BTXN 100 (rev. 12/14)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Highland Capital Management, L.P.	Debtor(s)	§	Case No.: 19–34054–sgj11 Chapter No.: 11
James Dondero,	Appellant(s)	§	Adversary No.: 20–03190–sgj
vs. Highland Capital Management, L.P.	Appellee(s)	§	Civil Action No.: 3:21–cv–01590–N

TRANSMITTAL AND CERTIFICATION OF RECORD ON APPEAL

Pursuant to Federal Rules of Bankruptcy Procedure 8010, the appeal filed on 06/15/2021 regarding [191]) Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021 by James Dondero, in the above styled bankruptcy case is hereby transmitted to the U.S. District Court for the Northern District of Texas.

This record on appeal contains all items listed on the attached index, but is not in compliance with Rule 8009 of the Federal Rules of Bankruptcy Procedure and is **deficient** for the following reason(s):

- ☐ Appeal not timely filed.
- ☐ Appeal filing fee not paid.
- ☐ Appellant(s) failed to file designation of the record.
- ☐ Appellant(s)/Appellee(s) failed to provide or prepay for the items designated.
- ☑ Did not provide Court admitted exhibits for hearing date 12/10/2020; did not provide court admitted exhibits for hearing 1/8/2021

All further pleadings or inquiries regarding this matter should be directed to the U.S. District Clerk's Office until such time as the appeal is fully processed in the U.S. District Court.

The above referenced record was delivered to the U.S. District Clerk's Office on August 6, 2021.

DATED: 8/6/21

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

1934054210806000000000021

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

MINI RECORD
VOLUME 1

BTXN 101 (rev. 10/02)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:		§	
Highland Capital Management, L.P.		§	
		§	Case No.: 19−34054−sgj11
	Debtor(s)	§	Chapter No.: 11
James Dondero		§	
	Appellant(s)	§	
vs.		§	
Highland Capital Management, L.P.		§	
	Appellee(s)	§	
		§	
		§	
		§	
		§	

INDEX OF RECORD FOR THE PURPOSE OF APPEAL

Page No.	**Item Description**
	Appellant Index
000001	Notice of appeal
000059	Appealed order
000114	Bk docket sheet
000489	Adv docket sheet 20−03190

DATED: 8/6/21

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

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000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that, pursuant to rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure and 28 U.S.C § 158(a), James Dondero hereby appeals to the United States District Court for the Northern District of Texas (the "District Court") from the *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in*

Civil Contempt of Court for Alleged Violation of TRO [Adv. Dkt. 191] (the "Order")[1] entered by the United States Bankruptcy Court for the Northern District of Texas on June 7, 2021. A copy of the Order is attached hereto as "**Exhibit 1**".

The parties to this matter and the names and addresses of their respective attorneys are as follows:

Party	**Counsel of Record**
James Dondero, Defendant in the above-captioned adversary proceeding and a creditor, indirect equity holder, and party in interest in the above-captioned bankruptcy case Appellant	John T. Wilson IV State Bar I.D. No. 24033344 Clay M. Taylor State Bar I.D. No. 24033261 Bryan C. Assink State Bar I.D. No. 24089009 BONDS ELLIS EPPICH SCHAFER JONES LLP 420 Throckmorton Street, Suite 1000 Fort Worth, Texas 76102 (817) 405-6900 telephone (817) 405-6902 facsimile Email: john.wilson@bondsellis.com Email: clay.taylor@bondsellis.com Email: bryan.assink@bondsellis.com
Highland Capital Management, L.P., Plaintiff in the above-captioned adversary proceeding and the Debtor in the above-captioned bankruptcy case Appellee	Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*) Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*) John A. Morris (NY Bar No. 266326) (*pro hac vice*) Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*) PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Email:jpomerantz@pszjlaw.com ikharasch@pszjlaw.com

[1] The memorandum opinion and order are contained in the same document. Docket number 190 is entered as the memorandum opinion and docket number 191 is entered as the Court's order.

	jmorris@pszjlaw.com gdemo@pszjlaw.com and Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) HAYWARD PLLC 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Telephone: (972) 755-7100 Email:MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com

Dated: June 15, 2021

Respectfully submitted,

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 15, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 7, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. Case No. 20-03190-sgj11

MEMORANDUM OPINION AND ORDER GRANTING IN PART PLAINTIFF'S MOTION TO HOLD JAMES DONDERO IN CIVIL CONTEMPT OF COURT FOR ALLEGED VIOLATION OF TRO[2]

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] This Order addresses the Motion filed at DE # 48 in above-referenced Adversary Proceeding.

EXHIBIT 1

You know, this is -- I hate to say it, but I feel like I've been in the role of a divorce judge today. We have very much a corporate divorce that has been in the works . . . and I'm a judge having to enter interim orders keeping one spouse away from the other, keeping one spouse out of the house, keeping one spouse away from the kids. It's not pleasant at all.

Transcript from 1/8/21 Hearing at 194:1-9. [DE # 80, Exh. 36].

I. Introduction.

The above quote aptly describes the above-referenced 20-month-old corporate bankruptcy case: it has, at times, become very much like a nasty divorce—in which one spouse (here, the company) is very much at odds with the other spouse (here, the company's former CEO). It is contentious, protracted, and unpleasant.

For a while, things were a bit like a situation where one spouse has filed for divorce, but both spouses remain living under the same roof for a while—rather than physically separating—for the perceived best interests of the family. This co-habitation eventually became untenable.

Next, things developed similarly to a situation in which one spouse wants to keep the family vacation home, boat, or mutual funds (*i.e.*, the husband), but the other spouse (*i.e.*, the one who happens to have custody and control over them) thinks the assets need to be liquidated to pay off the family's expenses or debt.

Also, this corporate divorce, sadly, is similar to a situation in which one spouse criticizes the other's new partner who has moved into the family home and also bears animus towards the spouse's lawyers. He thinks they are, collectively, mismanaging everything and taking actions towards him out of pure spite.

It's also similar to a situation in which one spouse is endeavoring to have members of the other spouse's household assist or cooperate with him in various ways, in his efforts to get what he perceives to be his fair share in the divorce.

And, finally, it is similar to a situation in which one spouse finally decides to seek a TRO against the other—for fear (legitimate or not) that the ex-spouse is about to burn the house down.

There is a bit of irony in all of this because the spouse (*i.e.*, former CEO) who is the alleged antagonist is the one who signed the divorce (*i.e.*, bankruptcy) petition to start the proceedings.

Divorce metaphors aside, this Order relates to a request by Chapter 11 Debtor Highland Capital Management, L.P. (the "Debtor" or "Highland"), made shortly before its Chapter 11 plan was confirmed,[3] that its co-founder, former President, former Chief Executive Officer ("CEO"), and indirect beneficial equity owner—Mr. James Dondero ("Mr. Dondero")—be held in civil contempt of court for allegedly violating a temporary restraining order ("TRO") of this court.[4] The TRO that Mr. Dondero is alleged to have violated arose in the above-referenced adversary proceeding ("Adversary Proceeding") that the Debtor filed December 7, 2020. A brief summary of the circumstances leading up to the Adversary Proceeding and the TRO is set forth below.

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[3] As of the date of issuance of this Order, the Debtor's confirmed plan has not yet gone effective.

[4] In addition to being the former CEO, Mr. Dondero represents that he is a "creditor, indirect equity security holder, and party in interest" in the Debtor's bankruptcy. This court has stated on various occasions that this assertion is ostensibly true, but somewhat tenuous. Mr. Dondero filed five proofs of claim in the Debtor's bankruptcy case. Two of those proofs of claim were withdrawn with prejudice on November 23, 2020 [DE # 1460 in main bankruptcy case]. The other three are unliquidated, contingent claims, each of which stated that Mr. Dondero would "update his claim in the next ninety days." Ninety days has long-since passed since those proofs of claim were filed and Mr. Dondero has not updated those claims to this court's knowledge. With regard to Mr. Dondero's assertion that he is an "indirect equity security holder," the details have been represented to the court many times to be as follows (undisputed): Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. ("Strand"), the Debtor's general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor's Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero's recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his indirect equity interest, the Debtor's estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be paid.

II. Background: The Chapter 11 Case.

On October 16, 2019 (the "Petition Date"), Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Highland is a registered investment advisor that is in the business of buying, selling, and managing assets on behalf of its managed investment vehicles. It manages billions of dollars of assets—to be clear, the assets are spread out in numerous, separate fund vehicles. While the Debtor has continued to operate and manage its business as a debtor-in-possession, the role of Mr. Dondero *vis-à-vis* the Debtor was significantly limited early in the bankruptcy case and ultimately terminated. The Debtor's current CEO is an individual selected by the creditors named James P. Seery.

Specifically, early in the case, the Official Unsecured Creditors Committee ("UCC") and the U.S. Trustee ("UST") desired to have a Chapter 11 Trustee appointed—absent some major change in corporate governance[5]—due to conflicts of interest and the alleged self-serving, improper acts of Mr. Dondero and possibly other officers (for example, allegedly engaging, for years, in fraudulent schemes to put Highland's assets out of the reach of creditors). Under this pressure, the Debtor negotiated a term sheet and settlement with the UCC (the "January 2020 Corporate Governance Settlement"), which was executed by Mr. Dondero and approved by a court order on January 9, 2020 (the "January 2020 Corporate Governance Order").[6] The settlement and term sheet contemplated a complete overhaul of the corporate governance structure of the Debtor. Mr. Dondero resigned from his role as an officer and director of the Debtor and of its general partner. Three new independent directors (the "Independent Board") were appointed to govern the Debtor's general partner Strand Advisors, Inc.—which, in turn, managed the Debtor. All of the new

[5] The UST was steadfast in wanting a Trustee.

[6] *See* DE ## 281 & 339 in main bankruptcy case. *See also* Dondero Exh. 8 (DE # 106 in the Adversary Proceeding).

Independent Board members were selected by the UCC and are very experienced within either the industry in which the Debtor operates, restructuring, or both (Retired Bankruptcy Judge Russell Nelms, John Dubel, and James P. Seery). As noted above, one of the Independent Board members, James P. Seery ("Mr. Seery"), was ultimately appointed as the Debtor's new CEO and CRO.[7] As for Mr. Dondero, while not originally contemplated as part of the January 2020 Corporate Governance Settlement, the Debtor proposed at the hearing on the January 2020 Corporate Governance Settlement that Mr. Dondero remain on as an unpaid employee of the Debtor and also continue to serve as and retain the title of a portfolio manager for certain separate ***non-Debtor*** investment vehicles/entities whose funds are managed by the Debtor.[8] The court approved this arrangement when the UCC ultimately did not oppose it. Mr. Dondero's authority with the Debtor was subject to oversight by the Independent Board.[9] Mr. Seery was given authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its subsidiaries, as well as the purchase and sale of assets that the Debtor manages for various separate non-Debtor investment vehicles/entities. Significant to the court and the UCC was a provision in the order, at paragraph 9, stating that "Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor."

To be sure, this was a complex arrangement. Apparently, there were well-meaning professionals in the case that thought that having the founder and "face" behind the Highland brand

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[7] "CRO" means Chief Restructuring Officer. *See* DE # 854 in main bankruptcy case, entered July 16, 2020.

[8] Although not discussed at the time, the court has become aware that Mr. Dondero has been a paid employee of the Non-Debtor Highland-Related Entities known as NexPoint and/or NexBank postpetition. *See* 1/8/21 Hearing Transcript, Debtor Exh. 36 (DE # 80) at 107:20-23.

[9] "Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination." *See* Debtor's Exh. 2, at Exh. 1 thereto, at 3 of 62 (DE # 80).

still involved with the business might be value-enhancing for the Debtor and its creditors (even though Mr. Dondero was perceived as not being the type of fiduciary needed to steer the ship through bankruptcy). For sake of clarity, it should be understood that there are at least hundreds of entities—the lawyers have sometimes said 2,000 entities—within the Highland byzantine organizational structure (sometimes referred to as the "Highland complex"), most of which are ***not*** subsidiaries of the Debtor, nor otherwise owned by Highland. And only Highland itself is in bankruptcy. However, these entities are very much intertwined with Highland—in that they have shared services agreements, sub-advisory agreements, payroll reimbursement agreements, or perhaps, in some cases, less formal arrangements with Highland. Through these agreements Highland (***through its own employees***) has historically provided resources such as fund managers, legal and accounting services, IT support, office space, and other overhead. Many of these non-Debtor entities appear to be under the *de facto* control of Mr. Dondero—as he is the president and portfolio manager for many or most of them—although Mr. Dondero and certain of these entities stress that these entities have board members with independent decision-making power and are not the mere "puppets" of Mr. Dondero (for ease of reference, these numerous entities will be referred to as the "Non-Debtor Dondero-Related Entities"). This court has never been provided a complete organizational chart that shows ownership and affiliations of all 2,000 Non-Debtor Dondero-Related Entities (such a chart would, no doubt, be the size of a football field), but the court has, on occasion, been shown information about some of them and is aware that a great many of them were formed in non-U.S. jurisdictions, such as the Cayman Islands.

Eventually, the Debtor's new Independent Board and management concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity. Various events occurred that led to the termination of his employment with the Debtor. For one thing, Mr.

Dondero prominently opposed certain actions taken by the Debtor through its CEO and Independent Board including: (a) objecting to a significant settlement that the Debtor had reached in court-ordered mediation[10] with creditors Acis Capital Management and Josh and Jennifer Terry (the "Acis Settlement")—which settlement helped pave the way toward a consensual Chapter 11 plan, and (b) pursuing, through one of his family trusts (the Dugaboy Investment Trust), a proof of claim alleging that the Debtor (including Mr. Seery) had mismanaged one of the Debtor's subsidiaries, Highland Multi Strategy Credit Fund, L.P. ("MSCF"), with respect to the sale of certain of its assets during the bankruptcy case (in May of 2020).[11] The Debtor's Independent Board and management considered these two actions to create a conflict of interest—if Mr. Dondero was going to litigate significant issues against the Debtor in court, that was his right, but he could not continue to work for the Debtor (among other things, having access to its computers and office space) while litigating these issues with the Debtor in court.

But the termination of his employment was not the end of the friction between the Debtor and Mr. Dondero. In fact, a week after his termination, litigation posturing and disputes began erupting between Mr. Dondero and certain Non-Debtor Dondero-Related Entities, on the one hand, and the Debtor on the other (as further described below).

III. **The Impetus for the Adversary Proceeding**.

The Adversary Proceeding centers significantly around two Non-Debtor Dondero-Related Entities known as NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors")—both of which, like

[10] The court appointed Retired Bankruptcy Judge Allan Gropper, S.D.N.Y., and Attorney Sylvia Mayer, Houston, Texas (both with the American Arbitration Association), to be co-mediators over multiple disputes in the Bankruptcy Case, including the Acis dispute. The co-mediators, among other things, attempted to mediate disputes/issues with Mr. Dondero.

[11] *See, e.g.*, Proof of Claim No. 177 and DE # 1154 in main bankruptcy case.

Highland, are registered investment advisors. Mr. Dondero is President of NexPoint and has an ownership interest in it.[12] Mr. Dondero is President of HCMFA and has an ownership interest in it as well.[13]

A. Alleged Interference with the Debtor's Management of the Highland CLOs.

The Advisors separately manage three funds ("NexPoint/HCMFA Funds"). The Advisors and these NexPoint/HCMFA Funds own, among other things, equity interests in certain pooled ***collateralized loan obligation*** ("CLO") vehicles that are managed by the Debtor (hereinafter the "Highland CLOs"). A key fact here to remember is that the CLO vehicles are managed by the Debtor (pursuant to contracts and neither the Advisors nor the NexPoint/HCMFA Funds are parties to such contracts).

Generally speaking, the term/acronym "CLO" is loosely used in the investment world to refer to a special purpose entity ("CLO SPE"), in which a manager (here, Highland) purchases a basket of loans to be held in the CLO SPE. The loans in the basket would typically be obligations of large well-known public companies and, collectively, provide a variable rate of interest. The CLO manager typically has discretion to buy and sell different loans to go into the pool of assets, with certain restrictions. There are, meanwhile, tranches of investors who invest funds into the CLO SPE, pursuant to an indenture (with an independent, third-party indenture trustee in place) so that the CLO SPE can purchase the loans, and those investors receive fixed interest from the CLO SPE (with the CLO SPE earning income on the "spread" between: (a) the variable interest being earned on the pool of loans in the CLO SPE's portfolio and (b) the amount of fixed interest the CLO SPE must pay out to its tranches of investors). This description, again, is a bit of a generalization. In

[12] 1/8/21 Hearing Transcript, Debtor's Exh. 36 at 35:9-25 (DE # 80).

[13] 1/8/21 Hearing Transcript, Debtor's Exh. 36 at 36:10-14 (DE # 80).

the case of the Highland CLOs (there are approximately 16 of them), many of them are quite old and do not have the typical diverse portfolio of loans that CLOs commonly have. Many of the CLOs are structured as closed-end investment funds and, in fact, own equity in post-reorganization companies (that are publicly traded and quite liquid) and some even own real estate.[14] In any event, as mentioned, the Debtor serves as portfolio manager on the numerous Highland CLOs (there more than a dozen), pursuant to ***separate portfolio management agreements*** that Highland has with the CLO SPEs. There are about $1 billion of assets in these CLO SPEs that Highland manages.[15] And, to be clear, the Advisors and NexPoint/HCMFA Funds own ***equity*** (*i.e.*, the bottom tranche) in most if not all of these Highland CLOs.

The Debtor has alleged in this Adversary Proceeding that the Advisors, acting under the direction of their President Mr. Dondero, have interfered multiple times with Mr. Seery's attempts to sell various assets in the CLO SPEs, by, among other things, exerting pressure on certain of the Debtor's employees to halt trades that were ordered by Mr. Seery. To be clear, the Advisors have no contractual right to do that—they are not party to the portfolio management agreements that Highland has with the CLO SPEs. The Advisors simply purport to speak for various investors (*i.e.*, the investors in the NexPoint/HCMFA Funds) who have invested in (*i.e.*, own the equity) in the Highland CLOs. However, it appears that the majority of these investors are yet ***other Non-Debtor Dondero-Related Entities***, including but not limited to the entities known as Charitable DAF HoldCo, Ltd. and CLO Holdco, Ltd.[16] In any event, various examples of communications that

[14] *See* 1/26/21 Hearing Transcript, Debtor's Exh. 37 at 155:9-18 (DE # 80).

[15] *See id.* at 202: 3-7.

[16] *See* Debtor's Exh. 2, Exh. 7 thereto (DE # 80). There may be some "mom and pop" or unrelated institutional investors in certain of these Highland CLOs (indirectly through the NexPoint/HCMFA Funds), *see* 1/26/21 Hearing Transcript, Debtor Exh. 37 (DE # 80), at 201:14-22, but ***none*** have ever come forward during the Highland bankruptcy. Moreover, the Debtor aptly notes that there is nothing preventing unhappy investors from simply selling their investments in the Highland CLOs if they are not happy with management decisions of the portfolio manager.

allegedly constituted interference were described in the Adversary Proceeding.[17] The court notes, anecdotally, that Mr. Dondero was continuing, well after his October 9, 2020 termination with the Debtor, to use an email address showing he was an employee of Highland in many of the communications introduced into evidence.[18]

B. Alleged Threats When Debtor Attempted to Collect Demand Notes from Mr. Dondero.

Additionally, the Adversary Proceeding describes that there are certain demand notes on which Mr. Dondero, personally, and certain Non-Debtor Dondero-Related Entities owe significant money to the Debtor. The Debtor made demand upon Mr. Dondero for payment on these demand notes on December 3, 2020, demanding payment by December 11, 2020, so that the Debtor could have these funds to use in its Chapter 11 plan that was set for confirmation in January 2021. Mr. Dondero is alleged to have sent a threatening text to Mr. Seery, just a few hours after the demand letters were sent to him.

After describing Mr. Dondero's alleged conduct, the complaint in the Adversary Proceeding sought injunctive relief preventing Mr. Dondero from interfering with the Debtor's operations, management of assets, and pursuit of a plan of reorganization, to the detriment of the Debtor, its estate, and its creditors, relying on 11 U.S.C. § 105 and Fed. R. Bankr. Pro. 7065. The Debtor has argued that Mr. Dondero's actions have jeopardized the Debtor's ability to effectively wind down its business in the Chapter 11 proceedings—to the detriment of its creditors.

[17] Debtor's Exh. 3, DE # 80 (10/16/20 letter from counsel for Advisors expressing "concerns" about the Debtor's management of the Highland CLOs and a desire that management be transitioned over to the Advisors); Debtor's Exh. 4, DE # 80 (11/24/20 letter from counsel for the Advisors further expressing "concerns" about the Debtor's management of Highland CLOs, especially the selling of assets therein); Debtor's Exh. 5, DE # 80 (11/24/20-11/27/20 emails of Mr. Dondero instructing Highland employee Hunter Covitz not to trade SKY equity as he had been instructed by James Seery); Debtor's Exh. 14, DE # 80 (12/24/20 letter of Debtor's counsel to counsel for the Advisors addressing some of their clients' actions).

[18] *See, e.g.*, Debtor's Exh. 5 (DE # 80).

IV. Motion for TRO [DE # 6].

Almost immediately after filing the Adversary Proceeding, the Debtor sought entry of a TRO enjoining Mr. Dondero from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Independent Board member ***unless*** Mr. Dondero's counsel and counsel for the Debtor were included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically related to shared services currently provided by the Debtor to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct"). It was supported by a Memorandum of Law[19] and a Declaration of Mr. Seery.[20]

The court held a hearing on December 10, 2020 on the Motion for TRO.

A. <u>The Evidence at the TRO Hearing.</u>

At the hearing on the Motion for TRO, the Debtor relied upon the Declaration of Mr. Seery and all exhibits that had been attached thereto (which the court admitted with no objection).[21] The court also heard a small amount of additional live testimony from Mr. Seery. Mr. Dondero's

[19] *See* DE # 6.

[20] *See* DE # 4 (with 29 exhibits attached, 177 pages in total length).

[21] *Id.*

counsel appeared and made some statements but did not file a responsive pleading or put on any evidence.

Mr. Seery credibly testified that, pursuant to the January 2020 Corporate Governance Settlement, Mr. Dondero surrendered control of the Debtor to the Independent Board. After that January 2020 Corporate Governance Settlement, Mr. Dondero's responsibilities with the Debtor were to be, in all cases, as determined by the Independent Board and subject at all times to the supervision, direction and authority of the Independent Board. In the event the Independent Board was to determine for any reason that the Debtor should no longer retain Mr. Dondero as an employee, Mr. Dondero agreed to resign immediately upon such determination.[22] By resolution passed on January 9, 2020, the Independent Board authorized Mr. Seery to work with the Debtor's traders and approve trades of certain of the Debtor's and funds' assets.[23] However, up until mid-March 2020, Mr. Dondero controlled certain of the Debtor's managed funds and accounts (as he still maintained the title of portfolio manager). Mr. Seery credibly testified that "[w]e took them away after they lost considerable amounts of money, about ninety million bucks. Real money. So we took over control of those accounts since then, and we've been managing to sell them down to create cash where we think the market opportunity is correct."[24]

Later, however, during the summer of 2020, the Independent Board determined that it was in the best interests of the Debtor's estate to formally appoint Mr. Seery as the Debtor's CEO and CRO (*i.e.*, not just an Independent Board member with trading authority). The bankruptcy court approved Mr. Seery's appointment as CEO and CRO on July 16, 2020.[25] Mr. Seery's appointment

[22] Debtor's Exh. 1, at pp. 2-3 (DE # 80).

[23] Debtor's Exh. 3, at p. 2 (DE # 80).

[24] 12/10/20 Transcript from TRO Hearing, at p. 51:21-25 (DE # 19).

[25] DE # 854 in main bankruptcy case.

as CEO and CRO formalized his role and his authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries. Mr. Seery credibly represented that he has routinely carried out such responsibilities during the case.

On August 12, 2020, the Debtor filed its Plan of Reorganization with the court[26] (as subsequently amended, the "Plan"). The Plan provided for, among other things, the gradual monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into court-ordered mediation with certain of its creditors which resulted in, among other things, the Acis Settlement (mentioned earlier). After the Acis Settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis Settlement, but that a settlement had been reached at all. On October 5, 2020, Mr. Dondero objected to the Debtor's motion seeking approval of the Acis Settlement, which the Debtor believed created an actual conflict with the Independent Board and the Debtor.[27] Additionally, one of Mr. Dondero's family trusts also filed a proof of claim alleging the Debtor and Mr. Seery were mismanaging the assets of a subsidiary of the Debtor.[28] Concluding that this situation was untenable, Mr. Dondero was asked to resign from the Debtor, and he did on October 9, 2020.[29]

Subsequent to Mr. Dondero's termination from the Debtor, he began engaging in activities that the Debtor perceived to be interference with its business judgment and management of the Highland CLOs. Approximately one week after Mr. Dondero resigned, the Advisors began writing letters to Mr. Seery requesting, among other things, that "no [Highland] CLO assets be sold without

[26] DE # 944 in main bankruptcy case.

[27] DE # 1121 in main bankruptcy case; Debtor's Exh. 2 (Mr. Seery's Decl.) at ¶ 11; DE # 80.

[28] *Id.* at ¶ 12.

[29] Debtor's Exhs. 4-5 (DE # 80).

prior notice and consent from the Advisors."[30] Not only is the Advisors' consent for Highland CLO assets sales not contractually required, but the Debtor's Chapter 11 plan (then on file, now confirmed) contemplates the gradual wind down of Highland's business over time so that it will have funds to pay its creditors. In fact, Mr. Seery credibly testified that the business model of Highland in recent years (under the direction of Mr. Dondero—and with its web and layers of entities) has not allowed Highland itself to operate at a profit.[31] Thus, interference with assets sales in the Highland CLOs seemed equivalent to interference with, not just the Debtor's efforts to manage the business in ways that allowed it to pay its expenses, but also interference with the Debtor's Chapter 11 plan.

In the November 24-27, 2020 time period (again, just a few weeks after Mr. Dondero's termination from the Debtor), Mr. Dondero sent various emails to both Debtor and Advisor employees (*e.g.*, Matt Pearson, Hunter Covitz, Joe Sowin, and Tom Surgent) telling them he had instructed the Debtor not to engage in trades of Highland CLO assets and that they should not engage in certain trades of Highland CLO assets that Mr. Seery had instructed them to make.[32] A review of this correspondence makes apparent the underlying conflicts of interest present—Highland was attempting to gradually wind down its business and monetize its managed assets for the benefit of its creditors (and this court believes—all the while—balancing its fiduciary duties to investors in such funds) and, meanwhile, Mr. Dondero (wearing his hat as a portfolio manager for, and indirect equity owner in, certain of the Non-Debtor Dondero-Related Entities—*i.e.*, the

[30] Debtor's Exh. 6, p.2 (DE # 80); *see also* Debtor's Exh. 7 (DE # 80).

[31] Apparently, the Debtor even ***offered to assign Highland's CLO management agreements to Mr. Dondero's affiliate, NexPoint (in early December 2020)***, but Mr. Dondero thought the proposed terms were untenable. *See* DE # 50, John Morris Decl., Exh. Z thereto (January 5, 2021 Deposition Transcript of Mr. Dondero, at 101:11-25).

[32] Debtor's Exh. 8 (DE # 80).

Advisors and the NexPoint/HCMFA Funds) did not want assets sold as part of a wind down. Mr. Dondero, it appears to this court, was putting his own and the Non-Debtor Dondero-Related Entities' interests (as investors in the Highland CLOs) ahead of Highland's creditors and the Highland CLOs, as a whole. But, Highland had duties to its creditors and to the Highland CLOs ***as a whole***, and not to the Advisors or their funds (as investors in or equity owners in the Highland CLOs). Mr. Seery further credibly explained the situation, and the harm the interference caused the bankruptcy estate, as follows: "We intend to continue to manage the CLOs, we intend to assume those contracts [*i.e.*, the portfolio management agreements for the Highland CLOs], we intend to manage them post-confirmation, after exit from bankruptcy. And causing confusion among the employees, preventing the Debtor from consummating trades in the ordinary course, deferring those transactions, we thought put the estate at significant risk, in addition to the cost."[33] The Highland CLOs generate fee income for the Debtor. Not all of them have liquid assets that are able to pay quarterly fees. Some owe deferred fees to Highland.[34]

The Debtor thereafter sent communications instructing the Advisors and Mr. Dondero to cease and desist their interference, indicating that Mr. Dondero's actions interfered with the management of the Debtor's bankruptcy estate and the property of such estate, in violation of the Bankruptcy Code and the January 9, 2020 Order.[35]

Meanwhile, around this same time period, the Debtor sent demand letters[36] to Mr. Dondero and certain Non-Debtor Dondero-Related Entities, each of whom are obligated to the Debtor on various demand notes, pursuant to which approximately $30 million is collectively owed to the

[33] Debtor's Exh. 37 at 166:6-13 (DE # 80).

[34] *Id.* 166-167.

[35] Debtor's Exhs. 9 & 10 (DE # 80).

[36] Debtor's Exhs. 24-27 (DE # 80).

Debtor.[37] Collection on these notes was part of the Debtor's liquidity plan, to help pay creditors under its Chapter 11 plan. Mr. Seery credibly testified that Mr. Dondero's response was a text message that stated: "Be careful what you do, last warning."[38]

The next day, Debtor's counsel sent Mr. Dondero's counsel correspondence demanding that he "cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero." The letter put Mr. Dondero on notice that the above-referenced Adversary Proceeding and Motion for TRO would be filed.

B. Entry of the TRO.

After hearing the evidence at the TRO Hearing, the court determined that the Debtor had met its burden of proving the need for a TRO. The court issued the TRO[39] which temporarily enjoined Mr. Dondero from "(a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the

[37] Debtor's Exhs. 11-23 (DE # 80).

[38] Debtor's Exh. 28 (DE # 80).

[39] *See* DE # 10; *see also* Debtor's Exh. 11 (DE # 80).

Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the 'Prohibited Conduct')." Mr. Dondero was further temporarily enjoined "from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct."

V. The Contempt Motion Now Before the Court.

Less than a month after entry of the TRO, on January 7, 2021, Highland filed *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Contempt Motion"),[40] which was supported by a Memorandum of Law[41] and a Declaration of John Morris with Exhs. G, K, L, M, N, P, Q, R, S, U, W, X, Y, Z attached.[42] Highland alleges Mr. Dondero violated the TRO as follows: (a) he willfully ignored it by not reading the TRO, the underlying pleadings, and allegations that supported it, nor did he listen to the hearing at which it was entered or make any meaningful effort to understand the scope of it; (b) he threw in the garbage his Highland-furnished cell phone, in what the Debtor believes was an attempt to evade discovery; (c) he trespassed on the Debtor's property after the Debtor had evicted him because the Debtor believed he was interfering with the Debtor's business; (d) he interfered with the Debtor's trading of Highland CLO assets; (e) he pushed and encouraged the Advisors and NexPoint/HCMFA Funds to make further demands and threats against the Debtor regarding the trading of Highland CLO assets; (f) he communicated with the Debtor's inhouse

[40] DE # 48.

[41] DE # 49.

[42] DE # 50.

counsel, Scott Ellington and Isaac Leventon, before they were terminated from Highland, to coordinate legal his own strategy against the Debtor; and (g) he interfered with the Debtor's obligation to produce certain documents that were requested by the UCC and that were in the Debtor's possession, custody and control.

The court held an evidentiary hearing on the Contempt Motion on March 22, 2021 (with closing arguments March 24, 2021). The court considered dozens of exhibits[43] and testimony from two witnesses (Mr. Dondero and the Debtor's current CEO, James Seery). The Debtor asserted that there were seventeen different violations of the TRO. To be clear, this Contempt Motion ***deals solely with whether Mr. Dondero violated the TRO after its entry on December 10, 2020 at 1:31 pm CST, up through the time of the filing of the Contempt Motion on January 7, 2021***.[44] In fact, the court has subsequently entered a Preliminary Injunction[45] and Agreed Injunction[46] resolving this Adversary Proceeding but reserved jurisdiction to rule on the earlier-filed Contempt Motion.

A. <u>The Evidence Regarding Whether Mr. Dondero Willfully Ignored the TRO by Not Reading It or the Underlying Pleadings and Allegations that Supported It; by Not Attending the Hearing Thereon; and by Not Making Any Meaningful Effort to Understand the Scope of the TRO.</u>

The Debtor argues that Mr. Dondero's willful ignorance of both the TRO, and the underlying evidence presented in connection with the TRO, is in and of itself contemptible.

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[43] The court admitted Debtor's Exhibits #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 through #57 (found at DE ## 80, 101, & 128), and Mr. Dondero's Exhibits #1 through #20 (found at DE # 106).

[44] The Debtor initially sought an expedited hearing on the Contempt Motion for January 8, 2021—the same day that the Debtor's request for a preliminary injunction was set for hearing. The court denied the request for an expedited hearing on the Contempt Motion—believing this was not enough notice to Mr. Dondero. So, there was a hearing on a request for a preliminary injunction only on January 8, 2021 (which was granted ultimately). To be clear, Mr. Dondero and his counsel had approximately 75 days to prepare for the hearing on this matter.

[45] DE # 59.

[46] DE # 182.

The evidence on this point is that Mr. Dondero testified multiple times in connection with this Adversary Proceeding[47] that he had not: (a) reviewed the Declaration of James P. Seery, Jr., the Debtor's Chief Executive Officer, in support of the TRO Motion; (b) attempted to learn of the allegations made against him; (c) thought about the fact that the Debtor was seeking a restraining order against him; (d) listened to the hearing where the court admitted evidence and heard argument on the Debtor's motion; (e) read the transcript of the hearing at which the court granted the Debtor's motion for the TRO; (f) read the TRO after it was entered; or (g) made any meaningful effort to understand the scope of the TRO.[48]

But on later examination by his counsel at the Hearing on the Contempt Motion itself, Mr. Dondero testified as follows:

> Q Did you have an opportunity to ask your counsel questions about the TRO?
>
> A Yes.
>
> Q And did you rely on your counsel to explain to you what the TRO meant?
>
> A Yes.
>
> Q And in the weeks that followed the entry of the TRO, did you continue to seek advice from your counsel regarding what you could and could not do under the TRO?
>
> A Yes.
>
> Q And why did you do that?
>
> A Again, to stay compliant, not -- to stay compliant any specific tripwires or any trickery that might have been in the agreement.[49]

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[47] The court will refer frequently herein to three Transcripts and hereinafter use the following defined terms for ease of reference: (a) the January 5, 2021 Transcript from Mr. Dondero's deposition in connection with this matter, found as an attachment to the John Morris Declaration, DE # 50, at Exh. Z ("1/5/21 Transcript"); (b) the January 8, 2021 Transcript from the hearing on the Motion for Preliminary Injunction, which was admitted as Debtor's Exh. 36 at the Hearing on the Contempt Motion ("1/8/21 Transcript"); and (c) the March 22, 2021 Transcript from the Hearing on the Contempt Motion, which is found at DE # 138 ("3/22/21 Transcript").

[48] *See* 1/5/21 Transcript at 12:17-15:14; 1/8/21 Transcript at 23:10-12 and 101:13-14; 3/22/21 Transcript at 30:20-22; 35:6-16. *See also* 1/5/21 Transcript at 84:8-16; 3/22/21 Transcript at 35:20-36:1.

[49] 3/22/21 Transcript at 130:6-19.

Mr. Dondero went on to testify: "Yeah, I -- again, I take seriously anything that comes from the Court, and I did adjust my behavior, but the overall theme, that somehow I was doing something to hurt the creditor or hurt the Debtor or hurt investors I viewed as incongruent with any of my behavior. So I didn't think it was going to require much adjustment."[50]

The court concludes that Mr. Dondero's testimony was very inconsistent on when and how carefully he read the TRO. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

B. The Evidence Regarding Whether Mr. Dondero Disposed of His Highland-Furnished Cell Phone to Evade Discovery.

First, the Highland Cell Phone Policy.

The evidence is undisputed that Highland had a cell phone policy for all of its employees dated March 27, 2012 that still remained in place at all relevant times during this bankruptcy case.[51] Employees could, among other things, have their cell phone expenses reimbursed by Highland. Mr. Dondero participated in this program. To be clear, Highland actually purchased and paid for Mr. Dondero's cell phone (in contrast, some employees used their own cell phones and obtained expense reimbursement). The policy stated as follows:

> Your obligations under this policy shall terminate upon the termination of your employment, ***provided that you will remain obligated to furnish historical call records covering the period through the date of your termination***, as requested following the termination of your employment. Employees participating in this policy should have no expectation of privacy regarding e-mail, voice mail, ***text messages***, graphics, and other electronic data composed, sent, and/or received on their cell phones. Notwithstanding the foregoing, Highland agrees not to review any call records on an employee's bill other than those associated with the phone number of employee. Further, regardless of whether employees choose to participate in this policy, ***all e-mail, voice mail, text messages, graphics, and other***

[50] 3/22/21 Transcript at 129:6-11; *see more generally, id.* at 130-136.

[51] Debtor's Exh. 54 (DE # 101).

> ***electronic data composed, sent, and/or received related to company business remain the property of Highland.***"[52]

Mr. Dondero certified in January 2020 and again on October 7, 2020, that he had read the Employee Handbook.[53] Mr. Dondero testified that he reviewed it and the company's Compliance Manual once a year in connection with required compliance training.[54]

It is undisputed that as of the day that the TRO was entered (December 10, 2020), Mr. Dondero had a cell phone that was bought and paid for by the Debtor.[55] Mr. Dondero testified that he would sometimes use it for business texts.[56]

From this evidence, the court finds that the cell phone that Mr. Dondero used for the majority of the Chapter 11 case (and as of the date of the TRO, December 10, 2020) was property of the bankruptcy estate, as was the data thereon related to company business.

Mr. Dondero's Cell Phone Goes Missing Immediately After Entry of the December 10, 2020 TRO. Coincidence or Not?

Soon after the entry of the December 10, 2020 TRO, on December 23, 2020, Debtor's counsel sent Mr. Dondero's counsel a letter informing him that Highland would:

> terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the 'Cell Phones'). [Highland] demands that Mr. Dondero immediately turn over the Cell Phones to [Highland] by delivering them to [Mr. Dondero's counsel]; we can make arrangements to recover the phones from [Mr. Dondero's counsel] at a later date. The Cell Phones and the accounts are property of [Highland]. [Highland] further demands that Mr. Dondero refrain from deleting or "wiping" any information or messages on the Cell Phone. [Highland], as the owner of the account

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[52] *Id.* (emphasis added). *See also* Debtor's Exh. 55, at 12-13 (DE # 101).

[53] Debtor's Exhs. 56 & 57 (DE # 101).

[54] 3/22/21 Transcript at 37:1-23; 42:1-25. *See also* Debtor's Exh. 55 (Employee Handbook); Debtor's Exhs. 56 & 57 (Compliance Certificates) (DE # 80).

[55] 3/22/21 Transcript at 51:17-21

[56] *Id.* at 51:22-25.

> and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.[57]

On December 29, 2020, Mr. Dondero's counsel sent a letter replying to the December 23, 2020 letter, stating that Mr. Dondero had recently acquired a new phone and they were not sure where Mr. Dondero's old Highland-provided phone was at the moment.[58] Mr. Dondero was copied on that letter. Nothing was ever mentioned in that letter about the disposal or wiping of the old cell phone. And yet, in discovery that soon unfolded, as well as the hearing on the Contempt Motion, Mr. Dondero testified that his old company cell phone had been wiped of data and disposed.

When Mr. Dondero was asked specifically about what happened to the cell phone he had that was "bought and paid for by the debtor," he testified that it "was disposed of as part of getting a replacement phone in anticipation of potentially a transition."[59] He testified that there was a historical practice at Highland of destroying old phones when he obtained a new one.[60] He testified that "[a]s far as I know, it was disposed of in the garbage, but I don't know if it was recycled or whatever."[61] He said he did not know specifically who threw it away.[62] When asked if he was aware that the UCC had asked for his phone messages, he testified no and that no one had ever told him.[63] He further testified that maybe an employee named Jason Rothstein (an employee in Highland's technology group) was involved with getting him a new phone and disposing of his old phone, but he was equivocal.[64] Mr. Dondero was insistent that disposing of old phones was always

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[57] Debtor's Exh. 12, at pp. 2-3 (DE # 80).

[58] Debtor's Exh. 22 (DE # 80).

[59] 1/5/21 Transcript at 72:5-7.

[60] *Id.* at 72:9-13.

[61] *Id*. at 72:18-20.

[62] *Id*. at 73: 4-18.

[63] *Id.* at 74:19-25.

[64] *Id.* at 75:7-11.

the protocol at Highland and, also, employees routinely kept their old phone numbers (as he had done after leaving Highland and getting a new phone).[65] He further testified that he thought that he and all senior executives had to "move their phones in the next 30 days or next 25 days, based on Seery's termination notice."[66] ("Seery's termination notice" presumably was a reference to Highland sending a letter on November 30, 2020 that Highland was terminating the shared services agreements among Highland and the Advisors effective January 30, 2021.[67] Of course, Mr. Dondero had been terminated as a Highland employee back on October 9, 2020).

An exhibit was shown to Mr. Dondero[68] during a January 5, 2021 deposition which was a text from Jason Rothstein (the aforementioned Debtor employee in the technology group) to Mr. Dondero dated December 10, 2020 at 6:25 pm. The TRO had been entered earlier that same day at 1:31 pm (after a 9:30 am hearing). Jason Rothstein's text stated, "I left your old phone in the top drawer of Tara's [Mr. Dondero's assistant's] desk" to which Mr. Dondero replied "[o]k."[69]

When questioned about this text and asked whether Mr. Dondero had told Jason Rothstein to do anything with the phone, he replied, "I don't—all I know is the phone's been disposed of. That's all I know."[70] He then specifically testified that he did not tell either Jason Rothstein or his assistant Tara to throw the phone in the garbage.[71] When later asked if he disposed of the phone "somewhere around December 10, 2020" he replied "I—I don't know. Probably."[72] Later at the

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[65] *Id.* at 76:8-77:2.

[66] *Id.* at 79:25-80:4.

[67] Dondero's Exhs. 4 & 5 (DE # 106).

[68] Debtor's Exh. 8 (DE # 80).

[69] While this timing seems very coincidental, Mr. Dondero testified that he had ordered his new cell phone a couple of weeks before December 10, 2020. 3/22/21 Transcript at 147:17-148:7.

[70] 1/5/21 Transcript at 80:18-81:8.

[71] *Id.* at 81:9-15.

[72] *Id.* at 85:15-17.

hearing on the Contempt Motion on March 22, 2021, Mr. Dondero answered more ambiguously as to what happened to the cell phone: "I don't know what happened to the phone. I don't know what Jason did or did not do."[73] Nobody called Jason Rothstein to testify at the hearing on the Contempt Motion. In any event, Mr. Dondero was insistent that he did nothing wrong—stating that he turned the cell phone over to the "tech group" for the Debtor (Jason Rothstein) as he was supposed to do and that he wiped it in accordance with company protocol.[74] Mr. Dondero further testified:

> Q Do you have any personal knowledge about what happened to your phone after Jason Rothstein texted you that he left it in Tara's desk?
>
> A No.
>
> Q Did you ever look to see if it was in Tara's desk?
>
> A No.
>
> Q Did you -- you -- you didn't take the phone out of Tara's desk?
>
> A No.
>
> Q So did you ever see the phone again after you turned it over to Jason Rothstein?
>
> A No.
>
> Q Do you know where the phone is today?
>
> A But, again, I don't know why this is relevant. They can get the text messages from the phone company if they think it's that big of a deal.[75]
>
> Q When you previously testified that the phone was disposed of, what did you mean?

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[73] 3/22/21 Transcript at 57:3-4.

[74] *Id.* at 58:1-16.

[75] The court did not have any expert evidence of this, but the court believes without much doubt that this is incorrect. While this may have been true long ago (in the days before iPhones and WiFi communications), Mr. Dondero testified that he had an iPhone. Whether he uses the iPhone "Messages" text app or some other messaging app such as "WhatsApp" or "Signal," his phone company (which he testified was AT&T) would not have his text messages since text messages are sent through these apps—not the AT&T phone service.

A I mean, that's -- that's the last step. That's what always happens to the old phones. But to say it was tossed in the garbage, I have no idea. I have no idea what happened to it after it went back to Tara's desk.

Q So do you have any personal knowledge that your phone was actually disposed of?

A I don't know.[76]

Is the Missing Phone Any Big Deal?

Mr. Dondero is rather adamant that this is all much ado about nothing. Is the missing cell phone a big deal? The answer is "maybe or maybe not." It depends on what was on it and whether the data on it was responsive to numerous discovery requests in this bankruptcy case. And in any event, the phone and any data on it related to Highland was "property of the estate," pursuant to section 541 of the Bankruptcy Code.

With regard to discovery requests, there have actually been many discovery requests in the bankruptcy case for which ***any relevant data on Mr. Dondero's phone would have been responsive***, starting from almost the very beginning, when the UCC sought, among other things, electronically stored information ("ESI") from the Debtor and key custodians including Mr. Dondero.

For example, back on November 10, 2019 (when the bankruptcy case was still pending in Delaware), the UCC served its first document request ***while Mr. Dondero was still CEO and during which time all original management and inhouse counsel were still intact***.[77] This first UCC document request, in seeking communications about numerous topics, defined "Communications" as including ***electronic communications such as texts***. And the "Instructions" therein to the Debtor

[76] 3/22/21 Transcript at 150:5-151:4.

[77] Debtor's Exh. 15 (DE # 80).

provided at paragraph 4 that: "You are requested to produce not only those documents in Your physical possession, but also those documents within Your custody and control, including, without limitation, documents in the possession of Your agents, employees, affiliates, advisors, or consultants and any other person or entity acting on Your behalf."[78] To be clear, this was approximately two months before the January 2020 Corporate Governance Settlement was reached, with the subsequent installment of the Independent Board. Mr. Dondero was still in control of the Debtor when this document request would have been served. The UCC served a second document request on February 3, 2020 (with the same definitions and instructions);[79] a third document request on February 24, 2020 (same definitions and instructions),[80] and a fourth document request on July 8, 2020 (same definition and instructions).[81]

At the same time as the UCC's fourth request for document production (on July 8, 2020), the UCC also filed a motion to compel.[82] This motion to compel brought to the court's attention for the first time that problems were brewing with the UCC's efforts to obtain documents that might be relevant to estate causes of action, and in particular, the UCC motion to compel sought assistance from the court in the UCC's efforts to obtain ESI from various custodians of documents of the Debtor.

The UCC's motion to compel reminded the court that the January 2020 Corporate Governance Settlement explicitly granted the UCC standing to pursue bankruptcy estate claims, defined as "any and all estate claims and causes of actions against Mr. Dondero, Mr. Okada, other

[78] *Id.*

[79] Debtor's Exh. 30 (DE # 80).

[80] Debtor's Exh. 31 (DE # 80).

[81] Debtor's Exh. 32 (DE # 80).

[82] Debtor's Exh. 33 (DE # 80).

insiders of the Debtor, and each of the Related Entities, including promissory notes held by any of the foregoing."[83] The parties also agreed in the January 2020 Corporate Governance Settlement that the UCC would receive any privileged documents or communications that relate to the "Estate Claims" so that the UCC could bring those claims. In short, the UCC, pursuant to the January 2020 Corporate Governance Settlement, stands in Debtors' shoes with respect to the "Estate Claims." In fact, the January 2020 Corporate Governance Settlement set forth a "Document Production Protocol," which stated that ESI was included within the documents being sought and stated that "***Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data***."[84] Thus, whether Mr. Dondero and inhouse counsel paid attention or not, they were on notice very early in this case that they had a duty to preserve ESI.

The UCC motion to compel (again, filed July 8, 2020) further stated that for approximately eight months, the UCC had attempted to work cooperatively with the Debtor to obtain documents and communications needed to investigate those claims, and, despite the UCC's efforts, the Debtor had not yet provided the UCC with the ESI it had requested. In particular, the UCC alleged that it had spent a considerable amount of time attempting to obtain "***production of emails, chats, texts, or other ESI or communications from the Debtor."*** In summary, the UCC, in July 2020 (some five months before Mr. Dondero's cell phone was disposed) moved to compel production of documents and communications of nine custodians pursuant to a protocol proposed by the UCC and these nine custodians were Patrick Boyce, Jim Dondero, Scott Ellington, David Klos, Isaac

[83] *Id.* at 4.

[84] Debtor's Exh. 2, Exh. 1.C. thereto (DE # 80).

Leventon, Mark Okada, Trey Parker, Tom Surgent, and Frank Waterhouse. The UCC specifically stated that for "avoidance of doubt," it was requesting "all ESI for the nine custodians, including without limitation, email, chat, text, Bloomberg messaging, or any other ESI attributable to the custodians."[85]

Notably, Mr. Dondero filed a responsive pleading to this UCC motion to compel—which would be some indication that he knew about it.[86] In his response, he argued that he did not want Josh Terry (Acis's manager, with whom he had been in long-running litigation) to get any documents that might be produced pursuant to the UCC motion to compel.

Finally, the Debtor also sought document production from Mr. Dondero including ESI in a formal document request it sent to him dated December 23, 2020.[87] More pointedly, on December 23, 2020, Debtor's counsel sent Mr. Dondero's counsel the letter mentioned above, in which the Debtor specifically asked that Mr. Dondero turn over his Highland-purchased cell phone.[88]

With regard to awareness about discovery requests, Mr. Dondero testified at his deposition on January 5, 2021 that he was aware of a document request sent to his lawyers for documents of his and that he delegated to his lawyers and his assistant, Tara Loiben, the task of responding by saying, "she has full access to my email, and I gave her my phone for the better part of a couple of days in the office."[89] He also testified that he understood that the Debtor's document requests called for the production of all text messages that were responsive to the requests.[90] When asked if he

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[85] *Id.*

[86] Debtor's Exh. 40 (DE # 101).

[87] Debtor's Exh. 7 (DE # 80).

[88] Debtor's Exh. 12 (DE # 80).

[89] *See* 1/5/21 Transcript at 67:20-69:9. *See also* Debtor's Exh. 9 (DE # 80).

[90] *Id.* at 70:1-6.

understood the document request was for the time period of December 10, 2020 to the end of the month, he replied "I didn't need the details of this. I didn't get into it. I didn't do the document production that I believe was completed and responsive. I delegated it."[91]

Mr. Dondero's testimony about awareness as to discovery requests has been inconsistent. Mr. Dondero testified at the hearing on the Contempt Motion that no one ever asked him to preserve his text messages.[92]

The court concludes that Mr. Dondero exercised control over property of the estate (*i.e.*, his Highland-provided cell phone and the company-related data thereon) and potentially spoliated evidence thereon that was responsive to multiple, pending discovery requests. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

The Evidence Regarding Whether Mr. Dondero Trespassed.

In the December 23, 2020 letter that Debtor's counsel sent to Mr. Dondero's counsel mentioned earlier (that demanded turn over of Mr. Dondero's cell phone), it also stated that Highland:

> has concluded that Mr. Dondero's presence at the [Highland] office suite and his access to all telephonic and information services provided by [Highland] are too disruptive to [Highland's] continued management of its bankruptcy case to continue. As a consequence, Mr. Dondero's access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the "Office"), will be revoked effective Wednesday, December 30, 2020 (the "Termination Date"). As of the Termination Date, Mr. Dondero's key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.[93]

[91] *Id.* at 70:17-20.

[92] 3/22/21 Transcript at 152:1-11.

[93] Debtor's Exh. 12 (DE # 80).

The letter went on to warn that: "Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by [Highland] will be viewed as an act of trespass, theft, and/or an attempted breach of [Highland's] security protocols."[94]

Mr. Dondero testified that he was aware of this and he nevertheless went into the office on January 5, 2021, to give a deposition regarding this Adversary Proceeding:

> I went through my phone, the January 5th deposition that has somehow become important, even though there were no Highland employees in the office other than the receptionist, is memorialized by a calendar invite on my phone -- which will also be in the Highland system -- where it was an invite a week earlier from Sarah Goldsmith, who was one of the Highland employees supporting the legal team that was largely supporting Jim Seery, sent me a calendar invite to the conference room at Highland for the deposition on the 5th. It's right front and center in my calendar. It'll be on the Highland Outlook program. And Sarah Smith -- I mean, Sarah Goldsmith works directly for Jim Seery.[95]

The court concludes that Mr. Dondero was trespassing against the Debtor's wishes and instructions at the Highland offices on January 5, 2020. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

<u>The Evidence Regarding Whether Mr. Dondero Interfered with Trading of Highland CLO Assets.</u>

It is undisputed that Mr. Dondero resigned (at the Debtor's request) completely from Highland on October 9, 2020. About a week later, on October 16, 2020, a law firm representing the Advisors and the NexPoint/HCMFA Funds sent its first of several letters complaining about the Debtor's supposed rush to sell assets in the Highland CLOs at so-called fire sale prices and

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[94] *Id.* at 3.

[95] 3/22/21 Transcript at 179:7-18.

expressing a desire that the Debtor not sell the Highland CLO assets without prior notice and consent of the Advisors. The second in this series of letters was sent in November 2020. Mr. Dondero testified that he supported these letters being sent.[96]

What was this about? The Debtor sought during certain times in November and December 2020 to cause the Highland CLOs to sell certain publicly-traded equity securities, including "AVYA" and "SKY' (stock tickers). Mr. Dondero disagreed that these securities should be sold. At issue here, in particular, are the Debtor's attempted sales in late December 2020—after entry of the TRO. Mr. Dondero testified at a deposition on January 5, 2021, that he gave instructions to a Debtor employee, Hunter Covitz, not to sell "SKY" equity after Mr. Covitz had been instructed by Mr. Seery to sell it.[97] He also testified that he communicated with an employee named Matt Pearson, an equity trader, informing him that certain Non-Debtor Highland Related Entities ("HFAM" and "DAF")—who were investors in the NexPoint/HCMFA Funds—had "instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again."[98] Matt Pearson, in response, canceled scheduled sales of SKY as well as AVYA.[99] Mr. Dondero also communicated with an employee of one of the Advisors named Joe Sowin regarding stoppage of trades of CLO assets. Mr. Dondero explained: "My intent was to prevent trades that weren't in the best interests of investors, that investors—the beneficial holders had articulated they didn't want sold while these funds were in transition, and that the–there was no business purpose to benefit the debtor to sell these assets."[100] To be clear, the so-called investors/beneficial holders were Non-

[96] 1/26/21 Transcript at 61:4-18.

[97] 1/5/21 Transcript at 41:22-43:11.

[98] *Id.* at 43:15-44:08.

[99] *Id.*

[100] *Id.* at 50:8-14; *see also, id.* at 89:8-25.

Debtor Highland Related Entities under the control of Mr. Dondero. And the Debtor, indeed, ***did*** have a business purpose—despite Mr. Dondero's belief that Mr. "Seery had no business purpose and he was doing it to tweak myself and everybody else."[101] For one thing, the Debtor is owed fees from managing these Highland CLOs and it cannot just defer them indefinitely—Highland needed liquidity to fund its Chapter 11 plan. Moreover, Mr. Seery credibly testified that he had consulted with many advisors on the Highland and Advisors team, and he concluded it was a good time to sell the AYVA and SKY securities. In any event, Mr. Dondero also communicated with Debtor employee Thomas Surgent, the Chief Compliance Officer, to inform him that he thought Mr. Seery was engaging in improper trades of Highland CLO assets and told Mr. Surgent he might face personal liability over this.[102] Finally, Mr. Dondero communicated with a text to Mr. Seery that stated: "Be careful what you do, last warning."[103] As a result of this conduct, the Debtor notified Mr. Dondero's counsel that they were essentially evicting Mr. Dondero from access to the Highland offices effective December 31, 2020 and terminating his Highland email account.[104]

Mr. Dondero stated that he communicated as he did regarding the Highland CLO asset sales because he thought Mr. Seery was acting improperly with the trades he was attempting to execute.[105] Mr. Dondero testified at the hearing on the Contempt Motion that he may have interfered with trades the week of Thanksgiving, but he did not after entry of the TRO. The evidence does not seem to support this testimony.[106]

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[101] *Id.* at 55:5-6.

[102] *Id.* at 60:23-61-25.

[103] *Id.* at 62:25.

[104] *See* Debtor's Exh. 12 (DE # 80).

[105] 1/5/21 Transcript at 63:1-64:20.

[106] 3/22/21 Transcript at 80-81.

Mr. Dondero testified that he only talked to Jason Post about trades in late December and that Jason Post was not a Debtor employee but rather an employee of NexPoint.[107]

What was at the bottom of this? Mr. Dondero said he "viewed it as a violation of the Advisers Act and the spirit of the Advisers Act, when the beneficial holders have told you they're going to change managers and don't want their account liquidated."[108] Mr. Post inconsistently testified at one hearing that he believed the trades violated Advisors' policies and procedures because they were not initiated through an electronic system called the OMS (Order Management System).[109] It appears to this court that Mr. Dondero wanted these funds to be kept intact and not have any assets liquidated until he could get a new company up and running (or maybe one of his existing companies) to hopefully take over Highland's role of managing these Highland CLOs.

In any event, the Debtor pointed out, in response to Mr. Dondero's "defense" of his interference—that he was looking out for investors—that Mr. Dondero himself, during January-October 2020, while still an employee of Highland, traded a significantly larger amount of the AVYA stock that was held in the Highland CLOs, sometimes at a lower price than Mr. Seery did or attempted.[110] Mr. Seery, in fact, credibly testified that the original impetus to sell AVYA came from Mr. Hunter Covitz, one of the Highland CLO portfolio managers, who had been looking at this security and noticed it had started moving up after performing extremely poorly post its own Chapter 11. Mr. Covitz, during the summer of 2020, believed Highland should "start lightening up" on the AVYA holdings, and Mr. Seery also had the following additional personnel look into it: Kunal Sachdev (Highland analyst); Joe Sowin (head trader at HCFMA) and Matthew Gray (another

[107] *Id.* at 162.

[108] 3/22/21 Transcript at 168:22-25.

[109] 1/26/21 Transcript at 223:11-16.

[110] *Id.* at 106:9-20, 159-161.

senior analyst). They determined (Mr. Sachdev, in particular) that AVYA had reached its peak and even though it could continue to go up, they just did not think the value was there and thought it should be sold. A similar analytical process was undertaken with the SKY equity holdings.[111]

One might wonder, if Mr. Dondero and the Advisors and the NexPoint/HCMFA Funds believed that Mr. Seery and the Debtor were mismanaging the Highland CLOs, why not offer to take them over during Highland's case (or as part of Highland' Chapter 11 plan)? Mr. Seery credibly testified that:

> Q Has the Debtor made any attempt to transfer the CLO management agreements to the Defendants or to others?
>
> A Well, our original construct of our plan was to do that. We've since determined, when we tried to do that, we got virtually no response from the Dondero interests. The structure of the original thought of the plan was if we didn't get a grand bargain we would effectively transition a significant part of the business to Dondero entities, they would assume employee responsibilities and the operations, and then assure that the third-party funds were not impacted.
>
> As I think I testified on the -- I can't recall if it was the deposition or my prior testimony in court -- Mr. Dondero, true to his word, told me that would be very difficult, he would not agree, and he has made that very difficult.
>
> So we examined it. We've determined that we're going to maintain the CLOs and assume them. But we originally tried to contemplate a way to assign those management agreements.[112]

What's really going on here? These Highland CLOs are one of the ways that the Debtor earns revenue. Specifically, the CLO SPEs must pay fees to the Debtor. Highland's management of the CLO SPEs generates about $4.5-$5 million of fees for it per year.[113] That sometimes requires liquidation of assets in the CLO SPEs to pay the fees, since not all of the assets in the CLO SPEs

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[111] *Id.* at 156-157.

[112] *Id.* at 163:5-22.

[113] *Id.* at 187:5-12.

are cash-generative.[114] To be more specific, these are very old CLOs that are no longer in a reinvestment period. The manager (Highland) can no longer sell assets and reinvest cash in new assets. Thus, the manager must either hold them or sell them. But the assets are for the most part not loans anymore—they are equity (such as MGM stock) and real estate. Many of the assets, as stated, do not regularly generate cash, so the only way Highland can generate cash to pay management fees is to sell assets (presumably at prudent times). When there is interference with liquidation of assets in the CLO SPEs, it interferes with Highland's revenue stream. Yes, it also reduces the assets in the CLO SPEs ultimately available for the equity tranche. ***But there would appear to be nothing in any contract (or any law presented to the court) that precludes Highland from liquidating assets in the CLO SPEs, from time to time, to pay its fees or otherwise as it deems fit—and the evidence was not at all convincing that there was any sort of bad decision making ongoing in that regard***. Most importantly, it was Highland's decision to make when and how to liquidate assets. It is easy to see a conflict of interest here. To the extent assets in a Highland CLO are not cash-generative, they will not have liquid funds to pay Highland, as portfolio manager, its management fees. That's not optimal for Highland to indefinitely defer/accrue management fees. But it ***would*** be optimal for Mr. Dondero and the Advisors as equity holders—they would rather see assets kept in the Highland CLOs longer to hopefully grow their investment. And it also might be optimal for Mr. Dondero and the Advisors for Highland to decide they do not want to manage these Highland CLOs anymore (because of inconsistent ability to pay management fees) and perhaps agree to assign their management agreements over to the Advisors so Mr. Dondero could once again have ultimate, total control over the Highland CLOs. Conspicuously absent on this issue are the indenture trustees and other ultimate equity holders of the Highland CLOs. Only

[114] *Id.* at 189:12-18.

Non-Debtor Dondero-Related equity holders have complained. The indenture trustees for the Highland CLOs even agreed to Highland continuing to be the portfolio manager on these CLOs post-confirmation.

The court concludes that Mr. Dondero interfered with the Debtor's trading of Highland CLO assets after entry of the TRO. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

> The Evidence Regarding Mr. Dondero's Communications with Debtor Employees—in Particular, with Inhouse Counsel—to Coordinate His Own Legal Strategy Against the Debtor.

It is apparent from the evidence (numerous emails) that Mr. Dondero communicated with Highland inhouse general counsel Scott Ellington (who was terminated from Highland in January 2021) about all kinds of things post-TRO ***other*** than shared services, including Mr. Dondero's own personal litigation strategies.[115] As a reminder, Section 2(c) of the TRO stated that Mr. Dondero was enjoined, "from communicating with any of the Debtor's employees, except as it specifically relates to ***shared services provided to affiliates*** owned or controlled by Mr. Dondero" (emphasis added).

Mr. Dondero asserts that after entry of the TRO, he never spoke with any Debtor employees, including Mr. Ellington, regarding anything other than shared services, a "pot plan," and to Mr. Ellington in connection with his role as settlement counsel. In other words, Mr. Dondero's defense is that, yes, he conversed with Scott Ellington regarding things other than shared services provided to affiliates—such as Mr. Dondero's desire to propose a "pot plan" in the case and maybe a few other subjects—but this was permissible because Mr. Ellington was understood by all to be in some

[115] *See, e.g.*, Debtor's Exhs. 17, 18, 21 (DE # 80); Debtor's Exhs. 48, 49, 50, 52, 53 (DE # 101). *See also* 3/22/21 Transcript at 122:1-124:7; 124:15-125:12.

sort of role of "settlement counsel" in the case: "Scott Ellington, as my settlement counsel, or as the go-between with Seery and with the creditors, was an important piece of trying to get something done."[116] But this is simply not accurate. This court never would have approved that role for Mr. Ellington. Moreover, Mr. Seery, the current Highland CEO, credibly testified as follows:

> Q Did you task Mr. Ellington with the role of a go-between between the board and Mr. Dondero?
>
> A No. This -- this settlement counsel is something I'd never heard until Dondero raised it and made it up. It -- it's wholly fictitious.
>
> Now, what Ellington did do is he was on a number of calls with me and Dondero, and he had a communication line with Dondero. This was through the first half of the case and into -- into the summer. But as it started to become more adversarial, particularly around the mediation, he wasn't invited. So, for example, Mr. Ellington was not invited to -- to participate in the mediation. He asked. I said no.
>
> The -- in addition, this idea that he was drafting the pot plan, well, not to my knowledge or understanding, because I drafted it for Dondero and his lawyers because you guys [Pachulski] couldn't.[117]

Mr. Seery further credibly testified as follows:

> Q So you're denying Mr. Dondero's testimony to the contrary?
>
> A Yes.
>
> Q Did Mr. Dondero send messages to you through Mr. Ellington?
>
> A No. Mr. Ellington often came back and gave me messages. They were often critical of Mr. Dondero. I didn't always believe them, because I figured Mr. Ellington had an ulterior motive. But he took a number of, you know, shots at Mr. Dondero and he came back and gave his color of what he thought was going on in Mr. Dondero's mind.[118]

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[116] 3/22/21 Transcript at 135:3-5.

[117] *Id.* at 257:6-21.

[118] *Id.* at 258:2-12.

In addition to this testimony, the documentary evidence reflects that just two days after the TRO was entered, Mr. Dondero was communicating with Scott Ellington seeking advice regarding an appropriate witness to support his interests at an upcoming hearing.[119] And just six days after entry of the TRO, Mr. Dondero was emailing Mr. Ellington telling him "I'm going to need you to provide leadership here" and Ellington replies "[o]n it."[120] Additionally, there are emails reflecting that inhouse lawyers Scott Ellington and Isaac Leventon were receiving and responding to information requests from Mr. Dondero[121] and were being copied on draft joint defense agreement prepared by the Dugaboy and Get Good Trusts' counsel.[122] And Mr. Dondero emailed with Scott Ellington on December 24, 2020 regarding his unhappiness and intention to object to a settlement between HarbourVest and Debtor.[123]

The Evidence Regarding Interference with Debtor's Duty to Produce Documents to the UCC.

On December 16, 2020, at 5:18 pm Mr. Dondero sent Melissa Schroth, a Highland employee (executive accountant), a text stating: "No dugaboy details without subpoena."[124] This was a reference to document requests from the UCC in which they were seeking documents that were on the Highland server concerning Mr. Dondero's family trust, the Dugaboy Trust.

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[119] Debtor's Exh. 17 (DE # 80) (Scott Ellington email to Mr. Dondero and his counsel on 12/12/20 at 11:55 pm suggesting JP Sevilla for a witness for some unknown hearing). *See also* Debtor's Exh. 26 (DE # 80).

[120] *See* Debtor's Exh. 18 (DE # 80).

[121] *See* Debtor's Exh. 20 (DE # 80).

[122] *See* Debtor's Exh. 24 (DE # 80).

[123] Debtor's Exh. 21 (DE # 80).

[124] *See* Debtor Exh. 19 (DE # 80).

VI. Conclusions of Law

A. Jurisdiction and Authority.

Bankruptcy subject matter jurisdiction exists in this matter, pursuant to 28 U.S.C. § 1334(b). This bankruptcy court has authority to exercise such subject matter jurisdiction, pursuant to 28 U.S.C. § 157(a) and the Standing Order of Reference of Bankruptcy Cases and Proceedings (Misc. Rule No. 33), for the Northern District of Texas, dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b) in which this court may issue a final order. Section 105 of the Bankruptcy Code and the cases construing it are the substantive legal authority.

The Contempt Motion seeks for this court to hold Mr. Dondero in civil contempt of court for violating an order of this court (the TRO). It is well established that bankruptcy courts have civil (as opposed to criminal) contempt powers. "The power to impose sanctions for contempt of an order is an inherent and well-settled power of all federal courts—including bankruptcy courts."[125] A bankruptcy court's power to sanction those who "flout [its] authority is both necessary and integral" to the court's performance of its duties.[126] Indeed, without such power, the court would be a "mere board[ ] of arbitration, whose judgments and decrees would be only advisory."[127]

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[125] *In re SkyPort Global Comm's, Inc.*, No. 08-36737-H4-11, 2013 WL 4046397, at *1 (Bankr. S.D.Tex. Aug. 7, 2013), *aff'd.*, 661 Fed. Appx. 835 (5th Cir. 2016); *see also In re Bradley*, 588 F.3d 254, 255 (5th Cir. 2009) (noting that "civil contempt remains a creature of inherent power[,]" to "prevent insults, oppression, and experimentation with disobedience of the law[,]" and it is "widely recognized" that contempt power extends to bankruptcy) (quoting 11 U.S.C. § 105(a), which states, in pertinent part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); *Placid Refining Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 613 (5th Cir.1997) ("[W]e assent with the majority of the circuits … and find that a bankruptcy court's power to conduct civil contempt proceedings and issue orders in accordance with the outcome of those proceedings lies in 11 U.S.C. § 105."); *Citizens Bank & Trust Co. v. Case (In re Case)*, 937 F.2d 1014, 1023 (5th Cir. 1991) (held that bankruptcy courts, as Article I as opposed to Article III courts, have the inherent power to sanction and police their dockets with respect to misconduct).

[126] *SkyPort Global*, 2013 WL 4046397, at *1.

[127] *Id.* (internal quotations omitted); *see also Bradley*, 588 F.3d at 266 (noting that contempt orders are both necessary and appropriate where a party violates an order for injunctive relief, noting such orders "are important to the management of bankruptcy cases, but have little effect if parties can irremediably defy them before they formally go into effect.").

Contempt is characterized as either civil or criminal depending upon its "primary purpose."[128] If the purpose of the sanction is to punish the contemnor and vindicate the authority of the court, the order is viewed as criminal. If the purpose of the sanction is to coerce the contemnor into compliance with a court order, or to compensate another party for the contemnor's violation, the order is considered purely civil.[129] It is clear that Highland's intent is to both seek compensation for the expenses incurred by Highland, due to Mr. Dondero's alleged violations of the TRO, and to coerce compliance going forward.[130]

B. Type of Civil Contempt: Alleged Violation of a Court Order.

There are different types of civil contempt, but the most common type is violation of a court order (such as is alleged here). "A party commits contempt when [they] violate[] a definite and specific order of the court requiring [them] to perform or refrain from performing a particular act or acts with knowledge of the court's order."[131] Thus, the party seeking an order of contempt in a civil contempt proceeding need only establish, by clear and convincing evidence:[132] "(1) that a

[128] *Bradley*, 588 F.3d at 263.

[129] *Id.* (internal citations omitted).

[130] Highland seeks the following relief in the Contempt Motion: an order (i) finding and holding Mr. Dondero in contempt for violating the TRO; (ii) directing Mr. Dondero to produce to the Debtor and the UCC within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) directing Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and this Motion (e.g., responding to the K&L Gates Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition), payable within three (3) calendar days of presentment of an itemized list of expenses, (iv) imposing a penalty of three (3) times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (iv) granting the Debtor such other and further relief as the court deems just and proper under the circumstances.

[131] *Travelhost*, 68 F.3d at 961.

[132] *United States v. Puente*, 558 F. App'x 338, 341 (5th Cir. 2013) (per curiam) (internal citation omitted) ("[C]ivil contempt orders must satisfy the clear and convincing evidence standard, while criminal contempt orders must be established beyond a reasonable doubt.").

court order was in effect, and (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court's order."[133]

C. Specificity of the Order.

"To support a contempt finding in the context of a TRO, the order must delineate 'definite and specific' mandates that the defendants violated."[134] The court need not, however, "anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated."[135]

D. Possible Sanctions.

To be clear, if the court ultimately determines that Mr. Dondero is in contempt of court, for not having complied with the TRO, the court can order what is necessary to: (1) compel or coerce obedience of the order; and (2) to compensate the Debtor/estate for losses resulting from Mr. Dondero's non-compliance with a court order.[136] The court must determine that the Debtor/movant showed by clear and convincing evidence that: (1) the TRO was in effect; (2) the TRO required certain conduct by Mr. Dondero; and (3) that Mr. Dondero failed to comply with the TRO.[137] "[T]he factors to be considered in imposing civil contempt sanctions are: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the financial resources of the contemnor and the burden the sanctions may impose; and (4) the willfulness of the contemnor in

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[133] *F.D.I.C. v. LeGrand*, 43 F.3d 163, 170 (5th Cir. 1995); *see also Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir.1992) (same); *Travelhost*, 68 F.3d at 961 (same).

[134] *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000) (citing Fed. R. Civ. P. 65).

[135] *Id.*

[136] *In re Gervin*, 337 B.R. 854, 858 (W.D. Tex. 2005) (citing *United States v. United Mine Workers*, 330 U.S. 258 (1947)).

[137] *In re LATCL&F, Inc.*, 2001 WL 984912. *3 (N.D. Tex. 2001) (citing to *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 400 (5th Cir. 1987)).

disregarding the court's order."[138] "Compensatory civil contempt reimburses the injured party for the losses and expenses incurred because of [their] adversary's noncompliance."[139] Ultimately, courts have "broad discretion in the assessment of damages in a civil contempt proceeding."[140]

E. Knowledge of the Order.

"An alleged contemnor must have had knowledge of the order on which civil contempt is to be based. The level of knowledge required, however, is not high. And intent or good faith is irrelevant."[141] To be clear, "intent is not an element in civil contempt matters. Instead, the basic rule is that all orders and judgments of courts must be complied with promptly."[142]

F. Willfulness of Actions.

For civil contempt of a court order to be found, "[t]he contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court's order."[143] For a stay violation, the complaining party need not show that the contemnor intended to violate the stay. Rather, the complaining party must show that the contemnor intentionally committed the acts which violate the stay. Nevertheless, in determining whether damages should be awarded under the court's

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[138] *Lamar Financial Corp. v. Adams*, 918 F.2d 564, 567 (5th Cir. 1990) (citing *United States v. United Mine Workers*, 330 U.S. 258 (1947)).

[139] *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 827 (5th Cir.1976); *see also Travelhost*, 68 F.3d at 961 (noting that "[b]ecause the contempt order in the present case is intended to compensate [plaintiff] for lost profits and attorneys' fees resulting from the contemptuous conduct, it is clearly compensatory in nature."); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613 (affirming court's decision to impose sanctions for violating injunction and awarding plaintiff costs and fees incurred in connection with prosecuting defendant's conduct); *F.D.I.C.*, 43 F.3d 168 (affirming court's imposition of sanctions requiring defendant to pay movant attorneys' fees).

[140] *Am. Airlines*, 228 F.3d at 585; *see also F.D.I.C.*, 43 F.3d 168 (reviewing lower court's contempt order for "abuse of discretion" under the "clearly erroneous standard."); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613 ("The bankruptcy court's decision to impose sanctions is discretionary[]").

[141] *Kellogg v. Chester*, 71 B.R. at 38.

[142] *In re Unclaimed Freight of Monroe, Inc.*, 244 B.R. 358, 366 (Bankr. W.D. La. 1999). *See also In re Norris*, 192 B.R. 863, 873 (Bankr. W.D. La. 1995) ("Intent is not an element of civil contempt.")

[143] *Id.* (citing *N.L.R.B. v. Trailways, Inc.*, 729 F.2d 1013, 1017 (5th Cir.1984)).

contempt powers, the court considers whether the contemnor's conduct constitutes a willful violation of the stay.[144]

G. Applying the Evidence to the Literal Terms of the TRO.

The court concludes that there is clear and convincing evidence that Mr. Dondero violated the specific wording of the TRO in certain ways and, thus, is in contempt of the court as follows.

1. The TRO states in Section 2(c) that Mr. Dondero is enjoined, "from communicating with any of the Debtor's employees, except as it specifically relates to shared services provided to affiliates owned or controlled by Mr. Dondero."

There are several examples of violations of this provision. And many of the communications appeared to be adverse to the Debtor's interests.

First, notably, Mr. Dondero actually admitted that he had conversations with some Debtor employees, including Scott Ellington, after December 10, 2020, regarding things other than "shared services," including a "pot plan" and, more generally, in connection with Mr. Ellington's role as "settlement counsel": "Scott Ellington, as my settlement counsel, or as the go-between with Seery and with the creditors, was an important piece of trying to get something done."[145] As indicated earlier, this court never would have approved that role for Mr. Ellington, and Mr. Seery credibly testified that this was never approved by him or the Independent Board. There was no exception for this in the TRO. As for Mr. Dondero's desire to pursue a pot plan, again, there's nothing in the TRO that allowed Mr. Dondero to speak with any of the Debtor's employees about the pot plan. It is clear that he knew that because on December 16, 2020, just six days after the TRO was entered, Mr. Dondero filed a motion seeking to modify the TRO to allow Mr. Dondero to speak directly with the Independent Board about a pot plan. He later withdrew that motion.[146]

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[144] *In re All Trac Transport, Inc.*, 306 B.R. 859, 875 (Bankr. N.D. Tex. 2004) (internal citations omitted).

[145] 3/22/21 Transcript at 135:3-5.

[146] *See* DE # 24.

Additionally, as noted earlier in this Opinion, it appears that Mr. Dondero communicated with inhouse lawyer Scott Ellington about all kinds of other things such as: (a) reporting to him about his intention to object to the settlement by the Debtor of the HarbourVest claim;[147] (b) reporting to him about his desire to collaborate with UBS and its counsel to give them "evidence of Seery ineptitude" and they would "run with it";[148] (c) forwarding email conversations to Scott Ellington that Mr. Dondero was having with his counsel (and thereby eviscerating attorney-client privilege as to those emails) about various disputes involving certain Non-Debtor Dondero-Related Entities and regarding the Debtor's desire to seek discovery from Mr. Dondero;[149] (d) reviewing a joint defense agreement that the lawyer for his family trusts (Dugaboy and Get Good) had drafted;[150] and (e) "showing leadership"—whatever that meant—but likely meaning coordinating of all the many lawyers involved for Mr. Dondero's interests.[151]

Finally, Mr. Dondero communicated with Highland employee (executive accountant) Melissa Schroth about resisting production of Dugaboy documents that were on the Highland server without a subpoena[152] and Jason Rothstein about his phone.[153]

In summary, Mr. Dondero violated Section 2(c) of the TRO numerous times.[154] His intent does not matter. He knew about the TRO. Thus, he was in contempt for these numerous violations.

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[147] Debtor's Exh. 21 (DE # 80).

[148] Debtor's Exh. 50 (DE # 101).

[149] Debtor's Exh. 52 & 53 (DE # 101).

[150] *See* Debtor's Exh. 24 (DE # 80).

[151] Debtor's Exh. 18 (DE # 80). *See also* 3/22/21 Transcript at 122:1-124:7; 124:15-125:12.

[152] *See* Debtor Exh. 19 (DE # 80) (on December 16, 2020, at 5:18 pm: "No dugaboy details without subpoena.").

[153] Debtor's Exh. 8 (DE # 80); 1/5/21 Transcript at 80-55; 3/22/21 Transcript at 57-58.

[154] The court notes that there was also clear and convincing evidence to suggest various conversations occurred between Mr. Dondero and his assistant Tara Loiben after December 10, 2020. However, it is not clear from the record if Tara Loiben was a Highland employee or an employee of one of the Non-Debtor Dondero-Related Entities. Moreover, there was evidence to suggest Mr. Dondero communicated with Mr. Ellington on December 11-12, 2020 regarding who should be a witness for Mr. Dondero at an upcoming hearing. However, the evidence of this was not

2. ***The TRO states at Section 3(a) that Mr. Dondero is "enjoined from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct" (and the "Prohibited Conduct" includes "interfering with or otherwise impeding" the Debtor's "decisions concerning disposition of assets controlled by the Debtor").***

The court concludes that there is clear and convincing evidence that Mr. Dondero violated this provision.

Things had grown very awkward at Highland, to say the least, by October 2020 when Mr. Dondero was terminated. It is clear from the evidence that Mr. Dondero did not like the way the bankruptcy case was playing out (his pot plan was not getting the attention or reception he hoped for from the UCC and the Debtor) and he did not like certain trading decisions that Mr. Seery was making. Conflicts of interest between the Debtor and Mr. Dondero (and the Non-Debtor Dondero-Controlled Entities) were seeming more and more problematic. It was against this backdrop that the TRO was entered. It was also against this backdrop that Mr. Dondero and his Non-Debtor Dondero-Related Entities began hiring armies of lawyers. In the midst of all of this, Mr. Dondero gave instructions to a Debtor employee, Hunter Covitz, not to sell "SKY" equity after Mr. Covitz had been instructed by Mr. Seery to sell it.[155] He also communicated with an employee named Matt Pearson, an equity trader, informing him that certain Non-Debtor Highland Related Entities ("HFAM" and "DAF")—who were investors in the NexPoint/HCMFA Funds—had "instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again."[156] Matt Pearson, in response, canceled scheduled sales of SKY, as well as AVYA. Mr.

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clear and convincing that Mr. Dondero spoke directly with Mr. Ellington (as opposed to being copied on conversations among Mr. Ellington and Mr. Dondero's counsel). *See* Debtor's Exhs. 17 (DE # 80), 48 & 49 (DE # 101).

[155] 1/5/21 Transcript at 41:22-43:11.

[156] *Id.* at 43:15-44:08.

Dondero also communicated with an employee of one of the Advisors named Joe Sowin regarding stoppage of trades of CLO assets.[157] Mr. Dondero also communicated with Debtor employee Thomas Surgent, the Chief Compliance Officer, to inform him that he thought Mr. Seery was engaging in improper trades of Highland CLO assets and told Mr. Surgent he might face personal liability over this.[158] Finally, Mr. Dondero communicated with a text to Mr. Seery that stated: "Be careful what you do, last warning."[159]

Mr. Dondero's "defense" of his interference—that he was looking out for investors—is neither relevant nor entirely credible. As earlier indicated, intent does not matter with civil contempt. Moreover, the evidence was credible that Mr. Dondero himself, postpetition, while still an employee of Highland, traded a significantly larger amount of the AVYA stock that was held in the Highland CLOs, sometimes at a lower price than Mr. Seery did or attempted.[160]

In summary, Mr. Dondero violated Section 3 of the TRO. His intent does not matter. He knew about the TRO. Thus, he was in contempt of court for interfering with or otherwise impairing the Debtor's business, including its decisions concerning disposition of assets controlled by the Debtor.

3. ***The TRO states in Section 2(e) that Mr. Dondero shall not violate section 362(a) of the Bankruptcy Code***.

The Debtor has argued that Mr. Dondero's actions with regard to the disappearing cell phone provided to him by the Debtor amounted to a violation of the automatic stay, section 362(a)(3) (as an exercise of control over property of the estate—*i.e.*, the phone and its data thereon) and, thus, a

[157] *Id.* at 50:8-14; *see also id.* at 89:8-25.

[158] *Id.* at 60:23-61-25.

[159] *Id.* at 62:25.

[160] *Id.* at 106:9-20, 159-161.

violation of this provision of the TRO. While the court is more than a little troubled by the mysterious disappearance of the cell phone—just hours after entry of the TRO and after a year of numerous ESI requests by the UCC during the case—the court cannot conclude that the disappearance was a clear and convincing violation of the TRO. There may or may not be a later evaluation of whether a spoliation of evidence has occurred, but for now, this is simply a matter of whether the TRO was violated.

As earlier stated, "To support a contempt finding in the context of a TRO, the order must delineate 'definite and specific' mandates that the defendants violated."[161] While the court need not, however, "anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated,"[162] the court concludes that the TRO simply was not specific enough with regard to the phone. The TRO did not specifically state "turn over your cell phone." A letter on December 23, 2020 from Debtor's counsel to Mr. Dondero's counsel later made such a demand,[163] but this was not the same as there being a mandate in the four corners of the TRO. Additionally, the Highland Employee Handbook made it clear that the phone and its data were the Debtor's.[164] But this, too, is not the same as the TRO's literal terms.

Mr. Dondero should not consider this to be a victory. ***The court reiterates that it is highly concerned about possible spoliation of evidence that may or not be presented in a contested matter later***.[165] At the same time, no one else should consider "spoliation" to be a foregone

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[161] *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000) (citing Fed. R. Civ. P. 65).

[162] *Id.*

[163] Debtor's Exh. 12 (DE # 80).

[164] Debtor's Exhs. 54 & 55 (DE # 101).

[165] *See* Fed. R. Civ. Proc. 37(e) (dealing with failure to preserve electronically stored information); *Hawkins v. Gresham*, No. 3:13-CV-00312-P, 2015 WL 11122118, at *3 (N.D. Tex. Jan. 16, 2015) (dealing with the question of whether a defendant's sale of his phone containing relevant text messages after being notified of a lawsuit was a breach of his duty to preserve evidence); *Paisley Park Enterprises, Inc. v. Boxill*, 330 F.R.D. 226, 230-237 (D. Minn. 2019) (dealing with whether two defendants' loss of relevant text messages resulting from their phones' auto-delete function

conclusion here. The court never heard testimony from Jason Rothstein or Tara Loiben (who seem to have been involved with the disappearing phone). The court never heard evidence as to whether the inhouse lawyers (*e.g.*, Scott Ellington, Isaac Leventon) properly addressed with Highland employees, such as Mr. Dondero, as they should have, the preservation notice and document requests served on the Debtor by the UCC.[166] The court also cannot be sure at this time whether there was even relevant and retrievable information on the phone. The court has many lingering questions, but it cannot find contempt of the TRO based on the TRO's lack of specificity where the cell phone was concerned.

4. ***Other Allegations of TRO Violations***.

The Debtor has cited various other instances of Mr. Dondero's behavior that it believes were violative of the TRO. For example: (a) Mr. Dondero's alleged willful ignorance of it by not reading it or underlying pleadings associated with it; (b) trespassing on the Debtor's property after the Debtor had evicted him; and (c) allegedly interfering with the Debtor's obligation to produce certain documents that were requested by the UCC and that were in the Debtor's possession, custody, and

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constituted spoliation of evidence when the defendants had explicitly discussed the possibility of litigation before the deletion and were principals of the company being sued); *First Fin. Sec., Inc. v. Freedom Equity Grp., LLC*, No. 15-CV-1893-HRL, 2016 WL 5870218, at *3-4 (N.D. Cal. Oct. 7, 2016) (dealing with whether Defendants' intentional deletion of text messages after they had discussed the likelihood of litigation was spoliation of evidence under Rule 37(e); also, whether sanctions were warranted when it was unclear whether the information contained in the deleted text messages would have been critical to plaintiff's claims); *Living Color Enterprises, Inc. v. New Era Aquaculture, Ltd.*, No. 14-CV-62216, 2016 WL 1105297, at *1-2, 4-7 (S.D. Fla. Mar. 22, 2016) (dealing with whether the deletion of text messages from Defendant's cell phone as a result of the phone's auto-delete feature after he reasonably anticipated litigation was spoliation of evidence that prejudiced the Plaintiff; also, whether Defendant's failure to disable the auto-delete feature that resulted in the deletion of text messages was evidence of his intent to deprive Plaintiff of relevant evidence.); *Clear-View Tech., Inc. v. Rasnick*, No. 5:13-CV-02744-BLF, 2015 WL 2251005, at *2, 7-11 (N.D. Cal. May 13, 2015) (whether Defendants spoliated text message evidence by purposefully deleting emails and discarding cell phones after receiving messages threatening a lawsuit from Plaintiff and discussing the possibility of litigation); *Kan-Di-Ki, LLC v. Suer*, No. CV 7937-VCP, 2015 WL 4503210, at *30 (Del. Ch. July 22, 2015) (whether Plaintiff's deletion of relevant emails and loss of his cell phone constituted spoliation and whether sanctions were warranted).

[166] Debtor's Exhs. 29-33 (DE # 80).

control. While the allegations are problematic, the court does not conclude these actions constituted civil contempt of the TRO.[167]

With regard to Mr. Dondero's alleged "willful ignorance" of the TRO, it is technically not a violation of any term of the TRO. The most important thing here is that Mr. Dondero cannot claim lack of knowledge of the TRO's contents. As mentioned earlier, "[a]n alleged contemnor must have had knowledge of the order on which civil contempt is to be based. The level of knowledge required, however, is not high."[168] When Mr. Dondero testified that he had not read the TRO (or the underlying pleadings supporting it), maybe he was trying to imply lack of knowledge of its terms as some sort of defense? Or maybe he really did not care to read the TRO and was relying entirely upon his counsel to tell him all of its terms. Whatever the explanation, it really does not matter much. The court determines that Mr. Dondero had the necessary knowledge of the TRO, for purposes of holding him accountable for compliance with it, but—even if he was somewhat cavalier in not actually reading the TRO line-for-line—this alone is not a violation of the TRO's terms.

With regard to Mr. Dondero's trespassing on the Debtor's property after the Debtor had evicted him, the problem here is that the "eviction" of Mr. Dondero occurred pursuant to the letter that Debtor's counsel sent to Mr. Dondero's counsel on December 23, 2010—not pursuant to the actual terms of the TRO.[169] The TRO itself did not specifically enjoin Mr. Dondero from going to

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[167] The court should add that it does not conclude that letters sent by counsel for the Advisors and the NexPoint/HCMFA Funds, seeking to stop the sale of Highland CLO assets, and a motion that they filed to address Highland CLO management issues, constituted contempt of court by Mr. Dondero. *See* Debtor's Exh. 25 (DE # 80). While Mr. Dondero, as the President and portfolio manager of these Non-Debtor Dondero-Related entities, was/is no doubt in control of them, and while it is a very close call as to whether—through these lawyers' actions—Mr. Dondero was causing "(a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf," to interfere with the disposition of assets controlled by the Debtor, the court ultimately believes that hiring lawyers to file motions (and those lawyers taking steps leading up to the filing of the motions, such as sending letters previewing that they may take legal actions), should not be viewed as having crossed the line into contemptuous behavior. Again, this was a close call.

[168] *Kellogg v. Chester*, 71 B.R. at 38.

[169] Debtor's Exh. 12 (DE # 80).

the Highland offices. The later preliminary injunction entered on January 8, 2021 for the first time contained such an injunction.[170] Thus, even though Mr. Dondero showed up in the Debtor's offices on January 5, 2021 to sit for the Debtor's virtual deposition of him, the court does not conclude that this violated a term of the TRO.

With regard to Mr. Dondero's allegedly interfering with the Debtor's obligation to produce certain documents that were requested by the UCC and that were in the Debtor's possession, custody, and control, the court understands this to be a reference to Mr. Dondero texting Highland employee Melissa Schroth and instructing her not to turn over documents concerning the Dugaboy Trust (that were on Highland's server) without a subpoena.[171] The court has already addressed this as a TRO violation, ***since it was a communication with a Highland employee regarding matters other than "shared services."*** For the avoidance of doubt, there was no shared services agreement between the Dugaboy Trust and Highland. This clearly was a TRO violation.

V. Damages.

The Contempt Motion requests that the court (i) find and hold Mr. Dondero in contempt for violating the TRO; (ii) direct Mr. Dondero to produce to the Debtor and the UCC, within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) direct Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion, payable within three calendar days of presentment of an itemized list of expenses; (iv) impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (v) grant the Debtor such other and further relief as the court deems just and proper under the circumstances.

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[170] DE # 59 at ¶ 5.

[171] Debtor's Exh. 19 (DE # 101).

As indicated earlier, the court can order what is necessary to: (1) compel or coerce obedience of an order; and (2) to compensate the Debtor/estate for losses resulting from Mr. Dondero's non-compliance with a court order. Here, the court believes compensatory damages are more appropriate than a remedy to compel or coerce future compliance. Compensatory damages are supposed to reimburse the injured party for the losses and expenses incurred because of their adversary's noncompliance. Courts have broad discretion but may consider such factors as: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the financial resources of the contemnor and the burden the sanctions may impose; and (4) the willfulness of the contemnor in disregarding the court's order.

As far as the harm from noncompliance, the Debtor presented invoices of the fees incurred by its counsel relating to the TRO and Contempt Motion. The Debtor did not attempt to quantify any potential economic harm to the Debtor from Mr. Dondero's prohibited conversations with Debtor employees and attempted interference with trading. Should this matter? Once again, is this much ado about nothing? In answering this question, context matters. Recall that the Corporate Governance Settlement between the Debtor and UCC from January 2020 was ***all about removing Mr. Dondero from control of the Debtor but avoiding the drastic remedy of a Chapter 11 Trustee***. It was heavily negotiated and extremely detailed in its terms. Ultimately, Mr. Dondero was kept around at the company in a non-control capacity, but eventually conflicts between the Debtor and him (and between the Debtor and the Non-Debtor Dondero-Related Entities) became intolerable. Mr. Dondero was, therefore, terminated. But almost immediately, he essentially began instructing Debtor employees to ignore their boss (Mr. Seery) and do as Mr. Dondero said instead. All of this was occurring at a critical time when the Debtor had filed a Chapter 11 plan, was still negotiating it with creditors, and was set for a confirmation hearing—and, meanwhile, Mr. Dondero was trying

to gain support for his own pot plan that would involve him regaining control of the company and/or transitioning the Debtor's managed funds over to his control. His interference—even if not ultimately resulting in quantifiable harm to the Debtor's balance sheet or cash flow—posed a risk to the Debtor's plan of reorganization that, ultimately ended up being supported by hundreds of millions of dollars-worth of creditors (in fact, all creditors except the Non-Debtor Dondero-Related Entities). The reality is that the Debtor's counsel acted quickly in bringing the Contempt Motion before much damage could be done. The fact that they acted swiftly—before the Debtor had incurred any quantifiable damage other than significant attorneys' fees—should not preclude the Debtor from alleging harm and receiving reimbursement of its attorneys' fees and expenses incurred relating to the TRO and Contempt Motion.

As far as the attorneys' fees incurred relating to the TRO and Contempt Motion, the Debtor presented invoices of the fees incurred by its primary bankruptcy counsel, Pachulski Stang, during December 2020 and January 2021, pertaining to "Bankruptcy Litigation"—much of which it represented related to its attorney time devoted to the Contempt Motion. The Debtor admitted that there were some other litigation matters mixed in these invoices.[172] Total December fees were $526,686. The court has reviewed the December invoice and conservatively estimates that **$170,919** of the fees reflected in the December invoice related to the TRO and Contempt Motion (other fees appeared to relate to other litigation matters such as the HarbourVest settlement, Pat Daugherty issues, UBS, demand note litigation, and Dugaboy claims). Total January fees were $698,770. The court has reviewed this invoice and conservatively estimates that **$195,002** of the fees reflected in the January 2021 invoice related to the TRO and Contempt Motion (again, other

[172] Debtor's Exhs. 38 & 39 (DE # 128).

fees appeared to relate to other litigation matters such as UBS and other litigation). These two sums total **$365,921**.

However, the hearing on this matter (as a result of continuances sought by Mr. Dondero) did not occur until March 22 & 24, 2021. The court was presented with no invoices for February or March. The court estimates that the hearing on this matter (March 22 & 24, 2021) required 10 hours of in-court time. The primary attorney handling this matter for the Debtor (Mr. Morris) charged at $1,245 per hour and his paralegal (Ms. Canty) charged $425 per hour. The court will assume that they each spent 10 hours during the day or two before the hearing preparing for it. This would amount to an additional **$33,400** of fees, bringing the total now to **$399,321**. The court stresses that it used conservative math when scrutinizing the invoices. Moreover, this represents fees only. The court assumes that the various depositions and transcripts required as a result of this litigation resulted in many thousands of dollars of additional expenses. Also, Pachulski had local counsel (Hayward & Associates) whose invoices were not submitted. Additionally, the UCC had counsel monitoring all of this (Sidley & Austin)—whose fees and expenses are reimbursed by the bankruptcy estate—and their fees and expenses have not been included. In summary, the $399,321 number is extremely conservative, and it does not include likely significant add-ons (expenses; local counsel; and UCC counsel). The court determines that it is reasonable to round the $399,321 number up approximately $50,000, to **$450,000** because of these extra items. In considering the probable effectiveness of the sanction, the financial resources of Mr. Dondero and the burden the sanctions may impose, and the willfulness of Mr. Dondero in disregarding the court's TRO, the court believes—based on information it has learned at numerous hearings about Mr. Dondero's compensation and the size of the companies he has been running for almost 30 years—he has substantial resources, and this $450,000 compensatory sanction will not place much of a burden on

him at all. The court believes that there was willfulness with regard to many of Mr. Dondero's actions. The court has no idea about the probability of these sanctions being effective. Time will tell.

The Debtor has asked for the court to impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court. The court declines to do this. However, the court will add on a sanction of $100,000 for each level of rehearing, appeal, or petition for *certioriari* that Mr. Dondero may choose to take with regard to this Order, to the extent any such motions for rehearing, appeals, or petitions for *certiorari* are not successful.

Accordingly, it is hereby ORDERED that:

(i) Mr. Dondero is in civil contempt of court in having violated the court's December 10, 2020 TRO—the court having found by clear and convincing evidence that: (1) the TRO was in effect and Mr. Dondero knew about it; (2) the TRO required certain conduct by Mr. Dondero; and (3) Mr. Dondero failed to comply with the TRO;

(ii) In order to compensate the Debtor's estate for loss and expense resulting from Mr. Dondero's non-compliance with the TRO, Mr. Dondero is directed to pay the Debtor (on the 15th day after entry of this order) an amount of money equal to **$450,000;**

(iii) The court will add on a sanction of **$100,000** for each level of rehearing, appeal, or petition for *certioriari* that Mr. Dondero may choose to take with regard to this Order, to the extent that any such motions for rehearing, appeals, or petitions for *certiorari* are pursued by him and are not successful;

(iv) Other sanctions are denied at this time; and

(v) The court reserves jurisdiction to interpret and enforce this Order.

End of Memorandum Opinion and Order

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 7, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. Case No. 20-03190-sgj11

MEMORANDUM OPINION AND ORDER GRANTING IN PART PLAINTIFF'S MOTION TO HOLD JAMES DONDERO IN CIVIL CONTEMPT OF COURT FOR ALLEGED VIOLATION OF TRO[2]

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] This Order addresses the Motion filed at DE # 48 in above-referenced Adversary Proceeding.

You know, this is -- I hate to say it, but I feel like I've been in the role of a divorce judge today. We have very much a corporate divorce that has been in the works . . . and I'm a judge having to enter interim orders keeping one spouse away from the other, keeping one spouse out of the house, keeping one spouse away from the kids. It's not pleasant at all.

Transcript from 1/8/21 Hearing at 194:1-9. [DE # 80, Exh. 36].

I. Introduction.

The above quote aptly describes the above-referenced 20-month-old corporate bankruptcy case: it has, at times, become very much like a nasty divorce—in which one spouse (here, the company) is very much at odds with the other spouse (here, the company's former CEO). It is contentious, protracted, and unpleasant.

For a while, things were a bit like a situation where one spouse has filed for divorce, but both spouses remain living under the same roof for a while—rather than physically separating—for the perceived best interests of the family. This co-habitation eventually became untenable.

Next, things developed similarly to a situation in which one spouse wants to keep the family vacation home, boat, or mutual funds (*i.e.*, the husband), but the other spouse (*i.e.*, the one who happens to have custody and control over them) thinks the assets need to be liquidated to pay off the family's expenses or debt.

Also, this corporate divorce, sadly, is similar to a situation in which one spouse criticizes the other's new partner who has moved into the family home and also bears animus towards the spouse's lawyers. He thinks they are, collectively, mismanaging everything and taking actions towards him out of pure spite.

It's also similar to a situation in which one spouse is endeavoring to have members of the other spouse's household assist or cooperate with him in various ways, in his efforts to get what he perceives to be his fair share in the divorce.

And, finally, it is similar to a situation in which one spouse finally decides to seek a TRO against the other—for fear (legitimate or not) that the ex-spouse is about to burn the house down.

There is a bit of irony in all of this because the spouse (*i.e.*, former CEO) who is the alleged antagonist is the one who signed the divorce (*i.e.*, bankruptcy) petition to start the proceedings.

Divorce metaphors aside, this Order relates to a request by Chapter 11 Debtor Highland Capital Management, L.P. (the "Debtor" or "Highland"), made shortly before its Chapter 11 plan was confirmed,[3] that its co-founder, former President, former Chief Executive Officer ("CEO"), and indirect beneficial equity owner—Mr. James Dondero ("Mr. Dondero")—be held in civil contempt of court for allegedly violating a temporary restraining order ("TRO") of this court.[4] The TRO that Mr. Dondero is alleged to have violated arose in the above-referenced adversary proceeding ("Adversary Proceeding") that the Debtor filed December 7, 2020. A brief summary of the circumstances leading up to the Adversary Proceeding and the TRO is set forth below.

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[3] As of the date of issuance of this Order, the Debtor's confirmed plan has not yet gone effective.

[4] In addition to being the former CEO, Mr. Dondero represents that he is a "creditor, indirect equity security holder, and party in interest" in the Debtor's bankruptcy. This court has stated on various occasions that this assertion is ostensibly true, but somewhat tenuous. Mr. Dondero filed five proofs of claim in the Debtor's bankruptcy case. Two of those proofs of claim were withdrawn with prejudice on November 23, 2020 [DE # 1460 in main bankruptcy case]. The other three are unliquidated, contingent claims, each of which stated that Mr. Dondero would "update his claim in the next ninety days." Ninety days has long-since passed since those proofs of claim were filed and Mr. Dondero has not updated those claims to this court's knowledge. With regard to Mr. Dondero's assertion that he is an "indirect equity security holder," the details have been represented to the court many times to be as follows (undisputed): Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. ("Strand"), the Debtor's general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor's Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero's recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his indirect equity interest, the Debtor's estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be paid.

II. Background: The Chapter 11 Case.

On October 16, 2019 (the "Petition Date"), Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Highland is a registered investment advisor that is in the business of buying, selling, and managing assets on behalf of its managed investment vehicles. It manages billions of dollars of assets—to be clear, the assets are spread out in numerous, separate fund vehicles. While the Debtor has continued to operate and manage its business as a debtor-in-possession, the role of Mr. Dondero *vis-à-vis* the Debtor was significantly limited early in the bankruptcy case and ultimately terminated. The Debtor's current CEO is an individual selected by the creditors named James P. Seery.

Specifically, early in the case, the Official Unsecured Creditors Committee ("UCC") and the U.S. Trustee ("UST") desired to have a Chapter 11 Trustee appointed—absent some major change in corporate governance[5]—due to conflicts of interest and the alleged self-serving, improper acts of Mr. Dondero and possibly other officers (for example, allegedly engaging, for years, in fraudulent schemes to put Highland's assets out of the reach of creditors). Under this pressure, the Debtor negotiated a term sheet and settlement with the UCC (the "January 2020 Corporate Governance Settlement"), which was executed by Mr. Dondero and approved by a court order on January 9, 2020 (the "January 2020 Corporate Governance Order").[6] The settlement and term sheet contemplated a complete overhaul of the corporate governance structure of the Debtor. Mr. Dondero resigned from his role as an officer and director of the Debtor and of its general partner. Three new independent directors (the "Independent Board") were appointed to govern the Debtor's general partner Strand Advisors, Inc.—which, in turn, managed the Debtor. All of the new

[5] The UST was steadfast in wanting a Trustee.

[6] *See* DE ## 281 & 339 in main bankruptcy case. *See also* Dondero Exh. 8 (DE # 106 in the Adversary Proceeding).

Independent Board members were selected by the UCC and are very experienced within either the industry in which the Debtor operates, restructuring, or both (Retired Bankruptcy Judge Russell Nelms, John Dubel, and James P. Seery). As noted above, one of the Independent Board members, James P. Seery ("Mr. Seery"), was ultimately appointed as the Debtor's new CEO and CRO.[7] As for Mr. Dondero, while not originally contemplated as part of the January 2020 Corporate Governance Settlement, the Debtor proposed at the hearing on the January 2020 Corporate Governance Settlement that Mr. Dondero remain on as an unpaid employee of the Debtor and also continue to serve as and retain the title of a portfolio manager for certain separate ***non-Debtor*** investment vehicles/entities whose funds are managed by the Debtor.[8] The court approved this arrangement when the UCC ultimately did not oppose it. Mr. Dondero's authority with the Debtor was subject to oversight by the Independent Board.[9] Mr. Seery was given authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its subsidiaries, as well as the purchase and sale of assets that the Debtor manages for various separate non-Debtor investment vehicles/entities. Significant to the court and the UCC was a provision in the order, at paragraph 9, stating that "Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor."

To be sure, this was a complex arrangement. Apparently, there were well-meaning professionals in the case that thought that having the founder and "face" behind the Highland brand

[7] "CRO" means Chief Restructuring Officer. *See* DE # 854 in main bankruptcy case, entered July 16, 2020.

[8] Although not discussed at the time, the court has become aware that Mr. Dondero has been a paid employee of the Non-Debtor Highland-Related Entities known as NexPoint and/or NexBank postpetition. *See* 1/8/21 Hearing Transcript, Debtor Exh. 36 (DE # 80) at 107:20-23.

[9] "Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination." *See* Debtor's Exh. 2, at Exh. 1 thereto, at 3 of 62 (DE # 80).

still involved with the business might be value-enhancing for the Debtor and its creditors (even though Mr. Dondero was perceived as not being the type of fiduciary needed to steer the ship through bankruptcy). For sake of clarity, it should be understood that there are at least hundreds of entities—the lawyers have sometimes said 2,000 entities—within the Highland byzantine organizational structure (sometimes referred to as the "Highland complex"), most of which are ***not*** subsidiaries of the Debtor, nor otherwise owned by Highland. And only Highland itself is in bankruptcy. However, these entities are very much intertwined with Highland—in that they have shared services agreements, sub-advisory agreements, payroll reimbursement agreements, or perhaps, in some cases, less formal arrangements with Highland. Through these agreements Highland (***through its own employees***) has historically provided resources such as fund managers, legal and accounting services, IT support, office space, and other overhead. Many of these non-Debtor entities appear to be under the *de facto* control of Mr. Dondero—as he is the president and portfolio manager for many or most of them—although Mr. Dondero and certain of these entities stress that these entities have board members with independent decision-making power and are not the mere "puppets" of Mr. Dondero (for ease of reference, these numerous entities will be referred to as the "Non-Debtor Dondero-Related Entities"). This court has never been provided a complete organizational chart that shows ownership and affiliations of all 2,000 Non-Debtor Dondero-Related Entities (such a chart would, no doubt, be the size of a football field), but the court has, on occasion, been shown information about some of them and is aware that a great many of them were formed in non-U.S. jurisdictions, such as the Cayman Islands.

Eventually, the Debtor's new Independent Board and management concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity. Various events occurred that led to the termination of his employment with the Debtor. For one thing, Mr.

Dondero prominently opposed certain actions taken by the Debtor through its CEO and Independent Board including: (a) objecting to a significant settlement that the Debtor had reached in court-ordered mediation[10] with creditors Acis Capital Management and Josh and Jennifer Terry (the "Acis Settlement")—which settlement helped pave the way toward a consensual Chapter 11 plan, and (b) pursuing, through one of his family trusts (the Dugaboy Investment Trust), a proof of claim alleging that the Debtor (including Mr. Seery) had mismanaged one of the Debtor's subsidiaries, Highland Multi Strategy Credit Fund, L.P. ("MSCF"), with respect to the sale of certain of its assets during the bankruptcy case (in May of 2020).[11] The Debtor's Independent Board and management considered these two actions to create a conflict of interest—if Mr. Dondero was going to litigate significant issues against the Debtor in court, that was his right, but he could not continue to work for the Debtor (among other things, having access to its computers and office space) while litigating these issues with the Debtor in court.

But the termination of his employment was not the end of the friction between the Debtor and Mr. Dondero. In fact, a week after his termination, litigation posturing and disputes began erupting between Mr. Dondero and certain Non-Debtor Dondero-Related Entities, on the one hand, and the Debtor on the other (as further described below).

III. **The Impetus for the Adversary Proceeding**.

The Adversary Proceeding centers significantly around two Non-Debtor Dondero-Related Entities known as NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors")—both of which, like

[10] The court appointed Retired Bankruptcy Judge Allan Gropper, S.D.N.Y., and Attorney Sylvia Mayer, Houston, Texas (both with the American Arbitration Association), to be co-mediators over multiple disputes in the Bankruptcy Case, including the Acis dispute. The co-mediators, among other things, attempted to mediate disputes/issues with Mr. Dondero.

[11] *See, e.g.,* Proof of Claim No. 177 and DE # 1154 in main bankruptcy case.

Highland, are registered investment advisors. Mr. Dondero is President of NexPoint and has an ownership interest in it.[12] Mr. Dondero is President of HCMFA and has an ownership interest in it as well.[13]

A. Alleged Interference with the Debtor's Management of the Highland CLOs.

The Advisors separately manage three funds ("NexPoint/HCMFA Funds"). The Advisors and these NexPoint/HCMFA Funds own, among other things, equity interests in certain pooled ***collateralized loan obligation*** ("CLO") vehicles that are managed by the Debtor (hereinafter the "Highland CLOs"). A key fact here to remember is that the CLO vehicles are managed by the Debtor (pursuant to contracts and neither the Advisors nor the NexPoint/HCMFA Funds are parties to such contracts).

Generally speaking, the term/acronym "CLO" is loosely used in the investment world to refer to a special purpose entity ("CLO SPE"), in which a manager (here, Highland) purchases a basket of loans to be held in the CLO SPE. The loans in the basket would typically be obligations of large well-known public companies and, collectively, provide a variable rate of interest. The CLO manager typically has discretion to buy and sell different loans to go into the pool of assets, with certain restrictions. There are, meanwhile, tranches of investors who invest funds into the CLO SPE, pursuant to an indenture (with an independent, third-party indenture trustee in place) so that the CLO SPE can purchase the loans, and those investors receive fixed interest from the CLO SPE (with the CLO SPE earning income on the "spread" between: (a) the variable interest being earned on the pool of loans in the CLO SPE's portfolio and (b) the amount of fixed interest the CLO SPE must pay out to its tranches of investors). This description, again, is a bit of a generalization. In

[12] 1/8/21 Hearing Transcript, Debtor's Exh. 36 at 35:9-25 (DE # 80).

[13] 1/8/21 Hearing Transcript, Debtor's Exh. 36 at 36:10-14 (DE # 80).

the case of the Highland CLOs (there are approximately 16 of them), many of them are quite old and do not have the typical diverse portfolio of loans that CLOs commonly have. Many of the CLOs are structured as closed-end investment funds and, in fact, own equity in post-reorganization companies (that are publicly traded and quite liquid) and some even own real estate.[14] In any event, as mentioned, the Debtor serves as portfolio manager on the numerous Highland CLOs (there more than a dozen), pursuant to ***separate portfolio management agreements*** that Highland has with the CLO SPEs. There are about $1 billion of assets in these CLO SPEs that Highland manages.[15] And, to be clear, the Advisors and NexPoint/HCMFA Funds own ***equity*** (*i.e.*, the bottom tranche) in most if not all of these Highland CLOs.

The Debtor has alleged in this Adversary Proceeding that the Advisors, acting under the direction of their President Mr. Dondero, have interfered multiple times with Mr. Seery's attempts to sell various assets in the CLO SPEs, by, among other things, exerting pressure on certain of the Debtor's employees to halt trades that were ordered by Mr. Seery. To be clear, the Advisors have no contractual right to do that—they are not party to the portfolio management agreements that Highland has with the CLO SPEs. The Advisors simply purport to speak for various investors (*i.e.*, the investors in the NexPoint/HCMFA Funds) who have invested in (*i.e.*, own the equity) in the Highland CLOs. However, it appears that the majority of these investors are yet ***other Non-Debtor Dondero-Related Entities***, including but not limited to the entities known as Charitable DAF HoldCo, Ltd. and CLO Holdco, Ltd.[16] In any event, various examples of communications that

[14] *See* 1/26/21 Hearing Transcript, Debtor's Exh. 37 at 155:9-18 (DE # 80).

[15] *See id.* at 202: 3-7.

[16] *See* Debtor's Exh. 2, Exh. 7 thereto (DE # 80). There may be some "mom and pop" or unrelated institutional investors in certain of these Highland CLOs (indirectly through the NexPoint/HCMFA Funds), *see* 1/26/21 Hearing Transcript, Debtor Exh. 37 (DE # 80), at 201:14-22, but ***none*** have ever come forward during the Highland bankruptcy. Moreover, the Debtor aptly notes that there is nothing preventing unhappy investors from simply selling their investments in the Highland CLOs if they are not happy with management decisions of the portfolio manager.

allegedly constituted interference were described in the Adversary Proceeding.[17] The court notes, anecdotally, that Mr. Dondero was continuing, well after his October 9, 2020 termination with the Debtor, to use an email address showing he was an employee of Highland in many of the communications introduced into evidence.[18]

B. Alleged Threats When Debtor Attempted to Collect Demand Notes from Mr. Dondero.

Additionally, the Adversary Proceeding describes that there are certain demand notes on which Mr. Dondero, personally, and certain Non-Debtor Dondero-Related Entities owe significant money to the Debtor. The Debtor made demand upon Mr. Dondero for payment on these demand notes on December 3, 2020, demanding payment by December 11, 2020, so that the Debtor could have these funds to use in its Chapter 11 plan that was set for confirmation in January 2021. Mr. Dondero is alleged to have sent a threatening text to Mr. Seery, just a few hours after the demand letters were sent to him.

After describing Mr. Dondero's alleged conduct, the complaint in the Adversary Proceeding sought injunctive relief preventing Mr. Dondero from interfering with the Debtor's operations, management of assets, and pursuit of a plan of reorganization, to the detriment of the Debtor, its estate, and its creditors, relying on 11 U.S.C. § 105 and Fed. R. Bankr. Pro. 7065. The Debtor has argued that Mr. Dondero's actions have jeopardized the Debtor's ability to effectively wind down its business in the Chapter 11 proceedings—to the detriment of its creditors.

[17] Debtor's Exh. 3, DE # 80 (10/16/20 letter from counsel for Advisors expressing "concerns" about the Debtor's management of the Highland CLOs and a desire that management be transitioned over to the Advisors); Debtor's Exh. 4, DE # 80 (11/24/20 letter from counsel for the Advisors further expressing "concerns" about the Debtor's management of Highland CLOs, especially the selling of assets therein); Debtor's Exh. 5, DE # 80 (11/24/20-11/27/20 emails of Mr. Dondero instructing Highland employee Hunter Covitz not to trade SKY equity as he had been instructed by James Seery); Debtor's Exh. 14, DE # 80 (12/24/20 letter of Debtor's counsel to counsel for the Advisors addressing some of their clients' actions).

[18] *See, e.g.*, Debtor's Exh. 5 (DE # 80).

IV. Motion for TRO [DE # 6].

Almost immediately after filing the Adversary Proceeding, the Debtor sought entry of a TRO enjoining Mr. Dondero from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Independent Board member ***unless*** Mr. Dondero's counsel and counsel for the Debtor were included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically related to shared services currently provided by the Debtor to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct"). It was supported by a Memorandum of Law[19] and a Declaration of Mr. Seery.[20]

The court held a hearing on December 10, 2020 on the Motion for TRO.

A. <u>The Evidence at the TRO Hearing.</u>

At the hearing on the Motion for TRO, the Debtor relied upon the Declaration of Mr. Seery and all exhibits that had been attached thereto (which the court admitted with no objection).[21] The court also heard a small amount of additional live testimony from Mr. Seery. Mr. Dondero's

[19] *See* DE # 6.

[20] *See* DE # 4 (with 29 exhibits attached, 177 pages in total length).

[21] *Id.*

counsel appeared and made some statements but did not file a responsive pleading or put on any evidence.

Mr. Seery credibly testified that, pursuant to the January 2020 Corporate Governance Settlement, Mr. Dondero surrendered control of the Debtor to the Independent Board. After that January 2020 Corporate Governance Settlement, Mr. Dondero's responsibilities with the Debtor were to be, in all cases, as determined by the Independent Board and subject at all times to the supervision, direction and authority of the Independent Board. In the event the Independent Board was to determine for any reason that the Debtor should no longer retain Mr. Dondero as an employee, Mr. Dondero agreed to resign immediately upon such determination.[22] By resolution passed on January 9, 2020, the Independent Board authorized Mr. Seery to work with the Debtor's traders and approve trades of certain of the Debtor's and funds' assets.[23] However, up until mid-March 2020, Mr. Dondero controlled certain of the Debtor's managed funds and accounts (as he still maintained the title of portfolio manager). Mr. Seery credibly testified that "[w]e took them away after they lost considerable amounts of money, about ninety million bucks. Real money. So we took over control of those accounts since then, and we've been managing to sell them down to create cash where we think the market opportunity is correct."[24]

Later, however, during the summer of 2020, the Independent Board determined that it was in the best interests of the Debtor's estate to formally appoint Mr. Seery as the Debtor's CEO and CRO (*i.e.*, not just an Independent Board member with trading authority). The bankruptcy court approved Mr. Seery's appointment as CEO and CRO on July 16, 2020.[25] Mr. Seery's appointment

[22] Debtor's Exh. 1, at pp. 2-3 (DE # 80).

[23] Debtor's Exh. 3, at p. 2 (DE # 80).

[24] 12/10/20 Transcript from TRO Hearing, at p. 51:21-25 (DE # 19).

[25] DE # 854 in main bankruptcy case.

as CEO and CRO formalized his role and his authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries. Mr. Seery credibly represented that he has routinely carried out such responsibilities during the case.

On August 12, 2020, the Debtor filed its Plan of Reorganization with the court[26] (as subsequently amended, the "Plan"). The Plan provided for, among other things, the gradual monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into court-ordered mediation with certain of its creditors which resulted in, among other things, the Acis Settlement (mentioned earlier). After the Acis Settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis Settlement, but that a settlement had been reached at all. On October 5, 2020, Mr. Dondero objected to the Debtor's motion seeking approval of the Acis Settlement, which the Debtor believed created an actual conflict with the Independent Board and the Debtor.[27] Additionally, one of Mr. Dondero's family trusts also filed a proof of claim alleging the Debtor and Mr. Seery were mismanaging the assets of a subsidiary of the Debtor.[28] Concluding that this situation was untenable, Mr. Dondero was asked to resign from the Debtor, and he did on October 9, 2020.[29]

Subsequent to Mr. Dondero's termination from the Debtor, he began engaging in activities that the Debtor perceived to be interference with its business judgment and management of the Highland CLOs. Approximately one week after Mr. Dondero resigned, the Advisors began writing letters to Mr. Seery requesting, among other things, that "no [Highland] CLO assets be sold without

[26] DE # 944 in main bankruptcy case.

[27] DE # 1121 in main bankruptcy case; Debtor's Exh. 2 (Mr. Seery's Decl.) at ¶ 11; DE # 80.

[28] *Id.* at ¶ 12.

[29] Debtor's Exhs. 4-5 (DE # 80).

prior notice and consent from the Advisors."[30] Not only is the Advisors' consent for Highland CLO assets sales not contractually required, but the Debtor's Chapter 11 plan (then on file, now confirmed) contemplates the gradual wind down of Highland's business over time so that it will have funds to pay its creditors. In fact, Mr. Seery credibly testified that the business model of Highland in recent years (under the direction of Mr. Dondero—and with its web and layers of entities) has not allowed Highland itself to operate at a profit.[31] Thus, interference with assets sales in the Highland CLOs seemed equivalent to interference with, not just the Debtor's efforts to manage the business in ways that allowed it to pay its expenses, but also interference with the Debtor's Chapter 11 plan.

In the November 24-27, 2020 time period (again, just a few weeks after Mr. Dondero's termination from the Debtor), Mr. Dondero sent various emails to both Debtor and Advisor employees (*e.g.*, Matt Pearson, Hunter Covitz, Joe Sowin, and Tom Surgent) telling them he had instructed the Debtor not to engage in trades of Highland CLO assets and that they should not engage in certain trades of Highland CLO assets that Mr. Seery had instructed them to make.[32] A review of this correspondence makes apparent the underlying conflicts of interest present—Highland was attempting to gradually wind down its business and monetize its managed assets for the benefit of its creditors (and this court believes—all the while—balancing its fiduciary duties to investors in such funds) and, meanwhile, Mr. Dondero (wearing his hat as a portfolio manager for, and indirect equity owner in, certain of the Non-Debtor Dondero-Related Entities—*i.e.*, the

[30] Debtor's Exh. 6, p.2 (DE # 80); *see also* Debtor's Exh. 7 (DE # 80).

[31] Apparently, the Debtor even ***offered to assign Highland's CLO management agreements to Mr. Dondero's affiliate, NexPoint (in early December 2020)***, but Mr. Dondero thought the proposed terms were untenable. *See* DE # 50, John Morris Decl., Exh. Z thereto (January 5, 2021 Deposition Transcript of Mr. Dondero, at 101:11-25).

[32] Debtor's Exh. 8 (DE # 80).

Advisors and the NexPoint/HCMFA Funds) did not want assets sold as part of a wind down. Mr. Dondero, it appears to this court, was putting his own and the Non-Debtor Dondero-Related Entities' interests (as investors in the Highland CLOs) ahead of Highland's creditors and the Highland CLOs, as a whole. But, Highland had duties to its creditors and to the Highland CLOs ***as a whole***, and not to the Advisors or their funds (as investors in or equity owners in the Highland CLOs). Mr. Seery further credibly explained the situation, and the harm the interference caused the bankruptcy estate, as follows: "We intend to continue to manage the CLOs, we intend to assume those contracts [*i.e.*, the portfolio management agreements for the Highland CLOs], we intend to manage them post-confirmation, after exit from bankruptcy. And causing confusion among the employees, preventing the Debtor from consummating trades in the ordinary course, deferring those transactions, we thought put the estate at significant risk, in addition to the cost."[33] The Highland CLOs generate fee income for the Debtor. Not all of them have liquid assets that are able to pay quarterly fees. Some owe deferred fees to Highland.[34]

The Debtor thereafter sent communications instructing the Advisors and Mr. Dondero to cease and desist their interference, indicating that Mr. Dondero's actions interfered with the management of the Debtor's bankruptcy estate and the property of such estate, in violation of the Bankruptcy Code and the January 9, 2020 Order.[35]

Meanwhile, around this same time period, the Debtor sent demand letters[36] to Mr. Dondero and certain Non-Debtor Dondero-Related Entities, each of whom are obligated to the Debtor on various demand notes, pursuant to which approximately $30 million is collectively owed to the

[33] Debtor's Exh. 37 at 166:6-13 (DE # 80).

[34] *Id.* 166-167.

[35] Debtor's Exhs. 9 & 10 (DE # 80).

[36] Debtor's Exhs. 24-27 (DE # 80).

Debtor.[37] Collection on these notes was part of the Debtor's liquidity plan, to help pay creditors under its Chapter 11 plan. Mr. Seery credibly testified that Mr. Dondero's response was a text message that stated: "Be careful what you do, last warning."[38]

The next day, Debtor's counsel sent Mr. Dondero's counsel correspondence demanding that he "cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero." The letter put Mr. Dondero on notice that the above-referenced Adversary Proceeding and Motion for TRO would be filed.

B. Entry of the TRO.

After hearing the evidence at the TRO Hearing, the court determined that the Debtor had met its burden of proving the need for a TRO. The court issued the TRO[39] which temporarily enjoined Mr. Dondero from "(a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the

[37] Debtor's Exhs. 11-23 (DE # 80).

[38] Debtor's Exh. 28 (DE # 80).

[39] *See* DE # 10; *see also* Debtor's Exh. 11 (DE # 80).

Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the 'Prohibited Conduct')." Mr. Dondero was further temporarily enjoined "from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct."

V. The Contempt Motion Now Before the Court.

Less than a month after entry of the TRO, on January 7, 2021, Highland filed *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Contempt Motion"),[40] which was supported by a Memorandum of Law[41] and a Declaration of John Morris with Exhs. G, K, L, M, N, P, Q, R, S, U, W, X, Y, Z attached.[42] Highland alleges Mr. Dondero violated the TRO as follows: (a) he willfully ignored it by not reading the TRO, the underlying pleadings, and allegations that supported it, nor did he listen to the hearing at which it was entered or make any meaningful effort to understand the scope of it; (b) he threw in the garbage his Highland-furnished cell phone, in what the Debtor believes was an attempt to evade discovery; (c) he trespassed on the Debtor's property after the Debtor had evicted him because the Debtor believed he was interfering with the Debtor's business; (d) he interfered with the Debtor's trading of Highland CLO assets; (e) he pushed and encouraged the Advisors and NexPoint/HCMFA Funds to make further demands and threats against the Debtor regarding the trading of Highland CLO assets; (f) he communicated with the Debtor's inhouse

[40] DE # 48.

[41] DE # 49.

[42] DE # 50.

counsel, Scott Ellington and Isaac Leventon, before they were terminated from Highland, to coordinate legal his own strategy against the Debtor; and (g) he interfered with the Debtor's obligation to produce certain documents that were requested by the UCC and that were in the Debtor's possession, custody and control.

The court held an evidentiary hearing on the Contempt Motion on March 22, 2021 (with closing arguments March 24, 2021). The court considered dozens of exhibits[43] and testimony from two witnesses (Mr. Dondero and the Debtor's current CEO, James Seery). The Debtor asserted that there were seventeen different violations of the TRO. To be clear, this Contempt Motion ***deals solely with whether Mr. Dondero violated the TRO after its entry on December 10, 2020 at 1:31 pm CST, up through the time of the filing of the Contempt Motion on January 7, 2021***.[44] In fact, the court has subsequently entered a Preliminary Injunction[45] and Agreed Injunction[46] resolving this Adversary Proceeding but reserved jurisdiction to rule on the earlier-filed Contempt Motion.

A. <u>The Evidence Regarding Whether Mr. Dondero Willfully Ignored the TRO by Not Reading It or the Underlying Pleadings and Allegations that Supported It; by Not Attending the Hearing Thereon; and by Not Making Any Meaningful Effort to Understand the Scope of the TRO.</u>

The Debtor argues that Mr. Dondero's willful ignorance of both the TRO, and the underlying evidence presented in connection with the TRO, is in and of itself contemptible.

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[43] The court admitted Debtor's Exhibits #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 through #57 (found at DE ## 80, 101, & 128), and Mr. Dondero's Exhibits #1 through #20 (found at DE # 106).

[44] The Debtor initially sought an expedited hearing on the Contempt Motion for January 8, 2021—the same day that the Debtor's request for a preliminary injunction was set for hearing. The court denied the request for an expedited hearing on the Contempt Motion—believing this was not enough notice to Mr. Dondero. So, there was a hearing on a request for a preliminary injunction only on January 8, 2021 (which was granted ultimately). To be clear, Mr. Dondero and his counsel had approximately 75 days to prepare for the hearing on this matter.

[45] DE # 59.

[46] DE # 182.

The evidence on this point is that Mr. Dondero testified multiple times in connection with this Adversary Proceeding[47] that he had not: (a) reviewed the Declaration of James P. Seery, Jr., the Debtor's Chief Executive Officer, in support of the TRO Motion; (b) attempted to learn of the allegations made against him; (c) thought about the fact that the Debtor was seeking a restraining order against him; (d) listened to the hearing where the court admitted evidence and heard argument on the Debtor's motion; (e) read the transcript of the hearing at which the court granted the Debtor's motion for the TRO; (f) read the TRO after it was entered; or (g) made any meaningful effort to understand the scope of the TRO.[48]

But on later examination by his counsel at the Hearing on the Contempt Motion itself, Mr. Dondero testified as follows:

> Q Did you have an opportunity to ask your counsel questions about the TRO?
>
> A Yes.
>
> Q And did you rely on your counsel to explain to you what the TRO meant?
>
> A Yes.
>
> Q And in the weeks that followed the entry of the TRO, did you continue to seek advice from your counsel regarding what you could and could not do under the TRO?
>
> A Yes.
>
> Q And why did you do that?
>
> A Again, to stay compliant, not -- to stay compliant any specific tripwires or any trickery that might have been in the agreement.[49]

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[47] The court will refer frequently herein to three Transcripts and hereinafter use the following defined terms for ease of reference: (a) the January 5, 2021 Transcript from Mr. Dondero's deposition in connection with this matter, found as an attachment to the John Morris Declaration, DE # 50, at Exh. Z ("1/5/21 Transcript"); (b) the January 8, 2021 Transcript from the hearing on the Motion for Preliminary Injunction, which was admitted as Debtor's Exh. 36 at the Hearing on the Contempt Motion ("1/8/21 Transcript"); and (c) the March 22, 2021 Transcript from the Hearing on the Contempt Motion, which is found at DE # 138 ("3/22/21 Transcript").

[48] *See* 1/5/21 Transcript at 12:17-15:14; 1/8/21 Transcript at 23:10-12 and 101:13-14; 3/22/21 Transcript at 30:20-22; 35:6-16. *See also* 1/5/21 Transcript at 84:8-16; 3/22/21 Transcript at 35:20-36:1.

[49] 3/22/21 Transcript at 130:6-19.

Mr. Dondero went on to testify: "Yeah, I -- again, I take seriously anything that comes from the Court, and I did adjust my behavior, but the overall theme, that somehow I was doing something to hurt the creditor or hurt the Debtor or hurt investors I viewed as incongruent with any of my behavior. So I didn't think it was going to require much adjustment."[50]

The court concludes that Mr. Dondero's testimony was very inconsistent on when and how carefully he read the TRO. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

B. The Evidence Regarding Whether Mr. Dondero Disposed of His Highland-Furnished Cell Phone to Evade Discovery.

First, the Highland Cell Phone Policy.

The evidence is undisputed that Highland had a cell phone policy for all of its employees dated March 27, 2012 that still remained in place at all relevant times during this bankruptcy case.[51] Employees could, among other things, have their cell phone expenses reimbursed by Highland. Mr. Dondero participated in this program. To be clear, Highland actually purchased and paid for Mr. Dondero's cell phone (in contrast, some employees used their own cell phones and obtained expense reimbursement). The policy stated as follows:

> Your obligations under this policy shall terminate upon the termination of your employment, ***provided that you will remain obligated to furnish historical call records covering the period through the date of your termination***, as requested following the termination of your employment. Employees participating in this policy should have no expectation of privacy regarding e-mail, voice mail, ***text messages***, graphics, and other electronic data composed, sent, and/or received on their cell phones. Notwithstanding the foregoing, Highland agrees not to review any call records on an employee's bill other than those associated with the phone number of employee. Further, regardless of whether employees choose to participate in this policy, ***all e-mail, voice mail, text messages, graphics, and other***

[50] 3/22/21 Transcript at 129:6-11; *see more generally, id.* at 130-136.

[51] Debtor's Exh. 54 (DE # 101).

> ***electronic data composed, sent, and/or received related to company business remain the property of Highland.***"[52]

Mr. Dondero certified in January 2020 and again on October 7, 2020, that he had read the Employee Handbook.[53] Mr. Dondero testified that he reviewed it and the company's Compliance Manual once a year in connection with required compliance training.[54]

It is undisputed that as of the day that the TRO was entered (December 10, 2020), Mr. Dondero had a cell phone that was bought and paid for by the Debtor.[55] Mr. Dondero testified that he would sometimes use it for business texts.[56]

From this evidence, the court finds that the cell phone that Mr. Dondero used for the majority of the Chapter 11 case (and as of the date of the TRO, December 10, 2020) was property of the bankruptcy estate, as was the data thereon related to company business.

Mr. Dondero's Cell Phone Goes Missing Immediately After Entry of the December 10, 2020 TRO. Coincidence or Not?

Soon after the entry of the December 10, 2020 TRO, on December 23, 2020, Debtor's counsel sent Mr. Dondero's counsel a letter informing him that Highland would:

> terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the 'Cell Phones'). [Highland] demands that Mr. Dondero immediately turn over the Cell Phones to [Highland] by delivering them to [Mr. Dondero's counsel]; we can make arrangements to recover the phones from [Mr. Dondero's counsel] at a later date. The Cell Phones and the accounts are property of [Highland]. [Highland] further demands that Mr. Dondero refrain from deleting or "wiping" any information or messages on the Cell Phone. [Highland], as the owner of the account

[52] *Id.* (emphasis added). *See also* Debtor's Exh. 55, at 12-13 (DE # 101).

[53] Debtor's Exhs. 56 & 57 (DE # 101).

[54] 3/22/21 Transcript at 37:1-23; 42:1-25. *See also* Debtor's Exh. 55 (Employee Handbook); Debtor's Exhs. 56 & 57 (Compliance Certificates) (DE # 80).

[55] 3/22/21 Transcript at 51:17-21

[56] *Id.* at 51:22-25.

> and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.[57]

On December 29, 2020, Mr. Dondero's counsel sent a letter replying to the December 23, 2020 letter, stating that Mr. Dondero had recently acquired a new phone and they were not sure where Mr. Dondero's old Highland-provided phone was at the moment.[58] Mr. Dondero was copied on that letter. Nothing was ever mentioned in that letter about the disposal or wiping of the old cell phone. And yet, in discovery that soon unfolded, as well as the hearing on the Contempt Motion, Mr. Dondero testified that his old company cell phone had been wiped of data and disposed.

When Mr. Dondero was asked specifically about what happened to the cell phone he had that was "bought and paid for by the debtor," he testified that it "was disposed of as part of getting a replacement phone in anticipation of potentially a transition."[59] He testified that there was a historical practice at Highland of destroying old phones when he obtained a new one.[60] He testified that "[a]s far as I know, it was disposed of in the garbage, but I don't know if it was recycled or whatever."[61] He said he did not know specifically who threw it away.[62] When asked if he was aware that the UCC had asked for his phone messages, he testified no and that no one had ever told him.[63] He further testified that maybe an employee named Jason Rothstein (an employee in Highland's technology group) was involved with getting him a new phone and disposing of his old phone, but he was equivocal.[64] Mr. Dondero was insistent that disposing of old phones was always

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[57] Debtor's Exh. 12, at pp. 2-3 (DE # 80).

[58] Debtor's Exh. 22 (DE # 80).

[59] 1/5/21 Transcript at 72:5-7.

[60] *Id.* at 72:9-13.

[61] *Id*. at 72:18-20.

[62] *Id*. at 73: 4-18.

[63] *Id.* at 74:19-25.

[64] *Id.* at 75:7-11.

the protocol at Highland and, also, employees routinely kept their old phone numbers (as he had done after leaving Highland and getting a new phone).[65] He further testified that he thought that he and all senior executives had to "move their phones in the next 30 days or next 25 days, based on Seery's termination notice."[66] ("Seery's termination notice" presumably was a reference to Highland sending a letter on November 30, 2020 that Highland was terminating the shared services agreements among Highland and the Advisors effective January 30, 2021.[67] Of course, Mr. Dondero had been terminated as a Highland employee back on October 9, 2020).

An exhibit was shown to Mr. Dondero[68] during a January 5, 2021 deposition which was a text from Jason Rothstein (the aforementioned Debtor employee in the technology group) to Mr. Dondero dated December 10, 2020 at 6:25 pm. The TRO had been entered earlier that same day at 1:31 pm (after a 9:30 am hearing). Jason Rothstein's text stated, "I left your old phone in the top drawer of Tara's [Mr. Dondero's assistant's] desk" to which Mr. Dondero replied "[o]k."[69]

When questioned about this text and asked whether Mr. Dondero had told Jason Rothstein to do anything with the phone, he replied, "I don't—all I know is the phone's been disposed of. That's all I know."[70] He then specifically testified that he did not tell either Jason Rothstein or his assistant Tara to throw the phone in the garbage.[71] When later asked if he disposed of the phone "somewhere around December 10, 2020" he replied "I—I don't know. Probably."[72] Later at the

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[65] *Id.* at 76:8-77:2.

[66] *Id.* at 79:25-80:4.

[67] Dondero's Exhs. 4 & 5 (DE # 106).

[68] Debtor's Exh. 8 (DE # 80).

[69] While this timing seems very coincidental, Mr. Dondero testified that he had ordered his new cell phone a couple of weeks before December 10, 2020. 3/22/21 Transcript at 147:17-148:7.

[70] 1/5/21 Transcript at 80:18-81:8.

[71] *Id.* at 81:9-15.

[72] *Id.* at 85:15-17.

hearing on the Contempt Motion on March 22, 2021, Mr. Dondero answered more ambiguously as to what happened to the cell phone: "I don't know what happened to the phone. I don't know what Jason did or did not do."[73] Nobody called Jason Rothstein to testify at the hearing on the Contempt Motion. In any event, Mr. Dondero was insistent that he did nothing wrong—stating that he turned the cell phone over to the "tech group" for the Debtor (Jason Rothstein) as he was supposed to do and that he wiped it in accordance with company protocol.[74] Mr. Dondero further testified:

> Q Do you have any personal knowledge about what happened to your phone after Jason Rothstein texted you that he left it in Tara's desk?
>
> A No.
>
> Q Did you ever look to see if it was in Tara's desk?
>
> A No.
>
> Q Did you -- you -- you didn't take the phone out of Tara's desk?
>
> A No.
>
> Q So did you ever see the phone again after you turned it over to Jason Rothstein?
>
> A No.
>
> Q Do you know where the phone is today?
>
> A But, again, I don't know why this is relevant. They can get the text messages from the phone company if they think it's that big of a deal.[75]
>
> Q When you previously testified that the phone was disposed of, what did you mean?

[73] 3/22/21 Transcript at 57:3-4.

[74] *Id.* at 58:1-16.

[75] The court did not have any expert evidence of this, but the court believes without much doubt that this is incorrect. While this may have been true long ago (in the days before iPhones and WiFi communications), Mr. Dondero testified that he had an iPhone. Whether he uses the iPhone "Messages" text app or some other messaging app such as "WhatsApp" or "Signal," his phone company (which he testified was AT&T) would not have his text messages since text messages are sent through these apps—not the AT&T phone service.

A I mean, that's -- that's the last step. That's what always happens to the old phones. But to say it was tossed in the garbage, I have no idea. I have no idea what happened to it after it went back to Tara's desk.

Q So do you have any personal knowledge that your phone was actually disposed of?

A I don't know.[76]

Is the Missing Phone Any Big Deal?

Mr. Dondero is rather adamant that this is all much ado about nothing. Is the missing cell phone a big deal? The answer is "maybe or maybe not." It depends on what was on it and whether the data on it was responsive to numerous discovery requests in this bankruptcy case. And in any event, the phone and any data on it related to Highland was "property of the estate," pursuant to section 541 of the Bankruptcy Code.

With regard to discovery requests, there have actually been many discovery requests in the bankruptcy case for which ***any relevant data on Mr. Dondero's phone would have been responsive***, starting from almost the very beginning, when the UCC sought, among other things, electronically stored information ("ESI") from the Debtor and key custodians including Mr. Dondero.

For example, back on November 10, 2019 (when the bankruptcy case was still pending in Delaware), the UCC served its first document request ***while Mr. Dondero was still CEO and during which time all original management and inhouse counsel were still intact***.[77] This first UCC document request, in seeking communications about numerous topics, defined "Communications" as including ***electronic communications such as texts***. And the "Instructions" therein to the Debtor

[76] 3/22/21 Transcript at 150:5-151:4.

[77] Debtor's Exh. 15 (DE # 80).

provided at paragraph 4 that: "You are requested to produce not only those documents in Your physical possession, but also those documents within Your custody and control, including, without limitation, documents in the possession of Your agents, employees, affiliates, advisors, or consultants and any other person or entity acting on Your behalf."[78] To be clear, this was approximately two months before the January 2020 Corporate Governance Settlement was reached, with the subsequent installment of the Independent Board. Mr. Dondero was still in control of the Debtor when this document request would have been served. The UCC served a second document request on February 3, 2020 (with the same definitions and instructions);[79] a third document request on February 24, 2020 (same definitions and instructions),[80] and a fourth document request on July 8, 2020 (same definition and instructions).[81]

At the same time as the UCC's fourth request for document production (on July 8, 2020), the UCC also filed a motion to compel.[82] This motion to compel brought to the court's attention for the first time that problems were brewing with the UCC's efforts to obtain documents that might be relevant to estate causes of action, and in particular, the UCC motion to compel sought assistance from the court in the UCC's efforts to obtain ESI from various custodians of documents of the Debtor.

The UCC's motion to compel reminded the court that the January 2020 Corporate Governance Settlement explicitly granted the UCC standing to pursue bankruptcy estate claims, defined as "any and all estate claims and causes of actions against Mr. Dondero, Mr. Okada, other

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[78] *Id.*

[79] Debtor's Exh. 30 (DE # 80).

[80] Debtor's Exh. 31 (DE # 80).

[81] Debtor's Exh. 32 (DE # 80).

[82] Debtor's Exh. 33 (DE # 80).

insiders of the Debtor, and each of the Related Entities, including promissory notes held by any of the foregoing."[83] The parties also agreed in the January 2020 Corporate Governance Settlement that the UCC would receive any privileged documents or communications that relate to the "Estate Claims" so that the UCC could bring those claims. In short, the UCC, pursuant to the January 2020 Corporate Governance Settlement, stands in Debtors' shoes with respect to the "Estate Claims." In fact, the January 2020 Corporate Governance Settlement set forth a "Document Production Protocol," which stated that ESI was included within the documents being sought and stated that "***Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data***."[84] Thus, whether Mr. Dondero and inhouse counsel paid attention or not, they were on notice very early in this case that they had a duty to preserve ESI.

The UCC motion to compel (again, filed July 8, 2020) further stated that for approximately eight months, the UCC had attempted to work cooperatively with the Debtor to obtain documents and communications needed to investigate those claims, and, despite the UCC's efforts, the Debtor had not yet provided the UCC with the ESI it had requested. In particular, the UCC alleged that it had spent a considerable amount of time attempting to obtain "***production of emails, chats, texts, or other ESI or communications from the Debtor."*** In summary, the UCC, in July 2020 (some five months before Mr. Dondero's cell phone was disposed) moved to compel production of documents and communications of nine custodians pursuant to a protocol proposed by the UCC and these nine custodians were Patrick Boyce, Jim Dondero, Scott Ellington, David Klos, Isaac

[83] *Id.* at 4.

[84] Debtor's Exh. 2, Exh. 1.C. thereto (DE # 80).

Leventon, Mark Okada, Trey Parker, Tom Surgent, and Frank Waterhouse. The UCC specifically stated that for "avoidance of doubt," it was requesting "all ESI for the nine custodians, including without limitation, email, chat, text, Bloomberg messaging, or any other ESI attributable to the custodians."[85]

Notably, Mr. Dondero filed a responsive pleading to this UCC motion to compel—which would be some indication that he knew about it.[86] In his response, he argued that he did not want Josh Terry (Acis's manager, with whom he had been in long-running litigation) to get any documents that might be produced pursuant to the UCC motion to compel.

Finally, the Debtor also sought document production from Mr. Dondero including ESI in a formal document request it sent to him dated December 23, 2020.[87] More pointedly, on December 23, 2020, Debtor's counsel sent Mr. Dondero's counsel the letter mentioned above, in which the Debtor specifically asked that Mr. Dondero turn over his Highland-purchased cell phone.[88]

With regard to awareness about discovery requests, Mr. Dondero testified at his deposition on January 5, 2021 that he was aware of a document request sent to his lawyers for documents of his and that he delegated to his lawyers and his assistant, Tara Loiben, the task of responding by saying, "she has full access to my email, and I gave her my phone for the better part of a couple of days in the office."[89] He also testified that he understood that the Debtor's document requests called for the production of all text messages that were responsive to the requests.[90] When asked if he

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[85] *Id.*

[86] Debtor's Exh. 40 (DE # 101).

[87] Debtor's Exh. 7 (DE # 80).

[88] Debtor's Exh. 12 (DE # 80).

[89] *See* 1/5/21 Transcript at 67:20-69:9. *See also* Debtor's Exh. 9 (DE # 80).

[90] *Id.* at 70:1-6.

understood the document request was for the time period of December 10, 2020 to the end of the month, he replied "I didn't need the details of this. I didn't get into it. I didn't do the document production that I believe was completed and responsive. I delegated it."[91]

Mr. Dondero's testimony about awareness as to discovery requests has been inconsistent. Mr. Dondero testified at the hearing on the Contempt Motion that no one ever asked him to preserve his text messages.[92]

The court concludes that Mr. Dondero exercised control over property of the estate (*i.e.*, his Highland-provided cell phone and the company-related data thereon) and potentially spoliated evidence thereon that was responsive to multiple, pending discovery requests. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

The Evidence Regarding Whether Mr. Dondero Trespassed.

In the December 23, 2020 letter that Debtor's counsel sent to Mr. Dondero's counsel mentioned earlier (that demanded turn over of Mr. Dondero's cell phone), it also stated that Highland:

> has concluded that Mr. Dondero's presence at the [Highland] office suite and his access to all telephonic and information services provided by [Highland] are too disruptive to [Highland's] continued management of its bankruptcy case to continue. As a consequence, Mr. Dondero's access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the "Office"), will be revoked effective Wednesday, December 30, 2020 (the "Termination Date"). As of the Termination Date, Mr. Dondero's key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.[93]

[91] *Id.* at 70:17-20.

[92] 3/22/21 Transcript at 152:1-11.

[93] Debtor's Exh. 12 (DE # 80).

The letter went on to warn that: "Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by [Highland] will be viewed as an act of trespass, theft, and/or an attempted breach of [Highland's] security protocols."[94]

Mr. Dondero testified that he was aware of this and he nevertheless went into the office on January 5, 2021, to give a deposition regarding this Adversary Proceeding:

> I went through my phone, the January 5th deposition that has somehow become important, even though there were no Highland employees in the office other than the receptionist, is memorialized by a calendar invite on my phone -- which will also be in the Highland system -- where it was an invite a week earlier from Sarah Goldsmith, who was one of the Highland employees supporting the legal team that was largely supporting Jim Seery, sent me a calendar invite to the conference room at Highland for the deposition on the 5th. It's right front and center in my calendar. It'll be on the Highland Outlook program. And Sarah Smith -- I mean, Sarah Goldsmith works directly for Jim Seery.[95]

The court concludes that Mr. Dondero was trespassing against the Debtor's wishes and instructions at the Highland offices on January 5, 2020. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

<u>The Evidence Regarding Whether Mr. Dondero Interfered with Trading of Highland CLO Assets.</u>

It is undisputed that Mr. Dondero resigned (at the Debtor's request) completely from Highland on October 9, 2020. About a week later, on October 16, 2020, a law firm representing the Advisors and the NexPoint/HCMFA Funds sent its first of several letters complaining about the Debtor's supposed rush to sell assets in the Highland CLOs at so-called fire sale prices and

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[94] *Id.* at 3.

[95] 3/22/21 Transcript at 179:7-18.

expressing a desire that the Debtor not sell the Highland CLO assets without prior notice and consent of the Advisors. The second in this series of letters was sent in November 2020. Mr. Dondero testified that he supported these letters being sent.[96]

What was this about? The Debtor sought during certain times in November and December 2020 to cause the Highland CLOs to sell certain publicly-traded equity securities, including "AVYA" and "SKY' (stock tickers). Mr. Dondero disagreed that these securities should be sold. At issue here, in particular, are the Debtor's attempted sales in late December 2020—after entry of the TRO. Mr. Dondero testified at a deposition on January 5, 2021, that he gave instructions to a Debtor employee, Hunter Covitz, not to sell "SKY" equity after Mr. Covitz had been instructed by Mr. Seery to sell it.[97] He also testified that he communicated with an employee named Matt Pearson, an equity trader, informing him that certain Non-Debtor Highland Related Entities ("HFAM" and "DAF")—who were investors in the NexPoint/HCMFA Funds—had "instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again."[98] Matt Pearson, in response, canceled scheduled sales of SKY as well as AVYA.[99] Mr. Dondero also communicated with an employee of one of the Advisors named Joe Sowin regarding stoppage of trades of CLO assets. Mr. Dondero explained: "My intent was to prevent trades that weren't in the best interests of investors, that investors—the beneficial holders had articulated they didn't want sold while these funds were in transition, and that the–there was no business purpose to benefit the debtor to sell these assets."[100] To be clear, the so-called investors/beneficial holders were Non-

[96] 1/26/21 Transcript at 61:4-18.

[97] 1/5/21 Transcript at 41:22-43:11.

[98] *Id.* at 43:15-44:08.

[99] *Id.*

[100] *Id.* at 50:8-14; *see also, id.* at 89:8-25.

Debtor Highland Related Entities under the control of Mr. Dondero. And the Debtor, indeed, ***did*** have a business purpose—despite Mr. Dondero's belief that Mr. "Seery had no business purpose and he was doing it to tweak myself and everybody else."[101] For one thing, the Debtor is owed fees from managing these Highland CLOs and it cannot just defer them indefinitely—Highland needed liquidity to fund its Chapter 11 plan. Moreover, Mr. Seery credibly testified that he had consulted with many advisors on the Highland and Advisors team, and he concluded it was a good time to sell the AYVA and SKY securities. In any event, Mr. Dondero also communicated with Debtor employee Thomas Surgent, the Chief Compliance Officer, to inform him that he thought Mr. Seery was engaging in improper trades of Highland CLO assets and told Mr. Surgent he might face personal liability over this.[102] Finally, Mr. Dondero communicated with a text to Mr. Seery that stated: "Be careful what you do, last warning."[103] As a result of this conduct, the Debtor notified Mr. Dondero's counsel that they were essentially evicting Mr. Dondero from access to the Highland offices effective December 31, 2020 and terminating his Highland email account.[104]

Mr. Dondero stated that he communicated as he did regarding the Highland CLO asset sales because he thought Mr. Seery was acting improperly with the trades he was attempting to execute.[105] Mr. Dondero testified at the hearing on the Contempt Motion that he may have interfered with trades the week of Thanksgiving, but he did not after entry of the TRO. The evidence does not seem to support this testimony.[106]

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[101] *Id.* at 55:5-6.

[102] *Id.* at 60:23-61-25.

[103] *Id.* at 62:25.

[104] *See* Debtor's Exh. 12 (DE # 80).

[105] 1/5/21 Transcript at 63:1-64:20.

[106] 3/22/21 Transcript at 80-81.

Mr. Dondero testified that he only talked to Jason Post about trades in late December and that Jason Post was not a Debtor employee but rather an employee of NexPoint.[107]

What was at the bottom of this? Mr. Dondero said he "viewed it as a violation of the Advisers Act and the spirit of the Advisers Act, when the beneficial holders have told you they're going to change managers and don't want their account liquidated."[108] Mr. Post inconsistently testified at one hearing that he believed the trades violated Advisors' policies and procedures because they were not initiated through an electronic system called the OMS (Order Management System).[109] It appears to this court that Mr. Dondero wanted these funds to be kept intact and not have any assets liquidated until he could get a new company up and running (or maybe one of his existing companies) to hopefully take over Highland's role of managing these Highland CLOs.

In any event, the Debtor pointed out, in response to Mr. Dondero's "defense" of his interference—that he was looking out for investors—that Mr. Dondero himself, during January-October 2020, while still an employee of Highland, traded a significantly larger amount of the AVYA stock that was held in the Highland CLOs, sometimes at a lower price than Mr. Seery did or attempted.[110] Mr. Seery, in fact, credibly testified that the original impetus to sell AVYA came from Mr. Hunter Covitz, one of the Highland CLO portfolio managers, who had been looking at this security and noticed it had started moving up after performing extremely poorly post its own Chapter 11. Mr. Covitz, during the summer of 2020, believed Highland should "start lightening up" on the AVYA holdings, and Mr. Seery also had the following additional personnel look into it: Kunal Sachdev (Highland analyst); Joe Sowin (head trader at HCFMA) and Matthew Gray (another

[107] *Id.* at 162.

[108] 3/22/21 Transcript at 168:22-25.

[109] 1/26/21 Transcript at 223:11-16.

[110] *Id.* at 106:9-20, 159-161.

senior analyst). They determined (Mr. Sachdev, in particular) that AVYA had reached its peak and even though it could continue to go up, they just did not think the value was there and thought it should be sold. A similar analytical process was undertaken with the SKY equity holdings.[111]

One might wonder, if Mr. Dondero and the Advisors and the NexPoint/HCMFA Funds believed that Mr. Seery and the Debtor were mismanaging the Highland CLOs, why not offer to take them over during Highland's case (or as part of Highland' Chapter 11 plan)? Mr. Seery credibly testified that:

> Q Has the Debtor made any attempt to transfer the CLO management agreements to the Defendants or to others?
>
> A Well, our original construct of our plan was to do that. We've since determined, when we tried to do that, we got virtually no response from the Dondero interests. The structure of the original thought of the plan was if we didn't get a grand bargain we would effectively transition a significant part of the business to Dondero entities, they would assume employee responsibilities and the operations, and then assure that the third-party funds were not impacted.
>
> As I think I testified on the -- I can't recall if it was the deposition or my prior testimony in court -- Mr. Dondero, true to his word, told me that would be very difficult, he would not agree, and he has made that very difficult.
>
> So we examined it. We've determined that we're going to maintain the CLOs and assume them. But we originally tried to contemplate a way to assign those management agreements.[112]

What's really going on here? These Highland CLOs are one of the ways that the Debtor earns revenue. Specifically, the CLO SPEs must pay fees to the Debtor. Highland's management of the CLO SPEs generates about $4.5-$5 million of fees for it per year.[113] That sometimes requires liquidation of assets in the CLO SPEs to pay the fees, since not all of the assets in the CLO SPEs

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[111] *Id.* at 156-157.

[112] *Id.* at 163:5-22.

[113] *Id.* at 187:5-12.

are cash-generative.[114] To be more specific, these are very old CLOs that are no longer in a reinvestment period. The manager (Highland) can no longer sell assets and reinvest cash in new assets. Thus, the manager must either hold them or sell them. But the assets are for the most part not loans anymore—they are equity (such as MGM stock) and real estate. Many of the assets, as stated, do not regularly generate cash, so the only way Highland can generate cash to pay management fees is to sell assets (presumably at prudent times). When there is interference with liquidation of assets in the CLO SPEs, it interferes with Highland's revenue stream. Yes, it also reduces the assets in the CLO SPEs ultimately available for the equity tranche. ***But there would appear to be nothing in any contract (or any law presented to the court) that precludes Highland from liquidating assets in the CLO SPEs, from time to time, to pay its fees or otherwise as it deems fit—and the evidence was not at all convincing that there was any sort of bad decision making ongoing in that regard***. Most importantly, it was Highland's decision to make when and how to liquidate assets. It is easy to see a conflict of interest here. To the extent assets in a Highland CLO are not cash-generative, they will not have liquid funds to pay Highland, as portfolio manager, its management fees. That's not optimal for Highland to indefinitely defer/accrue management fees. But it ***would*** be optimal for Mr. Dondero and the Advisors as equity holders—they would rather see assets kept in the Highland CLOs longer to hopefully grow their investment. And it also might be optimal for Mr. Dondero and the Advisors for Highland to decide they do not want to manage these Highland CLOs anymore (because of inconsistent ability to pay management fees) and perhaps agree to assign their management agreements over to the Advisors so Mr. Dondero could once again have ultimate, total control over the Highland CLOs. Conspicuously absent on this issue are the indenture trustees and other ultimate equity holders of the Highland CLOs. Only

[114] *Id.* at 189:12-18.

Non-Debtor Dondero-Related equity holders have complained. The indenture trustees for the Highland CLOs even agreed to Highland continuing to be the portfolio manager on these CLOs post-confirmation.

The court concludes that Mr. Dondero interfered with the Debtor's trading of Highland CLO assets after entry of the TRO. Whether this amounted to contempt of the TRO will be addressed in the Conclusions of Law section below.

The Evidence Regarding Mr. Dondero's Communications with Debtor Employees—in Particular, with Inhouse Counsel—to Coordinate His Own Legal Strategy Against the Debtor.

It is apparent from the evidence (numerous emails) that Mr. Dondero communicated with Highland inhouse general counsel Scott Ellington (who was terminated from Highland in January 2021) about all kinds of things post-TRO ***other*** than shared services, including Mr. Dondero's own personal litigation strategies.[115] As a reminder, Section 2(c) of the TRO stated that Mr. Dondero was enjoined, "from communicating with any of the Debtor's employees, except as it specifically relates to ***shared services provided to affiliates*** owned or controlled by Mr. Dondero" (emphasis added).

Mr. Dondero asserts that after entry of the TRO, he never spoke with any Debtor employees, including Mr. Ellington, regarding anything other than shared services, a "pot plan," and to Mr. Ellington in connection with his role as settlement counsel. In other words, Mr. Dondero's defense is that, yes, he conversed with Scott Ellington regarding things other than shared services provided to affiliates—such as Mr. Dondero's desire to propose a "pot plan" in the case and maybe a few other subjects—but this was permissible because Mr. Ellington was understood by all to be in some

[115] *See, e.g.*, Debtor's Exhs. 17, 18, 21 (DE # 80); Debtor's Exhs. 48, 49, 50, 52, 53 (DE # 101). *See also* 3/22/21 Transcript at 122:1-124:7; 124:15-125:12.

sort of role of "settlement counsel" in the case: "Scott Ellington, as my settlement counsel, or as the go-between with Seery and with the creditors, was an important piece of trying to get something done."[116] But this is simply not accurate. This court never would have approved that role for Mr. Ellington. Moreover, Mr. Seery, the current Highland CEO, credibly testified as follows:

> Q Did you task Mr. Ellington with the role of a go-between between the board and Mr. Dondero?
>
> A No. This -- this settlement counsel is something I'd never heard until Dondero raised it and made it up. It -- it's wholly fictitious.
>
> Now, what Ellington did do is he was on a number of calls with me and Dondero, and he had a communication line with Dondero. This was through the first half of the case and into -- into the summer. But as it started to become more adversarial, particularly around the mediation, he wasn't invited. So, for example, Mr. Ellington was not invited to -- to participate in the mediation. He asked. I said no.
>
> The -- in addition, this idea that he was drafting the pot plan, well, not to my knowledge or understanding, because I drafted it for Dondero and his lawyers because you guys [Pachulski] couldn't.[117]

Mr. Seery further credibly testified as follows:

> Q So you're denying Mr. Dondero's testimony to the contrary?
>
> A Yes.
>
> Q Did Mr. Dondero send messages to you through Mr. Ellington?
>
> A No. Mr. Ellington often came back and gave me messages. They were often critical of Mr. Dondero. I didn't always believe them, because I figured Mr. Ellington had an ulterior motive. But he took a number of, you know, shots at Mr. Dondero and he came back and gave his color of what he thought was going on in Mr. Dondero's mind.[118]

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[116] 3/22/21 Transcript at 135:3-5.

[117] *Id.* at 257:6-21.

[118] *Id.* at 258:2-12.

In addition to this testimony, the documentary evidence reflects that just two days after the TRO was entered, Mr. Dondero was communicating with Scott Ellington seeking advice regarding an appropriate witness to support his interests at an upcoming hearing.[119] And just six days after entry of the TRO, Mr. Dondero was emailing Mr. Ellington telling him "I'm going to need you to provide leadership here" and Ellington replies "[o]n it."[120] Additionally, there are emails reflecting that inhouse lawyers Scott Ellington and Isaac Leventon were receiving and responding to information requests from Mr. Dondero[121] and were being copied on draft joint defense agreement prepared by the Dugaboy and Get Good Trusts' counsel.[122] And Mr. Dondero emailed with Scott Ellington on December 24, 2020 regarding his unhappiness and intention to object to a settlement between HarbourVest and Debtor.[123]

The Evidence Regarding Interference with Debtor's Duty to Produce Documents to the UCC.

On December 16, 2020, at 5:18 pm Mr. Dondero sent Melissa Schroth, a Highland employee (executive accountant), a text stating: "No dugaboy details without subpoena."[124] This was a reference to document requests from the UCC in which they were seeking documents that were on the Highland server concerning Mr. Dondero's family trust, the Dugaboy Trust.

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[119] Debtor's Exh. 17 (DE # 80) (Scott Ellington email to Mr. Dondero and his counsel on 12/12/20 at 11:55 pm suggesting JP Sevilla for a witness for some unknown hearing). *See also* Debtor's Exh. 26 (DE # 80).

[120] *See* Debtor's Exh. 18 (DE # 80).

[121] *See* Debtor's Exh. 20 (DE # 80).

[122] *See* Debtor's Exh. 24 (DE # 80).

[123] Debtor's Exh. 21 (DE # 80).

[124] *See* Debtor Exh. 19 (DE # 80).

VI. Conclusions of Law

A. Jurisdiction and Authority.

Bankruptcy subject matter jurisdiction exists in this matter, pursuant to 28 U.S.C. § 1334(b). This bankruptcy court has authority to exercise such subject matter jurisdiction, pursuant to 28 U.S.C. § 157(a) and the Standing Order of Reference of Bankruptcy Cases and Proceedings (Misc. Rule No. 33), for the Northern District of Texas, dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b) in which this court may issue a final order. Section 105 of the Bankruptcy Code and the cases construing it are the substantive legal authority.

The Contempt Motion seeks for this court to hold Mr. Dondero in civil contempt of court for violating an order of this court (the TRO). It is well established that bankruptcy courts have civil (as opposed to criminal) contempt powers. "The power to impose sanctions for contempt of an order is an inherent and well-settled power of all federal courts—including bankruptcy courts."[125] A bankruptcy court's power to sanction those who "flout [its] authority is both necessary and integral" to the court's performance of its duties.[126] Indeed, without such power, the court would be a "mere board[ ] of arbitration, whose judgments and decrees would be only advisory."[127]

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[125] *In re SkyPort Global Comm's, Inc.*, No. 08-36737-H4-11, 2013 WL 4046397, at *1 (Bankr. S.D.Tex. Aug. 7, 2013), *aff'd.*, 661 Fed. Appx. 835 (5th Cir. 2016); *see also In re Bradley*, 588 F.3d 254, 255 (5th Cir. 2009) (noting that "civil contempt remains a creature of inherent power[,]" to "prevent insults, oppression, and experimentation with disobedience of the law[,]" and it is "widely recognized" that contempt power extends to bankruptcy) (quoting 11 U.S.C. § 105(a), which states, in pertinent part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); *Placid Refining Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 613 (5th Cir.1997) ("[W]e assent with the majority of the circuits … and find that a bankruptcy court's power to conduct civil contempt proceedings and issue orders in accordance with the outcome of those proceedings lies in 11 U.S.C. § 105."); *Citizens Bank & Trust Co. v. Case (In re Case)*, 937 F.2d 1014, 1023 (5th Cir. 1991) (held that bankruptcy courts, as Article I as opposed to Article III courts, have the inherent power to sanction and police their dockets with respect to misconduct).

[126] *SkyPort Global*, 2013 WL 4046397, at *1.

[127] *Id.* (internal quotations omitted); *see also Bradley*, 588 F.3d at 266 (noting that contempt orders are both necessary and appropriate where a party violates an order for injunctive relief, noting such orders "are important to the management of bankruptcy cases, but have little effect if parties can irremediably defy them before they formally go into effect.").

Contempt is characterized as either civil or criminal depending upon its "primary purpose."[128] If the purpose of the sanction is to punish the contemnor and vindicate the authority of the court, the order is viewed as criminal. If the purpose of the sanction is to coerce the contemnor into compliance with a court order, or to compensate another party for the contemnor's violation, the order is considered purely civil.[129] It is clear that Highland's intent is to both seek compensation for the expenses incurred by Highland, due to Mr. Dondero's alleged violations of the TRO, and to coerce compliance going forward.[130]

B. Type of Civil Contempt: Alleged Violation of a Court Order.

There are different types of civil contempt, but the most common type is violation of a court order (such as is alleged here). "A party commits contempt when [they] violate[] a definite and specific order of the court requiring [them] to perform or refrain from performing a particular act or acts with knowledge of the court's order."[131] Thus, the party seeking an order of contempt in a civil contempt proceeding need only establish, by clear and convincing evidence:[132] "(1) that a

[128] *Bradley*, 588 F.3d at 263.

[129] *Id.* (internal citations omitted).

[130] Highland seeks the following relief in the Contempt Motion: an order (i) finding and holding Mr. Dondero in contempt for violating the TRO; (ii) directing Mr. Dondero to produce to the Debtor and the UCC within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) directing Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and this Motion (e.g., responding to the K&L Gates Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition), payable within three (3) calendar days of presentment of an itemized list of expenses, (iv) imposing a penalty of three (3) times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (iv) granting the Debtor such other and further relief as the court deems just and proper under the circumstances.

[131] *Travelhost*, 68 F.3d at 961.

[132] *United States v. Puente*, 558 F. App'x 338, 341 (5th Cir. 2013) (per curiam) (internal citation omitted) ("[C]ivil contempt orders must satisfy the clear and convincing evidence standard, while criminal contempt orders must be established beyond a reasonable doubt.").

court order was in effect, and (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court's order."[133]

C. Specificity of the Order.

"To support a contempt finding in the context of a TRO, the order must delineate 'definite and specific' mandates that the defendants violated."[134] The court need not, however, "anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated."[135]

D. Possible Sanctions.

To be clear, if the court ultimately determines that Mr. Dondero is in contempt of court, for not having complied with the TRO, the court can order what is necessary to: (1) compel or coerce obedience of the order; and (2) to compensate the Debtor/estate for losses resulting from Mr. Dondero's non-compliance with a court order.[136] The court must determine that the Debtor/movant showed by clear and convincing evidence that: (1) the TRO was in effect; (2) the TRO required certain conduct by Mr. Dondero; and (3) that Mr. Dondero failed to comply with the TRO.[137] "[T]he factors to be considered in imposing civil contempt sanctions are: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the financial resources of the contemnor and the burden the sanctions may impose; and (4) the willfulness of the contemnor in

[133] *F.D.I.C. v. LeGrand*, 43 F.3d 163, 170 (5th Cir. 1995); *see also Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir.1992) (same); *Travelhost*, 68 F.3d at 961 (same).

[134] *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000) (citing Fed. R. Civ. P. 65).

[135] *Id.*

[136] *In re Gervin*, 337 B.R. 854, 858 (W.D. Tex. 2005) (citing *United States v. United Mine Workers*, 330 U.S. 258 (1947)).

[137] *In re LATCL&F, Inc.*, 2001 WL 984912. *3 (N.D. Tex. 2001) (citing to *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 400 (5th Cir. 1987)).

disregarding the court's order."[138] "Compensatory civil contempt reimburses the injured party for the losses and expenses incurred because of [their] adversary's noncompliance."[139] Ultimately, courts have "broad discretion in the assessment of damages in a civil contempt proceeding."[140]

E. Knowledge of the Order.

"An alleged contemnor must have had knowledge of the order on which civil contempt is to be based. The level of knowledge required, however, is not high. And intent or good faith is irrelevant."[141] To be clear, "intent is not an element in civil contempt matters. Instead, the basic rule is that all orders and judgments of courts must be complied with promptly."[142]

F. Willfulness of Actions.

For civil contempt of a court order to be found, "[t]he contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court's order."[143] For a stay violation, the complaining party need not show that the contemnor intended to violate the stay. Rather, the complaining party must show that the contemnor intentionally committed the acts which violate the stay. Nevertheless, in determining whether damages should be awarded under the court's

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[138] *Lamar Financial Corp. v. Adams*, 918 F.2d 564, 567 (5th Cir. 1990) (citing *United States v. United Mine Workers*, 330 U.S. 258 (1947)).

[139] *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 827 (5th Cir.1976); *see also Travelhost*, 68 F.3d at 961 (noting that "[b]ecause the contempt order in the present case is intended to compensate [plaintiff] for lost profits and attorneys' fees resulting from the contemptuous conduct, it is clearly compensatory in nature."); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613 (affirming court's decision to impose sanctions for violating injunction and awarding plaintiff costs and fees incurred in connection with prosecuting defendant's conduct); *F.D.I.C.*, 43 F.3d 168 (affirming court's imposition of sanctions requiring defendant to pay movant attorneys' fees).

[140] *Am. Airlines*, 228 F.3d at 585; *see also F.D.I.C.*, 43 F.3d 168 (reviewing lower court's contempt order for "abuse of discretion" under the "clearly erroneous standard."); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613 ("The bankruptcy court's decision to impose sanctions is discretionary[]").

[141] *Kellogg v. Chester*, 71 B.R. at 38.

[142] *In re Unclaimed Freight of Monroe, Inc.*, 244 B.R. 358, 366 (Bankr. W.D. La. 1999). *See also In re Norris*, 192 B.R. 863, 873 (Bankr. W.D. La. 1995) ("Intent is not an element of civil contempt.")

[143] *Id.* (citing *N.L.R.B. v. Trailways, Inc.*, 729 F.2d 1013, 1017 (5th Cir.1984)).

contempt powers, the court considers whether the contemnor's conduct constitutes a willful violation of the stay.[144]

G. Applying the Evidence to the Literal Terms of the TRO.

The court concludes that there is clear and convincing evidence that Mr. Dondero violated the specific wording of the TRO in certain ways and, thus, is in contempt of the court as follows.

1. The TRO states in Section 2(c) that Mr. Dondero is enjoined, "from communicating with any of the Debtor's employees, except as it specifically relates to shared services provided to affiliates owned or controlled by Mr. Dondero."

There are several examples of violations of this provision. And many of the communications appeared to be adverse to the Debtor's interests.

First, notably, Mr. Dondero actually admitted that he had conversations with some Debtor employees, including Scott Ellington, after December 10, 2020, regarding things other than "shared services," including a "pot plan" and, more generally, in connection with Mr. Ellington's role as "settlement counsel": "Scott Ellington, as my settlement counsel, or as the go-between with Seery and with the creditors, was an important piece of trying to get something done."[145] As indicated earlier, this court never would have approved that role for Mr. Ellington, and Mr. Seery credibly testified that this was never approved by him or the Independent Board. There was no exception for this in the TRO. As for Mr. Dondero's desire to pursue a pot plan, again, there's nothing in the TRO that allowed Mr. Dondero to speak with any of the Debtor's employees about the pot plan. It is clear that he knew that because on December 16, 2020, just six days after the TRO was entered, Mr. Dondero filed a motion seeking to modify the TRO to allow Mr. Dondero to speak directly with the Independent Board about a pot plan. He later withdrew that motion.[146]

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[144] *In re All Trac Transport, Inc.*, 306 B.R. 859, 875 (Bankr. N.D. Tex. 2004) (internal citations omitted).

[145] 3/22/21 Transcript at 135:3-5.

[146] *See* DE # 24.

Additionally, as noted earlier in this Opinion, it appears that Mr. Dondero communicated with inhouse lawyer Scott Ellington about all kinds of other things such as: (a) reporting to him about his intention to object to the settlement by the Debtor of the HarbourVest claim;[147] (b) reporting to him about his desire to collaborate with UBS and its counsel to give them "evidence of Seery ineptitude" and they would "run with it";[148] (c) forwarding email conversations to Scott Ellington that Mr. Dondero was having with his counsel (and thereby eviscerating attorney-client privilege as to those emails) about various disputes involving certain Non-Debtor Dondero-Related Entities and regarding the Debtor's desire to seek discovery from Mr. Dondero;[149] (d) reviewing a joint defense agreement that the lawyer for his family trusts (Dugaboy and Get Good) had drafted;[150] and (e) "showing leadership"—whatever that meant—but likely meaning coordinating of all the many lawyers involved for Mr. Dondero's interests.[151]

Finally, Mr. Dondero communicated with Highland employee (executive accountant) Melissa Schroth about resisting production of Dugaboy documents that were on the Highland server without a subpoena[152] and Jason Rothstein about his phone.[153]

In summary, Mr. Dondero violated Section 2(c) of the TRO numerous times.[154] His intent does not matter. He knew about the TRO. Thus, he was in contempt for these numerous violations.

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[147] Debtor's Exh. 21 (DE # 80).

[148] Debtor's Exh. 50 (DE # 101).

[149] Debtor's Exh. 52 & 53 (DE # 101).

[150] *See* Debtor's Exh. 24 (DE # 80).

[151] Debtor's Exh. 18 (DE # 80). *See also* 3/22/21 Transcript at 122:1-124:7; 124:15-125:12.

[152] *See* Debtor Exh. 19 (DE # 80) (on December 16, 2020, at 5:18 pm: "No dugaboy details without subpoena.").

[153] Debtor's Exh. 8 (DE # 80); 1/5/21 Transcript at 80-55; 3/22/21 Transcript at 57-58.

[154] The court notes that there was also clear and convincing evidence to suggest various conversations occurred between Mr. Dondero and his assistant Tara Loiben after December 10, 2020. However, it is not clear from the record if Tara Loiben was a Highland employee or an employee of one of the Non-Debtor Dondero-Related Entities. Moreover, there was evidence to suggest Mr. Dondero communicated with Mr. Ellington on December 11-12, 2020 regarding who should be a witness for Mr. Dondero at an upcoming hearing. However, the evidence of this was not

2. ***The TRO states at Section 3(a) that Mr. Dondero is "enjoined from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct" (and the "Prohibited Conduct" includes "interfering with or otherwise impeding" the Debtor's "decisions concerning disposition of assets controlled by the Debtor").***

The court concludes that there is clear and convincing evidence that Mr. Dondero violated this provision.

Things had grown very awkward at Highland, to say the least, by October 2020 when Mr. Dondero was terminated. It is clear from the evidence that Mr. Dondero did not like the way the bankruptcy case was playing out (his pot plan was not getting the attention or reception he hoped for from the UCC and the Debtor) and he did not like certain trading decisions that Mr. Seery was making. Conflicts of interest between the Debtor and Mr. Dondero (and the Non-Debtor Dondero-Controlled Entities) were seeming more and more problematic. It was against this backdrop that the TRO was entered. It was also against this backdrop that Mr. Dondero and his Non-Debtor Dondero-Related Entities began hiring armies of lawyers. In the midst of all of this, Mr. Dondero gave instructions to a Debtor employee, Hunter Covitz, not to sell "SKY" equity after Mr. Covitz had been instructed by Mr. Seery to sell it.[155] He also communicated with an employee named Matt Pearson, an equity trader, informing him that certain Non-Debtor Highland Related Entities ("HFAM" and "DAF")—who were investors in the NexPoint/HCMFA Funds—had "instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again."[156] Matt Pearson, in response, canceled scheduled sales of SKY, as well as AVYA. Mr.

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clear and convincing that Mr. Dondero spoke directly with Mr. Ellington (as opposed to being copied on conversations among Mr. Ellington and Mr. Dondero's counsel). *See* Debtor's Exhs. 17 (DE # 80), 48 & 49 (DE # 101).

[155] 1/5/21 Transcript at 41:22-43:11.

[156] *Id.* at 43:15-44:08.

Dondero also communicated with an employee of one of the Advisors named Joe Sowin regarding stoppage of trades of CLO assets.[157] Mr. Dondero also communicated with Debtor employee Thomas Surgent, the Chief Compliance Officer, to inform him that he thought Mr. Seery was engaging in improper trades of Highland CLO assets and told Mr. Surgent he might face personal liability over this.[158] Finally, Mr. Dondero communicated with a text to Mr. Seery that stated: "Be careful what you do, last warning."[159]

Mr. Dondero's "defense" of his interference—that he was looking out for investors—is neither relevant nor entirely credible. As earlier indicated, intent does not matter with civil contempt. Moreover, the evidence was credible that Mr. Dondero himself, postpetition, while still an employee of Highland, traded a significantly larger amount of the AVYA stock that was held in the Highland CLOs, sometimes at a lower price than Mr. Seery did or attempted.[160]

In summary, Mr. Dondero violated Section 3 of the TRO. His intent does not matter. He knew about the TRO. Thus, he was in contempt of court for interfering with or otherwise impairing the Debtor's business, including its decisions concerning disposition of assets controlled by the Debtor.

3. ***The TRO states in Section 2(e) that Mr. Dondero shall not violate section 362(a) of the Bankruptcy Code***.

The Debtor has argued that Mr. Dondero's actions with regard to the disappearing cell phone provided to him by the Debtor amounted to a violation of the automatic stay, section 362(a)(3) (as an exercise of control over property of the estate—*i.e.*, the phone and its data thereon) and, thus, a

[157] *Id.* at 50:8-14; *see also id.* at 89:8-25.

[158] *Id.* at 60:23-61-25.

[159] *Id.* at 62:25.

[160] *Id.* at 106:9-20, 159-161.

violation of this provision of the TRO. While the court is more than a little troubled by the mysterious disappearance of the cell phone—just hours after entry of the TRO and after a year of numerous ESI requests by the UCC during the case—the court cannot conclude that the disappearance was a clear and convincing violation of the TRO. There may or may not be a later evaluation of whether a spoliation of evidence has occurred, but for now, this is simply a matter of whether the TRO was violated.

As earlier stated, "To support a contempt finding in the context of a TRO, the order must delineate 'definite and specific' mandates that the defendants violated."[161] While the court need not, however, "anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated,"[162] the court concludes that the TRO simply was not specific enough with regard to the phone. The TRO did not specifically state "turn over your cell phone." A letter on December 23, 2020 from Debtor's counsel to Mr. Dondero's counsel later made such a demand,[163] but this was not the same as there being a mandate in the four corners of the TRO. Additionally, the Highland Employee Handbook made it clear that the phone and its data were the Debtor's.[164] But this, too, is not the same as the TRO's literal terms.

Mr. Dondero should not consider this to be a victory. ***The court reiterates that it is highly concerned about possible spoliation of evidence that may or not be presented in a contested matter later***.[165] At the same time, no one else should consider "spoliation" to be a foregone

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[161] *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000) (citing Fed. R. Civ. P. 65).

[162] *Id.*

[163] Debtor's Exh. 12 (DE # 80).

[164] Debtor's Exhs. 54 & 55 (DE # 101).

[165] *See* Fed. R. Civ. Proc. 37(e) (dealing with failure to preserve electronically stored information); *Hawkins v. Gresham*, No. 3:13-CV-00312-P, 2015 WL 11122118, at *3 (N.D. Tex. Jan. 16, 2015) (dealing with the question of whether a defendant's sale of his phone containing relevant text messages after being notified of a lawsuit was a breach of his duty to preserve evidence); *Paisley Park Enterprises, Inc. v. Boxill*, 330 F.R.D. 226, 230-237 (D. Minn. 2019) (dealing with whether two defendants' loss of relevant text messages resulting from their phones' auto-delete function

conclusion here. The court never heard testimony from Jason Rothstein or Tara Loiben (who seem to have been involved with the disappearing phone). The court never heard evidence as to whether the inhouse lawyers (*e.g.*, Scott Ellington, Isaac Leventon) properly addressed with Highland employees, such as Mr. Dondero, as they should have, the preservation notice and document requests served on the Debtor by the UCC.[166] The court also cannot be sure at this time whether there was even relevant and retrievable information on the phone. The court has many lingering questions, but it cannot find contempt of the TRO based on the TRO's lack of specificity where the cell phone was concerned.

4. ***Other Allegations of TRO Violations***.

The Debtor has cited various other instances of Mr. Dondero's behavior that it believes were violative of the TRO. For example: (a) Mr. Dondero's alleged willful ignorance of it by not reading it or underlying pleadings associated with it; (b) trespassing on the Debtor's property after the Debtor had evicted him; and (c) allegedly interfering with the Debtor's obligation to produce certain documents that were requested by the UCC and that were in the Debtor's possession, custody, and

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constituted spoliation of evidence when the defendants had explicitly discussed the possibility of litigation before the deletion and were principals of the company being sued); *First Fin. Sec., Inc. v. Freedom Equity Grp., LLC*, No. 15-CV-1893-HRL, 2016 WL 5870218, at *3-4 (N.D. Cal. Oct. 7, 2016) (dealing with whether Defendants' intentional deletion of text messages after they had discussed the likelihood of litigation was spoliation of evidence under Rule 37(e); also, whether sanctions were warranted when it was unclear whether the information contained in the deleted text messages would have been critical to plaintiff's claims); *Living Color Enterprises, Inc. v. New Era Aquaculture, Ltd.*, No. 14-CV-62216, 2016 WL 1105297, at *1-2, 4-7 (S.D. Fla. Mar. 22, 2016) (dealing with whether the deletion of text messages from Defendant's cell phone as a result of the phone's auto-delete feature after he reasonably anticipated litigation was spoliation of evidence that prejudiced the Plaintiff; also, whether Defendant's failure to disable the auto-delete feature that resulted in the deletion of text messages was evidence of his intent to deprive Plaintiff of relevant evidence.); *Clear-View Tech., Inc. v. Rasnick*, No. 5:13-CV-02744-BLF, 2015 WL 2251005, at *2, 7-11 (N.D. Cal. May 13, 2015) (whether Defendants spoliated text message evidence by purposefully deleting emails and discarding cell phones after receiving messages threatening a lawsuit from Plaintiff and discussing the possibility of litigation); *Kan-Di-Ki, LLC v. Suer*, No. CV 7937-VCP, 2015 WL 4503210, at *30 (Del. Ch. July 22, 2015) (whether Plaintiff's deletion of relevant emails and loss of his cell phone constituted spoliation and whether sanctions were warranted).

[166] Debtor's Exhs. 29-33 (DE # 80).

control. While the allegations are problematic, the court does not conclude these actions constituted civil contempt of the TRO.[167]

With regard to Mr. Dondero's alleged "willful ignorance" of the TRO, it is technically not a violation of any term of the TRO. The most important thing here is that Mr. Dondero cannot claim lack of knowledge of the TRO's contents. As mentioned earlier, "[a]n alleged contemnor must have had knowledge of the order on which civil contempt is to be based. The level of knowledge required, however, is not high."[168] When Mr. Dondero testified that he had not read the TRO (or the underlying pleadings supporting it), maybe he was trying to imply lack of knowledge of its terms as some sort of defense? Or maybe he really did not care to read the TRO and was relying entirely upon his counsel to tell him all of its terms. Whatever the explanation, it really does not matter much. The court determines that Mr. Dondero had the necessary knowledge of the TRO, for purposes of holding him accountable for compliance with it, but—even if he was somewhat cavalier in not actually reading the TRO line-for-line—this alone is not a violation of the TRO's terms.

With regard to Mr. Dondero's trespassing on the Debtor's property after the Debtor had evicted him, the problem here is that the "eviction" of Mr. Dondero occurred pursuant to the letter that Debtor's counsel sent to Mr. Dondero's counsel on December 23, 2010—not pursuant to the actual terms of the TRO.[169] The TRO itself did not specifically enjoin Mr. Dondero from going to

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[167] The court should add that it does not conclude that letters sent by counsel for the Advisors and the NexPoint/HCMFA Funds, seeking to stop the sale of Highland CLO assets, and a motion that they filed to address Highland CLO management issues, constituted contempt of court by Mr. Dondero. *See* Debtor's Exh. 25 (DE # 80). While Mr. Dondero, as the President and portfolio manager of these Non-Debtor Dondero-Related entities, was/is no doubt in control of them, and while it is a very close call as to whether—through these lawyers' actions—Mr. Dondero was causing "(a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf," to interfere with the disposition of assets controlled by the Debtor, the court ultimately believes that hiring lawyers to file motions (and those lawyers taking steps leading up to the filing of the motions, such as sending letters previewing that they may take legal actions), should not be viewed as having crossed the line into contemptuous behavior. Again, this was a close call.

[168] *Kellogg v. Chester*, 71 B.R. at 38.

[169] Debtor's Exh. 12 (DE # 80).

the Highland offices. The later preliminary injunction entered on January 8, 2021 for the first time contained such an injunction.[170] Thus, even though Mr. Dondero showed up in the Debtor's offices on January 5, 2021 to sit for the Debtor's virtual deposition of him, the court does not conclude that this violated a term of the TRO.

With regard to Mr. Dondero's allegedly interfering with the Debtor's obligation to produce certain documents that were requested by the UCC and that were in the Debtor's possession, custody, and control, the court understands this to be a reference to Mr. Dondero texting Highland employee Melissa Schroth and instructing her not to turn over documents concerning the Dugaboy Trust (that were on Highland's server) without a subpoena.[171] The court has already addressed this as a TRO violation, ***since it was a communication with a Highland employee regarding matters other than "shared services."*** For the avoidance of doubt, there was no shared services agreement between the Dugaboy Trust and Highland. This clearly was a TRO violation.

V. Damages.

The Contempt Motion requests that the court (i) find and hold Mr. Dondero in contempt for violating the TRO; (ii) direct Mr. Dondero to produce to the Debtor and the UCC, within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) direct Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion, payable within three calendar days of presentment of an itemized list of expenses; (iv) impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (v) grant the Debtor such other and further relief as the court deems just and proper under the circumstances.

[170] DE # 59 at ¶ 5.

[171] Debtor's Exh. 19 (DE # 101).

As indicated earlier, the court can order what is necessary to: (1) compel or coerce obedience of an order; and (2) to compensate the Debtor/estate for losses resulting from Mr. Dondero's non-compliance with a court order. Here, the court believes compensatory damages are more appropriate than a remedy to compel or coerce future compliance. Compensatory damages are supposed to reimburse the injured party for the losses and expenses incurred because of their adversary's noncompliance. Courts have broad discretion but may consider such factors as: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the financial resources of the contemnor and the burden the sanctions may impose; and (4) the willfulness of the contemnor in disregarding the court's order.

As far as the harm from noncompliance, the Debtor presented invoices of the fees incurred by its counsel relating to the TRO and Contempt Motion. The Debtor did not attempt to quantify any potential economic harm to the Debtor from Mr. Dondero's prohibited conversations with Debtor employees and attempted interference with trading. Should this matter? Once again, is this much ado about nothing? In answering this question, context matters. Recall that the Corporate Governance Settlement between the Debtor and UCC from January 2020 was ***all about removing Mr. Dondero from control of the Debtor but avoiding the drastic remedy of a Chapter 11 Trustee***. It was heavily negotiated and extremely detailed in its terms. Ultimately, Mr. Dondero was kept around at the company in a non-control capacity, but eventually conflicts between the Debtor and him (and between the Debtor and the Non-Debtor Dondero-Related Entities) became intolerable. Mr. Dondero was, therefore, terminated. But almost immediately, he essentially began instructing Debtor employees to ignore their boss (Mr. Seery) and do as Mr. Dondero said instead. All of this was occurring at a critical time when the Debtor had filed a Chapter 11 plan, was still negotiating it with creditors, and was set for a confirmation hearing—and, meanwhile, Mr. Dondero was trying

to gain support for his own pot plan that would involve him regaining control of the company and/or transitioning the Debtor's managed funds over to his control. His interference—even if not ultimately resulting in quantifiable harm to the Debtor's balance sheet or cash flow—posed a risk to the Debtor's plan of reorganization that, ultimately ended up being supported by hundreds of millions of dollars-worth of creditors (in fact, all creditors except the Non-Debtor Dondero-Related Entities). The reality is that the Debtor's counsel acted quickly in bringing the Contempt Motion before much damage could be done. The fact that they acted swiftly—before the Debtor had incurred any quantifiable damage other than significant attorneys' fees—should not preclude the Debtor from alleging harm and receiving reimbursement of its attorneys' fees and expenses incurred relating to the TRO and Contempt Motion.

As far as the attorneys' fees incurred relating to the TRO and Contempt Motion, the Debtor presented invoices of the fees incurred by its primary bankruptcy counsel, Pachulski Stang, during December 2020 and January 2021, pertaining to "Bankruptcy Litigation"—much of which it represented related to its attorney time devoted to the Contempt Motion. The Debtor admitted that there were some other litigation matters mixed in these invoices.[172] Total December fees were $526,686. The court has reviewed the December invoice and conservatively estimates that **$170,919** of the fees reflected in the December invoice related to the TRO and Contempt Motion (other fees appeared to relate to other litigation matters such as the HarbourVest settlement, Pat Daugherty issues, UBS, demand note litigation, and Dugaboy claims). Total January fees were $698,770. The court has reviewed this invoice and conservatively estimates that **$195,002** of the fees reflected in the January 2021 invoice related to the TRO and Contempt Motion (again, other

[172] Debtor's Exhs. 38 & 39 (DE # 128).

fees appeared to relate to other litigation matters such as UBS and other litigation). These two sums total **$365,921**.

However, the hearing on this matter (as a result of continuances sought by Mr. Dondero) did not occur until March 22 & 24, 2021. The court was presented with no invoices for February or March. The court estimates that the hearing on this matter (March 22 & 24, 2021) required 10 hours of in-court time. The primary attorney handling this matter for the Debtor (Mr. Morris) charged at $1,245 per hour and his paralegal (Ms. Canty) charged $425 per hour. The court will assume that they each spent 10 hours during the day or two before the hearing preparing for it. This would amount to an additional **$33,400** of fees, bringing the total now to **$399,321**. The court stresses that it used conservative math when scrutinizing the invoices. Moreover, this represents fees only. The court assumes that the various depositions and transcripts required as a result of this litigation resulted in many thousands of dollars of additional expenses. Also, Pachulski had local counsel (Hayward & Associates) whose invoices were not submitted. Additionally, the UCC had counsel monitoring all of this (Sidley & Austin)—whose fees and expenses are reimbursed by the bankruptcy estate—and their fees and expenses have not been included. In summary, the $399,321 number is extremely conservative, and it does not include likely significant add-ons (expenses; local counsel; and UCC counsel). The court determines that it is reasonable to round the $399,321 number up approximately $50,000, to **$450,000** because of these extra items. In considering the probable effectiveness of the sanction, the financial resources of Mr. Dondero and the burden the sanctions may impose, and the willfulness of Mr. Dondero in disregarding the court's TRO, the court believes—based on information it has learned at numerous hearings about Mr. Dondero's compensation and the size of the companies he has been running for almost 30 years—he has substantial resources, and this $450,000 compensatory sanction will not place much of a burden on

him at all. The court believes that there was willfulness with regard to many of Mr. Dondero's actions. The court has no idea about the probability of these sanctions being effective. Time will tell.

The Debtor has asked for the court to impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court. The court declines to do this. However, the court will add on a sanction of $100,000 for each level of rehearing, appeal, or petition for *certioriari* that Mr. Dondero may choose to take with regard to this Order, to the extent any such motions for rehearing, appeals, or petitions for *certiorari* are not successful.

Accordingly, it is hereby ORDERED that:

(i) Mr. Dondero is in civil contempt of court in having violated the court's December 10, 2020 TRO—the court having found by clear and convincing evidence that: (1) the TRO was in effect and Mr. Dondero knew about it; (2) the TRO required certain conduct by Mr. Dondero; and (3) Mr. Dondero failed to comply with the TRO;

(ii) In order to compensate the Debtor's estate for loss and expense resulting from Mr. Dondero's non-compliance with the TRO, Mr. Dondero is directed to pay the Debtor (on the 15th day after entry of this order) an amount of money equal to **$450,000;**

(iii) The court will add on a sanction of **$100,000** for each level of rehearing, appeal, or petition for *certioriari* that Mr. Dondero may choose to take with regard to this Order, to the extent that any such motions for rehearing, appeals, or petitions for *certiorari* are pursued by him and are not successful;

(iv) Other sanctions are denied at this time; and

(v) The court reserves jurisdiction to interpret and enforce this Order.

End of Memorandum Opinion and Order

SEALEDEXH, APPEAL, DirectAppeal, 5thCircuitAppeal, SealedDocument, FUNDS, TRANSIN, REFORM, ClaimsAgent, EXHIBITS, COMPLEX

U.S. Bankruptcy Court
Northern District of Texas (Dallas)
Bankruptcy Petition #: 19−34054−sgj11

Assigned to: Stacey G. Jernigan
Chapter 11
Voluntary
Asset
Show Previous Cases

Date filed: 10/16/2019
Date Plan Confirmed: 02/22/2021
Date transferred: 12/04/2019
Plan confirmed: 02/22/2021
341 meeting: 01/09/2020
Deadline for filing claims: 04/08/2020
Deadline for filing claims (govt.): 04/13/2020

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Filing Date	Docket Text
12/04/2019	1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)
12/04/2019	2 DOCKET SHEET filed in 19−12239 in the U.S. Bankruptcy Court for Delaware . (Okafor, M.)
12/04/2019	3 Chapter 11 Voluntary Petition . Fee Amount $1717. Filed by Highland Capital Management, L.P.. (Attachments: # 1 Creditor Matrix) [ORIGINALLY FILED AS DOCUMENT #1 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	4 Motion to Pay Employee Wages /Motion of the Debtors for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief Filed Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #2 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	5 Motion to Pay Critical Trade Vendor Claims /Motion of the Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and

	(B) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Proposed Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #3 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	6 Motion to Extend Deadline to File Schedules or Provide Required Information Filed by Highland Capital Management, L.P.(Attachments: # 1 Exhibit A − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #4 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	8 **WITHDRAWN** − 10/29/2019. SEE DOCKET # 72. Motion to Approve Use of Cash Collateral /Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Order)(O'Neill, James) Modified on 10/30/2019 (DMC)[ORIGINALLY FILED AS DOCUMENT #6 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	9 Application to Appoint Claims/Noticing Agent KURTZMAN CARSON CONSULTANTS, LLC Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Engagement Agreement # 2 Exhibit B − Gershbein Declaration # 3 Exhibit C − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #7 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	10 Motion to File Under Seal/Motion of the Debtor for Entry of Interim and Final Orders Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #8 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	11 Affidavit/Declaration in Support of First Day Motion /Declaration of Frank Waterhouse in Support of First Day Motions Filed By Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #9 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	12 Notice of Hearing on First Day Motions (related document(s)2, 3, 5, 6, 7, 8, 9 [ON DELAWARE DOCKET]) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #11 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	13 Notice of Hearing // Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.

	(Attachments: # 1 Exhibit A) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #12 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	14 Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #13 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	15 Notice of appearance Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #14 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	16 Motion to Appear pro hac vice of Marshall R. King of Gibson, Dunn & Crutcher LLP. Receipt Number 2757354, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #15 ON 10/1/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	17 Motion to Appear pro hac vice of Michael A. Rosenthal of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #16 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	18 Motion to Appear pro hac vice of Alan Moskowitz of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #17 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	19 Motion to Appear pro hac vice of Matthew G. Bouslog of Gibson, Dunn & Crutcher LLP. Receipt Number 2581894, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #18 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	20 Notice of Appearance and Request for Notice by Louis J. Cisz filed by Interested Party California Public Employees Retirement System (CalPERS) . (Okafor, M.) [ORIGINALLY FILED AS DOCUMENT #19 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	21 Motion to Appear pro hac vice (Jeffrey N. Pomerantz). Receipt Number 2564620, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #20 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	22 Motion to Appear pro hac vice (Maxim B. Litvak). Receipt Number 2564620, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #21 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	23 Motion to Appear pro hac vice (Ira D. Kharasch). Receipt Number DEX032537, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #22 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	24 Motion to Appear pro hac vice (Gregory V. Demo). Receipt Number DEX032536, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #23 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	25 Motion to Appear pro hac vice of Marc B. Hankin. Receipt Number 2757358, Filed by Redeemer Committee of the Highland Crusader Fund. (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #24 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	26 Order Approving Motion for Admission pro hac vice Marshall R. King of Gibson(Related Doc # 15) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #25 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	27 Order Approving Motion for Admission pro hac vice Michael A. Rosenthal (Related Doc # 16) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #26 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	28 Order Approving Motion for Admission pro hac vice Alan Moskowitz (Related Doc # 17) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #27 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	29 Order Approving Motion for Admission pro hac vice Matthew G. Bouslog(Related Doc # 18) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #28 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	30 Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz (Related Doc # 20) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #29 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	31 Order Approving Motion for Admission pro hac vice Maxim B. Litvak (Related Doc # 21) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #30 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	32 Order Approving Motion for Admission pro hac vice Ira D. Kharasch (Related Doc # 22) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #31 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	33 Order Approving Motion for Admission pro hac vice Gregory V. Demo(Related Doc # 23) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #32 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	34 Order Approving Motion for Admission pro hac vice Marc B. Hankin(Related Doc # 24) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #33 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	35 Certificate of Service of: 1) Notice of Hearing on First Day Motions; 2) Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C)

	Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing; and 3) Notice of Agenda for Hearing of First Day Motions Scheduled for October 18, 2019 at 10:00 a.m. (related document(s)11, 12, 13) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #34 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	36 Motion to Appear pro hac vice (John A. Morris). Receipt Number 2635868, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #35 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	37 Notice of Appearance and Request for Notice by Richard B. Levin , Marc B. Hankin , Kevin M. Coen , Curtis S. Miller filed by Interested Party Redeemer Committee of the Highland Crusader Fund . (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #36 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	38 Order Approving Motion for Admission pro hac vice John A. Morris(Related Doc # 35) Order Signed on 10/18/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #38 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	39 Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief. (related document(s)2) Order Signed on 10/18/2019. (NAB) [ORIGINALLY FILED AS DOCUMENT #39 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	40 Interim Order (A) Authorizing the Debtor to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief (Related Doc 3) Order Signed on 10/18/2019 (Attachments: # 1 Agreement)) (NAB) Modified Text on 10/21/2019 (LB) [ORIGINALLY FILED AS DOCUMENT #40 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	41 Notice of Appearance and Request for Notice by Eric Thomas Haitz filed by Debtor Highland Capital Management, L.P.. (Haitz, Eric)
12/04/2019	42 Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief. (Related Doc 5) Order Signed on 10/18/2019. (JS) Modified Text on 10/21/2019 (LB). [ORIGINALLY FILED AS DOCUMENT #42 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	43 Order Appointing Kurtzman Carson Consultants, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002−1(F) (Related Doc # 7) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #43 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	44 Interim Order Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information. (Related Doc # 8) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #44 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	45 Notice of Appearance and Request for Notice by Elizabeth Weller filed by Irving ISD , Grayson County , Upshur County , Dallas County , Tarrant County , Kaufman County ,

	Rockwall CAD , Allen ISD , Fannin CAD , Coleman County TAD . (Okafor, M.)
12/04/2019	46 Notice of hearing/*scheduling conference* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)). Status Conference to be held on 12/6/2019 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Haitz, Eric)
12/04/2019	47 Notice of Service // Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (related document(s)2, 39) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #47 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	48 Notice of Service // Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002−1(F) (related document(s)7, 43) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #48 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/9/2019 (Okafor, M.).
12/04/2019	49 Notice of Hearing // Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019.(Attachments: # 1 Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #49 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	50 Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #50 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	51 Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (related document(s)5, 42) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #51 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	52 Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (related document(s)8, 44) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6,

	Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #52 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	53 Notice of Hearing // Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 10/31/2019. (Attachments: # 1 Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #53 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	54 Affidavit/Declaration of Service for service of (1) [Signed] Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz [Docket No. 29]; (2) [Signed] Order Approving Motion for Admission pro hac vice Maxim B. Litvak [Docket No. 30]; (3) [Signed] Order Approving Motion for Admission pro hac vice Ira D. Kharasch [Docket No. 31]; (4) [Signed] Order Approving Motion for Admission pro hac vice Gregory V. Demo [Docket No. 32]; (5) [Signed] Order Approving Motion for Admission pro hac vice John A. Morris [Docket No. 38]; (6) Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief [Docket No. 47]; (7) Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002−1(F) [Docket No. 48]; (8) Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 49]; (9) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 50]; (10) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief [Docket No. 51]; (11) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information [Docket No. 52]; and (12) Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing [Docket No. 53] (related document(s)29, 30, 31, 32, 38, 47, 48, 49, 50, 51, 52, 53) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #55 ON 10/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M)
12/04/2019	55 Notice of Appearance and Request for Notice by Josef W. Mintz , John E. Lucian , Phillip L. Lamberson , Rakhee V. Patel filed by Acis Capital Management, L.P. , Acis Capital Management GP, LLC . (Attachments: # 1 Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #56 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	56 Motion to Appear pro hac vice of Rakhee V. Patel of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #57 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	

	57 Motion to Appear pro hac vice of Phillip Lamberson of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #58 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	58 Motion to Appear pro hac vice of John E. Lucian of Blank Rome LLP. Receipt Number 3112548736, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #59 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	59 Notice of Appearance and Request for Notice by Michael I. Baird filed by Interested Party Pension Benefit Guaranty Corporation . (Attachments: # 1 Certification of United States Government Attorney # 2 Certificate of Service) (Baird, Michael) [ORIGINALLY FILED AS DOCUMENT #60 ON 10/23/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	60 Order Granting Motion for Admission pro hac vice for Rakhee V. Patel (Related Doc # 57) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #61 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	61 Order Granting Motion for Admission pro hac vice of John E. Lucian (Related Doc # 59) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #62 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	62 Order Granting Motion for Admission pro hac vice of Phillip Lamberson (Related Doc # 58) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #63 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	63 Notice of Appearance and Request for Notice by Michael L. Vild filed by Creditor Patrick Daugherty . (Vild, Michael) [ORIGINALLY FILED AS DOCUMENT #64 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	64 Notice of Appointment of Creditors' Committee Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #65 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	65 Request of US Trustee to Schedule Section 341 Meeting of Creditors November 20,2019 at 9:30 a.m. Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #66 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	66 Notice of Meeting of Creditors/Commencement of Case Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #67 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	67 Motion to Authorize /Motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Form of Order # 3 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #68 ON 10/29/2019 IN U.S.

	BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C − Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	69 **WITHDRAWN per #437. Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Hurst Declaration # 3 Exhibit B − Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/11/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	70 Application/Motion to Employ/Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019(Attachments: # 1 Notice # 2 Rule 2016 Statement # 3 Declaration of Jeffrey N. Pomerantz in Support # 4 Declaration of Frank Waterhouse # 5 Proposed Form of Order # 6 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #71 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	71 Notice of Withdrawal of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P. (Attachments: # 1 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #72 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	72 Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #73 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	73 Application/Motion to Employ/Retain Kurtzman Carson Consultants as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Gershbein Declaration # 4 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #74 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	74 Application/Motion to Employ/Retain Development Specialists, Inc. as Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and

	Restructuring−Related Services, Nunc Pro Tunc As of the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Engagement Letter # 3 Exhibit B − Sharp Declaration # 4 Exhibit C − Proposed Order # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #75 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	76 **WITHDRAWN by # 360** Motion to Approve /Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Appendix I # 3 Appendix II # 4 Proposed Form of Order # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #77 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 1/16/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	77 Notice of Appearance and Request for Notice by William A. Hazeltine filed by Interested Party Hunter Mountain Trust . (Okafor, M.) (Hazeltine, William) [ORIGINALLY FILED AS DOCUMENT #78 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	78 Notice of Meeting of Creditors/Commencement of Case (Corrected) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #79 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	79 Motion to Appear pro hac vice of Brian P. Shaw of Rogge Dunn Group. Receipt Number 0311−27677, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #80 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	80 Amended Notice of Appearance. The party has consented to electronic service. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # 1 Certificate of Service) (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #81 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	81 Notice of Appearance and Request for Notice by Jessica Boelter , Alyssa Russell , Matthew A. Clemente , Bojan Guzina filed by Creditor Committee Official Committee of Unsecured Creditors . (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #82 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	82 Initial Reporting Requirements /Initial Monthly Operating Report of Highland Capital Management, LP Filed by Highland Capital Management, L.P.. (Attachments: # 1 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #83 ON 10/31/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	83 Order Approving Motion for Admission pro hac vice Brian P. Shaw(Related Doc # 80) Order Signed on 11/1/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #84 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	84 Notice of Appearance and Request for Notice by Sarah E. Silveira , Michael J. Merchant , Asif Attarwala , Jeffrey E. Bjork filed by Interested Parties UBS AG London Branch , UBS Securities LLC . (Attachments: # 1 Certificate of Service) (Merchant, Michael) [ORIGINALLY FILED AS DOCUMENT #85 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	85 Motion to Change Venue/Inter−district Transfer Filed by Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E − Certificate of Service) (Guzina, Bojan)[ORIGINALLY FILED AS DOCUMENT #86 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	86 Emergency Motion to Shorten Notice With Respect To The Motion Of Official Committee Of Unsecured Creditors To Transfer Venue Of This Case To The United States Bankruptcy Court For The Northern District Of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #87 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	87 Order Denying Emergency Motion to Shorten Notice With Respect to The Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District Of Texas (Related Doc # 87) Order Signed on 11/4/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #88 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	88 Notice of Appearance. The party has consented to electronic service. Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #89 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	89 Motion to Appear pro hac vice of Patrick C. Maxcy. Receipt Number 2770240, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #90 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	90 Motion to Appear pro hac vice of Lauren Macksoud. Receipt Number 2770389, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #91 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	91 Notice of Appearance. The party has consented to electronic service. Filed by INTEGRATED FINANCIAL ASSOCIATES, INC. (Carlyon, Candace) [ORIGINALLY FILED AS DOCUMENT #92 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	92 Order Approving Motion for Admission pro hac vice Patrick C. Maxcy(Related Doc # 90) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #93 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	93 Order Approving Motion for Admission pro hac vice Lauren Macksoud(Related Doc # 91) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #94 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	94 HEARING CANCELLED. Notice of Agenda of Matters not going forward. The following hearing has been cancelled. Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #95 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	95 Notice of Appearance. The party has consented to electronic service. Filed by BET Investments, II, L.P.. (Attachments: # 1 Certificate of Service) (Kurtzman, Jeffrey) (Attachments: # 1 Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #96 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	96 Certification of Counsel Regarding Order Scheduling Omnibus Hearing Date Filed by Highland Capital Management, L.P.. (Attachments: # 1 Proposed Form of Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #97 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	98 Order Scheduling Omnibus Hearings. Omnibus Hearings scheduled for 12/17/2019 at 11:00 AM US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Signed on 11/7/2019. (CAS) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #98 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	101 Exhibit(s) // Notice of Filing of Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #99 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	102 Affidavit/Declaration of Service for service of [Signed] Order Scheduling Omnibus Hearing Date [Docket No. 98] (related document(s)98) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #100 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	103 Notice of Deposition − Notice to Take Rule 30(b)(6) Deposition Upon Oral Examination of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #101 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	104 Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #102 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

	(Entered: 12/05/2019)
12/04/2019	106 Notice of Service − Notice of Intent to Serve Subpoena Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #103 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	107 Notice of Substitution of Counsel Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Attachments: # 1 Certificate of Service) (Ryan, Jeremy) [ORIGINALLY FILED AS DOCUMENT #104 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	108 Amended Notice of Appearance. The party has consented to electronic service. Filed by Official Committee of Unsecured Creditors. (Beach, Sean) . [ORIGINALLY FILED AS DOCUMENT #105 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	110 Motion to Appear pro hac vice Of Bojan Guzina of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #106 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	111 Motion to Appear pro hac vice of Alyssa Russell of Sidley Austin LLP. Receipt Number 2620330, Filed by Official Committee of Unsecured Creditors. (Beach, Sean)[ORIGINALLY FILED AS DOCUMENT #107 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	112 Motion to Appear pro hac vice of Matthew A. Clemente of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #108 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	113 Motion to Appear pro hac vice of Paige Holden Montgomery. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #109 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	114 Motion to Appear pro hac vice of Penny P. Reid of Sidley Austin. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #110 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	115 Order Approving Motion for Admission pro hac vice Bojan Guzina(Related Doc # 106) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #111 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	116 Order Approving Motion for Admission pro hac vice Alyssa Russell (Related Doc # 107) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #112 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	117 Order Approving Motion for Admission pro hac vice Matthew A. Clemente (Related Doc # 108) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #113 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF

	DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	118 Order Approving Motion for Admission pro hac vice Paige Holden(Related Doc # 109) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #114 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	119 Order Approving Motion for Admission pro hac vice Penny P. Reid(Related Doc # 110) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #115 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	120 Limited Objection to the Debtors: (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #116 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	121 Limited Objection and Reservation of Rights of Jefferies LLC to Debtor's Motion for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business (related document(s)77) Filed by Jefferies LLC (Attachments: # 1 Exhibit A # 2 Certificate of Service) (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #117 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	122 Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #118 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	123 Limited Objection to Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employee, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business (related document(s)76) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #119 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	124 **WITHDRAWN per # 456** Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/19/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	125 Limited Objection to the Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #121 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	126 Joinder to Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #122 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	127 Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	128 [SEALED in Delaware Bankruptcy Court] Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (related document(s)5, 75, 77, 123) Filed by Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #124 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	130 Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Redacted) (related document(s)5, 75, 77, 123, 124) Filed by Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E)(Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #125 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	131 Notice of Service of Discovery Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #126 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	132 Objection Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)8) Filed by U.S. Trustee (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #127 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	133 Certificate of Service of Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)118) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #128 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	134 Certificate of Service of Acis's Joinder in Motion to Transfer Venue (related document(s)122) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #129 ON 11/13/2019 IN

	U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	135 Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # 1 Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	136 Certificate of Service of United States Trustees Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	137 Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	138 Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	139 Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	140 Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	141 ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMI3URSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	142 ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	143 ORDER (I) EXTENDING TIME TO FILE SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND STATEMENTOF FINANCIAL AFFAIRS, AND (II) GRANTING RELATED RELIEF (Related Doc # 4) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #138 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	144 Notice of Appearance. The party has consented to electronic service. Filed by Intertrust Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #139 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	145 Notice of Appearance. The party has consented to electronic service. Filed by CLO Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #140 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	146 Notice of Deposition Upon Oral Examination Under Rules 30 and 30(b)(6) of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #141 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	147 Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # 1 Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #142 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	148 Affidavit/Declaration of Service for service of (1) [Signed] Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 136]; (2) [Signed] Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date [Docket No. 137]; and (3) [Signed] Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 138] (related document(s)136, 137, 138) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #143 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	149 Notice of Hearing regarding Motion to Change Venue/Inter−district Transfer (related document(s)86, 87, 88) Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #144 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	150 Notice of Rescheduled 341 Meeting (related document(s)67, 79) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 12/3/2019 at 10:30 AM (check with U.S. Trustee for location) (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #145 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	151 Agenda of Matters Scheduled for Telephonic Hearing (related document(s)142) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.(Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED

	AS DOCUMENT #146 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	152 Notice of Appearance. The party has consented to electronic service. Filed by CLO Holdco, Ltd.. (Kane, John) [ORIGINALLY FILED AS DOCUMENT #149 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	153 Amended Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #150 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	154 Notice of Appearance and Request for Notice by Sally T. Siconolfi , Joseph T. Moldovan filed by Interested Party Meta−e Discovery, LLC . (Moldovan, Joseph)[ORIGINALLY FILED AS DOCUMENT #152 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	156 Affidavit/Declaration of Service regarding Notice of Hearing regarding Motion to Change Venue/Inter−district Transfer (related document(s)144) Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #153 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	158 Motion to Appear pro hac vice of Annmarie Chiarello of Winstead PC. Receipt Number 0311−27843, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #154 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	159 Order Approving Motion for Admission pro hac vice Annmarie Chiarello (Related Doc # 154) Order Signed on 11/21/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #155 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	162 Reply in Support of Motion to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118) Filed by Official Committee of Unsecured Creditors (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #156 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	163 Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118, 122, 156) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #157 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	164 Response of the Debtor to Acis's Joinder to Motion to Transfer Venue (related document(s)86, 122) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #158 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	165 Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and

	Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Nunc Pro Tunc to Petition Date (related document(s)69, 70, 116, 120) Filed by Highland Capital Management, L.P.(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #159 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	166 Omnibus Reply of the Debtor in Support of: (1) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)5, 75, 77) Filed by Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Redline Order Approving Ordinary Course Protocols Motion # 2 Exhibit B − Redline Order Approving Cash Management Motion # 3 Exhibit C − Redline Order Approving DSI Retention Motion # 4 Exhibit D − Summary of Intercompany Transactions) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #160 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	168 Certificate of Service of 1) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue; 2) Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date, and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP; and 3) Omnibus Reply of the Debtor in Support of: (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)158, 159, 160) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #161 ON 11/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	169 Exhibit(s) // Notice of Filing of Second Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #162 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	170 Certification of Counsel Regarding Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P..(Attachments: # 1 Exhibit A # 2 Exhibit B) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #163 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	171 **WITHDRAWN** − 11/26/2019. SEE DOCKET # 165. Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) (O'Neill, James) Modified on 11/26/2019 (DMC). [ORIGINALLY FILED AS DOCUMENT #164 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	172 Notice of Withdrawal of Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)164) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS

	DOCUMENT #165 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	173 Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P (Attachments: # 1 Exhibit A # 2 Exhibit B)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #166 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	174 Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #167 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	175 FINAL ORDER (A) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (B) GRANTING RELATED RELIEF (Related document(s) 3, 40) Signed on 11/26/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #168 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	178 Supplemental Declaration in Support of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #171 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE(Okafor, M.) (Entered: 12/05/2019)
12/04/2019	179 Certification of Counsel Regarding Debtor's Application Pursuant to Section 327(A) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Blackline Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #172 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)

12/04/2019	180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	181 Certificate of Service and Service List for service of Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief [Docket No. 170] (related document(s)170) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #174 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	182 Amended Notice of Agenda of Matters Scheduled for Hearing (related document(s)167) Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # 1 Certificate of Service)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #175 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	183 ORDER PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE, RULE 2414 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND LOCAL RULE 2014−1 AUTHORIZING THE EMPLOYMENT AND RETENTION OF PACHULSKI TANG ZIEHL & JONES LLP AS COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 71) Order Signed on 12/2/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #176 ON 12/02/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	184 Certification of Counsel Regarding Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #182 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	185 Affidavit/Declaration of Service for service of (1) [Signed] Final Order (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 168]; (2) [Signed] Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [Docket No. 169]; and (3) [Signed] Order Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 Authorizing the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date [Docket No. 176] (related document(s)168, 169, 176) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #183 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	186 ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (related document(s)86) Order Signed on 12/4/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #184 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	

	187 Certificate of Service re: 1) Notice of Chapter 11 Bankruptcy Case; and 2) [Corrected] Notice of Chapter 11 Bankruptcy Case (related document(s)67, 79) Filed by Kurtzman Carson Consultants LLC. (Kass, Albert) ([ORIGINALLY FILED AS DOCUMENT #185 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/05/2019	97 Motion to appear pro hac vice for Bojan Guzina. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27228141, amount $ 100.00 (re: Doc# 97). (U.S. Treasury)
12/05/2019	99 Notice of Appearance and Request for Notice by Linda D. Reece filed by Wylie ISD, Garland ISD, City of Garland. (Reece, Linda)
12/05/2019	100 Motion to appear pro hac vice for Matthew A. Clemente. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	105 Motion to appear pro hac vice for Alyssa Russell. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27228455, amount $ 100.00 (re: Doc# 100). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27228455, amount $ 100.00 (re: Doc# 105). (U.S. Treasury)
12/05/2019	109 Motion to appear pro hac vice for Ira D. Kharasch. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27228644, amount $ 100.00 (re: Doc# 109). (U.S. Treasury)
12/05/2019	129 Notice of Appearance and Request for Notice by Laurie A. Spindler filed by City of Allen, Allen ISD, Dallas County, Grayson County, Irving ISD, Kaufman County, Tarrant County. (Spindler, Laurie)
12/05/2019	155 Notice of Appearance and Request for Notice by Mark A. Platt filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Platt, Mark)
12/05/2019	157 Motion to appear pro hac vice for Marc B. Hankin. Fee Amount $100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	160 Motion to appear pro hac vice for Richard Levin. Fee Amount $100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Addendum) (Platt, Mark)
12/05/2019	161 Motion to appear pro hac vice for Terri L. Mascherin. Fee Amount $100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount $ 100.00 (re: Doc# 157). (U.S. Treasury)

12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount $ 100.00 (re: Doc# 160). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount $ 100.00 (re: Doc# 161). (U.S. Treasury)
12/05/2019	167 Motion to appear pro hac vice for Gregory V. Demo. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27230422, amount $ 100.00 (re: Doc# 167). (U.S. Treasury)
12/05/2019	188 Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/06/2019	189 Motion to appear pro hac vice for Jeffrey N. Pomerantz. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27233957, amount $ 100.00 (re: Doc# 189). (U.S. Treasury)
12/06/2019	190 Amended Motion to appear pro hac vice for Jeffrey N. Pomerantz. (related document: 189) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	191 Motion to appear pro hac vice for John A. Morris. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27233983, amount $ 100.00 (re: Doc# 191). (U.S. Treasury)
12/06/2019	192 INCORRECT ENTRY − Incorrect Event Used; Refiled as Document 220. Motion to withdraw as attorney (Eric T. Haitz) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric) Modified on 12/9/2019 (Dugan, S.). Modified on 12/9/2019 (Dugan, S.).
12/06/2019	193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.,) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for 1, (Edmond, Michael)
12/06/2019	194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for 1, (Appearances: C. Gibbs, introducing J. Pomeranzt and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.) (Edmond, Michael)

12/06/2019	195 Request for transcript regarding a hearing held on 12/6/2019. The requested turn−around time is hourly. (Edmond, Michael)
12/06/2019	196 Order granting motion to appear pro hac vice adding Bojan Guzina for Official Committee of Unsecured Creditors (related document # 97) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	197 Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document # 100) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	198 Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document # 105) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	199 Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document # 109) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	200 Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document # 160) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	201 Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document # 161) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	202 Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document # 167) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	203 Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document # 157) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	204 INCORRECT ENTRY: DRAFT OF MOTION. SEE DOCUMENT 206. Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019* Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	205 Application to employ FTI CONSULTING, INC. as Financial Advisor *APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019* Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/06/2019	206 Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL*

	COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019 (related document: 204) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	220 Withdrawal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)41 Notice of appearance and request for notice). (Dugan, S.) (Entered: 12/09/2019)
12/08/2019	207 Transcript regarding Hearing Held 12/6/19 RE: Status and scheduling conference. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/9/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Palmer Reporting Services, Telephone number PalmerRptg@aol.com, 800−665−6251. (RE: related document(s) 193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.,) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for 1,, 194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for 1, (Appearances: C. Gibbs, introducing J. Pomeranzt and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.)). Transcript to be made available to the public on 03/9/2020. (Palmer, Susan)
12/08/2019	208 BNC certificate of mailing − PDF document. (RE: related document(s)197 Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document 100) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	209 BNC certificate of mailing − PDF document. (RE: related document(s)198 Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document 105) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	210 BNC certificate of mailing − PDF document. (RE: related document(s)199 Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document 109) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	211 BNC certificate of mailing − PDF document. (RE: related document(s)200 Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document 160) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	212 BNC certificate of mailing − PDF document. (RE: related document(s)201 Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document 161) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	

	213 BNC certificate of mailing − PDF document. (RE: related document(s)202 Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document 167) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	214 BNC certificate of mailing − PDF document. (RE: related document(s)203 Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document 157) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/09/2019	215 Acknowledgment of split/transfer case received FROM another district, Delaware, Delaware division, Case Number 19−12239. (Okafor, M.)
12/09/2019	216 Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document # 190) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	217 Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document # 191) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	218 Motion for relief from stay *MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT* Fee amount $181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order) (Crooks, David)
12/09/2019	219 Notice of Appearance and Request for Notice by Charles Martin Persons Jr. filed by Creditor Committee Official Committee of Unsecured Creditors. (Persons, Charles)
12/09/2019	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 27240994, amount $ 181.00 (re: Doc# 218). (U.S. Treasury)
12/09/2019	221 Notice of Appearance and Request for Notice by Brian Patrick Shaw filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Shaw, Brian)
12/09/2019	222 Motion to appear pro hac vice for Dennis M. Twomey. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/09/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27241671, amount $ 100.00 (re: Doc# 222). (U.S. Treasury)
12/09/2019	223 Certificate of service re: *1) Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019; and 2) [Amended] Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)205 Application to employ FTI CONSULTING, INC. as Financial Advisor *APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019* Filed by Creditor Committee Official

	Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019* (related document: 204) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/10/2019	224 Certificate Certificate of Conference filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)218 Motion for relief from stay *MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT* Fee amount $181,). (Crooks, David)
12/10/2019	225 Certificate of service re: Certificate of Service filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)218 Motion for relief from stay *MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT* Fee amount $181,, 224 Certificate (generic)). (Attachments: # 1 Service List) (Crooks, David)
12/10/2019	226 Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney *(Co−Counsel) Nunc Pro Tunc* Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/10/2019	227 INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 − Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non−individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).
12/10/2019	228 Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non−individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)
12/10/2019	229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020. (Neary, William)
12/10/2019	230 Notice of Appearance and Request for Notice by Melissa S. Hayward filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/10/2019	231 Notice of Appearance and Request for Notice by Zachery Z. Annable filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2019	232 Joint Motion to continue hearing on (related documents 194 Hearing held, Hearing set/continued)*Joint Motion to Continue Status Conference* Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order # 2 Service List) (Hayward, Melissa)
12/11/2019	233 Motion to appear pro hac vice for Michael I. Baird. Fee Amount $100 Filed by Creditor Pension Benefit Guaranty Corporation (Attachments: # 1 Certificate of Service) (Baird, Michael)

12/11/2019	234 Order granting joint motion to continue hearing on (related document # 232) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019. (Banks, Courtney)
12/11/2019	235 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: $383,583.75, Expenses: $9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. (Pomerantz, Jeffrey)
12/11/2019	236 Motion to appear pro hac vice for Lauren Macksoud. Fee Amount $100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27250084, amount $ 100.00 (re: Doc# 236). (U.S. Treasury)
12/11/2019	237 Motion to appear pro hac vice for Patrick C. Maxcy. Fee Amount $100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27250165, amount $ 100.00 (re: Doc# 237). (U.S. Treasury)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (0.00). Receipt Number KF − No Fee Due, amount $ 0.00 (re: Doc233). (Floyd)
12/11/2019	238 BNC certificate of mailing − PDF document. (RE: related document(s)216 Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document 190) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/11/2019	239 BNC certificate of mailing − PDF document. (RE: related document(s)217 Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document 191) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/12/2019	240 Notice of Appearance and Request for Notice by J. Seth Moore filed by Creditor Siepe, LLC. (Moore, J.)
12/12/2019	241 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Charles Harder)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
12/12/2019	242 Order granting motion to appear pro hac vice adding Michael I. Baird for Pension Benefit Guaranty Corporation (related document # 233) Entered on 12/12/2019. (Okafor, M.)
12/12/2019	243 BNC certificate of mailing. (RE: related document(s)227 INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 − Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non−individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)

12/12/2019	244 BNC certificate of mailing. (RE: related document(s)228 Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non−individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)
12/13/2019	245 Certificate of service re: *1) Application of the Official Committee of Unsecured Creditors to Retain and Employ Young Conaway Stargatt & Taylor, LLP as Co−Counsel, Nunc Pro Tunc to November 8, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)226 Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney *(Co−Counsel) Nunc Pro Tunc* Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/13/2019	246 Certificate of service re: *1) First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)235 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: $383,583.75, Expenses: $9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/13/2019	247 Schedules: Schedules A/B and D−H with Summary of Assets and Liabilities (with Declaration Under Penalty of Perjury for Non−Individual Debtors,). Filed by Debtor Highland Capital Management, L.P. (RE: related document(s)228 Notice of deficiency). (Attachments: # 1 Global notes regarding schedules) (Hayward, Melissa)
12/13/2019	248 Statement of financial affairs for a non−individual . Filed by Debtor Highland Capital Management, L.P. (RE: related document(s)228 Notice of deficiency). (Attachments: # 1 Global notes regarding SOFA) (Hayward, Melissa)
12/13/2019	249 BNC certificate of mailing − meeting of creditors. (RE: related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.) No. of Notices: 8. Notice Date 12/13/2019. (Admin.)
12/13/2019	250 BNC certificate of mailing − PDF document. (RE: related document(s)234 Order granting joint motion to continue hearing on (related document 232) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019.) No. of Notices: 1. Notice Date 12/13/2019. (Admin.)
12/16/2019	251 Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document # 236) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	252 Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document # 237) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	253 Order rescheduling status conference (RE: related document(s)1 Order transferring case filed by Debtor Highland Capital Management, L.P.). Status Conference to be held on 12/18/2019 at 10:30 AM at Dallas Judge Jernigan Ctrm. Entered on 12/16/2019 (Dugan, S.)
12/17/2019	254 Notice of Appearance and Request for Notice by Jason Patrick Kathman filed by Creditor Patrick Daugherty. (Kathman, Jason)

12/18/2019	255 Declaration re: *Supplemental Declaration In Support of* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). (Hoffman, Juliana)*
12/18/2019	Hearing held on 12/18/2019. (RE: related document(s)1 Status/Scheduling Conference; Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Pomerantz and I. Kharasch for Debtor; M. Hayward, local counsel for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; M. Platt and T. Mascherin and M. Hankin (each telephonically) for Redeemer Committee; L. Spindler for taxing authorities; A. Chiarello and R. Patel (telephonically) for Acis; L. Lambert for UST; P. Maxcy (telephonically) for Jeffries. Nonevidentiary status conference. Court heard reports regarding continued negotiations between Debtor and UCC regarding a proposed management structure for Debtor and ordinary course protocols. Debtor expects to file a motion for approval of same (if agreements reached) by 12/27/19 for a 1/9/20 hearing. Otherwise, UCC will file a motion for a chapter 11 trustee (which, if filed, will be filed 12/30/19 and set 1/20/20−1/21/20). Scheduling order to be submitted. Also, US Trustee announced intention to move for a Chapter 11 Trustee.) (Edmond, Michael)
12/18/2019	256 BNC certificate of mailing − PDF document. (RE: related document(s)251 Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document 236) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/18/2019	257 BNC certificate of mailing − PDF document. (RE: related document(s)252 Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document 237) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/19/2019	258 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Dechert LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Demo, Gregory)
12/19/2019	259 Support/supplemental document *to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to maintain bank accounts.). (Hayward, Melissa)
12/19/2019	260 Declaration re: *Disclosure Declaration of Ordinary Course Professional (ASW Law Limited)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/19/2019	261 Certificate of service re: *Disclosure Declaration of Ordinary Course Professional* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)241 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Charles Harder)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/20/2019	262 Certificate of service re: *Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
12/20/2019	263 Certificate of service re: *Supplemental Declaration of Bojan Guzina in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and*

	1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)255 Declaration re: *Supplemental Declaration In Support of* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)*
12/20/2019	264 Certificate of service re: *Supplement to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)259 Support/supplemental document *to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to maintain bank accounts.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/22/2019	265 Objection to (related document(s): 176 Document)*Limited Objection of The Official Committee of Unsecured Creditors to the Retention of Harder LLP as Ordinary Course Professional* filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/23/2019	266 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/23/2019	267 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/23/2019	268 Declaration re: *Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/23/2019	269 Agreed scheduling Order (RE: related document(s)1 Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)
12/23/2019	270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $176129.00, Expenses: $7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
12/23/2019	271 Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee (Lambert, Lisa)
12/23/2019	272 Trustee's Objection to *Motion to Seal Official Committee's Omnibus Objection and Supporting Exhibits* (RE: related document(s)127 Document) (Lambert, Lisa)
12/23/2019	273 Motion for leave *to Extend Deadline to Object to Motion for Relief of Stay of PensionDanmark* (related document(s) 218 Motion for relief from stay) Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/6/2020. (Hoffman, Juliana)

12/24/2019	274 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/24/2019	275 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Hunton Andrews Kurth LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/24/2019	276 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/25/2019	277 BNC certificate of mailing − PDF document. (RE: related document(s)269 Agreed scheduling Order (RE: related document(s)1 Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)) No. of Notices: 1. Notice Date 12/25/2019. (Admin.)
12/26/2019	278 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Kim & Chang)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)
12/26/2019	279 Certificate of service re: *1) Disclosure Declaration of Ordinary Course Professional; 2) Disclosure Declaration of Ordinary Course Professional; 3) Declaration of Marc D. Katz* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)266 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 267 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 268 Declaration re: *Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/27/2019	280 Motion for protective order*Joint Motion for Entry of an Order Approving the Agreed Protective Order* Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/27/2019	281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
12/27/2019	282 Support/supplemental document *to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # 1 Exhibit A) (Hayward, Melissa)
12/27/2019	283 Motion for expedited hearing(related documents 281 Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Hayward, Melissa)
12/28/2019	284 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C −

	Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 180, (Attachments: # 1 Exhibit) (Hayward, Melissa)
12/28/2019	285 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 177, (Attachments: # 1 Exhibit) (Hayward, Melissa)
12/30/2019	286 Application for compensation *Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: $798,767.50, Expenses: $26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. (Pomerantz, Jeffrey)
12/30/2019	287 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 281, (Hayward, Melissa)
12/31/2019	288 Certificate No Objection to Retention of Sidley Austin LLP filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). (Hoffman, Juliana)*
12/31/2019	289 Debtor−in−possession monthly operating report for filing period November 1, 2019 to November 30, 2019 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/31/2019	290 Certificate No Objection to Retention of FTI Consulting, Inc. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)205 Application to employ FTI CONSULTING, INC. as Financial Advisor *APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS). (Hoffman, Juliana)*
12/31/2019	291 Order granting motion for expedited hearing (Related Doc# 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 281, Entered on 12/31/2019. (Whitaker, Sheniqua)
01/02/2020	292 Certificate of service re: *1) Disclosure Declaration of Ordinary Course Professional; 2) Disclosure Declaration Alexander G. McGeoch in Support of Hunton Andrews Kurth LLP as Ordinary Course Professional; 3) Disclosure Declaration of Ordinary Course Professional* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)274 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 275 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Hunton*

	Andrews Kurth LLP) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 276 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	293 Certificate of service re: *Disclosure Declaration of Ordinary Course Professional* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)278 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Kim & Chang)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	294 Certificate Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)226 Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney *(Co−Counsel) Nunc Pro Tunc*). (Hoffman, Juliana)
01/02/2020	295 Notice of Appearance and Request for Notice by Edwin Paul Keiffer filed by Interested Party Hunter Mountain Trust. (Keiffer, Edwin)
01/02/2020	296 Certificate of service re: *Documents Served on December 27, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)280 Motion for protective order*Joint Motion for Entry of an Order Approving the Agreed Protective Order* Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors, 281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) filed by Debtor Highland Capital Management, L.P., 282 Support/supplemental document *to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 283 Motion for expedited hearing(related documents 281 Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	297 BNC certificate of mailing − PDF document. (RE: related document(s)291 Order granting motion for expedited hearing (Related Doc283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 281, Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
01/03/2020	298 Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)
01/03/2020	299 Motion to extend time to (RE: related document(s)273 Motion for leave) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/8/2020. (Hoffman, Juliana)
01/03/2020	300 Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document # 222) Entered on 1/3/2020. (Okafor, M.)
01/03/2020	301 Order granting the joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (related document # 273). The Committee and the Debtor shall have until January 6, 2020 to object to PensionDanmarks

	Stay Relief Motion Entered on 1/3/2020. (Okafor, M.)
01/05/2020	302 BNC certificate of mailing − PDF document. (RE: related document(s)298 Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)) No. of Notices: 45. Notice Date 01/05/2020. (Admin.)
01/05/2020	303 BNC certificate of mailing − PDF document. (RE: related document(s)300 Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document 222) Entered on 1/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/05/2020. (Admin.)
01/06/2020	304 Order granting 299 joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (Re: related document(s) 299 Motion to extend time to (RE: related document(s)273 Motion for leave)) Entered on 1/6/2020. (Okafor, M.)
01/06/2020	305 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 180, (Annable, Zachery)
01/06/2020	306 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 177, (Annable, Zachery)
01/06/2020	307 Trustee's Objection to *Joint Motion for Entry of an Order Approving the Agreed Protective Order* (RE: related document(s)280 Motion for protective order) (Lambert, Lisa)
01/06/2020	308 Motion to appear pro hac vice for Asif Attarwala. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	309 Motion to appear pro hac vice for Kimberly A. Posin. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	310 Motion to appear pro hac vice for Andrew Clubok. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	311 Motion to appear pro hac vice for Kuan Huang. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount $ 100.00 (re: Doc# 308). (U.S. Treasury)

01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount $ 100.00 (re: Doc# 309). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount $ 100.00 (re: Doc# 310). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount $ 100.00 (re: Doc# 311). (U.S. Treasury)
01/06/2020	312 Response opposed to (related document(s): 281 Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Jefferies LLC. (Attachments: # 1 Exhibit A) (Doherty, Casey)
01/06/2020	313 Trustee's Objection to *Motion to Approve Joint Agreement* (RE: related document(s)281 Motion to compromise controversy) (Lambert, Lisa)
01/06/2020	314 Certificate of service re: *(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/06/2020	315 Certificate of service re: *1) Notice of Hearing on Debtors Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to held on January 9, 2020 at 9:30 a.m. (CT); and 2) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be held on January 9, 2020 at 9:30 a.m. (CT)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)284 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 180, (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P., 285 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 177, (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/06/2020	316 Certificate of service re: *1) Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from November 1, 2019 Through November 30, 2019; 2) Notice of Hearing re: Motion of the Debtor to Approve Settlement with Official Committee of*

	Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; to be Held on January 9, 2020 at 9:30 a.m. (Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)286 Application for compensation *Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: $798,767.50, Expenses: $26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. filed by Debtor Highland Capital Management, L.P., 287 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 281, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/07/2020	317 Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document # 308) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	318 Order granting motion to appear pro hac vice adding Kimberly A. Posin for UBS AG London Branch and UBS Securities LLC (related document # 309) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	319 Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document 310) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).
01/07/2020	320 Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch and UBS Securities LLC (related document # 311) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	321 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors.). (Annable, Zachery)
01/07/2020	322 Certificate of service re: Certificate of Service filed by Interested Party Jefferies LLC (RE: related document(s)312 Response). (Doherty, Casey)
01/07/2020	323 Notice of Appearance and Request for Notice *(Amended)* by Joseph E. Bain filed by Creditor Issuer Group. (Bain, Joseph)
01/07/2020	324 ***WITHDRAWN per docket # 467** Objection to (related document(s): 281 Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.)*Limited Objection to Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* filed by Creditor Issuer Group. (Bain, Joseph) Modified on 2/24/2020 (Ecker, C.).
01/08/2020	325 Motion to appear pro hac vice for James T. Bentley. Fee Amount $100 Filed by Creditor Issuer Group (Anderson, Amy)
01/08/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27331269, amount $ 100.00 (re: Doc# 325). (U.S. Treasury)
01/08/2020	326 Notice *of Compliance with Local Bankruptcy Rule 2090−4* filed by Creditor Issuer Group. (Anderson, Amy)

01/08/2020	327 Declaration re: *(Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors.). (Annable, Zachery)
01/08/2020	328 Agreed Notice of hearing*with PensionDanmark and Highland Capital Management, L.P.* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)218 Motion for relief from stay *MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT* Fee amount $181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 218, (Hoffman, Juliana)
01/08/2020	329 Response unopposed to (related document(s): 313 Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.).
01/08/2020	330 Response unopposed to (related document(s): 313 Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.).
01/08/2020	331 Certificate of service re: *Order Regarding Request for Expedited Hearing; to be Held on January 9, 2020 at 9:30 a.m. (Prevailing Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)291 Order granting motion for expedited hearing (Related Doc283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 281, Entered on 12/31/2019.). (Kass, Albert)
01/08/2020	332 Certificate of service re: *1) Amended Notice of Hearing on Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to be Held on January 21, 2020 at 9:30 a.m. (Central Time); 2) Amended Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)305 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 180, filed by Debtor Highland Capital Management, L.P., 306 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 177, filed by Debtor Highland Capital Management, L.P.).

	(Kass, Albert)
01/09/2020	333 Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document # 325) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	334 Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document # 206) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	335 Court admitted exhibits date of hearing 01/09/2020. DEBTOR EXHIBIT 1 ADMITTED. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) (Jeng, Hawaii)
01/09/2020	336 Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document # 205) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	337 Order granting application to employ Young Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co−Counsel) (related document 226) Entered on 1/9/2020. (Okafor, M.) Modified to correct Firm name on 1/13/2020 (Ecker, C.).
01/09/2020	338 Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors.). (Hayward, Melissa)
01/09/2020	339 Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	340 Application to employ Hayward & Associates PLLC as Attorney *(Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Melissa S. Hayward # 2 Proposed Order) (Annable, Zachery)
01/09/2020	341 BNC certificate of mailing − PDF document. (RE: related document(s)317 Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document 308) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/09/2020. (Admin.)
01/09/2020	Hearing held on 1/9/2020. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.) (Edmond, Michael) (Entered: 01/10/2020)
01/10/2020	342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date

	(related document # 74) Entered on 1/10/2020. (Okafor, M.)
01/10/2020	343 Application for compensation *First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 11/30/2019, Fee: $795,054.96, Expenses: $10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. (Hoffman, Juliana)
01/10/2020	344 Certificate of service re: *Documents Served on January 8, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)327 Declaration re: *(Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors.). filed by Debtor Highland Capital Management, L.P., 328 Agreed Notice of hearing*with PensionDanmark and Highland Capital Management, L.P.* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)218 Motion for relief from stay *MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT* Fee amount $181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 218, filed by Creditor Committee Official Committee of Unsecured Creditors, 329 Response unopposed to (related document(s): 313 Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 330 Response unopposed to (related document(s): 313 Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/10/2020	345 Certificate of service re: *Documents Served on January 9, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)334 Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document 206) Entered on 1/9/2020. (Okafor, M.), 336 Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document 205) Entered on 1/9/2020. (Okafor, M.), 337 Order granting application to employ Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co−Counsel) (related document 226) Entered on 1/9/2020. (Okafor, M.), 338 Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors.). filed by Debtor Highland Capital Management, L.P., 340 Application to employ Hayward & Associates PLLC as Attorney *(Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Melissa S. Hayward # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/10/2020	346 BNC certificate of mailing − PDF document. (RE: related document(s)319 Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document 310) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/10/2020	347 BNC certificate of mailing − PDF document. (RE: related document(s)320 Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch

	and UBS Securities LLC (related document 311) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/11/2020	348 BNC certificate of mailing − PDF document. (RE: related document(s)333 Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document 325) Entered on 1/9/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/11/2020. (Admin.)
01/12/2020	349 BNC certificate of mailing − PDF document. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/12/2020. (Admin.)
01/13/2020	350 Certificate of service re: *(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/13/2020	351 Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
01/13/2020	352 DOCKET IN ERROR: Request for transcript regarding a hearing held on 1/9/2020. The requested turn−around time is daily. (Edmond, Michael) Modified on 1/21/2020 REQUEST WAS CANCELLED THE SAME DATE AS REQUESTED OF 1/13/2020. (Edmond, Michael).
01/13/2020	353 Objection to (related document(s): 270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019*) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
01/14/2020	354 Notice *(Notice of Final Term Sheet)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). (Attachments: # 1 Exhibit A−−Final Term Sheet) (Annable, Zachery)
01/14/2020	355 Certificate of service re: *Summary and First Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from October 29, 2019 to and Including November 30, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)343 Application for compensation *First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 11/30/2019, Fee: $795,054.96, Expenses: $10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/14/2020	356 Certificate of service re: *Debtor's Motion for Entry of an Order Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)351 Motion to extend time to (Debtor's Motion for

	Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/14/2020	357 Witness and Exhibit List *in Connection with Motion to Appoint a Chapter 11 Trustee* filed by U.S. Trustee United States Trustee (RE: related document(s)271 Trustee's Motion to appoint trustee). (Lambert, Lisa)
01/14/2020	358 Witness and Exhibit List *in connection with Motion to Seal and Joint Motion for an Agreed Protective Order* filed by U.S. Trustee United States Trustee (RE: related document(s)10 Motion to file document under seal., 280 Motion for protective order*Joint Motion for Entry of an Order Approving the Agreed Protective Order*). (Lambert, Lisa)
01/15/2020	359 Agreed Motion to continue hearing on (related documents 218 Motion for relief from stay) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
01/15/2020	360 Withdrawal *of Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)76 Motion by Highland Capital Management, L.P..). (Hayward, Melissa)
01/15/2020	361 Order granting motion to continue hearing on (related document # 359) (related documents Motion for relief from stay *MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT* Fee amount $181,). It is hereby ORDERED that a hearing on the Stay Relief Motion shall be continued to a later date provided by the Court and mutually acceptable to the Parties. Entered on 1/15/2020. (Okafor, M.)
01/15/2020	362 Response opposed to (related document(s): 271 Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/15/2020	363 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: 1 Exhibit A − Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C − Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 69 Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Hurst Declaration # 3 Exhibit B − Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to

	Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 259 Support/supplemental document *to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to maintain bank accounts.)., 271 Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, 280 Motion for protective order*Joint Motion for Entry of an Order Approving the Agreed Protective Order* Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 7 and for 68 and for 177 and for 259 and for 280 and for 271 and for 180 and for 69, (Annable, Zachery)
01/15/2020	364 Objection to (related document(s): 271 Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
01/16/2020	365 Certificate of service re: Objection to First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel for the Period From October 16, 2019 Through November 30, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019*). (Chiarello, Annmarie)
01/16/2020	366 Amended Witness and Exhibit List *in Connection with Motion to Appoint a Chapter 11 Trustee* filed by U.S. Trustee United States Trustee (RE: related document(s)357 List (witness/exhibit/generic)). (Lambert, Lisa)
01/16/2020	367 Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)68 Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, 69 Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). (Chiarello, Annmarie)
01/16/2020	368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/17/2020	369 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Staffing Report) (Annable, Zachery)

01/17/2020	370 Joint Motion to continue hearing on (related documents 68 Application to employ, 69 Application to employ)*(Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
01/17/2020	371 Order granting joint motion to continue hearing on (related document # 370) (related documents Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.)
01/17/2020	372 Witness and Exhibit List *(Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)362 Response). (Annable, Zachery)
01/19/2020	373 Amended Notice *(First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
01/20/2020	374 Amended Notice *(Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.., 373 Amended Notice *(First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..).). (Annable, Zachery)
01/21/2020	375 Certificate of service re: *(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s)271 Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s)7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: 1 Exhibit A − Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M.

	Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	376 Certificate of service re: *Notice of Final Term Sheet* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)354 Notice *(Notice of Final Term Sheet)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). (Attachments: # 1 Exhibit A—Final Term Sheet) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	377 Certificate of service re: *1) Objection of the Debtor to United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee; and 2) Notice of Hearing; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)362 Response opposed to (related document(s): 271 Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 363 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: 1 Exhibit A − Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF

	DELAWARE] (Okafor, M.), 68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C − Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 69 Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Hurst Declaration # 3 Exhibit B − Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 259 Support/supplemental document *to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to maintain bank accounts.)., 271 Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, 280 Motion for protective order*Joint Motion for Entry of an Order Approving the Agreed Protective Order* Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 7 and for 68 and for 177 and for 259 and for 280 and for 271 and for 180 and for 69, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s)280 Motion for protective order Joint Motion for Entry of an Order Approving the Agreed Protective Order filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s)127 Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1

	Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.) (Edmond, Michael)
01/21/2020	378 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: $322,274.88, Expenses: $4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. (Hoffman, Juliana)
01/21/2020	383 Court admitted exhibits date of hearing January 21, 2020 (RE: related document(s)271 Trustee's Motion to appoint trustee filed by Lisa Lambert representing the U.S. Trustee) (Court Admitted U.S. Trustee's Exhibits #4, #5, #7, #8, #9, #10 and Took Judicial Notice of Exhibit #11) (Edmond, Michael) (Entered: 01/22/2020)
01/22/2020	379 Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document # 7) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	380 Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document # 177) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	381 Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document # 180) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	382 Agreed Order Granting Motion for Protective Order (related document # 280) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	384 Declaration re: *Notice / Declaration of Conor P. Tully in Support of the Retention of FTI Consulting, Inc.* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)205 Application to employ FTI CONSULTING, INC. as Financial Advisor *APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS). (Hoffman, Juliana)*
01/22/2020	385 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)235 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019* for Highland C). (Annable, Zachery)
01/22/2020	386 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)286 Application for compensation *Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). (Annable, Zachery)
01/22/2020	387 Request for transcript regarding a hearing held on 1/21/2020. The requested turn−around time is hourly. (Edmond, Michael) (Entered: 01/23/2020)

01/23/2020	388 Certificate of service re: First Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc., as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019 filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)384 Declaration). (Hoffman, Juliana)
01/23/2020	389 Application for compensation *First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co−Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: $272,300.00, Expenses: $8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. (Hoffman, Juliana)
01/23/2020	390 Supplemental Notice *of the Young Conaway Stargatt & Taylor, LLP Final Fee Application* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)389 Application for compensation *First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co−Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: $272,300.00, Expenses: $8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). (Hoffman, Juliana)
01/23/2020	391 Certificate of service re: Final Fee Application *on behalf of Young Conaway Stargatt & Taylor, LLP* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)389 Application for compensation *First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co−Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Perio). (Hoffman, Juliana)
01/24/2020	392 Application for compensation *Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: $589,730.35, Expenses: $26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. (Pomerantz, Jeffrey)
01/24/2020	393 Transcript regarding Hearing Held 01/21/2020 (140 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/23/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) Hearing held on 1/21/2020. (RE: related document(s)271 Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.), Hearing held on 1/21/2020. (RE: related document(s)7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: 1 Exhibit A − Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload

	order.), Hearing held on 1/21/2020. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)280 Motion for protective order Joint Motion for Entry of an Order Approving the Agreed Protective Order filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)127 Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.)). Transcript to be made available to the public on 04/23/2020. (Rehling, Kathy)
01/24/2020	394 Application for compensation *Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: $143,328.50, Expenses: $2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)

01/24/2020	395 Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
01/24/2020	396 Motion for expedited hearing(related documents 395 Motion to extend/shorten time) *(Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016−1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/24/2020	397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings)* (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Email Correspondence) (Annable, Zachery)
01/24/2020	398 BNC certificate of mailing − PDF document. (RE: related document(s)381 Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document 180) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/24/2020. (Admin.)
01/24/2020	399 BNC certificate of mailing − PDF document. (RE: related document(s)379 Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document 7) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 44. Notice Date 01/24/2020. (Admin.)
01/27/2020	400 Certificate of service re: *(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/27/2020	401 Certificate of service re: *Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	402 Certificate of service re: *Documents Served on January 17, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)369 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Staffing Report) filed by Debtor Highland Capital Management, L.P., 370 Joint Motion to continue hearing on (related documents 68 Application to employ, 69 Application to employ)*(Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., 371 Order granting

	joint motion to continue hearing on (related document 370) (related documents Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.), 372 Witness and Exhibit List *(Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)362 Response). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	403 Certificate of service re: *Documents Served on or before January 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)373 Amended Notice *(First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..). filed by Debtor Highland Capital Management, L.P., 374 Amended Notice *(Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.., 373 Amended Notice *(First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)368 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..).). filed by Debtor Highland Capital Management, L.P., 378 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: $322,274.88, Expenses: $4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
01/27/2020	404 Certificate of service re: *Documents Served on January 22, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)379 Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document 7) Entered on 1/22/2020. (Okafor, M.), 380 Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document 177) Entered on 1/22/2020. (Okafor, M.), 381 Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document 180) Entered on 1/22/2020. (Okafor, M.), 382 Agreed Order Granting Motion for Protective Order (related document 280) Entered on 1/22/2020. (Okafor, M.), 385 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)235 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019* for Highland C). filed by Debtor Highland Capital Management, L.P., 386 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)286 Application for compensation *Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	405 Debtor−in−possession monthly operating report for filing period 10/16/2019 to 10/31/2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/27/2020	406 Notice *(Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized*

	by the Debtor in the Ordinary Course of Business) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1−−Updated OCP List # 2 Exhibit 2−−Blackline OCP List) (Annable, Zachery)
01/27/2020	407 Declaration re: *(Disclosure Declaration of Ordinary Course Professional−−Shawn Raver)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
01/27/2020	408 Notice of hearing*(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings)* (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/28/2020	409 Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document and 127 Motion). Entered on 1/28/2020 (Okafor, M.). Modified linkage on 2/11/2020 (Okafor, M.).
01/28/2020	410 Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc# 396)(document set for hearing: 395 Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 395, Entered on 1/28/2020. (Okafor, M.)
01/28/2020	411 Notice of Appearance and Request for Notice by Shawn M. Christianson Filed by Creditor Oracle America, Inc.. (Christianson, Shawn)
01/28/2020	412 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)395 Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 395, (Annable, Zachery)
01/29/2020	413 Certificate of service re: *1) First and Final Application of Young Conaway Stargatt & Taylor, LLP as Co− Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020; 2) Notice of First and Final Application of Young Conaway Stargatt & Taylor, LLP as Co−Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)389 Application for compensation *First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co−Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: $272,300.00, Expenses: $8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 390 Supplemental Notice *of the Young Conaway Stargatt & Taylor, LLP Final Fee Application* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)389 Application for compensation *First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co−Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: $272,300.00, Expenses: $8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

01/29/2020	414 Certificate of service re: *Documents Served on January 24, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)392 Application for compensation *Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: $589,730.35, Expenses: $26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. filed by Debtor Highland Capital Management, L.P., 394 Application for compensation *Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: $143,328.50, Expenses: $2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland), 395 Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 396 Motion for expedited hearing(related documents 395 Motion to extend/shorten time) *(Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016−1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings)* (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Email Correspondence) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/30/2020	415 Certificate of service re: *Documents Served on January 27, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)406 Notice *(Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1−−Updated OCP List # 2 Exhibit 2−−Blackline OCP List) filed by Debtor Highland Capital Management, L.P., 407 Declaration re: *(Disclosure Declaration of Ordinary Course Professional−−Shawn Raver)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 408 Notice of hearing*(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings)* (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/30/2020	416 Certificate of service re: *Documents Served on January 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)409 Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document). Entered on 1/28/2020 (Okafor, M.), 410 Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc396)(document set for hearing: 395 Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 395, Entered on 1/28/2020. (Okafor, M.), 412 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)395 Motion to extend or limit

	the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 395, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/31/2020	417 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
01/31/2020	418 Debtor−in−possession monthly operating report for filing period December 1, 2019 to December 31, 2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/31/2020	419 Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
01/31/2020	420 Application for compensation *Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2019 to 12/31/2019, Fee: $702,665.28, Expenses: $30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # 1 Exhibit A Fee Statement # 2 Exhibit B Expense Detail) (Hoffman, Juliana)
01/31/2020	421 Motion for leave *(Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Form of Bar Date Notice # 2 Exhibit B−−Form of Publication Notice # 3 Exhibit C−−Proposed Order) (Annable, Zachery)
01/31/2020	422 Motion for expedited hearing(related documents 421 Motion for leave) *(Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
02/02/2020	423 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)343 Application for compensation *First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 11/30/2019, Fee: $7). (Hoffman, Juliana)
02/03/2020	424 Certificate of service re: *Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/04/2020	425 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)340 Application to employ Hayward & Associates PLLC as Attorney *(Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associate). (Hayward, Melissa)*

02/04/2020	426 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)421 Motion for leave *(Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Form of Bar Date Notice # 2 Exhibit B−−Form of Publication Notice # 3 Exhibit C−−Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 421, (Annable, Zachery)
02/05/2020	427 Order granting motion for expedited hearing (Related Doc# 422)(document set for hearing: 421 Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 421, Entered on 2/5/2020. (Okafor, M.)
02/05/2020	428 Order denying motion to appoint trustee. (related document # 271) Entered on 2/5/2020. (Okafor, M.)
02/06/2020	429 Order granting 419 Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)
02/06/2020	430 Certificate of service re: *Documents Served on January 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)417 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 419 Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., 420 Application for compensation *Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2019 to 12/31/2019, Fee: $702,665.28, Expenses: $30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # 1 Exhibit A Fee Statement # 2 Exhibit B Expense Detail) filed by Creditor Committee Official Committee of Unsecured Creditors, 421 Motion for leave *(Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Form of Bar Date Notice # 2 Exhibit B−−Form of Publication Notice # 3 Exhibit C−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 422 Motion for expedited hearing(related documents 421 Motion for leave) *(Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/06/2020	431 Certificate of service re: *Notice of Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)426 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)421 Motion for leave *(Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Form of Bar Date Notice # 2 Exhibit B−−Form of Publication Notice # 3 Exhibit C−−Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 421, filed by Debtor Highland

	Capital Management, L.P.). (Kass, Albert)
02/06/2020	432 Certificate of service re: *(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/07/2020	433 Clerk's correspondence requesting an order or a notice of hearing from attorney for debtor. (RE: related document(s)270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $176129.00, Expenses: $7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)) Responses due by 2/14/2020. (Ecker, C.)
02/10/2020	434 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)351 Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure)). (Hayward, Melissa)
02/10/2020	435 Order granting application to employ Hayward & Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document # 340) Entered on 2/10/2020. (Okafor, M.)
02/10/2020	436 Certificate of service re: *(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/10/2020	437 Notice *(Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)69 Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Hurst Declaration # 3 Exhibit B − Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/10/2020	438 **WITHDRAWN by document # 443** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $176129.00, Expenses: $7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 270, (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.).

02/11/2020	439 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)67 Motion by Highland Capital Management, L.P..). (Annable, Zachery)
02/12/2020	440 Certificate of service re: *1) Order Granting Motion for Expedited Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof; to be Held on February 19, 2020 at 9:30 a.m. (Central Time); 2) Order Denying United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)427 Order granting motion for expedited hearing (Related Doc422)(document set for hearing: 421 Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 421, Entered on 2/5/2020. (Okafor, M.), 428 Order denying motion to appoint trustee. (related document 271) Entered on 2/5/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	441 Certificate of service re: *Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)429 Order granting 419 Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	442 Application for compensation *Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: $89,215.36, Expenses: $3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. (Hoffman, Juliana)
02/12/2020	443 Notice *(Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)438 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $176129.00, Expenses: $7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 270,). (Annable, Zachery)
02/12/2020	444 Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)378 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: $32). (Hoffman, Juliana)
02/13/2020	445 Certificate of service re: *1) Order Authorizing and Approving Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel; 2) Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date; and 3) Notice of Hearing re: First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019; to be Held on March 11, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	document(s)435 Order granting application to employ Hayward & Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document 340) Entered on 2/10/2020. (Okafor, M.), 437 Notice *(Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)69 Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Hurst Declaration # 3 Exhibit B − Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 438 **WITHDRAWN by document 443** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $176129.00, Expenses: $7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 270, (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/13/2020	446 Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)68 Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). (Chiarello, Annmarie)
02/13/2020	447 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)395 Motion to extend or limit the exclusivity period). (Annable, Zachery)
02/13/2020	448 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)421 Motion for leave *(Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)*). (Annable, Zachery)
02/13/2020	449 Certificate of service re: *1) Second Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2019 to and Including December 31, 2019; 2) Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)442 Application for compensation *Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: $89,215.36, Expenses: $3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, Financial Advisor FTI Consulting, Inc., 443 Notice *(Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)438 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to

	11/30/2019, Fee: $176129.00, Expenses: $7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 270,). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/14/2020	450 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)389 Application for compensation *First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co−Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Perio). (Hoffman, Juliana)
02/14/2020	451 Motion for relief from stay Fee amount $181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # 1 Exhibit 1 (Arb Award) # 2 Exhibit 2 (Rule 11) # 3 Exhibit 3 (Terry Declaration)) (Shaw, Brian)
02/14/2020	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 27457656, amount $ 181.00 (re: Doc# 451). (U.S. Treasury)
02/14/2020	452 Notice of hearing filed by Jennifer G. Terry, Joshua Terry (RE: related document(s)451 Motion for relief from stay Fee amount $181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # 1 Exhibit 1 (Arb Award) # 2 Exhibit 2 (Rule 11) # 3 Exhibit 3 (Terry Declaration))). Preliminary hearing to be held on 3/11/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Shaw, Brian)
02/14/2020	453 Objection to (related document(s): 394 Application for compensation *Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)*
02/14/2020	454 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)68 Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). (Annable, Zachery)
02/17/2020	455 Notice *(Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/18/2020	456 Notice *of Withdrawal of Objection* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)124 Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hoffman, Juliana)
02/18/2020	457 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)392 Application for compensation *Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/). (Annable, Zachery)
02/19/2020	458 Order granting first and final application for compensation (related document # 389) granting for Young Conaway Stargatt & Taylor, LLP as co−counsel for Official Committee of Unsecured Creditors, fees awarded: $272300.00, expenses awarded: $8855.56 Entered on 2/19/2020. (Okafor, M.)

02/19/2020	459 Order granting 351 Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.)
02/19/2020	460 Order granting 395 Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.)
02/19/2020	461 Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document # 67) Entered on 2/19/2020. (Okafor, M.)
02/19/2020	462 Court admitted exhibits date of hearing February 19, 2020 (RE: related document(s)68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P., (Court Admitted Debtors/Plaintiffs Exhibits #1, #2, #3, #4, #5, #6, #7 #8, & #9; Also Admitted Defendant/Respondent Exhibits #16 & #27 only). (Edmond, Michael)
02/19/2020	463 Request for transcript regarding a hearing held on 2/19/2020. The requested turn−around time is hourly (Jeng, Hawaii)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s)68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted.(Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s)397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings) (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing.*

	Discussion of prior order on sealing motion and court clarified its intent.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s)421 Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.,) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s)218 Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.) (Edmond, Michael) (Entered: 02/25/2020)
02/20/2020	464 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020* for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: $898,094.25, Expenses: $28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. (Pomerantz, Jeffrey)
02/20/2020	465 Application for compensation *(First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: $18,695.00, Expenses: $80.60. Filed by Attorney Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A December 2019 Fee Statement) (Annable, Zachery)
02/21/2020	466 Notice *(Notice of Debtor's Amended Operating Protocols)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)339 Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document 281) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Amended Operating Protocols # 2 Exhibit B−−Redline of Amended Operating Protocols) (Annable, Zachery)
02/21/2020	467 Withdrawal *of Limited Objection to Motion of the Debtor for Approval of Settlement with The Official Committee Of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* filed by Creditor Issuer Group (RE: related document(s)324 Objection). (Bain, Joseph)
02/21/2020	468 Certificate of service re: Objection to Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel for the Period From December 1, 2019 through December 31, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)394 Application for compensation *Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20). (Chiarello, Annmarie)*

02/21/2020	469 Certificate of service re: *Debtor's Witness and Exhibit List in Connection with its Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)454 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)68 Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	470 Certificate of service re: *Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)455 Notice *(Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	471 Certificate of service re: *1) Order Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Order Granting Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(D) and Local Rule 3016−1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan; 3) Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)459 Order granting 351 Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.), 460 Order granting 395 Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.), 461 Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document 67) Entered on 2/19/2020. (Okafor, M.)). (Kass, Albert)
02/23/2020	472 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)420 Application for compensation *Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2019 to 12/31/2019, Fee). (Hoffman, Juliana)
02/24/2020	473 Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensionsforsikringsaktieselskab (related document # 218) Entered on 2/24/2020. (Okafor, M.)
02/24/2020	474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) (Annable, Zachery)
02/24/2020	475 Motion for expedited hearing(related documents 474 Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
02/24/2020	476 Certificate of service re: *(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/25/2020	

	477 Order granting motion for expedited hearing (Related Doc# 475)(document set for hearing: 474 Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 474, Entered on 2/25/2020. (Okafor, M.)
02/25/2020	478 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 474, (Annable, Zachery)
02/26/2020	479 Transcript regarding Hearing Held 02/19/2020 (188 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) Hearing held on 2/19/2020. (RE: related document(s)68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted., Hearing held on 2/19/2020. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.), Hearing held on 2/19/2020. (RE: related document(s)397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings) (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Discussion of prior order on sealing motion and court clarified its intent.), Hearing held on 2/19/2020. (RE: related document(s)421 Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.,) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for*

	Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.), Hearing held on 2/19/2020. (RE: related document(s)218 Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.)). Transcript to be made available to the public on 05/26/2020. (Rehling, Kathy)
02/26/2020	480 Certificate of service re: *1) Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020; 2) First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 1, 2019 Through December 31, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)464 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020* for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: $898,094.25, Expenses: $28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. filed by Debtor Highland Capital Management, L.P., 465 Application for compensation *(First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: $18,695.00, Expenses: $80.60. Filed by Attorney Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A December 2019 Fee Statement)). (Kass, Albert)
02/26/2020	481 Certificate of service re: *Notice of Debtor's Amended Operating Protocols* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)466 Notice *(Notice of Debtor's Amended Operating Protocols)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)339 Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document 281) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Amended Operating Protocols # 2 Exhibit B−−Redline of Amended Operating Protocols) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2020	482 BNC certificate of mailing − PDF document. (RE: related document(s)473 Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensionsforsikringsaktieselskab (related document 218) Entered on 2/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 02/26/2020. (Admin.)
02/27/2020	483 Application to employ Deloitte Tax LLP as Other Professional *(Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Crawford Declaration # 2 Exhibit B−−Proposed Order) (Annable, Zachery)
02/28/2020	484 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause*

	Distributions to Certain "Related Entities")). (Annable, Zachery)
02/28/2020	485 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit A−−OCP Tracking Report) (Annable, Zachery)
03/02/2020	486 Response opposed to (related document(s): 474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party California Public Employees Retirement System (CalPERS). (Attachments: # 1 Exhibit A − Purchase and Sale Agreement # 2 Exhibit B − Assignment and Assumption Agreement) (Shriro, Michelle)
03/02/2020	487 Objection to (related document(s): 474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/02/2020	488 Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P(related document # 421) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)
03/02/2020	489 Joinder by *Acis Capital Management, L.P. and Acis Capital Management GP, LLC to the Committee's Objection to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities," and Comment to the Same* filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)487 Objection). (Enright, Jason)
03/02/2020	490 Motion to appear pro hac vice for Louis J. Cisz, III. Fee Amount $100 Filed by Interested Party California Public Employees Retirement System (CalPERS) (Shriro, Michelle)
03/02/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27511024, amount $ 100.00 (re: Doc# 490). (U.S. Treasury)
03/02/2020	491 Certificate of service re: *1) Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"; 2) Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., 475 Motion for expedited hearing(related documents 474 Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

03/02/2020	492 Certificate of service re: *1) Order Granting Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"; 2) Notice of Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"; to be Held on March 4, 2020 at 1:30 p.m. (Prevailing Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)477 Order granting motion for expedited hearing (Related Doc475)(document set for hearing: 474 Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 474, Entered on 2/25/2020. (Okafor, M.), 478 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 474, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2020	493 Certificate of service re: *1) Witness and Exhibit List for March 4, 2020 Hearing; 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)484 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")*). filed by Debtor Highland Capital Management, L.P., 485 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit A−−OCP Tracking Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2020	494 Objection to (related document(s): 451 Motion for relief from stay Fee amount $181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)*(Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non−Debtors and Reservation of Rights)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/02/2020	495 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)487 Objection). (Hoffman, Juliana)
03/02/2020	496 Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")*). (Enright, Jason)
03/03/2020	497 Debtor−in−possession monthly operating report for filing period January 1, 2020 to January 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2020	498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/04/2020	499 Reply to (related document(s): 487 Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)

03/04/2020	500 Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document # 490) Entered on 3/4/2020. (Okafor, M.)
03/04/2020	501 Application for compensation *Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2020 to 1/31/2020, Fee: $569,091.60, Expenses: $12,673.30. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. (Hoffman, Juliana)
03/04/2020	Hearing held on 3/4/2020. (RE: related document(s)474 Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception−Mark Okada may be paid approximately $2.876 (the $4.176 million owing to him from the Dynamic Fund will be offset against his $1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.) (Edmond, Michael) (Entered: 03/05/2020)
03/04/2020	504 Court admitted exhibits date of hearing March 4, 2020 (RE: related document(s)474 Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") Filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, & #12) (Edmond, Michael) (Entered: 03/05/2020)
03/05/2020	502 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)442 Application for compensation *Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: $89,215.36, Expenses: $3,955.12). (Hoffman, Juliana)
03/05/2020	503 Request for transcript regarding a hearing held on 3/4/2020. The requested turn−around time is daily (Jeng, Hawaii)
03/06/2020	505 Notice of Appearance and Request for Notice by John Y. Bonds III filed by Interested Party James Dondero. (Bonds, John)
03/06/2020	506 Notice of Appearance and Request for Notice by Bryan C. Assink filed by Interested Party James Dondero. (Assink, Bryan)
03/06/2020	507 Motion to appear pro hac vice for Jeffrey Bjork. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana) Modified to correct attorney name on 3/6/2020 (Ecker, C.).
03/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27531772, amount $ 100.00 (re: Doc# 507). (U.S. Treasury)
03/06/2020	508 Witness and Exhibit List filed by Jennifer G. Terry, Joshua Terry (RE: related document(s)451 Motion for relief from stay Fee amount $181,). (Shaw, Brian)

03/06/2020	509 BNC certificate of mailing − PDF document. (RE: related document(s)500 Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document 490) Entered on 3/4/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/06/2020. (Admin.)
03/10/2020	510 Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document # 507) Entered on 3/10/2020. (Okafor, M.)
03/11/2020	511 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C − Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	512 Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc # 474) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	513 Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document # 68) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	514 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	Hearing held on 3/11/2020. (RE: related document(s)451 Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (Appearances: M. Hayward for Debtor; B Shaw for Movants; J. Hoffman for UCC; M. Platt (and M. Hankin telephonically) for Redeemer Committee; J. Bonds for J. Dondero; A. Anderson for certain Issuers. Evidentiary hearing. Motion granted. Counsel to upload order.)(Edmond, Michael)
03/11/2020	515 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI January 2020 Staffing Report) (Annable, Zachery)
03/11/2020	516 Court admitted exhibits date of hearing March 11, 2020 (RE: related document(s)451 Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (COURT ADMITTED PLAINTIFF EXHIBIT'S #M1, #M2 & #M3). (Edmond, Michael)
03/12/2020	517 Application for compensation *Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: $411,407.28, Expenses: $79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. (Hoffman, Juliana)
03/12/2020	518 BNC certificate of mailing − PDF document. (RE: related document(s)510 Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document 507) Entered on 3/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/12/2020. (Admin.)

03/13/2020	519 Order granting motion for relief from stay by Jennifer G. Terry , Joshua Terry (related document # 451) Entered on 3/13/2020. (Okafor, M.)
03/13/2020	520 BNC certificate of mailing. (RE: related document(s)511 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C − Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	521 BNC certificate of mailing. (RE: related document(s)514 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	522 BNC certificate of mailing − PDF document. (RE: related document(s)512 Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc 474) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	523 BNC certificate of mailing − PDF document. (RE: related document(s)513 Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document 68) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/14/2020	524 Certificate of service re: *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)488 Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P(related document 421) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)). (Kass, Albert)
03/14/2020	525 Certificate of service re: *Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non−Debtors and Reservation of Rights* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)494 Objection to (related document(s): 451 Motion for relief from stay Fee amount $181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)*(Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non−Debtors and Reservation of Rights)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/14/2020	526 Certificate of service re: *Third Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)501 Application for compensation *Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2020 to 1/31/2020, Fee: $569,091.60, Expenses: $12,673.30. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

03/16/2020	527 Notice of Appearance and Request for Notice by David G. Adams filed by Creditor United States (IRS). (Adams, David)
03/16/2020	528 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)464 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020* for Highland C). (Annable, Zachery)
03/17/2020	529 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)465 Application for compensation *(First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019)* for Hayward). (Annable, Zachery)
03/17/2020	530 Certificate of service re: *Notice of Bar Dates for Filing Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	531 Certificate of service re: *1) Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain Related Entities; 2) Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; 3) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 Through January 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)512 Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc 474) Entered on 3/11/2020. (Bradden, T.), 513 Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document 68) Entered on 3/11/2020. (Bradden, T.), 515 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI January 2020 Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	532 Certificate of service re: *Third Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)517 Application for compensation *Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: $411,407.28, Expenses: $79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/18/2020	533 Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/18/2020	534 Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2020	

	535 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: $941,043.50, Expenses: $8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. (Pomerantz, Jeffrey)
03/19/2020	536 Application for compensation *(Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: $75315.00, Expenses: $2919.27. Filed by Attorney Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−January 2020 Invoice) (Annable, Zachery)
03/19/2020	537 Notice *of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
03/20/2020	538 Amended application for compensation *Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $84,194.00, Expenses: $4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
03/20/2020	539 Amended application for compensation *Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: $143,328.50, Expenses: $2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
03/20/2020	540 Application for compensation *Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: $88,520.60, Expenses: $2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
03/20/2020	541 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: $86,276.50, Expenses: $1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
03/20/2020	542 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2020 to 2/29/2020, Fee: $457,155.72, Expenses: $2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. (Hoffman, Juliana)
03/22/2020	

	543 Stipulation by Highland Capital Management, L.P., UBS AG London Branch, UBS Securities LLC and. filed by Debtor Highland Capital Management, L.P., Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)488 Order on motion for leave). (Manns, Ryan)
03/23/2020	544 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: $383,371.20, Expenses: $59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. (Hoffman, Juliana)
03/23/2020	545 Motion to extend time to file objection (Agreed Motion) (RE: related document(s)483 Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
03/23/2020	546 Certificate of service re: *(Supplemental) Notice of Bar Dates for Filing Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/25/2020	547 Joint Stipulation and Order Extending Bar Date for UBS Securities LLC and UBS AG London Branch (RE: related document(s)543 Stipulation filed by Debtor Highland Capital Management, L.P., Interested Party UBS Securities LLC, Interested Party UBS AG London Branch). Entered on 3/25/2020 (Okafor, M.)
03/25/2020	548 Agreed Order Extending the Deadline to Object to the Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief (Related documents # 545 Motion to extend and 483 Application to employ Deloitte Tax LLP) Entered on 3/25/2020. (Okafor, M.)
03/26/2020	549 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)501 Application for compensation *Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2020 to 1/31/2020, Fee: $569). (Hoffman, Juliana)
03/26/2020	550 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)483 Application to employ Deloitte Tax LLP as Other Professional *(Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date;). (Annable, Zachery)*
03/27/2020	551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document # 483) Entered on 3/27/2020. (Okafor, M.)
03/27/2020	552 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Annable, Zachery)
03/27/2020	553 Certificate of service re: *1) Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 Through February 29, 2020; 2) Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020; and 3) Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 Through December 31, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)535 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski*

	Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: $941,043.50, Expenses: $8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. filed by Debtor Highland Capital Management, L.P., 536 Application for compensation *(Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: $75315.00, Expenses: $2919.27. Filed by Attorney Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−January 2020 Invoice), 537 Notice *of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/27/2020	554 Certificate of service re: *Documents Served on or Before March 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)538 Amended application for compensation *Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $84,194.00, Expenses: $4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 539 Amended application for compensation *Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: $143,328.50, Expenses: $2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 540 Application for compensation *Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: $88,520.60, Expenses: $2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 541 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: $86,276.50, Expenses: $1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 542 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2020 to 2/29/2020, Fee: $457,155.72, Expenses: $2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/27/2020	555 Certificate of service re: *1) Fourth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from February 1, 2020 to and Including February 29, 2020; 2) Agreed Motion to Extend Objection Deadline for the Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)544 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses* for FTI

	Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: $383,371.20, Expenses: $59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. filed by Financial Advisor FTI Consulting, Inc., 545 Motion to extend time to file objection (Agreed Motion) (RE: related document(s)483 Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/31/2020	556 Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date (RE: related document(s)552 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.)
03/31/2020	557 Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s)488 Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
04/02/2020	558 Debtor−in−possession monthly operating report for filing period 02/01/2020 to 02/29/2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/02/2020	559 Certificate of service re: *(Supplemental) Notice of Bar Dates for Filing Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	560 Order granting 557 Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.)
04/03/2020	561 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)517 Application for compensation *Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: $411,407.28, Expenses: $79.00.). (Hoffman, Juliana)
04/03/2020	562 Notice of hearing*(Notice of May 26, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	563 Notice of hearing*(Notice of June 15, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	564 Certificate of service re: *1) Agreed Order: (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief; 2) Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.), 552 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	565 Certificate of service re: *1) Order Approving Stipulation Permitting Brown Rudnick LLP to File a Proof of Claim After the General Bar Date; 2) Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)556 Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date

	(RE: related document(s)552 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.), 557 Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s)488 Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/06/2020	566 Declaration re: *(First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
04/06/2020	567 Notice *(Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Staffing Report) (Annable, Zachery)
04/07/2020	568 Notice of hearing*(Notice of July 8, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/07/2020	569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 2/29/2020, Fee: $3,154,959.45, Expenses: $56,254.47. Filed by Objections due by 4/28/2020. (Hoffman, Juliana)
04/07/2020	570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: $1,757,835.90, Expenses: $8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. (Hoffman, Juliana)
04/08/2020	571 Transcript regarding Hearing Held 03/04/20 RE: Motion hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber J&J Court Transcribers, Inc., Telephone number 609−586−2311. (RE: related document(s) Hearing held on 3/4/2020. (RE: related document(s)474 Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception−Mark Okada may be paid approximately $2.876 (the $4.176 million owing to him from the Dynamic Fund will be offset against his $1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.)). Transcript to be made available to the public on 07/7/2020. (Bowen, James)
04/08/2020	

	572 Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s)488 Order on motion for leave). (Bain, Joseph)
04/09/2020	573 Application for compensation *(Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: $39,087.50, Expenses: $2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−February 2020 Fee Statement) (Annable, Zachery)
04/09/2020	574 Certificate No Objection Regarding Fifth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From February 1, 2020 Through February 29, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)535 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020* for Jeffrey Nat). (Pomerantz, Jeffrey)
04/10/2020	575 Certificate of service re: *1) Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims; 2) Notice of May 26, 2020 Omnibus Hearing Date; to be Held on May 26, 2020 at 9:30 a.m. (Central Time); and 3) Notice of June 15, 2020 Omnibus Hearing Date; to be Held on June 15, 2020 at 1:30 p.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)560 Order granting 557 Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.), 562 Notice of hearing*(Notice of May 26, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., 563 Notice of hearing*(Notice of June 15, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	576 Certificate of service re: *1) First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date; and 2) Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)566 Declaration re: *(First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., 567 Notice *(Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	577 Certificate of service re: *1) Summary Sheet and First Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019*

	Through and Including February 29, 2020; and 2) Summary Sheet and First Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019 Through and Including February 29, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 2/29/2020, Fee: $3,154,959.45, Expenses: $56,254.47. Filed by Objections due by 4/28/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: $1,757,835.90, Expenses: $8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
04/10/2020	578 Certificate of service re: *Notice of July 8, 2020 Omnibus Hearing Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)568 Notice of hearing*(Notice of July 8, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	579 Certificate of service re: *Joint Stipulation and [Proposed] Order Extending the General Bar Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)572 Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s)488 Order on motion for leave). filed by Creditor Issuer Group). (Kass, Albert)
04/10/2020	580 Objection to (related document(s): 538 Amended application for compensation *Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 539 Amended application for compensation Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 540 Application for compensation Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020< filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 541 Application for compensation Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 20 filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)*
04/11/2020	581 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)542 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2020 to 2/29/2020, Fee: &#0). (Hoffman, Juliana)
04/13/2020	582 Motion for relief from stay − agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # 1 Proposed Order) (Skolnekovich, Nicole)
04/14/2020	583 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)544 Application for compensation *Fourth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: $383,371.20, Expenses: $59.62.). (Hoffman, Juliana)

04/14/2020	584 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)536 Application for compensation *(Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020)* for Hayward &). (Annable, Zachery)
04/14/2020	585 Notice of Appearance and Request for Notice Filed by Creditor American Express National Bank. (Bharatia, Shraddha)
04/14/2020	586 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $1,222,801.25, Expenses: $18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. (Pomerantz, Jeffrey)
04/15/2020	587 Certificate of service re: *Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)573 Application for compensation *(Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: $39,087.50, Expenses: $2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−February 2020 Fee Statement) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
04/15/2020	588 Certificate of service re: Omnibus Limited Objection to Applications for Compensation and Reimbursement of Expense of Foley Gardere, Foley & Lardner LLP as Special Counsel for the Period From October 16, 2019 Through February 29, 2020 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)538 Amended application for compensation *Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November, 539 Amended application for compensation Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through, 540 Application for compensation Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020541 Application for compensation Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 20). (Chiarello, Annmarie)*
04/15/2020	589 Notice of hearing filed by Interested Party Hunton Andrews Kurth LLP (RE: related document(s)582 Motion for relief from stay − agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # 1 Proposed Order)). Hearing to be held on 5/7/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 582, (Skolnekovich, Nicole)
04/15/2020	590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]* Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List) (Kane, John)
04/17/2020	591 Certificate of service re: *1) Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management,

	L.P.). (Kass, Albert)
04/17/2020	592 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI Staffing Report for March 2020) (Annable, Zachery)
04/17/2020	593 Motion for relief from stay Fee amount $181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order) (Shaw, Brian)
04/17/2020	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 27675692, amount $ 181.00 (re: Doc# 593). (U.S. Treasury)
04/20/2020	594 Application for compensation *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: $476,836.20, Expenses: $14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. (Hoffman, Juliana)
04/21/2020	595 Certificate of service re: *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)586 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $1,222,801.25, Expenses: $18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/21/2020	596 Certificate of service re: *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)594 Application for compensation *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: $476,836.20, Expenses: $14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/21/2020	597 Certificate of service re: *Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)592 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI Staffing Report for March 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/22/2020	

	Receipt Number 00338531, Fee Amount $3,601,018.59 (RE: Related document(s) 512 Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd,K) (Entered: 08/10/2020)
04/23/2020	Receipt Number 00338532, Fee Amount $898,075.53 (RE: related document(s) 512 Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
04/24/2020	598 Application for compensation *(Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $35,307.50, Expenses: $1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A March 2020 Invoice) (Annable, Zachery)
04/24/2020	599 Notice *(Notice of Additional Services to Be Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Deloitte Tax Engagement Letters) (Annable, Zachery)
04/28/2020	600 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Annable, Zachery)
04/28/2020	601 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: $82,270.50, Expenses: $12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
04/28/2020	602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: $484,590.10, Expenses: $10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C − Proposed Order) (O'Neil, Holland)
04/28/2020	603 Certificate of service re: *1) Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020; and 2) Notice of Additional Services to Be Provided by Deloitte Tax LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)598 Application for compensation *(Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $35,307.50, Expenses: $1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 599 Notice *(Notice of Additional Services to Be Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2020	

	604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Alexander McGeoch # 2 Exhibit B−−Proposed Order) (Annable, Zachery)
04/28/2020	605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Timothy Silva # 2 Exhibit B−−Proposed Order) (Annable, Zachery)
04/28/2020	606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
04/28/2020	607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: $4,834,021.00, Expenses: $118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: $113,804.64, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	609 Application for compensation *(Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: $168,405.00, Expenses: $7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A Fee Statements) (Annable, Zachery)
04/28/2020	610 Notice of hearing*Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 2/29/2020, Fee: $3,154,959.45, Expenses: $56,254.47. Filed by Objections due by 4/28/2020., 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: $1,757,835.90, Expenses: $8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020., 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: $484,590.10, Expenses: $10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C − Proposed Order) (O'Neil, Holland), 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: $4,834,021.00, Expenses: $118,198.81. Filed by Attorney

	Jeffrey Nathan Pomerantz Objections due by 5/19/2020., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: $113,804.64, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., 609 Application for compensation *(Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: $168,405.00, Expenses: $7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 569 and for 607 and for 609 and for 570 and for 602 and for 608, (Pomerantz, Jeffrey)
04/28/2020	611 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Alexander McGeoch # 2 Exhibit B−−Proposed Order), 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Timothy Silva # 2 Exhibit B−−Proposed Order), 606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 605 and for 604 and for 606, (Annable, Zachery)
04/28/2020	612 Certificate of service re: *(Supplemental) 1) Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/29/2020	613 Clerk's correspondence requesting a notice of hearing from attorney for debtor. (RE: related document(s)394 Application for compensation *Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: $143,328.50, Expenses: $2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)) Responses due by 5/13/2020. (Ecker, C.)
04/29/2020	614 Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)600 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.)
04/29/2020	615 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s)429 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/30/2020	616 Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: 615 Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)
05/01/2020	

	617 Response unopposed to (related document(s): 593 Motion for relief from stay Fee amount $181, filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/05/2020	618 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/05/2020	619 Certificate of service re: *Documents Served on April 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)600 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P., 601 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: $82,270.50, Expenses: $12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: $484,590.10, Expenses: $10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C − Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 603 Certificate of service re: *1) Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020; and 2) Notice of Additional Services to Be Provided by Deloitte Tax LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)598 Application for compensation *(Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $35,307.50, Expenses: $1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 599 Notice *(Notice of Additional Services to Be Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Alexander McGeoch # 2 Exhibit B−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Timothy Silva # 2 Exhibit B−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 606 Motion to

extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: $4,834,021.00, Expenses: $118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. filed by Debtor Highland Capital Management, L.P., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: $113,804.64, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. filed by Consultant Mercer (US) Inc., 609 Application for compensation *(Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: $168,405.00, Expenses: $7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A Fee Statements) filed by Other Professional Hayward & Associates PLLC, 610 Notice of hearing*Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 2/29/2020, Fee: $3,154,959.45, Expenses: $56,254.47. Filed by Objections due by 4/28/2020., 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: $1,757,835.90, Expenses: $8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020., 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: $484,590.10, Expenses: $10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C − Proposed Order) (O'Neil, Holland), 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: $4,834,021.00, Expenses: $118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: $113,804.64, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., 609 Application for compensation *(Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: $168,405.00, Expenses: $7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 569 and for 607 and for 609 and for 570 and for 602 and for 608, filed by Debtor Highland Capital Management, L.P., 611 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Alexander McGeoch # 2 Exhibit B−−Proposed Order), 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules*

	2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Timothy Silva # 2 Exhibit B−−Proposed Order), 606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 605 and for 604 and for 606, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/05/2020	620 Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Attachments: # 1 Exhibit A−−Employee Letter) (Annable, Zachery)
05/05/2020	621 Certificate of No Objection Regarding Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 filed by Other Professional Hayward & Associates PLLC (RE: related document(s)573 Application for compensation *(Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020)* for Hayward &). (Annable, Zachery)
05/05/2020	622 Certificate No Objection Regarding Sixth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)586 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020* for Jeffrey Nathan Po). (Pomerantz, Jeffrey)
05/06/2020	623 Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document # 582) Entered on 5/6/2020. (Okafor, M.)
05/06/2020	624 Objection to (related document(s): 590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]* filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
05/06/2020	625 Certificate of service re: Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)624 Objection). (Hoffman, Juliana)
05/06/2020	626 Certificate of service re: *1) Order Approving Second Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim after the General Bar Date; and 2) Agreed Motion to Extend by Sixty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)614 Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)600 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.), 615 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s)429 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/06/2020	627 Certificate of service re: *Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Property Lease by Sixty Days* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)616 Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: 615 Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)). (Kass, Albert)

05/08/2020	628 Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s)620 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)
05/12/2020	629 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)594 Application for compensation *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: $476,). (Hoffman, Juliana)
05/13/2020	630 Reply to (related document(s): 624 Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # 1 Service List) (Kane, John)
05/13/2020	631 Certificate of service re: *1) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020; and 2) Joint Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors Modifying the Bar Date Order* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)618 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 620 Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Attachments: # 1 Exhibit A−−Employee Letter) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2020	632 Certificate of service re: *Stipulation and Agreed Order Permitting Hunton Andrew Kurth LLP to Apply Prepetition Retaine* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)623 Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document 582) Entered on 5/6/2020. (Okafor, M.) filed by Interested Party Hunton Andrews Kurth LLP). (Kass, Albert)
05/13/2020	633 Certificate of service re: *Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)628 Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s)620 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)). (Kass, Albert)
05/14/2020	634 Debtor−in−possession monthly operating report for filing period March 1, 2020 to March 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/15/2020	635 Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s)590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]* Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). Hearing to be held on 6/30/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 590, (Attachments: # 1 Service List) (Kane, John)
05/19/2020	

	636 Notice of Appearance and Request for Notice by Martin A. Sosland filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/19/2020	637 Notice of Appearance and Request for Notice by Candice Marie Carson filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Carson, Candice)
05/19/2020	638 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Annable, Zachery)
05/19/2020	639 Application for compensation *Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2020 to 4/30/2020, Fee: $438,619.32, Expenses: $5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	640 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: $477,538.20, Expenses: $14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	641 Objection to (related document(s): 601 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020* for Foley Gardere, filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Ga filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
05/20/2020	642 Trustee's Objection to *Foley & Lardner, LLP's First Interim Application for Fees and Expenses* (RE: related document(s)602 Application for compensation) (Lambert, Lisa)
05/20/2020	643 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)598 Application for compensation *(Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020)* for Hayward & Asso). (Annable, Zachery)
05/20/2020	644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K) (Sosland, Martin)
05/20/2020	645 Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 644, (Sosland, Martin)
05/20/2020	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 27774088, amount $ 181.00 (re: Doc# 644). (U.S. Treasury)

05/20/2020	646 Order approving third stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)638 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/20/2020 (Okafor, M.)
05/20/2020	647 Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)601 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020* for Foley Gardere,, 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit 9 # 2 Exhibit 10 # 3 Exhibit 11 # 4 Exhibit 12 # 5 Exhibit 13 # 6 Exhibit 14 # 7 Exhibit 15 # 8 Exhibit 16 # 9 Exhibit 17 # 10 Exhibit 18 # 11 Exhibit 19 # 12 Exhibit 20 # 13 Exhibit 21 # 14 Exhibit 22 # 15 Exhibit 23 # 16 Exhibit 24 # 17 Exhibit 25) (Chiarello, Annmarie)
05/21/2020	648 Application for compensation *Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: $1,113,522.50, Expenses: $3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. (Pomerantz, Jeffrey)
05/22/2020	649 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20). (Annable, Zachery)*
05/22/2020	650 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (). (Annable, Zachery)
05/22/2020	651 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 2/29/2020, Fee: $3,). (Hoffman, Juliana)
05/22/2020	652 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: $1,757,835.90, Expenses: $8,781.09.). (Hoffman, Juliana)
05/22/2020	653 Declaration re: *(Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
05/22/2020	654 Witness and Exhibit List *for May 26, 2020 Hearing* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to

	2/29/2020, Fee: $3,, 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: $1,757,835.90, Expenses: $8,781.09., 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Ga, 604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*, 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment, 606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time), 607 Application for compensation First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20, 608 Application for compensation First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer (, 609 Application for compensation (Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020) for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)*
05/22/2020	655 COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.)
05/22/2020	656 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)609 Application for compensation *(Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)
05/22/2020	657 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time)). (Annable, Zachery)
05/22/2020	658 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/23/2020	659 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment). (Annable, Zachery)*
05/25/2020	660 Amended Notice *(Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)658 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
05/26/2020	661 Order granting application for compensation (related document # 569) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: $3,154,959.45, expenses awarded: $56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	662 Order granting application for compensation (related document # 570) granting for FTI Consulting, Inc., fees awarded: $1,757,835.90, expenses awarded: $8,781.09 Entered

	on 5/26/2020. (Ecker, C.)
05/26/2020	663 Order granting application for compensation (related document # 607) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: $4,834,021.00, expenses awarded: $118,198.81 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	664 Order granting application for compensation (related document # 608) granting for Mercer (US) Inc., fees awarded: $113,804.64, expenses awarded: $2,151.69 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	665 Amended Order granting application for compensation (related document # 570) granting for FTI Consulting, Inc., fees awarded: $1,757,835.90, expenses awarded: $8,781.09 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	666 Amended Order granting application for compensation (related document # 569) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: $3,154,959.45, expenses awarded: $56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	667 Order granting application for compensation (related document # 609) granting for Hayward & Associates PLLC, fees awarded: $168,405.00, expenses awarded: $7,333.29 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	668 Order granting 606 Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.)
05/26/2020	669 Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document # 605) Entered on 5/26/2020. (Ecker, C.)
05/26/2020	670 Order granting application for compensation (related document # 602) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: $387,672.08, expenses awarded: $10,455.04 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	672 Hearing held on 5/26/2020. (RE: related document(s)602 First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	673 Hearing held on 5/26/2020. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	674 Hearing held on 5/26/2020. (RE: related document(s)606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time)

	filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order. (Edmond, Michael) (Entered: 05/27/2020)
05/27/2020	671 Request for transcript (ruling only) regarding a hearing held on 5/26/2020. The requested turn−around time is daily (Jeng, Hawaii)
05/28/2020	675 Application for compensation *Sixth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: $489,957.84, Expenses: $6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. (Hoffman, Juliana)
05/28/2020	676 Transcript regarding Hearing Held 05/26/2020 (7 pgs.) RE: Fee Applications, Applications to Employ Nunc Pro Tunc, Motion to Extend Exclusivity Period (Excerpt: 10:00−10:06 a.m. Only). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 672 Hearing held on 5/26/2020. (RE: related document(s)602 First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.), 673 Hearing held on 5/26/2020. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), 674 Hearing held on 5/26/2020. (RE: related document(s)606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order.). Transcript to be made available to the public on 08/26/2020. (Rehling, Kathy)
05/28/2020	677 BNC certificate of mailing − PDF document. (RE: related document(s)663 Order granting application for compensation (related document 607) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: $4,834,021.00, expenses awarded: $118,198.81 Entered on 5/26/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 05/28/2020. (Admin.)
06/01/2020	678 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion

	for leave). (Annable, Zachery)
06/01/2020	679 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI Staffing Report for April 2020) (Annable, Zachery)
06/01/2020	680 Certificate of service re: *1) Third Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date; 2) Summary Sheet and Sixth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020; and 3) Summary Sheet and Fifth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2020 to and Including March 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)638 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P., 639 Application for compensation *Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2020 to 4/30/2020, Fee: $438,619.32, Expenses: $5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 640 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: $477,538.20, Expenses: $14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
06/01/2020	681 Certificate of service re: *1) Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing [Attached hereto as Exhibit B]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)658 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 660 Amended Notice *(Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)658 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	682 Certificate of service re: *Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)648 Application for compensation *Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: $1,113,522.50, Expenses: $3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	683 Certificate of service re: *Documents Served on May 22, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)653 Declaration re: *(Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to*

	Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., 654 Witness and Exhibit List *for May 26, 2020 Hearing* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 2/29/2020, Fee: $3,, 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: $1,757,835.90, Expenses: $8,781.09., 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Ga, 604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*, 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment, 606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time), 607 Application for compensation First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20, 608 Application for compensation First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer (, 609 Application for compensation (Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020) for Hayward & Associates PLLC, Debtor's At). filed by Debtor Highland Capital Management, L.P., 655 COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.), 658 Notice (Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/02/2020	684 Clerk's correspondence requesting a notice of hearing from attorney for creditor. (RE: related document(s)593 Motion for relief from stay Fee amount $181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)) Responses due by 6/9/2020. (Ecker, C.)
06/02/2020	685 Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s)638 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)
06/02/2020	686 Debtor−in−possession monthly operating report for filing period April 1, 2020 to April 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
06/03/2020	687 Response opposed to (related document(s): 644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
06/03/2020	688 Support/supplemental document*(Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)687 Response). (Attachments: # 1

	Exhibit 1−−UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # 2 Exhibit 2−−UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # 3 Exhibit 3−−UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # 4 Exhibit 4−−NY D.I. 411: March 13, 2017 Decision # 5 Exhibit 5−−NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # 6 Exhibit 6−−NY D.I. 472: UBSs Pre−Trial Brief in Support of Bifurcation # 7 Exhibit 7−−Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # 8 Exhibit 8−−December 2, 2019 Email from the Debtors Pre−Petition Counsel to Counsel for UBS # 9 Exhibit 9−−March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # 10 Exhibit 10−−NY D.I. 320: UBSs Note of Issue Without Jury # 11 Exhibit 11−−March 22, 2020 New York Administrative Order AO/78/20 # 12 Exhibit 12−−May 26, 2020 Law360 Article (Excerpt Only)) (Annable, Zachery)
06/03/2020	689 Motion to file document under seal.*(Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Protective Order Filed in State Court Litigation) (Annable, Zachery)
06/03/2020	690 Objection to (related document(s): 644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
06/03/2020	691 Motion to file document under seal.*MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Proposed Order) (Platt, Mark)
06/03/2020	692 Objection to (related document(s): 644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)*Redacted Version (Pending Ruling on Motion to Seal at D.I. 691) of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action* filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit A (slip sheet, pending ruling on motion to seal) # 2 Exhibit Exhibit B slip sheet (pending ruling on motion to seal) # 3 Exhibit Exhibit C slip sheet (pending ruling on motion to seal) # 4 Exhibit Exhibit D slip sheet (pending ruling on motion to seal) # 5 Exhibit Exhibit E # 6 Exhibit Exhibit F # 7 Exhibit Exhibit G # 8 Exhibit Exhibit H slip sheet (pending ruling on motion to seal) # 9 Exhibit Exhibit I slip sheet (pending ruling on motion to seal) # 10 Exhibit Exhibit J # 11 Exhibit Exhibit L # 12 Exhibit Exhibit M # 13 Exhibit Exhibit N) (Platt, Mark)
06/03/2020	693 Support/supplemental document*Exhibit K* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)692 Objection). (Platt, Mark)
06/03/2020	694 Joinder by filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)692 Objection). (Shaw, Brian)
06/04/2020	695 Motion to appear pro hac vice for Robert J. Feinstein. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27814231, amount $ 100.00 (re: Doc# 695). (U.S. Treasury)

06/04/2020	696 Amended Motion to file document under seal.*AMENDED MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Proposed Order) (Platt, Mark)
06/04/2020	697 Certificate of service re: *Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)660 Amended Notice *(Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)658 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2020	698 Certificate of service re: *Documents Served on May 26, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)661 Order granting application for compensation (related document 569) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: $3,154,959.45, expenses awarded: $56,254.47 Entered on 5/26/2020. (Ecker, C.), 662 Order granting application for compensation (related document 570) granting for FTI Consulting, Inc., fees awarded: $1,757,835.90, expenses awarded: $8,781.09 Entered on 5/26/2020. (Ecker, C.), 663 Order granting application for compensation (related document 607) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: $4,834,021.00, expenses awarded: $118,198.81 Entered on 5/26/2020. (Ecker, C.), 664 Order granting application for compensation (related document 608) granting for Mercer (US) Inc., fees awarded: $113,804.64, expenses awarded: $2,151.69 Entered on 5/26/2020. (Ecker, C.), 665 Amended Order granting application for compensation (related document 570) granting for FTI Consulting, Inc., fees awarded: $1,757,835.90, expenses awarded: $8,781.09 Entered on 5/26/2020. (Ecker, C.), 666 Amended Order granting application for compensation (related document 569) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: $3,154,959.45, expenses awarded: $56,254.47 Entered on 5/26/2020. (Ecker, C.), 667 Order granting application for compensation (related document 609) granting for Hayward & Associates PLLC, fees awarded: $168,405.00, expenses awarded: $7,333.29 Entered on 5/26/2020. (Ecker, C.), 668 Order granting 606 Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.), 669 Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document 605) Entered on 5/26/2020. (Ecker, C.), 670 Order granting application for compensation (related document 602) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: $387,672.08, expenses awarded: $10,455.04 Entered on 5/26/2020. (Ecker, C.)). (Kass, Albert)
06/04/2020	699 Certificate of service re: *Summary Sheet and Sixth Monthly Application of FTI Consulting for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)675 Application for compensation *Sixth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: $489,957.84, Expenses: $6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
06/04/2020	700 Motion to redact/restrict Restrict From Public View (related document(s):692) (Fee Amount $25) Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Proposed Order) (Platt, Mark)
06/04/2020	Receipt of filing fee for Motion to Redact/Restrict From Public View(19−34054−sgj11) [motion,mredact] (25.00). Receipt number 27815698, amount $ 25.00 (re: Doc# 700). (U.S. Treasury)

06/04/2020	701 Objection to (related document(s): 644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)*Redacted Version of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action* filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Exhibit Exhibit F # 7 Exhibit Exhibit G # 8 Exhibit Exhibit H slip sheet # 9 Exhibit Exhibit I slip sheet # 10 Exhibit Exhibit J # 11 Exhibit Exhibit K # 12 Exhibit Exhibit L # 13 Exhibit Exhibit M # 14 Exhibit Exhibit N) (Platt, Mark)
06/04/2020	702 Notice of Appearance and Request for Notice by Thomas M. Melsheimer filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent. (Melsheimer, Thomas)
06/04/2020	703 Motion to appear pro hac vice for David Neier. Fee Amount $100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Melsheimer, Thomas)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27816362, amount $ 100.00 (re: Doc# 703). (U.S. Treasury)
06/05/2020	704 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/05/2020	705 Order granting motion to appear pro hac vice adding David Neier for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # 703) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	706 Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document # 695) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	707 Certificate of service re: *1) Fourth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 Through April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)678 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P., 679 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI Staffing Report for April 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/05/2020	708 Certificate of service re: *Order Approving Fourth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date* Filed by Claims Agent

	Kurtzman Carson Consultants LLC (related document(s)685 Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s)638 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)). (Kass, Albert)
06/05/2020	709 Certificate of service re: *1) Debtor's Objection to UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action; 2) Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay; and 3) Debtor's Motion for Entry of an Order Authorizing Filing Under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)687 Response opposed to (related document(s): 644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 688 Support/supplemental document*(Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)687 Response). (Attachments: # 1 Exhibit 1−−UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # 2 Exhibit 2−−UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # 3 Exhibit 3−−UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # 4 Exhibit 4−−NY D.I. 411: March 13, 2017 Decision # 5 Exhibit 5−−NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # 6 Exhibit 6−−NY D.I. 472: UBSs Pre−Trial Brief in Support of Bifurcation # 7 Exhibit 7−−Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # 8 Exhibit 8−−December 2, 2019 Email from the Debtors Pre−Petition Counsel to Counsel for UBS # 9 Exhibit 9−−March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # 10 Exhibit 10−−NY D.I. 320: UBSs Note of Issue Without Jury # 11 Exhibit 11−−March 22, 2020 New York Administrative Order AO/78/20 # 12 Exhibit 12−−May 26, 2020 Law360 Article (Excerpt Only)) filed by Debtor Highland Capital Management, L.P., 689 Motion to file document under seal.*(Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Protective Order Filed in State Court Litigation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/07/2020	710 BNC certificate of mailing − PDF document. (RE: related document(s)706 Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document 695) Entered on 6/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/07/2020. (Admin.)
06/08/2020	711 Order granting motion to seal documents (related document # 696) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	712 Certificate of No Objection filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)593 Motion for relief from stay Fee amount $181,). (Shaw, Brian)
06/08/2020	713 Order granting Motion to Redact (Related Doc # 700) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	714 **SEALED document regarding: Redeemer Committee's Objection to UBS's Motion for Relief From The Automatic Stay (unredacted version) per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	715 **SEALED document regarding: Exhibit A, Original Synthetic Warehouse Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)

06/08/2020	716 **SEALED document regarding: Exhibit B, Original Engagement Ltr. per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	717 **SEALED document regarding: Exhibit C, Original Cash Warehouse Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	718 **SEALED document regarding: Exhibit D, Expert Report of Louis G. Dudney per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	719 **SEALED document regarding: Exhibit E, 3/20/2009 Termination, Settlement, and Release Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	720 **SEALED document regarding: Exhibit H, UBS and Crusader Fund Settlement Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	721 **SEALED document regarding: Exhibit I, UBS and Credit Strategies Fund Settlement Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	722 Order granting motion to seal documents (related document # 689) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	723 **SEALED document regarding: Appendix B of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)722 Order on motion to seal). (Annable, Zachery)
06/08/2020	724 Certificate of service re: *Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)704 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/10/2020	725 Motion to appear pro hac vice for Sarah Tomkowiak. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
06/10/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27830926, amount $ 100.00 (re: Doc# 725). (U.S. Treasury)
06/10/2020	726 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Annable, Zachery)

06/10/2020	727 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)639 Application for compensation *Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2020 to 4/30/2020, Fee: $438,619.). (Hoffman, Juliana)
06/10/2020	728 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)640 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: $477,538.20, Expenses: $14,937.66.). (Hoffman, Juliana)
06/10/2020	729 Notice *of Subpoena of Highland Capital Management, L.P.* filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/11/2020	730 Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27834758, amount $ 100.00 (re: Doc# 730). (U.S. Treasury)
06/11/2020	731 Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document # 725) Entered on 6/11/2020. (Okafor, M.)
06/11/2020	732 Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s)638 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.).
06/11/2020	733 Motion for leave *to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action* (related document(s) 687 Response, 690 Objection, 692 Objection, 694 Joinder, 701 Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14) (Sosland, Martin)
06/11/2020	734 INCORRECT EVENT USED: See # 746 for correction. Motion for leave *to File Documents Under Seal with UBS's Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action* (related document(s) 733 Motion for leave) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − State Court Protective Stipulation) (Sosland, Martin) Modified on 6/15/2020 (Ecker, C.).
06/11/2020	746 Motion to file document under seal. Filed by Interested Parties UBS AG London Branch , UBS Securities LLC (Ecker, C.) (Entered: 06/15/2020)
06/12/2020	735 COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s)644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)

06/12/2020	736 Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document # 730) Entered on 6/12/2020. (Okafor, M.)
06/12/2020	737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
06/12/2020	738 Certificate of No Objection Regarding Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)648 Application for compensation *Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020* for Jeffrey Nathan). (Annable, Zachery)
06/12/2020	739 Witness and Exhibit List *(Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (Related document(s) 644 UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	740 Witness and Exhibit List *REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Related document(s) 644 UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	741 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 737, (Annable, Zachery)
06/12/2020	742 Witness and Exhibit List *for June 15, 2020 Hearing* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181,). (Sosland, Martin)
06/12/2020	743 Amended Witness and Exhibit List *REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND FIRST AMENDED WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)740 List (witness/exhibit/generic)). (Platt, Mark)
06/13/2020	744 BNC certificate of mailing − PDF document. (RE: related document(s)731 Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document 725) Entered on 6/11/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/13/2020. (Admin.)
06/14/2020	745 BNC certificate of mailing − PDF document. (RE: related document(s)736 Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document 730) Entered on 6/12/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/14/2020. (Admin.)
06/15/2020	747 Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule

	9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)459 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
06/15/2020	748 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)747 Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)459 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 747, (Annable, Zachery)
06/15/2020	754 Hearing held on 6/15/2020. (RE: related document(s)644 (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 06/17/2020)
06/15/2020	770 Court admitted exhibits date of hearing June 15, 2020 (RE: related document(s)644 Motion for relief from stay (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC., (COURT ADMITTED ALL EXHIBIT'S TO ALL THE ATTACHED OBJECTOR'S OBJECTION ALL EXCEPT FOR EXHIBIT #D (EXPERT REPORT OF LOUIS G. DUDLEY; THAT IS FILED UNDER SEAL); ON THE REDEEMER COMMITTEE OBJECTION; THE FOLLOWING EXHIBIT'S ATTACHED TO THE MOTION OF UBS'S MOTION TO LIFT STAY ALL ADMITTED; # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K; ALSO PLEASE SEE WITNESS AND EXHIBIT LIST OF DEBTOR; CREDITOR UBS AND REDEEMER COMMITTEE) (Edmond, Michael) (Entered: 06/23/2020)
06/16/2020	749 ENTER AN ERROR; NO PDF ATTACHED: Request for transcript regarding a hearing held on 6/15/2020. The requested turn−around time is daily (Edmond, Michael) Modified on 6/16/2020 (Edmond, Michael).
06/16/2020	750 Request for transcript regarding a hearing held on 6/15/2020. The requested turn−around time is daily. (Edmond, Michael)
06/16/2020	751 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: $32,602.50, Expenses: $0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
06/16/2020	752 Notice of hearing*(Notice of August 6, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/16/2020	753 Notice of hearing *(Notice of July 14, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/17/2020	755 Transcript regarding Hearing Held 06/15/2020 (127 pages) RE: Motion for Relief from the Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY

	AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 754 Hearing held on 6/15/2020. (RE: related document(s)644 (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.)). Transcript to be made available to the public on 09/15/2020. (Rehling, Kathy)
06/17/2020	756 Certificate of service re: *1) WebEx Meeting Invitation to participate electronically in the hearing on Monday, June 15, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)735 COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s)644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)). (Kass, Albert)
06/17/2020	757 Certificate of service re: *Fifth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)726 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	758 Certificate of service re: *1) Motion for Admission Pro Hac Vice of Alan J. Kornfeld to Represent Highland Capital Management, L.P.; and 2) Order Approving Fifth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)730 Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 732 Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s)638 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.).). (Kass, Albert)
06/17/2020	759 Certificate of service re: *Documents Served on June 12, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)736 Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document 730) Entered on 6/12/2020. (Okafor, M.), 737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 739 Witness and Exhibit List *(Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (Related document(s) 644 UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 741 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit

	A−−Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 737, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	760 Certificate of service re: *1) Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing Regarding Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; to be Held on July 8, 2020 at 1:30 p.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)747 Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)459 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 748 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)747 Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)459 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 747, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	761 Certificate of service re: *1) Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020; 2) Notice of August 6, 2020 Omnibus Hearing Date; and 3) Notice of July 14, 2020 Omnibus Hearing Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)751 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: $32,602.50, Expenses: $0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 752 Notice of hearing*(Notice of August 6, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., 753 Notice of hearing *(Notice of July 14, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/18/2020	762 Application for compensation *Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: $27,822.00, Expenses: $489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
06/18/2020	763 Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document # 604) Entered on 6/18/2020. (Bradden, T.)
06/18/2020	764 Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document # 593) Entered on 6/18/2020. (Bradden, T.)
06/19/2020	765 Order denying motion for relief from stay by Interested Parties UBS AG London Branch , UBS Securities LLC (related document # 644) Entered on 6/19/2020. (Okafor, M.)

06/20/2020	766 BNC certificate of mailing − PDF document. (RE: related document(s)764 Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document 593) Entered on 6/18/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 06/20/2020. (Admin.) (Entered: 06/21/2020)
06/22/2020	767 Application for compensation *Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2020 to 5/31/2020, Fee: $343,624.68, Expenses: $2,758.75. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. (Hoffman, Juliana)
06/22/2020	768 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)675 Application for compensation *Sixth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: $489,957.84, Expenses: $6,702.95.). (Hoffman, Juliana)
06/22/2020	769 Certificate of service re: *1) Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Foley Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020; and 2) Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)762 Application for compensation *Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: $27,822.00, Expenses: $489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 763 Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document 604) Entered on 6/18/2020. (Bradden, T.)). (Kass, Albert)
06/23/2020	771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. (Annable, Zachery)
06/23/2020	772 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 771, (Annable, Zachery)
06/23/2020	773 Application for compensation *Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: $803,509.50, Expenses: $4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. (Pomerantz, Jeffrey)
06/23/2020	774 Application to employ James P. Seery, Jr. as Other Professional *Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/23/2020	775 Application to employ Development Specialists, Inc. as Other Professional *Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring−Related Services, Nunc Pro Tunc to March 15, 2020* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

06/23/2020	776 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)774 Application to employ James P. Seery, Jr. as Other Professional *Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 774, (Annable, Zachery)
06/23/2020	777 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)775 Application to employ Development Specialists, Inc. as Other Professional *Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring−Related Services, Nunc Pro Tunc to March 15, 2020* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 775, (Annable, Zachery)
06/24/2020	778 Certificate of service re: *Summary Sheet and Seventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)767 Application for compensation *Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2020 to 5/31/2020, Fee: $343,624.68, Expenses: $2,758.75. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
06/24/2020	779 Certificate of service re: *Documents Served on 23, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. filed by Debtor Highland Capital Management, L.P., 772 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 771, filed by Debtor Highland Capital Management, L.P., 773 Application for compensation *Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: $803,509.50, Expenses: $4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. filed by Debtor Highland Capital Management, L.P., 774 Application to employ James P. Seery, Jr. as Other Professional *Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 775 Application to employ Development Specialists, Inc. as Other Professional *Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring−Related Services, Nunc Pro Tunc to March 15, 2020* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 776 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)774 Application to employ James P. Seery, Jr. as Other Professional *Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 774, filed by Debtor Highland Capital Management, L.P., 777 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)775 Application to employ Development Specialists, Inc. as Other Professional *Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring−Related*

	Services, Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 775, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/25/2020	780 Notice *of Subpoena of David Klos* filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/26/2020	781 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 through May 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
06/26/2020	782 Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 1−A # 3 Exhibit 1−B # 4 Exhibit 1−C # 5 Exhibit 1−D # 6 Exhibit 1−E # 7 Exhibit 1−F # 8 Exhibit 1−G # 9 Exhibit 1−H # 10 Exhibit 1−I # 11 Exhibit 2 # 12 Exhibit 3 # 13 Exhibit 4 # 14 Exhibit 5 # 15 Exhibit 6 # 16 Exhibit 7 # 17 Exhibit 8 # 18 Exhibit 9 # 19 Exhibit 10 # 20 Exhibit 11 # 21 Exhibit 12 # 22 Exhibit 13 # 23 Exhibit 14 # 24 Exhibit 15 # 25 Exhibit 16) (Kane, John)
06/26/2020	783 **SEALED document regarding: Exhibit 11 − AROF MUFG Bank Statement June 2018_ Highland_PEO−032620 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
06/26/2020	784 **SEALED document regarding: Exhibit 12 − GG and HCM Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
06/26/2020	785 **SEALED document regarding: Exhibit 13 − GG and HCM Amendment to Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
06/26/2020	786 **SEALED document regarding: Exhibit 14 − Exercise of Discretion by Trustee The Get Good Nonexempt Trust (Fully Executed) dated December 28, 2016 Highly Confidential per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
06/26/2020	787 **SEALED document regarding: Exhibit 15 − Dynamic Income CLO Holdco Side Letter ($2M Subscription) dated January 10, 2017 Highly Confidential per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
06/26/2020	788 **SEALED document regarding: Exhibit 16 − Highland Capital Management, L.P. December 31, 2016 Final Opinion per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
06/27/2020	789 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]*). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) (Hoffman, Juliana)
06/29/2020	790 COURTS NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON June 30, 2020 at 09:30 AM; (RE: related document(s)590 Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO

	Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). (Edmond, Michael)
06/30/2020	791 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: $484,590.10, Expenses: $10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C − Proposed Order) (O'Neil, Holland)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	792 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Timothy Silva # 2 Exhibit B−−Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	793 Hearing held on 6/30/2020. (RE: related document(s)590 Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90−day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on todays ruling on CLO Holdcos motion). (Edmond, Michael)
06/30/2020	794 Court admitted exhibits date of hearing June 30, 2020 (RE: related document(s)590 Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (COURT ADMITTED MOVANT'S CLO HOLDCO, LTD., EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 & #16; ALSO ADMITTED DEFENDANT'S UNSECURED CREDITOR'S COMMITTEE EXHIBIT'S #1, #2 & #3) (Edmond, Michael)
06/30/2020	795 Application for compensation *(Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: $24877.50, Expenses: $36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A April 2020 Invoice) (Annable, Zachery)
07/01/2020	796 Request for transcript regarding a hearing held on 6/30/2020. The requested turn−around time is daily. (Edmond, Michael)
07/01/2020	797 Certificate of service re: *re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 Through May 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)781 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period*

	from May 1, 2020 through May 31, 2020) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2020	798 Certificate of service re: *re: The Official Committee of Unsecured Creditors' Witness and Exhibit List for the June 30, 2020 Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)789 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]*). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/01/2020	799 Certificate of service re: *Cover Sheet and Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)795 Application for compensation *(Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: $24877.50, Expenses: $36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A April 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
07/02/2020	800 Debtor−in−possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/02/2020	801 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2020	802 Transcript regarding Hearing Held 06/30/2020 (100 pages) RE: Motion for Remittance of Funds (590). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/30/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 793 Hearing held on 6/30/2020. (RE: related document(s)590 Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90−day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital

	Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on todays ruling on CLO Holdcos motion).). Transcript to be made available to the public on 09/30/2020. (Rehling, Kathy)
07/02/2020	803 BNC certificate of mailing. (RE: related document(s)792 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Timothy Silva # 2 Exhibit B−−Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/02/2020. (Admin.)
07/03/2020	804 Response unopposed to (related document(s): 737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
07/06/2020	805 Notice of hearing *(Notice of September 10, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/07/2020	806 Certificate of service re: *1) Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)801 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/07/2020	807 Certificate of service re: *Statement of the Official Committee of Unsecured Creditors in Response to the Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016−1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)804 Response unopposed to (related document(s): 737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/08/2020	808 Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. (Montgomery, Paige)
07/08/2020	809 Certificate of service re: *Notice of September 10, 2020 Omnibus Hearing Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)805 Notice of hearing *(Notice of September 10, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

07/08/2020	812 Hearing held on 7/8/2020. (RE: related document(s)737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30−day extension). Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)
07/08/2020	813 Hearing held on 7/8/2020. (RE: related document(s)747 Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)459 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)
07/09/2020	810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
07/09/2020	811 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) (Annable, Zachery)*
07/09/2020	814 Motion for expedited hearing(related documents 808 Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
07/09/2020	815 Request for transcript regarding a hearing held on 7/8/2020. The requested turn−around time is hourly. (Edmond, Michael)
07/09/2020	816 Order granting 747 Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)459 O) Entered on 7/9/2020. (Okafor, M.)
07/10/2020	817 Transcript regarding Hearing Held 07/08/2020 (58 pages) RE: Motions to Extend Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/8/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 812 Hearing held on 7/8/2020. (RE: related document(s)737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30−day

	extension). Debtors counsel to upload order.), 813 Hearing held on 7/8/2020. (RE: related document(s)747 Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)459 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.)). Transcript to be made available to the public on 10/8/2020. (Rehling, Kathy)
07/10/2020	818 Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)751 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020* for Foley Gardere,). (O'Neil, Holland)
07/10/2020	819 Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)762 Application for compensation *Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020* for Foley Gardere). (O'Neil, Holland)
07/10/2020	820 Order granting 737 Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.)
07/10/2020	821 Agreed order regarding deposit of funds into the registry of the Court. (Related Doc # 474) Entered on 7/10/2020. (Okafor, M.)
07/10/2020	822 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)774 Application to employ James P. Seery, Jr. as Other Professional *Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, 775 Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct). (Annable, Zachery)*
07/13/2020	823 Certificate of service re: *Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)808 Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/13/2020	824 Certificate of service re: *Documents Served on July 9, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 811 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs).*

	(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., 814 Motion for expedited hearing(related documents 808 Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 816 Order granting 747 Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)459 O) Entered on 7/9/2020. (Okafor, M.)). (Kass, Albert)
07/13/2020	825 Order denying motion to reclaim funds from the registry (Related Doc # 590) Entered on 7/13/2020. (Okafor, M.)
07/13/2020	826 Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)808 Motion to compel Production by the Debtor. , 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs, 814 Motion for expedited hearing(related documents 808 Motion to compel)). (Annable, Zachery)*
07/13/2020	827 Objection to claim(s) 3 of Creditor(s) Acis Capital Management, L.P. and Acis Capital Management GP, LLC.. Filed by Interested Party James Dondero. (Assink, Bryan)
07/13/2020	828 Certificate of service re: *1) Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016−1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan; 2) Agreed Order Regarding Deposit of Funds into the Registry of the Court; and 3) Debtors Witness and Exhibit List with Respect to (A) the Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services Nunc Pro Tunc to March 15* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)820 Order granting 737 Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.), 821 Agreed order regarding deposit of funds into the registry of the Court. (Related Doc 474) Entered on 7/10/2020. (Okafor, M.), 822 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)774 Application to employ James P. Seery, Jr. as Other Professional *Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, 775 Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
07/14/2020	829 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)767 Application for compensation *Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2020 to 5/31/2020, Fee: $34). (Hoffman, Juliana)
07/14/2020	830 Application for compensation *Seventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: $223,330.68, Expenses: $1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. (Hoffman, Juliana)
07/14/2020	831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured

	Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,573,850.25, Expenses: $22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F) (Hoffman, Juliana)
07/14/2020	832 Response opposed to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
07/14/2020	833 Request for transcript regarding a hearing held on 7/14/2020. The requested turn−around time is daily. (Edmond, Michael)
07/14/2020	836 Court admitted exhibits date of hearing July 14, 2020 (RE: related document(s)774 Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P., And 775 Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring−Related Services, Nunc Pro Tunc to March 15, 2020 filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6 & #7) (Edmond, Michael) (Entered: 07/15/2020)
07/14/2020	862 Hearing held on 7/14/2020. (RE: related document(s)774 Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/14/2020	863 Hearing held on 7/14/2020. (RE: related document(s)775 Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring−Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/15/2020	834 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)773 Application for compensation *Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020* for Jeffrey Nathan P). (Annable, Zachery)
07/15/2020	835 Motion to appear pro hac vice for James A. Wright III. Fee Amount $100 Filed by Interested Parties NexPoint Real Estate Strategies Fund, Highland Global Allocation Fund, Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., Highland Total Return Fund, Highland Fixed Income Fund, Highland Socially Responsible Equity Fund, Highland Small−Cap Equity Fund, Highland Funds II and its series, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland/iBoxx Senior Loan ETF, Highland Healthcare Opportunities Fund, Highland Funds I and its series, NexPoint

	Advisors, L.P., Highland Capital Management Fund Advisors, L.P. (Varshosaz, Artoush)
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27927823, amount $ 100.00 (re: Doc# 835). (U.S. Treasury)
07/15/2020	837 Response opposed to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.) filed by John Honis, Rand PE Fund Management, LLC, Rand PE Fund I, LP, Rand Advisors, LLC, Hunter Mountain Investment Trust, Beacon Mountain, LLC, Atlas IDF, LP, Atlas IDF, GP, LLC. (Keiffer, Edwin)*
07/15/2020	838 INCORRECT ENTRY: Attorney to amend and refile. Motion to appear pro hac vice for Stephen G. Topetzes. Fee Amount $100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush) MODIFIED on 7/16/2020 (Ecker, C.).
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27928069, amount $ 100.00 (re: Doc# 838). (U.S. Treasury)
07/15/2020	839 Response opposed to (related document(s): 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)*
07/15/2020	840 INCORRECT ENTRY: FILED WITHOUT EXHIBITS. Notice of Appearance and Request for Notice by Paul Richard Bessette filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul) Modified on 7/15/2020 (Rielly, Bill).
07/15/2020	841 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)*
07/15/2020	842 Notice of Appearance and Request for Notice by Amanda Melanie Rush filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	843 Motion to appear pro hac vice for Tracy K. Stratford. Fee Amount $100 Filed by Interested Party CCS Medical, Inc. (Rush, Amanda)

07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27928305, amount $ 100.00 (re: Doc# 843). (U.S. Treasury)
07/15/2020	844 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)*
07/15/2020	845 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2020	846 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # 1 Exhibit A) (Kane, John)
07/15/2020	847 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors, L.P., VineBrook Homes, Trust, Inc., NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Partners, LLC, NexPoint Hospitality Trust, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, NexPoint Real Estate Finance Inc.. (Drawhorn, Lauren)
07/15/2020	848 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)845 Objection). (Attachments: # 1 Exhibit A) (Annable, Zachery)
07/16/2020	849 Amended Motion to appear pro hac vice for Stephen G. Topetzes. (related document: 838) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
07/16/2020	850 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)808 Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 810 and for 808, (Annable, Zachery)
07/16/2020	851 Notice of hearing *(Notice of September 17, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/16/2020	

	852 Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s)826 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.)
07/16/2020	853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document # 775) Entered on 7/16/2020. (Ecker, C.)
07/16/2020	854 Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
07/16/2020	855 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party MGM Holdings, Inc.. (Drawhorn, Lauren)
07/16/2020	856 Notice of Appearance and Request for Notice by Artoush Varshosaz filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
07/16/2020	857 Motion to appear pro hac vice for Mark M. Maloney. Fee Amount $100 Filed by Interested Party Highland CLO Funding, Ltd. (Bessette, Paul)
07/16/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27932614, amount $ 100.00 (re: Doc# 857). (U.S. Treasury)
07/16/2020	858 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul)
07/16/2020	859 Declaration re: *858 Objection* filed by Interested Party Highland CLO Funding, Ltd. (RE: related document(s)808 Motion to compel Production by the Debtor.). (Attachments: # 1 Exhibit A) (Bessette, Paul)
07/16/2020	860 Certificate of service re: *1) Order Denying Motion for Remittance of Funds Held in Registry of Court; and 2) Stipulation by and Between the Debtor and the Official Committee of Unsecured Creditors* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)825 Order denying motion to reclaim funds from the registry (Related Doc 590) Entered on 7/13/2020. (Okafor, M.), 826 Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)808 Motion to compel Production by the Debtor. , 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs, 814 Motion for expedited hearing(related documents 808 Motion to compel)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
07/16/2020	861 Certificate of service re: *1) Summary Sheet and Seventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020; and 2) Summary Sheet and Second Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period*

	from March 1, 2020 Through and Including May 31, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)830 Application for compensation *Seventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: $223,330.68, Expenses: $1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. filed by Financial Advisor FTI Consulting, Inc., 831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,573,850.25, Expenses: $22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/17/2020	864 Transcript regarding Hearing Held 07/14/2020 (134 pages) RE: Applications to Employ. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 863 Hearing held on 7/14/2020. (RE: related document(s)775 Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring−Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.)). Transcript to be made available to the public on 10/15/2020. (Rehling, Kathy)
07/17/2020	865 Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document # 843) Entered on 7/17/2020. (Ecker, C.)
07/17/2020	866 Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # 835) Entered on 7/17/2020. (Ecker, C.)
07/17/2020	867 Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # 849) Entered on 7/17/2020. (Ecker, C.)
07/17/2020	868 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. (Annable, Zachery)
07/17/2020	

	869 Reply to (related document(s): 839 Response filed by Creditor Committee Official Committee of Unsecured Creditors) *(Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/17/2020	870 Declaration re: *(Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs). (Annable, Zachery)*
07/17/2020	871 Declaration re: *First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date* filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*). (Hesse, Gregory)
07/17/2020	872 Response opposed to (related document(s): 841 Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small−Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, 844 Objection filed by Interested Party CCS Medical, Inc., 845 Objection filed by Debtor Highland Capital Management, L.P., 846 Objection filed by Creditor CLO Holdco, Ltd., 847 Objection filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., 855 Objection filed by Interested Party MGM Holdings, Inc., 858 Objection filed by Interested Party Highland CLO Funding, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
07/17/2020	873 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 868, (Annable, Zachery)
07/19/2020	874 BNC certificate of mailing − PDF document. (RE: related document(s)865 Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document 843) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	

	875 BNC certificate of mailing − PDF document. (RE: related document(s)866 Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document 835) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	876 BNC certificate of mailing − PDF document. (RE: related document(s)867 Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document 849) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/20/2020	877 Application for compensation *Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 6/30/2020, Fee: $493,788.96, Expenses: $5,759.29. Filed by Objections due by 8/10/2020. (Hoffman, Juliana)
07/20/2020	878 Application for compensation *Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: $818,786.50, Expenses: $3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	879 Amended application for compensation *Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: $818,786.50, Expenses: $3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	880 Certificate of service re: *1) Debtor's Objection to Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor; and 2) Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)845 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 848 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)845 Objection). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/20/2020	881 Certificate of service re: *Documents Served on July 16, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)850 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)808 Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., 810 Motion for protective order *(Debtor's Motion*

	for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 810 and for 808, filed by Debtor Highland Capital Management, L.P., 851 Notice of hearing *(Notice of September 17, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., 852 Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s)826 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.), 854 Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).). (Kass, Albert)
07/21/2020	882 Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document # 857) Entered on 7/21/2020. (Okafor, M.)
07/21/2020	883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26. Filed by Objections due by 8/11/2020. (Hoffman, Juliana)
07/21/2020	894 Hearing held on 7/21/2020. (RE: related document(s)808 Motion to compel Production by the Debtor, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion granted in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM communications, and as to Atlass communications with outside law firms. Counsel to submit order.) (Edmond, Michael) (Entered: 07/24/2020)
07/21/2020	895 Hearing held on 7/21/2020. (RE: related document(s)810 Motion for protective order (Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion denied in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM, and as to Atlass communications with outside law firms. Counsel to submit order.) (Edmond, Michael) (Entered: 07/24/2020)
07/21/2020	896 Hearing held on 7/21/2020. (RE: related document(s)1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R.

	Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.) (Edmond, Michael) (Entered: 07/24/2020)
07/22/2020	884 Application for compensation *Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: $21,242.00, Expenses: $343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
07/22/2020	885 INCORRECT ENTRY: EVENT CODE. Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery) Modified on 7/22/2020 (Rielly, Bill).
07/22/2020	886 Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
07/22/2020	887 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
07/22/2020	888 Request for transcript regarding a hearing held on 7/21/2020. The requested turn−around time is daily. (Edmond, Michael)
07/22/2020	889 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 771, (Annable, Zachery)
07/22/2020	890 Certificate of service re: *Documents Served on July 17, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)868 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. filed by Debtor Highland Capital Management, L.P., 869 Reply to (related document(s): 839 Response filed by Creditor Committee Official Committee of Unsecured Creditors) *(Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 870 Declaration re: *(Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs). filed by Debtor Highland Capital Management, L.P., 871 Declaration re: First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)604 Application to*

	employ Hunton Andrews Kurth LLP as Special Counsel (Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)). filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, 873 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 868, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/23/2020	891 Objection to claim(s) 3 of Creditor(s) ACIS Capital Management L.P. and ACIS Capital Management GP, LLC.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
07/23/2020	892 Certificate of service re: *Amended Ninth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 Through June 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)879 Amended application for compensation *Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: $818,786.50, Expenses: $3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/23/2020	893 BNC certificate of mailing − PDF document. (RE: related document(s)882 Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document 857) Entered on 7/21/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 07/23/2020. (Admin.)
07/24/2020	897 Transcript regarding Hearing Held 07/21/20 RE: DOCS 808 and 810. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/22/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Transcripts Plus, Inc., Telephone number 215−862−1115 CourtTranscripts@aol.com. (RE: related document(s) 896 Hearing held on 7/21/2020. (RE: related document(s)1 Order transferring case number 19−12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.)). Transcript to be made available to the public on 10/22/2020. (Hartmann, Karen)
07/24/2020	898 Certificate of service re: *1) Summary Cover Sheet and Eighth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2020 to and Including June 30, 2020; and 2) Summary Cover Sheet and Second Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2020 Through and Including May 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)877 Application for compensation *Eighth Monthly Application for Compensation and Reimbursement of*

	Expenses of Sidley Austin, LLP for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 6/30/2020, Fee: $493,788.96, Expenses: $5,759.29. Filed by Objections due by 8/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26. Filed by Objections due by 8/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
07/27/2020	899 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)795 Application for compensation *(Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020)* for Hayward & Assoc). (Annable, Zachery)
07/27/2020	900 Certificate of service re: *Documents Served on July 22, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)884 Application for compensation *Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: $21,242.00, Expenses: $343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 886 Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., 887 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., 889 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 771, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/28/2020	901 INCORRECT ENTRY: See # 902 for correction. Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)733 Motion for leave *to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action* (related document(s) 687 Response, 690 Objection, 692 Objection, 694 Joinder, 701 Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.) Modified on 7/28/2020 (Ecker, C.).
07/28/2020	902 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)733 Motion for leave *to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action* (related document(s) 687 Response, 690 Objection, 692 Objection, 694 Joinder, 701 Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	903 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)746 Motion to file document under seal. Filed by Interested Parties UBS AG

	London Branch , UBS Securities LLC (Ecker, C.)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	Receipt Number 00338615, Fee Amount $30,715.92 (RE: related document(s)) 821 Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338617, Fee Amount $20,830.29 (RE: related document(s) 821 Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338616, Fee Amount $84,062.32 (RE: related document(s) 821 Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/30/2020	904 Notice of Appearance and Request for Notice *Chad Timmons, Emily M. Hahn, Larry R. Boyd* by Chad D. Timmons filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Timmons, Chad)
07/30/2020	905 Amended Debtor−in−possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)800 Operating report). (Annable, Zachery)
07/30/2020	906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7) (Annable, Zachery)
07/30/2020	907 Notice of hearing *(Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F) Insufficient−Documentation Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to

	claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 906, (Annable, Zachery)
07/31/2020	908 Response opposed to (related document(s): 771 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Patel, Rakhee)
08/03/2020	909 Agreed Order Granting 886 Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.)
08/03/2020	910 Order granting motion for leave to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related document # 733) Entered on 8/3/2020. (Okafor, M.)
08/03/2020	911 Order granting motion to seal documents (related document # 746) Entered on 8/3/2020. (Okafor, M.)
08/03/2020	912 Order directing mediation (RE: related document(s)3 Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)
08/03/2020	913 Debtor−in−possession monthly operating report for filing period June 1, 2020 to June 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/03/2020	914 Motion for leave *[CLO Holdco, Ltd.'s Motion for Clarification of Ruling]* (related document(s) 808 Motion to compel, 846 Objection, 872 Response, 894 Hearing held) Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Kane, John)

08/04/2020	915 Joinder by *NexPoint RE Entities' Joinder to CLO Holdco, Ltd.'s Motion for Clarification of Ruling* filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)914 Motion for leave *[CLO Holdco, Ltd.'s Motion for Clarification of Ruling]* (related document(s) 808 Motion to compel, 846 Objection, 872 Response, 894 Hearing held)). (Drawhorn, Lauren)
08/04/2020	916 Certificate of service re: *1) Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F) Insufficient−Documentation Claims; and 2) Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F) Insufficient−Documentation Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7) filed by Debtor Highland Capital Management, L.P., 907 Notice of hearing *(Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F) Insufficient−Documentation Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation;

	Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 906, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/05/2020	917 Application for compensation *(Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: $17,667.50, Expenses: $37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A May 2020 Invoice) (Annable, Zachery)
08/05/2020	918 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,5). (Attachments: # 1 Exhibit) (Hoffman, Juliana)
08/05/2020	919 Certificate of service re: *1) Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by Sixty Days; and 2) Order Directing Mediation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)909 Agreed Order Granting 886 Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.), 912 Order directing mediation (RE: related document(s)3 Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)). (Kass, Albert)
08/05/2020	920 Certificate of No Objection (Amended) filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)918 Certificate (generic)). (Hoffman, Juliana)
08/05/2020	921 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN

	PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
08/06/2020	922 Application for compensation *Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: $6,264.50, Expenses: $0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
08/06/2020	923 Notice of Appearance and Request for Notice by Jared M. Slade filed by Interested Party NexBank. (Slade, Jared)
08/06/2020	924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland)
08/06/2020	925 Certificate of service re: *re: 1) Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)917 Application for compensation *(Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: $17,667.50, Expenses: $37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A May 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 921 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2020	926 Withdrawal of claim(s) Claim has been satisfied. Claim: 9 Filed by Creditor Gray Reed & McGraw LLP. (Brookner, Jason)
08/07/2020	927 Joinder by filed by Interested Party NexBank (RE: related document(s)914 Motion for leave *[CLO Holdco, Ltd.'s Motion for Clarification of Ruling]* (related document(s) 808 Motion to compel, 846 Objection, 872 Response, 894 Hearing held)). (Slade, Jared)
08/07/2020	928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) (Annable, Zachery)
08/07/2020	929 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital

	Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/07/2020	930 Response opposed to (related document(s): 914 Motion for leave *[CLO Holdco, Ltd.'s Motion for Clarification of Ruling]* (related document(s) 808 Motion to compel, 846 Objection, 872 Response, 894 Hearing held) filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A) (Montgomery, Paige)
08/07/2020	931 Application for compensation *(Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: $18,025.00, Expenses: $452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A June 2020 Invoice) (Annable, Zachery)
08/07/2020	932 Motion to file document under seal.*MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Proposed Order Proposed Order Granting Motion to Seal) (Platt, Mark)
08/07/2020	933 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit 1 (slip page − to be filed under seal upon order from Court)) # 2 Exhibit Exhibit 2 (slip page − to be filed under seal upon order from Court) # 3 Exhibit Exhibit 3 (slip page − to be filed under seal upon order from Court) # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 (slip page − to be filed under seal upon order from Court) # 7 Exhibit Exhibit 7 (slip page − to be filed under seal upon order from Court) # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 (slip page − to be filed under seal upon order from Court) # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 (slip page − to be filed under seal upon order from Court) # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19 # 20 Exhibit Exhibit 20 (slip page − to be filed under seal upon order from Court) # 21 Exhibit Exhibit 21 (slip page − to be filed under seal upon order from Court) # 22 Exhibit Exhibit 22 (slip page − to be filed under seal upon order from Court)) (Platt, Mark)
08/10/2020	934 Application for compensation *Eighth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: $328,185.72, Expenses: $440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. (Hoffman, Juliana)
08/11/2020	935 Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s)914 Motion for leave filed by Creditor CLO Holdco, Ltd., 915 Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., 927 Joinder filed by Interested Party NexBank). Entered on 8/11/2020 (Rielly, Bill)
08/11/2020	936 Application for compensation *Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020* for

	Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: $739,976.00, Expenses: $1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. (Pomerantz, Jeffrey)
08/11/2020	937 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)879 Amended application for compensation *Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended t). (Pomerantz, Jeffrey)*
08/11/2020	938 Certificate of service re: *1) Cover Sheet and Ninth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 Through July 31, 2020; and 2) Cover Sheet and Second Interim Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)922 Application for compensation *Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: $6,264.50, Expenses: $0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
08/11/2020	939 Certificate of service re: *1) Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch; and 2) Notice of Status Conference; to be Held on September 29, 2020 at 1:30 p.m. (Central Time); and 3) Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., 929 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., 931 Application for compensation *(Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: $18,025.00, Expenses: $452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A June 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
08/11/2020	940 Certificate of service re: *1) Webex Meeting Invitation to participate electronically in the hearing on Friday, August 14, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Summary Cover Sheet and Eighth Monthly Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period From June 1, 2020 to and Including June 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	document(s)934 Application for compensation *Eighth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: $328,185.72, Expenses: $440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/12/2020	941 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)877 Application for compensation *Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 6/30/2020, Fee: $493,78). (Hoffman, Juliana)
08/12/2020	942 Order resolving discovery motions and objections thereto (related document 808 and 810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management,) Entered on 8/12/2020. (Okafor, M.). Modified linkage on 10/1/2020 (Okafor, M.).*
08/12/2020	943 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
08/12/2020	944 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/12/2020	945 Disclosure statement filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−−Plan)(Annable, Zachery)
08/13/2020	946 Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)884 Application for compensation *Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020* for Foley Garder). (O'Neil, Holland)
08/13/2020	947 Joint Motion to continue hearing on (related documents 771 Objection to claim) *(Joint Motion to Continue Status Conference)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/13/2020	948 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
08/13/2020	949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
08/13/2020	950 Order granting motion to seal documents (related document # 932) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	951 Order granting joint motion to continue hearing on (related document # 947) (related documents Objection to claim) Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.)

08/13/2020	952 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 949, (Annable, Zachery)
08/13/2020	953 **SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC AND JOINDER IN THE DEBTOR'S OBJECTION per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)950 Order on motion to seal). (Attachments: # 1 Exhibit Exhibit 1 − Original Synthetic Warehouse Agreement # 2 Exhibit Exhibit 2 Original Engagement Ltr. # 3 Exhibit Exhibit 3 Original Cash Warehouse Agreement # 4 Exhibit Exhibit 6 Expert Report of Louis G. Dudney # 5 Exhibit Exhibit 7 March 20, 2009 Termination Settlement and Release Agreement # 6 Exhibit Exhibit 9 UBS and Crusader Fund Settlement Agreement # 7 Exhibit Exhibit 16 Unredacted version of UBS's Second Amended Complaint # 8 Exhibit Exhibit 20 UBS's Pre−Trial Brief ISO Bifurcation # 9 Exhibit Exhibit 21 UBS and Credit Strategies Settlement Agreement # 10 Exhibit Exhibit 22 Crusader Fund scheme of Arrangement and Joint Plan of Distribution) (Platt, Mark)
08/13/2020	954 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/13/2020	955 Order granting motion to seal documents (related document # 948) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	956 **SEALED document regarding: Plan of Reorganization of Highland Capital Management, L.P. per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)955 Order on motion to seal). (Annable, Zachery)
08/13/2020	957 **SEALED document regarding: Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P. per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)955 Order on motion to seal). (Attachments: # 1 Exhibit A−−Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
08/13/2020	958 BNC certificate of mailing − PDF document. (RE: related document(s)935 Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s)914 Motion for leave filed by Creditor CLO Holdco, Ltd., 915 Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., 927 Joinder filed by Interested Party NexBank). Entered on 8/11/2020) No. of Notices: 2. Notice Date 08/13/2020. (Admin.)
08/14/2020	959 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)830 Application for compensation *Seventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: $223,330.68, Expenses: $1,874.65.). (Hoffman, Juliana)

08/14/2020	960 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26.). (Hoffman, Juliana)
08/14/2020	961 Certificate of service re: *Cover Sheet and Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)936 Application for compensation *Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: $739,976.00, Expenses: $1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/14/2020	962 Certificate of service re: *1) Order Resolving Discovery Motions and Objections Thereto; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 Through June 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)942 Order resolving discovery motions and objections thereto (related document 808) Entered on 8/12/2020. (Okafor, M.), 943 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/17/2020	963 Motion to file document under seal. Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (Attachments: # 1 Proposed Order) (Chiarello, Annmarie)
08/18/2020	964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: $60,570.00, Expenses: $525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−Invoices) (Annable, Zachery)
08/18/2020	965 Order granting motion to seal documents (related document # 963) Entered on 8/18/2020. (Okafor, M.)
08/18/2020	966 **SEALED document regarding: email correspondence produced by Highland Capital Management, L.P. in connection with Acis's bankruptcy cases and bates labeled CONFIDENTIAL Highland0035395− Highland0035405 per court order** filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)965 Order on motion to seal). (Chiarello, Annmarie)
08/18/2020	967 Certificate of service re: *Documents Served on August 13, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)947 Joint Motion to continue hearing on (related documents 771 Objection to claim) *(Joint Motion to Continue Status Conference)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 948 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 951 Order granting joint motion to continue hearing on (related document 947) (related documents Objection to claim) Status Conference to be held on

	8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.), 952 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 949, filed by Debtor Highland Capital Management, L.P., 954 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., 955 Order granting motion to seal documents (related document 948) Entered on 8/13/2020. (Okafor, M.)). (Kass, Albert)
08/19/2020	968 Hearing held on 8/19/2020. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.) (Edmond, Michael)
08/19/2020	969 Application for compensation *Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 7/1/2020 to 7/31/2020, Fee: $531,094.32, Expenses: $10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. (Hoffman, Juliana)
08/19/2020	970 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). (Annable, Zachery)
08/19/2020	971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: $3,475,794.50, Expenses: $12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. (Pomerantz, Jeffrey)
08/19/2020	972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020* for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. (Pomerantz, Jeffrey)
08/19/2020	973 Support/supplemental document *(Notice of Filing of Executed Signature Pages to Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan). (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/19/2020	974 Support/supplemental document *(Notice of Filing of Executed Signature Pages to Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A) (Annable, Zachery)

08/19/2020	975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B) (Annable, Zachery)
08/19/2020	976 Notice of hearing *(Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,573,850.25, Expenses: $22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26. Filed by Objections due by 8/11/2020., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: $60,570.00, Expenses: $525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−Invoices), 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: $3,475,794.50, Expenses: $12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., 972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020* for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., 975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 964 and for 831 and for 975 and for 972 and for 971 and for 924 and for 883, (Annable, Zachery)
08/20/2020	977 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/20/2020	978 Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)970 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)

08/20/2020	979 Certificate of service re: *1) Webex Meeting Invitation to participate electronically in the hearing on Wednesday, August 19, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Notice of and Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 Through June 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: $60,570.00, Expenses: $525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−Invoices) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
08/20/2020	980 Certificate of service re: *Documents Served on August 19, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)969 Application for compensation *Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 7/1/2020 to 7/31/2020, Fee: $531,094.32, Expenses: $10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 970 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). filed by Debtor Highland Capital Management, L.P., 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: $3,475,794.50, Expenses: $12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. filed by Debtor Highland Capital Management, L.P., 972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020* for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. filed by Consultant Mercer (US) Inc., 975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B), 976 Notice of hearing *(Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,573,850.25, Expenses: $22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26. Filed by Objections due by 8/11/2020., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: $60,570.00,

	Expenses: $525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−Invoices), 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: $3,475,794.50, Expenses: $12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., 972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020* for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., 975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 964 and for 831 and for 975 and for 972 and for 971 and for 924 and for 883, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/21/2020	981 Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/21/2020	982 Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
08/21/2020	983 Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s)771 Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 771, Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.).
08/21/2020	984 Motion to appear pro hac vice for Tracy M. O'Steen. Fee Amount $100 Filed by Interested Party Integrated Financial Associates, Inc. (Bryant, M.)
08/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28037405, amount $ 100.00 (re: Doc# 984). (U.S. Treasury)
08/23/2020	985 BNC certificate of mailing − PDF document. (RE: related document(s)978 Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)970 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/23/2020. (Admin.)
08/24/2020	986 Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s)982 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.)
08/24/2020	987 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). (Annable, Zachery)
08/24/2020	988 Support/supplemental document *Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* filed by

	Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere). (O'Neil, Holland)
08/25/2020	989 Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document # 984) Entered on 8/25/2020. (Okafor, M.)
08/25/2020	990 Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)987 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)
08/25/2020	991 Certificate of service re: *1) Amended Notice of Status Conference; to be Held on October 6, 2020 at 1:30 p.m. (Central Time); and 2) Order Approving Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)977 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., 978 Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)970 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)). (Kass, Albert)
08/25/2020	992 Certificate of service re: *1) Affidavit of Service of Karina Yee re: Action by Written Consent of Stockholders in Lieu of Special Meeting (Cornerstone Healthcare Group Holding, Inc.); 2) Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal; and 3) Agreed Scheduling Order Regarding Objections to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)981 Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 982 Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 983 Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s)771 Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 771, Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.).). (Kass, Albert)
08/26/2020	993 Request for transcript regarding a hearing held on 8/19/2020. The requested turn−around time is daily. (Edmond, Michael)
08/26/2020	994 Response opposed to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Dugan, S.) Filed by Creditor Paul N. Adkins (related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund

	Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7) filed by Debtor Highland Capital Management, L.P.). (COURT NOTE: Signature of filer not included. Amended response with signature requested) (Dugan, S.)
08/26/2020	995 Adversary case 20−03105. Complaint by Highland Capital Management, L.P. against Hunter Mountain Investment Trust. Fee Amount $350 (Attachments: # 1 Adversary Proceeding Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). 91 (Declaratory judgment). (Annable, Zachery)
08/26/2020	996 Objection to claim(s) of Creditor(s) Redeemer Committee of the Highland Crusader Fund − Proof of Claim No. 72.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
08/26/2020	997 Motion to file document under seal.*(With the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # 1 Proposed Order Ex A) (Sosland, Martin)
08/26/2020	998 Transcript regarding Hearing Held 08/19/2020 (20 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 968 Hearing held on 8/19/2020. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.)). Transcript to be made available to the public on 11/24/2020. (Rehling, Kathy)
08/27/2020	

	999 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
08/27/2020	1000 Certificate of service re: *1) Order Approving Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal; 2) Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.; and 3) Supplement to the Second Interim Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)986 Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s)982 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.), 987 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). filed by Debtor Highland Capital Management, L.P., 988 Support/supplemental document *Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere). (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
08/27/2020	1001 Certificate of service re: *Order Approving Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)990 Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)987 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)). (Kass, Albert)
08/27/2020	1002 Response unopposed to (related document(s): 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
08/27/2020	1003 BNC certificate of mailing − PDF document. (RE: related document(s)989 Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document 984) Entered on 8/25/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/27/2020	1004 BNC certificate of mailing − PDF document. (RE: related document(s)990 Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)987 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/28/2020	1005 Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document # 999) Entered on 8/28/2020. (Okafor, M.)
08/31/2020	1006 Amended Response opposed to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Rielly, Bill)

08/31/2020	1007 Amended Notice of hearing *(Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 868, (Annable, Zachery)
08/31/2020	1008 Adversary case 20−03107. Complaint by Highland Capital Management, L.P. against Patrick Daugherty. Fee Amount $350 (Attachments: # 1 Adversary Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). (Annable, Zachery)
08/31/2020	1009 **SEALED document regarding: Exhibit 20 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1005 Order on motion to seal). (Annable, Zachery)
08/31/2020	1010 **SEALED document regarding: Exhibit 21 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1005 Order on motion to seal). (Annable, Zachery)
08/31/2020	1011 **SEALED document regarding: Exhibit 22 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1005 Order on motion to seal). (Annable, Zachery)
08/31/2020	1012 **SEALED document regarding: Exhibit 23 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1005 Order on motion to seal). (Annable, Zachery)
08/31/2020	1013 **SEALED document regarding: Exhibit 24 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1005 Order on motion to seal). (Annable, Zachery)
09/01/2020	1014 Debtor−in−possession monthly operating report for filing period July 1, 2020 to July 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/01/2020	1015 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). (Annable, Zachery)
09/01/2020	1016 Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)917 Application for compensation *(Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020)* for Hayward & Associate). (Annable, Zachery)
09/01/2020	1017 Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)931 Application for compensation *(Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020)* for Hayward & Assoc). (Annable, Zachery)
09/01/2020	1018 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)934 Application for compensation *Eighth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor,

	Period: 6/1/2020 to 6/30/2020, Fee: $328,185.72, Expenses: $440.33.). (Hoffman, Juliana)
09/01/2020	1019 Objection to (related document(s): 906 Objection to claim Filed by Debtor Highland Capital Management, L.P. filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Lopez, Paul). MODIFIED to correct linkage on 9/2/2020 (Ecker, C.).
09/01/2020	1020 Certificate of service re: *Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)999 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2020	1021 Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s)1015 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)
09/02/2020	1022 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)936 Application for compensation *Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, F). (Pomerantz, Jeffrey)
09/02/2020	1023 Certificate of service re: *Order Granting Debtor's Motion for Entry of an Order Authorizing Filing Under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1005 Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document 999) Entered on 8/28/2020. (Okafor, M.)). (Kass, Albert)
09/03/2020	1024 Certificate of service re: *Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.; to be Held on October 14, 2020 at 1:30 PM (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1007 Amended Notice of hearing *(Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 868, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/04/2020	1025 Motion to compromise controversy with Carey International, Inc.. *(Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Settlement Agreement) (Annable, Zachery)
09/04/2020	1026 Objection to (related document(s): 949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
09/04/2020	1027 Certificate of service re: *Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* Filed

	by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1015 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/05/2020	1028 Witness and Exhibit List *for Hearing on September 10, 2020* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,5, 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, 949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorn, 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202, 972 Application for compensation Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US), 975 Application for compensation (Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for). (Hayward, Melissa)*
09/08/2020	1029 Certificate of service re: *Order Approving Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1021 Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s)1015 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)). (Kass, Albert)
09/08/2020	1030 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
09/09/2020	1031 Motion to appear pro hac vice for James E. O'Neill. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28083098, amount $ 100.00 (re: Doc# 1031). (U.S. Treasury)
09/09/2020	1032 Notice *(Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)976 Notice of hearing *(Omnibus Notice of Hearing on Second Interim*

	Applications for Compensation and Reimbursement of Expenses of Estate Professionals) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,573,850.25, Expenses: $22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26. Filed by Objections due by 8/11/2020., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: $60,570.00, Expenses: $525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−Invoices), 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: $3,475,794.50, Expenses: $12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., 972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020* for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., 975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 964 and for 831 and for 975 and for 972 and for 971 and for 924 and for 883,). (Annable, Zachery)
09/09/2020	1033 Order granting motion to seal documents (related document # 997) Entered on 9/9/2020. (Okafor, M.)
09/09/2020	1034 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for). (Annable, Zachery)*
09/09/2020	1035 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020* for Mercer (US)). (Annable, Zachery)
09/09/2020	1036 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020*

	through July 31, 202). (Annable, Zachery)
09/09/2020	1037 Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorn). (Annable, Zachery)
09/09/2020	1038 Certificate of service re: *Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1025 Motion to compromise controversy with Carey International, Inc.. *(Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/10/2020	1039 **SEALED document regarding: Exhibits B and C to the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1033 Order on motion to seal). (Attachments: # 1 Part 2 # 2 Part 3 # 3 Part 4 # 4 Part 5 # 5 Part 6) (Sosland, Martin)
09/10/2020	1040 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)969 Application for compensation *Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 7/1/2020 to 7/31/2020, Fee: $531). (Hoffman, Juliana)
09/10/2020	1041 Amended Notice *(Amended Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)976 Notice of hearing *(Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,573,850.25, Expenses: $22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26. Filed by Objections due by 8/11/2020., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: $60,570.00, Expenses: $525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−Invoices), 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: $3,475,794.50, Expenses: $12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., 972 Application for compensation

	Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., 975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 964 and for 831 and for 975 and for 972 and for 971 and for 924 and for 883,). (Annable, Zachery)
09/10/2020	1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.,) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 949, (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.) (Edmond, Michael) (Entered: 09/14/2020)
09/10/2020	1062 Hearing held on 9/10/2020. (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.,) (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where

	appropriate and seeking resettings where appropriate.) (Edmond, Michael) (Entered: 09/14/2020)
09/11/2020	1042 Agreed Order regarding first omnibus objection to certain claims − administrative claim of Internal Revenue Service (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.)
09/11/2020	1043 Order granting application for compensation (related document # 971) granting for Jeffrey Nathan Pomerantz, fees awarded: $3470794.50, expenses awarded: $12205.15 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	1044 Order granting application for compensation (related document # 975) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $615941.40, expenses awarded: $2701.56 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	1045 Order granting application for compensation (related document # 924) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: $63144.80, expenses awarded: $833.49 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	1046 Order granting application for compensation (related document # 972) granting for Mercer (US) Inc., fees awarded: $54029.98, expenses awarded: $297.68 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	1047 Order granting application for compensation (related document # 964) granting for Hayward & Associates PLLC, fees awarded: $60210.00, expenses awarded: $525.80 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	1048 Order granting application for compensation (related document # 831) granting for Official Committee of Unsecured Creditors, fees awarded: $1573850.25, expenses awarded: $22930.21 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	1049 Request for transcript regarding a hearing held on 9/11/2020. The requested turn−around time is daily. (Edmond, Michael)
09/11/2020	1050 Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document # 1031) Entered on 9/11/2020. (Ecker, C.)
09/11/2020	1051 Order granting application for compensation (related document # 883) granting for FTI Consulting, Inc., fees awarded: $1488533.40, expenses awarded: $23515.26 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	1052 Motion to appear pro hac vice for Erica S. Weisgerber. Fee Amount $100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	1053 Motion to appear pro hac vice for Daniel E. Stroik. Fee Amount $100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	1054 Motion to appear pro hac vice for M. Natasha Labovitz. Fee Amount $100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28091874, amount $ 100.00 (re: Doc# 1052). (U.S. Treasury)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28091874, amount $ 100.00 (re: Doc# 1053). (U.S. Treasury)

09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28091874, amount $ 100.00 (re: Doc# 1054). (U.S. Treasury)
09/11/2020	1055 Application for compensation *Ninth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: $182,490.32, Expenses: $1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. (Hoffman, Juliana)
09/11/2020	1056 Certificate of service re: *1) Witness and Exhibit List for Hearing on September 10, 2020; 2) WebEx Meeting Invitation to participate electronically in the hearing on Thursday, September 10, 2020 at 2:30 p.m. Central Time before the Honorable Stacey G. Jernigan; and 3) Instructions for any counsel and parties who wish to participate in the Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1028 Witness and Exhibit List *for Hearing on September 10, 2020* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,5, 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, 949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorn, 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202, 972 Application for compensation Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US), 975 Application for compensation (Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
09/11/2020	1057 Response to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Attachments: # 1 Appendix Part 1 # 2 Appendix Part 2 # 3 Appendix Part 3 # 4 Appendix Part 4) (Driver, Vickie). Modified linkage on 9/14/2020 (Rielly, Bill).
09/13/2020	1058 BNC certificate of mailing − PDF document. (RE: related document(s)1044 Order granting application for compensation (related document 975) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $615941.40, expenses awarded: $2701.56 Entered on 9/11/2020. (Dugan, S.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	1059 BNC certificate of mailing − PDF document. (RE: related document(s)1046 Order granting application for compensation (related document 972) granting for Mercer (US) Inc., fees awarded: $54029.98, expenses awarded: $297.68 Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	1060 BNC certificate of mailing − PDF document. (RE: related document(s)1050 Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document 1031) Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/14/2020	

	1063 Certificate of service re: *1) Motion for Admission Pro Hac Vice of James E. O'Neill to Represent Highland Capital Management, L.P; and 2) Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1031 Motion to appear pro hac vice for James E. O'Neill. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1032 Notice *(Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)976 Notice of hearing *(Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,573,850.25, Expenses: $22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26. Filed by Objections due by 8/11/2020., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: $60,570.00, Expenses: $525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−Invoices), 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: $3,475,794.50, Expenses: $12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., 972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020* for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., 975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 964 and for 831 and for 975 and for 972 and for 971 and for 924 and for 883,). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/16/2020	1064 Transcript regarding Hearing Held 09/10/2020 (49 pages) RE: Fee Applications; Motion to Extend; Omnibus Objection to Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) filed by Debtor Highland Capital

	Management, L.P.,) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 949, (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.), 1062 Hearing held on 9/10/2020. (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.,) (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where appropriate and seeking resettings where appropriate.)). Transcript to be made available to the public on 12/15/2020. (Rehling, Kathy)
09/16/2020	1065 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
09/16/2020	1066 Certificate of service re: *Documents Served on September 11, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1042 Agreed Order regarding first omnibus objection to certain claims − administrative claim of Internal Revenue Service (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.), 1048 Order granting application for compensation (related document 831) granting for Official Committee of

	Unsecured Creditors, fees awarded: $1573850.25, expenses awarded: $22930.21 Entered on 9/11/2020. (Ecker, C.), 1051 Order granting application for compensation (related document 883) granting for FTI Consulting, Inc., fees awarded: $1488533.40, expenses awarded: $23515.26 Entered on 9/11/2020. (Ecker, C.)). (Kass, Albert)
09/16/2020	1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Proposed Order) (RE: Related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.) (Rielly, Bill). (Entered: 10/19/2020)
09/17/2020	1067 Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s).) (Edmond, Michael)
09/17/2020	1068 Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document # 1052) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	1069 Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document # 1053) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	1070 Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document # 1054) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	1071 Certificate of service re: *Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from July 1, 2020 to and Including July 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1055 Application for compensation *Ninth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: $182,490.32, Expenses: $1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
09/18/2020	1072 Application for compensation *Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: $8,046.00, Expenses: $31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
09/18/2020	1073 Order setting Disclosure Statement hearing and deadline to object (RE: related document(s)945 Disclosure statement filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 945. The deadline for any party wishing to object to the Disclosure Statement shall be October 19, 2020 at 5:00 p.m. Entered on 9/18/2020 (Okafor, M.)
09/19/2020	1074 Application for compensation *Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 8/1/2020 to 8/31/2020, Fee: $467,533.08,

	Expenses: $2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. (Hoffman, Juliana)
09/19/2020	1075 BNC certificate of mailing − PDF document. (RE: related document(s)1068 Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document 1052) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	1076 BNC certificate of mailing − PDF document. (RE: related document(s)1069 Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document 1053) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	1077 BNC certificate of mailing − PDF document. (RE: related document(s)1070 Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document 1054) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/21/2020	1078 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* Filed by Debtor Highland Capital Management, L.P.) Responses due by 10/5/2020. (Ecker, C.)
09/21/2020	1079 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan). (Annable, Zachery)
09/21/2020	1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)(Annable, Zachery)
09/21/2020	1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, (Annable, Zachery)
09/22/2020	1082 Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount $31 (with Declaration Under Penalty of Perjury for Non−Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1−−Amended Schedules of Assets and Liabilities − Schedule E−F) (Annable, Zachery)
09/22/2020	Receipt of filing fee for Schedules(19−34054−sgj11) [misc,schedall] (31.00). Receipt number 28122241, amount $ 31.00 (re: Doc# 1082). (U.S. Treasury)
09/22/2020	1083 Certificate of service re: *Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1030 Notice (generic)). (Annable, Zachery)
09/22/2020	1084 Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1065 Notice (generic)). (Annable, Zachery)

09/22/2020	1085 Certificate of service re: Orders of the Court filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1043 Order on application for compensation, 1044 Order on application for compensation, 1045 Order on application for compensation, 1046 Order on application for compensation, 1047 Order on application for compensation, 1050 Order on motion to appear pro hac vice). (Annable, Zachery)
09/22/2020	1086 Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1073 Order to set hearing, 1079 Chapter 11 plan, 1080 Disclosure statement, 1081 Notice of hearing). (Annable, Zachery)
09/23/2020	1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
09/23/2020	1088 Declaration re: *(Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit 1−−Settlement Agreement # 2 Exhibit 2−−Release) (Annable, Zachery)
09/23/2020	1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
09/23/2020	1090 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Annable, Zachery)
09/23/2020	1091 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/24/2020	1092 Order further extending the debtor's exclusive period for solicitation of acceptances of a chapter 11 plan 949 Motion to extend or limit the exclusivity period. Entered on 9/24/2020. (Ecker, C.)
09/24/2020	1093 Request for transcript regarding a hearing held on 9/17/2020. The requested turn−around time is 3−day expedited. (Edmond, Michael)
09/24/2020	1094 Application for compensation *Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/2020, Fee: $672,815.00, Expenses: $3,428.14. Filed by Attorney Jeffrey Nathan Pomerantz Objections

	due by 10/15/2020. (Pomerantz, Jeffrey)
09/24/2020	1095 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order), 1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1087 and for 1089, (Annable, Zachery)
09/24/2020	1096 Certificate of service re: *1) Cover Sheet and Tenth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 Through August 31, 2020; and 2) Summary Cover Sheet and Tenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1072 Application for compensation *Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: $8,046.00, Expenses: $31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 1074 Application for compensation *Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 8/1/2020 to 8/31/2020, Fee: $467,533.08, Expenses: $2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
09/24/2020	1097 Certificate of service re: *Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	1098 Certificate of service re: *Notice of Filing of Debtor's Amended Schedules* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1082 Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount $31 (with Declaration Under Penalty of Perjury for Non−Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1−−Amended Schedules of Assets and Liabilities − Schedule E−F) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List) (Kathman, Jason)
09/24/2020	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 28129975, amount $ 181.00 (re: Doc# 1099). (U.S. Treasury)

09/25/2020	1100 Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # 1 Service List) (Clontz, Megan)
09/25/2020	1101 Transcript regarding Hearing Held 09/17/2020 (13 pages) RE: Status Conference, Objection to Proof of Claim, Motion to Extend Exclusivity. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1067 Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s).)). Transcript to be made available to the public on 12/24/2020. (Rehling, Kathy)
09/25/2020	1102 Amended Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # 1 Service List) (Clontz, Megan)
09/25/2020	1103 Certificate of service re: Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptances of a Chapter 11 Plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1092 Order on motion to extend/shorten time). (Annable, Zachery)
09/25/2020	1104 Certificate of service re: Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1094 Application for compensation *Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Annable, Zachery)
09/25/2020	1105 Omnibus Response opposed to (related document(s): 928 Objection to claim filed by Debtor Highland Capital Management, L.P., 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund) *(UBS's Omnibus Response to Objections to the UBS Proofs of Claim)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., 933 Objection to claim(s) of

	Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit 1 (slip page − to be filed under seal upon order from Court)) # 2 Exhibit Exhibit 2 (slip page − to be filed under seal upon order from Court) # 3 Exhibit Exhibit 3 (slip page − to be filed under seal upon order from Court) # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 (slip page − to be filed under seal upon order from Court) # 7 Exhibit Exhibit 7 (slip page − to be filed under seal upon order from Court) # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 (slip page − to be filed under seal upon order from Court) # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 (slip page − to be filed under seal upon order from Court) # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19 # 20 Exhibit Exhibit 20 (slip page − to be filed under seal upon order from Court) # 21 Exhibit Exhibit 21 (slip page − to be filed under seal upon order from Court) # 22 Exhibit Exhibit 22 (slip page − to be filed under seal upon order from Court)) filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Sosland, Martin)
09/25/2020	1106 Exhibit List *to UBS's Omnibus Response to Objections to the UBS Proof of Claim* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1105 Response to objection to claim). (Attachments: # 1 Exhibit 1 # 2 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 42 # 43 Exhibit 43 # 44 Exhibit 44) (Sosland, Martin)
09/25/2020	1107 Motion to file document under seal.*(UBS's Motion for Leave to file Documents Under Seal with UBS's Omnibus Response to Objections to the UBS Proof of Claim* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
09/28/2020	1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption) (Annable, Zachery)
09/28/2020	1109 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1108, (Annable, Zachery)
09/28/2020	1110 Certificate of service re: *1) Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith; and 2) Declaration of Gregory V. Demo in Support of the Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital*

	Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 1088 Declaration re: *(Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit 1−−Settlement Agreement # 2 Exhibit 2−−Release) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/29/2020	1111 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1025 Motion to compromise controversy with Carey International, Inc.. *(Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith)*). (Annable, Zachery)
09/29/2020	1112 Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Conf, 1109 Notice of hearing). (Annable, Zachery)*
09/29/2020	1113 Certificate of service re: *Documents Served on or Before September 24, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 1090 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 1091 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1095 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order), 1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1087 and for 1089, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

09/30/2020	1114 Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/30/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28143856, amount $ 100.00 (re: Doc# 1114). (U.S. Treasury)
09/30/2020	1115 Debtor−in−possession monthly operating report for filing period August 1, 2020 to August 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2020	1116 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
10/01/2020	1117 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). (Annable, Zachery)
10/02/2020	1118 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Hayward, Melissa)
10/02/2020	1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. (Montgomery, Paige)
10/02/2020	1120 Motion for expedited hearing(related documents 1119 Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
10/05/2020	1121 Response opposed to (related document(s): 1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
10/05/2020	1122 Agreed Order granting 1118 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.)
10/05/2020	1123 Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document # 1025) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	1124 Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document # 1114) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	1125 Order granting motion to seal exhibits (related document # 1091 Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A.

	Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	1126 Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)1117 Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)
10/05/2020	1127 **SEALED document regarding: Exhibit B−−Cornerstone Monetization Schedule per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1125 Order on motion to seal). (Annable, Zachery)
10/05/2020	1128 **SEALED document regarding: Exhibit 2 − Partial Final Award dated March 6, 2019 per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1125 Order on motion to seal). (Annable, Zachery) Modified docket entry text on 10/5/2020 in include exhibit number. (Ellison, T.).
10/05/2020	1129 **SEALED document regarding: Exhibit 3−−Disposition of Application of Modification of Award dated March 14, 2019 per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1125 Order on motion to seal). (Annable, Zachery)
10/05/2020	1130 **SEALED document regarding: Exhibit 4−−Final Award dated April 29, 2019 per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1125 Order on motion to seal). (Annable, Zachery)
10/06/2020	1131 Order granting motion to seal documents (related document # 1107) Entered on 10/6/2020. (Okafor, M.)
10/06/2020	1132 INCORRECT ENTRY − REQUESTER CANCELLED REQUEST. Request for transcript regarding a hearing held on 9/23/2020. The requested turn−around time is 3−day expedited. (Edmond, Michael) Modified on 10/14/2020 (Edmond, Michael).
10/06/2020	1133 **SEALED document regarding: UBS's Omnibus Response to Objections to the UBS Proofs of Claim per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1131 Order on motion to seal). (Attachments: # 1 Exhibit 2 # 2 Exhibit 3 # 3 Exhibit 4 # 4 Exhibit 5 # 5 Exhibit 6 # 6 Exhibit 8 # 7 Exhibit 9 # 8 Exhibit 10 # 9 Exhibit 11 # 10 Exhibit 12 # 11 Exhibit 14 # 12 Exhibit 18 # 13 Exhibit 22 # 14 Exhibit 23 # 15 Exhibit 24 # 16 Exhibit 25 # 17 Exhibit 26 # 18 Exhibit 28 # 19 Exhibit 29 # 20 Exhibit 32 # 21 Exhibit 34 # 22 Exhibit 35 # 23 Exhibit 36 # 24 Exhibit 37 # 25 Exhibit 38 # 26 Exhibit 39 # 27 Exhibit 40 # 28 Exhibit 41 # 29 Exhibit 42 # 30 Exhibit 43) (Sosland, Martin)
10/06/2020	1134 Motion to appear pro hac vice for Joseph L. Christensen. Fee Amount $100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	1135 Motion to appear pro hac vice for Thomas A. Uebler. Fee Amount $100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28159068, amount $ 100.00 (re: Doc# 1134). (U.S. Treasury)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28159068, amount $ 100.00 (re: Doc# 1135).

	(U.S. Treasury)
10/06/2020	1136 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 1119, (Hoffman, Juliana)
10/06/2020	1137 Status Conference Hearing held on 10/6/2020. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)(Edmond, Michael)
10/06/2020	1138 Certificate of service re: *1) Motion for Admission Pro Hac Vice for Elissa A. Wagner to Represent Highland Capital Management, L.P.; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1114 Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1116 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	1139 Certificate of service re: *1) Webex Meeting Invitation to participate electronically in the hearing on October 6, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1117 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	1140 Request for transcript regarding a hearing held on 10/6/2020. The requested turn−around time is daily (Jeng, Hawaii) (Entered: 10/07/2020)
10/07/2020	1141 Objection to (related document(s): 1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/07/2020	1142 Application for compensation *(Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: $29,785.00, Expenses: $980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A July 2020 Invoice) (Annable, Zachery)

10/07/2020	1143 Certificate of service re: *Agreed Motion to Extend the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1118 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/07/2020	1144 BNC certificate of mailing − PDF document. (RE: related document(s)1124 Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document 1114) Entered on 10/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/07/2020. (Admin.)
10/08/2020	1145 Transcript regarding Hearing Held 10/06/2020 (58 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1137 Status Conference Hearing held on 10/6/2020. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)). Transcript to be made available to the public on 01/6/2021. (Rehling, Kathy)
10/08/2020	1146 Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document # 1134) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	1147 Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document # 1135) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	1148 Objection to (related document(s): 1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/08/2020	1149 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross−Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1148 Objection). (Attachments: # 1 Exhibit 1) (Annable, Zachery)
10/08/2020	1150 Adversary case 20−03128. Complaint by Highland Capital Management, L.P. against Patrick Hagaman Daugherty. Fee Amount $350 (Attachments: # 1 Adversary Cover Sheet). Nature(s) of suit: 71 (Injunctive relief − reinstatement of stay). (Annable, Zachery)
10/08/2020	1151 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1055 Application for compensation *Ninth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: $182,490.32, Expenses: $1,392.77.). (Hoffman, Juliana)
10/08/2020	1152 Certificate of service re: *Documents Served on October 5, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by

	10/23/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 1120 Motion for expedited hearing(related documents 1119 Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 1122 Agreed Order granting 1118 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.), 1123 Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document 1025) Entered on 10/5/2020. (Okafor, M.), 1124 Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document 1114) Entered on 10/5/2020. (Okafor, M.), 1125 Order granting motion to seal exhibits (related document 1091 Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/5/2020. (Okafor, M.), 1126 Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)1117 Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)). (Kass, Albert)
10/08/2020	1153 Response opposed to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Attachments: # 1 Ex. A − Loan Agreement # 2 Ex.B − Account Summary) (Assink, Bryan)
10/08/2020	1164 Hearing held on 10/8/2020. (RE: related document(s)1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: P. Montgomery for Official Committee of Unsecured Creditors; J. Kane for CLO Holdco. Nonevidentiary hearing. Announcement of an agreed 60−day extension. Counsel to upload order.) (Edmond, Michael) (Entered: 10/13/2020)
10/09/2020	1154 Motion for leave *to Amend Certain Proofs of Claim* Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed Order) (Assink, Bryan)
10/09/2020	1155 Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F) Insufficient−Documentation Claims (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Schedules 1 − 6) Entered on 10/9/2020 (Okafor, M.)
10/09/2020	1156 Certificate of service re: *Notice of Hearing on PensionDanmarks Motion for Relief from the Automatic Stay and Extending the Objection Deadline* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1136 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 1119, filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
10/09/2020	1157 Certificate of service re: *Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1142 Application for compensation

	(Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: $29,785.00, Expenses: $980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A July 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
10/09/2020	1158 Certificate of service re: *1) Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay; and 2) Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross−Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1148 Objection to (related document(s): 1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1149 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross−Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1148 Objection). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/09/2020	1159 Certificate of service re: *(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P., 1097 Certificate of service re: *Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/09/2020	1160 Application for compensation *Ninth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: $198,616.32, Expenses: $0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. (Hoffman, Juliana)
10/10/2020	1161 BNC certificate of mailing − PDF document. (RE: related document(s)1146 Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document 1134) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)
10/10/2020	1162 BNC certificate of mailing − PDF document. (RE: related document(s)1147 Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document 1135) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)

10/12/2020	1163 Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s)928 Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 928, Entered on 10/12/2020 (Okafor, M.)
10/13/2020	1165 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount $10,000.00) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	1166 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount $507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28176112, amount $ 25.00 (re: Doc# 1165). (U.S. Treasury)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28176112, amount $ 25.00 (re: Doc# 1166). (U.S. Treasury)
10/13/2020	1167 Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	1168 Order granting extension of time to file an adversary proceeding against CLO Holdo, Ltd (RE: related document(s) 1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors. Modified to correct linkage on 11/3/2020 (Ecker, C.).
10/14/2020	1169 Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s)763 Order on application to employ). Entered on 10/14/2020 (Okafor, M.)
10/14/2020	1170 Certificate of service re: *Agreed Supplemental Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1169 Order (generic)). (Annable, Zachery)
10/14/2020	1171 Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	1172 Certificate of service re: *Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F) Insufficient−Documentation Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1155 Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F) Insufficient−Documentation Claims (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Schedules 1 − 6) Entered on 10/9/2020 (Okafor, M.)). (Kass, Albert)
10/15/2020	1173 Notice *(Notice of Filing of (I) Liquidation Analysis and (II) Financial Projections as Exhibits to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit

	B−−Organizational Chart)). (Attachments: # 1 Exhibit C/D to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
10/15/2020	1174 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1074 Application for compensation *Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 8/1/2020 to 8/31/2020, Fee: $467,). (Hoffman, Juliana)
10/15/2020	1175 Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Chiarello, Annmarie)
10/16/2020	1176 Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1173 Notice (generic)). (Annable, Zachery)
10/16/2020	1177 Response opposed to (related document(s): 1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/16/2020	1178 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Annable, Zachery)
10/16/2020	1179 Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
10/16/2020	1180 INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims *(Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	1181 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	1182 Motion to file document under seal.*MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Proposed Order) (Platt, Mark)
10/16/2020	1183 INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1215 AND 1216. Motion to disallow claims *REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON*

	PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Proposed Order) (Platt, Mark) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	1184 Support/supplemental document *(Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery). Related document(s) 1214 Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	1185 Declaration re: *(Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	1186 Brief in support filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1215 Redeemer Committee of the Highland Crusander Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds'). (Platt, Mark). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	1187 Motion to file document under seal. *(Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
10/16/2020	1188 Motion to file document under seal.*(UBS's Motion for Leave to File Documents Under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # 1 Proposed Order) (Sosland, Martin)
10/16/2020	1189 INCORRECT ENTRY: Attorney to refile. Support/supplemental document*APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1183 Motion to disallow claims *REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND, 1186 Brief). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 (slip page − to be filed under seal upon order from Court) # 17 Exhibit 17 (slip page) # 18 Exhibit 18 (slip page) # 19 Exhibit 19 (slip*

	page) # 20 Exhibit 20 (slip page) # 21 Exhibit 21 (slip page) # 22 Exhibit 22 (slip page) # 23 Exhibit 23 (slip page) # 24 Exhibit 24 (slip page) # 25 Exhibit 25 (slip page) # 26 Exhibit 26 (slip page) # 27 Exhibit 27 (slip page) # 28 Exhibit 28 (slip page) # 29 Exhibit 29 (slip page)) (Platt, Mark) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	1190 Objection to (related document(s): 1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Attachments: # 1 A−C) (Sosland, Martin)
10/16/2020	1191 Response opposed to (related document(s): 1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Highland CLO Funding, Ltd.. (Maloney, Mark)
10/16/2020	1192 Declaration re: *W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1190 Objection). (Attachments: # 1 Exhibit 1−6 # 2 Attachments A−C) (Sosland, Martin)
10/16/2020	1193 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1179 Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 1179, (Annable, Zachery)
10/16/2020	1194 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Dondero Ex. A # 2 Dondero Ex. B # 3 Dondero Ex. C # 4 Dondero Ex. D # 5 Dondero Ex. E # 6 Dondero Ex. F # 7 Dondero Ex. G # 8 Dondero Ex. H # 9 Dondero Ex. I # 10 Dondero Ex. J # 11 Dondero Ex. K # 12 Dondero Ex. L # 13 Dondero Ex. M # 14 Dondero Ex. N # 15 Dondero Ex. O # 16 Dondero Ex. P # 17 Dondero Ex. Q # 18 Dondero Ex. R # 19 Dondero Ex. S # 20 Dondero Ex. T # 21 Dondero Ex. U # 22 Dondero Ex. V # 23 Dondero Ex. W # 24 Dondero Ex. X) (Assink, Bryan)
10/16/2020	1195 Objection to (related document(s): 1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/16/2020	1196 Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Driver, Vickie)
10/16/2020	1197 INCORRECT ENTRY: Attorney to refile. Notice *Response to Debtor's Omnibus Objection* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2

	International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	1198 INCORRECT ENTRY: Attorney to refile. Notice *Response to Debtor's Omnibus Objection* filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications

	Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	1199 Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 3 # 4 Exhibit 4 # 5 Exhibit 5) (Sosland, Martin)
10/16/2020	1200 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1094 Application for compensation *Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Pomerantz, Jeffrey)
10/16/2020	1201 Objection to (related document(s): 1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor Patrick Daugherty. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Service List) (Kathman, Jason)
10/16/2020	1202 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Annable, Zachery)
10/16/2020	1203 Certificate of service re: *1) Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020; 2) Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch; and 3) Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1160 Application for compensation *Ninth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: $198,616.32, Expenses: $0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. filed by Financial Advisor FTI Consulting, Inc., 1163 Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s)928 Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 928, Entered on 10/12/2020 (Okafor, M.), 1167 Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/16/2020	1215 Redeemer Committee of the Highland Crusander Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Rielly, Bill). (Entered: 10/19/2020)
10/16/2020	

	1216 Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1214 Motion for summary judgment). (Attachments: # 1 Proposed Order) (Rielly, Bill) (Entered: 10/19/2020)
10/17/2020	1204 Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit PHD −1 # 2 Exhibit PHD − 2) (Kathman, Jason)
10/18/2020	1205 Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	1206 Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order) (Driver, Vickie)
10/18/2020	1208 Declaration re: */of Michael Pugatch in Support of 3018(A) Motion* filed by Creditor HarbourVest et al (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*). (Driver, Vickie)
10/19/2020	1209 Objection to disclosure statement (RE: related document(s)1080 Disclosure statement) filed by Interested Party Jefferies LLC. (Doherty, Casey)
10/19/2020	1210 Objection to disclosure statement (RE: related document(s)1080 Disclosure statement) filed by Creditor Pension Benefit Guaranty Corporation. (Attachments: # 1 Exhibit # 2 Certificate of Service) (Baird, Michael)
10/19/2020	1211 List *APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1183 Motion to disallow claims *REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 (slip page − to be filed under seal upon order from Court) # 17 Exhibit 17 (slip page) # 18 Exhibit 18 (slip page) # 19 Exhibit 19 (slip page) # 20 Exhibit 20 (slip page) # 21 Exhibit 21 (slip page) # 22 Exhibit 22 (slip page) # 23 Exhibit 23 (slip page) # 24 Exhibit 24 (slip page) # 25 Exhibit 25 (slip page) # 26 Exhibit 26 (slip page) # 27 Exhibit 27 (slip page) # 28 Exhibit 28 (slip page) # 29 Exhibit 29 (slip page)) (Platt, Mark)*
10/19/2020	1212 Response opposed to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
10/19/2020	1213 Response opposed to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC. (Drawhorn, Lauren)

10/19/2020	1217 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order), 1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1087 and for 1089, (Annable, Zachery)
10/19/2020	1218 Objection to disclosure statement (RE: related document(s)1080 Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
10/19/2020	1219 Objection to disclosure statement (RE: related document(s)1080 Disclosure statement) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/19/2020	1220 Reply to (related document(s): 1190 Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/19/2020	1221 Omnibus Reply to (related document(s): 1121 Response filed by Interested Party James Dondero, 1177 Response filed by Creditor CLO Holdco, Ltd., 1191 Response filed by Interested Party Highland CLO Funding, Ltd., 1195 Objection filed by Creditor HarbourVest et al, 1201 Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
10/19/2020	1222 Notice of hearing filed by Creditor HarbourVest et al (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order), 1208 Declaration re: */of Michael Pugatch in Support of 3018(A) Motion* filed by Creditor HarbourVest et al (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*).). Hearing to be held on 11/10/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1207 and for 1208, (Driver, Vickie)
10/19/2020	1223 Certificate of service re: Motion of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*). (Driver, Vickie)
10/19/2020	1224 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Proposed Order) (RE: Related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.).). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1214, (Annable, Zachery)
10/19/2020	1225 Amended Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s)1204 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PHD−1 # 2 Exhibit PHD−2 # 3 Exhibit PHD−3 # 4 Exhibit PHD−4 # 5 Exhibit PHD−5 # 6 Exhibit PHD−6 # 7 Exhibit PHD−7 # 8 Exhibit PHD−8 # 9 Exhibit PHD−9 # 10 Exhibit PHD−10 # 11 Exhibit PHD−11 # 12 Exhibit PHD−12 # 13 Exhibit PHD−13 # 14 Exhibit PHD−14 #

	15 Exhibit PHD−15 # 16 Exhibit PHD−16 # 17 Exhibit PHD−17 # 18 Exhibit PHD−18 # 19 Exhibit PHD−19 # 20 Exhibit PHD−20 # 21 Exhibit PHD−22) (Kathman, Jason)
10/19/2020	1226 Witness and Exhibit List filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Platt, Mark)
10/19/2020	1227 Notice of hearing filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1215 Redeemer Committee of the Highland Crusander Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund).., 1216 Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1214 Motion for summary judgment). (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1215 and for 1216, (Platt, Mark)
10/19/2020	1228 Certificate of service re: *1) Order Granting Extension of Time to File an Adversary Proceeding Against CLO Holdo, Ltd.; and 2) Notice of Deposition of Professor Nancy B. Rapaport* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1168 Order granting extension of time to file an adversary proceeding against CLO Holdo, Ltd (RE: related document(s)590 Motion to reclaim funds from the registry filed by Creditor CLO Holdco, Ltd.). Entered on 10/14/2020 (Okafor, M.), 1171 Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/20/2020	1229 Amended Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1199 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 4 # 5 Exhibit 5 # 6 6) (Sosland, Martin)
10/20/2020	1230 Order granting motion to seal documents (related document # 1188 Motion for leave to file documents under seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	1231 **SEALED document regarding: Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1230 Order on motion to seal). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Sosland, Martin)
10/20/2020	1232 **SEALED document regarding: Declaration of W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1230 Order on motion to seal). (Attachments: # 1 Exhibit 4 # 2 Exhibit 4 # 3 Exhibit 6 # 4 Attachment A # 5 Attachment B # 6 Attachment C) (Sosland, Martin)
10/20/2020	1233 First Supplemental Order Sustaining First Omnibus Objection to Certain (A) DuplicateClaims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E)

	No−Liability Claims; and (F) Insufficient−Documentation Claims ((RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.)
10/20/2020	1234 Order granting motion to seal documents (related document # 1182 Motion to seal regarding the Redeemer Committee of the Crusader Funds Motion forPartial Summary Judgment and Joinder in the Debtors Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	1235 Order granting motion to seal documents (related document # 1187 Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	1236 **SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1234 Order on motion to seal). (Platt, Mark)
10/20/2020	1237 **SEALED document regarding: APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1234 Order on motion to seal). (Attachments: # 1 Exhibit 16 (sealed) # 2 Exhibit 17 (sealed) # 3 Exhibit 18 (sealed) # 4 Exhibit 19 (sealed) # 5 Exhibit 20 (sealed) # 6 Exhibit 21 (sealed) # 7 Exhibit 22 (sealed) # 8 Exhibit 23 (sealed) # 9 Exhibit 24 (sealed) # 10 Exhibit 25 (sealed) # 11 Exhibit 26 (sealed) # 12 Exhibit 27 (sealed) # 13 Exhibit 28 (sealed) # 14 Exhibit 29 (sealed)) (Platt, Mark)
10/20/2020	1238 Objection to disclosure statement (RE: related document(s)1080 Disclosure statement) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
10/20/2020	1239 Objection to disclosure statement (RE: related document(s)1080 Disclosure statement) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
10/20/2020	1240 Joinder by *META−E DISCOVERY, LLC TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE* filed by Interested Party Meta−e Discovery, LLC (RE: related document(s)1239 Objection to disclosure statement). (Umari, Basil)
10/20/2020	1241 Objection to disclosure statement (RE: related document(s)1080 Disclosure statement) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)

10/20/2020	1242 Joinder by *REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS JOINDER TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1239 Objection to disclosure statement). (Platt, Mark)
10/20/2020	1243 Hearing held and Continued (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (Continued Hearing to be held on 10/21/2020 at 10:00 AM Dallas Judge Jernigan Ctrm for 1087,) (Edmond, Michael)
10/20/2020	1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. (Hoffman, Juliana)
10/20/2020	1256 Hearing held on 10/20/2020. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	1257 Hearing held on 10/20/2020. (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	1303 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S EXHIBIT'S #1, #2, #3 & #4; COURT TOOK JUDICIAL NOTICE OF THE DECLARATION OF JOHN A. MORRIS; ADMITTED AS AN EXHIBIT #3; EXHIBITS #2 #3 AND #4 TO DECLARATION AND EXHIBIT #B TO EXHIBIT #1 FILED UNDER SEAL) (Edmond, Michael) (Entered: 10/28/2020)
10/20/2020	1304 DOCKET AN ERROR: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N.

	Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #Q, #R, #S, #T, #U, #V, #W & #X; NOTE* EXHIBIT #P (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	1305 MODIFIED TEXT: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (1304 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 − AMENDED PLAN & #1080 − AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE BY PATRICK DAUGHTERY COUNSEL JASON KATHMAN) (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). Modified on 10/30/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	1314 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN ; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 − AMENDED PLAN & #1080 − AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE). (Edmond, Michael) (Entered: 10/30/2020)
10/21/2020	1245 Request for transcript regarding a hearing held on 10/20/2020. The requested turn−around time is hourly. (Edmond, Michael)
10/21/2020	1246 Request for transcript regarding a hearing held on 10/20/2020. The requested turn−around time is hourly (Jeng, Hawaii)
10/21/2020	1247 Motion to appear pro hac vice for Faheem A. Mahmooth. Fee Amount $100 Filed by Creditor Pension Benefit Guaranty Corporation (Webb, Donna)
10/21/2020	1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.).
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (0.00). Receipt number KF: No Fee Due − Exempt U.S. Government Agency, amount $ 0.00 (re: Doc1247). (Floyd)
10/21/2020	1249 **SEALED document regarding: Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)

10/21/2020	1250 **SEALED document regarding: Exhibit 2 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)
10/21/2020	1251 **SEALED document regarding: Exhibit 11 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)
10/21/2020	1252 **SEALED document regarding: Exhibit 12 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)
10/21/2020	1253 **SEALED document regarding: Exhibit 14 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)
10/21/2020	1254 **SEALED document regarding: Exhibit 15 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)
10/21/2020	1255 **SEALED document regarding: Exhibit 16 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)
10/21/2020	1258 Hearing held on 10/21/2020. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.) (Edmond, Michael)
10/21/2020	1259 Notice of Appearance and Request for Notice by Thomas G. Haskins Jr. filed by Creditor NWCC, LLC. (Haskins, Thomas)
10/21/2020	1260 Motion to appear pro hac vice for Jonathan Sundheimer. Fee Amount $100 Filed by Creditor NWCC, LLC (Haskins, Thomas)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28201179, amount $ 100.00 (re: Doc# 1260). (U.S. Treasury)
10/21/2020	1261 Certificate of service re: Joinder to Objection to Disclosure Statement filed by Interested Party Meta−e Discovery, LLC (RE: related document(s)1240 Joinder). (Umari,

	Basil)
10/21/2020	1262 Motion to appear pro hac vice for Joseph T. Moldovan. Fee Amount $100 Filed by Interested Party Meta−e Discovery, LLC (Umari, Basil)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28201283, amount $ 100.00 (re: Doc# 1262). (U.S. Treasury)
10/21/2020	1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/21/2020	1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.).
10/21/2020	1265 Certificate of service re: *Documents Served on or Before October 16, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1178 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., 1179 Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 1180 INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims *(Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery) Modified on 10/19/2020. filed by Debtor Highland Capital Management, L.P., 1181 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., 1184 Support/supplemental document *(Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery). Related document(s) 1214 Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., 1185 Declaration re: *(Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., 1187 Motion to file document under seal. *(Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 1193 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1179 Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D.

	Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 1179, filed by Debtor Highland Capital Management, L.P., 1202 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/22/2020	1266 Order granting motion to continue hearing on (related document # 1263) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1080, Entered on 10/22/2020. (Ecker, C.)
10/22/2020	1267 Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
10/22/2020	1268 Amended Notice of hearing *(Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1080, (Annable, Zachery)
10/22/2020	1269 Certificate of service re: *Documents Served on or Before October 19, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1206 Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1217 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order), 1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1087 and for 1089, filed by Debtor Highland Capital Management, L.P., 1220 Reply to (related document(s): 1190 Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1221 Omnibus Reply to (related document(s): 1121 Response filed by Interested Party James Dondero, 1177 Response filed by Creditor CLO Holdco, Ltd., 1191 Response filed by Interested Party Highland CLO Funding, Ltd., 1195 Objection filed by Creditor HarbourVest et al, 1201 Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 1224 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A − Proposed Order) (RE: Related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.).). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1214, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/22/2020	1270 Certificate of service re: *Documents Served on October 20, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1233 First Supplemental Order Sustaining First Omnibus Objection to Certain (A) DuplicateClaims; (B) Overstated Claims; (C) Late−Filed Claims; (D) Satisfied Claims; (E) No−Liability Claims; and (F)

	Insufficient−Documentation Claims ((RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.), 1235 Order granting motion to seal documents (related document 1187 Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)). (Kass, Albert)
10/23/2020	1271 Transcript regarding Hearing Held 10/20/2020 (256 pages) RE: Motions to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/21/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1256 Hearing held on 10/20/2020. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.), 1257 Hearing held on 10/20/2020. (RE: related document(s)1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.)). Transcript to be made available to the public on 01/21/2021. (Rehling, Kathy)
10/23/2020	1272 Request for transcript regarding a hearing held on 10/21/2020. The requested turn−around time is hourly. (Edmond, Michael)
10/23/2020	1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document # 1089) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, (Annable, Zachery)
10/23/2020	1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital

	Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, (Annable, Zachery)
10/23/2020	1276 Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document # 1247) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	1277 Order granting motion to appear pro hac vice adding Jonathan D. Sundheimer for NWCC, LLC (related document 1260) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	1278 Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta−e Discovery, LLC (related document # 1262) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	1279 Motion to file document under seal.− *Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents* Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Delaware Protective Order) (Kathman, Jason)
10/23/2020	1280 Motion for leave *to Amend Proof of Claim No. 77* Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Second Amended Proof of Claim) (Kathman, Jason)
10/23/2020	1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A − Proposed Order) (Kathman, Jason)
10/23/2020	1282 Brief in support filed by Creditor Patrick Daugherty (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*). (Kathman, Jason)
10/23/2020	1283 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 9/30/2020, Fee: $356,889.96, Expenses: $2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. (Hoffman, Juliana)
10/23/2020	1284 Support/supplemental document− *Appendix to Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018* filed by Creditor Patrick Daugherty (RE: related document(s)1282 Brief). (Attachments: # 1 Appendix − Part 1 of 3 # 2 Appendix − Part 2 # 3 Appendix − Part 3) (Kathman, Jason)
10/24/2020	1285 Transcript regarding Hearing Held 10/21/2020 (48 pages) RE: Motion to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/22/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1258 Hearing held on 10/21/2020. (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST.

	Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.)). Transcript to be made available to the public on 01/22/2021. (Rehling, Kathy)
10/25/2020	1286 Omnibus Response opposed to (related document(s): 1209 Objection to disclosure statement filed by Interested Party Jefferies LLC, 1210 Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, 1218 Objection to disclosure statement filed by Creditor Patrick Daugherty, 1219 Objection to disclosure statement filed by Creditor HarbourVest et al, 1238 Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, 1239 Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, 1241 Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/25/2020	1287 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan). (Annable, Zachery)
10/25/2020	1288 Support/supplemental document *(Redline of Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1287 Chapter 11 plan). (Annable, Zachery)
10/25/2020	1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement). (Annable, Zachery)
10/25/2020	1290 Support/supplemental document *(Redline of the Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Disclosure statement). (Annable, Zachery)
10/25/2020	1291 BNC certificate of mailing − PDF document. (RE: related document(s)1276 Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document 1247) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/25/2020	1292 BNC certificate of mailing − PDF document. (RE: related document(s)1278 Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta−e Discovery, LLC (related document 1262) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/26/2020	1293 Certificate of service re: *(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P., 1097 Certificate of service re: *Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit

	B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/26/2020	1294 Certificate of service re: *Documents Served on October 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., 1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/26/2020	1295 Support/supplemental document *(Notice of Supplemental Disclosures)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Disclosure statement). (Annable, Zachery)
10/27/2020	1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,865,520.45, Expenses: $18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. (Hoffman, Juliana)
10/27/2020	1297 Request for transcript regarding a hearing held on 10/27/2020. The requested turn−around time is hourly (Jeng, Hawaii)
10/27/2020	1298 Certificate of service re: *Documents Served on or Before October 23, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1266 Order granting motion to continue hearing on (related document 1263) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1080, Entered on 10/22/2020. (Ecker, C.), 1268 Amended Notice of hearing *(Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/27/2020	1307 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth

	of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the $1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third−party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/27/2020	1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the $1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third−party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/28/2020	1299 Request for transcript regarding a hearing held on 10/28/2020. The requested turn−around time is hourly (Jeng, Hawaii)
10/28/2020	1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, (Annable, Zachery)
10/28/2020	1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.)
10/28/2020	1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document # 1087) Entered on 10/28/2020. (Okafor, M.)
10/28/2020	1306 Hearing held on 10/28/2020. (RE: related document(s)1099 Motion for relief from stay − Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.) (Edmond, Michael)

10/28/2020	1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, (Annable, Zachery)
10/28/2020	1310 Certificate of service re: *1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, filed by Debtor Highland Capital Management, L.P., 1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/28/2020	1311 Certificate of service re: *1) Summary Cover Sheet and Eleventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through September 30, 2020; and 2) Debtors Omnibus Reply to Objections to Approval of the Debtors Disclosure Statement for the Debtors First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1283 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 9/30/2020, Fee: $356,889.96, Expenses: $2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 1286 Omnibus Response opposed to (related document(s): 1209 Objection to disclosure statement filed by Interested Party Jefferies LLC, 1210 Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, 1218 Objection to disclosure statement filed by Creditor Patrick Daugherty, 1219 Objection to disclosure statement filed by Creditor HarbourVest et al, 1238 Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, 1239 Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, 1241 Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.)

	filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/29/2020	1312 Transcript regarding Hearing Held 10/27/2020 (95 pages) RE: Amended Disclosure Statement, Motion for Entry of an Order Approving Adequacy of Disclosure Statement. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/27/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the $1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third−party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.)). Transcript to be made available to the public on 01/27/2021. (Rehling, Kathy)
10/29/2020	1313 Certificate of service re: *Summary Cover Sheet and Third Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from June 1, 2020 Through and Including August 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,865,520.45, Expenses: $18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
10/30/2020	1315 Order directing UBS' Offer of Proof (RE: related document(s)1089 Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)
10/30/2020	1316 Certificate No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1160 Application for compensation *Ninth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: $198,616.32, Expenses: $0.). (Hoffman, Juliana)
10/30/2020	1317 Certificate of service re: *(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital

	Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P., 1097 Certificate of service re: *Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/31/2020	1318 Transcript regarding Hearing Held 10/28/2020 (32 pages) RE: Patrick Daugherty's Motion to Confirm Status of Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1306 Hearing held on 10/28/2020. (RE: related document(s)1099 Motion for relief from stay − Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.)). Transcript to be made available to the public on 01/29/2021. (Rehling, Kathy)
11/01/2020	1319 BNC certificate of mailing − PDF document. (RE: related document(s)1315 Order directing UBS' Offer of Proof (RE: related document(s)1089 Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)) No. of Notices: 2. Notice Date 11/01/2020. (Admin.)
11/02/2020	1320 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	1321 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C)

	Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/03/2020	1323 Certificate of service re: Daugherty's Objection to Approval of Debtor's Disclosure Statement filed by Creditor Patrick Daugherty (RE: related document(s)1218 Objection to disclosure statement). (Kathman, Jason)
11/03/2020	1324 Certificate of service re: Daugherty's Motion for Leave to File Under Seal filed by Creditor Patrick Daugherty (RE: related document(s)1279 Motion to file document under seal.− *Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents*). (Kathman, Jason)
11/03/2020	1325 Certificate of service re: Daugherty's Motion for Leave to Amend Proof of Claim No. 77 filed by Creditor Patrick Daugherty (RE: related document(s)1280 Motion for leave *to Amend Proof of Claim No. 77*). (Kathman, Jason)
11/03/2020	1326 Certificate of service re: Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes, Brief and Appendix filed by Creditor Patrick Daugherty (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*, 1282 Brief, 1284 Support/supplemental document). (Kathman, Jason)
11/03/2020	1327 Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document # 1099) Entered on 11/3/2020. (Okafor, M.)
11/03/2020	1328 Notice *of Withdrawal of Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause For Violations of the Acis Plan Injunction* filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)593 Motion for relief from stay Fee amount $181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)). (Shaw, Brian)
11/03/2020	1329 Debtor−in−possession monthly operating report for filing period September 1, 2020 to September 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/03/2020	1330 Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1142 Application for compensation *(Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020)* for Hayward & Associ). (Annable, Zachery)

11/03/2020	1331 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to September 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
11/04/2020	1332 Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1331 Notice (generic)). (Annable, Zachery)
11/05/2020	1333 Stipulation by Highland Capital Management, L.P. and Acis Capital Management, L.P., Acis Capital Management GP, LLC, Joshua N. Terry, Jennifer G. Terry, and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1302 Order on motion to compromise controversy). (Annable, Zachery)
11/05/2020	1334 Certificate of service re: *(Amended) Documents Served on October 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., 1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1294 Certificate of service re: *Documents Served on October 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., 1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/05/2020	1335 Certificate of service re: *(Amended) 1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of*

	Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, filed by Debtor Highland Capital Management, L.P., 1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1310 Certificate of service re: *1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, filed by Debtor Highland Capital Management, L.P., 1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/05/2020	1336 BNC certificate of mailing − PDF document. (RE: related document(s)1327 Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document 1099) Entered on 11/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/05/2020. (Admin.)
11/06/2020	1337 Response opposed to (related document(s): 1214 Motion for summary judgment filed by Debtor Highland Capital Management, L.P., 1215 Motion for summary judgment filed by Interested Party Redeemer Committee of the Highland Crusader Fund) filed by

	Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
11/06/2020	1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order) (Sosland, Martin)
11/06/2020	1339 Notice of appeal . Fee Amount $298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)(Sosland, Martin)
11/06/2020	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28246686, amount $ 298.00 (re: Doc# 1339). (U.S. Treasury)
11/06/2020	1340 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: $170,859.60, Expenses: $806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. (Hoffman, Juliana)
11/06/2020	1341 Brief in opposition filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment). (Sosland, Martin)
11/06/2020	1342 Brief in support filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Sosland, Martin)
11/06/2020	1343 Motion to file document under seal.*(With UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	1344 Motion to file document under seal.*(With UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	1345 Exhibit List *(Appendix of Exhibits to UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claims Nos. 190 and 191 and in Support of Rule 56(d) Request)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1337 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9−21 # 10 Exhibit 22) (Sosland, Martin)
11/06/2020	1346 Exhibit List *(Appendix of Exhibits to UBS's Brief in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9−29) (Sosland, Martin)
11/09/2020	1347 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)(Assink, Bryan)

11/09/2020	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28249949, amount $ 298.00 (re: Doc# 1347). (U.S. Treasury)
11/09/2020	1348 Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # 1 Proposed Order) (Driver, Vickie)
11/09/2020	1349 Objection to (related document(s): 1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/09/2020	1350 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1349 Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
11/10/2020	1351 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A − Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1281, (Annable, Zachery)
11/10/2020	1352 Order granting motion to continue hearing on (related document # 1348) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 12/2/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 11/10/2020. (Okafor, M.)
11/10/2020	1353 Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request (related document # 1343) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	1354 Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # 1344) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	1355 **SEALED document regarding: UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1353 Order on motion to seal). (Attachments: # 1 Exhibit 9 # 2 Exhibit 10 # 3 Exhibit 11 # 4 Exhibit 12 # 5 Exhibit 13 # 6 Exhibit 14 # 7 Exhibit 15 # 8 Exhibit 16 # 9 Exhibit 17 # 10 Exhibit 18 # 11 Exhibit 19 # 12 Exhibit 20 # 13 Exhibit 21) (Sosland, Martin)
11/10/2020	1356 **SEALED document regarding: UBS's Brief in Support of Motion for Temporary Allowance of claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1354 Order on motion to seal). (Attachments: # 1 Exhibit 9 # 2 Exhibit 10 # 3 Exhibit 11 # 4 Exhibit 12 # 5 Exhibit 13 # 6 Exhibit 14 # 7 Exhibit 15 # 8 Exhibit 16 # 9 Exhibit 17 # 10 Exhibit 18 # 11 Exhibit 19 # 12 Exhibit 20 # 13 Exhibit 21 # 14 Exhibit 22 # 15 Exhibit 23 # 16 Exhibit 24 # 17 Exhibit 25 # 18 Exhibit 26 # 19 Exhibit 27 # 20 Exhibit 28 # 21 Exhibit 29) (Sosland, Martin)
11/10/2020	1357 Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of*

	Bankruptcy Procedure 3018) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1338, (Sosland, Martin)
11/10/2020	1358 Certificate of service re: *Eleventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 to and Including September 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1340 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: $170,859.60, Expenses: $806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
11/10/2020	1359 Certificate of service re: *1) Debtors Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018; and 2) Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1349 Objection to (related document(s): 1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1350 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1349 Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/11/2020	1360 Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28256837, amount $ 100.00 (re: Doc# 1360). (U.S. Treasury)
11/11/2020	1361 Certificate of service re: *1) Notice of Transfer for MCS Capital LLC c/o STC, Inc. re: Lynn Pinker Cox & Hurst, LLP (Claim No. 148); and 2) Notice of Transfer for Argo Partners re: Stanton Advisors LLC (Scheduled Amount $10,000.00)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1165 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount $10,000.00) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, 1166 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount $507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. filed by Creditor Argo Partners). (Kass, Albert)
11/12/2020	1363 Certificate of mailing regarding appeal (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
11/12/2020	1364 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/12/2020	1365 Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s)821 Agreed order regarding deposit of funds into the registry of

	the Court.). Entered on 11/12/2020 (Okafor, M.)
11/12/2020	1366 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A−−DSI Monthly Staffing Report for August 2020) (Annable, Zachery)
11/12/2020	1367 Certificate of service re: *Notice of Hearing on Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1351 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A − Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1281, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2020	1368 Clerk's correspondence requesting to amend the notice of appeal from attorney for appellant. (RE: related document(s)1339 Notice of appeal . Fee Amount $298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) Responses due by 11/16/2020. (Whitaker, Sheniqua)
11/12/2020	1369 Amended notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1339 Notice of appeal). (Sosland, Martin)
11/12/2020	1370 Notice of docketing notice of appeal. Civil Action Number: 3:20−cv−03390−X. (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/13/2020	1371 Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document # 1360) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	1372 Order granting motion to seal documents (related document # 1279) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	1374 INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua) Modified on 11/13/2020 (Whitaker, Sheniqua).
11/13/2020	1375 Certificate of mailing regarding appeal (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
11/13/2020	

	1376 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	1377 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	1378 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	1379 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount $20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	1380 WITHDRAWN per # 1421. Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas) Modified on 11/19/2020 (Ecker, C.).
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1377). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1378). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1379). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1380). (U.S. Treasury)
11/13/2020	1381 Notice of docketing notice of appeal. Civil Action Number: 3:20−cv−03408−G. (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	1382 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*). (Annable, Zachery)
11/13/2020	1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan). (Annable, Zachery)
11/13/2020	1384 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement). (Annable, Zachery)
11/13/2020	1385 Support/supplemental document *(Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Chapter 11 plan). (Annable, Zachery)

11/13/2020	1386 Support/supplemental document *(Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1384 Disclosure statement). (Annable, Zachery)
11/13/2020	1387 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/13/2020	1388 Witness and Exhibit List *for Hearing on Motion for Allowance of Claim* filed by Creditor Patrick Daugherty (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*). (Attachments: # 1 Exhibit PHD−1 # 2 Exhibit PHD−2 # 3 Exhibit PHD−3 # 4 Exhibit PHD−4 # 5 Exhibit PHD−5 # 6 Exhibit PHD−6 # 7 Exhibit PHD−7 # 8 Exhibit PHD−8 # 9 Exhibit PHD−9 # 10 Exhibit PHD−10 # 11 Exhibit PHD−11 # 12 Exhibit PHD−12 # 13 Exhibit PHD−13 # 14 Exhibit PHD−14 # 15 Exhibit PHD−15 # 16 Exhibit

	PHD−16 # 17 Exhibit PHD−17 # 18 Exhibit PHD−18 # 19 Exhibit PHD−19 # 20 Exhibit PHD−20 # 21 Exhibit PHD−21 # 22 Exhibit PHD−22 # 23 Exhibit PHD−23 # 24 Exhibit PHD−24 # 25 Exhibit PHD−25 # 26 Exhibit PHD−26 # 27 Exhibit PHD−27 # 28 Exhibit PHD−28 # 29 Exhibit PHD−29 # 30 Exhibit PHD−30 # 31 Exhibit PHD−31 # 32 Exhibit PHD−32 # 33 Exhibit PHD−33 # 34 Exhibit PHD−34 # 35 Exhibit PHD−35 # 36 Exhibit PHD−36 # 37 Exhibit PHD−37 # 38 Exhibit PHD−38 # 39 Exhibit PHD−39 # 40 Exhibit PHD−40 # 41 Exhibit PHD−41 # 42 Exhibit PHD−42) (Kathman, Jason)
11/13/2020	1389 Notice *(Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan).). (Attachments: # 1 Exhibit A−−Form of Claimant Trust Agreement # 2 Exhibit B−−Form of New GP LLC Documents # 3 Exhibit C−−Form of Reorganized Limited Partnership Agreement # 4 Exhibit D−−Form of Litigation Sub−Trust Agreement # 5 Exhibit E−−Schedule of Retained Causes of Action # 6 Exhibit F−−Form of New Frontier Note # 7 Exhibit G−−Schedule of Employees # 8 Exhibit H−−Form of Senior Employee Stipulation) (Annable, Zachery)
11/14/2020	1390 BNC certificate of mailing. (RE: related document(s)1364 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order))) No. of Notices: 1. Notice Date 11/14/2020. (Admin.)
11/15/2020	1391 BNC certificate of mailing. (RE: related document(s)1376 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Attachments: # 1 Exhibit))) No. of Notices: 2. Notice Date 11/15/2020. (Admin.)
11/15/2020	1392 BNC certificate of mailing − PDF document. (RE: related document(s)1371 Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document 1360) Entered on 11/13/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 11/15/2020. (Admin.)
11/16/2020	1393 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Peri). (Pomerantz, Jeffrey)
11/16/2020	1394 **SEALED document regarding: Exhibit 1 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1395 **SEALED document regarding: Exhibit 26 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1396 **SEALED document regarding: Exhibit 27 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)

11/16/2020	1397 **SEALED document regarding: Exhibit 36 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1398 **SEALED document regarding: Exhibit 37 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1399 Notice *(Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
11/16/2020	1400 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
11/16/2020	1401 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/16/2020	1402 Reply to (related document(s): 1337 Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28270620, amount $ 25.00 (re: Doc# 1401). (U.S. Treasury)
11/16/2020	1403 Exhibit List *(Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1402 Reply). (Annable, Zachery)
11/16/2020	1404 Objection to (related document(s): 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

11/16/2020	1405 Motion to file document under seal.*MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Proposed Order) (Platt, Mark)
11/16/2020	1406 Motion to file document under seal.*MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS OBJECTION AND JOINDER TO DEBTORS OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES LLCS MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Platt, Mark)
11/16/2020	1407 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10.). (Hoffman, Juliana)
11/16/2020	1408 Reply to (related document(s): 1337 Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit A # 2 Exhibit B (slip sheet only)) (Platt, Mark)
11/16/2020	1409 Objection to (related document(s): 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit A (slip sheet only) # 2 Exhibit B (slip sheet only) # 3 Exhibit C (slip sheet only) # 4 Exhibit D (slip sheet only)) (Platt, Mark)
11/16/2020	1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10., 1407 Certificate (generic)). (Hoffman, Juliana)
11/16/2020	1411 Reply to (related document(s): 1349 Objection filed by Debtor Highland Capital Management, L.P.) − *Daugherty's Reply in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Bankruptcy Rule 3018* filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/16/2020	1412 Declaration re: *Michael S. Colvin in Support of Motion for Temporary Allowance of Claims for Voting Purposes* filed by Creditor Patrick Daugherty (RE: related document(s)1411 Reply). (Kathman, Jason)
11/17/2020	1413 Witness and Exhibit List *(Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 30) (Annable, Zachery)
11/17/2020	

	1414 Witness and Exhibit List *for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Platt, Mark)
11/17/2020	1415 Request for transcript regarding a hearing held on 11/17/2020. The requested turn−around time is hourly. (Edmond, Michael)
11/17/2020	1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,86). (Hoffman, Juliana)
11/17/2020	1417 Certificate of service re: *1) Motion for Admission Pro Hac Vice of Hayley R. Winograd to Represent Highland Capital Management, L.P.; 2) Agreed Supplemental Order Regarding Deposit of Funds Into the Registry of the Court; and 3) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 Through August 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1360 Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1365 Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s)821 Agreed order regarding deposit of funds into the registry of the Court.). Entered on 11/12/2020 (Okafor, M.), 1366 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A−−DSI Monthly Staffing Report for August 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/17/2020	1418 Witness and Exhibit List *(UBS's Witness and Exhibit List for November 20, 2020 Hearing)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1214 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 26 − 28 # 2 Exhibit 29 # 3 Exhibit 30 # 4 Exhibit AG30 # 5 Exhibit AG31 # 6 Exhibit AG32 − AG46) (Sosland, Martin)
11/17/2020	1419 Court admitted exhibits date of hearing November 17, 2020 (RE: related document(s)1281 Motion for leave − Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty., (COURT ADMITTED THE FOLLOWING EXHIBIT'S; PLAINTIFF'S PATRICK H. DAUGHERTY EXHIBIT'S #1 THROUGH #41 BY THOMAS UEBLER AND DEFENDANT DEBTOR'S EXHIBIT'S #A THROUGH #V & EXHIBIT'S #X1 & #X2 BY JOHN MORRIS) (Edmond, Michael) (Entered: 11/18/2020)
11/17/2020	1422 Hearing held on 11/17/2020. (RE: related document(s)1281 Motion for leave − Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at $9,134,019 for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2020)

11/18/2020	1420 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
11/18/2020	1421 Withdrawal *[Notice of Withdrawal of Notice of Transfer of Claim From Debevoise & Plimpton LLP to Contrarian Funds, LLC]* Filed by Creditor Contrarian Funds LLC (related document(s)1380 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Schneller, Douglas)
11/18/2020	1423 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1382 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit X−1 # 24 Exhibit X−2) (Annable, Zachery)
11/18/2020	1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery)
11/18/2020	1425 Motion for expedited hearing(related documents 1424 Motion for leave) *(Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreement)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/18/2020	1426 Transcript regarding Hearing Held 11/17/2020 (90 pages) RE: Motion for Temporary Allowance of Claim (#1281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/16/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1422 Hearing held on 11/17/2020. (RE: related document(s)1281 Motion for leave − Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at $9,134,019 for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 02/16/2021. (Rehling, Kathy)
11/18/2020	1427 Certificate of service re: *Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1420 Notice (generic)). (Annable, Zachery)
11/18/2020	1428 Certificate of service re: *Documents Served on or Before November 14, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1371 Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document 1360) Entered on 11/13/2020. (Ecker, C.), 1382 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related

	document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*). filed by Debtor Highland Capital Management, L.P., 1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1384 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1385 Support/supplemental document *(Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1386 Support/supplemental document *(Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1384 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1389 Notice *(Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan).). (Attachments: # 1 Exhibit A−−Form of Claimant Trust Agreement # 2 Exhibit B−−Form of New GP LLC Documents # 3 Exhibit C−−Form of Reorganized Limited Partnership Agreement # 4 Exhibit D−−Form of Litigation Sub−Trust Agreement # 5 Exhibit E−−Schedule of Retained Causes of Action # 6 Exhibit F−−Form of New Frontier Note # 7 Exhibit G−−Schedule of Employees # 8 Exhibit H−−Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/18/2020	1429 Expedited Motion to file document under seal.*(UBS's Expedited Motion for Leave to File Documents Under Seal With UBS's Witness and Exhibit List for November 20, 2020 Hearing)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/19/2020	1430 Order granting motion to seal documents regarding the RedeemerCommittee of the Highland Crusader Funds and Crusader Funds Reply Brief in Support of their Motion for Partial Summary Judgment and Joinder in the DebtorsMotion for Partial Summary Judgement on Proof of Claim Nos. 190 and 191 of UBS AG, LondonBranch and UBS Securities LLC.(related document # 1405) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1431 Order granting motion to seal documents regarding the RedeemerCommittee of the Crusader Fund and the Crusader Funds Objection and Joinder to Debtors Objection to UBS AG, London Branch and UBS Securities LLCs Motionfor Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of BankruptcyProcedure 3018 (related document # 1406) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1432 **SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS' OBJECTION AND JOINDER TO DEBTOR'S OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018 per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1431 Order on motion to seal). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Platt, Mark)
11/19/2020	1433 **SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order** filed by Interested Party Redeemer Committee

	of the Highland Crusader Fund (RE: related document(s)1430 Order on motion to seal). (Attachments: # 1 Exhibit B) (Platt, Mark)
11/19/2020	1434 Notice of hearing *(Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, (Annable, Zachery)
11/19/2020	1435 Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1166 Assignment/Transfer of claim (Claims Agent)). (Annable, Zachery)
11/19/2020	1436 Order granting motion for expedited hearing (Related Doc# 1425)(document set for hearing: 1424 Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1437 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/19/2020	1438 Notice *(Reservation of Rights of UBS Regarding Debtor's Motion for Approval of the Debtor's Proposed Disclosure Statement and Certain Solicitation and Notice Procedures)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption), 1384 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement).). (Sosland, Martin)
11/19/2020	1439 WITHDRAWN per docket # 1622Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
11/19/2020	1440 Order granting motion to seal documents with UBSs Witness and Exhibit List for November 20, 2020 Hearing (related document # 1429) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1441 **SEALED document regarding: UBS's Witness and Exhibit List for November 20, 2020 Hearing per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1440 Order on motion to seal). (Attachments: # 1 Exhibit 26 # 2 Exhibit 27 # 3 Exhibit 28 # 4 Exhibit 30 # 5 Exhibit AG32 # 6 Exhibit AG33 # 7 Exhibit AG34 # 8 Exhibit AG35 # 9 Exhibit AG36 # 10 Exhibit AG37 # 11 Exhibit AG38 # 12 Exhibit AG39 # 13 Exhibit AG40 # 14 Exhibit AG41 # 15 Exhibit AG42 # 16 Exhibit AG43 # 17 Exhibit AG44 # 18 Exhibit AG45 # 19 Exhibit AG46) (Sosland, Martin)
11/19/2020	

	1442 Certificate of service re: *Documents Served on November 16, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1399 Notice *(Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., 1400 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 1402 Reply to (related document(s): 1337 Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1403 Exhibit List *(Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1402 Reply). filed by Debtor Highland Capital Management, L.P., 1404 Objection to (related document(s): 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/19/2020	1443 Motion for expedited hearing(related documents 1439 Motion for leave) *(Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
11/20/2020	1444 Notice *(Revised Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1437 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
11/20/2020	1445 Objection to disclosure statement (RE: related document(s)1384 Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/20/2020	1446 Request for transcript regarding a hearing held on 11/20/2020. The requested turn−around time is hourly. (Edmond, Michael)
11/20/2020	1447 WITHDRAWN per # 1460 Response opposed to (related document(s): 1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Bonds, John) Modified on 11/23/2020 (Ecker, C.).

11/20/2020	1448 Application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: $1,119,675.50, Expenses: $19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	1449 Amended application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: $1,119,675.50, Expenses: $19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	1450 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan). (Annable, Zachery)
11/20/2020	1451 Support/supplemental document *(Interim Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1450 Chapter 11 plan). (Annable, Zachery)
11/20/2020	1452 Support/supplemental document *(Cumulative Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1450 Chapter 11 plan). (Annable, Zachery)
11/20/2020	1453 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement). (Annable, Zachery)
11/20/2020	1454 Support/supplemental document *(Interim Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1453 Disclosure statement). (Annable, Zachery)
11/20/2020	1455 Support/supplemental document *(Cumulative Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1453 Disclosure statement). (Annable, Zachery)
11/20/2020	1456 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1369 Amended notice of appeal). Appellee designation due by 12/4/2020. (Sosland, Martin)
11/20/2020	1457 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080

	Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/20/2020	1462 Hearing held on 11/20/2020. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1463 Hearing held on 11/20/2020. (RE: related document(s)1215 Redeemer Committee of the Highland Crusander Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1464 Hearing held on 11/20/2020. (RE: related document(s)1338 Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at $94.76 million. Counsel for UBS to submit an Order.) (Edmond, Michael) (Entered: 11/23/2020)

11/23/2020	1458 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)1456 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1369 Amended notice of appeal). Appellee designation due by 12/4/2020.) Responses due by 11/25/2020. (Blanco, J.)
11/23/2020	1459 Reply to (related document(s): 1447 Response filed by Interested Party James Dondero) *(Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	1460 Withdrawal filed by Interested Party James Dondero (RE: related document(s)1447 Response). (Assink, Bryan)
11/23/2020	1461 Objection to (related document(s): 1443 Motion for expedited hearing(related documents 1439 Motion for leave) *(Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)*
11/23/2020	1465 Reply to (related document(s): 1461 Objection filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
11/23/2020	1466 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1347 Notice of appeal). Appellee designation due by 12/7/2020. (Assink, Bryan)
11/23/2020	1467 Notice of hearing filed by Interested Party James Dondero (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, (Assink, Bryan)
11/23/2020	1468 Certificate of service re: *re: 1) WebEx Meeting Invitation to participate electronically in the hearing on Tuesday, November 20, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Debtors Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1413 Witness and Exhibit List *(Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 30) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	1469 Certificate of service re: *1) Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements; and 2) Debtors Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub−Servicer Agreement* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital

	Management, L.P., 1425 Motion for expedited hearing(related documents 1424 Motion for leave) *(Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreement)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	1470 Certificate of service re: *Documents Served on November 19, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1434 Notice of hearing *(Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, filed by Debtor Highland Capital Management, L.P., 1435 Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1166 Assignment/Transfer of claim (Claims Agent)). filed by Debtor Highland Capital Management, L.P., 1436 Order granting motion for expedited hearing (Related Doc1425)(document set for hearing: 1424 Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, Entered on 11/19/2020. (Okafor, M.), 1437 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	1478 Hearing held on 11/23/2020. (RE: related document(s)1424 Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/23/2020	1479 Hearing held on 11/23/2020. (RE: related document(s)1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/23/2020	1480 Hearing held on 11/23/2020. (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/24/2020	1471 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1154 Motion for leave *to Amend Certain Proofs of Claim* Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed

	Order)) Responses due by 12/8/2020. (Ecker, C.)
11/24/2020	1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). (Annable, Zachery)
11/24/2020	1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). (Annable, Zachery)
11/24/2020	1474 Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document # 1281) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	1475 Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements (related document # 1424) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)
11/24/2020	1477 Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s)1435 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)
11/25/2020	1481 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)1466 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1347 Notice of appeal). Appellee designation due by 12/7/2020.) Responses due by 12/2/2020. (Blanco, J.)
11/25/2020	1482 Transcript regarding Hearing Held 11/20/2020 (223 pages) RE: Motions for Partial Summary Judgment; Motion to Allow Claims for Voting Purposes. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1462 Hearing held on 11/20/2020. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), 1463 Hearing held on 11/20/2020. (RE: related document(s)1215 Redeemer Committee of the Highland Crusander Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), 1464 Hearing held

	on 11/20/2020. (RE: related document(s)1338 Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at $94.76 million. Counsel for UBS to submit an Order.)). Transcript to be made available to the public on 02/23/2021. (Rehling, Kathy)
11/25/2020	1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)
11/25/2020	1484 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1456 Appellant designation, Statement of issues on appeal). (Sosland, Martin)
11/25/2020	1485 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/26/2020	1486 BNC certificate of mailing − PDF document. (RE: related document(s)1474 Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document 1281) Entered on 11/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/26/2020	1487 BNC certificate of mailing − PDF document. (RE: related document(s)1477 Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s)1435 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/27/2020	1488 Certificate of service re: *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from October 1, 2020 through October 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1449 Amended application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: $1,119,675.50, Expenses: $19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/30/2020	1489 Order granting motion to continue hearing on (related document # 1485) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 11/30/2020. (Ecker, C.)
11/30/2020	1490 Application for compensation *Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/1/2020 to 10/31/2020, Fee: $537,841.80, Expenses: $3,125.47. Filed by Objections due by 12/21/2020. (Hoffman, Juliana)
11/30/2020	

	1491 Motion for relief from stay Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay) (Kathman, Jason)
12/01/2020	1492 Clerk's correspondence requesting exhibits from attorney for plaintiff. (RE: related document(s)1484 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1456 Appellant designation, Statement of issues on appeal).) Responses due by 12/14/2020. (Blanco, J.)
12/01/2020	1493 Debtor−in−possession monthly operating report for filing period October 1, 2020 to October 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/01/2020	1494 Notice of hearing *on Daugherty's Motion to Lift the Automatic Stay* filed by Creditor Patrick Daugherty (RE: related document(s)1491 Motion for relief from stay Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay)). Preliminary hearing to be held on 12/17/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # 1 Creditor Matrix) (Kathman, Jason)
12/01/2020	1495 Certificate of service re: *1) Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements; and 2) Debtors Objection to Request for Emergency Hearing Filed by James Dondero [Docket No. 1443]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1459 Reply to (related document(s): 1447 Response filed by Interested Party James Dondero) *(Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1461 Objection to (related document(s): 1443 Motion for expedited hearing(related documents 1439 Motion for leave) *(Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
12/01/2020	1496 Certificate of service re: *1) Order Granting Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018; 2) Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub−Servicer Agreements; and 3) Order Approving Stipulation Resolving Proof of Claim No. 148 Filed by Lynn Pinker Cox & Hurst, LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1474 Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document 1281) Entered on 11/24/2020. (Okafor, M.), 1475 Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements (related document 1424) Entered on 11/24/2020. (Okafor, M.), 1477 Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s)1435 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/01/2020	1497 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1466 Appellant designation, Statement of issues on appeal). (Assink, Bryan)
12/02/2020	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 28309234, amount $ 181.00 (re: Doc# 1491). (U.S. Treasury)
12/02/2020	

	1498 Notice of hearing filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1483, (O'Neil, Holland)
12/02/2020	1499 Certificate of service re: *1) Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2020; and 2) Joint Motion to Continue Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 1485 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2020	1500 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount $16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) (Tanabe, Kesha)
12/03/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28312406, amount $ 26.00 (re: Doc# 1500). (U.S. Treasury)
12/03/2020	1501 Request for transcript regarding a hearing held on 11/23/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/03/2020	1502 Stipulation by James Dondero and Highland Capital Management, L.P.. filed by Interested Party James Dondero (RE: related document(s)1179 Objection to claim). (Assink, Bryan)
12/03/2020	1503 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
12/03/2020	1504 Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1503 Notice (generic)). (Annable, Zachery)
12/03/2020	

	1505 Certificate of service re: *Debtor's Notice of Affidavit of Publication of the Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm Plan; and (III) Related Important Dates in the New York Times* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/03/2020	1506 Certificate of service re: *1) Order Granting Joint Motion to Continue Hearing; and 2) Twelfth Monthly Application of Sidley Austin for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1489 Order granting motion to continue hearing on (related document 1485) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 11/30/2020. (Ecker, C.), 1490 Application for compensation *Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/1/2020 to 10/31/2020, Fee: $537,841.80, Expenses: $3,125.47. Filed by Objections due by 12/21/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/03/2020	1507 Transcript regarding Hearing Held 11/23/2020 (42 pages) RE: Disclosure Statement Hearing; Motion to Enter into Sub−Servicer Agreements; Motion for Order Shortening Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1478 Hearing held on 11/23/2020. (RE: related document(s)1424 Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.), 1479 Hearing held on 11/23/2020. (RE: related document(s)1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.), 1480 Hearing held on 11/23/2020. (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.)). Transcript to be made available to the public on 03/3/2021. (Rehling, Kathy)
12/03/2020	

	1883 INCORRECT ENTRY − Agreed Notice of voluntary dismissal of appeals filed by Allied World Assurance Company (RE: related document(s)1347 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)). (Blanco, J.) Modified on 2/2/2021 (Blanco, J.). (Entered: 02/02/2021)
12/04/2020	1508 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount $32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	1509 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount $12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28315512, amount $ 26.00 (re: Doc# 1508). (U.S. Treasury)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28315512, amount $ 26.00 (re: Doc# 1509). (U.S. Treasury)
12/04/2020	1510 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 138 and 188 (RE: related document(s)1502 Stipulation filed by Interested Party James Dondero). Entered on 12/4/2020 (Ecker, C.)
12/04/2020	1511 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP

	LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/07/2020	1512 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. (Rapoport, Amanda)
12/07/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28320856, amount $ 26.00 (re: Doc# 1512). (U.S. Treasury)
12/07/2020	1513 Application for compensation *Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: $196,216.20, Expenses: $264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. (Hoffman, Juliana)
12/07/2020	1514 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount $350 (Attachments: # 1 Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief − other). (Annable, Zachery)
12/07/2020	1515 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s)1466 Appellant designation, Statement of issues on appeal, 1497 Appellant designation, Statement of issues on appeal). (Assink, Bryan)
12/07/2020	1516 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1347 Notice of appeal, Modified LINKAGE AND TEXT on 3/12/2021 (Blanco, J.).
12/07/2020	1517 Appellee designation of contents for inclusion in record of appeal filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)1347 Notice of appeal). (Chiarello, Annmarie)
12/08/2020	1518 Order temporarily granting UBS' motion to allow claim number(s) (related document # 1338) Entered on 12/8/2020. (Ecker, C.)
12/08/2020	1519 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1280 Motion for leave *to Amend Proof of Claim No. 77* Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Second Amended Proof of Claim)) Responses due by 12/22/2020. (Ecker, C.)
12/08/2020	1520 Application for compensation *(Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Hayward &

	Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: $27,465.00, Expenses: $859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−August 2020 Invoice) (Annable, Zachery)
12/08/2020	1521 Application for compensation *Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: $759,428.00, Expenses: $1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. (Pomerantz, Jeffrey)
12/08/2020	1522 INCORRECT EVENT: See # 1528 for correction. Motion to compel Temporary Restriction of Sales by Non−Debtors CLOs. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Attachments: # 1 Affidavit # 2 Proposed Order) (Varshosaz, Artoush) Modified on 12/9/2020 (Ecker, C.).
12/08/2020	1523 Motion for expedited hearing(related documents 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund. Modified linkage on 12/9/2020 (Ecker, C.).
12/08/2020	1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund . (Ecker, C.) (Entered: 12/09/2020)
12/09/2020	1524 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/09/2020	1525 Request for transcript regarding a hearing held on 1/9/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/09/2020	1526 Order granting partial summary judgment (related document # 1214) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	1527 Order granting joint motion to continue hearing on (related document # 1524) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	1529 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1179 Objection to claim). (Annable, Zachery)
12/09/2020	1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. (Montgomery, Paige)
12/09/2020	1531 Application for compensation *(Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: $25,075.00, Expenses: $132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A September 2020 Invoice) (Annable, Zachery)

12/09/2020	1532 Notice *(Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/10/2020	1533 Order granting motion to amend proof of claim #77 and to file supporting documents under seal. (related document # 1280) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	1534 Order granting 1530 Motion to extend time. (Re: related document(s) 1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic))) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	1535 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1207, (Annable, Zachery)
12/10/2020	1536 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). (Annable, Zachery)
12/10/2020	1537 Order regarding objection to claim number(s) (RE: related document(s)1179 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	1538 Order approving stipulation resolving proof of claim #164 (RE: related document(s)1532 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	1539 Notice of hearing*on Motion Imposing Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non−Debotor CLO Vehicles* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Ecker, C.)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1528, (Varshosaz, Artoush)
12/10/2020	1540 Certificate of service re: *Twelfth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020; and 2) Appellees Counter−Designation of Record on Appeal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1513 Application for compensation *Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: $196,216.20, Expenses: $264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. filed by Financial Advisor FTI Consulting, Inc., 1516 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1347 Notice of appeal, 1369 Amended notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2020	1541 BNC certificate of mailing − PDF document. (RE: related document(s)1518 Order temporarily granting UBS' motion to allow claim number(s) (related document 1338) Entered on 12/8/2020. (Ecker, C.)) No. of Notices: 2. Notice Date 12/10/2020. (Admin.)
12/11/2020	

	1542 Support/supplemental document/*Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland)
12/11/2020	1543 Transcript regarding Hearing Held 01/09/2020 (91 pages) RE: Motion to Compromise Controversy (#281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) Hearing held on 1/9/2020. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.)). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)
12/11/2020	1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP (Hesse, Gregory)
12/11/2020	1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020) (Annable, Zachery)
12/11/2020	1546 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. (Pomerantz, Jeffrey)
12/11/2020	1548 Notice to take deposition of James P. Seery, Jr. filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	1549 Notice to take deposition of John Dubel filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	1550 Notice to take deposition of Russell Nelms filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	

	1551 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/11/2020	1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
12/11/2020	1553 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10., 1407 Certificate (generic))., 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,86)., 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document*/Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., 1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM

	Dallas Judge Jernigan Ctrm for 1483 and for 1544 and for 1545 and for 1547 and for 1552 and for 1410 and for 1416 and for 1542, (Annable, Zachery)
12/11/2020	1554 Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	1555 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	1556 Certificate of service re: *1) Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020; and 2) Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1520 Application for compensation *(Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: $27,465.00, Expenses: $859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−August 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 1521 Application for compensation *Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: $759,428.00, Expenses: $1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	1557 Certificate of service re: *Documents Served on December 9, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1524 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1526 Order granting partial summary judgment (related document 1214) Entered on 12/9/2020. (Ecker, C.), 1527 Order granting joint motion to continue hearing on (related document 1524) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Entered on 12/9/2020. (Ecker, C.), 1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 1531 Application for compensation *(Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: $25,075.00, Expenses: $132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A September 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 1532 Notice *(Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	1639 Hearing set (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020., 1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,865,520.45, Expenses: $18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020.)

	Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1296 and for 1244, (Ellison, T.) (Entered: 12/29/2020)
12/12/2020	1558 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/13/2020	1559 WITHDRAWN per # 1622 Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Sevilla Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	1560 WITHDRAWN per # 1622 Subpoena on Russell Nelms filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Nelms Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	1561 WITHDRAWN per # 1622 Subpoena on Fred Caruso filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Caruso Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/14/2020	1562 Order granting motion for expedited hearing (Related Doc# 1523)(document set for hearing: 1528 Generic motion) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1528, Entered on 12/14/2020. (Ecker, C.)
12/14/2020	1563 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) (Assink, Bryan)
12/14/2020	1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	1566 Notice to take deposition of James P. Seery, Jr. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
12/14/2020	1567 Motion for expedited hearing(related documents 1564 Motion to quash, 1565 Motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	1568 Order approving stipulation and pre−trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s)1536 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.)
12/14/2020	1569 Objection to (related document(s): 1491 Motion for relief from stay Fee amount $181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/14/2020	1570 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1569 Objection). (Attachments: # 1 Exhibit A #

	2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Annable, Zachery)
12/14/2020	1571 Objection to (related document(s): 1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena file filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
12/14/2020	1572 Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s)1491 Motion for relief from stay Fee amount $181,). (Attachments: # 1 Exhibit PHD−1 # 2 Exhibit PHD−2 # 3 Exhibit PHD−3 # 4 Exhibit PHD−4 # 5 Exhibit PHD−5 # 6 Exhibit PHD−6) (Kathman, Jason)
12/14/2020	1573 Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) (Varshosaz, Artoush)
12/14/2020	1574 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*, 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Annable, Zachery)
12/15/2020	1575 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, (Annable, Zachery)
12/15/2020	1576 Order granting motion for expedited hearing (Related Doc# 1567)(document set for hearing: 1564 Motion to quash, 1565 Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, Entered on 12/15/2020. (Okafor, M.)
12/15/2020	1577 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
12/15/2020	1578 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland

	Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit A−3 # 4 Exhibit B−1 # 5 Exhibit B−2 # 6 Exhibit B−3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) (Annable, Zachery)
12/15/2020	1579 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1574 List (witness/exhibit/generic)). (Annable, Zachery)
12/15/2020	1580 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/15/2020	1581 INCORRECT ENTRY: See # 1580 for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non−debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1578 Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). (Entered: 12/16/2020)
12/16/2020	1582 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount $1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28347173, amount $ 26.00 (re: Doc# 1582). (U.S. Treasury)
12/16/2020	1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 1/6/2021. (Annable, Zachery)
12/16/2020	1584 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1449 Amended application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)* for Jeffrey Nathan Pomer). (Pomerantz, Jeffrey)
12/16/2020	1585 Court admitted exhibits date of hearing December 16, 2020 (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund. (COURT ADMITTED EXHIBIT'S #A & #B BY JAMES WRIGHT) (Edmond, Michael)
12/16/2020	1586 Request for transcript regarding a hearing held on 12/16/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/16/2020	1587 Certificate of service re: Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management,

	L.P. (RE: related document(s)1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)). (Annable, Zachery)
12/16/2020	1588 Certificate of service re: *Documents Served on December 10, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1534 Order granting 1530 Motion to extend time. (Re: related document(s) 1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic))) Entered on 12/10/2020. (Ecker, C.), 1535 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1207, filed by Debtor Highland Capital Management, L.P., 1536 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). filed by Debtor Highland Capital Management, L.P., 1537 Order regarding objection to claim number(s) (RE: related document(s)1179 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.), 1538 Order approving stipulation resolving proof of claim #164 (RE: related document(s)1532 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)). (Kass, Albert)
12/16/2020	1589 Certificate of service re: *Documents Served on or Before December 12, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1542 Support/supplemental document*/Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020) filed by Other Professional Hayward & Associates PLLC, 1546 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. filed by Debtor Highland Capital Management, L.P., 1551 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of*

Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 1553 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10., 1407 Certificate (generic))., 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,86)., 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document*/Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., 1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1483 and for 1544 and for 1545 and for 1547 and for 1552 and for 1410 and for 1416 and for 1542, filed by Debtor Highland Capital Management, L.P., 1554 Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1555 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1558 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/16/2020	1596 Hearing held on 12/16/2020. (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1597 Hearing held on 12/16/2020. (RE: related document(s)1564 Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1598 Hearing held on 12/16/2020. (RE: related document(s)1565 Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1599 Hearing held on 12/16/2020. (RE: related document(s)1439 Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/17/2020	1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery)
12/17/2020	1591 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount $90,855.70) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
12/17/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28350580, amount $ 26.00 (re: Doc# 1591). (U.S. Treasury)
12/17/2020	1592 Certificate of service re: *Documents Served on or Before December 16, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1567 Motion for expedited hearing(related documents 1564 Motion to quash, 1565 Motion for protective order) Filed by Debtor Highland Capital Management, L.P. filed by Debtor

	Highland Capital Management, L.P., 1568 Order approving stipulation and pre−trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s)1536 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.), 1569 Objection to (related document(s): 1491 Motion for relief from stay Fee amount $181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1570 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1569 Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Debtor Highland Capital Management, L.P., 1574 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*, 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/17/2020	1593 Certificate of service re: *Documents Served on December 15, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1575 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, filed by Debtor Highland Capital Management, L.P., 1576 Order granting motion for expedited hearing (Related Doc1567)(document set for hearing: 1564 Motion to quash, 1565 Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, Entered on 12/15/2020. (Okafor, M.), 1577 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 1578 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit A−3 # 4 Exhibit B−1 # 5 Exhibit B−2 # 6 Exhibit B−3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) filed by Debtor Highland Capital Management, L.P., 1579 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1574 List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P., 1580 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party

	NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/17/2020	1594 Adversary case 20−03195. Complaint by Official Committee of Unsecured Creditors against CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., The Dugaboy Investment Trust, Grant James Scott III, James D. Dondero. Fee Amount $350. Nature(s) of suit: 13 (Recovery of money/property − 548 fraudulent transfer). 91 (Declaratory judgment). 72 (Injunctive relief − other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Montgomery, Paige)
12/17/2020	1600 Hearing held on 12/17/2020. (RE: related document(s)1491 Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.) (Edmond, Michael) (Entered: 12/18/2020)
12/18/2020	1595 Notice of Appearance and Request for Notice *with Certificate of Service* by Douglas S. Draper filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
12/18/2020	1601 Request for transcript regarding a hearing held on 12/17/2020. The requested turn−around time is daily. (Edmond, Michael)
12/18/2020	1602 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1590, (Annable, Zachery)
12/18/2020	1603 Order resolving motions and adjourning evidentiary hearing (RE: related document(s)1439 Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, Entered on 12/18/2020 (Ecker, C.)
12/18/2020	1604 Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (O'Neil, Holland)
12/18/2020	1605 Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles (related document # 1528) Entered on 12/18/2020. (Okafor, M.)
12/18/2020	1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation) (Annable, Zachery)
12/18/2020	1607 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, (Annable, Zachery)

12/18/2020	1608 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/19/2020	1609 Transcript regarding Hearing Held 12/17/2020 (38 pages) RE: Motion for Relief from Stay (#1491). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1600 Hearing held on 12/17/2020. (RE: related document(s)1491 Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)
12/19/2020	1610 Transcript regarding Hearing Held 12/16/2020 (66 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1596 Hearing held on 12/16/2020. (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary

	hearing. Motion denied. Counsel to upload order.), 1597 Hearing held on 12/16/2020. (RE: related document(s)1564 Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1598 Hearing held on 12/16/2020. (RE: related document(s)1565 Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1599 Hearing held on 12/16/2020. (RE: related document(s)1439 Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)
12/19/2020	1611 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1340 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: $170,859.60, Expenses: $806.60.). (Hoffman, Juliana)
12/21/2020	1612 Order denying motion for relief from stay by Creditor Patrick Daugherty (related document # 1491) Entered on 12/21/2020. (Okafor, M.)
12/21/2020	1613 Certificate of service re: *re: 1) Instructions for any counsel and parties who wish to participate in the Hearing; 2) Joinder of the Official Committee of Unsecured Creditors to Debtor's Response to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non−Debtor CLO Vehicles; and 3) Debtors Motion Pursuant to the Protocols for Authority for Highland and Multi* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1581 INCORRECT ENTRY: See 1580 for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non−debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1578 Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors, 1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/22/2020	1614 Notice *(Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/22/2020	1615 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1490 Application for compensation *Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/1/2020 to 10/31/2020, Fee: $). (Hoffman, Juliana)
12/22/2020	1616 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1283 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for Official

	Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 9/30/2020, Fee: $356,889.96, Expenses: &#03). (Hoffman, Juliana)
12/23/2020	1617 Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s)1614 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.)
12/23/2020	1618 Notice *(Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
12/23/2020	1619 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
12/23/2020	1620 Motion to appear pro hac vice for A. Lee Hogewood. Fee Amount $100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
12/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28366971, amount $ 100.00 (re: Doc# 1620). (U.S. Treasury)
12/23/2020	1621 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
12/23/2020	1622 Withdrawal *(Notice of Withdrawal of James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business and Related Notices of Subpoena)* filed by Interested Party James Dondero (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*). (Assink, Bryan)
12/23/2020	1623 Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) (Hayward, Melissa)
12/23/2020	1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) (Hayward, Melissa)
12/23/2020	1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

12/23/2020	1626 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, (Annable, Zachery)
12/23/2020	1627 Certificate of service re: *Documents Served on December 18, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1602 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1590, filed by Debtor Highland Capital Management, L.P., 1603 Order resolving motions and adjourning evidentiary hearing (RE: related document(s)1439 Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, Entered on 12/18/2020 (Ecker, C.), 1605 Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non−debtor CLO Vehicles (related document 1528) Entered on 12/18/2020. (Okafor, M.), 1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P., 1607 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/23/2020	1628 Certificate of service re: *Order Denying Patrick Daughertys Motion to Lift the Automatic Stay* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1612 Order denying motion for relief from stay by Creditor Patrick Daugherty (related document 1491) Entered on 12/21/2020. (Okafor, M.) filed by Creditor Patrick Daugherty). (Kass, Albert)
12/23/2020	1629 Certificate of service re: *Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1614 Notice *(Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/23/2020	1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)

12/24/2020	1631 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
12/24/2020	1632 Application for compensation *Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/1/2020 to 11/30/2020, Fee: $401,659.92, Expenses: $3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	1633 Application for compensation *Thirteenth Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: $201,148.56, Expenses: $408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	1634 Support/supplemental document *(Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Annable, Zachery)
12/26/2020	1635 Declaration re: *Supplemental Declaration of Matthew Clemente* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). (Hoffman, Juliana)*
12/28/2020	1636 Agreed order granting 1623 Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)
12/28/2020	1637 Certificate of service re: *(Supplemental) Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/28/2020	1638 Certificate of service re: *Documents Served on December 23, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1617 Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE:

	related document(s)1614 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.), 1618 Notice *(Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., 1619 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 1621 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 1623 Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/29/2020	1640 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1513 Application for compensation *Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: $196,216.20, Expenses: $264.23.). (Hoffman, Juliana)
12/30/2020	1641 Order granting motion to appear pro hac vice adding A. Lee Hogewood, III for Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (related document # 1620) Entered on 12/30/2020. (Okafor, M.)
12/30/2020	1642 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1520 Application for compensation *(Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Hayward & Ass). (Annable, Zachery)
12/30/2020	1643 Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # 1 Proposed Order) (Smith, Frances)
12/30/2020	1644 Notice of Appearance and Request for Notice by Frances Anne Smith filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)
12/30/2020	1645 Certificate of service re: Senior Employees Agreed Motion to Withdraw and Substitute Counsel of Record and Notice of Appearance filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1643 Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau, 1644 Notice of appearance and request for notice). (Smith, Frances)
12/30/2020	1646 Certificate of service re: *Documents Served on or Before December 24, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management,

	L.P., 1626 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, filed by Debtor Highland Capital Management, L.P., 1631 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) filed by Debtor Highland Capital Management, L.P., 1632 Application for compensation *Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/1/2020 to 11/30/2020, Fee: $401,659.92, Expenses: $3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1633 Application for compensation *Thirteenth Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: $201,148.56, Expenses: $408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Financial Advisor FTI Consulting, Inc., 1634 Support/supplemental document *(Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/30/2020	1647 Certificate of service re: *1) Supplemental Declaration of Matthew Clemente in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors; and 2) Agreed Order Extending Deadline to Assume Unexpired Nonresidential Real Property Lease and Setting Motion to Assume for Hearing at Confirmation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1635 Declaration re: *Supplemental Declaration of Matthew Clemente* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). filed by Creditor Committee Official Committee of Unsecured Creditors, 1636 Agreed order granting 1623 Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)). (Kass, Albert)*
12/30/2020	1648 Notice *(Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
12/31/2020	

	1649 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # 1 Proposed Order) (Driver, Vickie)
12/31/2020	1650 Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland)
12/31/2020	1651 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1531 Application for compensation *(Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Hayward). (Annable, Zachery)
12/31/2020	1652 Order granting motion to continue hearing on (related document # 1649) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 12/31/2020. (Okafor, M.)
12/31/2020	1653 Certificate of service re: *(Supplemental) Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.), 1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/04/2021	1654 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1521 Application for compensation *Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* for J). (Pomerantz, Jeffrey)
01/04/2021	1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. (Hoffman, Juliana)
01/04/2021	1656 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by

	Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit L−−Amended Schedule of Retained Causes of Action # 2 Exhibit M−−Amended Form of Claimant Trust Agreement # 3 Exhibit N−−Redline of Form of Claimant Trust Agreement # 4 Exhibit O−−Amended Form of Litigation Trust Agreement # 5 Exhibit P−−Redline of Form of Litigation Trust Agreement) (Annable, Zachery)
01/05/2021	1657 Notice of Appearance and Request for Notice by Daniel P. Winikka filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	1658 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount $26,324.25) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
01/05/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28389049, amount $ 26.00 (re: Doc# 1658). (U.S. Treasury)
01/05/2021	1659 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Att). (Annable, Zachery)
01/05/2021	1660 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2021	1661 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Party James Dondero. (Clarke, James)
01/05/2021	1662 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County. (Spindler, Laurie)
01/05/2021	1663 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52.). (Annable, Zachery)
01/05/2021	1664 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30,). (Annable, Zachery)*
01/05/2021	1665 Certificate of No Objection filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s)1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for). (Annable, Zachery)*
01/05/2021	1666 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	1667 Objection to confirmation of plan*with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)

01/05/2021	1668 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor United States (IRS). (Adams, David)
01/05/2021	1669 WITHDRAWN per # 1845. Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/05/2021	1670 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A) (Rukavina, Davor)
01/05/2021	1671 Trustee's Objection to *Fifth Amended Plan* (RE: related document(s)1472 Chapter 11 plan) (Lambert, Lisa)
01/05/2021	1672 Certificate of service re: Senior Employees' Objection to Debtor's Fifth Amended Plan of Reorganization filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1669 Objection to confirmation of plan). (Smith, Frances)
01/05/2021	1673 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
01/05/2021	1674 Joinder by *Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization* filed by Paul Kauffman, Todd Travers, Davis Deadman (RE: related document(s)1472 Chapter 11 plan, 1666 Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	1675 Joinder by *[Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Dkt. No. 1670] and Supplemental Objection to Plan Confirmation]* filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1670 Objection to confirmation of plan). (Kane, John)
01/05/2021	1676 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank. (Drawhorn, Lauren)
01/05/2021	1677 Joinder by *NexPoint RE Entities to Objection to Confirmation of Fifth Amended Plan of Reorganization* filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)1670 Objection to confirmation of plan). (Drawhorn, Lauren)
01/05/2021	1678 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Patrick Daugherty. (Kathman, Jason)
01/05/2021	

	1679 Joinder by *Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization (Amended)* filed by Davis Deadman, Paul Kauffman, Todd Travers (RE: related document(s)1472 Chapter 11 plan, 1666 Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	1680 Motion to appear pro hac vice for Debra Dandenau. Fee Amount $100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Soderlund, Eric)
01/05/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28390902, amount $ 100.00 (re: Doc# 1680). (U.S. Treasury)
01/06/2021	1681 Motion to appear pro hac vice for Douglas S. Draper. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393061, amount $ 100.00 (re: Doc# 1681). (U.S. Treasury)
01/06/2021	1682 Motion to appear pro hac vice for Leslie A. Collins. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393082, amount $ 100.00 (re: Doc# 1682). (U.S. Treasury)
01/06/2021	1683 Motion to appear pro hac vice for Greta M. Brouphy. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Brouphy, Greta)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393123, amount $ 100.00 (re: Doc# 1683). (U.S. Treasury)
01/06/2021	1684 Order granting third interim fee application for compensation (related document # 1296) granting for Official Committee of Unsecured Creditors, fees awarded: $1865520.45, expenses awarded: $18678.47 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1685 Order granting third interim application for compensation (related document # 1244) granting for FTI Consulting, Inc., fees awarded: $886615.45, expenses awarded: $1833.10 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1686 Order granting first interim application for compensation (related document # 1544) granting for Hunton Andrews Kurth LLP, fees awarded: $206933.85, expenses awarded: $546.52 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1687 Order granting third interim application for compensation (related document # 1547) granting for Jeffrey Nathan Pomerantz, fees awarded: $3380111.5, expenses awarded: $31940.33 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1688 Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) 1365 Agreed Supplemental Order re: 474 Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., 1365 Order (generic)). Entered on 1/6/2021 (Okafor, M.)
01/06/2021	1689 Motion to appear pro hac vice for Warren Horn. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Horn, Warren)

01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393995, amount $ 100.00 (re: Doc# 1689). (U.S. Treasury)
01/06/2021	1690 Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # 1680) Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1691 Order granting third and final application for compensation (related document 1483) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: $617654.60, expenses awarded: $11433.73 Entered on 1/6/2021. (Okafor, M.) Modified to correct text on 1/29/2021 (Ecker, C.).
01/06/2021	1692 Adversary case 21−03000. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., CLO Holdco, Ltd.. Fee Amount $350 (Attachments: # 1 Adversary Proceeding Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 72 (Injunctive relief − other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Annable, Zachery)
01/06/2021	1693 Subpoena on Highland Capital Management, L.P. filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	1694 Subpoena on Kurtzman Carson Consultants LLC filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	1695 Certificate of service re: *1) WebEx Meeting Invitation to participate electronically in the hearing on Wednesday, December 16, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Foley & Lardner LLP's Witness and Exhibit List for Final Fee Application* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1650 Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
01/06/2021	1696 Certificate of service re: *1) Fourth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through and Including November 30, 2020; and 2) Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. filed by Financial Advisor FTI Consulting, Inc., 1656 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit L−−Amended Schedule of Retained Causes of Action # 2 Exhibit M−−Amended Form of Claimant Trust Agreement # 3 Exhibit N−−Redline of Form of Claimant Trust Agreement # 4 Exhibit O−−Amended Form of Litigation Trust Agreement # 5 Exhibit P−−Redline of Form of Litigation Trust Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

01/06/2021	1697 Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
01/07/2021	1698 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)). (Annable, Zachery)
01/07/2021	1699 Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice (generic)). (Annable, Zachery)
01/07/2021	1700 Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice (generic)). (Annable, Zachery)
01/07/2021	1701 Order granting motion to appear pro hac vice adding Douglas S. Draper for Get Good Trust and The Dugaboy Investment Trust (related document 1681) Entered on 1/7/2021. (Okafor, M.) Modified to add party on 1/7/2021 (Okafor, M.).
01/07/2021	1702 Order granting motion to appear pro hac vice adding Leslie A. Collins for Get Good Trust and The Dugaboy Investment Trust (related document # 1682) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	1703 Order granting motion to appear pro hac vice adding Greta M. Brouphy for Get Good Trust and The Dugaboy Investment Trust (related document # 1683) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	1704 Order granting motion to appear pro hac vice adding Warren Horn for Get Good Trust and The Dugaboy Investment Trust (related document # 1689) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	1705 Notice to take deposition of Michael Pugatch filed by Interested Party James Dondero. (Assink, Bryan)
01/08/2021	1706 Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.)*Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certficate of Service* filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/08/2021	1707 Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
01/08/2021	1708 **SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF,**

	including Harbourvest, the Debtor, and CLO Holdco − Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/08/2021	1709 Notice *(Notice of Filing of Certificate of Service Regarding Letter Dated January 7, 2021 to Highland Capital Management Services, Inc. from James P. Seery, Jr. Regarding Demand on Promissory Note)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	1710 Debtor−in−possession monthly operating report for filing period November 1, 2020 to November 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	1711 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
01/08/2021	1712 Certificate of service re: *Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1660 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	1713 BNC certificate of mailing − PDF document. (RE: related document(s)1690 Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document 1680) Entered on 1/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 01/08/2021. (Admin.)
01/09/2021	1714 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, (Annable, Zachery)
01/11/2021	1715 Order granting application for compensation (related document # 1552) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $709256.22, expenses awarded: $0.0 Entered on 1/11/2021. (Ecker, C.)
01/11/2021	1716 Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Kane, John)
01/11/2021	1717 **SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed**

	Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/11/2021	1718 Amended Notice of hearing *(Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/11/2021	1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/11/2021	1720 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, (Annable, Zachery)
01/11/2021	1721 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Dondero Ex. A − POCs # 2 Dondero Ex. B # 3 Dondero Ex. C # 4 Dondero Ex. D # 5 Dondero Ex. E # 6 Dondero Ex. F # 7 Dondero Ex. G # 8 Ex. H − M) (Assink, Bryan)
01/11/2021	1722 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Annable, Zachery)
01/11/2021	1723 Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Driver, Vickie)
01/11/2021	1724 Certificate of service re: *Documents Served on January 6, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1684 Order granting third interim fee application for compensation (related document 1296) granting for Official Committee of Unsecured Creditors, fees awarded: $1865520.45, expenses awarded: $18678.47 Entered on 1/6/2021. (Okafor, M.), 1685 Order granting third interim application for compensation (related document 1244) granting for FTI Consulting, Inc., fees awarded: $886615.45, expenses awarded: $1833.10 Entered on 1/6/2021. (Okafor, M.), 1686 Order granting first interim application for compensation (related document 1544) granting for Hunton Andrews Kurth LLP, fees awarded: $206933.85, expenses awarded: $546.52 Entered on 1/6/2021. (Okafor, M.), 1687 Order granting third interim application for compensation (related document 1547) granting for Jeffrey Nathan Pomerantz, fees awarded: $3380111.5, expenses awarded: $31940.33 Entered on 1/6/2021. (Okafor, M.),

	1688 Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) 1365 Agreed Supplemental Order re: 474 Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., 1365 Order (generic)). Entered on 1/6/2021 (Okafor, M.), 1691 Order granting first and final application for compensation (related document 1483) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: $617654.60, expenses awarded: $11433.73 Entered on 1/6/2021. (Okafor, M.)). (Kass, Albert)
01/12/2021	1725 Order further extending period within which the Debtor may remove actions 1583 Motion to extend time. (Re: related document(s) 1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	1726 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) (Annable, Zachery)
01/13/2021	1727 Certificate of service re: Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1711 Notice (generic)). (Annable, Zachery)
01/13/2021	1728 Order granting application for compensation (related document # 1545) granting for Hayward & Associates PLLC, fees awarded: $82325.00, expenses awarded: $1972.63 Entered on 1/13/2021. (Ecker, C.)
01/13/2021	1729 Certificate of service re: Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of the Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1476 Order approving disclosure statement). (Annable, Zachery)
01/13/2021	1730 Certificate of service re: Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1725 Order on motion to extend/shorten time). (Annable, Zachery)
01/13/2021	1731 Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/13/2021	1732 Amended Witness and Exhibit List *(Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic), 1726 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) (Annable, Zachery)
01/13/2021	1733 Expedited Motion to file document under seal.*/Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A − Proposed Order) (Driver, Vickie)

01/13/2021	1734 Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) */HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* filed by Creditor HarbourVest et al. (Driver, Vickie)
01/13/2021	1735 Support/supplemental document */Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply). (Driver, Vickie)
01/13/2021	1736 Emergency Motion to file document under seal.*(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
01/14/2021	1737 Order granting motion to seal exhibits (related document # 1736) Entered on 1/14/2021. (Ecker, C.)
01/14/2021	1738 **SEALED document regarding: Exhibit A−−Members Agreement per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal). (Annable, Zachery)
01/14/2021	1739 **SEALED document regarding: Exhibit B−−Articles of Incorporation per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal). (Annable, Zachery)
01/14/2021	1740 **SEALED document regarding: Exhibit C−−Offering Memorandum per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal). (Annable, Zachery)
01/14/2021	1741 Notice *(Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/14/2021	1742 Exhibit List *(Supplemental Exhibit List)* filed by Interested Party James Dondero (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Dondero Ex. N) (Assink, Bryan)
01/14/2021	1743 Declaration re: *Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). (Hoffman, Juliana)
01/14/2021	1744 Declaration re: *(Supplemental Declaration of Marc D. Katz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)268 Declaration). (Annable, Zachery)
01/14/2021	1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)* Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order) (Draper, Douglas)

01/14/2021	1752 INCORRECT Entry: Original entry at # [1745 is correct} Motion to Appoint Examiner pursuant to 11 U.S.C. § 1104(c) by Get Good Trust , The Dugaboy Investment Trust . (Ecker, C.) Modified on 1/15/2021 (Ecker, C.). (Entered: 01/15/2021)
01/14/2021	1753 Hearing held on 1/14/2021. (RE: related document(s)1590 Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	1754 Hearing held on 1/14/2021. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	1755 Hearing held on 1/14/2021. (RE: related document(s)1207 Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	1782 Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON) (Edmond, Michael) (Entered: 01/20/2021)
01/15/2021	1746 Order granting motion to pay (related document # 1590) Entered on 1/15/2021. (Ecker, C.)
01/15/2021	1747 Order (RE: related document(s)1741 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)
01/15/2021	1748 Motion for expedited hearing(related documents 1745 Motion to appoint trustee) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order) (Draper, Douglas)
01/15/2021	1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.

	(RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/15/2021	1750 Request for transcript regarding a hearing held on 1/14/2021. The requested turn−around time is hourly (Green, Shanette)
01/15/2021	1751 Supplemental Certificate of service re: filed by Creditors The Dugaboy Investment Trust, Get Good Trust (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*, 1748 Motion for expedited hearing(related documents 1745 Motion to appoint trustee)). (Draper, Douglas) Modified on 1/15/2021 (Rielly, Bill).
01/15/2021	1756 Joinder by filed by Interested Party James Dondero (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). (Assink, Bryan)
01/15/2021	1757 Notice *of Increase in Hourly Rates for Pachulski Stang Ziehl & Jones LLP Effective as of January 1, 2021* filed by Debtor Highland Capital Management, L.P.. (Pomerantz, Jeffrey)
01/15/2021	1758 Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1632 Application for compensation *Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/1/2020 to 11/30/2020, Fee: &#0). (Hoffman, Juliana)
01/15/2021	1759 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1633 Application for compensation *Thirteenth Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: $201,148.56, Expenses: $408.64.). (Hoffman, Juliana)
01/15/2021	1760 Certificate of service re: *(Supplemental) Solicitation Materials Served on January 11, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/15/2021	1761 Certificate of service re: *Documents Served on or Before January 12, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1714 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on

	1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, filed by Debtor Highland Capital Management, L.P., 1715 Order granting application for compensation (related document 1552) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $709256.22, expenses awarded: $0.0 Entered on 1/11/2021. (Ecker, C.), 1718 Amended Notice of hearing *(Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., 1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., 1720 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, filed by Debtor Highland Capital Management, L.P., 1722 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/15/2021	1762 Certificate of service re: *Documents Served on January 12, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1725 Order further extending period within which the Debtor may remove actions 1583 Motion to extend time. (Re: related document(s) 1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.), 1726 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/15/2021	1763 BNC certificate of mailing − PDF document. (RE: related document(s)1728 Order granting application for compensation (related document 1545) granting for Hayward & Associates PLLC, fees awarded: $82325.00, expenses awarded: $1972.63 Entered on 1/13/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/15/2021. (Admin.)
01/16/2021	1764 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/17/2021	1765 Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/19/2021.

	Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1753 Hearing held on 1/14/2021. (RE: related document(s)1590 Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), 1754 Hearing held on 1/14/2021. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), 1755 Hearing held on 1/14/2021. (RE: related document(s)1207 Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 04/19/2021. (Rehling, Kathy)
01/17/2021	1766 BNC certificate of mailing − PDF document. (RE: related document(s)1747 Order (RE: related document(s)1741 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)) No. of Notices: 1. Notice Date 01/17/2021. (Admin.)
01/18/2021	1767 Verified statement pursuant to Rule 2019 filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)
01/18/2021	1768 Certificate of service re: Verified Statement Pursuant to Federal Rule of Bankruptcy Procedure 2019 of (I) Frances A. Smith and Disclosures of Ross & Smith, PC; and (II) Michelle Hartmann and Disclosures of Baker & McKenzie LLP filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1767 Verified statement pursuant to Rule 2019). (Smith, Frances)
01/18/2021	1769 Declaration re: *(Report of Mediators)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)912 Order (generic)). (Annable, Zachery)
01/19/2021	1770 Order Granting Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtors Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith (related document # 1733) Entered on 1/19/2021. (Okafor, M.)
01/19/2021	1771 Application for compensation *Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $1,046,024.00, Expenses: $4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. (Pomerantz, Jeffrey)
01/19/2021	1772 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

01/19/2021	1773 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	1774 Notice to take deposition of Highland Capital Management, L.P. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.)
01/19/2021	1775 Certificate of service re: *1) Order Granting Debtors Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay; 2) Order Approving Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP; and 3) Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1746 Order granting motion to pay (related document 1590) Entered on 1/15/2021. (Ecker, C.), 1747 Order (RE: related document(s)1741 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.), 1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/19/2021	1776 Notice to take deposition of Highland Capital Management LP filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/19/2021	1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C) (Annable, Zachery)
01/19/2021	1778 Motion for expedited hearing(related documents 1777 Motion for leave) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/19/2021	1779 Certificate of service re: *Documents Served on January 13, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1728 Order granting application for compensation (related document 1545) granting for Hayward & Associates PLLC, fees awarded: $82325.00, expenses awarded: $1972.63 Entered on 1/13/2021. (Ecker, C.), 1731 Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1732 Amended Witness and Exhibit List *(Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic), 1726 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) filed by Debtor Highland Capital Management, L.P., 1736 Emergency Motion to file document under seal.*(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150,*

	153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	1780 Notice *of District Court Order Accepting Documents Designated for Inclusion in Record on Appeal Under Seal* filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
01/20/2021	1781 Certificate of service re: Notice of Rule 30(b)(6) *Amended Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1776 Notice to take deposition). (Draper, Douglas)
01/20/2021	1783 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, (Annable, Zachery)
01/20/2021	1784 WITHDRAWN PER # 1876. Objection to (related document(s): 1719 Notice (generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan) Modified on 2/2/2021 (Ecker, C.).
01/20/2021	1785 Order granting motion for expedited hearing (Related Doc# 1778)(document set for hearing: 1777 Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, Entered on 1/20/2021. (Rielly, Bill)
01/20/2021	1786 Certificate of service re: *Documents Served on January 14, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1737 Order granting motion to seal exhibits (related document 1736) Entered on 1/14/2021. (Ecker, C.), 1741 Notice *(Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1743 Declaration re: *Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., 1744 Declaration re: *(Supplemental Declaration of Marc D. Katz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)268 Declaration). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	1787 Certificate of service re: *Documents Served on or Before January 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1764 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1769 Declaration re: *(Report of Mediators)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)912 Order (generic)). filed by Debtor Highland Capital Management, L.P., 1771 Application for compensation *Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $1,046,024.00, Expenses: $4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. filed by Debtor Highland Capital Management, L.P., 1772 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1773 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital

	Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C) filed by Debtor Highland Capital Management, L.P., 1778 Motion for expedited hearing(related documents 1777 Motion for leave) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2021	1788 Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)
01/21/2021	1789 Notice *(Notice of Service of Discovery on Highland Capital Management, L.P.)* filed by Interested Party James Dondero. (Attachments: # 1 Ex. A − Document Requests) (Assink, Bryan)
01/21/2021	1790 Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Subpoena) (Assink, Bryan)
01/21/2021	1791 Notice *(Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice *(Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)).). (Annable, Zachery)
01/22/2021	1792 Witness and Exhibit List *United States' (IRS) Witness & Exhibit List* filed by Creditor United States (IRS) (RE: related document(s)1668 Objection to confirmation of plan). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Adams, David)
01/22/2021	1793 Witness and Exhibit List *for Confirmation Hearing* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint

	Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1670 Objection to confirmation of plan). (Hogewood, A.)
01/22/2021	1794 Witness and Exhibit List *with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit 5 # 2 Exhibit 6 # 3 Exhibit 6−1) (Draper, Douglas)
01/22/2021	1795 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10 # 11 Dondero Ex. 11 # 12 Dondero Ex. 12 # 13 Dondero Ex. 13 # 14 Dondero Ex. 14 # 15 Dondero Ex. 15 # 16 Dondero Ex. 16 # 17 Dondero Ex. 17) (Assink, Bryan)
01/22/2021	1796 Witness and Exhibit List *for Hearing Scheduled for January 26, 2021 at 9:30 a.m.* filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit SE1 # 2 Exhibit SE2 # 3 Exhibit SE # 4 Exhibit SE4 # 5 Exhibit SE5 # 6 Exhibit SE6 # 7 Exhibit SE7 # 8 Exhibit SE8 # 9 Exhibit SE9 # 10 Exhibit SE10 # 11 Exhibit SE11 # 12 Exhibit SE12 # 13 Exhibit SE13 # 14 Exhibit SE14 # 15 Exhibit SE15 # 16 Exhibit SE16 # 17 Exhibit SE17 # 18 Exhibit SE18 # 19 Exhibit SE19 # 20 Exhibit SE20 # 21 Exhibit SE21 # 22 Exhibit SE22 # 23 Exhibit SE23 # 24 Exhibit SE24 # 25 Exhibit SE25 # 26 Exhibit SE26 # 27 Exhibit SE27 # 28 Exhibit SE28 # 29 Exhibit SE29 # 30 Exhibit SE30 # 31 Exhibit SE31 # 32 Exhibit SE33 # 33 Exhibit SE34 # 34 Exhibit SE35 # 35 Exhibit SE36 # 36 Exhibit SE37 # 37 Exhibit SE38 # 38 Exhibit SE39 # 39 Exhibit SE40) (Smith, Frances)
01/22/2021	1797 Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1472 Chapter 11 plan). (Kane, John)
01/22/2021	1798 Certificate of service re: Witness & Exhibit List for Hearing Scheduled for January, 26, 2021 at 9:30 a.m. filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1796 List (witness/exhibit/generic)). (Smith, Frances)
01/22/2021	1799 Witness and Exhibit List *for Hearing Scheduled for January 26, 2021 at 9:30 a.m.* filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit SE33) (Smith, Frances)
01/22/2021	1800 Exhibit and Witness List for Confirmation Hearing filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1670 Objection to confirmation of plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit U # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit

	OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit ZZZ) (Hogewood, A.) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1801 Adversary case 21−03003. Complaint by Highland Capital Management, L.P. against James Dondero. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). (Annable, Zachery)
01/22/2021	1802 Adversary case 21−03004. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). (Annable, Zachery)
01/22/2021	1803 Adversary case 21−03005. Complaint by Highland Capital Management, L.P. against NexPoint Advisors, L.P.. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). (Annable, Zachery)
01/22/2021	1804 Adversary case 21−03006. Complaint by Highland Capital Management, L.P. against Highland Capital Management Services, Inc.. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). (Annable, Zachery)
01/22/2021	1805 Adversary case 21−03007. Complaint by Highland Capital Management, L.P. against HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). (Annable, Zachery)
01/22/2021	1806 Motion to file document under seal. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund (Attachments: # 1 Proposed Order) (Vasek, Julian)
01/22/2021	1807 INCORRECT EVENT: Attorney to refile. Notice *(Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1661 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Party James Dondero., 1662 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., 1666 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., 1667 Objection to confirmation of plan*with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., 1668 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor United States (IRS)., 1669 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), 1670 Objection to confirmation of plan (RE: related document(s)1472

	Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), 1673 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., 1676 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., 1678 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Annable, Zachery)
01/22/2021	1809 Support/supplemental document *(Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery)
01/22/2021	1810 Witness and Exhibit List [Exhibits 1−2 and 12−17] filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1797 List (witness/exhibit/generic)). (Attachments: # 1 CLO Exhibit 2 # 2 CLO Exhibit 12 # 3 CLO Exhibit 13 # 4 CLO Exhibit 14 # 5 CLO Exhibit 15 # 6 CLO Exhibit 16 # 7 CLO Exhibit 17) (Kane, John) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1811 NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.).
01/22/2021	1812 **SEALED document regarding: CLO Exhibit 3 − Aberdeen Loan Funding, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1813 **SEALED document regarding: CLO Exhibit 4 − Brentwood CLO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1814 Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.).
01/22/2021	1815 **SEALED document regarding: CLO Exhibit 5 − Grayson CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1816 **SEALED document regarding: CLO Exhibit 6 − Liberty CLO, Ltd. Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and**

	Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1817 **SEALED document regarding: CLO Exhibit 7 − Red River CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1818 **SEALED document regarding: CLO Exhibit 8 − Rockwall CDO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1819 **SEALED document regarding: CLO Exhibit 9 − Valhalla CLO, Ltd. Reference Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1820 **SEALED document regarding: CLO Exhibit 10 − Westchester CLO, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1821 **SEALED document regarding: CLO Exhibit 11 − Debtor Prepared Summary of CLO Holdco, Ltd.'s Interest in Debtor−Managed CLO Funds [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1822 (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit WWWW # 97 Exhibit XXXX # 98 Exhibit YYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBBB # 102 Exhibit CCCCC # 103 Exhibit DDDDD # 104 Exhibit EEEEE # 105 Exhibit FFFFF # 106 Exhibit GGGGG # 107 Exhibit HHHHH # 108 Exhibit IIIII # 109 Exhibit JJJJJ # 110 Exhibit KKKKK # 111 Exhibit LLLLL # 112 Exhibit MMMMM # 113 Exhibit NNNNN # 114 Exhibit OOOOO # 115 Exhibit PPPPP # 116 Exhibit QQQQQ # 117 Exhibit RRRRR # 118 Exhibit SSSSS # 119 Exhibit TTTTT # 120 Exhibit UUUUU # 121 Exhibit VVVVV # 122 Exhibit WWWWW # 123 Exhibit XXXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZZ # 126 Exhibit AAAAAA # 127 Exhibit

	BBBBBB # 128 Exhibit CCCCCC # 129 Exhibit DDDDDD # 130 Exhibit EEEEEE # 131 Exhibit FFFFFF # 132 Exhibit GGGGGG # 133 Exhibit HHHHHH # 134 Exhibit IIIIII # 135 Exhibit JJJJJJ # 136 Exhibit KKKKKK # 137 Exhibit LLLLLL # 138 Exhibit MMMMMM # 139 Exhibit NNNNNN # 140 Exhibit OOOOOO # 141 Exhibit PPPPPP # 142 Exhibit QQQQQQ # 143 Exhibit RRRRRR # 144 Exhibit SSSSSS # 145 Exhibit TTTTTT # 146 Exhibit UUUUUU # 147 Exhibit VVVVVV # 148 Exhibit WWWWWW # 149 Exhibit XXXXXX # 150 Exhibit YYYYYY # 151 Exhibit ZZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). Additional attachment(s) added on 1/28/2021 (Okafor, M.).
01/22/2021	1823 Response unopposed to (related document(s): 1828 Response filed by Debtor Highland Capital Management, L.P.. Modified linkage on 1/25/2021 (Ecker, C.).
01/22/2021	1828 Response opposed to (related document(s): 1661 Objection to confirmation of plan filed by Interested Party James Dondero, 1662 Objection to confirmation of plan filed by Creditor City of Richardson, Creditor Allen ISD, Creditor Kaufman County, Creditor Dallas County, Creditor City of Allen, 1666 Objection to confirmation of plan filed by Interested Party Jack Yang, Interested Party Brad Borud, 1667 Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1668 Objection to confirmation of plan filed by Creditor United States (IRS), 1669 Objection to confirmation of plan filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, 1670 Objection to confirmation of plan filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small−Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, 1671 Objection, 1673 Objection to confirmation of plan filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, 1676 Objection to confirmation of plan filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc., 1678 Objection to confirmation of plan filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) Modified date on 1/25/2021 (Ecker, C.). (Entered: 01/25/2021)
01/23/2021	1824 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/23/2021	1825 BNC certificate of mailing − PDF document. (RE: related document(s)1785 Order granting motion for expedited hearing (Related Doc1778)(document set for hearing: 1777 Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, Entered on 1/20/2021.) No. of Notices: 1. Notice Date 01/23/2021. (Admin.)
01/24/2021	1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List) (Vasek, Julian)
01/25/2021	1827 Emergency Motion to continue hearing on (related documents 1808 Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/25/2021	1829 Notice *(Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward & Associates PLLC) Effective as of January 1, 2021)* filed by Other Professional Hayward & Associates PLLC. (Annable, Zachery)

01/25/2021	1830 Order granting motion to continue hearing on (related document # 1827) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)
01/25/2021	1831 Order granting motion to file exhibits under seal (related document # 1806) Entered on 1/25/2021. (Okafor, M.)
01/25/2021	1832 Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)* Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order)). Hearing to be held on 3/2/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1745, (Draper, Douglas)
01/25/2021	1833 Notice *(Notice of Certificate of Service re: Letter Dated January 19, 2021 to PCMG Trading Partners XXIII, L.P. from James P. Seery, Jr. re Highland Select Equity Fund, L.P.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/25/2021	1834 Certificate of service re: Notice Of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1832 Notice of hearing). (Draper, Douglas)
01/25/2021	1835 INCORRECT ENTRY: Attorney to refile. Motion to redact/restrict Emergency Redact (related document(s):1822) (Fee Amount $26) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery) MODIFIED on 1/26/2021 (Ecker, C.).
01/25/2021	Receipt of filing fee for Motion to Redact/Restrict From Public View(19−34054−sgj11) [motion,mredact] (26.00). Receipt number 28441834, amount $ 26.00 (re: Doc# 1835). (U.S. Treasury)
01/25/2021	1836 Motion to file document under seal. *Emergency Motion to File Competing Plan and Disclosure Statement Under Seal* Filed by Interested Party NexPoint Advisors, L.P. (Attachments: # 1 Proposed Order) (Rukavina, Davor)
01/25/2021	1837 Certificate of service re: *1) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Relief; and 2) Order Granting Debtors Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1783 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, filed by Debtor Highland Capital Management, L.P., 1785 Order granting motion for expedited hearing (Related Doc1778)(document set for hearing: 1777 Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, Entered on 1/20/2021.). (Kass, Albert)
01/26/2021	1838 Notice *(Notice of Settlement)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−−Settlement Agreement) (Annable, Zachery)
01/26/2021	1839 WITHDRAWN at # 1858. Notice to take deposition of Frank Waterhouse filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland

	Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.) Modified on 1/29/2021 (Ecker, C.).
01/26/2021	1840 INCORRECT ENTRY: Attorney to refile. Motion to withdraw document*Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only* (related document(s) 1669 Objection to confirmation of plan) Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/26/2021	1841 Certificate of service re: Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1840 Motion to withdraw document*Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only* (related document(s) 1669 Objection to confirmation of plan)). (Smith, Frances)
01/26/2021	1842 Application for compensation *Fourteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 12/31/2020, Fee: $416,359.08, Expenses: $5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. (Hoffman, Juliana)
01/26/2021	1843 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
01/26/2021	1844 Certificate of service re: *Documents Served on January 21, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1788 Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document 1625) Entered on 1/21/2021. (Okafor, M.), 1791 Notice *(Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice *(Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit

	J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)).). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/26/2021	1850 Hearing held on 1/26/2021. (RE: related document(s)1777 Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/27/2021)
01/27/2021	1845 Withdrawal *of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only* filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1669 Objection to confirmation of plan). (Smith, Frances)
01/27/2021	1846 Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/27/2021	1847 Notice *(Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/27/2021	1848 Amended Motion to redact/restrict (related document(s):1835) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order # 2 Exhibit PPPP # 3 Exhibit QQQQ # 4 Exhibit RRRR # 5 Exhibit SSSS # 6 Exhibit TTTT # 7 Exhibit UUUU # 8 Exhibit VVVV # 9 Exhibit WWWW # 10 Exhibit XXXX # 11 Exhibit YYYY # 12 Exhibit ZZZZ # 13 Exhibit DDDDDD) (Annable, Zachery)
01/27/2021	1849 Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief (related document # 1777) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	1851 Order granting motion to seal documents (related document # 1836) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	1852 Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc # 1848) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. (Hoffman, Juliana)
01/27/2021	1854 Certificate of service re: *Documents Served on January 22, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1807 INCORRECT EVENT: Attorney to refile. Notice *(Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)* filed by Debtor Highland Capital Management, L.P. (RE: related

document(s)1661 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Party James Dondero., 1662 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., 1666 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., 1667 Objection to confirmation of plan*with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., 1668 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor United States (IRS)., 1669 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), 1670 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), 1673 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., 1676 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., 1678 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1809 Support/supplemental document *(Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1811 NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1814 Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1822 (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit

	QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit WWWW # 97 Exhibit XXXX # 98 Exhibit YYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBBB # 102 Exhibit CCCCC # 103 Exhibit DDDDD # 104 Exhibit EEEEE # 105 Exhibit FFFFF # 106 Exhibit GGGGG # 107 Exhibit HHHHH # 108 Exhibit IIIII # 109 Exhibit JJJJJ # 110 Exhibit KKKKK # 111 Exhibit LLLLL # 112 Exhibit MMMMM # 113 Exhibit NNNNN # 114 Exhibit OOOOO # 115 Exhibit PPPPP # 116 Exhibit QQQQQ # 117 Exhibit RRRRR # 118 Exhibit SSSSS # 119 Exhibit TTTTT # 120 Exhibit UUUUU # 121 Exhibit VVVVV # 122 Exhibit WWWWW # 123 Exhibit XXXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZZ # 126 Exhibit AAAAAA # 127 Exhibit BBBBBB # 128 Exhibit CCCCCC # 129 Exhibit DDDDDD # 130 Exhibit EEEEEE # 131 Exhibit FFFFFF # 132 Exhibit GGGGGG # 133 Exhibit HHHHHH # 134 Exhibit IIIIII # 135 Exhibit JJJJJJ # 136 Exhibit KKKKKK # 137 Exhibit LLLLLL # 138 Exhibit MMMMMM # 139 Exhibit NNNNNN # 140 Exhibit OOOOOO # 141 Exhibit PPPPPP # 142 Exhibit QQQQQQ # 143 Exhibit RRRRRR # 144 Exhibit SSSSSS # 145 Exhibit TTTTTT # 146 Exhibit UUUUUU # 147 Exhibit VVVVVV # 148 Exhibit WWWWWW # 149 Exhibit XXXXXX # 150 Exhibit YYYYYY # 151 Exhibit ZZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/28/2021	1855 Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Prostok, Jeff)
01/28/2021	1856 Notice of Appearance and Request for Notice by Suzanne K. Rosen filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Rosen, Suzanne)
01/28/2021	1857 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1624, (Annable, Zachery)
01/28/2021	1858 Withdrawal *of Notice of Deposition* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1839 Notice to take deposition). (Hogewood, A.)
01/28/2021	1859 **SEALED document regarding: PLAN OF REORGANIZATION OF JAMES DONDERO, NEXPOINT ADVISORS, L.P. per court order** filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1851 Order on motion to seal). (Rukavina, Davor)
01/28/2021	1860 **SEALED document regarding: DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION per court order** filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1851 Order on motion to seal). (Rukavina, Davor)
01/28/2021	1861 Certificate of service re: *Documents Served on or Before January 25, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1824 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1827 Emergency Motion to continue hearing on (related documents 1808 Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1829 Notice *(Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward & Associates PLLC) Effective as of January 1, 2021)* filed by Other Professional Hayward & Associates

	PLLC. filed by Other Professional Hayward & Associates PLLC, 1830 Order granting motion to continue hearing on (related document 1827) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)). (Kass, Albert)
01/29/2021	1862 Transcript regarding Hearing Held 01/26/2021 (257 pages) RE: KERP Motion 1777. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1850 Hearing held on 1/26/2021. (RE: related document(s)1777 Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 04/29/2021. (Rehling, Kathy)
01/29/2021	1863 Amended Witness and Exhibit List *of Funds and Advisors* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1793 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82) (Hogewood, A.)
01/29/2021	1864 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020)* filed by Other Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
01/29/2021	1865 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020)* filed by Other Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
01/29/2021	1866 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List

	(witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAA # 3 Exhibit BBBBBBB # 4 Exhibit CCCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) (Annable, Zachery)
01/29/2021	1867 Certificate of service re: *1) Notice of Settlement; 2) Fourteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through December 31, 2020; and 3) Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1838 Notice *(Notice of Settlement)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P., 1842 Application for compensation *Fourteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 12/31/2020, Fee: $416,359.08, Expenses: $5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1843 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/01/2021	Adversary case 3:20−ap−3128 closed (Ecker, C.)
02/01/2021	1868 Supplemental Objection to confirmation of plan *with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan, 1808 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
02/01/2021	1869 Certificate of service re: Monthly Staffing Reports by Development Specialists, Inc. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1864 Notice (generic), 1865 Notice (generic)). (Annable, Zachery)
02/01/2021	1870 Notice of appeal *and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021. (Draper, Douglas). Related document(s) 1788 Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).
02/01/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28458158, amount $ 298.00 (re: Doc# 1870). (U.S. Treasury)
02/01/2021	1871 Reply to (related document(s): 1784 Objection filed by Interested Party James Dondero) *(Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/01/2021	1872 **SEALED document regarding: Exhibit 76 per court order** filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1831 Order on motion to seal). (Attachments: # 1 Exhibit 77 # 2 Exhibit 78 # 3 Exhibit 79 # 4 Exhibit 80 # 5 Exhibit 81 # 6 Exhibit 82) (Vasek, Julian)
02/01/2021	1873 Notice *(Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's*

	Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
02/01/2021	1874 Amended Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1795 List (witness/exhibit/generic)). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10 # 11 Dondero Ex. 11 # 12 Dondero Ex. 12 # 13 Dondero Ex. 13 # 14 Dondero Ex. 14 # 15 Dondero Ex. 15 # 16 Dondero Ex. 16 # 17 Dondero Ex. 17 # 18 Dondero Ex. 18 # 19 Dondero Ex. 19 # 20 Dondero Ex. 20) (Assink, Bryan)
02/01/2021	1875 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) (Annable, Zachery)
02/01/2021	1876 Withdrawal *(Notice of Withdrawal of Document)* filed by Interested Party James Dondero (RE: related document(s)1784 Objection). (Assink, Bryan)
02/01/2021	1877 Amended Witness and Exhibit List *(Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List (witness/exhibit/generic), 1866 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFF # 4 Exhibit GGGGGGG # 5 Exhibit HHHHHHH # 6 Exhibit IIIIIII # 7 Exhibit JJJJJJJ # 8 Exhibit KKKKKKK # 9 Exhibit LLLLLLL # 10 Exhibit MMMMMMM # 11 Exhibit NNNNNNN # 12 Exhibit OOOOOOO # 13 Exhibit PPPPPPP # 14 Exhibit QQQQQQQ) (Annable, Zachery)
02/01/2021	1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B) (Montgomery, Paige)
02/01/2021	1879 Certificate of service re: *Documents Served on January 27, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1846 Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1847 Notice *(Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., 1849 Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief (related document 1777) Entered on 1/27/2021. (Okafor, M.), 1852 Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc 1848) Entered on 1/27/2021. (Okafor, M.)). (Kass, Albert)
02/01/2021	

	1880 Response opposed to (related document(s): 1868 Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
02/01/2021	1881 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47.). (Hoffman, Juliana)
02/02/2021	1882 Clerk's correspondence requesting File an amended appeal from attorney for appellant. (RE: related document(s)1870 Notice of appeal *and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021.) Responses due by 2/5/2021. (Blanco, J.)
02/02/2021	1884 Request for transcript regarding a hearing held on 2/2/2021. The requested turn−around time is hourly. (Edmond, Michael)
02/02/2021	1885 Hearing continued (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Edmond, Michael)
02/02/2021	1886 Certificate of service re: *Documents Served on or Before January 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1857 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1624, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/02/2021	1921 Hearing held on 2/2/2021. (RE: related document(s)1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Matter not taken up in light of all−day confirmation hearing.) (Edmond, Michael) (Entered: 02/09/2021)
02/02/2021	1922 Hearing held on 2/2/2021. (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Evidentiary hearing. Hearing recessed and will resume on 2/3/21.) (Edmond, Michael) (Entered: 02/09/2021)
02/03/2021	1887 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

02/03/2021	1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (Drawhorn, Lauren)
02/03/2021	1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal). (Draper, Douglas)
02/03/2021	1890 Request for transcript regarding a hearing held on 2/3/2021. The requested turn−around time is hourly. (Edmond, Michael)
02/03/2021	1891 Certificate of service re: *Supplemental Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1887 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	1892 Certificate of service re: *1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 Through November 30, 2020; 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 Through December 31, 2020; and 3) Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1864 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020)* filed by Other Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., 1865 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020)* filed by Other Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., 1866 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAA # 3 Exhibit BBBBBBB # 4 Exhibit CCCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	1893 Certificate of service re: *Documents Served on February 1, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1871 Reply to (related document(s): 1784 Objection filed by Interested Party James Dondero) *(Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1873 Notice *(Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., 1875 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) filed by Debtor Highland Capital Management, L.P., 1877 Amended Witness and Exhibit List *(Debtor's*

	Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List (witness/exhibit/generic), 1866 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFF # 4 Exhibit GGGGGGG # 5 Exhibit HHHHHHH # 6 Exhibit IIIIIII # 7 Exhibit JJJJJJJ # 8 Exhibit KKKKKKK # 9 Exhibit LLLLLLL # 10 Exhibit MMMMMMM # 11 Exhibit NNNNNNN # 12 Exhibit OOOOOOO # 13 Exhibit PPPPPPP # 14 Exhibit QQQQQQQ) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	1902 Bench Ruling set (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for 1808, (Ellison, T.) (Entered: 02/05/2021)
02/03/2021	1915 Court admitted exhibits date of hearing February 3, 2021 (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) (COURT ADMITTED ALL THE DEBTOR'S EXHIBIT'S THAT APPEAR AT DOC. #1822, #1866 & #1877 & DONDERO'S EXHIBITS #6 THROUGH #12, #15, 16 & #17; & HIGHLAND CAPTIAL MGMT. FUNDING EXHIBIT #2 AT DOC. #1863 AND JUDGE JERNIGAN TOOK JUDICIAL NOTICE OF THE DEBTOR'S SCHEDULES) (Edmond, Michael) (Entered: 02/08/2021)
02/03/2021	1923 Hearing held on 2/3/2021. (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan) (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank and NexPoint; L. Lambert for UST. Evidentiary hearing. Court took matter under advisement after conclusion of evidence and arguments. Bench ruling scheduled for 2/8/21 at 9:00 am.) (Edmond, Michael) (Entered: 02/09/2021)
02/04/2021	1894 Transcript regarding Hearing Held 02/02/2021 (295 pages) RE: Confirmation Hearing, Day One (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/5/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1885 Hearing continued (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/5/2021. (Rehling, Kathy)
02/04/2021	1895 Amended Witness and Exhibit List *(Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1877 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PPPPPPP # 2 Exhibit RRRRRRR # 3 Exhibit SSSSSSS # 4 Exhibit TTTTTTT # 5 Exhibit UUUUUUU) (Annable, Zachery)
02/04/2021	1896 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
02/05/2021	1898 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

02/05/2021	1899 Notice of docketing notice of appeal. Civil Action Number: 3:21−CV−00261−L (Lindsay). (RE: related document(s)1870 Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas). Related document(s) 1788 Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.)., 1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal).) (Blanco, J.)
02/05/2021	1900 Certificate of mailing regarding appeal (RE: related document(s)1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal).) (Blanco, J.) Additional attachment(s) added on 2/5/2021 (Blanco, J.).
02/05/2021	1901 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1870 Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. Related document(s) 1788 Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).) (Blanco, J.)
02/05/2021	1903 Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s)1843 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	1904 Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s)1896 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	1905 Transcript regarding Hearing Held 02/03/2021 (257 pages) RE: Confirmation Hearing, Day Two (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1885 Hearing continued (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/6/2021. (Rehling, Kathy)
02/05/2021	1906 Certificate of service re: *Official Committee of Unsecured Creditors' Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	1907 Certificate of service re: *Response of the Official Committee of Unsecured Creditors to Supplemental Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) Filed by the Dugaboy Investment Trust and Get Good Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1880 Response opposed to (related document(s): 1868 Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	1908 Certificate of service re: *Documents Served on February 4, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1895 Amended Witness and

	Exhibit List *(Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1877 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PPPPPPP # 2 Exhibit RRRRRRR # 3 Exhibit SSSSSSS # 4 Exhibit TTTTTTT # 5 Exhibit UUUUUUU) filed by Debtor Highland Capital Management, L.P., 1896 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/05/2021	1909 Certificate of service re: *(Supplemental) Solicitation Materials Served on February 1, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/06/2021	1910 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1900 Certificate of mailing regarding appeal, 1901 Notice regarding the record for a bankruptcy appeal). Appellee designation due by 02/22/2021. (Draper, Douglas)
02/06/2021	1911 Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1901 Notice regarding the record for a bankruptcy appeal, 1910 Appellant designation). (Draper, Douglas)
02/08/2021	1912 Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s)1910 Appellant designation of contents for inclusion in record on appeal) Responses due by 2/10/2021. (Blanco, J.)
02/08/2021	1913 Request for transcript (ruling only) regarding a hearing held on 2/8/2021. The requested turn−around time is hourly. (Edmond, Michael)
02/08/2021	1914 Motion for leave *(Motion for Status Conference)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
02/08/2021	1924 Hearing held on 2/8/2021. (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Appearances: J. Pomeranz; M. Clemente for UCC; M. Lynn, J. Bonds, and B. Assink for J. Dondero; D. Rukavina and L. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Lambert for UST (numerous others; full roll call not taken). Court read bench ruling approving plan. Counsel to incorporate courts bench ruling into their own set of FOFs, COLS and Order to be submitted.) (Edmond, Michael) (Entered: 02/09/2021)
02/09/2021	

	1916 Notice of hearing *(Status Conference)* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/22/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # 1 Service List) (Vasek, Julian)
02/09/2021	1917 Transcript regarding Hearing Held 02/08/2021 (51 pages) RE: Bench Ruling. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1902 Bench Ruling set (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for 1808, (Ellison, T.)). Transcript to be made available to the public on 05/10/2021. (Rehling, Kathy)
02/09/2021	1918 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/09/2021	1919 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/09/2021	1920 Certificate of service re: *1) Debtors Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC; 2) Order Approving Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation; and 3) Order Approving Second Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1898 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1903 Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s)1843 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.), 1904 Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s)1896 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)). (Kass, Albert)
02/09/2021	1925 Application for compensation *First Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: $73121.04, Expenses: $10.35. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 3/2/2021. (Hesse, Gregory)
02/10/2021	1926 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1771 Application for compensation *Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to). (Pomerantz, Jeffrey)

02/10/2021	1927 Application for compensation *Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: $239,297.76, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. (Hoffman, Juliana)
02/10/2021	1928 Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1910 Appellant designation). (Draper, Douglas)
02/11/2021	1929 Order denying motion for status conference (related document # 1914) Entered on 2/11/2021. (Ecker, C.)
02/11/2021	1930 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount $88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) (Tanabe, Kesha)
02/12/2021	1931 Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document # 1624) Entered on 2/12/2021. (Okafor, M.)
02/12/2021	1932 Certificate of service re: *1) Debtors Notice of Deposition to James Dondero in Connection with Debtors Objection to Proof of Claim Filed by HCRE Partners, LLC; and 2) Notice of Statement of Amounts Paid to Ordinary Course Processionals for the Period from October 16, 2019 to December 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1918 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1919 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/13/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28493529, amount $ 26.00 (re: Doc# 1930). (U.S. Treasury)
02/16/2021	1933 Agreed Motion to continue hearing on (related documents 1826 Application for administrative expenses) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Hogewood, A.)
02/16/2021	1934 Certificate of service re: *Fourteenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 to and Including December 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1927 Application for compensation *Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: $239,297.76, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/17/2021	1935 Adversary case 21−03010. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. Fee Amount $350 (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Adversary Cover

	Sheet). Nature(s) of suit: 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 72 (Injunctive relief – other). (Annable, Zachery)
02/17/2021	1936 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1643 Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # 1 Proposed Order)) Responses due by 2/24/2021. (Ecker, C.)
02/17/2021	1937 Order granting motion to continue hearing on (related document 1933) (related documents Application for administrative expenses) The Status Conference is hereby continued from March 22, 2021 at 9:30 a.m. to to such date and time on or after March 29, 2021 that is determined by the Court. (Okafor, M.) MODIFIED to correct hearing setting on 2/17/2021 (Okafor, M.).
02/18/2021	1938 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). (Annable, Zachery)
02/18/2021	1939 Certificate of service re: *Agreed Order on Motion to Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1931 Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document 1624) Entered on 2/12/2021. (Okafor, M.)). (Kass, Albert)
02/19/2021	1940 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1842 Application for compensation *Fourteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 12/31/2020, Fee: $416,359.08, Expenses:). (Hoffman, Juliana)
02/22/2021	1941 Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). (Annable, Zachery)
02/22/2021	1942 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1900 Certificate of mailing regarding appeal, 1901 Notice regarding the record for a bankruptcy appeal). (Annable, Zachery)
02/22/2021	1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
02/22/2021	1944 Application for compensation *Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $2,557,604.00, Expenses: $32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. (Pomerantz, Jeffrey)
02/23/2021	1945 Certificate of service re: *Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1938 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). filed by Debtor Highland Capital

	Management, L.P.). (Kass, Albert)
02/24/2021	1946 Clerk's correspondence requesting from attorney for appellant. (RE: related document(s)1928 Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1910 Appellant designation).) Responses due by 3/10/2021. (Blanco, J.)
02/24/2021	1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1878, (Montgomery, Paige)
02/24/2021	1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
02/24/2021	1949 Debtor−in−possession monthly operating report for filing period December 1, 2020 to December 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2021	1950 BNC certificate of mailing − PDF document. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)) No. of Notices: 8. Notice Date 02/24/2021. (Admin.)
02/25/2021	1951 Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1942 Appellee designation). (Annable, Zachery)
02/25/2021	Receipt of Registry Funds − $43976.75 by SD. Receipt Number 338805. (admin)
02/25/2021	Receipt of Registry Funds − $3022.74 by SD. Receipt Number 338806. (admin)
02/25/2021	1952 Certificate of service re: *Documents Served on February 22, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1941 Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). filed by Debtor Highland Capital Management, L.P., 1942 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1900 Certificate of mailing regarding appeal, 1901 Notice regarding the record for a bankruptcy appeal). filed by Debtor Highland Capital Management, L.P., 1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.), 1944 Application for compensation *Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $2,557,604.00, Expenses: $32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2021	1953 Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann

	for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document # 1643) Entered on 2/26/2021. (Okafor, M.)
02/26/2021	1954 Certificate of service re: *1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/28/2021	1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
02/28/2021	1956 BNC certificate of mailing − PDF document. (RE: related document(s)1953 Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document 1643) Entered on 2/26/2021. (Okafor, M.)) No. of Notices: 3. Notice Date 02/28/2021. (Admin.)
03/01/2021	1957 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)(Rukavina, Davor)
03/01/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28523950, amount $ 298.00 (re: Doc# 1957). (U.S. Treasury)
03/01/2021	1958 Motion for expedited hearing(related documents 1955 Motion to stay pending appeal) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
03/01/2021	1959 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount $3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
03/01/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28524853, amount $ 26.00 (re: Doc# 1959). (U.S. Treasury)
03/01/2021	1960 Order Denying Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) (related document # 1745) Entered on 3/1/2021. (Okafor, M.)
03/01/2021	

	1961 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,). (Hoffman, Juliana)
03/02/2021	1962 Certificate of service re: *Appellees Amended Supplemental Designation of Record on Appeal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1951 Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1942 Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2021	1963 Application for compensation *Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: $655,724.88, Expenses: $6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. (Hoffman, Juliana)
03/03/2021	1964 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	1965 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	1966 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.)
03/03/2021	1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.)
03/03/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28532838, amount $ 298.00 (re: Doc# 1966). (U.S. Treasury)
03/03/2021	1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. (Hoffman, Juliana)
03/03/2021	1969 Objection to (related document(s): 1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
03/04/2021	1970 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # 1 Exhibit)(Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28537086, amount $ 298.00 (re: Doc# 1970). (U.S. Treasury)
03/04/2021	1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Draper, Douglas)

03/04/2021	1972 Notice of appeal *Notice of Appeal and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/18/2021. (Draper, Douglas)
03/04/2021	1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28537308, amount $ 298.00 (re: Doc# 1972). (U.S. Treasury)
03/04/2021	1974 Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Annable, Zachery)
03/05/2021	1976 Certificate of No Objection Regarding First Monthly Fee Application filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)1925 Application for compensation *First Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: $73121.04, Expenses: $10.35.). (Hesse, Gregory)
03/05/2021	1977 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 12 Number of appellee volumes: 13. Civil Case Number: 3:20−CV−03390−X (RE: related document(s)1347 Notice of appeal) (Blanco, J.)
03/05/2021	1978 Notice of docketing COMPLETE record on appeal. 3:20−CV−03390−X (RE: related document(s)1347 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). (Blanco, J.)
03/05/2021	1979 Order approving stipulation regarding briefing (Re: related document(s) 1974 Stipulation) and setting hearing (RE: related document(s)1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1955 and for 1967, Entered on 3/5/2021 (Okafor, M.)
03/05/2021	1980 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1927 Application for compensation *Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: $239,297). (Hoffman, Juliana)
03/07/2021	1981 BNC certificate of mailing − PDF document. (RE: related document(s)1979 Order approving stipulation regarding briefing (Re: related document(s) 1974 Stipulation) and setting hearing (RE: related document(s)1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1955 and for 1967, Entered on 3/5/2021 (Okafor, M.)) No. of Notices: 2. Notice Date 03/07/2021. (Admin.)

03/08/2021	1986 Certificate of mailing regarding appeal (RE: related document(s)1966 Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1987 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1966 Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	1988 Certificate of mailing regarding appeal (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1989 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/08/2021	1990 Certificate of mailing regarding appeal (RE: related document(s)1970 Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1991 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1970 Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/08/2021	1992 Certificate of mailing regarding appeal (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1993 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	1994 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1967 and for 1973 and for 1955 and for 1971, (Annable, Zachery)
03/08/2021	1995 Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc..

	(Drawhorn, Lauren)
03/08/2021	1996 Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	1997 Certificate of service re: *Documents Served on or Before March 3, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1963 Application for compensation *Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: $655,724.88, Expenses: $6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1964 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1965 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/08/2021	1998 Certificate of service re: *1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1377 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, 1378 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, 1379 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount $20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, 1401 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Kass, Albert)
03/08/2021	1999 Certificate of service re: *1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1500 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount $16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP, 1508 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount $32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, 1509 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount $12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, 1512 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. filed by Creditor Hain Capital Group, LLC, 1582 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount $1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed

	by Creditor Fair Harbor Capital, LLC, 1591 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount $90,855.70) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, 1658 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount $26,324.25) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, 1930 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount $88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP). (Kass, Albert)
03/09/2021	2000 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00538−N. (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/09/2021	2001 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00539−N. (RE: related document(s)1966 Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). (Hogewood, A.)) (Whitaker, Sheniqua)
03/09/2021	2002 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00546−L. (RE: related document(s)1970 Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/09/2021	2003 Application for compensation *(First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: $87,972.80, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	2004 Application for compensation *(Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: $91,353.40, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	2005 Application for compensation *(Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: $78,594.30, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	2006 Certificate of service re: *Stipulation Regarding Briefing and Hearing Schedule* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1974 Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/10/2021	2007 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered

	on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
03/10/2021	2008 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00550−L. (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/10/2021	2009 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
03/10/2021	2011 Certificate of service re: *Order Approving Stipulation Regarding Briefing and Hearing Schedule* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1979 Order approving stipulation regarding briefing (Re: related document(s) 1974 Stipulation) and setting hearing (RE: related document(s)1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1955 and for 1967, Entered on 3/5/2021 (Okafor, M.)). (Kass, Albert)
03/10/2021	2012 BNC certificate of mailing. (RE: related document(s)1989 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/10/2021	2013 BNC certificate of mailing. (RE: related document(s)1993 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan).) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/11/2021	2014 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1972 Notice of appeal). (Draper, Douglas)
03/11/2021	2015 Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1957 Notice of appeal). (Rukavina, Davor)
03/11/2021	2016 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1957 Notice of appeal). Appellee designation due by 03/25/2021. (Rukavina, Davor)
03/11/2021	2017 Certificate of service re: *Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1994 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related

	documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1967 and for 1973 and for 1955 and for 1971, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/12/2021	2018 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 6 Number of appellee volumes: 1. Civil Case Number: 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	2019 Notice of docketing record on appeal. 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	2021 Notice of transmittal 20−CV−03408−G 13 SEALED DOCUMENTS (RE: related document(s)2019 Notice of docketing record on appeal. 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/12/2021	2022 Omnibus Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021 (Rielly, Bill).
03/12/2021	2023 Joinder by *the Official Committee of Unsecured Creditors* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2022 Response). (Hoffman, Juliana)
03/12/2021	2024 Application for compensation − *Second Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: $35042.76, Expenses: $3.80. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	2025 Application for compensation − *Third Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: $37092.24, Expenses: $94.54. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	2026 Certificate of service re: *1) First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through July 31, 2020; 2) Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 Through August 31, 2020; and 3) Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 Through September 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2003 Application for compensation *(First Combined Monthly Fee Statement of Deloitte Tax LLP*

	for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: $87,972.80, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2004 Application for compensation *(Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: $91,353.40, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2005 Application for compensation *(Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: $78,594.30, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP). (Kass, Albert)
03/12/2021	2027 Certificate of service re: *(Supplemental) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 1954 Certificate of service re: *1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
03/12/2021	2028 Certificate of service re: *1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 Through January 31, 2021; and 2) Notice of Status Conference* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2007 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2009 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/15/2021	2030 Debtor−in−possession monthly operating report for filing period January 1, 2021 to January 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)

03/15/2021	2032 Notice of transmittal 3:20−CV−03390−X. CLERKS OFFICE OVERLOOKED SECOND APPELLEE. AMENDED MINI RECORD TO INCLUDE SECOND APPELLEE INDEX. ATTACHED ALSO: APPELLEE VOL. 27 (RE: related document(s)1978 Notice of docketing COMPLETE record on appeal. 3:20−CV−03390−X (RE: related document(s)1347 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/16/2021	2033 Motion for Certification to Court of Appeals *(Joint Motion)* Filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Get Good Trust, The Dugaboy Investment Trust, Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Rukavina, Davor)
03/16/2021	2034 Order certifying appeals of the confirmation order for direct appeal to the United States Court of appeals for the Fifth Circuit (Related Doc # 2033) Entered on 3/16/2021. (Okafor, M.)
03/16/2021	2035 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1944 Application for compensation *Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/). (Pomerantz, Jeffrey)
03/16/2021	2036 Reply to (related document(s): 2022 Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)
03/16/2021	2037 Reply to (related document(s): 2022 Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/16/2021	2038 Second Notice *of Additional Services to be Provided by Deloitte Tax LLP* filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/16/2021	2039 Notice *of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hayward, Melissa)
03/17/2021	2040 Statement of issues on appeal, filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1966 Notice of appeal). (Hogewood, A.)
03/17/2021	2041 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1966 Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)
03/17/2021	2042 Certificate of service re: *1) Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order; and 2) Omnibus Objection of the Official Committee of*

	Unsecured Creditors Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtors Omnibus Objection to Motions for Stay Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2022 Omnibus Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021. filed by Debtor Highland Capital Management, L.P., 2023 Joinder by *the Official Committee of Unsecured Creditors* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2022 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/17/2021	2043 Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M) (Vasek, Julian)
03/17/2021	2044 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Bhawika Jain To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	2045 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Michael Beispiel To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	2046 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Sang Kook (Michael) Jeong To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	2047 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Phoebe Stewart To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2044). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2045). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2046). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2047). (U.S. Treasury)
03/17/2021	2048 Declaration re: *Third Supplemental Declaration* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). (Hoffman, Juliana)

03/18/2021	2052 Notice of transmittal to submit Amended Mini Record Vol. 1 to remove appellee index and to disregard Appellee Record Vol. 8 filed at doc 27 in 3:20−CV−03408−G (RE: related document(s)2019 Notice of docketing record on appeal. 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/18/2021	2053 Clerk's correspondence requesting Amended designation from attorney for Appellant. (RE: related document(s)2041 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1966 Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)) Responses due by 3/24/2021. (Blanco, J.)
03/18/2021	2054 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2014 Amended notice of appeal). Appellee designation due by 04/1/2021. (Draper, Douglas)
03/18/2021	2055 Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2014 Amended notice of appeal). (Draper, Douglas)
03/18/2021	2056 Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1970 Notice of appeal). (Taylor, Clay)
03/18/2021	2057 Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)1970 Notice of appeal, 2056 Statement of issues on appeal). Appellee designation due by 04/1/2021. (Taylor, Clay)
03/18/2021	2058 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) (Annable, Zachery)
03/18/2021	2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. (Annable, Zachery)
03/18/2021	2060 Motion to recuse Judge Jernigan Filed by Interested Party James Dondero (Lang, Michael)
03/18/2021	2061 Brief in support filed by Interested Party James Dondero (RE: related document(s)2060 Motion to recuse Judge Jernigan). (Lang, Michael)
03/18/2021	2062 Support/supplemental document*Appendix to Motion to Recuse* filed by Interested Party James Dondero (RE: related document(s)2060 Motion to recuse Judge Jernigan).

	(Lang, Michael)
03/19/2021	2063 Request for transcript regarding a hearing held on 3/19/2021. The requested turn−around time is hourly. (Edmond, Michael)
03/19/2021	2064 Motion to continue hearing on (related documents 1878 Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/19/2021	2065 Court admitted exhibits date of hearing March 19, 2021 (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).) (COURT ADMITTED MOVANT'S EXHIBIT'S #A THROUGH #M BY DAVOR RUKAVINA & DEFENDANT'S EXHIBIT'S #1 THROUGH #33 BY JEFFREY POMERANTZ) (Edmond, Michael)
03/19/2021	2066 Witness List *(Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021 (Rielly, Bill).
03/19/2021	2067 Hearing held on 3/19/2021. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2068 Hearing held on 3/19/2021. (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2069 Hearing held on 3/19/2021. (RE: related document(s)1971 Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth

	Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2070 Hearing held on 3/19/2021. (RE: related document(s)1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2071 Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021 (Tello, Chris).
03/19/2021	2072 Certificate of service re: *1) Second Notice of Additional Services to be Provided by Deloitte Tax LLP; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2038 Second Notice *of Additional Services to be Provided by Deloitte Tax LLP* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2039 Notice *of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2021	2077 Hearing set − follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967

	Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).) Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1955 and for 1967 and for 1973 and for 1971, (Ellison, T.) (Entered: 03/22/2021)
03/20/2021	2073 Transcript regarding Hearing Held 03/19/2021 (82 pages) RE: Motions/Joinders to Stay Pending Appeal. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/18/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2067 Hearing held on 3/19/2021. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2068 Hearing held on 3/19/2021. (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2069 Hearing held on 3/19/2021. (RE: related document(s)1971 Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2070 Hearing held on 3/19/2021. (RE: related document(s)1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.)). Transcript to be made available to the public on 06/18/2021. (Rehling, Kathy)
03/22/2021	

	2074 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)2041 Appellant designation). (Hogewood, A.)
03/22/2021	2075 Notice to take deposition of James P. Seery filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/22/2021	2076 Order granting motion to continue hearing on (related document # 2064) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, Entered on 3/22/2021. (Okafor, M.)
03/22/2021	2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, (Annable, Zachery)
03/22/2021	2079 Declaration re: *(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)70 Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). (Annable, Zachery)
03/22/2021	2080 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)2016 Appellant designation). (Rukavina, Davor)
03/23/2021	2081 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 4/6/2021. (Ecker, C.)
03/23/2021	2082 Notice *of Authority to Clerk of Bankruptcy Court* filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # 1 Order) (Draper, Douglas)
03/23/2021	2083 Order denying motion to recuse (related document #2060) Entered on 3/23/2021. (Okafor, M.)
03/23/2021	2084 Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document # 1955), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document # 1967), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related

	document # 1971), denying Joinder by filed by Interested Party James Dondero (related document # 1973). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jernigan for 1955 and for 1967 and for 1973 and for 1971, Entered on 3/23/2021. (Okafor, M.)
03/23/2021	2085 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, (Montgomery, Paige)
03/23/2021	2086 Support/supplemental document *(Letter to Court Regarding Mandatory Stay Pending Appeal Bond Hearing)* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 2077 Hearing set/continued, 2084 Order on motion to stay pending appeal, Order on motion to stay pending appeal). (Rukavina, Davor)
03/23/2021	2087 Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021 (Tello, Chris).
03/23/2021	2088 Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2058 List (witness/exhibit/generic), 2066 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) (Annable, Zachery)
03/23/2021	2089 Supplemental Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/23/2021	2090 Certificate of service re: *Debtor's Witness and Exhibit List with Respect to Hearing to be Held on March 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2058 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/23/2021	2091 Certificate of service re: *Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky

	Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021 (Rielly, Bill).
03/24/2021	2092 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2093 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2094 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)
03/24/2021	2096 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2097 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2098 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2099 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2100 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2101 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2102 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	

	2103 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2104 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2105 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2106 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2107 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2108 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2109 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2110 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2111 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2112 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2113 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2114 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2115 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2116 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1963 Application for compensation *Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: $655,7). (Hoffman, Juliana)

03/24/2021	2117 Certificate of service re: *Documents Served on March 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2048 Declaration re: *Third Supplemental Declaration* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., 2064 Motion to continue hearing on (related documents 1878 Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 2066 Witness List *(Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021. filed by Debtor Highland Capital Management, L.P., 2071 Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2092). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2093). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2094). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2096). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2097). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2098). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2099). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2100). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2101). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2102).

	(U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2103). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2104). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2105). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2106). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2107). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2108). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2109). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2110). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2111). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2112). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2113). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2114). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2115). (U.S. Treasury)
03/25/2021	2118 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

03/25/2021	2119 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	2120 INCORRECT ENTRY: Attorney to refile. Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00.). (Hoffman, Juliana) Modified on 3/26/2021 (Ecker, C.).
03/25/2021	2121 BNC certificate of mailing − PDF document. (RE: related document(s)2084 Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document 1955), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document 1967), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document 1971), denying Joinder by filed by Interested Party James Dondero (related document 1973). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jernigan for 1955 and for 1967 and for 1973 and for 1971, Entered on 3/23/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/25/2021. (Admin.)
03/26/2021	2122 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00.). (Hoffman, Juliana)
03/26/2021	2123 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
03/26/2021	2124 Application for compensation *Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $1,358,786.50, Expenses: $21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. (Pomerantz, Jeffrey)
03/26/2021	2125 Certificate of service re: *1) Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors; 2) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2076 Order granting motion to continue hearing on (related document 2064) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, Entered on 3/22/2021. (Okafor, M.), 2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit

	Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, filed by Debtor Highland Capital Management, L.P., 2079 Declaration re: *(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)70 Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/26/2021	2126 Certificate of service re: *Documents Served on March 23, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2084 Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document 1955), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document 1967), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document 1971), denying Joinder by filed by Interested Party James Dondero (related document 1973). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jernigan for 1955 and for 1967 and for 1973 and for 1971, Entered on 3/23/2021. (Okafor, M.), 2085 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 2087 Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021. filed by Debtor Highland Capital Management, L.P., 2088 Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2058 List (witness/exhibit/generic), 2066 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) filed by Debtor Highland Capital Management, L.P., 2089 Supplemental Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/26/2021	2127 BNC certificate of mailing − PDF document. (RE: related document(s)2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy

	Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 03/26/2021. (Admin.)
03/29/2021	2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
03/29/2021	2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery)
03/29/2021	2130 Certificate of service re: *Supplemental Order on Motions for Stay Pending Appeal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)). (Kass, Albert)
03/29/2021	2131 Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)*). (Annable, Zachery)
03/29/2021	2132 Certificate of Conference filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal*). (Sosland, Martin)
03/29/2021	2133 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. (Annable, Zachery)
03/29/2021	2134 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/29/2021	2135 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2021	2136 Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	2137 Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	2138 INCORRECT EVENT: Attorney to refile. Notice *(Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.).
03/31/2021	2139 Withdrawal of claim(s): *(Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

03/31/2021	2140 Order granting motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC(related document # 2128) Entered on 3/31/2021. (Okafor, M.)
03/31/2021	2141 Certificate of service re: *1) Debtor's Second Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC; and 2) Debtor's Second Amended Notice of Deposition to James Dondero in Connection with Debtor's Objection to Proof of Claim Filed by HCRE Partners, LLC* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2118 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2119 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	2142 Adversary case 21−03020. Complaint by UBS Securities LLC, UBS AG London Branch against Highland Capital Management, L.P.. Fee Amount $350. Nature(s) of suit: 72 (Injunctive relief − other). (Sosland, Martin)
03/31/2021	2143 Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s)2139 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)
03/31/2021	2144 Certificate of service re: *1) Amended Notice of Status Conference; and 2) Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2021 Through February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2123 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P., 2124 Application for compensation *Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $1,358,786.50, Expenses: $21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	2145 Certificate of service re: *Doucments Served on March 29, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2131 Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)*). filed by Debtor Highland Capital Management, L.P., 2133 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. filed by Debtor Highland Capital Management, L.P., 2134 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2135 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/01/2021	2146 Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document # 2129)

	Entered on 4/1/2021. (Okafor, M.)
04/01/2021	Adversary case 3:20−ap−3105 closed (Ecker, C.)
04/01/2021	2147 Response unopposed to (related document(s): 2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/01/2021	2148 **SEALED document regarding: (Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2146 Order on motion to seal). (Annable, Zachery)
04/01/2021	2149 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)(Lang, Michael)
04/01/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28609730, amount $ 298.00 (re: Doc# 2149). (U.S. Treasury)
04/02/2021	2150 Certificate of service re: *re: Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2138 INCORRECT EVENT: Attorney to refile. Notice *(Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/02/2021	2151 Motion to appear pro hac vice for Zachary F. Proulx. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28612120, amount $ 100.00 (re: Doc# 2151). (U.S. Treasury)
04/02/2021	2152 Motion to appear pro hac vice for Kathryn K. George. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28612132, amount $ 100.00 (re: Doc# 2152). (U.S. Treasury)
04/02/2021	2153 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). (Attachments: # 1 Ex. 1 # 2 Ex. 2 # 3 Ex. 3 # 4 Ex. 4 # 5 Ex. 5 # 6 Ex. 6 # 7 Ex. 7) (Assink, Bryan)
04/02/2021	2154 Reply to (related document(s): 1969 Objection filed by Interested Party James Dondero) *Reply to James Donderos Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation* filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
04/02/2021	2155 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2014 Amended notice of appeal,). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.).

04/02/2021	2156 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1970 Notice of appeal). (Annable, Zachery)
04/02/2021	2157 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1966 Notice of appeal). (Annable, Zachery)
04/03/2021	2158 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). (Montgomery, Paige)
04/05/2021	2159 Amended Witness and Exhibit List *for April 5, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2158 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) (Montgomery, Paige)
04/05/2021	2160 Application for compensation *Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2021 to 2/28/2021, Fee: $493,524.00, Expenses: $11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	2161 Application for compensation *Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: $187,387.56, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	2162 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/05/2021	2163 Certificate of service re: *1) Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152; and 2) Order Approving Joint Stipulation as to Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2139 Withdrawal of claim(s): *(Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2143 Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s)2139 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)). (Kass, Albert)
04/05/2021	2164 Hearing held on 4/5/2021. (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.) (Edmond, Michael) (Entered: 04/06/2021)
04/06/2021	2165 Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document # 2151) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	2166 Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document # 2152) Entered on 4/6/2021. (Okafor, M.)

04/06/2021	2167 Clerk's correspondence requesting to amend document from attorney for Interested Party. (RE: related document(s)2149 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) Responses due by 4/8/2021. (Whitaker, Sheniqua)
04/06/2021	2168 Request for hearing filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)2081 Clerk's correspondence). (Attachments: # 1 Proposed Order) (Drawhorn, Lauren)
04/06/2021	2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal). (Lang, Michael)
04/06/2021	2170 Certificate of service re: *1) Order Granting Debtor's Motion for Leave to File Under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal; and 2) Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2146 Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document 2129) Entered on 4/1/2021. (Okafor, M.), 2147 Response unopposed to (related document(s): 2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2021	2171 Request for transcript regarding a hearing held on 4/5/2021. The requested turn−around time is hourly. (Edmond, Michael)
04/07/2021	2172 Certificate of service re: *Documents Served on or Before April 3, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2154 Reply to (related document(s): 1969 Objection filed by Interested Party James Dondero) *Reply to James Donderos Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation* filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 2155 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2014 Amended notice of appeal,). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.). filed by Debtor Highland Capital Management, L.P., 2156 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1970 Notice of appeal). filed by Debtor Highland Capital Management, L.P., 2157 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1966 Notice of appeal). filed by Debtor Highland Capital Management, L.P., 2158 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/07/2021	2173 Certificate of service re: *Documents Served on April 5, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2159 Amended Witness and Exhibit List *for April 5, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2158 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Creditor Committee Official Committee of Unsecured Creditors, 2160 Application for compensation *Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2021 to 2/28/2021,

	Fee: $493,524.00, Expenses: $11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2161 Application for compensation *Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: $187,387.56, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Financial Advisor FTI Consulting, Inc., 2162 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/08/2021	2174 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2024 Application for compensation − *Second Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: $35042.76, Expenses: $3.80.). (Hesse, Gregory)
04/08/2021	2175 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2025 Application for compensation − *Third Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: $37092.24, Expenses: $94.54.). (Hesse, Gregory)
04/08/2021	2176 Transcript regarding Hearing Held 04/05/2021 (75 pages) RE: Motion to Compel (1878). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2164 Hearing held on 4/5/2021. (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.)). Transcript to be made available to the public on 07/7/2021. (Rehling, Kathy)
04/08/2021	2177 Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document # 1878) Entered on 4/8/2021. (Okafor, M.)
04/08/2021	2178 BNC certificate of mailing − PDF document. (RE: related document(s)2165 Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document 2151) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)
04/08/2021	2179 BNC certificate of mailing − PDF document. (RE: related document(s)2166 Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document 2152) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)
04/09/2021	2181 Certificate of service re: *(Supplemental) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin

	Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, filed by Debtor Highland Capital Management, L.P., 2125 Certificate of service re: *1) Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors; 2) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2076 Order granting motion to continue hearing on (related document 2064) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, Entered on 3/22/2021. (Okafor, M.), 2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, filed by Debtor Highland Capital Management, L.P., 2079 Declaration re: *(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)70 Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
04/09/2021	2182 Application for compensation *(Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: $153,957.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
04/09/2021	2183 Motion to withdraw as attorney (Brian P. Shaw) Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Jennifer G. Terry, Joshua Terry (Attachments: # 1 Proposed Order) (Shaw, Brian)
04/09/2021	2184 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s)2162 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)
04/11/2021	2185 BNC certificate of mailing − PDF document. (RE: related document(s)2184 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s)2162 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 04/11/2021. (Admin.)
04/12/2021	

	2186 Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Jennifer G. Terry, Joshua Terry. (Prostok, Jeff)
04/13/2021	2187 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal Related document(s) 1788 Order on motion to compromise controversy. (Blanco, J.)
04/13/2021	2189 Order granting motion to withdraw as attorney (attorney Brian Patrick Shaw terminated). (related document # 2183) Entered on 4/13/2021. (Ecker, C.)
04/13/2021	2190 Notice of docketing COMPLETE record on appeal. 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal. Related document(s) 1788 Order on motion to compromise controversy. 1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)
04/13/2021	2191 Notice of Transmittal 3:21−CV−00261−L (Lindsay) TRANSMITTED 5 SEALED DOCUMENTS (RE: related document(s)2190 Notice of docketing COMPLETE record on appeal. 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal. Related document(s) 1788 Order on motion to compromise controversy. 1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)). (Blanco, J.)
04/13/2021	2192 Certificate of service re: *1) Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; 2) Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2020 Through December 31, 2020; and 3) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2177 Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document 1878) Entered on 4/8/2021. (Okafor, M.), 2182 Application for compensation *(Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: $153,957.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2184 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s)2162 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)). (Kass, Albert)
04/13/2021	2193 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2003 Application for compensation *(First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020)* for Deloitte Ta). (Annable, Zachery)
04/13/2021	2194 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2004 Application for compensation *(Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Deloitte Tax LLP, O). (Annable, Zachery)
04/13/2021	2195 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2005 Application for compensation *(Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Deloitte Tax L). (Annable, Zachery)

04/14/2021	2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
04/14/2021	2197 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*). (Annable, Zachery)
04/14/2021	2198 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) (Annable, Zachery)
04/15/2021	2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/15/2021	2200 Declaration re: *(Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Annable, Zachery)
04/15/2021	2201 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2199, (Annable, Zachery)
04/15/2021	2203 Certificate of mailing regarding appeal (RE: related document(s)2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
04/15/2021	2204 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2169 Amended Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
04/15/2021	2205 Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). (Lang, Michael)
04/15/2021	2206 Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)2169 Amended notice of appeal). Appellee designation due by 04/29/2021. (Lang, Michael)

04/15/2021	2207 Certificate of service re: *(Supplemental) Debtor's Third Omnibus Objection to Certain No Liability Claim* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., 2091 Certificate of service re: *Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
04/15/2021	2208 INCORRECT EVENT: Attorney to refile. Notice *of Transfer of Claim Other Than for Security* filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/15/2021	2209 INCORRECT EVENT: Attorney to refile. Notice *of Transfer of Claim Other Than for Security* filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/16/2021	2210 Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s)2206 Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)2169 Amended notice of appeal). Appellee designation due by 04/29/2021.) Responses due by 4/20/2021. (Blanco, J.)
04/16/2021	2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff)
04/16/2021	2212 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management L.P. (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28644419, amount $ 26.00 (re: Doc# 2211). (U.S. Treasury)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28644419, amount $ 26.00 (re: Doc# 2212). (U.S. Treasury)

04/16/2021	2213 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)2206 Appellant designation). (Lang, Michael)
04/16/2021	2214 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
04/16/2021	2215 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount $23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28646419, amount $ 26.00 (re: Doc# 2215). (U.S. Treasury)
04/16/2021	2216 Certificate of service re: *1) Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; 2) Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 3) Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2197 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief*)). filed by Debtor Highland Capital Management, L.P., 2198 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/18/2021	2217 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00879−K. (RE: related document(s)2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Whitaker, Sheniqua)
04/19/2021	2218 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2124 Application for compensation *Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 t). (Pomerantz, Jeffrey)
04/19/2021	

	2219 Certificate of service re: *Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(1) or 3001(e)(3) [Re Docket No. 1959]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1959 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount $3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC). (Kass, Albert)
04/19/2021	2220 Certificate of service re: *1) Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith; 2) Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith; and 3) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2200 Declaration re: *(Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., 2201 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2199, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2021	2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. (Hoffman, Juliana)
04/20/2021	2222 Response opposed to (related document(s): 2059 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
04/20/2021	2223 Application for compensation *Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: $1,277,710.00, Expenses: $13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. (Pomerantz, Jeffrey)
04/20/2021	2224 Notice of Appearance and Request for Notice by Frances Anne Smith filed by Interested Party CPCM, LLC. (Smith, Frances)
04/20/2021	2225 Response opposed to (related document(s): 2059 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CPCM, LLC. (Smith, Frances) Filed by Interested Party CPCM, LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul

	Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Smith, Frances)
04/20/2021	2226 Motion to continue hearing on (related documents 2059 Objection to claim) Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Smith, Frances)
04/20/2021	2227 Motion for expedited hearing(related documents 2226 Motion to continue) Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Smith, Frances)
04/20/2021	2228 Certificate of service re: *Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2214 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/20/2021	2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/20/2021	2230 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, (Annable, Zachery)
04/21/2021	2231 Certificate of service re: Notice of Appearance, Preliminary Response to Debtors Third Omnibus Objection to Certain No Liability Claims, Motion to Continue Hearing on Debtors Third Omnibus Objection to Certain Liability Claims, and Motion for Setting and Request for Expedited Hearing filed by Interested Party CPCM, LLC (RE: related document(s)2224 Notice of appearance and request for notice, 2225 Response to objection to claim, 2226 Motion to continue hearing on (related documents 2059 Objection to claim), 2227 Motion for expedited hearing(related documents 2226 Motion to continue)). (Smith, Frances)
04/21/2021	2232 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, (Annable, Zachery)

04/21/2021	2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. (Hoffman, Juliana)
04/22/2021	2234 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
04/23/2021	2235 INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.).
04/23/2021	2236 Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	2237 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	2239 Certificate of service re: *Documents Served on April 20, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2223 Application for compensation *Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: $1,277,710.00, Expenses: $13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. filed by Debtor Highland Capital Management, L.P., 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2230 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

04/23/2021	2240 Certificate of service re: *1) Notice of Hearing; and 2) Fifth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through and Including February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2232 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, filed by Debtor Highland Capital Management, L.P., 2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/23/2021	2241 INCORRECT EVENT: See #2248 for correction. Notice *of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)854 Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).). (Attachments: # 1 Exhibit 1_Complaint # 2 Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/27/2021 (Ecker, C.).
04/23/2021	2242 DUPLICATE ENTRY: See # 2241. Notice *of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)854 Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).). (Attachments: # 1 Exhibit 1_Complaint # 2 Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/26/2021 (Ecker, C.).
04/23/2021	2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.) (Entered: 04/27/2021)
04/24/2021	2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Settlement Agreement) (Annable, Zachery)
04/26/2021	2244 Notice *of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021* filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
04/26/2021	2245 Certificate of service re: *Notice of Status Conference* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2234 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/26/2021	

	2246 Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., 1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., 2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., 2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1853 and for 1655 and for 2233 and for 2221, (Hoffman, Juliana)
04/27/2021	2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/27/2021	2249 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2247, (Annable, Zachery)
04/27/2021	2250 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2160 Application for compensation *Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2021 to 2/28/2021, Fee: $). (Hoffman, Juliana)
04/27/2021	2251 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2161 Application for compensation *Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: $187,387.56, Expenses: $0.00.). (Hoffman, Juliana)
04/27/2021	2252 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2247, (Annable, Zachery)
04/28/2021	2253 Certificate of service re: *1) Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; 2) Debtor's Memorandum of Law in Support of Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; and 3) Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2235 INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the

	Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 2236 Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 2237 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2021	2254 Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248, (Sbaiti, Mazin)
04/29/2021	2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document # 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)
04/29/2021	2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021. (Draper, Douglas)
04/29/2021	2257 Certificate of service re: filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3.). (Attachments: # 1 Exhibit − Matrix) (Draper, Douglas)
04/29/2021	2258 Certificate of service re: *1) Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from February 1, 2021 Through February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P., 2244 Notice *of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/29/2021	2259 Certificate of service re: *1) Notice of Hearing on the Fourth and Fifth Interim Applications for Compensation and Reimbursement of Expenses; and 2) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2246 Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by

	1/25/2021., 1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., 2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., 2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1853 and for 1655 and for 2233 and for 2221, filed by Creditor Committee Official Committee of Unsecured Creditors, 2252 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2247, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	2260 Application for compensation *Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: $96,823.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. (Hoffman, Juliana)
04/30/2021	2261 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount $137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	2262 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount $50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28681233, amount $ 26.00 (re: Doc# 2261). (U.S. Treasury)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28681233, amount $ 26.00 (re: Doc# 2262). (U.S. Treasury)
04/30/2021	2263 Assignment/Transfer of Claim. Fee Amount $156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (156.00). Receipt number 28682148, amount $ 156.00 (re: Doc# 2263). (U.S. Treasury)
04/30/2021	2264 Certificate of service re: *(Supplemental) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and

	granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	2265 Certificate of service re: *Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)). (Kass, Albert)
05/03/2021	2266 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Sahan Abayarathna To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
05/03/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28684014, amount $ 26.00 (re: Doc# 2266). (U.S. Treasury)
05/03/2021	2267 Status conference held on 5/3/2021., Trial set (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.) Trial date set for 9/21/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this. (Ellison, T.)
05/03/2021	2269 INCORRECT ENTRY: DUPLICATE ENTRY. Hearing held on 5/3/2021. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this.) (Edmond, Michael) Modified on 5/4/2021 (Tello, Chris). (Entered: 05/04/2021)
05/04/2021	

	2268 Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P.)*Limited Preliminary Objection* filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
05/04/2021	2270 PDF with attached Audio File. Court Date & Time [05/03/2021 01:33:52 PM]. File Size [3670 KB]. Run Time [00:15:40]. (admin).
05/04/2021	2271 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2133 Objection to claim). (Annable, Zachery)
05/04/2021	2272 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2182 Application for compensation *(Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020)* for Deloitt). (Annable, Zachery)
05/04/2021	2296 Order from circuit court re: appeal on appellate case number: 21−10449, (RE: related document(s)1957 Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.). IT IS ORDERED that the motion of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. for leave to appeal under 28 U.S.C. § 158(d) is GRANTED. Civil Case 3:21−cv−00538−N. Entered on 5/4/2021 (Whitaker, Sheniqua) (Entered: 05/12/2021)
05/05/2021	2273 Debtor−in−possession quarterly operating report (post−confirmation) for filing period January 1, 2021 to March 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	2274 Objection to (related document(s): 1826 Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	2275 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2274 Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) (Annable, Zachery)
05/05/2021	2276 Certificate of service re: *Seventeenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2021 to and Including March 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2260 Application for compensation *Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: $96,823.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/06/2021	2277 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). (Annable, Zachery)
05/06/2021	2278 Response opposed to (related document(s): 2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners,*

	LLC and for Related Relief) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Attachments: # 1 Proposed Order) (Drawhorn, Lauren)
05/06/2021	2279 Brief in opposition filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*, 2278 Response). (Drawhorn, Lauren)
05/06/2021	2280 Motion to file document under seal. *Appendix in Support of Response to Motion to Disqualify* Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Appendix) (Drawhorn, Lauren)
05/07/2021	2281 Notice of Appearance and Request for Notice by Brant C. Martin filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Martin, Brant)
05/07/2021	2282 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/07/2021	2283 Application for compensation *(Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: $69,327.00, Expenses: $6,478.70. Filed by Attorney Hayward PLLC (Annable, Zachery)
05/07/2021	2284 Order granting motion to continue hearing on (related document # 2282) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/7/2021. (Okafor, M.)*
05/10/2021	2285 Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Clubok, Andrew)
05/10/2021	2286 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, (Annable, Zachery)
05/10/2021	2287 Certificate of service re: *1) Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.; and 2) Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2274 Objection to (related document(s): 1826 Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2275 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2274 Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital

	Management, L.P.). (Kass, Albert)
05/11/2021	2288 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0.). (Hoffman, Juliana)
05/11/2021	2289 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/11/2021	2290 Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
05/11/2021	2291 Notice *Notice of Return of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2290 Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust.). (Draper, Douglas)
05/11/2021	2292 Certificate of service re: *Notice of Cancellation of Status Conference* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2277 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/12/2021	2293 Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P.)*with Certificate of Service* filed by Creditor The Dugaboy Investment Trust. (Attachments: # 1 Exhibit A) (Draper, Douglas)
05/12/2021	2294 Reply to (related document(s): 2278 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/12/2021	2295 Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/12/2021	2297 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at https://us−courts.webex.com/meet/jerniga for 2199, (Annable, Zachery)
05/12/2021	2298 Certificate of service re: *1) Motion to Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 Through November 30, 2020; and 3) Order Continuing Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay*

	Related Fees and Expenses, and (II) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2282 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2283 Application for compensation *(Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: $69,327.00, Expenses: $6,478.70. Filed by Attorney Hayward PLLC, 2284 Order granting motion to continue hearing on (related document 2282) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/7/2021. (Okafor, M.)). (Kass, Albert)*
05/13/2021	2299 Clerk's notice of fees due in the amount of $207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s)1957 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
05/13/2021	2300 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2223 Application for compensation *Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021* for Jeffrey). (Pomerantz, Jeffrey)
05/13/2021	2301 Certificate of service re: *Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2286 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	2302 Certificate of service re: *Notice of Deposition* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2289 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	2303 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2261 and 2262]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2261 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount $137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, 2262 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount $50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC). (Kass, Albert)
05/13/2021	Receipt Number 338881, Fee Amount $207.00 (RE: related document(s)2299 Clerk's notice of fees due in the amount of $207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s)1957 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors,

	L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)) (Floyd, K) (Entered: 05/14/2021)
05/14/2021	2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/14/2021	2305 Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Sosland, Martin)
05/14/2021	2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) (Hoffman, Juliana)
05/14/2021	2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, (Annable, Zachery)
05/14/2021	2308 Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) (Annable, Zachery)
05/14/2021	2309 Response to show cause order (related document(s): 2255 Order on motion to show cause) filed by Respondent Mark Patrick. (Phillips, Louis)
05/14/2021	2310 Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/14/2021	2311 Response opposed to (related document(s): 2248 Motion to Reconsider(related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/14/2021	2312 Objection to (related document(s): 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P., 2255 Order on motion to show cause. MODIFIED to correct linkage on 5/17/2021 (Ecker, C.).
05/14/2021	2313 Response to show cause order (related document(s): 2255 Order on motion to show cause) filed by Plaintiff The Charitable DAF Fund, L.P.. (Attachments: # 1 Appendix) (Sbaiti, Mazin)
05/14/2021	

	2314 Witness and Exhibit List *with Certificate of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Draper, Douglas)
05/14/2021	2315 Joinder by *to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2311 Response). (Hoffman, Juliana)
05/14/2021	2316 Motion to withdraw as attorney (John J. Kane, Brian W. Clark and the law firm of Kane Russell Coleman Logan PC) Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Proposed Order) (Kane, John)
05/17/2021	2317 Agreed Order granting motion to continue hearing on (related document 2226) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).
05/17/2021	2318 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,). (Hoffman, Juliana)
05/17/2021	2319 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/17/2021	2320 Certificate of service re: *1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2294 Reply to (related document(s): 2278 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2297 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at https://us−courts.webex.com/meet/jerniga for 2199, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/18/2021	2321 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). (Annable, Zachery)
05/18/2021	2322 Notice of Appearance and Request for Notice *for BH Equities LLC* by Casey William Doherty Jr. filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	2323 Response opposed to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor BHH Equities LLC. (Doherty, Casey)

05/18/2021	2324 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)*
05/18/2021	2325 Order granting fifth interim fee application for compensation (related document # 2221) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $838751.40, expenses awarded: $0.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2326 Order granting fourth interim application for compensation (related document # 1655) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $710280.45, expenses awarded: $1479.47 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2327 Order granting fifth interim application for compensation (related document # 2233) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1957009.95, expenses awarded: $23156.48 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2328 Application for compensation *Sidley Austin LLP's Seventeenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 3/31/2021, Fee: $371,842.20, Expenses: $6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. (Hoffman, Juliana)
05/18/2021	2329 Order granting fourth interim application for compensation (related document # 1853) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1620489.60, expenses awarded: $8974.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2330 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Dondero Ex. A # 2 Dondero Ex. B # 3 Dondero Ex. C # 4 Dondero Ex. D # 5 Dondero Ex. E # 6 Dondero Ex. F # 7 Dondero Ex. G # 8 Dondero Ex. H # 9 Dondero Ex. I # 10 Dondero Ex. J # 11 Dondero Ex. K # 12 Dondero Ex. L # 13 Dondero Ex. M # 14 Dondero Ex. N # 15 Dondero Ex. O # 16 Dondero Ex. P # 17 Dondero Ex. Q # 18 Dondero Ex. R # 19 Dondero Ex. S # 20 Dondero Ex. T # 21 Dondero Ex. U # 22 Dondero Ex. V # 23 Dondero Ex. W # 24 Dondero Ex. X) (Assink, Bryan)
05/18/2021	2331 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73) (Annable, Zachery)

05/18/2021	2360 Hearing held on 5/18/2021. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief) filed by Debtor Highland Capital Management, L.P., (Matter continued) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)2221 Application for compensation Fifth Interim Application for Compensation of FTI Consulting, Inc., for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman). (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)1853 Application for compensation Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)1655 Application for compensation Fourth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)2233 Application for compensation Sidley Austin LLP's Fifth Interim Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/19/2021	2332 Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	2333 Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	2334 Withdrawal of claim(s): *#93* Filed by Interested Party Integrated Financial Associates, Inc.. (Attachments: # 1 Exhibit Ex. 1 − POC #93 Integrated Financial Associates) (Bryant, M.)
05/19/2021	2335 Notice *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	2336 Amended Witness and Exhibit List *for May 21, 2021 Hearing* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)2305 List (witness/exhibit/generic)). (Sosland, Martin)
05/19/2021	2337 Certificate of service re: *Documents Served on May 14, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, 2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725

	Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, filed by Debtor Highland Capital Management, L.P., 2308 Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., 2311 Response opposed to (related document(s): 2248 Motion to Reconsider(related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2315 Joinder by *to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2311 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/19/2021	2338 BNC certificate of mailing − PDF document. (RE: related document(s)2317 Agreed Order granting motion to continue hearing on (related document 2226) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).) No. of Notices: 2. Notice Date 05/19/2021. (Admin.)
05/20/2021	2339 Amended Exhibit List *Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2314 List (witness/exhibit/generic)). (Draper, Douglas)
05/20/2021	2340 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) *(Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/20/2021	2341 Response opposed to (related document(s): 2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/20/2021	2342 Amended Exhibit List *Supplemental Exhibit List* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2339 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29) (Draper, Douglas)
05/20/2021	2343 Joinder by *Debtors Opposition to Motion to Compel* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2341 Response). (Hoffman, Juliana)
05/20/2021	2344 Certificate of service re: *Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2319 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/21/2021	2345 Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint

	Advisors, L.P. (RE: related document(s)2274 Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2274, Entered on 5/21/2021 (Okafor, M.)
05/21/2021	2346 Order granting motion to withdraw as attorney for CLO Holdco, LTD (attorney John J. Kane terminated). (related document # 2316) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	2347 Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
05/21/2021	2348 PDF with attached Audio File. Court Date & Time [05/21/2021 08:57:33 AM]. File Size [73177 KB]. Run Time [05:13:15]. (admin).
05/21/2021	2349 Omnibus Reply to (related document(s): 2309 Response to show cause order filed by Respondent Mark Patrick, 2312 Objection filed by Interested Party James Dondero, 2313 Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/21/2021	2350 Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document # 2243) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	2351 Declaration re: *(Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) (Annable, Zachery)
05/21/2021	2352 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s)2335 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	2353 Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s)2133 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	2354 Order granting motion to continue hearing on (related document # 2340) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/21/2021. (Okafor, M.)*
05/21/2021	2355 Declaration re: *(Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) (Annable, Zachery)
05/21/2021	2356 Notice *(Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4

	Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/21/2021	2357 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
05/21/2021	2358 Certificate of service re: *Documents Served on May 18, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2321 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). filed by Debtor Highland Capital Management, L.P., 2324 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)2325 Order granting fifth interim fee application for compensation (related document 2221) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $838751.40, expenses awarded: $0.00 Entered on 5/18/2021. (Okafor, M.), 2326 Order granting fourth interim application for compensation (related document 1655) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $710280.45, expenses awarded: $1479.47 Entered on 5/18/2021. (Okafor, M.), 2327 Order granting fifth interim application for compensation (related document 2233) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1957009.95, expenses awarded: $23156.48 Entered on 5/18/2021. (Okafor, M.), 2328 Application for compensation Sidley Austin LLP's Seventeenth Monthly Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 3/31/2021, Fee: $371,842.20, Expenses: $6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2329 Order granting fourth interim application for compensation (related document 1853) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1620489.60, expenses awarded: $8974.00 Entered on 5/18/2021. (Okafor, M.), 2331 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
05/21/2021	2359 Hearing held on 5/21/2021. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital

	Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 05/24/2021)
05/21/2021	2368 Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO (Edmond, Michael) (Entered: 05/24/2021)
05/24/2021	2361 Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s)2196 Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, Entered on 5/24/2021 (Okafor, M.)
05/24/2021	2362 Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)
05/24/2021	2363 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	2364 Request for transcript regarding a hearing held on 5/21/2021. The requested turn−around time is daily. (Edmond, Michael)
05/24/2021	2365 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	2366 Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	2367 Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021.). Hearing to be held on 6/10/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2256, (Draper, Douglas)
05/24/2021	2369 Certificate of service re: Notice of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2367 Notice of hearing). (Attachments: # 1 Mailing Matrix) (Draper, Douglas)
05/24/2021	2370 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2260 Application for compensation *Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: $96,823.80, Expenses: $0.). (Hoffman, Juliana)
05/24/2021	2371 Certificate of service re: *1) Debtor's Notice of Deposition to Mark Patrick in Connection with Debtor's Contempt Motion; 2) Debtor's Notice of Rule 30(b)(6) Deposition to (A) CLO Holdco, Ltd., and (B) Charitable DAF Fund, L.P.; and 3) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169* Filed by

	Claims Agent Kurtzman Carson Consultants LLC (related document(s)2332 Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2333 Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2335 Notice *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/25/2021	2372 Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	2373 Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	2374 Certificate of service re: *1) Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by Dugaboy Investment Trust and Get Good Trust; and 3) Joinder of the Official Committee of Unsecured Creditors to Debtors Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by Dugaboy Investment Trust and Get Good Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2340 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) *(Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2341 Response opposed to (related document(s): 2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2343 Joinder by *Debtors Opposition to Motion to Compel* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2341 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/26/2021	2375 Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2359 Hearing held on 5/21/2021. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 08/24/2021. (Rehling, Kathy)
05/26/2021	2376 Notice of Appearance and Request for Notice by Linda D. Reece filed by Creditor Plano ISD. (Reece, Linda)
05/26/2021	2377 Declaration re: *(Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 23 # 2

	Exhibit 24) (Annable, Zachery)
05/26/2021	2378 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
05/26/2021	2379 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F. R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2092 2094 and 2096 2115]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2092 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2093 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2094 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2096 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2097 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2098 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2099 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2100 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2101 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2102 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2103 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2104 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2105 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2106 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2107 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2108 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2109 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2110 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2111 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2112 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2113 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement

	3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2114 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2115 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC). (Kass, Albert)
05/26/2021	2380 Certificate of service re: *Documents Served on May 21, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2345 Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s)2274 Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2274, Entered on 5/21/2021 (Okafor, M.), 2349 Omnibus Reply to (related document(s): 2309 Response to show cause order filed by Respondent Mark Patrick, 2312 Objection filed by Interested Party James Dondero, 2313 Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2350 Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document 2243) Entered on 5/21/2021. (Okafor, M.), 2352 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s)2335 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), 2353 Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s)2133 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), 2354 Order granting motion to continue hearing on (related document 2340) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/21/2021. (Okafor, M.), 2355 Declaration re: (Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) filed by Debtor Highland Capital Management, L.P., 2356 Notice (Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2357 Declaration re: (Disclosure Declaration of Ordinary Course Professional) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
05/26/2021	2381 BNC certificate of mailing − PDF document. (RE: related document(s)2362 Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 05/26/2021. (Admin.)
05/27/2021	2382 Application for compensation *Eighteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: $85,577.40,

	Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. (Hoffman, Juliana)
05/27/2021	2383 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021)* for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: $1,286,897.00, Expenses: $8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP (Annable, Zachery)
05/27/2021	2384 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 38 . Civil Case Number: 3:21−CV−00879−K (RE: related document(s)2149 Notice of appeal 2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Blanco, J.)
05/27/2021	2386 Notice of docketing COMPLETE record on appeal. 3:21CV00879K (RE: related document(s)2149 Notice of appeal2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Blanco, J.)
05/27/2021	2387 Notice of hearing *(Status Conference)* filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.). Status Conference to be held on 8/4/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Drawhorn, Lauren)
05/27/2021	2388 Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s)2365 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.)
05/27/2021	2389 Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document # 2199) Entered on 5/27/2021. (Okafor, M.)
05/27/2021	2390 Certificate of service re: *Documents Served on May 24, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2361 Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s)2196 Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, Entered on 5/24/2021 (Okafor, M.), 2363 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2365 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2366 Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/27/2021	2391 Certificate of service re: *1) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion; and 2) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2372 Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2373 Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	2392 Withdrawal */Notice of Withdrawal of Appearance* filed by Interested Party NexBank (RE: related document(s)923 Notice of appearance and request for notice). (Slade, Jared)

06/01/2021	2393 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, (Annable, Zachery)
06/01/2021	2394 Certificate of service re: *1) Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; and 2) Disclosure Declaration of Ordinary Course Professional* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2377 Declaration re: *(Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., 2378 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/01/2021	2396 Application for compensation *Sidley Austin LLP's Eighteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2021 to 4/30/2021, Fee: $417,427.20, Expenses: $21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. (Hoffman, Juliana)
06/02/2021	2397 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2283 Application for compensation *(Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020)* for Hayward PLLC, Debtor's Attorney,). (Annable, Zachery)
06/02/2021	2398 Notice of appeal *and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). Appellant Designation due by 06/16/2021. (Draper, Douglas)
06/02/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28754649, amount $ 298.00 (re: Doc# 2398). (U.S. Treasury)
06/02/2021	2399 Certificate of service re: *Documents Served on May 27, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2382 Application for compensation *Eighteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: $85,577.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. filed by Financial Advisor FTI Consulting, Inc., 2383 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021)* for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: $1,286,897.00, Expenses: $8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP, 2388 Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s)2365 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.), 2389 Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document 2199) Entered on

	5/27/2021. (Okafor, M.)). (Kass, Albert)
06/02/2021	2466 Circuit Court Order granting motions for certification to court of appeals (Related Doc # 2033) Entered on 6/2/2021. IT IS ORDERED that the motion of Highland Global AllocationFund, Highland Income Fund, NexPoint Capital, Incorporated, and NexPoint Strategic Opportunities Fund for leave to appeal under 28 U.S.C.§ 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of James Dondero forleave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of Get Good Trust andThe Dugaboy Investment Trust for leave to appeal under 28 U.S.C. § 158(d)is GRANTED. USCA Circuit Court Case: 21−10449 (Whitaker, Sheniqua) (Entered: 06/21/2021)
06/03/2021	2400 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
06/03/2021	2401 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/03/2021	2402 Certificate of service re: *1) Amended Notice of Hearing; and 2) Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2393 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, filed by Debtor Highland Capital Management, L.P., 2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2021	2403 Objection to (related document(s): 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.)Preliminary Objection filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)*
06/04/2021	2404 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
06/04/2021	2405 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga

	for 2395, (Annable, Zachery)
06/04/2021	2406 Response opposed to (related document(s): 2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Howell, William)
06/04/2021	2407 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), 2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2255 and for 2248 and for 2304, (Annable, Zachery)
06/04/2021	2408 Certificate of service re: *(Supplemental) 1) Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, filed by Debtor Highland Capital Management, L.P., 2337 Certificate of service re: *Documents Served on May 14, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, 2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, filed by Debtor Highland Capital Management, L.P., 2308 Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., 2311 Response opposed to (related document(s): 2248 Motion to Reconsider(related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2315 Joinder by *to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by

	Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2311 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
06/04/2021	2409 Certificate of service re: *Eighteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2021 Through April 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2396 Application for compensation *Sidley Austin LLP's Eighteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2021 to 4/30/2021, Fee: $417,427.20, Expenses: $21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
06/05/2021	2410 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53) (Annable, Zachery)
06/05/2021	2411 Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P., Respondent Mark Patrick (RE: related document(s)2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)
06/05/2021	2412 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
06/06/2021	2414 Certificate of mailing regarding appeal (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). Appellant Designation due by 06/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
06/06/2021	2415 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/06/2021	2416 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01295−X. (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). (Whitaker, Sheniqua)

06/07/2021	2417 Notice *(Notice of Proposed Order)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
06/07/2021	2418 Declaration re: *(Declaration of Jeffrey N. Pomerantz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
06/07/2021	2419 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)
06/07/2021	2420 Amended Witness and Exhibit List *Exhibits 44, 45, 46* filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
06/07/2021	2421 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2410 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 54 # 2 Exhibit 55) (Annable, Zachery)
06/08/2021	2422 Request for transcript regarding a hearing held on 6/8/2021. The requested turn−around time is hourly. (Edmond, Michael)
06/08/2021	2423 Amended Witness and Exhibit List *(Second Amended)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2419 List (witness/exhibit/generic)). (Hayward, Melissa)
06/08/2021	2424 Reply to (related document(s): 2341 Response filed by Debtor Highland Capital Management, L.P.) *Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3* filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # 1 Exhibit 1) (Draper, Douglas)
06/08/2021	2425 Certificate of service re: Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2424 Reply). (Draper, Douglas)
06/08/2021	2426 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional). (Hoffman, Juliana)
06/08/2021	2427 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, 2215 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount $23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
06/08/2021	2428 Certificate of service re: *1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 Through March 31, 2021; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2021* Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s)2400 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2401 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/08/2021	2430 Hearing held on 6/8/2021. (RE: related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.) (Edmond, Michael)
06/08/2021	2431 Hearing held on 6/8/2021. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90−day continuance without prejudice. Counsel to upload order.) (Edmond, Michael)
06/08/2021	2519 Court admitted exhibits date of hearing June 8, 2021 (RE: related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (COURT ADMITTED DEBTOR'S EXHIBIT'S #12 THROUGH #55 THAT APPEAR AT DOC. #2410 BY JOHN MORRIS; (NOTE* EXHIBIT'S #1 THROUGH #11 WERE NOT ADMITTED) & THE COURT ADMITTED DEFENDANT'S EXHIBIT'S #1, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, & #30 THRUGHT #44 ALL ADMITTED BY LOUIS PHILLIPS; (NOTE* EXHIBIT'S #13, #14 & #29 WERE NOT ADMITTED) (Edmond, Michael) (Entered: 07/02/2021)
06/09/2021	2432 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 54 . Civil Case Number: 3:21−CV−00538−N (RE: related document(s)1957 Notice of appeal) (Blanco, J.)
06/09/2021	2433 Notice of docketing record on appeal. 3:21−cv−00538−N (RE: related document(s)1957 Notice of appeal) (Blanco, J.)
06/09/2021	2434 Certificate of service re: *1) Disclosure Declaration of Ordinary Course Professional; 2) Notice of Hearing; and 3) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2404 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 2405 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer*

	and Chief Restructuring Officer) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2395, filed by Debtor Highland Capital Management, L.P., 2407 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), 2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2255 and for 2248 and for 2304, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	2435 Certificate of service re: *1) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2410 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53) filed by Debtor Highland Capital Management, L.P., 2412 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	2436 Certificate of service re: *Documents Served on June 7, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2417 Notice *(Notice of Proposed Order)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2418 Declaration re: *(Declaration of Jeffrey N. Pomerantz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., 2419 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) filed by Debtor Highland Capital Management, L.P., 2421 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2410 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 54 # 2 Exhibit 55) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	2437 Certificate of service re: *Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2423 Amended Witness and Exhibit List *(Second Amended)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2419 List (witness/exhibit/generic)). filed by Debtor Highland Capital

	Management, L.P.). (Kass, Albert)
06/09/2021	2438 BNC certificate of mailing. (RE: related document(s)2415 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy).) No. of Notices: 1. Notice Date 06/09/2021. (Admin.)
06/10/2021	2439 Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us−courts.webex.com/meet/jerniga for 2248, (Sbaiti, Mazin)
06/10/2021	2440 Transcript regarding Hearing Held 06/08/2021 (298 pages) RE: Show Cause Hearing (2255); Motion to Modify Order (2248); Motion to Extend Time (2304). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/8/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2430 Hearing held on 6/8/2021. (RE: related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.), 2431 Hearing held on 6/8/2021. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90−day continuance without prejudice. Counsel to upload order.)). Transcript to be made available to the public on 09/8/2021. (Rehling, Kathy)
06/10/2021	2441 Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
06/10/2021	2442 Hearing held on 6/10/2021. (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero−related entities for clarification of their standing.) (Edmond, Michael) (Entered: 06/11/2021)
06/11/2021	Receipt Number 338903, Fee Amount $207.00 − Filing Fee for Direct Appeal to Fifth Circuit Court of Appeals paid by K&L Gates LLP (RE: related document(s)1966 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.)) (Floyd, K)

06/11/2021	2443 Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document # 2306) Entered on 6/11/2021. (Okafor, M.)
06/11/2021	2444 Request for transcript regarding a hearing held on 6/10/2021. The requested turn−around time is hourly. (Edmond, Michael)
06/12/2021	2445 Transcript regarding Hearing Held 06/10/2021 (91 pages) RE: Motion to Compel Compliance (2256). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2442 Hearing held on 6/10/2021. (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero−related entities for clarification of their standing.)). Transcript to be made available to the public on 09/10/2021. (Rehling, Kathy)
06/14/2021	Receipt Number 338904, Fee Amount $207.00 − Filing fee for Direct Appeal to Fifth Circuit Court of Appeals paid by Heller, Draper, Patrick, Horn & Dabney, LLC (Fifth Circuit Docket No. 21−10449) (RE: related document(s) 2014 Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust.(RE: related document(s)1943 Order confirming chapter 11 plan)).
06/14/2021	2446 Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2248, (Sbaiti, Mazin)
06/14/2021	2447 Notice to take deposition of Trussway Industries, LLC filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/14/2021	2448 Notice to take deposition of Highland Capital Management, LP filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/15/2021	2449 Certificate of service re: *Order Pursuant to Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors Effective April 15, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2443 Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document 2306) Entered on 6/11/2021. (Okafor, M.)). (Kass, Albert)
06/15/2021	2450 Certificate of service re: *(Supplemental) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, 2427 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to*

	F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, 2215 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount $23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
06/16/2021	2451 Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). (Draper, Douglas)
06/16/2021	2452 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2398 Notice of appeal, 2451 Statement of issues on appeal). Appellee designation due by 06/30/2021. (Draper, Douglas)
06/16/2021	2453 Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document:# 2304 Motion to extend time.) Entered on 6/16/2021. (Okafor, M.)
06/16/2021	2454 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
06/16/2021	2455 Support/supplemental document *(Notice of Final Term Sheet)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Annable, Zachery)*
06/16/2021	2456 Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider(related documents 854 Order on application to employ)) Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2248, Entered on 6/16/2021. (Okafor, M.)
06/17/2021	2457 Clerk's correspondence requesting exhibits from attorney for appellant. (RE: related document(s)2452 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2398 Notice of appeal, 2451 Statement of issues on appeal). Appellee designation due by 06/30/2021.) Responses due by 6/21/2021. (Blanco, J.)
06/17/2021	2458 Order requiring a trustee of The Dugaboy Investment Trust and the The Get Good Trust to appear at all hearings in the bankruptcy case and adversary cases in which they take positions. Entered on 6/17/2021 (Okafor, M.)
06/17/2021	2459 Motion for leave *to Amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009* (related document(s) 2452 Appellant designation) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Exhibit A) (Draper, Douglas)
06/18/2021	2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition . Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related

	Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)
06/18/2021	2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC (Annable, Zachery)
06/18/2021	2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). (Annable, Zachery)
06/21/2021	2465 Certificate of service re: *1) Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021; and 3) Notice of Final Term Sheet* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2453 Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document:2304 Motion to extend time.) Entered on 6/16/2021. (Okafor, M.), 2454 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., 2455 Support/supplemental document *(Notice of Final Term Sheet)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/21/2021	2467 Supplemental Objection to (related document(s): 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)*
06/21/2021	2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)
06/22/2021	2469 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)2280 Motion to file document under seal. *Appendix in Support of Response to Motion to Disqualify* Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Appendix)) Responses due by 6/29/2021. (Ecker, C.)
06/22/2021	2470 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2383 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021)* for Pachulsk). (Pomerantz, Jeffrey)
06/22/2021	2471 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2382 Application for compensation *Eighteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: $85,577.40, Expenses: $0.). (Hoffman, Juliana)
06/22/2021	

	2472 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Annable, Zachery)
06/22/2021	2473 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Annable, Zachery)*
06/23/2021	2474 Order granting motion for leave to amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document # 2459) Entered on 6/23/2021. (Okafor, M.)
06/23/2021	2475 Witness and Exhibit List *with Certificate of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4A # 5 Exhibit 4B # 6 Exhibit 5 # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10) (Draper, Douglas)*
06/23/2021	2476 Reply to (related document(s): 2403 Objection filed by Creditor The Dugaboy Investment Trust, 2467 Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Annable, Zachery). Related document(s) 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.).*
06/23/2021	2477 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2473 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 5 # 3 Exhibit 6 # 4 Exhibit 7 # 5 Exhibit 8) (Annable, Zachery)
06/23/2021	2478 Certificate of service re: *1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

06/23/2021	2479 Certificate of service re: *First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). (Kass, Albert)
06/24/2021	2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. (Pomerantz, Jeffrey)
06/24/2021	2481 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2480, (Pomerantz, Jeffrey)
06/24/2021	2482 Declaration re: *(Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment). (Annable, Zachery)*
06/25/2021	2483 Certificate of service re: *1) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtors Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtors Chief Executive Officer and Chief Restructuring Officer; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2472 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) filed by Debtor Highland Capital Management, L.P., 2473 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/25/2021	2484 Certificate of service re: *1) Debtor's Reply in Support of Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; and 2) Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2476 Reply to (related document(s): 2403 Objection filed by Creditor The Dugaboy Investment Trust, 2467 Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P..

	(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Annable, Zachery). Related document(s) 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 2477 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2473 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 5 # 3 Exhibit 6 # 4 Exhibit 7 # 5 Exhibit 8) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/25/2021	2485 Amended U.S. Trustee's appointment of committee *of Unsecured Creditors* (Lambert, Lisa)
06/25/2021	2486 Certificate of service re: U.S. Trustee's Amended Appointment of Committee of Unsecured Creditors filed by U.S. Trustee United States Trustee (RE: related document(s)2485 UST appointment of committee). (Lambert, Lisa)
06/25/2021	2487 Hearing held on 6/25/2021. (RE: related document(s)2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2488 INCORRECT ENTRY (corrected by DE 2490) Hearing held on 6/25/2021. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael) Modified on 6/29/2021 (Ellison, T.).
06/25/2021	2489 Hearing held on 6/25/2021. (RE: related document(s)2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2490 Hearing held on 6/25/2021. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post−hearing order regarding jury trial rights discussed.) (Edmond, Michael)
06/25/2021	2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
06/25/2021	2492 Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s)2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan

	and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THORUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
06/28/2021	2493 Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY,JR.) a hearing held on 6/25/2021. The requested turn−around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
06/28/2021	Receipt Number 338916, Fee Amount $207.00 for Direct Appeal to the Fifth Circuit Court of Appeals (Reference 21−90011 and 21−10449) (RE: related document(s)1970 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # 1 Exhibit)) (Floyd, K)
06/28/2021	2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)
06/28/2021	2495 Notice *(Notice of Filing of Second Amended and Restated Investment Advisory Agreement)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
06/28/2021	2496 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2491, (Annable, Zachery)
06/29/2021	2497 Request for transcript regarding a(ENTIRE) hearing held on 6/25/2021. The requested turn−around time is hourly (Jeng, Hawaii)
06/29/2021	2498 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2396 Application for compensation *Sidley Austin LLP's Eighteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2021 to 4/30/2021, Fee: $417,427.20, Expenses: $2). (Hoffman, Juliana)
06/29/2021	2499 Certificate of service re: *1) Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30,*

	2021; 2) Notice of Hearing on Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021; and 3) Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. filed by Debtor Highland Capital Management, L.P., 2481 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2480, filed by Debtor Highland Capital Management, L.P., 2482 Declaration re: *(Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/30/2021	2500 Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post−hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)
06/30/2021	2501 Transcript regarding Hearing Held 06/25/2021 (79 pages) (Excerpt 1: Proceedings from 9:36 am to 11:25 am) RE: Motion to Borrow (2229) and Motion to Pay Restructuring Fee (2395). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2487 Hearing held on 6/25/2021. (RE: related document(s)2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and

	M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.), 2489 Hearing held on 6/25/2021. (RE: related document(s)2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)
06/30/2021	2502 Application for compensation *Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: $1,603,754.00, Expenses: $28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. (Pomerantz, Jeffrey)
06/30/2021	2503 Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document # 2229) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	2504 Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document # 2395) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	2505 Order granting motion to seal appendix (related document # 2280) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	2506 Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document # 2248) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	2507 Notice *(Third Notice of Additional Services Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). (Annable, Zachery)
06/30/2021	2508 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/30/2021	2509 Certificate of service re: *Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	2510 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for*

	Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2480, (Annable, Zachery)
07/01/2021	2511 Certificate of service re: *1) Order Requiring Post−Hearing Submissions; 2) Notice of Filing of Second Amended and Restated Investment Advisory Agreement; and 3) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.), 2495 Notice *(Notice of Filing of Second Amended and Restated Investment Advisory Agreement)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2496 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2491, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	2512 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2328 Application for compensation *Sidley Austin LLP's Seventeenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 3/31/2021, Fee: $371,842.20, Expenses: $). (Hoffman, Juliana)
07/02/2021	2513 Notice of appeal . Fee Amount $298 filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021. (Sbaiti, Mazin)
07/02/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28822100, amount $ 298.00 (re: Doc# 2513). (U.S. Treasury)
07/02/2021	2514 Application for compensation *Nineteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: $88,932.60, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. (Hoffman, Juliana)
07/02/2021	2515 Notice *(Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2021	

	2516 Declaration re: *(Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
07/02/2021	2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
07/02/2021	2518 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause)). (Attachments: # 1 Exhibit 56) (Annable, Zachery)
07/06/2021	2520 Withdrawal of claim(s) Claim has been satisfied. Claim: *194* Filed by Creditor Crescent TC Investors, L.P.. (Held, Michael)
07/06/2021	2522 Notice of transmittal of appellee supplemental record vol. 1 3:21−CV−00261−L (RE: related document(s)2187 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal Related document(s) 1788 Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	2523 Notice of transmittal SEALED DOCUMENTS 3;21−cv00261 (RE: related document(s)2187 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal Related document(s) 1788 Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	2524 Certificate of service re: *Documents Served on June 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2502 Application for compensation *Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: $1,603,754.00, Expenses: $28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. filed by Debtor Highland Capital Management, L.P., 2503 Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document 2229) Entered on 6/30/2021. (Okafor, M.), 2504 Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document 2395) Entered on 6/30/2021. (Okafor, M.), 2506 Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document 2248) Entered on 6/30/2021. (Okafor, M.), 2507 Notice *(Third Notice of Additional Services Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2508 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON

	11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	2525 Certificate of service re: *Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2510 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2480, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	2526 Application for compensation *Sidley Austin LLP's Nineteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. (Hoffman, Juliana)
07/07/2021	2527 Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document # 2517) Entered on 7/7/2021. (Okafor, M.)
07/08/2021	2530 Certificate of mailing regarding appeal (RE: related document(s)2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
07/08/2021	2531 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	2532 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01585−S. (RE: related document(s)2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	2533 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
07/08/2021	2534 Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2494 Order (generic)). (Attachments: # 1 Exhibit 1_June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2_June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3_Subscription and Transfer Agreement # 4 Exhibit 4_Members Agreement) (Sbaiti, Mazin)
07/08/2021	2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
07/08/2021	2536 Certificate of service re: *Documents Served on July 2, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2514 Application for compensation *Nineteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial

	Advisor, Period: to, Fee: $88,932.60, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. filed by Financial Advisor FTI Consulting, Inc., 2515 Notice *(Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2516 Declaration re: *(Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2518 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause)). (Attachments: # 1 Exhibit 56) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2021	2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) (Annable, Zachery)
07/08/2021	Receipt of filing fee for Motion to Sell(19−34054−sgj11) [motion,msell] (188.00). Receipt number 28834907, amount $ 188.00 (re: Doc# 2537). (U.S. Treasury)
07/08/2021	2538 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) (Annable, Zachery)
07/09/2021	2539 Notice *and Disclosures of Funds Pursuant to Court's Sua Sponte Order* filed by Interested Parties Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Hogewood, A.)

07/09/2021	2540 Support/supplemental document *(Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). (Annable, Zachery)*
07/09/2021	2541 Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	2542 Notice *of Disclosures* filed by Creditor Get Good Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	2543 Notice *(Advisors' Disclosures in Respone to Sua Sponte Order)* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Rukavina, Davor)
07/09/2021	2544 Notice *and Disclosures of NexPoint RE Entities and HMCS Inc. in Response to Sua Sponte Order* filed by Creditor Highland Capital Management Services, Inc., Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors,

	managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit A) (Drawhorn, Lauren)
07/09/2021	2545 Amended Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	2546 Amended Notice *of Disclosures* filed by Creditor Get Good Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	2547 Notice *of Response and Disclosures related to sua sponte Order Requiring Disclosures* filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation − CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registery− CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership − DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination − HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination − HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25 Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution − DAF Holdco # 29 Exhibit 29.April 2 Resolution − CLO HoldCo # 30 Exhibit 30.Written Resolution − Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012−2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit

	36.CLO HoldCo − Register of Directors # 37 Exhibit 37.DAF Holdco − Register of Directors # 38 Exhibit 38.Register of Directors − Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register − Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors − MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register − MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors − HCT Holdco 2 − Ltd. # 43 Exhibit 43.Share Register − HCT Holdco 2, Ltd.) (Phillips, Louis)
07/09/2021	2548 Certificate of service re: *(Supplemental) 1) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims; and 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P., 2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), 2478 Certificate of service re: *1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2479 Certificate of service re: *First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
07/09/2021	2549 Amended Notice *Second Amended Response of Dugaboy Investment Trust to Order Requiring Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2541 Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.))., 2545 Amended Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring

	Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)).). (Draper, Douglas)
07/09/2021	2550 Certificate of service re: *Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2526 Application for compensation *Sidley Austin LLP's Nineteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/12/2021	2551 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2537 and for 2535, (Annable, Zachery)
07/12/2021	2552 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor). (Annable, Zachery)
07/12/2021	2553 Amended appellant designation of contents for inclusion in record on appeal *pursuant to Fed. R. Bankr. P. 8009* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2452 Appellant designation). (Draper, Douglas)
07/12/2021	2554 Application for compensation *(Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $83,450.00, Expenses: $5,939.09. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/12/2021	2555 Certificate of service re: *Order Granting Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2527 Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document 2517) Entered on 7/7/2021. (Okafor, M.)). (Kass, Albert)
07/12/2021	2556 Notice *of Filing of Supplement and Additional Exhibits* filed by Interested Parties CLO Holdco, Ltd., Highland Dallas Foundation, Inc., The Charitable DAF Fund, L.P. (RE: related document(s)2547 Notice *of Response and Disclosures related to sua sponte Order Requiring Disclosures* filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee

	Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation − CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registery− CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership − DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination − HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination − HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25 Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution − DAF Holdco # 29 Exhibit 29.April 2 Resolution − CLO HoldCo # 30 Exhibit 30.Written Resolution − Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012−2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit 36.CLO HoldCo − Register of Directors # 37 Exhibit 37.DAF Holdco − Register of Directors # 38 Exhibit 38.Register of Directors − Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register − Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors − MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register − MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors − HCT Holdco 2 − Ltd. # 43 Exhibit 43.Share Register − HCT Holdco 2, Ltd.)). (Attachments: # 1 Supplement # 2 Exhibit 19. Letter From The Dallas Foundation # 3 Exhibit Exhibit 44. Baltimore Sun Article re: Nonprofit Offshore Structures) (Phillips, Louis)
07/13/2021	2558 Certificate of service re: *Documents Served on or Before July 9, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2533 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., 2538 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2021	

	2559 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/14/2021	2560 PDF with attached Audio File. Court Date & Time [05/18/2021 09:37:03 AM]. File Size [4798 KB]. Run Time [00:20:29]. (admin).
07/14/2021	2561 PDF with attached Audio File. Court Date & Time [06/08/2021 02:03:12 PM]. File Size [26321 KB]. Run Time [01:52:35]. (admin).
07/14/2021	2562 PDF with attached Audio File. Court Date & Time [06/08/2021 04:04:27 PM]. File Size [27205 KB]. Run Time [01:56:13]. (admin).
07/14/2021	2563 Objection to (related document(s): 2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust. (Taylor, Clay)
07/14/2021	2564 PDF with attached Audio File. Court Date & Time [06/08/2021 09:34:21 AM]. File Size [26132 KB]. Run Time [01:51:38]. (admin).
07/14/2021	2565 PDF with attached Audio File. Court Date & Time [06/08/2021 11:30:55 AM]. File Size [23135 KB]. Run Time [01:38:51]. (admin).
07/14/2021	2566 PDF with attached Audio File. Court Date & Time [06/10/2021 09:44:23 AM]. File Size [31458 KB]. Run Time [02:14:19]. (admin).
07/14/2021	2567 PDF with attached Audio File. Court Date & Time [06/25/2021 08:48:05 AM]. File Size [77915 KB]. Run Time [05:33:38]. (admin).
07/14/2021	2568 Certificate of service re: *Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2540 Support/supplemental document *(Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
07/14/2021	2569 Certificate of service re: *(Supplemental) 1) Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief; and 2) Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry*

	of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2540 Support/supplemental document *(Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P., 2558 Certificate of service re: Documents Served on or Before July 9, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2533 Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2535 Motion to sell Property* ***NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.*** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief) Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., 2538 Motion to file document under seal. (Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2568 Certificate of service re: Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2540 Support/supplemental document (Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property* ***NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.*** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)*
07/14/2021	2570 Amended application for compensation *Sidley Austin LLP's Amended 19th Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. (Hoffman, Juliana)
07/15/2021	2571 Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2021	2572 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Annable, Zachery)

07/15/2021	2573 Certificate of service re: *1) Notice of Hearing; and 2) Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2551 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2537 and for 2535, filed by Debtor Highland Capital Management, L.P., 2554 Application for compensation *(Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $83,450.00, Expenses: $5,939.09. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)
07/16/2021	2574 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30,). (Pomerantz, Jeffrey)*
07/16/2021	2575 Witness and Exhibit List filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)*). (Attachments: # 1 Objectors Ex. A # 2 Objectors Ex. B # 3 Objectors Ex. C # 4 Objectors Ex. D # 5 Objectors Ex. E # 6 Objectors Ex. F # 7 Objectors Ex. G # 8 Objectors Ex. H # 9 Objectors Ex. I # 10 Objectors Ex. J # 11 Objectors Ex. K # 12 Objectors Ex. L # 13 Objectors Ex. M # 14 Objectors Ex. N # 15 Objectors Ex. O) (Taylor, Clay)
07/16/2021	2576 Reply to (related document(s): 2563 Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) *(Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
07/16/2021	2577 Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2576 Reply). (Hoffman, Juliana)
07/16/2021	2578 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2532 Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021. (Sbaiti, Mazin)
07/16/2021	2579 Certificate of service re: *Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2559 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF

	THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/19/2021	2580 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)2578 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2532 Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021.) Responses due by 7/21/2021. (Blanco, J.)
07/19/2021	2581 PDF with attached Audio File. Court Date & Time [07/19/2021 09:30:44 AM]. File Size [19741 KB]. Run Time [01:24:28]. (admin).
07/19/2021	2582 Court admitted exhibits date of hearing July 19, 2021 (RE: related document(s)2491 Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED PLAINTIFF'S/DEBTOR'S EXHIBITS #1, #2, #3, #4, #5 & #6 BY JOHN MORRIS AND DEFENDANT/RESPONDENT EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N & #O BY DAVOR RUKAVINA) (Edmond, Michael)
07/19/2021	2583 Hearing held on 7/19/2021. (RE: related document(s)2480 Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	2584 Hearing held on 7/19/2021. (RE: related document(s)2491 Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	2585 Application for compensation *Sidley Austin LLP's Sixth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 5/31/2021, Fee: $1,527,522.75, Expenses: $32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Hoffman, Juliana)
07/19/2021	2586 Application for compensation *of Teneo Capital, LLC as Litigation Advisor* for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: $80,000.00, Expenses: $118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) (Hoffman, Juliana)
07/19/2021	2587 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2578 Appellant designation). (Sbaiti, Mazin)

07/20/2021	2588 Order granting fourth interim application for compensation (related document # 2480) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP , fees awarded: $7527021.50, expenses awarded: $80299.92 Entered on 7/20/2021. (Okafor, M.)
07/20/2021	2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
07/20/2021	2590 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendan). (Attachments: # 1 Exhibit 1−−Settlement Agreement) (Annable, Zachery)
07/20/2021	2592 Notice of docketing APPELLANT SUPPLEMENTAL record on appeal. 3:21−CV−00879−K (RE: related document(s)2149 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) (Blanco, J.)
07/20/2021	2593 Request for transcript regarding a hearing held on 7/19/2021. The requested turn−around time is hourly. (Edmond, Michael)
07/20/2021	2594 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2589, (Annable, Zachery)
07/20/2021	2595 Application for compensation *(Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $55,885.00, Expenses: $3,218.35. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/20/2021	2596 Declaration re: *(Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*). (Annable, Zachery)
07/20/2021	2597 Certificate of service re: *1) Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021; 2) Debtor's Reply to Plaintiffs' Post−Hearing Brief Regarding Motion for Modification of Order; and 3) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on July 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2570 Amended application for compensation *Sidley*

	Austin LLP's Amended 19th Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2571 Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2572 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/21/2021	2598 Transcript regarding Hearing Held 07/19/2021 (59 pages) RE: Debtor's Motion for Entry of Order Authorizing Creation of Indemnity Sub−Trust (2491); Pachulski Stang Fourth Interim Fee Application (2480). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2583 Hearing held on 7/19/2021. (RE: related document(s)2480 Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), 2584 Hearing held on 7/19/2021. (RE: related document(s)2491 Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 10/19/2021. (Rehling, Kathy)
07/21/2021	2599 Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document # 2491) Entered on 7/21/2021. (Okafor, M.)
07/21/2021	2600 Certificate of service re: *1) Debtor's Reply in Support of Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief; and 2) The Official Committee of Unsecured Creditors' Response and Joinder to the Debtor's Response to the Objection to Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2576 Reply to (related document(s): 2563 Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) *(Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2577 Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2576 Reply). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

07/22/2021	2601 Certificate of service re: *1) Sixth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021; and 2) First Consolidated Monthly Fee Application of Teneo Capital, LLC as Litigation Advisor for the Official Committee of Unsecured Creditors for the Period from April 15, 2021 to and Including June 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2585 Application for compensation *Sidley Austin LLP's Sixth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 5/31/2021, Fee: $1,527,522.75, Expenses: $32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2586 Application for compensation *of Teneo Capital, LLC as Litigation Advisor* for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: $80,000.00, Expenses: $118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/22/2021	2602 Certificate of service re: *(Supplemental) 1) Debtor's Third Omnibus Objection to Certain No Liability Claims; 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., 2091 Certificate of service re: *Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P., 2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), 2478 Certificate of service re: *1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall

	file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2479 Certificate of service re: *First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
07/23/2021	2603 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2502 Application for compensation *Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021,). (Pomerantz, Jeffrey)
07/23/2021	2604 Order granting motion to seal exhibits (related document # 2538) Entered on 7/23/2021. (Okafor, M.)
07/23/2021	2605 Certificate of service re: *Documents Served on July 20, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2588 Order granting fourth interim application for compensation (related document 2480) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP, fees awarded: $7527021.50, expenses awarded: $80299.92 Entered on 7/20/2021. (Okafor, M.), 2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2590 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendan). (Attachments: # 1 Exhibit 1−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P., 2594 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2589, filed by Debtor Highland Capital Management, L.P., 2595 Application for compensation *(Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the*

	Debtor for the Period from February 1, 2021 through February 28, 2021) for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $55,885.00, Expenses: $3,218.35. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2596 Declaration re: *(Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/23/2021	2606 Certificate of service re: *Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2599 Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document 2491) Entered on 7/21/2021. (Okafor, M.)). (Kass, Albert)
07/26/2021	2607 Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2345 Order to set hearing). (Annable, Zachery)
07/26/2021	2608 Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2021	2609 Application for compensation *(Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: $11,549.20, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	2610 Application for compensation *(Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: $4,933.20, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	2611 Application for compensation *Sixth Interim Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: $339,167.25, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. (Hoffman, Juliana)
07/27/2021	2612 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2514 Application for compensation *Nineteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: $88,932.60, Expenses: $0.). (Hoffman, Juliana)
07/27/2021	2613 Motion for leave *to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # 1 Proposed Order) (Montgomery, Paige)
07/27/2021	2614 Motion for expedited hearing(related documents 2613 Motion for leave) *Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)

07/28/2021	2615 Objection to (related document(s): 2613 Motion for leave *to File a Brief in Excess of Twenty−Five Pages* filed by Creditor Committee Official Committee of Unsecured Creditors, 2614 Motion for expedited hearing(related documents 2613 Motion for leave) *Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages* filed by Creditor Committee Official Committee of Unsecured Creditors)*Initial Objection To Motion For Leave And To Emergency Consideration Of The Motion For Leave* filed by Interested Party Highland Dallas Foundation, Inc., Respondent Mark Patrick. (Phillips, Louis)
07/28/2021	2616 Support/supplemental document *(Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit B−−Redacted PetroCap Partnership Agreement # 2 Exhibit C−−Redacted SLP Partnership Agreement) (Annable, Zachery)*
07/28/2021	2617 **SEALED document regarding: Exhibit B: PetroCap Partnership Agreement per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2604 Order on motion to seal). (Annable, Zachery)
07/28/2021	2618 **SEALED document regarding: Exhibit C: SLP Partnership Agreement per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2604 Order on motion to seal). (Annable, Zachery)
07/28/2021	2619 Certificate of service re: *Order Granting Debtor's Motion for Entry of an Order Authorizing the Filing Under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2604 Order granting motion to seal exhibits (related document 2538) Entered on 7/23/2021. (Okafor, M.)). (Kass, Albert)
07/29/2021	2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15) (Montgomery, Paige)
07/29/2021	2621 Objection to (related document(s): 2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # 1 Exhibit A − NexPoint PSA # 2 Exhibit B − PSA Redline) (Berghman, Thomas)*
07/29/2021	2623 Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21−10449, Civil Case Number: 3:21−cv−00538−N (RE: related document(s)1957 Notice of appeal . (Whitaker, Sheniqua)
07/29/2021	2624 Transmittal of addendum to record on appeal to U.S. District Court . Number of appellee records: 5 Sealed Documents (RE: related document(s) 2623 Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21−10449, Civil Case Number: 3:21−cv−00538−N (RE: related document(s)1957 Notice of appeal .) (Whitaker, Sheniqua)
07/29/2021	2625 Notice of docketing supplemental record on appeal. (RE: related document(s)1957 Notice of appeal . (RE: related document(s)1943 Order confirming chapter 11 plan). Civil Case 3:21−CV−00538−N, Circuit Court Case 21−10449 (Whitaker, Sheniqua)

07/29/2021	2626 Objection to (related document(s): 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # 1 Exhibit A − PSA # 2 Exhibit B − PSA Redline) (Berghman, Thomas)*
07/29/2021	2627 Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty−Five Page (related document # 2613) Entered on 7/29/2021. (Okafor, M.)
07/29/2021	2628 Notice *of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa)
07/29/2021	2629 Chapter 11 Post−Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
07/29/2021	2630 Certificate of service re: *1) Stipulation (A) Amending Scheduling Order and (B) Consolidating and Resolving Certain Matters; and 2) Debtors Amended Notice of Rule 30(b)(6) Deposition to Wick Phillips Gould & Martin, LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2607 Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2345 Order to set hearing). filed by Debtor Highland Capital Management, L.P., 2608 Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/30/2021	2631 Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/30/2021	2632 Application for compensation *Twenty−First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: $1,200,401.75, Expenses: $19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. (Pomerantz, Jeffrey)
07/30/2021	2633 Witness and Exhibit List filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property, 2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Berghman, Thomas)*
07/30/2021	2634 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) (Annable, Zachery)*
07/30/2021	2635 Witness and Exhibit List filed by Interested Party PetroCap, LLC (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of*

	Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Schultz, Sarah)
07/30/2021	2636 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) (Annable, Zachery)*
07/30/2021	2637 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2620, (Montgomery, Paige)
07/30/2021	2638 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2169 Amended notice of appeal, 2398 Notice of appeal, 2451 Statement of issues on appeal, 2513 Notice of appeal, 2532 Notice of docketing notice of appeal/record). (Annable, Zachery)
07/30/2021	2639 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket No. 2263]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2263 Assignment/Transfer of Claim. Fee Amount $156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
07/30/2021	2640 Certificate of service re: *1) Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 Through January 31, 2021; 2) Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 Through February 28, 2021; and 3) Sixth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2609 Application for compensation *(Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: $11,549.20, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2610 Application for compensation *(Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: $4,933.20, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2611 Application for compensation *Sixth Interim Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: $339,167.25, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/01/2021	2641 Motion to compel Mediation. Filed by Interested Party James Dondero (Taylor, Clay)

08/02/2021	2642 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2620, (Attachments: # 1 Exhibit) (Hoffman, Juliana)
08/02/2021	2643 Application for compensation *(Fourth Monthly Fee Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: $37153.08, Expenses: $30.90. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	2644 Application for compensation *(Fifth Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: $41,936.40, Expenses: $573.69. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	2645 Application for compensation *(Sixth Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: $35,841.24, Expenses: $0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	2646 Application for compensation *(Seventh Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: $78,401.16, Expenses: $0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	2647 Certificate of service re: *1) The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages; 2) Motion for Expedited Consideration on the Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages; and 3) Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2613 Motion for leave *to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, 2614 Motion for expedited hearing(related documents 2613 Motion for leave) *Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 2616 Support/supplemental document *(Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit B−−Redacted PetroCap Partnership Agreement # 2 Exhibit C−−Redacted SLP Partnership Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
08/02/2021	2648 Reply to (related document(s): 2621 Objection filed by Interested Party NexPoint Advisors, L.P.) *(Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/02/2021	2649 Reply to (related document(s): 2626 Objection filed by Interested Party NexPoint Advisors, L.P.) *(Debtor's Reply in Support of Its Motion for Entry of an Order (i)*

	Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/02/2021	2650 Joinder by *the Official Committee of Unsecured Creditors to the Debtor's Reply and Response* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2648 Reply, 2649 Reply). (Hoffman, Juliana)
08/02/2021	2651 Application for compensation *Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2021 to 6/30/2021, Fee: $464,954.40, Expenses: $12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. (Hoffman, Juliana)
08/02/2021	2652 Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)2620 Motion for examination) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # 1 Proposed Order) (Reid, Penny)
08/02/2021	2653 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2636 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 18) (Annable, Zachery)
08/02/2021	2654 Motion for expedited hearing(related documents 2652 Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order) (Reid, Penny)
08/03/2021	2655 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2554 Application for compensation *(Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Hayward PLLC, Debto). (Annable, Zachery)
08/03/2021	2656 Amended Reply to (related document(s): 2621 Objection filed by Interested Party NexPoint Advisors, L.P., 2648 Reply filed by Debtor Highland Capital Management, L.P.) *(Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)

EXHIBITS, APPEAL

U.S. Bankruptcy Court
Northern District of Texas (Dallas)
Adversary Proceeding #: 20−03190−sgj

Assigned to: Stacey G. Jernigan
Lead BK Case: 19−34054
Lead BK Title: Highland Capital Management, L.P.
Lead BK Chapter: 11
Demand: 0
Nature[s] of Suit: 72 Injunctive relief − other

Date Filed: 12/07/20

Plaintiff
−−−−−−−−−−−−−−−−−−−−−−−−

Highland Capital Management, L.P. represented by

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V.

Defendant
−−−−−−−−−−−−−−−−−−−−−−−−

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Creditor Committee
−−−−−−−−−−−−−−−−−−−−−−−

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Filing Date	Docket Text
12/07/2020	1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount $350 (Attachments: # 1 Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief − other). (Annable, Zachery)
12/07/2020	Receipt of filing fee for Complaint(20−03190−sgj) [cmp,cmp] (350.00). Receipt number 28321214, amount $ 350.00 (re: Doc# 1). (U.S. Treasury)
12/07/2020	2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
12/07/2020	3 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.).
12/07/2020	4 Declaration re: *(Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29) (Annable, Zachery). Related document(s) 6 Motion for protective order

	filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.).
12/07/2020	5 Motion for expedited hearing(related documents 2 Motion for preliminary injunction) *(Plaintiff Highland Capital Management, L.P.'s Motion for Expedited Hearing on Its Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified to add linkage on 12/8/2020 (Ecker, C.).
12/07/2020	6 Motion for temporary restraining order filed by Plaintiff Highland Capital Management, L.P. (Ecker, C.). Modified on 12/8/2020 (Ecker, C.). (Entered: 12/08/2020)
12/08/2020	7 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*, 6 Motion for protective order). (Annable, Zachery)
12/08/2020	8 Notice of hearing *(Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, (Annable, Zachery)
12/09/2020	9 Order granting motion for expedited hearing (Related Doc5)(document set for hearing: 6 Motion for protective order) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, Entered on 12/9/2020. (Ecker, C.). Modified to correct links on 12/9/2020 (Ecker, C.).
12/10/2020	10 Order granting motion for temporary restraining order against James Dondero (related document # 6) Entered on 12/10/2020. (Rielly, Bill)
12/10/2020	11 Request for transcript regarding a hearing held on 12/10/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/10/2020	12 TRO Hearing held on 12/10/2020. (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (Appearances: j. Dondero and J. Morris for Debtor; M. Lynn and J. Bonds for J. Dondero; M. Clemente for UCC; J. Bain for CLO Issuers; J. Wright for NexPoint entities. Evidentiary hearing. Motion granted. Preliminary injunction hearing set for 1/4/21. Counsel to upload order.) (Edmond, Michael)
12/10/2020	13 Hearing held on 12/10/2020., Hearing continued (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero), filed by Plaintiff Highland Capital Management, L.P., Preliminary Injunction Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2), (Edmond, Michael)
12/10/2020	14 Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
12/10/2020	

	15 Certificate of service re: *Documents Served on December 7, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Plaintiff Highland Capital Management, L.P., 3 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P., 4 Declaration re: *(Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29) (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P., 5 Motion for expedited hearing(related documents 2 Motion for preliminary injunction) *(Plaintiff Highland Capital Management, L.P.'s Motion for Expedited Hearing on Its Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified to add linkage on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	16 Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2, (Annable, Zachery)
12/11/2020	17 Summons issued on James D. Dondero Answer Due 1/10/2021 (Ellison, T.)
12/11/2020	18 Scheduling order setting deadlines. Discovery and all exhibits except impeachment documents: 45 days prior to Docket Call, pre−trial order: 7 calendar days prior to Docket Call, proposed findings of fact and conclusions of law: 7 days prior to first scheduled docket call (RE: related document(s)1 Complaint filed by Plaintiff Highland Capital Management, L.P.). Trial Docket Call date set for 5/10/2021 at 01:30 PM at Dallas Judge Jernigan Ctrm. Entered on 12/11/2020 (Ellison, T.)
12/11/2020	19 Transcript regarding Hearing Held 12/10/2020 (58 pages) RE: Motion for Preliminary Injunction; Motion for Temporary Restraining Order. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 12 TRO Hearing held on 12/10/2020. (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (Appearances: j. Dondero and J. Morris for Debtor; M. Lynn and J. Bonds for J. Dondero; M. Clemente for UCC; J. Bain for CLO Issuers; J. Wright for NexPoint entities. Evidentiary hearing. Motion granted. Preliminary injunction hearing set

	for 1/4/21. Counsel to upload order.), 13 Hearing held on 12/10/2020., Hearing continued (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero), filed by Plaintiff Highland Capital Management, L.P., Preliminary Injunction Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2),). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)
12/11/2020	20 Certificate of service re: *Documents Served on December 9, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)6 Motion for temporary restraining order filed by Plaintiff Highland Capital Management, L.P. (Ecker, C.). Modified on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P., 7 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*, 6 Motion for protective order). filed by Plaintiff Highland Capital Management, L.P., 8 Notice of hearing *(Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	21 Certificate of service re: *Order Granting Plaintiff Highland Capital Management, L.P.'s Motion for Expedited Hearing on Its Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)9 Order granting motion for expedited hearing (Related Doc5)(document set for hearing: 6 Motion for protective order) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, Entered on 12/9/2020. (Ecker, C.). Modified to correct links on 12/9/2020 (Ecker, C.).). (Kass, Albert)
12/11/2020	22 BNC certificate of mailing − PDF document. (RE: related document(s)9 Order granting motion for expedited hearing (Related Doc5)(document set for hearing: 6 Motion for protective order) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, Entered on 12/9/2020. (Ecker, C.). Modified to correct links on 12/9/2020 (Ecker, C.).) No. of Notices: 1. Notice Date 12/11/2020. (Admin.)
12/12/2020	23 BNC certificate of mailing − PDF document. (RE: related document(s)10 Order granting motion for temporary restraining order against James Dondero (related document 6) Entered on 12/10/2020.) No. of Notices: 1. Notice Date 12/12/2020. (Admin.)
12/16/2020	24 WITHDRAWN per # 29 Motion for leave *(James Dondero's Emergency Motion to Modify Temporary Restraining Order)* (related document(s) 10 Order on motion for protective order) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/16/2020	25 Certificate of service re: *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)10 Order granting motion for temporary restraining order against James Dondero (related document 6) Entered on 12/10/2020.). (Kass, Albert)
12/16/2020	26 Certificate of service re: *Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Motion for a Preliminary Injunction Against Mr. James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)16 Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)

12/17/2020	27 Summons service executed on James D. Dondero 12/15/2020 (Annable, Zachery)
12/21/2020	28 Notice of hearing filed by Defendant James D. Dondero (RE: related document(s)24 Motion for leave *(James Dondero's Emergency Motion to Modify Temporary Restraining Order)* (related document(s) 10 Order on motion for protective order) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 24, (Assink, Bryan)
12/23/2020	29 Withdrawal filed by Defendant James D. Dondero (RE: related document(s)24 Motion for leave *(James Dondero's Emergency Motion to Modify Temporary Restraining Order)* (related document(s) 10 Order on motion for protective order)). (Assink, Bryan)
12/24/2020	30 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/24/2020	31 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/28/2020	32 Motion for protective order*(James Dondero's Emergency Motion for Entry of a Protective Order)* filed by Defendant James D. Dondero (Attachments: # 1 Ex. A – Discovery Requests # 2 Proposed Order) (Assink, Bryan)
12/28/2020	33 Motion for expedited hearing(related documents 32 Motion for protective order) *(Request for Emergency Hearing)* filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
12/28/2020	34 Objection to (related document(s): 32 Motion for protective order*(James Dondero's Emergency Motion for Entry of a Protective Order)* filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/28/2020	35 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/28/2020	36 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/29/2020	37 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, (Annable, Zachery)
12/29/2020	38 Order resolving James Dondero's emergency motion for a protective order and resetting hearing on preliminary injunction (RE: related document(s)32 Motion for protective Order and 2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, Entered on 12/29/2020 (Okafor, M.)
12/30/2020	39 Certificate of service re: *1) Notice of Deposition; and 2) Notice of Deposition* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)30 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 31 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/30/2020	40 Certificate of service re: *1) Debtor's Objection to James Dondero's Emergency Motion for a Protective Order; 2) Amended Notice of Deposition; and 3) Amended Notice of Deposition* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)34 Objection to (related document(s): 32 Motion for protective order*(James*

	Dondero's Emergency Motion for Entry of a Protective Order) filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 35 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 36 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/31/2020	41 BNC certificate of mailing − PDF document. (RE: related document(s)38 Order resolving James Dondero's emergency motion for a protective order and resetting hearing on preliminary injunction (RE: related document(s)32 Motion for protective Order and 2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, Entered on 12/29/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 12/31/2020. (Admin.)
01/04/2021	42 Certificate of service re: *1) Amended Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Motion for a Preliminary Injunction Against Mr. James Dondero; and 2) Order Resolving James Dondero's Emergency Motion for a Protective Order* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)37 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, filed by Plaintiff Highland Capital Management, L.P., 38 Order resolving James Dondero's emergency motion for a protective order and resetting hearing on preliminary injunction (RE: related document(s)32 Motion for protective Order and 2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, Entered on 12/29/2020 (Okafor, M.)). (Kass, Albert)
01/05/2021	43 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
01/06/2021	44 Notice *(Highland Capital Management, L.P.'s Notice of Subpoena to James D. Dondero)* filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
01/06/2021	45 Witness and Exhibit List *(Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U) (Annable, Zachery)
01/07/2021	46 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)45 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit Y) (Annable, Zachery)
01/07/2021	47 Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Assink, Bryan)

01/07/2021	48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery)
01/07/2021	49 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Annable, Zachery)
01/07/2021	50 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Attachments: # 1 Exhibit G # 2 Exhibit K # 3 Exhibit L # 4 Exhibit M # 5 Exhibit N # 6 Exhibit P # 7 Exhibit Q # 8 Exhibit R # 9 Exhibit S # 10 Exhibit U # 11 Exhibit W # 12 Exhibit X # 13 Exhibit Y # 14 Exhibit Z) (Annable, Zachery)
01/07/2021	51 Motion for expedited hearing(related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery)
01/07/2021	52 Response opposed to (related document(s): 2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P.) filed by Defendant James D. Dondero. (Assink, Bryan)
01/08/2021	53 Request for transcript regarding a hearing held on 1/8/2021. The requested turn−around time is hourly. (Edmond, Michael)
01/08/2021	54 Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
01/08/2021	55 Certificate of service re: *1) Second Amended Notice of Deposition of Andrew Clubok; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) WebEx Meeting Invitation to participate electronically in the hearing on Friday January 8, 2021 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)43 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	66 Hearing held on 1/8/2021. (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P., (Appearances: J. Morris and J. Pomeranz for Debtor; M. Lynn and J. Bonds for J. Dondero; M. Clemente for UCC; F. Smith for certain employees; D. Rukavina for certain non−Debtor Highland advisors and funds. Evidentiary hearing. Motion granted, with FOFs and COLs announced orally. Counsel to upload order consistent with courts ruling.) (Edmond, Michael) (Entered: 01/15/2021)
01/08/2021	

	69 DUPLICATE ENTRY OF #54. Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero), filed by Plaintiff Highland Capital Management, L.P., (COURT ADMITTED PLAINTIFF EXHIBIT'S #A THROUGHT #Y BY COUNSEL JOHN A. MORRIS) (Edmond, Michael) Modified on 1/22/2021 (Ward, J). (Entered: 01/20/2021)
01/11/2021	56 Transcript regarding Hearing Held 01/08/2021 (205 pages) RE: Preliminary Injunction Hearing (#2). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/12/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 13 Hearing held on 12/10/2020., Hearing continued (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero), filed by Plaintiff Highland Capital Management, L.P., Preliminary Injunction Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2),). Transcript to be made available to the public on 04/12/2021. (Rehling, Kathy)
01/11/2021	57 Answer to complaint filed by James D. Dondero. (Assink, Bryan)
01/12/2021	58 Certificate of service re: *1) Highland Capital Management, L.P's Notice of Subpoena to James D. Dondero; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)44 Notice *(Highland Capital Management, L.P.'s Notice of Subpoena to James D. Dondero)* filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 45 Witness and Exhibit List *(Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U) filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
01/12/2021	59 Order granting motion for preliminary injunction against James Dondero (related document # 2) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	60 Notice of appeal . Fee Amount $298 filed by Defendant James D. Dondero (RE: related document(s)59 Order on motion for preliminary injunction). Appellant Designation due by 01/26/2021. (Attachments: # 1 Preliminary Injunction)(Assink, Bryan)
01/12/2021	Receipt of filing fee for Notice of appeal(20−03190−sgj) [appeal,ntcapl] (298.00). Receipt number 28409400, amount $ 298.00 (re: Doc# 60). (U.S. Treasury)
01/12/2021	61 Certificate of service re: *Documents Served on January 7, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)46 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)45 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit Y) filed by Plaintiff Highland Capital Management, L.P., 48 Motion for contempt against James

	Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Plaintiff Highland Capital Management, L.P., 49 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). filed by Plaintiff Highland Capital Management, L.P., 50 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Attachments: # 1 Exhibit G # 2 Exhibit K # 3 Exhibit L # 4 Exhibit M # 5 Exhibit N # 6 Exhibit P # 7 Exhibit Q # 8 Exhibit R # 9 Exhibit S # 10 Exhibit U # 11 Exhibit W # 12 Exhibit X # 13 Exhibit Y # 14 Exhibit Z) filed by Plaintiff Highland Capital Management, L.P., 51 Motion for expedited hearing(related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
01/13/2021	62 Clerk's correspondence requesting File a separate motion for leave from attorney for appellant. (RE: related document(s)60 Notice of appeal . Fee Amount $298 filed by Defendant James D. Dondero (RE: related document(s)59 Order on motion for preliminary injunction). Appellant Designation due by 01/26/2021. (Attachments: # 1 Preliminary Injunction)) Responses due by 1/15/2021. (Blanco, J.)
01/13/2021	63 Amended notice of appeal filed by Defendant James D. Dondero (RE: related document(s)60 Notice of appeal). (Attachments: # 1 Ex. 1 − Preliminary Injunction)(Assink, Bryan)
01/13/2021	64 Motion for leave to appeal (related document(s): 59 Order on motion for preliminary injunction, 60 Notice of appeal filed by Defendant James D. Dondero) filed by Defendant James D. Dondero (Assink, Bryan)
01/14/2021	65 BNC certificate of mailing − PDF document. (RE: related document(s)59 Order granting motion for preliminary injunction against James Dondero (related document 2) Entered on 1/12/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/14/2021. (Admin.)
01/15/2021	67 Certificate of service re: *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)59 Order granting motion for preliminary injunction against James Dondero (related document 2) Entered on 1/12/2021. (Ecker, C.)). (Kass, Albert)
01/20/2021	71 Notice of docketing notice of appeal. Civil Action Number: 3:21−CV−00132−E. (RE: related document(s)60 Notice of appeal (RE: related document(s)59 Order on motion for preliminary injunction). Appellant Designation due by 01/26/2021. , 63 Amended notice of appeal filed by Defendant James D. Dondero) (Blanco, J.)
01/20/2021	73 Notice of transmittal: Motion for leave to appeal filed 1/13/2021 3:21−CV−00132−E (RE: related document(s)64 Motion for leave to appeal (related document(s): 59 Order on motion for preliminary injunction, 60 Notice of appeal filed by Defendant James D. Dondero) filed by Defendant James D. Dondero). (Blanco, J.)
01/27/2021	74 Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 2/5/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, (Annable, Zachery)

01/27/2021	75 Emergency Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
01/27/2021	76 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Defendant James D. Dondero (RE: related document(s)63 Amended notice of appeal, 71 Notice of docketing notice of appeal/record). Appellee designation due by 02/10/2021. (Assink, Bryan)
01/29/2021	77 Objection to (related document(s): 75 Emergency Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief) filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
01/29/2021	78 Notice to take deposition of Scott Ellington filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
01/29/2021	79 Notice to take deposition of Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
02/01/2021	80 Witness and Exhibit List filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Attachments: # 1 List of 20 Largest Creditors 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 List of 20 Largest Creditors 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 List of 20 Largest Creditors 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37) (Annable, Zachery)
02/01/2021	81 Certificate of service re: *Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)74 Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 2/5/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/02/2021	82 Notice of Appearance and Request for Notice by Melissa S. Hayward filed by Plaintiff Highland Capital Management, L.P.. (Hayward, Melissa)
02/02/2021	83 Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8) (Assink, Bryan)
02/02/2021	84 Amended Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)83 List (witness/exhibit/generic)). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10) (Assink, Bryan)
02/02/2021	85 Amended Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)83 List (witness/exhibit/generic), 84 List (witness/exhibit/generic)). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4

	# 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10) (Assink, Bryan)
02/03/2021	86 Certificate of service re: *1) Plaintiffs Objection to James Donderos Emergency Motion for Continuance of Hearing; 2) Notice of Deposition of Scott Ellington; and 3) Notice of Deposition of Isaac Leventon* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)77 Objection to (related document(s): 75 Emergency Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief) filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 78 Notice to take deposition of Scott Ellington filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 79 Notice to take deposition of Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/04/2021	87 Certificate of service re: *Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on February 5, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)80 Witness and Exhibit List filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Attachments: # 1 List of 20 Largest Creditors 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 List of 20 Largest Creditors 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 List of 20 Largest Creditors 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37) filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/05/2021	88 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 2/17/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, (Annable, Zachery)
02/08/2021	89 Notice to take deposition of Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
02/08/2021	90 Notice to take deposition of Scott Ellington filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
02/08/2021	91 Notice to take deposition of Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
02/08/2021	92 Notice to take deposition of Scott Ellington filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
02/09/2021	93 Certificate of service re: *1) Amended Notice of Hearing on Plaintiffs Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)88 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 2/17/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/10/2021	94 Appellee designation of contents for inclusion in record of appeal filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)63 Amended notice of

	appeal, 71 Notice of docketing notice of appeal/record). (Annable, Zachery)
02/10/2021	95 Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
02/10/2021	96 Certificate of service re: *Documents Served on February 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)89 Notice to take deposition of Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 90 Notice to take deposition of Scott Ellington filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 91 Notice to take deposition of Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 92 Notice to take deposition of Scott Ellington filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/11/2021	97 Order granting motion to continue hearing on (related document # 95) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 2/19/2021 at 10:00 AM Dallas Judge Jernigan Ctrm for 48, Entered on 2/11/2021. (Ecker, C.)
02/11/2021	98 Notice to take deposition of Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
02/11/2021	111 Memorandum opinion and Order denying appellant's motion for leave to appeal. 3:21−CV−00132−E (RE: related document(s)64 Motion for leave to appeal filed by Defendant James D. Dondero). Entered on 2/11/2021 (Blanco, J.) (Entered: 02/22/2021)
02/13/2021	99 BNC certificate of mailing − PDF document. (RE: related document(s)97 Order granting motion to continue hearing on (related document 95) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 2/19/2021 at 10:00 AM Dallas Judge Jernigan Ctrm for 48, Entered on 2/11/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 02/13/2021. (Admin.)
02/16/2021	100 Certificate of service re: *Appellee's Supplemental Designation of Record on Appeal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)94 Appellee designation of contents for inclusion in record of appeal filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)63 Amended notice of appeal, 71 Notice of docketing notice of appeal/record). filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/17/2021	101 Amended Witness and Exhibit List filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)80 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 40 # 2 Exhibit 41 # 3 Exhibit 42 # 4 Exhibit 43 # 5 Exhibit 44 # 6 Exhibit 45 # 7 Exhibit 46 # 8 Exhibit 47 # 9 Exhibit 48 # 10 Exhibit 49 # 11 Exhibit 50 # 12 Exhibit 51 # 13 Exhibit 52 # 14 Exhibit 53 # 15 Exhibit 54 # 16 Exhibit 55 # 17 Exhibit 56 # 18 Exhibit 57 # 19 Exhibit 58 # 20 Exhibit 59) (Annable, Zachery)
02/17/2021	102 Motion to continue hearing on (related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery)
02/17/2021	103 Certificate of service re: *1) Third Amended Notice of Deposition to Isaac Leventon; 2) WebEx Meeting Invitation to participate electronically in the hearing on February 19, 2021 at 10:00 a.m. Central Time before the Honorable Stacey G. Jernigan; and 3) Instructions for any counsel and parties who wish to participate in the Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)98 Notice to take deposition of

	Isaac Leventon filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/18/2021	104 Order granting motion to continue hearing on (related document # 102) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 2/23/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, Entered on 2/18/2021. (Okafor, M.)
02/19/2021	105 Certificate of service re: *1) Debtor's Supplemental Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on February 23, 2021; and 2) Motion to Continue Contempt Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)101 Amended Witness and Exhibit List filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)80 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 40 # 2 Exhibit 41 # 3 Exhibit 42 # 4 Exhibit 43 # 5 Exhibit 44 # 6 Exhibit 45 # 7 Exhibit 46 # 8 Exhibit 47 # 9 Exhibit 48 # 10 Exhibit 49 # 11 Exhibit 50 # 12 Exhibit 51 # 13 Exhibit 52 # 14 Exhibit 53 # 15 Exhibit 54 # 16 Exhibit 55 # 17 Exhibit 56 # 18 Exhibit 57 # 19 Exhibit 58 # 20 Exhibit 59) filed by Plaintiff Highland Capital Management, L.P., 102 Motion to continue hearing on (related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
02/20/2021	106 Amended Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)85 List (witness/exhibit/generic)). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10 # 11 Dondero Ex. 11 # 12 Dondero Ex. 12 # 13 Dondero Ex. 13 # 14 Dondero Ex. 14 # 15 Dondero Ex. 15 # 16 Dondero Ex. 16 # 17 Dondero Ex. 17 # 18 Dondero Ex. 18 # 19 Dondero Ex. 19 # 20 Dondero Ex. 20) (Assink, Bryan)
02/20/2021	107 Motion to strike (related document(s): 48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P., 49 Brief filed by Plaintiff Highland Capital Management, L.P.) *(James Dondero's Emergency Motion in Limine and to Exclude Evidence and Argument)* filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
02/20/2021	108 Motion for expedited hearing(related documents 107 Motion to strike document) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
02/20/2021	109 BNC certificate of mailing − PDF document. (RE: related document(s)104 Order granting motion to continue hearing on (related document 102) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 2/23/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, Entered on 2/18/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 02/20/2021. (Admin.)
02/21/2021	110 Objection to (related document(s): 48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P.)*(James Dondero's Objection and Response to Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause and Brief in Support)* filed by Defendant James D. Dondero. (Assink, Bryan)
02/23/2021	

	112 Request for transcript regarding a hearing held on 2/23/2021. The requested turn−around time is hourly. (Edmond, Michael)
02/23/2021	113 Certificate of service re: *1) Order Granting Motion to Continue Contempt Hearing; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) WebEx Meeting Invitation to participate electronically in the hearing on February 23, 2021 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)104 Order granting motion to continue hearing on (related document 102) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 2/23/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, Entered on 2/18/2021. (Okafor, M.)). (Kass, Albert)
02/23/2021	114 Hearing held on 2/23/2021. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P., (Appearances: J. Morris and J. Pomeranz for Debtor; L. Hogewood and D. Rukavina for Advisors; J. Wilson and B. Assink for J. Dondero; M. Clemente for UCC. Matter continued due to other case matters running long. Lawyers to coordinate with CRD for a resetting.) (Edmond, Michael) (Entered: 02/24/2021)
02/24/2021	115 Objection to (related document(s): 107 Motion to strike (related document(s): 48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held i filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)*
02/24/2021	116 BNC certificate of mailing − PDF document. (RE: related document(s)111 Memorandum opinion and Order denying appellant's motion for leave to appeal. 3:21−CV−00132−E (RE: related document(s)64 Motion for leave to appeal filed by Defendant James D. Dondero). Entered on 2/11/2021 (Blanco, J.)) No. of Notices: 1. Notice Date 02/24/2021. (Admin.)
02/25/2021	117 Transcript regarding Hearing Held 02/23/2021 (239 pgs.) RE: Show Cause (48). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/26/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 114 Hearing held on 2/23/2021. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P., (Appearances: J. Morris and J. Pomeranz for Debtor; L. Hogewood and D. Rukavina for Advisors; J. Wilson and B. Assink for J. Dondero; M. Clemente for UCC. Matter continued due to other case matters running long. Lawyers to coordinate with CRD for a resetting.)). Transcript to be made available to the public on 05/26/2021. (Rehling, Kathy)
03/01/2021	118 Certificate of service re: *Debtors Objection to James Donderos Emergency Motion in Limine and to Exclude Evidence and Argument* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)115 Objection to (related document(s): 107 Motion to strike (related document(s): 48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held i filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)*

03/02/2021	119 Motion to continue hearing on (related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery)
03/04/2021	120 Order granting motion to continue hearing on (related document # 119) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 3/22/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, Entered on 3/4/2021. (Okafor, M.)
03/04/2021	121 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 3/22/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, (Annable, Zachery)
03/04/2021	122 Certificate of service re: *Motion to Continue Further the Contempt Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)119 Motion to continue hearing on (related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
03/06/2021	123 BNC certificate of mailing − PDF document. (RE: related document(s)120 Order granting motion to continue hearing on (related document 119) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 3/22/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, Entered on 3/4/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/06/2021. (Admin.)
03/08/2021	124 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 3/22/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 48, (Annable, Zachery)
03/09/2021	125 Certificate of service re: *1) Order Granting Motion to Continue Further the Contempt Hearing; and 2) Amended Notice of Hearing on Plaintiffs Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not be Held in Civil Contempt for Violating the TRO* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)120 Order granting motion to continue hearing on (related document 119) (related documents Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*) Hearing to be held on 3/22/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, Entered on 3/4/2021. (Okafor, M.), 121 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 3/22/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 48, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
03/10/2021	126 Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief, 125 Certificate of service)*(Motion for Continuance of Contempt Hearing)* filed by Defendant James D. Dondero (Attachments: # 1 Ex. A − Mandamus # 2 Ex. B − Letter # 3 Proposed Order) (Bonds, John)
03/11/2021	127 Certificate of service re: *Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)124 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 3/22/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 48, filed by

	Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
03/21/2021	128 Amended Exhibit List *(Debtor's Notice of Replacement Exhibits 11, 38, and 39 with Respect to Evidentiary Hearing to Be Held on March 22, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)101 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 11 # 2 Exhibit 38 # 3 Exhibit 39) (Annable, Zachery)
03/22/2021	130 DOCKETED IN ERROR: Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBIT'S #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57 & DEFENDANT/JAMES DONDER'S EXHIBIT'S #1 THROUGH #20). (Edmond, Michael) Modified on 3/25/2021 (Edmond, Michael). Modified on 3/25/2021 (Edmond, Michael). (Entered: 03/23/2021)
03/22/2021	135 Hearing held on 3/22/2021. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P. (Appearances: J. Morris for Debtor; J. Wilson for J. Dondero; D. Dandenow, M. Hartmand and F. Smith for potential witnesses, I. Leventon and S. Ellington. Evidentiary hearing. Court adjourned after close of evidence and scheduled oral arguments for 3/24/21 at 9:30 am.) (Edmond, Michael) (Entered: 03/25/2021)
03/22/2021	140 Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021)
03/23/2021	129 Request for transcript regarding a hearing held on 3/22/2021. The requested turn−around time is hourly. (Edmond, Michael)
03/23/2021	131 Notice of hearing *(Notice of Continued Hearing)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 48, (Annable, Zachery)
03/24/2021	132 Motion for leave *(Defendant James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony)* (related document(s) 48 Motion for Contempt, 130 Court admitted exhibits, 131 Notice of hearing) filed by Defendant James D. Dondero (Attachments: # 1 Ex. A − Rothstein Declaration # 2 Ex. B − Deposition Excerpts # 3 Proposed Order) (Assink, Bryan)
03/24/2021	133 Request for transcript regarding a hearing held on 3/24/2021. The requested turn−around time is hourly. (Edmond, Michael) Modified on 3/24/2021 (Edmond, Michael).
03/24/2021	134 Order denying James Dondero's motion to reopen evidence to allow for additional rebuttal witness testimony (related document # 132) Entered on 3/24/2021. (Okafor, M.)
03/24/2021	136 Hearing held on 3/24/2021. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion

	for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P., (Appearances: J. Morris for Debtor; J. Wilson for J. Dondero; M. Clemente for UCC. Closing arguments heard and court took matter under advisement. Court denied Mr. Donderos Motion to Reopen Evidence filed at 9:01 am this morning.) (Edmond, Michael) (Entered: 03/25/2021)
03/25/2021	137 Response opposed to (related document(s): 126 Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief, 125 Certificate of service)*(Motion for Continuance of Contempt Hearing)* filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	138 Transcript regarding Hearing Held 03/22/2021 (278 pages) RE: Motion for Contempt (48). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 135 Hearing held on 3/22/2021. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P. (Appearances: J. Morris for Debtor; J. Wilson for J. Dondero; D. Dandenow, M. Hartmand and F. Smith for potential witnesses, I. Leventon and S. Ellington. Evidentiary hearing. Court adjourned after close of evidence and scheduled oral arguments for 3/24/21 at 9:30 am.)). Transcript to be made available to the public on 06/23/2021. (Rehling, Kathy)
03/25/2021	139 Transcript regarding Hearing Held 03/24/2021 (75 pages) RE: Motion for Contempt (48) (Continued from 03/22/2021) (See Docket Entry 138). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 136 Hearing held on 3/24/2021. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital Management, L.P., (Appearances: J. Morris for Debtor; J. Wilson for J. Dondero; M. Clemente for UCC. Closing arguments heard and court took matter under advisement. Court denied Mr. Donderos Motion to Reopen Evidence filed at 9:01 am this morning.)). Transcript to be made available to the public on 06/23/2021. (Rehling, Kathy)
03/25/2021	141 Certificate of service re: *Debtor's Notice of Replacement Exhibits 11, 38, and 39 with Respect to Evidentiary Hearing to Be Held on March 22, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)128 Amended Exhibit List *(Debtor's Notice of Replacement Exhibits 11, 38, and 39 with Respect to Evidentiary Hearing to Be Held on March 22, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)101 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 11 # 2 Exhibit 38 # 3 Exhibit 39) filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
03/26/2021	142 Certificate of service re: *Notice of Continued Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)131 Notice of hearing *(Notice of Continued Hearing)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 48, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)

03/26/2021	143 BNC certificate of mailing − PDF document. (RE: related document(s)134 Order denying James Dondero's motion to reopen evidence to allow for additional rebuttal witness testimony (related document 132) Entered on 3/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/26/2021. (Admin.)
03/31/2021	144 Certificate of service re: *Debtor's Response to Motion for Continuance of Contempt Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)137 Response opposed to (related document(s): 126 Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief, 125 Certificate of service)*(Motion for Continuance of Contempt Hearing)* filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
04/14/2021	145 INCORRECT ENTRY: PDF did not generate. Clerk's correspondence requesting an order from attorney for plaintiff. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Plaintiff Highland Capital Management, L.P.) Responses due by 4/21/2021. (Ecker, C.) Modified on 4/14/2021 (Ecker, C.).
04/14/2021	146 Clerk's correspondence requesting an order from attorney for plaintiff. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Plaintiff Highland Capital Management, L.P.) Responses due by 4/21/2021. (Ecker, C.)
04/19/2021	147 Notice of Appearance and Request for Notice by Paige Holden Montgomery filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
04/19/2021	148 Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
04/23/2021	149 Certificate of service re: *1) Notice of Appearance and Request for Service by Sidley Austin LLP on Behalf of the Official Committee of Unsecured Creditors; and 2) Notice of Appearance and Request for Service by Juliana L. Hoffman on Behalf of the Official Committee of Unsecured Creditors* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)147 Notice of Appearance and Request for Notice by Paige Holden Montgomery filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 148 Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/26/2021	150 Witness and Exhibit List *for Trial set for the week of May 17, 2021* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)1 Complaint). (Attachments: # 1 Exhibits 1 − 65) (Hayward, Melissa)
04/26/2021	151 Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)1 Complaint). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10 # 11 Dondero Ex. 11 # 12 Dondero Ex. 12 # 13 Dondero Ex. 13 # 14 Dondero Ex. 14 # 15 Dondero Ex. 15 # 16 Dondero Ex. 16 # 17 Dondero Ex. 17 # 18 Dondero Ex. 18 # 19 Dondero Ex. 19) (Assink, Bryan)
04/27/2021	

	152 Clerk's correspondence requesting an order from attorney for defendant. (RE: related document(s)126 Motion to continue hearing on (related documents 48 Motion for Contempt, 49 Brief, 125 Certificate of service)*(Motion for Continuance of Contempt Hearing)* filed by Defendant James D. Dondero (Attachments: # 1 Ex. A − Mandamus # 2 Ex. B − Letter # 3 Proposed Order) filed by Defendant James D. Dondero) Responses due by 5/4/2021. (Ecker, C.)
04/29/2021	153 Certificate of service re: *Debtor's Witness and Exhibit List with Respect to Trial to be Held During Week of May 17, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)150 Witness and Exhibit List *for Trial set for the week of May 17, 2021* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)1 Complaint). (Attachments: # 1 Exhibits 1 − 65) filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	154 Motion to stay pending appeal *(Defendants Emergency Motion to Stay Proceedings Pending Resolution of Defendants Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting)* (related documents 18 Standing scheduling order in an adversary proceeding, 59 Order on motion for preliminary injunction, 111 Order (generic)) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order # 2 Exhibit A # 3 Exhibit B) (Assink, Bryan)
04/30/2021	155 Motion for expedited hearing(related documents 154 Motion to stay pending appeal) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
05/03/2021	156 Proposed findings of fact and conclusions of law filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)1 Complaint). (Annable, Zachery)
05/03/2021	157 Proposed pre−trial order filed by Defendant James D. Dondero, Plaintiff Highland Capital Management, L.P.. (Hayward, Melissa)
05/03/2021	158 Proposed findings of fact and conclusions of law filed by Defendant James D. Dondero (RE: related document(s)1 Complaint). (Assink, Bryan)
05/03/2021	159 Brief in opposition filed by Defendant James D. Dondero (RE: related document(s)1 Complaint). (Assink, Bryan)
05/04/2021	160 Objection to (related document(s): 154 Motion to stay pending appeal *(Defendants Emergency Motion to Stay Proceedings Pending Resolution of Defendants Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting)* (related documents 18 Standing scheduling order filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	161 Certificate of service re: *1) Debtor's Proposed Findings of Fact and Conclusions of; and 2) Joint Pretrial Order* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)156 Proposed findings of fact and conclusions of law filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)1 Complaint). filed by Plaintiff Highland Capital Management, L.P., 157 Proposed pre−trial order filed by Defendant James D. Dondero, Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., Defendant James D. Dondero). (Kass, Albert)
05/06/2021	162 Order denying motion for continuance of contempt hearing (related document # 126) Entered on 5/6/2021. (Okafor, M.)
05/06/2021	163 Order granting motion for expedited hearing (Related Doc# 155)(document set for hearing: 154 Motion to stay pending appeal) Hearing to be held on 5/10/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 154, Entered on 5/6/2021. (Okafor, M.)
05/07/2021	

	164 Certificate of service re: *Debtor's Objection to James Dondero's Emergency Motion to Stay Proceedings Pending Resolution of Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)160 Objection to (related document(s): 154 Motion to stay pending appeal *(Defendants Emergency Motion to Stay Proceedings Pending Resolution of Defendants Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting)* (related documents 18 Standing scheduling order filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
05/08/2021	165 BNC certificate of mailing − PDF document. (RE: related document(s)163 Order granting motion for expedited hearing (Related Doc155)(document set for hearing: 154 Motion to stay pending appeal) Hearing to be held on 5/10/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 154, Entered on 5/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 05/08/2021. (Admin.)
05/08/2021	166 BNC certificate of mailing − PDF document. (RE: related document(s)162 Order denying motion for continuance of contempt hearing (related document 126) Entered on 5/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 05/08/2021. (Admin.)
05/10/2021	167 Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)154 Motion to stay pending appeal *(Defendants Emergency Motion to Stay Proceedings Pending Resolution of Defendants Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting)* (related documents 18 Standing scheduling order). (Assink, Bryan)
05/10/2021	168 Objection to (related document(s): 150 List (witness/exhibit/generic) filed by Plaintiff Highland Capital Management, L.P.)*(James Dondero's Objections to the Debtor's Trial Exhibits)* filed by Defendant James D. Dondero. (Assink, Bryan)
05/10/2021	169 Hearing held on 5/10/2021. (RE: related document(s)154 Motion to stay pending appeal (Defendants Emergency Motion to Stay Proceedings Pending Resolution of Defendants Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting) (related documents 18 Standing scheduling order in an adversary proceeding, 59 Order on motion for preliminary injunction, 111 Order (generic)) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order # 2 Exhibit A # 3 Exhibit B) filed by Defendant James D. Dondero) (Appearances: J. Morris and J. Pomeranz for Debtor; J. Wilson and C. Taylor for J. Dondero. Nonevidentiary hearing. Motion denied. Mr. Wilson should upload order.) (Edmond, Michael)
05/10/2021	170 TDC Hearing held on 5/10/2021., Hearing set (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) Trial date set for 5/18/2021 at 09:30 AM at at https://us−courts.webex.com/meet/jerniga. (Edmond, Michael)
05/10/2021	171 TDC Hearing held on 5/10/2021. (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (Appearances: J. Morris and J. Pomeranz for Debtor; J. Wilson and C. Taylor for J. Dondero. Nonevidentiary hearing. Trial is set for Tuesday 5/18/21 at 9:30 am, continuing into Wednesday 5/19/21 at 9:30 am, as needed. Mr. Morris to upload order setting trial.) (Edmond, Michael)
05/10/2021	172 Request for transcript regarding a hearing held on 5/10/2021. The requested turn−around time is hourly. (Edmond, Michael)
05/11/2021	173 Notice of Trial hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)1 Complaint filed by Plaintiff Highland Capital Management, L.P.).

	Trial date set for 5/18/2021 at 09:30 AM at at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
05/11/2021	174 PDF with attached Audio File. Court Date & Time [05/10/2021 01:40:45 PM]. File Size [20326 KB]. Run Time [01:26:52]. (admin).
05/11/2021	175 Transcript regarding Hearing Held 05/10/2021 (55 pages) RE: Trial Docket Call; Motion to Stay Proceedings. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/9/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 169 Hearing held on 5/10/2021. (RE: related document(s)154 Motion to stay pending appeal (Defendants Emergency Motion to Stay Proceedings Pending Resolution of Defendants Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting) (related documents 18 Standing scheduling order in an adversary proceeding, 59 Order on motion for preliminary injunction, 111 Order (generic)) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order # 2 Exhibit A # 3 Exhibit B) filed by Defendant James D. Dondero) (Appearances: J. Morris and J. Pomeranz for Debtor; J. Wilson and C. Taylor for J. Dondero. Nonevidentiary hearing. Motion denied. Mr. Wilson should upload order.), 171 TDC Hearing held on 5/10/2021. (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (Appearances: J. Morris and J. Pomeranz for Debtor; J. Wilson and C. Taylor for J. Dondero. Nonevidentiary hearing. Trial is set for Tuesday 5/18/21 at 9:30 am, continuing into Wednesday 5/19/21 at 9:30 am, as needed. Mr. Morris to upload order setting trial.)). Transcript to be made available to the public on 08/9/2021. (Rehling, Kathy)
05/13/2021	176 Amended Objection to (related document(s): 150 List (witness/exhibit/generic) filed by Plaintiff Highland Capital Management, L.P.)*(James Dondero's Amended Objections to the Debtor's Trial Exhibits)* filed by Defendant James D. Dondero. (Assink, Bryan)
05/13/2021	177 Certificate of service re: *Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)173 Notice of Trial hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)1 Complaint filed by Plaintiff Highland Capital Management, L.P.). Trial date set for 5/18/2021 at 09:30 AM at at https://us−courts.webex.com/meet/jerniga. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
05/14/2021	178 Order denying motion to stay proceedings pending resolution of Defendant's petition for Writ of Mandamus or, alternatively, motion to continue trial setting (related document # 154) Entered on 5/14/2021. (Okafor, M.)
05/16/2021	179 BNC certificate of mailing − PDF document. (RE: related document(s)178 Order denying motion to stay proceedings pending resolution of Defendant's petition for Writ of Mandamus or, alternatively, motion to continue trial setting (related document 154) Entered on 5/14/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 05/16/2021. (Admin.)
05/18/2021	180 Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery) Modified on 5/18/2021 (Ecker, C.). Modified text on 5/18/2021 (Okafor, M.). Modified on 5/19/2021 (Okafor, M.).
05/18/2021	181 INCORRECT ENTRY: Incorrect Event Code Used − Order dismissing case without prejudice (related document 180). Entered on 5/18/2021 (Okafor, M.) Modified on 5/19/2021 (Okafor, M.).
05/18/2021	

	182 Order Resolving Adversary Proceeding (RE: related document(s)180 Notice (generic) filed by Plaintiff Highland Capital Management, L.P.). Entered on 5/18/2021 (Okafor, M.) (Entered: 05/19/2021)
05/18/2021	188 Trial Hearing held on 5/18/2021. (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. (Attachments: # 1 Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (Appearances: J. Morris for Debtor; J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Announcement of agreed resolution.) (Edmond, Michael) (Entered: 05/24/2021)
05/20/2021	183 BNC certificate of mailing − PDF document. (RE: related document(s)181 INCORRECT ENTRY: Incorrect Event Code Used − Order dismissing case without prejudice (related document 180). Entered on 5/18/2021 (Okafor, M.) Modified on 5/19/2021 (Okafor, M.).) No. of Notices: 1. Notice Date 05/20/2021. (Admin.)
05/21/2021	184 Request for transcript (ruling only) regarding a hearing held on 5/18/2021. The requested turn−around time is hourly. (Edmond, Michael)
05/21/2021	185 Transcript regarding Hearing Held 5/18/2021 RE: Ruling. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Liberty Transcripts/Dipti Patel, Telephone number 8478484907. (RE: related document(s) 169 Hearing held on 5/10/2021. (RE: related document(s)154 Motion to stay pending appeal (Defendants Emergency Motion to Stay Proceedings Pending Resolution of Defendants Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting) (related documents 18 Standing scheduling order in an adversary proceeding, 59 Order on motion for preliminary injunction, 111 Order (generic)) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order # 2 Exhibit A # 3 Exhibit B) filed by Defendant James D. Dondero) (Appearances: J. Morris and J. Pomeranz for Debtor; J. Wilson and C. Taylor for J. Dondero. Nonevidentiary hearing. Motion denied. Mr. Wilson should upload order.)). Transcript to be made available to the public on 08/19/2021. (Patel, Dipti)
05/21/2021	186 Certificate of service re: *1) Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding; and 2) Order Resolving Adversary Proceeding* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)180 Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery) Modified on 5/18/2021 (Ecker, C.). Modified text on 5/18/2021 (Okafor, M.). Modified on 5/19/2021 (Okafor, M.). filed by Plaintiff Highland Capital Management, L.P., 181 INCORRECT ENTRY: Incorrect Event Code Used − Order dismissing case without prejudice (related document 180). Entered on 5/18/2021 (Okafor, M.) Modified on 5/19/2021 (Okafor, M.).). (Kass, Albert)
05/21/2021	187 BNC certificate of mailing − PDF document. (RE: related document(s)182 Order Resolving Adversary Proceeding (RE: related document(s)180 Notice (generic) filed by Plaintiff Highland Capital Management, L.P.). Entered on 5/18/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 05/21/2021. (Admin.)
05/24/2021	189 ***INCORRECT ENTRY***Request for transcript regarding a hearing held on 5/18/2021. The requested turn−around time is hourly (Jeng, Hawaii) Modified on 5/24/2021 (Jeng, Hawaii).
06/07/2021	190 Memorandum of opinion and order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Entered on 6/7/2021 (Bradden, T.)

06/07/2021	191 Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021. (Bradden, T.)
06/09/2021	192 Certificate of service re: *Memorandum Opinion and Order Granting in Part Plaintiffs Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)191 Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document 48) Entered on 6/7/2021. (Bradden, T.)). (Kass, Albert)
06/09/2021	193 BNC certificate of mailing − PDF document. (RE: related document(s)190 Memorandum of opinion and order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (RE: related document(s)48 Motion for Contempt filed by Plaintiff Highland Capital Management, L.P.). Entered on 6/7/2021 (Bradden, T.)) No. of Notices: 1. Notice Date 06/09/2021. (Admin.)
06/09/2021	194 BNC certificate of mailing − PDF document. (RE: related document(s)191 Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document 48) Entered on 6/7/2021. (Bradden, T.)) No. of Notices: 1. Notice Date 06/09/2021. (Admin.)
06/15/2021	195 Notice of appeal . Fee Amount $298 filed by Defendant James D. Dondero (RE: related document(s)191 Order on motion for contempt). Appellant Designation due by 06/29/2021. (Attachments: # 1 Ex. 1 − Order)(Assink, Bryan)
06/15/2021	196 Motion to stay pending appeal *(Defendants Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security)* (related documents 191 Order on motion for contempt) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
06/15/2021	197 Motion for expedited hearing(related documents 196 Motion to stay pending appeal) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
06/16/2021	Receipt of filing fee for Notice of appeal(20−03190−sgj) [appeal,ntcapl] (298.00). Receipt number 28785463, amount $ 298.00 (re: Doc# 195). (U.S. Treasury)
06/17/2021	198 Notice of hearing filed by Defendant James D. Dondero (RE: related document(s)196 Motion to stay pending appeal filed by Defendant James D. Dondero). Hearing to be held on 6/21/2021 at 12:00 PM at https://us−courts.webex.com/meet/jerniga for 196, (Attachments: # 1 Webex Instructions)(Assink, Bryan)
06/17/2021	199 Order granting motion for expedited hearing (Related Doc# 197)(document set for hearing: 196 Motion to stay pending appeal) Hearing to be held on 6/21/2021 at 12:00 PM at https://us−courts.webex.com/meet/jerniga for 196, Entered on 6/17/2021. (Okafor, M.)
06/19/2021	200 BNC certificate of mailing − PDF document. (RE: related document(s)199 Order granting motion for expedited hearing (Related Doc197)(document set for hearing: 196 Motion to stay pending appeal) Hearing to be held on 6/21/2021 at 12:00 PM at https://us−courts.webex.com/meet/jerniga for 196, Entered on 6/17/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 06/19/2021. (Admin.)
06/21/2021	206 INCORRECT ENTRY. SEE CORRECTED HEARING NOTES AT DE 207. Hearing held on 6/21/2021. (RE: related document(s)196 Motion to stay pending appeal (Defendants Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security) (related documents 191 Order on motion for contempt) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) filed by Defendant James D. Dondero) (Appearances: J. Wilson for J. Dondero; J. Pomeranz for Debtor. Evidentiary hearing.

	Motion denied. Counsel to upload order.) (Edmond, Michael) Modified on 7/1/2021 (Ellison, T.). (Entered: 06/30/2021)
06/21/2021	207 Hearing held on 6/21/2021. (RE: related document(s)196 Motion to stay pending appeal *(Defendants Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security)* (related documents 191 Order on motion for contempt) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) filed by Defendant James D. Dondero) Appearances: J. Wilson for J. Dondero; J. Pomeranz for Debtor. Nonevidentiary hearing. Parties announced an agreement on the record on the motion to stay pending appeal whereby Dondero would deposit $600k into the registry of the court. Stipulation and order uploaded. (Ellison, T.) (Entered: 07/01/2021)
06/22/2021	201 Stipulation and Agreed Order resolving defendant's emergency motion to stay pending appeal and for approval of supersedeas bond or other security (related document # 196) Entered on 6/22/2021. (Okafor, M.)
06/24/2021	Receipt Number 730028, Fee Amount $600,000.00 − Receipt of Registry funds via wire transfer (RE: Related document(s) 201 Order on motion to stay pending appeal.) (Floyd, K).
06/24/2021	202 BNC certificate of mailing − PDF document. (RE: related document(s)201 Stipulation and Agreed Order resolving defendant's emergency motion to stay pending appeal and for approval of supersedeas bond or other security (related document 196) Entered on 6/22/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 06/24/2021. (Admin.)
06/29/2021	203 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Defendant James D. Dondero (RE: related document(s)195 Notice of appeal). Appellee designation due by 07/13/2021. (Assink, Bryan)
06/29/2021	204 PDF with attached Audio File. Court Date & Time [06/21/2021 11:18:54 AM]. File Size [2897 KB]. Run Time [00:12:25]. (admin).
06/29/2021	205 Request for transcript regarding a hearing held on 6/21/2021. The requested turn−around time is hourly. (Edmond, Michael) (Entered: 06/30/2021)
07/02/2021	208 Transcript regarding Hearing Held 06/21/2021 (7 pages) RE: Motion to Stay Pending Appeal 196. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/30/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 207 Hearing held on 6/21/2021. (RE: related document(s)196 Motion to stay pending appeal *(Defendants Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security)* (related documents 191 Order on motion for contempt) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) filed by Defendant James D. Dondero) Appearances: J. Wilson for J. Dondero; J. Pomeranz for Debtor. Nonevidentiary hearing. Parties announced an agreement on the record on the motion to stay pending appeal whereby Dondero would deposit $600k into the registry of the court. Stipulation and order uploaded. (Ellison, T.)). Transcript to be made available to the public on 09/30/2021. (Rehling, Kathy)
07/02/2021	209 Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s)203 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Defendant James D. Dondero (RE: related document(s)195 Notice of appeal). Appellee designation due by 07/13/2021.) Responses due by 7/6/2021. (Blanco, J.)
07/06/2021	

	210 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Defendant James D. Dondero (RE: related document(s)203 Appellant designation, Statement of issues on appeal). (Assink, Bryan)
07/08/2021	212 Certificate of mailing regarding appeal (RE: related document(s)195 Notice of appeal . filed by Defendant James D. Dondero (RE: related document(s)191 Order on motion for contempt). (Attachments: # 1 Ex. 1 − Order) filed by Defendant James D. Dondero) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
07/08/2021	213 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)195 Notice of appeal . filed by Defendant James D. Dondero (RE: related document(s)191 Order on motion for contempt). (Attachments: # 1 Ex. 1 − Order)) (Whitaker, Sheniqua)
07/08/2021	214 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01590−N. (RE: related document(s)195 Notice of appeal . filed by Defendant James D. Dondero (RE: related document(s)191 Order on motion for contempt). (Attachments: # 1 Ex. 1 − Order) filed by Defendant James D. Dondero) (Whitaker, Sheniqua)
07/10/2021	215 BNC certificate of mailing. (RE: related document(s)213 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)195 Notice of appeal . filed by Defendant James D. Dondero (RE: related document(s)191 Order on motion for contempt). (Attachments: # 1 Ex. 1 − Order))) No. of Notices: 1. Notice Date 07/10/2021. (Admin.)
07/14/2021	216 PDF with attached Audio File. Court Date & Time [05/18/2021 09:37:03 AM]. File Size [4798 KB]. Run Time [00:20:29]. (admin).

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 2

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241 129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243 130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253 131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267 132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272 133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279 134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285 135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288 136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293 139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

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Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. <u>Defined Terms</u>

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" means an "affiliate" as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. "*Convenience Claim*" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all

distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. "*Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

59. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

62. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

69. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

71. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

77. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

87. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. "*Petition Date*" means October 16, 2019.

91. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of

Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

104. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

105. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

107. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. "*Related Entity*" means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

132. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be

overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the

Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. <u>Cancellation of Notes, Certificates and Instruments</u>

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. <u>Cancellation of Existing Instruments Governing Security Interests</u>

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. <u>Control Provisions</u>

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to

such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. <u>Waiver of Conditions</u>

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized

Debtor, or the Claimant Trust, as applicable.

C. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

D. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose

before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided*, *however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however,* the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.

G. <u>Term of Injunctions or Stays</u>

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

[Remainder of Page Intentionally Blank]

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:_____
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Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DISCLOSURE STATEMENT FOR THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

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[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned cases (the "Debtor"), is sending you this document and the accompanying materials (the "Disclosure Statement") because you are a creditor or interest holder in connection with the *Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.*, dated November 24, 2020, as the same may be amended from time to time (the "Plan").[2] The Debtor has filed a voluntary petition under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code").

This Disclosure Statement has not yet been approved by the Bankruptcy Court as containing adequate information within the meaning of section 1125(a) of the Bankruptcy Code. The Debtor intends to seek an order or orders of the Bankruptcy Court (a) approving this Disclosure Statement as containing adequate information and (b) confirming the Plan.

A copy of the Plan is attached hereto as **Exhibit A**.

The Debtor believes that the Plan is fair and equitable, will maximize the value of the Debtor's Estate, and is in the best interests of the Debtor and its constituents. Notably, the Plan provides for the transfer of the majority of the Debtor's Assets to a Claimant Trust. The balance of the Debtor's Assets, including the management of the Managed Funds, will remain with the Reorganized Debtor. The Reorganized Debtor will be managed by New GP LLC – a wholly-owned subsidiary of the Claimant Trust. This structure will allow for continuity in the Managed Funds and an orderly and efficient monetization of the Debtor's Assets.

The Claimant Trust, the Litigation Trust, or the Reorganized Debtor, as applicable, will institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action without any further order of the Bankruptcy Court, and the Claimant Trust and Reorganized Debtor, as applicable, will sell, liquidate, or otherwise monetize all Claimant Trust Assets and Reorganized Debtor Assets and resolve all Claims, except as otherwise provided in the Plan, the Claimant Trust Agreement, or the Reorganized Limited Partnership Agreement.

IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT FOR YOU TO READ

The Debtor is providing the information in this Disclosure Statement to Holders of Claims and Equity Interests in connection with the Debtor's Plan. Nothing in this Disclosure Statement may be relied upon or used by any Entity for any purpose other than with respect to confirmation of the Plan. The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose.

This Disclosure Statement has not been filed for approval with the Securities and Exchange Commission ("SEC") or any state authority and neither the SEC nor any state authority has passed upon the accuracy or adequacy of this Disclosure Statement or upon

[2] All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan shall control and govern.

the merits of the Plan. Any representation to the contrary is a criminal offense. This Disclosure Statement does not constitute an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The Debtor considers all statements regarding anticipated or future matters to be forward-looking statements. Forward-looking statements may include statements about:

- **the effects of insolvency proceedings on the Debtor's business and relationships with its creditors;**
- **business strategy;**
- **financial condition, revenues, cash flows, and expenses;**
- **financial strategy, budget, projections, and operating results;**
- **variation from projected operating and financial data;**
- **substantial capital requirements;**
- **availability and terms of capital;**
- **plans, objectives, and expectations;**
- **the adequacy of the Debtor's capital resources and liquidity; and**
- **the Claimant Trust's or the Reorganized Debtor's ability to satisfy future cash obligations.**

Statements concerning these and other matters are not guarantees of the Claimant Trust's or Reorganized Debtor's future performance. There are risks, uncertainties, and other important factors that could cause the Claimant Trust's or Reorganized Debtor's actual performance or achievements to be different from those that may be projected. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. Therefore, any analyses, estimates, or recovery projections may or may not turn out to be accurate.

This Disclosure Statement has been prepared pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and is not necessarily in accordance with federal or state securities laws or other similar laws.

No legal or tax advice is provided to you by this Disclosure Statement. The Debtor urges each Holder of a Claim or an Equity Interest to consult with its own advisers with respect to any legal, financial, securities, tax or business advice in reviewing this Disclosure Statement, the Plan and each of the proposed transactions contemplated thereby. Further, the Bankruptcy Court's approval of the adequacy of disclosures contained in this Disclosure Statement does not constitute the Bankruptcy Court's approval of the merits of the Plan or a guarantee by the Bankruptcy Court of the accuracy or completeness of the information contained herein.

Pachulski Stang Ziehl & Jones LLP ("PSZ&J") is general insolvency counsel to the Debtor. Development Specialists, Inc. ("DSI") is the Debtor's financial advisor. PSZ&J, DSI, and the Independent Board (as defined below) have relied upon information provided by the Debtor in connection with preparation of this Disclosure Statement. PSZ&J has not independently verified the information contained herein.

This Disclosure Statement contains, among other things, summaries of the Plan, the management of the Reorganized Debtor, the Claimant Trust, certain statutory provisions, certain events in the Debtor's Chapter 11 Case, and certain documents related to the Plan that are attached hereto and incorporated herein by reference or that may be filed later with the Plan Supplement. Although the Debtor believes that these summaries are fair and accurate, these summaries are qualified in their entirety to the extent that the summaries do not set forth the entire text of such documents or statutory provisions or every detail of such events. In the event of any conflict, inconsistency or discrepancy between a description in this Disclosure Statement and the terms and provisions of the Plan or any other documents incorporated herein by reference, the Plan or such other documents will govern and control for all purposes. Except where otherwise specifically noted, factual information contained in this Disclosure Statement has been provided by the Debtor's management. The Debtor does not represent or warrant that the information contained herein or attached hereto is without any material inaccuracy or omission.

In preparing this Disclosure Statement, the Debtor relied on financial data derived from the Debtor's books and records and on various assumptions regarding the Debtor's business. The Debtor's management has reviewed the financial information provided in this Disclosure Statement. Although the Debtor has used its reasonable business judgment to ensure the accuracy of this financial information, the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been audited (unless otherwise expressly provided herein) and no representations or warranties are made as to the accuracy of the financial information contained herein or assumptions regarding the Debtor's business and its, the Reorganized Debtor's, and the Claimant Trust's future results. The Debtor expressly cautions readers not to place undue reliance on any forward-looking statements contained herein.

This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation or waiver. Rather, this Disclosure Statement shall constitute a statement made in settlement negotiations related to potential contested matters, potential adversary proceedings and other pending or threatened litigation or actions.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in the Disclosure Statement. Except as provided under the Plan, the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, may seek to investigate, file and prosecute Claims and Causes of Action and may object to Claims or Equity Interests after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies any such Claims or Equity Interests or objections to Claims or Equity Interests on the terms specified in the Plan.

The Debtor is generally making the statements and providing the financial information contained in this Disclosure Statement as of the date hereof where feasible, unless otherwise specifically noted. Although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so. Holders of Claims and Equity Interests reviewing this Disclosure Statement should not infer that, at the time of their review, the facts set forth herein have not changed since the Disclosure Statement was sent. Information contained herein is subject to completion, modification, or amendment. The Debtor reserves the right to file an amended or modified Plan and related Disclosure Statement from time to time.

The Debtor has not authorized any Entity to give any information about or concerning the Plan other than that which is contained in this Disclosure Statement. The Debtor has not authorized any representations concerning the Debtor or the value of its property other than as set forth in this Disclosure Statement.

Holders of Claims or Equity Interests must rely on their own evaluation of the Debtor and their own analyses of the terms of the Plan in considering the Plan. Importantly, each Holder of a Claim should review the Plan in its entirety and consider carefully all of the information in this Disclosure Statement and any exhibits hereto, including the risk factors described in greater detail in ARTICLE IV herein, "Risk Factors."

If the Plan is confirmed by the Bankruptcy Court and the Effective Date occurs, all Holders of Claims against, and Holders of Equity Interests in, the Debtor will be bound by the terms of the Plan and the transactions contemplated thereby.

The effectiveness of the Plan is subject to certain material conditions precedent described herein and set forth in Article IX of the Plan. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied for the Plan to become effective will be satisfied (or waived).

EXHIBITS

EXHIBIT A – Plan of Reorganization

EXHIBIT B – Organizational Chart of the Debtor

EXHIBIT C – Liquidation Analysis/Financial Projections

THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN.

ARTICLE I.
EXECUTIVE SUMMARY

This Disclosure Statement is provided for informational purposes only.

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distributions to the Debtor's creditors and interest holders. The Debtor believes that any delay in confirmation of the Plan would result in significant administrative expenses resulting in less value available to the Debtor's constituents. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.

This Executive Summary is being provided to Holders of Allowed Claims and Equity Interests as an overview of the material items addressed in the Disclosure Statement and the Plan, which is qualified by reference to the entire Disclosure Statement and by the actual terms of the Plan (including all exhibits attached hereto and to the Plan and the Plan Supplement), and should not be relied upon for a comprehensive discussion of the Disclosure Statement and/or the Plan. Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance or rejection of the plan of reorganization or liquidation. As such, this Disclosure Statement is being submitted in accordance with the requirements of section 1125 of the Bankruptcy Code. This Disclosure Statement includes, without limitation, information about:

- the Debtor's operating and financial history;
- the significant events that have occurred to date;
- the Confirmation process; and
- the terms and provisions of the Plan, including key aspects of the Claimant Trust and the Reorganized Debtor, certain effects of Confirmation of the Plan, certain risk factors relating to the Plan, and the manner in which distributions will be made under the Plan.

The Debtor believes that any alternative to Confirmation of the Plan would result in significant delays, litigation, and additional costs, and ultimately would diminish the Debtor's value. **Accordingly, the Debtor strongly supports confirmation of the Plan.**

A. Summary of the Plan

The Plan represents a significant achievement for the Debtor. As discussed herein, the Plan provides that the Claimant Trust will receive the majority of the Debtor's assets, including Causes of Action. The assets being transferred to the Claimant Trust are referred to, collectively, as the Claimant Trust Assets. The Claimant Trust will – for the benefit of the Claimant Trust

Beneficiaries – monetize the Claimant Trust Assets, pursue the Causes of Action, and work to conclude the various lawsuits and litigation claims pending against the Estate.

The Plan also provides for the reorganization of the Debtor. This will be accomplished by the cancellation of the Debtor's current Equity Interests, which consist of partnership interests held by: The Dugaboy Investment Trust;[3] the Hunter Mountain Investment Trust ("Hunter Mountain"); Mark Okada, personally and through family trusts; and Strand, the Debtor's general partner. On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. The Reorganized Debtor will be managed by the Claimant Trust, as the managing member of New GP LLC.

The Reorganized Debtor will oversee the monetization of the Reorganized Debtor Assets, which consist of, among other Assets, the management of the Managed Funds. The net proceeds from the Reorganized Debtor Assets will ultimately be distributed to the Claimant Trust and available for distribution to the Claimant Trust Beneficiaries.

The following is an overview of certain other material terms of the Plan:

- Allowed Priority Non-Tax Claims will be paid in full;
- Allowed Retained Employee Claims will be Reinstated;
- Allowed Convenience Claims will receive the lesser of (i) 85% of their Allowed Claim or (ii) such Holder's Pro Rata share of the Convenience Claims Cash Pool (*i.e.*, $13,150,000). Holders of Convenience Claims can elect the treatment provided to General Unsecured Claims by making the GUC Election on their Ballots;
- Allowed General Unsecured Claims and Allowed Subordinated Claims will receive their Pro Rata share of Claimant Trust Interests. The Claimant Trust Interests distributed to Allowed General Unsecured Claims will be senior to those distributed to Allowed Subordinated Claims as set forth in the Claimant Trust Agreement. Holders of General Unsecured Claims that are liquidated as of the Confirmation Date can elect the treatment provided to Convenience Class Election by reducing their Claims to $1,000,000 and making the Convenience Class Election on their Ballots; and
- Allowed Class B/C Limited Partnership Interests and Allowed Class A Limited Partnership Interests will receive their Pro Rata share of the Contingent Claimant Trust Interests.

[3] The Dugaboy Investment Trust is a Delaware trust created to manage the assets of James Dondero and his family.

B. An Overview of the Chapter 11 Process

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11 of the Bankruptcy Code, a debtor may remain in possession of its assets and business and attempt to reorganize its business for the benefit of such debtor, its creditors, and other parties in interest. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The commencement of a Chapter 11 case creates an estate comprised of all of the legal and equitable interests of a debtor in property as of the date that the bankruptcy petition is filed. Sections 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a "debtor-in-possession," unless the bankruptcy court orders the appointment of a trustee. The filing of a bankruptcy petition also triggers the automatic stay provisions of section 362 of the Bankruptcy Code which provide, among other things, for an automatic stay of all attempts to collect prepetition claims from a debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay generally remains in full force and effect until the consummation of a plan of reorganization or liquidation, following confirmation of such plan of reorganization.

The Bankruptcy Code provides that upon commencement of a chapter 11 bankruptcy case, the Office of the United States Trustee may appoint a committee of unsecured creditors and may, in its discretion, appoint additional committees of creditors or of equity interest holders if necessary to assure adequate representation. Please see ARTICLE II for a discussion of the U.S. Trustee and the statutory committees.

Upon the commencement of a chapter 11 bankruptcy case, all creditors and equity interest holders generally have standing to be heard on any issue in the chapter 11 proceedings pursuant to section 1109(b) of the Bankruptcy Code.

The formulation and confirmation of a plan is the principal objective of a chapter 11 case. The plan sets forth the means of satisfying the claims against and equity interests in the debtor.

C. Purpose and Effect of the Plan

1. The Plan of Reorganization

The Debtor is reorganizing pursuant to chapter 11 of the Bankruptcy Code. As a result, the Confirmation of the Plan means that the Debtor's business will continue to operate following confirmation of the Plan through the Claimant Trust and the Reorganized Debtor to monetize assets for distribution to Holders of Allowed Claims. The Claimant Trust will hold the Claimant Trust Assets and manage the efficient monetization of, the Claimant Trust Assets. The Claimant Trust will also manage the Reorganized Debtor through the Claimant Trust's ownership of the Reorganized Debtor's general partner, New GP LLC. The Claimant Trust will also be the sole limited partner in the Reorganized Debtor. The Reorganized Debtor will manage the wind down

of the Managed Funds as well as the monetization of the balance of the Reorganized Debtor Assets. The Claimant Trust will also establish a Litigation Sub-Trust in accordance with the Plan, which will also be for the benefit of the Claimant Trust Beneficiaries. The Litigation Sub-Trust will receive the Estate Claims. The Litigation Trustee shall be the exclusive trustee of the Estate Claims included in the Claimant Trust Assets subject to oversight by the Claimant Trust Oversight Committee

A bankruptcy court's confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or an equity interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code to the terms and conditions of the confirmed plan, whether or not such Entity voted on the plan or affirmatively voted to reject the plan.

2. Plan Overview

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtor. For classification and treatment of Claims and Equity Interests, the Plan designates Classes of Claims and Classes of Equity Interests. These Classes and Plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Equity Interests.

The following chart briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan.[4] Amounts listed below are estimated.

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for eight Classes of Claims against and/or Equity Interests in the Debtor.

The projected recoveries set forth in the table below are estimates only and therefore are subject to change. For a complete description of the Debtor's classification and treatment of Claims or Equity Interests, reference should be made to the entire Plan and the risk factors described in ARTICLE IV below. For certain classes of Claims, the actual amount of Allowed Claims could be materially different than the estimated amounts shown in the table below.

[4] This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan. References should be made to the entire Disclosure Statement and the Plan for a complete description.

Class	Type of Claim or Interest	Estimated Prepetition Claim Amount [1]	Impaired	Entitled to Vote	Estimated Recovery
1	Jefferies Secured Claim	$0.00	No	No	100%
2	Frontier Secured Claim[2]	$5,209,964	Yes	Yes	100%
3	Other Secured Claims	$551,116	No	No	100%
4	Priority Non-Tax Claim	$16,489	No	No	100%
5	Retained Employee Claim	$0	No	No	100%
6	PTO Claims [3]	$1,181,886	No	No	100%
7	Convenience Claims[4]	$12,064,333	Yes	Yes	85.00%
8	General Unsecured Claims[5]	$180,442,199	Yes	Yes	85.31%
9	Subordinated Claims	Undetermined	Yes	Yes	Undetermined
10	Class B/C Limited Partnership Interests	N/A	Yes	Yes	Undetermined
11	Class A Limited Partnership Interests	N/A	Yes	Yes	Undetermined

[1] Excludes Priority Tax Claims and certain other unclassified amounts totaling approximately $1.1 million owed to Joshua and Jennifer Terry and Acis under a settlement agreement.

[2] Excludes interest accrued postpetition estimated at $318,000, which will be paid on the Effective Date. The Liquidation Analysis/Financial Projections provide for the payment of postpetition interest.

[3] Represents outstanding PTO Claims as of September 30, 2020. PTO Claims are subject to adjustment depending on the amount of actual prepetition PTO Claims outstanding as of the Effective Date. PTO claims are accounted for in the Liquidation Analysis/Financial Projections as an administrative claim and will be paid out in ordinary courses pursuant to applicable state law.

[4] Represents the estimated gross prepetition amount of Convenience Claims with a total payout amount estimated at 85% of $12.06 million, or $10.25 million. This number includes approximately $1.113 million of potential Rejection Claims and assumes that Holders of Allowed General Unsecured Claims that are each less than $2.50 million opt into the Convenience Class.

[5] Assumes no recovery for UBS, the HarbourVest Entities, IFA, Hunter Mountain, and an Allowed Claim of only $3,722,019 for Mr. Daugherty (each as discussed further below). Assumes $1.440 million of potential rejection damage claims. The Liquidation Analysis/Financial Projections assume Highland RCP, LP and Highland RCP Offshore, LP offset their Claim of $4.4 million against amounts owed to the Debtor.

3. Voting on the Plan

Under the Bankruptcy Code, acceptance of a plan by a Class of Claims or Equity Interests is determined by calculating the number and the amount of Claims voting to accept, based on the actual total Allowed Claims or Equity Interests voting on the Plan. Acceptance by a Class of Claims requires more than one-half of the number of total Allowed Claims in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims in the Class to vote in favor of the Plan. Acceptance by a Class of Equity Interests requires at least two-thirds in amount of the total Allowed Equity Interests in the Class to vote in favor of the Plan.

Under the Bankruptcy Code, only Classes of Claims or Equity Interests that are "Impaired" and that are not deemed as a matter of law to have rejected a plan under Section 1126 of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any Class that is "Unimpaired" is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a Class is "Impaired" if the legal, equitable, or contractual rights attaching to the claims or equity interests of that Class are modified or altered.

Pursuant to the Plan, Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims and Equity Interests in those Classes are entitled to vote to accept or reject the Plan. Whether a Holder of a Claim or Equity Interest in Class 2 and Class 7 through Class 11 may vote to accept or reject the Plan will also depend on whether the Holder held such Claim or Equity Interest as of November 23, 2020 (the "Voting Record Date"). The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

Pursuant to the Plan, Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, there are no Classes that will not receive or retain any property and no Classes are deemed to reject the Plan.

4. Confirmation of the Plan

(a) Confirmation Generally

"Confirmation" is the technical term for the Bankruptcy Court's approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed below.

The confirmation of a plan by the Bankruptcy Court binds the debtor, any issuer of securities under a plan, any person acquiring property under a plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan discharges a debtor from any debt that arose before the confirmation of such plan and provides for the treatment of such debt in accordance with the terms of the confirmed plan.

(b) The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Debtor will provide notice of the Confirmation Hearing to all necessary parties. The Confirmation Hearing may be adjourned from time to time without further notice except for an

announcement of the adjourned date made at the Confirmation Hearing of any adjournment thereof.

5. Confirming and Effectuating the Plan

It is a condition to the Effective Date of the Plan that the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtor and the Official Committee of Unsecured Creditors (the "Committee"). Certain other conditions contained in the Plan must be satisfied or waived pursuant to the provisions of the Plan.

6. Rules of Interpretation

The following rules for interpretation and construction shall apply to this Disclosure Statement: (1) capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meaning ascribed to such terms in the Plan; (2) unless otherwise specified, any reference in this Disclosure Statement to a contract, instrument, release, indenture, or other agreement or document shall be a reference to such document in the particular form or substantially on such terms and conditions described; (3) unless otherwise specified, any reference in this Disclosure Statement to an existing document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) any reference to an entity as a Holder of a Claim or Equity Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references in this Disclosure Statement to Sections are references to Sections of this Disclosure Statement; (6) unless otherwise specified, all references in this Disclosure Statement to exhibits are references to exhibits in this Disclosure Statement; (7) unless otherwise set forth in this Disclosure Statement, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (8) any term used in capitalized form in this Disclosure Statement that is not otherwise defined in this Disclosure Statement or the Plan but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

7. Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests

As set forth above, Holders of Claims in Class 1 and Class 3 through Class 6 are not entitled to vote on the Plan. As a result, such parties will not receive solicitation packages or ballots but, instead, will receive this a notice of non-voting status, a notice of the Confirmation Hearing, and instructions on how to receive a copy of the Plan and Disclosure Statement.

The Debtor, with the approval of the Bankruptcy Court, has engaged Kurtzman Carson Consultants LLC (the "Voting Agent") to serve as the voting agent to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the "Solicitation Package"):

- This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;

- The Bankruptcy Court order approving this Disclosure Statement (the "Disclosure Statement Order") (excluding exhibits);

- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the "Confirmation Hearing Notice");

- A single Ballot, to be used in voting to accept or to reject the Plan and applicable instructions with respect thereto (the "Voting Instructions");

- A pre-addressed, postage pre-paid return envelope; and

- Such other materials as the Bankruptcy Court may direct or approve.

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Debtor's restructuring website at www.kccllc.net/hcmlp.

On November 13, 2020, the Debtor filed the Plan Supplement [D.I. 1389] that included, among other things, the form of Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Reorganized Limited Partnership Agreement, New GP LLC Documents, the New Frontier Note, the Senior Employee Stipulation, and the identity of the initial members of the Claimant Trust Oversight Committee. The Plan Supplement also includes a schedule of the Causes of Action that will be retained after the Effective Date. The Plan Supplement may be supplemented or amended through and including December 18, 2020. If the Plan Supplement is supplemented, such supplemented documents will be made available on the Debtor's restructuring website at www.kccllc.net/hcmlp.

If you are the Holder of a Claim or Equity Interest and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to Kurtzman Carson Consultants LLC, via email at HighlandInfo@kccllc.com and reference "Highland Capital Management, L.P." in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. If your Claim or Equity Interest is subject to a pending claim objection and you wish to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim or Equity Interest for voting purposes or you will not be entitled to vote to accept or reject the Plan. Any such motion must be filed so that it is heard in sufficient time prior to the Voting Deadline to allow for your vote to be tabulated.

THE DEBTOR, THE REORGANIZED DEBTOR, AND THE CLAIMANT TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR EQUITY INTEREST FOR DISTRIBUTION PURPOSES.

8. Instructions and Procedures for Voting

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtor or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed November 23, 2020, as the Voting Record Date for the determination of the Holders of Claims and Equity Interests who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

The deadline to vote on the Plan is January 5, 2021 at 5:00 p.m. (prevailing Central Time) (the "Voting Deadline"). In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the following address, as applicable:

If by first class mail, personal delivery, or overnight mail to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

If by electronic voting:

You may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot. IMPORTANT NOTE: You will need the Unique Electronic Ballot ID Number and the Unique Electronic Ballot PIN Number set forth on your customized ballot in order to vote via the Balloting Agent's online portal. Each Electronic Ballot ID Number is to be used solely for voting on those Claims or Interests on your electronic ballot. You must complete and submit an electronic ballot for each Electronic Ballot ID Number you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

Only the Holders of Claims and Equity Interests in Class 2 and Class 7 through Class 11 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim and Equity Interest must vote its entire Claim or Equity Interest, as applicable, within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same Holder with respect to the same Claim or Equity Interest prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to

reflect that voter's intent and will supersede and revoke any prior Ballot. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM OR EQUITY INTEREST IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.

If you have any questions about (a) the procedure for voting your Claim or Equity Interest, (b) the Solicitation Package that you have received, or (c) the amount of your Claim or Equity Interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents filed in these Chapter 11 Case may be obtained free of charge on the Voting Agent's website at www.kccllc.net/hcmlp or by calling toll free at: (877) 573-3984, or international at: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor's case for a fee via PACER at pacer.uscourts.gov. Subject to any rules or procedures that have or may be implemented by the Court as a result of the COVID 19 Pandemic, documents filed in this case may be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Central Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, Texas 75242-1496.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will file a voting report (the "Voting Report") by January 11, 2021. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

THE DEBTOR URGES HOLDERS OF CLAIMS AND EQUITY INTERESTS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.

9. The Confirmation Hearing

The Bankruptcy Court has scheduled Confirmation Hearing Dates on January 13, 2021, and January 14, 2021, at 9:30 a.m. prevailing Central time. The Confirmation Hearing may be continued from time to time by the Bankruptcy Court or the Debtor without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to section 1127 of the Bankruptcy Code, prior to, during or as a result of the Confirmation Hearing, without further notice to parties-in-interest.

10. The Deadline for Objecting to Confirmation of the Plan

The Bankruptcy Court has set a deadline of January 5, 2021, at 5:00 p.m. prevailing Central time, for the filing of objections to confirmation of the Plan (the "Confirmation Objection Deadline"). Any objection to confirmation of the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) state the name of the objecting party and the amount and nature of the Claim of such Entity or the amount of Equity Interests held by such Entity; (iv) state with particularity the legal and factual bases and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** no later than the Confirmation Objection Deadline by the parties set forth below (the "Notice Parties").

CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH HEREIN MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE OVERRULED WITHOUT FURTHER NOTICE. INSTRUCTIONS WITH RESPECT TO THE CONFIRMATION HEARING AND DEADLINES WITH RESPECT TO CONFIRMATION WILL BE INCLUDED IN THE NOTICE OF CONFIRMATION HEARING APPROVED BY THE BANKRUPTCY COURT.

11. Notice Parties

- Debtor: Highland Capital Management, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 (Attn: James P. Seery, Jr.);
- Counsel to the Debtor: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067-4003 (Attn: Jeffrey Pomerantz, Esq.; Ira Kharasch, Esq., and Gregory Demo, Esq.);
- Counsel to the Committee: Sidley Austin, LLP, One South Dearborn, Chicago, Illinois 60603 (Attn: Matthew Clemente, Esq., and Alyssa Russell, Esq.); and
- Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Lisa Lambert, Esq.).

12. Effect of Confirmation of the Plan

The Plan contains certain provisions relating to (a) the compromise and settlement of Claims and Equity Interests; (b) exculpation of certain parties; and (c) the release of claims against certain parties by the Debtor.

The Plan shall bind all Holders of Claims against and Equity Interests in the Debtor to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder (i) will receive or retain any property or interest in property under the Plan, (ii) has filed a proof of claim in the Chapter 11 Case, or (iii) did not vote to accept or reject the Plan.

D. Effectiveness of the Plan

It will be a condition to the Effective Date of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. Following confirmation, the Plan will go into effect on the Effective Date.

E. RISK FACTORS

Each Holder of a Claim or an Equity Interest is urged to consider carefully all of the information in this Disclosure Statement, including the risk factors described in ARTICLE IV herein titled, "Risk Factors."

ARTICLE II.
BACKGROUND TO THE CHAPTER 11 CASE AND SUMMARY OF BANKRUPTCY PROCEEDINGS TO DATE

A. Description and History of the Debtor's Business

Prior to the Petition Date, the Debtor was a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm evolved over twenty-five years, building on its credit expertise and value-based approach to expand into other asset classes.

As of the Petition Date, the Debtor operated a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, the Debtor's investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, the Debtor provided shared services to its affiliated registered investment advisers.

B. The Debtor's Corporate Structure

The Debtor is headquartered in Dallas, Texas. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Debtor's business. As of the Petition Date, the Debtor employed approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel.

Pursuant to various contractual arrangements, the Debtor, as of the Petition Date, provided money management and advisory services for approximately $2.5 billion of assets under management shared services for approximately $7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. None of these affiliates filed for Chapter 11 protection. As of September 30, 2020, the Debtor provided money management and advisory services for approximately $1.641 billion of assets under management and shared services for approximately $7.136 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. Further, on the Petition Date, the value of the Debtor's Assets was approximately

$566.5 million. As of September 30, 2020, the total value of Debtor's Assets totaled approximately $328.3 million.

The drop in the value of the Debtor's Assets and assets under management was caused, in part, by the COVID-19 global pandemic. Specifically, the decline was the result of, among other things, the drop in value of the Debtor's assets generally, the loss of value in the Prime Accounts discussed below, the professional and other costs associated with the Chapter 11 Case, and the reserve of approximately $59 million against a loan receivable listed as an asset.

Asset	10/16/2019	9/30/2020
Investments (FV)[1]	$232,620,000	$109,479,000
Investments (Equity)	$161,819,000	$101,213,000
Cash/Cash Equivalents	$2,529,000	$5,888,000
Management/Incentive Fees Receivable	$2,579,000	$3,350,000
Fixed Assets, net	$3,754,000	$2,823,000
Loan Receivables	$151,901,000	$93,445,000[2]
Other Assets	$11,311,000	$12,105,000
Totals	$566,513,000	$328,302,000

[1] Includes decrease in value of assets, costs of Chapter 11 Cases, and assets sold to satisfy liabilities.

[2] Net of reserve of $59 million.

The Debtor's organizational chart is attached hereto as Exhibit B. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity.

C. Business Overview

The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC ("Jefferies"), as described in additional detail below. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and distribute those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor's stand-alone annual revenue totaled approximately $50 million. During calendar year 2019, the Debtor's stand-alone revenue totaled approximately $36.1 million.

D. Prepetition Capital Structure

1. Jefferies Margin Borrowings (Secured)

The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the "Brokerage Agreement"). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with

Jefferies (the "Prime Account"). A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker's street name.

As of the Petition Date, the Debtor held approximately $57 million of equity in liquid and illiquid securities (the "Securities") in the Prime Account. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof.

However, because of the economic distress caused by the COVID-19 global pandemic, the value of the Securities held in the Prime Account dropped since the Petition Date, and Jefferies has exerted significant pressure on the Debtor to liquidate the Securities to satisfy margin calls. As of September 30, 2020, the equity value of the Securities in the Prime Account was approximately $23.3 million, and the Debtor owed no amounts to Jefferies. The Debtor has been actively selling Securities to cover operating expenses and professional fees.

2. The Frontier Bank Loan (Secured)

The Debtor and Frontier State Bank ("Frontier Bank") are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the "Original Frontier Loan Agreement"), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of $9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain First Amended and Restated Loan Agreement (the "Amended Frontier Loan Agreement"), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional $1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the "Frontier Loan"). The Frontier Loan matures on August 17, 2021.

Pursuant to that certain Security and Pledge Agreement dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor's obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the "Frontier Collateral").

The aggregate principal balance of the Frontier Loan was approximately $5.2 million. As of September 30, 2020, the value of the Frontier Collateral was approximately $13.1 million, and approximately $318,000 in postpetition interest had accrued.

3. Other Unsecured Obligations

As discussed below, the Plan provides for four Classes of unsecured claims: (i) PTO Claims, (ii) the Convenience Claims, (iii) the General Unsecured Claims, and (iv) the Subordinated Claims.

The Debtor has various substantial litigation claims asserted against it, which have been classified as General Unsecured Claims. In addition, as of the Petition Date, the Debtor had ordinary course trade debt, unaccrued employee bonus obligations and loan repayment, and

contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that were potentially in the tens of millions of dollars. The Debtor is still assessing these claims and its liability for such amounts. These Claims have been classified as Convenience Claims and Subordinated Claims.

4. Equity Interests

The Debtor is a Delaware limited partnership. As of the Petition Date, the Debtor had three classes of limited partnership interest (Class A, Class B, and Class C). The Class A interests were held by The Dugaboy Investment Trust, Mark Okada, personally and through family trusts, and Strand, the Debtor's general partner. The Class B and C interests were held by Hunter Mountain.

In the aggregate, the Debtor's limited partnership interests were held: (a) 99.5% by Hunter Mountain; (b) 0.1866% by The Dugaboy Investment Trust, (c) 0.0627% by Mark Okada, personally and through family trusts, and (d) 0.25% by Strand.

E. SEC Filings

The Debtor is an investment adviser registered with the SEC as required by the Investment Advisers Act of 1940. As a registered investment adviser, the Debtor is required to file (at least annually) a Form ADV. The Debtor's current Form ADV is available at https://adviserinfo.sec.gov/.

Following the Effective Date, it is anticipated that the Reorganized Debtor will maintain its registration with the SEC as a registered investment adviser.

F. Events Leading Up to the Debtor's Bankruptcy Filings

The Chapter 11 Case was precipitated by the rendering of an Arbitration Award (as that term is defined below) against the Debtor on May 9, 2019, by a panel of the American Arbitration Association (the "Panel"), in favor of the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").

The Debtor was formerly the investment manager for the Highland Crusader Funds (the "Crusader Funds") that were formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Funds' investors, as the Crusader Funds' assets lost significant value.

On October 15, 2008, the Debtor placed the Crusader Funds in wind-down, thereby compulsorily redeeming the Crusader Funds' limited partnership interests. The Debtor also declared that it would liquidate the Crusader Funds' remaining assets and distribute the proceeds to investors.

However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a Joint Plan of Distribution of the Crusader Funds

(the "Crusader Plan"), and the Scheme of Arrangement between Highland Crusader Fund and its Scheme Creditors (the "Crusader Scheme"), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Funds' investors to oversee the Debtor's management of the Crusader Funds.

Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of $1.2 billion to the Crusader Funds' investors. The Debtor distributed a further $315.3 million through June 2016.

However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the "Arbitration"), and (c) commenced litigation in Delaware Chancery Court, to, among other things, obtain a status quo order in aid of the arbitration, which order was subsequently entered.

Following an evidentiary hearing, the Panel issued (a) a *Partial Final Award*, dated March 6, 2019 (the "March Award"), (b) a *Disposition of Application for Modification of Award*, dated March 14, 2019 (the "Modification Award"), and (c) a *Final Award*, dated May 9, 2019 (the "Final Award" and together with the March Award and the Modification Award, the "Arbitration Award"). Pursuant to the Arbitration Award, the Redeemer Committee was awarded gross damages against the Debtor in the aggregate amount of $136,808,302; as of the Petition Date, the total value of the Arbitration Award was $190,824,557, inclusive of interest

Prior to the Petition Date, the Redeemer Committee moved in the Chancery Court to confirm the Arbitration Award. For its part, the Debtor moved to vacate parts of the Final Award contending that certain aspects were procedurally improper. The Redeemer Committee's motion to confirm the Arbitration Award and the Debtor's motion to vacate were fully briefed and were scheduled to be heard by the Chancery Court on the day the Debtor filed for bankruptcy

On the Petition Date, the Debtor believed that the aggregate value of its assets exceeded the amount of its liabilities; however, the Debtor filed the Chapter 11 Case because it did not have sufficient liquidity to immediately satisfy the Award or post a supersedeas bond necessary to pursue an appeal.

G. Additional Prepetition Litigation

In addition to the litigation with the Redeemer Committee described above, the Debtor, both directly and through certain subsidiaries, affiliates, and related entities, was party to substantial prepetition litigation. Although the Debtor disputes the allegations raised in this litigation and believes it has substantial defenses, this litigation has resulted in substantial Claims against the Debtor's Estate, each of which has been classified as a General Unsecured Claim. To the extent that these litigation Claims cannot be resolved consensually, they will be litigated by the Claimant Trustee or Reorganized Debtor, as applicable. The Debtor's major prepetition litigation is as follows:

- Redeemer Committee: The dispute with the Redeemer Committee is described in ARTICLE II.F above. As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves the Redeemer Committee's claims against the Estate; however, that order is currently subject to appeal.

- Acis Capital Management, L.P., & Acis Capital Management GP, LLC: On January 30, 2018, Joshua Terry filed involuntary bankruptcy petitions against both Acis Capital Management, L.P. ("Acis LP") and its general partner, Acis Capital Management GP, LLC ("Acis GP," and collectively with Acis LP, "Acis") in the Bankruptcy Court for the Northern District of Texas, Dallas Division, the Honorable Judge Jernigan presiding (the same judge presiding over the Chapter 11 Case), Case No. 18-30264-SGJ (the "Acis Case"). Mr. Terry had been an employee of the Debtor and a limited partner of Acis LP. Mr. Terry was terminated in June 2016, and obtained a multi-million dollar arbitration award against Acis. Overruling various objections, the Bankruptcy Court entered the orders for relief for the Acis debtors in April 2018, and a chapter 11 trustee was appointed. The Debtor filed a proof of claim against Acis and an administrative claim. Acis disputes the Debtor's claim, and the Debtor has not received any distributions on its claim to date. On January 31, 2019, Acis's chapter 11 plan was confirmed, and Mr. Terry become the sole owner of reorganized Acis. Several appeals remain pending, including an appeal of the entry of the Acis orders for relief and the Acis confirmation order.

  The Acis trustee commenced a lawsuit against the Debtor, among others, alleging fraudulent conveyance and other causes of action in relation to the Debtor's alleged prepetition effort to control and transfer away Acis's assets to avoid paying Mr. Terry's claim. After the confirmation of the Acis plan, reorganized Acis allegedly supplanted the Acis Trustee as plaintiff and filed an amended complaint against the Debtor and other defendants, which claims comprise Acis's pending proof of claim against the Debtor.

  As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves Acis's claims against the Estate; however, that order is currently subject to appeal.

- UBS Securities LLC and UBS AG London Branch: UBS Securities LLC ("UBS Securities") filed a proof of claim in the amount of $1,039,957,799.40 [Claim No. 190] (the "UBS Securities Claim"), and UBS AG, London Branch ("UBS London," and together with UBS Securities, "UBS") filed a substantively identical proof of claim in the amount of $1,039,957,799.40 [Claim No. 191] (the "UBS London Claim" and together with the UBS Securities Claim, the "UBS Claim"). The UBS Claim was based on the amount of a judgment UBS received on a breach of contract claim against funds related to the Debtor that were unable to honor margin calls in 2008. Although the Debtor had no obligation under UBS's contracts with the funds, UBS alleges the Debtor is liable for the judgment because it (i) breached an alleged duty to ensure that the funds could pay UBS, (ii) caused or permitted $233 million in alleged fraudulent transfers to be made by

Highland Financial Partners, L.P. ("HFP") in March 2009, and (iii) is an alter ego of the funds. The Debtor believes there are meritorious defenses to most, if not all, of the UBS Claim for numerous reasons, including: (i) decisions by the New York Appellate Division that limited UBS's claims to the March 2009 transfers that it alleges were fraudulent; (ii) those decisions should also apply to any alter ego claim (which at this time has not been formally asserted against the Debtor); (iii) UBS settled claims relating to $172 million of the $233 million in alleged fraudulent transfers and the Debtor is covered by the release; and (iv) the March 2009 transfers were in any event part of a wholly legitimate transaction that did not target UBS and for which HFP received fair consideration. Those and several additional defenses are described in the *Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 928].

On October 19, 2020, both the Debtor and the Redeemer Committee filed motions seeking partial summary judgment of the UBS Claim, which, if granted, will significantly decrease the UBS Claim.[5] UBS responded to these motions on November 6, 2020 [D.I. 1341]. On November 20, 2020, the Bankruptcy Court granted partial summary judgment in favor of the Debtor and the Redeemer Committee. It is anticipated that the Bankruptcy Court will enter a formal order within the next couple of weeks.

- Patrick Daugherty: Patrick Daugherty has Filed a Proof of Claim for "at least $37,483,876.62" [Claim Nos. 67; 77] (the "Daugherty Claim").[6] Mr. Daugherty is a former limited partner and employee of the Debtor. The Daugherty Claim has three components, and Mr. Daugherty asserts claims: (1) for indemnification for any taxes Mr. Daugherty is required to pay as a result of the IRS audit of the Debtor's 2008-2009 tax return; (2) for defamation arising from a 2017 press release posted by the Debtor; and (3) arising from a pending Delaware lawsuit against the Debtor, which seeks to recover a judgment of $2.6 million in respect of Highland Employee Retention Assets ("HERA"), plus interest, from assets Mr. Daugherty claims were fraudulently transferred to the Debtor. The Daugherty Claim also seeks (a) the value of Mr. Daugherty's asserted interest in HERA, which he values at approximately $26 million; and (b) indemnification for fees incurred in the Delaware action and in previous litigation in Texas State Court. The Debtor believes that the Daugherty Claim should be allowed in the amount of

[5] See *Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1180]; *Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1181]; *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds' Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1183]; and *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds' Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor's Motion for Partial Summary Judgment on Proof of Claim No. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1186].

[6] On October 23, 2020, Mr. Daugherty filed *Patrick Hagaman Daugherty's Motion for Leave to Amend Proof of Claim No. 77* [D.I. 1280] pursuant to which Mr. Daugherty has asked leave to amend the Daugherty Claim to assert damages of $40,710,819.42. On November 17, 2020, the Bankruptcy Court approved Mr. Daugherty's request to amend the Daugherty Claim from the bench.

$3,722,019; however, the Debtor believes, for various reasons, that the balance of the Daugherty Claim lacks merit. The Debtor's defenses to the Daugherty Claim are described in the *Debtor's (i) Objection to Claim No. 77 of Patrick Hagaman Daugherty and (ii) Complaint to Subordinate Claim of Patrick Hagaman Daugherty* [D.I. 1008].

H. The Debtor's Bankruptcy Proceeding

On October 16, 2019, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court"). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Chapter 11 Case to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").[7] The Debtor continues to operate its business and manage its properties as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

An immediate effect of commencement of the Chapter 11 Case was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts, the enforcement of liens against property of the Debtor, and the continuation of litigation against the Debtor during the pendency of the Chapter 11 Case. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the later of the Effective Date and the date indicated in any order providing for the implementation of such stay or injunction.

I. First Day Relief

On or about the Petition Date, the Debtor filed certain "first day" motions and applications (the "First Day Motions") with the Delaware Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of this Chapter 11 Case and to facilitate the Debtor's transition to debtor-in-possession status. A brief description of each of the First Day Motions and the evidence in support thereof is set forth in the *Declaration of Frank Waterhouse in Support of First Day Motions* [D.I. 11] (the "First Day Declaration"). At a hearing on October 19, 2019, the Delaware Bankruptcy Court granted virtually all of the relief initially requested in the First Day Motions [D.I. 39, 40, 42-44].

The Delaware Bankruptcy Court subsequently entered an order authorizing the Debtor to pay critical vendor claims on a final basis [D.I. 168]. Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Bankruptcy Court entered an order authorizing the Debtor to continue its cash management system on a final basis [D.I. 379]

The First Day Motions, the First Day Declaration, and all orders for relief granted in this case can be viewed free of charge at https://www.kccllc.net/hcmlp.

[7] All docket reference numbers refer to the docket maintained by the Bankruptcy Court.

J. Other Procedural and Administrative Motions

On and after the Petition Date, the Debtor also filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Case, including:

- Interim Compensation Motion. On October 29, 2019, the Debtor filed the *Debtor's Motion Pursuant o Sections 105(a), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 72] (the "Interim Compensation Motion"). The Interim Compensation Motion sought to establish procedures for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Bankruptcy Court pursuant to section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to section 330 and 331 of the Bankruptcy Code. On November 14, 2019, the Delaware Bankruptcy Court entered an order granting the Interim Compensation Motion [D.I. 141].

- Ordinary Course Professionals. On October 29, 2019, the Debtor filed the Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [D.I. 75] (the "OCP Motion"). The OCP Motion sought authority for the Debtor to retain and compensate certain professionals in the ordinary course of its business. On November 26, 2019, the Delaware Bankruptcy Court entered an order granting the OCP Motion [D.I. 176].

- Retention Applications. During the course of the chapter 11 case, the Delaware Bankruptcy Court or Bankruptcy Court, as applicable, have approved a number of applications by the Debtor seeking to retain certain professionals pursuant to sections 327, 328 and/or 363 of the Bankruptcy Code, including Pachulski Stang Ziehl & Jones LLP as legal counsel [D.I. 183], Development Specialists, Inc. as chief restructuring officer and financial advisor [D.I. 342], Kurtzman Carson Consultants LLC as administrative advisor [D.I. 74], Mercer (US) Inc. as compensation consultant [D.I. 381], Hayward & Associates PLLC as local counsel [D.I. 435], Foley Gardere, Foley & Lardner LLP as special Texas counsel [D.I. 513], Deloitte Tax LLP as tax services provider [D.I. 551], Wilmer Cutler Pickering Hale and Dorr LLP as regulatory and compliance counsel [D.I. 669], and Hunton Andrews Kurth LLP as special tax counsel [D.I. 763].

K. United States Trustee

While the Chapter 11 Case was pending in the Delaware Bankruptcy Court, the U.S. Trustee for Region 3 appointed Jane Leamy as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Delaware U.S. Trustee"). Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Delaware U.S. Trustee no longer represented the U.S. Trustee, and the U.S. Trustee for Region 6 appointed Lisa Lambert as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Texas U.S. Trustee," and together with the

Delaware U.S. Trustee, the "U.S. Trustee"). The Debtor has worked cooperatively to address concerns and comments from the U.S. Trustee's office during this Chapter 11 Case.

L. Appointment of Committee

On October 29, 2019, the Delaware U.S. Trustee appointed the Committee in this Chapter 11 Case [D.I. 65]. The members of the Committee are (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP, LLP. Meta-E Discovery is a vendor to the Debtor. The other members of the Committee are litigants in prepetition litigation with the Debtor as described in ARTICLE II.G. The Bankruptcy Court approved the retention of Sidley Austin LLP as counsel to the Committee [D.I. 334], Young Conaway Stargatt & Taylor, LLP as Delaware co-counsel to the Committee [D.I. 337], and FTI Consulting, Inc. as financial advisor to the Committee [D.I. 336].

M. Meeting of Creditors

The meeting of creditors under section 341(a) of the Bankruptcy Code was initially scheduled for November 20, 2019, at 9:30 a.m. (prevailing Eastern Time) at the J. Caleb Boggs Federal Building, 844 N. King Street, Room 3209, Wilmington, Delaware 19801, and was rescheduled to December 3, 2019, at 10:30 a.m. (prevailing Eastern Time). At the meeting of creditors, the Delaware U.S. Trustee and creditors asked questions of a representative of the Debtor.

Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Texas U.S. Trustee scheduled an additional meeting of creditors under section 341(a) for January 9, 2020, at 11:00 a.m. (prevailing Central Time) at the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242, at the conclusion of that meeting, the Texas U.S. Trustee continued the meeting to January 22, 2020. The Texas U.S. Trustee and creditors asked questions of a representative of the Debtor at the January 9 and January 22, 2020 meetings.

N. Schedules, Statements of Financial Affairs, and Claims Bar Date

The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs (the "Schedules") on December 19, 2019 [D.I. 247-248]. A creditor whose Claim is set forth in the Schedules and not identified as contingent, unliquidated or disputed may have elected to file a proof of claim against the Debtor.

The Bankruptcy Court established (i) April 8, 2020 as the deadline for Creditors (other than governmental units) to file proofs of claim against the Debtor; (ii) April 13, 2020, as the deadline for any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code), (iii) April 23, 2020, and as the deadline for any investors in any fund managed by the Debtor to file proofs of claim against the Debtor; and (iv) May 26, 2020 as the deadline for the Debtor's employees to file proofs of claim against the Debtor pursuant to and accordance with Court's order entered on April 3, 2020 [D.I. 560].[8] Consequently, the bar date for filing proofs

[8] During the course of its Chapter 11 Case, the Debtor entered into stipulations to extend the Bar Date for certain other claimants or potential claimants.

of claims has passed and any claims filed after the applicable bar date will be considered late filed.

O. Governance Settlement with the Committee

On January 9, 2020, the Bankruptcy Court entered the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [D.I. 339] (the "Settlement Order").

Among other things, the Settlement Order approved a term sheet (the "Term Sheet") agreed to by the Debtor and the Committee pursuant to which the Debtor agreed to abide by certain protocols governing the production of documents and certain protocols governing the operation of the Debtor's business (the "Operating Protocols"). Under the Operating Protocols, the Debtor agreed to seek consent from the Committee prior to entering into certain "Transactions" (as defined in the Operating Protocols. The Operating Protocols were amended on February 21, 2020, with the consent of the Committee [D.I. 466].

Pursuant to the Term Sheet, the Debtor also granted the Committee standing to pursue certain estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and the Related Entities (as defined in the Operating Protocols) (collectively, the "Estate Claims"). To the extent permitted, the Estate Claims and the ability to pursue the Estate Claims are being transferred to either the Claimant Trust or Litigation Sub-Trust pursuant to the Plan.

In connection with the Settlement Order, an independent board of directors was also appointed at Strand, the Debtor's general partner (the "Independent Board"). The members of the Independent Board are John S. Dubel, James P. Seery, Jr., and Russell Nelms. The Independent Board was tasked with managing the Debtor's operations during the Chapter 11 Case and facilitating a reorganization or orderly liquidation of the Debtor's Estate.

P. Appointment of James P. Seery, Jr., as Chief Executive Officer and Chief Restructuring Officer

Following their appointment in January 2020, the Independent Board determined that it would be more efficient for the Debtor to have a traditional corporate management structure, i.e. a fully engaged chief executive officer supervised by the Independent Board. The Independent Board ultimately determined that Mr. Seery – a member of the Independent Board – had the requisite experience and expertise to lead the Debtor. On June 23, 2020, the Debtor filed *Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [D.I. 774] (the "Seery Retention Motion") to retain Mr. Seery as chief executive officer, chief restructuring officer, and foreign representative.

The Bankruptcy Court entered an order approving the Seery Retention Motion on July 16, 2020 [D.I. 854]. Mr. Seery was retained as the Debtor's chief executive officer and the duties of Bradley Sharp of DSI as the Debtor's chief restructuring officer and foreign representative were transferred to Mr. Seery.

Q. Mediation

On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [D.I. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation and appointed Sylvia Mayer and Allan Gropper as the mediators (the "Mediators"). The mediation began on August 27, 2020, and is still open as of the date of this Disclosure Statement

R. Postpetition Settlements

1. Settlement with Acis and the Terry Parties

With the assistance of the Mediators, on September 9, 2020, (i) the Debtor, (ii) Acis LP, (iii) Acis GP, and (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (together, the "Terry Parties") executed that certain Settlement Agreement and General Release. On September 23, 2020, the Debtor filed the *Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [D.I. 1087] (the "Acis Settlement Motion").

The Settlement Agreement and General Release contain the following material terms, among others:

- The proof of claim filed by Acis [Claim No. 23] will be Allowed in the amount of $23,000,000 as a General Unsecured Claim.
- On the Effective Date of the Plan (or any other plan of reorganization confirmed by the Bankruptcy Court), the Debtor will pay in cash to:
  - Mr. and Mrs. Terry in the amount of $425,000 plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed by the Terry Parties [Claim No. 156];
  - Acis LP in the amount of $97,000, which amount represents the legal fees incurred by Acis LP with respect to the N*WCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195/2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP [Claim No. 159]; and
  - Mr. Terry in the amount of $355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

The Settlement Agreement also provides that within five days of the Bankruptcy Court's approval of the Settlement Agreement and the General Release, the Debtor will move to withdraw, with prejudice, the proofs of claim that the Debtor filed in the Acis bankruptcy cases and the motion filed by the Debtor in the Acis bankruptcy cases seeking an administrative claim for postpetition services provided to Acis.

On October 5, 2020, James Dondero filed an objection to the Acis Settlement Motion [D.I. 1121] (the "Dondero Objection"). On October 28, 2020, the Bankruptcy Court entered an order approving the Acis Settlement Motion and overruling the Dondero Objection in its entirety [DI.I. 1347]. On November 9, 2020, Mr. Dondero filed a notice of his intent to appeal the order approving the Acis Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Acis Settlement Motion and related documents for additional information on the Settlement Agreement and General Release.

2. Settlement with the Redeemer Committee

The Debtor, Eames, Ltd., the Redeemer Committee, and the Crusader Funds (collectively, the "Settling Parties") executed a settlement (the "Redeemer Stipulation"). The Redeemer Stipulation was also executed, solely with respect to paragraphs 10 through 15 thereof, by Hockney, Ltd., Strand, Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., Highland Credit Opportunities CDO, L.P., House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC (collectively, the "Additional Release Parties"). On September 23, 2020, the Debtor filed *Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Funds (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [D.I. 1089] seeking approval of the Redeemer Stipulation (the "Redeemer Settlement Motion").

The Redeemer Stipulation contains the following material terms, among others:

- The proof of claim filed by the Redeemer Committee [Claim No. 72] will be Allowed in the amount of $137,696,610 as a General Unsecured Claim;

- The proof of claim filed by the Crusader Funds [Claim No. 81] will be Allowed in the amount of $50,000 as a General Unsecured Claim;

- The Debtor and Eames, Ltd., each (a) consented to the cancellation of certain interests in the Crusader Funds held by them, and (b) agreed that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable Donor Advised Fund;4

- The Debtor and Eames each acknowledged that they will not receive any portion of certain reserved distributions, and the Debtor further acknowledged that it will not receive any payments from the Crusader Funds in respect of any deferred fees, distribution fees, or management fees;

- The Debtor and the Redeemer Committee agreed to a form of amendment to the shareholders' agreement for Cornerstone Healthcare Group and to a process to monetize Cornerstone Healthcare Group;

- Upon the effective date of the Redeemer Stipulation, the Settling Parties and the Additional Release Parties shall exchange releases as set forth in the Redeemer Stipulation; and

- All litigation between the Debtor, Eames, Ltd., and the Additional Highland Release Parties (as defined in the Redeemer Stipulation) on the one hand, and the Redeemer Committee and the Crusader Funds, on the other hand, will cease.

On October 16, 2020, UBS filed an objection to the Redeemer Settlement Motion [D.I. 1190] (the "UBS Objection"). On October 22, 2020, the Bankruptcy Court entered an order approving the Redeemer Settlement Motion and overruling the UBS Objection in its entirety [DI.I. 1273]. On November 6, 2020, UBS filed a notice of its intent to appeal the order approving the Redeemer Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Redeemer Settlement Motion and related documents for additional information on the Redeemer Stipulation.

S. Certain Outstanding Material Claims

As discussed above, April 8, 2020, was the general bar date for filing proofs of claim. The Debtor has begun the process of resolving those Claims. Although each Claim represents a potential liability of the Estate, the Debtor believes that, in addition to UBS's Claim, the Claims filed by Integrated Financial Associates, Inc. ("IFA"), the HarbourVest Entities,[9] and Hunter Mountain represent the largest unresolved Claims against the Estate.

- IFA Proof of Claim. IFA filed a proof of claim [Claim No. 93] (the "IFA Claim") seeking damages in the amount of $241,002,696.73 arising from the purported joint control of the Debtor and NexBank, SSB, and the Debtor's management of various lenders to IFA. The Debtor believes that IFA's claim should be disallowed in its entirety. IFA's claim and the Debtor's defenses thereto are described in greater detail in the *Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 868]. On October 4, 2020, the Bankruptcy Court entered the *Order Approving Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 1126], which capped the IFA Claim, for all purposes, at $8,000,000.

- HarbourVest Entities Proofs of Claim. The HarbourVest Entities are investors in Highland CLO Funding, Ltd. ("HCLOF") and filed proofs of claim against the

[9] "HarbourVest Entities" means HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

Debtor's Estate [Claim No. 143, 147, 149, 150, 153, 154] (the "HarbourVest Claims"). The Debtor included an assertion of "no liability" in respect of the HarbourVest Claims in its Debtor's *First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No-Liability Claims; and (f) Insufficient Documentation Claims* [D.I. 906]. HarbourVest provided a response in its *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [D.I. 1057]. The HarbourVest Entities' response argued that the Debtor's objection should be overruled, and set forth allegations in support of claims under federal and state law and Guernsey law, including claims for fraud, violations of securities laws, breaches of fiduciary duties, and RICO violations. The Debtor intends to vigorously defend the HarbourVest Claims on various grounds, including, among others, the failure to state a claim upon which relief can be granted, the lack of reasonable reliance, the lack of misrepresentations, the lack of reasonable reliance, the failure to mitigate damages, the parties' agreements bar or otherwise limit the Debtor's liability, and waiver and estoppel. The HarbourVest Entities invested approximately $80 million in HCLOF but seek an allowed claim in excess of $300 million dollars (after giving effect to treble damages for the alleged RICO violations).

- Hunter Mountain Proof of Claim. Hunter Mountain is one of the Debtor's limited partners. Hunter Mountain filed a proof of claim [Claim No. 152] seeking a $60,298,739 indemnification claim against the Debtor because of the Debtor's alleged failures to make priority distributions to Hunter Mountain under the Debtor's Partnership Agreement. The Debtor believes that it has meritorious defenses to Hunter Mountain's claim. Hunter Mountain's claim and the Debtor's defenses to such claim are described in greater detail in the *Debtor's (i) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (ii) Complaint to Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief* [D.I. 995]. The Debtor believes that Hunter Mountain's proof of claim should either be disallowed in its entirety or subordinated in its entirety.

In addition to the foregoing, the UBS Claim (in the amount of $1,039,957,799.40) and the Daugherty Claim (in the amount of $40,710,819.42) remain outstanding. As set forth above, partial summary judgment on the UBS Claim was granted in favor of the Debtor and the Redeemer Committee on November 20, 2020, and a formal order is expected to be entered within the next couple of weeks.

The Daugherty Claim has been allowed for voting purposes only in the amount of $9,134,019 [D.I. 1422]. In a bench ruling on November 20, 2020, the Bankruptcy Court allowed UBS Claims for voting purposes only in the amount of $94,761,076 [D.I. 1646].

T. Treatment of Shared Service and Sub-Advisory Agreements

As discussed in the Plan, the Reorganized Debtor will manage the wind down of the Managed Funds. However, it is not anticipated that either the Reorganized Debtor or the

Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities[10] pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities.

Currently, the Debtor receives approximately $2.2 million per month in revenue from such contracts. However, in order to service those contracts, the Debtor must maintain a full staff and the cost of providing services under such contracts, among other factors, has historically resulted in a net loss to the Debtor. As such, the Debtor does not believe that assuming these contracts would benefit the Estate.

Further, the contracts generally contain anti-assignment provisions which the Debtor believes may be enforceable under 11 U.S.C. § 365(c). These provisions, therefore, would arguably prevent the assignment of such contracts without the consent of the Debtor's contract counterparty. However, even if 11 U.S.C. § 365(c) would not prevent assignment, the contracts are generally terminable at will by either party. As such, assuming and assigning such contracts without the consent of the contract counterparty would be of nominal or no benefit to the Estate. It is doubtful that any assignee would provide consideration to the Debtor for the assignment of such contract as the contract counterparty could simply terminate the contract immediately following assignment. As such, the Debtor does not believe that there is any benefit to the Estate in attempting to assign these contracts.

Notwithstanding the foregoing disclosure, the Debtor is currently assessing whether it is both possible and in the best interests of the Estate to assume and assign such shared services and sub-advisory agreements to a Related Entity.

During the course of this Chapter 11 Case, Mr. Daugherty stated that he would be willing to assume the Debtor's obligations under the shared service and sub-advisory contracts. The Independent Directors reviewed Mr. Daugherty's proposal and for the foregoing reasons, among others, determined that it was not workable and would provide no benefit to the Estate.

U. Portfolio Managements with Issuer Entities

The Debtor is party to certain portfolio management agreements (including any ancillary agreements relating thereto collectively being the "Portfolio Management Agreements" and each a "Portfolio Management Agreement") with ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd. (each an "Issuer" and collectively the "Issuers") wherein the Debtor agreed to generally provide certain services to each Issuer in the Debtor's capacity as a portfolio manager in exchange for certain fees as described in the applicable Portfolio Management Agreement.

[10] For the avoidance of doubt, the Debtor does not consider any of the Issuers (as defined herein) to be a Related Entity.

The Issuers filed proofs of claim [Claim No. 165, 168, and 169] asserting claims against the Debtor for damages arising from, relating to or otherwise concerning (i) such Issuer's Portfolio Management Agreement(s) with the Debtor, including, without limitation, failure to perform or other breach of the Portfolio Management Agreement(s), rejection of the Portfolio Management Agreement(s), any cure amount as a result of assumption of the Portfolio Management Agreement(s), any adequate assurance of future performance as a result of assumption of the Portfolio Management Agreement(s), and any failure to provide and pay for indemnification or other obligations under the Portfolio Management Agreement(s); and (ii) the action or inaction of the Debtor to the detriment of such Issuer (collectively, the "Issuer Claims"). The Debtor believes that it has satisfied its obligations to the Issuers; that the Issuer Claims lack merit; and that the Debtor will have no liability with respect to the Issuer Claims. However, such proofs of claim remain outstanding.

The Issuers have taken the position that the rejection of the Portfolio Management Agreements (including any ancillary documents) would result in material rejection damages and have encouraged the Debtor to assume such agreements. Nonetheless, the Issuers and the Debtor are working in good faith to address any outstanding issues regarding such assumption. The Portfolio Management Agreements may be assumed either pursuant to the Plan or by separate motion filed with the Bankruptcy Court.

The Debtor is still assessing its options with respect to the Portfolio Management Agreements, including whether to assume the Portfolio Management Agreements.

V. Resignation of James Dondero

On October 9, 2020, Mr. Dondero resigned as an employee and portfolio manager of the Debtor.

W. Exclusive Periods for Filing a Plan and Soliciting Votes

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization; however, a court may extend these periods upon request of a party in interest and "for cause."

The Debtor filed motions to extend the exclusive period, and the Bankruptcy Court entered the following orders granting such applications:

- Order Granting Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 460];

- Agreed Order Extending Exclusive Periods by Thirty Days [D.I. 668];

- Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 820]; and

- Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptance of a Chapter 11 Plan [D.I. 1092].

Pursuant to the foregoing orders, the Bankruptcy Court extended the exclusivity period through June 12, 2020, for the filing of a plan, which was subsequently extended through July 13, 2020, and again through August 12, 2020. The Bankruptcy Court also extended the exclusivity period for the solicitation of votes to accept such plan through August 11, 2020, which was subsequently extended through September 10, 2020, and again through October 13, 2020, and December 4, 2020.

X. Negotiations with Constituents

The Debtor, Mr. Dondero, and certain of the creditors have been negotiating a consensual reorganization plan for the Debtor that contemplates the Debtor continuing its business largely in its current form. Those negotiations have yet to reach conclusion but are continuing, and the negotiations were part of the previously discussed mediation. There is no certainty that those negotiations will reach a consensual resolution of the Debtor's bankruptcy case.

Y. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461.

The Debtor is the contributing sponsor of the Pension Plan. As such, the PBGC asserts that Debtor is liable to contribute to the Pension Plan the amounts necessary to satisfy the minimum funding standards in ERISA and the Internal Revenue Code of 1986, as amended ("IRC"). *See* 29 U.S.C. §§ 1082, 1083; 26 U.S.C. §§ 412, 430. As the sponsor of the Pension Plan, the PBGC asserts Debtor is also liable for insurance premiums owed to PBGC. *See* 29 U.S.C. §§ 1306, 1307. The PBGC asserts that any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) are also jointly and severally liable with the Debtor for such obligations relating to the Pension Plan.

The Pension Benefit Guaranty Corporation ("PBGC"), the federal agency that administers the pension insurance program under Title IV of ERISA, filed contingent proofs of claims against the Debtors for (1) the Pension Plan's potential underfunded benefit liabilities; (2) the potential unliquidated unpaid minimum funding contributions owed to the Pension Plan; and (3) the potential unliquidated insurance premiums owed to PBGC. The PBGC acknowledges that, as of the date of this Disclosure Statement, there is nothing currently owed by the Debtor to the PBGC.

The Debtor reserves the right to contest any claims filed by the PBGC for any reason.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

No provision contained in the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof), shall be construed as discharging, releasing, exculpating, or relieving any person or entity, including the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, government policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions for satisfaction, release, injunction, exculpation, and discharge of claims in the Plan, Confirmation Order, or the Bankruptcy Code.

ARTICLE III.
SUMMARY OF THE PLAN

THIS ARTICLE III IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE MATERIAL TERMS OF THE PLAN AND IS QUALIFIED BY REFERENCE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES OR CONFLICTS BETWEEN THIS ARTICLE III AND THE PLAN, THE TERMS AND CONDITIONS SET FORTH IN THE PLAN SHALL CONTROL AND GOVERN.

A. Administrative and Priority Tax Claims

1. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions

relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

3. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

B. Classification and Treatment of Classified Claims and Equity Interests

1. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

2. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

3. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

Please refer to "Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests" and "Instructions and Procedures for Voting" in ARTICLE I.C.7 and ARTICLE I.C.8 for a discussion of how the how votes on the Plan will be solicited and tabulated.

4. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

5. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

6. Cramdown

If any Class of Claims or Equity Interests is deemed to reject the Plan or does not vote to accept the Plan, the Debtor may (i) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify the Plan in accordance with the terms of the Plan and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

C. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

  The New Frontier Note will include the following terms: (i) an extension of the maturity date to December 31, 2022; (ii) quarterly interest only payments; (iii) a payment on the New Frontier Note equal to fifty percent of the outstanding principal on December 31, 2021, if the New Frontier Note is not paid in full on or prior to such date; (iv) mandatory prepayments from the proceeds of the sale of any collateral securing the New Frontier Note; and (v) the payment of fees and expenses incurred in negotiating the terms of the New Frontier Note.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

  "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is

Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.

"Convenience Claim" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

"*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

By making the GUC Election on their Ballots, each Holder of a Convenience Claim can elect the treatment provided to General Unsecured Claims.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes the Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and

will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject the Plan.

"*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

"*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject the Plan.

"*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a

Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject the Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject the Plan.

D. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

E. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

F. Means for Implementation of the Plan

1. Summary

The Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in the Plan and the Claimant Trust Agreement.

2. The Claimant Trust[11]

(a) *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant

[11] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

(a) *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

(b) *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in the Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in Article IV.C of the Plan.

(c) *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

(d) *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

- the payment of the Claimant Trust Expenses;
- the payment of other reasonable expenses of the Claimant Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- the orderly monetization of the Claimant Trust Assets;
- litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

- the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

- the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- the payment of other reasonable expenses of the Litigation Sub-Trust;

- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

- the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

(e) *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(f) *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

(g) *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(h) *Tax Reporting.*

The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

(i) *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in the Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

(j) *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

(k) *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

(l) *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are

investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

(m) *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

3. <u>The Reorganized Debtor</u>

(a) *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

(b) *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

(c) *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

(d) *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

(e) *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in the Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

(f) *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in the Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court

(g) *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in Article IV.B.1 of the Plan, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

4. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement

of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in the Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with the Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

5. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

6. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the

cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

7. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

8. Control Provisions

To the extent that there is any inconsistency between the Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, the Plan shall control.

9. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under Article III.C of the Plan shall receive no Plan Distributions.

10. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I of the Plan) and fully enforceable as if stated in full herein.

11. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal

Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

A. Treatment of Executory Contracts and Unexpired Leases

1. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts

and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [D.I. 1122].

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

3. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with the Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to Article V.C of the Plan shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to Article V.C of the Plan, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

B. Provisions Governing Distributions

1. Dates of Distributions

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under the Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in the Plan. Except as otherwise provided in the Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to the Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under the Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under the Plan to such Persons or the date of such distributions.

2. Distribution Agent

Except as provided herein, all distributions under the Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

3. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

4. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

As used above, "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant

Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

"*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

HarbourVest and Mr. Daugherty have objected to the mechanisms for calculating the amount of the Disputed Claims Reserve with respect to the HarbourVest Claim and the Daugherty Claim, respectively, and intend to press their objections at the hearing for confirmation of the Plan.

5. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

6. Rounding of Payments

Whenever the Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under the Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under the Plan.

7. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under the Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in Article VI.I of the Plan within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

8. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in the Plan, all distributions shall be made pursuant to the terms of the Plan and the Confirmation Order. Except as otherwise provided in the Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

9. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under the Plan, unless the Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under the Plan shall not be subject to any claim by any Person.

10. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under the Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

11. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under the Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

12. Withholding Taxes

In connection with the Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under the Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

13. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

14. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to Article IV of the Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

15. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by the Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with Article VI.O of the Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under the Plan, be deemed to have surrendered such security or note to the Distribution Agent.

C. Procedures for Resolving Contingent, Unliquidated and Disputed Claims

1. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

2. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of the Plan.

3. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

4. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

Allowance of Claims

After the Effective Date and subject to the other provisions of the Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and

defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

Estimation

Subject to the other provisions of the Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with the Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

D. Effectiveness of the Plan

1. Conditions Precedent to the Effective Date

The Effective Date of the Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of Article VIII.B of the Plan of the following:

- the Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to the Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate the Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in the Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under the Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent; (iii) the implementation of the Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under the Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

- All documents and agreements necessary to implement the Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement the Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Professional Fee Reserve shall be funded pursuant to the Plan in an amount determined by the Debtor in good faith.

2. Waiver of Conditions

The conditions to effectiveness of the Plan set forth in Article VIII of the Plan (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate the Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

3. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in Article VIII.B of the Plan, if the Effective Date of the Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw the Plan and, if withdrawn, the Plan shall be of no further force or effect.

4. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

E. Exculpation, Injunction, and Related Provisions

1. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

For purposes of the following provisions:

- "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

- "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

- "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO

Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

2. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

3. Exculpation

Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

4. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to Article IX.D of the Plan (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with

respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to Article IX.D of the Plan will vest and the Employee will be indefeasibly released pursuant to Article IX.D of the Plan if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

In addition to the obligations set forth in Article IX.D of the Plan, as additional consideration for the foregoing releases, the Senior Employees will waive their rights to certain deferred compensation owed to them by the Debtor. As of the date hereof, the total deferred compensation owed to the Senior Employees was approximately $3.9 million, which will be reduced by approximately $2.2 million to approximately $1.7 million. That reduction is composed of a reduction of (i) approximately $560,000 in the aggregate in order to qualify as Convenience Claims, (ii) approximately $510,000 in the aggregate to reflect the Convenience Claims treatment of 85% (and may be lower depending on the number of Convenience Claims), and (iii) of approximately $1.15 million in the aggregate to reflect an additional reduction of 40%.

As of the date of this Disclosure Statement, the Debtor has not identified any Causes of Action against any Released Parties. However, as set forth above, during the Chapter 11 Case, the Committee was granted sole standing to investigate and pursue the Estate Claims, which may include Causes of Action against certain of the Released Parties. As of the date of this Disclosure Statement, the Committee has not identified any Estate Claims against any Released Parties. The Debtor currently believes that there are no material Estate Claims or other Causes of Action against any Released Party.

5. Preservation of Rights of Action

Maintenance of Causes of Action

Except as otherwise provided in the Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as

appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

6. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any

judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to Article XII. D of the Plan, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however,* the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in Article XI of the Plan, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.

7. Term of Injunctions or Stays

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

8. Continuance of January 9 Order

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on

January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

F. Article XII.D of the Plan

Article XII.D of the Plan provides that, notwithstanding anything in the Plan to the contrary, nothing in the Plan will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

G. Binding Nature of Plan

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in Article IX of the Plan, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a)

H. Statutory Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code;
- The Debtor has complied and will comply with the applicable provisions of the Bankruptcy Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Debtor's bankruptcy case, or in connection with the Plan and incident to the case, has been or will be disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Plan is reasonable; or (ii) is subject to the

approval of the Bankruptcy Court as reasonable if it is to be fixed after confirmation of the Plan;

- Each Class of Claims or Equity Interests that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code;

- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Expense Claims and Priority Claims will be paid in full in Cash on the Effective Date, or as soon thereafter as is reasonably practicable;

- Confirmation of the Plan will not likely be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor thereto under the Plan;

- The Debtor has paid or will pay all fees payable under section 1930 of title 28, and the Plan provides for the payment of all such fees on the Effective Date; and

- The Plan provides for the continuation after the Effective Date of payment of all retiree benefits, if applicable.

1. Best Interests of Creditors Test

Often called the "best interests" test, section 1129(a)(7) of the Bankruptcy Code requires that the bankruptcy court find, as a condition to confirmation of a chapter 11 plan, that each holder of a claim or equity interest in each impaired class: (i) has accepted the plan; or (ii) among other things, will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such Person would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the net Cash proceeds (the "Liquidation Proceeds") that a chapter 7 trustee would generate if the Debtor's Chapter 11 Case were converted to a chapter 7 case on the Effective Date and the assets of such Debtor's Estate were liquidated; (b) determine the distribution (the "Liquidation Distribution") that each non-accepting Holder of a Claim or Equity Interest would receive from the Liquidation Proceeds under the priority scheme dictated in chapter 7; and (c) compare each Holder's Liquidation Distribution to the distribution under the Plan that such Holder would receive if the Plan were confirmed and consummated.

2. Liquidation Analysis

Any liquidation analysis, including the estimation of Liquidation Proceeds and Liquidation Distributions, with respect to the Debtor (the "Liquidation Analysis") is subject to numerous assumptions and there can be no guarantee that the Liquidation Analysis will be accurate. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims and Equity Interests at the projected amounts of Allowed Claims

and Equity Interests set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtor has projected an amount of Allowed Claims and Equity Interests that represents its best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims and Equity Interests. The estimate of the amount of Allowed Claims and Equity Interests set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any Plan Distribution to be made on account of Allowed Claims and Equity Interests under the Plan and Disclosure Statement.

The full Liquidation Analysis is attached hereto as **Exhibit C**.

Furthermore, any chapter 7 trustee appointed in a chapter 7 liquidation would have to confront all of the issues described in this Disclosure Statement, including the prepetition litigation claims. This process would be significantly time-consuming and costly, and reduce any recoveries available to the Debtor's Estate. The Debtor believes that liquidation under chapter 7 would result in (i) smaller distributions being made to creditors than those provided for in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee, (ii) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of executory contracts in connection with the cessation of the Debtor's operations, and (iii) the failure to realize greater value from all of the Debtor's assets.

Therefore, the Debtor believes that confirmation of the Plan will provide each Holder of a Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

3. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find that confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor, unless the plan contemplates such liquidation or reorganization. For purposes of demonstrating that the Plan meets this "feasibility" standard, the Debtor has analyzed the ability of the Claimant Trust and the Reorganized Debtor to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their business. A copy of the financial projections prepared by the Debtor is attached hereto as **Exhibit C**.

The Debtor believes that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtor analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources. The Debtor believes that its available Cash and any additional proceeds from the Debtor's Assets will be sufficient to allow the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, to make all payments required to be made under the Plan. Accordingly, the Debtor believes that the Plan is feasible.

4. Valuation

In order to provide information and full disclosure to parties in interest regarding the Debtor's assets, the Debtor estimates that its value and the total value of its Assets, as of September 30, 2020, was approximately $328.3 million.

5. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accepts the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (i) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default— (a) cures any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as such maturity existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan and are not insiders. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of equity interests as acceptance by holders of at least two-thirds in amount of the allowed interests of such class. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance. Section 1126(d) of the Bankruptcy Code, except as otherwise provided in section 1126(e) of the Bankruptcy Code, defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of equity interests in that class actually voting to accept or to reject the plan.

Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims or Equity Interests in any voting class must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Class, and without considering whether the Plan "discriminates unfairly" with respect to such Class, as both standards are described herein.

6. Confirmation Without Acceptance by Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if less than all impaired classes entitled to vote on the plan have accepted it, *provided* that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired Class's rejection or deemed rejection of the Plan, the Plan will be confirmed, at the Debtor's request, in a procedure commonly known as "cram down," so long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Plan.

7. No Unfair Discrimination

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

8. Fair and Equitable Test

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or equity interests in such class:

The condition that a plan be "fair and equitable" to a non-accepting Class of Secured Claims includes the requirements that: (a) the Holders of such Secured Claims retain the liens securing such Claims to the extent of the Allowed amount of the Claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the Plan; and (b) each Holder of a Secured Claim in the Class receives deferred Cash payments totaling at least the Allowed amount of such Claim with a present value, as of the Effective Date of the Plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be "fair and equitable" with respect to a non-accepting Class of unsecured Claims includes the requirement that either: (a) the plan provides that each Holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the plan, equal to the allowed amount of such Claim; or (b) the Holder of any Claim or Equity Interest that is junior to the Claims of such Class will not receive or retain under the plan on account of such junior Claim or Equity Interest any property.

The condition that a plan be "fair and equitable" to a non accepting Class of Equity Interests includes the requirements that either: (a) the plan provides that each Holder of an Equity Interest in that Class receives or retains under the plan, on account of that Equity Interest, property of a value, as of the Effective Date of the plan, equal to the greater of (i) the allowed

amount of any fixed liquidation preference to which such Holder is entitled, (ii) any fixed redemption price to which such Holder is entitled, or (iii) the value of such interest; or (b) if the Class does not receive such an amount as required under (a), no Class of Equity Interests junior to the non-accepting Class may receive a distribution under the plan.

To the extent that any class of Claims or Class of Equity Interests rejects the Plan, the Debtor reserves the right to seek (a) confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or (b) modify the Plan in accordance with Article XIII.C of the Plan.

The Debtor believes that the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan.

ARTICLE IV.
RISK FACTORS

ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTOR'S BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.

A. Certain Bankruptcy Law and Other Considerations

1. Parties in Interest May Object to the Debtor's Classification of Claims and Equity Interests, or Designation as Unimpaired.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Holders of Claims or Equity Interests or the Bankruptcy Court will reach the same conclusion.

There is also a risk that the Holders of Claims or Equity Interests could object to the Debtor's designation of Claims or Equity Interests as Unimpaired, and the Bankruptcy Court could reach the same conclusion.

2. The Debtor May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, findings by the bankruptcy court that: (i) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (ii) confirmation of such plan is not likely to be followed by a liquidation or a

need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to Holders of Claims within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.

As more fully set forth in Article IX of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place.

4. Continued Risk Following Effectiveness.

Even if the Effective Date of the Plan occurs, the Debtor, the Reorganized Debtor, and Claimant Trust will continue to face a number of risks, including certain risks that are beyond its control, such as changes in assets, asset values, and increasing expenses. Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of liquidation reflecting the Plan will achieve the Debtor's stated goals.

In addition, at the outset of the Chapter 11 Case, the Bankruptcy Code provides the Debtor with the exclusive right to propose the Plan and prohibits creditors and others from proposing a plan. The Debtor will have retained the exclusive right to propose the Plan upon filing its petition. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtor's ability to achieve confirmation of the Plan in order to achieve the Debtor's stated goals.

5. The Effective Date May Not Occur.

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.

6. The Chapter 11 Case May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in the Plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time, rather than selling the assets in an orderly and controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. Claims Estimation

There can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated herein.

8. The Financial Information Contained Herein is Based on the Debtor's Books and Records and, Unless Otherwise Stated, No Audit was Performed.

The financial information contained in this Disclosure Statement has not been audited. In preparing this Disclosure Statement, the Debtor relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement and, while the Debtor believes that such financial information fairly reflects its financial condition, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

B. Risks Related to Recoveries under the Plan

1. The Reorganized Debtor and/or Claimant Trust May Not Be Able to Achieve the Debtor's Projected Financial Results

The Reorganized Debtor or Claimant Trust, as applicable, may not be able to achieve their projected financial results. The Financial Projections represent the best estimate of the Debtor's future financial performance, which is necessarily based on certain assumptions regarding the anticipated future performance of the Reorganized Debtor or Claimant Trust, as well as the United States and world economies in general, and the investment industry in which the Debtor operates. The Debtor's Financial Projections include key assumptions on (i) target asset monetization values, (ii) timing of asset monetization, and (iii) costs to effectuate the Plan. In terms of achieving target asset monetization values, the Debtor faces issues including investment assets with cross-ownership across related entities and challenges associated with

collecting notes due from affiliates. The Debtor's Financial Projections anticipate that all investment assets will be sold by 2022, which may be at risk due to the semi-liquid or illiquid nature of the Debtor's assets, as well as general market conditions, including the sustained impact of COVID-19. Costs are based on estimates and may increase with delays or any other unforeseen factor. If the Reorganized Debtor or Claimant Trust do not achieve their projected financial results, the recovery for Claimant Trust Beneficiaries may be negatively affected and the Claimant Trust may lack sufficient liquidity after the Effective Date.

2. Claim Contingencies Could Affect Creditor Recoveries

The estimated Claims and projected creditor recoveries set forth in this Disclosure Statement are based on various assumptions the actual amount of Allowed Claims may differ from the estimates. Should one or more of the underlying assumptions ultimately prove incorrect, the actual Allowed amounts of Claims may vary materially from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

3. If Approved, the Debtor Release Could Release Claims Against Potential Defendants of Estate Causes of Action With Respect to Which the Claimant Trust Would Otherwise Have Recourse

The Claimant Trust Assets will include, among other things, Causes of Action, including Estate Claims that will be assigned to the Litigation Sub-Trust. The Committee's investigation of potential Estate Claims is still ongoing. Because the Committee has not concluded its investigation as of the date hereof, and such investigation will be transferred to the Litigation Trustee, there is no certainty of whether there are viable Estate Claims against any of the Released Parties. In the event there are viable Estate Claims against any of the Released Parties, such claims cannot be pursued for the ultimate benefit of Claimant Trust Beneficiaries if the Debtor Release is approved.

C. Investment Risk Disclaimer

1. Investment Risks in General.

The Reorganized Debtor is and will remain a registered investment adviser under the Investment Advisers Act of 1940, and the Reorganized Debtor will continue advising the Managed Funds. No guarantee or representation is made that the Reorganized Debtor's or the Managed Funds' investment strategy will be successful, and investment results may vary substantially over time.

2. General Economic and Market Conditions and Issuer Risk.

Any investment in securities carries certain market risks. Investments by the Reorganized Debtor, the Managed Funds, or the Claimant Trust may decline in value for any number of reasons over which none of the Managed Funds, the Reorganized Debtor, the Claimant Trust, or the Claimant Trustee may have control, including changes in the overall

market and other general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, currency exchange rates and controls and national, international political circumstances (including wars and security operations), and acts of God (including pandemics like COVID-19). The value of the Managed Funds or the assets held by the Reorganized Debtor or Claimant Trust may also decline as a result of factors pertaining to particular securities held by the Managed Funds, Reorganized Debtor, or Claimant Trust, as applicable, such as perception or changes in the issuer's management, the market for the issuer's products or services, sources of supply, technological changes within the issuer's industry, the availability of additional capital and labor, general economic conditions, political conditions, acts of God, and other similar conditions. All of these factors may affect the level and volatility of security prices and the liquidity and the value of the securities held by the Managed Fund, Reorganized Debtor, or Claimant Trust. Unexpected volatility or illiquidity could impair the Managed Funds', Reorganized Debtor's, or Claimant Trust's profitability or result in it suffering losses.

D. Disclosure Statement Disclaimer

1. The Information Contained Herein is for Disclosure Purposes Only.

The information contained in this Disclosure Statement is for purposes of disclosure in connection with the Plan and may not be relied upon for any other purposes.

2. This Disclosure Statement was Not Approved by the SEC.

Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained herein, and any representation to the contrary is unlawful.

3. This Disclosure Statement Contains Forward-Looking Statements.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements.

4. No Legal or Tax Advice is Provided to You by This Disclosure Statement.

This Disclosure Statement is not legal or tax advice to you. The contents of this Disclosure Statement should not be construed as legal, business or tax advice, and are not personal to any person or entity. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than as a disclosure of certain information to determine how to vote on the Plan or object to confirmation of the Plan.

5. No Admissions Are Made by This Disclosure Statement.

The information and statements contained in this Disclosure Statement will neither (i) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtor) nor (ii) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, the Reorganized Debtor, the Claimant Trust, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

6. No Reliance Should Be Placed on Any Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. The Debtor or the Reorganized Debtor or Claimant Trustee, as applicable, may seek to investigate, file and prosecute litigation rights and claims against any third parties and may object to Claims after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies such litigation claims or objections to Claims or Equity Interests.

7. Nothing Herein Constitutes a Waiver of Any Right to Object to Claims or Equity Interests or Recover Transfers and Assets.

The Debtor, the Reorganized Debtor, the Claimant Trustee, or any party in interest, as the case may be, reserve any and all rights to object to that Holder's Allowed Claim regardless of whether any Claims or Causes of Action of the Debtor or its Estate are specifically or generally identified herein.

8. The Information Used Herein was Provided by the Debtor and was Relied Upon by the Debtor's Advisors.

Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

9. The Disclosure Statement May Contain Inaccuracies.

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, the information contained in this Disclosure Statement is as of the date of the Disclosure Statement and does not address events that may occur after such date. The Debtor may update this Disclosure Statement but is not required to do so.

10. No Representations Made Outside the Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. You should promptly report unauthorized representations or inducements to the counsel to the Debtor and the U.S. Trustee.

ARTICLE V.
ALTERNATIVES TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code in which case, a trustee would be elected or appointed to liquidate the Debtor's assets. If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

ARTICLE VI.
U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

Implementation of the Plan will have federal, state, local or foreign tax consequences to the Debtor and Holders of Equity Interests as well as Holders of Claims. No tax opinion or ruling has been sought or will be obtained with respect to any tax consequences of the Plan, and the following discussion does not constitute and is not intended to constitute either a tax opinion or tax advice to any person.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan to the Debtor and to Holders of Claims. This discussion assumes that each Holder of Claims is for United States federal income tax purposes:

- An individual who is a citizen or resident of the United States for federal income tax purposes;
- a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- any other person that is subject to U.S. federal income taxation on a net income basis.
- an estate the income of which is subject to United States federal income tax without regard to its source; or
- a trust (1) that is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) that has a valid election in effect under applicable treasury regulations to be treated as a United States person.

This discussion also assumes that each Holder holds the Claims as capital assets under Section 1221 of the Internal Revenue Code.

The summary provides general information only and does not purport to address all of the federal income tax consequences that may be applicable to the Debtor or to any particular Holder of Claims in light of such Holder's own individual circumstances. In particular, the summary does not address the federal income tax consequences of the Plan to Holders of Claims that may be subject to special rules, such as non-U.S. persons, insurance companies, financial institutions, regulated investment companies, broker-dealers, persons who acquired Claims as part of a straddle, hedge, conversion transaction or other integrated transaction, or persons who acquired Claims in connection with the performance of services; persons who hold Claims through a partnership or other pass-through entity and tax-exempt organizations. The summary does not address foreign, state, local, estate or gift tax consequences of the Plan, nor does it address the federal income tax consequences to Holders of Equity Interests.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the final, temporary and proposed Treasury regulations promulgated thereunder, judicial decisions and administrative rulings and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, judicial decision or administrative action. Moreover, due to a lack of definitive authority, substantial uncertainties exist with respect to various tax consequences of the Plan.

THE TAX CONSEQUENCES TO THE HOLDERS OF CLAIMS OR EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN.

A. Consequences to the Debtor

It is anticipated that the consummation of the Plan will not result in any federal income tax liability to the Debtor. The Debtor is a partnership for federal income tax purposes. Therefore, the income and loss of the Debtor is passed-through to the Holders of its Equity Interests, and the Debtor does not pay federal income tax.

1. Cancellation of Debt

Generally, the discharge of a debt obligation of a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) creates cancellation of indebtedness ("COD") income that must be included in the debtor's income. Due to the nature of the Impaired Claims, it is anticipated that

the Debtor will not recognize any material amount of COD income. If any such COD income is recognized, it will be passed-through to the Holders of its Equity Interests, and the Holders of such Equity Interest generally will be required to include such amounts in income, unless a Holder is entitled to exclude such amounts from income under Section 108 of the Internal Revenue Code, based on the Holder's individual circumstances.

2. Transfer of Assets

Pursuant to the Plan, the Debtor's assets (including the Claimant Trust Assets and Reorganized Debtor Assets) will be transferred directly or indirectly to the Claimant Trust. For federal income tax purposes, any such assets transferred to the Claimant Trust will be deemed to have been transferred to the Claimant Trust Beneficiaries followed by the transfer by such Holders to the Claimant Trust of such assets in exchange for the respective Holders' beneficial interests in the Claimant Trust. The Claimant Trust thereafter will be treated as a grantor trust for federal income tax purposes. See U.S. Federal Income Tax Treatment of the Claimant Trust, below.

The Debtor's transfer of its assets pursuant to the Plan will constitute a taxable disposition of such assets. As discussed above, the Debtor is a partnership for federal income tax purposes. Any gain or loss recognized as a result of the taxable disposition of such assets will be passed through to the Holders of Equity Interests in the Debtor. The Debtor will not be required to pay any tax as a result of such disposition.

B. U.S. Federal Income Tax Treatment of the Claimant Trust

It is intended that the Claimant Trust will be treated as a "grantor trust" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Consistent with the requirements of Revenue Procedure 94-45, the Claimant Trust Agreement requires all relevant parties to treat, for U.S. federal income tax purposes, the transfer of the Debtor's assets to the Claimant Trust as (i) a transfer of such assets to the Claimant Trust Beneficiaries (to the extent of the value of their respective interests in the applicable Claimant Trust Assets) followed by (ii) a transfer of such assets by such beneficiaries to the Claimant Trust (to the extent of the value of their respective interests in the applicable Claimant Trust Assets), with the beneficiaries being treated as the grantors and owners of the Claimant Trust.

The Plan and the Claimant Trust Agreement generally provide that the Claimant Trust Beneficiaries must value the assets of the Claimant Trust consistently with the values determined by the Claimant Trustee for all U.S. federal income tax purposes. As soon as possible after the Effective Date, the Claimant Trustee, based upon his good faith determination after consultation with his counsel and other advisors, shall inform the beneficiaries in writing as to his estimate of the value of the assets transferred to the Claimant Trust and the value of such assets allocable to each Class of beneficiaries.

Consistent with the treatment of the Claimant Trust as a grantor trust, the Claimant Trust Agreement will require each beneficiary to report on its U.S. federal income tax return its allocable share of the Claimant Trust's income, gain, loss or deduction that reflects the

beneficiary's interest in the interim and final distributions to be made by the Claimant Trust. Furthermore, certain of the assets of the Claimant Trust will be interests in the Reorganized Debtor, which will be a partnership for U.S. federal income tax purposes. The income, gain, loss or deduction of the Reorganized Debtor will also flow through the Claimant Trust to the beneficiaries of the Claimant Trust. Therefore, a beneficiary may incur a federal income tax liability with respect to its allocable share of the income of the Claimant Trust (including the income of the Reorganized Debtor) whether or not the Claimant Trust has made any distributions to such beneficiary. The character of items of income, gain, deduction, and credit to any beneficiary and the ability of such beneficiary to benefit from any deduction or losses will depend on the particular situation of such beneficiary. The interests of the beneficiaries may shift from time to time as the result of the allowance or disallowance of claims that have not been allowed at the Effective Date, which could give rise to tax consequences both to the Holders of claims that have, and have not been, allowed at the Effective Date. The Claimant Trustee will file with the IRS tax returns for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each beneficiary a separate statement setting forth such beneficiary's share of items of Trust income, gain, loss, deduction, or credit. Each beneficiary will be required to report such items on its U.S. federal income tax return. Holders are urged to consult their tax advisors regarding the appropriate federal income tax treatment of distributions from the Claimant Trust.

The discussion above assumes that the Claimant Trust will be respected as a grantor trust for U.S. federal income tax purposes. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Claimant Trust and the beneficiaries could differ materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Claimant Trust).

C. Consequences to Holders of Allowed Claims

1. Recognized Gain or Loss

In general, each Holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such Holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim for accrued but unpaid interest). In general, the "amount realized" by a Holder will equal the sum of any cash and the aggregate fair market value of any property received by such Holder pursuant to the Plan (for example, such Holder's undivided beneficial interest in the assets of the Claimant Trust). A Holder that receives or is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its receipt or deemed receipt. See U.S. Federal Income Tax Treatment of the Claimant Trust, above for more information regarding the tax treatment of the Claimant Trust Interests.

Where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the claim constitutes a capital asset in the hands of the Holder and how long it has been held, whether the claim was acquired at

a market discount, and whether and to what extent the Holder had previously claimed a bad debt deduction.

A Holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the Holder's tax basis in the Allowed Claim may be entitled to a deduction for U.S. federal income tax purposes. The rules governing the character, timing and amount of such a deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

2. Distribution in Discharge of Accrued Unpaid Interest

Pursuant to the Plan, a distribution received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received (whether cash or other property) by a Holder of a claim is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the Holder as interest income if not previously included in the Holder's gross income. Conversely, a Holder generally recognizes a deductible loss to the extent that it does not receive payment of interest that has previously been included in its income. Holders of Claims are urged to consult their tax advisors regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

3. Information Reporting and Withholding

All distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding tax requirements. Under federal income tax law, interest, dividends, and other reportable payments, may, under certain circumstances, be subject to "backup withholding" (currently at a rate of up to 24%). Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

D. Treatment of the Disputed Claims Reserve

Pursuant to the Plan, the Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity. Such taxes will be paid out of the Disputed Claims Reserve and therefore may reduce amounts paid to Holders of Allowed Claims from the Claimant Trust. If the Claimant Trustee does not make such an election to treat the Disputed Claims Reserve as a separate taxable entity, the net income, if any, earned in the Disputed Claims Reserve will be taxable to the Holders of Allowed Claims in accordance with

the principles discussed above under the heading "U.S. Federal Income Tax Treatment of the Claimant Trust", possibly in advance of any distributions to the Holders.

AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE PLAN.

ARTICLE VII.
RECOMMENDATION

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distribution to the Debtor's creditors and interest holders. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

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EXHIBIT A

PLAN OF REORGANIZATION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

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[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. <u>Defined Terms</u>

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" means an "affiliate" as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. "*Convenience Claim*" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all

distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. "*Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

59. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

62. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

69. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

71. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

77. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

87. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. "*Petition Date*" means October 16, 2019.

91. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of

Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

104. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

105. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

107. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. "*Related Entity*" means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

132. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *<u>Class 10 – Class B/C Limited Partnership Interests</u>*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be

overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the

Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. <u>Cancellation of Notes, Certificates and Instruments</u>

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. <u>Cancellation of Existing Instruments Governing Security Interests</u>

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. <u>Control Provisions</u>

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to

such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. <u>Waiver of Conditions</u>

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized

Debtor, or the Claimant Trust, as applicable.

C. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

D. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose

before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided*, *however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however,* the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.

G. <u>Term of Injunctions or Stays</u>

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:_____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

EXHIBIT B

ORGANIZATIONAL CHART OF THE DEBTOR

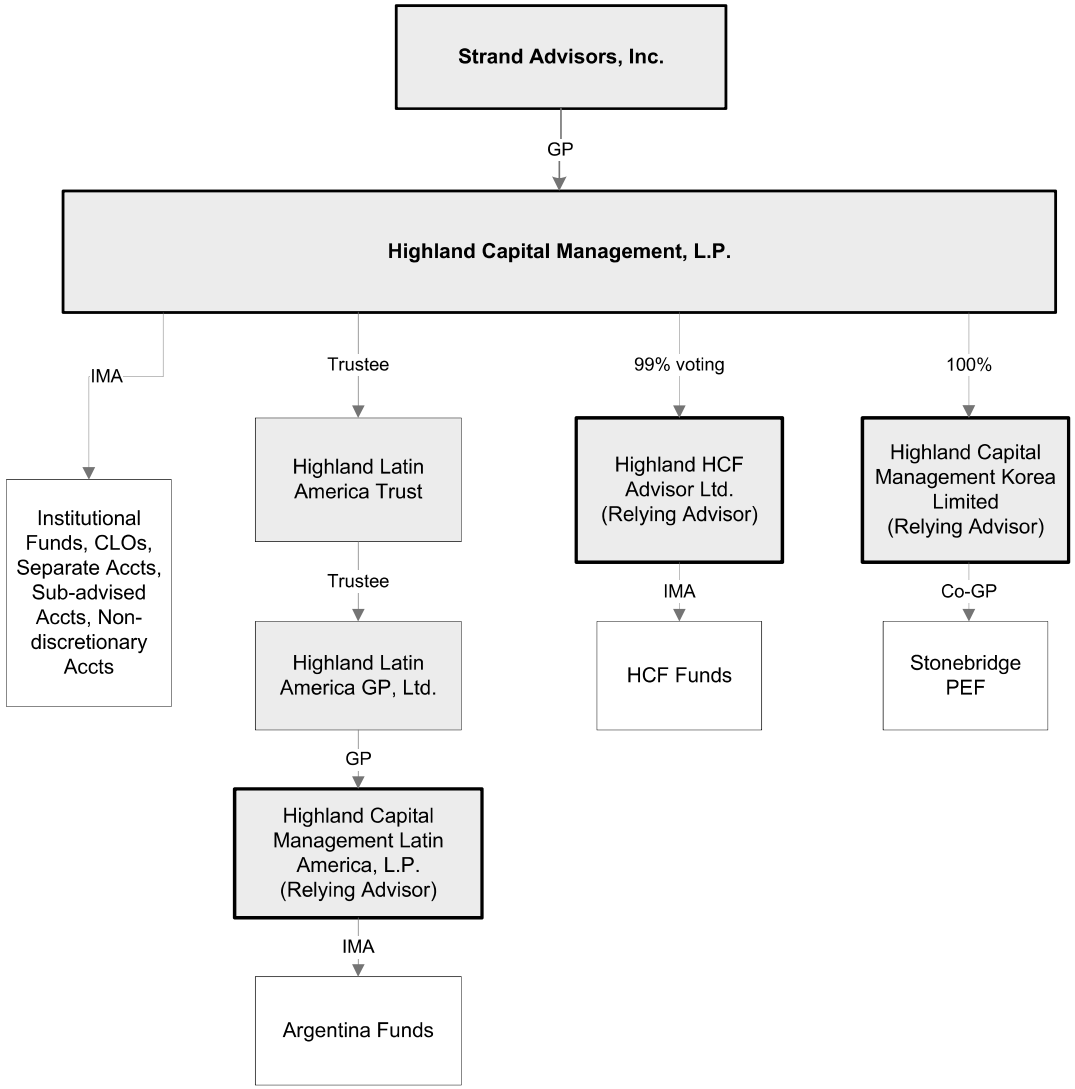
Strand Advisors, Inc.
GP
Highland Capital Management, L.P.
IMA
Trustee
99% voting
100%
Institutional Funds, CLOs, Separate Accts, Sub-advised Accts, Non-discretionary Accts
Highland Latin America Trust
Highland HCF Advisor Ltd. (Relying Advisor)
Highland Capital Management Korea Limited (Relying Advisor)
Trustee
IMA
Co-GP
Highland Latin America GP, Ltd.
HCF Funds
Stonebridge PEF
GP
Highland Capital Management Latin America, L.P. (Relying Advisor)
IMA
Argentina Funds

EXHIBIT C

LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS

Highland Capital Management, L.P.
Disclaimer For Financial Projections

This document includes financial projections for July 2020 through December 2022 (the "Projections") for Highland Capital Management, L.P. "Company"). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company's anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

Highland Capital Management, L.P.
Statement of Assumptions

A. Plan effective date is January 31 ,2021.
B. All investment assets are sold by December 31, 2022.
C. All demand notes are collected in the year 2021.
D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
E. Fixed assets used in daily business operations are sold in February 2021.
F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
I. Litigation Trustee budget is $6,500,000.
J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume $0 for UBS, IFA, HM and HV. Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate $13.15 million. Plan currently projects Class 7 payout of $9.96 million.
P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
    - By September 30, 2021 - $50,000,000
    - By March 31, 2022 – additional $50,000,000
    - By June 30, 2022 – additional $25,000,000
    - All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

Highland Capital Management, L.P.
Plan Analysis Vs. Liquidation Analysis
(US $000's)

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	$ 25,076	$ 25,076
Estimated proceeds from monetization of assets [1][2]	190,445	149,197
Estimated expenses through final distribution[1][3]	(33,642)	(36,232)
Total estimated $ available for distribution	181,879	138,042
Less: Claims paid in full		
Unclassified [4]	(1,078)	(1,078)
Administrative claims [5]	(10,574)	(10,574)
Class 1 - Jefferies Secured Claim	-	-
Class 2 - Frontier Secured Claim [6]	(5,463)	(5,463)
Class 3 - Other Secured Claims	(551)	(551)
Class 4 – Priority Non-Tax Claims	(16)	(16)
Class 5 - Retained Employee Claims	-	-
Class 6 - PTO Claims	-	-
Class 7 – Convenience Claims [7][8][9]	(10,255)	-
Subtotal	(27,937)	(17,682)
Estimated amount remaining for distribution to general unsecured claims	153,942	120,359
Class 8 – General Unsecured Claims [8][10]	176,049	192,258
Subtotal	176,049	192,258
% Distribution to general unsecured claims	87.44%	62.60%
Estimated amount remaining for distribution	-	-
Class 9 – Subordinated Claims	*no distribution*	*no distribution*
Class 10 – Class B/C Limited Partnership Interests	*no distribution*	*no distribution*
Class 11 – Class A Limited Partnership Interest	*no distribution*	*no distribution*

Footnotes:
[1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee
Assumes Chapter 7 Trustee engages new professionals to help liquidate assets
[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable
[3] Estimated expenses through final distribution exclude non-cash expenses:
Depreciation of $462 thousand in 2021
[4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court
[5] Represents $4.7 million in unpaid professional fees and $4.5 million in timing of payments to vendors
[6] Debtor will pay all unpaid interest estimated at $253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sold
[7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of $13.15 million
[8] Class 7 includes $1.1 million estimate for aggregate contract rejections damage and Class 8 includes $1.4 million for contract rejection damages
[9] Assumes 3 claimants with allowed claims less than $2.5 million opt into Class 7 along with claims of Senior Employees
[10] Class estimates $0 allowed claim for the following creditors: IFA, HV, HM and UBS; assumes RCP claims offset against HCMLP interest in RCP fund

Notes:
All claim amounts are estimated as of November 20, 2020 and subject to change

Highland Capital Management, L.P.
Balance Sheet
(US $000's)

	Actual Jun-20	Actual Sep-20	Forecast ---> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
Assets											
Cash and Cash Equivalents	$ 14,994	$ 5,888	$ 28,342	$ 4,934	$ 96,913	$ 90,428	$ 106,803	$ 52,322	$ 23,641	$ 21,344	$ -
Other Current Assets	13,182	13,651	10,559	9,629	7,746	7,329	5,396	6,054	6,723	7,406	-
Investment Assets	320,912	305,961	261,333	258,042	133,026	81,793	54,159	54,159	54,159	54,159	-
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-	-	-	-	-
TOTAL ASSETS	**$ 352,142**	**$ 328,323**	**$ 302,826**	**$ 273,952**	**$ 237,684**	**$ 179,550**	**$ 166,358**	**$ 112,535**	**$ 84,523**	**$ 82,910**	**$ -**
Liabilities											
Post-petition Liabilities	$ 26,226	$ 19,138	$ 19,280	$ 2,891	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pre-petition Liabilities	126,365	126,343	121,950	-	-	-	-	-	-	-	-
Claims											
Unclassified	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,210	-	-	-	-	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	176,049	176,049	126,049	126,049	76,049	51,049	51,049	22,107
Class 9 – Subordinated Claims	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	181,259	176,049	126,049	126,049	76,049	51,049	51,049	22,107
TOTAL LIABILITIES	**$ 152,591**	**145,481**	**141,230**	**184,150**	**176,049**	**126,049**	**126,049**	**76,049**	**51,049**	**51,049**	**22,107**
Partners' Capital	199,551	182,842	161,596	89,802	61,635	53,501	40,309	36,486	33,473	31,860	(22,107)
TOTAL LIABILITIES AND PARTNERS' CAPITAL	**$ 352,142**	**$ 328,323**	**$ 302,826**	**$ 273,952**	**$ 237,684**	**$ 179,550**	**$ 166,358**	**$ 112,535**	**$ 84,523**	**$ 82,910**	**$ -**

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Actual **Jan 2020 to June 2020 Total**	Actual **3 month ended Sept 2020**	Forecast --->**3 month ended Dec 2020**	**Total 2020**	**3 month ended Mar 2021**	**3 month ended Jun 2021**	**3 month ended Sept 2021**	**3 month ended Dec 2021**	**Total 2021**
Revenue									
Management Fees	$ 6,572	$ 1,949	$ 2,651	$ 11,173	$ 779	$ -	$ -	$ -	$ 779
Shared Service Fees	7,672	3,765	3,788	15,225	1,263	-	-	-	1,263
Other Income	3,126	538	340	4,004	113	-	-	-	113
Total revenue	$ 17,370	$ 6,252	$ 6,779	$ 30,401	$ 2,154	$ -	$ -	$ -	$ 2,154
Operating Expenses [1]	13,328	9,171	9,079	31,579	8,428	1,646	1,807	2,655	14,536
Income/(loss) From Operations	$ 4,042	$ (2,918)	$ (2,301)	$ (1,177)	$ (6,274)	$ (1,646)	$ (1,807)	$ (2,655)	$ (12,381)
Professional Fees	17,522	7,707	7,741	32,971	5,450	5,058	2,048	1,605	14,160
Other Income/(Expenses) [2]	2,302	1,518	1,057	4,878	(59,016)	573	423	423	(57,598)
Operating Gain/(Loss)	$ (11,178)	$ (9,107)	$ (8,985)	$ (29,270)	$ (70,741)	$ (6,130)	$ (3,432)	$ (3,837)	$ (84,139)
Realized and Unrealized Gain/(Loss)									
Other Realized Gains/(Loss)	-	-	-	-	(763)	522	-	-	(241)
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(12,167)	(39,036)	(290)	19	(4,702)	(8,006)	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	-	(37,380)	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	(94)	(94)	-	(22,578)	-	(1,349)	(23,927)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ (139,129)	$ (7,601)	$ (12,262)	$ (158,992)	$ (1,053)	$ (22,037)	$ (4,702)	$ (9,355)	$ (37,147)
Net Income	$ (150,307)	$ (16,708)	$ (21,247)	$ (188,262)	$ (71,794)	$ (28,167)	$ (8,134)	$ (13,192)	$ (121,287)

Footnotes:
[1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.
[2] Other income and expenses of $61.2 million in January 2021 includes:
[a] $77.7 million was expensed to record for the increase of allowed claims.
[b] Income of $15.8 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Forecast ---> 3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	Total 2022	Plan
Revenue						
Management Fees	$ -	$ -	$ -	$ -	$ -	$ 779
Shared Service Fees	-	-	-	-	-	1,263
Other Income	-	-	-	-	-	113
Total revenue	$ -	$ -	$ -	$ -	$ -	$ 2,154
Operating Expenses	1,443	643	758	1,088	3,932	18,468
Income/(loss) From Operations	$ (1,443)	$ (643)	$ (758)	$ (1,088)	$ (3,932)	$ (16,314)
Professional Fees	2,788	2,788	1,288	1,288	8,153	22,313
Other Income/(Expenses)	408	419	434	184	1,444	(56,154)
Operating Gain/(Loss)	$ (3,823)	$ (3,013)	$ (1,613)	$ (2,193)	$ (10,641)	$ (94,780)
Realized and Unrealized Gain/(Loss)						
Other Realized Gains/(Loss)	-	-	-	(51,775)	(51,775)	(52,016)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	-	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	(23,927)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ -	$ -	$ -	$ (51,775)	$ (51,775)	$ (88,922)
Net Income	$ (3,823)	$ (3,013)	$ (1,613)	$ (53,967)	$ (62,415)	$ (183,702)

Highland Capital Management, L.P.
Cash Flow Indirect
(US $000's)

	Forecast ---->									
	Sep-20	**Dec-20**	**Mar-21**	**Jun-21**	**Sep-21**	**Dec-21**	**Mar-22**	**Jun-22**	**Sep-22**	**Dec-22**
Net (Loss) Income	$ (16,708)	$ (21,247)	$ (71,794)	$ (28,167)	$ (8,134)	$ (13,192)	$ (3,823)	$ (3,013)	$ (1,613)	$ (53,967)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash										
Depreciation and amortization	231	231	231	231	-	-	-	-	-	
Other realized (gain)/ loss	-	-	763	(522)	-	-	-	-	-	51,775
Investment realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702	9,355	-	-	-	-
Unrealized (gain) / loss	(9,150)	-	-	-	-	-	-	-	-	
(Increase) Decrease in Current Assets	(470)	3,092	930	1,884	417	1,933	(658)	(669)	(684)	2,000
Increase (Decrease) in Current Liabilities	(7,110)	(4,251)	(54,172)	(2,891)	-	-	-	-	-	
Net Cash Increase / (Decrease) - Operating Activities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)	(1,904)	(4,481)	(3,681)	(2,297)	(1,192)
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-	-	-	-	-	
Proceeds from Investment Assets	25,650	32,366	3,002	102,457	46,531	18,278	-	-	-	7,780
Net Cash Increase / (Decrease) - Investing Activities	25,650	32,366	3,252	104,096	46,531	18,278	-	-	-	7,780
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	
Claim reclasses/(paid)	-	-	181,259	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	97,092	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Net Change in Cash	$ (9,107)	$ 22,454	$ (23,408)	$ 91,979	$ (6,484)	$ 16,374	$ (54,481)	$ (28,681)	$ (2,297)	$ (21,344)
Beginning Cash	14,994	5,888	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,344
Ending Cash	$ 5,887	$ 28,342	$ 4,934	$ 96,913	$ 90,428	$ 106,803	$ 52,322	$ 23,641	$ 21,344	$

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed November 24, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIFTH AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE

Upon the motion (the "Motion")[2] of the above-captioned debtor and debtor-in-possession (the "Debtor") seeking entry of an order: (a) approving the adequacy of the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020 (as amended or modified, the "Disclosure Statement"); (b)

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed thereto in the Motion.

scheduling a hearing to confirm the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as amended or modified, the "Plan"); (c) fixing an objection deadline to the Plan; (d) approving the forms of ballots, the voting deadline and solicitation procedures; and (e) approving the form and manner of notices related thereto; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and after due deliberation and it appearing that sufficient cause exists for granting the requested relief and that such relief is in the best interests of the Debtor's estate and creditors; it is hereby **ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. The Disclosure Statement is hereby **APPROVED** for solicitation as provided for herein.

3. A hearing to confirm the Plan (the "Confirmation Hearing") will commence on **January 13, 2021, at 9:30 a.m. (prevailing Central Time)**.

4. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, all without further notice to parties-in-interest.

5. The deadline to file and serve objections to the confirmation of the Plan (the "Plan Objection Deadline") shall be on **January 5, 2021, at 5:00 p.m. (prevailing Central Time)**.

6. All objections to the confirmation of the Plan, if any, must: (i) be in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Bankruptcy Rules for the Northern District of Texas (the "Local Rules"); (iii) be filed with the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"); and (iv) be served upon by the following parties: (a) counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Attn: Jeffrey N. Pomerantz, Ira D. Kharasch, and Gregory V. Demo, Emails: jpomerantz@pszjlaw.com, ikharasch@pszjlaw.com, and gdemo@pszjlaw.com; (b) counsel for

the Debtor, Hayward & Associates PLLC, 10501 N. Central Expy, Ste. 106, Dallas, Texas 75231, Attn: Melissa S. Hayward and Zachery Z. Annable, Emails: MHayward@HaywardFirm.com and ZAnnable@HaywardFirm.com; (c) counsel to the official committee of unsecured creditors, Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, Attn: Matthew A. Clemente and Alyssa Russell, Emails: mclemente@sidley.com and Alyssa.russell@sidley.com; and (d) counsel for the Office of the United States Trustee, U.S. Department of Justice, Region 6: Northern District of Texas, Office of The United States Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Lisa L. Lambert, Email: Lisa.L.Lambert@usdoj.gov (collectively, the "Notice Parties").

7. The Debtor shall be allowed to file a brief in support of confirmation of the Plan on or before **January 11, 2021, at 5:00 p.m. (prevailing Central Time)** and a reply to any objections to the Plan on or before **January 11, 2021, at 5:00 p.m. (prevailing Central Time)**.

8. The Court shall consider only written objections to the Plan that are timely filed by the Plan Objection Deadline and served upon the Notice Parties.

9. All objections to the Plan must (a) conform to the Bankruptcy Rules, the Local Rules and any orders of the Court in this chapter 11 case, (b) state with particularity the legal and factual grounds for such objection, (c) provide, where applicable, the specific text that the objecting party believes to be appropriate to insert into the Plan, and (d) describe the nature and amount of the objector's claim or interest.

10. Objections to the Plan not timely filed and served in accordance with the provisions of this Order shall not be heard and shall be overruled.

11. The Voting Record Date is **November 23, 2020**.

12. The deadline for casting a Ballot to accept or reject the Plan (the "Voting Deadline") shall be **January 5, 2021, at 5:00 p.m. (prevailing Central Time)**.

13. All Ballots accepting or rejecting the Plan must be received by Kurtzman Carson Consultants LLC (the "Balloting Agent") by no later than **5:00 p.m. (prevailing Central Time) on the Voting Deadline** at the following address, as specified on each Ballot, whether sent by

first class mail, personal delivery, or overnight courier:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

14. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions solely through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.

15. The Debtor or the Court may extend the period during which votes will be accepted by the Debtor, in which case the Voting Deadline for such solicitation shall mean the last time and date to which such solicitation is extended.

16. The forms of Ballots and voting instructions thereto, substantially in the form attached hereto as **Exhibit A**, are hereby approved.

17. All votes to accept or reject the Plan must be cast by using the appropriate Ballot.

18. The Solicitation Procedures are hereby approved; *provided, however*, the Debtor reserves the right to modify, amend or supplement the Solicitation Procedures subject to Court approval.

19. No later than four (4) business days after entry of this Order, (or as soon as reasonably practicable thereafter), the Debtor shall cause the following solicitation materials (the "Solicitation Package") to be distributed to (i) all known holders of claims and interests in Classes 2, 7, 8, 9, 10 and 11 as of the Voting Record Date who are entitled to vote on the Plan, (ii) the U.S. Trustee, and (iii) the Securities and Exchange Commission:

a. A CD Rom or a flash drive containing the Plan, the Disclosure Statement and a copy of this Disclosure Statement Order (without exhibits);

b. the appropriate Ballot and voting instructions;

c. the Confirmation Hearing Notice;

d. any supplemental solicitation materials filed with the Court; and

e. a pre-addressed return envelope.

20. The Debtor shall cause to be served on members of Classes 1, 3, 4, 5 and 6 only with (i) the Confirmation Hearing Notice, and (ii) the Notice of Non-Voting Status. Service of such documents under the procedures set forth in the Motion and this Order shall constitute adequate transmission of materials required under Bankruptcy Rule 3017(d).

21. Creditors who have more than one claim within the same Class shall receive only one Solicitation Package and one Ballot for each claim.

22. Each holder of a claim shall be entitled to vote to accept or reject the Plan in the amount of such claim as is held on the Voting Record Date.

23. With respect to claims, and solely for purposes of voting on the Plan:

a. If an objection has not been filed to a claim, the amount of such claim for voting purposes shall be the non-contingent, liquidated and undisputed claim amount contained on a timely filed proof of claim or, if no timely filed proof of claim was filed, the non-contingent, liquidated and undisputed amount of such claim listed in the Debtor's schedules filed with the Court;

b. If a claim for which a proof of claim has been timely filed is wholly contingent, unliquidated or disputed, undetermined or unknown in amount, such claim shall be temporarily allowed in the amount of $1.00 for voting purposes only, and not for purposes of allowance or distribution;

c. If a claim is partially liquidated and partially unliquidated, such claim shall be allowed for voting purposes only in the liquidated amount;

d. If an objection to a timely filed claim is filed, such claim shall be disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection;

e. Proofs of claim filed for $0.00 are not entitled to vote;

f. Notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased one or more duplicate claims within the same Class shall be provided with only one Solicitation Package and one Ballot for voting a single claim in such Class, regardless of whether the Debtor has objected to such duplicate claims;

g. If a claim is the subject of an amended proof of claim, the originally filed proof of claim shall be deemed superseded by the later filed amended proof of claim, regardless of whether or not the Debtor has objected to such claim, and only the amended proof of claim shall be used for the

purpose of determining voting eligibility in accordance with the provisions herein;

h. For purposes of the numerosity requirement of section 1126(c), separate claims held by a single creditor in a particular Class shall be aggregated as if such creditor held one claim against the Debtor in such Class, and the votes related to such claims shall be treated as a single vote to accept or reject the Plan;

i. If a claim has been disallowed by agreement of the applicable creditor or order of the Court at any time before the Voting Deadline, such claim shall also be disallowed for voting purposes; and

j. If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim shall be temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution.

24. Creditors seeking temporary allowance of their claims for voting purposes must serve the Notice Parties and file with the Court a motion seeking temporary allowance for voting purposes. Any such motion, with evidence in support thereof, must be filed no later than such date that will enable a hearing thereon to be held on or prior to the Voting Deadline. It shall be the responsibility of each creditor filing such a motion to schedule a hearing thereon to occur at or prior to the Voting Deadline.

25. The following general voting procedures and standard assumptions are to be used in tabulating Ballots:

a. Except to the extent the Debtor otherwise determines, or as permitted by the Court, Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;

b. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;

c. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;

d. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;

e. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;

f. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

g. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;

h. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; (b) overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;

i. Ballots submitted by facsimile, email or other means of electronic transmission, other than the online balloting portal, will not be counted;

j. No Ballot sent to the Debtor or the Debtor's financial or legal advisors shall be accepted or counted;

k. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with section 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms of the Plan, the Debtor will disseminate additional solicitation materials and will extend the solicitation in each case to the extent directed by the Court;

l. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;

m. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;

n. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;

o. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor in its sole discretion, which determination shall be final and binding;

p. If a designation is requested under section 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;

q. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

r. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;

s. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;

t. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;

u. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

v. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

26. The Confirmation Hearing Notice, substantially in the form attached hereto as **Exhibit B**, is hereby approved.

27. The Debtor shall serve the Confirmation Hearing Notice by no later than **four (4) business days following the entry of this Order (or as soon as reasonably practicable thereafter)**, on (i) the U.S. Trustee, (ii) counsel to the official committee of unsecured creditors (iii) the Securities and Exchange Commission, (iv) all creditors on the list of creditors and equity security holders maintained by the Balloting Agent in this chapter 11 case, and (v) those parties who requested notice pursuant to Bankruptcy Rule 2002.

28. The Notice of Non-Voting Status, substantially in the form attached hereto as **Exhibit C**, is hereby approved.

29. The Assumption Notice, substantially in the form attached hereto as **Exhibit D**, is hereby approved.

30. Consistent with section 1126 and Bankruptcy Rule 3017(d), Solicitation Packages shall not be distributed to holders of claims in the Non-Voting Classes (*i.e.*, Classes 1, 3, 4, 5 and 6); *provided, however*, that members of Classes 1, 3, 4, 5 and 6 shall receive the Confirmation Hearing Notice and Notice of Non-Voting Status, which includes instructions on how to obtain copies of the Solicitation Package, if so desired.

31. To the extent that the Debtor, in its sole discretion, elects to publish the Confirmation Hearing Notice, such publication, substantially in the form of Confirmation Hearing Notice attached hereto as **Exhibit B**, is approved, and the Debtor, to the extent that it elects to publish the Confirmation Hearing Notice, shall publish the Confirmation Hearing Notice in the national edition of the *Wall Street Journal* or similar paper of national circulation on or before **December 6, 2020,** and may pay the costs of such publication.

32. The Debtor is excused from re-mailing Solicitation Packages, the Confirmation Hearing Notice, or Notice of Non-Voting Status, as the case may be, to those entities whose addresses differ from the addresses in the claims register or the Debtor's records as of the Voting Record Date.

33. The Debtor is authorized and empowered to take all actions and execute such other documents as may be necessary to implement the relief granted herein.

34. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

END OF ORDER

EXHIBIT A

Forms of Ballot for Classes 2, 7, 8, 9, 10 and 11

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 2 BALLOT – Frontier Secured Claim

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the "Plan"). All capitalized terms used in this ballot (the "Ballot"), including in the voting instructions attached to this Ballot (the "Voting Instructions"), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On _____, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an Order [Docket No. __] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the "Disclosure Statement") as containing adequate information and authorized the above-captioned debtor (the "Debtor") to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.

This Ballot must be received by Kurtzman Carson Consultants LLC (the "Balloting Agent") by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the "Voting Deadline"), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term "Voting Deadline" shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.

Item 1. Acceptance or Rejection of the Plan

The undersigned certifies that as of November 23, 2020 (the "Record Date"), the undersigned was the holder of a Class 2 Frontier Secured Claim in the aggregate outstanding amount of $_____.[2]

CHECK ONE BOX

I hereby vote the above Claim to ACCEPT the Plan

I hereby vote the above Claim to REJECT the Plan

NOTE: You must vote all of your Class 2 Claim either to accept or reject the Plan, and may not split such vote.

Item 2. Certification

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 2 Claim set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

[2] For voting purposes only. Subject to tabulation rules.

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of the Class 2 Claim;

(iv) no other Ballots with respect to the Class 2 Claim identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 2 Claim, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: _____

SIGNATURE: _____

BY: _____
(If appropriate)

TITLE: _____
(If appropriate)

ADDRESS: _____

_____

TEL. NO. ( ) _____ - _____ DATE: _____

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT HIGHLANDINFO@KCCLLC.COM AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.

If by first class mail, personal delivery or overnight mail, to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #:_____
Unique Electronic Ballot PIN #: _____

Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;

2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;

3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;

4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;

5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;

6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;

8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;

9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.

10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;

11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;

13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;

14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;

15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;

16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;

17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;

19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;

20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;

21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 7 BALLOT – Convenience Claims

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the "Plan"). All capitalized terms used in this ballot (the "Ballot"), including in the voting instructions attached to this Ballot (the "Voting Instructions"), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On _____, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an Order [Docket No. __] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the "Disclosure Statement") as containing adequate information and authorized the above-captioned debtor (the "Debtor") to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.

This Ballot must be received by Kurtzman Carson Consultants LLC (the "Balloting Agent") by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the "Voting Deadline"), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term "Voting Deadline" shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.

Item 1. Acceptance or Rejection of the Plan

The undersigned certifies that as of November 23, 2020 (the "Record Date"), the undersigned was the holder of a Class 7 Convenience Claim in the aggregate outstanding amount of $_____.[2]

CHECK ONE BOX

I hereby vote the above Claim to ACCEPT the Plan

I hereby vote the above Claim to REJECT the Plan

NOTE: You must vote all of your Class 7 Convenience Claim either to accept or reject the Plan, and may not split such vote.

Item 2. GUC Election – Optional and Voluntary Election to Receive the Treatment Provided to Class 8 General Unsecured Claims.

If you check the box below, your Claim will receive the treatment provided to Class 8 General Unsecured Claims and you will receive (i) your Pro Rata share of the Claimant Trust Interests or (ii) such other less favorable treatment as to which you and the Claimant Trustee shall have agreed upon in writing.

If you check the box below and elect to have your Class 7 Convenience Claim treated as a Class 8 General Unsecured Claim; (i) your vote on this Ballot to accept or reject the Plan will still be tabulated as a vote in Class 7 with respect to the Plan, but your Claim will receive the treatment afforded to Class 8 General Unsecured Claims; and (ii) you will be giving up all distributions to Class 7 Convenience Class Claims in exchange for the treatment provided to Class 8 General Unsecured Claims.

I hereby elect to have my Class 7 Convenience Claim identified in Item 1 treated

[2] For voting purposes only. Subject to tabulation rules.

as a Class 8 General Unsecured Claim for all purposes.

Item 3. Certification

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 7 Convenience Claim(s) set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 7 Convenience Claims;

(iv) no other Ballots with respect to the Class 7 Convenience Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 7 Convenience Claims, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: _____

SIGNATURE: _____

BY: _____
(If appropriate)

TITLE: _____
(If appropriate)

ADDRESS: _____

_____

TEL. NO. ( ) _____ - _____ DATE: _____

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a

claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT HIGHLANDINFO@KCCLLC.COM AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.

If by first class mail, personal delivery or overnight mail, to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #:_____
Unique Electronic Ballot PIN #: _____

Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;

2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;

3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;

4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;

5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;

6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;

8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;

9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.

10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;

11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;

13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;

14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;

15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;

16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;

17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;

19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;

20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;

21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 8 BALLOT – General Unsecured Claims

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the "Plan"). All capitalized terms used in this ballot (the "Ballot"), including in the voting instructions attached to this Ballot (the "Voting Instructions"), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On _____, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an Order [Docket No. __] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the "Disclosure Statement") as containing adequate information and authorized the above-captioned debtor (the "Debtor") to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.

This Ballot must be received by Kurtzman Carson Consultants LLC (the "Balloting Agent") by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the "Voting Deadline"), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term "Voting Deadline" shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.

Item 1. Acceptance or Rejection of the Plan

The undersigned certifies that as of November 23, 2020 (the "Record Date"), the undersigned was the holder of a Class 8 General Unsecured Claim in the aggregate outstanding amount of $_____.[2]

CHECK ONE BOX

I hereby vote the above Claim to ACCEPT the Plan

I hereby vote the above Claim to REJECT the Plan

NOTE: You must vote all of your Class 8 General Unsecured Claim either to accept or reject the Plan, and may not split such vote.

Convenience Class Election – Optional and Voluntary Election to Receive the Treatment Provided Class 7 Convenience Claims.

If your Claim is liquidated on or before the Confirmation Date, you are eligible to make the Convenience Class Election. If you are eligible and you check the box below, your Claim will be reduced to $1,000,000 (to the extent your claim is in excess of that amount), and you will receive the treatment provided to Class 7 Convenience Claim, which is the lesser of (a) 85% of the Allowed amount of your Claim (as reduced) or (b) your pro rata share of the Convenience Claims Cash Pool ($13,150,000).

If you check the box below and elect to have your Class 8 General Unsecured Claim treated as a Class 7 Convenience Claim; (i) your vote on this Ballot to accept or reject the Plan will still be tabulated as a vote in Class 8 with respect to the Plan, but your Claim (as reduced) will receive the treatment afforded to Class 7 Convenience Claims; and (ii) you will be giving up all distributions to Class 8 General Unsecured Claims in exchange for the treatment provided to Class 7 Convenience Claims

[2] For voting purposes only. Subject to tabulation rules.

I hereby elect to reduce my Claim and to receive the treatment provide to a Class 7 Convenience Claim.

Item 2. Certification

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 8 General Unsecured Claim(s) set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 8 General Unsecured Claims;

(iv) no other Ballots with respect to the Class 8 General Unsecured Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 8 General Unsecured Claims, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: _____

SIGNATURE: _____

BY: _____
(If appropriate)

TITLE: _____
(If appropriate)

ADDRESS: _____

_____

TEL. NO. ( ) _____ - _____ DATE: _____

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT HIGHLANDINFO@KCCLLC.COM AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.

If by first class mail, personal delivery or overnight mail, to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #:_____
Unique Electronic Ballot PIN #: _____

Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;

2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;

3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;

4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;

5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;

6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;

8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;

9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.

10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;

11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;

13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;

14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;

15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;

16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;

17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;

19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;

20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;

21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 9 BALLOT – Subordinated Claims

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the "Plan"). All capitalized terms used in this ballot (the "Ballot"), including in the voting instructions attached to this Ballot (the "Voting Instructions"), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On _____, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an Order [Docket No. __] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the "Disclosure Statement") as containing adequate information and authorized the above-captioned debtor (the "Debtor") to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.

This Ballot must be received by Kurtzman Carson Consultants LLC (the "Balloting Agent") by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the "Voting Deadline"), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term "Voting Deadline" shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.

Item 1. Acceptance or Rejection of the Plan

The undersigned certifies that as of November 23, 2020 (the "Record Date"), the undersigned was the holder of a Class 9 Subordinated Claim in the aggregate outstanding amount of $_____.[2]

CHECK ONE BOX

I hereby vote the above Claim to ACCEPT the Plan

I hereby vote the above Claim to REJECT the Plan

NOTE: You must vote all of your Class 9 Subordinated Claim either to accept or reject the Plan, and may not split such vote.

Item 2. Certification

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 9 Subordinated Claim(s) set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

[2] For voting purposes only. Subject to tabulation rules.

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 9 Subordinated Claims;

(iv) no other Ballots with respect to the Class 9 Subordinated Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 9 Subordinated Claims, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: _____

SIGNATURE: _____

BY: _____
(If appropriate)

TITLE: _____
(If appropriate)

ADDRESS: _____

_____

TEL. NO. ( ) _____ - _____ DATE: _____

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT HIGHLANDINFO@KCCLLC.COM AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.

If by first class mail, personal delivery or overnight mail, to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #:_____
Unique Electronic Ballot PIN #: _____

Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;

2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;

3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;

4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;

5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;

6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;

8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;

9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.

10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;

11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;

13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;

14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;

15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;

16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;

17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;

19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;

20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;

21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 10 BALLOT – Class B/C Limited Partnership Interests

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the "Plan"). All capitalized terms used in this ballot (the "Ballot"), including in the voting instructions attached to this Ballot (the "Voting Instructions"), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On _____, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an Order [Docket No. __] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended)(the "Disclosure Statement") as containing adequate information and authorized the above-captioned debtor (the "Debtor") to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.

This Ballot must be received by Kurtzman Carson Consultants LLC (the "Balloting Agent") by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the "Voting Deadline"), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term "Voting Deadline" shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.

Item 1. Acceptance or Rejection of the Plan

The undersigned certifies that as of November 23, 2020 (the "Record Date"), the undersigned was the holder of a Class 10 Class B/C Limited Partnership Interests in the aggregate outstanding amount of $_____.[2]

CHECK ONE BOX

I hereby vote the above Interest to ACCEPT the Plan

I hereby vote the above Interest to REJECT the Plan

NOTE: You must vote all of your Class 10 Class B/C Limited Partnership Interests either to accept or reject the Plan, and may not split such vote.

Item 2. Certification

By signing this Ballot, the undersigned certifies with respect to the Class 10 Class B/C Limited Partnership Interests identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 10 Class B/C Limited Partnership Interests set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

[2] For voting purposes only. Subject to tabulation rules.

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 10 Class B/C Limited Partnership Interests;

(iv) no other Ballots with respect to the Class 10 Class B/C Limited Partnership Interests identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 10 Class B/C Limited Partnership Interests, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: _____

SIGNATURE: _____

BY: _____
(If appropriate)

TITLE: _____
(If appropriate)

ADDRESS: _____

_____

TEL. NO. ( ) _____ - _____ DATE: _____

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT HIGHLANDINFO@KCCLLC.COM AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING

AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.

If by first class mail, personal delivery or overnight mail, to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #:_____
Unique Electronic Ballot PIN #: _____

Each Electronic Ballot ID# is to be used solely for voting on those Interests in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;

2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;

3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;

4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;

5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;

6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;

8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;

9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.

10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;

11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;

13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;

14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;

15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;

16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;

17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;

19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;

20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;

21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 11 BALLOT – Class A Limited Partnership Interests

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the "Plan"). All capitalized terms used in this ballot (the "Ballot"), including in the voting instructions attached to this Ballot (the "Voting Instructions"), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On _____, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an Order [Docket No. __] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended)(the "Disclosure Statement") as containing adequate information and authorized the above-captioned debtor (the "Debtor") to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.

This Ballot must be received by Kurtzman Carson Consultants LLC (the "Balloting Agent") by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the "Voting Deadline"), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term "Voting Deadline" shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.

Item 1. Acceptance or Rejection of the Plan

The undersigned certifies that as of November 23, 2020 (the "Record Date"), the undersigned was the holder of a Class 11 A Limited Partnership Interests in the aggregate outstanding amount of $_____.[2]

CHECK ONE BOX

I hereby vote the above Interest to ACCEPT the Plan

I hereby vote the above Interest to REJECT the Plan

NOTE: You must vote all of your Class 11 Class A Limited Partnership Interests either to accept or reject the Plan, and may not split such vote.

Item 2. Certification

By signing this Ballot, the undersigned certifies with respect to the Class 11 Class A Limited Partnership Interests identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 11 Class A Limited Partnership Interests set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

[2] For voting purposes only. Subject to tabulation rules.

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 11 Class A Limited Partnership Interests;

(iv) no other Ballots with respect to the Class 11 Class A Limited Partnership Interests identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 11 Class A Limited Partnership Interests such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: _____

SIGNATURE: _____

BY: _____
(If appropriate)

TITLE: _____
(If appropriate)

ADDRESS: _____

_____

TEL. NO. ( ) _____ - _____ DATE: _____

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT HIGHLANDINFO@KCCLLC.COM AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.

If by first class mail, personal delivery or overnight mail, to:

HCMLP Ballot Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit http://www.kccllc.net/hcmlp and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #:_____
Unique Electronic Ballot PIN #: _____

Each Electronic Ballot ID# is to be used solely for voting on those Interests in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;

2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;

3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;

4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;

5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;

6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;

8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;

9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.

10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;

11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;

13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;

14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;

15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;

16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;

17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;

19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;

20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;

21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

EXHIBIT B

Confirmation Hearing Notice

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
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10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NOTICE OF: (I) ENTRY OF ORDER APPROVING DISCLOSURE STATEMENT; (II) HEARING TO CONFIRM PLAN; AND (III) RELATED IMPORTANT DATES[2]

On [•], 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered its *Order (a) Approving the Adequacy of the Disclosure Statement; (b) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization; (c) Establishing Deadline for Filing Objections to Confirmation of Plan; (d) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (e) Approving Form and Manner of Notice* (the "Disclosure Statement Order"). The Disclosure Statement Order approved the *Disclosure Statement for the Ffith Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Disclosure Statement"), as containing adequate information required

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms have the meanings given to them in the Plan.

under section 1125(a) of the Bankruptcy Code, and authorized the Debtor to solicit acceptances of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Plan").

HEARING TO CONFIRM PLAN. A hearing to confirm the Plan (the "Confirmation Hearing") will commence on **January 13, 2021, at 9:30 a.m., prevailing Central Time**, before the Bankruptcy Court. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing.

PLAN OBJECTION DEADLINE. The Bankruptcy Court has established **January 5, 2021, at 5:00 p.m., prevailing Central Time**, as the last date and time for filing and serving objections to the confirmation of the Plan (the "Plan Objection Deadline"). All objections must state with particularity the legal and factual grounds for such objection.

In order to be considered by the Bankruptcy Court, objections, if any, must: (i) be in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Northern District of Texas; (iii) be filed with the United States Bankruptcy Court for the Northern District of Texas; and (iv) be served upon by the following parties: (a) counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Attn: Jeffrey N. Pomerantz, Ira D. Kharasch, and Gregory V. Demo, Emails: jpomerantz@pszjlaw.com, ikharasch@pszjlaw.com, gdemo@pszjlaw.com; (b) counsel for the Debtor, Hayward & Associates PLLC, 10501 N. Central Expy, Ste. 106, Dallas, Texas 75231, Attn: Melissa S. Hayward and Zachery Z. Annable, Emails: ZAnnable@HaywardFirm.com, MHayward@HaywardFirm.com; (c) counsel to the official committee of unsecured creditors, Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, Attn: Matthew A. Clemente and Alyssa Russell, Emails: mclemente@sidley.com, Alyssa.russell@sidley.com; and (d) counsel for the Office of the United States Trustee, U.S. Department of Justice, Region 6: Northern District of Texas, Office of The United States Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Lisa L. Lambert, Emails: Email: Lisa.L.Lambert@usdoj.gov (collectively, the "Notice Parties").

VOTING RECORD DATE. **November 23, 2020**, is the record date for purposes of determining which parties are entitled to vote on the Plan.

VOTING DEADLINE. **January 5, 2021** (the "Voting Deadline"), is the deadline for casting a ballot ("Ballot") to accept or reject the Plan. All Ballots accepting or rejecting the Plan must be received by the Notice and Balloting Agent by 5:00 p.m., prevailing Central Time, on the Voting Deadline at the following address, whether by First Class Mail, hand delivery, or overnight courier: HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. If you require a Ballot, or if your Ballot is lost, damaged or destroyed, contact the Notice and Balloting Agent to obtain a replacement Ballot.

RULE 3018 MOTION DEADLINE AND HEARING. It shall be the responsibility of each party who files a motion for an order pursuant to Bankruptcy Rule 3018(a) seeking temporary allowance of a claim for voting purposes to (a) file such motion with evidence in support thereof by no later than **January 5, 2021**, (b) schedule a hearing on such motion, and (c) schedule the hearing on or prior to the Confirmation Hearing.

Dated: _____, 2020

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
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Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

If you require additional information, you may contact the Debtor's Solicitation Agent, KCC, by calling 877-573-3984 (U.S. and Canada) or 310-751-1829 (International), by email at HighlandInfo@kccllc.com, or through the case website: http://www.kccllc.net/HCMLP.

EXHIBIT C

Notice of Non-Voting Status

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
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HAYWARD & ASSOCIATES PLLC
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Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NOTICE OF NON-VOTING STATUS WITH RESPECT TO UNIMPAIRED CLASSES DEEMED TO ACCEPT THE PLAN[2]

TO: ALL HOLDERS OF CLAIMS IN CLASS 1 (JEFFERIES SECURED CLAIM), CLASS 3 (OTHER SECURED CLAIMS); CLASS 4 (PRIORITY NON-TAX CLAIMS); CLASS 5 (RETAINED EMPLOYEE CLAIMS); AND CLASS 6 (PTO CLAIMS)

On [•], 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered its *Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms not defined herein shall have the same meaning as ascribed in the Plan.

Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice (the "Disclosure Statement Order"). The Disclosure Statement Order approved the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Disclosure Statement"), as containing adequate information required under section 1125(a) of the Bankruptcy Code, and authorized the Debtor to solicit acceptances of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Plan").

In accordance with the terms of the Plan and the Bankruptcy Code, holders of claims in Classes 1, 3, 4, 5 and 6 are unimpaired under § 1124 of the Bankruptcy Code and, therefore, pursuant to § 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the Plan and are not entitled to vote on the Plan. You have been sent this notice because you have been identified as a holder of a claim in Class 1, 3, 4, 5 or 6. This notice and the Confirmation Hearing Notice are provided to you for informational purposes only.

If you have any questions regarding the status of your claim or wish to obtain additional information, including a copy of the Plan and Disclosure Statement free of charge, you may contact KCC, via email at HighlandInfo@kccllc.com and reference "Highland Capital Management, L.P." in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor's case for a fee via PACER at pacer.uscourts.gov.

Alternatively, you can obtain a copy of these documents by contacting counsel for the Debtor (a) by e-mail, at gdemo@pszjlaw.com, (b) by telephone, by contacting Gregory Demo at (212) 561-7700, or (c) by mail, at Pachulski Stang Ziehl & Jones LLP, Attn: Gregory Demo, 780 Third Avenue, 34th Floor, New York, NY 10017. Please specify whether you would like to receive copies of these documents by (i) **email transmission** (in which case, please include your e-mail address), (ii) on a **CD-ROM or flash drive** delivered by return mail, or (iii) in **paper copies** delivered by return mail.

Dated: _____, 2020

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

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/s/ Zachery Z. Annable

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Counsel for the Debtor and Debtor-in-Possession

EXHIBIT D

Form of Notice of Assumption of Executory Contracts and Unexpired Leases

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

NOTICE OF (I) EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED BY THE DEBTOR PURSUANT TO THE FIFTH AMENDED PLAN, (III) CURE AMOUNTS, IF ANY, AND (III) RELATED PROCEDURES IN CONNECTION THEREWITH

PLEASE TAKE NOTICE THAT on _____, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an order [Docket No. __] (the "Disclosure Statement Order") that, among other things: (a) approved the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Disclosure Statement") as containing "adequate information" pursuant to section 1125(a)

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

of the title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"); and (b) authorized the above-captioned debtor and debtor-in-possession (the "Debtor") to solicit acceptances of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the "Plan").[2]

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan and related voting and objection procedures (the "Confirmation Hearing") will commence on January 13, 2021 at 9:30 a.m. prevailing Central Time, before the Honorable Stacey G. C. Jernigan, in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), located at Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom No. 1, Dallas, TX 75242-1496.

PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice because the Debtor's records reflect that you are a party to a contract that will be assumed by the Debtor or, alternatively, assumed by the Debtor and assigned to and assignee. Therefore, you are advised to review carefully the information contained in this notice and the related provisions of the Plan.

PLEASE TAKE FURTHER NOTICE THAT the Debtor is proposing to assume, or alternatively assume and assign, your Executory Contract(s) and Unexpired Lease(s), listed in **Schedule A** attached hereto to which you are a party.[3]

PLEASE TAKE FURTHER NOTICE THAT section 365(b)(1) of the Bankruptcy Code requires a chapter 11 debtor to cure, or provide adequate assurance that it will promptly cure, any defaults under executory contracts and unexpired leases at the time of assumption/assignment. Accordingly, the Debtor has conducted a thorough review of its books and records and has determined the amounts required to cure defaults, if any, under the Executory Contract(s) and Unexpired Lease(s), which amounts are listed in the table on **Schedule A** attached hereto. Please note that if no amount is stated for a particular Executory Contract or Unexpired Lease, the Debtor believes that there is no cure amount outstanding for such contract or lease.

PLEASE TAKE FURTHER NOTICE THAT absent any pending dispute, the monetary amounts required to cure any existing defaults arising under the Executory Contract(s) and Unexpired Lease(s) identified on **Schedule A** attached hereto will be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by the Debtor in Cash on the Effective Date or as soon as reasonably practicable thereafter. In the event of a dispute, however, payment of the cure amount would be made following the entry of a final order(s) resolving the dispute and approving the assumption. If an objection to the proposed assumption or related cure amount is

[2] Capitalized terms not defined herein shall have the same meaning as ascribed in the Plan.

[3] Nothing contained in the Plan or the Debtor's schedule of assets and liabilities shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease capable of assumption, or assumption and assignment, that the Debtor or the Reorganized Debtor(s) has any liability thereunder, or that such Executory Contract or Unexpired Lease is necessarily a binding and enforceable agreement. Further, the Debtor expressly reserves the right to remove any Executory Contract or Unexpired Lease from assumption or assumption and assignment by the Debtor and reject such Executory Contract or Unexpired Lease pursuant to the terms of the Plan.

sustained by the Court, however, the Debtor may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan (including any assumption and/or assignment of an Executory Contract or Unexpired Lease as contemplated in the Plan Supplement) is January 5, 2021, at 5:00 p.m., prevailing Central Time (the "Confirmation Objection Deadline"). Any objection to the Plan must: (a) be in writing; (b) comply with the Federal Rules of Bankruptcy Procedure and the Bankruptcy Local Rules for the Northern District of Texas; (c) state, with particularity, the name and address of the objecting party, the basis and nature of any objection to the Plan, and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court on or before the **Confirmation Objection Deadline**.

PLEASE TAKE FURTHER NOTICE THAT any objections to the Plan in connection with the assumption and/or assignment of the Executory Contract(s) and Unexpired Lease(s) proposed in connection with the Plan that remain unresolved as of the Confirmation Hearing will be heard at the first omnibus hearing following the Confirmation Hearing (or such other date as fixed by the Court).

PLEASE TAKE FURTHER NOTICE THAT ANY COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE THAT FAILS TO OBJECT TIMELY TO EITHER THE PROPOSED ASSUMPTION AND/OR ASSIGNMENT OF SUCH CONTRACT OR LEASE OR THE CURE AMOUNT WILL BE DEEMED TO HAVE ASSENTED TO SUCH ASSUMPTION AND/OR ASSIGNMENT AND CURE AMOUNT.

PLEASE TAKE FURTHER NOTICE THAT ASSUMPTION AND/OR ASSIGNMENT OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE PURSUANT TO THE PLAN OR OTHERWISE SHALL RESULT IN THE FULL RELEASE AND SATISFACTION OF ANY CLAIMS OR DEFAULTS, WHETHER MONETARY OR NONMONETARY, INCLUDING DEFAULTS OF PROVISIONS RESTRICTING THE CHANGE IN CONTROL OR OWNERSHIP INTEREST COMPOSITION OR OTHER BANKRUPTCY-RELATED DEFAULTS, ARISING UNDER ANY ASSUMED EXECUTORY CONTRACT OR UNEXPIRED LEASE AT ANY TIME BEFORE THE DATE OF THE DEBTOR OR REORGANIZED DEBTOR ASSUMES OR ASSIGNS SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE. ANY PROOFS OF CLAIM FILED WITH RESPECT TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE THAT HAS BEEN ASSUMED SHALL BE DEEMED DISALLOWED AND EXPUNGED, WITHOUT FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT.

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement Order, Disclosure Statement, the Plan, the Plan Supplement, or related documents, you may: (a) access the Debtor's restructuring website at http://www.kccllc.net/hcmlp; (b) write to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; (c) call toll free: (877) 573-3984 or international: (310) 751-1829 and request to speak with a member of the Solicitation Group; or (d) email HighlandInfo@kccllc.com and reference "Highland" in the subject line. You may also

obtain copies of any pleadings filed in this case for a fee via PACER at: pacer.uscourts.gov.

Alternatively, you can obtain a copy of these documents by contacting counsel for the Debtor (a) by e-mail, at gdemo@pszjlaw.com, (b) by telephone, by contacting Gregory Demo at (212) 561-7700, or (c) by mail, at Pachulski Stang Ziehl & Jones LLP, Attn: Gregory Demo, 780 Third Avenue, 34th Floor, New York, NY 10017. Please specify whether you would like to receive copies of these documents by (i) **email transmission** (in which case, please include your e-mail address), (ii) on a **CD-ROM or flash drive** delivered by return mail, or (iii) in **paper copies** delivered by return mail.

THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE SOLICITATION AGENT.

Dated: _____, 2020

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for the Debtor and Debtor-in-Possession

Schedule A

Schedule of Assumed Contracts and Leases and Proposed Cure Cost

Debtor	Counterparty	Description of Assumed Contracts or Leases	Cure Cost	Proposed Assignee of Contract or Lease

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054 (SGJ11)
Debtors.	)	(Jointly Administered)

MOTION FOR ORDER IMPOSING TEMPORARY RESTRICTIONS ON DEBTOR'S ABILITY, AS PORTFOLIO MANAGER, TO INITIATE SALES BY NON-DEBTOR CLO VEHICLES

Highland Capital Management Fund Advisors, L.P. ("**HCMFA**") and NexPoint Advisors, L.P. ("**NexPoint**", and together with HCMFA, the "**Advisors**"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the

"**Funds**"), by and through their undersigned counsel, hereby submit this motion for an order of the Court under Bankruptcy Code §§ 105(a), 363, and 1107 imposing temporary restrictions on Highland Capital Management, L.P.'s (the "**Debtor**") ability to initiate sales as portfolio manager (or other similar capacity) for certain non-debtor investment vehicles (the "**CLOs**"). In support of the Motion, the Funds and Advisors submit the Declaration of Dustin Norris (the "**Declaration**") attached hereto and state as follows:

BACKGROUND

A. General Background on the Advisors and their Advised Funds

1. Each Advisor is registered with the U.S. Securities and Exchange Commission ("**SEC**") as an investment advisor under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**").

2. Each of the Advisors advises several funds, including the Funds. Each of the Funds is a registered investment company or business development company under the Investment Company Act of 1940 (as amended, the "**1940 Act**").

3. As an investment company or business development company, each Fund is overseen by a majority independent board of trustees subject to 1940 Act requirements. That board reviews and approves contracts with one of the Advisors for the respective Fund. The Funds do not have employees. Instead, each Fund relies on its respective Advisor, acting pursuant to advisory agreements, to provide the services necessary to the Fund's operations.

B. The CLOs

4. The CLOs are Aberdeen Loan Funding, Ltd., Brentwood CLO, Ltd., Eastland CLO, Ltd., Gleneagles CLO, Ltd., Grayson CLO, Ltd., Greenbriar CLO, Ltd., Jasper CLO, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Rockwall CDO, Ltd., Rockwall CDO II Ltd.,

Southfork CLO, Ltd., Stratford CLO Ltd., Loan Funding VII, LLC, and Westchester CLO, Ltd.

5. The CLOs are securitization vehicles formed to acquire and hold pools of debt obligations. They also issued various tranches of notes and preference shares, which are intended to be repaid from proceeds of the subject CLO's pool of debt obligations. The notes issued by the CLOs are paid according to a contractual waterfall, with the value remaining in the CLO after the notes are fully paid flowing to the holders of the preference shares.

6. The CLOs were created many years ago. Most of the CLOs are, at this point, past their reinvestment period and have paid off all the tranches of notes or, in a few instances, all but the last and most junior tranche. Accordingly, most of the economic value remaining in the CLOs, and all of the upside, belongs to the holders of the preference shares. The repayment status of the notes in the CLOs as of November 2020 is shown on Exhibit A to the Declaration, and the Funds' collective ownership of the preference shares is shown on Exhibit B to the Declaration. As shown on Exhibit B, the Funds hold a majority of the preference shares in three of the CLOs, Grayson CLO, Ltd., Greenbriar CLO, Ltd., and Stratford CLO Ltd., and material interests in most of the other CLOs.

7. The CLOs have each separately contracted for the Debtor to serve as the CLO's portfolio manager.[1] In this capacity, the Debtor is responsible, among other things, for making decisions to sell the CLOs' assets. Although the portfolio management agreements vary, the agreements generally impose a duty on the Debtor when acting as portfolio manager to maximize the value of the CLO's assets for the benefit of the CLO's noteholders and preference

[1] The title given to the Debtor by the CLOs varies from CLO to CLO based on the relevant agreements, but the Debtor has the same general rights and obligations for each CLO. In this Motion, the Funds and Advisors have used the term "portfolio manager" when referring to the Debtor's role for each CLO regardless of the precise title in the underlying documents.

shareholders.

C. The Operating Protocols

8. As part of the resolution of certain disputes between the Debtor and the Official Committee of Unsecured Creditors (the "**Committee**"), the Debtor is operating under the restrictions and provisions of certain operating protocols (the "**Operating Protocols**") approved by the Court. See Notice of Debtor's Amended Operating Protocols (Docket No. 466). Among other things, the Operating Protocols include provisions regulating the Debtor's actions on behalf of other entities. With respect to the CLOs, however, the Operating Protocols generally exempt the Debtor from the regular approval process involving the Committee where the Debtor acts as portfolio manager for the CLOs. See, e.g., Operating Protocols at § IV(B)(3)(a).

C. Recent Asset Sales and the Advisors' Requests for a Temporary Pause in Sales

9. The Court recently approved the Debtor's Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Docket No. 1473) (the "Disclosure Statement").

10. The Disclosure Statement discusses the Debtor's role as portfolio manager for the CLOs (which the Disclosure Statement defines as "Issuers") in Article II(U) (pg. 32). After explaining the Debtor's role and noting some proofs of claim filed by the CLOs, the Disclosure Statement states as follows:

> The Issuers have taken the position that the rejection of the Portfolio Management Agreements (including any ancillary documents) would result in material rejection damages and have encouraged the Debtor to assume such agreements. Nonetheless, the Issuers and the Debtor are working in good faith to address any outstanding issues regarding such assumption. The Portfolio Management Agreements may be assumed either pursuant to the Plan or by separate motion filed with the Bankruptcy Court.

> The Debtor is still assessing its options with respect to the Portfolio Management Agreements, including whether to assume the Portfolio Management Agreements.

11. The Financial Projections attached as Exhibit C to the Disclosure Statement make clear that, assuming confirmation of the Debtor's chapter 11 plan in its current form, the Debtor intends to liquidate its remaining assets over the next two years, concluding in December 2022.

12. The Funds and Advisors do not agree with recent sales executed by the Debtor in certain CLOs, including sales during the historically light Thanksgiving trading week, because the Funds and Advisors view those assets as having greater value if held as long-term investments. When the Advisors became aware the Debtor was considering these transactions, NexPoint requested that the Debtor not consummate the sales.

13. NexPoint has requested in two letters that the Debtor refrain from causing the CLOs to sell further assets without prior notice and consent of NexPoint. Counsel to the Funds and Advisors has also requested by email that the Debtor agree consensually to temporarily suspend further sales of the CLOs' assets and/or confirm that the Debtor is not presently planning further sales in the immediate future. The Debtor has refused these requests.

D. <u>HCMLP Decisions Illustrating Its Short-Term Approach</u>

14. Consistent with its proposal to liquidate all of its assets by the end of 2022 per the Disclosure Statement, HCMLP has engaged in transactions taking a short-term approach to value.

15. In addition to the sales noted above during Thanksgiving week, during the chapter 11 case, the Debtor has directed the disposition of other assets in a manner that suggests a focus on quick monetization at the expense of maximizing returns for investors and/or the

estate. For example, Debtor-controlled entities sold a collective majority interest in an unsecured term loan to OmniMax International, Inc. Other non-Debtor controlled entities, advised by the Advisors, were able to secure a substantially better price for their stake in the same asset by being willing to hold it and transacting at a later date. Given the Debtor-controlled entities large ownership in the unsecured loan, the Advisors believe the Debtor was well-positioned to realize a higher price.

16. Also, upon information and belief, the Debtor, through its wholly owned subsidiary Trussway Holdings, LLC ("**Trussway**"), consummated a sale transaction where Trussway sold a division, SSP Holdings, LLC, in which Trussway had a majority interest. Upon information and belief, the sale was conducted without a formal competitive bidding process and resulted in a loss of $10 million, despite certain metrics of SSP Holdings, LLC having improved materially since it was acquired in 2014.

REQUEST FOR RELIEF

17. The Funds and Advisors request that the Court, under Bankruptcy Code sections 105(a), 363, and 1107(a) impose a temporary restriction on the Debtor's ability, as portfolio manager, to cause the CLOs to sell assets. The Funds and Advisors request that the Court prohibit the Debtor from authorizing any such sales for a period of 30 days, absent further order of the Court.

18. Bankruptcy Code section 363 governs the Debtor's use of estate property. 11 U.S.C. § 363. Section 363 authorizes the Debtor to use that property outside of the ordinary course of business "after notice and a hearing," and in the ordinary course of business without notice and a hearing "unless the court orders otherwise . . . ." 11 U.S.C. § 363(b-c). Bankruptcy Code section 1107(a) grants the Debtor, as debtor-in-possession, the powers of a chapter 11 trustee, subject to "such limitations or conditions as the court prescribes . . . ." 11 U.S.C.

§ 1107(a). And Bankruptcy Code section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a).

19. Consistent with these powers, the Court implemented the Operating Protocols earlier in this case regarding the Debtor's actions on behalf of other non-debtor entities. Unlike where the Debtor directs sales of assets for other entities, however, the Operating Protocols generally do not restrict the Debtor's actions as portfolio manager for the CLOs. See Operating Protocols at IV(B)(3)(a).[2] The Funds and Advisors submit that the relief requested does not conflict with the Operating Protocols, but to the extent necessary, the Funds and Advisors request that the Court modify the Operating Protocols in the limited and temporary way requested in this Motion.

20. The Funds and Advisors seek this relief to preserve the status quo at the CLOs while the Funds and Advisors explore replacing the Debtor as portfolio manager either

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[2] Section IV(B)(3)(a) (Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest)(Operating Requirements)(Third Party Transactions: All Stages) provides in full:

> **Except** (x) as set forth in (b) and (c) below and **(y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party,** any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(emphasis added). "Specified Entity" is defined in section I(K) of the Operating Protocols to include the CLOs referenced in this Motion.

consensually or through the contractual processes laid out in the relevant underlying agreements.

21. In the Disclosure Statement, the Debtor states that it has not determined if it wants to continue to serve as portfolio manager for the CLOs. The Debtor also has not sought input from the Funds and Advisers, even though the Funds are among the largest stakeholders indirectly and significantly affected by the Debtor's actions with respect to the CLOs.

22. The Advisers Act places a fiduciary duty on investment advisers comprising a duty of care and duty of loyalty. See, e.g., SEC Release No. IA-3248, "Commission Interpretation Regarding Standard of Conduct for Investment Advisers," (July 12, 2019). This means an adviser, like the Debtor, must, at all times, serve the best interest of its client and not subordinate its client's interest to its own. See id. This combination of care and loyalty obligations has been characterized as requiring the investment adviser to act in the "best interest" of its client at all times. See SEC v. Tambone, 550 F.3d 106, 146 (1st Cir. 2008) ("Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund . . . ."); SEC v. Moran, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) ("Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.").

23. Although the Debtor's nominal "clients" are the CLOs themselves, the true parties in interest are the holders of beneficial interests in the CLOs, such as the Funds. Most or all of the other layers of CLO interests have been paid out, and the Funds hold either the majority or a substantial portion of most of the remaining CLO interests. In these circumstances, the Funds and the other preference shareholders are the parties who are economically affected by the Debtor's actions as portfolio manager.

24. The Funds and Advisors believe replacing the Debtor as portfolio manager is appropriate in light of the reduced staffing the Debtor anticipates having once the Debtor's chapter 11 plan goes effective. The Funds and Advisors also believe it is appropriate in light of the Debtor's reduced investment time horizon under the chapter 11 plan. As noted above, the Debtor intends to liquidate its investments in the next two years. The Funds, on the other hand, have a much longer investment time horizon and, as a result, have very different financial incentives with respect to their investments. The Funds and Advisors accordingly believe that the Funds and the other preference shareholders would be best served by a portfolio manager with a similar long-term perspective.

25. Upon information and belief, none of the CLOs needs liquidity at the current time, as the next quarterly waterfall payments are not due until February 2021. The Funds and Advisors accordingly submit that none of the CLOs, the other holders of preference shares and notes issued by the CLOs, or the Debtor will be harmed by the temporary restriction proposed by this Motion. Notably, the Funds and Advisors are not seeking to restrict the Debtor from performing any of its other functions for the CLOs or to modify the Debtor's compensation from the CLOs in any way.

[Remainder of Page Intentionally Left Blank]

CONCLUSION

26. For the reasons set forth above, the Funds and Advisors respectfully request that the Court grant the relief requested in the Motion and such other and further relief as the Court deems just and proper.

Dated: December 8, 2020

K&L GATES LLP

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Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2020, I caused the foregoing document to be served via first class United States mail, postage prepaid and/or electronic email through the Court's CM/ECF system to the parties that consented to such service, as each are listed in the debtor's service list filed at docket entry 1442, Exhibits A and B.

This the 8th day of December, 2020

/s/ Artoush Varshosaz
Artoush Varshosaz

CERTIFICATE OF CONFERENCE

I hereby certify that on December 7, 2020, I conferred with Mr. Greg Demo, counsel for the Debtors, regarding the relief requested in the motion. Mr. Demo informed me that the Debtors do not consent to the relief sought in the motion.

This the 8th day of December, 2020

/s/ James A. Wright III
James A. Wright III

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054 (SGJ11)
Debtors.	)	(Jointly Administered)

DECLARATION OF DUSTIN NORRIS

I, Dustin Norris, hereby declare pursuant to 28 U.S.C. § 1746, that the following is true and correct.

1. I am the Executive Vice President of NexPoint Advisors, L.P. ("**NexPoint**").

2. I submit this Declaration based on my personal knowledge and information supplied to me by other members of NexPoint's management. I submit this Declaration in support of the Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles (the "Motion") by NexPoint, Highland Capital Management Fund Advisors, L.P. ("**HCMFA**", and together with NexPoint, the "**Advisors**"), Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "**Funds**").

3. The Motion concerns the following non-debtor investment vehicles: Aberdeen Loan Funding, Ltd., Brentwood CLO, Ltd., Eastland CLO, Ltd., Gleneagles CLO, Ltd., Grayson CLO, Ltd., Greenbriar CLO, Ltd., Jasper CLO, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Rockwall CDO, Ltd., Rockwall CDO II Ltd., Southfork CLO, Ltd., Stratford CLO Ltd., Loan Funding VII, LLC, and Westchester CLO, Ltd. (collectively, the "**CLOs**").

4. The Funds each hold interests in the CLOs.

5. The CLOs are securitization vehicles formed to acquire and hold pools of debt obligations. They also issued various tranches of notes and preference shares, which are intended to be repaid from proceeds of the subject CLO's pool of debt obligations. The notes issued by the CLOs are paid according to a contractual waterfall, with the value remaining in the CLO after the notes are fully paid flowing to the holders of the preference shares.

6. The CLOs were created many years ago. Most of the CLOs are, at this point, past their reinvestment period and have paid off all the tranches of notes or, in a few instances, all but the last and most junior tranche. Accordingly, most of the economic value remaining in the CLOs, and all of the upside, belongs to the holders of the preference shares. The repayment status of the notes in the CLOs as of November 2020 is shown on Exhibit A hereto, and the Funds' collective ownership of the preference shares is shown on Exhibit B hereto.

7. The CLOs have each separately contracted for Highland Capital Management, L.P. (the "**Debtor**") to serve as the CLO's portfolio manager. The title given to the Debtor by the CLOs varies from CLO to CLO based on the relevant agreements, but the Debtor has the same general rights and obligations for each CLO. In this capacity, the Debtor is responsible, among other things, for making decisions to sell the CLOs assets. Although the portfolio management agreements vary, the agreements generally impose a duty on the Debtor when acting as portfolio manager to maximize the value of the CLO's assets for the benefit of the CLO's noteholders and preference shareholders.

8. During the chapter 11 case, the Debtor has directed the disposition of other assets in a manner that suggests a focus on quick monetization at the expense of maximizing returns for investors and/or the estate. For example, Debtor-controlled entities sold a collective majority

interest in an unsecured term loan to OmniMax International, Inc. Other non-Debtor controlled entities, advised by the Advisors, were able to secure a substantially better price for their stake in the same asset by being willing to hold it and transacting at a later date. Given the Debtor-controlled entities large ownership in the unsecured loan, the Advisors believe the Debtor was well-positioned to realize a higher price.

9. Also, upon information and belief, the Debtor, through its wholly owned subsidiary Trussway Holdings, LLC ("**Trussway**"), consummated a sale transaction where Trussway sold a division, SSP Holdings, LLC, in which Trussway had a majority interest. Upon information and belief, the sale was conducted without a formal competitive bidding process and resulted in a loss of $10 million, despite certain metrics of SSP Holdings, LLC having improved materially since it was acquired in 2014.

10. The Advisors did not agree with the Debtor's decision to execute recent sales for certain of the CLOs, because the Advisors viewed those assets as having greater value if held as long-term investments. When the Advisors became aware the Debtor was considering these transactions, NexPoint requested that the Debtor not consummate the sales.

11. Upon information and belief, none of the CLOs need liquidity at the current time, as the next quarterly waterfall payments are not due until February 2021.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8th day of December, 2020, in Allen, Texas,

By: Dustin Norris

Dustin Norris

EXHIBIT A

CLO Note Repayment Status[1]

Aberdeen Loan Funding, Ltd.

Security	CUSIP	Remaining Balance
Class A Notes	00306LAA2	$0
Class B Notes	00306LAB0	$0
Class C Notes	00306LAC8	$0
Class D Notes	00306LAD6	$0
Class E Notes	00306MAA0	$0
Class I Preference Shares	00306M201	$12,000,000.00
Class II Preference Shares	00306M300	$36,000,000.00

Brentwood CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1A Notes	107265AA8	$0
Class A-1B Notes	107265AM2	$0
Class A-2 Notes	107265AC4	$0
Class B Notes	107265AE0	$0
Class C Notes	107265AG5	$0
Class D Notes	107265AK5	$10,279,258.35
Class I Preference Shares	107264202	$34,400,000.00
Class II Preference Shares	107264400	$37,000,000.00

Eastland CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1 Notes	277345AA2	$0
Class A-2a Notes	277345AC8	$0
Class A-2b Notes	277345AE4	$0
Class A-3 Notes	277345AG9	$0
Class B Notes	277345AJ3	$0
Class C Notes	277345AL8	$0
Class D Notes	27734AAA1	$3,251,287.27
Class I Preference Shares	27734A202	$85,000,000.00
Class II Preference Shares	27734A400	$38,500,000.00

[1] As of December 1, 2020.

Gleneagles CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1 Notes		$0
Class A-2 Notes		$0
Class B Notes		$0
Class C Notes		$0
Class D Notes		$0
Class 1 Combination Notes		$0
Class 2 Combination Notes		$0
Preference Shares	37866PAB5 & G39165AA6	$91,000,000.00

Grayson CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1a Notes	389669AA0	$0
Class A-1b Notes	389669AB8	$0
Class A-2 Notes	389669AC6	$0
Class B Notes	389669AD4	$0
Class C	389669AE2	$0
Class D	389668AA2	$9,011,534.74
Class I Preference Shares	389669203	$52,500,000.00
Class II Preference Shares	389669302	$75,000,000.00

Greenbriar CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A Notes	393647AA0	$0
Class B Notes	393647AB8	$0
Class C Notes	393647AC6	$0
Class D Notes	393647AD4	$0
Class E Notes	39364PAA0	$0
Class I Preference Shares	39364P201	$20,000,000.00
Class II Preference Shares	39364P300	$60,000,000.00

Jasper CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A Notes		$0
Class B Notes		$0
Class C Notes		$0
Class D-1 Notes		$0
Class D-2 Notes		$0
Preference Shares	471315200	$70,000,000.00

Liberty CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1a Notes		$0
Class A-1b Notes		$0
Class A-1c Notes		$0
Class A-2 Notes		$0
Class A-3 Notes		$0
Class A-4 Notes		$0
Class B Notes		$0
Class C Notes		$0
Class Q-1 Notes		$0
Class P-1 Notes		$0
Class E Certificates	EP0175232 & 530360205	$94,000,000.00

Red River CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A Notes	75686VAA2	$0
Class B Notes	75686VAB0	$0
Class C Notes	75686VAC8	$0
Class D Notes	75686VAD2	$0
Class E Notes	75686XAA8	$0
Class I Preference Shares	75686X209	$36,000,000.00
Class II Preference Shares	75686X308	$45,000,000.00

Rockwall CDO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1LA Notes	774262AA7	$0
Class A-1LB Notes	774262AB5	$0
Class A-2L Notes	774262AC3	$0
Class A-3L Notes	774262AD1	$0
Class A-4L Notes	774262AE9	$0
Class B-1L Notes	774262AF6	$0
Class X Notes	774262AG4	$0
Class I Preference Shares	774272207	$33,200,000.00
Class II Preference Shares	774261127	$45,000,000.00

Rockwall CDO II Ltd.

Security	CUSIP	Remaining Balance
Class A-1LA Notes	77426NAA1	$0
Class A-1LB Notes	77426NAB9	$0
Class A-2L Notes	77426NAC7	$0
Class A-3L Notes	77426NAD5	$0
Class B-1L Notes	77426NAE3	$0
Class B-2L Notes	77426RAA2	$9,838,508.11
Class I Preference Shares	77426R203	$42,200,000.00
Class II Preference Shares	77426R401	$44,000,000.00

Southfork CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1a Notes		$0
Class A-1b Notes		$0
Class A-1g Notes		$0
Class A-2 Notes		$0
Class A-3a Notes		$0
Class B Notes		$0
Class C Notes		$0
Preference Shares	84427P202	$80,200,000.00
Class I Composite Note		$2,000,000.00

Stratford CLO Ltd.

Security	CUSIP	Remaining Balance
Class A-1 Notes	86280AAA5	$0
Class A-2 Notes	86280AAC1	$0
Class B Notes	86280AAD9	$0
Class C Notes	86280AAE7	$0
Class D Notes	86280AAF4	$0
Class E Notes	86280AAG2	$0
Class I Preference Shares	86280A202	$17,500,000.00
Class II Preference Shares	86280A301	$45,500,000.00

Loan Funding VII, LLC (aka Valhalla)

Security	CUSIP	Remaining Balance
Class A-1-A Notes		
Class A-2 Notes		
Class B Notes		
Class C-1 Notes		
Class C-2 Notes		
Class I Preference Shares	91914QAA4	$82,000,000.00

Westchester CLO, Ltd.

Security	CUSIP	Remaining Balance
Class A-1-A Notes	95736XAA6	$0
Class A-1-B Notes	95736XAB4	$0
Class B Notes	95736XAD0	$0
Class C Notes	95736XAE8	$0
Class D Notes	95736XAF5	$0
Class E Notes	95736XAG3	$9,141,575.05
Class I Preference Shares	95736T206	$80,000,000.00

EXHIBIT B

Holdings of Preference Shares[1] in CLOs

CLO	HIF	NSOF	NC	Total
Aberdeen	0%	30.21%	0%	**30.21%**
Brentwood	0%	40.06%	0%	**40.06%**
Eastland	31.16%	10.53%	0%	**41.69%**
Gleneagles	9.74%	8.52%	0%	**18.26%**
Grayson	49.10%	10.75%	0.63%	**60.48%**
Greenbriar	0%	53.44%	0%	**53.44%**
Jasper	0%	17.86%	0%	**17.86%**
Liberty	0%	10.64%	0%	**10.64%**
Red River	0%	10.49%	0%	**10.49%**
Rockwall	6.14%	19.57%	0%	**25.71%**
Rockwall II	14.56%	5.65%	0%	**20.21%**
Southfork	0%	7.30%	0%	**7.30%**
Stratford	0%	69.05%	0%	**69.05%**
Loan Funding VII (aka Valhalla)	0%	1.83%	0%	**1.83%**
Westchester	0%	44.38%	0%	**44.38%**

[1] Class E Certificates for Liberty CLO, Ltd.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054 (SGJ11)
Debtors.	)	(Jointly Administered)

ORDER GRANTING MOTION FOR ORDER IMPOSING TEMPORARY RESTRICTIONS ON DEBTOR'S ABILITY, AS PORTFOLIO MANAGER, TO INITIATE SALES BY NON-DEBTOR CLO VEHICLES

Upon the Motion (the "**Motion**"),[1] filed by Highland Capital Management Fund Advisors, L.P. ("**HCMFA**") and NexPoint Advisors, L.P. ("**NexPoint**," and together with HCMFA, the "**Advisors**"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "**Funds**"), seeking an order, pursuant to sections 105(a), 363, and 1107 of the Bankruptcy Code, imposing temporary restrictions on the Debtor's

[1] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

ability to initiate sales as portfolio manager (or other similar capacity) for certain non-debtor investment

vehicles (the "**CLOs**"); and upon the Declaration of Dustin Norris (the "**Declaration**"); and the Court, having reviewed the Motion and the Declaration; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and upon the record before the Court; and a hearing having been held on the Motion; and it appearing to the Court that good cause exists to grant the relief requested by the Motion;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. For a period of thirty days, commencing on the date hereof, the Debtor, in its capacity as portfolio manager or such other similar role with respect to the CLOs, is hereby prohibited from causing the CLOs to engage in any asset sales until January ___, 2021.

3. The Court shall retain jurisdiction over all matters involving the enforcement, implementation and interpretation of this Order.

END OF ORDER # #

Submitted by:

K&L Gates LLP
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Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 3

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Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346 thru Vol. 27	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
			Transcripts	
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	**Re: Docket No. 1528**

DEBTOR'S RESPONSE TO MOTION FOR ORDER IMPOSING TEMPORARY RESTRICTIONS ON DEBTOR'S ABILITY, AS PORTFOLIO MANAGER, TO INITIATE SALES BY NON-DEBTOR CLO VEHICLES

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor-in-possession (the "Debtor") hereby submits this response (the "Response") to the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Docket No. 1528] (the "Motion").[2] In support of the Response, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT

1. Through the Motion, Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NPA," and together with HCMFA, the "Advisors") and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Funds,"[3] and together with the Advisors, the "Movants") seek entry of an order enjoining the Debtor from exercising its authority and duties as Portfolio Manager with respect to the CLOs – each of which is a non-debtor – for a period of thirty days. The Advisors are controlled by Mr. James Dondero, and the Funds are managed by Mr. Dondero.[4] Mr. Dondero's attempt to hide behind the Funds' "independent" boards does not change this reality.[5]

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[2] All capitalized terms used but not defined herein have the meanings given to them in the Motion.

[3] HCMFA is the investment advisor for Highland Income Fund. NPA is the investment advisor for NexPoint Strategic Opportunities Fund and NexPoint Capital, Inc.

[4] **NexPoint Strategic Opportunities Fund**, Form N-2, filed Aug. 27, 2019 ("[NexPoint Advisors, L.P.] is controlled by James Dondero by virtue of his control of its general partner, NexPoint Advisors GP, LLC. . . [NexPoint Strategic Opportunities Fund's] portfolio manager is James Dondero. Mr. Dondero has managed the portfolio since September 2012. His investment decisions are not subject to the oversight, approval or ratification of a committee."); **NexPoint Capital, Inc.**, Form 497, filed March 14, 2018, ("Our portfolio managers are James Dondero, Michael Gregory, and Nate Burns. Their investment decisions are not subject to the oversight, approval or ratification of a committee"); **Highland Income Fund**, Form 497, filed July 29, 2019, ("Mr. Dondero is a founder and President of HCMLP and has managed [Highland Income Fund] since June 2018. . . Highland Capital Management Fund Advisors, L.P. serves as [Highland Income Fund's] investment adviser pursuant to the Investment Advisory Agreement with [Highland Income Fund]. HCMFA is controlled by James Dondero and Mark Okada, by virtue of their respective share ownership, and its general partner, Strand Advisors XVI, Inc., of which Mr. Dondero is the sole stockholder."). True and accurate copies of each of the foregoing are attached hereto as Exhibit A-1, A-2, and A-3, respectively.

[5] In their annual proxy statements filed with the Securities and Exchange Commission (the "SEC"), each Fund discloses its directors, their compensation, and their past experience. Each Fund has generally the same slate of directors, and each Fund's "independent" board consists of John Honis, Bryan Ward, Ethan Powell, and Robert Froehlich. NexPoint Strategic Opportunities Fund recently added an additional director with respect to its REIT operations, Edward Constantino. Each director receives a $150,000 annual stipend for its services across the "Highland Complex." On information and belief, each of the directors with the exception of Mr. Constantino,

2. The Motion, instead of addressing the Movants' contractual rights with respect to the CLOs (which, as shown below, prohibit the relief requested in the Motion) or following the proper procedures for a temporary injunction (which also would be unavailing), urges this Court to use its powers under 11 U.S.C. §§ 105 and 363 to enjoin the Debtor from fulfilling its responsibilities to manage the property of the non-debtor CLOs. Barring that, the Movants ask this Court to amend the Debtor's Operating Protocols to limit the Debtor's ability to cause the CLOs to sell assets. Each of these arguments is without merit. As discussed below:

- The agreements governing the CLOs expressly grant the Debtor, as Portfolio Manager, the authority and discretion to cause the CLOs to sell assets, and *no* investor has any right under those agreements to control or otherwise interfere with the Debtor's discretion;
- The Debtor is authorized under 11 U.S.C. § 363(c) to continue exercising its discretion with respect to the CLOs without interference;
- There are no grounds to enjoin the Debtor from exercising that authority or for this Court to interfere with the rights of third parties; and
- The Operating Protocols were negotiated with the CLOs expressly to preserve the Debtor's discretion to manage the CLOs' assets without interference.

3. Ultimately, the Movants state that they filed the Motion to "preserve the status quo" while the Movants explore replacing the Debtor "consensually or through the contractual process" in the Management Agreements. Motion, ¶ 21. That statement is disingenuous. The

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serves on twenty-three separate boards of funds managed by the Advisors. *See* Highland Income Fund, Form 497, dated July 29, 2019.

The Funds admit that Mr. Honis is not disinterested. Mr. Honis is the president of Rand Advisors, LLC, which manages the Hunter Mountain Investment Trust ("Hunter Mountain"). Hunter Mountain is the Debtor's largest limited partner and is currently in litigation with the Debtor. Although deemed to be disinterested, until December 2015, Mr. Powell was a long-tenured employee of the Debtor, HCMFA, and various Debtor- and Debtor-affiliate managed funds. Mr. Constantino has served as a member of NexPoint Residential Trust, Inc. – an affiliated fund – since March 2015 and is a director of NexPoint Residential Trust, Inc. – another affiliated fund. No information is currently known about the relationship, if any, between Mr. Ward, Dr. Froehlich, and Mr. Dondero. *See* Highland Income Fund, Form DEF-14A, filed April 22, 2020 (the "HIF Proxy"); NexPoint Strategic Opportunities Fund, Form DEF-14A, filed July 10, 2020 (the "NPSO Proxy"); NexPoint, Capital, Inc., Form DEF-14A, filed April 22, 2020 (the "NC Proxy"). True and accurate copies of each of the foregoing are attached hereto as Exhibit B-1, B-2, and B-3, respectively.

Debtor offered the Movants the chance to purchase the Management Agreements on December 5, 2020. The Movants responded to that offer by filing the Motion. The Motion does not want to preserve the status quo; it is simply a pretext for Mr. Dondero's continuing efforts to thwart the Debtor's effort to fulfill its contractual and statutory duties to manage the CLOs without interference as the Debtor proceeds towards confirmation of its plan. On December 10, 2020, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order against James Dondero*, Adv. Proc. No. 20-03190-sgj [Docket No. 10] (the "TRO"). The TRO was necessitated by Mr. Dondero's unlawful interference in the Debtor's management of the CLOs and threats made by Mr. Dondero to Mr. James P. Seery, Jr., and the Debtor's employees. This Motion, together with Mr. Dondero's *Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside of the Ordinary Course of Business* [Docket No. 1439] (the "Dondero Motion"), are desperate attempts by Mr. Dondero to regain control over the Debtor after his alternative plan proposal received no traction with the Debtor's creditors.

BACKGROUND

4. Each CLO is a Cayman-domiciled entity that owns a pool of loans. To finance its acquisition of loans, each CLO issued notes and preference shares to third party investors. The Preference Shares referenced in the Motion receive the CLOs' available residual cash flow after the CLO has made the required payments on the notes. Although called equity, the Preference Shares are not common equity and are not owed any statutory or common law duties.[6] Each CLO is a passive vehicle that has contracted with a third-party portfolio manager to manage its

[6] Attached as Exhibit A to the Motion is a chart showing the current capital structure of each of the CLOs and the Movants' alleged ownership in each CLO. As set forth on Exhibit B to the Motion, the Movants are minority investors in the Preference Shares in all but three CLOs and are junior to senior noteholders in a third of the CLOs. All other investors in the CLOs are, on information and belief, third party investors that are not affiliated or related to the Debtor, the Movants, or Mr. Dondero.

portfolio of loans. With respect to each CLO, the Debtor is the third-party "Portfolio Manager" retained by the CLO pursuant to the terms of various portfolio management or servicer agreements between the Debtor and the CLO (collectively, the "Management Agreements").[7] The Debtor, as Portfolio Manager, manages those assets, on a discretionary basis, which includes selling those assets if the Debtor, as Portfolio Management, determines that such sale is in the best interests of the CLOs.

5. Each investor in the CLOs agreed that the Portfolio Manager would have sole power to direct the CLOs with respect to investment decisions. What rights investors have are governed by the terms of the indentures governing the CLOs (collectively, the "Indentures"),[8] the preference share paying agency agreements, and in certain cases the Management Agreements. However, the investors have no right to direct the Portfolio Manager or to otherwise have a say in how the CLOs' assets are managed or sold.[9] Any effort by an individual investor to usurp that control is impermissible and contrary to the CLO agreements and the expectations of all investors. Mr. Dondero is, with three potential exceptions, a minority or junior investor in the CLOs and the Court should reject his attempt to usurp the Debtor's right to

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[7] True and accurate copies of the Management Agreements are attached hereto as Exhibit C.

[8] True and accurate copies of the Indentures are attached hereto as Exhibit D.

[9] *See, e.g.*, Offering Memorandum, Grayson CLO, Ltd., Grayson CLO Corp, dated October 7, 2005, Risk Factors, page 44:

> *The Issuer Will Have Limited Control of the Administration and Amendment of the Collateral Obligations*
>
> The Servicer will cause the Issuer to exercise or enforce or refrain from exercising or enforcing its rights in connection with the Collateral Obligations or any related documents or will refuse amendments or waivers of the terms of any Collateral Obligation and related documents in accordance with its ordinary business practices as if the Servicer were administering the Collateral Obligations for its own account The authority of the Servicer to cause the Issuer to change the terms of the Collateral Obligations will generally not be restricted by the Indenture or the Servicing Agreement. As result the Issuer will be relying on the Servicers customary standards policies and procedures with respect to the servicing of the Collateral Obligations The Holders of the Securities and the Issuer will not have any right to compel the Issuer or the Servicer to take or refrain from taking any actions other than in accordance with its ordinary business practices.

A true and correct copy of the Grayson CLO, Ltd., Grayson CLO, Corp. Offering Memorandum is attached as Exhibit E.

manage the CLOs without interference from Mr. Dondero or his funds.

REPLY

I. The Motion and Requested Relief Are Contrary to the CLO Agreements.

6. The relief sought by the Movants is barred under the terms of the agreements governing the CLOs. The Indentures define the procedures for buying, managing, and selling the CLOs' assets (referred to in the Indentures as the Collateral or Collateral Obligations or Reference Obligations). The Management Agreements set forth the Portfolio Manager's duties and obligations and the requirements for removing the Portfolio Manager if investors are not satisfied.[10] It is telling that the Motion is silent about those provisions; indeed, they offer no support for the Motion. As explained below, the Movants have no authority to stop the Debtor or the CLOs from managing and selling their assets as required under the Indenture and cannot unilaterally remove the Debtor as Portfolio Manager.[11]

The Movants Have No Contractual Right to Stop Sales of CLO Assets

7. The CLO agreements strictly define when and how the CLOs' assets are sold and the Portfolio Manager's rights and obligations related thereto. *See generally* Indenture § 12.1;

[10] The Debtor's role is referred to as either the Servicer of Portfolio Manager. References to the "Management Agreements" are to the Servicing Agreement or Portfolio Management Agreement entered by the Debtor and each CLO, and references to the "Indentures" are to the Indentures entered into by each CLO. All of the Management Agreements and Indentures are governed by New York law, and the relevant provisions of those agreements are identical in all material respects across the CLOs at issue in the Motion. To the extent that relevant differences exist, they are identified. For ease of reference, unless otherwise noted, the citations herein are to the Management Agreement and Indenture of the Grayson CLO. Exhibit F hereto includes references to the relevant provisions of each Indenture and Management Agreement.

[11] The Movants lack the requisite standing to enforce the CLO agreements. While they claim to be Preference Shareholders, none of the Movants actually holds the Preferred Shares: The Advisors, by their own admission, do not actually hold any Preference Shares or any other interest in the CLOs; and although the Funds may have such an interest, they are not the registered holders of such shares, *i.e.* the parties whose name shows up on the CLOs share register. Absent authorization from the registered holder, the Movants cannot enforce any rights with respect to the CLOs. *See, e.g.*, *Cortlandt St. Recovery Corp. v. Hellas Telecommc'ns, S.a.r.l.*, 996 N.Y.S.2d 476, 489 (Sup. Ct. N.Y. Cnty. 2014), *aff'd as modified*, 142 A.D.3d 833 (1st Dep't 2016) (holding that under New York law, "it is well settled that a beneficial holder of a note lacks standing to sue for payments due upon the note where, as here, the indenture reserves the right to sue to the registered holder of the note."); *Springwell Nav. Corp. v. Sanluis Corporacion*, S.A., 46 A.D.3d 377 (1st Dep't 2007) (same).

Management Agreement § 2. There is no dispute that these provisions make clear that sales take place at the Portfolio Manager's direction and sole discretion, subject to the limitations in the Indenture. *See* Indenture § 12.1 ("[T]he Issuer may, at the direction of the [Portfolio Manager], direct the Trustee to sell any Collateral Obligation or Workout Asset"); Management Agreement § 2(a)(iv) ("[T]he [Portfolio Manager], subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee to . . . dispose of a Collateral Obligation"); Motion, ¶ 7 ("[T]he Debtor is responsible, among other things, for making decisions to sell the CLOs' assets.").

8. Unlike other instances where "Noteholders" or "Preferred Shareholders" may have direction rights, nothing in the Indentures or the Management Agreements gives Movants (or any other investor in the CLOs) the right to block, interfere with, influence, control, or otherwise direct the asset sale process. This is dispositive under the maxim of "*expressio unium est exclusio alterius*." *Int'l Fid. Ins. Co. v. Cty. of Rockland*, 98 F. Supp. 2d 400, 412-13 (S.D.N.Y. 2000); *accord Rowe v. Great Atl. & Pac. Tea Co.*, 46 N.Y.2d 62, 72 (N.Y. 1978) ("[C]ourts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include."). The Movants thus have no contractual basis to stop sales of the CLOs' assets in any way whatsoever – temporarily or otherwise.

9. The Movants try to sidestep these unambiguous provisions by vaguely alluding, "upon information and belief," to asset sales the Movants "do not agree with." Motion ¶¶ 12, 15-16. First, whether an investor in a CLO agrees or disagrees with the Portfolio Manager's investment decisions has no bearing under the CLO agreements, and the Movants do not and cannot contend otherwise. Second, the Movants' criticism of the Debtor's "disposition of other

assets" that it holds or controls outside of the CLOs is equally unavailing. Motion ¶¶ 15-16. The Management Agreements plainly allow the Portfolio Manager to hold its own assets and use different investment strategies for those assets, even if they are similar to the CLOs' assets. *See* Management Agreement § 4.

10. There is likewise no merit to the Movants' assertion that the Debtor should forbear selling assets in order to try "to secure a substantially better price for [an asset] by being willing to hold it and transacting [sic] at a later date." Motion ¶ 15. For ten of the fifteen CLOs (including the three CLOs, discussed below, in which the Movants hold a majority of the Preference Shares),[12] the Debtor is actually prohibited from trying to time the market. *See* Indenture § 12.1(i) ("Notwithstanding anything herein to the contrary, the Issuer (at the direction of the [Portfolio Manager] or otherwise) shall not acquire or dispose of Collateral Obligation . . . for the primary purpose of recognizing gains or decreasing losses resulting from market value changes."). As such, the Movants are advocating that the Debtor breach the Indenture not just by ceding management discretion to the Movants but by trying to do the very thing the Debtor is expressly prohibited from doing, *i.e.*, trying to time the market.

11. Ultimately, while the Movants may not like the way the Debtor is managing the CLOs, they have no contractual right to do anything about it absent a showing that the Debtor has engaged in bad faith, willful misconduct, gross negligence, or a breach of its fiduciary duty to the CLO. *See* Management Agreement § 10(a) (limiting the Portfolio Manager's liability to "acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the [Portfolio Manager under the Management Agreements] and under the Indenture."). And even in those

[12] There is no "Supervening Requirement" in the Gleneagles, Jasper, Liberty, Southfork, [and Valhalla] CLOs.

extreme circumstances, which are plainly not present here, the Movants' remedy would be to replace the Portfolio Manager or seek money damages, not impose a prohibition on future sales.

The Movants Cannot Replace the Portfolio Manager

12. If the Preference Shareholders wish to remove the Portfolio Manager, the Management Agreements allow them to do so in certain circumstances not present here. Indeed, the Movants' "belief" that "replacing the Debtor as portfolio manager is appropriate," Motion ¶ 24, does not come close to satisfying the removal requirements under the Management Agreements, which set forth the process for replacing the Portfolio Manager for each CLO. Specifically, the replacement is made by the CLO, at the direction of at least a majority of Preferred Shareholders *not* affiliated with the existing Portfolio Manager, and is subject to certain express conditions, including approval of credit rating agencies. The Movants do not and cannot satisfy any of those requirements.

13. Among other deficiencies, the Movants do not satisfy the minimum holdings requirement to replace the Portfolio Manager. Under the Management Agreements, the Movants need a majority (and for some CLOs, a supermajority) of Preference Shares in each CLO to direct the CLO to terminate and appoint a new Portfolio Manager. *See* Management Agreement §§ 12(e)(i); 14.[13] The Movants admit they lack the requisite majority for twelve of the fifteen CLOs.

14. But even with respect to the remaining three CLOs (Grayson, Greenbriar, and Stratford), the Movants cannot exercise their votes to remove the Debtor as Portfolio Manager. The Management Agreements unambiguously exclude the votes of the Portfolio Manager's "Affiliates." *Id.* As set forth in their most recent proxy statements, the Movants (specifically the

[13] Preferred Shareholders have no right whatsoever to remove the Portfolio Manager of the Loan Funding VII (aka Valhalla) CLO. *See* Valhalla Management Agreement § 14.

Funds) consider themselves "affiliates" of the Debtor.[14] This disqualifies the Movants from voting their Preference Shares to remove the Portfolio Manager in *each* CLO, including the three in which they hold the majority. While the Indentures' definition of "Affiliate" may differ from how the Movants use the term in their SEC filings,[15] there is no question that the Movants were the Debtor's "Affiliates" before January 9, 2020. Equity does not permit the Movants (and Mr. Dondero) to use the bankruptcy to avoid the contracts and declare themselves non-"Affiliates" so they can usurp control of the CLOs. *See, e.g., Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-15 (1945) ("[T]he equitable maxim that 'he who comes into equity must come with clean hands' . . . closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief").

The Movants' Rights Are a Matter of Contract

15. Finally, in an effort to justify the Motion, the Movants invoke the Investment Advisers Act of 1940 (the "Advisers Act") as setting forth the Debtor's obligations to the investors in the CLOs.[16] Yet, it is axiomatic that those obligations (and CLOs generally) are purely creatures of contract and governed by the CLO agreements. *See, e.g.*, Management Agreement § 10(a) ("The [Portfolio Manager] assumes no responsibility under this Agreement

[14] *See* HIF Proxy; NPSO Proxy; NC Proxy ("Given Mr. Dondero's historic role with [the Debtor] and his continued ownership interest and roles with respect to the Highland platform as a whole, as well as the shared services agreements between [the Debtor] and the Adviser," each Fund will "still treat" the Debtor as the Fund's affiliates).

[15] The Indentures define the term "Affiliate" in Section 1.1 and ground it in common corporate or voting control.

[16] The Movants state – without authority – that the CLOs are only the Debtor's "nominal" clients and that the Debtor's true clients are "holders of the beneficial interests in the CLOs, such as the fund" and cite to various cases interpreting the Advisers Act to justify that position. Motion, ¶¶ 22-23. There is no statutory or common law basis for this argument. In fact, the seminal ruling in *Goldstein v. SEC* directly contradicts the Movant's position. 451 F.3d 873, 881-82 (D.C. Cir. 2006) (finding that under Section 206 of the Investment Advisers Act of 1940 and other provisions "[t]he adviser owes fiduciary duties only to the fund, not to the fund's investors. . . If the investors are owed fiduciary duty and the entity is also owed a fiduciary duty, then the adviser will inevitably face conflicts of interest."). *Goldstein* clarified that the investment adviser's only client is the fund itself and overturned an interpretation of Section 206 of the Advisers Act that would have broadened the adviser's fiduciary duties to include the underlying investors in the fund – the Movant's position. Subsequent to *Goldstein*, the SEC updated their guidance consistent with *Goldstein*. The Debtor's duties, as Portfolio Manager, to the underlying investors in the CLO, if any, are prescribed by contract.

other than to render the services called for hereunder and under the terms of the Transaction Documents made applicable to it pursuant to the terms of this Agreement"); *id.* § 2(b) ("In performing its duties hereunder, the [Portfolio Manager] shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities;" however the Portfolio Manager "shall not be responsible if such objectives are not achieved so long as [it] performs its duties under this Agreement").[17] The Movants' rights are therefore limited to those provided in the CLO agreements, and the Movants cannot cite to non-existent, extra-contractual duties to justify the relief requested.

II. 11 U.S.C. § 363 Does Not Authorize the Relief Requested

16. Although the issues set forth above are fatal to the Movants, their Motion also fails because the Debtor's contractual rights under the Management Agreements and Indentures to direct the sale of the CLOs' assets are an asset of the estate, and the Debtor has the right to use those assets – without interference – in the ordinary course of its business. *See In re Thomas*, 2020 Bankr. LEXIS 1364 at *31 (Bankr. W.D. Tenn. May 7, 2020); *see also In re New Center Hospital*, 200 B.R. 592 (E.D. Mich. 1996) (finding that a chapter 11 trustee was required to fulfill its duties as the administrator of an employee benefit plan governed by ERISA). As discussed below and in the Debtor's objection to the Dondero Motion [Docket No. 1546], the manner in which the Debtor may exercise its rights with respect to the CLOs in the ordinary course of its business was highly negotiated with the Committee and with the CLOs themselves. There is no basis under the Bankruptcy Code or otherwise to now require the Debtor to seek leave from this Court (and the Movants) to operate its business in the ordinary course.

[17] The Movants state that the Management Agreements "generally impose a duty on the Debtor. . . to maximize the value of the CLO's [sic] assets for the benefit of the CLO's [sic] noteholders and preference shareholders." Motion, ¶ 7. That duty is only found in four out of the fifteen Management Agreements – Gleneagles, Jasper, Liberty, and Southfork – and runs to the benefit of all holders of notes and Preference Shares, not just the Movants.

17. Furthermore, each of the CLOs is a Cayman-domiciled entity that owns its own assets and those assets are not, in any sense of the word, property of the Debtor's estate. The fact that the Debtor has the authority to direct the disposition of those assets does not turn those assets into the Debtor's property or allow this Court to limit the transfer of such assets under 11 U.S.C. § 363(b) or otherwise. *See Thomas*, 2020 Bankr. LEXIS 1364 at *31 (a debtor's membership interest in an LLC, including both its economic rights and governance rights, became property of the estate on the petition date, but the assets of the LLC remain separate and the debtor must manage them consistent with the terms of the operating agreement and applicable law); *In re Cardinal Indus.*, 105 B.R. 834, 849 (Bankr. S.D. Ohio 1989) (a debtor's ownership interests and control rights in non-debtor partnerships were property of the estate; but those rights did not make the assets of the partnership property of the estate or implicate the automatic stay so as to prevent secured creditors of the non-debtor partnerships from foreclosing on properties of the partnerships). The assets of the CLOs are not subject to 11 U.S.C. § 363, and, notwithstanding the bankruptcy, the Debtor is still required to fulfill its obligations as Portfolio Manager for the CLOs. Movants cite no authority allowing this Court to interfere with the disposition of the CLOs' assets or the CLOs' rights under the Management Agreements and the other agreements governing the CLOs. The Movants also do not cite to any authority allowing this Court under 11 U.S.C. § 363(b) or otherwise to amend the CLO agreements without the consent of the parties to those agreements to grant the Movants additional rights under those agreements.

18. As such, the Debtor is allowed to exercise its discretion with respect to the management of the CLOs under 11 U.S.C. § 363. Despite this, the Movants seek to stop the Debtor from managing the CLOs citing to the Court's equitable powers under 11 U.S.C. § 105.

As a general matter, Section 105(a) does not allow this type of relief *unless* the moving party follows the procedures and pleading requirements for a preliminary injunction. *Feld v. Zale Corp. (in re Zale Corp.)*, 62 F.3d 746, 765 (5th Cir. 1995) (citing *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 858 (6th Cir. 1992) ("When issuing a preliminary injunction pursuant to its powers set forth in section 105(a), a bankruptcy court must consider the traditional factors governing preliminary injunctions issued pursuant to Federal Rule of Civil Procedure 65."). Here, however, the Movants have not followed the procedural or substantive requirements to obtain a preliminary injunction, and the relief requested in the Motion should be denied.[18]

19. Even assuming that the Movants could challenge the Debtor's use of its property under 11 U.S.C. § 363 – and they cannot not – any such challenge would fail because the Debtor's conduct is fully justified. The Motion references three sales as highlighting the Debtor's purported shortsightedness. Each of these examples is misplaced, and the Movants' references to these examples only underscore Mr. Dondero's continued desire to re-assert control over the Debtor and to prevent the Debtor from maximizing value for both the Debtor's creditors and the investors in the CLOs.[19]

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[18] The requirement to seek an injunction should not be a surprise to the Movants. CLO Holdco, Ltd., made this exact argument when the Committee moved to prevent distributions to CLO Holdco, Ltd., from a non-Debtor entity. *See Motion for Remittance of Funds Held in Registry of Court* [Docket No. 590]. CLO Holdco, Ltd., is a direct and wholly-owned subsidiary of the Charitable DAF Fund, L.P. The Charitable DAF Fund, L.P., as this Court knows, is a donor advised fund founded by Mr. Dondero, which invests in multiple Debtor-managed vehicles, including the CLOs. Similarly, Highland CLO Funding Ltd. ("HCLOF") followed the correct procedures for a temporary restraining order by filing an adversary proceeding in *In re Acis Capital Management, L.P., et al.*, Case No. 18-30264-sgj (Bankr. N.D. Tex. 2018) by filing an adversary and seeking an injunction requiring the Chapter 11 trustee to fulfill its contractual obligations under certain CLO portfolio management agreements. Adv. Proc. No. 18-030178-sgj (Bankr. N.D. Tex. 2018). At the time of that filing, HCLOF was an investment vehicle controlled by Mr. Dondero. The irony of (i) the Movant seeking to force the Debtor's *not* to comply with its obligations to the CLOs and (ii) HCLOF filing a motion seeking to force Acis Capital Management, L.P., *to* comply with its obligations should not be lost on this Court.

[19] The first sales referenced by the Movants are the equity trades that were prevented by Mr. Dondero's inappropriate interference in the Debtor's business. This action and Mr. Dondero's threats were the basis for the TRO. The second sale is the sale of unsecured debt in OmniMax International, Inc. ("OmniMax"). The Movants allege that other entities received a higher price for the OmniMax debt; however, those parties only received a higher price because of Mr. Dondero's interference in that sale. *See Written Consent of the General Partner of*

III. The Operating Protocols Do Not Justify the Relief Requested

20. Finally, the Movants cite to the highly negotiated and carefully crafted Operating Protocols as precedent for the relief requested in the Motion. That argument ignores the actual terms of the Operating Protocols and the history of Section IV(B)(3)(a) thereof. The CLOs objected to the Operating Protocols. *See Limited Objection to Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 324] (the "CLO Issuers Objection"). As a result of the CLO Issuers Objection, the Debtor – with the consent of the Committee – amended the Operating Protocols to add the carve out in Section IV(B)(3)(a). The CLOs requested this carve out because, among other reasons:

> The stakeholders purchased notes offered by the applicable Issuers relying upon the terms of the relevant indenture and related public documents. The [Operating Protocols] would effectively modify the collateral management agreements in a way that is inconsistent with the investors' expectations and the [D]ebtor's fiduciary duty to each Issuer, because the [Operating Protocols] extends the time it may take for an Issuer to complete a transaction recommended by the Debtor in its capacity as collateral manager and provides the Committee – a party that did not exist at the time of the sale of the notes and that has neither a contractual relationship with, nor a fiduciary duty to, the Issuers – a review and objection right. The result is that investors may lose value that they bargained for when they purchased the applicable notes if, for example, the Collateral Manager cannot timely close a sale or purchase.

CLO Issuers Objection, ¶¶ 3.

21. Consequently, the carve out in Section IV(B)(3)(a) was specifically negotiated to allow the Debtor to fulfill its obligations to the CLOs without interference. The revision to the Operating Protocols requested by the Movants would therefore be in *direct* conflict with the Operating Protocols. The Motion would transfer investment discretion from the Debtor – the

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Highland Capital Management, L.P., Effective September 21, 2020, a true and correct copy of which is attached as Exhibit G. Finally, the Movants reference the sale of SSPI Holdings, Inc. ("SSPI"), a subsidiary of SSP Holdings, LLC. None of the CLOs held an equity interest in SSPI, its direct parent, SSP Holdings, LLC, or Trussway Holdings, LLC. The CLOs held debt instruments, and those instruments were repaid in accordance with their terms.

Portfolio Manager – to the Movants (and Mr. Dondero) and impermissibly abrogate the terms of the various Management Agreements that all investors – not just the Movants – relied on when they invested in the CLOs. *See Paradigm Air Carriers v. Tex. Rangers Baseball Partners (In re Tex. Rangers Baseball Partners)*, 521 B.R. 134, 180 (Bankr. N.D. Tex. 2014) (finding that a debtor – in the context of 11 U.S.C. § 365 – could not amend the terms of a contract without the consent of its contract counterparty).

22. Ultimately, the Movants' (and Mr. Dondero's) attempts to interfere with the operation of the Debtor's estate and non-debtor CLOs, and to re-insert themselves as the decision-making authority are meritless. The Motion should be denied.

[Remainder of Page Intentionally Blank]

WHEREFORE, for the reasons set forth above, the Debtor respectfully requests that the Court deny the Motion.

Dated: December 15, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

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EXHIBIT A-1

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As filed with the Securities and Exchange Commission on August 27, 2019

1933 Act File No. 333-230078
1940 Act File No. 811-21869

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

FORM N-2
(Check appropriate box or boxes)

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933 ☒
Pre-Effective Amendment No. 1
AND

REGISTRATION STATEMENT
UNDER
THE INVESTMENT COMPANY ACT OF 1940 ☒
Amendment No. 36

NexPoint Strategic Opportunities Fund
(Exact Name of Registrant as Specified in the Declaration of Trust)

300 Crescent Court, Suite 700
Dallas, Texas 75201
(Address of Principal Executive Offices)

(866) 351-4440
(Registrant's Telephone Number, including area code)

(Name and Address of Agent for Service)

Ms. Lauren Thedford, Esq.
NexPoint Strategic Opportunities Fund
300 Crescent Court, Suite 700
Dallas, Texas 75201

Copies of Communications to:

R. Charles Miller, Esq.
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Approximate Date of Proposed Public Offering:
From time to time after the effective date of this Registration Statement.

If any of the securities being registered on this form are offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, other than securities offered in connection with a dividend reinvestment plan, check the following box. ☒

It is proposed that this filing will become effective (check appropriate box)

☒ when declared effective pursuant to section 8(c)

☐ on March 19, 2018 pursuant to Rule 486(b) as applied by no-action relief granted to the Registrant on June 26, 2013

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CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of Securities Being Registered	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Preferred Shares of Beneficial Interest (2)		
Subscription Rights for Preferred Shares (2)		
Total	$500,000,000	$60,600.00(3)

(1) Estimated pursuant to Rule 457(o) solely for the purpose of determining the registration fee. The proposed maximum offering price per security will be determined, from time to time, by the Registrant in connection with the sale by the Registrant of the securities registered under this registration statement.

(2) There is being registered hereunder an indeterminate principal amount of preferred shares or subscription rights to purchase preferred shares as may be sold, from time to time. In no event will the aggregate offering price of all securities issued from time to time pursuant to this registration statement exceed $500,000,000.

(3) A registration fee amount of $60,600 was paid with respect to the Registrant's registration statement on Form N-2 (File No. 333-230078 filed on March 5, 2019.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically state that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such dates as the Commission, acting pursuant to said Section 8(a), may determine.

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NEXPOINT STRATEGIC OPPORTUNITIES FUND

CROSS REFERENCE SHEET
PARTS A AND B

Item No.	Registration Statement Caption	Caption in Part A or Part B
1.	Outside Front Cover	Front Cover
2.	Inside Front and Back Cover Page	Front and Back Cover
3.	Fee Table and Synopsis	Prospectus Summary/Fees and Expenses of the Trust
4.	Financial Highlights	Financial Highlights
5.	Plan of Distribution	Plan of Distribution
6.	Selling Shareholders	Not Applicable
7.	Use of Proceeds	Use of Proceeds
8.	General Description of Registrant	The Fund
9.	Management	Management of the Trust
10.	Capital Stock, Long-Term Debt, and Other Securities	Description of Capital Structure
11.	Defaults and Arrears on Senior Securities	Not Applicable
12.	Legal Proceedings	Legal Proceedings
13.	Table of Contents of the Statement of Additional Information	Table of Contents of the Statement of Additional Information
14.	Cover Page	Cover Page
15.	Table of Contents	Table of Contents
16.	General Information and History	The Fund
17.	Investment Objective and Policies	Investment Strategies and Risks
18.	Management	Management of the Trust
19.	Control Persons and Principal Holders of Securities	Control Persons and Principal Holders of Securities
20.	Investment Advisory and Other Services	Investment Adviser
21.	Portfolio Managers	Portfolio Managers
22.	Brokerage Allocation and Other Practices	Portfolio Transactions and Brokerage
23.	Tax Status	Tax Matters
24.	Financial Statements	Financial Statements

Part C

The information required to be included in Part C is set forth under the appropriate Item, so numbered, in Part C of the Registration Statement.

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NexPoint Strategic Opportunities Fund

Prospectus dated August 27, 2019

Preferred Shares

Subscription Rights to Purchase Preferred Shares

NexPoint Strategic Opportunities Fund (formerly, NexPoint Credit Strategies Fund) is a non-diversified, closed-end management investment company that commenced operations on June 29, 2006, following its initial public offering. Throughout this Prospectus, NexPoint Strategic Opportunities Fund is referred to as the "Trust."

The Trust's investment objectives are to provide both current income and capital appreciation. The Trust seeks to achieve its investment objectives by investing primarily in the following categories of securities and instruments of corporations and other business entities: (i) secured and unsecured floating and fixed rate loans; (ii) bonds and other debt obligations; (iii) debt obligations of stressed, distressed and bankrupt issuers; (iv) structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; (v) equities; (vi) other investment companies, including business development companies ("BDCs"); and (vii) real estate investment trusts ("REITs"). The Trust may also invest in derivative instruments that have economic characteristics similar to instruments in investment categories (i) - (vii). Subject to these general guidelines, NexPoint Advisors, L.P. (the "Investment Adviser") has broad discretion to allocate the Trust's assets among these investment categories and other investments and to change allocations as conditions warrant.

Additionally, the Trust has a fundamental policy to concentrate its investments in the real estate industry, and, under normal market conditions, the Trust invests at least 25% of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry.

You should read this Prospectus and the related Prospectus Supplement, which contains important information about the Trust, before deciding whether to invest, and retain it for future reference. A Statement of Additional Information ("SAI"), dated August 27, containing additional information about the Trust has been filed with the Commission and is incorporated by reference in its entirety into this Prospectus. You can review the table of contents of the SAI on page 110 of this Prospectus. You may request a free copy of the SAI request the Trust's most recent annual and semi-annual reports, request information about the Trust and make shareholder inquiries by calling 1-866-351-4440 or by writing to the Trust at 300 Crescent Court, Suite 700, Dallas, Texas 75201. You may also obtain a copy of the SAI (and other information regarding the Trust) from the Commission's Public Reference Room in Washington, D.C. by calling 1-202-551-8090. The Commission charges a fee for copies. The Trust's most recent annual and semi-annual reports are available, free of charge, on the Trust's website at www.nexpointadvisors.com. You can obtain the same information, free of charge, from the Commission's web site at www.sec.gov.

Investing in our securities involves a high degree of risk and may be considered speculative. Before investing in the Trust's securities, you should read the discussion of the material risks of investing in the Trust, including the risks of leverage, in the "Principal Risks of the Trust" section of this Prospectus.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined that this Prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Beginning on January 1, 2021, as permitted by regulations adopted by the U.S. Securities and Exchange Commission, paper copies of the Fund's annual and semi-annual shareholder reports will no longer be sent by mail, unless you specifically request paper copies of the reports. Instead, the reports will be made available on the Fund's website (highlandfunds.com), and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may elect to receive shareholder reports and other communications from a Fund electronically by contacting your

financial intermediary (such as a broker-dealer or bank) or, if you are a direct investor, by contacting the Fund's transfer agent at 1-877-665-1287.

Beginning on January 1, 2019, you may elect to receive all future reports in paper free of charge. If you invest through a financial intermediary, you can contact your financial intermediary to request that you continue to receive paper copies of your shareholder reports. If you invest directly with the Fund, you can call 1-877-665-1287 to let the Fund know you wish to continue receiving paper copies of your shareholder reports. Your election to receive reports in paper will apply to all funds held in your account if you invest through your financial intermediary or all funds held with the fund complex if you invest directly with the Fund.

The Trust's securities do not represent a deposit or obligation of, and are not guaranteed or endorsed by, any bank or other insured depository institution, and are not federally insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other government agency.

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You should rely only on the information contained or incorporated by reference in this Prospectus. The Trust has not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. The Trust is not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. The information in this Prospectus and any accompanying Prospectus Supplements is accurate only as of the date of this Prospectus or such Prospectus Supplement, as applicable, and under no circumstances should the delivery of this Prospectus or any accompanying Prospectus Supplement or the sale of any securities imply that the information in this Prospectus or such accompanying Prospectus Supplement is accurate as of any later date or that the affairs of the Trust have not changed since the date hereof or thereof. Our business, financial condition, results of operations and prospects may have changed since then. We will update the information in these documents to reflect material changes only as required by law.

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Cautionary Notice Regarding Forward-Looking Statements

This Prospectus and the SAI contain "forward-looking statements." Forward-looking statements relate to future events or the Trust's future financial performance. Forward-looking statements can generally be identified by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar words. Important assumptions in forward-looking statements include the Trust's ability to acquire or originate new investments and to achieve certain margins and levels of profitability. In light of these and other uncertainties, the inclusion of a projection or forward-looking statement should not be regarded as a representation by the Trust that its plans or objectives will be achieved.

There are a number of important risks and uncertainties that could cause the Trust's actual results to differ materially from those indicated by such forward-looking statements. These risks include, but are not limited to, the following:

- Investment risk;
- Changes in interest rates;
- Risks associated with investing in high yield securities (also known as "junk securities"), senior loans and other debt and equity securities;
- Risks of investing in obligations of stressed, distressed and bankrupt issuers;
- Risks associated with the Trust's use of leverage;
- Risk associated with investments in REITs;
- Derivatives and structured finance securities risk; and
- Market risk generally.

For a discussion of these and additional risks as well as other factors that could cause the Trust's actual results to differ from forward-looking statements contained in this Prospectus and in the SAI please see the discussion under "Principal Risks of the Trust." You should not place undue reliance on these forward-looking statements. The forward-looking statements made in this Prospectus and in the SAI relate only to events as of the date on which the statements are made. The Trust undertakes no obligation to update any forward-looking statement to reflect events or circumstances occurring after the date of this Prospectus and SAI except as required by federal securities laws.

The forward-looking statements contained in this Prospectus are excluded from the safe harbor protection provided by Section 27A of the Securities Act of 1933, as amended, and the forward looking statements contained in our periodic reports are excluded from the safe harbor protection provided by Section 21E of the Securities Exchange Act of 1934, as amended.

About this Prospectus

This Prospectus is part of a registration statement that we have filed with the Commission using the "shelf" registration process. Under the shelf registration process, we may offer, from time to time, in one or more offerings or series, up to $500,000,000 of our fixed rate preferred shares or subscription rights for fixed rate preferred shares, on the terms to be determined at the time of the offering. The securities may be offered at prices and on terms described in one or more Supplements to this Prospectus. This Prospectus provides you with a general description of the securities that we may offer. Each time we use this Prospectus to offer securities, we will provide a Prospectus Supplement that will contain specific information about the terms of that offering. The Prospectus Supplement may also add, update or change information contained in this Prospectus. Please carefully read this Prospectus and any Prospectus Supplement, together with any exhibits, any material terms of which will be summarized in the Prospectus and any applicable Prospectus Supplement, and the additional information described under the headings "Principal Risks of the Trust" and "Where You Can Find Additional Information" before you make an investment decision.

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Prospectus Summary

The following summary highlights information contained elsewhere in this Prospectus. This summary may not contain all of the information that you should consider before investing in the Trust. You should review the more detailed information contained in this Prospectus and in the Statement of Additional Information, especially the information set forth under the heading "Principal Risks of the Trust."

The Trust

The Trust is a non-diversified, closed-end management investment company. The Trust commenced operations on June 29, 2006, following its initial public offering.

Offerings

The Trust may offer, on an immediate, continuous or delayed basis, in one or more offerings (each, an "Offering" and together, the "Offerings"), up to $500,000,000 of the Trust's fixed rate preferred shares or rights to purchase fixed rate preferred shares (sometimes referred to as subscription rights), which we refer to collectively as the "securities," on terms to be determined at the time of the Offerings. The securities may be offered at prices and on terms to be set forth in one or more Prospectus Supplements to this Prospectus, unless otherwise required by the Commission or its staff. Offerings of the securities will be subject to the provisions of the Investment Company Act of 1940, as amended (the "1940 Act"), which generally require that the price at which a closed-end investment company sells its common shares (exclusive of distribution commissions and discounts) must equal or exceed the net asset value per share of a company's common shares (calculated within 48 hours of pricing), except (i) in connection with a rights offering to our existing shareholders, (ii) with the consent of the majority of our common shareholders, or (iii) under such circumstances as the Commission may permit. Any offering of securities by a closed-end investment company that requires shareholder approval must occur, if at all, within one year after receiving such shareholder approval.

The Prospectus Supplement relating to any sale of fixed rate preferred shares will set forth the liquidation preference and information about the dividend period, dividend rate, any call protection or non-call period and other matters. The Prospectus Supplement relating to any offering of subscription rights will set forth the number of common and/or fixed rate preferred shares issuable upon the exercise of each right and the other terms of such rights offering. You should read this Prospectus and the related Prospectus Supplement carefully before you decide to invest in any of the securities.

While the aggregate number and amount of securities we may issue pursuant to this registration statement is limited to $500,000,000 of securities, our Board of Trustees (the "Board") may, without any action by the shareholders, amend our Agreement and Declaration of Trust from time to time to increase or decrease the aggregate number of shares or the number of shares of any class or series that we have authority to issue.

The Trust may offer the securities directly to one or more purchasers, through agents that the Trust or the purchasers designate from time to time, or to or through underwriters or dealers (including agents, underwriters or dealers affiliated with the Trust's investment adviser). The Prospectus Supplement relating to the Offering will identify any agents or underwriters involved in the sale of the securities, and will set forth any applicable purchase price, fee, commission or discount arrangement between the Trust and such agents or underwriters or among underwriters or the basis upon which such amount may be calculated. See "Plan of Distribution." The securities may not be sold through agents, underwriters or dealers without delivery of a Prospectus Supplement describing the method and terms of the Offering. The Trust (and thus, indirectly, the Trust's common shareholders) will bear all of the expenses of any such offering.

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Preferred Shares

The term the preferred shares may be fixed by the Board and may materially limit and/or qualify the rights of holders of the Trust's common shares. If the Trust's Board determines that it may be advantageous to the holders of the Trust's common shares for the Trust to utilize additional leverage, the Trust may issue additional series of fixed rate preferred shares. Any fixed rate preferred shares issued by the Trust will pay distributions at a fixed rate. Leverage creates a greater risk of loss as well as a potential for more gains for the common shares than if leverage were not used. The Trust may also determine in the future to issue other forms of senior securities, such as securities representing debt, subject to the limitations of the Investment Company Act. The Trust may also engage in investment management techniques which will not be considered senior securities if the Trust establishes a segregated account with cash or other liquid assets or sets aside assets on the accounting records equal to the Trust's obligations in respect of such techniques. The Trust may also borrow money, to the extent permitted by the Investment Company Act.

Investment Adviser and Administrator

NexPoint Advisors, L.P. (the "Investment Adviser") is the investment adviser and administrator of the Trust. As of June 30, 2019, the Investment Adviser, together with its affiliates, managed approximately $9.9 billion in assets on behalf of investors around the world. In return for its advisory services, the Investment Adviser receives an annual fee, payable monthly, in an amount equal to 1.00% of the average weekly value of the Trust's Managed Assets. In return for its administrative services, the Investment Adviser receives an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Trust's Managed Assets. "Managed Assets" means the total assets of the Trust, including assets attributable to any form of investment leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to investment leverage obtained through (i) indebtedness of any type (including, without limitation, borrowing through a credit facility or the issuance of debt securities), (ii) the issuance of preferred shares or other similar preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the Trust's investment objectives and policies, and/or (iv) any other means. The Investment Adviser, at its own expense, has the authority to engage both a sub-adviser and a sub-administrator, each of which may be an affiliate of the Investment Adviser. See "Management of the Trust — Investment Adviser" and "Management of the Trust — Administrator/Sub-Administrator."

Potential Conflicts of Interest. As a result of the Trust's arrangements with Highland Capital Management, L.P. ("Highland"), an affiliate of the Investment Adviser, there may be times when Highland, the Investment Adviser or their affiliates have interests that differ from those of the Trust's shareholders, giving rise to a conflict of interest. Highland and the Investment Adviser are under common ownership, and the Trust's officers serve or may serve as officers, directors or principals of entities that operate in the same or a related line of business as the Trust does, or of investment funds managed by the Investment Adviser or its affiliates. Similarly, the Investment Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Trust or its shareholders. For example, the Trust's officers have, and will continue to have, management responsibilities for other investment funds, accounts or other investment vehicles managed or sponsored by the Investment Adviser and its affiliates.

The Trust's investment objective may overlap, in part or in whole, with the investment objective of such affiliated investment funds, accounts or other investment vehicles. As a result, those individuals may face conflicts in the allocation of investment opportunities among the Trust and other investment funds or accounts advised by or affiliated with the Investment Adviser. The Investment Adviser will seek to allocate investment opportunities among eligible accounts in a

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manner that is fair and equitable over time and consistent with its allocation policy. However, the Trust can offer no assurance that such opportunities will be allocated to it fairly or equitably in the short-term or over time.

Currently, a substantial portion of the Trust's net assets are invested in REITs, asset-backed securities and/or collateralized loan obligations ("CLOs") sponsored, organized and/or managed by Highland and its affiliates. The Investment Adviser will monitor for conflicts of interest in accordance with its fiduciary duties and will provide the independent trustees of the Trust with an opportunity to periodically review the Trust's investments in such REITs, asset-backed securities and/or CLOs and assure themselves that continued investment in such securities remains in the best interests of the Trust and its shareholders. Please see "Risk Factors—Potential Conflicts of Interest" for a description of risks associated with conflicts of interest. See "Management of the Trust — Investment Adviser."

Custodian and Transfer Agent

The custodian of the assets of the Trust is Bank of New York Mellon (240 Greenwich Street, New York, New York 10286). The custodian performs custodial services for the Trust. American Stock Transfer & Trust Company, LLC (6201 15th Avenue, Brooklyn, New York 11219; telephone (718) 921-8200) serves as the Trust's transfer agent with respect to its securities.

Closed-End Structure

Closed-end funds differ from open-end management investment companies (commonly referred to as mutual funds) in that closed-end funds generally list their shares for trading on a securities exchange and do not redeem their shares at the option of the shareholder. By comparison, mutual funds issue securities redeemable at net asset value ("NAV") at the option of the shareholder and typically engage in a continuous offering of their shares. Mutual funds are subject to continuous asset in-flows and out-flows that can complicate portfolio management, whereas closed-end funds generally can stay more fully invested in securities consistent with the closed-end fund's investment objective and policies. In addition, in comparison to open-end funds, closed-end funds have greater flexibility in their ability to make certain types of investments, including investments in illiquid securities.

Shares of closed-end investment companies listed for trading on a securities exchange frequently trade at a discount from NAV, but in some cases trade at a premium. The market price may be affected by NAV, dividend or distribution levels (which are dependent, in part, on expenses), supply of and demand for the shares, stability of dividends or distributions, trading volume of the shares, general market and economic conditions and other factors beyond the control of the closed-end fund. The foregoing factors may result in the market price of the common shares of the Trust being greater than, less than or equal to, NAV. The Board has reviewed the structure of the Trust in light of its investment objective and policies and has determined that the closed-end structure is appropriate. As described in this Prospectus, however, the Board may review periodically the trading range and activity of the Trust's common shares with respect to their NAV and may take certain actions to seek to reduce or eliminate any such discount. Such actions may include open market repurchases or tender offers for the common shares at NAV or the possible conversion of the Trust to an open-end investment company. There can be no assurance that the Board will decide to undertake any of these actions or that, if undertaken, such actions would result in the common shares trading at a price equal to or close to NAV per Share. In addition, as noted above, the Board determined in connection with the initial offering of common shares of the Trust that the closed-end structure is desirable, given the Trust's investment objective and policies. Investors should assume, therefore, that it is highly unlikely that the Board would vote to convert the Trust to an open-end investment company. See "Anti-Takeover Provisions in the Agreement and Declaration of Trust; Closed-End Fund Structure; Repurchase of Common Shares; Discount."

Listing

The Trust's outstanding common shares are listed on the New York Stock Exchange ("NYSE") under the symbol "NHF". Since the Trust commended trading on the NYSE, the Trust's common shares have traded at a discount to NAV as high as -40.89% and a premium as high as 9.78%. Any additional series of fixed rate preferred shares or subscription rights issued in the future pursuant to a Prospectus Supplement by the Trust may be listed on the NYSE.

Use of Proceeds

Unless otherwise specified in a Prospectus Supplement, the Trust will use the net proceeds of the sale of securities to invest in accordance with the Trust's investment objectives and policies as stated below, or use such proceeds for other general corporate purposes. See "Use of Proceeds."

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Investment Objectives and Policies

The Trust's investment objectives are to provide both current income and capital appreciation. The Trust seeks to achieve its investment objectives by investing primarily in the following categories of securities and instruments of corporations and other business entities: (i) secured and unsecured floating and fixed rate loans; (ii) bonds and other debt obligations; (iii) debt obligations of stressed, distressed and bankrupt issuers; (iv) structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; (v) equities; (vi) other investment companies, including BDCs; and (vii) REITs. The Trust may also invest in other securities and instruments, including derivative instruments. Subject to these general guidelines, the Investment Adviser has broad discretion to allocate the Trust's assets among these investment categories and other investments and to change allocations as conditions warrant.

The Trust has a fundamental policy to concentrate its investments in the real estate industry, and, under normal market conditions, the Trust invests at least 25% of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry. Within the categories of obligations and securities in which the Trust invests, the Investment Adviser employs various trading strategies, including capital structure arbitrage, pair trades and shorting. Capital structure arbitrage is a strategy in which the Trust seeks opportunities created by mispricing in different markets of various instruments issued by one corporation. Pair trades involve matching a long position with a short position in two stocks of different issuers in the same sector, betting that the "spread" between the two will eventually converge. Short selling (also known as shorting or going short) is a strategy in which the Trust sells a security it does not own in anticipation that the market price of that security will decline. See "Portfolio Composition" for further description of these strategies.

The Trust may also invest in these categories of obligations and securities through the use of derivatives. The Trust is not limited in the amount it may invest in derivatives, and it may use derivatives for speculative purposes. There is no limitation on the amount of securities and other instruments rated below investment grade, which are commonly referred to as "junk securities," that the Trust may purchase, and under normal circumstances substantially all of the Trust's investment portfolio is expected to consist of junk-rated securities and non-investment grade investments and instruments or securities and other instruments which, if unrated, are considered to be of similar quality.

The Trust may invest a significant portion of its assets in issuers that are in default or that present a high risk of default. Junk securities are subject to greater risk of loss of principal and interest and may be less liquid than investment grade securities. The Trust may invest up to 15% of its net assets in entities that are excluded from registration under the Investment Company Act by virtue of section 3(c)(1) and 3(c)(7) of the Investment Company Act (such as private equity funds or hedge funds). This limitation does not apply to any CLOs, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act. The Trust's investment objectives may be changed without shareholder approval. There can be no assurance that the Trust's investment objectives will be achieved. See "Investment Objectives and Policies."

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Investment Strategies

Under normal market conditions, the Trust invests across various markets in which the Investment Adviser holds significant investment experience: primarily the leveraged loan, high yield, other credit investments, structured products, real estate, communications, natural resources, stressed and distressed markets and equity markets. The Investment Adviser makes investment decisions based on quantitative analysis, which employs sophisticated, data-intensive models to drive the investment process. The Investment Adviser has full discretion regarding the capital markets from which it can access investment opportunities in accordance with the investment limitations set forth in this Prospectus.

The Investment Adviser uses trading strategies to seek to exploit pricing inefficiencies across the credit markets, or debt markets, and within an individual issuer's capital structure. The Investment Adviser varies the Trust's investments by strategy, industry, security type and credit market, but reserves the right to re-position the Trust's investment portfolio among these criteria depending on market dynamics, and thus the Trust may experience high portfolio turnover. The Investment Adviser manages interest rate, default, currency and systemic risks through a variety of trading methods and market tools, including derivative hedging instruments, as it deems appropriate.

This multi-strategy investment program allows the Investment Adviser to assess what it considers to be the best opportunities across multiple markets and to adjust quickly the Trust's trading strategies and market focus to changing conditions. The Investment Adviser focuses primarily on the U.S. marketplace, but may pursue opportunities in the non-U.S. credit or securities markets by investing in credit or securities market investments that are either issued by entities domiciled outside of the U.S., or denominated in currencies other than the U.S. dollar, or both ("Non-U.S. Securities").

The Trust invests and trades in listed and unlisted, public and private, rated and unrated, debt and equity instruments and other obligations, including structured debt and equity instruments and financial derivatives. Investments may include investments in stressed and distressed positions, which may include publicly-traded debt and equity securities (including securities of REITs, BDCs and master limited partnerships ("MLPs")), obligations which were privately placed with banks, insurance companies and other lending institutions, trade claims, accounts receivable and any other form of obligation recognized as a claim in a bankruptcy or workout process.

REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests. Foreign REIT equivalents are entities located in jurisdictions that have adopted legislation substantially similar to the REIT tax provisions in that they provide for favorable tax treatment for the foreign REIT equivalent and require distributions of income to shareholders. The Trust seeks to gain exposure to the real estate markets, in whole or in part, by investing in certain REIT subsidiaries of the Trust, notably NexPoint Real Estate Opportunities, LLC (formerly Freedom REIT) ("NREO") and NexPoint Real Estate Capital, LLC ("NREC").

With respect to the Trust's real estate investments, the Adviser seeks to: (i) recognize and allocate capital based upon where the Adviser believes we are in the current real estate cycle, and as a result (ii) minimize drawdowns during market downturns and maximize risk adjusted returns during all market cycles, though there can be no assurance that this strategy will achieve this objective. The Trust will rely on the expertise of the Adviser and its affiliates to determine the appropriate structure for structured credit investments, which may include bridge loans, common and preferred equity or other debt-like positions, as well as the acquisition of such instruments from banks, servicers or other third parties.

Preferred equity and mezzanine investments in real estate transactions come in various forms which may or may not be documented in the borrower's organizational documents. Generally, real estate preferred equity and/or mezzanine investments are typically junior to first mortgage financing but senior to the borrower's or sponsor's equity contribution. The investments are typically structured as an investment by a third-party investor in the real estate owner or various affiliates in the chain of ownership in exchange for a direct or indirect ownership interest in the real estate owner entitling it to a preferred/priority return on its investment. Sometimes, the investment is structured much like a loan where (i) "interest" on the investment is required to be paid monthly by the "borrower" regardless of available property cash flow; (ii) the entire investment is required to be paid by a certain maturity date; (iii) default rate "interest" and penalties are assessed against the "borrower" in the event payments are not made timely; and (iv) a default in the repayment of investment potentially results in the loss of management and/or ownership control by the "borrower" in the company in favor of the investor or other third-party.

As part of its investment program, the Trust may invest, from time to time, in securities or other instruments that are sold in private placements and that are neither listed on an exchange, nor traded over the counter. The Trust may also receive equity or equity-related securities in connection with a workout transaction or may invest directly in equity securities.

The Trust may employ currency hedges (either in the forward or options markets) in certain circumstances to reduce currency risk and may engage in other derivative transactions for hedging purposes or to enhance total return. The Trust may also lend securities and engage in short sales of securities. In addition, the Trust may invest in the securities of companies whose capital structures are highly leveraged.

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From time to time, the Investment Adviser may also invest a portion of the Trust's assets in short-term U.S. government obligations, certificates of deposit, commercial paper and other money market instruments, including repurchase agreements with respect to such obligations and pooled investment vehicles (for example, money market funds) that invest in these obligations, to enable the Trust to make investments quickly, to serve as collateral with respect to certain of its investments, and for other cash management purposes. A greater percentage of Trust assets may be invested in such obligations if the Investment Adviser believes that a defensive position is appropriate because of the outlook for security prices or in order to respond to adverse market, economic, business or political conditions. See "Investment Objectives and Policies — Investment Strategies."

Use of Leverage

As provided in the Investment Company Act and subject to certain exceptions, the Trust may issue debt or preferred shares with the condition that immediately after issuance the value of its total assets, less ordinary course liabilities, exceeds 300% of the amount of the debt outstanding and exceeds 200% of the sum of the amount of debt and preferred shares outstanding.

Thus, the Trust may use leverage in the form of borrowings in an amount up to 33 1/3% of the Trust's total assets (including the proceeds of such leverage) and may use leverage in the form of preferred shares in an amount up to 50% of the Trust's total assets (including the proceeds of such leverage). As of the date of this Prospectus, the Trust has no preferred shares outstanding. The total leverage of the Trust is generally expected to range between 25% and 30% of the Trust's total assets. The Trust seeks a leverage ratio, based on a variety of factors including market conditions and the Investment Adviser's market outlook, where the rate of return, net of applicable Trust expenses, on the Trust's portfolio investments purchased with leverage exceeds the costs associated with such leverage. The leverage ratio as of August 13, 2019 was 25%.

The Trust, as of January 31, 2018, was leveraged through borrowings from a committed facility with BNP Paribas Prime Brokerage, Inc. ("BNP") with a total commitment of $135,000,000. As of June 30, 2019, the Trust had drawn on the $66.0 million committed facility.

In addition, the Trust intends to leverage its portfolio through a master repurchase agreement entered into with BNP Paribas Securities Corp. ("BNP Securities") on November 16, 2017, as amended, that allows the Trust to enter into reverse repurchase transactions from time to time pursuant to the terms of the master repurchase agreement.

On August 14, 2018, the Trust, and two of its wholly-owned subsidiaries, NexPoint Real Estate Capital, LLC ("NREC") and NexPoint Real Estate Opportunities, LLC ("NREO"), entered into a $75.0 million revolving bridge credit agreement with KeyBank National Association. The revolving balance stepped down to $60.0 million after September 14, 2018. As of June 30, 2019, The Trust had drawn $55.4 million on the bridge facility.

The Trust's asset coverage ratio as of June 30, 2019 was 524.7% See "Principal Risks of the Trust — Leverage Risk" for a brief description of the Trust's committed facility, master repurchase agreement and bridge credit agreement.

Following the completion of an Offering, the Trust may increase the amount of leverage outstanding. The Trust may engage in additional borrowings, issue notes, or issue preferred shares in order to maintain the Trust's desired leverage ratio. Leverage creates a greater risk of loss, as well as a potential for more gain, for the common shares than if leverage were not used. Interest on borrowings (or dividends on preferred shares) may be at a fixed or floating rate and generally will be based on short-term rates. The costs associated with the Trust's use of leverage, including the issuance of such leverage and the payment of dividends or interest on such leverage, will be borne entirely by the holders of common shares. As long as the rate of return, net of applicable Trust expenses, on the Trust's portfolio investments purchased with leverage exceeds the costs associated with such leverage, the Trust will generate more return or income than will be needed to pay such costs. In this event, the excess will be available to pay higher dividends to holders of common shares. Conversely, if the Trust's return on such assets is less than the cost of leverage and other Trust expenses, the return to the holders of the common shares will diminish. To the extent that the Trust uses leverage, the NAV and market price of the common shares and the yield to holders of common shares will be more volatile. The Trust's leveraging strategy may not be successful. See "Principal Risks of the Trust—Leverage Risk."

Distributions

Common Shares Distributions. Subject to market conditions, the Trust plans to pay distributions monthly and capital gain distributions annually to common shareholders.

Preferred Shares Distributions. As required by the Investment Company Act, all preferred shares of the Trust must have the same seniority with respect to distributions. Accordingly, no complete distribution due for a particular dividend period will be declared or paid on any series of preferred shares of the Trust for any dividend period, or part thereof, unless full cumulative dividends and distributions due through the most recent dividend payment dates for all series of outstanding preferred shares of the Trust are declared and paid. If full cumulative distributions due have not been declared and made on all outstanding preferred shares of the Trust, any distributions on such preferred shares will be made as nearly pro rata as possible in proportion to the respective amounts of distributions accumulated but unmade on each such series of preferred shares on the relevant dividend payment date.

The Trust's annualized distributions may in the future contain a return of capital and should not be considered as the dividend yield or total return of an investment in its common or preferred shares. Shareholders who receive the payment of a distribution consisting of a return of capital may be under the impression that they are receiving net profits when they are not. Shareholders should not assume that the source of a distribution from the Trust is net profit. The composition of each distribution is estimated based on the earnings of the Trust as of the record date for each distribution. The actual composition of each of the current year's distributions will be based on the Trust's investment activity through the end of the calendar year.

Distributions on fixed rate preferred shares, at the applicable annual rate of the per share liquidation preference, are cumulative from the original issue date and are payable, when, as and if declared by the Board, out of funds legally available therefor.

Principal Risks of the Trust

The following is a summary of the principal risks associated with an investment in the Trust's securities. **Investors should also refer to "Principal Risks of the Trust" in this Prospectus for a more detailed explanation of the risks associated with investing in the Trust's securities.** Given the risks described below, an investment in the securities of the Trust may not be appropriate for all investors.

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You should carefully consider your ability to assume these risks before making an investment in securities of the Trust.

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REIT-Specific Risk. REITs may be affected by changes in the real estate markets generally as well as changes in the values of the properties owned by the REIT or securing the mortgages owned by the REIT (which changes in value could be influenced by market conditions for real estate in general or fluctuations in the value of rights to natural resources appurtenant to the property held by the REIT). REITs are dependent upon management skill and are not diversified. REITs are also subject to heavy cash flow dependency, defaults by borrowers, self-liquidation, and the possibility of failing to qualify for special tax treatment under the Internal Revenue Code of 1986, as amended (the "Code") and to maintain an exemption under the Investment Company Act. For example, because a REIT may acquire debt securities of issuers primarily engaged in or related to the real estate industry, it also could conceivably own real estate directly as a result of a default on such securities. Any rental income or income from the disposition of such real estate could adversely affect its ability to retain its tax status, which would have adverse tax consequences on its shareholders. Finally, certain REITs may be self-liquidating at the end of a specified term, and run the risk of liquidating at an economically inopportune time.

The Trust seeks to gain exposure to the real estate markets, in whole or in part, through investing in certain REIT subsidiaries of the Trust. The Trust invests in NREO, organized under the laws of Delaware on September 17, 2012 and NREC, organized under the laws of Delaware on March 31, 2014 (each, a "Subsidiary"). Each Subsidiary has elected to be taxed as a REIT. Each Subsidiary is generally subject to the same investment policies and restrictions of the Trust. As of June 30, 2019, NREO and NREC accounted for approximately 2.9% and 22.0% respectively, of the Trust's Managed Assets, and approximately 2.8% and 21.7% respectively, of the Trust's total (gross) assets. The Investment Adviser does not charge an additional fee on assets held in each Subsidiary. The Trust intends to limit its investments in each Subsidiary and related entities to the extent necessary to qualify as a RIC for tax purposes. In general, and subject to certain exceptions not applicable here, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in any one issuer, or in any two or more issuers which the taxpayer controls and which are determined to be engaged in the same or similar trades or businesses or related trades or businesses.

In 2015, the Trust completed its spin-off of NexPoint Residential Trust, Inc. ("NXRT") pursuant to an exemptive order obtained from the Commission. No assurance can be given that the Trust would be able to obtain another exemptive order in the event that it should again believe a spin-off of a REIT subsidiary to be in the best interests of the Trust's shareholders. As a result, the Trust may not be able to dispose of its interests in a REIT subsidiary in the manner the Investment Adviser believes would be most efficient.

Interest Rate Risk. Interest rate risk is the risk that debt securities, and the Trust's net assets, may decline in value because of changes in interest rates. Generally, fixed rate debt securities will decrease in value when interest rates rise and increase in value when interest rates decline. To the extent the Trust invests in fixed rate debt securities with longer duration, the Trust is subject to greater interest rate risk than funds investing solely in shorter-term fixed rate debt securities. In addition, in a period of rising interest rates, the higher cost of any leverage employed by the Trust and/or increasing defaults by issuers of high-yield securities would likely exacerbate any decline in the Trust's NAV.

Prepayment Risk. If interest rates fall, the principal on bonds and loans held by the Trust may be paid earlier than expected. If this happens, the proceeds from a prepaid security may be reinvested by the Trust in securities bearing lower interest

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rates, resulting in a possible decline in the Trust's income and distributions to shareholders. The Trust may invest in pools of mortgages or other assets issued or guaranteed by private issuers or U.S. government agencies and instrumentalities. Mortgage-related securities are especially sensitive to prepayment risk because borrowers often refinance their mortgages when interest rates decline.

Risks of Investing in High-Yield Securities, also Known as "Junk Securities." A substantial portion of the Trust's investments will consist of investments that may generally be characterized as "high-yield securities" or "junk securities," and the Trust may invest without limit in such securities. Such securities are typically rated below investment grade by one or more nationally recognized statistical rating organizations or are unrated but of comparable credit quality to obligations rated below investment grade, and have greater credit and liquidity risk than more highly rated obligations. High-yield securities are generally unsecured and may be subordinate to other obligations of the obligor. The lower rating of high-yield securities reflects a greater possibility that adverse changes in the financial condition of the issuer or in general economic conditions (including, for example, a substantial period of rising interest rates or declining earnings) or both may impair the ability of the issuer to make payment of principal and interest. Many issuers of high-yield securities are highly leveraged, and their relatively high debt to equity ratios create increased risks that their operations might not generate sufficient cash flow to service their obligations. Overall declines in the high-yield bond and other markets may adversely affect such issuers by inhibiting their ability to refinance their obligations at maturity.

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Illiquidity of Investments. The investments made by the Trust may be very illiquid, and consequently, the Trust may not be able to sell such investments at prices that reflect the Investment Adviser's assessment of their fair value or the amount paid for such investments by the Trust or to sell such investments in a timely fashion. An inability to sell a portfolio position can adversely affect the Trust's value or prevent the Trust from being able to take advantage of other investment opportunities. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale by the Trust and other factors. Furthermore, the nature of the Trust's investments, especially those in financially stressed and distressed companies, may require a long holding period prior to being able to determine whether the investment will be profitable or not. There is no limit on the amount of the Trust's investment portfolio that can be invested in illiquid securities.

Risks of Investing in Senior Loans. Senior loans, such as bank loans, are typically at the most senior level of the capital structure, and are sometimes secured by specific collateral, including, but not limited to, trademarks, patents, accounts receivable, inventory, equipment, buildings, real estate, franchises and common and preferred stock of the obligor or its affiliates. A portion of the Trust's investments may consist of loans and participations therein originated by banks and other financial institutions, typically referred to as "bank loans." The Trust's investments may include loans of a type generally incurred by borrowers in connection with highly leveraged transactions, often to finance internal growth, acquisitions, mergers or stock purchases, or for other reasons. As a result of the additional debt incurred by the borrower in the course of the transaction, the borrower's creditworthiness is often judged by the rating agencies to be below investment grade. Such loans are typically private corporate loans negotiated by one or more commercial banks or financial institutions and syndicated among a group of commercial banks and financial institutions. In order to induce the lenders to extend credit and to offer a favorable interest rate, the borrower often provides the lenders with extensive information about its business that is not generally available to the public. To the extent the Trust receives material non-public information, it may be prohibited from trading in certain securities, even when it might otherwise be beneficial to do so.

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Legislation Risk. To the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of financial institutions to make loans in connection with highly leveraged transactions, the availability of senior loan interests for investment by the Trust may be adversely affected. In addition, such requirements or restrictions may reduce or eliminate sources of financing for affected borrowers. Further, to the extent that legislation or federal or state regulators require such institutions to dispose of senior loan interests relating to highly leveraged transactions or subject such senior loan interests to increased regulatory scrutiny, such financial institutions may determine to sell senior loan interests in a manner that results in a price that, in the opinion of the Investment Adviser, is not indicative of fair value. Were the Trust to attempt to sell a senior loan interest at a time when a financial institution was engaging in such a sale with respect to the senior loan interest, the price at which the Trust could consummate such a sale might be adversely affected.

Second Lien Loans Risk. Second lien loans are subject to the same risks associated with investment in senior loans and non-investment grade securities. However, second lien loans are second in right of payment to senior loans and therefore are subject to additional risk that the cash flow of the borrower and any property securing the loan may be insufficient to meet scheduled payments after giving effect to the senior secured obligations of the borrower. Second lien loans are expected to have greater price volatility than senior loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in second lien loans, which would create greater credit risk exposure.

Other Secured Loans Risk. Secured loans other than senior loans and second lien loans are subject to the same risks associated with investment in senior loans, second lien loans and non-investment grade securities. However, such loans may rank lower in right of payment than any outstanding senior loans and second lien loans of the borrower and therefore are subject to additional risk that the cash flow of the borrower and any property securing the loan may be insufficient to meet scheduled payments after giving effect to the higher-ranking secured obligations of the borrower. Lower-ranking secured loans are expected to have greater price volatility than senior loans and second lien loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in lower-ranking secured loans, which would create greater credit risk exposure.

Unsecured Loans Risk. Unsecured loans are subject to the same risks associated with investment in senior loans, second lien loans, other secured loans and non-investment grade securities. However, because unsecured loans have lower priority in right of payment to any higher ranking obligations of the borrower and are not backed by a security interest in any specific collateral, they are subject to additional risk that the cash flow of the borrower and available assets may be insufficient to meet scheduled payments after giving effect to any higher ranking obligations of the borrower. Unsecured loans are expected to have greater price volatility than senior loans, second lien loans and other secured loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in unsecured loans, which would create greater credit risk exposure.

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Risks of Investing in Obligations of Stressed, Distressed and Bankrupt Issuers. The Trust is authorized to invest in the securities and other obligations of stressed, distressed and bankrupt issuers, including debt obligations that are in covenant or payment default. There is no limit on the amount of the Trust's investment portfolio that can be invested in stressed, distressed or bankrupt issuers, and the Trust may invest for purposes of control. Such investments generally trade significantly below par and are considered highly speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result in only partial recoveries, which may be in the form of cash payments or an exchange of the defaulted obligation for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or highly speculative. It is also possible that there could be limited or no recovery for creditors in a bankruptcy or workout.

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Insolvency Considerations with Respect to Issuers of Debt Obligations. Various laws enacted for the protection of creditors may apply to the debt obligations held by the Trust. The information in this paragraph is applicable with respect to U.S. issuers subject to U.S. bankruptcy laws. Insolvency considerations may differ with respect to other issuers. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an issuer of a debt obligation, such as a trustee in bankruptcy or a creditors' committee, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the debt obligation and, after giving effect to such indebtedness, the issuer (i) was insolvent, (ii) was engaged in a business for which the remaining assets of such issuer constituted unreasonably small capital, or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of such issuer, or to recover amounts previously paid by such issuer in satisfaction of such indebtedness.

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Litigation Risk. The Trust is sometimes subject to legal proceedings and claims based on the securities and instruments in which the Trust invests. Litigation may result in substantial costs and may seriously harm the Trust's investments and overall financial condition. In addition, legal claims that have not yet been asserted against the Trust may be asserted in the future.

Leverage Risk. When deemed appropriate by the Investment Adviser and subject to applicable regulations, the Trust may use leverage in its investment program, including through the issuance of preferred shares, borrowings from a credit facility, issuing notes or other debt securities and investments in certain types of options, such as puts, calls and warrants. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. To the extent the Trust purchases securities with borrowed funds, its net assets will tend to increase or decrease at a greater rate than if borrowed funds are not used. The level of interest rates generally, and the rates at which such funds may be borrowed in particular, could affect the operating results of the Trust. If the interest expense on borrowings were to exceed the net return on the portfolio securities purchased with borrowed funds, the Trust's use of leverage would result in a lower rate of return than if the Trust were not leveraged.

The Trust's leveraged capital structure creates special risks not associated with unleveraged funds having a similar investment objective and policies. These include the possibility of greater loss and the likelihood of higher volatility of the NAV of the Trust and the asset coverage for the preferred shares.

Other Investment Companies. The Trust may invest in the securities of other investment companies, which can include open-end funds, closed-end funds, unit investment trusts and BDCs. Investment companies combine shareholders' funds for investment in a variety of instruments, including equity securities, debt securities, and money market instruments and may invest primarily in a particular type of security, a particular industry or a mix of securities and industries. An investment company is not taxed on income distributed to shareholders if, among other things, it distributes to its shareholders substantially all of its taxable income for each taxable year. As a shareholder of another investment company, the Trust, and therefore its shareholders, will bear a proportionate share of the expenses of such other investment companies, including management fees, administration fees and custodial fees, in addition to the expenses of the Trust. Under one provision of the Investment Company Act, the Trust may not acquire the securities of other investment companies if, as a result, (i) more than 10% of the Trust's total assets would be invested in securities of other investment companies, (ii) such purchase would result in more than 3% of the total outstanding voting securities of any one investment company being held by the Trust or (iii) more than 5% of the Trust's total assets would be invested in any one investment company. Other provisions of the Investment Company Act are less restrictive, provided that the Trust is able to meet certain conditions. These limitations do not apply to the acquisition of shares of any investment company in connection with a merger, consolidation, reorganization or acquisition of substantially all of the assets of another investment company.

Preferred Share Risk. Preferred share risk is the risk associated with the issuance of preferred shares to leverage the common shares. If preferred shares are issued, the NAV and market value of the common shares will be more volatile, and the yield to the holders of common shares will tend to fluctuate with changes in the shorter-term dividend rates on the preferred shares. The Trust will pay (and the holders of common shares will bear) all costs and expenses relating to the issuance and ongoing maintenance of the preferred shares, including higher advisory fees. Accordingly, the issuance of preferred shares may not result in a higher yield or return to the holders of the common shares. If the dividend rate and other costs of the preferred shares approach the net rate of return on the Trust's investment portfolio, the benefit of leverage to the holders of the common shares would be reduced. If the dividend rate and other costs of the preferred shares exceed the net rate of return on the Trust's investment portfolio, the leverage will result in a lower rate of return to the holders of common shares than if the Trust had not issued preferred shares.

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Common Stock Risk. The Trust may invest in common stock. Although investments in common stock have historically generated higher average total returns than fixed income securities over the long-term, investments in common stock also have historically experienced significantly more volatility in those returns. Therefore, the Trust's investments in common stock could result in worse performance than would be the case had the Trust been invested solely in debt securities. An adverse event, such as an unfavorable earnings report, may depress the value of a particular investment in common stock held by the Trust. Also, the price of common stock is sensitive to general movements in the stock market and a drop in the stock market may depress the price of a common stock to which the Trust has exposure. Common stock prices fluctuate for several reasons, including changes in investors' perceptions of the financial condition of an issuer or the general condition of the relevant stock market, or when political or economic events affecting an issuer occur. In addition, common stock prices may be particularly sensitive to rising interest rates, as the cost of capital rises and borrowing costs increase.

Dividend Risk. Dividends on common stock are not fixed but are declared at the discretion of an issuer's board of directors. There is no guarantee that the issuers of the common stocks in which the Trust invests will declare dividends in the future or that, if declared, the dividends will remain at current levels or increase over time.

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Non-U.S. Securities Risk. The Trust may invest without limit in Non-U.S. Securities. The Trust may invest in Non-U.S. Securities of so-called emerging market issuers. The Trust currently does not expect to invest more than 15%, but may invest up to 20%, of its assets in emerging market issuers. Investing in Non-U.S. Securities involves certain risks not involved in domestic investments, including, but not limited to: (i) fluctuations in foreign exchange rates; (ii) future foreign economic, financial, political and social developments; (iii) different legal systems; (iv) the possible imposition of exchange controls or other foreign governmental laws or restrictions; (v) lower trading volume; (vi) much greater price volatility and illiquidity of certain non-U.S. securities markets; (vii) different trading and settlement practices; (viii) less governmental supervision; (ix) changes in currency exchange rates; (x) high and volatile rates of inflation; (xi) fluctuating interest rates; (xii) less publicly available information; and (xiii) different accounting, auditing and financial recordkeeping standards and requirements. In addition, certain investments in Non-U.S. Securities may be subject to foreign withholding or other taxes on interest, dividends, capital gains or other income. Those taxes will reduce the Trust's yield on any such securities.

Emerging Markets Risk. The Trust currently does not expect to invest more than 15%, but may invest up to 20% of its total assets in securities of issuers based in emerging markets. An emerging market country is any country having an economy and market that are (or would be) considered by the World Bank to be emerging or developing or is listed in the Morgan Stanley Capital International Emerging Markets Index. Emerging market countries are located in regions such as Asia, Latin America, the Middle East, Southern Europe, Eastern Europe (including the former republics of the Soviet Union and the Eastern Bloc) and Africa. Investing in securities of issuers based in emerging markets entails all of the risks of investing in securities of non-U.S. issuers, but to a heightened degree. These heightened risks include: (i) greater risks of expropriation, confiscatory taxation, nationalization, and less social, political and economic stability; (ii) the smaller size of the markets for such securities and a lower volume of trading, resulting in lack of liquidity and in price volatility; and (iii) certain national policies which may restrict the Trust's investment opportunities including restrictions on investing in issuers or industries deemed sensitive to relevant national interests.

Foreign Currency Risk. Because the Trust may invest in securities denominated or quoted in currencies other than the U.S. dollar, changes in foreign currency exchange rates may affect the value of securities owned by the Trust, the unrealized appreciation or depreciation of investments and gains on and income from investments. Currencies of certain countries may be volatile and therefore may affect the value of securities denominated in such currencies, which means that the Trust's NAV could decline as a result of changes in the exchange rates between foreign currencies and the U.S. dollar. These risks often are heightened for investments in smaller or emerging capital markets. In addition, the Trust may enter into foreign currency transactions in an attempt to enhance total return, which may further expose the Trust to the risks of foreign currency movements and other risks. The use of foreign currency transactions can result in the Trust incurring losses as a result of the imposition of exchange controls, suspension of settlements or the inability of the Trust to deliver or receive a specified currency.

Investments in Unseasoned Companies. The Trust may invest in the securities of less seasoned companies. These investments may present greater opportunities for growth, but also involve greater risks than customarily are associated with investments in securities of more established companies. Some of the companies in which the Trust may invest will be start-up companies that may have insubstantial operational or earnings history or may have limited products, markets, financial resources or management depth. Some may also be emerging companies at the research and development stage with no products or technologies to market or approved for marketing. Securities of emerging companies may lack an active secondary market and may be subject to more abrupt or erratic price movements than securities of larger, more established companies or stock market averages in general. Competitors of certain companies may have substantially greater financial resources than many of the companies in which the Trust may invest.

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Initial Public Offerings Risk. The Trust may invest in shares of companies through initial public offerings ("IPOs"). IPOs and companies that have recently gone public have the potential to produce substantial gains for the Trust. However, the Trust may not have access to or invest in IPOs that are ultimately profitable for investors. The investment performance of the Trust during periods when it is unable to invest significantly or at all in IPOs may be lower than during periods when the Trust is able to do so. Securities issued in IPOs are subject to many of the same risks as investing in companies with smaller market capitalizations. Securities issued in IPOs have no trading history, and information about the companies may be available for limited periods of time. In addition, the prices of securities sold in IPOs may be highly volatile or may decline shortly after the IPO.

Securities Lending Risk. Under the Trust's current securities lending agreement, the Trust may lend its portfolio securities (up to a maximum of one-third of its total assets) to financial institutions on an approved list of borrowers. Securities lending is subject to the risk that loaned securities may not be available to the Trust on a timely basis and the Trust may, therefore, lose the opportunity to sell the securities at a desirable price. Any loss in the market price of securities loaned by the Trust that occurs during the term of the loan would be borne by the Trust and would adversely affect the Trust's performance. Also, there may be delays in recovery, or no recovery, of securities loaned should the borrower of the securities fail financially while the loan is outstanding. In addition, voting rights with respect to loaned securities generally pass to the borrower. The Trust, as the lender, retains the right to recall the loans and obtain the return of the securities loaned in order to vote the loaned securities. However, in many circumstances the Trust may be unable to recall the securities in time to vote or may determine that the benefits to the Trust of voting are outweighed by the indirect or direct costs of such a recall. In these circumstances, loaned securities may be voted or not voted in a manner adverse to the best interests of the Trust. All of the aforementioned risks may be greater for Non-U.S. Securities.

Risks Associated with Options on Securities. There are several risks associated with transactions in options on securities, such as exchange-listed, over-the-counter and index options. For example, there are significant differences between the securities and options markets that could result in an imperfect correlation between these markets, causing a given transaction not to achieve its objectives. A decision as to whether, when and how to use options involves the exercise of skill and judgment, and even a well-conceived transaction may be unsuccessful to some degree because of market behavior or unexpected events.

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Exchange-Listed Option Risks. A liquid market may not exist when the Trust seeks to close out an option position on an options exchange. Reasons for the absence of a liquid secondary market on an exchange include the following: (i) there may be insufficient trading interest in certain options; (ii) restrictions may be imposed by an exchange on opening transactions or closing transactions or both; (iii) trading halts, suspensions or other restrictions may be imposed with respect to particular classes or series of options; (iv) unusual or unforeseen circumstances may interrupt normal operations on an exchange; (v) the facilities of an exchange or the Options Clearing Corporation "OCC" may not at all times be adequate to handle current trading volume; or (vi) one or more exchanges could, for economic or other reasons, decide or be compelled at some future date to discontinue the trading of options (or a particular class or series of options). If trading were discontinued, the secondary market on that exchange (or in that class or series of options) would cease to exist. However, outstanding options on that exchange that had been issued by the OCC as a result of trades on that exchange would continue to be exercisable in accordance with their terms. If the Trust were unable to close out a covered call option that it had written on a security, it would not be able to sell the underlying security unless the option expired without exercise.

Over-the-Counter Option Risk. The Trust may purchase and write (sell) unlisted ("OTC" or "over-the-counter") options. Options written by the Trust with respect to Non-U.S. Securities, indices or sectors generally will be OTC options. OTC options differ from exchange-listed options in that they are two-party contracts, with exercise price, premium and other terms negotiated between buyer and seller, and generally do not have as much market liquidity as exchange-listed options. The counterparties to these transactions typically will be major international banks, broker-dealers and financial institutions. The Trust may be required to treat as illiquid those securities being used to cover certain written OTC options. The OTC options written by the Trust will not be issued, guaranteed or cleared by the OCC. In addition, the Trust's ability to terminate the OTC options may be more limited than with exchange-traded options. Banks, broker-dealers or other financial institutions participating in such transactions may fail to settle a transaction in accordance with the terms of the option as written. In the event of default or insolvency of the counterparty, the Trust may be unable to liquidate an OTC option position.

Index Option Risk. The Trust may purchase and sell index put and call options from time to time. The purchaser of an index put option has the right to any depreciation in the value of the index below the exercise price of the option on or before the expiration date. The purchaser of an index call option has the right to any appreciation in the value of the index over the exercise price of the option on or before the expiration date. Because the exercise of an index option is settled in cash, sellers of index call options, such as the Trust, cannot provide in advance for their potential settlement obligations by acquiring and holding the underlying securities. The Trust will lose money if it is required to pay the purchaser of an index option the difference between the cash value of the index on which the option was written and the exercise price and such difference is greater than the premium received by the Trust for writing the option. The value of index options written by the Trust, which will be priced daily, will be affected by changes in the value and dividend rates of the underlying common stocks in the respective index, changes in the actual or perceived volatility of the stock market and the remaining time to the options' expiration. The value of the index options also may be adversely affected if the market for the index options becomes less liquid or smaller. Distributions paid by the Trust on its common shares may be derived in part from the net index option premiums it receives from selling index put and call options, less the cost of paying settlement amounts to purchasers of the options that exercise their options. Net index option premiums can vary widely over the short term and long term.

Asset-Backed Securities Risk. Payment of interest and repayment of principal on asset-backed securities is largely dependent upon the cash flows generated by the assets backing the securities and, in certain cases, supported by letters of credit, surety bonds or other credit enhancements. Asset-backed security values may also be affected by the creditworthiness of the servicing agent for the pool, the originator of the loans or receivables and any entities providing the credit enhancement. In addition, the underlying assets are subject to prepayments that shorten the securities' weighted average maturity and may lower their return.

Mortgage-Backed Securities Risk. A mortgage-backed security, which represents an interest in a pool of assets such as mortgage loans, will mature once all the mortgages in the pool mature or are prepaid. Therefore, mortgage-backed securities do not have a fixed maturity, and their expected maturities may vary when interest rates rise or fall.

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When interest rates fall, homeowners are more likely to prepay their mortgage loans. An increased rate of prepayments on the Trust's mortgage-backed securities will result in an unforeseen loss of interest income to the Trust, as the Trust may be required to reinvest assets at a lower interest rate. Because prepayments increase when interest rates fall, the price of mortgage-backed securities does not increase as much as that of other fixed income securities when interest rates fall.

When interest rates rise, homeowners are less likely to prepay their mortgage loans. A decreased rate of prepayments lengthens the expected maturity of a mortgage-backed security. Therefore, the prices of mortgage-backed securities may decrease more than prices of other fixed income securities when interest rates rise.

Repurchase Agreement Risk. The Trust may enter into reverse repurchase transactions with BNP Securities or other banks and securities dealers. A reverse repurchase transaction is a repurchase transaction in which the Trust is the seller of, rather than the investor in, securities or other assets and agrees to repurchase them at a date certain or on demand. Use of a reverse repurchase transaction may be preferable to a regular sale and later repurchase of securities or other assets because it avoids certain market risks and transaction costs. Reverse repurchase transactions involve the risk that the market value of securities and/or other assets purchased by the Trust with the proceeds received by the Trust in connection with such reverse repurchase transactions may decline below the market value of the securities the Trust is obligated to repurchase under such reverse repurchase transactions. They also involve the risk that the counterparty liquidates the securities delivered to it by the Trust under the reverse repurchase agreement following the occurrence of an event of default under the reverse repurchase agreement by the Trust. At the time when the Trust enters into a reverse repurchase transactions, liquid securities (cash, U.S. Government securities or other "high grade" debt obligations) of the Trust having a value at least as great as the Purchase Price of the securities to be purchased will be segregated on the books of the Trust throughout the period of the obligation. The use of these investment strategies may increase NAV fluctuation.

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Derivatives Risk. Derivative transactions in which the Trust may engage for hedging and speculative purposes or to enhance total return, including engaging in transactions such as options, futures, swaps, foreign currency transactions, forward foreign currency contracts, currency swaps or options on currency futures and other derivatives transactions (collectively, "Derivative Transactions"), involve certain risks and special considerations. Derivatives Risk is a combination of several risks, including the risks that: (1) an investment in a derivative instrument may not correlate well with the performance of the securities or asset class to which the Trust seeks exposure, (2) derivative contracts, including options, may expire worthless and the use of derivatives may result in losses to the Trust, (3) a derivative instrument entailing leverage may result in a loss greater than the principal amount invested, (4) derivatives not traded on an exchange may be subject to credit risk, for example, if the counterparty does not meet its obligations (see also "Counterparty Risk"), and (5) derivatives not traded on an exchange may be subject to liquidity risk and the related risk that the instrument is difficult or impossible to value accurately. Derivatives are financial contracts whose value depends on, or is derived from, the value of underlying assets, reference rates, or indices. Derivatives involve the risk that changes in their value may not move as expected relative to the value of the assets, rates, or indices they are designed to track. Derivatives include futures, non-U.S. currency contracts, swap contracts, warrants, and options contracts. Derivatives may relate to securities, interest rates, currencies or currency exchange rates, inflation rates, commodities, and indices.

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Derivatives; Future Developments. The above discussion relates to the Trust's proposed use of certain types of derivatives currently available. However, the Trust is not limited to the transactions described above. In addition, the relevant markets and related regulations are constantly changing and, in the future, the Trust may use derivatives not currently available or widely in use.

Regulatory Risk. Legal, tax and regulatory changes could occur and may adversely affect the Trust and its ability to pursue its investment strategies and/or increase the costs of implementing such strategies. New (or revised) laws or regulations may be imposed by the Commission, the U.S. Commodity Futures Trading Commission (the "CFTC"), the Internal Revenue Service ("IRS"), the U.S. Federal Reserve or other banking regulators, other governmental regulatory authorities or self-regulatory organizations that supervise the financial markets that could adversely affect the Trust. In particular, these agencies are empowered to promulgate a variety of new rules pursuant to financial reform legislation in the United States. The Trust also may be adversely affected by changes in the enforcement or interpretation of existing statutes and rules by these governmental regulatory authorities or self regulatory organizations.

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Regulatory Risk – Commodity Pool Operator. The Trust is operated by a person who has claimed an exclusion from the definition of the term "commodity pool operator" under the Commodity Exchange Act ("CEA") pursuant to Rule 4.5 under the CEA; therefore, the Investment Adviser (with respect to the Trust) is not subject to registration or regulation as a "commodity pool operator" under the CEA. To remain eligible for the exclusion, the Trust will be limited in its ability to use certain derivatives instruments regulated under the CEA ("commodity interests"), including futures, most swaps and options on futures. In the event that the Trust's investments in commodity interests exceed a certain threshold, the Investment Adviser may be required to register as a "commodity pool operator" and/or "commodity trading advisor" with the CFTC with respect to the Trust. The Investment Adviser's eligibility to claim the exclusion with respect to the Trust will be based upon the level and scope of the Trust's investment in commodity interests, the purposes of such investments and the manner in which the Trust holds out its use of commodity interests. For example, CFTC Rule 4.5 requires a fund with respect to which the operator is claiming the exclusion to, among other things, satisfy one of the two following trading thresholds: (i) the aggregate initial margin and premiums required to establish positions in commodity interests cannot exceed 5% of the liquidation value of a fund's portfolio, after taking into account unrealized profits and unrealized losses; or (ii) the aggregate net notional value of commodity interests not used solely for "bona fide hedging purposes," determined at the time the most recent position was established, cannot generally exceed 100% of the liquidation value of a fund's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. The Trust currently intends to operate in a manner that would permit the Investment Adviser to continue to claim the exclusion under Rule 4.5, which may adversely affect the Investment Adviser's ability to manage the Trust under certain market conditions and may adversely affect the Trust's total return. In the event the Investment Adviser becomes unable to rely on the exclusion in Rule 4.5 and is required to register with the CFTC as a commodity pool operator, the Trust's expenses may increase, adversely affecting the Trust's total return.

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Counterparty Risk. The Trust will be subject to credit risk with respect to the counterparties to the derivative contracts purchased or sold by the Trust. Recently, several broker-dealers and other financial institutions have experienced extreme financial difficulty, sometimes resulting in bankruptcy of the institution. Although the Investment Adviser monitors the creditworthiness of the Trust's counterparties, there can be no assurance that the Trust's counterparties will not experience similar difficulties, possibly resulting in losses to the Trust. If a counterparty becomes bankrupt, or otherwise fails to perform its obligations under a derivative contract due to financial difficulties, the Trust may experience significant delays in obtaining any recovery under the derivative contract in a bankruptcy or other reorganization proceeding. The Trust may obtain only a limited recovery or may obtain no recovery in such circumstances. Material exposure to a single or small group of counterparties increases the Trust's counterparty risk.

Credit Default Swaps Risk. The Trust may enter into credit default swap agreements, which may have as reference obligations one or more debt securities or an index of such securities. In a credit default swap, one party (the "protection buyer") is obligated to pay the other party (the "protection seller") a stream of payments over the term of the contract, provided that no credit event, such as a default or, in some instances, a downgrade in credit rating, occurs on the reference obligation. If a credit event occurs, the protection seller must generally pay the protection buyer the "par value" (the agreed-upon notional value) of the referenced debt obligation in exchange for an equal face amount of deliverable reference obligations.

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Market Risk Generally. The profitability of a significant portion of the Trust's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments and the movements of interest rates. The Investment Adviser may not be able to predict accurately these price and interest rate movements. With respect to certain investment strategies the Trust utilizes, there is a high degree of market risk.

Reinvestment Risk. The Trust reinvests the cash flows received from a security. The additional income from such reinvestment, sometimes called interest-on-interest, is reliant on the prevailing interest rate levels at the time of reinvestment. There is a risk that the interest rate at which interim cash flows can be reinvested will fall. Reinvestment risk is greater for longer holding periods and for securities with large, early cash flows such as high-coupon bonds. Reinvestment risk also applies generally to the reinvestment of the proceeds the Trust receives upon the maturity or sale of a portfolio security.

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Timing Risk. Many agency, corporate and municipal bonds, and most mortgage-backed securities, contain a provision that allows the issuer to "call" all or part of the issue before the bond's maturity date — often after five or ten years. The issuer usually retains the right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because an issuer is more likely to call the bonds when interest rates have dropped, the Trust is exposed to reinvestment risk, i.e., the Trust may have to reinvest at lower interest rates the proceeds received when the bond is called. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

Inflation Risk. Inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if the Trust purchases a bond in which it can realize a coupon rate of 5%, but the rate of inflation increases from 2% to 6%, then the purchasing power of the cash flow has declined. For all but adjustable bonds or floating rate bonds, the Trust is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk. In addition, during any periods of rising inflation, dividend rates of any variable rate preferred stock issued by the Trust would likely increase, which would tend to further reduce returns to common shareholders.

Arbitrage Risks. The Trust engages in capital structure arbitrage and other arbitrage strategies. Arbitrage strategies entail various risks, including the risk that external events, regulatory approvals and other factors will impact the consummation of announced corporate events and/or the prices of certain positions. In addition, hedging is an important feature of capital structure arbitrage. There is no guarantee that the Investment Adviser will be able to hedge the Trust's investment portfolio in the manner necessary to employ successfully the Trust's strategy.

Short Sales Risk. Short selling involves selling securities that may or may not be owned and borrowing the same securities for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the Trust to profit from declines in market prices to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. However, because the borrowed securities must be replaced by purchases at market prices in order to close out the short position, any appreciation in the price of the borrowed securities would result in a loss. The securities necessary to cover a short position may not be available for purchase. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss. The Trust may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Trust might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales. Short sales by the Trust that are not made "against the box" theoretically involve unlimited loss potential, since the market price of securities sold short may continuously increase.

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REIT Tax Risk for REIT Subsidiaries. In addition to NREO and NREC, we may form one or more subsidiaries that will elect to be taxed as REITs beginning with the first year in which they commence material operations. In order for each subsidiary to qualify and maintain its qualification as a REIT, it must satisfy certain requirements set forth in the Code and Treasury Regulations that depend on various factual matters and circumstances. The Trust and the Investment Adviser intend to structure each REIT subsidiary and its activities in a manner designed to satisfy all of these requirements. However, the application of such requirements is not entirely clear, and it is possible that the IRS may interpret or apply those requirements in a manner that jeopardizes the ability of such REIT subsidiary to satisfy all of the requirements for qualification as a REIT.

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MLP Risk. The Trust may invest in "MLP" securities. MLPs typically are characterized as "publicly traded partnerships" that qualify to be treated as partnerships for U.S. federal income tax purposes and are principally engaged in one or more aspects of the exploration, production, processing, transmission, marketing, storage or delivery of energy-related commodities, such as natural gas, natural gas liquids, coal, crude oil or refined petroleum products (collectively, the energy industry). As a result, holders of MLP securities will be subject to risks related to the energy industry, including: (i) fluctuations in commodity prices; (ii) reduced volumes of natural gas or other energy commodities available for transporting, processing, storing or distributing; (iii) slowdowns in new construction and acquisitions; (iv) reduced demand for commodities such as crude oil, natural gas and refined petroleum products; (v) depletion of natural gas reserves or other commodities; (vi) extreme weather and environmental hazards; (vii) stricter laws, regulations or enforcement policies; and (viii) dangers inherent to the energy industry, such as leaks, fires, explosions, damage to facilities and equipment resulting from natural disasters, inadvertent damage to facilities and equipment and terrorist acts.

BDC Risk. BDCs generally invest in less mature private companies or thinly traded U.S. public companies which involve greater risk than well-established publicly-traded companies. The Trust will indirectly bear its proportionate share of any management and other operating expenses and of any performance-based or incentive fees charged by the BDCs in which it invests, in addition to the expenses paid by the Trust. The Investment Company Act imposes certain constraints upon the operations of a BDC. Generally, little public information exists for private and thinly traded companies in which a BDC may invest and there is a risk that investors may not be able to make a fully informed evaluation of a BDC and its portfolio of investments. In addition, to qualify and remain eligible for the special tax treatment accorded to regulated investment companies ("RICs") and their shareholders, the BDCs in which the Trust invests must meet certain source-of-income, asset diversification and annual distribution requirements. If a BDC in which the Trust invests fails to qualify as a RIC, such BDC would be liable for federal, and possibly state, corporate taxes on its taxable income and gains. Such failure by a BDC could substantially reduce the BDC's net assets and the amount of income available for distribution to the Trust, which would in turn decrease the total return of the Trust in respect of such investment.

Risks of Investing in Structured Finance Securities. A portion of the Trust's investments may consist of equipment trust certificates, collateralized mortgage obligations, collateralized bond obligations ("CBOs"), CLOs or similar instruments. Such structured finance securities are generally backed by an asset or a pool of assets, which serve as collateral. Depending on the type of security, the collateral may take the form of a portfolio of mortgage loans or bonds or other assets. The Trust and other investors in structured finance securities ultimately bear the credit risk of the underlying collateral. In some instances, the structured finance securities are issued in multiple tranches, offering investors various maturity and credit risk characteristics, often categorized as senior, mezzanine and subordinated/equity according to their degree of risk. If there are defaults or the relevant collateral otherwise underperforms, scheduled payments to senior tranches of such securities take precedence over those of mezzanine tranches, and scheduled payments to mezzanine tranches take precedence over those to subordinated/equity tranches. In light of the above considerations, structured finance securities may present risks similar to those of the other types of debt obligations in which the Trust may invest and, in fact, such risks may be of greater significance in the case of structured finance securities. Moreover, investing in structured finance securities may entail a variety of unique risks. In addition to the risks noted above and other risks, structured finance securities may be subject to prepayment risk. In addition, the performance of a structured finance security will be affected by a variety of factors, including the security's priority in the capital structure of the issuer thereof, the availability of any credit enhancement, the level and timing of payments and recoveries on and the characteristics of the underlying receivables, loans or other assets that are being securitized, remoteness of those assets from the originator or transferor, the adequacy of and ability to realize upon any related collateral and the capability of the servicer of the securitized assets. In addition, the complex structure of the security may produce unexpected investment results, especially during times of market stress or volatility. Investments in structured finance securities may also be subject to illiquidity risk. Collateralized mortgage obligations may have risks similar to those of mortgage-backed securities. See "Mortgage-Backed Securities Risk" for more information.

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Risks of Investing in Preferred Securities. There are special risks associated with investing in preferred securities, including:

- *Deferral*. Preferred securities may include provisions that permit the issuer, at its discretion, to defer distributions for a stated period without any adverse consequences to the issuer. If the Trust owns a preferred security that is deferring the payment of its distributions, the Trust may be required to report income for U.S. federal income tax purposes to the extent of any such deferred distribution even though the Trust has not yet received such income. In order to receive the special treatment accorded to RICs and their shareholders under the Code and to avoid U.S. federal income or excise taxes at the Trust level, the Trust may be required to distribute this reported income to shareholders in the tax year in which the income is reported (without a corresponding receipt of cash). Therefore, the Trust may be required to pay out as an income distribution in any such tax year an amount greater than the total amount of income the Trust actually received, and, among other things, to sell portfolio securities, including at potentially disadvantageous times or prices, to obtain cash needed for these income distributions.

- *Subordination*. Preferred securities are subordinated to bonds and other debt instruments in a company's capital structure in terms of priority to corporate income and liquidation payments, and therefore will be subject to greater credit risk than more senior debt instruments.

- *Liquidity*. Preferred securities may be substantially less liquid than many other securities, such as common stock or U.S. government securities.

- *Limited Voting Rights*. Generally, preferred security holders have no voting rights with respect to the issuing company unless preferred dividends have been in arrears for a specified number of periods, at which time the preferred security holders may elect a number of directors to the issuer's board. Generally, once all the arrearages have been paid, the preferred security holders no longer have voting rights.

Risks of Investing in Swaps. Investments in swaps involve the exchange by the Trust with another party of their respective commitments. Use of swaps subjects the Trust to risk of default by the counterparty. If there is a default by the counterparty to such a transaction, there may be contractual remedies pursuant to the agreements related to the transaction although contractual remedies may not be sufficient in the event the counterparty is insolvent. The Trust may enter into credit default swaps, currency swaps or other swaps which may be surrogates for other instruments such as currency forwards or options. Swap agreements are sophisticated financial instruments that typically involve a small investment of cash relative to the magnitude of risks assumed. Swaps can be highly volatile and may have a considerable impact on the Trust's performance, as the potential gain or loss on any swap transaction is not necessarily subject to any fixed limit.

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Risks of Investing in Synthetic Securities. In addition to credit risks associated with holding non-investment grade loans and high-yield debt securities, with respect to synthetic securities the Trust will usually have a contractual relationship only with the counterparty of such synthetic securities, and not the issuer (the "Reference Obligor") of the debt security or other obligation upon which the synthetic security is based (the "Reference Obligation"). The Trust generally will have no right to enforce directly compliance by the Reference Obligor with the terms of the Reference Obligation nor any rights of setoff against the Reference Obligor, nor have any voting rights with respect to the Reference Obligation. The Trust will not benefit directly from any collateral supporting the Reference Obligation or have the benefit of the remedies on default that would normally be available to a holder of such Reference Obligation. In addition, in the event of insolvency of its counterparty, the Trust will be treated as a general creditor of such counterparty and will not have any claim with respect to the credit risk of the counterparty as well as that of the Reference Obligor. As a result, investments in synthetic securities are subject to an additional degree of risk because they are subject to the credit risk of the counterparty as well as that of the Reference Obligor. The Investment Adviser may not perform independent credit analyses of any particular counterparty, or any entity guaranteeing the obligations of such counterparty. See "Prospectus Summary – Principal Risks of the Trust – Counterparty Risk."

The Trust currently does not expect to invest more than 10% of its assets in synthetic securities as measured on a mark-to-market basis. However, the Trust's investments in synthetic securities may exceed this amount from time to time.

Valuation Risk. Portfolio securities may be valued using techniques other than market quotations, under the circumstances described under "Determination of Net Asset Value." The value established for a portfolio security may be different than what would be produced through the use of another methodology or if it had been priced using market quotations. Portfolio securities that are valued using techniques other than market quotations, including "fair valued" securities, may be subject to greater fluctuation in their value from one day to the next than would be the case if market quotations were used. In addition, there is no assurance that the Fund could sell a portfolio security for the value established for it at any time and it is possible that the Fund would incur a loss because a portfolio security is sold at a discount to its established value.

Fair value is defined as the amount for which assets could be sold in an orderly disposition over a reasonable period of time, taking into account the nature of the asset. Fair value pricing, however, involves judgments that are inherently subjective and inexact, since fair valuation procedures are used only when it is not possible to be sure what value should be attributed to a particular asset or when an event will affect the market price of an asset and to what extent. As a result, fair value pricing may not reflect actual market value, and it is possible that the fair value determined for a security will be materially different from the value that actually could be or is realized upon the sale of that asset.

Risks of Non-Diversification and Other Focused Strategies. While the Investment Adviser invests in a number of fixed-income and equity instruments issued by different issuers and employs multiple investment strategies with respect to the Trust's investment portfolio, it is possible that a significant amount of the Trust's investments could be invested in the instruments of only a few companies or other issuers or that at any particular point in time one investment strategy could be more heavily weighted than the others. The focus of the Trust's investment portfolio in any one issuer would subject the Trust to a greater degree of risk with respect to defaults by such issuer or other adverse events affecting that issuer, and the focus of the portfolio in any one industry or group of industries would subject the Trust to a greater degree of risk with respect to economic downturns relating to such industry or industries. The focus of the Trust's investment portfolio in any one investment strategy would subject the Trust to a greater degree of risk than if the Trust's investment portfolio were varied in its investments with respect to several investment strategies.

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Risks Related to Current Market Conditions. Recently, debt markets have experienced a period of high volatility, which has negatively impacted market liquidity conditions and prices. Initially, the concerns on the part of market participants were focused on the subprime segment of the mortgage-backed securities market. These concerns expanded to include derivatives, securitized assets and a broad range of other debt securities, including those rated investment grade, the U.S. and international credit and interbank money markets generally, and a wide range of financial institutions and markets, asset classes, and sectors. As a result, debt instruments have experienced, and may in the future experience, liquidity issues, increased price volatility, credit downgrades, and increased likelihood of default. Debt securities may be difficult to value during such periods. These market conditions may have an adverse effect on the Trust's investments and hamper the Trust's ability to sell the debt securities in which it invests or to find and purchase suitable debt instruments. Because the Trust invests heavily in fixed income securities and related investments, it may underperform during periods of rising interest rates. Market conditions may also make it more difficult or impossible for the Trust to use leverage to the degree required, or make any such leverage more expensive (for example, by increasing interest expense). In addition, these conditions may directly and adversely affect the setting of dividend rates on the common shares.

Risks of Investing in a Trust with Anti-Takeover Provisions. The Trust's Agreement and Declaration of Trust includes provisions that could limit the ability of other entities or persons to acquire control of the Trust or convert the Trust to open-end status.

Key Adviser Personnel Risk. The Trust's ability to identify and invest in attractive opportunities is dependent upon the Investment Adviser. If one or more key individuals leaves the Investment Adviser, the Investment Adviser may not be able to hire qualified replacements or may require an extended time to do so. This situation could prevent the Trust from achieving its investment objectives.

Risks Relating to Dilution of Shareholders' Interests. Shareholders' interests in the Trust may be diluted if they do not fully exercise their subscription rights in any rights offering. In addition, if the subscription price is less than our NAV per share, then there will be an immediate dilution of the aggregate NAV of our shares. In the event we issue subscription rights, shareholders who do not fully exercise their rights should expect that they will, at the completion of a rights offering pursuant to this Prospectus, own a smaller proportional interest in us than would otherwise be the case if they fully exercised their rights. Such dilution is not currently determinable because it is not known what proportion of the shares will be purchased as a result of such rights offering. Any such dilution will disproportionately affect non-exercising shareholders. This dilution could be substantial. The amount of any decrease in NAV is not predictable because it is not known at this time what the subscription price and NAV per share will be on the expiration date of the rights offering or what proportion of the shares will be purchased as a result of such rights offering.

Risks Relating to Trust's Tax Status. To remain eligible for the special tax treatment accorded to RICs and their shareholders under the Code, the Trust must meet certain source of income, asset diversification and annual distribution requirements. If the Trust were to fail to comply with the income, diversification or distribution requirements, the Trust could in some cases cure such failure, including by paying a Trust-level tax, paying interest, making additional distributions, or disposing of certain assets. If the Trust were ineligible to or otherwise did not cure such failure for any year, or were to otherwise fail to qualify as a RIC accorded special tax treatment, all of its taxable income regardless of whether timely distributed to shareholders would be subject to corporate-level tax and all of its distributions from earnings and profits (including from net long-term capital gains) would be taxable to shareholders as ordinary income. For individual shareholders who meet certain holding period requirements, such distributions would be eligible for reduced tax rates applicable to qualified dividend income. In any such event, the resulting corporate taxes could substantially reduce the Trust's net assets, the amount of income available for distribution and the amount of its distributions. Any such failure would have a material adverse effect on the Trust and its shareholders. In addition, in some cases, the Trust could be required to recognize unrealized gains, pay substantial taxes and interest and make substantial distributions in order to re-qualify as a RIC.

RIC-Related Risks of Investments Generating Non-Cash Taxable Income. Certain of the Trust's investments will require the Trust to recognize taxable income in a taxable year in excess of the cash generated on those investments during that year. In particular, the Trust expects that a substantial portion of its investments in loans and other debt obligations will be treated as having "market discount" and/or "original issue discount" for U.S. federal income tax purposes, which, in some cases, could be significant. Because the Trust may be required to recognize income in respect of these investments before or without receiving cash representing such income, the Trust may have difficulty satisfying the annual distribution requirements applicable to RICs and avoiding Trust-level U.S. federal income or excise taxes. Accordingly, the Trust may be required to sell portfolio securities, including at potentially disadvantageous times or prices, raise additional debt or equity capital, or reduce new investments, to obtain the cash needed to make these income distributions. If the Trust liquidates portfolio securities to raise cash, the Trust may realize gain or loss on such liquidations; in the event the Trust realizes net long-term or short-term capital gains from such liquidation transactions, its shareholders may receive larger capital gain or ordinary dividends, respectively, than they would in the absence of such transactions.

Limitations of Credit Ratings. Credit ratings represent only the opinion of the rating agency with respect to the ability of the issuer to make principal and interest payments on the securities. In determining a credit rating, rating agencies do not evaluate the risks of fluctuations in market value. Further, there may be limits on the effectiveness of the rating agencies' financial models. For these and other reasons, a credit rating may not fully reflect the risks inherent in the relevant security. Further, a rating organization may have a conflict of interest with respect to a security for which it assigns a particular rating. For example, if the issuer or sponsor of a security pays a rating agency for the analysis of the security, an inherent conflict of interest may exist that could affect the reliability of the rating. In addition, credit rating agencies may or may not make timely changes in a rating to reflect changes in the economy or in the conditions of the issuer that affect the market value of the security. In other words, a security or an issuer may maintain a certain credit rating even though conditions have deteriorated since the rating was issued. Consequently, credit ratings should not necessarily be relied upon as an indicator of investment quality. If a rating organization changes the rating assigned to one or more of the Trust's portfolio securities, the Trust is not required to sell the relevant securities.

Certain Affiliations. Certain broker-dealers may be considered to be affiliated persons of the Trust or the Investment Adviser. Absent an exemption from the SEC or other regulatory relief, the Trust is generally precluded from effecting certain principal transactions with affiliated brokers, and its ability to purchase securities being underwritten by an affiliated broker or a syndicate including an affiliated broker, or to utilize affiliated brokers for agency transactions, is subject to restrictions. This could limit the Trust's ability to engage in securities transactions and take advantage of market opportunities. In addition, unless and until the underwriting syndicate is broken in connection with the IPO of the securities, the Trust will be precluded from effecting principal transactions with brokers who are members of the syndicate.

Operational and Technology Risk. Cyberattacks, disruptions, or failures that affect the Trust's service providers, counterparties, market participants, or issuers of securities held by the Trust may adversely affect the Trust and its shareholders, including by causing losses for the Trust or impairing Trust operations.

Concentration Risk - Real Estate. The Trust is required to invest at least 25% of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry. Under this policy, the Trust may be subject to greater market fluctuations than a fund that does not concentrate its investments in a particular industry. Financial, economic, business, and other developments affecting issuers in the real estate industry will have a greater effect on the Trust, and if securities of the real estate industry fall out of favor, the Trust could underperform, or its NAV may be more volatile than, funds that have greater industry diversification.

Real Estate Industry Risk. Issuers principally engaged in real estate industry, including REITs, may be subject to risks similar to the risks associated with the direct ownership of real estate, including: (i) changes in general economic and market conditions; (ii) changes in the value of real estate properties; (iii) risks related to local economic conditions, overbuilding and increased competition; (iv) increases in property taxes and operating expenses; (v) changes in zoning laws; (vi) casualty and condemnation losses; (vii) variations in rental income, neighborhood values or the appeal of property to tenants; (viii) the availability of financing and (ix) changes in interest rates and leverage.

Communications Industry Risk. The market for communications products and services is characterized by rapidly changing technology, rapid product obsolescence, cyclical market patterns, evolving industry standards and frequent new product introductions. The success of the communications industry issuers depends in substantial part on the timely and successful introduction of new products and services. An unexpected change in in the market for products or services based on a particular technology could have a material adverse affect on an issuer's operating results. Furthermore, there can be no assurance that communications industry issuers will be able to respond in a timely manner to compete in the rapidly developing marketplace. Many communications companies rely on a combination of patents, copyrights, trademarks and trade secret laws to establish and protect their intellectual property. There can be no assurance that the steps taken to protect intellectual property will be adequate to prevent misappropriation or that competitors will not independently develop products or services that are substantially equivalent or superior to such issuers' products or services.

Given the risks described above, an investment in the securities may not be appropriate for all investors. You should carefully consider your ability to assume these risks before making an investment in the Trust.

The Trust's common and preferred shares are registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and we are required to file reports, proxy statements and other information with the Commission. The materials we file are available at the Commission's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information about the operation of the Commission's public reference room by calling the Commission at 1-800-SEC-0330. In addition, the Commission maintains an Internet website, at *http://www.sec.gov*, that contains reports, proxy and information statements, and other information regarding issuers, including us, that file documents electronically with the Commission.

Summary of Trust Fees and Expenses

The following table shows the Trust's expenses, including preferred shares offering expenses, as a percentage of net assets attributable to common shares.

Shareholder Transaction Expenses	
Sales load (as a percentage of offering price)	— %
Offering expenses borne by holders of common shares (as a percentage of offering price)	0.05%(1)
Dividend reinvestment and cash purchase plan fees	None(2)
Preferred Shares Offering Expenses Borne by the Trust (as a percentage of net assets attributable to common shares)	

	Percentage of Net Assets Attributable to Common Shares (Gives Effect to Leverage Through Borrowings(3))
Annual Expenses	
Management fees	1.60%(4)
Other expenses	1.74%(5)
Dividend expense on short sales	0.16%
Interest payments on borrowed funds	1.27%(6)
Remainder of other expenses	0.31%
Total annual expenses	3.34%
Dividends on Preferred Shares	—%
Total Annual Expenses and Dividends on Preferred Shares	3.34%

(1) The fees and expenses of the Offering will be borne by the Trust and indirectly by all of its common shareholders, including those who do not exercise their Rights.

(2) Common shareholders will pay a brokerage commission of $0.04 per share sold if they direct the Plan Agent (as defined in the accompanying Prospectus) to sell common shares held in a dividend reinvestment account. See "Dividend Reinvestment Plan" in the accompanying Prospectus.

(3) Assumes leverage in the amount of 25% of net assets. As of December 31, 2018, the Trust employed leverage in an amount equal to 23.7% of net assets. The Trust may use leverage through borrowings and/or preferred shares. The Trust currently leverages through borrowings from two committed facilities and through a master repurchase agreement. See "Principal Risks of the Trust — Leverage Risk" in the accompanying Prospectus for a brief description of the Trust's Committed Facility with BNP, the Repurchase Agreement with BNP Securities and the Committed Facility with KeyBank National Association.

(4) Management fees are the investment advisory and administrative services fees paid to the Investment Adviser, which are computed based on Managed Assets. See "Management of the Trust — Investment Adviser" and "Management of the Trust — Administrator/Sub-Administrator" in the accompanying Prospectus. Such fees have been converted to net assets for purposes of the fee table presentation as follows: management fees, assuming no leverage, divided by (one minus the Trust's assumed leverage of 25% of the Trust's total assets). Because the base management fees of 1.20% (including an administrative fee of 0.20%) are based on the Trust's gross assets, when the Trust uses leverage, the base management fees as a percentage of net assets attributable to common shares will increase because the Trust's common shareholders bear all of the fees and expenses of the Trust.

(5) "Other Expenses," which is based on the Trust's estimated current expenses, includes costs associated with the Trust's short sales on securities, including dividend and interest expenses associated with securities sold short. When a cash dividend is declared or interest is payable on a security for which the Trust holds a short position, the Trust incurs the obligation to pay an amount equal to that dividend or interest to the lender of the shorted security. Thus, the estimate for dividend and interest expenses paid is also based on the dividend yields or interest payments of securities that would be sold short as part of anticipated trading practices (which may involve avoiding dividend or interest expenses with respect to certain short sale transactions by closing out the position prior to the underlying issuer's ex-dividend or ex-interest date). "Other Expenses" also includes the dividend and interest expense that the Trust is expected to incur during the current fiscal year.

(6) Assumes the use of leverage in the form of borrowings representing 25% of the Trust's total assets (including assets obtained through such borrowing) at an effective annual interest rate cost to the Trust of 3.81%. This variable rate is based on current interest rates under the Trust's borrowing facilities and is subject to change. The interest rate will increase in rising interest rate environments and, therefore, the actual interest expense borne by Trust shareholders will increase over time in a rising interest rate environment. The Margin Facility has a rolling 90-day term. There is no guarantee that the Trust will be able to renew its credit facility on these or other favorable terms in the future. While the Trust has no present intention to issue preferred shares within the next twelve months, if an attractive preferred shares financing opportunity were to come to the Trust's attention during that period, the Trust may consider that opportunity.

(7) Dividends on Preferred Shares, which will be disclosed in the related Prospectus Supplement, represent the aggregate of (1) the estimated distributions on the existing preferred shares outstanding and (2) the distributions that would be made assuming $— million of preferred shares is issued with a fixed dividend rate of —%. There can, of course, be no guarantee that any preferred shares would be issued or, if issued, the terms thereof. This information will be updated if and when preferred shares are outstanding.

EXAMPLE

The following example illustrates the projected expenses that you would pay on a $1,000 investment in preferred shares of the Trust (including the estimated costs of this offering borne by the Trust of $455,000), assuming (1) that the Trust's current net assets do not increase or decrease, (2) that the Trust maintains a leverage ratio of 20% from all sources of leverage, (3) that the Trust incurs total annual expenses of 3.34% of net assets attributable to common shares through year 10, and (4) a 5% annual return. The following example also assumes all dividends and distributions are reinvested at NAV. **The example should not be considered a representation of future expenses, and actual expenses (including leverage and other expenses) may be greater or less than those shown.**

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	1 Year	3 Years	5 Years	10 Years
Total expenses incurred	$ 34	$ 103	$ 175	$ 363

** The example includes Dividends of Preferred Shares. If Dividends on Preferred Shares were not included in the example calculation, the expenses for the 1-, 3-, 5- and 10-year periods in the table above would be as follows (based on the same assumptions as above): $34, $103, $175 and $363. The applicable Prospectus Supplement to be used in connection with any sales of securities will set forth any applicable sales load and the estimated offering expenses borne by the Trust.

Financial Highlights

The following Financial Highlights table is intended to help you understand the Trust's financial performance since inception. The information in the table was audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm. Financial statements for the fiscal year ended December 31, 2018 and the Report of the Independent Registered Accounting Firm thereon appear in the Trust's Annual Report for the Fiscal Year Ended December 31, 2018 are incorporated by reference into the Statement of Additional Information ("SAI") and available from the Trust upon request. The Trust's performance has been enhanced by the existence of contractual waivers of fees and expenses, which may not continue into the future.

Selected data for a share outstanding throughout each period is as follows:

	For the Years Ended December 31,				
	2018	2017	2016	2015*	2014
Net Asset Value, Beginning of Year	$ 26.02	$ 25.89	$ 22.92	$ 53.92	$ 11.34
Income from Investment Operations:					
Net investment income(a)	0.75	0.93	4.08	8.75(b)	0.82
Net realized and unrealized gain/(loss)	0.83	2.88	1.69	(16.08)	2.02
Total from investment operations	1.58	3.81	5.77	(7.33)	2.84
Less Distributions Declared to Common Shareholders:					
From net investment income	(0.77)	(2.39)	(2.80)	(2.88)	(0.70)
From return of capital	(1.63)	(0.01)	—	—	—
From spin-off(d)	—	—	—	(20.79)	—
Total distributions declared to common shareholders	(2.40)	(2.40)	(2.80)	(23.67)	(0.70)
Issuance of Common Shares(e):					
Shares Issued:	(1.46)	(1.28)	—	—	—
Net Asset Value, End of Period	$ 23.74	$ 26.02	$ 25.89	$ 22.92	$ 13.48
Market Value, End of Period	$ 19.93	$ 25.29	$ 22.77	$ 20.44	$ 11.23
Market Value Total Return(f)	(8.93)%	27.31%	27.69%	(18.09)%	26.77%
Ratios to Average Net Assets/ Supplemental Data:					
Net assets, end of period (in 000's)	$767,711	$592,309	$414,800	$366,078	$860,877
Common Shares Information at End of Period:					
Ratios based on average net assets of common shares:					
Gross operating expenses(g)	2.65%	2.58%	3.12%	3.43%	2.48%
Net investment income/(loss)	3.02%	3.69%	17.34%	24.23%(h)	6.45%
Common and Preferred Shares Information at End of Period:					
Ratios based on average managed assets of common shares:					
Gross operating expenses(g)	2.14%	2.21%	2.17%	2.23%	1.68%
Net investment income/(loss)	2.44%	3.16%	12.05%	15.79%(i)	4.38%
Portfolio turnover rate(j)	48%	36%	41%	31%	59%
Average commission rate paid(k)	0.0263	0.0286	0.0294	0.0223	0.0266

* Per share data prior to October 6, 2015 has been adjusted to give effect to a 4 to 1 reverse stock split.

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(a) Net investment income (loss) per share was calculated using average shares outstanding during the period.
(b) Includes non-recurring dividend from NREO.
(c) Less than 0.005%
(d) On April 1, 2015, the Fund completed a spinoff transaction whereby shares of NexPoint Residential Trust, Inc. were distributed to shareholders in a pro-rata taxable distribution
(e) Shares issued at a discount to NAV. The per share impact was derived by computing (A) the number of shares issued times (B) the difference between the net proceeds per share and NAV divided by (C) the total shares outstanding following the share issuance.
(f) Based on market value per share. Distributions, if any, are assumed for purposes of this calculation to be reinvested at prices obtained under the Fund's Dividend Reinvestment Plan.
(g) Supplemental expense ratios are shown below:

	For the Years Ended December 31,				
	2018	2017	2016	2015	2014
Ratios based on average net assets of common shares:					
Net operating expenses (net of waiver/reimbursement, if applicable, but gross of all other operating expenses)	2.65%	2.58%	3.12%	3.43%	2.48%
Interest expense and commitment fees	0.90%	0.69%	0.93%	0.71%	0.50%
Dividends and fees on securities sold short	— %(c)	— %(c)	0.07%	0.24%	0.07%

	For the Years Ended December 31,				
	2018	2017	2016	2015	2014
Ratios based on Managed Assets of common shares:					
Net operating expenses (net of waiver/reimbursement, if applicable, but gross of all other operating expenses)	2.14%	2.21%	2.17%	2.23%	1.68%
Interest expense and commitment fees	0.73%	0.59%	0.65%	0.46%	0.34%
Dividends and fees on securities sold short	— %(c)	— %(c)	0.05%	0.15%	0.04%

(h) Net investment income (excluding non-recurring dividend from NREO) was 9.76%.
(i) Net investment income (excluding non-recurring dividend from NREO) was 6.36%.
(j) Excludes in-kind activity.
(k) Represents the total dollar amount of commissions paid on portfolio transactions divided by total number of portfolio shares purchased and sold for which commissions were charged.

The following table sets forth additional information regarding the Trust's credit facility since inception:

Year	Total Amount Outstanding	Asset Coverage per $1,000 of Indebtedness
2007	248,000,000	$ 3,504
2008	141,000,000	$ 3,562
2009	112,000,000	$ 5,096
2010	120,000,000	$ 5,106
2011	173,000,000	$ 3,561
2012	225,000,000	$ 3,117
2013	318,500,000	$ 3,275
2014	385,336,455	$ 3,230
2015	186,625,315[1]	$ 2,962[1,2]
2016	124,983,081	$ 4,319
2017	31,933,494	$ 19,548
2018	239,507,979	$ 4,205

1 Excludes borrowings of $29,300,000 deemed to be temporary in accordance with Section 18 of the Investment Company Act.
2 The Trust closes its net asset value daily, and using asset prices available at the time of the December 31, 2015 NAV close, the Trust calculated asset coverage of greater than 300%. The Trust received updated prices for certain instruments in January that were used for financial reporting purposes. These updated prices pushed the percentage of asset coverage down to 296.2%. As of February 4, 2016, the date that the Trust declared the February monthly dividend, the percentage of asset coverage was over 300%.

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NexPoint Strategic Opportunities Fund

Plan of Distribution

We may offer, from time to time, in one or more Offerings, up to $500,000,000 of our fixed rate preferred shares or subscription rights (either transferable or non-transferable), separately or as units comprising any combination of the foregoing, on the terms to be determined at the time of such Offering. The Prospectus Supplement relating to any sale of fixed rate preferred shares will set forth the liquidation preference and information about the dividend period, dividend rate, any call protection or non-call period and other matters. The Prospectus Supplement relating to any offering of subscription rights will set forth the number of common and/or fixed rate preferred shares issuable upon the exercise of each right and the other terms of such rights offering. We may sell the securities through underwriters or dealers, directly to one or more purchasers, through agents or through a combination of any such methods of sale (including agents, underwriters or dealers affiliated with the Investment Adviser). Any underwriter or agent involved in the offer and sale of the securities will be named in the applicable Prospectus Supplement.

While the aggregate number and amount of securities we may issue pursuant to this registration statement is limited to $500,000,000 of securities, our Board may, without any action by the shareholders, amend our Agreement and Declaration of Trust from time to time to increase or decrease the aggregate number of shares or the number of shares of any class or series that we have authority to issue. We may not sell any of our securities through agents, underwriters or dealers without delivery of a Prospectus Supplement describing the method and terms of the particular offering.

The distribution of the securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, at prevailing market prices at the time of sale, at prices related to such prevailing market prices, or at negotiated prices; *provided, however*, that the price per share at which our common shares are sold, less any underwriting commissions or discounts, must equal or exceed the NAV per share of our common shares at the time of the offering except (i) in connection with a rights offering to our existing shareholders, (ii) with the consent of the majority of our common shareholders, or (iii) under such circumstances as the Commission may permit.

In connection with the sale of the securities, underwriters or agents may receive compensation from us or from purchasers of the securities, for whom they may act as agents, in the form of discounts, concessions, commissions, structuring fees, distribution assistance payments or other compensation. Underwriters may sell the securities to or through dealers and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of the securities may be deemed to be underwriters under the Securities Act of 1933, as amended (the "Securities Act") and any discounts, commissions or other compensation they receive from us and any profit realized by them on the resale of the securities may be deemed to be underwriting discounts and commissions under the Securities Act. Any such underwriter or agent will be identified and any such compensation received from us will be described in the applicable Prospectus Supplement. The maximum commission or discount to be received by any member of the Financial Industry Regulatory Authority ("FINRA") or independent broker-dealer will not be greater than 9% for the sale of any securities being registered.

We may sell the securities through agents from time to time. The Prospectus Supplement will name any agent involved in the offer or sale of the securities and any commissions we pay to them. Generally, any agent will be acting on a best efforts basis for the period of its appointment.

Any securities sold pursuant to a Prospectus Supplement may be traded on the New York Stock Exchange (the "NYSE"), or another exchange on which the securities are traded.

Under agreements that we may enter, underwriters, dealers and agents who participate in the distribution of shares of our securities may be entitled to indemnification by us against certain liabilities, including liabilities under the Securities Act. Underwriters, dealers and agents may engage in transactions with, or perform services for, us in the ordinary course of business.

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In order to comply with the securities laws of certain states, if applicable, our securities offered hereby will be sold in such jurisdictions only through registered or licensed brokers or dealers.

The Trust's common shareholders will indirectly bear all of the various expenses incurred in connection with the distribution activities described herein.

Use of Proceeds

The Trust will invest the net proceeds of the Offer in accordance with the Trust's investment objectives and policies as stated in the accompanying Prospectus Supplement. Assuming current market conditions, the Trust estimates that investment of the net proceeds of an Offering will be substantially complete within one to three months of the completion of such Offering. Pending such investment, it is anticipated that the proceeds of the Offering may be invested in cash and/or short-term debt securities. These temporary investments are expected to provide a lower net return than we hope to achieve from our targeted investments. Following the completion of the Offering, the Trust may increase the amount of leverage outstanding. See "Use of Leverage."

The Trust

The Trust is a non-diversified, closed-end management investment company. The Trust was organized as a Delaware statutory trust on March 10, 2006, pursuant to an Agreement and Declaration of Trust governed by the laws of the State of Delaware. The Trust commenced operations on June 29, 2006, following its IPO. The Trust's principal office is located at 300 Crescent Court, Suite 700, Dallas, Texas 75201 and its telephone number is 1-866-351-4440.

Investment Objectives and Policies

The Trust's investment objectives are to provide both current income and capital appreciation. The Trust seeks to achieve its investment objectives by investing primarily in the following categories of securities and instruments of corporations and other business entities: (i) secured and unsecured floating and fixed rate loans; (ii) bonds and other debt obligations; (iii) debt obligations of stressed, distressed and bankrupt issuers; (iv) structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; (v) equities; (vi) other investment companies, including BDCs; and (vii) REITs. The Trust may also invest in other securities and instruments, including derivative instruments. Subject to these general guidelines, the Investment Adviser has broad discretion to allocate the Trust's assets among these investment categories and other investments and to change allocations as conditions warrant. In order to pursue most effectively its opportunistic investment strategy, the Trust will not maintain fixed duration, maturity or credit quality policies. The Trust may invest in debt obligations of any credit quality. The Trust may invest in securities and obligations of domestic issuers and in credit or securities market investments that are Non-U.S. Securities.

Additionally, the Trust has a fundamental policy to concentrate its investments in the real estate industry, and, under normal market conditions, the Trust invests at least 25% of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry. Within the categories of obligations and securities in which the Trust invests, the Investment Adviser employs various trading strategies, including capital structure arbitrage, pair trades and shorting. Capital structure arbitrage is a strategy in which the Trust seeks opportunities created by mispricing in different markets of various instruments issued by one corporation. Pair trades involve matching a long position with a short position in two stocks of different issuers in the same sector, betting that the "spread" between the two will eventually converge. Short selling (also known as shorting or going short) is a strategy in which the Trust sells a security it does not own in anticipation that the market price of that security will decline. See "Portfolio Composition" for further description of these strategies. The Trust may also invest in these categories of obligations and securities through the use of derivatives. The Trust is not limited in the amount it may invest in derivatives, and it may use derivatives for speculative purposes. There is no limitation on the amount of securities and other instruments rated below investment grade, which are commonly referred to as "junk securities," that the Trust may purchase, and under normal circumstances substantially all of the Trust's investment portfolio is expected to consist of such securities and instruments or securities and other instruments which, if unrated, are considered to be of similar quality. The Trust may invest a significant portion of its assets in issuers that are in default or that present a high risk of default. Junk securities are subject to greater risk of loss of principal and interest and may be less liquid than investment grade securities. The Trust may invest up to 15% of its net assets in entities that are excluded from registration under the Investment Company Act by virtue of section 3(c)(1) and 3(c)(7) of the Investment Company Act (such as private equity funds or hedge funds). This limitation does not apply to any CLOs, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act.

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The Trust's investment objectives may be changed without shareholder approval. There can be no assurance that the Trust's investment objectives will be achieved.

Investment Strategies

Under normal market conditions, the Trust invests across various markets in which the Investment Adviser holds significant investment experience: primarily the leveraged loan, high yield, structured products, real estate, communications, natural resources and stressed and distressed markets. The Investment Adviser makes investment decisions based on quantitative analysis, which employs sophisticated, data-intensive models to drive the investment process. The Trust has a fundamental policy to concentrate its investments in the real estate industry, and, under normal market conditions, the Trust invests at least 25% of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry and the Investment Adviser has full discretion regarding the capital markets from which it can access investment opportunities in accordance with the investment limitations set forth in this Prospectus.

The Investment Adviser uses trading strategies to seek to exploit pricing inefficiencies across the credit markets, or debt markets, and within an individual issuer's capital structure. The Investment Adviser varies its investments by strategy, industry, security type and credit market, but reserves the right to re-position its portfolio among these criteria depending on market dynamics, and thus the Trust may experience high portfolio turnover. The Investment Adviser manages interest rate, default, currency and systemic risks through a variety of trading methods and market tools, including derivative hedging instruments, as it deems appropriate. This multi-strategy investment program allows the Investment Adviser to assess what it considers to be the best opportunities across multiple markets and to adjust quickly the Trust's trading strategies and market focus to changing conditions. The Investment Adviser focuses primarily on the U.S. marketplace, but may pursue opportunities in the non-U.S. credit or securities markets by investing the Trust's assets in Non-U.S. Securities.

The Investment Adviser may select investments from a wide range of trading strategies and credit markets in order to vary the Trust's investments and to optimize the risk-reward parameters of the Trust. The Investment Adviser does not intend to invest the Trust's assets according to pre-determined allocations. The investment team and other personnel of the Investment Adviser use a wide range of resources to identify attractive individual investments and promising investment strategies for consideration in connection with investments by the Trust. The following is a description of the general types of securities in which the Trust may invest. This description is merely a summary, and the Investment Adviser has discretion to cause the Trust to invest in other types of securities and to follow other investment criteria and guidelines as described herein.

The Trust invests and trades in listed and unlisted, public and private, rated and unrated, debt and equity instruments and other obligations, including structured debt and equity instruments and financial derivatives. Investments may include investments in stressed and distressed positions, which may include publicly-traded debt and equity securities (including securities of REITs, BDCs and MLPs), obligations which were privately placed with banks, insurance companies and other lending institutions, trade claims, accounts receivable and any other form of obligation recognized as a claim in a bankruptcy or workout process. The Trust may invest in securities traded in foreign countries and denominated in foreign currencies.

REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests. Foreign REIT equivalents are entities located in jurisdictions that have adopted legislation substantially similar to the REIT tax provisions in that they provide for favorable tax treatment for the foreign REIT equivalent and require distributions of income to shareholders. The Trust seeks to gain exposure to the real estate markets, in whole or in part, by investing in certain REIT subsidiaries of the Trust, notably NexPoint Real Estate Opportunities, LLC (formerly Freedom REIT) ("NREO") and NexPoint Real Estate Capital, LLC ("NREC").

With respect to the Trust's real estate investments, the Adviser seeks to: (i) recognize and allocate capital based upon where the Adviser believes we are in the current real estate cycle, and as a result (ii) minimize drawdowns during market downturns and maximize risk adjusted returns during all market cycles, though there can be no assurance that this strategy will achieve this objective. The Trust will rely on the expertise of the Adviser and its affiliates to determine the appropriate structure for structured credit investments, which may include bridge loans, common and preferred equity or other debt-like positions, as well as the acquisition of such instruments from banks, servicers or other third parties.

Preferred equity and mezzanine investments in real estate transactions come in various forms which may or may not be documented in the borrower's organizational documents. Generally, real estate preferred equity and/or mezzanine investments are typically junior to first mortgage financing but senior to the borrower's or sponsor's equity contribution. The investments are typically

structured as an investment by a third-party investor in the real estate owner of various affiliates in the chain of ownership in exchange for a direct or indirect ownership interest in the real estate owner entitling it to a preferred/priority return on its investment. Sometimes, the investment is structured much like a loan where (i) "interest" on the investment is required to be paid monthly by the "borrower" regardless of available property cash flow; (ii) the entire investment is required to be paid by a certain maturity date; (iii) default rate "interest" and penalties are assessed against the "borrower" in the event payments are not made timely; and (iv) a default in the repayment of investment potentially results in the loss of management and/or ownership control by the "borrower" in the company in favor of the investor or other third-party.

As part of its investment program, the Trust may invest, from time to time, in securities or other instruments that are sold in private placements and that are neither listed on an exchange, nor traded over the counter. The Trust may also receive equity or equity-related securities in connection with a workout transaction or may invest directly in equity securities.

The Trust may employ currency hedges (either in the forward or options markets) in certain circumstances to reduce currency risk and may engage in other derivative transactions for hedging purposes or to enhance total return. The Trust may also lend securities and engage in short sales of securities. The Trust currently leverages through borrowings from a committed facility, through a master repurchase agreement and through a bridge credit agreement. Additionally, the Trust may continue to use leverage in the future through borrowings or the issuance of preferred shares. However, the Trust has no present intention to issue preferred shares within the next twelve months. However, it is possible that an attractive preferred shares financing opportunity may arise, which the Trust may consider. In addition, the Trust may invest in the securities of companies whose capital structures are highly leveraged.

From time to time, the Investment Adviser may also invest a portion of the Trust's assets in short-term U.S. government obligations, certificates of deposit, commercial paper and other money market instruments, including repurchase agreements with respect to such obligations and pooled investment vehicles (for example, money market funds) that invest in these obligations, to enable the Trust to make investments quickly, to serve as collateral with respect to certain of its investments, and for other cash management purposes. A greater percentage of Trust assets may be invested in such obligations if the Investment Adviser believes that a defensive position is appropriate because of the outlook for security prices or in order to respond to adverse market, economic, business or political conditions.

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As of June 30, 2019, 14% of the Trust's investment portfolio consisted of unrated securities, 3% of the Trust's investment portfolio consisted of securities rated below investment grade, also known as "junk securities," 1% of the Trust's investment portfolio consisted of securities of issuers that are in default, 1% of the Trust's investment portfolio consisted of securities rated investment grade, 47% of the Trust's investment portfolio consisted of equities (excluding investments considered to be debt obligations) and 34% of the Trust's investment portfolio consisted of REITs. All of the unrated securities referenced in the prior sentence have credit characteristics substantially equivalent to below investment grade securities, which are also known as "junk securities."

For a more complete discussion of the Trust's investment portfolio composition, see "Portfolio Composition" below.

Portfolio Composition

The Trust's investment portfolio will be composed principally of the following investments. Additional information relating to the Trust's investment policies and restrictions and the Trust's portfolio investments is contained in the SAI.

Senior Loans. Senior loans hold the most senior position in the capital structure of a business entity, are typically secured with specific collateral and have a claim on the general assets of the borrower that is senior to that held by subordinated debtholders and stockholders of the borrower. The proceeds of senior loans primarily are used to finance leveraged buyouts, recapitalizations, mergers, acquisitions, stock repurchases, and, to a lesser extent, to finance internal growth and for other corporate purposes. Senior loans typically have rates of interest which are redetermined either daily, monthly, quarterly or semi-annually by reference to a base lending rate, plus a premium. These base lending rates generally are the London Interbank Offered Rate ("LIBOR"), the prime rate offered by one or more major U.S. banks ("Prime Rate") or the certificate of deposit ("CD") rate or other base lending rates used by commercial lenders.

Senior loans will generally be supported by liens in the Trust's favor on all or a portion of the assets of the portfolio company or on assets of affiliates of the portfolio company. Although the Trust may seek to dispose of such collateral in the event of default, it may be delayed in exercising such rights or its rights may be contested by others. In addition, the value of the collateral may deteriorate so that the collateral is insufficient for the Trust to recover its investment in the event of default.

The Trust also may invest in unsecured loans, other floating rate debt securities such as notes, bonds and asset-backed securities (such as securities issued by special purchase funds investing in bank loans), investment grade and below-investment grade fixed income debt obligations and money market instruments, such as commercial paper. The Trust also may purchase obligations issued in connection with a restructuring pursuant to Chapter 11 of the U.S. Bankruptcy Code.

Loans and other corporate debt obligations are subject to the risk of non-payment of scheduled interest or principal. Such non-payment would result in a reduction of income to the Trust, a reduction in the value of the investment and a potential decrease in the NAV of the Trust. Liquidation of any collateral securing a senior loan may not satisfy a borrower's obligation in the event of non-payment of scheduled interest or principal payments, or that such collateral could be readily liquidated. In the event of bankruptcy of a borrower, the Trust could experience delays or limitations with respect to its ability to realize the benefits of the collateral securing a senior loan. To the extent that a senior loan is collateralized by stock in the borrower or its subsidiaries, such stock may lose all or substantially all of its value in the event of the bankruptcy of a borrower. Some senior loans are subject to the risk that a court, pursuant to fraudulent conveyance or other similar laws, could subordinate senior loans to presently existing or future indebtedness of the borrower or take other action detrimental to the holders of senior loans including, in certain circumstances, invalidating such senior loans or causing interest previously paid to be refunded to the borrower. If interest were required to be refunded, it could negatively affect the Trust's performance. To the extent a senior loan is subordinated in the capital structure, it will have characteristics similar to other subordinated debtholders, including a greater risk of nonpayment of interest or principal.

Many loans in which the Investment Adviser anticipates the Trust will invest, and the issuers of such loans, may not be rated by a rating agency, will not be registered with the Commission or any state securities commission and will not be listed on any national securities exchange. The amount of public information available with respect to issuers of senior loans will generally be less extensive than that available for issuers of registered or exchange listed securities. In evaluating the creditworthiness of borrowers, the Investment Adviser will consider, and may rely in part, on analyses performed by others. The Investment Adviser does not view ratings as the determinative factor in its investment decisions and relies more upon its credit analysis abilities than upon ratings. Borrowers may have outstanding debt obligations that are rated below investment grade by a rating agency. A high percentage of senior loans held by the Trust may be rated, if at all, below investment grade by independent rating agencies. In the event senior loans are not rated, they are likely to be the equivalent of below investment grade quality. Debt securities which are unsecured and rated below investment grade (*i.e.*, Ba and below by Moody's Investors Service, Inc. ("Moody's") or BB and below by Standard & Poor's Ratings Group, a division of

The McGraw-Hill Companies, Inc. ("S&P")) and comparable unrated bonds, are viewed by the rating agencies as having speculative characteristics and are commonly known as "junk bonds." A description of the ratings of corporate

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bonds by Moody's and S&P is included as Appendix A to the SAI. Because senior loans are senior in a borrower's capital structure and are often secured by specific collateral, the Investment Adviser believes that senior loans have more favorable loss recovery rates as compared to most other types of below investment grade debt obligations. However, the Trust's actual loss recovery experience may not be consistent with the Investment Adviser's prior experience and the Trust's senior loans may not achieve any specific loss recovery rates.

No active trading market may exist for many senior loans, and some senior loans may be subject to restrictions on resale. The Trust is not limited in the percentage of its assets that may be invested in senior loans and other securities deemed to be illiquid. A secondary market may be subject to irregular trading activity, wide bid/ask spreads and extended trade settlement periods, which may impair the ability to realize full value on the disposition of an illiquid senior loan, and cause a material decline in the Trust's NAV.

Senior loans generally are arranged through private negotiations between a borrower and a group of financial institutions initially represented by an agent who is usually one of the originating lenders. In larger transactions, it is common to have several agents. Generally, however, only one such agent has primary responsibility for ongoing administration of a senior loan. Agents are typically paid fees by the borrower for their services. The agent is primarily responsible for negotiating the credit agreement which establishes the terms and conditions of the senior loan and the rights of the borrower and the lenders. The agent is also responsible for monitoring collateral and for exercising remedies available to the lenders such as foreclosure upon collateral.

Credit agreements may provide for the termination of the agent's status in the event that it fails to act as required under the relevant credit agreement, becomes insolvent, enters Federal Deposit Insurance Corporation ("FDIC") receivership or, if not FDIC insured, enters into bankruptcy. Should such an agent, lender or assignor with respect to an assignment interpositioned between the Trust and the borrower become insolvent or enter FDIC receivership or bankruptcy, any interest in the senior loan of such person and any loan payment held by such person for the benefit of the Trust should not be included in such person's or entity's bankruptcy estate. If, however, any such amount were included in such person's or entity's bankruptcy estate, the Trust would incur certain costs and delays in realizing payment or could suffer a loss of principal or interest. In this event, the Trust could experience a decrease in NAV.

The Trust's investments in senior loans may take one of several forms, including acting as one of the group of lenders originating a senior loan, purchasing an assignment of a portion of a senior loan from a third party or acquiring a participation in a senior loan. When the Trust is a member of the originating syndicate for a senior loan, it may share in a fee paid to the syndicate. When the Trust acquires a participation in, or an assignment of, a senior loan, it may pay a fee to, or forego a portion of interest payments from, the lender selling the participation or assignment. The Trust will act as lender, or purchase an assignment or participation, with respect to a senior loan only if the agent is determined by the Investment Adviser to be creditworthy.

When the Trust is one of the original lenders, it will have a direct contractual relationship with the borrower and can enforce compliance by the borrower with terms of the credit agreement. It also may have negotiated rights with respect to any funds acquired by other lenders through setoff. Original lenders also negotiate voting and consent rights under the credit agreement. Actions subject to lender vote or consent generally require the vote or consent of the majority of the holders of some specified percentage of the outstanding principal amount of the senior loan. Certain decisions, such as reducing the interest rate, or extending the maturity of a senior loan, or releasing collateral securing a senior loan, among others, frequently require the unanimous vote or consent of all lenders affected.

When the Trust is a purchaser of an assignment, it typically succeeds to all the rights and obligations under the credit agreement of the assigning lender and becomes a lender under the credit agreement with the same rights and obligations as the assigning lender. Assignments are, however, arranged through private negotiations between potential assignees and potential assignors, and the rights and obligations acquired by the purchaser of an assignment may be more limited than those held by the assigning lender.

The Trust may also invest in participations in senior loans. The rights of the Trust when it acquires a participation are likely to be more limited than the rights of an original lender or an investor who acquired an assignment. Participation by the Trust in a lender's portion of a senior loan typically means that the Trust has only a contractual relationship with the lender, not with the borrower. This means that the Trust has the right to receive payments of principal, interest and any fees to which it is entitled only from the lender selling the participation and only upon receipt by the lender of payments from the borrower.

With a participation, the Trust will have no rights to enforce compliance by the borrower with the terms of the credit agreement or any rights with respect to any funds acquired by other lenders through setoff against the borrower. In addition, the Trust may not directly benefit from the collateral supporting the senior loan because it may be treated as a general creditor of the lender instead of a senior secured creditor of the borrower. As a result, the Trust may be subject to delays, expenses and risks that are greater than those that exist when the Trust is the original lender or holds an assignment. This means the Trust must assume the credit risk of both the

borrower and the lender selling the participation. The Trust will consider a purchase of participations only in those situations where the Investment Adviser considers the participating lender to be creditworthy.

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In the event of a bankruptcy or insolvency of a borrower, the obligation of the borrower to repay the senior loan may be subject to certain defenses that can be asserted by such borrower against the Trust as a result of improper conduct of the lender selling the participation. A participation in a senior loan will be deemed to be a senior loan for the purposes of the Trust's investment objectives and policies.

The Trust may have difficulty disposing of assignments and participations. Because there is no liquid market for such securities, the Trust anticipates that such securities could be sold only to a limited number of institutional investors. The lack of a liquid secondary market will have an adverse impact on the value of such securities and on the Trust's ability to dispose of particular assignments or participations when necessary to meet the Trust's liquidity needs or in response to a specific economic event, such as a deterioration in the creditworthiness of the borrower. The lack of a liquid secondary market for assignments and participations also may make it more difficult for the Trust to assign a value to those securities for purposes of valuing the Trust's investment portfolio and calculating its NAV.

Investing in senior loans involves investment risk. Some borrowers default on their senior loan payments. The Trust attempts to manage this credit risk through multiple different investments within the portfolio and ongoing analysis and monitoring of borrowers. The Trust also is subject to market, liquidity, interest rate and other risks. See "Principal Risks of the Trust."

Loans other than senior loans may not be acceptable collateral under the Trust's current credit facility or under any future credit facilities, or may require a higher collateral-to-loan ratio, and therefore to the extent the Trust invests in such loans its ability to borrow may be reduced.

Second Lien Loans. Second lien loans are loans made by public and private corporations and other non-governmental entities and issuers for a variety of purposes. Second lien loans are second in right of payment to one or more senior loans of the related borrower. Second lien loans typically are secured by a second priority security interest or lien to or on specified collateral securing the borrower's obligation under the loan and typically have similar protections and rights as senior loans. Second lien loans are not (and by their terms cannot) become subordinate in right of payment to any obligation of the related borrower other than senior loans of such borrower. Second lien loans, like senior loans, typically have adjustable floating rate interest payments. Because second lien loans are second to senior loans, they present a greater degree of investment risk but often pay interest at higher rates reflecting this additional risk. Such investments generally are of below investment grade quality. Other than their subordinated status, second lien loans have many characteristics and risks similar to senior loans discussed above. In addition, second lien loans of below investment grade quality share many of the risk characteristics of non-investment grade securities. As in the case of senior loans, the Trust may purchase interests in second lien loans through assignments or participations.

Second lien loans are subject to the same risks associated with investment in senior loans and non-investment grade securities. Because second lien loans are second in right of payment to one or more senior loans of the related borrower, they therefore are subject to additional risk that the cash flow of the borrower and any property securing the loan may be insufficient to meet scheduled payments after giving effect to the senior secured obligations of the borrower. Second lien loans are also expected to have greater price volatility than senior loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in second lien loans, which would create greater credit risk exposure.

The risks associated with second lien loans are higher than the risks of loans with first priority over the collateral. In the event of default on a second lien loan, the first priority lien holder has first claim to the underlying collateral of the loan. It is possible that no collateral value would remain for the second priority lien holder, resulting in a loss to the Trust.

Other Secured Loans. Secured loans other than senior loans and second lien loans are made by public and private corporations and other non-governmental entities and issuers for a variety of purposes. Such secured loans may rank lower in right of payment to one or more senior loans and second lien loans of the borrower. Such secured loans typically are secured by a lower priority security interest or lien to or on specified collateral securing the borrower's obligation under the loan, and typically have more subordinated protections and rights than senior loans and second lien loans. Secured loans may become subordinated in right of payment to more senior obligations of the borrower issued in the future. Such secured loans may have fixed or adjustable floating rate interest payments. Because such secured loans may rank lower as to right of payment than senior loans and second lien loans of the borrower, they may present a greater degree of investment risk than senior loans and second lien loans but often pay interest at higher rates reflecting this additional risk. Such investments generally are of below investment grade quality. Other than their more subordinated status, such investments have many characteristics and risks similar to senior loans and second lien loans discussed above. In addition, secured loans of below investment grade quality share many of the risk characteristics of non-investment grade securities. As in the case of senior loans and second lien loans, the Trust may purchase interests in other secured loans through assignments or participations. Other secured loans are subject to the same risks associated with investment in senior loans, second lien loans and non-investment

grade securities. Because such loans, however, may rank lower in right of payment to senior loans and second lien loans of the borrower, they may be subject to additional risk that the cash flow of the borrower and any property securing the loan may be insufficient to repay the scheduled payments after giving effect to more senior secured obligations of the borrower. Such secured loans are also expected to have greater price volatility than senior loans and second lien loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in other secured loans, which would create greater credit risk exposure.

Unsecured Loans. Unsecured loans are loans made by public and private corporations and other non-governmental entities and issuers for a variety of purposes. Unsecured loans generally have lower priority in right of payment compared to holders of secured debt of the borrower. Unsecured loans are not secured by a security interest or lien to or on specified collateral securing the borrower's obligation under the loan. Unsecured loans by their terms may be or may become subordinate in right of payment to other obligations of the borrower, including senior loans, second lien loans and other secured loans. Unsecured loans may have fixed or adjustable floating rate interest payments. Because unsecured loans are subordinate to the secured debt of the borrower, they present a greater degree of investment risk but often pay interest at higher rates reflecting this additional risk. Such investments generally are of non-investment grade quality. Other than their subordinated and unsecured status, such investments have many characteristics and risks similar to senior loans, second lien loans and other secured loans discussed above. In addition, unsecured loans of non-investment grade quality share many of the risk characteristics of non-investment grade securities. As in the case of secured loans, the Trust may purchase interests in unsecured loans through assignments or participations.

Unsecured loans are subject to the same risks associated with investment in senior loans, second lien loans, other secured loans and non-investment grade securities. However, because unsecured loans rank lower in right of payment to any secured obligations of the borrower, they may be subject to the additional risk that the cash flow of the borrower and available assets may be insufficient to meet scheduled payments after giving effect to the secured obligations of the borrower. Unsecured loans are also expected to have greater price volatility than secured loans and may be less liquid. There is also a possibility that loan originators will not be able to sell participations in unsecured loans, which would create greater credit risk exposure.

Mezzanine Debt. The Trust's assets may include mezzanine loans. Structurally, mezzanine loans usually rank subordinate in priority of payment to senior debt, such as senior bank debt, and are often unsecured. However, mezzanine loans rank senior to common and preferred equity in a borrower's capital structure. Mezzanine debt is often used in leveraged buyout and real estate finance transactions. Typically, mezzanine loans have elements of both debt and equity instruments, offering the fixed returns in the form of interest payments associated with senior debt, while providing lenders an opportunity to participate in the capital appreciation of a borrower, if any, through an equity interest. This equity interest typically takes the form of warrants. Due to their higher risk profile and often less restrictive covenants as compared to senior loans, mezzanine loans generally earn a higher return than senior secured loans. The warrants associated with mezzanine loans are typically detachable, which allows lenders to receive repayment of their principal on an agreed amortization schedule while retaining their equity interest in the borrower. Mezzanine loans also may include a "put" feature, which permits the holder to sell its equity interest back to the borrower at a price determined through an agreed-upon formula. The Trust believes that mezzanine loans offer an alternative investment opportunity based upon their historical returns and resilience during economic downturns.

Investment Grade Securities. The Trust may invest in a wide variety of bonds that are rated or determined by the Investment Adviser to be of investment grade quality of varying maturities issued by U.S. corporations and other business entities. Bonds are fixed or variable rate debt obligations, including bills, notes, debentures, money market instruments and similar instruments and securities. Bonds generally are used by corporations and other issuers to borrow money from investors for a variety of business purposes. The issuer pays the investor a fixed or variable rate of interest and normally must repay the amount borrowed on or before maturity. Certain bonds are "perpetual" in that they have no maturity date. Some investment grade securities, such as zero coupon bonds, do not pay current interest, but are sold at a discount from their face values. Although more creditworthy and generally less risky than non-investment grade securities, investment grade securities are still subject to market and credit risk. Market risk relates to changes in a security's value as a result of interest rate changes generally. Investment grade securities have varying levels of sensitivity to changes in interest rates and varying degrees of credit quality. In general, bond prices rise when interest rates fall, and fall when interest rates rise. Longer-term bonds and zero coupon bonds are generally more sensitive to interest rate changes. Credit risk relates to the ability of the issuer to make payments of principal and interest. The values of investment grade securities like those of other debt securities may be affected by changes in the credit rating or financial condition of an issuer. Investment grade securities are generally considered medium- and high-quality securities. Some, however, may possess speculative characteristics, and may be more sensitive to economic changes and to changes in the financial condition of issuers. The market prices of investment grade securities in the lowest investment grade categories may fluctuate more than higher-quality securities and may decline significantly in periods of general or regional economic difficulty. Like non-investment grade securities, such investment grade securities in the lowest investment grade categories may be thinly traded, making them difficult to sell promptly at an acceptable price.

Other Fixed Income Securities. The Trust also may purchase unsecured loans, other floating rate or fixed rate debt securities such as notes, bonds and asset-backed securities (such as securities issued by special purpose funds investing in bank loans), investment grade and below investment grade fixed income debt obligations and money market instruments, such as commercial paper. The high yield securities in which the Trust invests are rated Ba or lower by Moody's or BB or lower by S&P or are unrated but determined by the Investment Adviser to be of comparable quality. Debt securities rated below investment grade are commonly referred to as "junk securities" and are considered speculative with respect to the issuer's capacity to pay interest and repay principal.

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Below investment grade debt securities involve greater risk of loss, are subject to greater price volatility and are less liquid, especially during periods of economic uncertainty or change, than higher rated debt securities. The Trust's fixed-income securities may have fixed or variable principal payments and all types of interest rate and dividend payment and reset terms, including fixed rate, adjustable rate, zero coupon, contingent, deferred, payment in kind and auction rate features. The Trust may invest in fixed-income securities with a broad range of maturities. The Trust may invest in zero coupon bonds, deferred interest bonds and bonds or preferred stock on which the interest is payable-in-kind (PIK bonds). To the extent the Trust invests in such instruments, they will not contribute to the Trust's goal of current income. Zero coupon and deferred interest bonds are debt obligations which are issued at a significant discount from face value. While zero coupon bonds do not require the periodic payment of interest, deferred interest bonds provide for a period of delay before the regular payment of interest begins. PIK bonds are debt obligations that provide that the issuer thereof may, at its option, pay interest on such bonds in cash or in the form of additional debt obligations. Such investments may experience greater volatility in market value due to changes in interest rates. The Trust may be required to recognize income on these investments for U.S. federal income tax purposes even though the Trust receives no corresponding interest payment in cash on the investments. As a result, in order to receive the special treatment accorded to regulated investment companies ("RICs") and their shareholders under the Internal Revenue Code of 1986, as amended (the "Code") and to avoid any U.S. federal income or excise taxes at the Trust level, the Trust may be required to pay out as an income distribution each year an amount greater than the total amount of interest and other income the Trust actually received. The Trust may be required to, among other things, sell securities, including at potentially disadvantageous times or prices, to obtain cash needed for income distributions, and may realize gain or loss from such liquidations. In the event the Trust realizes net long-term or short-term capital gains from such liquidation transactions, its shareholders may receive larger capital gain or ordinary dividends, respectively, than they would in the absence of such transactions.

Non-Investment Grade Securities. The Trust may invest a significant portion of its assets in securities rated below investment grade, such as those rated Ba or lower by Moody's and BB or lower by S&P or securities comparably rated by other rating agencies or in unrated securities determined by the Investment Adviser to be of comparable quality. Securities rated Ba by Moody's are judged to have speculative elements, their future cannot be considered as well assured and often the protection of interest and principal payments may be very moderate. Securities rated BB by S&P are regarded as having predominantly speculative characteristics and, while such obligations have less near-term vulnerability to default than other speculative grade debt, they face major ongoing uncertainties or exposure to adverse business, financial or economic conditions which could lead to inadequate capacity to meet timely interest and principal payments. Securities rated C are regarded as having extremely poor prospects of ever attaining any real investment standing. Securities rated D are in default and the payment of interest and/or repayment of principal is in arrears. The Trust may purchase securities rated as low as D. When the Investment Adviser believes it to be in the best interests of the Trust's shareholders, the Trust will reduce its investment in lower grade securities.

Lower grade securities, though generally high-yielding, are characterized by high risk. They may be subject to certain risks with respect to the issuing entity and to greater market fluctuations than certain lower yielding, higher rated securities. The secondary market for lower grade securities may be less liquid than that of higher rated securities. Adverse conditions could make it difficult at times for the Trust to sell certain securities or could result in lower prices than those used in calculating the Trust's NAV.

The prices of debt securities generally are inversely related to interest rate changes; however, the price volatility caused by fluctuating interest rates of securities also is inversely related to the coupon of such securities. Accordingly, below investment grade securities may be relatively less sensitive to interest rate changes than higher quality securities of comparable maturity, because of their higher coupon. This higher coupon is what the investor receives in return for bearing greater credit risk. The higher credit risk associated with below investment grade securities potentially can have a greater effect on the value of such securities than may be the case with higher quality issues of comparable maturity, and may cause the value of the Trust's securities to fluctuate. Distressed debt securities often are priced based on estimated recovery value and are less sensitive to interest rate movement.

Lower grade securities may be particularly susceptible to economic downturns. It is likely that an economic recession could severely disrupt the market for such securities and may have an adverse impact on the value of such securities. In addition, it is likely that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default for such securities.

The ratings of Moody's, S&P and any other rating agencies represent their opinions as to the quality of the obligations which they undertake to rate. Ratings are relative and subjective and, although ratings may be useful in evaluating the safety of interest and principal payments, they do not evaluate the market value risk of such obligations. Although these ratings may be an initial criterion for selection of portfolio investments, the Investment Adviser also will independently evaluate these securities and the ability of the issuers of such securities to pay interest and principal. To the extent that the Trust invests in lower grade securities that have not been rated by a rating agency, the Trust's ability to achieve its investment objectives will be more dependent on the Investment Adviser's credit analysis than would be the case when the Trust invests in rated securities.

Asset-Backed Securities. The Trust may invest a portion of its assets in asset-backed securities. Asset-backed securities are generally issued as pass-through certificates, which represent undivided fractional ownership interests in an underlying pool of assets,

or as debt instruments, which are also known as collateralized obligations, and are generally issued as the debt of a special purpose entity organized solely for the purpose of owning such assets and issuing such debt. Asset-backed securities are often backed by a pool of assets representing the obligations of a number of different parties. Credit card receivables are generally unsecured, and the debtors are entitled to the protection of a number of state and federal consumer credit laws which give debtors the right to setoff certain amounts owed on the credit cards, thereby reducing the balance due. Most issuers of automobile receivables permit the servicers to retain possession of the underlying obligations. If the servicer were to sell these obligations to another party, there is a risk that the purchaser would acquire an interest superior to that of the holders of the related automobile receivables. In addition, because of the large number of vehicles involved in a typical issuance and technical requirements under state laws, the trustee for the holders of the automobile receivables may not have an effective security interest in all of the obligations backing such receivables. Therefore, there is a possibility that recoveries on repossessed collateral may not, in some cases, be able to support payments on these securities.

Royalty Securitizations. Companies holding rights to intellectual property may create bankruptcy remote special purpose entities whose underlying assets are royalty license agreements and intellectual property rights related to a product. A significant portion of the Trust's investments will be related to pharmaceutical royalties that are secured by rights related to one or more drugs. The Trust may, however, invest in royalty streams related to other industries.

Royalty securities may include bonds, loans and equity issued by the special purpose entity. The Investment Adviser believes that the terms of royalty securities that are bonds may be favorable as compared to the broader debt universe, and that the returns are not highly correlated with general credit market events.

In a typical structure in the pharmaceutical industry, a small pharmaceutical company that develops a compound may license the commercial opportunity to a large-cap pharmaceutical company in exchange for payments upon completion of certain milestones (for example, Food and Drug Administration ("FDA") approval) and a percentage of future product sales. Upon securing the right to receive royalties on product sales, the small pharmaceutical company finances a loan or bond secured by the royalty stream, which is typically non-recourse to either of the pharmaceutical companies.

In addition, a company, the sponsor, may create a wholly owned subsidiary, the issuer, that issues the royalty securities. The sponsor sells, assigns and contributes to the issuer rights under one or more license agreements, including the right to receive royalties and certain other payments from sales of the pharmaceutical or other products. The sponsor also pledges the equity ownership interests in the issuer to the trustee under the indenture related to the notes. In return, the sponsor receives the proceeds of the securities from the issuer. The issuer of the securities grants a security interest in its assets to the trustee and is responsible for the debt service on the notes. An interest reserve account may be established to provide a source for payments should there be a cash flow shortfall for one or more periods. Many structures include a 100% cash flow sweep, which means that the principal is paid down by all cash flows received. Although the notes may have a legal maturity date of up to five to sixteen years from issuance, the expected weighted average maturity of the notes may be significantly shorter because of expected required principal repayments if funds are available.

If the issuer of the loan or bond defaults, any recourse will be limited to the issuer (which is formed for the limited purpose of purchasing and holding the license agreement or related intellectual property) and the collateral. The pharmaceutical or other company sponsoring the special purpose entity will generally not have the obligation to contribute additional equity to the issuer. If the sponsor of the issuer were to become a debtor in a bankruptcy case, a creditor, debtor in possession or trustee could request that the bankruptcy court substantively consolidate the issuer of the royalty security with the sponsor and/or recharacterize the transaction pursuant to which the royalty stream was transferred to the issuer and/or take other actions challenging the transaction. To the extent that these efforts are successful, these actions may adversely impact the securities and the Trust.

Collateralized Loan Obligations and Bond Obligations. The Trust may invest in certain asset-backed securities that are securitizing certain financial assets by issuing securities in the form of negotiable paper that are issued by a financing company (generally called a Special Purpose Vehicle or "SPV"). These securitized assets are, as a rule, corporate financial assets brought into a pool according to specific diversification rules. The SPV is a company founded solely for the purpose of securitizing these claims and its only asset is the diversified asset pool. On this basis, marketable securities are issued which, due to the diversification of the underlying risk, are generally considered to represent a lower level of risk than the original assets taken separately. The redemption of the securities issued by the SPV takes place at maturity out of the cash flow generated by the collected claims.

A CLO is a structured security issued by an SPV that was created to reapportion the risk and return characteristics of a pool of assets. The assets, typically senior loans, are used as collateral supporting the various debt and equity tranches issued by the SPV. The key feature of the CLO structure is the prioritization of the cash flows from a pool of debt (and, to a lesser degree, equity) securities among the several classes of securities issued by a CLO. The Trust may invest in both equity and debt tranches issued by the SPV.

The Trust may also invest in CBOs, which are structured securities backed by a diversified pool of high-yield, public or private fixed income securities. These may be fixed pools or may be "market value" (or managed) pools

of collateral. The CBO issues debt securities that are typically separated into tranches representing different degrees of credit quality. The top tranche of securities has the greatest collateralization and pays the lowest interest rate. Lower CBO tranches have a lesser degree of collateralization quality and pay higher interest rates intended to compensate for the attendant risks. The bottom tranche specifically receives the residual interest payments (*i.e.*, money that is left over after the higher tranches have been paid) rather than a fixed interest rate. The return on the lower tranches of CBOs/CLOs is especially sensitive to the rate of defaults in the collateral pool and lower tranches of CBOs/CLOs typically present the highest risk of loss of entire investment and are required to bear losses before the higher tranches. Under normal market conditions, the Trust expects to invest in the lower tranches of CBOs/CLOs, including equity tranches.

Distressed Debt. The Trust is authorized to invest in the securities and other obligations of distressed and bankrupt issuers, including debt obligations that are in covenant or payment default. Such investments generally trade significantly below par and are considered speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result in only partial recovery of cash payments or an exchange of the defaulted obligation for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or speculative. The Trust may invest in securities of a company for purposes of gaining control.

Stressed Debt. The Trust is authorized to invest in securities and other obligations of stressed issuers. Stressed issuers are issuers that are not yet deemed distressed or bankrupt and whose debt securities are trading at a discount to par, but not yet at distressed levels. An example would be an issuer that is in technical default of its credit agreement, or undergoing strategic or operational changes, which results in market pricing uncertainty.

Credit Derivatives. The Trust may engage in credit derivative transactions for hedging or capital appreciation purposes. There are two broad categories of credit derivatives: default price risk derivatives and market spread derivatives. Default price risk derivatives are linked to the price of reference securities or loans after a default by the issuer or borrower, respectively. Market spread derivatives are based on the risk that changes in market factors, such as credit spreads, can cause a decline in the value of a security, loan or index.

There are currently three basic transactional forms for credit derivatives: swaps, options and structured instruments. The use of credit derivatives is a highly specialized activity which involves strategies and risks different from those associated with ordinary portfolio security transactions. If the Investment Adviser is incorrect in its forecasts of default risks, market spreads or other applicable factors, the investment performance of the Trust would diminish compared with what it would have been if these techniques were not used. Moreover, even if the Investment Adviser is correct in its forecasts, there is a risk that a credit derivative position may correlate imperfectly with the price of the asset or liability being purchased. There is no limit on the amount of credit derivative transactions that may be entered into by the Trust. The Trust's risk of loss in a credit derivative transaction varies with the form of the transaction. For example, if the Trust purchases a default option on a security, and if no default occurs with respect to the security, the Trust's loss is limited to the premium it paid for the default option. In contrast, if there is a default by the grantor of a default option, the Trust's loss will include both the premium that it paid for the option and the decline in value of the underlying security that the default option protects.

The sections entitled "Derivative Transactions and Risk Management" and "Additional Characteristics and Risks of Derivative Transactions" in the Trust's SAI contain further information about the characteristics, risks and possible benefits of Derivative Transactions and the Trust's other policies and limitations (which are not fundamental policies) relating to investment in futures contracts and options. The principal risks relating to the use of futures contracts and other Derivative Transactions are: (i) less than perfect correlation between the prices of the instrument and the market value of the securities in the Trust's investment portfolio; (ii) possible lack of a liquid secondary market for closing out a position in such instruments; (iii) losses resulting from interest rate or other market movements not anticipated by the Investment Adviser; and (iv) the obligation to meet additional variation margin or other payment requirements, all of which could result in the Trust being in a worse position than if such techniques had not been used.

Credit Default Swaps. The Trust may enter into credit default swap agreements for hedging or capital appreciation purposes. The "buyer" in a credit default contract is obligated to pay the "seller" a periodic stream of payments over the term of the contract provided that no event of default on an underlying reference obligation has occurred. If an event of default occurs, the seller must pay the buyer the "par value" (full notional value) of the reference obligation in exchange for the reference obligation. The Trust may be either the buyer or seller in the transaction. If the Trust is a buyer and no event of default occurs, the Trust loses its investment and recovers nothing. However, if an event of default occurs, the buyer receives full notional value for a reference obligation that may have little or no value. As a seller, the Trust receives income throughout the term of the contract, which typically is between six months and three years, provided that there is no default event.

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Credit default swaps involve greater risks than if the Trust had invested in the reference obligation directly. In addition to general market risks, credit default swaps are subject to illiquidity risk, counterparty risk and credit risks. The Trust will enter into swap agreements only with counterparties that are judged by the Investment Adviser to present acceptable credit risk to the Trust. A buyer also will lose its investment and recover nothing should no event of default occur. If an event of default were to occur, the value of the reference obligation received by the seller, coupled with the periodic payments previously received, may be less than the full notional value it pays to the buyer, resulting in a loss of value to the seller. Credit default swaps also involve the risk of imperfect correlation between the value of such instruments and the underlying assets and may involve commissions or other costs. When buying protection under a swap, the risk of loss with respect to swaps generally is limited to the net amount of payments that the Trust is contractually obligated to make. When selling protection under a swap, however, the risk of loss is often the notional value of the underlying asset, which can result in a loss substantially greater than the amount invested in the swap itself. In addition, collateral posting requirements are individually negotiated and there is no regulatory requirement that a counterparty post collateral to secure its obligations or a specified amount of cash, depending upon the terms of the swap, under a credit default swap. Furthermore, there is no requirement that a party be informed in advance when a credit default swap agreement is transferred. Accordingly, the Trust may have difficulty identifying the party responsible for payment of its claims. The notional value of credit default swaps with respect to a particular investment is often larger than the total par value of such investment outstanding and, in event of a default, there may be difficulties in making the required deliveries of the reference investments, possibly delaying payments. The market for credit default swaps has become more volatile recently as the creditworthiness of certain counterparties has been questioned and/or downgraded. If a counterparty's credit becomes significantly impaired, multiple requests for collateral posting in a short period of time could increase the risk that the Trust may not receive adequate collateral. There is no readily available market for trading credit default swaps. The Trust generally may exit its obligations under a credit default swap only by terminating the contract and paying applicable breakage fees, or by entering into an offsetting credit default swap position, which may cause the Trust to incur more losses. When the Trust acts as a seller of a credit default swap agreement it is exposed to many of the same risks of leverage described under "Principal Risks of the Trust — Leverage Risk" in this Prospectus. If the Trust uses credit default swaps to leverage its portfolio, the Trust will be exposed to additional risks, including the risk that the Trust's use of leverage will magnify the effect of any losses the Trust incurs since if an event of default occurs the seller must pay the buyer the full notional value of the reference obligation. The Trust will at all times segregate liquid securities or cash in an amount at least equal to the notional amount of the credit default swap due to the buyer if the credit event occurs. Such segregation will ensure that the Trust has assets available to satisfy its obligations and will limit any potential leveraging of the Trust's portfolio with respect to the transaction. Such segregation will not limit the Trust's exposure to loss.

The Trust is generally not limited in the amount it may invest in credit default swaps and all other derivatives. The Trust may use derivatives for speculative purposes.

Senior Loan Based Derivatives. The Trust may obtain exposure to senior loans and baskets of senior loans through the use of derivative instruments. The Investment Adviser reserves the right to utilize these instruments and similar instruments that may be available in the future. For example, the Trust may invest in a derivative instrument known as the Loan-Only Credit Default Swap Index ("LCDX"), a tradeable index with 100 equally-weighted underlying single-name long-only credit default swaps ("LCDS"). Each underlying LCDS references an issuer whose loans trade in the secondary leveraged loan market. The Trust can either buy the Index (take on credit exposure) or sell the Index (pass credit exposure to a counterparty). In either case, the Trust is in essence taking a macro view of the market as a whole rather than on a particular issuer. To compensate investors for the change in the value of the Index over time, an upfront payment is made at the time of a trade to account for the change in the present value of the Index since inception. The payment is the difference between par (or 100) and the amount of the purchase price, plus or minus (depending on whether the Trust is a buyer or seller of the Index) accrued interest. Each version of the Index launches with a fixed coupon which the seller of the Index pays quarterly (and the buyer of the Index receives quarterly). The amount of payments received or paid is the coupon times the notional amount. While investing in these types of derivatives will increase the universe of debt securities to which the Trust is exposed, such investments entail risks that are not typically associated with investments in other debt securities. The liquidity of the market for these types of instruments will be subject to liquidity in the secured loan and derivatives markets. The Trust may also be subject to the risk that the counterparty in a derivative transaction will default on its obligations. These transactions generally involve the risk of loss due to unanticipated adverse changes in securities prices, interest rates, the inability to close out a position, imperfect correlation between a position and the desired hedge, uncertainty regarding the tax rules applicable to these transactions and portfolio management constraints on securities subject to such transactions. The potential loss on derivative instruments may be substantially greater than the initial investment therein.

Investments in the Index may involve greater risks than if the Trust had invested in the reference obligation directly. The Trust will not engage in these transactions for speculative purposes and will use them only as a means to hedge or manage the risks associated with assets held in, or anticipated to be purchased for, the investment portfolio or obligations incurred by the Trust.

Credit-Linked Notes. The Trust may invest in credit-linked notes ("CLNs") for risk management purposes and to vary its portfolio. A CLN is a derivative instrument. It is a synthetic obligation between two or more parties where the payment of principal and/or interest is based on the performance of some obligation (a reference obligation). In addition to credit risk of the reference obligations and interest rate risk, the buyer/seller of the CLN is subject to counterparty risk.

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Common Stocks. The Trust may acquire an interest in common stocks in various ways, including upon the default of a senior loan secured by such common stock, in a workout or restructuring or by acquiring common stock for investment. The Trust may also acquire warrants or other rights to purchase a borrower's common stock in connection with the making of a senior loan. Common stocks of a corporation or other entity entitle the holder to a pro rata share of the profits, if any, of the corporation without preference over any other shareholder or class of shareholders, including holders of such entity's preferred stocks and other senior equity securities. Common stock usually carries with it the right to vote and frequently an exclusive right to do so.

Preferred Stocks. The Trust may invest in preferred stocks. Preferred stocks are equity securities, but they have many characteristics of fixed income securities, such as a fixed dividend payment rate and/or a liquidity preference over the issuer's common shares. However, because preferred stocks are equity securities, they may be more susceptible to risks traditionally associated with equity investments than the Trust's fixed income securities.

The market value of preferred stocks may be affected by favorable and unfavorable changes impacting companies in the utilities and financial services sectors, which are prominent issuers of preferred stocks, and by actual and anticipated changes in tax laws, such as changes in U.S. federal corporate income tax rates or the dividends-received deduction. Because the claim on an issuer's earnings represented by traditional preferred stocks may become onerous when interest rates fall below the rate payable on such stocks, the issuer may redeem the stocks. Thus, in declining interest rate environments in particular, the Trust's holdings of higher rate-paying fixed rate preferred stocks may be reduced and the Trust would be unable to acquire securities of comparable credit quality paying comparable rates with the redemption proceeds.

Fixed rate preferred stocks have fixed dividend rates. They can be perpetual, with no mandatory redemption date, or issued with a fixed mandatory redemption date. Certain issues of preferred stock are convertible into other equity securities. Perpetual preferred stocks provide a fixed dividend throughout the life of the issue, with no mandatory retirement provisions, but may be callable. Sinking fund preferred stocks provide for the redemption of a portion of the issue on a regularly scheduled basis with, in most cases, the entire issue being retired at a future date. The value of fixed rate preferred stocks can be expected to vary inversely with interest rates.

Adjustable rate preferred stocks have a variable dividend rate which is determined periodically, typically quarterly, according to a formula based on a specified premium or discount to the yield on particular U.S. Treasury securities, typically the highest base-rate yield of one of three U.S. Treasury securities: the 90-day Treasury bill; the 10-year Treasury note; and either the 20-year or 30-year Treasury bond or other index. The premium or discount to be added to or subtracted from this base-rate yield is fixed at the time of issuance and cannot be changed without the approval of the holders of the adjustable rate preferred stock. Some adjustable rate preferred stocks have a maximum and a minimum rate and in some cases are convertible into common stocks.

Auction rate preferred stocks pay dividends that adjust based on periodic auctions. Such preferred stocks are similar to short-term corporate money market instruments in that an auction rate preferred stockholder has the opportunity to sell the preferred stock at par in an auction, normally conducted at least every 49 days, through which buyers set the dividend rate in a bidding process for the next period. The dividend rate set in the auction depends on market conditions and the credit quality of the particular issuer. Typically, the auction rate preferred stock's dividend rate is limited to a specified maximum percentage of an external commercial paper index as of the auction date. Further, the terms of the auction rate preferred stocks generally provide that they are redeemable by the issuer at certain times or under certain conditions. In early 2008, auction rate preferred stocks became subject to numerous "failed" auctions, causing securities previously thought to be liquid to become illiquid. It is not known when, if ever, these auction markets will begin to function again. Special tax considerations may apply to the Trust's investments in preferred stock. See "Tax Matters" below.

Convertible Securities. The Trust's investment in fixed income securities may include convertible securities. A convertible security is a bond, debenture, note, preferred stock or other security that may be converted into or exchanged for a prescribed amount of common stock or other equity security of the same or a different issuer within a particular period of time at a specified price or formula. A convertible security entitles the holder to receive interest paid or accrued on debt or the dividend paid on preferred stock until the convertible security matures or is redeemed, converted or exchanged. Before conversion, convertible securities have characteristics similar to nonconvertible income securities in that they ordinarily provide a stable stream of income with generally higher yields than those of common stocks of the same or similar issuers, but lower yields than comparable nonconvertible securities.

The value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors also may have an effect on the convertible security's investment value. Convertible securities rank senior to common stock in a corporation's capital structure but are usually subordinated to comparable nonconvertible securities. Convertible securities may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument.

Depending on the relationship of the conversion price to the market value of the underlying securities, convertible securities may trade more like equity securities than debt instruments.

Money Market Instruments. The Trust may invest in money market instruments, which include short-term U.S. government securities, U.S. dollar-denominated, high quality commercial paper (unsecured promissory notes issued by corporations to finance their short-term credit needs), certificates of deposit, bankers' acceptances and repurchase agreements relating to any of the foregoing, and pooled investment vehicles (for example, money market funds) that invest in these obligations. U.S. government securities include Treasury notes, bonds and bills, which are direct obligations of the U.S. government backed by the full faith and credit of the U.S. and securities issued by agencies and instrumentalities of the U.S. government, which may be guaranteed by the U.S. Treasury, may be supported by the issuer's right to borrow from the U.S. Treasury or may be backed only by the credit of the federal agency or instrumentality itself.

U.S. Government Securities. U.S. government securities in which the Trust invests include debt obligations of varying maturities issued by the U.S. Treasury or issued or guaranteed by an agency or instrumentality of the U.S. government, including the Federal Housing Administration, Federal Financing Bank, Farmers Home Administration, Export-Import Bank of the United States, Small Business Administration, Government National Mortgage Association (GNMA), General Services Administration, Central Bank for Cooperatives, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Maritime Administration, Tennessee Valley Authority, District of Columbia Armory Board and various institutions that previously were or currently are part of the Farm Credit System (which has been undergoing reorganization since 1987). Some U.S. government securities, such as U.S. Treasury bills, Treasury notes and Treasury bonds, which differ only in their interest rates, maturities and times of issuance, are supported by the full faith and credit of the U.S. government. Others are supported by (i) the right of the issuer to borrow from the U.S. Treasury, such as securities of the Federal Home Loan Banks; (ii) the discretionary authority of the U.S. government to purchase the agency's obligations; or (iii) only the credit of the issuer. The U.S. government may not in the future continue to provide financial support to U.S. government agencies, authorities or instrumentalities that are not supported by the full faith and credit of the United States. To the extent the Trust invests in U.S. Government securities that are not backed by the full faith and credit of the U.S. Treasury, such investments may involve a greater risk of loss of principal and interest since the Trust must look principally or solely to the issuing or guaranteeing agency or instrumentality for repayment.

Securities guaranteed as to principal and interest by the U.S. government, its agencies, authorities or instrumentalities include (i) securities for which the payment of principal and interest is backed by an irrevocable letter of credit issued by the U.S. government or any of its agencies, authorities or instrumentalities; and (ii) participations in loans made to non-U.S. governments or other entities that are so guaranteed. The secondary market for certain of these participations is limited and therefore may be regarded as illiquid.

In September 2008, the U.S. Treasury Department placed FNMA and FHLMC into conservatorship. The companies remain in conservatorship, and the effect that this conservatorship will have on the companies' debt and equity securities is unclear. Although the U.S. government has recently provided financial support to FNMA and FHLMC, there can be no assurance that it will support these or other government-sponsored enterprises in the future. In addition, any such government support may benefit the holders of only certain classes of an issuer's securities.

Other Investment Companies. The Trust may invest in the securities of other investment companies, which can include open-end funds, closed-end funds, unit investment trusts and BDCs. Investment companies combine shareholders' funds for investment in a variety of instruments, including equity securities, debt securities, and money market instruments and may invest primarily in a particular type of security, a particular industry or a mix of securities and industries. An investment company is not taxed on income distributed to shareholders if, among other things, it distributes to its shareholders substantially all of its taxable income for each taxable year. As a shareholder of another investment company, the Trust, and therefore its shareholders, will bear a proportionate share of the expenses of such other investment companies, including management fees, administration fees and custodial fees, in addition to the expenses of the Trust. Under one provision of the Investment Company Act, the Trust may not acquire the securities of other investment companies if, as a result, (i) more than 10% of the Trust's total assets would be invested in securities of other investment companies, (ii) such purchase would result in more than 3% of the total outstanding voting securities of any one investment company being held by the Trust or (iii) more than 5% of the Trust's total assets would be invested in any one investment company. Other provisions of the Investment Company Act are less restrictive, provided that the Trust is able to meet certain conditions. These limitations do not apply to the acquisition of shares of any investment company in connection with a merger, consolidation, reorganization or acquisition of substantially all of the assets of another investment company.

The Trust, as a holder of the securities of other investment companies, will bear its pro rata portion of the other investment companies' expenses, including advisory fees. These expenses will be in addition to the direct expenses incurred by the Trust.

Exchange Traded Funds. Although not a principal investment strategy of the Trust, subject to the limitations on investment in other investment companies, the Trust may invest in exchange traded funds ("ETFs"). ETFs, such as SPDRs, NASDAQ 100 Index Trading Stock (QQQs), iShares and various country index funds, are funds whose shares are traded on a national securities exchange or

the National Association of Securities Dealers Automatic Quotation System (NASDAQ). ETFs may be based on underlying equity or fixed income securities. SPDRs, for example, seek to provide investment results that generally correspond to the performance of the

component common stocks of the S&P 500. ETFs do not sell individual shares directly to investors and only issue their shares in large blocks known as "creation units." The investor purchasing a creation unit may sell the individual shares on a secondary market. Therefore, the liquidity of ETFs depends on the adequacy of the secondary market. An ETF's investment objective may not be achieved. ETFs based on an index may not replicate and maintain exactly the composition and relative weightings of securities in the index and for these and other reasons the returns of an ETF may diverge significantly from the index which it is designated to track. ETFs are subject to the risks of investing in the underlying securities. The Trust, as a holder of the securities of the ETF, will bear its pro rata portion of the ETF's expenses, including advisory fees. These expenses are in addition to the direct expenses of the Trust's own operations.

Master Limited Partnerships. The Trust may invest in MLPs. MLPs typically are characterized as "publicly traded partnerships" that qualify to be treated as partnerships for U.S. federal income tax purposes and are principally engaged in one or more aspects of the exploration, production, processing, transmission, marketing, storage or delivery of energy-related commodities, such as natural gas, natural gas liquids, coal, crude oil or refined petroleum products. The Trust's MLP investments include investments that offer economic exposure to public MLPs in the form of common or subordinated units issued by MLPs, securities of entities holding primarily general partner or managing member interests in MLPs, debt securities of MLPs, and securities that are derivatives of interests in MLPs, including I-Shares, and derivative instruments in which the Trust may invest that have economic characteristics of MLP securities. The Trust intends to limit its investments in MLPs and related entities to the extent necessary to qualify as a RIC for tax purposes. In general, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in qualified publicly-traded partnerships.

Real Estate Investment Trusts. The Trust may invest in REITs. REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests. REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs. Equity REITs invest the majority of their assets directly in real property and derive income primarily from the collection of rents. Equity REITs can also realize capital gains by selling properties that have appreciated in value. Mortgage REITs invest the majority of their assets in real estate mortgages and derive income from the collection of interest payments. REITs are not taxed on income distributed to shareholders provided they comply with the applicable requirements of the Code. The Trust will indirectly bear its proportionate share of any management and other expenses paid by REITs in which it invests in addition to the expenses paid by the Trust. Debt securities issued by REITs are, for the most part, general and unsecured obligations and are subject to risks associated with REITs.

The Trust seeks to gain exposure to the real estate markets, in whole or in part, through investment in each Subsidiary. Each Subsidiary has elected to be taxed as a REIT. Each Subsidiary is generally subject to the same investment policies and restrictions of the Trust. As of June 30, 2019, NREO and NREC accounted for approximately 2.9% and 22.0% respectively, of the Trust's Managed Assets. The Investment Adviser does not charge an additional fee on assets held in each Subsidiary. The Trust intends to limit its investments in each Subsidiary and related entities to the extent necessary to qualify as a RIC for tax purposes. In general, and subject to certain exceptions not applicable here, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in any one issuer, or in any two or more issuers which the RIC controls and which are determined to be engaged in the same or similar trades or businesses or related trades or businesses.

Structured Investments. The Trust may invest a portion of its assets in interests in entities organized and operated solely for the purpose of restructuring the investment characteristics of securities. This type of restructuring involves the deposit with or purchase by an entity, such as a corporation or a trust, of specified instruments and the issuance by that entity of one or more classes of securities ("Structured Investments") backed by, or representing interests in the underlying instruments. The cash flow on the underlying instruments may be apportioned among the newly issued Structured Investments to create securities with different investment characteristics such as varying maturities, payment priorities and interest rate provisions, and the extent of the payments made with respect to Structured Investments is dependent on the extent of the cash flow on the underlying instruments. Because Structured Investments of the type in which the Trust anticipates it will invest typically involve no credit enhancement, their credit risk generally will be equivalent to that of the underlying instruments.

The Trust is permitted to invest in a class of Structured Investments that is either subordinated or not subordinated to the right of payment of another class. Subordinated Structured Investments typically have higher yields and present greater risks than unsubordinated Structured Investments.

Certain issuers of Structured Investments may be deemed to be "investment companies" as defined in the Investment Company Act. As a result, the Trust's investment in these Structured Investments may be limited by the restrictions contained in the Investment Company Act. Structured Investments are typically sold in private placement transaction, and there currently is no active trading market for Structured Investments.

Zero Coupon Securities. The securities in which the Trust invests may include zero-coupon securities, which are debt obligations that are issued or purchased at a significant discount from face value. The discount approximates the total amount of

interest the security will accrue and compound over the period until maturity or the particular interest payment date at a rate of interest reflecting the market rate of the security at the time of issuance. Zero coupon securities do not require the periodic payment of interest. These investments benefit the issuer by mitigating its need for cash to meet debt service, but generally require a higher rate of return to attract investors who are willing to defer receipt of cash. These investments may experience greater volatility in market value than securities that make regular payments of interest. The Trust is generally required to recognize income on these investments for U.S. federal income tax purposes even though the Trust receives no corresponding interest payment in cash on the investments. As a result, in order to receive the special treatment accorded to RICs and their shareholders under the Code and to avoid any U.S. federal income or excise taxes at the Trust level, the Trust may be required to pay out as an income distribution each year an amount greater than the total amount of interest or other income the Trust actually received. The Trust may be required to, among other things, sell portfolio securities, including at potentially disadvantageous times or prices, to obtain cash needed for these income distributions, and may realize gain or loss from such liquidations. In the event the Trust realizes net long-term or short-term capital gains from such liquidation transactions, its shareholders may receive larger capital gain or ordinary dividends, respectively, than they would in the absence of such transactions.

Deferred Payment Obligations. Deferred payment securities are securities that remain zero coupon securities until a predetermined date, at which time the stated coupon rate becomes effective and interest becomes payable at regular intervals. Deferred payment securities are subject to greater fluctuations in value and may have lesser liquidity in the event of adverse market conditions than comparably rated securities paying cash interest at regular interest payment periods. Because, during the period before interest payments begin on deferred payment securities, the Trust will not receive cash payments on a current basis in respect of income it is required to recognize on these securities for U.S. federal income tax purposes, the Trust may be required to pay out as an income distribution each year an amount greater than the total amount of interest and other income the Trust actually received, in order to receive the special treatment accorded to RICs and their shareholders under the Code and to avoid any U.S. federal income or excise taxes at the Trust level. The Trust may be required to, among other things, sell portfolio securities, including at potentially disadvantageous times or prices, to obtain cash needed for these income distributions, and may realize gain or loss from such liquidations. In the event the Trust realizes net long-term or short-term capital gains from such liquidation transactions, its shareholders may receive larger capital gain or ordinary dividends, respectively, than they would in the absence of such transactions.

Derivative Transactions. In addition to the credit and senior loan based derivatives discussed above the Trust may, but is not required to, use various Derivative Transactions described below to earn income, facilitate portfolio management and mitigate risks. Such Derivative Transactions are generally accepted under modern portfolio management theory and are regularly used by many mutual funds and other institutional investors. Although the Investment Adviser seeks to use the practices to further the Trust's investment objectives, no assurance can be given that these practices will achieve this result. With changes in the market or the Investment Adviser's strategy, it is possible that these instruments may be a more significant part of the Trust's investment approach in the future.

The Trust may purchase and sell derivative instruments such as exchange-listed and over-the-counter put and call options on securities, financial futures, equity, fixed-income and interest rate indices, and other financial instruments, purchase and sell financial futures contracts and options thereon, enter into various interest rate transactions such as swaps, caps, floors or collars and enter into various currency transactions such as currency forward contracts, currency futures contracts, currency swaps or options on currency or currency futures or credit transactions and credit default swaps. The Trust also may purchase derivative instruments that combine features of these instruments. The Trust generally seeks to use Derivative Transactions as a portfolio management or hedging technique to seek to protect against possible adverse changes in the market value of senior loans or other securities held in or to be purchased for the Trust's investment portfolio, protect the value of the Trust's investment portfolio, facilitate the sale of certain securities for investment purposes, manage the effective interest rate exposure of the Trust, protect against changes in currency exchange rates, manage the effective maturity or duration of the Trust's investment portfolio, or establish positions in the derivatives markets as a temporary substitute for purchasing or selling particular securities.

Derivative Transactions have risks, including the imperfect correlation between the value of such instruments and the underlying assets, the possible default of the other party to the transaction or illiquidity of the derivative instruments. Furthermore, the ability to use Derivative Transactions successfully depends on the Investment Adviser's ability to predict pertinent market movements, which cannot be assured. Thus, the use of Derivative Transactions may result in losses greater than if they had not been used, may require the Trust to sell or purchase portfolio securities at inopportune times or for prices other than current market values, may limit the amount of appreciation the Trust can realize on an investment, or may cause the Trust to hold a security that it might otherwise sell. The use of currency transactions can result in the Trust incurring losses as a result of the imposition of exchange controls, suspension of settlements or the inability of the Trust to deliver or receive a specified currency. Additionally, amounts paid by the Trust as premiums and cash or other assets held in margin accounts with respect to Derivative Transactions are not otherwise available to the Trust for investment purposes. In addition, the Trust's Derivative Transactions are generally subject to numerous special and complex tax rules. Because the tax rules applicable to such transactions may be uncertain under current law, an adverse determination or future Internal

Revenue Service ("IRS") guidance with respect to these rules (which determination or guidance could be retroactive) may affect whether the Trust has made sufficient distributions, and otherwise satisfied the relevant requirements, to maintain its qualification as a

RIC and avoid Trust-level U.S. federal income or excise taxes. Therefore, the Trust's investments in derivative instruments may be limited by these or other U.S. federal income tax considerations. Recently enacted legislation provides for new regulation of certain portions of the derivatives market, including clearing, margin, reporting, recordkeeping, and registration requirements. Because the legislation leaves much to rule making, its ultimate impact remains unclear. New regulations could, among other things, restrict the Trust's ability to engage in derivatives transactions (for example, by making certain types of derivatives transactions no longer available to the Trust) and/or increase the costs of such derivatives transactions (for example, by increasing margin or capital requirements), and the Trust may be unable to execute its investment strategy as a result.

A more complete discussion of Derivative Transactions and their risks is contained in the SAI.

Other Derivatives; Future Developments. The above discussion relates to the Trust's proposed use of certain types of derivatives currently available. However, the Trust is not limited to the transactions described above. In addition, the relevant markets and related regulations are constantly changing and, in the future, the Trust may use derivatives not currently available or widely in use.

Swaps. Swap contracts may be purchased or sold to obtain investment exposure and/or to hedge against fluctuations in securities prices, currencies, interest rates or market conditions, to change the duration of the overall portfolio or to mitigate default risk. In a standard "swap" transaction, two parties agree to exchange the returns (or differentials in rates of return) on different currencies, securities, baskets of currencies or securities, indices or other instruments, which returns are calculated with respect to a "notional value," *i.e.*, the designated reference amount of exposure to the underlying instruments. The Trust intends to enter into swaps primarily on a net basis, *i.e.*, the two payment streams are netted out, with the Trust receiving or paying, as the case may be, only the net amount of the two payments. If the other party to a swap contract entered into on net basis defaults, the Trust's risk of loss will consist of the net amount of payments that the Trust is contractually entitled to receive. The net amount of the excess, if any, of the Trust's obligations over its entitlements will be maintained in a segregated account by the Trust's custodian. The Trust will not enter into a swap agreement unless the claims-paying ability of the other party thereto is considered to be an acceptable credit risk to the Trust by the Investment Adviser. If there is a default by the other party to such a transaction, the Trust will have contractual remedies pursuant to the agreements related to the transaction. Swap instruments are not exchange-listed securities and may be traded only in the over-the-counter market.

Interest Rate Swaps. Interest rate swaps involve the exchange by the Trust with another party of their respective commitments to pay or receive interest (*e.g.*, an exchange of fixed rate payments for floating rate payments). The Trust may use interest rate swaps for risk management purposes and as a speculative investment.

Total Return Swaps. Total return swaps are contracts in which one party agrees to make payments of the total return from the designated underlying asset(s), which may include securities, baskets of securities, or securities indices, during the specified period, in return for receiving payments equal to a fixed or floating rate of interest or the total return from the other designated underlying asset(s). The Trust may use total return swaps for risk management purposes and as a speculative investment.

Currency Swaps. Currency swaps involve the exchange of the two parties' respective commitments to pay or receive fluctuations with respect to a notional amount of two different currencies (*e.g.*, an exchange of payments with respect to fluctuations in the value of the U.S. dollar relative to the Japanese yen). The Trust may enter into currency swap contracts and baskets thereof for risk management purposes and as a speculative investment.

Short Sales. The Trust may attempt to limit exposure to a possible market decline in the value of its portfolio securities through short sales of securities that the Investment Adviser believes possess volatility characteristics similar to those being hedged. In addition, the Trust intends to use short sales for non-hedging purposes to pursue its investment objectives. Subject to the requirements of the Investment Company Act and the Code, the Trust will not make a short sale if, after giving effect to such sale, the market value of all securities sold short by the Trust exceeds 25% of the value of its total assets. The Trust may make short sales "against the box" (as described below) without respect to such limitations.

A short sale is a transaction in which the Trust sells a security it does not own in anticipation that the market price of that security will decline. When the Trust makes a short sale, it must borrow the security sold short from a broker-dealer and deliver it to the buyer upon conclusion of the sale. The Trust may have to pay a fee to borrow particular securities and is often obligated to pay over any payments received on such borrowed securities.

The Trust's obligation to replace the borrowed security will be secured by collateral deposited with the broker-dealer, usually cash, U.S. government securities or other liquid securities. The Trust will also be required to designate on its books and records similar collateral with its custodian to the extent, if any, necessary so that the aggregate collateral value is at all times at least equal to the

current market value of the security sold short. Depending on arrangements made with the broker-dealer from which it borrowed the security regarding payment over of any payments received by the Trust on such security, the Trust may not receive any payments (including interest) on its collateral deposited with such broker-dealer.

If the price of the security sold short increases between the time of the short sale and the time the Trust replaces the borrowed security, the Trust will incur a loss; conversely, if the price declines, the Trust will realize a gain. Any gain will be decreased, and any loss increased, by the transaction costs described above. Although the Trust's gain is limited to the price at which it sold the security short, its potential loss is unlimited.

The Trust may also sell a security short if it owns at least an equal amount of the security sold short or another security convertible or exchangeable for an equal amount of the security sold short without payment of further compensation (a short sale against the box). In a short sale against the box, the short seller is exposed to the risk of being forced to deliver stocks that it holds to close the position if the borrowed stock is called in by the lender, which would cause gain or loss to be recognized on the delivered stock. The Trust expects normally to close its short sales against the box by delivering newly acquired stock.

Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss. Short-selling exposes the Trust to unlimited risk with respect to that security due to the lack of an upper limit on the price to which an instrument can rise. Although the Trust reserves the right to utilize short sales, and currently intends to utilize short sales, the Investment Adviser is under no obligation to utilize short sales at all. Special tax considerations will apply to the Trust's short sales. See "Tax Matters" below.

Capital Structure Arbitrage. Capital structure arbitrage typically involves establishing long and short positions in securities (or their derivatives) at different tiers within an issuer's capital structure in ratios designed to maintain a generally neutral overall exposure to the issuer while exploiting a pricing inefficiency. Some issuers may also have more than one class of shares or an equivalent vehicle that trades in a different market (*e.g.*, European equities and their American Depository Receipt counterparts). This strategy seeks to profit from the disparity in prices between the various related securities in anticipation that over time all tiers and classes will become more efficiently priced relative to one another.

Pair Trades. Pair trades involve the establishment of a long position in one security and a short position in another security at the same time. A pair trade attempts to minimize the effect of larger market trends and emphasizes the performance of one security relative to another.

Repurchase Agreements. The Trust may invest up to 33 1/3% of its assets in repurchase agreements. It may enter into repurchase agreements with broker-dealers, member banks of the Federal Reserve System and other financial institutions. Repurchase agreements are loans or arrangements under which the Trust purchases securities and the seller agrees to repurchase the securities within a specific time and at a specific price. The repurchase price is generally higher than the Trust's purchase price, with the difference being income to the Trust. Under the direction of the Board, the Investment Adviser reviews and monitors the creditworthiness of any institution which enters into a repurchase agreement with the Trust. The counterparty's obligations under the repurchase agreement are collateralized with U.S. Treasury and/or agency obligations with a market value of not less than 100% of the obligations, valued daily. Collateral is held by the Trust's custodian in a segregated, safekeeping account for the benefit of the Trust. Repurchase agreements afford the Trust an opportunity to earn income on temporarily available cash at relatively low risk. In the event of commencement of bankruptcy or insolvency proceedings with respect to the seller of the security before repurchase of the security under a repurchase agreement, the Trust may encounter delay and incur costs before being able to sell the security. Such a delay may involve loss of interest or a decline in price of the security. If the court characterizes the transaction as a loan and the Trust has not perfected a security interest in the security, the Trust may be required to return the security to the seller's estate and be treated as an unsecured creditor of the seller. As an unsecured creditor, the Trust would be at risk of losing some or all of the principal and interest involved in the transaction.

Reverse Repurchase Agreements. A reverse repurchase agreement is an investment technique under which the Trust sells an underlying debt security and simultaneously obtains the commitment of the purchaser (generally, a commercial bank or a broker or dealer) to sell the security back to the Trust at an agreed upon price on an agreed upon date. The repurchase price is generally higher than the Trust's sale price. Reverse repurchase agreements could involve certain risks in the event of default or insolvency of the other party, including possible delays or restrictions upon the Trust's ability to dispose of the underlying securities. An additional risk is that the market value of securities sold by the Trust under a reverse repurchase agreement could decline below the price at which the Trust is obligated to repurchase them. Reverse repurchase agreements will be considered borrowings by the Trust and as such would be subject to any restrictions on borrowing.

Reverse repurchase agreements are also generally subject to earmarking and coverage requirements, with the result that the Trust will designate on its books and records on an ongoing basis cash, U.S. government securities, or other liquid securities in an amount at least equal to the Trust's obligations under the reverse repurchase agreement.

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Restricted and Illiquid Securities. Certain of the Trust's investments may be illiquid. Illiquid securities are subject to legal or contractual restrictions on disposition or lack an established secondary trading market. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale.

Pay-in-kind (PIK) Securities. PIK securities are securities which pay interest through the issuance of additional debt or equity securities. Similar to zero coupon obligations, PIK securities also carry additional risk as holders of these types of securities realize no cash until the cash payment date unless a portion of such securities is sold. If the issuer defaults, the Trust may obtain no return at all on its investment. The market price of PIK securities is affected by interest rate changes to a greater extent, and therefore tends to be more volatile, than that of securities which pay interest in cash. Additionally, the Trust may be required to recognize income on certain PIK securities for U.S. federal income tax purposes even though the Trust receives no corresponding interest payment in cash on the investments. As a result, in order to receive the special treatment accorded to RICs and their shareholders under the Code and to avoid any U.S. federal income or excise taxes at the Trust level, the Trust may be required to pay out as an income distribution each year an amount greater than the total amount of interest or other income the Trust actually received. The Trust may be required to, among other things, sell portfolio securities, including at potentially disadvantageous times or prices, to obtain cash needed for these income distributions, and may realize gain or loss from such liquidations. In the event the Trust realizes net long-term or short-term capital gains from such liquidation transactions, its shareholders may receive larger capital gain or ordinary dividends, respectively, than they would in the absence of such transactions.

When-Issued, Delayed-Delivery and Forward Commitment Purchases. The Trust may purchase securities on a "when-issued" basis and may purchase or sell securities on a "forward commitment" basis in order to acquire the security or to offset against anticipated changes in interest rates and prices. When such transactions are negotiated, the price, which is generally expressed in yield terms, is fixed at the time the commitment is made, but delivery and payment for the securities take place at a later date. When-issued securities and forward commitments may be sold prior to the settlement date, but the Trust will enter into when-issued and forward commitments only with the intention of actually receiving or delivering the securities, as the case may be. If the Trust disposes of the right to acquire a when-issued security prior to its acquisition or disposes of its right to deliver or receive against a forward commitment, it might incur a gain or loss. At the time the Trust enters into a transaction on a when-issued or forward commitment basis, it will designate on its books and records cash or liquid securities equal to at least the value of the when-issued or forward commitment securities. The value of these assets will be monitored daily to ensure that their marked to market value will at all times equal or exceed the corresponding obligations of the Trust. There is always a risk that the securities may not be delivered and that the Trust may incur a loss. Settlements in the ordinary course, which may take substantially more than five business days, are not treated by the Trust as when-issued or forward commitment transactions and accordingly are not subject to the foregoing restrictions.

Lending of Assets. Under the Trust's current securities lending agreement, the Trust may lend up to 33 1/3% of its portfolio securities to financial institutions on an approved list of borrowers. The agreement requires that the loans be secured continuously by collateral maintained on a current basis at an amount at least equal to the market value of the securities loaned. The Trust generally accepts cash (U.S. and foreign currency), securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, or sovereign debt as collateral for these lending transactions, although in the future, it may accept other types of collateral. The Trust continues to receive the equivalent of the interest or dividends paid by the issuer on the securities loaned as well as the benefit of an increase and the detriment of any decrease in the market value of the securities loaned and would also receive compensation based on investment of the collateral. The Trust would not, however, have the right to vote any securities having voting rights during the existence of the loan, but would have the right to call the loan in anticipation of an important vote to be taken among holders of the securities or of the giving or withholding of consent on a material matter affecting the investment (although it may not always be able to call the loan in time to vote or consent, or may choose not to for various reasons).

As with other extensions of credit, there are risks of delay in recovery or even loss of rights in the collateral should the borrower of the securities fail financially. In addition, any income or gains and losses from investing and reinvesting any cash collateral delivered by a borrower pursuant to a loan are generally at the Trust's risk, and to the extent any such losses reduce the amount of cash below the amount required to be returned to the borrower upon the termination of any loan, the Trust may be required to pay or cause to be paid to such borrower or another entity an amount equal to such shortfall in cash.

Non-U.S. Securities. The Trust may invest without limit in Non-U.S. Securities, which may include securities denominated in U.S. dollars or in non-U.S. currencies or multinational currency units. The Trust may invest in Non-U.S. Securities of so-called emerging market issuers. The Trust does not currently expect to invest more than 15%, but may invest up to 20%, of its assets in emerging market issuers. For purposes of the Trust, a company is deemed to be a non-U.S. company if it meets any of the following tests: (i) such company was not organized in the United States; (ii) such company's primary business office is not in the United States; (iii) the

principal trading market for such company's securities is not located in the United States; (iv) less than 50% of such company's assets are located in the United States; or (v) 50% or more of such issuer's revenues are derived from outside the United States.

Non-U.S. securities markets generally are not as developed or efficient as those in the United States. Securities of some non-U.S. issuers are less liquid and more volatile than securities of comparable U.S. issuers. Similarly, volume and liquidity in most non-U.S. securities markets are less than in the United States and, at times, volatility of price can be greater than in the United States. In addition, certain investments in Non-U.S. Securities may be subject to foreign withholding or other taxes on interest, dividends, capital gains or other income. Those taxes will reduce the Trust's yield on any such securities. See "Tax Matters" below.

Because evidences of ownership of such securities usually are held outside the United States, the Trust would be subject to additional risks if it invested in Non-U.S. Securities, which include possible adverse political and economic developments, seizure or nationalization of foreign deposits and adoption of governmental restrictions which might adversely affect or restrict the payment of principal and interest on the Non-U.S. Securities to investors located outside the country of the issuer, whether from currency blockage or otherwise.

Since Non-U.S. Securities may be purchased with and payable in foreign currencies, the value of these assets as measured in U.S. dollars may be affected favorably or unfavorably by changes in currency rates and exchange control regulations.

Options. An option on a security is a contract that gives the holder of the option, in return for a premium, the right to buy from (in the case of a call) or sell to (in the case of a put) the writer of the option the security underlying the option at a specified exercise or "strike" price. The writer of an option on a security has the obligation upon exercise of the option to deliver the underlying security upon payment of the exercise price or to pay the exercise price upon delivery of the underlying security. Certain options, known as "American style" options, may be exercised at any time during the term of the option. Other options, known as "European style" options, may be exercised only on the expiration date of the option.

If an option written by the Trust expires unexercised, the Trust realizes on the expiration date a capital gain equal to the premium received by the Trust at the time the option was written. If an option purchased by the Trust expires unexercised, the Trust realizes a capital loss equal to the premium paid. Prior to the earlier of exercise or expiration, an exchange-traded option may be closed out by an offsetting purchase or sale of an option of the same series (type, underlying security, exercise price and expiration). There can be no assurance, however, that a closing purchase or sale transaction can be effected when or at the price the Trust desires. The Trust may sell put or call options it has previously purchased, which could result in a net gain or loss depending on whether the amount realized on the sale is more or less than the premium and other transaction costs paid on the put or call option when purchased. The Trust will realize a capital gain from a closing purchase transaction if the cost of the closing option is less than the premium received from writing the option, or, if it is more, the Trust will realize a capital loss. If the premium received from a closing sale transaction is more than the premium paid to purchase the option, the Trust will realize a capital gain or, if it is less, the Trust will realize a capital loss.

Futures Contracts and Options on Futures Contracts. The sale of a futures contract creates an obligation by the Trust, as seller, to deliver the specific type of financial instrument called for in the contract at a specified future time for a specified price. Options on futures contracts are similar to options on securities except that an option on a futures contract gives the purchaser the right in return for the premium paid to assume a position in a futures contract (a long position if the option is a call and a short position if the option is a put).

At the time a futures contract is purchased or sold, the Trust must allocate cash or securities as a deposit payment ("initial margin"). It is expected that the initial margin that the Trust will pay may range from approximately 1% to approximately 5% of the value of the securities or commodities underlying the contract. In certain circumstances, however, such as periods of high volatility, the Trust may be required by an exchange to increase the level of its initial margin payment. Additionally, initial margin requirements may be increased generally in the future by regulatory action. An outstanding futures contract is valued daily and the payment in case of "variation margin" may be required, a process known as "marking to the market." Transactions in listed options and futures are usually settled by entering into an offsetting transaction, and are subject to the risk that the position may not be able to be closed if no offsetting transaction can be arranged.

Forward Foreign Currency Contracts. The Trust may enter into forward currency contracts to purchase or sell foreign currencies for a fixed amount of U.S. dollars or another foreign currency. A forward currency contract involves an obligation to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the forward currency contract agreed upon by the parties, at a price set at the time the forward currency contract is entered into. Forward currency contracts are traded directly between currency traders (usually large commercial banks) and their customers.

Short-Term Debt Securities; Temporary Defensive Position; Invest-Up Period. During the period in which the net proceeds of this offering of common shares are being invested, during periods of adverse market conditions, during periods in which the Investment Adviser determines that it is temporarily unable to follow the Trust's investment strategy or that it would not be in the best interest of

the Trust to do so or pending reinvestment of proceeds received in connection with the sale of a portfolio security or the issuance of additional securities or borrowing money by the Trust, all or any portion of the Trust's assets may be invested in cash or

cash equivalents. The Investment Adviser's determination that it is temporarily unable to follow the Trust's investment strategy or that it is impractical to do so will generally occur only in situations in which a market disruption event has occurred and where trading in the securities selected through application of the Trust's investment strategy is extremely limited or absent. In such a case, the market price of the Trust's securities may be adversely affected, and the Trust may not pursue or achieve its investment objectives.

Use of Leverage

As provided in the Investment Company Act and subject to certain exceptions, the Trust may issue debt or preferred shares with the condition that immediately after issuance the value of its total assets, less certain ordinary course liabilities, exceed 300% of the amount of the debt outstanding and exceed 200% of the sum of the amount of debt and preferred shares outstanding.

Thus, the Trust may use leverage in the form of borrowings in an amount up to 33 1/3% of the Trust's total assets (including the proceeds of such leverage) and may use leverage in the form of preferred shares in an amount up to 50% of the Trust's total assets (including the proceeds of such leverage). The total leverage of the Trust is currently expected to range between 25% and 30% of the Trust's total assets. The Trust seeks a leverage ratio, based on a variety of factors including market conditions and the Investment Adviser's market outlook, for which the rate of return, net of applicable Trust expenses, on the Trust's portfolio investments purchased with leverage exceeds the costs associated with such leverage.

The Trust, as of June 30, 2019, was leveraged through borrowings from a committed facility with BNP Paribas Prime Brokerage, Inc. ("BNP") with a total commitment of $135,000,000. As of June 30, 2019, the Trust had drawn $66.0 million on the committed facility. In addition, the Trust intends to leverage its portfolio through a master repurchase agreement entered into with BNP Paribas Securities Corporation ("BNP Securities") on November 16, 2017, as amended, that allows the Trust to enter into reverse repurchase transactions from time to time pursuant to the terms of the master repurchase agreement. On August 14, 2018, the Trust, and two of its wholly-owned subsidiaries, NREC and NREO, entered into a $75.0 million revolving credit agreement with KeyBank National Association. The revolving balance stepped down to $60.0 million after September 14, 2018. As of June 30, 2019, The Trust had drawn $55.4 million on the committed facility. The Trust's asset coverage ratio as of June 30, 2019 was 524.7%. See "Principal Risks of the Trust — Leverage Risk" for a brief description of the Trust's committed facility, master repurchase agreement and bridge credit agreement.

Following the completion of an Offering, the Trust may increase the amount of leverage outstanding. The Trust may engage in additional borrowings, issue notes, or issue preferred shares in order to maintain the Trust's desired leverage ratio. Leverage creates a greater risk of loss, as well as a potential for more gain, for the common shares than if leverage were not used. Interest on borrowings (or dividends on preferred shares) may be at a fixed or floating rate and generally will be based on short-term rates. The costs associated with the Trust's use of leverage, including the issuance of such leverage and the payment of dividends or interest on such leverage, will be borne entirely by the holders of common shares. As long as the rate of return, net of applicable Trust expenses, on the Trust's portfolio investments purchased with leverage exceeds the costs associated with such leverage, the Trust will generate more return or income than will be needed to pay such costs. In this event, the excess will be available to pay higher dividends to holders of common shares. Conversely, if the Trust's return on such assets is less than the cost of leverage and other Trust expenses, the return to the holders of the common shares will diminish. To the extent that the Trust uses leverage, the NAV and market price of the common shares and the yield to holders of common shares will be more volatile. The Trust's leveraging strategy may not be successful. See "Principal Risks of the Trust—Leverage Risk."

Assuming the utilization of leverage in the amount of 25.0% of the Trust's total assets and an annual interest rate of 3.81% payable on such leverage based on market rates as of June 30, 2019, the additional income that the Trust must earn (net of expenses) in order to cover such leverage is 3.26% of NAV. Actual costs of leverage may be higher or lower than that assumed in the previous example.

The following table is designed to illustrate the effect on the return to a holder of the Trust's common shares of leverage in the amount of approximately 25.0% of the Trust's total assets, assuming hypothetical annual returns of the Trust's investment portfolio of minus 10% to plus 10%. As the table shows, leverage generally increases the return to holders of common shares when portfolio return is positive and greater than the cost of leverage and decreases the return when the portfolio return is negative or less than the cost of leverage. The figures appearing in the table are hypothetical and actual returns may be greater or less than those appearing in the table.

Assumed return on portfolio (net of expenses)	-10%	-5%	0%	5%	10%
Corresponding return to common stockholder	-14.4%	-7.8%	-1.1%	5.6%	12.2%

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Principal Risks of the Trust

The following is a description of the principal risks associated with an investment in the Trust's common and preferred shares specifically, as well as those risks generally associated with investment in a company with investment objectives, investment policies, capital structure or trading markets similar to the Trust. Given the risks described below, an investment in the common shares of the Trust may not be appropriate for all investors. You should carefully consider your ability to assume these risks before making an investment in common shares of the Trust.

INVESTMENT AND MARKET DISCOUNT RISK

An investment in the Trust's common shares is subject to investment risk, including the possible loss of the entire amount that you invest. As with any stock, the price of the Trust's shares fluctuates with market conditions and other factors. If common shares are sold, the price received may be more or less than the original investment. Shares of closed-end management investment companies frequently trade at a discount to their NAV. The Trust's common shares may trade at a price that is less than the offering price. This risk may be greater for investors who sell their shares in a relatively short period of time after completion of an Offering. Common shares are designed for long-term investors and should not be treated as trading vehicles.

REIT-SPECIFIC RISK

REITs may be affected by changes in the real estate markets generally as well as changes in the values of the properties owned by the REIT or securing the mortgages owned by the REIT (which changes in value could be influenced by market conditions for real estate in general or fluctuations in the value of rights to natural resources appurtenant to the property held by the REIT). REITs are dependent upon management skill and are not diversified. REITs are also subject to heavy cash flow dependency, defaults by borrowers, self-liquidation, and the possibility of failing to qualify for special tax treatment under the Code and to maintain an exemption under the Investment Company Act. For example, because a REIT may acquire debt securities of issuers primarily engaged in or related to the real estate industry, it also could conceivably own real estate directly as a result of a default on such securities. Any rental income or income from the disposition of such real estate could adversely affect its ability to retain its tax status, which would have adverse tax consequences on its shareholders. Finally, certain REITs may be self-liquidating at the end of a specified term, and run the risk of liquidating at an economically inopportune time.

Each Subsidiary has elected to be taxed as a REIT. In order for each Subsidiary to qualify and maintain its qualification as a REIT, it must satisfy certain requirements set forth in the Code and Treasury Regulations that depend on various factual matters and circumstances. The Trust and the Investment Adviser intend to structure each REIT Subsidiary and its activities in a manner designed to satisfy all of these requirements. However, the application of such requirements is not entirely clear, and it is possible that the IRS may interpret or apply those requirements in a manner that jeopardizes the ability of such REIT Subsidiary to satisfy all of the requirements for qualification as a REIT.

If a REIT Subsidiary fails to qualify as a REIT for any taxable year and it does not qualify for certain statutory relief provisions, it will be subject to U.S. federal income tax on its taxable income at corporate rates. In addition, it will generally be disqualified from treatment as a REIT for the four taxable years following the year of losing its REIT status. Losing its REIT status will reduce its net earnings available for investment or distribution to stockholders because of the additional tax liability. In addition, distributions to stockholders will no longer qualify for the dividends paid deduction, and the REIT Subsidiary will no longer be required to make distributions. If this occurs, such REIT Subsidiary might be required to borrow funds or liquidate some investments in order to pay the applicable tax.

To obtain the favorable tax treatment afforded to REITs under the Code, each REIT Subsidiary generally will be required each year to distribute to its stockholders at least 90% of its REIT taxable income determined without regard to the dividends-paid deduction and excluding net capital gain. To the extent that it does not distribute all of its net capital gains, or distributes at least 90%, but less than 100%, of its REIT taxable income, as adjusted, it will have to pay tax on amounts retained at regular ordinary and capital gains corporate tax rates. Furthermore, if it fails to distribute during each calendar year at least the sum of (a) 85% of its ordinary income for that year, (b) 95% of its capital gain net income for that year, and (c) any undistributed taxable income from prior periods, it would have to pay a 4% nondeductible excise tax on the excess of the amounts required to be distributed over the sum of (a) the amounts that it actually distributed and (b) the amounts it retained and upon which it paid income tax at the corporate level. These requirements could cause it to distribute amounts that otherwise would be spent on investments in real estate assets, and it is possible that the REIT Subsidiary might be required to borrow funds, possibly at unfavorable rates, or sell assets to fund the required distributions.

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INTEREST RATE RISK

Interest rate risk is the risk that debt securities, and the Trust's net assets, may decline in value because of changes in interest rates. Generally, debt securities will decrease in value when interest rates rise and increase in value when interest rates decline. This means that the NAV of the common shares will fluctuate with interest rate changes and the corresponding changes in the value of the Trust's debt security holdings. To the extent the Trust invests in longer duration fixed rate debt securities, the Trust is subject to greater interest rate risk than funds investing solely in shorter-term fixed-rate debt securities. Interest rate risk may be heightened when interest rates are below or significantly below historical averages. As of the date of this Prospectus, interest rates in the U.S. are at or near historically low levels, increasing the exposure of debt securities to the risks associated with rising interest rates. Rising market interest rates could have unpredictable effects on the markets and may expose fixed-income and related markets to heightened volatility. Recent and potential future changes in government policy may affect interest rates. In addition, in a period of rising interest rates, the higher cost of any leverage employed by the Trust and/or increasing defaults by issuers of high yield securities would likely exacerbate any decline in the Trust's NAV.

Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates that incorporates a security's yield, coupon, final maturity and call features, among other characteristics. Duration is useful primarily as a measure of the sensitivity of a fixed income security's market price to interest rate (i.e. yield) movements. All other things remaining equal, for each one percentage point increase in interest rates, the value of a portfolio of fixed income investments would generally be expected to decline by one percent for every year of the portfolio's average duration above zero. For example, the value of a portfolio of fixed income securities with an average duration of three years would generally be expected to decline by approximately 3% if interest rates rose by one percentage point.

PREPAYMENT RISK

If interest rates fall, the principal on bonds and loans held by the Trust may be paid earlier than expected. If this happens, the proceeds from a prepaid security may be reinvested by the Trust in securities bearing lower interest rates, resulting in a possible decline in the Trust's income and distributions to shareholders. The Trust may invest in pools of mortgages or other assets issued or guaranteed by private issuers or U.S. government agencies and instrumentalities. Mortgage-related securities are especially sensitive to prepayment risk because borrowers often refinance their mortgages when interest rates decline.

RISKS OF INVESTING IN HIGH-YIELD SECURITIES

A substantial portion of the Trust's investments will consist of investments that may generally be characterized as "high-yield securities" or "junk securities," and the Trust may invest without limit in such securities. Such securities are typically rated below investment grade by one or more nationally recognized statistical rating organizations or are unrated but of comparable credit quality to obligations rated below investment grade, and have greater credit and liquidity risk than more highly rated obligations. High-yield securities are generally unsecured and may be subordinate to other obligations of the obligor. The lower rating of high-yield securities reflects a greater possibility that adverse changes in the financial condition of the issuer or in general economic conditions (including, for example, a substantial period of rising interest rates or declining earnings) or both may impair the ability of the issuer to make payment of principal and interest. Many issuers of high-yield securities are highly leveraged, and their relatively high debt to equity ratios create increased risks that their operations might not generate sufficient cash flow to service their obligations. Overall declines in the high-yield bond and other markets may adversely affect such issuers by inhibiting their ability to refinance their obligations at maturity.

High-yield securities are often issued in connection with leveraged acquisitions or recapitalizations in which the issuers incur a substantially higher amount of indebtedness than the level at which they had previously operated. High-yield securities that are debt instruments have historically experienced greater default rates than has been the case for investment grade securities. The Trust may also invest in equity securities issued by entities whose obligations are unrated or are rated below investment grade.

The Trust is authorized to invest in obligations of issuers that are generally trading at significantly higher yields than had been historically typical of the applicable issuer's obligations. Such investments may include debt obligations that have a heightened probability of being in covenant or payment default in the future. Such investments generally are considered highly speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result in only partial recovery of cash payments or an exchange of the defaulted security for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or highly speculative.

High-yield securities purchased by the Trust are subject to certain additional risks to the extent that such obligations may be unsecured and subordinated to substantial amounts of senior indebtedness, all or a significant portion of which may be secured. Moreover, such obligations purchased by the Trust may not be protected by financial covenants or limitations upon additional indebtedness and are unlikely to be secured by collateral.

ILLIQUIDITY OF INVESTMENTS

The investments made by the Trust may be very illiquid, and consequently, the Trust may not be able to sell such investments at prices that reflect the Investment Adviser's assessment of their fair value or the amount paid for such investments by the Trust. An inability to sell a portfolio position can adversely affect the Trust's value or prevent the Trust from being able to take advantage of other investment opportunities. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale by the Trust and other factors. Furthermore, the nature of the Trust's investments, especially those in financially stressed and distressed companies, may require a long holding period prior to being able to determine whether the investment will be profitable or not. There is no limit on the amount of the Trust's investment portfolio that can be invested in illiquid securities.

RISKS OF INVESTING IN SENIOR LOANS

Senior loans, such as bank loans, are typically at the most senior level of the capital structure, and are sometimes secured by specific collateral, including, but not limited to, trademarks, patents, accounts receivable, inventory, equipment, buildings, real estate, franchises and common and preferred stock of the obligor or its affiliates. A portion of the Trust's investments may consist of loans and participations therein originated by banks and other financial institutions, typically referred to as "bank loans." The Trust's investments may include loans of a type generally incurred by borrowers in connection with highly leveraged transactions, often to finance internal growth, acquisitions, mergers or stock purchases, or for other reasons. As a result of the additional debt incurred by the borrower in the course of the transaction, the borrower's creditworthiness is often judged by the rating agencies to be below investment grade. Such loans are typically private corporate loans negotiated by one or more commercial banks or financial institutions and syndicated among a group of commercial banks and financial institutions. In order to induce the lenders to extend credit and to offer a favorable interest rate, the borrower often provides the lenders with extensive information about its business that is not generally available to the public. To the extent the Trust receives material non-public information, it may be prohibited from trading in certain securities, even when it might otherwise be beneficial to do so.

Bank loans often, but not always, contain restrictive covenants designed to limit the activities of the borrower in an effort to protect the right of lenders to receive timely payments of principal and interest. Such covenants may include restrictions on distribution payments, specific mandatory minimum financial ratios, limits on total debt and other financial tests. Bank loans usually have shorter terms than subordinated obligations and may require mandatory prepayments from excess cash flow, asset dispositions and offerings of debt and/or equity securities. The bank loans and other debt obligations to be acquired by the Trust are likely to be below investment grade.

The Trust may acquire interests in bank loans and other debt obligations either directly (by way of sale or assignment) or indirectly (by way of participation). The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to the debt obligation; however, its rights can be more restricted than those of the assigning institution, and, in any event, the Trust may not be able unilaterally to enforce all rights and remedies under the loan and any associated collateral. A participation interest in a portion of a debt obligation typically results in a contractual relationship only with the institution participating out the interest, not with the borrower. In purchasing participations, the Trust generally will have no right to enforce compliance by the borrower with the terms of the loan agreement or any rights of setoff against the borrower, and the Trust may not directly benefit from the collateral supporting the debt obligation in which it has purchased the participation. As a result, the Trust will be exposed to the credit risk of both the borrower and the institution selling the participation.

Purchasers of bank loans are predominantly commercial banks, investment funds and investment banks. As secondary market trading volumes increase, new bank loans frequently adopt standardized documentation to facilitate loan trading, which the Investment Adviser believes should improve market liquidity. However, no active trading market may exist for certain senior loans, which may impair the ability of the Trust to realize full value in the event of the need to liquidate such assets. Adverse market conditions may impair the liquidity of some actively traded senior loans. In addition, future levels of supply and demand in bank loan trading may not provide an adequate degree of liquidity and the current level of liquidity may not continue. Because of the provision to holders of such loans of confidential information relating to the borrower, the unique and customized nature of the loan agreement, the limited universe of eligible purchasers and the private syndication of the loan, bank loans are not as easily purchased or sold as a publicly-traded security.

As with any debt instrument, senior loans are generally subject to the risk of price declines and as interest rates rise, the cost of borrowing increases, which may increase the risk of default. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term

interest rates; long-term interest rates can vary dramatically from short-term interest rates. Declines in interest rates may increase prepayments of debt obligations and require the Trust to invest assets at lower yields.

LEGISLATION RISK

To the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of financial institutions to make loans in connection with highly leveraged transactions, the availability of senior loan interests for investment by the Trust may be adversely affected. In addition, such requirements or restrictions may reduce or eliminate sources of financing for affected borrowers. Further, to the extent that legislation or federal or state regulators require such institutions to dispose of senior loan interests relating to highly leveraged transactions or subject such senior loan interests to increased regulatory scrutiny, such financial institutions may determine to sell senior loan interests in a manner that results in a price that, in the opinion of the Investment Adviser, is not indicative of fair value. Were the Trust to attempt to sell a senior loan interest at a time when a financial institution was engaging in such a sale with respect to the senior loan interest, the price at which the Trust could consummate such a sale might be adversely affected.

SECOND LIEN LOANS RISK

Second lien loans are subject to the same risks associated with investment in senior loans and non-investment grade securities. However, second lien loans are second in right of payment to senior loans and therefore are subject to additional risk that the cash flow of the borrower and any property securing the loan may be insufficient to meet scheduled payments after giving effect to the senior secured obligations of the borrower. Second lien loans are expected to have greater price volatility than senior loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in second lien loans, which would create greater credit risk exposure.

OTHER SECURED LOANS RISK

Secured loans other than senior loans and second lien loans are subject to the same risks associated with investment in senior loans, second lien loans and non-investment grade securities. However, such loans may rank lower in right of payment than any outstanding senior loans and second lien loans of the borrower and therefore are subject to additional risk that the cash flow of the borrower and any property securing the loan may be insufficient to meet scheduled payments after giving effect to the higher-ranking secured obligations of the borrower. Lower-ranking secured loans are expected to have greater price volatility than senior loans and second lien loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in lower-ranking secured loans, which would create greater credit risk exposure.

UNSECURED LOANS RISK

Unsecured loans are subject to the same risks associated with investment in senior loans, second lien loans, other secured loans and non-investment grade securities. However, because unsecured loans have lower priority in right of payment to any higher ranking obligations of the borrower and are not backed by a security interest in any specific collateral, they are subject to additional risk that the cash flow of the borrower and available assets may be insufficient to meet scheduled payments after giving effect to any higher ranking obligations of the borrower. Unsecured loans are expected to have greater price volatility than senior loans, second lien loans and other secured loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in unsecured loans, which would create greater credit risk exposure.

Loans other than senior loans may not be acceptable collateral under the Trust's current credit facility or under any future credit facilities, or may require a higher collateral-to-loan ratio, and therefore to the extent the Trust invests in such loans its ability to borrow may be reduced.

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RISKS OF INVESTING IN OBLIGATIONS OF STRESSED, DISTRESSED AND BANKRUPT ISSUERS

The Trust is authorized to invest in the securities and other obligations of stressed, distressed and bankrupt issuers, including debt obligations that are in covenant or payment default. There is no limit on the amount of the Trust's investment portfolio that can be invested in stressed, distressed or bankrupt issuers, and the Trust may invest for purposes of control. Such investments generally trade significantly below par and are considered highly speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result in only partial recoveries, which may be in the form of cash payments or an exchange of the defaulted obligation for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or highly speculative. It is also possible that there could be limited or no recovery for creditors in a bankruptcy or workout.

There are a number of significant risks inherent in the bankruptcy process, including, without limitation, those set forth in this paragraph. First, many events in a bankruptcy are the product of contested matters and adversary proceedings and are beyond the control of the creditors. While creditors are generally given an opportunity to object to significant actions, a bankruptcy court in the exercise of its broad equitable powers may approve actions that are contrary to the interests of the Trust. Second, a bankruptcy filing by an issuer may adversely and permanently affect the issuer. The issuer may lose its market position and key employees and otherwise become incapable of restoring itself as a viable entity. If for this or any other reason the proceeding is converted to a liquidation, the value of the issuer may not equal the liquidation value that was believed to exist at the time of the investment. Third, the duration of a bankruptcy proceeding is difficult to predict. A creditor's return on investment can be adversely affected by delays while the plan of reorganization is being negotiated (or, in some cases, litigated), approved by the creditors and confirmed by the bankruptcy court and until it ultimately becomes effective. Fourth, the administrative costs in connection with a bankruptcy proceeding are frequently high and would be paid out of the debtor's estate prior to any return to creditors. For example, if a proceeding involves protracted or difficult litigation, or turns into a liquidation, substantial assets may be devoted to administrative costs. Fifth, bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization. Because the standard for classification is vague, there exists the risk that the Trust's influence with respect to the class of securities or other obligations it owns can be lost by increases in the number and amount of claims in that class or by different classification and treatment. Sixth, in certain circumstances in which the Trust acquires claims against the issuer to obtain a control position with respect to a class or classes of claims, the Trust's influence with respect to all of the class or classes of securities or other obligations it owns can be lost if the bankruptcy court designates the Trust's vote or votes on the Chapter 11 plan as a result of the Trust's claim purchases. Seventh, in the early stages of the bankruptcy process it is often difficult to estimate the extent of, or even to identify, any contingent claims that might be made. Eighth, especially in the case of investments made prior to the commencement of bankruptcy proceedings, creditors can lose their ranking and priority if they exercise "domination and control" over a debtor and other creditors can demonstrate that they have been harmed by such actions. Ninth, certain claims that have priority by law (for example, claims for taxes) may be substantial.

In any investment involving stressed and distressed debt obligations, there exists the risk that the transaction involving such debt obligations will be unsuccessful, take considerable time or will result in a distribution of cash or a new security or obligation in exchange for the stressed and distressed debt obligations, the value of which may be less than the Trust's purchase price of such debt obligations. Furthermore, if an anticipated transaction does not occur, the Trust may be required to sell its investment at a loss. Given the substantial uncertainties concerning transactions involving stressed and distressed debt obligations in which the Trust invests, there is a potential risk of loss by the Trust of its entire investment in any particular investment.

Investments in companies operating in workout modes or under Chapter 11 of the Bankruptcy Code are also, in certain circumstances, subject to certain additional liabilities, which may exceed the value of the Trust's original investment in a company. For example, under certain circumstances, creditors who have inappropriately exercised control over the management and policies of a debtor may have their claims subordinated or disallowed or may be found liable for damages suffered by parties as a result of such actions. The Investment Adviser's active management style may present a greater risk in this area than would a more passive approach. In addition, under certain circumstances, payments to the Trust and distributions by the Trust or payments on the debt may be reclaimed if any such payment is later determined to have been a fraudulent conveyance or a preferential payment.

The Investment Adviser on behalf of the Trust (and its other clients) may participate on committees formed by creditors to negotiate with the management of financially troubled companies that may or may not be in bankruptcy or may negotiate directly with debtors with respect to restructuring issues. If the Trust does choose to join a committee, the Trust would likely be only one of many

participants, all of whom would be interested in obtaining an outcome that is in their individual best interests. The Trust may not be successful in obtaining results most favorable to it in such proceedings, although the Trust may incur significant legal and other expenses in attempting to do so. As a result of participation by the Trust on such committees, the Trust may be deemed to have duties to other creditors represented by the committees, which might thereby expose the Trust to liability to such other creditors who disagree with the Trust's actions. Participation by the Trust on such committees may cause the Trust to be subject to certain restrictions on its ability to trade in a particular investment and may also make the Trust an "insider" or an "underwriter" for purposes of the federal securities laws. Either circumstance will restrict the Trust's ability to trade in or acquire additional positions in a particular investment when it might otherwise desire to do so.

Investments in distressed debt obligations that are at risk of or in default present special tax issues for the Trust. Tax rules are not entirely clear about issues such as whether and to what extent the Trust should recognize "market discount" on certain distressed debt obligations; when the Trust may cease to accrue interest, "original issue discount" or market discount; when and to what extent the Trust may take deductions for bad debts or worthless securities and how the Trust should allocate payments received on obligations in default between principal and income. These and other related issues will be addressed by the Trust when, as and if it invests in such obligations, in order to seek to ensure that it distributes sufficient income to maintain its eligibility for treatment as a RIC under the Code and that it does not become subject to Trust-level U.S. federal income or excise taxes.

INSOLVENCY CONSIDERATIONS WITH RESPECT TO ISSUERS OF DEBT OBLIGATIONS

Various laws enacted for the protection of creditors may apply to the debt obligations held by the Trust. The information in this paragraph is applicable with respect to U.S. issuers subject to U.S. bankruptcy laws. Insolvency considerations may differ with respect to other issuers. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an issuer of a debt obligation, such as a trustee in bankruptcy or a creditors' committee, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the debt obligation and, after giving effect to such indebtedness, the issuer (i) was insolvent, (ii) was engaged in a business for which the remaining assets of such issuer constituted unreasonably small capital, or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of such issuer, or to recover amounts previously paid by such issuer in satisfaction of such indebtedness.

The measure of insolvency for purposes of the foregoing will vary. Generally, an issuer would be considered insolvent at a particular time if the sum of its debts were then greater than all of its property at a fair valuation, or if the present fair saleable value of its assets was then less than the amount that would be required to pay its probable liabilities on its existing debts as they became absolute and matured. There can be no assurance as to what standard a court would apply in order to determine whether the issuer was "insolvent" after giving effect to the incurrence of the indebtedness constituting the debt obligation or that, regardless of the method of valuation, a court would not determine that the issuer was "insolvent" upon giving effect to such incurrence. In addition, in the event of the insolvency of an issuer of a debt obligation, payments made on such debt obligation could be subject to avoidance as a "preference" if made within a certain period of time (which may be as long as one year) before insolvency. Similarly, a court might apply the doctrine of equitable subordination to subordinate the claim of a lending institution against an issuer, to claims of other creditors of the borrower, when the lending institution, another investor, or any of their transferees, is found to have engaged in unfair, inequitable, or fraudulent conduct. In general, if payments on a debt obligation are avoidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Trust) or from subsequent transferees of such payments (such as the investors in the Trust). To the extent that any such payments are recaptured from the Trust the resulting loss will be borne by the investors. However, a court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from such a recipient or transferee only to the extent that such court has jurisdiction over such recipient or transferee or its assets. Moreover, it is likely that avoidable payments could not be recaptured directly from any such recipient or transferee that has given value in exchange for its note, in good faith and without knowledge that the payments were avoidable. Although the Investment Adviser will seek to avoid conduct that would form the basis for a successful cause of action based upon fraudulent conveyance, preference or equitable subordination, these determinations are made in hindsight and a court could disagree with the Trust's position, and, in any event, there can be no assurance as to whether any lending institution or other investor from which the Trust acquired the debt obligations engaged in any such conduct (or any other conduct that would subject the debt obligations and the issuer to insolvency laws) and, if it did, as to whether such creditor claims could be asserted in a U.S. court (or in the courts of any other country) against the Trust.

LITIGATION RISK

The Trust is sometimes subject to legal proceedings and claims based on the securities and instruments in which the Trust invests. Litigation may result in substantial costs and may seriously harm the Trust's investments and overall financial condition. In

addition, legal claims that have not yet been asserted against the Trust may be asserted in the future.

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LEVERAGE RISK

When deemed appropriate by the Investment Adviser and subject to applicable regulations, the Trust may use leverage in its investment program, including through the issuance of preferred shares, borrowings from a credit facility, issuing notes or other debt securities and investments in certain types of options, such as puts, calls and warrants. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. To the extent the Trust purchases securities with borrowed funds, its net assets will tend to increase or decrease at a greater rate than if borrowed funds are not used. The level of interest rates generally, and the rates at which such funds may be borrowed in particular, could affect the operating results of the Trust. If the interest expense on borrowings were to exceed the net return on the portfolio securities purchased with borrowed funds, the Trust's use of leverage would result in a lower rate of return than if the Trust were not leveraged.

The Trust's leveraged capital structure creates special risks not associated with unleveraged funds having a similar investment objective and policies. These include the possibility of greater loss and the likelihood of higher volatility of the NAV of the Trust and the asset coverage for the preferred shares.

Pursuant to regulations and/or published positions of the Commission, the Trust may be required to earmark liquid assets in an amount equal to the Trust's daily marked-to-market value of its transactions in futures and options. To maintain this required margin, the Trust may have to sell portfolio securities at disadvantageous prices or times because it may not be possible to liquidate a position at a reasonable price. In addition, the earmarking of such assets will have the effect of limiting the Trust's ability otherwise to invest those assets.

The Trust also has the ability to use leverage through the issuance of preferred shares, borrowings from a credit facility, issuance of secured notes or other debt securities, or any combination of the three. The Trust currently leverages through borrowings from a committed facility, through a master repurchase agreement and through a bridge credit agreement. The use of leverage, which can be described as exposure to changes in price at a ratio greater than the amount of equity invested, either through the issuance of preferred shares, borrowings or other forms of market exposure, magnifies both the favorable and unfavorable effects of price movements in the investments made by the Trust. Insofar as the Trust continues to employ leverage in its investment operations, the Trust will be subject to substantial risks of loss.

Therefore, if the market value of the Trust's investment portfolio declines, any leverage will result in a greater decrease in NAV to common shareholders than if the Trust were not leveraged. Such greater NAV decrease will also tend to cause a greater decline in the market price for the common shares. Further, if at any time while the Trust has leverage outstanding it does not meet applicable asset coverage requirements (as discussed below), it may be required to suspend distributions to common shareholders until the requisite asset coverage is restored. Any such suspension might impair the ability of the Trust to meet the RIC distribution requirements and to avoid Trust-level U.S. federal income or excise taxes.

As noted above, the Trust currently leverages through borrowings from a committed facility, through a master repurchase agreement and through a bridge credit agreement. The Trust had previously entered into a secured Credit Facility with State Street. Such borrowings constitute financial leverage.

Indebtedness incurred under the Committed Facility is not convertible into any other securities of the Trust. Outstanding amounts would be payable at maturity or such earlier times as required by the Committed Facility agreement. The Trust may be required to prepay outstanding amounts under the Committed Facility or incur a penalty rate of interest in the event of the occurrence of certain events of default. The Committed Facility agreement obligates the Trust to provide certain indemnities to the agent and the lenders and their affiliates. The Trust is required to pay ongoing commitment fees on the undrawn amount under the terms of the Committed Facility agreement. With the use of borrowings, there is a risk that the interest rates paid by the Trust on the amount it borrows will be higher than the return on the Trust's investments. The Committed Facility may in the future be replaced or refinanced by one or more credit facilities having substantially different terms or by the issuance of preferred shares, or the Trust may be unable to renew or replace its Committed Facility upon the termination of the current facilities, possibly requiring it to sell portfolio securities at times or prices that are disadvantageous. Any of these situations could adversely impact income or total return to shareholders.

The Trust must comply with investment quality, diversification and other guidelines established by the Committed Facility agreement. The Trust does not anticipate that such guidelines will have a material adverse effect on the Trust's common shareholders or its ability to achieve its investment objectives.

Successful use of a leveraging strategy may depend on the Investment Adviser's ability to predict correctly interest rates and market movements, and there is no assurance that a leveraging strategy will be successful during any period in which it is employed.

RISKS OF INVESTING IN OTHER INVESTMENT COMPANIES

The Trust may invest in investment companies such as open-end funds (mutual funds), closed-end funds and ETFs (also referred to as "Underlying Funds"). The Trust may invest in Underlying Funds subject to the limitations set forth in the Investment Company Act. Underlying Funds typically incur fees that are separate from those fees incurred directly by the Trust; therefore, the Trust's purchase of Underlying Funds' securities results in the layering of expenses. The Trust's shareholders indirectly bear a proportionate share of the operating expenses of Underlying Funds (including advisory fees) in addition to bearing the Trust's expenses.

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The Trust may invest in investment companies that are advised by the Investment Adviser or its affiliates, including ETFs, to the extent permitted by applicable law and/or pursuant to exemptive relief from the SEC. These investment companies typically incur fees that are separate from those fees incurred directly by the Trust. The Trust's purchase of such investment company securities results in the layering of expenses, such that shareholders would indirectly bear a proportionate share of the operating expenses of such investment companies, including advisory fees, in addition to paying Trust expenses.

Shares of closed-end funds are typically offered to the public in a one-time initial public offering by a group of underwriters who retain a spread or underwriting commission of between 4% or 6% of the initial public offering price. Such securities are then listed for trading on the New York Stock Exchange, the National Association of Securities Dealers Automated Quotation System (commonly known as "NASDAQ") and, in some cases, may be traded in other over-the-counter markets. Because the shares of closed-end funds cannot be redeemed upon demand to the issuer like the shares of an open-end investment company (such as the Funds), investors seek to buy and sell shares of closed-end funds in the secondary market.

The Trust generally will purchase shares of closed-end funds only in the secondary market. The Trust will incur normal brokerage costs on such purchases similar to the expenses the Trust would incur for the purchase of securities of any other type of issuer in the secondary market. The Trust may, however, also purchase securities of a closed-end fund in an initial public offering when, in the opinion of the Investment Adviser, based on a consideration of the nature of the closed-end fund's proposed investments, the prevailing market conditions and the level of demand for such securities, they represent an attractive opportunity for growth of capital. The initial offering price typically will include a dealer spread, which may be higher than the applicable brokerage cost if the Trust purchased such securities in the secondary market.

The shares of many closed-end funds, after their initial public offering, frequently trade at a price per share that is less than the NAV per share, the difference representing the "market discount" of such shares. This market discount may be due in part to the investment objective of long-term appreciation, which is sought by many closed-end funds, as well as to the fact that the shares of closed-end funds are not redeemable by the holder upon demand to the issuer at the next determined NAV but rather are subject to the principles of supply and demand in the secondary market. A relative lack of secondary market purchasers of closed-end fund shares also may contribute to such shares trading at a discount to their NAV.

The Trust may invest in shares of closed-end funds that are trading at a discount to NAV or at a premium to NAV. There can be no assurance that the market discount on shares of any closed-end fund purchased by the Trust will ever decrease. In fact, it is possible that this market discount may increase and the Trust may suffer realized or unrealized capital losses due to further decline in the market price of the securities of such closed-end funds, thereby adversely affecting the NAV of the Trust's shares. Similarly, there can be no assurance that any shares of a closed-end fund purchased by the Trust at a premium will continue to trade at a premium or that the premium will not decrease subsequent to a purchase of such shares by the Trust.

Closed-end funds may issue senior securities (including preferred stock and debt obligations) for the purpose of leveraging the closed-end fund's common shares in an attempt to enhance the current return to such closed-end fund's common shareholders. The Trust's investment in the common shares of closed-end funds that are financially leveraged may create an opportunity for greater total return on its investment, but at the same time may be expected to exhibit more volatility in market price and NAV than an investment in shares of investment companies without a leveraged capital structure.

The majority of ETFs are passive funds that track their related index and have the flexibility of trading like a security. They are managed by professionals and provide the investor with diversification, cost and tax efficiency, liquidity, margin-ability, are useful for hedging, have the ability to go long and short, and some provide quarterly dividends. Additionally, some ETFs are unit investment trusts (UITs), which are unmanaged portfolios overseen by trustees.

There is a risk that an ETF in which the Trust invests may terminate due to extraordinary events that may cause any of the service providers to the ETFs, such as the trustee or sponsor, to close or otherwise fail to perform their obligations to the ETF. Also, because the ETFs in which the Trust intends to principally invest may be granted licenses by agreement to use the indices as a basis for determining their compositions and/or otherwise to use certain trade names, the ETFs may terminate if such license agreements are terminated. In addition, an ETF may terminate if its entire NAV falls below a certain amount. Although the Trust believes that, in the event of the termination of an underlying ETF, it will be able to invest instead in shares of an alternate ETF tracking the same market index or another market index with the same general market, there is no guarantee that shares of an alternate ETF would be available for investment at that time. To the extent the Trust invests in a sector product, the Fund is subject to the risks associated with that sector.

Certain ETFs that invest in commodities or commodity-related instruments may give rise to income that is not "qualifying income" for purposes of the 90% gross income test for qualification as a RIC for U.S. federal income tax purposes. The Trust's investment in

such an ETF may bear on or be limited by the Trust's intention to qualify as a RIC. Further, certain ETFs that invest in commodities or certain commodity-related derivatives may qualify as "qualified publicly traded partnerships" ("QPTPs") for U.S. federal income tax purposes with the net income generated thereon treated as qualifying income for purposes of this 90% gross income test. Under the tax diversification requirements applicable to RICs, the Trust's investment in one or more entities qualifying as QPTPs may not exceed 25% of the Fund's total assets at the end of each quarter of each taxable year.

PREFERRED SHARE RISK

Preferred share risk is the risk associated with the issuance of preferred shares to leverage the common shares. If preferred shares are issued, the NAV and market value of the common shares will be more volatile, and the yield to the holders of common shares will tend to fluctuate with changes in the shorter-term dividend rates on the preferred shares. The Trust will pay (and

the holders of common shares will bear) all costs and expenses relating to the issuance and ongoing maintenance of the preferred shares, including higher advisory fees. Accordingly, the issuance of preferred shares may not result in a higher yield or return to the holders of the common shares. If the dividend rate and other costs of the preferred shares approach the net rate of return on the Trust's investment portfolio, the benefit of leverage to the holders of the common shares would be reduced. If the dividend rate and other costs of the preferred shares exceed the net rate of return on the Trust's investment portfolio, the leverage will result in a lower rate of return to the holders of common shares than if the Trust had not issued preferred shares.

Similarly, any decline in the NAV of the Trust's investments will be borne entirely by the holders of common shares. Therefore, if the market value of the Trust's investment portfolio declines, the leverage will result in a greater decrease in NAV to the holders of common shares than if the Trust were not leveraged. This greater NAV decrease will also tend to cause a greater decline in the market price for the common shares. The Trust might be in danger of failing to maintain the required asset coverage of the preferred shares or of losing its ratings on the preferred shares or, in an extreme case, the Trust's current investment income might not be sufficient to meet the dividend requirements on the preferred shares. In order to counteract such an event, the Trust might need to liquidate investments in order to fund a redemption of some or all of the preferred shares. Liquidation at times of low prices may result in capital loss and may reduce returns to the holders of common shares.

If preferred shares are issued, holders of preferred shares may have differing interests than holders of common shares and holders of preferred shares may at times have disproportionate influence over the Trust's affairs. If preferred shares are issued, holders of preferred shares, voting separately as a single class, would have the right to elect two members of the Board at all times. The remaining members of the Board would be elected by holders of common shares and preferred shares, voting as a single class. The Investment Company Act requires that, in addition to any approval by shareholders that might otherwise be required, the approval of the holders of a majority of any outstanding preferred shares, voting separately as a class, would be required to (i) adopt any plan of reorganization that would adversely affect the preferred shares and (ii) take any action requiring a vote of security holders under Section 13(a) of the Investment Company Act, including, among other things, changes in the Trust's subclassification as a closed-end investment company or changes in its fundamental investment restrictions.

If the Trust issues preferred shares, the Trust would likely seek a credit rating on the preferred shares from one or more nationally recognized statistical rating organizations. The Trust expects that, at anytime when preferred shares were outstanding, the composition of its investment portfolio would reflect guidelines established by any rating agencies, including for example, asset coverage requirements that are more restrictive than those under the Investment Company Act, restrictions on certain portfolio investments and investment practices, requirements that the Trust maintain a portion of its assets in higher rated debt securities and certain mandatory redemption requirements relating to the preferred shares. No assurance can be given that the guidelines actually imposed with respect to preferred shares by rating agencies would be more or less restrictive than these examples. These restrictions may require the Trust to alter its investment strategy and invest in different types of assets some of which may be lower yielding or result in less opportunities for capital appreciation. No minimum rating is required for the issuance of preferred shares by the Trust.

COMMON STOCK RISK

The Trust may invest in common stock. Although investments in common stock have historically generated higher average total returns than fixed income securities over the long-term, investments in common stock also have historically experienced significantly more volatility in those returns. Therefore, the Trust's investments in common stock could result in worse performance than would be the case had the Trust been invested solely in debt securities. An adverse event, such as an unfavorable earnings report, may depress the value of a particular investment in common stock held by the Trust. Also, the price of common stock is sensitive to general movements in the stock market and a drop in the stock market may depress the price of common stock to which the Trust has exposure. Common stock prices fluctuate for several reasons, including changes in investors' perceptions of the financial condition of an issuer or the general condition of the relevant stock market, or when political or economic events affecting an issuer occur. In addition, common stock prices may be particularly sensitive to rising interest rates, as the cost of capital rises and borrowing costs increase.

DIVIDEND RISK

Dividends on common stock are not fixed but are declared at the discretion of an issuer's board of directors. There is no guarantee that the issuers of the common stock in which the Trust invests will declare dividends in the future or that, if declared, the dividends will remain at current levels or increase over time.

SMALL AND MID-CAP SECURITIES RISK

The Trust may invest in companies with small or medium-sized capitalizations. Securities issued by small and medium-sized companies can be more volatile than, and perform differently from, larger company securities. There may be less trading in a small or medium-sized company's securities, which means that buy and sell transactions in those securities could have a larger impact on the

security's price than is the case with larger company securities. Small or medium-sized companies may have fewer business lines; changes in any one line of business, therefore, may have a greater impact on a small or medium-sized company's security price than is the case for a larger company. In addition, small or medium-sized company securities may not be well known to the investing public.

NON-U.S. SECURITIES RISK

The Trust may invest without limit in Non-U.S. Securities. Investing in Non-U.S. Securities involves certain risks not involved in domestic investments, including, but not limited to: (i) fluctuations in foreign exchange rates; (ii) future foreign economic, financial, political and social developments; (iii) different legal systems; (iv) the possible imposition of exchange controls or other foreign governmental laws or restrictions; (v) lower trading volume; (vi) much greater price volatility and illiquidity of certain non-U.S. securities markets; (vii) different trading and settlement practices; (viii) less governmental supervision; (ix) changes in currency exchange rates; (x) high and volatile rates of inflation; (xi) fluctuating interest rates; (xii) less publicly available information; and (xiii) different accounting, auditing and financial recordkeeping standards and requirements. In addition, certain investments in Non-U.S. Securities may be subject to foreign withholding or other taxes on interest, dividends, capital gains or other income. Those taxes will reduce the Trust's yield on any such securities. See "Tax Matters" below.

Certain countries in which the Trust may invest, especially emerging market countries, historically have experienced, and may continue to experience, high rates of inflation, high interest rates, exchange rate fluctuations, large amounts of external debt, balance of payments and trade difficulties and extreme poverty and unemployment. Many of these countries are also characterized by political uncertainty and instability. These risks are especially evident in the Middle East and Africa. The cost of servicing external debt will generally be adversely affected by rising international interest rates because many external debt obligations bear interest at rates which are adjusted based upon international interest rates. In addition, with respect to certain foreign countries, there is a risk of: (i) the possibility of expropriation or nationalization of assets; (ii) confiscatory taxation; (iii) difficulty in obtaining or enforcing a court judgment; (iv) economic, political or social instability; and (v) diplomatic developments that could affect investments in those countries. In addition, individual foreign economies may differ favorably or unfavorably from the U.S. economy in such respects as: (i) growth of gross domestic product; (ii) rates of inflation; (iii) capital reinvestment; (iv) resources; (v) self-sufficiency; and (vi) balance of payments position.

As a result of these potential risks, the Investment Adviser may determine that, notwithstanding otherwise favorable investment criteria, it may not be practicable or appropriate to invest in a particular country. The Trust may invest in countries in which foreign investors, including the Investment Adviser, have had no or limited prior experience.

EMERGING MARKETS RISK

The Trust currently does not expect to invest more than 15%, but may invest up to 20% of its total assets in securities of issuers based in emerging markets. An emerging market country is any country having an economy and market that are (or would be) considered by the World Bank to be emerging or developing or is listed in the Morgan Stanley Capital International Emerging Markets Index. Emerging market countries are located in regions such as Asia, Latin America, the Middle East, Southern Europe, Eastern Europe (including the former republics of the Soviet Union and the Eastern Bloc) and Africa. Investing in securities of issuers based in emerging markets entails all of the risks of investing in securities of non-U.S. issuers, but to a heightened degree. These heightened risks include: (i) greater risks of expropriation, confiscatory taxation, nationalization, and less social, political and economic stability; (ii) the smaller size of the markets for such securities and a lower volume of trading, resulting in lack of liquidity and in price volatility; and (iii) certain national policies which may restrict the Trust's investment opportunities including restrictions on investing in issuers or industries deemed sensitive to relevant national interests.

FOREIGN CURRENCY RISK

Because the Trust may invest in securities denominated or quoted in currencies other than the U.S. dollar, changes in foreign currency exchange rates may affect the value of securities owned by the Trust, the unrealized appreciation or depreciation of investments and gains on and income from investments. Currencies of certain countries may be volatile and therefore may affect the value of securities denominated in such currencies, which means that the Trust's NAV could decline as a result of changes in the exchange rates between foreign currencies and the U.S. dollar. These risks often are heightened for investments in smaller or emerging capital markets. In addition, the Trust may enter into foreign currency transactions in an attempt to enhance total return, which may further expose the Trust to the risks of foreign currency movements and other risks. The use of foreign currency transactions can result in the Trust incurring losses as a result of the imposition of exchange controls, suspension of settlements or the inability of the Trust to deliver or receive a specified currency.

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INVESTMENTS IN UNSEASONED COMPANIES

The Trust may invest in the securities of less seasoned companies. These investments may present greater opportunities for growth, but also involve greater risks than customarily are associated with investments in securities of more established companies. Some of the companies in which the Trust may invest will be start-up companies that may have insubstantial operational or earnings history or may have limited products, markets, financial resources or management depth. Some may also be emerging companies at the research and development stage with no products or technologies to market or approved for marketing. Securities of emerging companies may lack an active secondary market and may be subject to more abrupt or erratic price movements than securities of larger, more established companies or stock market averages in general. Competitors of certain companies may have substantially greater financial resources than many of the companies in which the Trust may invest.

INITIAL PUBLIC OFFERINGS RISK

The Trust may invest in shares of companies through IPOs. IPOs and companies that have recently gone public have the potential to produce substantial gains for the Trust. However, the Trust may not have access to or invest in IPOs that are ultimately profitable for investors. The investment performance of the Trust during periods when it is unable to invest significantly or at all in IPOs may be lower than during periods when the Trust is able to do so. Securities issued in IPOs are subject to many of the same risks as investing in companies with smaller market capitalizations. Securities issued in IPOs have no trading history, and information about the companies may be available for limited periods of time. In addition, the prices of securities sold in IPOs may be highly volatile or may decline shortly after the IPO.

SECURITIES LENDING RISK

Under the Trust's current securities lending agreement, the Trust may lend its portfolio securities (up to a maximum of one-third of its total assets) to financial institutions on an approved list of borrowers. Securities lending is subject to the risk that loaned securities may not be available to the Trust on a timely basis and the Trust may, therefore, lose the opportunity to sell the securities at a desirable price. Any loss in the market price of securities loaned by the Trust that occurs during the term of the loan would be borne by the Trust and would adversely affect the Trust's performance. Also, there may be delays in recovery, or no recovery, of securities loaned should the borrower of the securities fail financially while the loan is outstanding. In addition, voting rights with respect to loaned securities generally pass to the borrower. The Trust, as the lender, retains the right to recall the loans and obtain the return of the securities loaned in order to vote the loaned securities. However, in many circumstances the Trust may be unable to recall the securities in time to vote or may determine that the benefits to the Trust of voting are outweighed by the indirect or direct costs of such a recall. In these circumstances, loaned securities may be voted or not voted in a manner adverse to the best interests of the Trust. All of the aforementioned risks may be greater for Non-U.S. Securities.

These lending transactions must be fully collateralized at all times, but involve some credit risk to the Trust if the borrower or the party (if any) guaranteeing the loan should default on its obligation and the Trust is delayed in or prevented from recovering the collateral. In addition, any income or gains and losses from investing and reinvesting any cash collateral delivered by a borrower pursuant to a loan are generally at the Trust's risk, and to the extent any such losses reduce the amount of cash below the amount required to be returned to the borrower upon the termination of any loan, the Trust may be required to pay or cause to be paid to such borrower or another entity an amount equal to such shortfall in cash. The Trust generally accepts cash (U.S. and foreign currency), securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, or sovereign debt as collateral for these lending transactions, although in the future, it may accept other types of collateral.

RISKS ASSOCIATED WITH OPTIONS ON SECURITIES

There are several risks associated with transactions in options on securities, such as exchange-listed, over-the-counter and index options. For example, there are significant differences between the securities and options markets that could result in an imperfect correlation between these markets, causing a given transaction not to achieve its objectives. A decision as to whether, when and how to use options involves the exercise of skill and judgment, and even a well-conceived transaction may be unsuccessful to some degree because of market behavior or unexpected events.

As the writer of a covered call option, the Trust forgoes, during the option's life, the opportunity to profit from increases in the market value of the security covering the call option above the sum of the premium and the strike price of the call, but has retained the risk of loss should the price of the underlying security decline. As the Trust writes covered calls over more of its portfolio, its ability to benefit from capital appreciation becomes more limited. The writer of an option has no control over the time when it may be required to

fulfill its obligation as a writer of the option. Once an option writer has received an exercise notice, it cannot effect a closing purchase transaction in order to terminate its obligation under the option and must deliver the underlying security at the exercise price.

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When the Trust writes covered put options, it bears the risk of loss if the value of the underlying stock declines below the exercise price minus the put premium. If the option is exercised, the Trust could incur a loss if it is required to purchase the stock underlying the put option at a price greater than the market price of the stock at the time of exercise plus the put premium the Trust received when it wrote the option. While the Trust's potential gain in writing a covered put option is limited to distributions earned on the liquid assets securing the put option plus the premium received from the purchaser of the put option, the Trust risks a loss equal to the entire exercise price of the option minus the put premium.

EXCHANGE-LISTED OPTION RISKS

A liquid market may not exist when the Trust seeks to close out an option position on an options exchange. Reasons for the absence of a liquid secondary market on an exchange include the following: (i) there may be insufficient trading interest in certain options; (ii) restrictions may be imposed by an exchange on opening transactions or closing transactions or both; (iii) trading halts, suspensions or other restrictions may be imposed with respect to particular classes or series of options; (iv) unusual or unforeseen circumstances may interrupt normal operations on an exchange; (v) the facilities of an exchange or the OCC may not at all times be adequate to handle current trading volume; or (vi) one or more exchanges could, for economic or other reasons, decide or be compelled at some future date to discontinue the trading of options (or a particular class or series of options). If trading were discontinued, the secondary market on that exchange (or in that class or series of options) would cease to exist. However, outstanding options on that exchange that had been issued by the OCC as a result of trades on that exchange would continue to be exercisable in accordance with their terms. If the Trust were unable to close out a covered call option that it had written on a security, it would not be able to sell the underlying security unless the option expired without exercise.

The hours of trading for options on an exchange may not conform to the hours during which the underlying securities are traded. To the extent that the options markets close before the markets for the underlying securities, significant price and rate movements can take place in the underlying markets that cannot be reflected in the options markets. Call options are marked to market daily, and their value will be affected by changes in the value and dividend rates of the underlying common shares, an increase in interest rates, changes in the actual or perceived volatility of the stock market and the underlying common shares and the remaining time to the options' expiration. Additionally, the exercise price of an option may be adjusted downward before the option's expiration as a result of the occurrence of certain corporate events affecting the underlying equity security, such as extraordinary dividends, stock splits, merger or other extraordinary distributions or events. A reduction in the exercise price of a call option would reduce the Trust's capital appreciation potential on the underlying security.

OVER-THE-COUNTER OPTION RISK

The Trust may purchase or sell/write unlisted ("OTC" or "over-the-counter") options. Options entered into by the Trust with respect to Non-U.S. Securities, indices or sectors generally will be OTC options. OTC options differ from exchange-listed options in that they are two-party contracts, with exercise price, premium and other terms negotiated between buyer and seller, and generally do not have as much market liquidity as exchange-listed options. The counterparties to these transactions typically will be major international banks, broker-dealers and financial institutions. The Trust may be required to treat as illiquid those securities being used to cover certain written OTC options. The OTC options written by the Trust will not be issued, guaranteed or cleared by the OCC. In addition, the Trust's ability to terminate the OTC options may be more limited than with exchange-traded options. Banks, broker-dealers or other financial institutions participating in such transactions may fail to settle a transaction in accordance with the terms of the option as written. In the event of default or insolvency of the counterparty, the Trust may be unable to liquidate an OTC option position.

INDEX OPTION RISK

The Trust may purchase or sell/write index put and call options from time to time. The purchaser of an index put option has the right to any depreciation in the value of the index below the exercise price of the option on or before the expiration date. The purchaser of an index call option has the right to any appreciation in the value of the index over the exercise price of the option on or before the expiration date. Because the exercise of an index option is settled in cash, sellers of index call options, such as the Trust, cannot provide in advance for their potential settlement obligations by acquiring and holding the underlying securities. The Trust will lose money if it is required to pay the purchaser of an index option the difference between the cash value of the index on which the option was written and the exercise price and such difference is greater than the premium received by the Trust for writing the option. The value of index options written by the Trust, which will be priced daily, will be affected by changes in the value and dividend rates of the underlying common shares in the respective index, changes in the actual or perceived volatility of the stock market and the remaining time to the options' expiration. The value of the index options also may be adversely affected if the market for the index options becomes less liquid or smaller. Distributions paid by the Trust on its common shares may be derived in part from the net index option premiums it receives

from selling index put and call options, less the cost of paying settlement amounts to purchasers of the options that exercise their options. Net index option premiums can vary widely over the short term and long term.

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ASSET-BACKED SECURITIES RISK

Payment of interest and repayment of principal on asset-backed securities is largely dependent upon the cash flows generated by the assets backing the securities and, in certain cases, supported by letters of credit, surety bonds or other credit enhancements. Asset-backed security values may also be affected by the creditworthiness of the servicing agent for the pool, the originator of the loans or receivables and any entities providing the credit enhancement. In addition, the underlying assets are subject to prepayments that shorten the securities' weighted average maturity and may lower their return.

MORTGAGE-BACKED SECURITIES RISK

A mortgage-backed security, which represents an interest in a pool of assets such as mortgage loans, will mature once all the mortgages in the pool mature or are prepaid. Therefore, mortgage-backed securities do not have a fixed maturity, and their expected maturities may vary when interest rates rise or fall.

When interest rates fall, homeowners are more likely to prepay their mortgage loans. An increased rate of prepayments on the Trust's mortgage-backed securities will result in an unforeseen loss of interest income to the Trust, as the Trust may be required to reinvest assets at a lower interest rate. Because prepayments increase when interest rates fall, the price of mortgage-backed securities does not increase as much as that of other fixed income securities when interest rates fall.

When interest rates rise, homeowners are less likely to prepay their mortgage loans. A decreased rate of prepayments lengthens the expected maturity of a mortgage-backed security. Therefore, the prices of mortgage-backed securities may decrease more than prices of other fixed income securities when interest rates rise.

Timely payment of interest and principal of mortgage-backed securities may be supported by various forms of private insurance or guarantees, including individual loan, title, pool and hazard insurance purchased or held by the issuer. Private insurers may not, however, be able to meet their obligations under the policies. An unexpectedly high rate of defaults on the mortgages held by a mortgage pool may adversely affect the value of a mortgage-backed security and could result in losses to the Trust. The risk of such defaults is generally higher in the case of mortgage pools that include sub-prime mortgages (which are typically granted to individuals with poor credit histories who, as a result of their deficient credit ratings, would not be able to qualify for conventional mortgages), "Alt-A" mortgages (typically characterized by borrowers with less than full documentation, lower credit scores or higher loan-to-value ratios), "interest only" mortgages (which permit interest-only payments for a specified period before payment of principal is required) and/or "option ARM" mortgages (which are typically 30-year adjustable rate mortgages that initially offer a borrower four monthly payment options: a specified minimum payment, an interest-only payment, a 15-year fully amortizing payment and a 30-year fully amortizing payment). Some of these types of mortgages may be subject to "negative amortization," which occurs whenever the loan payment for any period is less than the interest charged over that period so that the outstanding principal balance of the loan increases. The types of mortgages discussed above are made to borrowers with weakened credit histories or with a lower capacity to make timely payments on their mortgages, and are subject to a greater risk of default than "prime" mortgages. Market factors adversely affecting mortgage loan repayments may include a general economic downturn, high unemployment, a general slowdown in the real estate market, a drop in the market prices of real estate, or an increase in interest rates resulting in higher mortgage payments by holders of adjustable rate mortgages. To the extent the Trust invests in securities directly or indirectly backed by these types of mortgages, it will be subject to greater risks.

Credit ratings on mortgage-backed securities are subject to the same limitations that apply to credit ratings generally. See "Limitations of Credit Ratings" in this Prospectus. In the past, the market for mortgage-backed and asset-backed securities has experienced high volatility and a lack of liquidity. As a result, the value of many of these securities has significantly declined. These markets may not become more liquid or less volatile, and it is possible that the value of these securities could decline further.

Mortgage-backed securities may not be readily marketable. To the extent any of these securities are not readily marketable in the judgment of the Investment Adviser, the Trust's restrictions on investments in illiquid instruments will apply.

RISKS OF INVESTING IN ROYALTY SECURITIES

The Trust may invest in debt and/or equity royalty securities. The risks of investing in these securities will include the risks of investing in the underlying industry. In addition, royalty securities are currently not widely recognized or understood and the Trust may not be able to sell the securities when it wants to do so. Under certain market conditions, these securities may also become highly illiquid. Each security will include different risk factors specific to that transaction. Risk factors of royalty securities generally include

risks relating to the products associated with the royalty stream, risks relating to the license agreement, risks relating to the structure of the financing and risks relating to bankruptcy or reorganization proceedings.

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REPURCHASE AGREEMENT RISK

The Trust may enter into repurchase agreements up to a maximum of 33 1/3% of its total assets. Repurchase agreements may be considered loans to the seller, collateralized by the underlying securities. If the seller does not pay the Trust the agreed-upon sum on the repurchase date, the Trust is entitled to sell the underlying collateral. If the value of the collateral declines after the agreement is entered into, and if the seller defaults under a repurchase agreement when the value of the underlying collateral is less than the repurchase price, the Trust could incur a loss of both principal and interest. If the seller were to be subject to a federal bankruptcy proceeding, the ability of the Trust to liquidate the collateral could be delayed or impaired because of certain provisions of the bankruptcy laws.

DERIVATIVES RISK

The Trust may engage in derivative transactions for hedging and speculative purposes or to enhance total return, including engaging in transactions such as options, futures, swaps, foreign currency transactions, forward foreign currency contracts, currency swaps or options on currency futures and other derivatives transactions (collectively, "Derivative Transactions"). The Trust may use any or all types of Derivative Transactions which it is authorized to use at any time; no particular strategy will dictate the use of one type of Derivative Transaction rather than another, as use of any authorized Derivative Transaction will be a function of numerous variables, including market conditions. Derivatives Risk is a combination of several risks, including the risks that: (1) an investment in a derivative instrument may not correlate well with the performance of the securities or asset class to which the Trust seeks exposure, (2) derivative contracts, including options, may expire worthless and the use of derivatives may result in losses to the Trust, (3) a derivative instrument entailing leverage may result in a loss greater than the principal amount invested, (4) derivatives not traded on an exchange may be subject to credit risk, for example, if the counterparty does not meet its obligations (see also "Counterparty Risk"), and (5) derivatives not traded on an exchange may be subject to liquidity risk and the related risk that the instrument is difficult or impossible to value accurately. Derivatives are financial contracts whose value depends on, or is derived from, the value of underlying assets, reference rates, or indices. Derivatives involve the risk that changes in their value may not move as expected relative to the value of the assets, rates, or indices they are designed to track. Derivatives include futures, non-U.S. currency contracts, swap contracts, warrants, and options contracts. Derivatives may relate to securities, interest rates, currencies or currency exchange rates, inflation rates, commodities, and indices.

If a put or call option purchased by the Trust is not sold when it has remaining value, and if the market price of the underlying security remains equal to or greater than the exercise price (in the case of a put), or remains less than or equal to the exercise price (in the case of a call), the Trust will lose its entire investment in the option.

Also, where a put or call option on a particular security is purchased to hedge against price movements in a related security, the price of the put or call option may move more or less than the price of the related security. If restrictions on exercise were imposed, the Trust might be unable to exercise an option it had purchased. If the Trust were unable to close out an option that it had purchased on a security, it would have to exercise the option in order to realize any profit or the option may expire worthless.

The Trust's Derivative Transactions are generally subject to numerous special and complex tax rules. Because the tax rules applicable to such transactions may be uncertain under current law, an adverse determination or future IRS guidance with respect to these rules (which determination or guidance could be retroactive) may affect whether the Trust has made sufficient distributions, and otherwise satisfied the relevant requirements, to maintain its qualification as a RIC and avoid Trust-level U.S. federal income or excise taxes. See "Risks Relating to the Trust's Tax Status" below for more information about the risks of a failure to qualify as a RIC. The Trust's investments in derivative instruments may be limited by the RIC qualification requirements or other U.S. federal income tax considerations.

In addition, the Commission recently proposed a rule under the Investment Company Act regulating the use by registered investment companies of derivatives and many related instruments. That rule, if adopted as proposed, would, among other things, restrict the Trust's ability to engage in derivatives transactions, and may so increase the cost of derivatives transactions that the Trust would be unable to implement its investment strategy.

ADDITIONAL RISK FACTORS IN CLEARED DERIVATIVES TRANSACTIONS

Under recently adopted rules and regulations, transactions in some types of swaps (including interest rate swaps and credit default swaps on North American and European indices) are required to be centrally cleared. In a transaction involving those swaps ("cleared derivatives"), the Trust's counterparty is a clearing house, rather than a bank or broker. Since the Trust is not a member of a clearing house and only members of a clearing house (a "clearing member") can participate directly in the clearing house, the Trust

will hold cleared derivatives through accounts at a clearing member. In cleared derivatives positions, the Trust will make payments (including margin payments) to and receive payments from a clearing house through its accounts at a clearing member. A clearing member guarantees performance of its clients' obligations to the clearing house.

In many ways, cleared derivative arrangements are less favorable to mutual funds than bilateral arrangements. For example, the Trust may be required to provide more margin for cleared derivatives positions than for bilateral derivatives positions. Also, in contrast to a bilateral derivatives position, following a period of notice to the Trust, a clearing member generally can require termination of an existing cleared derivatives position at any time or an increase in margin requirements above the margin that the clearing member required at the beginning of a transaction. Clearing houses also have broad rights to increase margin requirements for existing positions or to terminate those positions at any time. Any increase in margin requirements or termination of existing cleared derivatives positions by the clearing member or the clearing house could interfere with the ability of the Trust to pursue its investment strategy. Further, any increase in margin requirements by a clearing member could expose the Trust to greater credit risk to its clearing member because margin for cleared derivatives positions in excess of a clearing house's margin requirements typically is held by the clearing member. Also, the Trust is subject to risk if it enters into a derivatives transaction that is required to be cleared (or that the Investment Adviser expects to be cleared), and no clearing member is willing or able to clear the transaction on the Trust's behalf. While the documentation in place between the Trust and its clearing member generally provides that the clearing member will accept for clearing all cleared derivatives transactions that are within credit limits (specified in advance) for the Trust, the Trust is still subject to the risk that no clearing member will be willing or able to clear a transaction. In those cases, the position might have to be terminated, and the Trust could lose some or all of the benefit of the position, including loss of an increase in the value of the position and/or loss of hedging protection. In addition, the documentation governing the relationship between the Trust and a clearing member is drafted by the clearing member and generally is less favorable to the Trust than typical bilateral derivatives documentation. For example, documentation relating to cleared derivatives generally includes a one-way indemnity by the Trust in favor of the clearing member for losses the clearing member incurs as the Trust's clearing member and typically does not provide the Trust any remedies if the clearing member defaults or becomes insolvent. While futures contracts entail similar risks, the risks likely are more pronounced for cleared swaps due to their more limited liquidity and market history.

Some types of cleared derivatives are required to be executed on an exchange or on a swap execution facility. A swap execution facility is a trading platform where multiple market participants can execute derivatives by accepting bids and offers made by multiple other participants in the platform. While this execution requirement is designed to increase transparency and liquidity in the cleared derivatives market, trading on a swap execution facility can create additional costs and risks for the Trust. For example, swap execution facilities typically charge fees, and if the Trust executes derivatives on a swap execution facility through a broker intermediary, the intermediary may impose fees as well. Also, the Trust may indemnify a swap execution facility, or a broker intermediary who executes cleared derivatives on a swap execution facility on the Trust's behalf, against any losses or costs that may be incurred as a result of the Trust's transactions on the swap execution facility.

These and other new rules and regulations could, among other things, further restrict the Trust's ability to engage in, or increase the cost to the Trust of, derivatives transactions, for example, by making some types of derivatives no longer available to the Trust, increasing margin or capital requirements, or otherwise limiting liquidity or increasing transaction costs. These regulations are new and evolving, so their potential impact on the Trust and the financial system are not yet known. While the new regulations and central clearing of some derivatives transactions are designed to reduce systemic risk (i.e., the risk that the interdependence of large derivatives dealers could cause them to suffer liquidity, solvency or other challenges simultaneously), there is no assurance that the new clearing mechanisms will achieve that result, and in the meantime, as noted above, central clearing and related requirements expose the Trust to new kinds of risks and costs.

The above discussion and under "Derivatives Risks" relates to the Trust's proposed use of certain types of derivatives currently available. However, the Trust is not limited to the transactions described above. In addition, the relevant markets and related regulations are constantly changing and, in the future, the Trust may use derivatives not currently available or widely in use.

REGULATORY RISK

Legal, tax and regulatory changes could occur and may adversely affect the Trust and its ability to pursue its investment strategies and/or increase the costs of implementing such strategies. New (or revised) laws or regulations may be imposed by the Commission, the U.S. Commodity Futures Trading Commission (the "CFTC"), the IRS, the U.S. Federal Reserve or other banking regulators, other governmental regulatory authorities or self-regulatory organizations that supervise the financial markets that could adversely affect the Trust. In particular, these agencies are empowered to promulgate a variety of new rules pursuant to financial reform legislation in the United States. The Trust also may be adversely affected by changes in the enforcement or interpretation of existing statutes and rules by these governmental regulatory authorities or self regulatory organizations.

To the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of financial institutions to make loans in connection with highly leveraged transactions, the availability of senior loan interests for investment by the Trust may be adversely affected. To the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of the Trust to invest in the assets of distressed companies, the availability of distressed company interests for investment by the Trust may be adversely affected. In addition, such requirements or restrictions may reduce or eliminate sources of financing for affected borrowers. Further, to the extent that legislation or federal or state regulators require such institutions to dispose of senior loan interests relating to highly leveraged transactions or subject such senior loan interests to increased regulatory scrutiny, such financial institutions may determine to sell senior loan interests in a manner that results in a price that, in the opinion of the Investment Adviser, is not indicative of fair value. Were the Trust to attempt to sell a senior loan interest at a time when a financial institution was engaging in such a sale with respect to the senior loan interest, the price at which the Trust could consummate such a sale might be adversely affected.

REGULATORY RISK – COMMODITY POOL OPERATOR

The Trust is sponsored by a person who has claimed an exclusion from the definition of the term "commodity pool operator" under the CEA pursuant to Rule 4.5 under the CEA; therefore, the Investment Adviser (with respect to the Trust) is not subject to registration or regulation as a "commodity pool operator" under the CEA. To remain eligible for the exclusion, the Trust will be limited in its ability to use certain derivatives instruments regulated under the CEA ("commodity interests"), including futures, swaps and options on futures. In the event that the Trust's investments in commodity interests exceed a certain threshold, the Investment Adviser may be required to register as a "commodity pool operator" and/or "commodity trading advisor" with the CFTC with respect to the Trust. The Investment Adviser's eligibility to claim the exclusion with respect to the Trust will be based upon the level and scope of the Trust's investment in commodity interests, the purposes of such investments and the manner in which the Trust holds out its use of commodity interests. For example, CFTC Rule 4.5 requires a fund with respect to which the sponsor is claiming the exclusion to, among other things, satisfy one of the two following trading thresholds: (i) the aggregate initial margin and premiums

required to establish positions in commodity interests cannot exceed 5% of the liquidation value of a fund's portfolio, after taking into account unrealized profits and unrealized losses; or (ii) the aggregate net notional value of commodity interests not used solely for "bona fide hedging purposes," determined at the time the most recent position was established, cannot generally exceed 100% of the liquidation value of a fund's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. The Trust currently intends to operate in a manner that would permit the Investment Adviser to continue to claim the exclusion under Rule 4.5, which may adversely affect the Investment Adviser's ability to manage the Trust under certain market conditions and may adversely affect the Trust's total return. In the event the Investment Adviser becomes unable to rely on the exclusion in Rule 4.5 and is required to register with the CFTC as a commodity pool operator, the Trust's expenses may increase, adversely affecting the Trust's total return.

COUNTERPARTY RISK

The Trust will be subject to credit risk with respect to the counterparties to the derivative contracts purchased or sold by the Trust. Recently, several broker-dealers and other financial institutions have experienced extreme financial difficulty, sometimes resulting in bankruptcy of the institution. Although the Investment Adviser monitors the creditworthiness of the Trust's counterparties, there can be no assurance that the Trust's counterparties will not experience similar difficulties, possibly resulting in losses to the Trust. If a counterparty becomes bankrupt, or otherwise fails to perform its obligations under a derivative contract due to financial difficulties, the Trust may experience significant delays in obtaining any recovery under the derivative contract in a bankruptcy or other reorganization proceeding. The Trust may obtain only a limited recovery or may obtain no recovery in such circumstances. Material exposure to a single or small group of counterparties increases the Trust's counterparty risk.

CREDIT DEFAULT SWAPS RISK

The Trust may enter into credit default swap agreements, which may have as reference obligations one or more debt securities or an index of such securities. In a credit default swap, one party (the "protection buyer") is obligated to pay the other party (the "protection seller") a stream of payments over the term of the contract, provided that no credit event, such as a default or, in some instances, a downgrade in credit rating, occurs on the reference obligation. If a credit event occurs, the protection seller must generally pay the protection buyer the "par value" (the agreed-upon notional value) of the referenced debt obligation in exchange for an equal face amount of deliverable reference obligations.

The Trust may be either the protection buyer or protection seller in a credit default swap. If the Trust is a protection buyer, the Trust would pay the counterparty a periodic stream of payments over the term of the contract and would not recover any of those payments if no credit event were to occur. However, if a credit event occurs, the Trust as a protection buyer has the right to deliver the referenced debt obligations or a specified amount of cash, depending upon the terms of the swap, and receive the par value of such debt obligations from the counterparty protection seller. As a protection seller, the Trust would receive fixed payments throughout the term of the contract if no credit event occurs. If a credit event occurs, however, the value of the obligation received by the Trust (e.g., bonds which defaulted), plus the periodic payments previously received, may be less than the par value of the obligation, or cash received, resulting in a loss to the protection seller. Furthermore, the Trust as a protection seller would effectively add leverage to its portfolio because it will have investment exposure to the notional amount of the swap.

Credit default swap agreements are subject to greater risk than a direct investment in the reference obligation. Like all swap agreements, credit default swaps are subject to liquidity, credit and counterparty risks. In addition, collateral posting requirements are individually negotiated and there is no regulatory requirement that a counterparty post collateral to secure its obligations under a credit default swap. Furthermore, there is no requirement that a party be informed in advance when a credit default swap agreement is sold. Accordingly, the Trust may have difficulty identifying the party responsible for payment of its claims. The notional value of credit default swaps with respect to a particular investment is often larger than the total par value of such investment outstanding and, in event of a default, there may be difficulties in making the required deliveries of the reference investments, possibly delaying payments.

In the past, the market for credit default swaps has become more volatile as the creditworthiness of certain counterparties has been questioned and/or downgraded. If a counterparty's credit becomes significantly impaired, multiple requests for collateral posting in a short period of time could increase the risk that the Trust may not receive adequate collateral. There is no readily available market for trading credit default swaps. The Trust generally may exit its obligations under a credit default swap only by terminating the contract and paying applicable breakage fees, or by entering into an offsetting credit default swap position, which may cause the Trust to incur more losses.

In addition, the Trust may invest in publicly or privately issued interests in investment pools whose underlying assets are credit default, credit-linked, interest rate, currency exchange, equity-linked or other types of swap contracts and related underlying securities

or securities loan agreements. The pools' investment results may be designed to correspond generally to the performance of a specified securities index or "basket" of securities, sometimes a single security.

These types of pools are often used to gain exposure to multiple securities with a smaller investment than would be required to invest directly in the individual securities. They may also be used to gain exposure to foreign securities markets without investing in the foreign securities themselves or the relevant foreign market. To the extent that the Trust invests in pools of swaps and related underlying securities or securities loan agreements whose return corresponds to the performance of a foreign securities index or one or more foreign securities, investing in such pools will involve risks similar to the risks of investing in foreign securities. See "Foreign Securities" below. In addition to the risks associated with investing in swaps generally, the Trust bears the risks and costs generally associated with investing in pooled investment vehicles, such as paying the fees and expenses of the pool and the risk that the pool or the operator of the pool may default on its obligations to the holder of interests in the pool, such as the Trust. Interests in privately offered investment pools of swaps may be considered illiquid or deemed liquid, subject to the Trust's restrictions on investments in illiquid securities.

MARKET RISK GENERALLY

The profitability of a significant portion of the Trust's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments and the movements of interest rates. The Investment Adviser may not be able to predict accurately these price and interest rate movements. With respect to certain investment strategies the Trust utilizes, there is a high degree of market risk.

REINVESTMENT RISK

The Trust reinvests the cash flows received from a security. The additional income from such reinvestment, sometimes called interest-on-interest, is reliant on the prevailing interest rate levels at the time of reinvestment. There is a risk that the interest rate at which interim cash flows can be reinvested will fall. Reinvestment risk is greater for longer holding periods and for securities with large, early cash flows such as high-coupon bonds. Reinvestment risk also applies generally to the reinvestment of the proceeds the Trust receives upon the maturity or sale of a portfolio security.

TIMING RISK

Many agency, corporate and municipal bonds, and most mortgage-backed securities, contain a provision that allows the issuer to "call" all or part of the issue before the bond's maturity date — often after 5 or 10 years. The issuer usually retains the right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because an issuer is more likely to call the bonds when interest rates have dropped, the Trust is exposed to reinvestment risk, *i.e.*, the Trust may have to reinvest at lower interest rates the proceeds received when the bond is called. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

INFLATION RISK

Inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if the Trust purchases a bond in which it can realize a coupon rate of 5%, but the rate of inflation increases from 2% to 6%, then the purchasing power of the cash flow has declined. For all but adjustable bonds or floating rate bonds, the Trust is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk. In addition, during any periods of rising inflation, dividend rates of any variable rate preferred share issued by the Trust would likely increase, which would tend to further reduce returns to common shareholders.

ARBITRAGE RISKS

The Trust engages in capital structure arbitrage and other arbitrage strategies. Arbitrage strategies entail various risks, including the risk that external events, regulatory approvals and other factors will impact the consummation of announced corporate events and/or the prices of certain positions. In addition, hedging is an important feature of capital structure arbitrage. There is no guarantee that the Investment Adviser will be able to hedge the Trust's investment portfolio in the manner necessary to employ successfully the Trust's strategy.

SHORT SALES RISK

Short selling involves selling securities that may or may not be owned and borrowing the same securities for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the Trust to profit from declines in market prices to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. However, because the

borrowed securities must be replaced by purchases at market prices in order to close out the short position, any appreciation in the price of the borrowed securities would result in a loss. The securities necessary to cover a short position may not be available for purchase. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss. The Trust may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Trust might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales. Short sales by the Trust that are not made "against the box" theoretically involve unlimited loss potential, since the market price of securities sold short may continuously increase.

MLP RISK

The Trust may invest in MLP securities. MLPs typically are characterized as "publicly traded partnerships" that qualify to be treated as partnerships for U.S. federal income tax purposes and are principally engaged in one or more aspects of the exploration, production, processing, transmission, marketing, storage or delivery of energy-related commodities, such as natural gas, natural gas liquids, coal, crude oil or refined petroleum products (collectively, the energy industry). As a result, holders of MLP securities will be subject to risks related to the energy industry, including: (i) fluctuations in commodity prices; (ii) reduced volumes of natural gas or other energy commodities available for transporting, processing, storing or distributing; (iii) slowdowns in new construction and acquisitions; (iv) reduced demand for commodities such as crude oil, natural gas and refined petroleum products; (v) depletion of natural gas reserves or other commodities; (vi) extreme weather and environmental hazards; (vii) stricter laws, regulations or enforcement policies; and (viii) dangers inherent to the energy industry, such as leaks, fires, explosions, damage to facilities and equipment resulting from natural disasters, inadvertent damage to facilities and equipment and terrorist acts.

Generally, an MLP is operated under the supervision of one or more managing general partners. Limited partners (like the Trust when it invests in an MLP) are not involved in the day-to-day management of the partnership. The Trust also may invest in companies who serve (or whose affiliates serve) as the general partner of an MLP. These investments may not be taxed as partnerships for U.S. Federal income tax purposes. Conflicts of interest may exist among unit holders, subordinated unit holders and the general partner of an MLP, including those arising from incentive distribution payments. General Partners typically have limited fiduciary duties to an MLP, which could allow a general partner to favor its own interests over the MLP's interests. Additionally, general partners of MLPs often have limited call rights that may require MLP unit holders to sell their common units at an undesirable time or price.

Holders of MLP securities have limited control and voting rights on matters affecting the partnership. Holders of securities issued by an MLP are exposed to a remote possibility of liability for all of the obligations of that MLP in the event that a court determines that the rights of the holders of MLP securities to vote to remove or replace the general partner of that MLP, to approve amendments to that MLP's partnership agreement, or to take other action under the partnership agreement of that MLP would constitute "control" of the business of that MLP, or a court or governmental agency determines that the MLP is conducting business in a state without complying with the partnership statute of that state. Holders of MLP securities are also exposed to the risk that they will be required to repay amounts to the MLP that are wrongfully distributed to them.

In addition, MLPs are subject to the risk that they will fail to be treated as partnerships for U.S. federal income tax purposes. If an MLP does not meet current legal requirements to maintain its partnership status, or if it is unable to do so because of tax or other law changes, it would be treated as a corporation for U.S. federal income tax purposes. In that case, the MLP would be obligated to pay U.S. federal income tax (as well as state and local taxes) at the entity level on its taxable income and distributions received by the Trust would be taxable to the Trust as dividend income to the extent of the MLP's current and accumulated earnings and profits for federal tax purposes. The classification of an MLP as a corporation for U.S. federal income tax purposes could have the effect of reducing the amount of cash available for distribution by the MLP and the value of the Trust's investment in any such MLP. As a result, the value of the Trust's shares and the cash available for distribution to Trust shareholders could be materially reduced.

The Trust intends to limit its investments in MLPs and related entities to the extent necessary to qualify as a RIC for tax purposes. In general, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in qualified publicly-traded partnerships.

BDC RISK

BDCs generally invest in less mature private companies or thinly traded U.S. public companies which involve greater risk than well-established publicly-traded companies. The Trust will indirectly bear its proportionate share of any management and other operating expenses and of any performance-based or incentive fees charged by the BDCs in which it invests, in addition to the expenses paid by the Trust. The Investment Company Act imposes certain constraints upon the operations of a BDC. Generally, little public information exists for private and thinly traded companies in which a BDC may invest and there is a risk that investors may not be able to make a fully informed evaluation of a BDC and its portfolio of investments. In addition, to qualify and remain eligible for the special tax treatment accorded to RICs and their shareholders, the BDCs in which the Trust invests must meet certain source-of-income, asset diversification and annual distribution requirements. If a BDC in which the Trust invests fails to qualify as a RIC, such BDC would be liable for federal, and possibly state, corporate taxes on its taxable income and gains. Such failure by a BDC could substantially reduce the BDC's net assets and the amount of income available for distribution to the Trust, which would in turn decrease the total return of the Trust in respect of such investment.

RISKS OF INVESTING IN STRUCTURED FINANCE SECURITIES

A portion of the Trust's investments may consist of equipment trust certificates, collateralized mortgage obligations, CBOs, CLOs or similar instruments. Such structured finance securities are generally backed by an asset or a pool of assets, which serve as collateral. Depending on the type of security, the collateral may take the form of a portfolio of mortgage loans or bonds or other assets. The Trust and other investors in structured finance securities ultimately bear the credit risk of the underlying collateral. In some instances, the structured finance securities are issued in multiple tranches, offering investors various maturity and credit risk characteristics, often categorized as senior, mezzanine and subordinated/equity according to their degree of risk. The riskiest securities are the equity tranche, which bears the bulk of defaults from the bonds or loans serving as collateral, and thus may protect the other, more senior tranches from default. If there are defaults or the relevant collateral otherwise underperforms, scheduled payments to senior tranches of such securities take precedence over those of mezzanine tranches, and scheduled payments to mezzanine tranches take precedence over those to subordinated/equity tranches. A senior tranche typically has higher ratings and lower yields than the underlying securities, and may be rated investment grade. Despite the protection from the equity tranche, other tranches can experience substantial losses due to actual defaults, increased sensitivity to defaults due to previous defaults and the disappearance of protecting tranches, market anticipation of defaults and aversion to certain structured finance securities as a class. In light of the above considerations, structured finance securities may present risks similar to those of the other types of debt obligations in which the Trust may invest and, in fact, such risks may be of greater significance in the case of structured finance securities. Moreover, investing in structured finance securities may entail a variety of unique risks. In addition, the performance of a structured finance security will be affected by a variety of factors, including the security's priority in the capital structure of the issuer thereof, the availability of any credit enhancement, the level and timing of payments and recoveries on and the characteristics of the underlying receivables, loans or other assets that are being securitized, remoteness of those assets from the originator or transferor, the adequacy of and ability to realize upon any related collateral and the capability of the servicer of the securitized assets. Structured finance securities carry additional risks that include, but are not limited to: (i) the possibility that distributions from collateral securities will not be adequate to make interest or other payments; (ii) the structure and complexity of the transaction and the legal documents could lead to disputes among investors regarding the characterization of proceeds; (iii) the investment return achieved by the Trust could be significantly different than those predicted by financial models; (vi) the lack of a readily available secondary market for structured finance securities; (v) risk of forced "fire sale" liquidation due to technical defaults such as coverage test failures; and (vi) the manager of a structured finance security may perform poorly. In addition, the complex structure of the security may produce unexpected investment results, especially during times of market stress or volatility, and a small number of defaults may have a disproportionate impact on the performance of the security. Investments in structured finance securities may also be subject to illiquidity risk, as they are normally privately offered and sold and thus, are not registered under securities laws. In addition to the risks noted above and other risks, structured finance securities may be subject to prepayment risk. Collateralized mortgage obligations may have risks similar to those of mortgage-backed securities. See "Mortgage-Backed Securities Risk" for more information.

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RISKS OF INVESTING IN PREFERRED SECURITIES

There are special risks associated with investing in preferred securities, including:

- *Deferral*. Preferred securities may include provisions that permit the issuer, at its discretion, to defer distributions for a stated period without any adverse consequences to the issuer. If the Trust owns a preferred security that is deferring the payment of its distributions, the Trust may be required to report income for U.S. federal income tax purposes to the extent of any such deferred distribution even though the Trust has not yet received such income. In order to receive the special treatment accorded to RICs and their shareholders under the Code and to avoid U.S. federal income and/or excise taxes at the Trust level, the Trust may be required to distribute this reported income to shareholders in the tax year in which the income is reported (without a corresponding receipt of cash). Therefore, the Trust may be required to pay out as an income distribution in any such tax year an amount greater than the total amount of income the Trust actually received, and may, among other things, sell portfolio securities, including at potentially disadvantageous times or prices, to obtain cash needed for these income distributions.
- *Subordination*. Preferred securities are subordinated to bonds and other debt instruments in a company's capital structure in terms of priority to corporate income and liquidation payments, and therefore will be subject to greater credit risk than more senior debt instruments.
- *Liquidity*. Preferred securities may be substantially less liquid than many other securities, such as common stock or U.S. government securities.
- *Limited Voting Rights*. Generally, preferred security holders have no voting rights with respect to the issuing company unless preferred dividends have been in arrears for a specified number of periods, at which time the preferred security holders may elect a number of trustees to the issuer's board. Generally, once all the arrearages have been paid, the preferred security holders no longer have voting rights.

RISKS OF INVESTING IN SWAPS

Investments in swaps involve the exchange by the Trust with another party of their respective commitments. Use of swaps subjects the Trust to risk of default by the counterparty. If there is a default by the counterparty to such a transaction, there may be contractual remedies pursuant to the agreements related to the transaction although contractual remedies may not be sufficient in the event the counterparty is insolvent. The Trust may enter into credit default swaps, currency swaps or other swaps which may be surrogates for other instruments such as currency forwards or options. Swap agreements are sophisticated financial instruments that typically involve a small investment of cash relative to the magnitude of risks assumed. Swaps can be highly volatile and may have a considerable impact on the Trust's performance, as the potential gain or loss on any swap transaction is not necessarily subject to any fixed limit.

Recently, several broker-dealers and other financial institutions have experienced extreme financial difficulty, sometimes resulting in bankruptcy of the institution. Although the Investment Adviser monitors the creditworthiness of the Trust's counterparties, the Trust's counterparties could experience similar difficulties, possibly resulting in losses to the Trust.

RISKS OF INVESTING IN SYNTHETIC SECURITIES

In addition to credit risks associated with holding non-investment grade loans and high-yield debt securities, with respect to synthetic securities the Trust will usually have a contractual relationship only with the counterparty of such synthetic securities, and not the Reference Obligor on the Reference Obligation. The Trust generally will have no right to enforce directly compliance by the Reference Obligor with the terms of the Reference Obligation nor any rights of setoff against the Reference Obligor, nor have any voting rights with respect to the Reference Obligation. The Trust will not benefit directly from any collateral supporting the Reference Obligation or have the benefit of the remedies on default that would normally be available to a holder of such Reference Obligation. In addition, in the event of insolvency of its counterparty, the Trust will be treated as a general creditor of such counterparty and will not have any claim with respect to the credit risk of the counterparty or of the Reference Obligor. As a result, investments in synthetic securities are subject to an additional degree of risk because they are subject to the credit risk of the counterparty as well as that of the Reference Obligor. The Investment Adviser may not perform independent credit analyses of any particular counterparty, or any entity guaranteeing the obligations of such counterparty. See "Principal Risks of the Trust – Counterparty Risk."

The Trust currently does not expect to invest more than 10% of its assets in synthetic securities as measured on a mark-to-market basis. However, the Trust's investments in synthetic securities may exceed this amount from time to time.

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VALUATION RISK

Portfolio securities may be valued using techniques other than market quotations, under the circumstances described under "Determination of Net Asset Value." The value established for a portfolio security may be different than what would be produced through the use of another methodology or if it had been priced using market quotations. Portfolio securities that are valued using techniques other than market quotations, including "fair valued" securities, may be subject to greater fluctuation in their value from one day to the next than would be the case if market quotations were used. In addition, there is no assurance that the Fund could sell a portfolio security for the value established for it at any time and it is possible that the Fund would incur a loss because a portfolio security is sold at a discount to its established value.

Fair value is defined as the amount for which assets could be sold in an orderly disposition over a reasonable period of time, taking into account the nature of the asset. Fair value pricing, however, involves judgments that are inherently subjective and inexact, since fair valuation procedures are used only when it is not possible to be sure what value should be attributed to a particular asset or when an event will affect the market price of an asset and to what extent. As a result, fair value pricing may not reflect actual market value, and it is possible that the fair value determined for a security will be materially different from the value that actually could be or is realized upon the sale of that asset.

RISKS OF NON-DIVERSIFICATION AND OTHER FOCUSED STRATEGIES

While the Investment Adviser invests in a number of fixed-income and equity instruments issued by different issuers and employs multiple investment strategies with respect to the Trust's investment portfolio, it is possible that a significant amount of the Trust's investments could be invested in the instruments of only a few companies or other issuers or that at any particular point in time one investment strategy could be more heavily weighted than the others. The focus of the Trust's investment portfolio in any one issuer would subject the Trust to a greater degree of risk with respect to defaults by such issuer or other adverse events affecting that issuer, and the focus of the portfolio in any one industry or group of industries would subject the Trust to a greater degree of risk with respect to economic downturns relating to such industry. The focus of the Trust's investment portfolio in any one investment strategy would subject the Trust to a greater degree of risk than if the Trust's investment portfolio were varied in its investments with respect to several investment strategies.

RISKS RELATED TO CURRENT MARKET CONDITIONS

Recently, debt markets have experienced a period of high volatility, which has negatively impacted market liquidity conditions and prices. Initially, the concerns on the part of market participants were focused on the subprime segment of the mortgage-backed securities market. These concerns expanded to include derivatives, securitized assets and a broad range of other debt securities, including those rated investment grade, the U.S. and international credit and interbank money markets generally, and a wide range of financial institutions and markets, asset classes, and sectors. As a result, debt instruments have experienced, and may in the future experience, liquidity issues, increased price volatility, credit downgrades, and increased likelihood of default. Debt securities may be difficult to value during such periods. These market conditions may have an adverse effect on the Trust's investments and hamper the Trust's ability to sell the debt securities in which it invests or to find and purchase suitable debt instruments. Because the Trust invests heavily in fixed income securities and related investments, it may underperform during periods of rising interest rates. Market conditions may also make it more difficult or impossible for the Trust to use leverage to the degree required, or make any such leverage more expensive (for example, by increasing interest expense). In addition, these conditions may directly and adversely affect the setting of dividend rates on the common shares.

In recent periods, governmental financial regulators, including the U.S. Federal Reserve, have taken steps to maintain historically low interest rates by purchasing bonds. The ending of those programs, and withdrawal of other measures of government support, along with any increase to base interest rates, could result in the effects described above or otherwise adversely affect the value of the Trust's investments, and could have a material adverse effect on prices for debt securities and on the management of the Trust.

The recent market conditions have also caused domestic and international issuers to seek capital infusions to strengthen their financial positions or to remain financially viable. These capital infusions have taken a variety of forms, including the public or private issuance of additional debt securities, equity securities or both, which have been purchased by, among others, public and private investors, government agencies, and sovereign wealth funds. If the Trust owns shares of an issuer that sells additional equity securities and the Trust cannot or chooses not to purchase shares in the offering, the Trust's interest in the issuing company will be diluted.

RISKS OF INVESTING IN A TRUST WITH ANTI-TAKEOVER PROVISIONS

The Trust's Agreement and Declaration of Trust includes provisions that could limit the ability of other entities or persons to acquire control of the Trust or convert the Trust to open-end status. These provisions could deprive the holders of common shares of opportunities to sell their common shares at a premium over the then current market price of the common shares or at NAV. See "Anti-Takeover Provisions in the Agreement and Declaration of Trust".

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KEY ADVISER PERSONNEL RISK

The Trust's ability to identify and invest in attractive opportunities is dependent upon the Investment Adviser. If one or more key individuals leaves the Investment Adviser, the Investment Adviser may not be able to hire qualified replacements or may require an extended time to do so. This situation could prevent the Trust from achieving its investment objectives.

RISKS RELATING TO DILUTION OF SHAREHOLDERS' INTERESTS

Shareholders' interests in the Trust may be diluted if they do not fully exercise their subscription rights in any rights offering. In addition, if the subscription price is less than our NAV per share, then there will be an immediate dilution of the aggregate NAV of our shares. In the event we issue subscription rights, shareholders who do not fully exercise their rights should expect that they will, at the completion of a rights offering pursuant to this Prospectus, own a smaller proportional interest in us than would otherwise be the case if they fully exercised their rights. Such dilution is not currently determinable because it is not known what proportion of the shares will be purchased as a result of such rights offering. Any such dilution will disproportionately affect non-exercising shareholders. This dilution could be substantial. The amount of any decrease in NAV is not predictable because it is not known at this time what the subscription price and NAV per share will be on the expiration date of the rights offering or what proportion of the shares will be purchased as a result of such rights offering.

RISKS RELATING TO TRUST'S TAX STATUS

To remain eligible for the special tax treatment accorded to RICs and their shareholders under the Code, the Trust must meet certain source of income, asset diversification and annual distribution requirements. Very generally, in order to qualify as a RIC, the Trust must derive at least 90% of its gross income for each taxable year from dividends, interest, payments with respect to certain securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to its business of investing in stock or other securities. In some cases, if the Trust fails to meet these income requirements at the end of a taxable year, it will be able to cure such failure by paying a Trust-level tax to avoid the loss of its RIC status; such tax could be substantial. The Trust must also meet certain asset diversification requirements at the end of each quarter of each of its taxable years. Failure to meet these diversification requirements on the last day of a quarter will result in the Trust's loss of RIC status, unless it is able to cure such failure, for instance, by disposing of certain investments, including at potentially disadvantageous times and prices, and, in some cases, by paying a Trust-level tax.

In addition, in order to be eligible for the special tax treatment accorded RICs, the Trust must meet the annual distribution requirement, requiring it to distribute with respect to each taxable year at least the sum of 90% of its "investment company taxable income" (as that term is defined in the Code without regard to the deduction for dividends paid – generally its taxable ordinary income and realized net short-term capital gains in excess of realized net long-term capital losses, if any) and 90% of its net tax-exempt income (if any), to its shareholders. Because the Trust currently maintains a committed facility, and may use additional debt financing in the future, the Trust is subject to certain asset coverage ratio requirements under the Investment Company Act that could, under certain circumstances, restrict the Trust from making the distributions necessary to satisfy this annual distribution requirement and to avoid corporate-level U.S. federal income or excise taxes. Any taxable income (including net long-term capital gains) that the Trust is unable to distribute will be subject to corporate-level tax at regular corporate rates. Further, if the Trust fails to meet the annual distribution requirement, the source of income requirement or the asset diversification requirement in respect of a taxable year and is ineligible to or otherwise does not cure such failure for any such year, all of its taxable income regardless of whether timely distributed to shareholders will be subject to corporate-level tax and all of its distributions from earnings and profits (including from net long-term capital gains) will be taxable to shareholders as ordinary income. For individual shareholders who meet certain holding period requirements, such distributions would be eligible for reduced tax rates applicable to qualified dividend income.

In any such event, the resulting corporate taxes could substantially reduce the Trust's net assets, the amount of income available for distribution and the amount of its distributions. Such a failure would have a material adverse effect on the Trust and its shareholders. In addition, in some cases, the Trust could be required to recognize unrealized gains, pay substantial taxes and interest and make substantial distributions in order to re-qualify as a RIC.

RIC-RELATED RISKS OF INVESTMENTS GENERATING NON-CASH TAXABLE INCOME

Certain of the Trust's investments will require the Trust to recognize taxable income in a taxable year in excess of the cash generated on those investments during that year. In particular, the Trust expects that a substantial portion of its investments in loans and other debt obligations will be treated as having "market discount" and/or "original issue discount" for U.S. federal income tax purposes, which, in some cases, could be significant. Because the Trust may be required to recognize income in respect of these

investments before or without receiving cash representing such income, the Trust may have difficulty satisfying the annual distribution requirements applicable to RICs and avoiding Trust-level U.S. federal income or excise taxes. Accordingly, the Trust may be required

to sell portfolio securities, including at potentially disadvantageous times or prices, raise additional debt or equity capital, or reduce new investments, to obtain the cash needed to make these income distributions. If the Trust liquidates portfolio securities to raise cash, the Trust may realize gain or loss on such liquidations; in the event the Trust realizes net long-term or short-term capital gains from such liquidation transactions, its shareholders may receive larger capital gain or ordinary dividends, respectively, than they would in the absence of such transactions.

LIMITATIONS OF CREDIT RATINGS

Credit ratings represent only the opinion of the rating agency with respect to the ability of the issuer to make principal and interest payments on the securities. In determining a credit rating, rating agencies do not evaluate the risks of fluctuations in market value. Further, there may be limits on the effectiveness of the rating agencies' financial models. For these and other reasons, a credit rating may not fully reflect the risks inherent in the relevant security. Further, a rating organization may have a conflict of interest with respect to a security for which it assigns a particular rating. For example, if the issuer or sponsor of a security pays a rating agency for the analysis of the security, an inherent conflict of interest may exist that could affect the reliability of the rating. In addition, credit rating agencies may or may not make timely changes in a rating to reflect changes in the economy or in the conditions of the issuer that affect the market value of the security. In other words, a security or an issuer may maintain a certain credit rating even though conditions have deteriorated since the rating was issued. Consequently, credit ratings should not necessarily be relied upon as an indicator of investment quality. If a rating organization changes the rating assigned to one or more of the Trust's portfolio securities, the Trust is not required to sell the relevant securities.

CERTAIN AFFILIATIONS

Certain broker-dealers may be considered to be affiliated persons of the Trust or the Investment Adviser. Absent an exemption from the Commission or other regulatory relief, the Trust is generally precluded from effecting certain principal transactions with affiliated brokers, and its ability to purchase securities being underwritten by an affiliated broker or a syndicate including an affiliated broker, or to utilize affiliated brokers for agency transactions, is subject to restrictions. This could limit the Trust's ability to engage in securities transactions and take advantage of market opportunities. In addition, unless and until the underwriting syndicate is broken in connection with the initial public offering of the securities, the Trust will be precluded from effecting principal transactions with brokers who are members of the syndicate.

OPERATIONAL AND TECHNOLOGY RISK

The Trust, its service providers, and other market participants increasingly depend on complex information technology and communications systems to conduct business functions. These systems are subject to a number of different threats or risks that could adversely affect the Trust and its shareholders, despite the efforts of the Trust and its service providers to adopt technologies, processes, and practices intended to mitigate these risks.

For example, unauthorized third parties may attempt to improperly access, modify, disrupt the operations of, or prevent access to these systems of the Trust, the Trust's service providers, counterparties, or other market participants or data within them (a "cyber-attack"). Power or communications outages, acts of god, information technology equipment malfunctions, operational errors, and inaccuracies within software or data processing systems may also disrupt business operations or impact critical data. Market events also may trigger a volume of transactions that overloads current information technology and communication systems and processes, impacting the ability to conduct the Trust's operations.

Cyber-attacks, disruptions, or failures that affect the Trust's service providers or counterparties may adversely affect the Trusts and its shareholders, including by causing losses for the Trust or impairing Trust operations. For example, the Trust's or its service providers' assets or sensitive or confidential information may be misappropriated, data may be corrupted, and operations may be disrupted (e.g., cyber-attacks or operational failures may cause the release of private shareholder information or confidential Trust information, interfere with the processing of shareholder transactions, impact the ability to calculate the Trust's NAV, and impede trading). In addition, cyber-attacks, disruptions, or failures may cause reputational damage and subject the Trust or its service providers to regulatory fines, litigation costs, penalties or financial losses, reimbursement or other compensation costs, and/or additional compliance costs. While the Trust and its service providers may establish business continuity and other plans and processes to address the possibility of cyber-attacks, disruptions, or failures, there are inherent limitations in such plans and systems, including that they do not apply to third parties, such as other market participants, as well as the possibility that certain risks have not been identified or that unknown threats may emerge in the future.

Similar types of operational and technology risks are also present for issuers of the Trust's investments, which could have material adverse consequences for such issuers, and may cause the Trust's investments to lose value. In addition, cyber-attacks involving the Trust counterparty could affect such counterparty's ability to meet its obligations to the Trust, which may result in losses to the Trust and its shareholders. Furthermore, as a result of cyber-attacks, disruptions, or failures, an exchange or market may close or issue trading halts on specific securities or the entire market, which may result in the Trust being, among other things, unable to buy or sell certain securities or financial instruments or unable to accurately price its investments. The Trust cannot directly control any cybersecurity plans and systems put in place by its service providers, Trust counterparties, issuers in which the Trust invests, or securities markets and exchanges.

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CONCENTRATION RISK - REAL ESTATE

The Trust is required to invest at least 25% of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry. Under this policy, the Trust may be subject to greater market fluctuations than a fund that does not concentrate its investments in a particular industry. Financial, economic, business, and other developments affecting issuers in the real estate industry will have a greater effect on the Trust, and if securities of the real estate industry fall out of favor, the Trust could underperform, or its NAV may be more volatile than, funds that have greater industry diversification.

REAL ESTATE INDUSTRY RISK

Issuers principally engaged in real estate industry, including real estate investment trusts, may be subject to risks similar to the risks associated with the direct ownership of real estate, including: (i) changes in general economic and market conditions; (ii) changes in the value of real estate properties; (iii) risks related to local economic conditions, overbuilding and increased competition; (iv) increases in property taxes and operating expenses; (v) changes in zoning laws; (vi) casualty and condemnation losses; (vii) variations in rental income, neighborhood values or the appeal of property to tenants; (viii) the availability of financing and (ix) changes in interest rates and leverage.

COMMUNICATIONS INDUSTRY RISK

The market for communications products and services is characterized by rapidly changing technology, rapid product obsolescence, cyclical market patterns, evolving industry standards and frequent new product introductions. The success of the communications industry issuers depends in substantial part on the timely and successful introduction of new products and services. An unexpected change in in the market for products or services based on a particular technology could have a material adverse effect on an issuer's operating results. Furthermore, there can be no assurance that communications industry issuers will be able to respond in a timely manner to compete in the rapidly developing marketplace. Many communications companies rely on a combination of patents, copyrights, trademarks and trade secret laws to establish and protect their intellectual property. There can be no assurance that the steps taken to protect intellectual property will be adequate to prevent misappropriation or that competitors will not independently develop products or services that are substantially equivalent or superior to such issuers' products or services.

Management of the Trust

The Trust is a party to contractual arrangements with various parties, including, among others, the Trust's investment adviser, administrator, distributor, and shareholder servicing agent, who provide services to the Trust. Shareholders are not parties to, or intended ("third party") beneficiaries of, any such contractual arrangements, and such contractual arrangements are not intended to create in any individual shareholder or group of shareholders any right to enforce them against the service providers or to seek any remedy under them against the service providers, either directly or on behalf of the Trust.

Neither this Prospectus, nor the related SAI, is intended, or should be read, to be or to give rise to an agreement or contract between the Trust and any investor, or to give rise to any rights in any shareholder or other person other than any rights under federal or state law that may not be waived.

TRUSTEES AND OFFICERS

The Board is responsible for the overall management of the Trust, including supervision of the duties performed by the Investment Adviser. There are five trustees of the Trust. Four of the trustees are not "interested persons" (as defined in the Investment Company Act) of the Trust. The names and business addresses of the trustees and officers of the Trust and their principal occupations and other affiliations during the past five years are set forth under "Management of the Trust" in the SAI.

INVESTMENT ADVISER

NexPoint Advisors, L.P. acts as the Trust's investment adviser. The Investment Adviser is located at 300 Crescent Court, Suite 700, Dallas, Texas 75201. As of June 30, 2019, the Investment Adviser, together with its affiliates, managed approximately $9.9 billion in assets on behalf of investors around the world. The Investment Adviser is controlled by James Dondero by virtue of his control of its general partner, NexPoint Advisors GP, LLC.

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Responsibilities. The Investment Adviser provides the following services to the Trust: (i) furnishes an investment program for the Trust; (ii) determines, subject to the overall supervision and review of the Board, the investments to be purchased, held, sold or exchanged by the Trust and the portion, if any, of the assets of the Trust to be held uninvested; (iii) makes changes in the investments of the Trust; and (iv) votes, exercises consents, and exercises all other rights pertaining to such investments. Subject to the foregoing, the Investment Adviser will have the authority to engage one or more sub-advisers in connection with the portfolio management of the Trust, which sub-advisers may be affiliates of the Investment Adviser; provided, however, that the Investment Adviser shall remain responsible to the Trust with respect to its duties and obligations set forth in the investment advisory agreement.

Compensation. In return for its advisory services, the Investment Adviser receives an annual fee, payable monthly, in an amount equal to 1.00% of the average weekly value of the Trust's Managed Assets (the "Advisory Fee"). The accrued fees are payable monthly as promptly as possible after the end of each month during which the investment advisory agreement is in effect. A discussion regarding the basis for the approval of the investment advisory agreement by the Board is available in the Trust's report to shareholders for the period ended December 31, 2017.

Potential Conflicts of Interest. The Investment Adviser is an affiliate of Highland Capital Management Fund Advisors, L.P. ("HCMFA"). The Investment Adviser and/or its general partner, limited partners, officers, affiliates and employees provide investment advice to other parties and manage other accounts and private investment vehicles similar to the Trust. For the purposes of this section, the term "Highland" shall include the Investment Adviser and its affiliated investment advisors, including Highland Capital Management, L.P. and its affiliates. In connection with such other investment management activities, the Investment Adviser and/or its general partner, limited partners, officers, affiliates and employees may decide to invest the funds of one or more other accounts or recommend the investment of funds by other parties, rather than the Trust's monies, in a particular security or strategy. In addition, the Investment Adviser and such other persons will determine the allocation of funds from the Trust and such other accounts to investment strategies and techniques on whatever basis they consider appropriate or desirable in their sole and absolute discretion.

Highland has built a professional working environment, a firm-wide compliance culture and compliance procedures and systems designed to protect against potential incentives that may favor one account over another. Highland has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, Highland furnishes advisory services to numerous clients in addition to the Trust, and Highland may, consistent with applicable law, make investment recommendations to other clients or accounts (including accounts that have performance or higher fees paid to Highland or in which portfolio managers have a personal interest in the receipt of such fees) that may be the same as or different from those made to the Trust. In addition, Highland, its affiliates and any of their partners, directors, officers, stockholders or employees may or may not have an interest in the securities whose purchase and sale the Investment Adviser recommends to the Trust. Actions with respect to securities of the same kind may be the same as or different from the action that the Investment Adviser, or any of its affiliates, or any of their partners, directors, officers, stockholders or employees or any member of their families may take with respect to the same securities. Moreover, the Investment Adviser may refrain from rendering any advice or services concerning securities of companies of which any of the Investment Adviser's (or its affiliates') partners, directors, officers or employees are directors or officers, or companies as to which the Investment Adviser or any of its affiliates or partners, directors, officers and employees of any of them has any substantial economic interest or possesses material non-public information. In addition to its various policies and procedures designed to address these issues, Highland includes disclosure regarding these matters to its clients in both its Form ADV and investment advisory agreements.

The Investment Adviser, its affiliates or their partners, directors, officers or employees similarly serve or may serve other entities that operate in the same or related lines of business, including accounts managed by an investment adviser affiliated with the Investment Adviser. Accordingly, these individuals may have obligations to investors in those entities or funds or to other clients, the fulfillment of which might not be in the best interests of the Trust. As a result, the Investment Adviser will face conflicts in the allocation of investment opportunities to the Trust and other funds and clients. In order to enable such affiliates to fulfill their fiduciary duties to each of the clients for which they have responsibility, the Investment Adviser will endeavor to allocate investment opportunities in a fair and equitable manner, pursuant to policies and procedures adopted by the Investment Adviser and its advisory affiliates that are designed to manage potential conflicts of interest, which may, subject to applicable regulatory constraints, involve pro rata co-investment by the Trust and such other clients or may involve a rotation of opportunities among the Trust and such other clients. The Trust will only make investments in which the Investment Adviser or an affiliate hold an interest to the extent permitted under the Investment Company Act and SEC staff interpretations or pursuant to the terms and conditions of the exemptive order received by the Investment Adviser and certain funds affiliated with the Trust, dated April 19, 2016. For example, exemptive relief is not required for the Trust to invest in syndicated deals and secondary loan market transactions in which the Investment Adviser or an affiliate has an interest where price is the only negotiated point. The order applies to all "Investment Companies," which includes future closed-end investment companies registered under the Investment Company Act that are managed by the affiliated advisers,

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which includes the Trust. The Trust, therefore, may in the future invest in accordance with the terms and conditions of the exemptive order. To mitigate any actual or perceived conflicts of interest, allocation of limited offering securities (such as IPOs and registered secondary offerings) to principal accounts that do not include third party investors may only be made after all other client account orders for the security have been filled. However, there can be no assurance that such policies and procedures will in every case ensure fair and equitable allocations of investment opportunities, particularly when considered in hindsight.

Conflicts may arise in cases when clients and/or the Investment Adviser and other affiliated entities invest in different parts of an issuer's capital structure, including circumstances in which one or more clients own private securities or obligations of an issuer and other clients may own public securities of the same issuer. In addition, one or more clients may invest in securities, or other financial instruments, of an issuer that are senior or junior to securities, or financial instruments, of the same issuer that are held by or acquired for, one or more other clients. For example, if such issuer encounters financial problems, decisions related to such securities (such as over the terms of any workout or proposed waivers and amendments to debt covenants) may raise conflicts of interests. In such a distressed situation, a client holding debt securities of the issuer may be better served by a liquidation of the issuer in which it may be paid in full, whereas a client holding equity securities of the issuer might prefer a reorganization that holds the potential to create value for the equity holders. In the event of conflicting interests within an issuer's capital structure, Highland will generally pursue the strategy that Highland believes best reflects what would be expected to be negotiated in an arm's length transaction, but in all instances with due consideration being given to Highland's fiduciary duties to each of its accounts (without regard to the nature of the accounts involved or fees received from such accounts). This strategy may be recommended by one or more Highland investment professionals. A single person may represent more than one part of an issuer's capital structure. The recommended course of action will be presented to the conflicts committee for final determination as to how to proceed. Highland may elect, but is not required, to assign different teams to make recommendations for different parts of the capital structure as the conflicts committee determines in its discretion. In the event any Highland personnel serve on the board of the subject company, they generally recuse themselves from voting on any board matter with respect to a transaction that has an asymmetrical impact on the capital structure. Highland personnel board members may still make recommendations to the conflicts committee. If any such persons are also on the conflicts committee, they may recuse themselves from the committee's determination. A portfolio manager with respect to any applicable Highland registered investment company clients ("Retail Accounts") participates in such discussions, but makes an independent determination as to which course of action he or she determines is in the best interest of the applicable Retail Accounts. Highland may use external counsel for guidance and assistance.

The Investment Adviser and its affiliates have both subjective and objective procedures and policies in place designed to manage potential conflicts of interest involving clients so that, for example, investment opportunities are allocated in a fair and equitable manner among the Trust and such other clients. An investment opportunity that is suitable for multiple clients of the Investment Adviser and its affiliates may not be capable of being shared among some or all of such clients due to the limited scale of the opportunity or other factors, including regulatory restrictions imposed by the Investment Company Act. There can be no assurance that the Investment Adviser's or its affiliates' efforts to allocate any particular investment opportunity fairly among all clients for whom such opportunity is appropriate will result in an allocation of all or part of such opportunity to the Trust. Not all conflicts of interest can be expected to be resolved in favor of the Trust.

Another type of conflict may arise if one client account buys a security and another client account sells or shorts the same security. Currently, such opposing positions are generally not permitted within the same account without prior trade approval by the Chief Compliance Officer. However, a portfolio manager may enter into opposing positions for different clients to the extent each such client has a different investment objective and each such position is consistent with the investment objective of the applicable client. In addition, transactions in investments by one or more affiliated client accounts may have the effect of diluting or otherwise disadvantaging the values, prices or investment strategies of other client accounts.

Because certain client accounts may have investment objectives, strategies or legal, contractual, tax or other requirements that differ (such as the need to take tax losses, realize profits, raise cash, diversification, etc.), an affiliated advisor may purchase, sell or continue to hold securities for certain client accounts contrary to other recommendations. In addition, an affiliated advisor may be permitted to sell securities or instruments short for certain client accounts and may not be permitted to do so for other affiliated client accounts.

As a result of the Trust's arrangements with Highland, there may be times when Highland, the Investment Adviser or their affiliates have interests that differ from those of the Trust's shareholders, giving rise to a conflict of interest. Highland and the Investment Adviser are under common ownership, and the Trust's officers serve or may serve as officers, directors or principals of entities that operate in the same or a related line of business as the Trust does, or of investment funds managed by the Investment Adviser or its affiliates. Similarly, the Investment Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Trust or its shareholders. For example, the Trust's officers have, and will

continue to have, management responsibilities for other investment funds, accounts or other investment vehicles managed or sponsored by the Investment Adviser and its affiliates. The Trust's investment objective may overlap, in part or in whole, with the investment objective of such affiliated investment funds, accounts or other investment vehicles. As a result, those individuals may face conflicts in the allocation of investment opportunities among the

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Trust and other investment funds or accounts advised by or affiliated with the Investment Adviser. The Investment Adviser will seek to allocate investment opportunities among eligible accounts in a manner that is fair and equitable over time and consistent with its allocation policy. However, the Trust can offer no assurance that such opportunities will be allocated to it fairly or equitably in the short-term or over time. See "Conflicts of Interest" for a discussion of our Investment Adviser's allocation policy.

Currently a substantial portion of the Trust's assets are invested in REITs, asset-backed securities and/or CLOs sponsored, organized and/or managed by Highland and its affiliates. The Investment Adviser will monitor for conflicts of interest in accordance with its fiduciary duties and will provide the independent trustees of the Trust with an opportunity to periodically review the Trust's investments in such REITs, asset-backed securities and/or CLOs and assure themselves that continued investment in such securities remains in the best interests of the Trust and its shareholders. The Investment Adviser may effect client cross-transactions where it causes a transaction to be effected between the Trust and another client advised by the Investment Adviser or any of its affiliates. The Investment Adviser may engage in a client cross-transaction involving the Trust any time that the Investment Adviser believes such transaction to be fair to the Trust and the other client of the Investment Adviser or its affiliates.

As further described below, the Investment Adviser may effect principal transactions where the Trust may make and/or hold an investment, including an investment in securities, in which the Investment Adviser and/or its affiliates have a debt, equity or participation interest, in each case in accordance with applicable law, which may include the Investment Adviser obtaining the consent and approval of the Trust prior to engaging in any such principal transaction between the Trust and the Investment Adviser or its affiliates.

The Investment Adviser may direct the Trust to acquire or dispose of investments in cross trades between the Trust and other clients of the Investment Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, to the extent permitted by the Investment Company Act and SEC staff interpretations, the Trust may make and/or hold an investment, including an investment in securities, in which the Investment Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Trust may enhance the profitability of the Investment Adviser's own investments in such companies.

During periods in which the Trust is using leverage, the fees paid to the Investment Adviser for investment advisory services and to the Administrator for administrative services will be higher than if the Trust did not use leverage because the fees paid will be calculated on the basis of the Trust's Managed Assets, which may create an incentive for the Investment Adviser to leverage the Trust or to leverage using strategies that increase the Investment Adviser's fee. Furthermore, the Investment Adviser will also benefit to the extent that the Trust's Managed Assets are derived from the reinvested collateral received on portfolio securities loaned.

In addition to the Advisory Fee of the Investment Adviser, the Trust pays all other costs and expenses of its operations, including, but not limited to, compensation of its trustees (other than those affiliated with the Investment Adviser), custodian, transfer and dividend disbursing agent expenses, legal fees, listing fees and expenses, expenses of independent auditors, expenses of preparing, printing and distributing shareholder reports, notices, proxy statements and reports to governmental agencies, and reimbursement of actual expenses of the Investment Adviser or others for registration and maintenance of the Trust's registration with the Commission and other jurisdictions and taxes, if any.

Pursuant to the Trust's investment advisory agreement, the Trust has undertaken to indemnify the Investment Adviser and its partners, officers, employees, agents, and controlling persons for certain liabilities arising under the agreement, except liabilities arising from their willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his position. In accordance with the indemnification provision in the Trust's Investment Advisory Agreement, the Trust has in the past indemnified the Investment Adviser from time to time, and may continue to do so in the future.

Real Estate Allocation Procedures.

Members of the Trust's management team also operate: (1) an externally managed publicly traded REIT ("NXRT"), that manages a portfolio of Class B, value add multifamily properties; (2) VineBrook Homes Trust, Inc., an externally managed private REIT that manages a portfolio of single-family housing properties in the Midwest U.S. ("VineBrook"); (3) NexPoint Hospitality Trust, an externally managed publicly traded REIT ("NHT") listed on the TSX Venture Exchange, that manages a portfolio of hospitality assets located in the U.S; (4) a private REIT (NFRO REIT Sub, LLC), which is wholly-owned by Highland Income Fund ("HFRO"), that invests in real estate transactions, or real estate operating companies, via debt instruments; (5) a private REIT (NRESF REIT Sub, LLC), which is wholly-owned by NexPoint Real Estate Strategies Fund ("NRESF"), that invests directly in real estate transactions or real estate operating companies; (6) a private REIT (NexPoint Capital REIT, LLC), which is wholly-owned by NexPoint Capital Inc., that invests in both direct interests in opportunistic real estate investments and preferred equity investments for entities that own real estate, and (7) a private

REIT (GAF REIT, LLC), which is wholly-owned by Highland Global Allocation Fund, that invest in real estate transactions, or real estate operating companies, via debt and equity instruments.

If a potential investment is appropriate for either the Trust or another entity noted above, the Investment Adviser and its affiliates have an allocation policy that provides that opportunities will be allocated among those accounts for which participation in the respective opportunity is considered most appropriate, taking into account, among other considerations with respect to any real estate investments:

- which fund has available cash (including availability under lines of credit) to acquire the investment;
- whether there are any positive or negative income tax effects on any of the funds relating to the purchase;
- whether the investment opportunity creates geographic, asset class or tenant concentration / diversification concerns for any of the funds;
- how the investment size, potential leverage, transaction structure and anticipated cash flows affect each fund, including earnings and distribution coverage; and
- whether one or more of the funds has an existing relationship with the tenant(s), operator, facility or system associated with the investment, or a significant geographic presence that would make the investment strategically more important.

The Investment Adviser will allocate investment opportunities across the entities for which such opportunities are appropriate, consistent with its internal conflict of interest and allocation policies. As noted above, the Investment Adviser will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy. However, there is no assurance that such investment opportunities will be allocated to the Trust fairly or equitably in the short-term or over time and there can be no assurance that the Trust will be able to participate in all such investment opportunities that are suitable for the Trust.

No-Action Letter and Exemptive Order

The Commission staff, through a No-Action Letter dated June 26, 2013, has stated that it will not recommend enforcement action if the Trust utilizes Rule 486(b) of the Securities Act to file post-effective amendments to its shelf registration statement in order to update the Trust's financial statements and make other non-material changes.

Additionally, the Trust, HCMFA and the Investment Adviser have obtained an exemptive order dated April 19, 2016 from the Commission to permit certain co-investments among the Trust and other accounts managed by the Investment Adviser or its affiliates, subject to certain conditions.

ADMINISTRATOR/SUB-ADMINISTRATOR

Under an administration agreement dated June 29, 2006 and amended June 6, 2008, (the "Administration Agreement"), the Investment Adviser provides administration services to the Trust, provides executive and other personnel necessary to administer the

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Trust and furnishes office space. Some of the administrative services provided by the Investment Adviser under the Administration Agreement, include, but are not limited to:

- preparing and coordinating the Trust's state filings;
- determining and overseeing publication of the Trust's NAV and distribution amounts;
- overseeing and liaising with services providers, such as the custodian and transfer agent;
- monitoring leverage compliance;
- coordinating the negotiation of credit agreements and other agreements with counterparties;
- investigating customer complaints;
- determining and monitoring expense accruals;
- authorizing expenditures and bill payments on behalf of the Trust; and
- performing such additional administrative duties as requested by the Trust.

Effective June 14, 2012, NexPoint Advisors, L.P. became the investment advisor and administrator to the Trust. Prior to June 14, 2012, HCMFA was the investment advisor and administrator to the Trust. The Investment Adviser will receive an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Trust's Managed Assets. The Investment Adviser earned for administration services $1,083,853 in fees for the fiscal year ended December 31, 2016, $1,170,744 in fees for the fiscal year ended December 31, 2017, and $959,793 in fees for the fiscal year ended December 31, 2018. The Investment Adviser may waive a portion of its fees.

As of October 1, 2018, under a separate sub-administration agreement, NexPoint has delegated certain administrative functions to SEI Investments Global Funds Services ("SEI"), One Freedom Valley Drive, Oaks, Pennsylvania 19456, and pays SEI a portion of the fee it receives from the Trust. Under the sub-administration agreement, SEI has agreed to provide fund accounting services; asset data services; fund administration and reporting services; and regulatory administration services, including preparation and filing of various reports with the appropriate regulatory agencies and the SEC for the Trust.

PORTFOLIO MANAGER

The Trust's portfolio manager is James Dondero. Mr. Dondero has managed the portfolio since September 2012. His investment decisions are not subject to the oversight, approval or ratification of a committee.

Mr. Dondero has over 25 years of experience in the credit markets. In addition to his role at the Investment Adviser, Mr. Dondero is the co-founder and President of Highland Capital Management, L.P. and NexPoint Advisors, L.P. Mr. Dondero has over 30 years of experience investing in credit and equity markets and has helped pioneer credit asset classes. Prior to founding Highland Capital Management in 1993, Mr. Dondero served as Chief Investment Officer of Protective Life's GIC subsidiary and helped grow the business from concept to over $2 billion between 1989 and 1993. His portfolio management experience includes mortgage-backed securities, investment grade corporates, leveraged bank loans, high-yield bonds, emerging market debt, real estate, derivatives, preferred stocks and common stocks. From 1985 to 1989, he managed approximately $1 billion in fixed income funds for American Express. Mr. Dondero received a BS in Commerce (Accounting and Finance) from the University of Virginia, and is a Certified Managerial Accountant. Mr. Dondero has earned the right to use the Chartered Financial Analyst designation. Mr. Dondero currently serves as Chairman of NexBank SSB and serves on the Board of Directors of American Banknote Corporation, Metro-Goldwyn-Mayer, Jernigan Capital, Inc., Cornerstone Healthcare Group, and Texmark Timber Treasury, L.P.

The SAI provides additional information about the portfolio manager's compensation, other accounts managed by the portfolio manager and the portfolio manager's ownership of securities issued by the Trust.

Determination of Net Asset Value

The NAV of the common shares of the Trust is computed based upon the value of the Trust's investment portfolio securities and other assets. NAV per common share is determined daily on each day that the NYSE is open for business as of the close of the regular trading session on the NYSE, usually 4:00 p.m., Eastern time. The NYSE is open Monday through Friday, but currently is scheduled to

be closed on New Year's Day, Dr. Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day or on the preceding Friday or subsequent Monday when a holiday falls on a Saturday or Sunday, respectively. The Trust calculates NAV per common share by subtracting liabilities (including accrued expenses or dividends) from the total assets of the Trust (the value of the securities plus cash or other assets, including interest accrued but not yet received) and dividing the result by the total number of outstanding common shares of the Trust.

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VALUATIONS

The Trust uses the following valuation methods to determine either current market value for investments for which market quotations are available or, if not available, the fair value, as determined in good faith pursuant to policies and procedures approved by the Board:

- The market value of each security listed or traded on any recognized securities exchange or automated quotation system will be the last reported sale price at the relevant valuation date on the composite tape or on the principal exchange on which such security is traded, except that debt securities that are not credit-impaired and have remaining maturities of 60 days or less will be valued at amortized cost, a method of valuation that approximates market value. If no sale is reported on that date, or for over-the-counter securities, the Investment Adviser utilizes, when available, pricing quotations from principal market makers. Such quotations may be obtained from third-party pricing services or directly from investment brokers and dealers in the secondary market. Generally, the Trust's loan and bond positions are not traded on exchanges and consequently are valued based on market prices received from third-party pricing services or broker-dealer sources.
- Dividends declared but not yet received, and rights in respect of securities which are quoted ex-dividend or ex-rights, will be recorded at the fair value thereof, as determined by the Investment Adviser, which may (but need not) be the value so determined on the day such securities are first quoted ex-dividend or ex-rights.
- Listed options, or over-the-counter options for which representative brokers' quotations are available, will be valued in the same manner as listed or over-the-counter securities as hereinabove provided. Premiums for the sale of such options written by the Trust will be included in the assets of the Trust, and the market value of such options shall be included as a liability.
- The Trust's non-marketable investments for which market quotations are not readily will generally be valued in such manner as the Investment Adviser determines in good faith to reflect their fair values under procedures established by, and under the general supervision and responsibility of, the Board. The pricing of all assets that are fair valued in this manner will be subsequently reported to and ratified by the Board. Pursuant to the Trust's pricing procedures, securities for which market quotations are not readily available may include securities that are subject to legal or contractual restrictions on resale, securities for which no or limited trading activity has occurred for a period of time, or securities that are otherwise deemed to be illiquid (i.e., securities that cannot be disposed of within seven days at approximately the price at which the security is currently priced by the Trust). Swaps and other derivatives would generally fall under this category.

When determining the fair value of an asset, the Investment Adviser seeks to determine the price that the Trust might reasonably expect to receive from the current sale of that asset in an arm's-length transaction. Fair value is defined as the amount for which assets could be sold in an orderly disposition over a reasonable period of time, taking into account the nature of the asset. Fair value determinations are based upon all available factors that the Investment Adviser deems relevant. Fair value pricing, however, involves judgments that are inherently subjective and inexact, since fair valuation procedures are used only when it is not possible to be sure what value should be attributed to a particular asset or when an event will affect the market price of an asset and to what extent. As a result, fair value pricing may not reflect actual market value, and it is possible that the fair value determined for a security will be materially different from the value that actually could be or is realized upon the sale of that asset.

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Distributions

Subject to market conditions, the Trust expects to declare dividends on the Trust's common shares on a monthly basis. The Trust intends to pay any net capital gain distributions annually.

Various factors will affect the level of the Trust's current income and current gains, such as its asset mix and the Trust's use of options and other derivative transactions. To permit the Trust to maintain more stable monthly dividends and annual capital gain distributions, the Trust may from time to time distribute less than the entire amount of income and gains earned in the relevant month or year, respectively. The undistributed income and gains would be available to supplement future distributions. As a result, the distributions paid by the Trust for any particular period may be more or less than the amount of income and gains actually earned by the Trust during the applicable period. Undistributed income and gains will add to the Trust's NAV, and, correspondingly, distributions from previously undistributed income and gains, as well as from capital, if any, will be deducted from the Trust's NAV.

Shareholders will automatically receive newly issued common shares for all dividends declared for common shares of the Trust in accordance with the Trust's Dividend Reinvestment Plan unless an election is made to receive cash. Participants requesting a sale of securities through the plan agent of the Trust's Dividend Reinvestment Plan are subject to a sales fee and a brokerage commission. See "Dividend Reinvestment Plan."

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Dividend Reinvestment Plan

Unless the registered owner of common shares elects to receive cash by contacting the Plan Agent, all dividends declared for the common shares of the Trust will be automatically paid in the form of, or reinvested by Global Shares ("Global Shares" or the "Plan Agent") in, common shares of the Trust purchased in the open market at prevailing market prices. If you are a registered owner of common shares and elect not to participate in the Plan, you will receive all dividends or other distributions (together, a "dividend") in cash paid by check mailed directly to you (or, if the shares are held in street or other nominee name, then to such nominee) by American Stock Transfer and Trust Company LLC ("AST"), as dividend disbursing agent. You may elect not to participate in the Plan and to receive all dividends in cash by sending written instructions or by contacting AST, as dividend disbursing agent, at the address set forth below. Participation in the Plan is completely voluntary and may be terminated or resumed at any time without penalty by contacting the Plan Agent before the dividend record date; otherwise such termination or resumption will be effective with respect to any subsequently declared dividend. Some brokers may automatically elect to receive cash on your behalf and may reinvest that cash in additional shares of the Trust for you.

The Plan Agent will open an account for each shareholder under the Plan in the same name in which such shareholder's shares are registered. Whenever the Trust declares a dividend payable in cash, non-participants in the Plan will receive cash and participants in the Plan will receive the equivalent in newly issued common shares. The common shares will be acquired by the Plan Agent through receipt of additional unissued but authorized common shares from the Trust. The number of newly issued common shares to be credited to each participant's account will be determined by dividing the dollar amount of the dividend by the lesser of (i) the NAV per common share determined on the declaration date and (ii) the market price per common share as of the close of regular trading on the NYSE on the declaration date.

The Plan Agent maintains all shareholders' accounts in the Plan and furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Common shares in the account of each Plan participant will be held by the Plan Agent on behalf of the Plan participant, and each shareholder proxy will include those shares purchased or received pursuant to the Plan. The Plan Agent will forward all proxy solicitation materials to participants and vote proxies for shares held under the Plan in accordance with the instructions of the participants.

In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, the Plan Agent will administer the Plan on the basis of the number of common shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Plan.

There will be no brokerage charges with respect to common shares issued directly by the Trust. The automatic reinvestment of dividends will not relieve participants of any tax that may be payable (or required to be withheld) on such dividends. Accordingly, any taxable dividend received by a participant that is reinvested in additional common shares will be subject to U.S. federal (and possibly state and local) income tax even though such participant will not receive a corresponding amount of cash with which to pay such taxes. See "Tax Matters."

There will be no brokerage charges with respect to common shares issued directly by the Trust. Participants who request a sale of shares through the Plan Agent pay a brokerage commission of $0.4 per share sold.

The Trust reserves the right to amend or terminate the Plan. There is no direct service charge to participants in the Plan; however, the Trust reserves the right to amend the Plan to include a service charge payable by the participants.

All correspondence concerning the Plan should be directed to the Plan Agent at Global Shares, 111 Town Square Place, Suite 1401, Jersey City, NJ 07310; telephone (732) 256-1005.

Shareholder Loyalty Program

To promote loyalty and long-time alignment of interests among the Trust's shareholders, the Investment Adviser offers an incentive to shareholders that buy and hold the Trust's common shares for a period of at least twelve months through its Shareholder Loyalty Plan (the "Plan"). To participate in the Plan, existing shareholders must open an account (the "Account") with the Plan's administrator, Global Shares. Subsequently, if a participant makes contributions to the Account during a defined trading period to purchase shares, NexPoint will make a corresponding contribution on such participant's behalf (the "Gross-up"). The Gross-up is determined by NexPoint and may be adjusted at any point without notice by NexPoint prospectively from time to time in accordance with the terms of the Plan. For example, if a participant contributes $10,000 to the Account during a defined trading period to purchase

shares and NexPoint has determined the participant's Gross-up will be 2%, NexPoint will make a corresponding contribution of $200, or 2% of the total $10,000, to purchase additional Shares for the participant (the "Gross-up Shares"). In addition, Plan participants will not be required to pay any customary purchase commissions or distribution fees on the purchase of shares under the Plan.

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NexPoint will pay all expenses incident to the purchase of shares under the Plan and for operation of the Plan, including the costs of recordkeeping, accounting fees, legal fees and the costs of delivery of stock certificates, if any, to participants; provided, however, that NexPoint will not pay any expenses incurred in connection with any sale or transfer of shares credited to a participant's Account. Expenses incurred in connection with any such sales will be deducted from the proceeds of sale prior to any remittance to the participant.

While the portion of the Trust's common shares that are acquired through the participant's contribution will vest immediately, the Gross-up Shares will not vest until the first anniversary of the date that the Gross-up Shares were purchased. Vested shares and Gross-up Shares will be held in the Account with Global Shares' broker, Maxim Group, LLC ("Maxim"). A participant may not sell or otherwise withdraw, pledge, transfer, assign, hypothecate or dispose of any Gross-up Shares prior to the date on which they become vested Shares. Under the Plan, participants must contribute a minimum of $2,500 for purchases of shares in the initial contribution and each subsequent monthly contribution unless NexPoint, in its sole discretion, decides to permit contributions for a lesser amount. The maximum monthly contribution limit under the Plan is $1,000,000, which amount may be adjusted from time to time by NexPoint in its sole discretion.

All dividends received on shares that are purchased under the Plan will be automatically reinvested through the Plan. Shares acquired through the reinvestment of dividends paid to the holder of a vested share will vest immediately. Shares acquired through the reinvestment of dividends paid to the holder of a non-vested Gross-up share will vest on the first anniversary of the reinvest date. In addition, for dividends paid to holders of vested shares, NexPoint will provide a Gross-up on the amount of such reinvested dividends.

Maxim maintains all shareholders' accounts in the Plan and, upon request, furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Shares in the account of each Plan participant will be held by Maxim on behalf of the Plan participant, and each shareholder proxy will include those shares purchased or received pursuant to the Plan. Maxim will forward all proxy solicitation materials to participants and vote proxies for shares held under the Plan in accordance with the instructions of the participants.

In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, Global Shares and Maxim will administer the Plan on the basis of the number of common shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Plan.

NexPoint reserves the right to amend or terminate the Plan. To help align the interests of NexPoint's employees with the interests of the Trust's shareholders, NexPoint also offers the Plan to its employees.

Participants in the Plan should be aware that their receipt of Gross-up Shares under the Plan constitutes taxable income to them. In addition, such participants owe taxes on that portion of any distribution that constitutes taxable income in respect of shares of our common stock held in their Plan accounts, whether or not such shares of common stock have vested in the hands of the participants. To the extent any payments or distributions under the Plan are subject to U.S. federal, state or local taxes, the Trust, any participating affiliate of the Trust or the agent for the Plan may satisfy its tax withholding obligation by (1) withholding shares allocated to the participant's account or (2) deducting cash from the participant's account. Plan participants should consult their tax advisers regarding the tax consequences to them of participating in the Plan.

The Plan may create an incentive for shareholders to invest additional amounts in the Trust. Because the Adviser's management fee is based on a percentage of the assets of the Trust, the Plan will result in increased net revenues to NexPoint if the increase in the management fee due to the increased asset base offsets the costs associated with establishing and maintaining the Plan.

Description of Capital Structure

This Prospectus contains a summary of the preferred shares and subscription rights available in an Offering. These summaries are not meant to be a complete description of each security. However, this Prospectus will contain the material terms and conditions for each security.

Any of the securities described herein may be issued separately or as part of a unit consisting of two or more securities (for example, common shares and rights), which may or may not be separable from one another. If such units are publicly offered, they and their underlying securities will be registered under the Securities Act prior to completion of the offering.

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PREFERRED SHARES

The Trust's Agreement and Declaration of Trust provides that the Board may authorize and issue preferred shares with rights as determined by the Board, by action of the Board without the approval of the holders of the common shares. Holders of common shares have no preemptive right to purchase any preferred shares that might be issued. Whenever preferred shares are outstanding, the Trust will not be permitted to declare any distributions from the Trust unless all accrued dividends on preferred shares have been paid, unless asset coverage (as defined in the Investment Company Act) with respect to preferred shares would be at least 200% after giving effect to the distributions and unless certain other requirements imposed by any rating agencies rating the preferred shares have been met.

Currently, an unlimited number of the Trust's shares have been classified by the Board as preferred shares, par value $0.001 per share. The terms of such preferred shares may be fixed by the Board and would materially limit and/or qualify the rights of the holders of the Trust's common shares. Although the terms of any preferred shares, including dividend rate, liquidation preference and redemption provisions, will be determined by the Board, subject to applicable law and the Trust's Agreement and Declaration of Trust, it is likely that the preferred shares will be structured to carry a relatively short-term dividend rate reflecting interest rates on short-term bonds, by providing for the periodic redetermination of the dividend rate at relatively short intervals through an auction, remarketing or other procedure. The Trust also believes that it is likely that the liquidation preference, voting rights and redemption provisions of the preferred shares will be similar to those stated below.

Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the holders of preferred shares will be entitled to receive a preferential liquidating distribution, which is expected to equal the original purchase price per preferred share plus accrued and unpaid dividends, whether or not declared, before any distribution of assets is made to holders of common shares. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of preferred shares will not be entitled to any further participation in any distribution of assets by the Trust.

Voting Rights. The Investment Company Act requires that the holders of any preferred shares, voting separately as a single class, have the right to elect at least two trustees at all times. The remaining trustees will be elected by holders of common shares and preferred shares, voting together as a single class. In addition, subject to the prior rights, if any, of the holders of any other class of senior securities outstanding, the holders of any preferred shares have the right to elect a majority of the trustees of the Trust at any time two years' dividends on any preferred shares are unpaid. The Investment Company Act also requires that, in addition to any approval by shareholders that might otherwise be required, the approval of the holders of a majority of any outstanding preferred shares, voting separately as a class, would be required to (i) adopt any plan of reorganization that would adversely affect the preferred shares, and (ii) take any action requiring a vote of security holders under Section 13(a) of the Investment Company Act, including, among other things, changes in the Trust's subclassification as a closed-end investment company or changes in its fundamental investment restrictions. As a result of these voting rights, the Trust's ability to take any such actions may be impeded to the extent that there are any preferred shares outstanding. The Board presently intends that, except as otherwise indicated in this Prospectus and except as otherwise required by applicable law, holders of preferred shares will have equal voting rights with holders of common shares (one vote per share, unless otherwise required by the Investment Company Act) and will vote together with holders of common shares as a single class.

The affirmative vote of the holders of a majority of the outstanding preferred shares, voting as a separate class, will be required to amend, alter or repeal any of the preferences, rights or powers of holders of preferred shares that materially and adversely affect such preferences, rights or powers, or to increase or decrease the authorized number of preferred shares. The class vote of holders of preferred shares described above will in each case be in addition to any other vote required to authorize the action in question.

Redemption, Purchase and Sale of Preferred Shares by the Trust. The terms of the preferred shares are expected to provide that (i) they are redeemable by the Trust in whole or in part at the original purchase price per share plus accrued dividends per share, (ii) the Trust may tender for or purchase preferred shares, and (iii) the Trust may subsequently resell any shares so tendered for or purchased.

Any redemption or purchase of preferred shares by the Trust will reduce the leverage applicable to the common shares, while any resale of shares by the Trust will increase that leverage.

The discussion above describes the possible offering of preferred shares by the Trust. If the Board determines to proceed with such an offering, the terms of the preferred shares may be the same as, or different from, the terms described above, subject to applicable law and the Trust's Agreement and Declaration of Trust. The Board, without the approval of the holders of common shares, may authorize an offering of preferred shares or may determine not to authorize such an offering and may fix the terms of the preferred shares to be offered.

If preferred shares are offered in the future, such shares will be registered under the Securities Act prior to the offering.

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SUBSCRIPTION RIGHTS

General

We may issue subscription rights to our shareholders to purchase preferred shares. Subscription rights may be issued independently or together with any other offered security and may or may not be transferable by the person purchasing or receiving the subscription rights. In connection with a subscription rights offering to our shareholders, we would distribute certificates evidencing the subscription rights and a Prospectus Supplement to our shareholders on the record date that we set for receiving subscription rights in such subscription rights offering.

The applicable Prospectus Supplement would describe the following terms of subscription rights in respect of which this Prospectus is being delivered:

- the period of time the offering would remain open;
- the title of such subscription rights;
- the exercise price for such subscription rights (or method of calculation thereof);
- the ratio of the offering;
- the number of such subscription rights issued to each shareholder;
- the extent to which such subscription rights are transferable and the market on which they may be traded if they are transferable;
- the date on which the right to exercise such subscription rights shall commence, and the date on which such right shall expire (subject to any extension);
- the extent to which such subscription rights include an over-subscription privilege with respect to unsubscribed securities and the terms of such over-subscription privilege;
- any termination right we may have in connection with such subscription rights offering; and
- any other terms of such subscription rights, including exercise, settlement and other procedures and limitations relating to the transfer and exercise of such subscription rights.

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Exercise of Subscription Rights

Each subscription right would entitle the holder of the subscription right to purchase for cash such amount of preferred shares at such exercise price as shall in each case be set forth in, or be determinable as set forth in, the Prospectus Supplement relating to the subscription rights offered thereby. Under the Investment Company Act, we may generally only offer subscription rights that expire not later than 120 days after their issuance and are issued exclusively and ratably to a class or classes of our security holders. Subscription rights may be exercised at any time up to the close of business on the expiration date for such subscription rights set forth in the Prospectus Supplement. After the close of business on the expiration date, all unexercised subscription rights would become void.

Subscription rights may be exercised as set forth in the Prospectus Supplement relating to the subscription rights offered thereby. Upon receipt of payment and the subscription rights certificate properly completed and duly executed at the corporate trust office of the subscription rights agent or any other office indicated in the Prospectus Supplement we will forward, as soon as practicable, the preferred shares purchasable upon such exercise. To the extent permissible under applicable law, we may determine to offer any unsubscribed offered securities directly to persons other than shareholders, to or through agents, underwriters or dealers or through a combination of such methods, as set forth in the applicable Prospectus Supplement. The Trust's common shareholders will indirectly bear all of the expenses of any subscription rights offerings, regardless of whether the Trust's common shareholders exercise any subscription rights.

Dilutive Effect

The Trust may effectuate one or more rights offerings, as part of which the Trust will issue subscription rights. In any such event, shareholders who do not fully exercise their subscription rights should expect that they will, at the completion of a rights offering pursuant to this Prospectus, own a smaller proportional interest in the Trust than would otherwise be the case if they fully exercised their rights. We cannot state precisely the amount of any such dilution in share ownership because we do not know at this time what proportion of the shares will be purchased as a result of such rights offering. These shareholders will also experience a disproportionately greater decrease in their participation in the Trust's earnings and assets and their voting power than the increase the Trust will experience in its assets, potential earning power and voting interests due to such offering. These shareholders may also experience a decline in the market price of their shares, which often reflects to some degree announced or potential increases and decreases in NAV per share. This decrease could be more pronounced as the size of the offering and level of discounts increases. Further, if current shareholders do not purchase any shares to maintain their percentage interest, regardless of whether such offering is above or below the then current NAV, their voting power will be diluted.

U.S. Federal Income Tax Consequences of an Issuance of Subscription Rights to Common Shareholders

The following is a summary of the material U.S. federal income tax consequences of an issuance of subscription rights to our common shareholders pursuant to this Prospectus (for purposes of this section, each such issuance is referred to as an "offer" and each subscription right, a "right"), under the provisions of the Code, U.S. Treasury regulations promulgated under the Code ("Treasury regulations"), and other applicable authority in effect as of the date of the Prospectus that are generally applicable to common shareholders who are "United States persons" within the meaning of the Code. This summary does not address any state, local, foreign or other tax consequences. These authorities may be changed, possibly with retroactive effect, or become subject to new legislative, administrative, or judicial interpretation. Common shareholders or other holders of rights should consult their tax advisors regarding the tax consequences, including U.S. federal, state, or local, or foreign or other tax consequences, relevant to their particular circumstances. This summary assumes that the rights are issued separately by the Trust and not as part of a unit consisting of two or more securities.

The Trust believes that the value of any right issued pursuant to an offer will not be includible in the income of a common shareholder at the time the right is issued, and the Trust will not report to the IRS that a common shareholder has income as a result of the issuance of the right; however, depending on the specific terms of the offer, there may be no guidance directly on point concerning certain aspects of the taxation of the offer. The remainder of this discussion assumes that the receipt of the rights by common shareholders will not be a taxable event for U.S. federal income tax purposes.

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The basis of a right issued to a common shareholder will be zero, and the basis of the common share(s) with respect to which the right was issued (the "Old Share(s)") will remain unchanged, except that the shareholder must allocate its basis in the Old Share(s) between the Old Shares and the right in proportion to their respective fair market values on the date of distribution of the right if (i) either (a) the fair market value of the right on the date of distribution is at least 15% of the fair market value of the Old Share(s) on that date, or (b) the shareholder affirmatively elects (in the manner set out in Treasury regulations) to allocate to the right a portion of the basis of the Old Share(s), and (ii) the right does not expire unexercised in the hands of the shareholder (i.e., the shareholder either exercises or sells the right following its issuance). In compliance with Treasury regulations, the Trust will report to the common shareholders and to the IRS within 45 days of the distribution of the rights (or, if earlier, January 15 of the year following the calendar year of the distribution), either by mail or on the Trust's website, the effect, if any, of the offer on the common shareholders' basis in their Old Shares. Any determination the Trust makes with respect to the value of the rights in connection with this reporting requirement will not be binding on the IRS. Shareholders should consult with their tax advisers to determine the proper allocation, if any, of tax basis between rights and Old Shares, including whether the election described above would be appropriate for their situation.

No loss will be recognized by a common shareholder if a right distributed to such shareholder expires unexercised in the hands of such shareholder.

The basis of a right purchased in the market generally will be its purchase price. If a right that has been purchased in the market expires unexercised, the holder will recognize a loss equal to the basis of the right.

Any gain or loss on the sale of a right or, in the case of rights purchased in the market, any loss from a right that expires unexercised, will be a capital gain or loss if the right is held as a capital asset (which, in the case of rights issued to common shareholders, will normally depend on whether the Old Shares are held as capital assets), and will be a long-term capital gain or loss if the holding period of the right exceeds (or is deemed to exceed) one year. The deductibility of capital losses is subject to limitation. The holding period of a right issued to a common shareholder will include the holding period of the Old Share(s).

No gain or loss will be recognized by a holder upon the exercise of a right, and the basis of any common share acquired upon exercise (the "New Share") will equal the sum of the basis, if any, of the right and the subscription price for the New Share. When a holder exercises a right, the holder's holding period in the New Share(s) does not include the time during which the holder held the unexercised right; the holding period of the New Share(s) will begin no later than the date following the date of exercise of the right.

Employee retirement plans and other tax-exempt entities, including governmental plans, should also be aware that if they borrow in order to finance their exercise of rights, they may become subject to the tax on unrelated business taxable income ("UBTI") under Section 511 of the Code. If any portion of an individual retirement account ("IRA") is used as security for a loan, the portion so used may also be treated as distributed to the IRA depositor.

For more information relating to the U.S. federal income tax consequences of an investment in the Trust, see "Tax Matters" below and "Tax Matters" in the SAI.

U.S. Federal Income Tax Consequences of an Issuance of Subscription Rights to Preferred Shareholders

The following is a summary of the material U.S. federal income tax consequences of an issuance of subscription rights to our preferred shareholders pursuant to this Prospectus (for purposes of this section, each such issuance is referred to as an "offer" and each subscription right, a "right"), under the provisions of the Code, Treasury regulations, and other applicable authority in effect as of the date of the Prospectus that are generally applicable to preferred shareholders who are "United States persons" within the meaning of the Code. This summary does not address any state, local, foreign or other tax consequences. These authorities may be changed, possibly with retroactive effect, or become subject to new legislative, administrative, or judicial interpretation. Preferred shareholders or other holders of rights should consult their tax advisors regarding the tax consequences, including U.S. federal, state, or local, or foreign or other tax consequences, relevant to their particular circumstances. This summary assumes that the rights are issued separately by the Trust and not as part of a unit consisting of two or more securities.

The Trust believes that the value of any right issued pursuant to an offer will be includible in the income of a preferred shareholder at the time the right is issued, and the Trust will report to the IRS that a preferred shareholder has income as a result of the issuance of the right; however, depending on the specific terms of the offer, there may be no guidance directly on point concerning certain aspects of the taxation of the offer. The remainder of this discussion assumes that the receipt of the rights by preferred shareholders will be a taxable event for U.S. federal income tax purposes.

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The basis of a right issued to a preferred shareholder will be the value of the right that is taxable at the time of the issuance, and the basis of the preferred share(s) with respect to which the right was issued (the "Old Share(s)") will remain unchanged.

In the event that a right received by a preferred shareholder expires unexercised, the preferred shareholder will recognize a loss equal to the value of the right that is taxable at the time of the issuance.

The basis of a right purchased in the market generally will be its purchase price. If a right that has been purchased in the market expires unexercised, the holder will recognize a loss equal to the basis of the right.

Any gain or loss on the sale of a right or, in the case of rights purchased in the market, any loss from a right that expires unexercised, will be a capital gain or loss if the right is held as a capital asset (which, in the case of rights issued to preferred shareholders, will normally depend on whether the Old Shares are held as capital assets), and will be a long-term capital gain or loss if the holding period of the right exceeds (or is deemed to exceed) one year. The deductibility of capital losses is subject to limitation. The holding period of a right issued to a preferred shareholder will not include the holding period of the Old Share(s).

No gain or loss will be recognized by a holder upon the exercise of a right, and the basis of any common share acquired upon exercise (the "New Share") will equal the sum of the basis, if any, of the right and the subscription price for the New Share. When a holder exercises a right, the holder's holding period in the New Share(s) does not include the time during which the holder held the unexercised right; the holding period of the New Share(s) will begin no later than the date following the date of exercise of the right.

Employee retirement plans and other tax-exempt entities, including governmental plans, should also be aware that if they borrow in order to finance their exercise of rights, they may become subject to the tax on unrelated business taxable income ("UBTI") under Section 511 of the Code. If any portion of an individual retirement account ("IRA") is used as security for a loan, the portion so used may also be treated as distributed to the IRA depositor.

For more information relating to the U.S. federal income tax consequences of an investment in the Trust, see "Tax Matters" below and "Tax Matters" in the SAI.

Previous Rights Offerings

On January 18, 2008, the Trust offered subscription rights to its common shareholders. The net proceeds from this rights offering was $143.6 million.

On May 8, 2017, the Trust offered subscription rights to its common shareholders. The net proceeds from this rights offering was $139.9 million.

On May 10, 2018, the Trust offered subscription rights to its common shareholders. The net proceeds from this rights offering was $201.8 million.

On April 30, 2019, the Trust offered subscription rights to its common shareholders. The net proceeds from this rights offering was $239.9 million.

EMPLOYEE PLAN CONSIDERATIONS

Shareholders whose shares are held in employee benefit plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA") or Section 4975 of the Code (including corporate savings and 401(k) plans, Keogh or H.R. 10 plans of self-employed individuals and individual retirement accounts) (each, a "Plan") should be aware that additional contributions of cash to the Plan (other than rollover contributions or trustee-to-trustee transfers from other Plans) in order to exercise rights would be treated as contributions to such Plan and, when taken together with contributions previously made, may result in, among other things, excise taxes for excess or nondeductible contributions. In the case of Plans qualified under Section 401(a) of the Code and certain other retirement plans, additional cash contributions could cause the maximum contribution limitations of Section 415 of the Code or other qualification rules to be violated. In addition, there may be other adverse tax and ERISA consequences if rights are sold or transferred by a Plan.

Plans also should be aware that if they borrow in order to finance their exercise of rights, they may become subject to the tax on UBTI under Section 511 of the Code. If any portion of an IRA is used as security for a loan, the portion so used also is treated as distributed to the IRA depositor.

ERISA contains fiduciary responsibility requirements, and ERISA and the Code contain prohibited transaction rules that may affect the exercise or transfer of rights. Due to the complexity of these rules and the penalties for noncompliance, fiduciaries of Plans and other retirement plans should consult with their counsel and other advisers regarding the consequences of their exercise or transfer of rights under ERISA and the Code.

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COMMITTED FACILITY, MASTER REPURCHASE AGREEMENT AND REVOLVING CREDIT AGREEMENT

The Trust currently leverages through borrowings from a committed facility, a master repurchase agreement and a revolving credit facility. The Trust has entered into the Committed Facility with BNP to borrow up to $135,000,000. The Committed Facility has a rolling 90-day term (referred to as a "90-day evergreen"). Absent a default or termination event, as described in the Committed Facility, or the ratings decline as described in the following sentence, BNP is required to provide the Trust with 180 days' notice prior to terminating or materially amending the Committed Facility. BNP has a termination right if BNP's long-term credit rating declines three or more notches below its highest rating by any of Standard & Poor's Ratings Services, Moody's Investor Service, Inc. or Fitch Ratings, Ltd., during the period commencing on and including October 28, 2014 and ending on the date of such long-term credit rating decline. Upon any such termination, BNP shall pay the Trust a fee equal to 0.10% of the maximum amount of financing available on the termination date. The Trust pays interest on borrowed amounts under the Committed Facility at an annual rate of the one month LIBOR plus 0.60% to 1.30%, depending on the asset class of the underlying collateral. The Committed Facility agreement contains customary covenant and default provisions. When borrowings are made under the Committed Facility, collateral must be posted to an account with the Trust's custodian, Bank of New York Melon held for the benefit of BNP. Such borrowings constitute financial leverage.

The Trust has entered into an agreement with BNP Securities under which it may from time to time enter into reverse repurchase transactions pursuant to the terms of a master repurchase agreement and related annexes, dated as of November 16, 2017 (collectively the "Repurchase Agreement"). A reverse repurchase transaction is a repurchase transaction in which the Trust is the seller of securities or other assets and agrees to repurchase them at a date certain or on demand. Pursuant to the Repurchase Agreement, the Trust may agree to sell securities or other assets to BNP Securities for an agreed-upon price (the "Purchase Price"), with a simultaneous agreement to repurchase such securities or other assets from BNP Securities for the Purchase Price plus a price differential that is economically similar to interest. The price differential is negotiated for each transaction.

On August 14, 2018, the Trust, and two of its wholly-owned subsidiaries, NexPoint Real Estate Capital, LLC ("NREC") and NexPoint Real Estate Opportunities, LLC ("NREO"), entered into a revolving credit agreement (the "KeyBank Facility") with KeyBank National Association, as administrative agent and lender. Under the terms of the KeyBank Facility, the Trust, NREC and NREO may borrow up to $60.0 million.

The KeyBank Facility has an initial term of two years, maturing on August 14, 2020, with one-year extension options outlined further in the credit agreement for the KeyBank Facility (the "KeyBank Credit Agreement"). Payments due pursuant to the KeyBank Facility are interest-only. The KeyBank Facility bears interest based on the type of borrowing. The ABR Loans bear interest at the lesser of (x) the Alternate Base Rate (as defined in the KeyBank Credit Agreement) plus the Applicable Rate, or (y) the Maximum Rate (as defined in the KeyBank Credit Agreement). The Eurodollar Loans bear interest at the lesser of (a) the Adjusted LIBO Rate (as defined in the KeyBank Credit Agreement) for the Interest Period in effect plus the Applicable Rate, or (b) the Maximum Rate (as defined in the KeyBank Credit Agreement). The Applicable Rate means for any Eurodollar Loan, 200 basis points, and for any ABR Loan, 100 basis points. Pursuant to the KeyBank Credit Agreement, the Trust is subject to certain loan compliance covenants.

The KeyBank Facility is fully recourse and is secured by Collateral (as defined in the KeyBank Credit Agreement). The KeyBank Facility may be prepaid or terminated at any time without penalty, provided, however, that KeyBank National Association shall be indemnified for any breakage costs.

Any senior security representing indebtedness, as defined in Section 18(g) of the Investment Company Act, must have asset coverage of at least 300%.

Market and Net Asset Value Information

The Trust's common shares are listed on the NYSE under the symbol "NHF." The Trust's common shares commenced trading on the NYSE in June 2006. In the trading history of the Trust's common shares, the Trust's common shares have traded at both a premium and a discount to NAV. The Trust cannot predict whether its shares will trade in the future at a premium or discount to NAV. Issuance of additional common shares may have an adverse effect on prices in the secondary market for the Trust's common shares by increasing the number of shares available, which may put downward pressure on the market price for the shares.

The following table sets forth, for each of the periods indicated, the high and low closing market prices of the Trust's common shares on the NYSE, the corresponding NAV per share on such dates and the corresponding premium/discount to NAV per share on such dates. See "Net Asset Value" for information as to how the Trust's NAV is determined.

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Quarter*	Market Price High	Market Price Low	Net Asset Value per Share High	Net Asset Value per Share Low	Premium/ (Discount) as a % of Net Asset Value High	Premium/ (Discount) as a % of Net Asset Value Low
1st Quarter 2017	$23.75	$22.54	$ 26.47	$ 25.01	(8.04)%	(11.62)%
2nd Quarter 2017	$22.84	$21.45	$ 25.54	$ 23.95	(6.46)%	(13.40)%
3rd Quarter 2017	$23.05	$21.85	$ 25.22	$ 23.95	(6.58)%	(12.77)%
4th Quarter 2017	$25.40	$23.11	$ 26.61	$ 24.85	(3.64)%	(9.05)%
1st Quarter 2018	$24.72	$22.25	$ 25.64	$ 24.78	(3.33)%	(10.48)%
2nd Quarter 2018	$23.81	$21.82	$ 26.47	$ 24.26	(7.65)%	(16.05)%
3rd Quarter 2018	$23.11	$21.99	$ 24.98	$ 23.98	(6.21)%	(10.79)%
4th Quarter 2018	$22.50	$18.71	$ 24.48	$ 23.22	(7.94)%	(19.66)%
1st Quarter 2019	$21.08	$19.33	$ 23.54	$ 22.61	(8.28)%	(15.77)%
2nd Quarter 2019	$21.19	$18.26	$ 24.29	$ 21.72	(8.36)%	(23.63)%

The Trust's NAV per common share at the close of business on August 23, 2019 (the last trading date prior to the date of this Prospectus on which the Trust determined its NAV) was $21.22 and the last reported sale price of a common share on the NYSE on that day was $18.08, a discount to NAV of 14.80%.

Anti-Takeover Provisions in the Agreement and Declaration of Trust

The Agreement and Declaration of Trust includes provisions that could have the effect of limiting the ability of other entities or persons to acquire control of the Trust or to change the composition of its Board. This could have the effect of depriving shareholders of an opportunity to sell their shares at a premium over prevailing market prices by discouraging a third party from seeking to obtain control over the Trust. Such attempts could have the effect of increasing the expenses of the Trust and disrupting the normal operation of the Trust. The Board is divided into three classes, with the terms of one class expiring at each annual meeting of shareholders. At each annual meeting, one class of trustees is elected to a three-year term. This provision could delay for up to two years the replacement of a majority of the Board. A trustee may be removed from office (for cause, and not without cause) by the action of a majority of the remaining trustees followed by a vote of the holders of at least 75% of the shares then entitled to vote for the election of the respective trustee.

In addition, the Trust's Agreement and Declaration of Trust requires the favorable vote of a majority of the Board followed by the favorable vote of the holders of at least 75% of the outstanding shares of each affected class or series of the Trust, voting separately as a class or series, to approve, adopt or authorize certain transactions with 5% or greater holders of a class or series of shares and their associates, unless the transaction has been approved by at least 80% of the trustees, in which case "a majority of the outstanding voting securities" (as defined in the Investment Company Act) of the Trust shall be required. For purposes of these provisions, a 5% or greater holder of a class or series of shares (a "Principal Shareholder") refers to any person who, whether directly or indirectly and whether alone or together with its affiliates and associates, beneficially owns 5% or more of the outstanding shares of all outstanding classes or series of shares of beneficial interest of the Trust.

The 5% holder transactions subject to these special approval requirements are: the merger or consolidation of the Trust or any subsidiary of the Trust with or into any Principal Shareholder; the issuance of any securities of the Trust to any Principal Shareholder for cash, except pursuant to any automatic dividend reinvestment plan; the sale, lease or exchange of all or any substantial part of the assets of the Trust to any Principal Shareholder, except assets having an aggregate fair market value of less than 2% of the total assets of the Trust, aggregating for the purpose of such computation all assets sold, leased or exchanged in any series of similar transactions within a twelve-month period; or the sale, lease or exchange to the Trust or any subsidiary of the Trust, in exchange for securities of the Trust, of any assets of any Principal Shareholder, except assets having an aggregate fair market value of less than 2% of the total assets of the Trust, aggregating for purposes of such computation all assets sold, leased or exchanged in any series of similar transactions within a twelve-month period.

To convert the Trust to an open-end investment company, the Trust's Agreement and Declaration of Trust requires the favorable vote of a majority of the board of the trustees followed by the favorable vote of the holders of at least 75% of the outstanding shares of each affected class or series of shares of the Trust, voting separately as a class or series, unless such amendment has been approved by at least 80% of the trustees, in which case "a majority of the outstanding voting securities" (as defined in the Investment Company Act) of the Trust shall be required. The foregoing vote would satisfy a separate requirement in the Investment Company Act that any

conversion of the Trust to an open-end investment company be approved by the shareholders. If approved in the foregoing manner, conversion of the Trust to an open-end investment company could not occur until 90 days after the shareholders' meeting at which

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such conversion was approved and would also require at least 30 days' prior notice to all shareholders. Following any such conversion, it is possible that certain of the Trust's investment policies and strategies would have to be modified to assure sufficient portfolio liquidity. In the event of conversion, the common shares would cease to be listed on the NYSE or other national securities exchanges or market systems. Shareholders of an open-end investment company may require the company to redeem their shares at any time, except in certain circumstances as authorized by or under the Investment Company Act, at their NAV, less such redemption charge, if any, as might be in effect at the time of a redemption. The Trust expects to pay all such redemption requests in cash, but reserves the right to pay redemption requests in a combination of cash and securities. If such partial payment in securities were made, investors may incur brokerage costs in converting such securities to cash. If the Trust were converted to an open-end fund, it is likely that new shares would be sold at NAV plus a sales load. The Board believes, however, that the closed-end structure is desirable in light of the Trust's investment objectives and policies. Therefore, you should assume that it is not likely that the Board would vote to convert the Trust to an open-end fund.

For the purposes of calculating "a majority of the outstanding voting securities" under the Trust's Agreement and Declaration of Trust, each class and series of the Trust shall vote together as a single class, except to the extent required by the Investment Company Act or the Trust's Agreement and Declaration of Trust, with respect to any class or series of shares. If a separate class vote is required, the applicable proportion of shares of the class or series, voting as a separate class or series, also will be required.

The Agreement and Declaration of Trust also provides that the Trust may be liquidated upon the approval of 80% of the trustees.

The Board has determined that provisions with respect to the Board and the shareholder voting requirements described above, which voting requirements are greater than the minimum requirements under Delaware law or the Investment Company Act, are in the best interest of shareholders generally. Reference should be made to the Trust's Agreement and Declaration of Trust, on file with the Commission, for the full text of these provisions, the material terms of which are summarized in this Prospectus.

Closed-End Fund Structure

The Trust is a non-diversified, closed-end management investment company (commonly referred to as a closed-end fund). Closed-end funds differ from open-end funds (which are generally referred to as mutual funds) in that closed-end funds generally list their shares for trading on a stock exchange and do not redeem their shares at the request of the shareholder. This means that if you wish to sell your shares of a closed-end fund you must trade them on the market like any other stock at the prevailing market price at that time. In a mutual fund, if the shareholder wishes to sell shares of the fund, the mutual fund will redeem or buy back the shares at NAV (less a redemption fee, if applicable, or contingent deferred sales charge, if applicable). Also, mutual funds generally offer new shares on a continuous basis to new investors, and closed-end funds generally do not. The continuous inflows and outflows of assets in a mutual fund can make it difficult to manage a mutual fund's investments. By comparison, closed-end funds are generally able to stay more fully invested in securities that are consistent with their investment objective and also have greater flexibility to make certain types of investments and to use certain investment strategies, such as financial leverage and investments in illiquid securities.

Shares of closed-end funds frequently trade at a discount to their NAV. Because of this possibility and the recognition that any such discount may not be in the interest of shareholders, the Board might consider from time to time engaging in open-market repurchases, tender offers for shares or other programs intended to reduce the discount. We cannot guarantee or assure, however, that the Board will decide to engage in any of these actions, nor is there any guarantee or assurance that such actions, if undertaken, would result in the shares trading at a price equal or close to NAV per share. The Board might also consider converting the Trust to an open-end mutual fund, which would also require a vote of the shareholders of the Trust.

Repurchase of Common Shares; Discount

Shares of closed-end investment companies often trade at a discount to their NAV, and the Trust's common shares may also trade at a discount to their NAV, although it is possible that they may trade at a premium above NAV. The market price of the Trust's common shares will be determined by such factors as relative demand for and supply of such common shares in the market, the Trust's NAV, general market and economic conditions and other factors beyond the control of the Trust. See "Net Asset Value." Although the Trust's common shareholders will not have the right to redeem their common shares, the Trust may take action to repurchase common shares in the open market or make tender offers for its common shares. This may have the effect of reducing any market discount from NAV. The Board may decide not to take any of these actions. In addition, there can be no assurance that share repurchases or tender offers, if undertaken, will reduce market discount. On November 2, 2016, the Board approved a share repurchase program (the "Repurchase Program") pursuant to which the Trust may repurchase, over a six-month period beginning in December 2016, up to $10 million of its shares of its outstanding shares in open-market transactions. In connection with the May 8, 2017 rights offering, the Board approved the extension of the Repurchase Program for a period of one year from the closing of the rights offering. As of the date of this Prospectus, the Trust has not completed any repurchases.

The amount and timing of the repurchases will be at the discretion of the Trust's Investment Adviser, subject to market conditions and investment considerations. There is no assurance that the Trust will purchase shares at any particular discount levels or in any particular amounts. Any repurchases made under the Repurchase Program would be made on a national securities exchange at the prevailing market price, subject to exchange requirements regarding volume, timing and other limitations under federal securities laws.

Notwithstanding the foregoing, at any time when there are outstanding borrowings, the Trust may not purchase, redeem or otherwise acquire any of its common shares unless (i) all accrued preferred shares dividends have been paid, and (ii) at the time of such purchase, redemption or acquisition, the NAV of the Trust's portfolio (determined after deducting the acquisition price of the common shares) is at least 200% of the liquidation value of the outstanding borrowings. Any service fees incurred in connection with any tender offer made by the Trust will be borne by the Trust and will not reduce the stated consideration to be paid to tendering shareholders.

There is no assurance that, if action is undertaken to repurchase or tender for common shares, such action will result in the common shares trading at a price which approximates their NAV. Although share repurchases and tenders could have a favorable effect on the market price of the Trust's common shares, you should be aware that the acquisition of common shares by the Trust will decrease the capital of the Trust and, therefore, may have the effect of increasing the Trust's expense ratio and decreasing the asset coverage with respect to any borrowings. Any share repurchases or tender offers will be made in accordance with requirements of the Exchange Act, the Investment Company Act, and the principal stock exchange on which the common shares are traded. See the Trust's SAI for a discussion of the U.S. federal income tax implications of a repurchase or tender offer by the Trust.

Before deciding whether to take any action if the common shares trade below NAV, the Board would likely consider all relevant factors, including the extent and duration of the discount, the liquidity of the Trust's portfolio, the impact of any action that might be taken on the Trust or its shareholders and market considerations. Based on these considerations, even if the Trust's shares should trade at a discount, the Board may determine that, in the interest of the Trust and its shareholders, no action should be taken.

Tax Matters

The following is a general summary of some of the important U.S. federal income tax considerations affecting the Trust and its common or preferred shareholders that are "United States persons" within the meaning of the Code, and does not address any state, local, foreign or other tax consequences. It reflects provisions of the Code, existing Treasury regulations, and other applicable authority, as of the date of this Prospectus. These authorities may be changed, possibly with retroactive effect, or become subject to new legislative, administrative, or judicial interpretations. This summary does not purport to be a complete description of the U.S. federal income tax considerations applicable to common or preferred shareholders of the Trust. For example, it does not describe certain tax considerations that may be relevant to certain types of holders subject to special treatment under the U.S. federal income tax laws, including shareholders subject to the U.S. federal alternative minimum tax, insurance companies, tax-exempt organizations, pension plans and trusts, RICs, dealers in securities, shareholders holding Trust shares through tax-advantaged accounts (such as 401(k) plans or IRAs), financial institutions, persons who are neither citizens nor residents of the United States, and shareholders holding Trust shares as part of a hedge, straddle, or conversion transaction. This summary assumes that investors hold Trust common or preferred shares as capital assets (within the meaning of the Code). Your investment in the Trust may have other tax implications. Please consult your tax advisor about U.S. federal, state, local, foreign or other tax laws applicable to you, as the tax consequences to an investor in the Trust's common or preferred shares will depend on the facts of his, her or its particular situation. For more information, including a summary of certain tax consequences of investing in the Trust for non-U.S. persons, please see the SAI under "Tax Matters."

This summary does not discuss the tax consequences of an investment in subscription rights of the Trust, separately, or as part of a unit consisting of two or more securities. See "Description of Capital Structure—U.S. Federal Income Tax Consequences of an Issuance of Subscription Rights to Common Shareholders" above for a discussion of the material U.S. federal income tax consequences of the Trust's issuance of subscription rights to common shareholders.

The Trust has elected to be treated as a RIC under Subchapter M of the Code and intends each year to qualify and to be eligible to be treated as such. In order to qualify for the special tax treatment accorded RICs and their shareholders, the Trust must, among other things:

(i) derive at least 90% of its gross income for each taxable year from: (a) dividends, interest (including tax-exempt interest), payments with respect to certain securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income (including but not limited to gains from options, futures and forward contracts) derived with respect to its business of investing in such stock, securities or foreign currencies; and (b) net income derived from interests in "qualified publicly traded partnerships";

(ii) diversify its holdings so that, at the end of each quarter of the Trust's taxable year, (a) at least 50% of the market value of the Trust's total assets consists of cash and cash items, U.S. government securities, the securities of other RICs and other securities limited, in respect of any one issuer, to an amount not greater than 5% of the value of the Trust's total assets and not more than 10% of the outstanding voting securities of such issuer, and (b) not more than 25% of the value of the Trust's total assets is invested, including through corporations in which the Trust owns a 20% or more voting stock interest, (x) in the securities (other than U.S. government securities and the securities of other RICs) of any one issuer or of two or more issuers that the Trust controls, as determined under applicable Code rules, and that are determined to be engaged in the same business or similar or related trades or businesses, or (y) in the securities of one or more "qualified publicly traded partnerships"; and

(iii) distribute to its shareholders with respect to each taxable year at least the sum of 90% of its "investment company taxable income" (as that term is defined in the Code, without regard to the deduction for dividends paid—generally taxable ordinary income and the excess, if any, of net short-term capital gains over net long-term capital losses) and 90% of any net tax-exempt interest income, for such year.

In general, a RIC is not subject to tax at the corporate level on income and gains from investments that are distributed in a timely manner to shareholders in the form of dividends, provided the RIC complies with these ongoing requirements. If the Trust were to fail to comply with the income, diversification or distribution requirements, the Trust could in some cases cure such failure, including by paying a Trust-level tax, paying interest, making additional distributions, or disposing of certain assets. If the Trust were ineligible to or otherwise did not cure such failure for any year or otherwise were to fail to qualify as a RIC accorded special tax treatment, the Trust

would be subject to Trust-level taxation on its taxable income at regular corporate rates and consequently the income available for distribution to shareholders would be reduced. Additionally, all of its distributions from earnings and profits

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(including from net long-term capital gains) would be taxable to shareholders as ordinary income. For individual shareholders who meet certain holding period requirements, such distribution would be eligible for reduced tax rates applicable to qualified dividend income. In addition, in some cases, the Trust could be required to recognize unrealized gains, pay substantial taxes and interest and make substantial distributions in order to re-qualify as a RIC.

Amounts not distributed on a timely basis in accordance with a calendar-year distribution requirement are subject to a nondeductible 4% federal excise tax at the Trust level. To avoid the tax, the Trust must distribute during each calendar year an amount at least equal to the sum of (i) 98% of its ordinary income (not taking into account any capital gains or losses) for the calendar year, (ii) 98.2% of its capital gains in excess of its capital losses (adjusted for certain ordinary losses) for a one-year period generally ending on October 31 of the calendar year (unless an election is made to use the Trust's taxable year end) and (iii) any such undistributed income from the prior year. For these purposes, the Trust will be treated as having distributed any amount on which it has been subject to corporate income tax in the taxable year ending with the calendar year. The Trust reserves the right to pay the excise tax when circumstances warrant.

Certain of the Trust's investment practices, including Derivative Transactions, short sales and hedging activities generally, as well as the Trust's investments in certain types of securities, including loans or other debt obligations issued or purchased at a discount and preferred stock, may be subject to special and complex U.S. federal income tax provisions that may, among other things: (i) disallow, suspend or otherwise limit the allowance of certain losses or deductions, (ii) convert long-term capital gain or "qualified dividend income" into short-term capital gain or ordinary income taxable at higher rates, (iii) accelerate the recognition of income, (iv) convert short-term losses into long-term losses, (v) cause the Trust to recognize income or gain without a corresponding receipt of cash, (vi) adversely affect the time a purchase or sale of stock or other securities is deemed to occur, (vii) cause adjustments in the holding periods of the Trust's securities, or (viii) otherwise adversely alter the characterization of certain complex financial transactions. These U.S. federal income tax provisions could therefore affect the amount, timing and/or character of distributions to shareholders. In particular, the Trust expects that a substantial portion of the Trust's investments in loans and other debt obligations will be treated as having "market discount" and/or "original issue discount" for U.S. federal income tax purposes, which, in some cases, could be significant, and could cause the Trust to recognize income in respect of these investments before or without receiving cash representing such income. Accordingly, the Trust may be required to, among other things, dispose of securities, including at potentially disadvantageous times or prices, to obtain the cash needed to meet the distribution requirements for qualification as a RIC and to avoid incurring Trust-level U.S. federal income or excise taxes.

Investments in distressed debt obligations that are at risk of or are in default present special tax issues for the Trust. Tax rules are not entirely clear about issues such as whether and to what extent the Trust should recognize market discount on a distressed debt obligation; when the Trust may cease to accrue interest, original issue discount or market discount; when and to what extent the Trust may take deductions for bad debts or worthless securities and how the Trust should allocate payments received on obligations in default between principal and income. These and other related issues will be addressed by the Trust as necessary, in order to seek to ensure that it distributes sufficient income to preserve its eligibility for treatment as a RIC and that it does not become subject to Trust-level U.S. federal income or excise taxes.

Special tax rules may affect the treatment of gains and losses recognized by the Trust when the Trust invests in certain foreign debt securities or engages in foreign currency transactions. The application of these special rules may accelerate or increase the Trust's recognition of ordinary income or loss, and affect the timing, amount and/or character of distributions made by the Trust. In addition, dividend, interest, capital gains and other income received by the Trust from investments outside the United States may be subject to withholding and other taxes imposed by foreign countries. Tax treaties between the United States and other countries may reduce or eliminate such taxes. Shareholders generally will not be entitled separately to claim a credit or deduction with respect to such foreign taxes incurred by the Trust. This will decrease the Trust's yield on securities subject to such taxes. Foreign taxes paid by or withheld from the Trust will reduce the return from the Trust's underlying investments.

Distributions paid to shareholders by the Trust from its net realized long-term capital gains (that is, the excess of any net long-term capital gain over net short-term capital loss, in each case determined with reference to any loss carryforwards) that the Trust properly reports as capital gain dividends ("capital gain dividends") are generally taxable to you as long-term capital gains, regardless of how long you have held your shares. All other dividends paid to you by the Trust, including dividends from net investment income and from short-term capital gains (that is, the excess of any net short-term capital gain over any net long-term capital loss, in each case determined with reference to loss carryforwards), from its earnings and profits are generally taxable to you as ordinary income. Distributions of investment income properly reported by the Trust as derived from "qualified dividend income" will be taxed in the hands of individuals at the rates applicable to long-term capital gains, provided holding period and other requirements are met at both the shareholder and Trust levels. It is not generally expected that a significant portion of Trust distributions will qualify for favorable tax treatment as "qualified dividend income" or as income eligible for the dividend-received deduction for corporate shareholders.

The Trust will designate dividends made to holders of common shares and to holders of preferred shares in accordance with each class's proportionate share of each item of Trust income (such as net capital gains and other taxable income). A class's

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proportionate share of a particular type of income for a year is determined according to the percentage of total dividends paid by the Trust during that year to the class. Although the matter is not free from doubt, due to the absence of direct regulatory or judicial authority, under current law the manner in which the Trust intends to allocate items of ordinary income and net capital gain between the Trust's common shares and its preferred shares will be respected for federal income tax purposes. It is possible that the IRS could disagree and attempt to reallocate the Trust's net capital gain or other taxable income.

The Code generally imposes a 3.8% Medicare contribution tax on the "net investment income" of certain individuals, estates and trusts to the extent their income exceeds certain threshold amounts. Net investment income generally includes for this purpose dividends paid by the Trust, including any capital gain dividends and net capital gains recognized on the sale or exchange of shares of the Trust. Shareholders are advised to consult their tax advisors regarding the possible implications of this additional tax on their investment in the Trust.

If, for any taxable year, the Trust's total distributions exceed both current earnings and profits and accumulated earnings and profits, the excess will generally be treated as a tax-free return of capital up to the amount of your tax basis in the shares. The amount treated as a tax-free return of capital will reduce your tax basis in the shares, thereby increasing your potential gain or reducing your potential loss on a subsequent taxable disposition of the shares. Any amounts distributed to you in excess of your tax basis in the shares will be taxable to you as capital gain.

Dividends and other taxable distributions are taxable to you even if they are reinvested in additional shares of the Trust under the Trust's Dividend Reinvestment Plan. If your dividends and other distributions are reinvested in shares under the Dividend Reinvestment Plan, you generally will be treated as having received a dividend equal to either (i) if shares are purchased on the open market on your behalf, the amount of cash allocated to you for the purchase of such shares, or (ii) if newly issued shares are issued to you, generally, the fair market value of such new shares. Dividends and other distributions paid by the Trust are generally treated as received by you at the time the dividend or distribution is made. If, however, the Trust pays you a dividend in January that was declared and payable to shareholders of record in the previous October, November or December, then such dividend will be treated for tax purposes as being paid by the Trust and received by you on December 31 of the year in which the dividend was declared.

The price of shares purchased at any time may reflect either unrealized gains, or realized but undistributed income or gains. If you purchase shares just prior to a distribution, you will receive a distribution that may be taxable to you even though it economically represents in part a return of your invested capital.

Your broker or other intermediary will send you information after the end of each year setting forth the amount and tax status of any distributions paid to you by the Trust.

If you sell or otherwise dispose of shares of the Trust, you will generally recognize a gain or loss in an amount equal to the difference between your tax basis in such shares of the Trust and the amount you receive in exchange for such shares. Any such gain or loss generally will be long-term capital gain or loss if you have held (or are treated as having held) such shares for more than one year at the time of sale. All or a portion of any loss you realize on a taxable sale or exchange of your shares of the Trust will be disallowed if you acquire other shares of the Trust (whether through the automatic reinvestment of dividends or otherwise) within a 61-day period beginning 30 days before and ending 30 days after your sale or exchange of the shares. In such case, the basis of the shares acquired will be adjusted to reflect the disallowed loss. In addition, any loss realized upon a taxable sale or exchange of Trust shares held (or deemed held) by you for six months or less will be treated as long-term, rather than short-term, to the extent of any capital gain dividends received (or deemed received) by you with respect to those shares.

Your broker or other intermediary may be required to withhold, for U.S. federal backup withholding tax purposes, a portion of the dividends, distributions and redemption proceeds payable to an individual shareholder who fails to provide the broker or other intermediary with the shareholder's correct taxpayer identification number (in the case of an individual, generally, such individual's social security number) or to make the required certification, or who has been notified by the IRS that such shareholder is subject to backup withholding. Certain shareholders are exempt from backup withholding. Backup withholding is not an additional tax and any amount withheld may be refunded or credited against your U.S. federal income tax liability, if any, provided that you furnish the required information to the IRS.

Upon the sale or exchange of shares of the Trust, your broker or other intermediary generally will be required to provide you and the IRS with cost basis and certain other related tax information about the Trust shares you sold or exchanged. This cost basis reporting requirement is effective for shares purchased, including through dividend reinvestment, on or after January 1, 2012. Please consult your broker or other intermediary for more information regarding available methods for cost basis reporting and how to select a particular method. Please consult your tax advisor to determine which available cost basis method is best for you.

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The discussions set forth herein and in the Statement of Additional Information do not constitute tax advice, and you are urged to consult your own tax advisor to determine the specific U.S. federal, state, local and foreign tax consequences to you of investing in the Trust.

Custodian and Transfer Agent

The custodian of the assets of the Trust and its wholly-owned subsidiaries is Bank of New York Mellon (240 Greenwich Street, New York, New York 10286). The custodian performs custodial services for the Trust. American Stock Transfer & Trust Company, LLC (6201 15th Avenue, Brooklyn, New York 11219; telephone (718) 921-8200) serves as the Trust's transfer agent with respect to its common shares.

Legal Opinion

Certain legal matters in connection with the securities have been passed upon for the Trust by Smith, Katzenstein & Jenkins LLP, special Delaware counsel to the Trust.

Privacy Principles of the Trust

The Trust is committed to maintaining the privacy of its shareholders and to safeguarding their non-public personal information. The following information is provided to help you understand what personal information the Trust collects, how the Trust protects that information and why, in certain cases, the Trust may share information with select other parties.

Generally, the Trust does not receive any non-public personal information relating to its shareholders, although certain non-public personal information of its shareholders may become available to the Trust. The Trust does not disclose any non-public personal information about its shareholders or former shareholders to anyone, except as permitted by law or as is necessary in order to service shareholder accounts (for example, to a transfer agent or third party administrator).

The Trust restricts access to non-public personal information about its shareholders to employees of the Trust's Investment Adviser and its affiliates with a legitimate business need for the information. The Trust maintains physical, electronic and procedural safeguards designed to protect the non-public personal information of its shareholders.

No dealer, salesperson or any other person has been authorized to give any information or to make any representations other than those contained in this Prospectus in connection with the Offer and, if given or made, such information or representations must not be relied upon as having been authorized by the Trust or the Investment Adviser. This Prospectus does not constitute an offer to sell or the solicitation of any offer to buy any security other than the common shares of the Trust offered by this Prospectus, nor does it constitute an offer to sell or a solicitation of any offer to buy the common shares of the Trust by anyone in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so, or to any such person to whom it is unlawful to make such offer or solicitation. Neither the delivery of this Prospectus nor any sale made hereunder shall, under any circumstances, create any implication that information contained herein is correct as of any time subsequent to the date hereof. However, if any material change occurs while this Prospectus is required by law to be delivered, the Prospectus will be amended or Supplemented accordingly.

Where You Can Find Additional Information

We have filed with the Commission a registration statement on Form N-2 together with all amendments and related exhibits under the Securities Act. The registration statement contains additional information about us and the securities being offered by this Prospectus.

We file annual and semi-annual reports, proxy statements and other information with the Commission. You can inspect any materials we file with the Commission, without charge, at the Commission's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the Commission at 1-800-SEC-0330 for further information on the Public Reference Room. The information we file with the Commission is available free of charge by contacting us at 300 Crescent Court, Suite 700, Dallas, Texas 75201 or by telephone at 1-866-351-4440 or on our web site at *www.nexpointadvisors.com*. The Commission also maintains a web site that contains reports, proxy

statements and other information regarding registrants, including us, that file such information electronically with the Commission. The address of the Commission's web site is *www.sec.gov*. Unless specifically incorporated into this Prospectus, documents contained on our web site or on the Commission's web site about us are not incorporated into this Prospectus and should not be considered to be part of this Prospectus.

Legal Proceedings

The Trust and Highland Income Fund (formerly, Highland Floating Rate Opportunities Fund), an affiliated fund, are the beneficiaries of a +$360 million judgment against Credit Suisse related to a syndicated real estate transaction fraudulently underwritten by Swiss bank. Credit Suisse is appealing the judgment against it. The two funds also are participants in a similar action against Credit Suisse related to five additional real estate deals in which the funds allege Credit Suisse committed fraud in relation to the underwriting. Case or Docket Number: 05-15-01463CV. Full Names of Principal Parties: Claymore Holdings, LLC v. Credit Suisse AG, Cayman Islands Branch and Credit Suisse Securities (USA) LLC. The Trust would be entitled to 18% of any net amounts ultimately collected on the judgment against Credit Suisse.

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NexPoint Strategic Opportunities Fund

Preferred Shares
Subscription Rights

PROSPECTUS

August 27, 2019

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The information in this preliminary Statement of Additional Information is not complete and may be changed. We may not sell these securities until the Registration Statement filed with the U.S. Securities and Exchange Commission is effective. This preliminary Statement of Additional Information is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, Dated August 27, 2019

NexPoint Strategic Opportunities Fund

Statement of Additional Information

NexPoint Strategic Opportunities Fund (the "Trust" or "NHF") (formerly, NexPoint Credit Strategies Fund) is a non-diversified, closed-end management investment company registered under the Investment Company Act of 1940, as amended (the "Investment Company Act"). This Statement of Additional Information ("SAI") does not constitute a prospectus, but should be read in conjunction with the prospectus relating thereto dated August 27, 2019 (the "Prospectus"), which is incorporated by reference into this SAI. This SAI does not include all information that a prospective investor should consider before purchasing common shares, and investors should obtain and read the Prospectus prior to purchasing such shares. A copy of the Prospectus may be obtained without charge by calling 1-866-351-4440. You may also obtain a copy of the Prospectus on the U.S. Securities and Exchange Commission's web site *www.sec.gov*. Capitalized terms used but not defined in this SAI have the meanings ascribed to them in the Prospectus.

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This Statement of Additional Information is dated August 27, 2019

USE OF PROCEEDS

Unless otherwise specified in a Prospectus Supplement, the Trust will invest the net proceeds of any sales of securities (the "Offering") in accordance with the Trust's investment objectives and policies as stated below, or use such proceeds for other general corporate purposes. Assuming current market conditions, the Trust estimates that investment of the net proceeds of the Offering will be substantially complete within one to three months of the completion of the Offering. Pending such investment, it is anticipated that the proceeds of the Offering will be invested in cash and/or short-term debt securities.

INVESTMENT RESTRICTIONS

Fundamental Investment Restrictions. The following are the fundamental investment restrictions of the Trust, which may not be changed without the approval of the holders of a majority of the outstanding common shares and preferred shares, if any, voting together as a single class, and of the holders of a majority of the outstanding preferred shares, if any, voting as a separate class:

(1) **The Trust will**, under normal market conditions, invest at least 25% of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry, including obligations issued or guaranteed by the U.S. Government, any state or territory of the United States or any of their agencies, instrumentalities or political subdivisions, and investments by any territory of the United States or any of their agencies, instrumentalities or political subdivisions for which the underlying collateral is real estate;

Except as described below, the Trust, as a fundamental policy, may not:

(2) issue senior securities or borrow money other than as permitted by the Investment Company Act or pledge its assets other than to secure such issuances or in connection with hedging transactions, short sales, securities lending, when issued and forward commitment transactions and similar investment strategies;

(3) make loans of money or property to any person, except through loans of portfolio securities up to a maximum of 33 1/3% of the Trust's total assets, the purchase of debt securities, including bank loans (senior loans) and participations therein, or the entry into repurchase agreements up to a maximum of 33 1/3% of the Trust's total assets;

(4) underwrite the securities of other issuers, except to the extent that, in connection with the disposition of portfolio securities or the sale of its own securities, the Trust may be deemed to be an underwriter;

(5) purchase or sell real estate, except that the Trust may invest in securities of companies that deal in real estate or are engaged in the real estate business, including real estate investment trusts and real estate operating companies, and instruments secured by real estate or interests therein and the Trust may acquire, hold and sell real estate acquired through default, liquidation, or other distributions of an interest in real estate as a result of the Trust's ownership of such other assets; or

(6) purchase or sell commodities or commodity contracts for any purposes except as, and to the extent, permitted by applicable law without the Trust becoming subject to registration with the Commodity Futures Trading Commission (the "CFTC") as a commodity pool.

As currently relevant to the Trust, the Investment Company Act requires an asset coverage of 200% for a closed-end fund issuing preferred shares and 300% for a closed-end fund issuing borrowings (excluding certain temporary borrowings). The Trust will not engage in any secured borrowings constituting senior securities described under investment restriction number 2 pursuant to which the lenders would be able to foreclose on more than 33 1/3% of the Trust's total assets, measured at the date of the initial borrowing.

Non-Fundamental Investment Restrictions. The Trust is also subject to the following non-fundamental restrictions and policies, which may be changed by the Board of Trustees of the Trust (the "Board") and without shareholder approval. The Trust may not:

(1) make any short sale of securities except in conformity with applicable laws, rules and regulations and unless after giving effect to such sale, the market value of all securities sold short does not exceed 25% of the value of the Trust's total assets and the Trust's aggregate short sales of a particular class of securities of an issuer does not exceed 25% of the then outstanding securities of that class. The Trust may also make short sales "against the box" without respect to such limitations. In this type of short sale, at the time of the sale, the Trust owns or has the immediate and unconditional right to acquire at no additional cost the identical security; and

(2) purchase securities of open-end or closed-end investment companies except in compliance with the Investment Company Act or any exemptive relief obtained thereunder. Under the Investment Company Act, the Trust may invest up to 10% of

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its total assets in the aggregate in shares of other investment companies and up to 5% of its total assets in any one investment company, provided the investment does not represent more than 3% of the voting stock of the acquired investment company at the time such shares are purchased. As a shareholder in any investment company, the Trust will bear its ratable share of that investment company's expenses, and will remain subject to payment of the Advisory Fees and other expenses with respect to assets so invested. Holders of common shares will therefore be subject to duplicative expenses to the extent the Trust invests in other investment companies. In addition, the securities of other investment companies may be leveraged and will therefore be subject to the risks of leverage. The NAV and market value of leveraged shares will be more volatile and the yield to shareholders will tend to fluctuate more than the yield generated by unleveraged shares.

In addition, to comply with the federal tax requirements for qualification as a registered investment company, the Trust's investments must meet certain diversification requirements. See "Tax Matters."

For purposes of this SAI, a "majority of the outstanding" shares means (a) 67% or more of the Trust's outstanding voting securities present at a meeting, if the holders of more than 50% of its outstanding voting securities are present or represented by proxy, or (b) more than 50% of its outstanding voting securities, whichever is less.

The percentage limitations applicable to the Trust's portfolio described in the Prospectus and this SAI apply only at the time of investment, except that the percentage limitation with respect to borrowing applies at all times, and the Trust will not be required to sell securities due to subsequent changes in the value of securities it owns.

INVESTMENT POLICIES AND TECHNIQUES

The following information supplements the discussion of the Trust's investment objectives, policies and techniques that are described in the Prospectus.

The Trust's investment objectives are to provide both current income and capital appreciation. The Trust seeks to achieve its investment objectives by investing primarily in the following categories of securities and instruments of corporations and other business entities: (i) secured and unsecured floating and fixed rate loans; (ii) bonds and other debt obligations; (iii) debt obligations of stressed, distressed and bankrupt issuers; (iv) structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; (v) equities; (vi) other investment companies, including business development companies ("BDCs"); and (vii) real estate investment trusts ("REITs"). The Trust may also invest in derivative instruments that have economic characteristics similar to instruments in investment categories (i) - (vii). Subject to these general guidelines, NexPoint Advisors, L.P. (the "Investment Adviser") has broad discretion to allocate the Trust's assets among these investment categories and other investments and to change allocations as conditions warrant.

There can be no assurance that the Trust will achieve its investment objective. Investors should not consider the one Trust alone to be a complete investment program. The Trust is subject to the risk of changing economic conditions, as well as the risk inherent in the ability of the portfolio manager to make changes in the composition of the Trust in anticipation of changes in economic, business and financial conditions. As with any security, a risk of loss is inherent in an investment in the shares of the Trust. The securities, investments, and investment practices used by the Trust all have attendant risks of varying degrees. As described below, an investment in the Trust entails special additional risks as a result of its ability to invest a substantial portion of their assets in foreign securities.

Unless otherwise indicated, the Trust is permitted to engage in the following investment strategies and techniques. The Trust is not obligated to pursue the following strategies or techniques and does not represent that these strategies or techniques are available now or will be available at any time in the future. The Trust will not purchase all of the following types of securities or employ all of the following strategies unless doing so is consistent with its investment objective.

Short-Term Debt Securities

For temporary defensive purposes or to keep cash on hand, the Trust may invest up to 100% of its total assets in cash equivalents and short-term debt securities. Short-term debt investments are defined to include, without limitation, the following securities, as well as pooled investment vehicles (for example, money market funds) that invest in these securities:

(1) U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest that are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities. U.S. government securities include securities

issued by (a) the Federal Housing Administration, Farmers Home Administration, Export-Import Bank of the United States, Small Business Administration, and Government National Mortgage Association, whose securities are supported by the full faith and credit of the United States; (b) the Federal Home Loan Banks, Federal Intermediate Credit Banks, and Tennessee Valley Authority, whose securities are supported by the right of the agency to borrow from the U.S. Treasury; (c) the Federal National Mortgage Association

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(FNMA) and Federal Home Loan Mortgage Corporation (FHLMC), whose securities had historically been supported by the discretionary authority of the U.S. government to purchase certain obligations of the agencies or instrumentalities but which are now in U.S. government receivership; and (d) the Student Loan Marketing Association, whose securities are supported only by its credit. While the U.S. government provides financial support to such U.S. government-sponsored agencies or instrumentalities, no assurance can be given that it always will do so since it is not so obligated by law. The U.S. government, its agencies and instrumentalities do not guarantee the market value of their securities. Consequently, the value of such securities may fluctuate.

(2) Certificates of deposit issued against funds deposited in a bank or a savings and loan association. Such certificates are for a definite period of time, earn a specified rate of return, and are normally negotiable. The issuer of a certificate of deposit agrees to pay the amount deposited plus interest to the bearer of the certificate on the date specified thereon. Certificates of deposit purchased by the Trust may not be fully insured by the Federal Deposit Insurance Corporation.

(3) Repurchase agreements, which involve purchases of debt securities. At the time the Trust purchases securities pursuant to a repurchase agreement, it simultaneously agrees to resell and redeliver such securities to the seller, who also simultaneously agrees to buy back the securities at a fixed price and time. This assures a predetermined yield for the Trust during its holding period, because the resale price is always greater than the purchase price and reflects an agreed-upon market rate. Such actions afford an opportunity for the Trust to invest temporarily available cash. The Trust may enter into repurchase agreements only with respect to obligations of the U.S. government, its agencies or instrumentalities; certificates of deposit; or bankers' acceptances in which the Trust may invest. Repurchase agreements may be considered loans to the seller, collateralized by the underlying securities. The risk to the Trust is limited to the ability of the seller to pay the agreed-upon sum on the repurchase date; in the event of default, the repurchase agreement provides that the Trust is entitled to sell the underlying collateral. If the value of the collateral declines after the agreement is entered into, and if the seller defaults under a repurchase agreement when the value of the underlying collateral is less than the repurchase price, the Trust could incur a loss of both principal and interest. If the seller were to be subject to a federal bankruptcy proceeding, the ability of the Trust to liquidate the collateral could be delayed or impaired because of certain provisions of the bankruptcy laws.

(4) Commercial paper, which consists of short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. Master demand notes are direct lending arrangements between the Trust and a corporation. There is no secondary market for such notes. However, they are redeemable by the Trust at any time. NexPoint Advisors, L.P., the Trust's investment adviser (the "Investment Adviser") will consider the financial condition of the corporation (*e.g.*, earning power, cash flow and other liquidity ratios) and will continually monitor the corporation's ability to meet all of its financial obligations, because the Trust's liquidity might be impaired if the corporation were unable to pay principal and interest on demand. Investments in commercial paper will be limited to commercial paper rated in the highest categories by a major rating agency and which mature within one year of the date of purchase or carry a variable or floating rate of interest.

Equity Securities

The Trust may invest in equity securities including preferred stock, convertible securities, warrants and depository receipts.

Preferred Stock. Preferred stock has a preference over common stock in liquidation (and generally dividends as well) but is subordinated to the liabilities of the issuer in all respects. As a general rule, the market value of preferred stock with a fixed dividend rate and no conversion element varies inversely with interest rates and perceived credit risk, while the market price of convertible preferred stock generally also reflects some element of conversion value. Because preferred stock is junior to debt securities and other obligations of the issuer, deterioration in the credit quality of the issuer will cause greater changes in the value of a preferred stock than in a more senior debt security with similar stated yield characteristics. Unlike interest payments on debt securities, preferred stock dividends are payable only if declared by the issuer's board of directors. Preferred stock also may be subject to optional or mandatory redemption provisions.

Convertible Securities. A convertible security is a bond, debenture, note, preferred stock or other security that may be converted into or exchanged for a prescribed amount of common stock or other equity security of the same or a different issuer within a particular period of time at a specified price or formula. A convertible security entitles the holder to receive interest paid or accrued on debt or the dividend paid on preferred stock until the convertible security matures or is redeemed, converted or exchanged. Before conversion, convertible securities have characteristics similar to nonconvertible income securities in that they ordinarily provide a stable stream of income with generally higher yields than those of common stocks of the same or similar issuers, but lower yields than comparable nonconvertible securities. The value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors also may have an effect on the convertible security's investment value. Convertible securities rank senior to common stock in a corporation's capital

structure but are usually subordinated to comparable nonconvertible securities. Convertible securities may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument.

Warrants. Warrants, which are privileges issued by corporations enabling the owners to subscribe to and purchase a specified number of shares of the corporation at a specified price during a specified period of time. Subscription rights normally have a short life span to expiration. The purchase of warrants involves the risk that the Trust could lose the purchase value of a right or warrant if

the right to subscribe to additional shares is not exercised prior to the warrants' expiration. Also, the purchase of warrants involves the risk that the effective price paid for the warrant added to the subscription price of the related security may exceed the value of the subscribed security's market price such as when there is no movement in the level of the underlying security.

Depository Receipts. The Trust may invest in both sponsored and unsponsored American Depository Receipts ("ADRs"), European Depository Receipts ("EDRs"), Global Depository Receipts ("GDRs") and other similar global instruments. ADRs typically are issued by an American bank or trust company and evidence ownership of underlying securities issued by a non-U.S. corporation. EDRs, which are sometimes referred to as Continental Depository Receipts, are receipts issued in Europe, typically by non-U.S. banks and trust companies, that evidence ownership of either non-U.S. or U.S. underlying securities. GDRs are depository receipts structured like global debt issues to facilitate trading on an international basis. Unsponsored ADR, EDR and GDR programs are organized independently and without the cooperation of the issuer of the underlying securities. As a result, available information concerning the issuer may not be as current as for sponsored ADRs, EDRs and GDRs, and the prices of unsponsored ADRs, EDRs and GDRs may be more volatile than if such instruments were sponsored by the issuer. Investments in ADRs, EDRs and GDRs may present additional investment considerations of credit or securities market investments that are either issued by entities domiciled outside of the U.S., or denominated in currencies other than the U.S. dollar, or both ("Non-U.S. Securities").

Variable and Floating Rate Instruments

The Trust may purchase rated and unrated variable and floating rate instruments. These instruments may include variable amount master demand notes that permit the indebtedness thereunder to vary in addition to providing for periodic adjustments in the interest rate. The Trust may invest in leveraged inverse floating rate debt instruments ("Inverse Floaters"). The interest rate of an Inverse Floater resets in the opposite direction from the market rate of interest to which it is indexed. An Inverse Floater may be considered to be leveraged to the extent that its interest rate varies by a magnitude that exceeds the magnitude of the change in the index rate of interest. The higher degree of leverage inherent in Inverse Floaters is associated with greater volatility in their market values. Issuers of unrated variable and floating rate instruments must satisfy the same criteria as set forth above for the Trust. The absence of an active secondary market with respect to particular variable and floating rate instruments, however, could make it difficult for the Trust to dispose of a variable or floating rate instrument if the issuer defaulted on its payment obligation or during periods when the Trust is not entitled to exercise its demand rights.

Such instruments may include variable amount master demand notes that permit the indebtedness thereunder to vary in addition to providing for periodic adjustments in the interest rate. The absence of an active secondary market with respect to particular variable and floating rate instruments could make it difficult for the Trust to dispose of a variable or floating rate note if the issuer defaulted on its payment obligation or during periods that the Trust is not entitled to exercise its demand rights, and the Trust could, for these or other reasons, suffer a loss, with respect to such instruments.

Derivative Transactions and Risk Management

Consistent with its investment objectives and policies set forth in the Prospectus and in addition to its option strategy, the Trust may also enter into certain risk management transactions. In particular, the Trust may purchase and sell futures contracts, exchange listed and over-the-counter put and call options on securities, equity and other indices and futures contracts, forward foreign currency contracts, and may enter into various interest rate transactions. Derivative Transactions may be used to attempt to protect against possible changes in the market value of the Trust's portfolio resulting from fluctuations in the securities markets and changes in interest rates, to protect the Trust's unrealized gains in the value of its portfolio securities, to facilitate the sale of such securities for investment purposes and to establish a position in the securities markets as a temporary substitute for purchasing particular securities. Any or all of these Derivative Transactions may be used at any time. There is no particular strategy that requires use of one technique rather than another. Use of any Derivative Transaction is a function of market conditions. The ability of the Trust to manage them successfully will depend on the Investment Adviser's ability to predict pertinent market movements as well as sufficient correlation among the instruments, which cannot be assured. The Derivative Transactions that the Trust may use are described below.

Futures Contracts and Options on Futures Contracts. In connection with its Derivative Transactions and other risk management strategies, the Trust may also enter into contracts for the purchase or sale for future delivery ("futures contracts") of securities, aggregates of securities or indices or prices thereof, other financial indices and U.S. government debt securities or options on the above. The Trust will engage in such transactions only for bona fide risk management and other portfolio management purposes.

Forward Foreign Currency Contracts. The Trust may enter into forward currency contracts to purchase or sell foreign currencies for a fixed amount of U.S. dollars or another foreign currency. A forward currency contract involves an obligation to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the forward currency contract agreed upon

by the parties, at a price set at the time the forward currency contract is entered into. Forward currency contracts are traded directly between currency traders (usually large commercial banks) and their customers.

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The Trust may engage in various forward currency contract strategies, including without limitation the following:

- The Trust may purchase a forward currency contract to lock in the U.S. dollar price of a security denominated in a foreign currency that the Trust intends to acquire. The Trust may sell a forward currency contract to lock in the U.S. dollar equivalent of the proceeds from the anticipated sale of a security or a dividend or interest payment denominated in a foreign currency.
- The Trust may also use forward currency contracts to shift the Trust's exposure to foreign currency exchange rate changes from one currency to another. For example, if the Trust owns securities denominated in a foreign currency and the Investment Adviser believes that currency will decline relative to another currency, the Trust might enter into a forward currency contract to sell the appropriate amount of the first foreign currency with payment to be made in the second currency.
- The Trust may also purchase forward currency contracts to enhance income when the Investment Adviser anticipates that the foreign currency will appreciate in value but securities denominated in that currency do not present attractive investment opportunities.
- The Trust may also use forward currency contracts to offset against a decline in the value of existing investments denominated in a foreign currency. Such a transaction would tend to offset both positive and negative currency fluctuations, but would not offset changes in security values caused by other factors.
- The Trust could also enter into a forward currency contract to sell another currency expected to perform similarly to the currency in which the Trust's existing investments are denominated. This type of transaction could offer advantages in terms of cost, yield or efficiency, but may not offset currency exposure as effectively as a simple forward currency transaction to sell U.S. dollars. This type of transaction may result in losses if the currency sold does not perform similarly to the currency in which the Trust's existing investments are denominated.
- The Trust may also use forward currency contracts in one currency or a basket of currencies to attempt to offset against fluctuations in the value of securities denominated in a different currency if the Investment Adviser anticipates that there will be a correlation between the two currencies.
- The cost to the Trust of engaging in forward currency contracts varies with factors such as the currency involved, the length of the contract period and the market conditions then prevailing. Because forward currency contracts are usually entered into on a principal basis, no fees or commissions are involved.
- When the Trust enters into a forward currency contract, it relies on the counterparty to make or take delivery of the underlying currency at the maturity of the contract. Failure by the counterparty to do so would result in the loss of some or all of any expected benefit of the transaction. Secondary markets generally do not exist for forward currency contracts, with the result that closing transactions generally can be made for forward currency contracts only by negotiating directly with the counterparty. Thus, there can be no assurance that the Trust will in fact be able to close out a forward currency contract at a favorable price prior to maturity. In addition, in the event of insolvency of the counterparty, the Trust might be unable to close out a forward currency contract. In either event, the Trust would continue to be subject to market risk with respect to the position, and would continue to be required to maintain a position in securities denominated in the foreign currency or to maintain cash or liquid assets in a segregated account. The precise matching of forward currency contract amounts and the value of the securities involved generally will not be possible because the value of such securities, measured in the foreign currency, will change after the forward currency contract has been established. Thus, the Trust might need to purchase or sell foreign currencies in the spot (cash) market to the extent such foreign currencies are not covered by forward currency contracts. The projection of short-term currency market movements is extremely difficult, and the successful execution of a short-term strategy is highly uncertain.

Calls on Securities, Indices and Futures Contracts. In addition to its option strategy, in order to enhance income or reduce fluctuations on NAV, the Trust may sell or purchase call options ("calls") on securities and indices based upon the prices of futures contracts and debt or equity securities that are traded on U.S. and non-U.S. securities exchanges and in the over-the-counter markets. A call option gives the purchaser of the option the right to buy, and obligates the seller to sell, the underlying security, futures contract or index at the exercise price at any time or at a specified time during the option period. All such calls sold by the Trust must be "covered" as long as the call is outstanding (*i.e.*, the Trust must own the instrument subject to the call or other securities or assets acceptable for applicable segregation and coverage requirements). A call sold by the Trust exposes the Trust during the term of the option to possible loss of opportunity to realize appreciation in the market price of the underlying security, index or futures contract and may require the Trust to hold an instrument which it might otherwise have sold. The purchase of a call gives the Trust the right to buy a security,

futures contract or index at a fixed price. Calls on futures on securities must also be covered by assets or instruments acceptable under applicable segregation and coverage requirements.

Puts on Securities, Indices and Futures Contracts. In addition to its option strategy, the Trust may purchase put options ("puts") that relate to securities (whether or not it holds such securities in its portfolio), indices or futures contracts. For the same

purposes, the Trust may also sell puts on securities, indices or futures contracts on such securities if the Trust's contingent obligations on such puts are covered by assets consisting of cash or securities having a value not less than the exercise price. In selling puts, there is a risk that the Trust may be required to buy the underlying security at a price higher than the current market price.

Interest Rate Transactions. Among the Derivative Transactions in which the Trust may enter into are interest rate swaps and the purchase or sale of interest rate caps and floors. The Trust expects to enter into these transactions primarily to preserve a return or spread on a particular investment or portion of its portfolio as a duration management technique or to protect against any increase in the price of securities the Trust anticipates purchasing at a later date. Interest rate swaps involve the exchange by the Trust with another party of their respective commitments to pay or receive interest, *e.g.*, an exchange of floating rate payments for fixed rate payments with respect to a notional amount of principal. The purchase of an interest rate cap entitles the purchaser, to the extent that a specified index exceeds a predetermined interest rate, to receive payments of interest on a notional principal amount from the party selling such interest rate cap. The purchase of an interest rate floor entitles the purchaser, to the extent that a specified index falls below a predetermined interest rate, to receive payments of interest on a notional principal amount from the party selling such interest rate floor.

The Trust may enter into interest rate swaps, caps and floors on either an asset-based or liability-based basis, depending on whether it is offsetting volatility with respect to its assets or liabilities, and will usually enter into interest rate swaps on a net basis, *i.e.*, the two payment streams are netted out, with the Trust receiving or paying, as the case may be, only the net amount of the two payments on the payment dates. Inasmuch as these Derivative Transactions are entered into for good faith risk management purposes, the Investment Adviser and the Trust will not treat them as being subject to its borrowing restrictions. The Trust will accrue the net amount of the excess, if any, of the Trust's obligations over its entitlements with respect to each interest rate swap on a daily basis and will designate on its books and records with a custodian an amount of cash or liquid securities having an aggregate NAV at all times at least equal to the accrued excess. The Trust will enter into interest rate swap, cap or floor transactions only with counterparties that are judged by the Investment Adviser to present acceptable credit risk to the Trust. If there is a default by the other party to such a transaction, the Trust will have contractual remedies pursuant to the agreements related to the transaction. The swap market has grown substantially in recent years with a large number of banks and investment banking firms acting both as principals and as agents utilizing standardized swap documentation. Caps and floors are more recent innovations for which standardized documentation has not yet been developed and, accordingly, they are less liquid than swaps.

Additional Characteristics and Risks of Derivative Transactions

In order to manage the risk of its securities portfolio, or to enhance income or gain as described in the Prospectus, the Trust will engage in Derivative Transactions. The Trust will engage in such activities in the Investment Adviser's discretion, and may not necessarily be engaging in such activities when movements in interest rates that could affect the value of the assets of the Trust occur. The Trust's ability to pursue certain of these strategies may be limited by applicable regulations of the CFTC. The Trust's Derivative Transactions may affect the amount, timing and character of distributions to shareholders and, therefore, may accelerate and/or increase the amount of taxes payable by shareholders. In addition, the Trust's ability to engage in certain Derivative Transactions may be limited by tax considerations. See "Tax Matters" below for more information.

Put and Call Options on Securities and Indices

The Trust may purchase and sell put and call options on securities and indices. A put option gives the purchaser of the option the right to sell and the writer the obligation to buy the underlying security at the exercise price during the option period. The Trust may also purchase and sell options on securities indices ("index options"). Index options are similar to options on securities except that, rather than taking or making delivery of securities underlying the option at a specified price upon exercise, an index option gives the holder the right to receive cash upon exercise of the option if the level of the securities index upon which the option is based is greater, in the case of a call, or less, in the case of a put, than the exercise price of the option. The purchase of a put option on a security could protect the Trust's holdings in a security or a number of securities against a substantial decline in the market value. A call option gives the purchaser of the option the right to buy and the seller the obligation to sell the underlying security or index at the exercise price during the option period or for a specified period prior to a fixed date. The purchase of a call option on a security could protect the Trust against an increase in the price of a security that it intended to purchase in the future. In the case of either put or call options that it has purchased, if the option expires without being sold or exercised, the Trust will experience a loss in the amount of the option premium plus any related commissions. When the Trust sells put and call options, it receives a premium as the seller of the option. The premium that the Trust receives for selling the option will serve as a partial offset, in the amount of the option premium, against changes in the value of the securities in its portfolio. During the term of the option, however, a covered call seller has, in return for the premium on the option, given up the opportunity for capital appreciation above the exercise price of the option if the value of the underlying security increases, but has retained the risk of loss should the price of the underlying security decline. Conversely, a secured put seller retains the risk of loss should the market value of the underlying security decline below the exercise price of the option, less the premium

received on the sale of the option. The Trust is authorized to purchase and sell exchange listed options and over the-counter options ("OTC Options") which are privately negotiated with the counterparty. Listed options are issued by the Options Clearing Corporation ("OCC") which guarantees the performance of the obligations of the parties to such options.

The Trust's ability to close out its position as a purchaser or seller of an exchange listed put or call option is dependent upon the existence of a liquid secondary market on option exchanges. Among the possible reasons for the absence of a liquid secondary market on an exchange are: (i) insufficient trading interest in certain options; (ii) restrictions on transactions imposed by an exchange; (iii) trading halts, suspensions or other restrictions imposed with respect to particular classes or series of options or underlying securities; (iv) interruption of the normal operations on an exchange; (v) inadequacy of the facilities of an exchange or OCC to handle current trading volume; or (vi) a decision by one or more exchanges to discontinue the trading of options (or a particular class or series of options), in which event the secondary market on that exchange (or in that class or series of options) would cease to exist, although outstanding options on that exchange that had been listed by the OCC as a result of trades on that exchange would generally continue to be exercisable in accordance with their terms. OTC Options are purchased from or sold to dealers, financial institutions or other counterparties which have entered into direct agreements with the Trust. With OTC Options, such variables as expiration date, exercise price and premium will be agreed upon between the Trust and the counterparty, without the intermediation of a third party such as the OCC. If the counterparty fails to make or take delivery of the securities underlying an option it has written, or otherwise settle the transaction in accordance with the terms of that option as written, the Trust would lose the premium paid for the option as well as any anticipated benefit of the transaction.

The hours of trading for options on securities may not conform to the hours during which the underlying securities are traded. To the extent that the option markets close before the markets for the underlying securities, significant price movements can take place in the underlying markets that cannot be reflected in the option markets.

Futures Contracts and Related Options

Characteristics. The Trust may sell financial futures contracts or purchase put and call options on such futures as an offset against anticipated market movements. The sale of a futures contract creates an obligation by the Trust, as seller, to deliver the specific type of financial instrument called for in the contract at a specified future time for a specified price. Options on futures contracts are similar to options on securities except that an option on a futures contract gives the purchaser the right in return for the premium paid to assume a position in a futures contract (a long position if the option is a call and a short position if the option is a put).

Margin Requirements. At the time a futures contract is purchased or sold, the Trust must allocate cash or securities as a deposit payment ("initial margin"). It is expected that the initial margin that the Trust will pay may range from approximately 1% to approximately 5% of the value of the securities or commodities underlying the contract. In certain circumstances, however, such as periods of high volatility, the Trust may be required by an exchange to increase the level of its initial margin payment. Additionally, initial margin requirements may be increased generally in the future by regulatory action. An outstanding futures contract is valued daily and the payment in case of "variation margin" may be required, a process known as "marking to the market." Transactions in listed options and futures are usually settled by entering into an offsetting transaction, and are subject to the risk that the position may not be able to be closed if no offsetting transaction can be arranged.

Limitations on Use of Futures and Options on Futures. The Trust currently may enter into such transactions without limit for bona fide strategic purposes, including risk management and duration management and other portfolio strategies. The Trust may also engage in transactions in futures contracts or related options for non-strategic purposes to enhance income or gain provided that the Trust will not enter into a futures contract or related option (except for closing transactions) for purposes other than bona fide strategic purposes, or risk management including duration management if, immediately thereafter, the sum of the amount of its initial deposits and premiums on open contracts and options would exceed 5% of the Trust's liquidation value, *i.e.*, net assets (taken at current value); provided, however, that in the case of an option that is in-the-money at the time of the purchase, the in-the-money amount may be excluded in calculating the 5% limitation. The above policies are non-fundamental and may be changed by the Board at any time. Also, when required, an account of cash equivalents designated on the books and records will be maintained and marked to market on a daily basis in an amount equal to the market value of the contract.

Segregation and Cover Requirements. Futures contracts, interest rate swaps, caps, floors and collars, short sales, reverse repurchase agreements and dollar rolls, and listed or OTC options on securities, indices and futures contracts sold by the Trust are generally subject to earmarking and coverage requirements of either the CFTC or the SEC, with the result that, if the Trust does not hold the security or futures contract underlying the instrument, the Trust will be required to designate on its books and records on an ongoing basis cash, U.S. government securities, or other liquid securities in an amount at least equal to the Trust's net obligations with respect to such instruments.

Such Amounts Fluctuate as the Obligations Increase or Decrease. The earmarking requirement can result in the Trust maintaining securities positions it would otherwise liquidate, segregating assets at a time when it might be disadvantageous to do so or

otherwise restrict portfolio management.

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Derivative Transactions Present Certain Risks. With respect to Derivative Transactions and risk management, the variable degree of correlation between price movements of strategic instruments and price movements in the position being offset create the possibility that losses using the strategy may be greater than gains in the value of the Trust's position. The same is true for such instruments entered into for income or gain. In addition, certain instruments and markets may not be liquid in all circumstances. As a result, in volatile markets, the Trust may not be able to close out a transaction without incurring losses substantially greater than the initial deposit. Although the use of Derivative Transactions for hedging purposes may reduce the risk of loss due to a decline in the value of an underlying securities position, at the same time such use tends to limit any potential gain which might result from an increase in the value of such position. The ability of the Trust to successfully utilize Derivative Transactions will depend on the Investment Adviser's ability to predict pertinent market movements and sufficient correlations, which cannot be assured. Finally, the daily deposit requirements in futures contracts that the Trust has sold create an ongoing greater potential financial risk than do options transactions, where the exposure is limited to the cost of the initial premium. Losses due to the use of Derivative Transactions will reduce NAV.

Regulatory Considerations. The Trust is sponsored by a person who has claimed an exclusion from the definition of the term "commodity pool operator" under the Commodity Exchange Act ("CEA") pursuant to Rule 4.5 under the CEA; therefore, the Investment Adviser (with respect to the Trust) is not subject to registration or regulation as a "commodity pool operator" under the CEA.

Real Estate Investment Trusts ("REITs")

The Trust may invest in REITs. REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests. REITs are subject to risks similar to those associated with direct ownership of real estate (including loss to casualty or condemnation, increases in property taxes and operating expenses, zoning law amendments, changes in interest rates, overbuilding and increased competition, variations in market value, adverse changes in the real estate markets generally or in specific sectors of the real estate industry and possible environmental liabilities), as well as additional risks discussed below.

REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs. Equity REITs invest the majority of their assets directly in real property and derive income primarily from the collection of rents. Equity REITs can also realize capital gains by selling properties that have appreciated in value. Mortgage REITs invest the majority of their assets in real estate mortgages and derive income from the collection of interest payments. REITs are not taxed on income distributed to shareholders provided they comply with the applicable requirements of the Internal Revenue Code of 1986, as amended (the "Code"). The Trust will indirectly bear its proportionate share of any management and other expenses paid by REITs in which it invests in addition to the expenses paid by the Trust. Debt securities issued by REITs are, for the most part, general and unsecured obligations and are subject to risks associated with REITs.

Investing in REITs involves certain unique risks in addition to those risks associated with investing in the real estate industry in general. An equity REIT may be affected by changes in the value of the underlying properties owned by the REIT. A mortgage REIT may be affected by changes in interest rates and the ability of the issuers of its portfolio mortgages to repay their obligations. REITs are dependent upon the skills of their managers and are not diversified. REITs are generally dependent upon maintaining cash flows to repay borrowings and to make distributions to shareholders and are subject to the risk of default by lessees or borrowers. REITs whose underlying assets are concentrated in properties used by a particular industry, such as health care, are also subject to risks associated with such industry. REITs are often leveraged or invest in properties that are themselves leveraged, exposing them to the risks of leverage generally. Among other things, leverage will generally increase losses during periods of real estate market declines.

REITs (especially mortgage REITs) are also subject to interest rate risks. When interest rates decline, the value of a REIT's investment in fixed rate obligations can be expected to rise. Conversely, when interest rates rise, the value of a REIT's investment in fixed rate obligations can be expected to decline. If the REIT invests in adjustable rate mortgage loans the interest rates on which are reset periodically, yields on a REIT's investments in such loans will gradually align themselves to reflect changes in market interest rates. This causes the value of such investments to fluctuate less dramatically in response to interest rate fluctuations than would investments in fixed rate obligations.

REITs may have limited financial resources, may trade less frequently and in a more limited volume and may be subject to more abrupt or erratic price movements than larger company securities.

The Trust seeks to gain exposure to the real estate markets, in whole or in part, through investing in certain REIT subsidiaries of the Trust. The Trust invests in NexPoint Real Estate Opportunities, LLC (formerly Freedom REIT) ("NREO"), organized under the laws of Delaware on September 17, 2012 and NexPoint Real Estate Capital, LLC ("NREC"), organized under the laws of Delaware on March 31, 2014 (each, a "Subsidiary"). Each Subsidiary has elected to be taxed as a REIT. Each Subsidiary is generally subject to the same

investment policies and restrictions of the Trust. As of June 30, 2019, NREO and NREC accounted for approximately 2.9% and 22.0% respectively, of the Trust's Managed Assets and approximately 2.8% and 21.7%, respectively, of the Trust's total (gross)

assets. The Investment Adviser does not charge an additional fee on assets held in each Subsidiary. The Trust intends to limit its investments in each Subsidiary and related entities to the extent necessary to qualify as a regulated investment company ("RIC") for tax purposes. In general, and subject to certain exceptions not applicable here, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in any one issuer, or in any two or more issuers which the taxpayer controls and which are determined to be engaged in the same or similar trades or businesses or related trades or businesses.

Portfolio Turnover

The Trust's annual portfolio turnover rate may vary greatly from year to year. Although the Trust cannot accurately predict its annual portfolio turnover rate, it is not expected to exceed 100% under normal circumstances. For the fiscal year ended December 31, 2018, the portfolio turnover rate was 48%, and for the fiscal year ended December 31, 2017, the portfolio turnover rate was 36%. Portfolio turnover rate is not considered a limiting factor in the execution of investment decisions for the Trust. There are no limits on the rate of portfolio turnover, and investments may be sold without regard to length of time held when the Trust's investment strategy so dictates. A higher portfolio turnover rate results in correspondingly greater brokerage commissions and other transactional expenses that are borne by the Trust. High portfolio turnover may result in the realization of net short-term capital gains by the Trust which, when distributed to common shareholders, will be taxable as ordinary income. See "Tax Matters."

OTHER INVESTMENT POLICIES AND TECHNIQUES

When-Issued and Forward Commitment Securities

The Trust may purchase securities on a "when-issued" basis and may purchase or sell securities on a "forward commitment" basis in order to acquire the security or to offset against anticipated changes in interest rates and prices. When such transactions are negotiated, the price, which is generally expressed in yield terms, is fixed at the time the commitment is made, but delivery and payment for the securities take place at a later date. When-issued securities and forward commitments may be sold prior to the settlement date, but the Trust will enter into when-issued and forward commitments only with the intention of actually receiving or delivering the securities, as the case may be. If the Trust disposes of the right to acquire a when-issued security prior to its acquisition or disposes of its right to deliver or receive against a forward commitment, it might incur a gain or loss. At the time the Trust enters into a transaction on a when-issued or forward commitment basis, it will designate on its books and records cash or liquid securities equal to at least the value of the when-issued or forward commitment securities. The value of these assets will be monitored daily to ensure that their marked to market value will at all times equal or exceed the corresponding obligations of the Trust. There is always a risk that the securities may not be delivered and that the Trust may incur a loss. Settlements in the ordinary course, which may take substantially more than five business days, are not treated by the Trust as when-issued or forward commitment transactions and accordingly are not subject to the foregoing restrictions.

Pay-In-Kind Securities

The Trust may invest in Pay-in-kind, or "PIK" securities. PIK securities are securities which pay interest through the issuance of additional debt or equity securities. Similar to zero coupon obligations, PIK securities also carry additional risk as holders of these types of securities typically do not receive cash until the final payment date on the security unless such security is sold. In addition, if the issuer defaults, the Trust may obtain no return at all on its investment. The market price of PIK securities is affected by interest rate changes to a greater extent, and therefore tends to be more volatile, than that of securities which pay interest in cash. Additionally, U.S. federal income tax law requires the holder of certain PIK securities to recognize interest income with respect to these securities prior to the actual receipt of cash payments. In order to receive the special treatment accorded to RICs and their shareholders under Subchapter M of the Code, and to avoid liability for U.S. federal income or excise taxes at the Trust level, the Trust may be required to distribute income recognized with respect to these securities prior to the Trust's receipt of cash on these securities and thus may, among other things, dispose of portfolio securities under potentially disadvantageous circumstances in order to generate cash to satisfy these distribution requirements. See "Tax Matters" below.

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Mezzanine Investments

The Trust may invest in certain high yield securities known as mezzanine investments, which are subordinated debt securities which are generally issued in private placements in connection with an equity security (*e.g.*, with attached warrants). Such mezzanine investments may be issued with or without registration rights. Similar to other high yield securities, maturities of mezzanine investments are typically seven to ten years, but the expected average life is significantly shorter at three to five years. Mezzanine investments are usually unsecured and subordinate to other obligations of the issuer.

Loan Participations and Assignments

The Trust may invest in fixed and floating rate loans ("Loans") arranged through private negotiations between a corporation or foreign government and one or more financial institutions ("Lenders"). The Trust's investments in Loans are expected in most instances to be in the form of participations in Loans ("Participations") and assignments of all or a portion of Loans ("Assignments") from third parties. Participations typically will result in the Trust having a contractual relationship only with the Lender, not the borrower. The Trust will have the right to receive payments of principal, interest and any fees to which it is entitled only from the Lender selling the Participation and the Trust and only upon receipt by the Lender of the payments by the borrower. In connection with purchasing Participations, the Trust generally has no direct right to enforce compliance by the borrower with the terms of the loan agreement relating to the Loan, nor any rights of set-off against the borrower, and the Trust may not directly benefit from any collateral supporting the Loan in which it has purchased the Participation. As a result the Trust will assume the credit risk of both the borrower and the Lender that is selling the Participation. In the event of the insolvency of the Lender selling a Participation, the Trust may be treated as a general creditor of the Lender and may not benefit from any set-off between the Lender and the borrower. The Trust will acquire Participations only if the Lender interpositioned between the Trust and the borrower is determined by the Investment Adviser to be creditworthy. When the Trust purchases Assignments from Lenders, the Trust will acquire direct rights against the borrower on the Loan. However, because Assignments are arranged through private negotiations between potential assignees and assignors, the rights and obligations acquired by the Trust as the purchaser of an Assignment may differ from, and be more limited than, those held by the assigning Lender.

The Trust may have difficulty disposing of Assignments and Participations. Because there is no public market for such securities, the Trust anticipates that such securities could be sold only to a limited number of institutional investors. The lack of a liquid secondary market will have an adverse impact on the value of such securities and on the Trust's ability to dispose of particular Assignments or Participations when necessary to meet the Trust's liquidity needs or in response to a specific economic event, such as a deterioration in the creditworthiness of the borrower. The lack of a liquid secondary market for Assignments and Participations also may make it more difficult for the Trust to assign a value to those securities for purposes of valuing the Trust's portfolio and calculating its NAV.

Project Loans

The Trust may invest in project loans, which are fixed income securities of issuers whose revenues are primarily derived from mortgage loans to multi-family, nursing home and other real estate development projects. The principal payments on these mortgage loans will be insured by agencies and authorities of the U.S. government.

Zero Coupons and Deferred Payment Obligations

The Trust may invest in zero-coupon bonds, which are normally issued at a significant discount from face value and do not provide for periodic interest payments. Zero-coupon bonds may experience greater volatility in market value than similar maturity debt obligations which provide for regular interest payments. The Trust may also invest in deferred payment securities. Deferred payment securities are securities that remain zero-coupon securities until a predetermined date, at which time the stated coupon rate becomes effective and interest becomes payable at regular intervals. Deferred payment securities are subject to greater fluctuations in value and may have lesser liquidity in the event of adverse market conditions than comparably rated securities paying cash interest at regular interest payment periods.

U.S. federal income tax law requires the holder of certain zero-coupon bonds or deferred payment securities to recognize interest income with respect to these securities prior to the actual receipt of cash payments by the holder. In order to receive the special treatment accorded to RICs and their shareholders under the Code and to avoid liability for U.S. federal income or excise taxes at the Trust level, the Trust may be required to distribute income recognized with respect to these securities prior to the Trust's receipt of cash on these securities and thus may, among other things, dispose of Trust securities under potentially disadvantageous circumstances in order to generate cash to satisfy these distribution requirements. See "Tax Matters" below.

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Master Limited Partnerships ("MLPs")

The Trust may invest in MLPs. MLPs typically are characterized as "publicly traded partnerships" that qualify to be treated as partnerships for U.S. federal income tax purposes and are principally engaged in one or more aspects of the exploration, production, processing, transmission, marketing, storage or delivery of energy-related commodities, such as natural gas, natural gas liquids, coal, crude oil or refined petroleum products (collectively, the energy industry). The Trust's MLP investments include investments that offer economic exposure to public MLPs in the form of common or subordinated units issued by MLPs, securities of entities holding primarily general partner or managing member interests in MLPs, debt securities of MLPs, and securities that are derivatives of interests in MLPs, including I-Shares, and derivative instruments in which the Trust may invest that have economic characteristics of MLP securities.

Generally, an MLP is operated under the supervision of one or more managing general partners. Limited partners (like the Trust when it invests in an MLP) are not involved in the day-to-day management of the partnership. The Trust also may invest in companies who serve (or whose affiliates serve) as the general partner of an MLP. These investments may not be taxed as partnerships for U.S. federal income tax purposes. Conflicts of interest may exist among unit holders, subordinated unit holders and the general partner of an MLP, including those arising from incentive distribution payments. General Partners typically have limited fiduciary duties to an MLP, which could allow a general partner to favor its own interests over the MLP's interests. Additionally, general partners of MLPs often have limited call rights that may require MLP unit holders to sell their common units at an undesirable time or price.

Holders of MLP securities have limited control and voting rights on matters affecting the partnership. Holders of securities issued by a MLP are exposed to a remote possibility of liability for all of the obligations of that MLP in the event that a court determines that the rights of the holders of MLP securities to vote to remove or replace the general partner of that MLP, to approve amendments to that MLP's partnership agreement, or to take other action under the partnership agreement of that MLP would constitute "control" of the business of that MLP, or a court or governmental agency determines that the MLP is conducting business in a state without complying with the partnership statute of that state. Holders of MLP securities are also exposed to the risk that they will be required to repay amounts to the MLP that are wrongfully distributed to them.

Investments in MLP securities also present special tax risks. For example, if an MLP does not meet current legal requirements to maintain its partnership status, or if it is unable to do so because of tax or other law changes, it would be treated as a corporation for U.S. federal income tax purposes. In that case, the MLP would be obligated to pay U.S. federal income tax at corporate rates (as well as state and local taxes) at the entity level on its taxable income and distributions received by the Trust would be taxable to the Trust as dividend income to the extent of the MLP's current and accumulated earnings and profits for federal tax purposes. The classification of an MLP as a corporation for U.S. federal income tax purposes could have the effect of reducing the amount of cash available for distribution by the MLP and the value of the Trust's investment in any such MLP. As a result, the value of the Trust's shares and the cash available for distribution to Trust shareholders could be materially reduced.

The Trust intends to limit its investments in MLPs and related entities to the extent necessary to qualify as a RIC for tax purposes. In general, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in qualified publicly-traded partnerships.

Life Settlement Investments

The Trust may invest in life settlements, which are the transfers of the beneficial interest in a life insurance policy by the underlying insured person to a third party. The Trust will generally purchase the beneficial interest in a life insurance policy for more than its cash surrender value but at a discount to its face value (i.e., the payment amount set forth in the life insurance policy that is payable on the death of the insured or upon maturity of the life insurance policy). After purchase the Trust will be responsible for premiums payable on the life insurance policy and will be entitled to receive the full face value from the insurance company upon maturation (i.e., upon the death of the insured). Accordingly, if the Trust is unable to make premium payments on a purchased life insurance policy due to liquidity issues or for any other reason, the policy will lapse, and the Trust will lose its ownership interest in the policy. In addition, the Trust's investments in life settlement policies involve certain additional risks, including inaccurate estimations of life expectancy of the insured individuals, liquidity risk, credit risk of the insurance company, risks of any policies purchased being unenforceable and risks of adverse regulatory and legal changes.

The actual rate of return on a life settlement policy cannot be calculated before the insured dies and the longer the insured lives, the lower the rate of return on the related life settlement policy will be. Current privacy laws may limit the information available to the Trust about insureds and may cause the Trust to inaccurately estimate the value of particular policies. The Trust's inability to predict with certainty the life expectancies of the pool of underlying insured persons tied to purchased life settlement policies may cause unanticipated delays in the collection of a substantial number of life settlement policies. Life settlements are also generally considered

illiquid because there is a limited secondary market for such policies to be bought and sold. Accordingly, the Trust may be limited in its ability to sell policies in its portfolio in a timely fashion and/or at a favorable price. In addition, if a life insurance company declares bankruptcy or otherwise is insolvent, there may not be sufficient funds for it to pay its liability, and while many states have an insurance guarantee fund to provide payments to beneficiaries of insurance companies that declare bankruptcy, the collection process can be prolonged and complicated, and collection may not be possible in all circumstances.

Life settlement policies may also be subject to contest by the issuing life insurance company. If the insurance company successfully contests a policy, the policy will be rescinded and declared void. For example, insurers may refuse to pay benefits on certain life insurance policies on the basis that there was no "insurable interest" on the part of the purchaser of a life insurance policy at the time such policy was issued. Recently the issue of a lack of insurable interest has been raised by insurers and beneficiaries of irrevocable life insurance trusts, in the context of so-called "stranger originated life insurance" policies. It is possible that courts may void certain life settlement policies for these or other reasons. The market for life settlement policies may also be subject to new government regulation that may impact the ability of the Trust to obtain life settlement policies. Insurance companies may seek regulation or changes of law restricting or otherwise encumbering the transfer of life insurance policies in life settlement policy transactions. No assurance can be made that insurance companies will not be successful in limiting the supply of life insurance policies available for purchase in life settlement policy transactions.

Any or all of the risks described above could have a material adverse effect on the Trust's investment returns and, therefore, on its ability to make distributions to its shareholders. In addition, it is unclear whether the income from life settlements is qualifying income for purposes of the Internal Revenue Service ("IRS") 90% gross income test the Trust must satisfy each year to qualify as a RIC. The Trust intends to monitor its investments to ensure that the Trust remains qualified as a RIC.

MANAGEMENT OF THE TRUST

Trustees

The Board provides broad oversight over the operations and affairs of the Trust and protects the interests of shareholders. The Board has overall responsibility to manage and control the business affairs of the Trust, including the complete and exclusive authority to establish policies regarding the management, conduct and operation of the Trust's business. The names and birthdates of the Trustees and officers of the Trust, the year each was first elected or appointed to office, their principal business occupations during the last five years, the number of funds overseen by each Trustee and other directorships or trusteeships they hold are shown below. The business address of the Trust, the Investment Adviser and their Board members and officers is 300 Crescent Court, Suite 700, Dallas, Texas 75201, unless otherwise specified below.

Information About Each Trustee's Experience, Qualifications, Attributes, or Skills for Board Membership

The following provides an overview of the considerations that led the Board to conclude that each individual serving as a Trustee of the Trust should so serve, as well as each Trustee's name and certain biographical information as reported by them to the Trust. Among the factors the Board considered when concluding that an individual should serve on the Board were the following: (i) the individual's business and professional experience and accomplishments; (ii) the individual's ability to work effectively with the other members of the Board; (iii) the individual's prior experience, if any, serving on company boards (including public companies and, where relevant, other investment companies) and the boards of other complex enterprises and organizations; and (iv) how the individual's skills, experiences and attributes would contribute to an appropriate mix of relevant skills and experience on the Board.

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In respect of each Trustee, the individual's professional accomplishments and prior experience, including, in some cases, in fields related to the operations of the Trust, were a significant factor in the determination that the individual should serve as a Trustee of the Trust. Each Trustee's professional experience and additional considerations that contributed to the Board's conclusion that an individual should serve on the Board are summarized in the table below.

The "Highland Funds Complex," as referred to herein consists of: the Trust, each series of Highland Funds I ("HFI"), each series of Highland Funds II ("HFII"), Highland Global Allocation Fund ("GAF"), Highland Income Fund ("HFRO"), NexPoint Event-Driven Fund ("NEDF"), NexPoint Latin American Opportunities Fund ("NLAF"), NexPoint Real Estate Strategies Fund ("NRESF"), NexPoint Strategic Income Fund ("NSIF"), NexPoint Energy and Materials Opportunities Fund ("NEMO"), NexPoint Discount Strategies Fund ("NDSF"), NexPoint Healthcare Opportunities Fund ("NHOF", and together with NEDF, NLAF, NRESF, NSIF, NEMO, and NDSF, the "Interval Funds"), and NexPoint Capital, Inc. (the "BDC"), a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

Name, Date of Birth, Position(s) with the Trust and Length of Time Served, Term of Office[1] and Number of Portfolios in the Highland Funds Complex Overseen by the Trustees	Principal Occupations(s) During the Past Five Years and Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership During the Past Five Years
Independent Trustees		
Dr. Bob Froehlich (4/28/1953) Trustee since March 2016; 3 year term (expiring at 2020 annual meeting) for the Trust. 23 funds	Retired. Trustee of ARC Realty Finance Trust, Inc. (from January 2013 to May 2016); Director of KC Concessions, Inc. (since January 2013); Trustee of Realty Capital Income Funds Trust (from January 2014 to December 2016); Director of American Realty Capital Healthcare Trust II (from January 2013 to June 2016); Director, American Realty Capital Daily Net Asset Value Trust, Inc. (from November 2012 to July 2016); Director of American Sports Enterprise, Inc. (since January 2013); Director of Davidson Investment Advisors (from July 2009 to July 2016); Chairman and owner, Kane County Cougars Baseball Club (since January 2013); Advisory Board of Directors, Internet Connectivity Group, Inc. (from January 2014 to April 2016); Director of AXAR Acquisition Corp. (formerly AR Capital Acquisition Corp.) (from October 2014 to October 2017); Director of The Midwest League of Professional Baseball Clubs, Inc.; Director of Kane County Cougars Foundation, Inc.; Director of Galen Robotics, Inc.; Chairman and Director of FC Global Realty, Inc. (from May 2017 to June 2018); Chairman and Director of First Capital Investment Corp. (from March 2017 to March 2018); and Director and Special Advisor to Vault Data, LLC (since February 2018).	Significant experience in the financial industry; significant managerial and executive experience; significant experience on other boards of directors, including as a member of several audit committees.
John Honis[2] (6/16/1958) Trustee since July 2013; 3 year term (expiring at 2021 annual meeting) for the Trust. 23 funds	President of Rand Advisors, LLC since August 2013; Partner of Highland Capital Management, L.P. ("HCM") from February 2007 until his resignation in November 2014. Manager of Turtle Bay Resort, LLC (August 2011 – December 2018); Manager of American Home Patient (November 2011 to February 2016).	Significant experience in the financial industry; significant managerial and executive experience, including experience as president, chief executive officer or chief restructuring officer of five telecommunication firms; experience on other boards of directors.

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Name, Date of Birth, Position(s) with the Trust and Length of Time Served, Term of Office[1] and Number of Portfolios in the Highland Funds Complex Overseen by the Trustees	Principal Occupations(s) During the Past Five Years and Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership During the Past Five Years
Independent Trustees		
Ethan Powell[3] (6/20/1975) Trustee since December 2013; Chairman of the Board since December 2013; 3 year term (expiring at 2022 annual meeting) for the Trust. 23 funds	Trustee of Impact Shares Funds I Trust President and Founder of Impact Shares LLC since December 2015; Trustee/Director of the Highland Funds Complex from June 2012 until July 2013 and since December 2013; Chief Product Strategist of Highland Capital Management Fund Advisors, L.P. ("HCMFA") from 2012 until December 2015; Senior Retail Fund Analyst of HCM from 2007 until December 2015 and HCMFA from its inception until December 2015; President and Principal Executive Officer of NHF from June 2012 until May 2015; Secretary of NHF from May 2015 until December 2015; Executive Vice President and Principal Executive Officer of HFI and HFII from June 2012 until December 2015; and Secretary of HFI and HFII from November 2010 to May 2015.	Significant experience in the financial industry; significant executive experience including past service as an officer of funds in the Highland Funds Complex; significant administrative and managerial experience.
Bryan A. Ward (2/4/1955) Trustee since May 2006 3 year term (expiring at 2022 annual meeting). 23 funds	Senior Advisor, CrossFirst Bank since April 2019; Private Investor, BW Consulting, LLC since 2014; Senior Manager, Accenture, LLP (a consulting firm) from 1991 until retirement in 2014. Director of Equity Metrix, LLC	Significant experience on this and/or other boards of directors/trustees; significant managerial and executive experience; significant experience as a management consultant.
Interested Trustees		
Dustin Norris[4] (1/6/1984) Trustee since February 2018; Executive Vice President since April 2019; Nominee for 3 year term expiring at 2021 annual meeting. 23 funds	Head of Distribution and Chief Product Strategist at NexPoint since March 2019; President of NexPoint Securities, Inc. (formerly, Highland Capital Funds Distributor, Inc.) since April 2018; Head of Distribution at HCMFA from November 2017 until March 2019; Secretary of HFRO, GAF, HFI and HFII from October 2017 until April 2019; Assistant Secretary of HFRO and GAF II from August 2017 to October 2017; Chief Product Strategist at HCMFA from September 2015 to March 2019; Director of Product Strategy at HCMFA from May 2014 to September 2015; Assistant Secretary of HFI and HFII from March 2017 to October 2017; Secretary of NHF from December 2015 until April 2019; Assistant Treasurer of NexPoint Real Estate Advisors, L.P. since May 2015; Assistant Treasurer of NexPoint Real Estate Advisors II, L.P. since June 2016; Assistant Treasurer of HFI and HFII from November 2012 to March 2017; Assistant Treasurer of NHF from November 2012 to December 2015; Secretary of the BDC from 2014 until April 2019; and Secretary of the Interval Funds from March 2016 until April 2019. None	Significant experience in the financial industry; significant managerial and executive experience, including experience as an officer of the Highland Funds Complex since 2012.

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1 On an annual basis, as a matter of Board policy, the Governance and Compliance Committee reviews each Trustee's performance and determines whether to extend each such Trustee's service for another year. Effective June 2013, the Board adopted a retirement policy wherein the Governance and Compliance Committee shall not recommend the continued service as a Trustee of a Board member who is older than 80 years of age at the time the Governance and Compliance Committee reports its findings to the Board.

2 Since May 1, 2015, Mr. Honis has been treated as an Independent Trustee of the Trust. Prior to that date, Mr. Honis was treated as an Interested Trustee because he was a partner of an investment adviser affiliated with the Adviser until his resignation in November 2014. As of May 31, 2019, Mr. Honis was entitled to receive aggregate severance and/or deferred compensation payments of approximately $390,000 from another affiliate of the Adviser.

In addition, Mr. Honis serves as a trustee of a trust that owns substantially all of the economic interest in an investment adviser affiliated with the Adviser. Mr. Honis indirectly receives an asset-based fee in respect of such interest, which is projected to range from $450,000-$550,000 annually. Additionally, an investment adviser controlled by Mr. Honis has entered into a shared services arrangement with an affiliate of the Adviser, pursuant to which the affiliate provides back office support in exchange for approximately $50,000 per quarter. The affiliated adviser was paid $147,000 and $208,000 in 2017 and 2018, respectively. In light of these relationships between Mr. Honis and affiliates of the Adviser, it is possible that the SEC might in the future determine Mr. Honis to be an interested person of the Trust.

3 Prior to December 8, 2017, Mr. Powell was treated as an Interested Trustee of the Trust for all purposes other than compensation and the Trust's code of ethics.

4 On February 7, 2018, Mr. Norris was appointed as an Interested Trustee of the Trust.

OFFICERS

Name, Date of Birth, Position(s) held with the Trust and Length of Time Served, Term of Office	Principal Occupations(s) During the Past Five Years
James Dondero (6/29/1962) President and Principal Executive Officer since May 2015; Indefinite Term	President of HCM, which he co-founded in 1993; Chairman of the Board of NexPoint Residential Trust, Inc. since May 2015; Portfolio Manager of NHF; GAF; Highland Energy MLP Fund, Highland Small-Cap Equity Fund and Highland Premier Growth Equity Fund (each a series of HFII); Highland Opportunistic Credit Fund (series of HFI); the BDC; and the Interval Funds.
Frank Waterhouse (4/14/1971) Treasurer since May 2015; Principal Financial Officer and Principal Accounting Officer since October 2017; Principal Executive Officer since February 2018; Indefinite Term	Partner and Chief Financial Officer of HCM; Treasurer of the Highland Funds Complex since May 2015.
Clifford Stoops (11/17/1970) Assistant Treasurer since March 2017; Indefinite Term	Chief Accounting Officer at HCM; Assistant Treasurer of the Highland Funds Complex since March 2017.

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Name, Date of Birth, Position(s) held with the Trust and Length of Time Served, Term of Office	Principal Occupations(s) During the Past Five Years
Jason Post (1/9/1979) Chief Compliance Officer since September 2015; Indefinite Term	Chief Compliance Officer for HCMFA and NexPoint since September 2015; Chief Compliance Officer and Anti-Money Laundering Officer of the Highland Funds Complex since September 2015. Prior to his current role at HCMFA and NexPoint, Mr. Post served as Deputy Chief Compliance Officer and Director of Compliance for HCM.
Dustin Norris (1/6/1984) Executive Vice President since April 2019; Indefinite Term Trustee since February 2018	Head of Distribution and Chief Product Strategist at NexPoint since March 2019; President of NexPoint Securities, Inc. since April 2018; Head of Distribution at HCMFA from November 2017 until March 2019; Chief Product Strategist at HCMFA from September 2015 to March 2019; Director of Product Strategy at HCMFA from May 2014 to September 2015; Officer of the Highland Funds Complex since November 2012.
Lauren Thedford (1/7/1989) Secretary since April 2019; Indefinite Term	Associate General Counsel at HCM since September 2017; In-House Counsel at HCM from January 2015 until September 2017; Secretary of the Highland Funds Complex since April 2019.

1 The address for each officer is c/o NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201.

Role of the Board of Trustees, Leadership Structure and Risk Oversight

The Role of the Board of Trustees

The Board oversees the management and operations of the Trust. Like most registered investment companies, the day-to-day management and operation of the Trust is performed by various service providers to the Trust, such as the Investment Adviser, and the distributor, administrator, custodian, and transfer agent. The Board has appointed senior employees of certain of these service providers as officers of the Trust, with responsibility to monitor and report to the Board on the Trust's operations. The Board receives regular reports from these officers and service providers regarding the Trust's operations. For example, the Treasurer provides reports as to financial reporting matters and investment personnel report on the performance of the Trust. The Board has appointed a Chief Compliance Officer who administers the Trust's compliance program and regularly reports to the Board as to compliance matters. Some of these reports are provided as part of formal in-person Board meetings, which are typically held quarterly, in person, and involve the Board's review of, among other items, recent Trust operations. The Board also periodically holds telephonic meetings as part of its review of the Trust's activities. From time to time one or more members of the Board may also meet with management in

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less formal settings, between scheduled Board meetings, to discuss various topics. In all cases, however, the role of the Board and of any individual Trustee is one of oversight and not of management of the day-to-day affairs of the Trust and its oversight role does not make the Board a guarantor of the Trust's investments, operations or activities.

Board Structure and Leadership

The Board has structured itself in a manner that it believes allows it to perform its oversight function effectively. The Board consists of five Trustees, four of whom are Independent Trustees. Mr. Powell serves as Chairman of the Board. The Trustees meet periodically throughout the year in person and by telephone to oversee the Trust's activities, review contractual arrangements with service providers for the Trust and review the Trust's performance. The Board conducts much of its work through certain standing Committees, each of whose meetings are chaired by an Independent Trustee: an Audit and Qualified Legal Compliance Committee, a Governance and Compliance Committee, and a Distribution and Alternatives Oversight Committee, which are discussed in greater detail below.

Audit and Qualified Legal Compliance Committee. The members of the Audit and Qualified Legal Compliance Committee (formerly named the Audit Committee) are Dr. Froehlich and Messrs. Powell and Ward, each of whom is independent for purposes of the Investment Company Act. The Audit and Qualified Legal Compliance Committee is responsible for approving the Trust's independent accountants, reviewing with the Trust's independent accountants the plans and results of the audit engagement and the adequacy of the Trust's internal accounting controls, approving professional services provided by the Trust's independent accountants. The Audit and Qualified Legal Compliance Committee is charged with compliance with Rules 205.2(k) and 205.3(c) of Title 17 of the Code of Federal Regulations regarding alternative reporting procedures for attorneys representing the Trust who appear and practice before the SEC on behalf of the Trust. The Audit and Qualified Legal Compliance Committee is also responsible for reviewing and overseeing the valuation of debt and equity securities that are not publicly traded or for which current market values are not readily available pursuant to policies and procedures adopted by the Board. The Board and Audit and Qualified Legal Compliance Committee will use the services of one or more independent valuation firms to help them determine the fair value of these securities. In addition, each member of the Audit and Qualified Legal Compliance Committee meets the current independence and experience requirements of Rule 10A-3 under the Exchange Act.

The Audit and Qualified Legal Compliance Committee met seven times during the fiscal year ended December 31, 2018. Mr. Ward acts as the Chairman of the Audit and Qualified Legal Compliance Committee and as the audit committee financial expert.

Governance and Compliance Committee. The Trust's Governance and Compliance Committee's function is to oversee and make recommendations to the full Board or the Independent Trustees, as applicable, with respect to the governance of the Trust, selection and nomination of Trustees, compensation of Trustees, and related matters. The Governance and Compliance Committee is also responsible for at least annually evaluating each Trustee and determining whether to recommend each Trustee's continued service in that capacity. The Governance and Compliance Committee will consider recommendations for Trustee nominees from shareholders sent to the Secretary of the Trust, 300 Crescent Court, Suite 700, Dallas, Texas 75201. A nomination submission must include all information relating to the recommended nominee that is required to be disclosed in solicitations or proxy statements for the election of Trustees, as well as information sufficient to evaluate the recommended nominee's ability to meet the responsibilities of a Trustee of the Trust. Nomination submissions must be accompanied by a written consent of the individual to stand for election if nominated by the Board and to serve if elected by the shareholders, and such additional information must be provided regarding the recommended nominee as reasonably requested by the Governance and Compliance Committee. The Governance and Compliance Committee is currently comprised of Dr. Froehlich and Messrs. Honis, Ward and Powell, each of whom is independent for purposes of the 1940 Act. Mr. Powell serves as the Chairman of the Governance and Compliance Committee. The Governance and Compliance Committee met three times during the fiscal year ended December 31, 2018.

The Distribution and Alternatives Oversight Committee. The members of the Distribution and Alternatives Oversight Committee are Dr. Froehlich, Messrs. Honis, Norris, Ward, and Powell. The Distribution and Alternatives Oversight Committee is responsible for overseeing any Funds that in the Board's determination employ alternative investment strategies. Dr. Froehlich serves as Chairman of the Distribution and Alternatives Oversight Committee. The Distribution and Alternatives Oversight Committee met two times during the fiscal year ended December 31, 2018.

The Board periodically reviews its leadership structure, including the role of the Chairman. The Board also completes an annual self-assessment during which it reviews its leadership and Committee structure and considers whether its structure remains appropriate in light of the Trust's current operations. The Board believes that its leadership structure, including the current percentage of the Board who are Independent Trustees, is appropriate given its specific characteristics. These characteristics include: (i) the extent to which the work of the Board is conducted through the standing committees; (ii) the extent to which the Independent Trustees meet as needed,

together with their independent legal counsel, in the absence of members of management and members of the Board who are "interested persons" of the Trust; and (iii) Mr. Powell's and Mr. Honis' previous positions with affiliates of the Investment Adviser, which enhance the Board's understanding of the operations of the Investment Adviser.

Board Oversight of Risk Management

The Board's role is one of oversight, rather than active management. This oversight extends to the Trust's risk management processes. These processes are embedded in the responsibilities of officers of, and service providers to, the Trust. For example, the Investment Adviser and other service providers to the Trust are primarily responsible for the management of the Trust's investment risks. The Board has not established a formal risk oversight committee. However, much of the regular work of the Board and its standing Committees addresses aspects of risk oversight. For example, the Trustees seek to understand the key risks facing the Trust, including those involving conflicts of interest; how management identifies and monitors these risks on an ongoing basis; how management develops and implements controls to mitigate these risks; and how management tests the effectiveness of those controls.

In the course of providing that oversight, the Board receives a wide range of reports on the Trust's activities from the Investment Adviser and other service providers, including reports regarding the Trust's investment portfolio, the compliance of the Trust with applicable laws, and the Trust's financial accounting and reporting. The Board also meets periodically with the Trust's Chief Compliance Officer to receive reports regarding the compliance of the Trust with the federal securities laws and the Trust's internal compliance policies and procedures and meets with the Trust's Chief Compliance Officer periodically, including at least annually, to review the Chief Compliance Officer's annual report, including the Chief Compliance Officer's risk-based analysis for the Trust. The Board's Audit Committee also meets regularly with the Treasurer and the Trust's independent public accounting firm to discuss, among other things, the internal control structure of the Trust's financial reporting function. The Board also meets periodically with the portfolio managers of the Trust to receive reports regarding the management of the Trust, including its investment risks.

The Board recognizes that not all risks that may affect the Trust can be identified, that it may not be practical or cost-effective to eliminate or mitigate certain risks, that it may be necessary to bear certain risks (such as investment-related risks) to achieve the Trust's goals, that reports received by the Trustees with respect to risk management matters are typically summaries of the relevant information, and that the processes, procedures and controls employed to address risks may be limited in their effectiveness. As a result of the foregoing and other factors, risk management oversight by the Board and by the Committees is subject to substantial limitations.

Compensation of Trustees

The officers of the Trust and those of its Trustees who are "interested persons" (as defined in the 1940 Act) of the Trust receive no direct remuneration from the Trust. The following table sets forth the aggregate compensation paid to each of the Trustees who is not an "interested person" (as defined in the 1940 Act) of the Trust (the "Independent Trustees") by the Trust and the total compensation paid to each of the Trustees by the Highland Funds Complex for the fiscal year ended December 31, 2018.

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The following table summarizes the compensation paid by the Trust to the Independent Trustees and the aggregate compensation paid by the Fund Complex to the Independent Trustees for the fiscal year ended December 31, 2018.

Name of Trustee	Aggregate Compensation From the Trust	Pension or Retirement Benefits Accrued as Part of the Trust's Expense	Estimated Annual Benefits Upon Retirement	Aggregate Compensation from the Highland Funds Complex
Independent Trustees				
Timothy K. Hui[1]	$ 26,810.30	$ 0	$ 0	$ 150,000
Bryan A. Ward[2]	$ 28,844.46	$ 0	$ 0	$ 160,000
Dr. Bob Froehlich	$ 26,810.30	$ 0	$ 0	$ 150,000
John Honis[3]	$ 26,810.30	$ 0	$ 0	$ 150,000
Ethan Powell[2,4]	$ 28,844.46	$ 0	$ 0	$ 160,000
Interested Trustee				
Dustin Norris[5]	N/A	N/A	N/A	N/A

1 Effective March 31, 2019, Mr. Hui resigned as an Independent Trustee of the Trust. Mr. Hui's resignation was related to a reduction in the size of the Board to five members. There were no material conflicts, disagreements or other issues between Mr. Hui, the Board of Trustees or NexPoint.
2 Effective December 31, 2018, the Board approved an aggregate compensation increase of $10,000 payable to each of the Chairman of the Audit Committee and the Chairman of the Board.
3 Effective May 1, 2015, Mr. Honis is treated as an Independent Trustee of the Trust.
4 Prior to December 8, 2017, Mr. Powell was treated as an Interested Trustee of the Trust for all purposes other than compensation and the Trust's code of ethics.
5 On February 7, 2018, Mr. Norris was appointed an Interested Trustee of the Trust.

Share Ownership

The following table shows the dollar range of equity securities beneficially owned by the Trustees in the Trust and the aggregate dollar range of equity securities owned by the Trustees in all funds overseen by the Trustees in the Highland Funds Complex as of June 30, 2018.

Name of Trustee	Dollar Range of Equity Securities in the Trust	Aggregate Dollar Range of Equity Securities Owned in All Funds of the Highland Fund Complex[1] Overseen by Trustee
Independent Trustees		
Ethan Powell[1]	Over $ 100,000	Over $ 100,000
John Honis[2]	None	None
Dr. Bob Froehlich	None	Over $ 100,000
Bryan A. Ward	$1-$10,000	Over $ 100,000
Interested Trustee		
Dustin Norris[3]	Over $ 100,000	Over $ 100,000

1 Prior to December 8, 2017, Mr. Powell was treated as an Interested Trustee of the Trust for all purposes other than compensation and the Trust's code of ethics.
2 Effective May 1, 2015, Mr. Honis is treated as an Independent Trustee of the Trust.
3 On February 7, 2018, Mr. Norris was appointed an Interested Trustee of the Trust.

Proxy Voting Policies and Procedures

The Board has delegated the voting of proxies for Trust securities to the Investment Adviser pursuant to the Investment Adviser's proxy voting policies and procedures. Under these policies and procedures, the Investment Adviser will vote proxies related to Trust securities in the best interests of the Trust and its shareholders. A copy of the Investment Adviser's proxy voting policies and procedures is attached as Appendix B to this SAI. The Trust's proxy voting record for the most recent 12- month period ending June 30 is available (i) without charge, upon request, by calling 1-866-351-4440 and (ii) on the SEC's web site (http://www.sec.gov).

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Codes of Ethics

The Trust and the Investment Adviser have adopted codes of ethics under Rule 17j-1 of the Investment Company Act. These codes permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Trust. These codes can be reviewed and copied at the SEC's Public Reference Room in Washington, D.C. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-202-551-8090. The codes of ethics are available on the EDGAR Database on the SEC's web site (http://www.sec.gov), and copies of these codes may be obtained, after paying a duplicating fee, by electronic request at the following e-mail address: publicinfo@sec.gov, or by writing the SEC's Public Reference Section, Washington, D.C. 20549-0102.

Investment Adviser

Effective June 14, 2012, NexPoint Advisors, L.P. became the investment adviser and administrator to the Trust. Prior to June 14, 2012, HCMFA (formerly Pyxis Capital, L.P.) was the investment adviser and administrator to the Trust. For a description of the Investment Adviser, including a description of its controlling persons, see "Management of the Trust—Investment Adviser" in the Trust's Prospectus.

As described in more detail in the Trust's Prospectus, in return for its advisory services, the Investment Adviser receives an annual fee, payable monthly, in an amount equal to 1.00% of the average weekly value of the Trust's Managed Assets (the "Advisory Fee"). The accrued fees are payable monthly as promptly as possible after the end of each month during which the investment advisory agreement is in effect.

Pursuant to the investment advisory agreement, the Trust has paid the following amounts as Advisory Fees to the Investment Adviser for the past three fiscal years:

2016	2017	2018
$5,419,265	$5,853,721	$8,590,032

Administration Services

As described in more detail in the Trust's Prospectus, in return for its administrative services, the Investment Adviser receives an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Trust's Managed Assets. Pursuant to the Trust's administration services agreement, the Investment Adviser performs the following services: (i) prepare monthly security transaction listings; (ii) supply various normal and customary portfolio and Trust statistical data as requested on an ongoing basis; (iii) prepare for execution and file the Trust's Federal and state tax returns: prepare a fiscal tax provision in coordination with the annual audit; prepare an excise tax provision; and prepare all relevant 1099 calculations; (iv) coordinate contractual relationships and communications between the Trust and its contractual service providers; (v) coordinate printing of the Trust's annual and semi-annual shareholder reports; (vi) prepare income and capital gain distributions; (vii) prepare the semiannual and annual financial statements; (viii) monitor the Trust's compliance with Internal Revenue Code, SEC and Prospectus requirements; (ix) prepare, coordinate with the Trust's counsel and coordinate the filing with the SEC: annual reports on Form N-CEN and semi-annual reports on Form N-CSR; Form N-PORT; and Form N-PX based upon information provided by the Trust; assist in the preparation of Forms 3, 4 and 5 pursuant to Section 16 of the Securities Exchange Act of 1934, as amended, and Section 30(h) of the Investment Company Act for the officers and trustees of the Trust, such filings to be based on information provided by those persons; (x) assist in the preparation of notices of meetings of shareholders and coordinate preparation of proxy statements; (xi) assist in obtaining the fidelity bond and trustees' and officers'/errors and omissions insurance policies for the Trust in accordance with the requirements of Rule 17g-1 and 17d-1(d)(7) under the Investment Company Act; (xii) monitor the Trust's assets to assure adequate fidelity bond coverage is maintained; (xiii) draft agendas and resolutions for quarterly and special Board meetings; (xiv) coordinate the preparation, assembly and mailing of Board materials; (xv) attend Board meetings and draft minutes thereof; (xvi) maintain the Trust's corporate calendar to assure compliance with various filing and Board approval deadlines; (xvii) assist the Trust in the handling of SEC examinations and responses thereto; (xviii) assist the Trust's chief executive officer and chief financial officer in making certifications required under the SEC's disclosure forms; (xix) prepare and coordinate the Trust's state notice filings; (xx) furnish the Trust office space in the offices of the Investment Adviser, or in such other place or places as may be agreed from time to time, and all necessary office facilities, simple business equipment, supplies, utilities and telephone service for managing the affairs of the Trust; (xxi) perform clerical, bookkeeping and other administrative services not provided by the Trust's other service providers; (xxii) determine or oversee the determination and publication of the Trust's NAV in accordance with the Trust's policies as adopted from time to time by the Board; (xxiii) oversee the maintenance by the Trust's custodian and transfer agent and dividend disbursing agent of certain books and records of the Trust as required under Rule 31a-1(b)(2)(iv) of the Investment Company Act and maintain (or oversee maintenance by such

other persons as approved by the Board) such other books and records required by law or for the proper operation of the Trust; (xxiv) determine the amounts available for distribution as dividends and distributions to be paid by the Trust to its shareholders; calculate, analyze and prepare a detailed income analysis and forecast future earnings for presentation to the Board; prepare and arrange for the printing of dividend notices to shareholders, as applicable, and provide the Trust's dividend disbursing agent and custodian with such information as is required for such parties to effect the payment of dividends and distributions and to implement the Trust's dividend reinvestment plan; (xxv) serve as liaison between the Trust and each of its service providers; (xxvi) assist in monitoring and tracking the daily cash flows of the individual assets of the Trust, as well as security position data of portfolio investments; assist in resolving any identified discrepancies with the appropriate third party, including the Trust's custodian, administrative agents and other service providers, through various means including researching available data via agent notices, financial news and data services, and other sources; (xxvii) monitor compliance with leverage tests under the Trust's credit facility, and communicate with leverage providers and rating agencies; (xxviii) coordinate negotiation and renewal of credit agreements for presentation to the Board; (xxix) coordinate negotiations of agreements with counterparties and the Trust's custodian for derivatives, short sale and similar transactions, as applicable; (xxx) provide assistance with the settlement of trades of portfolio securities; (xxxi) coordinate and oversee the provision of legal services to the Trust; (xxxii) cooperate with the Trust's independent registered public accounting firm in connection with audits and reviews of the Trust's financial statements, including interviews and other meetings, and provide necessary information and coordinate confirmations of bank loans and other assets for which custody is not through DTC, as necessary; (xxxiii) provide Secretary and any Assistant Secretaries, Treasurer and any Assistant Treasurers and other officers for the Trust as requested; (xxxiv) develop or assist in developing compliance guidelines and procedures; (xxxv) investigate and research customer and other complaints to determine liability, facilitate resolution and promote equitable treatment of all parties; (xxxvi) determine and monitor expense accruals for the Trust; (xxxvii) authorize expenditures and approve bills for payment on behalf of the Trust; (xxxviii) monitor the number of shares of the Trust registered and assist in the registration of additional shares, as necessary; (xxxix) prepare such reports as the Board may request from time to time; (xl) administer and oversee any securities lending program of the Trust; and (xli) perform such additional administrative duties relating to the administration of the Trust as may subsequently be agreed upon in writing between the Trust and the Investment Adviser. The Investment Adviser shall have the authority to engage a sub-administrator in connection with the administrative services of the Trust, which sub-administrator may be an affiliate of the Investment Adviser; provided, however, that the Investment Adviser shall remain responsible to the Trust with respect to its duties and obligations set forth in the administration services agreement. Accordingly, under a separate sub-administration services agreement, dated July 19, 2018, as amended from time to time, the Investment Adviser has delegated certain administrative functions to SEI Investments Global Funds Services.

Pursuant to the administration services agreement, the Trust has paid the following amounts as Administration Fees to the Investment Adviser and HCMFA for the past three fiscal years:

Administration Fees

2016	2017	2018
$1,083,853	$1,170,744	$959,793

Portfolio Manager

The portfolio manager of the Trust is James Dondero.

As of June 30, 2019, Mr. Dondero managed the following client accounts:

Type of Account	Number of Accounts Managed	Total Assets (millions)	Number of Accounts Managed Subject to Performance-Based Advisory Fee	Total Assets Subject to Performance-Based Advisory Fee (millions)
Registered Investment Companies:	11	$ 1,760	1	$ 91
Other Pooled Investment Vehicles:	2	$ 1,046	2	$ 1,046
Other Accounts:	0	$ 0	0	$ 0

Because the portfolio manager manages other accounts, including accounts that may pay higher fees, potential conflicts of interest exist, including potential conflicts between the investment strategy of the Trust and the investment strategy of the other accounts managed by the portfolio manager and potential conflicts in the allocation of investment opportunities between the Trust and the other accounts.

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The Investment Adviser has built a professional working environment, a firm-wide compliance culture and compliance procedures and systems designed to protect against potential incentives that may favor one account over another. The Investment Adviser has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, the Investment Adviser furnishes advisory services to numerous clients in addition to the Trust, and the Investment Adviser may, consistent with applicable law, make investment recommendations to other clients or accounts (including accounts which are hedge funds or have performance or higher fees paid to the Investment Adviser, or in which portfolio managers have a personal interest in the receipt of such fees), which may be the same as or different from those made to the Trust. In addition, the Investment Adviser, its affiliates and any officer, director, stockholder or employee may or may not have an interest in the securities whose purchase and sale the Investment Adviser recommends to the Trust. Actions with respect to securities of the same kind may be the same as or different from the action which the Investment Adviser, or any of its affiliates, or any officer, director, stockholder, employee or any member of their families may take with respect to the same securities. Moreover, the Investment Adviser may refrain from rendering any advice or services concerning securities of companies of which any of the Investment Adviser's (or its affiliates') officers, directors or employees are directors or officers, or companies as to which the Investment Adviser or any of its affiliates or the officers, directors and employees of any of them has any substantial economic interest or possesses material non-public information. In addition to its various policies and procedures designed to address these issues, the Investment Adviser includes disclosure regarding these matters to its clients in both its Form ADV and investment advisory agreements.

The Investment Adviser, its affiliates or their officers and employees serve or may serve as officers, directors or principals of entities that operate in the same or related lines of business or of investment funds managed by affiliates of the Investment Adviser. Accordingly, these individuals may have obligations to investors in those entities or funds or to other clients, the fulfillment of which might not be in the best interests of the Trust. As a result, the Investment Adviser will face conflicts in the allocation of investment opportunities to the Trust and other funds and clients. In order to enable such affiliates to fulfill their fiduciary duties to each of the clients for which they have responsibility, the Investment Adviser will endeavor to allocate investment opportunities in a fair and equitable manner which may, subject to applicable regulatory constraints, involve pro rata co-investment by the Trust and such other clients or may involve a rotation of opportunities among the Trust and such other clients.

The Investment Adviser and its affiliates have both subjective and objective procedures and policies in place designed to manage the potential conflicts of interest between the Investment Adviser's fiduciary obligations to the Trust and their similar fiduciary obligations to other clients so that, for example, investment opportunities are allocated in a fair and equitable manner among the Trust and such other clients. An investment opportunity that is suitable for multiple clients of the Investment Adviser and its affiliates may not be capable of being shared among some or all of such clients due to the limited scale of the opportunity or other factors, including regulatory restrictions imposed by the Investment Company Act. There can be no assurance that the Investment Adviser's or its affiliates' efforts to allocate any particular investment opportunity fairly among all clients for whom such opportunity is appropriate will result in an allocation of all or part of such opportunity to the Trust. Not all conflicts of interest can be expected to be resolved in favor of the Trust.

Under current SEC guidance, the Trust may be prohibited from co-investing with certain of its affiliates in some types of private placement transactions (see Co-Investment Opportunities, below, for more information).

Compensation

The Investment Adviser's financial arrangements with its portfolio managers, its competitive compensation and its career path emphasis at all levels reflect the value senior management places on key resources. Compensation may include a variety of components and may vary from year to year based on a number of factors including the relative performance of a portfolio managers' underlying account, the combined performance of the portfolio managers underlying accounts, and the relative performance of the portfolio managers underlying accounts measured against other employees. The principal components of compensation include a base salary, a discretionary bonus and various retirement benefits.

Base Compensation. Generally, portfolio managers receive base compensation based on their seniority and/or their position with the firm, which may include the amount of assets supervised and other management roles within the firm. Base compensation is determined by taking into account current industry norms and market data to ensure that the Investment Adviser pays a competitive base compensation.

Discretionary Compensation. In addition to base compensation, portfolio managers may receive discretionary compensation, which can be a substantial portion of total compensation. Discretionary compensation can include a discretionary cash bonus paid to recognize specific business contributions and to ensure that the total level of compensation is competitive with the market, as well as participation in incentive plans.

Because each person's compensation is based on his or her individual performance, the Investment Adviser does not have a typical percentage split among base salary, bonus and other compensation. Senior portfolio managers who perform additional management functions may receive additional compensation in these other capacities. Compensation is structured such that key professionals benefit from remaining with the Investment Adviser. The Investment Adviser believes it is in the best interest of shareholders to maintain stability of portfolio management personnel.

Conflicts of Interest

From time to time, potential and actual conflicts of interest may arise between the portfolio manager's management of the investments of the Trust, on the one hand, and the management of other accounts, on the other. Potential and actual conflicts of interest may also arise as a result of the Investment Adviser's other business activities and the Investment Adviser's possession of material non-public information about an issuer. Other accounts managed by the portfolio manager might have similar investment objectives or strategies as the Trust, or otherwise hold, purchase, or sell securities that are eligible to be held, purchased or sold by the Trust. The other accounts might also have different investment objectives or strategies than the Trust.

Knowledge and Timing of Trust Trades. A potential conflict of interest may arise as a result of the portfolio manager's day-to-day management of the Trust. Because of his position with the Trust, the portfolio manager knows the size, timing and possible market impact of the Trust's trades. It is theoretically possible that the portfolio manager could use this information to the advantage of other accounts he manages and to the possible detriment of the Trust.

Investment Opportunities. A potential conflict of interest may arise as a result of the portfolio manager's management of a number of accounts with varying investment guidelines. Often, an investment opportunity may be suitable for both the Trust and other accounts managed by the portfolio manager, but may not be available in sufficient quantities for both the Trust and the other accounts to participate fully. Similarly, there may be limited opportunity to sell an investment held by the Trust and another account. The Investment Adviser has adopted policies and procedures reasonably designed to allocate investment opportunities on a fair and equitable basis over time.

Under the Investment Adviser's allocation procedures, investment opportunities are allocated among various investment strategies based on individual account investment guidelines and the Investment Adviser's investment outlook. The Investment Adviser has also adopted additional procedures to complement the general trade allocation policy that are designed to address potential conflicts of interest due to the side-by-side management of the Trust and certain pooled investment vehicles, including investment opportunity allocation issues.

Conflicts potentially limiting the Trust's investment opportunities may also arise when the Trust and other clients of the Investment Adviser invest in different parts of an issuer's capital structure, such as when the Trust owns senior debt obligations of an issuer and other clients own junior tranches of the same issuer, or when the Trust owns debt securities of an issuer and other clients own equity securities of the same issuer. In such circumstances, if the issuer experiences financial or operational challenges, decisions over whether to trigger an event of default, over the terms of any workout, or how to exit an investment may result in conflicts of interest (including, for example, conflicts over proposed waivers and amendments to debt covenants). For example, a debt holder may be better served by a liquidation of the issuer in which it may be paid in full, whereas an equity holder might prefer a reorganization that holds the potential to create value for the equity holders. In addition, the Investment Adviser may also, in certain circumstances, pursue or enforce rights with respect to a particular issuer jointly on behalf of one or more of its clients, or the Investment Adviser's personnel may work together to pursue or enforce such rights. Certain clients may be negatively impacted by the Investment Adviser's activities on behalf of its other clients, and transactions on behalf of some clients may be impaired or effected at prices or terms that may be less favorable than would otherwise have been the case. In order to minimize such conflicts, the portfolio manager may avoid certain investment opportunities that would potentially give rise to conflicts with other clients of the Investment Adviser or the Investment Adviser may enact internal procedures designed to minimize such conflicts, which could have the effect of limiting the Trust's investment opportunities.

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Additionally, if the Investment Adviser acquires material non-public confidential information in connection with its business activities for other clients, the portfolio manager may be restricted from purchasing securities or selling securities for the Trust. When making investment decisions where a conflict of interest may arise, the Investment Adviser will endeavor to act in a fair and equitable manner as between the Trust and other clients; however, in certain instances the resolution of the conflict may result in the Investment Adviser acting on behalf of another client in a manner that may not be in the best interest, or may be opposed to the best interest, of the Trust.

Performance Fees. The portfolio manager may advise certain accounts with respect to which the advisory fee is based entirely or partially on performance. Performance fee arrangements may create a conflict of interest for the portfolio manager in that the portfolio manager may have an incentive to allocate the investment opportunities that he believes might be the most profitable to such other accounts instead of allocating them to the Trust. The Investment Adviser has adopted policies and procedures reasonably designed to allocate investment opportunities between the Trust and such other accounts on a fair and equitable basis over time.

Co-Investment Opportunities

The Trust expects in the future to co-invest on a concurrent basis with other affiliates, unless doing so is impermissible under existing regulatory guidance, applicable regulations and our allocation procedures. The Trust, HCMFA and the Investment Adviser have obtained an exemptive order dated April 19, 2016 from the SEC to permit co-investments among the Trust and other accounts managed by the Investment Adviser or its affiliates, subject to certain conditions.

Securities Ownership of Portfolio Manager

The following table sets forth the dollar range of equity securities of the Trust beneficially owned by the portfolio manager as of June 30, 2019.

Name of Portfolio Manager	Dollar Range of Equity Securities in the Trust
James Dondero	Over $1,000,000

PORTFOLIO TRANSACTIONS AND BROKERAGE

Selection of Broker-Dealers; Order Placement

Subject to the overall review of the Board, the Investment Adviser is responsible for decisions to buy and sell securities and other portfolio holdings of the Trust, for selecting the broker or dealer to be used, and for negotiating any commission rates paid. In underwritten offerings, securities usually are purchased at a fixed price that includes an amount of compensation to the underwriter, generally referred to as the underwriter's concession or discount. On occasion, certain money market instruments may be purchased directly from an issuer, in which case no commissions or discounts are paid.

The Investment Adviser and its affiliates manage other accounts, including private funds and individual accounts that invest in senior loans and Trust investments. Although investment decisions for the Trust are made independently from those of such other accounts, investments of the type the Trust may make also may be made on behalf of such other accounts. When the Trust and one or more other accounts is prepared to invest in, or desires to dispose of, the same investment, available investments or opportunities for each are allocated in a manner believed by the Investment Adviser to be equitable over time. The Investment Adviser may (but is not obligated to) aggregate orders, which may include orders for accounts in which the Investment Adviser or its affiliates have an interest, to purchase and sell securities to obtain favorable execution or lower brokerage commissions, to the extent permitted by applicable laws and regulations. Although the Investment Adviser believes that, over time, the potential benefits of participating in volume transactions and negotiating lower transaction costs should benefit all participating accounts, in some cases these activities may adversely affect the price paid or received or the size of the position obtained by or disposed of for the Trust. Where trades are aggregated, the investments or proceeds, as well as the expenses incurred, will be allocated by the Investment Adviser in a manner designed to be equitable and consistent with the Investment Adviser's fiduciary duty to the Trust and its other clients (including its duty to seek to obtain best execution of client trades).

Commission Rates; Brokerage and Research Services

In placing orders for the Trust's portfolio, the Investment Adviser is required to give primary consideration to obtaining the most favorable price and efficient execution. This means that the Investment Adviser will seek to execute each transaction at a price and commission, if any, which provides the most favorable total cost or proceeds reasonably attainable in the circumstances. In seeking the most favorable price and execution, the Investment Adviser, having in mind the Trust's best interests, will consider all

factors it deems relevant, including, by way of illustration: price; the size, type and difficulty of the transaction; the nature of the market for the security; the amount of the commission; the timing of the transaction taking into account market prices and trends; operational capabilities; the reputation, experience and financial stability of the broker-dealer involved; and the quality of service rendered by the broker-dealer in other transactions. Though the Investment Adviser generally seeks reasonably competitive commissions or spreads, the Trust will not necessarily be paying the lowest commission or spread available. The Investment Adviser may place portfolio transactions, to the extent permitted by law, with brokerage firms participating in a distribution of the Trust's shares if it reasonably believes that the quality of execution and the commission are comparable to that available from other qualified firms.

The Investment Adviser seeks to obtain "best execution" considering the execution price and overall commission costs paid and other factors. The Investment Adviser routes its orders to various broker-dealers for execution at its discretion. Factors involved in selecting brokerage firms include the size, type and difficulty of the transaction, the nature of the market for the security, the reputation, experience and financial stability of the broker-dealer involved, the quality of service, the quality of research and investment information provided and the firm's risk in positioning a block of securities. Within the framework of the policy of obtaining the most favorable price and efficient execution, the Investment Adviser does consider "brokerage and research services" (as defined in the Securities Exchange Act of 1934, as amended) provided by brokers who effect portfolio transactions with the Investment Adviser or the Trust. "Brokerage and research services" are services that brokerage houses customarily provide to institutional investors and include statistical and economic data and research reports on particular issuers and industries.

Affiliated Brokers; Regular Broker-Dealers

The Investment Adviser is currently affiliated with NexBank Securities, Inc. ("NexBank"), a Financial Industry Regulatory Authority ("FINRA") member broker-dealer that is indirectly controlled by the principals of the Investment Adviser. Absent an exemption from the SEC or other regulatory relief, the Trust is generally precluded from effecting certain principal transactions with affiliated brokers. The Trust may utilize affiliated brokers for agency transactions subject to compliance with policies and procedures adopted pursuant to Rule 17e-1 under the Investment Company Act. These policies and procedures are designed to provide that commissions, fees or other remuneration received by any affiliated broker or its affiliates for agency transactions are reasonable and fair compared to the remuneration received by other brokers in comparable transactions.

During the fiscal years ended December 31, 2016, December 31, 2017 and December 31, 2018, the Trust paid brokerage commissions of $290,318, $557,751 and $521,016, respectively, of which $0 was paid to NexBank.

There were no payments made to other brokers by the Trust during the fiscal year ended December 31, 2018 that were directed at least partially on the basis of research services they provided.

During the fiscal year ended December 31, 2018, the Trust did not acquire any securities of its regular brokers or dealers. At that date, the Trust did not hold any securities of its regular brokers or dealers. For these purposes, regular brokers or dealers are (a) the brokers or dealers that received the greatest dollar amount of brokerage commissions by virtue of direct or indirect participation in the Trust's portfolio transactions during the Trust's most recent fiscal year, (b) the brokers or dealers that engaged as principal in the largest dollar amount of portfolio transactions of the Trust during the Trust's most recent fiscal year, or (c) the brokers or dealers that sold the largest dollar amount of securities of the Trust during the Trust's most recent fiscal year.

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CONTROL PERSONS AND PRINCIPAL HOLDERS OF SECURITIES

The following table sets forth, as of June 30, 2019, the beneficial ownership of each of our directors, executive officers, each person known to us to beneficially own 5% or more of the outstanding shares of our common stock, and the executive officers and directors as a "group," as the term is defined in Section 13(d) of the 1934 Act.

Name and Address on Account	% of Shares
Morgan Stanley 2000 Westchester Avenue Purchase, NY 10577-2530	14.83%
Wells CLRG One North Jefferson Avenue Mail Code: H0004-050 St. Louis, MO 63103	10.72%
National Financial Services LLC For exclusive benefit of our customers 499 Washington Blvd. Attn. Mutual Funds Dept. 4th Floor Jersey City, NJ 07310	9.79%
Pershing One Pershing Plaza Jersey City, NJ 07399	7.55%
Charles Schwab 211 Main Street San Francisco, CA 94105 States	5.77%

REPURCHASE OF COMMON SHARES

The Trust is a closed-end management investment company and as such its shareholders will not have the right to cause the Trust to redeem their shares. Instead, the Trust's common shares will trade in the open market at a price that will be a function of several factors, including dividend levels (which are in turn affected by performance and expenses), NAV, call protection, dividend stability, relative demand for and supply of such shares in the market, general market and economic conditions and other factors. Because shares of a closed-end investment company may frequently trade at prices lower than NAV, the Board may consider action that might be taken to reduce or eliminate any material discount from NAV in respect of common shares, which may include the repurchase of such shares in the open market or in private transactions, the making of a tender offer for such shares, or the conversion of the Trust to an open-end investment company. The Board may decide not to take any of these actions. In addition, there can be no assurance that share repurchases or tender offers, if undertaken, will reduce market discount. On November 2, 2016, the Board approved a share repurchase program pursuant to which the Trust may repurchase, over a six-month period beginning on December 1, 2016, up to $10 million of its shares of its outstanding shares in open-market transactions. In connection with the May 8, 2017 rights offering, the Board approved the extension of the Repurchase Program for a period of one year from the closing of the rights offering. As of the date of the Prospectus, the Trust has not completed any repurchases.

Notwithstanding the foregoing, at any time when there are outstanding borrowings, the Trust may not purchase, redeem or otherwise acquire any of its common shares unless (i) all accrued preferred shares dividends have been paid and (ii) at the time of such purchase, redemption or acquisition, the NAV of the Trust's portfolio (determined after deducting the acquisition price of the common shares) is at least 200% of the liquidation value of the outstanding borrowings. Any service fees incurred in connection with any tender offer made by the Trust will be borne by the Trust and will not reduce the stated consideration to be paid to tendering shareholders.

Subject to its investment restrictions, the Trust may borrow to finance the repurchase of shares or to make a tender offer. Interest on any borrowings to finance share repurchase transactions or the accumulation of cash by the Trust in anticipation of share repurchases or tenders will reduce the Trust's net income. Any share repurchase, tender offer or borrowing that might be approved by the Board would have to comply with the Securities Exchange Act of 1934, as amended, the Investment Company Act and the rules and regulations thereunder.

Although the decision to take action in response to a discount from NAV will be made by the Board at the time it considers such issue, it is the Board's present policy, which may be changed by the Board, not to authorize repurchases of common

shares or a tender offer for such shares if: (1) such transactions, if consummated, would (a) result in the delisting of the common shares from the New York Stock Exchange, or (b) impair the Trust's eligibility for treatment as a RIC under the Code (which could cause the Trust's income to be taxed at the corporate level in addition to the taxation of shareholders who receive dividends from the Trust), or as a registered closed-end investment company under the Investment Company Act; (2) the Trust would not be able to liquidate portfolio securities in an orderly manner and consistent with the Trust's investment objectives and policies in order to repurchase shares; or (3) there is, in the Board's judgment, any (a) material legal action or proceeding instituted or threatened challenging such transactions or otherwise materially adversely affecting the Trust, (b) general suspension of or limitation on prices for trading securities on the New York Stock Exchange, (c) declaration of a banking moratorium by federal or state authorities or any suspension of payment by U.S. or New York banks, (d) material limitation affecting the Trust or the issuers of its portfolio securities by federal or state authorities on the extension of credit by lending institutions or on the exchange of foreign currency, (e) commencement of war, armed hostilities or other international or national calamity directly or indirectly involving the United States or (f) other event or condition which would have a material adverse effect (including any adverse tax effect) on the Trust or its shareholders if shares were repurchased. The Board may in the future modify these conditions in light of experience.

The repurchase by the Trust of its shares at prices below NAV will result in an increase in the NAV of those shares that remain outstanding. However, there can be no assurance that share repurchases or tender offers at or below NAV will result in the Trust's shares trading at a price equal to their NAV. Nevertheless, the fact that the Trust's shares may be the subject of repurchase or tender offers from time to time, or that the Trust may be converted to an open-end investment company, may reduce any spread between market price and NAV that might otherwise exist.

Before deciding whether to take any action if the common shares trade below NAV, the Board would likely consider all relevant factors, including the extent and duration of the discount, the liquidity of the Trust's portfolio, the impact of any action that might be taken on the Trust or its shareholders and market considerations. Based on these considerations, even if the Trust's shares should trade at a discount, the Board may determine that, in the interest of the Trust and its shareholders, no action should be taken.

If the Board determines to repurchase common shares in a private transaction or to make a tender offer for the common shares, the terms of any such offer may require a selling or tendering (as applicable) shareholder to sell or tender (and thus effectively sell) all of his or her or its common shares held, or considered to be held under certain attribution rules of the Code, by such shareholder. Shareholders who sell (in a private repurchase transaction) or successfully tender and effectively sell (pursuant to a tender offer) to the Trust all common shares held or considered to be held by them generally will be treated as having sold their shares and generally will realize a capital gain or loss. If a shareholder sells or tenders and effectively sells, as applicable, fewer than all of his or her common shares, such shareholder may be treated as having received a distribution under Section 301 of the Code ("Section 301 distribution") unless such distribution is treated as being either (i) "substantially disproportionate" with respect to such shareholder or (ii) otherwise "not essentially equivalent to a dividend" under the relevant rules of the Code. A Section 301 distribution is not treated as a sale or exchange giving rise to a capital gain or loss, but rather is treated as a dividend to the extent supported by the Fund's current and accumulated earnings and profits, with the excess treated as a return of capital reducing the shareholder's tax basis in Fund shares, and thereafter as capital gain. Where a redeeming shareholder is treated as receiving a dividend, there is a risk that remaining shareholders whose percentage share interests in the Trust increase as a result of such sale or tender by the other shareholder will be treated as having received a taxable distribution from the Trust. The extent of such risk will vary depending upon the particular circumstances of the private repurchase or tender offer, in particular whether such offer is a single and isolated event or is part of a plan for periodically redeeming the common shares of the Trust; if isolated, any such risk is likely remote. If, instead, the Board determines to repurchase common shares on the open market, a selling shareholder may also be treated as having received a taxable dividend upon the sale, even though a selling shareholder would have no specific knowledge that he or she or it is selling shares to the Trust. In that event, there is generally a risk that remaining shareholders whose percentage share interests in the Trust increase as a result of any such open-market sales will be treated as having received a taxable distribution from the Trust.

To the extent the Trust recognizes net gains on the liquidation of portfolio securities to meet any such repurchase or tender, the Trust will be required to make additional distributions to its common shareholders.

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TAX MATTERS

The following discussion of U.S. federal income tax consequences of investment in common and preferred shares of the Trust is based on the Code, U.S. Treasury regulations promulgated thereunder, and other applicable authority, as of the date of this SAI. These authorities may be changed, possibly with retroactive effect, or become subject to new legislative, administrative, or judicial interpretation. The following discussion is only a summary of some of the important U.S. federal tax considerations generally applicable to investments in the Trust and does not constitute tax advice. This summary does not purport to be a complete description of the U.S. federal income tax considerations applicable to an investment in common or preferred shares of the Trust. There may be other U.S. federal income tax consequences applicable to particular common or preferred shareholders. For example, except as otherwise specifically noted herein, we have not described certain tax considerations that may be relevant to certain types of holders subject to special treatment under the U.S. federal income tax laws, including shareholders subject to the U.S. federal alternative minimum tax, insurance companies, tax-exempt organizations, pension plans and trusts, RICs, dealers in securities, shareholders holding Trust shares through tax-advantaged accounts (such as 401(k) plans or individual retirement accounts), financial institutions, shareholders holding Trust shares as part of a hedge, straddle, or conversion transaction, entities that are not organized under the laws of the United States or a political subdivision thereof, and persons who are neither citizens nor residents of the United States. This summary assumes that investors hold Trust common or preferred shares as capital assets (within the meaning of the Code). Shareholders should consult their own tax advisers regarding their particular situation and the possible application of U.S. federal, state, local, foreign or other tax laws.

This summary does not discuss the tax consequences of an investment in subscription rights of the Trust, separately, or as part of a unit consisting of two or more securities. See "Description of Capital Structure—Subscription Rights" in the Prospectus for a discussion of the material U.S. federal income tax consequences of the Trust's issuance of subscription rights to common and preferred shareholders.

Taxation of the Trust

The Trust has elected to be treated as a RIC under Subchapter M of the Code and intends each year to qualify and to be eligible to be treated as such. In order to qualify for the special tax treatment accorded RICs and their shareholders, the Trust must, among other things:

(i) derive at least 90% of its gross income for each taxable year from: (a) dividends, interest (including tax-exempt interest), payments with respect to certain securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income (including but not limited to gains from options, futures and forward contracts) derived with respect to its business of investing in such stock, securities or foreign currencies; and (b) net income derived from interests in "qualified publicly traded partnerships" (as described below);

(ii) diversify its holdings so that, at the end of each quarter of the Trust's taxable year, (a) at least 50% of the market value of the Trust's total assets consists of cash and cash items, U.S. government securities, the securities of other RICs and other securities limited, in respect of any one issuer, to an amount not greater than 5% of the value of the Trust's total assets and not more than 10% of the outstanding voting securities of such issuer, and (b) not more than 25% of the value of the Trust's total assets is invested, including through corporations in which the Trust owns a 20% or more voting stock interest, (x) in the securities (other than U.S. government securities and the securities of other RICs) of any one issuer or of two or more issuers that the Trust controls, as determined under applicable Code rules, and that are determined to be engaged in the same business or similar or related trades or businesses, or (y) in the securities of one or more "qualified publicly traded partnerships" (as described below); and

(iii) distribute to its shareholders with respect to each taxable year at least the sum of 90% of its "investment company taxable income" (as that term is defined in the Code, without regard to the deduction for dividends paid—generally taxable ordinary income and the excess, if any, of net short-term capital gains over net long-term capital losses) and 90% of any net tax-exempt interest income (the excess of its gross tax-exempt interest over certain disallowed deductions), for such year.

In general, for purposes of the 90% gross income requirement described in (i) above, income derived from a partnership will be treated as qualifying income only to the extent such income is attributable to items of income of the partnership which would be qualifying income if realized directly by the RIC. However, 100% of the net income derived from an interest in a "qualified publicly traded partnership" (generally, a partnership (y) interests in which are traded on an established securities market or readily tradable on a secondary market or the substantial equivalent thereof and (z) that meets certain qualifying income requirements but derives less than 90% of its income from the qualifying income described in (i)(a) above) will be treated as qualifying income. In general, such entities will be treated as partnerships for federal income tax purposes because they meet the passive income requirement under Section 7704(c)(2) of the Code. MLPs in which the Trust may invest will generally qualify as qualified publicly traded partnerships. In addition, although in

general the passive loss rules of the Code do not apply to RICs, such rules do apply to a RIC with respect to items attributable to an interest in a qualified publicly traded partnership.

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For purposes of meeting the diversification requirement described in (ii) above, the term "outstanding voting securities of such issuer" will include the equity securities of a qualified publicly traded partnership. Also, for purposes of the diversification test in (ii) above, the identification of the issuer (or, in some cases, issuers) of a particular Trust investment can depend on the terms and conditions of that investment. In some cases, identification of the issuer (or issuers) is uncertain under current law, and an adverse determination or future guidance by the IRS with respect to issuer identification for a particular type of investment may adversely affect the Trust's ability to meet the diversification test in (ii) above.

If the Trust qualifies as a RIC (i.e., satisfies the source of income and diversification requirements described in (i) and (ii) above) and satisfies the annual distribution requirement described in (iii) above, the Trust will not be subject to U.S. federal income tax on income or gains distributed in a timely manner to its shareholders in the form of dividends (including Capital Gain Dividends, as defined below).

If, for any taxable year, the Trust were to fail to meet the income, diversification or distribution test described above, the Trust could in some cases cure such failure, including by paying a Trust-level tax, paying interest, making additional distributions or disposing of certain assets. If the Trust were ineligible to or otherwise did not cure any such failure for any year, or if the Trust were otherwise to fail to qualify as a RIC accorded special tax treatment for such year, the Trust would be subject to tax on its taxable income at corporate rates, and all distributions from earnings and profits, including any distributions of net long-term capital gains, would be taxable to shareholders as ordinary income. Some portions of such distributions might be eligible for the dividends-received deduction in the case of corporate shareholders and might be eligible to be treated as "qualified dividend income" and thus taxable at the lower long-term capital gain rate in the case of shareholders taxed at individual rates, provided, in both cases, the shareholder met certain holding period and other requirements in respect of the Trust's shares (as described below). In addition, the Trust might be required to recognize unrealized gains, pay substantial taxes and interest and make substantial distributions before re-qualifying as a RIC.

The Trust intends to distribute at least annually to its shareholders all or substantially all of its investment company taxable income (computed without regard to the dividends-paid deduction) and its net capital gain (that is, the excess of net long-term capital gain over net short-term capital loss, in each case determined with reference to any loss carryforwards). Any investment company taxable income retained by the Trust will be subject to a Trust-level tax at regular corporate rates. The Trust may also retain for investment its net capital gain. If the Trust retains any net capital gain, it will be subject to Trust-level tax at regular corporate rates on the amount retained, but may designate the retained amount as undistributed capital gains in a timely notice to its shareholders who would then, in turn, be (i) required to include in income for U.S. federal income tax purposes, as long-term capital gain, their shares of such undistributed amount, and (ii) entitled to credit their proportionate shares of the tax paid by the Trust on such undistributed amount against their U.S. federal income tax liabilities, if any, and to claim refunds on a properly-filed U.S. tax return to the extent the credit exceeds such liabilities. If the Trust makes this designation, for U.S. federal income tax purposes, the tax basis of shares owned by a shareholder of the Trust would be increased by an amount equal under current law to the difference between the amount of undistributed capital gains included in the shareholder's gross income under clause (i) of the preceding sentence and the tax deemed paid by the shareholder under clause (ii) of the preceding sentence. The Trust is not required to, and there can be no assurance the Trust will, make this designation if it retains all or a portion of its net capital gain in a taxable year.

In determining its net capital gain, including in connection with determining the amount available to support a Capital Gain Dividend, its taxable income, and its earnings and profits, a RIC generally may elect to treat part or all of any post-October capital loss (defined as any net capital loss attributable to the portion of the taxable year after October 31 or, if there is no such loss, the net long-term capital loss or net short-term capital loss attributable to such portion of the taxable year) or late-year ordinary loss (generally, the sum of its (i) net ordinary loss from the sale, exchange or other taxable disposition of property, attributable to the portion of the taxable year after October 31, and its (ii) other net ordinary loss attributable to the portion, if any, of the taxable year after December 31) as if incurred in the succeeding taxable year.

If the Trust fails to distribute in a calendar year at least an amount equal to the sum of 98% of its ordinary income for such year and 98.2% of its capital gain net income (adjusted for certain ordinary losses) for the one-year period ending on October 31 of such year (unless an election is made to use the Trust's taxable year), plus any such undistributed amounts from the prior year, the Trust will be subject to a nondeductible 4% excise tax on the undistributed amounts. For purposes of the required excise tax distribution, a RIC's ordinary gains and losses from the sale, exchange or other taxable disposition of property that would otherwise be taken into account after October 31 of a calendar year generally (unless an election is made to use the Trust's taxable year) are treated as arising on January 1 of the following calendar year. Also, for these purposes, the Trust will be treated as having distributed any amount on which it has been subject to corporate income tax in the taxable year ending with the calendar year. The Trust reserves the right to pay the excise tax when circumstances warrant.

Capital losses in excess of capital gains ("net capital losses") are not permitted to be deducted against the Trust's net investment income. Instead, potentially subject to certain limitations, the Trust may carry net capital losses from any taxable year forward to subsequent taxable years to offset capital gains, if any, realized during such subsequent taxable year. Capital loss carryforwards are

reduced to the extent they offset current-year net realized capital gains, whether the Trust retains or distributes such gains. If the Trust incurs or has incurred net capital losses in taxable years beginning after December 22, 2010 ("post-2010 losses"), those losses will be carried forward to one or more subsequent taxable years without expiration to offset capital gains realized during such subsequent taxable years; any such carryforward losses will retain their character as short-term or long-term. If the Trust incurred net capital losses in a taxable year beginning on or before December 22, 2010 ("pre-2011 losses"), the Trust is permitted to carry such losses forward for eight taxable years; in the year to which they are carried forward, such losses are treated as short-term capital losses that first offset any short-term capital gains, and then offset any long-term capital gains. The Trust must use any post-2010 losses, which will not expire, before it uses any pre-2011 losses. This increases the likelihood that pre-2011 losses will expire unused at the conclusion of the eight-year carryforward period.

The Trust's ability to use net capital losses may be limited following the occurrence of certain (i) acquisitive reorganizations and (ii) shifts in the ownership of the Trust by a shareholder owning or treated as owning 5% or more of the shares of the Trust (each, an "ownership change"). The Code may similarly limit the Trust's ability to use any of its other capital losses, or ordinary losses, that have accrued but have not been recognized (i.e., "built-in" losses) at the time of an ownership change to the extent they are realized within the five-year period following the ownership change.

See the Trust's most recent annual shareholder report for the Trust's available capital loss carryovers as of the end of its most recently ended fiscal year.

Trust Distributions

Distributions are taxable to shareholders even if they are paid from income or gains earned by the Trust before a shareholder invested in the Trust (and thus were included in the price the shareholder paid for its shares). Distributions are taxable whether shareholders receive them in cash or reinvest them in additional shares through the Trust's Dividend Reinvestment Plan. A shareholder whose distributions are reinvested in shares through the Trust's Dividend Reinvestment Plan will be treated as having received a dividend equal to, generally, the fair market value of new shares issued to the shareholder. See "Dividend Reinvestment Plan" in the Trust's Prospectus for more information.

Dividends and other distributions paid by the Trust are generally treated under the Code as received by shareholders at the time the dividend or distribution is made. However, a dividend paid to shareholders in January of a year generally is deemed to have been paid by the Trust on December 31 of the preceding year, if the dividend was declared and payable to shareholders of record on a date in October, November or December of that preceding year.

Your broker or other intermediary will send you information after the end of each year setting forth the amount and tax status of any dividends or other distributions paid to you by the Trust.

For U.S. federal income tax purposes, distributions of investment income are generally taxable as ordinary income. Taxes on distributions of capital gains are determined by how long the Trust has owned or is treated as having owned the investments that generated them, rather than how long a shareholder has owned his or her shares. In general, the Trust will recognize long-term capital gain or loss on investments it has owned (or is deemed to have owned) for more than one year, and short-term capital gain or loss on investments it has owned (or is deemed to have owned) for one year or less. Distributions of net capital gain that are properly reported by the Trust as capital gain dividends ("Capital Gain Dividends") will generally be taxable to shareholders as long-term capital gains. Distributions from capital gains are generally made after applying any available capital loss carryovers. Distributions of net short-term capital gain (that is, the excess of net short-term capital gain over net long-term capital loss for the taxable year, in each case determined with reference to loss carryforwards) will generally be taxable to shareholders receiving such distributions as ordinary income. Distributions of investment income reported by the Trust as derived from "qualified dividend income" will be taxed in the hands of individuals at the rates applicable to long-term capital gain, provided holding period and other requirements are met at both the shareholder and Trust level. The Trust does not expect a significant portion of Trust distributions to be derived from qualified dividend income.

The Trust will designate dividends made to holders of common shares and to holders of preferred shares in accordance with each class's proportionate share of each item of Trust income (such as net capital gains and other taxable income). A class's proportionate share of a particular type of income for a year is determined according to the percentage of total dividends paid by the Trust during that year to the class. Although the matter is not free from doubt, due to the absence of direct regulatory or judicial authority, under current law the manner in which the Trust intends to allocate items of ordinary income and net capital gain between the Trust's common shares and its preferred shares will be respected for federal income tax purposes. It is possible that the IRS could disagree and attempt to reallocate the Trust's net capital gain or other taxable income.

In order for some portion of the dividends received by a Trust shareholder to be qualified dividend income, the Trust must meet holding period and other requirements with respect to some portion of the dividend-paying stocks in its portfolio and the shareholder

must meet holding period and other requirements with respect to the Trust's shares. In general, a dividend will not be treated as qualified dividend income (at either the Trust or shareholder level) (1) if the dividend is received with respect to any share of stock held for fewer than 61 days during the 121-day period beginning on the date which is 60 days before the date on which such share becomes ex-dividend with respect to such dividend (or, in the case of certain preferred stock, 91 days during the 181-day period beginning 90 days before such date), (2) to the extent that the recipient is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property, (3) if the recipient elects to have the dividend income treated as investment income for purposes of the limitation on deductibility of investment interest, or (4) if the dividend is received from a foreign corporation that is (a) not eligible for the benefits of a comprehensive income tax treaty with the United States (with the exception of dividends paid on stock of such a foreign corporation readily tradable on an established securities market in the United States) or (b) treated as a passive foreign investment company.

In general, distributions of investment income reported by the Trust as derived from qualified dividend income will be treated as qualified dividend income by a shareholder taxed at individual rates, provided the shareholder meets the holding period and other requirements described in the paragraph immediately above with respect to the Trust's shares.

In general, dividends of net investment income received by corporate shareholders of the Trust will qualify for the 50% dividends-received deduction generally available to corporations to the extent of the amount of eligible dividends received by the Trust from domestic corporations for the taxable year. In general, a dividend received by the Trust will not be treated as a qualifying dividend (i) if it has been received with respect to any share of stock that the Trust has held for less than 46 days (91 days in the case of certain preferred stock) during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend (during the 181-day period beginning 90 days before such date in the case of certain preferred stock) or (ii) to the extent that the Trust is under an obligation (pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property. Moreover, the dividends-received deduction may be disallowed or reduced (i) if the corporate shareholder fails to satisfy the foregoing requirements with respect to its shares of the Trust or (ii) by application of various provisions of the Code (for instance, the dividends-received deduction is reduced in the case of a dividend received on debt-financed portfolio stock (generally, stock acquired with borrowed funds)). The Trust does not expect a significant portion of Trust distributions to be eligible for this corporate dividends-received deduction.

Any distribution of income that is attributable to (i) income received by the Trust in lieu of dividends with respect to securities on loan pursuant to a securities lending transaction or (ii) dividend income received by the Trust on securities it temporarily purchased from a counterparty pursuant to a repurchase agreement that is treated for U.S. federal income tax purposes as a loan by the Trust will not constitute qualified dividend income to individual shareholders and will not be eligible for the dividends-received deduction for corporate shareholders.

The Code generally imposes a 3.8% Medicare contribution tax on the net investment income of certain individuals, trusts and estates to the extent their income exceeds certain threshold amounts. For these purposes, "net investment income" generally includes, among other things, (i) distributions paid by the Trust of net investment income and capital gains as described above, and (ii) any net gain from the sale or exchange of Trust shares. Shareholders are advised to consult their tax advisors regarding the possible implications of this additional tax on their investment in the Trust.

Return of Capital Distributions

If the Trust makes a distribution to a shareholder in excess of the Trust's current and accumulated earnings and profits in any taxable year, the excess distribution will be treated as a return of capital to the extent of such shareholder's tax basis in its shares, and thereafter as capital gain. A return of capital is not taxable, but it reduces a shareholder's tax basis in its shares, thus reducing any loss or increasing any gain on a subsequent taxable disposition by the shareholder of its shares.

Distributions on the Trust's shares are generally subject to U.S. federal income tax as described herein to the extent they do not exceed the Trust's realized income and gains, even though such dividends and distributions may economically represent a return of a particular shareholder's investment. Such distributions are likely to occur in respect of shares purchased at a time when the Trust's NAV reflects either unrealized gains, or realized but undistributed income or gains, that were therefore included in the price the shareholder paid. Such distributions may reduce the value of the Trust's shares below the shareholder's cost basis in those shares. As described above, the Trust is required to distribute realized income and gains regardless of whether the Trust's NAV also reflects unrealized losses.

Tax Implications of Certain Trust Investments

Some debt obligations with a fixed maturity date of more than one year from the date of issuance that are acquired by the Trust in the secondary market may be treated as having "market discount." Very generally, market discount is the excess of the stated redemption price of a debt obligation (or in the case of an obligation issued with OID (as defined below), its "revised issue price")

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over the purchase price of such obligation. Generally, any gain recognized on the disposition of, and any partial payment of principal on, a debt obligation having market discount is treated as ordinary income to the extent the gain, or principal payment, does not exceed the "accrued market discount" on such debt obligation. Alternatively, a holder may elect to accrue market discount currently. As of the date of this SAI, the Trust has made this election, and as such, the Trust is required to include currently any accrued market discount on such debt obligations in the Trust's taxable income (as ordinary income) and thus distribute it over the terms of the obligations, even though payment of those amounts is not received until a later time, upon partial or full repayment or disposition of the applicable debt obligations. The Trust reserves the right to revoke this election at any time pursuant to applicable IRS procedures. The rate at which market discount accrues, and thus is included in the Trust's income, will depend upon which of the permitted accrual methods the Trust elects.

In addition, some debt obligations with a fixed maturity date of more than one year from the date of issuance (and zero-coupon debt obligations with a fixed maturity date of more than one year from the date of issuance) will be treated as debt obligations that are issued originally at a discount. Generally, the amount of the original issue discount ("OID") is treated as interest income and is included in taxable income (and required to be distributed by the Trust) over the term of the debt obligation, even though payment of that amount is not received until a later time, upon partial or full repayment or disposition of the debt obligation. In addition, PIK securities will give rise to income which is required to be distributed and is taxable even though the Trust receives no interest payment in cash on the security during the year in which the income was accrued.

The Trust expects that a substantial portion of the Trust's investments in loans and other debt obligations will be treated as having market discount and/or OID, which, in some cases, could be significant.

Some debt obligations with a fixed maturity date of one year or less from the date of issuance that are acquired by the Trust may be treated as having OID or, in certain cases, "acquisition discount" (very generally, the excess of the stated redemption price over the purchase price). Generally, the Trust will be required to include the OID or acquisition discount in income (as ordinary income) over the term of the debt obligation and thus distribute it over the term of the debt obligation, even though payment of that amount is not received until a later time, upon partial or full repayment or disposition of the debt obligation. The rate at which OID or acquisition discount accrues, and thus is included in the Trust's income, will depend upon which of the permitted accrual methods the Trust elects.

Some preferred securities may include provisions that permit the issuer, at its discretion, to defer the payment of distributions for a stated period without any adverse consequences to the issuer. If the Trust owns a preferred security that is deferring the payment of its distributions, the Trust may be required to report income for U.S. federal income tax purposes to the extent of any such deferred distribution even though the Trust has not yet actually received the cash distribution.

As a result of holding the foregoing kinds of debt obligations or other debt obligations subject to special rules under the Code, the Trust may be required to pay out as an income distribution each year an amount which is greater than the total amount of cash interest (or dividends in the case of preferred securities) the Trust actually received. Such distributions may be made from, among other things, the cash assets of the Trust or cash generated from the Trust's liquidation of portfolio securities. The Trust may realize gains or losses from such liquidations. In the event the Trust realizes net long-term or short-term capital gains from such transactions, its shareholders may receive a larger capital gain or ordinary dividend, respectively, than they would in the absence of such transactions.

Investments in distressed debt obligations that are at risk of or in default present special tax issues for the Trust. Tax rules are not entirely clear about issues such as whether and to what extent the Trust should recognize market discount on these debt obligations, when the Trust may cease to accrue interest, OID or market discount, when and to what extent the Trust may take deductions for bad debts or worthless securities and how the Trust should allocate payments received on obligations in default between principal and income. These and other related issues will be addressed by the Trust when, as and if it invests in such securities, in order to seek to ensure that it distributes sufficient income to preserve its eligibility for treatment as a RIC and does not become subject to U.S. federal income or excise tax.

A portion of the OID accrued on certain high-yield discount obligations owned by the Trust may not be deductible to the issuer and will instead be treated as a dividend paid by the issuer for purposes of the dividends-received deduction. In such cases, if the issuer of the obligation is a domestic corporation, dividend payments by the Trust may be eligible for the dividends-received deduction to the extent of the deemed dividend portion of such OID.

Any transactions by the Trust in foreign currencies, foreign currency-denominated debt obligations and certain foreign currency options, futures contracts and forward contracts (and similar instruments) may give rise to ordinary income or loss to the extent such income or loss results from fluctuations in the value of the foreign currency concerned. Such ordinary income treatment may accelerate

Trust distributions to shareholders and increase the distributions taxed to shareholders as ordinary income. Any net ordinary losses so created cannot be carried forward by the Trust to offset income or gains earned in subsequent years.

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Any equity investments by the Trust in certain "passive foreign investment companies" ("PFICs") could potentially subject the Trust to a U.S. federal income tax (including interest charges) on distributions received from the PFIC or on proceeds received from the disposition of shares in the PFIC. This tax cannot be eliminated by making distributions to Trust shareholders. However, the Trust may elect to avoid the imposition of that tax. For example, the Trust may elect to treat a PFIC as a "qualified electing fund" (*i.e.*, make a "QEF election"), in which case the Trust will be required to include its share of the PFIC's income and net capital gains annually, regardless of whether it receives any distribution from the company. The Trust also may make an election to mark the gains (and to a limited extent losses) in such holdings "to the market" as though it had sold and repurchased its holdings in those PFICs on the last day of the Trust's taxable year. Such gains and losses are treated as ordinary income and loss. The QEF and mark-to-market elections may accelerate the recognition of income (without the receipt of cash) and increase the amount required to be distributed by the Trust to avoid taxation. Making either of these elections therefore may require the Trust to liquidate other investments (including when it is not advantageous to do so) to meet its distribution requirement, which also may accelerate the recognition of gain and affect the Trust's total return. Dividends paid by PFICs will not be eligible to be treated as qualified dividend income.

Because it is not always possible to identify a foreign corporation as a PFIC, the Trust may incur the tax and interest charges described above in some instances.

Income proceeds and gains received by the Trust from sources within foreign countries may be subject to withholding and other taxes imposed by such countries. Tax treaties between certain countries and the United States may reduce or eliminate such taxes. Shareholders generally will not be entitled to separately claim a credit or deduction with respect to foreign taxes incurred by the Trust. This will decrease the Trust's yield on securities subject to such taxes.

The Trust's Derivative Transactions, as well as any of its other hedging, short sale or similar transactions, may be subject to one or more special tax rules (including, for instance, notional principal contract, mark-to-market, constructive sale, straddle, wash sale and short-sale rules). These rules may affect whether gains and losses recognized by the Trust are treated as ordinary or capital and/or as short-term or long-term, accelerate the recognition of income or gains to the Trust, defer losses, and cause adjustments in the holding periods of the Trust's securities. The rules could therefore affect the amount, timing and/or character of distributions to shareholders.

Because the tax rules applicable to derivative financial instruments are in some cases uncertain under current law, an adverse determination or future guidance by the IRS with respect to these rules (which determination or guidance could be retroactive) may affect whether the Trust has made sufficient distributions, and otherwise satisfied the relevant requirements, to maintain its qualification as a RIC and avoid a Trust-level tax.

Certain of the Trust's Derivative Transactions and investments in foreign currency-denominated instruments, and any of the Trust's transactions in foreign currencies and hedging activities, are likely to produce a difference between its book income and the sum of its taxable income and net tax-exempt income (if any). If such a difference arises, and the Trust's book income is less than the sum of its taxable income and net tax-exempt income (if any), the Trust could be required to make distributions exceeding book income to qualify as a RIC that is accorded special tax treatment and to avoid a Trust-level tax. In the alternative, if the Trust's book income exceeds the sum of its taxable income and net tax-exempt income (if any), the distribution (if any) of such excess generally will be treated as (i) a dividend to the extent of the Trust's remaining earnings and profits (including earnings and profits arising from any tax-exempt income), (ii) thereafter, as a return of capital to the extent of the recipient's basis in its shares, and (iii) thereafter, as gain from the sale or exchange of a capital asset.

The Trust's investments in equity securities of REITs may result in the Trust's receipt of cash in excess of the REIT's earnings; if the Trust distributes these amounts, these distributions could constitute a return of capital to Trust shareholders for U.S. federal income tax purposes. Dividends received by the Trust from a REIT will not qualify for the corporate dividends-received deduction and generally will not constitute qualified dividend income.

Under a notice issued by the IRS in October 2006 and Treasury regulations that have yet to be issued but may apply retroactively, a portion of a Trust's income (if any) (including income allocated to the Trust from a REIT or other pass-through entity) that is attributable to a residual interest in a real estate mortgage investment conduit ("REMIC") (including residual interests in collateralized mortgage obligations) or an equity interest in a taxable mortgage pool ("TMP") (referred to in the Code as an "excess inclusion") will be subject to U.S. federal income tax in all events. This notice also provides, and the regulations are expected to provide, that excess inclusion income of a RIC will be allocated to shareholders of the RIC in proportion to the dividends received by such shareholders, with the same consequences as if the shareholders held the related interest directly. As a result, to the extent the Trust invests in any such interests, it may not be a suitable investment for certain tax-exempt shareholders (as noted below in "Tax-Exempt Shareholders").

In general, excess inclusion income allocated to shareholders (i) cannot be offset by net operating losses (subject to a limited exception for certain thrift institutions), (ii) will constitute unrelated business taxable income ("UBTI") to entities (including a

qualified pension plan, an individual retirement account, a 401(k) plan, a Keogh plan or other tax-exempt entity) subject to tax on UBTI, thereby potentially requiring such an entity that is allocated excess inclusion income, and otherwise might not be required to file a U.S. federal income tax return, to file such a tax return and pay tax on such income, and (iii) in the case of a non-U.S. shareholder, will not qualify for any reduction in U.S. federal withholding tax. A shareholder will be subject to U.S. federal income tax on such inclusions notwithstanding any exemption from such income tax otherwise available under the Code.

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Code generally allows individuals and certain non-corporate entities a deduction for 20% of qualified REIT dividends. Recently issued proposed regulations allow a RIC such as the Trust to pass the character of its qualified REIT dividends through to its shareholders provided certain holding period requirements are met. As a result, eligible shareholders in the Trust may receive the benefit of the deduction with respect to qualified REIT dividends received by the Trust that are distributed to shareholders.

Backup Withholding

Your broker or other intermediary generally is required to withhold and remit to the U.S. Treasury a percentage of the taxable distributions and redemption proceeds paid to any individual shareholder who fails to properly furnish the broker or other intermediary with a correct taxpayer identification number ("TIN"), who has under-reported dividend or interest income, or who fails to certify to the broker or other intermediary that he or she is not subject to such withholding.

Backup withholding is not an additional tax. Any amounts withheld may be credited against the shareholder's U.S. federal income tax liability, provided the appropriate information is furnished to the IRS.

Sale or Exchange of Trust Shares

The sale or exchange of Trust shares may give rise to a gain or loss. In general, any gain or loss realized upon a taxable disposition of shares will be treated as long-term capital gain or loss if the shares have been held for more than 12 months. Otherwise, the gain or loss on the taxable disposition of Trust shares will be treated as short-term capital gain or loss. However, any loss realized upon a taxable disposition of shares held for six months or less will be treated as long-term, rather than short-term, to the extent of any Capital Gain Dividends received (or deemed received) by the shareholder with respect to the shares. All or a portion of any loss realized upon a taxable disposition of Trust shares will be disallowed if other substantially identical shares are purchased within 30 days before or after the disposition. In such a case, the basis of the newly purchased shares will be adjusted to reflect the disallowed loss.

Shareholders may be entitled to offset their Capital Gain Dividends with capital loss from other sources. The Code contains a number of statutory provisions affecting the circumstances under which capital loss may be offset against capital gain and limiting the use of loss from certain investments and activities. Accordingly, shareholders that have capital losses are urged to consult their tax advisers.

Tax Shelter Reporting Regulations

Under Treasury regulations, if a shareholder recognizes a loss of $2 million or more for an individual shareholder or $10 million or more for a corporate shareholder, the shareholder must file with the IRS a disclosure statement on Form 8886. Direct holders of portfolio securities are in many cases excepted from this reporting requirement, but under current guidance, shareholders of a RIC are not excepted. Future guidance may extend the current exception from this reporting requirement to shareholders of most or all RICs. The fact that a loss is reportable under these regulations does not affect the legal determination of whether the taxpayer's treatment of the loss is proper. Shareholders should consult their tax advisers to determine the applicability of these regulations in light of their individual circumstances.

Non-U.S. Shareholders

Distributions by the Trust to shareholders that are not "U.S. persons" within the meaning of the Code ("foreign shareholders)" properly reported by the Trust as (1) Capital Gain Dividends, (2) short-term capital gain dividends and (3) interest-related dividends, each as defined and subject to certain conditions described below, generally are not subject to U.S. federal income tax withholding.

In general, the Code defines (1) "short-term capital gain dividends" as distributions of net short-term capital gains in excess of net long-term capital losses and (2) "interest-related dividends" as distributions from U.S. source interest income of types similar to those not subject to U.S. federal income tax if earned directly by an individual foreign shareholder, in each case, to the extent such distributions are properly reported as such by the Trust in a written notice to shareholders.

The exceptions to withholding for Capital Gain Dividends and short-term capital gain dividends do not apply to (A) distributions to an individual foreign shareholder who is present in the United States for a period or periods aggregating 183 days or more during the year of the distribution and (B) distributions attributable to gain that is treated as effectively connected with the conduct by the foreign shareholder of a trade or business within the United States under special rules regarding the disposition of U.S. real property interests ("USRPIs") as described below.

The exception to withholding for interest-related dividends does not apply to distributions to a foreign shareholder (A) that has not provided a satisfactory statement that the beneficial owner is not a U.S. person, (B) to the extent that the dividend is attributable to certain interest on an obligation if the foreign shareholder is the issuer or is a 10% shareholder of the issuer, (C) that is within certain foreign countries that have inadequate information exchange with the United States, or (D) to the extent the dividend is attributable to interest paid by a person that is a related person of the foreign shareholder and the foreign shareholder is a controlled foreign corporation.

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The Trust is permitted to report such part of its dividends as short-term capital gain and/or interest-related dividends as are eligible, but is not required to do so. In the case of shares held through an intermediary, the intermediary may withhold even if the Fund reports all or a portion of a payment as an interest-related or short-term capital gain dividend to shareholders.

Foreign shareholders should contact their intermediaries regarding the application of these rules to their accounts.

Distributions by the Trust to foreign shareholders other than Capital Gain Dividends, short-term capital gain dividends and interest-related dividends (e.g., dividends attributable to dividend and foreign-source interest income or to short-term capital gains or U.S. source interest income to which the exception from withholding described above does not apply) are generally subject to withholding of U.S. federal income tax at a rate of 30% (or lower applicable treaty rate).

A foreign shareholder is not, in general, subject to U.S. federal income tax on gains (and is not allowed a deduction for losses) realized on the sale of shares of the Trust unless (i) such gain is effectively connected with the conduct of a trade or business carried on by such holder within the United States, (ii) in the case of an individual holder, the holder is present in the United States for a period or periods aggregating 183 days or more during the year of the sale and certain other conditions are met, or (iii) the special rules relating to gain attributable to the sale or exchange of USRPIs apply to the foreign shareholder's sale of shares of the Trust (as described below).

Foreign shareholders with respect to whom income from the Trust is effectively connected with a trade or business conducted by the foreign shareholder within the United States will in general be subject to U.S. federal income tax on the income derived from the Trust at the graduated rates applicable to U.S. citizens, residents or domestic corporations, whether such income is received in cash or reinvested in additional shares of the Trust and, in the case of a foreign corporation, may also be subject to a branch profits tax. If a foreign shareholder is eligible for the benefits of a tax treaty, any effectively connected income or gain will generally be subject to U.S. federal income tax on a net basis only if it is also attributable to a permanent establishment maintained by the shareholder in the United States. More generally, foreign shareholders who are residents of a country with an income tax treaty with the United States may obtain different tax results than those described herein, and are urged to consult their tax advisers.

Special rules would apply if the Trust were a qualified investment entity ("QIE") because it is either a "U.S. real property holding corporation" ("USRPHC") or would be a USRPHC but for the operation of certain exceptions to the definition of USRPIs described below. Very generally, a USRPHC is a domestic corporation that holds USRPIs the fair market value of which equals or exceeds 50% of the sum of the fair market values of the corporation's USRPIs, interests in real property located outside the United States, and other trade or business assets. USRPIs generally are defined as any interest in U.S. real property and any interest (other than solely as a creditor) in a USRPHC or, very generally, an entity that has been a USRPHC in the last five years. A RIC that holds, directly or indirectly, significant interests in REITs may be a USRPHC. Interests in domestically controlled QIEs, including REITs and RICs that are QIEs, not-greater-than-10% interests in publicly traded classes of stock in REITs and not-greater-than-5% interests in publicly traded classes of stock in RICs generally are not USRPIs, but these exceptions do not apply for purposes of determining whether a RIC is a QIE.

If an interest in the Trust were a USRPI, a greater-than-5% foreign shareholder generally would be required to file a U.S. tax return in connection with the sale of its Trust shares, and pay related taxes due on any gain realized on the sale.

If the Trust were a QIE, under a special "look-through" rule, any distributions by the Trust to a foreign shareholder attributable directly or indirectly to (i) distributions received by the Trust from a lower-tier RIC or REIT that the Trust is required to treat as USRPI gain in its hands and (ii) gains realized on the disposition of USRPIs by the Trust would retain their character as gains realized from USRPIs in the hands of the Trust's foreign shareholders and would be subject to U.S. tax withholding. In addition, such distributions could result in the foreign shareholder being required to file a U.S. tax return and pay tax on the distributions at regular U.S. federal income tax rates. The consequences to a foreign shareholder, including the rate of such withholding and character of such distributions (e.g., as ordinary income or USRPI gain), would vary depending upon the extent of the foreign shareholder's current and past ownership of the Trust.

Foreign shareholders of the Trust also may be subject to "wash sale" rules to prevent the avoidance of the tax-filing and - payment obligations discussed above through the sale and repurchase of Trust shares.

The Trust generally does not expect that it will be a QIE.

Foreign shareholders should consult their tax advisers and, if holding shares through intermediaries, their intermediaries, concerning the application of these rules to their investment in the Trust.

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In order to have qualified for any exemption from withholding described above (to the extent applicable) or for lower withholding tax rates under income tax treaties, or to establish an exemption from backup withholding, a foreign shareholder must have complied with applicable certification and filing requirements relating to its non-U.S. status (including, in general, furnishing an IRS Form W-8BEN, W-8BEN-E or substitute form). Foreign shareholders should contact their tax advisers in this regard.

Special rules (including withholding and reporting requirements) apply to foreign partnerships and those holding Trust shares through foreign partnerships. Additional considerations may apply to foreign trusts and estates. Investors holding Trust shares through foreign entities should consult their tax advisers.

A foreign shareholder may be subject to state and local tax and to the U.S. federal estate tax in addition to the U.S. federal tax on income referred to above.

Tax-Exempt Shareholders

Income of the Trust that would be UBTI if earned directly by a tax exempt entity generally will not constitute UBTI when distributed to tax-exempt shareholders of the Trust. Notwithstanding this "blocking" effect, a tax-exempt shareholder could realize UBTI by virtue of its investment in the Trust if shares in the Trust constitute debt-financed property in the hands of the tax-exempt shareholder within the meaning of Section 514(b) of the Code.

A tax-exempt shareholder may also recognize UBTI if the Trust recognizes excess inclusion income derived from direct or indirect investments in residual interests in REMICS or equity interests in TMPs if the amount of such income recognized by the Trust exceeds the Trust's investment company taxable income (after taking into account deductions for dividends paid by the Trust).

In addition, special tax consequences apply to charitable remainder trusts ("CRTs") that invest in RICs that invest directly or indirectly in residual interests in REMICs or equity interests in TMPs. Under legislation enacted in December 2006, a CRT (as defined in Section 664 of the Code) that realizes any UBTI for a taxable year must pay an excise tax annually of an amount equal to such UBTI. Under IRS guidance issued in October 2006, a CRT will not recognize UBTI as a result of investing in a RIC that recognizes excess inclusion income. Rather, if at any time during any taxable year a CRT (or one of certain other tax-exempt shareholders, such as the United States, a state or political subdivision, or an agency or instrumentality thereof, and certain energy cooperatives) is a record holder of a share in a RIC that recognizes excess inclusion income, then the RIC will be subject to a tax on that portion of its excess inclusion income for the taxable year that is allocable to such shareholders at the highest federal corporate income tax rate. The extent to which this IRS guidance remains applicable in light of the December 2006 legislation is unclear. To the extent permitted under the Investment Company Act, the Trust may elect to specially allocate any such tax to the applicable CRT, or other shareholder, and thus reduce such shareholder's distributions for the year by the amount of the tax that relates to such shareholder's interest in the Trust.

CRTs and other tax-exempt investors are urged to consult their tax advisers concerning the consequences of investing in the Trust.

Shareholder Reporting Obligations With Respect to Foreign Bank and Financial Accounts

Shareholders that are U.S. persons and own, directly or indirectly, more than 50% of the Trust could be required to report annually their "financial interest" in the Trust's "foreign financial accounts," if any, on FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). Shareholders should consult their tax advisers, and persons investing in the Trust through an intermediary should contact their intermediary to determine the applicability to them of this reporting requirement.

Other Reporting and Withholding Requirements

Sections 1471-1474 of the Code and the U.S. Treasury and IRS guidance issued thereunder (collectively, "FATCA") generally require the Trust to obtain information sufficient to identify the status of each of its shareholders under FATCA or under an applicable intergovernmental agreement (an "IGA"). If a shareholder fails to provide this information or otherwise fails to comply with FATCA or an IGA, the Trust may be required to withhold under FATCA at a rate of 30% with respect to that shareholder on ordinary dividends it pays. Recently issued proposed regulations would eliminate the 30% withholding tax with respect to the gross proceeds from the sale or exchange of shares and certain Capital Gain Dividends that was scheduled to go in to effect after December 31, 2018. If a payment by the Trust is subject to FATCA withholding, the Trust is required to withhold even if such payment would otherwise be exempt from withholding under the rules applicable to foreign shareholders described above (e.g., Capital Gain Dividends, short-term capital gain dividends and interest-related dividends).

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Each prospective investor is urged to consult its tax adviser regarding the applicability of FATCA and any other reporting requirements with respect to the prospective investor's own situation, including investments through an intermediary.

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Shares Purchased Through Tax Qualified Plans

Special tax rules apply to investments through defined contribution plans and other tax-qualified plans. Shareholders should consult their tax advisers to determine the suitability of shares of the Trust as an investment through such plans and the precise effect of an investment on their particular tax situation.

General Considerations

The U.S. federal income tax discussion set forth above is for general information only. Prospective investors should consult their tax advisers regarding the specific federal tax consequences of purchasing, holding, and disposing of shares of the Trust, as well as the effects of state, local and foreign tax law and any proposed tax law changes.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

PricewaterhouseCoopers LLP provides accounting and auditing services to the Trust.

CUSTODIAN

The custodian of the assets of the Trust and its wholly-owned subsidiaries is Bank of New York Mellon (240 Greenwich Street, New York, New York 10286). The custodian performs custodial services for the Trust.

ADDITIONAL INFORMATION

A registration statement on Form N-2, including amendments thereto, relating to the shares offered hereby (the "Registration Statement"), has been filed by the Trust with the SEC. The Prospectus and this SAI do not contain all of the information set forth in the Registration Statement, including any exhibits and schedules thereto. For further information with respect to the Trust and the securities offered hereby, reference is made to the Registration Statement. Statements contained in the Prospectus and this SAI as to the contents of any contract or other document referred to are not necessarily complete and in each instance reference is made to the copy of such contract or other document filed as an exhibit to the Registration Statement, each such statement being qualified in all respects by such reference. A copy of the Registration Statement may be inspected without charge at the SEC's principal office in Washington, D.C., and copies of all or any part thereof may be obtained from the SEC upon the payment of certain fees prescribed by the SEC.

FINANCIAL STATEMENTS

The Trust's audited financial statements appearing in the Trust's annual shareholder report for the period ended December 31, 2018 are incorporated by reference in this SAI and have been so incorporated in reliance upon the report of PricewaterhouseCoopers LLP, independent registered public accounting firm for the Trust. The Trust's annual and semiannual shareholder reports are available upon request and without charge by writing to the Trust at 300 Crescent Court, Suite 700, Dallas, Texas 75201 or by calling 1-866-351-4440 and viewed on the Trust's website at www.nexpointadvisors.com.

APPENDIX A

Standard & Poor's—A brief description of the applicable rating symbols of Standard & Poor's and their meanings (as published by Standard & Poor's) follows:

Issue Credit Rating Definitions

A Standard & Poor's issue credit rating is a forward-looking opinion about the creditworthiness of an obligor with respect to a specific financial obligation, a specific class of financial obligations, or a specific financial program (including ratings on medium-term note programs and commercial paper programs). It takes into consideration the creditworthiness of guarantors, insurers, or other forms of credit enhancement on the obligation and takes into account the currency in which the obligation is denominated. The opinion reflects Standard & Poor's view of the obligor's capacity and willingness to meet its financial commitments as they come due, and may assess terms, such as collateral security and subordination, which could affect ultimate payment in the event of default.

Issue credit ratings can be either long-term or short-term. Short-term ratings are generally assigned to those obligations considered short-term in the relevant market. In the U.S., for example, that means obligations with an original maturity of no more than 365 days—including commercial paper. Short-term ratings are also used to indicate the creditworthiness of an obligor with respect to put features on long-term obligations. Medium-term notes are assigned long-term ratings.

Long-Term Issue Credit Ratings

Issue credit ratings are based, in varying degrees, on Standard & Poor's analysis of the following considerations:

i) Likelihood of payment—capacity and willingness of the obligor to meet its financial commitment on an obligation in accordance with the terms of the obligation;

ii) Nature of and provisions of the obligation, and the promise we impute;

iii) Protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganization, or other arrangement under the laws of bankruptcy and other laws affecting creditors' rights.

Issue ratings are an assessment of default risk, but may incorporate an assessment of relative seniority or ultimate recovery in the event of default. Junior obligations are typically rated lower than senior obligations, to reflect the lower priority in bankruptcy, as noted above. (Such differentiation may apply when an entity has both senior and subordinated obligations, secured and unsecured obligations, or operating company and holding company obligations.)

AAA

An obligation rated 'AAA' has the highest rating assigned by Standard & Poor's. The obligor's capacity to meet its financial commitment on the obligation is extremely strong.

AA

An obligation rated 'AA' differs from the highest-rated obligations only to a small degree. The obligor's capacity to meet its financial commitment on the obligation is very strong.

A

An obligation rated 'A' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories. However, the obligor's capacity to meet its financial commitment on the obligation is still strong.

BBB

An obligation rated 'BBB' exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitment on the obligation.

BB, B, CCC, CC, and C

Obligations rated 'BB', 'B', 'CCC', 'CC', and 'C' are regarded as having significant speculative characteristics. 'BB' indicates the least degree of speculation and 'C' the highest. While such obligations will likely have some quality and protective characteristics, these may be outweighed by large uncertainties or major exposures to adverse conditions.

BB

An obligation rated 'BB' is less vulnerable to nonpayment than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitment on the obligation.

B

An obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meet its financial commitment on the obligation.

CCC

An obligation rated 'CCC' is currently vulnerable to nonpayment, and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation. In the event of adverse business, financial, or economic conditions, the obligor is not likely to have the capacity to meet its financial commitment on the obligation.

CC

An obligation rated 'CC' is currently highly vulnerable to nonpayment. The 'CC' rating is used when a default has not yet occurred, but Standard & Poor's expects default to be a virtual certainty, regardless of the anticipated time to default.

C

An obligation rated 'C' is currently highly vulnerable to nonpayment, and the obligation is expected to have lower relative seniority or lower ultimate recovery compared to obligations that are rated higher.

D

An obligation rated 'D' is in default or in breach of an imputed promise. For non-hybrid capital instruments, the 'D' rating category is used when payments on an obligation are not made on the date due, unless Standard & Poor's believes that such payments will be made within five business days in the absence of a stated grace period or within the earlier of the stated grace period or 30 calendar days. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of similar action and where default on an obligation is a virtual certainty, for example due to automatic stay provisions. An obligation's rating is lowered to 'D' if it is subject to a distressed exchange offer.

Plus (+) or minus (—)

The ratings from 'AA' to 'CCC' may be modified by the addition of a plus (+) or minus (—) sign to show relative standing within the major rating categories.

NR

This indicates that no rating has been requested, that there is insufficient information on which to base a rating, or that Standard & Poor's does not rate a particular obligation as a matter of policy.

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Short-Term Issue Credit Ratings

A-1

A short-term obligation rated 'A-1' is rated in the highest category by Standard & Poor's. The obligor's capacity to meet its financial commitment on the obligation is strong. Within this category, certain obligations are designated with a plus sign (+). This indicates that the obligor's capacity to meet its financial commitment on these obligations is extremely strong.

A-2

A short-term obligation rated 'A-2' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher rating categories. However, the obligor's capacity to meet its financial commitment on the obligation is satisfactory.

A-3

A short-term obligation rated 'A-3' exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitment on the obligation.

B

A short-term obligation rated 'B' is regarded as vulnerable and has significant speculative characteristics. The obligor currently has the capacity to meet its financial commitments; however, it faces major ongoing uncertainties which could lead to the obligor's inadequate capacity to meet its financial commitments.

C

A short-term obligation rated 'C' is currently vulnerable to nonpayment and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation.

D

A short-term obligation rated 'D' is in default or in breach of an imputed promise. For non-hybrid capital instruments, the 'D' rating category is used when payments on an obligation are not made on the date due, unless Standard & Poor's believes that such payments will be made within any stated grace period. However, any stated grace period longer than five business days will be treated as five business days. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action and where default on an obligation is a virtual certainty, for example due to automatic stay provisions. An obligation's rating is lowered to 'D' if it is subject to a distressed exchange offer.

SPUR (Standard & Poor's Underlying Rating)

A SPUR rating is an opinion about the stand-alone capacity of an obligor to pay debt service on a credit-enhanced debt issue, without giving effect to the enhancement that applies to it. These ratings are published only at the request of the debt issuer/obligor with the designation SPUR to distinguish them from the credit-enhanced rating that applies to the debt issue. Standard & Poor's maintains surveillance of an issue with a published SPUR.

Municipal Short-Term Note Ratings Definitions

A Standard & Poor's U.S. municipal note rating reflects Standard & Poor's opinion about the liquidity factors and market access risks unique to the notes. Notes due in three years or less will likely receive a note rating. Notes with an original maturity of more than three years will most likely receive a long-term debt rating. In determining which type of rating, if any, to assign, Standard & Poor's analysis will review the following considerations:

a. Amortization schedule — the larger the final maturity relative to other maturities, the more likely it will be treated as a note; and

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b. Source of payment — the more dependent the issue is on the market for its refinancing, the more likely it will be treated as a note.
Note rating symbols are as follows:

SP-1

Strong capacity to pay principal and interest. An issue determined to possess a very strong capacity to pay debt service is given a plus (+) designation.

SP-2

Satisfactory capacity to pay principal and interest, with some vulnerability to adverse financial and economic changes over the term of the notes.

SP-3

Speculative capacity to pay principal and interest.

Dual Ratings

Dual Ratings may be assigned to debt issues that have a put option or demand feature. The first component of the rating addresses the likelihood of repayment of principal and interest as due, and the second component of the rating addresses only the demand feature. The first component of the rating can relate to either a short-term or long-term transaction and accordingly use either short-term or long-term rating symbols. The second component of the rating relates to the put option and is assigned a short-term rating symbol (for example, 'AAA/A-1+' or 'A-1+/A-1'). With U.S. municipal short-term demand debt, the U.S. municipal short-term note rating symbols are used for the first component of the rating (for example, 'SP-1+/A-1+').

The analyses, including ratings, of Standard & Poor's and its affiliates (together, Standard and Poor's) are statements of opinion as of the date they are expressed and not statements of fact or recommendations to purchase, hold, or sell any securities or make any investment decisions. Standard & Poor's assumes no obligation to update any information following publication. Users of ratings or other analyses should not rely on them in making any investment decision. Standard &Poor's opinions and analyses do not address the suitability of any security. Standard & Poor's does not act as a fiduciary or an investment advisor except where registered as such. While Standard & Poor's has obtained information from sources it believes to be reliable, Standard & Poor's does not perform an audit and undertakes no duty of due diligence or independent verification of any information it receives. Ratings and other opinions may be changed, suspended, or withdrawn at any time.

Active Qualifiers (Currently applied and/or outstanding)

Standard & Poor's uses six qualifiers that limit the scope of a rating. The structure of the transaction can require the use of a qualifier such as a 'p' qualifier, which indicates the rating addressed the principal portion of the obligation only. Likewise, the qualifier can indicate a limitation on the type of information used, such as "pi" for public information. A qualifier appears as a suffix and is part of the rating.

Federal deposit insurance limit: 'L' qualifier

Ratings qualified with 'L' apply only to amounts invested up to federal deposit insurance limits.

Principal: 'p' qualifier

This suffix is used for issues in which the credit factors, the terms, or both, that determine the likelihood of receipt of payment of principal are different from the credit factors, terms or both that determine the likelihood of receipt of interest on the obligation. The 'p' suffix indicates that the rating addresses the principal portion of the obligation only and that the interest is not rated.

Public Information Ratings: 'pi' qualifier

Ratings with a 'pi' suffix are based on an analysis of an issuer's published financial information, as well as additional information in the public domain. They do not, however, reflect in-depth meetings with an issuer's management and therefore may be based on less

comprehensive information than ratings without a 'pi' suffix. Ratings with a 'pi' suffix are reviewed annually based on a new year's financial statements, but may be reviewed on an interim basis if a major event occurs that may affect the issuer's credit quality.

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Preliminary Ratings: 'prelim' qualifier

Preliminary ratings, with the 'prelim' suffix, may be assigned to obligors or obligations, including financial programs, in the circumstances described below. Assignment of a final rating is conditional on the receipt by Standard & Poor's of appropriate documentation. Standard & Poor's reserves the right not to issue a final rating. Moreover, if a final rating is issued, it may differ from the preliminary rating.

- Preliminary ratings may be assigned to obligations, most commonly structured and project finance issues, pending receipt of final documentation of legal opinions.
- Preliminary ratings are assigned to Rule 415 Shelf Registrations. As specific issues, with defined terms, are offered from the master registration, a final rating may be assigned to them in accordance with Standard & Poor's policies.
- Preliminary ratings may be assigned to obligations that will likely be issued upon the obligor's emergence from bankruptcy or similar reorganization, based on late-stage reorganization plans, documentation and discussions with the obligor. Preliminary ratings may also be assigned to the obligors. These ratings consider the anticipated general credit quality of the reorganized or post-bankruptcy issuer as well as attributes of the anticipated obligation(s).
- Preliminary ratings may be assigned to entities that are being formed or that are in the process of being independently established when, in Standard & Poor's opinion, documentation is close to final. Preliminary ratings may also be assigned to the obligations of these entities.
- Preliminary ratings may be assigned when a previously unrated entity is undergoing a well-formulated restructuring, recapitalization, significant financing or other transformative event, generally at the point that investor or lender commitments are invited. The preliminary rating may be assigned to the entity and to its proposed obligation(s). These preliminary ratings consider the anticipated general credit quality of the obligor, as well as attributes of the anticipated obligation(s), assuming successful completion of the transformative event. Should the transformative event not occur, Standard & Poor's would likely withdraw these preliminary ratings.
- A preliminary recovery rating may be assigned to an obligation that has a preliminary issue credit rating.

Termination Structures: 't' qualifier

This symbol indicates termination structures that are designed to honor their contracts to full maturity or, should certain events occur, to terminate and cash settle all their contracts before their final maturity date.

Inactive Qualifiers (No longer applied or outstanding)

Contingent upon final documentation: '*' in active qualifier

This symbol that indicated that the ratings was contingent upon Standard & Poor 's receipt of an executed copy of the escrow agreement or closing documentation confirming investments and cash flows. Discontinued use in August 1998.

Termination of obligation to tender: 'c' inactive qualifier

This qualifier was used to provide additional information to investors that the bank may terminate its obligation to purchase tendered bonds if the long-term credit rating of the issuer was lowered to below an investment-grade level and/or the issuer's bonds are deemed taxable. Discontinued use in January 2001.

U.S. direct government securities: 'G' inactive qualifier

The letter 'G' followed the rating symbol when a fund's portfolio consisted primarily of direct U.S. government securities.

Provisional Ratings: 'pr' inactive qualifier

The letters 'pr' indicate that the rating was provisional. A provisional rating assumed the successful completion of a project financed by the debt being rated and indicates that the payment of debt service requirements was largely or entirely dependent upon the successful, timely completion of the project. This rating, however, while addressing credit quality subsequent to completion of the project, made no comment on the likelihood of or the risk of default upon failure of such completion.

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Quantitative Analysis of public information: 'q' inactive qualifier

A 'q' subscript indicates that the rating is based solely on quantitative analysis of publicly available information. Discontinued use in April 2001.

Extraordinary risks: 'r' inactive qualifier

The 'r' modifier was assigned to securities containing extraordinary risks, particularly market risks, which are not covered in the credit rating. The absence of an 'r' modifier should not be taken as an indication that an obligation will not exhibit extraordinary non-credit related risks. Standard & Poor's discontinued the use of the 'r' modifier for most obligations in June 2000 and for the balance of obligations (mainly structured finance transactions) in November 2002.

Moody's Investors Service, Inc.—A brief description of the applicable Moody's Investors Service, Inc. ("Moody's") rating symbols and their meanings (as published by Moody's) follows:

Long-Term Obligation Ratings

Moody's long-term obligation ratings are opinions of the relative credit risk of a fixed income obligations with an original maturity of one year or more. They address the possibility that a financial obligation will not be honored as promised. Such ratings reflect both the likelihood of default and any financial loss suffered in the event of default.

Moody's Global Long-Term Rating Scale Definitions:

Aaa

Obligations rated Aaa are judged to be of the highest quality, subject to the lowest level of credit risk.

Aa

Obligations rated Aa are judged to be of high quality and are subject to very low credit risk.

A

Obligations rated A are judged to be upper medium-grade and are subject to low credit risk.

Baa

Obligations rated Baa are judged to be medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics.

Ba

Obligations rated Ba are judged to be speculative elements and are subject to substantial credit risk.

B

Obligations rated B are considered speculative and are subject to high credit risk.

Caa

Obligations rated Caa are judged to be speculative of poor standing and are subject to very high credit risk.

Ca

Obligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest.

C Obligations rated C are the lowest rated and are typically in default, with little prospect for recovery of principal or interest.

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Note: Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category. Additionally, a "(hyb)" indicator is appended to all ratings of hybrid securities issued by banks, insurers, finance companies, and securities firms.

* By their terms, hybrid securities allow for the omission of scheduled dividends, interest, or principal payments, which can potentially result in impairment if such an omission occurs. Hybrid securities may also be subject to contractually allowable write- downs of principal that could result in impairment. Together with the hybrid indicator, the long-term obligation rating assigned to a hybrid security is an expression of the relative credit risk associated with that security.

Medium-Term Note Ratings

Moody's assigns provisional ratings to medium-term note (MTN) programs and definitive ratings to the individual debt securities issued from them (referred to as drawdowns or notes).

MTN program ratings are intended to reflect the ratings likely to be assigned to drawdowns issued from the program with the specified priority of claim (e.g. senior or subordinated). To capture the contingent nature of a program rating, Moody's assigns provisional ratings to MTN programs. A provisional rating is denoted by a (P) in front of the rating and is defined elsewhere in this document.

The rating assigned to a drawdown from a rated MTN or bank/deposit note program is definitive in nature, and may differ from the program rating if the drawdown is exposed to additional credit risks besides the issuer's default, such as links to the defaults of other issuers, or has other structural features that warrant a different rating. In some circumstances, no rating may be assigned to a drawdown.

Moody's encourages market participants to contact Moody's Ratings Desks or visit www.moodys.com directly if they have questions regarding ratings for specific notes issued under a medium-term note program. Unrated notes issued under an MTN program may be assigned an NR (not rated) symbol.

Global Short-Term Rating Scale:

Moody's short-term ratings are opinions of the ability of issuers to honor short-term financial obligations. Ratings may be assigned to issuers, short-term programs or to individual short-term debt instruments. Such obligations generally have an original maturity not exceeding thirteen months, unless explicitly noted.

Moody's employs the following designations to indicate the relative repayment ability of rated issuers:

P-1

Issuers (or supporting institutions) rated Prime-1 have a superior ability to repay short-term debt obligations.

P-2

Issuers (or supporting institutions) rated Prime-2 have a strong ability to repay short-term debt obligations.

P-3

Issuers (or supporting institutions) rated Prime-3 have an acceptable ability to repay short-term obligations.

NP

Issuers (or supporting institutions) rated Not Prime do not fall within any of the Prime rating categories.

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APPENDIX B

POLICY REGARDING PROXY VOTING

Purpose and Scope

The purpose of these voting policies and procedures (the "Policy") is to set forth the principles and procedures by which NexPoint Advisors, L.P. (the "Company") votes or gives consents with respect to the securities owned by Clients for which the Company exercises voting authority and discretion.[1] For avoidance of doubt, this includes any proxy and any shareholder vote or consent, including a vote or consent for a private company or other issuer that does not involve a proxy. These policies and procedures have been designed to help ensure that votes are cast in the best interests of Clients in accordance with the Company's fiduciary duties and Rule 206(4)-6 under the Investment Advisers Act of 1940 (the "Advisers Act").

This Policy applies to securities held in all Client accounts (including Retail Funds and other pooled investment vehicles) as to which the Company has explicit or implicit voting authority. Implicit voting authority exists where the Company's voting authority is implied by a general delegation of investment authority without reservation of proxy voting authority to the Client.

If the Company has delegated voting authority to an investment sub-adviser with respect to any Retail Fund, such sub-adviser will be responsible for voting all proxies for such Retail Funds in accordance with the sub-adviser's proxy voting policies. The Compliance Department, to provide oversight over the proxy voting by sub-advisers and to ensure that votes are executed in the best interests of the Retail Funds, shall (i) review the proxy voting policies and procedures of each Retail Fund sub-adviser to confirm that they comply with Rule 206(4)-6, both upon engagement of the sub-adviser and upon any material change to the sub-adviser's proxy voting policies and procedures, and (ii) require each such sub-adviser to provide quarterly certifications that all proxies were voted pursuant to the sub-adviser's policies and procedures or to describe any inconsistent votes.

General Principles

The Company and its affiliates engage in a broad range of activities, including investment activities for their own accounts and for the accounts of various Clients and providing investment advisory and other services to Clients. In the ordinary course of conducting the Company's activities, the interests of a Client may conflict with the interests of the Company, other Clients and/or the Company's affiliates and their clients. Any conflicts of interest relating to the voting of proxies, regardless of whether actual or perceived, will be addressed in accordance with these policies and procedures. The guiding principle by which the Company votes all proxies is to vote in the best interests of each Client by maximizing the economic value of the relevant Client's holdings, taking into account the relevant Client's investment horizon, the contractual obligations under the relevant advisory agreements or comparable documents and all other relevant facts and circumstances at the time of the vote. The Company does not permit voting decisions to be influenced in any manner that is contrary to, or dilutive of, this guiding principle.

Voting Procedures

Third-Party Proxy Advisors

The Company may engage a third-party proxy advisor ("Proxy Advisor") to provide proxy voting recommendations with respect to Client proxies. Proxy Advisor voting recommendation guidelines are generally designed to increase investors' potential financial gain. When considering whether to retain or continue retaining any particular Proxy Advisor, the Compliance Department will ascertain, among other things, whether the Proxy Advisor has the capacity and competency to adequately analyze proxy issues. In this regard, the Compliance Department will consider, among other things: the adequacy and quality of the Proxy Advisor's staffing and

[1] In any case where a Client has instructed the Company to vote in a particular manner on the Client's behalf, those instructions will govern in lieu of parameters set forth in the Policy. personnel; the robustness of its policies and procedures regarding its ability to (a) ensure that its proxy voting recommendations are based on current and accurate information and (b) identify and address any conflicts of interest and any other considerations that the Compliance Department determines would be appropriate in considering the nature and quality of the services provided by the Proxy Advisor. To identify and address any conflicts that may arise on the part of the Proxy Advisor, the Compliance Department will ensure that the Proxy Advisor notifies the Compliance Department of any relevant business changes or changes to its policies and procedures regarding conflicts.

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Third-Party Proxy Voting Services

The Company may utilize a third-party proxy voting service ("Proxy Voting Service") to monitor holdings in Client accounts for purposes of determining whether there are upcoming shareholder meetings or similar corporate actions and to execute Client proxies on behalf of the Company pursuant to the Company's instructions, which shall be given in a manner consistent with this Policy. The Compliance Department will oversee each Proxy Voting Service to ensure that proxies have been voted in a manner consistent with the Company's instructions.

Monitoring

Subject to the procedures regarding Nonstandard Proxy Notices described below, the Compliance Department of the Company shall have responsibility for monitoring Client accounts for proxy notices. Except as detailed below, if proxy notices are received by other employees of the Company, such employees must promptly forward all proxy or other voting materials to the Compliance Department.

Portfolio Manager Review and Instruction

From time to time, the settlement group of the Company may receive nonstandard proxy notices, regarding matters including, but not limited to, proposals regarding corporate actions or amendments ("Nonstandard Proxy Notices") with respect to securities held by Clients. Upon receipt of a Nonstandard Proxy Notice, a member of the settlement group (the "Settlement Designee") shall send an email notification containing all relevant information to the Portfolio Manager(s) with responsibility for the security and *[.com]*. Generally, the relevant Portfolio Manager(s) shall deliver voting instructions for Nonstandard Proxy Notices by replying to the email notice sent to the Portfolio Manager(s) and *[.com]* by the Settlement Designee or by sending voting instructions to *[.com]* and copying *[.com]*. Any conflicts for Nonstandard Proxy Notices should also be disclosed to the Compliance Department. In the event a Portfolio Manager orally conveys voting instructions to the Settlement Designee or any other member of the Company's settlement group, that Settlement Designee or member of the Company's settlement group shall respond to the original notice email sent to *[.com]* detailing the Portfolio Manager(s) voting instructions.

With regard to standard proxy notices, on a weekly basis, the Compliance Department will send a notice of upcoming proxy votes related to securities held by Clients and the corresponding voting recommendations of the Proxy Advisor to the relevant Portfolio Manager(s). Upon receipt of a proxy notice from the Compliance Department, the Portfolio Manager(s) will review and evaluate the upcoming votes and recommendations. The Portfolio Managers may rely on any information and/or research available to him or her and may, in his or her discretion, meet with members of an issuer's management to discuss matters of importance to the relevant Clients and their economic interests. Should the Portfolio Manager determine that deviating from the Proxy Advisor's recommendation is in a Client's best interest, the Portfolio Manager shall communicate his or her voting instructions to the Compliance Department.

In the event that more than one Portfolio Manager is responsible for making a particular voting decision and such Portfolio Managers are unable to arrive at an agreement as to how to vote with respect to a particular proposal, they should consult with the applicable Chief Compliance Officer (the "CCO") for guidance.

Voting

Upon receipt of the relevant Portfolio Managers' voting instructions, if any, the Compliance Department will communicate the instructions to the Proxy Voting Service to execute the proxy votes.

Non-Votes

It is the general policy of the Company to vote or give consent on all matters presented to security holders in any vote, and these policies and procedures have been designated with that in mind. However, the Company reserves the right to abstain on any particular vote if, in the judgment of the CCO, or the relevant Portfolio Manager, the effect on the relevant Client's economic interests or the value of the portfolio holding is insignificant in relation to the Client's portfolio, if the costs associated with voting in any particular instance outweigh the benefits to the relevant Clients or if the circumstances make such an abstention or withholding otherwise advisable and in the best interests of the relevant Clients not to vote. Such determination may apply in respect of all Client holdings of the securities or only certain specified Clients, as the Company deems appropriate under the circumstances. As examples, a Portfolio Manager may determine: (a) not to recall securities on loan if, in his or her judgment, the matters being voted upon are not material events affecting the securities and the negative consequences to Clients of disrupting the securities lending program would outweigh

the benefits of voting in the particular instance or (b) not to vote proxies relating to certain foreign securities if, in his or her judgment, the expense and administrative inconvenience outweighs the benefits to Clients of voting the securities.

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Conflicts of Interest

The Company's Compliance Department is responsible for monitoring voting decisions for any conflicts of interest, regardless of whether they are actual or perceived. All voting decisions contrary to the recommendation of a Proxy Advisor require a mandatory conflicts of interest review by the Compliance Department, which will include a consideration of whether the Company or any Portfolio Manager or other person recommending or providing input on how to vote has an interest in the vote that may present a conflict of interest.

In addition, all Company investment professionals are expected to perform their tasks relating to the voting of proxies in accordance with the principles set forth above, according the first priority to the best interest of the relevant Clients. If at any time a Portfolio Manager or any other investment professional becomes aware of a potential or actual conflict of interest regarding any particular voting decision, he or she must contact the Compliance Department promptly and, if in connection with a proxy that has yet to be voted, prior to such vote. If any investment professional is pressured or lobbied, whether from inside or outside the Company, with respect to any particular voting decision, he or she should contact the Compliance Department promptly. The CCO will use his or her best judgment to address any such conflict of interest and ensure that it is resolved in accordance with his or her independent assessment of the best interests of the relevant Clients.

In the event of a conflict, the Company may choose to address such conflict by: (i) voting in accordance with the Proxy Advisor's recommendation; (ii) the CCO determining how to vote the proxy (if the CCO approves deviation from the Proxy Advisor's recommendation, then the CCO shall document the rationale for the vote); (iii) "echo voting" or "mirror voting" the proxy in the same proportion as the votes of other proxy holders that are not Clients; or (iv) with respect to Clients other than Retail Funds, notifying the affected Client of the material conflict of interest and seeking a waiver of the conflict or obtaining such Client's voting instructions. Where the Compliance Department deems appropriate, third parties may be used to help resolve conflicts. In this regard, the CCO or his or her delegate shall have the power to retain fiduciaries, consultants or professionals to assist with voting decisions and/or to delegate voting or consent powers to such fiduciaries, consultants or professionals.

Where a conflict of interest arises with respect to a voting decision for a Retail Fund, the Company shall disclose the conflict and the rationale for the vote taken to the Retail Fund's Board of Directors/Trustees at the next regularly scheduled quarterly meeting. The Compliance Department will maintain a log documenting the basis for the decision and will furnish the log to the Board of Trustees.

Material Conflicts of Interest

The following relationships or circumstances are examples of situations that may give rise to a material conflict of interest for purposes of this Policy. This list is not exclusive or determinative; any potential conflict (including payments of the types described below but less than the specified threshold) should be identified to the Company's Compliance Department:

(i) The issuer is a Client of the Company, or of an affiliate, accounting for more than 5% of the Company's or affiliate's annual revenues.

(ii) The issuer is an entity that reasonably could be expected to pay the Company or its affiliates more than $1 million through the end of the Company's next two full fiscal years.

(iii) The issuer is an entity in which a "Covered Person" (as defined in the Company's Policies and Procedures Designed to Detect and Prevent Insider Trading and to Comply with Rule 17j-1 of the Investment Company Act of 1940, as amended (the "Code of Ethics")) has a beneficial interest contrary to the position held by the Company on behalf of Clients.

(iv) The issuer is an entity in which an officer or partner of the Company or a relative of any such person is or was an officer, director or employee, or such person or relative otherwise has received more than $150,000 in fees, compensation and other payment from the issuer during the Company's last three fiscal years; provided, however, that the Compliance Department may deem such a relationship not to be a material conflict of interest if the Company representative serves as an officer or director of the issuer at the direction of the Company for purposes of seeking control over the issuer.

(v) The matter under consideration could reasonably be expected to result in a material financial benefit to the Company or its affiliates through the end of the Company's next two full fiscal years (for example, a vote to increase an investment advisory fee for a Retail Fund advised by the Company or an affiliate).

(vi) Another Client or prospective Client of the Company, directly or indirectly, conditions future engagement of the Company on voting proxies in respect of any Client's securities on a particular matter in a particular way.

(vii) The Company holds various classes and types of equity and debt securities of the same issuer contemporaneously in different Client portfolios.

(viii) Any other circumstance where the Company's duty to serve its Clients' interests, typically referred to as its "duty of loyalty," could be compromised.

Notwithstanding the foregoing, a conflict of interest described above shall not be considered material for the purposes of this Policy in respect of a specific vote or circumstance if:

The securities in respect of which the Company has the power to vote account for less than 1% of the issuer's outstanding voting securities, but only if: (i) such securities do not represent one of the 10 largest holdings of such issuer's outstanding voting securities and (ii) such securities do not represent more than 2% of the Client's holdings with the Company.

The matter to be voted on relates to a restructuring of the terms of existing securities or the issuance of new securities or a similar matter arising out of the holding of securities, other than common equity, in the context of a bankruptcy or threatened bankruptcy of the issuer.

Recordkeeping

Following the submission of a proxy vote, the Fund will maintain a report of the vote and all relevant documentation.

The Fund shall retain records relating to the voting of proxies and the Company shall conduct due diligence, including on Proxy Voting Services and Proxy Advisors, as applicable, to ensure the following records are adequately maintained by the appropriate party:

(i) Copies of this Policy and any amendments thereto.

(ii) A current copy of the Proxy Advisor's voting guidelines, as amended.

(iii) A copy of each proxy statement that the Company receives regarding Client securities. The Company may rely on a third party to make and retain, on the Company's behalf, a copy of a proxy statement, provided that the Company has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request.

(iv) Records of each vote cast by the Company on behalf of Clients. The Company may satisfy this requirement by relying on a third party to make and retain, on the Company's behalf, a record of the vote cast, provided that the Company has obtained an undertaking from the third party to provide a copy of the record promptly upon request.

(v) A copy of any documents created by the Company that were material to making a decision how to vote or that memorializes the basis for that decision.

(vi) A copy of each written request for information on how the Company voted proxies on behalf of the Client, and a copy of any written response by the Company to any (oral or written) request for information on how the Company voted.

These records shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the Company's fiscal year during which the last entry was made in the records, the first two years in an appropriate office of the Company.[2]

Enforcement of this Policy

It shall be the responsibility of the Compliance Department to handle or coordinate the enforcement of this Policy. The Compliance Department will periodically sample proxy voting records to ensure that proxies have been voted in accordance with this Policy, with a particular focus on any proxy votes that require additional analysis (e.g., proxies voted contrary to the recommendations of a Proxy Advisor).

If the Compliance Department determines that a Proxy Advisor or Proxy Voting Service may have committed a material error, the Compliance Department will investigate the error, taking into account the nature of the error, and seek to determine whether the Proxy Advisor or Proxy Voting Service is taking reasonable steps to reduce similar errors in the future.

In addition, no less frequently than annually, the Compliance Department will review the adequacy of this Policy to ensure that it has been implemented effectively and to confirm that this Policy continues to be reasonably designed to ensure that proxies are voted in the best interest of Clients.

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2 If the Company has essentially immediate access to a book or record (on the Company's proprietary system or otherwise) through a computer located at an appropriate office of the Company, then that book or record will be considered to be maintained at an appropriate office of the Company. "Immediate access" to books and records includes that the Company has the ability to provide promptly to Securities and Exchange Commission (the "SEC") examination staff hard copies of the books and records or access to the storage medium. The party responsible for the applicable books and records as described above shall also be responsible for ensuring that those books and records for the first two years are either physically maintained in an appropriate office of the Company or that the Company otherwise has essentially immediate access to the required books and records for the first two years.

Disclosures to Clients and Investors

The Company includes a description of its policies and procedures regarding proxy voting in Part 2 of Form ADV, along with a statement that Clients can contact the CCO to obtain a copy of these policies and procedures and information about how the Company voted with respect to a Client's securities. This Policy is, however, subject to change at any time without notice.

As a matter of policy, the Company does not disclose how it expects to vote on upcoming proxies. Additionally, the Company does not disclose the way it voted proxies to unaffiliated third parties without a legitimate need to know such information.

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Part C

Other Information

Item 25. ***Financial Statements and Exhibits***

1. Financial Statements

Part A — Financial Highlights.

Part B — Audited financial statements for the period ended December 31, 2018 are incorporated by reference herein to the Trust's annual report for the period ended December 31, 2018.

2. Exhibits

(a) Agreement and Declaration of Trust (1)

(b) By-Laws (1)

(c) Not applicable

(d)(1) Provisions of instruments defining the rights of holders of securities are contained in the Trust's Agreement and Declaration of Trust and By-Laws

(e) Dividend Reinvestment Plan (19)

(f) Not applicable

(g) Amended and Restated Investment Advisory Agreement, dated June 29, 2006, between the Trust and NexPoint Advisors, L.P. (7)

(h) Not applicable

(i) Not applicable

(j)(1) Master Custodian Agreement dated October 3, 2018 between Bank of New York Mellon ("BNY") and NexPoint Real Estate Strategies Fund, NexPoint Healthcare Opportunities Fund, NexPoint Latin American Opportunities Fund, NexPoint Discount Strategies Fund, NexPoint Energy and Materials Opportunities Fund, NexPoint Strategic Income Fund and NexPoint Event Driven Fund (the "Interval Funds") listed on Annex A thereto (as Annex A may be amended from time to time), is filed herewith.

(j)(2) Amendment 1 to Master Custodian Agreement dated April 8, 2019 between BNY and the Trust, the Interval Funds, the series of Highland Funds II, the series of Highland Funds I, the Trust, Highland Income Fund, Highland Global Allocation Fund and Gambier Bay, LLC, is filed herewith.

(j)(3) Amendment 2 to Master Custodian Agreement dated April 8, 2019 between BNY and the Trust, the Interval Funds, the series of Highland Funds II, the series of Highland Funds I, the Trust, Highland Income Fund, Highland Global Allocation Fund and Gambier Bay, LLC, is filed herewith.

(k)(1) Transfer Agency and Registrar Services Agreement, dated January 18, 2013, between the Trust and American Stock Transfer & Trust Company, LLC (10)

(k)(2) Administration Services Agreement, dated June 29, 2006, between the Trust and Highland Capital Management, L.P. (10)

(k)(3) Amendment No. 1, dated June 6, 2008, to Administration Services Agreement, dated December 4, 2006, between the Trust and Highland Capital Management, L.P. (10)

(k)(4) Master Sub-Administration Agreement, dated July 19, 2018, between SEI investments Global Funds Services and NexPoint Advisors, L.P. (19)

(k)(5) Committed Facility Agreement, dated May 16, 2013, between BNP Paribas Prime Brokerage, Inc. ("BNP") and the Trust (8)

(k)(6) First Amendment Agreement, dated May 29, 2013, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (12)

(k)(7) Second Amendment Agreement, dated December 11, 2013, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (10)

(k)(8) Third Amendment Agreement, dated May 6, 2014, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (10)

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(k)(9)	Fourth Amendment Agreement, dated October 28, 2014, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (10)
(k)(10)	Fifth Amendment Agreement, dated February 26, 2015, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (10)
(k)(11)	Sixth Amendment Agreement, dated August 3, 2015, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (11)
(k)(12)	Seventh Amendment Agreement, dated November 30, 2015, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (11)
(k)(13)	Eighth Amendment Agreement, dated December 9, 2015, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (11)
(k)(14)	Ninth Amendment Agreement, dated March 16, 2016, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (18)
(k)(15)	Tenth Amendment Agreement, dated March 9, 2018, to the Committed Facility Agreement, dated May 16, 2013, between BNP and the Trust (18)
(k)(16)	Annex to the Master Repurchase Agreement dated November 17, 2017, between BNP Paribas Securities Corp. and NexPoint Advisors, L.P. (17)
(k)(17)	Form of Special Custody and Pledge Agreement (8)
(k)(18)	Form of U.S. PB Agreement (8)
(k)(19)	Rights Offering Marketing Support Agreement dated March 16, 2018, between Highland Capital Funds Distributor, Inc. and the Trust (18)
(k)(20)	ISDA Master Agreement dated August 4, 2017, Credit Support Annex and related Schedules between Societe Generale and NexPoint Advisors, L.P. (17)
(k)(21)	Amended and Restated Revolving Credit Agreement dated August 14, 2018, between the Trust, NexPoint Real Estate Opportunities, LLC and NexPoint Real Estate Capital, LLC and Keybank, National Association (19)
(l)(1)	Opinion of Counsel to the Trust, to be filed by amendment.
(l)(2)	Consent of Counsel to the Trust, filed herewith
(m)	Not applicable
(n)	Consent of Independent Registered Public Accounting Firm, filed herewith.
(o)	Not applicable
(p)	Subscription Agreement, dated June 1, 2006, between the Trust and Highland Capital Management Services, Inc. (1)
(q)	Not applicable
(r)(1)	Code of Ethics of the Trust (13)
(r)(2)	Code of Ethics of the Investment Adviser (19)
(s)	Powers of Attorney for Ethan Powell, Bryan A. Ward, John Honis, Dustin Norris and Dr. Bob Froehlich, filed herewith

(1) Incorporated by reference from Pre-Effective Amendment No. 4 to the Trust's Registration Statement on Form N-2 (File No. 333-132436), filed on June 9, 2006.

(2) Incorporated by reference from Pre-Effective Amendment No. 5 to the Trust's Registration Statement on Form N-2 (File No. 333-132436), filed on June 21, 2006.

(3) Incorporated by reference from the Trust's Registration Statement on Form N-14 (File No. 333-156464), filed on December 24, 2008.
(4) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-173004), filed on March 23, 2011.
(5) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-173004), filed on July 29, 2011.
(6) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-173004), filed on May 7, 2013.
(7) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-173004), filed on August 21, 2013.
(8) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-173004), filed on November 12, 2013.
(9) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-173004), filed on May 1, 2014.
(10) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-173004), filed on April 30, 2015.
(11) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-209877), filed on March 2, 2016.
(12) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-215796), filed on January 27, 2017.
(13) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-215796), filed on March 13, 2017.
(14) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-215796), filed on April 14, 2017.
(15) Incorporated by reference from Post-Effective Amendment No. 1 to the Trust's Registration Statement on Form N-2 (File No. 333-215796), filed on April 21, 2017.
(16) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-219983), filed on August 15, 2017.
(17) Incorporated by reference from the Trust's Registration Statement on Form N-2 (File No. 333-219983), filed on December 19, 2017.
(18) Incorporated by reference from Post-Effective Amendment No. 1 to the Trust's Registration Statement on Form N-2 (File No. 333-219983), filed March 23, 2018.
(19) Incorporated by reference to the Trust's Registration Statement on Form N-2 (File No. 333-230078), filed on March 5, 2019.

Item 26. ***Marketing Arrangements***

Not applicable.

Item 27. ***Other Expenses of Issuance and Distribution***

The following table sets forth the estimated expenses to be incurred in connection with all offerings described in this Registration Statement:

Legal Fees	$165,000
Subscription Agent	60,000
Information Agent	25,000
Printing and Mailing	50,000
NYSE Listing Fee	50,000
SEC Registration Fee	60,600
FINRA Fee	7,000
Other	27,400
Total	$445,000

Note: All amounts are estimates.

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Item 28. ***Persons Controlled by or Under Common Control with the Registrant***

As of June 30, 2019, the Trust beneficially owns 100% of NexPoint Real Estate Opportunities, LLC and 100% of NexPoint Real Estate Capital, LLC, each a Delaware limited liability company that has elected to be treated as a real estate investment trust. See "Portfolio Composition" in the Trust's Prospectus and "Investment Policies and Techniques—Real Estate Investment Trusts 'REITS'" in the Trust's statement of additional information filed herewith. As of June 30, 2019, the Trust beneficially owns 100% of Specialty Financial Products Ltd., a private company with limited liability duly incorporated under the laws of Ireland.

Item 29. ***Number of Holders of Shares***

As of June 30, 2019:

Title of Class	Number of Registered Holders
Common Shares of Beneficial Interest	1,166

Item 30. ***Indemnification***

Article V of the Registrant's Agreement and Declaration of Trust provides as follows:

5.1 *No Personal Liability of Shareholders, Trustees, etc.* No Shareholder of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person in connection with Trust Property or the acts, obligations or affairs of the Trust. Shareholders shall have the same limitation of personal liability as is extended to stockholders of a private corporation for profit incorporated under the Delaware General Corporation Law. No trustee or officer of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person, save only liability to the Trust or its Shareholders arising from bad faith, willful misfeasance, gross negligence or reckless disregard for his duty to such Person; and, subject to the foregoing exception, all such Persons shall look solely to the Trust Property for satisfaction of claims of any nature arising in connection with the affairs of the Trust. If any Shareholder, trustee or officer, as such, of the Trust, is made a party to any suit or proceeding to enforce any such liability, subject to the foregoing exception, he shall not, on account thereof, be held to any personal liability. Any repeal or modification of this Section 5.1 shall not adversely affect any right or protection of a trustee or officer of the Trust existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

5.2 *Mandatory Indemnification*. (a) The Trust hereby agrees to indemnify each person who at any time serves as a trustee or officer of the Trust (each such person being an "indemnitee") against any liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and reasonable counsel fees reasonably incurred by such indemnitee in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative or investigative body in which he may be or may have been involved as a party or otherwise or with which he may be or may have been threatened, while acting in any capacity set forth in this Article V by reason of his having acted in any such capacity, except with respect to any matter as to which he shall not have acted in good faith in the reasonable belief that his action was in the best interest of the Trust or, in the case of any criminal proceeding, as to which he shall have had reasonable cause to believe that the conduct was unlawful, provided, however, that no indemnitee shall be indemnified hereunder against any liability to any person or any expense of such indemnitee arising by reason of (i) willful misfeasance, (ii) bad faith, (iii) gross negligence, or (iv) reckless disregard of the duties involved in the conduct of his position (the conduct referred to in such clauses (i) through (iv) being sometimes referred to herein as "disabling conduct"). Notwithstanding the foregoing, with respect to any action, suit or other proceeding voluntarily prosecuted by any indemnitee as plaintiff, indemnification shall be mandatory only if the prosecution of such action, suit or other proceeding by such indemnitee (1) was authorized by a majority of the trustees or (2) was instituted by the indemnitee to enforce his or her rights to indemnification hereunder in a case in which the indemnitee is found to be entitled to such indemnification. The rights to indemnification set forth in this Declaration shall continue as to a person who has ceased to be a trustee or officer of the Trust and shall inure to the benefit of his or her heirs, executors and personal and legal representatives. No amendment or restatement of this Declaration or repeal of any

of its provisions shall limit or eliminate any of the benefits provided to any person who at any time is or was a trustee or officer of the Trust or otherwise entitled to indemnification hereunder in respect of any act or omission that occurred prior to such amendment, restatement or repeal.

(b) Notwithstanding the foregoing, no indemnification shall be made hereunder unless there has been a determination (i) by a final decision on the merits by a court or other body of competent jurisdiction before whom the issue of entitlement to indemnification hereunder was brought that such indemnitee is entitled to indemnification hereunder or, (ii) in the absence of such a decision, by (1) a majority vote of a quorum of those trustees who are neither "interested persons" of the Trust (as defined in Section 2(a)(19) of the Investment Company Act) nor parties to the proceeding ("Disinterested Non-Party Trustees"), that the indemnitee is entitled to indemnification hereunder, or (2) if such quorum is not obtainable or even if obtainable, if such majority so directs, independent legal counsel in a written opinion concludes that the indemnitee should be entitled to indemnification hereunder. All determinations to make advance payments in connection with the expense of defending any proceeding shall be authorized and made in accordance with the immediately succeeding paragraph (c) below.

(c) The Trust shall make advance payments in connection with the expenses of defending any action with respect to which indemnification might be sought hereunder if the Trust receives a written affirmation by the indemnitee of the indemnitee's good faith belief that the standards of conduct necessary for indemnification have been met and a written undertaking to reimburse the Trust unless it is subsequently determined that the indemnitee is entitled to such indemnification and if a majority of the trustees determine that the applicable standards of conduct necessary for indemnification appear to have been met. In addition, at least one of the following conditions must be met: (i) the indemnitee shall provide adequate security for his undertaking, (ii) the Trust shall be insured against losses arising by reason of any lawful advances, or (iii) a majority of a quorum of the Disinterested Non-Party Trustees, or if a majority vote of such quorum so direct, independent legal counsel in a written opinion, shall conclude, based on a review of readily available facts (as opposed to a full trial-type inquiry), that there is substantial reason to believe that the indemnitee ultimately will be found entitled to indemnification.

(d) The rights accruing to any indemnitee under these provisions shall not exclude any other right which any person may have or hereafter acquire under this Declaration, the By-Laws of the Trust, any statute, agreement, vote of stockholders or trustees who are "disinterested persons" (as defined in Section 2(a)(19) of the Investment Company Act) or any other right to which he or she may be lawfully entitled.

(e) Subject to any limitations provided by the Investment Company Act and this Declaration, the Trust shall have the power and authority to indemnify and provide for the advance payment of expenses to employees, agents and other Persons providing services to the Trust or serving in any capacity at the request of the Trust to the full extent corporations organized under the Delaware General Corporation Law may indemnify or provide for the advance payment of expenses for such Persons, provided that such indemnification has been approved by a majority of the trustees.

5.3 *No Bond Required of Trustees*. No trustee shall, as such, be obligated to give any bond or other security for the performance of any of his duties hereunder.

5.4 *No Duty of Investigation; Notice in Trust Instruments, etc*. No purchaser, lender, transfer agent or other person dealing with the trustees or with any officer, employee or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the trustees or by said officer, employee or agent or be liable for the application of money or property paid, loaned, or delivered to or on the order of the trustees or of said officer, employee or agent. Every obligation, contract, undertaking, instrument, certificate, Share, other security of the Trust, and every other act or thing whatsoever executed in connection with the Trust shall be conclusively taken to have been executed or done by the executors thereof only in their capacity as trustees under this Declaration or in their capacity as officers, employees or agents of the Trust. The trustees may maintain insurance for the protection of the Trust Property, its Shareholders, trustees, officers, employees and agents in such amount as the trustees shall deem adequate to cover possible tort liability, and such other insurance as the trustees in their sole judgment shall deem advisable or is required by the Investment Company Act.

5.5 *Reliance on Experts, etc*. Each trustee and officer or employee of the Trust shall, in the performance of its duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in

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good faith upon the books of account or other records of the Trust, upon an opinion of counsel, or upon reports made to the Trust by any of the Trust's officers or employees or by any advisor, administrator, manager, distributor, selected dealer, accountant, appraiser or other expert or consultant selected with reasonable care by the trustees, officers or employees of the Trust, regardless of whether such counsel or expert may also be a trustee.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "1933 Act"), may be permitted to trustees, officers and controlling persons of the Trust, pursuant to the foregoing provisions or otherwise, the Trust has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the 1933 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Trust of expenses incurred or paid by a trustee, officer or controlling person of the Trust in the successful defense of any action, suit or proceeding) is asserted by such trustee, officer or controlling person in connection with the securities being registered, the Trust will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue. Reference is made to Section 7 of the Dealer Manager Agreement, which will be filed as Exhibit (h) in a subsequent pre-effective amendment and will discuss the rights, responsibilities and limitations with respect to indemnity and contribution.

Item 31. ***Business and Other Connections of Investment Advisor***

(a) The description of the business of NexPoint Advisors, L.P. ("NexPoint"), the investment adviser, is set forth under the caption "Management of the Funds" in the Prospectus and under the caption "Management" in the SAI, each forming part of this Registration Statement. The information as to other businesses, if any, and the directors and officers of NexPoint is set forth in its Form ADV, as filed with the SEC through the Investment Adviser Registration Depository (IARD) on (File No. 801-54874) and as amended through the date hereof, and is incorporated herein by reference.

(b) Highland Capital Management Fund Advisors, L.P. ("HCMFA"), Highland Capital Management, L.P. ("HCM") and NexBank Securities, Inc., each with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201, are registered investment advisers affiliated with NexPoint.

The following person is a non-executive officer of HCMFA and NexPoint:

(1) Jason Post, Chief Compliance Officer

The following persons are executive offers of the general partner of HCMFA, Strand Advisors XVI, Inc.:

(1) Frank Waterhouse, Treasurer

(2) Dustin Norris, Executive Vice President

(3) Lauren Thedford, Secretary

The following persons are executive officers of the general partner of HCM and Strand Advisors, Inc.:

(1) James Dondero, President

(2) Mark Okada, Executive Vice President

(3) Scott Ellington, Secretary

(4) Frank Waterhouse, Treasurer

(5) Trey Parker, Assistant Secretary

The following persons are non-executive officers of NexBank Securities, Inc.

(1) Eric Holt, Chief Compliance Officer

(2) Stacy Hodges, Financial and Operations Principal

The following person is the executive officer of NexBank Securities, Inc.:

(1) Craig Campbell, President

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Item 32. ***Location of Accounts and Records***

(1) American Stock Transfer & Trust Company, LLC, 6201 15th Avenue, Brooklyn, NY 11219 (records relating to its function as transfer agent).

(2) Bank of New York Mellon, 240 Greenwich Street, New York, New York 10286 (records relating to its function as custodian).

(3) NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 (records relating to its function as adviser and administrator).

(4) SEI Investments Global Fund Services, One Freedom Valley Drive, Oaks, Pennsylvania 19456 (records relating to its function as sub-administrator).

Item 33. ***Management Services***

Not Applicable.

Item 34. ***Undertakings***

(1) The Registrant hereby undertakes to suspend the offering of its shares until it amends its prospectus if (a) subsequent to the effective date of its Registration Statement, the net asset value declines more than 10 percent from its net asset value as of the effective date of the Registration Statement, or (b) the net asset value increases to an amount greater than its net proceeds as stated in the prospectus.

(2) The Registrant undertakes to file a post-effective amendment to the registration statement, and to suspend any offers or sales pursuant to the registration statement until such post-effective amendment has been declared effective under the 1933 Act in the event the shares of the Registrant are trading below its net asset value and either (i) the Registrant receives, or has been advised by its independent registered accounting firm that it will receive, an audit report reflecting substantial doubt regarding the registrant's ability to continue as a going concern; or (ii) the Registrant has concluded that a material adverse change has occurred in its financial position or results of operations that has caused the financial statements and other disclosures on the basis of which the offering would be made to be materially misleading.

(3) If the securities being registered are to be offered to existing shareholders pursuant to rights, and any securities not taken by shareholders are to be reoffered to the public, the Registrant undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by underwriters during the subscription period, the amount of unsubscribed securities to be purchased by underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters of the securities being registered is to be made on terms differing from those set forth on the cover page of the prospectus, the Registrant further undertakes to file a post-effective amendment to set forth the terms of such offering.

(4) The Registrant undertakes:

(a) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(1) to include any prospectus required by Section 10(a)(3) of the 1933 Act;

(2) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

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(b) that, for the purpose of determining liability under the 1933 Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time shall be deemed to be the initial bona fide offering thereof; and

(c) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

(d) that, for the purpose of determining liability under the 1933 Act to any purchaser, if the Registrant is subject to Rule 430C; each prospectus filed pursuant to Rule 497(b), (c), (d) or (e) under the 1933 Act, shall be deemed to be part of and included in this registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in this registration statement or prospectus that is part of this registration statement or made in a document incorporated or deemed incorporated by reference into this registration statement or prospectus that is art of this registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in this registration statement or prospectus that was part of this registration statement or made in any such document immediately prior to such date of first use;

(e) that for the purpose of determining liability of the Registrant under the 1933 Act to any purchaser in the initial distribution of securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser:

(1) any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 497 under the 1933 Act;

(2) the portion of any advertisement pursuant to Rule 482 under the 1933 Act relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(3) any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(5) The Registrant undertakes that:

(a) For the purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of a registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the Registrant under Rule 497 (h) under the 1933 Act shall be deemed to be part of the Registration Statement as of the time it was declared effective.

(b) For the purpose of determining any liability under the 1933 Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

(6) The Registrant undertakes to send by first class mail or other means designed to ensure equally prompt delivery within two business days of receipt of a written or oral request, any Statement of Additional Information.

(7) The Registrant undertakes to file a post-effective amendment under Section 8(c) of the 1933 Act in connection with any one or more offerings of the Registrant's common shares (including rights to purchase the common shares) below net asset value that will result in greater than 15% dilution, in the aggregate, to existing net asset value per share.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended (the "1933 Act") and the Investment Company Act of 1940, as amended (the "1940 Act"), the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas and the State of Texas, on the on the 27th day of August, 2019.

/s/ James Dondero
James Dondero
President (Principal Executive Officer)

Pursuant to the requirements of the 1933 Act and the 1940 Act, this Registration Statement has been signed by the following persons in the capacities set forth below on the 27th day of August, 2019.

Signature	Title
/s/ James Dondero **James Dondero**	President (Principal Executive Officer)
/s/ Ethan Powell* **Ethan Powell**	Chairman of the Board of Trustees
/s/ Dr. Bob Froehlich* **Dr. Bob Froehlich**	Trustee
/s/ John Honis* **John Honis**	Trustee
/s/ Bryan A. Ward* **Bryan A. Ward**	Trustee
/s/ Dustin Norris* **Dustin Norris**	Trustee
/s/ Frank Waterhouse **Frank Waterhouse**	Treasurer (Principal Financial and Accounting Officer)

* By: /s/ Frank Waterhouse
Frank Waterhouse
Attorney in Fact*

* Pursuant to powers of attorney filed herewith.

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EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
(j)(1)	Master Custodian Agreement dated October 3, 2018 between Bank of New York Mellon ("BNY") and NexPoint Real Estate Strategies Fund, NexPoint Healthcare Opportunities Fund, NexPoint Latin American Opportunities Fund, NexPoint Discount Strategies Fund, NexPoint Energy and Materials Opportunities Fund, NexPoint Strategic Income Fund and NexPoint Event Driven Fund (the "Interval Funds") listed on Annex A thereto (as Annex A may be amended from time to time)
(j)(2)	Amendment 1 to Master Custodian Agreement dated April 8, 2019 between BNY and the Trust, the Interval Funds, the series of Highland Funds II, the series of Highland Funds I, the Trust, Highland Income Fund, Highland Global Allocation Fund and Gambier Bay, LLC
(j)(3)	Amendment 2 to Master Custodian Agreement dated April 8, 2019 between BNY and the Trust, the Interval Funds, the series of Highland Funds II, the series of Highland Funds I, the Trust, Highland Income Fund, Highland Global Allocation Fund and Gambier Bay, LLC
(l)(2)	Consent of Counsel to the Trust Dated August 27, 2019
(n)	Consent of Independent Registered Public Accounting Firm
(s)	Powers of Attorney for Ethan Powell, Bryan A. Ward, John Honis , Dustin Norris and Dr. Bob Froehlich

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 4

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

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	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

Vol. 2

Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346 thru Vol. 27	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
			Transcripts	
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT A-2

Filed Pursuant to Rule 497

NexPoint Capital, Inc.
Maximum Offering of 150,000,000 Shares of Common Stock

Supplement No. 21 dated March 14, 2018

to

Prospectus dated May 12, 2017

This supplement contains information which amends, supplements or modifies certain information contained in the Prospectus of NexPoint Capital, Inc. (the "Company") dated May 12, 2017 (the "Prospectus"), Supplement No. 1, dated June 14, 2017, Supplement No. 2, dated June 28, 2017, Supplement No. 3, dated July 26, 2017, Supplement No. 4, dated August 23, 2017, Supplement No. 5, dated September 13, 2017, Supplement No. 6, dated October 20, 2017, Supplement No. 7, dated October 23, 2017, Supplement No. 8, dated November 15, 2017, Supplement No. 9, dated November 22, 2017, Supplement No. 10, dated November 29, 2017, Supplement No. 11, dated November 30, 2017, Supplement No. 12, dated December 6, 2017, Supplement No. 13, dated December 13, 2017, Supplement No. 14, dated December 20, 2017, Supplement No. 15, dated December 28, 2017, Supplement No. 16, dated January 4, 2018, Supplement No. 17, dated January 10, 2018, Supplement No. 18, dated January 24, 2018, Supplement No. 19, dated January 31, 2018, and Supplement No. 20, dated February 14, 2018. The Prospectus has been filed with the U.S. Securities and Exchange Commission, and is available at www.sec.gov or by calling us toll-free at (877) 665-1287. Unless otherwise defined in this supplement, capitalized terms used in this supplement shall have the same meanings as set forth in the Prospectus.

You should carefully consider the "Risk Factors" beginning on page 31 of the Prospectus before you decide to invest in shares of our common stock.

Effective immediately, Nate Burns has been added as a portfolio manager for the Company.

Management of the Company – Portfolio Manager

Effective immediately, the section of the Prospectus entitled "Management of the Company – Portfolio Manager" beginning on page 113 of the Prospectus is hereby deleted in its entirety and replaced with the following:

Our portfolio managers are James Dondero, Michael Gregory and Nate Burns. Their investment decisions are not subject to the oversight, approval or ratification of a committee.

Name	Title	Length of Time Served	Principal Occupation(s) During the Past 5 Years
James Dondero	President	Since 2014	President of Highland Capital Management, L.P., which he co-founded in 1993; Chairman of the Board of NexPoint Residential Trust, Inc. since May 2015; Portfolio Manager of NHF, Portfolio Manager of Highland Energy MLP Fund, Highland Global Allocation Fund, Highland Small-Cap Equity Fund and Highland Premier Growth Equity Fund (all series of HFII); Portfolio Manager of Highland Opportunistic Credit Fund (series of Highland Funds I ("HFI"); President of NexPoint Real Estate Advisors, L.P. since May 2015; President of NexPoint Real Estate Advisors II, L.P. since June 2016; President and Portfolio Manager of NexPoint Discount Yield Fund, NexPoint Energy and Materials Opportunities Fund, NexPoint Healthcare Opportunities Fund, NexPoint Latin American Opportunities Fund, NexPoint Merger Arbitrage Fund, NexPoint Opportunistic Credit Fund and NexPoint Real Estate Strategies Fund since 2016; and a Portfolio Manager of NexPoint Capital since 2014.
Michael Gregory	Managing Director and Head of Healthcare	Since 2014	Managing Director and Head of Healthcare Credit and Healthcare Long/Short Equity investment strategies; Portfolio Manager of Highland Long/Short Healthcare Fund (series of HFI) since May 2010 and Highland Small-Cap Equity Fund and Highland Premier Growth Equity Fund (each a series of HFII) from July 2015 to March 2018 and from January 2016 to March 2018, respectively.

Nate Burns	Managing Director	Since 2018	Mr. Burns is a Managing Director at Highland Capital Management, L.P. and is a Portfolio Manager at NexPoint Advisors, L.P. Prior to joining Highland in 2013, he was an Associate at Ripplewood Holdings, a global private equity firm focused on control-oriented buyout, distressed and special situations investments. Prior to joining Ripplewood, he was an Analyst in the Global Technology Mergers & Acquisitions group at Lehman Brothers. Mr. Burns received a B.S. in Analytical Finance and Economics, summa cum laude and Phi Beta Kappa, from Wake Forest University and an MBA, with Dean's Honors and Distinction, from Columbia Business School. Mr. Burns is a holder of the right to use the Chartered Financial Analyst designation.

As of December 31, 2017, the portfolio managers managed the following client accounts:

Type of Account	Number of Accounts	Assets of Accounts (in millions)	Number of Accounts Subject to a Performance Fee	Assets Subject to a Performance Fee (in millions)
James Dondero				
Registered investment companies	9	$ 1,615	1	$ 95
Other pooled investment vehicles	2	$ 655	2	$ 655
Other accounts	0	$ 0	0	$ 0
Michael Gregory				
Registered investment companies	6	$ 681	0	$ 0
Other pooled investment vehicles	1	$ 7	1	$ 7
Other accounts	0	$ 0	0	$ 0
Nate Burns				
Registered investment companies	1	$ 95	1	$ 95
Other pooled investment vehicles	0	$ 0	0	$ 0
Other accounts	0	$ 0	0	$ 0

Effective immediately, the last paragraph and table under the section entitled "Control Persons and Principal Stockholders" on page 121 of the Prospectus are deleted in their entirety and replaced with the following:

The table below shows the dollar range of shares of common stock beneficially owned by each of our portfolio managers after giving effect to the private placement as of December 31, 2016.

Name of Portfolio Manager	Dollar Range of Equity Securities in NexPoint Capital (1)
James Dondero	Over $1 million
Michael Gregory	None
Nate Burns(2)	None

(1) Dollar ranges are as follows: None, $1 - $10,000, $10,001 - $50,000, $50,001 - $100,000, $100,001 - $500,000, $500,001 - $1,000,000, or over $1,000,000.

(2) As of February 28, 2018.

NEX-SUPP21-0318

EXHIBIT A-3

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HIGHLAND INCOME FUND
Filed Pursuant to Rule 497(c)
Registration Statement No. 333-219103

PROSPECTUS SUPPLEMENT
(To Prospectus dated July 1, 2019)

$135,000,000
5,400,000 Shares
5.375% Series A Cumulative Preferred Shares
(Liquidation Preference $25.00 per share)

Highland Income Fund (the "Trust") is offering 5,400,000 shares of 5.375% Series A Cumulative Preferred Shares, par value $0.001 per share (the "Series A Preferred Shares"). Investors in Series A Preferred Shares will be entitled to receive, when, as and if declared by, or under authority granted by, the Fund's Board of Trustees, out of funds legally available therefor, cumulative cash dividends and distributions at the rate of 5.375% per annum of the $25.00 per share liquidation preference on the Series A Preferred Shares. Dividends and distributions on Series A Preferred Shares will be payable quarterly on March 31, June 30, September 30 and December 31 in each year commencing on September 30, 2019. The Series A Preferred Shares will rank on parity with our any future preferred shares and senior to our common shares with respect to dividend and distribution rights and rights upon our liquidation.

The Series A Preferred Shares are redeemable at our option on or after September 30, 2024 and are subject to mandatory redemption by us in certain circumstances. See "Special Characteristics and Risks of the Series A Preferred Shares — Redemption."

The Trust is a non-diversified, closed-end management investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust's investment objective is to provide a high level of current income, consistent with preservation of capital.

The Trust seeks to achieve its objective by primarily investing directly and indirectly (e.g., through derivatives that are the economic equivalent of direct investments) in the following categories of securities and instruments: (i) floating rate loans and other securities deemed to be floating rate investments; (ii) investments in securities or other instruments directly or indirectly secured by real estate, including real estate investment trusts ("REITs"), preferred equity, securities convertible into equity securities and mezzanine debt; and (iii) other instruments, including, but not limited to, secured and unsecured fixed-rate loans and corporate bonds, distressed securities, mezzanine securities, structured products (including but not limited to mortgage-backed securities, collateralized loan obligations and asset-backed securities), convertible and preferred securities, equities (public and private), and futures and options. Floating rate investments are debt obligations of companies or other entities, the interest rates of which float or vary periodically based upon a benchmark indicator of prevailing interest rates. Highland Capital Management Fund Advisors, L.P. ("HCMFA" or the "Adviser") serves as investment adviser to the Trust.

Our common shares are listed on the New York Stock Exchange (the "NYSE") under the symbol "HFRO". On July 26, 2019, the last reported sale price of our common shares was $13.50. The net asset value of the Trust's common shares at the close of business on July 26, 2019 was $14.33 per share. As of the date hereof, the Trust has outstanding 71,872,584 common shares.

Application has been made to list the Series A Preferred Shares on the NYSE. If the application is approved, the Series A Preferred Shares are expected to commence trading on the NYSE under the symbol "HFRO Pr A" within thirty days of the date of issuance.

An investment in the Trust is not appropriate for all investors. We cannot assure you that the Trust's investment objective will be achieved. You should read this prospectus supplement (the "Prospectus Supplement") and the accompanying prospectus (the "Prospectus") before deciding whether to invest in Series A Preferred Shares and retain them for future reference. The Prospectus Supplement and the accompanying Prospectus contain important information about us. Material that has been incorporated by reference and other information about us can be obtained from us by calling 1-877- 665-1287 or by writing to the Trust or from the Securities and Exchange Commission's ("SEC") website (http://www.sec.gov).

Investing in Series A Preferred Shares involves certain risks that are described in the "Special Characteristics and Risks of the Series A Preferred Shares" section of this Prospectus Supplement and the "Principal Risks of the Trust" section beginning on page 39 of the accompanying Prospectus.

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NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS SUPPLEMENT IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Per Share	Total(2)
Public offering price	$ 25.00	$135,000,000
Underwriting discounts and commissions	$ 0.7875	$ 4,252,500
Proceeds, before expenses, to the Trust (1)	$ 24.2125	$130,747,500

(1) The aggregate expenses of the offering (excluding underwriting discounts and commissions) are estimated to be $500,000.

(2) We have granted the underwriters an option exercisable for a period of 30 days from the date of this prospectus supplement to purchase up to 810,000 additional shares of Series A Preferred Shares at the public offering price, less the underwriting discount, to cover over-allotments, if any. If the underwriters exercise the option in full, the total underwriting discounts and commissions will be $4,890,375, and the total proceeds, before expenses, to us will be $150,359,625.

The underwriters are expected to deliver the Series A Preferred Shares in book-entry form through the Depository Trust Company on or about August 1, 2019.

Morgan Stanley
Jefferies

The date of this Prospectus Supplement is July 29, 2019.

You should rely only on the information contained or incorporated by reference in this Prospectus Supplement and the accompanying Prospectus. Neither the Trust nor the underwriters have authorized anyone to provide you with different information. The Trust is not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this Prospectus Supplement and the accompanying Prospectus is accurate as of any date other than the date of this Prospectus Supplement and the accompanying Prospectus, respectively. Our business, financial condition, results of operations and prospects may have changed since those dates. In this Prospectus Supplement and in the accompanying Prospectus, unless otherwise indicated, "Trust," "us," "our" and "we" refer to The Highland Income Fund, a Massachusetts business trust. This Prospectus Supplement and the accompanying Prospectus also include trademarks owned by other persons.

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CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS

This Prospectus Supplement, the accompanying Base Prospectus and the Statement of Additional Information (the "SAI") contain "forward-looking statements." Forward-looking statements relate to future events or the Trust's future financial performance. Forward-looking statements can generally be identified by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar words. Important assumptions in forward-looking statements include the Trust's ability to acquire or originate new investments and to achieve certain margins and levels of profitability. In light of these and other uncertainties, the inclusion of a projection or forward-looking statement should not be regarded as a representation by the Trust that its plans or objectives will be achieved.

There are a number of important risks and uncertainties that could cause the Trust's actual results to differ materially from those indicated by such forward-looking statements. These risks include, but are not limited to, the following:

- Investment risk;
- Changes in interest rates;
- Risks associated with investing in high yield securities (also known as "junk securities"), senior loans and other debt and equity securities;
- Risks of investing in obligations of stressed, distressed and bankrupt issuers;
- Risk associated with investments in REITs;
- Risks associated with the Trust's use of leverage;
- Derivatives and structured finance securities risk; and
- Market risk generally.

For a discussion of these and additional risks as well as other factors that could cause the Trust's actual results to differ from forward-looking statements contained in this Prospectus Supplement, the Base Prospectus and the SAI, please see the discussion under "Principal Risks of the Trust." You should not place undue reliance on these forward-looking statements. The forward-looking statements made in this Prospectus Supplement, the Base Prospectus and the SAI relate only to events as of the date on which the statements are made. The Trust undertakes no obligation to update any forward-looking statement to reflect events or circumstances occurring after the date of this Prospectus Supplement, the Base Prospectus and the SAI, except as required by federal securities laws.

The forward-looking statements contained in this Prospectus Supplement, the Base Prospectus and the SAI excluded from the safe harbor protection provided by Section 27A of the Securities Act of 1933, as amended, and the forward looking statements contained in our periodic reports are excluded from the safe harbor protection provided by Section 21E of the Securities Exchange Act of 1934, as amended.

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SUMMARY OF THE TERMS OF THE SERIES A PREFERRED SHARES

This Prospectus Supplement sets forth certain terms of the Series A Preferred Shares that we are offering pursuant to this Prospectus Supplement and the accompanying Prospectus that is attached to the back of this Prospectus Supplement. This section outlines certain specific legal and financial terms of the Series A Preferred Shares that are more generally described under the headings "Special Characteristics and Risks of the Series A Preferred Shares" and "Description of the Series A Preferred Shares" herein and in the accompanying Prospectus under the heading "Description of Capital Structure." Capitalized terms used in this Prospectus Supplement and not otherwise defined shall have the meanings ascribed to them in the accompanying Prospectus or in the Statement of Preferences (as defined herein) governing and establishing the terms of the Series A Preferred Shares.

The Trust	Highland Income Fund (formerly, Highland Floating Rate Opportunities Fund) is a closed-end, non-diversified management investment company organized as a Massachusetts business trust on June 28, 2017. Throughout this Prospectus Supplement, we refer to Highland Income Fund as the "Trust" or as "we." The Trust's investment objective is to provide a high level of current income, consistent with preservation of capital. See the accompanying Prospectus under the heading "Investment Objective and Policies" for additional information. Highland Capital Management Fund Advisors, L.P. (the "Adviser") serves as investment adviser to the Trust. The Trust's outstanding common shares, par value $0.001 per share, are listed on the New York Stock Exchange (the "NYSE") under the symbol "HFRO". On July 26, 2019, the last reported sale price of our common shares was $13.50. The net asset value of the Trust's common shares at the close of business on July 26, 2019 was $14.33 per share. As of the date hereof, the Trust has outstanding 71,872,584 common shares. As of June 30, 2019, the net assets of the Trust attributable to its common shares were $1,037,528,378.
Securities Offered	5,400,000 shares of 5.375% Series A Cumulative Preferred Shares (the "Series A Preferred Shares"). Series A Preferred Shares shall constitute a separate series of preferred shares of the Trust.
Dividend Rate	Dividends and distributions on the Series A Preferred Shares are cumulative from their original issue date at the annual rate of 5.375% of the $25.00 per share liquidation preference on the Series A Preferred Shares.
Dividend Payment Date	Holders of Series A Preferred Shares will be entitled to receive, when, as and if declared by, or under authority granted by, the Trust's Board of Trustees (the "Board"), out of funds legally available therefor, cumulative cash dividends and distributions at the rate of 5.375% per annum of the $25.00 per share liquidation preference on the Series A Preferred Shares. Dividends and distributions will be paid quarterly on March 31, June 30, September 30 and December 31 in each year, commencing on September 30, 2019.
Liquidation Preference	$25.00 per share.
Use of Proceeds	The Trust estimates the total net proceeds of the offering to be $130,247,500, based on the public offering price of $25.00 per share without exercise of the over-allotment option and after deduction of the underwriting discounts and commissions and estimated offering expenses payable by us. The Trust intends to use net proceeds from this offering to purchase portfolio securities in accordance with its investment objectives and policies and may pay down a portion of the existing borrowings from the Trust's $350 million credit facility. See "Use of Proceeds."

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Non-Call Period/Redemption	The Series A Preferred Shares generally may not be called for redemption at the option of the Trust prior to September 30, 2024. The Trust reserves the right, however, to redeem the Series A Preferred Shares at any time if it is necessary, in the judgment of the Board, to maintain its status as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). The Trust may also be required under certain circumstances to redeem Series A Preferred Shares before or after September 30, 2024, in order to meet certain regulatory or rating agency asset coverage requirements. Commencing September 30, 2024, and thereafter, to the extent permitted by the 1940 Act and Massachusetts law, the Trust may at any time, upon notice of redemption, redeem the Series A Preferred Shares in whole or in part at the liquidation preference per share plus accumulated unpaid dividends through the date of redemption.
Stock Exchange Listing	Application has been made to list the Series A Preferred Shares on the NYSE. Prior to this offering, there has been no public market for Series A Preferred Shares. If the application is approved, it is anticipated that trading on the NYSE will begin within thirty days from the date of this Prospectus Supplement under the symbol "HFRO Pr A." Before the Series A Preferred Shares are listed on the NYSE, the underwriters may, but are not obligated to, make a market in Series A Preferred Shares. Consequently, it is anticipated that, prior to the commencement of trading on the NYSE, an investment in Series A Preferred Shares will be illiquid.
Taxation	See "Tax Matters" in the accompanying Prospectus and SAI for a discussion of U.S. federal income tax considerations affecting the Trust and holders of Series A Preferred Shares. The Trust will inform shareholders of the source and tax status of all distributions promptly after the close of each calendar year. The Internal Revenue Service has taken the position that if a RIC, such as the Trust, has more than one class of shares, it may designate distributions made to each class in any year as consisting of no more than that class's proportionate share of particular types of income for that year, including ordinary income and net capital gain. A class's proportionate share of a particular type of income for a year is determined according to the percentage of total dividends paid by the RIC during that year to the class. Accordingly, if the Trust pays any capital gain dividends for any year, the Trust intends to designate a portion of its dividends paid to holders of Series A Preferred Shares as capital gain dividends in accordance with the Internal Revenue Service position.
ERISA	See "Certain Employee Benefit Plan and IRA Considerations."
Dividend Disbursing Agent	American Stock Transfer and Trust Company LLC ("AST")

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DESCRIPTION OF THE SERIES A PREFERRED SHARES

The following is a brief description of the terms of the Series A Preferred Shares. This is not a complete description and is subject to and entirely qualified by reference to the Trust's Statement of Preferences for the Series A Preferred Shares (the "Statement of Preferences"). The Statement of Preferences will be attached as an exhibit to post-effective amendment number 1 to the Trust's registration statement. Copies may be obtained as described under "Additional Information" in the accompanying Prospectus. Any capitalized terms in this section and the "Special Characteristics and Risks of the Series A Preferred Shares" section of this Prospectus Supplement that are not defined have the meaning assigned to them in the Statement of Preferences.

The Trust's Agreement and Declaration of Trust (the "Declaration of Trust"), as amended from time to time, provides that the Board may authorize and issue classes of shares with rights and preferences as determined by the Board, by action of the Board without the approval of the holders of the common shares. Currently, an unlimited number of the Trust's shares are available for classification by the Board as preferred shares, par value $0.001 per share. The Statement of Preferences authorizes the issuance of up to 6,210,000 Series A Preferred Shares. All Series A Preferred Shares will have a liquidation preference of $25.00 per share plus accumulated and unpaid dividends. Holders of Series A Preferred Shares shall be entitled to receive, when, as and if declared by, or under authority granted by the Board, out of funds legally available therefor, cumulative cash dividends and distributions at the rate of 5.375% per annum (computed on the basis of a 360 day year consisting of twelve 30 day months) of the $25.00 per share liquidation preference on the Series A Preferred Shares. Dividends and distributions on Series A Preferred Shares will accumulate from the date of their original issue, which is expected to be August 1, 2019.

The Series A Preferred Shares, when issued by the Trust and paid for pursuant to the terms of this Prospectus Supplement and the accompanying Prospectus, will be fully paid and non-assessable and will have no preemptive, exchange or conversion rights. Any Series A Preferred Shares purchased or redeemed by the Trust will, after such purchase or redemption, have the status of authorized but unissued preferred shares. The Board may by resolution classify or reclassify any authorized and unissued Series A Preferred Shares from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and distributions, qualifications or terms or conditions of redemption of such shares. So long as any Series A Preferred Shares are outstanding, the Trust may not, without the affirmative vote of the holders of at least two-thirds of the Trust's preferred shares outstanding at the time and present and voting on such matter, voting separately as one class, amend, alter or repeal the provisions of the Statement of Preferences so as to in the aggregate adversely affect the rights and preferences of any preferred shares of the Trust. To the extent permitted under the 1940 Act, in the event that more than one series of the Trust's preferred shares are outstanding, the Trust will not effect any of the actions set forth in the preceding sentence which in the aggregate adversely affects the rights and preferences for a series of preferred shares differently than such rights and preferences for any other series of preferred shares without the affirmative vote of the holders of at least two-thirds of the Trust's preferred shares outstanding and present and voting on such matter of each series adversely affected (each such adversely affected series voting separately as a class to the extent its rights are affected differently).

The holders of the Series A Preferred Shares are not entitled to vote on any matter that affects the rights or interests of only one or more other series of the Trust's preferred shares. The Trust will notify the relevant Rating Agency ten Business Days prior to any such vote described above. Unless a higher percentage is required under the Governing Documents (as defined in the Statement of Preferences) or applicable provisions of Massachusetts law or the 1940 Act, the affirmative vote of the holders of at least two-thirds of the outstanding preferred shares, including Series A Preferred Shares, voting together as a single class, will be required to approve any plan of reorganization adversely affecting the Trust's preferred shares or any action requiring a vote of security holders under Section 13(a) of the 1940 Act. The class vote of holders of the Trust's preferred shares described above will in each case be in addition to a separate vote of the requisite percentage of common shares and preferred shares, including Series A Preferred Shares, voting together as a single class, necessary to authorize the action in question. An increase in the number of authorized preferred shares pursuant to the Governing Documents or the issuance of additional shares of any series of preferred shares (including Series A Preferred Shares) pursuant to the Governing Documents shall not in and of itself be considered to adversely affect the rights and preferences of the Trust's preferred shares.

Any dividend payment made on the Series A Preferred Shares will first be credited against the dividends and distributions accumulated with respect to the earliest Dividend Period for which dividends and distributions have not been paid.

The disclosure set forth in this Description of the Series A Preferred Shares and under the heading "Special Characteristics and Risks of the Series A Preferred Shares" is intended to be a summary of the material provisions of the Series A Preferred Shares. Since this Description of the Series A Preferred Shares is only a summary, you should refer to the Statement of Preferences for a complete description of the obligations of the Trust and your rights.

The disclosure set forth in this Description of the Series A Preferred Shares and under the heading "Special Characteristics and Risks of the Series A Preferred Shares" supplements the description of the preferred shares set forth under the caption

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"Description of Capital Structure – Preferred Shares" in the accompanying Prospectus, and in the event that any provision described in the disclosure set forth in this Description of the Series A Preferred Shares and under the heading "Special Characteristics and Risks of the Series A Preferred Shares" is inconsistent with any description contained in the accompanying Prospectus, the disclosure set forth in this Description of the Series A Preferred Shares and under the heading "Special Characteristics and Risks of the Series A Preferred Shares" will apply and supersede the description in the accompanying Prospectus.

USE OF PROCEEDS

The Trust estimates the total net proceeds of the offering to be $130,247,500, based on the public offering price of $25.00 per Series A Preferred Share without exercise of the over-allotment option and after deduction of the underwriting discounts and commissions and estimated offering expenses payable by the Trust. The Trust intends to use net proceeds from this offering to purchase portfolio securities in accordance with its investment objectives and policies and may pay down a portion of the existing borrowings from the Trust's $350 million credit facility, which currently bears interest at Libor + 1.35% with a maturity date of February 2, 2020.

CAPITALIZATION

The following table sets forth (i) the audited capitalization of the Trust as of December 31, 2018 and (ii) the unaudited adjusted capitalization of the Trust assuming the issuance of the 5,400,000 Series A Preferred Shares offered in this Prospectus Supplement. The actual size of the offering (including with the overallotment option) may be greater or less than what is assumed in the table below.

	Actual (audited)	As adjusted (unaudited)
Preferred shares, $0.001 par value per share, unlimited shares authorized	$ —	135,000,000
(The "Actual" column reflects the Trust's outstanding capitalization as of December 31, 2018. The "As adjusted (unaudited)" column assumes the issuance of 5,400,000 Series A Preferred Shares, $25.00 liquidation preference per share, and the common shares outstanding at December 31, 2018.)		
Shareholders' equity applicable to common shares:		
Common shares, $0.001 par value per share; unlimited shares authorized	71,873	71,873
(The "Actual" and "As Adjusted (unaudited)" columns reflect the 71,872,584 shares outstanding as of December 31, 2018.)		
Paid-in surplus*	1,628,548,821	1,624,898,821
Total distributable loss	(602,209,176)	(602,209,176)
Net assets applicable to common shares	1,026,411,518	1,022,761,518
Liquidation preference of preferred shares	—	135,000,000
Net assets, plus the liquidation preference of preferred shares	1,026,411,518	1,157,761,518

* As adjusted paid-in surplus reflects a deduction for the estimated underwriting discounts of $3,150,000 and estimated offering expenses of $500,000.

For financial reporting purposes, the Trust will deduct the liquidation preference of its outstanding preferred shares from "net assets," so long as the senior securities have redemption features that are not solely within the control of the Trust. For all regulatory purposes, the Trust's preferred shares will be treated as equity (rather than debt).

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DESCRIPTION OF THE SECURITIES

The following information regarding the Trust's authorized shares is as of the date hereof.

Title of Class	Amount Authorized	Amount Held by Trust or for its Account	Amount Outstanding Exclusive of Amount Held by Trust
Common Shares	Unlimited	—	71,872,584
Series A Preferred Shares	6,210,000	—	0
Other Series of Preferred Shares	Unlimited	—	0

ASSET COVERAGE RATIO

Pursuant to the 1940 Act, the Trust generally will not be permitted to declare any dividend, or declare any other distribution, upon any outstanding common shares, purchase any common shares or issue preferred shares, unless, in every such case, all preferred shares issued by the Trust have at the time of declaration of any such dividend or distribution or at the time of any such purchase or issuance an asset coverage of at least 200% ("1940 Act Asset Coverage Requirement") after deducting the amount of such dividend, distribution, or purchase price, as the case may be. As of the date of this Prospectus Supplement, all of the Trust's outstanding preferred shares are expected to have asset coverage on the date of issuance of the Series A Preferred Shares of approximately 270%.

In addition to the 1940 Act Asset Coverage Requirement, the Trust is subject to certain restrictions on investments imposed by guidelines of one or more rating agencies that are expected to issue a rating for the Series A Preferred Shares. See "Special Characteristics and Risks of the Series A Preferred Shares — Risks — Credit Rating Risk" in this Prospectus Supplement.

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SPECIAL CHARACTERISTICS AND RISKS OF THE SERIES A PREFERRED SHARES

Dividends

Holders of Series A Preferred Shares shall be entitled to receive, when, as and if declared by, or under authority granted by the Board, out of funds legally available therefor, cumulative cash dividends and distributions at the rate of 5.375% per annum (computed on the basis of a 360 day year consisting of twelve 30 day months) of the $25.00 per share liquidation preference on the Series A Preferred Shares. Dividends and distributions on Series A Preferred Shares will accumulate from the date of their original issue, which is expected to be August 1, 2019.

Dividends and distributions will be payable quarterly on March 31, June 30, September 30 and December 31 in each year (each a "Dividend Payment Date") commencing on September 30, 2019 (or, if any such day is not a business day, then on the next succeeding business day) to holders of record of Series A Preferred Shares as they appear on the share register of the Trust at the close of business on the fifth preceding business day (each, a "Record Date"). Dividends and distributions on Series A Preferred Shares that were originally issued on the Date of Original Issue (i.e., the Series A Preferred Shares to be issued in this offering) shall accumulate from the Date of Original Issue. Dividends and distributions on all other Series A Preferred Shares (i.e., any additional Series A Preferred Shares that may be issued in future offerings) will accumulate from (i) the date on which such shares are originally issued if such date is a Dividend Payment Date, (ii) the immediately preceding Dividend Payment Date if the date on which such shares are originally issued is other than a Dividend Payment Date and is on or before a Record Date or (iii) the immediately following Dividend Payment Date if the date on which such shares are originally issued is during the period between a Record Date and a Dividend Payment Date. Each period beginning on and including a Dividend Payment Date (or the date of original issue, in the case of the first dividend period after the first issuance of the Series A Preferred Shares) and ending on but excluding the next succeeding Dividend Payment Date is referred to herein as a "Dividend Period." Dividends and distributions on account of arrears for any past Dividend Period or in connection with the redemption of Series A Preferred Shares may be declared and paid at any time, without reference to any Dividend Payment Date, to holders of record on such date as shall be fixed by the Board that is not more than 30 days before the Dividend Payment Date.

No full dividends or distributions will be declared or paid on Series A Preferred Shares for any Dividend Period or part thereof unless full cumulative dividends and distributions due through the most recent Dividend Payment Dates therefor on all outstanding shares of any series of preferred shares of the Trust ranking on a parity with the Series A Preferred Shares as to the payment of dividends and distributions have been or contemporaneously are declared and paid through the most recent Dividend Payment Dates therefor. If full cumulative dividends and distributions due have not been paid on all of the Trust's outstanding preferred shares, any dividends and distributions being paid on such preferred shares (including the Series A Preferred Shares) will be paid as nearly pro rata as possible in proportion to the respective amounts of dividends and distributions accumulated but unpaid on each such series of preferred shares on the relevant Dividend Payment Date.

Restrictions on Issuance, Dividend, Redemption and Other Payments

Under the 1940 Act, the Trust is not permitted to issue preferred shares (such as the Series A Preferred Shares) unless immediately after such issuance the Trust will have an asset coverage of at least 200% (or such other percentage as may in the future be specified in or under the 1940 Act as the minimum asset coverage for senior securities representing stock of a closed-end investment company as a condition of declaring distributions, purchases or redemptions of its stock). In general, the term "asset coverage" for this purpose means the ratio which the value of the total assets of the Trust, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the Trust plus the aggregate of the involuntary liquidation preference of the preferred shares. The involuntary liquidation preference refers to the amount to which the preferred shares would be entitled on the involuntary liquidation of the Trust in preference to a security junior to them. The Trust also is not permitted to declare any cash dividend or other distribution on its common shares or purchase its common shares unless, at the time of such declaration or purchase, the Trust satisfies this 200% asset coverage requirement after deducting the amount of the dividend, distribution or purchase price, as applicable.

In addition, the Trust may be limited in its ability to declare any cash distribution on its shares (including the Series A Preferred Shares) or purchase its capital stock (including the Series A Preferred Shares) unless, at the time of such declaration or purchase, the Trust has an asset coverage on its indebtedness, if any, of at least 300% after deducting the amount of such distribution or purchase price, as applicable. The 1940 Act contains an exception, however, that permits dividends to be declared upon any preferred shares issued by the Trust (including the Series A Preferred Shares) if the Trust's indebtedness has an asset coverage of at least 200% at the time of declaration after deducting the amount of the dividend. In general, the term "asset coverage" for this purpose means the ratio which the value of the total assets of the Trust, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the Trust.

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The term "senior security" does not include any promissory note or other evidence of indebtedness in any case where such a loan is for temporary purposes only and in an amount not exceeding 5% of the value of the total assets of the Trust at the time when the loan is made. A loan is presumed under the 1940 Act to be for temporary purposes if it is repaid within 60 days and is not extended or renewed; otherwise it is presumed not to be for temporary purposes. For purposes of determining whether the 200% and 300% asset coverage requirements described above apply in connection with dividends or distributions on or purchases or redemptions of Series A Preferred Shares, the asset coverages may be calculated on the basis of values calculated as of a time within 48 hours (not including Sundays or holidays) next preceding the time of the applicable determination.

So long as any preferred shares are outstanding, the Trust may not pay any dividend or distribution (other than a dividend or distribution paid in common shares or in options, warrants or rights to subscribe for or purchase common shares) in respect of the common shares (except by conversion into or exchange for shares of the Trust ranking junior to the preferred shares as to the payment of dividends or distributions and the distribution of assets upon liquidation), unless:

- the Trust has declared and paid (or provided to the relevant dividend paying agent) all cumulative distributions on the Trust's outstanding preferred shares due on or prior to the date of such common shares dividend or distribution;
- the Trust has redeemed the full number of preferred shares to be redeemed pursuant to any mandatory redemption provision in the Trust's Governing Documents; and
- after making the distribution, the Trust meets applicable asset coverage requirements under the 1940 Act with respect to its preferred shares.

No complete distribution due for a particular dividend period will be declared or made on any series of preferred shares for any dividend period, or part thereof, unless full cumulative distributions due through the most recent dividend payment dates therefore for all outstanding series of preferred shares of the Trust ranking on a parity with such series as to distributions have been or contemporaneously are declared and made. If full cumulative distributions due have not been made on all outstanding preferred shares of the Trust ranking on a parity with such series of preferred shares as to the payment of distributions, any distributions being paid on the preferred shares will be paid as nearly pro rata as possible in proportion to the respective amounts of distribution accumulated but unmade on each such series of preferred shares on the relevant dividend payment date. The Trust's obligations to make distributions on the preferred shares will be subordinate to its obligations to pay interest and principal, when due, on any senior securities representing debt.

Voting Rights

Except as otherwise provided in the Trust's Governing Documents (including the Statement of Preferences) or a resolution of the Board, or as required by applicable law, holders of Series A Preferred Shares will have no power to vote on any matter except matters submitted to a vote of the Trust's common shares. In any matter submitted to a vote of the holders of the common shares, each holder of Series A Preferred Shares will be entitled to one vote for each Series A Preferred Share held and the holders of the outstanding preferred shares of the Trust, including Series A Preferred Shares, and the common shares will vote together as a single class; provided, however, that the holders of the outstanding preferred shares of the Trust, including Series A Preferred Shares, shall be entitled, as a separate class, to the exclusion of the holders of all other securities and classes of capital shares of the Trust, to elect two of the Trust's Trustees.

During any period in which any one or more of the conditions described below shall exist (such period being referred to herein as a "Voting Period"), the number and/or composition of Trustees constituting the Board will be automatically adjusted as necessary to permit the holders of outstanding preferred shares of the Trust, including the Series A Preferred Shares, voting separately as one class (to the exclusion of the holders of all other securities and classes of capital shares of the Trust) to elect the number of Trustees that, when added to the two Trustees elected exclusively by the holders of the Trust's preferred shares as described in the above paragraph, would constitute a simple majority of the Board as so adjusted. The Trust and the Board will take all necessary actions, including effecting the removal of Trustees or amendment of the Trust's Declaration of Trust, to effect an adjustment of the number and/or composition of Trustees as described in the preceding sentence. A Voting Period shall commence:

(i) if at any time accumulated dividends and distributions (whether or not earned or declared, and whether or not funds are then legally available in an amount sufficient therefor) on the outstanding Series A Preferred Shares equal to at least two full years' dividends and distributions shall be due and unpaid and sufficient cash or specified securities shall not have been deposited with AST and its successors or any other dividend disbursing agent appointed by the Trust for the payment of such accumulated dividends and distributions; or

(ii) if at any time holders of any other preferred shares of the Trust are entitled to elect a majority of the Trustees of the Trust under the 1940 Act or statement of preferences creating such shares.

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Additional voting rights are described in "Description of the Series A Preferred Shares."

Rating Agency Guidelines

The Trust anticipates that Moody's Investors Service, Inc. ("Moody's") will initially rate the Series A Preferred Shares. The Trust is, and expects that it will be, required under the applicable rating agency guidelines to maintain assets having in the aggregate a discounted value at least equal to the Basic Maintenance Amount (as defined in the Statement of Preferences), for its outstanding preferred shares, including the Series A Preferred Shares. To the extent any particular portfolio holding does not satisfy the applicable rating agency's guidelines, all or a portion of such holding's value will not be included in the calculation of discounted value (as defined by such rating agency). The Moody's guidelines also impose certain diversification requirements and industry concentration limitations on the Trust's overall portfolio, and apply specified discounts to securities held by the Trust (except certain money market securities).

If the value of the Trust's assets, as discounted in accordance with the rating agency guidelines, is less than the Basic Maintenance Amount, the Trust is required to use its commercially reasonable efforts to cure such failure. If the Trust does not cure in a timely manner a failure to maintain a discounted value of its portfolio equal to the Basic Maintenance Amount in accordance with the requirements of the applicable rating agency or agencies then rating the Trust's preferred shares, including the Series A Preferred Shares, at the request of the Trust, the Trust will be required to mandatorily redeem a portion its preferred shares, including the Series A Preferred Shares, sufficient to cure such failure as described below under "—Redemption."

Any rating agency providing a rating for the Trust's preferred shares, including the Series A Preferred Shares, at the request of the Trust may, at any time, change or withdraw any such rating. The Board, without further action by the Trust's shareholders, may amend, alter, add to or repeal any provision of the statements of preferences for the preferred shares, including the Statement of Preferences for the Series A Preferred Shares, that has been adopted by the Trust pursuant to the rating agency guidelines or add covenants and other obligations of the Trust to the statements of preferences, if the applicable rating agency confirms that such amendments or modifications are necessary to prevent a reduction in, or the withdrawal of, a rating of the Trust's preferred shares, including the Series A Preferred Shares, and such amendments and modifications do not adversely affect the rights and preferences of and are in the aggregate in the best interests of the holders of the Trust's preferred shares.

As described by Moody's or any other rating agency then rating a series of the Trust's preferred shares at the Trust's request, the ratings assigned to each series of preferred shares, including the Series A Preferred Shares, are assessments of the capacity and willingness of the Trust to pay the obligations of each such series. The ratings on these series of preferred shares are not recommendations to purchase, hold or sell shares of any series, inasmuch as the ratings do not comment as to market price or suitability for a particular investor. The rating agency guidelines also do not address the likelihood that an owner of preferred shares will be able to sell such shares on an exchange, in an auction or otherwise. The ratings are based on current information furnished to Moody's or any other rating agency then rating a series of the Trust's preferred shares at the Trust's request by the Trust and the Adviser and information obtained from other sources. The ratings may be changed, suspended or withdrawn as a result of changes in, or the unavailability of, such information.

A rating agency's guidelines apply to each series of preferred shares, including the Series A Preferred Shares, only so long as such rating agency is rating such series at the request of the Trust. The Trust expects to pay fees to Moody's for rating the Series A Preferred Shares.

Redemption

Mandatory Redemption. Under certain circumstances, the Series A Preferred Shares will be subject to mandatory redemption by the Trust out of funds legally available therefor in accordance with the Statement of Preferences and applicable law.

If the Trust fails to have asset coverage, as determined in accordance with Section 18(h) of the 1940 Act, of at least 200% with respect to all outstanding senior securities of the Trust which are stock, including all outstanding Series A Preferred Shares (or such other asset coverage as may in the future be specified in or under the 1940 Act as the minimum asset coverage for senior securities which are stock of a closed-end investment company as a condition of declaring dividends on its common stock), as of the last Business Day of March, June, September and December of each year in which any Series A Preferred Shares are outstanding, and such failure is not cured as of the cure date specified in the Statement of Preferences (49 days following such Business Day), (i) the Trust shall give a notice of redemption with respect to the redemption of a sufficient number of its preferred shares, which at the Trust's determination (to the extent permitted by the 1940 Act and Massachusetts law) may include any proportion of Series A Preferred Shares, to enable it to meet such asset coverage requirements, and, at the Trust's discretion, such additional number of Series A Preferred Shares or any other series of preferred shares in order for the Trust to have asset coverage with respect to the Series A Preferred Shares

and any other series of preferred shares of the Trust remaining outstanding after such redemption of as great as 220%, and (ii) deposit an amount with AST and its successors or any other dividend-disbursing agent appointed by the Trust, having an initial combined value sufficient to effect the redemption of the Series A Preferred Shares or other series of preferred shares to be redeemed.

If the Trust is required to redeem any preferred shares (including Series A Preferred Shares) as a result of a failure to maintain such minimum 1940 Act asset coverage as of an applicable cure date, then the Trust shall, to the extent permitted by the 1940 Act and Massachusetts law, by the close of business on such cure date fix a redemption date that is on or before the 30th Business Day after such cure date and proceed to redeem the preferred shares, including the Series A Preferred Shares. On such redemption date, the Trust shall redeem, out of funds legally available therefor, (i) the number of its preferred shares, which, to the

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extent permitted by the 1940 Act and Massachusetts law, at the option of the Trust may include any proportion of Series A Preferred Shares or shares of any other series of preferred shares of the Trust, is equal to the minimum number of shares the redemption of which, if such redemption had occurred immediately prior to the opening of business on such cure date, would have resulted in the Trust having asset coverage immediately prior to the opening of business on such cure date in compliance with the 1940 Act or (ii) if asset coverage cannot be so restored, all of the outstanding Series A Preferred Shares, in each case at a price equal to $25.00 per share plus accumulated but unpaid dividends and distributions (whether or not earned or declared by the Trust) through and including the date of redemption. In addition, as reflected above, the Trust may, but is not required to, redeem an additional number of preferred shares (including Series A Preferred Shares) which, when aggregated with all other preferred shares redeemed by the Trust, permits the Trust to have with respect to the preferred shares (including Series A Preferred Shares) remaining outstanding after such redemption a 1940 Act asset coverage of as great as 220%.

Similarly, as reflected above under "—Rating Agency Guidelines," so long as Moody's or another rating agency is rating the Trust's preferred shares (including the Series A Preferred Shares) at the request of the Trust, the Trust will be required to maintain, on the last Business Day of each month, assets having in the aggregate a discounted value at least equal to the Basic Maintenance Amount. So long as Moody's or another rating agency is rating the Trust's preferred shares (including the Series A Preferred Shares) at the request of the Trust, if the Trust fails to have assets having in the aggregate a discounted value at least equal to the Basic Maintenance Amount as of the last Business Day of any month, and such failure is not cured as of the cure date specified in the Statement of Preferences (10 Business Days following such Business Day), the Trust shall similarly follow the redemption protocol summarized above to restore compliance with the Basic Maintenance Amount, and the Trust may, but is not required to, redeem an additional number of preferred shares (including Series A Preferred Shares) which, when aggregated with all other preferred shares redeemed by the Trust, permits the Trust to have with respect to the preferred shares (including Series A Preferred Shares) remaining outstanding after such redemption assets having in the aggregate a discounted value equal to as great as 110% of the Basic Maintenance Amount.

Optional Redemption. Prior to September 30, 2024, the Series A Preferred Shares are not subject to optional redemption by the Trust unless the redemption is necessary, in the judgment of the Board, to maintain the Trust's status as a RIC under Subchapter M of the Code. Commencing September 30, 2024, and thereafter, to the extent permitted by the 1940 Act and Massachusetts law, the Trust may at any time upon notice in the manner provided in the Statement of Preferences redeem the Series A Preferred Shares in whole or in part at a price equal to the liquidation preference per share plus accumulated but unpaid dividends and distributions through and including the date of redemption.

Redemption Procedures. If the Trust determines or is required to redeem preferred shares, it will mail a notice of redemption to holders of the shares to be redeemed. Each notice of redemption will state (i) the redemption date, (ii) the number or percentage of preferred shares to be redeemed (which may be expressed as a percentage of such shares outstanding), (iii) the CUSIP number(s) of such shares, (iv) the redemption price (specifying the amount of accumulated distributions to be included therein, (v) the place or places where such shares are to be redeemed, (vi) that dividends or distributions on the shares to be redeemed will cease to accumulate on such redemption date, (vii) the provision of the Statement of Preferences under which the redemption is being made, and (viii) in the case of an optional redemption, any conditions precedent to such redemption. No defect in the notice of redemption or in the mailing thereof will affect the validity of the redemption proceedings, except as required by applicable law.

The redemption date with respect to the preferred shares will not be fewer than 30 days nor more than 90 days (subject to NYSE requirements) after the date of the applicable notice of redemption. The holders of preferred shares will not have the right to redeem any of their shares at their option except to the extent specified in the Statement of Preferences. The holders of preferred shares may receive shorter notice in the event of a mandatory redemption.

Liquidation

In the event of any liquidation, dissolution or winding up of the affairs of the Trust, whether voluntary or involuntary, the holders of Series A Preferred Shares shall be entitled to receive out of the assets of the Trust available for distribution to shareholders, after satisfying claims of creditors but before any distribution or payment shall be made in respect of the Trust's common shares or any other shares of the Trust ranking junior to the Series A Preferred Shares as to liquidation payments, a liquidation distribution in the amount of $25.00 per share (the "Liquidation Preference"), plus an amount equal to all unpaid dividends and distributions accumulated to and including the date fixed for such distribution or payment (whether or not earned or declared by the Trust, but excluding interest thereon), and such holders shall be entitled to no further participation in any distribution or payment in connection with any such liquidation, dissolution or winding up of the Trust.

If, upon any liquidation, dissolution or winding up of the affairs of the Trust, whether voluntary or involuntary, the assets of the Trust available for distribution among the holders of all outstanding Series A Preferred Shares and all outstanding shares of any other series of the Trust's preferred shares ranking on a parity with the Series A Preferred Shares as to payment upon liquidation shall be insufficient to permit the payment in full to such holders of Series A Preferred Shares of the Liquidation Preference plus accumulated and unpaid dividends and distributions and the amounts due upon liquidation with respect to all outstanding shares of such other series of preferred shares of the Trust, then such available assets shall be distributed among the holders of Series A Preferred Shares and such other series of preferred shares of the Trust ratably in proportion to the respective preferential liquidation amounts to which they are entitled. Unless and until the Liquidation Preference plus accumulated and unpaid dividends and distributions has been paid in full to the holders of Series A Preferred Shares, no dividends or distributions will be made to holders of the Trust's common shares or any other shares of the Trust ranking junior to the Series A Preferred Shares as to liquidation.

Stock Exchange Listing

Application has been made to list the Series A Preferred Shares on the NYSE. If the application is approved, the Series A Preferred Shares are expected to commence trading on the NYSE within thirty days of the date of issuance under the symbol "HFRO Pr A."

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Risks

Risk is inherent in all investing. Therefore, before investing in the Series A Preferred Shares you should consider the risks carefully. See "Principal Risks of the Trust" in the accompanying Prospectus as well as the risks below.

Material Weakness Risk. The Trust has identified a material weakness in its internal control over financial reporting related to the fair valuation of the Trust's portfolio securities that, if not properly remediated, could result in material misstatements in its reported net asset value and financial statements. While there were no material misstatements of the Trust's annual or interim financial reporting for the period ended December 31, 2018 related to fair valuation of the Trust's portfolio securities, the principal executive officer and principal financial officer identified a material weakness relating to the Trust's internal control over financial reporting under standards established by the Public Company Accounting Oversight Board, or PCAOB, for the period then ended. The PCAOB defines a material weakness as a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis.

The Trust has taken actions to remediate this material weakness, but some of these measures will take time to be confirmed to be effective. There can be no assurance that the steps taken will remediate such weaknesses, nor can we be certain of whether additional actions will be required or the costs of any such actions. Until measures are tested and confirmed to be effective, the identified material weakness may continue to exist.

The Trust may need to take additional measures to fully mitigate these issues, and the measures taken to improve its internal controls may not be sufficient to address the issues identified, to ensure that internal controls are effective or to ensure that the identified material weaknesses or significant deficiencies or other material weaknesses or deficiencies will not result in a material misstatement of the Trust's annual or interim financial statements. Because such material weakness related to our valuation of portfolio securities, it could also impact the accuracy of our daily net asset value calculations. In addition, other material weaknesses or deficiencies may be identified in the future. If the Trust is unable to correct material weaknesses or deficiencies in internal controls in a timely manner, its ability to record, process, summarize and report its net asset value and financial information accurately and within the time periods specified in the rules and forms of the SEC will be adversely affected. This failure could negatively affect the market price and trading liquidity of its securities, cause investors to lose confidence in our reported financial information, subject us to civil and criminal investigations and penalties, and generally materially and adversely impact its business and financial condition.

Primary risks associated with an investment in the Series A Preferred Shares include:

Market Price Risk. The market price for the Series A Preferred Shares will be influenced by changes in interest rates, the perceived credit quality of the Series A Preferred Shares and other factors, and may be higher or lower than the liquidation preference of the Series A Preferred Shares. There is currently no market for the Series A Preferred Shares of the Trust.

Liquidity Risk. Currently, there is no public market for the Series A Preferred Shares of the Trust. As noted above, an application has been made to list the Series A Preferred Shares on the NYSE. However, during an initial period which is not expected to exceed thirty days after the date of its issuance, the Series A Preferred Shares will not be listed on any securities exchange. Before the Series A Preferred Shares are listed on the NYSE, the underwriters may, but are not obligated to, make a market in the Series A Preferred Shares. No assurances can be provided that listing on any securities exchange or market making by the underwriters will occur or will result in the market for Series A Preferred Shares being liquid at any time.

Redemption Risk. The Trust may at any time redeem Series A Preferred Shares to the extent necessary to meet regulatory asset coverage requirements or requirements imposed by credit rating agencies. For example, if the value of the Trust's investment portfolio declines, thereby reducing the asset coverage for the Series A Preferred Shares, the Trust may be obligated under the terms of the Series A Preferred Shares to redeem some or all of the Series A Preferred Shares. In addition, commencing September 30, 2024, the Trust will be able to call the Series A Preferred Shares at the option of the Trust. Investors may not be able to reinvest the proceeds of any redemption in an investment providing the same or a higher dividend rate than that of the Series A Preferred Shares. Precipitous declines in the value of the Trust's assets could result in the Trust having insufficient assets to redeem all of the Series A Preferred Shares for the full redemption price.

Subordination Risk. The Series A Preferred Shares are not a debt obligation of the Trust. The Series A Preferred Shares are junior in respect of distributions and liquidation preference to the current and future indebtedness incurred by the Trust, and will have the same priority with respect to payment of dividends and distributions and liquidation preference as any other preferred shares that

the Trust may issue. The Series A Preferred Shares are subject to greater credit risk than any of the Trust's debt instruments, which would be of higher priority in the Trust's capital structure.

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Credit Rating Risk. The Trust is seeking a credit rating on the Series A Preferred Shares. Any credit rating that is issued on the Series A Preferred Shares could be reduced or withdrawn while an investor holds Series A Preferred Shares. A reduction or withdrawal of the credit rating would likely have an adverse effect on the market value of the Series A Preferred Shares. In addition, a credit rating does not eliminate or mitigate the risks of investing in the Series A Preferred Shares.

Distribution Risk. The Trust may not earn sufficient income from its investments to make distributions on the Series A Preferred Shares, in which case the distributions on the Series A Preferred Shares would be considered a return of capital. See "Prospectus Summary—Distributions—Preferred Shares Distributions" in the Prospectus. Additionally, if the Trust were to issue notes, the Trust's failure to meet certain asset coverage requirements with respect to such notes would prohibit the Trust from making distributions on the Series A Preferred Shares; any bank borrowings the Trust may enter into in the future could contain similarly restrictive terms.

The Trust currently leverages through borrowings made by HFRO Sub, LLC under the Financing Arrangement with Bank of America Merrill Lynch ("BAML"). As of June 30, 2019, HFRO Sub, LLC had drawn $350 million under the Financing Arrangement and the Trust's asset coverage ratio was 342%. On February 2, 2018, HFRO Sub, LLC a wholly-owned subsidiary of the Trust entered into Financing Arrangement with BAML. Pursuant to the terms of the Financing Arrangement, and subject to certain customary conditions, HFRO Sub, LLC may borrow on a revolving basis a maximum of $500 million. In connection with the Financing Arrangement, HFRO Sub, LLC and the Trust have made representations and warranties regarding the loans and underlying collateral and are required to comply with various covenants, reporting requirements and other customary requirements. The Facility also limits the recourse of the lender to the assets of HFRO Sub, LLC and includes usual and customary events of default for senior secured revolving facilities of this nature.

Interest Rate Risk. The Series A Preferred Shares pay dividends at a fixed rate. Prices of fixed income investments tend to vary inversely with changes in market yields. The market yields on securities comparable to the Series A Preferred Shares may increase, which would likely result in a decline in the value of the Series A Preferred Shares. Additionally, if interest rates rise, securities comparable to the Series A Preferred Shares may pay higher dividend rates and holders of the Series A Preferred Shares may not be able to sell the Series A Preferred Shares at their liquidation preference and reinvest the proceeds at market rates. The Trust may be subject to a greater risk of rising interest rates due to the current period of historically low interest rates. Recently, there have been some modest signs of inflationary price movements. There is a possibility that interest rates may rise, which would likely drive down the prices of income- or dividend-paying securities.

CERTAIN EMPLOYEE BENEFIT PLAN AND IRA CONSIDERATIONS

The following is a summary of certain considerations associated with the purchase of the Series A Preferred Shares by employee benefit plans that are subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), plans, individual retirement accounts ("IRAs") and other arrangements that are subject to Section 4975 of the Code, and entities whose underlying assets are considered to include "plan assets" of any such plan, account or arrangement (each, a "Benefit Plan").

ERISA and the Code impose certain duties on persons who are fiduciaries of a Benefit Plan and prohibit certain transactions involving the assets of a Benefit Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of such a Benefit Plan or the management or disposition of the assets of such a Benefit Plan, or who renders investment advice for a fee or other compensation to such a Benefit Plan, is generally considered to be a fiduciary of the Benefit Plan. Moreover, governmental plans (as defined in Section 3(32) of ERISA), certain church plans (as defined in Section 3(33) of ERISA), and foreign plans (as described in Section 4(b)(4) of ERISA) (each such governmental, church and foreign plan referred to as a "Non-ERISA Plan," and together with Benefit Plans, referred to herein as "Plans"), are not subject to the fiduciary responsibility provisions of Title I of ERISA or Section 4975 of the Code, but may be subject to state, federal or other laws or regulations substantively similar to such portions of ERISA or Section 4975 of the Code ("Similar Law").

Because the Trust is registered as an investment company under the 1940 Act, it is anticipated that the Trust's assets should not be deemed "plan assets" of Benefit Plans investing in the Trust for purposes of the fiduciary responsibility and prohibited transaction rules of ERISA and the Code. For this reason, the Adviser should not be a fiduciary within the meaning of ERISA or the Code with respect to the assets of any Benefit Plan solely as a result of the Benefit Plan's investment in the Trust.

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In considering an investment in the Series A Preferred Shares of a portion of the assets of any Plan, a fiduciary or other person considering the investment should determine whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA, Section 4975 of the Code and Similar Law including, without limitation, to the extent applicable, the prudence, diversification, delegation of control, conflicts of interest and prohibited transaction provisions of ERISA and the Code. The purchase of Series A Preferred Shares by a fiduciary for a Plan should be considered in light of such requirements.

In addition, Section 406 of ERISA and Section 4975 of the Code prohibit certain transactions involving the assets of a Benefit Plan and certain persons (referred to as "parties in interest" for purposes of ERISA and "disqualified persons" for purposes of the Code) having certain relationships to such Benefit Plans, unless a statutory or administrative exemption is applicable to the transaction. A party in interest or disqualified person who engages in a nonexempt prohibited transaction may be subject to excise taxes and such parties and fiduciaries causing a Benefit Plan to engage in such transactions may be subject to other penalties and liabilities under ERISA and/or the Code (or with respect to certain Benefit Plans, such as IRAs, a prohibited transaction may cause the Benefit Plan to lose its tax-exempt status). In this regard, the U.S. Department of Labor has issued certain prohibited transaction class exemptions ("PTCEs") that may apply to the purchase of the Series A Preferred Shares. These class exemptions include, without limitation, PTCE 84-14 respecting transactions determined by independent qualified professional asset managers, PTCE 90-1 respecting insurance company pooled separate accounts, PTCE 91-38 respecting bank collective investment funds, PTCE 95-60 respecting life insurance company general accounts and PTCE 96-23 respecting transactions determined by in-house asset managers, PTCE 84-24 respecting purchases of shares in investment companies) and PTCE 75-1 respecting sales of securities. In addition, Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code each provides a limited exemption, commonly referred to as the "service provider exemption," from the prohibited transaction provisions of ERISA and Section 4975 of the Code for certain transactions between a Benefit Plan and a person that is a party in interest and/or a disqualified person (other than a fiduciary or an affiliate that, directly or indirectly, has or exercises any discretionary authority or control or renders any investment advice with respect to the assets of any Benefit Plan involved in the transaction) solely by reason of providing services to the Benefit Plan or by relationship to a service provider, provided that the Benefit Plan neither receives nor pays more than adequate consideration. Each of the above-noted exemptions contains conditions and limitations on its application. Fiduciaries of Benefit Plans considering acquiring the Series A Preferred Shares in reliance on these exemptions or any other exemption should carefully review the exemption to assure it is applicable. There can be no assurance that all of the conditions of any such exemptions or any other exemption will be satisfied, or that any exemption will be applicable to all otherwise prohibited transactions which may otherwise occur in connection with a Benefit Plan's investment in the Series A Preferred Shares.

By its acquisition of a Series A Preferred Share, each purchaser will be deemed to represent and warrant that either (i) the purchaser is not acquiring or holding such Series A Preferred Share or an interest therein with the assets of a Plan or (ii) neither the purchase nor the holding (nor disposition) of such Series A Preferred Share or an interest therein by such purchaser will result in a non-exempt prohibited transaction under ERISA or Section 4975 of the Code or a similar violation under any applicable Similar Laws.

Further, if the purchaser is a Benefit Plan, such purchaser or subsequent transferee will be deemed to have represented and warranted that (1) none of the Trust, the Adviser, Morgan Stanley & Co. LLC or any of its respective affiliates ("Transaction Parties") has acted as the Benefit Plan's fiduciary (within the meaning of ERISA or the Code), or has been relied upon for any advice, with respect to the purchaser or transferee's decision to acquire the Series A Preferred Shares, and none of the Transaction Parties shall at any time be relied upon as the Benefit Plan's fiduciary with respect to any decision to acquire, continue to hold or transfer the Series A Preferred Shares. None of the Transaction Parties have or will undertake to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the investment in the Series A Preferred Shares.

The sale of Series A Preferred Shares to a Plan is in no respect a recommendation by the Trust, the Adviser, Morgan Stanley & Co. LLC or any of its respective affiliates with respect to whether any Plan should acquire Series A Preferred Shares or that that such an investment meets all relevant legal requirements with respect to investments by Plans generally or any particular Plan or that such an investment is appropriate for Plans generally or any particular Plan. Each purchaser and holder of the Series A Preferred Shares has exclusive responsibility for ensuring that its purchase, holding and subsequent disposition of the Series A Preferred Shares does not violate the fiduciary or prohibited transaction rules of ERISA, the Code or any applicable Similar Laws.

The foregoing discussion is general in nature and is not intended to be all inclusive. The provisions of ERISA and the Code are subject to extensive and continuing administrative and judicial interpretation and review. Due to the complexity of these rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries, or other persons considering purchasing the Series A Preferred Shares on behalf of, or with the assets of, any Plan, consult with their counsel regarding the potential applicability of ERISA, Section 4975 of the Code and Similar Law to such investment and whether an exemption would be applicable to the purchase and holding of the Series A Preferred Shares and whether the purchase and

holding of Series A Preferred Shares otherwise will be in compliance with the applicable provisions of ERISA, Section 4975 of the Code and Similar Law.

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UNDERWRITING

Morgan Stanley & Co. LLC is acting as representative of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among the Trust, the Adviser and the underwriters, the Trust has agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from the Trust, the number of Series A Preferred Shares set forth opposite its name below.

Underwriter	Number of Series A Preferred Shares
Morgan Stanley & Co. LLC	5,130,000
Jefferies LLC	270,000
Total	5,400,000

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the Series A Preferred Shares sold pursuant to the underwriting agreement if any of the Series A Preferred Shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

The Trust and the Adviser have each agreed to indemnify the underwriters and their controlling persons against certain liabilities in connection with this offering, including liabilities under the Securities Act of 1933, as amended, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the Series A Preferred Shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the Series A Preferred Shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

We expect that delivery of the Series A Preferred Shares will be made against payment therefor on or about the third business day following the date of confirmation of orders with respect to the Series A Preferred Shares (this settlement cycle being referred to as "T+3"). Under Rule 15c6-1 of the Securities Exchange Act of 1934, as amended, trades in the secondary market generally are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade prior to the delivery of the Series A Preferred Shares hereunder on the date hereof will be required, by virtue of the fact that the Series A Preferred Shares initially settle in T+3, to specify an alternative settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of Series A Preferred Shares who wish to trade the Series A Preferred Shares prior to their date of delivery hereunder should consult their own advisors.

Commissions and Discounts

The representative has advised us that the underwriters propose initially to offer the Series A Preferred Shares to the public at the public offering price set forth on the cover page of this Prospectus Supplement and to certain dealers at such price less a concession not in excess of $0.50 per share. Any underwriter may allow, and such dealers may reallow, a concession not in excess of $0.45 per share to other underwriters or to certain dealers. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The expenses of the offering, not including the underwriting discount, are estimated at $500,000 and are payable by the Trust.

Over-allotment Option

We have granted the underwriters an option to buy up to an aggregate of additional shares of Series A Preferred Shares. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with this offering. The underwriters have 30 days from the date of this prospectus supplement to exercise this option. If the underwriters exercise this option, they will each purchase additional shares approximately in proportion to the amounts specified in the table above.

No Sales of Similar Securities

The Trust and the Adviser have agreed that the Trust will not, for a period of 90 days from the date of this Prospectus Supplement, without the prior written consent of Morgan Stanley & Co. LLC, directly or indirectly, issue, sell, offer to contract or grant any option to sell, pledge, transfer or otherwise dispose of, any of its preferred shares or securities exchangeable for or convertible into its preferred shares, except for the Series A Preferred Shares sold to the underwriters pursuant to the underwriting agreement.

New York Stock Exchange

Application has been made to list the Series A Preferred Shares on the NYSE. Prior to the offering, there has been no public market for the Series A Preferred Shares. If the application is approved, the Series A Preferred Shares are expected to commence

trading on the NYSE within thirty days of the date of issuance under the symbol "HFRO Pr A." Before the Series A Preferred Shares are listed on the NYSE, the underwriters may, but are not obligated to, make a market in the Series A Preferred Shares. Consequently, it is anticipated that, prior to the commencement of trading on the NYSE, an investment in Series A Preferred Shares will be illiquid.

If a secondary trading market develops prior to the commencement of trading on the NYSE, holders of the Series A Preferred Shares may be able to sell such shares; however, such shares may trade at discounts from the liquidation preference of the Series A Preferred Shares.

Price Stabilization, Short Positions

Until the distribution of the Series A Preferred Shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing the Series A Preferred Shares. However, the representative may engage in transactions that have the effect of stabilizing the price of the Series A Preferred Shares, such as purchases and other activities that peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell Series A Preferred Shares in the open market. These transactions may include short sales and purchases on the open market to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of Series A Preferred Shares than they are required to purchase in the offering. The underwriters must close out any short position by purchasing Series A Preferred Shares in the open market. A short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the Series A Preferred Shares in the open market after pricing that could adversely affect investors who purchase in the offering.

The underwriters may impose a penalty bid. Penalty bids permit the underwriters to reclaim a selling concession from a syndicate member when the representative repurchases Series A Preferred Shares originally sold by that syndicate member in order to cover syndicate short positions or make stabilizing purchases.

Short sales may be "covered short sales," which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked short sales," which are short positions in excess of that amount.

The underwriters may close out any covered short position by either exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of the Series A Preferred Shares or preventing or retarding a decline in the market price of the Series A Preferred Shares. As a result, the price of the Series A Preferred Shares may be higher than the price that might otherwise exist in the open market.

None of the Trust, the Adviser or any of the underwriters makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the Series A Preferred Shares. In addition, none of the Trust, the Adviser or any of the underwriters makes any representation that the representative will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Distribution

In connection with this offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

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Other Relationships

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with the Trust, the Adviser or their respective affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of the Trust, the Adviser or their respective affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

The Trust anticipates that, from time to time, certain underwriters may act as brokers or dealers in connection with the execution of the Trust's portfolio transactions after they have ceased to be underwriters and, subject to certain restrictions, may act as brokers while they are underwriters.

The principal business address of Morgan Stanley & Co. LLC is 1585 Broadway, New York, NY 10036.

LEGAL MATTERS

Certain legal matters will be passed on by K&L Gates LLP, Boston, Massachusetts, our counsel in connection with the offering of the Series A Preferred Shares. Certain legal matters in connection with this offering will be passed upon for the underwriters by Simpson Thacher & Bartlett LLP.

FINANCIAL STATEMENTS

The audited financial statements included in the annual report to the Trust's shareholders for the fiscal period ended December 31, 2018, together with the report of PricewaterhouseCoopers LLP for the Trust's annual report, are incorporated by reference into the SAI.

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Dated July 1, 2019

BASE PROSPECTUS

$1,000,000,000

Highland Income Fund (formerly, Highland Floating Rate Opportunities Fund)

Base Prospectus dated July 1, 2019

Common Shares
Preferred Shares
Subscription Rights to Purchase Common Shares
Subscription Rights to Purchase Preferred Shares
Subscription Rights to Purchase Common and Preferred Shares

The Highland Income Fund (the "Trust"), formerly, Highland Floating Rate Opportunities Fund, is a non-diversified, closed-end management investment company that was organized as a Massachusetts business trust on June 28, 2017 pursuant to a Declaration of Trust dated June 28, 2017. The Trust's principal office is located at 300 Crescent Court, Suite 700, Dallas, Texas 75201 and its telephone number is 1-877- 665-1287. On September 25, 2017, the Trust acquired the assets of Highland Floating Rate Opportunities Fund (the "Predecessor Fund"), a series of Highland Funds I (the "Predecessor Trust"), a Delaware statutory trust. On May 20, 2019, the Trust's name changed from "Highland Floating Rate Opportunities Fund" to "Highland Income Fund." This Prospectus relates only to the Trust.

The Trust's investment objective is to provide a high level of current income, consistent with preservation of capital. The Trust seeks to achieve its objective by primarily investing directly and indirectly (e.g., through derivatives that are the economic equivalent of direct investments) in the following categories of securities and instruments: (i) floating rate loans and other securities deemed to be floating rate investments; (ii) investments in securities or other instruments directly or indirectly secured by real estate, including real estate investment trusts ("REITs"), preferred equity, securities convertible into equity securities and mezzanine debt; and (iii) other instruments, including, but not limited to, secured and unsecured fixed-rate loans and corporate bonds, distressed securities, mezzanine securities, structured products (including but not limited to mortgage-backed securities, collateralized loan obligations and asset-backed securities), convertible and preferred securities, equities (public and private), and futures and options. Floating rate investments are debt obligations of companies or other entities, the interest rates of which float or vary periodically based upon a benchmark indicator of prevailing interest rates.

You should read this Prospectus and the related Prospectus Supplement, which contains important information about the Trust, before deciding whether to invest, and retain it for future reference. A Statement of Additional Information ("SAI"), dated July 1, 2019, containing additional information about the Trust has been filed with the Commission and is incorporated by reference in its entirety into this Prospectus. You can review the table of contents of the SAI in this Prospectus. You may request a free copy of the SAI, request the Trust's most recent annual and semi-annual reports, request information about the Trust and make shareholder inquiries by calling 1-877- 665-1287 or by writing to the Trust at 300 Crescent Court, Suite 700, Dallas, Texas 75201. You may also obtain a copy of the SAI (and other information regarding the Trust) from the Commission's Public Reference Room in Washington, D.C. by calling 1-202-551-8090. The Commission charges a fee for copies. The Trust's most recent annual and semi-annual reports are available, free of charge from the Commission's web site at www.sec.gov.

Investing in our securities involves a high degree of risk and may be considered speculative. Before investing in the Trust's securities, you should read the discussion of the material risks of investing in the Trust, including the risks of leverage, in the "Principal Risks of the Trust" section of this Prospectus.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined that this Prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Beginning on January 1, 2021, as permitted by regulations adopted by the U.S. Securities and Exchange Commission, paper copies of the Funds' annual and semi-annual shareholder reports will no longer be sent by mail, unless you specifically request paper copies of the reports. Instead, the reports will be made available on the Funds' website (highlandfunds.com), and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may elect to receive shareholder reports and other communications from a Fund electronically by contacting your financial intermediary (such as a broker-dealer or bank) or, if you are a direct investor, by contacting the Funds' transfer agent at 1-877-665-1287.

Beginning on January 1, 2019, you may elect to receive all future reports in paper free of charge. If you invest through a financial intermediary, you can contact your financial intermediary to request that you continue to receive paper copies of your shareholder reports. If you invest directly

with a Fund, you can call 1-877-665-1287 to let the Fund know you wish to continue receiving paper copies of your shareholder reports. Your election to receive reports in paper will apply to all funds held in your account if you invest through your financial intermediary or all funds held with the fund complex if you invest directly with a Fund.

The Trust's securities do not represent a deposit or obligation of, and are not guaranteed or endorsed by, any bank or other insured depository institution, and are not federally insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other government agency.

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You should rely only on the information contained or incorporated by reference in this Prospectus. The Trust has not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. The Trust is not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. The information in this Prospectus and any accompanying Prospectus Supplements is accurate only as of the date of this Prospectus or such Prospectus Supplement, as applicable, and under no circumstances should the delivery of this Prospectus or any accompanying Prospectus Supplement or the sale of any securities imply that the information in this Prospectus or such accompanying Prospectus Supplement is accurate as of any later date or that the affairs of the Trust have not changed since the date hereof or thereof. Our business, financial condition, results of operations and prospects may have changed since then. We will update the information in these documents to reflect material changes only as required by law.

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Cautionary Notice Regarding Forward-Looking Statements

This Prospectus and the Statement of Additional Information contain "forward-looking statements." Forward-looking statements relate to future events or the Trust's future financial performance. Forward-looking statements can generally be identified by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar words. Important assumptions in forward-looking statements include the Trust's ability to acquire or originate new investments and to achieve certain margins and levels of profitability. In light of these and other uncertainties, the inclusion of a projection or forward-looking statement should not be regarded as a representation by the Trust that its plans or objectives will be achieved.

There are a number of important risks and uncertainties that could cause the Trust's actual results to differ materially from those indicated by such forward-looking statements. These risks include, but are not limited to, the following:

- Investment risk;
- Changes in interest rates;
- Risks associated with investing in high yield securities (also known as "junk securities"), senior loans and other debt and equity securities;
- Risks of investing in obligations of stressed, distressed and bankrupt issuers;
- Risk associated with investments in REITs;
- Risks associated with the Trust's use of leverage;
- Derivatives and structured finance securities risk; and
- Market risk generally.

For a discussion of these and additional risks as well as other factors that could cause the Trust's actual results to differ from forward-looking statements contained in this Prospectus and in the Statement of Additional Information, please see the discussion under "Principal Risks of the Trust." You should not place undue reliance on these forward-looking statements. The forward-looking statements made in this Prospectus and in the Statement of Additional Information relate only to events as of the date on which the statements are made. The Trust undertakes no obligation to update any forward-looking statement to reflect events or circumstances occurring after the date of this Prospectus and Statement of Additional Information, except as required by federal securities laws.

The forward-looking statements contained in this Prospectus are excluded from the safe harbor protection provided by Section 27A of the Securities Act of 1933, as amended, and the forward looking statements contained in our periodic reports are excluded from the safe harbor protection provided by Section 21E of the Securities Exchange Act of 1934, as amended.

About this Prospectus

This Prospectus is part of a registration statement that we have filed with the Commission using the "shelf" registration process. Under the shelf registration process, we may offer, from time to time, in one or more offerings or series, up to $1,000,000,000 of our common and/or preferred shares or subscription rights, on the terms to be determined at the time of the offering. The securities may be offered at prices and on terms described in one or more supplements to this Prospectus. Securities may be offered at prices and on terms to be set forth in one or more supplements to this Prospectus (this "Prospectus" and each supplement thereto, a "Prospectus

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Supplement"). This Prospectus provides you with a general description of the securities that we may offer. Each time we use this Prospectus to offer securities, we will provide a Prospectus Supplement that will contain specific information about the terms of that offering. The Prospectus Supplement may also add, update or change information contained in this Prospectus. Please carefully read this Prospectus and any Prospectus Supplement, together with any exhibits, and the additional information described under the headings "Principal Risks of the Trust" and "Where You Can Find Additional Information" before you make an investment decision.

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Prospectus Summary

The following summary highlights information contained elsewhere in this Prospectus. This summary may not contain all of the information that you should consider before investing in the Trust. You should review the more detailed information contained in this Prospectus and in the Statement of Additional Information, especially the information set forth under the heading "Principal Risks of the Trust."

The Trust

The Trust is a non-diversified, closed-end management investment company. The Trust commenced operations on June 28, 2017, following its initial public offering. On September 25, 2017, the Trust acquired the assets of Highland Floating Rate Opportunities Fund, a series of Highland Funds I, a Delaware statutory trust. On May 20, 2019, the Trust's name changed from "Highland Floating Rate Opportunities Fund" to "Highland Income Fund."

The Trust's outstanding common shares, par value $0.001 per share, are listed on the New York Stock Exchange (the "NYSE") under the symbol HFRO. On May 31, 2019, the last reported sale price of common shares was $13.33. The net asset value of the Trust's common shares at the close of business on such date was $14.60 per share. As of May 31, 2019, the net assets of the Trust attributable to its common shares were $1.05 billion. As of May 31, 2019, the Trust had outstanding 71,908,209 common shares.

Offerings

We may offer, from time to time, in one or more offerings, our common and/or fixed rate preferred shares, $0.001 par value per share, our notes, or our subscription rights to purchase our common or fixed rate preferred shares or both, which we refer to collectively as the "securities." The securities may be offered at prices and on terms to be set forth in one or more supplements to this Prospectus (each a "Prospectus Supplement"). The offering price per common share of the Trust will not be less than the net asset value per common share at the time we make the offering, exclusive of any underwriting commissions or discounts; however, rights offerings that meet certain conditions may be offered at a price below the then current net asset value per common share of the Trust. You should read this Prospectus and the applicable Prospectus Supplement carefully before you invest in our securities. Our securities may be offered directly to one or more purchasers, through agents designated from time to time by us, or through underwriters or dealers. The Prospectus Supplement relating to the offering will identify any agents, underwriters or dealers involved in the sale of our shares, and will set forth any applicable purchase price, fee, commission or discount arrangement between us and our agents or underwriters, or among our underwriters, or the basis upon which such amount may be calculated. The Prospectus Supplement relating to any sale of fixed rate preferred shares will set forth the liquidation preference and information about the dividend period, dividend rate, any call protection or non-call period and other matters. The Prospectus Supplement relating to any

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	offering of subscription rights will set forth the number of common and/or fixed rate preferred shares issuable upon the exercise of each right and the other terms of such rights offering. While the aggregate number and amount of securities we may issue pursuant to this registration statement is limited to $1,000,000,000 of securities, our Board of Trustees (the "Board" and each member of the Board individually a "Trustee") may, without any action by the shareholders, amend our Agreement and Declaration of Trust from time to time to increase or decrease the aggregate number of shares or the number of shares of any class or series that we have authority to issue. We may not sell any of our securities through agents, underwriters or dealers without delivery of a Prospectus Supplement describing the method and terms of the particular offering. Offerings of the securities will be subject to the provisions of the Investment Company Act of 1940, as amended (the "1940 Act"), which generally require that the price at which a closed-end investment company sells its common shares (exclusive of distribution commissions and discounts) must equal or exceed the net asset value per share of a company's common shares (calculated within 48 hours of pricing), except (i) in connection with a rights offering to our existing shareholders, (ii) with the consent of the majority of our common shareholders, or (iii) under such circumstances as the Commission may permit. Any offering of securities by a closed-end investment company that requires shareholder approval must occur, if at all, within one year after receiving such shareholder approval. You should read this Prospectus and the related Prospectus Supplement carefully before you decide to invest in any of the securities. The Trust may offer the securities directly to one or more purchasers, through agents that the Trust or the purchasers designate from time to time, or to or through underwriters or dealers (including agents, underwriters or dealers affiliated with the Trust's investment adviser). The Prospectus Supplement relating to the offering will identify any agents or underwriters involved in the sale of the securities, and will set forth any applicable purchase price, fee, commission or discount arrangement between the Trust and such agents or underwriters or among underwriters or the basis upon which such amount may be calculated. See "Plan of Distribution." The securities may not be sold through agents, underwriters or dealers without delivery of a Prospectus Supplement describing the method and terms of the Offering. The Trust (and thus, indirectly, the Trust's common shareholders) will bear all of the expenses of any such offering.
Preferred Shares	The terms of the preferred shares may be fixed by the Board and may materially limit and/or qualify the rights of holders of the Trust's common shares. If the Trust's Board determines that it may be advantageous to the holders of the Trust's common shares for the Trust to utilize additional leverage, the Trust may issue additional

	series of fixed rate preferred shares. Any fixed rate preferred shares issued by the Trust will pay distributions at a fixed rate. Leverage creates a greater risk of loss as well as a potential for more gains for the common shares than if leverage were not used. The Trust may also determine in the future to issue other forms of senior securities, such as securities representing debt, subject to the limitations of the 1940 Act. The Trust may also engage in investment management techniques which will not be considered senior securities if the Trust establishes a segregated account with cash or other liquid assets or sets aside assets on the accounting records equal to the Trust's obligations in respect of such techniques. The Trust may also borrow money, to the extent permitted by the 1940 Act.
Investment Adviser and Administrator	Highland Capital Management Fund Advisors, L.P. ("HCMFA" or the "Adviser") serves as investment adviser to the Trust. The address of the Adviser is 300 Crescent Court, Suite 700, Dallas, Texas 75201. Organized in February 2009, HCMFA is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. As of March 31, 2019, HCMFA had approximately $3.3 billion in assets under management. HCMFA is also the Trust's administrator. HCMFA is owned by Highland Capital Management Services, Inc., a Delaware corporation ("HCM Services") and its general partner, Strand Advisors XVI, Inc., of which James Dondero is the sole stockholder. HCM Services is controlled by Mr. Dondero and Mr. Mark Okada by virtue of their respective share ownership. In return for its advisory services, the Trust pays the Adviser a monthly fee of 0.65%, computed and accrued daily, based on an annual rate of the Trust's average daily managed assets. "Average Daily Managed Assets" of the Trust shall mean the average daily value of the total assets of the Trust, less all accrued liabilities of the Trust (other than the aggregate amount of any outstanding borrowings constituting financial leverage). In return for its administrative services, the Adviser receives an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Trust's Managed Assets. "Managed Assets" means the total assets of the Trust, including assets attributable to any form of investment leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to investment leverage obtained through (i) indebtedness of any type (including, without limitation, borrowing through a credit facility or the issuance of debt securities), (ii) the issuance of preferred shares or other similar preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the Trust's investment objectives and policies, and/or (iv) any other means. The Adviser, at its own expense, has the authority to engage both a sub-adviser and a sub-administrator, each of which may be an affiliate

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of the Adviser. See "Management of the Trust — Investment Adviser" and "Management of the Trust — Administrator/Sub-Administrator."

Potential Conflicts of Interest. As a result of the Trust's arrangements with Highland Capital Management, L.P. ("Highland"), there may be times when Highland, the Adviser or their affiliates have interests that differ from those of the Trust's shareholders, giving rise to a conflict of interest. Highland and the Adviser are under common ownership, and the Trust's officers serve or may serve as officers, directors or principals of entities that operate in the same or a related line of business as the Trust does, or of investment funds managed by the Adviser or its affiliates. Similarly, the Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Trust or its shareholders. For example, the Trust's officers have, and will continue to have, management responsibilities for other investment funds, accounts or other investment vehicles managed or sponsored by the Adviser and its affiliates.

The Trust's investment objective may overlap, in part or in whole, with the investment objective of such affiliated investment funds, accounts or other investment vehicles. As a result, those individuals may face conflicts in the allocation of investment opportunities among the Trust and other investment funds or accounts advised by or affiliated with the Adviser. The Adviser will seek to allocate investment opportunities among eligible accounts in a manner that is fair and equitable over time and consistent with its allocation policy. However, the Trust can offer no assurance that such opportunities will be allocated to it fairly or equitably in the short-term or over time.

The Adviser will allocate investment opportunities across the entities for which such opportunities are appropriate, consistent with its internal conflict of interest and allocation policies. The Adviser will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy. However, there is no assurance that such investment opportunities will be allocated to the Trust fairly or equitably in the short-term or over time and there can be no assurance that the Trust will be able to participate in all such investment opportunities that are suitable for it.

Currently, a portion of the Trust's net assets are invested in REITs, asset-backed securities and/or collateralized loan obligations sponsored, organized and/or managed by Highland Capital Management, L.P. ("Highland") and its affiliates. The Adviser will monitor for conflicts of interest in accordance with its fiduciary duties and will provide the independent trustees of the Trust with an opportunity to periodically review the Trust's investments in such

	REITs, asset backed securities and/or CLOs and assure themselves that continued investment in such securities remains in the best interests of the Trust and its shareholders. Please see "Risk Factors—Potential Conflicts of Interest" for a description of risks associated with conflicts of interest. See "Management of the Trust — Investment Adviser."
Custodian and Transfer Agent	The custodian of the assets of the Trust is Bank of New York Mellon (240 Greenwich Street, New York, New York 10286). The custodian performs custodial services for the Trust. American Stock Transfer & Trust Company, LLC (6201 15th Avenue, Brooklyn, New York 11219; telephone (718) 921-8200) serves as the Trust's transfer agent with respect to its securities.
Closed-End Structure	Closed-end funds differ from open-end management investment companies (commonly referred to as mutual funds) in that closed-end funds generally list their shares for trading on a securities exchange and do not redeem their shares at the option of the shareholder. By comparison, mutual funds issue securities redeemable at net asset value at the option of the shareholder and typically engage in a continuous offering of their shares. Mutual funds are subject to continuous asset in-flows and out-flows that can complicate portfolio management, whereas closed-end funds generally can stay more fully invested in securities consistent with the closed-end fund's investment objective and policies. In addition, in comparison to open-end funds, closed-end funds have greater flexibility in their ability to make certain types of investments, including investments in illiquid securities. Shares of closed-end investment companies listed for trading on a securities exchange frequently trade at a discount from net asset value, but in some cases trade at a premium. The market price may be affected by net asset value, dividend or distribution levels (which are dependent, in part, on expenses), supply of and demand for the shares, stability of dividends or distributions, trading volume of the shares, general market and economic conditions and other factors beyond the control of the closed-end fund. The foregoing factors may result in the market price of shares of the Trust being greater than, less than or equal to, net asset value. The Board has reviewed the structure of the Trust in light of its investment objective and policies and has determined that the closed-end structure is appropriate. As described in this Prospectus, however, the Board may review periodically the trading range and activity of the Trust's shares with respect to their net asset value and may take certain actions to seek to reduce or eliminate any such discount. Such actions may include open market repurchases or tender offers for the common shares at net asset value. There can be no assurance that the Board will decide to undertake any of these actions or that, if undertaken, such actions would result in the common shares trading at a price equal to or close to net asset value per Share.

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Listing	The Trust's outstanding common shares are listed on the NYSE under the symbol "HFRO" as will be the common shares offered in the applicable Prospectus Supplement, subject to notice of issuance. Since the Trust commenced trading on the NYSE, the Trust's common shares have traded at a discount to net asset value as high as 15.40% and a premium as high as 5.54%. Any additional series of fixed rate preferred shares or subscription rights issued in the future pursuant to a Prospectus Supplement by the Trust may be listed on the NYSE.
Use of Proceeds	Unless otherwise specified in a Prospectus Supplement, the Trust will use the net proceeds of the sale of securities to invest in accordance with the Trust's investment objectives and policies as stated below, or use such proceeds for other general corporate purposes. See "Use of Proceeds." The Trust may also use the net proceeds from the Offering to call, redeem or repurchase preferred shares.
Investment Objectives and Strategies	The Trust's investment objective is to provide a high level of current income, consistent with preservation of capital. The Trust seeks to achieve its objective by investing directly and indirectly (e.g., through derivatives that are the economic equivalent of direct investments) in the following categories of securities and instruments: (i) floating rate loans and other securities deemed to be floating rate investments; (ii) investments in securities or other instruments directly or indirectly secured by real estate, including real estate investment trusts ("REITs"), preferred equity, securities convertible into equity securities and mezzanine debt; and (iii) other instruments, including, but not limited to, secured and unsecured fixed-rate loans and corporate bonds, distressed securities, mezzanine securities, structured products (including but not limited to mortgage-backed securities, collateralized loan obligations and asset-backed securities), convertible and preferred securities, equities (public and private), and futures and options. The Trust will invest at least 25% of its assets in investments in securities or other instruments directly or indirectly secured by real estate, including REITs, preferred equity, securities convertible into equity securities and mezzanine debt. *Floating Rate Investments*. Floating rate investments are debt obligations of companies or other entities, the interest rates of which float or vary periodically based upon a benchmark indicator of prevailing interest rates. Floating rate investments may include, by way of example, floating rate debt securities, money market securities of all types, repurchase agreements with remaining maturities of no more than 60 days, collateralized loan obligations and asset backed securities. The reference in the Trust's investment objective to capital preservation does not indicate that the Trust may not lose money. HCMFA seeks to employ strategies that are consistent with capital preservation, but there can be no assurance that the Adviser will be

successful in doing so. In making floating rate investments for the Trust, the Trust's Adviser will seek to purchase instruments that it believes are undervalued or will provide attractive income, while attempting to minimize losses.

Floating rate loans in which the Trust invests are expected to be adjustable rate senior loans ("Senior Loans") to domestic or foreign corporations, partnerships and other entities that operate in a variety of industries and geographic regions ("Borrowers"). Senior Loans are business loans that have a right to payment senior to most other debts of the Borrower. Senior Loans generally are arranged through private negotiations between a Borrower and several financial institutions (the "Lenders") represented in each case by one or more such Lenders acting as agent (the "Agent") of the several Lenders. On behalf of the Lenders, the Agent is primarily responsible for negotiating the loan agreement ("Loan Agreement") that establishes the relative terms and conditions of the Senior Loan and rights of the Borrower and the Lenders.

The Trust may invest in securities of any credit quality. Senior Loans are typically below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("NRSRO") or are unrated but deemed by the Adviser to be of comparable quality. The Trust may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default.

The Trust may invest in participations ("Participations") in Senior Loans, may purchase assignments ("Assignments") of portions of Senior Loans from third parties, and may act as one of a group of Lenders originating a Senior Loan ("Primary Lender"). Senior Loans often are secured by specific assets of the Borrower, although the Trust may invest without limitation in Senior Loans that are not secured by any collateral. When the Trust acts as a Primary Lender, the Trust or the Adviser could be subject to allegations of lender liability. Senior Loans in which the Trust invests generally pay interest at rates that are periodically redetermined by reference to a base lending rate plus a spread.

Real Estate Investments. The Trust defines securities of issuers conducting their principal business activities in the real estate industry to include common stock, convertible or non-convertible preferred stock, warrants, convertible or non-convertible secured or unsecured debt, and partnership or membership interests issued by:

- commercial mortgage-backed securities ("CMBS"), residential mortgage-backed securities ("RMBS') and other real estate credit investments, which include existing first and second mortgages on real estate, either originated or acquired in the secondary market,

and secured, unsecured and/or convertible notes offered by real estate operating companies ("REOCs") and REITs;

- publicly traded REITs managed by affiliated or unaffiliated asset managers and their foreign equivalents ("Public REITs");
- REOCs;
- private real estate investment funds managed by affiliated or unaffiliated institutional asset managers ("Private Real Estate Investment Funds");
- registered closed-end funds that invest principally in real estate (collectively, "Public Investment Funds");
- real estate exchange traded funds ("ETFs"); and
- publicly-registered non-traded REITs ("Non-Traded REITs") and private REITs, generally wholly-owned by the Trust or wholly-owned or managed by an affiliate.

REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests, and REOCs are companies that invest in real estate and whose shares trade on public exchanges. Foreign REIT equivalents are entities located in jurisdictions that have adopted legislation substantially similar to the REIT tax provisions in that they provide for favorable tax treatment for the foreign REIT equivalent and require distributions of income to shareholders. The Trust may enter into certain real estate and real-estate related investments through its wholly-owned REIT subsidiary, NFRO REIT Sub, LLC (the "REIT Subsidiary"). With respect to the Trust's real estate investments, the Adviser seeks to: (i) recognize and allocate capital based upon where the Adviser believes we are in the current real estate cycle, and as a result (ii) minimize drawdowns during market downturns and maximize risk adjusted returns during all market cycles, though there can be no assurance that this strategy will achieve this objective. The Trust will rely on the expertise of the Adviser and its affiliates to determine the appropriate structure for structured credit investments, which may include bridge loans, common and preferred equity or other debt-like positions, as well as the acquisition of such instruments from banks, servicers or other third parties.

Preferred equity and mezzanine investments in real estate transactions come in various forms which may or may not be documented in the borrower's organizational documents. Generally, real estate preferred equity and/or mezzanine investments are typically junior to first mortgage financing but senior to the borrower's or sponsor's equity contribution. The investments are typically structured as an investment by a third-party investor in the real estate owner or various affiliates in the chain of ownership in exchange for a direct or indirect ownership interest in the real estate owner entitling it to a preferred/priority return on its investment. Sometimes, the investment is

structured much like a loan where (i) "interest" on the investment is required to be paid monthly by the "borrower" regardless of available property cash flow; (ii) the entire investment is required to be paid by a certain maturity date; (iii) default rate "interest" and penalties are assessed against the "borrower" in the event payments are not made timely; and (iv) a default in the repayment of investment potentially results in the loss of management and/or ownership control by the "borrower" in the company in favor of the investor or other third-party.

Other Investments. The Trust may invest up to 15% of its net assets in entities that are excluded from registration under the 1940 Act by virtue of section 3(c)(1) and 3(c)(7) of the 1940 Act (such as private equity funds or hedge funds). This limitation does not apply to any collateralized loan obligations, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the 1940 Act.

In addition, the Trust may invest in equity securities of companies of any market capitalization, market sector or industry. Equity securities of U.S. or non-U.S. issuers in which the Trust may invest include common stocks, preferred stocks, convertible securities, depositary receipts and warrants to buy common stocks. The Trust may invest in securities issued by other investment companies, including investment companies that are advised by the Adviser or its affiliates, to the extent permitted by applicable law and/or pursuant to exemptive relief from the SEC, and exchange-traded funds ("ETFs"). Fees and expenses of such investments will be borne by shareholders of the investing fund (the Trust), and the Adviser voluntarily waives the higher of the two fees for the portion of the Trust's management fee attributable to the Trust's investment in the affiliated investment company.

The Trust's investment in fixed income securities may include convertible securities. A convertible security is a bond, debenture, note, preferred stock or other security that may be converted into or exchanged for a prescribed amount of common stock or other equity security of the same or a different issuer within a particular period of time at a specified price or formula. A convertible security entitles the holder to receive interest paid or accrued on debt or the dividend paid on preferred stock until the convertible security matures or is redeemed, converted or exchanged. Before conversion, convertible securities have characteristics similar to nonconvertible income securities in that they ordinarily provide a stable stream of income with generally higher yields than those of common stocks of the same or similar issuers, but lower yields than comparable nonconvertible securities. The value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors also may have an effect on the convertible security's investment value. Convertible securities rank

senior to common stock in a corporation's capital structure but are usually subordinated to comparable nonconvertible securities. Convertible securities may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument. Depending on the relationship of the conversion price to the market value of the underlying securities, convertible securities may trade more like equity securities than debt instruments.

The Trust may invest without limitation in warrants and may also use derivatives, primarily swaps (including equity, variance and volatility swaps), options and futures contracts on securities, interest rates, non-physical commodities and/or currencies, as substitutes for direct investments the Trust can make. The Trust may also use derivatives such as swaps, options (including options on futures), futures, and foreign currency transactions (e.g., foreign currency swaps, futures and forwards) to any extent deemed by the Adviser to be in the best interest of the Trust, and to the extent permitted by the Investment Company Act of 1940, as amended (the "1940 Act"), to hedge various investments for risk management and speculative purposes.

The Trust may also engage in short sales of securities and may seek additional income by making secured loans of its portfolio securities.

The Trust may engage in securities lending by making secured loans of its portfolio securities amounting to not more than one-third of its total assets, thereby realizing additional income.

The Trust may invest in illiquid and restricted securities. Illiquid securities are those that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which the Trust has valued the securities.

The Trust may invest without limitation in securities (including loans) of non-U.S. issuers, including emerging market issuers. Such securities (including loans) may be denominated in U.S. dollars, non-U.S. currencies or multinational currency units.

Except as otherwise expressly noted in the Statement of Additional Information ("SAI"), all percentage limitations and ratings criteria apply at the time of purchase of securities.

The Trust may borrow an amount up to 33 1/3% of its total assets (including the amount borrowed) and may use leverage in the form of preferred shares in an amount up to 50% of the Trust's total assets (including the amount borrowed. The Trust may borrow for investment purposes and for temporary, extraordinary or emergency purposes. To the extent the Trust borrows more money than it has cash or short-term cash equivalents and invests the proceeds, the

	Trust will create financial leverage. The use of borrowing for investment purposes increases both investment opportunity and investment risk. When adverse market, economic, political or currency conditions domestically or abroad occur, the Trust may temporarily invest all or a portion of its total assets in defensive investments. Such investments may include fixed-income securities, high quality money market instruments, cash and cash equivalents. To the extent the Trust takes a temporary defensive position, it may not achieve its investment objective. The Trust is a non-diversified fund as defined in the 1940 Act, but it intends to adhere to the diversification requirements applicable to regulated investment companies ("RICs") under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). The Trust is not intended to be a complete investment program.
Distributions	*Preferred Shares Distributions.* As required by the 1940 Act, all preferred shares of the Trust must have the same seniority with respect to distributions. Accordingly, no complete distribution due for a particular dividend period will be declared or paid on any series of preferred shares of the Trust for any dividend period, or part thereof, unless full cumulative dividends and distributions due through the most recent dividend payment dates for all series of outstanding preferred shares of the Trust are declared and paid. If full cumulative distributions due have not been declared and made on all outstanding preferred shares of the Trust, any distributions on such preferred shares will be made as nearly pro rata as possible in proportion to the respective amounts of distributions accumulated but unmade on each such series of preferred shares on the relevant dividend payment date. The Trust's annualized distributions may in the future contain a return of capital and should not be considered as the dividend yield or total return of an investment in its common or preferred shares. Shareholders who receive the payment of a distribution consisting of a return of capital may be under the impression that they are receiving net profits when they are not. Shareholders should not assume that the source of a distribution from the Trust is net profit. The composition of each distribution is estimated based on the earnings of the Trust as of the record date for each distribution. The actual composition of each of the current year's distributions will be based on the Trust's investment activity through the end of the calendar year. Distributions on fixed rate preferred shares, at the applicable annual rate of the per share liquidation preference, are cumulative from the original issue date and are payable, when, as and if declared by the Board, out of funds legally available therefor.

	Common Shares Distributions. Subject to market conditions, the Trust expects to declare dividends on the Trust's common shares on a monthly basis. The Trust intends to pay any net capital gain distributions annually. Various factors will affect the level of the Trust's current income and current gains, such as its asset mix and the Trust's use of options and other derivative transactions. To permit the Trust to maintain more stable monthly dividends and annual capital gain distributions, the Trust may from time to time distribute less than the entire amount of income and gains earned in the relevant month or year, respectively. The undistributed income and gains would be available to supplement future distributions. As a result, the distributions paid by the Trust for any particular period may be more or less than the amount of income and gains actually earned by the Trust during the applicable period. Undistributed income and gains will add to the Trust's net asset value, and, correspondingly, distributions from previously undistributed income and gains, as well as from capital, if any, will be deducted from the Trust's net asset value. Shareholders will automatically receive common shares purchased in the open market at prevailing prices for all dividends declared for common shares of the Trust in accordance with the Trust's Dividend Reinvestment Plan unless an election is made to receive cash. Participants requesting a sale of securities through the plan agent of the Trust's Dividend Reinvestment Plan are subject to a sales fee and a brokerage commission. See "Dividend Reinvestment Plan."
Principal Risks of the Trust	The following is a summary of the principal risks associated with an investment in the Trust's securities. **Investors should also refer to "Principal Risks of the Trust" in this Prospectus for a more detailed explanation of the risks associated with investing in the Trust's securities.** Given the risks described below, an investment in the securities of the Trust may not be appropriate for all investors. You should carefully consider your ability to assume these risks before making an investment in securities of the Trust. **Credit Risk** is the risk that the issuers of certain securities or the counterparties of a derivatives contract or repurchase contract might be unable or unwilling (or perceived as being unable or unwilling) to make interest and/or principal payments when due, or to otherwise honor its obligations. Debt securities are subject to the risk of non-payment of scheduled interest and/or principal. Non-payment would result in a reduction of income to the Trust, a reduction in the value of the obligation experiencing non-payment and a potential decrease in the net asset value ("NAV") of the Trust. The value of debt securities owned by the Trust may be affected by the ability of issuers to make principal and interest payments and by the issuer's or counterparty's credit quality. If an issuer cannot meet its payment obligations or if its credit rating is lowered, the value of its debt securities may decline.

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Debt Securities Risk is the risk associated with the fact that the value of debt securities typically changes in response to various factors, including, by way of example, market-related factors (such as changes in interest rates or changes in the risk appetite of investors generally) and changes in the actual or perceived ability of the issuer (or of issuers generally) to meet its (or their) obligations. During periods of rising interest rates, debt securities generally decline in value. Conversely, during periods of falling interest rates, debt securities generally rise in value. This kind of market risk is generally greater for funds investing in debt securities with longer maturities. This risk is generally greater for obligations with longer maturities or for debt securities that do not pay current interest (such as zero-coupon securities). Debt securities with floating interest rates can be less sensitive to interest rate changes, although, to the extent the Trust's income is based on short-term interest rates that fluctuate over short periods of time, income received by the Trust may decrease as a result of a decline in interest rates. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates.

Senior Loans Risk is the risk associated with Senior Loans, which are typically below investment grade and are considered speculative because of the credit risk of their issuers. As with any debt instrument, Senior Loans are generally subject to the risk of price declines and as interest rates rise, the cost of borrowing increases, which may increase the risk of default. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. The secondary market for loans is generally less liquid than the market for higher grade debt. Less liquidity in the secondary trading market could adversely affect the price at which the Trust could sell a loan, and could adversely affect the NAV of the Trust's shares. The volume and frequency of secondary market trading in such loans varies significantly over time and among loans. Declines in interest rates may increase prepayments of debt obligations and require the Trust to invest assets at lower yields. No active trading market may exist for certain Senior Loans, which may impair the ability of the Trust to realize full value in the event of the need to liquidate such assets. Adverse market conditions may impair the liquidity of some actively traded Senior Loans.

Extension Risk: When interest rates rise, certain obligations will be paid off by the obligor more slowly than anticipated, causing the value of these obligations to fall. Rising interest rates tend to extend the duration of securities, making them more sensitive to changes in interest rates. The value of longer-term securities generally changes more in response to changes in interest rates than shorter-term securities. As a result, in a period of rising interest rates, securities may exhibit additional volatility and may lose value.

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Focused Investment Risk – Real Estate. The REIT Subsidiary's investments in mortgage, mezzanine or other real estate loans or preferred equity investments will generally be directly or indirectly secured by a lien on real property (or the equity interests in an entity that owns real property) that, upon the occurrence of a default on the loan, could result in the REIT Subsidiary acquiring ownership of the property. The Adviser will not know whether the values of the properties ultimately securing such loans or preferred equity investments will remain at the levels existing on the dates of origination of those loans or preferred equity investments. If the values of the underlying properties drop, the risk will increase because of the lower value of the security associated with such loans or preferred equity investments. In this manner, real estate values could impact the values of the Trust's loan or preferred equity investments. The Trust's investments in other real estate-related debt investments, through the REIT Subsidiary, may be similarly affected by real estate property values.

Real Estate Market Risk. The Trust is exposed to economic, market and regulatory changes that impact the real estate market generally through its investment in the REIT Subsidiary, which may cause the Trust's operating results to suffer. A number of factors may prevent the REIT Subsidiary's properties and other real estate-related investments from generating sufficient net cash flow or may adversely affect their value, or both, resulting in less cash available for distribution, or a loss, to us. These factors include: national, regional and local economic conditions; changing demographics; the ability of property managers to provide capable management and adequate maintenance; the quality of a property's construction and design; increases in costs of maintenance, insurance, and operations (including energy costs and real estate taxes); potential environmental and other legal liabilities; the level of financing used by the REIT Subsidiary and the availability and cost of refinancing; potential instability, default or bankruptcy of tenants in the properties owned by the REIT Subsidiary; the relative illiquidity of real estate investments in general, which may make it difficult to sell a property at an attractive price or within a reasonable time frame.

Asset-Backed Securities Risk: Because asset-backed securities often are secured by the loans underlying the securities, the Trust may lose money if there are defaults on the loans underlying the securities. Such defaults have increased the risk for asset-backed securities that are secured by home-equity loans related to sub-prime mortgage loans, especially in a declining residential real estate market. Asset-backed securities also may be subject to more rapid repayment than their stated maturity dates indicate, due to changing economic conditions. To maintain its position in such securities, the Trust may reinvest the reductions in principal amounts resulting from the prepayments. Yields on those reinvested amounts are subject to prevailing market rates. Because prepayments of principal generally

increase when rates are falling, the Trust generally has to reinvest proceeds from prepayments at lower rates. Investments in asset-backed securities may also be subject to valuation risk.

REIT-Specific Risk. REITs may be affected by changes in the real estate markets generally as well as changes in the values of the properties owned by the REIT or securing the mortgages owned by the REIT (which changes in value could be influenced by market conditions for real estate in general or fluctuations in the value of rights to natural resources appurtenant to the property held by the REIT). REITs are dependent upon management skill and are not diversified. REITs are also subject to heavy cash flow dependency, defaults by borrowers, self-liquidation, and the possibility of failing to qualify for special tax treatment under the Code and to maintain an exemption under the 1940 Act. For example, because a REIT may acquire debt securities of issuers primarily engaged in or related to the real estate industry, it also could conceivably own real estate directly as a result of a default on such securities. Any rental income or income from the disposition of such real estate could adversely affect its ability to retain its tax status, which would have adverse tax consequences on its shareholders. Finally, certain REITs may be self-liquidating at the end of a specified term, and run the risk of liquidating at an economically inopportune time.

REIT Tax Risk for REIT Subsidiaries. In addition to the REIT Subsidiary, the Trust may form one or more subsidiaries that will elect to be taxed as REITs beginning with the first year in which they commence material operations. In order for each subsidiary to qualify and maintain its qualification as a REIT, it must satisfy certain requirements set forth in the Code and Treasury Regulations that depend on various factual matters and circumstances. The Trust and the Adviser intend to structure each REIT subsidiary and its activities in a manner designed to satisfy all of these requirements. However, the application of such requirements is not entirely clear, and it is possible that the IRS may interpret or apply those requirements in a manner that jeopardizes the ability of such REIT subsidiary to satisfy all of the requirements for qualification as a REIT.

Financial Services Industry Risk is the risk associated with the fact that the Trust's investments in Senior Loans are arranged through private negotiations between a borrower ("Borrower") and several financial institutions. Investments in the financial services sector may be subject to credit risk, interest rate risk, and regulatory risk, among others. Banks and other financial institutions can be affected by such factors as downturns in the U.S. and foreign economies and general economic cycles, fiscal and monetary policy, adverse developments in the real estate market, the deterioration or failure of other financial institutions, and changes in banking or securities regulations. The financial services industry is subject to extensive government regulation, which can limit both the amounts and types of loans and

other financial commitments financial services companies can make and the interest rates and fees they can charge.

Fixed Income Market Risk is the risk that fixed income markets may, in response to governmental intervention, economic or market developments (including potentially a reduction in the number of broker-dealers willing to engage in market-making activity), or other factors, experience periods of increased volatility and reduced liquidity. Fixed income securities may be difficult to value during such periods. In recent periods, governmental financial regulators, including the U.S. Federal Reserve, have taken steps to maintain historically low interest rates by purchasing bonds. Steps by those regulators to curtail or "taper" such activities could result in the effects described above, and could have a material adverse effect on prices for fixed income securities and on the management of the Trust.

Interest Rate Risk is the risk that fixed income securities will decline in value because of changes in interest rates. When interest rates decline, the value of fixed rate securities already held by the Trust can be expected to rise. Conversely, when interest rates rise, the value of existing fixed rate portfolio securities can be expected to decline. A fund with a longer average portfolio duration will be more sensitive to changes in interest rates than a fund with a shorter average portfolio duration. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. However, the Trust will primarily invest in floating rate obligations, including Senior Loans, the rates on which periodically adjust with changes in market interest rates. Consequently, the Trust's exposure to fluctuations in interest rates will generally be limited to the time that the interest rates on the Senior Loans in its portfolio are reset. When interest rates decline, the value of fixed rate securities already held by the Trust can be expected to rise. Conversely, when interest rates rise, the value of existing fixed-rate portfolio securities can be expected to decline.

Structured Finance Securities Risk. A portion of the Trust's investments may consist of equipment trust certificates, collateralized mortgage obligations, collateralized bond obligations, collateralized loan obligations or similar instruments. Such structured finance securities are generally backed by an asset or a pool of assets, which serve as collateral. Depending on the type of security, the collateral may take the form of a portfolio of mortgage loans or bonds or other assets. The Trust and other investors in structured finance securities ultimately bear the credit risk of the underlying collateral.

Leverage Risk. The Trust currently uses financial leverage for investment purposes by issuing preferred shares and is also permitted to use other types of financial leverage, such as through the issuance of debt securities or additional preferred shares and borrowing from

financial institutions. As provided in the 1940 Act and subject to certain exceptions, the Trust may issue additional senior securities (which may be stock, such as preferred shares, and/or securities representing debt) only if immediately after such issuance the value of the Trust's total assets, less certain ordinary course liabilities, exceeds 300% of the amount of the debt outstanding and exceeds 200% of the amount of preferred shares and debt outstanding. As of May 31, 2019, the amount of leverage represented approximately 29.4% of the Trust's net assets.

The Trust's leveraged capital structure creates special risks not associated with unleveraged funds having a similar investment objective and policies. These include the possibility of greater loss and the likelihood of higher volatility of the net asset value of the Trust and the asset coverage for the preferred shares.

Preferred Share Risk is the risk associated with the issuance of preferred shares to leverage the common shares. When preferred shares are issued, the NAV and market value of the common shares become more volatile, and the yield to the holders of common shares will tend to fluctuate with changes in the shorter-term dividend rates on the preferred shares. The Trust will pay (and the holders of common shares will bear) all costs and expenses relating to the issuance and ongoing maintenance of the preferred shares, including higher advisory fees. Accordingly, the issuance of preferred shares may not result in a higher yield or return to the holders of the common shares. If the dividend rate and other costs of the preferred shares approach the net rate of return on the Trust's investment portfolio, the benefit of leverage to the holders of the common shares would be reduced. If the dividend rate and other costs of the preferred shares exceed the net rate of return on the Trust's investment portfolio, the leverage will result in a lower rate of return to the holders of common shares than if the Trust had not issued preferred shares.

High Yield Debt Securities Risk is the risk that below investment grade securities or unrated securities of similar credit quality (commonly known as "high yield securities" or "junk securities") are more likely to default than higher rated securities. The Trust's ability to invest in high-yield debt securities generally subjects the Trust to greater risk than securities with higher ratings. The market value of these securities is generally more sensitive to corporate developments and economic conditions and can be volatile. Market conditions can diminish liquidity and make accurate valuations difficult to obtain. Below investment grade may be fixed or variable rate obligations and are rated below investment grade (Ba/BB or lower) by a nationally recognized statistical rating organization or are unrated but deemed by the Adviser to be of comparable quality. Such securities should be considered speculative with respect to capacity to pay interest and repay principal in accordance with the terms of the obligation.

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Distressed and Defaulted Securities Risk: The Trust may invest in the securities of financially distressed and bankrupt issuers, including debt obligations that are in covenant or payment default. Such investments generally trade significantly below par and are considered speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result in only partial recovery of cash payments or an exchange of the defaulted obligation for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or speculative.

Illiquid and Restricted Securities Risk: Illiquid investments may be difficult to resell at approximately the price they are valued in the ordinary course of business within seven days. When investments cannot be sold readily at the desired time or price, the Trust may have to accept a much lower price, may not be able to sell the investment at all or may be forced to forego other investment opportunities, all of which may adversely impact the Trust's returns. Illiquid investments also may be subject to valuation risk. Restricted securities (including Rule 144A securities) may be subject to legal restraints on resale and, therefore, are typically less liquid than other securities. The prices received from selling restricted securities in privately negotiated transactions may be less than those originally paid by the Trust. Investors in restricted securities may not benefit from the same investor protections as publicly traded securities.

Payment-in-Kind Securities Risk: The risk that the value of payment-in-kind securities ("PIKs") held by the Trust may be more sensitive to fluctuations in interest rates than other securities. PIKs pay all or a portion of their interest or dividends in the form of additional securities. Federal tax law requires that the interest on PIK bonds be accrued as income to the Trust regardless of the fact that the Trust will not receive cash until such securities mature. Since the income must be distributed to shareholders, the Trust may be forced to liquidate other securities in order to make the required distribution. Additionally, the deferred nature of payments on PIKs creates specific risks.

Limited Information Risk is the risk associated with the fact that the types of Senior Loans in which the Trust will invest historically may not have been rated by a NRSRO, have not been registered with the SEC or any state securities commission, and have not been listed on any national securities exchange. Although the Trust will generally have access to financial and other information made available to the Lenders in connection with Senior Loans, the amount of public information available with respect to Senior Loans will generally be less extensive than that available for rated, registered or exchange-listed securities. As a result, the performance of the Trust and its

ability to meet its investment objective is more dependent on the analytical ability of the Adviser than would be the case for an investment company that invests primarily in rated, registered or exchange-listed securities.

Valuation Risk: Portfolio securities may be valued using techniques other than market quotations, under the circumstances described under "Determination of Net Asset Value." The value established for a portfolio security may be different than what would be produced through the use of another methodology or if it had been priced using market quotations. Portfolio securities that are valued using techniques other than market quotations, including "fair valued" securities, may be subject to greater fluctuation in their value from one day to the next than would be the case if market quotations were used. In addition, there is no assurance that the Trust could sell a portfolio security for the value established for it at any time and it is possible that the Trust would incur a loss because a portfolio security is sold at a discount to its established value.

Fair value is defined as the amount for which assets could be sold in an orderly disposition over a reasonable period of time, taking into account the nature of the asset. Fair value pricing, however, involves judgments that are inherently subjective and inexact, since fair valuation procedures are used only when it is not possible to be sure what value should be attributed to a particular asset or when an event will affect the market price of an asset and to what extent. As a result, fair value pricing may not reflect actual market value, and it is possible that the fair value determined for a security will be materially different from the value that actually could be or is realized upon the sale of that asset.

Non-Diversification Risk is the risk that an investment in the Trust could fluctuate in value more than an investment in a diversified fund. As a non-diversified fund for purposes of the 1940 Act, the Trust may invest a larger portion of its assets in the securities of fewer issuers than a diversified fund. The Trust's investment in fewer issuers may result in the Trust's shares being more sensitive to the economic results of those issuers. An investment in the Trust could fluctuate in value more than an investment in a diversified fund.

Securities Market Risk is the risk that the value of securities owned by the Trust may go up or down, sometimes rapidly or unpredictably, due to factors affecting particular companies or the securities markets generally. A general downturn in the securities market may cause multiple asset classes to decline in value simultaneously. Many factors can affect this value and you may lose money by investing in the Trust.

Preferred Equity Risk. Preferred equity investments may have similar risks to subordinated debt. The Trust may make preferred

equity investments in companies that own or acquire properties. These investments may involve special risks relating to the particular issuer of the securities, including the financial condition and business outlook of the issuer. Issuers of preferred equity generally will invest in real estate or real estate-related assets and are subject to the inherent risks associated with real estate-related investments, including risks related to rising interest rates.

Mezzanine Debt Risk. The Trust's assets may include mezzanine loans. Structurally, mezzanine loans usually rank subordinate in priority of payment to senior debt, such as senior bank debt, and are often unsecured. However, mezzanine loans rank senior to common and preferred equity in a borrower's capital structure. Mezzanine debt is often used in leveraged buyout and real estate finance transactions.

Convertible Securities Risk. Convertible securities generally offer lower interest or dividend yields than non-convertible securities of similar quality. Because convertible securities are higher in an issuer's capital structure than equity securities, convertible securities are generally not as risky as the equity securities of the same issuer. However, convertible securities may gain or lose value due to changes in, among other things, interest rates; other general economic conditions; industry fundamentals; market sentiment; and the issuer's operating results, financial statements and credit ratings. The value of convertible securities also tends to change whenever the market value of the underlying common or preferred stock fluctuates.

Equity Securities Risk is the risk that stock prices will fall over short or long periods of time. In addition, common stocks represent a share of ownership in a company, and rank after bonds and preferred stock in their claim on the company's assets in the event of bankruptcy. The market prices of equity securities owned by the Trust may go up or down, sometimes rapidly or unpredictably. The value of a security may decline for a number of reasons that may directly relate to the issuer, such as management performance, fundamental changes to the business, financial leverage, non-compliance with regulatory requirements and reduced demand for the issuer's goods or services. The values of equity securities also may decline due to general market conditions that are not specifically related to a particular company, such as real or perceived adverse economic conditions, changes in the general outlook for corporate earnings, changes in interest or currency rates or adverse investor sentiment generally.

Undervalued Stocks Risk: Undervalued stocks include stocks that the Adviser believes are undervalued and/or are temporarily out of favor in the market. An undervalued stock may decrease in price or may not increase in price as anticipated by the Adviser if other investors fail to recognize the company's value or the factors that the Adviser believes will cause the stock price to increase do not occur.

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Derivatives Risk is a combination of several risks, including the risks that: (1) an investment in a derivative instrument may not correlate well with the performance of the securities or asset class to which the Trust seeks exposure, (2) derivative contracts, including options, may expire worthless and the use of derivatives may result in losses to the Trust, (3) a derivative instrument entailing leverage may result in a loss greater than the principal amount invested, (4) derivatives not traded on an exchange may be subject to credit risk, for example, if the counterparty does not meet its obligations (see also "Counterparty Risk"), and (5) derivatives not traded on an exchange may be subject to liquidity risk and the related risk that the instrument is difficult or impossible to value accurately. Derivatives are financial contracts whose value depends on, or is derived from, the value of underlying assets, reference rates, or indices. Derivatives involve the risk that changes in their value may not move as expected relative to the value of the assets, rates, or indices they are designed to track. Derivatives include futures, non-U.S. currency contracts, swap contracts, warrants, and options contracts. Derivatives may relate to securities, interest rates, currencies or currency exchange rates, inflation rates, commodities, and indices.

Hedging Risk is the risk that, although intended to limit or reduce investment risk, hedging strategies may also limit or reduce the potential for profit. There is no assurance that hedging strategies will be successful. There are several risks in connection with the use by the Trust of futures contracts and related options as a hedging device. One risk arises because of the imperfect correlation between movements in the prices of the futures contracts and options and movements in the underlying securities or index or movements in the prices of the Trust's securities which are the subject of a hedge. The Adviser will, however, attempt to reduce this risk by purchasing and selling, to the extent possible, futures contracts and related options on securities and indices the movements of which will, in its judgment, correlate closely with movements in the prices of the underlying securities or index and the Trust's portfolio securities sought to be hedged.

Options Risk is the risk associated with investments in options. Options, such as covered calls and covered puts, are subject to the risk that significant differences between the securities and options markets could result in an imperfect correlation between these markets.

Swaps Risk: The use of swaps is a highly specialized activity which involves investment techniques, risk analyses and tax planning different from those associated with ordinary portfolio securities transactions. These transactions can result in sizeable realized and unrealized capital gains and losses relative to the gains and losses from the Trust's direct investments in securities.

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Transactions in swaps can involve greater risks than if the Trust had invested in the reference assets directly since, in addition to general market risks, swaps may be leveraged and are also subject to illiquidity risk, counterparty risk, credit risk and pricing risk. However, certain risks may be reduced (but not eliminated) if the Trust invests in cleared swaps. Regulators also may impose limits on an entity's or group of entities' positions in certain swaps. Because bilateral swap agreements are two party contracts and because they may have terms of greater than seven days, these swaps may be considered to be illiquid. Moreover, the Trust bears the risk of loss of the amount expected to be received under a swap in the event of the default or bankruptcy of a swap counterparty. Many swaps are complex and valued subjectively. Swaps and other derivatives may also be subject to pricing or "basis" risk, which exists when the price of a particular derivative diverges from the price of corresponding cash market instruments. Under certain market conditions it may not be economically feasible to initiate a transaction or liquidate a position in time to avoid a loss or take advantage of an opportunity. If a swap transaction is particularly large or if the relevant market is illiquid, it may not be possible to initiate a transaction or liquidate a position at an advantageous time or price, which may result in significant losses.

The value of swaps can be very volatile, and a variance in the degree of volatility or in the direction of securities prices from the Adviser's expectations may produce significant losses in the Trust's investments in swaps. In addition, a perfect correlation between a swap and a reference asset may be impossible to achieve. As a result, the Adviser's use of swaps may not be effective in fulfilling the Adviser's investment strategies and may contribute to losses that would not have been incurred otherwise.

Short Sales Risk is the risk of loss associated with any appreciation on the price of a security borrowed in connection with a short sale. The Trust may engage in short sales that are not made "against-the-box," which means that the Trust may sell short securities even when they are not actually owned or otherwise covered at all times during the period the short position is open. Short sales that are not made "against-the-box" involve unlimited loss potential since the market price of securities sold short may continuously increase.

Securities Lending Risk: The Trust will continue to receive interest on any securities loaned while simultaneously earning interest on the investment of the cash collateral in short-term money market instruments. However, the Trust will normally pay lending fees to broker-dealers and related expenses from the interest earned on such invested collateral. Any decline in the value of a portfolio security that occurs while the security is out on loan is borne by the Trust, and will adversely affect performance. There may be risks of delay in

receiving additional collateral or risks of delay in recovery of the securities, loss of rights in the collateral should the borrower of the securities fail financially and possible investment losses in the investment of collateral. Any loan may be terminated by either party upon reasonable notice to the other party.

Liquidity Risk is the risk that low trading volume, lack of a market maker, large position size, or legal restrictions (including daily price fluctuation limits or "circuit breakers") limits or prevents the Trust from selling particular securities or unwinding derivative positions at desirable prices. At times, a major portion of any portfolio security may be held by relatively few institutional purchasers. Even if the Trust considers such securities liquid because of the availability of an institutional market, such securities may become difficult to value or sell in adverse market or economic conditions. Because loan transactions often take longer to settle than transactions in other securities, the Trust may not receive the proceeds from the sale of a loan for a significant period of time.

Counterparty Risk is the risk that a counterparty (the other party to a transaction or an agreement or the party with whom the Trust executes transactions) to a transaction with the Trust may be unable or unwilling to make timely principal, interest or settlement payments, or otherwise honor its obligations. In an attempt to limit the counterparty risk associated with such transactions, the Trust conducts business only with financial institutions judged by the Adviser to present acceptable credit risk.

Non-U.S. Securities Risk is the risk associated with investing in non-U.S. issuers. Investments in securities of non-U.S. issuers involve certain risks not involved in domestic investments (for example, fluctuations in foreign exchange rates (for non-U.S. securities not denominated in U.S. dollars); future foreign economic, financial, political and social developments; nationalization; exploration or confiscatory taxation; smaller markets; different trading and settlement practices; less governmental supervision; and different accounting, auditing and financial recordkeeping standards and requirements) that may result in the Trust experiencing more rapid and extreme changes in value than a fund that invests exclusively in securities of U.S. companies. These risks are magnified for investments in issuers tied economically to emerging markets, the economies of which tend to be more volatile than the economies of developed markets. In addition, certain investments in non-U.S. securities may be subject to foreign withholding and other taxes on interest, dividends, capital gains or other income or proceeds. Those taxes will reduce the Trust's yield on any such securities. See the "Taxation" section below.

Management Risk is the risk associated with the fact that the Trust relies on the Adviser's ability to achieve its investment objective. The

Adviser may be incorrect in its assessment of the intrinsic value of the companies whose securities the Trust holds, which may result in a decline in the value of Fund shares and failure to achieve its investment objective. The Trust's portfolio managers use qualitative analyses and/or models. Any imperfections or limitations in such analyses and models could affect the ability of the portfolio managers to implement strategies.

Operational and Technology Risk is the risk that cyber-attacks, disruptions, or failures that affect the Trust's service providers, counterparties, market participants, or issuers of securities held by the Trust may adversely affect the Trust and its shareholders, including by causing losses for the Trust or impairing Fund operations.

Regulatory Risk is the risk that to the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of financial institutions to make loans in connection with highly leveraged transactions, the availability of loan interests for investment by the Trust may be adversely affected. To the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of the Trust to invest in the assets of distressed companies, the availability of distressed company interests for investment by the Trust may be adversely affected.

Given the risks described above, an investment in the securities may not be appropriate for all investors. You should carefully consider your ability to assume these risks before making an investment in the Trust.

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The Trust's common and preferred shares are registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and we are required to file reports, proxy statements and other information with the Commission. The materials we file are available at the Commission's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information about the operation of the Commission's public reference room by calling the Commission at 1-800-SEC-0330. In addition, the Commission maintains an Internet website, at *http://www.sec.gov*, that contains reports, proxy and information statements, and other information regarding issuers, including us, that file documents electronically with the Commission.

Summary of Trust Fees and Expenses

The following table shows the Trust's expenses, including preferred shares offering expenses, as a percentage of net assets attributable to common shares.

Shareholder Transaction Expenses*	
Sales load (as a percentage of offering price)	0%(1)
Offering expenses borne by the Trust (excluding Preferred Shares Offering Expenses) (as a percentage of offering price)	0%(2)
Dividend reinvestment and cash purchase plan fees	None(3)
Preferred Shares Offering Expenses Borne by the Trust (as a percentage of net assets attributable to common shares)	0.08%(4)

	Percentage of Net Assets Attributable to Common Shares (Gives Effect to Leverage Through Borrowings)
Annual Expenses	
Management fees	1.37%
Other expenses	1.85%(5)
Interest payments on borrowed funds	1.61%
Remainder of other expenses	0.24%
Dividends on Preferred Shares	— %(6)
Total Annual Expenses and Dividends on Preferred Shares	— %(6)

* The related Prospectus Supplement to be used in connection with any sales of securities will set forth any applicable sales load and the estimated offering expenses borne by the Trust.

(1) In the event that the securities to which this Prospectus relates are sold to or through underwriters or dealer managers, a corresponding Prospectus Supplement will disclose the applicable sales load.

(2) The related Prospectus Supplement will disclose the estimated amount of offering expenses, the offering price and the offering expenses borne by the Trust and indirectly by all of the shareholders as a percentage of the offering price.

(3) Shareholders participating in the Trust's dividend reinvestment and cash purchase plan do not incur any additional fees.

(4) The related Prospectus Supplement will disclose the estimated amount of preferred share offering expenses borne by the Trust and indirectly by all of the shareholders as a percentage of the offering price.

(5) "Other Expenses" are based on estimated amounts for the current year assuming completion of the proposed issuances.

(6) Dividends on Preferred Shares, which will be disclosed in the related Prospectus Supplement, represent the aggregate of (1) the estimated distributions on the existing preferred shares outstanding and (2) the distributions that would be made assuming $— million of preferred shares is issued with a fixed dividend rate of —%. There can, of course, be no guarantee that any preferred shares would be issued or, if issued, the terms thereof. This information will be updated if and when preferred shares are outstanding.

The purpose of this table above and the example below is to assist the investor in understanding the various costs and expenses that an investor in the Trust will bear directly or indirectly.

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EXAMPLE

The following example illustrates the expenses (including the maximum estimated offering expenses of $500,000.00 from the issuance of $0 in common shares and $200 million in preferred shares) you would pay on a $1,000 investment in common shares, followed by a preferred shares offering, assuming a 5% annual portfolio total return.* The actual amounts in connection with any offering will be set forth in the Prospectus Supplement if applicable. **The example should not be considered a representation of future expenses, and actual expenses (including leverage and other expenses) may be greater or less than those shown.**

	1 Year	3 Years	5 Years	10 Years
Total expenses incurred	$ 44	$ 130	$ 218	$ 443

* The example includes Dividends of Preferred Shares. If Dividends on Preferred Shares were not included in the example calculation, the expenses for the 1-, 3-, 5- and 10-year periods in the table above would be as follows (based on the same assumptions as above): $32, $99, $168, and $352. The applicable Prospectus Supplement to be used in connection with any sales of securities will set forth any applicable sales load and the estimated offering expenses borne by the Trust.

Financial Highlights

On September 25, 2017, the Trust acquired the assets of the Predecessor Fund. The Trust is the successor to the accounting and performance information of the Predecessor Fund. The selected data below sets forth the per share operating performance and ratios for the period presented. On April 11, 2019, the Trust changed its fiscal year end from June 30 to December 31. The financial information for the period from July 1, 2018 to December 31, 2018 has been audited by PricewaterhouseCoopers LLP ("PwC"), the Trust's independent registered public accounting firm. The financial information for the fiscal years ended June 30, 2018, 2017 and 2016, has been audited and reported on by another independent public registered accounting firm.

Selected data for a common share of beneficial interest outstanding throughout the period. Trust data for a common share outstanding throughout each period is as follows:

	For the Period Ended December 31, 2018**	For the Years Ended				
		2018*	2017*‡	2016*‡	2015*‡	2014*‡
Net Asset Value, Beginning of Year	$ 15.12	$15.01	$ 14.33	$ 16.17	16.91	15.98
Income from Investment Operations:(a)						
Net investment income	0.42	0.75	0.68	0.89	0.74	0.74
Redemption fees added to paid-in capital	—	—	—	—	—	— (b)
Net realized and unrealized gain/(loss)	(0.80)	0.18	0.74	(1.84)	(0.74)	0.93
Total from investment operations	(0.38)	0.93	1.42	(0.95)	— (b)	1.67
Less Distributions Declared to Shareholders:						
From net investment income	(0.45)	(0.72)	(0.74)	(0.89)	(0.74)	(0.72)
From return of capital	(0.01)	(0.10)	—	—	—	(0.02)
Total distributions declared to shareholders	(0.46)	(0.82)	(0.74)	(0.89)	(0.74)	(0.74)
Net Asset Value, End of Year(c)	$ 14.28	$15.12	$ 15.01	$ 14.33	$ 16.17	$ 16.91
Market Value, End of Period	$ 12.80	$15.62	$ —	$ —	$ —	$ —
Total return(d)	(15.44)%(j)	9.77%	10.05%	(5.77)%	0.11%	10.68%

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	For the Period Ended December 31, 2018**	For the Years Ended				
		2018*	2017*‡	2016*‡	2015*‡	2014*‡
Ratios to Average Net Assets(f)/Supplemental Data:						
Net assets, end of period (in 000's)	$ 1,026,412	$1,085,547	$389,278	$241,197	$283,673	$340,089
Gross operating expenses(g)(h)	3.10%	1.79%	1.20%(i)	1.38%	1.03%	1.25%
Net investment income(h)	5.48%	4.98%	4.61%	5.65%	4.55%	4.49%
Portfolio turnover rate	27%	177%	63%	53%	55%	69%
Average commission rate paid(l)	$ 0.0243	$ 0.0300				

* Per share data prior to November 3, 2017 has been adjusted to give effect to an approximately 2 to 1 reverse stock split as part of the conversion to a closed-end fund.

** For the six month period ended December 31, 2018. Effective April 11, 2019, the Fund had a fiscal year change from June 30 to December 31.

‡ Reflects the financial highlights of Class Z of the open-end fund prior to the conversion.

(a) Per share data was calculated using average shares outstanding during the period.

(b) Represents less than $0.005 per share.

(c) The Net Asset Value per share has been calculated based on net assets which include adjustments made in accordance with U.S. Generally Accepted Accounting Principles required at period end for financial reporting purposes. These figures do not necessarily reflect the Net Asset Value per share or total return experienced by the shareholder at period end.

(d) Total return is based on market value per share for periods after November 3, 2017. Distributions are assumed for purposes of this calculation to be reinvested at prices obtained under the Trust's Dividend Reinvestment Plan. Prior to November 3, 2017, total return is at net asset value assuming all distributions are reinvested. For periods with waivers/reimbursements, had the Trust's investment adviser not waived or reimbursed a portion of expenses, total return would have been lower.

(e) All ratios for the period have been annualized, unless otherwise indicated.

(f) Supplemental expense ratios are shown below:

	For the Period Ended December 31, 2018**	For the Years Ended June 30,				
		2018	2017	2016	2015	2014
Net operating expenses (net of waiver/reimbursement, if applicable, but gross of all other operating expenses)	3.10%	1.79%	1.12%	1.11%	1.04%	0.99%
Interest expense, commitment fees, and financing costs	1.63%	0.49%	0.01%	0.15%	0.04%	0.08%
Dividends and fees on securities sold short	— (k)	— (j)	0.01%	0.01%	0.05%	0.04%

(g) Includes dividends and fees on securities sold short.

(h) Excludes 12b-1 fees from partial period operating as an open-end fund. Following the conversion on November 3, 2017, the Trust is no longer subject to 12b-1 fees.

(i) Refer to Note 7 in the Notes to the Financial Statements for discussion of prior period custodian out-of-pocket expenses that were communicated to the Trust in the current period. The amount of the reimbursement was immaterial on a per share basis and did not impact the total return of the Trust. The Ratios of Gross Operating Expenses and Net Operating Expenses to Average Net Assets would be unchanged as the reimbursement of custodian fees was offset against current period expense waivers/ reimbursements with no impact to net expenses or net investment income.

(j) Not annualized.

(k) Represents less than 0.005%.

(l) Represents the total dollar amount of commissions paid on portfolio transactions divided by total number of portfolio shares purchased and sold for which commissions were charged. The period prior to the Conversion Date is not presented.

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The following table sets forth additional information regarding the Fund's credit facility for the last ten fiscal years:

Year	Total Amount Outstanding	Asset Coverage Per $1,000 of Indebtedness[1]
12/31/2018[2]	496,141,100.00	3,068.41
6/30/2018	498,563,423.00	3,177.35
6/30/2017	—	—
6/30/2016	—	—
6/30/2015	51,500,000.00	16,414.00
6/30/2014	60,000,000.00	15,776.00
6/30/2013	—	—
6/30/2012	89,000,000.00	7,184.00
6/30/2011	135,000,000.00	6,599.00
6/30/2010	115,000,000.00	6,060.00
6/30/2009	181,000,000.00	4,658.00

1 The Trust closes its net asset value daily, and calculates asset coverage greater than 300%

2 For the six month period ended December 31, 2018. Effective April 11, 2019, the Fund had a fiscal year change from June 30 to December 31

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Plan of Distribution

We may offer, from time to time, in one or more offerings, our common and/or fixed rate preferred shares, $0.001 par value per share, our notes, or our subscription rights to purchase our common or fixed rate preferred shares or both, which we refer to collectively as the "securities." The securities may be offered at prices and on terms to be set forth in one or more supplements to this Prospectus (each a "Prospectus Supplement"). The offering price per common share of the Trust will not be less than the net asset value per common share at the time we make the offering, exclusive of any underwriting commissions or discounts; however, rights offerings that meet certain conditions may be offered at a price below the then current net asset value per common share of the Trust. You should read this Prospectus and the applicable Prospectus Supplement carefully before you invest in our securities. Our securities may be offered directly to one or more purchasers, through agents designated from time to time by us, or through underwriters or dealers. The Prospectus Supplement relating to the offering will identify any agents, underwriters or dealers involved in the sale of our shares, and will set forth any applicable purchase price, fee, commission or discount arrangement between us and our agents or underwriters, or among our underwriters, or the basis upon which such amount may be calculated. The Prospectus Supplement relating to any sale of fixed rate preferred shares will set forth the liquidation preference and information about the dividend period, dividend rate, any call protection or non-call period and other matters. The Prospectus Supplement relating to any offering of subscription rights will set forth the number of common and/or fixed rate preferred shares issuable upon the exercise of each right and the other terms of such rights offering. While the aggregate number and amount of securities we may issue pursuant to this registration statement is limited to $1,000,000,000 of securities, our Board may, without any action by the shareholders, amend our Agreement and Declaration of Trust from time to time to increase or decrease the aggregate number of shares or the number of shares of any class or series that we have authority to issue. We may not sell any of our securities through agents, underwriters or dealers without delivery of a Prospectus Supplement describing the method and terms of the particular offering.

The distribution of the securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, at prevailing market prices at the time of sale, at prices related to such prevailing market prices, or at negotiated prices; *provided, however*, that the price per share at which our common shares are sold, less any underwriting commissions or discounts, must equal or exceed the net asset value per share of our common shares at the time of the offering except (i) in connection with a rights offering to our existing shareholders, (ii) with the consent of the majority of our common shareholders, or (iii) under such circumstances as the Commission may permit.

In connection with the sale of the securities, underwriters or agents may receive compensation from us or from purchasers of the securities, for whom they may act as agents, in the form of discounts, concessions, commissions, structuring fees, distribution assistance payments or other compensation. Underwriters may sell the securities to or through dealers and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of the securities may be deemed to be underwriters under the Securities Act of 1933, as amended (the "Securities Act") and any discounts, commissions or other compensation they receive from us and any profit realized by them on the resale of the securities may be deemed to be underwriting discounts and commissions under the Securities Act. Any such underwriter or agent will be identified and any such compensation received from us will be described in the applicable Prospectus Supplement. The maximum commission or discount to be received by any member of the Financial Industry Regulatory Authority ("FINRA") or independent broker-dealer will not be greater than 8% for the sale of any securities being registered.

We may sell the securities through agents from time to time. The Prospectus Supplement will name any agent involved in the offer or sale of the securities and any commissions we pay to them. Generally, any agent will be acting on a best efforts basis for the period of its appointment.

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Any securities sold pursuant to a Prospectus Supplement may be traded on the NYSE, or another exchange on which the securities are traded.

Under agreements that we may enter, underwriters, dealers and agents who participate in the distribution of shares of our securities may be entitled to indemnification by us against certain liabilities, including liabilities under the Securities Act. Underwriters, dealers and agents may engage in transactions with, or perform services for, us in the ordinary course of business.

Underwriters, dealers and agents may sell our shares at a price that is greater than, equal to or less than our net asset value per share so long as we sell our shares in accordance with the 1940 Act.

We may enter into derivative transactions with third parties, or sell securities not covered by this Prospectus to third parties in privately negotiated transactions. If the applicable Prospectus Supplement indicates, in connection with those derivatives, the third parties may sell securities covered by this Prospectus and the applicable Prospectus Supplement, including in short sale transactions. If so, the third party may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of shares, and may use securities received from us in settlement of those derivatives to close out any related open borrowings of shares. The third parties in such sale transactions will be underwriters and, if not identified in this Prospectus, will be identified in the applicable Prospectus Supplement.

In order to comply with the securities laws of certain states, if applicable, our securities offered hereby will be sold in such jurisdictions only through registered or licensed brokers or dealers.

The Trust's common shareholders will indirectly bear all of the various expenses incurred in connection with the distribution activities described herein.

Use of Proceeds

Unless otherwise specified in a Prospectus Supplement, the Trust will invest the net proceeds of any sales of securities in accordance with the Trust's investment objectives and policies as stated below, or use such proceeds for other general corporate purposes. Assuming current market conditions, the Trust estimates that investment of the net proceeds of an Offering will be substantially complete within one to three months of the completion of such Offering. Pending such investment, it is anticipated that the proceeds of the Offering may be invested in cash and/or short-term debt securities. These temporary investments are expected to provide a lower net return than we hope to achieve from our targeted investments. Following the completion of the Offering, the Trust may increase the amount of leverage outstanding. The Trust may also use the net proceeds from the Offering to call, redeem or repurchase preferred shares. See "Use of Leverage."

The Trust

The Trust is a non-diversified, closed-end management investment company that was organized as a Massachusetts business trust on June 28, 2017 pursuant to a Declaration of Trust dated June 28, 2017. The Trust's principal office is located at 300 Crescent Court, Suite 700, Dallas, Texas 75201 and its telephone number is 1-877- 665-1287. On September 25, 2017, the Trust acquired the assets of Highland Floating Rate Opportunities Fund (the "Predecessor Fund"), a series of Highland Funds I (the "Predecessor Trust"), a Delaware statutory trust. On May 20, 2019, the Trust's name changed from "Highland Floating Rate Opportunities Fund" to "Highland Income Fund."

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Investment Objective and Policies

The Trust's investment objective is to provide a high level of current income, consistent with preservation of capital. The Trust seeks to achieve its objective by investing at least 25% of its assets in investments in securities or other instruments directly or indirectly secured by real estate, including REITs, preferred equity, securities convertible into equity securities and mezzanine debt.The Trust seeks to achieve its objective by primarily investing directly and indirectly (e.g., through derivatives that are the economic equivalent of direct investments) in the following categories of securities and instruments: (i) floating rate loans and other securities deemed to be floating rate investments; (ii) investments in securities or other instruments directly or indirectly secured by real estate, including REITs, preferred equity, securities convertible into equity securities and mezzanine debt and (iii) other instruments, including, but not limited to, secured and unsecured fixed-rate loans and corporate bonds, distressed securities, mezzanine securities, structured products (including but not limited to mortgage-backed securities, collateralized loan obligations and asset-backed securities), convertible and preferred securities, equities (public and private), and futures and options.

Floating Rate Investments. Floating rate investments are debt obligations of companies or other entities, the interest rates of which float or vary periodically based upon a benchmark indicator of prevailing interest rates. Floating rate investments may include, by way of example, floating rate debt securities, money market securities of all types, repurchase agreements with remaining maturities of no more than 60 days, collateralized loan obligations and asset backed securities. The reference in the Trust's investment objective to capital preservation does not indicate that the Trust may not lose money. HCMFA seeks to employ strategies that are consistent with capital preservation, but there can be no assurance that the Adviser will be successful in doing so. In making investments for the Trust, the Trust's Adviser will seek to purchase instruments that it believes are undervalued or will provide attractive floating rate income, while attempting to minimize losses.

Floating rate loans in which the Trust invests are expected to be adjustable rate senior loans ("Senior Loans") to domestic or foreign corporations, partnerships and other entities that operate in a variety of industries and geographic regions ("Borrowers"). Senior Loans are business loans that have a right to payment senior to most other debts of the Borrower. Senior Loans generally are arranged through private negotiations between a Borrower and several financial institutions (the "Lenders") represented in each case by one or more such Lenders acting as agent (the "Agent") of the several Lenders. On behalf of the Lenders, the Agent is primarily responsible for negotiating the loan agreement ("Loan Agreement") that establishes the relative terms and conditions of the Senior Loan and rights of the Borrower and the Lenders.

The Trust may invest in securities of any credit quality. Senior Loans are typically below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("NRSRO") or are unrated but deemed by the Adviser to be of comparable quality. The Trust may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default. The Trust may invest without limitation in "covenant-lite" loans, which are loans made with fewer protections for the Lender and which are increasingly common in the loan and credit instruments market. Because covenant-lite loans are less restrictive on Borrowers and provide less protection for Lenders than typical corporate loans, the risk of default may be significantly higher.

The Trust may invest in participations ("Participations") in Senior Loans, may purchase assignments ("Assignments") of portions of Senior Loans from third parties, and may act as one of a group of Lenders originating a Senior Loan ("Primary Lender"). Senior Loans often are secured by specific assets of the Borrower, although the Trust may invest without limitation in Senior Loans that are not secured by any collateral. When the Trust acts as a Primary Lender, the Trust or the Adviser could be subject to allegations of lender liability. Senior Loans in which the Trust invests generally pay interest at rates that are periodically redetermined by reference to a base lending rate plus a spread.

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Real Estate Investments. The Trust defines securities of issuers conducting their principal business activities in the real estate industry to include common stock, convertible or non-convertible preferred stock, warrants, convertible or non-convertible secured or unsecured debt, and partnership or membership interests issued by:

- CMBS, RMBS and other real estate credit investments, which include existing first and second mortgages on real estate, either originated or acquired in the secondary market, and secured, unsecured and/or convertible notes offered by REOCs and REITs;
- Public REITs;
- REOCs;
- Private Real Estate Investment Funds;
- Public Investment Funds;
- real estate ETFs; and
- Non-Traded REITs and private REITs, generally wholly-owned by the Trust or wholly-owned or managed by an affiliate.

REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests, and REOCs are companies that invest in real estate and whose shares trade on public exchanges. Foreign REIT equivalents are entities located in jurisdictions that have adopted legislation substantially similar to the REIT tax provisions in that they provide for favorable tax treatment for the foreign REIT equivalent and require distributions of income to shareholders. The Trust may enter into certain real estate and real-estate related investments through its wholly-owned REIT subsidiary, NFRO REIT Sub, LLC (the "REIT Subsidiary"). With respect to the Trust's real estate investments, the Adviser seeks to: (i) recognize and allocate capital based upon where the Adviser believes we are in the current real estate cycle, and as a result (ii) minimize drawdowns during market downturns and maximize risk adjusted returns during all market cycles, though there can be no assurance that this strategy will achieve this objective. The Trust will rely on the expertise of the Adviser and its affiliates to determine the appropriate structure for structured credit investments, which may include bridge loans, common and preferred equity or other debt-like positions, as well as the acquisition of such instruments from banks, servicers or other third parties.

Preferred equity and mezzanine investments in real estate transactions come in various forms which may or may not be documented in the borrower's organizational documents. Generally, real estate preferred equity and/or mezzanine investments are typically junior to first mortgage financing but senior to the borrower's or sponsor's equity contribution. The investments are typically structured as an investment by a third-party investor in the real estate owner or various affiliates in the chain of ownership in exchange for a direct or indirect ownership interest in the real estate owner entitling it to a preferred/priority return on its investment. Sometimes, the investment is structured much like a loan where (i) "interest" on the investment is required to be paid monthly by the "borrower" regardless of available property cash flow; (ii) the entire investment is required to be paid by a certain maturity date; (iii) default rate "interest" and penalties are assessed against the "borrower" in the event payments are not made timely; and (iv) a default in the repayment of investment potentially results in the loss of management and/or ownership control by the "borrower" in the company in favor of the investor or other third-party.

Other Investments. The Trust may invest up to 15% of its net assets in entities that are excluded from registration under the 1940 Act by virtue of section 3(c)(1) and 3(c)(7) of the 1940 Act (such as private equity funds or hedge funds). This limitation does not apply to any collateralized loan obligations, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the 1940 Act.

In addition, the Trust may invest in equity or debt securities. The Trust may invest in equity securities of companies of any market capitalization, market sector or industry. Equity securities of U.S. or non-U.S. issuers in

which the Trust may invest include common stocks, preferred stocks, convertible securities, depositary receipts and warrants to buy common stocks. The Trust may invest in securities issued by other investment companies, including investment companies that are advised by the Adviser or its affiliates, to the extent permitted by applicable law and/or pursuant to exemptive relief from the SEC, and exchange-traded funds ("ETFs"). Fees and expenses of such investments will be borne by shareholders of the investing fund (the Trust), and the Adviser voluntarily waives the higher of the two fees for the portion of the Trust's management fee attributable to the Trust's investment in the affiliated investment company.

The Trust's investment in fixed income securities may include convertible securities. A convertible security is a bond, debenture, note, preferred stock or other security that may be converted into or exchanged for a prescribed amount of common stock or other equity security of the same or a different issuer within a particular period of time at a specified price or formula. A convertible security entitles the holder to receive interest paid or accrued on debt or the dividend paid on preferred stock until the convertible security matures or is redeemed, converted or exchanged. Before conversion, convertible securities have characteristics similar to nonconvertible income securities in that they ordinarily provide a stable stream of income with generally higher yields than those of common stocks of the same or similar issuers, but lower yields than comparable nonconvertible securities. The value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors also may have an effect on the convertible security's investment value. Convertible securities rank senior to common stock in a corporation's capital structure but are usually subordinated to comparable nonconvertible securities. Convertible securities may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument. Depending on the relationship of the conversion price to the market value of the underlying securities, convertible securities may trade more like equity securities than debt instruments.

The Trust may invest without limitation in warrants and may also use derivatives, primarily swaps (including equity, variance and volatility swaps), options and futures contracts on securities, interest rates, non-physical commodities and/or currencies, as substitutes for direct investments the Trust can make. The Trust may also use derivatives such as swaps, options (including options on futures), futures, and foreign currency transactions (e.g., foreign currency swaps, futures and forwards) to any extent deemed by the Adviser to be in the best interest of the Trust, and to the extent permitted by the 1940 Act, to hedge various investments for risk management and speculative purposes.

The Trust may also engage in short sales of securities and may seek additional income by making secured loans of its portfolio securities.

The Trust may engage in securities lending by making secured loans of its portfolio securities amounting to not more than one-third of its total assets, thereby realizing additional income.

The Trust may invest in illiquid and restricted securities. Illiquid securities are those that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which the Trust has valued the securities.

The Trust may invest without limitation in securities (including loans) of non-U.S. issuers, including emerging market issuers. Such securities (including loans) may be denominated in U.S. dollars, non-U.S. currencies or multinational currency units.

Except as otherwise expressly noted in the Statement of Additional Information ("SAI"), all percentage limitations and ratings criteria apply at the time of purchase of securities.

The Trust may borrow an amount up to 33 1/3% of its total assets (including the amount borrowed) and may use leverage in the form of preferred shares in an amount up to 50% of the Trust's total assets (including the

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amount borrowed. The Trust may borrow for investment purposes requests and for temporary, extraordinary or emergency purposes. To the extent the Trust borrows more money than it has cash or short-term cash equivalents and invests the proceeds, the Trust will create financial leverage. The use of borrowing for investment purposes increases both investment opportunity and investment risk.

When adverse market, economic, political or currency conditions domestically or abroad occur, the Trust may temporarily invest all or a portion of its total assets in defensive investments. Such investments may include fixed-income securities, high quality money market instruments, cash and cash equivalents. To the extent the Trust takes a temporary defensive position, it may not achieve its investment objective.

The Trust is a non-diversified fund as defined in the 1940 Act, but it intends to adhere to the diversification requirements applicable to regulated investment companies ("RICs") under Subchapter M of the Code. The Trust is not intended to be a complete investment program.

For a more complete discussion of the Trust's investment portfolio composition, see the Statement of Additional Information.

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Principal Risks of the Trust

The following is a description of the principal risks associated with an investment in the Trust's common or preferred shares, as well as those risks generally associated with investment in a company with investment objectives, investment policies, capital structure or trading markets similar to the Trust. Given the risks described below, an investment in shares of the Trust may not be appropriate for all investors. You should carefully consider your ability to assume these risks before making an investment in the Trust.

Like all funds, investing in the Trust involves risk factors and special considerations. The Trust's risk is defined primarily by its principal investment strategies, along with descriptions of the Trust's related risks. This section discusses the risk factors associated with an investment in the Trust specifically, as well as those factors generally associated with an investment in a company with investment objectives, investment policies, capital structure or trading markets similar to the Trust. Investments in the Trust are not insured against loss of principal. As with any fund, there can be no assurance that the Trust will achieve its investment objectives. Investing in shares of the Trust should not be considered a complete investment program.

Credit Risk is the risk that the issuers of certain securities or the counterparties of a derivatives contract or repurchase contract might be unable or unwilling (or perceived as being unable or unwilling) to make interest and/or principal payments when due, or to otherwise honor its obligations. Debt securities are subject to the risk of non-payment of scheduled interest and/or principal. Non-payment would result in a reduction of income to the Trust, a reduction in the value of the obligation experiencing non-payment and a potential decrease in the net asset value ("NAV") of the Trust. The value of debt securities owned by the Trust may be affected by the ability of issuers to make principal and interest payments and by the issuer's or counterparty's credit quality. If an issuer cannot meet its payment obligations or if its credit rating is lowered, the value of its debt securities may decline. Lower quality bonds are generally more sensitive to these changes than higher quality bonds. Even within securities considered investment grade, differences exist in credit quality and some investment-grade debt securities may have speculative characteristics. A security's price may be adversely affected by the market's perception of the security's credit quality level even if the issuer or counterparty has suffered no degradation in its ability to honor the obligation.

Credit risk varies depending upon whether the issuers of the securities are corporations or domestic or foreign governments or their sub-divisions or instrumentalities and whether the particular note or other instrument held by the Trust has a priority in payment of principal and interest. U.S. government securities are subject to varying degrees of credit risk depending upon whether the securities are supported by the full faith and credit of the United States, supported by the ability to borrow from the U.S. Treasury, supported only by the credit of the issuing U.S. government agency, instrumentality, or corporation, or otherwise supported by the United States. Obligations issued by U.S. government agencies, authorities, instrumentalities or sponsored enterprises, such as Government National Mortgage Association, are backed by the full faith and credit of the U.S. Treasury, while obligations issued by others, such as Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal Home Loan Banks (FHLBs), are backed solely by the ability of the entity to borrow from the U.S. Treasury or by the entity's own resources. No assurance can be given that the U.S. government would provide financial support to U.S. government agencies, authorities, instrumentalities or sponsored enterprises if it is not obligated to do so by law.

Debt Securities Risk is the risk associated with the fact that the value of debt securities typically changes in response to various factors, including, by way of example, market-related factors (such as changes in interest rates or changes in the risk appetite of investors generally) and changes in the actual or perceived ability of the issuer (or of issuers generally) to meet its (or their) obligations. During periods of rising interest rates, debt securities generally decline in value. Conversely, during periods of falling interest rates, debt securities generally rise in value. This kind of market risk is generally greater for funds investing in debt securities with longer maturities. This risk is generally greater for obligations with longer maturities or for debt securities that do not pay current interest (such as zero-coupon securities). Debt securities with floating interest rates can be less

sensitive to interest rate changes, although, to the extent the Trust's income is based on short-term interest rates that fluctuate over short periods of time, income received by the Trust may decrease as a result of a decline in interest rates. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. Because loans are not ordinarily registered with the SEC or any state securities commission or listed on any securities exchange, there is usually less publicly available information about such instruments. In addition, loans may not be considered "securities" for purposes of the anti-fraud protections of the federal securities laws and, as a result, as a purchaser of these instruments, we may not be entitled to the anti-fraud protections of the federal securities laws. In the course of investing in such instruments, we may come into possession of material nonpublic information and, because of prohibitions on trading in securities of issuers while in possession of such information, we may be unable to enter into a transaction in a publicly-traded security of that issuer when it would otherwise be advantageous for us to do so. Alternatively, we may choose not to receive material nonpublic information about an issuer of such loans, with the result that we may have less information about such issuers than other investors who transact in such assets.

In response to an interest rate decline, debt securities that provide the issuer with the right to call or redeem the security prior to maturity may be called or redeemed. If a debt security is repaid more quickly than expected, the Trust may not be able to reinvest the proceeds at the same interest rate, reducing the potential for gain. When interest rates increase or for other reasons, debt securities may be repaid more slowly than expected. As a result, the maturity of the debt instrument is extended, increasing the potential for loss. As of the date of this Prospectus, market interest rates in the United States are at or near historic lows, which may increase the Trust's exposure to risks associated with rising market interest rates. Rising market interest rates could have unpredictable effects on the markets and may expose fixed-income and related markets to heightened volatility, which could reduce liquidity for certain investments, adversely affect values, and increase costs. If dealer capacity in fixed-income and related markets is insufficient for market conditions, it may further inhibit liquidity and increase volatility in the fixed-income and related markets. Further, recent and potential future changes in government policy may affect interest rates.

The value of a debt security also depends on the issuer's credit quality or ability to pay principal and interest when due. The value of a debt security is likely to fall if an issuer or the guarantor of a security is unable or unwilling (or perceived to be unable or unwilling) to make timely principal and/or interest payments or otherwise to honor its obligations, or if the debt security's rating is downgraded by a credit rating agency. The obligations of issuers (and obligors of asset-backed securities) are subject to bankruptcy, insolvency, and other laws affecting the rights and remedies of creditors. The value of a debt security can also decline in response to other changes in market, economic, industry, political, and regulatory conditions that affect a particular type of debt security or issuer or debt securities generally. The values of many debt securities may fall in response to a general increase in investor risk aversion or a decline in the confidence of investors generally in the ability of issuers to meet their obligations.

Senior loans are subject to the same risks typically associated with debt securities. In addition, senior loans, which typically hold a senior position in the capital structure of a borrower, are subject to the risk that a court could subordinate such loans to presently existing or future indebtedness or take other action detrimental to the holders of senior loans. Senior loans are also especially subject to the risk that the value of the collateral, if any, securing a loan may decline, be insufficient to meet the obligations of the borrower, or be difficult to liquidate.

Senior Loans Risk is the risk associated with Senior Loans, which are typically below investment grade and are considered speculative because of the credit risk of their issuers. As with any debt instrument, Senior Loans are generally subject to the risk of price declines and as interest rates rise, the cost of borrowing increases, which may increase the risk of default. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. The secondary market for loans is generally less liquid than the market for higher grade debt. Less liquidity in the secondary trading market could adversely affect the price at which the Trust could sell a loan, and could

adversely affect the NAV of the Trust's shares. The volume and frequency of secondary market trading in such loans varies significantly over time and among loans. Declines in interest rates may increase prepayments of debt obligations and require the Trust to invest assets at lower yields. No active trading market may exist for certain Senior Loans, which may impair the ability of the Trust to realize full value in the event of the need to liquidate such assets. Adverse market conditions may impair the liquidity of some actively traded Senior Loans.

Senior Loans may not be rated by a rating agency, registered with the Securities and Exchange Commission or any state securities commission or listed on any national securities exchange. Therefore, there may be less publicly available information about them than for registered or exchange-listed securities. The risks associated with Senior Loans are similar to the risks of below investment grade securities. Moreover, any specific collateral used to secure a loan may decline in value or lose all its value or become illiquid, which would adversely affect the loan's value. Economic and other events, whether real or perceived, can reduce the demand for certain Senior Loans or Senior Loans generally, which may reduce market prices and cause the Trust's NAV per share to fall. The frequency and magnitude of such changes cannot be predicted.

At times of less liquidity, it may be more difficult to value high yield Senior Loans because this valuation may require more research, and elements of judgment may play a greater role in the valuation since there is less reliable, objective data available. Investments in Senior Loans and other securities may result in greater NAV fluctuation than if the Trust did not make such investments.

Although Senior Loans in which the Trust will invest will often be secured by collateral, there can be no assurance that liquidation of such collateral would satisfy the borrower's obligation in the event of a default or that such collateral could be readily liquidated. In the event of bankruptcy of a borrower, the Trust could experience delays or limitations in its ability to realize the benefits of any collateral securing a Senior Loan. The Trust may also invest in Senior Loans that are not secured.

In addition to the risks typically associated with debt securities and loans generally, Senior Loans are also subject to the risk that a court could subordinate a Senior Loan, which typically holds a senior position in the capital structure of a borrower, to presently existing or future indebtedness or take other action detrimental to the holders of Senior Loans. In addition to the risks discussed above, which pertain to all Senior Loans, those Senior Loans secured by specific assets of borrowers that are located outside of the U.S. may be subject to additional risks. Those risks may include difficulty in enforcing security interests in the collateral located in non-U.S. jurisdictions, complexities involved in liquidating the underlying collateral, and heightened risks that the underlying collateral may be insufficient to fully discharge the borrower's obligations evidenced by the Senior Loans.

Extension Risk: When interest rates rise, certain obligations will be paid off by the obligor more slowly than anticipated, causing the value of these obligations to fall. Rising interest rates tend to extend the duration of securities, making them more sensitive to changes in interest rates. The value of longer-term securities generally changes more in response to changes in interest rates than shorter-term securities. As a result, in a period of rising interest rates, securities may exhibit additional volatility and may lose value.

Focused Investment Risk – Real Estate. The REIT Subsidiary's investments in mortgage, mezzanine or other real estate loans or preferred equity investments will generally be directly or indirectly secured by a lien on real property (or the equity interests in an entity that owns real property) that, upon the occurrence of a default on the loan, could result in the REIT Subsidiary acquiring ownership of the property. The Adviser will not know whether the values of the properties ultimately securing such loans or preferred equity investments will remain at the levels existing on the dates of origination of those loans or preferred equity investments. If the values of the underlying properties drop, the risk will increase because of the lower value of the security associated with such loans or preferred equity investments. In this manner, real estate values could impact the values of the Trust's loan or preferred equity investments. The Trust's investments in other real estate-related debt investments, through the REIT Subsidiary, may be similarly affected by real estate property values.

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Real Estate Market Risk. The Trust is exposed to economic, market and regulatory changes that impact the real estate market generally through its investment in the REIT Subsidiary, which may cause the Trust's operating results to suffer. A number of factors may prevent the REIT Subsidiary's properties and other real estate-related investments from generating sufficient net cash flow or may adversely affect their value, or both, resulting in less cash available for distribution, or a loss, to us. These factors include: national, regional and local economic conditions; changing demographics; the ability of property managers to provide capable management and adequate maintenance; the quality of a property's construction and design; increases in costs of maintenance, insurance, and operations (including energy costs and real estate taxes); potential environmental and other legal liabilities; the level of financing used by the REIT Subsidiary and the availability and cost of refinancing; potential instability, default or bankruptcy of tenants in the properties owned by the REIT Subsidiary; the relative illiquidity of real estate investments in general, which may make it difficult to sell a property at an attractive price or within a reasonable time frame.

Asset-Backed Securities Risk: Because asset-backed securities often are secured by the loans underlying the securities, the Trust may lose money if there are defaults on the loans underlying the securities. Such defaults have increased the risk for asset-backed securities that are secured by home-equity loans related to sub-prime mortgage loans, especially in a declining residential real estate market. Asset-backed securities also may be subject to more rapid repayment than their stated maturity dates indicate, due to changing economic conditions. To maintain its position in such securities, the Trust may reinvest the reductions in principal amounts resulting from the prepayments. Yields on those reinvested amounts are subject to prevailing market rates. Because prepayments of principal generally increase when rates are falling, the Trust generally has to reinvest proceeds from prepayments at lower rates. Investments in asset-backed securities may also be subject to valuation risk.

REIT-Specific Risk. REITs may be affected by changes in the real estate markets generally as well as changes in the values of the properties owned by the REIT or securing the mortgages owned by the REIT (which changes in value could be influenced by market conditions for real estate in general or fluctuations in the value of rights to natural resources appurtenant to the property held by the REIT). REITs are dependent upon management skill and are not diversified. REITs are also subject to heavy cash flow dependency, defaults by borrowers, self-liquidation, and the possibility of failing to qualify for special tax treatment under the Code and to maintain an exemption under the 1940 Act. For example, because a REIT may acquire debt securities of issuers primarily engaged in or related to the real estate industry, it also could conceivably own real estate directly as a result of a default on such securities. Any rental income or income from the disposition of such real estate could adversely affect its ability to retain its tax status, which would have adverse tax consequences on its shareholders. Finally, certain REITs may be self-liquidating at the end of a specified term, and run the risk of liquidating at an economically inopportune time.

REIT Tax Risk for REIT Subsidiaries. In addition to the REIT Subsidiary, the Trust may form one or more subsidiaries that will elect to be taxed as REITs beginning with the first year in which they commence material operations. In order for each subsidiary to qualify and maintain its qualification as a REIT, it must satisfy certain requirements set forth in the Code and Treasury Regulations that depend on various factual matters and circumstances. The Trust and the Adviser intend to structure each REIT subsidiary and its activities in a manner designed to satisfy all of these requirements. However, the application of such requirements is not entirely clear, and it is possible that the IRS may interpret or apply those requirements in a manner that jeopardizes the ability of such REIT subsidiary to satisfy all of the requirements for qualification as a REIT.

If a REIT subsidiary fails to qualify as a REIT for any taxable year and it does not qualify for certain statutory relief provisions, it will be subject to U.S. federal income tax on its taxable income at corporate rates. In addition, it will generally be disqualified from treatment as a REIT for the four taxable years following the year of losing its REIT status. Losing its REIT status will reduce its net earnings available for investment or distribution to stockholders because of the additional tax liability. In addition, distributions to stockholders will no longer

qualify for the dividends paid deduction, and the REIT subsidiary will no longer be required to make distributions. If this occurs, such REIT subsidiary might be required to borrow funds or liquidate some investments in order to pay the applicable tax.

To obtain the favorable tax treatment afforded to REITs under the Code, among other things each REIT subsidiary generally will be required each year to distribute to its stockholders at least 90% of its REIT taxable income determined without regard to the dividends-paid deduction and excluding net capital gain. To the extent that it does not distribute all of its net capital gains, or distributes at least 90%, but less than 100%, of its REIT taxable income, as adjusted, it will have to pay a corporate level tax on amounts retained. Furthermore, if it fails to distribute during each calendar year at least the sum of (a) 85% of its ordinary income for that year, (b) 95% of its capital gain net income for that year, and (c) any undistributed taxable income from prior periods, it would have to pay a 4% nondeductible excise tax on the excess of the amounts required to be distributed over the sum of (a) the amounts that it actually distributed and (b) the amounts it retained and upon which it paid income tax at the corporate level. These requirements could cause it to distribute amounts that otherwise would be spent on investments in real estate assets, and it is possible that the REIT subsidiary might be required to borrow funds, possibly at unfavorable rates, or sell assets to fund the required distributions. *See REIT Tax Considerations below for more information.*

Financial Services Industry Risk is the risk associated with the fact that the Trust's investments in Senior Loans are arranged through private negotiations between a borrower ("Borrower") and several financial institutions. Investments in the financial services sector may be subject to credit risk, interest rate risk, and regulatory risk, among others. Banks and other financial institutions can be affected by such factors as downturns in the U.S. and foreign economies and general economic cycles, fiscal and monetary policy, adverse developments in the real estate market, the deterioration or failure of other financial institutions, and changes in banking or securities regulations. The financial services industry is subject to extensive government regulation, which can limit both the amounts and types of loans and other financial commitments financial services companies can make and the interest rates and fees they can charge. Profitability is largely dependent on the availability and cost of capital funds, and can fluctuate significantly when interest rates change. Because financial services companies are highly dependent on short-term interest rates, they can be adversely affected by downturns in the U.S. and foreign economies or changes in banking regulations. Losses resulting from financial difficulties of Borrowers can negatively affect financial services companies. The financial services industry is currently undergoing relatively rapid change as existing distinctions between financial service segments become less clear. This change may make it more difficult for the Adviser to analyze investments in this industry. Additionally, the recently increased volatility in the financial markets and implementation of the recent financial reform legislation may affect the financial services industry as a whole in ways that may be difficult to predict.

Fixed Income Market Risk is the risk that fixed income markets may, in response to governmental intervention, economic or market developments (including potentially a reduction in the number of broker-dealers willing to engage in market-making activity), or other factors, experience periods of increased volatility and reduced liquidity. In recent periods, governmental financial regulators, including the U.S. Federal Reserve, have taken steps to maintain historically low interest rates by purchasing bonds. Steps by those regulators to curtail or "taper" such activities could result in the effects described above, and could have a material adverse effect on prices for fixed income securities and on the management of the Trust.

Interest Rate Risk is the risk that fixed income securities will decline in value because of changes in interest rates. When interest rates decline, the value of fixed rate securities already held by the Trust can be expected to rise. Conversely, when interest rates rise, the value of existing fixed rate portfolio securities can be expected to decline. A fund with a longer average portfolio duration will be more sensitive to changes in interest rates than a fund with a shorter average portfolio duration. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. However, the Trust will primarily invest in floating rate obligations, including Senior Loans, the rates on which periodically adjust with changes in market interest rates. Consequently, the Trust's exposure to

fluctuations in interest rates will generally be limited to the time that the interest rates on the Senior Loans in its portfolio are reset. When interest rates decline, the value of fixed rate securities already held by the Trust can be expected to rise. Conversely, when interest rates rise, the value of existing fixed-rate portfolio securities can be expected to decline.

To the extent the Trust invests in fixed-rate debt securities with longer maturities, the Trust is subject to greater interest rate risk than funds investing solely in shorter-term fixed-rate debt securities. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. In a period of rising interest rates, the higher cost of any leverage employed by the Trust and/or increasing defaults by issuers of high-yield securities would likely exacerbate any decline in the Trust's NAV. If an issuer of a debt security containing a redemption or call provision exercises either provision in a declining interest rate market, the Trust would likely replace the security with a security having a lower interest rate, which could result in a decreased return for shareholders. To the extent that changes in market rates of interest are reflected not in a change to a base rate (such as LIBOR) but in a change in the spread over the base rate, which is payable on loans of the type and quality in which the Trust invests, the Trust's NAV could be adversely affected. This is because the value of a Senior Loan is partially a function of whether the Senior Loan is paying what the market perceives to be a market rate of interest, given its individual credit and other characteristics. However, unlike changes in market rates of interest for which there is generally only a temporary lag before the portfolio reflects those changes, changes in a Senior Loan's value based on changes in the market spread on Senior Loans in the Trust's portfolio may be of longer duration.

On July 27, 2017, the head of the United Kingdom's Financial Conduct Authority announced a desire to phase out the use of LIBOR by the end of 2021. Due to this announcement, there remains uncertainty regarding the future utilization of LIBOR and the nature of any replacement rate. As such, the potential effect of a transition away from LIBOR on the Fund or the financial instruments in which the Fund invests cannot yet be determined.

Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates that incorporates a security's yield, coupon, final maturity and call features, among other characteristics. Duration is useful primarily as a measure of the sensitivity of a fixed income security's market price to interest rate (i.e. yield) movements. All other things remaining equal, for each one percentage point increase in interest rates, the value of a portfolio of fixed income investments would generally be expected to decline by one percent for every year of the portfolio's average duration above zero. For example, the value of a portfolio of fixed income securities with an average duration of three years would generally be expected to decline by approximately 3% if interest rates rose by one percentage point.

The Trust will also be exposed to interest rate risk through the REIT Subsidiary's investments in securities such as preferred equity and debt securities. During periods of rising interest rates, the average life of certain types of securities may be extended because of slower than expected principal payments. This may lock in a below-market interest rate, increase the security's duration and reduce the value of the security. This is known as extension risk. During periods of declining interest rates, an issuer may be able to exercise an option to prepay principal earlier than scheduled, which is generally known as call risk or prepayment risk. If this occurs, the REIT Subsidiary may be forced to reinvest in lower yielding securities. This is known as reinvestment risk.

Structured Finance Securities Risk. A portion of the Trust's investments may consist of equipment trust certificates, collateralized mortgage obligations, collateralized bond obligations, collateralized loan obligations or similar instruments. Such structured finance securities are generally backed by an asset or a pool of assets, which serve as collateral. Depending on the type of security, the collateral may take the form of a portfolio of mortgage loans or bonds or other assets. The Trust and other investors in structured finance securities ultimately bear the credit risk of the underlying collateral. In some instances, the structured finance securities are issued in multiple tranches, offering investors various maturity and credit risk characteristics, often categorized as senior, mezzanine and subordinated/equity according to their degree of risk. The riskiest securities are the equity tranche, which bears the bulk of defaults from the bonds or loans serving as collateral, and thus may protect the

other, more senior tranches from default. If there are defaults or the relevant collateral otherwise underperforms, scheduled payments to senior tranches of such securities take precedence over those of mezzanine tranches, and scheduled payments to mezzanine tranches take precedence over those to subordinated/equity tranches. A senior tranche typically has higher ratings and lower yields than the underlying securities, and may be rated investment grade. Despite the protection from the equity tranche, other tranches can experience substantial losses due to actual defaults, increased sensitivity to defaults due to previous defaults and the disappearance of protecting tranches, market anticipation of defaults and aversion to certain structured finance securities as a class.

Leverage Risk is the risk associated with the use of leverage for investment purposes to create opportunities for greater total returns. Any investment income or gains earned with respect to the amounts borrowed that are in excess of the interest that is due on the borrowing will augment the Trust's income. Conversely, if the investment performance with respect to the amounts borrowed fails to cover the interest on such borrowings, the value of the Trust's shares may decrease more quickly than would otherwise be the case. Interest payments and fees incurred in connection with such borrowings will reduce the amount of net income available for payment to Trust shareholders. Pursuant to regulations and/or published positions of the SEC, the Trust may be required to earmark liquid assets in an amount equal to the Trust's daily marked-to-market value of its transactions in futures and options. To maintain this required margin, the Trust may have to sell portfolio securities at disadvantageous prices or times because it may not be possible to liquidate a position at a reasonable price. In addition, the earmarking of such assets will have the effect of limiting the Trust's ability otherwise to invest those assets. The Trust has the ability to use leverage through the issuance of preferred shares, borrowings from a credit facility, issuing notes or other debt securities, or any combination of the three. The Trust currently leverages through borrowings made by HFRO Sub, LLC under the Financing Arrangement with BAML. As of May 31, 2019, HFRO Sub, LLC had drawn $400 million under the Financing Arrangement and the Trust's asset coverage ratio was 340.42%.

The use of leverage, which can be described as exposure to changes in price at a ratio greater than the amount of equity invested, either through the issuance of preferred shares, borrowings or other forms of market exposure, magnifies both the favorable and unfavorable effects of price movements in the investments made by the Trust. Insofar as the Trust continues to employ leverage in its investment operations, the Trust will be subject to substantial risks of loss. Therefore, if the market value of the Trust's investment portfolio declines, any leverage will result in a greater decrease in net asset value to common shareholders than if the Trust were not leveraged. Such greater net asset value decrease will also tend to cause a greater decline in the market price for the common shares. Further, if at any time while the Trust has leverage outstanding it does not meet applicable asset coverage requirements (as discussed below), it may be required to suspend distributions to common shareholders until the requisite asset coverage is restored. Any such suspension might impair the ability of the Trust to meet the RIC distribution requirements and to avoid fund-level U.S. federal income or excise taxes. The Trust may borrow an amount up to 33 1/3% of its total assets (including the amount borrowed) and may use leverage in the form of preferred shares in an amount up to 50% of the Trust's total assets (including the amount borrowed. As provided in the 1940 Act and subject to certain exceptions, the Trust may issue debt or preferred shares with the condition that immediately after issuance the value of its total assets, less ordinary course liabilities, exceeds 300% of the amount of the debt outstanding and exceeds 200% of the sum of the amount of debt and preferred shares outstanding.

The costs associated with the Trust's use of leverage (including the issuance of such leverage and the payment of dividends or interest on such leverage, as well as the issuance of preferred shares) are borne by the holders of common shares and may consequently result in a reduction of the net asset value of common shares. During periods in which the Trust is using leverage, the fees paid to the Adviser for investment advisory services will be higher than if the Trust did not use leverage because the fees paid will be calculated on the basis of the Trust's gross assets, including proceeds from the issuance of preferred shares. In this regard, holders of preferred securities do not bear the investment advisory fee. Rather, holders of common shares bear the portion of the investment advisory fee attributable to the assets purchased with the proceeds, which means that common shareholders effectively bear the entire advisory fee.

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Capital raised through leverage will be subject to distribution and/or interest payments, which may exceed the income and appreciation of the assets purchased. The issuance of preferred shares involves offering expenses and other costs and may limit the Trust's freedom to pay distributions on common shares or to engage in other activities. The issuance of a class of preferred shares having priority over the common shares creates an opportunity for greater return per common share, but at the same time such leveraging is a speculative technique that will increase the Trust's exposure to capital risk. Such preferred shares may have priority over common shares with respect to dividends, which must be paid to preferred shareholders before any dividends can be paid to common shareholders. In addition, the issuance of preferred shares would dilute the level of ownership of holders of common shares and may decrease the returns per share of such common shareholders. Unless the income and appreciation, if any, on assets acquired with offering proceeds exceed the cost of issuing additional classes of securities (and other Trust expenses), the use of leverage will diminish the investment performance of the common shares compared with what it would have been without leverage.

Preferred Share Risk: Preferred share risk is the risk associated with the issuance of preferred shares to leverage the common shares. When preferred shares are issued, the NAV and market value of the common shares become more volatile, and the yield to the holders of common shares will tend to fluctuate with changes in the shorter-term dividend rates on the preferred shares. The Trust will pay (and the holders of common shares will bear) all costs and expenses relating to the issuance and ongoing maintenance of the preferred shares, including higher advisory fees. Accordingly, the issuance of preferred shares may not result in a higher yield or return to the holders of the common shares. If the dividend rate and other costs of the preferred shares approach the net rate of return on the Trust's investment portfolio, the benefit of leverage to the holders of the common shares would be reduced. If the dividend rate and other costs of the preferred shares exceed the net rate of return on the Trust's investment portfolio, the leverage will result in a lower rate of return to the holders of common shares than if the Trust had not issued preferred shares.

If preferred shares are issued, holders of preferred shares may have differing interests than holders of common shares and holders of preferred shares may at times have disproportionate influence over the Trust's affairs. If preferred shares are issued, holders of preferred shares, voting separately as a single class, would have the right to elect two members of the Board at all times. The remaining members of the Board would be elected by holders of common shares and preferred shares, voting as a single class. The 1940 Act requires that, in addition to any approval by shareholders that might otherwise be required, the approval of the holders of a majority of any outstanding preferred shares, voting separately as a class, would be required to (i) adopt any plan of reorganization that would adversely affect the preferred shares and (ii) take any action requiring a vote of security holders under Section 13(a) of the 1940 Act, including, among other things, changes in the Trust's subclassification as a closed-end investment company or changes in its fundamental investment restrictions.

If the Trust issues preferred shares, the Trust would likely seek a credit rating on the preferred shares from one or more nationally recognized statistical rating organizations. The Trust expects that, at any time when preferred shares were outstanding, the composition of its investment portfolio would reflect guidelines established by any rating agencies, including, for example, asset coverage requirements that are more restrictive than those under the 1940 Act, restrictions on certain portfolio investments and investment practices, requirements that the Trust maintain a portion of its assets in higher rated debt securities and certain mandatory redemption requirements relating to the preferred shares. No assurance can be given that the guidelines actually imposed with respect to preferred shares by rating agencies would be more or less restrictive than these examples. These restrictions may require the Trust to alter its investment strategy and invest in different types of assets, some of which may be lower yielding or result in fewer opportunities for capital appreciation. No minimum rating is required for the issuance of preferred shares by the Trust.

High Yield Debt Securities Risk is the risk that below investment grade securities or unrated securities of similar credit quality (commonly known as "high yield securities" or "junk securities") are more likely to default than higher rated securities. The Trust's ability to invest in high-yield debt securities generally subjects the Trust to greater risk than securities with higher ratings. The market value of these securities is generally more sensitive

to corporate developments and economic conditions and can be volatile. Market conditions can diminish liquidity and make accurate valuations difficult to obtain. Below investment grade may be fixed or variable rate obligations and are rated below investment grade (Ba/BB or lower) by a nationally recognized statistical rating organization or are unrated but deemed by the Adviser to be of comparable quality. Such securities should be considered speculative with respect to capacity to pay interest and repay principal in accordance with the terms of the obligation. High-yield debt securities are frequently issued by corporations in the growth stage of their development, but also may be issued by established companies. High-yield securities held by the Trust may include securities received as a result of a corporate reorganization or issued as part of a corporate takeover. Below investment grade securities have greater credit and liquidity risk than more highly rated obligations and are generally unsecured and may be subordinate to other obligations of the obligor. The lower rating of high-yield securities reflects a greater possibility that adverse changes in the financial condition of the issuer or in general economic conditions (including, for example, a substantial period of rising interest rates or declining earnings) or both may impair the ability of the issuer to make payment of principal and interest. Many issuers of high-yield securities are highly leveraged and their relatively high debt to equity ratios create increased risks that their operations might not generate sufficient cash flow to service their obligations. Overall declines in the below investment grade bond market and other markets may adversely affect such issuers by inhibiting their ability to refinance their obligations at maturity. Investments in obligations of issuers that are generally trading at significantly higher yields than had been historically typical of the applicable issuer's obligations may include debt obligations that have a heightened probability of being in covenant or payment default in the future. Such investments generally are considered speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result in only partial recovery of cash payments or an exchange of the defaulted security for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or speculative. High-yield securities will be subject to certain additional risks to the extent that such obligations may be unsecured and subordinated to substantial amounts of senior indebtedness, all or a significant portion of which may be secured. Moreover, such obligations may not be protected by financial covenants or limitations upon additional indebtedness and are unlikely to be secured by collateral. There is no limit on the percentage of assets that the Trust may invest in Senior Loans and other securities that are rated below investment grade or that are unrated but of comparable quality. As of the date of this Prospectus, substantially all of the Trust's rated debt securities were rated "high yield" (or "junk").

Distressed and Defaulted Securities Risk: The Trust may invest in the securities of financially distressed and bankrupt issuers, including debt obligations that are in covenant or payment default. Such investments generally trade significantly below par and are considered speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result in only partial recovery of cash payments or an exchange of the defaulted obligation for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or speculative.

Illiquid and Restricted Securities Risk: Illiquid investments may be difficult to resell at approximately the price they are valued in the ordinary course of business within seven days. When investments cannot be sold readily at the desired time or price, the Trust may have to accept a much lower price, may not be able to sell the investment at all or may be forced to forego other investment opportunities, all of which may adversely impact the Trust's returns. Illiquid investments also may be subject to valuation risk. Restricted securities (including Rule 144A securities) may be subject to legal restraints on resale and, therefore, are typically less liquid than other securities. The prices received from selling restricted securities in privately negotiated transactions may be less than those originally paid by the Trust. Investors in restricted securities may not benefit from the same investor protections as publicly traded securities.

Payment-in-Kind Securities Risk: The risk that the value of payment-in-kind securities ("PIKs") held by the Trust may be more sensitive to fluctuations in interest rates than other securities. PIKs pay all or a portion of

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their interest or dividends in the form of additional securities. Federal tax law requires that the interest on PIK bonds be accrued as income to the Trust regardless of the fact that the Trust will not receive cash until such securities mature. Since the income must be distributed to shareholders, the Trust may be forced to liquidate other securities in order to make the required distribution. Additionally, the deferred nature of payments on PIKs creates specific risks.

Interest payments deferred on a PIK are subject to the risk that the borrower may default when the deferred payments are due in cash at the maturity of the loan. Further, the interest rates on PIKs are generally higher to reflect the time-value of money on deferred interest payments and the higher credit risk of borrowers who may need to defer interest payments. The values of PIKs may be less reliable because the accruals require judgments about ultimate collectability of the deferred payments and the value of the associated collateral. An election to defer PIK interest payments by adding them to principal increases the Trust's net assets (as income is generally distributed at least annually) and, thus, may increase future management fees to the Adviser. The deferral of interest on a PIK increases its loan-to-value ratio, which is a measure of the riskiness of a loan. Even if conditions for income accrual under GAAP are satisfied, a borrower could still default when actual payment is due upon maturity.

Limited Information Risk is the risk associated with the fact that the types of Senior Loans in which the Trust will invest historically may not have been rated by a NRSRO, have not been registered with the SEC or any state securities commission, and have not been listed on any national securities exchange. Although the Trust will generally have access to financial and other information made available to the Lenders in connection with Senior Loans, the amount of public information available with respect to Senior Loans will generally be less extensive than that available for rated, registered or exchange-listed securities. As a result, the performance of the Trust and its ability to meet its investment objective is more dependent on the analytical ability of the Adviser than would be the case for an investment company that invests primarily in rated, registered or exchange-listed securities.

Valuation Risk: Portfolio securities may be valued using techniques other than market quotations, under the circumstances described under "Determination of Net Asset Value." The value established for a portfolio security may be different than what would be produced through the use of another methodology or if it had been priced using market quotations. Portfolio securities that are valued using techniques other than market quotations, including "fair valued" securities, may be subject to greater fluctuation in their value from one day to the next than would be the case if market quotations were used. In addition, there is no assurance that the Trust could sell a portfolio security for the value established for it at any time and it is possible that the Trust would incur a loss because a portfolio security is sold at a discount to its established value.

Fair value is defined as the amount for which assets could be sold in an orderly disposition over a reasonable period of time, taking into account the nature of the asset. Fair value pricing, however, involves judgments that are inherently subjective and inexact, since fair valuation procedures are used only when it is not possible to be sure what value should be attributed to a particular asset or when an event will affect the market price of an asset and to what extent. As a result, fair value pricing may not reflect actual market value, and it is possible that the fair value determined for a security will be materially different from the value that actually could be or is realized upon the sale of that asset.

Non-Diversification Risk is the risk that an investment in the Trust could fluctuate in value more than an investment in a diversified fund. As a non-diversified fund for purposes of the 1940 Act, the Trust may invest a larger portion of its assets in the securities of fewer issuers than a diversified fund. The Trust's investment in fewer issuers may result in the Trust's shares being more sensitive to the economic results of those issuers. An investment in the Trust could fluctuate in value more than an investment in a diversified fund.

Securities Market Risk is the risk that the value of securities owned by the Trust may go up or down, sometimes rapidly or unpredictably, due to factors affecting particular companies or the securities markets generally. A general downturn in the securities market may cause multiple asset classes to decline in value simultaneously. Many factors can affect this value and you may lose money by investing in the Trust.

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Preferred Equity Risk. Preferred equity investments may have similar risks to subordinated debt. The Trust may, through the REIT Subsidiary, make preferred equity investments in companies that own or acquire properties. These investments may involve special risks relating to the particular issuer of the securities, including the financial condition and business outlook of the issuer. Issuers of preferred equity generally will invest in real estate or real estate-related assets and are subject to the inherent risks associated with real estate-related investments, including risks related to rising interest rates.

Preferred equity securities may be unsecured and also may be subordinated to other obligations of the issuer, including debt. As a result, investments in preferred equity are subject to risks of (i) limited liquidity in the secondary trading market in the case of unlisted or lightly traded securities, (ii) substantial market price volatility in the case of traded preferred equity securities, (iii) subordination to the prior claims of banks and other lenders to the issuer, (iv) the operation of mandatory sinking fund or call/repurchase provisions that could cause the value of the Trust's investment to decline, (v) the possibility that earnings of the issuer may be insufficient to meet its debt service to lenders and distribution obligations to holders of the preferred equity, including the Trust, and (vi) the declining creditworthiness and potential for insolvency of the issuer. These risks may adversely affect the value of the REIT Subsidiary's investments in preferred equity securities.

Mezzanine Debt Risk. The Trust's assets may include mezzanine loans. Structurally, mezzanine loans usually rank subordinate in priority of payment to senior debt, such as senior bank debt, and are often unsecured. However, mezzanine loans rank senior to common and preferred equity in a borrower's capital structure. Mezzanine debt is often used in leveraged buyout and real estate finance transactions. Typically, mezzanine loans have elements of both debt and equity instruments, offering the fixed returns in the form of interest payments associated with senior debt, while providing lenders an opportunity to participate in the capital appreciation of a borrower, if any, through an equity interest. This equity interest typically takes the form of warrants. Due to their higher risk profile and often less restrictive covenants as compared to senior loans, mezzanine loans generally earn a higher return than senior secured loans. The warrants associated with mezzanine loans are typically detachable, which allows lenders to receive repayment of their principal on an agreed amortization schedule while retaining their equity interest in the borrower. Mezzanine loans also may include a "put" feature, which permits the holder to sell its equity interest back to the borrower at a price determined through an agreed-upon formula. The Trust believes that mezzanine loans offer an alternative investment opportunity based upon their historical returns and resilience during economic downturns

Convertible Securities Risk: Convertible securities generally offer lower interest or dividend yields than non-convertible securities of similar quality. Because convertible securities are higher in an issuer's capital structure than equity securities, convertible securities are generally not as risky as the equity securities of the same issuer. However, convertible securities may gain or lose value due to changes in, among other things, interest rates; other general economic conditions; industry fundamentals; market sentiment; and the issuer's operating results, financial statements and credit ratings. The value of convertible securities also tends to change whenever the market value of the underlying common or preferred stock fluctuates.

Equity Securities Risk is the risk that stock prices will fall over short or long periods of time. In addition, common stocks represent a share of ownership in a company, and rank after bonds and preferred stock in their claim on the company's assets in the event of bankruptcy. The market prices of equity securities owned by the Trust may go up or down, sometimes rapidly or unpredictably. The value of a security may decline for a number of reasons that may directly relate to the issuer, such as management performance, fundamental changes to the business, financial leverage, non-compliance with regulatory requirements and reduced demand for the issuer's goods or services. The values of equity securities also may decline due to general market conditions that are not specifically related to a particular company, such as real or perceived adverse economic conditions, changes in the general outlook for corporate earnings, changes in interest or currency rates or adverse investor sentiment generally. Certain equity securities may decline in value even during periods when the prices of equity securities in general are rising, or may not perform as well as the market in general. In addition to these risks, preferred stock and convertible securities are also subject to the risk that issuers will not make payments on securities held

by the Trust, which could result in losses to the Trust. The credit quality of preferred stock and convertible securities held by the Trust may be lowered if an issuer's financial condition changes, leading to greater volatility in the price of the security. In addition, a company's preferred stock generally pays dividends only after the company makes required payments to holders of its bonds and other debt. For this reason, the value of preferred stock will usually react more strongly than bonds and other debt to actual or perceived changes in the company's financial condition or prospects. The market value of convertible securities also tends to fall when prevailing interest rates rise.

Undervalued Stocks Risk: Undervalued stocks include stocks that the Adviser believes are undervalued and/or are temporarily out of favor in the market. An undervalued stock may decrease in price or may not increase in price as anticipated by the Adviser if other investors fail to recognize the company's value or the factors that the Adviser believes will cause the stock price to increase do not occur.

Derivatives Risk is a combination of several risks, including the risks that: (1) an investment in a derivative instrument may not correlate well with the performance of the securities or asset class to which the Trust seeks exposure, (2) derivative contracts, including options, may expire worthless and the use of derivatives may result in losses to the Trust, (3) a derivative instrument entailing leverage may result in a loss greater than the principal amount invested, (4) derivatives not traded on an exchange may be subject to credit risk, for example, if the counterparty does not meet its obligations (see also "Counterparty Risk"), and (5) derivatives not traded on an exchange may be subject to liquidity risk and the related risk that the instrument is difficult or impossible to value accurately. Derivatives are financial contracts whose value depends on, or is derived from, the value of underlying assets, reference rates, or indices. Derivatives involve the risk that changes in their value may not move as expected relative to the value of the assets, rates, or indices they are designed to track. Derivatives include futures, non-U.S. currency contracts, swap contracts, warrants, and options contracts. Derivatives may relate to securities, interest rates, currencies or currency exchange rates, inflation rates, commodities, and indices. As a general matter, when the Trust establishes certain derivative instrument positions, such as certain futures, options and forward contract positions, it will segregate liquid assets (such as cash, U.S. Treasury bonds or commercial paper) equivalent to the Trust's outstanding obligations under the contract or in connection with the position. In addition, changes in laws or regulations may make the use of derivatives more costly, may limit the availability of derivatives, or may otherwise adversely affect the use, value or performance of derivatives. There are several risks associated with derivatives transactions. The use of derivatives involves risks that are in addition to, and potentially greater than, the risks of investing directly in securities and other more traditional assets. A decision as to whether, when and how to use derivatives involves the exercise of skill and judgment, and even a well conceived transaction may be unsuccessful to some degree because of market behavior or unexpected events. The use of derivative transactions may result in losses greater than if they had not been used, may require the Trust to sell or purchase portfolio securities at inopportune times or for prices other than current market values, may limit the amount of appreciation the Trust can realize on an investment or may cause the Trust to hold a security that it might otherwise sell. The Trust may enter into credit derivatives, such as credit default swaps and credit default index investments, including loan credit default swaps and loan credit default index swaps. The use by the Trust of credit default swaps may have the effect of creating a short position in a security. These investments can create investment leverage and may create additional investment risks that may subject the Trust to greater volatility than investments in more traditional securities. Derivative contracts may expire worthless.

The Trust may invest in derivatives with a limited number of counterparties, and events affecting the creditworthiness of any of those counterparties may have a pronounced effect on the Trust. Derivatives risk is particularly acute in environments (like those of 2008) in which financial services firms are exposed to systemic risks of the type evidenced by the insolvency of Lehman Brothers and subsequent market disruptions. In addition, during those periods, the Trust may have a greater need for cash to provide collateral for large swings in its mark-to-market obligations under the derivatives in which it has invested.

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The Trust's use of derivatives may not be effective or have the desired results. Moreover, suitable derivatives will not be available in all circumstances. For example, the economic costs of taking some derivative positions may be prohibitive, and if a counterparty or its affiliate is deemed to be an affiliate of the Trust, the Trust will not be permitted to trade with that counterparty. In addition, the Adviser may decide not to use derivatives to hedge or otherwise reduce the Trust's risk exposures, potentially resulting in losses for the Trust.

Swap contracts and other over-the-counter ("OTC") derivatives are highly susceptible to liquidity risk (see "Illiquid and Restricted Securities Risk") and counterparty risk (see "Counterparty Risk"), and are subject to documentation risks. Because many derivatives have a leverage component (*i.e.*, a notional value in excess of the assets needed to establish and/or maintain the derivative position), adverse changes in the value or level of the underlying asset, rate or index may result in a loss substantially greater than the amount invested in the derivative itself. See "Principal Risks— Leverage Risk" below.

Derivatives also present other risks described in this section, including securities market risk, illiquid and restricted securities risk, currency risk, credit risk, and counterparty risk. Special tax considerations apply to the Trust's use of derivatives. See the "Taxation" section below.

As a general matter, when the Trust establishes certain derivative instrument positions, such as certain futures, options and forward contract positions, it will segregate liquid assets (such as cash, U.S. Treasury bonds or commercial paper) equivalent to the Trust's outstanding obligations under the contract or in connection with the position.

Under recently adopted rules and regulations, transactions in some types of swaps (including interest rate swaps and credit default swaps on North American and European indices) are required to be centrally cleared. In a transaction involving those swaps ("cleared derivatives"), the Trust's counterparty is a clearing house, rather than a bank or broker. Since the Trust is not a member of clearing houses and only members of a clearing house ("clearing members") can participate directly in the clearing house, the Trust will hold cleared derivatives through accounts at clearing members. In cleared derivatives transactions, the Trust will make payments (including margin payments) to and receive payments from a clearing house through their accounts at clearing members. Clearing members guarantee performance of their clients' obligations to the clearing house.

In many ways, cleared derivative arrangements are less favorable to mutual funds than bilateral arrangements. For example, the Trust may be required to provide more margin for cleared derivatives transactions than for bilateral derivatives transactions. Also, in contrast to a bilateral derivatives transaction, following a period of notice to the Trust, a clearing member generally can require termination of an existing cleared derivatives transaction at any time or an increase in margin requirements above the margin that the clearing member required at the beginning of a transaction. Clearing houses also have broad rights to increase margin requirements for existing transactions or to terminate those transactions at any time. Any increase in margin requirements or termination of existing cleared derivatives transactions by the clearing member or the clearing house could interfere with the ability of the Trust to pursue its investment strategy. Further, any increase in margin requirements by a clearing member could expose the Trust to greater credit risk to its clearing member, because margin for cleared derivatives transactions in excess of a clearing house's margin requirements typically is held by the clearing member. Also, the Trust is subject to risk if it enters into a derivatives transaction that is required to be cleared (or that the Adviser expects to be cleared), and no clearing member is willing or able to clear the transaction on the Trust's behalf. In those cases, the transaction might have to be terminated, and the Trust could lose some or all of the benefit of the transaction, including loss of an increase in the value of the transaction and/or loss of hedging protection. In addition, the documentation governing the relationship between the Trust and clearing members is drafted by the clearing members and generally is less favorable to the Trust than typical bilateral derivatives documentation. For example, documentation relating to cleared derivatives generally includes a one-way indemnity by the Trust in favor of the clearing member for losses the clearing member incurs as the Trust's clearing member and typically does not provide the Trust any remedies if the clearing member defaults or becomes insolvent. While futures contracts entail similar risks, the risks likely are more pronounced for cleared swaps due to their more limited liquidity and market history.

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Some types of cleared derivatives are required to be executed on an exchange or on a swap execution facility. A swap execution facility is a trading platform where multiple market participants can execute derivatives by accepting bids and offers made by multiple other participants in the platform. While this execution requirement is designed to increase transparency and liquidity in the cleared derivatives market, trading on a swap execution facility can create additional costs and risks for the Trust. For example, swap execution facilities typically charge fees, and if the Trust executes derivatives on a swap execution facility through a broker intermediary, the intermediary may impose fees as well. Also, the Trust may indemnify a swap execution facility, or a broker intermediary who executes cleared derivatives on a swap execution facility on the Trust's behalf, against any losses or costs that may be incurred as a result of the Trust's transactions on the swap execution facility.

These and other new rules and regulations could, among other things, further restrict the Trust's ability to engage in, or increase the cost to the Trust of, derivatives transactions, for example, by making some types of derivatives no longer available to the Trust, increasing margin or capital requirements, or otherwise limiting liquidity or increasing transaction costs. These regulations are new and evolving, so their potential impact on the Trust and the financial system are not yet known. While the new regulations and central clearing of some derivatives transactions are designed to reduce systemic risk (i.e., the risk that the interdependence of large derivatives dealers could cause them to suffer liquidity, solvency or other challenges simultaneously), there is no assurance that the new clearing mechanisms will achieve that result, and in the meantime, as noted above, central clearing and related requirements expose the Trust to new kinds of risks and costs. In addition, the SEC recently proposed a rule under the 1940 Act regulating the use by registered investment companies of derivatives and many related instruments. That rule, if adopted as proposed, would, among other things, restrict the Trust's ability to engage in derivatives transactions or so increase the cost of derivatives transactions that the Trust would be unable to implement its investment strategy.

Hedging Risk is the risk that, although intended to limit or reduce investment risk, hedging strategies may also limit or reduce the potential for profit. There is no assurance that hedging strategies will be successful. There are several risks in connection with the use by the Trust of futures contracts and related options as a hedging device. One risk arises because of the imperfect correlation between movements in the prices of the futures contracts and options and movements in the underlying securities or index or movements in the prices of the Trust's securities which are the subject of a hedge. The Adviser will, however, attempt to reduce this risk by purchasing and selling, to the extent possible, futures contracts and related options on securities and indices the movements of which will, in its judgment, correlate closely with movements in the prices of the underlying securities or index and the Trust's portfolio securities sought to be hedged. Successful use of futures contracts and options by the Trust for hedging purposes is also subject to the Adviser's ability to predict correctly movements in the direction of the market. It is possible that, where the Trust has purchased puts on futures contracts to hedge its portfolio against a decline in the market, the securities or index on which the puts are purchased may increase in value and the value of securities held in the portfolio may decline. If this occurred, the Trust would lose money on the puts and also experience a decline in the value of its portfolio securities. In addition, the prices of futures, for a number of reasons, may not correlate perfectly with movements in the underlying securities or index due to certain market distortions. First, all participants in the futures market are subject to margin deposit requirements. Such requirements may cause investors to close futures contracts through offsetting transactions which could distort the normal relationship between the underlying security or index and futures markets. Second, the margin requirements in the futures markets are less onerous than margin requirements in the securities markets in general, and as a result the futures markets may attract more speculators than the securities markets do. Increased participation by speculators in the futures markets may also cause temporary price distortions. Due to the possibility of price distortion, even a correct forecast of general market trends by the Adviser still may not result in a successful hedging transaction over a very short time period. In addition, to maintain margin requirements, the Trust may have to sell portfolio securities at disadvantageous prices or times because it may not be possible to liquidate a position at a reasonable price. The earmarking of such assets also will have the effect of limiting the Trust's ability otherwise to invest those assets. Special tax considerations apply to the Trust's hedging transactions.

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Options Risk is the risk associated with investments in options. Options, such as covered calls and covered puts, are subject to the risk that significant differences between the securities and options markets could result in an imperfect correlation between these markets.

Swaps Risk involves both the risks associated with an investment in the underlying investments or instruments (including equity investments) and counterparty risk. In a standard over-the-counter ("OTC") swap transaction, two parties agree to exchange the returns, differentials in rates of return or some other amount calculated based on the "notional amount" of predetermined investments or instruments, which may be adjusted for an interest factor. Swaps can involve greater risks than direct investments in securities, because swaps may be leveraged and OTC swaps are subject to counterparty risk (e.g., the risk of a counterparty's defaulting on the obligation or bankruptcy), credit risk and pricing risk (i.e., swaps may be difficult to value). Swaps may also be considered illiquid. Certain swap transactions, including interest rate swaps and index credit default swaps, may be subject to mandatory clearing and exchange trading, although the swaps in which the Trust will invest are not currently subject to mandatory clearing and exchange trading. The use of swaps is a highly specialized activity which involves investment techniques, risk analyses and tax planning different from those associated with ordinary portfolio securities transactions. The value of swaps, like many other derivatives, may move in unexpected ways and may result in losses for the Trust.

Swaps Risk: The use of swaps is a highly specialized activity which involves investment techniques, risk analyses and tax planning different from those associated with ordinary portfolio securities transactions. These transactions can result in sizeable realized and unrealized capital gains and losses relative to the gains and losses from the Trust's direct investments in securities.

Transactions in swaps can involve greater risks than if the Trust had invested in the reference assets directly since, in addition to general market risks, swaps may be leveraged and are also subject to illiquidity risk, counterparty risk, credit risk and pricing risk. However, certain risks may be reduced (but not eliminated) if the Trust invests in cleared swaps. Regulators also may impose limits on an entity's or group of entities' positions in certain swaps. Because bilateral swap agreements are two party contracts and because they may have terms of greater than seven days, these swaps may be considered to be illiquid. Moreover, the Trust bears the risk of loss of the amount expected to be received under a swap in the event of the default or bankruptcy of a swap counterparty. Many swaps are complex and valued subjectively. Swaps and other derivatives may also be subject to pricing or "basis" risk, which exists when the price of a particular derivative diverges from the price of corresponding cash market instruments. Under certain market conditions it may not be economically feasible to initiate a transaction or liquidate a position in time to avoid a loss or take advantage of an opportunity. If a swap transaction is particularly large or if the relevant market is illiquid, it may not be possible to initiate a transaction or liquidate a position at an advantageous time or price, which may result in significant losses.

The value of swaps can be very volatile, and a variance in the degree of volatility or in the direction of securities prices from the Adviser's expectations may produce significant losses in the Trust's investments in swaps. In addition, a perfect correlation between a swap and a reference asset may be impossible to achieve. As a result, the Adviser's use of swaps may not be effective in fulfilling the Adviser's investment strategies and may contribute to losses that would not have been incurred otherwise.

Short Sales Risk is the risk of loss associated with any appreciation on the price of a security borrowed in connection with a short sale. The Trust may engage in short sales that are not made "against-the-box," which means that the Trust may sell short securities even when they are not actually owned or otherwise covered at all times during the period the short position is open. Short sales that are not made "against-the-box" involve unlimited loss potential since the market price of securities sold short may continuously increase. When the Trust engages in a short sale on a security, it must borrow the security sold short and deliver it to the counterparty. The Trust will ordinarily have to pay a fee or premium to borrow particular securities and be obligated to repay the lender of the security any dividends or interest that accrue on the security during the period of the loan. The amount of any gain from a short sale will be decreased, and the amount of any loss increased, by the amount of

the premium, dividends, interest or expenses the Trust pays in connection with the short sale. Short selling allows the Trust to profit from declines in market prices to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. However, since the borrowed securities must be replaced by purchases at market prices in order to close out the short position, any appreciation in the price of the borrowed securities would result in a loss. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss. The Trust may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Trust might have difficulty purchasing securities to meet their short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet their short sale obligations at a time when fundamental investment considerations would not favor such sales. See "Taxation" below for special tax considerations associated with engaging in short sales.

Securities Lending Risk: The Trust will continue to receive interest on any securities loaned while simultaneously earning interest on the investment of the cash collateral in short-term money market instruments. However, the Trust will normally pay lending fees to broker-dealers and related expenses from the interest earned on such invested collateral. Any decline in the value of a portfolio security that occurs while the security is out on loan is borne by the Trust, and will adversely affect performance. There may be risks of delay in receiving additional collateral or risks of delay in recovery of the securities, loss of rights in the collateral should the borrower of the securities fail financially and possible investment losses in the investment of collateral. Any loan may be terminated by either party upon reasonable notice to the other party.

Liquidity Risk is the risk that low trading volume, lack of a market maker, large position size, or legal restrictions (including daily price fluctuation limits or "circuit breakers") limits or prevents the Trust from selling particular securities or unwinding derivative positions at desirable prices. At times, a major portion of any portfolio security may be held by relatively few institutional purchasers. Even if the Trust considers such securities liquid because of the availability of an institutional market, such securities may become difficult to value or sell in adverse market or economic conditions. Because loan transactions often take longer to settle than transactions in other securities, the Trust may not receive the proceeds from the sale of a loan for a significant period of time.

Counterparty Risk is the risk that a counterparty (the other party to a transaction or an agreement or the party with whom the Trust executes transactions) to a transaction with the Trust may be unable or unwilling to make timely principal, interest or settlement payments, or otherwise honor its obligations. In an attempt to limit the counterparty risk associated with such transactions, the Trust conducts business only with financial institutions judged by the Adviser to present acceptable credit risk. For example, repurchase agreements are loans of money or arrangements under which the Trust purchases securities and the seller agrees to repurchase the securities within a specific time and at a specific price. The repurchase price is generally higher than the Trust's purchase price, with the difference being income to the Trust. The counterparty's obligations under the repurchase agreement are collateralized with U.S. Treasury and/or agency obligations with a market value of not less than 100% of the obligations, valued daily. Collateral is held by the Trust's custodian in a segregated, safekeeping account for the benefit of the Trust. Repurchase agreements afford the Trust an opportunity to earn income at low risk on temporarily available cash. If bankruptcy or insolvency proceedings commence with respect to the seller of the securities before repurchase of the securities under a repurchase agreement, the Trust may encounter delays and incur costs before being able to sell the securities. Such a delay may involve loss of interest or a decline in price of the securities. If a court characterizes the transaction as a loan and the Trust has not perfected a security interest in the securities, the Trust may be required to return the securities to the seller's estate and be treated as an unsecured creditor of the seller. As an unsecured creditor, the Trust would be at risk of losing some or all of the principal and interest involved in the transaction.

Non-U.S. Securities Risk is the risk associated with investing in non-U.S. issuers. Investments in securities of non-U.S. issuers involve certain risks not involved in domestic investments (for example, fluctuations in foreign exchange rates (for non-U.S. securities not denominated in U.S. dollars); future foreign economic,

financial, political and social developments; nationalization; exploration or confiscatory taxation; smaller markets; different trading and settlement practices; less governmental supervision; and different accounting, auditing and financial recordkeeping standards and requirements) that may result in the Trust experiencing more rapid and extreme changes in value than a fund that invests exclusively in securities of U.S. companies. These risks are magnified for investments in issuers tied economically to emerging markets, the economies of which tend to be more volatile than the economies of developed markets. In addition, certain investments in non-U.S. securities may be subject to foreign withholding and other taxes on interest, dividends, capital gains or other income or proceeds. Those taxes will reduce the Trust's yield on any such securities. See the "Taxation" section below.

Management Risk is the risk associated with the fact that the Trust relies on the Adviser's ability to achieve its investment objective. The Adviser may be incorrect in its assessment of the intrinsic value of the companies whose securities the Trust holds, which may result in a decline in the value of Trust shares and failure to achieve its investment objective. The Trust's portfolio managers use qualitative analyses and/or models. Any imperfections or limitations in such analyses and models could affect the ability of the portfolio managers to implement strategies.

Operational and Technology Risk is the risk that cyber-attacks, disruptions, or failures that affect the Trust's service providers, counterparties, market participants, or issuers of securities held by the Trust may adversely affect the Trust and its shareholders, including by causing losses for the Trust or impairing Trust operations.

Regulatory Risk is the risk that to the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of financial institutions to make loans in connection with highly leveraged transactions, the availability of loan interests for investment by the Trust may be adversely affected. To the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of the Trust to invest in the assets of distressed companies, the availability of distressed company interests for investment by the Trust may be adversely affected. In addition, such requirements or restrictions may reduce or eliminate sources of financing for affected Borrowers. Further, to the extent that legislation or federal or state regulators require such institutions to dispose of Senior Loan interests relating to highly leveraged transactions or subject such Senior Loan interests to increased regulatory scrutiny, such financial institutions may determine to sell Senior Loan interests in a manner that results in a price that, in the opinion of the Adviser, is not indicative of fair value. Were the Trust to attempt to sell a Senior Loan interest at a time when a financial institution was engaging in such a sale with respect to the Senior Loan interest, the price at which the Trust could consummate such a sale might be adversely affected.

Legal, tax and regulatory changes could occur and may adversely affect the Trust and their ability to pursue its investment strategies and/or increase the costs of implementing such strategies. New (or revised) laws or regulations may be imposed by the CFTC, the SEC, the IRS, the U.S. Federal Reserve or other banking regulators, other governmental regulatory authorities or self-regulatory organizations that supervise the financial markets that could adversely affect the Trust. In particular, these agencies are empowered to promulgate a variety of new rules pursuant to financial reform legislation in the United States. The Trust also may be adversely affected by changes in the enforcement or interpretation of existing statutes and rules by these governmental regulatory authorities or self-regulatory organizations.

Management of the Trust

The Trust is a party to contractual arrangements with various parties, including, among others, the Trust's investment adviser, administrator, distributor, and shareholder servicing agent, who provide services to the Trust. Shareholders are not parties to, or intended ("third party") beneficiaries of, any such contractual arrangements, and such contractual arrangements are not intended to create in any individual shareholder or group of shareholders any right to enforce them against the service providers or to seek any remedy under them against the service providers, either directly or on behalf of the Trust.

Neither this Prospectus, nor the related Statement of Additional Information, is intended, or should be read, to be or to give rise to an agreement or contract between the Trust and any investor, or to give rise to any rights in any shareholder or other person other than any rights under federal or state law that may not be waived.

TRUSTEES AND OFFICERS

The Board has overall management responsibility for the Trust, Highland Global Allocation Fund and each series of Highland Funds I and Highland Funds II. See "Management of the Trust" in the SAI for the names of and other information about the Trustees and officers of the Trust. The Board also has overall management responsibility for funds advised by NexPoint Advisors, L.P., including NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc. (a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act) and the following registered closed-end funds that operate as interval funds: NexPoint Real Estate Strategies Fund, NexPoint Healthcare Opportunities Fund and NexPoint Latin American Opportunities Fund. NexPoint Advisors, L.P. is an affiliate of Highland Capital Management Fund Advisors, L.P.

INVESTMENT ADVISER

Highland Capital Management Fund Advisors, L.P. ("HCMFA" or the "Adviser") serves as investment adviser to the Trust. The address of the Adviser is 300 Crescent Court, Suite 700, Dallas, Texas 75201. Organized in February 2009, HCMFA is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. As of March 31, 2019, HCMFA had approximately $3. 3 billion in assets under management. HCMFA is also the Trust's administrator. HCMFA is owned by Highland Capital Management Services, Inc., a Delaware corporation ("HCM Services") and its general partner, Strand Advisors XVI, Inc., of which James Dondero is the sole stockholder. HCM Services is controlled by Mr. Dondero and Mr. Mark Okada by virtue of their respective share ownership.

Responsibilities. The Adviser provides the following services to the Trust: (i) furnishes an investment program for the Trust; (ii) determines, subject to the overall supervision and review of the Board, the investments to be purchased, held, sold or exchanged by the Trust and the portion, if any, of the assets of the Trust to be held uninvested; (iii) makes changes in the investments of the Trust; and (iv) votes, exercises consents, and exercises all other rights pertaining to such investments. Subject to the foregoing, the Adviser will have the authority to engage one or more sub-advisers in connection with the portfolio management of the Trust, which sub-advisers may be affiliates of the Adviser; provided, however, that the Adviser shall remain responsible to the Trust with respect to its duties and obligations set forth in the investment advisory agreement.

Compensation. The Trust has entered into an investment advisory agreement with HCMFA (each, an "Investment Advisory Agreement") pursuant to which HCMFA provides the day-to-day management of the Trust's portfolio of securities, which includes buying and selling securities for the Trust and conducting investment research. In return for its advisory services, the Trust pays the Adviser a monthly fee of 0.65%, computed and accrued daily, based on an annual rate of the Trust's average daily managed assets. "Average Daily Managed Assets" of the Trust shall mean the average daily value of the total assets of the Trust, less all accrued liabilities of the Trust (other than the aggregate amount of any outstanding borrowings constituting

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financial leverage). In addition to the advisory fees set forth above, the Adviser is entitled to receive administration fees of 0.20% of the Trust's Average Daily Managed Assets.

A discussion regarding the basis for the Board's approval of the Investment Advisory Agreement for the Trust appears in the Trust's annual reports to shareholders for the period ended December 31, 2018.

Potential Conflicts of Interest. The Adviser and/or its general partner, limited partners, officers, affiliates and employees provide investment advice to other parties and manage other accounts and private investment vehicles similar to the Trust. For the purposes of this section, the term "Highland" shall include the Adviser and its affiliated investment advisors, including Highland Capital Management, L.P. and its affiliates. In connection with such other investment management activities, the Adviser and/or its general partner, limited partners, officers, affiliates and employees may decide to invest the funds of one or more other accounts or recommend the investment of funds by other parties, rather than the Trust's monies, in a particular security or strategy. In addition, the Adviser and such other persons will determine the allocation of funds from the Trust and such other accounts to investment strategies and techniques on whatever basis they consider appropriate or desirable in their sole and absolute discretion.

The Adviser has built a professional working environment, a firm-wide compliance culture and compliance procedures and systems designed to protect against potential incentives that may favor one account over another. The Adviser has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, the Adviser furnishes advisory services to numerous clients in addition to the Trust, and the Adviser may, consistent with applicable law, make investment recommendations to other clients or accounts (including accounts that have performance or higher fees paid to the Adviser or in which portfolio managers have a personal interest in the receipt of such fees) that may be the same as or different from those made to the Trust. In addition, the Adviser, its affiliates and any of their partners, directors, officers, stockholders or employees may or may not have an interest in the securities whose purchase and sale the Adviser recommends to the Trust. Actions with respect to securities of the same kind may be the same as or different from the action that the Adviser, or any of its affiliates, or any of their partners, directors, officers, stockholders or employees or any member of their families may take with respect to the same securities. Moreover, the Adviser may refrain from rendering any advice or services concerning securities of companies of which any of the Adviser's (or its affiliates') partners, directors, officers or employees are directors or officers, or companies as to which the Adviser or any of its affiliates or partners, directors, officers and employees of any of them has any substantial economic interest or possesses material non-public information. In addition to its various policies and procedures designed to address these issues, the Adviser includes disclosure regarding these matters to its clients in both its Form ADV and investment advisory agreements.

The Adviser, its affiliates or their partners, directors, officers or employees similarly serve or may serve other entities that operate in the same or related lines of business, including accounts managed by an investment adviser affiliated with the Adviser. Accordingly, these individuals may have obligations to investors in those entities or funds or to other clients, the fulfillment of which might not be in the best interests of the Trust. As a result, the Adviser will face conflicts in the allocation of investment opportunities to the Trust and other funds and clients. In order to enable such affiliates to fulfill their fiduciary duties to each of the clients for which they have responsibility, the Adviser will endeavor to allocate investment opportunities in a fair and equitable manner , pursuant to policies and procedures adopted by the Adviser and its advisory affiliates that are designed to manage potential conflicts of interest, which may, subject to applicable regulatory constraints, involve pro rata co-investment by the Trust and such other clients or may involve a rotation of opportunities among the Trust and such other clients. The Trust will only make investments in which the Adviser or an affiliate hold an interest to the extent permitted under the 1940 Act and SEC staff interpretations or pursuant to the terms and conditions of the exemptive order received by certain advisers and funds affiliated with the Trust, dated April 19, 2016. For example, exemptive relief is not required for the Trust to invest in syndicated deals and secondary loan market

transactions in which the Adviser or an affiliate has an interest where price is the only negotiated point. The order applies to all "Investment Companies," which includes future closed-end investment companies registered under the 1940 Act that are managed by affiliated advisers, which includes the Trust. The Trust, therefore, may in the future invest in accordance with the terms and conditions of the exemptive order. To mitigate any actual or perceived conflicts of interest, allocation of limited offering securities (such as IPOs and registered secondary offerings) to principal accounts that do not include third party investors may only be made after all other client account orders for the security have been filled. However, there can be no assurance that such policies and procedures will in every case ensure fair and equitable allocations of investment opportunities, particularly when considered in hindsight.

Conflicts may arise in cases when clients and/or the Adviser and other affiliated entities invest in different parts of an issuer's capital structure, including circumstances in which one or more clients own private securities or obligations of an issuer and other clients may own public securities of the same issuer. In addition, one or more clients may invest in securities, or other financial instruments, of an issuer that are senior or junior to securities, or financial instruments, of the same issuer that are held by or acquired for, one or more other clients. For example, if such issuer encounters financial problems, decisions related to such securities (such as over the terms of any workout or proposed waivers and amendments to debt covenants) may raise conflicts of interests. In such a distressed situation, a client holding debt securities of the issuer may be better served by a liquidation of the issuer in which it may be paid in full, whereas a client holding equity securities of the issuer might prefer a reorganization that holds the potential to create value for the equity holders. In the event of conflicting interests within an issuer's capital structure, Highland will generally pursue the strategy that Highland believes best reflects what would be expected to be negotiated in an arm's length transaction, but in all instances with due consideration being given to Highland's fiduciary duties to each of its accounts (without regard to the nature of the accounts involved or fees received from such accounts). This strategy may be recommended by one or more Highland investment professionals. A single person may represent more than one part of an issuer's capital structure. The recommended course of action will be presented to the conflicts committee for final determination as to how to proceed, Highland may elect, but is not required, to assign different teams to make recommendations for different parts of the capital structure as the conflicts committee determines in its discretion. In the event any Highland personnel serve on the board of the subject company, they generally recuse themselves from voting on any board matter with respect to a transaction that has an asymmetrical impact on the capital structure. Highland personnel board members may still make recommendations to the conflicts committee. If any such persons are also on the conflicts committee, they may recuse themselves from the committee's determination. A Portfolio Manager with respect to any applicable Highland registered investment company clients ("Retail Accounts") participates in such discussions, but makes an independent determination as to which course of action he or she determines is in the best interest of the applicable Retail Accounts. Highland may use external counsel for guidance and assistance.

The Adviser and its affiliates have both subjective and objective procedures and policies in place designed to manage potential conflicts of interest involving clients so that, for example, investment opportunities are allocated in a fair and equitable manner among the Trust and such other clients. An investment opportunity that is suitable for multiple clients of the Adviser and its affiliates may not be capable of being shared among some or all of such clients due to the limited scale of the opportunity or other factors, including regulatory restrictions imposed by the 1940 Act. There can be no assurance that the Adviser's or its affiliates' efforts to allocate any particular investment opportunity fairly among all clients for whom such opportunity is appropriate will result in an allocation of all or part of such opportunity to the Trust. Not all conflicts of interest can be expected to be resolved in favor of the Trust.

Another type of conflict may arise if one client account buys a security and another client account sells or shorts the same security. Currently, such opposing positions are generally not permitted within the same account without prior trade approval by the Chief Compliance Officer. However, a portfolio manager may enter into opposing positions for different clients to the extent each such client has a different investment objective and each such position is consistent with the investment objective of the applicable client. In addition, transactions in

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investments by one or more affiliated client accounts may have the effect of diluting or otherwise disadvantaging the values, prices or investment strategies of other client accounts.

Because certain client accounts may have investment objectives, strategies or legal, contractual, tax or other requirements that differ (such as the need to take tax losses, realize profits, raise cash, diversification, etc.), an affiliated advisor may purchase, sell or continue to hold securities for certain client accounts contrary to other recommendations. In addition, an affiliated advisor may be permitted to sell securities or instruments short for certain client accounts and may not be permitted to do so for other affiliated client accounts.

As a result of the Trust's arrangements with Highland, there may be times when Highland, the Adviser or their affiliates have interests that differ from those of the Trust's shareholders, giving rise to a conflict of interest. Highland and the Adviser are under common ownership, and Trust's officers serve or may serve as officers, directors or principals of entities that operate in the same or a related line of business as the Trust does, or of investment funds managed by the Adviser or its affiliates. Similarly, the Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Trust or its shareholders. For example, the Trust's officers have, and will continue to have, management responsibilities for other investment funds, accounts or other investment vehicles managed or sponsored by the Adviser and its affiliates. The Trust's investment objective may overlap, in part or in whole, with the investment objective of such affiliated investment funds, accounts or other investment vehicles. As a result, those individuals may face conflicts in the allocation of investment opportunities among the Trust and other investment funds or accounts advised by or affiliated with the Adviser. The Adviser will seek to allocate investment opportunities among eligible accounts in a manner that is fair and equitable over time and consistent with its allocation policy. However, the Trust can offer no assurance that such opportunities will be allocated to it fairly or equitably in the short-term or over time.

In addition, it is anticipated that a portion of the Trust's assets will be represented by REITs, asset backed securities and/or collateralized loan obligations sponsored, organized and/or managed by Highland and its affiliates. The Adviser will monitor for conflicts of interest in accordance with its fiduciary duties and will provide the independent trustees of the Trust with an opportunity to periodically review the Trust's investments in such REITs, asset-backed securities and/or CLOs and assure themselves that continued investment in such securities remains in the best interests of the Trust and its shareholders. The Adviser may effect client cross-transactions where it causes a transaction to be effected between the Trust and another client advised by the Adviser or any of its affiliates. The Adviser may engage in a client cross-transaction involving the Trust any time that the Adviser believes such transaction to be fair to the Trust and the other client of the Adviser or its affiliates. As further described below, the Adviser may effect principal transactions where the Trust may make and/or hold an investment, including an investment in securities, in which the Adviser and/or its affiliates have a debt, equity or participation interest, in each case in accordance with applicable law, which may include the Adviser obtaining the consent and approval of the Trust prior to engaging in any such principal transaction between the Trust and the Adviser or its affiliates.

The Adviser may direct the Trust to acquire or dispose of investments in cross trades between the Trust and other clients of the Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, to the extent permitted by the 1940 Act and SEC staff interpretations, the Trust may make and/or hold an investment, including an investment in securities, in which the Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Trust may enhance the profitability of the Adviser's own investments in such companies.

Real Estate Allocation Procedures. Members of the Trust's management team also operate: (1) an externally managed publicly traded REIT ("NXRT"), that manages a portfolio of Class B, value add multifamily properties; (2) VineBrook Homes Trust, Inc., an externally managed private REIT that manages a portfolio of single-family housing properties in the Midwest U.S. ("VineBrook"); (3) NexPoint Hospitality Trust, an externally managed publicly traded REIT ("NHT") listed on the TSX Venture Exchange, that manages a

portfolio of hospitality assets located in the U.S; (4).a private REIT (NexPoint Real Estate Capital, LLC), which is wholly-owned by NHF, that originates preferred equity investments for entities that own real estate; (5) a private REIT (NexPoint Real Estate Opportunities, LLC), which is wholly-owned by NexPoint Strategic Opportunities Fund ("NHF"), that acquires direct interests in opportunistic real estate investments; (6) a private REIT (NRESF REIT Sub, LLC), which is wholly-owned by NexPoint Real Estate Strategies Fund ("NRESF"), that invests directly in real estate transactions or real estate operating companies; and (7) a private REIT (NexPoint Capital REIT, LLC), which is wholly-owned by NexPoint Capital Inc., that invests in both direct interests in opportunistic real estate investments and preferred equity investments for entities that own real estate.

If a potential investment is appropriate for either the Trust or another entity noted above, the Adviser and its affiliates have an allocation policy that provides that opportunities will be allocated among those accounts for which participation in the respective opportunity is considered most appropriate, taking into account, among other considerations with respect to any real estate investments:

- which fund has available cash (including availability under lines of credit) to acquire the investment;
- whether there are any positive or negative income tax effects on any of the funds relating to the purchase;
- whether the investment opportunity creates geographic, asset class or tenant concentration / diversification concerns for any of the funds;
- how the investment size, potential leverage, transaction structure and anticipated cash flows affect each fund, including earnings and distribution coverage; and
- whether one or more of the funds has an existing relationship with the tenant(s), operator, facility or system associated with the investment, or a significant geographic presence that would make the investment strategically more important.

The Adviser will allocate investment opportunities across the entities for which such opportunities are appropriate, consistent with its internal conflict of interest and allocation policies. As noted above, the Adviser will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy. However, there is no assurance that such investment opportunities will be allocated to the Trust fairly or equitably in the short-term or over time and there can be no assurance that the Trust will be able to participate in all such investment opportunities that are suitable for the Trust.

Co-Investment Opportunities. The Trust expects in the future to co-invest on a concurrent basis with other affiliates, unless doing so is impermissible under existing regulatory guidance, applicable regulations and our allocation procedures. The Trust, the Adviser and NexPoint Advisors, L.P. have obtained an exemptive order dated April 19, 2016 from the Commission to permit certain co-investments among the Trust and other accounts managed by the Adviser or its affiliates, subject to certain conditions.

ADMINISTRATOR/SUB-ADMINISTRATOR

HCMFA provides administration services to the Trust for a monthly administration fee, computed and accrued daily, at an annual rate of 0.20% of the Trust's Average Daily Managed Assets. In such capacity, HCMFA generally assists the Trust in all aspects of its administration and operations. As of October 1, 2018, under a separate sub-administration agreement, HCFMA has delegated certain administrative functions to SEI Investments Global Funds Services ("SEI"), One Freedom Valley Drive, Oaks, Pennsylvania 19456, and pays SEI a portion of the fee it receives from the Trust. Under the Sub-Administration Agreement, SEI has agreed to provide fund accounting services; asset data services; fund administration and reporting services; and regulatory administration services, including preparation and filing of various reports with the appropriate regulatory agencies and the SEC for the Trust.

For more information about the Trust's administration agreements, please see "Administrator/Sub-Administrator" in the SAI.

MULTI-MANAGER STRUCTURE

The Trust and the Adviser qualify for exemptive relief under a multi-managers' exemptive order (the "Order") from certain provisions of the 1940 Act, pursuant to which the Adviser will, subject to the oversight of the Board, be permitted to enter into and materially amend sub-advisory agreements on behalf of the Trust with sub-advisers unaffiliated with the Adviser without such agreements being approved by the shareholders of the Trust (the "Multi-Manager Structure"). The Board and the Adviser will therefore have the right to hire, terminate or replace sub-advisers without first obtaining shareholder approval, including in the event that a sub-advisory agreement has automatically terminated as a result of an assignment. The Adviser will continue to have the ultimate responsibility to oversee each sub-adviser and recommend its hiring, termination and replacement. Shareholders of the Trust have already approved the adoption of a Multi-Manager Structure, which enables the Trust to operate with greater efficiency and without incurring the expense and delays associated with obtaining shareholder approvals for matters relating to sub-advisers or sub-advisory agreements. The Trust and the Adviser will be subject to certain conditions imposed by the Order, including the condition that within 90 days of hiring of a new non-affiliated sub-adviser, the Trust will provide shareholders with an information statement containing information about the sub-adviser. Shareholders of the Trust retain the right to terminate a sub-advisory agreement for the Trust at any time by a vote of the majority of such outstanding securities of the Trust. Operation of the Trust under the Multi-Manager Structure will not: (1) permit management fees paid by the Trust to HCMFA to be increased without shareholder approval; or (2) diminish HCMFA's responsibilities to the Trust, including HCMFA's overall responsibility for overseeing the portfolio management services furnished by its sub-advisers. Shareholders will be notified of any changes made to sub-advisers or sub-advisory agreements within 90 days of the change.

PORTFOLIO MANAGERS

The following sets forth biographical information for those individuals who are primarily responsible for managing the Trust's investments. The portfolio managers may change from time to time.

Mr. Okada co-founded Highland and has served as Chief Investment Officer of Highland Capital Management, L.P. ("HCMLP") since 1993 and as Co-Chief Investment Officer of HCMLP since September 2017. He has managed the Trust's portfolio since October 2012. He is a pioneer in the development of the bank loan market and has over 25 years of credit experience. Mr. Okada is responsible for structuring one of the industry's first arbitrage CLOs. He received a BA in Economics and a BA in Psychology, cum laude, from the University of California, Los Angeles. He has earned the right to use the Chartered Financial Analyst designation.

Mr. Poglitsch is Head of Credit at HCMLP and has managed the Trust since June 2017. Prior to his current position, Mr. Poglitsch served as a Managing Director at HCFMA, where he spent a substantial amount of time covering the Energy, Competitive Power, Utilities, and Transportation industries; he also served as a Senior Portfolio Analyst on both the Institutional and Retail fund research teams. Prior to joining HCMLP in 2007, Mr. Poglitsch was a consultant for Muse Stancil and Co. ("Muse"), where he provided mergers and acquisition, valuation, and strategic advisory services to a variety of clients in the midstream and downstream energy sectors, including integrated oil, independent refinery, pipeline, power, and renewable fuel companies. Prior to joining Muse, Mr. Poglitsch was a senior financial analyst for American Airlines. He received an MBA with a concentration in Finance from the University of Texas at Austin and a BS in Chemical Engineering from the University of Oklahoma. Mr. Poglitsch has earned the right to use the Chartered Financial Analyst designation.

Mr. Dondero is a founder and President of HCMLP and has managed the Trust since June 2018. Formerly, Mr. Dondero served as Chief Investment Officer of Protective Life's GIC subsidiary and helped grow the business from concept to over $2 billion between 1989 and 1993. His portfolio management experience includes investments in mortgage-backed securities, investment grade corporate bonds, leveraged bank loans, emerging markets, derivatives, preferred stocks and common stocks. From 1985 to 1989, he managed approximately $1 billion in fixed income funds for American Express. Prior to American Express, he completed his financial

training at Morgan Guaranty Trust Fund. Mr. Dondero is a Beta Gamma Sigma graduate of the University of Virginia (1984) with degrees in Accounting and Finance. Mr. Dondero has earned the right to use the Chartered Financial Analyst designation. Mr. Dondero is a Certified Public Accountant and a Certified Management Accountant. Mr. Dondero currently serves as Chairman for NexBank and serves on the Board of Directors of American Banknote Corporation, Jernigan Capital, Inc., Texmark Timber Treasury, L.P., Cornerstone Healthcare Group and Metro-Goldwyn-Mayer.

The Statement of Additional Information provides additional information about the portfolio managers' compensation, other accounts managed by the portfolio managers and the portfolio managers' ownership of securities issued by the Trust.

Determination of Net Asset Value

The net asset value of the common shares of the Trust is computed based upon the value of the Trust's investment portfolio securities and other assets. Net asset value per common share is determined daily on each day that the NYSE is open for business as of the close of the regular trading session on the NYSE, usually 4:00 p.m., Eastern time. The NYSE is open Monday through Friday, but currently is scheduled to be closed on New Year's Day, Dr. Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day or on the preceding Friday or subsequent Monday when a holiday falls on a Saturday or Sunday, respectively.

The Trust calculates net asset value per common share by subtracting liabilities (including accrued expenses or dividends) from the total assets of the Trust (the value of the securities plus cash or other assets, including interest accrued but not yet received) and dividing the result by the total number of outstanding common shares of the Trust.

VALUATIONS

The Trust uses the following valuation methods to determine either current market value for investments for which market quotations are available or, if not available, the fair value, as determined in good faith pursuant to policies and procedures approved by the Board:

- The market value of each security listed or traded on any recognized securities exchange or automated quotation system will be the last reported sale price at the relevant valuation date on the composite tape or on the principal exchange on which such security is traded, except that debt securities that are not credit-impaired and have remaining maturities of 60 days or less will be valued at amortized cost, a method of valuation that approximates market value. If no sale is reported on that date, or for over-the-counter securities, the Adviser utilizes, when available, pricing quotations from principal market makers. Such quotations may be obtained from third-party pricing services or directly from investment brokers and dealers in the secondary market. Generally, the Trust's loan and bond positions are not traded on exchanges and consequently are valued based on market prices received from third-party pricing services or broker-dealer sources.
- Dividends declared but not yet received, and rights in respect of securities which are quoted ex-dividend or ex-rights, will be recorded at the fair value thereof, as determined by the Adviser, which may (but need not) be the value so determined on the day such securities are first quoted ex-dividend or ex-rights.
- Listed options, or over-the-counter options for which representative brokers' quotations are available, will be valued in the same manner as listed or over-the-counter securities as hereinabove provided. Premiums for the sale of such options written by the Trust will be included in the assets of the Trust, and the market value of such options shall be included as a liability.

- The Trust's non-marketable investments for which market quotations are not readily will generally be valued in such manner as the Adviser determines in good faith to reflect their fair values under procedures established by, and under the general supervision and responsibility of, the Board. The pricing of all assets that are fair valued in this manner will be subsequently reported to and ratified by the Board. Pursuant to the Trust's pricing procedures, securities for which market quotations are not readily available may include securities that are subject to legal or contractual restrictions on resale, securities for which no or limited trading activity has occurred for a period of time, or securities that are otherwise deemed to be illiquid (i.e., securities that cannot be disposed of within seven days at approximately the price at which the security is currently priced by the Trust). Swaps and other derivatives would generally fall under this category.

When determining the fair value of an asset, the Adviser seeks to determine the price that the Trust might reasonably expect to receive from the current sale of that asset in an arm's-length transaction. Fair value is defined as the amount for which assets could be sold in an orderly disposition over a reasonable period of time, taking into account the nature of the asset. Fair value determinations are based upon all available factors that the Adviser deems relevant. Fair value pricing, however, involves judgments that are inherently subjective and inexact, since fair valuation procedures are used only when it is not possible to be sure what value should be attributed to a particular asset or when an event will affect the market price of an asset and to what extent. As a result, fair value pricing may not reflect actual market value, and it is possible that the fair value determined for a security will be materially different from the value that actually could be or is realized upon the sale of that asset.

DETERMINATIONS IN CONNECTION WITH OFFERINGS

In connection with any primary offering of the Trust's common shares, the Trust is required to make the determination that it is not selling its common shares at a price below its then current net asset value at the time at which the sale is made. However, if the net asset value of the Trust changes during the pendency of a primary offering such that there is a possibility that the price of the Trust's common shares could fall below the then current net asset value of its common shares at the time at which the sale is made, or (ii) there is a possibility that the Trust could trigger the undertaking (which the Trust provided to the Commission in the registration statement to which this Prospectus is a part) to suspend the offering of its common shares pursuant to this Prospectus if the net asset value fluctuates by certain amounts in certain circumstances until the Prospectus is amended, the Trust may elect, in the case of clause (i) above, to postpone the offering until such time as the Trust makes a determination that it is not at risk of selling its common shares at a price below its then current net asset value and, in the case of clause (ii) above, to comply with such undertaking or to undertake to determine net asset value to ensure that such undertaking has not been triggered.

Distributions

Subject to market conditions, the Trust expects to declare dividends on the Trust's common shares on a monthly basis. The Trust intends to pay any net capital gain distributions annually. The Trust's distribution policy may be modified from time to time by the Board as it deems appropriate, including in light of market and economic conditions and the Trust's current, expected and historical earnings and investment performance. Common shareholders are expected to be notified of any such modifications by press release or in the Trust's periodic shareholder reports. As a registered investment company under the Code, the Trust will not be subject to U.S. federal income tax on any taxable income that it distributes to shareholders, provided that at least 90% of its investment company taxable income for that taxable year is distributed to its shareholders. If necessary, the Trust will pay an adjusting distribution in December which includes any additional income and net realized capital gains in excess of the monthly distributions for that year to satisfy the minimum distribution requirements of the Code.

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The Trust's annualized distributions may contain a return of capital and should not be considered as the dividend yield or total return of an investment in its common or preferred shares. Shareholders who receive the payment of a distribution consisting of a return of capital may be under the impression that they are receiving net profits when they are not. Shareholders should not assume that the source of a distribution from the Trust is net profit. A portion of the Trust's common share distributions for the year ending 2017 have included a return of capital. For the six months ended December 31, 2018, the Trust made distributions of $0.46 per common share, approximately $0.01 of which constituted a return of capital. To minimize the U.S. federal income tax that the Trust must pay at the corporate level, the Trust intends to distribute substantially all of its investment company taxable income and previously undistributed cumulative net capital gain. The composition of each distribution is estimated based on earnings as of the record date for the distribution. The actual composition of each distribution may change based on the Trust's investment activity through the end of the calendar year.

The Trust may retain for reinvestment, and pay the resulting U.S. federal income taxes on its net capital gain, if any, although, as previously mentioned, the Trust intends to distribute substantially all of its previously undistributed cumulative net capital gain each year. In the event that the Trust's investment company taxable income and net capital gain exceeds the total of the Trust's annual distributions on any shares issued by the Trust the Trust intends to pay such excess once a year. If, for any calendar year, the total annual distributions on any shares issued by the Trust exceed investment company taxable income and cumulative net capital gain, the excess will generally be treated as a tax-free return of capital up to the amount of a shareholder's tax basis in his or her shares. Any distributions to the holders of shares which constitute tax-free return of capital will reduce a shareholder's tax basis in such shares, thereby increasing such shareholder's potential gain or reducing his or her potential loss on the sale of the shares. Any such amounts distributed to a shareholder in excess of the basis in the shares will generally be taxable to the shareholder as capital gain.

To the extent the Trust makes distributions consisting of returns of capital, such distributions will further decrease the Trust's total assets and, therefore have the likely effect of increasing the Trust's expense ratio as the Trust's fixed expenses will become a larger percentage of the Trust's average net assets. In addition, in order to make such distributions, the Trust may have to sell a portion of its investment portfolio at a time when independent investment judgment may not dictate such action.

The Trust, along with other closed-end registered investment companies advised by the Adviser, is covered by an exemption from Section 19(b) of the 1940 Act and Rule 19b-1 thereunder permitting the Trust to make periodic distributions of long term capital gains provided that any distribution policy of the Trust with respect to its common shares calls for periodic distributions in an amount equal to a fixed percentage of the Trust's average net asset value over a specified period of time or market price per common share at or about the time of distribution or pay-out of a fixed dollar amount. The Trust's current policy is to make monthly distributions to holders of its common shares. The exemption also permits the Trust to make such distributions with respect to its preferred shares in accordance with such shares' terms.

Various factors will affect the level of the Trust's current income and current gains, such as its asset mix and the Trust's use of options and other derivative transactions. To permit the Trust to maintain more stable monthly dividends and annual capital gain distributions, the Trust may from time to time distribute less than the entire amount of income and gains earned in the relevant month or year, respectively. The undistributed income and gains would be available to supplement future distributions. As a result, the distributions paid by the Trust for any particular period may be more or less than the amount of income and gains actually earned by the Trust during the applicable period. Undistributed income and gains will add to the Trust's net asset value, and, correspondingly, distributions from previously undistributed income and gains, as well as from capital, if any, will be deducted from the Trust's net asset value.

Shareholders will automatically receive newly issued common shares for all dividends declared for common shares of the Trust in accordance with the Trust's Dividend Reinvestment Plan unless an election is made to

receive cash. Participants requesting a sale of securities through the plan agent of the Trust's Dividend Reinvestment Plan are subject to a sales fee and a brokerage commission. See "Dividend Reinvestment Plan."

Dividend Reinvestment Plan

Unless the registered owner of common shares elects to receive cash by contacting the Plan Agent, all dividends declared for the common shares of the Trust will be automatically paid in the form of, or reinvested by Global Shares ("Global Shares" or the "Plan Agent") in, common shares of the Trust purchased in the open market at prevailing market prices. If you are a registered owner of common shares and elect not to participate in the Plan, you will receive all dividends or other distributions (together, a "dividend") in cash paid by check mailed directly to you (or, if the shares are held in street or other nominee name, then to such nominee) by American Stock Transfer and Trust Company LLC ("AST"), as dividend disbursing agent. You may elect not to participate in the Plan and to receive all dividends in cash by sending written instructions or by contacting AST, as dividend disbursing agent, at the address set forth below. Participation in the Plan is completely voluntary and may be terminated or resumed at any time without penalty by contacting the Plan Agent before the dividend record date; otherwise such termination or resumption will be effective with respect to any subsequently declared dividend. Some brokers may automatically elect to receive cash on your behalf and may reinvest that cash in additional shares of the Trust for you.

The Plan Agent will open an account for each shareholder under the Plan in the same name in which such shareholder's shares are registered. Whenever the Trust declares a dividend payable in cash, non-participants in the Plan will receive cash and participants in the Plan will receive the equivalent in newly issued common shares. The common shares will be acquired by the Plan Agent through receipt of additional unissued but authorized common shares from the Trust The number of newly issued common shares to be credited to each participant's account will be determined by dividing the dollar amount of the dividend by the lesser of (i) the net asset value per common share determined on the declaration date and (ii) the market price per common share as of the close of regular trading on the NYSE on the declaration date.

The Plan Agent maintains all shareholders' accounts in the Plan and furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Common shares in the account of each Plan participant will be held by the Plan Agent on behalf of the Plan participant, and each shareholder proxy will include those shares purchased or received pursuant to the Plan. The Plan Agent will forward all proxy solicitation materials to participants and vote proxies for shares held under the Plan in accordance with the instructions of the participants.

In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, the Plan Agent will administer the Plan on the basis of the number of common shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Plan.

There will be no brokerage charges with respect to common shares issued directly by the Trust. The automatic reinvestment of dividends will not relieve participants of any tax that may be payable (or required to be withheld) on such dividends. Accordingly, any taxable dividend received by a participant that is reinvested in additional common shares will be subject to U.S. federal (and possibly state and local) income tax even though such participant will not receive a corresponding amount of cash with which to pay such taxes. See "Tax Matters."

There will be no brokerage charges with respect to common shares issued directly by the Trust. Participants who request a sale of shares through the Plan Agent pay a brokerage commission of $0.4 per share sold.

The Trust reserves the right to amend or terminate the Plan. There is no direct service charge to participants in the Plan; however, the Trust reserves the right to amend the Plan to include a service charge payable by the participants.

All correspondence concerning the Plan should be directed to the Plan Agent at Global Shares, 111 Town Square Place, Suite 1401, Jersey City, NJ 07310; telephone (732) 256-1005.

Shareholder Loyalty Program

To promote loyalty and long-time alignment of interests among the Trust's shareholders, the Adviser and an affiliate (collectively, "Highland") offer an incentive to shareholders that buy and hold the Trust's common shares for a period of at least twelve months through its Shareholder Loyalty Plan (the "Plan"). To participate in the Plan, existing shareholders must open an account (the "Account") with the Plan's administrator, Global Shares. Subsequently, if a participant makes contributions to the Account during a defined trading period to purchase shares, Highland will make a corresponding contribution on such participant's behalf (the "Gross-up"). The Gross-up is determined by Highland and may be adjusted at any point without notice by Highland prospectively from time to time in accordance with the terms of the Plan. For example, if a participant contributes $10,000 to the Account during a defined trading period to purchase shares and Highland has determined the participant's Gross-up will be 2%, Highland will make a corresponding contribution of $200, or 2% of the total $10,000, to purchase additional Shares for the participant (the "Gross-up Shares"). In addition, Plan participants will not be required to pay any customary purchase commissions or distribution fees on the purchase of shares under the Plan.

Highland will pay all expenses incident to the purchase of shares under the Plan and for operation of the Plan, including the costs of recordkeeping, accounting fees, legal fees and the costs of delivery of stock certificates, if any, to participants; provided, however, that Highland will not pay any expenses incurred in connection with any sale or transfer of shares credited to a participant's Account. Expenses incurred in connection with any such sales will be deducted from the proceeds of sale prior to any remittance to the participant.

While the portion of the Trust's common shares that are acquired through the participant's contribution will vest immediately, the Gross-up Shares will not vest until the first anniversary of the date that the Gross-up Shares were purchased. Vested shares and Gross-up Shares will be held in the Account with Global Shares' broker, Maxim Group, LLC ("Maxim"). A participant may not sell or otherwise withdraw, pledge, transfer, assign, hypothecate or dispose of any Gross-up Shares prior to the date on which they become vested Shares. Under the Plan, participants must contribute a minimum of $2,500 for purchases of shares in the initial contribution and each subsequent monthly contribution unless Highland, in its sole discretion, decides to permit contributions for a lesser amount. The maximum monthly contribution limit under the Plan is $1,000,000, which amount may be adjusted from time to time by Highland in its sole discretion.

All dividends received on shares that are purchased under the Plan will be automatically reinvested through the Plan. Shares acquired through the reinvestment of dividends paid to the holder of a vested share will vest immediately. Shares acquired through the reinvestment of dividends paid to the holder of a non-vested Gross-up share will vest on the first anniversary of the reinvest date. In addition, for dividends paid to holders of vested shares, Highland will provide a Gross-up on the amount of such reinvested dividends.

Maxim maintains all shareholders' accounts in the Plan and, upon request, furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Shares in the account of each Plan participant will be held by Maxim on behalf of the Plan participant, and each shareholder proxy will include those shares purchased or received pursuant to the Plan. Maxim will forward all proxy solicitation materials to participants and vote proxies for shares held under the Plan in accordance with the instructions of the participants.

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In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, Global Shares and Maxim will administer the Plan on the basis of the number of common shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Plan.

Highland reserves the right to amend or terminate the Plan. To help align the interests of Highland's employees with the interests of the Trust's shareholders, Highland also offers the Plan to its employees.

Participants in the Plan should be aware that their receipt of Gross-up Shares under the Plan constitutes taxable income to them. In addition, such participants owe taxes on that portion of any distribution that constitutes taxable income in respect of shares of our common stock held in their Plan accounts, whether or not such shares of common stock have vested in the hands of the participants. To the extent any payments or distributions under the Plan are subject to U.S. federal, state or local taxes, the Trust, any participating affiliate of the Trust or the agent for the Plan may satisfy its tax withholding obligation by (1) withholding shares allocated to the participant's account or (2) deducting cash from the participant's account. Plan participants should consult their tax advisers regarding the tax consequences to them of participating in the Plan.

The Plan may create an incentive for shareholders to invest additional amounts in the Trust. Because the Adviser's management fee is based on a percentage of the assets of the Trust, the Plan will result in increased net revenues to Highland if the increase in the management fee due to the increased asset base offsets the costs associated with establishing and maintaining the Plan.

Description of Capital Structure

The following is a brief description of the terms of the Trust's common shares, preferred shares and subscription rights. This description does not purport to be complete and is qualified by reference to the Trust's governing documents. For complete terms of the subscription rights, please refer to the actual terms of such subscription rights which will be set forth in the subscription rights agreement relating to such subscription rights (the "Subscription Rights Agreement"). This Prospectus will contain the material terms and conditions for each security.

Any of the securities described herein may be issued separately or as part of a unit consisting of two or more securities (for example, common shares and rights), which may or may not be separable from one another. If such units are publicly offered, they and their underlying securities will be registered under the Securities Act prior to completion of the offering.

COMMON SHARES

The Trust is a non-diversified, closed-end management investment company that was organized as a Massachusetts business trust on June 28, 2017 pursuant to a Declaration of Trust dated June 28, 2017. The Trust is authorized to issue an unlimited number of common shares of beneficial interest, par value $0.001 per share. Each common share has one vote and, when issued and paid for in accordance with the terms of this offering, will be fully paid and non-assessable, except that the trustees shall have the power to cause shareholders to pay expenses of the Trust by setting off charges due from shareholders from declared but unpaid dividends or distributions owed such shareholders and/or by reducing the number of common shares owned by such shareholder. The Trust currently is not aware of any expenses that will be paid pursuant to this provision, except to the extent fees payable under its Dividend Reinvestment Plan are deemed to be paid pursuant to this provision.

The Trust intends to hold annual meetings of shareholders so long as the common shares are listed on a national securities exchange and such meetings are required as a condition to such listing. All common shares are equal as to dividends, assets and voting privileges and have no conversion, preemptive or other subscription rights. The Trust will send annual and semi-annual reports, including financial statements, to all holders of its shares.

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The Trust has no present intention of offering any additional shares other than the securities offered pursuant to this Prospectus and common shares issued under the Trust's Dividend Reinvestment Plan. Any additional offerings of shares will require approval by the Board. Any additional offering of common shares will be subject to the requirements of the 1940 Act, which generally provides that shares may not be issued at a price below the then current net asset value, exclusive of sales load, except in connection with an offering to existing holders of common shares or with the consent of a majority of the Trust's common shareholders.

Any additional offerings of common shares would result in current shareholders owning a smaller proportionate interest in the Trust than they owned prior to such offering to the extent that shareholders do not purchase sufficient shares in such offering to maintain their percentage interest. The Trust's net asset value would be reduced immediately following an offering of the shares due to the costs of such offering, which will be borne entirely by the Trust. The sale of shares by the Trust (or the perception that such sales may occur) may have an adverse effect on prices of shares in the secondary market. An increase in the number of shares available may put downward pressure on the market price for shares. If the Trust were unable to invest the proceeds of an additional offering of shares as intended, the Trust's per share distribution may decrease and the Trust may not participate in market advances to the same extent as if such proceeds were fully invested as planned.

The Trust's common shares are listed on the NYSE under the symbol HFRO. Unlike open-end funds, closed-end funds like the Trust do not continuously offer shares and do not provide daily redemptions. Rather, if a shareholder determines to buy additional common shares or sell shares already held, the shareholder may do so by trading through a broker on the NYSE or otherwise. Shares of closed-end investment companies frequently trade on an exchange at prices lower than net asset value. Because the market value of the common shares may be influenced by such factors as dividend levels (which are in turn affected by expenses), dividend stability, net asset value, relative demand for and supply of such shares in the market, general market and economic conditions and other factors beyond the control of the Trust, the common shares may not trade at a price equal to or higher than net asset value in the future. The common shares are designed primarily for long-term investors, and you should not purchase the common shares if you intend to sell them soon after purchase. See the Statement of Additional Information under "Repurchase of Common Shares."

The following table provides information about the Trust's outstanding shares as of May 31, 2019. The Trust does not currently hold any of its shares for its own account.

Title of Class	(1) Amount Authorized	(2) Amount Outstanding	(3) Amount Held by the Trust or for its Account	(4) Amount Outstanding Exclusive of Amount Shown Under (3)
Common Shares	Unlimited	71,908,209	—	71,908,209

The Board has the power to cause each holder of common or preferred shares of the Trust to pay directly, in advance or arrears, for charges of distribution, of the custodian or transfer, shareholder servicing or similar agent, a pro rata amount as determined from time to time by the Board, by setting off such charges due from such shareholder from declared but unpaid dividends or distributions owed such shareholder and/or by reducing the number of shares in the account of such shareholder by that number of full and/or fractional shares which represents the outstanding amount of such charges due from such shareholder. In the event the Trustees determine to cause each shareholder to pay certain expenses directly by setting off such expenses due from a shareholder from dividends payable to such shareholder, the shareholder generally will be deemed to receive, and incur U.S. federal income taxes on, the full amount of the distribution paid to such shareholder, prior to its reduction by the expenses allocated to the shareholder. Alternatively, to the extent the Trustees determine to cause each shareholder to pay certain expenses directly by reducing the number of shares in the shareholder's account by the amount of the expenses allocated to the shareholder, such reduction in shares generally will constitute a redemption for U.S. federal income tax purposes, giving rise to capital gain or loss on the shares redeemed. See "Tax Matters" below for more information about the tax treatment of distributions and redemptions from the Trust.

For information concerning the U.S. federal income tax consequences of an investment in common shares of the Trust, See "Tax Matters" below and "Tax Matters" in the Statement of Additional Information.

PREFERRED SHARES

The Trust's Agreement and Declaration of Trust provides that the Board may authorize and issue preferred shares with rights as determined by the Board, by action of the Board without the approval of the holders of the common shares. Holders of common shares have no preemptive right to purchase any preferred shares that might be issued. Whenever preferred shares are outstanding, the Trust will not be permitted to declare any distributions from the Trust unless all accrued dividends on preferred shares have been paid, unless asset coverage (as defined in the 1940 Act) with respect to preferred shares would be at least 200% after giving effect to the distributions and unless certain other requirements imposed by any rating agencies rating the preferred shares have been met.

Currently, an unlimited number of the Trust's shares have been classified by the Board as preferred shares, par value $0.001 per share. The terms of such preferred shares may be fixed by the Board and would materially limit and/or qualify the rights of the holders of the Trust's common shares. Although the terms of any preferred shares, including dividend rate, liquidation preference and redemption provisions, will be determined by the Board, subject to applicable law and the Trust's Agreement and Declaration of Trust, it is likely that the preferred shares will be structured to carry a relatively short-term dividend rate reflecting interest rates on short-term bonds, by providing for the periodic redetermination of the dividend rate at relatively short intervals through an auction, remarketing or other procedure. The Trust also believes that it is likely that the liquidation preference, voting rights and redemption provisions of the preferred shares will be similar to those stated below. In connection with the offering of any preferred shares, the related Prospectus Supplement will disclose the terms of the preferred shares.

Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the holders of preferred shares will be entitled to receive a preferential liquidating distribution, which is expected to equal the original purchase price per preferred share plus accrued and unpaid dividends, whether or not declared, before any distribution of assets is made to holders of common shares. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of preferred shares will not be entitled to any further participation in any distribution of assets by the Trust.

Voting Rights. The 1940 Act requires that the holders of any preferred shares, voting separately as a single class, have the right to elect at least two trustees at all times. The remaining trustees will be elected by holders of common shares and preferred shares, voting together as a single class. In addition, subject to the prior rights, if any, of the holders of any other class of senior securities outstanding, the holders of any preferred shares have the right to elect a majority of the trustees of the Trust at any time two years' dividends on any preferred shares are unpaid. The 1940 Act also requires that, in addition to any approval by shareholders that might otherwise be required, the approval of the holders of a majority of any outstanding preferred shares, voting separately as a class, would be required to (i) adopt any plan of reorganization that would adversely affect the preferred shares, and (ii) take any action requiring a vote of security holders under Section 13(a) of the 1940 Act, including, among other things, changes in the Trust's subclassification as a closed-end investment company or changes in its fundamental investment restrictions. As a result of these voting rights, the Trust's ability to take any such actions may be impeded to the extent that are any preferred shares outstanding. The Board presently intends that, except as otherwise indicated in this Prospectus Supplement and except as otherwise required by applicable law, holders of preferred shares will have equal voting rights with holders of common shares (one vote per share, unless otherwise required by the 1940 Act) and will vote together with holders of common shares as a single class.

The affirmative vote of the holders of a majority of the outstanding preferred shares, voting as a separate class, will be required to amend, alter or repeal any of the preferences, rights or powers of holders of preferred shares that materially and adversely affect such preferences, rights or powers, or to increase or decrease the

authorized number of preferred shares. The class vote of holders of preferred shares described above will in each case be in addition to any other vote required to authorize the action in question.

Redemption, Purchase and Sale of Preferred Shares by the Trust. The terms of the preferred shares are expected to provide that (i) they are redeemable by the Trust in whole or in part at the original purchase price per share plus accrued dividends per share, (ii) the Trust may tender for or purchase preferred shares, and (iii) the Trust may subsequently resell any shares so tendered for or purchased.

Any redemption or purchase of preferred shares by the Trust will reduce the leverage applicable to the common shares, while any resale of shares by the Trust will increase that leverage.

The discussion above describes the possible offering of preferred shares by the Trust. If the Board determines to proceed with such an offering, the terms of the preferred shares may be the same as, or different from, the terms described above, subject to applicable law and the Trust's Agreement and Declaration of Trust. The Board, without the approval of the holders of common shares, may authorize an offering of preferred shares or may determine not to authorize such an offering and may fix the terms of the preferred shares to be offered.

SUBSCRIPTION RIGHTS

General

We may issue subscription rights to holders of our common and/or preferred shares to purchase common and/or fixed rate preferred shares. Subscription rights may be issued independently or together with any other offered security and may or may not be transferable by the person purchasing or receiving the subscription rights. In connection with a subscription rights offering to holders of our common and/or preferred shares, we would distribute certificates evidencing the subscription rights and a Prospectus Supplement to our common or preferred shareholders, as applicable, as of the record date that we set for determining the shareholders eligible to receive subscription rights in such subscription rights offering.

The applicable Prospectus Supplement would describe the following terms of subscription rights in respect of which this Prospectus is being delivered:

- the period of time the offering would remain open;
- the title of such subscription rights;
- the exercise price for such subscription rights (or method of calculation thereof);
- the ratio of the offering;
- the number of such subscription rights issued to each shareholder;
- the extent to which such subscription rights are transferable and the market on which they may be traded if they are transferable;
- the date on which the right to exercise such subscription rights shall commence, and the date on which such right shall expire (subject to any extension);
- the extent to which such subscription rights include an over-subscription privilege with respect to unsubscribed securities and the terms of such over-subscription privilege;
- any termination right we may have in connection with such subscription rights offering; and
- any other terms of such subscription rights, including exercise, settlement and other procedures and limitations relating to the transfer and exercise of such subscription rights.

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Exercise of Subscription Rights

Each subscription right would entitle the holder of the subscription right to purchase for cash such amount of shares of common shares at such exercise price as shall in each case be set forth in, or be determinable as set forth in, the Prospectus Supplement relating to the subscription rights offered thereby. Under the 1940 Act, we may generally only offer subscription rights that expire not later than 120 days after their issuance and are issued exclusively and ratably to a class or classes of our security holders. Subscription rights may be exercised at any time up to the close of business on the expiration date for such subscription rights set forth in the Prospectus Supplement. After the close of business on the expiration date, all unexercised subscription rights would become void.

Subscription rights may be exercised as set forth in the Prospectus Supplement relating to the subscription rights offered thereby. Upon receipt of payment and the subscription rights certificate properly completed and duly executed at the corporate trust office of the subscription rights agent or any other office indicated in the Prospectus Supplement we will forward, as soon as practicable, the common shares purchasable upon such exercise. To the extent permissible under applicable law, we may determine to offer any unsubscribed offered securities directly to persons other than shareholders, to or through agents, underwriters or dealers or through a combination of such methods, as set forth in the applicable Prospectus Supplement. The Trust's common shareholders will indirectly bear all of the expenses of any subscription rights offerings, regardless of whether the Trust's common shareholders exercise any subscription rights.

Dilutive Effect

The Trust may effectuate one or more rights offerings, as part of which the Trust will issue subscription rights. In any such event, shareholders who do not fully exercise their subscription rights should expect that they will, at the completion of a rights offering pursuant to this Prospectus, own a smaller proportional interest in the Trust than would otherwise be the case if they fully exercised their rights. We cannot state precisely the amount of any such dilution in share ownership because we do not know at this time what proportion of the shares will be purchased as a result of such rights offering. These shareholders will also experience a disproportionately greater decrease in their participation in the Trust's earnings and assets and their voting power than the increase the Trust will experience in its assets, potential earning power and voting interests due to such offering. These shareholders may also experience a decline in the market price of their shares, which often reflects to some degree announced or potential increases and decreases in net asset value per share. This decrease could be more pronounced as the size of the offering and level of discounts increases. Further, if current shareholders do not purchase any shares to maintain their percentage interest, regardless of whether such offering is above or below the then current net asset value, their voting power will be diluted.

In addition, if the subscription price in any such offering is less than the net asset value per share of our common shares, then shareholders would experience an immediate dilution of the aggregate net asset value of their shares as a result of the offering. The amount of any decrease in net asset value is not predictable because it is not known at this time what the subscription price and net asset value per share will be on the expiration date of a rights offering or what proportion of the shares will be purchased as a result of such rights offering. Any dilution could be substantial and may be compounded by any subsequent rights offering the Trust may undertake.

U.S. Federal Income Tax Consequences of an Issuance of Subscription Rights to Common Shareholders

The following is a summary of the material U.S. federal income tax consequences of an issuance of subscription rights to our common shareholders pursuant to this Prospectus (for purposes of this section, each such issuance is referred to as an "offer" and each subscription right, a "right"), under the provisions of the Code, U.S. Treasury regulations promulgated under the Code ("Treasury regulations"), and other applicable authority in effect as of the date of the Prospectus that are generally applicable to common shareholders and other holders of rights to purchase common shares who are "United States persons" within the meaning of the Code. This

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summary does not address any state, local, foreign or other tax consequences. These authorities may be changed, possibly with retroactive effect, or become subject to new legislative, administrative, or judicial interpretation. Common shareholders or other holders of rights should consult their tax advisors regarding the tax consequences, including U.S. federal, state, or local, or foreign or other tax consequences, relevant to their particular circumstances. This summary assumes that the rights are issued separately by the Trust and not as part of a unit consisting of two or more securities.

The Trust believes that the value of any right issued pursuant to an offer will not be includible in the income of a common shareholder at the time the right is issued, and the Trust will not report to the IRS that a common shareholder has income as a result of the issuance of the right; however, depending on the specific terms of the offer, there may be no guidance directly on point concerning certain aspects of the taxation of the offer. The remainder of this discussion assumes that the receipt of the rights by common shareholders will not be a taxable event for U.S. federal income tax purposes.

The basis of a right issued to a common shareholder will be zero, and the basis of the common share(s) with respect to which the right was issued (the "Old Share(s)") will remain unchanged, except that the shareholder must allocate its basis in the Old Share(s) between the Old Shares and the right in proportion to their respective fair market values on the date of distribution of the right if (i) either (a) the fair market value of the right on the date of distribution is at least 15% of the fair market value of the Old Share(s) on that date, or (b) the shareholder affirmatively elects (in the manner set out in Treasury regulations) to allocate to the right a portion of the basis of the Old Share(s), and (ii) the right does not expire unexercised in the hands of the shareholder (i.e., the shareholder either exercises or sells the right following its issuance). In compliance with Treasury regulations, the Trust will report to the common shareholders and to the IRS within 45 days of the distribution of the rights (or, if earlier, January 15 of the year following the calendar year of the distribution), either by mail or on the Trust's website, the effect, if any, of the offer on the common shareholders' basis in their Old Shares. Any determination the Trust makes with respect to the value of the rights in connection with this reporting requirement will not be binding on the IRS. Shareholders should consult with their tax advisers to determine the proper allocation, if any, of tax basis between rights and Old Shares, including whether the election described above would be appropriate for their situation.

No loss will be recognized by a common shareholder if a right distributed to such shareholder expires unexercised in the hands of such shareholder.

The basis of a right purchased in the market generally will be its purchase price. If a right that has been purchased in the market expires unexercised, the holder will recognize a loss equal to the basis of the right.

Any gain or loss on the sale of a right or, in the case of rights purchased in the market, any loss from a right that expires unexercised, will be a capital gain or loss if the right is held as a capital asset (which, in the case of rights issued to common shareholders, will normally depend on whether the Old Shares are held as capital assets), and will be a long-term capital gain or loss if the holding period of the right exceeds (or is deemed to exceed) one year. The deductibility of capital losses is subject to limitation. The holding period of a right issued to a common shareholder will include the holding period of the Old Share(s).

No gain or loss will be recognized by a holder upon the exercise of a right, and the basis of any common share acquired upon exercise (the "New Share") will equal the sum of the basis, if any, of the right and the subscription price for the New Share. When a holder exercises a right, the holder's holding period in the New Share(s) does not include the time during which the holder held the unexercised right; the holding period of the New Share(s) will begin no later than the date following the date of exercise of the right.

Employee retirement plans and other tax-exempt entities, including governmental plans, should also be aware that if they borrow in order to finance their exercise of rights, they may become subject to the tax on unrelated business taxable income ("UBTI") under Section 511 of the Code. If any portion of an individual retirement account ("IRA") is used as security for a loan, the portion so used may also be treated as distributed to the IRA depositor.

For more information relating to the U.S. federal income tax consequences of an investment in the Trust, see "Tax Matters" below and "Tax Matters" in the Statement of Additional Information.

EMPLOYEE PLAN CONSIDERATIONS

The Trust may accept investments from employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") such as corporate pension plans ("ERISA Plans"); plans and accounts subject to Section 4975 of the Code, such as IRAs and Keogh plans ("Tax-Qualified Plans"); and entities the underlying assets of which include "plan assets" subject to ERISA or Section 4975 of the Code (together with ERISA Plans and Tax-Qualified Plans, "Benefit Plan Investors"). Benefit Plans Investors and their fiduciaries should consider, among other things, the matters described below.

A "fiduciary" for purposes of ERISA with respect to an ERISA plan must discharge its duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In determining whether a particular investment is appropriate, a fiduciary should give appropriate consideration to those facts and circumstances that, given the scope of the fiduciary's investment duties, the fiduciary knows or should know are relevant to an investment in the Trust, including the role the investment in the Trust plays in the portion of the ERISA Plan's investment portfolio with respect to which the fiduciary has investment duties. Because the Trust is a registered investment company under the Investment Company Act, it is anticipated that the Trust's assets will not be deemed "plan assets" for purposes of ERISA or the Code.

Additional contributions of cash to an ERISA Plan or a Tax-Qualified Plan (other than rollover contributions or trustee-to-trustee transfers from other plans) in order to exercise rights would be treated as contributions to such plan and, when taken together with contributions previously made, may result in, among other things, excise taxes for excess or nondeductible contributions. Additional cash contributions could cause the maximum contribution limitations of Section 415 of the Code or other qualification rules to be violated. In addition, there may be other adverse tax and ERISA consequences if rights are sold or transferred by a plan.

Plans also should be aware that if they borrow in order to finance their exercise of rights, they may become subject to the tax on UBTI under Section 511 of the Code. If any portion of an IRA is used as security for a loan, the portion so used also is treated as distributed to the IRA depositor.

ERISA's fiduciary responsibility requirements, and the ERISA and Code prohibited transaction rules that affect the exercise or transfer of rights. Due to the complexity of these rules and the penalties for noncompliance, Benefit Plan Investors should consult with their counsel and other advisers regarding an investment in the Trust and the consequences of their exercise or transfer of rights under ERISA and the Code.

Market and Net Asset Value Information

The Trust's common shares are listed on the NYSE under the symbol HFRO. The Trust's common shares commenced trading on the NYSE in November 2017. In the trading history of the Trust's common shares, the Trust's common shares have traded at both a premium and a discount to net asset value. The Trust cannot predict whether its shares will trade in the future at a premium or discount to net asset value. Issuance of additional common shares may have an adverse effect on prices in the secondary market for the Trust's common shares by increasing the number of shares available, which may put downward pressure on the market price for the shares.

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The following table sets forth, for each of the periods indicated, the high and low closing market prices of the Trust's common shares on the NYSE, the corresponding net asset value per share on such dates and the corresponding premium/discount to net asset value per share on such dates. See "Net Asset Value" for information as to how the Trust's net asset value is determined.

	Market Price		Net Asset Value per Share		Premium/ (Discount) as a % of Net Asset Value	
Quarter	High	Low	High	Low	High	Low
3rd Quarter 2017	$15.07	$14.97	$15.05	$14.95	0.13%	0.00%
4th Quarter 2017	$15.65	$15.01	$15.17	$14.94	4.40%	-0.07%
1st Quarter 2018	$16.24	$15.30	$15.30	$15.11	6.85%	0.59%
2nd Quarter 2018	$16.12	$15.58	$15.27	$15.05	7.04%	2.83%
3rd Quarter 2018	$16.00	$15.42	$15.23	$15.07	5.54%	1.65%
4th Quarter 2018	$15.54	$12.20	$15.20	$14.41	2.37%	-15.40%
1st Quarter 2019	$14.10	$12.95	$14.68	$14.39	-2.35%	-10.19%

The Trust's net asset value per common share at the close of business on May 31, 2019 was $14.60, and the last reported sale price of a common share on the NYSE on that day was $13.33, a discount to net asset value of 8.70%.

Anti-Takeover Provisions in the Agreement and Declaration of Trust

The Agreement and Declaration of Trust includes provisions that could have the effect of limiting the ability of other entities or persons to acquire control of the Trust or to change the composition of its Board. This could have the effect of depriving shareholders of an opportunity to sell their shares at a premium over prevailing market prices by discouraging a third party from seeking to obtain control over the Trust. Such attempts could have the effect of increasing the expenses of the Trust and disrupting the normal operation of the Trust. The Board is divided into three classes, with the terms of one class expiring at each annual meeting of shareholders. At each annual meeting, one class of trustees is elected to a three-year term. This provision could delay for up to two years the replacement of a majority of the Board. A trustee may be removed from office (for cause, and not without cause) by the action of a majority of the remaining trustees followed by a vote of the holders of at least 75% of the shares then entitled to vote for the election of the respective trustee.

In addition, the Trust's Agreement and Declaration of Trust requires the favorable vote of a majority of the Board followed by the favorable vote of the holders of at least 75% of the outstanding shares of each affected class or series of the Trust, voting separately as a class or series, to approve, adopt or authorize certain transactions with 5% or greater holders of a class or series of shares and their associates, unless the transaction has been approved by at least 80% of the trustees, in which case "a majority of the outstanding voting securities" (as defined in the 1940 Act) of the Trust shall be required. For purposes of these provisions, a 5% or greater holder of a class or series of shares (a "Principal Shareholder") refers to any person who, whether directly or indirectly and whether alone or together with its affiliates and associates, beneficially owns 5% or more of the outstanding shares of all outstanding classes or series of shares of beneficial interest of the Trust.

The 5% holder transactions subject to these special approval requirements are: the merger or consolidation of the Trust or any subsidiary of the Trust with or into any Principal Shareholder; the issuance of any securities of the Trust to any Principal Shareholder for cash, except pursuant to any automatic dividend reinvestment plan; the sale, lease or exchange of all or any substantial part of the assets of the Trust to any Principal Shareholder, except assets having an aggregate fair market value of less than 2% of the total assets of the Trust, aggregating for the purpose of such computation all assets sold, leased or exchanged in any series of similar transactions within a twelve-month period; or the sale, lease or exchange to the Trust or any subsidiary of the Trust, in

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exchange for securities of the Trust, of any assets of any Principal Shareholder, except assets having an aggregate fair market value of less than 2% of the total assets of the Trust, aggregating for purposes of such computation all assets sold, leased or exchanged in any series of similar transactions within a twelve-month period.

For the purposes of calculating "a majority of the outstanding voting securities" under the Trust's Agreement and Declaration of Trust, each class and series of the Trust shall vote together as a single class, except to the extent required by the 1940 Act or the Trust's Agreement and Declaration of Trust, with respect to any class or series of shares. If a separate class vote is required, the applicable proportion of shares of the class or series, voting as a separate class or series, also will be required.

The Agreement and Declaration of Trust also provides that the Trust may be liquidated upon the approval of 80% of the trustees.

The Board has determined that provisions with respect to the Board and the shareholder voting requirements described above, which voting requirements are greater than the minimum requirements under Delaware law or the 1940 Act, are in the best interest of shareholders generally. Reference should be made to the Trust's Agreement and Declaration of Trust, on file with the Commission, for the full text of these provisions, the material terms of which are summarized in this Prospectus.

Closed-End Fund Structure

The Trust is a non-diversified, closed-end management investment company (commonly referred to as a closed-end fund). Closed-end funds differ from open-end funds (which are generally referred to as mutual funds) in that closed-end funds generally list their shares for trading on a stock exchange and do not redeem their shares at the request of the shareholder. This means that if you wish to sell your shares of a closed-end fund you must trade them on the market like any other stock at the prevailing market price at that time. In a mutual fund, if the shareholder wishes to sell shares of the fund, the mutual fund will redeem or buy back the shares at "net asset value" (less a redemption fee, if applicable, or contingent deferred sales charge, if applicable). Also, mutual funds generally offer new shares on a continuous basis to new investors, and closed-end funds generally do not. The continuous inflows and outflows of assets in a mutual fund can make it difficult to manage a mutual fund's investments. By comparison, closed-end funds are generally able to stay more fully invested in securities that are consistent with their investment objective and also have greater flexibility to make certain types of investments and to use certain investment strategies, such as financial leverage and investments in illiquid securities.

Shares of closed-end funds frequently trade at a discount to their net asset value. Because of this possibility and the recognition that any such discount may not be in the interest of shareholders, the Board might consider from time to time engaging in open-market repurchases, tender offers for shares or other programs intended to reduce the discount. We cannot guarantee or assure, however, that the Board will decide to engage in any of these actions, nor is there any guarantee or assurance that such actions, if undertaken, would result in the shares trading at a price equal or close to net asset value per share. The Board might also consider converting the Trust to an open-end mutual fund, which would also require a vote of the shareholders of the Trust.

Repurchase of Common Shares; Discount

Shares of closed-end investment companies often trade at a discount to their net asset value, and the Trust's common shares may also trade at a discount to their net asset value, although it is possible that they may trade at a premium above net asset value. The market price of the Trust's common shares will be determined by such factors as relative demand for and supply of such common shares in the market, the Trust's net asset value, general market and economic conditions and other factors beyond the control of the Trust. See "Net Asset Value." Although the Trust's common shareholders will not have the right to redeem their common shares, the

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Trust may take action to repurchase common shares in the open market or make tender offers for its common shares. This may have the effect of reducing any market discount from net asset value. The Board may decide not to take any of these actions. In addition, there can be no assurance that share repurchases or tender offers, if undertaken, will reduce market discount.

The amount and timing of the repurchases will be at the discretion of the Trust's investment adviser, subject to market conditions and investment considerations. There is no assurance that the Trust will purchase shares at any particular discount levels or in any particular amounts. Any repurchases made under the Repurchase Program would be made on a national securities exchange at the prevailing market price, subject to exchange requirements regarding volume, timing and other limitations under federal securities laws. The Repurchase Program seeks to enhance shareholder value by purchasing shares trading at a discount from their net asset value per share.

Notwithstanding the foregoing, at any time when there are outstanding borrowings, the Trust may not purchase, redeem or otherwise acquire any of its common shares unless (i) all accrued preferred shares dividends have been paid, and (ii) at the time of such purchase, redemption or acquisition, the net asset value of the Trust's portfolio (determined after deducting the acquisition price of the common shares) is at least 200% of the liquidation value of the outstanding borrowings. Any service fees incurred in connection with any tender offer made by the Trust will be borne by the Trust and will not reduce the stated consideration to be paid to tendering shareholders.

There is no assurance that, if action is undertaken to repurchase or tender for common shares, such action will result in the common shares trading at a price which approximates their net asset value. Although share repurchases and tenders could have a favorable effect on the market price of the Trust's common shares, you should be aware that the acquisition of common shares by the Trust will decrease the capital of the Trust and, therefore, may have the effect of increasing the Trust's expense ratio and decreasing the asset coverage with respect to any borrowings. Any share repurchases or tender offers will be made in accordance with requirements of the Exchange Act, the 1940 Act, and the principal stock exchange on which the common shares are traded. See the Trust's Statement of Additional Information for a discussion of the U.S. federal income tax implications of a repurchase or tender offer by the Trust.

Before deciding whether to take any action if the common shares trade below net asset value, the Board would likely consider all relevant factors, including the extent and duration of the discount, the liquidity of the Trust's portfolio, the impact of any action that might be taken on the Trust or its shareholders and market considerations. Based on these considerations, even if the Trust's shares should trade at a discount, the Board may determine that, in the interest of the Trust and its shareholders, no action should be taken.

Tax Matters

The following discussion is a summary of some of the important U.S. federal income tax considerations generally applicable to an investment in the Trust. Your investment may have other tax implications. The discussion reflects provisions of the Code, existing Treasury regulations, rulings published by the IRS, and other applicable authorities, as of the date of this Prospectus. These authorities may be changed, possibly with retroactive effect, or subject to new legislative, administrative or judicial interpretations. No attempt is made to present a detailed explanation of all U.S. federal, state, local and foreign tax law concerns affecting the Trust and its shareholders, or to address all aspects of taxation that may apply to individual shareholders or to specific types of shareholders, such as foreign persons, that may qualify for special treatment under U.S. federal income tax laws. The discussion set forth herein does not constitute tax advice. Please consult your tax advisor about foreign, federal, state, local or other tax laws applicable to you in light of your particular circumstances. For more information, including for a summary of certain tax consequences to foreign investors of investing in the Trust, please see "Income Tax Considerations" in the SAI.

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Taxation of the Trust

The Trust has elected to be treated and intends to qualify annually for treatment as a regulated investment company (a "RIC") under Subchapter M of the Code, including by complying with the applicable qualifying income and diversification requirements. If the Trust so qualifies and satisfies certain distribution requirements, the Trust generally will not be subject to U.S. federal income tax on income and gains that the Trust distributes to its shareholders in a timely manner in the form of dividends, including capital gain dividends (as defined below). As described in "Dividends and Other Distributions" above, the Trust intends to distribute at least annually all or substantially all of its net investment income and net realized capital gains. The Trust will be subject to the Trust-level income tax at regular corporate income tax rates on any taxable income or gains that it does not distribute to its shareholders.

Amounts not distributed on a timely basis in accordance with a calendar year distribution requirement will be subject to a nondeductible 4% U.S. federal excise tax at the Trust level. To avoid the tax, the Trust must distribute during each calendar year an amount at least equal to the sum of (i) 98% of its ordinary income (not taking into account any capital gains or losses) for the calendar year, (ii) 98.2% of its capital gains in excess of its capital losses (adjusted for certain ordinary losses) for a one-year period ending on October 31 of the calendar year, and (iii) any undistributed amounts described in (i) and (ii) above from the prior year on which the Trust paid no U.S. federal income tax. While the Trust intends to distribute any income and capital gain in the manner necessary to minimize imposition of the 4% U.S. federal excise tax, there can be no assurance that sufficient amounts of the Trust's taxable income and capital gain will be distributed to avoid entirely the imposition of the tax. In that event, the Trust will be liable for the excise tax only on the amount by which it does not meet the foregoing distribution requirement.

Additionally, if for any taxable year the Trust were not to qualify as a RIC, and were ineligible to or otherwise did not cure such failure, all of its taxable income and gain would be subject to the Trust-level tax at regular corporate income tax rates without any deduction for distributions to shareholders. This treatment would reduce the Trust's net income available for investment or distribution to its shareholders. In addition, all distributions from earnings and profits, including any net long-term capital gains, would be taxable to shareholders as ordinary income. Some portions of such distributions might be eligible for the dividends-received deduction in the case of corporate shareholders or to be treated as "qualified dividend income" in the case of individual shareholders. The Trust also could be required to recognize unrealized gains, pay substantial taxes and interest and make substantial distributions before requalifying as a RIC that is accorded special tax treatment.

The tax rules applicable to certain derivative instruments in which the Trust may invest are uncertain under current law, including the provisions applicable to RICs under Subchapter M of the Code. For instance, the timing and character of income or gains arising from certain derivatives can be uncertain, including for Subchapter M purposes. Accordingly, while the Trust intends to account for such transactions in a manner it deems to be appropriate, an adverse determination or future guidance by the IRS with respect to one or more of these rules (which determination or guidance could be retroactive) may adversely affect the Trust's ability to meet one or more of the relevant requirements to maintain its qualification as a RIC, as well as to avoid Trust-level taxes.

Certain of the Trust's investment practices, including entering into futures, options and other derivative transactions, short sales, and its hedging activities, generally, as well as the Trust's investments in certain types of securities, including certain preferred stock, debt obligations issued or purchased at a discount and foreign debt securities may be subject to special and complex U.S. federal income tax provisions that may, among other things: (i) disallow, suspend or otherwise limit the allowance of certain losses or deductions; (ii) convert lower taxed long-term capital gain or "qualified dividend income" into higher taxed short-term capital gain or ordinary income; (iii) accelerate the recognition of income; (iv) convert short-term losses into long-term losses; (v) cause the Trust to recognize income or gain without a corresponding receipt of cash; (vi) adversely affect the time as to when a purchase or sale of stock or other securities is deemed to occur; (vii) cause adjustments in the holding periods of the Trust's securities; or (viii) otherwise adversely alter the characterization of certain complex

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financial transactions. These U.S. federal income tax provisions could therefore affect the amount, timing and/or character of distributions to Trust shareholders. In particular, a substantial portion of the Trust's investments in loans and other debt obligations will be treated as having "market discount" and/or "original issue discount" for U.S. federal income tax purposes, which, in some cases, could be significant, and could cause the Trust to recognize income in respect of these investments before, or without receiving, cash representing such income. The Trust intends to monitor its transactions, may make certain tax elections, and may be required to, among other things, dispose of securities (including at a time when it is not advantageous to do so) to mitigate the effect of these provisions, prevent the Trust's disqualification as a RIC, or avoid incurring Trust-level U.S. federal income and/or excise tax.

Investments in below investment grade loans and other debt obligations that are at risk of or in default present special tax issues for the Trust. Tax rules are not entirely clear about issues such as whether and to what extent the Trust should recognize market discount on a distressed debt obligation, when the Trust may cease to accrue interest, original issue discount or market discount, when and to what extent the Trust may take deductions for bad debts or worthless securities and how the Trust should allocate payments received on obligations in default between principal and income. These and other related issues will be addressed by the Trust as necessary, in order to seek to ensure that it distributes sufficient income to preserve its status as a RIC and that it does not become subject to Trust-level U.S. federal income and/or excise taxes.

Special tax rules may change the treatment of gains and losses recognized by the Trust when the Trust invests in certain foreign debt securities or engages in certain foreign currency transactions. The application of these special rules may also affect the timing, amount or character of distributions made by the Trust. Interest and other income, as well as gain or proceeds received by the Trust from investments in foreign securities may be subject to withholding and other taxes imposed by foreign countries on dividends, interest, capital gains or other income or proceeds. Tax treaties between the U.S. and other countries may reduce or eliminate such taxes. Foreign withholding and other taxes paid by the Trust will reduce the return from the Trust's investments. Under some circumstances, the Trust may be eligible to make a special election that generally will require you to include in income your share of any foreign income taxes paid by the Trust or by certain underlying investment companies in which the Trust invests. You may be able either to deduct this amount from your income or claim it as a foreign tax credit. There is no assurance that the Trust will make this special election for a taxable year even if it is eligible to do so.

Dividends paid to you by the Trust from net capital gain realized by the Trust (that is, the excess of any net long-term capital gain over net short-term capital loss, in each case with reference to any loss carryforwards) that the Trust reports as capital gain dividends ("capital gain dividends") generally are treated as long-term capital gain includible in net capital gain and taxable to individuals at reduced rates, regardless of how long you have held your shares. Distributions of investment income reported by the Trust as derived from "qualified dividend income" will be taxed in the hands of individuals at the rates applicable to net capital gains, provided holding periods and other requirements are met at both the shareholder and Trust level. All other dividends paid to you by the Trust (including dividends from short-term capital gain (that is, the excess of any net short-term capital gain over any net long-term capital loss)) from its current or accumulated earnings and profits generally are taxable to you as ordinary income. The Trust generally does not expect a significant portion of its distributions to qualify as qualified dividend income. A 3.8% Medicare contribution tax is imposed on the net investment income of certain individuals, trusts and estates to the extent their income exceeds certain threshold amounts. Net investment income generally includes for this purpose dividends paid by the Trust, including any capital gain dividends, and net gains recognized on the taxable sale, redemption or exchange of shares of the Trust. Shareholders are advised to consult their tax advisors regarding the possible implications of this additional tax on their investment in the Trust.

To the extent that the amount of the Trust's total distributions exceed the Trust's current and accumulated earnings and profits for a taxable year, the excess will generally be treated as a tax-free return of capital up to the amount of your tax basis in the shares. The amount treated as a tax-free return of capital will reduce your tax basis in the shares, thereby increasing the amount of gain or reducing the amount of loss on a subsequent sale of

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the shares. Any amounts distributed to you in excess of your tax basis in the shares will be taxable to you as capital gain. Any such capital gain will be long-term capital gain includible in net capital gain if you have held the applicable Trust shares for more than one year.

Dividends and other taxable distributions are taxable to you as described herein, whether you receive them in cash or reinvest them in additional shares. Dividends and other distributions paid by the Trust generally are treated as received by you at the time the dividend or distribution is made. If, however, the Trust pays you a dividend in January that was declared in the previous October, November or December and you were a shareholder of record on a specified record date in one of those months, then such dividend will be treated for tax purposes as having been paid by the Trust and received by you on December 31 of the year in which the dividend was declared.

The price of shares purchased at any time may reflect the amount of a forthcoming dividend or other distribution. If you purchase shares just prior to a dividend, you may receive a distribution that is taxable to you even though it represents in part a return of your invested capital.

The Trust (or your broker or other financial intermediary through which you own your shares) will send you information after the end of each calendar year setting forth the amount and tax status of any dividends or other distributions paid to you by the Trust. Dividends and other distributions may also be subject to state, local and other taxes.

In addition, any loss realized upon a taxable sale or exchange of Trust shares held (or deemed held) by you for six months or less will be treated as long-term, rather than short-term, to the extent of any capital gain dividends received (or deemed received) by you with respect to those shares. Present law taxes both long-term and short-term capital gains of corporations at the rates applicable to ordinary income.

The Trust (or, if Trust shares are purchased through a Financial Advisor, a Financial Advisor) may be required to withhold, for U.S. federal backup withholding tax purposes, a portion of the dividends and distributions payable to you if: (i) you fail to provide the Trust (or Financial Advisor) with your correct taxpayer identification number (in the case of an individual, generally, such individual's social security number) or to make the required certification; or (ii) the Trust (or Financial Advisor) has been notified by the IRS that you are subject to backup withholding. Certain shareholders are exempt from backup withholding. Backup withholding is not an additional tax and any amount withheld may be refunded or credited against your U.S. federal income tax liability, if any, provided that you furnish the required information to the IRS.

REIT Tax Considerations

Requirements for Qualification as a REIT

To qualify for the beneficial tax regime applicable to REITs, the REIT Subsidiary must meet and continue to meet the requirements described below relating to organization, sources of income, nature of assets and distributions of income to its stockholders.

Organizational Requirements

The Code defines a REIT as a domestic corporation, trust or association:

(1) which is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest;

(3) which would be taxable as a domestic corporation but for Sections 856 through 859 of the Code;

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(4) which is neither a financial institution nor an insurance company subject to certain provisions of the Code;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) not more than 50.0% in value of the outstanding stock of which is owned, directly or indirectly applying various attribution rules, by or for five or fewer individuals (as defined in the Code to include for these purposes certain entities) (the "Not Closely Held Test");

(7) which makes an election to be a REIT (or has made such election for a previous taxable year which has not been revoked or terminated) and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;

(8) which uses the calendar year as its taxable year; and

(9) which meets certain other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) through (4), inclusive, must be met during the entire taxable year, that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months, and that condition (6) must be met during the last half of each taxable year. For purposes of condition (6), the beneficiaries of a pension or profit-sharing trust described in Section 401(a) of the Code, and not the pension or profit-sharing trust itself, are treated as REIT stockholders. Conditions (5) and (6) do not apply to a REIT until the second calendar year in which the REIT qualifies as such. The REIT Subsidiary will be treated as having met condition (6) above for a taxable year if it complied with certain Treasury Regulations for ascertaining the ownership of its stock for such year and if it did not know (or after the exercise of reasonable diligence would not have known) that its stock was sufficiently closely held during such year to cause the REIT Subsidiary to fail condition (6).

The Trust intends to structure and operate the REIT Subsidiary and cause it to conduct its activities in a manner designed to satisfy all of these requirements. However, the application of such requirements is complex, and it is possible that the Internal Revenue Service may interpret or apply those requirements in a manner that jeopardizes the ability of the REIT Subsidiary to satisfy all of the requirements for qualification as a REIT or that the REIT Subsidiary may be unable to satisfy all of the applicable requirements.

Distribution Requirements

To obtain the favorable tax treatment afforded to REITs under the Code, among other things, the REIT Subsidiary generally will be required each year to distribute to its stockholders at least 90% of its REIT taxable income determined without regard to the dividends-paid deduction and excluding net capital gain. To the extent that it does not distribute all of its net capital gains, or distributes at least 90%, but less than 100%, of its REIT taxable income, as adjusted, it will have to pay a corporate-level tax on amounts retained. Furthermore, if it fails to distribute during each calendar year at least the sum of (a) 85% of its ordinary income for that year, (b) 95% of its capital gain net income for that year, and (c) any undistributed taxable income from prior periods, it would have to pay a 4% nondeductible excise tax on the excess of the amounts required to be distributed over the sum of (i) the amounts that it actually distributed and (ii) the amounts it retained and upon which it paid income tax at the corporate level.

These requirements could cause the REIT Subsidiary to distribute amounts that otherwise would be spent on investments in real estate assets, and it is possible that the REIT Subsidiary might be required to borrow funds, possibly at unfavorable rates, or sell assets to fund the required distributions.

For so long as the REIT Subsidiary qualifies as a REIT, generally, the REIT Subsidiary will not have to pay corporate-level U.S. federal income taxes on any income that it distributes to its shareholders from its tax earnings and profits.

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Failure to Qualify as a REIT

If the REIT Subsidiary fails to qualify as a REIT for any taxable year and it does not qualify for certain statutory relief provisions, it will be subject to U.S. federal income tax on its taxable income at corporate rates. In addition, it will generally be disqualified from treatment as a REIT for the four taxable years following the year of losing its REIT status. Losing its REIT status will reduce the REIT Subsidiary's net earnings available for investment or distribution to stockholders because of the additional tax liability. In addition, distributions to stockholders will no longer qualify for the dividends paid deduction, and the REIT Subsidiary will no longer be required to make distributions equal to at least 90% of its taxable income. If the REIT Subsidiary fails to qualify as a REIT, it may be required to borrow funds or liquidate some of its investments in order to have funds with which to pay any resulting entity level tax.

Because of the minimum distribution requirements imposed by the Code, REITs tend be dependent on the acquisition of assets with high positive cash flows. The minimum distribution requirements also tend to limit the degree to which REITs can retain and redeploy capital. These requirements could cause the REIT Subsidiary to distribute amounts that otherwise would be spent on investments in real estate-related assets, and it is possible that it might be required to borrow funds, possibly at unfavorable rates, or sell assets to fund these distributions. REITs are particularly vulnerable to defaults by their borrowers and there are significant limitations on their ability to realize income from property acquired as a result of foreclosure.

THE FOREGOING IS A GENERAL AND ABBREVIATED SUMMARY OF THE PROVISIONS OF THE CODE AND THE TREASURY REGULATIONS IN EFFECT AS THEY DIRECTLY GOVERN THE TAXATION OF THE TRUST AND ITS SHAREHOLDERS. THESE PROVISIONS ARE SUBJECT TO CHANGE BY LEGISLATIVE OR ADMINISTRATIVE ACTION, AND ANY SUCH CHANGE MAY BE RETROACTIVE. A MORE COMPLETE DISCUSSION OF THE TAX RULES APPLICABLE TO THE TRUST CAN BE FOUND IN THE STATEMENT OF ADDITIONAL INFORMATION, WHICH IS INCORPORATED BY REFERENCE INTO THIS PROSPECTUS. SHAREHOLDERS ARE URGED TO CONSULT THEIR TAX ADVISERS REGARDING SPECIFIC QUESTIONS AS TO U.S. FEDERAL, STATE, LOCAL AND FOREIGN INCOME OR OTHER TAXES.

Custodian and Transfer Agent

The custodian of the assets of the Trust and its wholly-owned subsidiaries is Bank of New York Mellon (240 Greenwich Street, New York, New York 10286). The custodian performs custodial services for the Trust. American Stock Transfer & Trust Company, LLC (6201 15th Avenue, Brooklyn, New York 11219; telephone (718) 921-8200) serves as the Trust's transfer agent.

Privacy Principles of the Trust

The Trust is committed to maintaining the privacy of its shareholders and to safeguarding their non-public personal information. The following information is provided to help you understand what personal information the Trust collects, how the Trust protects that information and why, in certain cases, the Trust may share information with select other parties.

Generally, the Trust does not receive any non-public personal information relating to its shareholders, although certain non-public personal information of its shareholders may become available to the Trust. The Trust does not disclose any non-public personal information about its shareholders or former shareholders to anyone, except as permitted by law or as is necessary in order to service shareholder accounts (for example, to a transfer agent or third party administrator).

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The Trust restricts access to non-public personal information about its shareholders to employees of the Trust's Adviser and its affiliates with a legitimate business need for the information. The Trust maintains physical, electronic and procedural safeguards designed to protect the non-public personal information of its shareholders.

No dealer, salesperson or any other person has been authorized to give any information or to make any representations other than those contained in this Prospectus in connection with the Offer and, if given or made, such information or representations must not be relied upon as having been authorized by the Trust or the Adviser. This Prospectus does not constitute an offer to sell or the solicitation of any offer to buy any security other than the common shares of the Trust offered by this Prospectus, nor does it constitute an offer to sell or a solicitation of any offer to buy the common shares of the Trust by anyone in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so, or to any such person to whom it is unlawful to make such offer or solicitation. Neither the delivery of this Prospectus nor any sale made hereunder shall, under any circumstances, create any implication that information contained herein is correct as of any time subsequent to the date hereof. However, if any material change occurs while this Prospectus is required by law to be delivered, the Prospectus will be amended or supplemented accordingly.

Where You Can Find Additional Information

We have filed with the Commission a registration statement on Form N-2 together with all amendments and related exhibits under the Securities Act. The registration statement contains additional information about us and the securities being offered by this Prospectus.

We file annual and semi-annual reports, proxy statements and other information with the Commission. You can inspect any materials we file with the Commission, without charge, at the Commission's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the Commission at 1-800-SEC-0330 for further information on the Public Reference Room. The information we file with the Commission is available free of charge by contacting us at 300 Crescent Court, Suite 700, Dallas, Texas 75201 or by telephone at 1-877-665-1287. The Commission also maintains a web site that contains reports, proxy statements and other information regarding registrants, including us, that file such information electronically with the Commission. The address of the Commission's web site is *www.sec.gov*. Unless specifically incorporated into this Prospectus, documents contained on our web site or on the Commission's web site about us are not incorporated into this Prospectus and should not be considered to be part of this Prospectus.

Legal Proceedings

The Trust and NexPoint Strategic Opportunities Fund, an affiliated fund, are the beneficiaries of a +$360 million judgment against Credit Suisse related to a syndicated real estate transaction fraudulently underwritten by Swiss bank. Credit Suisse is appealing the judgment against it. The two funds also are participants in a similar action against Credit Suisse related to five additional real estate deals in which the funds allege Credit Suisse committed fraud in relation to the underwriting. Case or Docket Number: 05-15-01463-CV. Full Names of Principal Parties: Claymore Holdings, LLC v. Credit Suisse AG, Cayman Islands Branch and Credit Suisse Securities (USA) LLC. The Trust would be entitled to 82% of any net amounts ultimately collected on the judgment against Credit Suisse.

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HIGHLAND INCOME FUND

Common Shares

Preferred Shares

Subscription Rights to Purchase Common Shares

Subscription Rights to Purchase Preferred Shares

Subscription Rights to Purchase Common and Preferred Shares

PROSPECTUS

July 1, 2019

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5,400,000 Shares

THE HIGHLAND INCOME FUND

5.375% Series A Cumulative Preferred Shares

(Liquidation Preference $25.00 per share)

PROSPECTUS SUPPLEMENT

Morgan Stanley
Jefferies

July 29, 2019

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Dated July 1, 2019

Highland Income Fund (formerly, Highland Floating Rate Opportunities Fund)
Statement of Additional Information

The Highland Income Fund (the "Trust"), formerly, the Highland Floating Rate Opportunities Fund, is a non-diversified, closed-end management investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act"). This Statement of Additional Information does not constitute a prospectus, but should be read in conjunction with the Prospectus relating thereto dated July 1, 2019, which is incorporated by reference into this Statement of Additional Information. The common shares of the Trust are listed on the New York Stock Exchange (the "NYSE") under the symbol HFRO. This Statement of Additional Information does not include all information that a prospective investor should consider before purchasing common or preferred shares, and investors should obtain and read the Prospectus prior to purchasing shares. A copy of the Prospectus may be obtained without charge by calling 1-800-357-9167. You may also obtain a copy of the Prospectus on the U.S. Securities and Exchange Commission's web site *www.sec.gov*. Capitalized terms used but not defined in this Statement of Additional Information have the meanings ascribed to them in the Prospectus.

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This Statement of Additional Information is dated July 1, 2019

USE OF PROCEEDS

Unless otherwise specified in a Prospectus Supplement, the Trust will invest the net proceeds of any sales of securities (the "Offering") in accordance with the Trust's investment objectives and policies as stated below, or use such proceeds for other general corporate purposes. Assuming current market conditions, the Trust estimates that investment of the net proceeds of the Offering will be substantially complete within one to three months of the completion of the Offering. Pending such investment, it is anticipated that the proceeds of the Offering will be invested in cash and/or short-term debt securities or may pay down a portion of the existing borrowing from the Fund's $350 million credit facility, which currently bears interest at Libor + 1.35% with a maturity date of February 2, 2020.

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INVESTMENT RESTRICTIONS

Fundamental Investment Restrictions. The following are the fundamental investment restrictions of the Trust, which may not be changed without the approval of the holders of a majority of the outstanding common shares and preferred shares, if any, voting together as a single class, and of the holders of a majority of the outstanding preferred shares, if any, voting as a separate class.

1. The Trust will invest at least 25% or more of the value of its total assets at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry, provided that: (i) there is no limitation with respect to obligations issued or guaranteed by the U.S. Government, any state or territory of the United States or any of their agencies, instrumentalities or political subdivisions, and investments by the Trust in any such obligations for which the underlying collateral is real estate will count towards compliance with the 25% limitation; and (ii) notwithstanding this limitation, assets may be invested in the securities of one or more management investment companies or subsidiaries to the extent permitted by the 1940 Act, the rules and regulations thereunder and any applicable exemptive relief;

The Trust may not:

2. Issue senior securities or borrow in excess of the amounts permitted by the 1940 Act[1];
3. Underwrite securities of other issuers, except to the extent that the Trust, in disposing of Trust securities, may be deemed an underwriter within the meaning of the 1933 Act;
4. Purchase or sell real estate, except that the Trust may (a) invest in securities or other instruments directly or indirectly secured by real estate, (b) invest in securities or other instruments issued by issuers that invest in real estate, and (c) hold for prompt sale, real estate or interests in real estate to which it may gain an ownership interest through the forfeiture of collateral securing loans or debt securities held by it;
5. Purchase or sell commodities or commodity contracts, but this shall not prevent the Trust from purchasing, selling and entering into financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), warrants, swaps, forward contracts, foreign currency spot and forward contracts or other derivative instruments that are not related to physical commodities; and
6. Lend any property or make any loan if, as a result, more than 33 1/3% of its total assets would be loaned to other parties (including the value of collateral received for loans of portfolio securities), but this limitation does not apply to the purchase of debt securities and other Senior Loans in which it is authorized to invest in accordance with its investment objective and policies or to repurchase agreements.

For purposes of fundamental investment restriction number 5 above, at the time of the establishment of the restriction, swap contracts on financial instruments or rates were not within the understanding of the terms “commodities” or “commodity contracts,” and notwithstanding any federal legislation or regulatory action by the CFTC that subject such swaps to regulation by the CFTC, the Trust will not consider such instruments to be commodities or commodity contracts for purposes of this restriction.

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1 Under the 1940 Act, the Trust may not issue senior securities or borrow in excess of 33 1/3% of the Trust’s total assets (after giving effect to any such borrowing), which amount excludes borrowing for temporary purposes and in an amount not more than 5% of the Trust’s total assets at the time borrowing is made.

For assets invested in senior loans and loan participations where the Trust does not assume a contractual lending relationship with the borrower, the Trust will treat both the financial intermediary and the ultimate borrower as issuers when applying the Trust's industry concentration policy.

The Trust may become subject to rating agency guidelines that are more limiting than its current investment restrictions in order to obtain and maintain a desired rating on its preferred shares.

Non-Fundamental Investment Restrictions. The Trust is also subject to the following non-fundamental investment restrictions and policies that may be changed by the Board without shareholder approval.

The Trust may not:

1. Acquire securities of investment companies that are not part of the same group of investment companies ("other investment companies"), except as permitted by applicable law (currently under the 1940 Act, in addition to any investments permitted by exemptive relief, the Trust may invest up to 10% of its total assets in the aggregate in shares of other investment companies and up to 5% of its total assets in any one other investment company, provided that any investment does not result in the Trust owning more than 3% of the voting stock of the acquired investment company at the time such shares are purchased); or

2. Borrow on margin, notwithstanding fundamental investment restriction number 2, unless such activity is permitted by applicable law.

In addition, to comply with the federal tax requirements for qualification as a registered investment company, the Trust's investments must meet certain diversification requirements. See "Tax Matters."

For purposes of this Statement of Additional Information, a "majority of the outstanding" shares means (a) 67% or more of the Trust's outstanding voting securities present at a meeting, if the holders of more than 50% of its outstanding voting securities are present or represented by proxy, or (b) more than 50% of its outstanding voting securities, whichever is less.

The percentage limitations applicable to the Trust's portfolio described in the Prospectus and this Statement of Additional Information apply only at the time of investment, except that the percentage limitation with respect to borrowing applies at all times, and the Trust will not be required to sell securities due to subsequent changes in the value of securities it owns.

INVESTMENT POLICIES AND TECHNIQUES

The following information supplements the discussion of the Trust's investment objectives, policies and techniques that are described in the Prospectus.

The Trust's investment objective is to provide a high level of current income, consistent with preservation of capital. The Trust seeks to achieve its objective by investing directly and indirectly (e.g., through derivatives that are the economic equivalent of direct investments) in the following categories of securities and instruments: (i) floating rate loans and other securities deemed to be floating rate investments; (ii) investments in securities or other instruments directly or indirectly secured by real estate, including real estate investment trusts ("REITs"), preferred equity, securities convertible into equity securities and mezzanine debt; and (iii) other instruments, including, but not limited to, secured and unsecured fixed-rate loans and corporate bonds, distressed securities, mezzanine securities, structured products (including but not limited to mortgage-backed securities, collateralized loan obligations and asset-backed securities), convertible and preferred securities, equities (public and private), and futures and options. The Trust seeks to achieve its objective by investing at least 25% of its assets in investments in securities or other instruments directly or indirectly secured by real estate (including real estate investment trusts ("REITs"), preferred equity, securities convertible into equity securities and mezzanine debt).

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The principal investment objectives of the Trust are not fundamental and can be changed without the approval of a majority of the outstanding voting shares of beneficial interest of the Trust. Certain investment restrictions are fundamental and cannot be changed without shareholder approval. In contrast, certain other investment restrictions, as well as the investment policies, of the Trust are not fundamental and may be changed by the Trust's Board of Trustees (the "Board") without shareholder approval.

There can be no assurance that the Trust will achieve its investment objective. Investors should not consider the one Trust alone to be a complete investment program. The Trust is subject to the risk of changing economic conditions, as well as the risk inherent in the ability of the portfolio managers to make changes in the composition of the Trust in anticipation of changes in economic, business and financial conditions. As with any security, a risk of loss is inherent in an investment in the shares of the Trust. The securities, investments, and investment practices used by the Trust all have attendant risks of varying degrees. For example, with respect to equity securities, there can be no assurance of capital appreciation and there is a substantial risk of decline. With respect to debt securities, there exists the risk that the issuer of a security may not be able to meet its obligations on interest or principal payments at the time required by the instrument. In addition, the value of debt instruments generally rise and fall inversely with prevailing current interest rates. As described below, an investment in the Trust entails special additional risks as a result of its ability to invest a substantial portion of their assets in foreign securities.

Supplemental information concerning certain of the securities and other instruments in which the Trust may invest, the investment policies and strategies that the Trust may utilize and certain risks attendant to those investments, policies and strategies is provided below. The following is a description of investment strategies and risks for the Trust. Unless otherwise indicated, the Trust is permitted to engage in the following investment strategies and techniques. The Trust is not obligated to pursue the following strategies or techniques and does not represent that these strategies or techniques are available now or will be available at any time in the future. The Trust will not purchase all of the following types of securities or employ all of the following strategies unless doing so is consistent with its investment objective.

In addition to the principal investments described in the Prospectus, Highland Capital Management Fund Advisors, L.P. ("HCMFA" or the "Adviser"), may also invest some of the Trust's assets in short-term U.S. government obligations, certificates of deposit, commercial paper and other money market instruments, including repurchase agreements with respect to such obligations, to enable the Trust to make investments quickly and to serve as collateral with respect to certain of their investments. However, if the Adviser believes that a defensive position is appropriate because of expected economic or business conditions or the outlook for security prices, a greater percentage of the Trust's assets may be invested in such obligations. The Trust may purchase securities on a when-issued or forward commitment basis, engage in securities lending activities, and invest up to 33 1/3% of its total assets in reverse repurchase agreements when aggregated with all other borrowings (other than temporary borrowings). The Trust may also invest up to 100% of its assets (in high yield bonds (also known as "junk bonds") which are bonds typically rated below investment grade by one or more nationally recognized statistical ratings organizations ("NRSROs"). NRSROs generally regard high-yield debt securities as predominately speculative with respect to ability to pay interest and repay principal and riskier than higher-rated debt securities. Appendix A contains additional information concerning the characteristics of the ratings used by certain NRSROs. From time to time, in the sole discretion of the Adviser, cash balances of the Trust may be placed in a money market fund or investments may be made in shares of other investment companies, subject to the applicable limits under the 1940 Act.

The Trust is a non-diversified fund as defined in the 1940 Act, but it intends to adhere to the diversification requirements applicable to regulated investment companies ("RICs") under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). The Trust is not intended to be a complete investment program.

Financial Futures. The Trust is sponsored by the Adviser, which is registered as a "commodity pool operator" and "commodity trading adviser" under the Commodity Exchange Act ("CEA"). However, pursuant to Commodity Futures Trading Commission (the "CFTC") Rule 4.5, the Adviser has claimed an exclusion from the definition of the term "commodity pool operator" under the CEA; therefore, the Adviser, with respect to the Trust, is not subject to registration or regulation as a "commodity pool operator" under the CEA. To remain eligible for the exclusion under CFTC Rule 4.5, the Trust will be limited in its ability to use certain derivative

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instruments regulated under the CEA ("commodity interests"), including futures, swaps and options on futures. In the event that the Trust's investments in commodity interests exceed a certain threshold, the Adviser may be required to register as a "commodity pool operator" and/or "commodity trading advisor" with the CFTC with respect to the Trust. The Adviser's eligibility to claim the exclusion with respect to the Trust will be based upon the level and scope of the Trust's investment in commodity interests, the purposes of such investments and the manner in which the Trust holds out its use of commodity interests. For example, CFTC Rule 4.5 requires the Trust with respect to which the sponsor is claiming the exclusion to, among other things, satisfy one of the two following trading thresholds: (i) the aggregate initial margin and premiums required to establish positions in commodity interests cannot exceed 5% of the liquidation value of the fund's portfolio, after taking into account unrealized profits and unrealized losses; or (ii) the aggregate net notional value of commodity interests not used solely for "bona fide hedging purposes," determined at the time the most recent position was established, cannot generally exceed 100% of the liquidation value of the fund's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. In the event the Trust becomes unable to rely on the exclusion in Rule 4.5 and the Adviser is required to register with the CFTC as a commodity pool operator with respect to that Trust, the Trust's expenses may increase.

The CFTC and certain futures exchanges have established limits, referred to as "position limits," on the maximum net long or net short positions which any person may hold or control in particular options and futures contracts; those position limits may in the future also apply to certain other derivatives positions the Trust may wish to take. All positions owned or controlled by the same person or entity, even if in different accounts, may in the future be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Trust does not intend to exceed applicable position limits, it is possible that different clients managed by the Adviser and its affiliates may be aggregated for this purpose. Therefore, it is possible that in the future the trading decisions of the Adviser may have to be modified and that positions held by the Trust may have to be liquidated in order to avoid exceeding such limits. The modification of investment decisions or the elimination of open positions, if it occurs, may adversely affect the performance of the Trust.

Fixed-Income and Other Debt Securities

Fixed-income and other debt instrument securities include all bonds, high yield or "junk" bonds, municipal bonds, debentures, U.S. Government securities, mortgage-related securities, zero coupon securities and custodial receipts. The market value of fixed-income obligations of the Trust will be affected by general changes in interest rates, which will result in increases or decreases in the value of the obligations held by the Trust. The market value of the fixed-income obligations held by the Trust can be expected to vary inversely to changes in prevailing interest rates. As a result, shareholders should anticipate that the market value of the fixed-income obligations held by the Trust generally will increase when prevailing interest rates are declining and generally will decrease when prevailing interest rates are rising. Shareholders also should recognize that, in periods of declining interest rates, the Trust's yield will tend to be somewhat higher than prevailing market rates and, in periods of rising interest rates, the Trust's yield will tend to be somewhat lower. Also, when interest rates are falling, the inflow of net new money to the Trust from the continuous sale of its shares will tend to be invested in instruments producing lower yields than the balance of its portfolio, thereby reducing the Trust's current yield. In periods of rising interest rates, the opposite can be expected to occur. In addition, securities in which the Trust may invest may not yield as high a level of current income as might be achieved by investing in securities with less liquidity, less creditworthiness or longer maturities.

Ratings made available by NRSROs are relative and subjective and are not absolute standards of quality. Although these ratings are initial criteria for selection of portfolio investments, the Adviser also will make its own evaluation of these securities. Among the factors that will be considered are the long-term ability of the issuers to pay principal and interest and general economic trends.

Fixed-income securities may be purchased on a when-issued or delayed-delivery basis. See "When-Issued Securities and Forward Commitments" below.

The Trust may invest in certain high yield securities known as mezzanine investments, which are subordinated debt securities which are generally issued in private placements in connection with an equity security (*e.g.*, with attached warrants). Such mezzanine investments may be issued with or without registration rights. Similar to other high yield securities, maturities of mezzanine investments are typically seven to ten years, but the expected average life is significantly shorter at three to five years. Mezzanine investments are usually unsecured and subordinate to other obligations of the issuer.

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Floating rate investments are debt obligations of companies or other entities, the interest rates of which float or vary periodically based upon a benchmark indicator of prevailing interest rates.

Floating Rate Investments. Floating rate investments may include, by way of example, floating rate debt securities, money market securities of all types, repurchase agreements with remaining maturities of no more than 60 days, collateralized loan obligations and asset backed securities. The reference in the Trust's investment objective to capital preservation does not indicate that the Trust may not lose money. HCMFA seeks to employ strategies that are consistent with capital preservation, but there can be no assurance that the Adviser will be successful in doing so. In making floating rate investments for the Trust, the Trust's Adviser will seek to purchase instruments that it believes are undervalued or will provide attractive income, while attempting to minimize losses.

Floating rate loans in which the Trust invests are expected to be adjustable rate senior loans ("Senior Loans") to domestic or foreign corporations, partnerships and other entities that operate in a variety of industries and geographic regions ("Borrowers"). Senior Loans are business loans that have a right to payment senior to most other debts of the Borrower. Senior Loans generally are arranged through private negotiations between a Borrower and several financial institutions (the "Lenders") represented in each case by one or more such Lenders acting as agent (the "Agent") of the several Lenders. On behalf of the Lenders, the Agent is primarily responsible for negotiating the loan agreement ("Loan Agreement") that establishes the relative terms and conditions of the Senior Loan and rights of the Borrower and the Lenders.

The Trust may invest in securities of any credit quality. Senior Loans are typically below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("NRSRO") or are unrated but deemed by the Adviser to be of comparable quality. The Trust may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default.

The Trust may invest in participations ("Participations") in Senior Loans, may purchase assignments ("Assignments") of portions of Senior Loans from third parties, and may act as one of a group of Lenders originating a Senior Loan ("Primary Lender"). Senior Loans often are secured by specific assets of the Borrower, although the Trust may invest without limitation in Senior Loans that are not secured by any collateral. When the Trust acts as a Primary Lender, the Trust or the Adviser could be subject to allegations of lender liability. Senior Loans in which the Trust invests generally pay interest at rates that are periodically redetermined by reference to a base lending rate plus a spread.

Commercial Paper. Commercial paper consists of short-term (usually from 1 to 270 days) unsecured promissory notes issued by corporations in order to finance their current operations. A variable amount master demand note (which is a type of commercial paper) represents a direct borrowing arrangement involving periodically fluctuating rates of interest under a letter agreement between a commercial paper issuer and an institutional lender pursuant to which the lender may determine to invest varying amounts.

Medium-, Lower-Rated and Unrated Securities. Securities rated in the fourth highest category by a NRSRO, although considered investment grade, may possess speculative characteristics, and changes in economic or other conditions are more likely to impair the ability of issuers of these securities to make interest and principal payments than is the case with respect to issuers of higher grade bonds.

Generally, medium- or lower-rated securities and unrated securities of comparable quality, sometimes referred to as "junk bonds," offer a higher current yield than is offered by higher rated securities, but also (i) will likely have some quality and protective characteristics that, in the judgment of the rating organizations, are outweighed by large uncertainties or major risk exposures to adverse conditions and (ii) are predominantly speculative with respect to the issuer's capacity to pay interest and repay principal in accordance with the terms of the obligation. The yield of junk bonds will fluctuate over time.

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The market values of certain of these securities also tend to be more sensitive to individual corporate developments and changes in economic conditions than higher quality bonds. In addition, medium- and lower-rated securities and comparable unrated securities generally present a higher degree of credit risk. The risk of loss due to default by these issuers is significantly greater because medium- and lower-rated securities, and unrated securities of comparable quality, generally are unsecured and frequently are subordinated to the prior payment of senior indebtedness. Since the risk of default is higher for lower-rated debt securities, the Adviser's research and credit analysis are an especially important part of managing securities of this type held by the Trust.

In addition, the market for securities in lower-rated categories is more volatile than that for higher-rated securities, and the markets in which medium- and lower-rated or unrated securities are traded are more limited than those in which higher-rated securities are traded. The existence of limited markets may make it more difficult for the Trust to obtain accurate market quotations for purposes of valuing its portfolio and calculating its net asset value. Moreover, the lack of a liquid trading market may restrict the availability of securities for the Trust to purchase and may also have the effect of limiting the ability of the Trust to sell securities at their fair value either to meet redemption requests or to respond to changes in the economy or the financial markets.

Lower-rated debt obligations also present risks based on payment expectations. If an issuer calls the obligation for redemption, the Trust may have to replace the security with a lower yielding security, resulting in a decreased return for shareholders. Also, as the principal value of bonds moves inversely with movements in interest rates, in the event of rising interest rates the value of the securities held by the Trust may decline relatively proportionately more than a portfolio consisting of higher rated securities. If the Trust experiences unexpected net redemptions, it may be forced to sell its higher rated bonds, resulting in a decline in the overall credit quality of the securities held by the Trust and increasing the exposure of the Trust to the risks of lower rated securities. Investments in zero coupon bonds may be more speculative and subject to greater fluctuations in value due to changes in interest rates than bonds that pay interest currently.

Subsequent to its purchase by the Trust, an issue of securities may cease to be rated or its rating may be reduced. Neither event will require sale of these securities by the Trust, but the Adviser will consider this event in its determination of whether the Trust should continue to hold the securities.

The market for lower-rated debt securities may be thinner and less active than that for higher rated debt securities, which can adversely affect the prices at which the former are sold. If market quotations are not available, lower-rated debt securities will be valued in accordance with procedures established by the Board, including the use of outside pricing services. Judgment plays a greater role in valuing high yield corporate debt securities than is the case for securities for which more external sources for quotations and last sale information is available. Adverse publicity and changing investor perception may affect the ability of outside pricing services to value lower-rated debt securities and the ability to dispose of these securities.

In considering investments for the Trust, the Adviser will attempt to identify those issuers of high yielding debt securities whose financial condition is adequate to meet future obligations or has improved or is expected to improve in the future. The analysis of the Adviser focuses on relative values based on such factors as interest or dividend coverage, asset coverage, earnings prospects and the experience and managerial strength of the issuer.

The Trust may choose, at its expense or in conjunction with others, to pursue litigation or otherwise exercise its rights as a security holder to seek to protect the interest of security holders if it determines this to be in the best interest of the Trust.

Investments in high-yield debt obligations or other distressed debt obligations that are at risk of or in default present special tax issues for the Trust investing in or holding such securities. Tax rules are not entirely clear about issues such as whether or to what extent the Trust should recognize market discount on a debt obligation, when the Trust may cease to accrue interest, OID or market discount, when and to what extent the Trust may take deductions for bad debts or worthless securities and how the Trust should allocate payments received on obligations in default between principal and income. These and other related issues will be addressed by the Trust as necessary, in order to seek to ensure that it distributes sufficient income to preserve its eligibility for treatment as a RIC and does not become subject to U.S. federal income or excise tax.

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A portion of the OID paid or accrued on certain high-yield discount obligations owned by the Trust may not be deductible to the issuer and will instead be treated as a dividend paid by the issuer for purposes of the dividends-received deduction. In such cases, if the issuer of the obligation is a domestic corporation, dividend payments by the Trust may be eligible for the dividends-received deduction to the extent of the deemed dividend portion of such OID.

Very generally, where the Trust purchases a bond at a price that exceeds the redemption price at maturity – that is, at a premium — the premium is amortizable over the remaining term of the bond. In the case of a taxable bond, if the Trust makes an election applicable to all such bonds it purchases, which election is irrevocable without consent of the IRS, the Trust reduces the current taxable income from the bond by the amortized premium and reduces its tax basis in the bond by the amount of such offset; upon the disposition or maturity of such bonds acquired on or after January 4, 2013, the Trust is permitted to deduct any remaining premium allocable to a prior period. In the case of a tax-exempt bond, tax rules require the Trust to reduce its tax basis by the amount of amortized premium.

Certificates of Deposit, Bankers' Acceptances and Time Deposits. Certificates of deposit are receipts issued by a depository institution in exchange for the deposit of Trust. The issuer agrees to pay the amount deposited plus interest to the bearer of the receipt on the date specified on the certificate. The certificate usually can be traded in the secondary market prior to maturity. Bankers' acceptances typically arise from short-term credit arrangements designed to enable businesses to obtain funds to finance commercial transactions. Generally, an acceptance is a time draft drawn on a bank by an exporter or an importer to obtain a stated amount of funds to pay for specific merchandise. The draft is then "accepted" by a bank that, in effect, unconditionally guarantees to pay the face value of the instrument on its maturity date. The acceptance may then be held by the accepting bank as an earning asset or it may be sold in the secondary market at the going rate of discount for a specific maturity. Although maturities for acceptances can be as long as 270 days, most acceptances have maturities of six months or less. Time deposits are non-negotiable deposits maintained in a banking institution for a specified period of time at a stated interest rate.

U.S. Government Securities. U.S. Government securities are obligations issued or guaranteed by the U.S. Government, its agencies, authorities or instrumentalities. Some U.S. Government securities, such as U.S. Treasury bills, Treasury notes and Treasury bonds, which differ only in their interest rates, maturities and times of issuance, are supported by the full faith and credit of the United States. Others are supported by: (i) the right of the issuer to borrow from the U.S. Treasury, such as securities of the Federal Home Loan Banks; (ii) the discretionary authority of the U.S. Government to purchase the agency's obligations, such as securities of the Federal National Mortgage Association or (iii) only the credit of the issuer, such as securities of the Student Loan Marketing Association. No assurance can be given that the U.S. Government will provide financial support in the future to U.S. Government agencies, authorities or instrumentalities that are not supported by the full faith and credit of the United States. To the extent the Trust invests in U.S. Government securities that are not backed by the full faith and credit of the U.S. Treasury, such investments may involve a greater risk of loss of principal and interest since the Trust must look principally or solely to the issuing or guaranteeing agency or instrumentality for repayment.

Securities guaranteed as to principal and interest by the U.S. Government, its agencies, authorities or instrumentalities include: (i) securities for which the payment of principal and interest is backed by an irrevocable letter of credit issued by the U.S. Government or any of its agencies, authorities or instrumentalities; and (ii) participation interests in loans made to foreign governments or other entities that are so guaranteed. The secondary market for certain of these participation interests is limited and, therefore, may be regarded as illiquid.

U.S. Treasury Bills. U.S. Treasury Bills are issued with maturities of up to one year. Three month bills are currently offered by the Treasury on a 13-week cycle and are auctioned each week by the Treasury. Bills are issued in bearer form only and are sold only on a discount basis, and the difference between the purchase price and the maturity value (or the resale price if they are sold before maturity) constitutes the interest income for the investor.

Mortgage-Related Securities. There are several risks associated with mortgage-related securities. One is that the monthly cash inflow from the underlying loans may not be sufficient to meet the monthly payment requirements of the mortgage-related security. Prepayment of principal by mortgagors or mortgage foreclosures will shorten the term of the underlying mortgage pool for a mortgage-related security. Early returns of principal will affect the average life of the mortgage-related securities remaining in the Trust. The occurrence of mortgage prepayments is affected by factors including the level of interest rates, general economic conditions, the location and age of the

mortgage and other social and demographic conditions. In periods of rising interest rates, the rate of prepayment tends to decrease, thereby lengthening the average life of a pool of mortgage-related securities. Conversely, in periods of falling interest rates, the rate of prepayment tends to increase, thereby shortening the average life of a pool. Reinvestment of prepayments may occur at higher or lower interest rates than the original investment, thus affecting the yield of the Trust. Because prepayments of principal generally occur when interest rates are declining, it is likely that the Trust will have to reinvest the proceeds of prepayments at lower interest rates than those at which the assets were previously invested. If this occurs, the Trust's yield will correspondingly decline. Thus, mortgage-related securities may have less potential for capital appreciation in periods of falling interest rates than other fixed-income securities of comparable maturity, although these securities may have a comparable risk of decline in market value in periods of rising interest rates. To the extent that the Trust purchases mortgage-related securities at a premium, unscheduled prepayments, which are made at par, will result in a loss equal to any unamortized premium.

Collateralized Bond Obligations ("CBOs"), Collateralized Loan Obligations ("CLOs") and Other Collateralized Debt Obligations ("CDOs"). The Trust may invest in CBOs, CLOs and other CDOs, which are debt instruments backed solely by a pool of other debt securities. The risks of an investment in a CBO, CLO or other CDO depend largely on the type of the collateral securities (which would have the risks described elsewhere in this document for that type of security) and the class of the CBO, CLO or other CDO in which the Trust invests. Some CBOs, CLOs and other CDOs have credit ratings, but are typically issued in various classes with various priorities. Normally, CBOs, CLOs and other CDOs are privately offered and sold (that is, not registered under the securities laws) and may be characterized by the Trust as illiquid securities, but an active dealer market may exist for CBOs, CLOs and other CDOs that qualify for Rule 144A transactions. In addition to the normal interest rate, default and other risks of fixed income securities discussed elsewhere in this document, CBOs, CLOs and other CDOs carry additional risks, including the possibility that distributions from collateral securities will not be adequate to make interest or other payments, the quality of the collateral may decline in value or default, the Trust may invest in CBOs, CLOs or other CDOs that are subordinate to other classes, volatility in values, and the complex structure of the security may not be fully understood at the time of investment and produce disputes with the issuer or unexpected investment results.

Collateralized Mortgage Obligations ("CMOs") are obligations fully collateralized by a portfolio of mortgages or mortgage-related securities. Payments of principal and interest on the mortgages are passed through to the holders of the CMOs on the same schedule as they are received, although certain classes of CMOs have priority over others with respect to the receipt of prepayments on the mortgages. Therefore, depending on the type of CMOs in which the Trust invests, the investment may be subject to a greater or lesser risk of prepayment than other types of mortgage-related securities.

Mortgage-related securities may not be readily marketable. To the extent any of these securities are not readily marketable in the judgment of the Adviser, the Trust's restrictions on investments in illiquid instruments will apply.

Asset-Backed and Receivable-Backed Securities. The Trust may invest in securities issued by trusts and special purpose corporations with principal and interest payouts backed by, or supported by, any of various types of assets. These assets typically include receivables related to the purchase of automobiles, credit card loans, and home equity loans. These securities generally take the form of a structured type of security, including pass-through, pay-through, and stripped interest payout structures similar to the Collateralized Mortgage Obligation or CMO structure. Investments in these and other types of asset-backed securities must be consistent with the investment objectives and policies of the Trust.

The yield characteristics of asset-backed securities differ from traditional debt securities. Among the major differences are that interest and principal payments are made more frequently, usually monthly, and that principal may be prepaid at any time because the underlying assets generally may be prepaid at any time. As a result, if the Trust purchases such a security at a premium, a prepayment rate that is faster than expected will reduce yield to maturity, while a prepayment rate that is slower than expected will have the opposite effect of increasing yield to maturity. Alternatively, if the Trust purchases these securities at a discount, faster than expected prepayments will increase, while slower than expected prepayments will reduce, yield to maturity. The portfolio manager will seek to manage these risks (and potential benefits) by diversifying its investments in such securities and through hedging techniques.

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Asset-backed securities involve certain risks that are not posed by other types of CMO securities, resulting mainly from the fact that asset-backed securities do not usually contain the complete benefit of a security interest in the related collateral. For example, credit card receivables generally are unsecured and the debtors are entitled to the protection of a number of state and Federal consumer credit laws, some of which may reduce the ability to obtain full payment. In the case of automobile receivables, due to various legal and economic factors, proceeds from repossessed collateral may not always be sufficient to support payments on these securities.

Zero Coupon Securities. Zero coupon U.S. Government securities are debt obligations that are issued or purchased at a significant discount from face value. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity or the particular interest payment date at a rate of interest reflecting the market rate of the security at the time of issuance. Zero coupon securities do not require the periodic payment of interest. These investments benefit the issuer by mitigating its need for cash to meet debt service, but also require a higher rate of return to attract investors who are willing to defer receipt of cash. These investments may experience greater volatility in market value than U.S. Government securities that make regular payments of interest. The Trust accrues income on these investments for tax and accounting purposes, which must be distributed to shareholders in order to avoid taxation. Because no cash is received at the time of accrual, the Trust may be required to liquidate other portfolio securities (including when it is not advantageous to do so) to satisfy the Trust's distribution obligations (see "Income Tax Considerations" below), in which case the Trust will forego the purchase of additional income producing assets. Zero coupon securities include Separately Traded Registered Interest and Principal Securities ("STRIPS"). STRIPS are securities underwritten by securities dealers or banks that evidence ownership of future interest payments, principal payments or both on certain notes or bonds issued by the U.S. Government, its agencies, authorities or instrumentalities. They also include Coupons Under Book Entry Safekeeping ("CUBES"), which are component parts of U.S. Treasury bonds and represent scheduled interest and principal payments on the bonds.

Custodial Receipts. Custodial receipts or certificates include Certificates of Accrual on Treasury Securities ("CATS"), Treasury Investment Growth Receipts ("TIGRs") and Financial Corporation certificates ("FICO Strips"). CATS, TIGRs and FICO Strips are securities underwritten by securities dealers or banks that evidence ownership of future interest payments, principal payments or both on certain notes or bonds issued by the U.S. Government, its agencies, authorities or instrumentalities. The underwriters of these certificates or receipts purchase a U.S. Government security and deposit the security in an irrevocable Trust or custodial account with a custodian bank, which then issues receipts or certificates that evidence ownership of the periodic unmatured coupon payments and the final principal payment on the U.S. Government security. Custodial receipts evidencing specific coupon or principal payments have the same general attributes as zero coupon U.S. Government securities, described above. Although typically under the terms of a custodial receipt the Trust is authorized to assert its rights directly against the issuer of the underlying obligation, the Trust may be required to assert through the custodian bank such rights as may exist against the underlying issuer. Thus, if the underlying issuer fails to pay principal and/or interest when due, the Trust may be subject to delays, expenses and risks that are greater than those that would have been involved if the Trust had purchased a direct obligation of the issuer. In addition, if the Trust or custodial account in which the underlying security has been deposited were determined to be an association taxable as a corporation, instead of a non-taxable entity, the yield on the underlying security would be reduced in respect of any taxes paid.

Loans and Other Direct Debt Instruments. These are instruments in amounts owed by a corporate, governmental or other borrower to another party. They may represent amounts owed to lenders or lending syndicates (loans and loan participations), to suppliers of goods or services (trade claims or other receivables) or to other parties. Direct debt instruments purchased by the Trust may have a maturity of any number of days or years, may be secured or unsecured, and may be of any credit quality. Direct debt instruments involve the risk of loss in the case of default or insolvency of the borrower. Direct debt instruments may offer less legal protection to the Trust in the event of fraud or misrepresentation. In addition, loan participations involve a risk of insolvency of the lending bank or other financial intermediary. Direct debt instruments also may include standby financing commitments that obligate the Trust to supply additional cash to the borrower on demand at a time when the Trust would not have otherwise done so, even if the borrower's condition makes it unlikely that the amount will ever be repaid.

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Because loans are not ordinarily registered with the U.S. Securities and Exchange Commission (the "SEC") or any state securities commission or listed on any securities exchange, there is usually less publicly available information about such instruments. In addition, loans may not be considered "securities" for purposes of the anti-fraud provisions under the federal securities laws and, as a result, as a purchaser of these instruments, the Trust may not be entitled to the anti-fraud protections of the federal securities laws. In the course of investing in such instruments, the Trust may come into possession of material nonpublic information and, because of prohibitions on trading in securities of issuers while in possession of such information, the Trust may be unable to enter into a transaction in a publicly-traded security of that issuer when it would otherwise be advantageous for the Trust to do so. Alternatively, the Trust may choose not to receive material nonpublic information about an issuer of such loans, with the result that the Trust may have less information about such issuers than other investors who transact in such assets.

Real Estate Investments

Investments in the real estate industry involve particular risks. The real estate industry has been subject to substantial fluctuations and declines on a local, regional and national basis in the past and may continue to be in the future. Real property values and income from real property may decline due to general and local economic conditions, overbuilding and increased competition, increases in property taxes and operating expenses, changes in zoning laws, casualty or condemnation losses, regulatory limitations on rents, changes in neighborhoods and in demographics, increases in market interest rates, or other factors. Factors such as these may adversely affect companies that own and operate real estate directly, companies that lend to such companies, and companies that service the real estate industry.

The Trust defines securities of issuers conducting their principal business activities in the real estate industry to include common stock, convertible or non-convertible preferred stock, warrants, convertible or non-convertible secured or unsecured debt, and partnership or membership interests issued by:

- commercial mortgage-backed securities ("CMBS"), residential mortgage-backed securities ("RMBS') and other real estate credit investments, which include existing first and second mortgages on real estate, either originated or acquired in the secondary market, and secured, unsecured and/or convertible notes offered by real estate operating companies ("REOCs") and REITs;
- publicly traded REITs managed by affiliated or unaffiliated asset managers and their foreign equivalents ("Public REITs");
- REOCs;
- private real estate investment funds managed by affiliated or unaffiliated institutional asset managers ("Private Real Estate Investment Funds");
- registered closed-end funds that invest principally in real estate (collectively, "Public Investment Funds");
- real estate exchange traded funds ("ETFs"); and
- publicly-registered non-traded REITs ("Non-Traded REITs") and private REITs, generally wholly-owned by the Trust or wholly-owned or managed by an affiliate.

Real Estate Investment Trusts. The Trust may invest in REITs. REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests, and REOCs are companies that invest in real estate and whose shares trade on public exchanges. Foreign REIT equivalents are entities located in jurisdictions that have adopted legislation substantially similar to the REIT tax provisions in that they provide for favorable tax treatment for the foreign REIT equivalent and require distributions of income to shareholders. The Trust may enter into certain real estate and real-estate related investments through its wholly-owned REIT subsidiary, NFRO REIT Sub, LLC (the "REIT Subsidiary"). With respect to the Trust's real estate investments, the Adviser seeks to: (i) recognize and allocate capital based upon where the Adviser believes we are in the current real estate cycle, and as a result (ii) minimize drawdowns during market downturns and maximize risk adjusted returns during all market cycles, though there can be no assurance that this strategy will achieve this objective. The Trust will rely on the expertise of the Adviser and its affiliates to determine the appropriate structure for structured credit investments, which may include bridge loans, common and preferred equity or other debt-like positions, as well as the acquisition of such instruments from banks, servicers or other third parties.

Preferred equity and mezzanine investments in real estate transactions come in various forms which may or may not be documented in the borrower's organizational documents. Generally, real estate preferred equity and/or mezzanine investments are typically junior to first mortgage financing but senior to the borrower's or sponsor's

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equity contribution. The investments are typically structured as an investment by a third-party investor in the real estate owner or various affiliates in the chain of ownership in exchange for a direct or indirect ownership interest in the real estate owner entitling it to a preferred/priority return on its investment. Sometimes, the investment is structured much like a loan where (i) "interest" on the investment is required to be paid monthly by the "borrower" regardless of available property cash flow; (ii) the entire investment is required to be paid by a certain maturity date; (iii) default rate "interest" and penalties are assessed against the "borrower" in the event payments are not made timely; and (iv) a default in the repayment of investment potentially results in the loss of management and/or ownership control by the "borrower" in the company in favor of the investor or other third-party.

REITs are subject to risks similar to those associated with direct ownership of real estate (including loss to casualty or condemnation, increases in property taxes and operating expenses, zoning law amendments, changes in interest rates, overbuilding and increased competition, variations in market value, adverse changes in the real estate markets generally or in specific sectors of the real estate industry and possible environmental liabilities), as well as additional risks discussed below.

REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs. Equity REITs invest the majority of their assets directly in real property and derive income primarily from the collection of rents. Equity REITs can also realize capital gains by selling properties that have appreciated in value. Mortgage REITs invest the majority of their assets in real estate mortgages and derive income from the collection of interest payments. REITs are not taxed on income distributed to shareholders provided they comply with the applicable requirements of the Internal Revenue Code of 1986, as amended (the "Code"). The Trust will indirectly bear its proportionate share of any management and other expenses paid by REITs in which it invests in addition to the expenses paid by the Trust. Debt securities issued by REITs are, for the most part, general and unsecured obligations and are subject to risks associated with REITs.

Investing in REITs involves certain unique risks in addition to those risks associated with investing in the real estate industry in general. An equity REIT may be affected by changes in the value of the underlying properties owned by the REIT. A mortgage REIT may be affected by changes in interest rates and the ability of the issuers of its portfolio mortgages to repay their obligations. REITs are dependent upon the skills of their managers and are not diversified. REITs are generally dependent upon maintaining cash flows to repay borrowings and to make distributions to shareholders and are subject to the risk of default by lessees or borrowers. REITs whose underlying assets are concentrated in properties used by a particular industry, such as health care, are also subject to risks associated with such industry. REITs are often leveraged or invest in properties that are themselves leveraged, exposing them to the risks of leverage generally. Among other things, leverage will generally increase losses during periods of real estate market declines.

REITs (especially mortgage REITs) are also subject to interest rate risks. When interest rates decline, the value of a REIT's investment in fixed rate obligations can be expected to rise. Conversely, when interest rates rise, the value of a REIT's investment in fixed rate obligations can be expected to decline. If the REIT invests in adjustable rate mortgage loans the interest rates on which are reset periodically, yields on a REIT's investments in such loans will gradually align themselves to reflect changes in market interest rates. This causes the value of such investments to fluctuate less dramatically in response to interest rate fluctuations than would investments in fixed rate obligations.

REITs may have limited financial resources, may trade less frequently and in a more limited volume and may be subject to more abrupt or erratic price movements than larger company securities.

The Trust seeks to gain exposure to the real estate markets, in whole or in part, through investing in certain REIT subsidiaries of the Trust. The Trust invests in NFRO REIT Sub, LLC, organized under the laws of Delaware on March 29, 2018 (the "REIT Subsidiary"). The REIT Subsidiary is generally subject to the same investment policies and restrictions of the Trust . The REIT Subsidiary is generally subject to the same investment policies and restrictions of the Trust. As of May 31, 2019, NFRO REIT Sub, LLC accounted for approximately 1.9% of the Trust's net assets and approximately 1.4% of the Trust's Managed Assets. The Adviser does not charge an additional fee on assets held in the REIT Subsidiary. The Trust intends to limit its investments in the REIT Subsidiary and related entities to the extent necessary to qualify as a regulated investment company ("RIC") for tax

purposes. In general, and subject to certain exceptions not applicable here, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in any one issuer, or in any two or more issuers which the taxpayer controls and which are determined to be engaged in the same or similar trades or businesses or related trades or businesses.

Equity Securities

The Trust may invest in equity securities including preferred stock, convertible securities, warrants and depository receipts.

Preferred Stock. Preferred stock has a preference over common stock in liquidation (and generally dividends as well) but is subordinated to the liabilities of the issuer in all respects. As a general rule, the market value of preferred stock with a fixed dividend rate and no conversion element varies inversely with interest rates and perceived credit risk, while the market price of convertible preferred stock generally also reflects some element of conversion value. Because preferred stock is junior to debt securities and other obligations of the issuer, deterioration in the credit quality of the issuer will cause greater changes in the value of a preferred stock than in a more senior debt security with similar stated yield characteristics. Unlike interest payments on debt securities, preferred stock dividends are payable only if declared by the issuer's board of directors. Preferred stock also may be subject to optional or mandatory redemption provisions.

Convertible Securities. A convertible security is a bond, debenture, note, preferred stock or other security that may be converted into or exchanged for a prescribed amount of common stock or other equity security of the same or a different issuer within a particular period of time at a specified price or formula. A convertible security entitles the holder to receive interest paid or accrued on debt or the dividend paid on preferred stock until the convertible security matures or is redeemed, converted or exchanged. Before conversion, convertible securities have characteristics similar to nonconvertible income securities in that they ordinarily provide a stable stream of income with generally higher yields than those of common stocks of the same or similar issuers, but lower yields than comparable nonconvertible securities. The value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors also may have an effect on the convertible security's investment value. Convertible securities rank senior to common stock in a corporation's capital structure but are usually subordinated to comparable nonconvertible securities. Convertible securities may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument.

Warrants. Warrants, which are privileges issued by corporations enabling the owners to subscribe to and purchase a specified number of shares of the corporation at a specified price during a specified period of time. Subscription rights normally have a short life span to expiration. The purchase of warrants involves the risk that the Trust could lose the purchase value of a right or warrant if the right to subscribe to additional shares is not exercised prior to the warrants' expiration. Also, the purchase of warrants involves the risk that the effective price paid for the warrant added to the subscription price of the related security may exceed the value of the subscribed security's market price such as when there is no movement in the level of the underlying security.

Illiquid Securities

Historically, illiquid securities have included securities subject to contractual or legal restrictions on resale because they have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), securities that are otherwise not readily marketable and repurchase agreements having a maturity of longer than seven days. Securities that have not been registered under the 1933 Act are referred to as "private placements" or "restricted securities" and are purchased directly from the issuer or in the secondary market. Investment companies do not typically hold a significant amount of these restricted securities or other illiquid securities because of the potential for delays on resale and uncertainty in valuation. Limitations on resale may have an adverse effect on the marketability of portfolio securities and an investment company might be unable to dispose of restricted or other illiquid securities promptly or at reasonable prices and might thereby experience difficulty satisfying redemptions within seven days. An investment company might also have to register such restricted securities in order to dispose of them, which would result in additional expense and delay. Adverse market conditions could impede such a public offering of securities.

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In recent years, however, a large institutional market has developed for certain securities that are not registered under the 1933 Act, including repurchase agreements, commercial paper, foreign securities, municipal securities and corporate bonds and notes. Institutional investors depend on an efficient institutional market in which the unregistered security can be readily resold or on an issuer's ability to honor a demand for repayment. The fact that there are contractual or legal restrictions on resale of such investments to the general public or to certain institutions may not be indicative of their liquidity.

- *Rule 144A Securities.* The SEC has adopted Rule 144A, which allows a broader institutional trading market for securities otherwise subject to restriction on their resale to the general public. Rule 144A establishes a "safe harbor" from the registration requirements of the 1933 Act on resales of certain securities to qualified institutional buyers. The Adviser will monitor the liquidity of Rule 144A securities in the Trust's portfolio under the oversight of the Board. In reaching liquidity decisions, the Adviser will consider, among other things, the following factors: (1) the frequency of trades and quotes for the security; (2) the number of dealers and other potential purchasers wishing to purchase or sell the security; (3) dealer undertakings to make a market in the security; and (4) the nature of the security and of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers and the mechanics of the transfer).

  The Trust may purchase securities in the United States that are not registered for sale under federal securities laws but which can be resold to institutions under Rule 144A or under an exemption from such laws. The Board, with advice and information from the Adviser will determine the liquidity of restricted securities or Rule 144A securities by looking at factors such as trading activity and the availability of reliable price information and, through reports from the Adviser, the Board will monitor trading activity in restricted securities. If institutional trading in restricted securities or Rule 144A securities were to decline, the Trust's illiquidity could increase and the Trust could be adversely affected.

- *Section 4(a)(2) Commercial Paper.* The Trust may invest in commercial paper issued in reliance on the exemption from registration afforded by Section 4(a)(2) of the 1933 Act. Section 4(a)(2) commercial paper is restricted as to disposition under federal securities laws and is generally sold to institutional investors who agree that they are purchasing the paper for investment purposes and not with a view to public distribution. Any resale by the purchaser must be in an exempt transaction. Section 4(a)(2) commercial paper is normally resold to other institutional investors through or with the assistance of the issuer or investment dealers who make a market in Section 4(a)(2) commercial paper, thus providing liquidity. The Adviser believes that Section 4(a)(2) commercial paper and possibly certain other restricted securities that meet the criteria for liquidity established by the Board are quite liquid. The Trust will not invest more than 10% of its total assets in restricted securities (excluding Rule 144A securities).

Derivatives

The Trust may invest in various instruments that are commonly known as derivatives to any extent deemed by the Adviser to be in the best interest of the Trust, and to the extent permitted by the 1940 Act. Generally, a derivative is a financial arrangement, the value of which is based on, or "derived" from, a traditional security, asset or market index. There are, in fact, many different types of derivatives and many different ways to use them. There is a range of risks associated with those uses. Futures and options are commonly used for traditional hedging purposes to attempt to protect the Trust from exposure to changing interest rates, securities prices or currency exchange rates and as a low cost method of gaining exposure to a particular securities market without investing directly in those securities. However, some derivatives are used for leverage, which tends to magnify the effects of an instrument's price changes as market conditions change. Leverage involves the use of a small amount of money to control a large amount of financial assets, and can in some circumstances lead to significant losses.

In addition, the SEC recently proposed a rule under the 1940 Act regulating the use by registered investment companies of derivatives and many related instruments. That rule, if adopted as proposed, would, among other things, restrict the Trust's ability to engage in derivatives transactions or so increase the cost of derivatives transactions that the Trust would be unable to implement its investment strategy.

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Options. An option on a security is a contract that gives the holder of the option, in return for a premium, the right to buy from (in the case of a call) or sell to (in the case of a put) the writer of the option the security underlying the option at a specified exercise or "strike" price.

The Trust may write (sell) covered call and put options ("covered options") on stocks, securities, futures contracts, non-physical commodities, indices and foreign currencies in an attempt to increase income. When the Trust writes a covered call option, it gives the purchaser of the option the right to buy, and obligates the writer to sell, the underlying security at the price specified in the option (the "exercise price") by exercising the option at any time during the option period. If the option expires unexercised, the Trust will realize income in an amount equal to the premium received for writing the option. If the option is exercised, a decision over which the Trust has no control, the Trust must sell the underlying security to the option holder at the exercise price. By writing a covered call option, the Trust foregoes, in exchange for the premium less the commission ("net premium"), the opportunity to profit during the option period from an increase in the market value of the underlying security above the exercise price.

When the Trust writes a covered put option, it gives the purchaser of the option the right to sell, and obligates the writer to buy, the underlying security to the Trust at the specified exercise price at any time during the option period. If the option expires unexercised, the Trust will realize income in the amount of the premium received for writing the option. If the put option is exercised, a decision over which the Trust has no control, the Trust must purchase the underlying security from the option holder at the exercise price. By writing a covered put option, the Trust, in exchange for the net premium received, accepts the risk of a decline in the market value of the underlying security below the exercise price.

The Trust may terminate its obligation as the writer of a call or put option by purchasing an option with the same exercise price and expiration date as the option previously written. This transaction is called a "closing purchase transaction." With respect to writing covered options, the Trust will realize a profit or loss for a closing purchase transaction if the amount paid to purchase an option is less or more, as the case may be, than the amount received from the sale thereof. To close out a position as a purchaser of an option, the Trust may make a "closing sale transaction" which involves liquidating the Trust's position by selling the option previously purchased. Where the Trust cannot effect a closing purchase transaction, it may be forced to incur brokerage commissions or dealer spreads in selling securities it receives or it may be forced to hold underlying securities until an option is exercised or expires.

When the Trust writes a call option, it will "cover" its obligation by owning and earmarking the underlying security or other assets on the books of the Trust's custodian. When the Trust writes a put option, it will "cover" its obligation by earmarking assets at the Trust's custodian.

The Trust may purchase call and put options on any securities in which it may invest. The Trust would normally purchase a call option in anticipation of an increase in the market value of such securities. The purchase of a call option would entitle the Trust, in exchange for the premium paid, to purchase a security at a specified price during the option period. The Trust would ordinarily have an economic gain if the value of the securities increased above the exercise price sufficiently to cover the premium and would have an economic loss if the value of the securities remained at or below the exercise price during the option period.

The Trust would normally purchase put options in anticipation of a decline in the market value of securities in its portfolio ("protective puts") or securities of the type in which it is permitted to invest. The purchase of a put option would entitle the Trust, in exchange for the premium paid, to sell a security, which may or may not be held in the Trust's portfolio, at a specified price during the option period. The purchase of protective puts is designed merely to offset or hedge against a decline in the market value of the Trust's portfolio securities. Put options also may be purchased by the Trust for the purpose of affirmatively benefiting from a decline in the price of securities which the Trust does not own. Upon exercise, the Trust would ordinarily realize a gain if the value of the securities decreased below the exercise price sufficiently to cover the premium and would realize a loss if the value of the securities remained at or above the exercise price. Gains and losses on the purchase of protective put options would tend to be offset by countervailing changes in the value of underlying portfolio securities.

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Options on Securities Indices. The Trust may purchase and write put and call options on securities indices listed on domestic and on foreign exchanges. Such options give the holder the right to receive a cash settlement during the term of the option based upon the difference between the exercise price and the value of the index. Options on securities indices entail risks in addition to the risks of options on securities. The absence of a liquid secondary market to close out options positions on securities indices is more likely to occur. Use of options on securities indices also entails the risk that trading in such options may be interrupted if trading in certain securities included in the index is interrupted.

Because options on securities indices require settlement in cash, the Adviser may be forced to liquidate portfolio securities to meet settlement obligations. When the Trust writes a put or call option on a securities index, it will cover the position by earmarking assets with the Trust's custodian.

Options on Foreign Currencies. The Trust may write covered put and call options and purchase put and call options on foreign currencies for the purpose of protecting against declines in the dollar value of portfolio securities and against increases in the dollar cost of securities to be acquired. For example, a decline in the dollar value of a foreign currency in which portfolio securities are denominated will reduce the dollar value of such securities, even if their value in the foreign currency remains constant. In order to protect against such diminutions in the value of portfolio securities, the Trust may purchase put options on the foreign currency. If the value of the currency does decline, the Trust will have the right to sell such currency for a fixed amount in dollars and will thereby offset, in whole or in part, the adverse effect on its portfolio which otherwise would have resulted.

Conversely, where a rise in the dollar value of a currency in which securities to be acquired are denominated is projected, thereby increasing the cost of such securities, the Trust may purchase call options thereon. The purchase of such options could offset, at least partially, the effects of the adverse movements in exchange rates. As in the case of other types of options, however, the benefit to the Trust derived from purchases of foreign currency options will be reduced by the amount of the premium and related transaction costs. In addition, where currency exchange rates do not move in the direction or to the extent anticipated, the Trust could sustain losses on transactions in foreign currency options that would require it to forego a portion or all of the benefits of advantageous changes in such rates.

As in the case of forward contracts, certain options on foreign currencies are traded over-the-counter and involve liquidity and credit risks that may not be present in the case of exchange-traded currency options. The Trust's ability to terminate over-the-counter options ("OTC Options") will be more limited than the exchange-traded options. It is also possible that broker-dealers participating in OTC Options transactions will not fulfill their obligations. Until such time as the staff of the SEC changes its position, the Trust will treat purchased OTC Options and assets used to cover written OTC Options as illiquid securities. With respect to options written with primary dealers in U.S. Government securities pursuant to an agreement requiring a closing purchase transaction at a formula price, the amount of illiquid securities may be calculated with reference to the repurchase formula.

Forward Currency Contracts. Because, when investing in foreign securities, the Trust buys and sells securities denominated in currencies other than the U.S. dollar and receives interest, dividends and sale proceeds in currencies other than the U.S. dollar, the Trust from time to time may enter into forward currency transactions to convert to and from different foreign currencies and to convert foreign currencies to and from the U.S. dollar. The Trust either enters into these transactions on a spot (i.e., cash) basis at the spot rate prevailing in the foreign currency exchange market or uses forward currency contracts to purchase or sell foreign currencies.

A forward currency contract is an obligation by the Trust to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the contract. Forward currency contracts establish an exchange rate at a future date. These contracts are transferable in the interbank market conducted directly between currency traders (usually large commercial banks) and their customers. A forward currency contract generally has no deposit requirement and is traded at a net price without commission. The Trust earmarks liquid securities at its custodian in an amount at least equal to its obligations under each forward currency contract. Neither spot transactions nor forward currency contracts eliminate fluctuations in the prices of the Trust's securities or in foreign exchange rates, or prevent loss if the prices of these securities should decline.

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The Trust may enter into foreign currency hedging transactions in an attempt to protect against changes in foreign currency exchange rates between the trade and settlement dates of specific securities transactions or changes in foreign currency exchange rates that would adversely affect a portfolio position or an anticipated investment position. Although these transactions tend to minimize the risk of loss due to a decline in the value of the hedged currency, at the same time they tend to limit any potential gain that might be realized should the value of the hedged currency increase. The precise matching of the forward currency contract amounts and the value of the securities involved will not generally be possible because the future value of such securities in foreign currencies will change as a consequence of market movements in the value of such securities between the date the forward currency contract is entered into and the date it matures. The projection of currency market movements is extremely difficult, and the successful execution of a hedging strategy is highly uncertain.

While these contracts are not presently regulated by the CFTC, the CFTC may in the future assert authority to regulate forward currency contracts. In such event the Trust's ability to utilize forward currency contracts may be restricted. Forward currency contracts may reduce the potential gain from a positive change in the relationship between the U.S. dollar and foreign currencies. Unanticipated changes in currency prices may result in poorer overall performance for the Trust than if it had not entered into such contracts. The use of forward currency contracts may not eliminate fluctuations in the underlying U.S. dollar equivalent value of the prices of or rates of return on the Trust's foreign currency denominated portfolio securities and the use of such techniques will subject the Trust to certain risks.

The matching of the increase in value of a forward currency contract and the decline in the U.S. dollar equivalent value of the foreign currency denominated asset that is the subject of the hedge generally will not be precise. In addition, the Trust may not always be able to enter into forward currency contracts at attractive prices and this will limit the Trust's ability to use such contract to hedge or cross-hedge its assets. Also, with regard to the Trust's use of cross-hedges, there can be no assurance that historical correlations between the movements of certain foreign currencies relative to the U.S. dollar will continue. Thus, at any time poor correlation may exist between movements in the exchange rates of the foreign currencies underlying the Trust's cross-hedges and the movements in the exchange rates of the foreign currencies in which the Trust's assets that are the subject of such cross-hedges are denominated.

Futures Contracts and Related Options. To the extent consistent with applicable law, the Trust may invest in futures contracts on, among other things, individual equity securities, securities indices, interest rates, currencies, non-physical commodities and inflation indices. The sale of a futures contract creates an obligation by the Trust, as seller, to deliver the specific type of financial instrument called for in the contract at a specified future time for a specified price. At the time a futures contract is purchased or sold, the Trust must allocate cash or securities as a deposit payment ("initial margin"). It is expected that the initial margin that the Trust will pay may range from approximately 1% to approximately 5% of the value of the securities or commodities underlying the contract. In certain circumstances, however, such as periods of high volatility, the Trust may be required by an exchange to increase the level of its initial margin payment. Certain futures contracts are physically settled (i.e., involve the making and taking of delivery of a specified amount of an underlying security or other asset). Some futures contracts, however, are cash settled, which means that the purchase price is subtracted from the current market value of the instrument and the net amount, if positive, is paid to the purchaser by the seller of the futures contract and, if negative, is paid by the purchaser to the seller of the futures contract.

Options on futures contracts are similar to options on securities except that an option on a futures contract gives the purchaser the right in return for the premium paid to assume a position in a futures contract (a long position if the option is a call and a short position if the option is a put).

Futures contracts and related options involve costs and may result in losses in excess of the amount invested in the futures contract or related option. If a futures contract is used for hedging, an imperfect correlation between movements in the price of the futures contract and the price of the security, currency, or other investment being hedged creates risk. Correlation is higher when the investment being hedged underlies the futures contract. Correlation is lower when the investment being hedged is different than the instrument underlying the futures contract, such as when a futures contract on one security or commodity is used to hedge a different security or commodity or when a futures contract in one currency is used to hedge a security denominated in another currency. In the event of an imperfect correlation between a futures position and the portfolio position (or anticipated position)

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intended to be protected, the Trust may realize a loss on the futures contract and/or on the portfolio position intended to be protected. The risk of imperfect correlation generally tends to diminish as the maturity date of the futures contract approaches. To compensate for imperfect correlations, the Trust may purchase or sell futures contracts in a greater amount than the hedged investments if the volatility of the price of the hedged investments is historically greater than the volatility of the futures contracts. Conversely, the Trust may purchase or sell fewer futures contracts if the volatility of the price of the hedged investments is historically less than that of the futures contract.

The Trust's ability to engage in the futures and options on futures strategies depends on the liquidity of the markets in those instruments. Trading interest in various types of futures and options on futures cannot be predicted. Therefore, no assurance can be given that the Trust will be able to utilize these instruments effectively. In addition, there can be no assurance that a liquid market will exist at a time when the Trust seeks to close out a futures or option on a futures contract position, and that Trust would remain obligated to meet margin requirements until the position is closed. The liquidity of a secondary market in a futures contract may be adversely affected by "daily price fluctuation limits" established by commodity exchanges to limit the amount of fluctuation in a futures contract price during a single trading day.

The Trust that purchases or sells a futures contract is only required to deposit initial and variation margin as required by relevant regulations and the rules of the contract market. Because the purchase of a futures contract obligates the Trust to purchase the underlying security or other instrument at a set price on a future date, the Trust's net asset value will fluctuate with the value of the security or other instrument as if it were already in the Trust's portfolio. Futures transactions have the effect of investment leverage to the extent the Trust does not maintain liquid assets equal to the face amount of the contract. If the Trust combines short and long positions, in addition to possible declines in the values of its investment securities, the Trust will incur losses if the index underlying the long futures position underperforms the index underlying the short futures position.

Financial Futures. The Trust is sponsored by the Adviser, which is registered as a "commodity pool operator" and "commodity trading adviser" under the Commodity Exchange Act ("CEA"). However, pursuant to Commodity Futures Trading Commission (the "CFTC") Rule 4.5, the Adviser has claimed an exclusion from the definition of the term "commodity pool operator" under the CEA; therefore, the Adviser, with respect to the Trust, is not subject to registration or regulation as a "commodity pool operator" under the CEA. To remain eligible for the exclusion under CFTC Rule 4.5, the Trust will be limited in its ability to use certain derivative instruments regulated under the CEA ("commodity interests"), including futures, swaps and options on futures. In the event that the Trust's investments in commodity interests exceed a certain threshold, the Adviser may be required to register as a "commodity pool operator" and/or "commodity trading advisor" with the CFTC with respect to the Trust. The Adviser's eligibility to claim the exclusion with respect to the Trust will be based upon the level and scope of the Trust's investment in commodity interests, the purposes of such investments and the manner in which the Trust holds out its use of commodity interests. For example, CFTC Rule 4.5 requires the Trust with respect to which the sponsor is claiming the exclusion to, among other things, satisfy one of the two following trading thresholds: (i) the aggregate initial margin and premiums required to establish positions in commodity interests cannot exceed 5% of the liquidation value of the fund's portfolio, after taking into account unrealized profits and unrealized losses; or (ii) the aggregate net notional value of commodity interests not used solely for "bona fide hedging purposes," determined at the time the most recent position was established, cannot generally exceed 100% of the liquidation value of the fund's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. In the event the Trust becomes unable to rely on the exclusion in Rule 4.5 and the Adviser is required to register with the CFTC as a commodity pool operator with respect to that Trust, the Trust's expenses may increase.

The CFTC and certain futures exchanges have established limits, referred to as "position limits," on the maximum net long or net short positions which any person may hold or control in particular options and futures contracts; those position limits may in the future also apply to certain other derivatives positions the Trust may wish to take. All positions owned or controlled by the same person or entity, even if in different accounts, may in the future be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Trust does not intend to exceed applicable position limits, it is possible that different clients managed by the Adviser and its affiliates may be aggregated for this purpose. Therefore, it is possible that in the future the trading decisions of the Adviser may have to be modified and that positions held by the Trust may have to be liquidated in order to avoid exceeding such limits. The modification of investment decisions or the elimination of open positions, if it occurs, may adversely affect the performance of the Trust.

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Borrowing and Lending

Borrowing. The Trust may borrow an amount up to 33 1/3% of its total assets (including the amount borrowed) and may use leverage in the form of preferred shares in an amount up to 50% of the Trust's total assets (including the amount borrowed. The Trust may borrow for investment purposes and for temporary, extraordinary or emergency purposes. To the extent the Trust borrows more money than it has cash or short-term cash equivalents and invests the proceeds, the Trust will create financial leverage. The use of borrowing for investment purposes increases both investment opportunity and investment risk.

The Trust may borrow money from banks (including their custodian bank) or from other lenders to the extent permitted under applicable law. The 1940 Act requires the Trust maintain asset coverage of at least 300% for all such borrowings and 200% of the sum of the amount of preferred shares outstanding. The Trust will not make any borrowing that would cause its outstanding borrowings to exceed one-third of the value of its total assets. To reduce its borrowings, the Trust might be required to sell securities at a time when it would be disadvantageous to do so. In addition, because interest on money borrowed is the Trust expense that it would not otherwise incur, the Trust may have less net investment income during periods when its borrowings are substantial. The interest paid by the Trust on borrowings may be more or less than the yield on the securities purchased with borrowed funds, depending on prevailing market conditions.

The Trust currently leverages through borrowings made by HFRO Sub, LLC under the Financing Arrangement with Bank of America Merrill Lynch ("BAML"). As of May 30, 2019, HFRO Sub, LLC had drawn $400 million under the Financing Arrangement and the Trust's asset coverage ratio was 320%. On February 2, 2018, HFRO Sub, LLC a wholly-owned subsidiary of the Trust entered into Financing Arrangement with BAML. Pursuant to the terms of the Financing Arrangement, and subject to certain customary conditions, HFRO Sub, LLC may borrow on a revolving basis a maximum of $500 million. In connection with the Financing Arrangement, HFRO Sub, LLC and the Trust have made representations and warranties regarding the loans and underlying collateral and are required to comply with various covenants, reporting requirements and other customary requirements. The Facility also limits the recourse of the lender to the assets of HFRO Sub, LLC and includes usual and customary events of default for senior secured revolving facilities of this nature.

There can be no assurance that any leveraging strategy the Trust employs will be successful during any period in which it is employed. In addition to any indebtedness incurred by the Trust and HFRO Sub, LLC, the REIT Subsidiary may also utilize leverage, including by mortgaging properties held by special purpose vehicles, or by acquiring property with existing debt. Any such borrowings will generally be the sole obligation of each respective special purpose vehicle, without any recourse to any other special purpose vehicle, the REIT Subsidiary, the Trust or its assets, and the Trust will not treat such non-recourse borrowings as senior securities (as defined in the 1940 Act) for purposes of complying with the 1940 Act's limitations on leverage unless the financial statements of the special purpose vehicle, or the subsidiary of the Trust that owns such special purpose vehicle, will be consolidated in accordance with Regulation S-X and other accounting rules. If cash flow is insufficient to pay principal and interest on a special purpose vehicle's borrowings, a default could occur, ultimately resulting in foreclosure of any security instrument securing the debt and a complete loss of the investment, which could result in losses to the REIT Subsidiary and, therefore, to the Trust. To the extent that any subsidiaries of the Trust, including the REIT Subsidiary, directly incur leverage in the form of debt (as opposed to non-recourse borrowings made through special purpose vehicles), the amount of such recourse leverage used by the Trust and such subsidiaries, including the REIT Subsidiary, will be consolidated and treated as senior securities for purposes of complying with the 1940 Act's limitations on leverage by the Trust.

Securities Loans. The Trust may seek additional income by making secured loans of its portfolio securities through its custodian, Bank of New York Mellon ("BNY Mellon"). Such loans will be in an amount not greater than one-third of the value of the Trust's total assets. BNY Mellon will charge the Trust fees based on a percentage of the securities lending income. The Trust will receive collateral consisting of cash (U.S. and foreign currency), securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, sovereign debt, convertible bonds, irrevocable bank letters of credit or such other collateral as may be agreed on by the parties to a securities lending arrangement, initially with a value of 102% or 105% of the market value of the loaned securities

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and thereafter maintained at a value of 100% of the market value of the loaned securities. If the collateral consists of non-cash collateral, the borrower will pay the Trust a loan premium fee. If the collateral consists of cash, BNY Mellon will reinvest the cash. Although voting rights, or rights to consent, with respect to the loaned securities pass to the borrower, the Trust will recall the loaned securities upon reasonable notice in order that the securities may be voted by the Trust if the holders of such securities are asked to vote upon or consent to matters materially affecting the investment. The Trust also may call such loans in order to sell the securities involved.

The risks in lending portfolio securities, as with other extensions of credit, consist of possible delays in recovery of the securities or possible loss of rights in the collateral should the borrower fail financially. The Trust also bears the risk that the value of investments made with collateral may decline. Although the Trust has the right to call loans at any time on reasonable notice and will do so if holders of a loaned security are asked to vote upon or consent to material matters, the Trust bears the risk of delay in the return of the security, impairing the Trust's ability to vote on such matters.

Securities lending also exposes the Trust to counterparty risk, as the borrower of the Trust's securities may be unable or unwilling to make timely principal, interest, or settlement payments or otherwise honor its obligations. There can be no assurance that a counterparty will meet its obligations, especially during unusually adverse market conditions. If the counterparty defaults, the Trust will have contractual remedies, but the Trust may be unable to enforce its contractual rights.

The following table is designed to illustrate the effect on the return to a holder of the Trust's common shares of leverage in the amount of approximately 30% of the Trust's total assets, assuming hypothetical annual returns of the Trust's investment portfolio of minus 10% to plus 10%. As the table shows, leverage generally increases the return to holders of common shares when portfolio return is positive and greater than the cost of leverage and decreases the return when the portfolio return is negative or less than the cost of leverage. The figures appearing in the table are hypothetical and actual returns may be greater or less than those appearing in the table.

Assumed return on portfolio (net of expenses)	-10%	-5%	0%	5%	10%
Corresponding return to common stockholder	-15.9%	-8.8%	-1.70%	5.5%	12.6%

OTHER INVESTMENT POLICIES

Other Investments. The Trust may invest up to 15% of its net assets in entities that are excluded from registration under the 1940 Act by virtue of section 3(c)(1) and 3(c)(7) of the 1940 Act (such as private equity funds or hedge funds). This limitation does not apply to any collateralized loan obligations, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the 1940 Act.

Swap Agreements. To help enhance the value of their portfolio or manage their exposure to different types of investments, the Trust may enter into credit default swap agreements, interest rate, currency and mortgage swap agreements and may purchase and sell interest rate "caps," "floors" and "collars."

In a standard "swap" transaction, two parties agree to exchange the returns (or differentials in rates of return) on different currencies, securities, baskets of currencies or securities, indices or other instruments, which returns are calculated with respect to a "notional value," (*i.e.*, the designated reference amount of exposure to the underlying instruments). The Trust intends to enter into swaps primarily on a net basis, *i.e.*, the two payment streams are netted out, with the Trust receiving or paying, as the case may be, only the net amount of the two payments. If the other party to a swap contract entered into on net basis defaults, the Trust's risk of loss will consist of the net amount of payments that the Trust is contractually entitled to receive. The net amount of the excess, if any, of the Trust's obligations over its entitlements will be maintained in a segregated account by the Trust's custodian. The Trust will not enter into swap agreements unless the claims-paying ability of the other party thereto is considered to be an acceptable credit risk to the Trust by the Adviser. If there is a default by the other party to such a transaction, the Trust will have contractual remedies pursuant to the agreements related to the transaction. Swap instruments are not exchange-listed securities and may be traded only in the over-the-counter market.

In a typical interest rate swap agreement, one party agrees to make regular payments equal to a floating interest rate on a specified amount (the "notional principal amount") in return for payments equal to a fixed interest rate on the same amount for a specified period. If a swap agreement provides for payment in different currencies, the parties may also agree to exchange the notional principal amount. Mortgage swap agreements are similar to interest rate swap agreements, except that notional principal amount is tied to a reference pool of mortgages. In a cap or floor, one party agrees, usually in return for a fee, to make payments under particular circumstances. For example, the purchaser of an interest rate cap has the right to receive payments to the extent a specified interest rate exceeds an agreed level; the purchaser of an interest rate floor has the right to receive payments to the extent a specified interest rate falls below an agreed level. A collar entitles the purchaser to receive payments to the extent a specified interest rate falls outside an agreed range.

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Investments in swaps involve the exchange by the Trust with another party of their respective commitments. Use of swaps subjects the Trust to risk of default by the counterparty. If there is a default by the counterparty to such a transaction, there may be contractual remedies pursuant to the agreements related to the transaction although contractual remedies may not be sufficient in the event the counterparty is insolvent. However, the swap market has grown substantially in recent years with a large number of banks and investment banking firms acting both as principals and agents utilizing standardized swap documentation. As a result, the swap market has become relatively liquid in comparison with the markets for other similar instruments which are traded in the interbank market. Swap agreements are sophisticated financial instruments that typically involve a small investment of cash relative to the magnitude of risks assumed. Swaps may involve leverage and can be highly volatile and may have a considerable impact on the Trust's performance, as the potential gain or loss on any swap transaction is not necessarily subject to any fixed limit. Swaps may also be considered illiquid.

The Trust may enter into credit default swap agreements. The "buyer" in a credit default contract is obligated to pay the "seller" a periodic stream of payments over the term of the contract provided that no event of default on an underlying reference obligation has occurred. If an event of default occurs, the seller must pay the buyer the "par value" (full notional value) of the reference obligation in exchange for the reference obligation. The Trust may be either the buyer or seller in the transaction. If the Trust is a buyer and no event of default occurs, the Trust loses its investment and recovers nothing. However, if an event of default occurs, the buyer receives full notional value for a reference obligation that may have little or no value. As a seller, the Trust receives income throughout the term of the contract, which typically is between six months and three years, provided that there is no default event.

Credit default swap agreements are subject to greater risk than direct investment in the reference obligation. Like all swap agreements, credit default swaps are subject to liquidity, credit and counterparty risks. A buyer in a credit default swap contract will lose its investment and recover nothing should no event of default occur. If an event of default were to occur, the value of the reference obligation received by the seller, coupled with the periodic payments previously received, may be less than the full notional value it pays to the buyer, resulting in a loss of value to the seller. In addition, collateral posting requirements are individually negotiated and there is no regulatory requirement that a counterparty post collateral to secure its obligations under a credit default swap. Furthermore, there is no requirement that a party be informed in advance when a credit default swap agreement is sold. Accordingly, the Trust may have difficulty identifying the party responsible for payment of its claims. The notional value of credit default swaps with respect to a particular investment is often larger than the total par value of such investment outstanding and, in event of a default, there may be difficulties in making the required deliveries of the reference investments, possibly delaying payments.

The market for credit default swaps has become more volatile recently as the creditworthiness of certain counterparties has been questioned and/or downgraded. If a counterparty's credit becomes significantly impaired, multiple requests for collateral posting in a short period of time could increase the risk that the Trust may not receive adequate collateral. The Trust generally may exit its obligations under a credit default swap only by terminating the contract and paying applicable breakage fees, or by entering into an offsetting credit default swap position, which may cause the Trust to incur more losses. If the Trust uses credit default swaps to leverage its portfolio, it will be exposed to additional risks, including the risk that the Trust's use of leverage will magnify the effect of any losses the Trust incurs since if an event of default occurs the seller must pay the buyer the full notional value of the reference obligation.

When-Issued Securities and Forward Commitments. The Trust may enter into forward commitments for the purchase or sale of interests in Senior Loans and other portfolio securities, including on a "when-issued" or "delayed delivery" basis in excess of customary settlement periods for the type of security involved. In some cases, a forward commitment may be conditioned upon the occurrence of a subsequent event, such as approval and consummation of a merger, corporate reorganization or debt restructuring (*i.e.*, a when, as and if issued security). When such transactions are negotiated, the price is fixed at the time of the commitment, with payment and delivery taking place in the future, generally a month or more after the date of the commitment. While the Trust will only enter into a forward commitment with the intention of actually acquiring the security, the Trust may sell the security before the settlement date if it is deemed advisable. Securities purchased by the Trust under a forward commitment are subject

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to market fluctuation, and no interest (or dividends) accrues to the Trust prior to the settlement date. For forward commitments that are cash settled, the Trust will designate or segregate liquid assets in an amount equal to the Trust's daily marked-to-market value of such commitments.

Purchases of securities on a forward commitment basis may involve more risk than other types of purchases. Securities purchased on a forward commitment basis and the securities held in the Trust's portfolio are subject to changes in value based upon the public's perception of the creditworthiness of the issuer and changes, real or anticipated, in the level of interest rates. Purchasing securities on a forward commitment basis can involve the risk that the yields available in the market when the delivery takes place may actually be higher or lower than those obtained in the transaction itself. On the settlement date of the forward commitment transaction, the Trust will meet its obligations from then available cash flow, sale of securities reserved for payment of the commitment, sale of other securities or, although it would not normally expect to do so, from sale of the forward commitment securities themselves (which may have a value greater or lesser than the Trust's payment obligations). The sale of securities to meet such obligations may result in the realization of capital gains or losses. Purchasing securities on a forward commitment basis can also involve the risk of default by the other party on its obligation, delaying or preventing the Trust from recovering the collateral or completing the transaction.

Repurchase Agreements. The Trust may enter into repurchase agreements without limitation as part of its investment strategy. A repurchase agreement is a purchase of, and a simultaneous commitment to resell, a financial instrument at an agreed-upon price on an agreed-upon date. When participating in repurchase agreements, the Trust buys securities from a seller (*e.g.*, a bank or brokerage firm) with the agreement that the seller will repurchase the securities at the agreed-upon price at a later date. Repurchase agreements may also be viewed as loans made by the Trust that are collateralized by the securities subject to repurchase. Such transactions afford an opportunity for the Trust to earn a return on available liquid assets at minimal market risk, although the Trust may be subject to various delays and risks of loss if the counterparty is unable to meet its obligation to repurchase. If the counterparty to a repurchase agreement defaults on its repurchase obligation pursuant to the repurchase agreement, the Trust may lose money to the extent proceeds from the sale of collateral are less than the repurchase price. If the member bank or member firm that is the party to the repurchase agreement petitions for bankruptcy or otherwise becomes subject to the Bankruptcy Code, the law regarding the rights of the Trust is unsettled and the Trust's realization upon the collateral may be delayed or limited. The Adviser will evaluate the creditworthiness of the repurchase agreement counterparties with whom the Trust does business and will monitor their creditworthiness during the period of any repurchase agreement.

Reverse Repurchase Agreements. The Trust may enter into reverse repurchase agreements with respect to securities held by the Trust that could otherwise be sold by the Trust. In a reverse repurchase agreement the Trust sells a security held by the Trust and simultaneously obtains the commitment of the purchaser (typically, a commercial bank or a broker or dealer) to sell the security back to the Trust at an agreed-upon price on an agreed-upon date. The Trust will maintain cash or liquid securities in an amount sufficient to cover its obligations with respect to reverse repurchase agreements. The Trust receives payment for such securities only upon physical delivery or evidence of book entry transfer by its custodian. Regulations of the SEC require that, if securities are sold by the Trust under a reverse repurchase agreement, the Trust designate or segregate liquid assets in an amount equal to the Trust's daily marked-to-market value of such agreement. Reverse repurchase agreements are considered borrowings of money by the Trust and as such would be subject to the restrictions on issuing senior securities described below under "Investment Restrictions."

Reverse repurchase agreements could involve certain risks in the event of default or insolvency of the counterparty, including possible delays or restrictions upon the Trust's ability to dispose of the proceeds of the sale received from the counterparty. An additional risk is that the market value of securities sold by the Trust under a reverse repurchase agreement could decline below the price at which the Trust is obligated to repurchase them.

Emerging and Developing Markets. The Trust may invest without limitation in emerging market countries. Such investment may be denominated in U.S. dollars, non-U.S. currencies or multinational currency units.

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Investing in emerging or developing market countries involves certain risks not typically associated with investing in the United States and imposes risks greater than, or in addition to, risks of investing in more developed foreign countries. These risks include, but are not limited to, the following: greater risks of nationalization or expropriation of assets or confiscatory taxation; currency devaluations and other currency exchange rate fluctuations; greater social, economic, and political uncertainty and instability (including amplified risk of war and terrorism); more substantial government involvement in the economy; less government supervision and regulation of the securities markets and participants in those markets; controls on foreign investment and limitations on repatriation of invested capital and on the Trust's ability to exchange local currencies for U.S. dollars; unavailability of currency hedging techniques in certain emerging and developing market countries; the fact that companies in emerging and developing market countries may be smaller, less seasoned, and newly organized companies; the difference in, or lack of, auditing and financial reporting standards, which may result in unavailability of material information about issuers; the risk that it may be more difficult to obtain and/or enforce a judgment in a court outside the United States; and greater price volatility, substantially less liquidity, and significantly smaller market capitalization of securities markets. Also, any change in the leadership or politics of emerging or developing market countries, or the countries that exercise a significant influence over those countries, may halt the expansion of or reverse the liberalization of foreign investment policies now occurring and adversely affect existing investment opportunities. Furthermore, high rates of inflation and rapid fluctuations in inflation rates have had, and may continue to have, negative effects on the economies and securities markets of certain emerging and developing market countries.

Money Market Instruments. The Trust may invest in money market instruments. Money market securities are high-quality, dollar-denominated, short-term instruments. They consist of (i) bankers' acceptances, certificates of deposit, notes and time deposits of highly-rated U.S. banks and U.S. branches of foreign banks; (ii) U.S. Treasury obligations and obligations issued or guaranteed by agencies and instrumentalities of the U.S. Government; (iii) high-quality commercial paper issued by U.S. foreign corporations; (iv) debt obligations with a maturity of one year or less issued by corporations with outstanding high-quality commercial paper ratings; and (v) repurchase agreements involving any of the foregoing obligations entered into with highly-rated banks and broker-dealers.

Convertible Securities. Convertible securities may offer higher income than the common stocks into which they are convertible and include fixed-income or zero coupon debt securities, which may be converted or exchanged at a stated or determinable exchange ratio into underlying shares of common stock. Prior to their conversion, convertible securities may have characteristics similar to both non-convertible debt securities and equity securities. While convertible securities generally offer lower yields than non-convertible debt securities of similar quality, their prices may reflect changes in the value of the underlying common stock. Convertible securities entail less credit risk than the issuer's common stock.

Asset Coverage. To assure that the Trust's use of futures and related options, as well as when issued and delayed-delivery transactions, forward currency contracts and swap transactions, are not used to achieve investment leverage, the Trust will cover such transactions, as required under applicable SEC interpretations, either by owning the underlying securities or by earmarking liquid securities with its custodian in an amount at all times equal to or exceeding the Trust's commitment with respect to these instruments or contracts.

Warrants and Rights. Warrants are options to purchase equity securities at a specified price and are valid for a specific time period. Rights are similar to warrants, but normally have a short duration and are distributed by the issuer to its shareholders. The Trust may purchase warrants and rights, provided that the Trust presently does not intend to invest more than 20% of its net assets at the time of purchase in warrants and rights other than those that have been acquired in units or attached to other securities.

Short-Term Trading. Short-term trading involves the selling of securities held for a short time, ranging from several months to less than a day. The object of such short-term trading is to increase the potential for capital appreciation and/or income of the Trust in order to take advantage of what the Adviser believes are changes in market, industry or individual company conditions or outlook. Any such trading would increase the turnover rate of the Trust and its transaction costs, and could result in higher taxes for shareholders if Trust shares are held in a taxable account.

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Short Selling. Short selling (also known as shorting or going short) is a strategy in which the Trust sells a security it does not own in anticipation that the market price of that security will decline. When the Trust makes a short sale, it must borrow the security sold short from a broker-dealer and deliver it to the buyer upon conclusion of the sale. The Trust will ordinarily have to pay a fee to borrow a security and is often obligated to repay the lender of the security any dividend or interest that accrues on the security during the period of the loan. If the price of the security sold short increases between the time of the short sale and the time the Trust replaces the borrowed security, the Trust will incur a loss.

The Trust may sell a security short if it owns at least an equal amount of the security sold short or another security convertible or exchangeable for an equal amount of the security sold short without payment of further compensation (a short sale "against-the-box"). The Trust also may engage in short sales that are not "against-the-box," and will be subject to additional risks to the extent that it engages in short sales that are not "against-the-box." The Trust's loss on a short sale could be unlimited in cases where the Trust is unable, for whatever reason, to close out its short position.

Short sales by the Trust that are not made "against-the-box" (that is when the Trust has an offsetting long position in the asset that is selling short) involve unlimited loss potential since the market price of securities sold short may continuously increase. When the Trust engages in a short sale on a security, it must borrow the security sold short and deliver it to the counterparty. The Trust will ordinarily have to pay a fee or premium to borrow particular securities and be obligated to repay the lender of the security any dividends or interest that accrue on the security during the period of the loan. The amount of any gain from a short sale will be decreased, and the amount of any loss increased, by the amount of the premium, dividends, interest or expenses the Trust pays in connection with the short sale. Short selling allows the Trust to profit from declines in market prices to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. However, since the borrowed securities must be replaced by purchases at market prices in order to close out the short position, any appreciation in the price of the borrowed securities would result in a loss. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss. The Trust may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Trust might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales. See "Income Tax Considerations" below for special tax considerations associated with engaging in short sales.

Micro Cap Securities. The Trust may invest in companies whose total market capitalization at the time of investment is generally between $30 million and $500 million, referred to as micro cap companies. Micro cap companies may not be well-known to the investing public, may not have significant institutional ownership and may have cyclical, static or only moderate growth prospects. Micro cap companies may have greater risk and volatility than large companies and may lack the management depth of larger, mature issuers. Micro cap companies may have relatively small revenues and limited product lines, markets, or financial resources, and their securities may trade less frequently and in more limited volume than those of larger, more mature companies. In addition, micro cap companies may be developing or marketing new products or services for which markets are not yet established and may never become established. As a result, the prices of their securities may fluctuate more than those of larger issuers.

Securities of Other Investment Companies. Such investments are subject to limitations prescribed by the 1940 Act unless an SEC exemption is applicable or as may be permitted by rules under the 1940 Act or SEC staff interpretations thereof. The 1940 Act limitations currently provide, in part, that the Trust may not purchase shares of an investment company if (a) such a purchase would cause the Trust to own in the aggregate more than 3% of the total outstanding voting stock of the investment company; (b) such a purchase would cause the Trust to have more than 5% of its total assets invested in the investment company; or (c) more than 10% of the Trust's total assets would be invested in the aggregate in all investment companies. The Trust may invest in excess of the foregoing limitations in an exchange traded fund ("ETF") that is not part of the same group of investment companies (*e.g.*, an unaffiliated ETF) if the ETF has obtained exemptive relief from the SEC and both the ETF and the Trust adhere to the conditions in the exemptive relief.

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The Trust may invest in investment companies that are advised by the Adviser or its affiliates, including ETFs, to the extent permitted by applicable law and/or pursuant to exemptive relief from the SEC. These investment companies typically incur fees that are separate from those fees incurred directly by the Trust. The Trust's purchase of such investment company securities results in the layering of expenses, such that shareholders would indirectly bear a proportionate share of the operating expenses of such investment companies, including advisory fees, in addition to paying Trust expenses.

Privately-Placed Securities. The Trust may invest in securities that are neither listed on a stock exchange nor traded over-the-counter, including privately placed securities. Investing in such unlisted securities, including investments in new and early stage companies, may involve a high degree of business and financial risk that can result in substantial losses. As a result of the absence of a public trading market for these securities, they may be less liquid than publicly traded securities. Although these securities may be resold in privately negotiated transactions, the prices realized from these sales could be less than those originally paid by the Trust, or less than what may be considered the fair value of such securities. Further, companies whose securities are not publicly traded may not be subject to the disclosure and other investor protection requirements that might be applicable if their securities were publicly traded. If such securities are required to be registered under the securities laws of one or more jurisdictions before being resold, the Trust may be required to bear the expenses of registration.

Initial Public Offerings ("IPOs"). The Trust may invest in IPOs. An IPO presents the risk that the market value of IPO shares will fluctuate considerably due to factors such as the absence of a prior public market, unseasoned trading, the small number of shares available for trading and limited information about the issuer. The purchase of IPO shares may involve high transactions costs. IPO shares are subject to market risk and liquidity risk. When the Trust's asset base is small, a significant portion of the Trust's performance could be attributable to investments in IPOs, because such investments would have a magnified impact on the Trust. As the Trust's assets grow, the effect of the Trust's investments in IPOs on the Trust's performance probably will decline, which could reduce the Trust's performance. Because of the price volatility of IPO shares, the Trust may choose to hold IPO shares for a very short period of time. This may increase the turnover of the Trust and may lead to increased expenses to the Trust, such as commissions and transaction costs. By selling IPO shares, the Trust may realize taxable gains it will subsequently distribute to shareholders. In addition, the market for IPO shares can be speculative and/or inactive for extended periods of time. There is no assurance that the Trust will be able to obtain allocable portions of IPO shares. The limited number of shares available for trading in some IPOs may make it more difficult for the Trust to buy or sell significant amounts of shares without an unfavorable impact on prevailing prices. Investors in IPO shares can be affected by substantial dilution in the value of their shares, by sales of additional shares and by concentration of control in existing management and principal shareholders.

The Trust's investments in IPO shares may include the securities of "unseasoned" companies (companies with less than three years of continuous operations), which present risks considerably greater than common stocks of more established companies. These companies may have limited operating histories and their prospects for profitability may be uncertain. These companies may be involved in new and evolving businesses and may be vulnerable to competition and changes in technology, markets and economic conditions. They may be more dependent on key managers and third parties and may have limited products.

Operating Deficits. The expenses of operating the Trust (including the fees payable to the Adviser) may exceed its income, thereby requiring that the difference be paid out of the Trust's capital, reducing the Trust's investments and potential for profitability.

Accuracy of Public Information. The Adviser selects investments for the Trust, in part, on the basis of information and data filed by issuers with various government regulators or made directly available to the Adviser by the issuers or through sources other than the issuers. Although the Adviser evaluates all such information and data and ordinarily seeks independent corroboration when the Adviser considers it appropriate and when such corroboration is reasonably available, the Adviser is not in a position to confirm the completeness, genuineness or accuracy of such information and data.

Trading Limitations. For all securities listed on a securities exchange, including options listed on a public exchange, the exchange generally has the right to suspend or limit trading under certain circumstances. Such suspensions or limits could render certain strategies difficult to complete or continue and subject the Trust to loss.

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Also, such a suspension could render it impossible for the Adviser to liquidate positions and thereby expose the Trust to potential losses. Finally, to the extent that advisory personnel of the Adviser acquire material non-public information in the course of service on the board of directors or creditor's committee of a company, the Trust may be prevented from buying or selling securities of that company.

Risks of Interest Only Mortgage-Backed Securities. "Interest only" mortgage-backed securities present a heightened risk of total loss of investment.

Risks of Inverse Floaters. As interest rates rise, inverse floaters produce less current income. A change in prevailing interest rates will often result in a greater change in the interest rate paid by an inverse floater. As a result, inverse floaters may have a greater degree of volatility than other types of interest-bearing securities of similar credit quality.

PORTFOLIO TURNOVER

The Trust's annual portfolio turnover rate may vary greatly from year to year. Although the Trust cannot accurately predict its annual portfolio turnover rate, it is not expected to exceed 100% under normal circumstances. For the six months ended December 31, 2018, the portfolio turnover rate was 27%. For the fiscal year ended June 30, 2018 the portfolio turnover rate was 177% and for the fiscal year ended June 30, 2017 the portfolio turnover rate was 63%. The conversion to a closed-end fund and use of leverage drove an increase in portfolio turnover from the prior year. Portfolio turnover rate is not considered a limiting factor in the execution of investment decisions for the Trust. There are no limits on the rate of portfolio turnover, and investments may be sold without regard to length of time held when the Trust's investment strategy so dictates. A higher portfolio turnover rate results in correspondingly greater brokerage commissions and other transactional expenses that are borne by the Trust. High portfolio turnover may result in the realization of net short-term capital gains by the Trust which, when distributed to shareholders, will be taxable as ordinary income. See "Tax Matters."

MANAGEMENT OF THE TRUST

Trustees

The Board provides broad oversight over the operations and affairs of the Trust and protects the interests of shareholders. The Board has overall responsibility to manage and control the business affairs of the Trust, including the complete and exclusive authority to establish policies regarding the management, conduct and operation of the Trust's business. The names and birthdates of the Trustees and officers of the Trust, the year each was first elected or appointed to office, their principal business occupations during the last five years, the number of funds overseen by each Trustee and other directorships or trusteeships they hold are shown below. The business address of the Trust, the Adviser and their Board members and officers is 300 Crescent Court, Suite 700, Dallas, Texas 75201, unless otherwise specified below.

Information About Each Trustee's Experience, Qualifications, Attributes, or Skills for Board Membership

The following provides an overview of the considerations that led the Board to conclude that each individual serving as a Trustee of the Trust should so serve, as well as each Trustee's name and certain biographical information as reported by them to the Trust. Among the factors the Board considered when concluding that an individual should serve on the Board were the following: (i) the individual's business and professional experience and accomplishments; (ii) the individual's ability to work effectively with the other members of the Board; (iii) the individual's prior experience, if any, serving on company boards (including public companies and, where relevant, other investment companies) and the boards of other complex enterprises and organizations; and (iv) how the individual's skills, experiences and attributes would contribute to an appropriate mix of relevant skills and experience on the Board.

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In respect of each Trustee, the individual's professional accomplishments and prior experience, including, in some cases, in fields related to the operations of the Trust, were a significant factor in the determination that the individual should serve as a Trustee of the Trust. Each Trustee's professional experience and additional considerations that contributed to the Board's conclusion that an individual should serve on the Board are summarized in the table below.

The "Highland Funds Complex," as referred to herein consists of: the Trust, each series of Highland Funds I ("HFI"), each series of Highland Funds II ("HFII"), Highland Global Allocation Fund ("GAF"), NexPoint Strategic Opportunities Fund ("NHF"), NexPoint Event-Driven Fund ("NEDF"), NexPoint Latin American Opportunities Fund ("NLAF"), NexPoint Real Estate Strategies Fund ("NRESF"), NexPoint Strategic Income Fund ("NSIF"), NexPoint Energy and Materials Opportunities Fund ("NEMO"), NexPoint Discount Strategies Fund ("NDSF"), NexPoint Healthcare Opportunities Fund ("NHOF", and together with NEDF, NLAF, NRESF, NSIF, NEMO, and NDSF, the "Interval Funds"), and NexPoint Capital, Inc. (the "BDC"), a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

Name, Date of Birth, Position(s) with the Trust and Length of Time Served, Term of Office[1] and Number of Portfolios in the Highland Funds Complex Overseen by the Trustees Independent Trustees	Principal Occupations(s) During the Past Five Years and Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership During the Past Five Years
Dr. Bob Froehlich (4/28/1953) Trustee since March 2016; 3 year term (expiring at 2020 annual meeting) for the Trust. 23 funds	Retired. Trustee of ARC Realty Finance Trust, Inc. (from January 2013 to May 2016); Director of KC Concessions, Inc. (since January 2013); Trustee of Realty Capital Income Funds Trust (from January 2014 to December 2016); Director of American Realty Capital Healthcare Trust II (from January 2013 to June 2016); Director, American Realty Capital Daily Net Asset Value Trust, Inc. (from November 2012 to July 2016); Director of American Sports Enterprise, Inc. (since January 2013); Director of Davidson Investment Advisors (from July 2009 to July 2016); Chairman and owner, Kane County Cougars Baseball Club (since January 2013); Advisory Board of Directors, Internet Connectivity Group, Inc. (from January 2014 to April 2016); Director of AXAR Acquisition Corp. (formerly AR Capital Acquisition Corp.) (from October 2014 to October 2017); Director of The Midwest League of Professional Baseball Clubs, Inc.; Director of Kane County Cougars Foundation, Inc.; Director of Galen Robotics, Inc.; Chairman and Director of FC Global Realty, Inc. (from May 2017 to June 2018); Chairman and Director of First Capital Investment Corp. (from March 2017 to March 2018); and Director and Special Advisor to Vault Data, LLC (since February 2018).	Significant experience in the financial industry; significant managerial and executive experience; significant experience on other boards of directors, including as a member of several audit committees.
John Honis[2] (6/16/1958) Trustee since July 2013; 3 year term (expiring at 2021 annual meeting) for the Trust. 23 funds	President of Rand Advisors, LLC since August 2013; Partner of Highland Capital Management, L.P. ("HCM") from February 2007 until his resignation in November 2014. Manager of Turtle Bay Resort, LLC (August 2011 – December 2018); Manager of American Home Patient (November 2011 to February 2016).	Significant experience in the financial industry; significant managerial and executive experience, including experience as president, chief executive officer or chief restructuring officer of five telecommunication firms; experience on other boards of directors.

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Name, Date of Birth, Position(s) with the Trust and Length of Time Served, Term of Office[1] and Number of Portfolios in the Highland Funds Complex Overseen by the Trustees	Principal Occupations(s) During the Past Five Years and Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership During the Past Five Years
Independent Trustee		
Ethan Powell[3] (6/20/1975) Trustee since December 2013; Chairman of the Board since December 2013; 3 year term (expiring at 2022 annual meeting) for the Trust. 23 funds	Trustee of Impact Shares Funds I Trust President and Founder of Impact Shares LLC since December 2015; Trustee/Director of the Highland Funds Complex from June 2012 until July 2013 and since December 2013; Chief Product Strategist of Highland Capital Management Fund Advisors, L.P. ("HCMFA") from 2012 until December 2015; Senior Retail Fund Analyst of HCM from 2007 until December 2015 and HCMFA from its inception until December 2015; President and Principal Executive Officer of NHF from June 2012 until May 2015; Secretary of NHF from May 2015 until December 2015; Executive Vice President and Principal Executive Officer of HFI and HFII from June 2012 until December 2015; and Secretary of HFI and HFII from November 2010 to May 2015.	Significant experience in the financial industry; significant executive experience including past service as an officer of funds in the Highland Funds Complex; significant administrative and managerial experience.
Bryan A. Ward (2/4/1955) Trustee since May 2006 3 year term (expiring at 2022 annual meeting). 23 funds	Senior Advisor, CrossFirst Bank since April 2019; Private Investor, BW Consulting, LLC since 2014; Senior Manager, Accenture, LLP (a consulting firm) from 1991 until retirement in 2014. Director of Equity Metrix, LLC	Significant experience on this and/or other boards of directors/trustees; significant managerial and executive experience; significant experience as a management consultant.
Interested Trustees		
Dustin Norris[4] (1/6/1984) Trustee since February 2018; Executive Vice President since April 2019; Nominee for 3 year term expiring at 2021 annual meeting. 23 funds	Head of Distribution and Chief Product Strategist at NexPoint since March 2019; President of NexPoint Securities, Inc. (formerly, Highland Capital Funds Distributor, Inc.) since April 2018; Head of Distribution at HCMFA from November 2017 until March 2019; Secretary of HFRO, GAF, HFI and HFII from October 2017 until April 2019; Assistant Secretary of HFRO and GAF II from August 2017 to October 2017; Chief Product Strategist at HCMFA from September 2015 to March 2019; Director of Product Strategy at HCMFA from May 2014 to September 2015; Assistant Secretary of HFI and HFII from March 2017 to October 2017; Secretary of NHF from December 2015 until April 2019; Assistant Treasurer of NexPoint Real Estate Advisors, L.P. since May 2015; Assistant Treasurer of NexPoint Real Estate Advisors II, L.P. since June 2016; Assistant Treasurer of HFI and HFII from November 2012 to March 2017; Assistant Treasurer of NHF from November 2012 to December 2015; Secretary of the BDC from 2014 until April 2019; and Secretary of the Interval Funds from March 2016 until April 2019. None	Significant experience in the financial industry; significant managerial and executive experience, including experience as an officer of the Highland Funds Complex since 2012.

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1 On an annual basis, as a matter of Board policy, the Governance and Compliance Committee reviews each Trustee's performance and determines whether to extend each such Trustee's service for another year. Effective June 2013, the Board adopted a retirement policy wherein the Governance and Compliance Committee shall not recommend the continued service as a Trustee of a Board member who is older than 80 years of age at the time the Governance and Compliance Committee reports its findings to the Board.

2 Since May 1, 2015, Mr. Honis has been treated as an Independent Trustee of the Trust. Prior to that date, Mr. Honis was treated as an Interested Trustee because he was a partner of an investment adviser affiliated with the Adviser until his resignation in November 2014. As of May 31, 2019, Mr. Honis was entitled to receive aggregate severance and/or deferred compensation payments of approximately $390,000 from another affiliate of the Adviser.

In addition, Mr. Honis serves as a trustee of a trust that owns substantially all of the economic interest in an investment adviser affiliated with the Adviser. Mr. Honis indirectly receives an asset-based fee in respect of such interest, which is projected to range from $450,000-$550,000 annually. Additionally, an investment adviser controlled by Mr. Honis has entered into a shared services arrangement with an affiliate of the Adviser, pursuant to which the affiliate provides back office support in exchange for approximately $50,000 per quarter. The affiliated adviser was paid $147,000 and $208,000 in 2017 and 2018, respectively. In light of these relationships between Mr. Honis and affiliates of the Adviser, it is possible that the SEC might in the future determine Mr. Honis to be an interested person of the Trust.

3 Prior to December 8, 2017, Mr. Powell was treated as an Interested Trustee of the Trust for all purposes other than compensation and the Trust's code of ethics.

4 On February 7, 2018, Mr. Norris was appointed as an Interested Trustee of the Trust.

OFFICERS

Name, Date of Birth, Position(s) held with the Trust and Length of Time Served, Term of Office	Principal Occupations(s) During the Past Five Years
Dustin Norris (1/6/1984) Executive Vice President since April 2019; Indefinite Term Trustee since February 2018	Head of Distribution and Chief Product Strategist at NexPoint since March 2019; President of NexPoint Securities, Inc. since April 2018; Head of Distribution at HCMFA from November 2017 until March 2019; Chief Product Strategist at HCMFA from September 2015 to March 2019; Director of Product Strategy at HCMFA from May 2014 to September 2015; Officer of the Highland Funds Complex since November 2012.
Frank Waterhouse (4/14/1971) Treasurer since May 2015; Principal Financial Officer and Principal Accounting Officer since October 2017; Principal Executive Officer since February 2018; Indefinite Term	Partner and Chief Financial Officer of HCM; Treasurer of the Highland Funds Complex since May 2015.
Clifford Stoops (11/17/1970) Assistant Treasurer since March 2017; Indefinite Term	Chief Accounting Officer at HCM; Assistant Treasurer of the Highland Funds Complex since March 2017.

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Name, Date of Birth, Position(s) held with the Trust and Length of Time Served, Term of Office	Principal Occupations(s) During the Past Five Years
Jason Post (1/9/1979) Chief Compliance Officer since September 2015; Indefinite Term	Chief Compliance Officer for HCMFA and NexPoint since September 2015; Chief Compliance Officer and Anti-Money Laundering Officer of the Highland Funds Complex since September 2015. Prior to his current role at HCMFA and NexPoint, Mr. Post served as Deputy Chief Compliance Officer and Director of Compliance for HCM.
Lauren Thedford (1/7/1989) Secretary since April 2019; Indefinite Term	Associate General Counsel at HCM since September 2017; In-House Counsel at HCM from January 2015 until September 2017; Secretary of the Highland Funds Complex since April 2019.

1 The address for each officer is c/o Highland Capital Management Fund Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201.

Role of the Board of Trustees, Leadership Structure and Risk Oversight

The Role of the Board of Trustees

The Board oversees the management and operations of the Trust. Like most registered investment companies, the day-to-day management and operation of the Trust is performed by various service providers to the Trust, such as the Adviser, and the distributor, administrator, custodian, and transfer agent. The Board has appointed senior employees of certain of these service providers as officers of the Trust, with responsibility to monitor and report to the Board on the Trust's operations. The Board receives regular reports from these officers and service providers regarding the Trust's operations. For example, the Treasurer provides reports as to financial reporting matters and investment personnel report on the performance of the Trust. The Board has appointed a Chief Compliance Officer who administers the Trust's compliance program and regularly reports to the Board as to compliance matters. Some of these reports are provided as part of formal in-person Board meetings, which are typically held quarterly, in person, and involve the Board's review of, among other items, recent Trust operations. The Board also periodically holds telephonic meetings as part of its review of the Trust's activities. From time to time one or more members of the Board may also meet with management in less formal settings, between scheduled Board meetings, to discuss various topics. In all cases, however, the role of the Board and of any individual Trustee is one of oversight and not of management of the day-to-day affairs of the Trust and its oversight role does not make the Board a guarantor of the Trust's investments, operations or activities.

Board Structure and Leadership

The Board has structured itself in a manner that it believes allows it to perform its oversight function effectively. The Board consists of five Trustees, four of whom are Independent Trustees. The Trustees meet periodically throughout the year in person and by telephone to oversee the Trust's activities, review contractual arrangements with service providers for the Trust and review the Trust's performance. The Board conducts much of its work through certain standing Committees, each of whose meetings are chaired by an Independent Trustee.

Audit and Qualified Legal Compliance Committee. The members of the Audit and Qualified Legal Compliance Committee (formerly named the Audit Committee) are Dr. Froehlich and Messrs. Powell and Ward, each of whom is independent for purposes of the 1940 Act. The Audit and Qualified Legal Compliance Committee is responsible for approving the Trust's independent accountants, reviewing with the Trust's independent accountants the plans and results of the audit engagement and the adequacy of the Trust's internal accounting controls, approving professional services provided by the Trust's independent accountants. The Audit and Qualified Legal Compliance Committee is charged with compliance with Rules 205.2(k) and 205.3(c) of Title 17 of the Code

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of Federal Regulations regarding alternative reporting procedures for attorneys representing the Trust who appear and practice before the SEC on behalf of the Trust. The Audit and Qualified Legal Compliance Committee is also responsible for reviewing and overseeing the valuation of debt and equity securities that are not publicly traded or for which current market values are not readily available pursuant to policies and procedures adopted by the Board. The Board and Audit and Qualified Legal Compliance Committee will use the services of one or more independent valuation firms to help them determine the fair value of these securities. In addition, each member of the Audit and Qualified Legal Compliance Committee meets the current independence and experience requirements of Rule 10A-3 under the Exchange Act.

The Audit and Qualified Legal Compliance Committee met six times during the fiscal year ended December 31, 2018. Mr. Ward acts as the Chairman of the Audit and Qualified Legal Compliance Committee and as the audit committee financial expert.

The Governance and Compliance Committee. The Trust's Governance and Compliance Committee's function is to oversee and make recommendations to the full Board or the Independent Trustees, as applicable, with respect to the governance of the Trust, selection and nomination of Trustees, compensation of Trustees, and related matters, as well as to oversee and assist Board oversight of the Trust's compliance with legal and regulatory requirements and to seek to address any potential conflicts of interest between the Trust and HCMFA in connection with any potential or existing litigation or other legal proceeding related to securities held by the Trust and the Adviser or another client of the Adviser. The Governance and Compliance Committee is also responsible for at least annually evaluating each Trustee and determining whether to recommend each Trustee's continued service in that capacity. The Governance and Compliance Committee will consider recommendations for Trustee nominees from shareholders sent to the Secretary of the Trust, 300 Crescent Court, Suite 700, Dallas, Texas 75201. A nomination submission must include all information relating to the recommended nominee that is required to be disclosed in solicitations or proxy statements for the election of Trustees, as well as information sufficient to evaluate the recommended nominee's ability to meet the responsibilities of a Trustee of the Trust. Nomination submissions must be accompanied by a written consent of the individual to stand for election if nominated by the Board and to serve if elected by the shareholders, and such additional information must be provided regarding the recommended nominee as reasonably requested by the Governance and Compliance Committee. The Governance and Compliance Committee is currently comprised of Dr. Froehlich and Messrs. Honis, Ward and Powell, each of whom is independent for purposes of the 1940 Act. Mr. Powell serves as the Chairman of the Governance and Compliance Committee. Prior to the February 28, 2019-March 1, 2019 Board Meeting, the Governance and Compliance Committee was divided into the Governance Committee and the Compliance Committee, each of which met three times during the fiscal year ended December 31, 2018.

The Distribution and Alternatives Oversight Committee. The members of the Distribution and Alternatives Oversight Committee are Dr. Froehlich, Messrs. Honis, Norris, Ward, and Powell. The Distribution and Alternatives Oversight Committee is responsible for reviewing arrangements with financial intermediaries who provide service to the Trust, including Trust payments to financial intermediaries, and for overseeing any funds that, in the Board's determination, employ alternative investment strategies.

Dr. Froehlich serves as Chairman of the Distribution and Alternatives Oversight Committee. Prior to the February 28, 2019-March 1, 2019 Board Meeting, the Distribution and Alternatives Oversight Committee was divided into the Distribution Oversight Committee and the Alternatives Oversight Committee, each of which met two times during the fiscal year ended December 31, 2018.

The Trust is led by Ethan Powell, who has served as the Chairman of the Board since December 2013. Under certain 1940 Act governance guidelines that apply to the Trust, the Independent Trustees will meet in executive session, at least quarterly. Under the Trust's governing documents, the Chairman of the Board is responsible for (a) presiding at board meetings, (b) calling special meetings on an as-needed basis, (c) execution and administration of Trust policies including (i) setting the agendas for board meetings and (ii) providing information to board members in advance of each board meeting and between board meetings. The Trust believes that the Chairman, and, as an entity, the full Board, provide effective leadership that is in the best interests of the Trust and each shareholder.

The Board periodically reviews its leadership structure, including the role of the Chairman. The Board also completes an annual self-assessment during which it reviews its leadership and Committee structure and considers whether its structure remains appropriate in light of the Trust's current operations. The Board believes that its leadership structure, including the current percentage of the Board who are Independent Trustees, is appropriate

given its specific characteristics. These characteristics include: (i) the extent to which the work of the Board is conducted through the standing committees; (ii) the extent to which the Independent Trustees meet as needed, together with their independent legal counsel, in the absence of members of management and members of the Board who are "interested persons" of the Trust; and (iii) Mr. Powell's and Mr. Honis' previous positions with affiliates of the Adviser enhance the Board's understanding of the operations of the Adviser.

Board Oversight of Risk Management

The Board's role is one of oversight, rather than active management. This oversight extends to the Trust's risk management processes. These processes are embedded in the responsibilities of officers of, and service providers to, the Trust. For example, the Adviser and other service providers to the Trust are primarily responsible for the management of the Trust's investment risks. The Board has not established a formal risk oversight committee; however, much of the regular work of the Board and its standing Committees addresses aspects of risk oversight. For example, the Trustees seek to understand the key risks facing the Trust, including those involving conflicts of interest; how management identifies and monitors these risks on an ongoing basis; how management develops and implements controls to mitigate these risks; and how management tests the effectiveness of those controls.

In the course of providing that oversight, the Board receives a wide range of reports on the Trust's activities from the Adviser and other service providers, including reports regarding the Trust's investment portfolio, the compliance of the Trust with applicable laws, and the Trust's financial accounting and reporting. The Board also meets periodically with the Trust's Chief Compliance Officer to receive reports regarding the compliance of the Trust with the federal securities laws and the Trust's internal compliance policies and procedures, and meets with the Trust's Chief Compliance Officer periodically, including at least annually, to review the Chief Compliance Officer's annual report, including the Chief Compliance Officer's risk-based analysis for the Trust. The Board's Audit Committee also meets regularly with the Treasurer and Trust's independent registered public accounting firm to discuss, among other things, the internal control structure of the Trust's financial reporting function. The Board also meets periodically with the portfolio managers of the Trust to receive reports regarding the management of the Trust, including its investment risks.

Compensation of Trustees

The officers of the Trust and those of its Trustees who are "interested persons" (as defined in the 1940 Act) of the Trust receive no direct remuneration from the Trust. The following table sets forth the aggregate compensation paid to each of the Trustees who is not an "interested person" (as defined in the 1940 Act) of the Trust (the "Independent Trustees") by the Trust and the total compensation paid to each of the Trustees by the Highland Funds Complex for the fiscal year ended December 31, 2018.

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Name of Trustee	Aggregate Compensation From the Trust	Pension or Retirement Benefits Accrued as Part of the Fund's Expense	Estimated Annual Benefits Upon Retirement	Aggregate Compensation from the Highland Funds Complex
Independent Trustees				
Timothy K. Hui[1]	$ 21,454	$ 0	$ 0	$ 150,000
Bryan A. Ward[2]	$ 24,254	$ 0	$ 0	$ 160,000
Dr. Bob Froehlich	$ 21,454	$ 0	$ 0	$ 150,000
John Honis[3]	$ 21,454	$ 0	$ 0	$ 150,000
Ethan Powell[2, 4]	$ 24,254	$ 0	$ 0	$ 160,000
Interested Trustee				
Dustin Norris[5]	N/A	N/A	N/A	N/A

1 Effective March 31, 2019, Mr. Hui resigned as an Independent Trustee of the Trust. Mr. Hui's resignation was related to a reduction in the size of the Board to five members. There were no material conflicts, disagreements or other issues between Mr. Hui, the Board of Trustees or HCMFA.

2 Effective December 31, 2018, the Board approved an aggregate compensation increase of $10,000 payable to each of the Chairman of the Audit Committee and the Chairman of the Board.

3 Effective May 1, 2015, Mr. Honis is treated as an Independent Trustee of the Trust.

4 Prior to December 8, 2017, Mr. Powell was treated as an Interested Trustee of the Trust for all purposes other than compensation and the Trust's code of ethics.

5 On February 7, 2018, Mr. Norris was appointed as an Interested Trustee of the Trust.

Each Independent Trustee receives an annual retainer of $150,000 payable in quarterly installments and allocated among each portfolio in the Highland Funds Complex.

Share Ownership

Set forth in the table below is the dollar range of shares of the Trust and the aggregate dollar range of shares beneficially owned by each Trustee of the Trust as of March 31, 2019.

Name of Trustee	Dollar Range of Shares of the Trust[1]	Aggregate Dollar Range of Equity Securities[1] Owned in All Registered Investment Companies Overseen by Trustee in the Highland Funds Complex
Independent Trustees		
Ethan Powell[2]	$10,001-$50,000	Over $100,000
John Honis[3]	None	None
Dr. Bob Froehlich	$10,001-$50,000	Over $100,000
Bryan A. Ward	None	Over $100,000
Interested Trustee		
Dustin Norris[4]	$1-$10,000	Over $100,000

1 Based on market value as of March 31, 2019.

2 Prior to December 8, 2017, Mr. Powell was treated as an Interested Trustee of the Trust for all purposes other than compensation and the Trust's code of ethics.

3 Effective May 1, 2015, Mr. Honis is treated as an Independent Trustee of the Trust.

4 On February 7, 2018, Mr. Norris was appointed as an Interested Trustee of the Trust.

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Proxy Voting Policies and Procedures

The Board has delegated the voting of proxies for Trust securities to the Adviser pursuant to the Adviser's proxy voting policies and procedures. Under these policies and procedures, the Adviser will vote proxies related to Trust securities in the best interests of the Trust and its shareholders. A copy of the Adviser's proxy voting policies and procedures is attached as Appendix B to this Statement of Additional Information. The Trust's proxy voting record for the most recent 12- month period ended June 30, 2018 is available (i) without charge, upon request, by calling 1-866-351-4440 and (ii) on the SEC's web site (http://www.sec.gov).

Codes of Ethics

The Trust and the Adviser have adopted codes of ethics under Rule 17j-1 of the 1940 Act. These codes permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Trust. These codes can be reviewed and copied at the SEC's Public Reference Room in Washington, D.C. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-202-551-8090. The codes of ethics are available on the EDGAR Database on the SEC's web site (http://www.sec.gov), and copies of these codes may be obtained, after paying a duplicating fee, by electronic request at the following e-mail address: publicinfo@sec.gov, or by writing the SEC's Public Reference Section, Washington, D.C. 20549-0102.

Investment Adviser

Highland Capital Management Fund Advisors, L.P. serves as the Trust's investment adviser pursuant to the Investment Advisory Agreement with the Trust. HCMFA is controlled by James Dondero and Mark Okada, by virtue of their respective share ownership, and its general partner, Strand Advisors XVI, Inc., of which Mr. Dondero is the sole stockholder.

Under the Investment Advisory Agreement, HCMFA receives a monthly fee, computed and accrued daily, at the annual rate of 0.65% of the Trust's Average Daily Managed Assets for the first $1 billion, 0.60% of the Trust's Average Daily Managed Assets for the next $1 billion and 0.55% of the Trust's Average Daily Managed Assets over $2 billion.

The table below sets forth the advisory fees paid by the Trust, as well as any fee waivers and/or expense reimbursements, for the past three fiscal years:

	Six Months Ended December 31, 2018	Fiscal Year Ended June 30, 2018	Fiscal Year Ended June 30, 2017
Gross Advisory Fee	$ 4,956,766	$ 7,490,859	$ 4,897,925
Fee Waiver	$ 0	$ 0	$ (169,993)[1]
Net Advisory Fee	$ 4,956,766	$ 7,490,859	$ 4,727,932

1 HCMFA had contractually agreed to limit the total annual fund operating expenses of the Trust to 0.95% of average daily net assets attributable to any class of the Trust through October 31, 2016.

Administrator/Sub-Administrator

HCMFA provides administration services to the Trust for a monthly administration fee, computed and accrued daily, at an annual rate of 0.20% of the Trust's Average Daily Managed Assets. In such capacity, HCMFA generally assists the Trust in all aspects of its administration and operations. As of October 1, 2018, under a separate sub-administration agreement, HCFMA has delegated certain administrative functions to SEI Investments Global Funds Services ("SEI"), One Freedom Valley Drive, Oaks, Pennsylvania 19456, and pays SEI a portion of the fee it receives from the Trust. Under the Sub-Administration Agreement, SEI has agreed to provide fund accounting services; asset data services; fund administration and reporting services; and regulatory administration services, including preparation and filing of various reports with the appropriate regulatory agencies and the SEC for the Trust. Prior to October 1, 2018, under a separate sub-administration agreement, HCFMA had delegated certain administrative functions to State Street, One Lincoln Street, Boston, Massachusetts 02111, and paid State Street a portion of the fee it receives from the Trust. Under the State Street sub-administration agreement, State Street had agreed to provide corporate secretarial services; prepare and file various reports with the appropriate regulatory agencies; assist in preparing various materials required by the SEC; and prepare various materials required by any state securities commission having jurisdiction over the Trust.

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The table below sets forth the administration fees paid by the Trust, as well as any fee waiver or reimbursement, for the past three fiscal years.

	Six Months Ended December 31, 2018	Fiscal Year Ended June 30, 2018	Fiscal Year Ended June 30, 2017
Gross Administration Fee	$ 1,585,927	$ 2,330,569	$ 1,507,054
Fee Waiver/Reimbursement	$ 0	$ 0	$ 0
Net Administration Fee	$ 1,585,927	$ 2,330,569	$ 1,507,054

INFORMATION REGARDING PORTFOLIO MANAGERS

The following table identifies: (i) the portfolio managers identified in the Prospectus who are primarily responsible for the day-to-day management of the Trust, (ii) the number of registered investment companies, other than the Trust, managed by each portfolio manager on a day-to-day basis and the corresponding total assets managed in such investment companies, (iii) the number of other pooled investment vehicles managed by each portfolio manager on a day-to-day basis and the corresponding total assets managed in such pooled investment vehicles, (iv) the number of other accounts managed by each portfolio manager on a day-to-day basis and the corresponding total assets managed in such other accounts, and (v) for each of the foregoing categories, the number of accounts and total assets in the accounts whose fees are based on performance, if any. All information is provided as of March 31, 2019.

As of March 31, 2019, Mark Okada managed the following client accounts:

Type of Account	Number of Accounts Managed	Total Assets (millions)	Number of Accounts Managed Subject to Performance-Based Advisory Fee	Total Assets Subject to Performance-Based Advisory Fee (millions)
Registered Investment Companies:	1	$ 385.39	0	$ 0
Other Pooled Investment Vehicles:	0	$ 0	0	$ 0
Other Accounts:	0	$ 0	0	$ 0

As of March 31, 2019, Jon Poglitsch managed the following client accounts:

Type of Account	Number of Accounts Managed	Total Assets (millions)	Number of Accounts Managed Subject to Performance-Based Advisory Fee	Total Assets Subject to Performance-Based Advisory Fee (millions)
Registered Investment Companies:	3	$ 455.04	0	$ 0
Other Pooled Investment Vehicles:	2	$ 116.64	2	$ 116.64
Other Accounts:	1	$ 416.06	0	$ 0

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As of March 31, 2019, Jim Dondero managed the following client accounts:

Type of Account	Number of Accounts Managed	Total Assets (millions)	Number of Accounts Managed Subject to Performance-Based Advisory Fee	Total Assets Subject to Performance-Based Advisory Fee (millions)
Registered Investment Companies:	11	$ 1,565.60	1	$ 100.46
Other Pooled Investment Vehicles:	2	$ 707.64	2	$ 707.42
Other Accounts:	0	$ 0	0	$ 0

Compensation Structure – HCMFA

HCMFA's financial arrangements with its portfolio managers, its competitive compensation and its career path emphasis at all levels reflect the value senior management places on key resources. Compensation may include a variety of components and may vary from year to year based on a number of factors, including the pre-tax relative performance of a portfolio manager's underlying account, the pre-tax combined performance of the portfolio manager's underlying accounts, and the pre-tax relative performance of the portfolio manager's underlying accounts measured against other employees. Portfolio managers are compensated generally based on their investment performance. The portfolio managers and other investment professionals are ranked based on the alpha generated by their portfolio versus their target index benchmark. Their investment performance is evaluated both versus a target index benchmark return and also compared to the returns of their peers at HCMFA and its affiliates. Other attributes which may be considered in the evaluation process are communication, teamwork, attitude and leadership.

The Trust's target index is the S&P LSTA Leveraged Loan Index.

HCMFA is owned by Highland Capital Management Services, Inc., a Delaware corporation ("HCM Services") and its general partner, Strand Advisors XVI, Inc., of which Mr. James Dondero is the sole stockholder. HCM Services is controlled by Mr. Dondero and Mr. Mark Okada by virtue of their respective share ownership. Mr. Okada does not receive compensation based upon investment performance of the Trust for which he serves as portfolio manager and instead shares in the profits of HCMFA.

The principal components of compensation include a base salary, a discretionary bonus and various retirement benefits.

Base compensation. Generally, portfolio managers receive base compensation based on their seniority and/or their position with HCMFA, which may include the amount of assets supervised and other management roles within HCMFA. Base compensation is determined by taking into account current industry norms and market data to ensure that HCMFA pays a competitive base compensation.

Discretionary compensation. In addition to base compensation, portfolio managers may receive discretionary compensation, which can be a substantial portion of total compensation. Discretionary compensation can include a discretionary cash bonus paid to recognize specific business contributions and to ensure that the total level of compensation is competitive with the market, as well as participation in incentive plans, including one or more of the following:

Because each person's compensation is based on his or her individual performance, HCMFA does not have a typical percentage split among base salary, bonus and other compensation. Senior portfolio managers who perform additional management functions may receive additional compensation in these other capacities. Compensation is structured such that key professionals benefit from remaining with HCMFA.

For information about the Trust's conflicts of interest policy, please see "Risk Factors—Potential Conflicts of Interest" in the Prospectus.

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Ownership of Securities

The following table sets forth the dollar range of equity securities of the Trust beneficially owned by each portfolio manager. This information is provided as of the fiscal year ended March 31, 2019.

	Dollar Range of Equity Securities Beneficially Owned by Portfolio Manager[1]
Mark Okada	$500,001 - $1,000,000
Jon Poglitsch	$10,001 - $50,000
Jim Dondero	Over $1,000,000

1 Mr. Poglitsch's beneficial ownership of these shares includes the value of deferred compensation payments that are determined as if the amount had been invested, as of the date awarded, in shares of the Trust.

PORTFOLIO TRANSACTIONS AND BROKERAGE

Selection of Broker-Dealers; Order Placement

Subject to the overall review of the Board, the Adviser is responsible for decisions to buy and sell securities and other portfolio holdings of the Trust, for selecting the broker or dealer to be used, and for negotiating any commission rates paid. In underwritten offerings, securities usually are purchased at a fixed price that includes an amount of compensation to the underwriter, generally referred to as the underwriter's concession or discount. On occasion, certain money market instruments may be purchased directly from an issuer, in which case no commissions or discounts are paid.

The Adviser and its affiliates manage other accounts, including private funds and individual accounts that invest in senior loans and Trust investments. Although investment decisions for the Trust are made independently from those of such other accounts, investments of the type the Trust may make also may be made on behalf of such other accounts. When the Trust and one or more other accounts is prepared to invest in, or desires to dispose of, the same investment, available investments or opportunities for each are allocated in a manner believed by the Adviser to be equitable over time. The Adviser may (but is not obligated to) aggregate orders, which may include orders for accounts in which the Adviser or its affiliates have an interest, to purchase and sell securities to obtain favorable execution or lower brokerage commissions, to the extent permitted by applicable laws and regulations. Although the Adviser believes that, over time, the potential benefits of participating in volume transactions and negotiating lower transaction costs should benefit all participating accounts, in some cases these activities may adversely affect the price paid or received or the size of the position obtained by or disposed of for the Trust. Where trades are aggregated, the investments or proceeds, as well as the expenses incurred, will be allocated by the Adviser in a manner designed to be equitable and consistent with the Adviser's fiduciary duty to the Trust and its other clients (including its duty to seek to obtain best execution of client trades).

Commission Rates; Brokerage and Research Services

In placing orders for the Trust's portfolio, the Adviser is required to give primary consideration to obtaining the most favorable price and efficient execution. This means that the Adviser will seek to execute each transaction at a price and commission, if any, which provides the most favorable total cost or proceeds reasonably attainable in the circumstances. In seeking the most favorable price and execution, the Adviser, having in mind the Trust's best interests, will consider all factors it deems relevant, including, by way of illustration: price; the size, type and difficulty of the transaction; the nature of the market for the security; the amount of the commission; the timing of the transaction taking into account market prices and trends; operational capabilities; the reputation, experience and financial stability of the broker-dealer involved; and the quality of service rendered by the broker-dealer in other

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transactions. Though the Adviser generally seeks reasonably competitive commissions or spreads, the Trust will not necessarily be paying the lowest commission or spread available. The Adviser may place portfolio transactions, to the extent permitted by law, with brokerage firms participating in a distribution of the Trust's shares if it reasonably believes that the quality of execution and the commission are comparable to that available from other qualified firms.

The Adviser seeks to obtain "best execution" considering the execution price and overall commission costs paid and other factors. The Adviser routes its orders to various broker-dealers for execution at its discretion. Factors involved in selecting brokerage firms include the size, type and difficulty of the transaction, the nature of the market for the security, the reputation, experience and financial stability of the broker-dealer involved, the quality of service, the quality of research and investment information provided and the firm's risk in positioning a block of securities. Within the framework of the policy of obtaining the most favorable price and efficient execution, the Adviser does consider "brokerage and research services" (as defined in the Securities Exchange Act of 1934, as amended) provided by brokers who effect portfolio transactions with the Adviser or the Trust. "Brokerage and research services" are services that brokerage houses customarily provide to institutional investors and include statistical and economic data and research reports on particular issuers and industries.

Affiliated Brokers; Regular Broker-Dealers

The Adviser is currently affiliated with NexBank Securities, Inc. ("NexBank"), a Financial Industry Regulatory Authority ("FINRA") member broker-dealer that is indirectly controlled by the principals of the Adviser. Absent an exemption from the SEC or other regulatory relief, the Trust is generally precluded from effecting certain principal transactions with affiliated brokers. The Trust may utilize affiliated brokers for agency transactions subject to compliance with policies and procedures adopted pursuant to Rule 17e-1 under the 1940 Act. These policies and procedures are designed to provide that commissions, fees or other remuneration received by any affiliated broker or its affiliates for agency transactions are reasonable and fair compared to the remuneration received by other brokers in comparable transactions.

During the six months ended December 31, 2018, and the fiscal years ended June 30, 2018, and June 30, 2017, the Trust paid brokerage commissions of $42,520, $103,395, and $3,700, respectively, of which $0 was paid to NexBank.

There were no payments made to other brokers by the Trust during the fiscal year ended December 31, 2018 that were directed at least partially on the basis of research services they provided.

During the fiscal year ended December 31, 2018, the Trust did not acquire any securities of its regular brokers or dealers. At that date, the Trust did not hold any securities of its regular brokers or dealers. For these purposes, regular brokers or dealers are (a) the brokers or dealers that received the greatest dollar amount of brokerage commissions by virtue of direct or indirect participation in the Trust's portfolio transactions during the Trust's most recent fiscal year, (b) the brokers or dealers that engaged as principal in the largest dollar amount of portfolio transactions of the Trust during the Trust's most recent fiscal year, or (c) the brokers or dealers that sold the largest dollar amount of securities of the Trust during the Trust's most recent fiscal year.

Expedited Settlement Agreement

The Trust has entered into an Expedited Settlement Agreement with two major dealers in the floating rate loan market, pursuant to which the Trust has the right to designate certain loans it sells to the dealer to settle on or prior to three days from the trade date in exchange for a quarterly fee (the "Agreements").

These Agreements are is designed to reduce settlement times from the standard seven days to three days for eligible loans. While the Agreements are intended to provide the Trust with additional liquidity with respect to such loans, and may not represent the exclusive method of expedited settlement of such loans, no assurance can be given that the Agreements or other methods for expediting settlements will provide the Trust with sufficient liquidity in the event of abnormally large redemptions.

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CONTROL PERSONS AND PRINCIPAL HOLDERS OF SECURITIES

A principal shareholder is any person who owns (either of record or beneficially) 5% or more of the outstanding shares of a fund. A control person is one who owns, either directly or indirectly more than 25% of the voting securities of a company or acknowledges the existence of control. A control person may be able to determine the outcome of a matter put to a shareholder vote. As of as of May 31, 2019, there were no owners of preferred shares of the Trust.

As of May 31, 2019, the Trustees and officers beneficially owned less than 1% of the Trust's outstanding shares of common stock.

As of May 31, 2019, the Trust was not aware of any entities or persons to own of record or beneficially 25% or more of the outstanding shares of the Trust's common stock.

As of May 31, 2019, the only persons known by the Trust to own of record or beneficially 5% or more of any class of the outstanding shares of the Trust were as follows:

Name and Address of Beneficial Owner of Common Shares	Amount and Nature of Beneficial Ownership*	Percentage of Class
Morgan Stanley Smith Barney LLC P.O. Box 703 New York, NY 10014	13,759,082 shares	19.44%
National Financial Services LLC For Exclusive Benefit of Our Customers 499 Washington Boulevard Attn: Mutual Fund Dept., 4th Floor Jersey City, NJ 07310	9,318,546 shares	13.16%
Wells Fargo Clearing Services LLC P.O. Box 5268 Sioux Falls, SD 57117	7,454,363 shares	10.53%
Pershing LLC 1 Pershing Plaza, 7th Floor Jersey City, NJ 07399	5,043,870 shares	7.13%

* Each owner owned shares as a nominee

REPURCHASE OF COMMON SHARES

The Trust is a closed-end management investment company and as such its shareholders will not have the right to cause the Trust to redeem their shares. Instead, the Trust's common shares will trade in the open market at a price that will be a function of several factors, including dividend levels (which are in turn affected by performance and expenses), net asset value, call protection, dividend stability, relative demand for and supply of such shares in the market, general market and economic conditions and other factors. Because shares of a closed-end investment company may frequently trade at prices lower than net asset value, the Board may consider action that might be taken to reduce or eliminate any material discount from net asset value in respect of common shares, which may include the repurchase of such shares in the open market or in private transactions, the making of a tender offer for such shares, or the conversion of the Trust to an open-end investment company. The Board may decide not to take any of these actions. In addition, there can be no assurance that share repurchases or tender offers, if undertaken, will reduce market discount.

Notwithstanding the foregoing, at any time when there are outstanding borrowings, the Trust may not purchase, redeem or otherwise acquire any of its common shares unless (i) all accrued preferred shares dividends have been paid and (ii) at the time of such purchase, redemption or acquisition, the net asset value of the Trust's portfolio (determined after deducting the acquisition price of the common shares) is at least 200% of the liquidation value of the outstanding borrowings. Any service fees incurred in connection with any tender offer made by the Trust will be borne by the Trust and will not reduce the stated consideration to be paid to tendering shareholders.

Subject to its investment restrictions, the Trust may borrow to finance the repurchase of shares or to make a tender offer. Interest on any borrowings to finance share repurchase transactions or the accumulation of cash by the Trust in anticipation of share repurchases or tenders will reduce the Trust's net income. Any share repurchase, tender offer or borrowing that might be approved by the Board would have to comply with the Securities Exchange Act of 1934, as amended, the 1940 Act and the rules and regulations thereunder.

Although the decision to take action in response to a discount from net asset value will be made by the Board at the time it considers such issue, it is the Board's present policy, which may be changed by the Board, not to authorize repurchases of common shares or a tender offer for such shares if: (1) such transactions, if consummated, would (a) result in the delisting of the common shares from the New York Stock Exchange, or (b) impair the Trust's eligibility for treatment as a RIC under the Code (which could cause the Trust's income to be taxed at the corporate level in addition to the taxation of shareholders who receive dividends from the Trust), or as a registered closed-end investment company under the 1940 Act; (2) the Trust would not be able to liquidate portfolio securities in an orderly manner and consistent with the Trust's investment objectives and policies in order to repurchase shares; or (3) there is, in the Board's judgment, any (a) material legal action or proceeding instituted or threatened challenging such transactions or otherwise materially adversely affecting the Trust, (b) general suspension of or limitation on prices for trading securities on the New York Stock Exchange, (c) declaration of a banking moratorium by federal or state authorities or any suspension of payment by U.S. or New York banks, (d) material limitation affecting the Trust or the issuers of its portfolio securities by federal or state authorities on the extension of credit by lending institutions or on the exchange of foreign currency, (e) commencement of war, armed hostilities or other international or national calamity directly or indirectly involving the United States or (f) other event or condition which would have a material adverse effect (including any adverse tax effect) on the Trust or its shareholders if shares were repurchased. The Board may in the future modify these conditions in light of experience.

The repurchase by the Trust of its shares at prices below net asset value will result in an increase in the net asset value of those shares that remain outstanding. However, there can be no assurance that share repurchases or tender offers at or below net asset value will result in the Trust's shares trading at a price equal to their net asset value. Nevertheless, the fact that the Trust's shares may be the subject of repurchase or tender offers from time to time, or that the Trust may be converted to an open-end investment company, may reduce any spread between market price and net asset value that might otherwise exist.

Before deciding whether to take any action if the common shares trade below net asset value, the Board would likely consider all relevant factors, including the extent and duration of the discount, the liquidity of the Trust's portfolio, the impact of any action that might be taken on the Trust or its shareholders and market considerations. Based on these considerations, even if the Trust's shares should trade at a discount, the Board may determine that, in the interest of the Trust and its shareholders, no action should be taken.

If the Board determines to repurchase common shares in a private transaction or to make a tender offer for the common shares, the terms of any such offer may require a selling or tendering (as applicable) shareholder to sell or tender (and thus effectively sell) all of his or her or its common shares held, or considered to be held under certain attribution rules of the Code, by such shareholder. Shareholders who sell (in a private repurchase transaction) or successfully tender and effectively sell (pursuant to a tender offer) to the Trust all common shares held or considered to be held by them generally will be treated as having sold their shares and generally will realize a capital gain or loss. If a shareholder sells or tenders and effectively sells, as applicable, fewer than all of his or her common shares, such shareholder may be treated as having received a distribution under Section 301 of the Code ("Section 301 distribution") unless such distribution is treated as being either (i) "substantially disproportionate" with respect to such shareholder or (ii) otherwise "not essentially equivalent to a dividend" under the relevant rules of the Code. A Section 301 distribution is not treated as a sale or exchange giving rise to a capital gain or loss, but rather is treated as a dividend to the extent supported by the Trust's current and accumulated earnings and profits, with the excess treated as a return of capital reducing the shareholder's tax basis in Trust shares, and thereafter as capital gain. Where a redeeming shareholder is treated as receiving a dividend, there is a risk that remaining shareholders whose

percentage share interests in the Trust increase as a result of such sale or tender by the other shareholder will be treated as having received a taxable distribution from the Trust. The extent of such risk will vary depending upon the particular circumstances of the private repurchase or tender offer, in particular whether such offer is a single and isolated event or is part of a plan for periodically redeeming the common shares of the Trust; if isolated, any such risk is likely remote. If, instead, the Board determines to repurchase common shares on the open market, a selling shareholder may also be treated as having received a taxable dividend upon the sale, even though a selling shareholder would have no specific knowledge that he or she or it is selling shares to the Trust. In that event, there is generally a risk that remaining shareholders whose percentage share interests in the Trust increase as a result of any such open-market sales will be treated as having received a taxable distribution from the Trust.

To the extent the Trust recognizes net gains on the liquidation of portfolio securities to meet any such repurchase or tender, the Trust will be required to make additional distributions to its common shareholders.

ERISA MATTERS

Persons who are fiduciaries with respect to an employee benefit plan or other arrangement subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and persons who are fiduciaries with respect to an individual retirement account or Keogh Plan, which is not subject to ERISA but is subject to the prohibited transaction rules of Section 4975 of the Code (collectively, "Benefit Plan Investors") should consider, among other things, the matters described below before determining whether to invest in the Trust.

ERISA imposes certain responsibilities on persons who are fiduciaries with respect to an ERISA plan, including prudence, diversification, and an obligation not to engage in a prohibited transaction. Before investing the assets of an ERISA plan in the Trust, a fiduciary should determine whether the investment is consistent with its fiduciary responsibilities. For example, a fiduciary should consider whether an investment in the Trust may be too illiquid or too speculative for a particular ERISA plan, and whether the assets of the ERISA plan would be sufficiently diversified. If a fiduciary with respect to an ERISA Plan breaches its responsibilities, the fiduciary may be held liable for losses incurred by the ERISA plan as a result of the breach.

Because the Trust is registered as an investment company under the Investment Company Act, it is anticipated that the Trust's assets will not be deemed "plan assets" of the ERISA plans investing in the Trust for purposes of the fiduciary responsibility and prohibited transaction rules of ERISA and the Code. For this reason, the Investment Adviser should not be a fiduciary within the meaning of ERISA with respect to the assets of any ERISA plan solely as a result of the ERISA plan's investment in the Trust.

ERISA prohibits (and the Code penalizes) the use of the assets of a Benefit Plan Investor for the benefit of a party in interest and also prohibits (or penalizes) such an investor's fiduciary from using its position to cause a Benefit Plan Investor to make an investment from which the fiduciary or certain third-parties in which the fiduciary has an interest would receive a fee or other consideration.

Benefit Plan Investors and their fiduciaries should consult with their own counsel and other advisors to determine if participation in the Trust is a transaction that is prohibited by ERISA or the Code or is otherwise inappropriate. Employee benefit plans or similar arrangements which are not subject to ERISA or Section 4975 of the Code may be subject to other rules governing such plans. Fiduciaries of employee benefit plans or similar arrangements which are not subject to ERISA or Section 4975 of the Code should consult with their own counsel and other advisors regarding such matters.

The provisions of ERISA and the Code are subject to extensive and continuing administrative and judicial interpretation and review. The discussion of ERISA and the Code is, of necessity, general and may be affected by future publication of regulations and rulings.

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TAX MATTERS

The following discussion of U.S. federal income tax consequences of investment in common and preferred shares of the Trust is based on the Code, U.S. Treasury regulations promulgated thereunder, and other applicable authority, as of the date of this Statement of Additional Information. These authorities may be changed, possibly with retroactive effect, or become subject to new legislative, administrative, or judicial interpretation. The following discussion is only a summary of some of the important U.S. federal tax considerations generally applicable to investments in the Trust and does not constitute tax advice. This summary does not purport to be a complete description of the U.S. federal income tax considerations applicable to an investment in preferred shares of the Trust. There may be other U.S. federal income tax consequences applicable to particular preferred shareholders. For example, except as otherwise specifically noted herein, we have not described certain tax considerations that may be relevant to certain types of holders subject to special treatment under the U.S. federal income tax laws, including shareholders subject to the U.S. federal alternative minimum tax, insurance companies, tax-exempt organizations, pension plans and trusts, RICs, dealers in securities, shareholders holding Trust shares through tax-advantaged accounts (such as 401(k) plans or individual retirement accounts), financial institutions, shareholders holding Trust shares as part of a hedge, straddle, or conversion transaction, entities that are not organized under the laws of the United States or a political subdivision thereof, and persons who are neither citizens nor residents of the United States. This summary assumes that investors hold Trust preferred shares as capital assets (within the meaning of the Code). Shareholders should consult their own tax advisers regarding their particular situation and the possible application of U.S. federal, state, local, foreign or other tax laws.

This summary does not discuss the tax consequences of an investment in subscription rights of the Trust, separately, or as part of a unit consisting of two or more securities. See “Description of Capital Structure—Subscription Rights” in the Prospectus for a discussion of the material U.S. federal income tax consequences of the Trust’s issuance of subscription rights to preferred shareholders.

Taxation of the Trust

The Trust has elected to be treated as a RIC under Subchapter M of the Code and intends each year to qualify and to be eligible to be treated as such. In order to qualify for the special tax treatment accorded RICs and their shareholders, the Trust must, among other things:

(i) derive at least 90% of its gross income for each taxable year from: (a) dividends, interest (including tax-exempt interest), payments with respect to certain securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income (including but not limited to gains from options, futures and forward contracts) derived with respect to its business of investing in such stock, securities or foreign currencies; and (b) net income derived from interests in “qualified publicly traded partnerships” (as described below);

(ii) diversify its holdings so that, at the end of each quarter of the Trust’s taxable year, (a) at least 50% of the market value of the Trust’s total assets consists of cash and cash items, U.S. government securities, the securities of other RICs and other securities limited, in respect of any one issuer, to an amount not greater than 5% of the value of the Trust’s total assets and not more than 10% of the outstanding voting securities of such issuer, and (b) not more than 25% of the value of the Trust’s total assets is invested, including through corporations in which the Trust owns a 20% or more voting stock interest, (x) in the securities (other than U.S. government securities and the securities of other RICs) of any one issuer or of two or more issuers that the Trust controls, as determined under applicable Code rules, and that are determined to be engaged in the same business or similar or related trades or businesses, or (y) in the securities of one or more “qualified publicly traded partnerships” (as described below); and

(iii) distribute to its shareholders with respect to each taxable year at least the sum of 90% of its “investment company taxable income” (as that term is defined in the Code, without regard to the deduction for dividends paid—generally taxable ordinary income and the excess, if any, of net short-term capital gains over net long-term capital losses) and 90% of any net tax-exempt interest income (the excess of its gross tax-exempt interest over certain disallowed deductions), for such year.

In general, for purposes of the 90% gross income requirement described in (i) above, income derived from a partnership will be treated as qualifying income only to the extent such income is attributable to items of income of the partnership which would be qualifying income if realized directly by the RIC. However, 100% of the net income derived from an interest in a “qualified publicly traded partnership” (generally, a partnership (y) interests in which are traded on an established securities market or readily tradable

on a secondary market or the substantial equivalent thereof and (z) that derives less than 90% of its income from the qualifying income described in (i)(a) above) will be treated as qualifying income. In general, such entities will be treated as partnerships for federal income tax purposes because they meet the passive income requirement under Section 7704(c)(2) of the Code. MLPs in which the Trust may invest will generally qualify as qualified publicly traded partnerships. In addition, although in general the passive loss rules of the Code do not apply to RICs, such rules do apply to a RIC with respect to items attributable to an interest in a qualified publicly traded partnership.

For purposes of meeting the diversification requirement described in (ii) above, the term "outstanding voting securities of such issuer" will include the equity securities of a qualified publicly traded partnership. Also, for purposes of the diversification test in (ii) above, the identification of the issuer (or, in some cases, issuers) of a particular Trust investment can depend on the terms and conditions of that investment. In some cases, identification of the issuer (or issuers) is uncertain under current law, and an adverse determination or future guidance by the Internal Revenue Service ("IRS") with respect to issuer identification for a particular type of investment may adversely affect the Trust's ability to meet the diversification test in (ii) above.

If the Trust qualifies as a RIC (i.e., satisfies the source of income and diversification requirements described in (i) and (ii) above) and satisfies the annual distribution requirement described in (iii) above, the Trust will not be subject to U.S. federal income tax on income or gains distributed in a timely manner to its shareholders in the form of dividends (including Capital Gain Dividends, as defined below).

If, for any taxable year, the Trust were to fail to meet the income, diversification or distribution test described above, the Trust could in some cases cure such failure, including by paying a Trust-level tax, paying interest, making additional distributions or disposing of certain assets. If the Trust were ineligible to or otherwise did not cure any such failure for any year, or if the Trust were otherwise to fail to qualify as a RIC accorded special tax treatment for such year, the Trust would be subject to tax on its taxable income at corporate rates, and all distributions from earnings and profits, including any distributions of net long-term capital gains, would be taxable to shareholders as ordinary income. Some portions of such distributions might be eligible for the dividends-received deduction in the case of corporate shareholders and might be eligible to be treated as "qualified dividend income" and thus taxable at the lower long-term capital gain rate in the case of shareholders taxed at individual rates, provided, in both cases, the shareholder met certain holding period and other requirements in respect of the Trust's shares (as described below). In addition, the Trust might be required to recognize unrealized gains, pay substantial taxes and interest and make substantial distributions before re-qualifying as a RIC.

The Trust intends to distribute at least annually to its shareholders all or substantially all of its investment company taxable income (computed without regard to the dividends-paid deduction) and its net capital gain (that is, the excess of net long-term capital gain over net short-term capital loss, in each case determined with reference to any loss carryforwards). Any investment company taxable income retained by the Trust will be subject to a Trust-level tax at regular corporate rates. The Trust may also retain for investment its net capital gain. If the Trust retains any net capital gain, it will be subject to Trust-level tax at regular corporate rates on the amount retained, but may designate the retained amount as undistributed capital gains in a timely notice to its shareholders who would then, in turn, be (i) required to include in income for U.S. federal income tax purposes, as long-term capital gain, their shares of such undistributed amount, and (ii) entitled to credit their proportionate shares of the tax paid by the Trust on such undistributed amount against their U.S. federal income tax liabilities, if any, and to claim refunds on a properly-filed U.S. tax return to the extent the credit exceeds such liabilities. If the Trust makes this designation, for U.S. federal income tax purposes, the tax basis of shares owned by a shareholder of the Trust would be increased by an amount equal under current law to the difference between the amount of undistributed capital gains included in the shareholder's gross income under clause (i) of the preceding sentence and the tax deemed paid by the shareholder under clause (ii) of the preceding sentence. The Trust is not required to, and there can be no assurance the Trust will, make this designation if it retains all or a portion of its net capital gain in a taxable year.

In determining its net capital gain, including in connection with determining the amount available to support a Capital Gain Dividend, its taxable income, and its earnings and profits, a RIC generally may elect to treat part or all of any post-October capital loss (defined as any net capital loss attributable to the portion of the taxable year after October 31 or, if there is no such loss, the net long-term capital loss or net short-term capital loss attributable to such portion of the taxable year) or late-year ordinary loss (generally, the sum of its (i) net ordinary loss from the sale, exchange or other taxable disposition of property, attributable to the portion of the taxable year after October 31, and its (ii) other net ordinary loss attributable to the portion, if any, of the taxable year after December 31) as if incurred in the succeeding taxable year.

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If the Trust fails to distribute in a calendar year at least an amount equal to the sum of 98% of its ordinary income for such year and 98.2% of its capital gain net income (adjusted for certain ordinary losses) for the one-year period ending on October 31 of such year (unless an election is made to use the Trust's taxable year), plus any such undistributed amounts from the prior year, the Trust will be subject to a nondeductible 4% excise tax on the undistributed amounts. For purposes of the required excise tax distribution, a RIC's ordinary gains and losses from the sale, exchange or other taxable disposition of property that would otherwise be taken into account after October 31 of a calendar year generally (unless an election is made to use the Trust's taxable year) are treated as arising on January 1 of the following calendar year. Also, for these purposes, the Trust will be treated as having distributed any amount on which it has been subject to corporate income tax in the taxable year ending with the calendar year. The Trust reserves the right to pay the excise tax when circumstances warrant.

Capital losses in excess of capital gains ("net capital losses") are not permitted to be deducted against the Trust's net investment income. Instead, potentially subject to certain limitations, the Trust may carry net capital losses from any taxable year forward to subsequent taxable years to offset capital gains, if any, realized during such subsequent taxable year. Capital loss carryforwards are reduced to the extent they offset current-year net realized capital gains, whether the Trust retains or distributes such gains. If the Trust incurs or has incurred net capital losses in taxable years beginning after December 22, 2010 ("post-2010 losses"), those losses will be carried forward to one or more subsequent taxable years without expiration to offset capital gains realized during such subsequent taxable years; any such carryforward losses will retain their character as short-term or long-term. If the Trust incurred net capital losses in a taxable year beginning on or before December 22, 2010 ("pre-2011 losses"), the Trust is permitted to carry such losses forward for eight taxable years; in the year to which they are carried forward, such losses are treated as short-term capital losses that first offset any short-term capital gains, and then offset any long-term capital gains. The Trust must use any post-2010 losses, which will not expire, before it uses any pre-2011 losses. This increases the likelihood that pre-2011 losses will expire unused at the conclusion of the eight-year carryforward period.

The Trust's ability to use net capital losses may be limited following the occurrence of certain (i) acquisitive reorganizations and (ii) shifts in the ownership of the Trust by a shareholder owning or treated as owning 5% or more of the shares of the Trust (each, an "ownership change"). The Code may similarly limit the Trust's ability to use any of its other capital losses, or ordinary losses, that have accrued but have not been recognized (i.e., "built-in" losses) at the time of an ownership change to the extent they are realized within the five-year period following the ownership change.

See the Trust's most recent annual shareholder report for the Trust's available capital loss carryovers as of the end of its most recently ended fiscal year.

Trust Distributions

Distributions are taxable to shareholders even if they are paid from income or gains earned by the Trust before a shareholder invested in the Trust (and thus were included in the price the shareholder paid for its shares). Distributions are taxable whether shareholders receive them in cash or reinvest them in additional shares through the Trust's Dividend Reinvestment Plan. A shareholder whose distributions are reinvested in shares through the Trust's Dividend Reinvestment Plan will be treated as having received a dividend equal to, generally, the fair market value of new preferred shares issued to the shareholder. See "Dividend Reinvestment Plan" in the Trust's Prospectus for more information.

Dividends and other distributions paid by the Trust are generally treated under the Code as received by shareholders at the time the dividend or distribution is made. However, a dividend paid to shareholders in January of a year generally is deemed to have been paid by the Trust on December 31 of the preceding year, if the dividend was declared and payable to shareholders of record on a date in October, November or December of that preceding year.

Your broker or other intermediary will send you information after the end of each year setting forth the amount and tax status of any dividends or other distributions paid to you by the Trust.

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For U.S. federal income tax purposes, distributions of investment income are generally taxable as ordinary income. Taxes on distributions of capital gains are determined by how long the Trust has owned or is treated as having owned the investments that generated them, rather than how long a shareholder has owned his or her shares. In general, the Trust will recognize long-term capital gain or loss on investments it has owned (or is deemed to have owned) for more than one year, and short-term capital gain or loss on investments it has owned (or is deemed to have owned) for one year or less. Distributions of net capital gain that are properly reported by the Trust as capital gain dividends ("Capital Gain Dividends") will generally be taxable to shareholders as long-term capital gains. Distributions from capital gains are generally made after applying any available capital loss carryovers. Distributions of net short-term capital gain (that is, the excess of net short-term capital gain over net long-term capital loss for the taxable year, in each case determined with reference to loss carryforwards) will generally be taxable to shareholders receiving such distributions as ordinary income. Distributions of investment income reported by the Trust as derived from "qualified dividend income" will be taxed in the hands of individuals at the rates applicable to long-term capital gain, provided holding period and other requirements are met at both the shareholder and Trust level. The Trust does not expect a significant portion of Trust distributions to be derived from qualified dividend income.

In order for some portion of the dividends received by a Trust shareholder to be qualified dividend income, the Trust must meet holding period and other requirements with respect to some portion of the dividend-paying stocks in its portfolio and the shareholder must meet holding period and other requirements with respect to the Trust's shares. In general, a dividend will not be treated as qualified dividend income (at either the Trust or shareholder level) (1) if the dividend is received with respect to any share of stock held for fewer than 61 days during the 121-day period beginning on the date which is 60 days before the date on which such share becomes ex-dividend with respect to such dividend (or, in the case of certain preferred stock, 91 days during the 181-day period beginning 90 days before such date), (2) to the extent that the recipient is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property, (3) if the recipient elects to have the dividend income treated as investment income for purposes of the limitation on deductibility of investment interest, or (4) if the dividend is received from a foreign corporation that is (a) not eligible for the benefits of a comprehensive income tax treaty with the United States (with the exception of dividends paid on stock of such a foreign corporation readily tradable on an established securities market in the United States) or (b) treated as a passive foreign investment company.

In general, distributions of investment income reported by the Trust as derived from qualified dividend income will be treated as qualified dividend income by a shareholder taxed at individual rates, provided the shareholder meets the holding period and other requirements described in the paragraph immediately above with respect to the Trust's shares.

In general, dividends of net investment income received by corporate shareholders of the Trust will qualify for the 50% dividends-received deduction generally available to corporations to the extent of the amount of eligible dividends received by the Trust from domestic corporations for the taxable year. In general, a dividend received by the Trust will not be treated as a qualifying dividend (i) if it has been received with respect to any share of stock that the Trust has held for less than 46 days (91 days in the case of certain preferred stock) during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend (during the 181-day period beginning 90 days before such date in the case of certain preferred stock) or (ii) to the extent that the Trust is under an obligation (pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property. Moreover, the dividends-received deduction may be disallowed or reduced (i) if the corporate shareholder fails to satisfy the foregoing requirements with respect to its shares of the Trust or (ii) by application of various provisions of the Code (for instance, the dividends-received deduction is reduced in the case of a dividend received on debt-financed portfolio stock (generally, stock acquired with borrowed funds)). The Trust does not expect a significant portion of Trust distributions to be eligible for this corporate dividends-received deduction.

Any distribution of income that is attributable to (i) income received by the Trust in lieu of dividends with respect to securities on loan pursuant to a securities lending transaction or (ii) dividend income received by the Trust on securities it temporarily purchased from a counterparty pursuant to a repurchase agreement that is treated for U.S. federal income tax purposes as a loan by the Trust will not constitute qualified dividend income to individual shareholders and will not be eligible for the dividends-received deduction for corporate shareholders.

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The Code generally imposes a 3.8% Medicare contribution tax on the net investment income of certain individuals, trusts and estates to the extent their income exceeds certain threshold amounts. For these purposes, "net investment income" generally includes, among other things, (i) distributions paid by the Trust of net investment income and capital gains as described above, and (ii) any net gain from the sale or exchange of Trust shares. Shareholders are advised to consult their tax advisors regarding the possible implications of this additional tax on their investment in the Trust.

Return of Capital Distributions

If the Trust makes a distribution to a shareholder in excess of the Trust's current and accumulated earnings and profits in any taxable year, the excess distribution will be treated as a return of capital to the extent of such shareholder's tax basis in its shares, and thereafter as capital gain. A return of capital is not taxable, but it reduces a shareholder's tax basis in its shares, thus reducing any loss or increasing any gain on a subsequent taxable disposition by the shareholder of its shares.

Distributions on the Trust's shares are generally subject to U.S. federal income tax as described herein to the extent they do not exceed the Trust's realized income and gains, even though such dividends and distributions may economically represent a return of a particular shareholder's investment. Such distributions are likely to occur in respect of shares purchased at a time when the Trust's net asset value reflects either unrealized gains, or realized but undistributed income or gains, that were therefore included in the price the shareholder paid. Such distributions may reduce the value of the Trust's shares below the shareholder's cost basis in those shares. As described above, the Trust is required to distribute realized income and gains regardless of whether the Trust's net asset value also reflects unrealized losses.

Tax Implications of Certain Trust Investments

Some debt obligations with a fixed maturity date of more than one year from the date of issuance that are acquired by the Trust in the secondary market may be treated as having "market discount." Very generally, market discount is the excess of the stated redemption price of a debt obligation (or in the case of an obligation issued with OID (as defined below), its "revised issue price") over the purchase price of such obligation. Generally, any gain recognized on the disposition of, and any partial payment of principal on, a debt obligation having market discount is treated as ordinary income to the extent the gain, or principal payment, does not exceed the "accrued market discount" on such debt obligation. Alternatively, a holder may elect to accrue market discount currently. As of the date of this Statement of Additional Information, the Trust has made this election, and as such, the Trust is required to include currently any accrued market discount on such debt obligations in the Trust's taxable income (as ordinary income) and thus distribute it over the terms of the obligations, even though payment of those amounts is not received until a later time, upon partial or full repayment or disposition of the applicable debt obligations. The Trust reserves the right to revoke this election at any time pursuant to applicable IRS procedures. The rate at which market discount accrues, and thus is included in the Trust's income, will depend upon which of the permitted accrual methods the Trust elects.

In addition, some debt obligations with a fixed maturity date of more than one year from the date of issuance (and zero-coupon debt obligations with a fixed maturity date of more than one year from the date of issuance) will be treated as debt obligations that are issued originally at a discount. Generally, the amount of the original issue discount ("OID") is treated as interest income and is included in taxable income (and required to be distributed by the Trust) over the term of the debt obligation, even though payment of that amount is not received until a later time, upon partial or full repayment or disposition of the debt obligation. In addition, PIK securities will give rise to income which is required to be distributed and is taxable even though the Trust receives no interest payment in cash on the security during the year in which the income was accrued.

The Trust expects that a substantial portion of the Trust's investments in loans and other debt obligations will be treated as having market discount and/or OID, which, in some cases, could be significant.

Some debt obligations with a fixed maturity date of one year or less from the date of issuance that are acquired by the Trust may be treated as having OID or, in certain cases, "acquisition discount" (very generally, the excess of the stated redemption price over the purchase price). Generally, the Trust will be required to include the OID or acquisition discount in income (as ordinary income) over the term of the debt obligation and thus distribute it over the term of the debt obligation, even though payment of that amount is not received until a later time, upon partial or full repayment or disposition of the debt obligation. The rate at which OID or acquisition discount accrues, and thus is included in the Trust's income, will depend upon which of the permitted accrual methods the Trust elects.

Some preferred securities may include provisions that permit the issuer, at its discretion, to defer the payment of distributions for a stated period without any adverse consequences to the issuer. If the Trust owns a preferred security that is deferring the payment of its distributions, the Trust may be required to report income for U.S. federal income tax purposes to the extent of any such deferred distribution even though the Trust has not yet actually received the cash distribution.

As a result of holding the foregoing kinds of debt obligations or other debt obligations subject to special rules under the Code, the Trust may be required to pay out as an income distribution each year an amount which is greater than the total amount of cash interest (or dividends in the case of preferred securities) the Trust actually received. Such distributions may be made from, among other things, the cash assets of the Trust or cash generated from the Trust's liquidation of portfolio securities. The Trust may realize gains or losses from such liquidations. In the event the Trust realizes net long-term or short-term capital gains from such transactions, its shareholders may receive a larger capital gain or ordinary dividend, respectively, than they would in the absence of such transactions.

Investments in distressed debt obligations that are at risk of or in default present special tax issues for the Trust. Tax rules are not entirely clear about issues such as whether and to what extent the Trust should recognize market discount on these debt obligations, when the Trust may cease to accrue interest, OID or market discount, when and to what extent the Trust may take deductions for bad debts or worthless securities and how the Trust should allocate payments received on obligations in default between principal and income. These and other related issues will be addressed by the Trust when, as and if it invests in such securities, in order to seek to ensure that it distributes sufficient income to preserve its eligibility for treatment as a RIC and does not become subject to U.S. federal income or excise tax.

A portion of the OID accrued on certain high-yield discount obligations owned by the Trust may not be deductible to the issuer and will instead be treated as a dividend paid by the issuer for purposes of the dividends-received deduction. In such cases, if the issuer of the obligation is a domestic corporation, dividend payments by the Trust may be eligible for the dividends-received deduction to the extent of the deemed dividend portion of such OID.

Any transactions by the Trust in foreign currencies, foreign currency-denominated debt obligations and certain foreign currency options, futures contracts and forward contracts (and similar instruments) may give rise to ordinary income or loss to the extent such income or loss results from fluctuations in the value of the foreign currency concerned. Such ordinary income treatment may accelerate Trust distributions to shareholders and increase the distributions taxed to shareholders as ordinary income. Any net ordinary losses so created cannot be carried forward by the Trust to offset income or gains earned in subsequent years.

Any equity investments by the Trust in certain "passive foreign investment companies" ("PFICs") could potentially subject the Trust to a U.S. federal income tax (including interest charges) on distributions received from the PFIC or on proceeds received from the disposition of shares in the PFIC. This tax cannot be eliminated by making distributions to Trust shareholders. However, the Trust may elect to avoid the imposition of that tax. For example, the Trust may elect to treat a PFIC as a "qualified electing fund" (*i.e.*, make a "QEF election"), in which case the Trust will be required to include its share of the PFIC's income and net capital gains annually, regardless of whether it receives any distribution from the company. The Trust also may make an election to mark the gains (and to a limited extent losses) in such holdings "to the market" as though it had sold and repurchased its holdings in those PFICs on the last day of the Trust's taxable year. Such gains and losses are treated as ordinary income and loss. The QEF and mark-to-market elections may accelerate the recognition of income (without the receipt of cash) and increase the amount required to be distributed by the Trust to avoid taxation. Making either of these elections therefore may require the Trust to liquidate other investments (including when it is not advantageous to do so) to meet its distribution requirement, which also may accelerate the recognition of gain and affect the Trust's total return. Dividends paid by PFICs will not be eligible to be treated as qualified dividend income.

Because it is not always possible to identify a foreign corporation as a PFIC, the Trust may incur the tax and interest charges described above in some instances.

Income proceeds and gains received by the Trust from sources within foreign countries may be subject to withholding and other taxes imposed by such countries. Tax treaties between certain countries and the United States may reduce or eliminate such taxes. Shareholders generally will not be entitled to separately claim a credit or deduction with respect to foreign taxes incurred by the Trust. This will decrease the Trust's yield on securities subject to such taxes.

The Trust's Derivative Transactions, as well as any of its other hedging, short sale or similar transactions, may be subject to one or more special tax rules (including, for instance, notional principal contract, mark-to-market, constructive sale, straddle, wash sale and short-sale rules). These rules may affect whether gains and losses recognized by the Trust are treated as ordinary or capital and/or as short-term or long-term, accelerate the recognition of income or gains to the Trust, defer losses, and cause adjustments in the holding periods of the Trust's securities. The rules could therefore affect the amount, timing and/or character of distributions to shareholders.

Because the tax rules applicable to derivative financial instruments are in some cases uncertain under current law, an adverse determination or future guidance by the IRS with respect to these rules (which determination or guidance could be retroactive) may affect whether the Trust has made sufficient distributions, and otherwise satisfied the relevant requirements, to maintain its qualification as a RIC and avoid a Trust-level tax.

Certain of the Trust's Derivative Transactions and investments in foreign currency-denominated instruments, and any of the Trust's transactions in foreign currencies and hedging activities, are likely to produce a difference between its book income and the sum of its taxable income and net tax-exempt income (if any). If such a difference arises, and the Trust's book income is less than the sum of its taxable income and net tax-exempt income (if any), the Trust could be required to make distributions exceeding book income to qualify as a RIC that is accorded special tax treatment and to avoid a Trust-level tax. In the alternative, if the Trust's book income exceeds the sum of its taxable income and net tax-exempt income (if any), the distribution (if any) of such excess generally will be treated as (i) a dividend to the extent of the Trust's remaining earnings and profits (including earnings and profits arising from any tax-exempt income), (ii) thereafter, as a return of capital to the extent of the recipient's basis in its shares, and (iii) thereafter, as gain from the sale or exchange of a capital asset.

The Trust's investments in equity securities of REITs may result in the Trust's receipt of cash in excess of the REIT's earnings; if the Trust distributes these amounts, these distributions could constitute a return of capital to Trust shareholders for U.S. federal income tax purposes. Dividends received by the Trust from a REIT will not qualify for the corporate dividends-received deduction and generally will not constitute qualified dividend income.

Under a notice issued by the IRS in October 2006 and Treasury regulations that have yet to be issued but may apply retroactively, a portion of a Trust's income (if any) (including income allocated to the Trust from a REIT or other pass-through entity) that is attributable to a residual interest in a real estate mortgage investment conduit ("REMIC") (including residual interests in collateralized mortgage obligations) or an equity interest in a taxable mortgage pool ("TMP") (referred to in the Code as an "excess inclusion") will be subject to U.S. federal income tax in all events. This notice also provides, and the regulations are expected to provide, that excess inclusion income of a RIC will be allocated to shareholders of the RIC in proportion to the dividends received by such shareholders, with the same consequences as if the shareholders held the related interest directly. As a result, to the extent the Trust invests in any such interests, it may not be a suitable investment for certain tax-exempt shareholders (as noted below in "Tax-Exempt Shareholders").

In general, excess inclusion income allocated to shareholders (i) cannot be offset by net operating losses (subject to a limited exception for certain thrift institutions), (ii) will constitute unrelated business taxable income ("UBTI") to entities (including a qualified

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pension plan, an individual retirement account, a 401(k) plan, a Keogh plan or other tax-exempt entity) subject to tax on UBTI, thereby potentially requiring such an entity that is allocated excess inclusion income, and otherwise might not be required to file a U.S. federal income tax return, to file such a tax return and pay tax on such income, and (iii) in the case of a non-U.S. shareholder, will not qualify for any reduction in U.S. federal withholding tax. A shareholder will be subject to U.S. federal income tax on such inclusions notwithstanding any exemption from such income tax otherwise available under the Code.

Backup Withholding

Your broker or other intermediary generally is required to withhold and remit to the U.S. Treasury a percentage of the taxable distributions and redemption proceeds paid to any individual shareholder who fails to properly furnish the broker or other intermediary with a correct taxpayer identification number ("TIN"), who has under-reported dividend or interest income, or who fails to certify to the broker or other intermediary that he or she is not subject to such withholding.

Backup withholding is not an additional tax. Any amounts withheld may be credited against the shareholder's U.S. federal income tax liability, provided the appropriate information is furnished to the IRS.

Sale or Exchange of Trust Shares

The sale or exchange of Trust shares may give rise to a gain or loss. In general, any gain or loss realized upon a taxable disposition of shares will be treated as long-term capital gain or loss if the shares have been held for more than 12 months. Otherwise, the gain or loss on the taxable disposition of Trust shares will be treated as short-term capital gain or loss. However, any loss realized upon a taxable disposition of shares held for six months or less will be treated as long-term, rather than short-term, to the extent of any Capital Gain Dividends received (or deemed received) by the shareholder with respect to the shares. All or a portion of any loss realized upon a taxable disposition of Trust shares will be disallowed if other substantially identical shares are purchased within 30 days before or after the disposition. In such a case, the basis of the newly purchased shares will be adjusted to reflect the disallowed loss.

Shareholders may be entitled to offset their Capital Gain Dividends with capital loss from other sources. The Code contains a number of statutory provisions affecting the circumstances under which capital loss may be offset against capital gain and limiting the use of loss from certain investments and activities. Accordingly, shareholders that have capital losses are urged to consult their tax advisers.

Tax Shelter Reporting Regulations

Under Treasury regulations, if a shareholder recognizes a loss of $2 million or more for an individual shareholder or $10 million or more for a corporate shareholder, the shareholder must file with the IRS a disclosure statement on Form 8886. Direct holders of portfolio securities are in many cases excepted from this reporting requirement, but under current guidance, shareholders of a RIC are not excepted. Future guidance may extend the current exception from this reporting requirement to shareholders of most or all RICs. The fact that a loss is reportable under these regulations does not affect the legal determination of whether the taxpayer's treatment of the loss is proper. Shareholders should consult their tax advisers to determine the applicability of these regulations in light of their individual circumstances.

REIT Tax Considerations

Requirements for Qualification as a REIT

To qualify for the beneficial tax regime applicable to REITs, the REIT Subsidiary must meet and continue to meet the requirements described below relating to organization, sources of income, nature of assets and distributions of income to its stockholders.

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Organizational Requirements

The Code defines a REIT as a domestic corporation, trust or association:

(1) which is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest;

(3) which would be taxable as a domestic corporation but for Sections 856 through 859 of the Code;

(4) which is neither a financial institution nor an insurance company subject to certain provisions of the Code;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) not more than 50.0% in value of the outstanding stock of which is owned, directly or indirectly applying various attribution rules, by or for five or fewer individuals (as defined in the Code to include for these purposes certain entities) (the "Not Closely Held Test");

(7) which makes an election to be a REIT (or has made such election for a previous taxable year which has not been revoked or terminated) and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;

(8) which uses the calendar year as its taxable year; and

(9) which meets certain other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) through (4), inclusive, must be met during the entire taxable year, that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months, and that condition (6) must be met during the last half of each taxable year. For purposes of condition (6), the beneficiaries of a pension or profit-sharing trust described in Section 401(a) of the Code, and not the pension or profit-sharing trust itself, are treated as REIT stockholders. Conditions (5) and (6) do not apply to a REIT until the second calendar year in which the REIT qualifies as such. The REIT Subsidiary will be treated as having met condition (6) above for a taxable year if it complied with certain Treasury Regulations for ascertaining the ownership of its stock for such year and if it did not know (or after the exercise of reasonable diligence would not have known) that its stock was sufficiently closely held during such year to cause the REIT Subsidiary to fail condition (6).

The Trust intends to structure and operate the REIT Subsidiary and cause it to conduct its activities in a manner designed to satisfy all of these requirements. However, the application of such requirements is complex, and it is possible that the Internal Revenue Service may interpret or apply those requirements in a manner that jeopardizes the ability of the REIT Subsidiary to satisfy all of the requirements for qualification as a REIT or that the REIT Subsidiary may be unable to satisfy all of the applicable requirements.

Distribution Requirements

To obtain the favorable tax treatment afforded to REITs under the Code, among other things, the REIT Subsidiary generally will be required each year to distribute to its stockholders at least 90% of its REIT taxable income determined without regard to the dividends-paid deduction and excluding net capital gain. To the extent that it does not distribute all of its net capital gains, or distributes at least 90%, but less than 100%, of its REIT taxable income, as adjusted, it will have to pay a corporate-level tax on amounts retained. Furthermore, if it fails to distribute during each calendar year at least the sum of (a) 85% of its ordinary income for that year, (b) 95% of its capital gain net income for that year, and (c) any undistributed taxable income from prior periods, it would have to pay a 4% nondeductible excise tax on the excess of the amounts required to be distributed over the sum of (i) the amounts that it actually distributed and (ii) the amounts it retained and upon which it paid income tax at the corporate level.

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These requirements could cause the REIT Subsidiary to distribute amounts that otherwise would be spent on investments in real estate assets, and it is possible that the REIT Subsidiary might be required to borrow funds, possibly at unfavorable rates, or sell assets to fund the required distributions.

For so long as the REIT Subsidiary qualifies as a REIT, generally, the REIT Subsidiary will not have to pay corporate-level U.S. federal income taxes on any income that it distributes to its shareholders from its tax earnings and profits.

Failure to Qualify as a REIT

If the REIT Subsidiary fails to qualify as a REIT for any taxable year and it does not qualify for certain statutory relief provisions, it will be subject to U.S. federal income tax on its taxable income at corporate rates. In addition, it will generally be disqualified from treatment as a REIT for the four taxable years following the year of losing its REIT status. Losing its REIT status will reduce the REIT Subsidiary's net earnings available for investment or distribution to stockholders because of the additional tax liability. In addition, distributions to stockholders will no longer qualify for the dividends paid deduction, and the REIT Subsidiary will no longer be required to make distributions equal to at least 90% of its taxable income. If the REIT Subsidiary fails to qualify as a REIT, it may be required to borrow funds or liquidate some of its investments in order to have funds with which to pay any resulting entity level tax.

Because of the minimum distribution requirements imposed by the Code, REITs tend be dependent on the acquisition of assets with high positive cash flows. The minimum distribution requirements also tend to limit the degree to which REITs can retain and redeploy capital. These requirements could cause the REIT Subsidiary to distribute amounts that otherwise would be spent on investments in real estate-related assets, and it is possible that it might be required to borrow funds, possibly at unfavorable rates, or sell assets to fund these distributions. REITs are particularly vulnerable to defaults by their borrowers and there are significant limitations on their ability to realize income from property acquired as a result of foreclosure.

Non-U.S. Shareholders

Distributions by the Trust to shareholders that are not "U.S. persons" within the meaning of the Code ("foreign shareholders)" properly reported by the Trust as (1) Capital Gain Dividends, (2) short-term capital gain dividends and (3) interest-related dividends, each as defined and subject to certain conditions described below, generally are not subject to U.S. federal income tax withholding.

In general, the Code defines (1) "short-term capital gain dividends" as distributions of net short-term capital gains in excess of net long-term capital losses and (2) "interest-related dividends" as distributions from U.S. source interest income of types similar to those not subject to U.S. federal income tax if earned directly by an individual foreign shareholder, in each case, to the extent such distributions are properly reported as such by the Trust in a written notice to shareholders.

The exceptions to withholding for Capital Gain Dividends and short-term capital gain dividends do not apply to (A) distributions to an individual foreign shareholder who is present in the United States for a period or periods aggregating 183 days or more during the year of the distribution and (B) distributions attributable to gain that is treated as effectively connected with the conduct by the foreign shareholder of a trade or business within the United States under special rules regarding the disposition of U.S. real property interests ("USRPIs") as described below.

The exception to withholding for interest-related dividends does not apply to distributions to a foreign shareholder (A) that has not provided a satisfactory statement that the beneficial owner is not a U.S. person, (B) to the extent that the dividend is attributable to certain interest on an obligation if the foreign shareholder is the issuer or is a 10% shareholder of the issuer, (C) that is within certain foreign countries that have inadequate information exchange with the United States, or (D) to the extent the dividend is attributable to interest paid by a person that is a related person of the foreign shareholder and the foreign shareholder is a controlled foreign corporation.

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The Trust is permitted to report such part of its dividends as short-term capital gain and/or interest-related dividends as are eligible, but is not required to do so. In the case of shares held through an intermediary, the intermediary may withhold even if the Trust reports all or a portion of a payment as an interest-related or short-term capital gain dividend to shareholders.

Foreign shareholders should contact their intermediaries regarding the application of these rules to their accounts.

Distributions by the Trust to foreign shareholders other than Capital Gain Dividends, short-term capital gain dividends and interest-related dividends (e.g., dividends attributable to dividend and foreign-source interest income or to short-term capital gains or U.S. source interest income to which the exception from withholding described above does not apply) are generally subject to withholding of U.S. federal income tax at a rate of 30% (or lower applicable treaty rate).

A foreign shareholder is not, in general, subject to U.S. federal income tax on gains (and is not allowed a deduction for losses) realized on the sale of shares of the Trust unless (i) such gain is effectively connected with the conduct of a trade or business carried on by such holder within the United States, (ii) in the case of an individual holder, the holder is present in the United States for a period or periods aggregating 183 days or more during the year of the sale and certain other conditions are met, or (iii) the special rules relating to gain attributable to the sale or exchange of USRPIs apply to the foreign shareholder's sale of shares of the Trust (as described below).

Foreign shareholders with respect to whom income from the Trust is effectively connected with a trade or business conducted by the foreign shareholder within the United States will in general be subject to U.S. federal income tax on the income derived from the Trust at the graduated rates applicable to U.S. citizens, residents or domestic corporations, whether such income is received in cash or reinvested in additional shares of the Trust and, in the case of a foreign corporation, may also be subject to a branch profits tax. If a foreign shareholder is eligible for the benefits of a tax treaty, any effectively connected income or gain will generally be subject to U.S. federal income tax on a net basis only if it is also attributable to a permanent establishment maintained by the shareholder in the United States. More generally, foreign shareholders who are residents of a country with an income tax treaty with the United States may obtain different tax results than those described herein, and are urged to consult their tax advisers.

Special rules would apply if the Trust were a qualified investment entity ("QIE") because it is either a "U.S. real property holding corporation" ("USRPHC") or would be a USRPHC but for the operation of certain exceptions to the definition of USRPIs described below. Very generally, a USRPHC is a domestic corporation that holds USRPIs the fair market value of which equals or exceeds 50% of the sum of the fair market values of the corporation's USRPIs, interests in real property located outside the United States, and other trade or business assets. USRPIs generally are defined as any interest in U.S. real property and any interest (other than solely as a creditor) in a USRPHC or, very generally, an entity that has been a USRPHC in the last five years. A RIC that holds, directly or indirectly, significant interests in REITs may be a USRPHC. Interests in domestically controlled QIEs, including REITs and RICs that are QIEs, not-greater-than-10% interests in publicly traded classes of stock in REITs and not-greater-than-5% interests in publicly traded classes of stock in RICs generally are not USRPIs, but these exceptions do not apply for purposes of determining whether a RIC is a QIE.

If an interest in the Trust were a USRPI, a greater-than-5% foreign shareholder generally would be required to file a U.S. tax return in connection with the sale of its Trust shares, and pay related taxes due on any gain realized on the sale.

If the Trust were a QIE, under a special "look-through" rule, any distributions by the Trust to a foreign shareholder attributable directly or indirectly to (i) distributions received by the Trust from a lower-tier RIC or REIT that the Trust is required to treat as USRPI gain in its hands and (ii) gains realized on the disposition of USRPIs by the Trust would retain their character as gains realized from USRPIs in the hands of the Trust's foreign shareholders and would be subject to U.S. tax withholding. In addition, such distributions could result in the foreign shareholder being required to file a U.S. tax return and pay tax on the distributions at regular U.S. federal income tax rates. The consequences to a foreign shareholder, including the rate of such withholding and character of such distributions (e.g., as ordinary income or USRPI gain), would vary depending upon the extent of the foreign shareholder's current and past ownership of the Trust.

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Foreign shareholders of the Trust also may be subject to "wash sale" rules to prevent the avoidance of the tax-filing and -payment obligations discussed above through the sale and repurchase of Trust shares.

The Trust generally does not expect that it will be a QIE.

Foreign shareholders should consult their tax advisers and, if holding shares through intermediaries, their intermediaries, concerning the application of these rules to their investment in the Trust.

In order to have qualified for any exemption from withholding described above (to the extent applicable) or for lower withholding tax rates under income tax treaties, or to establish an exemption from backup withholding, a foreign shareholder must have complied with applicable certification and filing requirements relating to its non-U.S. status (including, in general, furnishing an IRS Form W-8BEN, W-8BEN-E or substitute form). Foreign shareholders should contact their tax advisers in this regard.

Special rules (including withholding and reporting requirements) apply to foreign partnerships and those holding Trust shares through foreign partnerships. Additional considerations may apply to foreign trusts and estates. Investors holding Trust shares through foreign entities should consult their tax advisers.

A foreign shareholder may be subject to state and local tax and to the U.S. federal estate tax in addition to the U.S. federal tax on income referred to above.

Tax-Exempt Shareholders

Income of the Trust that would be UBTI if earned directly by a tax exempt entity generally will not constitute UBTI when distributed to tax-exempt shareholders of the Trust. Notwithstanding this "blocking" effect, a tax-exempt shareholder could realize UBTI by virtue of its investment in the Trust if shares in the Trust constitute debt-financed property in the hands of the tax-exempt shareholder within the meaning of Section 514(b) of the Code.

A tax-exempt shareholder may also recognize UBTI if the Trust recognizes excess inclusion income derived from direct or indirect investments in residual interests in REMICS or equity interests in TMPs if the amount of such income recognized by the Trust exceeds the Trust's investment company taxable income (after taking into account deductions for dividends paid by the Trust).

In addition, special tax consequences apply to charitable remainder trusts ("CRTs") that invest in RICs that invest directly or indirectly in residual interests in REMICs or equity interests in TMPs. Under legislation enacted in December 2006, a CRT (as defined in Section 664 of the Code) that realizes any UBTI for a taxable year must pay an excise tax annually of an amount equal to such UBTI. Under IRS guidance issued in October 2006, a CRT will not recognize UBTI as a result of investing in a RIC that recognizes excess inclusion income. Rather, if at any time during any taxable year a CRT (or one of certain other tax-exempt shareholders, such as the United States, a state or political subdivision, or an agency or instrumentality thereof, and certain energy cooperatives) is a record holder of a share in a RIC that recognizes excess inclusion income, then the RIC will be subject to a tax on that portion of its excess inclusion income for the taxable year that is allocable to such shareholders at the highest federal corporate income tax rate. The extent to which this IRS guidance remains applicable in light of the December 2006 legislation is unclear. To the extent permitted under the 1940 Act, the Trust may elect to specially allocate any such tax to the applicable CRT, or other shareholder, and thus reduce such shareholder's distributions for the year by the amount of the tax that relates to such shareholder's interest in the Trust.

CRTs and other tax-exempt investors are urged to consult their tax advisers concerning the consequences of investing in the Trust.

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Shareholder Reporting Obligations With Respect to Foreign Bank and Financial Accounts

Shareholders that are U.S. persons and own, directly or indirectly, more than 50% of the Trust could be required to report annually their "financial interest" in the Trust's "foreign financial accounts," if any, on FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). Shareholders should consult their tax advisers, and persons investing in the Trust through an intermediary should contact their intermediary to determine the applicability to them of this reporting requirement.

Other Reporting and Withholding Requirements

Sections 1471-1474 of the Code and the U.S. Treasury and IRS guidance issued thereunder (collectively, "FATCA") generally require the Trust to obtain information sufficient to identify the status of each of its shareholders under FATCA or under an applicable intergovernmental agreement (an "IGA"). If a shareholder fails to provide this information or otherwise fails to comply with FATCA or an IGA, the Trust may be required to withhold under FATCA at a rate of 30% with respect to that shareholder on ordinary dividends it pays. Recently issued proposed regulations would eliminate the application of the withholding tax on gross proceeds from the sale or exchange of shares and certain Capital Gain Dividends that was scheduled to take effect in 2019. If a payment by the Trust is subject to FATCA withholding, the Trust is required to withhold even if such payment would otherwise be exempt from withholding under the rules applicable to foreign shareholders described above (e.g., Capital Gain Dividends, short-term capital gain dividends and interest-related dividends).

Each prospective investor is urged to consult its tax adviser regarding the applicability of FATCA and any other reporting requirements with respect to the prospective investor's own situation, including investments through an intermediary.

Shares Purchased Through Tax Qualified Plans

Special tax rules apply to investments through defined contribution plans and other tax-qualified plans. Shareholders should consult their tax advisers to determine the suitability of shares of the Trust as an investment through such plans and the precise effect of an investment on their particular tax situation.

General Considerations

The U.S. federal income tax discussion set forth above is for general information only. Prospective investors should consult their tax advisers regarding the specific federal tax consequences of purchasing, holding, and disposing of shares of the Trust, as well as the effects of state, local and foreign tax law and any proposed tax law changes.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

PricewaterhouseCoopers LLP ("PwC"), an independent registered public accounting firm located at 2121 N. Pearl Street, Suite 2000, Dallas, TX 75201, serves as the Trust's independent registered public accounting firm. The independent registered public accounting firm audits and reports on the annual financial statements, and performs other professional audit related and tax services when approved to do so by the Audit Committee. Certain information for the years ended June 30, 2018, 2017, and 2016 was audited and reported on by another independent public registered accounting firm. On September 25, 2017, the Trust acquired the assets of Highland Floating Rate Opportunities Fund (the "Predecessor Fund"), a series of Highland Funds I, a Delaware statutory trust. The Trust is the successor to the accounting and performance information of the Predecessor Fund.

CUSTODIAN

Bank of New York Mellon ("BNY"), located at 240 Greenwich Street, New York, New York 10286, is the custodian for the Trust and for its wholly-owned subsidiaries. BNY is responsible for holding all securities, other investments and cash, receiving and paying for securities purchased, delivering against payment securities sold, receiving and collecting income from investments, making all payments covering expenses and performing other administrative duties, all as directed by authorized persons. BNY does not exercise any supervisory function in such matters as purchase and sale of portfolio securities, payment of dividends or payment of expenses.

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LEGAL COUNSEL

K&L Gates LLP, located at State Street Financial Center, 1 Lincoln Street, Boston, Massachusetts 02111, acts as our legal counsel.

ADDITIONAL INFORMATION

A registration statement on Form N-2, including amendments thereto, relating to the shares offered hereby (the "Registration Statement"), has been filed by the Trust with the SEC. The Prospectus and this Statement of Additional Information do not contain all of the information set forth in the Registration Statement, including any exhibits and schedules thereto. For further information with respect to the Trust and the securities offered hereby, reference is made to the Registration Statement. Statements contained in the Prospectus and this Statement of Additional Information as to the contents of any contract or other document referred to are not necessarily complete and in each instance reference is made to the copy of such contract or other document filed as an exhibit to the Registration Statement, each such statement being qualified in all respects by such reference. A copy of the Registration Statement may be inspected without charge at the SEC's principal office in Washington, D.C., and copies of all or any part thereof may be obtained from the SEC upon the payment of certain fees prescribed by the SEC.

FINANCIAL STATEMENTS

On September 25, 2017, the Trust acquired the assets of the Predecessor Fund. The Trust is the successor to the accounting and performance information of the Predecessor Fund. The audited financial statements and notes thereto of the Trust's Annual Report to Shareholders for the fiscal year ended June 30, 2018 are incorporated into this SAI by reference and have been audited and reported on by another independent public registered accounting firm. The Trust's audited financial statements for the period ended December 31, 2018 have been audited by PricewaterhouseCoopers LLP, the Trust's independent registered public accounting firm, and are also incorporated in this Statement of Additional Information by reference to the Trust's Form N-CSR Filed June 7, 2019, and is available upon request. The Trust's Annual Report is available without charge by calling the Trust at 800-357-9167 or on the SEC's website at http://www.sec.gov.

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APPENDIX A

Standard & Poor's—A brief description of the applicable rating symbols of Standard & Poor's and their meanings (as published by Standard & Poor's) follows:

Issue Credit Rating Definitions

A Standard & Poor's issue credit rating is a forward-looking opinion about the creditworthiness of an obligor with respect to a specific financial obligation, a specific class of financial obligations, or a specific financial program (including ratings on medium-term note programs and commercial paper programs). It takes into consideration the creditworthiness of guarantors, insurers, or other forms of credit enhancement on the obligation and takes into account the currency in which the obligation is denominated. The opinion reflects Standard & Poor's view of the obligor's capacity and willingness to meet its financial commitments as they come due, and may assess terms, such as collateral security and subordination, which could affect ultimate payment in the event of default.

Issue credit ratings can be either long-term or short-term. Short-term ratings are generally assigned to those obligations considered short-term in the relevant market. In the U.S., for example, that means obligations with an original maturity of no more than 365 days—including commercial paper. Short-term ratings are also used to indicate the creditworthiness of an obligor with respect to put features on long-term obligations. Medium-term notes are assigned long-term ratings.

Long-Term Issue Credit Ratings

Issue credit ratings are based, in varying degrees, on Standard & Poor's analysis of the following considerations:

i) Likelihood of payment—capacity and willingness of the obligor to meet its financial commitment on an obligation in accordance with the terms of the obligation;

ii) Nature of and provisions of the obligation, and the promise we impute;

iii) Protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganization, or other arrangement under the laws of bankruptcy and other laws affecting creditors' rights.

Issue ratings are an assessment of default risk, but may incorporate an assessment of relative seniority or ultimate recovery in the event of default. Junior obligations are typically rated lower than senior obligations, to reflect the lower priority in bankruptcy, as noted above. (Such differentiation may apply when an entity has both senior and subordinated obligations, secured and unsecured obligations, or operating company and holding company obligations.)

AAA

An obligation rated 'AAA' has the highest rating assigned by Standard & Poor's. The obligor's capacity to meet its financial commitment on the obligation is extremely strong.

AA

An obligation rated 'AA' differs from the highest-rated obligations only to a small degree. The obligor's capacity to meet its financial commitment on the obligation is very strong.

A

An obligation rated 'A' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories. However, the obligor's capacity to meet its financial commitment on the obligation is still strong.

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BBB

An obligation rated 'BBB' exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitment on the obligation.

BB, B, CCC, CC, and C

Obligations rated 'BB', 'B', 'CCC', 'CC', and 'C' are regarded as having significant speculative characteristics. 'BB' indicates the least degree of speculation and 'C' the highest. While such obligations will likely have some quality and protective characteristics, these may be outweighed by large uncertainties or major exposures to adverse conditions.

BB

An obligation rated 'BB' is less vulnerable to nonpayment than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitment on the obligation.

B

An obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meet its financial commitment on the obligation.

CCC

An obligation rated 'CCC' is currently vulnerable to nonpayment, and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation. In the event of adverse business, financial, or economic conditions, the obligor is not likely to have the capacity to meet its financial commitment on the obligation.

CC

An obligation rated 'CC' is currently highly vulnerable to nonpayment. The 'CC' rating is used when a default has not yet occurred, but Standard & Poor's expects default to be a virtual certainty, regardless of the anticipated time to default.

C

An obligation rated 'C' is currently highly vulnerable to nonpayment, and the obligation is expected to have lower relative seniority or lower ultimate recovery compared to obligations that are rated higher.

D

An obligation rated 'D' is in default or in breach of an imputed promise. For non-hybrid capital instruments, the 'D' rating category is used when payments on an obligation are not made on the date due, unless Standard & Poor's believes that such payments will be made within five business days in the absence of a stated grace period or within the earlier of the stated grace period or 30 calendar days. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of similar action and where default on an obligation is a virtual certainty, for example due to automatic stay provisions. An obligation's rating is lowered to 'D' if it is subject to a distressed exchange offer.

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Plus (+) or minus (—)

The ratings from 'AA' to 'CCC' may be modified by the addition of a plus (+) or minus (—) sign to show relative standing within the major rating categories.

NR

This indicates that no rating has been requested, that there is insufficient information on which to base a rating, or that Standard & Poor's does not rate a particular obligation as a matter of policy.

Short-Term Issue Credit Ratings

A-1

A short-term obligation rated 'A-1' is rated in the highest category by Standard & Poor's. The obligor's capacity to meet its financial commitment on the obligation is strong. Within this category, certain obligations are designated with a plus sign (+). This indicates that the obligor's capacity to meet its financial commitment on these obligations is extremely strong.

A-2

A short-term obligation rated 'A-2' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher rating categories. However, the obligor's capacity to meet its financial commitment on the obligation is satisfactory.

A-3

A short-term obligation rated 'A-3' exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitment on the obligation.

B

A short-term obligation rated 'B' is regarded as vulnerable and has significant speculative characteristics. The obligor currently has the capacity to meet its financial commitments; however, it faces major ongoing uncertainties which could lead to the obligor's inadequate capacity to meet its financial commitments.

C

A short-term obligation rated 'C' is currently vulnerable to nonpayment and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation.

D

A short-term obligation rated 'D' is in default or in breach of an imputed promise. For non-hybrid capital instruments, the 'D' rating category is used when payments on an obligation are not made on the date due, unless Standard & Poor's believes that such payments will be made within any stated grace period. However, any stated grace period longer than five business days will be treated as five business days. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action and where default on an obligation is a virtual certainty, for example due to automatic stay provisions. An obligation's rating is lowered to 'D' if it is subject to a distressed exchange offer.

SPUR (Standard & Poor's Underlying Rating)

A SPUR rating is an opinion about the stand-alone capacity of an obligor to pay debt service on a credit-enhanced debt issue, without giving effect to the enhancement that applies to it. These ratings are published only at the request of the debt issuer/obligor with the designation SPUR to distinguish them from the credit-enhanced rating that applies to the debt issue. Standard & Poor's maintains surveillance of an issue with a published SPUR.

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Municipal Short-Term Note Ratings Definitions

A Standard & Poor's U.S. municipal note rating reflects Standard & Poor's opinion about the liquidity factors and market access risks unique to the notes. Notes due in three years or less will likely receive a note rating. Notes with an original maturity of more than three years will most likely receive a long-term debt rating. In determining which type of rating, if any, to assign, Standard & Poor's analysis will review the following considerations:

a. Amortization schedule — the larger the final maturity relative to other maturities, the more likely it will be treated as a note; and

b. Source of payment — the more dependent the issue is on the market for its refinancing, the more likely it will be treated as a note. Note rating symbols are as follows:

SP-1

Strong capacity to pay principal and interest. An issue determined to possess a very strong capacity to pay debt service is given a plus (+) designation.

SP-2

Satisfactory capacity to pay principal and interest, with some vulnerability to adverse financial and economic changes over the term of the notes.

SP-3

Speculative capacity to pay principal and interest.

Dual Ratings

Dual Ratings may be assigned to debt issues that have a put option or demand feature. The first component of the rating addresses the likelihood of repayment of principal and interest as due, and the second component of the rating addresses only the demand feature. The first component of the rating can relate to either a short-term or long-term transaction and accordingly use either short-term or long-term rating symbols. The second component of the rating relates to the put option and is assigned a short-term rating symbol (for example, 'AAA/A-1+' or 'A-1+/A-1'). With U.S. municipal short-term demand debt, the U.S. municipal short-term note rating symbols are used for the first component of the rating (for example, 'SP-1+/A-1+').

The analyses, including ratings, of Standard & Poor's and its affiliates (together, Standard and Poor's) are statements of opinion as of the date they are expressed and not statements of fact or recommendations to purchase, hold, or sell any securities or make any investment decisions. Standard & Poor's assumes no obligation to update any information following publication. Users of ratings or other analyses should not rely on them in making any investment decision. Standard &Poor's opinions and analyses do not address the suitability of any security. Standard & Poor's does not act as a fiduciary or an investment advisor except where registered as such. While Standard & Poor's has obtained information from sources it believes to be reliable, Standard & Poor's does not perform an audit and undertakes no duty of due diligence or independent verification of any information it receives. Ratings and other opinions may be changed, suspended, or withdrawn at any time.

Active Qualifiers (Currently applied and/or outstanding)

Standard & Poor's uses six qualifiers that limit the scope of a rating. The structure of the transaction can require the use of a qualifier such as a 'p' qualifier, which indicates the rating addressed the principal portion of the obligation only. Likewise, the qualifier can indicate a limitation on the type of information used, such as "pi" for public information. A qualifier appears as a suffix and is part of the rating.

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Federal deposit insurance limit: 'L' qualifier

Ratings qualified with 'L' apply only to amounts invested up to federal deposit insurance limits.

Principal: 'p' qualifier

This suffix is used for issues in which the credit factors, the terms, or both, that determine the likelihood of receipt of payment of principal are different from the credit factors, terms or both that determine the likelihood of receipt of interest on the obligation. The 'p' suffix indicates that the rating addresses the principal portion of the obligation only and that the interest is not rated.

Public Information Ratings: 'pi' qualifier

Ratings with a 'pi' suffix are based on an analysis of an issuer's published financial information, as well as additional information in the public domain. They do not, however, reflect in-depth meetings with an issuer's management and therefore may be based on less comprehensive information than ratings without a 'pi' suffix. Ratings with a 'pi' suffix are reviewed annually based on a new year's financial statements, but may be reviewed on an interim basis if a major event occurs that may affect the issuer's credit quality.

Preliminary Ratings: 'prelim' qualifier

Preliminary ratings, with the 'prelim' suffix, may be assigned to obligors or obligations, including financial programs, in the circumstances described below. Assignment of a final rating is conditional on the receipt by Standard & Poor's of appropriate documentation. Standard & Poor's reserves the right not to issue a final rating. Moreover, if a final rating is issued, it may differ from the preliminary rating.

- Preliminary ratings may be assigned to obligations, most commonly structured and project finance issues, pending receipt of final documentation of legal opinions.
- Preliminary ratings are assigned to Rule 415 Shelf Registrations. As specific issues, with defined terms, are offered from the master registration, a final rating may be assigned to them in accordance with Standard & Poor's policies.
- Preliminary ratings may be assigned to obligations that will likely be issued upon the obligor's emergence from bankruptcy or similar reorganization, based on late-stage reorganization plans, documentation and discussions with the obligor. Preliminary ratings may also be assigned to the obligors. These ratings consider the anticipated general credit quality of the reorganized or post-bankruptcy issuer as well as attributes of the anticipated obligation(s).
- Preliminary ratings may be assigned to entities that are being formed or that are in the process of being independently established when, in Standard & Poor's opinion, documentation is close to final. Preliminary ratings may also be assigned to the obligations of these entities.
- Preliminary ratings may be assigned when a previously unrated entity is undergoing a well-formulated restructuring, recapitalization, significant financing or other transformative event, generally at the point that investor or lender commitments are invited. The preliminary rating may be assigned to the entity and to its proposed obligation(s). These preliminary ratings consider the anticipated general credit quality of the obligor, as well as attributes of the anticipated obligation(s), assuming successful completion of the transformative event. Should the transformative event not occur, Standard & Poor's would likely withdraw these preliminary ratings.
- A preliminary recovery rating may be assigned to an obligation that has a preliminary issue credit rating.

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Termination Structures: 't' qualifier

This symbol indicates termination structures that are designed to honor their contracts to full maturity or, should certain events occur, to terminate and cash settle all their contracts before their final maturity date.

Inactive Qualifiers (No longer applied or outstanding)

Contingent upon final documentation: '*' in active qualifier

This symbol that indicated that the ratings was contingent upon Standard & Poor 's receipt of an executed copy of the escrow agreement or closing documentation confirming investments and cash flows. Discontinued use in August 1998.

Termination of obligation to tender: 'c' inactive qualifier

This qualifier was used to provide additional information to investors that the bank may terminate its obligation to purchase tendered bonds if the long-term credit rating of the issuer was lowered to below an investment-grade level and/or the issuer's bonds are deemed taxable. Discontinued use in January 2001.

U.S. direct government securities: 'G' inactive qualifier

The letter 'G' followed the rating symbol when a fund's portfolio consisted primarily of direct U.S. government securities.

Provisional Ratings: 'pr' inactive qualifier

The letters 'pr' indicate that the rating was provisional. A provisional rating assumed the successful completion of a project financed by the debt being rated and indicates that the payment of debt service requirements was largely or entirely dependent upon the successful, timely completion of the project. This rating, however, while addressing credit quality subsequent to completion of the project, made no comment on the likelihood of or the risk of default upon failure of such completion.

Quantitative Analysis of public information: 'q' inactive qualifier

A 'q' subscript indicates that the rating is based solely on quantitative analysis of publicly available information. Discontinued use in April 2001.

Extraordinary risks: 'r' inactive qualifier

The 'r' modifier was assigned to securities containing extraordinary risks, particularly market risks, which are not covered in the credit rating. The absence of an 'r' modifier should not be taken as an indication that an obligation will not exhibit extraordinary non-credit related risks. Standard & Poor's discontinued the use of the 'r' modifier for most obligations in June 2000 and for the balance of obligations (mainly structured finance transactions) in November 2002.

Moody's Investors Service, Inc.—A brief description of the applicable Moody's Investors Service, Inc. ("Moody's") rating symbols and their meanings (as published by Moody's) follows:

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Long-Term Obligation Ratings

Moody's long-term obligation ratings are opinions of the relative credit risk of a fixed income obligations with an original maturity of one year or more. They address the possibility that a financial obligation will not be honored as promised. Such ratings reflect both the likelihood of default and any financial loss suffered in the event of default.

Moody's Global Long-Term Rating Scale Definitions:

Aaa

Obligations rated Aaa are judged to be of the highest quality, subject to the lowest level of credit risk.

Aa

Obligations rated Aa are judged to be of high quality and are subject to very low credit risk.

A

Obligations rated A are judged to be upper medium-grade and are subject to low credit risk.

Baa

Obligations rated Baa are judged to be medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics.

Ba

Obligations rated Ba are judged to be speculative elements and are subject to substantial credit risk.

B

Obligations rated B are considered speculative and are subject to high credit risk.

Caa

Obligations rated Caa are judged to be speculative of poor standing and are subject to very high credit risk.

Ca

Obligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest.

C

Obligations rated C are the lowest rated and are typically in default, with little prospect for recovery of principal or interest.

Note: Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category. Additionally, a "(hyb)" indicator is appended to all ratings of hybrid securities issued by banks, insurers, finance companies, and securities firms.

* By their terms, hybrid securities allow for the omission of scheduled dividends, interest, or principal payments, which can potentially result in impairment if such an omission occurs. Hybrid securities may also be subject to contractually allowable write-downs of principal that could result in impairment. Together with the hybrid indicator, the long-term obligation rating assigned to a hybrid security is an expression of the relative credit risk associated with that security.

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Medium-Term Note Ratings

Moody's assigns provisional ratings to medium-term note (MTN) programs and definitive ratings to the individual debt securities issued from them (referred to as drawdowns or notes).

MTN program ratings are intended to reflect the ratings likely to be assigned to drawdowns issued from the program with the specified priority of claim (e.g. senior or subordinated). To capture the contingent nature of a program rating, Moody's assigns provisional ratings to MTN programs. A provisional rating is denoted by a (P) in front of the rating and is defined elsewhere in this document.

The rating assigned to a drawdown from a rated MTN or bank/deposit note program is definitive in nature, and may differ from the program rating if the drawdown is exposed to additional credit risks besides the issuer's default, such as links to the defaults of other issuers, or has other structural features that warrant a different rating. In some circumstances, no rating may be assigned to a drawdown.

Moody's encourages market participants to contact Moody's Ratings Desks or visit www.moodys.com directly if they have questions regarding ratings for specific notes issued under a medium-term note program. Unrated notes issued under an MTN program may be assigned an NR (not rated) symbol.

Global Short-Term Rating Scale:

Moody's short-term ratings are opinions of the ability of issuers to honor short-term financial obligations. Ratings may be assigned to issuers, short-term programs or to individual short-term debt instruments. Such obligations generally have an original maturity not exceeding thirteen months, unless explicitly noted.

Moody's employs the following designations to indicate the relative repayment ability of rated issuers:

P-1

Issuers (or supporting institutions) rated Prime-1 have a superior ability to repay short-term debt obligations.

P-2

Issuers (or supporting institutions) rated Prime-2 have a strong ability to repay short-term debt obligations.

P-3

Issuers (or supporting institutions) rated Prime-3 have an acceptable ability to repay short-term obligations.

NP

Issuers (or supporting institutions) rated Not Prime do not fall within any of the Prime rating categories.

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APPENDIX B

POLICY REGARDING PROXY VOTING

Purpose and Scope

The purpose of these voting policies and procedures (the "Policy") is to set forth the principles and procedures by which Highland Capital Management Fund Advisors, L.P. (the "Company") votes or gives consents with respect to the securities owned by Clients for which the Company exercises voting authority and discretion.[2] For avoidance of doubt, this includes any proxy and any shareholder vote or consent, including a vote or consent for a private company or other issuer that does not involve a proxy. These policies and procedures have been designed to help ensure that votes are cast in the best interests of Clients in accordance with the Company's fiduciary duties and Rule 206(4)-6 under the Investment Advisers Act of 1940 (the "Advisers Act").

This Policy applies to securities held in all Client accounts (including Retail Funds and other pooled investment vehicles) as to which the Company has explicit or implicit voting authority. Implicit voting authority exists where the Company's voting authority is implied by a general delegation of investment authority without reservation of proxy voting authority to the Client.

If the Company has delegated voting authority to an investment sub-adviser with respect to any Retail Fund, such sub-adviser will be responsible for voting all proxies for such Retail Funds in accordance with the sub-adviser's proxy voting policies. The Compliance Department, to provide oversight over the proxy voting by sub-advisers and to ensure that votes are executed in the best interests of the Retail Funds, shall (i) review the proxy voting policies and procedures of each Retail Fund sub-adviser to confirm that they comply with Rule 206(4)-6, both upon engagement of the sub-adviser and upon any material change to the sub-adviser's proxy voting policies and procedures, and (ii) require each such sub-adviser to provide quarterly certifications that all proxies were voted pursuant to the sub-adviser's policies and procedures or to describe any inconsistent votes.

General Principles

The Company and its affiliates engage in a broad range of activities, including investment activities for their own accounts and for the accounts of various Clients and providing investment advisory and other services to Clients. In the ordinary course of conducting the Company's activities, the interests of a Client may conflict with the interests of the Company, other Clients and/or the Company's affiliates and their clients. Any conflicts of interest relating to the voting of proxies, regardless of whether actual or perceived, will be addressed in accordance with these policies and procedures. The guiding principle by which the Company votes all proxies is to vote in the best interests of each Client by maximizing the economic value of the relevant Client's holdings, taking into account the relevant Client's investment horizon, the contractual obligations under the relevant advisory agreements or comparable documents and all other relevant facts and circumstances at the time of the vote. The Company does not permit voting decisions to be influenced in any manner that is contrary to, or dilutive of, this guiding principle.

Voting Procedures

Third-Party Proxy Advisors

The Company may engage a third-party proxy advisor ("Proxy Advisor") to provide proxy voting recommendations with respect to Client proxies. Proxy Advisor voting recommendation guidelines are generally designed to increase investors' potential financial gain. When considering whether to retain or continue retaining

2 In any case where a Client has instructed the Company to vote in a particular manner on the Client's behalf, those instructions will govern in lieu of parameters set forth in the Policy.

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any particular Proxy Advisor, the Compliance Department will ascertain, among other things, whether the Proxy Advisor has the capacity and competency to adequately analyze proxy issues. In this regard, the Compliance Department will consider, among other things: the adequacy and quality of the Proxy Advisor's staffing and personnel; the robustness of its policies and procedures regarding its ability to (a) ensure that its proxy voting recommendations are based on current and accurate information and (b) identify and address any conflicts of interest and any other considerations that the Compliance Department determines would be appropriate in considering the nature and quality of the services provided by the Proxy Advisor. To identify and address any conflicts that may arise on the part of the Proxy Advisor, the Compliance Department will ensure that the Proxy Advisor notifies the Compliance Department of any relevant business changes or changes to its policies and procedures regarding conflicts.

Third-Party Proxy Voting Services

The Company may utilize a third-party proxy voting service ("Proxy Voting Service") to monitor holdings in Client accounts for purposes of determining whether there are upcoming shareholder meetings or similar corporate actions and to execute Client proxies on behalf of the Company pursuant to the Company's instructions, which shall be given in a manner consistent with this Policy. The Compliance Department will oversee each Proxy Voting Service to ensure that proxies have been voted in a manner consistent with the Company's instructions.

Monitoring

Subject to the procedures regarding Nonstandard Proxy Notices described below, the Compliance Department of the Company shall have responsibility for monitoring Client accounts for proxy notices. Except as detailed below, if proxy notices are received by other employees of the Company, such employees must promptly forward all proxy or other voting materials to the Compliance Department.

Portfolio Manager Review and Instruction

From time to time, the settlement group of the Company may receive nonstandard proxy notices, regarding matters including, but not limited to, proposals regarding corporate actions or amendments ("Nonstandard Proxy Notices") with respect to securities held by Clients. Upon receipt of a Nonstandard Proxy Notice, a member of the settlement group (the "Settlement Designee") shall send an email notification containing all relevant information to the Portfolio Manager(s) with responsibility for the security and *[.com]*. Generally, the relevant Portfolio Manager(s) shall deliver voting instructions for Nonstandard Proxy Notices by replying to the email notice sent to the Portfolio Manager(s) and *[.com]* by the Settlement Designee or by sending voting instructions to *[.com]* and copying *[.com]*. Any conflicts for Nonstandard Proxy Notices should also be disclosed to the Compliance Department. In the event a Portfolio Manager orally conveys voting instructions to the Settlement Designee or any other member of the Company's settlement group, that Settlement Designee or member of the Company's settlement group shall respond to the original notice email sent to *[.com]* detailing the Portfolio Manager(s) voting instructions.

With regard to standard proxy notices, on a weekly basis, the Compliance Department will send a notice of upcoming proxy votes related to securities held by Clients and the corresponding voting recommendations of the Proxy Advisor to the relevant Portfolio Manager(s). Upon receipt of a proxy notice from the Compliance Department, the Portfolio Manager(s) will review and evaluate the upcoming votes and recommendations. The Portfolio Managers may rely on any information and/or research available to him or her and may, in his or her discretion, meet with members of an issuer's management to discuss matters of importance to the relevant Clients and their economic interests. Should the Portfolio Manager determine that deviating from the Proxy Advisor's recommendation is in a Client's best interest, the Portfolio Manager shall communicate his or her voting instructions to the Compliance Department.

In the event that more than one Portfolio Manager is responsible for making a particular voting decision and such Portfolio Managers are unable to arrive at an agreement as to how to vote with respect to a particular proposal, they should consult with the applicable Chief Compliance Officer (the "CCO") for guidance.

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Voting

Upon receipt of the relevant Portfolio Managers' voting instructions, if any, the Compliance Department will communicate the instructions to the Proxy Voting Service to execute the proxy votes.

Non-Votes

It is the general policy of the Company to vote or give consent on all matters presented to security holders in any vote, and these policies and procedures have been designated with that in mind. However, the Company reserves the right to abstain on any particular vote if, in the judgment of the CCO, or the relevant Portfolio Manager, the effect on the relevant Client's economic interests or the value of the portfolio holding is insignificant in relation to the Client's portfolio, if the costs associated with voting in any particular instance outweigh the benefits to the relevant Clients or if the circumstances make such an abstention or withholding otherwise advisable and in the best interests of the relevant Clients not to vote. Such determination may apply in respect of all Client holdings of the securities or only certain specified Clients, as the Company deems appropriate under the circumstances. As examples, a Portfolio Manager may determine: (a) not to recall securities on loan if, in his or her judgment, the matters being voted upon are not material events affecting the securities and the negative consequences to Clients of disrupting the securities lending program would outweigh the benefits of voting in the particular instance or (b) not to vote proxies relating to certain foreign securities if, in his or her judgment, the expense and administrative inconvenience outweighs the benefits to Clients of voting the securities.

Conflicts of Interest

The Company's Compliance Department is responsible for monitoring voting decisions for any conflicts of interest, regardless of whether they are actual or perceived. All voting decisions contrary to the recommendation of a Proxy Advisor require a mandatory conflicts of interest review by the Compliance Department, which will include a consideration of whether the Company or any Portfolio Manager or other person recommending or providing input on how to vote has an interest in the vote that may present a conflict of interest.

In addition, all Company investment professionals are expected to perform their tasks relating to the voting of proxies in accordance with the principles set forth above, according the first priority to the best interest of the relevant Clients. If at any time a Portfolio Manager or any other investment professional becomes aware of a potential or actual conflict of interest regarding any particular voting decision, he or she must contact the Compliance Department promptly and, if in connection with a proxy that has yet to be voted, prior to such vote. If any investment professional is pressured or lobbied, whether from inside or outside the Company, with respect to any particular voting decision, he or she should contact the Compliance Department promptly. The CCO will use his or her best judgment to address any such conflict of interest and ensure that it is resolved in accordance with his or her independent assessment of the best interests of the relevant Clients.

In the event of a conflict, the Company may choose to address such conflict by: (i) voting in accordance with the Proxy Advisor's recommendation; (ii) the CCO determining how to vote the proxy (if the CCO approves deviation from the Proxy Advisor's recommendation, then the CCO shall document the rationale for the vote); (iii) "echo voting" or "mirror voting" the proxy in the same proportion as the votes of other proxy holders that are not Clients; or (iv) with respect to Clients other than Retail Funds, notifying the affected Client of the material conflict of interest and seeking a waiver of the conflict or obtaining such Client's voting instructions. Where the Compliance Department deems appropriate, third parties may be used to help resolve conflicts. In this regard, the CCO or his or her delegate shall have the power to retain fiduciaries, consultants or professionals to assist with voting decisions and/or to delegate voting or consent powers to such fiduciaries, consultants or professionals.

Where a conflict of interest arises with respect to a voting decision for a Retail Fund, the Company shall disclose the conflict and the rationale for the vote taken to the Retail Fund's Board of Directors/Trustees at the next regularly scheduled quarterly meeting. The Compliance Department will maintain a log documenting the basis for the decision and will furnish the log to the Board of Trustees.

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Material Conflicts of Interest

The following relationships or circumstances are examples of situations that may give rise to a material conflict of interest for purposes of this Policy. This list is not exclusive or determinative; any potential conflict (including payments of the types described below but less than the specified threshold) should be identified to the Company's Compliance Department:

(i) The issuer is a Client of the Company, or of an affiliate, accounting for more than 5% of the Company's or affiliate's annual revenues.

(ii) The issuer is an entity that reasonably could be expected to pay the Company or its affiliates more than $1 million through the end of the Company's next two full fiscal years.

(iii) The issuer is an entity in which a "Covered Person" (as defined in the Company's Policies and Procedures Designed to Detect and Prevent Insider Trading and to Comply with Rule 17j-1 of the Investment Company Act of 1940, as amended (the "Code of Ethics")) has a beneficial interest contrary to the position held by the Company on behalf of Clients.

(iv) The issuer is an entity in which an officer or partner of the Company or a relative of any such person is or was an officer, director or employee, or such person or relative otherwise has received more than $150,000 in fees, compensation and other payment from the issuer during the Company's last three fiscal years; provided, however, that the Compliance Department may deem such a relationship not to be a material conflict of interest if the Company representative serves as an officer or director of the issuer at the direction of the Company for purposes of seeking control over the issuer.

(v) The matter under consideration could reasonably be expected to result in a material financial benefit to the Company or its affiliates through the end of the Company's next two full fiscal years (for example, a vote to increase an investment advisory fee for a Retail Fund advised by the Company or an affiliate).

(vi) Another Client or prospective Client of the Company, directly or indirectly, conditions future engagement of the Company on voting proxies in respect of any Client's securities on a particular matter in a particular way.

(vii) The Company holds various classes and types of equity and debt securities of the same issuer contemporaneously in different Client portfolios.

(viii) Any other circumstance where the Company's duty to serve its Clients' interests, typically referred to as its "duty of loyalty," could be compromised.

Notwithstanding the foregoing, a conflict of interest described above shall not be considered material for the purposes of this Policy in respect of a specific vote or circumstance if:

The securities in respect of which the Company has the power to vote account for less than 1% of the issuer's outstanding voting securities, but only if: (i) such securities do not represent one of the 10 largest holdings of such issuer's outstanding voting securities and (ii) such securities do not represent more than 2% of the Client's holdings with the Company.

The matter to be voted on relates to a restructuring of the terms of existing securities or the issuance of new securities or a similar matter arising out of the holding of securities, other than common equity, in the context of a bankruptcy or threatened bankruptcy of the issuer.

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Recordkeeping

Following the submission of a proxy vote, the Trust will maintain a report of the vote and all relevant documentation.

The Trust shall retain records relating to the voting of proxies and the Company shall conduct due diligence, including on Proxy Voting Services and Proxy Advisors, as applicable, to ensure the following records are adequately maintained by the appropriate party:

(i) Copies of this Policy and any amendments thereto.

(ii) A current copy of the Proxy Advisor's voting guidelines, as amended.

(iii) A copy of each proxy statement that the Company receives regarding Client securities. The Company may rely on a third party to make and retain, on the Company's behalf, a copy of a proxy statement, provided that the Company has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request.

(iv) Records of each vote cast by the Company on behalf of Clients. The Company may satisfy this requirement by relying on a third party to make and retain, on the Company's behalf, a record of the vote cast, provided that the Company has obtained an undertaking from the third party to provide a copy of the record promptly upon request.

(v) A copy of any documents created by the Company that were material to making a decision how to vote or that memorializes the basis for that decision.

(vi) A copy of each written request for information on how the Company voted proxies on behalf of the Client, and a copy of any written response by the Company to any (oral or written) request for information on how the Company voted.

These records shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the Company's fiscal year during which the last entry was made in the records, the first two years in an appropriate office of the Company.[3]

Enforcement of this Policy

It shall be the responsibility of the Compliance Department to handle or coordinate the enforcement of this Policy. The Compliance Department will periodically sample proxy voting records to ensure that proxies have been voted in accordance with this Policy, with a particular focus on any proxy votes that require additional analysis (e.g., proxies voted contrary to the recommendations of a Proxy Advisor).

If the Compliance Department determines that a Proxy Advisor or Proxy Voting Service may have committed a material error, the Compliance Department will investigate the error, taking into account the nature of the error, and seek to determine whether the Proxy Advisor or Proxy Voting Service is taking reasonable steps to reduce similar errors in the future.

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3 If the Company has essentially immediate access to a book or record (on the Company's proprietary system or otherwise) through a computer located at an appropriate office of the Company, then that book or record will be considered to be maintained at an appropriate office of the Company. "Immediate access" to books and records includes that the Company has the ability to provide promptly to Securities and Exchange Commission (the "SEC") examination staff hard copies of the books and records or access to the storage medium. The party responsible for the applicable books and records as described above shall also be responsible for ensuring that those books and records for the first two years are either physically maintained in an appropriate office of the Company or that the Company otherwise has essentially immediate access to the required books and records for the first two years.

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In addition, no less frequently than annually, the Compliance Department will review the adequacy of this Policy to ensure that it has been implemented effectively and to confirm that this Policy continues to be reasonably designed to ensure that proxies are voted in the best interest of Clients.

Disclosures to Clients and Investors

The Company includes a description of its policies and procedures regarding proxy voting in Part 2 of Form ADV, along with a statement that Clients can contact the CCO to obtain a copy of these policies and procedures and information about how the Company voted with respect to a Client's securities. This Policy is, however, subject to change at any time without notice.

As a matter of policy, the Company does not disclose how it expects to vote on upcoming proxies. Additionally, the Company does not disclose the way it voted proxies to unaffiliated third parties without a legitimate need to know such information.

EXHIBIT B-1

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant [X]
Filed by a Party other than the Registrant [ ]

Check the appropriate box:
[ ] Preliminary Proxy Statement

[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

[X] Definitive Proxy Statement

[ ] Definitive Additional Materials

[ ] Soliciting Material Pursuant to Sec. 240.14a-12

Highland Income Fund
(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than Registrant)

Payment of Filing Fee (Check the appropriate box):

[X] No fee required.

[ ] Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1) Title of each class of securities to which transactions applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

[ ] Fee paid previously with preliminary materials.

[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identity the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

HIGHLAND INCOME FUND

300 Crescent Court
Suite 700
Dallas, Texas 75201
(800) 357-9167

April 22, 2020

Dear Shareholder:

Enclosed you will find the proxy materials for the 2020 Annual Meeting of Shareholders of Highland Income Fund (formerly, Highland Floating Rate Opportunities Fund) (the "Fund") to be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, June 12, 2020, at 8:30 a.m. Central Time (the "Annual Meeting"). In light of the developing situation with COVID-19 (coronavirus) and the travel advisories across the United States, we are requesting that shareholders and others NOT ATTEND the Annual Meeting in person this year but to attend the Annual Meeting via conference call. For those who wish to attend via conference call, please email Highland Capital Management Fund Advisors, L.P. at attendameeting@astfinancial.com and provide us with your full name and address in order to receive the conference call dial-in information. Details regarding the business to be conducted at the Annual Meeting are more fully described in the accompanying Notice of Annual Meeting of Shareholders and Proxy Statement.

In addition to voting on the Proposal described in the Notice of Annual Meeting of Shareholders and Proxy Statement, you will have an opportunity to hear a report on the Fund and to discuss other matters of interest to you as a shareholder.

It is very important that your shares be represented at the Annual Meeting. Whether or not you plan to attend, please review the enclosed proxy card, which provides options for voting, to assure that your shares are represented at the Annual Meeting.

Sincerely,

/s/ Frank Waterhouse

Frank Waterhouse
Treasurer, Principal Accounting Officer, Principal Financial Officer, and Principal Executive Officer

HIGHLAND INCOME FUND

300 Crescent Court
Suite 700
Dallas, Texas 75201
(800) 357-9167

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON JUNE 12, 2020

The Annual Meeting of Shareholders of Highland Income Fund (formerly Highland Floating Rate Opportunities Fund), a Massachusetts business trust (the "Fund"), will be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, June 12, 2020, at 8:30 a.m. Central Time (the "Annual Meeting"). In light of the developing situation with COVID-19 (coronavirus) and the travel advisories across the United States, we are requesting that stockholders and others NOT ATTEND the Annual Meeting in person this year but to attend the Annual Meeting via conference call. For those who wish to attend via conference call, please email Highland Capital Management Fund Advisors, L.P. at attendameeting@astfinancial.com and provide us with your full name and address in order to receive the conference call dial-in information. The Annual Meeting will be held for the following purposes:

1. To elect Dr. Bob Froehlich as a Class II Trustee of the Fund, to serve for a three-year term expiring at the 2023 Annual Meeting or until his successor is duly elected and qualifies, by the holders of the Fund's 5.375% Series A Cumulative Preferred Shares ("Preferred Shares") (the "Proposal"); and

2. To transact such other business as may properly come before the Annual Meeting and any adjournment or postponements thereof.

The Board of Trustees recommends a vote FOR the Proposal. The close of business on April 16, 2020 has been fixed as the record date for the determination of shareholders entitled to notice of, and to vote at, the Annual Meeting and any adjournment or postponements thereof. Please email Highland Capital Management Fund Advisors, L.P. at attendameeting@astfinancial.com and provide us with your full name and address in order to receive the conference call dial-in information.

Important Notice Regarding Availability of Proxy Materials for the Shareholder Meeting to be held on June 12, 2020: Copies of these proxy materials, including the Fund's annual shareholder report, the Notice for the Annual Meeting, the Proxy Statement and the form of proxy, are available to you on the Internet at www.vote.proxyonline.com/docs/highlandfrof2020.pdf. Copies of the proxy materials are available upon request, without charge, by writing to AST Fund Solutions, LLC at AST Fund Solutions, ATTN: Highland 14324 Fulfillment, 55 Challenger Road, Suite 201, Ridgefield Park, New Jersey 07660, by calling (866) 829-0541, or by sending an e-mail to corporateservices@astfundsolutions.com, using subject line: Highland 14324 Fulfillment.

Shareholders are encouraged to read all of the proxy materials before voting as the proxy materials contain important information necessary to make an informed decision.

The Board of Trustees is requesting your vote. Your vote is important regardless of the number of shares that you own. Please complete and sign the enclosed proxy card and return it promptly in the enclosed envelope, which needs no postage if mailed in the United States. If you desire to vote in person at the Annual Meeting using the conference call dial-in information, you may revoke your proxy at any time before it is exercised.

By Order of the Board of Trustees,

/s/ Lauren Thedford
Lauren Thedford
Secretary

April 22, 2020
Dallas, Texas

HIGHLAND INCOME FUND

300 Crescent Court
Suite 700
Dallas, Texas 75201
(800) 357-9167

PROXY STATEMENT
ANNUAL MEETING OF SHAREHOLDERS
JUNE 12, 2020

This Proxy Statement is furnished in connection with the solicitation of proxies on behalf of the Board of Trustees of Highland Income Fund (formerly Highland Floating Rate Opportunities Fund), a Massachusetts business trust (the "Fund" or "HFRO"), for use at the Fund's Annual Meeting of Shareholders to be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, June 12, 2020, at 8:30 a.m. Central Time, and at any and all adjournments or postponements thereof (the "Annual Meeting"), for the purposes set forth in the accompanying Notice of Annual Meeting of Shareholders dated April 22, 2020. In light of the developing situation with COVID-19 (coronavirus) and the travel advisories across the United States, we are requesting that stockholders and others NOT ATTEND the Annual Meeting in person this year but to attend the Annual Meeting via conference call. For those who wish to attend via conference call, please email Highland Capital Management Fund Advisors, L.P. at attendameeting@astfinancial.com and provide us with your full name and address in order to receive the conference call dial-in information. The Fund is a closed-end management investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act").

Highland Capital Management Fund Advisors L.P., a Delaware limited partnership ("HCMFA" or the "Adviser"), with its principal office at 300 Crescent Court, Suite 700, Dallas, Texas 75201, serves as the investment adviser and the administrator to the Fund. The Fund's principal executive office is located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

This Proxy Statement and the accompanying Notice of Annual Meeting of Shareholders and form of proxy are being provided to shareholders on or about April 22, 2020. The Board of Trustees (the "Board") has fixed the close of business on April 16, 2020 as the record date (the "Record Date") for the determination of shareholders entitled to receive notice of, and to vote at, the Annual Meeting. As of the Record Date, 71,775,921.00 shares of the Fund's common shares ("Common Shares"), par value $0.001 per share, were issued and outstanding, and 5,800,000.00 5.375% Series A Cumulative Preferred Shares ("Preferred Shares"), with a liquidation preference of $25.00 per share, were issued and outstanding. Shareholders of the Fund are entitled to one vote for each Fund share held and fractional votes for each fractional Fund share held. Only shareholders of Preferred Shares ("Preferred Shareholders") will be asked to vote on Proposal 1.

If the form of proxy is properly executed and returned in time to be voted at the Annual Meeting, the shares covered thereby will be voted at the Annual Meeting in accordance with the instructions marked thereon. All properly executed proxies received by the Board that do not specify how shares should be voted will be voted **"FOR"** the election as a Trustee of the nominee listed in the Proposal and (ii) in the discretion of the persons named as proxies in connection with any other matter which may properly come before the Annual Meeting or any adjournment or postponements thereof.

The Board does not know of any matters to be considered at the Annual Meeting other than the election of the Trustee referred to in this Proxy Statement. A shareholder may revoke his or her proxy any time before it is exercised by (i) voting in person using the conference call dial-in information at the Annual Meeting, (ii) giving written notice of such revocation to the Secretary of the Fund or (iii) returning a later-dated proxy before the Annual Meeting.

The presence in person or by proxy of the holders of a majority of the shares of the Fund entitled to vote shall constitute a quorum ("Quorum") for the Fund's Annual Meeting. If a Quorum is not present at the Annual

Meeting, or if a Quorum is present but sufficient votes to approve the Proposal are not received, the persons named as proxies may propose one or more adjournments or postponements of the Annual Meeting to permit further solicitation of proxies. Any adjournment or postponement will require the affirmative vote of a majority of those shares that are represented at the Annual Meeting in person or by proxy, whether or not a Quorum is present.

Shares represented by properly executed proxies with respect to which (i) a vote is withheld, (ii) the shareholder abstains, or (iii) a broker does not vote (i.e., "broker non-votes") will be treated as shares that are present and entitled to vote for purposes of determining a Quorum. Assuming the presence of a Quorum, abstentions and "broker non-votes" will have no effect on the outcome of the vote on the Proposal.

In addition to soliciting proxies by mail, the Fund's officers and employees of the Adviser may solicit proxies by internet or by telephone. Copies of the Notice for the Annual Meeting, the Proxy Statement and the form of proxy are available at www.vote.proxyonline.com/docs/ highlandfrof2020.pdf. The Fund has engaged AST Fund Solutions, LLC, at AST Fund Solutions, ATTN: Highland 14324 Fulfillment, 55 Challenger Road, Suite 201, Ridgefield Park, New Jersey 07660 for inquiries, to provide shareholder meeting services, including the distribution of this Proxy Statement and related materials to shareholders as well as assisting the Fund in soliciting proxies for the Annual Meeting at an approximate cost of $57,990. The costs of proxy solicitation and expenses incurred in connection with preparing this Proxy Statement and its enclosures will be paid by the Fund.

PROPOSAL 1

ELECTION OF TRUSTEES

The Fund's Board is currently composed of four Trustees, three of whom are not "interested persons" of the Fund (as defined in the 1940 Act) (the "Independent Trustees"). The Independent Trustees of the Board are Bryan A. Ward, Ethan Powell and Dr. Bob Froehlich. In light of certain relationships between Mr. Honis and certain affiliates of the Adviser, including Highland Capital Management, L.P. ("HCMLP"), arising out of HCMLP's pending Chapter 11 proceedings, Mr. Honis is treated as an Interested Trustee of the Fund.

At the Annual Meeting, the holders of the Fund's Preferred Shares are being asked to re-elect Dr. Bob Froehlich as a Class II Trustee of the Fund, to serve for a three-year term until the 2023 annual meeting of shareholders or until his respective successor is duly elected and qualifies. Dr. Bob Froehlich is currently serving as a Class II Trustee of the Fund and has agreed to continue to serve as a Class II Trustee, if re-elected. If Dr. Bob Froehlich is not available for re-election at the time of the Annual Meeting, the persons named as proxies will vote for such substitute nominee(s) as the Fund's Governance and Compliance Committee may select.

The Fund's Board is divided into three classes with the term of office of one class expiring each year. Dr. Bob Froehlich is currently serving as a Class II Trustee. Dr. Froehlich was last elected to serve a three year term at the annual meeting of shareholders held on June 2, 2017. Mr. Honis is currently serving as a Class III Trustee and was last elected to serve until the 2021 annual meeting of shareholders at the annual meeting of shareholders held on June 22, 2018. Ethan Powell and Bryan A. Ward are currently serving as Class I Trustees and were last elected to serve until the 2022 annual meeting of shareholders at the Fund's annual meeting of shareholders held on June 14, 2019. Dr. Froehlich will continue to serve as a Class II Trustee if re-elected at the Annual Meeting until the 2023 annual meeting of shareholders or until his respective successor is duly elected and qualifies. The Fund's Trustees are not required to attend the Fund's annual shareholder meetings.

Under the Fund's Declaration of Trust, Statement of Preferences for the Preferred Shares and the 1940 Act, the holders of the Fund's Preferred Shares, voting as a separate class, to the exclusion of holders of all other securities and classes of capital shares of the Fund, are entitled to elect two of the Fund's Trustees. The holders of the Fund's Preferred Shares are entitled to elect the minimum number of additional Trustees that would represent a majority of the Trustees in the event that dividends on the Fund's Preferred Shares become in arrears for two full years and until all arrearages are eliminated. No dividend arrearages exist as of the date of this Proxy Statement.

Dr. Froehlich and Mr. Powell have been designated as the directors representing the holders of the Preferred Shares. Accordingly, only the holders of the Preferred Shares will vote to re-elect Dr. Froehlich. The holders of the Preferred Shares will be entitled to re-elect one additional Trustee when the next term of office expires. This means that Mr. Powell, as a Class I Trustee, will be re-elected solely by the holders of the Preferred Shares at the Annual Meeting of Shareholders in 2022. The holders of the outstanding capital shares of the Fund, including the holders of the Preferred Shares, voting as a single class, elect the balance of the trustees.

Vote Required for Election of Trustees

For Dr. Froehlich, the election requires the affirmative vote of the holders of a majority of the Preferred Shares of the Fund, represented in person or by proxy at the Annual Meeting and entitled to vote. Abstentions and "broker non-votes" (i.e., shares held in "street name" by brokers or nominees that indicate on their proxies that they do not have discretionary authority to vote such shares as to the election of a Trustee) are counted as present at the Annual Meeting but, assuming the presence of a Quorum, will have no effect on the outcome of the vote on the Proposal.

THE BOARD, INCLUDING ALL OF THE INDEPENDENT TRUSTEES, UNANIMOUSLY RECOMMENDS THAT SHAREHOLDERS VOTE "FOR" THE ELECTION OF THE NOMINEE AS A TRUSTEE.

Qualifications and Additional Information about the Nominee for Trustee and the Continuing Trustees

The following provides an overview of the considerations that led the Board to conclude that the nominee for Trustee or the individuals serving as continuing Trustees of the Fund should be nominated or so serve, as well as the nominee's and each Trustee's name and certain biographical information as reported by them to the Fund. Among the factors the Board considered when concluding that an individual should be a nominee for Trustee or serve on the Board were the following: the individual's experience, skills, expertise, education, knowledge, diversity, personal and professional integrity, character, business judgment, time availability in light of other commitments, dedication, the candidate's ability to qualify as an Independent Trustee and the existence of any other relationships that might give rise to a conflict of interest and other relevant factors that the Fund's Governance and Compliance Committee considers appropriate in the context of the needs of the Board (e.g., whether a candidate is an "audit committee financial expert" under the federal securities laws).

In respect of the Trustee nominee and each continuing Trustee, the individual's professional accomplishments and prior experience, including, in some cases, in fields related to the operations of the Fund, were a significant factor in the determination that the individual should be a nominee for Trustee or serve as a Trustee of the Fund. The Trustee nominee's and each continuing Trustee's professional experience and additional considerations that contributed to the Board's conclusion that an individual should serve on the Board are summarized in the table below.

The "Highland Funds Complex," as referred to herein consists of: the Fund, each series of Highland Funds I ("HFI"), each series of Highland Funds II ("HFII"), Highland Global Allocation Fund ("GAF'), NexPoint Strategic Opportunities Fund ("NHF"), NexPoint Event-Driven Fund ("NEDF"), NexPoint Latin American Opportunities Fund ("NLAF"), NexPoint Real Estate Strategies Fund ("NRESF"), NexPoint Strategic Income Fund ("NSIF"), NexPoint Energy and Materials Opportunities Fund ("NEMO"), NexPoint Discount Strategies Fund ("NDSF"), NexPoint Healthcare Opportunities Fund ("NHOF", and together with NEDF, NLAF, NRESF, NSIF, NEMO, and NDSF, the "Interval Funds"), and NexPoint Capital, Inc. (the "BDC"), a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

Name, Date of Birth, Position(s) with the Fund and Length of Time Served, Term of Office[1] and Number of Portfolios in the Highland Funds Complex Overseen by the Trustee	Principal Occupations(s) During the Past Five Years and Other Directorships/Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
Independent Trustees		
Dr. Bob Froehlich (4/28/1953) Trustee since March 2016; 3 year term (expiring at 2020 annual meeting) for the Fund. 20 funds	Retired. Trustee of ARC Realty Finance Trust, Inc. (from January 2013 to May 2016); Director of KC Concessions, Inc. (since January 2013); Trustee of Realty Capital Income Funds Trust (from January 2014 to December 2016); Director of American Realty Capital Healthcare Trust II (from January 2013 to June 2016); Director, American Realty Capital Daily Net Asset Value Trust, Inc. (from November 2012 to July 2016); Director of American Sports Enterprise, Inc. (since January 2013); Director of Davidson Investment Advisors (from July 2009 to July 2016); Chairman and owner, Kane County Cougars Baseball Club (since January 2013); Advisory Board of Directors, Internet Connectivity Group, Inc. (from January 2014 to April 2016); Director of AXAR Acquisition Corp. (formerly AR Capital Acquisition Corp.) (from October 2014 to October 2017); Director of The Midwest League of Professional Baseball Clubs, Inc.; Director of Kane County Cougars Foundation, Inc.; Director of Galen Robotics, Inc.; Chairman and Director of FC Global Realty, Inc. (from May 2017 to June 2018); and Chairman and Director of First Capital Investment Corp. (from March 2017 to March 2018); and Director and Special Advisor to Vault Data, LLC (since February 2018).	Significant experience in the financial industry; significant managerial and executive experience; significant experience on other boards of directors, including as a member of several audit committees.
Ethan Powell (6/20/1975) Trustee since December 2013; Chairman of the Board since December 2013; 3 year term (expiring at 2022 annual meeting) for the Fund. 20 funds	CEO, Chairman and Founder of Impact Shares LLC since December 2015; Trustee/Director of the Highland Funds Complex from June 2012 until July 2013 and since December 2013; Chief Product Strategist of HCMFA from 2012 until December 2015; Senior Retail Fund Analyst of HCMLP from 2007 until December 2015 and HCMFA from its inception until December 2015; President and Principal Executive Officer of NHF from June 2012 until May 2015; Secretary of NHF from May 2015 until December 2015; Executive Vice President and Principal Executive Officer of HFI and HFII from June 2012 until December 2015; and Secretary of HFI and HFII from November 2010 to May 2015. Trustee of Impact Shares Funds I Trust	Significant experience in the financial industry; significant executive experience including past service as an officer of funds in the Highland Funds Complex; significant administrative and managerial experience.

Name, Date of Birth, Position(s) with the Fund and Length of Time Served, Term of Office[1] and Number of Portfolios in the Highland Funds Complex Overseen by the Trustee	Principal Occupations(s) During the Past Five Years and Other Directorships/Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
Bryan A. Ward (2/4/1955) Trustee since May 2006; 3 year term (expiring at 2022 annual meeting) for the Fund. 20 funds	Senior Advisor, CrossFirst Bank since April 2019; Private Investor, BW Consulting, LLC since 2014; Senior Manager, Accenture, LLP (a consulting firm) from 1991 until retirement in 2014. Director of Equity Metrix, LLC	Significant experience on this and/or other boards of directors/trustees; significant managerial and executive experience; significant experience as a management consultant.
Interested Trustee		
John Honis[2] (6/16/1958) Trustee since July 2013; 3 year term (expiring at 2021 annual meeting) for the Fund. 20 funds	President of Rand Advisors, LLC since August 2013; and Partner HCMLP from February 2007 until his resignation in November 2014. Manager of Turtle Bay Resort, LLC (August 2011 – December 2018); Manager of American Home Patient (November 2011 to February 2016).	Significant experience in the financial industry; significant managerial and executive experience, including experience as president, chief executive officer or chief restructuring officer of five telecommunication firms; experience on other boards of directors.

1 On an annual basis, as a matter of Board policy, the Governance and Compliance Committee reviews each Trustee's performance and determines whether to extend each such Trustee's service for another year. Effective June 2013, the Board adopted a retirement policy wherein the Governance and Compliance Committee shall not recommend the continued service as a Trustee of a Board member who is older than 80 years of age at the time the Governance and Compliance Committee reports its findings to the Board.

2 Effective January 28, 2020, Mr. Honis is treated as an Interested Trustee of the Fund in light of certain relationships between Mr. Honis and certain affiliates of the Adviser, including HCMLP, arising out of HCMLP's pending Chapter 11 proceedings. From May 1, 2015 to January 28, 2020, Mr. Honis was treated as an Independent Trustee of the Fund.

Information about the Fund's Executive Officers

Set forth below are the names and certain information regarding the Fund's executive officers. Such officers serve at the pleasure of the Trustees or until their successors have been duly elected and qualified. The Trustees may fill any vacancy in office or add any additional officers at any time.

Name, Date of Birth, Position(s) held with the Fund and Length of Time Served, Term of Office	Principal Occupations(s) During the Past Five Years
Dustin Norris (1/6/1984) Executive Vice President since April 2019; Indefinite Term	Head of Distribution and Chief Product Strategist at NexPoint since March 2019; President of NexPoint Securities, Inc. since April 2018; Head of Distribution at HCMFA from November 2017 until March 2019; Chief Product Strategist at HCMFA from September 2015 to March 2019; Director of Product Strategy at HCMFA from May 2014 to September 2015; Officer of the Highland Funds Complex since November 2012.

Name, Date of Birth, Position(s) held with the Fund and Length of Time Served, Term of Office	Principal Occupations(s) During the Past Five Years
Frank Waterhouse (4/14/1971) Treasurer since May 2015; Principal Financial Officer and Principal Accounting Officer since October 2017; Principal Executive Officer since February 2018; Indefinite Term	Partner and Chief Financial Officer of HCM; Treasurer of the Highland Funds Complex since May 2015.
David Klos, CPA (5/6/1982) Assistant Treasurer since April 2020; Indefinite Term	Chief Accounting Officer at HCMLP since April 2020 and Financial Operations Principal for NexPoint Securities, Inc. since October 2016; Controller at HCMLP from March 2017 to March 2020; Assistant Controller at HCMLP from March 2015 until February 2017.
Jason Post (1/9/1979) Chief Compliance Officer since September 2015; Indefinite Term	Chief Compliance Officer for HCMFA and NexPoint since September 2015; Chief Compliance Officer and Anti-Money Laundering Officer of the Highland Funds Complex since September 2015. Prior to his current role at HCMFA and NexPoint, Mr. Post served as Deputy Chief Compliance Officer and Director of Compliance for HCM.
Lauren Thedford (1/7/1989) Secretary since April 2019; Indefinite Term	Associate General Counsel at HCM since September 2017; In-House Counsel at HCM from January 2015 until September 2017; Secretary of the Highland Funds Complex since April 2019.

1 The address for each officer is c/o Highland Capital Management Fund Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201.

Beneficial Ownership of Shares

Set forth in the table below is the dollar range of shares of the Fund and the aggregate dollar range of shares beneficially owned by each Trustee of the Fund.

Name of Trustee	Dollar Range of Shares of the Fund[1]	Aggregate Dollar Range of Equity Securities[2] Owned in All Registered Investment Companies Overseen by Trustee in the Highland Funds Complex
Independent Trustees		
Ethan Powell	$ 10,001-$50,000	$10,001-$50,000
Dr. Bob Froehlich	$ 10,001-$50,000	Over $100,000
Bryan A. Ward	None	Over $100,000
Interested Trustee		
John Honis[3]	None	None

1 Based on market value as of February 28, 2020.
2 Based on market value as of February 28, 2020.
3 Effective January 28, 2020, Mr. Honis is treated as an Interested Trustee of the Fund.

As of February 28, 2020, the Trustees and officers of the Fund as a group owned 0.02% of the Fund's outstanding shares.

As of February 28, 2020, none of the Independent Trustees or their immediate family members owned beneficially or of record any securities issued by the Adviser, the principal underwriter, or any person controlling, controlled by, or under common control with the Adviser or principal underwriter.

Role of the Board of Trustees, Leadership Structure and Risk Oversight

The Role of the Board

The Board oversees the management and operations of the Fund. Like most registered investment companies, the day-to-day management and operation of the Fund is performed by various service providers to the Fund, such as the Adviser, and the distributor, administrator, custodian, and transfer agent. The Board has appointed senior employees of certain of these service providers as officers of the Fund, with responsibility to monitor and report to the Board on the Fund's operations. The Board receives regular reports from these officers and service providers regarding the Fund's operations. For example, the Treasurer provides reports as to financial reporting matters and investment personnel report on the performance of the Fund. The Board has appointed a Chief Compliance Officer who administers the Fund's compliance program and regularly reports to the Board as to compliance matters. Some of these reports are provided as part of formal in-person Board meetings, which are typically held quarterly, in person, and involve the Board's review of, among other items, recent Fund operations. The Board also periodically holds telephonic meetings as part of its review of the Fund's activities. From time to time one or more members of the Board may also meet with management in less formal settings, between scheduled Board meetings, to discuss various topics. In all cases, however, the role of the Board and of any individual Trustee is one of oversight and not of management of the day-to-day affairs of the Fund and its oversight role does not make the Board a guarantor of the Fund's investments, operations or activities.

Board Structure and Leadership

The Board has structured itself in a manner that it believes allows it to perform its oversight function effectively. The Board currently consists of four Trustees, three of whom are not "interested persons," as defined in the 1940 Act and are "independent" as defined in Rule 303A.02 of the New York Stock Exchange Listed Company Manual. The remaining Trustee, Mr. Honis, is currently treated as an "interested person" of the Fund (an "Interested Trustee"). Mr. Powell serves as Chairman of the Board. The Trustees meet periodically throughout the year in person and by telephone to oversee the Fund's activities, review contractual arrangements with service providers for the Fund and review the Fund's performance. Effective April 11, 2019, the Fund changed its fiscal year end to December 31. The previous fiscal year end was June 30. During the fiscal year ended December 31, 2019, the Board convened sixteen times. Each Trustee attended at least 75% of the aggregate of the total number of meetings of the Board and Committees on which he served during the periods that he served. The Fund encourages, but does not require, Trustees to attend the Annual Meeting.

The Board periodically reviews its leadership structure, including the role of the Chairman. The Board also completes an annual self-assessment during which it reviews its leadership and Committee structure and considers whether its structure remains appropriate in light of the Fund's current operations. The Board believes that its leadership structure, including the current percentage of the Board who are Independent Trustees is appropriate given its specific characteristics. These characteristics include: (i) the extent to which the work of the Board is conducted through the standing committees, and that the Audit and Qualified Legal Compliance Committee (the "Audit Committee") and the Governance and Compliance Committee meetings are chaired by an Independent Trustee; (ii) the extent to which the Independent Trustees meet as needed, together with their independent legal counsel, in the absence of members of management and any member of the Board who is considered an "interested person" of the Fund; and (iii) Mr. Powell's and Mr. Honis' previous positions with the Adviser and affiliates of the Adviser, which enhances the Board's understanding of the operations of the Adviser.

Board Oversight of Risk Management. The Board's role is one of oversight, rather than active management. This oversight extends to the Fund's risk management processes. These processes are embedded in the responsibilities of officers of, and service providers to, the Fund. For example, the Adviser and other service providers to the Fund are primarily responsible for the management of the Fund's investment risks. The Board

has not established a formal risk oversight committee; however, much of the regular work of the Board and its standing Committees addresses aspects of risk oversight. For example, the Trustees seek to understand the key risks facing the Fund, including those involving conflicts of interest; how management identifies and monitors these risks on an ongoing basis; how management develops and implements controls to mitigate these risks; and how management tests the effectiveness of those controls.

In the course of providing that oversight, the Board receives a wide range of reports on the Fund's activities from the Adviser and other service providers, including reports regarding the Fund's investment portfolio, the compliance of the Fund with applicable laws, and the Fund's financial accounting and reporting. The Board also meets periodically with the Fund's Chief Compliance Officer to receive reports regarding the compliance of the Fund with the federal securities laws and the Fund's internal compliance policies and procedures and meets with the Fund's Chief Compliance Officer periodically, including at least annually, to review the Chief Compliance Officer's annual report, including the Chief Compliance Officer's risk-based analysis for the Fund. The Board's Audit Committee also meets regularly with the Treasurer and the Fund's independent registered public accounting firm to discuss, among other things, the internal control structure of the Fund's financial reporting function. The Board also meets periodically with the portfolio managers of the Fund to receive reports regarding the management of the Fund, including its investment risks.

The Board recognizes that not all risks that may affect the Fund can be identified, that it may not be practical or cost-effective to eliminate or mitigate certain risks, that it may be necessary to bear certain risks (such as investment-related risks) to achieve the Fund's goals, that reports received by the Trustees with respect to risk management matters are typically summaries of the relevant information, and that the processes, procedures and controls employed to address risks may be limited in their effectiveness. As a result of the foregoing and other factors, risk management oversight by the Board and by the Committees is subject to substantial limitations.

Committees of the Board

The Board conducts much of its work through certain standing Committees. The Board has three Committees, the Audit Committee, the Governance and Compliance Committee, and the Distribution and Alternatives Oversight Committee, which are discussed in greater detail below. The Board has adopted charters for each of these committees.

The Audit and Qualified Legal Compliance Committee. The members of the Audit Committee are Dr. Froehlich and Messrs. Ward and Powell, each of whom is independent for purposes of the 1940 Act. The Audit Committee is responsible for (i) approving the Fund's independent accountants, (ii) reviewing with the Fund's independent accountants the plans and results of the audit engagement and the adequacy of the Fund's internal accounting controls and (iii) approving professional services provided by the Fund's independent accountants. The Audit Committee is charged with compliance with Rules 205.2(k) and 205.3(c) of Title 17 of the Code of Federal Regulations regarding alternative reporting procedures for attorneys representing the Fund who appear and practice before the SEC on behalf of the Fund. The Audit Committee is also responsible for reviewing and overseeing the valuation of debt and equity securities that are not publicly traded or for which current market values are not readily available pursuant to policies and procedures adopted by the Board. The Board and Audit Committee will use the services of one or more independent valuation firms to help them determine the fair value of these securities. In addition, each member of the Audit Committee meets the current independence and experience requirements of Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the "1934 Act"). The Audit Committee met seven times during the fiscal year ended December 31, 2019. Mr. Ward acts as the Chairman of the Audit Committee and as the audit committee financial expert.

The Governance and Compliance Committee. The Fund's Governance and Compliance Committee's function is to oversee and make recommendations to the full Board or the Independent Trustees, as applicable, with respect to the governance of the Fund, selection and nomination of Trustees, compensation of Trustees, and related matters, as well as to oversee and assist Board oversight of the Fund's compliance with legal and regulatory requirements and to seek to address any potential conflicts of interest between the Fund and HCMFA in connection with any potential or existing litigation or other legal proceeding related to securities held by the

Fund and the Adviser or another client of the Adviser. The Governance and Compliance Committee is also responsible for at least annually evaluating each Trustee and determining whether to recommend each Trustee's continued service in that capacity. The Governance and Compliance Committee will consider recommendations for Trustee nominees from shareholders sent to the Secretary of the Fund, 300 Crescent Court, Suite 700, Dallas, Texas 75201. A nomination submission must include all information relating to the recommended nominee that is required to be disclosed in solicitations or proxy statements for the election of Trustees, as well as information sufficient to evaluate the recommended nominee's ability to meet the responsibilities of a Trustee of the Fund. Nomination submissions must be accompanied by a written consent of the individual to stand for election if nominated by the Board and to serve if elected by the shareholders, and such additional information must be provided regarding the recommended nominee as reasonably requested by the Governance and Compliance Committee. The Governance and Compliance Committee is currently comprised of Dr. Froehlich and Messrs. Ward and Powell, each of whom is independent for purposes of the 1940 Act. Dr. Froehlich serves as the Chairman of the Governance and Compliance Committee. Prior to the February 28, 2019-March 1, 2019 Board Meeting, the Governance and Compliance Committee was divided into the Governance Committee and the Compliance Committee, each of which met one time during the fiscal year ended December 31, 2019. The Governance and Compliance Committee met three times during the fiscal year ended December 31, 2019.

The Distribution and Alternatives Oversight Committee. The members of the Distribution and Alternatives Oversight Committee are Dr. Froehlich and Messrs. Honis, Ward, and Powell. The Distribution and Alternatives Oversight Committee is responsible for reviewing arrangements with financial intermediaries who provide service to the Fund, including Fund payments to financial intermediaries, and for overseeing any funds that, in the Board's determination, employ alternative investment strategies. Mr. Honis serves as Chairman of the Distribution and Alternatives Oversight Committee. Prior to the February 28, 2019-March 1, 2019 Board Meeting, the Distribution and Alternatives Oversight Committee was divided into the Distribution Oversight Committee and the Alternatives Oversight Committee, each of which met one time during the fiscal year ended December 31, 2019. The Distribution and Alternatives Oversight Committee met three times during the fiscal year ended December 31, 2019.

Remuneration of Trustees and Executive Officers

The executive officers of the Fund receive no direct remuneration from the Fund. Each Trustee receives an annual retainer of $150,000 payable in quarterly installments and allocated among each portfolio in the Highland Funds Complex based upon relative net assets. The Trustees are reimbursed for actual out-of-pocket expenses relating to attendance at meetings. The Trustees do not receive any separate compensation in connection with service on Committees or for attending Board or Committee Meetings; however, the Chairman of the Board and the Chairman of the Audit Committee each receive an additional payment of $10,000 payable in quarterly installments and allocated among each portfolio in the Highland Funds Complex based on relative net assets. The Trustees do not have any pension or retirement plan.

The following table summarizes the compensation paid by the Fund to its Trustees and the aggregate compensation paid by the Highland Funds Complex to the Trustees for services rendered in the fiscal year ended December 31, 2019.

Name of Trustee	Aggregate Compensation From the Fund	Pension or Retirement Benefits Accrued as Part of the Fund's Expense	Estimated Annual Benefits Upon Retirement	Aggregate Compensation from the Highland Funds Complex
Independent Trustees				
Timothy K. Hui[1]	$ 10,852	$ 0	$ 0	$ 37,500
Bryan A. Ward[2]	$ 46,302	$ 0	$ 0	$ 160,000
Dr. Bob Froehlich	$ 43,408	$ 0	$ 0	$ 150,000
Ethan Powell[2]	$ 46,302	$ 0	$ 0	$ 160,000
Interested Trustee				
John Honis[3]	$ 43,408	$ 0	$ 0	$ 150,000
Dustin Norris[4]	N/A	N/A	N/A	N/A

1 Effective March 31, 2019, Mr. Hui resigned as an Independent Trustee of the Fund. Mr. Hui's resignation was related to a reduction in the size of the Board to five members. There were no material conflicts, disagreements or other issues between Mr. Hui, the Board of Trustees or the Fund.

2 Effective December 31, 2018, the Board approved an aggregate compensation increase of $10,000 payable to each of the Chairman of the Audit Committee and the Chairman of the Board.

3 Effective January 28, 2020, Mr. Honis is treated as an Interested Trustee of the Fund.

4 Effective February 28, 2020, Mr. Norris resigned as an Interested Trustee of the Fund. Mr. Norris' resignation was related to a reduction in the size of the Board to four members and the Governance Committee's decision to maintain the independence of at least 75% of the Board in connection with industry best practice. There were no material conflicts, disagreements or other issues between Mr. Norris, the Board or the Fund.

Share Ownership and Certain Beneficial Owners

To the knowledge of management of the Fund and the Board, the following Common Shares shareholder(s) or "groups," as the term is defined in Section 13(d) of the 1934 Act, beneficially owned, or were owners of record of, more than 5% of the Fund's outstanding shares as of February 28, 2020:

Title of Class	Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership*	Percentage of Class
Common Shares	Morgan Stanley Smith Barney LLC P.O. Box 703 New York, NY 10014	12,176,689 shares	17.20%
Common Shares	National Financial Services LLC For Exclusive Benefit of Our Customers 499 Washington Boulevard Attn: Mutual Fund Dept., 4th Floor Jersey City, NJ 07310	10,492,909 shares	14.82%
Common Shares	Wells Fargo Clearing Services LLC P.O. Box 5268 Sioux Falls, SD 57117	6,618,327 shares	9.35%
Common Shares	Pershing LLC 1 Pershing Plaza, 7th Floor Jersey City, NJ 07399	4,772,500 shares	6.74%

* Each owner owned shares as a nominee.

To the knowledge of management of the Fund and the Board, the following Preferred Shares shareholder(s) or "groups," as the term is defined in Section 13(d) of the 1934 Act, beneficially owned, or were owners of record of, more than 5% of the Fund's outstanding shares as of February 28, 2020:

Title of Class	Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership*	Percentage of Class
Preferred Shares	Morgan Stanley Smith Barney LLC P.O. Box 703 New York, NY 10014	600,858 shares	10.36%
Preferred Shares	National Financial Services LLC For Exclusive Benefit of Our Customers 499 Washington Boulevard Attn: Mutual Fund Dept., 4th Floor Jersey City, NJ 07310	306,196 shares	5.28%

Certain Relationships and Related Party Transactions

Members of senior management also serve as officers of other investment managers affiliated with the Adviser that do and may in the future manage investment funds, accounts or other investment vehicles with investment objectives similar to those of the Fund. In addition, the Fund's executive officers and directors and the members of the Adviser serve or may serve as officers, directors or principals of entities that operate in the same, or related, lines of business as the Fund does or of investment funds, accounts or other investment vehicles managed by the Fund's affiliates. These investment funds, accounts or other investment vehicles may have investment objectives similar to the Fund's investment objective.

As a result, the Fund may not be given the opportunity to participate in certain investments made by investment funds, accounts or other investment vehicles managed by the Adviser or its affiliates. However, in order to fulfill its fiduciary duties to each of its clients, the Adviser intends to allocate investment opportunities in a manner that is fair and equitable over time and is consistent with the Adviser's allocation policy, investment objective and strategies so that the Fund is not disadvantaged in relation to any other client. Where the Fund is able to co-invest consistent with the requirements of the 1940 Act, if sufficient securities or loan amounts are available to satisfy the Fund's and each such account's proposed demand, the opportunity will be allocated in accordance with the Adviser's pre-transaction determination. If there is an insufficient amount of an investment opportunity to satisfy the Fund's demand and that of other accounts sponsored or managed by the Adviser or its affiliates, the allocation policy provides that allocations among the Fund and such other accounts will generally be made pro rata based on the amount that each such party would have invested if sufficient securities or loan amounts were available. Where the Fund is unable to co-invest consistent with the requirements of the 1940 Act, the Adviser's allocation policy further provides for investments to be allocated on a random or rotational basis to assure that all clients have fair and equitable access to such investment opportunities.

The Board, in consultation with the Fund's Chief Executive Officer, Chief Compliance Officer and legal counsel, may review potential related party transactions and, during these reviews, it may also consider any conflicts of interest brought to its attention pursuant to the Fund's Code of Conduct or the Fund's or the Adviser's Rule 17j-1 Code of Ethics.

The Fund has entered into an investment advisory agreement with the Adviser pursuant to which the Adviser has agreed to provide investment advisory services to the Fund. In exchange for these services, the Fund will pay the Adviser a fee for investment management services. The Fund's contractual advisory fee for the year ended December 31, 2019 was 0.65% for assets up to $1 billion, 0.60% for assets between $1 billion and $2 billion and 0.55% for assets above $2 billion.

The Adviser also provides administrative services to the Fund. For its services, the Adviser receives an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Fund's Managed Assets. Under a separate sub-administration agreement, the Adviser delegates certain administrative functions to SEI Investments Global Funds Services ("SEI") and pays SEI directly for these sub-administration services.

The Adviser has been historically affiliated through common control with HCMLP, an SEC-registered investment adviser. On October 16, 2019, HCMLP filed for Chapter 11 bankruptcy protection with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas. On January 9, 2020, the bankruptcy court approved a change of control of HCMLP, which involved the resignation of James Dondero as the sole director of, and the appointment of an independent board to, HCMLP's general partner. Mr. Dondero will, however, remain as an employee of HCMLP and as portfolio manager for all funds and vehicles for which he currently holds such titles. Nevertheless, given Mr. Dondero's historic role with HCMLP and his continued ownership interest and roles with respect to the Highland platform as a whole, as well as the shared services agreements between HCMLP and the Adviser, the Fund will still treat HCMLP and its affiliates as the Fund's affiliates for purposes hereof.

The Adviser is not a party to HCMLP's bankruptcy filing. The Adviser is a party to a shared services arrangement with HCMLP. Under this arrangement the Adviser may utilize employees from HCMLP in connection with various services such as human resources, accounting, tax, valuation, information technology

services, office space, employees, compliance and legal. The Fund does not expect HCMLP's bankruptcy filings to impact its provision of services to the Adviser at this time.

In the future, the Fund may engage the Adviser or certain of its affiliates to provide services other than those discussed above. Any arrangements would be subject to approval by the Board prior to the Adviser or its affiliates being engaged to provide services to the Fund.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the 1934 Act and Section 30(h) of the 1940 Act, and the rules thereunder, require that the Fund's Trustees and officers, the Adviser, certain persons affiliated with the Adviser, and persons who own beneficially, directly or indirectly, more than 10% of the Fund's outstanding interests (collectively, "Section 16 reporting persons"), file initial reports of beneficial ownership and reports of changes in beneficial ownership of Fund interests with the SEC and the New York Stock Exchange. Section 16 reporting persons are required by SEC regulations to furnish to the Fund copies of all Section 16(a) forms they file with respect to shares of the Fund. The Fund believes that during the past fiscal year, the Officers, Trustees and greater than 10% beneficial holders of the Fund complied with all applicable filing requirements.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

PricewaterhouseCoopers LLP ("PwC"), an independent registered public accounting firm located at 2121 N. Pearl Street, Suite 2000, Dallas, TX 75201, serves as the independent registered public accounting firm. After reviewing the Fund's audited financial statements for the fiscal year ended December 31, 2019, the Fund's Audit Committee recommended to the Fund's Board that such statements be included in the Fund's Annual Report to Shareholders for the fiscal year ended December 31, 2019. A copy of the Audit Committee's report appears below. On September 25, 2017, the Fund acquired the assets of Highland Floating Rate Opportunities Fund (the "Predecessor Fund"), a series of Highland Funds I, a Delaware statutory trust. The Fund is the successor to the accounting and performance information of the Predecessor Fund.

The independent registered public accounting firm for the Fund during the fiscal years ended June 30, 2018, 2017, and 2016 was KPMG LLP ("KPMG"), located at Two Financial Center, 60 South Street, Boston, Massachusetts 02111. On September 28, 2018, the Fund dismissed KPMG as its independent registered public accounting firm, effective on such date. The decision to dismiss KPMG was approved by the audit committee and by the full Board. On September 27, 2018, the Fund approved the appointment of PwC as the Fund's independent registered public accounting firm.

KPMG's audit reports on the Fund's financial statements as of and for the years ended June 30, 2018 and 2017 did not contain any adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope, or accounting principles.

During its audit of the Fund as of June 30, 2018, KPMG concluded management's review control over a certain hard-to-value security held by the Fund was not designed at an appropriate level of precision to assess the orderly nature of transactions involving the security and reasonableness and reliability of certain inputs to the fair value model for the security. In connection with this audit, KPMG advised the Fund of the need to expand significantly the scope of its audit. Although Management of the Fund initially disagreed with KPMG's position, subsequent to KPMG's dismissal, Management ultimately took the position that the transactions were orderly and revised certain non-observable inputs to the fair value model for the security.

Other than the disagreements and reportable events disclosed above, during the Fund's years ended June 30, 2018 and 2017 and the subsequent interim period through September 28, 2018, there were no: (1) disagreements (as defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) with KPMG on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures, which disagreements if not resolved to their satisfaction would have caused them to make reference in connection with

their opinion to the subject matter of the disagreement, or (2) reportable events (as described in Item 304(a)(1)(v) of Regulation S-K). The audit committee of the Fund discussed the subject matter of these disagreements and reportable events with KPMG. The Fund has authorized KPMG to respond fully to the inquiries of PwC concerning the subject matter of these disagreements and reportable events.

During the years ended June 30, 2018 and 2017 and the subsequent interim period through September 28, 2018, neither Management, the Fund, nor anyone on its behalf, consulted PwC regarding either (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the financial statements of the Fund, and no written report or oral advice was provided to the Fund by PwC that PwC concluded was an important factor considered by the Fund in reaching a decision as to any accounting, auditing or financial reporting issue; or (ii) any matter that was either the subject of a disagreement (as defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) or a reportable event (as described in Item 304(a)(1)(v) of Regulation S-K).

The Fund provided KPMG and PwC with a copy of the disclosure it is making in response to Item 304(a) of Regulation S-K and requested that KPMG and PwC furnish the Fund with letters addressed to the SEC, pursuant to Item 304(a) containing any new information, clarification of the Fund's expression of its view, or the respects in which it does not agree with the statements made by the Fund in response to Item 304(a). A copy of KPMG's letter dated March 1, 2019 was filed as an exhibit to the Fund's N-CSRS filed on March 8, 2019.

Representatives of PwC will not be present at the Annual Meeting, but PwC has been given the opportunity to make a statement if they desire to do so and will be available should any matter arise requiring their presence.

Independent Registered Public Accounting Firm Fees and Services

The following chart reflects fees paid to PwC in the Fund's last two fiscal years. One hundred percent (100%) of all services provided by PwC to the Fund in each year were pre-approved and no fees were subject to pre-approval by the Audit Committee pursuant to Rule 2-01(c)(7)(i)(c) of Regulation S-X. The audit services are approved by the Audit Committee pursuant to an audit engagement letter, and, in accordance with the Fund's pre-approval policies and procedures, the Audit Committee of the Fund must pre-approve all non-audit services provided by PwC, and all non-audit services provided by PwC to the Adviser, or any entity controlling, controlled by, or under common control with the Adviser that provides ongoing services to the Fund that are related to the operations and financial reporting of the Fund. In some circumstances, when certain services were not recognized at the time of the engagement to be non-audit services, the pre-approval requirement may be waived if the aggregate amount of the fees for such non-audit services constitutes less than five percent of the total amount of revenues paid to PwC by the Fund during the fiscal year in which the non-audit services are provided. PwC provided non-audit services to the Adviser during the Fund's last two fiscal years, but these services did not relate directly to the operations and financial reporting of the Fund, and therefore were not subject to pre-approval pursuant to Rule 2-01(c)(7)(ii) of Regulation S-X. PwC did not provide any non-audit services to any entity controlling, controlled by or under common control with the Adviser that provides ongoing services to the Fund. The Audit Committee has considered whether the provision of non-audit services that were rendered to the Adviser was compatible with maintaining PwC's independence.

	Fiscal Year Ended June 30, 2018	Period Ended December 31, 2018*	Fiscal Year Ended December 31, 2019
Audit Fees paid by Fund	N/A	$ 255,000	$ 357,000
Audit-Related Fees paid by Fund[1]	N/A	$ 55,000	$ 20,000
Tax Fees paid by Fund[2]	N/A	$ 10,000	$ 20,000
All Other Fees paid by Fund	N/A	$ 0	$ 0
Aggregate Non-Audit Fees paid by Fund and Adviser	N/A	$ 15,000	$ 0

* For the six month period ended December 31, 2018. Effective April 11, 2019, the Fund had a fiscal year change from June 30 to December 31.

1 The nature of the services related to agreed-upon procedures, performed on the Fund's semi-annual financial statements.
2 The nature of the services related to assistance on the Fund's tax returns and excise tax calculations.

The following chart reflects fees paid to KPMG in the Fund and Predecessor Fund's last two fiscal years. One hundred percent (100%) of all services provided by KPMG to the Fund and the Predecessor Fund in each year were pre-approved and no fees were subject to pre-approval by the Audit Committee pursuant to Rule 2-01(c)(7)(i)(c) of Regulation S-X. The audit services are approved by the Audit Committee pursuant to an audit engagement letter, and, in accordance with the Fund's pre-approval policies and procedures, the Audit Committee of the Fund must pre-approve all non-audit services provided by KPMG, and all non-audit services provided by KPMG to the Adviser, or any entity controlling, controlled by, or under common control with the Adviser that provides ongoing services to the Fund that are related to the operations and financial reporting of the Fund. In some circumstances, when certain services were not recognized at the time of the engagement to be non-audit services, the pre-approval requirement may be waived if the aggregate amount of the fees for such non-audit services constitutes less than five percent of the total amount of revenues paid to KPMG by the Fund during the fiscal year in which the non-audit services are provided. KPMG provided non-audit services to the Adviser during the Predecessor Fund's last two fiscal years, but these services did not relate directly to the operations and financial reporting of the Predecessor Fund, and therefore were not subject to pre-approval pursuant to Rule 2-01(c)(7)(ii) of Regulation S-X. KPMG did not provide any non-audit services to any entity controlling, controlled by or under common control with the Adviser that provides ongoing services to the Fund or Predecessor Fund. The Audit Committee has considered whether the provision of non-audit services that were rendered to the Adviser was compatible with maintaining KPMG's independence.

	Fiscal Year Ended June 30, 2018	Fiscal Period Ended December 31, 2018	Fiscal Year Ended December 31, 2019
Audit Fees paid by Fund	$ 200,000	N/A	N/A
Audit-Related Fees paid by Fund1	$ 10,000	N/A	N/A
Tax Fees paid by Fund2	$ 6,896	N/A	N/A
All Other Fees paid by Fund	$ 0	N/A	N/A
Aggregate Non-Audit Fees paid by Fund and Adviser	$ 3,560	$ 50,000	N/A

1 The nature of the services related to agreed-upon procedures, performed on the Fund or Predecessor Fund's semi-annual financial statements.
2 The nature of the services related to assistance on the Fund or Predecessor Fund's tax returns and excise tax calculations.

Audit Fees. Audit fees consist of fees billed for professional services rendered for the audit of the Fund's year-end consolidated financial statements and reviews of the interim consolidated financial statements included in quarterly reports and services that are normally provided by PwC in connection with statutory and regulatory filings. These services also include the required audits of the Fund's internal controls over financial reporting.

Audit-Related Fees. Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of the Fund's consolidated financial statements and are not reported under "Audit Fees." These services include attestation services that are not required by statute or regulation, consultations concerning financial accounting and reporting standards, and fees related to requests for documentation and information from regulatory and other government agencies.

Tax Fees. Tax fees consist of fees billed for professional services for tax compliance. These services include assistance regarding federal, state, and local tax compliance.

All Other Fees. All other fees include fees for products and services other than the services reported above.

Report of the Audit Committee

The Audit Committee oversees the Fund's accounting and financial reporting processes and the audits of the Fund's financial statements. Management is responsible for the preparation, presentation and integrity of the Fund's financial statements, the Fund's accounting and financial and reporting principles, and internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The Audit Committee reviewed the audited financial statements in the Annual Report dated December 31, 2019 with management and discussed the quality of the accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the financial statements.

The Audit Committee has considered and discussed the above described December 31, 2019 audited financial statements with management and with PwC. The Audit Committee has also discussed with PwC the matters required to be discussed by the statement on Auditing Standards No. 1301, as amended (AICPA, Professional Standards, Vol. 1. AU section 380), as adopted by the Public Company Accounting Oversight Board ("PCAOB") in Rule 3200T, *The Auditor's Communication With Those Charged With Governance*. The Audit Committee reviewed with PwC, who is responsible for expressing an opinion on the conformity of those audited financial statements with generally accepted accounting principles, their judgment as to the quality, not just the acceptability, of the Fund's accounting principles and such other matters as are required to be discussed with the Audit Committee under generally accepted auditing standards. Finally, the Audit Committee reviewed the written disclosures and the letters from PwC required by PCAOB Rule 3526, *Communication with Audit Committees Concerning Independence*, as currently in effect, has considered whether the provision of other non-audit services by PwC to the Fund are compatible with maintaining PwC's independence, and has discussed with PwC its independence of the Fund.

The Audit Committee discussed with PwC the overall scope and plans for the audit. The Audit Committee met with PwC to discuss the results of their audit, their evaluations of the Fund's internal controls and the overall quality of the Fund's financial reporting.

Based upon the reports and discussions described in this report, and subject to the limitations on the role and responsibilities of the Audit Committee referred to in this proxy statement and in the Audit Committee's Charter, the Fund's Audit Committee recommended to the Fund's Board (and the Fund's Board has approved) that the Fund's audited financial statements be included in the Annual Report to Shareholders for the fiscal year ended December 31, 2019 and filed with the SEC.

Shareholders are reminded, however, that the members of the Audit Committee are not professionally engaged in the practice of auditing or accounting. Members of the Audit Committee rely, without independent verification, on the information provided to them and on the representations made by management and PwC. Accordingly, the Audit Committee's oversight does not provide an independent basis to determine that management has maintained appropriate accounting and financial reporting principles or appropriate internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. Furthermore, the Audit Committee's considerations and discussions, referred to above, do not assure that the audit of the Fund's financial statements has been carried out in accordance with the standards of the PCAOB, that the financial statements are presented in conformity with accounting principles generally accepted in the United States of America or that the Fund's independent registered public accounting firm is, in fact, "independent."

Bryan A. Ward, Audit Committee Chair
Dr. Bob Froehlich, Audit Committee Member
Ethan Powell, Audit Committee Member

OTHER MATTERS TO COME BEFORE THE ANNUAL MEETING

The Trustees do not intend to present any other business at the Annual Meeting nor are they aware that any shareholder intends to do so. If, however, any other matters are properly brought before the Annual Meeting, the persons named in the accompanying proxy will vote thereon in accordance with their judgment.

ADDITIONAL INFORMATION

Shareholder Proposals

Any proposals of shareholders intended to be presented at the Fund's 2021 Annual Meeting of Shareholders must be received at the Fund's principal executive office no later than January 28, 2021 for inclusion in the Fund's proxy statement and proxy card relating to the 2021 Annual Meeting of Shareholders and must comply with the requirements of Rule 14a-8 under the 1934 Act and all other legal requirements. Such proposals must also comply with the requirements as to form and substance established by the SEC if such proposals are to be included in the proxy statement and form of proxy. The submission by a shareholder of a proposal for inclusion in the proxy materials does not guarantee that it will be included. Any proposals submitted after such date will not be included in the Fund's proxy statement and proxy card relating to the 2021 Annual Meeting of Shareholders. Proxies solicited by the Fund will confer discretionary voting authority with respect to these proposals if the proposals are not received by the Fund, in good order and complying with all applicable legal requirements, by January 28, 2021, and may confer discretionary voting authority with respect to proposals received before such date, in each case subject to SEC rules governing the exercise of this authority.

Delivery Requirements

The SEC has adopted rules that permit companies and intermediaries such as brokers to satisfy delivery requirements for proxy statements with respect to two or more shareholders sharing the same address by delivering a single proxy statement or Notice of Internet Availability of Proxy Materials ("Notice") addressed to those shareholders or by sending separate Notices for each household account in a single envelope. This process, which is commonly referred to as "householding," potentially provides extra convenience for shareholders and cost savings for companies. The Fund and some brokers household proxy materials or Notices, delivering a single proxy statement or Notice to multiple shareholders sharing an address unless contrary instructions have been received from the affected shareholders. Once a shareholder has received notice from a broker or the Fund that they will be householding materials to the shareholder's address, householding will continue until the shareholder is notified otherwise or until the shareholder revokes consent.

We will deliver promptly, upon request, a separate copy of any of these documents to shareholders at a shared address to which a single copy of such document(s) was delivered. Shareholders who wish to receive a separate copy of any of these documents, or to receive a single copy of such documents if multiple copies were delivered, now or in the future, should submit their request by writing to the Fund c/o Highland Capital Management Fund Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 or calling the Fund at (800) 357-9167.

Communications with Trustees

Shareholders of the Fund who wish to communicate with Trustees (or to the Independent Trustees as a group) should send communications to the attention of the Secretary of the Fund, c/o Highland Capital Management Fund Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201, and all communications will be directed to the Trustee or Trustees indicated in the communication or, if no Trustee or Trustees are indicated, to all Trustees.

COPIES OF THE FUND'S ANNUAL REPORT DATED DECEMBER 31, 2019 AND THE FUND'S SEMI-ANNUAL REPORT DATED JUNE 30, 2019 TO SHAREHOLDERS ARE AVAILABLE UPON REQUEST, WITHOUT CHARGE, BY WRITING THE FUND AT 6201 15TH AVENUE, BROOKLYN, NEW YORK 11219, OR BY CALLING TOLL-FREE (800) 357-9167.

It is important that proxies be returned promptly. You are urged to complete and sign the enclosed proxy card and return it promptly in the enclosed stamped, self-addressed envelope.

Dallas, Texas
April 22, 2020

HIGHLAND CAPITAL MANAGEMENT

PROXY CARD

small barcode here

HIGHLAND INCOME FUND

Annual Meeting of Shareholders – June 12, 2020

Proxy Solicited on Behalf of the Board of Trustees

The undersigned holder of shares of Highland Income Fund, a Massachusetts business trust (the "Fund"), hereby appoints Frank Waterhouse and Jason Post, and each of them separately, with full power of substitution, as proxies to represent the undersigned at the Annual Meeting of Shareholders to be held at 200 Crescent Court, Crescent Club, Dallas, TX 75201, on June 12, 2020, at 8:30 a.m., Central Time and at any and all adjournments and postponements thereof (the "Annual Meeting"), and thereat to vote all shares of the Fund which the undersigned would be entitled to vote, with all powers the undersigned would possess if personally present, in accordance with the instructions of this proxy. The undersigned holder hereby acknowledges receipt of the accompanying Notice of Annual Meeting and Proxy Statement.

In light of the developing situation with COVID-19 (coronavirus) and the travel advisories across the United States, we are requesting that shareholders and others NOT ATTEND the Annual Meeting in person this year but to attend the Annual Meeting via conference call. For those who wish to attend via conference call, please email Highland Capital Management Fund Advisors, L.P. at attendameeting@astfinancial.com and provide us with your full name and address in order to receive the conference call dial-in information. Please vote your shares in accordance with the instructions on this Proxy Card whether or not you attend the Shareholder Meeting.

The execution of this proxy is not intended to, and does not, revoke any prior proxies or powers of attorney other than the revocation, in accordance with the law of the Commonwealth of Massachusetts and applicable federal securities laws, of any proxy previously granted specifically in connection with the voting of the shares subject hereto.

Please sign exactly as names appear on this proxy. If shares are held jointly, each holder should sign. If signing as an attorney, trustee, executor, administrator, custodian, guardian or corporate officer, please give full title.

SIGNATURE DATE

SIGNATURE (if held jointly) DATE

Title – if a corporation, partnership or other entity

QUESTIONS ABOUT THIS PROXY? Should you have any questions about the proxy materials or regarding how to vote your shares, please contact our proxy information line **toll-free at (8 6 6) 8 2 9 - 0 5 4 1** . Representatives are available Monday through Friday 9:00 a.m. to 10:00 p.m. Eastern Time.

IF YOU SIGN, DATE AND RETURN THIS PROXY, IT WILL BE VOTED AS DIRECTED, OR IF NO DIRECTION IS INDICATED, WILL BE VOTED "FOR" THE PROPOSAL.

THREE OPTIONS FOR VOTING YOUR PROXY

1. **Internet** Log on to www.vote.proxyonline.com. Make sure to have this proxy card available when you plan to vote your shares. You will need the control number found in the box at the right at the time you execute your vote.

2. **Telephone** Simply dial toll-free (866) 829-0541 and have this proxy card available at the time of the call. You will need the control number found in the box at the right at the time you execute your vote.

3. **Mail** Simply sign, date, and complete the reverse side of this proxy card and return it in the postage paid envelope provided.

CONTROL NUMBER

TAG ID: BAR CODE CUSIP: 43010E404

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THIS ANNUAL MEETING OF SHAREHOLDERS TO BE HELD ON JUNE 12, 2020

The proxy statement for this meeting is available at: www.vote.proxyonline.com/docs/highlandfrof2020.pdf

TAG ID: BAR CODE CUSIP: 43010E404

HIGHLAND INCOME FUND

PROXY CARD

IF THIS PROXY IS PROPERLY EXECUTED, THE VOTES ENTITLED TO BE CAST BY THE UNDERSIGNED HOLDER WILL BE CAST IN THE MANNER DIRECTED ON THE REVERSE SIDE HEREOF, AND WILL BE VOTED IN THE DISCRETION OF THE PROXY HOLDER(S) ON ANY OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE ANNUAL MEETING OR ANY ADJOURNMENTS OR POSTPONEMENTS THEREOF. THIS PROXY WILL BE VOTED FOR THE PROPOSAL UNLESS OTHERWISE INDICATED. THIS PROXY WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS AND APPLICABLE FEDERAL SECURITIES LAWS.

PLEASE VOTE, DATE AND SIGN ON REVERSE AND RETURN PROMPTLY IN THE ENCLOSED ENVELOPE

TO VOTE, MARK ONE BOX FOR EACH ITEM IN BLUE OR BLACK INK. Example: X

THE BOARD OF TRUSTEES RECOMMENDS A VOTE FOR THE BELOW PROPOSAL.

PROPOSAL:

	FOR	WITHHOLD
1. To elect Dr. Bob Froehlich as a Class I I Trustee of the Fund, to serve for a three-year term expiring at the 2023 Annual Meeting or until his successor is duly elected and qualifies, by the holders of the Fund's 5.375% Series A Cumulative Preferred Shares.		
1a. Dr. Bob Froehlich	☐	☐

2. To transact such other business as may properly come before the Annual Meeting and any adjournment thereof.

THANK YOU FOR VOTING

TAG ID: BAR CODE CUSIP: 43010E404

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 5

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
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007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
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007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

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007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
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007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT B-2

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SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant [X]
Filed by a Party other than the Registrant [ ]

Check the appropriate box:
[ ] Preliminary Proxy Statement
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
[X] Definitive Proxy Statement
[ ] Definitive Additional Materials
[ ] Soliciting Material Pursuant to Sec. 240.14a-12

NexPoint Strategic Opportunities Fund
(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than Registrant)

Payment of Filing Fee (Check the appropriate box):

[X] No fee required.

[ ] Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1) Title of each class of securities to which transactions applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

[ ] Fee paid previously with preliminary materials.

[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identity the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
1) Amount Previously Paid:
2) Form, Schedule or Registration Statement No.:
3) Filing Party:
4) Date Filed:

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Notice of Special Meeting

of Shareholders and Proxy Statement

NEXPOINT

Friday, August 28, 2020, at 8:30 a.m. Central Time

200 Crescent Court, Crescent Club, Dallas, Texas 75201

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NEXPOINT

NEXPOINT STRATEGIC OPPORTUNITIES FUND

Dear Shareholder:

You are cordially invited to attend the 2020 Special Meeting of Shareholders of NexPoint Strategic Opportunities Fund ("NHF" or the "Fund") on Friday, August 28, 2020, at 8:30 a.m. Central Time to consider a proposal to change our business from a registered investment company that invests primarily in debt and equity securities to a diversified real estate investment trust ("REIT") that focuses on unique opportunities in real estate. The Board, including the members of the Board who are not interested persons (as defined in the Investment Company Act of 1940 (the "1940 Act")) of the Fund (the "Independent Trustees"), believes that the Business Change Proposal is in the best interest of shareholders because it believes it is the best path for the Fund to increase shareholder value over time. The Business Change Proposal is expected to have the potential to increase shareholder value for the following reasons:

- Potential to provide investors with a superior risk adjusted return compared to equity, fixed income, and distressed debt markets through real estate investments over the next decade. Risk adjusted return is a calculation of the potential profit from an investment that takes into account the degree of risk associated with such investment. Please refer to the "Questions & Answers" section of this Proxy Statement for more information on how risk adjusted return is calculated.
- Expand the Fund's access to NexPoint's real estate capabilities (see Question 7, below, for further discussion of the Adviser's capabilities).
- Potential to reduce the Fund's historical discount to net asset value ("NAV"). Historically, REITs have traded more frequently at a premium to NAV while closed-end funds have traded at a discount to NAV.
- Potential to provide greater liquidity for shareholders, including the increased ability to raise capital from institutional and retail investors.
- Expected to provide investors with an opportunity to take advantage of the current dislocation in the commercial real estate markets.
- Expected to facilitate the transition of the Fund's investments to assets with the potential to earn greater income for the Fund in an historically low interest rate environment.

Details regarding the business to be conducted at the Special Meeting are more fully described in the accompanying Notice of Special Meeting of Shareholders and Proxy Statement.

In addition to voting on the Proposals described in the Notice of Special Meeting of Shareholders and Proxy Statement, you will have an opportunity to hear a report on the Fund and to discuss other matters of interest to you as a shareholder.

We hope that you will be able to attend the Special Meeting. Whether or not you plan to attend, please complete, date, sign and mail the enclosed proxy card to assure that your shares are represented at the Special Meeting. Thank you for being a shareholder and for your continued investment in the Fund.

July 10, 2020

James D. Dondero
President

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NEXPOINT STRATEGIC OPPORTUNITIES FUND

300 Crescent Court, Suite 700
Dallas, Texas 75201
(866) 351-4440

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS
TO BE HELD ON AUGUST 28, 2020

The Special Meeting of Shareholders of NexPoint Strategic Opportunities Fund, a Delaware statutory trust ("NHF" or the "Fund"), will be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, August 28, 2020, at 8:30 a.m. Central Time (the "Special Meeting"), for the following purposes:

1. To consider and vote upon a change in the Fund's business from a registered investment company that invests primarily in debt and equity securities to a diversified REIT and to amend the Fund's fundamental investment restrictions to permit the Fund to engage in its new business (the "Business Change Proposal").

2. If the Business Change Proposal is approved, to approve the amendment and restatement of the Fund's Agreement and Declaration of Trust (the "Amendment Proposal").

Shareholders are being asked to vote upon each proposal separately; however, the effectiveness of each of the Business Change Proposal and the Amendment Proposal is conditioned and dependent upon the approval of both proposals. Accordingly, the Business Change Proposal, if approved, will only be effective if the Amendment Proposal is also approved, and the Amendment Proposal, if approved, will only be effective if the Business Change Proposal is also approved. The Board, including the Independent Trustees, unanimously recommends that you vote "FOR" the Proposals.

No other business may be presented or transacted at the Special Meeting.

The close of business on June 19, 2020 has been fixed as the record date for the determination of shareholders entitled to notice of, and to vote at, the Special Meeting and any adjournment or postponements thereof. Please call Di Costa Partners LLC at (833) 252-3690 for directions on how to attend the Special Meeting.

The Board of Trustees is requesting your vote. Your vote is important regardless of the number of shares that you own. Whether or not you expect to be present at the Special Meeting, please complete and sign the enclosed proxy card and return it promptly in the enclosed envelope, which needs no postage if mailed in the United States. If you desire to vote in person at the Special Meeting, you may revoke your proxy at any time before it is exercised.

By Order of the Board of Trustees,

/s/ Lauren Thedford
Lauren Thedford
Secretary

July 10, 2020
Dallas, Texas

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HOW TO VOTE

Please vote on the future direction of our Fund. The New York Stock Exchange ("NYSE") rules do not allow a broker, bank or other nominee who holds shares on your behalf to vote on the Business Change Proposal described below without your instructions.

You can vote in advance in one of three ways:

via the internet	The web address and instructions for voting **VIA THE INTERNET** can be found on the enclosed proxy card or voting instruction form. You will be required to provide your control number located on the proxy card.
by phone	The toll-free number for voting **BY TELEPHONE** voting can be found on the enclosed proxy card or voting instruction form. You will be required to provide your control number located on the proxy card.
by mail	Sign, date and return your proxy card if you are a shareholder of record or voting instruction form if you are a beneficial owner to authorize a proxy **BY MAIL.**

If the Special Meeting is postponed or adjourned, these times will be extended to 11:59 p.m., Eastern time, on the day before the reconvened meeting.

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NEXPOINT STRATEGIC OPPORTUNITIES FUND

300 Crescent Court
Suite 700
Dallas, Texas 75201
(866) 351-4440

PROXY STATEMENT
SPECIAL MEETING OF SHAREHOLDERS
AUGUST 28, 2020

July 10, 2020

The Board of Trustees (the "Board") of the NexPoint Strategic Opportunities Fund, a Delaware statutory trust ("NHF," the "Fund," "we," "us," or "our"), is furnishing this proxy statement and accompanying proxy card (or voting instruction form) to you in connection with the solicitation of proxies by the Board for the special meeting of our shareholders (the "Special Meeting"). The Special Meeting will be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, August 28, 2020, at 8:30 a.m., Central time, and any adjournment or postponements thereof (the "Special Meeting"). We are first making these proxy materials available to shareholders on or about July 15, 2020.

Only owners of record of common shares, par value $0.001 per share, as of the close of business on June 19, 2020 (the "Record Date") are entitled to notice of, and to vote at, the Special Meeting and at any postponements or adjournments thereof. Holders of common shares are entitled to one vote for each common share. On June 19, 2020, there were 45,606,964 common shares issued and outstanding.

We will furnish, without charge, a copy of our annual report and most recent semi-annual report succeeding the annual report, if any, to any shareholder upon request. Requests should be directed to the Secretary of the Fund at 300 Crescent Court, Suite 700, Dallas, Texas 75201 or by telephone at 1-866-351-4440 or on our web site at www.nexpointadvisors.com.[1] Copies of our annual and semi-annual reports are also available on the EDGAR Database on the Securities and Exchange Commission's (the "SEC") website at www.sec.gov.

The mailing address of our principal executive offices is 300 Crescent Court, Suite 700, Dallas, Texas 75201.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS

FOR THE SPECIAL MEETING TO BE HELD ON FRIDAY, AUGUST 28, 2020.

THE NOTICE OF SPECIAL MEETING AND PROXY STATEMENT ARE AVAILABLE AT: .
www.eproxyaccess.com/nhf2020

[1]Our Internet address is included in this proxy statement as a textual reference only. The information on the website is not incorporated by reference into this proxy statement.

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QUESTIONS & ANSWERS ABOUT THE PROXY MATERIALS AND VOTING

1. ON WHAT PROPOSALS AM I BEING ASKED TO VOTE?

You are being asked to consider and vote upon two proposals:

1. To approve changing our business from a registered investment company to a real estate investment trust (a "REIT"). We refer to this proposal as the "Business Change Proposal" in the proxy materials.

   If the Business Change Proposal is approved, we will change our business from a registered investment company that invests in (i) secured and unsecured floating and fixed rate loans; (ii) bonds and other debt obligations; (iii) debt obligations of stressed, distressed and bankrupt issuers; (iv) structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; (v) equities; (vi) other investment companies, including business development companies ("BDCs"); and (vii) REITs to a diversified REIT. In connection with this change to our business, we would amend our fundamental investment restrictions regarding purchasing and selling real estate and originating loans to allow us to begin the transitioning to our new business as a diversified REIT. The Business Change Proposal is discussed in greater detail in the proxy materials under the heading "Proposal 1: Business Change Proposal."

2. If the Business Change Proposal is approved, to approve the amendment and restatement of the Fund's Agreement and Declaration of Trust (the "Declaration of Trust"). We refer to this proposal as the "Amendment Proposal" in the proxy materials.

   The Declaration of Trust amendments, if approved, would (i) make certain changes necessary to implement the Business Change Proposal and operate as a REIT, (ii) provide the Trustees with greater flexibility and authority consistent with the Delaware Statutory Trust Act and (iii) implement other updates and clarifications. The Declaration of Trust amendments would also require a supermajority vote to reverse or take other action that would impede the implementation of the Business Change Proposal. The Declaration of Trust amendments are discussed in greater detail in the proxy materials under the heading "Proposal 2: Amendment Proposal."

No other business may be presented or transacted at the Special Meeting.

2. HOW DOES THE BOARD RECOMMEND THAT I VOTE?

The Board, including the Independent Trustees, unanimously recommends that you vote "FOR" the Proposals.

3. WHY IS THE BOARD RECOMMENDING THE BUSINESS CHANGE PROPOSAL?

The Board, including the members of the Board who are not interested persons (as defined in the Investment Company Act of 1940 (the "1940 Act")) of the Fund (the "Independent Trustees"), believes

that the Business Change Proposal is in the best interest of shareholders because it believes it is the best path for the Fund to increase shareholder value over time. The Business Change Proposal is expected to have the potential to increase shareholder value for the following reasons:

- Potential to provide investors with a superior risk adjusted return compared to equity, fixed income, and distressed debt markets through real estate investments over the next decade. Risk-adjusted return is a calculation of the potential profit from an investment that takes into account the degree of risk associated with such investment. One measure of risk-adjusted return is the Sharpe ratio, which is a measurement of return or profit per unit of risk. The Sharpe ratio measures the return or profit that exceeds the risk-free rate, per unit of risk as measured by the standard deviation. This is calculated by taking the return of the investment, subtracting the risk-free rate, and then dividing this by the investment's standard deviation.

- Expand the Fund's access to NexPoint's real estate capabilities (see Question 7, below, for further discussion of the Adviser's capabilities).

- Potential to reduce the Fund's historical discount to net asset value ("NAV"). Historically, REITs have traded more frequently at a premium to NAV while closed-end funds have traded at a discount to NAV.

- Potential to provide greater liquidity for shareholders, including the increased ability to raise capital from institutional and retail investors.

- Expected to provide investors with an opportunity to take advantage of the current dislocation in the commercial real estate markets.

- Expected to facilitate the transition of the Fund's investments to assets with the potential to earn greater income for the Fund in an historically low interest rate environment.

Please refer to Appendix A for additional information regarding these statements. In connection with the Board's approval of the Business Change Proposal, the Board also considered potential risks associated with the Fund's conversion to a REIT (the "Conversion"), including (i) the complexity and unique nature of the transaction; (ii) risks related to current market conditions, including market volatility related to COVID-19; (iii) potential delays in receiving the Deregistration Order or in implementing the Fund's investment strategy as a REIT; (iv) the requirement to qualify as a REIT for tax purposes by March 31, 2021 (discussed below); (v) inherent risks in increasing the Fund's exposure to real estate; (vi) the risk that the Fund's exemption from the 1940 Act through a decrease in assets that qualify as "securities" under the 1940 Act is not viewed favorably by the SEC Staff; and (vii) conflicts of interest as noted in the Fund's offering documents.

For a detailed discussion of the principal considerations taken into account by the Board and a discussion of the potential risks in implementing the Business Change Proposal, see "Business Change Proposal—Reasons for the Proposed Change" and Appendix B.

4. WHY IS THE BOARD RECOMMENDING THE AMENDMENT PROPOSAL?

The Fund's current Declaration of Trust was adopted in 2006 and reflects the Fund's operations as a closed-end investment management company registered under the 1940 Act. Some of the proposed amendments to the Declaration of Trust are necessary in order to implement the Business Change

Proposal, operate as a REIT and qualify for REIT tax treatment. Certain of the other proposed amendments would allow the Fund to operate more efficiently and enhance its ability to achieve the full benefit of the Business Change Proposal, as well as update the Declaration of Trust to more modern provisions for investment vehicles organized as Delaware statutory trusts. Accordingly, the Board, including the Independent Trustees, recommends that Shareholders approve an amendment and restatement of the Fund's Declaration of Trust, as set forth in substantially the form attached hereto as Appendix D (the "A&R Declaration of Trust").

For a discussion of the principal considerations taken into account by the Board and a discussion of the amendments comprising the Amendment Proposal, see "Proposal 2: Amendment Proposal."

5. WHAT WILL HAPPEN IF ONLY ONE OF THE PROPOSALS IS APPROVED BY SHAREHOLDERS?

Shareholders are being asked to vote upon each proposal separately; however, the effectiveness of each of the Business Change Proposal and the Amendment Proposal is conditioned and dependent upon the approval of both proposals. Accordingly, the Business Change Proposal, if approved, will only be effective if the Amendment Proposal is also approved, and the Amendment Proposal, if approved, will only be effective if the Business Change Proposal is also approved.

6. IF THE BUSINESS CHANGE PROPOSAL IS APPROVED, WHAT WILL THE FUND DO TO IMPLEMENT THE PROPOSAL?

If the Business Change Proposal is approved by shareholders, we will begin to transition its business and investments to those of a diversified REIT. At some point during this transition, we will no longer qualify as an "investment company" and we will apply to the SEC for an order under the 1940 Act declaring that we have ceased to be a registered investment company (the "Deregistration Order"). Pending the SEC's issuance of the Deregistration Order, we intend to begin realigning our portfolio consistent with our new business as a diversified REIT. We anticipate that the implementation period may last up to two years, in which case full implementation will not occur until approximately the middle of 2022. This time period is an estimate and may vary depending upon the length of the deregistration process with the SEC, tax considerations and the pace at which we will be able to transition certain of the Fund's investments to tactically fund additional real estate investments across the investable issuer's capital structure. The Adviser expects the Fund to be able to transition its investment portfolio sufficient to qualify as a REIT for tax purposes by the first quarter of 2021.

7. DOES OUR ADVISER HAVE EXPERIENCE IN MANAGING REITS? WILL THERE BE ANY CHANGES TO THE FUND'S INVESTMENT ADVISORY AGREEMENT IN CONNECTION WITH THE BUSINESS CHANGE PROPOSAL?

Our investment adviser, NexPoint Advisors, L.P. ("NexPoint" or, the "Adviser"), and its affiliates have significant experience underwriting, originating, purchasing, and managing real estate investments, REITs and publicly traded companies. NexPoint and its affiliates manage strategies such as direct real estate, real estate credit and originated or structured real estate credit investments and also invest in various credit and equity strategies through long-only funds, Delaware Statutory Trusts, non-traded funds, publicly traded closed-end funds, mutual funds and an ETF. Together with its affiliates, NexPoint had approximately $9.2 billion in assets under management as of March 31, 2020.

The Adviser and its affiliates currently manage nine REITs, which include three publicly traded sector-specific REITs, one privately offered sector-specific REIT and five private REITs which are wholly-owned subsidiaries of registered investment companies, including the Fund, advised by the Adviser and its affiliates (collectively, the "REIT Complex"). The REIT Complex includes three publicly traded sector-specific REITs, one privately offered sector-specific REIT and five private REITs which are wholly-owned subsidiaries of registered investment companies, including the Fund. Within the sector-specific REITs the Adviser manages portfolios of: Class B, value add multifamily properties; single-family housing properties in the Midwest U.S.; hospitality assets located in the U.S.; and mortgages.

As such, the Fund has access to a fully integrated, broad institutional real estate investment platform that, as of March 31, 2020, managed approximately $7.8 billion in gross real estate assets. NexPoint's position in the markets gives it access to unique sourcing opportunities for investments not typically available to retail investors. NexPoint is a select sponsor with Freddie Mac and has experience structuring financing solutions behind first mortgage lenders, including banks, life insurance companies, Freddie Mac and The Federal National Mortgage Association, or Fannie Mae, including mezzanine loans and preferred equity investments. NexPoint and its affiliates have successfully tailored financing solutions to property owners in creative ways but also highly symbiotic with a typical Freddie Mac or Fannie Mae first mortgage. NexPoint's multifamily loan and investment platform complies with current Freddie Mac and Fannie Mae standards, giving the Fund a unique opportunity to invest alongside quality sponsors and some of the largest multifamily lenders in the U.S.

After we receive the Deregistration Order, the Adviser will continue to provide the day-to-day management of our operations, subject to the oversight and direction of the Board. Management and administrative fees will remain the same (an annual fee, paid monthly, in an amount equal to 1.00% of the average weekly value of the Fund's Managed Assets (defined below) for management fees and 0.20% of the average weekly value of the Fund's Managed Assets for administrative fees) immediately after receipt of the Deregistration Order, subject to the revised definition of Managed Assets discussed below, which is intended to reflect REIT market practice and take into consideration the Fund's deregistration from the 1940 Act. At this stage, the terms of the investment advisory agreement would also likely be amended to remove certain provisions required by the 1940 Act and to otherwise conform the agreement to terms more customary for publicly traded REITS.

It is important for shareholders to be aware that management fee expenses, as well as other operating expenses, are expected to increase as the Business Change Proposal becomes fully implemented following receipt of the Deregistration Order due to increased costs associated with an increase in the Fund's gross assets; however, these expenses are projected to be offset by higher projected income attributable to increased cash flows from leveraged real estate assets, resulting in higher projected net income per common share (thus supporting a potentially higher distribution rate in the long term) than without the implementation of the Business Change Proposal.

Following receipt of the Deregistration Order, the Adviser intends to seek Board and shareholder approval to implement a Long-Term Incentive Plan ("LTIP") for the REIT's trustees, officers and key employees. The Adviser notes that LTIPs are common in the REIT industry and, better align the interests of management with shareholders.

The Adviser has agreed to a total expense cap of 1.5% of Managed Assets on the aggregate amount of the corporate operating expenses, administrative fees and management fees paid to the Adviser for the

twelve-month period following the Fund's receipt of the Deregistration Order ("the Total Expense Cap"). The Total Expense Cap is intended to cap general and administrative expenses and certain other expenses to ensure NHF's expenses are competitive and shareholder friendly.

8. WHAT ARE THE TAX CONSEQUENCES OF IMPLEMENTING THE BUSINESS CHANGE PROPOSAL?

We have elected to be treated and currently operate in a manner intended to qualify for taxation as a "regulated investment company" ("RIC") under the Internal Revenue Code of 1986, as amended (the "IRC"). Assuming we deregister as an investment company under the 1940 Act as a result of the Business Change Proposal, our qualification for taxation as a RIC would terminate for the taxable year in which the Deregistration Order becomes effective (the "Deregistration Year") and we intend to elect to be taxed as a REIT under the IRC commencing with the Deregistration Year and in subsequent taxable years. See Appendix C for a detailed discussion of the tax consequences of implementing the Business Change Proposal.

Once the Business Change Proposal is fully implemented, we intend to make monthly distributions to our shareholders in amounts that will, at a minimum, enable us to comply with the REIT provisions of the IRC that require annual distributions of at least 90% of our REIT taxable income (other than net capital gains). The actual amount of such distributions will be determined on a monthly basis by the Board, taking into account the REIT tax requirements, our cash needs, our earnings, the market price of our common shares and other factors the Board considers relevant.

9. WHAT IS THE ESTIMATED COST ASSOCIATED WITH THE BUSINESS CHANGE PROPOSAL? WHO WILL BEAR THE COSTS AND EXPENSES ASSOCIATED WITH THE BUSINESS CHANGE PROPOSAL?

We estimate that the third-party legal fees, transfer agency costs, SEC and NYSE registration fees and de minimus other expenses associated with consideration and approval of the Business Change Proposal will be approximately $1.45 million (the "Transaction Costs"). The Adviser has agreed to cap Transaction Costs payable by the Fund to 20-basis points (0.20%) of the Fund's net asset value (the "Expense Cap").

Based on the Fund's current NAV, the Fund would be responsible for paying Transaction Costs up to $1.5 million. We believe this cap is reasonable given that the average REIT IPO costs on average $3.8 million (including accounting fees, registration fees, FINRA, printing, etc.).[1]

10. WILL MY VOTE MAKE A DIFFERENCE?

YES! Your vote is important no matter how many shares you own to ensure that the Business Change Proposal is adopted. We hope you will participate in the governance of our Fund.

1 Data derived from publicly available information from the last nineteen REIT IPOs as of April 22, 2020.

11. WHAT WILL HAPPEN IF SHAREHOLDERS DO NOT APPROVE THE BUSINESS CHANGE PROPOSAL?

If the Business Change Proposal is not approved, or if the Business Change Proposal is not effective because Shareholders did not approve the Amendment Proposal, the Board may consider other options

to enhance or preserve shareholder value, including continuing our current operation as a registered investment company.

12. HOW CAN I AUTHORIZE A PROXY TO VOTE MY SHARES?

Please follow the instructions included on the enclosed proxy card or voting instruction form.

13. WHOM DO I CALL IF I HAVE QUESTIONS REGARDING THE PROXY?

You may contact our proxy solicitor:

Di Costa Partners LLC

Call Toll Free: (833) 252-3690

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PROPOSAL 1: BUSINESS CHANGE PROPOSAL

Introduction

The Board, including the Independent Trustees, recommends that we change our business from a registered investment company that invests in (i) secured and unsecured floating and fixed rate loans; (ii) bonds and other debt obligations; (iii) debt obligations of stressed, distressed and bankrupt issuers; (iv) structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; (v) equities; (vi) other investment companies, including business development companies ("BDCs"); and (vii) real estate investment trusts ("REITs") to a diversified REIT and to amend the Fund's fundamental investment restrictions to permit the Fund to engage in its new business (the "Business Change Proposal");

Once the Business Change Proposal is fully implemented, it is expected that investments will be diversified among various commercial real estate property types and across the capital structure, including but not limited to: equity, mortgage debt, mezzanine debt and preferred equity.

It is expected that property types will primarily include industrial, hospitality, net lease, retail, office, storage and healthcare and, to the extent currently owned, multifamily and single-family rentals; however, the Fund would have the authority to invest without limitation in any property type. As of the date of this proxy, the Fund's real estate portfolio consists of multifamily, single-family, net lease, hospitality, retail, storage, office, and other assets.

The Fund will invest primarily in real estate and real estate related assets; however, the Fund may, to a limited extent, continue to hold, acquire or transact in certain non-real estate securities. To permit us to engage in our new business, our fundamental investment restrictions regarding purchasing and selling real estate and originating loans and certain of our fundamental investment restrictions would be amended to allow us to engage in our business as a diversified REIT.

The Board and the Adviser believe that, over the long term, the Business Change Proposal would result in expanded access to the Adviser's real estate capabilities, an investment portfolio with the potential to provide a superior risk adjusted return, increased share liquidity, the potential to reduce the discount at which our common shares historically have traded relative to their NAV, and/or provide investors with an opportunity to take advantage of the current dislocation in the commercial real estate markets and low-interest rate environment.

To promote loyalty and long-time alignment of interests among the Fund's shareholders, the Adviser offers an incentive to shareholders that buy and hold the Fund's common shares for a period of at least twelve months through its Shareholder Loyalty Plan (the "Plan"). Shareholders holding an account (the "Account") with the Plan's administrator, Global Shares, may make contributions to the Account during a defined trading period to purchase shares and NexPoint will make a corresponding contribution on such participant's behalf (the "Gross-up"). The Gross-up is determined by NexPoint and may be adjusted at any point without notice by NexPoint prospectively from time to time in accordance with the terms of the Plan. For example, if a participant contributes $10,000 to the Account during a defined trading period to purchase shares and NexPoint has determined the participant's Gross-up will be 2%, NexPoint will make a corresponding contribution of $200, or 2% of the total $10,000, to purchase additional Shares for the participant. In addition, Plan participants are not required to pay any customary purchase commissions or distribution fees on the purchase of shares under the Plan. The Adviser intends to continue the Plan following the Fund's conversion into a REIT.

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For a variety of reasons discussed below, the Board believes that the Business Change Proposal is a better long-term business strategy and is more likely to increase shareholder value than continuing to operate as a registered investment company.

The Board has unanimously recommended that shareholders vote "FOR" the Business Change Proposal.

Set forth below is a summary of the Board's considerations in approving the Business Change Proposal.

Reasons for the Proposed Change

Following preliminary discussion of the Business Change Proposal beginning in February 2020, the Adviser presented the Business Change Proposal to the Board at a meeting on April 28, 2020. The Board reached their decision to unanimously recommend the Business Change Proposal after approximately four months of consideration, discussions and deliberations, during which the Board met on eight occasions. The Independent Board Members also reviewed and discussed the Business Change Proposal during executive sessions with their independent legal counsel at which no representatives of management were present. The Board also had the opportunity to request additional follow up information, which the Adviser provided.

The Board reviewed materials prepared by the Adviser relating to the Business Change Proposal, our investment objectives, strategies, and restrictions, the types of investments we intend to make if the Business Change Proposal is approved, the risk and return characteristics of those investments, projected income and expenses anticipated to be associated with implementing the Business Change Proposal and associated with operating as a diversified REIT and related matters.

These materials generally compared our business and prospects both with and without implementing the Business Change Proposal, and the Board discussed these matters extensively with the Adviser. Given the Adviser's experience in the investment management and REIT industries, the Adviser prepared a report evaluating the overall REIT industry and the anticipated broader impact of the implementation of the Business Change Proposal on the Fund, including on the Fund's operations and performance. During the course of its evaluation, the Board also consulted with the Adviser and the Adviser's and the Fund's legal counsel. Throughout the process, the Board, and separately, the Independent Trustees with their independent counsel, met in executive sessions with no representatives of management present to further discuss the Business Change Proposal. At Board meetings held on June 16, 2020 and June 18-19, 2020, the Board further discussed the Business Change Proposal and, after meeting in executive session, unanimously recommended that the Board approve the Business Change Proposal and submit it to a vote of the Fund's shareholders. In reaching its decision to recommend the approval of the Business Change Proposal, the Board, in consultation with the Adviser, considered various factors it deemed relevant, including, but not limited to, the following factors:

- In considering the Business Change Proposal, the Board noted its discussions with the Adviser regarding the anticipated positive impact that the implementation of the Business Change Proposal would have on the sustainability and potential growth of earnings and distribution rate over the long term. The Board in particular considered in its evaluations, the Adviser's discussion of the potential benefits of the Business Change Proposal, including that, over the long term, our new investment strategies could result in our result in expanded access to the

Adviser's real estate capabilities, an investment portfolio with the potential to provide a superior risk adjusted return, increased share liquidity, the potential to reduce the discount at which our common shares historically have traded relative to their NAV, and/or providing investors with an opportunity to take advantage of the current dislocation in the commercial real estate markets and low-interest rate environment.

- The Board further considered that the Adviser has committed to cap third-party legal fees, transfer agency costs, SEC and NYSE registration fees and de minimus other costs and expenses associated with consideration and approval of the Business Change Proposal (the "Transaction Costs") to 20-basis points (0.20%) of the Fund's net asset value (the "Expense Cap") compared to the average cost of a REIT's initial public offering, (including accounting fees, registration fees, FINRA, printing, etc.).

- The Board considered pro forma fees and expenses associated with implementing the Business Change Proposal and associated with operating as a diversified REIT, including expense information relating to other REITs in the REIT Complex. The Board took into account the Adviser's discussion of the Fund's fees and expenses, including that although management fee expenses and other operating expenses are expected to increase as the Business Change Proposal becomes fully implemented following receipt of the Deregistration Order due to increased costs associated with an increase in the Fund's gross assets, these expenses are projected to be offset by higher projected income attributable to increased cash flows from leveraged real estate assets, which, potentially could result in higher projected net income per common share than without the implementation of the Business Change Proposal (and thus, although no guarantee, supporting a potentially higher distribution rate in the long term).

- The Board also took into account that the Adviser has agreed to the Total Expense Cap of 1.5% of Managed Assets on the aggregate amount of the corporate operating expenses, administrative fees and management fees paid to the Adviser for the twelve-month period following the Fund's receipt of the Deregistration Order.

- The Board considered the Adviser's belief that, given the current phase of the real estate cycle, the current and projected interest rate environment and anticipated economic decline, a diversified real estate investment trust could provide the Fund with a greater ability to generate returns for shareholders and could represent a more favorable risk-return tradeoff, as compared to investing primarily in equity securities of companies engaged in real estate businesses.

- The Board discussed the following advantages of a diversified REIT strategy[2]:

  - Real estate investments have generally outperformed the securities markets over long periods of time;

  - REITs generally provide investors with greater liquidity, including the increased ability to raise capital from institutional and retail investors;

2 Please refer to Appendix A for support provided to the Board for consideration of the Business Change Proposal.

- Historically, REITs have traded more frequently at a premium to NAV while closed-end funds have traded at a discount to NAV;
- The proposed diversified REIT strategy has the potential to generate higher income than the current strategy; and
- REITs can offer additional tax advantages compared to closed-end funds, such as a 20% deduction for most REIT ordinary income dividends received by non-corporate U.S. shareholders and generally a greater portion of a REIT's dividends being classified as a tax-deferred return of capital due to the depreciation and other expenses accrued from owning properties.

- The Board noted that, notwithstanding these anticipated advantages, the particular nature of any economic downturns, recessions or financial crises (including the recent recession caused by the COVID-19 pandemic), and issuer specific or asset class/property type specific risk could adversely impact the anticipated risk-return tradeoff for real estate investing and lead to losses notwithstanding any perceived protection provided by investing in direct real estate and real estate debt as opposed to the current strategy.

- Additionally, the Board noted that the Fund is currently required to, under normal market conditions, invest at least 25% of the value of its total assets in the real estate industry, including obligations issued or guaranteed by the U.S. Government, any state or territory of the United States or any of their agencies, instrumentalities or political subdivisions, and investments by any territory of the United States or any of their agencies, instrumentalities or political subdivisions for which the underlying collateral is real estate. The Board noted that shareholders had previously voted to approve the 25% policy with respect to the Fund's investments in the real estate industry and that converting the Fund to a REIT would better position the Fund to access such real estate investments.

- The Board assesses the Fund's performance at each quarterly meeting and during its regular telephonic meetings. The Board noted that over the last several years, real estate investments were among the Fund's top contributors and led to less volatility within the Fund's portfolio.

- Shares of closed-end funds often trade in the marketplace at a discount to their NAV per share. This has been the case for our common shares, given that they have traded at a persistent discount to our NAV for the past several years. In October 2019, the Board approved a repurchase program of up to $25 million of the Fund's shares over a period of six months. Due to continued volatility in the markets in response to the COVID-19 pandemic, the Board amended and restated the Fund's repurchase program to permit the Fund to purchase up to 10% of the Fund's outstanding shares over the next 1-year period. The Board noted that despite these efforts, the Fund's common shares have continued to trade at a discount to NAV.

- Additionally, the Board considered the potential for reduction in the Fund's discount to NAV once converted to a REIT based on the historical trading discounts of REITs and closed-end funds.

- In evaluating U.S. listed REITs invested in similar property types, the Board noted the Adviser's presentation that that these REITs often, though not always, traded at a premium to

net asset value and considered the potential for the Business Change Proposal, in the long term, to act as a catalyst for providing shareholders with an improved likelihood of being able to trade their common shares at a price closer to, or perhaps even in excess of, NAV. The Board noted the precedent of another closed-end fund that deregistered and became a REIT and the impact of such conversion on the trading price of that fund, though the Board also noted the different facts and circumstances applicable to that situation and that there could be no assurance that converting to a diversified REIT would have a similar impact on the market price of our common shares. The Board also noted that another closed-end fund recently received shareholder approval to deregister and become a mortgage REIT for many of the same reasons noted above.

- The Board also considered the size of NHF's asset base and that NHF is of sufficient size to operate as a REIT, noting the Fund is currently larger than approximately 30% of publicly traded REITs.

- The Board and the Adviser believe that the Fund's status as a closed-end fund has made it difficult for the Fund to attract interest from broader capital market participants, including market analysts, and therefore may be an obstacle to enhancing our profile in the market and thus the market liquidity and trading prices of our common shares. The Board believes that the Business Change Proposal's potential for long term enhancement of the price at which our common shares trade relative to their NAV could protect our long-term shareholders from these vulnerabilities and preserve value for them, while at the same time improving market sentiment and recognition for us, which in turn could enhance the market liquidity of our common shares.

- The Board considered the Adviser's and its affiliates' position in the markets and access to unique sourcing opportunities, including that the Adviser is a select sponsor with Freddie Mac and has experience structuring unique financing solutions behind first mortgage lenders, including banks, life insurance companies, Freddie Mac and The Federal National Mortgage Association, or Fannie Mae, including mezzanine loans and preferred equity investments.

- The Board considered the current investments of the Fund, including that a significant portion of the Fund's net assets are already comprised of real estate and real estate related securities, and that transition of the Fund's remaining assets into assets sufficient to render the Fund not an "investment company" under the 1940 Act could be facilitated at a relatively low cost.

- The Board considered the experience and qualifications of the Adviser's and its affiliates' personnel in managing REITs and whether the Fund's total assets were sufficient to allow us to successfully implement the Business Change Proposal. The Board noted the substantial experience of the Adviser's personnel and its affiliates in the real estate management, REIT and mortgage origination businesses and the experience of the Adviser's personnel that would service us if the Business Change Proposal is approved. The Board concluded that the Adviser has the wherewithal to successfully implement the Business Change Proposal. The Board also considered the performance and trading history of other REITs managed by an affiliate of the Adviser and that the same personnel that conduct the business of the other REITs are expected to conduct our business if the Business Change Proposal is approved.

- The Board recognized that if the Fund is unsuccessful in implementing the Business Change Proposal, the anticipated benefits of the Business Change Proposal may not be realized. The

Board also recognized that, based on projections, there would be an extended implementation period for the Business Change Proposal because of the anticipated length of time to obtain the Deregistration Order and the timing of becoming a REIT which may be impacted by tax considerations. The Board noted the Adviser's expectation that the Fund would be able to transition its investment portfolio sufficient to qualify as a REIT for tax purposes by the first quarter of 2021; however, the implementation period may last up to two years, in which case the full implementation will not occur until approximately the middle of 2022. The Board noted that this time period was an estimate and may vary depending upon the length of the deregistration process with the SEC, tax considerations and the pipeline of mortgage origination opportunities.

- The Board considered the impact to the Fund of no longer being subject to regulation as a registered investment company under the 1940 Act. The Board noted that the 1940 Act provides certain protections to shareholders that would no longer apply once we deregister under the 1940 Act. The Board concluded that this result was appropriate given the differing nature of the Fund's business following the implementation of the Business Change Proposal as a type of business that Congress chose not to regulate under the 1940 Act. The Board noted that the Business Change Proposal could also provide benefits to shareholders. The Board noted that the lack of 1940 Act regulation would permit the Fund, post implementation of the Business Change Proposal, to compete with other similar diversified REITs through more flexible ability to transact with related parties, including other REITS managed by the Adviser or its affiliates, without being subject to the restrictions of the 1940 Act. The Board also noted that the Fund would continue to be subject to reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act") and shareholders would continue to have the benefit of the significant regulatory protections provided by the corporate governance requirements of the NYSE or another national securities exchange. See "—Implementation of the Business Change Proposal and Related Risks" and "—Operation as a REIT."

- The Board also considered any direct and indirect benefits to the Adviser and its affiliates as a result of the Business Change Proposal.

- The Board considered the tax consequences of the Business Change Proposal, including that as a REIT, we expect to pay distributions to shareholders of at least 90% of our REIT taxable income (other than net capital gains). See "—U.S. Federal Income Tax Considerations of the Fund's Conversion to a REIT" and Appendix C.

- The Board considered the current market disruptions and volatility arising out of the COVID-19 pandemic, including the impact on the Fund's equity investments, the Fund's ability to pursue its current investment strategy, and the ability for the Fund to take advantage of opportunities in the real estate markets due to dislocation caused by recent quarantine and shelter in place orders. For example, valuations of real estate properties and debt securities across various property sectors have declined significantly since the outbreak of COVID-19. Based on the Adviser's experience, the Board believes the Fund can take advantage of these dislocations.

- The Board took into account potential risks associated with implementing the Business Change Proposal, including those discussed in Appendix B.

In determining to approve the Business Change Proposal, the Board did not identify any particular factor as determinative, and each Trustee attributed different weights to the various factors. These factors were also considered by the Independent Trustees meeting separately from the full Board with their independent counsel and both with and without Fund counsel. Following review and discussions with the Adviser and Fund counsel, the Board, including separately the Independent Trustees, unanimously determined that the Business Change Proposal is advisable and in the best interests of the Fund and the Fund's shareholders. During Board meetings held on June 18-19 2020, the Board, including the Independent Trustees, unanimously approved the Business Change Proposal and directed that the Business Change Proposal be submitted for consideration by our shareholders. If shareholders do not approve the Business Change Proposal, the Board may consider other options to enhance or preserve shareholder value, including continuing our current operation as a registered investment company.

THE BOARD, INCLUDING THE INDEPENDENT TRUSTEES, UNANIMOUSLY RECOMMENDS THAT SHAREHOLDERS VOTE "FOR" THE BUSINESS CHANGE PROPOSAL.

Implementation of the Business Change Proposal and Related Risks

Realignment of Portfolio and Deregistration. If the Business Change Proposal is approved by shareholders, we will begin to realign our portfolio to invest to a greater degree in real estate and real estate related assets. At some point during this transition process, we will no longer qualify as an "investment company" under the 1940 Act and will apply to the SEC for a Deregistration Order. We intend to accomplish this by selling certain existing investments in securities, as defined in the 1940 Act, to fund additional investments to tactically fund additional real estate investments across the capital stack. The composition of our portfolio during the transition period will depend upon a variety of factors, including changes in economic conditions, desired common share distribution level, the availability of desirable investment opportunities and the availability of leverage facilities on acceptable terms, among others. The issuance of the Deregistration Order by the SEC is not within our control, and we anticipate that it may take a year or longer from the date of filing of the application to obtain the Deregistration Order. Until the SEC issues a Deregistration Order, we will continue to be registered as an investment company and will continue to be regulated under the 1940 Act. The Fund will continue to be listed on the NYSE under the ticker "NHF."

Changes to Our Fundamental Restrictions. If the Business Change Proposal is approved, our fundamental investment restrictions regarding purchasing and selling real estate and originating loans would be amended to permit us to engage in our new business strategy, as set forth below.

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Current Fundamental Restrictions		Fundamental Restrictions After Approval of Business Change Proposal But Before Deregistration
The Fund may not purchase or sell real estate, except that the Fund may invest in securities of companies that deal in real estate or are engaged in the real estate business, including real estate investment trusts and real estate operating companies, and instruments secured by real estate or interests therein and the Fund may acquire, hold and sell real estate acquired through default, liquidation, or other distributions of an interest in real estate as a result of the Fund's ownership of such other assets.		The Fund may purchase or sell real estate, except to the extent that it would violate the 1940 Act.
The Fund may not make loans of money or property to any person, except through loans of portfolio securities up to a maximum of 33 1/3% of the Fund's total assets, the purchase of debt securities, including bank loans (senior loans) and participations therein, or the entry into repurchase agreements up to a maximum of 33 1/3% of the Fund's total assets		The Fund may originate loans to other persons, except to the extent that it would violate the 1940 Act.

Each of the amended policies would remain fundamental, as required by the 1940 Act, until we receive the Deregistration Order, at which time these policies (and other Fund policies) could be changed by the Board without shareholder approval.

We currently have, and will retain until we receive the Deregistration Order, a fundamental investment policy to make investments that will result in concentration (25% or more of the value of our investments) at the time of purchase in the securities of issuers conducting their principal business activities in the real estate industry, including obligations issued or guaranteed by the U.S. Government, any state or territory of the United States or any of their agencies, instrumentalities or political subdivisions, and investments by any territory of the United States or any of their agencies, instrumentalities or political subdivisions for which the underlying collateral is real estate.

Changes to Our Non-Fundamental Investment Policies and Strategies. Our current non-fundamental investment policies and strategies provide that under normal market conditions, we invest:

- To provide both current income and capital appreciation;

- Primarily in the following categories of securities and instruments of corporations and other business entities: (i) secured and unsecured floating and fixed rate loans; (ii) bonds and other debt obligations; (iii) debt obligations of stressed, distressed and bankrupt issuers; (iv) structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; (v) equities; (vi) other investment companies, including BDCs; and (vii) REITs; and

• Up to 15% of our net assets in entities that are excluded from registration under the 1940 Act by virtue of section 3(c)(1) and 3(c)(7) of the 1940 Act (such as private equity funds or hedge funds). This limitation does not apply to any CLOs, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the 1940 Act.

If the Business Change Proposal is approved, the foregoing policies and strategies will be replaced with the investment strategy described under "—Operation as a Diversified REIT—Investment Strategy."

Investment Advisory Agreement. If the Business Change Proposal is approved, our current investment advisory agreement will remain in effect until receipt of the Deregistration Order, including the existing investment advisory fee. After we receive the Deregistration Order, the Adviser will continue to provide the day-to-day management of our operations, subject to the oversight and direction of the Board. Management and administrative fees will remain the same (an annual fee, paid monthly, in an amount equal to 1.00% of the average weekly value of the Fund's Managed Assets (defined below) for management fees and 0.20% of the average weekly value of the Fund's Managed Assets for administrative fees) immediately after receipt of the Deregistration Order, subject to the revised definition of Managed Assets discussed below. At this stage, the terms of the investment advisory agreement would also likely be amended to remove certain provisions required by the 1940 Act and to otherwise conform the agreement to terms more customary for publicly traded REITS.

It is important for shareholders to be aware that management fee expenses, as well as other operating expenses, are expected to increase as the Business Change Proposal becomes fully implemented following receipt of the Deregistration Order due to increased costs associated with an increase in the Fund's gross assets; however, these expenses are projected to be offset by higher projected income attributable to increased cash flows from leveraged real estate assets, resulting in higher projected net income per common share (thus supporting a potentially higher distribution rate in the long term) than without the implementation of the Business Change Proposal.

Following receipt of the Deregistration Order, the Adviser intends to seek Board and shareholder approval to implement an LTIP for the REIT's trustees, officers and key employees. The Adviser notes that LTIPs are common in the REIT industry and, better align the interests of management with shareholders.

The Adviser has agreed to a total expense cap of 1.5% of Managed Assets on the aggregate amount of the corporate operating expenses, administrative fees and management fees paid to the Adviser for the twelve-month period following the Fund's receipt of the Deregistration Order ("the Total Expense Cap"). The Total Expense Cap is intended to cap general and administrative expenses and certain other expenses to ensure NHF's expenses are competitive and shareholder friendly.

Under the terms of our investment advisory agreement, the Adviser provides us with an investment program, makes our day-to-day investment decisions and manages our business affairs in accordance with our investment objectives and policies, subject to the general supervision of the Board. As compensation for its services rendered and the related expenses borne by the Adviser, we pay the Adviser an annual fee, paid monthly, in an amount equal to 1.00% of the average weekly value of the Fund's Managed Assets. The Fund's "Managed Assets" is an amount equal to the total assets of the Fund, including any form of leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to investment leverage obtained through

(i) indebtedness of any type (including, without limitation, borrowing through a credit facility or the issuance of debt securities), (ii) the issuance of preferred stock or other preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the Fund's investment objectives and policies, and/or (iv) any other means. We may terminate the investment advisory agreement at any time without penalty by giving the Adviser sixty days' notice and paying any compensation earned prior to such termination, provided that such termination shall be directed or approved by the vote of a majority of our Trustees or by the vote of the holders of a "majority" (as defined in the 1940 Act) of our outstanding voting securities.

Additionally, the Adviser provides administrative services to the Fund. For its services, the Adviser receives an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Fund's Managed Assets. Under a separate sub-administration agreement, the Adviser has delegated certain administrative functions to SEI Global Funds Services ("SEI"). The Investment Adviser pays SEI directly for these sub-administration services.

The Adviser has historically been affiliated through common control with Highland Capital Management, L.P. ("HCMLP"), an SEC-registered investment adviser. On October 16, 2019, HCMLP filed for Chapter 11 bankruptcy protection with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas. On January 9, 2020, the bankruptcy court approved a change of control of HCMLP, which involved the resignation of James Dondero as the sole director of, and the appointment of an independent board to, HCMLP's general partner. Mr. Dondero will, however, remain as an employee of HCMLP and as portfolio manager for all funds and vehicles for which he currently holds such titles. Nevertheless, given Mr. Dondero's historic role with HCMLP and his continued ownership interest and roles with respect to the Highland platform as a whole, as well as the shared services agreements between HCMLP and the Adviser, the Fund will still treat HCMLP and its affiliates as the Fund's affiliates for purposes hereof.

The Adviser is not a party to HCMLP's bankruptcy filing. The Adviser is a party to a shared services arrangement with HCMLP. Under this arrangement the Adviser may utilize employees from HCMLP in connection with various services such as human resources, accounting, tax, valuation, information technology services, office space, employees, compliance and legal. The Fund does not expect HCMLP's bankruptcy filings to impact its provision of services to the Adviser at this time.

In the future, the Fund may engage the Adviser or certain of its affiliates to provide services other than those discussed above. Any arrangements would be subject to approval by the Board prior to the Adviser or its affiliates being engaged to provide services to the Fund.

Distribution Policy. During the transition period before our portfolio has been fully converted to its new investment strategy, we intend to try to maintain the monthly dividend. However, there can be no assurance that we will not reduce our monthly distributions during the investment strategy transition period. We anticipate distributing net capital gains, if any, recognized on the sale of assets during this transition period, either as part of our monthly distributions or at the end of the year in accordance with the requirements of subchapter M of the IRC.

Credit Facility. If shareholders approve the Business Change Proposal, we intend to terminate our credit facility with BNP Paribas Prime Brokerage International, Ltd. We would seek to fund such

termination with a replacement credit facility designed for our new business as a diversified REIT. See "—Operation as a Diversified REIT—Policies and Investment Guidelines—Leverage Policies and Financing Strategy."

Change in Name. We expect to change our name to "NexPoint Diversified Real Estate Trust."

Effects of Deregistration. As a registered investment company, we are subject to extensive regulation under the 1940 Act. The 1940 Act, among other things,

- regulates the composition of the Board, requiring that the Fund be managed by a board of directors, at least 40% of whom are not "interested persons" of the Fund, as defined in the 1940 Act;

- requires that the Fund's management agreement be approved by a majority of the directors who are not interested persons of the Fund both initially and on an annual basis; the 1940 Act also generally requires that the Fund's management agreement be approved initially by the Fund's shareholders and that any material amendments to such agreement also be approved by the Fund's shareholders;

- provides shareholders with the right to terminate the management agreement;

- restricts the extent to which the Fund may utilize financial leverage; for every dollar of indebtedness outstanding, the Fund is required to have at least three dollars of total assets and for every dollar of preferred shares outstanding, the Fund is required to have at least two dollars of total assets);

- limits the Fund to issuing one class of indebtedness and one class of preferred shares; restricts the issuance of stock options, rights and warrants; prohibits the issuance of securities for services or for property other than cash or securities, except as a dividend or a distribution to security holders or in connection with a reorganization; restricts the sale of common shares at a price below NAV;

- imposes restrictions on the Fund's ability to engage in transactions with affiliated persons, including trustees and officers of the Fund, the Adviser and its affiliates and other companies managed by the Adviser, unless such transactions are exempted by the SEC or a rule under the 1940 Act. These prohibitions generally apply to buying and selling securities and other property to or from affiliated persons; lending money to affiliated persons; or participating in joint transactions or profit sharing arrangements with affiliated persons;

- regulates the form, content and frequency of financial reports to shareholders;

- requires the Fund to report its assets at their fair value rather than at cost in financial reports;

- requires the Fund to file periodic reports with the SEC designed for investment companies to disclose compliance with the 1940 Act and to present other financial information;

- prohibits the Fund from changing the nature of its business or fundamental investment objectives, policies and restrictions without the prior approval of its shareholders;

• prohibits pyramiding of investment companies and the cross ownership of securities;

• requires the Fund to maintain its securities and other investments with certain types of custodians under conditions designed to assure the safety of the Fund's assets;

• provides for the bonding of certain employees;

• requires the Fund to have a written code of ethics and compliance policies and procedures designed to prevent violations of federal securities laws and a chief compliance officer charged with administering these policies;

• regulates the manner in which repurchases of shares may be effected;

• regulates plans of reorganization, including mergers with affiliates;

• prohibits the Fund from limiting the liability of any trustee and officer for willful misfeasance, bad faith, gross negligence or reckless regard of the duties involved in the conduct of his or her office; and

• creates a right in private persons to bring actions in Federal courts to enforce compliance with certain, limited provisions of the 1940 Act.

After we receive a Deregistration Order, we will no longer be subject to regulations under the 1940 Act. Instead, as a diversified REIT, we would be able to, among other things:

• enter into a new management agreement with the Adviser without shareholder approval or change the management agreement;

• shareholders will not have the right to require us to terminate the management agreement;

• employ both direct and structural leverage on our loan investments in amounts in excess of what the 1940 Act permits;

• issue multiple classes of indebtedness and capital stock, including multiple classes of common and preferred stock with different rights, preferences and privileges, and multiple classes of debt with varying terms, seniority and security interests;

• issue stock options, rights and warrants for services or for property in addition to cash or securities, and may sell shares at a price below net asset value;

• engage in transactions involving affiliated persons;

• change our investment restrictions and policies without shareholder approval and without being subject to any regulatory restrictions under the 1940 Act;

• maintain our securities and other investments as we believe would be appropriate without being subject to any custody restrictions under the 1940 Act; and

• amend our organizational documents in accordance with their terms to remove provisions relating to 1940 Act requirements.

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However, we would be regulated by, among other laws, the Exchange Act, which regulates, among other things:

- soliciting proxies from shareholders;
- filing interim and annual reports with the SEC, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K;
- filing securities ownership reports by directors, officers and principal shareholders; and
- restrictions on engaging in insider trading in securities, using manipulative devices in connection with certain security transactions, and making misleading statements in reports or documents filed with the SEC.

After we receive the Deregistration Order, we will continue to be managed by our Board and our officers; however, we anticipate the appointment of certain of NexPoint's real estate professionals as officers of the Fund during the transition. Additionally, as discussed below and in the proxy statement for the Fund's 2020 annual meeting of shareholders (the "Annual Meeting Proxy"), the Board has recommended the addition of Mr. Edward Constantino as a Class II Trustee of the Fund to serve for a three-year term until the 2023 annual meeting of shareholders or until his respective successor is duly elected and qualified.

The Board and the Adviser believe that the Fund would benefit from the expertise that Mr. Constantino would provide in overseeing the Fund's real estate and real estate-related investments, particularly in connection with the implementation of the Fund's conversion to a REIT pursuant to the Proposals. The Board expects that full implementation of the REIT Conversion may take up to two years and would involve, among other things, the transition of the Fund's assets to tactically fund additional real estate investments across the capital stack; therefore, the Board believes that the Fund will benefit from Mr. Constantino's knowledge, experience and oversight during the conversion process. If elected, Mr. Constantino is expected to be appointed to each of the Committees (as defined below).

Mr. Constantino, age 73, has served as a member of NexPoint Residential Trust, Inc. ("NXRT") since NXRT was spun out of the Fund in March 2015. Mr. Constantino has also served as a member of the board of NexPoint Real Estate Finance, Inc. ("NREF"), a mortgage real estate investment trust advised by an affiliate of the Adviser, since February 2020. Mr. Constantino has over 40 years of audit, advisory and tax experience working for two major accounting firms, Arthur Andersen LLP and KPMG. He retired from KPMG in late 2009, where he was an audit partner in charge of the firm's real estate and asset management businesses. Mr. Constantino is, and since 2010 has been, a member of the Board of Directors of Patriot Bank N.A. Mr. Constantino has also served as a consultant for the law firm Skadden, Arps, Slate, Meagher & Flom LLP. He is a licensed CPA, a member of the American Institute of Certified Public Accountants and a member of the New York State Society of Public Accountants. He is currently a member of the Board of Trustees and the Audit Committee Chairman of St. Francis College in Brooklyn Heights, New York.

The Board will maintain substantially similar power, authority and discretion as the Board has before deregistration and be subject to the same duties under state law. Shareholders would also continue to have the benefit of the significant regulatory protections provided by the corporate governance requirements of the NYSE or another national securities exchange, including those that require that a majority of the trustees be "independent directors" (as defined under NYSE or other applicable

exchange rules), trustee nominations and the compensation of all of our executive officers be subject to independent director approval, and that we hold an annual meeting of shareholders no later than one year after our first fiscal year following listing. In addition, consistent with the requirements of the NYSE or another national securities exchange, we intend to adopt a code of conduct and ethics applicable to all trustees, officers and employees.

Because the regulatory requirements specifically applicable to financial statements of registered investment companies would no longer be applicable to the Fund, the financial information in our financial statements after we receive the Deregistration Order will change. For example, once we are no longer an investment company, we will no longer be required to present a schedule of portfolio of investments as part of our financial statements or report investments at fair value. The Board believes that Mr. Constantino's significant experience in audit, advisory and taxation of real estate and real estate-related investments will benefit the Fund during this transition.

See Appendix B for more information on the risks associated with the Business Change Proposal.

Operation as a Diversified REIT

The following discussion assumes that, unless otherwise noted, the Business Change Proposal has been approved by shareholders and we have fully implemented the Business Change Proposal and received the Deregistration Order. See Appendix B for more information on the risks associated with the Business Change Proposal.

Investment Strategy

As a diversified REIT, our primary investment objective will be to provide both current income and capital appreciation. We will seek to achieve this objective by investing among various commercial real estate property types and across the capital structure, including but not limited to: equity, mortgage debt, mezzanine debt and preferred equity. The Adviser will focus on opportunistic investments in real estate properties with a value-add component and real estate credit. The objective will be to increase the cash flow and value of our properties, acquire properties with cash flow growth potential and achieve capital appreciation for shareholders through a value-add program. The Fund will pursue real estate credit investments based on where the Adviser believes the various real estate subsectors are within the broader real estate cycle and tactically allocate among these opportunities.

Underlying property types will primarily include industrial, hospitality, net lease, retail, office, storage and healthcare and, to the extent currently owned, multifamily and single-family rentals; however, the Fund may invest without limitation in any property type. As of the date of this proxy, the Fund's real estate portfolio consists of multifamily, single-family, net lease, hospitality, retail, storage, office, and other assets.

The Fund will invest primarily in real estate and real estate related assets; however, the Fund may, to a limited extent, continue to hold, acquire or transact in certain non-real estate securities.

The Adviser and the Board believe that a diversified investment approach is appropriate for the current market environment. However, to capitalize on investment opportunities at different times in the economic and real estate investment cycle, we may change our investment strategy from time to time. The Adviser and the Board believe that the flexibility of our investment strategy and the experience

and resources of the Adviser and its affiliates, will allow us to take advantage of changing market conditions to provide both current income and generate capital appreciation. The Board will be able to modify such strategies without the consent of the shareholders to the extent that the Board determines that such modification is in the Fund's best interest.

Policies and Investment Guidelines

If the Business Change Proposal is approved by shareholders, the Board will approve the Fund's operating and regulatory policies and investment guidelines. The Board currently anticipates adopting the policies and guidelines described below. The Board may, in its discretion, revise or waive such policies and guidelines from time to time in response to changes in market conditions or business opportunities without shareholder approval.

Leverage Policies and Financing Strategy. To increase the returns on our investments, after issuance of the Deregistration Order, we plan to employ both direct and structural leverage on our property and debt investments, which we expect generally will not exceed, on a debt to equity basis, a ratio of 3-to-1, an increase from the ratio of 1-to-2 set by the 1940 Act.

Leverage will take the form of repurchase or margin facilities collateralized by our debt investments and mortgage debt collateralized our property investments. At the REIT level we may have a revolving corporate credit facility, or may issue unsecured debt, mezzanine debt or preferred equity. We believe that the relationships the Adviser and its affiliates, as well as other companies managed by the Adviser's affiliates (the "NexPoint managed companies"), have with banks, life insurance companies, Freddie Mac and The Federal National Mortgage Association, or Fannie Mae, provide the Fund with a unique opportunity to invest alongside quality sponsors and the largest multifamily lenders in the U.S.

We intend to use leverage, to the extent available, to make additional investments that may increase our potential returns. Although we are not required to maintain any particular leverage ratio, the amount of leverage we will use for particular investments will depend upon an assessment of a variety of factors, which may include the anticipated liquidity and price volatility of our assets, the potential for losses in our portfolio, the gap between the duration of our assets and liabilities, the availability and cost of financing our assets, the health of the U.S. economy and commercial real estate markets, our outlook for the level, slope and volatility of future interest rates, the credit quality of our borrowers and tenants, the collateral values underlying our assets and our outlook for market lending spreads relative to the LIBOR (or other applicable benchmark interest rate index) curve.

REIT Operations. We intend to operate to ensure that we establish and maintain our qualification as a REIT for U.S. federal tax purposes and are not required to register as an investment company under the 1940 Act. We intend to regularly monitor the nature of our assets and the income they generate to ensure that at all times we maintain our tax qualification as a REIT and are not required to register as an investment company under the 1940 Act. The Board currently intends to review our transactions on a periodic basis to ensure compliance with these operating policies.

Distribution Policy. We intend to make monthly distributions to our shareholders of amounts that will, at a minimum, enable us to comply with the REIT provisions of the IRC that require annual distributions of at least 90% of our REIT taxable income (other than net capital gains). See Appendix C. The actual amount of such distributions will be determined on a monthly basis by the Board, taking into account, in addition to the REIT tax requirements, our cash needs, the market price for our common shares and other factors our Board considers relevant.

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Operating Expenses. Operating expenses may increase as the Business Change Proposal becomes fully implemented following receipt of the Deregistration Order due to increased costs associated with sourcing additional real estate investments and costs associated with servicing those investments; however, these expenses are projected to be offset by higher projected income attributable to increased cash flows from leveraged real estate assets, resulting in higher projected net income per common share (thus supporting a potentially higher distribution rate in the long term).

Following approval of the Business Change Proposal, the Adviser will continue to implement our business strategies subject to the oversight of the Board, including: (a) performing all of our day-to-day activities as a public company operating as a diversified REIT; (b) sourcing, analyzing and closing our investments; (c) arranging our financings; (d) performing our asset management functions by monitoring the performance of our borrowers and the maintenance of our collateral; and (e) when necessary, enforcing our loan and security rights.

Policies with Respect to Certain Other Activities. We may raise additional funds through offerings of equity or debt securities or by retaining cash flow (subject to provisions in the IRC concerning distribution requirements and the taxability of undistributed REIT taxable income) or a combination of these methods. If our Board determines to raise additional equity capital, it has the authority, without shareholder approval, to issue additional common shares or preferred shares of beneficial interest in any manner and on such terms and for such consideration as it deems appropriate, at any time.

In addition, to the extent available, we intend to borrow money to make investments that may increase our potential returns. We intend to use traditional forms of financing, including repurchase agreements, bank credit facilities (including revolving facilities and term loans), public or private debt issuances, securitizations and other sources of financing. Although we have no present intention to do so, we may also issue preferred equity which requires us to pay dividends at fixed or variable rates before we may pay distributions to our common shareholders. We expect that the Board will periodically review our investment guidelines and our portfolio and leverage strategies.

We may invest in equity or debt securities of other REITs or other entities engaged in real estate operating or financing activities, and may do so for the purpose of exercising control over such entities.

We do not intend to adopt a formal portfolio turnover policy. Subject to maintaining our qualification for taxation as a REIT under the IRC for U.S. federal income tax purposes and our exemption from registration under the 1940 Act, we currently expect that we will typically hold investments for between two and 10 years. However, in order to maximize returns and manage portfolio risk while maintaining the financial capacity to undertake attractive opportunities that become available to us, we may dispose of an asset earlier than anticipated or hold an investment longer than anticipated if we determined doing so to be appropriate based upon market conditions or other factors regarding a particular investment.

Anticipated Terms of Management Agreement

For purposes of this discussion, we assume that the Adviser will continue to be our manager although, as stated above, after receipt of the Deregistration Order we may enter into a new management agreement with an affiliate of the Adviser, who would continue to provide for the day-to-day management of our operations, subject to the oversight and direction of the Board.

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The Board anticipates that any new management agreement with the Adviser after receipt of the Deregistration Order would include the following terms, which remain subject to negotiation:

Base Management Fee. We anticipate that we will maintain the same fee structure that is currently in place for the Fund, subject to the following changes which are intended to reflect REIT market practice and take into consideration the Fund's deregistration from the 1940 Act. We pay the Adviser an annual fee, paid monthly, in an amount equal to 1.00% of the average weekly value of the Fund's Managed Assets. The Fund's "Managed Assets" is currently defined as an amount equal to the total assets of the Fund, including any form of leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to investment leverage obtained through (i) indebtedness of any type (including, without limitation, borrowing through a credit facility or the issuance of debt securities), (ii) the issuance of preferred stock or other preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the Fund's investment objectives and policies, and/or (iv) any other means. Once the Deregistration Order is received, "Managed Assets" will be revised as follows:

> The term "Managed Assets" means an amount equal to the total assets of the Fund, including any form of leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to ~~***investment***~~ leverage obtained through (i) indebtedness of any type (including, without limitation, ***borrowing to purchase or develop real estate or other investments,*** borrowing through a credit facility, or the issuance of debt securities), (ii) the issuance of preferred stock or other preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the Fund's investment objectives and policies, and/or (iv) any other means. (emphasis added)

In the event the Fund holds collateralized mortgage backed securities ("CMBS") where the Fund holds the "controlling" tranche of the securitization and is required to consolidate under GAAP all assets and liabilities of a specific CMBS trust, the consolidated assets and liabilities of the consolidated trust will be netted to calculate the allowable amount to be included as Managed Assets.

Additionally, the Adviser provides administrative services to the Fund. For its services, the Adviser receives an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Fund's Managed Assets. Under a separate sub-administration agreement, the Adviser has delegated certain administrative functions to SEI Global Funds Services ("SEI").

Expense Reimbursement. The advisory agreement will require that the Fund reimburse the Adviser for all of its out-of-pocket expenses in performing its services, including legal, accounting, financial, due diligence, investor relations and other services performed by our Adviser (or its affiliates, acting on behalf of the Adviser for the Fund) and also pay the Fund's pro rata share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of our Adviser required for our operations ("Adviser Operating Expenses"). Adviser Operating Expenses do not include expenses for the advisory and administrative services provided under the Advisory Agreement. All expenses payable by the Fund or reimbursable to the Adviser pursuant to the agreement will not be in amounts greater than those which would be payable to outside professionals or consultants engaged to perform such services pursuant to agreements negotiated on an arm's length basis. The Adviser may, at its discretion and at any time, waive its right to reimbursement for eligible out-of-pocket expenses paid on our behalf. Once waived, these expenses are considered permanently waived and become non-recoupable in the future.

The Adviser has agreed to a total expense cap of 1.5% of Managed Assets on the aggregate amount of the corporate operating expenses, administrative fees and management fees paid to the Adviser for the twelve-month period following the Fund's receipt of the Deregistration Order ("the Total Expense Cap").

The Total Expense Cap does not limit the reimbursement of expenses related to securities offerings and does not apply to legal, accounting, financial, due diligence and other service fees incurred in connection with mergers and acquisitions, extraordinary litigation or other events outside the Fund's ordinary course of business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets.

Other. In addition to the fees and expense reimbursements payable to the Adviser under the management agreement, the Adviser and its affiliates may benefit from other fees paid to it in respect of our investments. For example, if we seek to securitize some of our property loans, the Adviser or its affiliates may act as collateral manager. In any of these or other capacities, the Adviser and its affiliates may receive fees for their services if approved by a majority of our Independent Trustees.

Reports and Annual Meetings

We anticipate that our common shares will continue to be listed on the NYSE or another national securities exchange. We will be required to satisfy the annual and periodic reporting requirements of the Exchange Act, including filing an Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, each of which requires the filing of financial statements and officers' certifications. Furthermore, we will be required to file a Current Report on Form 8-K whenever a reportable event occurs between the above reporting periods. Pursuant to applicable exchange rules, we will continue to hold annual meetings of shareholders.

Trustees of the Fund

The Board is responsible for the overall management of the Fund, including supervision of the duties performed by the Adviser. The Board is currently comprised of four trustees (each, a "Trustee"). The Trustees are responsible for the Fund's overall management, including adopting the investment and other policies of the Fund, electing and replacing officers and selecting and supervising the Fund's investment adviser. The name and business address of the Trustees and officers of the Fund and their principal occupations and other affiliations during the past five years, as well as a description of committees of the Board, are set forth below.

Committees of the Board of Trustees. We currently have an Audit and Qualified Legal Compliance Committee, a Governance and Compliance Committee and a Distribution and Alternatives Oversight Committee (collectively, the "Committees"). The Governance and Compliance Committee is currently comprised of Dr. Froehlich and Messrs. Ward and Powell, each of whom is independent for purposes of the 1940 Act. Mr. Honis serves as an ex officio non-voting Governance and Compliance Committee member. Dr. Froehlich serves as the Chairman of the Governance and Compliance Committee. The structure of the Fund's committees may be changed in the future in order to comply with the applicable corporate governance requirements of the NYSE or other national securities exchange on which the Fund's shares are listed.

Compensation of Trustees and Officers. Each Trustee receives an annual retainer of $150,000 payable in quarterly installments and allocated among each portfolio in the Funds Complex based on relative net assets. The "Funds Complex," as referred to herein consists of: the Fund, each series of Highland

Funds I ("HFI"), each series of Highland Funds II ("HFII"), Highland Global Allocation Fund ("GAF"), Highland Income Fund ("HFRO"), NexPoint Real Estate Strategies Fund ("NRESF") and NexPoint Capital, Inc. (the "BDC"), a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

Trustees are reimbursed for actual out-of-pocket expenses relating to attendance at meetings, however, the Chairman of the Board and the Chairman of the Audit Committee each receive an additional payment of $10,000 payable in quarterly installments and allocated among each portfolio in the Funds Complex based on relative net assets. The Trustees do not receive any separate compensation in connection with service on Committees or for attending Board or Committee Meetings. The Trustees do not have any pension or retirement plan. The executive officers of the Fund receive no direct remuneration from the Fund.

It is anticipated that the size and composition of our Board will change. Additionally, as discussed above and in the Annual Meeting Proxy, the Board has recommended the addition of Mr. Edward Constantino as a Class II Trustee of the Fund to serve for a three-year term until the 2023 annual meeting of shareholders or until his respective successor is duly elected and qualified. If elected, Mr. Constantino is expected to be appointed to each of the Committees.

The Board and the Adviser believe that the Fund would benefit from the expertise that Mr. Constantino would provide in overseeing the Fund's real estate and real estate-related investments, particularly in connection with the implementation of the Fund's conversion to a REIT pursuant to the Proposals. The Board expects that full implementation of the REIT Conversion may take up to two years and would involve, among other things, the transition of the Fund's assets into real estate investments across the capital stack; therefore, the Board believes that the Fund will benefit from Mr. Constantino's knowledge, experience and oversight during the REIT conversion process.

Board compensation will remain the same during the transition process. The executive officers of the Fund receive no direct remuneration from the Fund. Each Trustee receives an annual retainer of $150,000 payable in quarterly installments and allocated among each portfolio in the Funds Complex based upon relative net assets.

The Trustees are reimbursed for actual out-of-pocket expenses relating to attendance at meetings. The Trustees do not receive any separate compensation in connection with service on Committees or for attending Board or Committee Meetings; however, the Chairman of the Board and the Chairman of the Audit Committee each receive an additional payment of $10,000 payable in quarterly installments and allocated among each portfolio in the Funds Complex based on relative net assets. The Trustees do not have any pension or retirement plan. We expect the annual fee for Mr. Constantino to be prorated based on the Fund's allocable portion of the annual retainer.

Additionally, the Board may in the future and subject to shareholder approval, implement a long-term incentive plan pursuant to which executive officers and Independent Trustees of the Fund are compensated.

U.S. Federal Income Tax Considerations of the Fund's Conversion to a REIT

The Fund has elected to be treated and currently operates in a manner intended to qualify as a RIC under the IRC. Assuming we deregister as an investment company under the 1940 Act as a result of the

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Business Change Proposal, our qualification for taxation as a RIC would terminate for the Deregistration Year. As noted above, in that event, we intend to elect to be treated and to qualify for taxation as a REIT commencing with the Deregistration Year and in subsequent taxable years.

Taxation of the Fund as a REIT

The law firm of Hunton Andrews Kurth LLP ("Hunton") has acted as our tax counsel ("tax counsel"). Following the commencement of the Deregistration Year, we would expect to receive an opinion of Hunton to the effect that, commencing with the Deregistration Year, we have been organized in conformity with the requirements for qualification for taxation as a REIT under the IRC, and that our actual method of operation has enabled, and our proposed method of operation will enable, us to meet the requirements for qualification and taxation as a REIT. The opinion of tax counsel will be based on various assumptions relating to our organization and operation, and will be conditioned upon fact-based representations and covenants regarding our organization, assets, income, and the past, present and future conduct of our business operations. While, if the Business Change Proposal is approved, we intend to operate so that we will qualify for taxation as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by tax counsel or by us that we will qualify for taxation as a REIT for any particular year. The opinion will be expressed as of the date issued. Tax counsel will have no obligation to advise us or our shareholders of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the U.S. Internal Revenue Service (the "IRS"), and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinions.

Our qualification and taxation as a REIT will depend on our ability to meet, through actual operating results, distribution levels, and diversity of stock and asset ownership, various qualification requirements imposed upon REITs by the IRC, the compliance with which will not be reviewed by tax counsel. In addition, our ability to qualify for taxation as a REIT depends in part upon the operating results, organizational structure and entity classification for U.S. federal income tax purposes of certain affiliated entities, the status of which may not have been reviewed by tax counsel. Our ability to qualify for taxation as a REIT also requires that we satisfy specified asset tests, some of which depend upon the fair market values of assets that we own directly or indirectly. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that the actual results of our operations for any taxable year will satisfy such requirements for qualification and taxation as a REIT.

A summary of the U.S. federal income tax consequences generally expected to be applicable to us as a diversified REIT and to an investment in our common shares from and after our conversion to a REIT is attached to this Proxy Statement as Appendix C.

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PROPOSAL 2: AMENDMENT PROPOSAL

Introduction

The Board recommends that shareholders of the Fund approve the proposed Amended and Restated Agreement and Declaration of Trust (the "A&R Declaration of Trust"). The Fund's current Declaration of Trust was adopted in 2006 and reflects the Fund's operations as a closed-end investment management company registered under the 1940 Act. Some of the proposed amendments to the Declaration of Trust are necessary in order to implement the Business Change Proposal, to operate as a REIT and qualify for REIT tax treatment. Certain of the other proposed amendments would allow the Fund to operate more efficiently and enhance its ability to achieve the full benefit of the Business Change Proposal, as well as update the Declaration of Trust to more modern provisions for investment vehicles organized as Delaware statutory trusts (such amendments, collectively, the "Amendment Proposal").

Shareholders are being asked to vote upon each of the Business Change Proposal and the Amendment Proposal separately; however, the effectiveness of each of the Business Change Proposal and the Amendment Proposal is conditioned and dependent upon the approval of both proposals. Accordingly, the Business Change Proposal, if approved, will only be effective if the Amendment Proposal is also approved, and the Amendment Proposal, if approved, will only be effective if the Business Change Proposal is also approved.

The following is a brief discussion of the principal changes contained in the A&R Declaration of Trust. A copy of the A&R Declaration of Trust is attached to this Proxy Statement as Appendix D and the discussion below is qualified in its entirety by reference to Appendix D, which you should read in its entirety.

Conversion-Related Amendments

Share Ownership and Transfer Limitations

If both the Business Change Proposal and the Amendment Proposal are approved, the A&R Declaration of Trust will include certain limits and restrictions on ownership and transferability relating to shares of beneficial interest of the Fund ("Shares") in order to assist the Fund with complying with REIT tax requirements. The current Declaration of Trust imposes no such limits or restrictions. These limits and restrictions will be effective immediately upon approval of the Business Change Proposal and the Amendment Proposal.

The A&R Declaration of Trust would generally prohibit any shareholder from beneficially or constructively owning more than 9.8% in value or in number, whichever is more restrictive, of the outstanding Shares of any class or series. The A&R Declaration of Trust would also prohibit any person from, among other things, (1) beneficially or constructively owning Shares that would result in the Fund's being "closely held" or otherwise cause the Fund to fail to qualify as a REIT, or (2) transferring Shares if the transfer would result in the Shares being owned by fewer than 100 persons. The current Declaration of Trust imposes no such limits or restrictions. The Board may revoke or otherwise terminate the Fund's REIT election, without the approval of shareholders, if it determines that it is no longer in the Fund's best interests to continue to qualify as a REIT. The Board may also

determine that compliance with any restriction or limitation on Share ownership and transfers set forth in the A&R Declaration of Trust is no longer required for REIT qualification. These ownership and transfer restrictions will not affect any current shareholders who already own 9.8% or more of the Fund's common shares and will only affect shareholders who seek to acquire more than that percentage (including common shares they own at the time the restriction is imposed) in the future. These restrictions may, however, discourage a tender offer or other transactions or a change in the composition of the Board or control that might involve a premium price for the Shares or otherwise be in the best interests of the Fund's shareholders.

To qualify as a REIT under the IRC for any taxable year after the first taxable year for which a REIT election is made, an entity's shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year, and no more than 50% of the value of the outstanding shares may be owned, directly, indirectly or constructively, by five or fewer individuals (defined to include certain entities) during the second half of any such year. See Appendix C for more information on qualification as a REIT under the IRC.

In order to comply with these and other requirements, the A&R Declaration of Trust will contain restrictions on the number of Shares that a person may own.The A&R Declaration of Trust will provide that (subject to certain exceptions described below) no person may own, or be deemed to own by applying the attribution provisions of the IRC, more than 9.8% in value or in number, whichever is more restrictive, of the outstanding Shares of any class or series.

The A&R Declaration of Trust will also prohibit any person from (1) beneficially or constructively owning Shares that would result in the Fund's being "closely held," as determined under section 856(h) of the IRC, or otherwise cause the Fund to fail to qualify as a REIT and (2) transferring Shares if such transfer would result in the Shares being beneficially owned by fewer than 100 persons. Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of Shares that will or may violate any of the foregoing restrictions on transferability and ownership, or who is the intended transferee of Shares that are transferred to a charitable trust (as described below), will be required to give written notice immediately to the Fund, or in the case of such a proposed or attempted transaction, give at least 15 days' prior written notice, and provide the Fund with other information it may request to determine the effect of such transfer on the Fund's status as a REIT. The foregoing restrictions on transferability and ownership will not apply if the Board determines that it is no longer in the Fund's best interests to attempt to qualify, or to continue to qualify, as a REIT.

The Board, in its sole discretion, may exempt a person from the foregoing restrictions. A person seeking an exemption must provide to the Board representations, covenants and undertakings the Board may deem appropriate to conclude that granting the exemption will not cause the Fund to lose its status as a REIT. The Board may also require a ruling from the IRS or an opinion of counsel to determine or ensure the Fund's status as a REIT.

Any attempted transfer of Shares that, if effective, would result in a violation of any of the foregoing restrictions will not be effected, and instead the number of Shares that would cause the violation (rounded to the nearest whole share) will be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the proposed transferee will not acquire any rights in such Shares. The automatic transfer will be deemed to be effective as of the close of business on the business day (as defined in the A&R Declaration of Trust) before the date of the transfer. The A&R Declaration of Trust will provide that, if, for any reason, the transfer to the trust is ineffective, the

purported transfer in violation of the restrictions will be void *ab initio*. Shares held in the trust will continue to be issued and outstanding Shares. The proposed transferee will not benefit economically from ownership of any Shares held in the trust and will have no rights to dividends or other distributions on, and no rights to vote or other rights attributable to, those Shares. The trustee of the trust will have all voting rights and rights to dividends or other distributions with respect to Shares held in the trust. These rights will be exercised for the exclusive benefit of the charitable beneficiary(ies). Any dividend or other distribution on Shares that is automatically transferable to the trust that is paid to the proposed transferee before the Fund's discovery of the attempted transfer will be paid by the proposed transferee to the trustee upon demand. Any such dividend or other distribution authorized but unpaid will be paid when due to the trustee, and any such dividend or other distribution paid to the trustee will be held in trust for the charitable beneficiary(ies). Subject to Delaware law, the trustee will have the authority (1) to rescind as void any vote cast by the proposed transferee before the Fund's discovery of the attempted transfer and (2) to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary(ies). However, if the Fund has already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from the Fund that Shares have been transferred to the trust, the trustee will sell the Shares to a person, designated by the trustee, whose ownership of the Shares will not violate the A&R Declaration of Trust's ownership limitations. Upon such sale, the interest of the charitable beneficiary(ies) in the sold Shares will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee and to the charitable beneficiary(ies) as follows. The proposed transferee will receive the lesser of (1) the price it paid for the Shares or, if it did not give value for the Shares in connection with the event causing the Shares to be held in the trust (*e.g.*, a gift, devise or other similar transaction), the market price (as defined in the A&R Declaration of Trust) of the Shares on the day of that event and (2) the price received by the trustee from the sale or other disposition of the Shares. The trustee may reduce the amount payable to the proposed transferee by the amount of dividends and other distributions paid to the proposed transferee and owed by the proposed transferee to the trustee. Any net sale proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the charitable beneficiary(ies). If, before the Fund's discovery of the attempted transfer, the Shares are sold by the proposed transferee, then (1) the Shares shall be deemed to have been sold on behalf of the trust and (2) to the extent that the proposed transferee received an amount for the Shares that exceeds the amount the proposed transferee was entitled to receive, the excess shall be paid to the trustee upon demand.

In addition, the Shares held in the trust will be deemed to have been offered for sale to the Fund, or its designee, at a price per Share equal to the lesser of (1) the price per Share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of the devise or gift) and (2) the market price on the date the Fund, or its designee, accepts the offer. The Fund may reduce the amount payable to the proposed transferee, however, by the amount of any dividends or other distributions paid to the proposed transferee on the Shares and owed by the proposed transferee to the trustee. The Fund will have the right to accept the offer until the trustee has sold the Shares. Upon a sale to the Fund, the interest of the charitable beneficiary(ies) in the sold Shares will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee.

Each certificate, if any, representing Shares issued on or after the first day of the first year for which the Fund elects to be a REIT will bear a legend referring to the restrictions described above or will

state that the Fund will furnish a full statement about certain transfer restrictions to a shareholder upon request and without charge. Each uncertificated Share will be deemed to bear the same legend.

Each beneficial or constructive owner of Shares shall upon demand be required to provide to the Fund information it requests, in good faith, to determine the Fund's status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance. In addition, every owner of 5% or more (or such lower percentage as required by the IRC or the Treasury regulations promulgated thereunder) in value or in number of each class and series of outstanding Shares shall be required to provide to the Fund additional information it may request to determine the effect, if any, of the owner's beneficial ownership thereof on the Fund's status as a REIT and to ensure compliance with the ownership limitations. Each such owner also will be required to give written notice to the Fund, within 30 days after the end of each taxable year, stating the owner's name and address, the number of Shares of each class and series the owner beneficially owns and a description of the manner in which those Shares are held.

If the Board determines that it is no longer in the best interests of the Fund to continue to be qualified as a REIT, the Board may revoke or otherwise terminate the Fund's REIT election pursuant to section 856(g) of the IRC. The Board also may determine that compliance with any restriction or limitation on Share ownership and transfers set forth in the A&R Declaration of Trust is no longer required for REIT qualification.

Eventual Removal of Provisions Related to the 1940 Act

The Fund's existing Declaration of Trust is based on the Fund's current operation as a closed-end investment management company registered under the 1940 Act. As such, the Declaration of Trust includes certain provisions that are common to the organizational documents of companies that are registered under the 1940 Act. If the Business Change Proposal is approved, the Fund will begin the process of converting into a REIT and, once it no longer qualifies as an investment company under the 1940 Act, will apply for the Deregistration Order. Once the Fund is no longer registered under the 1940 Act, the Declaration of Trust, including certain provisions related to, or required under, the 1940 Act, would be inconsistent with the Fund's business plan to operate as a REIT and could inhibit the Fund's ability to further grow and operate successfully. In some cases, if these 1940 Act related provisions are retained, the Declaration of Trust could put us at a competitive disadvantage compared to our publicly-traded REIT peers. Additionally, there are certain voting requirements under the 1940 Act that would no longer be necessary or desirable. Accordingly, if both the Business Change Proposal and the Amendment Proposal are approved, the 1940 Act related provisions of the A&R Declaration of Trust will no longer be applicable after receipt of the Deregistration Order, which will facilitate the Fund's future operations as a REIT and more closely align our charter to those of other publicly-traded REITs.

Supermajority Vote Required to Undo or Impede Implementation of the Business Change Proposal

If both the Business Change Proposal and the Amendment Proposal are approved, it is the intent of the Board to respect this decision and promptly begin to implement the Business Change Proposal. Accordingly, to avoid the potential uncertainty and disruption that would be introduced by a subsequent proposal that is inconsistent with the Business Change Proposal, the A&R Declaration of Trust includes a provision that would, unless otherwise determined by the vote of at least 80% of the Board, require the affirmative vote of not less than 75% of the outstanding Shares to approve any

action that, in the judgment of the Board, would prevent, impede or make less efficient or more costly the implementation of the Business Change Proposal, or the realization of the benefits sought thereby. The Board believes that such threshold is appropriate given the time and expense of implementing the Business Change Proposal.

Amendments to Enhance Board Flexibility in Managing the Trust

The A&R Declaration of Trust includes a number of amendments that are designed to give the Board greater flexibility in managing the Fund consistent with the Board's duty under the A&R Declaration of Trust to act in good-faith in the best interest of the Fund. The more important among these amendments are discussed below, but Shareholders should read the A&R Declaration in its entirety in order to understand the full extent of these amendments.

Trustee Eligibility and Board Composition

The A&R Declaration of Trust will allow the Board, from time to time, to establish eligibility criteria for Trustees and Trustee Nominees. In addition, the A&R Declaration of Trust will grant greater flexibility to the Board in managing the size of the Board and removing Trustees, with or without cause, without the need for shareholder approval.

Shareholder Meetings

The A&R Declaration of Trust will grant the Board greater flexibility in conducting shareholder meetings by allowing the Board to set the quorum required for conducting business higher or lower than the default standard of a majority of the Shares entitled to vote. In addition, the A&R Declaration of Trust will include certain technical amendments, such extending the amount of time that a shareholder meeting may be postponed or adjourned without needing to set a new record date. These amendments could spare the Fund and its Shareholders additional costs and expenses associated with adjourning, postponing or setting a new record date for shareholder meetings.

Additionally, the A&R Declaration of Trust will allow the Board to set the required vote for any matter, except to the extent that the A&R Declaration of Trust requires a specific vote on a matter or otherwise prohibits the Board from changing the vote required on such matter. The A&R Declaration of Trust will also reduce the Fund's voting requirements for the election of Trustees to a plurality vote, unless the Trustees establish a different voting standard.

The A&R Declaration of Trust will also provide the Board with the flexibility to disregard a vote if such vote does not comply with the requirements of applicable state or federal laws.

Procedure for Amending the A&R Declaration of Trust

The A&R Declaration of Trust will grant the Board increased flexibility to make certain additional amendments to the A&R Declaration of Trust that it believes to be in the best interest of the Fund without the need for shareholder approval as well.

Nevertheless, amendments to the following provisions would still require a shareholder vote:

- Section 5.1, which (i) provides certain limitations on the personal liability of Shareholders and Trustees and (ii) provides that satisfaction of claims is limited to Fund property;

- Section 5.2, which provides for certain mandatory indemnification of the Fund's Trustees and officers;
- Section 10.1, which sets forth the matters on which a shareholder vote is required;
- Section 11.2(a), which requires a shareholder vote on certain transactions occurring after the Board has determined to terminate the Fund;
- Section 11.3, which sets forth the procedures and votes required to amend the A&R Declaration of Trust;
- Section 11.4, which requires a shareholder vote in the event of a merger, consolidation or sale of all or substantially all of the Fund's assets in a transaction in which the Fund is not the surviving entity;
- Section 11.6, which, for so long as the Fund is a registered investment company, requires a shareholder vote to convert the Fund to an open-end fund;
- Section 11.7, which requires a shareholder vote in connection with certain transactions with "Principal Shareholders" (as that term is defined in the A&R Declaration of Trust), including, but not limited to (i) mergers or consolidations with or into any Principal Shareholder, (ii) the issuance of securities to such persons for cash (other than pursuant to any automatic dividend reinvestment plan), (iii) the sale, lease or exchange of all or any substantial part of the assets of the Fund, except in certain circumstances and (iv) the sale, lease or exchange to the Fund or any subsidiary thereof, in exchange for securities of the Fund, of any assets of any Principal Shareholder, except in certain circumstances; and
- Any amendment that would change any rights with respect to Shares of the Fund by reducing any stated amount payable thereon in preference over all other classes or series of Shares upon the liquidation of the Fund or by eliminating any voting rights pertaining thereto.

In addition, the amendments would lower the vote required to make certain amendments to the A&R Declaration of Trust in the event that the amendment is approved by 80% of the Trustees. See Section 11.3 "Amendment Procedures" in the A&R Declaration of Trust, attached hereto as Appendix D, for a complete description of these amendment procedures.

Shareholder Action by Written Consent

The A&R Declaration of Trust would give the Board the ability to determine whether Shareholders may act by written consent. The Board concluded that there are several important arguments in support of limiting the absolute right to shareholder action by written consent, which include, but are not limited to: (i) requiring shareholder action only at a shareholder meeting increases the likelihood that the Fund and all of its Shareholders will be given an opportunity to consider carefully and respond prudently to important shareholder proposals; (ii) requiring shareholder action only at a shareholder meeting avoids untimely action in a context that might not permit Shareholders to have the full benefit of the knowledge, advice, and participation of the Fund's management and Board; and (iii) limiting these proposals to our annual meeting or duly called special meetings will reduce the time and effort our Board and management would need to devote to shareholder proposals, which time and effort could distract the Fund's management and the Board from implementing the Business Change Proposal, if approved, and other important Fund business.

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Other Amendments

The A&R Declaration of Trust will include amendments to remove references to the Delaware General Corporation Law (the "DGCL") and to clarify that the Fund, as a Delaware Statutory Trust, is governed by the DSTA. In some instances, the A&R Declaration of Trust will directly incorporate relevant concepts. For example, the A&R Declaration of Trust will recite the standard of conduct for Trustees, which is consistent with the standard for most matters under Delaware corporate law. The removal of references to the DGCL could curtail certain rights of the Fund's Shareholders that were based on the DGCL to the extent that the DSTA does not also provide similar rights. For example, (i) Shareholders will no longer have a right to vote on bringing a derivative suit against the Fund and (ii) Shareholders will no longer have a right to inspect the Fund's books and records. In addition, the DSTA does not require the Fund to hold an annual meeting of shareholders; however, for so long as the Fund remains listed on a major stock exchange, the exchange rules will require the Fund to continue to hold a shareholder meeting each year.

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VOTING INFORMATION

Required Vote

Business Change Proposal. Under the 1940 Act, changing the Fund's business from an investment company to a diversified REIT and changing the Fund's fundamental investment restrictions requires the affirmative vote of the lesser of (a) 67% of our outstanding voting securities present at the Special Meeting, if the holders of more than 50% of our outstanding voting securities are present in person or represented by proxy, or (b) more than 50% of our outstanding voting securities. For purposes of the foregoing, shareholders will vote as a single class.

Amendment Proposal. Under the Declaration of Trust, the Amendment Proposal requires the affirmative vote of the lesser of (a) 67% of our outstanding voting securities present at the Special Meeting, if the holders of more than 50% of our outstanding voting securities are present in person or represented by proxy, or (b) more than 50% of our outstanding voting securities. For purposes of the foregoing, shareholders will vote as a single class.

Shareholders are being asked to vote upon each proposal separately; however, the effectiveness of each of the Business Change Proposal and the Amendment Proposal is conditioned and dependent upon the approval of both proposals. Accordingly, the Business Change Proposal, if approved, will only be effective if the Amendment Proposal is also approved, and the Amendment Proposal, if approved, will only be effective if the Business Change Proposal is also approved.

For more information, see "—Quorum, Abstentions and Broker Non-Votes" and "—Adjournment."

Record Date

Only shareholders of record at the close of business on the Record Date (June 19, 2020) will be entitled to vote at the Special Meeting. As of the Record Date, we had the following shares outstanding:

Fund	NYSE Symbol	Number of Common Shares
NexPoint Strategic Opportunities Fund	NHF	45,606,964

Voting Methods

You may send in your proxy by one of the following methods:

1. If you received your proxy card(s) by mail, complete, sign and return the enclosed proxy card or voting instruction form promptly in the postage paid envelope.

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2. Call the toll-free number listed on the front of the enclosed proxy card or voting instruction form. Have your control number (located on the enclosed proxy card or voting instruction form) available for reference. The automatic system will prompt you on how to vote.

3. Log on to the website listed on the front of the enclosed proxy card or voting instruction form. Have your control number (located on the enclosed proxy card or voting instruction form) available for reference. The system will prompt you with instructions on how to vote.

If you hold shares in the name of a brokerage firm, bank, nominee or other institution, you must provide a legal proxy from that institution in order to vote your shares at the Special Meeting.

In addition, shareholders of record may vote in person at the Special Meeting. If your shares are held by a bank, broker or other nominee (that is, in "street name"), you are considered the beneficial owner of your shares and you should refer to the instructions provided by your bank, broker or nominee regarding how to vote. In addition, because a beneficial owner is not the shareholder of record, you may not vote shares held by a bank, broker or nominee in street name at the Special Meeting unless you obtain a "legal proxy" from the bank, broker or nominee that holds your shares, giving you the right to vote the shares at the Special Meeting.

Quorum, Abstentions and Broker Non-Votes

A quorum of shareholders is required to take action at the Special Meeting. The presence in person or by proxy of the holders of a majority of the shares of the Fund entitled to vote shall constitute a quorum for the Special Meeting. If a quorum is not present at the Special Meeting, or if a quorum is present but sufficient votes to approve either Proposal are not received, the persons named as proxies may propose one or more adjournments or postponements of the Special Meeting to permit further solicitation of proxies. Our common shares represented by valid proxies or in person will count for the purpose of determining the presence of a quorum for the Special Meeting. Votes cast by proxy or in person at the Special Meeting will be tabulated by the inspector of election appointed for the Special Meeting. Abstentions will be counted as shares present for purposes of determining whether a quorum is present at the Special Meeting, and will have the effect of a vote "against" the applicable Proposal.

We do not anticipate "broker non-votes" (i.e., shares held by brokers or nominees as to which (i) instructions have not been received from the beneficial owner or the persons entitled to vote and (ii) the broker does not have discretionary voting power on a particular matter) on the Proposals, since our understanding is that brokers do not have discretionary authority to vote on the Proposals.

Adjournments

The chairman of the Special Meeting may adjourn the Special Meeting from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned Special Meeting if the time and place, if any, thereof and the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at such adjourned Special Meeting are announced at the Special Meeting. At the adjourned Special Meeting, the Fund may transact any business which might have been transacted at the Special Meeting. If after the adjournment a new record date is fixed for the adjourned Special Meeting, notice of the adjourned Special Meeting shall be given to each shareholder of record entitled to vote at the Special Meeting and each other shareholder entitled to notice of the Special Meeting.

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Revocation of Proxy

Any proxies may be revoked at any time before they are exercised at the Special Meeting by timely filing with us a written notice of revocation, by timely delivering to us a duly executed proxy bearing a later date, by voting over the Internet or by telephone at a later time in the manner provided on the website indicated in the proxy card or by attending the Special Meeting and voting in person via conference call. Votes provided over the Internet, by telephone or by mail must be received by 11:59 p.m. Eastern time on August 27, 2020. If you hold shares in the name of a brokerage firm, bank, nominee or other institution, you must provide a legal proxy from that institution in order to revoke your shares at the Special Meeting. Being present in person via conference call at the Special Meeting alone does not revoke a previously executed and returned proxy.

SOLICITATION OF PROXIES

It is expected that the solicitation of proxies will be primarily by mail and telephone. The costs of preparing, assembling and mailing material in connection with the solicitation of proxies will be borne by the Adviser. The Adviser and its personnel, and personnel of the Adviser's affiliates, as well as our Trustees and officers, may assist in the solicitation of proxies by telephone, facsimile, email or personal interview and will receive no additional compensation in connection therewith. We have retained Di Costa Partners LLC to provide shareholder meeting services, including the distribution of this proxy statement and related materials to shareholders as well as assisting the Fund in soliciting proxies for the Special Meeting at an approximate cost of $90,000.00. These costs will be paid by the Fund.

COMMUNICATIONS WITH TRUSTEES

Any of our shareholders or other interested party who desires to communicate with our Trustees, individually or as a group, should write to the party for whom the communication is intended, in care of the Secretary, NexPoint Strategic Opportunities Fund, at 300 Crescent Court, Suite 700, Dallas, Texas 75201 or by telephone at 855-498-1580. The communications will then be delivered to the appropriate persons.

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SHAREHOLDER NOMINATIONS AND PROPOSALS

Pursuant to our Declaration of Trust and Bylaws, because the Special Meeting is a special meeting of our shareholders, only the business stated in the notice of meeting attached to this Proxy Statement shall be conducted at the Special Meeting. At this time, the Board knows of no other matter which will be brought before the Special Meeting. Please note that the annual election of Trustees will be brought before shareholders at the Annual Meeting of the Fund on July 14, 2020, at 8:00 a.m. Central Time. Shareholder proposals for our annual meetings of shareholders may be brought pursuant to Rule 14a-8 under the Exchange Act.

Pursuant to our Declaration of Trust and our Bylaws, shareholders may make nominations and propose other business only in connection with annual meetings of shareholders. Our Bylaws require require compliance with certain procedures for a shareholder to properly make a nomination for election to the Board or to propose other Company business at an annual meeting. In order for a shareholder to properly propose a nominee for election to the Board or propose business outside of Rule 14a-8 under the Exchange Act, the shareholder must comply, in all respects, with the advance notice and other provisions set forth in our Bylaws, which currently include, among other things, requirements as to the shareholder's timely delivery of advance notice, ownership of at least a specified minimum amount of our common or preferred shares, if applicable, for a specified minimum period of time, record ownership and submission of specified information. If a shareholder who is eligible to do so under our Bylaws wishes to nominate a person or persons for election to the Board or propose other Company business at an annual meeting, notice of such proposal must be timely received at our principal executive offices. The notice must set forth detailed specified information about any proposed nominee, the shareholder making the nomination and affiliates and associates of that shareholder. As to any other Company business that the shareholder proposes to bring before an annual meeting, our Bylaws provide that the notice must set forth a description of such business, the reasons for proposing such business at the meeting and any material interest in such business of the shareholder, a description of all agreements, arrangements and understandings involving the shareholder in connection with the proposal of such business and a representation that the shareholder intends to appear in person or by proxy at the meeting to bring the business before the meeting.

2020 Annual Meeting. Shareholder proposals intended to be presented pursuant to Rule 14a-8 under the Exchange Act at our 2020 annual meeting of shareholders must have been received at our principal executive offices by January 28, 2020. Shareholder nominations and proposals received after January 28, 2020 will be considered untimely and therefore may be excluded from our proxy materials for our 2020 annual meeting.

2021 Annual Meeting. Shareholder proposals intended to be presented pursuant to Rule 14a-8 under the Exchange Act at our 2021 annual meeting of shareholders must be received at our principal executive offices not later than February 19, 2021 in order to be considered for inclusion in our proxy statement for our 2021 annual meeting of shareholders; provided that if we hold our 2021 annual meeting on a date that is more than 30 days before or after the first anniversary of the date of our 2020 annual meeting, shareholders must submit proposals for inclusion in our 2021 proxy statement within a reasonable time before we begin to print and send proxy materials. Under Rule 14a-8, we are not required to include shareholder proposals in the proxy materials unless conditions specified in the rule are met.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

Unless otherwise indicated, the information set forth below is as of May 31, 2020. To our knowledge, no person beneficially owned more than 5% of our outstanding common shares, except as set forth below. To our knowledge, none of our officers or Trustees owned 1% or more of our outstanding common shares, except as set forth below.

Collectively, to our knowledge, the officers and Trustees of the Fund beneficially own, as a group, in the aggregate, 2,943,168 common shares of the Fund, representing approximately 11.6% of our outstanding common shares. Unless otherwise indicated below, to our knowledge, each owner named below has sole voting and dispositive power for all shares shown to be beneficially owned by that person. Share amounts listed below do not include fractional share amounts.

Title	Name and Address of Beneficial Owner[1]	Amount and Nature of Beneficial Ownership	Percentage of Share Class
Independent Trustee	Ethan Powell	33	*
Independent Trustee	Dr. Bob Froehlich	281	*
Independent Trustee	Bryan A. Ward	27	*
Proposed REIT Trustee	Edward Constantino	0	*
Interested Trustee	John Honis[2]	0	*
President	Jim Dondero[3]	2,927,919	11.57%
Treasurer	Frank Waterhouse	422	*
Executive Vice President	Dustin Norris	12,346	*
Chief Compliance Officer	Jason Post	2,167	*

*Less than 1%

1 Except as otherwise indicated, each person has sole voting and investment power over the indicated shares.

2 Effective January 28, 2020, Mr. Honis is treated as an Interested Trustee of the Fund in light of certain relationships between Mr. Honis and certain affiliates of the Adviser, including HCMLP, arising out of HCMLP's pending Chapter 11 proceedings.

3 Includes shares held by Highland Capital Management, L.P. ("HCMLP"). On October 16, 2019, HCMLP filed for Chapter 11 bankruptcy protection with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas. On January 9, 2020, the bankruptcy court approved a change of control of HCMLP, which involved the resignation of James Dondero as the sole director of, and the appointment of an independent board to, HCMLP's general partner. Mr. Dondero remains an employee of HCMLP and as portfolio manager for all funds and vehicles for which he currently holds such titles. Effective January 2020 as a result of the change of control of HCMLP, Mr. Dondero no longer serves as the President or sole director of Strand Advisors, Inc., HCMLP's general partner, and consequently, no longer has direct or indirect voting or investment control to such shares. Accordingly, Mr. Dondero no longer report beneficial ownership of shares held by HCMLP on Section 13 and Section 16 filings under the Securities Exchange Act of 1934. Nevertheless, given Mr. Dondero's historic role with HCMLP and his continued ownership interest and roles with respect to the Highland platform as a whole, as well as the shared services agreements between HCMLP and the Adviser, the Fund will still treat HCMLP and its affiliates as the Fund's affiliates for purposes hereof. Mr. Dondero disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein. Mr. Dondero also controls Strand Advisors XVI, Inc., which is the general partner of Highland Capital Management Fund Advisors, L.P. ("HCMFA"). Through his control of Strand Advisors XVI, Inc., Mr. Dondero may be viewed as having voting and dispositive power over the shares of the Common Stock directly owned by HCMFA or by funds that are advised by HCMFA.

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Mr. Dondero disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein. Mr. Dondero controls NexPoint Advisors GP, LLC, which is the general partner of the Adviser. Through his control of NexPoint Advisors GP, LLC, Mr. Dondero may be viewed as having voting and dispositive power over the shares of the Common Stock directly owned by the Adviser or by funds that are advised by the Adviser. Mr. Dondero disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein.

HOUSEHOLDING OF MEETING MATERIALS

Some banks, brokers and other record holders may participate in the practice of "householding" proxy statements and annual reports. This means that, unless shareholders give contrary instructions, only one copy of this proxy statement may be sent to multiple shareholders of the same Fund in each household. The Adviser will promptly deliver a separate copy of either document to you, if you call or write to the Adviser at the following address or telephone number: NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 or by telephone at (866) 351-4440.

If you want to receive separate copies of a proxy statement in the future, or if you are receiving multiple copies and would like to receive only one copy per household, you should contact your bank, broker or other record holder, or you may contact the Adviser at the above address or telephone number.

OTHER MATTERS

At this time, our Board knows of no other matter which will be brought before the Special Meeting. Please note that the annual election of Trustees will be brought before shareholders at the Annual Meeting of the Fund on July 14, 2020, at 8:30 a.m. Central Time. Pursuant to our Declaration of Trust and Bylaws, only the business stated in the notice of meeting attached to this Proxy Statement shall be conducted at the Special Meeting.

By order of the Board,

LAUREN THEDFORD

Secretary

NexPoint Strategic Opportunities Fund

Dallas, Texas

IMPORTANT

If your shares are held in your own name, please complete a proxy over the internet or by telephone in the manner provided on the website indicated in the proxy card that you received in the mail; you may also request, complete and return a proxy card today. If your shares are held in "street name," you should provide instructions to your broker, bank, nominee or the other institution holding your shares on how to vote your shares. You may provide instructions to your broker, bank, nominee or other institution over the internet or by telephone if your broker, bank, nominee or other institution offers these options, or you may return a proxy card or voting instruction form to your broker, bank, nominee or other institution and contact the person responsible for your account to ensure that a proxy is voted on your behalf.

July 10, 2020

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EXECUTIVE SUMMARY

SUMMARY

NexPoint Advisors, L.P. ("NexPoint") proposes converting the NexPoint Strategic Opportunities Fund ("the Fund") from a Closed-End Fund ("CEF") to a Real Estate Investment Trust ("REIT") (the "Conversion"). We believe the Conversion will better position the Fund to generate returns and maximize the value of current high-conviction themes in the portfolio. Additionally, we believe real estate has the potential to have superior risk adjusted returns compared to equity, fixed income, and distressed debt markets over the next decade. We also believe the REIT structure may provide potential to improve the Fund's discount to NAV.

SHAREHOLDER VOTE

Shareholders are being asked to vote to approve the Conversion at the shareholder meeting on August 28, 2020.

BOARD SUPPORT

The Fund's board of trustees, together with NexPoint, believes the conversion would benefit the Fund and its shareholders.

SHARE REPURCHASES

The Board has approved a repurchase program that allows for repurchases of up to 10% of the Fund's stock over a one-year period beginning April 24, 2020.

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CURRENT REAL ESTATE HOLDINGS IN NHF

The portfolio currently has a large real estate allocation

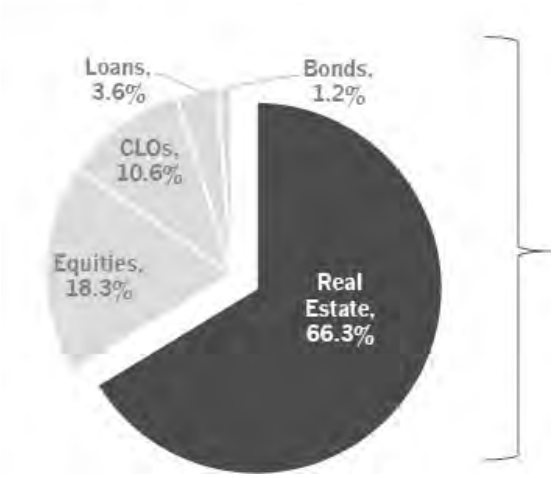

CITYPLACE TOWER	1.35 million-square-foot, class A office building in Dallas
SAFStor	Self storage development platform
JERNIGAN Capital	Provides debt and equity capital for self-storage facilities
Freddie Mac / Freddie Mac K-Deals	Securitization program offering a wide-range of multifamily products
VINEBROOK Homes	Single-family rental operator
IQHQ	Life Science Real Estate Development and Management Platform

As of March 31, 2020. NHF's portfolio, at any given point in time, may be comprised of some, all or none of the assets or asset classes shown. An investment in NHF is different from a direct investment in any of the assets or asset classes shown above.

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REIT SOLUTION

POTENTIAL TO CLOSE THE DISCOUNT[1]

REITs have historically traded at a premium to NAV, while CEFs have traded at a discount to NAV

LONG-TERM OUTPERFORMANCE[1]

Over the past 20 yeas REITs have generally outperformed many other major asset classes

BETTER LIQUIDITY[1]

The REIT market is **6x** larger than the CEF market. The average trading volume of REITs with comparable size to NHF is 9x greater than CEFs its size

GREATER TRANSPARENCY[1]

REIT management teams typically host public quarterly earnings calls and publish detailed financial results. REITs also have a dedicated following of research analysts

INDEX INCLUSION[2]

REITs have high institutional ownership and often inclusion in ETFs. Real Estate is now a stand- alone sector of the S&P 500

TAX BENEFITS

REITs can offer a 20% deduction on taxable income

1. Sources and disclosures on Slide 5. 2. Source: NAREIT.

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THE REIT ADVANTAGE – REITS VS. CLOSED-END FUNDS

POTENTIAL TO CLOSE THE DISCOUNT

AVERAGE DISCOUNT OF REITS VS CLOSED-END FUNDS

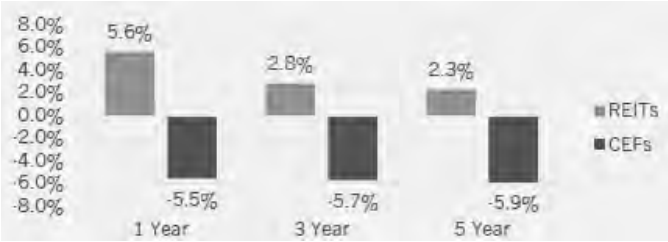

As of May 31, 2020. REIT property type data includes apartment, industrial, office, lodging, self storage, life sciences, data centers, net lease, and single family rentals. Source: Green Street, Bloomberg. Past performance is not indicative of future results. REITs = US Listed REITs, inclusive of property types listed above. CEFs = US Listed Closed-End Funds. There is no assurance that any one REIT or one CEF will have a discount or premium that corresponds to any particular asset class average over any particular period of time. Discounts may be more pronounced or volatile in uncertain economic or market conditions.

LONG TERM OUTPERFORMANCE

20-YEAR AVERAGE ANNUAL RETURN

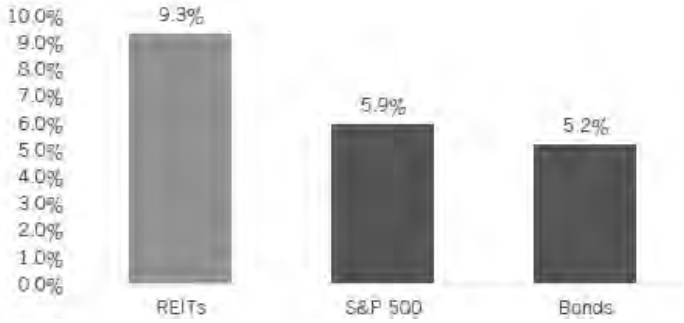

As of May 31, 2020. Source: Morningstar Direct. Past performance is not indicative of future results. REITs = MSCI US REIT Index. Bonds = Barclays Aggregate Bond Index.

GREATER LIQUIDITY - 6X

MARKET SIZE[1]

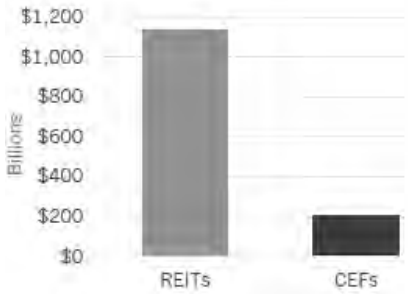

As of May 31, 2020. Source: Citadel

MORE LIQUIDITY – 9X

3 MONTH AVERAGE VOLUME[1]

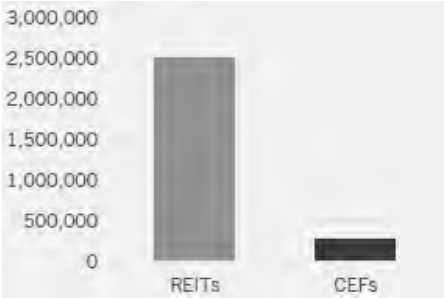

As of May 31, 2020. Includes REITs and CEFs with a market cap between $250 million to $1 billion. Source Citadel

MORE TRANSPARENCY

AVERAGE # OF ANALYSTS PER FUND OR REIT[2]

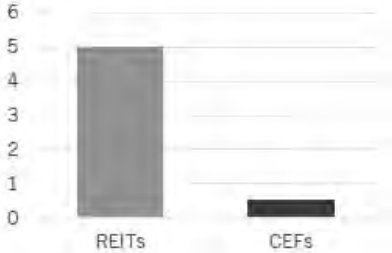

Includes REITs with a market cap between $250 million to $1 billion. Source: Bloomberg. Per Bloomberg there is no sell side analyst coverage for CEFs. There are wealth management firms that have analysts providing research for clients that is internal use only and not publicly distributed.

1. There can be no assurance that market size or trading volume will be maintained in the future or in all market environments. Volatile market and economic environments could cause market size and trading volumes to decline, at times significantly. There can also be no assurance that any one REIT or one CEF has a market size or trading volume that corresponds to any particular average or median.
2. There can be no assurance that any particular level of analyst coverage will be maintained or that any one REIT or one CEF will have analyst coverage that corresponds to any particular average.

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REAL ESTATE STRATEGY

There can be no assurance that assets bought at what appear to be depressed prices will increase in value or increase in value by a factor anticipated by NHF.

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NEXPOINT REAL ESTATE TRACK RECORD

NEXPOINT REAL ESTATE TRACK RECORD

$9.7 BILLION
IN GROSS REAL ESTATE ACQUISITIONS

$2.9 BILLION
REAL ESTATE ACQUISITIONS IN LAST 12 MONTHS

32
STATES

3
PUBLICLY TRADED REITs

ASSET TYPE ALLOCATION[1]

ASSET LOCATIONS[1]

1.Real estate assets acquired from January 1, 2012, to March 31, 2020, inclusive of affiliates. NHF's portfolio, at any given point in time, may be comprised of some, all or none of the asset classes shown. An investment in NHF is different from a direct investment in any of the asset classes shown above.

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PUBLIC MARKET EXPERIENCE

EXPERTISE IN PUBLIC MARKETS

- Robust network of dedicated sell-side analyst relationships
- Long-standing relationships with major lending institutions
- Inclusion in several major indices, creating demand[1]
- Platform-dedicated institutional investor base
- Investor-focused externally managed structure

NYSE: NXRT	NYSE: NREF	TSX-V: NHT.U
NEXPOINT RESIDENTIAL TRUST	NEXPOINT REAL ESTATE FINANCE	NEXPOINT HOSPITALITY TRUST
Value-add, workforce housing multifamily REIT	Opportunistically positioned mortgage REIT	Hospitality REIT focused on select service and extended stay

1. NexPoint Residential Trust is included in the MSCI US REIT index and the S&P SmallCap 600 Index.

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BENEFITS OF A REIT STRUCTURE

POTENTIAL TO REDUCE DISCOUNT

Historically, CEFs trade at a discount to Net Asset Value

DISCOUNT OF REITS VS CLOSED-END FUNDS

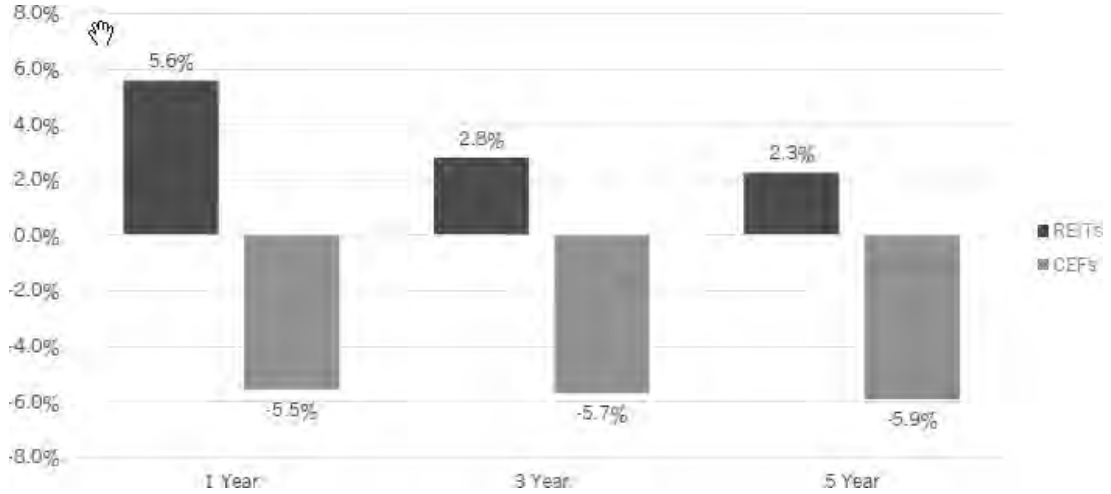

As of May 31, 2020. REIT property type data includes apartment, industrial, office, lodging, self storage, life sciences, data centers, net lease, single family rentals. Source: Bloomberg, Green Street. REITs = US Listed REITs, inclusive of property types listed above. CEFs = US listed Closed-End Funds. There is no assurance that any one REIT or one CEF will have a discount or premium that corresponds to any particular asset class average over any particular period of time. Discounts may be more pronounced or volatile in uncertain economic or market conditions.

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BENEFITS OF A REIT STRUCTURE

LARGER UNIVERSE – MORE LIQUIDITY

- The REIT market is **6x** larger than the CEF market
- Public REIT shareholders have much more liquidity
- The average trading volume of REITs is 9**x** greater than that of CEFs

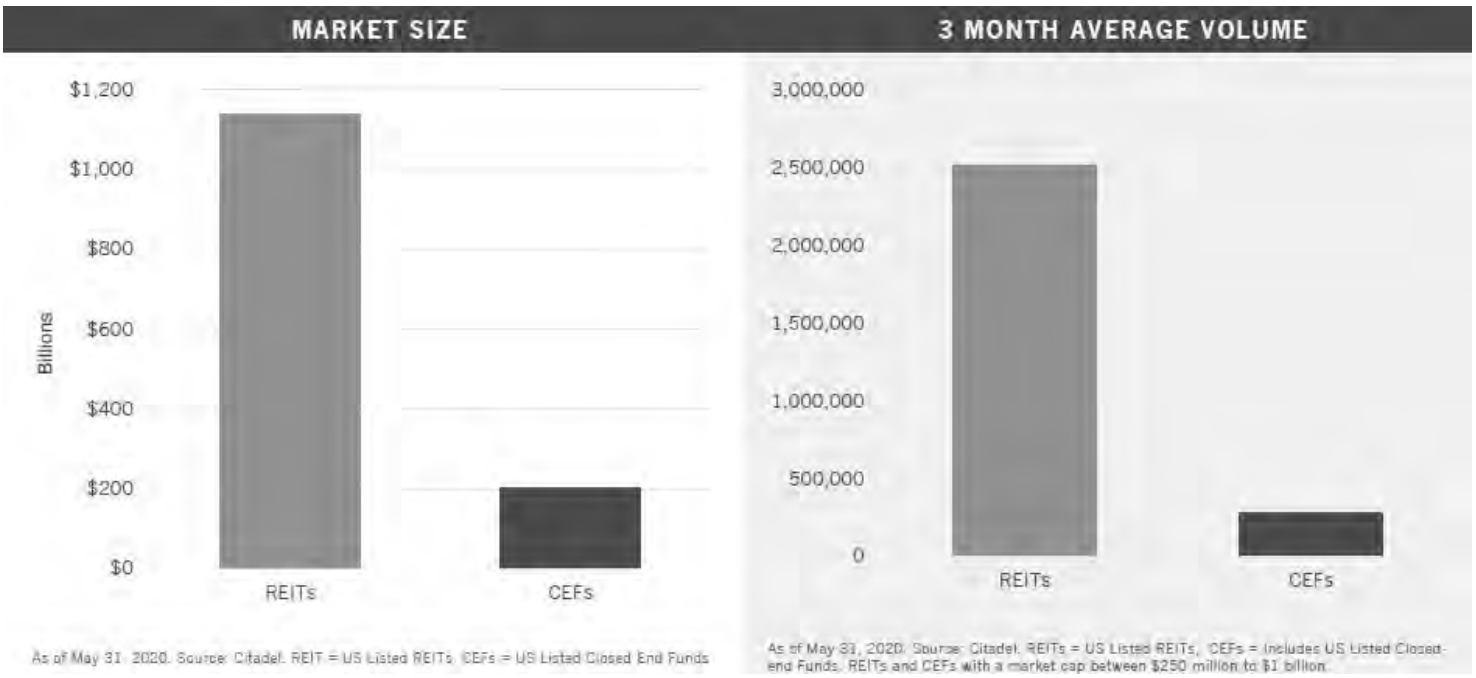

There can be no assurance that market size or trading volume will be maintained in the future or in all market environments. Volatile market and economic environments could cause market size and trading volumes to decline, at times significantly. There can also be no assurance that any one REIT or one CEF has a market size or trading volume that corresponds to any particular average or median.

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BENEFITS OF A REIT STRUCTURE

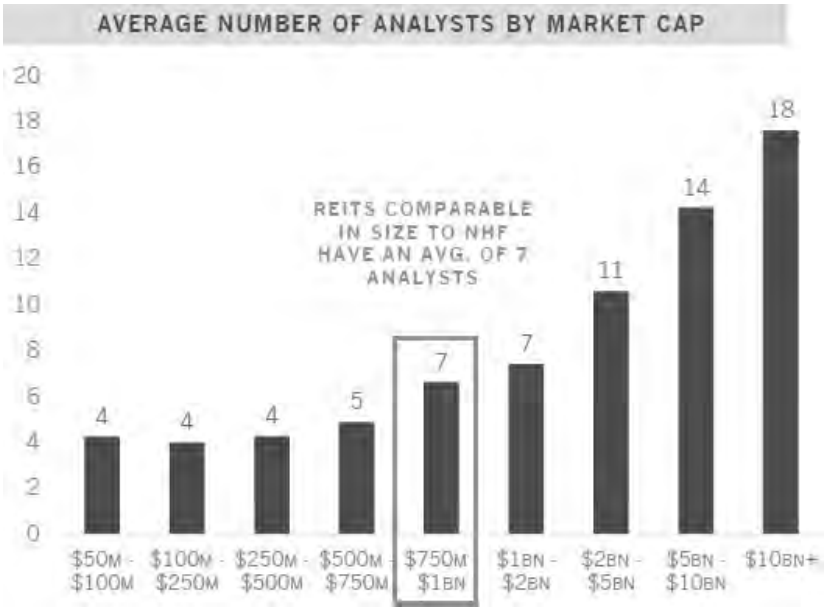

Strong analyst coverage promotes transparency and accountability

REITs have active analyst coverage, offering shareholders a valuable source for independent analysis and providing a level of oversight that promotes transparency

Source: Bloomberg. There can be no assurance that any particular level of analyst coverage will be maintained or that any one REIT or one CEF will have analyst coverage that corresponds to any particular average.

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DISCLOSURES

You should carefully consider the Fund's investment objectives, risks, fees and expenses. For a copy of the proxy statement, which contains this and other information, please visit our website at www.nexpointadvisors.com or call 1-866-351-4440.

This presentation contains information about prior investments made by the Adviser of the Fund. This information was prepared by the Adviser based on its experience in the industry and on assumptions of fact and opinion as to future events which the Adviser believed to be reasonable when made. There can be no assurance that the Adviser and/or the Fund will be as successful as these earlier investments. Prior investment returns are not indicative of future results. It should not be assumed that investment recommendations made in the future will be profitable or will equal the performance of the securities included herein.

Closed-end funds, unlike open-end funds, are not continuously offered. There is a one-time public offering and once issued, shares of closed-end funds are sold in the open market through a stock exchange and frequently trade at prices lower than their net asset value. Net Asset Value (NAV) is total assets less total liabilities, which includes preferred shares, divided by the number of common shares outstanding. When net asset value (NAV) is lower than market price, dividends are assumed to be reinvested at the greater of NAV or 95% of the market price. When NAV is higher, dividends are assumed to be reinvested at market price. For additional information, please contact your investment adviser or visit our website www.nexpointadvisors.com.

Past performance is no guarantee of future results. The rate of return will vary and the principal value of an investment will fluctuate and shares, if sold, may be worth more or less than their original cost. current performance may be lower or higher than the performance data quoted. Returns are historical and include change in share price and reinvestment of all distributions. Total investment return does not reflect broker sales charges or commissions. All performance information is for common shares of the Trust. See the proxy statement and financial statements for more information before investing.

Shares of closed-end funds frequently trade at a discount to their net asset value. Because of this possibility and the recognition that any such discount may not be in the interest of shareholders, the Board might consider from time to time engaging in open-market repurchases tender offers for shares or other programs intended to reduce the discount.

Interest Rate Risk. The risk that debt securities, and the Trust's net assets, may decline in value because of changes in interest rates. Generally, debt securities will decrease in value when interest rates rise and increase in value when interest rates decline.

Credit Risk. The risk that the Fund could lose money if the issuer or guarantor of a fixed income security, or the counterparty of a derivatives contract or repurchase agreement, is unable or unwilling (or is perceived to be unable or unwilling) to make a timely payment of principal and/or interest, or to otherwise honor its obligations.

Leverage Risk. Leverage may increase the risk of loss, cause fluctuations in the market value of the Fund's portfolio to have disproportionately large effects or cause the NAV of the Fund generally to decline faster than it would otherwise.

Illiquidity Risk. The investments made by the Trust may be very illiquid, and consequently, the Trust may not be able to sell such investments at prices that reflect the Investment Adviser's assessment of their fair value or the amount paid for such investments by the Trust.

Industry Concentration Risk. The Fund must invest at least 25% of the value of its total assets at the time of purchase in securities of issuers conducting their principal business activities in the real estate industry. The Fund may be subject to greater market fluctuations than a fund that does not concentrate its investments in a particular industry. Financial, economic, business, and other developments affecting issuers in the real estate industry will have a greater effect on the Fund, and if securities of the real estate industry fall out of favor, the Fund could underperform, or its NAV may be more volatile than, funds that have greater industry diversification.

Real Estate Risk. Real estate investments are subject to various risk factors. Generally, real estate investments could be adversely affected by a recession or general economic downturn where the properties are located. The full extent of the impact and effects of the recent outbreak of COVID-19 on the future financial performance of the Fund, and specifically, on its investments and tenants to properties held by its REIT subsidiaries, are uncertain at this time. The outbreak could have a continued adverse impact on economic and market conditions and trigger a period of global economic slowdown.

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DISCLOSURES

You should read the proxy statement for the Conversion, which contains important information about the Fund, before deciding whether to vote, and retain it for future reference. You may request the Fund's most recent annual and semiannual reports or make shareholder inquiries by calling 1-877-665-1287 or by writing to the Fund at 200 Crescent Court, Suite 700, Dallas, Texas 75201.

Index returns assume reinvestment of all dividends and distributions, if any. Indices are unmanaged, have no fees or costs and are not available for investment. The performance of the indices may be materially different from the individual performance attained by a specific investor. In addition, the investors' holdings may differ significantly from the securities that comprise the indices. The indices have not been selected to represent an appropriate benchmark to compare an investor's performance, but rather are disclosed to allow for comparison of the investor's performance to that of certain well-known and widely recognized indices.

S&P 500 Index: S&P 500 Index is an index of a basket of 500 stocks designed to provide a broad snapshot of the overall U.S. equity market. Criteria for inclusion: U.S. Company, market capitalization must be in excess of US$ 3 billion, public float of at least 50%, financial viability, adequate liquidity and reasonable price, sector balance, and company type. Ordinary cash dividends are applied on the ex-date in calculating the total return series. "Special dividends" are those dividends that are outside of the normal payment pattern established historically by the issuing corporation. The total return index series reflect both ordinary and special dividends.

Barclays US Aggregate Index. Barclays Capital Aggregate Bond Index, which used to be called the "Lehman Aggregate Bond Index," is a broad base index, maintained by Barclays Capital, which took over the index business of the now defunct Lehman Brothers, and is often used to represent investment grade bonds being traded in United States. Index funds and exchange-traded funds are available that track this bond index.

MSCI US REIT Index is a free float-adjusted market capitalization weighted index that is comprised of equity REITs that are included in the MSCI US Investable Market 2500 Index, with the exception of specialty equity REITs that do not generate a majority of their revenue and income from real estate rental and leasing operations. The index represents approximately 85% of the US REIT universe.

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APPENDIX B: RISK FACTORS

Unless otherwise noted, the Business Change Proposal, as set forth in the proxy statement, has been approved by shareholders, we have fully implemented the Business Change Proposal and we have converted to a diversified REIT. There can be no assurance that these conditions will be satisfied. In addition, these risks may adversely affect our financial condition, yield on investment, results of operations, cash flow, per share trading price of our common shares and ability to satisfy debt service obligations, if any, and to make cash distributions to shareholders. Whether we remain a registered investment company or convert to a diversified REIT, our common shares, like an investment in any other public company, are subject to investment risk, including the possible loss of your investment. For a discussion of certain other risks relating to our conversion to a diversified REIT, see "Implementation of the Business Change Proposal and Related Risks" in the proxy statement.

Risks related Current Market Conditions

Events outside of our control, including widespread public health emergencies such as the novel coronavirus ("COVID-19"), may cause significant market disruptions and volatility that could negatively affect our results or ability to effectively implement the Business Change Proposal.

Periods of market volatility may continue to occur in response to pandemics or other events outside of our control. In recent months, the novel coronavirus ("COVID-19") pandemic has resulted in severe disruptions to global financial markets, border closings, restrictions on travel and gatherings of any measurable amount of people, "shelter in place" orders (or the equivalent) for entire cities, metropolitan areas and countries, expedited and enhanced health screenings, quarantines, cancellations, business and school closings, disruptions to employment and supply chains, reduced productivity, severely impacted customer and client activity in virtually all markets and sectors, and a virtual cessation of normal economic activity. The current economic situation and the unprecedented measures taken by state, local and national governments around the world to combat the spread of COVID-19 and its economic impacts, as well as various social, political and psychological tensions in the United States and around the world, may continue to contribute to severe market disruptions and volatility and reduced economic activity, may have long-term negative effects on the U.S. and worldwide financial markets and economy and may cause further economic uncertainties in the United States and worldwide. It is difficult to predict how long the financial markets and economic activity will continue to be impacted by these events and the Company cannot predict the effects of these or similar events in the future on the U.S. economy and securities markets. However, these events could have a significant negative impact on the Company's performance, net asset value, liquidity, income and ability to pay distributions and service debts. Potential consequences of market disruptions and volatility arising out of the COVID-19 pandemic include, but are not limited to:

- sudden, unexpected and/or severe declines in the market price of our common stock or net asset value;
- inability of the Company to accurately or reliably value its assets;
- inability of the Company to comply with debt covenants that could prevent the Company from paying dividends to our common stockholders or result in events of default under the terms of our debt or credit facilities;
- inability of the Company to pay any dividends and distributions;
- inability of the Company to maintain its status as a REIT under the Code;
- inability of the Company to make payments on our outstanding debt as they become due;
- potentially severe, sudden and unexpected declines in the value of our assets;
- increased risk of default or bankruptcy by the companies in which we invest or by tenants of properties that we own;
- increased risk of companies or properties in which we invest being unable to weather an extended cessation of normal economic activity and thereby impairing their ability to continue functioning as a going concern or generate revenue for us;

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- reduced economic demand resulting from mass employee layoffs or furloughs in response to governmental action taken to slow the spread of COVID-19, which could impact the continued viability of the companies in which we invest or tenants of properties that we own;
- companies or properties in which we invest being disproportionally impacted by governmental action aimed at slowing the spread of COVID-19;
- limited availability of new investment opportunities;
- inability of the Company to realign its portfolio without being required to sell assets at inopportune times or in distressed situations; and
- general threats to the Company's ability to continue operations.

It is virtually impossible to determine the ultimate impact of COVID-19 at this time. Accordingly, the ultimate implementation of the Business Change Proposal is subject to a wide range of risks that may adversely affect the Company and delay or significantly impair the Company's ability to implement the Business Change Proposal.

Risk related to the Fund's Concentration in Real Estate Securities. The Fund's investments will be significantly impacted by the performance of the real estate market and may experience more volatility and be exposed to greater risk than a more diversified portfolio. The values of companies engaged in the real estate industry are affected by: (i) changes in general economic and market conditions; (ii) changes in the value of real estate properties; (iii) risks related to local economic conditions, overbuilding and increased competition; (iv) increases in property taxes and operating expenses; (v) changes in zoning laws; (vi) casualty and condemnation losses; (vii) variations in rental income, neighborhood values or the appeal of property to tenants; (viii) the availability of financing and (ix) changes in interest rates and leverage.

The COVID-19 pandemic and governmental responses thereto have severely negatively affected the real estate industry in general. The imposition of "shelter-in-place" orders for certain businesses have led to a dramatic reduction in demand for office and retail space. As many businesses have been required to operate through remote working programs, their current need for office space has been significantly reduced. Other businesses, including restaurants, entertainment venues and retail businesses, have been prohibited from keeping their doors open to customers and required to limit services to takeout, delivery and e-commerce. Such prohibitions have limited demand for retail space. Although a majority of states have announced plans to permit a phased re-opening of businesses in certain sectors, and we expect that social distancing requirements may require such businesses to use more space in the near term to perform existing functions, public health concerns about large gatherings and use of public spaces and the impact of working remotely and on-line purchasing may lead to a reduction in corporate and retail space requirements in the long term, resulting in reduced construction and higher vacancy rates, as well as bankruptcies and insolvencies of our clients and counterparties, higher foreclosure rates and declines in real estate values and transaction volumes. Accordingly, there can be no assurance as to when or if such changes in restrictions will result in a resumption of prior levels of office and retail space use.

Reductions in demand for real estate may result in fewer acquisitions of commercial properties and reduced levels of new lease activity and long-term renewals, each of which could negatively impact the value of our real estate investments. Limited availability of debt financing has led to reduction in capital market activity and valuation and advisory services. Non-payment of rent by commercial tenants, whether as a result of increased unemployment or federal and state government mandates providing rent relief, may reduce the cash flow of commercial real estate borrowers, resulting in higher rates of default on our receivables. Accordingly, the reduction in demand for commercial real estate space nay have a material adverse effect, on the Fund's business, financial condition, results of operations and prospects, and could negate the anticipated benefits from the implementation of the Business Change Proposal.

Additionally, government restrictions on foreclosures may lead to higher rates of default or forbearance. The increase in defaults and forbearance may lead to reduced demand for new loan origination and servicing by

REITs and other entities in which we invest. These entities may also be required to advance payments owed by borrowers under Fannie Mae and FHA/HUD loans whose loans are permitted under government regulations to enter into forbearance. There can be no assurance that the REITs and other entities in which we invest will be able to enter into financing arrangements to provide funding for potential forbearance advances or that such arrangements will be enough to cover these potential advances.

A decline in economic conditions may also lead to constraints on capital and liquidity, a higher cost of capital, and possible change or downgrades to our credit ratings, and additional restructuring charges. Although the federal government has taken many actions to provide liquidity to businesses and the financial markets, including loan programs for businesses in certain sectors or meeting certain criteria, these programs have experienced greater demand than funds available and have had strict eligibility requirements.

The full extent of the impact and effects of the recent outbreak of COVID-19 on the future financial performance of the Fund, and specifically, on its investments and tenants to properties held by the REIT Subsidiary, are uncertain at this time. The impact will depend on future developments, including, among other factors, the duration and spread of the outbreak along with related travel advisories and restrictions, the recovery time of the disrupted supply chains, the consequential staff shortages, the production delays, and the uncertainty with respect to the accessibility of additional liquidity or the capital markets. The outbreak could have a continued adverse impact on economic and market conditions and trigger a period of global economic slowdown. The rapid development and fluidity of this situation precludes any prediction as to the ultimate adverse impact of COVID-19. The federal government has enacted various forms of aid to the industries negatively affected by the virus, but we cannot be certain that such aid will help mitigate the material reduction in revenue we may experience.

Risks Related to Our Conversion to a Diversified REIT

Any delay in receiving the Deregistration Order may delay our ability to operate like a typical REIT not subject to the 1940 Act.

If the Business Change Proposal is approved by shareholders, we will apply to the SEC for a Deregistration Order, but the timing for receiving the Deregistration Order is uncertain. Until the SEC issues a Deregistration Order, we will continue to be registered as an investment company and will continue to be regulated under the 1940 Act. Pending the SEC's issuance of the Deregistration Order, we intend to begin realigning our portfolio consistent with our new business as a diversified REIT. We anticipate that the implementation period may last approximately two years, with full implementation not projected until approximately the middle of 2022. We intend to seek to qualify as a REIT for tax purposes for the taxable year beginning January 1, 2021, which, among other requirements, will require that we transition our assets into a REIT-compliant portfolio no later than March 31, 2021, the first date on which we must satisfy the quarterly REIT asset tests, and that we limit the income from nonqualifying investments in a way that permits us to satisfy the annual REIT income tests. However, our ability to apply for the Deregistration Order may be delayed if we are unable to transition assets of the Fund sufficient to satisfy such requirements or any other requirement to qualify as REIT for such year. The foregoing time period is an estimate and may vary depending upon the length of the deregistration process with the SEC, tax considerations and the pace at which we will be able to transition certain of the Fund's investments into real estate, mortgages secured by real estate or other qualifying assets. Any delay in receiving the Deregistration Order beyond the projected two-year implementation period may delay our ability to operate like a typical REIT not subject to the 1940 Act and would delay our ability to realize the benefits we anticipate to realize from becoming a diversified REIT.

During the implementation period, we will be required to transition a material portion of our assets to ensure a REIT-compliant portfolio.

During the implementation period, we will be required to transition a material portion of our assets to ensure a REIT-compliant portfolio sufficient to qualify as a REIT for tax purpose. During the transition period and before

our portfolio has been fully converted to its new investment strategy, we may experience a reduction in income and we expect our cash flow from earnings and the status and availability of capital gains we realize from our portfolio to decline during our transition to a diversified REIT. This decline could result from the rotation out of existing investments, the need to establish new revenue streams, the potential for holding assets in temporary investments with lower yields and the availability or unavailability of realized capital gains to distribute, among other potential variables.

Pursuant to the Business Change Proposal, we expect to sell assets we own in transactions that may be taxable.

If the Business Change Proposal is approved and we convert to a diversified REIT, we expect to sell approximately 25% of the assets that we own in taxable transactions. Pursuant to RIC and REIT tax laws, any taxable income or gains recognized on such sales would generally need to be distributed to our shareholders in the year recognized, and any such distributions would generally be taxable to shareholders when received.

Our failure to qualify for taxation as a REIT would cause our common shares to be delisted from the NYSE.

Following our conversion to a diversified REIT, the NYSE will require, as a condition to the continued listing of our shares, that we maintain our qualification for taxation as a REIT. Consequently, if we fail to maintain our qualification for taxation as a REIT, our shares would promptly be delisted from the NYSE, which would decrease the trading activity of such shares. This could make it difficult for our shareholders to sell their shares and would likely cause the market volume of the shares trading to decline.

If we are delisted as a result of failing to maintain our qualification for taxation as a REIT and desire to relist our shares on the NYSE or another national stock exchange, we would have to reapply to the NYSE or such other exchange to be listed as a domestic corporation. We might not be able to satisfy the NYSE's listing standards for a domestic corporation. As a result, if we are delisted from the NYSE, we might not be able to relist on the NYSE or another national stock exchange as a domestic corporation, in which case our shares could not trade on such stock exchange.

Risks Related to Our Company

We may not be able to achieve our investment objective.

Our ability to achieve our investment objectives depends on our ability to make investments that generate attractive, risk adjusted returns, as well as on our access to financing on terms that permit us to realize net interest income from our investments. In general, the availability of favorable investment opportunities will be affected by the level and volatility of interest rates in the market generally, the availability of adequate short- and long-term real estate financing and the competition for investment opportunities. We cannot be sure that we will be successful in obtaining additional capital to enable us to make new investments, that any investments we make will satisfy our targeted rate of return or other investment objectives or that we will be able to successfully operate our business, or implement our operating policies and investment strategies. If we fail to make a meaningful number of target investments within a reasonable time or on acceptable terms, such failure may have a material adverse effect on our business, financial condition, results of operations, ability to maintain our qualification for taxation as a REIT under the IRC, and ability to make or sustain distributions to our shareholders, and could cause the value of our securities to decline.

Changes in laws or regulations could increase competition for debt financing or require changes to our business practices and adversely affect us.

Various laws and regulations currently exist that restrict the investment activities of banks and certain other financial institutions but would not apply to us. We believe this regulatory difference may create opportunities

for us to successfully grow our business. However, recent and possible future changes in financial regulations and enforcement under the current U.S. presidential administration could decrease the current restrictions on banks and other financial institutions, which may allow them to compete more effectively with us for investment opportunities.

The laws and regulations governing our operations, as well as their interpretation, may change from time to time, and new laws and regulations may be enacted. Such changes or new laws or regulations could require changes to certain of our business practices, negatively impact our operations, impose additional costs on us or otherwise adversely affect our business. There has been increasing commentary amongst regulators and intergovernmental institutions on the role of nonbank institutions in providing credit and, particularly, so-called "shadow banking," a term generally taken to refer to credit intermediation involving entities and activities outside the regulated banking system. For example, in August 2013, the Financial Stability Board issued a policy framework for strengthening oversight and regulation of shadow banking entities. That report outlined initial steps to define the scope of the shadow banking system and proposed governing principles for a regulatory framework. A number of other regulators and international organizations are studying the shadow banking system. At this time, it is too early to assess whether any new rules or regulations will be adopted or what impact such rules or regulations will have on us, if any. In an extreme eventuality, it is possible that such regulations could cause us to cease operations.

Our operating and investment guidelines, investment and financing strategies and leverage and hedging policies may be changed without shareholder approval.

The Adviser will be authorized to follow broad operating and investment guidelines. These guidelines, as well as our investment and financing strategies, leverage and hedging policies with respect to investments, originations, acquisitions, operations, indebtedness, capitalization and distributions, may be changed at any time without the approval of our shareholders. Changes in our investment strategies may increase our exposure to interest rate risks, default risks and real estate market fluctuations. Such changes could result in the types of investments we make being different from those described in "Business Change Proposal—Operation as a Diversified REIT." These changes could adversely affect our financial condition, results of operations, the market price of our common shares and our ability to make distributions to our shareholders.

Any material failure, inadequacy, interruption or security failure of the information technology networks and systems on which we rely could materially and adversely affect us.

The Adviser relies on information technology and systems, including the Internet and cloud-based infrastructures, commercially available software and their internally developed applications, to process, transmit, store and safeguard information and to manage or support a variety of their business processes, including financial transactions and maintenance of records, which may include personal identifying information of employees and investment data. If the Adviser experiences material security or other failures, inadequacies or interruptions of their information technology, they could incur material costs and losses, and our operations could be disrupted as a result. Further, third-party vendors could experience similar events with respect to their information technology and systems that impact the products and services they provide to the Adviser or the Fund. The Adviser relies on commercially available systems, software, tools and monitoring, as well as their internally developed applications and internal procedures and personnel, to provide security for processing, transmitting, storing and safeguarding confidential borrower and vendor information, such as personally identifiable information related to their employees, guarantors, tenants and others and information regarding their and our financial accounts. The Adviser takes various actions, and incur significant costs, to maintain and protect the operation and security of its information technology and systems, including the data maintained in those systems. However, it is possible that these measures will not prevent the systems' improper functioning or a compromise in security, such as in the event of a cyberattack or the improper disclosure of personally identifiable information.

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Security breaches, computer viruses, attacks by hackers, online fraud schemes and similar breaches can create significant system disruptions, shutdowns, fraudulent transfer of assets or unauthorized disclosure of confidential information. The cybersecurity risks to the Adviser, the Fund and third-arty vendors are heightened by, among other things, the evolving nature of the threats faced, advances in computer capabilities, new discoveries in the field of cryptography and new and increasingly sophisticated methods used to perpetuate illegal or fraudulent activities against the Adviser, including cyberattacks, email or wire fraud and other attacks exploiting security vulnerabilities in the Adviser's or other third parties' information technology networks and systems or operations. Any failure to maintain the security, proper function and availability of the Adviser's information technology and systems, or certain third-party vendors' failure to similarly protect their information technology and systems that are relevant to the Adviser's or the Fund's operations, or to safeguard the Adviser's or the Fund's business processes, assets and information could result in financial losses, interrupt the Adviser's operations, damage the Adviser's reputations, cause Adviser to be in default of material contracts and subject the Adviser to liability claims or regulatory penalties, any of which could materially and adversely affect our business and the value of our securities.

Our business could be adversely impacted if there are deficiencies in our disclosure controls and procedures or our internal control over financial reporting.

The design and effectiveness of our disclosure controls and procedures and our internal control over financial reporting may not prevent all errors, misstatements or misrepresentations. While management will continue to review the effectiveness of our disclosure controls and procedures and our internal control over financial reporting, we cannot guarantee that our disclosure controls and procedures and internal control over financial reporting will be effective in accomplishing all control objectives all of the time. Deficiencies, including any material weaknesses, in our disclosure controls and procedures or internal control over financial reporting could result in misstatements of our results of operations or our financial statements or could otherwise materially and adversely affect our business, reputation, results of operations, financial condition or liquidity.

[During Fund management's evaluation of the effectiveness of the design and operation of the Fund's disclosure controls and procedures in connection with the Fund's annual report for the fiscal year-ended December 31, 2019, the principal executive officer and principal financial officer concluded that the Fund's disclosure controls and procedures were not effective due to a material weakness for the Fund relating to the application of ASC 820 with respect to the selection and validation of fair value methodologies which are monitored by the Valuation Committee through the operation of a review control. This control was not designed to ensure the appropriateness of the methodologies employed and fair value determinations reached for certain real estate-related holdings. A material weakness (as defined in Rule 12b-2 under the Exchange Act) is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the Fund's annual or interim financial statements will not be prevented or detected on a timely basis. While this material weakness did not result in material pricing errors related to any hard-to-value securities held by the Fund during the reporting period, it could have resulted in a misstatement to the investment balances or disclosures that would have resulted in a material misstatement to the annual or interim financial statements that would not be prevented or detected.

Management has developed a plan to remediate the material weakness described above. Management utilizes one or more independent valuation experts as part of its existing valuation process. Management will undertake the addition of a review control by designating a member of the Valuation Committee to monitor and report to the Valuation Committee to ensure that for significant real estate-related holdings, a) the valuation methodology employed is confirmed by an independent valuation expert at least annually and b) for independently obtained valuations of real estate-related holdings, fair values for such holdings are materially validated through one or more other valuation techniques that are acceptable under ASC 820.]

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Risks Related to Our Business

Unfavorable market and economic conditions in the United States and globally and in the specific markets or submarkets where our properties are located could adversely affect occupancy levels, rental rates, rent collections, operating expenses and the overall market value of our assets, and impair our ability to sell, recapitalize or refinance our assets.

Unfavorable market conditions in the areas in which we operate and unfavorable economic conditions in the United States and globally may significantly affect our occupancy levels, our rental rates, rent collections, operating expenses, the market value of our properties and our ability to strategically acquire, dispose, recapitalize or refinance our multifamily properties on economically favorable terms or at all. Our ability to lease our properties at favorable rates is adversely affected by increases in supply of multifamily communities in our markets and is dependent upon overall economic conditions, which are adversely affected by, among other things, job losses and unemployment levels, a recession, personal debt levels, a downturn in the housing market, stock market volatility and uncertainty about the future. Some of our major expenses, including debt service and real estate taxes, generally do not decline when related rents decline. We expect that any declines in our occupancy levels, rental revenues and/or the values of our multifamily properties would cause us to have less cash available to pay our indebtedness, fund necessary capital expenditures and to make distributions to our stockholders, which could negatively affect our financial condition and the market value of our assets. Factors that may affect our occupancy levels, our revenues, our NOI and/or the value of our properties include the following, among others:

- downturns in global, national, regional and local economic conditions;
- declines in the financial condition of our residents, which may make it more difficult for us to collect rents from these residents;
- the inability or unwillingness of our residents to pay rent increases;
- a decline in household formation;
- a decline in employment or lack of employment growth;
- an oversupply of, or a reduced demand for, apartment homes;
- changes in market rental rates in our core markets;
- our ability to renew leases or re-lease space on favorable terms;
- the timing and costs associated with property improvements, repairs and renovations;
- declines in mortgage interest rates, making home and condominium ownership more affordable;
- changes in home loan lending practices, including the easing of credit underwriting standards, increasing the availability of home loans and thereby reducing demand for apartment homes;
- government or builder incentives which enable first-time homebuyers to put little or no money down, making alternative housing options more attractive;
- rent control or rent stabilization laws, or other laws regulating housing, that could prevent us from raising rents to offset increases in operating costs; and
- economic conditions that could cause an increase in our operating expenses, such as increases in property taxes (particularly as a result of increased local, state and national government budget deficits and debt and potentially reduced federal aid to state and local governments), utilities, insurance, compensation of on-site associates and routine maintenance.

We are subject to risks inherent in ownership of real estate.

Real estate cash flows and values are affected by a number of factors, including competition from other available properties and the ability to provide adequate property maintenance and insurance and to control operating costs. Real estate cash flows and values are also affected by such factors as government regulations (including zoning, usage and tax laws) limitations on rent and rent increases, interest rate levels, the availability of financing, property tax rates, utility expenses, potential liability under environmental and other laws and changes in environmental and other laws.

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We are exposed to risks associated with real estate development and redevelopment, such as unanticipated expenses, delays and other contingencies, any of which could have a material adverse effect on us.

Real estate development and redevelopment activities are a critical element of our business strategy, and we expect to engage in such activities with respect to several of our properties and with properties that we may acquire in the future. To the extent that we do so, we will be subject to risks, including, without limitation:

- construction or redevelopment costs of a project may exceed original estimates, possibly making the project less profitable than originally estimated, or unprofitable;
- time required to complete the construction or redevelopment of a project or to lease-up the completed project may be greater than originally anticipated, thereby adversely affecting our cash flow and liquidity;
- contractor, subcontractor and supplier disputes, strikes, labor disputes, weather conditions or supply disruptions;
- failure to achieve expected occupancy and/or rent levels within the projected time frame, if at all;
- delays with respect to obtaining, or the inability to obtain, necessary zoning, occupancy, land use and other governmental permits, and changes in zoning and land use laws;
- occupancy rates and rents of a completed project may not be sufficient to make the project profitable;
- incurrence of design, permitting and other development costs for opportunities that we ultimately abandon;
- the ability of prospective real estate venture partners or buyers of our properties to obtain financing; and
- the availability and pricing of financing to fund our development activities on favorable terms or at all.

Furthermore, if we develop assets in new markets or asset classes where we do not have the same level of market knowledge or experience as with our current markets and asset classes, then we may experience weaker than anticipated performance. These risks could result in substantial unanticipated delays or expenses and, under certain circumstances, could prevent the initiation or the completion of development or redevelopment activities, any of which could have a material adverse effect on us.

We may fail to consummate future property acquisitions, and we may not be able to find suitable alternative investment opportunities.

When acquiring properties in the future, we may be subject to various closing conditions, and there can be no assurance that we can satisfy these conditions or that the acquisitions will close. If we fail to consummate future acquisitions, there can be no assurance that we will be able to find suitable alternative investment opportunities.

Acquisitions may not yield anticipated results, which could negatively affect our financial condition and results of operations.

We intend to actively acquire multifamily properties for rental operations as market conditions, including access to the debt and equity markets, dictate. We may also acquire multifamily properties that are unoccupied or in the early stages of lease-up. We may be unable to lease-up these multifamily properties on schedule, resulting in decreases in expected rental revenues and/or lower yields as the result of lower occupancy and rental rates as well as higher than expected concessions. We may underestimate the costs necessary to bring an acquired property up to standards established for its intended market position or to complete a development project. We may be unable to integrate the existing operations of newly acquired multifamily properties and over time such communities may not perform as well as existing communities or as we initially anticipated in terms of occupancy and/or rental rates. Additionally, we expect that other major real estate investors with significant capital will compete with us for attractive investment opportunities or may also develop properties in markets where we focus our development efforts. This competition may increase acquisition costs for multifamily properties. We may not be in a position or have the opportunity in the future to make suitable property acquisitions on favorable terms.

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We may be subject to contingent or unknown liabilities related to properties or business that we have acquired or may acquire for which we may have limited or no recourse against the sellers.

The properties or businesses that we have acquired or may acquire, may be subject to unknown or contingent liabilities for which we have limited or no recourse against the sellers. Unknown liabilities might include liabilities for, among other things, cleanup or remediation of undisclosed environmental conditions, liabilities under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), claims of residents, vendors or other persons dealing with the entities prior to the acquisition of such property, tax liabilities, and accrued but unpaid liabilities whether incurred in the ordinary course of business or otherwise. Because many liabilities, including tax liabilities, may not be identified within the applicable contractual indemnification period, we may have no recourse against any of the owners from whom we acquire such properties for these liabilities. The existence of such liabilities could significantly and adversely affect the value of the property subject to such liability. As a result, if a liability were asserted against us based on ownership of any of such properties, then we might have to pay substantial sums to settle it, which could adversely affect our cash flows.

We will operate in a highly competitive market for investment opportunities and competition may limit our ability to acquire our target investments on attractive terms and could also affect the pricing of these investment opportunities.

We will operate in a highly competitive market for investment opportunities. Our profitability will depend, in large part, on our ability to acquire our target investments on attractive terms. In acquiring our investments, we will compete with a variety of institutional investors, including other REITs, specialty finance companies, public and private funds (including funds or investors that the Adviser and its subsidiaries may sponsor, advise or manage), banks, and insurance companies and other financial institutions. Some of our competitors, including other REITs and alternative real estate lenders, have recently raised, or are expected to raise, significant amounts of capital, and may have investment objectives that overlap with our investment objectives, which may create additional competition for lending and other investment opportunities. Many of our competitors are significantly larger than we are and have considerably greater financial, technical, marketing and other resources than we have. Many of our competitors are not subject to the operating constraints associated with REIT tax or SEC reporting compliance or maintenance of an exemption from registration as an investment company under the 1940 Act. Some of our competitors may have a lower cost of capital and access to funding sources that may not be available to us, such as the U.S. Government, or are only available to us on substantially less attractive terms. In addition, some of our competitors may have higher risk tolerances or make different risk assessments than us, which could lead them to consider a wider variety of investments, offer more attractive pricing or other terms than us, for example, higher LTV ratios or lower interest rates than we are willing to offer or accept, or establish more relationships than us. In addition, recent and possible future changes in financial regulations and enforcement under the current U.S. presidential administration could decrease the current restrictions on banks and other financial institutions. If this occurs, these banks and financial institutions may increase or commence their pursuit of investments that are within our target investments either because they would no longer be restricted in making these investments or because the regulatory burdens resulting from these investments would be removed or significantly reduced. Furthermore, competition for our target investments may lead to the price for these investments increasing, which may further limit our ability to generate desired returns. The competitive pressures we will face may have a material adverse effect on our business, financial condition and results of operations, and we cannot be sure that we will be able to identify and acquire our target investments.

The anticipated lack of liquidity of certain of our investments may adversely affect our business.

The anticipated lack of liquidity of certain of our investments may make it difficult for us to sell such investments if the need or desire arises. Certain investments such as real property, mortgages, B-Notes, mezzanine and other loans (including most loan participations) and preferred equity, in particular, are relatively illiquid investments due to their short life, their potential unsuitability for securitization and the difficulty of recovery in the event of a borrower's default. In addition, we anticipate that certain of our investments may

become less liquid after we have made them as a result of delinquencies or defaults, turbulent market conditions or the unavailability to borrowers of refinancing capital, which may make it more difficult for us to dispose of such investments at advantageous prices or in a timely manner. Moreover, many of the loans and securities we will invest in are not registered under relevant securities laws, resulting in limitations or prohibitions against their transfer, sale, pledge or disposition except in transactions that are exempt from registration requirements or are otherwise in accordance with such laws. As a result, many of our investments are expected to be illiquid, and if we are required to liquidate all or a portion of our portfolio quickly, we may realize significantly less than the value at which we have previously recorded our investments. Further, we may face other restrictions on our ability to liquidate an investment to the extent that we or the Adviser has or could be attributed as having material, non-public information regarding the borrower entity. As a result, our ability to adjust our portfolio in response to changes in economic and other conditions may be relatively limited, which could adversely affect our financial condition and results of operations.

Concentrations within our portfolio of investments may subject us to losses.

While we intend to expand and diversify our portfolio of investments, we are not required to observe specific diversification criteria. Our investments may therefore at times be concentrated in certain property types or in certain borrowers that may be subject to higher risk of default or foreclosure, or secured by properties concentrated in a limited number of geographic locations. To the extent that our investments are concentrated in any one region or type of asset, downturns generally relating to such type of asset or region my result in defaults on a number of our investments within a short time period. Further, investments concentrated in certain borrowers may result in defaults of a significant amount of our investments if one or more of those borrowers default. Defaults of our concentrated investments may significantly reduce our net income, the returns on our investments and the value of our common shares, and as a result reduce our ability to make or sustain distributions to our shareholders.

Loans secured by properties in transition or requiring significant renovation involve a greater risk of loss than loans secured by stabilized properties.

We may originate or acquire transitional or bridge loans to borrowers who are seeking shorter term capital to be used in acquisitions, construction or repositioning of properties. In a typical transitional loan, the borrower has usually identified a property that the borrower believes has been under-managed or is located in a recovering market or requires renovation. The renovation, refurbishment or expansion of a property by a borrower involves risks of cost overruns, construction risks and noncompletion risks, among others. Estimates of the costs of property improvements may be inaccurate. Other risks may include rehabilitation costs exceeding original estimates, possibly making a project uneconomical, environmental risks, delays in legal and other approvals and rehabilitation and subsequent leasing of the property not being completed on schedule. If the borrower fails to improve the quality of the property's management or the market in which the property is located fails to improve as expected, or the renovation is not completed in a timely manner or such costs are more than expected, then the borrower may not generate sufficient cash flow to make payments on or refinance the transitional loan, and we may not recover some or all of our investment.

In addition, borrowers often use the proceeds of a conventional mortgage to repay a transitional loan. Transitional loans therefore are subject to the risk of the borrowers' inability to obtain financing to repay the loan. Losses we or our subsidiaries suffer with respect to our transitional loans could be material.

The Adviser's diligence process for investment opportunities may not reveal all facts that may be relevant for an investment, and if we incorrectly evaluate the risks of our investments, we may experience losses.

Prior to our making any investment, the Adviser will conduct diligence that it considers reasonable based upon the facts and circumstances of the investment. When conducting diligence on our behalf, the Adviser may be required to evaluate important and complex business, financial, tax, accounting, environmental and legal issues.

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Outside consultants, legal advisors, accountants and investment banks may be involved in the diligence process to varying degrees depending on the type of potential investment. Nonetheless, our diligence may not reveal all of the risks associated with our investments. We will evaluate our potential investments based upon criteria the Adviser deems appropriate for the relevant investment. Our underwriting assumptions and loss estimates may not prove accurate, and actual results may vary from estimates. If we underestimate the risks and potential losses associated with an investment we originate or acquire, we may experience losses from the investment.

Moreover, investment analyses and decisions by the Adviser may frequently be required to be undertaken on an expedited basis to take advantage of investment opportunities. In such cases, the information available to the Adviser at the time of making an investment decision may be limited. Therefore, we cannot be sure that the Adviser will have knowledge of all circumstances that may adversely affect such investment.

We may be subject to risks involved in real estate activity through joint ventures.

We may acquire properties through joint ventures when we believe circumstances warrant the use of such structures. Joint venture investments involve risks, including: the possibility that joint venture partners might refuse to make capital contributions when due; that we may be responsible to joint venture partners for indemnifiable losses; that joint venture partners might at any time have business or economic goals which are inconsistent with ours; and that joint venture partners may be in a position to take action or withhold consent contrary to our recommendations, instructions or requests. In some instances, joint venture partners may have competing interests in our markets that could create conflicts of interest. Further, joint venture partners may fail to meet their obligations to the joint venture as a result of financial distress or otherwise, and we would be forced to make contributions to maintain the value of the property. To the extent joint venture partners do not meet their obligations to the joint venture or they take action inconsistent with the interests of the joint venture, we could be adversely affected.

If we acquire properties through joint ventures, we may be required to make decisions jointly with the other investors who have interests in the respective joint ventures. We might not have the same interests as the other investors in relation to these decisions or transactions. Accordingly, we might not be able to favorably resolve any of these issues, or we might have to provide financial or other inducements to the other investors to obtain a favorable resolution.

In addition, various restrictive provisions and third-party rights, including consent rights to certain transactions, may apply to sales or transfers of interests in joint ventures. Consequently, decisions to buy or sell interests in a property or properties relating to joint ventures may be subject to the prior consent of other investors. These restrictive provisions and third-party rights would potentially preclude us from achieving full value of the properties because of our inability to obtain the necessary consents to sell or transfer the interests.

Prepayment rates may adversely affect the value of certain of our investments which could negatively impact our ability to make or sustain distributions to our shareholders.

The prepayment rates at which borrowers prepay our investments, where contractually permitted, will be influenced by changes in current interest rates, significant changes in the performance of underlying real estate assets and a variety of economic and other factors beyond our control. Prepayment rates cannot be predicted with certainty and no strategy can completely insulate us from increases in such rates. In periods of declining interest rates, prepayments on investments generally increase and the proceeds of prepayments received during these periods are likely to be reinvested by us in comparable assets at reduced yields. Conversely, in periods of rising interest rates, prepayments on investments, where contractually permitted, generally decrease, in which case we would not have the prepayment proceeds available to invest in comparable assets at higher yields. We may invest in loans and other assets secured or supported by transitional real estate assets; significant improvement in the performance of such assets may result in prepayments as other financing alternatives become available to the borrower. In addition, it may take an extended period for us to reinvest any repayments we may receive and any

reinvestments we may be able to make may not provide us with similar returns or comparable risks as those of our current investments. We expect to be entitled to fees upon the prepayment of our investments, although we cannot be sure that such fees will adequately compensate us as the functional equivalent of a "make whole" payment. Furthermore, we may not be able to structure future investments to impose a make whole obligation upon a borrower in the case of an early prepayment. As a result, our income will be reduced, which will have a negative impact on our ability to make or sustain distributions to our shareholders.

A prolonged economic slowdown, a recession or declining real estate values could materially and adversely affect us.

We believe that the risks associated with our investments will be more severe during periods of economic slowdown or recession, especially if these periods are accompanied by declining real estate values. Consequently, our investment strategy may be adversely affected by prolonged economic downturns or recessions. Borrowers may also be less able to pay principal and interest on our loans if the value of their real estate declines. Further, declining real estate values significantly increase the likelihood that we will incur losses on our investments and on our loans in the event of default because the value of our collateral may be insufficient to cover our cost on the loan. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect our ability to originate or acquire loans, which would materially and adversely affect our results of operations, financial condition, liquidity and business and our ability to make or sustain distributions to our shareholders.

Loans and other real estate related investments we will originate and acquire are subject to the ability of the property owner to generate net income from operating the property as well as the risks of delinquency and foreclosure.

Loans and other real estate related investments that we will originate or acquire are subject to risks of delinquency and foreclosure. The ability of a borrower to repay a loan secured by an income producing property typically is dependent primarily upon the successful operation of the property rather than upon the existence of independent income or assets of the borrower. If the net operating income of the property is reduced, the borrower's ability to repay the loan may be impaired. Similarly, when we are the borrower, a decrease in net operating income may impair our ability to pay our loans on properties that we own. Net operating income of an income producing property can be affected by, among other things:

- tenant mix and tenant bankruptcies;
- success of tenant businesses;
- property management decisions, including with respect to capital improvements, particularly in older building structures;
- property location, condition and design;
- competition from comparable properties;
- changes in national, regional or local economic conditions and/or specific industry segments;
- declines in regional or local real estate values;
- declines in regional or local rental or occupancy rates;
- changes in interest rates, and in the state of the debt and equity capital markets, including diminished availability or lack of debt financing for CRE;
- changes in real estate tax rates, tax credits and other operating expenses;
- costs of remediation and liabilities associated with environmental conditions;
- the potential for uninsured or underinsured property losses;
- changes in laws and regulations, including fiscal policies, zoning ordinances and environmental legislation and the related costs of compliance; and
- acts of God, terrorist attacks, social unrest and civil disturbances.

In the event of any default under any loan or other debt-related investment held directly by us, we will bear a risk of loss of principal to the extent of any deficiency between the value of the collateral (net of our costs to enforce

our rights with respect to that collateral) and the principal and accrued interest of the loan or investment, which could have a material adverse effect on our cash flow from operations and limit amounts available for distribution to our shareholders. In the event of the bankruptcy of a mortgage loan borrower, the mortgage loan to such borrower will be deemed to be secured only to the extent of the value of the underlying collateral at the time of bankruptcy (as determined by the bankruptcy court), and the lien securing the mortgage loan will be subject to the avoidance powers of the bankruptcy trustee or debtor-in-possession to the extent the lien is unenforceable under applicable law. Foreclosure of a mortgage loan can be an expensive and lengthy process, which could have a substantial negative effect on our anticipated return on the foreclosed mortgage loan.

The investments we will originate and acquire will expose us to risks associated with real estate investments generally.

In addition to the other risks discussed herein, the real property loans and other real estate-related investments we will originate and acquire expose us to risks associated with real estate investment, generally, including:

- economic and market fluctuations;
- political instability or changes;
- changes in environmental, zoning and other laws;
- casualty or condemnation losses;
- regulatory limitations on rents;
- decreases in property values;
- changes in the appeal of properties to tenants;
- changes in supply and demand for real estate properties and debt resulting from the recent growth in real estate debt funds or otherwise;
- changes in valuation of collateral underlying real properties and real estate loans, resulting from inherently subjective and uncertain valuations;
- energy supply shortages;
- various uninsured or uninsurable risks;
- natural disasters;
- changes in government regulations, such as rent control;
- changes in the availability of debt financing and/or mortgage funds, which may render the sale or refinancing of properties difficult or impracticable;
- increases in mortgage defaults;
- increases in borrowing rates; and
- negative developments in the economy and/or adverse changes in real estate values generally and other factors that are beyond our control.

We cannot predict the degree to which economic conditions generally, and the conditions for real estate debt investing in particular, will improve or decline. Any declines in the performance of the United States or global economies or in the real estate debt markets could have a material adverse effect on us.

We intend to continue to hold a portion of the Fund's assets in securities, including equities, structured products, including but not limited to, mortgage-backed and other asset-backed securities and collateralized debt obligations; other investment companies and REITs.

The market prices of equity securities owned by the Fund may go up or down, sometimes rapidly or unpredictably. The value of a security may decline for a number of reasons that may directly relate to the issuer, such as management performance, fundamental changes to the business, financial leverage, non-compliance with regulatory requirements and reduced demand for the issuer's goods or services. The values of equity securities also may decline due to general market conditions that are not specifically related to a particular company, such as real or perceived adverse economic conditions, changes in the general outlook for corporate earnings, changes in interest or currency rates or adverse investor sentiment generally. Certain equity securities may decline in

value even during periods when the prices of equity securities in general are rising, or may not perform as well as the market in general. In addition to these risks, preferred stock and convertible securities are also subject to the risk that issuers will not make payments on securities held by the Fund, which could result in losses to the Fund. The credit quality of preferred stock and convertible securities held by a Fund may be lowered if an issuer's financial condition changes, leading to greater volatility in the price of the security. In addition, a company's preferred stock generally pays dividends only after the company makes required payments to holders of its bonds and other debt. For this reason, the value of preferred stock will usually react more strongly than bonds and other debt to actual or perceived changes in the company's financial condition or prospects. The market value of convertible securities also tends to fall when prevailing interest rates rise.

The Fund may also invest in collateralized bond obligations ("CBOs"), collateralized loan obligations ("CLOs") and other collateralized debt obligations ("CDOs"), which are debt instruments backed solely by a pool of other debt securities. The risks of an investment in a CBO, CLO or other CDO depend largely on the type of the collateral securities (which would have the risks described elsewhere in this document for that type of security) and the class of the CBO, CLO or other CDO in which the Fund invests. Some CBOs, CLOs and other CDOs have credit ratings, but are typically issued in various classes with various priorities. Normally, CBOs, CLOs and other CDOs are privately offered and sold (that is, not registered under the securities laws) and may be characterized by the Fund as illiquid securities, but an active dealer market may exist for CBOs, CLOs and other CDOs that qualify for Rule 144A transactions. In addition to the normal interest rate, default and other risks of fixed income securities discussed elsewhere in this document, CBOs, CLOs and other CDOs carry additional risks, including the possibility that distributions from collateral securities will not be adequate to make interest or other payments, the quality of the collateral may decline in value or default, the Fund may invest in CBOs, CLOs or other CDOs that are subordinate to other classes, volatility in values, and the complex structure of the security may not be fully understood at the time of investment and produce disputes with the issuer or unexpected investment results.

The Fund may also invest in these categories of obligations and securities through the use of derivatives.

The Fund is not limited in the amount it may invest in derivatives, and it may use derivatives to hedge various investments for risk management and for speculative purposes. Derivatives risk is a combination of several risks, including the risks that: (1) an investment in a derivative instrument may not correlate well with the performance of the securities or asset class to which the Fund seeks exposure, (2) derivative contracts, including options, may expire worthless and the use of derivatives may result in losses to the Fund, (3) a derivative instrument entailing leverage may result in a loss greater than the principal amount invested, (4) derivatives not traded on an exchange may be subject to credit risk, for example, if the counterparty does not meet its obligations; and (5) derivatives not traded on an exchange may be subject to liquidity risk and the related risk that the instrument is difficult or impossible to value accurately. As a general matter, when the Fund establishes certain derivative instrument positions, such as certain futures, options and forward contract positions, it will segregate liquid assets (such as cash, U.S. Treasury bonds or commercial paper) equivalent to the Fund's outstanding obligations under the contract or in connection with the position. In addition, changes in laws or regulations may make the use of derivatives more costly, may limit the availability of derivatives, or may otherwise adversely affect the use, value or performance of derivatives.

REIT distribution requirements and limitations on our ability to access reasonably priced capital may adversely impact our ability to carry out our business plan.

To maintain our qualification for taxation as a REIT under the IRC, we are required to satisfy distribution requirements imposed by the IRC. See the discussion below under "Risks Related to Our Taxation—REIT distribution requirements could adversely affect us and our shareholders." Accordingly, we may not be able to retain sufficient cash to fund our operations, repay our debts or make investments. Our business strategies therefore depend, in part, upon our ability to raise additional capital at reasonable costs. The volatility in the availability of capital to businesses on a global basis in most debt and equity markets generally may limit our ability to raise reasonably priced capital. We may also be unable to raise reasonably priced capital because of

reasons related to our business, market perceptions of our prospects, the terms of our indebtedness, the extent of our leverage or for reasons beyond our control, such as market conditions. Because the earnings we are permitted to retain are limited by the rules governing REIT qualification and taxation, if we are unable to raise reasonably priced capital, we may not be able to carry out our business plan.

Investments in non-conforming loans involve increased risk of loss.

Certain of our loans and investments may not conform to conventional loan standards applied by traditional lenders and either will not be rated or, if rated, would be rated as non-investment grade by the rating agencies. The non-investment grade ratings typically result from the overall leverage of the loans, the lack of a strong operating history for the properties underlying the loans, the borrowers' credit history, the underlying properties' cash flow or other factors. As a result, these investments should be expected to have a higher risk of default and loss than investment grade rated assets. Any loss we incur may be significant and may negatively impact our ability to make or sustain distributions to our shareholders and adversely affect the value of our common shares. There are no limits on the percentage of unrated assets or non-investment grade rated assets we may hold in our investment portfolio.

Any credit ratings that may be assigned to our investments will be subject to possible revisions, and we cannot be sure that those ratings will not be downgraded.

Some of our investments may be rated by credit rating agencies. Any credit ratings on our investments will be subject to ongoing evaluation by credit rating agencies, and we cannot be sure that any such ratings will not be changed or withdrawn by a rating agency after they are issued. If a rating agency assigns a lower than expected rating or reduces or withdraws, or indicates that it may reduce or withdraw, its rating of any of our investments, the value of those investments could significantly decline, which could result in losses if we determine to sell these investments or the failure of the affected borrowers to refinance or otherwise satisfy their debt service obligations.

Risks of cost overruns and failure to complete renovations of properties in transition may result in significant losses.

The renovation, refurbishment or expansion of a property by a borrower involves risks of cost overruns, construction risks and noncompletion risks, among others. Estimates of the costs of property improvements may be inaccurate. Other risks may include rehabilitation costs exceeding original estimates, possibly making a project uneconomical, environmental risks, delays in legal and other approvals and rehabilitation and subsequent leasing of the property not being completed on schedule. If such renovation is not completed in a timely manner, or if it costs more than expected, we, as borrower, or the borrowers as to loans we make, may experience a prolonged reduction of net operating income and may not be able to make payments on loans on a timely basis or at all, which may result in significant losses to us.

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The renovation, refurbishment or expansion of a property by a borrower involves risks of cost overruns, construction risks and noncompletion risks, among others. Estimates of the costs of property improvements may be inaccurate. Other risks may include rehabilitation costs exceeding original estimates, possibly making a project uneconomical, environmental risks, delays in legal and other approvals and rehabilitation and subsequent leasing of the property not being completed on schedule. If such renovation is not completed in a timely manner, or if it costs more than expected, the borrower may experience a prolonged reduction of net operating income and may not be able to make payments on our investment on a timely basis or at all, which may result in significant losses to us.

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Investments in non-conforming loans involve increased risk of loss.

We expect that many of our loans and investments will not conform to conventional loan standards applied by traditional lenders and either will not be rated or, if rated, would be rated as non-investment grade by the rating agencies. The non-investment grade ratings typically result from the overall leverage of the loans, the lack of a strong operating history for the properties underlying the loans, the borrowers' credit history, the underlying properties' cash flow or other factors. As a result, these investments should be expected to have a higher risk of default and loss than investment grade rated assets. Any loss we incur may be significant and may negatively impact our ability to make or sustain distributions to our shareholders and adversely affect the value of our common shares. There are no limits on the percentage of unrated assets or non-investment grade rated assets we may hold in our investment portfolio.

Any credit ratings that may be assigned to our investments will be subject to possible revisions, and we cannot be sure that those ratings will not be downgraded.

We expect that some of our investments may be rated by credit rating agencies. Any credit ratings on our investments will be subject to ongoing evaluation by credit rating agencies, and we cannot be sure that any such ratings will not be changed or withdrawn by a rating agency after they are issued. If a rating agency assigns a lower than expected rating or reduces or withdraws, or indicates that it may reduce or withdraw, its rating of any of our investments, the value of those investments could significantly decline, which could result in losses if we determine to sell these investments or the failure of the affected borrowers to refinance or otherwise satisfy their debt service obligations to ***B-Notes are subordinated and have individually negotiated terms, which may result in losses to us.***

We may originate or acquire B-Notes. A B-Note is a mortgage loan typically (a) secured by a first mortgage on a single commercial property or group of related properties and (b) subordinated to an A-Note secured by the same first mortgage on the same collateral. The rights associated with the B-Note are subordinate to the rights associated with the A-Note. If the borrower whose mortgage is divided into an A-Note and a B-Note defaults, there may not be sufficient value in the collateral property remaining for B-Note holders after payment to the A-Note holders. Because each transaction is individually negotiated, B-Notes can vary in their structural characteristics and risks. For example, the rights of holders of B-Notes to control the process following a borrower default vary from transaction to transaction. Losses we suffer investing in B-Notes could be material.

Subordinated and mezzanine loans involve greater risks of loss than first mortgage whole loans.

We may originate or acquire subordinated and mezzanine loans, which are loans secured by junior mortgages on the underlying collateral property or loans secured by a pledge of the ownership interests of either the entity owning the property or a pledge of the ownership interests in the entity that owns the interest in the entity owning the property. Subordinated loans have less priority and rights than senior or first mortgages. Mezzanine loans secured by a pledge of ownership interests in an entity are by their nature structurally subordinated to financings that are secured directly by the collateral property. Subordinated and mezzanine loans involve a higher degree of risk than first mortgage whole loans because they rank behind senior loans and may become unsecured as a result of foreclosure by senior lenders. In the event of a bankruptcy of an entity providing the pledge of its ownership interests as security, we may not have full recourse to the assets of such entity, or the assets of the entity may not be sufficient to satisfy our mezzanine loan. If borrowers default on our subordinated loans, mezzanine loans or debt senior to our loans, or in the event of borrowers' bankruptcies, our subordinated loans and mezzanine loans will be satisfied only after the senior debts, and we may not recover some or all of our subordinated loans and mezzanine investments. In addition, subordinated loans and mezzanine loans may have higher LTV ratios than other real estate mortgage loans, resulting in less equity in the collateral properties and increasing the risk of loss of principal. Losses we suffer with respect to our subordinated loans and mezzanine loans could be material.

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Any distressed investments we originate or acquire, or investments that later become distressed, may subject us to losses and other significant risks.

While our investments will focus primarily on "performing" real estate loans, our investments may include distressed investments from time to time (*e.g.*, investments in defaulted, out-of-favor or distressed bank loans or debt securities) or may involve investments that become "sub-performing" or "non-performing" after we originate or acquire them. From time to time, our investments may be secured by properties that are encumbered by large amounts of debt relative to their values and cash flows and, therefore, involve a high degree of financial risk. During an economic downturn or recession, loans or securities of financially or operationally troubled borrowers are more likely to go into default than loans or securities of other borrowers. Investment in the loans secured by highly leveraged properties and loans to operationally troubled borrowers involves a high degree of credit risk.

In certain circumstances (*e.g.*, in connection with a workout, restructuring or foreclosing proceedings involving one or more of our investments), the success of our investment strategy will depend on our ability to effectuate loan modifications or restructure and improve the operations of our borrowers. Implementing successful restructuring programs and operating improvements entails a high degree of uncertainty. We cannot be sure that we will be able to implement successful restructuring programs and improvements with respect to any distressed loans or investments we may have from time to time. Distressed loans may become subject to bankruptcy or other similar legal proceedings. In such proceedings, there is a possibility that we may incur substantial costs and total losses on our investments and, in certain circumstances, become subject to liabilities that may exceed the value of our original investments. For example, under certain circumstances, a lender that has inappropriately exercised control over the management and policies of a debtor may have its claims legally subordinated or disallowed or may be found liable for damages suffered by the debtor and its related parties as a result of such actions. Bankruptcy and similar laws may delay our ability to realize on collateral for our loans, may adversely affect the economic terms and priority of our loans through legal doctrines such as equitable subordination or may result in a restructuring of our loans through principles such as the "cramdown" provisions of the bankruptcy laws. In any reorganization or liquidation proceeding relating to our investments, we may lose our entire investment, may be required to accept cash or securities with a value less than our original investment and/or may be required to accept terms different than our original loan terms, including payment over an extended period of time. In addition, in certain circumstances, payments we have received may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance, preferential payment or similar transaction under applicable bankruptcy and insolvency laws.

We may not have control over certain of our investments.

Our ability to manage our investments may be limited by the form in which they are made. In certain situations, we may:

- acquire or retain investments subject to rights of senior classes and servicers under intercreditor or servicing agreements;
- acquire or retain only a minority and/or a non-controlling participation in an underlying investment;
- pledge our investments as collateral for financing arrangements;
- co-invest with others through partnerships, joint ventures or other entities, thereby acquiring non-controlling interests; or
- rely on independent third-party management or servicing with respect to the management of a particular investment.

We may not be able to exercise control over all aspects of our investments. For example, our rights to control the process following a borrower default may be subject to the rights of senior or junior creditors or servicers whose interests may not be aligned with ours. A partner or co-venturer may have economic or business interests or goals that are inconsistent with ours, or may be in a position to take action contrary to our investment objectives. In addition, in certain circumstances we may be liable for the actions of our partners or co-venturers.

Changes in market interest rates may significantly reduce our revenues or impede our growth.

Since the most recent U.S. recession, the Board of Governors of the U.S. Federal Reserve System (the "U.S. Federal Reserve") has taken actions which have resulted in low interest rates prevailing in the marketplace for a historically long period of time. The U.S. Federal Reserve steadily increased the targeted federal funds rate over the last several years, but recently took action to decrease its federal funds rate and may continue to make adjustments in the near future. If market interest rates increase, those increases may materially and negatively affect us in several ways, including:

- Increases in interest rates will make our borrowing to acquire property more costly and increase the risk that operating income from our properties will not cover our borrowing costs.
- When interest rates increase, our interest costs will increase, which could adversely affect our cash flows, our ability to pay principal and interest on our debt, our cost of refinancing our fixed rate debts when they become due and our ability to make or sustain distributions to our shareholders. Additionally, if we choose to hedge our interest rate risk, we cannot be sure that the hedge will be effective or that our hedging counterparty will meet its obligations to us.
- Changes in interest rates may affect our net interest income from our investments, which is the difference between the interest income we earn on our interest earning investments and the interest expense we incur in financing our investments.
- Changes in interest rates may affect our ability to make investments as well as borrower default rates. In a period of rising interest rates, our interest expense could increase, while the interest we earn on any fixed rate debt investments would not change, adversely affecting our profitability. Our operating results depend in large part on differences between the income from our investments, net of credit losses and our financing costs. Even when our investments and borrowings are match funded, the income from our investments may respond more slowly to interest rate fluctuations than the cost of our borrowings.
- Investors may consider whether to buy or sell our common shares based upon the then distribution rate on our common shares relative to the then prevailing market interest rates. If market interest rates go up, investors may expect a higher distribution rate than we are able to pay, which may increase our cost of capital, or they may sell our common shares, if any, and seek alternative investments that offer higher distribution rates. Sales of our common shares may cause a decline in the value of our common shares.

We may be subject to lender liability claims and, if we are held liable under such claims, we could be subject to losses.

A number of judicial decisions have recognized the rights of borrowers to sue lending institutions on the basis of various evolving legal theories, collectively termed "lender liability." Generally, lender liability is founded on the premise that a lender has either violated a duty, whether implied or contractual, of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower resulting in the creation of a fiduciary duty owed to the borrower or its other creditors or shareholders. We cannot be sure that such claims will not arise or that we will not be subject to significant liability and losses if claims of this type arise.

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If the loans that we acquire do not comply with applicable laws, we may be subject to material penalties.

Loans that we acquire may be subject to U.S. federal, state or local laws. Real estate lenders and borrowers may be responsible for compliance with a wide range of laws intended to protect the public interest, including, without limitation, the Americans with Disabilities Act and local zoning laws. If we or the Adviser fail to comply with such laws in relation to a loan that we have originated or acquired, legal penalties may be imposed, which could materially and adversely affect us. Jurisdictions with "one action," "security first" and/or "antideficiency rules" may limit our ability to foreclose on a collateral property or to realize on obligations secured by a collateral property. In the future, new laws may be enacted or imposed by U.S. federal, state or local governmental entities, and such laws could have a material adverse effect on us and our operations.

A prolonged economic slowdown, a recession or declining real estate values could materially and adversely affect us.

We believe that the risks associated with our investments will be more severe during periods of economic slowdown or recession, especially if these periods are accompanied by declining real estate values. Consequently, our investment strategy may be adversely affected by prolonged economic downturns or recessions where declining real estate values would likely reduce the level of new mortgage and other real estate related loan originations since borrowers often use the appreciation in the value of their existing properties to support the purchase or investment in additional properties. Borrowers may also be less able to pay principal and interest on our loans if the value of their real estate declines. Further, declining real estate values significantly increase the likelihood that we will incur losses on our loans in the event of default because the value of our collateral may be insufficient to cover our cost on the loan. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect our ability to originate or acquire loans, which would materially and adversely affect our results of operations, financial condition, liquidity and business and our ability to make or sustain distributions to our shareholders.

Real estate valuation is inherently subjective and uncertain.

The valuation of real estate is inherently subjective due to, among other factors, the individual nature of each property, its location, its expected future rental revenues and the valuation methodology adopted. The valuations of our real estate assets may not be precise and may be based on assumptions and methodologies that are inaccurate. Our valuations of our collateral properties may be wrong and we may incur losses. After receipt of the Deregistration Order, the Fund will value its investments using fair value measurements, in accordance with GAAP accounting principles. Fair value measurements are determined based on the assumptions that market participants would use in pricing an asset or liability. As a basis for considering market participant assumptions in fair value measurements, ASC 820 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy):

- Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Fund has the ability to access.
- Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates and yield curves that are observable at commonly quoted intervals.
- Level 3 inputs are the unobservable inputs for the asset or liability, which are typically based on an entity's own assumption, as there is little, if any, related market activity. In instances where the determination of the fair value measurement is based on input from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety.

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The Fund's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability. The Fund will utilize independent third parties to perform the allocation of value analysis for each property acquisition and to perform the market valuations on its derivative financial instruments and has established policies, as described above, processes and procedures intended to ensure that the valuation methodologies for investments and derivative financial instruments are fair and consistent as of the measurement date.

We are subject to losses that are either uninsurable, not economically insurable or that are in excess of our insurance coverage.

There are certain types of losses (including, but not limited to, losses arising from environmental conditions, earthquakes, tornados and hurricanes, acts of war or certain kinds of terrorist attacks) that are not insured, in full or in part, because they are either uninsurable or the cost of insurance makes it, in our belief, economically impractical to maintain such coverage. We carry commercial general liability insurance, property insurance and terrorism insurance with respect to our communities with limits and on terms we consider commercially reasonable. If an uninsured loss or liability were to occur, whether because of a lack of insurance coverage or a loss in excess of insured limits, we could lose our capital invested in a community, as well as the anticipated future revenues from such community. We would also continue to be obligated to repay any mortgage indebtedness or other obligations related to the community. If an uninsured liability to a third party were to occur, we would incur the cost of defense and settlement with, or court ordered damages to, that third party. A significant uninsured property or liability loss could materially and adversely affect our business and our financial condition and results of operations.

Our environmental assessments may not identify all potential environmental liabilities and our remediation actions may be insufficient.

Properties being considered for potential acquisition by us are subjected to at least a Phase I or similar environmental assessment prior to closing, which generally does not involve invasive techniques such as soil or ground water sampling. A Phase II assessment is conducted if recommended in the Phase I report. These assessments, together with subsurface assessments conducted on some properties, have not revealed, and we are not otherwise aware of, any environmental conditions that we believe would have a material adverse effect on our business, assets, financial condition or results of operations. However, such environmental assessments may not identify all potential environmental liabilities. Moreover, we may in the future discover adverse environmental conditions at our communities, including at communities we acquire in the future, which may have a material adverse effect on our business, assets, financial condition or results of operations. In connection with our ownership, operation and selective development of communities, from time to time we undertake substantial remedial action in response to the presence of subsurface or other contaminants, including contaminants in soil, groundwater and soil vapor beneath or affecting our buildings. In some cases, an indemnity exists upon which we may be able to rely if environmental liability arises from the contamination, or if remediation costs exceed estimates. We can provide no assurance, however, that all necessary remediation actions have been or will be undertaken at our communities or that we will be indemnified, in full or at all, in the event that environmental liability arises.

Compliance with various laws and regulations, including accessibility, building and health and safety laws and regulations, may be costly, may adversely affect our operations or expose us to liability.

In addition to compliance with environmental regulations, we must comply with various laws and regulations such as accessibility, building, zoning, landlord/tenant and health and safety laws and regulations, including, but not limited to, the ADA and the FHA. Some of those laws and regulations may conflict with one another or be subject to limited judicial or regulatory interpretations. Under those laws and regulations, we may be liable for, among other things, the costs of bringing our properties into compliance with the statutory and regulatory requirements. Noncompliance with certain of these laws and regulations may result in liability without regard to

fault and the imposition of fines and could give rise to actions brought against us by governmental entities and/or third parties who claim to be or have been damaged as a consequence of an apartment not being in compliance with the subject laws and regulations. As part of our due diligence procedures in connection with the acquisition of a property, we typically conduct an investigation of the property's compliance with known laws and regulatory requirements with which we must comply once we acquire a property, including a review of compliance with the ADA and local zoning regulations. Our investigations and these assessments may not have revealed, and may not with respect to future acquisitions reveal, all potential noncompliance issues or related liabilities and we can provide no assurance that our development properties have been, or that our future development projects will be, designed and built in accordance with all applicable legal requirements.

The phase out or transitioning of LIBOR may negatively impact our business, financial results and cash flows.

LIBOR is currently expected to be phased out in 2021. At this time, no consensus exists as to what rate or rates will become accepted alternatives to LIBOR, although the U.S. Federal Reserve, in connection with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, is considering replacing U.S. dollar LIBOR with the Secured Overnight Financing Rate ("SOFR"). Given the inherent differences between LIBOR and SOFR, or any other alternative benchmark rate that may be established, there are many uncertainties regarding a transition from LIBOR, including but not limited, to the need to amend all contracts with LIBOR as the referenced rate and how this will impact the cost of variable rate debt and certain derivative financial instruments. In addition, SOFR or other replacement rates may fail to gain market acceptance. Any failure of SOFR or alternative reference rates to gain market acceptance could adversely affect the return on, value of and market for securities linked to such rates.

With respect to our LIBOR-based debt financing arrangements, if LIBOR is not able to be determined we currently expect that the determination of interest would be revised as provided under the agreements or amended as necessary to provide for an interest rate that approximates the existing interest rate as calculated in accordance with LIBOR. Despite our current expectations, we cannot be sure that, if LIBOR is phased out or transitioned, the changes to the determination of interest under our agreements would approximate the current calculation in accordance with LIBOR. We do not know what standard, if any, will replace LIBOR if it is phased out or transitioned. If the determination of interest does not, or if we cannot forecast with sufficient confidence that it will, approximate the current calculation in accordance with LIBOR, we may incur additional costs, our investment income, net of interest expense, may decline, we may lose investment opportunities or make unsuccessful investments due to not being able to accurately price our proposed investments and our cash flows may be negatively impacted.

Investments in commercial mortgage-backed securities ("CMBS") and other structured finance investments pose additional risks, including the sensitivity of such investments to economic downturns, the illiquidity of such investments, the risk that the servicer or manager may take actions that could adversely affect our interests and the possibility that the CMBS market will be significantly affected by current or future regulation.

We generally do not expect to make investments in senior CMBS classes, but we may invest in CMBS and similar structured finance investments which are subordinated classes of securities in a structure of securities secured by a pool of mortgages or loans. Such subordinated securities are the first, or among the first, to bear the loss upon a restructuring or liquidation of the underlying collateral and the last to receive payment of interest and principal. There is generally only a nominal amount of equity or other debt securities junior to such positions, if any, issued in such structures. The values of such subordinated interests tend to be much more sensitive to adverse economic downturns and underlying borrower developments than more senior securities. A projection of an economic downturn, for example, could cause a decline in the price of lower status CMBS or other similar securities because the ability of borrowers to make principal and interest payments on the mortgages or loans underlying such securities may be expected to become impaired.

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Subordinate CMBS classes are generally not actively traded and are relatively illiquid investments, and volatility in the trading markets for those investments may cause their value to decline materially and quickly. In addition, if the underlying mortgage portfolio has been overvalued by the originator, or if the values subsequently decline and, as a result, less collateral value is available to satisfy interest and principal payments and any other fees in connection with the trust or other conduit arrangement for such securities, we may incur significant losses. Also, with respect to the CMBS and similar structured finance investments in which we may invest, control over the related underlying loans will be exercised through a special servicer or collateral manager designated by a "directing certificate holder" or a "controlling class representative," or otherwise pursuant to the related securitization documents. We may not have the right to appoint the directing certificate holder or otherwise direct the special servicing or collateral management of classes of existing series of CMBS or similar structured finance investments that we acquire. With respect to the management and servicing of these loans, the related special servicers or collateral managers may take actions that could adversely affect our interests.

Risks Related to Our Organization and Structure

The Board may revoke our REIT election at any time.

The Board may revoke or otherwise terminate our REIT election without the approval of shareholders if it determines that it is no longer in the Fund's best interests to continue to qualify for taxation as a REIT. If we cease to qualify for taxation as a REIT, we would become subject to U.S. federal income tax on our taxable income and would no longer be required to distribute most of our net taxable income to shareholders, which may have adverse consequences on the total return and/or distributions made to our shareholders. See "Risks Related to Our Conversion to a REIT—Our failure to qualify for taxation as a REIT would cause our common shares to be delisted from the NYSE," "Risks Related to Our Taxation" and Appendix C.

We may sell our common shares at a price below net asset value without shareholder approval.

Section 23(b) of the 1940 Act generally prohibits closed-end investment companies from selling their common shares at a price below current NAV. After issuance of the Deregistration Order, we may offer our common shares at below net asset value without shareholder approval.

Our intention to remain exempt from registration under the 1940 Act will impose limits on our operations.

After we obtain the Deregistration Order, we believe we will not be considered an investment company under Section 3(a)(1)(A) of the 1940 Act because we will not engage primarily, or hold ourselves out as being engaged primarily, in the business of investing, reinvesting or trading in securities and may qualify for exclusion under Section 3(c)(5)(C), as discussed in further detail below.

We may conduct our business, in whole or in part, through wholly or majority owned subsidiaries. Under Section 3(a)(1)(C) of the 1940 Act, the securities issued by these subsidiaries that are excepted from the definition of "investment company" under Section 3(c)(1) or Section 3(c)(7) of the 1940 Act, together with any other investment securities we may own, may not have a combined value in excess of 40% of the value of our total assets (exclusive of U.S. Government securities and cash items) on an unconsolidated basis. This requirement limits the types of businesses in which we may engage through subsidiaries. In addition, the assets we may acquire are limited by the provisions of the 1940 Act and the rules and regulations promulgated under the 1940 Act, which may adversely affect our business.

If the value of securities issued by our subsidiaries that are excepted from the definition of "investment company" by Section 3(c)(1) or 3(c)(7) of the 1940 Act, together with any other investment securities we own, exceeds 40% of our total assets (exclusive of U.S. Government securities and cash items) on an unconsolidated basis, or if one or more of such subsidiaries fails to maintain an exception or exemption from the 1940 Act, we could, among other things, be required to either (a) substantially change the manner in which we conduct our

operations to avoid being required to re-register as an investment company or (b) re-register as an investment company under the 1940 Act, either of which could have an adverse effect on us and the market price of our common shares. If we or any of our subsidiaries were required to re-register as an investment company under the 1940 Act, the registered entity would once again become subject to substantial regulation with respect to capital structure (including the ability to use leverage), management, operations, transactions with affiliated persons (as defined in the 1940 Act), portfolio composition, including restrictions with respect to diversification and industry concentration, compliance with reporting, record keeping, voting, proxy disclosure and other rules and regulations that would significantly change our diversified REIT operations.

We and certain subsidiaries that we may form in the future may rely upon the exemption from registration as an investment company under the 1940 Act pursuant to Section 3(c)(5)(C) of the 1940 Act, which is available for entities "primarily engaged" in the business of "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate." This exemption generally requires that at least 55% of our or our applicable subsidiaries' assets must be comprised of qualifying real estate assets and at least 80% of our or each of our applicable subsidiaries' portfolios must be comprised of qualifying real estate assets and real estate related assets under the 1940 Act. To the extent that we or any of our subsidiaries rely on Section 3(c)(5)(C) of the 1940 Act, we expect to rely on guidance published by the SEC staff or on our analyses of such guidance to determine which assets are qualifying real estate assets and real estate related assets. However, the SEC's guidance is more than 25 years old and was issued in accordance with factual situations that may be different from ours. No assurance can be given that the SEC staff will concur with our classification of our assets. In addition, the SEC staff may, in the future, issue further guidance that may require us to re-classify our assets for purposes of qualifying for an exemption from registration under the 1940 Act. If we are required to re-classify our assets, we may no longer be in compliance with the exclusion from the definition of an "investment company" provided by Section 3(c)(5)(C) of the 1940 Act. To the extent that the SEC staff publishes new or different guidance with respect to any assets we have determined to be qualifying real estate assets, we may be required to adjust our strategy accordingly. In addition, we may be limited in our ability to make certain investments, and these limitations could result in a subsidiary holding assets we might wish to sell or selling assets we might wish to hold.

The SEC has not published guidance with respect to the treatment of CMBS for purposes of the Section 3(c)(5)(C) exemption. Unless we receive further guidance from the SEC or its staff with respect to CMBS, we intend to treat CMBS as a real estate related asset.

We or certain of our subsidiaries may also rely on the exemption provided by Section 3(c)(6) of the 1940 Act. The SEC staff has issued little interpretive guidance with respect to Section 3(c)(6) of the 1940 Act and any guidance published by the staff may require us to adjust our strategy accordingly. We intend to structure and conduct our business in a manner that does not require our or our subsidiaries' registration under the 1940 Act and, in so structuring and conducting our business, we may rely on any available exemption from registration, or exclusion from the definition of "investment company," under the 1940 Act.

We will determine whether an entity is one of our majority owned subsidiaries. The 1940 Act defines a majority owned subsidiary of a person as a company 50% or more of the outstanding voting securities of which are owned by such person, or by another company which is a majority owned subsidiary of such person. The 1940 Act further defines voting securities as any security presently entitling the owner or holder thereof to vote for the election of directors of a company. We will treat companies in which we own a majority of the outstanding voting securities as majority owned subsidiaries for purposes of the 40% test described above. We have not requested the SEC to approve our treatment of any company as a majority owned subsidiary and the SEC has not done so. If the SEC were to disagree with our treatment of one or more companies as majority owned subsidiaries, we might need to adjust our strategy and our assets in order to continue to pass the 40% test. Any such adjustment in our strategy could have a material adverse effect on us.

There can be no assurance that the laws and regulations governing the 1940 Act status of REITs, including the SEC or its staff providing more specific or different guidance regarding these exemptions, will not change in a

manner that adversely affects our operations. If we or our subsidiaries fail to maintain an exception or exemption from the 1940 Act, we could, among other things, be required either to (a) change the manner in which we conduct our operations to avoid being required to re-register as an investment company, (b) sell our assets in a manner that, or at a time when, we would not otherwise choose to do so or (c) re-register as an investment company, any of which could negatively affect the value of our common shares, the sustainability of our business, and our ability to make distributions, which could have an adverse effect on our business and the market price for our common shares.

Rapid and steep declines in the values of our qualifying real estate or real estate related investments may make it more difficult for us to maintain our qualification for taxation as a REIT or exemption from the 1940 Act.

If the market value or income potential of our qualifying real estate or real estate related investments declines as a result of increased interest rates or other factors, we may need to increase our qualifying real estate or real estate related investments and income and/or liquidate our nonqualifying assets in order to maintain our qualification for taxation as a REIT or our exemption from registration under the 1940 Act. If the decline in real estate asset values and/or income occurs quickly, this may be especially difficult to accomplish. This difficulty may be exacerbated by the illiquid nature of any nonqualifying assets that we may own. We may have to make investment decisions that we otherwise would not make absent the REIT and 1940 Act considerations, and those decisions may cause us to experience losses and reduce the market trading price of our common shares.

Risks Related to Financing

We may incur significant debt, and we anticipate that, following our receipt of the Deregistration Order, our amended organizational documents will contain no limit on the amount of debt we may incur.

Subject to market conditions and availability, we may incur significant debt through repurchase or credit facilities (including term loans and revolving facilities), warehouse facilities and structured financing arrangements, public and private debt issuances or otherwise. The amount of leverage we may use will vary depending on our available investment opportunities, our available capital, our ability to obtain and access financing arrangements with lenders and the lenders' and our estimate of the stability of our investment portfolio's cash flow. We anticipate that, following our receipt of the Deregistration Order, our amended organizational documents will contain no limit on the amount of debt we may incur, and we would be able to significantly increase the amount of leverage we utilize at any time without approval of our shareholders. The amount of leverage on individual assets may vary, with leverage on some assets substantially higher than others. Leverage can enhance our potential returns but can also exacerbate our losses.

Incurring substantial debt could subject us to many risks that, if realized, would materially and adversely affect us, including the risk that:

- our cash flow from operations may be insufficient to make required payments of principal of and interest on the debt or we may fail to comply with covenants contained in our debt instruments;
- our debt may increase our vulnerability to adverse economic, market and industry conditions with no assurance that our investment yields will increase to match our higher financing costs;
- we may be required to dedicate a substantial portion of our cash flow from operations to payments on our debt, thereby reducing funds available for operations, future business opportunities, distributions to our shareholders or other purposes; and
- we may not be able to refinance maturing debts.

We cannot be sure that our leverage strategies will be successful.

We may be unable to access capital.

Our access to capital depends upon a number of factors, some of which we have little or no control over, including:

- general economic, market or industry conditions;
- the market's view of the quality of our assets;
- the market's perception of our growth potential;
- our current and potential future earnings and distributions to our shareholders; and
- the value of our securities.

If regulatory capital requirements imposed on our lenders change, they may be required to limit, or increase the cost of, financing they provide to us. This could potentially increase our financing costs and reduce our liquidity or require us to sell assets at an inopportune time or price.

In order to grow our business, we may have to rely on additional equity issuances, which may be dilutive to our shareholders, or on debt financings which may require us to use a large portion of our cash flow from operations to fund our debt service obligations, thereby reducing funds available for our operations, future business opportunities, distributions to our shareholders or other purposes. We cannot be sure that we will have access to such debt or equity capital on favorable terms at the desired times, or at all, which may cause us to curtail our investment activities or dispose of assets at an inopportune time or price, which could negatively affect our financial condition, results of operations and ability to make or sustain our distributions to our shareholders.

If the market value of our common shares declines, our cost of equity capital will increase, and we may not be able to raise equity capital by issuing additional equity securities.

The duration of our debt leverage and our investments may not match.

We generally intend to structure our debt leverage so that we minimize the difference between the term of our investments and the term of the leverage we use to finance them; however, we may not succeed in doing so. In the event that our leverage is for a shorter term than our investments, we may not be able to extend or find appropriate replacement leverage, which could require us to sell certain investments before we otherwise might. In the event that our leverage is for a longer term than our investments, we may not be able to replace our investments as they mature with new investments or at all, which could negatively impact our earnings.

We intend to structure our leverage so that we minimize the difference between the index of our investments and the index of our debt leverage, by financing floating rate investments with floating rate leverage and fixed rate investments with fixed rate leverage. If such a floating rate or fixed rate product is not available to us on reasonable terms, we may use hedging instruments to create such a match. Our attempts to mitigate the risk of a mismatch with the duration or index of our investments and leverage will be subject to factors outside of our control, such as the availability to us of favorable financing and hedging options, and we may not be successful.

The risks of duration mismatches are magnified by the potential for the extension of loans in order to maximize the likelihood and magnitude of their recovery value in the event the loans experience credit or performance challenges; use of these asset management practices would effectively extend the duration of our investments, while our liabilities may have set maturity dates.

Lenders may require us to enter into restrictive covenants that adversely impact our operations.

When we obtain debt financing, lenders (especially in the case of bank credit facilities) may impose restrictions on us that impact our ability to incur additional debt, make certain investments, reduce liquidity below certain levels, make distributions to our shareholders, redeem debt or equity securities and impact our flexibility to

determine our operating and investment strategies. For example, our lenders may restrict, among other things, our ability to repurchase our shares, distribute more than a certain amount of our net income or funds from operations to our shareholders, use leverage beyond certain amounts, sell assets, engage in mergers or consolidations, grant liens or enter into transactions with affiliates. These covenants and restrictions may make it difficult for us to satisfy the qualification requirements necessary to maintain our qualification for taxation as a REIT under the IRC.

Any repurchase agreements or bank credit facilities that we may enter will likely require us to provide additional collateral or pay down debt.

We expect that that we may utilize repurchase agreements, bank credit facilities (including term loans and revolving facilities) or other repurchase facilities we may enter to finance some of our investments. Such financing arrangements would involve the risk that the value of the loans sold by us or pledged to the provider of the repurchase agreement or bank credit facility may decline, and, in such circumstances, likely would require us to provide additional collateral or to repay all or a portion of the funds advanced. Posting additional collateral would reduce our liquidity and limit our ability to leverage our assets. If we cannot meet our lender's requirements, the lender might accelerate our indebtedness, increase the interest rate on advanced funds or terminate our ability to borrow additional funds, which could materially and adversely affect our financial condition and ability to implement our investment strategy. The providers of repurchase agreement financing and bank credit facilities may also require us to maintain a certain amount of cash or set aside assets sufficient to maintain a specified liquidity position that would allow us to satisfy our collateral obligations. Currently, we have no repurchase agreements or bank credit facilities in place, and there can be no assurance that we will be able to obtain such financing arrangements on favorable terms, or at all.

Any default in a repurchase agreement will likely cause us to experience a loss.

If any counterparty to a repurchase transaction or the counterparty to any repurchase financing arrangement we may enter defaults on its obligation to resell the underlying asset back to us at the end of the transaction term, or if the value of the underlying asset has declined as of the end of that term, or if we default on our obligations under such repurchase agreement, we will likely incur a loss on such repurchase transactions.

Risks Related to Our Relationship with the Adviser and its Affiliates

We are dependent on the Adviser, its affiliates and their personnel. We may be unable to find suitable replacements if our management agreement is terminated.

NexPoint Advisors, L.P., which serves as the investment adviser of the Fund, is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940, as amended and is an affiliate of Highland Capital Management, L.P. ("HCMLP"). Under the general supervision of the Board, the Adviser will carry out the investment and reinvestment of the net assets of the Fund, will furnish continuously an investment program with respect to the Fund, and determine which securities should be purchased, sold or exchanged. In addition, the Adviser will supervise and provide oversight of the Fund's service providers. The Adviser, through a Shared Services Agreement with HCMLP (discussed below), will furnish to the Fund office facilities, equipment and personnel for servicing the management of the Fund. The Adviser will compensate all Adviser personnel who provide services to the Fund.

The Adviser has been historically affiliated through common control with HCMLP, an SEC-registered investment adviser. On October 16, 2019, HCMLP filed for Chapter 11 bankruptcy protection with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas. On January 9, 2020, the bankruptcy court approved a change of control of HCMLP, which involved the resignation of James Dondero as the sole director of, and the appointment of an independent board to, HCMLP's general partner. Mr. Dondero will, however, remain as an

employee of HCMLP and as portfolio manager for all funds and vehicles for which he currently holds such titles. Nevertheless, given Mr. Dondero's historic role with HCMLP and his continued ownership interest and roles with respect to the investment platform as a whole, as well as the shared services agreements between HCMLP and our Adviser, we still treat HCMLP and its affiliates as our affiliates for purposes hereof. Effective March 30, 2020, Mr. Dondero no longer reports beneficial ownership of shares held by HCMLP or its advised accounts. NexPoint is not a party to HCMLP's bankruptcy filing.

Pursuant to the Shared Services Agreement with HCMLP, the Adviser may utilize employees from HCMLP in connection with various services such as human resources, accounting, tax, valuation, information technology services, office space, employees, compliance and legal. We do not expect HCMLP's bankruptcy filings to impact its provision of services to NexPoint Advisors at this time.

The Adviser has broad discretion in operating our day-to-day business.

The Adviser is authorized to follow broad operating and investment guidelines and, therefore, has broad discretion in implementing our business plan and day-to-day activities. Our Board of Trustees periodically reviews our operating and investment guidelines and our operating activities, investments and financing arrangements, but it does not review or approve each decision made by the Adviser on our behalf. In addition, in conducting periodic reviews, our Board of Trustees relies primarily on information provided to it by the Adviser. The Adviser may exercise its discretion in a manner that results in investment returns that are substantially below expectations or that result in losses.

Substantial Conflicts of Interest. The Adviser and/or its general partner, limited partners, officers, affiliates and employees provide investment advice to other parties and manage other accounts and private investment vehicles similar to the Fund. For the purposes of this section, the term "NexPoint" shall include the Adviser and its affiliated investment advisors, including HCMLP. In connection with such other investment management activities, the Adviser and/or its general partner, limited partners, officers, affiliates and employees may decide to invest the funds of one or more other accounts or recommend the investment of funds by other parties, rather than the Fund's monies, in a particular security or strategy. In addition, the Adviser and such other persons will determine the allocation of funds from the Fund and such other accounts to investment strategies and techniques on whatever basis they consider appropriate or desirable in their sole and absolute discretion.

NexPoint has built a professional working environment, a firm-wide compliance culture and compliance procedures and systems designed to protect against potential incentives that may favor one account over another. NexPoint has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, NexPoint furnishes advisory services to numerous clients in addition to the Fund, and NexPoint may, consistent with applicable law, make investment recommendations to other clients or accounts (including accounts that have performance or higher fees paid to NexPoint or in which portfolio managers have a personal interest in the receipt of such fees) that may be the same as or different from those made to the Fund. In addition, NexPoint, its affiliates and any of their partners, directors, officers, stockholders or employees may or may not have an interest in the securities whose purchase and sale the Adviser recommends to the Fund. Actions with respect to securities of the same kind may be the same as or different from the action that the Adviser, or any of its affiliates, or any of their partners, directors, officers, stockholders or employees or any member of their families may take with respect to the same securities. Moreover, the Adviser may refrain from rendering any advice or services concerning securities of companies of which any of the Adviser's (or its affiliates') partners, directors, officers or employees are directors or officers, or companies as to which the Adviser or any of its affiliates or partners, directors, officers and employees of any of them has any substantial economic interest or possesses material non-public information. In addition to its various policies and procedures designed to address these issues, NexPoint includes disclosure regarding these matters to its clients in both its Form ADV and investment advisory agreements.

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The Adviser, its affiliates or their partners, directors, officers or employees similarly serve or may serve other entities that operate in the same or related lines of business, including accounts managed by an investment adviser affiliated with the Adviser. Accordingly, these individuals may have obligations to investors in those entities or funds or to other clients, the fulfillment of which might not be in the best interests of the Fund. As a result, the Adviser will face conflicts in the allocation of investment opportunities to the Fund and other funds and clients. In order to enable such affiliates to fulfill their fiduciary duties to each of the clients for which they have responsibility, the Adviser will endeavor to allocate investment opportunities in a fair and equitable manner, pursuant to policies and procedures adopted by the Adviser and its advisory affiliates that are designed to manage potential conflicts of interest, which may, subject to applicable regulatory constraints, involve pro rata co-investment by the Funds and such other clients or may involve a rotation of opportunities among the Funds and such other clients. The Fund will only make investments in which the Adviser or an affiliate hold an interest to the extent permitted under the 1940 Act and SEC staff interpretations or pursuant to the terms and conditions of the exemptive order received by the Adviser and certain funds affiliated with the Fund, dated April 19, 2016. For example, exemptive relief is not required for the Fund to invest in syndicated deals and secondary loan market transactions in which the Adviser or an affiliate has an interest where price is the only negotiated point. The order applies to all "Investment Companies," which includes future closed-end investment companies registered under the 1940 Act that are managed by the Adviser, which includes the Fund. The Fund, therefore, may in the future invest in accordance with the terms and conditions of the exemptive order. To mitigate any actual or perceived conflicts of interest, allocation of limited offering securities (such as IPOs and registered secondary offerings) to principal accounts that do not include third- party investors may only be made after all other client account orders for the security have been filled. However, there can be no assurance that such policies and procedures will in every case ensure fair and equitable allocations of investment opportunities, particularly when considered in hindsight.

Conflicts may arise in cases when clients and/or the Adviser and other affiliated entities invest in different parts of an issuer's capital structure, including circumstances in which one or more clients own private securities or obligations of an issuer and other clients may own public securities of the same issuer. In addition, one or more clients may invest in securities, or other financial instruments, of an issuer that are senior or junior to securities, or financial instruments, of the same issuer that are held by or acquired for, one or more other clients. For example, if such issuer encounters financial problems, decisions related to such securities (such as over the terms of any workout or proposed waivers and amendments to debt covenants) may raise conflicts of interests. In such a distressed situation, a client holding debt securities of the issuer may be better served by a liquidation of the issuer in which it may be paid in full, whereas a client holding equity securities of the issuer might prefer a reorganization that holds the potential to create value for the equity holders. In the event of conflicting interests within an issuer's capital structure, NexPoint will generally pursue the strategy that NexPoint believes best reflects what would be expected to be negotiated in an arm's length transaction, but in all instances with due consideration being given to NexPoint's fiduciary duties to each of its accounts (without regard to the nature of the accounts involved or fees received from such accounts). This strategy may be recommended by one or more NexPoint investment professionals. A single person may represent more than one part of an issuer's capital structure. The recommended course of action will be presented to the Adviser's conflicts committee for final determination as to how to proceed. NexPoint may elect, but is not required, to assign different teams to make recommendations for different parts of the capital structure as the Adviser's conflicts committee determines in its discretion. In the event any NexPoint personnel serve on the board of the subject company, they generally recuse themselves from voting on any board matter with respect to a transaction that has an asymmetrical impact on the capital structure. NexPoint personnel board members may still make recommendations to the Adviser's conflicts committee. If any such persons are also on the Adviser's conflicts committee, they may recuse themselves from the committee's determination. A portfolio manager with respect to any applicable NexPoint registered investment company clients ("Retail Accounts") participates in such discussions, but makes an independent determination as to which course of action he or she determines is in the best interest of the applicable Retail Accounts. NexPoint may use external counsel for guidance and assistance.

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The Adviser and its affiliates have both subjective and objective procedures and policies in place designed to manage potential conflicts of interest involving clients so that, for example, investment opportunities are allocated in a fair and equitable manner among the Fund and such other clients. An investment opportunity that is suitable for multiple clients of the Adviser and its affiliates may not be capable of being shared among some or all of such clients due to the limited scale of the opportunity or other factors, including regulatory restrictions imposed by the 1940 Act. There can be no assurance that the Adviser's or its affiliates' efforts to allocate any particular investment opportunity fairly among all clients for whom such opportunity is appropriate will result in an allocation of all or part of such opportunity to the Fund. Not all conflicts of interest can be expected to be resolved in favor of the Fund.

Another type of conflict may arise if one client account buys a security and another client sells or shorts the same security. Currently, such opposing positions are generally not permitted within the same account without prior trade approval by the Adviser's Chief Compliance Officer. However, a portfolio manager may enter into opposing positions for different clients to the extent each such client has a different investment objective and each such position is consistent with the investment objective of the applicable client. In addition, transactions in investments by one or more affiliated client accounts may have the effect of diluting or otherwise disadvantaging the values, prices or investment strategies of other client accounts.

Because certain client accounts may have investment objectives, strategies or legal, contractual, tax or other requirements that differ (such as the need to take tax losses, realize profits, raise cash, diversification, etc.), an affiliated advisor may purchase, sell or continue to hold securities for certain client accounts contrary to other recommendations. In addition, an affiliated advisor may be permitted to sell securities or instruments short for certain client accounts and may not be permitted to do so for other affiliated client accounts.

As a result of the Fund's arrangements with NexPoint, there may be times when NexPoint, the Adviser or their affiliates have interests that differ from those of the Fund's shareholders, giving rise to a conflict of interest. NexPoint and the Adviser are under common ownership, and the Fund's officers serve or may serve as officers, directors or principals of entities that operate in the same or a related line of business as the Fund does, or of investment funds managed by the Adviser or its affiliates. Similarly, the Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund or its shareholders. For example, the Fund's officers have, and will continue to have, management responsibilities for other investment funds, accounts or other investment vehicles managed or sponsored by the Adviser and its affiliates. The Fund's investment objective may overlap, in part or in whole, with the investment objective of such affiliated investment funds, accounts or other investment vehicles. As a result, those individuals may face conflicts in the allocation of investment opportunities among the Fund and other investment funds or accounts advised by or affiliated with the Adviser. The Adviser will seek to allocate investment opportunities among eligible accounts in a manner that is fair and equitable over time and consistent with its allocation policy. However, the Fund can offer no assurance that such opportunities will be allocated to it fairly or equitably in the short-term or over time.

In addition, it is anticipated that a significant portion of the Fund's assets will be represented by REITs, asset-backed securities and/or collateralized loan obligations sponsored, organized and/or managed by NexPoint and its affiliates. The Adviser will monitor for conflicts of interest in accordance with its fiduciary duties and will provide the independent trustees of the Fund with an opportunity to periodically review the Fund's investments in such REITs, asset-backed securities and/or CLOs and assure themselves that continued investment in such securities remains in the best interests of the Fund and its shareholders. The Adviser may effect client cross-transactions where it causes a transaction to be effected between the Fund and another client advised by the Adviser or any of its affiliates. The Adviser may engage in a client cross-transaction involving the Fund any time that the Adviser believes such transaction to be fair to the Fund and the other client of the Adviser or its affiliates.

The Adviser may direct the Fund to acquire or dispose of investments in cross trades between the Fund and other clients of the Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, to the extent permitted by the 1940 Act and SEC staff interpretations, the Fund may make and/or hold an investment, including an investment in securities, in which the Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Fund may enhance the profitability of the Adviser's own investments in such companies.

Conflicts of interest as a result of our management structure and relationships may provoke dissident shareholder activities that result in significant costs.

Companies with business dealings with related persons and entities may more often be the target of dissident trustee nominations, dissident shareholder proposals and shareholder litigation alleging conflicts of interest in their business dealings. Our relationships with the Adviser and its affiliates, including HCMLP, may precipitate such activities. These activities, if instituted against us, could result in substantial costs and a diversion of our management's attention, even if such actions are without merit.

Our management agreement's fee and expense structure may not create proper incentives for the Adviser, which may increase the risk of an investment in our common shares.

Upon the effectiveness of the new management agreement, we expect to pay the Adviser base management fees regardless of the performance of our portfolio. The Adviser's entitlement to a base management fee that is not based upon our performance or results might reduce its incentive to devote its time and effort to seeking investments that provide attractive, risk adjusted returns for us. Because the base management fees will also be based in part on our outstanding equity, the Adviser may be incentivized to advance strategies that increase our equity. Our increasing our equity capital by selling common shares will usually be dilutive to existing shareholders and may not improve returns for our shareholders or the market price of our common shares. In addition, it is expected that we will be required to pay or to reimburse the Adviser for all costs and expenses of its operations (other than the costs of the Adviser's employees who provide services to us), including but not limited to, the costs of rent, utilities, office furniture, equipment, machinery and other overhead type expenses, the costs of legal, accounting, auditing, tax planning and tax return preparation, consulting services, diligence costs related to our investments, investor relations expenses and other professional services, and other costs and expenses not specifically required under our management agreement to be borne by the Adviser. We expect that some of these overhead, professional and other services will be provided by HCMLP pursuant to a Shared Services Agreement between the Adviser and HCMLP. We expect that our obligation to reimburse the Adviser for certain shared services costs may reduce the Adviser's incentive to efficiently manage those costs, which may increase our costs.

Our management agreement will be between related parties and may be less favorable to us than if it had been negotiated on an arm's length basis with an unrelated party.

Our management agreement will be between related parties and its terms, including fees payable to the Adviser, may be less favorable to us than if they had been negotiated on an arm's length basis between unrelated parties. We anticipate that pursuant to the terms of our management agreement, we will reimburse the Adviser for the fees and other costs it pays to HCMLP. Because of the relationships among us, the Adviser and HCMLP, the terms of our management agreement will not be negotiated on an arm's length basis, and we can provide no assurance that these terms will be as favorable to us as they would have been if our management agreement was negotiated on an arm's length basis between unrelated parties.

The Adviser does not guaranty our performance; moreover, we could experience poor performance or losses for which the Adviser would not be liable. The Adviser's liability is limited under our management agreement, and we will agree to indemnify the Adviser against certain liabilities.

We anticipate that pursuant to our management agreement, the Adviser will not assume any responsibility other than to render the services called for thereunder in good faith and will not be responsible for any action of our Board of Trustees in following or declining to follow its advice or recommendations. We could experience poor performance or losses for which the Adviser would not be liable. Under the terms of our management agreement, the Adviser and its affiliates and their respective directors, trustees, officers, shareholders, owners, members, managers, employees and personnel will not be liable to us or any of our Trustees, shareholders or subsidiaries for any acts or omissions related to the provision of services to us under our management agreement, except by reason of acts or omissions that are proved to constitute bad faith, fraud, intentional misconduct, gross negligence or reckless disregard of the duties of the Adviser under our management agreement. In addition, under the terms of our management agreement, we agree to indemnify, hold harmless and advance expenses to the Adviser and its affiliates and their respective directors, trustees, officers, shareholders, owners, members, managers, employees and personnel from and against all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever, including all reasonable attorneys', accountants', and experts' fees and expenses, arising from acts or omissions related to the provision of services to us or the performance of any matter pursuant to an instruction by our Board of Trustees, except to the extent it is proved that such acts or omissions constituted bad faith, fraud, intentional misconduct, gross negligence or reckless disregard of the duties of the Adviser under our management agreement. Such persons will also not be liable for trade errors that may result from ordinary negligence, including errors in the investment decision making or trade process.

The Adviser may change its processes for identifying, evaluating and managing investments and the personnel performing those functions for us without our or our shareholders' consent at any time.

The Adviser may change its personnel and processes for identifying, evaluating and managing investments for us without our or our shareholders' consent at any time. In addition, there can be no assurance that the Adviser will follow its processes. Changes in the Adviser's personnel and processes may result in fewer investment opportunities for us, inferior diligence and underwriting standards or adversely affect the collection of payments on, and the preservation of our rights with respect to, our investments, any of which may adversely affect our operating results.

The Adviser is subject to extensive regulation as an investment adviser, which could adversely affect its ability to manage our business.

The Adviser is subject to regulation as an investment adviser by various regulatory authorities that are charged with protecting the interests of its clients, including us. The Adviser could be subject to civil liability, criminal liability, or sanction, including revocation of its registration as an investment adviser, censures, fines, or temporary suspension or permanent bar from conducting business, if it is found to have violated any of the laws or regulations governing investment advisers. Any such liability or sanction could adversely affect the Adviser's ability to manage our business. The Adviser must continually address conflicts between its interests and those of its clients, including us. In addition, the SEC and other regulators have increased their scrutiny of conflicts of interest. The Adviser has procedures and controls that are reasonably designed to address these issues. However, appropriately dealing with conflicts of interest is complex and difficult and if the Adviser fails, or appears to fail, to deal appropriately with conflicts of interest, it could face litigation or regulatory proceedings or penalties, any of which could adversely affect its ability to manage our business.

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Risks Related to Our Securities

We may not be able to make or sustain distributions to our shareholders at any time in the future.

As a REIT, we will generally be required to distribute annually to our shareholders at least 90% of our REIT taxable income (which may be different than our income calculated according to with generally accepted accounting principles in the United States ("GAAP")), determined without regard to the deduction for dividends paid and excluding net capital gains, for us to maintain our qualification for taxation as a REIT under the IRC. Our ability to make or sustain distributions to our shareholders will be adversely affected if any of the risks described below occurs. Further, our making of distributions may be subject to restrictions in future debt obligations we may incur.

The timing and amount of any distributions will be determined at the discretion of our Board of Trustees and will depend on various factors that our Board of Trustees deems relevant, including our financial condition, our results of operations, our liquidity, our capital requirements, our Core Earnings, restrictive covenants in our financial or other contractual arrangements, general economic conditions in the United States, requirements to remain qualified for taxation as a REIT under the IRC and restrictions under the laws of Delaware.

We believe that a change in any one of the following factors could adversely affect our financial condition and results of operations and impair our ability to make or sustain distributions to our shareholders:

- the profitability of the investments we make;
- our ability to obtain debt leverage at a cost less than the returns we realize on our investments made with the proceeds of such debt leverage;
- our ability to make profitable additional investments in the future;
- defaults by our borrowers and decreases in the value of and income from our collateral properties; and
- our operating expenses exceeding the amounts we anticipate we will incur.

We cannot assure that we will be able to make or sustain distributions to our shareholders at any time in the future, that the level of any distributions we do make to our shareholders will achieve a market yield relative to the value of our common shares, or that we will be able to increase or even maintain our distribution level over time.

We may use future debt leverage to pay distributions to our shareholders.

If our earnings are at any time insufficient to fund distributions to our shareholders at the level which may in the future be established by our Board of Trustees, we may pay distributions to our shareholders with the proceeds of borrowings or other leverage or from sales of our assets. The use of borrowings or sale proceeds for distributions may dilute our shareholders' ownership interests in us. In addition, funding distributions to our shareholders from our future borrowings or asset sales may constitute a return of capital to our investors, which would have the effect of reducing our shareholders' bases in our common shares.

Changes in market conditions could adversely affect the value of our securities.

As with other publicly traded equity securities and REIT securities, the value of our common shares and other securities depends on various market conditions that are subject to change from time to time, including:

- the extent of investor interest in our securities;
- the general reputation of REITs and externally managed companies and the attractiveness of our equity securities in comparison to other equity securities, including securities issued by other real estate based companies or by other issuers less sensitive to rises in interest rates;
- our underlying asset value;

- investor confidence in the stock and bond markets, generally;
- market interest rates;
- national economic conditions;
- changes in tax laws;
- changes in our credit ratings; and
- general market conditions.

We believe that one of the factors that investors consider important in deciding whether to buy or sell equity securities of a REIT is the distribution rate, considered as a percentage of the price of the equity securities, relative to market interest rates. Interest rates have been at historically low levels for an extended period of time. There is a general market perception that REIT shares outperform in low interest rate environments and underperform in rising interest rate environments when compared to the broader market.

The U.S. Federal Reserve steadily increased the targeted federal funds rate over the last several years, but recently took action to decrease its federal funds rate and may continue to make adjustments in the near future. If the U.S. Federal Reserve increases interest rates, or if there is a market expectation of such increases, prospective purchasers of REIT equity securities may want to achieve a higher distribution rate. Thus, higher market interest rates, or the expectation of higher interest rates, could cause the value of our securities to decline.

Investing in our common shares involves a high degree of risk.

The investments that we intend to make in accordance with our investment objectives may result in a high amount of risk when compared to alternative investment options. Certain of our investments may be highly speculative and aggressive, and therefore an investment in our common shares may not be suitable for someone with low risk tolerance.

Further issuances of equity securities may be dilutive to current shareholders.

The interests of our existing shareholders could be diluted if we issue additional equity securities to finance future loan originations or acquisitions or to repay indebtedness. Our ability to execute our business strategy depends on our access to an appropriate blend of debt financing, which may include secured and unsecured debt, and equity financing, which may include common and preferred shares.

Our future offerings of debt or equity securities that rank senior to our common shares may adversely affect our shareholders.

If we decide in the future to issue debt or equity securities that rank senior to our common shares, it is likely that they will be governed by an indenture or other instrument containing covenants restricting our operating flexibility. Also, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of our common shares and may result in dilution to our shareholders. We and, indirectly, our shareholders, will bear the cost of issuing and servicing such securities. Because our decision to issue debt or equity securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or even estimate the amount, timing or nature of our future capital offerings. Thus our shareholders will bear the risk of our future offerings reducing the market price of our common shares and diluting the value of their common shares.

Risks Related to Our Taxation

Qualifying for taxation as a REIT involves highly technical and complex provisions of the IRC.

Qualification for taxation as a REIT involves the application of highly technical and complex IRC provisions for which only limited judicial and administrative authorities exist. Even a technical or inadvertent violation could

jeopardize our qualification for taxation as a REIT. Our qualification for taxation as a REIT will depend on the satisfaction of specified asset, income, organizational, distribution, shareholder ownership and other requirements on a continuing basis. Compliance with these requirements must be carefully monitored, which may be challenging depending on the size and complexity of the assets in our portfolio, a meaningful portion of which may not be qualifying REIT assets. There can be no assurance that the Adviser's personnel responsible for doing so will be able to successfully monitor our compliance or maintain our qualification for taxation as a REIT.

Our failure to qualify or remain qualified for taxation as a REIT under the IRC could have significant adverse consequences.

We intend to elect and qualify for taxation as a REIT under the IRC and to maintain that qualification thereafter. We intend to seek to qualify as a REIT for tax purposes for the taxable year beginning January 1, 2021; however, this time period is an estimate and may vary depending upon the pace at which we will be able to transition certain of the Fund's investments into real property or mortgages securing real estate. As a REIT, we generally will not pay federal or most state income taxes as long as we distribute all of our REIT taxable income and meet other qualifications set forth in the IRC. However, actual qualification for taxation as a REIT under the IRC depends on our satisfying complex statutory requirements, for which there are only limited judicial and administrative interpretations. We expect that by the beginning of the taxable year in which the Deregistration Order becomes effective that we will be organized, and that we will continue to be organized and will operate, in a manner that will allow us to qualify for taxation as a REIT under the IRC, pursuant to our timely election with our first REIT income tax return. However, we cannot be sure that, upon review or audit, the IRS will agree with this conclusion. Furthermore, we cannot be sure that the federal government, or any state or other taxation authority, will continue to afford favorable income tax treatment to REITs and their shareholders.

Maintaining our qualification for taxation as a REIT under the IRC will require us to continue to satisfy tests concerning, among other things, the nature of our assets, the sources of our income and the amounts we distribute to our shareholders. In order to meet these requirements, it may be necessary for us to sell or forgo attractive investments.

If we fail to qualify or remain qualified for taxation as a REIT under the IRC, then our ability to raise capital might be adversely affected, we may be subject to material amounts of federal and state income taxes, our cash available for distribution to our shareholders could be reduced, and the market price of our common shares could decline. In addition, if we lose or revoke our qualification for taxation as a REIT under the IRC for a taxable year, we will generally be prevented from requalifying for taxation as a REIT for the next four taxable years. Moreover, we currently own certain assets through subsidiary REITs, and if we were to cause such any subsidiary REIT to liquidate for U.S. federal income tax purposes, or to otherwise transfer assets to us, in a manner that causes us to be a "successor" to such REIT, a failure of such subsidiary REIT to qualify as a REIT (including for past years) could prohibit us from being eligible to elect to be subject to tax as a REIT prior to the fifth year following the year of such failure.

REIT distribution requirements could adversely affect us and our shareholders.

We generally must distribute annually at least 90% of our REIT taxable income, subject to specified adjustments and excluding any net capital gain, in order to maintain our qualification for taxation as a REIT under the IRC. To the extent that we satisfy this distribution requirement, federal corporate income tax will not apply to the earnings that we distribute, but if we distribute less than 100% of our REIT taxable income, then we will be subject to federal corporate income tax on our undistributed taxable income. We intend to make distributions to our shareholders to comply with the REIT requirements of the IRC. In addition, we will be subject to a 4% nondeductible excise tax if the actual amount that we pay out to our shareholders in a calendar year is less than a minimum amount specified under federal tax laws.

We may experience timing and other differences, for example on account of income and expense accrual principles under U.S. federal income tax laws, or on account of repaying outstanding indebtedness, whereby our available cash is less than, or does not otherwise correspond to, our taxable income. In addition, the IRC generally requires that our income be taken into account no later than when it is taken into account on applicable financial statements, even if financial statements take such income into account before it would otherwise accrue. As a result, from time to time we may not have sufficient cash to meet our REIT distribution requirements. If we do not have other funds available in these situations, among other things, we may borrow funds on unfavorable terms, sell investments at disadvantageous prices, distribute amounts that would otherwise be invested in future acquisitions, or pay taxable distributions partly in shares in order to make distributions sufficient to enable us to pay out enough of our taxable income to satisfy the REIT distribution requirement and to avoid corporate income tax and the 4% excise tax in a particular year. These alternatives could increase our costs or reduce our shareholders' equity. Thus, compliance with the REIT distribution requirements may hinder our ability to grow, which could cause the market price of our common shares to decline.

Complying with the REIT requirements may negatively impact our investment returns or cause us to forgo otherwise attractive opportunities, liquidate assets or contribute assets to a TRS.

To qualify as a REIT for U.S. federal income tax purposes, we must continually satisfy tests concerning, among other things, the sources of our income, the nature and diversification of our assets, the amounts we distribute to our stockholders and the ownership of our stock. As a result of these tests, we may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution, forgo otherwise attractive investment opportunities, liquidate assets in adverse market conditions or contribute assets to a taxable REIT subsidiary ("TRS") that is subject to regular corporate federal income tax. Thus, compliance with the REIT requirements may hinder our ability to make and retain certain attractive investments.

We may be required to report taxable income from particular investments in excess of the economic income we ultimately realize from them.

We may acquire debt instruments in the secondary market for less than their face amount. Though the discount at which such debt instruments are acquired may reflect doubts about their ultimate collectability rather than current market interest rates, the amount of such discount will nevertheless generally be treated as "market discount" for U.S. federal income tax purposes. Accrued market discount is generally reported as income when, and to the extent that, any payment of principal of the debt instrument is made. Payments on commercial mortgage loans are ordinarily made monthly, and consequently accrued market discount may have to be included in income each month as if the debt instrument were assured of ultimately being collected in full. If we collect less on the debt instrument than our purchase price plus the market discount we had previously reported as income, we may not be able to benefit from any offsetting loss deductions.

Moreover, some of the debt instruments that we might acquire may have been issued with original issue discount. We will be required to report such original issue discount based on a constant yield method and will be taxed based on the assumption that all future projected payments due on such debt instruments will be made. If such debt instruments turn out not to be fully collectible, an offsetting loss deduction will become available only in the later year that uncollectibility is provable.

Finally, in the event that any debt instruments acquired by us are delinquent as to mandatory principal and interest payments, or in the event payments with respect to a particular debt instrument are not made when due, we may nonetheless be required to continue to recognize the unpaid interest as taxable income as it accrues, despite doubt as to its ultimate collectability. Similarly, we may be required to accrue interest income with respect to a debt instrument at its stated rate regardless of whether corresponding cash payments are received or are ultimately collectible. In each case, while we would in general ultimately have an offsetting loss deduction available to us when such interest was determined to be uncollectible, the utility of that deduction could depend on our having taxable income in that later year or thereafter.

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We may in the future choose to pay dividends in our own shares, in which case you may be required to pay income taxes in excess of the cash dividends that you receive.

We may in the future distribute taxable dividends that are payable in part in our shares. Under current guidance, as much as 80% (or, for distributions declared before December 31, 2020, 90%) of such distributions may be payable in shares. Taxable shareholders receiving such dividends will be required to include the full amount of the dividend as ordinary income to the extent of our current and accumulated earnings and profits for U.S. federal income tax purposes. As a result, shareholders may be required to pay income taxes with respect to these dividends in excess of the cash dividends received. If a shareholder sells the shares that it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our shares at the time of the sale. Furthermore, with respect to some non-U.S. shareholders, we may be required to withhold U.S. federal income tax with respect to these dividends, including in respect of all or a part of the dividend that is payable in our shares. In addition, if a significant number of our shareholders determine to sell our shares in order to pay taxes owed on dividends paid in shares, then that may put downward pressure on the trading price of our shares.

Distributions to shareholders generally will not qualify for reduced tax rates applicable to "qualified dividends."

Dividends payable by U.S. corporations to noncorporate shareholders, such as individuals, trusts and estates, are generally eligible for reduced U.S. federal income tax rates applicable to "qualified dividends." Distributions paid by REITs generally are not treated as "qualified dividends" under the IRC and the reduced rates applicable to such dividends do not generally apply. For tax years beginning before 2026, REIT dividends paid to noncorporate shareholders are generally taxed at an effective tax rate lower than applicable ordinary income tax rates due to the availability of a deduction under the IRC for specified forms of income from passthrough entities. However, more favorable rates will nevertheless continue to apply to regular corporate "qualified" dividends, which may cause some investors to perceive that an investment in a REIT is less attractive than an investment in a non-REIT entity that pays dividends, thereby reducing the demand and market price of our common shares.

Even if we qualify and remain qualified for taxation as a REIT under the IRC, we may face other tax liabilities that reduce our cash flow.

Even if we qualify and remain qualified for taxation as a REIT under the IRC, we may be subject to federal, state and local taxes on our income and assets, including taxes on any undistributed income, excise taxes, state or local income, property and transfer taxes, such as mortgage recording taxes, and other taxes. Also, some jurisdictions may in the future limit or eliminate favorable income tax deductions, including the dividends paid deduction, which could increase our income tax expense. In addition, in order to meet the requirements for qualification and taxation as a REIT under the IRC, prevent the recognition of particular types of non-cash income, or avert the imposition of a 100% tax that applies to specified gains derived by a REIT from dealer property or inventory, we may hold or dispose of some of our assets and conduct some of our operations through TRSs or other subsidiary corporations that will be subject to corporate level income tax at regular rates. In addition, while we intend that our transactions with our TRSs will be conducted on arm's length bases, we may be subject to a 100% excise tax on a transaction that the IRS or a court determines was not conducted at arm's length. Any of these or other taxes would decrease cash available for distribution to our shareholders.

The failure of a mezzanine loan to qualify as a real estate asset could adversely affect our ability to remain qualified for taxation as a REIT under the IRC.

We may originate or acquire mezzanine loans, for which the IRS has provided a safe harbor but not rules of substantive law. Pursuant to the safe harbor, if a mezzanine loan meets specified requirements, it will be treated by the IRS as a real estate asset for purposes of the REIT asset tests, and interest derived from the mezzanine

loan will be treated as qualifying mortgage interest for purposes of the 75% gross income test applicable to REITs. We may originate or acquire mezzanine loans that do not meet all of the requirements of this safe harbor. In the event we own a mezzanine loan that does not meet the safe harbor requirements and the IRS successfully challenges the loan's treatment as a real estate asset for purposes of the REIT asset and income tests, then we could fail to qualify for taxation as a REIT under the IRC.

We may fail to qualify for taxation as a REIT under the IRC if the IRS successfully challenges the treatment of certain debt instruments as debt for U.S. federal income tax purposes or successfully challenges the treatment of our preferred equity investments as equity for U.S. federal income tax purposes.

There is limited case law or administrative guidance addressing the treatment of certain debt instruments and preferred equity investments as debt or equity for U.S. federal income tax purposes. We expect that debt instruments that we may originate or acquire generally will be treated as debt for U.S. federal income tax purposes, and preferred equity investments that we may make generally will be treated as equity for U.S. federal income tax purposes, but we do not anticipate obtaining private letter rulings from the IRS and may not obtain opinions of counsel on the characterization of those investments for U.S. federal income tax purposes. If a debt instrument is treated as equity in a pass-through entity for federal income tax purposes, we will be treated as owning the assets held by the entity that issued the debt instrument and we will be treated as receiving our proportionate share of the income of that entity. If that entity owns nonqualifying assets or earns nonqualifying income, we may not be able to satisfy all of the REIT gross income and asset tests. Alternatively, if the IRS successfully asserts a preferred equity investment is debt for federal income tax purposes, then that investment may be treated as a nonqualifying asset for purposes of the 75% asset test and as producing nonqualifying income for the 75% gross income test. In addition, such an investment may be subject to the 10% value test and the 5% asset test, and it is possible that a preferred equity investment that is treated as debt for federal income tax purposes could cause us to fail one or more of the foregoing tests. Accordingly, we could fail to qualify for taxation as a REIT under the IRC if the IRS does not respect our classification of our debt instruments or preferred equity for federal income tax purposes.

The failure of assets subject to repurchase agreements to qualify as real estate assets could adversely affect our ability to qualify for taxation as a REIT under the IRC.

We may enter into financing arrangements that are structured as sale and repurchase agreements pursuant to which we will nominally sell assets to a counterparty and simultaneously enter into an agreement to repurchase these assets at a later date in exchange for a purchase price. Economically, these agreements are financings that are secured by the assets sold pursuant to those agreements. We believe that we will be treated for REIT asset and income test purposes as the owner of the assets that are the subject of any such sale and repurchase agreement notwithstanding that such agreement may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the IRS may assert that we did not own the assets during the term of the sale and repurchase agreement, in which case our qualification for taxation as a REIT may be jeopardized.

Complying with REIT requirements may limit our ability to hedge effectively and may cause us to incur tax liabilities.

The REIT provisions of the IRC substantially limit our ability to hedge our assets and liabilities. Any income from a hedging transaction that we enter into to manage risk of interest rate changes with respect to borrowings made or to be made to acquire or carry real estate assets does not constitute "gross income" for purposes of the 75% or 95% gross income tests that we must satisfy in order to maintain our qualification for taxation as a REIT under the IRC. As a result, a qualifying hedge transaction will neither assist nor hinder our compliance with the 75% and 95% gross income tests. To the extent that we enter into other types of hedging transactions, the income from those transactions is likely to be treated as nonqualifying income for purposes of both of these gross income tests. As a result of these rules, we may limit our use of advantageous hedging techniques or implement some

hedges through a TRS. This could increase the cost of our hedging activities because our TRS would be subject to tax on gains or expose us to greater risks associated with changes in the hedged items than we might otherwise want to bear. In addition, losses in our TRS will generally not provide any tax benefit, except for being carried forward against future taxable income in the TRS.

If we own assets or conduct operations that generate "excess inclusion income" outside of a TRS, our doing so could adversely affect our shareholders' taxation and could cause our shares to become ineligible for inclusion in leading market indexes.

Some leading market indexes exclude companies whose dividends to shareholders constitute "unrelated business taxable income" as defined by Section 512 of the IRC ("UBTI"). For purposes of the IRC, shareholder dividends attributable to a REIT's "excess inclusion income" are treated as UBTI to specified investors, and thus REITs that generate excess inclusion income are generally not eligible for inclusion in these market indexes. Furthermore, REIT dividends attributable to excess inclusion income cause both the REIT and its shareholders to experience a range of disruptive and adverse U.S. federal income tax consequences, including the recognition of UBTI by specified tax-exempt shareholders, the unavailability of treaty benefits to non-U.S. shareholders and the unavailability of net operating losses to offset such income with respect to U.S. taxable shareholders. We do not intend to acquire assets or enter into financing or other arrangements that will produce excess inclusion income for our shareholders. As a result, we may forgo investment or financing opportunities that we would otherwise have considered attractive or implement these arrangements through a TRS, which would increase the cost of these activities because TRSs are subject to U.S. federal income tax. Furthermore, our analysis regarding our investments' or activities' potential for generating excess inclusion income could be subject to challenge or we could affirmatively modify our position regarding the generation of excess inclusion income in the future. In either case, our shareholders could suffer adverse tax consequences through the recognition of UBTI or the other adverse consequences that flow from excess inclusion income. Furthermore, in such an event, our shares could become ineligible for inclusion in those market indexes that exclude UBTI-generating stock, which could adversely affect demand for our shares and their market price.

The tax on prohibited transactions will limit our ability to engage in transactions, including some methods of securitizing mortgage loans, that would be treated as sales for U.S. federal income tax purposes.

A REIT's net income from prohibited transactions is subject to a 100% tax. In general, prohibited transactions are sales or other dispositions at a gain of property held primarily for sale to customers in the ordinary course of business. If we were to dispose of real estate, loans, or other assets in a manner that was treated as a sale of the loans for U.S. federal income tax purposes (including certain securitizations), those sales could be viewed as sales to customers in the ordinary course of business and to that extent subject to the 100% tax. Therefore, in order to avoid the prohibited transactions tax, we may choose not to engage in particular sales of assets, or may limit the structures we utilize for our dispositions or securitization transactions, even though the sales or structures might otherwise be beneficial to us.

Legislative or other actions affecting REITs could materially and adversely affect us and our shareholders.

The rules dealing with U.S. federal, state, and local taxation are constantly under review by persons involved in the legislative process and by the IRS, the U.S. Department of the Treasury, and other taxation authorities. Changes to the tax laws, with or without retroactive application, could materially and adversely affect us and our shareholders. We cannot predict how changes in the tax laws might affect us or our shareholders. New legislation, Treasury regulations, administrative interpretations or court decisions could significantly and negatively affect our ability to remain qualified for taxation as a REIT or the tax consequences of such qualification to us and our shareholders.

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APPENDIX C: SUMMARY OF MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of material U.S. federal income tax considerations generally applicable to the Business Change Proposal, our intended qualification and taxation as a REIT commencing with the Deregistration Year, and the ownership and disposition of our common shares ("common shares") following the commencement of the Deregistration Year. For purposes of this Appendix references to the "Fund," "we," "our" and "us" generally mean only NexPoint Strategic Opportunities Fund and not its subsidiaries or other lower-tier entities, except as otherwise indicated. This summary is based upon the IRC, the regulations promulgated by the Treasury, rulings and other administrative pronouncements issued by the IRS, and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. The summary is also based upon the assumption that we and our subsidiaries and affiliated entities will operate in accordance with our and their applicable organizational documents. This summary is for general information only and is not tax advice. It does not discuss any state, local or non-U.S. tax consequences relevant to us or an investment in our common shares, and it does not purport to discuss all aspects of U.S. federal income taxation that may be important to a particular investor in light of its investment or tax circumstances or to investors subject to special tax rules, such as:

- financial institutions;
- insurance companies;
- broker-dealers;
- regulated investment companies;
- partnerships, other pass-through entities and trusts;
- persons who hold our common shares on behalf of other persons as nominees;
- persons who receive our common shares as compensation;
- persons holding our common shares as part of a "straddle," "hedge," "conversion transaction," "synthetic security" or other integrated investment;
- persons subject to the mark-to-market method of accounting for their securities;
- a person who owns 10% or more (by vote or value, directly or constructively under the IRC) of any class of our shares;
- U.S. expatriates;
- persons whose functional currency is not the U.S. dollar;
- a person subject to special tax accounting rules as a result of its use of applicable financial statements (within the meaning of Section 451(b)(3) of the IRC);
- persons subject to special rules or exemptions under the Foreign Investment in Real Property Tax Act of 1980, as amended ("FIRPTA")

and, except to the extent discussed below:

- tax-exempt organizations; and
- foreign investors.

This summary assumes that investors will hold their common shares as a capital asset, which generally means property held for investment. Further, except as expressly provided otherwise, this summary assumes (i) that the Business Change Proposal will be approved and effected in the manner contemplated in the Proxy Statement, (ii) that we will successfully realign our portfolio and otherwise satisfy all requirements so as to qualify for taxation as a REIT for the Deregistration Year and each taxable year thereafter, and (iii) that we have been organized and have qualified for taxation as a RIC, and that we will remain so qualified until the end of our taxable year preceding the Deregistration Year.

The U.S. federal income tax treatment of holders of our common shares depends in some instances on determinations of fact and interpretations of complex provisions of U.S. federal income tax law for which no clear precedent or authority may be available. In addition, the tax consequences to any particular shareholder of holding or disposing of our common shares will depend on the shareholder's particular tax circumstances. You are urged to consult your tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences to you in light of your particular investment or tax circumstances of acquiring, holding, exchanging, or otherwise disposing of our common shares.

Taxation of the Fund

Our first taxable year as a REIT will be the Deregistration Year, for which we intend to elect to be taxed as a REIT under Sections 856 through 860 of the IRC. The discussion below assumes that we will make that election by timely filing our U.S. federal income tax return as a REIT for that year and that we qualify as a REIT for that year and each subsequent year.

The law firm of [ ] has acted as our tax counsel ("tax counsel"). Following the commencement of the Deregistration Year, we would expect to receive an opinion of tax counsel to the effect that, commencing with the Deregistration Year, we have been organized in conformity with the requirements for qualification for taxation as a REIT under the IRC, and that our actual method of operation has enabled, and our proposed method of operation will enable, us to meet the requirements for qualification and taxation as a REIT. The opinion of tax counsel will be based on various assumptions relating to our organization and operation, and will be conditioned upon fact-based representations and covenants regarding our organization, assets, income, and the past, present and future conduct of our business operations. While, if the Business Change Proposal is approved, we intend to operate so that we will qualify for taxation as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by tax counsel or by us that we will qualify for taxation as a REIT for any particular year. In addition, the law may change prior to the Deregistration Year or thereafter, possibly with retroactive effect, which could result in our inability to receive the opinions from tax counsel described herein or in adverse consequences to matters otherwise addressed herein. The opinion will be expressed as of the date issued. Tax counsel will have no obligation to advise us or our shareholders of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the IRS, and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinions.

Our qualification and taxation as a REIT will depend on our ability to meet, through actual operating results, distribution levels, and diversity of stock and asset ownership, various qualification requirements imposed upon REITs by the IRC, the compliance with which will not be reviewed by tax counsel. In addition, our ability to qualify for taxation as a REIT depends in part upon the operating results, organizational structure and entity classification for U.S. federal income tax purposes of certain affiliated entities, the status of which may not have been reviewed by tax counsel. Our ability to qualify for taxation as a REIT also requires that we satisfy specified asset tests, some of which depend upon the fair market values of assets that we own directly or indirectly. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that the actual results of our operations for any taxable year will satisfy such requirements for qualification and taxation as a REIT.

Taxation of REITs in General

As indicated above, our qualification and taxation as a REIT depend upon our ability to meet, on a continuing basis, various qualification requirements imposed upon REITs by the IRC. The material qualification requirements are summarized below under "—Requirements for Qualification—General." While we intend to operate so that we qualify as a REIT commencing with the Deregistration Year, no assurance can be given that the IRS will not challenge our qualification, or that we will be able to operate in accordance with the REIT requirements in the future See "—Failure to Qualify".

Provided that we qualify as a REIT, generally we will be entitled to a deduction for dividends that we pay and therefore will not be subject to U.S. federal corporate income tax on our net taxable income that is currently distributed to our shareholders. This treatment, which is similar to the treatment the Fund is currently subject to as a RIC, substantially eliminates the "double taxation" at the corporate and shareholder levels that generally results from an investment in a C corporation. A "C corporation" is a corporation that generally is required to pay tax at the corporate level. In general, the income that we generate is taxed only at the shareholder level upon a distribution of dividends to our shareholders.

Any net operating losses, foreign tax credits and other tax attributes generally do not pass through to our shareholders, subject to special rules for certain items such as the capital gains that we recognize. See "—Taxation of Shareholders—Taxation of Taxable U.S. Shareholders—Distributions."

If we qualify as a REIT, we will nonetheless be subject to U.S. federal tax in the following circumstances:

- We will be taxed at regular corporate rates on any undistributed net taxable income, including undistributed net capital gains.
- If we have net income from "prohibited transactions," which are, in general, sales or other dispositions of inventory or property held primarily for sale to customers in the ordinary course of business, other than "foreclosure property," such income will be subject to a 100% tax. See "—Prohibited Transactions" and "—Foreclosure Property."
- If we elect to treat property that we acquire in connection with a foreclosure of a mortgage loan or certain leasehold terminations as foreclosure property, we may thereby avoid the 100% tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), but the income from the sale or operation of the property may be subject to corporate income tax at the highest applicable rate.
- If we fail to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but nonetheless maintain our qualification as a REIT because we satisfy other requirements, we will be subject to a 100% tax on an amount based on the magnitude of the failure, as adjusted to reflect the profit margin associated with our gross income.
- If we violate the asset tests (other than certain *de minimis* violations) or other requirements applicable to REITs, as described below, and yet maintain our qualification as a REIT because there is reasonable cause for the failure and other applicable requirements are met, we may be subject to a penalty tax. In that case, the amount of the penalty tax will be at least $50,000 per failure, and, in the case of certain asset test failures, will be determined as the amount of net income generated by the nonqualifying assets in question multiplied by the highest corporate tax rate if that amount exceeds $50,000 per failure.
- If we fail to distribute during each calendar year at least the sum of (i) 85% of our ordinary income for such year, (ii) 95% of our capital gain net income for such year and (iii) any undistributed net taxable income from prior periods, we will be subject to a nondeductible 4% excise tax on the excess of the required distribution over the sum of (a) the amounts that we actually distributed and (b) the amounts we retained and upon which we paid income tax at the corporate level.
- If we were to derive "excess inclusion income" from an interest in certain mortgage loan securitization structures (i.e., a "taxable mortgage pool" or a residual interest in a real estate mortgage investment conduit ("REMIC")), we could be subject to corporate level U.S. federal income tax at the highest applicable rate to the extent that such income is allocable to specified types of tax-exempt shareholders known as "disqualified organizations" that are not subject to unrelated business income tax.
- We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of a REIT's shareholders, as described below in "—Requirements for Qualification—General."
- A 100% tax may be imposed on transactions between us and a taxable REIT subsidiary ("TRS") that do not reflect arm's length terms.

- If we acquire appreciated assets from a corporation that is not a REIT or a RIC (i.e., a corporation taxable under subchapter C of the IRC) in a transaction in which the adjusted tax basis of the assets in our hands is determined by reference to the adjusted tax basis of the assets in the hands of the subchapter C corporation, we may be subject to tax on such appreciation at the highest corporate income tax rate then applicable if we subsequently recognize gain on a disposition of any such assets during the five-year period following their acquisition from the subchapter C corporation.
- The earnings of our TRSs will generally be subject to U.S. federal corporate income tax.

In addition, we and our subsidiaries may be subject to a variety of taxes, including payroll taxes and state, local, and foreign income, property, gross receipts and other taxes on our assets and operations. We could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for Qualification—General

The IRC defines a REIT as a corporation, trust or association:

1. that is managed by one or more trustees or directors;
2. the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;
3. that would be taxable as a domestic corporation but for its election to be subject to tax as a REIT;
4. that is neither a financial institution nor an insurance company subject to specific provisions of the IRC;
5. the beneficial ownership of which is held by 100 or more persons;
6. in which, during the last half of each taxable year, not more than 50% in value of the outstanding stock is owned, directly or indirectly, by five or fewer "individuals" (as defined in the IRC to include specified tax-exempt entities); and
7. that meets other tests described below, including with respect to the nature of its income and assets.

The IRC provides that conditions (1) through (4) must be met during the entire taxable year, and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a shorter taxable year. Conditions (5) and (6) need not be met during a corporation's initial tax year as a REIT (which, in our case, is expected to be the Deregistration Year). As part of the Business Change Proposal, we intend to amend our Declaration of Trust to provide for restrictions regarding the ownership and transfers of our common shares, which are intended to assist us in satisfying the stock ownership requirements described in conditions (5) and (6) above. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in conditions (5) and (6) above.

To monitor compliance with the stock ownership requirements, we generally are required to maintain records regarding the actual ownership of our common shares. To do so, we must demand written statements each year from the record holders of significant percentages of our common shares pursuant to which the record holders must disclose the actual owners of our common shares (i.e., the persons required to include our dividends in their gross income). We must maintain a list of those persons failing or refusing to comply with this demand as part of our records. We could be subject to monetary penalties if we fail to comply with these record-keeping requirements. If you fail or refuse to comply with the demands, you will be required by Treasury regulations to submit a statement with your tax return disclosing your actual ownership of our common shares and other information.

In addition, a corporation generally may not elect to become a REIT unless its taxable year is the calendar year. We adopted December 31 as our year-end and thereby satisfy this requirement.

Effect of Subsidiary Entities

Ownership of Partnership Interests. If we are a partner in an entity that is treated as a partnership for U.S. federal income tax purposes, Treasury regulations provide that we are deemed to own our proportionate share of

the partnership's assets, and to earn our proportionate share of the partnership's income, for purposes of the asset and gross income tests applicable to REITs. Our proportionate share of a partnership's assets and income is based on our capital interest in the partnership (except that for purposes of the 10% value test, described below, our proportionate share of the partnership's assets is based on our proportionate interest in the equity and certain debt securities issued by the partnership). In addition, the assets and gross income of the partnership are deemed to retain the same character in our hands. Thus, our proportionate share of the assets and items of income of any of our subsidiary partnerships will be treated as our assets and items of income for purposes of applying the REIT requirements.

If we are or become a limited partner or non-managing member in any entity treated as a partnership and such entity takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that an entity treated as a partnership could take an action which could cause us to fail a gross income or asset test, and that we would not become aware of such action in time to dispose of our interest in such entity or take other corrective action on a timely basis. In that case, we could fail to qualify as a REIT unless we were entitled to relief, as described below.

Disregarded Subsidiaries. If we own a corporate subsidiary that is a "qualified REIT subsidiary," that subsidiary is generally disregarded as a separate entity for U.S. federal income tax purposes, and all of the subsidiary's assets, liabilities and items of income, deduction and credit are treated as our assets, liabilities and items of income, deduction and credit, including for purposes of the gross income and asset tests applicable to REITs. A qualified REIT subsidiary is any corporation, other than a TRS, that is directly or indirectly wholly-owned by a REIT. Other entities that are wholly-owned by us (either directly or through other disregarded entities), including single member limited liability companies that have not elected to be taxed as corporations for U.S. federal income tax purposes, are also generally disregarded as separate entities for U.S. federal income tax purposes, including for purposes of the REIT income and asset tests. Disregarded subsidiaries, along with any partnerships in which we hold an equity interest, are sometimes referred to herein as "pass-through subsidiaries."

In the event that a disregarded subsidiary of ours ceases to be wholly-owned—for example, if any equity interest in a disregarded subsidiary is acquired by a person other than us or another disregarded subsidiary of ours—the subsidiary's separate existence would no longer be disregarded for U.S. federal income tax purposes. Instead, the subsidiary would have multiple owners and would be treated as either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect our ability to satisfy the various asset and gross income requirements applicable to REITs, including the requirement that REITs generally may not own, directly or indirectly, more than 10% of the securities of another corporation. See "—Asset Tests" and "—Income Tests."

Taxable REIT Subsidiaries. In general, we may jointly elect with a subsidiary corporation, whether or not wholly-owned, to treat such subsidiary corporation as a TRS. We generally may not own more than 10% of the securities of a taxable corporation, as measured by voting power or value, unless we and such corporation elect to treat such corporation as a TRS. The separate existence of a TRS or other taxable corporation is not ignored for U.S. federal income tax purposes. Accordingly, a TRS or other taxable subsidiary corporation generally is subject to corporate income tax on its earnings, which may reduce the cash flow that we and our subsidiaries generate in the aggregate, and may reduce our ability to make distributions to our shareholders.

We are not treated as holding the assets of a TRS or other taxable subsidiary corporation or as receiving any income that the subsidiary earns. Rather, the stock issued by a taxable subsidiary corporation to us is an asset in our hands, and we treat the dividends paid to us from such taxable subsidiary corporation, if any, as income. This treatment can affect our income and asset test calculations, as described below. Because we do not include the assets and income of TRSs or other taxable subsidiary corporations on a look-through basis in determining our compliance with the REIT requirements, we may use such entities to undertake indirectly activities that the REIT rules might otherwise preclude us from doing directly or through pass-through subsidiaries. For example, we may use TRSs or other taxable subsidiary corporations to hold assets that, if held by us directly, may cause us to

fail to satisfy the REIT asset tests, to perform services or conduct activities that give rise to certain categories of income such as certain fees, or to conduct activities that, if conducted by us directly, would be treated in our hands as prohibited transactions.

The TRS rules impose a 100% excise tax on transactions between a TRS and its parent REIT or the REIT's tenants that are not conducted on an arm's length basis. We intend that all of our transactions with our TRSs, if any, will be conducted on an arm's length basis.

Subsidiary REITs. We currently own stock in certain entities that are intended to be treated as REITs. Our stock of any subsidiary REIT will generally be treated as a qualifying real estate asset for purposes of the REIT asset requirements (see "—Asset Tests" below), and any dividend income or gains derived by us from such stock will generally be treated as income that qualifies for purposes of the 95% and 75% gross income tests (see "—Income Tests" below), provided, in each case, that such subsidiary qualifies as a REIT. We and any subsidiary REIT are separate entities, each of which intends to qualify as a REIT, and each of which must independently satisfy the various REIT qualification requirements. If our subsidiary REIT were to fail to qualify as a REIT, it would then be a regular taxable corporation, and its income would be subject to U.S. federal income tax. In addition, a failure of such subsidiary to qualify as a REIT would likely have an adverse effect on our ability to comply with the REIT asset and income requirements described below, and thus our ability to qualify as a REIT. Moreover, if we cause a subsidiary REIT to liquidate for U.S. federal income tax purposes, or to otherwise transfer assets to us, in a manner that causes us to be a "successor" to such REIT, a failure of such subsidiary REIT to qualify as a REIT (including for past years) could prohibit us from being eligible to elect to be subject to tax as a REIT.

Income Tests

In order to qualify as a REIT, we must satisfy two gross income requirements on an annual basis. First, at least 75% of our gross income for each taxable year, excluding gross income from sales of inventory or dealer property in prohibited transactions, discharge of indebtedness and certain hedging transactions, generally must be derived from "rents from real property" (as described below), gains from the sale of real property, mortgages on real property, and shares in other REITs, interest income derived from mortgage loans secured by real property (including certain types of mortgage-backed securities), dividends received from other REITs, and specified income from temporary investments. Second, at least 95% of our gross income in each taxable year, excluding gross income from prohibited transactions, discharge of indebtedness and certain hedging transactions, must be derived from some combination of income that qualifies under the 75% gross income test described above, as well as other dividends, interest, and gain from the sale or disposition of stock or securities, which need not have any relation to real property. Income and gain from certain hedging transactions will be excluded from both the numerator and the denominator for purposes of both the 75% and 95% gross income tests.

Rents from Real Property. Rents we receive from a tenant will qualify as "rents from real property" for the purpose of satisfying the gross income requirements for a REIT described above only if all of the conditions described below are met.

- The amount of rent is not based in whole or in part on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term "rents from real property" solely because it is based on a fixed percentage or percentages of receipts or sales;
- Neither we nor an actual or constructive owner of 10% or more of our common shares actually or constructively owns 10% or more of the interests in the assets or net profits of a non-corporate tenant, or, if the tenant is a corporation, 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of all classes of stock of the tenant. Rents we receive from such a tenant that is a TRS of ours, however, will generally not be excluded from the definition of "rents from real property" as a result of this condition if at least 90% of the space at the property to

which the rents relate is leased to third parties, and the rents paid by the TRS are substantially comparable to rents paid by our other tenants for comparable space;

- Rent attributable to personal property that is leased in connection with a lease of real property is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property"; and
- We generally do not operate or manage the property or furnish or render services to our tenants, subject to a 1% *de minimis* exception and except as provided below. We are permitted, however, to perform directly certain services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property. Examples of these permitted services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we are permitted to employ an "independent contractor" from whom we derive no revenue to provide customary services to our tenants, or a TRS, which may be wholly or partially owned by us, to provide both customary and non-customary services to our tenants without causing the rent that we receive from those tenants to fail to qualify as "rents from real property." Any amounts that we receive from a TRS with respect to the TRS's provision of non-customary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test.

We intend to cause any services that are not "usually or customarily rendered," or that are for the benefit of a particular tenant in connection with the rental of real property, to be provided through a TRS or through an "independent contractor." However, no assurance can be given that the IRS will concur with our determination as to whether a particular service is usual or customary, or otherwise in this regard.

Interest Income. Interest income constitutes qualifying mortgage interest for purposes of the 75% gross income test to the extent that the obligation upon which such interest is paid is secured by a mortgage on real property or an interest in real property. If we receive interest income with respect to a mortgage loan that is secured by both real property and other property, and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property on the date that we acquired or originated the mortgage loan, the interest income will generally be apportioned between the real property and the other collateral, and our income from the arrangement will qualify for purposes of the 75% gross income test only to the extent that the interest is allocable to the real property. In certain cases, personal property collateral securing a loan that we hold may be treated as real property for purposes of the foregoing rules. Even if a loan is not secured by real property, or is undersecured, the income that it generates may nonetheless qualify for purposes of the 95% gross income test. For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

We may invest in mortgage-backed securities or other securitization vehicles. If these investments are treated as interests in grantor trusts for U.S. federal income tax purposes, we will be treated as owning an undivided beneficial ownership interest in the mortgage loans held by the grantor trust. The interest on such mortgage loans would be qualifying income for purposes of the 75% gross income test to the extent that the obligation is secured by real property. We also may invest in interests in REMICs for U.S. federal income tax purposes, in which case income derived from such REMIC interests would generally be treated as qualifying income for purposes of the 75% and 95% gross income tests. If less than 95% of the assets of a REMIC are real estate assets, however, then only a proportionate part of its income derived from the interest will qualify for purposes of the 75% gross income test. In addition, some REMIC securitizations include imbedded interest rate swap or cap contracts or other derivative instruments that potentially could produce nonqualifying income. To the extent that we hold interests in securitizations that do not represent grantor trust or REMIC interests, the income generated from them might not qualify for purposes of either or both of the REIT income tests, depending upon the circumstances and the specific structure of the investment. Other mortgage-related

investments, such as mezzanine loans, and mortgage participation interests (such as "B-notes"), "to be announced" forward contracts, and mortgage servicing rights, may be subject to special rules or uncertain treatment and may generate nonqualifying income. The Fund's ability to invest in those assets may be limited by its intention to qualify as a REIT.

Dividend Income. We may directly or indirectly receive distributions from TRSs or other corporations that are not REITs or qualified REIT subsidiaries. These distributions generally are treated as dividend income to the extent of the earnings and profits of the distributing corporation. Such distributions will generally constitute qualifying income for purposes of the 95% gross income test, but not for purposes of the 75% gross income test. Any dividends that we receive from another REIT, however, will be qualifying income for purposes of both the 95% and 75% gross income tests.

Fee Income. With limited exceptions, any fee income that we earn will generally not be qualifying income for purposes of either gross income test. Any fees earned by a TRS, however, will not be included for purposes of our gross income tests.

Hedging Transactions. Any income or gain that we or our pass-through subsidiaries derive from instruments that hedge certain specified risks, such as the risk of changes in interest rates with respect to certain of our borrowings, will be excluded from gross income for purposes of both the 75% and 95% gross income tests, provided that specified requirements are met, including the requirement that the instrument is entered into during the ordinary course of our business and that the instrument be properly identified as a hedge along with the risk that it hedges within prescribed time periods. Income and gain from all other hedging transactions will not be qualifying income for either the 95% or 75% gross income test.

Failure to Satisfy the Gross Income Tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may still qualify as a REIT for such year if we are entitled to relief under applicable provisions of the IRC. These relief provisions will be generally available if (i) our failure to meet these tests was due to reasonable cause and not due to willful neglect and (ii) following our identification of the failure to meet the 75% or 95% gross income test for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income test for such taxable year in accordance with Treasury regulations, which have not yet been issued. It is not possible to state whether we would be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions are inapplicable to a particular set of circumstances, we will not qualify as a REIT. Even if these relief provisions apply, and we retain our status as a REIT, the IRC imposes a tax based upon the amount by which we fail to satisfy the particular gross income test.

Asset Tests

At the close of each calendar quarter, we must also satisfy five tests relating to the nature of our assets. First, at least 75% of the value of our total assets must be represented by some combination of "real estate assets," cash, cash items, U.S. government securities, and, under some circumstances, stock or debt instruments purchased with new capital. For this purpose, "real estate assets" include interests in real property (and certain ancillary personal property), stock of other corporations that qualify as REITs, some kinds of mortgage-backed securities and mortgage loans, and debt instruments (whether or not secured by real property) that are issued by a "publicly offered REIT" (i.e., a REIT that is required to file annual and periodic reports with the SEC under the Exchange Act). Assets that do not qualify for purposes of the 75% asset test are subject to the additional asset tests described below.

Second, the value of any one issuer's securities that we own may not exceed 5% of the value of our total assets.

Third, we may not own more than 10% of any one issuer's outstanding securities, as measured by either voting power or value. The 5% and 10% asset tests do not apply to securities of TRSs and qualified REIT subsidiaries and the value prong of the 10% asset test does not apply to "straight debt" having specified characteristics and to certain other securities described below. Solely for purposes of the value prong of the 10% asset test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the IRC.

Fourth, the aggregate value of all securities of TRSs that we hold may not exceed 20% of the value of our total assets.

Fifth, no more than 25% of the total value of our assets may be represented by "nonqualified publicly offered REIT debt instruments" (i.e., real estate assets that would cease to be real estate assets if debt instruments issued by publicly offered REITs were not included in the definition of real estate assets).

Notwithstanding the general rule, as noted above, that for purposes of the REIT income and asset tests we are treated as owning our proportionate share of the underlying assets of a subsidiary partnership, if we hold indebtedness issued by a partnership, the indebtedness will be subject to, and may cause a violation of, the asset tests unless the indebtedness is a qualifying mortgage asset or other conditions are met. Similarly, although stock of another REIT is a qualifying asset for purposes of the REIT asset tests, any non-mortgage debt that is issued by a non-publicly offered REIT may not so qualify (although such debt will not be treated as "securities" for purposes of the value prong of the 10% asset test, as explained below).

Certain securities will not cause a violation of the value prong of the 10% asset test described above. Such securities include instruments that constitute "straight debt," which term generally excludes, among other things, securities having contingency features. A security does not qualify as "straight debt" where a REIT (or a controlled TRS of the REIT) owns other securities of the same issuer which do not qualify as straight debt, unless the value of those other securities constitute, in the aggregate, 1% or less of the total value of that issuer's outstanding securities. In addition to straight debt, the IRC provides that certain other securities will not violate the value prong of the 10% asset test. Such securities include (i) any loan made to an individual or an estate, (ii) certain rental agreements pursuant to which one or more payments are to be made in subsequent years (other than agreements between a REIT and certain persons related to the REIT under attribution rules), (iii) any obligation to pay "rents from real property," (iv) securities issued by governmental entities that are not dependent in whole or in part on the profits of (or payments made by) a nongovernmental entity, (v) any security (including debt securities) issued by another REIT and (vi) any debt instrument issued by a partnership if the partnership's income is of a nature that it would satisfy the 75% gross income test described above under "—Income Tests." In applying the value prong of the 10% asset test, a debt security issued by a partnership is not taken into account to the extent, if any, of the REIT's proportionate interest in the equity and certain debt securities issued by that partnership.

We may invest in mortgage-backed securities or other securitization vehicles. If these investments are treated as interests in grantor trusts for U.S. federal income tax purposes, we will be treated as owning an undivided beneficial ownership interest in the mortgage loans held by the grantor trust, which would generally be treated as real estate assets to the extent that the obligation is secured by real property. We also may invest in interests in REMICs for U.S. federal income tax purposes, in which case such interests would generally qualify as real estate assets. If less than 95% of the assets of a REMIC are real estate assets, however, then only a proportionate part of our interest in the REMIC would qualify as a real estate asset. In addition, some REMIC securitizations include imbedded interest rate swap or cap contracts or other derivative instruments that would generally be not be treated as real estate assets. To the extent that we hold interests in securitizations that do not represent grantor trust or REMIC interests, such assets may not qualify as real estate assets, depending upon the circumstances and the specific structure of the investment. Other mortgage-related investments, such as mezzanine loans, certain mortgage participation interests (such as "B-notes"), "to be announced" forward

contracts, and mortgage servicing rights, may be subject to special rules or uncertain treatment and may not be treated as real estate assets. The Fund's ability to invest in those assets may be limited by its intention to qualify as a REIT

We may enter into repurchase agreements under which we will nominally sell assets to a counterparty and simultaneously enter into an agreement to repurchase the sold assets. We believe that we will be treated for U.S. federal income tax purposes as the owner of the assets that are the subject of any such agreements, notwithstanding that we may transfer record ownership of the subject assets to the counterparty during the term of the agreement. It is possible, however, that the IRS could assert that we did not own the assets during the term of the applicable repurchase agreement, which characterization could jeopardize our qualification for taxation as a REIT.

No independent appraisals have been obtained to support our conclusions as to the value of our total assets or the value of any particular security or securities. Moreover, the values of some assets may not be susceptible to a precise determination, and values are subject to change in the future. Furthermore, the proper classification of an instrument as debt or equity for U.S. federal income tax purposes may be uncertain in some circumstances, which could affect the application of the REIT asset requirements. Accordingly, there can be no assurance that the IRS will not contend that our interests in our subsidiaries or in the securities of other issuers will not cause a violation of the REIT asset tests.

However, certain relief provisions are available to allow REITs to satisfy the asset requirements or to maintain REIT qualification notwithstanding certain violations of the asset tests and other requirements. For example, if we should fail to satisfy the asset tests at the end of a calendar quarter such a failure would not cause us to lose our REIT qualification if we (i) satisfied the asset tests at the close of the preceding calendar quarter and (ii) the discrepancy between the value of our assets and the asset requirements was not wholly or partly caused by an acquisition of nonqualifying assets, but instead arose from changes in the relative market values of our assets. If the condition described in clause (ii) were not satisfied, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose or by making use of the relief provisions described below.

In the case of *de minimis* violations of the 10% and 5% asset tests, a REIT may maintain its qualification despite a violation of such requirements if (i) the value of the assets causing the violation does not exceed the lesser of 1% of the REIT's total assets and $10,000,000 and (ii) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or the relevant tests are otherwise satisfied within that time frame.

Even if we did not qualify for the foregoing relief provisions, one additional provision allows a REIT that fails one or more of the asset tests to nevertheless maintain its REIT qualification if (i) the REIT provides the IRS with a description of each asset causing the failure, (ii) the failure is due to reasonable cause and not willful neglect, (iii) the REIT pays a tax equal to the greater of (a) $50,000 per failure and (b) the product of the net income generated by the assets that caused the failure multiplied by the highest applicable corporate tax rate and (iv) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or otherwise satisfies the relevant asset tests within that time frame.

Annual Distribution Requirements

In order to qualify as a REIT, we are required to annually distribute dividends, other than capital gain dividends, to our shareholders in an amount at least equal to:

i. the sum of
   a. 90% of our REIT taxable income, computed without regard to our net capital gains and the deduction for dividends paid; and
   b. 90% of our after tax net income, if any, from foreclosure property (see "—Foreclosure Property" below); minus

ii. the excess of the sum of specified items of non-cash income over 5% of our REIT taxable income, computed without regard to our net capital gains and the deduction for dividends paid.

We generally must make these distributions in the taxable year to which they relate, or in the following taxable year if declared before we timely file our tax return for the year and if paid with or before the first regular dividend payment after such declaration. These distributions will be treated as received by our shareholders in the year in which paid.

To the extent that we distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we will be subject to tax at ordinary corporate tax rates on the retained portion. We may elect to retain, rather than distribute, some or all of our net long-term capital gains and pay tax on such gains. In this case, we could elect for our shareholders to include their proportionate shares of such undistributed long-term capital gains in income, and to receive a corresponding credit for their share of the tax that we paid. Our shareholders would then increase the adjusted basis of their stock by the difference between (i) the amounts of capital gain dividends that we designated and that they include in their taxable income, and (ii) the tax that we paid on their behalf with respect to that income.

To the extent that in the future we may have available net operating losses carried forward from prior tax years, such losses may, subject to limitations, reduce the amount of distributions that we must make in order to comply with the REIT distribution requirements. Such losses, however, will generally not affect the tax treatment to our shareholders of any distributions that are actually made. See "—Taxation of Shareholders—Taxation of Taxable U.S. Shareholders—Distributions."

If we fail to distribute during each calendar year at least the sum of (i) 85% of our ordinary income for such year, (ii) 95% of our capital gain net income for such year and (iii) any undistributed net taxable income from prior periods, we will be subject to a nondeductible 4% excise tax on the excess of such required distribution over the sum of (a) the amounts actually distributed, plus (b) the amounts of income we retained and on which we have paid corporate income tax.

From time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements due to timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in determining our taxable income. In addition, we may decide to retain our cash, rather than distribute it, in order to repay debt, acquire assets, or for other reasons. For example, the IRC contains various limitations on the deductibility of interest and other expenses and various rules that may accelerate income before the receipt of cash. If these timing differences occur, we may sell assets, borrow funds to pay dividends or pay dividends through taxable distributions of other property (including our common share) in order to meet the distribution requirements, while preserving our cash.

If our taxable income for a particular year is subsequently determined to have been understated, we may be able to rectify a resultant failure to meet the distribution requirements for a year by paying "deficiency dividends" to shareholders in a later year, which may be included in our deduction for dividends paid for the earlier year. In this case, we may be able to avoid losing REIT qualification or being taxed on amounts distributed as deficiency dividends, subject to the 4% excise tax described above. We will be required to pay interest based on the amount of any deduction taken for deficiency dividends.

For purposes of the 90% distribution requirement and excise tax described above, any dividend that we declare in October, November or December of any year and that is payable to a shareholder of record on a specified date in any such month will be treated as both paid by us and received by the shareholder on December 31 of such year, provided that we actually pay the dividend before the end of January of the following calendar year.

Prohibited Transactions

Net income that we derive from a prohibited transaction is subject to a 100% tax. The term "prohibited transaction" generally includes a sale or other disposition of property (other than foreclosure property, as discussed below) that is held as inventory or primarily for sale to customers in the ordinary course of a trade or business. We intend to conduct our operations so that no asset that we own (or are treated as owning) will be treated as, or as having been, held as inventory or for sale to customers, and that a sale of any such asset will not be treated as having been in the ordinary course of our business. Whether property is held as inventory or "primarily for sale to customers in the ordinary course of a trade or business" depends on the particular facts and circumstances. No assurance can be given that any property that we sell will not be treated as inventory or property held for sale to customers, or that we can comply with certain safe-harbor provisions of the IRC that would prevent such treatment. The 100% tax does not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be subject to tax in the hands of the corporation at regular corporate rates. We intend to structure our activities to avoid prohibited transaction characterization.

Like-Kind Exchanges

We may dispose of properties in transactions intended to qualify as like-kind exchanges under the IRC. Such like-kind exchanges are intended to result in the deferral of gain for U.S. federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transaction.

Derivatives and Hedging Transactions

We may enter into hedging transactions, including with respect to foreign currency exchange rate and interest rate exposure on one or more of our assets or liabilities. Any such hedging transactions could take a variety of forms, including the use of derivative instruments such as swap contracts, cap or floor contracts, futures or forward contracts, and options. Income from a hedging transaction (including gain from the sale, disposition, or termination of a position in such a transaction) generally will not constitute gross income for purposes of the 75% and 95% gross income tests if we properly identify the transaction as specified in applicable Treasury regulations and we enter into such transaction (i) in the normal course of our business primarily to manage risk of interest rate changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, to acquire or carry real estate assets; (ii) primarily to manage risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% income tests; or (iii) in connection with the extinguishment of indebtedness with respect to which we have entered into a qualified hedging position described in clause (i) or the disposition of property with respect to which we have entered into a qualified hedging position described in clause (ii), primarily to manage the risks of such hedging positions. To the extent that we enter into other types of hedging transactions, the income from those transactions is likely to be treated as nonqualifying income for purposes of both the 75% and 95% gross income tests. Moreover, to the extent that a position in a hedging transaction has positive value at any particular point in time, it may be treated as an asset that does not qualify for purposes of the REIT asset tests. We intend to structure any hedging transactions in a manner that does not jeopardize our qualification as a REIT. We may conduct some or all of our hedging activities (including hedging activities relating to currency risk) through a TRS or other corporate entity, the income from which may be subject to U.S. federal income tax, rather than by participating in the arrangements directly or through pass-through subsidiaries. No assurance can be given, however, that our hedging activities will not give rise to income or assets that do not qualify for purposes of the REIT tests, or that our hedging activities will not adversely affect our ability to satisfy the REIT qualification requirements.

Foreclosure Property

Foreclosure property is real property and any personal property incident to such real property (i) that we acquire as the result of having bid on the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after a default (or upon imminent default) on a lease of the property or a mortgage loan held by us and secured by the property, (ii) for which we acquired the related loan or lease at a time when default was not imminent or anticipated and (iii) with respect to which we made a proper election to treat the property as foreclosure property. We generally will be subject to tax at the maximum corporate rate (currently 21%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property. We do not anticipate receiving any income from foreclosure property that does not qualify for purposes of the 75% gross income test.

Penalty Tax

Any redetermined rents, redetermined deductions, excess interest, or redetermined TRS service income that we or our TRSs generate will be subject to a 100% penalty tax. In general, redetermined rents are "rents from real property" that are overstated as a result of any services furnished to any of our tenants by a TRS, redetermined deductions and excess interest represent any amounts that are deducted by a TRS for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations, and redetermined TRS service income is income of a TRS attributable to services provided to, or on behalf of, us (other than services furnished or rendered to a tenant of ours) to the extent such income is lower than the income the TRS would have earned based on arm's length negotiations. Rents that we receive will not constitute redetermined rents if they qualify for certain safe-harbor provisions contained in the IRC.

From time to time, our TRS may provide services to our tenants. We intend to set the fees paid to our TRS for such services at arm's length rates, although the fees paid may not satisfy the safe-harbor provisions described above. These determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to clearly reflect their respective incomes. If the IRS successfully made such an assertion, we would be required to pay a 100% penalty tax on the excess of an arm's length fee for tenant services over the amount actually paid.

Failure to Qualify

If we fail to satisfy one or more requirements for REIT qualification other than the income or asset tests, we could avoid disqualification as a REIT if our failure is due to reasonable cause and not to willful neglect and we pay a penalty of $50,000 for each such failure. Relief provisions are also available for failures of the income tests and asset tests, as described above in "—Income Tests" and "—Asset Tests."

If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions described above do not apply, we would be subject to tax, including any applicable alternative minimum tax, on our taxable income at regular corporate rates. We cannot deduct distributions to shareholders in any year in which we are not a REIT, nor would we be required to make distributions in such a year. In this situation, to the extent of current and accumulated earnings and profits, distributions to shareholders would be taxable as regular corporate dividends. Such dividends paid to U.S. shareholders that are individuals, trusts and estates may be taxable at the preferential income tax rates for qualified dividends. In addition, subject to the limitations of the IRC, corporate distributees may be eligible for the dividends received deduction. Unless we are entitled to relief under specific statutory provisions, we would also be disqualified from re-electing to be taxed as a REIT for the four taxable years following the year during which we lost our qualification. It is not possible to state whether, in all circumstances, we would be entitled to this statutory relief.

Taxable Mortgage Pools and Excess Inclusion Income

Certain investments in mortgage securitizations that we could make may give rise to "excess inclusion income" that would be allocated to our shareholders. A REIT is required to notify shareholders of the amount of excess inclusion income allocated to them. A shareholder's share of excess inclusion income:

- cannot be offset by any net operating losses otherwise available to the shareholder,
- is subject to tax as unrelated business taxable income in the hands of most types of shareholders that are otherwise generally exempt from U.S. federal income tax, and
- results in the application of U.S. federal income tax withholding at the maximum rate, without reduction for any otherwise applicable income tax treaty or other exemption, to the extent allocable to most types of non-U.S. holders.

Under IRS guidance, to the extent that excess inclusion income is allocated to a tax-exempt shareholder of a REIT that is not subject to unrelated business income tax (such as a government entity or charitable remainder trust), the REIT may be subject to tax on this income at the highest applicable corporate tax rate. In that case, the REIT could reduce distributions to such shareholders by the amount of such tax paid by the REIT attributable to such shareholder's ownership. The manner in which excess inclusion income is calculated, or would be allocated to shareholders, including allocations among different classes of shares, is not clear under current law. Tax-exempt investors, foreign investors and taxpayers with net operating losses should carefully consider the tax consequences described above, and are urged to consult their tax advisors.

Taxation of Shareholders

Taxation of Taxable U.S. Shareholders

The following is a summary of certain U.S. federal income tax consequences of the ownership and disposition of our common shares applicable to taxable U.S. shareholders following the commencement of the Deregistration Year. A "U.S. shareholder" is a beneficial owner of our common shares that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation (or entity treated as a corporation for U.S. federal income tax purposes) created or organized in the United States or under the laws of the United States, or of any state thereof, or the District of Columbia;
- an estate, the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if (a) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. fiduciaries have the authority to control all substantial decisions of the trust or (b) that trust has a valid election in effect under applicable Treasury regulations to be treated as a domestic trust for U.S. federal income tax purposes.

If any entity or arrangement that is treated as a partnership for U.S. federal income tax purposes holds our common shares, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership and the partners in such partnership should consult their tax advisors about the U.S. federal income tax consequences of the acquisition, ownership and disposition of our common shares.

Distributions. So long as we qualify as a REIT, the distributions that we make to our taxable U.S. shareholders out of current or accumulated earnings and profits that we do not designate as capital gain dividends will generally be taken into account by such shareholders as ordinary income and will not be eligible for the dividends received deduction for corporations. With limited exceptions, our dividends are not eligible for

taxation at the preferential income tax rates for qualified dividends received by most U.S. shareholders that are individuals, trusts and estates from taxable C corporations. Such shareholders, however, are taxed at the preferential rates on dividends designated by and received from REITs to the extent that the dividends are attributable to:

- income retained by the REIT in the prior taxable year on which the REIT was subject to corporate level income tax (less the amount of tax);
- dividends received by the REIT from TRSs or other taxable C corporations;
- dividends received by the REIT from other REITs to the extent designated by such other REITs as qualified dividends, or
- income in the prior taxable year from sales of "built-in gain" property acquired by the REIT from C corporations in carryover basis transactions (less the amount of corporate tax on such income).

In addition, for taxable years that begin before January 1, 2026, U.S. shareholders that are individuals, trusts or estates are generally entitled to a deduction equal to 20% of the aggregate amount of ordinary income dividends received from a REIT (not including capital gain dividends or dividends eligible for the preferential rates applicable to qualified dividends as described above), subject to certain limitations. Under final regulations recently issued by the Treasury, in order to qualify for this deduction with respect to a dividend on our common shares, a shareholder must hold such shares for more than 45 days during the 91-day period beginning on the date which is 45 days before the date on which such shares become ex-dividend with respect to such dividend (taking into account certain special holding period rules that may, among other consequences, reduce a shareholder's holding period during any period in which the shareholder has diminished its risk of loss with respect to the shares). Shareholders are urged to consult their tax advisors as to their ability to claim this deduction.

Distributions that we designate as capital gain dividends will generally be taxed to our U.S. shareholders as long-term capital gains, to the extent that such distributions do not exceed our actual net capital gain for the taxable year, without regard to the period for which the shareholder that receives such distribution has held its common shares. We may elect to retain and pay taxes on some or all of our net long-term capital gains, in which case we may elect to treat our U.S. shareholders as having received, solely for tax purposes, our undistributed capital gains, and the shareholders as receiving a corresponding credit for taxes that we paid on such undistributed capital gains. See "Taxation of the Fund—Annual Distribution Requirements." Corporate shareholders may be required to treat up to 20% of some capital gain dividends as ordinary income. Long-term capital gains are generally taxable at reduced maximum U.S. federal rates in the case of U.S. shareholders that are individuals, trusts or estates, and ordinary income rates in the case of U.S. shareholders that are corporations. Capital gains attributable to the sale of depreciable real property held for more than 12 months are subject to a 25% maximum U.S. federal income tax rate for taxpayers who are taxed as individuals, to the extent of previously claimed depreciation deductions.

Distributions in excess of our current and accumulated earnings and profits will generally represent a return of capital and will not be taxable to a shareholder to the extent that the amount of such distributions does not exceed the adjusted basis of the shareholder's shares in respect of which the distributions were made. Rather, the distribution will reduce the adjusted basis of the shareholder's shares. To the extent that such distributions exceed the adjusted basis of a shareholder's shares, the shareholder generally must include such distributions in income as long-term capital gain if the shares have been held for more than one year, or short-term capital gain if the shares have been held for one year or less. In addition, any dividend that we declare in October, November or December of any year and that is payable to a shareholder of record on a specified date in any such month will be treated as both paid by us and received by the shareholder on December 31 of such year, provided that we actually pay the dividend before the end of January of the following calendar year.

To the extent that we have available net operating losses and capital losses carried forward from prior tax years, such losses may, subject to limitations, reduce the amount of distributions that we must make in order to comply with the REIT distribution requirements. See "Taxation of the Fund—Annual Distribution

Requirements." Such losses, however, are not passed through to shareholders and do not offset income of shareholders from other sources, nor would such losses affect the character of any distributions that we make, which are generally subject to tax in the hands of shareholders to the extent that we have current or accumulated earnings and profits.

Dispositions of Our Common Shares. If a U.S. shareholder sells or disposes of our common shares, the shareholder will generally recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the shareholder's adjusted tax basis in the common shares. In general, capital gains recognized by individuals, trusts and estates upon the sale or disposition of our common shares will be subject to a reduced maximum U.S. federal income tax rate if the common shares are held for more than one year, and will be taxed at ordinary income rates if the common shares are held for one year or less. Gains recognized by shareholders that are corporations are subject to U.S. federal income tax at ordinary income rates, whether or not such gains are classified as long-term capital gains. Capital losses recognized by a shareholder upon the disposition of our common shares that was held for more than one year at the time of disposition will be considered long-term capital losses, and are generally available only to offset capital gain income of the shareholder but not ordinary income (except in the case of individuals, who may also offset up to $3,000 of ordinary income each year). In addition, any loss upon a sale or exchange of our common shares by a shareholder who has held the shares for six months or less, after applying holding period rules, will be treated as a long-term capital loss to the extent of actual or deemed distributions that we make that are required to be treated by the shareholder as long-term capital gain.

If an investor recognizes a loss upon a subsequent disposition of our common shares or other securities in an amount that exceeds a prescribed threshold, it is possible that the provisions of Treasury regulations involving "reportable transactions" could apply, with a resulting requirement to separately disclose the loss-generating transaction to the IRS. These regulations, though directed towards "tax shelters," are broadly written and apply to transactions that would not typically be considered tax shelters. The IRC imposes significant penalties for failure to comply with these requirements. You should consult your tax advisor concerning any possible disclosure obligation with respect to the receipt or disposition of our common shares or securities or transactions that we might undertake directly or indirectly. Moreover, you should be aware that we and other participants in the transactions in which we are involved (including their advisors) might be subject to disclosure or other requirements pursuant to these regulations.

*3.8% Medicare Tax on Investment Income***.** Certain U.S. shareholders who are individuals, estates or trusts and whose income exceeds certain thresholds are required to pay a 3.8% Medicare tax on dividends and certain other investment income, including capital gains from the sale or other disposition of our common shares.

Taxation of Non-U.S. Shareholders

The following is a summary of certain U.S. federal income and estate tax consequences of the ownership and disposition of our common shares applicable to non-U.S. shareholders following the commencement of the Deregistration Year. A "non-U.S. shareholder" is a beneficial owner of our common shares other than a partnership or U.S. shareholder.

Ordinary Dividends. The portion of dividends received by non-U.S. shareholders that (i) is payable out of our earnings and profits, (ii) is not attributable to capital gains that we recognize and (iii) is not effectively connected with a U.S. trade or business of the non-U.S. shareholder, will be subject to U.S. withholding tax at the rate of 30%, unless reduced or eliminated by treaty.

In general, non-U.S. shareholders will not be considered to be engaged in a U.S. trade or business solely as a result of their ownership of our common shares. In cases where the dividend income from a non-U.S. shareholder's investment in our common shares is, or is treated as, effectively connected with the non-U.S.

shareholder's conduct of a U.S. trade or business, the non-U.S. shareholder generally will be subject to U.S. federal income tax at graduated rates, in the same manner as U.S. shareholders are taxed with respect to such dividends. Such effectively connected income must generally be reported on a U.S. income tax return filed by or on behalf of the non-U.S. shareholder. The income may also be subject to a branch profits tax at the rate of 30% (unless reduced or eliminated by treaty) in the case of a non-U.S. shareholder that is a corporation.

Non-Dividend Distributions. Unless our common shares constitute a U.S. real property interest ("USRPI"), distributions that we make which are not dividends out of our earnings and profits will generally not be subject to U.S. income tax (except distributions that exceed both our earnings and profits and the shareholder's tax basis in our shares would generally be subject to the rules under "—Dispositions of Common Shares"). If we cannot determine at the time a distribution is made whether or not the distribution will exceed current and accumulated earnings and profits, the distribution will be subject to withholding at the rate applicable to dividends. The non-U.S. shareholder may seek a refund from the IRS of any amounts withheld if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits. If our common shares constitute a USRPI, as described below, distributions that we make in excess of the sum of (i) the shareholder's proportionate share of our earnings and profits, plus (ii) the shareholder's basis in its common shares, will be taxed under FIRPTA at the rate of tax, including any applicable capital gains rates, that would apply to a U.S. shareholder of the same type (e.g., an individual or a corporation, as the case may be), and the collection of the tax may be enforced by a withholding at a rate of 15% of the amount by which the distribution exceeds the shareholder's share of our earnings and profits.

Capital Gain Dividends. Under FIRPTA, a distribution that we make to a non-U.S. shareholder, to the extent attributable to gains from dispositions of USRPIs that we held directly or through pass-through subsidiaries, or USRPI gains, will, except as described below, be considered effectively connected with a U.S. trade or business of the non-U.S. shareholder and will be subject to U.S. income tax at the rates applicable to U.S. individuals or corporations, without regard to whether we designate the distribution as a capital gain dividend. See above under "—Taxation of Non-U.S. Shareholders—Ordinary Dividends," for a discussion of the consequences of income that is effectively connected with a U.S. trade or business. In addition, we will be required to withhold tax equal to the highest corporate tax rate applied to the amount treated as attributable to our USRPIs. Distributions subject to FIRPTA may also be subject to a branch profits tax at the rate of 30% (unless reduced or eliminated by treaty) in the hands of a non-U.S. shareholder that is a corporation. A distribution is not attributable to USRPI gain if we held an interest in the underlying asset solely as a creditor. Capital gain dividends received by a non-U.S. shareholder that are attributable to dispositions of our assets other than USRPIs are not subject to U.S. federal income or withholding tax, unless (i) the gain is effectively connected with the non-U.S. shareholder's U.S. trade or business, in which case the non-U.S. shareholder would be subject to the same treatment as U.S. shareholders with respect to such gain, except that a non-U.S. shareholder that is a corporation may also be subject to a branch profits tax at the rate of 30% (unless reduced or eliminated by treaty), or (ii) the non-U.S. shareholder is a nonresident alien individual who was present in the United States. for 183 days or more during the taxable year and certain other requirements are met, in which case the non-U.S. shareholder will incur a 30% tax on his capital gains. A significant portion of our assets are USRPIs.

A capital gain dividend that would otherwise have been treated as a USRPI gain will not be so treated or be subject to FIRPTA, and generally will not be treated as income that is effectively connected with a U.S. trade or business, and instead will be treated in the same manner as an ordinary dividend (see "—Taxation of Non-U.S. Shareholders—Ordinary Dividends"), if (i) the capital gain dividend is received with respect to a class of shares that is regularly traded on an established securities market located in the United States and (ii) the recipient non-U.S. shareholder does not own more than 10% of that class of shares at any time during the year ending on the date on which the capital gain dividend is received. Our common shares are, and we anticipate that they will continue to be, "regularly traded" on an established securities exchange.

Dispositions of our common shares. Unless our common shares constitute a USRPI, a sale of our common shares by a non-U.S. shareholder generally will not be subject to U.S. taxation. Subject to certain exceptions

discussed below, our common shares will be treated as a USRPI if, at any time during a prescribed testing period, 50% or more of our assets consist of interests in real property located within the United States, excluding, for this purpose, interests in real property solely in a capacity as a creditor. [It is possible that 50% or more of our assets will consist of USRPIs.][1]

Even if the foregoing 50% test is met, however, our common shares will not constitute a USRPI if we are a "domestically controlled qualified investment entity." A domestically controlled qualified investment entity includes a REIT, less than 50% of the value of which is held, directly or indirectly, by non-U.S. shareholders at all times during a specified testing period (after applying certain presumptions regarding the ownership of our common shares, as described in Section 897(h)(4)(E) of the IRC). [We believe that we are and will remain a domestically controlled qualified investment entity, and that a sale of our common shares should not be subject to taxation under FIRPTA.][2] However, no assurance can be given that we are or will remain a domestically controlled qualified investment entity.

In the event that we are not a domestically controlled qualified investment entity, but our common shares are "regularly traded," as defined by applicable Treasury regulations, on an established securities market, a non-U.S. shareholder's sale of our common shares nonetheless also would not be subject to tax under FIRPTA as a sale of a USRPI, provided that the selling non-U.S. shareholder held 10% or less of our outstanding common shares any time during a prescribed testing period. Our common shares are, and we expect that they will continue to be, regularly traded on an established securities market.

If gain on the sale of our common shares were subject to taxation under FIRPTA, the non-U.S. shareholder would be required to file a U.S. federal income tax return and would be subject to the same treatment as a U.S. shareholder with respect to such gain, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals. Moreover, in order to enforce the collection of the tax, the purchaser of the common shares could be required to withhold 15% of the purchase price and remit such amount to the IRS.

Gain from the sale of our common shares that would not otherwise be subject to FIRPTA will nonetheless be taxable in the United States to a non-U.S. shareholder in two cases: (i) if the non-U.S. shareholder's investment in our common shares is effectively connected with a U.S. trade or business conducted by such non-U.S. shareholder, the non-U.S. shareholder will be subject to the same treatment as a U.S. shareholder with respect to such gain, except that a non-U.S. shareholder that is a corporation may also be subject to a branch profits tax at a rate of 30% (unless reduced or eliminated by treaty), or (ii) if the non-U.S. shareholder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and certain other requirements are met, the nonresident alien individual will be subject to a 30% tax on the individual's capital gain. In addition, even if we are a domestically controlled qualified investment entity, upon disposition of our common shares, a non-U.S. shareholder may be treated as having gain from the sale or exchange of a USRPI if the non-U.S. shareholder (a) disposes of our common shares within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI and (b) acquires, or enters into a contract or option to acquire, other common shares within 30 days after such ex-dividend date.

Special FIRPTA Rules. Certain provisions under FIRPTA create certain exemptions from FIRPTA and otherwise modify the application of the foregoing FIRPTA rules for particular types of non-U.S. investors, including "qualified foreign pension funds" and their wholly owned foreign subsidiaries and certain widely held, publicly traded "qualified collective investment vehicles." Non-U.S. shareholders are urged to consult their own tax advisors regarding the applicability of these or any other special FIRPTA rules to their particular investment in our common shares.

1 Client to confirm.
2 Client to confirm.

Estate Tax. If our common shares are owned or treated as owned by an individual who is not a citizen or resident (as specially defined for U.S. federal estate tax purposes) of the United States at the time of such individual's death, the common shares will be includable in the individual's gross estate for U.S. federal estate tax purposes, unless an applicable estate tax treaty provides otherwise, and may therefore be subject to U.S. federal estate tax.

Non-U.S. shareholders are urged to consult their tax advisors regarding the U.S. federal, state, local and foreign income and other tax consequences of owning and disposing of our common shares.

Taxation of Tax-Exempt Shareholders

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from U.S. federal income taxation. However, they may be subject to taxation on their unrelated business taxable income ("UBTI"). While some investments in real estate may generate UBTI, the IRS has ruled that dividend distributions from a REIT to a tax-exempt entity do not constitute UBTI. Based on that ruling, and provided that (i) a tax-exempt shareholder has not held our common shares as "debt financed property" within the meaning of the IRC (i.e., where the acquisition or holding of the property is financed through a borrowing by the tax-exempt shareholder) and (ii) our common shares are not otherwise used in an unrelated trade or business, distributions that we make and income from the sale of our common shares generally should not give rise to UBTI to a tax-exempt shareholder.

Tax-exempt shareholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from U.S. federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) and (c)(20) of the IRC are subject to different UBTI rules, which generally require such shareholders to characterize distributions that we make as UBTI.

In certain circumstances, a pension trust that owns more than 10% of our common shares could be required to treat a percentage of any dividends received from us as UBTI if we are a "pension-held REIT." We will not be a pension-held REIT unless (i) we are required to "look through" one or more of our pension trust shareholders in order to satisfy the REIT "closely held" test and (ii) either (a) one pension trust owns more than 25% of the value of our common shares or (b) one or more pension trusts, each individually holding more than 10% of the value of our common shares, collectively own more than 50% of the value of our common shares. Certain restrictions on ownership and transfer of our common shares generally should prevent a tax-exempt entity from owning more than 10% of the value of our common shares and generally should prevent us from becoming a pension-held REIT.

Tax-exempt shareholders are urged to consult their tax advisors regarding the U.S. federal, state, local and foreign income and other tax consequences of owning and disposing of our common shares.

Other Tax Considerations

Legislative or Other Actions Affecting REITs

The present U.S. federal income tax treatment of REITs may be modified, possibly with retroactive effect, by legislative, judicial or administrative action at any time. The REIT rules are constantly under review by persons involved in the legislative process and by the IRS and the Treasury, which may result in statutory changes as well as revisions to regulations and interpretations. Changes to the U.S. federal tax laws and interpretations thereof could adversely affect an investment in our common shares.

Foreign Account Tax Compliance Act

Sections 1471 to 1474 of the IRC and existing guidance issued thereunder require withholding at a rate of 30% on dividends in respect of our common shares held by or through certain foreign financial institutions

(including investment funds), unless such institution enters into an agreement with the Treasury to report, on an annual basis, information with respect to shares in the institution held by certain U.S. persons and by certain non-U.S. entities that are wholly or partially owned by U.S. persons and to withhold on certain payments. Accordingly, the entity through which our common shares are held will affect the determination of whether such withholding is required. Similarly, dividends in respect of our common shares held by an investor that is a non-financial non-U.S. entity which does not qualify under certain exemptions will be subject to withholding at a rate of 30%, unless such entity either (i) certifies that such entity does not have any "substantial United States owners" or (ii) provides certain information regarding the entity's "substantial United States owners," which we or the applicable withholding agent will in turn provide to the Secretary of the Treasury. An intergovernmental agreement between the United States and an applicable foreign country, or future Treasury regulations or other guidance, may modify these requirements. We will not pay any additional amounts to shareholders in respect of any amounts withheld. Non-U.S. shareholders are encouraged to consult their tax advisors regarding the possible implications of these rules on their investment in our common shares.

State, Local and Foreign Taxes

We and our subsidiaries and shareholders may be subject to state, local or foreign taxation in various jurisdictions including those in which we or they transact business, own property or reside. Our state, local or foreign tax treatment and that of our shareholders may not conform to the U.S. federal income tax treatment discussed above. Any foreign taxes that we incur do not pass through to shareholders as a credit against their U.S. federal income tax liability. Prospective investors should consult their tax advisors regarding the application and effect of state, local and foreign income and other tax laws on an investment in our common shares.

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NEXPOINT STRATEGIC OPPORTUNITIES FUND

AMENDED AND RESTATED

AGREEMENT AND DECLARATION OF TRUST

As of [ ], 2020

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NEXPOINT STRATEGIC OPPORTUNITIES FUND

AGREEMENT AND DECLARATION OF TRUST

AGREEMENT AND DECLARATION OF TRUST initially made as of March 10, 2006, by the Trustees hereunder, and by the holders of shares of beneficial interest issued hereunder as hereinafter provided, and amended and/or restated from time to time, most recently as of [ ], 2020.

WHEREAS, this Trust has been formed to carry on business as set forth more particularly hereinafter;

WHEREAS, this Trust is authorized to issue an unlimited number of its shares of beneficial interest all in accordance with the provisions hereinafter set forth;

WHEREAS, the Trustees have agreed to manage all property coming into their hands as Trustees of a Delaware statutory trust in accordance with the provisions hereinafter set forth; and

WHEREAS, the parties hereto intend that the Trust created by this Declaration and the Certificate of Trust filed with the Secretary of State of the State of Delaware on March 10, 2006 shall constitute a statutory trust under the Delaware Statutory Trust Act and that this Declaration shall constitute the governing instrument of such statutory trust.

NOW, THEREFORE, the Trustees hereby declare that they will hold all cash, securities, and other assets which they may from time to time acquire in any manner as Trustees hereunder IN TRUST to manage and dispose of the same upon the following terms and conditions for the benefit of the holders from time to time of shares of beneficial interest in this Trust as hereinafter set forth.

ARTICLE I

THE TRUST

1.1 Name. This Trust shall be known as the "NexPoint Strategic Opportunities Fund" and the Trustees shall conduct the business of the Trust under that name or any other name or names as they may from time to time determine.

1.2 Definitions. As used in this Declaration, the following terms shall have the following meanings:

"1940 Act" shall mean the Investment Company Act of 1940 and the rules and regulations promulgated thereunder and exemptions granted therefrom, as amended from time to time.

"Affiliated Person" shall, for so long as the Trust shall remain registered as an investment company under the 1940 Act, have the meanings given to it in the 1940 Act.

"Assignment" shall, for so long as the Trust shall remain registered as an investment company under the 1940 Act, have the meanings given to it in the 1940 Act.

"By-Laws" shall mean the By-Laws of the Trust as amended from time to time by the Trustees, which By-Laws are expressly herein incorporated by reference as part of the "governing instrument" within the meaning of the DSTA.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Commission" shall mean the Securities and Exchange Commission.

"Declaration" shall mean this Agreement and Declaration of Trust, as amended, supplemented or amended and restated from time to time.

"Delaware Statutory Trust Act" or "DSTA" shall mean the provisions of the Delaware Statutory Trust Act, 12 Del. C. §3801, et seq., as such Act may be amended from time to time.

"Fundamental Policies" shall, for so long as the Trust shall remain registered as an investment company under the 1940 Act, mean the investment policies and restrictions as set forth from time to time in any Registration Statement of the Trust filed with the Commission and designated as fundamental policies therein, as they may be amended from time to time in accordance with the requirements of the 1940 Act.

"Interested Person" shall, for so long as the Trust shall remain registered as an investment company under the 1940 Act, have the meanings given to it in the 1940 Act.

"Majority Shareholder Vote" shall, for so long as the Trust shall remain registered as an investment company under the 1940 Act, mean a vote of "a majority of the outstanding voting securities" (as such term is defined in the 1940 Act) of the Trust with each class and series of Shares voting together as a single class, except to the extent otherwise required by the 1940 Act or this Declaration with respect to any one or more classes or series of Shares, in which case the applicable proportion of such classes or series of Shares voting as a separate class or series, as case may be, also will be required.

"Person" shall mean and include individuals, corporations, partnerships, trusts, limited liability companies, associations, joint ventures and other entities, whether or not legal entities, and governments and agencies and political subdivisions thereof.

"Principal Underwriter" shall, for so long as the Trust shall remain registered as an investment company under the 1940 Act, have the meanings given to it in the 1940 Act.

"Prospectus" shall mean the Prospectus of the Trust, if any, as in effect from time to time under the Securities Act of 1933, as amended.

"Shareholders" shall mean as of any particular time the holders of record of outstanding Shares of the Trust, at such time.

"Shares" shall mean the transferable units of beneficial interest into which the beneficial interest in the Trust shall be divided from time to time and includes fractions of Shares as well as whole Shares. In addition, Shares also means any preferred shares or preferred units of beneficial interest which may be issued from time to time, as described herein. All references to Shares shall be deemed to be Shares of any or all series or classes as the context may require.

"Trust" shall mean the trust established by this Declaration, as amended from time to time, inclusive of each such amendment.

"Trust Property" shall mean as of any particular time any and all property, real or personal, tangible or intangible, which at such time is owned or held by or for the account of the Trust or the Trustees in such capacity.

"Trustees" shall mean the signatories to this Declaration, so long as they shall continue in office in accordance with the terms hereof, and all other persons who at the time in question have been duly elected or appointed and have qualified as trustees in accordance with the provisions hereof and are then in office.

ARTICLE II

TRUSTEES

2.1 Number and Qualification. The number of Trustees shall be determined by a written instrument signed by a majority of the Trustees then in office. Except as otherwise provided from time to time by a majority of the Trustees, the number of Trustees shall be no less than two or more than eleven. No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his term. An individual nominated as a Trustee shall be at least 21 years of age and not older than 80 years of age at the time of nomination, shall not be under legal disability and shall have such other qualifications, satisfy such other requirements and be subject to such other limitations as may be determined from time to time by a majority of the Trustees. Trustees need not own Shares and may succeed themselves in office.

2.2 Term and Election. The Board of Trustees shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of trustees constituting the entire Board of Trustees. Within the limits above specified, the number of the Trustees in each class shall be determined by resolution of the Board of Trustees. As of the date hereof, the term of office of the Class I Trustee(s) shall expire at the annual meeting of the Trust held in 2022, the term of office of the Class II Trustee(s) shall expire at the annual meeting of the Trust held in 2020 and the term of office of the Class III Trustee(s) shall expire at the annual meeting of the Trust held in 2021. Upon expiration of the term of office of each class as set forth above, the number of Trustees in such class, as determined by the Board of Trustees, shall be elected for a term expiring on the date of the third annual meeting of Shareholders or special meeting in lieu thereof following such expiration to succeed the Trustees whose terms of office expire. The Trustees shall be elected at an annual meeting of the Shareholders or special meeting in lieu thereof called for that purpose by a majority of the Trustees then in office or, if no such Trustee then exists, by the President, and each Trustee elected shall hold office until his or her successor shall have been elected and shall have qualified; provided that the term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, removal, bankruptcy, adjudicated incompetence or other incapacity to perform the duties of the office of a Trustee.

2.3 Resignation and Removal. Any of the Trustees may resign their trust (without need for prior or subsequent accounting) by an instrument in writing signed by such Trustee and delivered or mailed to the Trustees or the Chairman, if any, the President or the Secretary and such resignation shall be effective upon such delivery, or at a later date according to the terms of the instrument. Any of the Trustees may be removed (provided the aggregate number of Trustees after such removal shall not be less than the minimum number required by Section 2.1 hereof), with or without cause, by the affirmative vote of a majority of the remaining Trustees. Upon the resignation or removal of a Trustee,

each such resigning or removed Trustee shall execute and deliver such documents as the remaining Trustees shall require for the purpose of conveying to the Trust or the remaining Trustees any Trust Property held in the name of such resigning or removed Trustee. Upon the incapacity or death of any Trustee, such Trustee's legal representative shall execute and deliver on such Trustee's behalf such documents as the remaining Trustees shall require as provided in the preceding sentence.

2.4 Vacancies. Whenever a vacancy in the Board of Trustees shall occur, the remaining Trustees may fill such vacancy by appointing an individual having the qualifications applicable to Trustees by a written instrument signed by a majority of the Trustees then in office or may leave such vacancy unfilled or may reduce the number of Trustees; provided the aggregate number of Trustees after such reduction shall not be less than the minimum number required by Section 2.1 hereof; provided, further, that if the Shareholders of any class or series of Shares are entitled separately to elect one or more Trustees, a majority of the remaining Trustees or the sole remaining Trustee elected by that class or series may fill any vacancy among the number of Trustees elected by that class or series. Any vacancy created by an increase in Trustees may be filled by the appointment of an individual having the qualifications applicable to Trustees made by a written instrument signed by a majority of the Trustees then in office. No vacancy shall operate to annul this Declaration or to revoke any existing agency created pursuant to the terms of this Declaration. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided herein, the Trustees in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration.

2.5 Meetings. Meetings of the Trustees shall be held from time to time upon the call of the Chairman, if any, or the President or any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place fixed by the By-Laws or by resolution of the Trustees. Notice of any other meeting shall be given by the Secretary and shall be delivered to the Trustees orally as soon as practicable before the meeting, but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been properly called or convened. Any time there is more than one Trustee, a quorum for all meetings of the Trustees shall be determined from time to time by a majority of the Trustees then in office. Unless provided otherwise in this Declaration or the By-Laws and, for so long as the Trust shall remain registered as an investment company under the 1940 Act, except as required under the 1940 Act, any action of the Trustees may be taken at a meeting by vote of a majority of the Trustees present (a quorum being present) or without a meeting by written consent of a majority of the Trustees.

Any committee of the Trustees, including an executive committee, if any, may act with or without a meeting. A quorum for all meetings of any such committee shall be such number as the applicable committee charter may provide. Unless provided otherwise in this Declaration, the By-Laws or the applicable committee charter, any action of any such committee may be taken at a meeting by vote of a majority of the members present (a quorum being present) or without a meeting by written consent of all of the members.

For so long as the Trust shall remain registered as an investment company under the 1940 Act, with respect to actions of the Trustees and any committee of the Trustees, Trustees who are Interested Persons in any action to be taken may be counted for quorum purposes under this Section and shall be entitled to vote to the extent not prohibited by the 1940 Act.

All or any one or more Trustees may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other; participation in a meeting pursuant to any such communications system shall constitute presence in person at such meeting, subject, for so long as the Trust shall remain registered as an investment company under the 1940 Act, to the requirements of the 1940 Act with respect to attendance in person.

2.6 Trustee Action by Written Consent. Any action which may be taken by Trustees by vote may be taken without a meeting if that number of the Trustees, or members of a committee, as the case may be, required for approval of such action at a meeting of the Trustees or of such committee consent to the action in writing and the written consents are filed with the records of the meetings of Trustees. Such consent shall be treated for all purposes as a vote taken at a meeting of Trustees.

2.7 Officers. The Trustees shall elect a President, a Secretary and a Treasurer and may elect a Chairman who shall serve at the pleasure of the Trustees or until their successors are elected. The Trustees may elect or appoint or may authorize the Chairman, if any, or President to appoint such other officers or agents with such powers as the Trustees may deem to be advisable. A Chairman shall, and the President, Secretary and Treasurer may, but need not, be a Trustee.

ARTICLE III

POWERS AND DUTIES OF TRUSTEES

3.1 General. Trustees shall act in good faith in the manner they reasonably believe to be in the best interest of the Trust as a whole. The Trustees shall have exclusive and absolute control over the Trust Property and over the business of the Trust to the same extent as if the Trustees were the sole owners of the Trust Property and business in their own right, but with such powers of delegation as may be permitted by this Declaration. The Trustees may perform such acts as in their sole discretion are proper for conducting the business of the Trust. The enumeration of any specific power herein shall not be construed as limiting the aforesaid power. Such powers of the Trustees may be exercised without order of or resort to any court.

3.2 Investments. The Trustees shall have power, subject, for so long as the Trust shall remain registered as an investment company under the 1940 Act, to the Fundamental Policies in effect from time to time with respect to the Trust, to:

(a) manage, conduct, operate and carry on any lawful business activity;

(b) subscribe for, invest in, reinvest in, purchase or otherwise acquire, hold, pledge, sell, assign, transfer, exchange, distribute or otherwise deal in or dispose of any and all sorts of property, tangible or intangible, including but not limited to interests in real estate and securities of any type whatsoever, whether equity or non-equity, of any issuer, evidences of indebtedness of any person and any other rights, interests, instruments or property of any sort and to exercise any and all rights, powers and privileges of ownership or interest in respect of any and all such investments of every kind and description, including, without limitation, the right to consent and otherwise act with respect thereto, with power to designate one or more Persons to exercise any of said rights, powers and privileges in respect of any of said investments. The Trustees shall not be limited by any law limiting the investments which may be made by fiduciaries.

3.3 Legal Title. Legal title to all the Trust Property shall be vested in the Trustees as joint tenants except that the Trustees shall have power to cause legal title to any Trust Property to be held by or in the name of one or more of the Trustees, or in the name of the Trust, or in the name of any other Person as nominee, custodian or pledgee, on such terms as the Trustees may determine; provided that the interest of the Trust therein is appropriately protected.

The right, title and interest of the Trustees in the Trust Property shall vest automatically in each person who may hereafter become a Trustee upon his due election and qualification. Upon the ceasing of any person to be a Trustee for any reason, such person shall automatically cease to have any right, title or interest in any of the Trust Property, and the right, title and interest of such Trustee in the Trust Property shall vest automatically in the remaining Trustees. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

3.4 Issuance and Repurchase of Shares. The Trustees shall have the power to issue, sell, repurchase, redeem, retire, cancel, acquire, hold, resell, reissue, dispose of, transfer, and otherwise deal in, Shares, including Shares in fractional denominations, and, subject to the more detailed provisions set forth in ARTICLE VIII and ARTICLE IX, to apply to any such repurchase, redemption, retirement, cancellation or acquisition of Shares any funds or property whether capital or surplus or otherwise, to the full extent now or hereafter permitted under the DSTA.

3.5 Borrow Money or Utilize Leverage. Subject to the Fundamental Policies in effect from time to time with respect to the Trust, the Trustees shall have the power to borrow money or otherwise obtain credit or utilize leverage to the maximum extent permitted by law or regulation as such may be needed from time to time and to secure the same by mortgaging, pledging or otherwise subjecting as security the assets of the Trust, including the lending of portfolio securities, and to endorse, guarantee, or undertake the performance of any obligation, contract or engagement of any other person, firm, association or corporation.

3.6 Delegation; Committees. The Trustees shall have the power, consistent with their continuing exclusive authority over the management of the Trust and the Trust Property, to delegate from time to time to such of their number or to officers, employees or agents of the Trust the doing of such things, including any matters set forth in this Declaration, and the execution of such instruments either in the name of the Trust or the names of the Trustees or otherwise as the Trustees may deem expedient. The Trustees may designate one or more committees which shall have all or such lesser portion of the authority of the entire Board of Trustees as the Trustees shall determine from time to time except, for so long as the Trust shall remain registered as an investment company under the 1940 Act, to the extent action by the entire Board of Trustees or particular Trustees is required by the 1940 Act.

3.7 Collection and Payment. The Trustees shall have power to collect all property due to the Trust; to pay all claims, including taxes, against the Trust Property or the Trust, the Trustees or any officer, employee or agent of the Trust; to prosecute, defend, compromise or abandon any claims relating to the Trust Property or the Trust, or the Trustees or any officer, employee or agent of the Trust; to foreclose any security interest securing any obligations, by virtue of which any property is owed to the Trust; and to enter into releases, agreements and other instruments. The Shareholders shall have no power to vote as to whether or not a court action, legal proceeding or claim should or should not be brought or maintained derivatively or as a class action on behalf of the Trust or the Shareholders.

3.8 Expenses. The Trustees shall have power to incur and pay out of the assets or income of the Trust any expenses which in the opinion of the Trustees are necessary or incidental to carry out any of the purposes of this Declaration, and the business of the Trust, and to pay reasonable compensation from the funds of the Trust to themselves as Trustees. The Trustees shall fix the compensation of all officers, employees and Trustees. The Trustees may pay themselves such compensation for special services, including legal, underwriting, syndicating and brokerage services, as they in good faith may deem reasonable and reimbursement for expenses reasonably incurred by themselves on behalf of the Trust. The Trustees shall have the power, as frequently as they may determine, to cause each Shareholder to pay directly, in advance or arrears, for charges of distribution, of the custodian or transfer, Shareholder servicing or similar agent, a pro rata amount as defined from time to time by the Trustees, by setting off such charges due from such Shareholder from declared but unpaid dividends or distributions owed such Shareholder and/or by reducing the number of shares in the account of such Shareholder by that number of full and/or fractional Shares which represents the outstanding amount of such charges due from such Shareholder.

3.9 By-Laws. The Trustees shall have the exclusive authority to adopt and from time to time amend or repeal By-Laws for the conduct of the business of the Trust.

3.10 Miscellaneous Powers. The Trustees shall have the power to: (a) employ or contract with such Persons as the Trustees may deem desirable for the transaction of the business of the Trust; (b) enter into joint ventures, partnerships and any other combinations or associations; (c) purchase, and pay for out of Trust Property, insurance policies insuring the Shareholders, Trustees, officers, employees, agents, investment advisors, distributors, selected dealers or independent contractors of the Trust against all claims arising by reason of holding any such position or by reason of any action taken or omitted by any such Person in such capacity, whether or not constituting negligence, or whether or not the Trust would have the power to indemnify such Person against such liability; (d) establish pension, profit-sharing, share purchase, and other retirement, incentive and benefit plans for any Trustees, officers, employees and agents of the Trust; (e) make donations, irrespective of benefit to the Trust, for charitable, religious, educational, scientific, civic or similar purposes; (f) to the full extent permitted by law, indemnify any Person with whom the Trust has dealings, including, without limitation, any advisor, administrator, manager, transfer agent, custodian, distributor or selected dealer, or any other person as the Trustees may see fit to such extent as the Trustees shall determine; (g) guarantee indebtedness or contractual obligations of others; (h) determine and change the fiscal year of the Trust and the method in which its accounts shall be kept; (i) notwithstanding the Fundamental Policies of the Trust, convert the Trust to a master-feeder structure; provided, however, for so long as the Trust shall remain registered as an investment company under the 1940 Act, the Trust obtains the approval of shareholders holding at least a majority of the Trust's Shares present at a meeting of Shareholders at which a quorum is present; and (j) adopt a seal for the Trust but the absence of such seal shall not impair the validity of any instrument executed on behalf of the Trust.

3.11 Further Powers. The Trustees shall have the power to conduct the business of the Trust and carry on its operations in any and all of its branches and maintain offices both within and without the State of Delaware, in any and all states of the United States of America, in the District of Columbia, in any foreign country and in any and all commonwealths, municipalities, territories, dependencies, colonies, possessions, agencies or instrumentalities of the United States of America and of foreign governments, and to do all such other things and execute all such instruments as they deem necessary, proper or desirable in order to promote the interests of the Trust although such things are not herein specifically mentioned. Any determination as to what is in the interests of the Trust made by the

Trustees in good faith shall be conclusive. In construing the provisions of this Declaration, the presumption shall be in favor of a grant of power to the Trustees. The Trustees will not be required to obtain any court order to deal with the Trust Property.

ARTICLE IV

ADVISORY, MANAGEMENT AND DISTRIBUTION ARRANGEMENTS

4.1 Advisory and Management Arrangements. Subject, for so long as the Trust shall remain registered as an investment company under the 1940 Act, to the requirements of the 1940 Act, the Trustees may in their discretion from time to time enter into advisory, administration or management contracts (including, in each case, one or more sub-advisory, sub-administration or sub-management contracts) whereby the other party to any such contract shall undertake to furnish such advisory, administrative and management services with respect to the Trust as the Trustees shall from time to time consider desirable and all upon such terms and conditions as the Trustees may in their discretion determine. Notwithstanding any provisions of this Declaration, the Trustees may authorize any advisor, administrator or manager (subject to such general or specific instructions as the Trustees may from time to time adopt) to exercise any of the powers of the Trustees, including to effect investment transactions with respect to the assets on behalf of the Trust to the full extent of the power of the Trustees to effect such transactions or may authorize any officer, employee or Trustee to effect such transactions pursuant to recommendations of any such advisor, administrator or manager (and all without further action by the Trustees). Any such investment transaction shall be deemed to have been authorized by all of the Trustees.

4.2 Distribution Arrangements. Subject, for so long as the Trust shall remain registered as an investment company under the 1940 Act, to the requirements of the 1940 Act, the Trustees may retain underwriters and/or placement agents to sell Shares and other securities of the Trust. The Trustees may in their discretion from time to time enter into one or more contracts, providing for the sale of securities of the Trust, whereby the Trust may either agree to sell such securities to the other party to the contract or appoint such other party its sales agent for such securities. In either case, the contract shall be on such terms and conditions as the Trustees may in their discretion determine not inconsistent with the provisions of this ARTICLE IV or the By-Laws; and such contract may also provide for the repurchase or sale of securities of the Trust by such other party as principal or as agent of the Trust and may provide that such other party may enter into selected dealer agreements with registered securities dealers and brokers and servicing and similar agreements with persons who are not registered securities dealers to further the purposes of the distribution or repurchase of the securities of the Trust.

4.3 Parties to Contract. Any contract of the character described in Sections 4.1 and 4.2 of this ARTICLE IV or in ARTICLE VII hereof or otherwise may be entered into with any Person, although one or more of the Trustees, officers or employees of the Trust may be an officer, director, trustee, shareholder, or member of such other party to the contract, and no such contract shall be invalidated or rendered voidable by reason of the existence of any such relationship, nor shall any Person holding such relationship be liable merely by reason of such relationship for any loss or expense to the Trust under or by reason of said contract or accountable for any profit realized directly or indirectly therefrom; provided that the contract when entered into was reasonable and fair and not in violation of this Declaration or the By-Laws. The same Person may be the other party to contracts entered into pursuant to Sections 4.1 and 4.2 above or ARTICLE VII hereof or otherwise, and any individual may be financially interested or otherwise affiliated with Persons who are parties to any or all of the contracts mentioned in this Section 4.3.

ARTICLE V

LIMITATIONS OF LIABILITY AND INDEMNIFICATION

5.1 No Personal Liability of Shareholders, Trustees, etc. No Shareholder of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person in connection with Trust Property or the acts, obligations or affairs of the Trust. Shareholders shall have the limitation of personal liability provided under the DSTA. No Trustee or officer of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person, save only, for so long as the Trust shall remain registered as an investment company under the 1940 Act, liability to the Trust or its Shareholders arising from bad faith, willful misfeasance, gross negligence or reckless disregard for his duty to such Person; and, subject to the foregoing exception, all such Persons shall look solely to the Trust Property for satisfaction of claims of any nature arising in connection with the affairs of the Trust. If any Shareholder, Trustee or officer, as such, of the Trust, is made a party to any suit or proceeding to enforce any such liability, subject to the foregoing exception, he shall not, on account thereof, be held to any personal liability. Any repeal or modification of this Section 5.1 shall not adversely affect any right or protection of a Trustee or officer of the Trust existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

5.2 Mandatory Indemnification. (a) Subject to any limitations or requirements contained in the By-Laws, the Trust hereby agrees to indemnify each person who at any time serves as a Trustee or officer of the Trust (each such person being an “indemnitee”) against any liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and reasonable counsel fees reasonably incurred by such indemnitee in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative or investigative body in which he may be or may have been involved as a party or otherwise or with which he may be or may have been threatened, while acting in any capacity set forth in this ARTICLE V by reason of his having acted in any such capacity, except with respect to any matter as to which he shall not have acted in good faith in the reasonable belief that his action was in the best interest of the Trust or, in the case of any criminal proceeding, as to which he shall have had reasonable cause to believe that the conduct was unlawful; provided, however, that, for so long as the Trust shall remain registered as an investment company under the 1940 Act, no indemnitee shall be indemnified hereunder against any liability to any person or any expense of such indemnitee arising by reason of (i) willful misfeasance, (ii) bad faith, (iii) gross negligence, or (iv) reckless disregard of the duties involved in the conduct of his position (the conduct referred to in such clauses (i) through (iv) being sometimes referred to herein as “disabling conduct”). Notwithstanding the foregoing, with respect to any action, suit or other proceeding voluntarily prosecuted by any indemnitee as plaintiff, indemnification shall be mandatory only if the prosecution of such action, suit or other proceeding by such indemnitee (1) was authorized by a majority of the Trustees or (2) was instituted by the indemnitee to enforce his or her rights to indemnification hereunder in a case in which the indemnitee is found to be entitled to such indemnification. The rights to indemnification set forth in this Declaration shall continue as to a person who has ceased to be a Trustee or officer of the Trust and shall inure to the benefit of his or her heirs, executors and personal and legal representatives. No amendment or restatement of this Declaration or repeal of any of its provisions shall limit or eliminate any of the benefits provided to any person who at any time is or was a Trustee or officer of the Trust or otherwise entitled to indemnification hereunder in respect of any act or omission that occurred prior to such amendment, restatement or repeal.

(b) Notwithstanding the foregoing, for so long as the Trust shall remain registered as an investment company under the 1940 Act, no indemnification shall be made hereunder unless there has been a determination (i) by a final decision on the merits by a court or other body of competent jurisdiction before whom the issue of entitlement to indemnification hereunder was brought that such indemnitee is entitled to indemnification hereunder or, (ii) in the absence of such a decision, by (1) a majority vote of a quorum of those Trustees who are neither "interested persons" of the Trust (as defined in Section 2(a)(19) of the 1940 Act) nor parties to the proceeding ("Disinterested Non-Party Trustees"), that the indemnitee is entitled to indemnification hereunder, or (2) if such quorum is not obtainable or even if obtainable, if such majority so directs, independent legal counsel in a written opinion concludes that the indemnitee should be entitled to indemnification hereunder. All determinations to make advance payments in connection with the expense of defending any proceeding shall be authorized and made in accordance with the immediately succeeding paragraph (c) below.

(c) The Trust shall make advance payments in connection with the expenses of defending any action with respect to which indemnification might be sought hereunder if the Trust receives a written affirmation by the indemnitee of the indemnitee's good faith belief that the standards of conduct necessary for indemnification have been met and a written undertaking to reimburse the Trust unless it is subsequently determined that the indemnitee is entitled to such indemnification and if a majority of the Trustees determine that the applicable standards of conduct necessary for indemnification appear to have been met. In addition, at least one of the following conditions must be met: (i) the indemnitee shall provide adequate security for his undertaking, (ii) the Trust shall be insured against losses arising by reason of any lawful advances, or (iii) a majority of a quorum of Trustees not party to the action (or, for so long as the Trust shall remain registered as an investment company under the 1940 Act, the Disinterested Non-Party Trustees), or if a majority vote of such quorum so direct, independent legal counsel in a written opinion, shall conclude, based on a review of readily available facts (as opposed to a full trial-type inquiry), that there is substantial reason to believe that the indemnitee ultimately will be found entitled to indemnification.

(d) The rights accruing to any indemnitee under these provisions shall not exclude any other right which any person may have or hereafter acquire under this Declaration, the By-Laws of the Trust, any statute, agreement, vote of Shareholders or Trustees (provided that, for so long as the Trust shall remain registered as an investment company under the 1940 Act, such vote includes the vote of a majority of the Trustees who are not "interested persons," as defined in Section 2(a)(19) of the 1940 Act) or any other right to which he or she may be lawfully entitled.

(e) Subject to (1), for so long as the Trust shall remain registered as an investment company under the 1940 Act, any limitations provided by the 1940 Act and (2) this Declaration, the Trust shall have the power and authority to indemnify and provide for the advance payment of expenses to employees, agents and other Persons providing services to the Trust or serving in any capacity at the request of the Trust to the full extent permitted by law and may indemnify or provide for the advance payment of expenses for such Persons; provided that such indemnification has been approved by a majority of the Trustees.

5.3 No Bond Required of Trustees. No Trustee shall, as such, be obligated to give any bond or other security for the performance of any of his duties hereunder.

5.4 No Duty of Investigation; No Notice in Trust Instruments, etc. No purchaser, lender, transfer agent or other person dealing with the Trustees or with any officer, employee or agent of the

Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by said officer, employee or agent or be liable for the application of money or property paid, loaned, or delivered to or on the order of the Trustees or of said officer, employee or agent. Every obligation, contract, undertaking, instrument, certificate, Share, other security of the Trust, and every other act or thing whatsoever executed in connection with the Trust shall be conclusively taken to have been executed or done by the executors thereof only in their capacity as Trustees under this Declaration or in their capacity as officers, employees or agents of the Trust. The Trustees may maintain insurance for the protection of the Trust Property, the Shareholders, Trustees, officers, employees and agents in such amount as the Trustees shall deem adequate to cover possible tort liability, and such other insurance as the Trustees in their sole judgment shall deem advisable or is required by the 1940 Act.

5.5 Reliance on Experts, etc. Each Trustee and officer or employee of the Trust shall, in the performance of its duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Trust, upon an opinion of counsel, or upon reports made to the Trust by any of the Trust's officers or employees or by any advisor, administrator, manager, distributor, selected dealer, accountant, appraiser or other expert or consultant selected with reasonable care by the Trustees, officers or employees of the Trust, regardless of whether such counsel or expert may also be a Trustee.

ARTICLE VI

SHARES OF BENEFICIAL INTEREST

6.1 Beneficial Interest. The interest of the beneficiaries hereunder shall be divided into an unlimited number of transferable shares of beneficial interest, par value $.001 per share. All Shares issued in accordance with the terms hereof, including, without limitation, Shares issued in connection with a dividend in Shares or a split of Shares, shall be fully paid and, except as provided in the last sentence of Section 3.8, nonassessable when the consideration determined by the Trustees (if any) therefor shall have been received by the Trust.

6.2 Other Securities. The Trustees may, subject, for so long as the Trust shall remain registered as an investment company under the 1940 Act, to the Fundamental Policies and the requirements of the 1940 Act, authorize and issue such other securities of the Trust as they determine to be necessary, desirable or appropriate, having such terms, rights, preferences, privileges, limitations and restrictions as the Trustees see fit, including multiple classes of common shares, preferred interests, debt securities or other senior securities. To the extent that the Trustees authorize and issue additional shares of any class or series, they are hereby authorized and empowered to amend or supplement this Declaration as they deem necessary or appropriate, including to comply with the requirements of any applicable law or requirements imposed by the rating agencies or other Persons, all without the approval of Shareholders. Any such supplement or amendment shall be filed as is necessary. The Trustees are also authorized to take such actions and retain such persons as they see fit to offer and sell such securities.

6.3 Rights of Shareholders. The Shares shall be personal property giving only the rights in this Declaration specifically set forth. The ownership of the Trust Property of every description and the right to conduct any business herein before described are vested exclusively in the Trustees, and the Shareholders shall have no interest therein other than the beneficial interest conferred by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or

interests of the Trust nor can they be called upon to share or assume any losses of the Trust or, subject to the right of the Trustees to charge certain expenses directly to Shareholders, as provided in the last sentence of Section 3.8, suffer an assessment of any kind by virtue of their ownership of Shares. The Shares shall not entitle the holder to preference, preemptive, appraisal, conversion or exchange rights (except as specified in this Section 6.3, in Section 11.4 or as specified by the Trustees when creating any class or series of Shares).

6.4 Trust Only. It is the intention of the Trustees to create only the relationship of Trustee and beneficiary between the Trustees and each Shareholder from time to time. It is not the intention of the Trustees to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a trust. Nothing in this Declaration shall be construed to make the Shareholders, either by themselves or with the Trustees, partners or members of a joint stock association.

6.5 Issuance of Shares. The Trustees, in their discretion, may from time to time without vote of the Shareholders issue Shares including preferred shares that may have been established pursuant to Section 6.2, in addition to the then issued and outstanding Shares and Shares held in the treasury, to such party or parties and for such amount and type of consideration, including cash or property, at such time or times, and on such terms as the Trustees may determine, and may in such manner acquire other assets (including the acquisition of assets subject to, and in connection with the assumption of, liabilities) and businesses. The Trustees may from time to time divide or combine the Shares into a greater or lesser number without thereby changing the proportionate beneficial interest in such Shares. Issuances and redemptions of Shares may be made in whole Shares and/or l/l,000ths of a Share or multiples thereof as the Trustees may determine.

6.6 Register of Shares. A register shall be kept at the offices of the Trust or any transfer agent duly appointed by the Trustees under the direction of the Trustees which shall contain the names and addresses of the Shareholders and the number of Shares held by them respectively and a record of all transfers thereof. Separate registers shall be established and maintained for each class or series of Shares. Each such register shall be conclusive as to who are the holders of the Shares of the applicable class or series of Shares and who shall be entitled to receive dividends or distributions or otherwise to exercise or enjoy the rights of Shareholders. No Shareholder shall be entitled to receive payment of any dividend or distribution, nor to have notice given to him as herein provided, until he has given his address to a transfer agent or such other officer or agent of the Trustees as shall keep the register for entry thereon. It is not contemplated that certificates will be issued for the Shares; however, the Trustees, in their discretion, may authorize the issuance of share certificates and promulgate appropriate fees therefore and rules and regulations as to their use.

6.7 Transfer Agent and Registrar. The Trustees shall have power to employ a transfer agent or transfer agents, and a registrar or registrars, with respect to the Shares. The transfer agent or transfer agents may keep the applicable register and record therein, the original issues and transfers, if any, of the said Shares. Any such transfer agents and/or registrars shall perform the duties usually performed by transfer agents and registrars of certificates of stock in a corporation, as modified by the Trustees.

6.8 Transfer of Shares. Shares shall be transferable on the records of the Trust only by the record holder thereof or by its agent thereto duly authorized in writing, upon delivery to the Trustees or a transfer agent of the Trust of a duly executed instrument of transfer, together with such evidence of the genuineness of each such execution and authorization and of other matters (including compliance

with any securities laws and contractual restrictions) as may reasonably be required. Upon such delivery the transfer shall be recorded on the applicable register of the Trust. Until such record is made, the Shareholder of record shall be deemed to be the holder of such Shares for all purposes hereof and neither the Trustees nor any transfer agent or registrar nor any officer, employee or agent of the Trust shall be affected by any notice of the proposed transfer.

Any person becoming entitled to any Shares in consequence of the death, bankruptcy, or incompetence of any Shareholder, or otherwise by operation of law, shall be recorded on the applicable register of Shares as the holder of such Shares upon production of the proper evidence thereof to the Trustees or a transfer agent of the Trust, but until such record is made, the Shareholder of record shall be deemed to be the holder of such for all purposes hereof, and neither the Trustees nor any transfer agent or registrar nor any officer or agent of the Trust shall be affected by any notice of such death, bankruptcy or incompetence, or other operation of law.

6.9 Notices. Any and all notices to which any Shareholder hereunder may be entitled and any and all communications shall be deemed duly served or given (1) if mailed, postage prepaid, addressed to any Shareholder of record at his last known address as recorded on the applicable register of the Trust; (2) by press release or posting on the Trust's publicly available website together in either case with the filing of a Form 8-K; or (3) such other method as the Trustees may determine.

ARTICLE VII

CUSTODIANS

7.1 Appointment and Duties. The Trustees shall at all times employ a custodian or custodians, for so long as the Trust shall remain registered as an investment company under the 1940 Act, meeting the qualifications for custodians for portfolio securities of investment companies contained in the 1940 Act, as custodian with respect to the assets of the Trust. Any custodian shall have authority as agent of the Trust as determined by the custodian agreement or agreements, but subject to such restrictions, limitations and other requirements, if any, as may be contained in the By-Laws of the Trust and, for so long as the Trust shall remain registered as an investment company under the 1940 Act, the 1940 Act, including without limitation authority:

(1) to hold the securities owned by the Trust and deliver the same upon written order;

(2) to receive any receipt for any moneys due to the Trust and deposit the same in its own banking department (if a bank) or elsewhere as the Trustees may direct;

(3) to disburse such funds upon orders or vouchers;

(4) if authorized by the Trustees, to keep the books and accounts of the Trust and furnish clerical and accounting services; and

(5) if authorized to do so by the Trustees, to compute the net income or net asset value of the Trust; all upon such basis of compensation as may be agreed upon between the Trustees and the custodian.

The Trustees may also authorize each custodian to employ one or more sub-custodians from time to time to perform such of the acts and services of the custodian and upon such terms and conditions, as may be agreed upon between the custodian and such sub-custodian and approved by the Trustees; provided that, for so long as the Trust shall remain registered as an investment company

under the 1940 Act, in every case such sub-custodian shall meet the qualifications for custodians contained in the 1940 Act.

7.2 Central Certificate System. Subject to such rules, regulations and orders as the Commission may adopt, the Trustees may direct the custodian to deposit all or any part of the securities owned by the Trust in a system for the central handling of securities established by a national securities exchange or a national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other Person as may be permitted by the Commission, or otherwise, for so long as the Trust shall remain registered as an investment company under the 1940 Act, in accordance with the 1940 Act, pursuant to which system all securities of any particular class of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities; provided that all such deposits shall be subject to withdrawal only upon the order of the Trust.

ARTICLE VIII

REDEMPTION

8.1 Redemptions. Except as otherwise provided by a majority of Trustees, the Shares of the Trust are not redeemable by the holders.

8.2 Disclosure of Holding. The holders of Shares or other securities of the Trust shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of Shares or other securities of the Trust as the Trustees deem necessary to comply with the provisions of the Code or other applicable laws or regulations, or to comply with the requirements of any other taxing or regulatory authority or as the Trustees may otherwise determine is necessary or desirable.

ARTICLE IX

DETERMINATION OF NET ASSET VALUE NET INCOME AND DISTRIBUTIONS

9.1 Net Asset Value. For so long as the Trust shall remain registered as an investment company under the 1940 Act, the net asset value of each outstanding Share of the Trust shall be determined at such time or times on such days as the Trustees may determine, in accordance with the 1940 Act. The method of determination of net asset value shall be determined by the Trustees and shall be as set forth in the Prospectus or as may otherwise be determined by the Trustees. The power and duty to make the net asset value calculations may be delegated by the Trustees and shall be as generally set forth in the Prospectus or as may otherwise be determined by the Trustees.

9.2 Distributions to Shareholders. (a) The Trustees shall from time to time distribute ratably among the Shareholders of any class of Shares, or any series of any such class, in accordance with the number of outstanding full and fractional Shares of such class or any series of such class, such proportion of the net profits, surplus (including paid-in surplus), capital, or assets held by the Trustees as they may deem proper or as may otherwise be determined in accordance with this Declaration. Any such distribution may be made in cash or property (including without limitation any type of obligations of the Trust or any assets thereof) or Shares of any class or series or any combination thereof, and the Trustees may distribute ratably among the Shareholders of any class of shares or series of any such

class, in accordance with the number of outstanding full and fractional Shares of such class or any series of such class, additional Shares of any class or series in such manner, at such times, and on such terms as the Trustees may deem proper or as may otherwise be determined in accordance with this Declaration.

(b) Distributions pursuant to this Section 9.2 may be among the Shareholders of record of the applicable class or series of Shares at the time of declaring a distribution or among the Shareholders of record at such later date as the Trustees shall determine and specify.

(c) The Trustees may always retain from the net profits such amount as they may deem necessary to pay the debts or expenses of the Trust or to meet obligations of the Trust, or as they otherwise may deem desirable to use in the conduct of its affairs or to retain for future requirements or extensions of the business.

(d) Inasmuch as the computation of net income and gains for Federal income tax purposes may vary from the computation thereof on the books, the above provisions shall be interpreted to give the Trustees the power in their discretion to distribute for any fiscal year as ordinary dividends and as capital gains distributions, respectively, additional amounts sufficient to enable the Trust to avoid or reduce liability for taxes.

9.3 Power to Modify Foregoing Procedures. Notwithstanding any of the foregoing provisions of this ARTICLE IX, the Trustees may prescribe, in their absolute discretion except, for so long as the Trust shall remain registered as an investment company under the 1940 Act, as may be required by the 1940 Act, such other bases and times for determining the per share asset value of the Trust's Shares or net income, or the declaration and payment of dividends and distributions as they may deem necessary or desirable for any reason, including to enable the Trust to comply with any provision of the 1940 Act, or any securities exchange or association registered under the Securities Exchange Act of 1934, or any order of exemption issued by the Commission, all as in effect now or hereafter amended or modified.

ARTICLE X

SHAREHOLDERS

10.1 Meetings of Shareholders. The Trust shall, to the extent required by applicable law, rules or regulations, hold annual meetings of the Shareholders. A special meeting of Shareholders may be called at any time by a majority of the Trustees or the President and shall be called by any Trustee for any proper purpose upon written request of Shareholders of the Trust holding in the aggregate not less than 51% of the outstanding Shares of the Trust or class or series of Shares having voting rights on the matter, such request specifying the purpose or purposes for which such meeting is to be called. Any shareholder meeting, including a Special Meeting, shall be held within or without the State of Delaware on such day and at such time as the Trustees shall designate.

10.2 Voting. Shareholders shall have no power to vote on any matter except matters on which a vote of Shareholders is required by this Section 10.2, Section 11.2(a), Section 11.3, Section 11.4, Section 11.6 and Section 11.7 of this Declaration or by resolution of the Trustees. This Declaration expressly provides that no matter for which voting is required by the Statutory Trust Act in the absence of the contrary provision in the Declaration shall require any vote. Except as otherwise provided herein, any matter required to be submitted to Shareholders and affecting one or more classes

or series of Shares shall require approval by the required vote of all the affected classes and series of Shares voting together as a single class; provided, however, that as to any matter with respect to which a separate vote of any class or series of Shares is provided for by resolution of the Trustees, such requirement as to a separate vote by that class or series of Shares shall apply in addition to a vote of all the affected classes and series voting together as a single class. Shareholders of a particular class or series of Shares shall not be entitled to vote on any matter that affects only one or more other classes or series of Shares. There shall be no cumulative voting in the election or removal of Trustees.

10.3 Notice of Meeting and Record Date. Notice of all meetings of Shareholders, stating the time, place and purposes of the meeting, shall be given by the Trustees by mail to each Shareholder of record entitled to vote thereat at its registered address, mailed at least 10 days and not more than 120 days before the meeting or otherwise in compliance with applicable law. Only the business stated in the notice of the meeting shall be considered at such meeting. Any postponed or adjourned meeting may be held as postponed or adjourned one or more times without further notice not later than 120 days after the original meeting date. For the purposes of determining the Shareholders who are entitled to notice of and to vote at any meeting the Trustees may, without closing the transfer books, fix a date not more than 120 nor less than 10 days prior to the date of such meeting of Shareholders as a record date for the determination of the Persons to be treated as Shareholders of record for such purposes.

10.4 Quorum and Required Vote. (a) Subject to such greater or lesser amount determined by the Trustees as to any or all matters, the holders of a majority of the Shares entitled to vote on any matter at a meeting present in person or by proxy shall constitute a quorum at such meeting of the Shareholders for purposes of conducting business on such matter. The absence from any meeting, in person or by proxy, of a quorum of Shareholders for action upon any given matter shall not prevent action at such meeting upon any other matter or matters which may properly come before the meeting, if there shall be present thereat, in person or by proxy, a quorum of Shareholders in respect of such other matters.

(b) Subject to any provision of this Declaration or a resolution of the Trustees specifying a greater or a lesser vote requirement for the transaction of any item of business at any meeting of Shareholders, (i) with respect to the election of Trustees, the affirmative vote of a plurality of the Shares represented in person or by proxy at any meeting at which a quorum is present shall be the act of the shareholders with respect to such matters, (ii) with respect to all other matters, the affirmative vote of a majority of the Shares present in person or represented by proxy and entitled to vote on the subject matter shall be the act of the Shareholders with respect to such matter, and (iii) where a separate vote of one or more classes or series of Shares is required on any matter, the affirmative vote of a majority of the Shares of such class or series of Shares present in person or represented by proxy at the meeting shall be the act of the Shareholders of such class or series with respect to such matter. Any purported vote of any Shareholders which purported vote does not meet the requirements of applicable state or federal law may be disregarded as invalid if so determined by the Trustees or the chairman of any meeting of shareholders. In such event, such shares shall nevertheless be counted for purposes of determining whether a quorum is present.

10.5 Proxies, etc. At any meeting of Shareholders, any holder of Shares entitled to vote thereat may vote by properly executed proxy; provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Secretary, or with such other officer or agent of the Trust as the Secretary may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of a majority of the Trustees, proxies may be solicited in the name of one or

more Trustees or one or more of the officers or employees of the Trust. No proxy shall be valid after the expiration of 11 months from the date thereof, unless otherwise provided in the proxy. Only Shareholders of record shall be entitled to vote. Each full Share shall be entitled to one vote and fractional Shares shall be entitled to a vote of such fraction. When any Share is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Share, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Share. A proxy purporting to be executed by or on behalf of a Shareholder shall be deemed valid unless challenged at or prior to its exercise If the holder of any such Share is a minor or a person of unsound mind, and subject to guardianship or to the legal control of any other person as regards the charge or management of such Share, he may vote by his guardian or such other person appointed or having such control, and such vote may be given in person or by proxy.

10.6 Reports. The Trustees shall cause to be prepared at least annually and more frequently to the extent and in the form required by law, regulation or any exchange on which Trust Shares are listed a report of operations containing a balance sheet and statement of income and undistributed income of the Trust prepared in conformity with generally accepted accounting principles and an opinion of an independent public accountant on such financial statements. Copies of such reports shall be mailed to all Shareholders of record within the time required by applicable federal law or stock exchange requirements, and in any event within a reasonable period preceding any annual meeting of Shareholders. The Trustees shall, in addition, furnish to the Shareholders to the extent required by law, interim reports containing an unaudited balance sheet of the Trust as of the end of such period and an unaudited statement of income and surplus for the period from the beginning of the current fiscal year to the end of such period.

10.7 Inspection of Records. Shareholders shall have the right to inspect the records of the Trust, including, without limitation, Shareholder lists, documents, accounts and books of the Trust only to the extent inalienably granted under the DSTA; all other such rights whether or not provided in the DSTA are expressly precluded. All Shareholders' requests to inspect the records of the Trust shall be submitted by Shareholders to the Trustees in writing. Upon receipt of such requests, the Trustees may in their discretion establish procedures for any permitted inspections. To preserve the integrity of the Trust's records, the Trustees may provide certified copies of Trust records rather than originals. The Trustees shall not be required to create records or obtain records from third parties to satisfy Shareholders' requests. The Trustees may require Shareholders to pay in advance or otherwise indemnify the Trust for the costs and expenses of Shareholders' inspection of records. Nothing in this Section 10.7 is intended nor shall be construed to permit Shareholders to inspect the records of the Trust except as may be required by the DSTA or permitted by the Trustees in their discretion.

10.8 Shareholder Action by Written Consent. Except as otherwise provided by a majority of the Trustees then in office, shareholder action may only be taken at a duly called and held meeting of Shareholders called for such purpose, and not by written consent.

ARTICLE XI

DURATION; TERMINATION OF TRUST; AMENDMENT; MERGERS, ETC.

11.1 Duration. Subject to possible termination in accordance with the provisions of Section 11.2 hereof, the Trust created hereby shall have perpetual existence.

11.2 Termination. (a) The Trust may be dissolved, only upon approval of not less than 80% of the Trustees. Upon the dissolution of the Trust:

(i) The Trust shall carry on no business except for the purpose of winding up its affairs.

(ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Declaration shall continue until the affairs of the Trust shall have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, merge where the Trust is not the survivor, transfer or otherwise dispose of all or any part of the remaining Trust Property to one or more Persons at public or private sale for consideration which may consist in whole or in part in cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; provided that any sale, conveyance, assignment, exchange, merger in which the Trust is not the survivor, transfer or other disposition of all or substantially all the Trust Property of the Trust (measured at the time that such termination was originally approved by 80% of the Trustees as set forth in this Section 11.2(a)) shall require approval of the principal terms of the transaction and the nature and amount of the consideration by Shareholders with the same vote as set forth under Section 11.3(b) of this Declaration.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements, as they deem necessary for their protection, the Trustees may distribute the remaining Trust Property, in cash or in kind or partly each, among the Shareholders according to their respective rights.

(b) After the winding up and termination of the Trust and distribution to the Shareholders as herein provided, a majority of the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination and shall execute and file a certificate of cancellation with the Secretary of State of the State of Delaware. Upon termination of the Trust, the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the rights and interests of all Shareholders shall thereupon cease.

11.3 Amendment Procedure. (a) This Declaration may only be amended if such amendment is approved by a majority of the Trustees. Except as provided in Section 11.3(b), the Trustees may amend this Declaration without any vote of Shareholders of any class or series to divide the Shares of the Trust into one or more classes or additional classes, or one or more series of any such class or classes, to determine the rights, powers, preferences, limitations and restrictions of any class or series of Shares, to change the name of the Trust or any class or series of Shares, to make any change that does not adversely affect the relative rights or preferences of any individual Shareholder as compared to the rights and preferences of other Shareholders of the same class and series of Shares, as they may deem necessary or appropriate.

(b) No amendment may be made to Section 5.1, Section 5.2, Section 10.2 Section 11.2(a), this Section 11.3, Section 11.4, Section 11.6 or Section 11.7 of this Declaration and no amendment may be made to this Declaration which would change any rights with respect to any Shares of the Trust by reducing any stated amount payable thereon in preference over all other classes or series of Shares upon liquidation of the Trust or by eliminating any voting rights pertaining thereto set forth in

Section 10.2 of this Declaration (provided that nothing in this Section 11.3(b) shall limit the ability of the Trustees to authorize, and to cause the Trust to issue, other securities pursuant to Section 6.2), except after a majority of the Trustees have approved a resolution therefor, by the affirmative vote of the holders of not less than seventy-five percent (75%) of the Shares of each affected class or series outstanding, voting as separate classes or series, unless such amendment has been approved by 80% of the Trustees, in which case approval of Shareholders as set forth in Section 10.4 shall be required. Nothing contained in this Declaration shall permit the amendment of this Declaration to impair the exemption from personal liability of the Shareholders, Trustees, officers, employees and agents of the Trust or to permit assessments upon holders of then outstanding Shares.

(c) To the extent that Shareholders are entitled to vote on any matter that in the judgement of the Board of Trustees would prevent, impede or make less efficient or more costly the implementation of the proposals adopted by Shareholders at the Special Meeting of Shareholders held on _____, 2020 or the realization of the benefits sought thereby, notwithstanding any other provision of the Declaration, such matter shall, unless otherwise determined by the vote of at least 80% of the Board of Trustees, require the affirmative vote of not less than 75% of the outstanding Shares.

(d) An amendment duly adopted by the requisite vote of the Board of Trustees and, if required, the Shareholders as aforesaid, shall become effective at the time of such adoption or at such other time as may be designated by the Board of Trustees or Shareholders, as the case may be. A certification in recordable form signed by a majority of the Trustees setting forth an amendment and reciting that it was duly adopted by the Trustees and, if required, the Shareholders as aforesaid, or a copy of the Declaration, as amended, in recordable form, and executed by a majority of the Trustees, shall be conclusive evidence of such amendment when lodged among the records of the Trust or at such other time designated by the Board.

11.4 Merger, Consolidation and Sale of Assets. Except as provided in Section 11.7, the Trust may merge or consolidate with any other corporation, association, trust or other organization or may sell, lease or exchange all or substantially all of the Trust Property or the property, including its good will, upon such terms and conditions and for such consideration when and as authorized by two-thirds of the Trustees; provided that any merger or consolidation in which the Trust is not the surviving entity, or sale, lease or exchange of all or substantially all of the Trust Property of the Trust (measured at the time that such transaction was originally approved by two-thirds of the Trustees as set forth in this Section 11.4) shall require approval by Shareholders as set forth under Section 11.3(b) of this Declaration and any such merger, consolidation, sale, lease or exchange shall be determined for all purposes to have been accomplished under and pursuant to the laws of the State of Delaware.

11.5 Subsidiaries. Without approval by Shareholders, the Trustees may cause to be organized or assist in organizing one or more corporations, trusts, partnerships, associations or other organizations to take over all of the Trust Property or to carry on any business in which the Trust shall directly or indirectly have any interest, and to sell, convey and transfer all or a portion of the Trust Property to any such corporation, trust, limited liability company, association or organization in exchange for the shares or securities thereof, or otherwise, and to lend money to, subscribe for the shares or securities of, and enter into any contracts with any such corporation, trust, limited liability company, partnership, association or organization, or any corporation, partnership, trust, limited liability company, association or organization in which the Trust holds or is about to acquire shares or any other interests.

11.6 Conversion. Notwithstanding any other provisions of this Declaration or the By-Laws of the Trust, for so long as the Trust shall remain registered as an investment company under the 1940 Act, a favorable vote of a majority of the Trustees then in office followed by the favorable vote of the holders of not less than seventy-five percent (75%) of the Shares of each affected class or series outstanding, voting as separate classes or series, shall be required to approve, adopt or authorize an amendment to this Declaration that makes the Shares a "redeemable security" as that term is defined in the 1940 Act, unless such amendment has been approved by 80% of the Trustees, in which case approval by a Majority Shareholder Vote shall be required. Upon the adoption of a proposal to convert the Trust from a "closed-end company" to an "open-end company" as those terms are defined by the 1940 Act and the necessary amendments to this Declaration to permit such a conversion of the Trust's outstanding Shares entitled to vote, the Trust shall, upon complying with any requirements of the 1940 Act and state law, become an "open-end" investment company. Such affirmative vote or consent shall be in addition to the vote or consent of the holders of the Shares otherwise required by law, or any agreement between the Trust and any national securities exchange.

11.7 Certain Transactions. (a) Notwithstanding any other provision of this Declaration and subject to the exceptions provided in paragraph (d) of this Section 11.7, the types of transactions described in paragraph (c) of this Section 11.7 shall require the affirmative vote or consent of a majority of the Trustees then in office followed by the affirmative vote of the holders of not less than seventy-five percent (75%) of the Shares of each affected class or series outstanding, voting as separate classes or series, when a Principal Shareholder (as defined in paragraph (b) of this Section 11.7) is a party to the transaction. Such affirmative vote or consent shall be in addition to the vote or consent of the holders of Shares otherwise required by law or by the terms of any class or series of preferred stock, whether now or hereafter authorized, or any agreement between the Trust and any national securities exchange.

(b) The term "Principal Shareholder" shall mean any corporation, Person or other entity which is the beneficial owner, directly or indirectly, of five percent (5%) or more of the outstanding Shares of all outstanding classes or series and shall include any affiliate or associate, as such terms are defined in clause (ii) below, of a Principal Shareholder. For the purposes of this Section 11.7, in addition to the Shares which a corporation, Person or other entity beneficially owns directly, (a) any corporation, Person or other entity shall be deemed to be the beneficial owner of any Shares (i) which it has the right to acquire pursuant to any agreement or upon exercise of conversion rights or warrants, or otherwise (but excluding share options granted by the Trust) or (ii) which are beneficially owned, directly or indirectly (including Shares deemed owned through application of clause (i) above), by any other corporation, Person or entity with which its "affiliate" or "associate" (as defined below) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of Shares, or which is its "affiliate" or "associate" as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, and (b) the outstanding Shares shall include Shares deemed owned through application of clauses (i) and (ii) above but shall not include any other Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights or warrants, or otherwise.

(c) This Section 11.7 shall apply to the following transactions:

(i) The merger or consolidation of the Trust or any subsidiary of the Trust with or into any Principal Shareholder.

(ii) The issuance of any securities of the Trust to any Principal Shareholder for cash (other than pursuant to any automatic dividend reinvestment plan).

(iii) The sale, lease or exchange of all or any substantial part of the assets of the Trust to any Principal Shareholder (except assets having an aggregate fair market value of less than 2% of the total assets of the Trust, aggregating for the purpose of such computation all assets sold, leased or exchanged in any series of similar transactions within a twelve-month period.)

(iv) The sale, lease or exchange to the Trust or any subsidiary thereof, in exchange for securities of the Trust, of any assets of any Principal Shareholder (except assets having an aggregate fair market value of less than 2% of the total assets of the Trust, aggregating for the purposes of such computation all assets sold, leased or exchanged in any series of similar transactions within a twelve-month period).

(d) The provisions of this Section 11.7 shall not be applicable to (i) any of the transactions described in paragraph (c) of this Section 11.7 if 80% of the Trustees shall by resolution have approved a memorandum of understanding with such Principal Shareholder with respect to and substantially consistent with such transaction, in which case approval by Shareholders as set forth in Section 10.4 of this Declaration shall be the only vote of Shareholders required by this Section 11.7, or (ii) any such transaction with any entity of which a majority of the outstanding shares of all classes and series of a stock normally entitled to vote in elections of directors is owned of record or beneficially by the Trust and its subsidiaries.

(e) The Board of Trustees shall have the power and duty to determine for the purposes of this Section 11.7 on the basis of information known to the Trust whether (i) a corporation, person or entity beneficially owns five percent (5%) or more of the outstanding Shares of any class or series, (ii) a corporation, person or entity is an “affiliate” or “associate” (as defined above) of another, (iii) the assets being acquired or leased to or by the Trust or any subsidiary thereof constitute a substantial part of the assets of the Trust and have an aggregate fair market value of less than 2% of the total assets of the Trust, and (iv) the memorandum of understanding referred to in paragraph (d) hereof is substantially consistent with the transaction covered thereby. Any such determination shall be conclusive and binding for all purposes of this Section 11.7.

ARTICLE XII

RESTRICTIONS ON TRANSFER AND OWNERSHIP OF SHARES

REIT Qualification. If the Trust elects to qualify for federal income tax treatment as a REIT (as defined below in Section 12.1), the Board of Trustees shall use its reasonable best efforts to take such actions as are necessary or appropriate to preserve the status of the Trust as a REIT; however, if the Board of Trustees determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT, the Board of Trustees may revoke or otherwise terminate the Trust’s REIT election pursuant to Section 856(g) of the Code. The Board of Trustees, in its sole and absolute discretion, also may (a) determine that compliance with any restriction or limitation on stock ownership and transfers set forth in this Article XII is no longer required for REIT qualification and (b) make any other determination or take any other action pursuant to this Declaration or the By-Laws.

Excess Inclusion Income. To the extent that NHF has incurred or the Board of Trustees determines that NHF will incur any tax pursuant to Section 860E(e)(6) of the Code as the result of any

"excess inclusion" income (within the meaning of Section 860E of the Code) of NHF that is allocable to a stockholder that is a "disqualified organization" (as defined in Section 860E(e)(5) of the Code), the Board of Trustees may, in its sole discretion, cause NHF to allocate such tax solely to the stock held by such disqualified organization in the manner described in Treasury Regulation Section 1.860E-2(b)(4), by reducing from one or more distributions paid to such stockholder the tax incurred by NHF pursuant to Section 860E(e)(6) as a result of such stockholder's stock ownership.

12.1 Definitions. For the purpose of this Article XII, the following terms shall have the following meanings:

Aggregate Share Ownership Limit. The term "Aggregate Share Ownership Limit" shall mean 9.8 percent (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding Shares of any class or series, or such other percentage determined by the Board of Trustees in accordance with Section 12.2.8 of the Declaration. The value and number of the outstanding Shares shall be determined by the Board of Trustees, which determination shall be conclusive for all purposes hereof. For the purposes of determining the percentage ownership of Shares by any Person, Shares that may be acquired upon conversion, exchange or exercise of any securities of NHF directly or constructively held by such Person, but not Shares issuable with respect to the conversion, exchange or exercise of securities for NHF held by other Persons, shall be deemed to be outstanding prior to conversion, exchange or exercise.

Beneficial Ownership. The term "Beneficial Ownership" shall mean ownership of Shares by a Person, whether the interest in the Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) and 856(h)(3) of the Code. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

Business Day. The term "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in Texas or New York are authorized or required by law, regulation or executive order to close.

Charitable Beneficiary. The term "Charitable Beneficiary" shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to Section 12.3.6, provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

Charitable Trust. The term "Charitable Trust" shall mean any trust provided for in Section 12.3.1.

Charitable Trustee. The term "Charitable Trustee" shall mean the Person unaffiliated with NHF and a Prohibited Owner that is appointed by NHF to serve as trustee of the Charitable Trust.

Common Share Ownership Limit. The term "Common Share Ownership Limit" shall mean 9.8 percent (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding common shares of beneficial interest of NHF, par value $0.001 per share ("Common Shares"), or such other percentage determined by the Board of Trustees in accordance with Section 12.2.8 of the Declaration. The value and number of the outstanding Common Shares shall be determined by the Board of Trustees, which determination shall be conclusive for all purposes hereof.

For purposes of determining the percentage ownership of Common Shares by any Person, shares of Common Shares that may be acquired upon conversion, exchange or exercise of any securities of NHF directly or constructively held by such Person, but not shares of Common Shares issuable with respect to the conversion, exchange or exercise of securities for NHF held by other Persons, shall be deemed to be outstanding prior to conversion, exchange or exercise.

Constructive Ownership. The term "Constructive Ownership" shall mean ownership of Shares by a Person, whether the interest in the Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

Excepted Holder. The term "Excepted Holder" shall mean a Person for whom an Excepted Holder Limit is created by this Article XII or by the Board of Trustees pursuant to Section 12.2.12.

Excepted Holder Limit. The term "Excepted Holder Limit" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by this Article XII or by the Board of Trustees pursuant to Section 12.2.7 and subject to adjustment pursuant to Section 12.2.8, the percentage limit established by the Board of Trustees pursuant to Section 12.2.12.

Initial Date. The term "Initial Date" shall mean the date on which the Shareholders approve the conversion of the NHF from an investment company registered under the 1940 Act to a REIT.

Market Price. The term "Market Price" on any date shall mean, with respect to any class or series of outstanding Shares, the Closing Price for such Shares on such date. The "Closing Price" on any date shall mean the last sale price for such Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Shares, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if such Shares is not listed or admitted to trading on the NYSE, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Shares is listed or admitted to trading or, if such Shares is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system that may then be in use or, if such Shares is not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Shares selected by the Board of Trustees or, in the event that no trading price is available for such Shares, the fair market value of the Shares, as determined by the Board of Trustees.

NHF. The term "NHF" shall mean the Trust, as defined in Section 1.2 of this Declaration.

NYSE. The term "NYSE" shall mean The New York Stock Exchange.

Person. The term "Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit applies.

Prohibited Owner. The term "Prohibited Owner" shall mean, with respect to any purported Transfer (or other event), any Person who, but for the provisions of this Article XII, would Beneficially Own or Constructively Own Shares in violation of Section 12.2.1, and if appropriate in the context, shall also mean any Person who would have been the record owner of the shares that the Prohibited Owner would have so owned.

REIT. The term "REIT" shall mean a real estate investment trust within the meaning of Section 856 of the Code.

Restriction Termination Date. The term "Restriction Termination Date" shall mean the first day after the Initial Date on which the Board of Trustees determines that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers set forth herein are no longer in the best interests of NHF

Transfer. The term "Transfer" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event or circumstance that causes any Person to acquire or possess, or change its level of, Beneficial Ownership or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Shares or the right to vote or receive dividends on Shares, including (a) the granting or exercise of any option (or any disposition of any option), (b) any disposition of any securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right, (c) Transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Shares and (d) changes in the relative values of Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms "Transferring" and "Transferred" shall have the correlative meanings.

12.2 Shares.

Section 12.2.1 Ownership Limitations. During the period commencing on the Initial Date and prior to the Restriction Termination Date, but subject to Section 12.4 of this Article XII:

(a) Basic Restrictions.

(i) (1) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Aggregate Share Ownership Limit, (2) no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Common Share Ownership Limit and (3) no Excepted Holder shall Beneficially Own or Constructively Own Shares in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) No Person shall Beneficially Own or Constructively Own Shares to the extent that such Beneficial Ownership or Constructive Ownership of Shares would result in NHF being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial Ownership or Constructive Ownership that would result in NHF (or any subsidiary REIT thereof, as applicable) owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by NHF (or such subsidiary) from such tenant would cause NHF (or such subsidiary) to fail to satisfy any of the gross income requirements of Section 856(c) of the Code, taking into account any other income of NHF (or such subsidiary) that would not constitute qualifying income under such requirements).

(iii) Any Transfer of Shares that, if effective, would result in the Shares being beneficially owned by less than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void ab initio, and the intended transferee shall acquire no rights in such Shares.

(iv) No Person shall Beneficially Own or Constructively Own Shares to the extent that such Beneficial Ownership or Constructive Ownership of Shares would result in NHF failing to qualify as a "domestically controlled qualified investment entity" within the meaning of Section 897(h)(4)(B) of the Code.

(b) Transfer in Charitable Trust. If any Transfer of Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system) occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Shares in violation of Section 12.2.1(a)(i), (ii), (iii) or (iv),

(i) then that number of shares of the Shares the Beneficial Ownership or Constructive Ownership of which otherwise would cause such Person to violate Section 12.2.1(a)(i), (ii), (iii) or (iv) (rounded up to the nearest whole share) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 12.3, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such shares; or

(ii) if the transfer to the Charitable Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 12.2.1(a)(i), (ii), (iii) or (iv), then the Transfer of that number of Shares that otherwise would cause any Person to violate Section 12.2.1(a)(i), (ii), (iii) or (iv) shall be void ab initio, and the intended transferee shall acquire no rights in such Shares.

(iii) To the extent that, upon a transfer of Shares pursuant to this Section 12.2.1(b), a violation of any provision of this Article XII would nonetheless be continuing (for example where the ownership of Shares by a single Charitable Trust would violate the 100 shareholder requirement applicable to REITs), then Shares shall be transferred to that number of Charitable Trusts, each having a distinct Charitable Trustee and a Charitable Beneficiary or Charitable Beneficiaries that are distinct from those of each other Trust, such that there is no violation of any provision of this Article XII.

(iv) In determining which Shares are to be transferred to a Charitable Trust in accordance with this Section 12.2.1(b), Shares shall be so transferred to a Charitable Trust in such manner that minimizes the aggregate value of the Shares that are transferred to the Charitable Trust (except to the extent that the Board of Trustees determines that the Shares transferred to the Charitable Trust shall be those directly or indirectly held or Beneficially Owned or Constructively Owned by a Person or Persons that caused or contributed to the application of this Section 12.2.1(b)), and to the extent not inconsistent therewith, on a pro rata basis.

12.2.2 Remedies for Breach. If the Board of Trustees shall at any time determine that a Transfer or other event has taken place that results in a violation of Section 12.2.1 or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Shares in violation of Section 12.2.1 (whether or not such violation is intended), the Board of Trustees shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing NHF to redeem Shares, refusing to give effect to such Transfer on the books of NHF or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 12.2.1 shall automatically result in the transfer to the Charitable Trust described above, and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Trustees.

12.2.3 Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Shares that will or may violate Section 12.2.1(a) or any

Person who would have owned Shares that resulted in a transfer to the Charitable Trust pursuant to the provisions of Section 12.2.1(b) shall immediately give written notice to NHF of such event or, in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to NHF such other information as NHF may request in order to determine the effect, if any, of such Transfer on NHF's status as a REIT.

12.2.4 Owners Required To Provide Information. From the Initial Date and prior to the Restriction Termination Date:

(a) every owner of five percent or more (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) in number or value of the outstanding Shares, within 30 days after the end of each taxable year, shall give written notice to NHF stating the name and address of such owner, the number of Shares Beneficially Owned and a description of the manner in which such shares are held. Each such owner shall provide to NHF such additional information as NHF may request in order to determine the effect, if any, of such Beneficial Ownership on NHF's status as a REIT and to ensure compliance with the Aggregate Share Ownership Limit and the Common Share Ownership Limit; and

(b) each Person who is a Beneficial Owner or Constructive Owner of Shares and each Person (including the Shareholder of record) who is holding Shares for a Beneficial Owner or Constructive Owner shall provide to NHF such information as NHF may request in good faith in order to determine NHF's status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance and to ensure compliance with the Aggregate Share Ownership Limit and the Common Share Ownership Limit.

12.2.5 Remedies Not Limited. Nothing contained in this Section 12.2 shall limit the authority of the Board of Trustees to take such other action as it deems necessary or advisable to protect NHF in preserving NHF's status as a REIT.

12.2.6 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article XII, the Board of Trustees shall have the power to determine the application of the provisions of this Article XII with respect to any situation based on the facts known to it. In the event this Article XII requires an action by the Board of Trustees and the Declaration fails to provide specific guidance with respect to such action, the Board of Trustees shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article XII. Absent a decision to the contrary by the Board of Trustees (which the Board of Trustees may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in this Article XII) acquired Beneficial or Constructive Ownership of Shares in violation of this Article XII, such remedies (as applicable) shall apply first to the Shares that, but for such remedies, would have been actually owned by such Person, and second to Shares which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such Shares based upon the relative number of the Shares held by each such Person.

12.2.7 Exceptions.

(a) Subject to Section 12.2.1(a)(ii), (iii) and (iv), the Board of Trustees may exempt (prospectively or retroactively) a Person from the Aggregate Share Ownership Limit or the Common Share Ownership Limit, as the case may be, and may establish or increase an Excepted Holder Limit for such Person if NHF obtains such representations and undertakings from such Person as are reasonably necessary for the Board of Trustees to determine that:

(i) no Person's Beneficial or Constructive Ownership of Shares will violate Section 12.2.1(a)(ii), (iii) or (iv); and

(ii) such Person does not and will not own, actually or Constructively, an interest in a tenant of NHF (or a tenant of any entity owned or controlled by NHF, including a subsidiary REIT) that would cause NHF (or such subsidiary REIT) to own, actually or Constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant (for this purpose, a tenant shall not be treated as a tenant of NHF if NHF (or an entity owned or controlled by NHF, including such subsidiary REIT) derives (and is expected to continue to derive) a sufficiently small amount of revenue from such tenant such that, in the judgment of the Board of Trustees, rent from such tenant would not adversely affect NHF's (or such subsidiary REIT's) ability to qualify as a REIT).

Any violation or attempted violation of any such representations or undertakings (or other action which is contrary to the restrictions contained in this Article XII) will result in such Shares being automatically transferred to a Charitable Trust in accordance with Sections 12.2.1(b) and 12.3.

(b) Prior to granting any exception pursuant to Section 12.2.7(a), the Board of Trustees may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Trustees as it may deem necessary or advisable in order to determine or ensure NHF's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Trustees may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(c) Subject to Section 12.2.1(a)(ii), an underwriter or placement agent that participates in a public offering or a private placement of Shares (or securities convertible into or exchangeable for Shares) may Beneficially Own or Constructively Own Shares (or securities convertible into or exchangeable for Shares) in excess of the Aggregate Share Ownership Limit, the Common Share Ownership Limit, or both such limits, but only to the extent necessary to facilitate such public offering or private placement.

(d) The Board of Trustees may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, or (2) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Aggregate Share Ownership Limit or the Common Share Ownership Limit, as the case may be.

12.2.8 Increase or Decrease in Common Share Ownership or Aggregate Share Ownership Limits. Subject to Section 12.2.1(a)(ii) and this Section 12.2.8, the Board of Trustees may from time to time increase or decrease the Common Share Ownership Limit or the Aggregate Share Ownership Limit for one or more Persons and increase or decrease the Common Share Ownership Limit or the Aggregate Share Ownership Limit for all other Persons. No decreased Common Share Ownership Limit or Aggregate Share Ownership Limit will be effective for any Person whose percentage of ownership of Shares is in excess of such decreased Common Share Ownership Limit or Aggregate Share Ownership Limit, as applicable, until such time as such Person's percentage of ownership of Shares equals or falls below the decreased Common Share Ownership Limit or Aggregate Share Ownership Limit, as applicable; provided, however, any further acquisition of Shares by any such Person (other than a Person for whom an exemption has been granted pursuant to Section 12.2.7(a) or an Excepted Holder) in excess of the Shares owned by such person on the date the decreased Common Share Ownership Limit or Aggregate Share Ownership Limit, as applicable, became effective will be

in violation of the Common Share Ownership Limit or Aggregate Share Ownership Limit. No increase to the Common Share Ownership Limit or Aggregate Share Ownership Limit may be approved if the new Common Share Ownership Limit and/or Aggregate Share Ownership Limit would allow five or fewer Persons to Beneficially Own, in the aggregate more than 49.9% in value of the outstanding Shares.

12.2.9 Legend. Each certificate for Shares, if certificated, or the notice in lieu of a certificate shall bear substantially the following legend:

The shares represented by this certificate are subject to restrictions on Beneficial Ownership and Constructive Ownership and Transfer for the purpose, among others, of NHF's maintenance of its status as a Real Estate Investment Trust under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain further restrictions and except as expressly provided in NHF's Declaration, (i) no Person may Beneficially Own or Constructively Own shares of NHF's Common Shares in excess of the Common Share Ownership Limit, unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (ii) no Person may Beneficially Own or Constructively Own Shares of NHF in excess of the Aggregate Share Ownership Limit, unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (iii) no Person may Beneficially Own or Constructively Own Shares that would result in NHF being "closely held" under Section 856(h) of the Code or otherwise cause NHF to fail to qualify as a REIT; (iv) no Person may Transfer Shares if such Transfer would result in the Shares of NHF being owned by fewer than 100 Persons; and (v) no Person may Beneficially Own or Constructively Own Shares that could result in NHF failing to qualify as a "domestically controlled qualified investment entity" under Section 897(h)(4)(B) of the Code. Any Person who Beneficially Owns or Constructively Owns or attempts or intends to Beneficially Own or Constructively Own Shares which causes or will cause a Person to Beneficially Own or Constructively Own Shares in excess or in violation of the above limitations must immediately notify NHF. If any of the restrictions on transfer or ownership provided in (i), (ii), (iii) or (v) above are violated, the Shares in excess or in violation of the above limitations will be automatically transferred to a Charitable Trustee of a Charitable Trust for the benefit of one or more Charitable Beneficiaries. In addition, NHF may redeem shares upon the terms and conditions specified by the Board of Trustees in its sole discretion if the Board of Trustees determines that ownership or a Transfer or other event may violate the restrictions described above. Furthermore, if the ownership restriction provided in (iv) above would be violated, or upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be void ab initio. All capitalized terms in this legend have the meanings given to them in the Declaration, as the same may be amended from time to time, a copy of which, including the restrictions on transfer and ownership, will be furnished to each holder of Shares of NHF on request and without charge. Requests for such a copy may be directed to the Secretary of NHF at its principal office.

Instead of the foregoing legend, the certificate or notice may state that NHF will furnish a full statement about certain restrictions on ownership and transferability to a Shareholder on request and without charge.

12.3 Transfer of Shares in Charitable Trust.

12.3.1 Ownership in Charitable Trust. Upon any purported Transfer or other event described in Section 12.2.1(b) that would result in a transfer of Shares to a Charitable Trust, such Shares shall be deemed to have been transferred to the Charitable Trustee as trustee of a Charitable

Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Charitable Trust pursuant to Section 12.2.1(b). The Charitable Trustee shall be appointed by NHF and shall be a Person unaffiliated with NHF and any Prohibited Owner. Each Charitable Beneficiary shall be designated by NHF as provided in Section 12.3.6.

12.3.2 Status of Shares Held by the Charitable Trustee. Shares held by the Charitable Trustee shall be issued and outstanding Shares of NHF. The Prohibited Owner shall have no rights in the shares held by the Charitable Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Charitable Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Charitable Trust.

12.3.3 Dividend and Voting Rights. The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by NHF that the Shares have been transferred to the Charitable Trustee shall be paid by the recipient of such dividend or distribution to the Charitable Trustee upon demand, and any dividend or other distribution authorized but unpaid shall be paid when due to the Charitable Trustee. Any dividend or distribution so paid to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to Shares held in the Charitable Trust and, subject to Delaware law, effective as of the date that the Shares have been transferred to the Charitable Trust, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by NHF that the Shares have been transferred to the Charitable Trust and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if NHF has already taken irreversible corporate action, then the Charitable Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article XII, until NHF has received notification that Shares have been transferred into a Charitable Trust, NHF shall be entitled to rely on its share transfer and other Shareholder records for purposes of preparing lists of Shareholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes and determining the other rights of Shareholders.

12.3.4 Sale of Shares by Charitable Trustee. Within 20 days of receiving notice from NHF that Shares have been transferred to the Charitable Trust, the Charitable Trustee of the Charitable Trust shall sell the shares held in the Charitable Trust to a person, designated by the Charitable Trustee, whose ownership of the shares will not violate the ownership limitations set forth in Section 12.2.1(a). Upon such sale, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 12.3.4. The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Charitable Trust (*e.g.*, in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Charitable Trust and (2) the price per share received by the Charitable Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares held in the Charitable Trust. The Charitable Trustee may reduce the amount

payable to the Prohibited Owner by the amount of dividends and distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Charitable Trustee pursuant to Section 12.3.3 of this Article XII. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by NHF that Shares have been transferred to the Charitable Trustee, such shares are sold by a Prohibited Owner, then (i) such shares shall be deemed to have been sold on behalf of the Charitable Trust and (ii) to the extent that the Prohibited Owner received an amount for, or in respect of, such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 12.3.4, such excess shall be paid to the Charitable Trustee upon demand.

12.3.5 Purchase Right in Shares Transferred to the Charitable Trustee. Shares transferred to the Charitable Trustee shall be deemed to have been offered for sale to NHF, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Charitable Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date NHF, or its designee, accepts such offer. NHF may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Charitable Trustee pursuant to Section 12.3.3 of this Article XII. NHF may pay the amount of such reduction to the Charitable Trustee for the benefit of the Charitable Beneficiary. NHF shall have the right to accept such offer until the Charitable Trustee has sold the shares held in the Charitable Trust pursuant to Section 12.3.4. Upon such a sale to NHF, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner.

12.3.6 Designation of Charitable Beneficiaries. By written notice to the Charitable Trustee, NHF shall designate one or more nonprofit organizations to be the Charitable Beneficiary or Charitable Beneficiaries of the interest in the Charitable Trust such that (i) the Shares held in the Charitable Trust would not violate the restrictions set forth in Section 12.2.1(a) in the hands of such Charitable Beneficiary or Charitable Beneficiaries and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. Neither the failure of NHF to make such designation nor the failure of NHF to appoint the Charitable Trustee before the automatic transfer provided in Section 12.2.1(b) shall make such transfer ineffective, provided that NHF thereafter makes such designation and appointment.

12.4 NYSE Transactions. Nothing in this Article XII shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article XII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article XII.

12.5 Enforcement. NHF is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article XII.

12.6 Non-Waiver. No delay or failure on the part of NHF or the Board of Trustees in exercising any right hereunder shall operate as a waiver of any right of NHF or the Board of Trustees, as the case may be, except to the extent specifically waived in writing.

12.7. Severability. If any provision of this Article XII or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues,

the validity of the remaining provisions shall not be affected and other applications of such provisions shall be affected only to the extent necessary to comply with the determination of such court.

ARTICLE XIII

MISCELLANEOUS

13.1 Filing. This Declaration and any amendment or supplement hereto shall be filed in such places as may be required or as the Trustees deem appropriate. Each amendment or supplement shall be accompanied by a certificate signed and acknowledged by a Trustee stating that such action was duly taken in a manner provided herein, and shall, upon insertion in the Trust's minute book, be conclusive evidence of all amendments contained therein. A restated Declaration, containing the original Declaration and all amendments and supplements theretofore made, may be executed from time to time by a majority of the Trustees and shall, upon insertion in the Trust's minute book, be conclusive evidence of all amendments and supplements contained therein and may thereafter be referred to in lieu of the original Declaration and the various amendments and supplements thereto.

13.2 Resident Agent. The Trust shall maintain a resident agent in the State of Delaware, which agent shall initially be The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801 The Trustees may designate a successor resident agent; provided, however, that such appointment shall not become effective until written notice thereof is delivered to the office of the Secretary of the State.

13.3 Governing Law. This Declaration is executed by the Trustees and delivered in the State of Delaware and with reference to the laws thereof, and the rights of all parties and the validity and construction of every provision hereof shall be subject to and construed according to the DSTA.

13.4 Counterparts. This Declaration may be simultaneously executed in several counterparts, each of which shall be deemed to be an original, and such counterparts, together, shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

13.5 Reliance by Third Parties. Any certificate executed by an individual who, according to the records of the Trust, or of any recording office in which this Declaration may be recorded, appears to be a Trustee hereunder, certifying to: (a) the number or identity of Trustees or Shareholders, (b) the name of the Trust, (c) the due authorization of the execution of any instrument or writing, (d) the form of any vote passed at a meeting of Trustees or Shareholders, (e) the fact that the number of Trustees or Shareholders present at any meeting or executing any written instrument satisfies the requirements of this Declaration, (f) the form of any By-Laws adopted by or the identity of any officers elected by the Trustees, or (g) the existence of any fact or facts which in any manner relate to the affairs of the Trust, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trustees and their successors.

13.6 Provisions in Conflict with Law or Regulation. (a) The provisions of this Declaration are severable, and if the Trustees shall determine, with the advice of counsel, that any of such provisions is in conflict with the provisions of the Code or with other applicable laws and regulations, the conflicting provision shall, to the maximum extent possible, be interpreted to give as much effect as possible to the intent of the Declaration taken as a whole; provided, however, that such determination shall not affect any of the remaining provisions of this Declaration or render invalid or improper any action taken or omitted prior to such determination.

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(b) If any provision of this Declaration shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction or any other provision of this Declaration in any jurisdiction.

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Agreement and Declaration of Trust to be executed as of [ ], 2020.

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NEXPOINT

Vote by Telephone	Vote Online	Vote by Mail
1. Read the proxy statement and have the proxy card at hand. 2. Call toll-free 866-818-9355 3. Follow the simple instructions.	1. Read the proxy statement and have the proxy card at hand. 2. Go to www.proxyvotenow.com/nhf 3. Follow the simple instructions.	1. Read the proxy statement. 2. Check the appropriate box(es) on the reverse side. 3. Sign, date and return the proxy card in the envelope provided.

↓ **Please detach at perforation before mailing.** ↓

NEXPOINT STRATEGIC OPPORTUNITIES FUND
PROXY IN CONNECTION WITH THE SPECIAL MEETING OF SHAREHOLDERS TO BE HELD ON AUGUST 28, 2020

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF TRUSTEES. The undersigned shareholder of NexPoint Strategic Opportunities Fund ("NHF" or the "Fund") hereby appoints David Klos and Frank Waterhouse and each of them, the attorneys and proxies of the undersigned, with full power of substitution, to vote, as indicated herein, all shares of the Fund standing in the name of the undersigned at the close of business on June 19, 2020 (the "Record Date"), at the Special Meeting of Shareholders of the Fund to be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, August 28, 2020, at 8:30 Central time, and at any adjournments or postponements thereof (the "Special Meeting"), with all of the powers the undersigned would possess if then and there personally present and especially (but without limiting the general authorization and power hereby given) to vote as indicated on the proposals, as more fully described in the Proxy Statement for the Meeting. The undersigned hereby acknowledges receipt of the Notice of Special Meeting of Shareholders of the Fund and of the accompanying Proxy Statement, the terms of each of which are incorporated by reference, and revokes any proxy heretofore given with respect to such meeting.

THIS PROXY, WHEN EXECUTED, WILL BE VOTED IN THE MANNER DIRECTED HEREIN BY THE UNDERSIGNED SHAREHOLDER. IF THIS PROXY IS PROPERLY EXECUTED BUT NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR THE PROPOSALS. NO OTHER BUSINESS MAY BE PRESENTED OR TRANSACTED AT THE SPECIAL MEETING.

CONTROL NUMBER

AUTHORIZED SIGNATURE(S)

This section must be completed for your vote to be counted.

Please complete, sign and return this card as soon as possible.
Date_____

Signature(s) and Title(s), if applicable *(Sign in the box)*

Note: Please sign exactly as your name(s) appear(s) on this proxy card, and date it. If shares are held jointly, one or more owners should sign personally. When signing as attorney, executor, administrator, trustee, officer of corporation or other entity or in another representative capacity, please give the full title under the signature.

NHF_Ballot_100038_09042020

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Important Notice Regarding the Availability of Proxy Materials for this Special Meeting of Shareholders to Be Held on August 28, 2020.
The Notice of Special Meeting and Proxy Statement are available at: www.eproxyaccess.com/nhf2020

EVERY SHAREHOLDER'S VOTE IS IMPORTANT

↓ **Please detach at perforation before mailing.** ↓

It is important that votes be received no later than 11:59 p.m. Eastern time on the day before the meeting.

TO VOTE – Mark boxes below in blue or black ink as shown in this example: ☒

THE BOARD, INCLUDING THE INDEPENDENT TRUSTEES, UNANIMOUSLY RECOMMENDS A VOTE FOR THE FOLLOWING PROPOSALS:

	FOR	AGAINST	ABSTAIN
1. To approve a change in the Fund's business from a registered investment company that invests primarily in debt and equity securities to a diversified REIT and to amend the Fund's fundamental investment restrictions to permit the Fund to engage in its new business (the "Business Change Proposal").	☐	☐	☐
2. To approve the amendment and restatement of the Fund's Agreement and Declaration of Trust (the "Amendment Proposal").	☐	☐	☐

Shareholders are being asked to vote upon each proposal separately; however, the effectiveness of each of the Business Change Proposal and the Amendment Proposal is conditioned and dependent upon the approval of both proposals.

No other business may be presented or transacted at the Special Meeting.

PLEASE SIGN AND DATE ON THE REVERSE SIDE AND RETURN THIS PROXY CARD USING THE ENCLOSED ENVELOPE.

THANK YOU FOR VOTING

NHF_Ballot_100038_09042020

EXHIBIT B-3

SCHEDULE 14A

(RULE 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant ☒ Filed by a party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2)**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to § 240.14a-12

NexPoint Capital, Inc.

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transactions applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identity the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No:

(3) Filing party:

(4) Date Filed:

NEXPOINT CAPITAL, INC.
300 Crescent Court
Suite 700
Dallas, Texas 75201
(844) 485-9167

April 24, 2019

Dear Stockholder:

You are cordially invited to attend the 2019 Annual Meeting of Stockholders of NexPoint Capital, Inc. (the "Corporation") to be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, June 14, 2019, at 8:15 a.m. Central Time (the "Annual Meeting").

At the Annual Meeting, you will be asked to elect two (2) Class I directors to each serve a three-year term. In addition to voting on the election of directors, which is described in more detail in the accompanying Notice of Annual Meeting of Stockholders and Proxy Statement, you will have an opportunity to hear a report on the Corporation and to discuss other matters of interest to you as a stockholder.

It is very important that your shares be represented at the Annual Meeting. We hope that you will be able to attend the Annual Meeting in person. Whether or not you plan to attend, I urge you to please complete, date, sign and mail the enclosed proxy card to us to assure that your shares are represented at the Annual Meeting.

Sincerely,

/s/ James Dondero

James Dondero
President and Principal Executive Officer

NEXPOINT CAPITAL, INC.
300 Crescent Court
Suite 700
Dallas, Texas 75201
(844) 485-9167

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON JUNE 14, 2019

Notice is hereby given to holders of shares of common stock of NexPoint Capital, Inc., a Delaware corporation (the "Corporation"), that the 2019 Annual Meeting of the Stockholders will be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, June 14, 2019, at 8:15 a.m. Central Time (the "Annual Meeting"), for the following purposes:

1. To elect each of Bryan A. Ward and Ethan Powell as a Class I director of the Corporation to serve for a three-year term expiring at the 2022 Annual Meeting of the Stockholders or until his successor is duly elected and qualifies; and

2. To transact such other business as may properly come before the Annual Meeting and any adjournment or postponement thereof.

THE BOARD OF DIRECTORS, INCLUDING EACH OF THE INDEPENDENT DIRECTORS, UNANIMOUSLY RECOMMENDS A VOTE FOR THE ELECTION OF EACH OF THE DIRECTOR NOMINEES.

The close of business on April 16, 2019 has been fixed as the record date for the determination of stockholders entitled to notice of, and to vote at, the Annual Meeting and any adjournment or postponement thereof. Please call (844) 485-9167 for directions on how to attend the Annual Meeting and vote in person.

Important Notice Regarding Availability of Proxy Materials for the Stockholder Meeting to be held on June 14, 2019: Copies of these proxy materials, including the Corporation's Annual Report, the Notice for the Annual Meeting, the Proxy Statement and the form of proxy, are available to you on the Internet at https://www.proxyonline.com/docs/NexPoint2019.pdf. Copies of the proxy materials are also available upon request, without charge, by writing to AST Fund Solutions, LLC at AST Fund Solutions, ATTN: NexPoint 13450 Fulfillment, 55 Challenger Road, Ridgefield Park, New Jersey 07660, by calling (800) 967-5068, or by sending an e-mail to corporateservices@astfundsolutions.com using subject line: NexPoint 13450 Fulfillment. Stockholders are encouraged to read all of the proxy materials before voting as the proxy materials contain important information necessary to make an informed decision.

The Board of Directors is requesting your vote. Your vote is important regardless of the number of shares that you own. Whether or not you expect to be present at the Annual Meeting, please complete and sign the enclosed proxy card and return it promptly in the enclosed envelope, which needs no postage if mailed in the United States. If you desire to vote in person at the Annual Meeting, you may revoke your proxy at any time before it is exercised.

By Order of the Board of Directors,

/s/ Lauren Thedford
Lauren Thedford
Secretary

April 24, 2019
Dallas, Texas

NEXPOINT CAPITAL, INC.
300 Crescent Court
Suite 700
Dallas, Texas 75201
(844) 485-9167

PROXY STATEMENT
ANNUAL MEETING OF STOCKHOLDERS
JUNE 14, 2019

This Proxy Statement is furnished in connection with the solicitation of proxies on behalf of the Board of Directors (the "Board") of NexPoint Capital, Inc., a Delaware corporation (the "Corporation"), for use at the Corporation's 2019 Annual Meeting of Stockholders (the "Annual Meeting") to be held at 200 Crescent Court, Crescent Club, Dallas, Texas 75201, on Friday, June 14, 2019, at 8:15 a.m. Central Time, and at any and all adjournments or postponements thereof, for the purposes set forth in the accompanying Notice of Annual Meeting of Stockholders dated April 24, 2019. The Corporation is a closed-end management investment company that has elected to be treated as a business development company under the Investment Company Act of 1940, as amended (the "1940 Act"). NexPoint Advisors, L.P., a Delaware limited partnership (the "Adviser") serves as the investment adviser and the administrator ("Administrator") to the Corporation. The principal executive offices of each of the Corporation and the Adviser are located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

This Proxy Statement and the accompanying Notice of Annual Meeting of Stockholders and form of proxy are being provided to stockholders on or about April 24, 2019. The Board of Directors (the "Board") has fixed the close of business on April 16, 2019 as the record date (the "Record Date") for the determination of stockholders entitled to receive notice of, and to vote at, the Annual Meeting. As of the Record Date, 10,385,280 shares of the Common Stock were issued and outstanding, and the Corporation had not issued any shares of preferred stock. Stockholders of the Corporation are entitled to one vote for each share held and fractional votes for each fractional share held.

If the form of proxy is properly executed and returned in time to be voted at the Annual Meeting, the shares covered thereby will be voted at the Annual Meeting in accordance with the instructions marked thereon. All properly executed proxies received by the Board that do not specify how shares should be voted will be voted **"FOR"** the election as a director of the nominees listed below, and in the discretion of the persons named as proxies in connection with any other matter which may properly come before the Annual Meeting or any adjournment or postponement thereof.

The Board does not know of any matter to be considered at the Annual Meeting other than the election of the directors referred to in this Proxy Statement and the Notice of Annual Meeting. A stockholder may revoke his or her proxy any time before it is exercised by (i) voting in person at the Annual Meeting, (ii) giving written notice of such revocation to the Secretary of the Corporation or (iii) returning a properly executed, later-dated proxy.

In addition to soliciting proxies by mail, officers of the Corporation or officers or employees of the Adviser may solicit proxies by web, by telephone or in person. Copies of the Notice for the Annual Meeting, the Proxy Statement, the form of proxy and the Corporation's annual report are available at https://www.proxyonline.com/docs/NexPoint2019.pdf. The Corporation has engaged AST Fund Solutions, LLC, at AST Fund Solutions, ATTN: NexPoint 13450 Fulfillment, 55 Challenger Road, Suite 201, Ridgefield Park, New Jersey 07660 to provide stockholder meeting services, including the distribution of this Proxy Statement and related materials to stockholders, as well as assisting the Corporation in soliciting proxies for the Annual Meeting, at an approximate cost of $16,284. The costs of proxy solicitation and expenses incurred in connection with the preparation of this Proxy Statement and its enclosures will be paid by the Corporation.

Quorum

A quorum must be present at the Annual Meeting for any business to be conducted. The presence in person or by proxy of the holders of a majority of the shares of Common Stock entitled to vote shall constitute a quorum for the Annual Meeting. Shares represented by properly executed proxies with respect to which (i) a vote is withheld or (ii) the stockholder abstains will be treated as shares that are present and entitled to vote for purposes of determining a quorum.

Shares of Common Stock held by a broker or other nominee for which the nominee has not received voting instructions from the record holder and does not have discretionary authority to vote the shares on non-routine proposals are considered "broker non-votes" with respect to such proposals. Because the election of directors is a non-routine matter, broker non-votes are not entitled to vote at the Annual Meeting. Therefore, broker non-votes will be treated as shares that are not present for quorum purposes at the Annual Meeting.

If a quorum is not present at the Annual Meeting, or if a quorum is present but sufficient votes to approve the proposal are not received, the persons named as proxies may propose one or more adjournments or postponements of the Annual Meeting to permit further solicitation of proxies. Any adjournment or postponement will require the affirmative vote of a majority of those shares that are represented at the Annual Meeting in person or by proxy, whether or not a quorum is present.

Vote Required

The election of a director requires the affirmative vote of a majority of the shares of Common Stock cast at the Annual Meeting in person or by proxy. Abstentions are counted as present at the Annual Meeting but, assuming the presence of a quorum, will have the effect of a vote against each nominee.

Broker non-votes are described as votes cast by a broker or other nominee on behalf of a beneficial holder who does not provide explicit voting instructions to such broker or nominee and who does not attend the Annual Meeting. The election of a director is a non-routine matter. As a result, if you hold shares in "street name" through a broker, bank or other nominee, your broker, bank or nominee will **not** be permitted to exercise voting discretion with respect to the proposal at the Annual Meeting to elect each of Bryan A. Ward and Ethan Powell as a Class I director of the Corporation. Thus, if you do not give your broker or nominee specific instructions on how to vote for you or do not vote for yourself by returning a proxy card or by other arrangement with your broker or nominee, your shares will have no effect on the election of the Class I directors at the Annual Meeting.

THE PROPOSAL

ELECTION OF DIRECTORS

The Board is currently composed of five directors, who are divided into three classes with staggered terms of three years each, with the term of office of one of the three classes expiring at each annual meeting of the stockholders. At the Annual Meeting, the holders of the Corporation's shares of Common Stock are being asked to re-elect Bryan A. Ward and Ethan Powell as Class I Directors of the Corporation, each to serve for a three-year term expiring at the 2022 Annual Meeting of Stockholders or until his respective successor is duly elected and qualifies. Each of Messrs. Ward and Powell is currently serving as a Class I Director of the Corporation and has agreed to continue to serve as a Class I Director, if re-elected. If Messrs. Ward and Powell are not available for re-election at the time of the Annual Meeting, the persons named as proxies will vote for such substitute nominee(s) as the Corporation's Governance and Compliance Committee may select.

Each of John Honis and Dustin Norris is currently serving as a Class III Director and each was last elected to serve a three year term at the Corporation's annual meeting of stockholders held on June 22, 2018. Dr. Bob Froehlich is currently serving as a Class II Director. Dr. Froehlich was last elected to serve a three year term at

the Corporation's annual meeting of stockholders held on June 2, 2017. Ethan Powell and Bryan A. Ward are currently serving as Class I Directors. Messrs. Powell and Ward will continue to serve as Class I Directors if re-elected at the Annual Meeting. The Corporation's Directors are not required to attend the Corporation's annual stockholder meetings.

THE BOARD, INCLUDING EACH OF THE INDEPENDENT DIRECTORS, UNANIMOUSLY RECOMMENDS THAT STOCKHOLDERS VOTE "FOR" THE ELECTION OF THE NOMINEES AS DIRECTORS.

Qualifications and Additional Information about each Director Nominee and Continuing Directors

The following provides an overview of the considerations that led the Board to conclude that each individual nominee for director or the individuals serving as continuing directors of the Corporation should be nominated or so serve, as well as each nominee's and each director's name and certain biographical information as reported by them to the Corporation. Among the factors the Board considered when concluding that an individual should be a nominee for director or serve on the Board were the following: the individual's experience, skills, expertise, education, knowledge, diversity, personal and professional integrity, character, business judgment, time availability in light of other commitments, dedication, the candidate's ability to qualify as an Independent Director and the existence of any other relationships that might give rise to a conflict of interest and other relevant factors that the Corporation's Governance and Compliance Committee considers appropriate in the context of the needs of the Board (e.g., whether a candidate is an "audit committee financial expert" under the federal securities laws).

In respect of each director nominee and each continuing director, the individual's professional accomplishments and prior experience, including, in some cases, in fields related to the operations of the Corporation, were a significant factor in the determination that the individual should be a nominee for director or serve as a director of the Corporation. Each director nominee's and each continuing director's professional experience and additional considerations that contributed to the Board's conclusion that an individual should serve on the Board are summarized in the table below.

The "Highland Funds Complex," as referred to herein consists of: the Corporation, each series of Highland Funds I ("HFI"), each series of Highland Funds II ("HFII"), Highland Floating Rate Opportunities Fund ("HFRO"), NexPoint Strategic Opportunities Fund ("NHF"), Highland Global Allocation Fund ("GAF"), NexPoint Event-Driven Fund ("NEDF"), NexPoint Latin American Opportunities Fund ("NLAF"), NexPoint Real Estate Strategies Fund ("NRESF"), NexPoint Strategic Income Fund ("NSIF"), NexPoint Energy and Materials Opportunities Fund ("NEMO"), NexPoint Discount Strategies Fund ("NDSF"), and NexPoint Healthcare Opportunities Fund ("NHOF" and, together with NEDF, NLAF, NRESF, NSIF, NEMO and NDSF, the "Interval Funds").

Nominees for Class I Directors

Name, Date of Birth and Address (1)	Position(s) held with the Corporation	Term of Office and Length of Time Served (2)	Principal Occupation(s) During the Past Five Years	Other Directorships Held During the Past Five Years(3)	Experience, Qualifications, Attributes, Skills for Board Membership
Independent Directors					
Bryan A. Ward (2/4/1955)	Director and Chairman of the Audit and Qualified Legal Compliance Committee	Term expires 2019; Class I Director since 2014	Senior Advisor, CrossFirst Bank since April 2019; Private Investor, BW Consulting, LLC since 2014; Senior Manager, Accenture, LLP (a consulting firm) from 2002 until retirement in 2014.	Director of Equity Metrix, LLC.	Significant experience on this and/or other boards of directors/trustees; significant managerial and executive experience; significant experience as a management consultant.
Ethan Powell (4) (6/20/1975)	Director and Chairman of the Board	Term expires 2019; Class I Director since 2014	President and Founder of Impact Shares LLC since December 2015; Trustee/Director of the Highland Funds Complex from June 2012 until July 2013 and since December 2013; Chief Product Strategist of Highland Capital Management Fund Advisors, L.P. (“HCMFA”) from 2012 until December 2015; Senior Retail Fund Analyst of Highland Capital Management, L.P. (“HCM”) from 2007 until December 2015 and HCMFA from its inception until December 2015.	Trustee of Impact Shares Funds I Trust.	Significant experience in the financial industry; significant executive experience including past service as an officer of funds in the Highland Funds Complex; significant administrative and managerial experience.

Class II Directors (continuing directors not up for re-election at the Annual Meeting)

Name, Date of Birth and Address (1)	Position(s) held with the Corporation	Term of Office and Length of Time Served(2)	Principal Occupation(s) During the Past Five Years	Other Directorships Held During the Past Five Years(3)	Experience, Qualifications, Attributes, Skills for Board Membership
Independent Director					
Dr. Bob Froehlich (4/28/1953)	Director	Term expires 2020; Class II Director since 2014	Retired.	Trustee of ARC Realty Finance Trust, Inc. (from January 2013 to May 2016); Director of KC Concessions, Inc. (since January 2013); Trustee of Realty Capital Income Funds Trust (from January 2014 to December 2016); Director of American Realty Capital Healthcare Trust II (from January 2013 to June 2016); Director, American Realty Capital Daily Net Asset Value Trust, Inc. (from November 2012 to July 2016); Director of American Sports Enterprise, Inc. (since January 2013); Director of Davidson Investment Advisors (from July 2009 to July 2016); Chairman and owner, Kane County Cougars Baseball Club (since January 2013); Advisory Board of Directors, Internet Connectivity Group, Inc. (from January 2014 to April 2016); Director of AXAR Acquisition Corp. (formerly AR Capital Acquisition Corp.) (from October 2014 to October 2017); Director of The Midwest League of Professional Baseball Clubs, Inc.; Director of Kane County Cougars Foundation, Inc.; Director of Galen Robotics, Inc.; Chairman and Director of FC Global Realty, Inc. (from May 2017 to June 2018); and Chairman and Director of First Capital Investment Corp. (from March 2017 to March 2018).	Significant experience in the financial industry; significant managerial and executive experience; significant experience on other boards of directors, including as a member of several audit committees.

Class III Directors (continuing directors not up for re-election at the Annual Meeting)

Name, Date of Birth and Address (1)	Position(s) held with the Corporation	Term of Office and Length of Time Served (2)	Principal Occupation(s) During the Past Five Years	Other Directorships Held During the Past Five Years(3)	Experience, Qualifications, Attributes, Skills for Board Membership
Independent Director					
John Honis (5) (6/16/1958)	Director	Terms expires 2021; Class III Director since 2014	President of Rand Advisors, LLC since August 2013; Partner of HCM from February 2007 until his resignation in November 2014.	Manager of Turtle Bay Resort, LLC (August 2011 to December 2018); Manager of American Home Patient (November 2011 to February 2016).	Significant experience in the financial industry; significant managerial and executive experience, including experience as president, chief executive officer or chief restructuring officer of five telecommunication firms; experience on other boards of directors/trustees.

Name, Date of Birth and Address (1)	Position(s) held with the Corporation	Term of Office and Length of Time Served (2)	Principal Occupation(s) During the Past Five Years	Other Directorships Held During the Past Five Years(3)	Experience, Qualifications, Attributes, Skills for Board Membership
Interested Director					
Dustin Norris (6) (1/6/1984)	Director	Terms expires 2021; Class III Director since February 2018	President of NexPoint Securities, Inc. (formerly, Highland Capital Funds Distributor, Inc.) since April 2018; Head of Distribution and Chief Product Strategist at the Adviser since March 2019; Head of Distribution at HCMFA from November 2018 to March 2019; Secretary of Highland Floating Rate Opportunities Fund ("HFRO"), Highland Global Allocation Fund ("GAF"), Highland Funds I ("HFI") and Highland Funds II ("HFII") from October 2017-April 2019; Assistant Secretary of HFRO and GAF from August 2017 to October 2017; Chief Product Strategist at HCMFA from September 2015 to March 2019; and Director of Product Strategy at HCMFA from May 2014 to September 2015; Assistant Secretary of HFI and HFII from March 2017 to October 2017; Secretary of NexPoint Strategic Opportunities Fund ("NHF") from December 2015 to April 2019; Assistant Treasurer of NexPoint Real Estate Advisors, L.P. since May 2015; Assistant Treasurer of NexPoint Real Estate Advisors II, L.P. since June 2016; Assistant Treasurer of HFI and HFII from November 2012 to March 2017; Assistant Treasurer of NHF from November 2012 to December 2015; Secretary of the Corporation from 2014 to April 2019; Secretary of the Interval Funds from March 2016 to April 2019; and Senior Accounting Manager at HCMFA from August 2012 to May 2014.	None	Significant experience in the financial industry; significant managerial and executive experience, including experience as an officer of the Highland Funds Complex since 2012.

(1) The address for each nominee and director is c/o NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201.

(2) On an annual basis, as a matter of Board policy, the Governance and Compliance Committee reviews each director's performance and determines whether to extend each such director's service for another year. Effective June 2013, the Board adopted a retirement policy wherein the Committee shall not recommend the continued service as a director of a Board member who is older than 80 years of age at the time the Committee reports its findings to the Board.

(3) Each nominee and director oversees 24 portfolios in the Highland Funds Complex.

(4) Prior to December 8, 2017, Mr. Powell was treated as an Interested Director of the Corporation for all purposes other than compensation and the Corporation's code of ethics.

(5) Since May 1, 2015, Mr. Honis has been treated as an Independent Director of the Corporation. Prior to that date, Mr. Honis was treated as an Interested Director because he was a partner of an investment adviser affiliated with the Adviser until his resignation in November 2014. As of March 5, 2019, Mr. Honis was entitled to receive aggregate severance and/or deferred compensation payments of approximately $400,000 from another affiliate of the Adviser.

In addition, Mr. Honis serves as a trustee of a trust that owns substantially all of the economic interest in an investment adviser affiliated with the Adviser. Mr. Honis indirectly receives an asset-based fee in respect of such interest, which is projected to range from $450,000-$550,000 annually. Additionally, an investment adviser controlled by Mr. Honis has entered into a shared services arrangement with an affiliate of the Adviser, pursuant to which the affiliate provides back office support in exchange for approximately $50,000 per quarter. The affiliated adviser was paid $147,000 and $208,000 in 2017 and 2018, respectively. In light of these relationships between Mr. Honis and affiliates of the Adviser, it is possible that the Securities and Exchange Commission (the "SEC") might in the future determine Mr. Honis to be an interested person of the Corporation.

(6) On February 7, 2018, Mr. Norris was appointed as an Interested Director of the Corporation.

Information about the Executive Officers

Set forth below are the names and certain information regarding the Corporation's executive officers. Each executive officer serves until his successor has been duly elected and qualifies, or until his earlier resignation or removal.

Name, Date of Birth and Address (1)	Position(s) held with the Corporation	Principal Occupation(s) During Past Five Years
James Dondero (6/29/1962)	President and Principal Executive Officer since 2014	President of HCM, which he co-founded in 1993; Chairman of the Board of NexPoint Residential Trust, Inc. since May 2015; Portfolio Manager of NHF, Portfolio Manager of Highland Energy MLP Fund, Highland Small-Cap Equity Fund and Highland Premier Growth Equity Fund (all series of HFII); Portfolio Manager of Highland Opportunistic Credit Fund (series of HFI), Portfolio Manager of the Corporation and Portfolio Manager of GAF (including its predecessor in interest) since 2014; President of NexPoint Real Estate Advisors, L.P. since May 2015; President of NexPoint Real Estate Advisors II, L.P. since June 2016; President and Portfolio Manager of the Interval Funds since 2016.

Name, Date of Birth and Address (1)	Position(s) held with the Corporation	Principal Occupation(s) During Past Five Years
Frank Waterhouse (4/14/1971)	Treasurer, Principal Financial Officer and Principal Accounting Officer since May 2015	Principal Executive Officer of HFI, HFII, HFRO, and GAF since February 2018; Principal Financial Officer and Principal Accounting Officer of HFRO, GAF, the Corporation, NHF, HFI, HFII, and NexPoint Real Estate Advisors, L.P. since October 2017; Treasurer of HFRO and GAF since August 2017; Assistant Treasurer of Acis Capital Management, L.P. from December 2011 to February 2012; Treasurer of Acis Capital Management, L.P. since February 2012; Treasurer of HCM since April 2012; Assistant Treasurer of HCMFA from December 2011 until October 2012; Treasurer of HCMFA since October 2012; Treasurer of the Adviser since March 2012 and Treasurer of the Corporation, NHF, HFI, HFII, and NexPoint Real Estate Advisors, L.P. since May 2015; Treasurer of NexPoint Real Estate Advisors II, L.P. since June 2016; Treasurer of the Interval Funds since March 2016.
Clifford Stoops (11/17/1970)	Assistant Treasurer since March 2017	Assistant Treasurer of HFRO and GAF since August 2018; Assistant Treasurer of HFI, HFII, NHF, the Corporation and the Interval Funds since March 2017; Chief Accounting Officer at HCM since December 2011.
Jason Post (1/9/1979)	Chief Compliance Officer since September 2015	Chief Compliance Officer and Anti-Money Laundering Officer of HFRO and GAF since August 2017; Chief Compliance Officer and Anti-Money Laundering Officer of HFI, HFII, the Corporation and NHF since September 2015; Chief Compliance Officer and Anti-Money Laundering Officer of the Interval Funds since March 2016; and Chief Compliance Officer for HCMFA and NexPoint since September 2015. Prior to this role served as Deputy Chief Compliance Officer and Director of Compliance for HCM.
Lauren Thedford (1/7/1989)	Secretary since April 2019	Associate General Counsel at HCM since September 2017; In-House Counsel at HCM from January 2015 until September 2017; Secretary of the Highland Funds Complex since April 2019.

(1) The address for each officer is c/o NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain ownership information with respect to our Common Stock, as of February 28, 2019, for those persons who directly or indirectly own, control or hold with the power to vote, five percent or more of our outstanding Common Stock and all officers and directors, individually and as a group.

Name and Address(1)	Type of Ownership	Shares Owned	Value of Securities	Percentage of Outstanding Shares as of February 28, 2019
NexPoint Advisors, L.P.	Record	2,361,234	$21,109,428	22.56%
Independent Directors				
Dr. Bob Froehlich	N/A	None	$ 0	0%
John Honis	N/A	None	$ 0	0%
Bryan A. Ward	N/A	None	$ 0	0%
Ethan Powell(2)	N/A	None	$ 0	0%
Interested Director				
Dustin Norris(3)	N/A	None	$ 0	0%
Executive Officers				
James Dondero(4)	N/A	None	$ 0	0%
Clifford Stoops	N/A	None	$ 0	0%
Frank Waterhouse	N/A	None	$ 0	0%
Jason Post	N/A	None	$ 0	0%
All officers and directors as a group (9 persons)	N/A	None	$ 0	0%

(1) The address for the Adviser and each director or officer is c/o NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201.
(2) Prior to December 8, 2017, Mr. Powell was treated as an Interested Director of the Corporation for all purposes other than compensation and the Corporation's code of ethics.
(3) On February 7, 2018, Mr. Norris was appointed as an Interested Director of the Corporation.
(4) Mr. Dondero controls NexPoint Advisors GP, LLC, which is the general partner of the Adviser. Through his control of NexPoint Advisors GP, LLC, Mr. Dondero may be viewed as having voting and dispositive power over the shares of the Common Stock directly owned by the Adviser.

Dollar Range of Equity Securities Beneficially Owned by Directors

Set forth in the table below is the dollar range of shares beneficially owned by each director in (i) the Corporation and (ii) all registered investment companies in the Highland Funds Complex overseen by such director.

Name of Director	Dollar Range of Shares of the Corporation (1)	Aggregate Dollar Range of Equity Securities(2) Owned in All Registered Investment Companies Overseen by Director in the Highland Funds Complex
Independent Directors		
Dr. Bob Froehlich	None	Over $100,000
Bryan A. Ward	None	Over $100,000
John Honis	None	None
Ethan Powell(3)	None	Over $100,000
Interested Director		
Dustin Norris(4)	None	Over $100,000

(1) Based on market value as of December 31, 2018.
(2) Based on market value as of December 31, 2018.
(3) Prior to December 8, 2017, Mr. Powell was treated as an Interested Director of the Corporation for all purposes other than compensation and the Corporation's code of ethics.
(4) On February 7, 2018, Mr. Norris was appointed as an Interested Director of the Corporation.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules thereunder require that the Corporation's directors and officers and persons who own beneficially, directly or indirectly, more than 10 percent of any class of the Corporation's securities file initial reports of beneficial ownership and reports of changes in beneficial ownership with the Securities and Exchange Commission ("SEC") and furnish the Corporation with copies of all such reports. Specific due dates for those reports have been established, and the Corporation is required to report in this Proxy Statement any known failure to file such reports by those due dates. Based solely upon a review of the copies of such reports furnished, the Corporation does not know of any director, officer or person who beneficially owns more than 10 percent of any class of the Corporation's securities who failed to file on a timely basis the required reports.

Role of the Board of Directors, Leadership Structure and Risk Oversight

The Role of the Board of Directors

The Board oversees the management and operations of the Corporation. Like most business development companies and registered investment companies, the day-to-day management and operation of the Corporation is performed by various service providers to the Corporation, such as the Adviser, custodian and transfer agent. The Board has appointed senior employees of certain of these service providers as officers of the Corporation, with responsibility to monitor and report to the Board on the Corporation's operations. The Board receives regular reports from these officers and service providers regarding the Corporation's operations. For example, the Chief Financial Officer provides reports as to financial reporting matters and investment personnel report on the performance of the Corporation. The Board has appointed a Chief Compliance Officer who administers the Corporation's compliance program and regularly reports to the Board as to compliance matters. Some of these reports are provided as part of formal in-person Board meetings, which are typically held quarterly, and involve the Board's review of, among other items, recent Corporation operations. The Board also periodically holds telephonic meetings as part of its review of the Corporation's activities. From time to time, one or more members of the Board may also meet with management in less formal settings, between scheduled Board meetings, to discuss various topics. In all cases, however, the role of the Board and of any individual director is one of oversight and not of management of the day-to-day affairs of the Corporation and its oversight role does not make the Board a guarantor of the Corporation's investments, operations or activities.

Board Structure and Leadership

The Board has structured itself in a manner that it believes allows it to perform its oversight function effectively. The Board consists of five directors, four of whom are not "interested persons," as defined in 1940 Act, of the Corporation. These individuals are referred to as the Corporation's independent directors (the "Independent Directors"). The other director, Mr. Norris, is currently treated as an interested director (the "Interested Director") because of his position with the Advisor, and his previous position with HCMFA, an affiliate of the Adviser. During the fiscal year ended December 31, 2018, the Board convened eleven times. Each Director then serving in such capacity attended at least 75% of the meetings. The Corporation encourages, but does not require, Directors to attend the Annual Meeting.

The Board periodically reviews its leadership structure, including the role of the Chairman. The Board also completes an annual self-assessment during which it reviews its leadership and Committee structure and

considers whether its structure remains appropriate in light of the Corporation's current operations. The Board believes that its leadership structure, including the current percentage of the Board who are Independent Directors is appropriate given its specific characteristics. These characteristics include: (i) the extent to which the work of the Board is conducted through the standing committees, each of whose meetings are chaired by an Independent Director; (ii) the extent to which the Independent Directors meet as needed, together with their independent legal counsel, in the absence of members of management and any member of the Board who is considered an "interested person" of the Corporation; and (iii) Mr. Powell's and Mr. Honis' previous positions with affiliates of the Adviser, which enhances the Board's understanding of the operations of the Adviser.

Board Oversight of Risk Management. The Board's role is one of oversight, rather than active management. This oversight extends to the Corporation's risk management processes. These processes are embedded in the responsibilities of officers of, and service providers to, the Corporation. For example, the Adviser and other service providers to the Corporation are primarily responsible for the management of the Corporation's investment risks. The Board has not established a formal risk oversight committee. However, much of the regular work of the Board and its standing Committees addresses aspects of risk oversight. For example, the Directors seek to understand the key risks facing the Corporation, including those involving conflicts of interest; how management identifies and monitors these risks on an ongoing basis; how management develops and implements controls to mitigate these risks; and how management tests the effectiveness of those controls.

In the course of providing that oversight, the Board receives a wide range of reports on the Corporation's activities from the Adviser and other service providers, including reports regarding the Corporation's investment portfolio, the compliance of the Corporation with applicable laws, and the Corporation's financial accounting and reporting. The Board also meets periodically with the Corporation's Chief Compliance Officer to receive reports regarding the compliance of the Corporation with the federal securities laws and the Corporation's internal compliance policies and procedures and meets with the Corporation's Chief Compliance Officer periodically, including at least annually, to review the Chief Compliance Officer's annual report, including the Chief Compliance Officer's risk-based analysis for the Corporation. The Board's Audit and Qualified Legal Compliance Committee (the "Audit Committee") also meets regularly with the Chief Financial Officer and the Corporation's independent registered public accounting firm to discuss, among other things, the internal control structure of the Corporation's financial reporting function. The Board also meets periodically with the portfolio managers of the Corporation to receive reports regarding the management of the Corporation, including its investment risks.

The Board recognizes that not all risks that may affect the Corporation can be identified, that it may not be practical or cost-effective to eliminate or mitigate certain risks, that it may be necessary to bear certain risks (such as investment-related risks) to achieve the Corporation's goals, that reports received by the directors with respect to risk management matters are typically summaries of the relevant information, and that the processes, procedures and controls employed to address risks may be limited in their effectiveness. As a result of the foregoing and other factors, risk management oversight by the Board and by the Committees is subject to substantial limitations.

Committees of the Board

The Board conducts much of its work through certain standing Committees. The Board has three Committees, the Audit and Qualified Legal Compliance Committee (the "Audit Committee"), the Governance and Compliance Committee, and the Distribution and Alternatives Oversight Committee, which are discussed in greater detail below. The Board has adopted charters for each of these Committees.

Prior to March 1, 2019, the Board had five Committees, the Audit Committee, the Governance Committee, the Compliance Committee, the Distribution Oversight Committee and the Alternatives Oversight Committee. For the fiscal year ended December 31, 2018, the Audit Committee held seven meetings and the Governance Committee held three meetings. The Compliance Committee held three meetings during the fiscal year ended

December 31, 2018. The Distribution Oversight Committee held two meetings during the fiscal year ended December 31, 2018. The Alternatives Oversight Committee held two meetings during the fiscal year ended December 31, 2018. Each Director then serving in such capacity attended at least 75% of the meetings of the Committees of which he is a member.

Audit and Qualified Legal Compliance Committee

The members of the Audit Committee are Dr. Froehlich and Messrs. Ward and Powell, each of whom is an Independent Director. Mr. Ward serves as Chairman of the Audit Committee. The Audit Committee is responsible for approving the Corporation's independent registered public accounting firm, reviewing with the Corporation's independent accountants the plans and results of the audit engagement and the adequacy of the Corporation's internal accounting controls, and approving professional services provided by the independent registered public accounting firm. The Audit Committee is charged with compliance with Rules 205.2(k) and 205.3(c) of Title 17 of the Code of Federal Regulations regarding alternative reporting procedures for attorneys representing the Corporation who appear and practice before the SEC on behalf of the Corporation. The Audit Committee is also responsible for reviewing and overseeing the valuation of debt and equity securities that are not publicly traded or for which current market values are not readily available pursuant to policies and procedures adopted by the Board. The Board and Audit Committee will use the services of one or more independent valuation firms to help them determine the fair value of these securities. The Board has determined that Mr. Ward is an "audit committee financial expert," as defined under Item 407(d)(5) of Regulation S-K under the Exchange Act. In addition, each member of the Audit Committee meets the current independence and experience requirements of Rule 10A-3 under the Exchange Act.

A current copy of the Corporation's Audit Committee Charter is available on the Corporation's website at http://nexpointcapital.com/investor-relations/.

Governance and Compliance Committee

The members of the Governance and Compliance Committee are Dr. Froehlich and Messrs. Honis, Powell and Ward, each of whom is independent for purposes of the 1940 Act. Dr. Froehlich serves as the Chairman of the Governance and Compliance Committee. The Governance and Compliance Committee's function is to oversee and make recommendations to the full Board or the Independent Directors, as applicable, with respect to the Corporation's governance, selection and nomination of directors, compensation of directors, and related matters, as well as to oversee and assist Board oversight of the Corporation's compliance with legal and regulatory requirements and to seek to address any potential conflicts of interest between the Corporation and the Adviser in connection with any potential or existing litigation or other legal proceeding related to securities held by the Corporation and the Adviser or another client of the Adviser. The Governance and Compliance Committee is also responsible for at least annually evaluating each director and determining whether to recommend each director's continued service in that capacity.

The Governance and Compliance Committee considers nominees properly recommended by the Corporation's stockholders. The Corporation's bylaws provide that for any nomination to be properly brought by a stockholder for a meeting, such stockholder will have to comply with advance notice requirements and provide the Corporation with certain information. Generally, to be timely, a stockholder's notice must be received at the Corporation's principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary of the date the proxy statement for the immediately preceding annual meeting of stockholders was released to the Corporation's stockholders.

The Corporation's bylaws further provide that nominations of persons for election to the Board at a special meeting may be made only by or at the direction of the Board and, provided that the Board has determined that directors will be elected at the meeting, by a stockholder who is entitled to vote at the meeting and who has complied with the advance notice provisions of the bylaws.

This notice must contain, as to each nominee, all of the information relating to such person as would be required to be disclosed in a proxy statement meeting the requirements of Regulation 14A under the Exchange Act, and certain other information set forth in the bylaws, including the following information for each director nominee: full name, age and address; principal occupation during the past five years; directorships on publicly held companies and investment companies during the past five years; number of shares of Common Stock owned, if any; and a written consent of the individual to stand for election if nominated by the Board and to serve if elected by the stockholders. In order to be eligible to be a nominee for election as a director, such potential nominee may be required to provide additional information to determine his or her qualifications or eligibility to serve on the Board.

The Governance and Compliance Committee has not established any specific, minimum qualifications that must be met for an individual to be considered for nomination as a director. Criteria and attributes considered by the Governance and Compliance Committee in evaluating the qualifications of individuals for election as a director, including individuals nominated by stockholders, include the following: experience, skills, expertise, education, knowledge, diversity, personal and professional integrity, character, business judgment, time availability in light of other commitments, dedication, the individual's ability to qualify as an Independent Director and the existence of any other relationships that might give rise to a conflict of interest and other relevant factors that the Governance and Compliance Committee considers appropriate in the context of the needs of the Board (e.g., whether a candidate is an "audit committee financial expert" under the federal securities laws).

A current copy of the Corporation's Governance and Compliance Committee Charter is available on the Corporation's website at http://nexpointcapital.com/investor-relations/.

Alternatives and Distribution Oversight Committee

The members of the Alternatives and Distribution Oversight Committee are Dr. Froehlich and Messrs. Honis, Norris, Powell and Ward. The Alternatives and Distribution Oversight Committee is responsible for reviewing arrangements with financial intermediaries who provide service to the Corporation, including Corporation payments to financial intermediaries and for overseeing any funds that, in the Board's determination, employ alternative investment strategies. Mr. Honis serves as Chairman of the Alternatives and Distribution Oversight Committee.

Compensation Committee

As none of the Corporation's executive officers are compensated by the Corporation, the Corporation does not have a compensation committee and neither the Board nor a Committee thereof produces and/or reviews a report on executive compensation practices. The Governance and Compliance Committee reviews and evaluates compensation payable to the Independent Directors at least annually to ensure that such compensation continues to be appropriate in light of the responsibilities of the Independent Directors. The Governance and Compliance Committee makes any recommendations regarding changes to Independent Directors' compensation to the Board, and the full Board approves the Independent Directors' compensation.

Compensation of Directors and Executive Officers

The executive officers of the Corporation receive no direct remuneration from the Corporation. Each Independent Director of the Corporation receives an annual retainer of $150,000 payable in quarterly installments and allocated among each portfolio in the Highland Funds Complex based upon relative net assets. The Independent Directors are reimbursed for actual out-of-pocket expenses relating to attendance at meetings. The Independent Directors do not receive any separate compensation in connection with service on Committees or for attending Board or Committee meetings; however, the Chairman of the Board and the Chairman of the Audit Committee each receive an additional payment of $10,000 payable in quarterly installments and allocated among each portfolio in the Highland Funds Complex based on relative net assets. The Independent Directors do not receive equity awards or incentive-based compensation and do not have any pension or retirement plan.

The following table summarizes the compensation paid by the Corporation to its directors and the aggregate compensation paid by the Highland Funds Complex to the directors for services rendered in the fiscal year ended December 31, 2018.

Name of Director	Aggregate Compensation from the Corporation	Aggregate Compensation from the Highland Funds Complex
Independent Directors		
Timothy K. Hui(1)	$3,820.75	$150,000
Bryan A. Ward(2)	$3,820.75	$150,000
Dr. Bob Froehlich	$3,820.75	$150,000
John Honis(3)	$3,820.75	$150,000
Ethan Powell(2,4)	$3,820.75	$150,000
Interested Director		
Dustin Norris(5)	N/A	N/A

(1) Effective March 31, 2019, Mr. Hui resigned as an Independent Director of the Corporation.
(2) Effective December 31, 2018, the Board approved an aggregate compensation increase of $10,000 payable to each of the Chairman of the Audit Committee and the Chairman of the Board.
(3) Effective May 1, 2015, Mr. Honis is treated as an Independent Director of the Corporation.
(4) Prior to December 8, 2017, Mr. Powell was treated as an Interested Director of the Corporation for all purposes other than compensation and the Corporation's code of ethics.
(5) On February 7, 2018, Mr. Norris was appointed an Interested Director of the Corporation.

Code of Conduct and Code of Ethics

The Corporation expects each of its officers and directors, as well as any person affiliated with its operations, to act in accordance with the highest standards of personal and professional integrity at all times and to comply with the Corporation's policies and procedures and all laws, rules and regulations of any applicable international, federal, provincial, state or local government. To this effect, the Corporation has adopted a Sarbanes-Oxley ("SOX") Code of Ethics, which is posted on the Corporation's website at http://nexpointcapital.com/investor-relations/. The SOX Code of Ethics applies to the Corporation's principal executive officer and principal financial officer.

As required by the 1940 Act, the Corporation and the Adviser have each adopted a Code of Ethics (the "Rule 17j-1 Code of Ethics") that establishes procedures that apply to the Corporation's directors, executive officers, officers, their respective staffs and the employees of the Adviser with respect to their personal investments and investment transactions. Each Rule 17j-1 Code of Ethics generally does not permit investments by the Corporation's directors, officers or any other covered person in securities that may be purchased or held by the Corporation. You may access the Corporation's Rule 17j-1 Code of Ethics on the Corporation's website at http://nexpointcapital.com/investor-relations/.

Certain Relationships and Related Party Transactions

The Corporation has entered into agreements with the Adviser and Administrator. Certain members of the Corporation's senior management have ownership and financial interests in the Adviser and the Administrator. Members of senior management also serve as officers of other investment managers affiliated with the Adviser that do and may in the future manage investment funds, accounts or other investment vehicles with investment objectives similar to those of the Corporation. In addition, the Corporation's executive officers and directors and the members of the Adviser serve or may serve as officers, directors or principals of entities that operate in the same, or related, lines of business as the Corporation does or of investment funds, accounts or other investment vehicles managed by the Corporation's affiliates. These investment funds, accounts or other investment vehicles may have investment objectives similar to the Corporation's investment objective.

As a result, the Corporation may not be given the opportunity to participate in certain investments made by investment funds, accounts or other investment vehicles managed by the Adviser or its affiliates. However, in order to fulfill its fiduciary duties to each of its clients, the Adviser intends to allocate investment opportunities in a manner that is fair and equitable over time and is consistent with the Adviser's allocation policy, investment objective and strategies so that the Corporation is not disadvantaged in relation to any other client. Where the Corporation is able to co-invest consistent with the requirements of the 1940 Act, if sufficient securities or loan amounts are available to satisfy the Corporation's and each such account's proposed demand, the opportunity will be allocated in accordance with the Adviser's pre-transaction determination. If there is an insufficient amount of an investment opportunity to satisfy the Corporation's demand and that of other accounts sponsored or managed by the Adviser or its affiliates, the allocation policy provides that allocations among the Corporation and such other accounts will generally be made pro rata based on the amount that each such party would have invested if sufficient securities or loan amounts were available. Where the Corporation is unable to co-invest consistent with the requirements of the 1940 Act, the Adviser's allocation policy further provides for investments to be allocated on a random or rotational basis to assure that all clients have fair and equitable access to such investment opportunities.

The Board, in consultation with the Corporation's Chief Executive Officer, Chief Compliance Officer and legal counsel, may review potential related party transactions and, during these reviews, it may also consider any conflicts of interest brought to its attention pursuant to the Corporation's Code of Conduct or the Corporation's or the Adviser's Rule 17j-1 Code of Ethics.

The Corporation has entered into an investment advisory agreement with the Adviser pursuant to which the Adviser has agreed to provide investment advisory services to the Corporation. In exchange for these services, the Corporation will pay the Adviser a fee for investment management services consisting of a base management fee and a performance-based incentive fee. For the fiscal year ended December 31, 2018, the Adviser earned a base management fee of $2,025,178. For the fiscal year ended December 31, 2018, the Adviser did not earn an incentive fee. Effective December 20, 2017, the Adviser ended its voluntary waiver of advisory fees. Fees waived before June 10, 2016 are not subject to recoupment. The Adviser may elect to recoup any fees voluntarily waived from and after June 10, 2016 within three years from the date that such fees were otherwise payable, provided that the recoupment of the Adviser will be limited to the amount of such voluntarily waived fees (excluding any fees the Adviser has indicated are not subject to recoupment) and will not cause the sum of the Corporation's advisory fees, administration fees, and "Other Expenses" (as defined in the Expense Limitation Agreement), nor will any recoupment exceed the annual rate of 3.40% of average gross assets.

The Corporation has also entered into an administration agreement pursuant to which the Adviser furnishes the Corporation with office facilities, equipment and clerical, bookkeeping, recordkeeping and other administrative services to enable the Corporation to operate. The Corporation has agreed to reimburse the Adviser for its allocable portion of overhead and other expenses incurred by the Adviser in performing its obligations under the administration agreement. To the extent that the Adviser outsources any of its functions, the Corporation will pay the fees associated with such functions on a direct basis without profit to the Adviser. In no event, however, will the Corporation reimburse the Adviser under the administration agreement in an amount that exceeds an annual rate of 0.4% of the Corporation's gross assets, including cash and cash equivalents and assets purchased with borrowed funds.

In the future, the Corporation may engage the Adviser or certain of its affiliates to provide services other than those discussed above. Any arrangements would be subject to approval by the Board prior to the Adviser or its affiliates being engaged to provide services to the Corporation.

Information About the Independent Registered Public Accounting Firm

At a meeting held on December 6-7, 2018, the Corporation's Audit Committee approved, and the Corporation's Board, including a majority of the Independent Directors, ratified the selection of, PricewaterhouseCoopers LLP ("PwC") as the Corporation's independent registered public accounting firm for the fiscal year ending December 31, 2019. After reviewing the Corporation's audited financial statements for the fiscal year ended December 31, 2018, the Corporation's Audit Committee recommended to the Corporation's Board that such statements be included in the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 2018. A copy of the Audit Committee's report appears below. The directors do not have knowledge of any direct or indirect financial interest of PwC in the Corporation. Representative(s) of PwC will not attend the Annual Meeting.

The following table presents fees for professional services rendered by PwC for the Corporation's fiscal years ended December 31, 2018 and 2017. One hundred percent (100%) of all services provided by PwC were pre-approved and no fees were subject to pre-approval by the Audit Committee pursuant to Rule 2-01(c)(7)(i)(c) of Regulation S-X. The audit services are approved by the Audit Committee pursuant to an audit engagement letter, and, in accordance with the Corporation's pre-approval policies and procedures, the Audit Committee of the Corporation must pre-approve all non-audit services provided by PwC, and all non-audit services provided by PwC to the Adviser, or any entity controlling, controlled by, or under common control with the Adviser that provides ongoing services to the Corporation that are related to the operations and financial reporting of the Corporation. In some circumstances, when certain services were not recognized at the time of the engagement to be non-audit services, the pre-approval requirement may be waived if the aggregate amount of the fees for such non-audit services constitutes less than five percent of the total amount of revenues paid to PwC by the Corporation during the fiscal year in which the non-audit services are provided. PwC provides permitted non-audit services to certain entities controlling, controlled by or under common control with the Adviser that provide ongoing services to the Corporation.

	Fiscal Year Ended December 31, 2018	Fiscal Year Ended December 31, 2017
Audit Fees paid by the Corporation	$139,500	$132,000
Audit-Related Fees paid by the Corporation	$ 66,000	$ 67,500
Tax Fees paid by the Corporation	$ 11,430	$ 11,430
All Other Fees paid by the Corporation	$ 0	$ 0
Total Fees	$216,930	$210,930

Audit Fees. Audit fees consist of fees billed for professional services rendered for the audit of the Corporation's year-end financial statements and reviews of the interim financial statements included in quarterly reports and services that are normally provided by PwC in connection with statutory and regulatory filings.

Audit-Related Fees. Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of the Corporation's financial statements and are not reported under "Audit Fees." These services include attestation services that are not required by statute or regulation, consultations concerning financial accounting and reporting standards, and fees related to requests for documentation and information from regulatory and other government agencies.

Tax Fees. Tax fees consist of fees billed for professional services for tax compliance. These services include assistance regarding federal, state, and local tax compliance.

All Other Fees. All other fees include fees for products and services other than the services reported above.

Report of the Audit Committee(1)

The following is the report of the Audit Committee (the "Committee") of NexPoint Capital, Inc. (the "Corporation") with respect to the Corporation's audited financial statements for the fiscal year ended December 31, 2018.

The Committee oversees the Corporation's accounting and financial reporting processes and the audits of the Corporation's financial statements. Management is responsible for the preparation, presentation and integrity of the Corporation's financial statements, the Corporation's accounting and financial and reporting principles, and internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The Committee reviewed the audited financial statements in the Corporation's annual report on Form 10-K for the fiscal year ended December 31, 2018 with management and discussed the quality of the accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the financial statements.

The Committee has considered and discussed the above described December 31, 2018 audited financial statements with management and with PwC. The Committee has also discussed with PwC the matters required to be discussed by the statement on Auditing Standards No. 1301, as amended (AICPA, Professional Standards, Vol. 1. AU section 380), as adopted by the Public Company Accounting Oversight Board ("PCAOB") in Rule 3200T, *The Auditor's Communication With Those Charged With Governance*. The Committee reviewed with PwC, who is responsible for expressing an opinion on the conformity of those audited financial statements with generally accepted accounting principles, their judgment as to the quality, not just the acceptability, of the Corporation's accounting principles and such other matters as are required to be discussed with the Committee under generally accepted auditing standards. Finally, the Committee reviewed the written disclosures and the letters from PwC required by PCAOB Rule 3526, *Communication with Audit Committees Concerning Independence*, as currently in effect, has considered whether the provision of other non-audit services by PwC to the Corporation are compatible with maintaining PwC's independence, and has discussed with PwC its independence of the Corporation.

The Committee discussed with PwC the overall scope and plans for the audit. The Committee met with PwC to discuss the results of their audit, their evaluations of the Corporation's internal controls and the overall quality of the Corporation's financial reporting.

Based upon the reports and discussions described in this report, and subject to the limitations on the role and responsibilities of the Committee referred to in this proxy statement and in the Committee's Charter, the Committee recommended to the Board (and the Board has approved) that the Corporation's audited financial statements be included in the Corporation's annual report on Form 10-K for the fiscal year ended December 31, 2018 and filed with the SEC.

Stockholders are reminded, however, that the members of the Committee are not professionally engaged in the practice of auditing or accounting. Members of the Committee rely, without independent verification, on the information provided to them and on the representations made by management and PwC. Accordingly, the Committee's oversight does not provide an independent basis to determine that management has maintained appropriate accounting and financial reporting principles or appropriate internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. Furthermore, the Committee's considerations and discussions, referred to above, do not assure that the audit of the Corporation's

(1) The material in this report is not "soliciting material," is not deemed "filed" with the SEC, and is not to be incorporated by reference into any filing of the Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

financial statements has been carried out in accordance with the standards of the PCAOB, that the financial statements are presented in conformity with accounting principles generally accepted in the United States of America or that the Corporation's independent registered public accounting firm is, in fact, "independent."

Bryan A. Ward, Committee Chair
Dr. Bob Froehlich, Committee Member
Timothy K. Hui, Committee Member[1]
Ethan Powell, Committee Member

OTHER MATTERS TO COME BEFORE THE ANNUAL MEETING

The directors do not intend to present any other business at the Annual Meeting nor are they aware that any stockholder intends to do so. If, however, any other matters are properly brought before the Annual Meeting, the persons named in the proxy will vote thereon in accordance with their judgment.

ADDITIONAL INFORMATION

Stockholder Proposals

The Corporation expects that the 2020 Annual Meeting of Stockholders will be held in June 2020, but the exact date, time and location of such meeting have yet to be determined. Proposals to be included in the proxy statement for the 2020 Annual Meeting must be submitted by eligible stockholders who have complied with the relevant regulations of the SEC and received no later than December 26, 2019.

In addition, the Corporation's bylaws contain an advance notice provision requiring that, if a stockholder's proposal, including nomination of a director, is brought before the next annual meeting of the Corporation's stockholders, such stockholder must provide timely notice thereof in writing addressed to Lauren Thedford, Secretary, c/o NexPoint Capital, Inc., 300 Crescent Court, Suite 700, Dallas, Texas 75201. Notices of intention to present proposals, including nomination of a director, at the 2020 Annual Meeting must be received by the Corporation between December 26, 2019 and 5:00 p.m. Central Time on January 24, 2020. The submission of a proposal does not guarantee its inclusion in the Corporation's proxy statement or presentation at the 2020 Annual Meeting of the Stockholders unless certain securities law requirements are met. The Corporation reserves the right to reject, rule out of order, or to take other appropriate action with respect to any proposal that does not comply with these and other applicable requirements. Proxies solicited by the Corporation will confer discretionary voting authority with respect to these proposals if the proposals are not received by the Corporation, in good order and complying with all applicable legal requirements, by March 9, 2020, and may confer discretionary voting authority with respect to proposals received before such date, in each case subject to SEC rules governing the exercise of this authority.

Delivery Requirements

The SEC has adopted rules that permit companies and intermediaries such as brokers to satisfy delivery requirements for proxy statements with respect to two or more stockholders sharing the same address by delivering a single proxy statement or Notice of Internet Availability of Proxy Materials ("Notice") addressed to those stockholders or by sending separate Notices for each household account in a single envelope. This process, which is commonly referred to as "householding," potentially provides extra convenience for stockholders and cost savings for companies. The Corporation and some brokers household proxy materials or Notices, delivering

1 Effective March 31, 2019, Mr. Hui resigned as an Independent Director of the Corporation.

a single proxy statement or Notice to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once a stockholder has received notice from a broker or the Corporation that they will be householding materials to the stockholder's address, householding will continue until the stockholder is notified otherwise or until the stockholder revokes consent. If a stockholder does not want Corporation mailings consolidated and would prefer to receive separate mailings at any time in the future, the stockholder should call the Corporation at (844) 485-9167 or write the Corporation c/o NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 and the Corporation will furnish separate mailings, in accordance with instructions.

COPIES OF THE CORPORATION'S ANNUAL REPORT DATED DECEMBER 31, 2018 TO STOCKHOLDERS ARE AVAILABLE UPON REQUEST, WITHOUT CHARGE, BY WRITING TO AST FUND SOLUTIONS, LLC AT AST FUND SOLUTIONS, ATTN: NEXPOINT 13450 FULFILLMENT, 55 CHALLENGER ROAD, RIDGEFIELD PARK, NEW JERSEY 07660, BY CALLING (800) 967-5068, OR BY SENDING AN E-MAIL TO CORPORATESERVICES@ASTFUNDSOLUTIONS.COM, USING SUBJECT LINE: NEXPOINT 13450 FULFILLMENT.

Communications with Directors

Stockholders of the Corporation who wish to communicate with the directors (or with an individual director) should send communications to the attention of Lauren Thedford, Secretary, c/o NexPoint Advisors, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201, and all communications will be directed to the director or directors indicated in the communication or, if no director or directors are indicated, to all directors.

It is important that proxies be returned promptly. Whether or not you expect to attend the Annual Meeting in person, you are urged to complete and sign the enclosed proxy card and return it promptly in the enclosed envelope, which needs no postage if mailed in the United States.

Dallas, Texas
April 24, 2019

PROXY CARD

NEXPOINT ADVISORS

YOUR VOTE IS IMPORTANT NO MATTER HOW MANY SHARES YOU OWN. **PLEASE CAST YOUR PROXY VOTE *TODAY!***

SIGN, DATE AND VOTE ON THE REVERSE SIDE

PROXY VOTING OPTIONS

1. **MAIL** your signed and voted proxy back in the postage paid envelope provided
2. **ONLINE** at **proxyonline.com** using your proxy control number found below
3. By **IVR** when you call (888) 227-9349 (toll-free) to reach an automated touchtone voting line
4. By **PHONE** with a live operator when you call (800) 967-5068 (toll-free) Monday through Friday 9 a.m. to 10 p.m. Eastern time

CONTROL NUMBER

NEXPOINT CAPITAL, INC.

PROXY FOR AN ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON JUNE 14, 2019

The undersigned holder of shares of NexPoint Capital, Inc., a Delaware Corporation (the "Corporation"), revoking prior proxies, hereby appoints Frank Waterhouse and Jason Post, as attorneys-in-fact and proxies of the undersigned, granted in connection with the voting of the shares subject hereto. Each of them, with full power of substitution, are entitled to vote shares held in the name of the undersigned as of the record date at the Annual Meeting of Stockholders of NexPoint Capital, Inc. at 200 Crescent Court, Crescent Club, Dallas, Texas 75201 on June 14, 2019, at 8:15 a.m. Central Time (the "Annual Meeting"), or at any adjournment or postponement thereof, upon the Proposals described in the Notice of Meeting and accompanying Proxy Statement. The undersigned acknowledges receiving the Notice of Meeting and accompanying Proxy Statement.

Do you have questions?

If you have any questions about how to vote your proxy or about the meeting in general, please call toll-free (800) 967-5068. Representatives are available to assist you Monday through Friday 9 a.m. to 10 p.m. Eastern Time.

IMPORTANT NOTICE REGARDING AVAILABILITY OF PROXY MATERIALS FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD JUNE 14, 2019:

The proxy statement is available online at: https://www.proxyonline.com/docs/NexPoint2019.pdf

PROXY CARD

NEXPOINT CAPITAL, INC.

YOUR SIGNATURE IS REQUIRED FOR YOUR VOTE TO BE COUNTED. The signer(s) acknowledge(s) receipt of this Proxy Statement of the Board of Directors. Your signature(s) on this should be exactly as your name(s) appear on this Proxy (reverse side). If the shares are held jointly, each holder should sign this Proxy. Attorneys-in-fact, executors, administrators, trustees or guardians should indicate the full title and capacity in which they are signing.

SIGNATURE (AND TITLE IF APPLICABLE) DATE

SIGNATURE (IF HELD JOINTLY) DATE

This proxy is solicited on behalf of the Corporation's Board of Directors. The Proposal has been unanimously approved by the Board of Directors and recommended for approval by stockholders. When properly executed, this proxy will be voted as indicated or "FOR" the proposal if no choice is indicated. The proxy will be voted in accordance with the proxy holders' best judgment as to any other matters that may arise at the Annual Meeting.

THE BOARD, INCLUDING EACH OF THE INDEPENDENT DIRECTORS, UNANIMOUSLY RECOMMENDS THAT STOCKHOLDERS VOTE "FOR" THE ELECTION OF THE NOMINEES AS DIRECTORS.

TO VOTE, MARK CIRCLES BELOW IN BLUE OR BLACK INK AS FOLLOWS. Example: ●

PROPOSAL

1. To elect each of Bryan A. Ward and Ethan Powell as a Class I director of the Corporation to serve for a three-year term expiring at the 2022 Annual Meeting of the Stockholders or until his successor is duly elected and qualifies; and

	FOR	WITHHOLD
la. Bryan A. Ward	☐	☐
lb. Ethan Powell	☐	☐

2. To transact such other business as may properly come before the Annual Meeting and any adjournment thereof.

THANK YOU FOR VOTING

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 6

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1

000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346 thru Vol. 27	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

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007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
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007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241 129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243 130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253 131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267 132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272 133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279 134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285 135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288 136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293 139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
			Transcripts	
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT C

SERVICING AGREEMENT

This Servicing Agreement, dated as of May 10, 2006 is entered into by and among ROCKWALL CDO LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and ROCKWALL CDO (DELAWARE) CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$538,000,000 of their Class A-1LA Floating Rate Extendable Notes due August 2021 (the "Class A-1LA Notes"), U.S.$96,000,000 of their Class A-1LB Floating Rate Extendable Notes due August 2021 (the "Class A-1LB Notes"), U.S.$76,000,000 of their Class A-2L Floating Rate Extendable Notes due August 2021 (the "Class A-2L Notes"), U.S.$36,500,000 of their Class A-3L Floating Rate Extendable Notes due August 2021 (the "Class A-3L Notes"), U.S.$10,000,000 of their Class A-4L Floating Rate Extendable Notes due August 2021 (the "Class A-4L Notes"), U.S.$21,000,000 of their Class B-1L Floating Rate Extendable Notes due August 2021 (the "Class B-1L Notes"), U.S.$14,000,000 of their Class X Floating Rate Notes due August 2013 (the "Class X Notes" and together with the Class A-1LA Notes, Class A-1LB Notes, Class A-2L Notes, Class A-3L Notes, Class A-4L Notes and Class B-1L Notes, the "Notes") pursuant to the Indenture dated as of May 10, 2006 (the "Indenture"), among the Co-Issuers and JPMorgan Chase Bank, National Association, as trustee (the "Trustee") and 33,200,000 Class I Preferred Shares, $0.001 par value (the "Class I Preferred Shares") and 45,000,000 Class II Preferred Shares, $0.001 par value (the "Class II Preferred Shares" and, together with the Class I Preferred Shares, the "Preferred Shares" and, together with the Notes, the "Securities");

WHEREAS, the Issuer intends to pledge certain Portfolio Collateral, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and in the applicable provisions of the other Transaction Documents and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean Highland Financial Partners, L.P. (which includes, for the avoidance of doubt, any subsidiary thereof).

"Offering Circular" shall mean the Offering Circular of the Issuer dated May 8, 2006 prepared in connection with the offering of the Securities.

"Redemption Date" shall mean any Optional Redemption Date, Special Redemption Date, Tax Event Redemption Date or Mandatory Redemption Date, as applicable.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Servicing Fee" shall mean, collectively, the Base Servicing Fee, the Additional Servicing Fee and the Supplemental Servicing Fee.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms this Agreement and the other Transaction Documents, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and the other Transaction Documents, and including the furnishing of Orders, Requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Portfolio Collateral, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the other Transaction Documents, perform its obligations hereunder and thereunder with reasonable care, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having

similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the other Transaction Documents. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the other Transaction Documents affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to any Transaction Document until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to any Transaction Document that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Collateral criteria set forth herein and in the Indenture;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Portfolio Collateral has become a Defaulted Portfolio Collateral;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Portfolio Collateral, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) to acquire, as security for the Notes in substitution for or in addition to any one or more Portfolio Collateral or Eligible Investments included in the Collateral, one or more substitute Portfolio Collateral or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Portfolio Collateral or Eligible Investment:

(1) retain such Portfolio Collateral or Eligible Investment; or

(2) dispose of such Portfolio Collateral or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Portfolio Collateral or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Portfolio Collateral; or

(7) vote to accelerate the maturity of any Defaulted Portfolio Collateral; or

(8) exercise any other rights or remedies with respect to such Portfolio Collateral or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities; and

(v) the Servicer shall (a) on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Portfolio Collateral and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption and (b) conduct Auctions in accordance with the terms of the Indenture.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the Collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preferred Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding. The provisions of this Section 2(c)(i) shall survive termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Portfolio Collateral or Eligible Investment to be conducted on an arm's-length basis.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Portfolio Collateral or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Portfolio Collateral or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Portfolio Collateral or other securities of the issuers of Portfolio Collateral. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to have or pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Investment Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Investment Advisers Act.

(c) In addition, the Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preferred Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the other Transaction Documents. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Amended and Restated Memorandum and Articles of Association or the Co-Issuer's Certificate of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) not be permitted by Annex 1 hereto and would subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable on such later Payment Date on which funds are available therefor as provided in the Indenture.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement, the Indenture and the other Transaction Documents; provided, however, that any extraordinary expenses incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Portfolio Collateral or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preferred Shares, as applicable, as provided in the Indenture.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement or (ii) with respect to any information included in the Offering Circular in the section entitled "The Servicer" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement, the Indenture and the other Transaction Documents. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer complies with the requirements set forth in Annex 1 hereto.

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Circular, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities

or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

(vi) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defense of such claim, including, but not limited to, the right to designate counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Indemnifying Party assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for any Indemnified Party incurred thereafter in connection with such claim except that if such Indemnified Party reasonably determines that counsel designated by the

Indemnifying Party has a conflict of interest in connection with its representation of such Indemnified Party, such Indemnifying Party shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, further, that prior to entering into any final settlement or compromise, such Indemnifying Party shall seek the consent of the Indemnified Party and use its commercially reasonable efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such Indemnified Party as to the terms of settlement or compromise. If an Indemnified Party does not consent to the settlement or compromise within a reasonable time under the circumstances, the Indemnifying Party shall not thereafter be obligated to indemnify the Indemnified Party for any amount in excess of such proposed settlement or compromise.

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preferred Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Securityholders; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

I. if the Class A-1LA Notes are Outstanding and (i) the sum of (A) the Aggregate Par Amount of Portfolio Collateral other than any Equity Portfolio Collateral and (B) the Market Value of all Equity Portfolio Collateral (as determined by the Servicer in a commercially reasonable manner), if any, is less than (ii) the sum of (A) the Aggregate Principal Amount of the Outstanding Notes other than the Class B-1L Notes plus any accrued and unpaid interest thereon and (B) 50% of the Aggregate Principal Amount of the Class B-1L Notes plus any accrued and unpaid interest thereon (a "Preferred Share Event"), then:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP), (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by a Majority of the Controlling Class of Notes); or

(ii) if a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP) has nominated two or more possible successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 30 days of the date of notice of such removal or resignation of the Servicer (or, if later, within 30 days of the last failure to successfully appoint a successor Servicer), then (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Controlling Class of Notes, (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP); or

(iii) if the Issuer fails to appoint a successor Servicer pursuant to the preceding clauses (i) and (ii) within 90 days of any notice of resignation or removal of the Servicer, (A) a Majority of the Controlling Class of Notes may petition a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture.

II. if there is no Preferred Share Event in effect, then:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preferred Shares (excluding any Preferred Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority, other than HFP which may exercise its vote with respect to Preferred Shares it owns, up to the Original HFP Share Amount), (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Majority of the Controlling Class of Notes or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP); or

(ii) if a Majority of the Preferred Shares (excluding any Preferred Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP) has nominated two or more possible successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 30 days of the date of notice of such removal or resignation of the Servicer (or, if later, within 30 days of the last failure to successfully appoint a successor Servicer), then (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Controlling Class of Notes, (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 45 days after notice of such succession by either of (x) a Majority of the Preferred Shares (excluding any Preferred Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP which may exercise its vote with respect to Preferred Shares it owns, up to the Original HFP Share Amount) or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP); or

(iii) if the Issuer fails to appoint a successor Servicer pursuant to the preceding clauses (i) and (ii) within 90 days of any notice of resignation or removal of the Servicer, (A) a Majority of the Controlling Class of Notes may petition a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without

causing the Issuer, the Co Issuer or any Holder of Preferred Shares to become subject to tax in any jurisdiction where such successor Servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the Servicer without the prior written consent of a Majority of the Noteholders and a Majority of the Preferred Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

If there has been no appointment of a successor Servicer within 90 days following the resignation or termination of the Servicer, until a successor Servicer has been appointed and has assumed its duties hereunder, any sales or disposition of Portfolio Collateral shall be limited to Credit Risk Portfolio Collateral, Defaulted Portfolio Collateral and Equity Portfolio Collateral; provided, that, such restriction on the sale or disposition of Portfolio Collateral shall not apply if the Portfolio Collateral is being liquidated in whole or in part in connection with an acceleration or early termination of the Notes.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Majority of the Noteholders and a Majority of the Preferred Shares (excluding Notes and Preferred Shares held by the Servicer or any of its Affiliates) and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, the Requisite Noteholders and the Holders of a Majority of the Preferred Shares (excluding Notes and Preferred Shares held by the Servicer or any of its Affiliates other than HFP) and (ii) the Rating Agency Confirmation is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, the Requisite Noteholders and the Holders of Preferred Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, the Requisite Noteholders and the Holders of the Preferred Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i)

and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) a Majority of the Controlling Class of Notes or (2) the Holders of at least 66-2/3% of the Preferred Shares (excluding any Preferred Shares held by the Servicer or any of its Affiliates and accounts over which the Servicer or any of its Affiliates exercise discretionary voting authority, other than HFP which may exercise its vote with respect to Preferred Shares it owns, up to the Original HFP Share Amount). For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or

suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preferred Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee and the Fiscal Agent an accounting with respect to the books and records delivered to the Trustee and the Fiscal Agent or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the other Transaction Documents and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the other Transaction Documents and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the other Transaction Documents and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the other Transaction Documents and the Securities is required by the Issuer in connection with this Agreement, the other Transaction Documents and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the other Transaction Documents and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to

which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the other Transaction Documents applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the other Transaction Documents applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the other Transaction Documents applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the other Transaction Documents applicable to the Servicer and the documents and instruments required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the other Transaction Documents applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Investment Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the other Transaction Documents applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Rockwall CDO Ltd.
c/o Maples Finance Limited
P.O. Box 1093GT
Queensgate House
South Church Street
George Town, Grand Cayman, Cayman Islands
Telephone: (345) 945-7099
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

JPMorgan Chase Bank, National Association
600 Travis Street, 50th Floor
JPMorgan Chase Tower
Houston, Texas 77002
Telecopy: (713) 216-2101
Attention: Worldwide Securities Services—Rockwall CDO Ltd.

(d) If to the Noteholders:

In accordance with Section 14.3 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preferred Shares:

In accordance with Section 14.3 of the Indenture, to the Paying and Transfer Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 14.1(f)(4) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Investment Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Portfolio Collateral, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Portfolio Collateral, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Portfolio Collateral to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted

Portfolio Collateral and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Portfolio Collateral, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the asset servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Servicer hereby consents to (i) the posting of the final Offering Circular and the Indenture (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name: Todd Travers
Title: Senior Portfolio Manager
Highland Capital Management, LP.

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title:

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name:
Title: Wendy Ebanks
Director

ANNEX 1

Certain Tax Provisions

Unless otherwise noted, references to the Issuer in this Annex 1 include the Servicer and any other person acting on the Issuer's behalf. Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex 1,

"Affiliate" means, with respect to a specified Person, (a) any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person and (b) any Person that is a member, director, officer or employee of (i) the specified Person or (ii) a Person described in clause (a) of this definition; and

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section I. General Restrictions.

As provided in this Annex 1, the Issuer (and the Servicer acting on the Issuer's behalf) shall only purchase debt securities, interests in loans and other assets (each a "Portfolio Collateral") only in secondary-market transactions and shall not engage in any lending or underwriting activities or otherwise participate in the structuring or origination of any Portfolio Collateral.

A. Communications and Negotiations.

1. The Issuer will not have any communications or negotiations with the obligor of a Portfolio Collateral or a Reference Obligation (directly or indirectly through an intermediary such as the seller of such Portfolio Collateral or the Synthetic Security) in connection with the issuance or funding of such Portfolio Collateral or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

2. By way of example, permitted due diligence activities may include, but are not limited to, (a) attendance at an obligor's general "roadshow" or other presentations to investment professionals, (b) direct private discussions with personnel of the obligor, arranged by a sponsor, lead bank or other arranger, and (c) other due diligence activities of the kind customarily performed by offerees of the type of Portfolio Collateral being offered, but may not include any negotiations with the obligor, employees or agents of the obligor of any terms or conditions of the Portfolio Collateral being offered.

3. Negotiations between the Servicer and the underwriter, placement agent or broker of Portfolio Collateral are permitted solely to the extent that they are limited to responses to customary pre-offering period and offering period inquiries by the underwriter or placement agent (e.g., "If we offered you 10-year senior subordinated bonds of XYZ company, what spread

would it require to interest you?" or "If you will not buy the bonds as offered, would you buy if we convinced the obligor to add a fixed charge coverage test?"). For purposes of this Section I.A., "negotiations" shall not include (i) commenting on offering documents to an unrelated underwriter or placement agent when the ability to comment was generally available to other investors, or (ii) communicating certain objective criteria (such as the minimum yield or maturity) the Issuer generally uses in purchasing the relevant type of Portfolio Collateral.

4. The Issuer may consent or otherwise act with respect to amendments, supplements or other modifications of the terms of any Portfolio Collateral (other than a Subsidiary Obligation (as defined in Section III)) requiring consent or action after the date on which any such Portfolio Collateral is acquired by the Issuer if (a) such amendment, supplement or modification would not constitute a Significant Modification (as defined below), (b) (i) in the reasonable judgment of the Servicer, the obligor is in financial distress and such change in terms is desirable to protect the Issuer's interest in such Portfolio Collateral and (ii) the Portfolio Collateral is described in clause 5(b) of this Section I.A., (c) the amendment or modification would not be treated as the acquisition of a new Portfolio Collateral under paragraph 5 of this Section I.A., or (d) otherwise, if it has received advice of counsel that its involvement in such amendment, supplement or modification will not cause the Issuer to be treated as engaged in a trade or business within the United States.

A "Significant Modification" means any amendment, supplement or other modification that involves (a) a change in the stated maturity or a change in the timing of any material payment of any Portfolio Collateral (including deferral of an interest payment), that would materially alter the weighted average life of the Portfolio Collateral, (b) any change (whether positive or negative) in the yield on the Portfolio Collateral immediately prior to the modification in excess of the greater of (i) 25 basis points or (ii) 5 percent of such unmodified yield, (c) any change involving a material new extension of credit, (d) a change in the obligor of any Portfolio Collateral (as determined for purposes of section 1001 of the Code), or (e) a material change in the collateral or security for any Portfolio Collateral, including the addition or deletion of a co-obligor or guarantor that results in a material change in payment expectations.

5. In the event the Issuer owns an interest in a Portfolio Collateral the terms of which are subsequently amended or modified, or in the case of a workout situation not described in Section III hereof, which Portfolio Collateral is subsequently exchanged for new obligations or other securities of the obligor of the Portfolio Collateral, such amendments or modifications or exchange will not be treated as the acquisition of an interest in a new Portfolio Collateral for purposes of this Annex 1, provided, that (a) the Issuer does not, directly or indirectly (through the Servicer or otherwise), seek the amendments or modifications or the exchange, or participate in negotiating the amendments or modifications or the exchange, and (b) at the time of original acquisition of the interest in the Portfolio Collateral, it was not reasonably anticipated that the terms of the Portfolio Collateral would, pursuant to a workout or other negotiation, subsequently be amended or modified.

B. Fees. The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Portfolio Collateral or entering into a Synthetic Security; the foregoing prohibition shall not be construed to preclude the Issuer from receiving (i) commitment fees or facility maintenance fees that are received by the Issuer in connection with revolving or delayed drawdown Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Portfolio Collateral; (iv) fees from permitted securities lending; or (v) upfront payments in lieu of periodic payments under a Synthetic Security. The Issuer will not provide services to any Person;

the foregoing prohibition shall not be construed to preclude the Issuer from activities relating to the receipt of income described in (i) through (v) of the preceding sentence.

Section II. Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, a loan subparticipation or a collateralized loan obligation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller shall only be made pursuant to a forward sale agreement at an agreed price (stated as a dollar amount or as a percentage) (a "Forward Purchase Commitment"), unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled (e.g., would otherwise be subject to a significant monetary penalty) to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent decision whether to purchase such Loan on behalf of the Issuer after completion of the closing of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Agreement.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment or a Non-Binding Agreement earlier than 48 hours after the time of the closing of the Loan (i.e., execution of definitive documentation), and, in the case of a Forward Purchase Commitment, the Issuer's obligation to purchase such Loan is subject to the condition that no material adverse change has occurred in the financial condition of the Loan's obligor or the relevant market on or before the relevant purchase date.

E. The Issuer cannot have a contractual relationship with the borrower with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the original lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan, prior to the time specified in subsection D above.

G. The Issuer will not enter into any Forward Purchase Commitment or Non-Binding Agreement in which it knows that the counterparty has acted or described itself as acting as the Issuer's agent in making or committing to make the loan to which the Forward Purchase Commitment or Non-Binding Agreement relates, and for the avoidance of doubt no such agreement shall be entered into with the understanding that the counterparty will disclose to the borrower the Issuer's intention to purchase the underlying Loan prior to execution of final legal documentation of the Loan.

Section III. Distressed Debt Obligations.

A. The Issuer may only purchase a Debt Instrument that is a Potential Workout Obligation to the extent permitted by this Section III.

B. Neither the Issuer nor the Servicer on behalf of the Issuer shall purchase a Subsidiary Obligation from any Issuer Subsidiary.

C. Special Procedures for Subsidiary Obligations.

1. Potential Workout Obligations. On or prior to the date of acquisition, the Servicer on behalf of the Issuer shall identify each Portfolio Collateral that is a Potential Workout Obligation.

2. Transfer of Subsidiary Obligations. From and after the occurrence of a Workout Determination Date with respect to a Subsidiary Obligation, neither the Issuer nor the Servicer on behalf of the Issuer shall knowingly take any action in respect of such Subsidiary Obligation that may result in the Issuer being engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes. As soon as practicable, but in any event within 30 calendar days following a Workout Determination Date, the Servicer shall cause the Issuer either (i) to sell or dispose of any Subsidiary Obligation identified on such Workout Determination Date to a Person that is not an Affiliate of the Issuer or Servicer or (ii) to assign any Subsidiary Obligation identified on such Workout Determination Date to an Issuer Subsidiary.

For purposes of this Annex 1, an "Issuer Subsidiary" means any wholly-owned corporate subsidiary of the Issuer to which a Special Workout Obligation may be transferred in accordance with this Annex 1.

3. Consideration for Assignment of Subsidiary Obligations. Consideration given by an Issuer Subsidiary for the assignment to it of Subsidiary Obligations may be in the form of cash or in the form of indebtedness of, or equity interests in, such Issuer Subsidiary.

4. Classification of Issuer Subsidiaries. Each Issuer Subsidiary shall be an entity treated as a corporation for United States federal income tax purposes and formed under the laws of any state of the United States.

As used herein:

"Potential Workout Obligation" means any debt instrument (any such instrument, including an interest in a Loan, a "Debt Instrument") which, as of the date of acquisition by the Issuer or an Issuer Subsidiary, based on information specific to such Debt Instrument or the circumstances of the obligor thereof, is a Workout Obligation or, in the reasonable determination of the Servicer, has a materially higher likelihood of becoming a Workout Obligation as compared to debt obligations that par or other non-distressed debt purchasers or funds customarily purchase and expect to hold to maturity.

"Subsidiary Obligation" means any Potential Workout Obligation (a) as to which the Issuer on any Workout Determination Date either (i) owns more than 40% of the aggregate principal amount of such class of Potential Workout Obligation outstanding or (ii) is one of the two largest holders of any class of debt of the issuer of such Potential Workout Obligation (based

on the outstanding principal amount of such class of debt owned by the Issuer as a percentage of the aggregate outstanding principal amount of such class of debt) unless not fewer than three other holders and the Issuer collectively own at least 65% of such class of debt and, if the Issuer is the largest holder of such class, the Issuer's percentage of such class does not exceed the percentage held by the next largest holder of the debt by more than 5% of such class or (b) that would, upon foreclosure or exercise of similar legal remedies, result in the Issuer directly owning assets (other than securities treated as debt, equity in a partnership not engaged in a trade or business within the United States, or corporate equity for United States federal income tax purposes, provided in the case of corporate equity that the corporation is not a "United States real property holding corporation" within the meaning of section 897 of the Code) which are "United States real property interests" within the meaning of section 897 of the Code or which the Servicer reasonably expects it would, on behalf of the Issuer, be required to actively manage to preserve the value of the Issuer's interest therein; provided that a Potential Workout Obligation shall not be treated as a Subsidiary Obligation if the Issuer obtains a Tax Opinion that, based on all the surrounding circumstances, the activities in which the Issuer intends to engage with respect to such Potential Workout Obligation will not cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes.

"Workout Determination Date" means any date on which, in connection with the occurrence of any event described in clauses (a) through (c), inclusive, of the definition of Workout Obligation, either (a) any material action by the Issuer is required to be taken, (b) the Servicer receives written notice that such material action shall be required or (c) the Servicer reasonably determines that the taking of such material action is likely to be required.

"Workout Obligation" means any Debt Instrument as to which the Servicer on behalf of the Issuer (a) consents to a Significant Modification in connection with the workout of a defaulted Portfolio Collateral, (b) participates in an official or unofficial committee or similar official or unofficial body in connection with a bankruptcy, reorganization, restructuring or similar proceeding, or (c) exercises, or has exercised on its behalf, rights of foreclosure or similar judicial remedies.

Section IV. Purchases from the Servicer or its Affiliates.

A. If the Servicer or an Affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror, or received any fee for services (it being understood that receipts described in clauses (i) through (v) of Section I.B. are not construed as so treated), in connection with the issuance or origination of a Portfolio Collateral or was a member of the original lending syndicate with respect to the Portfolio Collateral (any such Portfolio Collateral, a "Special Procedures Obligation"), the Issuer will not acquire any interest in such Special Procedures Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an Affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Special Procedures Obligation has been outstanding for at least 90 days, (ii) the holder of the Special Procedures Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its issuance, (iii) the employees or agents of the Servicer responsible for selecting Portfolio Collateral for the Issuer were not directly involved in the origination of the Special Procedures Obligation on behalf of the Servicer, an Affiliate of the Servicer, or a fund serviced or managed by the Servicer, (iv) the price paid for such Special Procedures Obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (v) the transaction is proposed to, and the ultimate purchase is approved on behalf of the Issuer by, one or more Independent Advisors to the Issuer in accordance with the provisions of Section IV.B. below. The Issuer will not acquire any Special Procedures Obligation if, immediately following such acquisition, the fair market value of all Special

Procedures Obligations owned by the Issuer would constitute more than 49% of the fair market value of all of the Issuer's assets at such time.

B. An "Independent Advisor" is a Person who is not an Affiliate of the Issuer, the Servicer or any fund serviced or managed by the Servicer.

1. The Issuer may not purchase or commit to enter into any such Special Procedures Obligation without prior approval by an Independent Advisor. If the Independent Advisor declines to approve a proposed Special Procedures Obligation, at least three months must elapse before any proposal with respect to a purchase of debt or other obligations of the same obligor is proposed or considered.

2. The Issuer shall engage the Independent Advisor in an agreement the terms of which shall in substantial form set forth:

(a) the representation of the Independent Advisor, which the Servicer shall not know not to be incorrect, that it has significant financial and commercial expertise, including substantial expertise and knowledge in and of the loan market and related investment arenas;

(b) the agreement between the Independent Advisor, the Issuer and the Servicer generally to the effect that (i) the Independent Advisor will operate pursuant to procedures consistent with maintaining his or her independence from the Servicer and its Affiliates, (ii) the Independent Advisor will have the sole authority and discretion to approve or reject acquisition proposals made by the Servicer with respect to any Special Procedures Obligation, (iii) all proposals for the Issuer to acquire any Special Procedures Obligation will be first submitted to the Independent Advisor, (iii) the Servicer will prepare the materials it deems necessary to describe the Special Procedures Obligation to the Independent Advisor, (iv) the Investment Advisor will not be required to make any decision to accept or decline a Special Procedures Obligation at the price offered prior to its review of the materials prepared, plus any additional information requested by the Independent Advisor, and (v) no Independent Advisor may be proposed to be replaced by the Servicer, unless for cause or in the event of a resignation of such Independent Advisor; and

(c) such other commercially reasonable terms and conditions, including terms and conditions to the effect that (i) the Independent Advisor will be paid a reasonable fee for its services plus reimbursement of any reasonable expenses incurred in performance of his or her responsibilities, (ii) the Independent Advisor may be removed or replaced only by a majority (whether by positive act or failure to object) of the probable equity owners (as determined for United States federal income tax purposes) of the Issuer, (iii) if at any time there is more than one Independent Advisor to the Issuer, a majority of such Independent Advisors must approve any Special Procedures Obligation subject to Independent Advisor approval, (iv) an Independent Advisor may not engage, directly or indirectly, in the negotiation of the terms of any Special Procedures Obligation to be acquired by the Issuer (provided however, that an Independent Advisor may negotiate with the Servicer or the seller with respect to the price and terms of the Issuer's purchase of the Special Procedures Obligation, provided further that the Independent Advisor will not make suggestions to the Servicer or any other person about alternative or modified terms of the underlying Special Procedures Obligation on which they might be willing to approve such a Special Procedures Obligation).

3. Any servicing agreement or other document under which the Servicer is granted signatory powers or other authority on behalf of the Issuer will provide that such powers or authority with respect to Special Procedures Obligations are conditioned upon the prior written approval of the Independent Advisor

4. No Special Procedures Obligation will be presented to an Independent Advisor until at least 90 days have elapsed since the later of (a) the execution of final documentation and (b) the funding in whole or part of the Special Procedures Obligation and there will have been no commitment or arrangement prior to that time that the Issuer will acquire any such Special Procedures Obligation; provided, further, that if the person from whom the Issuer will acquire the Special Procedures Obligation is an Affiliate of the Servicer, such person will not be treated as owning the Special Procedures Obligation for any day during which it does not enjoy substantially all of the benefits and burdens of ownership (for example, because it has hedged its credit exposure to the Special Procedures Obligation).

5. The Issuer will have no obligation to, or understanding that it will refund, reimburse or indemnify any person (including an Affiliate of the Servicer), directly or indirectly, for "breakage" costs or other costs or expenses incurred by such person if the Independent Advisor determines that the Issuer should decline to purchase any Special Procedures Obligation.

6. Neither the Servicer nor any Affiliate of the Servicer will have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to Special Procedures Obligations without the prior written approval of an Independent Advisor. Except as may be conditioned upon such prior written approval, neither the Servicer nor any Affiliate of the Servicer may hold itself out as having signatory powers on behalf of the Issuer or authority to enter into agreements with respect to Special Procedures Obligations on behalf of the Issuer.

Section V. Synthetic Securities.

A. The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex 1 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security collateral accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, shall not constitute the making of advances).

B. With respect to each Synthetic Security, the Issuer will not acquire or enter into any Synthetic Security which does not satisfy all of the following additional criteria unless the Servicer has first received advice of counsel that the ownership and disposition of such Synthetic Security would not cause the Issuer to be engaged in a trade or business within the United States for United States federal income tax purposes:

1. the criteria used to determine whether to enter into any particular Synthetic Security was similar to the criteria used by the Servicer in making decisions to acquire debt securities;

2. the Synthetic Security is acquired by or entered into by the Issuer for its own account and for purposes of holding with the expectation of realizing a profit from income earned on the securities (and any potential rise in their value during the interval of time between their

purchase and sale) or hedging purposes and not with an intention to trade or to sell for a short-term profit;

3. the Issuer enters into the Synthetic Security with a counterparty that is not a special purpose vehicle and is a broker-dealer or that holds itself out as in the business of entering into such contracts;

4. neither the Issuer nor any Person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities;

5. except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation;

6. the net payment from the Issuer to the Synthetic Security Counterparty is not determined based on an actual loss incurred by the Synthetic Security Counterparty or any other designated person;

7. there exists no agreement, arrangement or understanding that (i) the Synthetic Security Counterparty is required to own or hold the related Reference Obligation while the Synthetic Security remains in effect or (ii) the Synthetic Security Counterparty is economically or practically compelled to own or hold the related physical Reference Obligation while the Synthetic Security remains in effect;

8. the Synthetic Security provides for (i) all cash settlement, (ii) all physical settlement or (iii) the option to either cash settle or physically settle; provided that, in the latter two cases, physical settlement provides the settling party the right to settle the Synthetic Security by delivering deliverable obligations which *may* include the Reference Obligation and the settling party must not be required to deliver the related Reference Obligation upon the settlement of such Synthetic Security.

Notwithstanding the preceding paragraph, a Synthetic Security providing for physical settlement may require a party to deliver the related Reference Obligation if either:

(i) at the time the Issuer enters into such Synthetic Security, such Reference Obligation is readily available to purchasers generally in a liquid market; or

(ii) the advice of both United States federal income tax and insurance counsel of nationally recognized standing in the United States experienced in such matters is that, under the relevant facts and circumstances with respect to such Synthetic Security, the acquisition of such Synthetic Security will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis and should not cause the Issuer to be treated as writing insurance in the United States under the law of the state in which the Synthetic Security Counterparty is organized.

9. the Synthetic Security is not treated by the Issuer as insurance or a financial guarantee sold by the Issuer for United States or Cayman Islands regulatory purposes.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan, that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

Section VI. Other Types of Assets.

A. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is:

1. not treated for U.S. federal income tax purposes as debt if the issuing entity is a "partnership" (within the meaning of Section 7701(a)(2) of the Code) unless such entity is not engaged in a trade or business within the United States, or

2. a "United States real property interest" as defined in section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may cause an Issuer Subsidiary to acquire assets set forth in clause (i) or (ii) above (each, an "ETB/897 Asset") in connection with the workout of defaulted Portfolio Collateral, so long as the acquisition of ETB/897 Assets by such Issuer Subsidiary will not cause the stock of such Issuer Subsidiary to be deemed to be an ETB/897 Asset.

B. Revolving Loans and Delayed Drawdown Loans. All of the terms of any advance required to be made by the Issuer under any revolving or delayed drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Servicer will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such revolving or delayed drawdown Loan.

C. Securities Lending Agreements. The Issuer will not purchase any Portfolio Collateral primarily for the purpose of entering into a securities lending agreement with respect thereto.

Section VII. General Restrictions on the Issuer. The Issuer itself shall not:

A. hold itself out, through advertising or otherwise, as originating Loans, lending funds, or making a market in or dealing in Loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, a surety bond issuer, or a company engaged in Loan origination;

C. knowingly take any action causing it to be treated as a bank, insurance company, or company engaged in Loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to acquire a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the related indenture or acquire a Portfolio Collateral conditioned upon a particular person or entity holding Securities;

G. acquire any asset the holding or acquisition of which the Servicer knows would cause the Issuer to be subject to income tax on a net income basis;

H. hold any security as nominee for another person; or

I. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

Section VIII. Tax Opinion; Amendments.

A. In furtherance and not in limitation of this Annex 1, the Servicer shall comply with all of the provisions set forth in this Annex 1, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of Skadden, Arps, Slate, Meagher & Flom LLP or Orrick, Herrington & Sutcliffe LLP or an opinion of other counsel of nationally recognized standing in the United States experienced in such matters (a "Tax Opinion"), that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

B. The provisions set forth in the Annex 1 may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received a Tax Opinion that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

EXECUTION COPY

ROCKWALL CDO LTD.

Issuer

ROCKWALL CDO (DELAWARE) CORP.

Co-Issuer

AND

HIGHLAND CAPITAL MANAGEMENT, L.P.

Servicer

AMENDMENT NO. 1

TO

SERVICING AGREEMENT

Dated as of October 2, 2007

COLLATERALIZED DEBT OBLIGATIONS

THIS AMENDMENT NO. 1 TO SERVICING AGREEMENT (the "Amendment"), dated as of October 2, 2007, among Rockwall CDO Ltd. (the "Issuer"), Rockwall CDO (Delaware) Corp. (the "Co-Issuer") and Highland Capital Management, L.P. (the "Servicer"), hereby amends the Servicing Agreement, dated as May 10, 2006, among the Issuer, the Co-Issuer and the Servicer.

W I T N E S S E T H

WHEREAS, the Issuer, the Co-Issuer and the Servicer entered into the Servicing Agreement;

WHEREAS, the Issuers and the Servicer desire to change certain provisions with respect to the Servicer's ability to waive certain Servicing Fees;

WHEREAS, Section 19 of the Servicing Agreement provides that the Servicing Agreement may be amended by the Issuer, Co-Issuer and the Servicer in accordance with the terms of Section 14.1(f)(4) of the Indenture;

WHEREAS, Section 14.1(f)(4) of the Indenture provides that the Servicing Agreement may be amended by the Issuer, Co-Issuer and the Servicer so long as the Requisite Holders have not timely objected in writing to such amendment;

WHEREAS, the Requisite Holders have not timely objected in writing to this Amendment;

WHEREAS, Section 14.1(f)(4) of the Indenture provides that the Ratings Agencies shall confirm that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn; and

WHEREAS, the Ratings Agencies have confirmed that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Defined Terms.

For purposes of this Amendment, all capitalized terms which are used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Indenture.

SECTION 2. Amendment.

Section 8(a) of the Servicing Agreement is hereby amended and replaced in its entirety with the following:

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preferred Share Portion of the Servicing Fees which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date until February 3, 2008. After February 3, 2008, the Servicer may, in its sole discretion, at any time waive the Class II Preferred Share Portion of its Servicing Fees then due and payable. All waived amounts will be paid to the Class II Preferred Shares as Class II Preferred Share Dividends pursuant to the Indenture. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preferred Shares as Class II Preferred Share Dividends.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Additional Servicing Fee or Supplemental Servicing Fee, any funds representing the waived Additional Servicing Fees and Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

SECTION 3. Effect of Amendment.

Upon execution of this Amendment, the Indenture shall be, and be deemed to be, modified and amended in accordance herewith and the respective rights, limitations, obligations, duties, liabilities and immunities of the Issuer, Co-Issuer and the Servicer shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this Amendment shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes. Except as modified and expressly amended by this Amendment, the Indenture is in all respects ratified and confirmed, and all the terms, provisions and conditions thereof shall be and remain in full force and effect.

SECTION 4. Binding Effect.

The provisions of this Amendment shall be binding upon and inure to the benefit of the Issuer, the Co-Issuer and the Servicer and each of their respective successors and assigns.

SECTION 5. GOVERNING LAW.

THIS AMENDMENT TO THE INDENTURE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

SECTION 6. Severability of Provisions.

If any one or more of the provisions or terms of this Amendment shall be for any reason whatsoever held invalid, then such provisions or terms shall be deemed severable from the remaining provisions or terms of this Amendment and shall in no way affect the validity or enforceability of the other provisions or terms of this Amendment.

SECTION 7. Section Headings.

The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

SECTION 8. Counterparts.

This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name: Guy Major
Title: Director

ROCKWALL CDO (DELAWARE) CORP.,
as Co-Issuer

By:_____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name:
Title:

ROCKWALL CDO (DELAWARE) CORP.,
as Co-Issuer

By:_____
Name: Donald J. Puglisi
Title: President

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name:
Title:

ROCKWALL CDO (DELAWARE) CORP.,
as Co-Issuer

By:_____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer

By:_____
Name: Todd Travers
Title: Senior Portfolio Manager
Highland Capital Management, L.P.

CONSENTED AND AGREED TO BY:

Name: Todd Travers
Title: CEO & CFO
E-mail address: ttravers@hcamp.com
Aggregate Outstanding Amount/Face Amount of Class II Preferred Shares Held: 45,000,000
CUSIP/ISIN: 77426 1119

EXECUTION COPY

SERVICING AGREEMENT

This Servicing Agreement, dated as of November 30, 2006 is entered into by and among GRAYSON CLO LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and GRAYSON CLO CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$1,015,000,000 of their Class A-1a Floating Rate Senior Secured Extendable Notes due 2021 (the "Class A-1a Notes"), U.S.$111,500,000 of their Class A-1b Floating Rate Senior Secured Extendable Notes due 2021 (the "Class A-1b Notes" and, together with the Class A-1a Notes, the "Class A-1 Notes"), U.S.$68,000,000 of their Class A-2 Floating Rate Senior Secured Extendable Notes due 2021 (the "Class A-2 Notes" and, together with the Class A-1 Notes, the "Class A Notes"), U.S.$72,000,000 of their Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2021 (the "Class B Notes") and U.S.$75,000,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2021 (the "Class C Notes" and, together with the Class A Notes and the Class B Notes, the "Senior Notes") and the Issuer will individually issue U.S.$31,000,000 of its Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2021 (the "Class D Notes" and together with the Senior Notes, the "Notes") pursuant to the Indenture dated as of November 30, 2006 (the "Indenture"), among the Co-Issuers and Investors Bank & Trust Company, as trustee (the "Trustee") and 52,500 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 75,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Share Documents;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Advisers Act" shall mean the Investment Advisers Act of 1940, as amended.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean collectively, Highland Financial Partners, L.P. and any subsidiary thereof.

"Independent Advisor" shall have the meaning specified in Section IV.B. of the Collateral Acquisition Agreement.

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated November 28, 2006 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Special Procedures Obligation" shall have the meaning specified in Section IV.A. of the Collateral Acquisition Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms the Indenture and this Agreement, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and this Agreement, and including the furnishing of orders, requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the Indenture, perform its obligations hereunder and thereunder with reasonable care and in good faith, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers

or managers of national standing relating to assets of the nature and character of the Collateral for clients having similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the Indenture affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to the Indenture that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Eligibility Criteria;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Servicer shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee to (x) dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(3) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(4) retain or dispose of any securities or other property (if other than Cash) received pursuant to an Offer; or

(5) waive any default with respect to any Defaulted Collateral Obligation; or

(6) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(7) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities;

(v) subject to and in accordance with the terms of the Indenture and this Agreement, the Servicer on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Servicer shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the hedge counterparty), to enter into a replacement Hedge Agreement;

(vi) the Servicer shall on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligations and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption; and

(vii) if the Servicer, on behalf of the Issuer, desires to make distributions of Eligible Equity Securities on any Payment Date pursuant to Section 2(e) of the Preference Shares Paying Agency Agreement, the Servicer shall so notify the Trustee and the Preference Shares Paying Agent and provide the Trustee and the Preference Shares Paying Agent (for forwarding to each Holder of the Preference Shares with respect to the applicable Record Date) details of such Eligible Equity Securities in accordance with the procedure set forth in Section 3(b) of the Preference Shares Paying Agency Agreement.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligations or Eligible Investment to be conducted on an arm's-length basis.

(iii) The Servicer shall notify the Trustee, the Share Registrar and the Holding Share Registrar of any Affiliate of the Servicer that owns the Securities or the Holding Preference Shares.

(iv) The Servicer and/or its Affiliates (other than HFP) will purchase Class D Notes having an aggregate principal amount equal to U.S.$16,000,000, the Servicer and/or its Affiliates (other than HFP) will purchase Holding Preferences Shares having an aggregate Face Amount equal to U.S.$20,000,000 and the Servicer and/or its Affiliates will purchase Class II Preferences Shares having an aggregate Face Amount equal to U.S.$75,000,000.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Placement Agents, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Advisers Act.

(c) The Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code. In addition, after the initial distribution of the Class D Notes and the Preference Shares, neither the Servicer nor any of its affiliates (as defined in the Plan Asset Regulation) shall acquire any Class D Notes or Preference Shares (including pursuant to the Extension Procedure or the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates or other investor agreement with respect thereto or deemed made by holders thereof, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class D Notes, the Class I Preference Shares or

the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, the Plan Asset Regulation, the Indenture and the Preference Share Documents). The Class D Notes and the Preference Shares held as principal by the Servicer or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's or the Co-Issuer's respective governing instruments, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) would subject the Issuer to U.S. federal or state net income or

franchise taxation. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees deposited by the Trustee into the Class II Preference Share Special Payment Account pursuant to the Indenture, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date during the first two years following the Closing Date. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive the Class II Preference Share Portion of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments pursuant to the Indenture. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion: (i) waive all or any portion of the Servicing Fee, any funds representing the waived Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments; or (ii) defer all or any portion of the Servicing Fee, any funds representing the deferred Servicing Fees to be retained in the Collection Account, when they will become payable in the same manner and priority as their original characterization would have required unless deferred again.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement and the Indenture; provided, however, that any extraordinary expenses actually incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligations or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages) shall be reimbursed by the

Issuer to the extent funds are available therefor in accordance with and subject to the priority of payments and the other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the Indenture or (ii) with respect to any information included in the Offering Memorandum in the sections entitled "The Servicer" and "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" and information in the Offering Memorandum relating to the Servicer Letter Disclosure that contain any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement and the Indenture. The Servicer shall be liable for any non-waivable breaches of applicable securities laws. The Servicer shall be deemed to have satisfied Section 7(f) and the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent (i) the Servicer acts consistently with the Collateral Acquisition Agreement with respect to Collateral Obligations and Eligible Investments and (ii) the Servicer does not have actual knowledge that its actions with respect to a Collateral Obligation or an Eligible Investment would violate Section 7(f).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and

employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) Notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns,

the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority (or, with respect to Class I Preference Shares held by Investors Corp. at such time, Holding Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority) other than, with respect to the Class II Preference Shares, HFP; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class);

(ii) if a majority of the Voting Preference Shares has nominated two or more successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, (A) the Issuer appoints a successor Servicer at the written direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) Majority of the Voting Preference Shares or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(iii) if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) has nominated two or more successor Servicers that have been objected to pursuant to the preceding clauses (i)(C) and (ii)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) or (ii) (C) within 120 days of the date of notice of such removal or resignation of the Servicer, (A) any Holder of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without causing the Issuer, the Co Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and (ii) the Rating Agency Confirmation is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) the Trustee, acting at the direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) the Holders of a Majority of the Voting Preference Shares. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for

or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the Indenture and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the Securities is required by the Issuer in connection with this Agreement, the Indenture and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions

of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the Indenture applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the Indenture applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or

similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Servicer and the documents and instruments required hereunder or under the terms of the Indenture applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the Indenture applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Grayson CLO Ltd.
c/o Ogier Fiduciary Services (Cayman) Limited
P.O. Box 1093GT
Queensgate House
South Church Street
George Town, Grand Cayman, Cayman Islands
Telephone: (345) 945-6264
Telecopy: (345) 945-6265
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

Investors Bank & Trust Company
200 Claredon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617)351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted

Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, as applied in accordance with the Priorities of Payments pursuant to the Indenture, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Servicer hereby consents to (i) the posting of the final Offering Memorandum, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer
By: Strand Advisors, Inc., its General Partner

By:_____
Name: Todd Travers, Assisant Secretary
Title: Strand Advisors, Inc., General Partner of Highland Capital Management, L.P.

GRAYSON CLO, LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

By: Strand Advisors, Inc., its General Partner

By:_____
Name:
Title:

GRAYSON CLO, LTD.,
as Issuer

By:_____
Name: SCOTT DAKERS
Title: DIRECTOR

EXECUTION COPY

GRAYSON CLO LTD.

Issuer

GRAYSON CLO CORP.

Co-Issuer

AND

HIGHLAND CAPITAL MANAGEMENT, L.P.

Servicer

AMENDMENT NO. 1

TO

SERVICING AGREEMENT

Dated as of October 2, 2007

COLLATERALIZED DEBT OBLIGATIONS

THIS AMENDMENT NO. 1 TO SERVICING AGREEMENT (the "Amendment"), dated as of October 2, 2007, among Grayson CLO Ltd. (the "Issuer"), Grayson CLO Corp. (the "Co-Issuer") and Highland Capital Management, L.P. (the "Servicer"), hereby amends the Servicing Agreement, dated as November 30, 2006, among the Issuer, the Co-Issuer and the Servicer.

W I T N E S S E T H

WHEREAS, the Issuer, the Co-Issuer and the Servicer entered into the Servicing Agreement;

WHEREAS, the Issuers and the Servicer desire to change certain provisions with respect to the Servicer's ability to waive certain Servicing Fees;

WHEREAS, Section 19 of the Servicing Agreement provides that the Servicing Agreement may be amended by the Issuer, Co-Issuer and the Servicer in accordance with the terms of Section 15.1(h) of the Indenture;

WHEREAS, Section 15.1(h) of the Indenture provides that the Servicing Agreement may be amended by the Issuer, Co-Issuer and the Servicer with the consent of Majority of each Class of Notes or a Majority of the Preference Shares have not objected in writing to such amendment;

WHEREAS, the necessary consents pursuant to the preceding paragraph have been obtained;

WHEREAS, Section 15.1(h) of the Indenture provides that the Ratings Agencies shall confirm that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn; and

WHEREAS, the Ratings Agencies have confirmed that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Defined Terms.

For purposes of this Amendment, all capitalized terms which are used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Indenture.

SECTION 2. Amendment.

Section 8(a) of the Servicing Agreement is hereby amended and replaced in its entirety with the following:

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees deposited by the Trustee into the Class II Preference Share Special Payment Account pursuant to the Indenture, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date prior to February 3, 2008. With respect to any Payment Date after February 3, 2008, the Servicer may, in its sole discretion, at any time waive a portion (or all) of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments pursuant to the Indenture; provided that with respect to the Payment Date in May 2008 such Class II Preference Share Special Payments will, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Payment Date in February 2008 through February 3, 2008. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Subordinate Servicing Fee or Supplemental Servicing Fee, any funds representing the waived Subordinate Servicing Fees or Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

SECTION 3. Effect of Amendment.

Upon execution of this Amendment, the Indenture shall be, and be deemed to be, modified and amended in accordance herewith and the respective rights, limitations, obligations, duties, liabilities and immunities of the Issuer, Co-Issuer and the Servicer shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this Amendment shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes. Except as modified and expressly amended by this Amendment, the Indenture is in all respects ratified and confirmed, and all the terms, provisions and conditions thereof shall be and remain in full force and effect.

SECTION 4. Binding Effect.

The provisions of this Amendment shall be binding upon and inure to the benefit of the Issuer, the Co-Issuer and the Servicer and each of their respective successors and assigns.

SECTION 5. GOVERNING LAW.

THIS AMENDMENT TO THE INDENTURE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

SECTION 6. Severability of Provisions.

If any one or more of the provisions or terms of this Amendment shall be for any reason whatsoever held invalid, then such provisions or terms shall be deemed severable from the remaining provisions or terms of this Amendment and shall in no way affect the validity or enforceability of the other provisions or terms of this Amendment.

SECTION 7. Section Headings.

The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

SECTION 8. Counterparts.

This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

GRAYSON CLO LTD.,
as Issuer

By:_____
Name: VIJAYABALAN MURUGESU
Title: DIRECTOR

GRAYSON CLO CORP.,
as Co-Issuer

By:_____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT,
L.P., as Servicer

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

GRAYSON CLO LTD.,
as Issuer

By:_____
Name:
Title:

GRAYSON CLO CORP.,
as Co-Issuer

By:_____
Name: Donald J. Puglisi
Title: President

HIGHLAND CAPITAL MANAGEMENT,
L.P., as Servicer

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

GRAYSON CLO LTD.,
as Issuer

By:_____
Name:
Title:

GRAYSON CLO CORP.,
as Co-Issuer

By:_____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer

By:_____
Name: Todd Travers
Title: Senior Portfolio Manager
Highland Capital Management, L.P.

CONSENTED AND AGREED TO BY:

Name: Todd Travers
Title: CEO & CIO
E-mail address: tatravers@hemp.com
Aggregate Outstanding Amount/Face Amount of Class II Preference Shares Held: 75,000
CUSIP/ISIN: US3896683022

EXECUTION COPY

SERVICING AGREEMENT

This Servicing Agreement, dated as of December 20, 2007 is entered into by and among GREENBRIAR CLO, LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and GREENBRIAR CLO CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$730,000,000 of their Class A Floating Rate Senior Secured Extendable Notes due November 2021 (the "Class A Notes"), U.S.$60,000,000 of their Class B Floating Rate Senior Secured Extendable Notes due November 2021 (the "Class B Notes"), U.S.$50,000,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class C Notes"), U.S.$40,000,000 of their Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class D Notes"), and the Issuer intends to issue U.S.$40,000,000 of its Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class E Notes" and together with the Class A Notes, Class B Notes, Class C Notes and Class D Notes, the "Notes") pursuant to the Indenture dated as of December 20, 2007 (the "Indenture"), among the Co-Issuers and State Street Bank and Trust Company, as trustee (the "Trustee") and the Issuer intends to issue 20,000 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 60,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Shares Paying Agency Agreement dated as of December 20, 2007 (the "Preference Shares Paying Agency Agreement") between the Issuer and State Street Bank and Trust Company, as the Preference Shares Paying Agent, and pursuant to the Issuer's amended and restated memorandum and articles of association (the "Memorandum and Articles of Association") and certain resolutions of the board of directors of the Issuer;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and in the applicable provisions of the other Transaction Documents and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean Highland Financial Partners, L.P. (which includes, for the avoidance of doubt, any subsidiary thereof).

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated December 18, 2007 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Servicing Fee" shall mean, collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"Transaction Documents" shall mean the Indenture, the Preference Shares Paying Agency Agreement, the Servicing Agreement and the Collateral Administration Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms this Agreement and the other Transaction Documents, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and the other Transaction Documents, and including the furnishing of Issuer Orders, Issuer Requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the other Transaction Documents, perform its obligations hereunder and thereunder with reasonable care, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having

similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the other Transaction Documents. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the other Transaction Documents affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to any Transaction Document until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to any Transaction Document that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Collateral criteria set forth herein and in the Indenture;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligation; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(8) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities; and

(v) the Servicer shall (a) on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligation and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption and (b) conduct auctions in accordance with the terms of the Indenture.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the Collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer until the payment in full of all Notes issued under the Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer. The provisions of this Section 2(c)(i) shall survive termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations (as defined in Annex 1) shall be conditioned upon the prior written approval of the Independent Advisor (as defined in Annex 1) and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

(f) Except as otherwise provided in the Indenture and herein, subject to the resignation rights of the Servicer pursuant to Section 12 of this Agreement, the Servicer shall continue to serve as Servicer under this Agreement notwithstanding that the Servicer shall not have received amounts due it under this Agreement because sufficient funds were not then available under the Indenture to pay the amounts owed to the Servicer pursuant to the Priority of Payments.

(g) The Servicer agrees that on the Closing Date, (i) HFP and/or one or more of its subsidiaries will purchase all of the Class II Preference Shares and all of the Class E Notes and (ii) the Servicer or one or more of its Affiliates is expected to purchase all of the Class I Preference Shares.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by the Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible

Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and each Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test; and provided, further, that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliates act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in

accordance with applicable law. The Servicer shall not be obligated to have or pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the United States Investment Advisers Act of 1940, as amended.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the United States Investment Advisers Act of 1940, as amended.

(c) In addition, the Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the other Transaction Documents. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any Class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis; provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions

contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Memorandum and Articles of Association or the Co-Issuer's Certificate of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) not be permitted by Annex 1 hereto and would subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable on such later Payment Date on which funds are available therefor as provided in the Indenture.

With respect to any Payment Date after February 3, 2008, the Servicer may, in its sole discretion, at any time waive a portion (or all) of its Servicing Fees then due and payable. All waived amounts will be paid to the Class II Preference Shares as Class II Preference Share Special Payments pursuant to the Indenture; provided that with respect to the Payment Date in August 2008, such Class II Preference Share Special Payments will, at a minimum, include amounts that otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Closing Date through February 3, 2008. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Subordinated Servicing Fee or Supplemental Servicing Fee, any

funds representing the waived Subordinated Servicing Fees and Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement, the Indenture and the other Transaction Documents; provided, however, that any extraordinary expenses incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages, including reasonable expenses incurred with respect to any compliance requirements, including, but not limited to, compliance with the requirements of the Sarbanes-Oxley Act, related solely to the ownership or holding of any Securities by HFP or any of its subsidiaries) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the Priority of Payments and other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the

performance, or reckless disregard, of the obligations of the Servicer hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement or (ii) with respect to any information included in the Offering Memorandum in the sections entitled "The Servicer" and "Risk Factors–Relating to Certain Conflicts of Interest–The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). The Servicer shall be liable for any non-waivable breaches of applicable securities laws. For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement, the Indenture and the other Transaction Documents. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer complies with the requirements set forth in Annex 1 hereto (unless the Servicer knows that as a result of a change in law the investment restrictions set forth in Annex 1 may no longer be relied upon).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with, and subject to, the Priority of Payments and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying

Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this

Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than, with respect to the Class II Preference Shares, HFP; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting

authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(ii) if a Majority of the Voting Preference Shares has nominated two or more successor servicers that have been objected to pursuant to the preceding clause (i)(C) or has failed to appoint a successor servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, (A) the Issuer appoints a successor servicer at the written direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), (B) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor servicer is not objected to within 30 days after notice of such succession by either (x) a Majority of the Voting Preference Shares (voting as a single class) or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); provided, that if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) have each nominated two or more successor servicers that have been objected to pursuant to the preceding clauses (i)(C) and (ii)(C) or have otherwise failed to appoint a successor servicer that has not been objected to pursuant to the preceding clause (i)(C) or (ii)(C) within 120 days of the date of notice of such removal or resignation of the Servicer, (A) any Holder of the Controlling Class (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor servicer, (B) such court appoints a successor servicer and (C) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as successor servicer under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor servicer shall not cause its then-current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice

in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Majority of Noteholders and the Holders of a Majority of the Preference Shares (excluding Notes and Preference Shares held by the Servicer or any of its Affiliates other than HFP) and (ii) the Rating Condition is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Majority of Noteholders and the Holders of Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Majority of Noteholders and the Holders of the Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by the Trustee acting at the direction of (1) a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) a Majority of the Voting Preference Shares (excluding any Preference Shares that are not Voting Preference Shares). For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer

being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee and the Preference Shares Paying Agent an accounting with respect to the books and records delivered to the Trustee and the Preference Shares Paying Agent or the successor servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly incorporated and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform its obligations pursuant to this Agreement, the other Transaction Documents and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the other Transaction Documents and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of its obligations pursuant to this Agreement, the other Transaction Documents and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the other Transaction Documents and the Securities is required by the Issuer in connection with this Agreement, the other Transaction Documents and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the other Transaction Documents and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the other Transaction Documents applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the other Transaction Documents applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the other Transaction Documents applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the other Transaction Documents applicable to the Servicer and the documents and instruments required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the other Transaction Documents applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the

provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Investment Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the other Transaction Documents applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Greenbriar CLO, Ltd.
c/o Maples Finance Limited
P.O. Box 1093GT
Boundary Hall
Cricket Square
George Town, Grand Cayman, Cayman Islands
Telephone: (345) 945-7099
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

State Street Bank and Trust Company
200 Clarendon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617) 351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.3 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.3 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the Rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any

nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

The Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or the Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3 of the Indenture. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Investment Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted

Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the asset servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Preference Shares Paying Agent , the Holders of the Securities or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name: Todd Travers, Assisant Secretary
Title: Strand Advisors, Inc., General Partner of Highland Capital Management, L.P.

GREENBRIAR CLO, LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title:

GREENBRIAR CLO, LTD.,
as Issuer

By:_____
Name: Chris Marett
Title: DIRECTOR

ANNEX 1

Certain Asset Acquisition Provisions

Unless otherwise noted, references to the Issuer in this Annex 1 include the Servicer and any other person acting on the Issuer's behalf. Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex 1,

"Affiliate" means, with respect to a specified Person, (a) any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person and (b) any Person that is a member, director, officer or employee of (i) the specified Person or (ii) a Person described in clause (a) of this definition; and

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section I. General Investment Restrictions.

Except as may otherwise be provided in this Annex 1, the Issuer (and the Servicer acting on the Issuer's behalf) shall only purchase debt securities, interests in loans and other assets (each a "Portfolio Obligation") only in secondary-market transactions and shall not engage in any lending or underwriting activities or otherwise participate in the structuring or origination of any Portfolio Obligation.

A. Communications and Negotiations.

1. The Issuer will not have any communications or negotiations with the obligor of a Portfolio Obligation or a Reference Obligation (directly or indirectly through an intermediary such as the seller of such Portfolio Obligation or the Synthetic Security) in connection with the issuance or funding of such Portfolio Obligation or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

2. By way of example, permitted due diligence activities may include, but are not limited to, (a) attendance at an obligor's general "roadshow" or other presentations to investment professionals, (b) direct private discussions with personnel of the obligor, arranged by a sponsor, lead bank or other arranger, and (c) other due diligence activities of the kind customarily performed by offerees of the type of Portfolio Obligation being offered, but in each case may not include any

negotiations with the obligor, employees or agents of the obligor of any terms or conditions of the Portfolio Obligation being offered.

3. Negotiations between the Servicer and the underwriter, placement agent or broker of a Portfolio Obligation are permitted solely to the extent that they are limited to responses to customary pre-offering period and offering period inquiries by the underwriter or placement agent (e.g., "If we offered you 10-year senior subordinated bonds of XYZ company, what spread would it require to interest you?" or "If you will not buy the bonds as offered, would you buy if we convinced the obligor to add a fixed charge coverage test?"). For purposes of this Section I.A., "negotiations" shall not include (i) commenting on offering documents to an unrelated underwriter or placement agent when the ability to comment was generally available to other offerees, or (ii) communicating certain objective criteria (such as the minimum yield or maturity) the Issuer generally uses in purchasing the relevant type of Portfolio Obligation.

4. The Issuer may consent or otherwise act with respect to amendments, supplements or other modifications of the terms of any Portfolio Obligation (other than a Subsidiary Obligation (as defined in Section III)) requiring consent or action after the date on which any such Portfolio Obligation is acquired by the Issuer if (a) such amendment, supplement or modification would not constitute a Significant Modification (as defined below), (b) (i) in the reasonable judgment of the Servicer, the obligor is in financial distress and such change in terms is desirable to protect the Issuer's interest and (ii) the Portfolio Obligation is described in clause 5(b) of this Section I.A., (c) the amendment or modification would not be treated as the acquisition of a new Portfolio Obligation under paragraph 5 of this Section I.A., or (d) otherwise, if it has received advice of counsel that its involvement in such amendment, supplement or modification will not cause the Issuer to be treated as engaged in a trade or business within the United States.

A "Significant Modification" means any amendment, supplement or other modification that involves (a) a change in the stated maturity or a change in the timing of any material payment of any Portfolio Obligation (including deferral of an interest payment), that would materially alter the weighted average life of the Portfolio Obligation, (b) any change (whether positive or negative) in the yield on the Portfolio Obligation immediately prior to the modification in excess of the greater of (i) 25 basis points or (ii) 5 percent of such unmodified yield, (c) any change involving a material new extension of credit, (d) a change in the obligor of any Portfolio Obligation (as determined for purposes of section 1001 of the Code), or (e) a material change in the collateral or security for any Portfolio Obligation, including the addition or deletion of a co-obligor or guarantor that results in a material change in payment expectations.

5. In the event the Issuer owns an interest in a Portfolio Obligation the terms of which are subsequently amended or modified, or in the case of a workout situation not described in Section III hereof, which Portfolio Obligation is

subsequently exchanged for new obligations or other securities of the obligor of the Portfolio Obligation, such amendments or modifications or exchange will not be treated as the acquisition of an interest in a new Portfolio Obligation for purposes of this Annex 1, provided, that (a) the Issuer does not, directly or indirectly (through the Servicer or otherwise), seek the amendments or modifications or the exchange, or participate in negotiating the amendments or modifications or the exchange, (b) at the time of original acquisition of the interest in the Portfolio Obligation, it was not reasonably anticipated that the terms of the Portfolio Obligation would, pursuant to a workout or other negotiation, subsequently be amended or modified and (c) the Issuer does not advance any additional funds except to maintain or protect its existing interest in the Portfolio Obligation.

B. Fees. The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Portfolio Obligation or entering into a Synthetic Security; the foregoing prohibition shall not be construed to preclude the Issuer from receiving (i) commitment fees, facility maintenance fees or other similar fees that are received by the Issuer in connection with revolving or delayed drawdown Loans or synthetic or pre-funded letter of credit Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Portfolio Obligations; (iv) fees from permitted securities lending; or (v) upfront payments in lieu of periodic payments under a Synthetic Security. The Issuer will not provide services to any Person; the foregoing prohibition shall not be construed to preclude the Issuer from activities relating to the receipt of income described in (i) through (v) of the preceding sentence.

Section II. Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, or a loan subparticipation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller shall only be made pursuant to a forward sale agreement at an agreed price (stated as a dollar amount or as a percentage) (a "Forward Purchase Commitment"), unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled (e.g., would otherwise be subject to a significant monetary penalty) to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent decision whether to purchase such Loan on behalf of the Issuer after completion of the closing of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Agreement.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment or a Non-Binding Agreement earlier than 48 hours after the time of the closing of the Loan (i.e., execution of definitive documentation), and, in the case of a Forward Purchase Commitment, the Issuer's obligation to purchase such Loan is subject to the condition that no material adverse change has occurred in the financial condition of the Loan's obligor or the relevant market on or before the relevant purchase date.

E. The Issuer cannot have a contractual relationship with the obligor with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the original lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan, prior to the time specified in subsection D above.

G. In addition to the restrictions otherwise applicable to Loans, the Issuer shall not acquire any synthetic or pre-funded letter of credit Loan unless (1) the cash collateral deposit with respect to such Loan was fully funded by a predecessor in interest with respect to such Loan; (2) the Loan is part of a credit facility that includes another Loan (other than a synthetic or pre-funded letter of credit Loan) to the same obligor, and is being acquired in connection with the acquisition of such other Loan and from the same seller as such other Loan, with the intent to hold both parts and with the amount of the other Loan being significantly in excess of the amount of the synthetic or pre-funded letter of credit Loan; (3) such synthetic or pre-funded letter of credit Loan satisfies the requirements set forth in Section VI.B., treating the synthetic or pre-funded letter of credit Loan, for this purpose, as though it were a delayed drawdown or revolving Loan; and (4) at no time may more than 5% of the aggregate principal amount of Portfolio Obligations consist of synthetic or pre-funded letter of credit Loans and, if a Loan requires the Issuer to participate in letter of credit issued or to be issued to a borrower other than in a synthetic or pre-funded letter of credit Loan, such Loan will only be acquired and held in connection with an interest in a related term Loan where the amount of such interest in the term Loan is at least as large as the Issuer's potential exposure under the letter of credit and all of the terms of any letter of credit in which the Issuer acquires an interest have been fully negotiated no later than the original legal document closing of such credit facility.

Section III. Distressed Debt

A. The Issuer may only purchase a Debt Instrument that is a Potential Workout Obligation to the extent permitted by this Section III.

B. Neither the Issuer nor the Servicer on behalf of the Issuer shall purchase a Subsidiary Obligation from any Issuer Subsidiary.

C. Special Procedures for Subsidiary Obligations.

1. Potential Workout Obligations. On or prior to the date of acquisition, the Servicer on behalf of the Issuer shall identify each Portfolio Obligation that is a Potential Workout Obligation.

2. Transfer of Subsidiary Obligations. From and after the occurrence of a Workout Determination Date with respect to a Subsidiary Obligation, neither the Issuer nor the Servicer on behalf of the Issuer shall knowingly take any action in respect of such Subsidiary Obligation that may result in the Issuer being engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes. As soon as practicable, but in any event within 30 calendar days following a Workout Determination Date, the Servicer shall cause the Issuer either (i) to sell or dispose of any Subsidiary Obligation identified on such Workout Determination Date to a Person that is not an Affiliate of the Issuer or Servicer or (ii) to assign any Subsidiary Obligation identified on such Workout Determination Date to an Issuer Subsidiary.

For purposes of this Annex 1, an "Issuer Subsidiary" means any wholly-owned corporate subsidiary of the Issuer to which a Special Workout Obligation may be transferred in accordance with this Annex 1.

3. Consideration for Assignment of Subsidiary Obligations. Consideration given by an Issuer Subsidiary for the assignment to it of Subsidiary Obligations may be in the form of cash or in the form of indebtedness of, or equity interests in, such Issuer Subsidiary.

4. Classification of Issuer Subsidiaries. Each Issuer Subsidiary shall be an entity treated as a corporation for United States federal income tax purposes.

As used herein:

"Potential Workout Obligation" means any debt instrument (any such instrument, including an interest in a Loan, a "Debt Instrument") which, as of the date of acquisition by the Issuer or an Issuer Subsidiary, based on information specific to such Debt Instrument or the circumstances of the obligor thereof, is a Workout Obligation or, in the reasonable determination of the Servicer, has a materially higher likelihood of becoming a Workout Obligation as compared to debt obligations that par or other non-distressed debt purchasers or funds relating to that asset type customarily purchase and expect to hold to maturity.

"Subsidiary Obligation" means any Potential Workout Obligation (a) as to which the Issuer on any Workout Determination Date either (i) owns more than 40% of the aggregate principal amount of such class of Potential Workout Obligation outstanding or (ii) is one of the two largest holders of any class of debt of the obligor of such Potential Workout Obligation (based on the outstanding principal amount of such class of debt owned by the Issuer as a percentage of the aggregate outstanding principal amount of such class of debt) unless not fewer than three other holders and the Issuer collectively own at least 65% of such class of

debt and, if the Issuer is the largest holder of such class, the Issuer's percentage of such class does not exceed the percentage held by the next largest holder of the debt by more than 5% of such class or (b) that would, upon foreclosure or exercise of similar legal remedies, result in the Issuer directly owning assets (other than securities treated as debt, equity in a partnership not engaged in a trade or business within the United States, or corporate equity for United States federal income tax purposes, provided in the case of corporate equity that the corporation is not a "United States real property holding corporation" within the meaning of section 897 of the Code) which (1) are "United States real property interests" within the meaning of section 897 of the Code or partnership or grantor trust interests for U.S. federal income tax purposes in entities engaged or that may be engaged in a United States trade or business or (2) the Servicer reasonably expects it would, on behalf of the Issuer, be required to actively manage to preserve the value of the Issuer's interest therein; provided that a Potential Workout Obligation shall not be treated as a Subsidiary Obligation if the Issuer obtains a Tax Opinion that, based on all the surrounding circumstances, the activities in which the Issuer intends to engage with respect to such Potential Workout Obligation will not cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes.

"Workout Determination Date" means any date on which, in connection with the occurrence of any event described in clauses (a) through (c), inclusive, of the definition of Workout Obligation, either (a) any material action by the Issuer is required to be taken, (b) the Servicer receives written notice that such material action shall be required or (c) the Servicer reasonably determines that the taking of such material action is likely to be required.

"Workout Obligation" means any Debt Instrument as to which the Servicer on behalf of the Issuer (a) consents to a Significant Modification in connection with the workout of a defaulted Portfolio Obligation, (b) participates in an official or unofficial committee or similar official or unofficial body in connection with a bankruptcy, reorganization, restructuring or similar proceeding, or (c) exercises, or has exercised on its behalf, rights of foreclosure or similar judicial remedies.

Section IV. Purchases from the Servicer or its Affiliates.

A. If the Servicer or an Affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror, or received any fee for services (it being understood that receipts described in clauses (i) through (v) of Section I.B. are not construed as so treated), in connection with the issuance or origination of a Portfolio Obligation or was a member of the original lending syndicate with respect to the Portfolio Obligation (any such Portfolio Obligation, a "Special Procedures Obligation"), the Issuer will not acquire any interest in such Special Procedures Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an Affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Special Procedures Obligation has been outstanding for at least 90 days, (ii) the holder of the Special Procedures Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its

issuance, (iii) the price paid for such Special Procedures Obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (iv) the transaction is proposed to, and the ultimate purchase is approved on behalf of the Issuer by, one or more Independent Advisors to the Issuer in accordance with the provisions of Section IV.B. below. The Issuer will not acquire any Special Procedures Obligation if, immediately following such acquisition, the fair market value of all Special Procedures Obligations owned by the Issuer would constitute more than 49% of the fair market value of all of the Issuer's assets at such time.

B. An "Independent Advisor" is a Person who is not an Affiliate of the Issuer, the Servicer or any fund managed by the Servicer.

1. The Issuer may not purchase or commit to enter into any such Special Procedures Obligation without prior approval by an Independent Advisor. If the Independent Advisor declines to approve a proposed Special Procedures Obligation, at least three months must elapse before any proposal with respect to the acquisition of debt or other obligations of the same obligor are proposed or considered.

2. The Issuer shall engage the Independent Advisor in an agreement the terms of which shall in substantial form set forth:

(a) the representation of the Independent Advisor, which the Servicer shall not know to be incorrect, that it has significant financial and commercial expertise, including substantial expertise and knowledge in and of the loan market and related investment arenas;

(b) the agreement between the Independent Advisor, the Issuer and the Servicer generally to the effect that (i) the Independent Advisor will operate pursuant to procedures consistent with maintaining his or her independence from the Servicer and its Affiliates, (ii) the Independent Advisor will have the sole authority and discretion to approve or reject purchase proposals made by the Servicer with respect to any Special Procedures Obligation, (iii) all proposals for the Issuer to acquire any Special Procedures Obligation will be first submitted to the Independent Advisor, (iii) the Servicer will prepare the materials it deems necessary to describe the Special Procedures Obligation to the Independent Advisor, (iv) the Investment Advisor will not be required to make any decision to accept or decline a Special Procedures Obligation at the price offered prior to its review of the materials prepared, plus any additional information requested by the Independent Advisor, and (v) no Independent Advisor may be proposed to be replaced by the Servicer, unless for cause or in the event of a resignation of such Independent Advisor; and

(c) such other commercially reasonable terms and conditions, including terms and conditions to the effect that (i) the Independent Advisor will be paid a reasonable fee for its services plus reimbursement of any reasonable

expenses incurred in performance of his or her responsibilities, (ii) the Independent Advisor may be removed or replaced only by a majority (whether by positive act or failure to object) of the probable equity owners (as determined for United States federal income tax purposes) of the Issuer, (iii) if at any time there is more than one Independent Advisor to the Issuer, a majority of such Independent Advisors must approve any Special Procedures Obligation subject to Independent Advisor approval, (iv) an Independent Advisor may not engage, directly or indirectly, in the negotiation of the terms of any Special Procedures Obligation to be acquired by the Issuer (provided however, that an Independent Advisor may negotiate with the Servicer or the seller with respect to the price and terms of the Issuer's purchase of the Special Procedures Obligation, provided further that the Independent Advisor will not make suggestions to the Servicer or any other person about alternative or modified terms of the underlying Special Procedures Obligation on which they might be willing to approve such a Special Procedures Obligation).

3. Any servicing agreement or other document under which the Servicer is granted signatory powers or other authority on behalf of the Issuer will provide that such powers or authority with respect to Special Procedures Obligations are conditioned upon the prior written approval of the Independent Advisor

4. No Special Procedures Obligation will be presented to an Independent Advisor until at least 90 days have elapsed since the later of (a) the execution of final documentation and (b) the funding in whole or part of the Special Procedures Obligation and there will have been no commitment or arrangement prior to that time that the Issuer will acquire any such Special Procedures Obligation; provided, further, that the Special Procedures Obligation will not be treated as outstanding for any day on which the Issuer enjoys the benefits and burdens of ownership (for example, because any Person has hedged its credit exposure to the Special Procedures Obligation with the Issuer).

5. The Issuer will have no obligation to, or understanding that it will refund, reimburse or indemnify any person (including an Affiliate of the Servicer), directly or indirectly, for "breakage" costs or other costs or expenses incurred by such person if the Independent Advisor determines that the Issuer should decline to purchase any Special Procedures Obligation.

6. Neither the Servicer nor any Affiliate of the Servicer will have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to Special Procedures Obligations without the prior written approval of an Independent Advisor. Except as may be conditioned upon such prior written approval, neither the Servicer nor any Affiliate of the Servicer may hold itself out as having signatory powers on behalf of the Issuer or authority to enter into agreements with respect to Special Procedures Obligations on behalf of the Issuer.

Section V. Synthetic Securities.

A. The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex 1 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security collateral accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, shall not constitute the making of advances).

B. With respect to each Synthetic Security, the Issuer will not acquire or enter into any Synthetic Security that does not satisfy all of the following additional criteria unless the Servicer has first received advice of counsel that the ownership and disposition of such Synthetic Security would not cause the Issuer to be engaged in a trade or business within the United States for United States federal income tax purposes:

1. the criteria used to determine whether to enter into any particular Synthetic Security was similar to the criteria used by the Servicer in making purchase decisions with respect to debt securities;

2. the Synthetic Security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities (and any potential rise in their value) during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit;

3. the Issuer enters into the Synthetic Security with a counterparty that is not a special purpose vehicle and is a broker-dealer or that holds itself out as in the business of entering into such contracts and is not an insurance company;

4. neither the Issuer nor any Person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities;

5. except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation;

6. the net payment from the Issuer to the Synthetic Security Counterparty is not determined based on an actual loss incurred by the Synthetic Security Counterparty or any other designated person;

7. there exists no agreement, arrangement or understanding that (i) the Synthetic Security Counterparty is required to own or hold the related Reference Obligation while the Synthetic Security remains in effect or (ii) the Synthetic Security Counterparty is economically or practically compelled to own or hold the

related physical Reference Obligation while the Synthetic Security remains in effect;

8. the Synthetic Security provides for (i) all cash settlement, (ii) all physical settlement or (iii) the option to either cash settle or physically settle; provided that, in the latter two cases, physical settlement provides the settling party the right to settle the Synthetic Security by delivering deliverable obligations which *may* include the Reference Obligation and the settling party must not be required to deliver the related Reference Obligation upon the settlement of such Synthetic Security.

Notwithstanding the preceding paragraph, a Synthetic Security providing for physical settlement may require a party to deliver the related Reference Obligation if either:

(i) at the time the Issuer enters into such Synthetic Security, such Reference Obligation is readily available to purchasers generally in a liquid market; or

(ii) the advice of both United States federal income tax and insurance counsel of nationally recognized standing in the United States experienced in such matters is that, under the relevant facts and circumstances with respect to such Synthetic Security, the acquisition of such Synthetic Security will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis and should not cause the Issuer to be treated as writing insurance in the United States under the law of the state in which the Synthetic Security Counterparty is organized.

9. the Synthetic Security is not treated by the Issuer as insurance or a financial guarantee sold by the Issuer for United States or Cayman Islands regulatory purposes.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan, that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

Section VI. Other Types of Assets.

A. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is:

1. not treated for U.S. federal income tax purposes as debt if the issuing entity is a "partnership"(within the meaning of Section 7701(a)(2) of the Code) unless such entity is not engaged in a trade or business within the United States, or

2. a "United States real property interest" as defined in section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may cause an Issuer Subsidiary to acquire assets set forth in clause (i) or (ii) above (each, an "ETB/897 Asset") in connection with the workout of defaulted Portfolio Obligations, so long as the acquisition of ETB/897 Assets by such Issuer Subsidiary will not cause the stock of such Issuer Subsidiary to be deemed to be an ETB/897 Asset.

B. Revolving Loans and Delayed Drawdown Loans. All of the terms of any advance required to be made by the Issuer under any revolving or delayed drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Servicer will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such revolving or delayed drawdown Loan.

C. Securities Lending Agreements. The Issuer will not purchase any Portfolio Obligation primarily for the purpose of entering into a securities lending agreement with respect thereto.

D. Exception From Secondary Market Rule for Debt Securities. Any purchase of a Portfolio Obligation other than a Loan (a "Debt Security") pursuant to a commitment, arrangement or other understanding made before or contemporaneously with completion of the closing and funding of such Debt Security issuance shall be made only in connection with one of the following:

(i) an underwriting of a registered public offering in which the seller has made a firm underwriting commitment to the issuer of such Debt Security where none of the Servicer or any Affiliate thereof acted as an underwriter or placement agent or participated in negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities),

(ii) a private placement to qualified investors (pursuant to Rule 144A or Section 4(2) under the Securities Act or other similar arrangement) in which such Debt Security was originally issued pursuant to an offering circular, private placement memorandum, or similar offering document and none of the Servicer or any Affiliate thereof acted as a placement agent or underwriter or participated in

negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities), or

(iii) an acquisition of or entry into a Synthetic Obligation in accordance with Section V. above;

If an Affiliate of the Servicer is acting as an underwriter or placement agent or an Affiliate of the Servicer or an employee of an Affiliate of the Servicer participated in the structuring of an issuance otherwise described in clause (i) or clause (ii) of this paragraph D, one of the following additional conditions must be met:

(x) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases no more than 33% of the aggregate principal amount of the tranche of securities (or other instruments) of which such Debt Security is a part and more than 50% of the aggregate principal amount of such tranche is substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase,

(y) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases less than 33% of the aggregate principal amount of all tranches issued as part of the transaction in which the Debt Security was issued and more than 50% of the aggregate principal amount of such tranches are substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase, or

(z) such security or obligation satisfies the requirements and procedures applicable to Special Procedures Obligations in Section IV as though it were a Loan;

provided, however, in either of (x) or (y), the Affiliate of the Servicer was (or the employees of the Affiliate of the Servicer were) acting as an underwriter or placement agent (or otherwise participated in the structuring of such issuance) solely as, or solely as an employee of, a Permitted Affiliate (as defined below); and provided further, that for purposes of calculating the total principal amount sold to related parties under this paragraph D, purchases by Affiliates will be considered purchases by persons unrelated to

the Servicer so long as the Servicer has no knowledge of such purchases and has no reason to know of such purchases.

"Permitted Affiliate" means any Affiliate (i) that is a separate legal entity that is operated independently of the Servicer, (ii) whose personnel are not managed by and who do not report to the personnel of the Servicer, and (iii) whose personnel are not compensated based upon the performance of the Servicer.

Section VII. General Restrictions on the Issuer. The Issuer itself shall not:

A. hold itself out, through advertising or otherwise, as originating Loans, lending funds, or making a market in or dealing in Loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, a surety bond issuer, or a company engaged in Loan origination;

C. knowingly take any action causing it to be treated as a bank, insurance company, or company engaged in Loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to acquire a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the related indenture or acquire a Portfolio Obligation conditioned upon a particular person or entity holding Securities;

G. acquire any asset the holding or acquisition of which the Servicer knows would cause the Issuer to be subject to income tax on a net income basis;

H. hold any security as nominee for another person; or

I. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

Section VIII. Tax Opinion; Amendments.

A. In furtherance and not in limitation of this Annex 1, the Servicer shall comply with all of the provisions set forth in this Annex 1, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of McKee Nelson LLP, Skadden, Arps, Slate, Meagher & Flom LLP or Orrick, Herrington & Sutcliffe LLP or an opinion of other counsel of nationally recognized standing in the United States experienced in such matters (a "Tax Opinion"), that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

B. The provisions set forth in the Annex 1 may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received a Tax Opinion that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

SERVICING AGREEMENT

This Servicing Agreement, dated as of May 9, 2007 is entered into by and among ROCKWALL CDO II LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, KY1-1108, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and ROCKWALL CDO II (DELAWARE) CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$635,000,000 of their Class A-1LA Floating Rate Extendable Notes due August 2024 (the "Class A-1LA Notes"), U.S.$115,000,000 of their Class A-1LB Floating Rate Extendable Notes due August 2024 (the "Class A-1LB Notes"), U.S.$76,000,000 of their Class A-2L Floating Rate Extendable Notes due August 2024 (the "Class A-2L Notes"), U.S.$48,000,000 of their Class A-3L Floating Rate Extendable Notes due August 2024 (the "Class A-3L Notes"), U.S.$36,000,000 of their Class B-1L Floating Rate Extendable Notes due August 2024 (the "Class B-1L Notes"), U.S.$26,000,000 of their Class B-2L Floating Rate Extendable Notes due August 2024 (the "Class B-2L Notes" and together with the Class A-1LA Notes, Class A-1LB Notes, Class A-2L Notes, Class A-3L Notes and Class B-1L Notes, the "Notes") pursuant to the Indenture dated as of May 9, 2007 (the "Indenture"), among the Co-Issuers and JPMorgan Chase Bank, National Association, as trustee (the "Trustee") and 42,200,000 Class I Preferred Shares, $0.001 par value (the "Class I Preferred Shares") and 44,000,000 Class II Preferred Shares, $0.001 par value (the "Class II Preferred Shares" and, together with the Class I Preferred Shares, the "Preferred Shares" and, together with the Notes, the "Securities");

WHEREAS, the Issuer intends to pledge certain Portfolio Collateral, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and in the applicable provisions of the other Transaction Documents and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean Highland Financial Partners, L.P. (which includes, for the avoidance of doubt, any subsidiary thereof).

"Offering Circular" shall mean the Offering Circular of the Issuer dated May 8, 2007 prepared in connection with the offering of the Securities.

"Redemption Date" shall mean any Optional Redemption Date, Special Redemption Date, Tax Event Redemption Date or Mandatory Redemption Date, as applicable.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Servicing Fee" shall mean, collectively, the Base Servicing Fee, the Additional Servicing Fee and the Supplemental Servicing Fee.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms this Agreement and the other Transaction Documents, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and the other Transaction Documents, and including the furnishing of Orders, Requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Portfolio Collateral, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the other Transaction Documents, perform its obligations hereunder and thereunder with reasonable care, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the other Transaction Documents. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the other Transaction Documents affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to any Transaction Document until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to any Transaction Document that affects the rights, powers, obligations or duties of the Servicer unless the

Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Collateral criteria set forth herein and in the Indenture;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Portfolio Collateral has become a Defaulted Portfolio Collateral;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Portfolio Collateral, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) to acquire, as security for the Notes in substitution for or in addition to any one or more Portfolio Collateral or Eligible Investments included in the Collateral, one or more substitute Portfolio Collateral or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Portfolio Collateral or Eligible Investment:

(1) retain such Portfolio Collateral or Eligible Investment; or

(2) dispose of such Portfolio Collateral or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Portfolio Collateral or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Portfolio Collateral; or

(7) vote to accelerate the maturity of any Defaulted Portfolio Collateral; or

(8) exercise any other rights or remedies with respect to such Portfolio Collateral or Eligible Investment as provided in the related

Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities; and

(v) the Servicer shall (a) on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Portfolio Collateral and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption and (b) conduct Auctions in accordance with the terms of the Indenture.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the Collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preferred Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding. The provisions of this Section 2(c)(i) shall survive termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Portfolio Collateral or Eligible Investment to be conducted on an arm's-length basis.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Portfolio Collateral or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Portfolio Collateral or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable

judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Portfolio Collateral or other securities of the issuers of Portfolio Collateral. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to have or pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Investment Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Investment Advisers Act.

(c) In addition, the Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preferred Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the other Transaction Documents. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Amended and Restated Memorandum and Articles of Association or the Co-Issuer's Certificate of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) not be permitted by Annex 1 hereto and would subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States

for U.S. federal income tax purposes. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date until February 3, 2008. After February 3, 2008, the Servicer may, in its sole discretion, at any time waive the Class II Preference Share Portion of its Servicing Fees then due and payable. All waived amounts will be paid to the Class II Preferred Shares as Class II Preferred Share Dividends pursuant to the Indenture. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preferred Shares as Class II Preference Share Dividends.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Additional Servicing Fee or Supplemental Servicing Fee, any funds representing the waived Additional Servicing Fees and Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement, the Indenture and the other Transaction Documents; provided, however, that any extraordinary expenses incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Portfolio Collateral or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages, including reasonable expenses incurred with respect to any compliance requirements, including, but not limited to, compliance with the requirements of the Sarbanes-Oxley Act, related solely to the ownership or holding of any Securities by HFP or its Affiliates) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preferred Shares, as applicable, as provided in the Indenture.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement or (ii) with respect to any information included in the Offering Circular in the section entitled "The Servicer" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement, the Indenture and the other Transaction Documents. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer complies with the requirements set forth in Annex 1 hereto (unless the Servicer knows that as a result of a change in law the investment restrictions set forth in Annex 1 may no longer be relied upon).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering

Circular, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

(vi) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defense of such claim, including, but not limited to, the right to designate counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Indemnifying Party assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for

any Indemnified Party incurred thereafter in connection with such claim except that if such Indemnified Party reasonably determines that counsel designated by the Indemnifying Party has a conflict of interest in connection with its representation of such Indemnified Party, such Indemnifying Party shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, further, that prior to entering into any final settlement or compromise, such Indemnifying Party shall seek the consent of the Indemnified Party and use its commercially reasonable efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such Indemnified Party as to the terms of settlement or compromise. If an Indemnified Party does not consent to the settlement or compromise within a reasonable time under the circumstances, the Indemnifying Party shall not thereafter be obligated to indemnify the Indemnified Party for any amount in excess of such proposed settlement or compromise.

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preferred Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Securityholders; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be

registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

I. if the Class A-1LA Notes are Outstanding and (i) the sum of (A) the Aggregate Par Amount of Portfolio Collateral other than any Equity Portfolio Collateral and (B) the Market Value of all Equity Portfolio Collateral (as determined by the Servicer in a commercially reasonable manner), if any, is less than (ii) the sum of (A) the Aggregate Principal Amount of the Outstanding Notes other than the Class B-1L Notes plus any accrued and unpaid interest thereon and (B) 50% of the Aggregate Principal Amount of the Class B-1L Notes plus any accrued and unpaid interest thereon (a "Preferred Share Event"), then:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP), (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by a Majority of the Controlling Class of Notes); or

(ii) if a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP) has nominated two or more possible successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 30 days of the date of notice of such removal or resignation of the Servicer (or, if later, within 30 days of the last failure to successfully appoint a successor Servicer), then (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Controlling Class of Notes, (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP); or

(iii) if the Issuer fails to appoint a successor Servicer pursuant to the preceding clauses (i) and (ii) within 90 days of any notice of resignation or removal of the Servicer, (A) a Majority of the Controlling Class of Notes may petition a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture.

II. if there is no Preferred Share Event in effect, then:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preferred Shares (excluding any Preferred Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority, other than HFP which may exercise its vote with respect to Preferred Shares it owns, up to the Original HFP Share Amount), (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Majority of the Controlling Class of Notes or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP); or

(ii) if a Majority of the Preferred Shares (excluding any Preferred Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP) has nominated two or more possible successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 30 days of the date of notice of such removal or resignation of the Servicer (or, if later, within 30 days of the last failure to successfully appoint a successor Servicer), then (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Controlling Class of Notes, (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 45 days after notice of such succession by either of (x) a Majority of the Preferred Shares (excluding any Preferred Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP which may exercise its vote with respect to Preferred Shares it owns, up to the Original HFP Share Amount) or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP); or

(iii) if the Issuer fails to appoint a successor Servicer pursuant to the preceding clauses (i) and (ii) within 90 days of any notice of resignation or removal of the Servicer, (A) a Majority of the Controlling Class of Notes may petition a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without

causing the Issuer, the Co Issuer or any Holder of Preferred Shares to become subject to tax in any jurisdiction where such successor Servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the Servicer without the prior written consent of a Majority of the Controlling Class, Majority of the Noteholders and a Majority of the Preferred Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

If there has been no appointment of a successor Servicer within 90 days following the resignation or termination of the Servicer, until a successor Servicer has been appointed and has assumed its duties hereunder, any sales or disposition of Portfolio Collateral shall be limited to Credit Risk Portfolio Collateral, Defaulted Portfolio Collateral and Equity Portfolio Collateral; provided, that, such restriction on the sale or disposition of Portfolio Collateral shall not apply if the Portfolio Collateral is being liquidated in whole or in part in connection with an acceleration or early termination of the Notes.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Majority of the Noteholders and a Majority of the Preferred Shares (excluding Notes and Preferred Shares held by the Servicer or any of its Affiliates) and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, the Requisite Noteholders and the Holders of a Majority of the Preferred Shares (excluding Notes and Preferred Shares held by the Servicer or any of its Affiliates other than HFP) and (ii) the Rating Agency Confirmation is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, the Requisite Noteholders and the Holders of Preferred Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, the Requisite Noteholders and the Holders of the Preferred Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i)

and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) a Majority of the Controlling Class of Notes or (2) the Holders of at least 66-2/3% of the Preferred Shares (excluding any Preferred Shares held by the Servicer or any of its Affiliates and accounts over which the Servicer or any of its Affiliates exercise discretionary voting authority, other than HFP which may exercise its vote with respect to Preferred Shares it owns, up to the Original HFP Share Amount). For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or

suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preferred Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee and the Fiscal Agent an accounting with respect to the books and records delivered to the Trustee and the Fiscal Agent or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the other Transaction Documents and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the other Transaction Documents and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the other Transaction Documents and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the other Transaction Documents and the Securities is required by the Issuer in connection with this Agreement, the other Transaction Documents and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the other Transaction Documents and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to

which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the other Transaction Documents applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the other Transaction Documents applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the other Transaction Documents applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the other Transaction Documents applicable to the Servicer and the documents and instruments required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the other Transaction Documents applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Investment Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the other Transaction Documents applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Rockwall CDO II Ltd.
c/o Maples Finance Limited
P.O. Box 1093GT
Queensgate House
South Church Street
George Town, Grand Cayman, KY1-1108, Cayman Islands
Telephone: (345) 945-7099
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

Investors Bank & Trust Company
200 Claredon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617) 351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.3 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preferred Shares:

In accordance with Section 14.3 of the Indenture, to the Paying and Transfer Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 14.1(f)(4) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Investment Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Portfolio Collateral, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Portfolio Collateral, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Portfolio Collateral to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted

Portfolio Collateral and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Portfolio Collateral, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the asset servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Servicer hereby consents to (i) the posting of the final Offering Circular and the Indenture (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title: James D. Dondero, President
Strand Advisors, Inc., General Partner of
Highland Capital Management, L.P.

ROCKWALL CDO II LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title:

ROCKWALL CDO II LTD.,
as Issuer

By:_____
Name: **Chris Marett**
Title: Director

ANNEX 1

Certain Tax Provisions

Unless otherwise noted, references to the Issuer in this Annex 1 include the Servicer and any other person acting on the Issuer's behalf. Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex 1,

"Affiliate" means, with respect to a specified Person, (a) any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person and (b) any Person that is a member, director, officer or employee of (i) the specified Person or (ii) a Person described in clause (a) of this definition; and

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section I. General Restrictions.

As provided in this Annex 1, the Issuer shall only purchase debt securities, interests in loans and other assets (each a "Portfolio Collateral") only in secondary-market transactions and shall not engage in any lending or underwriting activities or otherwise participate in the structuring or origination of any Portfolio Collateral.

A. Communications and Negotiations.

1. The Issuer will not have any communications or negotiations with the obligor of a Portfolio Collateral or a Reference Obligation (directly or indirectly through an intermediary such as the seller of such Portfolio Collateral or the Synthetic Security) in connection with the issuance or funding of such Portfolio Collateral or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

2. By way of example, permitted due diligence activities may include, but are not limited to, (a) attendance at an obligor's general "roadshow" or other presentations to investment professionals, (b) direct private discussions with personnel of the obligor, arranged by a sponsor, lead bank or other arranger, and (c) other due diligence activities of the kind customarily performed by offerees of the type of Portfolio Collateral being offered, but may not include any negotiations with the obligor, employees or agents of the obligor of any terms or conditions of the Portfolio Collateral being offered.

3. Negotiations between the Servicer and the underwriter, placement agent or broker of Portfolio Collateral are permitted solely to the extent that they are limited to responses to customary pre-offering period and offering period inquiries by the underwriter or placement agent (e.g., "If we offered you 10-year senior subordinated bonds of XYZ company, what spread

would it require to interest you?" or "If you will not buy the bonds as offered, would you buy if we convinced the obligor to add a fixed charge coverage test?"). For purposes of this Section I.A., "negotiations" shall not include (i) commenting on offering documents to an unrelated underwriter or placement agent when the ability to comment was generally available to other investors, or (ii) communicating certain objective criteria (such as the minimum yield or maturity) the Issuer generally uses in purchasing the relevant type of Portfolio Collateral.

4. The Issuer may consent or otherwise act with respect to amendments, supplements or other modifications of the terms of any Portfolio Collateral (other than a Subsidiary Obligation (as defined in Section III)) requiring consent or action after the date on which any such Portfolio Collateral is acquired by the Issuer if (a) such amendment, supplement or modification would not constitute a Significant Modification (as defined below), (b) (i) in the reasonable judgment of the Servicer, the obligor is in financial distress and such change in terms is desirable to protect the Issuer's interest in such Portfolio Collateral and (ii) the Portfolio Collateral is described in clause 5(b) of this Section I.A., (c) the amendment or modification would not be treated as the acquisition of a new Portfolio Collateral under paragraph 5 of this Section I.A., or (d) otherwise, if it has received advice of counsel that its involvement in such amendment, supplement or modification will not cause the Issuer to be treated as engaged in a trade or business within the United States.

A "Significant Modification" means any amendment, supplement or other modification that involves (a) a change in the stated maturity or a change in the timing of any material payment of any Portfolio Collateral (including deferral of an interest payment), that would materially alter the weighted average life of the Portfolio Collateral, (b) any change (whether positive or negative) in the yield on the Portfolio Collateral immediately prior to the modification in excess of the greater of (i) 25 basis points or (ii) 5 percent of such unmodified yield, (c) any change involving a material new extension of credit, (d) a change in the obligor of any Portfolio Collateral (as determined for purposes of section 1001 of the Code), or (e) a material change in the collateral or security for any Portfolio Collateral, including the addition or deletion of a co-obligor or guarantor that results in a material change in payment expectations.

5. In the event the Issuer owns an interest in a Portfolio Collateral the terms of which are subsequently amended or modified, or in the case of a workout situation not described in Section III hereof, which Portfolio Collateral is subsequently exchanged for new obligations or other securities of the obligor of the Portfolio Collateral, such amendments or modifications or exchange will not be treated as the acquisition of an interest in a new Portfolio Collateral for purposes of this Annex 1, provided, that (a) the Issuer does not, directly or indirectly (through the Servicer or otherwise), seek the amendments or modifications or the exchange, or participate in negotiating the amendments or modifications or the exchange, and (b) at the time of original acquisition of the interest in the Portfolio Collateral, it was not reasonably anticipated that the terms of the Portfolio Collateral would, pursuant to a workout or other negotiation, subsequently be amended or modified.

B. Fees. The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Portfolio Collateral or entering into a Synthetic Security; the foregoing prohibition shall not be construed to preclude the Issuer from receiving (i) commitment fees or facility maintenance fees that are received by the Issuer in connection with revolving or delayed drawdown Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Portfolio Collateral; (iv) fees from permitted securities lending; or (v) upfront payments in lieu of periodic payments under a Synthetic Security. The Issuer will not provide services to any Person;

the foregoing prohibition shall not be construed to preclude the Issuer from activities relating to the receipt of income described in (i) through (v) of the preceding sentence.

Section II. Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, a loan subparticipation or a collateralized loan obligation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller shall only be made pursuant to a forward sale agreement at an agreed price (stated as a dollar amount or as a percentage) (a "Forward Purchase Commitment"), unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled (e.g., would otherwise be subject to a significant monetary penalty) to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent decision whether to purchase such Loan on behalf of the Issuer after completion of the closing of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Agreement.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment or a Non-Binding Agreement earlier than 48 hours after the time of the closing of the Loan (i.e., execution of definitive documentation), and, in the case of a Forward Purchase Commitment, the Issuer's obligation to purchase such Loan is subject to the condition that no material adverse change has occurred in the financial condition of the Loan's obligor or the relevant market on or before the relevant purchase date.

E. The Issuer cannot have a contractual relationship with the borrower with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the original lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan, prior to the time specified in subsection D above.

G. The Issuer will not purchase any Portfolio Collateral or enter into any Forward Purchase Commitment or Non-Binding Agreement as to which it knows that the seller or counterparty has acted or described itself as acting as the Issuer's agent in purchasing the Portfolio Collateral or in making or committing to make the loan to which the Forward Purchase Commitment or Non-Binding Agreement relates, and for the avoidance of doubt no such sale or agreement shall be entered into with the understanding that the seller or counterparty will disclose to the borrower the Issuer's intention to purchase the underlying Loan prior to execution of final legal documentation of the Loan.

H. The Issuer shall not purchase an item of Portfolio Collateral unless the purchase occurs after 48 hours from the closing and execution of final documentation with respect to such item.

Section III. Distressed Debt Obligations.

A. The Issuer may only purchase a Debt Instrument that is a Potential Workout Obligation to the extent permitted by this Section III.

B. The Issuer shall not purchase a Subsidiary Obligation from any Issuer Subsidiary.

C. Special Procedures for Subsidiary Obligations.

1. Potential Workout Obligations. On or prior to the date of acquisition, the Servicer on behalf of the Issuer shall identify each Portfolio Collateral that is a Potential Workout Obligation.

2. Transfer of Subsidiary Obligations. From and after the occurrence of a Workout Determination Date with respect to a Subsidiary Obligation, the Issuer shall not knowingly take any action in respect of such Subsidiary Obligation that may result in the Issuer being engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes. As soon as practicable, but in any event within 30 calendar days following a Workout Determination Date, the Servicer shall cause the Issuer either (i) to sell or dispose of any Subsidiary Obligation identified on such Workout Determination Date to a Person that is not an Affiliate of the Issuer or Servicer or (ii) to assign any Subsidiary Obligation identified on such Workout Determination Date to an Issuer Subsidiary.

For purposes of this Annex 1, an "Issuer Subsidiary" means any wholly-owned corporate subsidiary of the Issuer to which a Special Workout Obligation may be transferred in accordance with this Annex 1.

3. Consideration for Assignment of Subsidiary Obligations. Consideration given by an Issuer Subsidiary for the assignment to it of Subsidiary Obligations may be in the form of cash or in the form of indebtedness of, or equity interests in, such Issuer Subsidiary.

4. Classification of Issuer Subsidiaries. Each Issuer Subsidiary shall be an entity treated as a corporation for United States federal income tax purposes.

As used herein:

"Potential Workout Obligation" means any debt instrument (any such instrument, including an interest in a Loan, a "Debt Instrument") which, as of the date of acquisition by the Issuer or an Issuer Subsidiary, based on information specific to such Debt Instrument or the circumstances of the obligor thereof, is a Workout Obligation or, in the reasonable determination of the Servicer, has a materially higher likelihood of becoming a Workout Obligation as compared to debt obligations that par or other non-distressed debt purchasers or funds customarily purchase and expect to hold to maturity.

"Subsidiary Obligation" means any Potential Workout Obligation (a) as to which the Issuer on any Workout Determination Date either (i) owns more than 40% of the aggregate principal amount of such class of Potential Workout Obligation outstanding or (ii) is one of the two largest holders of any class of debt of the issuer of such Potential Workout Obligation (based on the outstanding principal amount of such class of debt owned by the Issuer as a percentage of the aggregate outstanding principal amount of such class of debt) unless not fewer than three other holders and the Issuer collectively own at least 65% of such class of debt and, if the Issuer

is the largest holder of such class, the Issuer's percentage of such class does not exceed the percentage held by the next largest holder of the debt by more than 5% of such class or (b) that would, upon foreclosure or exercise of similar legal remedies, result in the Issuer directly owning assets (other than securities treated as debt, equity in a partnership not engaged in a trade or business within the United States, or corporate equity for United States federal income tax purposes, provided in the case of corporate equity that the corporation is not a "United States real property holding corporation" within the meaning of section 897 of the Code) which are "United States real property interests" within the meaning of section 897 of the Code or which the Servicer reasonably expects it would, on behalf of the Issuer, be required to actively manage to preserve the value of the Issuer's interest therein; provided that a Potential Workout Obligation shall not be treated as a Subsidiary Obligation if the Issuer obtains a Tax Opinion that, based on all the surrounding circumstances, the activities in which the Issuer intends to engage with respect to such Potential Workout Obligation will not cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes.

"Workout Determination Date" means any date on which, in connection with the occurrence of any event described in clauses (a) through (c), inclusive, of the definition of Workout Obligation, either (a) any material action by the Issuer is required to be taken, (b) the Servicer receives written notice that such material action shall be required or (c) the Servicer reasonably determines that the taking of such material action is likely to be required.

"Workout Obligation" means any Debt Instrument as to which the Issuer (a) consents to a Significant Modification in connection with the workout of a defaulted Portfolio Collateral, (b) participates in an official or unofficial committee or similar official or unofficial body in connection with a bankruptcy, reorganization, restructuring or similar proceeding, or (c) exercises, or has exercised, rights of foreclosure or similar judicial remedies.

Section IV. Purchases from the Servicer or its Affiliates.

A. If the Servicer or an Affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror, or received any fee for services (it being understood that receipts described in clauses (i) through (v) of Section I.B. are not construed as so treated), in connection with the issuance or origination of a Portfolio Collateral or was a member of the original lending syndicate with respect to the Portfolio Collateral (any such Portfolio Collateral, a "Special Procedures Obligation"), the Issuer will not acquire any interest in such Special Procedures Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from (x) the Servicer or (y) an Affiliate of the Servicer, or a fund managed by the Servicer, unless, in the case of (y) only, (i) the Special Procedures Obligation has been outstanding for at least 90 days, (ii) the holder of the Special Procedures Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its issuance, (iii) the price paid for such Special Procedures Obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (iv) the transaction is proposed to, and the ultimate purchase is approved on behalf of the Issuer by, one or more Independent Advisors to the Issuer in accordance with the provisions of Section IV.B. below. The Issuer will not acquire any Special Procedures Obligation if, immediately following such acquisition, the fair market value of all Special Procedures Obligations owned by the Issuer would constitute more than 49% of the fair market value of all of the Issuer's assets at such time.

B. An "Independent Advisor" is a Person who is not an Affiliate of the Issuer, the Servicer or any fund serviced or managed by the Servicer.

1. The Issuer may not purchase or commit to enter into any such Special Procedures Obligation without prior approval by an Independent Advisor. If the Independent Advisor declines to approve a proposed Special Procedures Obligation, at least three months must elapse before any proposal with respect to a purchase of debt or other obligations of the same obligor is proposed or considered.

2. The Issuer shall engage the Independent Advisor in an agreement the terms of which shall in substantial form set forth:

(a) the representation of the Independent Advisor, which the Servicer shall not know to be incorrect, that it has significant financial and commercial expertise, including substantial expertise and knowledge in and of the loan market and related investment arenas;

(b) the agreement between the Independent Advisor, the Issuer and the Servicer generally to the effect that (i) the Independent Advisor will operate pursuant to procedures consistent with maintaining his or her independence from the Servicer and its Affiliates, (ii) the Independent Advisor will have the sole authority and discretion to approve or reject acquisition proposals made by the Servicer with respect to any Special Procedures Obligation, (iii) all proposals for the Issuer to acquire any Special Procedures Obligation will be first submitted to the Independent Advisor, (iii) the Servicer will prepare the materials it deems necessary to describe the Special Procedures Obligation to the Independent Advisor, (iv) the Investment Advisor will not be required to make any decision to accept or decline a Special Procedures Obligation at the price offered prior to its review of the materials prepared, plus any additional information requested by the Independent Advisor, and (v) no Independent Advisor may be proposed to be removed or replaced by the Servicer, unless for cause or in the event of a resignation of such Independent Advisor; and

(c) such other commercially reasonable terms and conditions, including terms and conditions to the effect that (i) the Independent Advisor will be paid a reasonable fee for its services plus reimbursement of any reasonable expenses incurred in performance of his or her responsibilities, (ii) the Independent Advisor may be removed or replaced only by a majority (whether by positive act or failure to object) of the probable equity owners (as determined for United States federal income tax purposes) of the Issuer, (iii) if at any time there is more than one Independent Advisor to the Issuer, a majority of such Independent Advisors must approve any Special Procedures Obligation subject to Independent Advisor approval, (iv) an Independent Advisor may not engage, directly or indirectly, in the negotiation of the terms of any Special Procedures Obligation to be acquired by the Issuer (provided however, that an Independent Advisor may negotiate with the Servicer or the seller with respect to the price and terms of the Issuer's purchase of the Special Procedures Obligation, provided further that the Independent Advisor will not make suggestions to the Servicer or any other person about alternative or modified terms of the underlying Special Procedures Obligation on which they might be willing to approve such a Special Procedures Obligation).

3. Any servicing agreement or other document under which the Servicer is granted signatory powers or other authority on behalf of the Issuer will provide that such powers or authority with respect to Special Procedures Obligations are conditioned upon the prior written approval of the Independent Advisor

.

4. No Special Procedures Obligation will be presented to an Independent Advisor until at least 90 days have elapsed since the later of (a) the execution of final documentation and (b) the funding in whole or part of the Special Procedures Obligation and there will have been no commitment or arrangement prior to that time that the Issuer will acquire any such Special Procedures Obligation; provided, further, that if the person from whom the Issuer will acquire the Special Procedures Obligation is an Affiliate of the Servicer, the 90 day period specified in this clause (4) will be extended by such number of days as the Affiliate does not enjoy substantially all of the benefits and burdens of ownership (for example, because it has hedged its credit exposure to the Special Procedures Obligation).

5. The Issuer will have no obligation to, or understanding that it will refund, reimburse or indemnify any person (including an Affiliate of the Servicer), directly or indirectly, for "breakage" costs or other costs or expenses incurred by such person if the Independent Advisor determines that the Issuer should decline to purchase any Special Procedures Obligation.

6. Neither the Servicer nor any Affiliate of the Servicer will have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to Special Procedures Obligations without the prior written approval of an Independent Advisor. Except as may be conditioned upon such prior written approval, neither the Servicer nor any Affiliate of the Servicer may hold itself out as having signatory powers on behalf of the Issuer or authority to enter into agreements with respect to Special Procedures Obligations on behalf of the Issuer.

Section V. Synthetic Securities.

A. The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex 1 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security collateral accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, shall not constitute the making of advances).

B. With respect to each Synthetic Security, the Issuer will not acquire or enter into any Synthetic Security which does not satisfy all of the following additional criteria unless the Servicer has first received advice of counsel that the ownership and disposition of such Synthetic Security would not cause the Issuer to be engaged in a trade or business within the United States for United States federal income tax purposes:

1. the criteria used to determine whether to enter into any particular Synthetic Security was similar to the criteria used by the Servicer in making decisions to acquire debt securities;

2. the Synthetic Security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities (and any potential rise in their value during the interval of time between their purchase and sale) or hedging purposes and not with an intention to trade or to sell for a short-term profit;

3. the Issuer enters into the Synthetic Security with a counterparty that is not a special purpose vehicle and is a broker-dealer or that holds itself out as in the business of entering into such contracts;

4. neither the Issuer nor any Person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities;

5. except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation;

6. the net payment from the Issuer to the Synthetic Security Counterparty is not determined based on an actual loss incurred by the Synthetic Security Counterparty or any other designated person;

7. there exists no agreement, arrangement or understanding that (i) the Synthetic Security Counterparty is required to own or hold the related Reference Obligation while the Synthetic Security remains in effect or (ii) the Synthetic Security Counterparty is economically or practically compelled to own or hold the related physical Reference Obligation while the Synthetic Security remains in effect;

8. the Synthetic Security provides for (i) all cash settlement, (ii) all physical settlement or (iii) the option to either cash settle or physically settle; provided that, in the latter two cases, physical settlement provides the settling party the right to settle the Synthetic Security by delivering deliverable obligations which *may* include the Reference Obligation and the settling party must not be required to deliver the related Reference Obligation upon the settlement of such Synthetic Security.

Notwithstanding the preceding paragraph, a Synthetic Security providing for physical settlement may require a party to deliver the related Reference Obligation if either:

(i) at the time the Issuer enters into such Synthetic Security, such Reference Obligation is readily available to purchasers generally in a liquid market; or

(ii) the advice of both United States federal income tax and insurance counsel of nationally recognized standing in the United States experienced in such matters is that, under the relevant facts and circumstances with respect to such Synthetic Security, the acquisition of such Synthetic Security will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis and should not cause the Issuer to be treated as writing insurance in the United States under the law of the state in which the Synthetic Security Counterparty is organized.

9. the Synthetic Security is not treated by the Issuer as insurance or a financial guarantee sold by the Issuer for United States or Cayman Islands regulatory purposes.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan, that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

Section VI. Other Types of Assets.

A. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is:

1. not treated for U.S. federal income tax purposes as debt if the issuing entity is a "partnership" (within the meaning of Section 7701(a)(2) of the Code) unless such entity is not engaged in a trade or business within the United States, or

2. a "United States real property interest" as defined in section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may cause an Issuer Subsidiary to acquire assets set forth in clause (i) or (ii) above (each, an "ETB/897 Asset") in connection with the workout of defaulted Portfolio Collateral, so long as the acquisition of ETB/897 Assets by such Issuer Subsidiary will not cause the stock of such Issuer Subsidiary to be deemed to be an ETB/897 Asset.

B. Revolving Loans and Delayed Drawdown Loans. All of the terms of any advance required to be made by the Issuer under any revolving or delayed drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Servicer will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such revolving or delayed drawdown Loan. Further, the Issuer shall not purchase any item of Portfolio Collateral that requires the Issuer in any manner whatsoever to acquire new Portfolio Collateral from the borrower or otherwise lend, advance or provide new funds to the borrower unless the addition of such Portfolio Collateral would not cause 10% or more of the aggregate principal amount of the Portfolio Collateral owned by the Issuer to be considered revolving or delayed drawdown loans.

C. Securities Lending Agreements. The Issuer will not purchase any Portfolio Collateral primarily for the purpose of entering into a securities lending agreement with respect thereto.

Section VII. General Restrictions on the Issuer. The Issuer itself shall not:

A. hold itself out, through advertising or otherwise, as originating Loans, lending funds, or making a market in or dealing in Loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, a surety bond issuer, or a company engaged in Loan origination;

C. knowingly take any action causing it to be treated as a bank, insurance company, or company engaged in Loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales

of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to acquire a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the related indenture or acquire a Portfolio Collateral conditioned upon a particular person or entity holding Securities;

G. acquire any asset the holding or acquisition of which the Servicer knows would cause the Issuer to be subject to income tax on a net income basis;

H. hold any security as nominee for another person; or

I. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

Section VIII. Tax Opinion; Amendments.

A. In furtherance and not in limitation of this Annex 1, the Servicer shall comply with all of the provisions set forth in this Annex 1, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of Orrick, Herrington & Sutcliffe LLP or an opinion of other counsel of nationally recognized standing in the United States experienced in such matters (a "Tax Opinion"), that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

B. The provisions set forth in the Annex 1 may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received a Tax Opinion that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

AMENDED AND RESTATED PORTFOLIO MANAGEMENT AGREEMENT

This Amended and Restatetd Portfolio Management Agreement, dated as of November 30, 2005, is entered into by and among JASPER CLO LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as portfolio manager ("Highland" or, in such capacity, the "Portfolio Manager").

WITNESSETH:

WHEREAS, the Issuer and Jasper CLO Corp. (the "Co-Issuer") issued their Class A Floating Rate Senior Secured Extendable Notes (the "Class A Notes"), Class B Floating Rate Senior Secured Extendable Notes (the "Class B Notes"), Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes (the "Class C Notes"), and Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes (the "Class D Notes" and, together with the Class A Notes, the Class B Notes and the Class C Notes, the "Notes"), pursuant to an indenture (the "Indenture"), dated as June 29, 2005, among the Issuer, the Co-Issuer, as co-issuer of the Notes, and JPMorgan Chase Bank, National Association, as trustee (together with any successor trustee permitted under the Indenture, the "Trustee") and the Issuer issued preference shares, par value $0.01 per share, (the "Preference Shares" and together with the Notes, the "Securities"), pursuant to the Issuer's Amended and Restated Memorandum and Articles of Association;

WHEREAS, the Issuer pledged certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer entered into this Portfolio Management Agreement (the "Original Agreement"), dated June 29, 2005, between the Issuer and the Portfolio Manager pursuant to which the Portfolio Manager agreed to perform, on behalf of the Issuer, certain duties with respect to the Collateral securing the Notes in the manner and on the terms set forth herein;

WHEREAS, the Issuer an Highland wish to amend the Original Agreement in the manner and on the terms set forth herein

WHEREAS, the Portfolio Manager has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Portfolio Management Agreement, as amended from time to time.

"Approved Replacement" shall mean an individual (x) who is a partner, director, officer or management level employee of Highland or any affiliate thereof and (y) who shall be proposed by any of James Dondero, Mark Okada, Todd Travers (or a prior Approved Replacement therefor) to replace James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) within 30 days after James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) fails to be a partner, director, officer or management-level employee of Highland or any affiliate thereof.

"Change of Control" shall mean that two or more of James Dondero, Mark Okada and Todd Travers (or any Approved Replacement therefor) shall fail to be a partner, director, officer or management-level employee of Highland.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated June 27, 2005 prepared in connection with the offering of the Securities.

"Portfolio Manager Breaches" shall have the meaning specified in Section 10(a).

"Preliminary Offering Memorandum" shall mean the Preliminary Offering Memorandum for the Issuer dated May 2, 2005 prepared in connection with the offering of the Securities.

2. General Duties of the Portfolio Manager.

The Portfolio Manager shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager shall supervise and direct the investment and reinvestment of the Collateral, and shall perform on behalf of the Issuer those investment–related duties and functions that have been specifically delegated or assigned to the Portfolio Manager in the Indenture (and the Portfolio Manager shall have no obligation to perform any other duties other than as specified herein or under the Indenture) and, to the extent necessary or appropriate to perform such duties, the Portfolio Manager shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto, including without limitation, providing such certifications and Officer's certificates as are required of the Portfolio Manager or the Issuer under the Indenture with respect to the permitted purchases and sales of Collateral Obligations and other securities required or permitted to be purchased or sold under the Indenture. The Portfolio Manager shall, subject to the terms and conditions hereof and of the Indenture, perform its obligations hereunder and under the Indenture (including, without limitation, its obligations in Sections 2.4 and 9.6 thereof) with reasonable care and in good faith, using a degree of skill and attention no less than that which the Portfolio Manager exercises with respect to comparable assets that it manages for others having similar investment objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Collateral for clients having similar investment objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not

inconsistent with the foregoing, the Portfolio Manager shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Portfolio Manager shall comply with all terms and conditions of the Indenture affecting the duties and functions to be performed hereunder. The Portfolio Manager shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Portfolio Manager shall not be bound by any amendment to the Indenture that affects the rights, duties or liabilities of the Portfolio Manager unless the Portfolio Manager shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, duties or liabilities of the Portfolio Manager or (y) affects the amount or priority of any fees payable to the Portfolio Manager to become effective unless the Portfolio Manager has been given prior written notice of such amendment and consented thereto in writing;

the Portfolio Manager shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the investment criteria set forth therein;

the Portfolio Manager shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Portfolio Manager shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Portfolio Manager shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

the Portfolio Manager, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (i) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, or (ii) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, and may, in each case subject to and in accordance with the provisions of the Indenture, direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

waive any default with respect to any Defaulted Collateral Obligation; or

vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(2) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments or take any other action consistent with the terms of the Indenture which is in the best interests of the Noteholders and the Holders of the Preference Shares; and

subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Portfolio Manager shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the Hedge Counterparty), to enter into a replacement Hedge Agreement.

(b) In performing its duties hereunder, the Portfolio Manager shall seek to maximize the value of the Collateral for the benefit of the Noteholders and the Holders of the Preference Shares taking into account the investment criteria and limitations set forth herein and in the Indenture and the Portfolio Manager shall use reasonable efforts to manage the Collateral in such a way that will (i) permit a timely performance of all payment obligations by the Issuer under the Indenture and (ii) subject to such objective, maximize the return to the Holders of the Preference Shares; provided, that the Portfolio Manager shall not be responsible if such objectives are not achieved so long as the Portfolio Manager performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Portfolio Manager with respect to the Notes or the Preference Shares. The Portfolio Manager and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Portfolio Manager hereby agrees to the following:

(i) The Portfolio Manager agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day after the payment in full of all Notes issued under the Indenture or, if longer, the applicable period then provided by law; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Portfolio Manager

(A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Portfolio Manager, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding.

(ii) The Portfolio Manager shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(d) The Portfolio Manager shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Portfolio Manager may employ third parties, including its Affiliates, to render advice (including investment advice) and assistance; provided, however, that the Portfolio Manager shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Portfolio Manager shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

3. Brokerage.

The Portfolio Manager shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Portfolio Manager may take into consideration research and other brokerage services furnished to the Portfolio Manager or its Affiliates by brokers and dealers which are not Affiliates of the Portfolio Manager. Such services may be used by the Portfolio Manager or its Affiliates in connection with its other advisory activities or investment operations. The Portfolio Manager may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts managed by Portfolio Manager or with accounts of the Affiliates of the Portfolio Manager, if in the Portfolio Manager's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Portfolio Manager (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Portfolio Manager may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Portfolio Manager.

Nothing herein shall prevent the Portfolio Manager or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Noteholders, the Holders of the Preference Shares or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Portfolio Manager and partners, directors, officers, employees and agents of the Portfolio Manager or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be deposited into the Collection Account; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof.

It is understood that the Portfolio Manager and any of its Affiliates may engage in any other business and furnish investment management and advisory services to others, including Persons which may have investment policies similar to those followed by the Portfolio Manager with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Portfolio Manager shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Portfolio Manager determines in its reasonable judgment that such purchase or sale is appropriate, the Portfolio Manager may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Portfolio Manager, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Portfolio Manager or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Portfolio Manager or any of its Affiliates have information which the Portfolio Manager deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Portfolio

Manager shall not be obligated to pursue any particular investment strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Portfolio Manager or any of its Affiliates as principal or to sell an obligation to the Portfolio Manager or any of its Affiliates as principal unless (i) the Issuer shall have received from the Portfolio Manager such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Portfolio Manager, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Investment Adviser's Act of 1940.

(b) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Portfolio Manager serves as investment advisor, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Portfolio Manager serves as investment advisor unless such acquisition or sale is (i) in the judgment of the Portfolio Manager, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Investment Adviser's Act of 1940.

(c) In addition, the Portfolio Manager shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Portfolio Manager shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Preference Share Paying Agent, the Noteholders, the Holders of the Preference Shares and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Portfolio Manager make a public announcement concerning the issuance of the Notes or the Preference Shares, the Portfolio Manager's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Portfolio Manager shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of the Notes, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Portfolio Manager, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Portfolio Manager on a non-confidential basis, provided, that the Portfolio Manager does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator, the Preference Share Paying Agent, the Noteholders and the Holders of the Preference Shares shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Portfolio Manager and the Issuer (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

7. Obligations of Portfolio Manager.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Portfolio Manager shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Portfolio Manager to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's or the Co-Issuer's respective governing instruments, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) engage in any activity which would subject the Issuer's income to taxation on a net basis in any jurisdiction. The Portfolio Manager covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Portfolio Manager shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Portfolio Manager, for services rendered and performance of its obligations under this Agreement, the Management Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Management Fee shall not be amended without the consent of the Portfolio Manager. If on any Payment Date there are insufficient funds to pay such fee (and/or any other amounts due and payable to the Portfolio Manager) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the definition of "Subordinated Management Fee" in the Indenture.

(b) The Portfolio Manager shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement; provided, however, that any extraordinary expenses actually incurred by the Collateral Manager in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee, the Preference Shares Paying Agent and the accountants appointed by the Issuer, the reasonable expenses incurred by the Portfolio Manager to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation, any reasonable expenses incurred by the Portfolio Manager in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage

commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Portfolio Manager customarily allocates among all of the funds or portfolios that it manages) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the priority of payments and the other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Portfolio Manager shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Portfolio Manager agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or Holders of Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Portfolio Manager Responsibility; Indemnification.

(a) The Portfolio Manager assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of conduct described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Portfolio Manager. The Portfolio Manager, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Noteholders, the Preference Share Paying Agent, the Holders of the Preference Shares or any other person for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Noteholders, the Preference Share Paying Agent, the Holders of the Preference Shares or any other person that arise out of or in connection with the performance by the Portfolio Manager of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Portfolio Manager hereunder and under the terms of the Indenture applicable to it or (ii) with respect to any information included in the Offering Memorandum in the sections entitled "The Portfolio Manager" and "Risk Factors--Relating to Certain Conflicts of Interest--The Issuer Will Be Subject to Various Conflicts of Interests Involving the Portfolio Manager" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Portfolio Manager Breaches").

For the avoidance of doubt, (x) the Portfolio Manager shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement and the Indenture and (y) the Portfolio Manager shall be deemed to have satisfied Section 7(f) with respect to U.S. federal or state income taxes if (i) the Portfolio Manager acts consistently with the Collateral Acquisition Agreement with respect to Collateral Obligations and Eligible Investments and (ii) the Portfolio Manager does not have actual knowledge that its actions with respect to a Collateral Obligation or an Eligible Investment would violate Section 7(f).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Portfolio Manager, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Portfolio Manager Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Portfolio Manager, the Portfolio Manager shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the

entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) Notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer, the Holders of Notes or Preference Shares may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Portfolio Manager are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Portfolio Manager's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Noteholders and the Preference Share Paying Agent; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

Subject to Section 12(f) below, the Portfolio Manager may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Portfolio Manager resigns, the Issuer agrees to appoint a successor Portfolio Manager to assume such duties and obligations.

Subject to Section 12(f) below, the Portfolio Manager may be removed without cause upon 90 days' prior written notice by the Issuer, at the direction of the Holders of a Super Majority of the Aggregate Outstanding Amount of Preference Shares (excluding Preference Shares held by the Portfolio Manager, its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority at the time of such vote); provided, however, that the Portfolio Manager shall have the right to avoid any such removal if, on or prior to the proposed removal date the following conditions are satisfied: (i) the Portfolio Manager provides written notice, not less than 20 Business Days prior to the proposed removal date, to the Holders of the Composite Securities, the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares), the Issuer and the Trustee that the Portfolio Manager intends to purchase not less than all of the Preference Shares voting for such removal from the Holders thereof (the "Directing Preference Shares" and all of the securities relating to the Preference Share Components which constitute a part of the Directing Preferences Shares), (ii) in the notice provided to the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) in the preceding clause (i), the Portfolio Manager includes a statement to the effect that each Holder of Preference Share (including each Holder of a Composite Security in respect of Preference Share Components) who did not vote for removal may provide written notice to the Portfolio Manager not later than 5 Business Days prior to the proposed removal date that the Preference Shares or Preferences Share Components, as applicable, held by such Holder shall be deemed to be included in the Directing Preference Shares as provided in the preceding clause (i), and (iii) the Portfolio Manager effects the purchase of not less than all of the Directing Preference Shares and all of the Composite Securities relating to the Preference Share Components which form a part of the Directing Preference Shares at the Buy-out Amount. If all of the conditions set forth in the preceding sentence are satisfied on or prior to the proposed removal date, the Portfolio Manager shall continue as the Portfolio Manager under this Agreement. For purposes of this Section 12(c), "Buy-out Amount" means, with respect to the (i) Directing Preference Shares, an amount, when taken together with all payments and distributions made in respect of such Directing Preference Shares since the Closing Date, would cause the Directing Preference Shares to have received (as of the date of the Portfolio Manager's purchase thereof) a Preference Share Internal Rate of Return of 15% (assuming such purchase date was a "Payment Date" under the Indenture), (ii) the Class 1 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Preference Shares underlying the Class 1 Composite Security Preference Share Component and (y) the Aggregate Outstanding Amount of the Class D-2 Notes underlying the Note Component plus all accrued and unpaid interest (including Deferred Interest, if any) to the date of purchase and (iii) the Class 2 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Preference Shares underlying the Class 2 Composite Security Preference Share Component and (y) the Aggregate Outstanding Amount of the Class C Notes underlying the Note Component plus all accrued and unpaid interest (including Deferred Interest, if any) to the date of purchase.

(b) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Portfolio Manager thereof.

(c) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(d) No removal, termination or resignation of the Portfolio Manager shall be effective unless (i) at the written direction of a Majority of the Preference Shares, the Issuer appoints a successor Portfolio Manager that has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to this Agreement and the Indenture and (ii) the successor Portfolio Manager is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single Class (excluding any Notes held by the retiring Portfolio Manager or any of its Affiliates)); provided, that if a Majority of the Preference Shares has nominated two or more successor Portfolio Managers that have been objected to pursuant to clause (ii) of the preceding sentence or has otherwise failed to appoint a successor Portfolio Manager that is not objected to pursuant to clause (ii) of the preceding sentence within 60 days of the date of notice of such removal, termination or resignation of the Portfolio Manager, then any Holder of the Controlling Class of Notes or the Trustee may petition a court of competent authority to appoint a successor Portfolio Manager. In addition, any successor Portfolio Manager must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Portfolio Manager hereunder, (ii) is legally qualified and has the capacity to act as Portfolio Manager hereunder, as successor to the Portfolio Manager under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Portfolio Manager hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Portfolio Manager under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Portfolio Manager is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Portfolio Manager shall not cause its then-current rating of any Class of Notes or Composite Securities to be reduced or withdrawn. No compensation payable to a successor from payments on the Collateral shall be greater than that paid to the Portfolio Manager without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Notes and a Majority of the Preference Shares. The Issuer, the Trustee and the successor Portfolio Manager shall take such action (or cause the retiring Portfolio Manager to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Portfolio Manager, as shall be necessary to effectuate any such succession.

(e) In the event of removal of the Portfolio Manager pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Portfolio Manager as provided under this Agreement terminate all the rights and obligations of the Portfolio Manager under this Agreement (except those that survive termination pursuant to Section 12(e) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Portfolio Manager under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Portfolio Manager upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Portfolio Manager hereunder, shall not be delegated by the Portfolio Manager, in whole or in part, except to any entity that is both (i) controlled by two or more of James Dondero, Mark Okada and Todd Travers and (ii) one in which two or more of James Dondero, Mark Okada and Todd Travers (or any Approved Replacement thereof) is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes and a Majority of the Preference Shares

(excluding Preference Shares held by the Portfolio Manager or any of its Affiliates), and, notwithstanding any such consent, no delegation of obligations or duties by the Portfolio Manager (including, without limitation, to an entity described above) shall relieve the Portfolio Manager from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Portfolio Manager shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Super Majority of the Controlling Class of Notes and the Holders of a Majority of the Preference Shares (excluding Preference Shares held by the Portfolio Manager or any of its Affiliates) and (ii) the Rating Condition is satisfied with respect to any such assignment. Any assignment consented to by the Issuer and such Noteholders and Holders of Preference Shares shall bind the assignee hereunder in the same manner as the Portfolio Manager is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Portfolio Manager. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, such Noteholders and such Holders of the Preference Shares, the Portfolio Manager shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Portfolio Manager and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Portfolio Manager such documents as the Portfolio Manager shall consider reasonably necessary to effect fully such assignment. The Portfolio Manager hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(f) above, this Agreement shall be terminated, and the Portfolio Manager shall be removed, by the Issuer, if directed by the Trustee or a Super Majority of the Controlling Class of Notes or by a Majority of the Holders of the Preference Shares (excluding any Preference Shares held by the Portfolio Manager or its Affiliates), in each case for cause upon 10 days' prior written notice to the Portfolio Manager and upon written notice to the Noteholders and the Holders of the Preference Shares as set forth below. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Portfolio Manager willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Portfolio Manager breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Portfolio Manager shall prove to have been incorrect in any material respect when made or given, and the Portfolio Manager fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Portfolio Manager is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Portfolio Manager in accordance

with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Portfolio Manager (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Portfolio Manager or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Portfolio Manager and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Portfolio Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Portfolio Manager of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Portfolio Manager related to its activities in any securities, financial advisory or other investment business that constitutes fraud, (y) the Portfolio Manager being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any securities, financial advisory or other investment business or (z) the Portfolio Manager being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder; or

(f) a Change of Control shall occur with respect to the Portfolio Manager.

If any of the events specified in this Section 14 shall occur, the Portfolio Manager shall give prompt written notice thereof to the Issuer, the Trustee, the Preference Share Paying Agent and the Holders of all outstanding Notes and Preference Shares upon the Portfolio Manager's becoming aware of the occurrence of such event. A Super Majority of Controlling Class of Notes and a Majority of the Holders of the Preference Shares (excluding any Preference Shares held by the Portfolio Manager or its Affiliates) may, acting together, waive any event described above as a basis for termination of this Agreement and removal of the Portfolio Manager under this Section 14.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Portfolio Manager shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Portfolio Manager shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Portfolio Manager; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Portfolio Manager appointed pursuant to Section 12(d) hereof.

Notwithstanding such termination, the Portfolio Manager shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Portfolio Manager in Section 16(b) hereof or from any failure of the Portfolio Manager to comply with the provisions of this Section 15.

(b) The Portfolio Manager agrees that, notwithstanding any termination, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Portfolio Manager or any Affiliate of the Portfolio Manager) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Portfolio Manager as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture, the Notes or the Preference Shares would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture and the Notes and all obligations required hereunder, under the Indenture and the Notes and has taken all necessary action to authorize this Agreement, the Indenture, the Notes and the Preference Shares on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture and the Notes and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, stockholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the issuance of the Notes and the Preference Shares, is required by the Issuer in connection with this Agreement, the Indenture, the Notes or the Preference Shares or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture or the Notes or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency

or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Portfolio Manager.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Portfolio Manager as promptly as practicable after its adoption or execution.

(b) The Portfolio Manager hereby represents and warrants to the Issuer as follows:

(i) The Portfolio Manager is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or on the ability of the Portfolio Manager to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager.

(ii) The Portfolio Manager has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Portfolio Manager, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required

hereunder and under the terms of the Indenture applicable to the Portfolio Manager. No consent of any other person, including, without limitation, creditors of the Portfolio Manager, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Portfolio Manager in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Portfolio Manager. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture shall be, executed and delivered by a duly authorized partner of the Portfolio Manager, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture when executed and delivered by the Portfolio Manager hereunder or under the terms of the Indenture shall constitute, the valid and legally binding obligations of the Portfolio Manager enforceable against the Portfolio Manager in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Portfolio Manager and the documents and instruments required hereunder or under the terms of the Indenture shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Portfolio Manager, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Portfolio Manager, or the Governing Instruments of, or any securities issued by the Portfolio Manager or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Portfolio Manager is a party or by which the Portfolio Manager or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or its ability to perform its obligations under this Agreement and the provisions of the Indenture applicable to the Portfolio Manager, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Portfolio Manager, threatened that, if determined adversely to the Portfolio Manager, would have a material adverse effect upon the performance by the Portfolio Manager of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager hereunder.

(v) The Portfolio Manager is a registered investment advisor under the United States Investment Advisers Act of 1940, as amended.

(vi) The Portfolio Manager is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Portfolio Manager or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Portfolio Manager, or the performance by the Portfolio Manager of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Jasper CLO Ltd.
/o Ogier Fiduciary Services (Cayman) Limited
P.O. Box 1234
Queensgate House, South Church Street,
George Town, Grand Cayman, Cayman Islands
Telecopy: (345) 945-6265
Attention: The Directors

(b) If to the Portfolio Manager:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

JPMorgan Chase Bank
600 Travis Street, 50th Floor,
Houston, Texas 77002
Telecopy: (713) 216-2101
Attention: Worldwide Securities Services —Jasper CLO Ltd.

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Share Paying Agent at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Portfolio Manager hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Portfolio Manager's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(f)(iv) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(ii), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Portfolio Manager agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Portfolio Manager's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares. In addition, with respect to any Defaulted Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's

rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares. In the event any Offer is made with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Portfolio Manager may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Without prejudice to Section 14(f) hereof, any corporation, partnership or limited liability company into which the Portfolio Manager may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Portfolio Manager shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the collateral management business of the Portfolio Manager, shall be the successor to the Portfolio Manager without any further action by the Portfolio Manager, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Portfolio Manager shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

Consent to Posting of Documents on Repository.

The Portfolio Manager hereby consents to (i) the posting of the final Offering Memorandum, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Portfolio Manager

BY: STRAND ADVISORS, INC., as General Partner

By:_____
Name:
Title:

JASPER CLO LTD., as Issuer

By:_____
Name: VIJAYABALAN MURUGESU
Title: DIRECTOR

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 7

John T. Wilson IV
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 28 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

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007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
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007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXECUTION COPY

PORTFOLIO MANAGEMENT AGREEMENT

This Portfolio Management Agreement, dated as of March 15, 2005 is entered into by and among SOUTHFORK CLO LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as portfolio manager ("Highland" or, in such capacity, the "Portfolio Manager").

WITNESSETH:

WHEREAS, the Issuer and Southfork CLO Corp. (the "Co-Issuer") intend to issue their Class A-1a Floating Rate Senior Secured Extendable Notes due 2017 (the "Class A-1a Notes"), Class A-1b Fixed Rate Senior Secured Extendable Notes due 2017 (the "Class A-1b Notes"), Class A-1g Floating Rate Senior Secured Extendable Notes due 2017 (the "Class A-1g Notes"), Class A-2 Floating Rate Senior Secured Extendable Notes due 2017 (the "Class A-2 Notes"), Class A-3a Floating Rate Senior Secured Extendable Notes due 2017 (the "Class A-3a Notes"), Class A-3b Fixed Rate Senior Secured Extendable Notes due 2017 (the "Class A-3b Notes" and, together with the Class A-1a Notes, Class A-1b Notes, Class A-1g Notes, Class A-2 Notes and Class A-3a Notes, the "Class A Notes"), Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017 (the "Class B Notes") and Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017 (the "Class C Notes" and, together with the Class A Notes and the Class B Notes, the "Notes"), the Issuer intends to issue its Class 1 Extendable Composite Securities due 2017 (the "Composite Securities") consisting of (i) a component entitling its holders to rights in respect of 2,000 Preference Shares, as defined below, (the "Preference Share Component") and (ii) a component entitling its holders to rights to receive proceeds from a trust account initially holding a United States Treasury strip security maturing on November 15, 2016 with a principal amount at maturity of U.S.$6,000,000 (the "Class 1 Components" and, together with the Preference Share Component, the "Components"), pursuant to an indenture (the "Indenture"), dated as of the date hereof, among the Issuer, the Co-Issuer, as co-issuer of the Notes, Assured Guaranty Corp., as insurer, and JPMorgan Chase Bank, National Association, as trustee (together with any successor trustee permitted under the Indenture, the "Trustee") and the Issuer intends to issue 82,200 preference shares, par value $0.01 per share (the "Preference Shares" and together with the Notes and the Composite Securities, the "Securities"), pursuant to the Issuer's Amended and Restated Memorandum and Articles of Association;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes and the Class 1 Components;

WHEREAS, the Issuer intends to pledge all of its right title and interest in the Class 1 Component Account, as defined in the Indenture, (the "Class 1 Collateral") to the Trustee as security for the Class 1 Components;

WHEREAS, the Issuer wishes to enter into this Portfolio Management Agreement, pursuant to which the Portfolio Manager agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral securing the Notes, the Class 1 Components and the Class 1 Collateral securing the Class 1 Components in the manner and on the terms set forth herein; and

WHEREAS, the Portfolio Manager has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Portfolio Management Agreement, as amended from time to time.

"Approved Replacement" shall mean an individual who shall (x) be proposed by Highland to replace James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) within 30 days after James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) fails to be a partner, director, officer or management-level employee of Highland or, following any objection pursuant to the following clause (y) to the first proposed replacement, within 30 days after such objection and (y) not have been objected to by either (A) the Controlling Class of Notes or (B) a Majority of the Preference Shares (excluding any Preference Shares held by Highland or any of its affiliates), within 30 days after written notice of such Approved Replacement has been given by the Portfolio Manager to the Controlling Class of Notes and the Holders of Preference Shares).

"Change of Control" shall mean that two or more of James Dondero, Mark Okada and Todd Travers (or any Approved Replacement therefor) shall fail to be a partner, director, officer or management-level employee of Highland.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"Offering Circular" shall mean the Offering Circular of the Issuer dated March 9, 2005 prepared in connection with the offering of the Securities.

"Portfolio Manager Breaches" shall have the meaning specified in Section 10(a).

2. General Duties of the Portfolio Manager.

(a) The Portfolio Manager shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager shall supervise and direct the investment and reinvestment of the Collateral, and shall perform on behalf of the Issuer those investment–related duties and functions that have been specifically delegated or assigned to the Portfolio Manager in the Indenture (and the Portfolio Manager shall have no obligation to perform any other duties other than as specified herein or under the Indenture) and, to the extent necessary or appropriate to perform such duties, the Portfolio Manager shall have the power to execute and deliver all necessary and

appropriate documents and instruments on behalf of the Issuer with respect thereto, including without limitation, providing such certifications and Officer's certificates as are required of the Portfolio Manager or the Issuer under the Indenture with respect to the permitted purchases and sales of Collateral Obligations and other securities required or permitted to be purchased or sold under the Indenture. The Portfolio Manager shall, subject to the terms and conditions hereof and of the Indenture, perform its obligations hereunder and under the Indenture (including, without limitation, its obligations in Sections 2.4 and 9.6 thereof) with reasonable care and in good faith, using a degree of skill and attention no less than that which the Portfolio Manager exercises with respect to comparable assets that it manages for others having similar investment objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Collateral for clients having similar investment objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not inconsistent with the foregoing, the Portfolio Manager shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Portfolio Manager shall comply with all terms and conditions of the Indenture affecting the duties and functions to be performed hereunder. The Portfolio Manager shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Portfolio Manager shall not be bound by any amendment to the Indenture that affects the rights, duties or liabilities of the Portfolio Manager unless the Portfolio Manager shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, duties or liabilities of the Portfolio Manager or (y) affects the amount or priority of any fees payable to the Portfolio Manager to become effective unless the Portfolio Manager has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Portfolio Manager shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the investment criteria set forth therein;

(iii) the Portfolio Manager shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Portfolio Manager shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Portfolio Manager shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Portfolio Manager, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (i) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, or (ii) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or

Eligible Investments, and may, in each case subject to and in accordance with the provisions of the Indenture, direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligation; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(8) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments or take any other action consistent with the terms of the Indenture which is in the best interests of the Noteholders and the Holders of the Preference Shares; and

(v) subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Portfolio Manager shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the Hedge Counterparty), to enter into a replacement Hedge Agreement.

(b) In performing its duties hereunder, the Portfolio Manager shall seek to maximize the value of the Collateral for the benefit of the Noteholders and the Holders of the Preference Shares taking into account the investment criteria and limitations set forth herein and in the Indenture and the Portfolio Manager shall use reasonable efforts to manage the Collateral in such a way that will (i) permit a timely performance of all payment obligations by the Issuer under the Indenture and (ii) subject to such objective, maximize the return to the Holders of the Preference Shares; provided, that the Portfolio Manager shall not be responsible if such objectives are not achieved so long as the Portfolio Manager performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Portfolio Manager with respect to the Notes or the Preference Shares. The Portfolio Manager and the Issuer shall take such other action, and furnish such

certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement. The Portfolio Manager shall notify the Trustee and the Issuer in writing of an Event of Default under the Indenture of which the Portfolio Manager has actual knowledge.

(c) The Portfolio Manager hereby agrees to the following:

(i) The Portfolio Manager agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day after the payment in full of all Notes issued under the Indenture and all amounts due under the Insurance Agreement or, if longer, the applicable period then provided by law; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Portfolio Manager (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Portfolio Manager, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding.

(ii) The Portfolio Manager shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(d) The Portfolio Manager shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Portfolio Manager may employ third parties, including its Affiliates, to render advice (including investment advice) and assistance; provided, however, that the Portfolio Manager shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Portfolio Manager shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) The Portfolio Manager or its Affiliates will maintain, in the aggregate, ownership of Preference Shares having an aggregate Face Amount of at least $10,000,000 until the earlier of such time as (i) none of the Notes are Outstanding or (ii) Highland is removed or resigns as Portfolio Manager and such removal or resignation has become effective in accordance with this Agreement.

3. Brokerage.

The Portfolio Manager shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Portfolio Manager may take into consideration research and other brokerage services furnished to the Portfolio Manager or its Affiliates by brokers and dealers which are not Affiliates of the Portfolio Manager. Such services may be used by the Portfolio Manager or its Affiliates in connection with its other advisory activities or investment operations. The Portfolio Manager may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts managed by Portfolio Manager or with accounts of the Affiliates of the Portfolio Manager, if in the Portfolio Manager's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Portfolio Manager (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Portfolio Manager may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Portfolio Manager.

Nothing herein shall prevent the Portfolio Manager or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Noteholders, the Holders of the Preference Shares or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Portfolio Manager and partners, directors, officers, employees and agents of the Portfolio Manager or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be deposited into the Collection Account; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof.

It is understood that the Portfolio Manager and any of its Affiliates may engage in any other business and furnish investment management and advisory services to others, including Persons which may have investment policies similar to those followed by the Portfolio Manager with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Portfolio Manager shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Portfolio Manager determines in its reasonable judgment that such purchase or sale is appropriate, the Portfolio Manager may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Portfolio Manager, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Portfolio Manager or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Portfolio Manager or any of its Affiliates have information which the Portfolio Manager deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Portfolio Manager shall not be obligated to pursue any particular investment strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Portfolio Manager or any of its Affiliates as principal or to sell an obligation to the Portfolio Manager or any of its Affiliates as principal unless (i) the Issuer shall have received from the Portfolio Manager such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Portfolio Manager, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Adviser's Act.

(b) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Portfolio Manager serves as investment advisor, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Portfolio Manager serves as investment advisor unless such acquisition or sale is (i) in the judgment of the Portfolio Manager, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Adviser's Act.

(c) In addition, the Portfolio Manager shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Portfolio Manager shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Preference Share Paying Agent, the Controlling Class of Notes, the Noteholders, the Holders of the Preference Shares and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Portfolio Manager make a public announcement concerning the issuance of the Notes or the Preference Shares, the Portfolio Manager's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Portfolio Manager shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of the Notes, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Portfolio Manager, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Portfolio Manager on a non-confidential basis, provided, that the Portfolio Manager does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator, the Preference Share Paying Agent, the Controlling Class of Notes, the Noteholders and the Holders of the Preference Shares shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Portfolio Manager, the Co-Issuers, the Trustee and the Holders of the Notes and the Preference Shares (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Portfolio Manager.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Portfolio Manager shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Portfolio Manager to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Amended and Restated Memorandum and Articles of Association or the Co-Issuer's Articles of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) engage in activities not permitted by Schedule 7 of the Indenture that would subject the Issuer or the Co-Issuer to U.S. federal or state income or franchise taxation or cause the Issuer or the Co-Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes.

The Portfolio Manager covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Portfolio Manager shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Portfolio Manager, for services rendered and performance of its obligations under this Agreement, the Management Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Management Fee shall not be amended without the consent of the Portfolio Manager. If on any Payment Date there are insufficient funds to pay such fee (and/or any other amounts due and payable to the Portfolio Manager) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the definition of "Subordinated Management Fee" in the Indenture.

(b) The Portfolio Manager shall pay all costs and expenses incurred by it in the course of performing its obligations under this Agreement, including the expenses and fees of any third party employed by the Portfolio Manager pursuant to this Agreement or the Indenture; provided, however, that the Issuer, and not the Portfolio Manager, shall be responsible for: (i) any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee, the Preference Shares Paying Agent and the accountants appointed by the Issuer, (ii) the reasonable expenses incurred by the Portfolio Manager to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation, (iii) any reasonable expenses incurred by the Portfolio Manager in obtaining advice from outside counsel with respect to its obligations under this Agreement (but excluding any such counsel fees and expenses not otherwise ordered by any court incurred in connection with any dispute between the Portfolio Manager and any of the Trustee, or a Holder of Notes or Preference Shares), (vi) brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and (v) the portion allocated to the Issuer of any other fees and expenses that the Portfolio Manager customarily allocates among all of the funds or portfolios that it manages.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Portfolio Manager shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Portfolio Manager agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or Holders of Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Portfolio Manager Responsibility; Indemnification.

(a) The Portfolio Manager assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of

conduct described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Portfolio Manager. The Portfolio Manager, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Noteholders, the Preference Share Paying Agent, the Holders of the Preference Shares or any other person for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Noteholders, the Preference Share Paying Agent, the Holders of the Preference Shares or any other person that arise out of or in connection with the performance by the Portfolio Manager of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Portfolio Manager hereunder and under the terms of the Indenture applicable to it or (ii) with respect to any information included in the Offering Circular in the sections entitled "The Portfolio Manager" and "Certain Conflicts of Interest—Conflicts of Interest Involving the Portfolio Manager" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Portfolio Manager Breaches").

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Portfolio Manager, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Circular, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Portfolio Manager Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Portfolio Manager, the Portfolio Manager shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying

Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this

Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer, the Holders of Notes or Preference Shares may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Portfolio Manager are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Portfolio Manager's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Noteholders and the Preference Share Paying Agent; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d), (e) or (f) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(g) below, the Portfolio Manager may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Portfolio Manager resigns, the Issuer agrees to appoint a successor Portfolio Manager to assume such duties and obligations.

(c) Subject to Section 12(g) below, the Portfolio Manager may be removed without cause upon 90 days' prior written notice by the Issuer, at the direction of the Holders of at least 63% of the Aggregate Outstanding Amount of Preference Shares (excluding Preference Shares held by the Portfolio Manager, its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority at the time of such vote); provided, however, that the Portfolio Manager shall have the right to avoid any such removal if, on or prior to the proposed removal date the following conditions are satisfied: (i) the Portfolio Manager provides written notice, not less than 20 Business Days prior to the proposed removal date, to the Holders of the Composite Securities, the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares), the Issuer and the Trustee that the Portfolio Manager intends to purchase not less than all of the Preference Shares voting for such removal from the Holders thereof (the "Directing Preference Shares"), (ii) in the notice provided to the Holders of the Composite Securities and the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) in the preceding clause (i), the Portfolio Manager includes a statement to the effect that each Holder of Preference Share (including each Holder of a Composite Security in respect of the Preference Share Component) who did not vote for removal may provide written notice to the Portfolio Manager not later than 5 Business Days prior to the proposed removal date that the Preference Shares or Preference Share Component, as applicable, held by such Holder shall be deemed to be included in the Directing Preference Shares as provided in the preceding clause (i), and (iii) the Portfolio Manager effects the purchase of not less than all of the Directing Preference Shares and all of the Composite Securities relating to the Preference Share Component which constitute a part of the Directing Preference Shares at the Buy-out Amount. If all of the conditions set forth in the preceding sentence are satisfied on or prior to the proposed removal date, the Portfolio Manager shall continue as the Portfolio Manager under this Agreement. For purposes of this Section 12(c), "Buy-out Amount" means, with respect to (i) the Directing Preference Shares, an amount, when taken together with all payments and distributions made in respect of such Directing Preference Shares since the Closing Date, would cause the Directing Preference Shares to have received (as of the date of the Portfolio Manager's purchase thereof) a Preference Share

Internal Rate of Return of 12% (assuming such purchase date was a "Payment Date" under the Indenture) and (ii) the Class 1 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Preference Shares underlying the Class 1 Composite Security Preference Share Component, (y) the Treasury Strip Market Value and (z) the Composite Security Make-Up Amount.

(d) Subject to Section 12(g) below, if (i) an Event of Default described in Section 5.1(d) of the Indenture occurs, and (ii) the Policy has not been terminated and delivered for cancellation in accordance with the terms of the Indenture, this Agreement shall be terminated, and the Portfolio Manager shall be removed, by the Issuer, if directed by a Majority of the Controlling Class of Notes upon 10 days' prior written notice to the Portfolio Manager and upon written notice to the Securityholders as set forth below; provided, however, that the Portfolio Manager shall have the right to avoid any such removal if, on or prior to the proposed removal date, the Portfolio Manager provides written notice, not less than 2 Business Days prior to the proposed removal date, to the Controlling Class, the Issuer and the Trustee that the Removal Buy-Out Purchaser intends to (i) purchase not less than all of the Class A-1g Notes at the Removal Buy-Out Purchase Price pursuant to the Indenture and as described in Section 9.7(a) therein and (ii) terminate the Policy pursuant to the Indenture upon the effectiveness of such purchase, and the Removal Buy-Out Purchaser purchases not less than all of the Class A-1g Notes prior to the proposed removal date. If the conditions set forth in the preceding sentence are satisfied on or prior to the proposed removal date, the Portfolio Manager shall continue as the Portfolio Manager under this Agreement. "Removal Buy-Out Purchase Price" means, the purchase price payable by the Removal Buy-Out Purchaser for the Class A-1g Notes purchased in an Removal Buy-Out, if any, in an amount equal to the Aggregate Outstanding Amount of such Class A-1g Notes, plus accrued and unpaid interest to the date of purchase payable to the Holder of such Class A-1g Notes (giving effect to any amounts paid to the Holder on such date).

(e) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Portfolio Manager thereof.

(f) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(g) No removal, termination or resignation of the Portfolio Manager shall be effective unless (i) at the written direction of a Majority of the Preference Shares, the Issuer appoints a successor Portfolio Manager that has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to this Agreement and the Indenture and (ii) the successor Portfolio Manager is not objected to within 30 days after notice of such succession by either (x) the Controlling Class of Notes or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single Class (excluding any Notes held by the retiring Portfolio Manager or any of its Affiliates)); provided, that if a Majority of the Preference Shares has nominated two or more successor Portfolio Managers that have been objected to pursuant to clause (ii) of the preceding sentence or has otherwise failed to appoint a successor Portfolio Manager that is not objected to pursuant to clause (ii) of the preceding sentence within 60 days of the date of notice of such removal, termination or resignation of the Portfolio Manager, then the Controlling Class of Notes may petition a court of competent authority to appoint a successor Portfolio Manager. In addition, any successor Portfolio Manager must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Portfolio Manager hereunder, (ii) is legally qualified and has the capacity to act as Portfolio Manager hereunder, as successor to the Portfolio Manager under this Agreement in the assumption of all of the responsibilities,

duties and obligations of the Portfolio Manager hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Portfolio Manager under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Portfolio Manager is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Portfolio Manager shall not cause its then-current rating of any Class of Notes or Composite Securities to be reduced or withdrawn (without consideration of the Policy). No compensation payable to a successor from payments on the Collateral shall be greater than that paid to the Portfolio Manager without the prior written consent of the Controlling Class of Notes, a Majority of the Notes, a Majority of the Composite Securities and a Majority of the Preference Shares (voting collectively). The Issuer, the Trustee and the successor Portfolio Manager shall take such action (or cause the retiring Portfolio Manager to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Portfolio Manager, as shall be necessary to effectuate any such succession.

(h) In the event of removal of the Portfolio Manager pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Portfolio Manager as provided under this Agreement terminate all the rights and obligations of the Portfolio Manager under this Agreement (except those that survive termination pursuant to Section 12(f) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Portfolio Manager under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Portfolio Manager upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Portfolio Manager hereunder, shall not be delegated by the Portfolio Manager, in whole or in part, except to any entity that is both (i) controlled by two or more of James Dondero, Mark Okada and Todd Travers and (ii) one in which two or more of James Dondero, Mark Okada and Todd Travers (or any Approved Replacement thereof) is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, the Controlling Class of Notes, a Majority of the Composite Securities and a Majority of the Preference Shares (excluding Preference Shares held by the Portfolio Manager or any of its Affiliates), and, notwithstanding any such consent, no delegation of obligations or duties by the Portfolio Manager (including, without limitation, to an entity described above) shall relieve the Portfolio Manager from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Portfolio Manager shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, the Controlling Class of Notes and the Holders of a Majority of the Preference Shares (excluding Preference Shares held by the Portfolio Manager or any of its Affiliates) and (ii) the Rating Condition is satisfied with respect to any such assignment. Any assignment consented to by the Issuer and such Noteholders and Holders of Preference Shares shall bind the assignee hereunder in the same manner as the Portfolio Manager is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Portfolio Manager. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, such Noteholders and such Holders of the Preference Shares, the Portfolio Manager shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under

Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Portfolio Manager and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Portfolio Manager such documents as the Portfolio Manager shall consider reasonably necessary to effect fully such assignment. The Portfolio Manager hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(g) above, this Agreement shall be terminated, and the Portfolio Manager shall be removed, by the Issuer, if directed by the Trustee or the Controlling Class of Notes or by a Majority of the Holders of the Preference Shares (excluding any Preference Shares held by the Portfolio Manager or its Affiliates), in each case for cause upon 10 days' prior written notice to the Portfolio Manager and upon written notice to the Noteholders and the Holders of the Preference Shares as set forth below. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Portfolio Manager willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Portfolio Manager breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Portfolio Manager shall prove to have been incorrect in any material respect when made or given, and the Portfolio Manager fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Portfolio Manager is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Portfolio Manager in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Portfolio Manager (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Portfolio Manager or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Portfolio Manager and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Portfolio Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers

all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Portfolio Manager of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period;

(e) (x) the occurrence of an act by the Portfolio Manager related to its activities in any securities, financial advisory or other investment business that constitutes fraud, (y) the Portfolio Manager being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any securities, financial advisory or other investment business or (z) the Portfolio Manager being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder; or

(f) a Change of Control shall occur with respect to the Portfolio Manager.

If any of the events specified in this Section 14 shall occur, the Portfolio Manager shall give prompt written notice thereof to the Issuer, the Trustee, the Preference Share Paying Agent and the Holders of all outstanding Notes and Preference Shares upon the Portfolio Manager's becoming aware of the occurrence of such event. The Controlling Class of Notes and a Majority of the Holders of the Preference Shares (excluding any Preference Shares held by the Portfolio Manager or its Affiliates) may, acting together, waive any event described above as a basis for termination of this Agreement and removal of the Portfolio Manager under this Section 14.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Portfolio Manager shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Portfolio Manager shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Portfolio Manager; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Portfolio Manager appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Portfolio Manager shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Portfolio Manager in Section 16(b) hereof or from any failure of the Portfolio Manager to comply with the provisions of this Section 15.

(b) The Portfolio Manager agrees that, notwithstanding any termination, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Portfolio

Manager or any Affiliate of the Portfolio Manager) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Portfolio Manager as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture, the Notes or the Preference Shares would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture, the Notes and the Preference Shares and all obligations required hereunder, under the Indenture, the Notes and the Preference Shares and has taken all necessary action to authorize this Agreement, the Indenture, the Notes and the Preference Shares on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture, the Notes and the Preference Shares and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, stockholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the issuance of the Notes and the Preference Shares, is required by the Issuer in connection with this Agreement, the Indenture, the Notes or the Preference Shares or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture, the Notes or the Preference Shares or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions

of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Portfolio Manager.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Portfolio Manager as promptly as practicable after its adoption or execution.

(b) The Portfolio Manager hereby represents and warrants to the Issuer as follows:

(i) The Portfolio Manager is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or on the ability of the Portfolio Manager to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager.

(ii) The Portfolio Manager has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Portfolio Manager, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the Indenture applicable to the Portfolio Manager. No consent of any other person, including, without limitation, creditors of the Portfolio Manager, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Portfolio Manager in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Portfolio Manager. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture shall be, executed and delivered by a duly authorized partner of the Portfolio Manager, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture when executed and delivered by the Portfolio Manager hereunder or under the terms of the Indenture shall constitute, the valid and legally binding obligations of the Portfolio

Manager enforceable against the Portfolio Manager in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Portfolio Manager and the documents and instruments required hereunder or under the terms of the Indenture shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Portfolio Manager, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Portfolio Manager, or the Governing Instruments of, or any securities issued by the Portfolio Manager or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Portfolio Manager is a party or by which the Portfolio Manager or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or its ability to perform its obligations under this Agreement and the provisions of the Indenture applicable to the Portfolio Manager, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Portfolio Manager, threatened that, if determined adversely to the Portfolio Manager, would have a material adverse effect upon the performance by the Portfolio Manager of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager hereunder.

(v) The Portfolio Manager is a registered investment advisor under the United States Investment Advisers Act of 1940, as amended.

(vi) The Portfolio Manager is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Portfolio Manager or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Portfolio Manager, or the performance by the Portfolio Manager of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Southfork CLO, Ltd.
P.O. Box 1093 GT
Queensgate House, South Church Street,
George Town, Grand Cayman, Cayman Islands
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Portfolio Manager:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

JPMorgan Chase Bank
600 Travis Street, 50th Floor,
Houston, Texas 77002
Telecopy: (713) 216-2101
Attention: Institutional Trust Services—Southfork CLO Ltd.

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Share Paying Agent at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Portfolio Manager hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Portfolio Manager's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(f)(iv) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(ii), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Portfolio Manager agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Portfolio Manager's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares. In addition, with respect to any Defaulted Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's

rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares. In the event any Offer is made with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Portfolio Manager may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Without prejudice to Section 14(f) hereof, any corporation, partnership or limited liability company into which the Portfolio Manager may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Portfolio Manager shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the collateral management business of the Portfolio Manager, shall be the successor to the Portfolio Manager without any further action by the Portfolio Manager, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Portfolio Manager shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Portfolio Manager hereby consents to (i) the posting of the final Offering Circular, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Portfolio Manager

BY: STRAND ADVISORS, INC., as General Partner

By: _____
Name: MARK OKADA
Title: CIO

SOUTHFORK CLO LTD., as Issuer

By: _____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Portfolio Manager

BY: STRAND ADVISORS, INC., as General Partner

By:_____
Name:
Title:

SOUTHFORK CLO LTD., as Issuer

By:_____
Name: Phillip Hinds
Title: Director

EXECUTION COPY

SERVICING AGREEMENT

This Servicing Agreement, dated as of March 27, 2008 is entered into by and among ABERDEEN LOAN FUNDING, LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9002, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and ABERDEEN LOAN FUNDING CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$376,000,000 of their Class A Floating Rate Senior Secured Extendable Notes due 2018 (the "Class A Notes"), U.S.$29,500,000 of their Class B Floating Rate Senior Secured Extendable Notes due 2018 (the "Class B Notes"), U.S.$25,250,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2018 (the "Class C Notes"), U.S.$19,250,000 of their Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2018 (the "Class D Notes"), and the Issuer intends to issue U.S.$17,250,000 of its Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2018 (the "Class E Notes" and together with the Class A Notes, Class B Notes, Class C Notes and Class D Notes, the "Notes") pursuant to the Indenture dated as of March 27, 2008 (the "Indenture"), among the Co-Issuers and State Street Bank and Trust Company, as trustee (the "Trustee") and the Issuer intends to issue 12,000 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 36,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Shares Paying Agency Agreement dated as of March 27, 2008 (the "Preference Shares Paying Agency Agreement") between the Issuer and State Street Bank and Trust Company, as the Preference Shares Paying Agent, and pursuant to the Issuer's amended and restated memorandum and articles of association (the "Memorandum and Articles of Association") and certain resolutions of the board of directors of the Issuer;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and in the applicable provisions of the other Transaction Documents and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean Highland Financial Partners, L.P. (which includes, for the avoidance of doubt, any subsidiary thereof).

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated March 27, 2008 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Servicing Fee" shall mean, collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"Transaction Documents" shall mean the Indenture, the Preference Shares Paying Agency Agreement, the Servicing Agreement and the Collateral Administration Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms of this Agreement and the other Transaction Documents, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and the other Transaction Documents, and including the furnishing of Issuer Orders, Issuer Requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the other Transaction Documents, perform its obligations hereunder and thereunder with reasonable care, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having

similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the other Transaction Documents. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the other Transaction Documents affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to any Transaction Document until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to any Transaction Document that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Collateral criteria set forth herein and in the Indenture;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture;

(iv) the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation;

(v) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligation; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(8) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities; and

(vi) the Servicer shall (a) on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligation and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption and (b) conduct auctions in accordance with the terms of the Indenture.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the Collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer until the payment in full of all Notes issued under the Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any

Affiliate of the Servicer. The provisions of this Section 2(c)(i) shall survive termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations (as defined in Annex 1) shall be conditioned upon the prior written approval of the Independent Advisor (as defined in Annex 1) and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by the Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and each Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test; and provided, further, that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliates act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to have or pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the commercially reasonable judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the United States Investment Advisers Act of 1940, as amended.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the commercially reasonable judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the United States Investment Advisers Act of 1940, as amended.

(c) In addition, the Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and Section 4975 of the Code.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the other Transaction Documents. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any Class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis; provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Memorandum and Articles of Association or the Co-Issuer's Certificate of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) not be permitted by Annex 1 hereto and would subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable on such later Payment Date on which funds are available therefor as provided in the Indenture.

With respect to any Payment Date, the Servicer may, in its sole discretion, at any time waive a portion (or all) of its Servicing Fees then due and payable. All waived amounts will be paid to the Class II Preference Shares as Class II Preference Share Special Payments pursuant to the Indenture. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Subordinated Servicing Fee or Supplemental Servicing Fee, any funds representing the waived Subordinated Servicing Fees and Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement, the Indenture and the other Transaction Documents; provided, however, that any extraordinary expenses incurred by the Servicer in the

performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages, including reasonable expenses incurred with respect to any compliance requirements, including, but not limited to, compliance with the requirements of the Sarbanes-Oxley Act, related solely to the ownership or holding of any Securities by HFP or any of its subsidiaries) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the Priority of Payments and other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture or the Preference Shares Paying Agency Agreement, as applicable.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement or (ii) with respect to any information included in the Offering Memorandum in the section entitled "The Servicer" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the

avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement, the Indenture and the other Transaction Documents. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer complies with the requirements set forth in Annex 1 hereto (unless the Servicer knows that as a result of a change in law the investment restrictions set forth in Annex 1 may no longer be relied upon).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with, and subject to, the Priority of Payments and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than, with respect to the Class II Preference Shares owned by HFP or its subsidiaries; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(ii) if a Majority of the Voting Preference Shares has nominated two or more successor servicers that have been objected to pursuant to the preceding clause (i)(C) or has failed to appoint a successor servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, (A) the Issuer appoints a successor servicer at the written direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), (B) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor servicer is not objected to within 30 days after notice of such succession by either (x) a Majority of the Voting Preference Shares (voting as a single class) or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); provided, that if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) have each nominated two or more successor servicers that have been objected to pursuant to the preceding clauses (i)(C) and (ii)(C) or have otherwise failed to appoint a successor servicer that has not been objected to pursuant to the preceding clause (i)(C) or (ii)(C) within 120 days of the date of notice of such removal or resignation of the Servicer, (A) any Holder of the Controlling Class (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor servicer, (B) such court appoints a successor servicer and (C) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as successor servicer under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor servicer shall not cause its then-current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Majority of Noteholders and the Holders of a Majority of the Preference Shares (excluding Notes and Preference Shares held by the Servicer or any of its Affiliates other than HFP) and (ii) the Rating Condition is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Majority of Noteholders and the Holders of Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Majority of Noteholders and the Holders of the Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by the Trustee acting at the direction of (1) a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) a Majority of the Voting Preference Shares (excluding any Preference Shares that are not Voting Preference Shares). For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach

or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee and the Preference Shares Paying Agent an accounting with respect to the books and records delivered to the Trustee and the Preference Shares Paying Agent or the successor servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly incorporated and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform its obligations pursuant to this Agreement, the other Transaction Documents and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the other Transaction Documents and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of its obligations pursuant to this Agreement, the other Transaction Documents and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the other Transaction Documents and the Securities is required by the Issuer in connection with this Agreement, the other Transaction Documents and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the other Transaction Documents and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against

the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the other Transaction Documents applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required

hereunder and under the terms of the other Transaction Documents applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the other Transaction Documents applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the other Transaction Documents applicable to the Servicer and the documents and instruments required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the other Transaction Documents applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Investment Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement

or the provisions of the other Transaction Documents applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Aberdeen Loan Funding, Ltd.
c/o Walkers SPV Limited
Walker House
87 Mary Street
George Town, Grand Cayman, KY1-9002, Cayman Islands
Telephone: (345) 945-3727
Telecopy: (345) 945-4757
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

State Street Bank and Trust Company
200 Clarendon Street
Mail Code: EUC-108
Boston, Massachusetts 02116
Telecopy: (617) 351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.3 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.3 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the Rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or

partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Investment Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the asset servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Preference Shares Paying Agent , the Holders of the Securities or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title:

ABERDEEN LOAN FUNDING, LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title:

ABERDEEN LOAN FUNDING, LTD.,
as Issuer

By:
Name: John Cullinane
Title: Director

ANNEX 1

Certain Asset Acquisition Provisions

Unless otherwise noted, references to the Issuer in this Annex 1 include the Servicer and any other person acting on the Issuer's behalf. Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex 1,

"Affiliate" means, with respect to a specified Person, (a) any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person and (b) any Person that is a member, director, officer or employee of (i) the specified Person or (ii) a Person described in clause (a) of this definition; and

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section I. General Investment Restrictions.

Except as may otherwise be provided in this Annex 1, the Issuer (and the Servicer acting on the Issuer's behalf) shall only purchase debt securities, interests in loans and other assets (each a "Portfolio Obligation") only in secondary-market transactions and shall not engage in any lending or underwriting activities or otherwise participate in the structuring or origination of any Portfolio Obligation.

A. Communications and Negotiations.

1. The Issuer will not have any communications or negotiations with the obligor of a Portfolio Obligation or a Reference Obligation (directly or indirectly through an intermediary such as the seller of such Portfolio Obligation or the Synthetic Security) in connection with the issuance or funding of such Portfolio Obligation or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

2. By way of example, permitted due diligence activities may include, but are not limited to, (a) attendance at an obligor's general "roadshow" or other presentations to investment professionals, (b) direct private discussions with personnel of the obligor, arranged by a sponsor, lead bank or other arranger, and (c) other due diligence activities of the kind customarily performed by offerees of the type of Portfolio Obligation being offered, but may not include any negotiations

with the obligor, employees or agents of the obligor of any terms or conditions of the Portfolio Obligation being offered.

3. Negotiations between the Servicer and the underwriter, placement agent or broker of a Portfolio Obligation are permitted solely to the extent that they are limited to responses to customary pre-offering period and offering period inquiries by the underwriter or placement agent (e.g., "If we offered you 10-year senior subordinated bonds of XYZ company, what spread would it require to interest you?" or "If you will not buy the bonds as offered, would you buy if we convinced the obligor to add a fixed charge coverage test?"). For purposes of this Section I.A., "negotiations" shall not include (i) commenting on offering documents to an unrelated underwriter or placement agent when the ability to comment was generally available to other offerees, or (ii) communicating certain objective criteria (such as the minimum yield or maturity) the Issuer generally uses in purchasing the relevant type of Portfolio Obligation.

4. The Issuer may consent or otherwise act with respect to amendments, supplements or other modifications of the terms of any Portfolio Obligation (other than a Subsidiary Obligation (as defined in Section III)) requiring consent or action after the date on which any such Portfolio Obligation is acquired by the Issuer if (a) such amendment, supplement or modification would not constitute a Significant Modification (as defined below), (b) (i) in the reasonable judgment of the Servicer, the obligor is in financial distress and such change in terms is desirable to protect the Issuer's interest and (ii) the Portfolio Obligation is described in clause 5(b) of this Section I.A., (c) the amendment or modification would not be treated as the acquisition of a new Portfolio Obligation under paragraph 5 of this Section I.A., or (d) otherwise, if it has received advice of counsel that its involvement in such amendment, supplement or modification will not cause the Issuer to be treated as engaged in a trade or business within the United States.

A "Significant Modification" means any amendment, supplement or other modification that involves (a) a change in the stated maturity or a change in the timing of any material payment of any Portfolio Obligation (including deferral of an interest payment), that would materially alter the weighted average life of the Portfolio Obligation, (b) any change (whether positive or negative) in the yield on the Portfolio Obligation immediately prior to the modification in excess of the greater of (i) 25 basis points or (ii) 5 percent of such unmodified yield, (c) any change involving a material new extension of credit, (d) a change in the obligor of any Portfolio Obligation, or (e) a material change in the collateral or security for any Portfolio Obligation, including the addition or deletion of a co-obligor or guarantor that results in a material change in payment expectations (all as determined for purposes of section 1001 of the Code).

5. In the event the Issuer owns an interest in a Portfolio Obligation the terms of which are subsequently amended or modified, or in the case of a workout situation not described in Section III hereof, which Portfolio Obligation is

subsequently exchanged for new obligations or other securities of the obligor of the Portfolio Obligation, such amendments or modifications or exchange will not be treated as the acquisition of an interest in a new Portfolio Obligation for purposes of this Annex 1, provided, that (a) the Issuer does not, directly or indirectly (through the Servicer or otherwise), seek the amendments or modifications or the exchange, or participate in negotiating the amendments or modifications or the exchange, and (b) at the time of original acquisition of the interest in the Portfolio Obligation, it was not reasonably anticipated that the terms of the Portfolio Obligation would, pursuant to a workout or other negotiation, subsequently be amended or modified.

B. Fees. The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Portfolio Obligation or entering into a Synthetic Security; the foregoing prohibition shall not be construed to preclude the Issuer from receiving (i) commitment fees, facility maintenance fees or other similar fees that are received by the Issuer in connection with revolving or delayed drawdown Loans or synthetic or pre-funded letter of credit Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Portfolio Obligations; (iv) fees from permitted securities lending; or (v) upfront payments in lieu of periodic payments under a Synthetic Security. The Issuer will not provide services to any Person; the foregoing prohibition shall not be construed to preclude the Issuer from activities relating to the receipt of income described in (i) through (v) of the preceding sentence.

Section II. Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, or a loan subparticipation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller shall only be made pursuant to a forward sale agreement at an agreed price (stated as a dollar amount or as a percentage) (a "Forward Purchase Commitment"), unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled (e.g., would otherwise be subject to a significant monetary penalty) to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent decision whether to purchase such Loan on behalf of the Issuer after completion of the closing of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Agreement.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment or a Non-Binding Agreement earlier than 48 hours after the time of the closing of the Loan (i.e., execution of definitive documentation), and, in the case of a Forward Purchase Commitment, the Issuer's obligation to purchase such Loan is subject to the condition that no material adverse change has occurred in the financial condition of the Loan's obligor or the relevant market on or before the relevant purchase date.

E. The Issuer cannot have a contractual relationship with the obligor with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the original lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan, prior to the time specified in subsection D above.

G. In addition to the restrictions otherwise applicable to Loans, the Issuer shall not acquire any synthetic or pre-funded letter of credit Loan unless (1) the cash collateral deposit with respect to such Loan was fully funded by a predecessor in interest with respect to such Loan; (2) the Loan is part of a credit facility that includes another Loan (other than a synthetic or pre-funded letter of credit Loan) to the same obligor, and is being acquired in connection with the acquisition of such other Loan and from the same seller as such other Loan, with the intent to hold both parts and with the amount of the other Loan being significantly in excess of the amount of the synthetic or pre-funded letter of credit Loan; (3) such synthetic or pre-funded letter of credit Loan satisfies the requirements set forth in Section VI.B., treating the synthetic or pre-funded letter of credit Loan, for this purpose, as though it were a delayed drawdown or revolving Loan; and (4) at no time may more than 5% of the aggregate principal amount of Portfolio Obligations consist of synthetic or pre-funded letter of credit Loans.

Section III. Distressed Debt

A. The Issuer may only purchase a Debt Instrument that is a Potential Workout Obligation to the extent permitted by this Section III.

B. Neither the Issuer nor the Servicer on behalf of the Issuer shall purchase a Subsidiary Obligation from any Issuer Subsidiary.

C. Special Procedures for Subsidiary Obligations.

1. Potential Workout Obligations. On or prior to the date of acquisition, the Servicer on behalf of the Issuer shall identify each Portfolio Obligation that is a Potential Workout Obligation.

2. Transfer of Subsidiary Obligations. From and after the occurrence of a Workout Determination Date with respect to a Subsidiary Obligation, neither the Issuer nor the Servicer on behalf of the Issuer shall knowingly take any action in respect of such Subsidiary Obligation that may result in the Issuer being engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes. As soon as practicable, but in any event within

30 calendar days following a Workout Determination Date, the Servicer shall cause the Issuer either (i) to sell or dispose of any Subsidiary Obligation identified on such Workout Determination Date to a Person that is not an Affiliate of the Issuer or Servicer or (ii) to assign any Subsidiary Obligation identified on such Workout Determination Date to an Issuer Subsidiary.

For purposes of this Annex 1, an "Issuer Subsidiary" means any wholly-owned corporate subsidiary of the Issuer to which a Special Workout Obligation may be transferred in accordance with this Annex 1.

3. Consideration for Assignment of Subsidiary Obligations. Consideration given by an Issuer Subsidiary for the assignment to it of Subsidiary Obligations may be in the form of cash or in the form of indebtedness of, or equity interests in, such Issuer Subsidiary.

4. Classification of Issuer Subsidiaries. Each Issuer Subsidiary shall be an entity treated as a corporation for United States federal income tax purposes.

As used herein:

"Potential Workout Obligation" means any debt instrument (any such instrument, including an interest in a Loan, a "Debt Instrument") which, as of the date of acquisition by the Issuer or an Issuer Subsidiary, based on information specific to such Debt Instrument or the circumstances of the obligor thereof, is a Workout Obligation or, in the reasonable determination of the Servicer, has a materially higher likelihood of becoming a Workout Obligation as compared to debt obligations that par or other non-distressed debt purchasers or funds relating to that asset type customarily purchase and expect to hold to maturity.

"Subsidiary Obligation" means any Potential Workout Obligation (a) as to which the Issuer on any Workout Determination Date either (i) owns more than 40% of the aggregate principal amount of such class of Potential Workout Obligation outstanding or (ii) is one of the two largest holders of any class of debt of the obligor of such Potential Workout Obligation (based on the outstanding principal amount of such class of debt owned by the Issuer as a percentage of the aggregate outstanding principal amount of such class of debt) unless not fewer than three other holders and the Issuer collectively own at least 65% of such class of debt and, if the Issuer is the largest holder of such class, the Issuer's percentage of such class does not exceed the percentage held by the next largest holder of the debt by more than 5% of such class or (b) that would, upon foreclosure or exercise of similar legal remedies, result in the Issuer directly owning assets (other than securities treated as debt, equity in a partnership not engaged in a trade or business within the United States, or corporate equity for United States federal income tax purposes, provided in the case of corporate equity that the corporation is not a "United States real property holding corporation" within the meaning of section 897 of the Code) which are "United States real property interests" within the meaning of section 897 of the Code or which the Servicer reasonably expects it

would, on behalf of the Issuer, be required to actively manage to preserve the value of the Issuer's interest therein; provided that a Potential Workout Obligation shall not be treated as a Subsidiary Obligation if the Issuer obtains a Tax Opinion that, based on all the surrounding circumstances, the activities in which the Issuer intends to engage with respect to such Potential Workout Obligation will not cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes.

"Workout Determination Date" means any date on which, in connection with the occurrence of any event described in clauses (a) through (c), inclusive, of the definition of Workout Obligation, either (a) any material action by the Issuer is required to be taken, (b) the Servicer receives written notice that such material action shall be required or (c) the Servicer reasonably determines that the taking of such material action is likely to be required.

"Workout Obligation" means any Debt Instrument as to which the Servicer on behalf of the Issuer (a) consents to a Significant Modification in connection with the workout of a defaulted Portfolio Obligation, (b) participates in an official or unofficial committee or similar official or unofficial body in connection with a bankruptcy, reorganization, restructuring or similar proceeding, or (c) exercises, or has exercised on its behalf, rights of foreclosure or similar judicial remedies.

Section IV. Purchases from the Servicer or its Affiliates.

A. If the Servicer or an Affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror, or received any fee for services (it being understood that receipts described in clauses (i) through (v) of Section I.B. are not construed as so treated), in connection with the issuance or origination of a Portfolio Obligation or was a member of the original lending syndicate with respect to the Portfolio Obligation (any such Portfolio Obligation, a "Special Procedures Obligation"), the Issuer will not acquire any interest in such Special Procedures Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an Affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Special Procedures Obligation has been outstanding for at least 90 days, (ii) the holder of the Special Procedures Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its issuance, (iii) the price paid for such Special Procedures Obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (iv) the transaction is proposed to, and the ultimate purchase is approved on behalf of the Issuer by, one or more Independent Advisors to the Issuer in accordance with the provisions of Section IV.B. below. The Issuer will not acquire any Special Procedures Obligation if, immediately following such acquisition, the fair market value of all Special Procedures Obligations owned by the Issuer would constitute more than 49% of the fair market value of all of the Issuer's assets at such time.

B. An "Independent Advisor" is a Person who is not an Affiliate of the Issuer, the Servicer or any fund managed by the Servicer.

1. The Issuer may not purchase or commit to enter into any such Special Procedures Obligation without prior approval by an Independent Advisor. If the Independent Advisor declines to approve a proposed Special Procedures Obligation, at least three months must elapse before any proposal with respect to the acquisition of debt or other obligations of the same obligor are proposed or considered.

2. The Issuer shall engage the Independent Advisor in an agreement the terms of which shall in substantial form set forth:

(a) the representation of the Independent Advisor, which the Servicer shall not know to be incorrect, that it has significant financial and commercial expertise, including substantial expertise and knowledge in and of the loan market and related investment arenas;

(b) the agreement between the Independent Advisor, the Issuer and the Servicer generally to the effect that (i) the Independent Advisor will operate pursuant to procedures consistent with maintaining his or her independence from the Servicer and its Affiliates, (ii) the Independent Advisor will have the sole authority and discretion to approve or reject purchase proposals made by the Servicer with respect to any Special Procedures Obligation, (iii) all proposals for the Issuer to acquire any Special Procedures Obligation will be first submitted to the Independent Advisor, (iii) the Servicer will prepare the materials it deems necessary to describe the Special Procedures Obligation to the Independent Advisor, (iv) the Investment Advisor will not be required to make any decision to accept or decline a Special Procedures Obligation at the price offered prior to its review of the materials prepared, plus any additional information requested by the Independent Advisor, and (v) no Independent Advisor may be proposed to be replaced by the Servicer, unless for cause or in the event of a resignation of such Independent Advisor; and

(c) such other commercially reasonable terms and conditions, including terms and conditions to the effect that (i) the Independent Advisor will be paid a reasonable fee for its services plus reimbursement of any reasonable expenses incurred in performance of his or her responsibilities, (ii) the Independent Advisor may be removed or replaced only by a majority (whether by positive act or failure to object) of the probable equity owners (as determined for United States federal income tax purposes) of the Issuer, (iii) if at any time there is more than one Independent Advisor to the Issuer, a majority of such Independent Advisors must approve any Special Procedures Obligation subject to Independent Advisor approval, (iv) an Independent Advisor may not engage, directly or indirectly, in the negotiation of the terms of any Special Procedures Obligation to be acquired by the Issuer (provided however, that an Independent Advisor may

negotiate with the Servicer or the seller with respect to the price and terms of the Issuer's purchase of the Special Procedures Obligation, provided further that the Independent Advisor will not make suggestions to the Servicer or any other person about alternative or modified terms of the underlying Special Procedures Obligation on which they might be willing to approve such a Special Procedures Obligation).

3. Any servicing agreement or other document under which the Servicer is granted signatory powers or other authority on behalf of the Issuer will provide that such powers or authority with respect to Special Procedures Obligations are conditioned upon the prior written approval of the Independent Advisor

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4. No Special Procedures Obligation will be presented to an Independent Advisor until at least 90 days have elapsed since the later of (a) the execution of final documentation and (b) the funding in whole or part of the Special Procedures Obligation and there will have been no commitment or arrangement prior to that time that the Issuer will acquire any such Special Procedures Obligation; provided, further, that the Special Procedures Obligation will not be treated as outstanding for any day on which the Issuer enjoys the benefits and burdens of ownership (for example, because any Person has hedged its credit exposure to the Special Procedures Obligation with the Issuer).

5. The Issuer will have no obligation to, or understanding that it will refund, reimburse or indemnify any person (including an Affiliate of the Servicer), directly or indirectly, for "breakage" costs or other costs or expenses incurred by such person if the Independent Advisor determines that the Issuer should decline to purchase any Special Procedures Obligation.

6. Neither the Servicer nor any Affiliate of the Servicer will have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to Special Procedures Obligations without the prior written approval of an Independent Advisor. Except as may be conditioned upon such prior written approval, neither the Servicer nor any Affiliate of the Servicer may hold itself out as having signatory powers on behalf of the Issuer or authority to enter into agreements with respect to Special Procedures Obligations on behalf of the Issuer.

Section V. Synthetic Securities.

A. The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex 1 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security collateral accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, shall not constitute the making of advances).

B. With respect to each Synthetic Security, the Issuer will not acquire or enter into any Synthetic Security that does not satisfy all of the following additional criteria unless the Servicer has first received advice of counsel that the ownership and disposition of such Synthetic Security would not cause the Issuer to be engaged in a trade or business within the United States for United States federal income tax purposes:

1. the criteria used to determine whether to enter into any particular Synthetic Security was similar to the criteria used by the Servicer in making purchase decisions with respect to debt securities;

2. the Synthetic Security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities (and any potential rise in their value) during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit;

3. the Issuer enters into the Synthetic Security with a counterparty that is not a special purpose vehicle and is a broker-dealer or that holds itself out as in the business of entering into such contracts;

4. neither the Issuer nor any Person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities;

5. except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation;

6. the net payment from the Issuer to the Synthetic Security Counterparty is not determined based on an actual loss incurred by the Synthetic Security Counterparty or any other designated person;

7. there exists no agreement, arrangement or understanding that (i) the Synthetic Security Counterparty is required to own or hold the related Reference Obligation while the Synthetic Security remains in effect or (ii) the Synthetic Security Counterparty is economically or practically compelled to own or hold the related physical Reference Obligation while the Synthetic Security remains in effect;

8. the Synthetic Security provides for (i) all cash settlement, (ii) all physical settlement or (iii) the option to either cash settle or physically settle; provided that, in the latter two cases, physical settlement provides the settling party the right to settle the Synthetic Security by delivering deliverable obligations which *may* include the Reference Obligation and the settling party must not be required to deliver the related Reference Obligation upon the settlement of such Synthetic Security.

Notwithstanding the preceding paragraph, a Synthetic Security providing for physical settlement may require a party to deliver the related Reference Obligation if either:

(i) at the time the Issuer enters into such Synthetic Security, such Reference Obligation is readily available to purchasers generally in a liquid market; or

(ii) the advice of both United States federal income tax and insurance counsel of nationally recognized standing in the United States experienced in such matters is that, under the relevant facts and circumstances with respect to such Synthetic Security, the acquisition of such Synthetic Security will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis and should not cause the Issuer to be treated as writing insurance in the United States under the law of the state in which the Synthetic Security Counterparty is organized.

9. the Synthetic Security is not treated by the Issuer as insurance or a financial guarantee sold by the Issuer for United States or Cayman Islands regulatory purposes.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan, that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

Section VI. Other Types of Assets.

A. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is:

1. not treated for U.S. federal income tax purposes as debt if the issuing entity is a "partnership"(within the meaning of Section 7701(a)(2) of the Code) unless such entity is not engaged in a trade or business within the United States, or

2. a "United States real property interest" as defined in section 897 of the Code and the Treasury Regulations promulgated thereunder.

3. a residual interest in a "REMIC" or an ownership interest in a "FASIT" (as such terms are as defined in the Code).

The Issuer may cause an Issuer Subsidiary to acquire assets set forth in clause (i) or (ii) above (each, an "ETB/897 Asset") in connection with the workout of defaulted Portfolio Obligations, so long as the acquisition of ETB/897 Assets by such Issuer Subsidiary will not cause the stock of such Issuer Subsidiary to be deemed to be an ETB/897 Asset.

B. Revolving Loans and Delayed Drawdown Loans. All of the terms of any advance required to be made by the Issuer under any revolving or delayed drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Servicer will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such revolving or delayed drawdown Loan.

C. Securities Lending Agreements. The Issuer will not purchase any Portfolio Obligation primarily for the purpose of entering into a securities lending agreement with respect thereto.

D. Exception From Secondary Market Rule for Debt Securities. Any purchase of a Portfolio Obligation other than a Loan (a "Debt Security") pursuant to a commitment, arrangement or other understanding made before or contemporaneously with completion of the closing and funding of such Debt Security issuance shall be made only in connection with one of the following:

(i) an underwriting of a registered public offering in which the seller has made a firm underwriting commitment to the issuer of such Debt Security where none of the Servicer or any Affiliate thereof acted as an underwriter or placement agent or participated in negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities),

(ii) a private placement to qualified investors (pursuant to Rule 144A or Section 4(2) under the Securities Act or other similar arrangement) in which such Debt Security was originally issued pursuant to an offering circular, private placement memorandum, or similar offering document and none of the Servicer or any Affiliate thereof acted as a placement agent or underwriter or participated in negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities), or

(iii) an acquisition of or entry into a Synthetic Obligation in accordance with Section V. above;

If an Affiliate of the Servicer is acting as an underwriter or placement agent or an Affiliate of the Servicer or an employee of an Affiliate of the Servicer participated in the structuring of an issuance otherwise described in clause (i) or clause (ii) of this paragraph D, one of the following additional conditions must be met:

(x) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases no more than 33% of the aggregate principal amount of the tranche of securities (or other instruments) of which such Debt Security is a part and more than 50% of the aggregate principal amount of such tranche is substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase,

(y) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases less than 33% of the aggregate principal amount of all tranches issued as part of the transaction in which the Debt Security was issued and more than 50% of the aggregate principal amount of such tranches are substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase, or

(z) such security or obligation satisfies the requirements and procedures applicable to Special Procedures Obligations in Section IV as though it were a Loan;

provided, however, in either of (x) or (y), the Affiliate of the Servicer was (or the employees of the Affiliate of the Servicer were) acting as an underwriter or placement agent (or otherwise participated in the structuring of such issuance) solely as, or solely as an employee of, a Permitted Affiliate (as defined below).

"Permitted Affiliate" means any Affiliate (i) that is a separate legal entity that is operated independently of the Servicer, (ii) whose personnel are not managed by and who do not report to the personnel of the Servicer, and (iii) whose personnel are not compensated based upon the performance of the Servicer.

Section VII. General Restrictions on the Issuer. The Issuer itself shall not:

A. hold itself out, through advertising or otherwise, as originating Loans, lending funds, or making a market in or dealing in Loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, a surety bond issuer, or a company engaged in Loan origination;

C. knowingly take any action causing it to be treated as a bank, insurance company, or company engaged in Loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to acquire a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the related indenture or acquire a Portfolio Obligation conditioned upon a particular person or entity holding Securities;

G. acquire any asset the holding or acquisition of which the Servicer knows would cause the Issuer to be subject to income tax on a net income basis;

H. hold any security as nominee for another person; or

I. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

Section VIII. Tax Opinion; Amendments.

A. In furtherance and not in limitation of this Annex 1, the Servicer shall comply with all of the provisions set forth in this Annex 1, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of counsel of nationally recognized standing in the United States experienced in such matters (a "Tax Opinion"), that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

B. The provisions set forth in the Annex 1 may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received a Tax Opinion that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be

eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

EXECUTION COPY

PORTFOLIO MANAGEMENT AGREEMENT

This Portfolio Management Agreement, dated as of December 8, 2005 is entered into by and between LIBERTY CLO, LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of P.O. Box 908 GT, Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as portfolio manager ("Highland" or, in such capacity, the "Portfolio Manager").

WITNESSETH:

WHEREAS, the Issuer and Liberty CLO, Corp. (the "Co-Issuer") intend to issue the Class A-1A Revolving Floating Rate Senior Secured Extendable Notes (the "Class A-1A Notes"), the Class A-1B Delayed Drawdown Floating Rate Senior Secured Extendable Notes (the "Class A-1B Notes"), the Class A-1C Floating Rate Senior Secured Extendable Notes (the "Class A-1C Notes" and, together with the Class A-1A Notes and the Class A-1B Notes, the "Class A-1 Notes"), the Class A-2 Floating Rate Senior Secured Extendable Notes (the "Class A-2 Notes"), the Class A-3 Floating Rate Senior Secured Extendable Notes (the "Class A-3 Notes"), the Class A-4 Floating Rate Senior Secured Extendable Notes (the "Class A-4 Notes" and, together with the Class A-1 Notes, Class A-2 Notes and Class A-3 Notes, the "Class A Notes"), the Class B Floating Rate Deferrable Senior Secured Extendable Notes (the "Class B Notes") and the Class C Floating Rate Deferrable Senior Secured Extendable Notes (the "Class C Notes" and, together with the Class A Notes and the Class B Notes, the "Notes"), and the Issuer intends to issue the Class P-1 Extendable Securities (the "Class P-1 Securities"), the Class P-2 Extendable Securities (the "Class P-2 Securities" and, together with the Class P-1 Securities, the "Class P Securities") and the Class Q-1 Combination Extendable Securities (the "Class Q-1 Securities"), pursuant to an indenture (the "Indenture"), dated as of the date hereof, among the Issuer, the Co-Issuer, as co-issuer of the Notes, and JPMorgan Chase Bank, National Association, as trustee (together with any successor trustee permitted under the Indenture, the "Trustee"). The Issuer also intends to issue 94,000 Class E Certificates, par value $0.01 per share (the "Class E Certificates" and, together with the Notes, the Class Q-1 Securities and the Class P Securities, the "Securities"), pursuant to the Issuer's Amended and Restated Memorandum and Articles of Association;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations and Eligible Investments (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes and the Class Q-1 Securities (to the extent of the Class Q-1 Note Component);

WHEREAS, the Issuer intends to pledge the Class P-1 Collateral (as defined in the Indenture) to the Trustee as security for the Class P-1 Securities;

WHEREAS, the Issuer intends to pledge the Class P-2 Collateral (as defined in the Indenture) to the Trustee as security for the Class P-2 Securities;

WHEREAS, the Issuer wishes to enter into this Portfolio Management Agreement, pursuant to which the Portfolio Manager agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral securing the Notes and the Class Q-1 Securities (to the extent of the Class Q-1 Note Component) in the manner and on the terms set forth herein; and

WHEREAS, the Portfolio Manager has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture. References herein to the Class E Certificates shall include the Class E Certificate Components, and references to the Notes shall include the Class Q-1 Note Component.

"Agreement" shall mean this Portfolio Management Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"Offering Circular" shall mean the Offering Memorandum of the Issuer dated December 7, 2005 prepared in connection with the offering of the Securities.

"Portfolio Manager Breaches" shall have the meaning specified in Section 10(a).

2. General Duties of the Portfolio Manager.

(a) The Portfolio Manager shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager shall supervise and direct the investment and reinvestment of the Collateral, and shall perform on behalf of the Issuer those investment–related duties and functions that have been specifically delegated or assigned to the Portfolio Manager in the Indenture or hereunder (and the Portfolio Manager shall have no obligation to perform any other duties other than as specified herein or under the Indenture) and, to the extent necessary or appropriate to perform such duties, the Portfolio Manager shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto, including without limitation, providing such certifications and Officer's certificates as are required of the Portfolio Manager or the Issuer under the Indenture with respect to the permitted purchases and sales of Collateral Obligations and other securities required or permitted to be purchased or sold under the Indenture. The Portfolio Manager shall, subject to the terms and conditions hereof and of the Indenture, perform its obligations hereunder and under the Indenture with reasonable care, using a degree of skill and attention no less than that which the Portfolio Manager exercises with respect to comparable assets that it manages for others having similar investment objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Collateral for clients having similar investment objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not inconsistent with the foregoing, the Portfolio Manager shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Portfolio Manager shall comply with all terms and conditions of the

Indenture affecting the duties and functions to be performed hereunder. The Portfolio Manager shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Portfolio Manager shall not be bound by any amendment to the Indenture that would reduce the rights or decrease the fees or any other amounts payable to the Portfolio Manager hereunder or under the Indenture or increase the duties, obligations or liabilities of the Portfolio Manager unless the Portfolio Manager shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, duties or liabilities of the Portfolio Manager or (y) affects the amount or priority of any fees payable to the Portfolio Manager to become effective unless the Portfolio Manager has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Portfolio Manager shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the investment criteria set forth herein and in the Indenture;

(iii) the Portfolio Manager shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Portfolio Manager shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Portfolio Manager shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Portfolio Manager, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, or (y) to acquire, as security for the Notes and the Class Q-1 Securities (to the extent of the Class Q-1 Note Component) in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, and may, in each case subject to and in accordance with the provisions of the Indenture, or (z) to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligation; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(8) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments or take any other action consistent with the terms of the Indenture which is in the best interests of the Securityholders; and

(v) subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager on behalf of the Issuer shall determine whether to enter into any Hedge Agreements, increase or reduce the notional amounts of Hedge Agreements or terminate Hedge Agreements, and the Portfolio Manager shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the Hedge Counterparty), to enter into a replacement Hedge Agreement.

(b) In performing its duties hereunder, the Portfolio Manager shall seek to maximize the value of the Collateral for the benefit of the Holders of the Notes and the Class Q-1 Securities and the Holders of the Class E Certificates taking into account the investment criteria and limitations set forth herein and in the Indenture and the Portfolio Manager shall use reasonable efforts to manage the Collateral in such a way that will (i) permit a timely performance of all payment obligations by the Issuer under the Indenture and (ii) subject to such objective, maximize the return to the Holders of the Class E Certificates; provided, that the Portfolio Manager shall not be responsible if such objectives are not achieved so long as the Portfolio Manager performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Portfolio Manager with respect to the Notes, the Class Q-1 Securities or the Class E Certificates. The Portfolio Manager and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Portfolio Manager hereby agrees to the following:

(i) The Portfolio Manager agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture, the reduction of the Commitment to zero in the case of the Class A-1A Notes and the payment to the Class E Certificates Paying Agent of all amounts payable with respect to the Class E Certificates in accordance with the Priority of Payments; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Portfolio Manager (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily

filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Portfolio Manager, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding.

(ii) The Portfolio Manager shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(d) The Portfolio Manager shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Portfolio Manager may employ third parties, including its Affiliates, to render advice (including investment advice) and assistance; provided, however, that (i) the Portfolio Manager shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties and (ii) such employment of third parties shall not cause the Issuer to be subject to tax in the United States. Notwithstanding any other provision of this Agreement, the Portfolio Manager shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

3. Brokerage.

The Portfolio Manager shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Portfolio Manager may take into consideration research and other brokerage services furnished to the Portfolio Manager or its Affiliates by brokers and dealers which are not Affiliates of the Portfolio Manager. Such services may be used by the Portfolio Manager or its Affiliates in connection with its other advisory activities or investment operations. The Portfolio Manager may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts managed by Portfolio Manager or with accounts of the Affiliates of the Portfolio Manager, if in the Portfolio Manager's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Portfolio Manager (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Portfolio Manager may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Portfolio Manager.

Nothing herein shall prevent the Portfolio Manager or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Securityholders, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Portfolio Manager and partners, directors, officers, employees and agents of the Portfolio Manager or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof.

It is understood that the Portfolio Manager and any of its Affiliates may engage in any other business and furnish investment management and advisory services to others, including Persons which may have investment policies similar to those followed by the Portfolio Manager with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Portfolio Manager shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Portfolio Manager determines in its reasonable judgment that such purchase or sale is appropriate and otherwise in accordance with the requirements of this Agreement and the Indenture, the Portfolio Manager may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Portfolio Manager, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Portfolio Manager or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Portfolio Manager or any of its Affiliates have information which the Portfolio Manager deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Portfolio Manager shall not be obligated to pursue any particular investment strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Portfolio Manager or any of its Affiliates as principal or to sell an obligation to the Portfolio Manager or any of its Affiliates as principal unless (i) the Issuer shall have received from the Portfolio Manager such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Portfolio Manager, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other, (iii) such transaction is permitted by the Adviser's Act and (iv) such transaction satisfies the requirements of this Agreement and the Indenture.

(b) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Portfolio Manager serves as investment advisor, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Portfolio Manager serves as investment advisor unless such acquisition or sale is (i) in the judgment of the Portfolio Manager, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other, (ii) permitted by the Adviser's Act and (iii) in compliance with the terms of this Agreement and the Indenture.

(c) In addition, the Portfolio Manager shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Portfolio Manager shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Class E Certificates Paying Agent, the Noteholders, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Portfolio Manager make a public announcement concerning the issuance of the Securities, the Portfolio Manager's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Portfolio Manager shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Portfolio Manager, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Portfolio Manager on a non-confidential basis, provided, that the Portfolio Manager does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator, the Class E Certificate Paying Agent, the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Portfolio Manager, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the

transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Portfolio Manager.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Portfolio Manager shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Portfolio Manager to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Amended and Restated Memorandum and Articles of Association or the Co-Issuer's Certificate of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Portfolio Manager covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Portfolio Manager shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Portfolio Manager, for services rendered and performance of its obligations under this Agreement, the Management Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Management Fee shall not be amended without the consent of the Portfolio Manager. If on any Payment Date there are insufficient funds to pay such fee (and/or any other amounts due and payable to the Portfolio Manager) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the definition of "Subordinated Management Fee" in the Indenture.

(b) The Portfolio Manager shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement; provided, however, that any extraordinary expenses incurred by the Collateral Manager in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee, the Class E Certificates Paying Agent and the accountants appointed by the Issuer, the reasonable expenses incurred by the Portfolio Manager to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation, any reasonable expenses incurred by the Portfolio Manager in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Portfolio Manager customarily allocates among all of the funds or

portfolios that it manages) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Portfolio Manager shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Portfolio Manager agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Holders of the Notes and the Class Q-1 Securities, or the requisite percentage of Holders of the Notes and the Class Q-1 Securities or Holders of Class E Certificates, as applicable, as provided in the Indenture or the Class E Certificates Paying Agency Agreement, as applicable.

10. Limits of Portfolio Manager Responsibility; Indemnification.

(a) The Portfolio Manager assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of conduct described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Portfolio Manager. The Portfolio Manager, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Holders of the Notes and the Class Q-1 Securities, the Class E Certificates Paying Agent, the Holders of the Class E Certificates or any other person for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Holders of the Notes and the Class Q-1 Securities, the Class E Certificates Paying Agent, the Holders of the Class E Certificates or any other person that arise out of or in connection with the performance by the Portfolio Manager of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Portfolio Manager hereunder and under the terms of the Indenture applicable to it or (ii) with respect to any information included in the Offering Circular in the sections entitled "The Portfolio Manager" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Portfolio Manager Breaches"). For the avoidance of doubt, the Portfolio Manager shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement and the Indenture. When purchasing, managing, selling or terminating Collateral Obligations on behalf of the Issuer, the Portfolio Manager shall be deemed to have satisfied the requirements in clause (bb) of the definition of Collateral Obligation, in the final sentence of Section 7.12(a) and in Sections 7.8(a)(xi) and 7.16(m) of the Indenture, in each case, as to the manner of acquisition, if it satisfies each of the requirements set forth in Section I and Section II of Schedule 1 hereto. When entering into, performing under and terminating Hedge Agreements on behalf of the Issuer, the Portfolio Manager shall be deemed to have satisfied the requirements in Section 14.2(k)(ii) of the Indenture as to U.S. federal income tax if it satisfies the requirements set forth in Section III of Schedule 1 hereto.

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Portfolio Manager, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Circular, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Portfolio Manager Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Portfolio Manager, the Portfolio Manager shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the

entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer, the Holders of Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Portfolio Manager are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Portfolio Manager's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Class E Certificates; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Notes, the Holders of the Class Q-1 Securities and the Class E

Certificates Paying Agent; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(f) below, the Portfolio Manager may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Portfolio Manager resigns, the Issuer agrees to appoint a successor Portfolio Manager to assume such duties and obligations in accordance with Section 12(f).

(c) Subject to Section 12(f) below, the Portfolio Manager may be removed without cause upon 90 days' prior written notice by the Issuer, at the direction of the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of Class E Certificates (excluding Class E Certificates held by the Portfolio Manager, its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority at the time of such vote); provided, however, that the Portfolio Manager shall have the right to avoid any such removal if, on or prior to the proposed removal date the following conditions are satisfied: (i) the Portfolio Manager provides written notice, not less than 20 Business Days prior to the proposed removal date, to the Class E Certificates Paying Agent (for forwarding to Holders of Class E Certificates), the Issuer and the Trustee that the Portfolio Manager intends to purchase not less than all of the Class E Certificates voting for such removal from the Holders thereof (the "Directing Class E Certificates"), (ii) in the notice provided to the Class E Certificates Paying Agent (for forwarding to Holders of Class E Certificates) in the preceding clause (i), the Portfolio Manager includes a statement to the effect that each Holder of Class E Certificates who did not vote for removal may provide written notice to the Portfolio Manager not later than 5 Business Days prior to the proposed removal date that the Class E Certificates held by such Holder shall be deemed to be included in the Directing Class E Certificates as provided in the preceding clause (i), and (iii) the Portfolio Manager effects the purchase of not less than all of the Directing Class E Certificates (including, for the avoidance of doubt, Class E Certificate Components of Class P Securities and Class Q-1 Securities in accordance with the Indenture) at the Buy-out Amount. If all of the conditions set forth in the preceding sentence are satisfied on or prior to the proposed removal date, the Portfolio Manager shall continue as the Portfolio Manager under this Agreement. For purposes of this Section 12(c), "Buy-out Amount" means, with respect to the Directing Class E Certificates, an amount, when taken together with all payments and distributions made in respect of such Directing Class E Certificates since the Closing Date, would cause the Directing Class E Certificates to have received (as of the date of the Portfolio Manager's purchase thereof) a Class E Certificate Internal Rate of Return of 12.00% (assuming such purchase date was a "Payment Date" under the Indenture); provided that in the case of any such purchase by the Portfolio Manager on a date after the Payment Date in November 2018, and solely with respect to any single Holder of Directing Class E Certificates holding U.S. $30,000,000 or more in aggregate Face Amount of Class E Certificates, an amount, when taken together with all payments and distributions made in respect of such Holder's Directing Class E Certificates since the Closing Date, would cause such Directing Class E Certificates to have received (as of the date of the Portfolio Manager's purchase there) a Class E Certificate Internal Rate of Return of 15.00% (assuming such purchase date was a "Payment Date" under the Indenture). If the applicable Directing Class E Certificates have already received a Class E Certificate Internal Rate of Return of such respective levels, the Buy-out Amount will be zero.

(d) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Portfolio Manager thereof.

(e) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(f) No removal, termination or resignation of the Portfolio Manager shall be effective unless the Issuer appoints a successor Portfolio Manager (a) (i) at the written direction of a Super Majority of the Class E Certificates (excluding any Class E Certificates held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority), (ii) such successor has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to this Agreement and the Indenture, (iii) a Majority of the Aggregate Outstanding Amount of the Controlling Class of Notes has consented to the appointment of such successor portfolio manager and (iv) such successor portfolio manager is not objected to within 30 days after notice of such succession by a Majority in Aggregate Outstanding Amount of the Notes (voting as a single Class (excluding any Notes held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority)); or (b) if a Super Majority of the Class E Certificates (excluding any Class E Certificates held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority) has nominated two or more successor portfolio managers that have either not been consented to pursuant to the preceding clause (a)(iii) or been objected to pursuant to the preceding clause (a)(iv) or has otherwise failed to appoint a successor portfolio manager that has been consented to pursuant to the preceding clause (a)(iii) and is not objected to pursuant to the preceding clause (a)(iv) within 30 days of the date of notice of such removal, termination or resignation of the Portfolio Manager, then (i) at the direction of the Holders of at least a Majority in Aggregate Outstanding Amount of the Controlling Class appoint a successor portfolio manager, (ii) such successor has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to this Agreement and the Indenture and (iii) such successor portfolio manager is not objected to within 30 days after notice of such succession by either (x) a Majority of the Class E Certificates (excluding any Class E Certificates held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority) or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single Class (excluding any Notes held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority)); or (c) if a Majority in Aggregate Outstanding Amount of the Controlling Class fails to appoint a successor portfolio manager pursuant to the preceding clause (b) within 90 days of the date of notice of such removal, termination or resignation of the Portfolio Manager, the Holders of a Majority in Aggregate Outstanding Amount of the Controlling Class may petition a court of competent authority to appoint a successor portfolio manager. In addition, any successor Portfolio Manager must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Portfolio Manager hereunder, (ii) is legally qualified and has the capacity to act as Portfolio Manager hereunder, as successor to the Portfolio Manager under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Portfolio Manager hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Portfolio Manager under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Class E Certificates to become subject to tax in any jurisdiction where such successor Portfolio Manager is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Portfolio Manager shall not cause its then-current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor from payments on the Collateral shall be greater than that paid to the Portfolio Manager without the prior written consent of the Holders of a Majority in Aggregate Outstanding Amount of the Controlling Class of Notes, the Holders of a Majority in Aggregate Outstanding Amount of the Notes (voting collectively) and a Majority of the Class E Certificates. The Issuer, the Trustee and the successor Portfolio Manager shall take such action (or cause the retiring Portfolio Manager to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Portfolio Manager, as shall be necessary to effectuate any such succession.

(g) In the event of removal of the Portfolio Manager pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Portfolio Manager as provided under this Agreement terminate all the rights and obligations of the Portfolio Manager under this Agreement (except those that survive termination pursuant to Section 12(e) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Portfolio Manager under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Portfolio Manager upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Portfolio Manager hereunder, shall not be delegated by the Portfolio Manager, in whole or in part, except to any entity that (i) is controlled by two or more of James Dondero, Mark Okada and Todd Travers and (ii) is one in which two or more of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Majority of the Controlling Class of Notes and a Majority of the Class E Certificates (excluding Class E Certificates held by the Portfolio Manager or any of its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority); provided that such delegation shall not cause the Issuer to be subject to tax in the United States, and, notwithstanding any such consent, no delegation of obligations or duties by the Portfolio Manager (including, without limitation, to an entity described above) shall relieve the Portfolio Manager from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Portfolio Manager shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Controlling Class of Notes and the Holders of a Majority of the Class E Certificates (excluding Class E Certificates held by the Portfolio Manager or any of its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority), (ii) the Rating Condition is satisfied with respect to any such assignment and (iii) such assignee or delegate shall not cause the Issuer to be subject to tax in the United States. Any assignment consented to by the Issuer and such Noteholders and Holders of Class E Certificates shall bind the assignee hereunder in the same manner as the Portfolio Manager is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Portfolio Manager. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, such Noteholders and such Holders of the Class E Certificates, the Portfolio Manager shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Portfolio Manager and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Portfolio Manager such documents as the Portfolio Manager shall consider reasonably necessary to effect fully such assignment. The Portfolio Manager hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(f) above, this Agreement shall be terminated, and the Portfolio Manager shall be removed, by the Issuer, if directed by the Trustee or by the Holders of a Majority of the Aggregate Outstanding Amount of the Controlling Class of Notes or by Holders of at least 66 2/3% of the Class E Certificates (excluding any Class E Certificates held by the Portfolio Manager or its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority at the time of such vote), in each case for "cause" upon 10 days' prior written notice to the Portfolio Manager and upon written notice to the Noteholders and the Holders of the Class E Certificates as set forth below. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Portfolio Manager willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Portfolio Manager breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Portfolio Manager shall prove to have been incorrect in any material respect when made or given, and the Portfolio Manager fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Portfolio Manager is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Portfolio Manager in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Portfolio Manager (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Portfolio Manager or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Portfolio Manager and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Portfolio Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Portfolio Manager of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Portfolio Manager related to its activities in any securities, financial advisory or other investment business that constitutes fraud, (y) the

Portfolio Manager being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any securities, financial advisory or other investment business or (z) the Portfolio Manager being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Portfolio Manager shall give prompt written notice thereof to the Issuer, the Trustee, the Class E Certificate Paying Agent and the Holders of all outstanding Notes and Class E Certificates upon the Portfolio Manager's becoming aware of the occurrence of such event. The Controlling Class of Notes and a Majority of the Holders of the Class E Certificates (excluding any Class E Certificates held by the Portfolio Manager or its Affiliates) may, acting together, waive any event described above as a basis for termination of this Agreement and removal of the Portfolio Manager under this Section 14.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Portfolio Manager shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Portfolio Manager shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral, the Class P-1 Collateral and the Class P-2 Collateral then in the custody of the Portfolio Manager; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Portfolio Manager appointed pursuant to Section 12(f) hereof.

Notwithstanding such termination, the Portfolio Manager shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Portfolio Manager in Section 16(b) hereof or from any failure of the Portfolio Manager to comply with the provisions of this Section 15.

(b) The Portfolio Manager agrees that, notwithstanding any termination, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Portfolio Manager or any Affiliate of the Portfolio Manager) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Portfolio Manager as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each

jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture, the Notes, the Class Q-1 Securities or the Class E Certificates would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture, the Notes, the Class Q-1 Securities and the Class E Certificates and all obligations required hereunder, under the Indenture, the Notes and the Class E Certificates and has taken all necessary action to authorize this Agreement, the Indenture, the Notes, the Class Q-1 Securities and the Class E Certificates on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture, the Notes, the Class Q-1 Securities and the Class E Certificates and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, stockholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the issuance of the Notes, the Class Q-1 Securities and the Class E Certificates, is required by the Issuer in connection with this Agreement, the Indenture, the Notes, the Class Q-1 Securities or the Class E Certificates or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture, the Notes, the Class Q-1 Securities or the Class E Certificates or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Portfolio Manager.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Portfolio Manager as promptly as practicable after its adoption or execution.

(b) The Portfolio Manager hereby represents and warrants to the Issuer as follows:

(i) The Portfolio Manager is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or on the ability of the Portfolio Manager to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager.

(ii) The Portfolio Manager has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Portfolio Manager, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the Indenture applicable to the Portfolio Manager. No consent of any other person, including, without limitation, creditors of the Portfolio Manager, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Portfolio Manager in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Portfolio Manager. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture shall be, executed and delivered by a duly authorized partner of the Portfolio Manager, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture when executed and delivered by the Portfolio Manager hereunder or under the terms of the Indenture shall constitute, the valid and legally binding obligations of the Portfolio Manager enforceable against the Portfolio Manager in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Portfolio Manager and the documents and instruments required hereunder or under the terms of the Indenture shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Portfolio Manager, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Portfolio Manager, or the Governing Instruments of, or any securities issued by the Portfolio Manager or of any mortgage, indenture, lease,

contract or other agreement, instrument or undertaking to which the Portfolio Manager is a party or by which the Portfolio Manager or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or its ability to perform its obligations under this Agreement and the provisions of the Indenture applicable to the Portfolio Manager, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Portfolio Manager, threatened that, if determined adversely to the Portfolio Manager, would have a material adverse effect upon the performance by the Portfolio Manager of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager hereunder.

(v) The Portfolio Manager is a registered investment advisor under the United States Investment Advisers Act of 1940, as amended.

(vi) The Portfolio Manager is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Portfolio Manager or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Portfolio Manager, or the performance by the Portfolio Manager of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Liberty CLO, Ltd.
c/o Walkers SPV Limited
P.O. Box 908GT
Walker House
Mary Street
George Town, Grand Cayman, Cayman Islands
Telephone: (345) 945-3727
Telecopy: (345) 945-4757
Attention: The Directors

(b) If to the Portfolio Manager:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

JPMorgan Chase Bank
600 Travis Street, 50th Floor,
Houston, Texas 77002
Telecopy: (713) 216-2101
Attention: Worldwide Securities Services—Liberty CLO, Ltd.

(d) If to the Holders of the Notes and the Holders of the Class Q-1 Securities:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Class E Certificates:

In accordance with Section 14.4 of the Indenture, to the Class E Certificate Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.4 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Portfolio Manager hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Portfolio Manager's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 14.1(f)(v) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(ii), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Portfolio Manager agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or

privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Portfolio Manager's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, shall vote or refrain from voting any such

security in any manner permitted by the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Portfolio Manager may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Without prejudice to Section 14(f) hereof, any corporation, partnership or limited liability company into which the Portfolio Manager may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Portfolio Manager shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the collateral management business of the Portfolio Manager, shall be the successor to the Portfolio Manager without any further action by the Portfolio Manager, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Portfolio Manager shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Portfolio Manager hereby consents to (i) the posting of the final Offering Circular, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Portfolio Manager

BY: STRAND ADVISORS, INC., as General Partner

By:_____
Name: James Dondero, CFA, CPA
Title: President
Highland Capital Management, L.P.

LIBERTY CLO, LTD., as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Portfolio Manager

BY: STRAND ADVISORS, INC., as General Partner

By:_____
Name:
Title:

LIBERTY CLO, LTD., as Issuer

By:_____
Name: David Egglishaw
Title: Director

Schedule 1

Certain Tax Provisions

Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

Section I. Specific Restrictions.

A. Communications and Negotiations with Issuers.

Neither the Issuer nor the Portfolio Manager will have any communications or negotiations with the issuer of a Collateral Obligation or the issuer of a Reference Obligation (in any case, directly or indirectly through an intermediary such as the seller of such Collateral Obligation or the Synthetic Security) in connection with the issuance or funding of such Collateral Obligation or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Portfolio Manager may (i) consent to or withhold consent to any proposed amendments, supplements or other modifications of the term of any Collateral Obligations after such Collateral Obligations are acquired by the Issuer, and (ii) provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

B. Collateralized Obligations Purchased from the Portfolio Manager and Affiliates.

If the Portfolio Manager or an affiliate of the Portfolio Manager acted as an underwriter, placement or other agent, arranger, negotiator or structuror in connection with the issuance or origination of a Collateral Obligation or was a member of the original lending syndicate with respect to the Collateral Obligation, the Issuer will not acquire any interest in such Collateral Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Portfolio Manager, an affiliate of the Portfolio Manager, or a fund managed by the Portfolio Manager, unless such Collateral Obligation is a "Permitted Affiliated Collateral Obligation," which shall require that (i) the Collateral Obligation has been outstanding for at least 90 days, (ii) the holder of the Collateral Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its issuance, (iii) the employees or agents or the Portfolio Manager responsible for selecting Collateral Obligations for the Issuer were not directly involved in the origination of the Collateral Obligation on behalf of the Portfolio Manager, an affiliate of the Portfolio Manager, or a fund managed by the Portfolio Manager (e.g. responsible for approving or reviewing the lending decision, participation in a credit committee reviewing any loan proposed to be made), (iv) the price paid for such obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, (v) after the acquisition the Issuer will own less than 50% of the aggregate principal amount of the tranche or class of the borrowing that includes such Collateral Obligation and (vi) the addition of such Collateral Obligation to the portfolio would not cause 25% or more of the Collateral Obligations to consist of Permitted Affiliated Collateral Obligations.

C. Revolving Loans and Delayed Drawdown Loans.

(i) The Issuer will not purchase any Collateral Obligation that constitutes a Revolving Loan or Delayed Drawdown Loan unless the legal document closing with respect

thereto has occurred and either (x) at least one advance of more than a de minimis amount has already been made under the facility or loan of which the Revolving Loan or Delayed Drawdown Loan, respectively, is a part by a Person that is not an Affiliate of the Issuer or the Portfolio Manager or (y) such Revolving Loan or Delayed Drawdown Loan is not a stand-alone Revolving Loan or a stand-alone Delayed Drawdown Loan and such Revolving Loan or Delayed Drawdown Loan is being acquired in connection with the related loan.

(ii) All of the terms of any advance required to be made by the Issuer under any Revolving Loan or Delayed Drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Portfolio Manager will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such Revolving Loan or Delayed Drawdown Loan.

(iii) The Issuer cannot acquire or hold more than a 50% interest in a Revolving Loan or a Delayed Drawdown Loan.

D. Application to Synthetic Securities.

With respect to each Synthetic Security: (a) the criteria used to determine whether to enter into any particular Synthetic Security is similar to the criteria used by the Portfolio Manager in making investment decisions in debt securities; (b) the Synthetic Security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities and/or any rise in their value during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit; (c) the Issuer enters into the Synthetic Security with a counterparty that is a broker-dealer or that holds itself out as in the business of entering into such contracts; (d) none of the Issuer and any other person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities; and (e) except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation.

Section II. Restrictions with Respect to Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, a loan subparticipation or a collateralized loan obligation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller must be treated as a forward sale agreement (a "Forward Purchase Commitment") unless such an understanding or commitment is not legally binding and neither the Issuer nor the Portfolio Manager is economically compelled to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Portfolio Manager will make an independent investment decision whether to purchase such Loan on behalf of the Issuer after completion of the closing and full funding of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof, (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Commitment.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment earlier than 48 hours after the time of the closing and full funding of the Loan.

E. The Issuer cannot have a contractual relationship with the borrower with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the lending agreement or otherwise acquire a loan as a member of the original lending syndicate, and cannot be obligated to fund an assignment of or a participation in a Loan prior to the actual funding of the Loan by the institutions lending to the borrower.

G. The Issuer cannot purchase or commit to purchase a Loan if it would cause the Issuer to own more than 50% of the aggregate principal amount of the tranche or class of the borrowing that includes such Loan.

Section III. Hedge Agreements.

When entering into, performing under or terminating a hedge agreement:

A. The Issuer and the Portfolio Manager on behalf of the Issuer, shall not solicit, advertise, publish or otherwise hold the Issuer out as willing to execute or facilitate trades in, enter into, assume, offset or terminate derivative instruments or transactions in the ordinary course of business; and

B. The Issuer shall enter into hedge agreements (1) on standard form ISDA documentation, (2) solely for the purpose of hedging currency risk, interest risk, basis risk, and other non-credit related financial risk in connection with the Issuer's issuance of, and making payments on, the Notes and the Issuer's ownership and disposition of the Collateral, and (3) that it will treat as "notional principal contracts" for all applicable U.S. federal tax purposes except as otherwise may be required by any taxing authority.

SERVICING AGREEMENT

This Servicing Agreement, dated as of October 25, 2007 is entered into by and among STRATFORD CLO LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, KY1-1108, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and STRATFORD CLO LLC (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$417,200,000 of their Class A-1 Floating Rate Senior Secured Extendable Notes due November 2021 (the "Class A-1 Notes"), U.S.$104,300,000 of their Class A-2 Floating Rate Senior Secured Extendable Variable Funding Notes due November 2021 (the "Class A-2 Notes"), U.S.$41,300,000 of their Class B Floating Rate Senior Secured Extendable Notes due November 2021 (the "Class B Notes"), U.S.$37,100,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class C Notes"), U.S.$16,100,000 of their Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class D Notes"), U.S.$21,000,000 of their Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class E Notes" and together with the Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C Notes and Class D Notes, the "Notes") pursuant to the Indenture dated as of October 25, 2007 (the "Indenture"), among the Co-Issuers and State Street Bank and Trust Company, as trustee (the "Trustee") and 17,500 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 45,500 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities");

WHEREAS, the Issuer intends to pledge the Collateral to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and in the applicable provisions of the other Transaction Documents and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean Highland Financial Partners, L.P. (which includes, for the avoidance of doubt, any subsidiary thereof).

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated October 22, 2007 prepared in connection with the offering of the Securities.

"Redemption Date" shall mean any Optional Redemption Date, Special Redemption Date, Tax Event Redemption Date or Mandatory Redemption Date, as applicable.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Servicing Fee" shall mean, collectively, the Senior Servicing Fee, the Subordinate Servicing Fee and the Supplemental Servicing Fee.

"Transaction Documents" shall mean, this Agreement, the Indenture, the Collateral Administrator Agreement, the Preference Shares Paying Agency Agreement, any Hedge Agreement and any Synthetic Security Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms this Agreement and the other Transaction Documents, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and the other Transaction Documents, and including the furnishing of Issuer Orders, Issuer Requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligation, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the other Transaction Documents, perform its obligations hereunder and thereunder with reasonable care, using a degree of skill and attention no less than that

which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the other Transaction Documents. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the other Transaction Documents affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to any Transaction Document until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to any Transaction Document that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Collateral criteria set forth herein and in the Indenture;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Collateral Obligation, Eligible Equity Security, Qualified Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligation or Eligible Investments included in the Collateral, one or more substitute Collateral Obligation or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligation; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(8) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities; and

(v) the Servicer shall (a) on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligation and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption and (b) conduct Auctions in accordance with the terms of the Indenture.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the Collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the

Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding. The provisions of this Section 2(c)(i) shall survive termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(iii) The Servicer shall, on behalf of the Issuer and at the Issuer's expense, retain a firm of independent certified public accountants of recognized national reputation (the Accountants) to (i) prepare on behalf of (and at the expense of) the Issuer and Co-Issuer any income tax or information returns that the Issuer or Co-Issuer may from time to time be required to file under applicable law (each, a Tax Return), (ii) deliver, reasonably prior to any applicable time limit, each Tax Return, properly completed, to the Administrator for signature by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, (iii) file or deliver such Tax Return on behalf of the Issuer or Co-Issuer within any applicable time limit with any authority or Person as required under applicable law, (iv) prepare and file any elections, as needed, to preserve the status of the Issuer as a corporation for United States Federal tax purposes due to a change in United States Federal tax laws, and (v) prepare (alone or with the assistance of the Collateral Administrator) and deliver on an annual basis in a timely manner to the Preference Share Paying Agent for delivery to each Preference Shareholder the information required by Section 7.1(d) and (g) of the Preference Share Paying Agency Agreement including (A) any Internal Revenue Service Form 5471 (or successor or form), and any other information required under Sections 6038, 6038B or 6046 of the Code of (or successor provisions), (B) all information that a U.S. shareholder making a "qualified electing fund" election with respect to the Issuer is required to obtain for United States Federal income tax purposes, (C) a "PFIC Annual Information Statement" as described in Treasury Regulation Section 1.1295 1(g) (or any successor guidance), including all representations and statements required by such statement and (D) information required by a Preference Shareholder to satisfy its obligations, if any, under Treasury Regulations Section 1.6011-4 (or successor provisions) with respect to transactions undertaken by the Issuer.

(iv) The Servicer shall, on behalf of the Issuer and at the Issuer's expense (i) provide (or cause to be provided) to each issuer or paying agent of (or counterparty or paying agent with respect to) an item included in the Collateral (or, as appropriate, provide or cause to be provided to the relevant tax authority or tax authorities) any tax forms or certifications that the Issuer is able to provide as necessary to avoid or minimize withholding or imposition of income or withholding tax or as reasonably required or requested by each issuer (or counterparty or paying agent) and (ii) take any steps reasonably necessary to obtain a refund of withholding taxes imposed on any item included in the Collateral.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties and provided further that such assignee must perform its duties without causing the Issuer to become subject to net income tax in any jurisdiction outside the Issuer's jurisdiction of incorporation or otherwise cause adverse tax consequences to the Issuer or Co-Issuer. Notwithstanding any other provision of this Agreement, the Servicer shall not

be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligation or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test or Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test or Collateral Quality Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test or Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligation or other securities of the issuers of Collateral Obligation. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to have or pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Investment Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Investment Advisers Act.

(c) In addition, the Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the other Transaction Documents. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Memorandum and Articles of Association or the Co-Issuer's certificate of formation or limited liability company agreement, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) not be permitted by Annex 1 hereto and would subject the Issuer to U.S. federal or state income or franchise taxation, cause the Issuer to be engaged in a trade or business in the United States for

U.S. federal income tax purposes or cause the Issuer to be subject to tax on a net income basis outside the Issuer's jurisdiction of incorporation or otherwise cause adverse tax consequences to the Issuer or Co-Issuer. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable on such later Payment Date on which funds are available therefor as provided in the Indenture.

With respect to any Payment Date, the Servicer may, in its sole discretion, at any time waive a portion (or all) of its Servicing Fees then due and payable. All waived amounts will be paid to the Class II Preference Shares as Class II Preference Share Dividends pursuant to the Indenture; provided that with respect to the Payment Date in May 2008, such Class II Preference Share Special Payments will, at a minimum, include amounts that otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Closing Date through February 3, 2008. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Dividends.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Subordinated Servicing Fee or Supplemental Servicing Fee, any funds representing the waived Subordinated Servicing Fees and Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement, the Indenture and the other Transaction Documents; provided, however, that any extraordinary expenses incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages, including reasonable expenses incurred with respect to any compliance requirements, including, but not limited to, compliance with the requirements of the Sarbanes-Oxley Act, related solely to the ownership

or holding of any Securities by HFP or its Affiliates) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement or (ii) with respect to any information included in the Offering Memorandum in the section entitled "The Servicer" and paragraphs 1, 2, 3, 4, 5, 7 and 11 in the section entitled "Risk Factors–Certain Conflicts of Interest–Conflicts of Interest Involving the Servicer" of that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement, the Indenture and the other Transaction Documents. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer complies with the requirements set forth in Annex 1 hereto (unless the Servicer knows that as a result of a change in law the investment restrictions set forth in Annex 1 may no longer be relied upon).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses

(including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

(vi) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defense of such

claim, including, but not limited to, the right to designate counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Indemnifying Party assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for any Indemnified Party incurred thereafter in connection with such claim except that if such Indemnified Party reasonably determines that counsel designated by the Indemnifying Party has a conflict of interest in connection with its representation of such Indemnified Party, such Indemnifying Party shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, further, that prior to entering into any final settlement or compromise, such Indemnifying Party shall seek the consent of the Indemnified Party and use its commercially reasonable efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such Indemnified Party as to the terms of settlement or compromise. If an Indemnified Party does not consent to the settlement or compromise within a reasonable time under the circumstances, the Indemnifying Party shall not thereafter be obligated to indemnify the Indemnified Party for any amount in excess of such proposed settlement or compromise.

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority, other than HFP which may exercise its vote with respect to Preference Shares it owns, up to the Original HFP Share Amount (each such non-excluded Preference Share, a "Voting Preference Share")), (B) such successor Servicer has assumed in writing all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP (each such non-excluded Note, a "Voting Note")); or

(ii) if a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP) has nominated two or more possible successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 30 days of the date of notice of such removal or resignation of the Servicer (or, if later, within 30 days of the last failure to successfully appoint a successor Servicer), then (A) the Issuer appoints a successor Servicer at the written direction of a Super Majority of the Controlling Class of Notes, (B) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 45 days after notice of such succession by either of (x) a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP which may exercise its vote with respect to Preference Shares it owns, up to the Original HFP Share Amount) or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single class and excluding any Notes held by the retiring Servicer or any of its Affiliates and accounts over which the retiring Servicer or any of its Affiliates exercise discretionary voting authority other than HFP); or

(iii) if the Issuer fails to appoint a successor Servicer pursuant to the preceding clauses (i) and (ii) within 90 days of any notice of resignation or removal of the

Servicer, (A) any Holder of the Controlling Class of Notes (excluding any Notes that are not Voting Notes or any Holder of Voting Preference Shares) may petition a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of any Securities to become subject to tax in any jurisdiction outside of the Issuer's jurisdiction of incorporation and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the Servicer without the prior written consent of a Super Majority of the Controlling Class, Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

If there has been no appointment of a successor Servicer within 90 days following the resignation or termination of the Servicer, until a successor Servicer has been appointed and has assumed its duties hereunder, any sales or disposition of Collateral Obligation shall be limited to Credit Risk Obligation, Credit Improved Obligation, Defaulted Collateral Obligation, Eligible Equity Securities or Qualified Equity Securities; provided, that, such restriction on the sale or disposition of Collateral Obligation shall not apply if the Collateral Obligation is being liquidated in whole or in part in connection with an acceleration or early termination of the Notes.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class and a Majority of the Preference Shares (excluding Notes and Preference Shares held by the Servicer or any of its Affiliates) and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to

an entity described above) shall relieve the Servicer from any liability hereunder; provided that such delegate or assignee must perform its duties without causing the Issuer to become subject to net income tax in any jurisdiction outside the Issuer's jurisdiction of incorporation or otherwise cause adverse tax consequences to the Issuer or Co-Issuer.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Majority of the Controlling Class and the Holders of a Majority of the Preference Shares (excluding Notes and Preference Shares held by the Servicer or any of its Affiliates other than HFP) and (ii) the Rating Condition is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Majority of the Controlling Class and the Holders of a Majority of the Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Majority of the Controlling Class and the Holders of a Majority of the Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) a Super Majority of the Controlling Class of Notes or (2) the Holders of at least 66-2/3% of the Preference Shares (excluding any Preference Shares or other Notes held by the Servicer or any of its Affiliates and accounts over which the Servicer or any of its Affiliates exercise discretionary voting authority, other than HFP which may exercise its vote with respect to Preference Shares it owns, up to the Original HFP Share Amount). For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, S&P, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee and the Preference Shares Paying Agent an accounting with respect to the books and records delivered to the Trustee and the Preference Shares Paying Agent or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the other Transaction Documents and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the other Transaction Documents and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the other Transaction Documents and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the other Transaction Documents and the Securities is required by the Issuer in connection with this Agreement, the other Transaction Documents and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the other Transaction Documents and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any

provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the other Transaction Documents applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the other Transaction Documents applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required

hereunder or under the terms of the other Transaction Documents applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the other Transaction Documents applicable to the Servicer and the documents and instruments required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the other Transaction Documents applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Investment Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the other Transaction Documents applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

(vii) All Collateral Obligations and Eligible Investments purchased on behalf of the Issuer on the Closing Date satisfy paragraphs (15), (28) and (29) of the definition of "Collateral Obligation" in the case of a Collateral Obligation or, in the case

of Eligible Investments, are not described in clause (5) of the exclusions to the definition of "Eligible Investment", as of the date of purchase or commitment to purchase (if earlier) thereof; provided that a Collateral Obligation will be deemed to satisfy paragraph (29) of the definition of "Collateral Obligation" and an Eligible Investment will be deemed not to be described in clause (5) of the exclusions to the definition of "Eligible Investment" if it is acquired in accordance with the requirements of Annex 1.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Stratford CLO Ltd.
c/o Maples Finance Limited
P.O. Box 1093GT
Queensgate House, South Church Street
George Town, Grand Cayman, KY1-1108, Cayman Islands
Telephone: (345) 945-7099
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

State Street Bank and Trust Company
200 Clarendon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617) 351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.3 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.3 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Investment Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the asset servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby. Notwithstanding anything to the contrary, the obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Waiver of Jury Trial Right.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING. EACH PARTY HEREBY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER WOULD NOT, IN THE EVENT OF A PROCEEDING, SEEK TO ENFORCE

THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name: Todd Travers, Assisant Secretar
Title: Strand Advisors, Inc., General Partner of Highland Capital Management, L.P.

STRATFORD CLO LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title:

STRATFORD CLO LTD.,
as Issuer

By:_____
Name: Hugh Thompson
Title: DIRECTOR

ANNEX 1

Certain Asset Acquisition Provisions

Unless otherwise noted, references to the Issuer in this Annex 1 include the Servicer and any other person acting on the Issuer's behalf. Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex 1,

"Affiliate" means, with respect to a specified Person, (a) any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person, (b) any Person that is a member, director, officer or employee of (i) the specified Person or (ii) a Person described in clause (a) of this definition and (c) any fund or account which is managed by (i) the specified Person or (ii) a Person described in clause (a) of this definition; and

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section I. General Investment Restrictions.

Except as otherwise provided in Section VI.D. of this Annex 1, the Issuer (and the Servicer acting on the Issuer's behalf) shall purchase debt securities, interests in loans and other assets (each a "Portfolio Obligation") only in secondary-market transactions and it shall not engage in any lending or underwriting activities or otherwise participate in the structuring or origination of any Portfolio Obligation.

A. Communications and Negotiations.

1. The Issuer will not have any communications or negotiations with the obligor of a Portfolio Obligation or a Reference Obligation (directly or indirectly through an intermediary such as the seller of such Portfolio Obligation or the Synthetic Security) in connection with the issuance or funding of such Portfolio Obligation or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

2. By way of example, permitted due diligence activities may include, but are not limited to, (a) attendance at an obligor's general "roadshow" or other presentations to investment professionals, (b) direct private discussions with personnel of the obligor, arranged by a sponsor, lead bank or other arranger, and (c) other due diligence activities of the kind customarily performed by offerees of the type of Portfolio Obligation being offered, but may not include any negotiations with the obligor, employees or agents of the obligor of any terms or conditions of the Portfolio Obligation being offered.

3. Negotiations between the Servicer and the underwriter, placement agent or broker of a Portfolio Obligation are permitted solely to the extent that they are limited to

responses to customary pre-offering period and offering period inquiries by the underwriter or placement agent (e.g., "If we offered you 10-year senior subordinated bonds of XYZ company, what spread would it require to interest you?"). For purposes of this Section I.A., "negotiations" shall not include (i) commenting on offering documents to an unrelated underwriter or placement agent when the ability to comment was generally available to other offerees, or (ii) communicating certain objective criteria (such as the minimum yield or maturity) the Issuer generally uses in purchasing the relevant type of Portfolio Obligation.

4. The Issuer may consent or otherwise act with respect to amendments, supplements or other modifications of the terms of any Portfolio Obligation (other than a Subsidiary Obligation (as defined in Section III)) requiring consent or action after the date on which any such Portfolio Obligation is acquired by the Issuer if (a) such amendment, supplement or modification would not constitute a Significant Modification (as defined below), (b) (i) in the reasonable judgment of the Servicer, the obligor is in financial distress and such change in terms is desirable to protect the Issuer's interest and (ii) the Portfolio Obligation is described in clause 5(b) of this Section I.A., (c) the amendment or modification would not be treated as the acquisition of a new Portfolio Obligation under paragraph 5 of this Section I.A., or (d) otherwise, if it has received written advice of counsel, which takes into account all the facts and circumstances, including the Issuer's other activities that its involvement in such amendment, supplement or modification will not cause the Issuer to be treated as engaged in a trade or business within the United States.

A "Significant Modification" means any amendment, supplement or other modification that involves (a) a change in the stated maturity or a change in the timing of any material payment of any Portfolio Obligation (including deferral of an interest payment), that would materially alter the weighted average life of the Portfolio Obligation, (b) any change (whether positive or negative) in the yield on the Portfolio Obligation (calculated taking into account any fee in consideration for such modification) immediately prior to the modification in excess of the greater of (i) 25 basis points or (ii) 5 percent of such unmodified yield, (c) any change involving a material new extension of credit, (d) a change in the obligor of any Portfolio Obligation (as determined for purposes of section 1001 of the Code), or (e) a material change in the collateral or security for any Portfolio Obligation, including the addition or deletion of a co-obligor or guarantor that results in a material change in payment expectations.

5. In the event the Issuer owns an interest in a Portfolio Obligation the terms of which are subsequently amended or modified, or in the case of a workout situation not described in Section III hereof, which Portfolio Obligation is subsequently exchanged for new obligations or other securities of the obligor of the Portfolio Obligation, such amendments or modifications or exchange will not be treated as the acquisition of an interest in a new Portfolio Obligation for purposes of this Annex 1, provided, that (a) the Issuer does not, directly or indirectly (through the Servicer or otherwise), seek the amendments or modifications or the exchange, or participate in negotiating the amendments or modifications or the exchange, and (b) at the time of original acquisition of the interest in the Portfolio Obligation, it was not reasonably anticipated that the terms of the Portfolio Obligation would, pursuant to a workout or other negotiation, subsequently be amended or modified.

B. Fees. The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Portfolio Obligation or entering into a Synthetic Security; the foregoing prohibition shall not be construed to preclude the Issuer from receiving (i) commitment fees, facility maintenance fees or other similar fees that are received by the Issuer in connection with revolving or delayed drawdown Loans or synthetic or pre-funded letter of

credit Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Portfolio Obligations (provided in the case of amendments, waivers and other modifications described in clause 4(b) of this Section I.A., but not in clauses 4(a), (c) or (d), such fees are generally available to all holders on the same terms); (iv) fees from permitted securities lending; or (v) upfront payments in lieu of periodic payments under a Synthetic Security. The Issuer will not provide services to any Person; the foregoing prohibition shall not be construed to preclude the Issuer from activities relating to the receipt of income described in (i) through (v) of the preceding sentence.

Section II. Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation or a loan subparticipation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller shall only be made pursuant to a forward sale agreement at an agreed price (stated as a dollar amount or as a percentage) (a "Forward Purchase Commitment"), unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled (e.g., would otherwise be subject to a significant monetary penalty) to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent decision whether to purchase such Loan on behalf of the Issuer after completion of the closing of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Agreement.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment or a Non-Binding Agreement earlier than 48 hours after the time of the closing of the Loan (i.e., execution of definitive documentation), and, in the case of a Forward Purchase Commitment, the Issuer's obligation to purchase such Loan is subject to the condition that no material adverse change has occurred in the financial condition of the Loan's obligor or the relevant market on or before the relevant purchase date.

E. The Issuer cannot have a contractual relationship with the obligor with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the original lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan, prior to the time specified in subsection D above.

G. In addition to the restrictions otherwise applicable to Loans, the Issuer shall not acquire any synthetic or pre-funded letter of credit Loan unless (1) the cash collateral deposit with respect to such Loan was fully funded by a predecessor in interest with respect to such Loan; (2) the Loan is part of a credit facility that includes another Loan (other than a synthetic or pre-funded letter of credit Loan) to the same obligor, and is being acquired in connection with the acquisition of such other Loan and from the same seller as such other Loan, with the intent to hold both parts and with the amount of the other Loan held by the Issuer being at least two times as large as the amount of the synthetic or pre-funded letter of

credit Loan held by the Issuer with the Issuer holding no less than the same percentage interest in the other Loan as in the synthetic or pre-funded letter of credit Loan; (3) such synthetic or pre-funded letter of credit Loan satisfies the requirements set forth in Section VI.B., treating the synthetic of pre-funded letter of credit Loan, for this purpose, as though it were a delayed drawdown or revolving Loan; and (4) at no time may the Issuer have entered into more than ten currently outstanding synthetic or pre-funded letter of credit Loans or may more than 5% of the aggregate principal amount of Portfolio Obligations consist of synthetic or pre-funded letter of credit Loans.

Section III. Distressed Debt.

A. The Issuer may only purchase a Debt Instrument (as defined below) that is a Potential Workout Obligation to the extent permitted by this Section III.

B. Neither the Issuer nor the Servicer on behalf of the Issuer shall purchase a Subsidiary Obligation from any Issuer Subsidiary.

C. Special Procedures for Subsidiary Obligations.

1. Potential Workout Obligations. On or prior to the date of acquisition, the Servicer on behalf of the Issuer shall identify each Portfolio Obligation that is a Potential Workout Obligation.

2. Transfer of Subsidiary Obligations. From and after the occurrence of a Workout Determination Date with respect to a Subsidiary Obligation, neither the Issuer nor the Servicer on behalf of the Issuer shall knowingly take any action in respect of such Subsidiary Obligation that may result in the Issuer being engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes. As soon as practicable, but in any event within 30 calendar days following a Workout Determination Date, the Servicer shall cause the Issuer either (i) to sell or dispose of any Subsidiary Obligation identified on such Workout Determination Date to a Person that is not an Affiliate of the Issuer or Servicer or (ii) to assign any Subsidiary Obligation identified on such Workout Determination Date to an Issuer Subsidiary.

For purposes of this Annex 1, an "Issuer Subsidiary" means any wholly-owned corporate subsidiary of the Issuer to which a Special Workout Obligation may be transferred in accordance with this Annex 1.

3. Consideration for Assignment of Subsidiary Obligations. Consideration given by an Issuer Subsidiary for the assignment to it of Subsidiary Obligations may be in the form of cash or in the form of indebtedness of, or equity interests in, such Issuer Subsidiary.

4. Classification of Issuer Subsidiaries. Each Issuer Subsidiary shall be an entity treated as a corporation for United States federal income tax purposes.

As used herein:

"Potential Workout Obligation" means any debt instrument (any such instrument, including an interest in a Loan, a "Debt Instrument") which, as of the date of acquisition by the Issuer or an Issuer Subsidiary, based on information specific to such Debt Instrument or the circumstances of the obligor thereof, is a Workout Obligation or, in the reasonable determination of the Servicer, has a materially higher likelihood of becoming a Workout Obligation as

compared to debt obligations that par or other non-distressed debt purchasers or funds relating to that asset type customarily purchase and expect to hold to maturity.

"Subsidiary Obligation" means any Potential Workout Obligation (a) as to which the Issuer on any Workout Determination Date either (i) owns more than 40% of the aggregate principal amount of such class of Potential Workout Obligation outstanding or (ii) is one of the two largest holders of any class of debt of the obligor of such Potential Workout Obligation (based on the outstanding principal amount of such class of debt owned by the Issuer as a percentage of the aggregate outstanding principal amount of such class of debt) unless not fewer than three other holders and the Issuer collectively own at least 65% of such class of debt and, if the Issuer is the largest holder of such class, the Issuer's percentage of such class does not exceed the percentage held by the next largest holder of the debt by more than 5% of such class or (b) that would, upon foreclosure or exercise of similar legal remedies, result in the Issuer directly owning assets (other than securities treated as debt, equity in a partnership not engaged in a trade or business within the United States, or corporate equity for United States federal income tax purposes, provided in the case of corporate equity that the corporation is not a "United States real property holding corporation" within the meaning of section 897 of the Code) which are "United States real property interests" within the meaning of section 897 of the Code or which the Servicer reasonably expects it would, on behalf of the Issuer, be required to actively manage to preserve the value of the Issuer's interest therein; provided that a Potential Workout Obligation shall not be treated as a Subsidiary Obligation if the Issuer obtains a Tax Opinion that, based on all the surrounding circumstances, the activities in which the Issuer intends to engage with respect to such Potential Workout Obligation will not cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes.

"Workout Determination Date" means any date on which, in connection with the occurrence of any event described in clauses (a) through (c), inclusive, of the definition of Workout Obligation, either (a) any material action by the Issuer is required to be taken, (b) the Servicer receives written notice that such material action shall be required or (c) the Servicer reasonably determines that the taking of such material action is likely to be required.

"Workout Obligation" means any Debt Instrument as to which the Servicer on behalf of the Issuer (a) consents to a Significant Modification in connection with the workout of a defaulted Portfolio Obligation, (b) participates in an official or unofficial committee or similar official or unofficial body in connection with a bankruptcy, reorganization, restructuring or similar proceeding, or (c) exercises, or has exercised on its behalf, rights of foreclosure or similar judicial remedies.

Section IV. Purchases from the Servicer or its Affiliates.

A. If the Servicer or an Affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror, or received any fee for services (it being understood that receipts described in clauses (i) through (v) of Section I.B. are not construed as so treated), in connection with the issuance or origination of a Portfolio Obligation or was a member of the original lending syndicate with respect to the Portfolio Obligation or the Portfolio Obligation could not have been purchased by the Issuer under Sections II and IV of these guidelines in the same circumstances as it was purchased by the Servicer or such Affiliates (any such Portfolio Obligation, a "Special Procedures Obligation"), the Issuer will not acquire any interest in such Special Procedures Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an Affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Special Procedures Obligation has been outstanding for at least 90 days, (ii) the holder of the

Special Procedures Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its issuance, (iii) the price paid for such Special Procedures Obligation by the Issuer is its fair market value at the time of acquisition by the Issuer and (iv) the transaction is proposed to, and the ultimate purchase is approved on behalf of the Issuer by, one or more Independent Advisors to the Issuer in accordance with the provisions of Section IV.B. below. The Issuer will not acquire any Special Procedures Obligation if, immediately following such acquisition, the fair market value of all Special Procedures Obligations owned by the Issuer would constitute more than 49% of the fair market value of all of the Issuer's assets at such time.

B. An "Independent Advisor" is a Person who is not an Affiliate of the Issuer, the Servicer or any fund managed by the Servicer.

1. The Issuer may not purchase or commit to enter into any such Special Procedures Obligation without prior approval by an Independent Advisor. If the Independent Advisor declines to approve a proposed Special Procedures Obligation, at least three months must elapse before any proposal with respect to the acquisition of debt or other obligations of the same obligor are proposed or considered.

2. The Issuer shall engage the Independent Advisor in an agreement the terms of which shall in substantial form set forth:

(a) the representation of the Independent Advisor, which the Servicer shall not know to be incorrect, that it has significant financial and commercial expertise, including substantial expertise and knowledge in and of the loan market and related investment arenas;

(b) the agreement between the Independent Advisor, the Issuer and the Servicer generally to the effect that (i) the Independent Advisor will operate pursuant to procedures consistent with maintaining his or her independence from the Servicer and its Affiliates, (ii) the Independent Advisor will have the sole authority and discretion to approve or reject purchase proposals made by the Servicer with respect to any Special Procedures Obligation, (iii) all proposals for the Issuer to acquire any Special Procedures Obligation will be first submitted to the Independent Advisor, (iii) the Servicer will prepare the materials it deems necessary to describe the Special Procedures Obligation to the Independent Advisor, (iv) the Investment Advisor will not be required to make any decision to accept or decline a Special Procedures Obligation at the price offered prior to its review of the materials prepared, plus any additional information requested by the Independent Advisor, and (v) no Independent Advisor may be proposed to be replaced by the Servicer, unless for cause or in the event of a resignation of such Independent Advisor; and

(c) such other commercially reasonable terms and conditions, including terms and conditions to the effect that (i) the Independent Advisor will be paid a reasonable fee for its services plus reimbursement of any reasonable expenses incurred in performance of his or her responsibilities, (ii) the Independent Advisor may be removed or replaced only by a majority (whether by positive act or failure to object) of the probable equity owners (as determined for United States federal income tax purposes) of the Issuer, (iii) if at any time there is more than one Independent Advisor to the Issuer, a majority of such Independent Advisors must approve any Special Procedures Obligation subject to Independent Advisor approval, (iv) an Independent Advisor may not engage, directly or indirectly, in the negotiation of the terms of any Special Procedures Obligation to be

acquired by the Issuer (provided however, that an Independent Advisor may negotiate with the Servicer or the seller with respect to the price and terms of the Issuer's purchase of the Special Procedures Obligation, provided further that the Independent Advisor will not make suggestions to the Servicer or any other person about alternative or modified terms of the underlying Special Procedures Obligation on which they might be willing to approve such a Special Procedures Obligation).

3. Any servicing agreement or other document under which the Servicer is granted signatory powers or other authority on behalf of the Issuer will provide that such powers or authority with respect to Special Procedures Obligations are conditioned upon the prior written approval of the Independent Advisor.

4. No Special Procedures Obligation will be presented to an Independent Advisor until at least 90 days have elapsed since the later of (a) the execution of final documentation and (b) the funding in whole or part of the Special Procedures Obligation and there will have been no commitment or arrangement prior to that time that the Issuer will acquire any such Special Procedures Obligation; provided, further, that the Special Procedures Obligation will not be treated as outstanding for any day on which the Issuer enjoys the benefits and burdens of ownership (for example, because any Person has hedged its credit exposure to the Special Procedures Obligation with the Issuer).

5. The Issuer will have no obligation to, or understanding that it will refund, reimburse or indemnify any person (including an Affiliate of the Servicer), directly or indirectly, for "breakage" costs or other costs or expenses incurred by such person if the Independent Advisor determines that the Issuer should decline to purchase any Special Procedures Obligation.

6. Neither the Servicer nor any Affiliate of the Servicer will have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to Special Procedures Obligations without the prior written approval of an Independent Advisor. Except as may be conditioned upon such prior written approval, neither the Servicer nor any Affiliate of the Servicer may hold itself out as having signatory powers on behalf of the Issuer or authority to enter into agreements with respect to Special Procedures Obligations on behalf of the Issuer.

Section V. Synthetic Securities.

A. The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex 1 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security collateral accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, shall not constitute the making of advances).

B. With respect to each Synthetic Security, the Issuer will not acquire or enter into any Synthetic Security that does not satisfy all of the following additional criteria unless the Servicer has first received written advice of counsel that, taking into account all facts and circumstances, including the Issuer's other activities, the ownership and disposition of such Synthetic Security would not cause the Issuer to be engaged in a trade or business within the United States for United States federal income tax purposes:

1. the criteria used to determine whether to enter into any particular Synthetic Security was similar to the criteria used by the Servicer in making purchase decisions with respect to debt securities;

2. the Synthetic Security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities (and any potential rise in their value) during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit;

3. the Issuer enters into the Synthetic Security with a counterparty that (x) is neither a special purpose vehicle nor an insurance company and (y) is a broker-dealer or that holds itself out as in the business of entering into such contracts;

4. neither the Issuer nor any Person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities;

5. except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation;

6. the net payment from the Issuer to the Synthetic Security Counterparty is not determined based on an actual loss incurred by the Synthetic Security Counterparty or any other designated person;

7. there exists no agreement, arrangement or understanding that (i) the Synthetic Security Counterparty is required to own or hold the related Reference Obligation while the Synthetic Security remains in effect or (ii) the Synthetic Security Counterparty is economically or practically compelled to own or hold the related physical Reference Obligation while the Synthetic Security remains in effect;

8. the Synthetic Security provides for (i) all cash settlement, (ii) all physical settlement or (iii) the option to either cash settle or physically settle; provided that, in the latter two cases, physical settlement provides the settling party the right to settle the Synthetic Security by delivering deliverable obligations which *may* include the Reference Obligation and the settling party must not be required to deliver the related Reference Obligation upon the settlement of such Synthetic Security.

Notwithstanding the preceding paragraph, a Synthetic Security providing for physical settlement may require a party to deliver the related Reference Obligation if either:

(i) at the time the Issuer enters into such Synthetic Security, such Reference Obligation is readily available to purchasers generally in a liquid market; or

(ii) the written advice of both United States federal income tax and insurance counsel of nationally recognized standing in the United States experienced in such matters is that, taking into account all the relevant facts and circumstances with respect to such Synthetic Security and the Issuer's other activities, the acquisition of such Synthetic Security will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis and should

not cause the Issuer to be treated as writing insurance in the United States under the law of the state in which the Synthetic Security Counterparty is organized.

9. the Synthetic Security is not treated as insurance or a financial guarantee for regulatory purposes in the United States or Cayman Islands or any other jurisdiction where the Issuer could be subject to insurance regulation.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan, that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

Section VI. Other Types of Assets.

A. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is:

1. not treated for U.S. federal income tax purposes either as debt or as issued by an entity that is a corporation (within the meaning of Section 7701 of the Code), or

2. a "United States real property interest" as defined in section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may cause an Issuer Subsidiary to acquire assets set forth in clause (i) or (ii) above (each, an "ETB/897 Asset") in connection with the workout of defaulted Portfolio Obligations, so long as the acquisition of ETB/897 Assets by such Issuer Subsidiary will not cause the stock of such Issuer Subsidiary to be deemed to be an ETB/897 Asset.

B. Revolving Loans and Delayed Drawdown Loans. All of the terms of any advance required to be made by the Issuer under any revolving or delayed drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Servicer will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such revolving or delayed drawdown Loan.

C. Securities Lending Agreements. The Issuer will not purchase any Portfolio Obligation primarily for the purpose of entering into a securities lending agreement with respect thereto.

D. Exception From Secondary Market Rule for Debt Securities. Any purchase of a Portfolio Obligation other than a Loan (a "Debt Security") pursuant to a commitment, arrangement or other understanding made before or contemporaneously with completion of the closing and funding of such Debt Security issuance shall be made only in connection with one of the following:

(i) an underwriting of a registered public offering in which the seller has made a firm underwriting commitment to the issuer of such Debt Security where none of the Servicer or any Affiliate thereof acted as an underwriter or placement agent or participated in negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities),

(ii) a private placement to qualified investors (pursuant to Rule 144A or Section 4(2) under the Securities Act or other similar arrangement) in which such Debt Security was originally issued pursuant to an offering circular, private placement memorandum, or similar offering document and none of the Servicer or any Affiliate thereof acted as a placement agent or underwriter or participated in negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities), or

(iii) an acquisition of or entry into a Synthetic Obligation in accordance with Section V. above;

If an Affiliate of the Servicer is acting as an underwriter or placement agent or an Affiliate of the Servicer or an employee of an Affiliate of the Servicer participated in the structuring of an issuance otherwise described in clause (i) or clause (ii) of this paragraph D, one of the following additional conditions must be met:

(x) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases no more than 33% of the aggregate principal amount of the tranche of securities (or other instruments) of which such Debt Security is a part and more than 50% of the aggregate principal amount of such tranche is substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase,

(y) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases less than 50% of the aggregate principal amount of all tranches issued as part of the transaction in which the Debt Security was issued and more than 50% of the aggregate principal amount of such tranches are substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase, or

(z) such security or obligation satisfies the requirements and procedures applicable to Special Procedures Obligations in Section IV as though it were a Loan;

provided, however, in either of (x) or (y), the Affiliate of the Servicer was (or the employees of the Affiliate of the Servicer were) acting as an underwriter or placement agent (or otherwise participated in

the structuring of such issuance) solely as, or solely as an employee of, a Permitted Affiliate (as defined below); and provided further, that for purposes of calculating the total principal amount sold to related parties under this paragraph D, purchases by Affiliates will be considered purchases by persons unrelated to the Servicer so long as the Servicer has no knowledge of such purchases and has no reason to know of such purchases.

"Permitted Affiliate" means any Affiliate (i) that is a separate legal entity that is operated independently of the Servicer, (ii) whose personnel are not managed by and who do not report to the personnel of the Servicer, and (iii) whose personnel are not compensated based upon the performance of the Servicer.

Section VII. General Restrictions on the Issuer. The Issuer itself shall not:

A. hold itself out, through advertising or otherwise, as originating Loans, lending funds, or making a market in or dealing in Loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, a surety bond issuer, or a company engaged in Loan origination;

C. take any action causing it to be treated as a bank, insurance company, or company engaged in Loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to acquire a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the related indenture or acquire a Portfolio Obligation conditioned upon a particular person or entity holding Securities;

G. acquire any asset the holding or acquisition of which would cause the Issuer to be subject to income tax on a net income basis;

H. hold any security as nominee for another person;

I. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit; or

J. buy any Portfolio Obligation that the Servicer expects to default or for the purposes of restructuring the Portfolio Obligation or any obligation thereunder.

Section VIII. Tax Opinion; Amendments.

A. In furtherance and not in limitation of this Annex 1, the Servicer shall comply with all of the provisions set forth in this Annex 1, unless, with respect to a particular transaction or specific provision, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of Skadden, Arps, Slate, Meagher & Flom LLP or Orrick, Herrington & Sutcliffe LLP or an opinion of other counsel of nationally recognized standing in the United States experienced in such matters (a "Tax Opinion"), that, taking into account all the relevant facts and circumstances with respect to such transaction or such specific provision and the Issuer's other activities, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

B. The provisions set forth in the Annex 1 may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received a Tax Opinion that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

SERVICING AGREEMENT

This Servicing Agreement, dated as of December 21, 2006 is entered into by and among BRENTWOOD CLO, LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and BRENTWOOD CLO, CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$388,700,000 of their Class A-1A Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-1A Notes"), U.S.$75,000,000 of their Class A-1B Delayed Drawdown Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-1B Notes" and, together with the Class A-1A Notes, the "Class A-1 Notes"), U.S.$51,500,000 of their Class A-2 Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-2 Notes" and, together with the Class A-1 Notes, the "Class A Notes"), U.S.$68,000,000 of their Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class B Notes"), U.S.$23,800,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class C Notes" and, together with the Class A Notes and the Class B Notes, the "Senior Notes") and the Issuer will issue U.S.$21,000,000 of the Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class D Notes" and, together with the Senior Notes, the "Notes") pursuant to the Indenture dated as of December 21, 2006 (the "Indenture"), among the Co-Issuers and Investors Bank & Trust Company, as trustee (the "Trustee") and 34,400 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 37,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Share Documents;

WHEREAS, pursuant to the Indenture, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Advisers Act" shall mean the Investment Advisers Act of 1940, as amended.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean collectively, Highland Financial Partners, L.P. and any subsidiary thereof.

"Independent Advisor" shall have the meaning specified in Section IV.B. of Annex 1 hereto.

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated December 21, 2006 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Special Procedures Obligation" shall have the meaning specified in Section IV.A. of Annex 1 hereto.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms of this Agreement and the other Transaction Documents, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and the other Transaction Documents, and including the furnishing of Orders, Requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the other Transaction Documents, perform its obligations hereunder and thereunder with reasonable care, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with

practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the other Transaction Documents. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the other Transaction Documents affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to any Transaction Document until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to any Transaction Document that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Collateral criteria set forth herein and in the Indenture;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Interest has become an Defaulted Collateral Obligation; and the Servicer shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligations or Eligible Investment:

(1) retain such Collateral Obligations or Eligible Investment; or

(2) dispose of such Collateral Obligations or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligations or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligations; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligations; or

(8) exercise any other rights or remedies with respect to such Collateral Obligations or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities;

(v) subject to and in accordance with the terms of this Agreement and the Transaction Documents, the Servicer on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Servicer shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the hedge counterparty), to enter into a replacement Hedge Agreement

(vi) the Servicer shall (a) on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligation and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption and (b) conduct Auctions in accordance with the terms of the Indenture; and

(vii) if the Servicer, on behalf of the Issuer, desires to make distributions of Eligible Equity Securities on any Payment Date pursuant to Section 2(e) of the Preference Shares Paying Agency Agreement, the Servicer shall so notify the Trustee and the Preference Shares Paying Agent and provide the Trustee and the Preference Shares Paying Agent (for forwarding to each Holder of the Preference Shares with respect to the applicable Record Date) details of such Eligible Equity Securities in accordance with the procedure set forth in Section 3(b) of the Preference Shares Paying Agency Agreement.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to

the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding. The provisions of this Section 2(c)(i) shall survive the termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligations or Eligible Investment to be conducted on an arm's-length basis.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Placement Agent, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and the Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to have or pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the reasonable, good faith judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the reasonable, good faith judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Advisers Act.

(c) The Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code. In addition, after the initial distribution of the Class D Notes and the Preference Shares, neither the Servicer nor any of its affiliates (as defined in the Plan Asset Regulation) shall acquire any Class D Notes or Preference Shares (including pursuant to the Extension Procedure or the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class D

Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, the Plan Asset Regulation, the Indenture and the Preference Share Documents). The Class D Notes and the Preference Shares held as principal by the Servicer or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the other Transaction Documents. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's or the Co-Issuer's respective governing instruments, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement

contemplated by the Indenture or (f) not be permitted by Annex 1 hereto and would subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees deposited by the Trustee into the Class II Preference Share Special Payment Account pursuant to the Indenture, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date until February 3, 2008. After February 3, 2008, the Servicer may, in its sole discretion, at any time waive the Class II Preference Share Portion of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments pursuant to the Indenture. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion: (i) waive all or any portion of the Servicing Fee, any funds representing the waived Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments; or (ii) defer all or any portion of the Servicing Fee, any funds representing the deferred Servicing Fees to be retained in the Collection Account, when they will become payable in the same manner and priority as their original characterization would have required unless deferred again.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement, the Indenture and the other Transaction Documents; provided, however, that any extraordinary expenses incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligations or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages) shall be

reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement or (ii) with respect to any information included in the Offering Circular in the section entitled "The Servicer" and "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" that contain any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement, the Indenture and the other Transaction Documents. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer complies with the requirements set forth in Annex 1 hereto.

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses

(including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

(vi) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defense of such

claim, including, but not limited to, the right to designate counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Indemnifying Party assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for any Indemnified Party incurred thereafter in connection with such claim except that if such Indemnified Party reasonably determines that counsel designated by the Indemnifying Party has a conflict of interest in connection with its representation of such Indemnified Party, such Indemnifying Party shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, further, that prior to entering into any final settlement or compromise, such Indemnifying Party shall seek the consent of the Indemnified Party and use its commercially reasonable efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such Indemnified Party as to the terms of settlement or compromise. If an Indemnified Party does not consent to the settlement or compromise within a reasonable time under the circumstances, the Indemnifying Party shall not thereafter be obligated to indemnify the Indemnified Party for any amount in excess of such proposed settlement or compromise.

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) Notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority (or, with respect to Class I Preference Shares held by Investors Corp. at such time, Holding Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority) other than, with respect to the Class II Preference Shares, HFP; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class);

(ii) if a Majority of the Voting Preference Shares has nominated two or more successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, (A) the Issuer appoints a successor Servicer at the written direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) Majority of the Voting Preference Shares or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(iii) if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) has

nominated two or more successor Servicers that have been objected to pursuant to the preceding clauses (i)(C) and (ii)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) or (ii) (C) within 120 days of the date of notice of such removal or resignation of the Servicer, (A) any Holder of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without causing the Issuer, the Co Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing

by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and (ii) the Rating Agency Confirmation is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) the Trustee, acting at the direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) the Holders of a Majority of the Voting Preference Shares. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer

or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against

the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the other Transaction Documents and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the other Transaction Documents and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the other Transaction Documents and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the other Transaction Documents and the Securities is required by the Issuer in connection with this Agreement, the other Transaction Documents and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the other Transaction Documents and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the other Transaction Documents applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the other Transaction Documents applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the other Transaction Documents applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the other Transaction Documents applicable to the Servicer and the documents and instruments required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the other Transaction Documents applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Investment Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the other Transaction Documents applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Brentwood CLO, Ltd.
c/o Maples Finance Limited
P.O. Box 1093GT
Queensgate House
South Church Street
George Town, Grand Cayman, Cayman Islands
Telephone: (345) 945-7099
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

Investors Bank & Trust Company
200 Claredon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617)351-4358
Attention: CDO Services – Brentwood CLO, Ltd.

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the Rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted

Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, as applied in accordance with the Priorities of Payments pursuant to the Indenture, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Servicer hereby consents to (i) the posting of the final Offering Memorandum, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

By:_____
Name: Todd Travers
Title: Senior Portfolio Manager
Highland Capital Management, L.P.

BRENTWOOD CLO, LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

By:_____
Name:
Title:

BRENTWOOD CLO, LTD.,
as Issuer

By:_____
Name:
Title:

Chris Watler
Director

ANNEX 1

Certain Tax Provisions

Unless otherwise noted, references to the Issuer in this Annex 1 include the Servicer and any other person acting on the Issuer's behalf. Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex 1,

"Affiliate" means, with respect to a specified Person, (a) any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person and (b) any Person that is a member, director, officer or employee of (i) the specified Person or (ii) a Person described in clause (a) of this definition; and

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section I. General Restrictions.

As provided in this Annex 1, the Issuer (and the Servicer acting on the Issuer's behalf) shall only purchase debt securities, interests in loans and other assets (each a "Portfolio Collateral") only in secondary-market transactions and shall not engage in any lending or underwriting activities or otherwise participate in the structuring or origination of any Portfolio Collateral.

A. Communications and Negotiations.

1. The Issuer will not have any communications or negotiations with the obligor of a Portfolio Collateral or a Reference Obligation (directly or indirectly through an intermediary such as the seller of such Portfolio Collateral or the Synthetic Security) in connection with the issuance or funding of such Portfolio Collateral or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

2. By way of example, permitted due diligence activities may include, but are not limited to, (a) attendance at an obligor's general "roadshow" or other presentations to investment professionals, (b) direct private discussions with personnel of the obligor, arranged by a sponsor, lead bank or other arranger, and (c) other due diligence activities of the kind customarily performed by offerees of the type of Portfolio Collateral being offered, but may not include any negotiations with the obligor, employees or agents of the obligor of any terms or conditions of the Portfolio Collateral being offered.

3. Negotiations between the Servicer and the underwriter, placement agent or broker of a Portfolio Collateral are permitted solely to the extent that they are limited to responses to customary pre-offering period and offering period inquiries by the underwriter or placement agent (e.g., "If we offered you 10-year senior subordinated bonds of XYZ company, what spread would it require to interest you?" or "If you will not buy the bonds as offered, would you buy if

we convinced the obligor to add a fixed charge coverage test?"). For purposes of this Section I.A., "negotiations" shall not include (i) commenting on offering documents to an unrelated underwriter or placement agent when the ability to comment was generally available to other offerees, or (ii) communicating certain objective criteria (such as the minimum yield or maturity) the Issuer generally uses in purchasing the relevant type of Portfolio Collateral.

4. The Issuer may consent or otherwise act with respect to amendments, supplements or other modifications of the terms of any Portfolio Collateral (other than a Subsidiary Obligation (as defined in Section III)) requiring consent or action after the date on which any such Portfolio Collateral is acquired by the Issuer if (a) such amendment, supplement or modification would not constitute a Significant Modification (as defined below), (b) (i) in the reasonable judgment of the Servicer, the obligor is in financial distress and such change in terms is desirable to protect the Issuer's interest and (ii) the Portfolio Collateral is described in clause 5(b) of this Section I.A., (c) the amendment or modification would not be treated as the acquisition of a new Portfolio Collateral under paragraph 5 of this Section I.A., or (d) otherwise, if it has received advice of counsel that its involvement in such amendment, supplement or modification will not cause the Issuer to be treated as engaged in a trade or business within the United States.

A "Significant Modification" means any amendment, supplement or other modification that involves (a) a change in the stated maturity or a change in the timing of any material payment of any Portfolio Collateral (including deferral of an interest payment), that would materially alter the weighted average life of the Portfolio Collateral, (b) any change (whether positive or negative) in the yield on the Portfolio Collateral immediately prior to the modification in excess of the greater of (i) 25 basis points or (ii) 5 percent of such unmodified yield, (c) any change involving a material new extension of credit, (d) a change in the obligor of any Portfolio Collateral (as determined for purposes of section 1001 of the Code), or (e) a material change in the collateral or security for any Portfolio Collateral, including the addition or deletion of a co-obligor or guarantor that results in a material change in payment expectations.

5. In the event the Issuer owns an interest in a Portfolio Collateral the terms of which are subsequently amended or modified, or in the case of a workout situation not described in Section III hereof, which Portfolio Collateral is subsequently exchanged for new obligations or other securities of the obligor of the Portfolio Collateral, such amendments or modifications or exchange will not be treated as the acquisition of an interest in a new Portfolio Collateral for purposes of this Annex 1, provided, that (a) the Issuer does not, directly or indirectly (through the Servicer or otherwise), seek the amendments or modifications or the exchange, or participate in negotiating the amendments or modifications or the exchange, and (b) at the time of original acquisition of the interest in the Portfolio Collateral, it was not reasonably anticipated that the terms of the Portfolio Collateral would, pursuant to a workout or other negotiation, subsequently be amended or modified.

B. Fees.

The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Portfolio Collateral or entering into a Synthetic Security; the foregoing prohibition shall not be construed to preclude the Issuer from receiving (i) commitment fees or facility maintenance fees that are received by the Issuer in connection with revolving or delayed drawdown Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any items of Portfolio Collateral; (iv) fees from permitted securities lending; or (v) upfront payments in lieu of

periodic payments under a Synthetic Security. The Issuer will not provide services to any Person; the foregoing prohibition shall not be construed to preclude the Issuer from activities relating to the receipt of income described in (i) through (v) of the preceding sentence.

Section II. Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, a loan subparticipation or a collateralized loan obligation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller shall only be made pursuant to a forward sale agreement at an agreed price (stated as a dollar amount or as a percentage) (a "Forward Purchase Commitment"), unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled (e.g., would otherwise be subject to a significant monetary penalty) to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent decision whether to purchase such Loan on behalf of the Issuer after completion of the closing of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Agreement.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment or a Non-Binding Agreement earlier than 48 hours after the time of the closing of the Loan (i.e., execution of definitive documentation), and, in the case of a Forward Purchase Commitment, the Issuer's obligation to purchase such Loan is subject to the condition that no material adverse change has occurred in the financial condition of the Loan's obligor or the relevant market on or before the relevant purchase date.

E. The Issuer cannot have a contractual relationship with the obligor with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the original lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan, prior to the time specified in subsection D above.

Section III. Distressed Debt.

A. The Issuer may only purchase a Debt Instrument that is a Potential Workout Obligation to the extent permitted by this Section III.

B. Neither the Issuer nor the Servicer on behalf of the Issuer shall purchase a Subsidiary Obligation from any Issuer Subsidiary.

C. Special Procedures for Subsidiary Obligations.

1. Potential Workout Obligations. On or prior to the date of acquisition, the Servicer on behalf of the Issuer shall identify each Portfolio Collateral that is a Potential Workout Obligation.

2. Transfer of Subsidiary Obligations. From and after the occurrence of a Workout Determination Date with respect to a Subsidiary Obligation, neither the Issuer nor the Servicer on behalf of the Issuer shall knowingly take any action in respect of such Subsidiary Obligation that may result in the Issuer being engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes. As soon as practicable, but in any event within 30 calendar days following a Workout Determination Date, the Servicer shall cause the Issuer either (i) to sell or dispose of any Subsidiary Obligation identified on such Workout Determination Date to a Person that is not an Affiliate of the Issuer or Servicer or (ii) to assign any Subsidiary Obligation identified on such Workout Determination Date to an Issuer Subsidiary.

For purposes of this Annex 1, an "Issuer Subsidiary" means any wholly-owned corporate subsidiary of the Issuer to which a Special Workout Obligation may be transferred in accordance with this Annex 1.

3. Consideration for Assignment of Subsidiary Obligations. Consideration given by an Issuer Subsidiary for the assignment to it of Subsidiary Obligations may be in the form of cash or in the form of indebtedness of, or equity interests in, such Issuer Subsidiary.

4. Classification of Issuer Subsidiaries. Each Issuer Subsidiary shall be an entity treated as a corporation for United States federal income tax purposes and formed under the laws of any state of the United States.

As used herein:

"Potential Workout Obligation" means any debt instrument (any such instrument, including an interest in a Loan, a "Debt Instrument") which, as of the date of acquisition by the Issuer or an Issuer Subsidiary, based on information specific to such Debt Instrument or the circumstances of the obligor thereof, is a Workout Obligation or, in the reasonable determination of the Servicer, has a materially higher likelihood of becoming a Workout Obligation as compared to debt obligations that par or other non-distressed debt purchasers or funds relating to that asset type customarily purchase and expect to hold to maturity.

"Subsidiary Obligation" means any Potential Workout Obligation (a) as to which the Issuer on any Workout Determination Date either (i) owns more than 40% of the aggregate principal amount of such class of Potential Workout Obligation outstanding or (ii) is one of the two largest holders of any class of debt of the obligor of such Potential Workout Obligation (based on the outstanding principal amount of such class of debt owned by the Issuer as a percentage of the aggregate outstanding principal amount of such class of debt) unless not fewer than three other holders and the Issuer collectively own at least 65% of such class of debt and, if the Issuer is the largest holder of such class, the Issuer's percentage of such class does not exceed the percentage held by the next largest holder of the debt by more than 5% of such class or (b) that would, upon foreclosure or exercise of similar legal remedies, result in the Issuer directly owning assets (other than securities treated as debt, equity in a partnership not engaged in a trade or business within the United States, or corporate equity for United States federal income tax

purposes, provided in the case of corporate equity that the corporation is not a "United States real property holding corporation" within the meaning of section 897 of the Code) which are "United States real property interests" within the meaning of section 897 of the Code or which the Servicer reasonably expects it would, on behalf of the Issuer, be required to actively manage to preserve the value of the Issuer's interest therein; provided that a Potential Workout Obligation shall not be treated as a Subsidiary Obligation if the Issuer obtains a Tax Opinion that, based on all the surrounding circumstances, the activities in which the Issuer intends to engage with respect to such Potential Workout Obligation will not cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes.

"Workout Determination Date" means any date on which, in connection with the occurrence of any event described in clauses (a) through (c), inclusive, of the definition of Workout Obligation, either (a) any material action by the Issuer is required to be taken, (b) the Servicer receives written notice that such material action shall be required or (c) the Servicer reasonably determines that the taking of such material action is likely to be required.

"Workout Obligation" means any Debt Instrument as to which the Servicer on behalf of the Issuer (a) consents to a Significant Modification in connection with the workout of a defaulted Portfolio Collateral, (b) participates in an official or unofficial committee or similar official or unofficial body in connection with a bankruptcy, reorganization, restructuring or similar proceeding, or (c) exercises, or has exercised on its behalf, rights of foreclosure or similar judicial remedies.

Section IV. Purchases from the Servicer or its Affiliates.

A. If the Servicer or an Affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror, or received any fee for services (it being understood that receipts described in clauses (i) through (v) of Section I.B. are not construed as so treated), in connection with the issuance or origination of a Portfolio Collateral or was a member of the original lending syndicate with respect to the Portfolio Collateral (any such Portfolio Collateral, a "Special Procedures Obligation"), the Issuer will not acquire any interest in such Special Procedures Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an Affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Special Procedures Obligation has been outstanding for at least 90 days, (ii) the holder of the Special Procedures Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its issuance, (iii) the price paid for such Special Procedures Obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (iv) the transaction is proposed to, and the ultimate purchase is approved on behalf of the Issuer by, one or more Independent Advisors to the Issuer in accordance with the provisions of Section IV.B. below. The Issuer will not acquire any Special Procedures Obligation if, immediately following such acquisition, the fair market value of all Special Procedures Obligations owned by the Issuer would constitute more than 49% of the fair market value of all of the Issuer's assets at such time.

B. An "Independent Advisor" is a Person who is not an Affiliate of the Issuer, the Servicer or any fund managed by the Servicer.

1. The Issuer may not purchase or commit to enter into any such Special Procedures Obligation without prior approval by an Independent Advisor. If the Independent Advisor declines to approve a proposed Special Procedures Obligation, at least three months must elapse before any proposal with respect to the acquisition of debt or other obligations of the same obligor are proposed or considered.

2. The Issuer shall engage the Independent Advisor in an agreement the terms of which shall in substantial form set forth:

(a) the representation of the Independent Advisor, which the Servicer shall not know to be incorrect, that it has significant financial and commercial expertise, including substantial expertise and knowledge in and of the loan market and related investment arenas;

(b) the agreement between the Independent Advisor, the Issuer and the Servicer generally to the effect that (i) the Independent Advisor will operate pursuant to procedures consistent with maintaining his or her independence from the Servicer and its Affiliates, (ii) the Independent Advisor will have the sole authority and discretion to approve or reject purchase proposals made by the Servicer with respect to any Special Procedures Obligation, (iii) all proposals for the Issuer to acquire any Special Procedures Obligation will be first submitted to the Independent Advisor, (iii) the Servicer will prepare the materials it deems necessary to describe the Special Procedures Obligation to the Independent Advisor, (iv) the Investment Advisor will not be required to make any decision to accept or decline a Special Procedures Obligation at the price offered prior to its review of the materials prepared, plus any additional information requested by the Independent Advisor, and (v) no Independent Advisor may be proposed to be replaced by the Servicer, unless for cause or in the event of a resignation of such Independent Advisor; and

(c) such other commercially reasonable terms and conditions, including terms and conditions to the effect that (i) the Independent Advisor will be paid a reasonable fee for its services plus reimbursement of any reasonable expenses incurred in performance of his or her responsibilities, (ii) the Independent Advisor may be removed or replaced only by a majority (whether by positive act or failure to object) of the probable equity owners (as determined for United States federal income tax purposes) of the Issuer, (iii) if at any time there is more than one Independent Advisor to the Issuer, a majority of such Independent Advisors must approve any Special Procedures Obligation subject to Independent Advisor approval, (iv) an Independent Advisor may not engage, directly or indirectly, in the negotiation of the terms of any Special Procedures Obligation to be acquired by the Issuer (provided however, that an Independent Advisor may negotiate with the Servicer or the seller with respect to the price and terms of the Issuer's purchase of the Special Procedures Obligation, provided further that the Independent Advisor will not make suggestions to the Servicer or any other person about alternative or modified terms of the underlying Special Procedures Obligation on which they might be willing to approve such a Special Procedures Obligation).

3. Any servicing agreement or other document under which the Servicer is granted signatory powers or other authority on behalf of the Issuer will provide that such powers or authority with respect to Special Procedures Obligations are conditioned upon the prior written approval of the Independent Advisor

4. No Special Procedures Obligation will be presented to an Independent Advisor until at least 90 days have elapsed since the later of (a) the execution of final documentation and (b) the funding in whole or part of the Special Procedures Obligation and there will have been no commitment or arrangement prior to that time that the Issuer will acquire any such Special Procedures Obligation; provided, further, that if the person from whom the Issuer will acquire the

Special Procedures Obligation is an Affiliate of the Servicer, such person will not be treated as owning the Special Procedures Obligation for any day during which it does not enjoy substantially all of the benefits and burdens of ownership (for example, because it has hedged its credit exposure to the Special Procedures Obligation).

5. The Issuer will have no obligation to, or understanding that it will refund, reimburse or indemnify any person (including an Affiliate of the Servicer), directly or indirectly, for "breakage" costs or other costs or expenses incurred by such person if the Independent Advisor determines that the Issuer should decline to purchase any Special Procedures Obligation.

6. Neither the Servicer nor any Affiliate of the Servicer will have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to Special Procedures Obligations without the prior written approval of an Independent Advisor. Except as may be conditioned upon such prior written approval, neither the Servicer nor any Affiliate of the Servicer may hold itself out as having signatory powers on behalf of the Issuer or authority to enter into agreements with respect to Special Procedures Obligations on behalf of the Issuer.

Section V. Synthetic Securities.

A. The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex 1 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security collateral accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, shall not constitute the making of advances).

B. With respect to each Synthetic Security, the Issuer will not acquire or enter into any Synthetic Security that does not satisfy all of the following additional criteria unless the Servicer has first received advice of counsel that the ownership and disposition of such Synthetic Security would not cause the Issuer to be engaged in a trade or business within the United States for United States federal income tax purposes:

1. the criteria used to determine whether to enter into any particular Synthetic Security was similar to the criteria used by the Servicer in making purchase decisions with respect to debt securities;

2. the Synthetic Security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities (and any potential rise in their value) during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit;

3. the Issuer enters into the Synthetic Security with a counterparty that is not a special purpose vehicle and is a broker-dealer or that holds itself out as in the business of entering into such contracts;

4. neither the Issuer nor any Person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities;

5. except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation;

6. the net payment from the Issuer to the Synthetic Security Counterparty is not determined based on an actual loss incurred by the Synthetic Security Counterparty or any other designated person;

7. there exists no agreement, arrangement or understanding that (i) the Synthetic Security Counterparty is required to own or hold the related Reference Obligation while the Synthetic Security remains in effect or (ii) the Synthetic Security Counterparty is economically or practically compelled to own or hold the related physical Reference Obligation while the Synthetic Security remains in effect;

8. the Synthetic Security provides for (i) all cash settlement, (ii) all physical settlement or (iii) the option to either cash settle or physically settle; provided that, in the latter two cases, physical settlement provides the settling party the right to settle the Synthetic Security by delivering deliverable obligations which *may* include the Reference Obligation and the settling party must not be required to deliver the related Reference Obligation upon the settlement of such Synthetic Security.

Notwithstanding the preceding paragraph, a Synthetic Security providing for physical settlement may require a party to deliver the related Reference Obligation if either:

(i) at the time the Issuer enters into such Synthetic Security, such Reference Obligation is readily available to purchasers generally in a liquid market; or

(ii) the advice of both United States federal income tax and insurance counsel of nationally recognized standing in the United States experienced in such matters is that, under the relevant facts and circumstances with respect to such Synthetic Security, the acquisition of such Synthetic Security will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis and should not cause the Issuer to be treated as writing insurance in the United States under the law of the state in which the Synthetic Security Counterparty is organized.

9. the Synthetic Security is not treated by the Issuer as insurance or a financial guarantee sold by the Issuer for United States or Cayman Islands regulatory purposes.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan, that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

Section VI. Other Types of Assets.

A. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is:

1. not treated for U.S. federal income tax purposes as debt if the issuing entity is a "partnership"(within the meaning of Section 7701(a)(2) of the Code) unless such entity is not engaged in a trade or business within the United States, or

2. a "United States real property interest" as defined in section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may cause an Issuer Subsidiary to acquire assets set forth in clause (i) or (ii) above (each, an "ETB/897 Asset") in connection with the workout of defaulted Portfolio Collaterals, so long as the acquisition of ETB/897 Assets by such Issuer Subsidiary will not cause the stock of such Issuer Subsidiary to be deemed to be an ETB/897 Asset.

B. Revolving Loans and Delayed Drawdown Loans. All of the terms of any advance required to be made by the Issuer under any revolving or delayed drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Servicer will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such revolving or delayed drawdown Loan.

C. Securities Lending Agreements. The Issuer will not purchase any Portfolio Collateral primarily for the purpose of entering into a securities lending agreement with respect thereto.

Section VII. General Restrictions on the Issuer.

The Issuer itself shall not:

A. hold itself out, through advertising or otherwise, as originating Loans, lending funds, or making a market in or dealing in Loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, a surety bond issuer, or a company engaged in Loan origination;

C. knowingly take any action causing it to be treated as a bank, insurance company, or company engaged in Loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to acquire a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the related indenture or acquire a Portfolio Collateral conditioned upon a particular person or entity holding Securities;

G. acquire any asset the holding or acquisition of which the Servicer knows would cause the Issuer to be subject to income tax on a net income basis;

H. hold any security as nominee for another person; or

I. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

Section VIII. Tax Opinion; Amendments.

A. In furtherance and not in limitation of this Annex 1, the Servicer shall comply with all of the provisions set forth in this Annex 1, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of Skadden, Arps, Slate, Meagher & Flom LLP or Orrick, Herrington & Sutcliffe LLP or an opinion of other counsel of nationally recognized standing in the United States experienced in such matters (a "Tax Opinion"), that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

B. The provisions set forth in the Annex may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received a Tax Opinion that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 8

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346 thru Vol. 27	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
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007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
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007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
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007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

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007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
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007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXECUTION VERSION

REFERENCE PORTFOLIO MANAGEMENT AGREEMENT

This REFERENCE PORTFOLIO MANAGEMENT AGREEMENT, dated as of August 1, 2016 (this "Agreement"), is entered into by and between Highland Capital Management, L.P., a Delaware limited partnership ("Highland" and, in its capacity as reference portfolio manager hereunder, the "Reference Portfolio Manager") and Valhalla CLO, Ltd. (the "Issuer").

WHEREAS, the Issuer and Citigroup Financial Products Inc. ("CFPI") entered into a portfolio swap transaction documented pursuant to the ISDA Master Agreement and Confirmation thereunder, each dated as of August 18, 2004 (as amended, modified or supplemented from time to time, the "Swap Agreement") in connection with which CFPI and the Reference Portfolio Manager entered into a reference portfolio management agreement, dated as of August 18, 2004, (the "Initial Management Agreement");

WHEREAS, the Issuer wishes to enter into this Agreement, pursuant to which the Reference Portfolio Manager agrees to perform, on behalf of the Issuer, certain services with respect to the Reference Portfolio acquired by the Issuer in connection with the termination of the Swap Agreement on the terms set forth herein; and

WHEREAS, the Reference Portfolio Manager has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms.

Capitalized terms used herein that are not otherwise defined herein shall have the respective meanings ascribed thereto in the indenture, dated as of August 18, 2004 (as amended, the "Indenture"), among the Issuer, Valhalla CLO, Inc. (the "Co-Issuer") and The Bank of New York Mellon Trust Company, National Association as successor to JPMorgan Chase Bank (the "Trustee").

2. General Duties of the Reference Portfolio Manager.

(a) The Reference Portfolio Manager shall provide the Issuer with the following services in a manner consistent with the provisions of the Indenture, and in each case subject to the terms and conditions thereof and hereof (and the Reference Portfolio Manager shall have no obligation to perform any other duties other than as specified herein or under the Indenture):

(i) selecting Reference Obligations to be removed from the Reference Portfolio, in whole or in part;

(ii) with respect to each Reference Obligation that is to be added to the Reference Portfolio, (A) designating the Reference Obligation Calculation Amount and Reference Entity with respect thereto and (B) determining the Reference Price for such Reference Obligation;

(iii) with respect to each Reference Obligation with respect to which an Amortization has occurred, calculating the related Obligation Value Reduction Amount or Obligation Value Increase Amount.

(iv) with respect to each Reference Obligation that is to be removed from the Reference Portfolio or is included in the Reference Portfolio as of the 45th Business Day prior to the Swap Termination Date, calculating the Final Price and the related Obligation Value Reduction Amount or Obligation Value Increase Amount for such obligation;

(v) determining (and if so required, certifying in writing) whether a specific Reference Obligation is a Deferring PIK Obligation, Equity Security, Credit Improved Obligation, Credit Risk Obligation, Current Pay Obligation or Defaulted Reference Obligation;

(vi) selecting Dealers for the purposes of obtaining Quotations with respect to Reference Obligations;

(vii) [reserved];

(viii) on behalf of the Issuer, directing the Trustee as to specific Eligible Investments to be purchased or sold by the Issuer as part of the Trust Estate under the Indenture, if any, other than the initial Eligible Investments and other amounts invested in the Investment Agreement pursuant to the terms thereof and the Indenture;

(ix) (a) monitoring the Reference Portfolio on an ongoing basis and providing or causing to be provided, on behalf of the Issuer, to the Collateral Administrator and/or the Independent Accountants all information, determinations, schedules and other data in possession of, or reasonably available to, the Reference Portfolio Manager and required or requested by the Collateral Administrator to generate (or provide information for) the reports described in Sections 8.7, 8.8, and 8.9 of the Indenture or the Independent Accountants to generate the statement described in Section 8.9(b) of the Indenture, substantially in the form and containing all information required thereby and in sufficient time for the Collateral Administrator and/or the Independent Accountants, as applicable, to review such information, schedules and data, generate such reports and to deliver them to the parties entitled thereto under the Indenture and (b) upon receipt from the Collateral Administrator of any such draft report, reviewing such report, verifying the information contained therein with the information contained in its records with respect to the Reference Portfolio, promptly (but in no event later than two Business Days after receipt of such report) notifying the Collateral Administrator of any discrepancies and cooperating with the Collateral Administrator and the Issuer in resolving any such discrepancies;

(x) providing or causing to be provided, on behalf of the Issuer, to the Trustee all information in the possession of or reasonably available to, the Reference Portfolio

Manager relating to the Reference Portfolio and required or requested by the Trustee to provide to the Holders of Income Notes information necessary for the filing of tax returns required by any governmental authority;

(xi) complying with such other duties and responsibilities as may be required of the Reference Portfolio Manager as set forth in the Indenture, including providing such information to such persons as may be required by the Indenture; and

(xii) providing to the Issuer such information regarding the Reference Portfolio and the Reference Portfolio Manager's activities under this Agreement as the Issuer may request from time to time.

(b) In performing its services hereunder, the Reference Portfolio Manager shall comply with all the terms and conditions of the Indenture affecting the duties and functions that have been delegated to the Reference Portfolio Manager thereunder and hereunder.

(c) Unless otherwise specifically required by any provision of the Indenture or by applicable law, the Reference Portfolio Manager shall use all reasonable efforts to ensure that no action is taken or omitted to be taken by it, and shall not intentionally or with reckless disregard take or omit to take any action, which would (i) in the reasonable determination of the Issuer, materially adversely affect the Issuer (or the Issuer's ability to make payments on the Income Notes), for purposes of Cayman Islands law, United States federal or state law or any other law known to the Reference Portfolio Manager (or advised by the Issuer) to be applicable to the Issuer, as applicable; (ii) violate any law, rule, or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer, including, without limitation any Cayman Islands or United States federal, state or other applicable securities law the violation of which, in the reasonable determination of the Issuer, has or could reasonably be expected to have a material adverse affect on the Issuer, the Co-Issuer or the Reference Portfolio, (iii) require registration of the Issuer or the Co-Issuer or the pool as an "investment company" under the Investment Company Act, (iv) result in the Issuer or Co-Issuer violating any terms of the Indenture or would reasonably be expected to result in an Event of Default under the Indenture, or (v) be reasonably likely to cause the Issuer to be engaged in a United States trade or business for United States federal tax purposes.

(d) [reserved].

(e) The Issuer agrees that it will not consent to any amendment to the Indenture that in the reasonable determination of the Reference Portfolio Manager (as notified to the Issuer) adversely affects the rights or duties of the Reference Portfolio Manager or creates, supplements, modifies, limits or eliminates any provision of the Indenture affecting the discretion, judgment, conduct, care or role of the Reference Portfolio Manager (including without limitation, the provisions relating to calculations with respect to the Reference Portfolio) or the Reference Portfolio Manager's obligations or liabilities or fees or expenses payable or reimbursable to it, or that otherwise adversely affects the Reference Portfolio Manager unless the Reference Portfolio Manager has been given prior written notice of such amendment and has consented thereto in writing.

3. Standard of Care.

(a) The Reference Portfolio Manager shall perform its obligations hereunder and under the Indenture in good faith and with reasonable care, using a degree of skill and attention no less than that which the Reference Portfolio Manager exercises with respect to comparable assets or reference assets that it manages for itself and others with similar investment objectives and restrictions in a manner consistent with practices and procedures followed by institutional managers of national standing relating to comparable assets or reference assets. To the extent not inconsistent with the foregoing, the Reference Portfolio Manager shall follow its customary standards, policies and procedures in performing its duties hereunder and under the Indenture.

(b) The Reference Portfolio Manager agrees, in performing its duties hereunder, that it shall use reasonable efforts to manage the Reference Portfolio with the objective to provide for returns to the Holders of the Income Notes; provided, that the Reference Portfolio Manager shall not be responsible if such objectives are not achieved so long as the Reference Portfolio Manager performs its duties under this Agreement as provided herein; and, provided, further that Holders of Income Notes shall have no recourse to the Reference Portfolio Manager with respect to payment under the Income Notes. Furthermore, notwithstanding anything to the contrary in this Agreement or the Indenture, the Reference Portfolio Manager shall not be required to take any action if such action would violate any applicable law, rule, regulation or court order. The Reference Portfolio Manager shall comply with all applicable laws and regulations relating to its performance under this Agreement.

4. Compensation; Fees and Expenses.

(a) As compensation for services rendered and the performance of its obligations as Reference Portfolio Manager under this Agreement, the Issuer will pay to the Reference Portfolio Manager on each Payment Date the Base Amount, the Subordinate Amount, if any, and the Incentive Amount, if any, for such date (collectively, the "Management Fees") as described in the Indenture and subject to the Priority of Payments set forth therein.

(b) The Reference Portfolio Manager shall be responsible for its ordinary expenses incurred in the performance of its obligations under this Agreement; provided, however, that the Issuer shall reimburse the Reference Portfolio Manager for the following extraordinary expenses incurred by the Reference Portfolio Manager in the performance of such obligations: (i) reasonable fees and expenses of outside counsel, consultants, accountants and other professionals retained by the Reference Portfolio Manager in connection with negotiating this Agreement or as to unusual matters arising in the performance of its duties under this Agreement; (ii) fees and expenses of Rating Agencies incurred by the Reference Portfolio Manager, if any; and (iii) any fees payable by the Reference Portfolio Manager in connection with fees payable to the Pricing Source or any other nationally recognized pricing service for services rendered with respect to Reference Obligations. If any expenses or costs described in this paragraph (b) are allocable to one or more entities or accounts in addition to the Issuer for which the Reference Portfolio Manager provides advisory or management services, the Issuer shall be responsible (subject to the other provisions hereof) only for the portions of those expenses and costs fairly allocable to the Issuer in the Reference Portfolio Manager's good faith and commercially reasonable discretion.

5. Additional Activities of the Reference Portfolio Manager.

(a) The Reference Portfolio Manager and its Affiliates may invest, and may manage other funds and accounts ("Other Highland Accounts") that invest, in assets eligible for inclusion in the Reference Portfolio. The Reference Portfolio Manager and its Affiliates may make investment decisions for themselves or Other Highland Accounts that are different from decisions to add or remove Reference Obligations under the Indenture and in making such investments have no duty to take into account the interests of the Issuer or any holder of Income Notes. No provision in this Agreement shall prevent the Reference Portfolio Manager or any of its Affiliates from rendering services of any kind to a Reference Entity (or an issuer of any Eligible Investment included in the Trust Estate) or CFPI, the Trustee, the Collateral Administrator, the Holders of Income Notes or any other Person or entity to the extent permitted by law. Without prejudice to the generality of the foregoing, the Reference Portfolio Manager, its Affiliates and their respective directors, officers, employees, agents and representatives may, among other things:

(i) serve as portfolio manager, advisor or subadvisor or directors (whether supervisory or managing), partners, officers, employees, agents, nominees or signatories for any Reference Entity (or other issuers who invest in assets of a similar nature to the Reference Obligation) to the extent permitted by its governing instruments; provided that in the reasonable judgment of the Reference Portfolio Manager such activity is not likely to have a material adverse effect on any Reference Obligation or the Reference Portfolio as a whole;

(ii) receive fees for services of any nature rendered to any Reference Entity or any Affiliates thereof or any such issuer, except as otherwise provided by the Indenture or as would otherwise cause an Indenture Tax Event to occur under the Indenture and provided that in the reasonable judgment of the Reference Portfolio Manager such activity is not likely to have a material adverse effect on any Reference Obligation or the Reference Portfolio as a whole;

(iii) be a secured or unsecured creditor of, or hold an equity interest in, any Reference Entity or any such issuer, subject to applicable law and the terms of the relevant instrument;

(iv) make a market in any Reference Obligations;

(v) serve as a member of any "creditors' committee" with respect to any Reference Obligation which has or which may, in the reasonable opinion of the Reference Portfolio Manager, become a Defaulted Reference Obligation;

(vi) enter into swap agreements with swap counterparties relating to reference entities that may be the same as actual or potential Reference Entities;

(vii) be retained to provide services for the Issuer, the Co-Issuer, the Trustee or the Collateral Administrator that are unrelated to this Agreement, and be paid therefor; provided that in the reasonable judgment of the Reference Portfolio Manager such activity is not likely to have a material adverse effect on any Reference Obligation or the Reference Portfolio as a whole;

(b) Subject to the requirements of the Indenture, the Reference Portfolio Manager and its Affiliates, employees and associates are in no way prohibited from other businesses or activities, including, but not limited to, managing investments, advising or managing entities whose investment objectives are the same as or overlap with those of the Reference Portfolio, participating in the issuance or management of actual or potential Reference Obligations, providing consulting, merger and acquisition, structuring or financial advisory services, including with respect to actual, contemplated or potential Reference Obligations, or acting as a director, officer or creditors' committee member of, adviser to, or participant in any corporation, partnership, trust or other business entity. The Reference Portfolio Manager and its Affiliates and associates may, and expect to, receive fees or other compensation from third parties for any of these activities, which fees will be for the benefit of their own account and not the Issuer. These fees can relate to actual, contemplated or potential Reference Obligations and may be payable by actual or potential Reference Entities.

(c) To the extent permitted by applicable law, and without limiting the Reference Obligation Eligibility Criteria and Reference Portfolio Criteria set forth in the Indenture, the Reference Portfolio Manager, its Affiliates, and any officer, director, stockholder or employee of the Reference Portfolio Manager or any such Affiliates or any member of their families or an individual or entity advised by the Reference Portfolio Manager may have an interest in a particular transaction or in securities or obligations of the same kind or class, or securities or obligations of a different kind or class, as those of the Reference Obligations.

(d) Unless the Reference Portfolio Manager determines in its reasonable judgment that a transaction is on terms and conditions no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other, the Reference Portfolio Manager shall be required to refrain from removing Reference Obligations issued by (i) persons of which the Reference Portfolio Manager, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) persons for which the Reference Portfolio Manager or its Affiliates act as financial adviser or underwriter or (iii) persons with whom the Reference Portfolio Manager or its Affiliates otherwise maintain a client relationship. The Reference Portfolio Manager may, in its sole discretion, refrain from adding or removing a Reference Obligation issued by any of the persons described in (i), (ii) or (iii) of the preceding sentence or persons about which the Reference Portfolio Manager or any of its Affiliates have information that the Reference Portfolio Manager deems confidential or non-public or that otherwise might prohibit it from trading (or referencing) such obligations in accordance with applicable law. The Reference Portfolio Manager will not be obligated to utilize any particular investment opportunity or strategy that may arise with respect to the Reference Obligations.

(e) The investment policies, fee arrangements and other circumstances of the Reference Portfolio Manager's engagement under the Indenture may vary from those of Other Highland Accounts. The Reference Portfolio Manager may at certain times be simultaneously adding or removing a Reference Obligation or Reference Obligations to or from, as applicable, the Reference Portfolio and arranging for Other Highland Accounts or its Affiliates, to purchase or sell the same Reference Obligation or Reference Obligations or to add or remove the same Reference Obligation or Reference Obligations to or from, as applicable, the reference portfolio under comparable swap agreements or other cash portfolios. In doing so, the Reference Portfolio Manager shall be free, in its sole discretion, to make recommendations to others, or effect

transactions on behalf of itself or for others, that may be the same as or different from those effected on behalf of the Issuer.

(f) Neither the Reference Portfolio Manager nor any of its Affiliates is under any obligation (affirmative or otherwise) to offer investment opportunities of which it becomes aware to the Issuer or to account to the Issuer for (or share with the Issuer or inform the Issuer of) any such opportunity or any benefit received by it from any such opportunity before offering any investments to Other Highland Accounts or before engaging in any investments for themselves. The Reference Portfolio Manager shall endeavor to resolve conflicts with respect to investment opportunities in a manner which it deems equitable to the extent possible under the prevailing facts and circumstances.

6. Term. This Agreement shall become effective on the date hereof and shall terminate upon the termination of the Indenture unless terminated as provided in Section 7. If this Agreement terminates pursuant to this Section 6, such termination shall be without further liability or obligation of either party to the other, except as provided in Sections 8, 9, 10, 11 (b) and (c), 16 and 26 hereof.

7. Termination; Removal; Resignation.

(a) The Issuer shall be entitled to (but shall not be obligated to) remove the Reference Portfolio Manager without cause at any time upon 90 days' prior written notice to the Reference Portfolio Manager upon the vote of at least $66^2/_3$% of the Aggregate Principal Amount of the Income Notes (in each case excluding any Income Notes beneficially owned by the Reference Portfolio Manager or any of its Affiliates or by an account or fund for which the Reference Portfolio Manager or its Affiliate acts as investment manager with discretionary authority) in accordance with the Indenture.

(b) The Issuer shall be entitled to (but shall not be obligated to) remove the Reference Portfolio Manager for cause at any time upon written notice to the Reference Portfolio Manager. The Reference Portfolio Manager acknowledges that the Issuer may request such removal upon the vote of at least $66^2/_3$% of the Aggregate Principal Amount of the Income Notes (in each case excluding any Income Notes beneficially owned by the Reference Portfolio Manager or any of its Affiliates or by an account or fund for which the Reference Portfolio Manager or its Affiliate acts as investment manager with discretionary authority) in accordance with the Indenture, in which case the Issuer may, but shall not be obligated, to so remove the Reference Portfolio Manager.

For purposes of this Agreement, "cause" will mean (i) willful violation by the Reference Portfolio Manager of, or the taking of any action by the Reference Portfolio Manager that it knows breaches, any provision of this Agreement or the Indenture; (ii) breach or violation by the Reference Portfolio Manager of any provision of this Agreement or the Indenture and failure to cure such breach or violation within 30 days after becoming aware of, or its receiving notice from the Issuer of such breach or violation; (iii) the Reference Portfolio Manager (A) is wound up or dissolved or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, (B) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the

benefit of or enters into any composition or arrangement with, its creditors generally, (C) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Reference Portfolio Manager or of all or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Reference Portfolio Manager and continue undismissed for 60 days, (D) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Reference Portfolio Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency or (E) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days; (iv) the occurrence of an act that constitutes fraud or criminal activity by the Reference Portfolio Manager or any director, officer or employee thereof in connection with the performance of the Reference Portfolio Manager's obligations under this Agreement; (v) the indictment of the Reference Portfolio Manager or any director, officer or employee thereof whose duties include work in fulfillment of the Reference Portfolio Manager's obligations under this Agreement or the Indenture of a criminal offense under the laws of the United States, or the laws of any other jurisdiction in which the Reference Portfolio Manager conducts business, materially related to the Reference Portfolio Manager's asset management businesses; (vi) the occurrence of an Event of Default under Section 5.1(a) under the Indenture; (vii) the persons owning and controlling voting securities of the Reference Portfolio Manager as of the date hereof failing to own and control, directly or indirectly, in the aggregate at least 50% of the outstanding voting securities of the Reference Portfolio Manager; and (viii) the failure of any representation or warranty by the Reference Portfolio Manager hereunder, or any certification or written statement made by or delivered by the Reference Portfolio Manager hereunder to be correct in any material respect when made where such failure has a material adverse effect on the Issuer or the Holders of Income Notes or the Issuer's rights under this Agreement and no correction is made for a period of 30 days after the Reference Portfolio Manager's becoming aware of, or receiving notice from the Issuer of, such failure.

If any of the events specified in this clause (b) shall occur, the Reference Portfolio Manager shall give prompt written notice thereof to the Issuer and the Trustee upon the Reference Portfolio Manager's becoming aware of the occurrence of such event.

(c) The Reference Portfolio Manager may resign upon not less than 90 days' written notice to the Issuer.

(d) This Agreement shall be automatically terminated in the event that the Internal Revenue Service has determined, in a final, non-appealable proceeding, that the Issuer or Co-Issuer has become engaged in the conduct of a trade or business in the United States for purposes of the Code.

(e) No termination, removal or resignation of the Reference Portfolio Manager shall be effective until the Issuer has appointed a successor Reference Portfolio Manager and such

successor Reference Portfolio Manager shall have agreed in writing to assume all of the Reference Portfolio Manager's duties and obligations pursuant to this Agreement; provided, however, that if no successor Reference Portfolio Manager shall have been appointed and so confirmed, or if an instrument of acceptance by a successor Reference Portfolio Manager shall not have been delivered to the Issuer, in any case within 90 days of the initial notice to the Issuer or the Reference Portfolio Manager, as the case may be, relating to the termination, removal or resignation of the Reference Portfolio Manager, then the Reference Portfolio Manager may petition a court of competent jurisdiction to appoint any established institutional manager of national standing with experience managing comparable assets or reference assets as the successor to the Reference Portfolio Manager hereunder in the assumption of all or any part of the responsibilities, duties or liabilities of the Reference Portfolio Manager hereunder.

8. Action Upon Termination, Removal or Resignation. Upon the termination of this Agreement or the removal or resignation of the Reference Portfolio Manager:

(a) The Reference Portfolio Manager shall, as soon as practicable, deliver to the Issuer all property and documents relating to the Reference Obligations and Eligible Investments then in the custody of the Reference Portfolio Manager. The Reference Portfolio Manager shall also deliver to the Issuer an accounting with respect to the books and records delivered to the the Issuer or the successor Reference Portfolio Manager appointed pursuant to Section 7 above.

(b) The Reference Portfolio Manager shall be reimbursed for all reimbursable expenses incurred by the Reference Portfolio Manager prior to the date of termination, removal or resignation for which the Issuer is responsible hereunder to the extent and at such time as provided in Section 4 hereof.

(c) The Reference Portfolio Manager shall remain liable (subject to Section 9 hereof) for its acts and omissions in the performance of its duties hereunder prior to such termination or pursuant to this Section 8 and for any expenses, losses, damages, liabilities, demands, charges or claims of any nature whatsoever (including reasonable attorney's fees) arising therefrom or out of a breach of representations and warranties made by the Reference Portfolio Manager in Section 18 hereof.

(d) The Reference Portfolio Manager shall not be entitled to Management Fees or other compensation accruing after the effective date of the termination of this Agreement or the removal or resignation of the Reference Portfolio Manager hereunder, but shall be paid all Management Fees accrued and unpaid prior to such effective date to the extent and at such time as provided in Section 4 hereof and the Indenture.

(e) The Reference Portfolio Manager agrees that, notwithstanding any termination, it shall reasonably cooperate with the Issuer in any Proceeding arising in connection with this Agreement, the Reference Portfolio or the Indenture (excluding any such Proceeding in which claims are asserted against the Reference Portfolio Manager or any Affiliate thereof).

9. Liability of the Reference Portfolio Manager; Delegation.

(a) Except as otherwise required by law, the Reference Portfolio Manager, its Affiliates, directors, officers, employees, shareholders, assigns, representatives or agents shall not

be liable to CFPI, the Issuer, the Trustee or the Holders of the Income Notes for any loss, liability, damage, settlement cost, or other expense (including attorneys' fees) incurred by reason of any act or omission by the Reference Portfolio Manager, its Affiliates, directors, officers, employees, shareholders, assigns, representatives or agents in the performance of the Reference Portfolio Manager's duties or obligations hereunder and under the Indenture, except by reason of acts or omissions (including, without limitation, acts or omissions of any persons employed in accordance with clause (c) below) constituting bad faith, fraud, willful misconduct, gross negligence or breach of fiduciary duty in the performance of, or reckless disregard of, such duties or obligations. The matters excluded by the preceding sentence are collectively referred to as "Reference Portfolio Manager Breaches".

(b) In connection with taking or omitting to take any action under this Agreement or the Indenture, the Reference Portfolio Manager may consult with nationally recognized counsel and may rely in good faith on the written advice or opinion of such counsel.

(c) Notwithstanding Section 15 hereof, in providing services hereunder, the Reference Portfolio Manager may employ third parties, including its Affiliates, to render advice (including investment advice) and assistance; provided, however, that the Reference Portfolio Manager shall not be relieved of any of its duties or obligations hereunder regardless of the performance of such services by third parties.

(d) The Reference Portfolio Manager assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture applicable to it, in good faith, and, absent a Reference Portfolio Manager Breach, shall not be responsible for any action of the Issuer in following or declining to follow any advice, recommendation or direction of the Reference Portfolio Manager. The Reference Portfolio Manager will not be liable to CFPI, the Issuer, the Trustee or the Holders of Income Notes for any loss incurred as a result of any omission or recommendation by, or any actions taken or recommended by, the Reference Portfolio Manager under this Agreement or the Indenture, except by reason of a Reference Portfolio Manager Breach.

10. Indemnification. (a) To the extent permitted by applicable law, the Reference Portfolio Manager and any of its Affiliates, directors, officers, employees, shareholders, assigns, representatives or agents, in each case other than in its capacity of as the holder or beneficial owner of any Security (each such person being an "Indemnified Party") shall be held harmless and be indemnified by the Issuer (solely to the extent provided herein) for any liability, loss (including amounts paid by such person in settlement in accordance with the provisions herein), damages or expenses (including reasonable attorneys' fees and expenses) (in the case of expenses in connection with defending any action, claim, investigation or proceeding, as such expenses are incurred (subject to an obligation to repay any such expenses if it is determined that the Indemnified Party is not entitled to be indemnified thereof hereunder)) (collectively, "Liabilities") suffered by virtue of any acts or omissions or alleged acts or omissions by such Indemnified Party, in the performance of the Reference Portfolio Manager's duties under this Agreement and the Indenture, except to the extent any such Liability arises as a result of a Reference Portfolio Manager Breach.

Notwithstanding anything to the contrary herein, the Issuer shall only be obligated to pay amounts pursuant to this Section 10 subject to the availability of funds under the Priority of Payments.

(b) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are the Reference Portfolio Manager's directors, officers, stockholders, partners, employees, Affiliates and agents, the Reference Portfolio Manager shall cause such Indemnified Party to):

(i) give written notice to the Issuer of such claim within ten (10) days after such claim is made or threatened, which notice shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim, provided that failure to so notify the Issuer shall not relieve the Issuer from its obligations under this Section 10 unless and to the extent such failure materially prejudices the Issuer or the Issuer otherwise forfeits rights or defenses by reason of such failure;

(ii) provide the Issuer such information and cooperation with respect to such claim as the Issuer may reasonably require, including, but not limited to, making appropriate personnel available to the Issuer at such reasonable times as the Issuer may request;

(iii) cooperate and take all such steps as the Issuer may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Issuer the right, which the Issuer may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof without the prior written consent of the Issuer; and

(vi) upon reasonable prior notice, afford to the Issuer the right, in its sole discretion and at its sole expense, to assume the defense of such claim, including, but not limited to, the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Issuer assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for any Indemnified Party incurred thereafter in connection with such claim except that if such Indemnified Party reasonably determines that counsel designated by the Issuer has a conflict of interest, the Issuer shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; and

provided further, that prior to entering into any final settlement or compromise, the Issuer shall seek the consent of the Indemnified Party and use its best efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such Indemnified Party as to the terms of settlement or compromise. If an Indemnified Party does not consent to the settlement or compromise within a reasonable time under the then-prevailing circumstances, the Issuer shall not thereafter be obligated to indemnify the Indemnified Party for any amount in excess of such proposed settlement or compromise.

(c) No Indemnified Party shall, without the prior written consent of the Issuer, which consent shall not be unreasonably withheld or delayed, settle or compromise any claim giving rise to a claim for indemnity hereunder or permit a default or consent to the entry of any judgment in respect thereof, unless such settlement, compromise or consent includes, as an unconditional term thereof, the giving by the claimant to the Issuer of a release from liability substantially equivalent to the release given by the claimant to such Indemnified Party in respect of such claim.

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Issuer shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Issuer reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) Nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer may have under any U.S. federal securities laws.

11. Records; Confidentiality.

(a) The Reference Portfolio Manager shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer and the Trustee at any time during normal business hours and upon not less than three Business Days' prior notice.

(b) At no time shall the Reference Portfolio Manager make or permit any other person to make a public announcement concerning the issuance of the Income Notes, the structure of the transaction, the Reference Portfolio Manager's role hereunder or any other aspect to the transactions contemplated by this Agreement and the Indenture, without the prior consent of the Issuer. The Reference Portfolio Manager shall, and shall cause its affiliates to, keep confidential and not without the prior written consent of the Issuer use or disclose any and all information received in connection herewith except (a) as necessary to perform its obligations hereunder, (b) as required by law, regulation, court order or the rules or regulations of any self-regulatory organization, body or official having jurisdiction over the Reference Portfolio Manager, (c) to its professional advisers which are bound by confidentiality obligations, (d) such information as shall have been publicly disclosed other than in violation of this Agreement or the Indenture and (e) as otherwise expressly contemplated by the Indenture or this Agreement.

(c) Notwithstanding anything to the contrary herein, the Reference Portfolio Manager (and each employee, representative, or other agent of the Reference Portfolio Manager)

may disclose to any and all persons, without limitation of any kind, the U.S. federal income and state and local income and franchise tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the Reference Portfolio Manager relating to such tax treatment and tax structure. For this purpose "tax structure" is limited to facts relevant to the U.S. federal income and state and local income and franchise tax treatment of the transaction and does not include information relating to the identity of the Issuer, the Co-Issuer, the Trustee, the Collateral Administrator, the Initial Purchaser, the Placement Agent, or any Holder.

12. Certain Additional Requirements. During the term of this Agreement, (i) the Issuer, at its own expense, shall be entitled to audit (either directly or through an independent auditor) the Reference Portfolio Manager with respect to the performance of its obligations under this Agreement and the Indenture (including, without limitation, as to internal controls, security programs and business continuity programs); (ii) the Reference Portfolio Manager shall notify the Issuer of any service disruptions, security breaches or other events which may materially impact the Reference Portfolio Manager's ability to perform its obligations under this Agreement; (iii) the Reference Portfolio Manager shall forward to the Issuer any complaints it receives from Holders of Income Notes in connection with the transactions contemplated by this Agreement and the Indenture, (iv) the Reference Portfolio Manager shall maintain an appropriate disaster recovery and business continuity plan providing for the continuation or resumption, as the case may be, of business functions in connection with its obligations under this Agreement and the Indenture, including in the case of system breakdown and natural or man-made disaster and (v) the Reference Portfolio Manager shall retain insurance and equity capital in such amounts as are reasonable and customary (as determined by the Reference Portfolio Manager in its reasonable judgment) for managers managing comparable assets or reference assets. The Reference Portfolio Manager acknowledges that the Issuer's retention of the Reference Portfolio Manager hereunder may be subject to examination oversight by applicable regulatory authorities, and agrees to reasonably cooperate with the Issuer in connection with any examination or inquiry by any such regulatory authority in connection with this Agreement and the Indenture.

13. No Partnership or Joint Venture. The Issuer and the Reference Portfolio Manager are not partners or joint venturers with each other, and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on any of them. The Reference Portfolio Manager's relation to the Issuer shall be deemed to be that of an independent contractor, and all transactions between the Issuer and the Reference Portfolio Manager shall be on arm's-length terms.

14. Notices. Unless otherwise expressly provided herein, all notices, requests, demands and other communications required or permitted under, or otherwise in connection with, this Agreement shall be in writing and sent by answerback facsimile or addressed and delivered or mailed postage paid via registered mail with a return receipt request to the other party at the address specified below, or at such address as such other party may designate for the receipt of such notice.

The Issuer:	Valhalla CLO, Ltd. c/o Intertrust SPV (Cayman) Limited 190 Elgin Avenue George Town Grand Cayman KY1-9005 Cayman Islands Attn: The Directors Fax: (345) 945-4757
Reference Portfolio Manager:	Highland Capital Management, L.P. 300 Crescent Court, Suite 700 Dallas, Texas 75240 Attn: Hunter Covitz Fax: (972) 628-4147

15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. Any purported assignment of this Agreement to any Person, in whole or in part, by the Reference Portfolio Manager shall be deemed null and void unless such assignment is consented to in writing by the Issuer. Any assignment so consented to shall bind the assignee hereunder in the same manner as the Reference Portfolio Manager is bound. In addition, the assignee shall execute and deliver to the Issuer a counterpart of this Agreement naming such assignee as Reference Portfolio Manager. Upon the execution and delivery of such a counterpart by the assignee, the Reference Portfolio Manager shall be released from further obligations pursuant to this Agreement, except with respect to its agreements in Section 16 and its obligations arising under Section 9 in respect of acts or omissions occurring before such assignment and except with respect to its obligations under Section 8.

This Agreement shall not be assigned by the Issuer without the prior written consent of the Reference Portfolio Manager. In the event of any assignment by the Issuer of the Agreement to a successor, the Issuer shall use reasonable efforts to cause such successor to execute and deliver to the Reference Portfolio Manager such documents as the Reference Portfolio Manager shall consider reasonably necessary to effect fully such assignment.

Notwithstanding anything to the contrary in this Section 15, any successor to the Reference Portfolio Manager by way of transfer, merger, conversion, consolidation or acquisition of all or substantially all of the Reference Portfolio Manager's asset management business relating to debt securities and loans shall be the successor to the Reference Portfolio Manager under this Agreement without any further action by the Reference Portfolio Manager, the Issuer or any other person or entity.

The Reference Portfolio Manager shall notify the Issuer and the Trustee in writing (i) if it shall (x) consolidate or merge with or into any other unrelated third party entity or (y) sell, lease or otherwise transfer, directly or indirectly, in a single transaction or a series of related transactions all or any substantial part of its assets and its subsidiaries, taken as a whole, to any other unrelated third party entity, or (ii) if there is any material change in the limited partnership structure of the Reference Portfolio Manager, in any case as soon as practicable after the conclusion of such transactions or such change.

16. Bankruptcy Proceedings. The Reference Portfolio Manager agrees that it will not (and will not join any other Person in order to) (i) institute against the Issuer or Co-Issuer any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief entered with respect to it, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, (ii) seek appointment of a receiver, trustee, custodian or other similar official for the Issuer or Co-Issuer or for all or any substantial part of its assets or (iii) take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth above, until at least one year and one day (or, if longer, the applicable preference period then provided by law) after the payment in full of all Securities issued under the Indenture; provided that nothing in this Section 16 shall preclude, or be deemed to estop, the Reference Portfolio Manager (A) from taking any action before the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by either the Issuer or the Co-Issuer or (y) any involuntary insolvency proceeding filed or commenced against either the Issuer or the Co-Issuer by a Person other than the Reference Portfolio Manager or (B) from commencing against the Issuer or the Co-Issuer or any properties of such party, any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding. The provisions of this Section 16 shall survive the termination of this Agreement.

17. Submission to Jurisdiction. Each of the Reference Portfolio Manager and the Issuer:

(i) irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States federal courts located in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Indenture or this Agreement;

(ii) irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York state or federal court and further irrevocably waives the right to object, with respect to such proceedings, that such court does not have any jurisdiction over such party;

(iii) to the fullest extent it may legally do so, irrevocably waives the defense of an inconvenient forum to the maintenance of such action or proceeding, including by irrevocably waiving any objection which it may have at any time to the laying of venue of any proceedings brought in any such court and irrevocably waiving any claim that such proceedings have been brought in an inconvenient forum; and

(iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

The Reference Portfolio Manager irrevocably consents to the service of any and all process in any action or proceeding by the mailing or delivery of copies of such process to it at its office as the address set forth in Section 14 hereof.

18. Representations and Warranties.

(a) The Reference Portfolio Manager represents and warrants to the Issuer that:

(i) the Reference Portfolio Manager has been duly organized as a limited partnership and is validly existing and in good standing under the laws of the State of Delaware, has full corporate power and authority to own its assets and transact the business in which it is currently engaged and proposes to be engaged and is duly qualified and in good standing as a limited partnership under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement or the Indenture would require, such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not, individually or in the aggregate, have a material adverse effect on the business, operations, assets or financial condition of the Reference Portfolio Manager or on the ability of the Reference Portfolio Manager to perform its obligations under, or the validity or enforceability of, this Agreement or the Indenture;

(ii) the Reference Portfolio Manager has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the Indenture, and the Reference Portfolio Manager has taken all necessary action to authorize this Agreement and the execution, delivery and performance of this Agreement an all obligations required hereunder and under the Indenture. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture shall be, executed and delivered by a duly authorized officer of the Reference Portfolio Manager, and this Agreement constitutes a valid and binding agreement of the Reference Portfolio Manager, enforceable against the Reference Portfolio Manager in accordance with its terms, except that the enforceability thereof may be subject to (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (b) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(iii) the Reference Portfolio Manager is not in violation of any federal or state securities law or regulation promulgated thereunder and there is no charge, investigation, action, suit or proceeding before or by any court or regulatory agency pending or, to the best knowledge of the Reference Portfolio Manager, threatened that would have a material adverse effect upon the performance by the Reference Portfolio Manager of its duties under this Agreement or on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Reference Portfolio Manager hereunder (the "Indenture Provisions");

(iv) The Reference Portfolio Manager is not in violation of its governing instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Reference Portfolio Manager or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or

enforceability of this Agreement or the Indenture Provisions, or the performance by the Reference Portfolio Manager of its duties hereunder or thereunder;

(v) neither the execution and delivery of this Agreement, nor the fulfillment of the terms hereof, nor the fulfillment of the terms of the Indenture Provisions nor the documents and instruments required hereunder or under the Indenture Provisions, conflicts or results in a material breach or violation of any of the terms or provisions, or constitutes a default under, (a) the Reference Portfolio Manager's constitutive documents, (b) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement or other agreement, obligation, condition, covenant, instrument or undertaking to which the Reference Portfolio Manager is a party or by which the Reference Portfolio Manager or any of its assets is or may be bound, (c) any law or regulation binding on or applicable to the Reference Portfolio Manager or (d) any decree, order, judgment, award, rule or regulation binding on or applicable to the Reference Portfolio Manager of any court, arbitrator or regulatory, administrative or governmental agency, body or authority having or asserting jurisdiction over the Reference Portfolio Manager or its properties, and which individually or in the aggregate would have a material adverse effect upon the business, operations, assets or financial condition of the Reference Portfolio Manager or its ability to perform its duties under this Agreement or the Swap Provision, or shall result in or require the creation or imposition of any lien on its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking;

(vi) no consent, approval, authorization, license, permit or order of or exemption by, notice or report to or declaration, registration or filing with, any government, governmental instrumentality or court or other person is required by the Reference Portfolio Manager in connection with this Agreement or the execution, delivery, validity or enforceability of this Agreement or the obligations required hereunder or under the Indenture or the performance thereof by the Reference Portfolio Manager, except such as have been duly made or obtained; and

(vii) the Reference Portfolio Manager is duly registered and in good standing as an investment advisor with the United States Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended.

(b) The Issuer hereby represents and warrants to the Reference Portfolio Manager as follows:

(i) The Issuer has been duly incorporated and is validly existing as an exempted company with limited liability under the laws of the jurisdiction of its incorporation, has full power and authority to own its assets and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement would require, such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not in the aggregate have a material adverse effect on the business, operations, assets or financial

condition of the Issuer or on the ability of the Issuer to perform its obligations under, or the validity or enforceability of, this Agreement;

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the Indenture and has taken all necessary action to authorize this Agreement and the Indenture; and

(iii) This Agreement has been executed and delivered by a duly authorized officer of the Issuer and constitutes a valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms, except that the enforceability thereof may be subject to (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (b) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

19. Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

20. Miscellaneous.

(a) The captions in this Agreement are included for convenience only and in no way define or limit any of the provisions hereof or otherwise affect their construction or effect.

(b) In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

(c) This Agreement may not be amended or modified except by an instrument in writing signed by the parties hereto.

(d) This Agreement constitutes the entire understanding and agreement between the parties and supersedes all other prior understandings and agreements, whether written or oral, between the parties concerning this subject matter.

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

(f) Unless otherwise noted, use of the word "Section" refers to the relevant Section in this Agreement.

(g) Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

21. Beneficiaries. This Agreement is made solely for the benefit of the Issuer and the Reference Portfolio Manager, their successors and permitted assigns, and no other person shall have any right, benefit or interest under or because of this Agreement.

22. [Reserved].

23. Indulgences Not Waivers. Neither the failure nor any delay on the part of the Issuer or the Reference Portfolio Manager to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Conflicts with Indenture. Subject to Sections 2(d) and 5(d) hereof, in the event this Agreement requires action with respect to any matter and the terms of the Indenture expressly require that the Reference Portfolio Manager take a different action with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

25. Written Disclosure Statement.

The Issuer acknowledges that it has received Part II of the Reference Portfolio Manager's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement. The Reference Portfolio Manager shall provide the Issuer with a copy of Part II of its Form ADV annually within seven days of receipt of a written request therefor from the Issuer.

26. No Recourse.

The Reference Portfolio Manager hereby acknowledges and agrees that the Issuer's obligations hereunder shall be solely the corporate obligations of the Issuer, and the Reference Portfolio Manager shall not have any recourse to any of the directors, officers, employees, shareholders or affiliates of the Issuer or the Co-Issuer with respect to any expenses, losses, damages, judgments, assessments, costs, demands, charges, claims, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby. No recourse shall be had, whether by levy or execution or otherwise, against any affiliate of the Issuer, or the Co-Issuer or any shareholders, directors, officers, agents or employees of the Issuer or the Co-Issuer and its respective affiliate under any rule of law, statute or constitution, or by the enforcement of any assessment or penalty, or otherwise, nor shall any of such persons be personally liable for any such amounts or claims, or liable for any defenses or judgments based thereon or with respect thereto. Notwithstanding any other provision of this Agreement, obligations of the Issuer pursuant to this Agreement shall constitute limited recourse obligations of the Issuer payable solely from the Trust Estate in accordance with the Priority of Payments and following the liquidation of the Trust Estate and the application of the proceeds thereof in accordance with the Priority of Payments, all obligations of and claims against the Issuer under this Agreement shall be extinguished and shall

not thereafter revive. The provisions of this Section 26 shall survive the termination of this Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives on the day and year first above written.

VALHALLA CLO, LTD.

By: _____
Name: Martin Couch
Title: Director

HIGHLAND CAPITAL MANAGEMENT, L.P., as Reference Portfolio Manager

By: STRAND ADVISORS, INC., as General Partner

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives on the day and year first above written.

VALHALLA CLO, LTD.

By: _____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, L.P., as Reference Portfolio Manager

By: STRAND ADVISORS, INC., as General Partner

By: _____
Name: James Dondero
Title: President

SERVICING AGREEMENT

This Servicing Agreement, dated as of March 13, 2007 is entered into by and among EASTLAND CLO LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, South Church Street, George Town, Grand Cayman KY1-1108, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and EASTLAND CLO CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$100,000,000 of their Class A-1 Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-1 Notes"), U.S.$825,600,000 of their Class A-2a Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-2a Notes"), U.S.$206,000,000 of their Class A-2b Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-2b Notes" and, together with the Class A-2a Notes, the "Class A-2 Notes"), U.S.$78,500,000 of their Class A-3 Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-3 Notes" and, together with the Class A-1 Notes and Class A-2 Notes, the "Class A Notes"), U.S.$81,500,000 of their Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class B Notes") and U.S.$68,500,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class C Notes" and, together with the Class A Notes and the Class B Notes, the "Senior Notes") and the Issuer will individually issue U.S.$48,000,000 of its Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class D Notes" and together with the Senior Notes, the "Notes") pursuant to the Indenture dated as of March 13, 2007 (the "Indenture"), among the Co-Issuers and Investors Bank & Trust Company, as trustee (the "Trustee") and 61,500 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 62,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Share Documents;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Advisers Act" shall mean the Investment Advisers Act of 1940, as amended.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean collectively, Highland Financial Partners, L.P. and any subsidiary thereof.

"Independent Advisor" shall have the meaning specified in Section IV.B. of the Collateral Acquisition Agreement.

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated March 9, 2007 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Special Procedures Obligation" shall have the meaning specified in Section IV.A. of the Collateral Acquisition Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms the Indenture and this Agreement, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and this Agreement, and including the furnishing of orders, requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the Indenture, perform its obligations hereunder and thereunder with reasonable care and in good faith, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers

or managers of national standing relating to assets of the nature and character of the Collateral for clients having similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the Indenture affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to the Indenture that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Eligibility Criteria;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Servicer shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee to (x) dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(3) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(4) retain or dispose of any securities or other property (if other than Cash) received pursuant to an Offer; or

(5) waive any default with respect to any Defaulted Collateral Obligation; or

(6) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(7) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities;

(v) subject to and in accordance with the terms of the Indenture and this Agreement, the Servicer on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Servicer shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the hedge counterparty), to enter into a replacement Hedge Agreement;

(vi) the Servicer shall on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligations and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption; and

(vii) if the Servicer, on behalf of the Issuer, desires to make distributions of Eligible Equity Securities on any Payment Date pursuant to Section 2(e) of the Preference Shares Paying Agency Agreement, the Servicer shall so notify the Trustee and the Preference Shares Paying Agent and provide the Trustee and the Preference Shares Paying Agent (for forwarding to each Holder of the Preference Shares with respect to the applicable Record Date) details of such Eligible Equity Securities in accordance with the procedure set forth in Section 3(b) of the Preference Shares Paying Agency Agreement.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding. This Section 2(c)(i) shall survive the termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligations or Eligible Investment to be conducted on an arm's-length basis.

(iii) The Servicer shall notify the Trustee, the Share Registrar and the Holding Share Registrar of any Affiliate of the Servicer that owns the Securities or the Holding Preference Shares.

(iv) HFP and/or its subsidiaries will purchase Class C Notes having an aggregate principal amount equal to U.S.$11,000,000, Class D Notes having an aggregate principal amount equal to U.S.$9,000,000, the Servicer and/or its Affiliates (other than HFP) will purchase Holding Preferences Shares having an aggregate Face Amount equal to U.S.$11,583,000 and HFP and/or its subsidiaries will purchase Class II Preferences Shares having an aggregate Face Amount equal to U.S.$62,000,000.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Placement Agents, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Advisers Act.

(c) The Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code. In addition, after the initial distribution of the Class D Notes and the Preference Shares, neither the Servicer nor any of its affiliates (as defined in the Plan Asset Regulation) shall acquire any Class D Notes or Preference Shares (including pursuant to the Extension Procedure or the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates or other investor agreement with respect thereto or deemed made by holders thereof, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class D Notes, the Class I Preference Shares or

the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, the Plan Asset Regulation, the Indenture and the Preference Share Documents). The Class D Notes and the Preference Shares held as principal by the Servicer or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's or the Co-Issuer's respective governing instruments, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) would subject the Issuer to U.S. federal or state net income or

franchise taxation. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees deposited by the Trustee into the Class II Preference Share Special Payment Account pursuant to the Indenture, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date until the Payment Date in February 2008. After the Payment Date in February 2008, the Servicer may, in its sole discretion, at any time waive the Class II Preference Share Portion of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments pursuant to the Indenture. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion: (i) waive all or any portion of the Servicing Fee, any funds representing the waived Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments; or (ii) defer all or any portion of the Servicing Fee, any funds representing the deferred Servicing Fees to be retained in the Collection Account, when they will become payable in the same manner and priority as their original characterization would have required unless deferred again.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement and the Indenture; provided, however, that any extraordinary expenses actually incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligations or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages, including reasonable expenses incurred with respect to any compliance requirements, including, but not limited to, compliance with the

requirements of the Sarbanes-Oxley Act, related solely to the ownership or holding of any Securities by HFP or its Affiliates) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the priority of payments and the other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the Indenture or (ii) with respect to any information included in the Offering Memorandum in the sections entitled "The Servicer" and "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" and information in the Offering Memorandum relating to the Servicer Letter Disclosure that contain any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement and the Indenture. The Servicer shall be liable for any non-waivable breaches of applicable securities laws. The Servicer shall be deemed to have satisfied Section 7(f) and the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent (i) the Servicer acts consistently with the Collateral Acquisition Agreement with respect to Collateral Obligations and Eligible Investments and (ii) the Servicer does not have actual knowledge that its actions with respect to a Collateral Obligation or an Eligible Investment would violate Section 7(f).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the

entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) Notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority (or, with respect to Class I Preference Shares held by Investors Corp. at such time, Holding Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority) other than, with respect to the Class II Preference Shares, HFP; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class);

(ii) if a majority of the Voting Preference Shares has nominated two or more successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, (A) the Issuer appoints a successor Servicer at the written direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of

such succession by either (x) Majority of the Voting Preference Shares or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(iii) if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) has nominated two or more successor Servicers that have been objected to pursuant to the preceding clauses (i)(C) and (ii)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) or (ii) (C) within 120 days of the date of notice of such removal or resignation of the Servicer, (A) any Holder of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without causing the Issuer, the Co Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent,

no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and (ii) the Rating Agency Confirmation is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) the Trustee, acting at the direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) the Holders of a Majority of the Voting Preference Shares. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator,

administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the

Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the Indenture and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the Securities is required by the Issuer in connection with this Agreement, the Indenture and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the

violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the Indenture applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer when executed and delivered by the Servicer

hereunder or under the terms of the Indenture applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Servicer and the documents and instruments required hereunder or under the terms of the Indenture applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the Indenture applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Eastland CLO Ltd.
c/o Ogier Fiduciary Services (Cayman) Limited
P.O. Box 1093GT
Queensgate House
South Church Street
George Town, Grand Cayman KY1-1108, Cayman Islands
Telephone: (345) 945-6264
Telecopy: (345) 945-6265
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

Investors Bank & Trust Company
200 Claredon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617)351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted

Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, as applied in accordance with the Priorities of Payments pursuant to the Indenture, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Servicer hereby consents to (i) the posting of the final Offering Memorandum, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

By:_____
Name:
Title: Todd Travers
Senior Portfolio Manager
Highland Capital Management, L.P.

EASTLAND CLO LTD.,
as Issuer

By:_____
Name:
Title:

tten above.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

By:_____
Name:
Title:

EASTLAND CLO, LTD.,
as Issuer

By:_____
Name:
Title: SCOTT DAKERS
Director

SERVICING AGREEMENT

This Servicing Agreement, dated as of August 3, 2006 is entered into by and among RED RIVER CLO LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and RED RIVER CLO CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$657,000,000 of their Class A Floating Rate Senior Secured Extendable Notes due 2018 (the "Class A Notes"), U.S.$45,000,000 of their Class B Floating Rate Senior Secured Extendable Notes due 2018 (the "Class B Notes"), U.S.$40,500,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2018 (the "Class C Notes"), and U.S.$45,000,000 of their Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2018 (the "Class D Notes"), and the Issuer will individually issue U.S.$31,500,000 of its Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2018 (the "Class E Notes" and together with the Class A Notes, Class B Notes, Class C Notes and Class D Notes, the "Notes") pursuant to the Indenture dated as of August 3, 2006 (the "Indenture"), among the Co Issuers and U.S. Bank National Association, as trustee (the "Trustee") and 36,000 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 45,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Share Documents;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Advisers Act" shall mean the Investment Advisers Act of 1940, as amended.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean collectively, Highland Financial Partners, L.P. and any subsidiary thereof.

"Independent Advisor" shall have the meaning specified in Section IV.B. of the Collateral Acquisition Agreement.

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated July 31, 2006 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Special Procedures Obligation" shall have the meaning specified in Section IV.A. of the Collateral Acquisition Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms the Indenture and this Agreement, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and this Agreement, and including the furnishing of orders, requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the Indenture, perform its obligations hereunder and thereunder with reasonable care and in good faith, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the Indenture affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to the Indenture that affects the rights,

powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Eligibility Criteria;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Servicer shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee to (x) dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(3) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(4) retain or dispose of any securities or other property (if other than Cash) received pursuant to an Offer; or

(5) waive any default with respect to any Defaulted Collateral Obligation; or

(6) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(7) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related

Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities;

(v) subject to and in accordance with the terms of the Indenture and this Agreement, the Servicer on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Servicer shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the hedge counterparty), to enter into a replacement Hedge Agreement;

(vi) the Servicer shall on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligations and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption; and

(vii) if the Servicer, on behalf of the Issuer, desires to make distributions of Eligible Equity Securities on any Payment Date pursuant to Section 2(e) of the Preference Shares Paying Agency Agreement, the Servicer shall so notify the Trustee and the Preference Shares Paying Agent and provide the Trustee and the Preference Shares Paying Agent (for forwarding to each Holder of the Preference Shares with respect to the applicable Record Date) details of such Eligible Equity Securities in accordance with the procedure set forth in Section 3(b) of the Preference Shares Paying Agency Agreement.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily

filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligations or Eligible Investment to be conducted on an arm's-length basis.

(iii) The Servicer shall notify the Trustee, the Share Registrar and the Holding Share Registrar of any Affiliate of the Servicer that owns the Securities or the Holding Preference Shares.

(iv) The Servicer and/or its Affiliates will purchase Class E Notes having an aggregate principal amount equal to U.S.$31,500,000 and the Servicer and/or its Affiliates (other than HFP) will purchase Holding Preferences Shares having an aggregate Face Amount equal to U.S.$21,000,000.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Placement Agents, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Advisers Act.

(c) The Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code. In addition, after the initial distribution of the Class E Notes and the Preference Shares, neither the Servicer nor any of its affiliates (as defined in the Plan Asset Regulation) shall acquire any Class E Notes or Preference Shares (including pursuant to the Extension Procedure or the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class E Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition

(determined in accordance with the Plan Asset Regulation, the Indenture and the Preference Share Documents). The Class E Notes and the Preference Shares held as principal by the Servicer or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's or the Co-Issuer's respective governing instruments, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) not be permitted by the Collateral Acquisition Agreement and would

subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees deposited by the Trustee into the Class II Preference Share Special Payment Account pursuant to the Indenture, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date during the first two years following the Closing Date. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive the Class II Preference Share Portion of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments pursuant to the Indenture. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion: (i) waive all or any portion of the Servicing Fee, any funds representing the waived Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments; or (ii) defer all or any portion of the Servicing Fee, any funds representing the deferred Servicing Fees to be retained in the Collection Account, when they will become payable in the same manner and priority as their original characterization would have required unless deferred again.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement and the Indenture; provided, however, that any extraordinary expenses actually incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligations or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages) shall be reimbursed by the

Issuer to the extent funds are available therefor in accordance with and subject to the priority of payments and the other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the Indenture or (ii) with respect to any information included in the Offering Memorandum in the sections entitled "The Servicer" and "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" that contain any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement and the Indenture. The Servicer shall be liable for any non-waivable breaches of applicable securities laws. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer (i) complies with the requirements set forth in the Collateral Acquisition Agreement and (ii) the Servicer does not have actual knowledge that its actions with respect to a Collateral Obligation or an Eligible Investment would violate Section 7(f).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all

Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) Notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns,

the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority (or, with respect to Class I Preference Shares held by Investors Corp. at such time, Holding Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority) other than, with respect to the Class II Preference Shares, HFP; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(ii) if a Majority of the Voting Preference Shares has nominated two or more successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, then (A) any Holder of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or the Trustee may petition a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without causing the Issuer, the Co Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and (ii) the Rating Agency Confirmation is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of

assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) the Trustee, acting at the direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) the Holders of a Majority of the Voting Preference Shares. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each

jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the Indenture and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the Securities is required by the Issuer in connection with this Agreement, the Indenture and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the Indenture applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the Indenture applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Servicer and the documents and instruments required hereunder or under the terms of the Indenture applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and

the provisions of the Indenture applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Red River CLO Ltd.
c/o Ogier Fiduciary Services (Cayman) Limited
P.O. Box 1093GT
Queensgate House
South Church Street
George Town, Grand Cayman, Cayman Islands
Telephone: (345) 945-6264
Telecopy: (345) 945-6265
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100

Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

U.S. Bank National Association
One Federal Street, 3rd Floor
Mailcode: EX-MA-FED
Boston, Massachusetts 02110
Telecopy: (866) 350-3148
Attention: CDO Unit – Red River CLO Ltd.

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Servicer hereby consents to (i) the posting of the final Offering Memorandum, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.
in its capacity as Servicer

BY: STRAND ADVISORS, INC., as General Partner

By: _____
Name: Todd Travers, Assisant Secretary
Title: Strand Advisors, Inc., General Partner of Highland Capital Management, L.P.

RED RIVER CLO Ltd., as Issuer

By: _____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.
in its capacity as Servicer

BY: STRAND ADVISORS, INC., as General Partner

By: _____
Name:
Title:

RED RIVER CLO LTD., as Issuer

By: _____
Name: SCOTT DAKERS
Title: DIRECTOR

EXECUTION COPY

RED RIVER CLO LTD.

Issuer

RED RIVER CLO CORP.

Co-Issuer

AND

HIGHLAND CAPITAL MANAGEMENT, L.P.

Servicer

AMENDMENT NO. 1

TO

SERVICING AGREEMENT

Dated as of October 2, 2007

COLLATERALIZED DEBT OBLIGATIONS

THIS AMENDMENT NO. 1 TO SERVICING AGREEMENT (the "Amendment"), dated as of October 2, 2007, among Red River CLO Ltd. (the "Issuer"), Red River CLO Corp. (the "Co-Issuer") and Highland Capital Management, L.P. (the "Servicer"), hereby amends the Servicing Agreement, dated as August 3, 2006, among the Issuer, the Co-Issuer and the Servicer.

W I T N E S S E T H

WHEREAS, the Issuer, the Co-Issuer and the Servicer entered into the Servicing Agreement;

WHEREAS, the Issuers and the Servicer desire to change certain provisions with respect to the Servicer's ability to waive certain Servicing Fees;

WHEREAS, Section 19 of the Servicing Agreement provides that the Servicing Agreement may be amended by the Issuer, Co-Issuer and the Servicer in accordance with the terms of Section 15.1(h) of the Indenture;

WHEREAS, Section 15.1(h) of the Indenture provides that the Servicing Agreement may be amended by the Issuer, Co-Issuer and the Servicer with the consent of Majority of each Class of Notes or a Majority of the Preference Shares have not objected in writing to such amendment;

WHEREAS, the necessary consents pursuant to the preceding paragraph have been obtained;

WHEREAS, Section 15.1(h) of the Indenture provides that the Ratings Agencies shall confirm that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn; and

WHEREAS, the Ratings Agencies have confirmed that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Defined Terms.

For purposes of this Amendment, all capitalized terms which are used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Indenture.

SECTION 2. Amendment.

Section 8(a) of the Servicing Agreement is hereby amended and replaced in its entirety with the following:

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such

amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees deposited by the Trustee into the Class II Preference Share Special Payment Account pursuant to the Indenture, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date prior to February 3, 2008. With respect to any Payment Date after February 3, 2008, the Servicer may, in its sole discretion, at any time waive a portion (or all) of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments pursuant to the Indenture; provided that with respect to the Payment Date in May 2008 such Class II Preference Share Special Payments will, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Payment Date in February 2008 through February 3, 2008. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Subordinate Servicing Fee or Supplemental Servicing Fee, any funds representing the waived Subordinate Servicing Fees or Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

SECTION 3. Effect of Amendment.

Upon execution of this Amendment, the Indenture shall be, and be deemed to be, modified and amended in accordance herewith and the respective rights, limitations, obligations, duties, liabilities and immunities of the Issuer, Co-Issuer and the Servicer shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this Amendment shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes. Except as modified and expressly amended by this Amendment, the Indenture is in all respects ratified and confirmed, and all the terms, provisions and conditions thereof shall be and remain in full force and effect.

SECTION 4. Binding Effect.

The provisions of this Amendment shall be binding upon and inure to the benefit of the Issuer, the Co-Issuer and the Servicer and each of their respective successors and assigns.

SECTION 5. GOVERNING LAW.

THIS AMENDMENT TO THE INDENTURE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

SECTION 6. Severability of Provisions.

If any one or more of the provisions or terms of this Amendment shall be for any reason whatsoever held invalid, then such provisions or terms shall be deemed severable from the remaining provisions or terms of this Amendment and shall in no way affect the validity or enforceability of the other provisions or terms of this Amendment.

SECTION 7. Section Headings.

The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

SECTION 8. Counterparts.

This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

RED RIVER CLO LTD.,
as Issuer

By:_____
Name: VIJAYABALAN MURUGESU
Title: DIRECTOR

RED RIVER CLO CORP.,
as Co-Issuer

By:_____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT,
L.P., as Servicer

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

RED RIVER CLO LTD.,
as Issuer

By:_____
Name:
Title:

RED RIVER CLO CORP.,
as Co-Issuer

By:_____
Name: Donald J. Puglisi
Title: President

HIGHLAND CAPITAL MANAGEMENT,
L.P., as Servicer

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

RED RIVER CLO LTD.,
as Issuer

By:_____
Name:
Title:

RED RIVER CLO CORP.,
as Co-Issuer

By:_____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer

By:_____
Name: Todd Travers
Title: Senior Portfolio Manager
Highland Capital Management, L.P.

CONSENTED AND AGREED TO BY:

Name: Todd Travers
Title: CEO & CFO
E-mail address: tatravers@hcmlp.com
Aggregate Outstanding Amount/Face Amount of Class II Preference Shares Held: 45,000,000
CUSIP/ISIN: 756873204

EXECUTION COPY

PORTFOLIO MANAGEMENT AGREEMENT

This Portfolio Management Agreement, dated as of October 13, 2005 is entered into by and among GLENEAGLES CLO, LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as portfolio manager ("Highland" or, in such capacity, the "Portfolio Manager").

WITNESSETH:

WHEREAS, the Issuer and Gleneagles CLO Corp. (the "Co-Issuer") intend to issue their Class A-1 Floating Rate Senior Secured Extendable Notes due 2017 (the "Class A-1 Notes"), Class A-2 Floating Rate Senior Secured Extendable Notes due 2017 (the "Class A-2 Notes"), Class B Floating Rate Senior Secured Extendable Notes Due 2017 (the "Class B Notes"), Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017 (the "Class C Notes") and the Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017 (the "Class D Notes" and, together with the Class A Notes, the Class B Notes and the Class C Notes, the "Notes"), the Issuer intends to issue (i) its Class 1 Extendable Combination Securities Due 2017 (the "Class 1 Combination Securities") consisting of (a) a component entitling its holders to rights in respect of Preference Shares in an initial aggregate Face Amount equal to $1,000,000, as defined below, (the "Class 1 Combination Security Preference Share Component") and (b) a component representing an initial aggregate principal amount of Class C Notes equal to $4,000,000 (the "Class 1 Note Components") and (ii) its Class 2 Combination Securities due 2015 (the "Class 2 Combination Securities" and, together with the Class 1 Combination Securities, the "Combination Securities") consisting of (a) a component entitling its holders to rights in respect of Preference Shares, as defined below, (the "Class 2 Combination Security Preference Share Component" and, together with the Class 1 Combination Security Preference Share Component, the "Preference Share Components") and (b) a component entitling its holders to rights to receive proceeds from a trust account initially holding a $20,000,000 principal-only zero coupon security issued by Banc of America Corporation maturing on October 30, 2015 (the "Class 2 Components") pursuant to an indenture (the "Indenture"), dated as of the date hereof, among the Issuer, the Co-Issuer, as co-issuer of the Notes, and JPMorgan Chase Bank, National Association, as trustee (together with any successor trustee permitted under the Indenture, the "Trustee") and the Issuer intends to issue 91,000,000 preference shares, par value $0.01 per share (the "Preference Shares" and together with the Notes, the "Securities"), pursuant to the Issuer's Amended and Restated Memorandum and Articles of Association;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer intends to pledge all of its right title and interest in the Class 2 Component Account, as defined in the Indenture, (the "Class 2 Collateral") to the Trustee as security for the Class 2 Components;

WHEREAS, the Issuer wishes to enter into this Portfolio Management Agreement, pursuant to which the Portfolio Manager agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral securing the Notes (including the Class 1 Note Components and the Class/Collateral securing the Class 2 Components) in the manner and on the terms set forth herein; and

WHEREAS, the Portfolio Manager has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Portfolio Management Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"Offering Circular" shall mean the Offering Memorandum of the Issuer dated October 7, 2005 prepared in connection with the offering of the Securities.

"Portfolio Manager Breaches" shall have the meaning specified in Section 10(a).

2. General Duties of the Portfolio Manager.

(a) The Portfolio Manager shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager shall supervise and direct the investment and reinvestment of the Collateral, and shall perform on behalf of the Issuer those investment–related duties and functions that have been specifically delegated or assigned to the Portfolio Manager in the Indenture (and the Portfolio Manager shall have no obligation to perform any other duties other than as specified herein or under the Indenture) and, to the extent necessary or appropriate to perform such duties, the Portfolio Manager shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto, including without limitation, providing such certifications and Officer's certificates as are required of the Portfolio Manager or the Issuer under the Indenture with respect to the permitted purchases and sales of Collateral Obligations and other securities required or permitted to be purchased or sold under the Indenture. The Portfolio Manager shall, subject to the terms and conditions hereof and of the Indenture, perform its obligations hereunder and under the Indenture (including, without limitation, its obligations in Sections 2.4 and 9.6 thereof) with reasonable care, using a degree of skill and attention no less than that which the Portfolio Manager exercises with respect to comparable assets that it manages for others having similar investment objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Collateral for clients having similar investment objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not inconsistent with the

foregoing, the Portfolio Manager shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Portfolio Manager shall comply with all terms and conditions of the Indenture affecting the duties and functions to be performed hereunder. The Portfolio Manager shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Portfolio Manager shall not be bound by any amendment to the Indenture that would reduce the rights or decrease the fees or any other amounts payable to the Portfolio Manager hereunder or under the Indenture or increase the duties, obligations or liabilities of the Portfolio Manager unless the Portfolio Manager shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, duties or liabilities of the Portfolio Manager or (y) affects the amount or priority of any fees payable to the Portfolio Manager to become effective unless the Portfolio Manager has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Portfolio Manager shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the investment criteria set forth therein;

(iii) the Portfolio Manager shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Portfolio Manager shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Portfolio Manager shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Portfolio Manager, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (i) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, or (ii) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, and may, in each case subject to and in accordance with the provisions of the Indenture, direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligation; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(8) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments or take any other action consistent with the terms of the Indenture which is in the best interests of the Noteholders and the Holders of the Preference Shares; and

(v) subject to and in accordance with the terms of the Indenture and this Agreement, the Portfolio Manager on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Portfolio Manager shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the Hedge Counterparty), to enter into a replacement Hedge Agreement.

(b) In performing its duties hereunder, the Portfolio Manager shall seek to maximize the value of the Collateral for the benefit of the Noteholders and the Holders of the Preference Shares taking into account the investment criteria and limitations set forth herein and in the Indenture and the Portfolio Manager shall use reasonable efforts to manage the Collateral in such a way that will (i) permit a timely performance of all payment obligations by the Issuer under the Indenture and (ii) subject to such objective, maximize the return to the Holders of the Preference Shares; provided, that the Portfolio Manager shall not be responsible if such objectives are not achieved so long as the Portfolio Manager performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Portfolio Manager with respect to the Notes or the Preference Shares. The Portfolio Manager and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement. The Portfolio Manager shall notify the Trustee and the Issuer in writing of an Event of Default under the Indenture of which the Portfolio Manager has actual knowledge.

(c) The Portfolio Manager hereby agrees to the following:

(i) The Portfolio Manager agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day after the payment in full of all Notes issued under the

Indenture or, if longer, the applicable period then provided by law; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Portfolio Manager (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Portfolio Manager, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding.

(ii) The Portfolio Manager shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(d) The Portfolio Manager shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Portfolio Manager may employ third parties, including its Affiliates, to render advice (including investment advice) and assistance; provided, however, that the Portfolio Manager shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Portfolio Manager shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) The Portfolio Manager or its Affiliates will maintain, in the aggregate, ownership of (or, through a derivative or similar arrangement, retain economic exposure to) Preference Shares having an aggregate Face Amount of at least $15,000,000 until the earlier of such time as (i) none of the Notes are Outstanding or (ii) Highland is removed or resigns as Portfolio Manager and such removal or resignation has become effective in accordance with this Agreement.

3. Brokerage.

The Portfolio Manager shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Portfolio Manager may take into consideration research and other brokerage services furnished to the Portfolio Manager or its Affiliates by brokers and dealers which are not Affiliates of the Portfolio Manager. Such services may be used by the Portfolio Manager or its Affiliates in connection with its other advisory activities or investment operations. The Portfolio Manager may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts managed by Portfolio Manager or with accounts of the Affiliates of the Portfolio Manager, if in the Portfolio Manager's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Portfolio Manager (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Portfolio Manager may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Portfolio Manager.

Nothing herein shall prevent the Portfolio Manager or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Noteholders, the Holders of the Preference Shares or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Portfolio Manager and partners, directors, officers, employees and agents of the Portfolio Manager or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be deposited into the Collection Account; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Portfolio Manager, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Portfolio Manager set forth in Section 2 hereof.

It is understood that the Portfolio Manager and any of its Affiliates may engage in any other business and furnish investment management and advisory services to others, including Persons which may have investment policies similar to those followed by the Portfolio Manager with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Portfolio Manager shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Portfolio Manager determines in its reasonable judgment that such purchase or sale is appropriate, the Portfolio Manager may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Portfolio Manager, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Portfolio Manager or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Portfolio Manager or any of its Affiliates have information which the Portfolio Manager deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Portfolio

Manager shall not be obligated to pursue any particular investment strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Portfolio Manager or any of its Affiliates as principal or to sell an obligation to the Portfolio Manager or any of its Affiliates as principal unless (i) the Issuer shall have received from the Portfolio Manager such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Portfolio Manager, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Adviser's Act.

(b) The Portfolio Manager shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Portfolio Manager serves as investment advisor, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Portfolio Manager serves as investment advisor unless such acquisition or sale is (i) in the judgment of the Portfolio Manager, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Adviser's Act.

(c) In addition, the Portfolio Manager shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Portfolio Manager shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Preference Share Paying Agent, the Noteholders, the Holders of the Preference Shares and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Portfolio Manager make a public announcement concerning the issuance of the Notes or the Preference Shares, the Portfolio Manager's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Portfolio Manager shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of the Notes, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Portfolio Manager, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Portfolio Manager on a non-confidential basis, provided, that the Portfolio Manager does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator, the Preference Share Paying Agent, the Noteholders and the Holders of the Preference Shares shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Portfolio Manager, the Co-Issuers, the Trustee and the Holders of the Notes and the Preference Shares

(and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Portfolio Manager.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Portfolio Manager shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Portfolio Manager to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Amended and Restated Memorandum and Articles of Association or the Co-Issuer's Articles of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) engage in activities not permitted by Schedule 8 of the Indenture that would subject the Issuer or the Co-Issuer to U.S. federal or state income or franchise taxation or cause the Issuer or the Co-Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Portfolio Manager covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Portfolio Manager shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Portfolio Manager, for services rendered and performance of its obligations under this Agreement, the Management Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Management Fee shall not be amended without the consent of the Portfolio Manager. If on any Payment Date there are insufficient funds to pay such fee (and/or any other amounts due and payable to the Portfolio Manager) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the definition of "Subordinated Management Fee" in the Indenture.

(b) The Portfolio Manager shall be responsible for the ordinary expenses incurred in the performance of; provided, however, that any extraordinary expenses incurred by the Collateral Manager in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee, the Preference Shares Paying Agent and the accountants appointed by the Issuer, the reasonable expenses incurred by the Portfolio Manager to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation, any reasonable expenses incurred by the Portfolio Manager in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and

other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Portfolio Manager customarily allocates among all of the funds or portfolios that it manages) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Portfolio Manager shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Portfolio Manager agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or Holders of Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Portfolio Manager Responsibility; Indemnification.

(a) The Portfolio Manager assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of conduct described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Portfolio Manager. The Portfolio Manager, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Noteholders, the Preference Share Paying Agent, the Holders of the Preference Shares or any other person for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Noteholders, the Preference Share Paying Agent, the Holders of the Preference Shares or any other person that arise out of or in connection with the performance by the Portfolio Manager of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Portfolio Manager hereunder and under the terms of the Indenture applicable to it or (ii) with respect to any information included in the Offering Circular in the sections entitled "The Portfolio Manager" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Portfolio Manager Breaches").

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Portfolio Manager, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Circular, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such

Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Portfolio Manager Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Portfolio Manager, the Portfolio Manager shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

(vi) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defense of such claim, including, but not limited to, the right to designate counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Indemnifying Party assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for any Indemnified Party incurred thereafter in connection with such claim except that if

such Indemnified Party reasonably determines that counsel designated by the Indemnifying Party has a conflict of interest in connection with its representation of such Indemnified Party, such Indemnifying Party shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, further, that prior to entering into any final settlement or compromise, such Indemnifying Party shall seek the consent of the Indemnified Party and use its commercially reasonable efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such Indemnified Party as to the terms of settlement or compromise. If an Indemnified Party does not consent to the settlement or compromise within a reasonable time under the circumstances, the Indemnifying Party shall not thereafter be obligated to indemnify the Indemnified Party for any amount in excess of such proposed settlement or compromise.

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer, the Holders of Notes or Preference Shares may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Portfolio Manager are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Portfolio Manager's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Noteholders and the Preference Share Paying Agent; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(f) below, the Portfolio Manager may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Portfolio Manager resigns, the Issuer agrees to appoint a successor Portfolio Manager to assume such duties and obligations in accordance with Section 12(f).

(c) Subject to Section 12(f) below, the Portfolio Manager may be removed without cause upon 90 days' prior written notice by the Issuer, at the direction of the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of Preference Shares (excluding Preference Shares held

by the Portfolio Manager, its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority at the time of such vote); provided, however, that the Portfolio Manager shall have the right to avoid any such removal if, on or prior to the proposed removal date the following conditions are satisfied: (i) the Portfolio Manager provides written notice, not less than 20 Business Days prior to the proposed removal date, to the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares), the Issuer and the Trustee that the Portfolio Manager intends to purchase not less than all of the Preference Shares voting for such removal from the Holders thereof (the "Directing Preference Shares"), (ii) in the notice provided to the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) in the preceding clause (i), the Portfolio Manager includes a statement to the effect that each Holder of Preference Share who did not vote for removal may provide written notice to the Portfolio Manager not later than 5 Business Days prior to the proposed removal date that the Preference Shares held by such Holder shall be deemed to be included in the Directing Preference Shares as provided in the preceding clause (i), and (iii) the Portfolio Manager effects the purchase of not less than all of the Directing Preference Shares at the Buy-out Amount. If all of the conditions set forth in the preceding sentence are satisfied on or prior to the proposed removal date, the Portfolio Manager shall continue as the Portfolio Manager under this Agreement. For purposes of this Section 12(c), "Buy-out Amount" means, with respect to (i) the Directing Preference Shares, an amount, when taken together with all payments and distributions made in respect of such Directing Preference Shares since the Closing Date, would cause the Directing Preference Shares to have received (as of the date of the Portfolio Manager's purchase thereof) a Preference Share Internal Rate of Return of 12% (assuming such purchase date was a "Payment Date" under the Indenture) and (ii) the Combination Securities, the amount that would be payable pursuant to the preceding clause (i) in respect of the Preference Shares underlying the Preference Share Components.

(d) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Portfolio Manager thereof.

(e) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(f) No removal, termination or resignation of the Portfolio Manager shall be effective unless the Issuer appoints a successor Portfolio Manager (a) (i) at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority), (ii) such successor has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to this Agreement and the Indenture and (ii) such successor portfolio manager is not objected to within 30 days after notice of such succession by either (x) the Holders of at least 66 2/3% in Aggregate Outstanding Amount of the Controlling Class or Notes or (y) the Holders of at least 66 /2/3% in Aggregate Outstanding Amount of the Notes (voting as a single Class (excluding any Notes held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority)); or (b) if a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority) has nominated two or more successor portfolio managers that have been objected to pursuant to the preceding clause (a) or has otherwise failed to appoint a successor portfolio manager that is not objected to pursuant to the preceding clause (a)(iii) within 30 days of the date of notice of such removal, termination or resignation of the Portfolio Manager, then (i) at the direction of the Holders of at least 66 2/3% in Aggregate Outstanding Amount of the

Controlling Class, (ii) such successor has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to the Management Agreement and the Indenture and (iii) such successor portfolio manager is not objected to within 30 days after notice of such succession by the Majority of the Preference Shares (excluding any Preference Shares held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority); or (c) if 66 2/3% in Aggregate Outstanding Amount of the Controlling Class fail to appoint a successor portfolio manager pursuant to the preceding clause (b), within 90 days of the date of notice of such removal, termination or resignation of the Portfolio Manager, the Holders of at least 66 2/3% in Aggregate Outstanding Amount of the Controlling Class may petition a court of competent authority to appoint a successor portfolio manager. In addition, any successor Portfolio Manager must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Portfolio Manager hereunder, (ii) is legally qualified and has the capacity to act as Portfolio Manager hereunder, as successor to the Portfolio Manager under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Portfolio Manager hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Portfolio Manager under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Portfolio Manager is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Portfolio Manager shall not cause its then-current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor from payments on the Collateral shall be greater than that paid to the Portfolio Manager without the prior written consent of the Holders of at least 66 2/3% in Aggregate Outstanding Amount of the Controlling Class, the Holders of at least 66 2/3% in Aggregate Outstanding Amount of the Notes voting collectively and a Majority of the Preference Shares (voting collectively). The Issuer, the Trustee and the successor Portfolio Manager shall take such action (or cause the retiring Portfolio Manager to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Portfolio Manager, as shall be necessary to effectuate any such succession.

(g) In the event of removal of the Portfolio Manager pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Portfolio Manager as provided under this Agreement terminate all the rights and obligations of the Portfolio Manager under this Agreement (except those that survive termination pursuant to Section 12(e) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Portfolio Manager under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Portfolio Manager upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Portfolio Manager hereunder, shall not be delegated by the Portfolio Manager, in whole or in part, except to any entity that is both (i) controlled by two or more of James Dondero, Mark Okada and Todd Travers and (ii) one in which two or more of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, the Controlling Class of Notes and a Majority of the Preference Shares (excluding Preference Shares held by the Portfolio Manager or any of its Affiliates), and, notwithstanding any such consent, no delegation of obligations or duties by the

Portfolio Manager (including, without limitation, to an entity described above) shall relieve the Portfolio Manager from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Portfolio Manager shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Controlling Class of Notes and the Holders of a Majority of the Preference Shares (excluding Preference Shares held by the Portfolio Manager or any of its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority) and (ii) the Rating Condition is satisfied with respect to any such assignment. Any assignment consented to by the Issuer and such Noteholders and Holders of Preference Shares shall bind the assignee hereunder in the same manner as the Portfolio Manager is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Portfolio Manager. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, such Noteholders and such Holders of the Preference Shares, the Portfolio Manager shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Portfolio Manager and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Portfolio Manager such documents as the Portfolio Manager shall consider reasonably necessary to effect fully such assignment. The Portfolio Manager hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(f) above, this Agreement shall be terminated, and the Portfolio Manager shall be removed, by the Issuer, if directed by the Trustee or by the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Controlling Class of Notes or by a Majority of the Holders of the Preference Shares (excluding any Preference Shares held by the Portfolio Manager or its Affiliates or any account for which the Portfolio Manager or its Affiliates have discretionary voting authority at the time of such vote), in each case for "cause" upon 10 days' prior written notice to the Portfolio Manager and upon written notice to the Noteholders and the Holders of the Preference Shares as set forth below. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Portfolio Manager willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Portfolio Manager breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Portfolio Manager shall prove to have been incorrect in any material respect when made or given, and the Portfolio Manager fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Portfolio Manager is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Portfolio Manager in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Portfolio Manager (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Portfolio Manager or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Portfolio Manager and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Portfolio Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Portfolio Manager of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Portfolio Manager related to its activities in any securities, financial advisory or other investment business that constitutes fraud, (y) the Portfolio Manager being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any securities, financial advisory or other investment business or (z) the Portfolio Manager being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Portfolio Manager shall give prompt written notice thereof to the Issuer, the Trustee, the Preference Share Paying Agent and the Holders of all outstanding Notes and Preference Shares upon the Portfolio Manager's becoming aware of the occurrence of such event. The Controlling Class of Notes and a Majority of the Holders of the Preference Shares (excluding any Preference Shares held by the Portfolio Manager or its Affiliates) may, acting together, waive any event described above as a basis for termination of this Agreement and removal of the Portfolio Manager under this Section 14.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Portfolio Manager shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Portfolio Manager shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral and the Class 2 Collateral then in the custody of the Portfolio Manager; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Portfolio Manager appointed pursuant to Section 12(f) hereof.

Notwithstanding such termination, the Portfolio Manager shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Portfolio Manager in Section 16(b) hereof or from any failure of the Portfolio Manager to comply with the provisions of this Section 15.

(b) The Portfolio Manager agrees that, notwithstanding any termination, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Portfolio Manager or any Affiliate of the Portfolio Manager) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Portfolio Manager as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture, the Notes or the Preference Shares would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture, the Notes and the Preference Shares and all obligations required hereunder, under the Indenture, the Notes and the Preference Shares and has taken all necessary action to authorize this Agreement, the Indenture, the Notes and the Preference Shares on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture, the Notes and the Preference Shares and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, stockholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the issuance of the Notes and the Preference Shares, is required by the Issuer in connection with this Agreement, the Indenture, the Notes or the Preference Shares or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture, the Notes or the Preference Shares or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in

accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Portfolio Manager.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Portfolio Manager as promptly as practicable after its adoption or execution.

(b) The Portfolio Manager hereby represents and warrants to the Issuer as follows:

(i) The Portfolio Manager is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or on the ability of the Portfolio Manager to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager.

(ii) The Portfolio Manager has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Portfolio Manager, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the

execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the Indenture applicable to the Portfolio Manager. No consent of any other person, including, without limitation, creditors of the Portfolio Manager, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Portfolio Manager in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Portfolio Manager. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture shall be, executed and delivered by a duly authorized partner of the Portfolio Manager, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture when executed and delivered by the Portfolio Manager hereunder or under the terms of the Indenture shall constitute, the valid and legally binding obligations of the Portfolio Manager enforceable against the Portfolio Manager in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Portfolio Manager and the documents and instruments required hereunder or under the terms of the Indenture shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Portfolio Manager, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Portfolio Manager, or the Governing Instruments of, or any securities issued by the Portfolio Manager or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Portfolio Manager is a party or by which the Portfolio Manager or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Portfolio Manager or its ability to perform its obligations under this Agreement and the provisions of the Indenture applicable to the Portfolio Manager, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Portfolio Manager, threatened that, if determined adversely to the Portfolio Manager, would have a material adverse effect upon the performance by the Portfolio Manager of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Portfolio Manager hereunder.

(v) The Portfolio Manager is a registered investment advisor under the United States Investment Advisers Act of 1940, as amended.

(vi) The Portfolio Manager is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Portfolio Manager or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or

enforceability of this Agreement or the provisions of the Indenture applicable to the Portfolio Manager, or the performance by the Portfolio Manager of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Gleneagles CLO, Ltd.
P.O. Box 1093 GT
Queensgate House, South Church Street,
George Town, Grand Cayman, Cayman Islands
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Portfolio Manager:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

JPMorgan Chase Bank
600 Travis Street, 50th Floor,
Houston, Texas 77002
Telecopy: (713) 216-2101
Attention: Institutional Trust Services—Gleneagles CLO, Ltd.

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Share Paying Agent at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Portfolio Manager hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Portfolio Manager's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(f)(iv) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(ii), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Portfolio Manager agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Portfolio Manager's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares. In addition, with respect to any Defaulted Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's

rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares. In the event any Offer is made with respect to any Collateral Obligation, the Portfolio Manager, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Portfolio Manager has determined in its reasonable judgment shall be in the best interests of the Noteholders and the Holders of the Preference Shares.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Portfolio Manager may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Without prejudice to Section 14(f) hereof, any corporation, partnership or limited liability company into which the Portfolio Manager may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Portfolio Manager shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the collateral management business of the Portfolio Manager, shall be the successor to the Portfolio Manager without any further action by the Portfolio Manager, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Portfolio Manager shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Portfolio Manager hereby consents to (i) the posting of the final Offering Circular, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Portfolio Manager

BY: STRAND ADVISORS, INC., as General Partner

By:_____
Name: James Dondero, CFA, CPA
Title: President
Highland Capital Management, L.P.

GLENEAGLES CLO, LTD., as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P., as Portfolio Manager

BY: STRAND ADVISORS, INC., as General Partner

By:_____
Name:
Title:

GLENEAGLES CLO, LTD., as Issuer

By:_____
Name: Wendy Ebanks
Title: Director

EXECUTION COPY

SERVICING AGREEMENT

This Servicing Agreement, dated as of May 31, 2007 is entered into by and among WESTCHESTER CLO, LTD., an exempted company incorporated under the laws of the Cayman Islands, with its registered office located at the offices of Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and WESTCHESTER CLO CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$570,500,000 of their Class A-1-A Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-1-A Notes"), U.S.$142,500,000 of their Class A-1-B Floating Rate Senior Secured Extendable Notes due 2022 (the "Class A-1-B Notes" and, together with the Class A-1-A Notes, the "Class A Notes"), U.S.$80,000,000 of their Class B Floating Rate Senior Secured Extendable Notes due 2022 (the "Class B Notes"), U.S.$53,500,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class C Notes") and U.S.$36,000,000 of their Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class D Notes" and, together with the Class A Notes, Class B Notes and Class C Notes, the "Senior Notes"), and the Issuer will individually issue U.S.$37,500,000 of its Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes due 2022 (the "Class E Notes" and together with the Senior Notes, the "Notes") pursuant to the Indenture dated as of May 31, 2007 (the "Indenture"), among the Co-Issuers and Investors Bank & Trust Company, as trustee (the "Trustee"), 39,000 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares"), and 41,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Share Documents;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Advisers Act" shall mean the Investment Advisers Act of 1940, as amended.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean collectively, Highland Financial Partners, L.P. and any subsidiary thereof.

"Independent Advisor" shall have the meaning specified in Section IV.B. of the Collateral Acquisition Agreement.

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated May [29], 2007 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Servicing Fees" shall mean, collectively, the Senior Servicing Fee, the Subordinate Servicing Fee and the Supplemental Servicing Fee

"Special Procedures Obligation" shall have the meaning specified in Section IV.A. of the Collateral Acquisition Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms the Indenture and this Agreement, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and this Agreement, and including the furnishing of orders, requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the Indenture, perform its obligations hereunder and thereunder with reasonable care and in good faith, using a degree of skill

and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the Indenture. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the Indenture affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to the Indenture until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to the Indenture that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Eligibility Criteria;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture and any Hedge Agreement, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation; and the Servicer shall monitor any Hedge Agreements and direct the Trustee on behalf of the Issuer in respect of all actions to be taken thereunder by the Issuer;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee to (x) dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(3) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(4) retain or dispose of any securities or other property (if other than Cash) received pursuant to an Offer; or

(5) waive any default with respect to any Defaulted Collateral Obligation; or

(6) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(7) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities;

(v) subject to and in accordance with the terms of the Indenture and this Agreement, the Servicer on behalf of the Issuer shall determine whether to enter into any additional hedging arrangements, increase or reduce the notional amounts of existing Hedge Agreements or terminate existing Hedge Agreements, and the Servicer shall use its reasonable efforts to cause the Issuer, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) and to the extent possible through application of funds received as a result of the early termination (including the proceeds of the liquidation of any collateral pledged by the hedge counterparty), to enter into a replacement Hedge Agreement;

(vi) the Servicer shall on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligations and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption; and

(vii) if the Servicer, on behalf of the Issuer, desires to make distributions of Eligible Equity Securities on any Payment Date pursuant to Section 2(e) of the Preference Shares Paying Agency Agreement, the Servicer shall so notify the Trustee and the Preference Shares Paying Agent and provide the Trustee and the Preference Shares Paying Agent (for forwarding to each Holder of the Preference Shares with respect to the applicable Record Date) details of such Eligible Equity Securities in accordance with the procedure set forth in Section 3(b) of the Preference Shares Paying Agency Agreement.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish

such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under federal or state bankruptcy or similar laws of any jurisdiction until at least one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes issued under the Indenture; provided, however, that nothing in this clause (i) shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or similar proceeding. This Section 2(c)(i) shall survive the termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligations or Eligible Investment to be conducted on an arm's-length basis.

(iii) The Servicer shall notify the Trustee and the Share Registrar of any Affiliate of the Servicer that owns the Securities.

(iv) HFP and/or its subsidiaries will purchase Class II Preference Shares having an aggregate principal amount equal to U.S.$41,000,000, Class E Notes having an aggregate principal amount equal to U.S.$9,500,000, the Servicer and/or its Affiliates (other than HFP) will purchase Class I Preferences Shares having an aggregate Face Amount equal to U.S.$17,000,000.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations shall be conditioned upon the prior written approval of the Independent Advisor and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchasers, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; and provided, further that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on any item of Collateral or the ability of the Issuer to comply with each Collateral Quality Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliate act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in accordance with applicable law. The Servicer shall not be obligated to pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Advisers Act.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Advisers Act.

(c) The Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code. In addition, after the initial distribution of the Class E Notes and the Preference Shares, neither the Servicer nor any of its affiliates (as defined in the Plan Asset Regulation) shall acquire any Class E Notes or Preference Shares (including pursuant to the Extension Procedure or the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates or other investor agreement with respect thereto or deemed made by holders thereof, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class E Notes, the Class I Preference Shares or

the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, the Plan Asset Regulation, the Indenture and the Preference Share Documents). The Class E Notes and the Preference Shares held as principal by the Servicer or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the Indenture. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis, provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's or the Co-Issuer's respective governing instruments, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) would subject the Issuer to U.S. federal or state net income or

franchise taxation. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable with accrued interest on such later Payment Date on which funds are available therefor as provided in the Indenture.

The Servicer hereby agrees to waive the Class II Preference Share Portion of the Servicing Fees deposited by the Trustee into the Class II Preference Share Special Payment Account pursuant to the Indenture, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date prior to February 3, 2008. With respect to any Payment Date after February 3, 2008, the Servicer may, in its sole discretion, at any time waive a portion (or all) of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments pursuant to the Indenture; provided that with respect to the Payment Date in May 2008 such Class II Preference Share Special Payments will, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Payment Date in February 2008 through February 3, 2008. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Subordinate Servicing Fee or Supplemental Servicing Fee, any funds representing the waived Subordinate Servicing Fees or Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement and the Indenture; provided, however, that any extraordinary expenses actually incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligations or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages, including reasonable expenses

incurred with respect to any compliance requirements, including, but not limited to, compliance with the requirements of the Sarbanes-Oxley Act, related solely to the ownership or holding of any Securities by HFP or its Affiliates) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the priority of payments and the other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture or the Preference Share Paying Agency Agreement, as applicable.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the Indenture made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer hereunder and under the Indenture or (ii) with respect to any information included in the Offering Memorandum in the sections entitled "The Servicer" and "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" and information in the Offering Memorandum relating to the Servicer Letter Disclosure that contain any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement and the Indenture. The Servicer shall be liable for any non-waivable breaches of applicable securities laws. The Servicer shall be deemed to have satisfied Section 7(f) and the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent (i) the Servicer acts consistently with the Collateral Acquisition Agreement with respect to Collateral Obligations and Eligible Investments and (ii) the Servicer does not have actual knowledge that its actions with respect to a Collateral Obligation or an Eligible Investment would violate Section 7(f).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the

entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

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

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) Notwithstanding any other provision of this Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor Servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor Servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than, with respect to the Class II Preference Shares, HFP; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class);

(ii) if a majority of the Voting Preference Shares has nominated two or more successor Servicers that have been objected to pursuant to the preceding clause (i)(C) or has failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, (A) the Issuer appoints a successor Servicer at the written direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), (B) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor Servicer is not objected to within 30 days after notice of such succession by either (x) Majority of the Voting Preference Shares or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(iii) if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) has nominated two or more successor Servicers that have been objected to pursuant to the preceding clauses (i)(C) and (ii)(C) or has otherwise failed to appoint a successor Servicer that has not been objected to pursuant to the preceding clause (i)(C) or (ii) (C) within 120 days of the date of notice of such removal or resignation of the Servicer, (A) any Holder of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor Servicer, (B) such court appoints a successor Servicer and (C) such successor Servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor Servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as Servicer under this Agreement and the Indenture without causing the Issuer, the Co Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor Servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor Servicer shall not cause its then current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor Servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor Servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor Servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and (ii) the Rating Agency Confirmation is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by (1) the Trustee, acting at the direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) the Holders of a Majority of the Voting Preference Shares. For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for

or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the successor Servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly registered and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform this Agreement, the Indenture and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the Indenture and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of this Agreement, the Indenture and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the Indenture and the Securities is required by the Issuer in connection with this Agreement, the Indenture and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the Indenture and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions

of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the Indenture applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the Indenture applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the Indenture applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the Indenture applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the Indenture applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or

similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the Indenture applicable to the Servicer and the documents and instruments required hereunder or under the terms of the Indenture applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the Indenture applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the Indenture applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the Indenture applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Westchester CLO, Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

Investors Bank & Trust Company
200 Claredon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617) 351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.4 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.4 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The

Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Noteholders or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby, except for any claims, losses, damages, liabilities, indemnities or other obligations caused by the gross negligence, bad faith or willful misconduct of such directors, officers, shareholders, members or incorporators of the Issuer. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, as applied in accordance with the Priorities of Payments pursuant to the Indenture, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

32. Consent to Posting of Documents on Repository.

The Servicer hereby consents to (i) the posting of the final Offering Memorandum, the Indenture and any Hedge Agreements (collectively, the "Documents") and the periodic reports to be delivered pursuant to the Documents and any amendments or other modifications thereto on the Repository (as such term is defined in the Indenture) for use in the manner provided in the Repository; and (ii) the display of its name on the Repository in connection therewith.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

By: Todd Travers
Name: Senior Portfolio Manager
Title: Highland Capital Management, L.P.

WESTCHESTER CLO, LTD.,
as Issuer

By:_____
Name:
Title:

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

By:_____
Name:
Title:

WESTCHESTER CLO, LTD.,
as Issuer

By:_____
Name: Chris Marett
Title: Director

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 9

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

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	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT D

EXECUTION COPY

ABERDEEN LOAN FUNDING, LTD.
Issuer,

ABERDEEN LOAN FUNDING CORP.
Co-Issuer,

and

STATE STREET BANK AND TRUST COMPANY
Trustee

INDENTURE

Dated as of March 27, 2008

COLLATERALIZED DEBT OBLIGATIONS

U.S.$376,000,000 Class A Floating Rate Senior Secured Extendable Notes Due 2018
U.S.$29,500,000 Class B Floating Rate Senior Secured Extendable Notes Due 2018
U.S.$25,250,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2018
U.S.$19,250,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2018
U.S.$17,250,000 Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2018

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INDENTURE, dated as of March 27, 2008, among **ABERDEEN LOAN FUNDING, LTD.** (the "***Issuer***"), **ABERDEEN LOAN FUNDING CORP.** (the "***Co-Issuer***") and **STATE STREET BANK AND TRUST COMPANY**, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Class E Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty (and the Collateral Administrator and Preference Shares Paying Agent to the extent of Administrative Expenses payable to such parties as provided hereunder) (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and listed from time to time on such Schedule 1 as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account, the Interest Reserve Account and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and, together with the Issuer Accounts, the Synthetic Security Collateral Account and the Hedge Counterparty Collateral Account, the "***Accounts***") and assets included therein, subject to the terms of the related

Synthetic Security (*provided*, *however*, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account and the Collateral Administration Agreement, to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money, general intangibles, chattel paper and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding any Excluded Property, the "***Collateral***"). Notwithstanding the foregoing, the Collateral shall not include (i) amounts released from the Trustee's lien in connection with certain Synthetic Securities, Hedge Agreements and Securities Lending Agreements in accordance with this Indenture and (ii) any Excluded Property.

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (including without limitation, Administrative Expenses, but excluding amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions.

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"***25% Limitation***": The limitation imposed so that any purchase or transfer of Class E Notes, Class I Preference Shares and Class II Preference Shares by Benefit Plan Investors from the Initial Purchaser or the Issuer and any subsequent transferee will be limited to less than 25% of the value of each of all Outstanding Class E Notes, Class I Preference Shares and Class II Preference Shares by requiring each such purchaser and subsequent transferee to make certain representations and/or to agree to certain transfer restrictions regarding their status as Benefit Plan Investors or Controlling Persons.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have the same seniority, maturity and interest rate as the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation

less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Loan that constitutes part of the price paid by the Issuer to repay amounts owed to the Pre-Closing Parties in connection with the financing of the Issuer's pre-closing acquisition of such Loan.

"***Act***": The meaning specified in Section 14.2.

"***Adjusted Interest Proceeds***": The meaning specified in Section 11.1(b).

"***Adjusted Principal Proceeds***": The meaning specified in Section 11.1(b).

"***Adjusted Proceeds***": The meaning specified in Section 11.1(b).

"***Administration Agreement***": The Administration Agreement between the Issuer and the Administrator, providing for the administrative functions on behalf of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.025% of the Maximum Amount on the related Determination Date plus $250,000; over

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and of accountants, agents and counsel for either of the Co-Issuers;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Collateral (requested by the Issuer or the Servicer) or the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other Person (except the Servicer) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Walkers SPV Limited, or any successor thereto appointed under the Administration Agreement.

"***Affected Bank***" means a "bank" for purposes of Section 881 of the Code or an entity acting on behalf of such a bank that neither (x) meets the definition of a U.S. Holder nor (y) is entitled to the benefits of an income tax treaty with the United States under which withholding taxes on interest payments made by obligors resident in the United States to such bank are reduced to 0%.

"***Affected Class***": Any Class of Notes that, as a result of the occurrence of a Tax Event, has received or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Payment Date related to the Due Period with respect to which such Tax Event occurs.

"***Affiliate***" or "***Affiliated***": With respect to a Person,

(i) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the Person; or

(ii) any other Person who is a director, officer, or employee (A) of the Person, (B) of any subsidiary or parent company of the Person or (C) of any Person described in clause (i) above.

For the purposes of this definition, control of a Person shall mean the power, direct or indirect:

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the Person; or

(B) to direct the corporate management and corporate policies of the Person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Base Fees and Expenses***": The meaning specified in Section 11.1(b).

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date. When used with respect to

the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto;

(d) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto; and

(e) the Aggregate Outstanding Amount of the Class E Notes at any time shall include all Class E Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Securities purchased in an Amendment Buy-Out, if any, in an amount

equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, *plus* accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), *plus* any unpaid Extension Bonus Payment, and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder on the next succeeding Payment Date) would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12% (assuming such purchase date was a Payment Date); *provided*, *however*, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders of Preference Shares have received a Preference Share Internal Rate of Return equal to or in excess of 12%, the Amendment Buy-Out Purchase Price for such Preference Shares shall be zero.

"***Amendment Buy-Out Purchaser***": The Servicer (or any of its Affiliates acting as principal or agent); *provided* that in the event that the Servicer elects not to purchase Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser or any of their Affiliates acting as principal or agent) designated by the Servicer; *provided*, *however*, none of the Servicer, the Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, each of the Co-Issuers. With respect to the Class E Notes and the Preference Shares, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate applicable to the Collateral Obligation and the S&P Recovery Rate applicable to the Collateral Obligation and the current S&P Rating of the most senior Class of Notes then Outstanding.

"***Approved Credit Support Document***": A security agreement in the form of an ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations which are also Independent from the Servicer or (ii) if the foregoing set of prices could not be obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading

of such obligations which are also Independent from the Servicer or (iii) if the foregoing set of prices could not be obtained, the ask-side market price obtained by the Servicer from one Independent broker-dealer active in the trading of such obligations which is also Independent from the Servicer or (iv) if the foregoing sets of prices could not be obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); *provided* that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

"***Authorized Officer***": With respect to the Issuer or the Co-Issuer, as applicable, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer, as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. With respect to the Preference Share Paying Agent, the persons constituting Authorized Officers of the Trustee under this Indenture. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any Person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by *dividing*:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": State Street Bank and Trust Company, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (as amended) of the Cayman Islands and the Bankruptcy Law (as amended) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": The term "benefit plan investor" includes (a) an employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to the fiduciary responsibility provisions of ERISA, (b) a plan as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, (c) any entity whose underlying assets include "plan assets" by reason of any such employee benefit plan's or plan's investment in the entity or (d) as such term is otherwise modified from time to time.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; *provided*, *however*, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Listing Agent and the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Calculation Agent***": The meaning specified in Section 7.16.

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

"***CCC+/Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***CCC+/Caa1 Excess Market Value Percentage***": The percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Note***": The meaning specified in Section 2.2(e).

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares.

"***Class A Notes***": The Class A Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A/B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A Notes and the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class E Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class E Notes.

"***Class E Deferred Interest***": Deferred Interest with respect to the Class E Notes.

"***Class E Notes***": The Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class I Preference Shares***": The Class I Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class II Preference Share Portion***": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"***Class II Preference Share Senior Special Payment***": For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Special Payment***": Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

"***Class II Preference Share Special Payment Account***": The trust account established pursuant to Section 10.3(i).

"***Class II Preference Share Subordinated Special Payment***": For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Supplemental Special Payment***": For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Shares***": The Class II Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, *société anonyme*, a corporation organized under the laws of the Duchy of Luxembourg.

"***CLO***": A collateralized loan obligation.

"***Closing Date***": March 27, 2008.

"***Closing Date Diversity Factor***": 90%

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Closing Expenses***": The meaning specified in Section 11.1(a).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Servicer and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administrator***": State Street Bank and Trust Company, in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations that is rated by a nationally-recognized credit rating agency);

(6) not an obligation or security that has been called for redemption and not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating

does not have a "p", "pi", "q", "r", "t" or "f" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition with respect to S&P has been satisfied with respect to the acquisition thereof;

(9) (a) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (b) in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; *provided* that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than four years after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that fully compensate for such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees, facility fees or other similar fees);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Baa3" or higher and an S&P Rating of "BBB-" or higher;

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(D) not serviced/managed by the Servicer; and

(E) not a middle market CLO (as determined by the Servicer);

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and a short-term debt rating by S&P of at least "A-1+" or, if no short-term rating exists, an issuer credit rating by S&P of at least "AA-" and at the time of acquisition the documentation meets S&P's current counterparty criteria with respect to collateral posting and replacement upon downgrade of the counterparty;

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease of the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition); and

(26) an "eligible asset" as defined under Rule 3a-7 and not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations) as a percentage of the Maximum Amount:

	Percentage of the Maximum Amount
(1) Senior Secured Loans and Eligible Investments	≥ 90.0%
(2) Senior Unsecured Loans, Subordinated Lien Loans and Second Lien Loans	≤ 5.0%
(3) Revolving Loans and the unfunded portion of Delayed Drawdown Loans	≤12.0%
(4) DIP Loans	≤7.5%
(5) PIK Securities	≤5.0%
(6) High-Yield Bonds	≤5.0%
(7) Structured Finance Obligations	≤2.5%
(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤0.0%
(b) except that Structured Finance Obligations that are middle market CLOs may not exceed the percentage of the Maximum Amount specified in the right column	≤0.0%
(c) except that Structured Finance Obligations that are rated either Ba1 or lower or BB+ or lower may not exceed the percentage of the Maximum Amount specified in the right column	≤0.0%
(d) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤1.0%
(e) except that Structured Finance Obligations that are CLOs of which greater than 10% of the underlying obligations are backed primarily by other CLOs may not exceed the percentage of the Maximum Amount specified in the right column	≤0.0%
(8) obligors Domiciled other than in the United States and Canada	≤20.0%
(9) obligors Domiciled in Canada or any single Moody's Group I Country	≤10.0%
(10) obligors Domiciled in any single Moody's Group II Country	≤5.0%

	Percentage of the Maximum Amount
(11) obligors Domiciled in all Moody's Group II Countries in the aggregate	≤10.0%
(12) obligors Domiciled in any single Moody's Group III Country	≤2.5%
(13) obligors Domiciled in all Moody's Group III Countries in the aggregate	≤5.0%
(14) obligors organized in any Tax Advantaged Jurisdiction (other than Structured Finance Obligations)	≤3.0%
(15) same S&P Industry Classification	≤10.0%
(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤12.0%
(16) same Moody's Industry Classification	≤12.0%
(a) except that Relevant Obligations belonging to two Moody's Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤14.0%
(17) single obligor and any of its Affiliates (excluding Secondary Risk Counterparties)	≤1.5%
(a) except that up to each of five individual obligors and any of their Affiliates (excluding Secondary Risk Counterparties and any obligor under a DIP Loan) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤2.5%
(18) Fixed Rate Obligations	≤5.0%
(19) Pay interest less frequently than quarterly but no less frequently than semi-annually	≤5.0%
(20) Pay interest less frequently than semi-annually but no less frequently than annually	≤3.0%
(21) Synthetic Securities	≤20.0%
(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤5.0%
(b) except that Synthetic Securities that reference a	≤0.0%

	Percentage of the Maximum Amount
senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	
(c) except that Synthetic Securities that reference a single vintage of such index may not exceed the percentage of the Maximum Amount specified in the right column	≤2.0%
(22) Participations including Synthetic Letters of Credit structured as a Participation (provided that no Relevant Obligations may be a Participation in a Participation)	≤10.0%
(23) Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤20.0%
(24) Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(25) Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(26) Deep Discount Obligations	≤7.5%
(a) except that Collateral Obligations acquired by the Issuer for a Purchase Price less than 50% of their Principal Balance and which have a public Moody's rating that is equal to or better than "B2"	≤3.0%

		Percentage of the Maximum Amount
	(and not rated "B2" on watch for downgrade) may not exceed the percentage of the Maximum Amount specified in the right column; *provided* that: (i) no Collateral Obligation of the type set forth in the clause 26(a) may be purchased: (a) if on the date of such purchase a Credit Rating Event is in effect; (b) if on the date of such purchase the Weighted Average Rating Factor Test is not satisfied; (c) if on the date of such purchase the Concentration Limitations set forth in clause 27 are not satisfied; or (d) if the Class E Coverage Tests are lower than the levels as of the Ramp-Up Completion Date; (ii) Collateral Obligations may not exceed, on a cumulative basis, 12% of the Maximum Amount from the Ramp-Up Completion Date up to and including the Stated Maturity, but such cumulative amount will be reset on any Maturity Extension; (iii) once such a Collateral Obligation has traded for 30 consecutive days at a Market Value Percentage equal to or greater than 65% it shall no longer be counted as part of the 3.0% limit in clause 26(a) above (for the avoidance of doubt any such Collateral Obligation will count toward the 12% cumulative bucket set forth in clause (a)(iii) above);	
(b)	except that no single obligor of a Collateral Obligation of the type specified in clause 26(a) may exceed the percentage of the Maximum Percentage specified in the right column	≤1.0%
(c)	except that Collateral Obligations that do not have a public Moody's rating or have a public Moody's rating less than "B2" (or rated "B2" on watch for downgrade) may not exceed the percentage of the	≤0.0%

		Percentage of the Maximum Amount
	Maximum Amount specified in the right column	
(d)	except that prior to the Ramp-Up Completion Date Collateral Obligations acquired by the Issuer for a Purchase Price less than 50% of their Principal Balance (regardless of their rating) may not exceed the percentage of the Maximum Amount specified in the right column	≤0.0%
(27)	CCC+/Caa1 Collateral Obligations	≤5.0%
(28)	Long-Dated Collateral Obligations	≤2.0%
(29)	Collateral Obligations lent under Securities Lending Agreements	≤15.0%
(30)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan)	≤5.0%
(31)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $150,000,000	≤10.0%
(32)	Synthetic Letters of Credit	≤5.0%
(33)	Current-Pay Obligations	≤5.0%
(34)	Cov-lite Loans	≤ 10.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Consenting Holder of the Preference Shares***": With respect to any Payment Date after the Aggregate Outstanding Amount of the Notes has been paid in full, or so long as the Class A Notes are no longer Outstanding, if the Coverage Tests are at the same level as of the Ramp-Up Completion Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of all or a portion of the Interest Proceeds on such Payment Date.

"***Controlling Class***": The Class A Notes, (voting together as a Class) so long as any Class A Notes are Outstanding; then the Class B Notes (voting together as a Class), so long as

any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class), so long as any Class C Notes are Outstanding; then the Class D Notes (voting together as a Class), so long as any Class D Notes are Outstanding; and then the Class E Notes (voting together as a Class), so long as any Class E Notes are Outstanding.

"***Controlling Person***": A person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the Issuer or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any Affiliate of such a person.

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116, telecopy no. (617) 937-0517, Attention: CDO Services Group, or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A/B Coverage Tests, the Class C Coverage Tests, the Class D Coverage Tests and the Class E Coverage Tests applicable as of any Measurement Date.

"***Cov-lite Loan***": A Loan that (i) does not contain any financial covenants or (ii) requires the borrower to comply with an Incurrence Covenant, but does not require the borrower to comply with a Maintenance Covenant.

"***Credit Improved Obligation***": Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange and in the commercially reasonable judgment of the Servicer, has improved in credit quality or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; *provided* that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and *provided*, *further*, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each

case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer;

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 1.01%), or (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation set forth in clauses (i) through (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation set forth in clauses (i) through (iii) above for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation; or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A Notes or the Class B Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class C Notes, the Class D Notes or the Class E Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; *provided* that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer;

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer, and (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(i) the Synthetic Security itself is a Credit Risk Obligation; or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn;

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an Officer's certificate to the effect that the Servicer expects that the obligor will make payments of interest and principal in Cash on the Collateral Obligation as they become due and is current on such payments;

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance; *provided* that the Market Value of the Collateral Obligation must be at least equal to 80% of its Principal Balance without regard to its rating and not determined in accordance with clause (b) of the definition of Market Value;

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized all payments of principal and interest payable on the Collateral Obligation;

(v) there is a rating of at least "Caa2" by Moody's (if rated by Moody's) (provided that if such rating is "Caa2", such rating must not be on watch for possible downgrade by Moody's); and

(vi) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the Market Value Percentage of the Collateral Obligation (other than a Structured Finance Obligation), as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance or any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% but greater than or equal to 80% of its Principal Balance and which has a public Moody's Rating that is equal to or better than "B3" (and not rated "B3" on watch for downgrade). Until the Market Value Percentage of a Structured Finance Obligation, as determined daily for any period of 60 consecutive days, equals or exceeds 85%, any Structured Finance Obligation acquired by the Issuer for a Purchase Price less than 75% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Default Interest Rate***": With respect to any specified Class of Notes, the *per annum* interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of principal or interest (including the non-payment of any PIK Cash-Pay Interest) without giving effect to any applicable grace or waiver period (*provided* that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive Business Days), unless in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable

judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Servicer, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor;

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn; or

(C) the obligor is assigned a probability of default rating of "D" by Moody's;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; *provided, however*, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral

Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Defaulted Synthetic Security Termination Payments***": Any termination payment required to be made by the Issuer to a Synthetic Security Counterparty pursuant to a Synthetic Security upon the occurrence of any "event of default" or "termination event" (each as defined in the applicable Synthetic Security) under such Synthetic Security as to which such Synthetic Security Counterparty is the Defaulting Party or the sole Affected Party (each as defined in the applicable Synthetic Security).

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class C Notes, the Class D Notes and the Class E Notes.

"***Definitive Notes***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that:

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments;

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates; and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for purposes of the Concentration Limitations only unfunded portions will count as Delayed Drawdown Loans.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery to the Custodian of the original executed certificate or other writing that constitutes or evidences such Certificated Security (UCC) or Instrument, registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian in blank (unless such Certificated Security or Instrument is in bearer form in which case delivery alone shall suffice),

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to continuously credit such Clearing Corporation Security to the securities account of the Custodian at such Clearing Corporation, and

(B) causing the Custodian to continuously indicate on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of any Financial Asset that is maintained in book-entry form on the records of a Federal Reserve Bank ("***FRB***"),

(A) causing the continuous crediting of such Financial Asset to a securities account of the Custodian at any FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Financial Asset is credited to the applicable Account;

(v) in the case of each Financial Asset not covered by the foregoing subclauses (i) through (iv) and (vi),

(A) causing the transfer of such Financial Asset to the Custodian in accordance with applicable law and regulation, and

(B) causing the Custodian to continuously credit such Financial Asset to the applicable Account; and

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account;

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument or Certificated Security), by:

(1) either

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds in the District of Columbia, Washington, DC, within 10 days after the Closing Date, or

(B) (1) causing the Custodian to become and remain the owner thereof, (2) causing the Custodian to credit and continuously identify such general intangible to the relevant Issuer Account, (3) causing the Custodian to agree to treat such general intangible as a Financial Asset and (4) causing the Custodian to agree pursuant to the Securities Account Control Agreement to comply with Entitlement Orders related thereto originated by the Trustee without further consent by the Issuer; and

(2) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership to the Issuer and the pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan:

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer);

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States; and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested

matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that:

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code;

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code;

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets; or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score and, with respect to the Interim Target Date, will be satisfied if the Diversity Score equals or exceeds the Minimum Diversity Score multiplied by the Interim Diversity Factor and, with respect to the Closing Date, will be satisfied if the Diversity Score equals or exceeds the Minimum Diversity Score multiplied by the Closing Date Diversity Factor. For purposes of calculating the Diversity Test, any Structured Finance Obligation that is (i) a collateralized loan obligation (including any collateralized loan obligation primarily backed by other collateralized loan obligations), (ii) a Synthetic Security with respect to which the Reference Obligation is a collateralized loan obligation or (iii) a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, will be disregarded.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile***" or "***Domiciled***": With respect to each Collateral Obligation, either (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation with an obligor organized, incorporated or created in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement; *provided* in each case to collateralize fully in accordance with S&P's current published counterparty criteria (as determined by the Servicer).

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" and a Moody's foreign currency rating of at least "Aa2".

"***Eligible Equity Security***": An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer (for the avoidance of doubt, the Principal Balance of any Eligible Equity Security shall be zero for purposes of determining the Overcollateralization Test).

"***Eligible Investments***": Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of

such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; *provided* that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity which, even after giving effect to any extendibility feature thereof, does not exceed 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; *provided* that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's and "AA-" by S&P, and if so rated, such rating is not on watch for downgrade;

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; *provided* that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market funds (including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (*provided* that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture) (i) which funds have at the time of acquisition and throughout the term thereof a credit rating of "Aaa" and "MR1+" by Moody's and "AAA" by S&P, respectively (and not on credit watch with negative implications) or (ii) that are registered as money market funds under Rule 2a-7 under the Investment Company Act and have a credit rating of "Aaa" from Moody's and "AAAm" or "AAAmG" from S&P (and not on credit watch with negative implications);

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; *provided* that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A Notes, the Class B Notes, the Class C

Notes, the Class D Notes or the Class E Notes; *provided*, *further*, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) that is the earlier of (i) 60 days from acquisition and (ii) the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, any mortgage-backed security or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r", "t", "p", "pi", "q" or "f";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer or depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean; or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***Entitlement Order***": The meaning specified in Section 8-102(a)(8) of the UCC.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Established Securities Market***": Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excel Default Model Input File***": An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation or Reference Obligation in the case of a Synthetic Security:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan, Cov-lite Loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Recovery Rate, and

(k) such other information as the Trustee may determine to include in such file.

"***Excess CCC+/Caa1 Collateral Obligations***": The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": (i) U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts, (ii) any amounts credited to the Class II Preference Share Special Payment Account and the Preference Shares Distribution Account from time to time and (iii) any Margin Stock.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Replacement Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in May 2018); *provided* that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in May 2030.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in November 2022); *provided* that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in November 2034.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, May 2022); *provided* that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in May 2034.

"***Extension***": An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate

Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class C Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class D Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (5) in the case of the Class E Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in May 2012).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12% (assuming such purchase date was a Payment Date); *provided, however*, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12%, the applicable Extension Purchase Price for such Preference Shares shall be zero.

"***Extension Qualifying Purchasers***": The Servicer (or any of its Affiliates acting as principal or agent); *provided* that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchaser or any of its Affiliates acting as principal or agent) designated by the Servicer; *provided, however*, none of the Servicer, the Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction; *provided* that such Finance Lease shall have a rating by Moody's.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test; and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate.

"***Floating Rate Notes***": The Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security:

(i) (A) the Reference Obligation of which satisfies the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action

by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) the Reference Obligation of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal. For the avoidance of doubt, no form of Synthetic Security Agreement approved by S&P will be in place as of the Closing Date.

"***Funded Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan at any time, the aggregate principal amount of advances or other extensions of credit made thereunder by the Issuer that are outstanding and have not been repaid at such time.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": Any counterparty, to the extent that when the Issuer enters into any Hedge Agreement with such counterparty, such counterparty satisfies the requirements of Section 15.2(b) (subject to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***HFP***": Highland Financial Partners, L.P. (an Affiliate of the Servicer).

"***High-Yield Bond***": Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; and of any Preference Share, the person whose name appears in the share register of the Issuer related thereto as the registered holder of such Preference Share.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit H-2.

"***Incurrence Covenant***": A covenant by the borrower to comply with one or more financial covenants only upon the occurrence of certain actions of the borrower including, but not limited to, a debt issuance, dividend payment, share purchase, merger, acquisition or divestiture.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(c) to the Holders of Securities.

"***Initial Purchaser***": Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Institutional Accredited Investor***": An institutional accredit investor as defined in clause (1), (2), (3) or (7) of Rule 501(a) under Regulation D under the Securities Act.

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, *minus*

(B) Aggregate Base Fees and Expenses on the related Payment Date, *by*:

(ii) all accrued and unpaid interest on such Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it) on the related Payment Date; *provided* that the Class A Notes and the Class B Notes shall constitute one Class of Notes for purposes of the Interest Coverage Ratio relating to such Classes of Notes.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A/B Interest Coverage Test	125.00 %
Class C Interest Coverage Test	115.00 %
Class D Interest Coverage Test	110.00 %
Class E Interest Coverage Test	105.00 %

"***Interest Diversion Ratio***": As of any Measurement Date, the ratio obtained by *dividing*:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes (including any Deferred Interest on any Class of Notes).

"***Interest Diversion Test***": A test that is satisfied as of any Measurement Date on which any Notes remain Outstanding, if the Interest Diversion Ratio as of such Measurement Date is at least equal to 106.00%.

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments;

(vii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(ix) any recoveries (including interest) received on a Non-Performing Collateral Obligation in excess of the principal balance of such Non-Performing Collateral Obligation (as of the date the related Collateral Obligation became a Non-Performing Collateral Obligation and excluding from such principal balance any deferred interest on Non-Performing Collateral Obligations that are PIK Securities).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date after the Aggregate Outstanding Amount of the Notes has been paid in full, or so long as the Class A Notes are no longer Outstanding, if the Coverage Tests are at the same level as of the Ramp-Up Completion Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Sections 11.1(b) and (c)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(j) hereof.

"***Interest Reserve Amount***": U.S. $2,000,000.

"***Interim Diversity Factor***": 95%.

"***Interim Target Date***": May 27, 2008.

"***Interim Target Test***": A test that will be satisfied on the Interim Target Date if (i) the Aggregate Principal Balance of all items of Collateral Obligation which the Issuer has purchased or has entered into binding commitments to purchase is at least $484,500,000, and (ii) the following tests are satisfied: (A) the Diversity Test, (B) the Weighted Average Moody's Recovery Rate Test, (C) the Weighted Average Fixed Rate Coupon Test, (D) the Weighted Average Spread Test and (E) the Weighted Average Rating Factor Test.

"***Interim Targets***": The meaning specified in Section 7.19(h).

"***Interim Target Failure***": The meaning specified in Section 7.19(h).

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Insurer***": The meaning specified in Section 14.3.

"***Irish Listing Agent***": Dillon Eustace.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***ISE***": The Irish Stock Exchange.

"***Issuer***": The Person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": The offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Reuters Screen LIBOR01 Page (or 3750) as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Reuters Screen LIBOR01 Page (or 3750) for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Reuters Screen LIBOR01 Page (or 3750) as reported on Bloomberg

Financial Market Commodities News (or a page that replaces Reuters Screen LIBOR01 Page (or 3750) for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "***Reference Banks***") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period, LIBOR shall be determined using two separate time periods, first, using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month Dollar deposits, one rate shall be determined using four month Dollar deposits and the other rate shall be determined using five month Dollar deposits calculated on the basis of the actual number of days elapsed from the Closing Date to, but not including August 1, 2008 *divided* by 360, and second, based on three-month Dollar deposits for the period from and including August 1, 2008 to the first Payment Date. Unless the Maturity Extension occurs, LIBOR shall be determined for the last Interest Period based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month Dollar deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits and synthetic letters of credit) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered; or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Maintenance Covenant***": A covenant by the borrower to comply with one or more financial covenants during each reporting period, whether or not it has taken any specified action.

"***Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": (a) As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations which are also Independent from the Servicer or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations which are also Independent from the Servicer or (iii) if the foregoing set of prices were not obtained, the bid-side market price obtained by the Servicer from one Independent broker-dealer active in the trading of such obligations which is also Independent from the Servicer; *provided* the Servicer remains a registered investment advisor, or (iv) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

(b) If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the previous paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; *provided*, that during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to (a) the higher of (i) the S&P Recovery Rate for such Collateral Obligation and the then current S&P Rating of the most senior Class of Notes then Outstanding and (ii) 70% of the

Principal Balance of such Collateral Obligation or (b) if the Servicer has determined in its commercially reasonable judgment that the Market Value of such Collateral Obligation is lower than the amount determined pursuant to clause (a), such amount to be determined by the Servicer in its commercially reasonable judgment; *provided, further*, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount (which amount shall be composed of Collateral Obligations with the lowest Market Value Percentage) shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities or Current-Pay Obligations.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

"***Market Value Determination Date***": With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by *dividing*:

(i) the Market Value of the Collateral Obligation; *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$510,000,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations; plus

(B) Cash representing Principal Proceeds on deposit in the Collection Account; plus

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the Interim Target Date;

(vi) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6; and,

with respect to any distribution of Eligible Equity Securities only,

(vii) that is the Market Value Determination Date.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as may be amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

"***Minimum Diversity Score***": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Minimum Weighted Average Spread***": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the lesser of (x) 60% and (y) the number obtained by:

(i) summing the products obtained by *multiplying* the Principal Balance of each Collateral Obligation *by* its respective Moody's Priority Category Recovery Rate;

(ii) *dividing* the sum determined pursuant to clause (i) above *by* the sum of the Aggregate Principal Balance of all Collateral Obligations; and

(iii) *rounding* up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Moody's Priority Category Recovery Rate Matrix" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Moody's Priority Category Recovery Rate Matrix" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Priority Category Recovery Rate Matrix***":

Moody's Priority Category	Moody's Priority Category Recovery Rate

Synthetic Securities.....	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations.....	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below.....	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	**Moody's Senior Secured Loans**	**Moody's Non Senior Secured Loans**	**High-Yield Bonds**
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1,350
Aa2	20	Ba3	1,766
Aa3	40	B1	2,220
A1	70	B2	2,720
A2	120	B3	3,490
A3	180	Caa1	4,770
Baa1	260	Caa2	6,500
Baa2	360	Caa3	8,070
Baa3	610	Ca or lower	10,000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless (1) there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security, or (2) such Collateral Obligation is a Form-Approved Synthetic Security, in which case the Moody's Rating Factor given to such Collateral Obligation at the time of approval of the Form-Approved Synthetic Security shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Obligation shall be equal to: $\frac{Ax55\%}{1-B}$

where: "A" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"B" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"***Moody's Senior Secured Loan***":

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan;

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan; and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral; or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan;

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan;

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral; and

(iv) has been assigned a Moody's rating equal to or higher than Moody's corporate family rating for such obligor; and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Priority Category Recovery Rate has been or is to be determined on a case-by-case basis.

"***Non-Call Period***": With respect to the Class A Notes, the period from the Closing Date to but not including the Payment Date in May 2012, and with respect to the Class B Notes, the

Class C Notes, the Class D Notes and the Class E Notes, the period from the Closing Date to but not including the Payment Date in May 2009.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year, in each case, following the date of the initial deferral or capitalization of interest due on it; or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3", the earlier of its first payment date or six months, in each case, following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted ERISA Holder***": The meaning specified in Section 2.6(c)(iii).

"***Non-Permitted Holder***": (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class E Notes, a Holder or beneficial owner of an interest in a Class E Note that is not a QIB/QP.

"***Non-qualifying Collateral Obligation***": The meaning specified in Section 12.1(d).

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain (as determined by S&P through application of the S&P CDO Monitor) and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A Notes and the Class B Notes and the ultimate payment of interest on the Class C Notes, the Class D Notes and the Class E Notes using S&P's assumptions on recoveries, defaults and timing, and taking into account the Priority of Payments.

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Scenario Default Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the *per annum* interest rate payable on the Notes of the Class with respect to each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) equal to LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A Notes until the Class A Notes have been fully redeemed;

(2) to the Class B Notes until the Class B Notes have been fully redeemed;

(3) to the Class C Notes until the Class C Notes have been fully redeemed;

(4) to the Class D Notes until the Class D Notes have been fully redeemed; and

(5) to the Class E Notes until the Class E Notes have been fully redeemed.

"***Noteholder***": A Holder of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes.

"***Notes***": The Senior Notes and the Class E Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Notice of Refinancing***": The meaning specified in Section 9.7.

"***Objection Cut-Off Date***": The meaning specified in Section 15.1(h)(ii).

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes.

"***Offering Memorandum***": The final offering memorandum, dated March 26, 2008, prepared and delivered in connection with the offer and sale of the Securities.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of

an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Optional Redemption Date***": The Payment Date fixed by the Issuer for an Optional Redemption, which shall be no earlier than the Non-Call Period with respect to any Class of Notes.

"***Optional Redemption Price***": With respect to each Class of Notes, an amount equal to the aggregate of (i) the Aggregate Outstanding Amount of such Class of Notes as of the Optional Redemption Date and (ii)(A) with respect to the Class A Notes and the Class B Notes, the applicable accrued and unpaid interest, and any accrued and unpaid Defaulted Interest and (B) with respect to the Class C Notes, the Class D Notes and the Class E Notes, the applicable accrued and unpaid interest, and any accrued and unpaid Deferred Interest, in each case with respect to the Optional Redemption Date.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any paying agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; and

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser; and

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the share register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Securities have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, the Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account for which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; *provided* that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Trustee or the Preference Shares Paying Agent, as applicable, by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares, only Preference Shares that an Authorized Officer of the Preference Shares Paying Agent) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee or the Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee and the Preference Shares Paying Agent.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; *by*

(ii) the Aggregate Outstanding Amount of such Class of Notes and all Notes ranking senior to it (including any Deferred Interest on the Notes and all Notes ranking senior to it); *provided* that the Class A Notes and the Class B Notes shall constitute one Class of Notes for purposes of the Overcollateralization Ratio relating to such Classes of Notes.

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing and any Structured Finance Obligation that has an overcollateralization-based event of default with ratings based haircuts (including CCC excess securities haircuts)); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect to Collateral Obligations that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; *provided* that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the CCC+/Caa1 Excess Market Value Percentage, *multiplied by* (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A/B Overcollateralization Test	113.75 %
Class C Overcollateralization Test	110.50 %
Class D Overcollateralization Test	107.25 %
Class E Overcollateralization Test	105.00 %

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and a short-term credit rating by S&P of at least "A-1" or, if no short-term rating exists, a long-term credit rating by S&P of at least "A+".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in November 2008 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***Person***": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash; *provided* that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% *per annum*, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Plan***": An employee benefit plan as defined in Section 3(3) of ERISA that is subject to the provisions of Title I of ERISA or a plan as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code.

"***Plan Asset Regulation***": The regulations issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101, which have been modified by Section 3(42) of ERISA.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Improvement Exchange***": The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"***Pre-Closing Parties***": One or more Affiliates of the Initial Purchaser that are financing the acquisition of Collateral Obligations by the Issuer during an accumulation period before the Closing Date.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing and approving the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a *per annum* basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date; and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the

extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Class I Preference Shares and the Class II Preference Shares.

"***Preference Shares Distribution Account***": A separate segregated non-interest bearing account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement dated as of March 27, 2008, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": State Street Bank and Trust Company, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any Qualified Equity Security and any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1.

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"***Purchase Agreement***": A securities purchase agreement dated as of March 27, 2008 among the Co-Issuers and the Initial Purchaser, relating to the purchase of the Senior Notes, as modified, amended and supplemented and in effect from time to time.

"***Purchase Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; *provided, however*, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be equal to the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase

price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 120th day after the Closing Date, and

(ii) the first date on which the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer plus the Aggregate Principal Balance of the Collateral Obligations committed to be purchased by the Issuer with proceeds from the sale of the Securities (in each case with respect to Collateral Obligations committed to be purchased, measured solely as of the date of commitment) equals at least U.S.$510,000,000 (for the avoidance of doubt, (x) without giving effect to any reductions of that amount that may have resulted from scheduled principal payments or principal prepayments made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date, (y) for any Loan acquired by the Issuer at a Purchase Price less than 70% of its Principal Balance (I) if such Loan has a Moody's Obligation Rating that is equal to or better than "B2" (and not rated "B2" on watch for downgrade) such Loan will be given 100% par credit for purposes of determining its Principal Balance on the Ramp-Up Completion Date and (II) if such Loan has a Moody's Obligation Rating less than "B2" (or "B2" on

watch for downgrade) such Loan will be valued at its Purchase Price for purposes of determining its Principal Balance on the Ramp-Up Completion Date and (z) any Structured Finance Obligation that has an overcollateralization-based event of default with ratings based haircuts (including CCC excess securities haircuts) shall have a Principal Balance of zero).

"***Ramp-Up Notice***": The meaning specified in Section 7.19(e).

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes; *provided*, *however*, that in the case of Refinancing Notes, both a Moody's rating and an S&P rating will be obtained for such Refinancing Notes and a Rating Confirmation with respect to such Refinancing Notes shall mean (i) with respect to S&P, confirmation in writing from S&P that the S&P rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing and (ii) with respect to Moody's, that the Moody's rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing; *provided* further that if the terms of such Refinancing Notes are the same as the terms of the corresponding Class of Notes subject to Refinancing (other than with respect to the coupon thereof), it is expected that the cost of obtaining such rating from Moody's shall be no more than the cost of obtaining a Rating Confirmation.

"***Rating Confirmation Failure***": The meaning specified in Section 7.19(f) hereof.

"***Ratings Matrix***": On the Closing Date the Servicer may select a "row/column combination" of the table below to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score							
Minimum Weighted Average Spread	**45**	**50**	**55**	**60**	**65**	**70**	**75**	**80**
2.00%	1890	1915	1925	1940	1960	1980	2005	2030
2.10%	1950	1990	2005	2025	2035	2060	2070	2095
2.20%	2050	2075	2095	2105	2135	2150	2175	2190
2.30%	2140	2165	2195	2210	2240	2250	2275	2285
2.40%	2220	2255	2290	2315	2340	2360	2375	2385
2.50%	2300	2340	2380	2400	2430	2455	2475	2495
2.60%	2350	2405	2450	2485	2515	2540	2560	2575
2.70%	2390	2455	2505	2550	2585	2620	2640	2650
2.80%	2430	2505	2560	2605	2640	2675	2700	2720
2.90%	2465	2535	2600	2655	2695	2735	2760	2785
3.00%	2510	2585	2640	2690	2740	2780	2815	2845
3.10%	2545	2615	2680	2730	2780	2815	2855	2890
3.20%	2585	2655	2720	2770	2815	2855	2900	2930
3.30%	2620	2695	2755	2810	2855	2900	2940	2975
3.40%	2660	2735	2795	2850	2895	2940	2975	3010
3.50%	2695	2775	2835	2885	2935	2980	3010	3050
	Maximum Weighted Average Moody's Rating Factor							

"***Recovery Rate Modifier***": As of any Measurement Date, the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) *multiplied by* (b) 100; and

(ii) 55.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2 or the redemption of a Class of Notes in connection with a Refinancing pursuant to Section 9.7.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a) or any redemption by Refinancing pursuant to Section 9.7(a), an amount equal to:

(i) the outstanding principal amount of the Note being redeemed; *plus*

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest); *plus*

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note; *plus*

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the request of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous written request of the Holders of the Preference Shares, in each case as specified in Section 9.2(b).

"***Redemption Date Statement***": The meaning specified in Section 10.6(c).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; *provided* that no Reference Obligation shall be a Synthetic Security.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Refinancing***": The meaning specified in Section 9.7.

"***Refinancing Date***": The meaning specified in Section 9.7.

"***Refinancing Notes***": The meaning specified in Section 9.7.

"***Refinancing Price***": With respect to any Class of Notes that is subject to a Refinancing, an amount equal to the Redemption Price therefor.

"***Refinancing Proceeds***": The proceeds from any refinancing permitted under this Indenture.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("***Treasury***") regulations promulgated thereunder.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Note***": The meaning specified in Section 2.2(b).

"***Relevant Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security and otherwise the Collateral Obligation.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Replacement Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in May 2014 or, in the case of an Extension, the Extended Replacement Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

"***Required Redemption Percentage***": With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 66⅔% of the Aggregate Outstanding Amount of any Affected Class or at least 66⅔% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 3a-7***": Rule 3a-7 under the Investment Company Act.

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-"; and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P CRR***": With respect to any Collateral Obligation, a corporate recovery rate assigned by S&P to such Collateral Obligation.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Rating Confirmation***": Confirmation in writing from S&P that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***S&P Recovery Rate***": As of any date of determination, with respect to any Collateral Obligation, the percentage for such Collateral Obligation set forth in (x) the applicable table below, as modified, amended, and supplemented from time to time by S&P, (y) the row in such table opposite the S&P CRR (or, if the relevant assets have no S&P CRR, the senior secured recovery rating, the U.S. loan recovery rating or the CDO liability rating, as applicable) of such Collateral Obligation (or, in the case of a Form-Approved Synthetic Security, the Reference Obligation unless otherwise specified by S&P) and (z) the column in such table below the initial S&P Rating of the respective Class of Notes; *provided, however* that (i) with respect to a DIP Loan or a Synthetic Security (other than a Form-Approved Synthetic Security that does not reference an index), the S&P Recovery Rate shall be the recovery rate assigned by S&P and with

respect to a Structured Finance Obligation the S&P Recovery Rate shall be the recovery rate determined by reference to Table V or Table VI below, as applicable and (ii) the Issuer or the Servicer may request the assignment of a recovery rate from S&P with respect to any Collateral Obligation, any such assignment by S&P to be in writing (electronic or otherwise); *provided, further*, that if a Collateral Obligation is a Cov-lite Loan for which there is no S&P CRR and therefore Table IV would apply, the recovery rate for such Collateral Obligation shall be equal to 90% of its recovery rate as of such date of determination, unless otherwise provided by S&P upon request by the Issuer or the Servicer on behalf of the Issuer.

Table I (if the Collateral Obligation has a S&P CRR): Recovery Rates For Assets With Corporate Recovery Ratings

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
S&P CRR				**(%)**			
1+	100	100	100	100	100	100	100
1	92	94	96	98	100	100	100
2	78	81	84	87	90	90	90
3	58	61	64	67	70	70	70
4	38	41	44	47	50	50	50
5	16	20	24	27	30	30	30
6	6	7	8	9	10	10	10

* As of the Closing Date.

Table II (if the Collateral Obligation is a Senior Unsecured Loan and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. Recovery Rates of Corporate Senior Unsecured Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
Senior secured recovery ratings				**(%)**		
1+	53	55	57	59	61	61
1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	22	24	26	28	30	30
5	8	10	12	14	15	15
6	4	4	4	4	4	4

* As of the Closing Date.

Table III (if the Collateral Obligation is a subordinated obligation and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. Recovery Rates of Corporate Subordinated Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
Senior secured recovery ratings			**(%)**			
1+	25	25	25	25	25	25
1	22	22	22	22	22	22
2	20	20	20	20	20	20
3	20	20	20	20	20	20
4	10	10	10	10	10	10
5	5	5	5	5	5	5
6	2	2	2	2	2	2

* As of the Closing Date.

Table IV (if none of Table I, Table II or Table III is applicable): S&P's U.S. Tiered Corporate Recovery Rates (for Collateral Obligations that do not have a S&P CRR)

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
U.S. loan recovery rates			**(%)**			
Senior Secured Loans	56	60	64	67	70	70
Senior Secured Loan which is a Cov-lite Loan	51	54	58	60	63	63
Senior Unsecured Loans and Second Lien Loans	40	42	44	46	48	48
Subordinated Loans	22	22	22	22	22	22
Senior Secured Notes	48	49	50	51	52	52
Unsecured Bonds	38	41	42	44	45	45
Subordinated Bonds	19	19	19	19	19	19

* As of the Closing Date.

** The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) that, in the aggregate, represent up to 15% of the Maximum Amount will have the S&P Recovery Rate specified for Second Lien Loans in the table above. The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) in excess of 15% of the Maximum Amount will have the S&P Recovery Rate specified for Subordinated Loans in the table above.

Table V (if the Structured Finance Obligation is the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	80.00%	85.00%	90.00%	90.00%	90.00%	90.00%	90.00%
AA	70.00%	75.00%	85.00%	90.00%	90.00%	90.00%	90.00%
A	60.00%	65.00%	75.00%	85.00%	90.00%	90.00%	90.00%
BBB	50.00%	55.00%	65.00%	75.00%	85.00%	85.00%	85.00%
BB	45.00%	50.00%	55.00%	65.00%	75.00%	75.00%	75.00%
B	25.00%	30.00%	50.00%	55.00%	65.00%	65.00%	50.00%
CCC	0.00%	0.00%	0.00%	0.00%	5.00%	10.00%	10.00%

* As of the Closing Date.

Table VI (if the Structured Finance Obligation is not the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	65.00%	70.00%	80.00%	85.00%	85.00%	85.00%	85.00%
AA	55.00%	65.00%	75.00%	80.00%	80.00%	80.00%	80.00%
A	40.00%	45.00%	55.00%	65.00%	80.00%	80.00%	80.00%
BBB	30.00%	35.00%	40.00%	45.00%	50.00%	60.00%	70.00%
BB	10.00%	10.00%	10.00%	25.00%	35.00%	40.00%	50.00%
B	2.50%	5.00%	5.00%	10.00%	10.00%	20.00%	25.00%
CCC	0.00%	0.00%	0.00%	0.00%	2.50%	5.00%	5.00%

* As of the Closing Date.

Table VII: European and Asian Tiered Corporate Recovery Rates (By Asset Class And CDO Liability Rating)

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Senior secured loans				**(%)**		
Group A**	68	73	78	81	85	85
Group B**	56	60	64	67	70	70
Group C**	48	51	55	57	60	60
Senior Secured Loan which is a Cov-lite Loan						
Group A	61	66	70	73	77	77
Group B	51	54	58	60	63	63
Group C	43	46	50	51	54	54
Mezz./second-lien/senior unsecured loans (%)						
Group A	45	47	50	52	54	54
Group B	40	42	44	46	48	48
Group C	35	37	39	40	42	42
Subordinated loans (%)						
Group A	20	20	20	20	20	20
Group B	20	20	20	20	20	20
Group C	17	17	17	17	17	17
Senior secured bonds (%)						
Group A	60	61	62	63	64	64
Group B	48	49	50	51	52	52
Group C	43	44	45	46	47	47
Senior unsecured bonds (%)						
Group A	40	42	44	46	48	48
Group B	38	41	42	44	45	45
Group C	32	35	36	38	39	40
Subordinated bonds (%)						
Group A	18	18	18	18	18	18
Group B	18	18	18	18	18	18
Group C	15	15	15	15	15	15

* As of the Closing Date.

** Group A: U.K., Ireland, South Africa, and The Netherlands. Group B: Belgium, Germany, Austria, Spain, Portugal, Luxembourg, Denmark, Sweden, Norway, Finland, Hong Kong and Singapore. Group C: France, Italy, Greece, Switzerland, Japan, Korea and Taiwan.

Table VIII: Group A European and Asian Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	65	68	71	73	76	76
1	57	60	63	65	68	68
2	50	53	55	57	59	59
3	42	45	47	49	51	51
4	18	18	18	18	18	18
5	8	8	8	8	8	8
6	4	4	4	4	4	4
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4
6	2	2	2	2	2	2

* As of the Closing Date.

Table IX: Group B European and Asian Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	53	55	57	59	61	61
1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	18	18	18	18	18	18
5	8	8	8	8	8	8
6	4	4	4	4	4	4
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4
6	2	2	2	2	2	2

* As of the Closing Date.

Table X: Group C European and Asian Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
CDO liability rating						
Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	45	46	48	49	51	51
1	41	43	44	46	47	48
2	37	39	41	42	44	44
3	33	36	37	39	40	41
4	16	16	16	16	16	16
5	6	6	6	6	6	6
6	3	3	3	3	3	3
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	20	20	20	20	20	20
1	17	17	17	17	17	17
2	15	15	15	15	15	15
3	15	15	15	15	15	15
4	8	8	8	8	8	8
5	3	3	3	3	3	3
6	1	1	1	1	1	1

* As of the Closing Date.

In all recovery rate tables above, Note rating categories below "AAA" include rating subcategories (for example, the "AA" column also applies to Notes rated "AA+" and "AA-").

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Scenario Default Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Second Lien Loan***": A Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan, (ii) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets and (iii) if such Loan does not have an S&P Recovery Rating, then, solely for purposes of determining the S&P Recovery Rate for such Loan, in the Servicer's commercially reasonable judgment (with such judgment being made in good faith by the Servicer at the time of such Loan's purchase), the specified collateral for such Loan has a value not less than the outstanding principal amount of all debt senior to such Loan and any debt *pari passu* with such Loan, which value may be derived from, among other things, the enterprise value of the issuer of such Loans (provided that the provisions of the clause (iii) may be amended at any time, subject to Rating Confirmation from S&P, or in order to conform to S&P's then-current criteria for such Loans).

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": With respect to Moody's, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
Aaa	20.0%	20.0%
Aa1	10.0%	10.0%
Aa2	10.0%	10.0%
Aa3	10.0%	10.0%
A1	5.0%	10.0%
A2 or below	0.0%	0.0%

With respect to S&P and solely with respect to Participations and Securities Lending Agreements, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
AAA	20.0%	20.0%
AA+/AA/AA-	10.0%	20.0%
A+	5.0%	20.0%
A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the Investment Company Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit H-1.

"***Secured Loan***": A Loan that is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Preference Shares.

"***Securities Account Control Agreement***": An agreement dated as of the Closing Date by and among the Issuer, the Trustee and the Bank, as Custodian.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": The meaning specified in Section 8-102(a)(14) of the UCC.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreement***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Senior Notes***": The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a valid and perfected first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan and that is not a DIP Loan.

"***Senior Servicing Fee***": A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.10% *per annum* of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Unsecured Loan***": A Loan that is not a Senior Secured Loan and is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Servicer***": Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

"***Servicing Agreement***": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended and supplemented and in effect from time to time.

"***Servicing Fee Portion***": 100% minus a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date.

"***Servicing Fees***": Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"***Share Registrar***": Walkers SPV Limited or any successor thereto.

"***Share Trustee***": Walkers SPV Limited.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix; and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date; and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, the Payment Date in November 2018 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

"***Structured Finance Obligation***": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) primarily secured directly by, referenced to or representing ownership of, a pool of loan receivables of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions (for the avoidance of doubt, excluding:

(A) residential mortgage backed securities;

(B) collateralized debt obligations primarily backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities";

(G) net interest margin securitizations;

(H) collateralized debt obligations greater than 10% of the underlying obligations of which are backed by high yield corporate bonds;

(I) collateralized debt obligations and collateralized loan obligations greater than 10% of the underlying obligations of which are backed by other collateralized debt obligations or collateralized loan obligations, as applicable;

(J) collateralized loan obligations backed by less than 90% loans; *provided* that the following collateralized loan obligations up to the Principal Balance set forth opposite their name will be allowed:

(1) Greywolf CLO I, Ltd.: $1,000,000, and

(2) Madison Park Funding V, Ltd.: $5,000,000;

(K) obligations secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets where the obligors with respect to such receivables or other assets are non-corporate credit risks);

(ii) that has an S&P Rating;

(iii) that has a Moody's Rating and a Moody's Priority Category Recovery Rate as specified in Moody's Priority Category Recovery Rate Matrix; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CLOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Servicing Fee***": An amount payable on each Payment Date equal to the sum of (i) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.40% *per annum* of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments and (ii) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period *plus* 3.00% *per annum*. The portion of the Subordinated Servicing Fee in clauses (i) and (ii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Substantially Similar Law***": State, local or other federal and non-U.S. laws that are substantially similar to Section 406 of ERISA and Section 4975 of the Code to which governmental plans, certain church plans and non-U.S. plans, while not subject to the fiduciary responsibility provisions of ERISA or the provisions of Section 4975 of the Code, may nevertheless be subject.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Supplemental Servicing Fee***": On each Payment Date, the fee, if any, payable to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment Date pursuant to Section 11.1(c)(i)(19) and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(c)(ii)(11)(A) and, if applicable, Section 11.1(c)(ii)(15).

"***Synthetic Letter of Credit***": A facility whereby (i) an agent bank issues or will issue a letter of credit for or on behalf of a borrower pursuant to an Underlying Instrument, (ii) the lender/participant pre-funds in full its obligations thereunder (provided that for the avoidance of doubt if funds are deposited to the Revolving Reserve Account with respect to such Synthetic Letter of Credit, such future funding obligations shall be deemed to be pre-funded) and upon such pre-funding, the lender/participant has no future funding obligations with respect to such Synthetic Letter of Credit and (iii) either (x) in the event that the letter of credit is drawn upon and the borrower does not reimburse the agent bank, the amounts pre-funded by the lender/participant are utilized by the agent bank to reimburse the agent bank for such amounts not funded by the borrower or (y) the agent bank passes on (in whole or in part) the fees it receives for providing the letter of credit to the lender/participant; *provided* that, with respect to any Synthetic Letter of Credit, either (i) the related agent bank has confirmed to the Issuer that it will withhold taxes from fees paid to the Issuer, or (ii) if the Issuer, or the Servicer on behalf of the Issuer, determines in its reasonable discretion that it is probable that such Synthetic Letter of Credit will be subject to withholding tax, then the Issuer, or the Servicer on behalf of the Issuer, either (x) disposes of such Synthetic Letter of Credit or (y) establishes an account with the Trustee into which 30% of all fee income from such Synthetic Letter of Credit will be transferred and applied to the payment of any withholding tax imposed on the related fees

received by the Issuer (it being understood that such reserved amounts shall be released and applied as Interest Proceeds at any later date if (A) the Issuer has received an Opinion of Counsel to the effect that the Issuer is no longer responsible for any withholding tax payments on such Synthetic Letter of Credit or (B) the Rating Condition with respect to S&P (so long as any Class of Notes is rated by S&P) is satisfied with respect to such release of the reserved amounts).

"***Synthetic Security***": Any swap transaction, structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse Securities (USA) LLC) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments that mature no later than the Stated Maturity or (ii) floating rate credit card securitizations that are rated "Aaa" by Moody's and "AAA" by S&P that mature no later than the Stated Maturity in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral; *provided* that any amounts described in clause (ii) above shall be hedged by a guaranteed investment contract or a total return swap which shall be subject to Rating Confirmation by S&P.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": Any entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto; *provided* that any Tax Advantaged Jurisdiction that is the jurisdiction of organization of an obligor of a Collateral Obligation other than obligors that are special purpose vehicles or issuers of Structured Finance Obligations shall have a Moody's foreign currency rating of at least "Aa2" and a S&P foreign currency rating of at least "AA-".

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period; or

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation.

"***Tax Opinion of Counsel***": A written opinion addressed to the Issuer (a copy of which will be provided to the Trustee) and, if requested, each Rating Agency that has made such request, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, issued by a nationally recognized law firm reasonably satisfactory to the Trustee, which law firm is experienced in the relevant areas of tax law, and which law firm may be counsel for the Servicer or the Issuer.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transfer Agent***": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"***Transferee Certificate***": A certificate substantially in the form of, with respect to the Senior Notes, Exhibit B-1 or, with respect to the Class E Notes, Exhibit B-4 attached hereto, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unfunded Amount***": With respect to any Revolving Loan or any Delayed Drawdown Loan at any time, the excess, if any, of (a) the Commitment Amount over (b) the Funded Amount thereof.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. Persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as U.S. Persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by:

(i) *multiplying* the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date *by* the current *per annum* rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor);

(ii) summing the amounts determined pursuant to clause (i);

(iii) *dividing* the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held *by* the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by *multiplying*

(A) the Average Life at that time of each Collateral Obligation *by*

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) *dividing* that sum *by* the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and May 1, 2018 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) four years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by *multiplying* the Principal Balance of each Collateral Obligation (excluding Eligible Investments) *by* its respective Moody's Rating Factor, *dividing* that sum *by* the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 44.50%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Recovery Rate for each Class of Notes is greater than or equal to: (i) with respect to the Class A Notes, 58.50%; (ii) with respect to the Class B Notes, 61.75%; (iii)

with respect to the Class C Notes, 65.00%; (iv) with respect to the Class D Notes, 67.75% and (v) with respect to the Class E Notes, 70.75%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) *multiplying* the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held *by* the Issuer as of the Measurement Date by the current *per annum* contract spread at which it pays interest (which (w) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero, (x) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto, (y) for any Revolving Loan or Delayed Drawdown Loan, will be the *per annum* contract spread for the Funded Amount thereof and the rate of the commitment fee and such other fees payable to the Issuer for any Unfunded Amount thereof and (z) for any synthetic letter of credit, will be the all-in rate net of withholding taxes (including any fees payable to the Issuer by the underlying obligor) minus the applicable LIBOR), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR;

(ii) summing the amounts determined pursuant to clause (i);

(iii) *dividing* that sum *by* the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2 Assumptions as to Pledged Obligations; Construction Conventions.

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and acquisition of Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not used to purchase

additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests and the Interest Diversion Test, and all related definitions, unless otherwise specified in this Indenture, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations. For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests and the Interest Diversion Test, and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

Section 1.3 Rules of Interpretation.

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)", refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein", "hereof", "hereto", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either", the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both", not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any", and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or

more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, *i.e.*, an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including", the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding", and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding", "following", "before", "after", "next" and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9, references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES

Section 2.1 Forms Generally.

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

Section 2.2 Forms of Notes and Certificate of Authentication.

(a) The Senior Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A 1.

(b) Regulation S Global Notes. The Senior Notes of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (the "***Regulation S Global Notes***"). The global notes shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Notes*. The Senior Notes of each Class initially sold to U.S. persons that are Qualified Institutional Buyers (or, solely in the case of certain Holders purchasing Certificated Notes on the Closing Date, Institutional Accredited Investors) and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Book-Entry Provisions*. This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Senior Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the

operation of customary practices governing the exercise of the rights of a Holder of any Senior Note.

(e) Some of the Class C Notes and Class D Notes, and all of the Class E Notes, shall be issued in the form of one or more certificated Notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit A-2, including legends, which shall be registered in the name of the owner thereof (each, a "***Certificated Note***").

Section 2.3 Authorized Amount; Denominations.

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$467,250,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A	B	C	D	E
Original Principal Amount	$376,000,000	$29,500,000	$25,250,000	$19,250,000	$17,250,000
Interest Rate	LIBOR + 0.65%	LIBOR + 1.65%	LIBOR + 2.75%	LIBOR + 5.25%	LIBOR + 9.50%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aa2/AA	A2/A	Baa2/BBB	Ba2/BB

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 12,000 Class I Preference Shares and 36,000 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable, and in accordance with the provisions of the Preference Shares Paying Agency Agreement.

Section 2.4 Extension of Replacement Period and Stated Maturity.

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Securities or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); *provided* that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell all or a portion of such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, in connection with an Extension Sale, all, but not part, of the Extension Sale Securities shall be purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that the Initial Purchaser shall not be responsible for causing the Extension Conditions to be satisfied and the Initial Purchaser shall not be liable to any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture. The Trustee shall be entitled to receive and rely conclusively on a certificate of the Issuer as to compliance with the extension provisions, as provided in Section 2.4(e) below.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the "***Extension Notice***"), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit J, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable written notice (an "***Extension Sale Notice***") to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the "***Extension Sale Notice Period***") of its intention to sell all or a portion of its Securities to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent) and notified to the Trustee, the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm, as shall be certified to the Trustee by a certificate of an Authorized Officer of the Issuer (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture and the Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; *provided* that all Extension Conditions set

forth in subparagraph (c) above, and other applicable requirements of this Section 2.4 are satisfied, as determined by the Issuer upon consultation with the Servicer (and as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on such determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Initial Purchaser, each Rating Agency (so long as any rated Notes are Outstanding) and the ISE (if and for so long as any Class of Senior Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners, as determined by the Issuer, who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, such Holder will sell such Class II Preference Shares to the Extension Qualifying Purchaser and such Preference Shares will, subject to the terms of the Memorandum and Articles of Association, be converted into Class I Preference Shares, which shall be effected by a redemption by the Issuer of the applicable Class II Preference Shares and an issue of an equivalent number of Class I Preference Shares.

Section 2.5 Execution, Authentication, Delivery, and Dating.

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Senior Notes and the Issuer may deliver the Class E Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent, for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

Section 2.6 Registration, Registration of Transfer and Exchange.

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar

as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) (i) In the case of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, on each day from the date on which a Holder or transferee acquires such Holder's or subsequent transferee's interest in such Notes through and including the date on which such Holder or subsequent transferee disposes of such Holder's or subsequent transferee's interest in such Notes, such Holder or subsequent transferee (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) shall be deemed to represent either that (A) such Holder or subsequent transferee is neither a Plan nor an entity whose underlying assets include "plan assets" by reason of such Plan's investment in the entity, nor a governmental, church, non-U.S. or other plan which is subject to any Substantially Similar Law or (B) (1) in connection with the acquisition, holding and disposition of such Class A Note, Class B Note, Class C Notes or Class D Note, the Holder's or transferee's fiduciary has

determined that such Holder or transferee is receiving no less, and paying no more, than "adequate consideration" (within the meaning of Section 408(b)(17)(B) of ERISA and Section 4975(f)(10) of the Code) and (2) such Holder's or transferee's acquisition, holding and disposition of such Notes will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, church, non-U.S. or other plan, a violation of any Substantially Similar Law). Any purported purchase or transfer of the Senior Notes to a Holder or transferee that does not comply with the requirements of this subsection (i) shall be null and void *ab initio*.

(ii) (A) Each Holder or subsequent transferee of a Class E Note (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) will be required to represent whether such Holder or subsequent transferee is (or is not, as applicable) a Benefit Plan Investor or a Controlling Person. No Benefit Plan Investor or Controlling Person will be permitted to purchase Class E Notes unless such Holder's or subsequent transferee's acquisition, holding and disposition of such Class E Notes, (x) will not cause participation by Benefit Plan Investors to be "significant" within the meaning of the Plan Asset Regulation and (y) (1) in connection with the acquisition, holding and disposition of such Class E Note, the Holder's or subsequent transferee's fiduciary has determined that such Holder or subsequent transferee is receiving no less, and paying no more, than "adequate consideration" (within the meaning of Section 408(b)(17)(B) of ERISA and Section 4975(f)(10) of the Code) and (2) such Holder's or subsequent transferee's acquisition, holding and disposition of such Class E Notes will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. If the Holder or the subsequent transferee is a governmental, church, non-U.S. or other plan that is subject to any Substantially Similar Law, such Holder or subsequent transferee (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) shall represent and warrant that such Holder's or subsequent transferee's acquisition, holding and disposition of a Class E Note will not constitute or result in a non-exempt violation of any such Substantially Similar Law.

(B) In determining whether participation by Benefit Plan Investors is "significant", Class E Notes beneficially held by (1) the Servicer, the Trustee, any of their respective Affiliates, employees of the Servicer or any of their respective Affiliates and any charitable foundation of any such employees or (2) persons that have represented that they are Controlling Persons, will be disregarded and will not be treated as Outstanding for purposes of whether participation by Benefit Plan Investors is "significant" to the extent that persons listed in (1) or (2) are not Benefit Plan Investors.

(C) Each Holder or subsequent transferee (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) acknowledges that a transfer of the Class E Notes will not be permitted, and no such transfer or exchange will be registered under this Indenture, to the extent that the transfer or exchange would result in Benefit Plan Investors owning 25% or more of the Aggregate Outstanding Amount of the Class E Notes

immediately after such transfer or exchange (determined in accordance with the Plan Asset Regulation and this Indenture).

(iii) If any Person shall become the beneficial owner of an interest in a Class E Note who has made a Benefit Plan Investor or Controlling Person representation that is subsequently shown to be false or misleading or whose beneficial ownership otherwise causes a violation of the 25% Limitation (any such person a "***Non-Permitted ERISA Holder***"), the Issuer shall, promptly after discovery that such person is a Non-Permitted ERISA Holder by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), send notice to such Non-Permitted ERISA Holder demanding that such Non-Permitted ERISA Holder transfer its interest to a person that is not a Non-Permitted ERISA Holder within 14 days of the date of such notice. If such Non-Permitted ERISA Holder fails to so transfer its Class E Notes, the Issuer shall have the right, without further notice to the Non-Permitted ERISA Holder, to sell (and shall sell if directed to do so by the Servicer) such Class E Notes or interest in such Class E Notes, to a purchaser selected by the Issuer that is not a Non-Permitted ERISA Holder on such terms as the Issuer may choose. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities similar to the Class E Notes and selling such Class E Notes to the highest such bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Class E Note, the Non-Permitted ERISA Holder and each other Person in the chain of title from the Holder to the Non-Permitted ERISA Holder, by its acceptance of an interest in the Class E Notes, agrees to cooperate with the Issuer and the Trustee to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale, shall be remitted to the Non-Permitted ERISA Holder. The terms and conditions of any sale under this subsection (iii) shall be determined in the sole discretion of the Issuer, and none of the Issuer, the Servicer or the Trustee shall be liable to any Person having an interest in the Class E Notes sold as a result of any such sale or the exercise of such discretion (including for the price of such sale).

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee, the Share Registrar or the Indenture Registrar by a prospective transferee, the Trustee, the Share Registrar or the Indenture Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii) and (iv) of this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note to Regulation S Global Note*. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of:

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) the transferor shall be deemed to make the representations, warranties and agreements set forth in a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) the transferee shall be deemed to make the representations, warranties and agreements set forth in a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Note to Rule 144A Global Note*. If a Holder of a Senior Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) the transferor shall be deemed to make the representations, warranties and agreements set forth in a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the Person transferring the interest in the Regulation S Global Note reasonably believes that the Person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) the transferee shall be deemed to make the representations, warranties and agreements set forth in a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) *Other Exchanges*. If a Global Note is exchanged for a Senior Note in definitive registered form without interest coupons pursuant to Section 2.11, the Senior Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including the certification

requirements, intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as the Class E Notes remain Outstanding transfers of such Class E Notes shall only be made in accordance with Section 2.6(c) and this Section 2.6(g) upon receipt by the Indenture Registrar of a certificate in the form of Exhibit B-4 given by the proposed transferee stating that it is a QIB/QP and containing other representations, warranties and agreements of such transferee and a certificate in the form of Exhibit B-5 given by the proposed transferee with respect to such transferee's Benefit Plan Investor and affected bank status.

(h) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(j) (i) Each Person who becomes a beneficial owner of a Senior Note evidenced by: (A) an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such Person's purchase or other acquisition of the relevant Definitive Note and (B) an interest in a Global Note, shall be deemed to make the representations, warranties and agreements set forth in the applicable legends of the Notes set forth in Exhibit A-1 hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note.

(ii) Each Person who becomes a beneficial owner of a Class E Note shall (x) make the representations, warranties and agreements set forth in the Transferee Certificate set forth in Exhibit B-4 and (y) make the representations set forth in the

Benefit Plan Investor and Affected Bank Certificate set forth in Exhibit B-5 upon such Person's purchase or other acquisition of such Class E Note.

(k) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(l) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

Section 2.7 Mutilated, Destroyed, Lost or Stolen Notes.

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

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

Section 2.8 Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture).

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class E Notes on any Payment Date to the extent necessary to satisfy the Class E Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note and a Class E Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note and a Class E Note. In the case of a Definitive Note and a Class E Note, its Holder has provided written wiring instructions to the Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 days nor less than 10 days before the date on which the payment is to be made (or as soon as possible after known by the Trustee to be such final payment), mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice

specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Co-Issuer under the Senior Notes and under this Indenture are non-recourse obligations, and the obligations of the Issuer under the Notes and under this Indenture are limited recourse obligations payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in

appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 2.9 Persons Considered Owners.

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will notify the Trustee and the Share Registrar of any Securities that are owned by the Servicer or any Affiliate of the Servicer.

Section 2.10 Cancellation.

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11 Definitive Notes.

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the Corporate Trust Office (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Note***") in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(j), bear the legends in the applicable portion of Exhibit A-1 and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Senior Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

Section 2.12 Notes Beneficially Owned by Non-Permitted Holders.

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, (i) any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act and (ii) any transfer of a beneficial interest in any Class E Note to a Person that is not a QIB/QP, shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee

acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

Section 2.13 Tax Purposes.

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1 Conditions to Issuance of Notes on Closing Date.

(a) The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters*. An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Purchase Agreement and, in the case of the Issuer, the Servicing Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement, the Securities Account Control Agreement and any Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and

that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Securities applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Securities except as have been given; *provided* that the opinions of Dechert LLP and Walkers, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Servicer's U.S. Counsel Opinion*. An opinion of Dechert LLP , special U.S. counsel to the Co-Issuers, an opinion of Orrick Herrington & Sutcliffe LLP, counsel to the Servicer, and an opinion of Pepper Hamilton LLP, counsel to the Co-Issuer, dated the Closing Date, substantially in the forms of Exhibit C, Exhibit F and Exhibit G.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Walkers, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Nixon Peabody LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture*. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Securities applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of any Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Servicing Agreement*. Executed copy of the Servicing Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents*. Executed copy of the Preference Shares Paying Agency Agreement.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Servicer*. A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligations on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(a)(xx)(B);

(xiv) *Rating Letters*. Copies of letters signed by each of the Rating Agencies confirming that the Class A Notes have been rated "Aaa" by Moody's and "AAA" by S&P, that the Class B Notes have been rated at least "Aa2" by Moody's and at least "AA" by S&P, that the Class C Notes have been rated at least "A2" by Moody's and at least "A" by S&P, that the Class D Notes have been rated at least "Baa2" by Moody's and at least "BBB" by S&P, that the Class E Notes have been rated at least "Ba2" by Moody's and at least "BB" by S&P, and that such ratings are in effect on the Closing Date.

(xv) *Accounts*. Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$285,000,000 into the Collection Account for use pursuant to Section 7.19 and the deposit of at least U.S.$1,800,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g), and the deposit of the Interest Reserve Amount into the Interest Reserve Account pursuant to Section 10.3(j).

(xvii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the ISE to admit the Senior Notes to the Official List of the ISE.

(xviii) *Issuer Order for Authentication of Notes*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate*. An Accountants' Certificate satisfactory to the Issuer (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$459,000,000, that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and that the Diversity Test is satisfied as of the Closing Date, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(a)(xix), (D) confirming the weighted average purchase price of the Collateral Obligations and (E) indicating the percentage of Collateral Obligations constituting Deep Discount Obligations.

(xx) *Certificate of the Issuer Regarding Collateral*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the

knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the Delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer has good and marketable title to such Collateral Obligation free and clear of any liens, claims, encumbrances or defects of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in such Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in such Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge such Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral;

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Collateral as of the Closing Date is at least 85% of the aggregate par amount thereof; and

(G) the Issuer has made delivery to the Trustee or to a Custodian as contemplated by Section 3.2 of all Collateral Obligations pledged to the Trustee for inclusion in the Collateral on the Closing Date (including any and all promissory notes and other Underlying Instruments related to them to the extent received by the Issuer or on its behalf).

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit H-2.

(xxii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

(b) Any Refinancing Note may be issued from time to time pursuant to Section 9.7 hereof. Any such Refinancing Notes shall be executed by the Applicable Issuer and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee

upon and pursuant to Issuer Order delivered to the Trustee, together with delivery to the Trustee by the Issuer of an Opinion of Counsel to the effect that (A) such Refinancing Notes are duly authorized and validly issued by the Applicable Issuer pursuant to this Indenture, constituting the legal, valid and binding obligation of such Applicable Issuer, enforceable against such Issuer in accordance with its terms and (B) all conditions precedent under this Indenture, if any, applicable to the issuance, authentication and delivery of such Notes, have been satisfied.

Section 3.2 Custodianship; Delivery of Collateral Obligations and Eligible Investments.

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be State Street Bank and Trust Company. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer, has a long-term debt rating of at least "Baa1" by Moody's (and not on credit watch with negative implications) and has combined capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into a Securities Account Control Agreement with the Custodian in accordance with Article 8 of the UCC providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

Section 3.3 Representations as to Collateral.

The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee,

which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Loans with respect to which loans were made by Pre-Closing Parties and repaid by the Issuer on the Closing Date, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," "uncertificated securities," "chattel paper" or "securities accounts," each within the meaning of the applicable Uniform

Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities accounts," "chattel paper," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost or stolen Notes,

(iii) rights of Noteholders to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(vii) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement, and

(viii) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect

thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of a Tax Opinion of Counsel to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3 and 13.1 shall survive.

Section 4.2 Application of Trust Money.

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3 Repayment of Monies Held by Paying Agent.

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1 Events of Default.

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on the Class A Notes or the Class B Notes, or, if no Class A Notes or Class B Notes are Outstanding, a default in the payment of any interest on the Controlling Class, in each case, when it becomes payable

(or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A Notes are Outstanding, the Overcollateralization Ratio with respect to the Class A Notes (which, for purposes of this clause (d), will be calculated without giving effect to clause 5(A) of the definition of Overcollateralization Ratio Numerator) is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer made in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Interest Diversion Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator,

assignee, trustee or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 and that remain unstayed, undischarged and unsatisfied for 30 days after the judgments become non-appealable, unless adequate funds have been reserved or set aside for their payment.

Section 5.2 Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment.

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder, and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences if:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due (other than as a result of the acceleration);

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes that have become due solely by the acceleration, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of the Stated Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the

reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall at the written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Majority of the Controlling Class), and shall upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4 Remedies.

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Majority of the Controlling Class), and shall, upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the written direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 5.8 and Section 6.3(e), institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

Section 5.5 Optional Retention of Collateral.

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place) in accordance with the Priority of Payments and Article 10 and Article 13 unless:

(i) the Trustee, in consultation with the Servicer, determines (bid prices having been obtained with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one dealer, that dealer), selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and having computed the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security) that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under Section 11.1(b)(v); or

(ii) with respect to an Event of Default other than as specified in Section 5.1(a), (b) or (d), the Holders of a Super Majority of each of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes direct the sale and liquidation of the Collateral, and with respect to an Event of Default specified in Section 5.1(a), (b) or (d), a Majority of the Controlling Class direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the

conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm, or other appropriate Advisor, of national reputation, which may be the Initial Purchaser.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination made as required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the written request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a) (provided that if such review is made more frequently than once per Due Period the Trustee shall be entitled to require that any associated expense be borne by the requesting Holders). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the mathematical accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture (to the extent such accountants are willing and able to do so).

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6 Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

Section 5.7 Application of Money Collected.

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied in accordance with Section 11.1, subject to Section 13.1, at the dates fixed by the Trustee.

Section 5.8 Limitation on Suits.

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee, for 30 days after its receipt of the notice, request and offer of indemnity, has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholders of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments under Section 11.1, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity pursuant to this Section 5.8 from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

Section 5.9 Unconditional Rights of Noteholders.

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to

institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10 Restoration of Rights and Remedies.

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11 Rights and Remedies Cumulative.

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12 Delay or Omission Not Waiver.

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

Section 5.13 Control by Majority of the Controlling Class.

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee (including the exercise of any remedy specified in Section 5.4(a) or otherwise with respect to the Collateral), or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability or expense unless it has received an indemnity against the liability and expense).

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability or expense (unless the Trustee has received an indemnity against the liabilities and expenses reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14 Waiver of Past Defaults.

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

Section 5.15 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the

filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16 Waiver of Stay or Extension Laws.

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17 Sale of Collateral.

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of

Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18 Action on the Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default known to the Trustee:

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in

its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; *provided* that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2 Notice of Default.

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the ISE, for so long as any Class of Senior Notes is listed on the ISE and so long as the guidelines of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3 Certain Rights of Trustee.

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless

the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; *provided*, *however*, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4 Not Responsible for Recitals or Issuance of the Notes.

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5 May Hold Notes.

(a) The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

Section 6.6 Acquisition of Class E Notes and Preference Shares.

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Class E Notes and the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Class E Notes or Preference Shares (including pursuant to a Maturity Extension, a Refinancing and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class E Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, this Indenture and the Preference Share Documents). Any Class E Notes or Preference Shares held as principal by the Trustee or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% Limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

Section 6.7 Money Held in Trust.

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer (*provided* that the foregoing shall not relieve the Bank of its obligations under any security or obligation issued by the Bank or any Affiliate thereof).

Section 6.8 Compensation and Reimbursement.

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Sections 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify the Trustee and its officers, directors, employees and agents for any loss, liability or expense (including reasonable attorney's fees and costs) incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(b), (c)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture.

No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.9 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee under this Indenture that is an Independent "bank" (within the meaning of the Investment Company Act) organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be "affiliated" (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers; *provided* that the requirements of the preceding sentence shall be met if (a) the Trustee is not "affiliated" (as defined in the preceding sentence) with the Issuer, the Co-Issuer, the Administrator or the Share Registrar, (b) neither the Trustee nor the Issuer has actual knowledge, or has received written notice, that the Trustee is "affiliated" (as defined in the preceding sentence) with any person involved with the organization or operation of either of the Co-Issuers, and (c) the Trustee has not provided and does not provide credit or credit enhancement to either of the Co-Issuers. For purposes of the preceding clause (b), (i) the "actual knowledge" of the Trustee shall mean (x) its knowledge of those persons who have been expressly identified in writing to it by either or both of the Co-Issuers, or the Servicer on their behalf or (y) any persons otherwise actually known to a Responsible Officer of the Trustee, in either case, to be a person involved with the organization or operation either of the Co-Issuers, without any duty of independent inquiry or investigation on the part of the Trustee, and (ii) unless and except to the extent it has been otherwise expressly notified in writing by the Issuer , or the Servicer on its behalf , the Trustee shall be entitled to presume that the Issuer has no knowledge of such an affiliation. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days' written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall by Board Resolution (or, if an Event of Default shall have occurred and be continuing, at the direction of a Majority of the Controlling Class) promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by the Co-Issuers as directed by Board Resolution (or, if an Event of Default shall have occurred and be continuing, by an Act of a Majority of the Controlling Class) or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor

Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.11 Acceptance of Appointment by Successor.

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.12 Merger, Conversion, Consolidation, or Succession to Business of Trustee.

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the

Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.13 Co-Trustees.

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under clauses (i)-(iii) of Section 11.1(b), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.14 Certain Duties of Trustee Related to Delayed Payment of Proceeds.

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

Section 6.15 Authenticating Agents.

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any

Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; *provided*, *however*, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.16 Fiduciary for Noteholders Only; Agent for Secured Parties.

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

Section 6.17 Representations and Warranties of the Bank.

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) *Organization*. The Bank has been duly organized and is validly existing as a Massachusetts trust company and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations.* The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility*. The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

Section 6.18 Withholding Tax Forms.

The Issuer hereby agrees to deliver or cause to be delivered, a United States Internal Revenue Service Form W-8BEN (or successor form thereto) or any other appropriate tax certificates to the relevant issuer of its Collateral Obligations and issuer of its Eligible Investments at the time such Collateral Obligations or Eligible Investments are purchased by the Issuer and thereafter as required under the relevant law. In addition, the Issuer hereby agrees to deliver, and the Issuer shall be required to deliver, United States Internal Revenue Service Forms W-8BEN (or successor form thereto) and other appropriate United States tax forms as may be required by the Hedge Counterparty, to the Hedge Counterparty at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form,

and shall take any other action appropriate to prevent withholding or backup withholding tax on the Hedge Agreements. The Issuer shall represent, to the Hedge Counterparty in the master agreement, confirmation or schedule to the Hedge Agreement, that the Issuer is a "non-U.S. branch" of a foreign person as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations. The Issuer will request that the Hedge Counterparty provide the Issuer a United States Internal Revenue Service Form W-9 or an appropriate United States Internal Revenue Service Form W-8, as applicable, together with any required attachments, at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form.

ARTICLE 7

COVENANTS

Section 7.1 Payment of Principal and Interest.

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Senior Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2 Maintenance of Office or Agency.

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint State Street Bank and Trust Company, 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116, telecopy no. (617) 937-0517, Attention: CDO Services Group, as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served, which office will initially be the office of CT Corporation System, 111 Eighth Avenue, 13th Floor, New York, New York 10011, and an office or agency outside of the United States where the Notes may be presented and surrendered for payment (written notice of which shall be provided to the Trustee by the Co-Issuers).

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Senior Notes is listed on the ISE and the guidelines of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Senior Notes and this Indenture may be served and where the Senior Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Senior Notes is listed on the ISE, Custom House Administration & Corporate Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Senior Notes, for the payment of principal, interest and other distributions on the Senior Notes and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Senior Notes or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Senior Notes is listed on the ISE, notice of the appointment of any replacement shall be given to the Company Announcements Office of the ISE as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Senior Notes of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers at their addresses as provided in Section 14.3.

Section 7.3 Money for Note Payments to be Held in Trust.

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect

to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent other than the Trustee must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P 1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the

payment of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Issuer. The Noteholder shall thereafter look only to the Issuer for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Issuer) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Issuer any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4 Existence of Co-Issuers.

(a) The Issuer and the Co-Issuer shall, to the maximum extent permitted by applicable law, maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a Tax Opinion of Counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed.

Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries (other than the Co-Issuer),

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5 **<u>Protection of Collateral</u>**.

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone;

(vi) pay when due all taxes levied or assessed on any part of the Collateral and use commercially reasonable efforts to minimize taxes and any other costs arising in connection with its activities; and

(vii) give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other papers that may be necessary or desirable to create, preserve, perfect or validate the security interest granted pursuant to this Indenture or to enable the Trustee to exercise and enforce its rights hereunder with respect to such pledge and security interest, and hereby authorizes the Trustee to file a UCC financing statement listing 'all assets of the debtor' in the collateral description of such financing statement.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and State Street Bank and Trust Company as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(a)(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank) on such date, or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded at such date, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless (in the case of clause (i) or (ii) of this Section 7.5(b))

the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to such action or actions.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay, or cause to be paid, any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6 <u>Opinions as to Collateral</u>.

On or before January 1 in each calendar year, commencing in 2009, the Issuer shall furnish to the Trustee and each of the Rating Agencies, an Opinion of Counsel stating that in the opinion of such counsel as of the date of such opinion under the District of Columbia Uniform Commercial Code, the UCC financing statement(s) filed in connection with the lien and security interests created by this Indenture shall remain effective and no additional financing statements, continuation statements or amendments with respect to such financing statement(s) shall be required to be filed in the District of Columbia from the date thereof through the next twelve months to maintain the perfection of the security interest of this Indenture under the District of Columbia Uniform Commercial Code.

Section 7.7 <u>Performance of Obligations</u>.

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the Collateral Administration Agreement as initially executed), contract with

other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8 Negative Covenants.

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi) and (ix), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including a Refinancing in accordance with Section 9.7 and including, as contemplated hereby, entering into any Hedge Agreements and Securities Lending Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its

terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such "non-petition" and "limited recourse" provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9 **Notice of Default; Statement as to Compliance**.

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before December 15 in each calendar year, commencing in 2009, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its

obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10 Co-Issuers May Consolidate, etc. Only on Certain Terms.

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and shall have obtained a Tax Opinion of Counsel that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. Person.

Section 7.11 Successor Substituted.

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be

dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12 No Other Business.

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement or engage in any transaction or activity not permitted by the restrictions set forth in Annex 1 to the Servicing Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in Annex 1 to the Servicing Agreement, unless, with respect to a particular transaction, it obtains written advice of Dechert LLP or a Tax Opinion of Counsel that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in Annex 1 to the Servicing Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer obtains written advice of Dechert LLP or a Tax Opinion of Counsel that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis and, at the request of the Issuer, the Trustee is hereby authorized to enter into any amendment of Annex 1 to the Servicing Agreement under such circumstances; *provided*, *however*, that written notice of any such amendment, elimination or supplementation of or to the provisions of Annex 1 to the Servicing Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Notes within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event written advice of Dechert LLP or a Tax Opinion of Counsel as described above has been obtained in accordance with the terms hereof, no consent of any Noteholder or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of Annex 1 to the Servicing Agreement contemplated by such written advice or opinion.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13 Listing on ISE.

So long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the regulated market of the ISE; *provided* that the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

Section 7.14 Annual Rating Review.

So long as any Notes of any Class remain Outstanding, on or before December 1 in each year commencing in 2009, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.15 Reporting.

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16 Calculation Agent.

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the ISE, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the ISE and the guidelines of the exchange so require,

notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the ISE as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 a.m., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 a.m., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the guidelines of the exchange so require, the ISE. In the latter case, the information shall be given to the Company Announcements Office of the ISE as soon as possible after its determination. The Calculation Agent shall separately notify the ISE of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 p.m., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17 <u>Certain Tax Matters</u>.

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. The Issuer and each Holder and beneficial owner of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes, except (x) as otherwise required by applicable law, (y) to the extent a Holder makes a protective QEF election, or (z) to the extent that a Holder files certain United States tax information returns required of only certain equity owners with respect to various reporting requirements under the Code.

(b) The Issuer will not make an election to be treated as a partnership for U.S. federal income tax purposes, and will take all necessary actions to maintain its status as a corporation for U.S. federal income tax purposes.

(c) The Issuer and Co-Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; *provided, however*, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in the United States or any state thereof except with respect to a return required by a tax imposed under Section 881 of the Code unless it shall have obtained a Tax Opinion of Counsel prior to such filing that,

under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) Upon the Trustee's receipt of a written request of the Issuer's Independent accountants, a Noteholder, or written request of a Person certifying that it is an owner of a beneficial interest in a Note, for the information described in United States Treasury Regulations Section 1.1275-3(b)(1)(i) that is applicable to such Note, it shall notify the Issuer of such request and the Issuer will cause its Independent accountants to provide promptly to the Trustee and such requesting Holder or owner of a beneficial interest in such a Note all of such information. Any additional issuance of Notes shall be accomplished in a manner that will allow the Issuer to accurately provide the same information as the foregoing to the Noteholders of such Notes.

(e) In order to ensure the Holders' and Beneficial Owners' acquisition of the Notes pursuant to this Indenture are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners of the Notes (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Indenture (including the ownership and disposition of the Notes). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(f) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Noteholder requests information about any such transactions in which the Issuer is a purchaser, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(g) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture and the Preference Shares Paying Agency Agreement.

(h) The Issuer shall provide, upon the request by a Holder of Class E Notes (or any other Class of Notes that may be treated as equity for U.S. federal income tax purposes), such information for the purposes of allowing such Holder to make a protective "qualifying electing fund" election. The Issuer shall provide, upon request of a Holder of Class E Notes, any information that such Holder reasonably requests to assist such Holder with regard to any filing requirements the Holder may have as a result of the controlled foreign corporation rules under the Code. Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(i) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax, accounting and reporting purposes.

(j) Each of the Issuers and the Trustee agrees that it does not intend for this Indenture to represent an agreement to enter into a partnership, a joint venture or any other business entity for U.S. federal income tax purposes. The Issuers and the Trustee shall not represent or

otherwise hold themselves out to the United States Internal Revenue Service or other third parties as partners in a partnership or members of a joint venture or other business entity for U.S. federal income tax purposes.

Section 7.18 Securities Lending.

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (29) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a short-term senior unsecured debt rating of at least "A-1", or if no short-term rating exists, a long-term senior unsecured debt rating of at least "A+" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); *provided* that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchaser or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that fully compensate for the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities

Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor with the required ratings for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement:

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19 Purchase of Collateral Obligations; Ramp-Up Completion Date.

(a) The Issuer shall use its commercially reasonable efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes and the Class B Notes is at least U.S.$510,000,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes and the Class B Notes is at least U.S.$510,000,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments or principal prepayments made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments or principal prepayments made with respect to any Collateral Obligations on or before the Ramp-Up

Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) No later than 10 Business Days after the Ramp-Up Completion Date, the Issuer shall notify each of the Rating Agencies in writing of the occurrence of the Ramp-Up Completion Date (each, a "***Ramp-Up Notice***") and request in writing that each of S&P (with such request sent to CDOEffectivedatePortfolios@sandp.com) and Moody's confirm in writing within 25 days of delivery of such Ramp-Up Notice that it has not reduced or withdrawn the Initial Ratings; *provided*, *however*, that the Issuer shall not be required to request a Rating Confirmation from Moody's if, as of the Ramp-Up Completion Date Moody's has received an Accountants' Certificate confirming (i) the Issuer is in compliance with each of the Collateral Quality Tests, the Coverage Tests and the Concentration Limitations and (ii) the Overcollateralization Ratio Numerator of the Collateral Obligations that the Issuer owns or has committed to purchase is at least equal to U.S.$510,000,000. In connection with such request or, in the case of Moody's, in lieu of such request, the Issuer shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, an Excel Default Model Input File (if applicable)) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Overcollateralization Ratio Numerator of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests, the Concentration Limitations and the Eligibility Criteria; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) Any failure by the Issuer to obtain a Ratings Confirmation pursuant to Section 7.19(e) above shall be a Rating Confirmation Failure (a "***Rating Confirmation Failure***"). If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

(g) On the Ramp-Up Completion Date, S&P shall provide sixteen (16) different S&P CDO Monitors to the Issuer, the Servicer, the Collateral Administrator and the Trustee, such

S&P CDO Monitors corresponding to portfolios with weighted average spreads of 2.00%, 2.10%, 2.20%, 2.30%, 2.40%, 2.50%, 2.60%, 2.70%, 2.80%, 2.90%, 3.00%, 3.10%, 3.20%, 3.30% , 3.40% and 3.50%, respectively. After the Ramp-Up Completion Date, the Servicer, by written notice to the Collateral Administrator, the Trustee and S&P, will elect which S&P CDO Monitor shall apply initially and, thereafter, on two Business Days written notice prior to the Measurement Date to the Collateral Administrator, Trustee and S&P, the Servicer will elect to have a different S&P CDO Monitor apply, such S&P CDO Monitor corresponding to a portfolio with a weighted average spread that is equal to or lower than the Weighted Average Spread of the Floating Rate Obligations in the Collateral at the time of such election; *provided*, that if the Weighted Average Spread of the Floating Rate Obligations in the Collateral at the time of such election is less than 2.00%, then the Servicer on behalf of the Issuer will request S&P to provide a different S&P CDO Monitor which has a weighted average spread equal to or lower then the Weighted Average Spread of the Floating Rate Obligations in the Collateral. For the avoidance of doubt, the selection of an S&P CDO Monitor as described in this paragraph shall be separate and independent of any election of the Servicer with respect to the Ratings Matrix.

(h) On the Interim Target Date (assuming for these purposes (1) settlement in accordance with customary settlement procedures in the relevant markets of all agreements entered into by the Issuer to acquire items of Collateral Obligation scheduled to settle on or following such date and (2) that each such item or Collateral Obligation is pledged as security for the Notes pursuant to this Indenture), the Issuer shall deliver to the Trustee and Moody's a statement that the Interim Target Test is satisfied (and calculations thereof in reasonable detail). Failure to satisfy the Interim Target Test on the Interim Target Date (any such failure an "***Interim Target Failure***") will not constitute and Event of Default; provided that upon the occurrence of an Interim Target Failure the Servicer, on behalf of the Issuer, shall submit to Moody's a plan with respect to which the Servicer certifies that, in the Servicer's reasonable business judgment is sufficient to attain compliance with each applicable Collateral Quality Test by the Ramp-Up Completion Date.

Section 7.20 <u>Secondary Risk Procedures</u>.

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Balance of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Balance of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Balance of Synthetic Securities with respect to Collateral Obligations the "Aggregate Counterparty Limit" of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.21 Section 3(c)(7) Procedures.

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (*provided* that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) *Section 3(c)(7) Notice to Investors*. The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers*. The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Initial Purchaser and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens*. The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act, to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1 Supplemental Indentures Without Consent of Holders.

(a) Without the consent of the Holders of any Securities, when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in clauses (1) through (21) below, the interests of the Holders of the Securities (except, in the case of clause (11) below, any Holders of Notes subject to the applicable Refinancing) are not materially and adversely affected thereby as provided in this Section 8.1, execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations or restrictions on the authorized amount, terms and purposes of the issue, authentication and delivery of the Notes;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) cause any provision of this Indenture to conform to, or be consistent with, the statements made with respect to such provision in the Offering Memorandum;

(7) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act (including, without limitation, to add provisions for resales and transfers of the Class E Notes and/or Preference Shares under Regulation S) or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required thereunder (for the avoidance of doubt no modification of the restrictions or procedures for resales and transfers may be made for the purpose of increasing any such restrictions);

(8) make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the ISE;

(9) otherwise correct any inconsistency or cure any ambiguity or errors in this Indenture;

(10) accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(11) accommodate a Refinancing effected pursuant to and in compliance with Section 9.7; *provided* that no Holders of Notes or Preference Shares are materially adversely affected thereby, other than Holders of Notes subject to such Refinancing (and provided that the mere occurrence of the Refinancing itself shall be deemed not to constitute such a material adverse effect);

(12) take any appropriate action to prevent the Issuer, the Holders of the Securities, or the Trustee from becoming subject to withholding or other taxes, fees or assessments, or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character or source of the income from the Securities, as evidenced by a Tax Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(13) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the ISE or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(14) amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted under this Indenture;

(15) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(16) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(17) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(18) facilitate hedging transactions;

(19) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(20) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(21) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under this Indenture and the Preference Share Documents; or

(22) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); *provided* that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer under this Indenture.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified in writing by a Majority of any Class of Notes or a Majority of the Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee shall be entitled to receive and may rely on a certificate of the Servicer or an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition

with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency), the Collateral Administrator and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

Section 8.2 Supplemental Indentures With Consent of Holders.

(a) If the Rating Condition is satisfied with respect to S&P, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, change in any manner or eliminate any of the provisions of this Indenture, or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(1) the Servicer if the supplemental indenture would affect the rights, powers, obligations or duties of the Servicer or would affect the amount or priority of any fees payable to the Servicer under this Indenture or is with respect to any matters described in Section 8.2(b)(viii) or (ix);

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes; and

(3) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

(b) Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares (other than in the case of any Maturity Extension in connection with an extension of the Replacement Period as

described in Section 2.4), reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid, or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral, or terminate the lien on any property at any time subject hereto, or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section 8.2(b), or to modify other provisions of this Indenture that expressly provide by their terms that they cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1 or Section 13.1;

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture;

(viii) except as permitted under Section 8.1(a)(22), modify (A) the restrictions on the sales of Collateral Obligations in Section 12.1 or (B) the Eligibility Criteria in Section 12.2 (and the definitions related thereto); or

(ix) except as permitted under Section 8.1(a)(22), be entered into for the purpose of adding any additional agreements as well as any amendment, modification or

waiver if the Issuer determines that the agreement, amendment, modification or waiver would, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities.

(c) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Collateral Administrator and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee in writing (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(d) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(e) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Collateral Administrator and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3 Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer, the Servicer (if such Servicer's consent is required hereunder) and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Preference Shares (if the consent of the Holders of the Preference Shares is required hereunder) and the Rating Condition is satisfied or is specifically waived by all consenting parties (and provided that no objection has been received from any Hedge Counterparty after delivery of such proposed supplemental indenture to such Hedge Counterparty at least 10 days prior to execution), all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; *provided* that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would affect the rights, powers, obligations or duties of the Servicer or would affect the amount or priority of any fees payable to the Servicer under this Indenture unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

Section 8.4 Effect of Supplemental Indentures; Certain Required Consents.

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Any supplemental indenture that would necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Memorandum and Articles of Association to be altered to conform with such proposed amendment.

Section 8.5 Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1 Mandatory Redemption.

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then the Servicer may direct and, upon such direction and in accordance with the instructions of the Servicer, the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale, each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory

redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2 Optional Redemption.

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the applicable Required Redemption Percentage, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

In the event that the Preference Shares Paying Agent, the Trustee and the Issuer receive notice directing an Optional Redemption of the Notes from any one or more Holders of Preference Shares holding less than a Majority of the Preference Shares, the Preference Shares Paying Agent shall, within five Business Days of receipt of such notice, notify the Holders of the Preference Shares (i) of the receipt of such notice and (ii) that any Holder of Preference Shares may join in directing an optional redemption by notifying the Issuer, the Trustee and the Preference Shares Paying Agent in writing within five Business Days after such Holder's receipt of the Preference Shares Paying Agent's notice.

Upon receipt of a notice of redemption pursuant to the first paragraph of this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Closing Date Expense Account, the Payment Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Replacement Period will terminate in accordance with the definition of that term. The Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency in writing of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, so long as all administrative fees and expenses and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the request of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings subject to the provisions of the Preference Shares Paying Agency Agreement and Cayman Islands law; or

(ii) at the unanimous written request of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a specified portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such written request subject to the provisions of the Preference Shares Paying Agency Agreement and Cayman Islands law.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3 Optional Redemption Procedures.

(a) Upon any redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, to (i) each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and (ii) in the case of a redemption pursuant to Section 9.2(a), to each Rating Agency. In addition, for so long as any Senior Notes are listed on the ISE and so long as the guidelines of the exchange so require, notice of a redemption pursuant to Section 9.2(a) of Senior Notes shall also be given to the Company Announcements Office of the ISE.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Senior Notes to be redeemed are listed on the ISE, and the Irish Paying Agent.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption or the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least 10 Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreement (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to any Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge

Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by *multiplying* the expected proceeds of sale of the Collateral *by* the indicated percentage in the table below. For the avoidance of doubt, no Hedge Agreement shall be sold or terminated unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

(d) Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Trustee and the Servicer only if:

(i) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Sections 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(ii) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written request of the Majority of the Preference Shares (or, in the

case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) to withdraw the notice of redemption delivered by the percentage of the Preference Shares (or, in the case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(iii) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written request of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the requesting Holders to withdraw the applicable notice of redemption if it receives the written request referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail) and the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption having been given as provided above, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date.

Upon final payment on a Note to be so redeemed, the Holder present and surrender the Note at the place specified in the notice of redemption to receive the applicable Redemption Price unless the Holder provides an undertaking to surrender the Note thereafter.

Section 9.4 Notes Payable on Redemption Date.

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or

surrender. Payments of interest on Notes to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5 Special Redemption.

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the use of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, that cannot be used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(c)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Senior Notes are listed on the ISE and so long as the guidelines of the exchange so require, notice of a redemption pursuant to this Section 9.5 of Senior Notes shall also be given to the Company Announcements Office of the ISE.

Section 9.6 Amendment Buy-Out.

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders whose consent was solicited with respect to such supplemental indenture (the "***Amendment Buy-Out Option***"), in each case, for the applicable Amendment Buy-Out Purchase Price; *provided*, *however*, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period (i) for any reason with respect to the Class A Noteholders or (ii) with respect to Notes of any Class, in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such

option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders for the applicable Amendment Buy-Out Purchase Price, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "***Amendment Buy-Out***"); *provided* that if any Non Consenting Holder holds Class II Preference Shares, such Non-Consenting Holder will sell such Class II Preference Shares to the Amendment Buy-Out Purchaser and such Preference Shares will, subject to the terms of the Memorandum and Articles of Association, be converted into Class I Preference Shares, which shall be effected by a redemption by the Issuer of the applicable Class II Preference Shares and an issue of an equivalent number of Class I Preference Shares. By its acceptance of its Securities hereunder or under the Preference Share Documents, as applicable, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities to the Amendment Buy-Out Purchaser. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities set forth herein and in the Preference Share Documents, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.7 Redemption by Refinancing.

(a) On any Payment Date after the Non-Call Period, any Class of the Notes may be redeemed in whole, but not in part from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares)) with a copy to the Trustee and the Rating Agencies, at least 30 days prior to the Payment Date for such redemption (such date, the "***Refinancing Date***"), to redeem such Notes in accordance with this Section 9.7 (a "***Notice of Refinancing***"), which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be refinanced. Such redemption shall be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes ("***Refinancing Notes***"), the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Issuer, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "***Refinancing***"), and provided that (i) such proposal is approved by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date.

(b) The Issuer shall obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) (A) a Rating Confirmation has been obtained from each Rating Agency for each Class of Notes not subject to Refinancing and (B) a rating letter has been obtained from each Rating Agency with respect to each class of Refinancing Notes that such Refinancing Notes shall be rated at least as high as the Initial Rating of the Class of Notes subject to the Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Issuer related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the stated maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain limited recourse, non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth herein;

(viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and

(ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for.

(c) The Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3 hereof) shall be fully protected in relying upon an Opinion of Counsel stating that the Refinancing is permitted by this Indenture and that all conditions precedent thereto have been complied with.

(d) Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date pursuant to this Indenture to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; *provided* that to the extent that any Refinancing Proceeds exceed the amount necessary to redeem the Notes being refinanced (and any associated Administrative Expenses), such excess Refinancing Proceeds will be treated as Principal Proceeds.

(e) If notice of consent by a Majority of the Preference Shares to a Refinancing has been received by the Trustee from the Servicer pursuant to Section 9.7(a) no later than 15 days prior to the Refinancing Date, notice of a Refinancing shall be given by the Trustee by first class mail, postage prepaid, mailed not less than 10 days prior to the proposed Refinancing Date, to each Holder of Notes of the Class to be refinanced at the address in the Indenture Register (with a copy to the Servicer) and, so long as any Class of Notes is listed on the ISE, the Irish Paying Agent.

All Notices of Refinancing shall state:

(i) the proposed Refinancing Date, which shall be the applicable Redemption Date in respect of the Notes being redeemed;

(ii) the Refinancing Price, which shall be the applicable Redemption Price in respect of the Notes being redeemed;

(iii) that on such proposed Refinancing Date such Notes will be refinanced and redeemed in full, and that, provided that the Refinancing Proceeds have been deposited with the Trustee for any such payment in full, interest on such Notes being redeemed shall cease to accrue on such date; and

(iv) the place or places where such Notes are to be surrendered for payment of the Refinancing Price which, if not stated, shall be the office or agency of any paying agent as provided in Section 7.2.

provided that no such Notice of Refinancing shall be sent if either (a) the Servicer has withdrawn its consent to such Refinancing or (b) the consent of a Majority of the Holders of Preference Shares to such Refinancing has not been obtained.

(f) Notice of Refinancing shall be given by the Trustee at the expense of the Issuer. Failure to give a Notice of Refinancing, or any defect therein, to any Holder of any Note selected for Refinancing shall not impair or affect the validity of the Refinancing or give rise to any claim based upon such failure or defect.

Any Notice of Refinancing may be withdrawn by the Servicer, on behalf of the Issuer, on or prior to the fourth Business Day prior to the scheduled Refinancing Date by written notice to the Trustee, the Paying Agent, the Preference Shares Paying Agent, the Rating Agencies and the Holders of the Preference Shares. Upon receipt of such notice of withdrawal, the Trustee shall send such notice to the Holders of Notes and, if applicable, the Irish Paying Agent.

(g) If a Notice of Refinancing pursuant to Section 9.7(a) has been given as provided herein and not withdrawn, the Notes to be refinanced shall on the Refinancing Date become due and payable at the Refinancing Price. Each Holder of such Notes shall present and surrender its Note at the place specified in the Notice of Refinancing on or prior to such Refinancing Date; *provided* that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer and the Trustee that the applicable Note

has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender.

If any Class of Notes called for Refinancing shall not be so paid upon surrender thereof for Refinancing (or the delivery of the indemnity pursuant to the preceding paragraph) the principal shall, until paid, bear interest from the Refinancing Date at the applicable Interest Rate for each successive Payment Date with respect to which such Note remains Outstanding.

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1 Collection of Money.

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

Each Account shall be established and maintained (a) with a federal or state-chartered depository institution with a short-term rating of at least "A-1" by S&P (or a long-term rating of at least "A+" by S&P if such institution has no short-term rating) and if such institution's short-term rating falls below "A-1" by S&P (or its long-term rating falls below "A+" by S&P if such institution has no short-term rating), the assets held in such Account shall be transferred within 60 calendar days to another institution that has a short-term rating of at least "A-1" by S&P (or which has a long-term rating of at least "A+" by S&P if such institution has no short-term rating) or (b) in segregated trust accounts with the corporate trust department of a federal or state-chartered deposit institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulation Section 9.10(b).

Section 10.2 Collection Account.

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from the Closing Date Expense Account pursuant to Section 10.3(g),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee from the Collateral and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Risk Obligations and Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Risk Obligations, Credit Improved Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall

withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, clauses (i)-(iii) of Section 11.1(b).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1 on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3 Other Accounts.

(a) *Custodial Account*. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in or otherwise to the credit of the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account*. Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan,

respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under clauses (i)-(iii) of Section 11.1(b) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under clauses (i)-(iii) of Section 11.1(b) to the Expense Reimbursement Account in accordance with Section 11.1(b)(iv); *provided* that the Trustee shall be entitled (but not required), without liability on its part, to refrain from making such payments if, in the reasonable determination of the Trustee, the payment of such amounts would leave insufficient funds available to pay in full each of the items described in the Priority of Payments in amounts reasonably anticipated by the Trustee to be payable on the next Payment Date, or would result in payments being made that are inconsistent with the items described in the Priority of Payments. Funds in the Expense Reimbursement Account shall be used to purchase Eligible Investments in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be (i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or (ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to obligations of the relevant Synthetic Security Counterparty to the Issuer under a Synthetic Security if the Synthetic Security becomes subject to early termination or in the exercise of remedies under the Synthetic Security upon any "event of default" under and as defined in the terms of the Synthetic Security, including liquidating the related Synthetic Security Collateral Account or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$1,800,000 from the proceeds of the Offering. At any time before the Payment Date in November 2008, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any

applicable fees and expenses of the Offering. On the Payment Date in November 2008, at the direction of the Servicer in its sole discretion, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Interest Proceeds (to the extent such funds are not required to be applied to cure a Rating Confirmation Failure) or Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Class II Preference Share Special Payment Account*. With respect to any Payment Date, the Servicer may, in its sole discretion, at any time waive a portion (or all) of the Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Trustee on behalf of the Issuer, from available funds in the Payment Account as provided in the Priority of Payments, to the Preference Shares Paying Agent, subject to the laws of the Cayman Islands, for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. On the first Payment Date that the Servicer elects to waive a portion (or all) of the Servicing Fees then due and payable, the Issuer shall direct the Trustee and the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Trustee for the benefit of Holders of the Class II Preference Shares, over which the Trustee shall have exclusive control and the sole right of withdrawal. On each Payment Date that the Servicer elects to waive a portion (or all) of its Servicing Fees, to the extent of available funds in accordance with the Priority of Payments (but subject to Section 13.1), the Trustee shall deposit into the Class II Preference Share Special Payment Account amounts equal to the Class II Preference Share Special Payments. For purposes of any calculation under this Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(j) *Interest Reserve Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The Trustee shall credit to the Interest Reserve Account the Interest Reserve

Amount, from the deposit made therein as provided in Section 3.1(a)(xvi). All amounts in the Interest Reserve Account shall be applied on the November 2008 Payment Date as Adjusted Interest Proceeds in accordance with Section 11.1(c)(i) hereof.

(k) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(l) In order to comply with its obligations under the USA PATRIOT Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA PATRIOT Act of 2001.

Section 10.4 Application of Funds in Accounts; Reports by Trustee.

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, use all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Interest Reserve Account and the Closing Date Expense Account as so directed to purchase Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Interest Reserve Account or the Closing Date Expense Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Interest Reserve Account, the Closing Date Expense Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of

the Issuer Order, the Trustee shall, apply all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with

the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements in accordance with Article 8 of the UCC; *provided*, *however*, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lending Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the Servicing Agreement. The Trustee shall promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be used to purchase Eligible Investments as described above.

Section 10.5 Synthetic Security Counterparty Account.

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty or to the extent that any Synthetic Security has an unfunded amount payable by the Issuer that does not by its terms require collateral, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account (a "***Synthetic Security Counterparty Account***") for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security as directed by the Servicer. In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account, from funds or Eligible Investments on deposit in the Collection Account, all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security and, without duplication, an amount equal to the unfunded amount of a Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction, in each case as directed by the Servicer. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing; *provided* that any Defaulted Synthetic Security Termination Payments shall be paid in accordance with the Priority of Payments. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6 Accountings.

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) July 25, 2008, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchaser, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchaser) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or

its designee), a monthly report (the "***Monthly Report***"); *provided* that a Monthly Report may be provided to any such party by posting such Monthly Report on the Trustee's password-protected website initially located at http://www.cdocalc.com/ibt/cdo/ and providing access thereto to such parties. Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the "***Monthly Determination Date***"):

(i) *Collateral*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The Aggregate Principal Balance of Collateral Obligations that are Cov-lite Loans;

(D) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(E) The obligor of each Workout Asset;

(F) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report on each sale;

(G) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset, a Cov-lite Loan, a Deep Discount Obligation (including Deep Discount Obligations purchased below 50% of their Principal Balance) or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such

default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(H) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(I) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(J) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Recovery Rate;

(K) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(L) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(M) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(N) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(O) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(P) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default

Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(Q) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value;"

(R) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(S) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Interest Diversion Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Interest Diversion Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Scenario Default Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P;

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Initial Purchaser, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Initial Purchaser), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) *Notes*:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(b), 11.1(c)(i) and 11.1(c)(ii) itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best

knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Optional Redemption Instructions*. Not less than three Business Days after an Issuer Order electing an Optional Redemption of the Notes pursuant to Section 9.2 has been delivered to the Trustee, the Issuer shall compute the following information and provide such information in a statement (the "***Redemption Date Statement***") delivered to the Trustee, the Servicer and the Rating Agencies:

(i) the amounts payable to the Trustee, the Preference Shares Paying Agent, the Hedge Counterparty, the Issuer and the Servicer pursuant to Sections 11.1(b) and (d);

(ii) any amount payable to any Synthetic Security Obligor;

(iii) the amount in the Collection Account available for payment of the Optional Redemption Price; and

(iv) the Optional Redemption Price.

(d) *Failure to Provide Accounting*. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(e) *Irish Stock Exchange*. So long as any Class of Senior Notes is listed on the ISE: (i) the Trustee shall communicate to the ISE the Aggregate Outstanding Amount of each listed Class of Senior Notes following each Payment Date and inform the ISE if any such Class of Senior Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the ISE if the ratings assigned to the Senior Notes are reduced or withdrawn and the information shall be given to the Company Announcements Office of the ISE; and (iii) the Trustee shall inform the ISE, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(f) *Quarterly Letter*. The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(g) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File.

(h) *Payments or Transfers from the Payment Account*. Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment

Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

Section 10.7 Release of Collateral.

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible

Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

Section 10.8 Reports by Independent Accountants.

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before December 15 of each year commencing in 2009, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any

matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9 Reports to Rating Agencies.

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1 Disbursements of Monies from Payment Account.

Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Closing Date Expense Account and the Collection Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(a) On the Closing Date, the Trustee shall pay, from the funds deposited in the Closing Expense Date Account, the fees, commissions and expenses associated with the Closing (collectively, "***Closing Expenses***") as set forth in an Issuer Order delivered to the Trustee on the Closing Date; *provided* that any such Closing Expenses may in the alternative be paid on any date after the Closing Date and prior to the Payment Date in November 2008 from the amounts on deposit in the Closing Date Expense Account pursuant to an Issuer Order delivered to the Trustee (which shall state that the amounts called for to be paid therein are Closing Expenses). All payments pursuant to this Section 11.1 may be made from the United States. The Issuer may appoint an agent or agents for purposes of making payment of expenses, fees and commissions to be paid on its behalf from outside the United States pursuant hereto and (each such person shall be considered a Paying Agent hereunder). The Issuer hereby initially appoints State Street Bank and Trust Company, as such Paying Agent for such limited purpose.

(b) On each Payment Date (including the Stated Maturity and if funds become available after the Stated Maturity, on any date after the Stated Maturity) and in accordance with the Valuation Report for the Determination Date immediately preceding such Payment Date, the

Trustee shall withdraw from the Collection Account, to the extent of the available funds therein, an amount up to the Interest Proceeds (excluding therefrom (I) any Sale Proceeds received during the Due Period relating to such Determination Date to be applied by the Trustee during the related Due Period or the immediately succeeding Due Period as set forth in Section 9.2 and Section 12.1(f) and (II) Principal Proceeds in an aggregate amount equal to the agreed purchase prices for additional Collateral Obligations with respect to which the Issuer has entered into a commitment (as set forth in the notice from the Servicer to the Trustee) prior to the end of such Due Period for the purchase thereof, but has not settled such purchase by the end of such Due Period, as set forth in Section 12.2), and payments received from the Hedge Counterparties under any Hedge Agreements (after giving effect to the netting provisions thereunder), and, to the extent the amount of the Interest Proceeds is not sufficient, an amount up to the Principal Proceeds, and shall make a disbursement in the following order of priority:

(i) *first*, taxes and registration and filing fees owed by the Co-Issuers (without limit), *second*, the fees, expenses and indemnities of the Trustee with respect to such Payment Date and any fees, indemnities and expenses of the Trustee with respect to a previous Payment Date that were not paid on a previous Payment Date, and *third*, fees, expenses and indemnities of the Collateral Administrator with respect to such Payment Date and any fees, indemnities and expenses of the Collateral Administrator with respect to a previous Payment Date that were not paid on a previous Payment Date;

(ii) the fees, expenses and indemnities of the Preference Shares Paying Agent with respect to such Payment Date and any fees, indemnities and expenses of the Preference Shares Paying Agent with respect to a previous Payment Date that were not paid on a previous Payment Date;

(iii) *first*, fees and expenses of the Administrator with respect to such Payment Date and any fees and expenses of the Administrator with respect to a previous Payment Date that were not paid on a previous Payment Date, and *second*, fees and expenses of the Co-Issuers (including fees and expenses of counsel and ongoing surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(iv) for the replenishment of the Expense Reimbursement Account to the extent any of the amounts referred to in clauses (i)-(iii) above have already been paid from funds on deposit therein (the aggregate of the amounts set forth in clauses (i), (ii), (iii) and (iv) shall not exceed the Administrative Expense Cap);

(v) *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and *second*, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(vi) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments (the aggregate of clauses (i), (ii), (iii), (iv), (v) and (vi), the "***Aggregate Base Fees and Expenses***").

Notwithstanding anything herein to the contrary, any amounts to be paid to the Preference Shares Paying Agent for the Preference Shares pursuant to this Indenture will be delivered by the Trustee to the Preference Shares Paying Agent for deposit in the Preference Shares Distribution Account in accordance with the Preference Shares Paying Agency Agreement.

Interest Proceeds, net of amounts payable on a Payment Date pursuant to clauses (i) through (vi) above, represent "***Adjusted Interest Proceeds***" for such Payment Date. Principal Proceeds, net of amounts payable on a Payment Date pursuant to clauses (i) through (vi) above, to the extent not paid or replenished from Interest Proceeds with respect to such Payment Date, represent "***Adjusted Principal Proceeds***" (and, together with Adjusted Interest Proceeds, "***Adjusted Proceeds***") for such Payment Date.

(c) On each Payment Date (other than a Payment Date covered by Section 11.1(d)) in accordance with the Valuation Report for the Determination Date immediately preceding such Payment Date, the Trustee shall withdraw from the Collection Account, to the extent of the available funds therein (excluding therefrom (I) any Sale Proceeds received during the Due Period relating to such Determination Date to be applied by the Trustee during the related Due Period or the immediately succeeding Due Period as set forth in Section 9.2 and Section 12.1(f) hereof and (II) Principal Proceeds in an aggregate amount equal to the agreed purchase prices for additional Collateral Obligations with respect to which the Issuer has entered into a commitment (as set forth in the notice from the Servicer to the Trustee) prior to the end of such Due Period for the purchase thereof, but has not settled such purchase by the end of such Due Period, as set forth in Section 12.2 hereof) an amount equal to the Adjusted Proceeds and shall make the following disbursements:

(i) The Trustee shall apply such amounts constituting Adjusted Interest Proceeds (to the extent of available funds therefor) in the following order of priority:

(1) to the payment of accrued and unpaid interest on the Class A Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A Notes;

(2) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class B Notes;

(3) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes and the Class B Notes in the Note Payment Sequence, in each case, in the amount necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in

reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (3) before the application of any Principal Proceeds as pursuant to Section 11.1(c)(ii) below on the current Payment Date);

(4) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(5) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (5) before the application of any Principal Proceeds pursuant to Section 11.1(c)(ii) below on the current Payment Date);

(6) to the payment of Class C Deferred Interest;

(7) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(8) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (8) before the application of any Principal Proceeds pursuant to Section 11.1(c)(ii) on the current Payment Date);

(9) to the payment of Class D Deferred Interest;

(10) to the payment of accrued and unpaid interest on the Class E Notes (excluding Class E Deferred Interest but including interest accrued for the preceding Interest Period on Class E Deferred Interest);

(11) if the Class E Coverage Tests are not satisfied on the related Determination Date, *first*, to the payment of principal of the Class E Notes, and *second*, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class E Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in

full (Interest Proceeds to be applied pursuant to this clause (11) before the application of any Principal Proceeds pursuant to Section 11.1(c)(ii) on the current Payment Date);

(12) to the payment of Class E Deferred Interest;

(13) if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (13) before the application of any Principal Proceeds pursuant to Section 11.1(c)(ii) on the current Payment Date);

(14) if the Interest Diversion Test is not satisfied on the related Determination Date, 50% of the remaining Interest Proceeds available after the payments pursuant to clause 13 above (or, if the amount necessary to cause the Interest Diversion Test to be satisfied as of such Determination Date is less than 50% of the such remaining Interest Proceeds, such necessary amount), such amount to be paid *first*, to principal of the Class E Notes, *second*, to principal of the Class D Notes, *third*, to principal of the Class C Notes, *fourth*, to principal of the Class B Notes and *fifth*, to principal of the Class A Notes, in that order, in each case, to the extent required to satisfy the Interest Diversion Test;

(15) *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and *second*, to the payment (*pro rata* according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) *pro rata* to each Holder of Securities entitled thereto, the applicable Extension Bonus Payment pursuant to Section 2.4;

(16) to the payment of any remaining Administrative Expenses not paid under Section 11(b)(i)-(iii) above in the respective priorities specified therein;

(17) to the payment, *pro rata*, of (i) any Defaulted Hedge Termination Payments and (ii) any Defaulted Synthetic Security Termination Payments;

(18) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of the Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12%;

(19) *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and *second*, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and;

(20) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares in accordance with the Preference Shares Paying Agency Agreement;

provided that, after the Aggregate Outstanding Amount of the Notes has been paid in full, or so long as the Class A Notes are no longer Outstanding, if the Coverage Tests are at the same level as of the Ramp-Up Completion Date, in lieu of payment of Interest Proceeds referred to under clauses (18) and (20) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with the Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly. Any payments to the Preference Shares Paying Agent shall be released from the lien of this Indenture and shall be paid in accordance with the provisions of the Preference Shares Paying Agency Agreement.

(ii) The Trustee shall apply the Adjusted Principal Proceeds (to the extent of available funds therefor) other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

in the following order of priority:

(1) to the payment of the amounts described in Section 11.1(c)(i)(1)-(2) with respect to Interest Proceeds, in each case to the extent such amounts have not been paid from Adjusted Interest Proceeds with respect to such Payment Date;

(2) after the Replacement Period, *first*, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Risk Obligations and Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and *second*, to the payment of the Notes in the following order of Priority:

(i) to pay principal of the Class A Notes until the Aggregate Outstanding Amount thereof has been paid in full;

(ii) to pay principal of the Class B Notes until the Aggregate Outstanding Amount thereof has been paid in full;

(iii) to the payment of accrued and unpaid interest on the Class C Notes, and any accrued and unpaid Class C Deferred Interest;

(iv) to pay principal of the Class C Notes until the Aggregate Outstanding Amount thereof has been paid in full;

(v) to the payment of accrued and unpaid interest on the Class D Notes, and any accrued and unpaid Class D Deferred Interest;

(vi) to pay principal of the Class D Notes until the Aggregate Outstanding Amount thereof has been paid in full;

(vii) to the payment of accrued and unpaid interest on the Class E Notes, and any accrued and unpaid Class E Deferred Interest;

(viii) to pay principal of the Class E Notes until the Aggregate Outstanding Amount thereof has been paid in full;

(3) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes and the Class B Notes in the Note Payment Sequence, in each case, in the amount

necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full;

(4) if the Class A Notes and the Class B Notes have been paid in full, to the payment of the amounts described in Section 11.1(c)(i)(4), in each case to the extent such amounts have not been paid from Adjusted Interest Proceeds with respect to such Payment Date;

(5) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full;

(6) if the Class A Notes, the Class B Notes and the Class C Notes have been paid in full, to the payment of the amounts described in Section 11.1(c)(i)(7), in each case to the extent such amounts have not been paid from Adjusted Interest Proceeds with respect to such Payment Date;

(7) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full;

(8) if the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes have been paid in full, to the payment of the amounts described in Section 11.1(c)(i)(10), in each case to the extent such amounts have not been paid from Adjusted Interest Proceeds with respect to such Payment Date;

(9) if the Class E Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class E Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full;

(10) if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full;

(11) (A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (15), (16) and (17) of Section 11.1(c)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder, (iii) the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12%, (iv) *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (x) the Class II Preference Share Portion for such Payment Date, if any, and (y) the Supplemental Servicing Fee, if applicable and *second*, to the payment to the Servicer of an amount equal to the difference between (x) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (y) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause and (v) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(12) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(13) to the extent not previously paid in full under clause (11) above, after the Replacement Period, to the payment of the amounts referred to in clauses (15), (16) and (17) under Section 11.1(c)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder;

(14) after the Replacement Period, the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12%;

(15) after the Replacement Period, *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with

Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and *second*, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(16) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Any payments to the Preference Shares Paying Agent shall be released from the lien of this Indenture and shall be paid in accordance with the provisions of the Preference Shares Paying Agency Agreement.

(d) On (i) the Stated Maturity (including an Optional Redemption Date or any Payment Date on which the Aggregate Outstanding Amount of the Notes is paid in full as described herein) and, if funds become available after the Stated Maturity, on any other date after the Stated Maturity, and (ii) each Payment Date (x) after the occurrence of an Event of Default and an acceleration of the Notes pursuant to Section 5.2 that has not been rescinded, or (y) after the occurrence of an Event of Default and an acceleration of the Notes pursuant to Section 5.2 that has not been rescinded and the liquidation of the Collateral pursuant to Sections 5.4 and 5.5, and, in each case, in accordance with the Valuation Report for the Determination Date immediately preceding such Payment Date or Stated Maturity (or in the case of an Optional Redemption, in accordance with the Redemption Date Statement), the Trustee shall withdraw from the Collection Account an amount equal to the Adjusted Proceeds (including Sale Proceeds, if any) and, in the case of clause (i) above, from the Expense Reimbursement Account any amount on deposit therein, and shall apply such amounts in the following order of priority:

(i) to the payment of accrued and unpaid interest on the Class A Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A Notes;

(ii) to pay the Aggregate Outstanding Amount of the Class A Notes;

(iii) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class B Notes;

(iv) to pay the Aggregate Outstanding Amount of the Class B Notes;

(v) to the payment of accrued and unpaid interest on the Class C Notes, and any accrued and unpaid Class C Deferred Interest;

(vi) to pay the Aggregate Outstanding Amount of the Class C Notes;

(vii) to the payment of accrued and unpaid interest on the Class D Notes, and any accrued and unpaid Class D Deferred Interest;

(viii) to pay the Aggregate Outstanding Amount of the Class D Notes;

(ix) to the payment of accrued and unpaid interest on the Class E Notes, and any accrued and unpaid Class E Deferred Interest;

(x) to pay the Aggregate Outstanding Amount of the Class E Notes;

(xi) *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Subordinated Servicing Fee, if applicable and *second*, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(xii) to the payment of any remaining Administrative Expenses not paid under Section 11(b)(i)-(iii) in the respective priorities specified therein;

(xiii) to the payment, *pro rata*, of any (i) Defaulted Hedge Termination Payments and any (ii) Defaulted Synthetic Security Termination Payments;

(xiv) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of the Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12%;

(xv) *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and *second*, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(xvi) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares in accordance with the Preference Shares Paying Agency Agreement;

provided that, after the Aggregate Outstanding Amount of the Notes has been paid in full, or so long as the Class A Notes are no longer Outstanding, if the Coverage Tests are at the same level as of the Ramp-Up Completion Date, in lieu of payment of Interest Proceeds referred to under clauses (xiv) and (xvi) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with the Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly. Any payments to the Preference Shares Paying Agent shall be released from the lien of this Indenture and shall be paid in accordance with the provisions of the Preference Shares Paying Agency Agreement.

The obligation to pay the foregoing amounts on the Stated Maturity is absolute and unconditional, but recourse therefor will be limited to the Collateral.

(e) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Sections 11.1(b) and (c), subject to Section 13.1, to the extent funds are available therefor.

(f) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Sections 11.1(b) and (c), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(g) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and (subject to Section 6.1(c)(iv)) shall take the action with respect to the continuing failure as directed by the Servicer unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(h) Except as otherwise expressly provided in Sections 11.1(b) and (c) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the

related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Sections 11.1(b) and (c) to different Persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

(i) Notwithstanding anything in this Indenture to the contrary, with respect to Adjusted Proceeds on deposit in the Collection Account and held in Eligible Investments pending the purchase of Collateral Obligations, any such amounts not used to purchase Collateral Obligations by the last day of the Due Period next succeeding the Due Period in which such amounts were collected may be used to purchase Collateral Obligations in subsequent Due Periods in accordance with Section 12.2 (until otherwise applied pursuant to this Section 11.1).

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1 Sales of Collateral Obligations.

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) *Credit Risk Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i) below, to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be

consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; and

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation (the "***Non-qualifying Collateral Obligation***") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After the Holders of a Majority of the Preference Shares have requested an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous written request of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure*. After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Workout Assets*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price, and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) *Supervening Requirement*. Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

Section 12.2 Purchase of Collateral Obligations.

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; *provided*, *however*, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test (other than the Weighted Average Rating Factor Test) is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the stated maturity of such Collateral Obligation is equal to or earlier than the stated maturity of the Collateral Obligation being the source of the Unscheduled Principal Payments or the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable;

(F) the Scenario Default Rate for all Outstanding Classes of Notes is no worse following such purchase; and

(G) the current Moody's Ratings on the Class A Notes and the Class B Notes are no lower than their Initial Rating and the current Moody's Ratings on the Class C Notes and the Class D Notes are no lower than one subcategory below their Initial Rating.

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement.

(c) *Certain Permitted Exchanges*. The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Servicer*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Eligible Investments*. Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

Section 12.3 Conditions Applicable to All Sale and Purchase Transactions.

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Article 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Section 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

Section 12.4 Certain Determinations Relating to Collateral Obligations.

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; *provided, however*, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

Section 12.5 Certain Conditions Relating to Synthetic Securities.

Each Synthetic Security that is a credit default swap the Reference Obligations of which are Loans shall require each such Reference Obligation to be denominated and payable in U.S. Dollars.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event" and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event."

No Synthetic Security may provide for termination by the Synthetic Security Counterparty at any time (i) after a declaration of acceleration of Maturity of the Notes has been made upon the occurrence of an Event of Default, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with Section 5.2(c) and liquidation of the Collateral has begun or (ii) upon an Optional Redemption, unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

For purposes of the Coverage Tests and the Interest Diversion Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a

Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clause 15, and the exception thereto, of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Recovery Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Recovery Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than five days' prior notice of the purchase of or entry into any Synthetic Security.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1 Subordination.

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
A	B, C, D, E, Preference Shares*	None
B	C, D, E, Preference Shares*	A
C	D, E, Preference Shares*	A, B
D	E, Preference Shares*	A, B, C
E	Preference Shares*	A, B, C, D
Preference Shares	None**	A, B, C, D, E

* Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments. If the Class E Coverage Tests are not satisfied on any Determination Date, Interest Proceeds will first be used to pay principal of the Class E Notes and second to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary to meet all Class E Coverage Tests on such Determination Date as set forth in Section 11.1(c)(i)(11). If the Interest Diversion Test is not satisfied on any Determination Date, Interest Proceeds will be used to satisfy the Interest Diversion Test and such amount will be paid first, to principal of the Class E Notes, second, to principal of the Class D Notes, third, to principal of the Class C Notes, fourth, to principal of the Class B Notes and fifth, to principal of the Class A Notes, in that order, in each case, to the extent required to satisfy the Interest Diversion Test as set forth in Section 11.1(c)(i)(14).

** The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class of Notes (voting separately) consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class, as and to the extent provided in Section 11.1(d). The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes has been paid in full in Cash or, to the extent a Majority of each Class of Notes (voting separately) consents, other than in Cash, in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2 Standard of Conduct.

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1 Form of Documents Delivered to Trustee.

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

other such Persons as to other matters, and any such Person may certify or give an opinion as to the matters in one or several documents.

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2 Acts of Holders of Securities.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (*provided* that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Holders of Securities signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes, and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to any Person shall be proved by the share register of the Issuer.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

Section 14.3 <u>Notices, etc., to Certain Persons or Parties</u>.

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at, 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116, telecopy no. (617) 937-0517, Attention: CDO Services Group, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under <u>Article 12</u> (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Issuer shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9002, Cayman Islands, telecopy no. (345) 945-4757, Attention: the Directors—Aberdeen Loan Funding, Ltd., or at any other address previously furnished in writing to the other parties hereto by the Issuer, with a copy to the Servicer at its address below;

(iii) the Co-Issuer at c/o Puglisi & Associates, 850 Library Avenue, Suite 204, Newark, Delaware 19711, Attention: Director, or at any other address previously furnished in writing by the Co-Issuer;

(iv) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: Todd Travers, or at any other address previously furnished in writing to the other parties hereto;

(v) the Initial Purchaser shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Initial Purchaser addressed to them at c/o Merrill Lynch Pierce, Fenner & Smith Incorporated, 4 World Financial Center, 7th Floor, New York, New York 10080, telecopy no. (212) 449-3210, Attention: Glen Ostrander, or at any other address previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of the Initial Purchaser;

(vi) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vii) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 7 World Trade Center at 250 Greenwich Street, New York, New York 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(viii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9002, Cayman Islands, telecopy no. (345) 945-4757, Attention: the Directors—Aberdeen Loan Funding, Ltd.;

(ix) to the Listing Agent at Dillon Eustace, 33 Sir John Rogerson's Quay, Dublin 2, Ireland, telephone no. +353-1-667-0022, telecopy no. +353-1-667-0042, Attention: Mark Fitzgerald, or at any other address previously furnished in writing by the Listing Agent or e-mailed to info@dilloneustace.ie; and

(x) to the Irish Paying Agent at Custom House Administration & Corporate Services Ltd., 25 Eden Quay, Dublin 1, Ireland, telephone no. +353 1 878 0807, telecopy

no. +353 1 878 0827, Attention: Evelyn Meenaghan, or at any other address previously furnished in writing by the Irish Paying Agent.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A Notes may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A Notes on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A Notes) to the Trustee in substantially the form of Exhibit K specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A Notes (each, an "***Insurer***"). After receipt of any such notice (in the form of Exhibit K) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

Section 14.4 Notices to Noteholders and the Preference Shares Paying Agent; Waiver.

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders or the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders or the Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event or the Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register or at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder or the Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the

Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder or the Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders or the Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders or the Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders or the Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

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

So long as any Senior Notes are listed on the ISE and the guidelines of the exchange so require, all notices to Noteholders or the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the ISE.

The Issuer shall (and authorizes the Trustee to) deliver to the Initial Purchaser all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation relating to the Notes requested by the Initial Purchaser (collectively, the "***Transaction Reports***") and the Issuer consents to the Initial Purchaser providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Initial Purchaser or any of its Affiliates).

Section 14.5 <u>Effect of Headings and Table of Contents</u>.

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

Section 14.6 <u>Successors and Assigns</u>.

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7 Separability.

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

Section 14.8 Benefits of Indenture.

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9 Governing Law.

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.10 Submission to Jurisdiction.

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of State Street Bank and Trust Company (to the attention of State Street Bank and Trust Company, Trustee for Aberdeen Loan Funding, Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.11 Counterparts.

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.12 Acts of Issuer.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

Section 14.13 Liability of Co-Issuers.

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co-Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.14 Indemnity of Co-Issuer.

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

Section 15.1 Assignment of Servicing Agreement; Amendment of Servicing Agreement.

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(i) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(ii) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations, covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(iii) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h) below.

(v) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts owed to the Servicer pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for the nonpayment of the fees or other amounts payable by

the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(vi) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use commercially reasonable efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; *provided* that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and

(c) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the "***Objection Cut-Off Date***"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

Section 15.2 Hedge Agreements.

(a) At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer, may enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering into such Hedge Agreement the Hedge Counterparty has the ratings specified in such Hedge Agreement.

(c) If at any time a Hedge Counterparty does not have the required ratings as set forth in the Hedge Agreement, the Hedge Counterparty shall be required to take such actions as are set forth in the relevant Hedge Agreement.

(d) Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty thereto shall comply with the then currently applicable rating criteria of each Rating Agency from time to time.

(e) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer, or the Servicer on behalf of the Issuer, shall make the demand.

(f) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(g) Except as provided in paragraph (i) of this Section 15.2, following the early termination of a Hedge Agreement (other than on a Redemption Date) the Issuer, at the direction of the Servicer, shall, promptly (but no later than 60 days after the early termination), and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(h) Notwithstanding Section 15.2(i), the applicable requirements of Section 15.2(i) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(i) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(j) Each Hedge Agreement may be terminated pursuant to its terms by the Hedge Counterparty upon an Optional Redemption of the Notes (but only after the applicable notice of redemption may no longer be withdrawn pursuant to Section 9.3), an acceleration of maturity of the Notes after an Event of Default or the entry into certain amendments to this Indenture without the consent of the Hedge Counterparty. The Hedge Agreement will not be permitted to be terminated by the Issuer as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(k) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

ABERDEEN LOAN FUNDING, LTD.,
AS ISSUER

By: _____
Name: John Cullinane
Title: Director

Witnessed by: _____
Name: Jolene Nelson
Title: Administrator

ABERDEEN LOAN FUNDING CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

STATE STREET BANK AND TRUST COMPANY,
AS TRUSTEE

By: _____

Name: Brian Peterson
Title: Vice President

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 10

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
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006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

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006668 36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671 37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673 38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677 39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679 40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686 41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688 42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690 43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694 44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698 45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702 46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706 47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713 48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727 49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes Personal Transportation: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs
50a. CDOs of ABS, including RMBS, not included in 50y
50y. CDOs back by affected Collateral, or CDOs backed by CDOs backed by affected Collateral.

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. Prime and Alt-A RMBS
57. Subprime, home equity loan, tax-lien RMBS.
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

70. Prime RMBS issued in the U.S. during or after the fourth quarter of 2005.
71. Alt-A RMBS issued in the U.S. during or after the fourth quarter of 2005.
72. Subprime, home equity loan, tax-lien RMBS issued in the U.S. during or after the fourth quarter of 2005.

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and *dividing by* the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor divided by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

The Diversity Score for any Structured Finance Obligation that is (i) a collateralized loan obligation, (ii) any Synthetic Security with respect to which the Reference Obligation is a collateralized loan obligation or (iii) any Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or

notional amount of the credit exposure to any single Reference Obligation does not increase over time, is equal to zero.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure[1]						
	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure[1]						
	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	15%
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure[1]						
	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure(1)						
	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure(1)						
	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates divided by initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

Structured Finance Obligation Rating*	RATING OF A CLASS OF NOTES AT THE TIME OF COMMITMENT TO PURCHASE						
Senior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%
Junior Asset Class							
	AAA	AA	A	BBB	BB	B	CCC
AAA	65.0%	70.0%	80.0%	85.0%	85.0%	85.0%	85.0%
AA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
A	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
BBB	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* If the Structured Finance Obligation is (x) a collateralized debt obligation backed by project finance securities, asset-backed securities, structured finance or real estate securities, distressed debt or other collateralized debt obligations; (y) a market value collateralized debt obligation; or (z) a synthetic collateralized debt obligation, the recovery rate will be assigned by S&P at the time of acquisition. This Schedule 6 may be modified, amended, and supplemented from time to time by S&P.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating;

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a High-Yield Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, then the Moody's Default Probability Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher; or

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories.

For purposes of any calculation under this Indenture, if a Moody's Default Probability Rating is withdrawn by Moody's with respect to a Collateral Obligation and if the Issuer, or the Servicer on behalf of the Issuer, has applied for a rating estimate from Moody's with respect to such Collateral Obligation, the Issuer will continue using the latest Moody's Default Probability Rating available immediately prior to such withdrawal pending receipt of such rating estimate from Moody's; *provided, however*, that if a Moody's Default Probability Rating is withdrawn and neither the Issuer, nor the Servicer on behalf of the Issuer, have applied for a rating estimate, the provisions of this Schedule 7 with respect to Collateral Obligations whose ratings have been withdrawn will be followed.

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" (as defined by Moody's) for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating; then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating; or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating; then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating; or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any

postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or High-Yield Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clause (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or High-Yield Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or High-Yield Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings;

(ii) no debt securities or obligations of the obligor are in default;

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years;

(iv) the obligor has been in existence for the preceding five years;

(v) the obligor is current on any cumulative dividends;

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter;

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter; and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a High-Yield Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; *provided* that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used. If no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to Moody's for a Moody's credit rating estimate, which will be its Moody's Rating; *provided* that, on or prior to each one-year anniversary of the acquisition of any such Collateral Obligation, the Issuer shall submit to Moody's a request for a Moody's credit rating estimate for such Collateral Obligation, which shall be its Moody's Rating, together with all information reasonably required by Moody's to perform such estimate.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "***Borrower***"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "***Guarantor***") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; *provided* that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (A) (after giving effect to the addition of the relevant Collateral Obligation, if applicable); or

(B) if no security or obligation of the issuer or obligor is rated by S&P or Moody's, and the Issuer or the Servicer on behalf of the Issuer has applied to S&P for a rating estimate and provided all relevant Information to S&P (at Credit_estimates@sandp.com) within 30 days of the acquisition (or, if such application is caused as a result of a rating withdrawal by S&P or Moody's, as applicable, the withdrawal of the rating by S&P or Moody's, as applicable) of

such security or obligation, such security or obligation, pending receipt from S&P of such rating estimate, shall have an S&P Rating as determined by the Servicer in its commercially reasonable judgment; *provided* that, if the Servicer does not submit all relevant Information within 30 days of such acquisition or rating withdrawal, as applicable, of such security or obligation, (x) S&P shall endeavor to provide a rating estimate as soon as reasonably practical upon receipt of all relevant Information, (y) during a period of 90 days (or such longer period as agreed to by S&P pursuant to a request made by the Servicer) from the date of such acquisition or rating withdrawal, as applicable, and pending receipt from S&P of a rating estimate, such security or obligation shall have an S&P Rating as determined by the Servicer in its commercially reasonable judgment and (z) if S&P does not provide a rating estimate within 90 days (or such longer period as agreed by S&P pursuant to a request made by the Servicer) of the date of such acquisition or rating withdrawal, as applicable, of such security or obligation, such security or obligation shall be treated as rated "CCC-" by S&P until such time as S&P provides a credit estimate; and

(C) any reference in this definition to an S&P rating estimate or estimated rating must be such rating provided by S&P in writing and any such rating shall expire after one year of its provision by S&P. The Servicer may re-apply for a credit estimate within 30 days prior to the expiration of such credit estimate, subject to the procedures specified in subclause (iii)(B) above; *provided* that, if an obligation identical to a Collateral Obligation is held in another fund serviced or managed by the Servicer and an estimated rating has been assigned by S&P to such obligation held in such other fund (and such estimated rating has not yet expired), such estimated rating, upon request by the Servicer to S&P, shall be applicable to the Collateral Obligation held by the Trustee under this Indenture;

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

"***Information***": S&P's "Credit Estimate Information Requirements" dated June 2007 and any other information S&P reasonably requests in order to produce a credit estimate for a Collateral Obligation.

Exhibit A-1

Form of Senior Note

Exhibit A-2

Form of Class E Note

Exhibit B-1

Form of Senior Note Transferee Certificate

Exhibit B-2

Form of Senior Note Transferor Certificate for Regulation S to Rule 144A Transfer

Exhibit B-3

Form of Senior Note Transferor Certificate for Rule 144A to Regulation S Transfer

Exhibit B-4

Form of Class E Note Transferee Certificate

Exhibit B-5

Form of Benefit Plan Investor and Affected Bank Certificate

Exhibit C

Form of Dechert LLP Opinion

Exhibit D

Form of Walkers Opinion

Exhibit E

Form of Nixon Peabody LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G

Form of Pepper Hamilton LLP Opinion

Exhibit H-1

Form of Section 3(c)(7) Reminder Notice

Exhibit H-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit I

Form of Beneficial Owner Certificate

Exhibit J

Form of Extension Notice

Exhibit K

Form of Insurer Notice

EXECUTION COPY

SUPPLEMENTAL INDENTURE NO. 1
(Aberdeen Loan Funding, Ltd.)

THIS SUPPLEMENTAL INDENTURE NO. 1 (this "Supplemental Indenture"), dated as of September 11, 2008 , is entered into in connection with that certain Indenture, dated as of March 27, 2008 (as amended, supplemented, restated or replaced from time to time, the "Indenture"), by and among ABERDEEN LOAN FUNDING, LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the "Issuer"), ABERDEEN LOAN FUNDING CORP., a Delaware corporation (the "Co-Issuer" and, together with the Issuer, the "Co-Issuers"), and STATE STREET BANK AND TRUST COMPANY, a trust company formed under the laws of The Commonwealth of Massachusetts, as trustee (herein, together with its permitted successors in the trusts hereunder, called the "Trustee"). Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Indenture.

R E C I T A L S

WHEREAS, the above-named parties have entered into the Indenture and, pursuant to and in accordance with Section 8.1 thereof, desire to amend the Indenture in certain respects as provided herein;

NOW, THEREFORE, based upon the above Recitals, the mutual premises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, intending to be legally bound, hereby agree as follows:

SECTION 1. AMENDMENT.

(a) In Section 1.1 of the Indenture, the definition of "***Deep Discount Obligation***" is hereby amended by deleting the word "or" in the fourth line and replacing it with the words "except for".

SECTION 2. AGREEMENT IN FULL FORCE AND EFFECT AS AMENDED.

Except as specifically amended hereby, all provisions of the Indenture shall remain in full force and effect. This Supplemental Indenture shall not be deemed to expressly or impliedly waive, amend or supplement any provision of the Indenture other than as expressly set forth herein and shall not constitute a novation of the Indenture.

SECTION 3. REPRESENTATIONS.

Each of the Co-Issuers represents and warrants as of the date of this Supplemental Indenture as follows:

(i) it is duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization;

(ii) the execution, delivery and performance by it of this Supplemental Indenture are within its powers, have been duly authorized, and do not contravene its charter, by-laws or other organizational documents, or any applicable law;

(iii) no consent, license, permit, approval or authorization of, or registration, filing or declaration with any governmental authority, is required in connection with the execution, delivery, performance, validity or enforceability of this Supplemental Indenture by or against it;

(iv) this Supplemental Indenture has been duly executed and delivered by it;

(v) this Supplemental Indenture constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity; and

(vi) it is not in default under the Indenture.

SECTION 4. <u>CONDITIONS TO EFFECTIVENESS</u>.

Pursuant to Section 8.1 of the Indenture, as of the date hereof, the Co-Issuers, the Servicer (on behalf of the Co-Issuers) and/or the Trustee, as required, have received confirmation in writing that the Rating Condition with respect to each Rating Agency is satisfied with respect to the Supplemental Indenture. Accordingly, this Supplemental Indenture shall become effective as of the date hereof.

SECTION 5. <u>MISCELLANEOUS</u>.

(a) This Supplemental Indenture may be executed in any number of counterparts (including by facsimile or other electronic means), and by the different parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument but all of which together shall constitute one and the same agreement.

(b) The descriptive headings of the various sections of this Supplemental Indenture are inserted for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

(c) This Supplemental Indenture may not be amended or otherwise modified except as provided in the Indenture.

(d) The failure or unenforceability of any provision hereof shall not affect the other provisions of this Supplemental Indenture.

(e) Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

(f) This Supplemental Indenture represents the final agreement between the parties only with respect to the subject matter expressly covered hereby and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the parties. There are no unwritten oral agreements between the parties.

(g) **THIS SUPPLEMENTAL INDENTURE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.**

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have caused this Supplemental Indenture to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ABERDEEN LOAN FUNDING, LTD., as the Issuer

By: _____
Name:
Title:

Witnessed by: _____

ABERDEEN LOAN FUNDING CORP., as the Co-Issuer

By: _____
Name:
Title:

STATE STREET BANK AND TRUST COMPANY, as Trustee

By: _____
Name:
Title:

EXECUTION COPY

BRENTWOOD CLO, LTD.

Issuer,

BRENTWOOD CLO, CORP.

Co-Issuer,

and

INVESTORS BANK & TRUST COMPANY

Trustee

INDENTURE

Dated as of December 21, 2006

COLLATERALIZED DEBT OBLIGATIONS

U.S.$388,700,000 Class A-1A Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$75,000,000 Class A-1B Delayed Draw Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$51,500,000 Class A-2 Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$68,600,000 Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022
U.S.$23,800,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022
U.S$21,000,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022

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INDENTURE, dated as of December 21, 2006, among BRENTWOOD CLO, LTD. (the "***Issuer***"), BRENTWOOD CLO, CORP. (the "***Co-Issuer***") and INVESTORS BANK & TRUST COMPANY, as trustee (in such capacity, together with its permitted successors in such capacity, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1A Notes, the Class A-1B Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Class A-1B Funding Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and, together with the Issuer Accounts, the Synthetic Security Collateral Account and the Hedge Counterparty Collateral Account, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the "***Collateral***").

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE I.

DEFINITIONS

Section 1.1. Definitions

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to the A

Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (a) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (b) interest accrued on a Warehoused Loan as part of the price paid by the Issuer to repurchase and terminate the related participation under the Warehouse Agreement.

"***Act***": The meaning specified in Section 14.2.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.055% of the Maximum Amount on the related Determination Date plus U.S.$200,000 *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(a) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers or Investors Corp. (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(b) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Delayed Drawdown Note Agent, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent and the Collateral Administrator;

(c) fees, indemnities and expenses of the Co-Issuers and Investors Corp. and of accountants, agents, and counsel for each of the Co-Issuers and Investors Corp.;

(d) fees and expenses of the Rating Agencies in connection with any rating of the Notes owed by either Co-Issuer (including fees and expenses for on-going surveillance, credit estimates, and other fees owing to the Rating Agencies);

(e) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(f) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(g) amounts due (other than indemnities) to any other person (except the Servicer) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Maples Finance Limited.

"***Affected Class***": Any Class of Notes that, as a result of the occurrence of a Tax Event, has received or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Distribution Date related to the Due Period with respect to which such Tax Event occurs.

"***Affiliate***" or "***Affiliated***": With respect to a person,

(a) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(b) any other person who is a director, officer, or employee (i) of the person, (ii) of any subsidiary or parent company of the person or (iii) of any person described in clause (a) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(i) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(ii) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to (i) any of the Notes (other than the Class A-1B Notes) as of any date, the aggregate principal amount of such Notes on that date; (ii) the Class A-1B Notes as of any date, (a) prior to the first Payment Date, the Fully Drawn Amount and (b) from and after the first Payment Date, the aggregate principal amount of the Class A-1B Notes on that date; and (iii) the Preference Shares as of any date, the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of all of the Class A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class B Notes at any time shall include all Class B Deferred Interest attributed thereto;

(c) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto; and

(d) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Aggregate Undrawn Amount***": At any time, with respect to the Class A-1B Notes, the aggregate Undrawn Amounts of all Class A-1B Notes.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amended and Restated Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated from time to time.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Transaction Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (a) in the case of (i) the Notes (other than the Class A-1B Notes), the Aggregate Outstanding Amount thereof and (ii) the Class A-1B Notes, the aggregate principal amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, plus in the case of the Class A-1B Notes, any accrued and unpaid Delayed Drawdown Fee, plus in the case of any Notes held or, with respect to any Notes representing Global Notes, beneficially owned, by a CDS/TRS Purchaser, the applicable CDS/TRS Termination Payment Amount, if any, and (b) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as applicable, since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder or the Non-Consenting Holding Preference Share Holder, as

applicable, on the next succeeding Payment Date) would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders or the Non-Consenting Holding Preference Share Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12%, the Amendment Buy-Out Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Amendment Buy-Out Purchaser***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Transaction Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Discount Rate***": For purposes of determining the CDS/TRS Termination Payment Amount with respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, USD-LIBOR-BBA, as defined in the Annex to the 2000 ISDA Definitions as determined by the applicable CDS/TRS Purchaser on the Business Day preceding the date of purchase of the applicable Notes from such CDS/TRS Purchaser in connection with such Amendment Buy-Out, as the case may be.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A-1A Notes, the Class A-1B Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes, each of the Co-Issuers. With respect to the Class D Notes and the Preference Shares, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified below.

If a Collateral Obligation has been specifically assigned a recovery rate by Moody's in connection with the assignment by Moody's of a credit estimate, the Moody's Priority Category Recovery Rate of such Collateral Obligation shall be such assigned recovery rate.

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities.....	In the case of: (a) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (b) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations.....	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation

Moody's Priority Category	Moody's Priority Category Recovery Rate
	Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below.....	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating based on the then current Moody's Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Senior Secured Loans other than Subordinated Lien Loans or DIP Loans.....	55.0%
Senior Unsecured Loans	37.5%
Second Lien Loans.....	37.5%
Subordinated Lien Loans other than a DIP Loan	21.5%
Senior Secured High-Yield Bonds	44.0%
Senior Unsecured High-Yield Bonds	30.0%
Subordinated High-Yield Bonds...	18.0%
Structured Finance Obligations.....	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in Schedule 6 by reference to the type of asset and its then S&P

S&P Priority Category	S&P Priority Category Recovery Rate
	Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the Grant of the relevant Collateral Obligation).
Synthetic Securities.....	As assigned by S&P on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above	As assigned by S&P on a case-by-case basis.

"***Applicable Procedures***": The meaning set forth in Section 2.6(f)(ii).

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by the Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Approved Replacement***": An individual who shall (x) be proposed by the Servicer to replace James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) within 30 days after James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) fails to be a partner, director, officer or management-level employee of Highland Capital or, following any objection pursuant to the following clause (y) to the first proposed replacement, within 30 days after such objection and (y) not have been objected to by either (A) a Super Majority of the Controlling Class of Notes or (B) a Majority of the Preference Shares (excluding any Preference Shares held by the Servicer or any of its Affiliates), within 30 days after written notice of such Approved Replacement has been given by the Servicer to the Controlling Class of Notes and the Holders of Preference Shares.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (a) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (b) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (c) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

"***Authorized Officer***": With respect to the Issuer, the Co-Issuer or Investors Corp., any Officer or agent who is authorized to act for the Issuer, the Co-Issuer or Investors Corp., as applicable, in matters relating to, and binding on, the Issuer, the Co-Issuer or Investors Corp. With respect to the Servicer, any

managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(a) the sum of the products of:

(i) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(ii) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(b) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": Investors Bank & Trust Company, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code, as amended.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": Any (a) "employee benefit plan" subject to Part 4 of Title I of ERISA, (b) any "plan" to which Section 4975 of the Code applies, or an entity whose underlying assets include the assets of any plan described in clauses (a) or (b) by reason of such plan's investment in such entity.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Calculation Agent***": The meaning specified in Section 7.16.

"***Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3".

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

"***CCC+/Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (a) a Moody's Rating below "B3" and/or (b) an S&P Rating below "B-".

"***CCC+/Caa1 Excess Market Value Percentage***": The percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

"***CDS/TRS Purchaser***": A Holder of the Notes or, in the case of Notes represented by Global Notes, any beneficial owner thereof that has entered into either a credit default swap or a total return swap with respect to such Notes.

"***CDS/TRS Termination Payment Amount***": With respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, as the case may be, (i) on any Payment Date prior to the Payment Date occurring in November, 2010, an amount equal to the present value of the Fixed Amounts with respect to such CDS/TRS Purchaser and each Fixed Rate Payor Calculation Period until the last Fixed Rate Calculation Period, discounting each Fixed Amount from the Payment Date following the end of each such Fixed Rate Payor Calculation Period to the date of purchase of the applicable Notes at the Applicable Discount Rate, and (ii) on any Payment Date on and after the Payment Date occurring in November, 2010, zero; provided that, in the case of clause (i), the CDS/TRS Termination Payment Amount shall be calculated by the Servicer and subject to the approval of such CDS/TRS Purchaser.

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Class A-1B Notes***": The meaning specified in Section 2.2(f).

"***Certificated Class D Note***": The meaning set forth in Section 2.2(e).

"***Certificated Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares; provided, however, unless otherwise expressly provided for herein, the Class A-1A Notes, the Class A-1B Notes and the Class A-2 Notes shall be considered the same Class.

"***Class A Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A Notes.

"***Class A Notes***": Collectively, the Class A-1A Notes, the Class A-1B Notes and the Class A-2 Notes.

"***Class A-1A Notes***": The Class A-1A Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-1B Funding Account***": The trust account established pursuant to Section 10.3(l).

"***Class A-1B Note Purchase Agreement***": The Note Purchase Agreement dated as of the Closing Date, entered into among the Issuer, the Co Issuer, the Delayed Drawdown Note Agent, the Trustee and the Holders of the Class A–1B Notes, as from time to time amended, modified or supplemented.

"***Class A-1B Notes***": The Class A-1B Delayed Draw Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-2 Notes***": The Class A-2 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class B Notes.

"***Class B Deferred Interest***": Deferred Interest with respect to the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class I Preference Shares"***: The Class I Preference Shares issued by the Issuer pursuant to the Issuer's Amended and Restated Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class II Preference Share Percentage***": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

"***Class II Preference Share Portion***": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"***Class II Preference Share Senior Special Payment***": For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Special Payment***": Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

"***Class II Preference Share Special Payment Account*"**: The segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement for the benefit of the Issuer.

"***Class II Preference Share Subordinated Special Payment***": For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Supplemental Special Payment***": For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Shares*":** The Class II Preference Shares issued by the Issuer pursuant to the Issuer's Amended and Restated Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (a) is a debt or equity security and (b) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": December 21, 2006.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Servicer, and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administrator***": Investors Bank & Trust Company, in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(a) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(b) an obligation of an obligor Domiciled in an Eligible Country;

(c) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(d) not an exchangeable or convertible security;

(e) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(f) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(g) an obligation that (i) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (ii) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript;

(h) an obligation that is a Finance Lease (if it is a lease) and is rated by Moody's and S&P;

(i) (i) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (ii) in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(j) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(k) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(l) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(m) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(n) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(o) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(p) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(i) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(ii) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(q) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(i) has been assigned a rating by both Moody's and S&P;

(ii) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(iii) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(r) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(s) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(t) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "Aa3" and, if rated "Aa3" by Moody's, such rating is not on watch for downgrade, and a short term debt rating by S&P of at least "A-1+" or, if such counterparty or issuer, as the case may be, does not have a short term debt rating by S&P, a long term debt rating by S&P of at least "AA-";

(u) not an obligation that constitutes Margin Stock;

(v) not a Zero-Coupon Security;

(w) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(x) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(y) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition); and

(z) an "eligible asset" as defined under Rule 3a-7 and not an obligation that will (A) cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act or (B) cause the Issuer to be engaged in a U.S. trade or business for U.S. federal income tax purposes.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans and Eligible Investments	≥ 87.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 12.5%
(4)	Middle Market Loans	≤ 50.0%
(5)	Revolving Loans and Delayed Drawdown Loans	≤ 12.0%
(6)	DIP Loans	≤ 7.5%
	(a) except that DIP Loans of any individual obligor may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.0%
(7)	S&P Unrated DIP Loans	≤ 2.5%
(8)	Servicer Originated Loans	≤ 25.0%
	(a) except that Servicer Originated Loans made to obligors Domiciled or having, in the commercially reasonable judgment of the Servicer, their principal place of business in the state of Texas may not exceed the percentage of the Maximum Amount specified in the right column	≤ 15.0%
(9)	PIK Securities	≤ 3.0%
(10)	High-Yield Bonds	≤ 5.0%
(11)	Structured Finance Obligations	≤ 10.0%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%

		Percentage of the Maximum Amount
(12)	Structured Finance Obligations that are collateralized loan obligations	≤ 7.5%
(13)	obligors Domiciled other than in the United States and Canada	≤ 15.0%
(14)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(15)	obligors Domiciled in Moody's Group II Countries	≤ 10.0%
	(a) except that obligors Domiciled in any single Moody's Group II Country may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(16)	obligors Domiciled in Moody's Group III Countries	≤ 7.5%
	(a) except that obligors Domiciled in any single Moody's Group III Country may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%
(17)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(18)	same S&P Industry Classification	≤ 8.0%
	(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%
(19)	single obligor and any of its Affiliates (excluding Secondary Risk Counterparties) of any Middle Market Loan	≤ 2.0%
	(a) except that up to each of five such obligors and any of their Affiliates (excluding Secondary Risk Counterparties) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 3.0%
(20)	single issuer and any of its Affiliates (excluding Secondary Risk Counterparties) of a Collateral Obligation other than a Middle Market Loan	≤ 1.5%
	(a) except that up to each of five individual obligor and any of their Affiliates (excluding Secondary Risk Counterparties) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 2.0%
(21)	Fixed Rate Obligations	≤ 5.0%
(22)	Pay interest less frequently than quarterly but no less frequently than semi-annually	≤ 7.5%
(23)	Pay interest less frequently than semi-annually but no less frequently than annually	≤ 3.0%
(24)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%

		Percentage of the Maximum Amount
(25)	Participations (provided that no Relevant Obligations may be a Participation in a Participation)	≤ 20.0%
(26)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤ 20.0%
(27)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(28)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(29)	Deep Discount Obligations	≤ 10.0%
(30)	CCC+/Caa1 and below Collateral Obligations	≤ 7.5%
(31)	Long-Dated Collateral Obligations	≤ 2.0%
(32)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(33)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan); provided that the Rating Condition is satisfied with respect to the use of the index for such non-London interbank offered rate	≤ 5.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Consenting Holder of the Preference Shares***": With respect to any Payment Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date.

"***Consenting Purchaser***": The meaning specified in Section 9.7.

"***Controlling Class***": The Class A Notes (voting together as a single Class or group), so long as any Class A Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; and then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding.

"***Controlling Person***": The meaning specified in Section 6.6.

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 200 Clarendon Street, Mail Code EUC 108, Boston, Massachusetts 02116, telecopy no. (617) 937-5585, Attention: CDO Services, Brentwood CLO Ltd. or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A Coverage Tests, the Class B Coverage Tests, the Class C Coverage Tests and the Class D Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; provided that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and provided, further, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (A) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (provided that this subclause (iii)(A) will be deemed satisfied if Market Value increases to 101%), or (B) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent

downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(a) of the Class A-1A Notes, the Class A-1B Notes or the Class A-2 Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(b) of the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes and the Class D Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; provided that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (b) or (c) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

(a) So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(b) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(c) such Collateral Obligation has experienced an increase in credit spread of (i) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (ii) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (iii) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(d) (i) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as

determined by the Servicer, and (ii) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period, or

(e) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (a), (b) and (c) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (e) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (e) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(i) the Synthetic Security itself is a Credit Risk Obligation, or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(a) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(b) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due,

(c) (i) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) and the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (ii) if the rating by Moody's of the Collateral Obligation is at least "Caa2" and not on credit watch with negative implications, and the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance,

(d) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(e) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(a) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (a) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(b) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(c) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (i) amounts to a diminished financial obligation or (ii) has the sole purpose of enabling the obligor to avoid a default;

(d) (i) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (ii) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the

default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (iii) the Servicer; provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(e) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(i) an Insolvency Event has occurred with respect to its obligor, or

(ii) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(f) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(g) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (a) through (e) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(h) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (a) through (f) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (i) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (ii) the "Defaulted Collateral Obligation" for purposes of this clause (h) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (a) through (f) above;

(i) that is a Written-Down Obligation;

(j) that is a DIP Loan as to which an order has been entered converting the debtor's Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code; or

(k) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(i) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(ii) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest (and in the case of the Class A-1B Notes, the Delayed Drawdown Fee, but excluding any Deferred Interest) payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class B Notes, the Class C Notes and the Class D Notes.

"***Deficiency Amount***": The meaning specified in Section 16.3(a).

"***Deficiency Notice Date***": The meaning specified in Section 16.3(a).

"***Definitive Notes***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Fee***": With respect to the Class A–1B Notes and (i) the first Payment Date, the Delayed Drawdown Fee Rate multiplied by the Aggregate Undrawn Amount of the Class A–1B Notes for each day during the Delayed Drawdown Period (except that no Delayed Drawdown Fee shall be paid with respect to the Aggregate Undrawn Amount attributable to a Holder that has breached its obligation to fund a request for a Drawdown from the date of such breach to and until the date such breach has been cured) and (ii) any Payment Date thereafter, any Delayed Drawdown Fee not paid in full on the first Payment Date plus interest accrued thereon for the Interest Period for such Payment Date at the Note Interest Rate of the Class A–1B Notes.

"***Delayed Drawdown Fee Rate***": A rate per annum equal to 0.17%.

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(a) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(b) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(c) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for the purposes of the Concentration Limits only, unfunded portions will count as Delayed Drawdown Loans.

"***Delayed Drawdown Note Agent***": The meaning specified in the Class A-1B Note Purchase Agreement.

"***Delayed Drawdown Note Agent Expenses***": Amounts due to the Delayed Drawdown Note Agent and payable in arrears to the Delayed Drawdown Note Agent pursuant to the Class A-1B Note Purchase Agreement (other than the Delayed Drawdown Note Agent Fee); provided that the Delayed Drawdown Note Agent Expenses will be payable on any Payment Date only to the extent that funds are available for such purpose in accordance with the Priority of Payments.

"***Delayed Drawdown Note Agent Fee***": Only during the Delayed Drawdown Period, the quarterly fee accrued and payable to the Delayed Drawdown Note Agent on each Payment Date pursuant to the Class A-1B Note Purchase Agreement; provided that the Delayed Drawdown Note Agent Fee will be payable on each Payment Date only to the extent that funds are available for such purpose in accordance with the Priority of Payments.

"***Delayed Drawdown Period***": The period commencing on and including the Closing Date and ending on the earlier to occur of (a) the date on which the Fully Drawn Amount of Class A-1B Notes is fully drawn and (b) March 21, 2007.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(a) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(i) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian or in blank,

(ii) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(iii) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(b) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(i) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(ii) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(c) in the case of each Clearing Corporation Security,

(i) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(ii) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(d) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(i) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(ii) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(e) in the case of each Security Entitlement not governed by clauses (a) through (d) above,

(i) causing a Securities Intermediary (A) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's securities account, (B) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (C) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(ii) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(iii) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(f) in the case of cash or money,

(i) causing the delivery of such cash or money to the Custodian,

(ii) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(iii) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(g) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(i) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(ii) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership and/or pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan

(a) that has a rating assigned by Moody's and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer);

(b) that is paying interest on a current basis;

(c) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States; and

(d) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that

(i) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code,

(ii) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code,

(iii) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets, or

(iv) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (iv), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Distribution Compliance Period***": The 40-day period prescribed by Regulation S commencing on the later of (a) the date upon which Notes are first offered to Persons other than the initial purchasers of such Notes and any other distributor (as such term is defined in Regulation S) of the Notes and (b) the Closing Date. The Trustee and Note Registrar shall be entitled to request and receive, and upon receipt to rely upon, a certificate from the Issuer as to occurrence of the date described in preceding clause (a).

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture. For the purposes of calculating the Diversity Score, any Structured Finance Obligation that is a collateralized loan obligation will be disregarded.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile"*** or ***"Domiciled"***: With respect to each Collateral Obligation, (a) the jurisdiction of incorporation, organization or creation of the related obligor or (b) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (a) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Drawdown***": The meaning specified in Section 2.14(a).

"***Drawdown Date***": The meaning specified in Section 2.14(a).

"***Drawn Amount***": At any time with respect to the Class A-1B Notes, the aggregate principal amount of the Class A-1B Notes funded on the Closing Date or by one or more Drawdowns after the Closing Date.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the

previous Payment Date (or in the case of the first Payment Date from the Closing Date through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": Means: (a) Cash, (b) U.S. Treasury obligations, (c) U.S. agency obligations or (d) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" by S&P and is rated at least "Aa2" by Moody's; provided that such country has not imposed currency exchange controls.

"***Eligible Equity Security***": An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (a) is publicly traded on an Established Securities Market or (b) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

"***Eligible Investments***": Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; provided that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's, and if so rated, such rating is not on watch for downgrade.

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; provided that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar vehicle having at the time of acquisition and throughout the term thereof a credit rating of "MR1+" by Moody's and "AAAm" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (i) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (ii) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes; provided, further, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(i) any interest-only security, any security purchased at a price in excess of 100% of its par value, or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(ii) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q";

(iii) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(iv) any security that is subject to an exchange or tender offer; or

(v) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer, obligor or applicable depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(a) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(b) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Established Securities Market***": Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excel Default Model Input File***": An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Priority Category, and

(k) such other information as the Trustee may determine to include in such file.

"***Excess CCC+/Caa1 Collateral Obligations***": The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": (a) U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts, (b) any amounts credited to the Class II Preference Share Special Payment Account from time to time (c) any amounts credited to the Preference Share Distribution Account from time to time, (d) the shares of the Co-Issuer owned by the Issuer and (e) any Margin Stock.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Replacement Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in February, 2018); provided that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in February, 2030.

"***Extended Scheduled Holding Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Holding Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Holding Preference Shares Redemption Date, the Payment Date in February, 2026); provided that the "Extended Stated Holding Preference Shares Redemption Date" will in no event be a date later than the Payment Date in February, 2038.

"***Extended Scheduled Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Preference Shares Redemption Date, the Payment Date in February, 2026); provided that the "Extended Stated Preference Shares Redemption Date" will in no event be a date later than the Payment Date in February, 2038.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in February, 2026); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in February, 2038.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, the Payment Date in February, 2020); provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in May, 2032.

"***Extension***": An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (a) in the case of the Class A-1A Notes, the Class A-1B Notes and the Class A-2 Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (b) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (c) in the case of the Class C Notes, 0.50% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (d) in the case of the Class D Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The eighth Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in November, 2011).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (a) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date) and (b) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as the case may be, since the Closing Date would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment

Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Extension Qualifying Purchasers***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share or Holding Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be U.S.$1,000 per Preference Share or Holding Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***First Trigger Collateral Amount***": The collateral to be posted by a downgraded Hedge Counterparty as required by Section 15.2(c) and determined by the following table:

First Trigger Collateral Amounts[1]	
Single currency swaps, transaction-specific hedges, caps, floors & swaptions	
Daily Posting:	Max[0, MtM[2] + Min[**15** * DV01, **2%** * hedge notional]]
Weekly Posting:	Max[0, MtM[2] + Min[**25** * DV01, **4%** * hedge notional]]
Cross-currency swaps, transaction-specific hedges, caps, floors & swaptions	
Daily Posting:	Max[0, MtM[2] + Min[**1.00%** * hedge notional[3] + 10 * DV01[4], **2.5%** * hedge notional[3]]]
Weekly Posting:	Max[0, MtM[2] + Min[**2.00%** * hedge notional[3] + 20' DV01[4], **5%** * hedge notional[3]]]

1. Calculation should be in same currency as that of rated liabilities. However, for certain single-currency hedges addressing asset mismatches only, calculation may be made in the currency of the hedge itself, even where different from that of the rated liabilities.
2. MtM = Mid-market value.
3. "Hedge Notional" for cross-currency hedge = notional of that leg denominated in same currency as rated liabilities of cashflow transaction.
4. Larger of two DV01's corresponding to each leg of a cross-currency hedge.

"***Fixed Amount***": With respect to CDS/TRS Purchaser and each applicable Fixed Rate Payor Calculation Period, the product of (i) the applicable Fixed Rate Payor Calculation Amount with respect to such CDS/TRS Purchaser, (ii) the applicable Fixed Rate with respect to such CDS/TRS Purchaser and (iii) a fraction the numerator of which is the actual number of days in such Fixed Rate Payor Calculation Period and the denominator of which is 360.

"***Fixed Rate***": With respect to any CDS/TRS Purchaser, the spread over LIBOR of the Class of Notes held by such CDS/TRS Purchaser with respect to which such CDS/TRS Purchaser has entered into a credit default swap or a total return swap, as the case may be.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(a) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(b) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Obligations***": Any Collateral Obligation that bears interest at a fixed rate.

"***Fixed Rate Payer Calculation Amount***": With respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, the Aggregate Outstanding Amount of the Notes held by such CDS/TRS Purchaser as of the date of purchase of such Notes in an Amendment Buy-Out (in each case, after giving effect to any principal amounts paid to such CDS/TRS Purchaser on such date).

"***Fixed Rate Payer Calculation Period***": With respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, initially, the period from and including the date of purchase of such Notes in an Amendment Buy-Out to but excluding the immediately succeeding Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided that the last Fixed Rate Payer Calculation Period shall end on the Payment Date occurring in August 2010.

"***Floating Rate Notes***": The Class A-1A Notes, the Class A-1B Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security

(a) (i) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(ii) each of the Reference Obligations of which would satisfy sublause (a)(i) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(b) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(c) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(d) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

"***Fully Drawn Amount***": The maximum aggregate principal amount that can be drawn under the Class A-1B Notes, in an amount equal to $75,000,000.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": Any counterparty, to the extent that when the Issuer enters into any Hedge Agreement with such counterparty, such counterparty satisfies the requirements of Section 15.2(b) (subject, in the case of any other counterparty, to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***HFP***": Highland Financial Partners, L.P., an Affiliate of the Servicer.

"***High-Yield Bond***": Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (a) it is issued by an obligor that is not resident in the United States, (b) the payments on it are not subject to United States withholding tax and (c) it is held through a financial institution pursuant to the procedures described in Treasury Regulation Section 1.165-12(c)(3).

"***Holder***": Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; of any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share; and of any Holding Preference Share, the person whose name appears in the Holding Preference Share register related thereto as the registered holder of such Holding Preference Share.

"***Holding Preference Share Documents***": Investors Corp.'s memorandum and articles of association, the Holding Preference Shares Paying Agency Agreement and the resolutions of Investors Corp.'s board of directors authorizing the issuance of the Holding Preference Shares passed on or before the Closing Date.

"***Holding Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for each distribution made to the Holders of the Holding Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Holding Preference Share Internal Rate of Return, the current Payment Date, assuming all Holding Preference Shares are purchased on the Closing Date at their Face Amount.

"***Holding Preference Shares***": Preference shares issued by Investors Corp. pursuant to the Holding Preference Share Documents.

"***Holding Preference Shares Paying Agency Agreement***": The Holding Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between Investors Corp. and the Holding Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Holding Preference Shares Paying Agent***": Investors Bank & Trust Company, in its capacity as holding preference shares paying agent under the Holding Preference Shares Paying Agency Agreement, unless a successor Person shall have become the holding preference shares paying agent pursuant to the applicable provisions of the Holding Preference Shares Paying Agency Agreement, and thereafter "Holding Preference Shares Paying Agent" shall mean such successor Person.

"***Holding Share Registrar***": Maples Finance Limited or any successor thereto.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit C-2.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(a) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(b) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(b) to the Holders of Securities.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(i) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(b) the person shall:

(c) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(d) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (a) above,

(e) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(f) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(g) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Institutional Accredited Investor***": An Accredited Investor as defined by Rule 501(a)(1), (2), (3) and (7) of the Securities Act.

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Insurer***": The meaning specified in Section 14.3(c).

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(a) the sum of:

(i) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, minus

(ii) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(b) all accrued and unpaid interest on the specified Class of Notes (and the Delayed Drawdown Fee with respect to the Class A-1B Notes) and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A Interest Coverage Test	130.0%

Class B Interest Coverage Test	120.0%
Class C Interest Coverage Test	115.0%
Class D Interest Coverage Test	110.0%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided that with respect to any Drawdown made under the Class A-1B Notes, the first Interest Period shall be the period from and including the date of such Drawdown to but excluding the Payment Date following such date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(a) payments of interest, fees, and commissions (excluding (i) Accrued Interest Purchased With Principal, (ii) interest and dividends on Workout Assets, (iii) fees and commissions from Defaulted Collateral Obligations, and (iv) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(b) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(c) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(d) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(e) all fees received pursuant to any Securities Lending Agreements;

(f) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(g) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(h) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(i) any recoveries (including interest) received on a Defaulted Collateral Obligation or a deferred interest PIK Security in excess of the principal balance of such Defaulted Collateral Obligation or deferred interest PIK Security (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation or a deferred interest PIK Security).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (a) through (c) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Section 11.1(a)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(j).

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Investors Corp.***": Brentwood Investors Corp., an exempted limited liability company incorporated under the laws of the Cayman Islands.

"***Investors Corp. Placement Agency Agreement***": A placement agency agreement dated December 21, 2006 among Investors Corp. and Banc of America Securities LLC relating to the placement of the Placed Shares, as modified, amended and supplemented and in effect from time to time.

"***Investors Corp. Placement Agent***": Banc of America Securities LLC.

"Investors Corp. Subscription Agreement": A subscription agreement dated December 21, 2006 among Investors Corp. and the Issuer relating to the purchase of the Class I Preference Shares by Investors Corp.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The Person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer, the Co-Issuer or Investors Corp. by an Authorized Officer of the Issuer, the Co-Issuer or Investors Corp., as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The 250 ordinary shares, par value U.S.$1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the

unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": The offered rate, as determined by the Calculation Agent for any Interest Period, for three-month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "***Reference Banks***") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(a) Registered, or

(b) issued by an obligor that is not resident in the United States:

(i) whose payments are not subject to United States withholding tax; and

(ii) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or the Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (a) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (b) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (c) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the preceding paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided that, during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) the product of (A) the Principal Balance of such Collateral Obligation multiplied by (B) 1.25 multiplied by (C) the applicable S&P Priority Category Recovery Rate and (ii) the current market value of such Collateral Obligation as determined by the Servicer in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

"***Market Value Determination Date***": With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(a) the Market Value of the Collateral Obligation, *by*

(b) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Amount***": An amount equal to:

(a) on any Measurement Date during the Ramp-Up Period, U.S.$677,332,536; and

(b) on any Measurement Date after the Ramp-Up Completion Date:

(i) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations, *plus*

(ii) Cash representing Principal Proceeds on deposit in the Collection Account, *plus*

(iii) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account, *plus*

(iv) without duplication, an amount equal to the Aggregate Undrawn Amount of the Class A-1B Notes.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (a) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable) plus (b) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(a) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(b) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(c) that is a Determination Date;

(d) that is the Ramp-Up Completion Date;

(e) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6; and,

(f) with respect to any distribution of Eligible Equity Securities only, that is a Market Value Determination Date.

"***Merging Entity***": The meaning specified in Section 7.10.

"***Middle Market Loan***": Any Loan issued as part of a loan facility with an original loan size (including any First Lien Loan and Second Lien Loans included in the facility) of less than U.S.$200,000,000 but greater than U.S.$10,000,000, including for purposes of this definition the maximum available amount of commitments under any Revolving Loan or Delayed Drawdown Loan.

"***Minimum Diversity Score***": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Minimum Weighted Average Spread***": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(a) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate,

(b) dividing the sum determined pursuant to clause (a) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(c) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Security shall be equal to: $\frac{A \times 55\%}{1-B}$,

where: "*A*" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"*B*" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"***Moody's Senior Secured Loan***":

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan,

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral, or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan,

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan,

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral, and

(iv) has a Moody's rating equal to or higher than the applicable Moody's corporate family rating, and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in November, 2010.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (a) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (b) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Consenting Holding Preference Share Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder of Holding Preference Shares that either (a) has directed Investors Corp. not to consent to such

supplemental indenture or (b) has not provided Investors Corp. with any direction with respect to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Consenting Note Refinancing***": The meaning specified in Section 9.7.

"***Non-Consenting Notes***": The meaning specified in Section 9.7.

"***Non-Consenting Notes Payment Amount***": The meaning specified in Section 9.7.

"***Non-Performing Collateral Obligation***": Any (a) Defaulted Collateral Obligation and (b) PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class D Notes, a Holder or beneficial owner of an interest in a Class D Note that is not (i) an Institutional Accredited Investor or (ii) a Qualified Institutional Buyer and both a Qualified Purchaser.

"***Non-Permitted Benefit Plan Investor***": The meaning specified in the second paragraph of Section 6.6.

"***Non-qualifying Collateral Obligation***": The meaning specified in Section 12.1(d).

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.05%
2	Greater than or equal to 2.95% but less than 3.05%
3	Greater than or equal to 2.85% but less than 2.95%
4	Greater than or equal to 2.75% but less than 2.85%

5	Greater than or equal to 2.65% but less than 2.75%
6	Greater than or equal to 2.55% but less than 2.65%
7	Greater than or equal to 2.45% but less than 2.55%
8	Greater than or equal to 2.35% but less than 2.45%
9	Greater than or equal to 2.25% but less than 2.35%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Noteholder***": A Holder of the Class A-1A Notes, the Class A-1B Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(a) to the Class A-1A Notes and the Class A-1B Notes, *pro rata* based on the Aggregate Outstanding Amount of each of the Class A-1A Notes and the Class A-1B Notes, until the Class A-1 Notes have been fully redeemed;

(b) to the Class A-2 Notes until the Class A-2 Notes have been fully redeemed;

(c) to the Class B Notes until the Class B Notes have been fully redeemed;

(d) to the Class C Notes until the Class C Notes have been fully redeemed; and

(e) to the Class D Notes until the Class D Notes have been fully redeemed.

"***Notes***": The Senior Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Notice of Refinancing***": The meaning specified in Section 9.8(a).

"***Objection Cut-Off Date***": The meaning specified in Section 15.1(h)(ii).

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes.

"***Offering Memorandum***": The final offering memorandum, dated December 18, 2006, prepared and delivered in connection with the offer and sale of the Securities.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant

Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and, when required hereunder, each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, as applicable, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; and

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser;

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

(c) the Holding Preference Shares, as of any date of determination, all of the Holding Preference Shares theretofore issued under the Holding Preference Share Documents and listed in the Holding Preference Share register of Investors Corp. as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Transaction Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Transaction Documents, Transaction Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Transaction Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account for which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; provided that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares and Holding Preference Shares, only Preference Shares and Holding Preference Shares that an authorized officer of the Preference Shares Paying Agent or Holding Preference Shares Paying Agent, as applicable) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Transaction Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Transaction Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee, the Preference Shares Paying Agent and the Holding Preference Shares Paying Agent.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(a) the Overcollateralization Ratio Numerator; by

(b) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(a) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, any Current Pay Obligation and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(b) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(c) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(d) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(e) with respect to Collateral Obligations that are Non-Performing Collateral Obligations, Deep Discount Obligations, Current Pay Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(i) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (A) the lower of (1) 70% and (2) the CCC+/Caa1 Excess Market Value Percentage, multiplied by (B) the Excess CCC+/Caa1 Collateral Obligations**;**

(ii) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (ii));

(iii) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations; and

(iv) with respect to any Current Pay Obligation that becomes a Current Pay Obligation after failing to pay interest when due for a period of six months or more then (A) if the Market Value of such Current Pay Obligation is greater than or equal to 80%, the par amount thereof or (B) if the Market Value of such Current Pay Obligation is less than 80%, the Market Value thereof; and, with respect to any other Current Pay Obligation, the Principal Balance thereof.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A Overcollateralization Test	121.0%
Class B Overcollateralization Test	109.4%
Class C Overcollateralization Test	106.8%
Class D Overcollateralization Test	104.3%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in May 2007 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***Person***": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (a) if such loan or debt obligation is a fixed rate loan or debt obligation, 4.0% per annum, or (b) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Placed Notes***": The Notes placed by the Placement Agent pursuant to the Placement Agency Agreement.

"***Placed Shares***": The Holding Preference Shares placed by the Investors Corp. Placement Agent pursuant to the Investors Corp. Placement Agency Agreement.

"***Placement Agency Agreement***": A placement agency agreement dated December 21, 2006 among the Co-Issuers and the Placement Agent, relating to the placement of the Placed Notes, as modified, amended and supplemented and in effect from time to time.

"***Placement Agent***": Banc of America Securities LLC.

"***Plan Asset Regulation***": Section 3(42) of ERISA, the regulation issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101, and any other or successor provisions relating to the definition of plan assets for the purposes of ERISA.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Improvement Exchange***": The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (a) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (b) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (c) in the case of each of clauses (a) and (b), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"***Preference Share Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent for the benefit of the Issuer pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Amended and Restated Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(a) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(b) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Class I Preference Shares and the Class II Preference Shares.

"***Preference Shares Notional Amount***": As of the Closing Date, U.S.$71,400,000 and thereafter as increased each time additional Preference Shares are issued in accordance with the Preference Share Documents.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": Investors Bank & Trust Company, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

"Pricing Amendment": The meaning specified in Section 9.7.

"***Principal Balance***": With respect to:

(a) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(b) a Synthetic Security, the notional amount specified in the Synthetic Security;

(c) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(d) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(e) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(f) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(g) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(h) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds or Refinancing Proceeds; provided that Principal Proceeds shall include any Refinancing Proceeds to the extent such Refinancing Proceeds are not applied to redeem Notes or pay Administrative Expenses of the Co-Issuers related to a Refinancing.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2 and may also include other amounts as expressly provided in Section 10.2(a).

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"***Purchase Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (a) the weighted average

Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances and (b) the product of (i) 70% and (ii) their respective Principal Balance.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (a) the Purchase Price (stated as a percentage) thereof and (b) the Principal Balance thereof on such date.

"***QIB/QP***": Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(a) the Business Day after the 90th day after the Closing Date, and

(b) the first date on which the following conditions are satisfied:

(i) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least U.S.$677,332,536 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least U.S.$677,332,536 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(ii) the Overcollateralization Ratio Numerator is at least U.S.$677,332,536.

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***Rating Confirmation Failure***": A failure by the Issuer or the Servicer (on behalf of the Issuer) to obtain confirmation in writing from S&P and written confirmation from Moody's that it has not reduced, suspended, or withdrawn its Initial Rating of each Class of Notes and that it has not placed any Class of Notes on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date.

"***Rating Criteria***": The criteria that will be satisfied on any date with respect to any Holder of Class A-1B Notes during the Delayed Drawdown Period only, if the short-term debt, deposit or similar obligations of such Holder (or its guarantor) are on such date rated at least "P-1" (but not "P-1" on credit watch for downgrade) by Moody's and "A-1" by S&P (but not "A-1" on credit watch for downgrade).

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score					
Minimum Weighted Average Spread	**60**	**65**	**70**	**75**	**80**	**85**
2.65%	2610	2640	2670	2700	2730	2760
2.75%	2640	2670	2710	2740	2770	2800
2.85%	2670	2710	2740	2770	2810	2850
2.90%	2690	2730	2760	2790	2830	2870
2.95%	2710	2750	2780	2810	2850	2890

3.05%	2740	2780	2820	2860	2900	2930
	Maximum Weighted Average Moody's Rating Factor					

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(a) (i) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (ii) 100; and

(b) 40.

"***Record Date***": As to any Payment Date or Refinancing Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a), an amount equal to:

(a) the outstanding principal amount of the portion of the Note being redeemed, plus

(b) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest), plus

(c) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note, plus

(d) in the case of the Class A-1B Notes, any accrued and unpaid Delayed Drawdown Fee, plus

(e) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; provided that no Reference Obligation shall be a Synthetic Security.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Refinancing***": The meaning specified in Section 9.8.

"***Refinancing Date***": The meaning specified in Section 9.8.

"***Refinancing Notes***": The meaning specified in Section 9.8.

"***Refinancing Price***": means, with respect to any Class of Notes that is subject to a Refinancing, an amount equal to the Redemption Price therefor.

"***Refinancing Proceeds***": The proceeds from any Refinancing permitted under Section 9.8.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("***Treasury***") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Note***": The meaning specified in Section 2.2(b).

"***Regulation S Investor***": A transferee of a Regulation S Global Note pursuant to Regulation S.

"***Relevant Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"Replacement Notes": The meaning specified in Section 9.7.

"***Replacement Period***": The period from the Closing Date through and including the first to occur of:

(a) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(b) the Payment Date in February, 2014 or, in the case of an Extension, the Extended Replacement Period End Date,

(c) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(d) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Required Redemption Percentage***": With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of any Affected Class or the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

"***Retention Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(a) the Overcollateralization Ratio Numerator *by*

(b) the Aggregate Outstanding Amount of the Class A Notes, the Class B Notes and the Class C Notes, excluding any Deferred Interest on any Class of Notes.

"***Retention Overcollateralization Test***": A test that is satisfied as of any Measurement Date on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 105.2%.

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 3a-7***": Rule 3a-7 under the Investment Company Act.

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(a) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(b) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P Excel Default Model Input File***": An electronic spreadsheet file in Microsoft Excel format to be provided to S&P, which file shall include the following information (to the extent such information is not confidential) with respect to each Collateral Obligation:

(a) the name and country of domicile of the issuer thereof and the particular issue held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of issue (including, by way of example, whether such Collateral Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation that bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation that bears interest at a floating rate),

(g) the S&P Industry Classification Group for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the priority category assigned by S&P to such Collateral Obligation, if available,

(k) such other information as the Trustee may determine to include in such file, and

(l) the principal balance in cash and Eligible Investments.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(a) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate,

(b) dividing the sum determined pursuant to clause (a) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(c) rounding up to the first decimal place.

"***S&P Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"***S&P Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(a) the name of the obligor and a unique Loan or other instrument identifier;

(b) the Purchase Price;

(c) the Principal Balance;

(d) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(e) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(f) the coupon or spread (as applicable);

(g) the Stated Maturity;

(h) the Moody's Rating;

(i) the S&P Rating; and

(j) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Scheduled Holding Preference Shares Redemption Date***": February 1, 2022.

"***Scheduled Preference Shares Redemption Date***": February 1, 2022.

"***Second Lien Loan***": A Loan that (a) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan and (b) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan which security interest or lien is not subordinate to the security interest or lien securing any other debt for borrowed money and, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets.

"***Second Trigger Collateral Amount***": The collateral to be posted by a downgraded Hedge Counterparty as required by Section 15.2(d) and determined by the following table:

Second Trigger Collateral Amounts[1]	
Single currency swap, no optionality (excludes transaction-specific hedges, caps, floors & swaptions)	
Daily Posting:	Max[0, next payment, MtM[2] + Min[**50** * DV01, **8%** * hedge notional]]
Weekly Posting:	Max[0, next payment, MtM[2] + Min[**60** * DV01, **9%** * hedge notional]]
Single currency transaction-specific hedges, caps, floors & swaptions	
Daily Posting:	Max[0, next payment, MtM[2] + Min[**65** * DV01[3], **10%** * hedge notional]]
Weekly Posting:	Max[0, next payment, MtM[2] + Min[**75** * DV01[3], **11%** * hedge notional]]
Cross-currency swap, no optionality (excludes transaction-specific hedges, caps, floors & swaptions)	
Daily Posting:	Max[0, next payment[4], MtM[2] + Min[**6.00%** of hedge notional[6] + **15** * DV016, **9% *** hedge notional[5]]]
Weekly Posting:	Max[0, next payment[4], MtM[2] + Min[**7.00%** of hedge notional[6] + **25** * DV016, **10% *** hedge notional[5]]]
Cross-currency transaction-specific hedges, caps, floors & swaptions	
Daily Posting:	Max[0, next payment[4], MtM[2] + Min[**6.00%** of hedge notional[6] + **30** * DV01[3,6], **11%** hedge notional[5]]]
Weekly Posting:	Max[0, next payment[4], MtM[2] + Min[**7.00%** of hedge notional[6] + **40** * DV01[3,6], **12% *** hedge notional[5]]]

1. Calculation should be in same currency as that of rated liabilities. However, for certain single-currency hedges addressing asset mismatches only, calculation may be made in the currency of the hedge itself, even where different from that of the rated liabilities.
2. MtM = Mid-market value.
3. "DV01" for transaction-specific hedge uses same assumptions as mid-market value.
4. Excludes exchange of principal.
5. "Hedge Notional" for cross-currency hedge = notional of that leg denominated in same currency as rated liabilities of cashflow transaction.
6. Larger of two DV01's corresponding to each leg of a cross-currency hedge.

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the Investment Company Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and 10.6(b)) substantially in the form of Exhibit C-1.

"***Secured High-Yield Bond***": A High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

"***Secured Loan***": A Loan that is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Preference Shares.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any Person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Notes*"**: The Class A-1A Notes, the Class A-1B Notes the Class A-2 Notes, the Class B Notes and the Class C Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Senior Secured High-Yield Bond***": A Secured High-Yield Bond that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority perfected security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the High-Yield Bond.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a valid first priority perfected security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan.

"***Senior Servicing Fee***": A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Unsecured High-Yield Bond***": A High-Yield Bond that is not (a) subordinated by its terms to indebtedness of the borrower for borrowed money and (b) secured by a valid and perfected security interest in collateral.

"***Senior Unsecured Loan***": A Loan that is not (a) subordinated by its terms to indebtedness of the borrower for borrowed money and (b) secured by a valid and perfected security interest in collateral.

"***Servicer***": Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

"***Servicer Originated Loans***": Any Collateral Obligation that is a Loan originated by the Servicer or an Affiliate of the Servicer; provided that for any Servicer Originated Loan that is a Middle Market Loan and is included in the Collateral, the Servicer will not grant any forbearance to the related obligor.

"***Servicing Agreement***": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended, and supplemented and in effect from time to time.

"***Servicing Fee Portion***": 100% minus (a) for any Payment Date from the Closing Date until (and including) the Payment Date occurring in February, 2008, the Class II Preference Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date.

"***Servicing Fees***": Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"***Share Trustee***": Maples Finance Limited.

"***Share Registrar***": Maples Finance Limited or any successor thereto.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(a) numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(ii) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(b) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Standby Investment***": The meaning specified in Section 10.3(l).

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, February 1, 2022 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

"***Structured Finance Obligation***": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(a) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(i) residential mortgage-backed securities;

(ii) collateralized debt obligations backed by Emerging Market Securities;

(iii) collateralized debt obligations primarily backed by asset-backed securities;

(iv) market value collateralized debt obligations;

(v) securities backed by "future flow" receivables;

(vi) securities backed by "trust preferred securities";

(vii) net interest margin securitizations;

(viii) collateralized debt obligations backed primarily by other collateralized debt obligations;

(ix) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "synthetic CDOs"); and

(x) collateralized debt obligations a significant portion of which are backed by bonds;

(b) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(c) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's;

(d) that is Registered; and

(e) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated High-Yield Bond***": A Secured High-Yield Bond secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Servicing Fee***": An amount equal to the sum of (a) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments, (b) on any Payment Date that any part of the Senior Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum and (c) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Servicing Fee or Senior Servicing Fee, as applicable, in clauses (a) through (c) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Supplemental Servicing Fee***": On each Payment Date, the fee payable to the Servicer in an amount equal to: (a) 20.0% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment Date pursuant to Section 11.1(a)(i)(21) and (b) 20.0% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(a)(ii)(14)(A) and, if applicable, Section 11.1(a)(ii)(15).

"***Synthetic Security***": Any swap transaction, structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse First Boston) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (a) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (b) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may

constitute a Defaulted Collateral Obligation when delivered upon a "credit event and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event" thereunder.

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (a) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (b) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than 10 days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (a) all Eligible Investments or (b) Collateral Obligations that satisfy the Rating Condition, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto; *provided* that any Tax Advantaged Jurisdiction (with the exception of the Cayman Islands) must be rated at least "Aa2" by Moody's.

"***Tax Event***": An event that occurs if either:

(a) (i) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (ii) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period;

(b) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation; or

(c) if the Issuer is at the time treated as a pass-through entity for U.S. federal income tax purposes, that investors in the Preference Shares who are non-U.S. persons not otherwise subject to U.S. net income tax are or have become subject to U.S. net income taxation in respect of income of the Issuer in an amount in excess of 10.0% of the net income of the Issuer in any twelve-month period.

"***Transaction Documents***": Collectively, this Indenture, the Class A-1B Note Purchase Agreement, the Collateral Administration Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the Holding Preference Shares Paying Agency Agreement.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transaction Securities***": Collectively, the Securities and the Holding Preference Shares.

"***Transfer Agent***": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"***Transferee Certificate***": A certificate substantially in the form of Exhibit B-1, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Undrawn Amount***": At any time with respect to any Class A-1B Note, the excess, if any, of (x) the applicable portion of the Fully Drawn Amount relating to such Class A-1B Note over (y) the Drawn Amount under such Class A-1B Note; provided that any funds deposited with the Trustee in the Class A-1B Funding Account as a result of the failure of a Holder of a Class A-1B Note to satisfy the Rating Criteria during the Delayed Drawdown Period pursuant to Section 2.14(c) will for all purposes be part of the Undrawn Amount of such Class A-1B Note and such Holder will be entitled to receive the applicable Delayed Drawdown Fee thereon.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its

administration and one or more U.S. Persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as U.S. Persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Warehouse Agreement***": The Master Participation and Warehousing Agreement, dated as of June 21, 2006, by and among the Issuer, the Servicer, HFP, Highland CDO Opportunities Master Fund, L.P., Highland Special Opportunities Holding Company and Bank of America, N.A.

"***Warehoused Loans***": Loans acquired by the Issuer before the Closing Date pursuant to the Warehouse Agreement.

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by

(a) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(b) summing the amounts determined pursuant to clause (a),

(c) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(d) if the result obtained in clause (c) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(a) summing the products obtained by multiplying

(i) the Average Life at that time of each Collateral Obligation by

(ii) the Principal Balance at that time of the Collateral Obligation and

(b) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and May 1, 2016 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 2.4 years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its

respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 43.88%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 52.44%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(a) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (i) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero and (ii) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR,

(b) summing the amounts determined pursuant to clause (a),

(c) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date, and

(d) if the result obtained in clause (c) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

For purposes of calculating the Weighted Average Spread, the Principal Balance of each Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan shall not include any of its unfunded amount.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu*

with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. Assumptions as to Pledged Obligations; Construction Conventions.

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

(a) with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,

(b) with respect to the sale of and acquisition of Collateral Obligations,

(c) with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and

(d) with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(i) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(ii) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(A) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(B) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (j) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet

settled, to be received during the Due Period and not used to purchase additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(e) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(f) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(g) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Retention Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(h) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Retention Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(i) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(j) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in

respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

(k) The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Section 1.3. Rules of Interpretation.

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that

the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding," "following," "before," "after," "next," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9, references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE II.

THE NOTES

Section 2.1. Forms Generally.

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

Section 2.2. Forms of Notes and Certificate of Authentication.

(a) The Senior Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms as attached in Exhibit A.

(b) Regulation S Global Notes. The Senior Notes of each Class (other than the Class A-1B Notes during the Delayed Drawdown Period only) sold to non-U.S. persons in off-shore transactions in

reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (the "***Regulation S Global Notes***"). The global notes shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in Section 2.2(c), "***U.S. person***" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) Rule 144A Global Notes. The Senior Notes of each Class (other than the Class A-1B Notes during the Delayed Drawdown Period only) initially sold to U.S. persons that are Qualified Institutional Buyers and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) Book-Entry Provisions. This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Global Note.

(e) The Class D Notes shall be sold only to persons that are (i) Institutional Accredited Investors or (ii) Qualified Institutional Buyers and that are both Qualified Purchasers and shall be issued in the form of one or more certificated Class D Notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit A-3, including legends (each, a "***Certificated Class D Note***"), which shall be registered in the name of the owner thereof.

(f) During the Delayed Drawdown Period, the Class A-1B Notes will be issued in the form of definitive, physical certificates in fully-registered form without interest coupons attached substantially in the form of Exhibit A-2, including legends (each, a "***Certificated Class A-1B Note***") which shall be registered in the name of the owner thereof. Following the Delayed Drawdown Period, Certificated Class A-1B Notes held by Qualified Institutional Buyers that are also Qualified Purchasers may be exchanged by their Holder for a beneficial interest in a Rule 144A Global Note. Following the Delayed Drawdown

Period, Certificated Class A-1B Notes held by non-U.S. Persons may be exchanged for a beneficial interest in a Regulation S Global Note.

Section 2.3. Authorized Amount; Denominations.

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$628,600,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A-1A	A-1B	A-2	B	C	D
Original Principal Amount*	U.S.$388,700,000	U.S.$75,000,000	U.S.$51,500,000	U.S.$68,600,000	U.S.$23,800,000	U.S.$21,000,000
Interest Rate**	LIBOR + 0.27%	LIBOR + 0.27%	LIBOR + 0.38%	LIBOR + 0.82%	LIBOR + 1.60%	LIBOR + 3.75%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aaa/AAA	Aaa/AAA	A2/A	Baa2/BBB	Ba2/BB

* The original principal amount shown above in respect of the Class A–1B Notes is the Fully Drawn Amount for such Class. Except as otherwise provided, for purposes of this Indenture, references to the principal of Class A-1B Notes shall mean the Drawn Amount thereof from time to time.

** The Class A-1B Notes also will be entitled to the Delayed Drawdown Fee on the Aggregate Undrawn Amount of Class A-1B Notes.

(c) The Rule 144A Global Notes will be issued in minimum denominations of U.S.$250,000 and integral multiples of U.S.$1,000 in excess thereof for each Class of Senior Notes. The Regulation S Global Notes will be issued in minimum denominations of U.S.$100,000 and integral multiples of U.S.$1,000 in excess thereof for each Class of Senior Notes. The Certificated Class A-1B Notes will be issued in minimum denominations of U.S.$250,000 and integral multiples of U.S.$1,000 in excess thereof. The Certificated Class D Notes will be issued in minimum denominations of U.S.$250,000 and integral multiples of U.S.$1,000 in excess thereof.

The Issuer will also issue 34,400 Class I Preference Shares and 37,000 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable.

Section 2.4. Extension of Replacement Period and Stated Maturity.

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities (or the related Holding Preference Shares, as applicable) as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture, the Preference Share Documents and the Holding Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (A) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (B) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that the Placement Agent shall not be responsible for causing the Extension Conditions to be satisfied and shall

not be liable to any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the "***Extension Notice***"), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit E, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable notice (an "***Extension Sale Notice***") to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the "***Extension Sale Notice Period***") of its intention to sell all or a portion of its Securities or, with respect to Investors Corp., in its capacity as a Holder of the Class I Preference Shares, all or a portion of Holding Preference Shares, as the case may be, to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Holding Preference Shares, as applicable, to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (c)(iii)(A) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture (and in the case of the Class A-1B Notes, the Class A-1B Note Purchase Agreement), the Preference Share Documents and the Holding Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied (as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Placement Agent, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Senior Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension

became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, (i) such Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be cancelled and an equivalent number of Class I Preference Shares shall be issued to Investors Corp., (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Extension Qualifying Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares.

Section 2.5. Execution, Authentication, Delivery, and Dating.

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Senior Notes and the Issuer may deliver the Class D Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so

transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

Section 2.6. Registration, Registration of Transfer and Exchange.

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed Indenture Registrar for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) No Note or interest therein may be transferred to any purchaser or transferee unless such purchase, holding and disposition of such Note will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental or church plan, a violation of any applicable law that is similar to Section 406 of ERISA or Section 4975 of the Code).

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee or such Registrar by a prospective transferee, the Trustee and such Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this Section 2.6(e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall be subject to the restrictions set forth elsewhere in this Indenture and the following.

(i) Subject to this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) Regulation S Global Note to Rule 144A Global Note. If the Beneficial Owner of an interest in a Regulation S Global Note wishes at any time to transfer its beneficial interest in such Regulation S Global Note to a Person who wishes to take delivery thereof in the form of a beneficial interest in a Rule 144A Global Note, such holder may, in addition to complying with all applicable rules and procedures of the Depository and Clearstream or Euroclear applicable to transfers by their respective participants (the "***Applicable Procedures***"), transfer or cause the transfer of such beneficial interest for an equivalent beneficial interest in the Rule 144A Global Note only upon compliance with the provisions of this Section 2.6(f)(ii). Upon receipt by the Indenture Registrar at its Corporate Trust Office of (A) written instructions given in accordance with the Applicable Procedures from a Depository Participant directing the Indenture Registrar to credit or cause to be credited to another specified Depository Participant's account a beneficial interest in the Rule 144A Global Note in an amount equal to the denomination of the beneficial interest in the Regulation S Global Note to be transferred, (B) a written order given in accordance with the Applicable Procedures containing information regarding the account of the Depository Participant to be credited with, and the account of the Depository Participant (or, if such account is held for Euroclear or Clearstream, the Euroclear or Clearstream account, as the case may be) to be debited for such beneficial interest, and (C) with respect to a transfer of a beneficial interest in the Regulation S Global Note for a beneficial interest in the related Rule 144A Global Note

(1) during the Distribution Compliance Period, certificates in the form of both Exhibit B-1 hereto and Exhibit B-2 hereto given by the Beneficial Owner that is transferring such interest, or (2) after the Distribution Compliance Period, a certificate in the form of Exhibit B-1 hereto from the transferee of such interest, the Indenture Registrar shall instruct the Depository to reduce the denomination of the Regulation S Global Note by the denomination of the beneficial interest in the Regulation S Global Note to be transferred and, concurrently with such reduction, to increase the denomination of the Rule 144A Global Note by the aggregate denomination of the beneficial interest in the Regulation S Global Note to be so transferred, and to credit or cause to be credited to the account of the Person specified in such instructions (who shall be a Depository Participant acting for or on behalf of Euroclear or Clearstream, or both, as the case may be) a beneficial interest in the Rule 144A Global Note having a denomination equal to the amount by which the denomination of the Regulation S Global Note was reduced upon such transfer.

(iii) Rule 144A Global Note to Regulation S Global Note. If a Beneficial Owner of an interest in a Rule 144A Global Note wishes at any time to transfer its beneficial interest in such Rule 144A Global Note to a Person who wishes to take delivery thereof in the form of a beneficial interest in a Regulation S Global Note, such Beneficial Owner may, in addition to complying with all Applicable Procedures, transfer or cause the transfer of such beneficial interest for an equivalent beneficial interest in the Regulation S Global Note only upon compliance with the provisions of this Section 2.6(f)(iii). Upon receipt by the Indenture Registrar at its Corporate Trust Office of (A) written instructions given in accordance with the Applicable Procedures from a Depository Participant directing the Indenture Registrar to credit or cause to be credited to another specified Depository Participant's account a beneficial interest in the Regulation S Global Note in an amount equal to the denomination of the beneficial interest in the Rule 144A Global Note to be transferred, (B) a written order given in accordance with the Applicable Procedures containing information regarding the account of the Depository Participant (and the Euroclear or Clearstream account, as the case may be) to be credited with, and the account of the Depository Participant to be debited for, such beneficial interest, and (C) a certificate in the form of Exhibit B-3 hereto, both given by the Beneficial Owner that is transferring such interest, the Indenture Registrar shall instruct the Depository to reduce the denomination of the Rule 144A Global Note by the denomination of the beneficial interest in the Rule 144A Global Note to be so transferred and, concurrently with such reduction, to increase the denomination of the Regulation S Global Note by the denomination of the beneficial interest in the Rule 144A Global Note to be so transferred, and to credit or cause to be credited to the account of the Person specified in such instructions (who shall be a Depository Participant acting for or on behalf of Euroclear or Clearstream, or both, as the case may be) a beneficial interest in the Regulation S Global Note having a denomination equal to the amount by which the denomination of the Rule 144A Global Note was reduced upon such transfer.

(iv) Other Exchanges. If Senior Notes that are Global Notes are exchanged for Senior Notes in definitive registered form without interest coupons pursuant to Section 2.11, the Senior Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) Subject to the restrictions set forth elsewhere in this Indenture, transfers of Class D Notes, in whole or in part, shall be subject to the following:

(i) Transfers of Certificated Class D Notes. Subject to the limitations on transfer set forth in this Indenture, Certificated Class D Notes may be exchanged or transferred for another Certificated Class D Note by a Noteholder by presenting or surrendering such Certificated Class D Notes at the office of the Indenture Registrar, together with an executed instrument of transfer and a certificate in the form of Exhibit B-4 hereto executed by the transferee. In exchange for any Certificated Class D Note properly presented for transfer with all necessary accompanying documentation, the Trustee will, upon execution by the Issuer, authenticate and deliver at the Corporate Trust Office or the office of the transfer agent as the case may be, to the transferee or send by first-class mail at the risk of the transferee to such address as the transferee may request, a Certificated Class D Note, for a like principal amount as may be requested. The presentation for transfer of any Certificated Class D Notes will not be valid unless made at the Corporate Trust Office or at the office of a transfer agent by the registered Holder in person, or by a duly authorized attorney-in-fact. The Holder of a Certificated Class D Note will not be required to bear the costs and expenses of effecting any transfer or registration of transfer, except that the relevant Holder will be required to bear (A) the expenses of delivery by other than regular mail (if any) and (B) if the Issuer so requires, the payment of a sum sufficient to cover any duty, stamp tax or governmental charge or insurance charges that may be imposed in relation thereto.

(ii) So long as the Class D Notes remain Outstanding, transfers of such Class D Notes shall only be made in accordance with Section 2.6(c) and the requirements of Section 2.6(g)(i) and upon receipt by the Indenture Registrar of (A) appropriate documentation required under the Code and the applicable Treasury regulations establishing that the beneficial owner of the Class D Notes to be transferred is either not a U.S. person (e.g., an IRS Form W-8BEN or an IRS Form W-8IMY with appropriate attachments) or is a U.S. person (e.g., an IRS Form W-9) and (B) if such beneficial owner of Class D Notes to be transferred is treated as a partnership, S-corporation or grantor trust for U.S. federal income tax purposes (as indicated on the transfer certificate delivered in the form of Exhibit B-4), a written representation from such beneficial owner that (1) there will not be any interests in such beneficial owner where substantially all of the value of such interest is attributable to the value of the Class D Notes proposed to be transferred to such beneficial owner, together with the value of any Class D Notes, Holding Preference Shares and Preference Shares already held by such beneficial owner and (2) such beneficial owner is not a part of any arrangement a principal purpose of which is to cause the Class D Notes and Preference Shares to be treated as owned by 100 persons or less within the meaning of Treasury Regulation section 1.7704-1(h). In addition, neither the Trustee nor the Issuer shall recognize any transfers of Class D Notes, and any such proposed transfer shall be null and void, if (a) the proposed transfer will cause the Issuer to have more than ninety-nine beneficial owners (as determined by the Issuer for purposes of the provisions of Treasury Regulation section 1.7704-1(h)) of its Class D Notes and Preference Shares unless it receives the consent of all of the Holders of the Preference Shares and an Opinion of Counsel to the effect that Holders of the Notes will not recognize gain or loss for U.S. federal income tax purposes as a result of such transfer, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transfer had not been made or (b) such transfer was made pursuant to a trade on an Established Securities Market. The Trustee shall contact the Preference Shares Paying Agent to request, and shall be entitled to rely upon the information it receives from the Preference Shares Paying Agent to determine the number of beneficial owners of the Preference Shares. The Trustee shall provide, upon request by the Preference Shares Paying Agent, the number of beneficial owners of the Class D Notes referenced on, and in reliance upon, the transfer certificates received pursuant to the terms of this Indenture.

(iii) No person shall be permitted to acquire any Class D Note if such acquisition would result in persons who have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of the Class D Notes immediately after such sale or transfer (excluding for purposes of such determination any Class D Notes held by any Controlling Person and its affiliates determined in accordance with the Plan Asset Regulation).

(h) Subject to the restrictions set forth elsewhere in this Indenture, transfers of Certificated Class A-1B Notes, in whole or in part, shall be subject to the following:

(i) Transfers between Certificated Class A-1B Notes. Subject to the limitations on transfer set forth in this Indenture and the Class A-1B Note Purchase Agreement, Certificated Class A-1B Notes may be exchanged or transferred for another Certificated Class A-1B Note by a Noteholder by presenting or surrendering such Certificated Class A-1B Notes at the office of the Indenture Registrar, together with an executed assignment and acceptance in the form attached as Exhibit B to the Class A-1B Note Purchase Agreement executed by the transferee. In exchange for any Certificated Class A-1B Note properly presented for transfer with all necessary accompanying documentation, the Trustee will, upon execution by the Issuer, authenticate and deliver at the Corporate Trust Office or the office of the transfer agent as the case may be, to the transferee or send by first-class mail at the risk of the transferee to such address as the transferee may request, a Certificated Class A-1B Note, for a like principal amount as may be requested. The presentation for transfer of any Certificated Class A-1B Notes will not be valid unless made at the Corporate Trust Office or at the office of a transfer agent by the registered Holder in person, or by a duly authorized attorney-in-fact. The Holder of a Certificated Class A1-B Note will not be required to bear the costs and expenses of effecting any transfer or registration of transfer, except that the relevant Holder will be required to bear (A) the expenses of delivery by other than regular mail (if any) and (B) if the Issuer so requires, the payment of a sum sufficient to cover any duty, stamp tax or governmental charge or insurance charges that may be imposed in relation thereto.

(ii) Subject to the restrictions on transfer set forth in this Indenture and the Class A-1B Note Purchase Agreement, following the first Payment Date, any of the Certificated Class A-1B Notes held by a Holder who is a Qualified Institutional Buyer and a Qualified Purchaser may be exchanged for a beneficial interest in a Rule 144A Global Note pursuant to this Section 2.6 and may be transferred thereafter in the form of a beneficial interest in a Rule 144A Global Note to a Person who is a Qualified Institutional Buyer and a Qualified Purchaser, provided that any remaining principal amount of the transferor's interest in the Rule 144A Global Note shall either equal zero or meet the required minimum denominations.

(iii) Subject to the restrictions on transfer set forth in this Indenture and the Class A-1B Note Purchase Agreement, following the first Payment Date, any of the Certificated Class A-1B Notes held by a Holder who is not a U.S. Person may be exchanged for a beneficial interest in a Regulation S Global Note pursuant to this Section 2.6 and may be transferred thereafter in the form of a beneficial interest in a Regulation S Global Note to a non-U.S. Person in an offshore transaction in reliance on Regulation S, provided that any remaining principal amount of the transferor's interest in the Regulation S Global Note shall either equal zero or meet the required minimum denominations.

(i) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably

required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(j) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note shall be limited to transfers made pursuant to the provisions of Sections 2.6(f)(ii), 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(k) Each Person who becomes a beneficial owner of a Senior Note evidenced by an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such Person's purchase or other acquisition of the relevant Definitive Note. Each Person who becomes a beneficial owner of a Senior Note evidenced by an interest in a Global Note, shall be deemed to make the representations, warranties and agreements set forth in the Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note. No transfer of a beneficial interest in a Regulation S Global Note to a Definitive Note shall be made except (i) prior to the expiration of the Distribution Compliance Period and (ii) in compliance with the certification requirements of Rule 903(b)(3)(ii)(B) under the Securities Act.

(l) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(m) Until the end of the Delayed Drawdown Period, transfers of beneficial interests in Class A–1B Notes will be permitted only to transferees that satisfy the Rating Criteria. In addition to the requirements of this Indenture, all transfers of Class A-1B Notes shall be made in accordance with the Class A-1B Note Purchase Agreement if then in effect.

(n) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

Section 2.7. Mutilated, Destroyed, Lost or Stolen Notes.

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section 2.7, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section 2.7 in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

The provisions of this Section 2.7 are exclusive and shall preclude (to the extent lawful) all other rights with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Notes.

Section 2.8. Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.

(a) The Notes of each Class (other than**,** with respect to the first Interest Period only, the Class A-1B Notes) shall accrue interest during each Interest Period on their Aggregate Outstanding Amount and the Class A-1B Notes shall accrue interest during the first Interest Period on their Drawn Amount and any Interest Period thereafter on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments. The Delayed Drawdown Fee on the Class A-1B Notes shall accrue as specified in the definition thereof and will be payable in arrears on the first Payment Date. To the extent the Delayed Drawdown Fee is not paid in full on the first Payment Date, interest shall accrue at the Note Interest Rate for the Class A-1B Notes on such accrued and unpaid Delayed Drawdown Fee as specified in the definition thereof and such unpaid Delayed Drawdown Fee and the interest thereon shall be payable in arrears on each Payment Date in accordance with the Priority of Payments until paid in full.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, refinancing, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note and a Class D Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note and a Class D Note. In the case of a Definitive Note and a Class D Note, its Holder has provided written wiring instructions to the Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Applicable Issuers under the Notes and under this Indenture are limited recourse obligations of the Applicable Issuers payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this Section 2.8(i) shall not (i) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (ii) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this Section 2.8(i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the

nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 2.9. Persons Considered Owners.

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will notify the Trustee, the Share Registrar and the Holding Share Registrar of any Affiliate of the Servicer that owns any of the Transaction Securities.

Section 2.10. Cancellation.

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. Definitive Notes.

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Note***") in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(k), bear the legends in the applicable portion of Exhibit A and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Senior Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Sections 2.11(a)(i) and 2.11(a)(ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

Section 2.12. Notes Beneficially Owned by Non-Permitted Holders.

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, (i) any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act and (ii) any transfer of a beneficial interest in any Class D Note to a Person that is not a QIB/QP, shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to

cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

Section 2.13. Tax Purposes

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

Section 2.14. Drawdowns Under the Class A-1B Notes

(a) On any Business Day during the Delayed Drawdown Period, the Co-Issuers may draw down amounts under the Class A–1B Notes (together with amounts paid by Holders of Class A–1B Notes on the Closing Date, each a "***Drawdown***") at the direction of the Servicer acting pursuant to the Servicing Agreement; provided, in each case that (i) each applicable condition to such Drawdown specified in Section 3 of the Class A-1B Note Purchase Agreement is satisfied on the date of such Drawdown (a "***Drawdown Date***") and (ii) in no event may the aggregate amount of Drawdowns outstanding under the Class A–1B Notes exceed the Fully Drawn Amount.

(b) Notice of any Drawdown shall be given by the Issuer (or the Servicer on behalf of the Issuer acting pursuant to the Servicing Agreement) to the Delayed Drawdown Note Agent, the Servicer and the Trustee in accordance with the Class A-1B Note Purchase Agreement.

(c) If any Holder of Class A–1B Notes shall at any time during the Delayed Drawdown Period fail to satisfy the Rating Criteria, the Issuer will enforce its rights under the Class A-1B Note Purchase Agreement to require such Holder to fund the full undrawn amount of its Commitment into a reserve account.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1. Conditions to Issuance of Notes on Closing Date.

(a) The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) Officers' Certificates of the Co-Issuers Regarding Corporate Matters. An Officer's certificate of each of the Co-Issuers:

(A) evidencing (1) the authorization by Board Resolution of the execution and delivery of this Indenture, the Class A-1B Note Purchase Agreement and the Placement Agency Agreement and, in the case of the Issuer, the Servicing Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and

delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) Governmental Approvals. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Notes applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Notes except as have been given; provided that the opinions of Dechert LLP and Maples and Calder, respectively, shall satisfy this clause (B).

(iii) Co-Issuers' and Servicer's U.S. Counsel Opinion. Opinions of Dechert LLP, special U.S. counsel to the Co-Issuers, an opinion of Pepper Hamilton, LLP, special Delaware counsel to the Co-Issuer and an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer, dated the Closing Date.

(iv) Issuer's Cayman Counsel Opinion. An opinion of Maples and Calder, Cayman Islands counsel to the Issuer, dated the Closing Date.

(v) Trustee's Counsel Opinion. An opinion of Nixon Peabody, LLP, counsel to the Trustee, dated the Closing Date.

(vi) Officers' Certificates of Co-Issuers Regarding Indenture. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Notes applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) Hedge Agreements. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) Servicing Agreement. Executed copy of the Servicing Agreement.

(ix) Preference Shares. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) Preference Share Documents. An executed counterpart of the Preference Shares Paying Agency Agreement.

(xi) Collateral Administration Agreement. Executed copy of the Collateral Administration Agreement.

(xii) Grant of Collateral Obligations. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) Certificate of the Servicer. A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(xx)(B);

(xiv) Rating Letters. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Notes rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) Accounts. Evidence that each of the Accounts has been established.

(xvi) Issuer Order for Deposit of Funds into Accounts. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$105,000,000 into the Collection Account for use pursuant to Section 7.19, the deposit of approximately U.S.$14,900,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of approximately U.S.$5,600,000 into the Interest Reserve Account for use pursuant to Section 10.3(j).

(xvii) Irish Listing. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Senior Notes to the Daily Official List.

(xviii) Issuer Order for Authentication of Notes. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate and deliver the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) Accountants' Certificate. An Accountants' Certificate acceptable to the Issuer (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$677,332,536, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(a)(xix) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xx) Certificate of the Issuer Regarding Collateral. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing

Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Collateral as of the Closing Date is at least 100.03% of the aggregate par amount thereof.

(xxi) Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit C-2.

(xxii) Other Documents. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

(b) Any Replacement Notes may be issued from time to time pursuant to Section 9.7 hereof, and any Refinancing Note may be issued from time to time pursuant to Section 9.8 hereof. Any such Replacement Notes and Refinancing Notes shall be executed by the Applicable Issuer and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee upon and pursuant to Issuer Order delivered to the Trustee, together with delivery to the Trustee by the Issuer of an Opinion of Counsel to the affect that (A) such Replacement Notes or Refinancing Notes, as the case may be, are duly authorized and validly issued by the Applicable Issuer pursuant to this Indenture, constituting the legal, valid and binding obligation of such Applicable Issuer, enforceable against such Applicable Issuer in accordance with its terms and (B) all conditions precedent under this Indenture, if any, applicable to the issuance, authentication and delivery of such Notes, have been satisfied.

Section 3.2. Custodianship; Delivery of Collateral Obligations and Eligible Investments.

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be Investors Bank & Trust Company. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into the Securities Account Control Agreement with the Custodian providing, inter alia, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not

already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in or to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

Section 3.3. Representations as to Collateral.

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority perfected security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority perfected security interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Warehoused Loans, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has

delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

(b) The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

(c) If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3, then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE IV.

SATISFACTION AND DISCHARGE

Section 4.1. Satisfaction and Discharge of Indenture.

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(a) rights of registration of transfer and exchange,

(b) substitution of mutilated, destroyed, lost or stolen Notes,

(c) rights of Noteholders to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(d) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(e) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(f) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(g) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement,

(h) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

(i) when:

(i) either:

(A) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

(B) all Notes not theretofore delivered to the Trustee for cancellation have become payable, or

(C) will become payable at their Stated Maturity within one year, or

(D) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

(ii) and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(i)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(i)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of an Opinion of Counsel of Independent U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture,

(j) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer, and

(k) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3, 13.1, and 14.14 shall survive.

Section 4.2. Application of Trust Money.

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture, including the Priority of Payments, to the payment of principal and interest (and, in the case of the Class A-1B Notes, Delayed Drawdown Fee), either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. Repayment of Monies Held by Paying Agent.

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE V.

REMEDIES

Section 5.1. Events of Default.

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest (or, in the case of the Class A-1B Notes, Delayed Drawdown Fee) on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity, Refinancing Date or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A Notes are Outstanding, the Class A Overcollateralization Ratio is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or other covenants or

agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to each Rating Agency is satisfied with respect thereon.

Section 5.2. Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment.

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h)

occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences if:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (a), (b), or (c) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

Section 5.3. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall at the written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective

agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. Remedies.

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall, upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests therein, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the written direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 6.3(e), institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes and redemption of all of the Preference Shares, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

Section 5.5. Optional Retention of Collateral.

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments, Article 10 and Article 12 unless:

(i) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under Section 11.1(a)(i)(3) and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of the Class A Notes (voting as a single Class), the Class B Notes, the Class C Notes and the Class D Notes direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Placement Agent.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the written request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a) (provided, however, that in the case of any such request made more frequently than one per Due Period, the Trustee may require that any expenses associated with such determination, including the accountant's letter described in the next sentence, be paid by the requesting Noteholders). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Sections 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the

continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

Section 5.7. Application of Money Collected.

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. Limitation on Suits.

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholders of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce

any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments.

If, during the occurrence of an Event of Default, the Trustee receives conflicting or inconsistent requests and indemnity pursuant to this Section 5.8 from two or more groups of Holders of the Controlling Class, regarding the institution or conduct of any proceeding or any remedy or the exercise of any right available to the Trustee under this Indenture, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

Section 5.9. Unconditional Rights of Noteholders.

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. Restoration of Rights and Remedies.

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. Rights and Remedies Cumulative.

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. Delay or Omission Not Waiver.

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

Section 5.13. Control by Majority of the Controlling Class.

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received an indemnity against the liabilities reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Sections 5.4 or 5.5.

Section 5.14. Waiver of Past Defaults.

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of

any such waiver to the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

Section 5.15. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. Waiver of Stay or Extension Laws.

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. Sale of Collateral.

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may, on an arm's length basis, bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. Action on the Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE VI.

THE TRUSTEE

Section 6.1. Certain Duties and Responsibilities.

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. Notice of Default.

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit D certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. Certain Rights of Trustee.

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) notwithstanding anything herein to the contrary, the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. Not Responsible for Recitals or Issuance of the Notes.

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. May Hold Notes.

The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with

the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

Section 6.6. Acquisition of Class D Notes and Preference Shares

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Class D Notes and the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Class D Notes or Preference Shares (including pursuant to a Maturity Extension and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding value of any of the Class D Notes, Class I Preference Shares or the Class II Preference Shares (or any other class of Preference Shares) immediately after such acquisition (determined in accordance with the Plan Asset Regulation, this Indenture and the Preference Share Documents). Any Class D Notes or Preference Shares held as principal by the Trustee or any of its affiliates or by any other person who has discretionary authority or control with respect to the assets of a Co-Issuer or any person who provides investment advice with respect to a Co-Issuer's assets, or any person controlling, controlled by or under common control with a Co-Issuer, including by reason of having the power to exercise a controlling influence over the management or policies of a Co-Issuer (a "***Controlling Person***"), shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor. Any transfer of a beneficial interest in any equity interest in the Issuer or the Co-Issuer to a Benefit Plan Investor or a Controlling Person that would cause the 25% limitation to be breached (a "***Non-Permitted Benefit Plan Investor***") shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

Section 6.7. Money Held in Trust.

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer, unless such asset is purchased in an obligation of the Trustee in its corporate capacity.

Section 6.8. Compensation and Reimbursement.

(a) The Issuer agrees:

(i) to pay the Trustee, in accordance with the Priority of Payments, on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses

and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Sections 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify and hold harmless the Trustee and its officers, directors, employees and agents for any loss, liability or expense incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves (including reasonable attorney's fees and costs) against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14. The indemnification set forth in Section 6.8(a)(ii) shall survive the termination of this Indenture.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment in accordance with the Priority of Payments. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.9. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee under this Indenture that is an Independent entity organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be "affiliated" (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be

eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall at the direction of a Majority of the Controlling Class promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by an Act of a Majority of the Controlling Class, (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers or (iii) so long as no Event of Default has occurred and is continuing, by the Issuer.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee or (B) subject to Section 5.15, any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of

the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.11. Acceptance of Appointment by Successor.

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.12. Merger, Conversion, Consolidation, or Succession to Business of Trustee.

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.13. Co-Trustees.

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.14. Certain Duties of Trustee Related to Delayed Payment of Proceeds.

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

Section 6.15. Authenticating Agents.

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.16. Fiduciary for Noteholders Only; Agent for Secured Parties.

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

Section 6.17. Representations and Warranties of the Bank.

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) Organization. The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) Authorization; Binding Obligations. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) Eligibility. The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

Section 6.18. Additional Reporting Requirements.

If the Placement Agent elects to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Servicer and the Placement Agent.

If the Placement Agent has entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee at the expense of the Issuer shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(viii).

ARTICLE VII.

COVENANTS

Section 7.1. Payment of Principal and Interest.

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Senior Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

All payments under the Class A-1B Notes to any Holder thereof will be made by the Issuer without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If the Issuer is so required to deduct or withhold, then the Issuer (or its agent) will: (i) notify each affected Holder of such requirement no later than ten days prior to the date of the payment from which amounts are required to be withheld (provided that, despite the failure of the Issuer to give such notice, amounts withheld pursuant to applicable laws shall be considered as having been paid

by the Co-Issuers as provided above); (ii) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the affected Holder; and (iii) promptly forward to the affected Holder documentation reasonably acceptable to the affected Holder evidencing such payment to such authorities.

Section 7.2. Maintenance of Office or Agency.

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint Investors Bank &Trust Compamy, 200 Clarendon Street, Boston, MA 02116 Attn: CDO Services, Brentwood CLO, Ltd., as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served, which office will initially be the office of Investors Bank & Trust Company, 33 Maiden Lane, 4th Floor, NY, NY 10038 and an office or agency outside of the United States where the Notes may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Senior Notes is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Senior Notes and this Indenture may be served and where the Senior Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange, Custom House Administration and Listing Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Senior Notes, for the payment of principal, interest and other distributions on the Senior Notes and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Senior Notes or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Senior Notes is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Senior Notes of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. Money for Note Payments to be Held in Trust.

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date, Refinancing Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(a) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date, Refinancing Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(b) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(c) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(d) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Noteholder shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. Existence of Co-Issuers.

(a) The Issuer and the Co-Issuer shall, to the maximum extent permitted by applicable law, maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(i) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(ii) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency, and

(iii) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a legal opinion from nationally recognized legal counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries other than the Co-Issuer or as contemplated by the provisions of the Servicing Agreement,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement, the Investors Corp. Subscription Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. Protection of Collateral.

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and Investors Bank and Trust as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the

Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. Opinions as to Collateral.

On or before January 31 in each calendar year, commencing in 2008, the Issuer shall furnish to the Trustee, the Servicer and each Rating Agency an Opinion of Counsel from each relevant jurisdiction stating that, in the counsel's opinion, as of the date of the opinion, all actions necessary to maintain the lien and security interest created by this Indenture with respect to the Collateral have been taken and that no further action (other than as specified in the opinion) needs to be taken for the continued effectiveness and perfection of the lien over the next year. The opinion may be subject to customary assumptions and qualifications.

Section 7.7. Performance of Obligations.

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the Collateral Administration Agreement as initially executed), contract with other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. Negative Covenants.

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi), (ix), (x) and (xii) the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees);

(x) fail to correct any known misunderstanding regarding the separate identity of the Issuer and the Co-Issuer;

(xi) commingle assets with the assets of any other entity;

(xii) take any action reasonably likely to result in the consolidation of the Issuer and the Co-Issuer; or

(xiii) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains “non-petition” and “limited recourse” provisions and shall not amend such “non-petition” and “limited recourse” provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business

with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9. Notice of Default; Statement as to Compliance.

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before January 31 in each calendar year, commencing in 2008, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit D certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. Co-Issuers May Consolidate, etc., Only on Certain Terms.

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. Person.

Section 7.11. Successor Substituted.

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12. No Other Business.

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, engaging in Securities Lending and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by the Servicing Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in the Servicing Agreement, unless, with respect to a particular transaction, the Issuer and the Trustee shall have received an opinion or advice of tax counsel of nationally recognized standing in the United States experienced in such matters that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Servicing Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer and the Trustee shall have received an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis and, at the request of the Issuer, the Trustee is hereby authorized to enter into any amendment of the Servicing Agreement under such circumstances; provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of the Servicing Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Notes within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event an opinion of tax counsel as described above has been obtained in accordance with the terms hereof, no consent of any Noteholder or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of the Servicing Agreement contemplated by such opinion of tax counsel.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Amended and Restated Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. Listing on Irish Stock Exchange.

So long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the Irish Stock Exchange.

Section 7.14. Annual Rating Review.

So long as any Notes of any Class remain Outstanding, on or before January 31 in each year commencing in 2008, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.15. Reporting.

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. Calculation Agent.

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 a.m., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 a.m., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate

Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 p.m., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. Certain Tax Matters.

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. Each Holder of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes.

(b) The Issuer will make an election to be treated as a partnership for U.S. federal income tax purposes, and will take all necessary actions to maintain its status as a partnership (or, if the equity of the Issuer is treated as owned by one person, as a disregarded entity of such person) for U.S. federal income tax purposes; provided, however, that the Issuer will not be required to maintain its status as a partnership (or disregarded entity) if the Issuer elects to be a corporation for U.S. federal income tax purposes.

(c) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an Opinion of Counsel from a tax counsel of nationally recognized standing experienced in such matters prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) In order to ensure the Holders' and Beneficial Owners' acquisition of the Notes pursuant to this Indenture are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners of the Notes (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement (including the ownership and disposition of the Notes). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(e) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Noteholder requests information about any such

transactions in which the Issuer is a purchaser, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(f) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture and the Preference Shares Paying Agency Agreement.

(g) Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(h) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(i) The Issuer shall not participate in listing or including the Class D Notes or Preference Shares on or in any Established Securities Markets, and shall not participate in establishing any Established Securities Market for its Class D Notes or Preference Shares. In addition, the Issuer shall not recognize any transfers made on any Established Securities Markets with respect to its Class D Notes or Preference Shares (including any transfers of any financial instrument (other than the Senior Notes) or contract the value of which is determined in whole or in part by reference to the Issuer).

Section 7.18. Securities Lending.

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a short-term debt rating of at least "A-1" and a long-term senior unsecured debt rating of at least "A" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Placement Agent or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (mutatis mutandis) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

(e) So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(i) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(ii) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. Purchase of Collateral Obligations; Ramp-Up Completion Date.

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$677,332,536.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$677,332,536 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Servicer (on behalf of the Issuer) shall request a Rating Confirmation on behalf of the Issuer and shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, the S&P Excel Default Model Input File and, with respect to each Collateral Obligation, the S&P Priority Category thereof) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(A) each of the Coverage Tests are satisfied;

(B) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(C) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in Section 12.2 of this Indenture; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. Posting of Reports on Repository.

If the Placement Agent has entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Trustee and the Servicer acknowledges and agrees that each Monthly Report and Valuation Report shall be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee, at the expense of the Issuer, agrees to make available in accordance with Section 14.3(a)(viii) each Monthly Report or Valuation Report to the operator of the Repository for posting on the Repository. The Placement Agent will notify the Trustee, the Co-Issuers and the Servicer upon entering into a posting dealer agreement.

Section 7.21. Secondary Risk Procedures.

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.22. Section 3(c)(7) Procedures.

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) *Section 3(c)(7) Notice to Investors*. The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit C-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit C-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers*. The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Placement Agent and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act of 1933, as amended (the "Securities Act"), to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE VIII.

SUPPLEMENTAL INDENTURES

Section 8.1. Supplemental Indentures Without Consent of Holders.

(a) Without the consent of the Holders of any Securities (other than as specified in Sections 8.1(a)(viii), (xiv) and (xv)), when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in paragraphs (i) through (xxiv) below, the interests of the Holders of the Securities are not materially and adversely affected thereby (the Co-Issuers and the Trustee will be bound by a standard of good faith and fair dealing in making such determination) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(i) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(ii) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(iii) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication and delivery of the Notes;

(iv) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(v) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(vi) conform any provision in this Indenture to the related provision in the Offering Memorandum that is intended to be a verbatim recitation of such provision;

(vii) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(viii) with the consent of the Servicer, modify (A) the restrictions on the sales of Collateral Obligations in Section 12.1 or (B) with the consent of the Majority of the Controlling Class (which consent shall not be unreasonably withheld), the Eligibility Criteria in Section 12.2 (and the definitions related thereto); provided that, for the avoidance of doubt, the consent of the Majority of the Controlling Class shall not be required if such amendment also satisfies the requirements of Section 8.1(a)(xxv);

(ix) make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the Irish Stock Exchange;

(x) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(xi) accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(xii) take any appropriate action to prevent the Issuer, the Holders of the Securities, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing,

character, or source of the income from the Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(xiii) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(xiv) with the consent of the Majority of the Controlling Class, amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted by this Indenture;

(xv) with the consent of a Majority of the Class A-1B Notes, to amend any provisions herein relating solely to the manner, timing and conditions of Drawdowns;

(xvi) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(xvii) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(xviii) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(xix) to evidence or implement the issuance of Replacement Notes or Refinancing Notes as provided for in this Indenture;

(xx) facilitate hedging transactions;

(xxi) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(xxii) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(xxiii) with the consent of the Servicer, enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents

necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer to the effect that the modification would not be materially adverse to the Holders of any Class of Securities; provided that, for the avoidance of doubt, this clause (xxiii) shall not permit the Co-Issuers and the Trustee to enter into any amendment hereto that expressly requires the consent of the Majority of the Controlling Class without obtaining such consent;

(xxiv) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under this Indenture and the Preference Share Documents; or

(xxv) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); provided that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Servicer under this Indenture or increase the duties or obligations of the Servicer.

(c) The Trustee is authorized to join in the execution of any supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any supplemental indenture (pursuant to Sections 8.1 or 8.2) that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified in writing by a Majority of any Class of Notes or a Majority of the Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee shall be entitled to receive in connection with any such supplemental indenture, and may rely on, a certificate of the Servicer and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares

Paying Agent (for forwarding to the Holders of Holding Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by such Rating Agency) and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section 8.1 at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

Section 8.2. Supplemental Indentures With Consent of Holders.

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(i) the Servicer if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer;

(ii) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes; and

(iii) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Amended and Restated Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Amended and Restated Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(A) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate, Refinancing Price or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed or refinanced at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption or refinancing, on or after the applicable Redemption Date or Refinancing Date);

(B) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with

certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(C) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(D) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(E) modify any of the provisions of this Section 8.2, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(F) modify the definition of "Outstanding," "Controlling Class," or "Majority," the Priority of Payments in Section 11.1(a), Section 13.1 or any non-petition or limited recourse clause; or

(G) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

Prior to the entry into any supplemental indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) informing them of such fact.

(b) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after

the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(c) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(d) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; provided that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee. The Trustee shall deliver any such amendment or supplement to the Repository in accordance with Section 6.18.

Section 8.4. Effect of Supplemental Indentures; Certain Required Consents.

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for

all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Any supplemental indenture that would necessitate a change to the Amended and Restated Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) may only be made after a Special Resolution (as defined in the Amended and Restated Memorandum and Articles of Association) has been passed to permit the Amended and Restated Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) to be altered to conform with such proposed amendment.

Section 8.5. Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE IX.

REDEMPTION OF NOTES

Section 9.1. Mandatory Redemption.

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then at the direction and in accordance with the instructions of the Servicer the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section 9.1 shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

(c) In the event that the Issuer or the Servicer (on behalf of the Issuer) has failed to obtain confirmation in writing from S&P that it has not (i) reduced, suspended, or withdrawn its Initial Rating of each Class of Notes and (ii) placed any Class of Notes on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date, the Issuer (by Issuer Order) may direct the Trustee to make payments on the first Payment Date in accordance with the Priority of Payments; provided that all amounts (other than Class II Preference Share Special Payments) otherwise payable to the Holders of the Class I Preference Shares and the Class II Preference Shares shall be retained by the Trustee in the Payment Account pending receipt of S&P's written confirmation as set forth in this Section 9.1(c).

Section 9.2. Optional Redemption.

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the applicable Required Redemption Percentage, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

Upon receipt of a notice of redemption pursuant to this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each

Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares pro rata in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3. Redemption Procedures.

(a) Upon any optional redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Senior Notes to be redeemed are listed on the Irish Stock Exchange, and the Irish Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares), the Trustee and the Servicer only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Sections 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Preference Shares or Affected Class (as applicable) to withdraw the notice of redemption delivered by a percentage of the Preference Shares or Affected Class (as applicable) requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail), the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to each Holder of Holding Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to each of Holding Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least ten Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer

has entered into a binding agreements (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. Notes Payable on Redemption Date.

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. Special Redemption.

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. Amendment Buy-Out.

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders whose consent was solicited with respect to such supplemental indenture or, with respect to any Class I Preference Shares held by Investors Corp. if the consent of the Holders of Holding Preference Shares has

been solicited, to purchase from Non-Consenting Holding Preference Share Holders all Holding Preference Shares held by such Holders (the "***Amendment Buy-Out Option***"), in each case, for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders and all such Holding Preference Shares of the Non-Consenting Holding Preference Share Holders, as the case may be, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "***Amendment Buy-Out***"). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder and any Non-Consenting Holding Preference Share Holder will be required to sell its applicable Transaction Securities to the Amendment Buy-Out Purchaser; provided that if any Non-Consenting Holder holds Class II Preference Shares, (i) such Non-Consenting Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be cancelled and new Class I Preference Shares shall be issued in an equivalent amount, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such issued Class I Preference Shares purchased by it and (iii) the Amendment Buy-Out Purchaser will purchase such additional Holding Preference Shares in lieu of such issued Class I Preference Shares. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Transaction Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Transaction Securities set forth herein, in the case of the Class A-1B Notes, the Class A-1B Note Purchase Agreement, and in the Preference Share Documents or the Holding Preference Share Documents, as applicable, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency). For the avoidance of doubt, any Amendment Buy-Out of Class A-1B Notes during the Delayed Drawdown Period shall include the related obligation to fund the Fully Drawn Amount.

Section 9.7. Refinancing of Non-Consenting Holder's Notes

(a) After the Non-Call Period, if Holders representing a Majority of the Preference Shares and the Servicer consent to a proposed amendment of the provisions of this Indenture relating to interest on the Notes (a "***Pricing Amendment***") and any Noteholder becomes a Non-Consenting Holder with respect to such Pricing Amendment, then the Co-Issuers and the Trustee shall, if so directed in writing by Holders representing a Majority of the Preference Shares and the Servicer, effect a refinancing (a "***Non-Consenting Note Refinancing***") of the Notes of all such Non-Consenting Holders (the "***Non-Consenting Notes***") by the issuance of additional Notes of the same Classes and respective principal amounts (the "***Replacement Notes***") to be purchased by a Person or Persons consenting to such Pricing Amendment and otherwise eligible under the provisions of this Indenture to be a Holder of such Notes (each a "***Consenting Purchaser***"). If and to the extent a Consenting Purchaser can be found, the Co-Issuers (or the Servicer on behalf of the Co-Issuers) will use reasonable efforts to arrange for and negotiate the terms of such purchase with any such Consenting Purchaser or Consenting Purchasers. The Consenting Purchasers shall make payment to the Trustee, to be deposited into a separate, non-interest bearing account to be held by the Trustee for the account of such Non-Consenting Holders in full of the outstanding principal amount of the Non-Consenting Notes and, to the extent not otherwise paid pursuant to the Priority of Payments on the date of such Non-Consenting Note Refinancing, all accrued and unpaid

interest thereon (to be disbursed to such Non-Consenting Holders upon surrender of their Non-Consenting Notes for cancellation) and any expenses incurred by the Trustee in connection with the Refinancing (the "***Non-Consenting Notes Payment Amount***").

(b) All purchases of Replacement Notes individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Classes set forth herein, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.8. Redemption by Refinancing

(a) Any Class of Notes may be redeemed in whole, but not in part, on any Payment Date after the Non-Call Period from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares)) with a copy to the Trustee and the Rating Agencies at least 30 days prior to the Payment Date for such redemption (such date, the "***Refinancing Date***") to redeem such Notes in accordance with this Section 9.8 (a "***Notice of Refinancing***") which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be refinanced and redeemed. Such redemption will be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes (such notes, the "***Refinancing Notes***") the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Co-Issuers, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "***Refinancing***"), provided that (i) such proposal is approved by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date.

(b) The Co-Issuers will obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) a Rating Agency Confirmation has been obtained from S&P for such Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Co-Issuers related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the Stated Maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain non-recourse and non-petition provisions equivalent to those applicable to the Notes being redeemed, as set forth in this Indenture;

(viii) the expenses in connection with the Refinancing have been paid or will be adequately provided for; and

(ix) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed.

(c) Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; provided, that to the extent that any Refinancing Proceeds are not applied to redeem the Notes being refinanced (and any associated Administrative Expenses), such Refinancing Proceeds will be treated as Principal Proceeds.

(d) The Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3 hereof) shall be fully protected in relying upon an Opinion of Counsel stating that the Refinancing is permitted by this Indenture and that all conditions precedent thereto have been complied with.

(e) If notice of consent by a Majority of the Preference Shares (voting as a single Class) to a Refinancing has been received by the Trustee from the Servicer pursuant to Section 9.8(a) no later than 15 days prior to the Refinancing Date, notice of a Refinancing shall be given by the Trustee by first class mail, postage prepaid, mailed not less than 10 Business Days prior to the proposed Refinancing Date, to each Holder of Notes of the Class to be refinanced at the address in the Indenture Register (with a copy to the Servicer) and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All notices of a Refinancing shall state:

(i) the proposed Refinancing Date, which shall be the applicable Redemption Date in respect of the Notes being redeemed;

(ii) the Refinancing Price, which shall be the applicable Redemption Price in respect of the notes being redeemed;

(iii) that on such proposed Refinancing Date such Notes will be refinanced and redeemed in full, and that, provided that the Refinancing Proceeds have been deposited with the Trustee for any such payment in full, interest on such Notes being redeemed shall cease to accrue on such date; and

(iv) the place or places where such Notes are to be surrendered for payment of the Refinancing Price which, if not stated, shall be the office or agency of any paying agent as provided in Section 7.2;

provided that no notice of Refinancing shall be sent if either (a) the Servicer has withdrawn its consent to such Refinancing or (b) the consent of a Majority of the Holders of Preference Shares to such Refinancing has not been obtained.

(f) Notice of Refinancing shall be given by the Trustee at the expense of the Issuer. Failure to give a Notice of Refinancing, or any defect therein, to any Holder of any Note selected for Refinancing shall not impair or affect the validity of the Refinancing or give rise to any claim based upon such failure or defect.

Any Notice of Refinancing may be withdrawn by the Servicer, on behalf of the Issuer, on or prior to the fourth Business Day prior to the scheduled Refinancing Date by written notice to the Trustee, the Paying Agent, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent, the Rating Agencies and the holders of the Preference Shares. Upon receipt of such notice of withdrawal, the Trustee shall send such notice to the Holders of Notes and, if applicable, the Irish Paying Agent.

(g) If a Notice of Refinancing pursuant to Section 9.7(a) has been given as provided herein and not withdrawn, the Notes to be refinanced shall on the Refinancing Date become due and payable at the Refinancing Price and the Servicer shall cause the Refinancing Proceeds to be deposited with the Trustee in immediately available funds no later than the close of business on the Business Date immediately preceding the Refinancing Date. Each Holder of such Notes shall present and surrender its Note at the place specified in the Notice of Refinancing on or prior to such Refinancing Date; provided that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender.

(h) If any Class of Notes called for Refinancing shall not be so paid upon surrender thereof for Refinancing (or the delivery of the indemnity pursuant to the preceding paragraph) the principal shall, until paid, bear interest from the Refinancing Date at the applicable Note Interest Rate for each successive Payment Date with respect to which such Note remains Outstanding.

ARTICLE X.

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. Collection of Money.

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

Section 10.2. Collection Account.

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Such amounts may include net proceeds from the sale of the Securities, deposited by the Issuer on the Closing Date (which funds shall be treated as Principal Proceeds, subject to Section 10.2(c). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the

posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order. In addition, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee may, withdraw funds on deposit in the Collection Account representing Principal Proceeds (up to the amount deposited by the Issuer on the Closing Date from net proceeds of the sale of the Securities) and apply and disburse such funds to adjustments in the settlement price of the Collateral Obligations purchased on the Closing Date.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. Other Accounts.

(a) Custodial Account. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) Revolving Reserve Account and Delayed Drawdown Reserve Account. Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At any other time that amounts on deposit in the Revolving Reserve Account or Delayed Drawdown Reserve Account, respectively, are less than the total unfunded Commitment Amounts for all Revolving Loans or Delayed Drawdown Loans (as applicable) in the Collateral, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account or the Delayed Drawdown Reserve Account (as applicable) in the amount necessary to cause the amount on deposit in the Revolving Reserve Account to equal the total unfunded Commitment Amounts of all Revolving Loans in the Collateral and the amount on deposit in the Delayed

Drawdown Reserve Account to equal to total unfunded Commitment Amounts of all Delayed Drawdown Loans in the Collateral, as applicable. At the direction of the Servicer at any time, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) Expense Reimbursement Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of Administrative Expenses that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be applied in accordance with Section 10.4(a).

(d) Hedge Counterparty Collateral Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) Synthetic Security Collateral Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) Securities Lending Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) Closing Date Expense Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$14,900,000 from the gross proceeds of the Offering. At any time before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in May, 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in May, 2007, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account (after application of any funds therein on such date) to the Collection Account as Principal Proceeds and close the Closing Date Expense Account.

(h) Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(i) Payment Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(j) Interest Reserve Account. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$5,600,000 from the gross proceeds of the Offering. At any time on or before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in May, 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, (a) transfer from amounts on deposit in the Interest Reserve Account to the Payment Account an amount necessary such that the amounts referred to in Section 11.1(a)(i)(1) through (19) will be paid in full on the Payment Date occurring in May, 2007 or (b) at the discretion of the Servicer, transfer any funds on deposit in the Interest Reserve Account to the Collection Account as Principal Proceeds. On the Payment Date in May, 2007, the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies

therefrom on such date) to the Collection Account as Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be held pursuant to Section 10.4(a).

(k) Class II Preference Share Special Payment Account. Before the Closing Date, the Preference Shares Paying Agent shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Preference Shares Paying Agent for the benefit of the Issuer, over which the Preference Shares Paying Agent shall have exclusive control and the sole right of withdrawal. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments, the Trustee will pay to the Preference Shares Paying Agent for deposit into the Class II Preference Share Special Payment Account amounts equal to the products of (a) the Class II Preference Share Portion for such Payment Date and (b) on any Payment Date on or prior to February 3, 2008 or with respect to which the Servicer has notified the Trustee on or before the related Determination Date that it is waiving its Servicing Fee, the Servicing Fees then due and payable, as described in Section 11.1(a), for payment to the Servicer on such Payment Date. The Servicer has agreed to waive such amounts, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date occurring on or prior to February 3, 2008 and an amount equal to such waived amounts will be distributed by the Preference Shares Paying Agent in accordance with the Preference Share Paying Agency Agreement and the laws of the Cayman Islands to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event, an amount equal to such waived portion will be distributed by the Trustee, subject to the laws of the Cayman Islands, to the Preference Shares Paying Agent for payment pro rata to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. For purposes of any calculation under this Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(l) Class A–1B Funding Account. The Trustee shall, prior to the Closing Date, establish a segregated trust account designated the Class A-1B Funding Account. Any Aggregate Undrawn Amount deposited with the Trustee pursuant to Section 2.14(c) as a result of the failure of a Holder of a Class A-1B Note to satisfy the Rating Criteria during the Delayed Drawdown Period shall be placed in a separate subaccount of the Class A-1B Funding Account relating to such Holder and shall be used by the Trustee to fund such holder's *pro rata* portion of any subsequent Drawdown under the Class A-1B Notes. Amounts so placed in the Class A-1B Funding Account shall, for all purposes under this Indenture, be part of the Aggregate Undrawn Amount and such Holder shall be entitled to receive the applicable Delayed Drawdown Fee thereon. During the Delayed Drawdown Period, amounts held in each subaccount of the Class A-1B Funding Account shall be invested in Eligible Investments at the direction of the related Holder or, in the absence of such direction, in the Bank's "Cash Management Account" (the "***Standby Investment***") or such other Eligible Investment as may be specified in writing by the Servicer as the "Standby Investment". Amounts in the Class A-1B Funding Account as of the Business Day prior to the first Payment Date will be automatically converted to constitute Drawn Amounts under the related Class A-1B Notes; provided that to the extent the amount in the Class A-1B Funding Account exceeds the related Holder's pro rata share of the Fully Drawn Amount, such excess shall be remitted to such Holder on the first Payment Date.

(m) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(n) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. Application of Funds in Accounts; Reports by Trustee.

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited

to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements; provided, however, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lender shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the Servicing Agreement. The Trustee shall promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be held in Eligible Investments as described above.

Section 10.5. Synthetic Security Counterparty Account.

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty or to the extent that any Synthetic Security has an unfunded amount payable by the Issuer that does not by its terms require collateral, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section 10.5.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security and, without duplication, an amount equal to the unfunded amount of a Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. Accountings.

(a) Monthly. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending January, 2008, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Placement Agent, each Hedge Counterparty, the Rating Agencies, (if so requested by the Placement Agent) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit D certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the "***Monthly Determination Date***"):

(i) Collateral:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Non-Performing Collateral Obligation, a Workout Asset or a Non-qualifying Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report, and the gain or loss (measured against its Purchase Price) on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the

definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value";

(Q) The identity of any Collateral Obligation that the related obligor of which is an entity for which the Servicer is the servicer or the manager;

(R) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(S) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) Hedge Agreements:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(C) Coverage Tests, Collateral Quality Tests and Retention Overcollateralization Test:

(D) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Retention Overcollateralization Test is satisfied;

(E) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(F) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(G) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(H) The Moody's Minimum Average Recovery Rate, the S&P Minimum Average Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Minimum Average Recovery Rate is satisfied;

(I) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(J) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(K) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(L) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate";

(iv) Concentration Limitations and Withholding Taxes:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(v) Securities Lending Agreements:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vi) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) Payment Date Accounting. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Placement Agent, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Placement Agent) the Repository in accordance with Section 14.3(a)(viii), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit D certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) Notes:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest (and, with respect to the Class A-1B Notes, Delayed Drawdown Fee) payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) Payment Date Payments:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i) and 11.1(a)(ii) itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(I) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(J) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) Failure to Provide Accounting. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(d) Irish Stock Exchange. So long as any Class of Senior Notes is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Senior Notes following each Payment Date and inform the Irish Stock Exchange if any such Class of Senior Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Senior Notes are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof.

(g) *Payments or Transfers from the Payment Account.* Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

Section 10.7. Release of Collateral.

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's Certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

Section 10.8. Reports by Independent Accountants.

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before January 31 of each year commencing in 2008, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit D certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. Reports to Rating Agencies.

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE XI.

APPLICATION OF MONIES

Section 11.1. Disbursements of Monies from Payment Account.

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fee, expenses and indemnities of the Delayed Drawdown Note Agent; and then

(iv) fees, expenses and indemnities of the Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other Person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account; provided that on the final Payment Date, no Interest Proceeds shall be distributed pursuant to this clause (2);

(3) first, payment to the Preference Shares Paying Agent for deposit in the Class II Preference Share Special Payment Account for distribution by way of dividend by the Preference Shares Paying Agent to the Class II Preference Shareholders in accordance with Section 10.3(k) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and second, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of (i) (A) accrued and unpaid interest on the Class A-1A Notes, (B) accrued and unpaid interest and Delayed Drawdown Fee on the Class A-1B Notes and (C) accrued and unpaid interest on the Class A-2 Notes, and (ii) any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, (A) the Class A-1A Notes, (B) the Class A-1B Notes and (C) the Class A-2 Notes, in each case on a *pro rata* basis;

(6) if either of the Class A Coverage Tests is not satisfied on the related Determination Date, to the payment of principal of the Class A Notes in the Note Payment Sequence, in each case, in the amount necessary so that all of the Class A Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (6) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(2) on the current Payment Date);

(7) to the payment of accrued and unpaid interest on the Class B Notes (excluding Class B Deferred Interest, but including interest accrued for the preceding Interest Period on Class B Deferred Interest);

(8) to the payment of Class B Deferred Interest;

(9) if either of the Class B Coverage Tests is not satisfied on the related Determination Date, to the payment of principal of the Class A Notes and

the Class B Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(3) on the current Payment Date);

(10) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest, but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(11) to the payment of Class C Deferred Interest;

(12) if either of the Class C Coverage Tests is not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (12) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(4) on the current Payment Date);

(13) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest, but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(14) to the payment of Class D Deferred Interest;

(15) if either of the Class D Coverage Tests is not satisfied on the related Determination Date, to the payment of principal of the Class D Notes in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full, or if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (15) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(5) on the current Payment Date);

(16) to deposit in the Collection Account as Principal Proceeds amounts representing Principal Proceeds previously used to pay amounts referred to in clauses (1) through (5), (7), (8), (10), (11), (13) and (14) above and not previously restored to the Collection Account or, if not restored to the Collection Account, used to purchase Collateral Obligations;

(17) if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal

Proceeds the lesser of (i) 50% of the remaining Interest Proceeds available after the payments pursuant to clause (16) above and (ii) the amount necessary to cause the Retention Overcollateralization Test to be satisfied as of such Determination Date, after application of funds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date;

(18) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(19) first, payment to the Preference Shares Paying Agent for deposit in the Class II Preference Share Special Payment Account for distribution by way of dividend by the Preference Shares Paying Agent to the Class II Preference Shareholders in accordance with Section 10.3(k) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and second, to the payment (pro rata according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) pro rata to each Noteholder entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(20) to the payment of any Defaulted Hedge Termination Payments;

(21) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12.0%;

(22) first, payment to the Preference Shares Paying Agent for deposit in the Class II Preference Share Special Payment Account for distribution by way of dividend by the Preference Shares Paying Agent to the Class II Preference Shareholders in accordance with Section 10.3(k) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and second, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(23) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (21) and (23) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest

Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with the Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) to the payment of the amounts referred to in clauses (1) through (5) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder;

(2) to the payment of amounts referred to in clause (6) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (2), or until such amounts are paid in full;

(3) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3), or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (12) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of

the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (4), or until such amounts are paid in full;

(5) to the payment of principal of the Notes in the Note Payment Sequence in an amount necessary to (A) cause the Class D Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (5), or until paid in full or (B) if a Rating Confirmation Failure exists on the Payment Date, obtain a Rating Confirmation, or until paid in full;

(6) (x) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds) and (y) after the Replacement Period, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments;

(7) (x) FIRST, to pay the principal of the Class A-1 Notes, *pro rata* based on the Aggregate Outstanding Amount of each of the Class A-1A Notes and the Class A-1B Notes, until the Class A-1 Notes have been fully redeemed and (y) SECOND, to pay the principal of the Class A-2 Notes, *pro rata*, until the Class A-2 Notes have been fully redeemed;

(8) to the payment of the amounts referred to in clauses (7) and (8) of Section 11.1(a)(i), in the order set forth therein, to the extent not previously paid in full thereunder;

(9) to pay the principal of the Class B Notes, *pro rata*, until the Class B Notes have been fully redeemed;

(10) to the payment of the amounts referred to in clauses (10) and (11) of Section 11.1(a)(i), in the order set forth therein, to the extent not previously paid in full thereunder;

(11) to pay the principal of the Class C Notes, *pro rata*, until the Class C Notes have been fully redeemed;

(12) to the payment of the amounts referred to in clauses (13) and (14) of Section 11.1(a)(i), in the order set forth therein, to the extent not previously paid in full thereunder;

(13) to pay the principal of the Class D Notes, *pro rata*, until the Class D Notes have been fully redeemed;

(14) (x) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (18) through (22) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(y) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(15) to the extent not previously paid in full under clause (14) above, after the Replacement Period, to the payment of the amounts referred to in clauses (18) through (22) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(16) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Servicer unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a), if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different Persons, the Trustee shall make the disbursements called for by the paragraph

or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

ARTICLE XII.

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. Sales of Collateral Obligations.

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's Certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) Credit Risk Obligations. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during or after the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) Credit Improved Obligations. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i), to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or

Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; or

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) Non-Performing Collateral Obligations. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) Non-qualifying Collateral Obligations. At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "***Non-qualifying Collateral Obligation***") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) Withholding Tax Sales. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) Optional Redemption. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) Rating Confirmation Failure. After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) Workout Assets. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) Supervening Requirement. Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

Section 12.2. Purchase of Collateral Obligations.

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) and the funds available from Drawdowns under the Class A-1B Notes to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) Eligibility Criteria. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 10.0% of the Maximum Amount;

(D) the Weighted Average Life Test is satisfied and the Weighted Average Life of such Collateral Obligation is less than or equal to the Weighted Average Life of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the current Moody's Ratings on the Class A-1A Notes, the Class A-1B Notes and the Class A-2 Notes are "Aaa" and the current Moody's Ratings on the Class B Notes, the Class C Notes and the Class D Notes, are no lower than one subcategory below their Initial Rating.

Notwithstanding the foregoing, (i) one or more Collateral Obligations may be purchased pursuant to a Portfolio Improvement Exchange effected in compliance with Section 12.1(b) regardless of whether such purchase would otherwise satisfy the Eligibility Criterion set forth in clause (xii) above and (ii) the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal or resignation pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement. .

(c) Certain Permitted Exchanges. The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) Certification by Servicer. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) Eligible Investments. Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

Section 12.3. Conditions Applicable to All Sale and Purchase Transactions.

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser or servicer, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Article 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Sections 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

Section 12.4. Certain Determinations Relating to Collateral Obligations.

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE XIII.

NOTEHOLDERS' RELATIONS

Section 13.1. Subordination.

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
Class A-1A	A-2[1], B, C, D, Preference Shares[2]	None
Class A-1B	A-2[1], B, C, D, Preference Shares[2]	None
Class A-2	B, C, D, Preference Shares[2]	A-1[1]
Class B	C, D, Preference Shares[2]	Class A
Class C	D, Preference Shares[2]	Class A, B
Class D	Preference Shares[2]	Class A, B, C
Preference Shares	None[3]	Class A, B, C, D

1 Interest payments will be made to the Class A-1A Notes, the Class A-1B Notes and the Class A-2 Notes on a *pari passu* basis. The Class A-1A Notes and the Class A-1B Notes will be entitled to principal payments on a *pari passu* basis and will be senior to the Class A-2 Notes in right of repayment of principal.

2 Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

3 The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be

fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2. Standard of Conduct.

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE XIV.

MISCELLANEOUS

Section 14.1. Form of Documents Delivered to Trustee.

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. Acts of Holders of Securities.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (provided that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "Act" of the Holders of Securities signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 14.2.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

(e) With respect to any time period or deadline to deliver any request, demand, authorization, direction, notice, consent, waiver or other communication provided by this Indenture to be given by Holders of the Preference Shares, the Holders of Holding Preference Shares shall not be prejudiced by any delay in delivery of such request, demand, authorization, direction, notice, consent, waiver or other communication from the Holding Preference Shares Paying Agent to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be. If any such Holder of Holding Preference Shares timely delivers such request, demand, authorization, direction, notice, consent, waiver or other communication to the Holding Preference Shares Paying Agent such request, demand, authorization, direction, notice, consent, waiver or other communication shall be deemed to be timely delivered to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be.

Section 14.3. Notices, etc., to Certain Persons or Parties.

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

(i) the Trustee, Delayed Drawdown Note Agent or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at its Corporate Trust Office, 200 Clarendon Street, Mail Code EUC 108, Boston, Massachusetts 02116, telecopy no. (617) 937-5585, Attention: CDO Services, Brentwood CLO Ltd., or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Maples Finance Limited, P.O. Box 1093GT, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: The Directors, or to the Co-Issuer addressed to it at c/o Puglisi & Associates, 850 Library Avenue, Suite 204, Newark, Delaware 19711, telecopy no. (302) 738-7210, Attention: Donald J. Puglisi, or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Servicer at its address below;

(iii) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) the Placement Agent shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Placement Agent at 9 West 57th Street, New York, New York 10019, Attention: Structured Securities Group—CDO Structuring, or at any other address previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of the Placement Agent;

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New

York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Maples Finance Limited, P.O. Box 1093GT, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 949-7100, Attention: The Directors; or

(viii) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Any document required to be delivered or made available to the Repository by the Trustee may be made available by providing the operator of the Repository with access to a website containing such document in a format that permits the user to download the document as a PDF file.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A Note may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A Note on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A Notes) to the Trustee in substantially the form of Exhibit F specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A Note (each, an "***Insurer***"). After receipt of any such notice (in the form of Exhibit F) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

(d) Unless notified to the contrary by Financial Security Assurance Inc. ("***FSA***") or unless FSA is no longer to direct the vote of at least a Majority of the Aggregate Outstanding Amount of the Class A-1 Notes, each of the parties hereto agrees that, so long as any Class A-1 Notes are Outstanding, FSA shall be entitled to receive, and shall be distributed, all reports, notices, certificates, statements and other information (including access to the Trustee's password protected website) that are required to be delivered to any Holder of the Class A-1 Notes (or that any Holder of the Class A-1 Notes is entitled to request) at the same time and in the same manner as such reports, notices certificates, statements and other information are delivered to each such Holder of Class A-1 Notes, at the following address (or at any other address furnished in writing from time to time by FSA to the parties hereto): Financial Security Assurance Inc., 31 West 52nd Street, New York, NY 10019, Attention CDO Surveillance, telephone no.: (212) 826-0100; electronic mail: cdoreport@fsa.com, facsimile no.: (212) 339-3581. For the avoidance of doubt, FSA shall be entitled to request directly that the parties hereto provide it with such reports, notices, certificates, statements and other information that are required to be delivered to any Holder of the Class A-1 Notes (or that any Holder of the Class A-1 Notes is entitled to request).

Section 14.4. Notices to Noteholders, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent; Waiver.

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register, at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee or at the address of the Holding Preference Shares Paying Agent supplied by the Holding Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder, the Preference Shares Paying Agent or Holding Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer. The Trustee shall deliver to the Holding Preference Shares Paying Agent any information or notice that the Holding Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Holding Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

Where this Indenture provides for notice in any manner, the notice may be waived in writing by any Person entitled to receive the notice, either before or after the event, and the waiver shall be the

equivalent of the notice. Waivers of notice by Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

So long as any Senior Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Noteholders, the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to Holders of Holding Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Placement Agent all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation relating to the Notes requested by the Placement Agent (collectively, the "***Transaction Reports***") and the Issuer consents to the Placement Agent's providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Placement Agent or any of its Affiliates).

Section 14.5. Effect of Headings and Table of Contents.

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

Section 14.6. Successors and Assigns.

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. Separability.

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

Section 14.8. Benefits of Indenture.

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9. Legal Holidays.

If any Payment Date, Redemption Date, or Stated Maturity is not a Business Day, then notwithstanding any other provision of the Notes or this Indenture, payment need not be made on that date, but shall be made on the next Business Day with the same effect as if made on the nominal date of the Payment Date, Redemption Date or Stated Maturity date, as the case may be, and except as provided in the definition of "Due Period," no interest shall accrue on the payment for the period beginning on the nominal date.

Section 14.10. Governing Law.

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.11. Submission to Jurisdiction.

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of Investors Bank & Trust Company (to the attention of Investors Bank and Trust, Trustee for Brentwood CLO, Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.12. Counterparts.

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.13. Acts of Issuer.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

Section 14.14. Consent of Posting of Documents on Repository.

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.15. Liability of Co-Issuers.

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to

the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.16. Indemnity of Co-Issuer.

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE XV.

ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

Section 15.1. Assignment of Servicing Agreement; Amendment of Servicing Agreement.

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(A) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(B) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations, covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(C) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(D) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h).

(E) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(F) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use its best efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; provided that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), (c) to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and (d) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the "***Objection Cut-Off Date***"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

Section 15.2. Hedge Agreements.

(a) At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer and with the consent of a Majority of the Controlling Class, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture and the Collateral Assignment of Hedge Agreements. The Servicer, on behalf of the Issuer, shall obtain the approval of each new Hedge Agreement from each Hedge Counterparty to a then-existing Hedge Agreement. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "A1" (which rating of "A1" is not on credit watch for possible downgrade) or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A2" (which rating of "A2" is not on credit watch for possible downgrade) or higher and a debt rating by Moody's for short-term debt of "P-1" (which rating of "P-1" is not on credit watch for possible downgrade) if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or, if the Hedge Counterparty does not have a short-term debt rating by S&P, a long-term debt rating of not less than "A+" (the "***Required Rating***").

(c) If at any time a Hedge Counterparty has:

(i) no short-term Moody's rating and a long-term Moody's rating and that rating is below "A1" or is "A1" and has been placed on credit watch for possible downgrade by Moody's; or

(ii) both a short-term and long-term Moody's rating; and either:

(A) the long-term Moody's rating is below "A2" or that rating is "A2" and has been placed on credit watch for possible downgrade by Moody's, or

(B) the short-term Moody's rating is below "P-1" or that rating is "P-1" and has been placed on credit watch for possible downgrade by Moody's

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 Business Days, either:

(1) post collateral on at least a weekly basis with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type sufficient to equal the First Trigger Collateral Amount for such type of hedge;

(2) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the above criteria; or

(3) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty whose short-term and long-term debt ratings equal or exceed the above criteria;

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 11

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol. 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
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007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
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007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
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007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

provided that the failure to take any such steps set forth under paragraphs (1) through (3) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(d) If at any time the Hedge Counterparty has:

(i) no short-term Moody's rating and a long-term Moody's rating that is "Baa1" or below or has been suspended or withdrawn;

(ii) both a short-term and long-term Moody's rating; and either:

(A) the long-term Moody's rating is "Baa1" or below or is suspended or withdrawn, or

(B) the short-term Moody's rating is "P-3" or below, or

(C) a short-term debt rating by S&P below "A-1" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "A+" or that has been suspended or withdrawn;

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 Business Days, either:

(1) obtain a guarantor that has a Required Rating and that will satisfy the Rating Condition with respect to S&P with respect to its appointment; or

(2) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P;

provided that failure to take any such steps set forth under paragraphs (1) and (2) above shall be treated as an "Additional Termination Event" under such Hedge Agreement. Until the Hedge Counterparty complies with either paragraph (1) or paragraph (2) above (when applicable), such Hedge Counterparty shall post collateral on at least a weekly basis as required by the Hedge Agreement to secure the Hedge Counterparty's obligations under the Hedge Agreement in an amount and of the type sufficient to (i) cause the Rating Condition with respect to S&P to be satisfied and (ii) equal the Second Trigger Collateral Amount for such type of hedge; provided that the Hedge Counterparty shall, at the time such collateral is first posted, deliver to the Issuer, the Trustee and the Rating Agencies an Opinion of Counsel of nationally recognized standing in the jurisdiction in which the Hedge Counterparty is incorporated confirming that such collateral will be available in a timely manner upon a bankruptcy of the Hedge Counterparty.

Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty shall comply with the then currently applicable rating criteria published by each Rating Agency from time to time.

(e) If at any time the Hedge Counterparty has a long-term unsecured debt rating by S&P below "BBB-," then the Hedge Counterparty shall be required to replace itself within 10 days under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P; provided that failure to do so shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(f) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(g) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(h) Except as provided in paragraph (i) of this Section 15.2, the Issuer, at the direction of the Servicer, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), at the expense of the Hedge Counterparty and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1(a) on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(i) Notwithstanding Section 15.2(h), the applicable requirements of Section 15.2(h) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(j) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(k) Each Hedge Agreement may be terminated pursuant to its terms upon an Optional Redemption of the Notes or an acceleration of maturity of the Notes after an Event of Default. The Hedge Agreement will not be permitted to be terminated as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(l) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

BRENTWOOD CLO, LTD.,
AS ISSUER

By: _____
Name: Phillipa White
Title: Director

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

BRENTWOOD CLO, CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

INVESTORS BANK & TRUST COMPANY,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name: Brian Peterson
Title: Director

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care

Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor *divided* by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

The Diversity Score for any Structured Finance Obligation that is a collateralized loan obligation is equal to zero.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	15%
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

The S&P Priority Category Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate asset class and liability rating as categorized by S&P:

Senior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
AA	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
A	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BBB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* This table shall not apply to project finance, future flows, synthetics, CDO repacks of ABS or CDOs, guaranteed ABS, distressed debt CDOs, synthetic CDOs, or emerging market CDOs. Recovery rates for such Structured Finance Obligations will be assigned by S&P on a case-by-case basis.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the annually renewed estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised; provided that, on or prior to each one-year anniversary of the acquisition of any Collateral Obligation with a Moody's annually renewed estimated rating, the Issuer shall submit to Moody's a request for a Moody's credit rating estimate for such Collateral Obligation, which shall be its Assigned Moody's Rating, together with all information reasonably required by Moody's to perform such estimate.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof; and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories.

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clause (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "Borrower"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "Guarantor") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; provided that, on or prior to each one-year anniversary of the acquisition of any such Collateral Obligation, the Issuer shall submit to S&P a request for an S&P credit rating estimate for such Collateral Obligation, which shall be its S&P Rating, together with all information reasonably required by S&P to perform such estimate; or

(C) if such Collateral Obligation is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Servicer determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; provided that the Servicer must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above. For purposes of any calculation under this Indenture, if a S&P Rating is withdrawn by S&P with respect to a Collateral Obligation, the Issuer will continue using the latest S&P Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

EXECUTION COPY

EASTLAND CLO, LTD.

Issuer,

EASTLAND CLO CORP.

Co-Issuer,

and

INVESTORS BANK & TRUST COMPANY

Trustee

INDENTURE

Dated as of March 13, 2007

COLLATERALIZED DEBT OBLIGATIONS

U.S.$100,000,000 Class A-1 Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$825,600,000 Class A-2a Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$206,000,000 Class A-2b Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$78,500,000 Class A-3 Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$81,500,000 Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022
U.S.$68,500,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022
U.S.$48,000,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022

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INDENTURE, dated as of March 13, 2007, among EASTLAND CLO LTD. (the "***Issuer***"), EASTLAND CLO CORP. (the "***Co-Issuer***") and INVESTORS BANK & TRUST COMPANY, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Class D Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty (and the Collateral Administrator, Preference Shares Paying Agent and Holding Preference Shares Paying Agent to the extent of Administrative Expenses payable to such parties as provided hereunder) (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and listed from time to time on such Schedule 1 as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and, together with the Issuer Accounts, the Synthetic Security Collateral Account, the Class II Preference Share Special Payment Account and the Hedge Counterparty Collateral Account, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money, general intangibles, chattel paper and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the "***Collateral***"). Notwithstanding the foregoing, the Collateral shall not include any Excluded Property.

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Loan that constitutes part of the price paid by the Issuer to repurchase and terminate participations sold to Pre-Closing Parties to finance the Issuer's pre-closing acquisition of such Loan.

"***Act***": The meaning specified in Section 14.2.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.04% of the Maximum Amount on the related Determination Date plus $200,000, *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers or Investors Corp. (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and Investors Corp. and of accountants, agents, and counsel for each of the Co-Issuers and Investors Corp.;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Collateral (requested by the Issuer or the Servicer) or the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates, and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other person (except the Servicer) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Ogier Fiduciary Services (Cayman) Limited.

"***Affected Class***": Any Class of Notes that, as a result of the occurrence of a Tax Event, has received, or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Distribution Date related to the Due Period with respect to which such Tax Event occurs.

"***Affiliate***" or "***Affiliated***": With respect to a person,

(i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(ii) any other person who is a director, officer, or employee (A) of the person, (B) of any subsidiary or parent company of the person or (C) of any person described in clause (i) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(B) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date. When used with respect to the Preference Shares or Holding Preference Shares as of any date, means the number of such Preference Shares or Holding Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A-1 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class A-2a Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class A-2b Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(d) the Aggregate Outstanding Amount of the Class A-3 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(e) the Aggregate Outstanding Amount of the Class B Notes at any time shall include all Deferred Interest attributed thereto;

(f) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto; and

(g) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Transaction Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, plus in the case of any CDS/TRS Purchaser, the applicable CDS/TRS Termination Payment Amount and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as applicable, since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder or the Non-Consenting Holding Preference Share Holder, as applicable, on the next succeeding Payment Date) would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders or the Non-Consenting Holding Preference Share Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Amendment Buy-Out Purchaser***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Transaction Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser, the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Initial Purchaser, the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Discount Rate***" : For purposes of determining the CDS/TRS Termination Payment Amount with respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, USD-LIBOR-BBA, as defined in the Annex to the 2000 ISDA Definitions as determined by the applicable CDS/TRS Purchaser on the Business Day preceding the date of purchase of the applicable Notes from such CDS/TRS Purchaser in connection with such Amendment Buy-Out.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes, each of the Co-Issuers. With respect to the Class D Notes and the Preference Shares, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate applicable to the Collateral Obligation and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation and the current S&P Rating of the Class A-1 Notes.

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

"***Authorized Officer***": With respect to the Issuer, the Co-Issuer or Investors Corp., any Officer or agent who is authorized to act for the Issuer, the Co-Issuer or Investors Corp., as applicable, in matters relating to, and binding on, the Issuer, the Co-Issuer or Investors Corp. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": Investors Bank & Trust Company, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": Any (i) "employee benefit plan" within the meaning of Section 3(3) of ERISA, that is subject to Title I of ERISA, (ii) any "plan" described by Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, or an entity whose underlying assets include the assets of any plan described in (i) or (ii) by reason of such plan's investment in such entity.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Calculation Agent***": The meaning specified in Section 7.16.

"***Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3".

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

"***CCC+/Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***CCC+/Caa1 Excess Market Value Percentage***": The percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

"***CDS/TRS Purchaser***": A Holder of the Notes or, in the case of Notes represented by Global Notes, any beneficial owner thereof that has entered into either a credit default swap or a total return swap with respect to such Notes.

"***CDS/TRS Termination Payment Amount***": With respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, as the case may be, (i) on any Payment Date prior to the

August 2011 Payment Date, an amount equal to the present value of the Fixed Amounts with respect to such CDS/TRS Purchaser and each Fixed Rate Payor Calculation Period until the last Fixed Rate Calculation Period, discounting each Fixed Amount from the Payment Date following the end of each such Fixed Rate Payor Calculation Period to the date of purchase of the applicable Notes at the Applicable Discount Rate, and (ii) on any Payment Date on and after the August 2011 Payment Date, zero; provided that, in the case of clause (i), the CDS/TRS Termination Payment Amount shall be calculated by the Servicer and subject to the approval of such CDS/TRS Purchaser.

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Class D Note***": The meaning set forth in Section 2.2(e).

"***Certificated Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares.

"***Class A Notes***": The Class A-1 Notes, the Class A-2 Notes and the Class A-3 Notes.

"***Class A-1 Notes***": The Class A-1 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-2 Notes*** ": The Class A-2a Notes and the Class A-2b Notes.

"***Class A-2a Notes***": The Class A-2a Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-2b Notes*** ": The Class A-2b Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-3 Notes*** ": The Class A-3 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes and the Class A-3 Notes.

"***Class B Coverage Test***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class B Notes.

"***Class B Deferred Interest***": Deferred Interest with respect to the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class P Securities***": The Class P Securities issued by Investors Corp. pursuant to the Holding Preference Share Documents

"***Class I Preference Shares***": The Class I Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class II Preference Share Percentage***": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

"***Class II Preference Share Portion***": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"***Class II Preference Share Senior Special Payment***": For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Special Payment***": Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

"***Class II Preference Share Special Payment Account***": The trust account established pursuant to Section 10.3(j).

"***Class II Preference Share Subordinated Special Payment***": For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Supplemental Special Payment***": For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Shares***"**:** The Class II Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's

board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": March, 13, 2007.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Acquisition Agreement***": The agreement dated as of the Closing Date between the Issuer and the Servicer, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Servicer, and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administrator***": Investors Bank & Trust Company, in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) (a) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (b) in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "AA-" or a short term debt rating by S&P of at least "A-1+";

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease of the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition); and

(26) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans and Eligible Investments	≥ 87.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4)	Revolving Loans and the unfunded portion of Delayed Drawdown Loans	≤ 12.0%
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%
(6)	S&P Unrated DIP Loans	≤ 2.5%
(7)	PIK Securities	≤ 3.0%
(8)	High-Yield Bonds	≤ 7.5%
(9)	Structured Finance Obligations	≤ 10.0%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
(10)	Structured Finance Obligations that are collateralized loan obligations	≤ 7.5%
(11)	obligors Domiciled other than in the United States and Canada	≤ 20.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14)	obligors Domiciled in all Moody's Group II Countries in the aggregate	≤ 10.0%
(15)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(16)	obligors Domiciled in all Moody's Group III Countries in the aggregate	≤ 5.0%
(17)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(18)	same S&P Industry Classification	≤ 8.0%
	(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%

(19)	single issuer and any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual issuers and any of their Affiliates (excluding Secondary Risk Counterparties) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 2.5%
(20)	Fixed Rate Obligations	≤ 7.5%
(21)	Pay interest less frequently than quarterly but no less frequently than semi-annually	≤ 7.5%
(22)	Pay interest less frequently than semi-annually but no less frequently than annually	≤ 3.0%
(23)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(24)	Participations (provided that no Relevant Obligations may be a Participation in a Participation)	≤ 20.0%
(25)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤ 20.0%
(26)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(27)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(28)	Deep Discount Obligations	≤ 7.5%
(29)	CCC+/Caa1 and below Collateral Obligations	≤ 7.5%
(30)	Long-Dated Collateral Obligations	≤ 2.0%
(31)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%

(32)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan)	≤ 5.0%
(33)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $75,000,000	≤ 10.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Consenting Holder of the Preference Shares***": With respect to any Payment Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date.

"***Controlling Class***": The Class A-1 Notes, the Class A-2a Notes and the Class A-2b Notes (voting together as a Class or group), so long as any Class A-1 Notes, Class A-2a Notes or Class A-2b Notes are Outstanding; then the Class A-3 Notes (voting together as a Class or group), so long as any Class A-3 Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; and then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding.

"***Controlling Person***": The meaning specified in Section 2.6(c).

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 200 Clarendon Street, Mail Code: EUC 108, Boston, MA, 02116, telecopy no. (617) 351-4358, Attention: CDO Services Group or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A Coverage Tests, the Class B Coverage Tests, the Class C Coverage Tests and the Class D Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; provided that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and provided, further, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 101), or (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A-1 Notes, the Class A-2a Notes or the Class A-2b Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class A-3 Notes, the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1 Notes, the Class A-2a Notes and the Class A-2b Notes, or to only one subcategory below their Initial Rating in the case of the Class A-3 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; provided that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer, and (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation, or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an Officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due,

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance,

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(v) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Servicer, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor, or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class B Notes, the Class C Notes and the Class D Notes.

"***Deficiency Amount***": The meaning specified in Section 16.3(a).

"***Deficiency Notice Date***": The meaning specified in Section 16.3(a).

"***Definitive Notes***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for purposes of the Concentration Limits only unfunded portions will count as Delayed Drawdown Loans.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership to the Issuer and the pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer),

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States, and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code,

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code,

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets, or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score. For the purposes of calculating the Diversity Test, any Structured Finance Obligation that is a collateralized loan obligation will be disregarded.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile***" or "***Domiciled***": With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" and Moody's foreign currency rating of at least "Aa2".

"***Eligible Equity Security***": An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

"***Eligible Investments***": Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; provided that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's and "AA-" by S&P, and if so rated, such rating is not on watch for downgrade.

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; provided that, if such repurchase obligation has

a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar vehicle having at the time of acquisition and throughout the term thereof a credit rating of "MR1+" by Moody's and "AAA" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes or the Class D Notes; provided, further, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, any mortgage-backed security or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r", "t", "p", "pi" or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer or depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Established Securities Market***": Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excel Default Model Input File***": An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Priority Category, and

(k) such other information as the Trustee may determine to include in such file.

"***Excess CCC+/Caa1 Collateral Obligations***": The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": (i) U.S.$1,000 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$1,000 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts, (ii) any amounts credited to the Class II Preference Share Special Payment Account from time to time and (iii) any Margin Stock.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Replacement Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in May 2018); provided that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in May, 2030.

"***Extended Scheduled Holding Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Holding Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Holding Preference Shares Redemption Date, the Payment Date in May 2026); provided that the "Extended Scheduled Holding Preference Shares Redemption Date" will in no event be a date later than the Payment Date in May 2038.

"***Extended Scheduled Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Preference Shares Redemption Date, the Payment Date in May 2026); provided that the "Extended Scheduled Preference Shares Redemption Date" will in no event be a date later than the Payment Date in May 2038.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first

Extended Stated Maturity Date, the Payment Date in May 2026); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in May 2038.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, May 1, 2021); provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in May 2033.

"***Extension***": An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A-1 Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-2a Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class A-2b Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class A-3 Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (6) in the case of the Class C Notes, 0.25% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (7) in the case of the Class D Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in February 2012).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as the case may be, since the Closing Date would cause such Preference Shares or Holding

Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Extension Qualifying Purchasers***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchaser, the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Initial Purchaser, the Placement Agent, the Investors Corp. Placement Agent or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share or Holding Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share or Holding Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***Fixed Amount***": With respect to any CDS/TRS Purchaser and each applicable Fixed Rate Payor Calculation Period, the product of (i) the applicable Fixed Rate Payor Calculation Amount with respect to such CDS/TRS Purchaser, (ii) the applicable Fixed Rate with respect to such CDS/TRS Purchaser and (iii) a fraction the numerator of which is the actual number of days in such Fixed Rate Payor Calculation Period and the denominator of which is 360.

"***Fixed Rate***": With respect to any CDS/TRS Purchaser, the spread over LIBOR of the Class of Notes held by such CDS/TRS Purchaser with respect to which such CDS/TRS Purchaser has entered into a credit default swap or a total return swap, as the case may be.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate.

"***Fixed Rate Payor Calculation Amount***": With respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, the Aggregate Outstanding Amount of the Notes held by such CDS/TRS Purchaser as of the date of purchase of such Notes in an Amendment Buy-Out (in each case, after giving effect to any principal amounts paid to such CDS/TRS Purchaser on such date).

"***Fixed Rate Payor Calculation Period***": With respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, initially, the period from and including the date of purchase of such Notes in an Amendment Buy-Out to but excluding the immediately succeeding Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided that the last Fixed Rate Payor Calculation Period shall end on the August 2011 Payment Date.

"***Floating Rate Notes***": The Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A-1 Notes, the Class A-2a Notes and the Class A-2b Notes by the

Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

"***FSA***": The meaning specified in Section 14.3(d).

"***Funded Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan at any time, the aggregate principal amount of advances or other extensions of credit made thereunder by the Issuer that are outstanding and have not been repaid at such time.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": Any counterparty, to the extent that when the Issuer enters into any Hedge Agreement with such counterparty, such counterparty satisfies the requirements of Section 15.2(b) (subject to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***HFP***": Highland Financial Partners, L.P., an Affiliate of the Servicer.

"***High-Yield Bond***": Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not

resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; of any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share; and of any Holding Security, the person whose name appears in the Holding Preference Share register related thereto as the registered holder of such Holding Security.

"***Holding Preference Share Documents***": Investors Corp.'s memorandum and articles of association, the Holding Preference Shares Paying Agency Agreement and the resolutions of Investors Corp.'s board of directors authorizing the issuance of the Holding Securities passed on or before the Closing Date.

"***Holding Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for each distribution made to the Holders of the Holding Securities on any prior Payment Date and, to the extent necessary to reach the applicable Holding Preference Share Internal Rate of Return, the current Payment Date, assuming all Holding Preference Shares are purchased on the Closing Date at their Face Amount.

"***Holding Preference Shares***": Preference shares issued by Investors Corp. pursuant to the Holding Preference Share Documents. For the avoidance of doubt, (A) all references in this Indenture to the “Holding Preference Shares” include the “Holding Preference Share Component” of the Class P Securities and (B) all references in this Indenture to the rights of the Holders of the Holding Preference Shares (including with respect to any payments, distributions, redemptions, votes or consents to be given by such Holders) include the rights of the Holders of the Class P Securities to the extent of the Holding Preference Share Component of the Class P Securities.

"***Holding Preference Shares Component***": The component of the Class P Securities consisting of Holding Preference Shares.

"***Holding Preference Shares Paying Agency Agreement***": The Holding Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between Investors Corp. and the Holding Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Holding Preference Shares Paying Agent***": Investors Bank & Trust Company, in its capacity as holding preference shares paying agent under the Holding Preference Shares Paying Agency Agreement, unless a successor Person shall have become the holding preference shares paying agent pursuant to the applicable provisions of the Holding Preference Shares Paying Agency Agreement, and thereafter "Holding Preference Shares Paying Agent" shall mean such successor Person.

"***Holding Securities***": Collectively, the Holding Preference Shares and the Class P Securities.

"***Holding Share Registrar***": Ogier Fiduciary Services (Cayman) Limited or any successor thereto.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit G-2.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(b) to the Holders of Securities.

"***Initial Purchaser***": Citigroup Global Markets Inc.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Institutional Accredited Investor***": An institutional investor that is also an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under Regulation D.

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, minus

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A Interest Coverage Test	120.0%
Class B Interest Coverage Test	115.0%
Class C Interest Coverage Test	110.0%
Class D Interest Coverage Test	105.0%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(vii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(ix) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Section 11.1(a)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(i).

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Investors Corp.***": Eastland Investors Corp., an exempted limited liability company incorporated under the laws of the Cayman Islands.

"***Investors Corp. Placement Agent***": Citigroup Global Markets Inc.

"***Investors Corp. Subscription Agreement***": A subscription agreement dated March 13, 2007 between Investors Corp. and the Issuer relating to the purchase of the Class I Preference Shares by Investors Corp.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The Person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer, the Co-Issuer or Investors Corp. by an Authorized Officer of the Issuer, the Co-Issuer or Investors Corp., as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or

indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": The offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Reuters Screen LIBOR01 Page as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Reuters Screen LIBOR01 Page for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Reuters Screen LIBOR01 Page as reported on Bloomberg Financial Market Commodities News (or a page that replaces Reuters Screen LIBOR01 Page for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "**Reference Banks**") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered, or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or the Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the preceding paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided that, during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to (a) the higher of (i) the S&P Priority Category Recovery Rate for such Collateral Obligation and the then current S&P Rating of the Class A-1 Notes and (ii) 70%, of the Principal Balance of such Collateral Obligation or (b) if the Servicer has determined in its commercially reasonable judgment that the Market Value of such Collateral Obligation is lower than the amount determined pursuant to clause (a), such amount to be determined by the Servicer in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

"***Market Value Determination Date***": With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation, *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$1,500,000,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations, *plus*

(B) Cash representing Principal Proceeds on deposit in the Collection Account, *plus*

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6; and,

with respect to any distribution of Eligible Equity Securities only,

(vi) that is a Market Value Determination Date.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

"***Minimum Diversity Score***": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Minimum Weighted Average Spread***": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Moody's Priority Category Recovery Rate Matrix" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Moody's Priority Category Recovery Rate Matrix" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Priority Category Recovery Rate Matrix***":

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	**Moody's Senior Secured Loans**	**Moody's Non Senior Secured Loans**	**High-Yield Bonds**
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Security shall be equal to: $\frac{A \times 55\%}{1 - B}$,

where: "*A*" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"*B*" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"***Moody's Senior Secured Loan***":

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan,

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral, or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan,

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan,

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral, and

(iv) has been assigned a Moody's Obligation Rating equal to or higher than the applicable Moody's Default Probability Rating, and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in August 2011.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Consenting Holding Preference Share Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder of Holding Securities that either (i) has directed Investors Corp. not to consent to such supplemental indenture or (ii) has not provided Investors Corp. with any direction with respect to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3", or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-", the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class D Notes, a Holder or beneficial owner of an interest in a Class D Note that is not a QIB/QP (except that, solely with respect to a Holder purchasing Class D Notes on the Closing Date, such Holder shall not be a Non-Permitted Holder so long as it is an Institutional Accredited Investor).

"***Non-Permitted Benefit Plan Investor***": The meaning specified in the second paragraph of Section 2.6(c).

*"**Non-qualifying Collateral Obligation**"*: The meaning specified in Section 12.1(d).

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes and the Class A-3 Notes and the ultimate payment of interest on the Class B Notes, the Class C Notes and the Class D Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.00%
2	Greater than or equal to 2.90% but less than 3.00%
3	Greater than or equal to 2.80%% but less than 2.90%
4	Greater than or equal to 2.70%% but less than 2.80%
5	Greater than or equal to 2.60% but less than 2.70%
6	Greater than or equal to 2.50% but less than 2.60%
7	Greater than or equal to 2.40% but less than 2.50%
8	Greater than or equal to 2.30% but less than 2.40%
9	Greater than or equal to 2.20% but less than 2.30%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Noteholder***": A Holder of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes or the Class D Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A-1 Notes and the Class A-2 Notes *pro rata* in proportion to the respective amounts then due on each such Class until the Class A-1 Notes and the Class A-2 Notes have been fully redeemed (provided that amounts allocated to the Class A-2 Notes shall be paid, first, to the Class A-2a Notes and, second, to the Class A-2b Notes);

(2) to the Class A-3 Notes until the Class A-3 Notes have been fully redeemed;

(3) to the payment of accrued and unpaid interest and any Deferred Interest and interest thereon on the Class B Notes;

(4) to the Class B Notes until the Class B Notes have been fully redeemed;

(5) to the payment of accrued and unpaid interest and any Deferred Interest and interest thereon on the Class C Notes;

(6) to the Class C Notes until the Class C Notes have been fully redeemed;

(7) to the payment of accrued and unpaid interest and any Deferred Interest and interest thereon on the Class D Notes; and

(8) to the Class D Notes until the Class D Notes have been fully redeemed.

"***Notes***": The Senior Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Notice of Refinancing***": The meaning specified in Section 9.7.

"***Objection Cut-Off Date***": The meaning specified in Section 15.1(h)(ii).

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes.

"***Offering Memorandum***": The final offering memorandum, dated March 9, 2007, prepared and delivered in connection with the offer and sale of the Securities.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the

Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; or

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser;

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

(c) the Holding Preference Shares, as of any date of determination, all of the Holding Preference Shares theretofore issued under the Holding Preference Share Documents and listed in the Holding Preference Share register of Investors Corp. as outstanding; and

(d) the Class P Securities, as of any date of determination, all of the Class P Securities theretofore issued under the Holding Preference Share Documents and listed in the Class P Security register of Investors Corp. as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Transaction Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Transaction Documents, Transaction Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Transaction Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account for which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; provided that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares, Holding Preference Shares and Class P Securities, only Preference Shares, Holding Preference Shares and Class P Securities that an authorized officer of the Preference Shares Paying Agent or Holding Preference Shares Paying Agent, as applicable) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Transaction Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Transaction Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee, the Preference Shares Paying Agent and the Holding Preference Shares Paying Agent.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect to Collateral Obligations that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the CCC+/Caa1 Excess Market Value Percentage, multiplied by (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A Overcollateralization Test	113.0%
Class B Overcollateralization Test	108.1%
Class C Overcollateralization Test	105.5%
Class D Overcollateralization Test	102.5%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in August 2007 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as

to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***Person***": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Placement Agency Agreement***": A placement agency agreement dated March 13, 2007 between the Issuer and the Placement Agent, relating to the placement of the Class II Preference Shares, as modified, amended and supplemented and in effect from time to time.

"***Placement Agent***": Citigroup Global Markets Inc.

"***Plan Asset Regulation***": The regulation issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Improvement Exchange***": The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"***Pre-Closing Party***": One or more Affiliates of the Initial Purchaser that financed the Issuer's pre-closing acquisition of Collateral Obligations through the purchase of participations therein.

"***Preference Share Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Class I Preference Shares and the Class II Preference Shares.

"***Preference Shares Notional Amount***": As of the Closing Date, $123,500,000, thereafter as increased each time additional Preference Shares are issued in accordance with the Preference Share Documents.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": Investors Bank & Trust Company, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"***Purchase Agreement***": A purchase agreement dated March 13, 2007 among the Co-Issuers and the Initial Purchaser, relating to the Notes, as modified, amended and supplemented and in effect from time to time.

"***Purchase Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a

percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 90th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least U.S.$1,500,000,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least U.S.$1,500,000,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with

respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least U.S.$1,500,000,000.

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***Rating Confirmation Failure***": (i) a failure by the Issuer or the Servicer (on behalf of the Issuer) to obtain confirmation in writing from S&P that it has not reduced, suspended, or withdrawn its Initial Rating of any Class of Notes and that it has not placed any Class of Notes on credit watch with negative implications, or (ii) receipt of a written notice from Moody's that it has reduced, suspended, or withdrawn its Initial Rating of any Class of Notes or that it has placed any Class of Notes on credit watch with negative implications, in each case, by the Business Day after the 29th day after the Ramp-Up Completion Date.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score							
Minimum Weighted Average Spread	**55**	**60**	**65**	**70**	**75**	**80**	**85**	**90**
2.20%	**2180**	**2225**	**2270**	**2315**	**2355**	**2390**	**2425**	**2450**
2.30%	**2225**	**2270**	**2315**	**2360**	**2405**	**2440**	**2475**	**2495**
2.40%	**2270**	**2315**	**2360**	**2405**	**2450**	**2485**	**2520**	**2545**
2.50%	**2315**	**2360**	**2405**	**2450**	**2495**	**2530**	**2565**	**2590**
2.60%	**2370**	**2415**	**2460**	**2505**	**2550**	**2585**	**2620**	**2645**
2.70%	**2425**	**2470**	**2515**	**2560**	**2605**	**2640**	**2675**	**2700**
2.80%	**2480**	**2525**	**2570**	**2615**	**2660**	**2695**	**2730**	**2755**
2.90%	**2535**	**2580**	**2625**	**2670**	**2715**	**2750**	**2785**	**2810**
3.00%	**2590**	**2635**	**2680**	**2725**	**2770**	**2805**	**2840**	**2865**
	Maximum Weighted Average Moody's Rating Factor							

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2 or the redemption of a Class of Notes in connection with a Refinancing pursuant to Section 9.7.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a) or any redemption by Refinancing pursuant to Section 9.7(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed, plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest), plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note, plus

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro*

rata portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; provided that no Reference Obligation shall be a Synthetic Security.

"***Refinancing***": The meaning specified in Section 9.7.

"***Refinancing Date***": The meaning specified in Section 9.7.

"***Refinancing Notes***": The meaning specified in Section 9.7.

"***Refinancing Price***": With respect to any Class of Note that is subject to a Refinancing, an amount equal to the Redemption Price thereof.

"***Refinancing Proceeds***": The proceeds from any refinancing permitted under this Indenture.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Note***": The meaning specified in Section 2.2(b).

"***Relevant Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Replacement Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in May 2014 or, in the case of an Extension, the Extended Replacement Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"***Required Redemption Percentage***": With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 66⅔% of the Aggregate Outstanding Amount of any Affected Class or at least 66⅔% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Retention Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes and the Class D Notes, excluding any Deferred Interest on any Class of Notes.

"***Retention Overcollateralization Test***": A test that is satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 103.5%.

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 3a-7***": Rule 3a-7 under the Investment Company Act.

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Minimum Average Recovery Rate***": For a Class of Notes, a rate, as of any Measurement Date, equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate specified in the S&P Priority Category Recovery Rate Matrix for the S&P Priority Category of such Collateral Obligation under the S&P Rating that is the then current S&P Rating on such Class of Notes,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***S&P Priority Category***": Each type of Collateral Obligation specified in the definition of "S&P Priority Category Recovery Rate Matrix" as an "S&P Priority Category."

"***S&P Priority Category Recovery Rate***": For any Collateral Obligation and a Class of Notes, the percentage specified in the definition of "S&P Priority Category Recovery Rate Matrix" opposite the S&P Priority Category of the Collateral Obligation under the S&P Rating that is the then current S&P Rating on such Class of Notes.

"***S&P Priority Category Recovery Rate Matrix***":

S&P Priority Category	S&P Priority Category Recovery Rate						
	AAA	AA	A	BBB	BB	B	CCC
Senior Secured Loans	56%	60%	64%	67%	70%	70%	70%
Senior Unsecured Loans*	40%	42%	44%	46%	48%	48%	48%
Subordinated Lien Loans other than a DIP Loan*	22%	22%	22%	22%	22%	22%	22%
Senior Secured High-Yield Bonds	48%	49%	50%	51%	52%	52%	52%
Senior Unsecured High-Yield Bonds	38%	41%	42%	44%	45%	45%	45%
Subordinated High-Yield Bonds	19%	19%	19%	19%	19%	19%	19%
Structured Finance Obligations	The S&P Priority Category Recovery Rate determined in accordance with the definition of "S&P Structured Finance Obligation Recovery Rate" by reference to the type of asset and its then current S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the grant of the relevant Collateral Obligation).						
Synthetic Securities	As assigned by S&P on a case-by-case basis in connection with the grant of the relevant Collateral Obligation.						
DIP Loans and any Collateral Obligation not covered above	As assigned by S&P on a case-by-case basis.						

* In the case of Second Lien Loans, the first 15% in the portfolio should be treated as Senior Unsecured Loans and the excess over 15% as Subordinated Lien Loans.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Structured Finance Obligation Recovery Rate***": For a Structured Finance Obligation and a Class of Notes, the percentage specified in the table set forth in Schedule 6 under the then current S&P Rating of such Class of Notes and across from the then current S&P Rating of such Structured Finance Obligation.

"***S&P Rating Confirmation***": Confirmation in writing from S&P that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less

any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Scheduled Holding Preference Shares Redemption Date***": May 1, 2022.

"***Scheduled Preference Shares Redemption Date***": May 1, 2022.

"***Second Lien Loan***": A Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan and (ii) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets.

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the Investment Company Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit G-1.

"***Secured High-Yield Bond***": A High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

"***Secured Loan***": A Loan that is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Preference Shares.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any Person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Notes***": The Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Senior Secured High-Yield Bond***": A Secured High-Yield Bond that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the High-Yield Bond.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan and that is not a DIP Loan.

"***Senior Servicing Fee***": A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Unsecured High-Yield Bond***": A High-Yield Bond that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Senior Unsecured Loan***": A Loan that is not a Senior Secured Loan and is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Servicer***": Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

"***Servicing Agreement***": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended, and supplemented and in effect from time to time.

"***Servicing Fee Portion***": 100% minus (a) for any Payment Date from the Closing Date until (and including) the Payment Date in February 2008, the Class II Preference Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date.

"***Servicing Fees***": Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"***Share Trustee***": Ogier Fiduciary Services (Cayman) Limited.

"***Share Registrar***": Ogier Fiduciary Services (Cayman) Limited or any successor thereto.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, May 1, 2022 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

"***Structured Finance Obligation***": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities;"

(G) net interest margin securitizations;

(H) collateralized debt obligations backed primarily by other collateralized debt obligations;

(I) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "synthetic CDOs"); and

(J) collateralized debt obligations a significant portion of which are backed by bonds;

(ii) that has an S&P Rating;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated High-Yield Bond***": A Secured High-Yield Bond secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Servicing Fee***": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments and (ii) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Servicing Fee in clauses (i) and (ii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be; provided that with respect to the Class A-1 Notes, Class A-2a Notes and Class A-2b Notes voting together as the Controlling Class, "Super Majority" shall mean at least 60% of the Aggregate Outstanding Amount of such Controlling Class for so long as FSA is entitled to direct the vote of at least 60% of the Aggregate Outstanding Amount of such Controlling Class.

"***Supplemental Servicing Fee***": On each Payment Date, the fee payable to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment Date pursuant to Section 11.1(a)(i)(22) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(a)(ii)(12)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(15) of the Priority of Payments.

"***Synthetic Security***": Any swap transaction, structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse Securities (USA) LLC) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event" and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event."

No Synthetic Security shall provide for termination by the Synthetic Security Counterparty at any time (i) after a declaration of acceleration of Maturity of the Notes has been made upon the occurrence of an Event of Default, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with Section 5.2(c) and liquidation of the Collateral has begun or (ii) upon an Optional Redemption, unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than five days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) floating rate credit card securitizations that are rated "Aaa" by Moody's and "AAA" by S&P, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto; provided that any Tax Advantaged Jurisdiction that is the jurisdiction of organization of an obligor of a Collateral Obligation other than obligors that are special purpose vehicles or issuers of Structured Finance Obligations shall have a Moody's foreign currency rating of at least "Aa2" and a S&P foreign currency rating of at least "AA-".

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period;

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation; or

(iii) if the Issuer is at the time treated as a pass-through entity for U.S. federal income tax purposes, that investors in the Preference Shares who are non-U.S. persons not otherwise subject to U.S. net income tax are or have become subject to U.S. net income taxation in respect of income

of the Issuer in an amount in excess of 10.0% of the net income of the Issuer in any twelve-month period.

"***Tax Opinion of Counsel***": A written opinion addressed to the Issuer (a copy of which will be provided to the Trustee) and, if requested, each Rating Agency that has made such request, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, issued by a nationally recognized law firm reasonably satisfactory to the Trustee, which law firm is experienced in the relevant areas of tax law, and which law firm may be counsel for the Servicer or the Issuer.

"***Transaction Documents***": Collectively, this Indenture, the Preference Shares Paying Agency Agreement and the Holding Preference Shares Paying Agency Agreement.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transaction Securities***": Collectively, the Securities and the Holding Securities.

"***Transfer Agent***": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"***Transferee Certificate***": A certificate substantially in the form of, with respect to the Senior Notes, Exhibit B-1 or, with respect to the Class D Notes, Exhibit B-4 attached hereto, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unfunded Amount***": With respect to any Revolving Loan or any Delayed Drawdown Loan at any time, the excess, if any, of (a) the Commitment Amount over (b) the Funded Amount thereof.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. Persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as U.S. Persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and May 1, 2017 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 3 years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 43.2%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate for each Class of Notes is greater than or equal to: (i) with respect to the Class A-1 Notes, 52.4%; (ii) with respect to the Class A-2 Notes, 52.4%; (iii) with respect to the Class A-3 Notes, 56.0%; (iv) with respect to the Class B Notes, 59.6%; (v) with respect to the Class C Notes, 62.4% and (vi) with respect to the Class D Notes, 65.1%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (x) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero, (y) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto and (z) for any Revolving Loan or Delayed Draw Loan, will be the per annum contract spread for the Funded Amount thereof and the rate of the commitment fee and such other fees payable to the Issuer for any Unfunded Amount thereof), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR,

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and acquisition of Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not used to purchase additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Retention Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Retention Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

(i) The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Section 1.3. ***Rules of Interpretation.***

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)", refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein", "hereof", "hereto", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either", the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both", not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any", and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including", the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding", and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding", "following", "before", "after", "next" and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES

Section 2.1. ***Forms Generally.***

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

Section 2.2. ***Forms of Notes and Certificate of Authentication.***

(a) The Senior Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A-1.

(b) *Regulation S Global Notes*. The Senior Notes of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (the "***Regulation S Global Notes***"). The global notes shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Notes.* The Senior Notes of each Class initially sold to U.S. persons that are Qualified Institutional Buyers and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Book-Entry Provisions*. This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository

may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Senior Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Senior Note.

(e) The Class D Notes shall be issued in the form of one or more certificated Class D Notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit A-2, including legends (each, a "***Certificated Class D Note***"), which shall be registered in the name of the owner thereof.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$1,408,100,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A-1	A-2a	A-2b	A-3	B	C	D
Original Principal Amount	$100,000,000	$825,600,000	$206,000,000	$78,500,000	$81,500,000	$68,500,000	$48,000,000
Interest Rate	LIBOR +0.25%	LIBOR + 0.23%	LIBOR + 0.33%	LIBOR + 0.40%	LIBOR + 0.70%	LIBOR + 1.50%	LIBOR + 3.60%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aaa/AAA	Aa1/AAA	Aa2/AA	A2/A	Baa2/BBB	Ba2/BB

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 61,500 Class I Preference Shares and 62,000 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable.

Section 2.4. ***Extension of Replacement Period and Stated Maturity.***

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities (or the related Holding Preference Shares, as applicable) as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, in connection with an Extension Sale, all, but not part, of the Extension Sale Securities shall be purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture, the Preference Share Documents and the Holding Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that neither the Initial Purchaser nor the Placement Agent shall be responsible for causing the Extension Conditions to be satisfied and neither the Initial Purchaser nor the Placement Agent shall be liable to

any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the "***Extension Notice***"), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Securities) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit I, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable notice (an "***Extension Sale Notice***") to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the "***Extension Sale Notice Period***") of its intention to sell all or a portion of its Securities or, with respect to Investors Corp., in its capacity as a Holder of the Class I Preference Shares, all or a portion of Holding Preference Shares, as the case may be, to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Holding Preference Shares, as applicable, to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture, the Preference Share Documents and the Holding Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied (as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Initial Purchaser, the Placement Agent, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Senior Notes is listed thereon) confirming

whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, (i) such Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Extension Qualifying Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Senior Notes and the Issuer may deliver the Class D Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are

authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) (i) No Note or interest therein may be transferred to any purchaser or transferee unless such purchase, holding and disposition of such Note will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, foreign or local law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code).

(ii) No person shall be permitted to acquire any Class D Note if such acquisition would result in persons who have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of the Class D Notes immediately after such sale or transfer (excluding, as described below, for purposes of such determination any Class D Notes held by any Controlling Person (as defined below) and its affiliates (as defined below)) determined in accordance with Section 3(42) of ERISA. Under the Plan Asset Regulation, an “affiliate” of a person includes any person, directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person, and “control” with respect to a person other than an individual, means the power to exercise a controlling influence over the management or policies of such person. In making the 25% determination, Class D Notes held by any person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuer or a person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Issuer or any affiliate of any such person (any such person, a "***Controlling Person***") (such as the Class D Notes held by the Servicer or its affiliates) will be disregarded and not treated as outstanding.

(iii) Any person described in paragraph (i) and (ii) above is referred to herein as a "***Non-Permitted Benefit Plan Investor***." Any transfer of a beneficial interest to a Non-Permitted Benefit Plan Investor shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee or such Registrar by a prospective transferee, the Trustee and such Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii) and (iv) of this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note to Regulation S Global Note*. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Note to Rule 144A Global Note*. If a Holder of a Senior Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the Person transferring the interest in the Regulation S Global Note reasonably believes that the Person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) *Other Exchanges*. If a Global Note is exchanged for Senior Notes in definitive registered form without interest coupons pursuant to Section 2.11, the Senior Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as the Class D Notes remain Outstanding transfers of such Class D Notes shall only be made in accordance with Section 2.6(c) and this Section 2.6(g) upon receipt by the Indenture Registrar of (i) a certificate in the form of Exhibit B-4 given by the proposed transferee stating that it is a QIB/QP (or, solely in the case of a Holder purchasing Class D Notes on the Closing Date, is an Institutional Accredited Investor) and containing other representations,

warranties and agreements of such transferee and (ii) (A) appropriate documentation required under the Code and the applicable Treasury regulations establishing that the beneficial owner of the Class D Notes to be transferred is either not a U.S. person (e.g., an IRS Form W-8BEN or an IRS Form W-8IMY with appropriate attachments) or a U.S. person (e.g., an IRS Form W-9) and (B) if such beneficial owner of Class D Notes to be transferred is treated as a partnership, S-corporation or grantor trust for U.S. federal income tax purposes, a written representation from such beneficial owner that (1) there will not be any interests in such beneficial owner where substantially all of the value of such interest is attributable to the value of the Class D Notes proposed to be transferred to such beneficial owner, together with the value of any Class D Notes, Holding Securities and Preference Shares already held by such beneficial owner and (2) such beneficial owner is not a part of any arrangement a principal purpose of which is to cause the Class D Notes and Preference Shares to be treated as owned by 100 persons or less within the meaning of Treasury Regulation section 1.7704-1(h). In addition, neither the Trustee nor the Issuer shall recognize any transfers of Class D Notes, and any such proposed transfer shall be null and void, if (a) the proposed transfer will cause the Issuer to have more than ninety-nine beneficial owners (as determined for purposes of the provisions of Treasury Regulation section 1.7704-1(h)) of its Class D Notes and Preference Shares unless it receives the consent of all of the Holders of the Preference Shares and a Tax Opinion of Counsel to the effect that Holders of the Notes will not recognize gain or loss for U.S. federal income tax purposes as a result of such transfer, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transfer had not been made or (b) such transfer was made pursuant to a trade on an Established Securities Market. The Trustee shall contact the Preference Shares Paying Agent to determine the number of beneficial owners of the Preference Shares. The Trustee shall provide, upon request by the Preference Shares Paying Agent, the number of beneficial owners of the Class D Notes.

(h) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(j) (i) Each Person who becomes a beneficial owner of a Senior Note evidenced by: (A) an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such Person's purchase or other acquisition of the relevant Definitive Note and (B) an interest in a Global Note, shall be deemed to make the representations, warranties and

agreements set forth in the applicable legends of the Notes set forth in Exhibit A-1 hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note.

(ii) Each Person who becomes a beneficial owner of a Class D Note shall make the representations, warranties and agreements set forth in the Transferee Certificate set forth in Exhibit B-4 upon such Person's purchase or other acquisition of such Class D Note.

(k) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(l) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost or Stolen Notes.***

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section 7701(a)(30) of

the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note and a Class D Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note and a Class D Note. In the case of a Definitive Note and a Class D Note, its Holder has provided written wiring instructions to the Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Applicable Issuers under the Notes and under this Indenture are limited recourse obligations of the Applicable Issuers payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will

notify the Trustee, the Share Registrar and the Holding Share Registrar of any Affiliate of the Servicer that owns any of the Transaction Securities.

Section 2.10. ***Cancellation.***

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Definitive Notes.***

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Note*** ") in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(j), bear the legends in the applicable portion of Exhibit A-1 and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Senior Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

Section 2.12. ***Notes Beneficially Owned by Non-Permitted Holders.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, (i) any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act and (ii) any transfer of a beneficial interest in any Class D Note to a Person that is not a QIB/QP (or, solely in the case of a Holder purchasing Class D Notes on the Closing Date, that is an Institutional Accredited Investor), shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

Section 2.13 ***Tax Purposes***

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Notes on Closing Date.***

(a) The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters.* An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Purchase Agreement and, in the case of the Issuer, the Servicing Agreement, the Placement Agency Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Notes applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Notes except as have been given; provided that the opinions of Latham & Watkins, LLP and Ogier, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Servicer's U.S. Counsel Opinion*. Opinions of Latham & Watkins LLP, special U.S. counsel to the Co-Issuers, and an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Ogier, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Nixon Peabody LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture.* An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Notes applied for by it will not result in a default or a breach of,

or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Servicing Agreement*. Executed copy of the Servicing Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents*. An executed counterpart of the Preference Shares Paying Agency Agreement.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Servicer*. A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(a)(xx)(B);

(xiv) *Rating Letters*. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Notes rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) *Accounts*. Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$211,060,755.32 into the Collection Account for use pursuant to Section 7.19, the deposit of at least U.S.$23,050,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of at least U.S.$6,300,000 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xvii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Senior Notes to the Official List.

(xviii) *Issuer Order for Authentication of Notes*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate*. An Accountants' Certificate satisfactory to the Issuer (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$1,500,000,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(a)(xix) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xx) *Certificate of the Issuer Regarding Collateral*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Collateral as of the Closing Date is at least 90% of the aggregate par amount thereof.

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit I-2.

(xxii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

(b) Any Refinancing Note may be issued from time to time pursuant to Section 9.7 hereof. Any such Refinancing Notes shall be executed by the Applicable Issuer and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee upon and pursuant to Issuer Order delivered to the Trustee, together with delivery to the Trustee by the Issuer of an Opinion of Counsel to the effect that (A) such Refinancing Notes are duly authorized and validly issued by the Applicable Issuer pursuant to the Indenture, constituting the legal, valid and binding obligation of such Applicable Issuer, enforceable against such Issuer in accordance with its terms and (B) all conditions precedent under this Indenture, if any, applicable to the issuance, authentication and delivery of such Notes, have been satisfied.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be Investors Bank & Trust Company. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer, has a long-term debt rating of at least "BBB+" by S&P and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee

shall have entered into a securities account control agreement with the Custodian in accordance with Article 8 of the UCC providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

Section 3.3. ***Representations as to Collateral.***

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Loans with respect to which participations therein

were sold to Pre-Closing Parties and repurchased by the Issuer on the Closing Date, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," "uncertificated securities," "chattel paper" or "securities accounts," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities accounts," "chattel paper," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost or stolen Notes,

(iii) rights of Noteholders to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(vi) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement, and

(vii) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of

Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of a Tax Opinion of Counsel to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3, 13.1, and 14.13 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A-1 Notes, Class A-2a Notes or Class A-2b Notes are Outstanding, the Class A Overcollateralization Ratio is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by any Rating Agency) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to each Rating Agency is satisfied with respect thereon.

Section 5.2. ***Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment.***

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c)).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall at the written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall, upon written direction of a Majority of the Controlling Class (subject

to Section 6.3(e)), to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 5.8, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy,

reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

Section 5.5. ***Optional Retention of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of each of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes and the Class D Notes direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the

Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Initial Purchaser.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Notes.***

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholders of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

Section 5.9. ***Unconditional Rights of Noteholders.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability or expense (unless the Trustee has received an indemnity against the liabilities and expenses reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all

amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Notes.***

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

(a) Except during the continuance of an Event of Default known to the Trustee:

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be

construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of the Notes.***

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Notes.***

(a) The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

Section 6.6. ***Acquisition of Class D Notes and Preference Shares.***

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Class D Notes and the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Class D Notes or Preference Shares (including pursuant to a Maturity Extension, a Refinancing and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class D Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, this Indenture and the Preference Share Documents). Any Class D Notes or Preference Shares held as principal by the Trustee or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

Section 6.7. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer, unless such asset is purchased in an obligation of the Trustee in its corporate capacity.

Section 6.8. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify the Trustee and its officers, directors, employees and agents for any loss, liability or expense (including reasonable attorney's fees and costs) incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.9. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent "bank" (within the meaning of the Investment Company Act) organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least

"Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be "affiliated" (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall by Board Resolution (or, if an Event of Default shall have occurred and be continuing, at the direction of a Majority of the Controlling Class) promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by the Co-Issuers as directed by Board Resolution (or, if an Event of Default shall have occurred and be continuing, by an Act of a Majority of the Controlling Class) or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove

the Trustee or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.11. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.12. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the

Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.13. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.14. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

Section 6.15. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.16. ***Fiduciary for Noteholders Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

Section 6.17. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) *Organization*. The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations*. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility*. The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

Section 6.18. ***Additional Reporting Requirements.***

If the Initial Purchaser elects to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Servicer and the Initial Purchaser.

If the Initial Purchaser has entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee at the expense of the Issuer shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(ix).

Section 6.19. ***Withholding Tax Forms.***

The Issuer hereby agrees to deliver or cause to be delivered, a United States Internal Revenue Service Form W-8BEN (or successor form thereto) or any other appropriate tax certificates to the relevant issuer of its Collateral Obligations and issuer of its Eligible Investments at the time such Collateral Obligations or Eligible Investments are purchased by the Issuer and thereafter as required under the relevant law. In addition, the Issuer hereby agrees to deliver, and the Issuer shall be required to deliver, United States Internal Revenue Service Forms W-8BEN (or successor form thereto) and other appropriate United States tax forms as may be required by the Hedge Counterparty, to the Hedge Counterparty at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form, and shall take any other action appropriate to prevent withholding or backup withholding tax on the Hedge Agreements. The Issuer shall represent, to the Hedge Counterparty in the master agreement, confirmation or schedule to the Hedge Agreement, that the Issuer is a “non-U.S. branch” of a foreign person as that term is used in

section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations. The Issuer will request that the Hedge Counterparty provide the Issuer a United States Internal Revenue Service Forms W-9 or W-8, as applicable, together with any required attachments, at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form.

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Senior Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint Investors Bank & Trust Company, 200 Clarendon Street, Mailcode EUC 108, Boston, MA 02116, Attn: CDO Services Group, as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served, which office will initially be the office of Investors Bank & Trust Company, an Affiliate of the Trustee, located at 33 Maiden Lane, 4th Floor, New York, NY 10038, and an office or agency outside of the United States where the Notes may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Senior Notes is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Senior Notes and this Indenture may be served and where the Senior Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange, AIB International Financial Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Senior Notes, for the payment of principal, interest and other distributions on the Senior Notes and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Senior Notes or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Senior Notes is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Senior Notes of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each

Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Noteholder shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a Tax Opinion of Counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement, the Investors Corp. Subscription Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and Investors Bank & Trust Company as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(a)(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. ***Opinions as to Collateral.***

On or before April 1 in each calendar year, commencing in 2008, the Issuer shall furnish to the Trustee and each of the Rating Agencies, an Opinion of Counsel stating that in the opinion of such counsel as of the date of such opinion under the District of Columbia Uniform Commercial Code, the UCC financing statement(s) filed in connection with the lien and security interests created by this Indenture shall remain effective and no additional financing statements, continuation statements or amendments with respect to such financing statement(s) shall be required to be filed in the District of Columbia from the date thereof through the next twelve months to maintain the perfection of the security interest of this Indenture under the District of Columbia Uniform Commercial Code.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the Collateral Administration Agreement as initially executed), contract with other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi) and (ix), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including a Refinancing in accordance with Section 9.7 and including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements

without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such "non-petition" and "limited recourse" provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before March 15 in each calendar year, commencing in 2008, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc. Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person,

unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the

enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and shall have obtained a Tax Opinion of Counsel that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by the Collateral Acquisition Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer’s income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than

issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in the Collateral Acquisition Agreement, unless, with respect to a particular transaction, it obtains written advice of Latham & Watkins LLP or a Tax Opinion of Counsel that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Collateral Acquisition Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer obtains written advice of Latham & Watkins LLP or a Tax Opinion of Counsel that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis and, at the request of the Issuer, the Trustee is hereby authorized to enter into any amendment of the Collateral Acquisition Agreement under such circumstances; provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of the Collateral Acquisition Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Notes within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event written advice of Latham & Watkins LLP or a Tax Opinion of Counsel as described above has been obtained in accordance with the terms hereof, no consent of any Noteholder or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of the Collateral Acquisition Agreement contemplated by such written advice or opinion.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Irish Stock Exchange.***

So long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the regulated market of the ISE; provided that the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

Section 7.14. ***Annual Rating Review.***

So long as any Notes of any Class remain Outstanding, on or before February 1 in each year commencing in 2008, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. Each Holder of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes.

(b) The Issuer will make an election to be treated as a partnership for U.S. federal income tax purposes, and will take all necessary actions to maintain its status as a partnership (or, if the equity of the Issuer is treated as owned by one person, as a disregarded entity of such person) for U.S. federal income tax purposes.

(c) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained a Tax Opinion of Counsel prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) In order to ensure the Holders' and Beneficial Owners' acquisition of the Notes pursuant to this Indenture are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners of the Notes (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement (including the ownership and disposition of the Notes). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(e) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Noteholder requests information about any such transactions in which the Issuer is a purchaser, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(f) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture and the Preference Shares Paying Agency Agreement.

(g) Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(h) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(i) The Issuer shall not participate in listing or including the Class D Notes or Preference Shares on or in any Established Securities Markets, and shall not participate in establishing any Established Securities Market for its Class D Notes or Preference Shares. In addition, the Issuer shall not recognize any transfers made on any Established Securities Markets with respect to its Class D Notes or Preference Shares (including any transfers of any financial instrument (other than the Senior Notes) or contract the value of which is determined in whole or in part by reference to the Issuer).

(j) Each of the Issuers and the Trustee agrees that it does not intend for this Indenture to represent an agreement to enter into a partnership, a joint venture or any other business entity for U.S. federal income tax purposes. The Issuers and the Trustee shall not represent or otherwise hold themselves out to the United States Internal Revenue Service or other third parties as partners in a partnership or members of a joint venture or other business entity for U.S. federal income tax purposes.

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (31) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" or a short-term senior unsecured debt rating of at least "A-1" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchaser or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no

longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor with the required ratings for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the

Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$1,500,000,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$1,500,000,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) Within five Business Days after the Ramp-Up Completion Date, the Issuer or the Servicer (on behalf of the Issuer) shall request a S&P Rating Confirmation and shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, a Microsoft Excel file of the S&P CDO Monitor input file and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date

and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. ***Posting of Reports on Repository.***

If the Initial Purchaser has entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Trustee and the Servicer acknowledges and agrees that each Monthly Report and Valuation Report may be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee, at the expense of the Issuer, agrees to make available in accordance with Section 14.3(a)(ix) each Monthly Report or Valuation Report to the operator of the Repository for posting on the Repository. The Initial Purchaser will notify the Trustee, the Co-Issuers and the Servicer upon entering into a posting dealer agreement.

Section 7.21. ***Secondary Risk Procedures.***

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.22. ***Section 3(c)(7) Procedures.***

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) *Section 3(c)(7) Notice to Investors*. The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers*. The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Initial Purchaser and any market makers to require that all “confirms” of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act, to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities (other than with respect to the consent of the Majority of the Controlling Class specified in clause (15) below), when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in clauses (1) through (23) below, the interests of the Holders of the Securities (except, in

the case of clause (12) below, any Holders of Notes subject to the applicable Refinancing) are not materially and adversely affected thereby (the Co-Issuers and the Trustee will be bound by a standard of good faith and fair dealing in making such determination) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication and delivery of the Notes;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) conform any provision in this Indenture to the related provision in the Offering Memorandum that is intended to be a verbatim recitation of such provision;

(7) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(8) with the consent of the Servicer, modify (A) the restrictions on the sales of Collateral Obligations in Section 12.1 or (B) with the consent of the Majority of the Controlling Class (which consent shall not be unreasonably withheld), the Eligibility Criteria in Section 12.2 (and the definitions related thereto); provided that, for the avoidance of doubt, the consent of a Majority of the Controlling Class shall not be required if such amendment also satisfies the requirements of clause (24) below;

(9) make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the Irish Stock Exchange;

(10) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(11) accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(12) to accommodate a Refinancing effected pursuant to and in compliance with Section 9.7; provided that no Holders of Notes or Preference Shares are materially adversely affected thereby, other than Holders of Notes subject to such Refinancing;

(13) take any appropriate action to prevent the Issuer, the Holders of the Securities, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities, as evidenced by a Tax Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(14) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(15) with the consent of the Majority of the Controlling Class, amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted under the Indenture;

(16) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(17) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(18) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(19) facilitate hedging transactions;

(20) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(21) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(22) with the consent of the Servicer, enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after

becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer to the effect that the modification would not be materially adverse to the Holders of any Class of Securities; provided that, for the avoidance of doubt, this clause (22) shall not permit the Co-Issuers and the Trustee to effect any amendment that expressly requires the consent of the Majority of the Controlling Class without such consent;

(23) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under the Indenture and the Preference Share Documents; or

(24) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); provided that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Servicer under this Indenture or increase the duties or obligations of the Servicer.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of Notes or a Majority of the Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Servicer and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(1) the Servicer if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes; and

(3) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares (other than in the case of any Maturity Extension in connection with an extension of the Replacement Period as described in Section 2.4), reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

(b) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders

of Holding Securities). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(c) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(d) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; provided that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee. The Trustee shall deliver any such amendment or supplement to the Repository in accordance with Section 6.18.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Any supplemental indenture that would necessitate a change to the Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) to be altered to conform with such proposed amendment.

Section 8.5. ***Reference in Notes to Supplemental Indentures.***

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then at the direction and in accordance with the instructions of the Servicer the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the applicable Required Redemption Percentage, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

In the event that the Preference Shares Paying Agent, the Trustee and the Issuer receive notice directing an optional redemption from any one or more Holders of Preference Shares holding less than a Majority of the Preference Shares, the Preference Shares Paying Agent shall, within five Business Days of receipt of such notice, notify the Holders of the Preference Shares and the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Securities) (i) of the receipt of such notice and (ii) that any Holder of Preference Shares may join in directing an optional redemption by notifying the Issuer, the Trustee and the Preference Shares Paying Agent in writing within five Business Days after such Holder's receipt of the Preference Shares Paying Agent's Notice.

Upon receipt of a notice of redemption pursuant to the first paragraph of this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the

Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3. ***Optional Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Senior Notes to be redeemed are listed on the Irish Stock Exchange, and the Irish Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities), the Trustee and the Servicer only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares (or, in the case of an Optional Redemption of the Notes, the Affected Class) to withdraw the notice of redemption delivered by a percentage of the Preference Shares (or, in the case of an Optional Redemption of the Notes, the Affected Class) requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail), the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to each Holder of Holding Securities). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to each of Holding Securities) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least 10 Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreement (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below. For the avoidance of doubt, no Hedge Agreement shall be sold or terminated unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral

Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders whose consent was solicited with respect to such supplemental indenture or, with respect to any Class I Preference Shares held by Investors Corp. if the consent of the Holders of Holding Securities has been solicited, to purchase from Non-Consenting Holding Preference Share Holders all Holding Preference Shares held by such Holders (the "***Amendment Buy-Out Option***"), in each case, for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders and all such Holding Preference Shares of the Non-Consenting Holding Preference Share Holders, as the case may be, in each case, for the applicable Amendment Buy-Out Purchase Price, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "***Amendment Buy-Out***"). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder and any Non-Consenting Holding Preference Share Holder will be required to sell its applicable Transaction Securities to the Amendment Buy-Out Purchaser; provided that if any Non-Consenting Holder holds Class II Preference Shares, (i) such Non-Consenting Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Amendment Buy-Out Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Transaction Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant

Transaction Securities set forth herein and in the Preference Share Documents or the Holding Preference Share Documents, as applicable, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.7. ***Redemption by Refinancing.***

(a) On any Payment Date after the Non-Call Period, any Class of the Notes may be redeemed in whole, but not in part from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities)) with a copy to the Trustee and the Rating Agencies, at least 30 days prior to the Payment Date for such redemption (such date, the "***Refinancing Date***"), to redeem such Notes in accordance with this Section 9.7 (a "***Notice of Refinancing***"), which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be Refinanced. Such redemption shall be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes ("***Refinancing Notes***"), the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Issuer, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "***Refinancing***"), and provided that (i) such proposal is approved by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date.

(b) The Issuer shall obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) a Rating Agency Confirmation has been obtained from each Rating Agency for such Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Issuer related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the stated maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth herein;

(viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and

(ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for.

(c) The Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3 hereof) shall be fully protected in relying upon an Opinion of Counsel stating that the Refinancing is permitted by this Indenture and that all conditions precedent thereto have been complied with.

(d) Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date pursuant to this Indenture to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; provided that to the extent that any Refinancing Proceeds exceed the amount necessary to redeem the Notes being refinanced (and any associated Administrative Expenses), such excess Refinancing Proceeds will be treated as Principal Proceeds.

(e) If notice of consent by a Majority of the Preference Shares to a Refinancing has been received by the Trustee from the Servicer pursuant to Section 9.7(a) no later than 15 days prior to the Refinancing Date, notice of a Refinancing shall be given by the Trustee by first class mail, postage prepaid, mailed not less than 10 Business Days prior to the proposed Refinancing Date, to each Holder of Notes of the Class to be refinanced at the address in the Indenture Register (with a copy to the Servicer) and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All Notices of Refinancing shall state:

(i) the proposed Refinancing Date, which shall be the applicable Redemption Date in respect of the Notes being redeemed;

(ii) the Refinancing Price, which shall be the applicable Redemption Price in respect of the Notes being redeemed;

(iii) that on such proposed Refinancing Date such Notes will be refinanced and redeemed in full, and that, provided that the Refinancing Proceeds have been deposited with the Trustee for any such payment in full, interest on such Notes being redeemed shall cease to accrue on such date; and

(iv) the place or places where such Notes are to be surrendered for payment of the Refinancing Price which, if not stated, shall be the office or agency of any paying agent as provided in Section 7.2.

provided that no such Notice of Refinancing shall be sent if either (a) the Servicer has withdrawn its consent to such Refinancing or (b) the consent of a Majority of the Holders of Preference Shares to such Refinancing has not been obtained.

(f) Notice of Refinancing shall be given by the Trustee at the expense of the Issuer. Failure to give a Notice of Refinancing, or any defect therein, to any Holder of any Note selected for Refinancing shall not impair or affect the validity of the Refinancing or give rise to any claim based upon such failure or defect.

Any Notice of Refinancing may be withdrawn by the Servicer, on behalf of the Issuer, on or prior to the fourth Business Day prior to the scheduled Refinancing Date by written notice to the

Trustee, the Paying Agent, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent, the Rating Agencies and the Holders of the Preference Shares. Upon receipt of such notice of withdrawal, the Trustee shall send such notice to the Holders of Notes and, if applicable, the Irish Paying Agent.

(g) If a Notice of Refinancing pursuant to Section 9.7(a) has been given as provided herein and not withdrawn, the Notes to be refinanced shall on the Refinancing Date become due and payable at the Refinancing Price. Each Holder of such Notes shall present and surrender its Note at the place specified in the Notice of Refinancing on or prior to such Refinancing Date; provided that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender.

(h) If any Class of Notes called for Refinancing shall not be so paid upon surrender thereof for Refinancing (or the delivery of the indemnity pursuant to the preceding paragraph) the principal shall, until paid, bear interest from the Refinancing Date at the applicable Interest Rate for each successive Payment Date with respect to which such Note remains Outstanding.

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. ***Collection of Money.***

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

Section 10.2. ***Collection Account.***

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously

with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee from the Collateral and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee

shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account*. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account*. Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be applied in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the

Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$23,050,000 from the gross proceeds of the Offering. At any time before the Payment Date in November 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in November 2007 (or, at the discretion of the Servicer, on the Payment Date in August 2007), at the direction of the Servicer in its sole discretion, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Interest Proceeds or Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Interest Reserve Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$ 6,300,000 from the gross proceeds of the Offering. At any time before the Payment Date in November 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall transfer any funds on deposit in the Interest Reserve Account to the Collection Account as Interest Proceeds or Principal Proceeds. On the Payment Date in November 2007 (or, at the discretion of the Servicer, on the Payment Date in August 2007), at the direction of the Servicer in its sole discretion, the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies therefrom on such date) to the Collection Account as Interest Proceeds or Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be held pursuant to Section 10.4(a).

(j) *Class II Preference Share Special Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Trustee for the benefit of Holders of the Class II Preference Shares, over which the Trustee shall

have exclusive control and the sole right of withdrawal. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments, the Trustee will deposit into the Class II Preference Share Special Payment Account amounts equal to the products of (a) the Class II Preference Share Portion for such Payment Date and (b) the Servicing Fees then due and payable, as described in Section 11.1(a) for payment to the Servicer on such Payment Date. The Servicer has agreed to waive amounts that would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date until (and including) the Payment Date in February 2008 and an amount equal to such waived amounts will be distributed by the Trustee, subject to the laws of the Cayman Islands, to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. After the Payment Date in February 2008, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event, an amount equal to such waived portion will be distributed by the Trustee, subject to the laws of the Cayman Islands, to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. For purposes of any calculation under the Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(k) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(l) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. ***Application of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible

Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements in accordance with Article 8 of the UCC; provided, however, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lender shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the Servicing Agreement. The Trustee shall promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be held in Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty or to the extent that any Synthetic Security has an unfunded amount payable by the Issuer that does not by its terms require collateral, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security and, without

duplication, an amount equal to the unfunded amount of a Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending July 2007, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchaser, the Placement Agent, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchaser) the Repository in accordance with Section 14.3(a)(ix) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the "***Monthly Determination Date***"):

(i) *Collateral*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value;"

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Retention Overcollateralization Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Retention Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Minimum Average Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Minimum Average Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate;"

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Initial Purchaser, the Placement Agent, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Initial Purchaser) the Repository in accordance with Section 14.3(a)(ix), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) *Notes*:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral,

and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting*. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(d) *Irish Stock Exchange*. So long as any Class of Senior Notes is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Senior Notes following each Payment Date and inform the Irish Stock Exchange if any such Class of Senior Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Senior Notes are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof.

(g) *Payments or Transfers from the Payment Account*. Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is

continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before March 15 of each year commencing in 2008, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent

(iv) fees, expenses and indemnities of the Holding Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and ongoing surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other Person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior

Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of accrued and unpaid interest on the Class A-1 Notes and the Class A-2 Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-1 Notes and the Class A-2 Notes, in each case, *pro rata* in proportion to the respective amounts of interest, Defaulted Interest and Defaulted Interest Charge then due on each such Class (provided that amounts allocated to the payment of the Class A-2 Notes shall be paid, first, to the Class A-2a Notes and, second, to the Class A-2b Notes);

(6) to the payment of accrued and unpaid interest on the Class A-3 Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class A-3 Notes;

(7) if the Class A Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes and the Class A-3 Notes in the Note Payment Sequence in the amount necessary so that all of the Class A Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(8) to the payment of accrued and unpaid interest on the Class B Notes (excluding Class B Deferred Interest, but including interest accrued for the preceding Interest Period on Class B Deferred Interest);

(9) if the Class B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes and the Class B Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(3) on the current Payment Date);

(10) to the payment of Class B Deferred Interest;

(11) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(12) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid

in full (Interest Proceeds to be applied pursuant to this clause (12) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(6) on the current Payment Date);

(13) to the payment of Class C Deferred Interest;

(14) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(15) if the Class D Coverage Tests are not satisfied on the related Determination Date and (i) all of the Class A Coverage Tests, the Class B Coverage Tests and the Class C Coverage Tests are satisfied on such Determination Date (without giving effect to any amounts payable pursuant to clauses (7), (9) and (12) above on the related Payment Date), to the payment of principal of the Class D Notes in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full, or (ii) the conditions of sub-clause (i) are not satisfied, to the payment of principal of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (15) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(9) on the current Payment Date);

(16) to the payment of Class D Deferred Interest;

(17) if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A-1 Notes, the Class A-2a Notes, the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (17) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(11) on the current Payment Date);

(18) during the Replacement Period, if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds 50% of the remaining Interest Proceeds available after the payments pursuant to clause (17) above (or, if the amount necessary to cause the Retention Overcollateralization Test to be satisfied as of such Determination Date is less than 50% of such remaining Interest Proceeds, such necessary amount);

(19) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(20) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and SECOND, to the payment (*pro rata* according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated

Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) *pro rata* to each Noteholder entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(21) to the payment of any Defaulted Hedge Termination Payments;

(22) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12.0%;

(23) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(24) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (22) and (24) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) FIRST, to the payment of the amounts referred to in clauses (1) through (6) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) SECOND, to the payment of amounts referred to in clause (7) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(3) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3), or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(5) to the payment of the amounts referred to in clause (11) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(6) to the payment of the amounts referred to in clause (12) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (6), or until such amounts are paid in full;

(7) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(8) to the payment of the amounts referred to in clause (14) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(9) to the payment of the amounts referred to in sub-clause (ii) in clause (15) of Section 11.1(a)(i) (regardless whether or not the conditions of sub-clause (i) of such clause (15) are satisfied) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class D Overcollateralization Test to be met as of the related

Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (9), or until such amounts are paid in full;

(10) to the payment of the amounts referred to in clause (16) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(11) to the payment of the amounts referred to in clause (17) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(12)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(13) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(14) after the Replacement Period, (i) FIRST, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) SECOND, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(15) to the extent not previously paid in full under clause (12) above, after the Replacement Period, to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(16) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the

Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 P.M., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Servicer unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different Persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) *Credit Risk Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold.

For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i), to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; and

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "**Non-qualifying Collateral Obligation**") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure*. After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Workout Assets*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) *Supervening Requirement*. Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and

Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the Weighted Average Life Test is satisfied;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the current Moody's Rating on the Class A-1 Notes and the Class A-2a Notes is "Aaa" and the current Moody's Ratings on the Class A-2b Notes, the Class A-3 Notes, the Class B Notes, the Class C Notes and the Class D Notes are no lower than one subcategory below their Initial Rating.

Notwithstanding the foregoing, (i) one or more Collateral Obligations may be purchased pursuant to a Portfolio Improvement Exchange effected in compliance with Section 12.1(b) regardless of whether such purchase would otherwise satisfy the Eligibility Criterion set forth in clause (xii) above and (ii) the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the

Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement. .

(c) *Certain Permitted Exchanges*. The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Servicer*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Eligible Investments*. Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Article 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Section 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and

requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
A-1 Notes*	A-3, B, C, D, Preference Shares**	None
A-2a Notes*	A-2b, A-3, B, C, D, Preference Shares**	None
A-2b Notes*	A-3, B, C, D, Preference Shares**	A-2a
A-3 Notes	B, C, D, Preference Shares**	A-1, A-2
B	C, D, Preference Shares**	A-1, A-2, A-3
C	D, Preference Shares**	A-1, A-2, A-3, B
D	Preference Shares**	A-1, A-2, A-3, B, C
Preference Shares	None***	A-1, A-2, A-3, B, C, D

* The payment of principal of and interest on the Class A-1 Notes and the Class A-2 Notes shall rank *pari passu* (provided that amounts allocated to the payment of the Class A-2 Notes shall be paid, first, to the Class A-2a Notes and, second, to the Class A-2b Notes).

** Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

*** The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Holders of Securities.***

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (provided that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Holders of Securities signing the

instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

(e) With respect to any time period or deadline to deliver any request, demand, authorization, direction, notice, consent, waiver or other communication provided by this Indenture to be given by Holders of the Preference Shares, the Holders of Holding Securities shall not be prejudiced by any delay in delivery of such request, demand, authorization, direction, notice, consent, waiver or other communication from the Holding Preference Shares Paying Agent to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be. If any such Holder of Holding Securities timely delivers such request, demand, authorization, direction, notice, consent, waiver or other communication to the Holding Preference Shares Paying Agent such request, demand, authorization, direction, notice, consent, waiver or other communication shall be deemed to be timely delivered to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at, 200 Clarendon Street, Mail Code EUC 108, Boston, MA 02116, telecopy no. (617) 351-4358, Attention: CDO Services Group, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class

postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman KY1-1108, Cayman Islands, telecopy no. (345) 945-6265, Attention: the Directors—Eastland CLO, Ltd., or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Servicer at its address below;

(iii) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) the Initial Purchaser shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Initial Purchaser addressed to them at 390 Greenwich Street., 4th Floor, New York, New York 10013, telecopy no. (212) 723-8671, Attention CDO Group, or at any other address previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of the Initial Purchaser, as the case may be

(v) the Placement Agent shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Placement Agent addressed to them at 390 Greenwich Street., 4th Floor, New York, New York 10013, telecopy no. (212) 723-8671, Attention CDO Group, or at any other address previously furnished in writing to the Issuer, the Servicer, and the Trustee by an Officer of the Placement Agent, as the case may be;

(vi) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vii) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(viii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate

House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 949-9876, Attention: The Directors; or

(ix) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Any document required to be delivered or made available to the Repository by the Trustee may be made available by providing the operator of the Repository with access to a website containing such document in a format that permits the user to download the document as a pdf file.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A-1 Notes, Class A-2a Notes or Class A-2b Notes may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A-1 Notes, Class A-2a Notes or Class A-2b Notes, as applicable, on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A-1 Notes, Class A-2a Notes or Class A-2b Notes, as applicable) to the Trustee in substantially the form of Exhibit J specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A-1 Notes, Class A-2a Notes or Class A-2b Notes, as applicable (each, an "***Insurer***"). After receipt of any such notice (in the form of Exhibit J) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

(d) Unless notified to the contrary by Financial Security Assurance Inc. ("***FSA***") or unless FSA is no longer to direct the vote of at least the Super Majority of the Class A-2a Notes, each of the parties hereto agrees that, so long as any Class A-2a Notes are Outstanding, FSA shall be entitled to receive, and shall be distributed, all reports, notices, certificates, statements and other information (including access to the Trustee's password protected website) that are required to be delivered to any Holder of the Class A-2a Notes (or that any Holder of the Class A-2a Notes is entitled to request) at the same time and in the same manner as such reports, notices, certificates, statements and other information are delivered to each such Holder of Class A-2a Notes, at the following address (or at any other address furnished in writing from time to time by FSA to the parties hereto): Financial Security Assurance Inc., 31 West 52nd Street, New York, NY 10019, Attention: CDO Surveillance, telephone no.: (212) 826-0100; electronic mail: cdoreport@fsa.com, facsimile no.: (212) 339-3581. For the avoidance of doubt, FSA shall be entitled to request directly that the parties hereto provide it with such reports, notices, certificates, statements and other information that are required to be delivered to any Holder of the Class A-2a Notes (or that any Holder of the Class A-2a Notes is entitled to request).

Section 14.4. ***Notices to Noteholders, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of

Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) of any event,

(a) the notice shall be sufficiently given to the Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register, at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee or at the address of the Holding Preference Shares Paying Agent supplied by the Holding Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder, the Preference Shares Paying Agent or Holding Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer. The Trustee shall deliver to the Holding Preference Shares Paying Agent any information or notice that the Holding Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Holding Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

Where this Indenture provides for notice in any manner, the notice may be waived in writing by any Person entitled to receive the notice, either before or after the event, and the waiver shall be the equivalent of the notice. Waivers of notice by Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

So long as any Senior Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Noteholders, the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to Holders of Holding Securities) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Initial Purchaser all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation relating to the Notes requested by the Initial Purchaser (collectively, the "***Transaction Reports***") and the Issuer consents to the Initial Purchaser providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Initial Purchaser or any of its Affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

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

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9. ***Governing Law.***

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.10. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers

and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of Investors Bank & Trust Company (to the attention of Investors Bank & Trust Company, Trustee for Eastland CLO, Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.11. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.12. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

Section 14.13. ***Consent of Posting of Documents on Repository.***

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.14. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.15. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Servicing Agreement; Amendment of Servicing Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(i) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(ii) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations, covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(iii) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h) below.

(v) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(vi) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use its best efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed

Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; provided that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), (c) to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Securities) and (d) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the "***Objection Cut-Off Date***"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer and with the consent of a Majority of the Controlling Class, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "A1" or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A2" or higher and a debt rating by Moody's for short-term debt of "P-1" if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or, if the Hedge Counterparty does not have a short-term debt rating by S&P, a long-term debt rating of not less than "A+" (the "***Required Rating***").

(c) If at any time a Hedge Counterparty does not have the Required Rating, then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type specified under the relevant Hedge Agreement; provided that the Hedge Counterparty shall, at the time such collateral is first posted, deliver to the Issuer, the Trustee and the Rating Agencies an Opinion of Counsel of nationally recognized standing in the jurisdiction in which the Hedge Counterparty is incorporated confirming that such collateral will be available in a timely manner upon a bankruptcy of the Hedge Counterparty;

(ii) obtain a guarantor that has a short-term debt rating by S&P of not less than "A-1" and otherwise has the Required Rating, subject to satisfaction of the Rating Condition; or

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to the satisfaction of the Rating Condition.

provided that failure to take any such steps set forth under paragraphs (i) through (iii) above within 30 days shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(d) If at any time the Hedge Counterparty has (x) no short-term Moody's rating and a long-term Moody's that is below "A3" or (y) both a short-term and long-term Moody's rating and either the long-term Moody's rating that is below "A3" or the short-term Moody's rating that is below "P-2", then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) obtain a guarantor that has the Required Rating, subject to satisfaction of the Rating Condition; or

(ii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition;

provided that failure to take any such steps set forth under paragraphs (i) and (ii) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(e) If at any time the Hedge Counterparty has a long-term unsecured debt rating by S&P below "BBB-", then the Hedge Counterparty shall be required, within 10 days, to replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition; provided that failure to do so shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(f) Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty thereto shall comply with the then currently applicable rating criteria of each Rating Agency from time to time.

(g) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(h) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(i) Except as provided in paragraph (i) of this Section 15.2, the Issuer, at the direction of the Servicer, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(j) Notwithstanding Section 15.2(h), the applicable requirements of Section 15.2(h) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(k) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(l) Each Hedge Agreement may be terminated pursuant to its terms by the Hedge Counterparty upon an Optional Redemption of the Notes, an acceleration of maturity of the Notes followed by the liquidation of any or all of the Collateral after an Event of Default or the entry into certain amendments to the Indenture without the consent of the Hedge Counterparty. The Hedge Agreement will not be permitted to be terminated by the Issuer as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(m) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

EASTLAND CLO, LTD.,
AS ISSUER

By: _____
Name: SCOTT DAKERS
Title: Director

EASTLAND CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

INVESTORS BANK & TRUST COMPANY,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name: Brian Peterson
Title: Director

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

EASTLAND CLO, LTD.,
AS ISSUER

By: _____
Name:
Title:

EASTLAND CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

INVESTORS BANK & TRUST COMPANY,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor *divided* by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

The Diversity Score for any Structured Finance Obligation that is a collateralized loan obligation is equal to zero.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5%	55%	45%	40%	35%	25%	15%

>2%						
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

Structured Finance Obligation Rating*	RATING OF A CLASS OF NOTES AT THE TIME OF COMMITMENT TO PURCHASE						
Senior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%
Junior Asset Class							
	AAA	AA	A	BBB	BB	B	CCC
AAA	65.0%	70.0%	80.0%	85.0%	85.0%	85.0%	85.0%
AA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
A	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
BBB	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* If the Structured Finance Obligation is (x) a collateralized debt obligation backed by project finance securities, asset-backed securities, structured finance or real estate securities, distressed debt or other collateralized debt obligations; (y) a market value collateralized debt obligation; or (z) a synthetic collateralized debt obligation, the recovery rate will be assigned by S&P at the time of acquisition.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, then the Moody's Default Probability Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher, or

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories. For purposes of any calculation under this Indenture, if a Moody's Default Probability Rating is withdrawn by Moody's with respect to a Collateral Obligation, the Issuer will continue using the latest Moody's Default Probability Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clause (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be

adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "***Borrower***"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "***Guarantor***") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 12

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 28 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; provided that, on or prior to each one-year anniversary of the acquisition of any such Collateral Obligation, the Issuer shall submit to S&P a request for a S&P credit rating estimate for such Collateral Obligation, which shall be its S&P Rating, together with all information reasonably required by S&P to perform such estimate; or

(C) if such Collateral Obligation is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Servicer determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; provided that the Servicer must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above. For purposes of any calculation under the Indenture, if a S&P Rating is withdrawn by S&P with respect to a Collateral Obligation, the Issuer will continue using the latest S&P Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

Exhibit A-1

Form of Senior Note

Exhibit A-3

Form of Class D Note

Exhibit B-1

Form of Senior Note Transferee Certificate

Exhibit B-2

Form of Senior Note Transferor Certificate for Regulation S to Rule 144A Transfer

Exhibit B-3

Form of Senior Note Transferor Certificate for Rule 144A to Regulation S Transfer

Exhibit B-4

Form of Class D Note Transferee Certificate

Exhibit C

Form of Latham & Watkins LLP Opinion

Exhibit D

Form of Ogier Opinion

Exhibit E

Form of Nixon Peabody LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G

Forms of Section 3(c)(7) Notices

Exhibit G-1

Form of Section 3(c)(7) Reminder Notice

Exhibit G-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit H

Form of Beneficial Owner Certificate

Exhibit I

Form of Extension Notice

Exhibit J

Form of Insurer Notice

GLENEAGLES CLO, LTD.
ISSUER,

GLENEAGLES CLO CORP.
CO-ISSUER,

AND

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
Trustee

INDENTURE

Dated as of October 13, 2005

COLLATERALIZED DEBT OBLIGATIONS

U.S. $620,000,000 Class A-1 Floating Rate Senior Secured Extendable Notes Due 2017
U.S. $28,000,000 Class A-2 Floating Rate Senior Secured Extendable Notes Due 2017
U.S. $60,500,000 Class B Floating Rate Senior Secured Extendable Notes Due 2017
U.S. $51,000,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017
U.S. $49,500,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017
U.S. $5,000,000 Class 1 Extendable Combination Securities Due 2017
U.S. $20,000,000 Class 2 Combination Securities Due 2015

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Indenture, dated as of October 13, 2005, among GLENEAGLES CLO, LTD. (the "***Issuer***"), GLENEAGLES CLO CORP. (the "***Co-Issuer***") and JPMorgan Chase Bank, National Association, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Combination Securities, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Combination Securityholders, the Trustee, the Portfolio Manager and each Hedge Counterparty (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Synthetic Security Collateral Account, the Hedge Counterparty Collateral Account, the Closing Date Expense Account, the Expense Reimbursement Account, and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from the investment of funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and together with the Issuer Accounts, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Management Agreement, the Securities Lending Agreements, the Hedge Agreements as set forth in Article 15, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Class 2 Collateral and the Excluded Property, the "***Collateral***").

The Issuer as a second and separate grant Grants to the Trustee, for the benefit and security solely of the Holders of the Class 2 Combination Securities (solely to the extent of their Class 2 Component), all of its right, title and interest in, to and under, in each case, whether now owned or existing, or hereafter acquired or arising, the Class 2 Component Account (including, without limitation, the Class 2 Bond) and any property of any type deposited into the Class 2 Component Account and all proceeds with respect to the foregoing (all of the foregoing, the "***Class 2 Collateral***").

These Grants are not intended to and do not transfer any liability under the Collateral or the Class 2 Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes, the Class 2 Components and the Class 1 Note Components in the case of the first grant, and only the Class 2 Components in the case of the second grant. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes, the Class 2 Components and the Class 1 Note Components are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note, Class 2 Component or Class 1 Note Component and any other Note, Class 2 Component or Class 1 Note Component because of difference in time of issuance or otherwise. The Class 2 Component is secured by the second grant equally and ratably without prejudice, priority or distinction because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments, 11.2 and Article 13:

(i) the payment of all amounts due on the Notes, the Class 2 Components and the Class 1 Note Components equally and ratably without prejudice, priority or distinction between any Note, Class 2 Component or Class 1 Note Component and any other Note, Class 2 Component or Class 1 Note Component because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Portfolio Manager under the Management Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture. Payments or distributions made or to be made on the Combination Securities in respect of their Components are referred to as payments made or to be made on the Class 2 Components, the Class 1 Note Components and the Preference Share Components, as the case may be.

Except as otherwise specified herein or as the context may otherwise require or dictate or unless the Combination Securities are explicitly addressed in the same context, (A) all references in this Indenture to the "Notes" include the "Class 1 Note Component" of the Class 1 Combination Securities , (B) all references in this Indenture to the rights of the Holders of the Class C Notes (including with respect to any payments, distributions, redemptions, votes or consents to be given by such Holders) include the rights of the Holders of the Class 1 Combination Securities to the extent of the Class 1 Note Component of the Class 1 Combination Securities, (C) all references in this Indenture to the "Preference Shares" include the "Preference Share Component" of the Class 1 Combination Securities and/or the Class 2 Combination Securities, as applicable, and (D) all references in this Indenture to the rights of the Holders of the Preference Shares (including with respect to any payments, distributions, redemptions, votes or consents to be given by such Holders) include the rights of the Holders of the Class 1 Combination Securities to the extent of the Preference Share Component of the Class 1 Combination Securities and of the Holders of the Class 2 Combination Securities to the extent of the Preference Share Component of the Class 2 Combination Securities.

"***1940 Act***": The United States Investment Company Act of 1940, as amended.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Portfolio Manager.

"***Accredited Investor***": The meaning specified in Rule 501(a) of the Securities Act.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Warehoused Loan as part of the price paid by the Issuer, if any, to repurchase and terminate the related participation under the Warehouse Agreement.

"***Act***": The meaning specified in Section 14.2.

"***Additional Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Additional Preference Shares Closing Date***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.05% of the Maximum Investment Amount on the related Determination Date plus $150,000, over

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.7), the Administrator, the Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and of accountants, agents, and counsel for either of the Co-Issuers;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Notes owed by either Co-Issuer (including fees and expenses for surveillance, credit estimates, and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Management Fees) of the Portfolio Manager if payable under the Management Agreement;

(vi) fees and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other person (except the Portfolio Manager) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Maples Finance Limited.

"***Affiliate***" or "***Affiliated***": With respect to a person,

(i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(ii) any other person who is a director, officer, or employee (A) of the person, (B) of any subsidiary or parent company of the person, or (C) of any person described in clause (i) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(B) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Management Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes or the Class 1 Note Component as of any date, the aggregate principal amount of the Notes or Class 1 Note Components represented by the Outstanding Class 1 Combination Securities on that date. When used with respect to the Preference Shares or the Preference Share Components as of any date, means the number of such Preference Shares Outstanding on such date in respect of such Preference Shares or Preference Share Component. When used with respect to any of the Class 2 Combination Securities, as of any date, the aggregate face amount of the Class 2 Combination Securities.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto;

(d) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Securities or Preference Shares purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) to the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder on the next succeeding Payment Date) would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders of Preference Shares have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares shall be zero, (iii) in the case of the Class 1 Combination Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Class C Notes underlying the Class 1 Note Component and (y) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 1 Combination Security Preference Share Component and (iv) in the case of the Class 2 Combination Securities, the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 2 Combination Security Preference Share Component.

"***Amendment Buy-Out Purchaser***": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event that the Portfolio Manager elects not to purchase Securities or Preference Shares from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Placement Agent or any of its Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Placement Agent or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, each of the Co-Issuers. With respect to the Preference Shares and the Combination Securities, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified in the tables below. High-Yield Bonds do not include Structured Finance Obligations for this purpose.

Moody's Priority Category	**Moody's Priority Category Recovery Rate**

Moody's Priority Category	Moody's Priority Category Recovery Rate
Synthetic Securities	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
Unsecured DIP Loans and any Collateral Obligations not covered above or below	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Senior Secured Loans and Second	55.0%

S&P Priority Category	S&P Priority Category Recovery Rate
Lien Loans with an S&P Recovery Rating of 1+, 1 or 2 (in each case, other than DIP Loans)	
Senior Unsecured Loans	37.5%
Second Lien Loans (other than Second Lien Loans with an S&P Recovery Rating of 1+, 1 or 2)	37.5%
Subordinated Lien Loans other than a DIP Loan	21.5%
Senior secured High-Yield Bonds (other than Structured Finance Obligations)	44.0%
Senior unsecured High-Yield Bonds (other than Structured Finance Obligations)	30.0%
Subordinated High-Yield Bonds (other than Structured Finance Obligations)	18.0%
Structured Finance Obligations	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in Schedule 6 by reference to the type of asset and its then S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the Grant of the relevant Collateral Obligation).
Synthetic Securities	As assigned by S&P on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above	As assigned by S&P on a case-by-case basis.

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by the Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, LoanX Inc., Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio

Manager); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Securities, the Trustee or the person designated by the Trustee to authenticate the Securities on behalf of the Trustee pursuant to Section 6.14.

"***Authorized Officer***": With respect to the Issuer or the Co-Issuer, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer, as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Portfolio Manager, any managing member, Officer, manager, employee, partner or agent of the Portfolio Manager who is authorized to act for the Portfolio Manager in matters relating to, and binding on, the Portfolio Manager with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, by

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": JPMorgan Chase Bank, National Association, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Security or Regulation S Global Preference Shares as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": Any "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, and including, without limitation, foreign, church and governmental plans, any "plan" described by Section 4975(e)(1) of the Code, or an entity whose underlying assets include the assets of any plan by reason of a plan's investment in such entity.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Bridge Loan***": Any obligation or security incurred in connection with a merger, acquisition, consolidation, sale of all or substantially all of the assets of a person or entity, restructuring or similar transaction, which obligation or security by its terms is required to be repaid within one year of the incurrence thereof with proceeds from additional borrowings or other refinancing (other than any additional borrowing or refinancing if one or more financial institutions shall have provided the issuer of such obligation or security with a binding written commitment to provide the same). For the avoidance of doubt, a DIP Loan will not constitute a Bridge Loan.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note or the final payment in respect of any Combination Security, the place of presentation of the Security designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market.

"***Buy-Out Amount***": The meaning set forth in the Management Agreement.

"***Calculation Agent***": The meaning specified in Section 7.16.

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

"***CCC/Caa Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Security***": Any Regulation S Certificated Security or U.S. Certificated Security.

"***Certificated Preference Shares***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Securities having the same priority and the same Stated Maturity and all of the Preference Shares; provided, however, unless otherwise expressly provided for herein, the Class A-1 Notes and the Class A-2 Notes shall be separate Classes.

"***Class 1 Combination Security***": The Class 1 Extendable Combination Securities issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class 1 Combination Security Preference Share Component***": A Component of the Class 1 Combination Securities representing an initial aggregate Face Amount of Preference Shares equal to $1,000,000. The number of Preference Shares to which the Class 1 Combination Security Preference Share Component relates is included in (and are not in addition to) the number of Preference Shares being issued by the Issuer on the Closing Date pursuant to its Memorandum and Articles of Association.

"***Class 1 Combination Security Rated Balance***": With respect to the rating of the Class 1 Combination Securities by Moody's, (i) on the Closing Date $5,000,000 and (ii) on any date of determination thereafter, the initial Class 1 Combination Security Rated Balance reduced by an amount equal to (x) the aggregate amount of distributions paid to the Holders of the Class 1 Combination Securities on each Payment Date prior to such date of determination in respect of its related Components pursuant to Section 11.1(a) *minus*

(y) the aggregate Class 1 Combination Security Rated Coupon Distributions paid to the Holders of the Class 1 Combination Securities on each Payment Date prior to such date of determination; *provided* that if the amount of distributions paid to the Holders of the Class 1 Combination Securities on any Payment Date is less than the Class 1 Combination Security Rated Coupon Distribution for such Payment Date, then the Class 1 Combination Security Rated Balance shall be increased by such deficiency.

"***Class 1 Combination Security Rated Coupon***": With respect to the Class 1 Combination Securities, 0.25% percent per annum in respect of the Class 1 Combination Security Rated Balance of such Class 1 Combination Securities.

"Class 1 Combination Security Rated Coupon Distribution": With respect to the Class 1 Combination Securities as of any Payment Date, shall be calculated as the amount accrued at the Class 1 Combination Security Rated Coupon during the related Interest Period on the Class 1 Combination Security Rated Balance as of such Payment Date (without giving effect to any payments to be made on such Payment Date) and calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Class 1 Note Component***": A component of the Class 1 Combination Securities representing an initial aggregate principal amount of Class C Notes equal to $4,000,000. The number of Class C Notes to which the Class 1 Note Component relates is included in (and are not in addition to) the number of Class C Notes being issued by the Issuer on the Closing Date pursuant to this Indenture.

"***Class 2 Bond***": The meaning specified in Section 10.3(j).

"***Class 2 Collateral***": The meaning specified in the Granting Clauses.

"***Class 2 Component***": A component representing the rights of the Holders of the Class 2 Combination Securities to receive the payments from the Class 2 Component Account or delivery of the Class 2 Bond from such account.

"***Class 2 Component Account***": The trust account established pursuant to Section 10.3(j).

"***Class 2 Component Payment Date***": The meaning specified in Section 11.2.

"***Class 2 Combination Security***": The Class 2 Combination Securities issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class 2 Combination Security Preference Share Component***": A Component of the Class 2 Combination Securities representing an initial aggregate Face Amount of Preference Shares equal to $7,600,000. The number of Preference Shares to which the Class 2 Combination Security Preference Share Component relates is included in (and are not in addition to) the number of Preference Shares being issued by the Issuer on the Closing Date pursuant to its Memorandum and Articles of Association.

"***Class 2 Combination Security Rated Balance***": With respect to the rating of the Class 2 Combination Securities by Moody's, on the Closing Date $20,000,000.

"***Class A Notes***": The Class A-1 Notes and the Class A-2 Notes.

"***Class A-1 Notes***": The Class A-1 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-2 Notes***: The Class A-2 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A/B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A-1 Notes, the Class A-2 Notes and the Class B Notes (treating the Class A-1 Notes, the Class A-2 Notes and the Class B Notes as one Class for this purpose).

"***Class B Notes***": The Class B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of such Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or Equity Security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": October 13, 2005.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Portfolio Manager, and the Collateral Administrator, as modified, amended, and supplemented and in effect from time to time.

"***Collateral Administrator***": The Bank in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation, or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security that is exchangeable or convertible at the option of its issuer;

(5) not an Equity Security or a component of an Equity Security or a security that has a component that is an Equity Security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Portfolio Manager has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of

doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans;

(11) an obligation that (i) bears simple interest payable in cash no less frequently than annually (although, in the case of a PIK Security, interest may be deferrable) at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than one year after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) if such obligation is a Structured Finance Obligation managed by the Portfolio Manager that is other than a collateralized loan obligation primarily secured by senior secured loans, the Rating Condition has been satisfied;

(19) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(20) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(21) in the case of a Synthetic Security, a Synthetic Security for which the counterparty or issuer, as the case may be, has a long-term senior unsecured rating by Moody's of at least "A3", and if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "A+";

(22) not an obligation that constitutes Margin Stock;

(23) not a Zero-Coupon Security;

(24) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(25) not a security whose repayment is subject to substantial non-credit related risk as determined by the Portfolio Manager;

(26) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition);

(27) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act; and

(28) not a Bridge Loan.

Pursuant to the definition of "Synthetic Security", unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event".

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average

Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test, and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Combination Securities***": The Class 1 Combination Securities and the Class 2 Combination Securities issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Combination Security Rated Balance***": The Class 1 Combination Security Rated Balance or Class 2 Combination Security Rated Balance, as applicable.

"***Combination Securityholder***": A Holder of Combination Securities of any Class.

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Components***": The Class 1 Note Components, the Class 2 Components or the Preference Share Components, as the context requires.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Investment Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Investment Amount:

	Percentage of the Maximum Investment Amount
(1) Senior Secured Loans, Second Lien Loans, Subordinated Lien Loans and Eligible Investments	≥ 92.5%
(a) except that Senior Secured Loans shall meet or exceed the percentage of the Maximum Investment Amount specified in the right column	≥ 87.5%
(2) Unsecured Loans	≤ 3.0%
(3) Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4) High-Yield Bonds	≤ 7.5%
(5) Subordinated Lien Loans and High-Yield Bonds	≤ 15.0%
(6) Revolving Loans and Delayed Drawdown Loans	≤ 15.0%
(7) DIP Loans	≤ 5.0%
(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 7.5%
(8) S&P Unrated DIP Loans	≤ 2.5%
(9) PIK Securities	≤ 3.0%

(10)	Structured Finance Obligations	≤ 7.5%
	(a) except that Structured Finance Obligations managed by the Portfolio Manager may not exceed the percentage of the Maximum Investment Amount specified in the right column;	≤ 5.0%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Investment Amount specified in the right column; and	≤ 3.0%
	(c) except that any single issuer whose long-term debt obligations are rated below BBB- by S&P, or are rated BBB- by S&P and are on negative watch for downgrade, other than an issuer with respect to which the Rating Condition has been satisfied, may not exceed the percentage of the Maximum Investment Amount specified in the right column;	0%
(11)	obligors Domiciled other than in the United States and Canada	≤ 15.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(15)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(16)	same S&P Industry Classification	≤ 8.0%
	(a) except that Investment Obligations belonging to two S&P Industry Classifications (not including Telecommunications) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 12.0%
(17)	single issuer or any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%

	(a) except that up to each of five individual issuers (including any of their respective Affiliates but excluding issuers that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 2.0%
(18)	Fixed Rate Obligations	≤ 7.5%
(19)	Pay interest less frequently than quarterly but no less frequently than annually	≤ 7.5%
(20)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
(21)	Participations (provided, that no Investment Obligations may be a Participation in a Participation)	≤ 20.0%
(22)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 20.0%
(23)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*

(24)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(25)	Deep Discount Obligations	≤ 10.0%
(26)	CCC/Caa Collateral Obligations	≤ 7.5%
(27)	Long-Dated Collateral Obligations	≤ 4.0%
(28)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(29)	Floating Rate Obligations providing for interest at a non-London interbank offered rate	≤ 5.0%
(30)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $75,000,000	≤ 10.0%
(31)	Collateral Obligations representing units consisting of debt and warrants to purchase equity securities; provided that, with respect to each Collateral Obligation which consists of such unit of debt and warrants, at the time of purchase of such Collateral Obligation, the aggregate value of the warrants included in such unit must be determined by the Portfolio Manager in good faith to be no more than 2% of the outstanding principal amount of the debt included in such unit.	≤ 5.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the right of the Portfolio Manager to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Controlling Class***": The Class A-1 Notes (voting together as a Class or group), so long as any Class A-1 Notes are Outstanding; then the Class A-2 Notes (voting together as a Class or group), so long as any Class A-2 Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; and then the Class D Notes (voting together as a Class or group).

"***Controlling Person***": Any person, other than a Benefit Plan Investor, who has discretionary authority or control with respect to the assets of the Issuer or who provides investment advice for a fee (direct or indirect) with respect to such assets, or any Affiliate of such person.

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 600 Travis Street, 50th Floor, Houston, Texas

77002, telecopy no. (713) 216-2101, Attention: Worldwide Securities Services—Gleneagles CLO, Ltd. or any other address the Trustee designates from time to time by notice to the Noteholders, the Portfolio Manager, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A/B Coverage Tests, the Class C Coverage Tests and the Class D Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that in the commercially reasonable judgment of the Portfolio Manager, has improved in credit quality; provided that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 101%), or (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A-1 Notes or the Class A-2 Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1 Notes or the Class A-2 Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes and the Class D Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Portfolio Manager, has a significant risk of declining in credit quality and, with a lapse of time, becoming a Defaulted Collateral Obligation.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager, and (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation, or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) except with respect to a DIP Loan, an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Portfolio Manager has delivered to the Trustee an officer's certificate to the effect that the Portfolio Manager expects that the obligor will make payments on the Collateral Obligation as they become due,

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications but greater than or equal to Caa3 without credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 90% of its Principal Balance,

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(v) the Portfolio Manager has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Investment Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Portfolio Manager shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Portfolio Manager may, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided that, if the Portfolio Manager certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Portfolio Manager, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is pari passu with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Portfolio Manager (provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred) determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor, or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with

respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Portfolio Manager.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of such Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class C Notes and the Class D Notes.

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or its affiliated nominee or endorsed to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Portfolio Manager on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership and/or

pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Portfolio Manager has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Portfolio Manager has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer),

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "Debtor") organized under the laws of the United States or any state of the United States, and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code,

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code,

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets, or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile***" or "***Domiciled***": With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Portfolio Manager, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": Means: (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country; provided that such country has not imposed currency exchange controls.

"***Eligible Investments***": Any Dollar-denominated investment that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) any demand or time deposits account in a well-capitalized (as such term is used by the FDIC relating to its risk-based assessment system) FDIC insured banking institution having (A) repayment terms with a predetermined fixed Dollar amount of principal due at the maturity of such deposit that may not vary or change, (B) a rate of interest (if a variable rate) based upon a single interest rate index and a fixed spread which rate of interest varies based solely on such index and (C) no right by the Issuer to liquidate or redeem such deposit prior to the maturity of such deposit;

(d) any demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking

authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such investment or contractual commitment providing for such investment and throughout the term of the investment, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that, in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(e) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such investment a credit rating of at least "P-1" by Moody's and "A-1+" by S&P, provided that, in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, and if so rated, such rating is not on watch for downgrade;

(f) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such investment and throughout the term of the investment; provided that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such investment and throughout the term of the investment a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(g) any money market fund or similar investment vehicle having at the time of investment therein and throughout the term of the investment a credit rating of "MR1+" by Moody's and "AAAm" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment advisor, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture; provided that (x) such fund or vehicle is formed and has its principal office outside of the United States and (y) the ownership of an interest in such fund or vehicle will not subject the Issuer to net income tax in any jurisdiction;

(h) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes; provided, further, that, at the time of investment therein and throughout the term of the investment, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(i) such other investments for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of the investment.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Portfolio Manager;

(2) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***Equity Security***": (a) Any equity security or any other security which is not eligible for purchase by the Issuer and is received with respect to a Collateral Obligation or a Defaulted Collateral Obligation and (b) any similar security purchased as part of a "unit" with a Collateral Obligation and which itself is not eligible for purchase by the Issuer.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excess CCC/Caa Collateral Obligations***": The Principal Balance of all CCC/Caa Collateral Obligations in excess of 7.5% of the Maximum Investment Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Reinvestment Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Reinvestment Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in November, 2016); provided that the "Extended Reinvestment Period End Date" will in no event be a date later than the Payment Date in November, 2028.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in November, 2021); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in November, 2033.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, the Payment Date in February 2019); provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in February, 2031.

"***Extension***": An extension of the Reinvestment Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable Beneficial Owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A-1 Notes and the Class A-2 Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such Beneficial Owner as of the applicable Extension Effective Date, (2) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such Beneficial Owner as of the applicable Extension Effective Date, (3) in the case of the Class C Notes (including the Class 1 Note Component), 0.25% of the Aggregate Outstanding Amount thereof held by such Beneficial Owner as of the applicable Extension Effective Date and (4) in the case of the Class D Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such Beneficial Owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each Beneficial Owner of Notes and Class 1 Combination Securities (to the extent of the Class 1 Note Component) other than Extension Sale Securities, the written certification by such Beneficial Owner substantially in the form annexed to Exhibit J to the effect that it held Notes and the Class 1 Combination Securities (to the extent of the Class 1 Note Component) other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes or the Aggregate Outstanding Amount of the Class 1 Note Component in the case of the Class 1 Combination Securities and wire transfer instructions for the Extension Bonus Payment.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in November, 2010); provided that if the Extension Conditions are not satisfied because the Holders of Class A-1 Notes have failed to deliver an Extension Sale Notice or have failed to provide their written consent to the related Maturity Extension, then the Portfolio Manager may extend the Extension Effective Date to such later date (not to exceed 7 Business Days after the then proposed Extension Effective Date) if the Portfolio Manager

shall cause the Extension Conditions set forth in clause (v) of such definition to be satisfied as of such later date.

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares shall be zero, (iii) in the case of the Class 1 Combination Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Class C Notes underlying the Class 1 Note Component and (y) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 1 Combination Security Preference Share Component and (iv) in the case of the Class 2 Combination Securities, the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 2 Combination Security Preference Share Component.

"***Extension Qualifying Purchasers***": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event the Portfolio Manager elects not to purchase Securities or Preference Shares from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Placement Agent or any of their Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Placement Agent, or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party and relating to the Class 2 Collateral naming the Issuer as debtor and the Trustee on behalf of the Holders of the Class 2 Combination Securities as secured party.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate, including a Collateral Obligation that does not bear interest on a floating rate index and whose interest rate is scheduled to increase one or more times over the life of the Collateral Obligation.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P; and

(iii) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Portfolio Manager, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Portfolio Manager receives the notice of withdrawal.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Global Security***": Any Regulation S Global Security or Rule 144 A Global Note.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": Any counterparty that when the Issuer enters into any Hedge Agreement with such counterparty, it satisfies the requirements of Section 15.2(b) (subject, in the case of any other counterparty, to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***High-Yield Bond***": Any debt security other than a Loan, including any Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation Section 1.165-12(c)(3).

"***Holder***": With respect to any Note or Combination Security, the person whose name appears on the Indenture Register as the registered holder of the Note or Combination Security and with respect to any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share; and with respect to any Component, the person whose name appears in the Indenture Register as the registered holder of the Combination Security representing the Component.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit H-2.

"***Incentive Management Fee***": On each Payment Date, the fee payable to the Portfolio Manager in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment pursuant to Section 11.1(a)(i)(17) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Incentive Management Fee pursuant to Section 11.1(a)(ii)(5)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(14) of the Priority of Payments.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"***Independent***" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee provided notice of a proposed supplemental indenture pursuant to Section 8.2(c) to the Holders of Securities and Preference Shares.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes and the Combination Securities provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes and the Class B Notes as one Class for this purpose) on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, minus

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes and the Class B Notes as one Class for this purpose) if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A/B Interest Coverage Test	120%
Class C Interest Coverage Test	115%
Class D Interest Coverage Test	110%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) during the continuance of an "event of default" (under and as defined in the related Securities Lending Agreement), all interest received from the related Securities Lending Collateral;

(vii) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(viii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(ix) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(x) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(i).

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Investment Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC/Caa Collateral Obligations exist, the Investment Criteria Adjusted Balance for the Excess CCC/Caa Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Investment Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"***Issuer***": The person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Portfolio Manager by an Authorized Officer of the Portfolio Manager, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Knowledgeable Employee***": The meaning specified in Rule 3c-5 under the Investment Company Act.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Portfolio Manager, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": Determined by the Calculation Agent for any Interest Period, the offered rate, as determined by the Calculation Agent, for three month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 a.m. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Portfolio Manager) (the "***Reference Banks***") for quotations as of approximately 11:00 a.m. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that leading banks in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager)).

For the first Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered, or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation Section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes; provided that such Collateral Obligation shall in no event have a stated maturity later than two years after the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or Combination Securities or the Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Combination Securities or Preference Shares, as the case may be.

"***Management Agreement***": The Portfolio Management Agreement, dated as of the Closing Date, between the Issuer and the Portfolio Manager, as modified, amended, and supplemented and in effect from time to time.

"***Management Fee***": The Senior Management Fee, the Subordinated Management Fee, and the Incentive Management Fee. The Portfolio Manager may, in its sole discretion:

(i) waive all or any portion of the Management Fee, any funds representing the waived Management Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Portfolio Manager) pursuant to the Priority of Payments; or

(ii) defer all or any portion of the Management Fee, any funds representing the deferred Management Fees to be retained in the Collection Account, when they will, subject to the limitation

in Section 11.1(a)(i)(3), become payable in the same manner and priority as their original characterization would have required unless deferred again.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio Manager); provided that if a Market Value of any Collateral Obligation cannot be so determined for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided, further, that during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) (if any) the Market Value of such Collateral Obligation as most recently determined by the Portfolio Manager in accordance with the foregoing and (ii) the current market value of such Collateral Obligation as determined by the Portfolio Manager in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Investment Amount (and any amount in excess of 5.0% of the Maximum Investment Amount shall be deemed to have a Market Value of zero).

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation, by

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Investment Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, $872,000,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations, plus

(B) Cash representing Principal Proceeds on deposit in the Collection Account, plus

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation,

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation,

(iii) that is a Determination Date,

(iv) that is the Ramp-Up Completion Date, and

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

"***Minimum Diversity Score***": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Minimum Weighted Average Commitment Fee***": As of any Measurement Date, 0.40%.

"***Minimum Weighted Average Spread***": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	**Moody's Rating Factor**	**Moody's Rating**	**Moody's Rating Factor**
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500

Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Portfolio Manager on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

"***Moody's Senior Secured Loan***":

(a) A Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan,

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral, or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan,

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral,

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis, and

(d) if the Loan is a Second Lien Loan under clause (b) above, such Loan has an Assigned Moody's Rating that is not lower than the corporate family rating by Moody's of the related obligor.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in November, 2010.

"***Non-Consenting Holder***": In connection with any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities or Preference Shares, with respect to the Holders of the Securities or the Preference Shares, any such Holder or, in the case of such Securities represented by Global Securities, any Beneficial Owner thereof, that either (i) has declared in writing that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period; provided that, during the Non-Call Period, "Non-Consenting Holder" shall exclude any Holder or, in the case of Securities represented by Global Securities, Beneficial Owner, of the Class A-1 Notes, unless such Holder or Beneficial Owner shall have consented in writing to the designation as a Non-Consenting Holder.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": A Holder or Beneficial Owner of an interest in a Global Security or a Certificated Security that is a U.S. person and (i) with respect to a Global Security, is not a QIB/QP and that becomes the Beneficial Owner of an interest in a Rule 144A Global Note, (ii) with respect to a U.S. Certificated Security, is not (x) a QIB/QP or (y) an Accredited Investor and a Qualified Purchaser and that becomes the Beneficial Owner of an interest in a U.S. Certificated Security or (iii) does not have an exemption available under the Securities Act.

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of such Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A-1 Notes, the Class A-2 Notes and the Class B Notes and the ultimate payment of interest on the Class C Notes and the Class D Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.05%
2	Greater than or equal to 2.95% but less than 3.05%
3	Greater than or equal to 2.85% but less than 2.95%
4	Greater than or equal to 2.75% but less than 2.85%

5	Greater than or equal to 2.65% but less than 2.75%
6	Greater than or equal to 2.55% but less than 2.65%
7	Greater than or equal to 2.45% but less than 2.55%
8	Greater than or equal to 2.35% but less than 2.45%
9	Greater than or equal to 2.25% but less than 2.35%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for such Class from the then-applicable Note Break-Even Loss Rate for such Class of Notes.

"***Noteholder***": A Holder of any Class of Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of such Class with respect to each Interest Period equal to LIBOR for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes, except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A-1 Notes until the Class A-1 Notes have been fully redeemed;

(2) to the Class A-2 Notes until the Class A-2 Notes have been fully redeemed;

(3) to the Class B Notes until the Class B Notes have been fully redeemed;

(4) to the Class C Notes until the Class C Notes have been fully redeemed; and

(5) to the Class D Notes until the Class D Notes have been fully redeemed.

"***Notes***": The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Securities and the Preference Shares.

"***Offering Memorandum***": The final Offering Memorandum, dated October 7, 2005, prepared and delivered in connection with the offer and sale of the Notes, the Combination Securities and the Preference Shares.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law

firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Portfolio Manager, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to: (a) the Notes and the Combination Securities or any specified Class, as of any date of determination, all of the Notes, all of the Combination Securities, or all of the Notes or Combination Securities of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes and Combination Securities:

(i) Securities canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture and Combination Securities in exchange for or in lieu of which other Combination Securities or Notes relating to their Components have been authenticated and delivered pursuant to this Indenture; and

(iv) Securities alleged to have been destroyed, lost, or stolen for which replacement Securities have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Securities are held by a protected purchaser;

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Notes, the Preference Shares or the Combination Securities have given any request, demand, authorization, direction, notice, consent, or waiver under this Indenture,

(1) the Holders of Combination Securities shall be entitled to voting rights in respect of their Preference Share Components in the proportion that the Aggregate Outstanding Amount of their Preference Share Components bears to the Aggregate Outstanding Amount of Preference Shares and shall not have voting rights as a separate Class except to the extent otherwise expressly provided in this Indenture;

(2) the Holders of the Class 1 Combination Securities shall be entitled to voting rights in respect of their Class 1 Note Components in the proportion that the Aggregate Outstanding Amount of their

Class 1 Note Components bears to the Aggregate Outstanding Amount of the Class C Notes and shall not have voting rights as a separate Class except to the extent otherwise expressly provided in this Indenture; and

(3) Securities or Preference Shares owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and (only (x) with respect to any matter affecting its status as Portfolio Manager, or (y) in any matter respecting an acceleration of any Class of Notes or Preference Shares if the effect of the Portfolio Manager's action or inaction as a Holder of Notes or Preference Shares would effectively prevent acceleration) the Portfolio Manager and its Affiliates and any accounts over which the Portfolio Manager or its Affiliates have discretionary voting authority shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent, or waiver, only Notes or Preference Shares that a Trust Officer of the Trustee has actual knowledge to be so owned or beneficially owned shall be so disregarded. Notes, Combination Securities or Preference Shares so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes, Combination Securities or Preference Shares and that the pledgee is not the Issuer, the Co-Issuer, the Portfolio Manager, the Preference Shares Paying Agent or any Affiliate of the Issuer or the Co-Issuer.

"***Overcollateralization Ratio***": With respect to any Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes and the Class B Notes as one Class for this purpose) on any Measurement Date, the ratio calculated by dividing:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC/Caa Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); plus

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); plus

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and, without duplication, the amount of Principal Proceeds on deposit in the Collection Account; plus

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; plus

(5) with respect Collateral Obligation that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC/Caa Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC/Caa Collateral Obligations, an amount equal to the product of (i) the lower of (1) 70% and (2) the weighted average Market Value of all CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances multiplied by (ii) the Excess CCC/Caa Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance <u>including any unfunded amount thereof</u> (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes and the Class B Notes as one Class for this purpose) if, as of any

Measurement Date, the Overcollateralization Ratio for such Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A/B Overcollateralization Test	112.4%
Class C Overcollateralization Test	108.3%
Class D Overcollateralization Test	104.2%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any person authorized by the Issuer to pay the principal of or interest on any Notes or to pay amounts on any Combination Securities on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in February, 2006 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Portfolio Manager has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Placed Securities***": The Notes, the Combination Securities and the Preference Shares, in each case placed by the Placement Agent pursuant to the Placement Agency Agreement.

"***Placement Agency Agreement***": A placement agency agreement dated October 13, 2005 among the Co-Issuers, and Banc of America Securities LLC relating to the placement of the Placed Securities, as modified, amended and supplemented and in effect from time to time.

"***Placement Agent***": Banc of America Securities LLC.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Manager***": Highland Capital Management, L.P., and any successor Portfolio Manager pursuant to the Management Agreement.

"***Preference Share Component***": The Class 1 Combination Security Preference Share Component and/or the Class 2 Combination Security Preference Share Component, as applicable.

"***Preference Shares Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares were purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Preference Shares (and including any Additional Preference Shares issued pursuant to Section 9 of the Preference Shares Paying Agency Agreement).

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": JPMorgan Chase Bank, National Association, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, (i) all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds and (ii) the net proceeds received from any issuance of Additional Preference Shares pursuant to the Preference Shares Paying Agency Agreement.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed reinvestment in a Collateral Obligation, as the case may be.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related

transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any person that, at the time of its acquisition of Notes or Combination Securities is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the 1940 Act and Rule 2a51-2 under the 1940 Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 86th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $872,000,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $872,000,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least $872,000,000.

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the

replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Portfolio Manager (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Securities will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Securities are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency (and with respect to the Combination Securities, from Moody's only) that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Securities.

"***Rating Confirmation Failure***": A failure by the Issuer or the Portfolio Manager (on behalf of the Issuer) to obtain confirmation in writing from S&P and written confirmation from Moody's that it has not reduced, suspended, or withdrawn its Initial Rating of each Class of Notes and, in the case of Moody's, the Class 1 Combination Securities, and that it has not placed any Class of Notes or, in the case of Moody's, the Class 1 Combination Securities, on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Portfolio Manager on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Portfolio Manager may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score						
Minimum Weighted Average Spread	**50**	**55**	**60**	**65**	**70**	**75**	**80**
2.25%	**2110**	**2140**	**2170**	**2200**	**2230**	**2260**	**2290**
2.35%	**2170**	**2200**	**2230**	**2260**	**2290**	**2320**	**2350**
2.45%	**2230**	**2260**	**2290**	**2320**	**2350**	**2380**	**2410**
2.55%	**2290**	**2320**	**2350**	**2380**	**2410**	**2440**	**2470**
2.65%	**2350**	**2380**	**2410**	**2440**	**2470**	**2500**	**2530**
2.75%	**2410**	**2440**	**2470**	**2500**	**2530**	**2560**	**2590**
2.85%	**2470**	**2500**	**2530**	**2560**	**2590**	**2620**	**2650**
2.95%	**2530**	**2560**	**2590**	**2620**	**2650**	**2680**	**2710**
3.05%	**2590**	**2620**	**2650**	**2680**	**2710**	**2740**	**2770**
	Maximum Weighted Average Moody's Rating Factor						

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Securities pursuant to Section 9.2.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed, plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest), plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note, plus

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the pro rata portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("***Treasury***") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Certificated Security***": The meaning specified in Section 2.2(b).

"***Regulation S Global Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Regulation S Global Security***": The meaning specified in Section 2.2(b).

"***Reinvestment Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator by

(ii) the Aggregate Outstanding Amount of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes, excluding any Deferred Interest on any Class of Notes.

"***Reinvestment Overcollateralization Test***": A test that is satisfied as of any Measurement Date on which any Notes remain Outstanding, if the Reinvestment Overcollateralization Ratio as of such Measurement Date is at least equal to 104.95%.

"***Reinvestment Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Portfolio Manager notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Portfolio Manager, that, in light of the composition of the Collateral, general market conditions, and other factors, investments in additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in November, 2012 or, in the case of an Extension, the Extended Reinvestment Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Portfolio Manager to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Reinvestment Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(b)).

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P, that may be modified by S&P from time to time, and provided to the Portfolio Manager and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that will be satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the reinvestment of the related Sale Proceeds in additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***S&P Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"***S&P Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Recovery Rating***": With respect to a Collateral Obligation for which an S&P Priority Category Recovery Rate is being determined, the “Recovery Rating” assigned by S&P to such Collateral Obligation based upon the following table:

Recovery Rating	Recovery of Principal
1+	Highest expectation of full recovery of principal
1	High expectation of full recovery of principal
2	Substantial recovery of principal
3	Meaningful recovery of principal
4	Marginal recovery of principal
5	Negligible recovery of principal

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Portfolio Manager has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Portfolio Manager or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan, or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Second Lien Loan***": A Secured Loan (other than a Senior Secured Loan) that (i) is only subordinated in right of payment to the Senior Secured Loan and (ii) has a junior contractual claim on tangible property (which property is subject to a prior lien (other than customary permitted liens, as such, but not limited to, any tax liens)) to secure payment of a debt or the fulfillment of a contractual obligation.

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Tabl***e": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the 1940 Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit H-1.

"***Secured Loan***": A Loan that (i) is not subordinated by its terms to other indebtedness of the borrower for borrowed money and (ii) is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Combination Securities

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Management Fee***": A fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.30% per annum of the Maximum Investment Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Management Fee shall be calculated on the basis of the actual number of days elapsed divided by 360.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral and with respect to which the Portfolio Manager determines that the value of the collateral securing such Secured Loan equal or exceeds the outstanding principal balance of the loan plus the aggregate outstanding balances of all other loans of equal or higher seniority secured by the same collateral.

"***Senior Unsecured Loan***": A Loan that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Share Trustee***": Maples Financed Limited.

"***Share Registrar***": Maples Financed Limited.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class and the Class 1 Combination Securities, the Payment Date in November, 2017, or upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. With respect to the Class 2 Combination Securities, the Payment Date in November, 2015. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes and the Combination Securities.

"***Structured Finance Obligation***": Any obligation:

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries or Moody's Group III Countries, including portfolio credit default swaps, synthetic collateralized debt obligations, and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities,

(B) collateralized debt obligations backed by Emerging Market Securities,

(C) collateralized debt obligations primarily backed by asset-backed securities,

(D) market value collateralized debt obligations,

(E) securities backed by "future flow" receivables

(F) securities backed by "trust preferred securities",

(G) net interest margin securitizations,

(H) collateralized debt obligations backed by other collateralized debt obligations,

(I) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "synthetic CDOs"), and

(J) collateralized debt obligations a significant portion of which are backed by bonds;

(ii) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes. Compliance with Schedule 8 hereto will be deemed to satisfy this requirement.

In connection with the purchase of a Structured Finance Obligation, the Portfolio Manager shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs managed by the same Portfolio Manager or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Management Fee***": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.25% per annum of the Maximum Investment Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments, (ii) on any Payment Date that any part of the Senior Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum and (iii) on any Payment Date that any part of the Subordinated Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Management Fee or Senior Management Fee, as applicable, in clauses (i) through (iii) above, as applicable, shall be calculated on the basis of the actual number of days elapsed divided by 360.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Combination Securities, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Combination Securities, as the case may be.

"***Synthetic Security***": Any swap transaction, structured bond investment, credit linked note, or other derivative financial instrument relating to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse First Boston) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Portfolio Manager's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "credit risk") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a weighted average Market Value of at least 85% at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall (i) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty)

equivalent (mutatis mutandis) to those contained in this Indenture and (ii) include provisions satisfying Section 15.3 of this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes. Compliance with Schedule 8 hereto will be deemed to satisfy this requirement.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

Synthetic Securities that are credit default swaps, credit linked notes, or other similar instruments may not provide for "restructuring" as a "credit event".

For purposes of the Coverage Tests and the Reinvestment Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 20 and 20(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in

respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

Any Synthetic Security shall be positively indexed to the Reference Obligation on no more than a one-for-one basis (i.e. unleveraged credit exposure).

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Portfolio Manager, on behalf of the Issuer, shall give each applicable Rating Agency not less than 5 days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) investments that satisfy the Rating Condition with respect to Moody's, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation and meeting the Synthetic Security Counterparty Ratings Requirement.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Synthetic Security Counterparty Ratings Requirement***": With respect to the Synthetic Security Counterparty and in respect of a Synthetic Security, a requirement that is satisfied if, at the time the Issuer enters into such Synthetic Security Agreement, the related Synthetic Security Counterparty has a senior unsecured credit rating assigned by S&P for short-term debt of at least "A-1+" or a senior unsecured credit rating assigned by S&P for long-term debt of at least "AA-".

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period; or

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any liabilities for withholding taxes included in clause (i) above.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transfer Agent***": The person or persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Securities.

"***Transferee Certificate***": A certificate substantially in the form of Exhibit B-1 attached hereto, duly completely as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Certificated Security***": The meaning specified in Section 2.2(c).

"***U.S. Person***": A Beneficial Owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as United States persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Warehouse Agreement***": The Master Warehousing and Participation Agreement, dated as of May 31, 2005, among Bank of America, N.A., as the Warehouse Provider, the Issuer and the Portfolio Manager, as amended.

"***Warehoused Loans***": Loans acquired by the Issuer before the Closing Date pursuant to the Warehouse Agreement.

"***Weighted Average Commitment Fee***": As of any Measurement Date, an amount (rounded up to the next 0.001%) equal to the weighted average commitment fee on all Revolving Loans and Delayed Drawdown Loans determined by dividing (i) the aggregate of all scheduled amounts (other than interest) of commitment fees or facility fees payable on the unfunded amount of all Revolving Loans and Delayed Drawdown Loans held by the Issuer as of such Measurement Date by (ii) the aggregate unfunded amount of all Revolving Loans and Delayed Drawdown Loans held by the Issuer as of such Measurement Date; provided that if such quotient is less than the Minimum Weighted Average Commitment Fee for such Measurement Date, there shall be added to the amount set forth in clause (i) above an amount equal to the Spread Excess, if any, as of such Measurement Date (less any portion of the Spread Excess that has been added to the Weighted Average Fixed Rate Coupon as of such Measurement Date pursuant to clause (iv) of the definition of "Weighted Average Fixed Rate Coupon"), and the Weighted Average Commitment Fee as of such Measurement Date shall be the amount calculated after giving effect to such addition.

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Portfolio Manager on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 8.00%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that will be satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the number of years (including any fraction of a year) between such Measurement Date and February, 2015 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 44.8%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 51.7%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum overall rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), determined with respect to any Floating Rate Obligation that does not bear interest based on a three month London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR,

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

For purposes of calculating the Weighted Average Spread, the Principal Balance of each Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan shall not include any of its unfunded amount.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if (i) the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread and (ii) the Weighted Average Commitment Fee as of the Measurement Date equals or exceeds the Minimum Weighted Average Commitment Fee.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Portfolio Manager, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank pari passu with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other pari passu and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and reinvestment in Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not reinvested in additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent reinvestment pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Portfolio Manager certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Reinvestment Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Reinvestment Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Portfolio Manager by notice to the Trustee, during the Reinvestment Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Reinvestment Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale

Proceeds from Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until reinvested in an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

Section 1.3. ***Rules of Interpretation.***

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.12 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be

construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding," "following," "before," "after," "next," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to Beneficial Owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES AND COMBINATION SECURITIES

Section 2.1. ***Forms Generally.***

The Notes, the Combination Securities and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Securities as evidenced by their execution of the Securities.

Section 2.2. ***Forms of Notes and Certificate of Authentication.***

(a) The Securities, including the U.S. Certificated Securities, Regulation S Certificated Securities, the Regulation S Global Securities, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A.

(b) *Regulation S Certificated Securities and Regulation S Global Securities*. The Notes and the Combination Securities of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more (i) global securities in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (the "***Regulation S Global Security***") or (ii) certificated securities in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (each a "***Regulation S Certificated Security***"). The global securities shall be deposited on behalf of the subscribers for the Securities represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in

subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *U.S. Certificated Securities and Rule 144A Global Notes*. The Securities of each Class initially sold to U.S. persons that are Accredited Investors and either (i) Qualified Purchasers or (ii) entities owned exclusively by Qualified Purchasers shall each be issued initially in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (each, a "***U.S. Certificated Security***"). The Notes of each Class initially sold to U.S. Persons that are Qualified Institutional Buyers and either (i) Qualified Purchasers or (ii) entities owned exclusively by Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Book-Entry Provisions*. This Section 2.2(d) shall apply only to Global Securities deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Securities insofar as interests in the Global Securities are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Security for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$809,000,000, except for (i) Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7 or 8.5 and (ii) Notes authenticated and delivered in exchange for the Class 1 Note Component upon the exchange of the Class 1 Combination Securities pursuant to Section 2.6.

The aggregate principal amount of Class 1 Combination Securities that may be authenticated and delivered under this Indenture is limited to U.S.$5,000,000, except for Combination Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Class 1 Combination Securities pursuant to Section 2.6, or 2.7. The aggregate principal amount of Class 2 Combination Securities that may be authenticated and delivered under this Indenture is limited to U.S.$20,000,000, except for Combination Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Class 2 Combination Securities pursuant to Section 2.6, 2.7, or 8.5.

The Securities shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A-1	A-2	B	C	D	Preference Shares
Original Principal Amount	U.S.$620,000,000	U.S.$28,000,000	U.S.$60,500,000	U.S.$51,000,000 [1]	U.S.$49,500,000	U.S.$91,000,000
Interest Rate	LIBOR + 0.275%	LIBOR + 0.40%	LIBOR + 0.55%	LIBOR + 0.90%	LIBOR + 1.90%	N/A
Initial Rating (Moody's/S&P)	Aaa/AAA	Aaa/AAA	Aa2/AA	A2/A	Baa2/BBB	N/A

Class	Class 1 Combination Securities[2]	Class 2 Combination Securities[3]
Interest Rate	0.25% [4]	N/A
Initial Rating (Moody's/S&P)	A2/N/A[5]	Aa2/N/A[6]

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1 The amount of Class C Notes shown also includes the Class 1 Note Component comprised of $4,000,000 Class C Notes.

2 The Class 1 Combination Securities shall consist of the Class 1 Combination Security Preference Share Component and the Class 1 Note Component. The portions of the interest in the Class C Notes and the Preference Shares that comprise the Class 1 Combination Securities are not separately transferable. The Class 1 Note Component will bear interest in the same manner as the Class C Notes and the Class 1 Combination Security Preference Share Components will receive payments in the same manner as the Preference Shares.

3 The Class 2 Combination Securities shall consist of the Preference Share Component and the Class 2 Component. The portions of the interest in the Class 2 Bond and the Preference Shares that comprise the Class 2 Combination Securities are not separately transferable. On each Payment Date, the Holders of the Class 2 Combination Securities will be entitled to receive a pro rata share of the distribution on the Preference Shares on such date. No other payments will be made on the Class 2 Combination Securities until final maturity of the Class 2 Bond.

4 Representing the Class 2 Combination Security Rated Coupon. In the event that the Class 2 Combination Security Rated Balance is reduced to zero, Holders of the Class 2 Combination Securities will continue to receive payments in accordance with the Priority of Payments to the extent allocated to their related Components, and such payments will be classified as "excess distributions."

5 The Class 1 Combination Securities are rated only as to the ultimate payment of their Class 1 Combination Security Rated Balances and the Class 1 Combination Security Rated Coupon.

6 The Class 2 Combination Securities are rated only as to the ultimate payment of their Class 2 Combination Security Rated Balances.

(b) The Class 1 Combination Securities have two Components, the Class 1 Note Component and the Class 1 Combination Security Preference Share Component. At issuance U.S.$5,000,000 original principal amount of Class 1 Combination Securities represents U.S.$4,000,000 original principal amount of the Class C Notes and a Class 1 Combination Security Preference Share Component equal to 1,000 Preference Shares.

(c) The Class 2 Combination Securities have two Components, the Class 2 Component and the Preference Share Component. At issuance U.S.$20,000,000 original principal amount of Class 2 Combination Securities represents a Class 2 Combination Security Preference Share Component Amount equal to 7,600 Preference Shares combined with the Class 2 Component.

(d) The Notes will be issuable in minimum denominations of U.S.$500,000 principal amount, and integral multiples of U.S.$1,000 in excess of that amount. The Class 1 Combination Securities will be issuable in minimum denominations of U.S.$1,250,000 principal amount, and integral multiples of U.S.$1,000 in excess of that amount. The Class 2 Combination Securities will be issuable in minimum denominations of U.S.$1,000,000 principal amount, and integral multiples of U.S.$1,000 in excess of that amount.

(e) The Issuer will also issue 91,000 Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes and the Combination Securities under this Indenture. Such Preference Shares include amounts issuable in exchange for the Preference Share

Components in an exchange of Combination Securities for the securities represented by their Components. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares will be released by the Trustee to the Preference Shares Paying Agent in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment (subject to the laws of the Cayman Islands) to Holders of the Preference Shares as dividends or redemption price, as applicable.

Section 2.4. ***Extension of Reinvestment Period and Stated Maturity.***

(a) The Issuer, if directed by the Portfolio Manager, shall be entitled on each Extension Effective Date to extend the Reinvestment Period to the applicable Extended Reinvestment Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice to the Trustee of its election to extend the Reinvestment Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Securities (other than the Class 2 Combination Securities) shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Securities or Preference Shares (other than as may be required pursuant to the Extension Conditions) or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions. The Stated Maturity of the Class 2 Combination Securities is not subject to extension.

(b) In the case of a Maturity Extension, any Holder of Notes, Combination Securities (other than Class 2 Combination Securities) or Preference Shares wishing to sell such Securities or Preference Shares to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities and Preference Shares as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). The Class 2 Combination Securities are not subject to sale in connection with a Maturity Extension and the maturity of the Class 2 Combination Securities is not subject to extension; provided, however, that the maturity of the Preference Shares underlying the Class 2 Combination Security Preference Share Component is subject to extension. A Holder of Class 2 Combination Securities may, however, request that the Preference Shares underlying the Preference Share Component of such Class 2 Combination Securities be distributed to such Holder in accordance with Section 2.6(g)(iii) and, upon such distribution, the Holder may then subject the Preference Shares so distributed to the provisions of this Section 2.4 for the purposes of offering such Preference Shares for sale to an Extension Qualifying Purchaser. In such circumstance, the Class 2 Combination Securities held by such Holder will only be comprised of the Class 2 Component. Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Preference Share Documents immediately after such purchase and the legends on such Securities or Preference Shares and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) either (i) all Coverage Tests and the Selected Collateral Quality Tests are satisfied as of the related Extension Determination Date, the rating of each Class of Notes and Class 1 Combination Securities then rated by Moody's has not been downgraded, withdrawn or qualified from that in effect on the Closing Date (unless it subsequently has been reinstated to the rating assigned on the Closing Date) and the Overcollateralization Ratio Numerator is at least $872,000,000 or (ii) the Rating Condition has been satisfied with respect to Moody's (so long as any Securities are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) (A) the Holders of 100% of the Aggregate Outstanding Amount of the Class A-1 Notes have delivered the Extension Sale Notice in the Extension Sale Notice Period or (B) if the Holders of 100% of the Aggregate Outstanding Amount of the Class A-1 Notes fail to deliver an Extension Sale Notice pursuant to the preceding clause (A), either (i) the Issuer, acting through the Portfolio Manager, notifies the Holders of the Class A-1 Notes in writing not later than the last day of the Extension Sale Notice Period of an election to treat such Class A-1 Notes as "Extension Sale Securities" (with the result that such Class A-1 Notes must be purchased by an Extension Qualifying Purchaser) or (ii) the Holders of 100% of the Aggregate Outstanding Amount of the Class A-1 Notes have consented in writing to the Maturity Extension not later than the last day of the Extension Sale Notice Period.

The Issuer, the Trustee and, by its acceptance of the Securities or Preference Shares, each Holder of Securities or Preference Shares agrees that the Placement Agent shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such person or Holder of Securities or Preference Shares (whether or not such Holder gave an Extension Sale Notice with respect to its Securities or Preference Shares) or to any other person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) No later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Reinvestment Period (the ***"Extension Notice"***), the Trustee shall forward the Extension Notice to all Holders of Securities and the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares) and each Rating Agency (so long as any rated Securities are Outstanding), in the form of Exhibit J, and shall request the Rating Condition for the Maturity Extension from S&P, if applicable;

(ii) Any Holder of Securities (other than Class 2 Combination Securities) or Preference Shares may deliver to the Trustee an irrevocable notice (an ***"Extension Sale Notice"***) within 30 days after the date of the Extension Notice (the ***"Extension Sale Notice Period"***) of its intention to sell its Securities or Preference Shares to an Extension Qualifying Purchaser in the case of a Maturity Extension. If the Holders of 100% of the Aggregate Outstanding Amount of the Class A-1 Notes have not delivered the Extension Sale Notice to the Trustee by the 20th calendar day after the date of the Extension Notice, the Trustee shall notify the Holders of the Class A-1 Notes of the date on which the Extension Sale Notice Period shall end and include a statement to the effect that

(i) no Extension Sale Notice delivered after the end of the Extension Sale Notice Period shall be effective and (ii) the Class A-1 Notes for which no Extension Sale Notice has been delivered may be treated as Extension Sale Securities pursuant to clause (v) of the Extension Conditions (with the result that the Class A-1 Notes must be purchased by an Extension Qualifying Purchaser). Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of Securities or Preference Shares that has not given such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Preference Shares to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or the Portfolio Manager on its behalf), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or the Portfolio Manager on its behalf) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Securities or Preference Shares in compliance with all transfer restrictions in this Indenture and the legends on such Securities or Preference Shares and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied as certified by the Issuer (or the Portfolio Manager on its behalf). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Portfolio Manager, at the expense of the Co-Issuers, shall mail a notice to all Holders of Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager, the Placement Agent, each Rating Agency (so long as any rated Securities are Outstanding) and the Cayman Islands Stock Exchange (if and for so long as any Class of Securities is listed thereon) stating whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer (or the Portfolio Manager on its behalf) shall make any required notifications thereof to the Depository for any Securities or Preference Shares subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Holder of Notes (other than Extension Sale Securities) shall be entitled to receive an amount equal to the applicable Extension Bonus Payment and each Holder of Class 1 Combination Securities (other than Extension Sale Securities) shall be entitled to receive an amount equal to the Extension Bonus Payment relating to the Class C Notes underlying the Class 1 Note Component, in each case to the extent of available funds and as provided in Section 11.01. Holders of the Class 2 Combination Securities and the Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying Beneficial Owners who have provided the Trustee with an Extension Bonus Eligibility Certification on or before the 5th Business Day prior to the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Securities (other than the Class 2 Combination Securities). Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder but are due and payable on the next Payment Date on which funds are due and payable. The failure to pay any such

Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities (other than the Class 2 Combination Securities). Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Securities (other than the Class 2 Combination Securities), to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Securities shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Securities or did not hold their offices at the date of issuance of the Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer and the Co-Issuer may deliver Securities executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Securities as provided in this Indenture and not otherwise.

Each Security authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Securities that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Securities issued upon transfer, exchange, or replacement of other Securities shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Securities so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Securities so transferred, exchanged, or replaced. If any Security is divided into more than one Security in accordance with this Article 2, the original principal amount of the Security shall be proportionately divided among the Securities delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Security a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Security shall be conclusive evidence, and the only evidence, that the Security has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Securities and the registration of transfers of Securities. The Trustee is hereby initially appointed "Indenture Registrar" for the purpose of registering Securities and transfers of the Securities as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Portfolio Manager of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar. The Issuer shall cause the Combination Securities to be registered and recorded in the Indenture Register and, with respect to the Preference Share Component, in the Preference Share register.

If the Issuer appoints a person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Holders of the Securities and the principal amounts and number of the Securities.

Upon surrender for registration of transfer of any Securities at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Securities of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of its holder, Securities may be exchanged for Securities of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Securities to be exchanged at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2. Whenever any Security is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Securities that the Noteholder or Combination Securityholder making the exchange is entitled to receive.

All Securities issued on any registration of transfer or exchange of Securities shall be the valid obligations of the Applicable Issuers evidencing the same obligations, and entitled to the same benefits under this Indenture, as the Securities surrendered for registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Securities, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Security may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the 1940 Act. None of the Co-Issuers, the Trustee, or any other person shall have any obligation to register the Securities under the Securities Act or any state securities laws.

The Trustee shall require, before any registration of transfer of a Note or a Combination Security in which delivery is to be made in the form of a Certificated Security, that the Noteholder or Combination Securityholder's prospective transferee deliver to the Trustee a certificate relating to the transfer in the form of the applicable portion of Exhibit B.

(c) (i) No Note may be transferred to any Benefit Plan Investor unless such Benefit Plan Investor's purchase and holding of such Note will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, local or non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code) and (ii) no Combination Security in the form of a Certificated Security or a Regulation S Global Security may be transferred to any Benefit Plan Investor or a Controlling Person, and if after its initial acquisition of a Combination Security or any interest therein, the purchaser determines, or it is determined by another party, that such purchaser is a Benefit Plan Investor or a Controlling Person, the purchaser will dispose of all its Combination Securities in a

manner consistent with the restrictions set forth in the Indenture and the purchaser will not sell or otherwise transfer any such Combination Security or interest therein to any person who is unable to satisfy the same foregoing representations and warranties.

(d) Neither the Trustee nor the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the 1940 Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee by a prospective transferee, the Trustee shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

Each Holder of a Combination Security in the form of a Certificated Security will be required to provide to the Issuer and the Trustee written certification in the form of the applicable portion of Exhibit B as to whether it is an Affected Bank and each purchaser and subsequent transferee of a Combination Security in the form of a Regulation S Global Security will be deemed to represent to the Issuer and to the Trustee that it is not an Affected Bank. No transfer of any Combination Security to a transferee that has represented it is an Affected Bank will be effective, and the Trustee will not recognize any such transfer, unless such transfer is specifically authorized by the Issuer in writing; provided, however, that the Issuer shall authorize any such transfer if (x) such transfer would not cause more than 33⅓% of the aggregate outstanding amount of the Preference Shares (including the Preference Share Components of the Combination Securities) to be owned by Affected Banks or (y) the transferor is an Affected Bank previously approved by the Issuer.

(e) For so long as any of the Securities are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Certificated Security or a Global Security remains Outstanding and is held by or on behalf of the Depository, transfers of the Certificated Security or Global Security, in whole or in part, shall only be made in accordance with Sections 2.2(b) and (c) and this Section 2.6(f); provided that any exchange of a Combination Security for its Components shall be affected in accordance with Section 2.2(g).

(i) Subject to clauses (ii), (iii), (iv) and (v) of this Section 2.6(f), transfers of a Global Security shall be limited to transfers of the Global Security in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note or Certificated Security to Regulation S Global Security*. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository or a Certificated Security wishes at any time to exchange its interest in the Rule 144A Global Note or Certificated Security for an interest in the corresponding Regulation S Global Security, or to transfer its interest in the Rule 144A Global Note or Certificated Security to a person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Security, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Security (subject, in the case of the Rule 144A Global Note, to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

In the case of the transfer of (x) a Rule 144A Global Note, the Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Security by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, but not less than the minimum denomination applicable to

the Holder's Notes, and to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Regulation S Global Security equal to the reduction in the principal amount of the Rule 144A Global Security and (y) a Certificated Security, the Trustee will exchange such Certificated Security for the remaining untransferred principal amount of or cancel, as applicable, such Certificated Security (and note such cancellation or reduction in the Indenture Register) and the Indenture Registrar shall instruct the Depository to increase the principal amount of the Regulation S Global Security by the aggregate principal amount of the Certificated Security to be exchanged, and to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Regulation S Global Security equal to the reduction or cancellation in the principal amount of the Certificated Security, in each case upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Security, but not less than the minimum denomination applicable to the Holder's Securities, equal to the beneficial interest in the Rule 144A Global Note or the Certificated Security to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Securities or the Certificated Securities, as applicable, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Security or Certificated Security to Rule 144A Global Note.* If a Holder of a Security held as a beneficial interest in a Regulation S Global Security deposited with the Depository, Euroclear or Clearstream, as applicable, or a Certificated Security wishes at any time to exchange its interest in the Regulation S Global Security or Certificated Security for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Security or Certificated Security to a person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note (subject, in the case of a Regulation S Global Security, to the rules and procedures of Euroclear, Clearstream, or the Depository, as the case may be) if the Holder after the exchange or transfer is a QIB/QP.

In the case of an exchange or transfer of (x) a Regulation S Global Security, the Indenture Trustee shall instruct Euroclear, Clearstream, or the Depository, as the case may be, to reduce the principal amount of the Regulation S Global Security and increase the principal amount of the Rule 144A Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Security to be exchanged, but not less than the minimum denomination applicable to the Holder's Securities, and to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Security and (y) a Certificated Security, the Trustee will exchange such Certificated Security for the remaining untransferred principal amount of or cancel, as applicable, such Certificated Security (and note such cancellation or reduction in the Indenture Register) and the Indenture Registrar shall instruct the Depository to increase the principal amount of the Rule 144A

Global Note by the aggregate principal amount of the Certificated Security to be exchanged, and to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction or cancellation in the principal amount of the Certificated Security, in each case upon receipt by the Indenture Registrar of,

(A) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and either (i) a Qualified Purchaser or (ii) an entity owned exclusively by Qualified Purchasers or, in the case of a transfer, the person transferring the interest in the Regulation S Global Security or Certificated Security reasonably believes that the person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and either (i) a Qualified Purchaser or (ii) an entity owned exclusively by Qualified Purchasers, and

(B) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP.

(iv) *Global Security or Certificated Security to U.S. Certificated Security*. If a Holder of a Security held as a beneficial interest in a Global Security deposited with the Depository, Euroclear or Clearstream, as applicable, or a Certificated Security wishes at any time to exchange its interest in the Global Security or Certificated Security for an interest in the corresponding U.S. Certificated Security or to transfer its interest in the corresponding U.S. Certificated Security, the Holder may exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in a corresponding U.S. Certificated Security (subject, in the case of a Global Securities, to the rules and procedures of Euroclear, Clearstream, or the Depository, as the case may be) if the Holder after the exchange or transfer is an Accredited Investor that is also a Qualified Purchaser.

In the case of an exchange or transfer of (x) a Global Security, the Indenture Trustee shall instruct Euroclear, Clearstream, or the Depository, as the case may be, to reduce the principal amount of the Global Security and the Indenture Trustee shall authenticate and deliver to the transferee the U.S. Certificated Security specified in the instructions set forth in clause (A) below in an aggregate principal amount equal to such reduction in the principal amount of the Global Security and note the issuance, principal amount and registered holder of such U.S. Certificated Security in the Indenture Register and (y) a Certificated Security, the Indenture Trustee will exchange such Certificated Security for the remaining untransferred principal amount of or cancel, as applicable, such Certificated Security presented for transfer or exchange (and note such cancellation or reduction in the Indenture Register) and the Indenture Trustee shall authenticate and deliver to the transferee the U.S. Certificated Security specified in the instructions set forth in clause (A) below in an aggregate principal amount equal to the portion of the principal amount of the Certificated Securities presented for transfer or exchange (and note the issuance, principal amount and registered holder of such U.S. Certificated Security in the Indenture Register), and, in the case of a transfer in part, authenticate and deliver to the transferor a Certificated Security for any remaining portion of the principal amount of the Certificated Security presented for transfer of exchange, in each case upon receipt by the Indenture Registrar of,

(A) instructions from the Co-Issuers to authenticate and deliver a new Security in the form of a U.S. Certificated Security registered in the name of the transferee or its nominee in a principal amount equal to such beneficial interest in such Global Securities or principal amount of the Certificated Security being exchanged or transferred, but not less than the minimum denomination applicable to the related Class of Securities to be exchanged or transferred;

(B) certificate in the form of Exhibit B-2 hereto given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is an Accredited Investor and a Qualified Purchaser or an entity owned exclusively by Qualified Purchasers or, in the case of a transfer, the person transferring the interest in the Global Security or Certificated Security reasonably believes that the person acquiring the interest in the U.S. Certificated Security is an Accredited Investor and a Qualified Purchaser or an entity owned exclusively by Qualified Purchasers, is obtaining such beneficial interest in a transaction meeting the requirements or Rule 144A and in accordance with any applicable securities laws of any state of the United States or any applicable jurisdiction, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is an Accredited Investor and a Qualified Purchaser.

(v) *Global Security or Certificated Security to Regulation S Certificated Security*. If a Holder of a Note held as a beneficial interest in a Global Security deposited with the Depository, Euroclear or Clearstream, as applicable, or a Certificated Security wishes at any time to exchange its interest in the Global Security or Certificated Security for an interest in the corresponding Regulation S Certificated Security or to transfer its interest in the corresponding Regulation S Certificated Security, the Holder may exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in a corresponding Regulation S Certificated Security (subject, in the case of a Global Securities, to the rules and procedures of Euroclear, Clearstream, or the Depository, as the case may be) if the Holder after the exchange or transfer is not a U.S. person.

In the case of an exchange or transfer of (x) a Global Security, the Indenture Trustee shall instruct Euroclear, Clearstream, or the Depository, as the case may be, to reduce the principal amount of the Global Security and the Indenture Trustee shall authenticate and deliver to the transferee the Regulation S Certificated Security specified in the instructions set forth in clause (A) below in an aggregate principal amount equal to such reduction in the principal amount of the Global Security and note the issuance, principal amount and registered holder of such Regulation S Certificated Security in the Indenture Register and (y) a Certificated Security, the Indenture Trustee will exchange such Certificated Security for the remaining untransferred principal amount of or cancel, as applicable, such Certificated Security presented for transfer or exchange (and note such cancellation or reduction in the Indenture Register) and the Indenture Trustee shall authenticate and deliver to the transferee the Regulation S Certificated Security specified in the instructions set forth in clause (A) below in an aggregate principal amount equal to the portion of the principal amount of the Certificated Securities presented for transfer or exchange (and note the issuance, principal amount and registered holder of such Regulation S Certificated Security in the Indenture Register), and, in the case of a transfer in part, authenticate and deliver to the transferor a Certificated Security for any remaining portion of the principal amount of the Certificated Security presented for transfer of exchange, in each case upon receipt by the Indenture Registrar of,

(A) instructions from the Co-Issuers to authenticate and deliver a new Security in the form of a Regulation S Certificated Security registered in the name of the transferee or its nominee in a principal amount equal to such beneficial interest in such Global Securities or principal amount of the Certificated Security being exchanged or transferred, but not less than the minimum denomination applicable to the related Class of Securities to be exchanged or transferred;

(B) certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Securities or the Certificated Securities, as applicable, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(C) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(vi) *Other Exchanges*. If a Global Security is exchanged for the Securities in definitive registered form without interest coupons pursuant to Section 2.11, the Securities may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs, Accredited Investors that are Qualified Purchasers or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) The Components of the Combination Securities, whether in the form of Certificated Preference Shares, Regulation S Global Preference Shares, Class C Notes or the Class 2 Bond, are not separately transferable.

So long as a Combination Security remains Outstanding, exchanges of a Combination Security, in whole or in part, for the Notes (in the case of a Class 1 Combination Security) or the Class 2 Bond (in the case of the Class 2 Combination Security) and Preference Shares represented by its Components may be made, and shall only be made, in accordance with this Section 2.6(g), subject to the minimum denomination requirements applicable to relevant Class of Notes and Preference Shares. A Holder of, or a holder of a beneficial interest in, a Combination Security may exchange such interest for interests in the relevant Certificated Preference Share or Regulation S Global Preference Share, Global Security or Certificated Security, or Class 2 Bond representing the Preference Share Components, the Class 1 Note Component and the Class 2 Component, respectively, only in accordance with this Section. Any Holder of any Notes, Class 2 Bond or Preference Shares (including a Holder that received such Notes, the Class 2 Bond or Preference Shares upon exchange of a Combination Security) will not have the right to exchange such Notes, Class 2 Bond and Preference Shares for a Combination Security.

(i) A Holder of a beneficial interest in a Combination Security represented by a U.S. Certificated Security may exchange such interest for (A) interests in a proportionate amount of Rule 144A Global Notes or U.S. Certificated Securities, as applicable, relating to the Component representing Notes of such Combination Security (if applicable) or (B) with respect to the Class 2 Combination Securities, an in-kind delivery of such Holder's pro rata share of the Class 2 Bond and (C) Certificated Preference Shares relating to the Preference Share Component of such Combination Security, as provided below. Upon receipt by the Issuer and the Indenture Registrar of:

(A) the Holder's Certificated Security representing such Combination Securities properly endorsed for the exchange, together with written instructions from the Holder designating (A) the principal amount of Notes (if applicable) to be issued (the aggregate of the principal amount and Class of Notes being equal to the aggregate principal amount of the related Component representing Notes) or (B) delivery of the Class 2 Bond and (C) the number of Preference Shares to be issued (the aggregate number of Preference Shares being equal to the aggregate number of Preference Shares of the related Preference Share Component),

(B) written instructions from (1) (a) DTC directing the Indenture Registrar to cause to be credited a beneficial interest in the Rule 144A Global Notes of the Component representing Notes equal to the principal amount of such Component representing Notes, the instructions to contain information regarding the participant account with the Depository to be credited with the increase or (b) the Co-Issuers to authenticate and deliver a new Security in the form of a Certificated Security registered in the name of the transferee or its nominee in a principal amount equal to such interest in the relevant Component representing Notes being exchanged, but not less than the minimum denomination applicable to the Combination

Securities to be exchanged or (c) with respect to the Class 2 Combination Securities, the Holder directing the Trustee to make an in-kind delivery of the Holder's *pro rata* share of the Class 2 Bond and (2) the Co-Issuers to authenticate and deliver a new security in the form of a Certificated Preference Share registered in the name of the transferee or its nominee in a notional amount equal to such interest in the relevant Component representing Preference Shares being exchanged, but not less than the minimum denomination applicable to the Combination Securities to be exchanged,

(C) a certificate in the form provided in Annex A to the resolutions of the Issuer's Board of Directors authorizing the issuance of the Preference Shares, given by the Holder of such Combination Security stating that the exchange of the interest has been made in compliance with the transfer restrictions applicable to the Certificated Preference Shares, including that the person requesting the exchange is a Qualified Purchaser and that the proposed transfer is being made pursuant to Rule 144A or another applicable exemption from registration under the Securities Act,

then the Indenture Registrar shall cancel the U.S. Certificated Security and (1) (w) with respect to a Class 2 Combination Security, make an in-kind delivery of the Class 2 Bond or (x) instruct the Depository to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the Components representing Notes so exchanged or (y) shall authenticate and deliver the U.S. Certificated Security specified in the instructions set forth in clause (B) above in an aggregate principal amount equal to the portion of the principal amount of the Component representing Notes presented exchange (and note the issuance, principal amount and registered holder of such U.S. Certificated Security in the Indenture Register), and, in the case of a transfer in part, authenticate and deliver to the transferor a U.S. Certificated Security comprised of a Component representing Notes with a principal amount equal to the remaining portion of the principal amount of the Component representing Notes relating to such U.S. Certificated Security presented for transfer of exchange, and (2) the Trustee shall request the Issuer to issue (and the Issuer shall issue) Certificated Preference Shares in a number equal to the Preference Share Component being exchanged pursuant to the Preference Share Paying Agency Agreement. No service charge will be made for the exchange, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. Promptly after the consummation of the exchange of the U.S. Certificated Securities for all or a proportionate amount of the Class 2 Bond or Notes and Preference Shares relating to the relevant Components, the Issuer shall give each Rating Agency notice of such exchange. No Holder of Notes, the Class 2 Bond or Preference Shares (including a Holder that received Notes, the Class 2 Bond or Preference Shares upon an exchange of a Combination Security) may exchange Notes, Class 2 Bond and Preference Shares for a Combination Security.

(ii) A Holder of a beneficial interest in a Combination Security represented by a Regulation S Global Security or a Regulation S Certificated Security may exchange such interest for (A) interests in a proportionate amount of Regulation S Global Securities or Regulation S Certificated Securities relating to the Component of such Combination Security representing Notes (if applicable) or (B) with respect to the Class 2 Combination Securities, an in-kind delivery of such Holder's *pro rata* share of the Class 2 Bond and (C) Regulation S Global Preference Shares relating to the Preference Share Component of such Combination Security, as provided below. Upon receipt by the Issuer and the Indenture Registrar of:

(A) with respect to a Regulation S Certificated Security, the Holder's Certificated Security representing such Combination Securities properly endorsed for the exchange, together with written instructions from the Holder designating (A) the principal amount of Notes (if applicable) to be issued (the aggregate of the principal amount and Class of Notes being equal to the aggregate principal amount of the related Component

representing Notes) or (B) with respect to the Class 2 Combination Securities, delivery of the Class 2 Bond and (C) the number of Preference Shares to be issued (the aggregate number of Preference Shares being equal to the aggregate number of Preference Shares of the related Preference Share Component),

(B) written instructions from (1) (a) with respect to a Regulation S Global Security, Euroclear or Clearstream, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Regulation S Global Security equal to the beneficial interest in the Components representing Notes of such Combination Security or (b) with respect to a Regulation S Certificated Security, the Co-Issuers to authenticate and deliver a new Security in the form of a Certificated Security registered in the name of the transferee or its nominee in a principal amount equal to such interest in the relevant Component representing Notes being exchanged, but not less than the minimum denomination applicable to the Combination Securities to be exchanged or (c) with respect to the Class 2 Combination Securities, the Holder designating delivery of the Class 2 Bond and (2) Euroclear or Clearstream, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Regulation S Global Preference Shares equal to the beneficial interest in the Preference Share Components of such Combination Security, but not less than the minimum denomination applicable to the Holder's Securities and Preference Shares, to be exchanged, the instructions to contain information regarding the participant account with the Depository to be credited with the increase, and

(C) a certificate in the applicable form of Exhibit B-1, given by the Holder of the Combination Security stating that the exchange of the interest has been made in compliance with the transfer restrictions applicable to the Regulation S Global Security or Regulation S Certificated Security, as applicable, and Regulation S Global Preference Shares, including that the person requesting the exchange is not a U.S. person and that the proposed transfer is being made pursuant to and in accordance with Regulation S,

then the Indenture Registrar shall either cancel the Regulation S Certificated Security or instruct the Depository to reduce the Regulation S Global Security evidencing the relevant Combination Security by the aggregate principal amount of the beneficial interest in the Components represented by the Regulation S Global Security to be exchanged and the Indenture Registrar shall (1)(w) with respect to the Class 2 Combination Securities, make an in-kind distribution of the Class 2 Bond or (x) instruct the Depository, concurrently with the cancellation or reduction, to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Regulation S Global Securities evidencing the relevant Component representing Notes equal to the reduction in the principal amount of the Regulation S Global Security or Regulation S Certificated Security evidencing the Combination Securities or (y) shall authenticate and deliver the Regulation S Certificated Security specified in the instructions set forth in clause (B) above in an aggregate principal amount equal to the portion of the principal amount of the Component representing Notes presented exchange (and note the issuance, principal amount and registered holder of such Regulation S Certificated Security in the Indenture Register) and, in the case of a transfer in part, authenticate and deliver to the transferor a Regulation S Certificated Security comprised of a Component representing Notes with a principal amount equal to the remaining portion of the principal amount of the Component representing Notes relating to such Regulation S Global Security or Regulation S Certificated Security presented for transfer of exchange and (2) instruct the Depository, concurrently with the reduction, to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Regulation S Global Preference Shares evidencing the Preference Share Component equal to the reduction in the notional amount of the Regulation S Global Security evidencing the Combination Securities. No Holder of Notes, the Class 2 Bond or Preference Shares represented by Regulation S Global Securities (including a Holder that received Notes, the Class 2 Bond or Preference Shares represented by Regulation S Global Securities upon an exchange

of a Combination Security) may exchange such Notes, Class 2 Bond and Preference Shares for a Combination Security represented by a Regulation S Global Security.

(iii) Notwithstanding the foregoing:

(A) in connection with the sale of Extension Sale Securities in accordance with Section 2.4, the Trustee shall, upon the direction of the Holder of any Class 2 Combination Security in accordance with Section 2.4(b), (1) request the Issuer to distribute (and the Issuer shall distribute) the Preference Shares underlying the Preference Share Component of such Class 2 Combination Security to such Holder (without any further action or consent of such Holder) and (2) note in the Indenture Register that the Class 2 Combination Security remains Outstanding with respect to its Class 2 Component;

(B) in connection with the Amendment Buy-Out Purchaser's exercise of an Amendment Buy-Out Option in accordance with Section 9.6, the Trustee shall, upon the direction of the Amendment Buy-Out Purchaser in accordance with Section 9.6(a), (1) request the Issuer to distribute (and the Issuer shall distribute) the Preference Shares underlying the Preference Share Component of such Class 2 Combination Security to the Holder of such Class 2 Combination Security (without any further action or consent of such Holder) and (2) note in the Indenture Register that the Class 2 Combination Security remains Outstanding with respect to its Class 2 Component; and

(C) under the circumstances described in the last paragraph of Section 11.2 and upon written notice from the Issuer to the Trustee and the Preference Shares Paying Agent, the Class 2 Combination Securities shall be exchanged for the Preference Shares underlying the Preference Share Component without any action or consent of the Holder of the Class 2 Combination Securities after the payments have been made on the related Class 2 Component Payment Date.

(h) If the Securities are issued upon the transfer, exchange, or replacement of Securities bearing the applicable legends in the applicable portion of Exhibit A, and if a request is made to remove the legend on the Securities, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Securities comply with the Securities Act, the 1940 Act, ERISA, and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Securities that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Security or a Regulation S Certificated Security that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note or U.S. Certificated Security, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Security may only be held through Euroclear or Clearstream.

(j) Each person who becomes a Beneficial Owner of a Security evidenced by: (i) an interest in a Certificated Security, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such person's purchase or other

acquisition of the relevant Certificated Security and (ii) an interest in a Global Security, shall be deemed to make (or in the case of a Class 2 Combination Security represented by a Global Security purchased in the Offering of the Securities, will be required to make) the representations, warranties and agreements set forth in the applicable legends of the Securities set forth in the applicable portion of Exhibit A hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such person's purchase or other acquisition of the relevant Global Security.

(k) The aggregate principal amount of any Global Security may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Security, which adjustments shall be conclusive as to the aggregate principal amount of any Global Security.

(l) Any purported transfer of a Security not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost, or Stolen Securities.***

If any mutilated or defaced Security is delivered to a Transfer Agent or if the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss, or theft of any Security, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Security is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Security has been acquired by a protected purchaser, the Applicable Issuers shall execute and upon Issuer Order and the Trustee shall authenticate and deliver, in lieu of the mutilated, destroyed, lost, or stolen Security, a replacement Security, of like tenor and equal principal amount.

If, after delivery of the replacement Security or payment on it, a protected purchaser of the predecessor Security presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Security (or the payment on it) from the person to whom it was delivered or any person taking the replacement Security from the person to whom the replacement Security was delivered or any assignee of that person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If any mutilated, destroyed, lost, or stolen Security has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Security pay the Security without requiring its surrender except that any mutilated Security shall be surrendered.

Upon the issuance of any new Security under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Security issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Security shall be an original additional contractual obligation of the Applicable Issuers and the new Security shall be entitled to all the benefits of this Indenture equally and proportionately with all other Securities of the same Class duly issued under this Indenture.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("*Deferred Interest*") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for such Class and, to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Security without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may

be required to deduct or withhold from payments on the Security under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Security shall be made by the Trustee in U.S. Dollars to the Depository or its designee with respect to a Global Security and to the Holder or its nominee with respect to a Certificated Security, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Security, and to the Holder or its designee with respect to a Certificated Security, in the case of a Certificated Security, its holder has provided written wiring instructions to the Trustee. Payments in respect of distributions on any Preference Share payable to the Preference Shares Paying Agent in accordance with the Priority of Payments for payments on the Preference Shares in accordance with the Preference Share Documents shall be payable by wire transfer in immediately available funds (or by internal transfer if the Trustee and the Preference Shares Paying Agent are the same Person) to the Preference Shares Distribution Account.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. In the case of the Components to be redeemed, the related Combination Securities do not need to be surrendered at the office of any paying agent under this Indenture to receive the applicable Redemption Price. Neither the Co-Issuers, the Trustee, the Share Registrar, nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Security.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. The final payment on any Combination Security shall be made only upon surrender of the certificate for the Combination Security to the Trustee at the office designated by the Trustee. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Security (or one or more predecessor Securities) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Security and of any Security issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on such Security.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Applicable Issuers under the Securities and under this Indenture are limited recourse obligations of the Applicable Issuers payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Securities or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Securities or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Securities or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Securities or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Securities to any Noteholder or Combination Securityholder, as applicable, the tax shall reduce the amount otherwise distributable to the Noteholder or Combination Securityholder, as applicable. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder or Combination Securityholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder or Combination Securityholder shall be treated as Cash distributed to the Noteholder or Combination Securityholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder or Combination Securityholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder or Combination Securityholder in making the claim by providing information readily available to the Trustee so long as the Noteholder or Combination Securityholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder and Combination Securityholder that the failure by the Noteholder or Combination Securityholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder or Combination Securityholder, as applicable. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Securities.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Security the person in whose name any Security is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments of principal of and interest on the Security and

on any other date for all other purposes whatsoever (whether or not the Security is overdue), and neither the Issuer, the Co-Issuers, nor the Trustee nor any agent of the Issuer, the Co-Issuer, or the Trustee shall be affected by notice to the contrary. The Portfolio Manager shall notify the Trustee of any Affiliate of the Portfolio Manager that owns the Securities or Preference Shares.

Section 2.10. ***Cancellation.***

All Securities surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Co-Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Certificated Securities.***

(a) A Global Security deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Certificated Security to their Beneficial Owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Security or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Security that is transferable in the form of a Certificated Security to its Beneficial Owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Security, an equal aggregate principal amount of Certificated Securities (pursuant to the instructions of the Depository) in authorized denominations. Any Certificated Security delivered in exchange for an interest in a Global Security, as applicable, shall, except as otherwise provided by Section 2.6(i), bear the legends in the applicable portion of Exhibit A and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form without interest coupons.

The Certificated Securities shall be in substantially the same form as the Global Securities, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Certificated Securities of authorized denominations.

Section 2.12. ***Securities Beneficially Owned by Non-Permitted Holders.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, any transfer of a beneficial interest in any Global Security or Regulation S Certificated Security to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP (or an Accredited Investor and a Qualified Purchaser with respect to U.S. Certificated Securities) and that is not in each case made pursuant to an applicable exemption under the Securities Act, shall be void and any such purported transfer of which the Issuer, the Co-Issuer, or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer, and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer, or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), that a person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Securities or interest in the Securities, without further notice to the Non-Permitted Holder, the Issuer may sell the Securities or interest in the Securities to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Securities, and selling the Securities, or interest in the Securities to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Security, the Beneficial Owner of each interest in a Security, the Non-Permitted Holder, and each other person in the chain of title from the Holder or Beneficial Owner to the Non-Permitted Holder, by its acceptance of an interest in the Securities agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any person having an interest in the Securities sold as a result of any such sale or the exercise of its discretion.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Securities on Closing Date.***

The Securities to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters.* An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Placement Agency Agreement and, in the case of the Issuer, the Management Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication, and delivery of the Securities applied for by it and specifying the Stated Maturity, principal amount, and, with respect to the Notes, the Note Interest Rate of each Class of Notes to be authenticated and delivered and (2) evidencing the authorization by

Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date, and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals.* From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval, or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval, or consent of any governmental body is required for the valid issuance of the Securities applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Securities except as have been given; provided that the opinions of McKee Nelson LLP and Maples and Calder, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Portfolio Manager's U.S. Counsel Opinion.* An opinion of McKee Nelson LLP, special U.S. counsel to the Co-Issuers, and Orrick, Herrington & Sutcliffe LLP, counsel to the Portfolio Manager, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion.* An opinion of Maples and Calder, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion.* An opinion of Gardere Wynne Sewell LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture.* An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Securities applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the Securities have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements.* Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Management Agreement.* Executed copy of the Management Agreement.

(ix) *Preference Shares.* Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents.* An executed counterpart of each of the Preference Share Documents.

(xi) *Collateral Administration Agreement.* Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations.* Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Portfolio Manager.* A certificate of an Authorized Officer of the Portfolio Manager, dated as of the Closing Date, to the effect that, to the best knowledge of the Portfolio Manager, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Portfolio Manager on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct;

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(xx)(B); and

(D) no Deep Discount Obligation is included in the Collateral on the Closing Date.

(xiv) *Rating Letters.* An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Securities rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) *Accounts.* Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts.* An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of approximately U.S.$274,895,753.10 into the Collection Account for use pursuant to Section 7.19, the deposit of approximately U.S.$332,917.16 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of approximately U.S.$7,200,000 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xvii) *Cayman Islands Listing.* An Officer's certificate of the Issuer to the effect that application will be made for the Securities to be admitted to the official list of the Cayman Islands Stock Exchange.

(xviii) *Issuer Order for Authentication of Securities.* An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Securities in the amounts, in the registered names, and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate.* An Accountants' Certificate (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, by reference to such sources as shall be specified therein (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has committed to purchase in accordance with customary settlement procedures in the relevant markets, is at least U.S.$698,300,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score and, with respect to each such test, specifying the percentage or other numerical value required in order to satisfy the applicable test and (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(xx).

(xx) *Certificate of the Issuer Regarding Collateral.* A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral;

(F) based solely on the Accountant's Certificate set forth in clause (xix) above,

the weighted average purchase price of the Collateral Obligations in the portfolio as of the Closing Date is at least 90% of the aggregate par amount thereof; and

(G) based on the certification provided by the Portfolio Manager on the Closing Date pursuant to Section 3.1(xiii), no Deep Discount Obligation is included in the Collateral on the Closing Date.

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice.* A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit H-2.

(xxii) *Other Documents.* Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Portfolio Manager, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "Custodian"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be JPMorgan Chase Bank, National Association. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other investments purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into an agreement with the Custodian substantially in the form of Exhibit G providing, inter alia, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Portfolio Manager on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment, or other investments, the Portfolio Manager (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment, or other investment is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment, or other investment to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such investment that is not a Collateral Obligation, in the Account in which the funds used to purchase the investment are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment, or other investment so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments, or other investments.

Section 3.3. ***Representations as to Collateral.***

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral and the Holders of the Class 2 Combination Securities as to the Class 2 Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral and in the Class 2 Collateral in favor of the

Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages, and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral and Class 2 Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Securities Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral or Class 2 Collateral (or, if any interest in the Collateral or Class 2 Collateral has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral and the Class 2 Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Warehoused Loans, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion, or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral and the Class 2 Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral and the Class 2 Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral or the Class 2 Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated, or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral or the Class 2 Collateral have been delivered to the Custodian, to the extent received by the Issuer. None of the instruments that are or evidence the Collateral or the Class 2 Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any person other than the Trustee.

(xiii) The Accounts are not in the name of any person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral and the Class 2 Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received a written acknowledgment from the Custodian that the Custodian is holding all the certificated securities delivered to it that are or evidence the Collateral and the Class 2 Collateral solely on behalf and for the benefit of the Trustee.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral and the Class 2 Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral and the Class 2 Collateral.

(xvii) The parties to this Indenture (i) shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver; (ii) shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

(b) If the Issuer acquires Collateral or Class 2 Collateral that is not "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral or the Class 2 Collateral, the Issuer (or the Portfolio Manager on behalf of the Issuer) shall notify S&P and the Trustee (with respect to the Collateral, for the benefit of the Secured Parties and, with respect to the Class 2 Collateral, for the benefit of the Holder of the Class 2 Combination Securities) of its acquisition or intended acquisition of the Collateral or Class 2 Collateral, as applicable, and the Issuer shall represent to S&P and to the Trustee (with respect to the Collateral, for

the benefit of the Secured Parties and, with respect to the Class 2 Collateral, for the benefit of the Holder of the Class 2 Combination Securities) as to the category of the Collateral or the Class 2 Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral or the Class 2 Collateral Granted under this Indenture acceptable to S&P.

Section 3.4. ***Conditions to Issuance of Additional Preference Shares***

Any Additional Preference Shares to be issued on an Additional Preference Shares Closing Date pursuant to Section 9 of the Preference Shares Paying Agency Agreement shall satisfy the conditions precedent set forth in Section 9 of the Preference Shares Paying Agency Agreement.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes, the Combination Securities, the Class 2 Collateral and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost, or stolen Securities,

(iii) rights of Holders of the Securities to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments, as applicable) owing in respect of, the Securities and the rights of the Holders of the Class 2 Combination Securities to receive distributions with respect to the Class 2 Component, as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention, disbursement and reinvestment of Collateral,

(vii) the rights, obligations, and immunities of the Portfolio Manager under this Indenture and under the Management Agreement, and

(viii) the rights of Holders of the Securities as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them and the rights of the Holders of the Class 2 Combination Securities as beneficiaries of this Indenture with respect to the Class 2 Collateral (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Securities theretofore authenticated and delivered to Noteholders and the Combination Securityholders (other than (A) Securities that have been destroyed, lost, or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Securities for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Securities, Cash or non-callable obligations of the United States of America. The Class 2 Bond is the obligation that must be deposited and held in a segregated trust account with respect to the Class 2 Component, and when distribution is required, will be distributed in kind in complete satisfaction of all obligations to the Holders of the Class 2 Combination Securities for payment on their interest in the Class 2 Component (and the Class 2 Component shall not be entitled to any of the proceeds of any of the other obligations). The obligations deposited under Section 4.1(a)(ii) with respect to the other Securities must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Securities that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of an Opinion of Counsel of Independent U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Holders of Notes would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Portfolio Manager and, if applicable, the Noteholders and the Combination Securityholders, as applicable, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.6, 6.7, 7.1, 7.3, 13.1, and 14.14 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the person entitled to it and applied by the Trustee in accordance with the Securities and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Securities, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

Section 4.4. ***Indenture to Remain in Effect for Class 2 Combination Securities.***

Notwithstanding anything in this Indenture to the contrary, this Indenture shall remain in effect after such time as the Notes and Preference Shares have been redeemed or paid in full if the Class 2 Bond forming part of the Class 2 Collateral has not matured or has not been distributed in-kind to the Holders of the Class 2 Combination Securities. During such time as the Indenture shall remain in effect, the Holders of the Class 2 Combination Securities shall only be entitled to payments described in Section 11.2 and, subject to this Article 4, after such payments have been made in full, this Indenture shall be discharged.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"**Event of Default**," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, any Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of (x) principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date or (y) any distribution in respect of the Class 2 Component when amounts are available therefore in the Class 2 Component Account under Section 11.2 (or, in the case of a default in payment or distribution due to an administrative error or omission by the Trustee, any Paying Agent or the Indenture Registrar, such default has continued for three Business Days);

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days (or in the case of a failure to disburse such amounts due to an administrative error or omission by the Trustee, any Paying Agent or the Indenture Registrar, after six Business Days);

(d) on any Measurement Date for so long as any Class A-1 Notes or Class A-2 Notes are Outstanding, the Aggregate Principal Balance is less than 100% of the Aggregate Outstanding Amount of the Class A-1 Notes and the Class A-2 Notes;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the 1940 Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Reinvestment Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Portfolio Manager by the Trustee or to the Issuer, the Co-Issuer, the Portfolio Manager, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by Moody's) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to Moody's is satisfied with respect thereon.

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

(a) If an Event of Default is continuing (other than (i) an Event of Default specified in Section 5.1(e), (g) or (h) or (ii) an Event of Default with respect to the Class 2 Component under Section 5.1(b)(y)), the Trustee may, with the consent of a Majority of the Controlling Class, and upon the written direction of a Majority of the Controlling Class shall, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers, and upon that declaration the unpaid

principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Reinvestment Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(b)(y)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Reinvestment Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(b)). If an Event of Default occurs with respect to the Class 2 Component under Section 5.1(b), a Majority of the Class 2 Combination Securities may declare the Class 2 Component immediately payable by notice to the Issuer and the Trustee and, upon receipt of such notice, the Trustee shall effect a distribution in kind of a *pro rata* share (based on the Class 2 Combination Security Rated Balance) of each item of the Class 2 Collateral to the Holders of the Class 2 Combination Securities.

(b) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class (or a Majority of the Holders of the Class 2 Combination Securities solely in respect of the acceleration of the Class 2 Component by the Majority of the Class 2 Combination Securities) by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due or, in the case of acceleration of the Class 2 Component by the Majority of the Class 2 Combination Securities, all distributions with respect to the Class 2 Component under Section 11.2 (other than as a result of the acceleration);

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Management Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes or, in the case of acceleration of the Class 2 Component by the Majority of the Class 2 Combination Securities, nonpayment of distributions with respect to the Class 2 Component under Section 11.2 that may have become due solely by acceleration, have been (A) cured, and a Majority of the Controlling Class (or a Majority of the Class 2 Combination Securities solely in respect of the acceleration of the Class 2 Component) by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes or the Class 2 Combination Securities has been made, unless such declaration and its consequences

may no longer be rescinded and annulled in accordance with this Section 5.2(b) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Reinvestment Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Reinvestment Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall preserve the Collateral and the Class 2 Collateral in accordance with this Indenture. If the preservation of the Collateral or the Class 2 Collateral is rescinded pursuant to Section 5.5, the Notes and the Class 2 Component may again be accelerated pursuant to Section 5.2(a), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(b)).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(c) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class, or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note or distribution on the Class 2 Component, upon demand of the Trustee or the Holder of any affected Note or Class 2 Combination Security, the Applicable Issuers shall pay to the Trustee, for the benefit of such Holder of the Note or the Class 2 Combination Security, the whole amount then payable on the Note or the Class 2 Component for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Holders of such Securities under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements, and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may, and shall at the direction of a Majority of the Controlling Class, institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes or the Class 2 Component and collect the monies determined to be payable in the manner provided by law out of the Collateral or Class 2 Collateral, as applicable.

If an Event of Default is continuing, the Trustee may, and shall upon written direction of a Majority of the Controlling Class, proceed to protect and enforce its rights and the rights of the Holders of the Securities by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Holders of the Securities, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.7.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes or the Class 2 Component under the Bankruptcy Law or any other applicable bankruptcy, insolvency, or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator, or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer, or their respective property or any other obligor on the Notes or the Class 2 Component or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer, or other obligor on the Notes or the Class 2 Component, or the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes or the Class 2 Component, the Trustee, regardless of whether the principal of any Notes or distributions on the Class 2 Component is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes and the Class 2 Component, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Holders of the Securities allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or the Class 2 Component or to the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes of the Class 2 Component;

(b) unless prohibited by applicable law, vote on behalf of the Holders of the Securities in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation, or other bankruptcy or insolvency Proceedings or person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Holders of the Securities and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian, or other similar official is authorized by each of the Holders of the Securities to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Holders of the Securities, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Security, any plan of reorganization, arrangement, adjustment, or composition affecting the Notes or any Holder of Securities, or to authorize the Trustee to vote on the claim of the Holder of any Security in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or the Class 2 Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral or the Class 2 Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, and shall, upon written direction of a Majority of the

Controlling Class, to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Holders of the Notes under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default is continuing, and the Class 2 Component has been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, and shall, upon written direction of a Majority of the Class 2 Combination Securities, to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Class 2 Component or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Class 2 Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Class 2 Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Class 2 Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Holders of the Securities under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Class 2 Collateral or institute Proceedings in furtherance of the sale or liquidation of the Class 2 Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(c) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to

the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(d) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Portfolio Manager (subject to the Management Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee, and the Holders of the Securities, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all persons claiming through or under them.

(e) Notwithstanding any other provision of this Indenture, none of the Secured Parties may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Securities, institute against, or join any other person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a person other than a Secured Party, or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceeding.

Section 5.5. ***Optional Preservation of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default has occurred and is continuing, the Trustee shall retain the Class 2 Collateral intact, collect, and cause the collection of the proceeds of the Class 2 Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Class 2 Collateral and the Class 2 Components in accordance with Section 11.2 and Article 10 and shall not sell the Class 2 Collateral in any circumstances unless so directed by all of the Holders of the Class 2 Combination Securities, in which case the Trustee shall sell the Class 2 Collateral to the buyer identified by such Holders of the Class 2 Combination Securities. Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral intact, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination

payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) either (x) the Holders of a Majority of each of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes or (y) (A) in the event the Aggregate Principal Balance is less than 100% of the Aggregate Outstanding Amount of the Class A-1 Notes and the Class A-2 Notes or (B) there has been an Event of Default pursuant to clause (a) of the definition thereof with respect to the payment of interest on any Class of Notes that is part of the Controlling Class, a Super Majority of the Holders of the Controlling Class direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Portfolio Manager. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to preserve the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service), at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Placement Agent.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holders of the Securities, the Co-Issuers, the Portfolio Manager and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of the calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying its conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Holders of the Notes representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section

5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Securities.***

All rights of action and claims under this Indenture or under any of the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Securities.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Any money collected by the Trustee with respect to the Class 2 Component pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Class 2 Component under this Indenture shall be applied in accordance with Section 11.2 at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

No Holder of any Note or Class 2 Combination Security shall have any right to institute any Proceedings, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy under this Indenture, unless:

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class or, in the case of acceleration of the Class 2 Component by the Majority of the Class 2 Combination Securities, of the Class 2 Combination Securities, shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request, and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class or, in the case of acceleration of the Class 2 Component by the Majority of the Class 2 Combination Securities, of the Class 2 Combination Securities.

No one or more Holders of Securities have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Holders of Securities of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of the Securities of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for

the equal and ratable benefit of all the Holders of Securities of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture.

Section 5.9. ***Unconditional Rights of Holders of Notes.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note and a Holder of the Class 2 Combination Securities shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on such Note or the Class 2 Component, as the case may be, as it comes due in accordance with the Priority of Payments or Section 11.2, as the case may be, and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Holders of Notes ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Shares Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee or the Holder of any Security has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee or the Holder of any Security to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Holders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class, with respect to the Notes, or 100% of the Class 2 Combination Securities, with respect to the acceleration of the Class 2 Component by the Majority of

the Class 2 Combination Securities, may institute and direct the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes or the Class 2 Components if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received such indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral and only a Majority of the Class 2 Combination Securities may direct proceedings with respect to remedies specified in Section 5.4(b) or otherwise with respect to the Class 2 Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received an indemnity against the liabilities reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class or 100% of the Class 2 Combination Securities, as the case may be, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes , or the Holders of 100% of the Class 2 Combination Securities with respect to the acceleration of the Class 2 Component, waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or any distribution owing in respect of the Class 2 Component, as the case may be, or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Portfolio Manager, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such

waiver to the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Holder of Notes.

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Security by its acceptance of its Security agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Portfolio Manager for any action taken or omitted by it as Trustee or for any action taken or omitted by the Portfolio Manager, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee, the Portfolio Manager, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Holder of Securities for the enforcement of the payment of the principal of or interest or distributions on, as the case may be any Security or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Holders of the Securities but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral or the Class 2 Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral or the Class 2 Collateral remaining unsold, but shall continue unimpaired until the entire Collateral or Class 2 Collateral is sold or all amounts secured by the Collateral or the Class 2 Collateral have been paid. The Trustee may upon notice to the Holders of the Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, and 100% of the Class 2 Combination Securities with respect to the Class 2 Component, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.7.

(b) The Trustee may bid for and acquire any portion of the Collateral or the Class 2 Collateral in connection with a public Sale of the Collateral or the Class 2 Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes (in the case of the Collateral) or the Class 2 Component (in the case of the Class 2 Collateral) or other amounts secured by the Collateral (in the case of the Notes) or the Class 2 Collateral (in the case of the Class 2 Combination Securities) all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.7. The Securities need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes (in the case of the Collateral) or the Class 2 Components (in the

case of the Class 2 Collateral). The Trustee may hold, lease, operate, manage, or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral or the Class 2 Collateral consists of securities issued without registration under the Securities Act ("Unregistered Securities"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral or the Class 2 Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral or the Class 2 Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Notes.***

The Trustee's right to seek and recover judgment on the Notes, the Class 2 Component or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Holders of the Securities shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or the Class 2 Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Holders of the Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would use under the circumstances in the conduct of the person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Portfolio Manager in accordance with this Indenture or a Majority (or the other percentage required by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) or, with respect to the Class 2 Component, the Holders of the Class 2 Combination Securities relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any extraordinary financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed an "extraordinary financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes or the Class 2 Component generally, the Issuer, the Co-Issuer, the Collateral, the Class 2 Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Portfolio Manager and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Holders of Securities, as their names and addresses appear on the Indenture Register, the Cayman Islands Stock Exchange, for so long as any Class of Securities is listed on the Cayman Islands Stock Exchange and so long as the rules of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or Class 2 Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers, or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of the Securities pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class or of a Rating Agency shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Portfolio Manager, to examine the books and records relating to the Securities, the Collateral and the Class 2 Collateral, personally or by agent or attorney, during the Co-Issuers' or the Portfolio Manager's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

(g) the Trustee may execute any of the trusts or powers under this Indenture or perform any duties under this Indenture either directly or by or through agents or attorneys, and the Trustee shall not

be responsible for any misconduct or negligence on the part of any non-Affiliated agent, or non-Affiliated attorney, appointed with due care by it under this Indenture;

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate, or information received from the Issuer or Portfolio Manager;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Portfolio Manager, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("GAAP"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, the Portfolio Manager, the Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent, or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in making or disposing of any investment permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent, or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of Securities.***

The recitals contained in this Indenture and in the Securities, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral, the Class 2 Collateral or the Securities. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Securities or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Securities.***

The Trustee, any Paying Agent, Indenture Registrar, or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar, or other agent.

Section 6.6. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on investments that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on investments made in accordance with an Issuer Order or a written order or request by the Portfolio Manager, unless such investment is made in an obligation of the Trustee in its corporate capacity.

Section 6.7. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements, and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5, or 10.7, except any such expense, disbursement, or advance attributable to its negligence, willful misconduct, or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Portfolio Manager;

(iii) to indemnify the Trustee and its officers, directors, employees, and agents for any loss, liability, or expense incurred without negligence, willful misconduct, or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves (including reasonable attorney's fees and costs) against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.13.

(b) The Trustee shall receive amounts pursuant to this Section 6.7 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.9, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Holders of the Securities shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.7 until at least one year and one day, or if

longer the applicable preference period then in effect plus one day, after the payment in full of all Securities issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.7(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.8. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent entity organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.8, it shall resign immediately in the manner and with the effect specified in Section 6.9.

Section 6.9. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Portfolio Manager, the Holders of the Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall at the direction of a Majority of the Controlling Class promptly appoint a successor trustee satisfying the requirements of Section 6.8, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Holder of Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Portfolio Manager. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Holder of a Security, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.8.

(c) The Trustee may be removed (i) at any time (including, for the avoidance of doubt, when an Event of Default is continuing) by a Majority of the Controlling Class, or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.8 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge

or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation,

then, in any such case (subject to Section 6.9(a)), (A) the Co-Issuers, by Issuer Order, may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee, or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.10, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Portfolio Manager, to each Rating Agency, to the Holders of Securities as their names and addresses appear in the Indenture Register and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.10. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer, and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.8 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.11. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion, or consolidation to which the Trustee is a party, or any

entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar, and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Securities have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, or consolidation to the authenticating Trustee may adopt the authentication and deliver the Securities so authenticated with the same effect as if the successor Trustee had itself authenticated the Securities.

Section 6.12. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Holders of the Securities and the, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.12.

The Co-Issuers shall join with the Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged, and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Securities shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash, and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.12, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.12;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Holders of Securities delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.13. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Portfolio Manager in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Portfolio Manager in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Portfolio Manager requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Management Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.13 and the payment shall not be part of the Collateral.

Section 6.14. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of Securities in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7 and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Securities. For all purposes of this Indenture, the authentication of Securities by an Authenticating Agent pursuant to this Section 6.14 shall be the authentication of Securities "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.15. ***Fiduciary for Holders of Notes Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Holders of Notes or the Holders of the Class 2 Combination Securities, as the case may be, and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account)

are all undertaken by the Trustee in its capacity as representative of the Holders of Notes or the Holders of the Class 2 Combination Securities, as the case may be, and agent for the other Secured Parties.

Section 6.16. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders and the Combination Securityholders:

(a) *Organization.* The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations.* The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery, and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility.* The Bank is eligible under Section 6.8 to serve as Trustee under this Indenture.

Section 6.17. ***Additional Reporting Requirements.***

If the Placement Agent elects to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Portfolio Manager and the Placement Agent.

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Securities in accordance with the Securities and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Securities or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Securities or this Indenture.

Amounts properly withheld under the Code or other applicable law by any person from a payment to any Holder shall be considered as having been paid by the applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Securities. The Co-Issuers appoint JPMorgan Chase Bank, National Association, 4 New York Plaza, Ground Floor, New York, NY 10004, Attn: Worldwide Securities Services Gleneagles CLO, Ltd., as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Securities or this Indenture may be served and where Securities may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Securities and this Indenture may be served and an office or agency outside of the United States where Securities may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Securities that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Securities.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish no later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Securities held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Securities with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Securities of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Holders of Securities for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Securities in trust for the benefit of the persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Securities if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Security and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Holder of the Security shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Securities have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Securities, the Preference Shares Paying Agency Agreement, the Preference Shares, any of the Collateral or any of the Class 2 Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Portfolio Manager or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Holders of the Securities, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares), the Portfolio Manager, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a legal opinion from nationally recognized legal counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action, or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other person in a bankruptcy, reorganization, or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries other than the Co-Issuer,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Portfolio Manager, the Trustee, and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Management Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) have any employees (other than their respective directors),

(B) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(C) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Portfolio Manager on behalf of the Issuer will procure any action within the Portfolio Manager's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral or the Class 2 Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver

any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral or the Class 2 Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral and the Class 2 Collateral;

(v) preserve and defend title to the Collateral and the Class 2 Collateral and the rights of the Secured Parties in the Collateral and of the Holders of the Class 2 Combination Securities in the Class 2 Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral and the Class 2 Collateral.

The Issuer designates the Portfolio Manager as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and JPMorgan Chase Bank, National Association as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral and the Class 2 Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b), or (c), remove any portion of the Collateral or the Class 2 Collateral that consists of Cash or is evidenced by an instrument, certificate, or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral or the Class 2 Collateral that consists of book-entry securities to be recorded on the books of a person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the

effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Portfolio Manager, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Management Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Portfolio Manager on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Securities or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Securities.

Section 7.6. ***Opinions as to Collateral.***

On or before November 30, 2006 in each calendar year, commencing in 2006, the Issuer shall furnish to the Trustee, the Portfolio Manager and each Rating Agency an Opinion of Counsel from each relevant jurisdiction stating that, in the counsel's opinion, as of the date of the opinion, all actions necessary to maintain the lien and security interest created by this Indenture with respect to the Collateral and the Class 2 Collateral have been taken and that no further action (other than as specified in the opinion) needs to be taken for the continued effectiveness and perfection of the lien over the next year. The opinion may be subject to customary assumptions and qualifications.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any person from any of the person's covenants or obligations under any instrument included in the Collateral or the Class 2 Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Portfolio Manager under the Management Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes, a Majority of the Preference Shares (excluding the Class 2 Combination Security Preference Share Component) and a Majority of the Class 2 Combination Securities (except in the case of the Management Agreement and the Collateral Administration Agreement as initially executed), contract with other persons (including the Portfolio Manager, the Trustee, and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Portfolio Manager, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other person to perform, all of their obligations in the Management Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi), (vii), (viii), (ix) and (x), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral or the Class 2 Collateral, except as expressly permitted by this Indenture and the Management Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes or the Class 2 Component (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Holder of Securities because of the payment of any taxes levied or assessed on any part of the Collateral or the Class 2 Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Securities and this Indenture and the transactions contemplated by this Indenture (including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements), or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged, or permit any person to be released from any covenants or obligations with respect to this Indenture or the Securities, except as may be expressly permitted by this Indenture or by the Management Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage, or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral or the Class 2 Collateral, any interest in it, or its proceeds of, or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral and the Class 2 Collateral;

(v) amend the Management Agreement except pursuant to its terms and Section 15.1(f)(iv) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange, or otherwise dispose of Collateral or Class 2 Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral or the Class 2 Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Management Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the 1940 Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Securities to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Portfolio Manager, the Rating Agencies, and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before November 30, 2006 in each calendar year commencing in 2006 and prior to the issuance of any Additional Preference Shares, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Portfolio Manager and each Holder of Securities making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc., Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "**Merging Entity**") shall consolidate or merge with or into any other person or transfer or convey all or substantially all of its assets to any person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "**Successor Entity**"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder and each Combination Securityholder, the due and punctual payment of all amounts on all Securities issued by the Merging Entity and the

performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other person or transfer or convey the Collateral or the Class 2 Collateral or all or substantially all of its assets to any other person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder, each Combination Securityholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all Securities issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral and the Class 2 Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral and the Class 2 Collateral; and in each case as to any other matters the Trustee or any Noteholder or Combination Securityholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer, or conveyance and shall have delivered to the Trustee, each Noteholder, each Combination Securityholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer, or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Securities or Preference Shares;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be as an investment company under the 1940 Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the 1940 Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer, or conveyance, the person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up, and liquidated at any time thereafter, and the person thereafter shall be released from its liabilities as obligor and maker on all the Securities and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Securities pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral and the Class 2 Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by Schedule 8 or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in Schedule 8, unless, with respect to a particular transaction, the Issuer and the Trustee shall have received an opinion or advice of tax counsel of nationally recognized standing in the United States experienced in such matters that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in Schedule 8 may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer and the Trustee shall have received an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of Schedule 8 pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of

Securities within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event an opinion of tax counsel as described above has been obtained in accordance with the terms hereof, no consent of any Holder of the Securities or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of Schedule 8 contemplated by such opinion of tax counsel.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Cayman Islands Stock Exchange.***

So long as any Securities remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Notes on the Cayman Islands Stock Exchange.

Section 7.14. ***Annual Rating Review.***

So long as any Securities of any Class remain Outstanding, on or before May, 31 in each year commencing in 2006, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes and the Class 1 Combination Securities from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Portfolio Manager in writing (and the Trustee shall promptly provide a copy of the notice to the Holders of the Securities) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes or the Class 1 Combination Securities has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note or a Holder of a Combination Security, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Security designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Security by the Holder or Beneficial Owner. "**Rule 144A Information**" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "**Calculation Agent**"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Cayman Islands Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Portfolio Manager (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Securities are listed on the Cayman Islands Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Cayman Islands Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 a.m., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 a.m., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Portfolio Manager, Euroclear, Clearstream, the Depository, and, so long as any of the Securities are listed thereon and the rules of the exchange so require, the Cayman Islands Stock Exchange. In the latter case, the information shall be given to the Cayman Islands Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Cayman Islands Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 p.m., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) The Issuer will not elect to be treated as a partnership for U.S. federal income tax purposes.

(b) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an Opinion of Counsel from a tax counsel of nationally recognized standing experienced in such matters prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(c) Notwithstanding any contrary agreement or understanding, the Portfolio Manager, the Issuers, the Trustee and the Holders and Beneficial Owners of the Notes (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Indenture and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such tax treatment and tax structure. The foregoing provision shall apply from the beginning of discussions between the parties. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. tax treatment of the transaction under applicable U.S federal, state and local law, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. tax treatment of the transaction under applicable U.S. federal, state and local law.

(d) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Holder of a Security requests information about any such transactions in which the Issuer is an investor, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(e) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Agreement.

(f) Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(g) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(h) Upon the Trustee's receipt of a written request of a Holder or Beneficial Owner holding a Security that is issued with original issue discount for U.S. Federal income tax purposes for the information described in United States Treasury Regulations section 1.1275-3(b)(1) that is applicable to such Security that is issued with original issue discount for U.S. Federal income tax purposes, the Issuer will cause its independent accountants to provide promptly to the Trustee and such requesting Holder or Beneficial Owner all of such information. Any issuance of Additional Notes will be accomplished in a manner that will allow the Issuer to accurately provide the same information as the foregoing to the Holders or Beneficial Owner of such Additional Notes.

(i) Each Holder and Beneficial Owner of a Security, by acceptance of its Security or its interest in a Security, shall be deemed to understand and acknowledge that failure to provide the Paying Agent with the applicable U.S. federal income tax certifications (generally, a United States Internal Revenue Service Form W-9 (or successor applicable form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate United States Internal Revenue Service Form W-8 (or successor applicable form) in the case of a person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) may result in U.S. federal back-up withholding from payments in respect of such Note.

(j) The Issuer and each Holder of a Note (or in the case of the Combination Securities, the Class 1 Note Component of such Combination Securities) shall treat the Notes (or in the case of the Combination Securities, the Class 1 Note Component of such Combination Securities) as debt for U.S. federal income tax purposes and further agrees not to take any action inconsistent with such treatment.

(k) The Issuer shall provide, or cause the independent accountants to provide, within 90 days after the end of the Issuer's tax year, to each Holder of a Security, upon written request and, upon written request therefor, all information that a U.S. shareholder making a "qualified electing fund" election (as defined in the Code) with respect to the Security is required to obtain from the Issuer for U.S. federal income tax purposes, and a "PFIC Annual Information Statement" as described in United States Treasury Regulation Section 1.1295-1(g)(1) (or any successor Treasury Regulation), including all representations and statements required by such statement, and the Issuer will take or cause the accountants to take any other reasonable steps to facilitate such election by a Holder or Beneficial Owner of a Security.

(l) The Issuer will provide, or cause its Independent accountants to provide, to a Holder of a Security, upon written request and, upon written request therefor, any information that such Holder or Beneficial Owner reasonably requests to assist such Holder or Beneficial Owner with regard to filing requirements that such Holder or Beneficial Owner is required to satisfy as a result of the controlled foreign corporation rules under the Code.

(m) The Issuer and each Holder and each Beneficial Owner of any Class of Combination Securities, or any interest therein will treat, at the time of its purchase and throughout the period that is holds such Combination Security or interest therein, each Class of Combination Securities as its respective Components rather than a single unit for United States federal income tax purposes.

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Portfolio Manager may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" from S&P (each, a "Securities Lending Counterparty") pursuant to one or more agreements (each, a "Securities Lending Agreement"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Portfolio Manager. The Securities Lending Counterparties may be Affiliates of the Placement Agent or Affiliates of the Portfolio Manager. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Securities.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Portfolio Manager (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Securities in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of Cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "**Securities Lending Collateral**") to secure its obligation to return the

Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.8;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Portfolio Manager) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Portfolio Manager on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Portfolio Manager on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (mutatis mutandis) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Portfolio Manager on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Portfolio Manager to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the

Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Portfolio Manager, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Portfolio Manager in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Portfolio Manager instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Portfolio Manager shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity, or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator is at least $872,000,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Portfolio Manager in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator is at least $872,000,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the

Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Portfolio Manager (on behalf of the Issuer) shall request a Rating Confirmation on behalf of the Issuer and shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, a Microsoft Excel file of the S&P CDO Monitor input file and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Investment Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in Section 12.2 of this Indenture; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

If the Issuer or the Portfolio Manager (on behalf of the Issuer) fails to deliver an Accountants' Certificate meeting the requirements of this Section 7.19(e) within 5 Business Days of the Ramp-Up Completion Date, the Issuer or the Portfolio Manager (on behalf of the Issuer) shall give notice to the Rating Agencies of such failure.

(f) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. ***Posting of Reports on Repository.***

(a) If the Placement Agent has entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Co-Issuer and the Portfolio Manager acknowledges and agrees to (i) the posting of the Monthly Reports and the Valuation Reports on the Repository for use in the manner provided in the Repository and (ii) the display of its name on the Repository in connection therewith. In connection therewith, the Issuer agrees to make available in accordance with Section 14.3(a)(viii) each Monthly Report or Valuation Report to the operator of the Repository for posting on the Repository.

(b) Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer or the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or any other transaction document or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 7.21. ***Secondary Risk Procedures.***

The Portfolio Manager shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Investment Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Investment Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.22. ***Section 3(c)(7) Procedures.***

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the 1940 Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the 1940 Act):

(a) *Section 3(c)(7) Notice to Investors.* The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Securities due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the 1940 Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-2 in connection with the initial offering of the Securities and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and

cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Securities (and the applicable CUSIP numbers for the Securities) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Securities.

(b) *CUSIP Numbers.* The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Securities shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Placement Agent and any market makers to require that all "confirms" of trades of the Securities contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Securities to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Securities shall state: "Iss'd Under 144A/3(c)(7)", (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information", and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act of 1933, as amended (the "Securities Act") to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act of 1940)". The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Securities include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities or the Holders of any Preference Shares, when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Securities, the Co-Issuers and the Trustee may execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another person to the Issuer or the Co-Issuer and the assumption by the successor person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Holders of the Securities or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage, or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication, and delivery of the Securities;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.9, 6.10, and 6.12;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) modify the restrictions on and procedures for resales and other transfers of the Securities to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the 1940 Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(7) with the consent of the Portfolio Manager, to modify the restrictions on the sales of Collateral Obligations in Section 12.1 or the Eligibility Criteria in Section 12.2 (and the definitions related thereto) in a manner not materially adverse to the Holders of any Class of the Notes, the Combination Securities or the Preference Shares as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of the Notes, the Combination Securities or the Preference Shares;

(8) make appropriate changes for any Class of Securities to be listed on an exchange other than the Cayman Islands Stock Exchange;

(9) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(10) accommodate the issuance of the Notes and Combination Securities and Preference Shares in book-entry form through the facilities of DTC or otherwise;

(11) to take any appropriate action to prevent the Issuer, the Holders of Securities or Preference Shares, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities or Preference Shares to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities or Preference Shares, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(12) to authorize the appointment of any listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities appropriate in connection with the listing of any Class of Securities on the Cayman Islands Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Holder of Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Portfolio Manager, to the effect that the modification would not be materially adverse to the Holders of any Class of the Securities;

(13) to amend, modify, enter into, or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement);

(14) to modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(15) to evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(16) to facilitate the issuance of participation notes, combination notes, combination securities and other similar securities;

(17) to facilitate hedging transactions;

(18) to facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(19) to modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(20) with the consent of the Portfolio Manager, to enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities or the Holders of Preference Shares as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of Securities or the Holders of Preference Shares; or

(21) provide for the issuance of Additional Preference Shares to the extent permitted by the Preference Shares Paying Agency Agreement and to extend to such Additional Preference Shares the benefits applicable to the Preference Shares hereunder and under the Preference Share Documents.

(b) Without the consent of the Portfolio Manager, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Portfolio Manager under this Indenture or increase the duties or obligations of the Portfolio Manager.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities, or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of the Securities or a Majority of the Holders of Preference Shares that the Class of Securities or Holders of Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Portfolio Manager and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities or Holder of Preference Shares would be materially and adversely affected by any such supplemental indenture. The Trustee shall give notice of any such supplemental indenture described in the preceding sentence

to the Holders of Securities and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) at least 15 Business Days before execution of any supplemental indenture by the Trustee (or 60 calendar days before execution, in the case of a supplemental indenture for the purpose described in paragraph (7) of Section 8.1(a), which shall be identified as such in a certificate of the Portfolio Manager delivered to the Trustee before the date on which such notice is required to be given).

(d) Except for a supplemental indenture described in Section 8.1(a)(21) above, if any Outstanding Securities are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Portfolio Manager and the Holders of 100% in Aggregate Outstanding Amount of each Class of Securities the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental indenture with respect to which a Rating Confirmation for one or more Classes of Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Security informing them of such fact.

(e) Without limiting any other requirement to deliver notice pursuant to this Section 8.1, at the cost of the Co-Issuers, for so long as any Securities are Outstanding and rated by a Rating Agency, the Trustee shall provide to the Rating Agency, the Holders of the Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Hedge Counterparty a copy of any proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee.

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Holders of the Securities under this Indenture with the consent of:

(1) the Portfolio Manager if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes;

(3) a Majority of each Class of the Combination Securities adversely affected thereby, by Act of the Holders of each Class of the Combination Securities; and

(4) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby, the Holder of each Outstanding Combination Security of each Class adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or the Class 2 Component or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, reduce the principal amount or the rate of interest on any Security, or the Default Interest Rate or the Redemption Price with respect to any Note, the Class 2 Component or Preference Share, or change the earliest date on which Notes, the Class 2 Component or any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes and the application of procceds of any Class 2 Collateral or Preference Share Component corresponding to their related Components, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Securities or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Combination Securities or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or the Class 2 Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Security of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to preserve the Collateral or rescind the Trustee's election to preserve the Collateral or the percentage of the Aggregate Outstanding Amount of Holders of the Class 2 Combination Securities whose consent is required to preserve the Class 2 Collateral or rescind the Trustee's election to preserve the Class 2 Collateral, as the case may be, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note, Preference Share and Combination Security affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or the Class 2 Component or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of Notes or Preference Shares or the Holders of the Class 2 Combination Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

Prior to the entry into any supplemental indenture with respect to which a Rating Confirmation for one or more Classes of Notes or Combination Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note, each Holder of each Outstanding Combination Security and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) informing them of such fact.

(b) At the cost of the Co-Issuers, for so long as any Securities are Outstanding and rated by a Rating Agency, the Trustee shall provide to the Rating Agency a copy of any proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee.

(c) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall forward to the Holders of the Securities, the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency (so long as any rated Securities are Outstanding) a copy of such supplemental indenture and shall request any required consent from the applicable Holders of Securities or Preference Shares to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities or Preference Shares, as applicable, shall be irrevocable and binding on all future Holders or Beneficial Owners of that Security or Preference Share, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities or Preference Shares consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Portfolio Manager which Holders of Securities or Preference Shares have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which Beneficial Owners) have not consented to the proposed supplemental indenture. To the extent that any Holder of Class A-1 Notes fails to respond to the consent solicitation relating to the proposed supplemental indenture after the Non-Call Period, such Holder shall be deemed to have cast its vote against adopting such supplemental indenture and, as a result, such Holder shall be subject to the Amendment Buy-Out. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee in writing (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five (5) Business Days after so being notified by the Trustee and the Trustee shall mail such notice to all Holders of Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Any Non-Consenting Holder may deliver written consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or Beneficial Owner of the applicable Securities or Preference Shares, may consent to the related proposed supplemental indenture within five (5) Business Days of the Amendment Buy-Out.

(d) It shall not be necessary for any Act of Holders of Securities under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(e) The Trustee, at the expense of the Co-Issuers, shall mail to the Holders of the Securities, the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon (including with respect to determinations of adverse effect), an Opinion of Counsel stating that the execution of the supplemental

indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, or immunities under this Indenture or otherwise. The Portfolio Manager shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager unless the Portfolio Manager consents to it in writing, such consent not to be unreasonably withheld or delayed. The Portfolio Manager shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities and Preference Shares theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Section 8.5. ***Reference in Securities to Supplemental Indentures.***

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes and new Combination Securities, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

Section 8.6. ***Combination Securities.***

For purposes of this Article 8, the Combination Securities shall only be adversely affected or materially and adversely affected, as the context requires, by any proposed supplemental indenture if the Combination Securities would suffer an adverse effect or material adverse effect, as the context requires, that does not arise directly from an adverse effect or material adverse effect suffered by the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes or the Preference Shares.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment

Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Securities (other than the Class 2 Combination Securities), then at the direction and in accordance with the instructions of the Portfolio Manager the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Securities) and to pay all administrative and other fees, expenses, and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account, and the Delayed Drawdown Reserve Account at the direction of the Holders of at least 66⅔% of the Aggregate Outstanding Amount of Preference Shares or, upon the occurrence of a Tax Event, a Majority of the Controlling Class (but only if the Aggregate Principal Balance is less than 100% of the Class A-1 Notes and the Class A-2 Notes), which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Portfolio Manager not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Holders of the Notes on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

Upon receipt of a notice of redemption pursuant to this Section 9.2(a), the Portfolio Manager in its sole discretion will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account, and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Portfolio Manager's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses, and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date, and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares pro rata in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Portfolio Manager will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Portfolio Manager will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Upon the occurrence of a redemption of the Preference Shares, in whole or in part, pursuant to this Section 9.2 prior to the Class 2 Component Payment Date, the Class 2 Combination Securities shall remain Outstanding until the maturity thereof and shall have the benefits provided by this Indenture (including, without limitation, the provisions of Section 11.2).

Section 9.3. ***Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, a notice of redemption shall be given by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Securities are listed on the Cayman Islands Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Securities pursuant to Section 9.2 shall also be given to the Cayman Islands Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Securities to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Trustee and the Portfolio Manager only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Portfolio Manager does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares to withdraw the notice of redemption delivered by a percentage of the Preference Shares requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, and

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing person to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Holder of Notes scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail) and the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Reinvestment Period (and, in respect of Sale Proceeds from Credit Improved Obligations, after the Reinvestment Period) at the Portfolio Manager's discretion, be reinvested in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Note selected for redemption or the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) shall not impair or affect the validity of the redemption of any other Securities or Preference Shares. For the avoidance of doubt, any notices of redemption delivered hereunder shall be delivered to each Holder of a Combination Security by virtue of such Holder’s interest in the underlying Components of its relevant Class of Combination Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions are satisfied:

(i) At least ten Business Days before the Redemption Date, the Portfolio Manager shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreements (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Portfolio Manager shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Holders of the Notes, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Reinvestment Period, the Portfolio Manager elects (subject to the Management Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional Collateral Obligations that are deemed appropriate by the Portfolio Manager in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the investment or reinvestment of all or a portion of the funds then in the Collection Account available to be invested in additional Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not reinvested in additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Securities are listed on the Cayman Islands Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Securities pursuant to Section 9.2 shall also be given to the Cayman Islands Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities or Preference Shares, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities (other than the Class 2 Combination Securities) or Preference Shares (including Preference Shares

underlying the Preference Share Component of the Class 2 Combination Securities distributed in accordance with the third sentence of this paragraph) held by such Holders of the Class of Securities or Preference Shares whose consent was solicited with respect to such supplemental indenture (the "***Amendment Buy-Out Option***") for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Security, as applicable, or to change the earliest date on which Securities of any Class or Preference Shares may be redeemed at the option of the Issuer. In the event that Holders of the Class 2 Combination Securities are Non-Consenting Holders in connection with a supplemental indenture pursuant to Section 8.2, the Class 2 Combination Securities shall not be subject to the Amendment Buy-Out Option. However, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to cause the Preference Shares underlying the Preference Share Component of the Class 2 Combination Securities be distributed to such Holder in accordance with Section 2.6(g)(iii) and, upon such distribution, the Amendment Buy-Out Purchaser may then subject the Preference Shares so distributed to the provisions of this Section 9.6. If the Amendment Buy-Out Option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities (other than Class 2 Combination Securities) or Preference Shares (including Preference Shares underlying the Preference Share Component of the Class 2 Combination Securities distributed in accordance with the third sentence of this paragraph) of Non-Consenting Holders, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities or Preference Shares the consent of whose Holders is required for such supplemental indenture (an "***Amendment Buy-Out***"). By its acceptance of its Securities or Preference Shares hereunder, each Holder of Securities or Preference Shares agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities (other than the Class 2 Combination Securities) or Preference Shares (including Preference Shares underlying the Preference Share Component of the Class 2 Combination Securities distributed in accordance with the third sentence of this paragraph) to the Amendment Buy-Out Purchaser; provided that, if the solicited consent to a supplemental indenture only applies to one Component of a Class 1 Combination Security, the Non-Consenting Holder will be required to sell, at the Non-Consenting Holder's option, its Class 1 Combination Security as a whole or solely the affected Component. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or Beneficial Owner of Securities or Preference Shares as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option. Pursuant to the definition of "Non-Consenting Holder", during the Non-Call Period, "Non-Consenting Holder" shall exclude any Holder of Class A-1 Notes (unless such Holder has consented in writing to be designated as a Non-Consenting Holder) and the Amendment Buy-Out Option shall not be applicable to such Class A-1 Notes. For the avoidance of doubt, (i) nothing described above or in the Indenture shall in any way limit or restrict the rights of the Holders of the Class A-1 Notes to consent or withhold their consent to a supplemental indenture or to otherwise vote their interest both during and after the Non-Call Period and (ii) the Trustee shall have no responsibility for overseeing the Portfolio Manager's compliance with the Amendment Buy-Out provisions herein.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities or Preference Shares set forth herein and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. ***Collection of Money.***

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Portfolio Manager for convenience in administering the Accounts, the Collateral or the Class 2 Collateral.

Section 10.2. ***Collection Account.***

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously reinvested in Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously reinvested in accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Reinvestment Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Reinvestment Period, which have not been reinvested in additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Portfolio Manager be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such investment or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments) received after the Reinvestment Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the

Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be reinvested pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Portfolio Manager. Within five Business Days of receipt of the notice from the Trustee, the Portfolio Manager, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a person that is not the Portfolio Manager or an Affiliate of the Portfolio Manager and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Portfolio Manager certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Reinvestment Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations, after the Reinvestment Period), at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and reinvest (or invest, in the case of funds referred to in Section 7.19) the funds in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral into the Synthetic Security Counterparty Account with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Reinvestment Period, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account.* Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account.* Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Portfolio Manager, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Portfolio Manager at any time during or after the Reinvestment Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Reinvestment Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Portfolio Manager as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be reinvested pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be invested in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the

Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be reinvested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Synthetic Security Collateral Account shall be reinvested pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Securities Lending Account shall be reinvested pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$332,917.16 from the gross proceeds of the Offering. At any time before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in February, 2006, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in February, 2006, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be reinvested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes and Combination Securities in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Interest Reserve Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$7,200,000 from the gross proceeds of the Offering. Subject to the following sentence, on the Payment Date in February, 2006, the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies therefrom on such date) to the Collection Account as

Principal Proceeds and close the Interest Reserve Account. If on any date during the period from and including to the Closing Date up to and including the first Determination Date the Portfolio Manager certifies in writing to the Trustee (based upon a calculation provided to the Trustee) that, as of such date, the sum of (x) amounts on deposit in the Collection Account as Interest Proceeds plus (y) interest accrued on the Collateral prior to the first Determination Date, will be sufficient to pay the amounts referred to in clauses (1) through (11) of Section 11.1(a)(i) on the Payment Date in February, 2006, the Portfolio Manager may make a one-time written direction to the Trustee to transfer not more than 75% of the funds on deposit in the Interest Reserve Account as of such date to the Collection Account as Principal Proceeds. Amounts on deposit in the Interest Reserve Account shall be reinvested pursuant to Section 10.4(a).

(j) *Class 2 Component Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class 2 Component Account, that shall be held in trust in the name of the Trustee for the benefit of the Holders of the Class 2 Combination Securities, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the principal-only zero coupon security issued by Banc of America Corporation, maturing on October 30, 2005 paying a principal amount at maturity equal to the original principal amount of the Class 2 Combination Securities specified in Section 2.3 (the "***Class 2 Bond***"), which Class 2 Bond shall be delivered to the Trustee by the Issuer on the Closing Date. All assets or securities at any time on deposit in, or otherwise to the credit of, the Class 2 Component Account shall be held in trust by the Trustee for the benefit of the Holders of the Class 2 Combination Securities. The only permitted withdrawals from the Class 2 Component Account shall be in accordance with this Indenture. None of the Co-Issuers, the Noteholders, the Holders of Preference Shares (other than the Holders of the Class 2 Combination Securities, to the extent of their Preference Share Components) or any other Secured Party shall have any legal, equitable, or beneficial interest in the Class 2 Component Account.

(k) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(l) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, Beneficial Owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. ***Reinvestment of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. Before an Event of Default occurs, if the Issuer has not given investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of

the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the investment or (ii) the Business Day before the next Payment Date. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account. Subject to Section 6.6, the Trustee shall not in any way be held liable for the selection of investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated

termination date of the related Securities Lending Agreement. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution, or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into a securities account control agreement substantially in the form of Exhibit G.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Portfolio Manager any information regularly maintained by the Trustee that the Co-Issuers or the Portfolio Manager may from time to time request with respect to the Pledged Obligations, the Accounts, the Collateral and the Class 2 Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Portfolio Manager to perform its obligations under the Management Agreement. The Trustee shall promptly forward to the Portfolio Manager copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation, or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be invested in Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.8 and the account satisfies the other requirements of this Section.

As directed in writing by the Portfolio Manager, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Portfolio Manager shall direct any such deposit only during the Reinvestment Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the

Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Portfolio Manager in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be invested in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Portfolio Manager in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the Payment Date in February, 2006, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Portfolio Manager, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Placement Agents, each Hedge Counterparty, the Rating Agencies, (if so requested by the Placement Agents) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Security who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Portfolio Manager (the "Monthly Determination Date"):

(i) Portfolio:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity, and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion, or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold,

indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset, or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Portfolio Manager) since the date of the previous Monthly Report, and the gain or loss (measured against its Purchase Price) on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Portfolio Manager has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a

Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation), and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value";

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds), and Uninvested Proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) Hedge Agreements:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) Coverage Tests, Collateral Quality Tests and Reinvestment Overcollateralization Test:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Reinvestment Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Minimum Average Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Minimum Average Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate";

(v) Concentration Limitations and Withholding Taxes:

(A) The percentage of the Maximum Investment Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) Securities Lending Agreements:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Investment Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value, and (z) its Principal Balance expressed as a percentage of the Maximum Investment Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Portfolio Manager if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting.* The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Portfolio Manager, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Placement Agent, each Hedge Counterparty, the Rating Agencies, each Noteholder (if so requested by the Placement Agent), each Combination Securityholder (if so requested by the Placement Agent) the Repository in accordance with Section 14.3(a)(viii), the Depository (with instructions to forward it to each of its Agent Members who are holders of Securities), and upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the

second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Portfolio Manager:

(i) Securities:

(A) The amount of principal payments to be made on each Class of Notes and Combination Securities on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes and Combination Securities after giving effect to any principal payments on the related Payment Date and, for each Class of Securities, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Securities, the percentage of the initial Aggregate Outstanding Amount of all of the Securities that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Securities that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes and Combination Securities on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail;

(E) For each Class of Combination Securities it's Combination Security Rated Balance; and

(F) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) Payment Date Payments:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds) and Uninvested Proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Portfolio Manager if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting.* If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Portfolio Manager, and the Portfolio Manager shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.7.

(d) *Cayman Islands Stock Exchange.* So long as any Class of Securities is listed on the Cayman Islands Stock Exchange: (i) the Trustee shall communicate to the Cayman Islands Stock Exchange the Aggregate Outstanding Amount of each listed Class of Notes following each Payment Date and inform the Cayman Islands Stock Exchange if any such Class of Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Cayman Islands Stock Exchange if the ratings assigned to the Notes or the Class 1 Combination Securities are reduced or withdrawn and the information shall be given to the Cayman Islands Stock Exchange; and (iii) the Trustee shall inform the Cayman Islands Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Portfolio Manager shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P a Microsoft Excel File of the S&P Monitor input file and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof.

(g) *Payments or Transfers from the Payment Account.* Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

(h) *NAV Calculation.* The Trustee shall forward to the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Placement Agents, each Hedge Counterparty, the Rating Agencies, (if so requested by the Placement Agent) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Security who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), any net asset value report with respect to the Issuer which the Trustee receives from the asset value calculation agent appointed pursuant to Section 10.8(a) hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Portfolio Manager, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Portfolio Manager in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) If no Event of Default is continuing, the Trustee shall upon an Issuer Order executed by an Authorized Officer of the Portfolio Manager deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption, or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Portfolio Manager.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Portfolio Manager of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion, or other similar action (an "Offer"). If no Event of Default is continuing, the Portfolio Manager may direct the Trustee to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b), or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Securities are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's Certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Securities Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e), and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Portfolio Manager, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Portfolio Manager, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Portfolio Manager, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. In addition, the Issuer shall appoint an net asset value calculation agent to prepare and deliver to the Trustee a net asset value report with respect to the Issuer. The fees of such Independent certified public accountants, the NAV calculation agent and their respective successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before November 30 of each year commencing in 2006, the Issuer shall cause to be delivered to the Trustee the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement), and

(iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Portfolio Manager on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Issuer or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "Priority of Payments"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other person (except the Portfolio Manager) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Portfolio Manager if payable under the Management Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) to the payment to the Portfolio Manager of any accrued and unpaid Senior Management Fee then payable; *provided*, that no such payment shall be made pursuant to this clause (3) to the extent that such payment: (x) represents unpaid Senior Management Fee deferred by the Portfolio Manager in respect of a prior Payment Date and (ii) would result in monies being unavailable to pay the amounts pursuant to clause (5) below in full on such Payment Date;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of accrued and unpaid interest on the Class A-1 Notes and the Class A-2 Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class A-1 Notes and the Class A-2 Notes (with distributions being made to the Holders of the class A-1 Notes and the Class A-2 Notes pro rata based upon the amount of accrued and unpaid interest and accrued and unpaid Defaulted Interest owing in respect of the Class A-1 Notes and the Class A-2 Notes);

(6) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class B Notes;

(7) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1 Notes, the Class A-2 Notes and the Class B Notes in the Note Payment Sequence in the amount necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(8) First, to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest, but including interest accrued for the preceding Interest Period on Class C Deferred Interest) and Second, to the payment of Class C Deferred Interest;

(9) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(2) on the current Payment Date);

(10) First, to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest) and Second, to the payment of Class D Deferred Interest;

(11) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class D Notes in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full, or if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A-1 Notes, Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (11) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(3) on the current Payment Date);

(12) to deposit in the Collection Account as Principal Proceeds amounts representing Principal Proceeds previously used to pay amounts referred to in clauses (1) and (3) through (6) above and not previously restored to the Collection Account or, if not restored to the Collection Account, used to purchase Collateral Obligations;

(13) if the Reinvestment Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds the lesser of (i) 50% of the remaining Interest Proceeds available after the payments pursuant to clause (12) above and (ii) the amount necessary to cause the Reinvestment Overcollateralization Test to be satisfied as of such Determination Date, after application of funds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date;

(14) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(15) to the payment First, to the Portfolio Manager of accrued and unpaid Subordinated Management Fee then due and payable and Second, to each Holder of Securities entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(16) to the payment of any Defaulted Hedge Termination Payments;

(17) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 15.0%;

(18) to the payment to the Portfolio Manager of the Incentive Management Fee, if applicable; and

(19) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously reinvested in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) first, to the payment of the amounts referred to in clauses (1) and (3) through (6) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) second, to the payment of amounts referred to in clause (7) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A/B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Coverage Tests to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (2), or until such amounts are paid in full;

(3) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary, after application of the amounts referred to in clause (11) of Section 11.1(a)(i)(11) so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause (3), or until paid in full;

(4) if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Notes in the Note Payment Sequence in an amount necessary to obtain a Rating Confirmation, or until paid in full;

(5)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (14) through (18) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(6) during the Reinvestment Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(7) after the Reinvestment Period, (i) first, at the discretion of the Portfolio Manager (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of substitute Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) second, to the payment in the Note Payment Sequence of principal of the Class A-1 Notes, the Class A-2 Notes and the Class B Notes until paid in full;

(8) after the Reinvestment Period, to the payment of the amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(9) after the Reinvestment Period, to the payment of principal of the Class C Notes until paid in full;

(10) after the Reinvestment Period, to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(11) after the Reinvestment Period, to the payment of principal of the Class D Notes until paid in full;

(12) after the Reinvestment Period and to the extent not previously paid in full under clause (4) above, to the payment of the amounts referred to in clauses (14) through (16) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder;

(13) after giving effect to payments pursuant to clause (17) of Section 11.1(a)(i) and clause 5(A) above, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 15.0%;

(14) after the Reinvestment Period, to the payment to the Portfolio Manager of the Incentive Management Fee, if applicable; and

(15) after the Reinvestment Period, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares.

The calculation on any Coverage Test on any Measurement Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Measurement Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Portfolio Manager unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

(f) On each Payment Date on which distributions are made in respect of the Class C Notes, a portion of such payment will be allocated to the Class 1 Combination Securities in the proportion that the Aggregate Outstanding Amount of the Class 1 Note Component bears to the Aggregate Outstanding Amount of the Class C Notes. On each Payment Date on which distributions are made in respect of the Preference Shares, a portion of such payment will be allocated to the Combination Securities in the proportion that the aggregate Face Amount of the relevant Preference Share Component bears to the aggregate Face Amount of the Preference Shares.

Section 11.2. ***Class 2 Component Distributions***

(a) On the Business Day immediately following any Business Day that proceeds from the Class 2 Bond are deposited in the Class 2 Component Account as a result of the maturity of such Class 2 Bond or upon the early liquidation of such Class 2 Bond as a result of an Event of Default pursuant to Section 5.1(b) (the "***Class 2 Component Payment Date***"), the Trustee shall disburse the proceeds from the maturity or liquidation of the Class 2 Bond on deposit in the Class 2 Component Account to the Holders of the Class 2 Combination Securities, *pro rata* based on their share of the Class 2 Combination Security Rated Balance in accordance with subclause (b) below.

(b) On each Class 2 Component Payment Date, the Trustee shall disburse available amounts from the Class 2 Component Account as follows:

(i) if such Class 2 Component Payment Date occurs prior to a Redemption Date on which the Preference Shares relating to the Preference Share Component have been redeemed in whole, to the Holders of the Class 2 Combination Securities, *pro rata* based on their share of the Class 2 Combination Security Rated Balance; and

(ii) if such Class 2 Component Payment Date occurs after a Redemption Date on which the Preference Shares relating to the Preference Share Component have been redeemed in whole,

(A) FIRST, to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of any accrued and unpaid Administrative Expenses; and

(B) SECOND, to the Holders of the Class 2 Combination Securities, *pro rata* based on their share of the Class 2 Combination Security Rated Balance.

(c) In the event that the Class 2 Component Payment Date occurs prior to a Redemption Date on which the Preference Shares relating to the Preference Share Component have been redeemed in whole, immediately following such Class 2 Component Payment Date, the Preference Share Component of the Class 2 Combination Securities shall be exchanged (and the Holder of such Class 2 Combination Securities shall be deemed to have requested such exchange without any action or request by such Holder) for the Preference Shares underlying such Preference Share Component in accordance with Section 2.6(g)(iii).

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's Certificate of the Portfolio Manager provided to the Trustee, the Issuer may, at the direction of the Portfolio Manager, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Portfolio Manager certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Reinvestment Period, the proceeds shall be reinvested in accordance with Section 12.2.

(a) *Credit Risk Obligations.* At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Portfolio Manager during the Reinvestment Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations.* At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Reinvestment Period, the Portfolio Manager believes before the sale that it will be able to cause the Issuer to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Investment Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal

Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest); or

(ii) after the Reinvestment Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Investment Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction. Notwithstanding the foregoing provisions of this clause (b), the Portfolio Manager may not direct the sale of a Credit Improved Obligation during the period from and after notice of a removal or resignation of the Portfolio Manager has been delivered in accordance with the Management Agreement and until a successor portfolio manager has been appointed pursuant to the Management Agreement and has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to the Management Agreement and this Indenture.

(c) *Non-Performing Collateral Obligations and Current-Pay Obligations.* At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation or Current-Pay Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation or Current-Pay Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price; provided that, the Principal Balance of any Collateral Obligation purchased with proceeds of any Current-Pay Obligation shall equal or exceed the Principal Balance of such Current-Pay Obligation that was sold.

(d) *Non-qualifying Collateral Obligations.* At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales.* At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption.* After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Portfolio Manager pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure.* After the Portfolio Manager has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the

Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Notes, the Issuer may, at the direction of the Portfolio Manager, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Discretionary Sales.* At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation:

(i) at any time on or before the Ramp-Up Completion Date (without regard to any restriction specified in clause (ii) below); and

(ii) at any time after the Ramp-Up Completion Date if:

(A) after giving effect to the sale and the sale of any other Collateral Obligations whose sale is pending, the Aggregate Principal Balance of all Collateral Obligations sold pursuant to this Section 12.1(h)(ii) (in each case determined as of the date the direction to sell is given) is not greater than 20% of the Maximum Investment Amount as of January 1 of such calendar year (or, for the first calendar year, as of the Ramp-Up Completion Date); and

(B) during the Reinvestment Period the Portfolio Manager believes before the sale that it will be able to cause the Issuer within 30 days thereafter to reinvest or commit to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Investment Criteria Adjusted Balance of the Collateral Obligation (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest);

and the Trustee shall sell the Collateral Obligations in accordance with such direction. However, if the rating by Moody's of any of the Class A-1 Notes or the Class A-2 Notes is one or more rating sub-categories below the Initial Rating of the Class A-1 Notes or the Class A-2 Notes or has been withdrawn or the rating by Moody's of the Class B Notes, the Class C Notes or the Class D Notes is two or more rating sub-categories below the Initial Rating of the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn, the Issuer shall not instruct the Trustee to sell any Collateral Obligations pursuant to this Section 12.1(h). This restriction may be waived by written consent of a Majority of the Controlling Class. For the purposes of this subsection (h), any withdrawal or reduction in rating shall not restrict the sale of any Collateral Obligations pursuant to this subsection (h) if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1 Notes or the Class A-2 Notes or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes and the Class D Notes. Notwithstanding the foregoing provisions of this clause (h), the Portfolio Manager may not direct the sale of a Credit Improved Obligation during the period from and after notice of a removal or resignation of the Portfolio Manager has been delivered in accordance with the Management Agreement and until a successor portfolio manager has been appointed pursuant to the Management Agreement and has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to the Management Agreement and this Indenture.

For the purposes of determining the percentage of Collateral Obligations sold during any period in Section 12.1(h)(ii):

(i) the amount of any Collateral Obligation sold shall be reduced:

(A) to the extent of any purchases of Collateral Obligations of the same obligor (that are *pari passu* with the sold Collateral Obligation) occurring within 30 Business Days of

the sale (determined based on the date of any relevant trade confirmation or commitment letter) (but only for so long as (x) the Collateral Obligations purchased have not been downgraded by any of the Rating Agencies during the 30 Business Day period, (y) the Collateral Obligations have not been purchased from the Portfolio Manager or any of its Affiliates acting, in each case, as principal or from any funds or accounts advised or managed by the Portfolio Manager or any of its Affiliates, and (z) the purchase price of each Notes purchased Collateral Obligation must not exceed the sale price of the sold Collateral Obligation), and

(B) to the extent of any purchases of Collateral Obligations permitted pursuant to Section 12.2(c); and

(ii) any Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time that is invested into a substantially similar Synthetic Security but with a later maturity shall be treated as having been sold.

(i) *Workout Assets.* At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Reinvestment Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Reinvestment Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations, on any date after the Reinvestment Period), so long as no Event of Default is continuing, at the direction of the Portfolio Manager, the Issuer may direct the Trustee to invest or reinvest Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Portfolio Manager certifies to the Trustee that, to the best knowledge of the Portfolio Manager, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria.* No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Portfolio Manager as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Reinvestment Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of such Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Reinvestment Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Reinvestment Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Reinvestment Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Reinvestment Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Reinvestment Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Reinvestment Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Reinvestment Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Reinvestment Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Reinvestment Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to reinvestment of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the reinvestment of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Reinvestment Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved;

(C) each Concentration Limitation is maintained or improved;

(D) the maturity date of such Collateral Obligation will occur on or prior to the Stated Maturity of the Notes and the Weighted Average Life Test is satisfied;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments

or of the Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the aggregate Principal Balance of Collateral Obligations to be purchased in connection with such sale must be no less than the aggregate Principal Balance of the Collateral Obligations sold or prepaid.

(c) *Certain Permitted Exchanges.*

The Issuer may, at the direction of the Portfolio Manager, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Portfolio Manager.* Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Portfolio Manager shall deliver to the Trustee an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Investment in Eligible Investments.* Cash on deposit in the Collection Account may be invested at any time in Eligible Investments in accordance with Section 10.4(a) pending investment in Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Portfolio Manager or a person Affiliated with the Portfolio Manager or any fund or account for which the Portfolio Manager or an Affiliate of the Portfolio Manager acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Management Agreement on terms no less favorable to the Issuer than would be the case if the person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date. Notwithstanding anything to the contrary in this Indenture, any certifications or other documents required to be delivered by the Portfolio Manager or the Issuer in connection with the purchase or sale of Collateral during the Reinvestment Period may be delivered by the Issuer or the Portfolio Manager on the settlement date for such Collateral even if such date occurs after the Reinvestment Period.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to sell, a commitment letter, a confirmation or a due bill for

such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Portfolio Manager shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Portfolio Manager's certification to the effect that the Portfolio Manager believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
Class A-1	B, C, D, Preference Shares	None
Class A-2	B, C, D, Preference Shares	Class A-1
Class B	C, D, Preference Shares	Class A-1, Class A-2
Class C	D, Preference Shares	Class A-1, Class A-2, B
Class D	Preference Shares	Class A-1, Class A-2, B, C
Preference Shares	None*	Class A-1, Class A-2, B, C, D

* The Preference Shares will be entitled to certain residual cashflow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of the Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. The Class 1 Note Components of a Class rank *pari passu* with the Notes of that Class. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of the Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of the Notes of each Priority Class in respect of the Junior Class, not to cause the

filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of a Junior Class of Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of the Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares are subordinate to distributions on the Notes and Preference Shares as described in the Priority of Payments.

(f) The Management Fees shall have priority only to the extent provided in the Priority of Payments.

(g) For purposes of subordination, the Combination Securities shall not be treated as a separate Class, but the Class 1 Note Component shall be treated as being *pari passu* with the Class C Notes and the Preference Share Components shall be treated as being *pari passu* with the Preference Shares.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder or a Combination Securityholder under this Indenture, a Noteholder or a Combination Securityholder shall not have any obligation or duty to any person or to consider or take into account the interests of any person and shall not be liable to any person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, Combination Securityholder, the Issuer, or any other person, except for any liability to which the Noteholder or Combination Securityholder may be subject to the extent the same results from the Noteholders or Combination Securityholders taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer, or the Portfolio Manager may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer, or the Portfolio Manager or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Portfolio Manager, or any other person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Portfolio Manager, or the other person, unless the Officer of the Issuer, Co-Issuer, or the Portfolio Manager or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Noteholders, Combination Securityholders or Holders of Preference Shares.***

(a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Noteholders, Combination Securityholders or Holders of Preference Shares may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by Noteholders, Combination Securityholders or Holders of Preference Shares in person or by agents duly appointed in writing. Except as otherwise expressly provided in this Indenture the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "Act" of the Noteholders, Combination Securityholders or the Holders of Preference Shares signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Noteholder, Combination Securityholders or Holder of a Preference Share shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the person executing it to act. The fact and date of the execution by any person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of Securities and the principal amount and registered numbers of Securities and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted, or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Security or Preference Shares.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at its Corporate Trust Office, telecopy no. (713) 216-2101, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Portfolio Manager to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Maples Finance Limited, P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-1700, Attention: Directors, or to the Co-Issuer addressed to it at 1209 Orange Street, Wilmington, Delaware, 19801, Attention: Donald J. Puglisi, or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Portfolio Manager at its address below;

(iii) the Portfolio Manager shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Portfolio Manager addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) Banc of America Securities LLC as the Placement Agent shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Placement Agent addressed to them at 9 West 57th Street, New York, New York 10019, Attention: Structured Securities

Group, respectively or at any other address previously furnished in writing to the Co-Issuers, the Portfolio Manager, and the Trustee by an Officer of the Placement Agent;

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Maples Finance Limited, P.O. Box 1093, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: The Directors; or

(viii) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Notwithstanding any provision to the contrary contained herein, any document, report, statement or other information required to be delivered or made available to the Repository may be delivered or made available by providing the operator of the Repository with access to the Trustee's website containing such information.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other person unless otherwise expressly specified in this Indenture.

Notwithstanding any provision to the contrary, any report, statement or other information required to be provided by the Trustee may be provided by providing access to the Trustee’s website containing such information. The Trustee shall provide access to the Trustee’s website referenced in the immediately preceding sentence to the party indicated on the Issuer Order delivered on or before the Closing Date.

Section 14.4. ***Notices to Holders, the Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders, the Combination Securityholders or the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders, the Combination Securityholders or the Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder and Combination Securityholder affected by the event or the Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register or at the address of the

Preference Shares Paying Agent supplied by the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder, Combination Securityholder or the Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Holders of Notes any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expenses of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder, Combination Securityholder or the Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders, Combination Securityholders or the Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders, Combination Securityholders or the Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage, or similar activity or because of any other cause, then the notification to Noteholders, Combination Securityholders or the Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

Where this Indenture provides for notice in any manner, the notice may be waived in writing by any person entitled to receive the notice, either before or after the event, and the waiver shall be the equivalent of the notice. Waivers of notice by Noteholders, Combination Securityholders or the Preference Shares Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

So long as any Securities are listed on the Cayman Islands Stock Exchange and the rules of the exchange so require, all notices to Holders of the Notes or the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) shall also be given to the Cayman Islands Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Placement Agent all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Portfolio Manager, trustees, paying agents, accountants, or other persons pursuant to this Indenture and other operative documentation relating to the Securities requested by the Placement Agent (collectively, the "Transaction Reports") and the Issuer consents to the Placement Agent providing Transaction Reports received by it to current and prospective investors in the Securities (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Placement Agent or any of their Affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

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

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any person, other than the parties hereto and their successors under this Indenture, the Portfolio Manager, the Noteholders, the Combination Securityholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy, or claim under this Indenture.

Section 14.9. ***Legal Holidays.***

If any Payment Date, Redemption Date, or Stated Maturity is not a Business Day, then notwithstanding any other provision of the Notes or this Indenture, payment need not be made on that date, but shall be made on the next Business Day with the same effect as if made on the nominal date of the Payment Date, Redemption Date, or Stated Maturity date, as the case may be, and except as provided in the definition of "Interest Period," no interest shall accrue on the payment for the period beginning on the nominal date.

Section 14.10. ***Governing Law.***

(a) THIS INDENTURE, EACH NOTE, AND EACH COMPOSITE SECURITY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.11. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities, the Preference Shares or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of the Co-Issuers' agent in Section 7.2 and to the Trustee at the Corporate Trust Office. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.12. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.13. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Portfolio Manager on the Issuer's behalf.

Section 14.14. ***Consent of Posting of Documents on Repository.***

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository; and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.15. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Notes, the Combination Securities or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, the Combination Securities, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, the Combination Securities, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.16. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Securities issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF MANAGEMENT AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Management Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Management Agreement, including:

(i) the right to give all notices, consents, and releases under it,

(ii) the right to give all notices of termination pursuant to the Management Agreement and to take any legal action upon the breach of an obligation of the Portfolio Manager under it, including the commencement, conduct, and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases, and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Management Agreement, nor shall any of the obligations contained in the Management Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the Class 2 Component and the release of the Collateral and the Class 2 Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders and the Combination Securityholders shall cease and terminate and all the interest of the Trustee in the Management Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Management Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Portfolio Manager in the Management Agreement to the following:

(i) The Portfolio Manager consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Portfolio Manager pursuant to the Management Agreement.

(ii) The Portfolio Manager acknowledges that the Issuer is collaterally assigning all of its interest in the Management Agreement to the Trustee for the benefit of the Secured Parties and the Portfolio Manager agrees that all of the representations, covenants and agreements made by the Portfolio Manager in the Management Agreement are also for the benefit of the Secured Parties.

(iii) The Portfolio Manager shall deliver to the Trustee duplicate original copies of all notices, statements, communications, and instruments delivered or required to be delivered to the Issuer pursuant to the Management Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) Neither the Issuer nor the Portfolio Manager shall select or consent to a successor manager or enter into any agreement amending, modifying, or terminating the Management Agreement (other than an amendment or modification of the type that may be made to this Indenture without Holder consent) (a) without satisfying the Rating Condition with respect to each Rating Agency with respect thereto and (b) so long as a Majority of the Controlling Class or a Majority of the Preference Shares have objected in writing to such amendment or modification within 30 days of notice thereof.

(v) Except as otherwise provided in this Indenture and the Management Agreement, subject to the resignation rights of the Portfolio Manager pursuant to Section 12 of the Management Agreement, the Portfolio Manager shall continue to serve as Portfolio Manager under the Management Agreement notwithstanding that the Portfolio Manager shall not have received amounts due it under the Management Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Portfolio Manager agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Portfolio Manager under the Management Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Portfolio Manager may commence any legal action that is not a bankruptcy, insolvency, liquidation, or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation, or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Portfolio Manager or any Affiliate of the Portfolio Manager.

(vi) The Portfolio Manager irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Portfolio Manager irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Portfolio Manager irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Portfolio Manager irrevocably consents to the service of all process in any action or Proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Portfolio Manager agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Portfolio Manager, the Issuer shall use its best efforts to appoint a successor Portfolio Manager, and the Issuer, the Trustee, and the resigning or removed Portfolio Manager shall take any action consistent with the Management Agreement and this Indenture applicable to the Portfolio Manager, necessary to effectuate any such succession.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time after the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture and the Collateral Assignment of Hedge Agreements. The Portfolio Manager, on behalf of the Issuer, shall obtain the approval of each new Hedge Agreement from each Hedge Counterparty to a then-existing Hedge

Agreement. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "Aa3" (which rating of "Aa3" is not on credit watch for possible downgrade) or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A1" (which rating of "A1" is not on credit watch for possible downgrade) or higher and a debt rating by Moody's for short-term debt of "P-1" (which rating of "P-1" is not on credit watch for possible downgrade) if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or a long-term debt rating of not less than "A+" (the "Required Rating").

(c) If at any time a Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating and that rating is below "Aa3" or is "Aa3" and has been placed on credit watch for possible downgrade by Moody's; or

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is below "A1" or that rating is "A1" and has been placed on credit watch for possible downgrade by Moody's, or

(ii) the short-term Moody's rating is below "P-1" or that rating is "P-1" and has been placed on credit watch for possible downgrade by Moody's

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's to be satisfied;

(ii) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the above criteria;

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty whose short-term and long-term debt ratings equal or exceed the above criteria; or

(iv) take other actions to satisfy the Rating Condition with respect to Moody's;

(d) If at any time the Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating that is "A2" or

below or has been suspended or withdrawn;

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is "A3" or below or is suspended or withdrawn, or

(ii) the short-term Moody's rating is "P-2" or below, or

(C) a short-term debt rating by S&P below "A-1" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "A+" or that has been suspended or withdrawn;

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral as required by the Hedge Agreement to secure the Hedge Counterparty's obligations under the Hedge Agreement in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's and S&P to be satisfied; or

(ii) (x) obtain a guarantor that has a Required Rating and that will satisfy the Rating Condition with respect to S&P with respect to its appointment;

(y) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P; or

(z) take such other actions to satisfy the Ratings Condition;

provided that, if at any time the Hedge Counterparty has a short-term debt rating by S&P below "A-3" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "BBB-" or such Hedge Counterparty's rating has been suspended or withdrawn, then the Hedge Counterparty shall be required, at its sole expense, to within 7 days replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P.

Whenever a Hedge Agreement is being entered into, the Hedge Counterparty shall comply with the then current rating criteria.

(e) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(f) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(g) Except as provided in paragraph (h) of this Section 15.2, the Issuer, at the direction of the Portfolio Manager, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), at the expense of the Issuer and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Portfolio Manager's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Portfolio Manager determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination; or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(h) Notwithstanding Section 15.2(g), the applicable requirements of Section 15.2(g) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(i) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified, or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification, or termination, as the case may be.

(j) Each Hedge Agreement may be terminated pursuant to its terms upon an Optional Redemption of the Notes or an acceleration of maturity of the Notes after an Event of Default. The Hedge Agreement will not be permitted to be terminated as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded and liquidation of the Collateral has begun pursuant to this Indenture.

(k) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

Section 15.3. ***Synthetic Securities.***

The Issuer shall not enter into a Synthetic Security Agreement with a Synthetic Security Counterparty unless the terms of such Synthetic Security Agreement provide that, if at any time the Synthetic Security Counterparty does not meet the Synthetic Security Counterparty Ratings Requirement, such Synthetic Security Counterparty shall (at the sole cost and expense of the Synthetic Security Counterparty) take one of the following actions within 30 days following the date on which the Synthetic Security Counterparty fails to meet such Synthetic Security Counterparty Ratings Requirement:

(a) post collateral with the Trustee to secure the Synthetic Security Counterparty's obligations under the Synthetic Security Agreement, in an amount and of the type sufficient to cause the Rating Condition with respect to S&P to be satisfied; *provided* that, if the Synthetic Security Counterparty's senior unsecured credit rating by S&P for long-term debt of such Synthetic Security

Counterparty are rated below "BBB+" and the senior unsecured, credit rating by S&P for short-term senior debt of such Synthetic Security Counterparty are rated below "A 2" (if such Synthetic Counterparty has a short term rating from Standard & Poor's), the Synthetic Security Counterparty shall obtain or provide a legal opinion addressed to the Issuer and the Trustee acceptable to S&P to the effect that the collateral will be available to the Trustee and the Noteholders in the event of the insolvency of such Synthetic Security Counterparty;

(b) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the Synthetic Security Counterparty Ratings Requirement;

(c) cause an entity who satisfies the Security Counterparty Ratings Requirement to issue in favor of the Issuer a credit support of such Synthetic Security Counterparty's obligations under the related Synthetic Security acceptable in form and substance to the Issuer and that satisfies the Rating Condition;

(d) replace itself under the related or substantially equivalent Synthetic Security Agreement with a substitute Synthetic Security Counterparty whose short-term and long-term debt ratings equal or exceed the Synthetic Security Counterparty Ratings Requirement; *provided* that, upon successful consummation of any such substitution and assignment, the related Synthetic Security Counterparty's obligations to post collateral contemplated by clause (a) above shall terminate and Issuer shall release its security interest in, and return to the related Synthetic Security Counterparty, any then posted collateral; or

(e) take other actions to satisfy the Rating Condition with respect to S&P.

If the Synthetic Security Counterparty has taken action pursuant to clause (b) above, the Issuer (or the Portfolio Manager on its behalf) shall, in the event that the Synthetic Security Counterparty fails to meet its payment obligations under the Synthetic Security Agreement, demand payment from the guarantor on the day such payment from the Synthetic Security Counterparty is due for the purposes of requiring such guarantor to make payment on such same day.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GLENEAGLES CLO, LTD.,
AS ISSUER

By:_____
Name: Wendy Ebanks
Title: Director

GLENEAGLES CLO CORP.,
AS CO-ISSUER

By:_____
Name:
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE

By:_____
Name:
Title:

61938

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GLENEAGLES CLO, LTD.,
AS ISSUER

By:_____
Name:
Title:

GLENEAGLES CLO CORP.,
AS CO-ISSUER

By:_____
Name: Donald J. Puglisi
Title: President

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE

By:_____
Name:
Title:

61938

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GLENEAGLES CLO, LTD.,
AS ISSUER

By:_____
Name:
Title:

GLENEAGLES CLO CORP.,
AS CO-ISSUER

By:_____
Name:
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE

By:_____
Name: Richard Johnson
Title: Vice President

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Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor divided by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B

>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	15%
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%

<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

The S&P Priority Category Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate asset class and liability rating as categorized by S&P:

Senior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
AA	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
A	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BBB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* This table shall not apply to project finance, future flows, synthetics, CDO repacks of ABS or CDOs, guaranteed ABS, distressed debt CDOs, synthetic CDOs, or emerging market CDOs. Recovery rates for such Structured Finance Obligations will be assigned by S&P on a case-by-case basis.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof (or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, the rating that is the number of rating subcategories specified by Moody's below such S&P rating); and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clauses (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable

judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Investment Amount may consist of Investment Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Portfolio Manager, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "Borrower"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "Guarantor") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided that, with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided that, with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that Collateral Obligations constituting no more than 5% of the Maximum Investment Amount (which concentration may be increased to 10% upon satisfaction of the Rating Condition with respect to S&P) may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (A) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Portfolio Manager may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; or

(C) (1) if such Collateral Obligation (other than a Current-Pay Obligation) is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Portfolio Manager determines in good faith based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is

foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; provided that the Portfolio Manager must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Investment Amount may be given an S&P Rating based on this subclause (C) (after giving effect to the addition of the relevant Collateral Obligation, if applicable) or (2) if such Collateral Obligation is a Current-Pay Obligation and is not rated by Moody's or S&P and no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the S&P Rating will be "CCC-";

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Portfolio Manager. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

Schedule 8

Certain Tax Provisions

Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

I. Specific Restrictions.

A. Communications and Negotiations with Issuers.

The Issuer will not have any communications or negotiations with the issuer of a Collateral Obligation or the issuer of a Reference Obligation (in any case, directly or indirectly through an intermediary such as the seller of such Collateral Obligation or the Synthetic Security) in connection with the issuance or funding of such Collateral Obligation or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Portfolio Manager may (i) consent to or withhold consent to any proposed amendments, supplements or other modifications of the term of any Collateral Obligations after such Collateral Obligations are acquired by the Issuer, and (ii) provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

B. Fees.

The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Collateral Obligation or entering into a Synthetic Security except for (i) commitment fees or facility maintenance fees that are received by the Issuer in connection with Revolving Loans or Delayed Drawdown Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Collateral Obligations; (iv) fees from permitted securities lending; and (v) upfront payments in lieu of periodic payments under a Synthetic Security. Except for services provided in connection with permitted fees, the Issuer will not provide services to any Person.

C. Collateralized Obligations Purchased from the Portfolio Manager and Affiliates.

If the Portfolio Manager or an affiliate of the Portfolio Manager acted as an underwriter, placement or other agent, arranger, negotiator or structuror in connection with the issuance or origination of a Collateral Obligation or was a member of the original lending syndicate with respect to the Collateral Obligation, the Issuer will not acquire any interest in such Collateral Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Portfolio Manager, an affiliate of the Portfolio Manager, or a fund managed by the Portfolio Manager, unless (i) the Collateral Obligation has been outstanding for at least 30 days, (ii) the holder of the Collateral Obligation did not identify the obligation or security as intended for sale to the Issuer within 30 days of its issuance, (iii) the employees or agents or the Portfolio Manager responsible for selecting Collateral Obligations for the Issuer were not directly involved in the origination of the Collateral Obligation on behalf of the Portfolio Manager, an affiliate of the Portfolio Manager, or a fund managed by the Portfolio Manager (e.g. responsible for approving or reviewing the lending decision, participation in a credit committee reviewing any loan proposed to be made), (iv) the price paid for such obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (v) after the acquisition the Issuer will own less than 50% of the aggregate principal amount of the borrowing that includes such Collateral Obligation.

D. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is treated for U.S. federal income tax purposes as:

1. an equity interest in a "partnership"(within the meaning of Section 7701(a)(2) of the Code) engaged or deemed to be engaged in a trade or business within the United States, or

2. a "United States real property interest" as defined in Section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may acquire stock of a subsidiary and cause such subsidiary to acquire assets set forth in clause (i) or (ii) above (an "ETB/897 Asset") in connection with the workout of defaulted Collateral Obligations, so long as the acquisition of ETB/897 Assets by such subsidiary will not cause the stock of such subsidiary to be deemed to be an ETB/897 Asset.

E. Revolving Loans and Delayed Drawdown Loans.

1. The Issuer will not purchase any Collateral Obligation that constitutes a Revolving Loan or Delayed Drawdown Loan unless the legal document closing with respect thereto has occurred and either (x) at least one advance of more than a de minimis amount has already been made under the facility or loan of which the Revolving Loan or Delayed Drawdown Loan, respectively, is a part by a Person that is not an Affiliate of the Issuer or the Portfolio Manager or (y) such Revolving Loan or Delayed Drawdown Loan is not a stand-alone Revolving Loan or a stand-alone Delayed Drawdown Loan and the Issuer is acquiring such Revolving Loan or Delayed Drawdown Loan in connection with the related Loan with the interest to hold both parts and cannot separate them without the consent of the borrower.

2. All of the terms of any advance required to be made by the Issuer under any Revolving Loan or Delayed Drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Portfolio Manager will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such Revolving Loan or Delayed Drawdown Loan.

3. The Issuer cannot acquire or hold more than a 50% interest in a Revolving Loan or a Delayed Drawdown Loan.

F. Application to Synthetic Securities.

The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Schedule 8 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security Collateral Accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, in each case in accordance with the Indenture, shall not constitute the making of advances).

No Synthetic Security acquired by the Issuer shall (i) require that the purchaser of credit protection thereunder own the applicable Reference Obligation or (ii) require by its terms the delivery of reports or other information relating to the Reference Obligation if the effect of such requirement is

that the purchaser of credit protection thereunder would be required to own the applicable Reference Obligation.

With respect to each Synthetic Security: (a) the criteria used to determine whether to enter into any particular synthetic security is similar to the criteria used by the Portfolio Manager in making investment decisions in debt securities; (b) the synthetic security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities and/or any rise in their value during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit; (c) the Issuer enters into the synthetic security with a counterparty that is a broker-dealer or that holds itself out as in the business of entering into such contracts; (d) none of the Issuer and any other person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into synthetic securities; and (e) except with respect to (x) credit-linked notes or similar synthetic securities and (y) any other synthetic securities where standard form ISDA documentation is not applicable, the synthetic security is written on standard form ISDA documentation.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

G. Securities Lending Agreements.

The Issuer will not purchase any Collateral Obligation primarily for the purpose of entering into a securities lending agreement with respect thereto.

II. Restrictions with Respect to Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, a loan subparticipation or a collateralized loan obligation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller must be treated as a forward sale agreement (a "Forward Purchase Commitment") unless such an understanding or commitment is not legally binding and neither the Issuer nor the Portfolio Manager is economically compelled to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Portfolio Manager will make an independent investment decision whether to purchase such Loan on behalf of the Issuer after completion of the closing and full funding of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof, (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Commitment.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment earlier than 48 hours (24 hours in connection with a Non-Binding Agreement) after the time of the closing and full funding of the Loan.

E. The Issuer cannot have a contractual relationship with the borrower with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan prior to the actual funding of the Loan by the institutions lending to the borrower.

G. The Issuer cannot purchase or commit to purchase a Loan if it would cause the Issuer to own more than 50% of the aggregate principal amount of the borrowing that includes such Loan.

H. The Issuer will not be listed as a "lender" or otherwise a party to a Loan until after the Closing Date.

III. General Restrictions. The Issuer shall not:

A. hold itself out, through advertising or otherwise, as originating loans, lending funds, or making a market in or a dealer in loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, surety bond issuer, or a company engaged in loan origination;

C. take any action causing it to be treated as a bank, insurance company, or company engaged in loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. disclose the identity of any holder of a Security to any person from whom it purchases Collateral Obligations or attempt to obtain more favorable terms from any seller as a result of the identity of any holder of a Security;

G. allow any non-U.S bank or lending institution who is a holder of a Security to control or direct the Portfolio Manager's or Issuer's decision to invest in a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the Indenture or acquire a Collateral Obligation conditioned upon a particular person or entity holding Securities;

H. acquire any asset the holding or acquisition of which the Portfolio Manager believes would cause the Issuer to be subject to income tax on a net income basis;

I. hold any security as nominee for another person; or

J. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

Section IV. Amendments and Modifications.

In furtherance and not in limitation of this Schedule, the Portfolio Manager shall comply with all of the provisions set forth in this Schedule, unless, with respect to a particular transaction, the Portfolio Manager acting on behalf of the Issuer and the Trustee shall have received written advice of McKee Nelson LLP or an opinion of counsel of nationally recognized standing in the United States experienced in such matters, that, under the relevant facts and circumstances with respect to such transaction, the Portfolio Manager's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Schedule may be amended, eliminated or supplemented by the Portfolio Manager if the Issuer, the Portfolio Manager and the Trustee shall have received an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters that the Portfolio Manager's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

Exhibit A-1

Form of Notes

Exhibit A-2

Form of Combination Securities

Exhibit B-1

Form of Note and Combination Security Transferee Certificate

Exhibit B-2

Form of Note and Combination Security Transferor Certificate for Regulation S to Rule 144A Transfer

Exhibit B-3

Form of Note and Combination Security Transferor Certificate for Rule 144A to Regulation S Transfer

Exhibit C

Form of McKee Nelson LLP Opinion

Exhibit D

Form of Maples and Calder Opinion

Exhibit E

Form of Gardere Wynne Sewell LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G

Form of Securities Account Control Agreement

Exhibit H

Forms of Section 3(c)(7) Notices

Exhibit H-1

Form of Section 3(c)(7) Reminder Notice

Exhibit H-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit I

Form of Beneficial Owner Certificate

Exhibit J

Form of Extension Notice

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 13

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

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	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
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006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
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007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

GRAYSON CLO, LTD.

Issuer,

GRAYSON CLO CORP.

Co-Issuer,

and

INVESTORS BANK & TRUST COMPANY

Trustee

INDENTURE

Dated as of November 30, 2006

COLLATERALIZED DEBT OBLIGATIONS

U.S.$1,015,000,000 Class A-1a Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$111,500,000 Class A-1b Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$68,000,000 Class A-2 Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$72,000,000 Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021
U.S.$75,000,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021
U.S.$31,000,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021

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Schedule 3 – S&P Industry Classifications
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Schedule 5 – Moody's Structured Finance Obligation Recovery Rates
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B-4 – Form of Class D Note Transferee Certificate
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Exhibit F – Form of Orrick, Herrington & Sutcliffe LLP Opinion
Exhibit G – Form of Securities Account Control Agreement
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H-1 – Form of Section 3(c)(7) Reminder Notice
H-2 – Form of Important Section 3(c)(7) Reminder Notice
Exhibit I – Form of Beneficial Owner Certificate
Exhibit J – Form of Extension Notice
Exhibit K – Form of Class A-1 Note Notice

INDENTURE, dated as of November 30, 2006, among GRAYSON CLO LTD. (the "***Issuer***"), GRAYSON CLO CORP. (the "***Co-Issuer***") and INVESTORS BANK & TRUST COMPANY, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Class D Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and, together with the Issuer Accounts, the Synthetic Security Collateral Account and the Hedge Counterparty Collateral Account, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's

obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the "***Collateral***").

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Loan that constitutes part of the price paid by the Issuer to repurchase and terminate participations sold to Pre-Closing Parties to finance the Issuer's pre-closing acquisition of such Loan.

"***Act***": The meaning specified in Section 14.2.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.04% of the Maximum Amount on the related Determination Date plus $150,000, *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers or Investors Corp. (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent, the Collateral Administrator and the Original Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and Investors Corp. and of accountants, agents, and counsel for each of the Co-Issuers and Investors Corp.;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates, and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other person (except the Servicer) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Ogier Fiduciary Services (Cayman) Limited.

"***Affected Class***": Any Class of Notes that, as a result of the occurrence of a Tax Event, has received, or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Distribution Date related to the Due Period with respect to which such Tax Event occurs.

"***Affiliate***" or "***Affiliated***": With respect to a person,

(i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(ii) any other person who is a director, officer, or employee (A) of the person, (B) of any subsidiary or parent company of the person or (C) of any person described in clause (i) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(B) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date. When used with respect to the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A-1a Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class A-1b Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class A-2 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(d) the Aggregate Outstanding Amount of the Class B Notes at any time shall include all Deferred Interest attributed thereto;

(e) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto; and

(f) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Transaction Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, plus in the case of any CDS/TRS Purchaser, the applicable CDS/TRS Termination Payment Amount and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions

made in respect of such Preference Shares or Holding Preference Shares, as applicable, since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder or the Non-Consenting Holding Preference Share Holder, as applicable, on the next succeeding Payment Date) would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders or the Non-Consenting Holding Preference Share Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Amendment Buy-Out Purchaser***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Transaction Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser, the Investors Corp. Initial Purchaser or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Initial Purchaser, the Investors Corp. Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Discount Rate***" : For purposes of determining the CDS/TRS Termination Payment Amount with respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, USD-LIBOR-BBA, as defined in the Annex to the 2000 ISDA Definitions as determined by the applicable CDS/TRS Purchaser on the Business Day preceding the date of purchase of the applicable Notes from such CDS/TRS Purchaser in connection with such Amendment Buy-Out.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes, each of the Co-Issuers. With respect to the Class D Notes and the Preference Shares, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class."***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified in the tables below.

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	**Moody's Senior Secured Loans**	**Moody's Non Senior Secured Loans**	**High-Yield Bonds**
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Senior Secured Loans other than Subordinated Lien Loans or DIP Loans	55.0%
Senior Unsecured Loans.....	37.5%
Second Lien Loans.....	37.5%
Subordinated Lien Loans other than a DIP Loan.....	21.5%
Senior Secured High-Yield Bonds	44.0%
Senior Unsecured High-Yield Bonds	30.0%
Subordinated High-Yield Bonds	18.0%
Structured Finance Obligations.....	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in Schedule 6 by reference to the type of asset and its then S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the Grant of the relevant Collateral Obligation).
Synthetic Securities.....	As assigned by S&P on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above.....	As assigned by S&P on a case-by-case basis.

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

"***Authorized Officer***": With respect to the Issuer, the Co-Issuer or Investors Corp., any Officer or agent who is authorized to act for the Issuer, the Co-Issuer or Investors Corp., as applicable, in matters relating to, and binding on, the Issuer, the Co-Issuer or Investors Corp. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": Investors Bank & Trust Company, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": Any (i) "employee benefit plan" within the meaning of Section 3(3) of ERISA, that is subject to Title I of ERISA, (ii) any "plan" described by Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, or an entity whose underlying assets include the assets of any plan described in (i) or (ii) by reason of such plan's investment in such entity.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland

shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Calculation Agent***": The meaning specified in Section 7.16.

"***Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3".

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

"***CCC+/Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***CCC+/Caa1 Excess Market Value Percentage***": The percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

"***CDS/TRS Purchaser***": A Holder of the Notes or, in the case of Notes represented by Global Notes, any beneficial owner thereof that has entered into either a credit default swap or a total return swap with respect to such Notes.

"CDS/TRS Termination Payment Amount": With respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, as the case may be, (i) on any Payment Date prior to the November 2010 Payment Date, an amount equal to the present value of the Fixed Amounts with respect to such CDS/TRS Purchaser and each Fixed Rate Payor Calculation Period until the last Fixed Rate Calculation Period, discounting each Fixed Amount from the Payment Date following the end of each such Fixed Rate Payor Calculation Period to the date of purchase of the applicable Notes at the Applicable Discount Rate, and (ii) on any Payment Date on and after the November 2010 Payment Date, zero; provided that, in the case of clause (i), the CDS/TRS Termination Payment Amount shall be calculated by the Servicer and subject to the approval of such CDS/TRS Purchaser.

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Class D Note***": The meaning set forth in Section 2.2(e).

"***Certificated Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***CIFG***": The meaning set forth in Section 14.3(e).

"***Class***": All of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares.

"***Class A Notes***": The Class A-1 Notes and the Class A-2 Notes.

"***Class A-1 Notes***": The Class A-1a Notes and the Class A-1b Notes.

"***Class A-1a Notes***": The Class A-1a Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-1b Notes*** ": The Class A-1b Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-2 Notes*** ": The Class A-2 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes.

"***Class B Coverage Test***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class B Notes.

"***Class B Deferred Interest***": Deferred Interest with respect to the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class I Preference Shares***": The Class I Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class II Preference Share Percentage***": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

"***Class II Preference Share Portion***": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"***Class II Preference Share Senior Special Payment***": For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Special Payment***": Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

"***Class II Preference Share Special Payment Account*"**: The trust account established pursuant to Section 10.3(j).

"***Class II Preference Share Subordinated Special Payment***": For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Supplemental Special Payment***": For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Shares*":** The Class II Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": November 30, 2006.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Acquisition Agreement***": The agreement dated as of the Closing Date between the Issuer and the Servicer, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Servicer, and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administrator***": Investors Bank & Trust Company, in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) (a) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (b) in the case of a Collateral Obligation

that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "AA-" or a short term debt rating by S&P of at least “A-1+”;

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition);

(26) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act; and

(27) in the case of a Loan, an obligation that is part of, or a Participation in, a syndicated loan facility that provides for a commitment by the lenders, in the aggregate, of no less than $25,000,000.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the

occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans and Eligible Investments	≥ 87.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4)	Revolving Loans and the unfunded portion of Delayed Drawdown Loans	≤ 12.0%
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%
(6)	S&P Unrated DIP Loans	≤ 2.5%
(7)	PIK Securities	≤ 3.0%
(8)	High-Yield Bonds	≤ 7.5%
(9)	Structured Finance Obligations	≤ 10.0%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%

(10)	Structured Finance Obligations that are collateralized loan obligations	≤ 7.5%
(11)	obligors Domiciled other than in the United States and Canada	≤ 15.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14)	obligors Domiciled in all Moody's Group II Countries in the aggregate	≤ 10.0%
(15)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(16)	obligors Domiciled in all Moody's Group III Countries in the aggregate	≤ 5.0%
(17)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(18)	same S&P Industry Classification	≤ 8.0%
	(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%
(19)	single issuer and any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual issuers and any of their Affiliates (excluding Secondary Risk Counterparties) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 2.5%
(20)	Fixed Rate Obligations	≤ 7.5%
(21)	Pay interest less frequently than quarterly but no less frequently than semi-annually	≤ 7.5%
(22)	Pay interest less frequently than semi-annually but no less frequently than annually	≤ 3.0%
(23)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(24)	Participations (provided that no Relevant Obligations may be a Participation in a Participation)	≤ 20.0%

(25)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤ 20.0%
(26)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(27)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(28)	Deep Discount Obligations	≤ 7.5%
(29)	CCC+/Caa1 and below Collateral Obligations	≤ 7.5%
(30)	Long-Dated Collateral Obligations	≤ 2.0%
(31)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(32)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan)	≤ 5.0%
(33)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of equal to or greater than $25,000,000 but less than $75,000,000	≤ 10.0%
(34)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $25,000,000	≤ 0.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Consenting Holder of the Preference Shares***": With respect to any Payment Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date.

"***Controlling Class***": The Class A-1a Notes (voting together as a Class or group), so long as any Class A-1a Notes are Outstanding; then the Class A-1b Notes (voting together as a Class or group), so long as any Class A-1b Notes are Outstanding; then the Class A-2 Notes (voting together

as a Class or group), so long as any Class A-2 Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; and then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding.

"***Controlling Person***": The meaning specified in Section 2.6(c).

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 200 Clarendon Street, Mail Code: EUC 108, Boston, MA, 02116, telecopy no. (617) 351-4358, Attention: CDO Services Group or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A Coverage Tests, the Class B Coverage Tests, the Class C Coverage Tests and the Class D Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; provided that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and provided, further, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 101), or (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super

Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A-1a Notes or the Class A-1b Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1a Notes or the Class A-1b Notes, or to only one subcategory below their Initial Rating in the case of the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; provided that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of

acquisition, as determined by the Servicer, and (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation, or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an Officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due,

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance,

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(v) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Servicer, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor, or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class B Notes, the Class C Notes and the Class D Notes.

"***Deficiency Amount***": The meaning specified in Section 16.3(a).

"***Deficiency Notice Date***": The meaning specified in Section 16.3(a).

"***Definitive Notes***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for purposes of the Concentration Limits only unfunded portions will count as Delayed Drawdown Loans.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's

securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership and/or pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer),

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States, and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code,

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code,

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets, or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score. For the purposes of calculating the Diversity Test, any Structured Finance Obligation that is a collateralized loan obligation will be disregarded.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile"*** or ***"Domiciled"***: With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax

Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": Means: (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least “AA” by S&P; provided that such country has not imposed currency exchange controls.

"***Eligible Equity Security***": An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

"***Eligible Investments***": Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or

debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; provided that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's and “AA-” by S&P, and if so rated, such rating is not on watch for downgrade.

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; provided that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar vehicle having at the time of acquisition and throughout the term thereof a credit rating of "MR1+" by Moody's and "AAA" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes; provided, further, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, any mortgage-backed security or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer or depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Established Securities Market***": Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excel Default Model Input File***": An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Priority Category, and

(k) such other information as the Trustee may determine to include in such file.

"***Excess CCC+/Caa1 Collateral Obligations***": The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": (i) U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts, (ii) any amounts credited to the Class II Preference Share Special Payment Account from time to time and (iii) any Margin Stock.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Replacement Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in November 2017); provided that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in November, 2029.

"***Extended Scheduled Holding Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Holding Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Holding Preference Shares Redemption Date, the Payment Date in November 2025) ; provided that the "Extended Scheduled Holding Preference Shares Redemption Date" will in no event be a date later than the Payment Date in November 2037 .

"***Extended Scheduled Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Preference Shares Redemption Date, the Payment Date in November 2025); provided that the "Extended Scheduled Preference Shares Redemption Date" will in no event be a date later than the Payment Date in November 2037.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in November 2025); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in November, 2037.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, May 1, 2021); provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in May 2033.

"***Extension***": An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A-1a Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-1b Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class A-2 Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class C Notes, 0.50% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (6) in the case of the Class D Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in August 2011).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as the case may be, since the Closing Date would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Extension Qualifying Purchasers***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchaser, the Investors Corp. Initial Purchaser or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Initial Purchaser, the Investors Corp. Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share or Holding Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share or Holding Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***Fixed Amount***": With respect to any CDS/TRS Purchaser and each applicable Fixed Rate Payor Calculation Period, the product of (i) the applicable Fixed Rate Payor Calculation Amount with respect to such CDS/TRS Purchaser, (ii) the applicable Fixed Rate with respect to such CDS/TRS Purchaser and (iii) a fraction the numerator of which is the actual number of days in such Fixed Rate Payor Calculation Period and the denominator of which is 360.

"***Fixed Rate***": With respect to any CDS/TRS Purchaser, the spread over LIBOR of the Class of Notes held by such CDS/TRS Purchaser with respect to which such CDS/TRS Purchaser has entered into a credit default swap or a total return swap, as the case may be.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate.

"***Fixed Rate Payer Calculation Amount***": With respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, the Aggregate Outstanding Amount of the Notes held by such CDS/TRS Purchaser as of the date of purchase of such Notes in an Amendment Buy-Out (in each case, after giving effect to any principal amounts paid to such CDS/TRS Purchaser on such date).

"***Fixed Rate Payer Calculation Period***": With respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, initially, the period from and including the date of purchase of such Notes in an Amendment Buy-Out to but excluding the immediately succeeding Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided that the last Fixed Rate Payer Calculation Period shall end on the November 2010 Payment Date.

"***Floating Rate Notes***": The Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A-1 Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

"***FSA***": The meaning specified in Section 14.3(d).

"***Funded Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan at any time, the aggregate principal amount of advances or other extensions of credit made thereunder by the Issuer that are outstanding and have not been repaid at such time.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": Rabobank International, Utrecht ("Rabobank") or any other counterparty, to the extent that when the Issuer enters into any Hedge Agreement with Rabobank or the other counterparty, Rabobank or the other counterparty satisfies the requirements of Section 15.2(b) (subject, in the case of any other counterparty, to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***HFP***": Highland Financial Partners, L.P., an Affiliate of the Servicer.

"***High-Yield Bond***": Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; of any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share; and of any Holding Preference Share, the person whose name appears in the Holding Preference Share register related thereto as the registered holder of such Holding Preference Share.

"***Holding Preference Share Documents***": Investors Corp.'s memorandum and articles of association, the Holding Preference Shares Paying Agency Agreement and the resolutions of Investors Corp.'s board of directors authorizing the issuance of the Holding Preference Shares passed on or before the Closing Date.

"***Holding Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for each distribution made to the Holders of the Holding Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Holding Preference Share Internal Rate of Return, the current Payment Date, assuming all Holding Preference Shares are purchased on the Closing Date at their Face Amount.

"***Holding Preference Shares***": Preference shares issued by Investors Corp. pursuant to the Holding Preference Share Documents.

"***Holding Preference Shares Paying Agency Agreement***": The Holding Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between Investors Corp. and the Holding Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Holding Preference Shares Paying Agent***": Investors Bank & Trust Company, in its capacity as holding preference shares paying agent under the Holding Preference Shares Paying Agency Agreement, unless a successor Person shall have become the holding preference shares paying agent pursuant to the applicable provisions of the Holding Preference Shares Paying Agency Agreement, and thereafter "Holding Preference Shares Paying Agent" shall mean such successor Person.

"***Holding Share Registrar***": Ogier Fiduciary Services (Cayman) Limited or any successor thereto.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit H-2.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(b) to the Holders of Securities.

"***Initial Purchaser***": Credit Suisse Securities (USA) LLC.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, minus

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A Interest Coverage Test	130.0%
Class B Interest Coverage Test	120.0%
Class C Interest Coverage Test	110.0%
Class D Interest Coverage Test	105.0%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(vii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(ix) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Section 11.1(a)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(i).

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Investors Corp.***": Grayson Investors Corp., an exempted limited liability company incorporated under the laws of the Cayman Islands.

"***Investors Corp. Share Purchase Agreement***": a share purchase agreement dated October 17, 2006 among Investors Corp. and the Investors Corp. Initial Purchaser relating to the purchase of the Purchased Shares, as modified, amended and supplement and in effect from time to time.

"***Investors Corp. Initial Purchaser***": Credit Suisse Securities (USA) LLC.

"Investors Corp. Subscription Agreement": A subscription agreement dated October, 17, 2006 among Investors Corp. and the Issuer relating to the purchase of the Class I Preference Shares by Investors Corp.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The Person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer, the Co-Issuer or Investors Corp. by an Authorized Officer of the Issuer, the Co-Issuer or Investors Corp., as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": The offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "**Reference Banks**") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using

the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered, or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or the Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the preceding paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided that, during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) the product of (x) the Principal Balance of such Collateral Obligation multiplied by (y) 1.25 multiplied by (z) the applicable S&P Priority Category Recovery Rate and (ii) the current market value of such Collateral Obligation as determined by the Servicer in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market

Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

"***Market Value Determination Date***": With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation, *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$1,471,900,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations, *plus*

(B) Cash representing Principal Proceeds on deposit in the Collection Account, *plus*

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6; and,

with respect to any distribution of Eligible Equity Securities only,

(vi) that is a Market Value Determination Date.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

*"**Minimum Diversity Score**"*: As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

*"**Minimum Weighted Average Spread**"*: As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Security shall be equal to: $\frac{A \times 55\%}{1-B}$,

where: "*A*" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"*B*" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"***Moody's Senior Secured Loan***":

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan,

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral, or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan,

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan,

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral, and

(iv) has been assigned a Moody's Obligation Rating equal to or higher than the applicable Moody's Default Probability Rating, and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"***Multiple Class Holder***" Any Holder of Securities or, in the case of Notes represented by Global Notes, beneficial owner thereof that holds or has a beneficial interest in more than one Class of Securities (including for this purpose any interest in Holding Preference Shares as an interest in Preference Shares).

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in November, 2010.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Consenting Holding Preference Share Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder of Holding Preference Shares that either (i) has directed Investors Corp. not to consent to such supplemental indenture or (ii) has not provided Investors Corp. with any direction with respect to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class D Notes, a Holder or beneficial owner of an interest in a Class D Note that is not a QIB/QP.

"***Non-Permitted Benefit Plan Investor***": The meaning specified in the second paragraph of Section 2.6(c).

*"**Non-qualifying Collateral Obligation**"*: The meaning specified in Section 12.1(d).

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes and the ultimate payment of interest on the Class B Notes, the Class C Notes and the Class D Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any

Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.05%
2	Greater than or equal to 2.95% but less than 3.05%
3	Greater than or equal to 2.85% but less than 2.95%
4	Greater than or equal to 2.75% but less than 2.85%
5	Greater than or equal to 2.65% but less than 2.75%
6	Greater than or equal to 2.55% but less than 2.65%
7	Greater than or equal to 2.45% but less than 2.55%
8	Greater than or equal to 2.35% but less than 2.45%
9	Greater than or equal to 2.25% but less than 2.35%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Noteholder***": A Holder of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A-1a Notes until the Class A-1a Notes have been fully redeemed;

(2) to the Class A-1b Notes until the Class A-1b Notes have been fully redeemed;

(3) to the Class A-2 Notes until the Class A-2 Notes have been fully redeemed;

(4) to the Class B Notes until the Class B Notes have been fully redeemed;

(5) to the Class C Notes until the Class C Notes have been fully redeemed; and

(6) to the Class D Notes until the Class D Notes have been fully redeemed.

"***Note Purchase Agreement***": A note purchase agreement dated October 17, 2006 among the Co-Issuers and the Initial Purchaser, relating to the Purchased Notes, as modified, amended and supplemented and in effect from time to time.

"***Notes***": The Senior Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Notice of Refinancing***": The meaning specified in Section 9.7.

"***Objection Cut-Off Date***": The meaning specified in Section 15.1(h)(ii).

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes.

"***Offering Memorandum***": The final offering memorandum, dated November 28, 2006, prepared and delivered in connection with the offer and sale of the Securities.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Original Administrator***": Maples Finance Limited.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; and

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser;

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

(c) the Holding Preference Shares, as of any date of determination, all of the Holding Preference Shares theretofore issued under the Holding Preference Share Documents and listed in the Holding Preference Share register of Investors Corp. as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Transaction Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Transaction Documents, Transaction Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Transaction Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account for which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; provided that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares and Holding Preference Shares, only Preference Shares and Holding Preference Shares that an authorized officer of the Preference Shares Paying Agent or Holding Preference Shares Paying Agent, as applicable) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Transaction Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Transaction Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee, the Preference Shares Paying Agent and the Holding Preference Shares Paying Agent.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect Collateral Obligation that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the lower of (1) 70% and (2) the CCC+/Caa1 Excess Market Value Percentage, multiplied by (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A Overcollateralization Test	110.0%
Class B Overcollateralization Test	105.0%
Class C Overcollateralization Test	103.0%
Class D Overcollateralization Test	102.2%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in May, 2007 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***Person***": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Plan Asset Regulation***": The regulation issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Improvement Exchange***": The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the

total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"***Pre-Closing Party***": One or more Affiliates of the Initial Purchaser that financed the Issuer's pre-closing acquisition of Collateral Obligations through the purchase of participations therein.

"***Preference Share Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Class I Preference Shares and the Class II Preference Shares.

"***Preference Shares Notional Amount***": As of the Closing Date, $127,500,000, thereafter as increased each time additional Preference Shares are issued in accordance with the Preference Share Documents.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": Investors Bank & Trust Company, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"***Purchase Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***Purchased Notes***": The Notes purchased by the Initial Purchaser pursuant to the Note Purchase Agreement.

"***QIB/QP***": Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 90th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $1,471,900,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $1,471,900,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least $1,471,900,000.

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***Rating Confirmation Failure***": (i) a failure by the Issuer or the Servicer (on behalf of the Issuer) to obtain confirmation in writing from S&P that it has not reduced, suspended, or withdrawn its Initial Rating of any Class of Notes and that it has not placed any Class of Notes on credit watch with negative implications, or (ii) receipt of a written notice from Moody's that it has reduced, suspended, or withdrawn its Initial Rating of any Class of Notes or that it has placed any Class of Notes on credit watch with negative implications, in each case, by the Business Day after the 29th day after the Ramp-Up Completion Date.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score							
Minimum Weighted Average Spread	**55**	**60**	**65**	**70**	**75**	**80**	**85**	**90**
2.25%	2150	2180	2210	2240	2270	2300	2330	2360
2.35%	2210	2240	2270	2300	2330	2360	2390	2420
2.45%	2270	2300	2330	2360	2390	2420	2450	2480
2.55%	2330	2360	2390	2420	2450	2480	2510	2540
2.65%	2390	2420	2450	2480	2510	2540	2570	2600
2.75%	2450	2480	2510	2540	2570	2600	2630	2660
2.85%	2510	2540	2570	2600	2630	2660	2690	2720
2.95%	2570	2600	2630	2660	2690	2720	2750	2780
3.05%	2620	2660	2690	2720	2750	2780	2810	2840
	Maximum Weighted Average Moody's Rating Factor							

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2 or the redemption of a Class of Notes in connection with a Refinancing pursuant to Section 9.7.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a) or any redemption by Refinancing pursuant to Section 9.7(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed, plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest), plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note, plus

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; *provided* that no Reference Obligation shall be a Synthetic Security.

"***Refinancing***": The meaning specified in Section 9.7.

"***Refinancing Date***": The meaning specified in Section 9.7.

"***Refinancing Notes***": The meaning specified in Section 9.7.

"***Refinancing Price***": With respect to any Class of Note that is subject to a Refinancing, an amount equal to the Redemption Price thereof.

"***Refinancing Proceeds***": The proceeds from any refinancing permitted under this Indenture.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Note***": The meaning specified in Section 2.2(b).

"***Relevant Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Replacement Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in November, 2013 or, in the case of an Extension, the Extended Replacement Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"Required Redemption Percentage": With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of any Affected Class or at least 66 2/3% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Retention Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes, excluding any Deferred Interest on any Class of Notes.

"***Retention Overcollateralization Test***": A test that is satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 103.2%.

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 3a-7***": Rule 3a-7 under the Investment Company Act.

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***S&P Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"***S&P Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Rating Confirmation***": Confirmation in writing from S&P that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Scheduled Holding Preference Shares Redemption Date***": November 1, 2021.

"***Scheduled Preference Shares Redemption Date***": November 1, 2021.

"***Second Lien Loan***": A Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan and (ii) is secured

by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets.

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the Investment Company Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit H-1.

"***Secured High-Yield Bond***": A High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

"***Secured Loan***": A Loan that is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Preference Shares.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any Person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Notes***": The Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Senior Secured High-Yield Bond***": A Secured High-Yield Bond that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the High-Yield Bond.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan.

"***Senior Servicing Fee***": A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Unsecured High-Yield Bond***": A High-Yield Bond that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Senior Unsecured Loan***": A Loan that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Servicer***": Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

"***Servicing Agreement***": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended, and supplemented and in effect from time to time.

"***Servicing Fee Portion***": 100% <u>minus</u> (a) for any Payment Date from the Closing Date until (and including) the Payment Date on or immediately preceeding the second anniversary of the Closing Date, the Class II Preference Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date.

"***Servicing Fees***": Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"***Share Trustee***": Ogier Fiduciary Services (Cayman) Limited.

"***Share Registrar***": Ogier Fiduciary Services (Cayman) Limited or any successor thereto.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, November 1, 2021 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

"***Structured Finance Obligation***": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities";

(G) net interest margin securitizations;

(H) collateralized debt obligations backed primarily by other collateralized debt obligations;

(I) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "synthetic CDOs"); and

(J) collateralized debt obligations a significant portion of which are backed by bonds;

(ii) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated High-Yield Bond***": A Secured High-Yield Bond secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Servicing Fee***": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments and (ii) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Servicing Fee in clauses (i) and (ii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be; *provided* that with respect to the Class A-1a Notes, "Super Majority" shall mean at least 58% of the Aggregate Outstanding Amount of the Class A-1a Notes for so long as Financial Security Assurance Inc. is entitled to direct the vote of at least 58% of the Aggregate Outstanding Amount of the Class A-1a Notes.

"***Supplemental Servicing Fee***": On each Payment Date, the fee payable to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment Date pursuant to Section 11.1(a)(i)(22) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(a)(ii)(11)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(14) of the Priority of Payments.

"***Synthetic Security***": Any swap transaction, structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event" and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event".

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than 5 days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) floating rate credit card securitizations that are rated "Aaa" by Moody's and "AAA" by S&P, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period;

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation; or

(iii) if the Issuer is at the time treated as a pass-through entity for U.S. federal income tax purposes, that investors in the Preference Shares who are non-U.S. persons not otherwise subject to U.S. net income tax are or have become subject to U.S. net income taxation in respect of income of the Issuer in an amount in excess of 10.0% of the net income of the Issuer in any twelve-month period.

"***Transaction Documents***": Collectively, this Indenture, the Preference Shares Paying Agency Agreement and the Holding Preference Shares Paying Agency Agreement.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transaction Securities***": Collectively, the Securities and the Holding Preference Shares.

"***Transfer Agent***": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"***Transferee Certificate***": A certificate substantially in the form of, with respect to the Senior Notes, Exhibit B-1 or, with respect to the Class D Notes, Exhibit B-4 attached hereto, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unfunded Amount***": With respect to any Revolving Loan or any Delayed Drawdown Loan at any time, the excess, if any, of (a) the Commitment Amount over (b) the Funded Amount thereof.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. Persons have the authority

to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as U.S. Persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and May 1, 2017 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 4.0 years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 43.63%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 52.28%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (x) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero, (y) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto and (z) for any Revolving Loan or Delayed Draw Loan, will be the per annum contract spread for the Funded Amount thereof and the rate of the commitment fee and such other fees payable to the Issuer for any Unfunded Amount thereof), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR,

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and acquisition of Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not used to purchase additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty

simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Retention Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Retention Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional

Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

(i) The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Section 1.3. ***Rules of Interpretation.***

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the

excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding," "following," "before," "after," "next," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES

Section 2.1. ***Forms Generally.***

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

Section 2.2. ***Forms of Notes and Certificate of Authentication.***

(a) The Senior Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A-1.

(b) *Regulation S Global Notes*. The Senior Notes of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (the "***Regulation S Global Notes***").

The global notes shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Notes.* The Senior Notes of each Class initially sold to U.S. persons that are Qualified Institutional Buyers and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Book-Entry Provisions.* This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Senior Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Senior Note.

(e) The Class D Notes shall be issued in the form of one or more certificated Class D Notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit A-2, including legends (each, a "***Certificated Class D Note***"), which shall be registered in the name of the owner thereof.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$1,372,500,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A-1a	A-1b	A-2	B	C	D
Original Principal Amount	U.S.$1,015,000,000	U.S.$111,500,000	U.S.$68,000,000	U.S.$72,000,000	U.S.$75,000,000	U.S.$31,000,000
Interest Rate	LIBOR + 0.245%	LIBOR + 0.36%	LIBOR + 0.41%	LIBOR + 0.70%	LIBOR + 1.55%	LIBOR + 3.60%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aa1/AAA	Aa2/AA	A2/A	Baa2/BBB	Ba2/BB

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 52,500 Class I Preference Shares and 75,000 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable.

Section 2.4. ***Extension of Replacement Period and Stated Maturity.***

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities (or the related Holding Preference Shares, as applicable) as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture, the Preference Share Documents and the Holding Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that the Initial Purchaser shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the ***"Extension Notice"***), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit J, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable notice (an ***"Extension Sale Notice"***) to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the ***"Extension Sale Notice Period"***) of its intention to sell all or a portion of its Securities or, with respect to Investors Corp., in its capacity as a Holder of the Class I Preference Shares, all or a portion of Holding Preference Shares, as the case may be, to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Holding Preference Shares, as

applicable, to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture, the Preference Share Documents and the Holding Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied (as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Initial Purchaser, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Senior Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, (i) such Holder will sell such Class II Preference Shares to Investors Corp. and such

Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Extension Qualifying Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Senior Notes and the Issuer may deliver the Class D Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) (i) No Note or interest therein may be transferred to any purchaser or transferee unless such purchase, holding and disposition of such Note will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, foreign or local law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code).

(ii) No person shall be permitted to acquire any Class D Note if (A) such acquisition would result in persons who have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of the Class D Notes immediately after such sale or transfer (excluding for purposes of such determination any Class D Notes held by any Controlling Person (as defined below) and its affiliates (as defined below)) determined in accordance with Section 3(42) of ERISA or (B) such person, or any account on behalf of which such person is acquiring the Class D Notes, is an

employee benefit plan or other plan subject to Title I of ERISA or Section 4975 of the Code, including entities whose underlying assets are treated as if they are they assets of such plans. Under the Plan Asset Regulation, an "affiliate" of a person includes any person, directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person, and "control" with respect to a person other than an individual, means the power to exercise a controlling influence over the management or policies of such person. In making the 25% determination, Class D Notes held by any person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuer or a person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Issuer or any affiliate of any such person (any such person, a "**Controlling Person**") (such as the Class D Notes held by the Servicer or its affiliates) will be disregarded and not treated as outstanding.

(iii) Any person described in paragraph (i) and (ii) above is referred to herein as a "**Non-Permitted Benefit Plan Investor**." Any transfer of a beneficial interest to a Non-Permitted Benefit Plan Investor shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee or such Registrar by a prospective transferee, the Trustee and such Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii) and (iv) of this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note to Regulation S Global Note*. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Note to Rule 144A Global Note*. If a Holder of a Senior Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the Person transferring the interest in the Regulation S Global Note reasonably

believes that the Person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) *Other Exchanges*. If a Global Note is exchanged for Senior Notes in definitive registered form without interest coupons pursuant to Section 2.11, the Senior Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as the Class D Notes remain Outstanding transfers of such Class D Notes shall only be made in accordance with Section 2.6(c) and this Section 2.6(g) upon receipt by the Indenture Registrar of (i) a certificate in the form of Exhibit B-4 given by the proposed transferee stating that it is a QIB/QP and containing other representations, warranties and agreements of such transferee and (ii) (A) appropriate documentation required under the Code and the applicable Treasury regulations establishing that the beneficial owner of the Class D Notes to be transferred is either not a U.S. person (e.g., an IRS Form W-8BEN or an IRS Form W-8IMY with appropriate attachments) or a U.S. person (e.g., an IRS Form W-9) and (B) if such beneficial owner of Class D Notes to be transferred is treated as a partnership, S-corporation or grantor trust for U.S. federal income tax purposes, a written representation from such beneficial owner that (1) there will not be any interests in such beneficial owner where substantially all of the value of such interest is attributable to the value of the Class D Notes proposed to be transferred to such beneficial owner, together with the value of any Class D Notes, Holding Preference Shares and Preference Shares already held by such beneficial owner and (2) such beneficial owner is not a part of any arrangement a principal purpose of which is to cause the Class D Notes and Preference Shares to be treated as owned by 100 persons or less within the meaning of Treasury Regulation section 1.7704-1(h). In addition, neither the Trustee nor the Issuer shall recognize any transfers of Class D Notes, and any such proposed transfer shall be null and void, if (a) the proposed transfer will cause the Issuer to have more than ninety-nine beneficial owners (as determined for purposes of the provisions of Treasury Regulation section 1.7704-1(h)) of its Class D Notes and Preference Shares unless it receives the consent of all of the Holders of the Preference Shares and an Opinion of Counsel to the effect that Holders of the Notes will not recognize gain or loss for U.S. federal income tax purposes as a result of such transfer, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transfer had not been made or (b) such transfer was made pursuant to a trade on an Established Securities Market. The Trustee shall contact the Preference Shares Paying Agent to determine the number of beneficial owners of the Preference Shares. The Trustee shall provide, upon request by the Preference Shares Paying Agent, the number of beneficial owners of the Class D Notes.

(h) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(j) (i) Each Person who becomes a beneficial owner of a Senior Note evidenced by: (A) an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such Person's purchase or other acquisition of the relevant Definitive Note and (B) an interest in a Global Note, shall be deemed to make the representations, warranties and agreements set forth in the applicable legends of the Notes set forth in Exhibit A-1 hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note.

(ii) Each Person who becomes a beneficial owner of a Class D Note shall make the representations, warranties and agreements set forth in the Transferee Certificate set forth in Exhibit B-4 upon such Person's purchase or other acquisition of such Class D Note.

(k) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(l) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost or Stolen Notes.***

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not

paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note and a Class D Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note and a Class D Note. In the case of a Definitive Note and a Class D Note, its Holder has provided written wiring instructions to the Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the

absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Applicable Issuers under the Notes and under this Indenture are limited recourse obligations of the Applicable Issuers payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will notify the Trustee, the Share Registrar and the Holding Share Registrar of any Affiliate of the Servicer that owns any of the Transaction Securities.

Section 2.10. ***Cancellation.***

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Definitive Notes.***

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Note*** ") in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(j), bear the legends in the applicable portion of Exhibit A-1 and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Senior Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

Section 2.12. ***Notes Beneficially Owned by Non-Permitted Holders.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, (i) any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act and (ii) any transfer of a beneficial interest in any Class D Note to a Person that is not a QIB/QP, shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The

Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

Section 2.13 ***Tax Purposes***

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Notes on Closing Date.***

(a) The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters.* An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Note Purchase Agreement and, in the case of the Issuer, the Servicing Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Notes applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Notes except as have been given; provided that the opinions of Latham & Watkins, LLP and Ogier, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Servicer's U.S. Counsel Opinion*. Opinions of Latham & Watkins LLP, special U.S. counsel to the Co-Issuers, and an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Ogier, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Nixon Peabody LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture*. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Notes applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Servicing Agreement*. Executed copy of the Servicing Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents*. An executed counterpart of the Preference Shares Paying Agency Agreement.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Servicer*. A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(xx)(B);

(xiv) *Rating Letters*. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Notes rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) *Accounts*. Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$63,081,814.97 into the Collection Account for use pursuant to Section 7.19, the deposit of at least U.S.$150,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of at least U.S.$3,000,000 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xvii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Senior Notes to the Official List.

(xviii) *Issuer Order for Authentication of Notes*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate.* An Accountants' Certificate satisfactory to the Issuer (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$1,400,000,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(xix) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xx) *Certificate of the Issuer Regarding Collateral.* A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Collateral as of the Closing Date is at least 90% of the aggregate par amount thereof.

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit H-2.

(xxii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

(b) Any Refinancing Note may be issued from time to time pursuant to Section 9.7 hereof. Any such Refinancing Notes shall be executed by the Applicable Issuer and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee upon and pursuant to Issuer Order delivered to the Trustee, together with delivery to the Trustee by the Issuer of an Opinion of Counsel to the effect that (A) such Refinancing Notes are duly authorized and validly issued by the Applicable Issuer pursuant to the Indenture, constituting the legal, valid and binding obligation of such Applicable Issuer, enforceable against such Issuer in accordance with its terms and (B) all conditions precedent under this Indenture, if any, applicable to the issuance, authentication and delivery of such Notes, have been satisfied.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be Investors Bank & Trust Company. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer, has a long-term debt rating of at least "BBB+" by S&P and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into an agreement with the Custodian substantially in the form of Exhibit G providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

Section 3.3. ***Representations as to Collateral.***

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Loans with respect to which participations therein were sold to Pre-Closing Parties and repurchased by the Issuer on the Closing Date, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations

contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost or stolen Notes,

(iii) rights of Noteholders to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(vi) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement, and

(vii) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on

demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of an Opinion of Counsel of Independent U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3, 13.1, and 14.13 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A-1a Notes or Class A-1b Notes are Outstanding, the Class A Overcollateralization Ratio is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30

days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by any Rating Agency) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to each Rating Agency is satisfied with respect thereon.

Section 5.2. ***Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment.***

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c)).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall at the written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of

negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall, upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 5.8, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

Section 5.5. ***Optional Retention of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of each of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Initial Purchaser.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge

Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Notes.***

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholders of the same Class or

to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

Section 5.9. ***Unconditional Rights of Noteholders.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability or expense (unless the Trustee has received an indemnity against the liabilities and expenses reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give

written notice of any such waiver to the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Notes.***

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

(a) Except during the continuance of an Event of Default known to the Trustee:

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon

written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however,

that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of the Notes.***

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Notes.***

(a) The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

Section 6.6. ***Acquisition of Class D Notes and Preference Shares***

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Class D Notes and the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Class D Notes or Preference Shares (including pursuant to a Maturity Extension, a Refinancing and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class D Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, this Indenture and the Preference Share Documents). Any Class D Notes or Preference Shares held as principal by the Trustee or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

Section 6.7. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer, unless such asset is purchased in an obligation of the Trustee in its corporate capacity.

Section 6.8. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the

Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify the Trustee and its officers, directors, employees and agents for any loss, liability or expense (including reasonable attorney's fees and costs) incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.9. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent “bank” (within the meaning of the Investment Company Act) organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be “affiliated” (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall at the direction of a Majority of the Controlling Class promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by an Act of a Majority of the Controlling Class or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the

Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.11. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.12. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.13. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.14. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

Section 6.15. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.16. ***Fiduciary for Noteholders Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

Section 6.17. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) *Organization*. The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations*. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility*. The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

Section 6.18. ***Additional Reporting Requirements.***

If the Initial Purchaser elects to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Servicer and the Initial Purchaser.

If the Initial Purchaser has entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee at the expense of the Issuer shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(viii).

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Senior Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint Investors Bank & Trust Company, 200 Clarendon Street, Mailcode EUC 108, Boston, MA 02116, Attn: CDO Services Group, as the Co-Issuers' agent

where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served, which office will initially be the office of Investors Bank & Trust Company, an Affiliate of the Trustee, located at 33 Maiden Lane, 4th Floor, New York, NY 10038, and an office or agency outside of the United States where the Notes may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Senior Notes is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Senior Notes and this Indenture may be served and where the Senior Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange, AIB International Financial Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Senior Notes, for the payment of principal, interest and other distributions on the Senior Notes and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Senior Notes or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Senior Notes is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Senior Notes of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to

deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment

of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Noteholder shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a legal opinion from nationally recognized legal counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement, the Investors Corp. Subscription Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and Investors Bank & Trust Company as "secured party" (with or

without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. ***Opinions as to Collateral.***

On or before December 1 in each calendar year, commencing in 2007, the Issuer shall furnish to the Trustee, the Servicer and each Rating Agency an Opinion of Counsel from each relevant jurisdiction stating that, in the counsel's opinion, as of the date of the opinion, all actions necessary to maintain the lien and security interest created by this Indenture with respect to the Collateral have been taken and that no further action (other than as specified in the opinion) needs to be taken for the continued effectiveness and perfection of the lien over the next year. The opinion may be subject to customary assumptions and qualifications.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the Collateral Administration Agreement as initially executed), contract with other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi) and (ix), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including a Refinancing in accordance with Section 9.7 and including, as contemplated hereby, entering

into the Hedge Agreements and Securities Lending Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such “non-petition” and “limited recourse” provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before March 15 in each calendar year, commencing in 2008, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc., Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is

not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by the Collateral Acquisition Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in the Collateral Acquisition Agreement, unless, with respect to a particular transaction, the Issuer and the Trustee shall have received an opinion or advice of tax counsel of nationally recognized standing in the United States experienced in such matters that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Collateral Acquisition Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer and the Trustee shall have received an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis and, at the request of the Issuer, the Trustee is hereby authorized to enter into any amendment of the Collateral Acquisition Agreement under such circumstances; provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of the Collateral Acquisition Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Notes within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event an opinion of tax counsel as described above has been obtained in accordance with the terms hereof, no consent of any Noteholder or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of the Collateral Acquisition Agreement contemplated by such opinion of tax counsel.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Irish Stock Exchange.***

So long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the regulated market of the ISE; *provided* that the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

Section 7.14. ***Annual Rating Review.***

So long as any Notes of any Class remain Outstanding, on or before November 1 in each year commencing in 2007, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. Each Holder of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes.

(b) The Issuer will make an election to be treated as a partnership for U.S. federal income tax purposes, and will take all necessary actions to maintain its status as a partnership (or, if the equity of the Issuer is treated as owned by one person, as a disregarded entity of such person) for U.S. federal income tax purposes.

(c) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an Opinion of Counsel from a tax counsel of nationally recognized standing experienced in such matters prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) In order to ensure the Holders' and Beneficial Owners' acquisition of the Notes pursuant to this Indenture are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners of the Notes (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement (including the ownership and disposition of the Notes). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure

of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(e) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Noteholder requests information about any such transactions in which the Issuer is a purchaser, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(f) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture and the Preference Shares Paying Agency Agreement.

(g) Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(h) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(i) The Issuer shall not participate in listing or including the Class D Notes or Preference Shares on or in any Established Securities Markets, and shall not participate in establishing any Established Securities Market for its Class D Notes or Preference Shares. In addition, the Issuer shall not recognize any transfers made on any Established Securities Markets with respect to its Class D Notes or Preference Shares (including any transfers of any financial instrument (other than the Senior Notes) or contract the value of which is determined in whole or in part by reference to the Issuer).

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchaser or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending

Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$1,471,900,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$1,471,900,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Servicer (on behalf of the Issuer) shall request a S&P Rating Confirmation and shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral

and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, a Microsoft Excel file of the S&P CDO Monitor input file and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in Section 12.2 of this Indenture; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. ***Posting of Reports on Repository.***

If the Initial Purchaser has entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Trustee and the Servicer acknowledges and agrees that each Monthly Report and Valuation Report may be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee, at the expense of the Issuer, agrees to make available in accordance with Section 14.3(a)(viii) each Monthly Report or Valuation Report to the operator of the Repository for posting on the Repository. The Initial Purchaser will notify the Trustee, the Co-Issuers and the Servicer upon entering into a posting dealer agreement.

Section 7.21. ***Secondary Risk Procedures.***

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the

percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.22. ***Section 3(c)(7) Procedures.***

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) *Section 3(c)(7) Notice to Investors*. The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers*. The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Initial Purchaser and any market makers to require that all “confirms” of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7),” (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act, to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities (other than with respect to the consent of the Majority of the Controlling Class specified in clause (15) below), when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in clauses (1) through (23) below, the interests of the Holders of the Securities (except, in the case of clause (12) below, any Holders of Notes subject to the applicable Refinancing) are not materially and adversely affected thereby (the Co-Issuers and the Trustee will be bound by a standard of good faith and fair dealing in making such determination) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication and delivery of the Notes;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) conform any provision in this Indenture to the related provision in the Offering Memorandum that is intended to be a verbatim recitation of such provision;

(7) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(8) with the consent of the Servicer, modify (A) the restrictions on the sales of Collateral Obligations in Section 12.1 or (B) with the consent of the Majority of the Controlling Class (which consent shall not be unreasonably withheld), the Eligibility Criteria in Section 12.2 (and the definitions related thereto); *provided* that, for the avoidance

of doubt, the consent of a Majority of the Controlling Class shall not be required if such amendment also satisfies the requirements of clause (24) below;

(9) make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the Irish Stock Exchange;

(10) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(11) accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(12) to accommodate a Refinancing effected pursuant to and in compliance with Section 9.7, *provided* that no Holders of Notes or Preference Shares are materially adversely affected thereby, other than Holders of Notes subject to such Refinancing;

(13) take any appropriate action to prevent the Issuer, the Holders of the Securities, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(14) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(15) with the consent of the Majority of the Controlling Class, amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted under the Indenture;

(16) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(17) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(18) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(19) facilitate hedging transactions;

(20) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(21) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(22) with the consent of the Servicer, enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer to the effect that the modification would not be materially adverse to the Holders of any Class of Securities; *provided* that, for the avoidance of doubt, this clause (22) shall not permit the Co-Issuers and the Trustee to effect any amendment that expressly requires the consent of the Majority of the Controlling Class without such consent;

(23) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under the Indenture and the Preference Share Documents; or

(24) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); *provided* that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Servicer under this Indenture or increase the duties or obligations of the Servicer.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of Notes or a Majority of the Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Servicer and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in

the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(1) the Servicer if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes; and

(4) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with

respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

(b) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the

Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(c) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(d) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; provided that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee. The

Trustee shall deliver any such amendment or supplement to the Repository in accordance with Section 6.18.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Any supplemental indenture that would necessitate a change to the Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) to be altered to conform with such proposed amendment.

Section 8.5. ***Reference in Notes to Supplemental Indentures.***

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then at the direction and in accordance with the instructions of the Servicer the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of Moody's and S&P to confirm in

writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the applicable Required Redemption Percentage, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

In the event that the Preference Share Paying Agent, the Trustee and the Issuer receive notice directing an optional redemption from any one or more Holders of Preference Shares holding less than a Majority of the Preference Shares, the Preference Shares Paying Agent shall, within five Business Days of receipt of such notice, notify the Holders of the Preference Shares and the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Preference Shares) (i) of the receipt of such notice and (ii) that any Holder of Preference Shares may join in directing an optional redemption by notifying the Issuer, the Trustee and the Preference Shares Paying Agent in writing within five Business Days after such Holder's receipt of the Preference Shares Paying Agent's Notice.

Upon receipt of a notice of redemption pursuant to the first paragraph of this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay

all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3. ***Optional Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Senior Notes to be redeemed are listed on the Irish Stock Exchange, and the Irish Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares), the Trustee and the Servicer only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares (or, in the case of an Optional Redemption of the Notes, the Affected Class) to withdraw the notice of redemption delivered by a percentage of the Preference Shares (or, in the case of an Optional Redemption of the Notes, the Affected Class) requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail), the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to each Holder of Holding Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to each of Holding Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least ten Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreements (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral

Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders whose consent was solicited with respect to such supplemental indenture or, with respect to any Class I Preference Shares held by Investors Corp. if the consent of the Holders of Holding Preference Shares has been solicited, to purchase from Non-Consenting Holding Preference Share Holders all Holding Preference Shares held by such Holders (the ***"Amendment Buy-Out Option"***), in each case, for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders and all such Holding Preference Shares of the Non-Consenting Holding Preference Share Holders, as the case may be, in each case, for the applicable Amendment Buy-Out Purchase Price, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an ***"Amendment Buy-Out"***). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder and any Non-Consenting Holding Preference Share Holder will be required to sell its applicable Transaction Securities to the Amendment Buy-Out Purchaser; provided that if any Non-Consenting Holder holds Class II Preference Shares, (i) such Non-Consenting Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Amendment Buy-Out Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Transaction Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Transaction

Securities set forth herein and in the Preference Share Documents or the Holding Preference Share Documents, as applicable, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency)

Section 9.7. ***Redemption by Refinancing.***

(a) On any Payment Date following the fifth anniversary of the Closing Date, any Class of the Notes may be redeemed in whole, but not in part from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares)) with a copy to the Trustee and the Rating Agencies, at least 30 days prior to the Payment Date for such redemption (such date, the "Refinancing Date"), to redeem such Notes in accordance with this Section 9.7 (a "Notice of Refinancing"), which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be Refinanced. Such redemption shall be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes ("Refinancing Notes"), the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Issuer, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "Refinancing"), and provided that (i) such proposal is approved by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date..

(b) The Issuer shall obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) a Rating Agency Confirmation has been obtained from each Rating Agency for such Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Issuer related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the stated maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth herein;

(viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and

(ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for.

(c) The Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3 hereof) shall be fully protected in relying upon an Opinion of Counsel stating that the Refinancing is permitted by this Indenture and that all conditions precedent thereto have been complied with.

(d) Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date pursuant to this Indenture to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; provided that to the extent that any Refinancing Proceeds exceed the amount necessary to redeem the Notes being refinanced (and any associated Administrative Expenses), such excess Refinancing Proceeds will be treated as Principal Proceeds.

(e) If notice of consent by a Majority of the Preference Shares to a Refinancing has been received by the Trustee from the Servicer pursuant to Section 9.7(a) no later than 15 days prior to the Refinancing Date, notice of a Refinancing shall be given by the Trustee by first class mail, postage prepaid, mailed not less than 10 Business Days prior to the proposed Refinancing Date, to each Holder of Notes of the Class to be refinanced at the address in the Indenture Register (with a copy to the Servicer) and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All Notices of Refinancing shall state:

(i) the proposed Refinancing Date, which shall be the applicable Redemption Date in respect of the Notes being redeemed;

(ii) the Refinancing Price, which shall be the applicable Redemption Price in respect of the Notes being redeemed;

(iii) that on such proposed Refinancing Date such Notes will be refinanced and redeemed in full, and that, provided that the Refinancing Proceeds have been deposited with the Trustee for any such payment in full, interest on such Notes being redeemed shall cease to accrue on such date; and

(iv) the place or places where such Notes are to be surrendered for payment of the Refinancing Price which, if not stated, shall be the office or agency of any paying agent as provided in Section 7.2.

provided that no such Notice of Refinancing shall be sent if either (a) the Servicer has withdrawn its consent to such Refinancing or (b) the consent of a Majority of the Holders of Preference Shares to such Refinancing has not been obtained.

(f) Notice of Refinancing shall be given by the Trustee at the expense of the Issuer. Failure to give a Notice of Refinancing, or any defect therein, to any Holder of any Note selected for Refinancing shall not impair or affect the validity of the Refinancing or give rise to any claim based upon such failure or defect.

Any Notice of Refinancing may be withdrawn by the Servicer, on behalf of the Issuer, on or prior to the fourth Business Day prior to the scheduled Refinancing Date by written notice to the

Trustee, the Paying Agent, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent, the Rating Agencies and the Holders of the Preference Shares. Upon receipt of such notice of withdrawal, the Trustee shall send such notice to the Holders of Notes and, if applicable, the Irish Paying Agent.

(g) If a Notice of Refinancing pursuant to Section 9.7(a) has been given as provided herein and not withdrawn, the Notes to be refinanced shall on the Refinancing Date become due and payable at the Refinancing Price. Each Holder of such Notes shall present and surrender its Note at the place specified in the Notice of Refinancing on or prior to such Refinancing Date; provided that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender.

(h) If any Class of Notes called for Refinancing shall not be so paid upon surrender thereof for Refinancing (or the delivery of the indemnity pursuant to the preceding paragraph) the principal shall, until paid, bear interest from the Refinancing Date at the applicable Interest Rate for each successive Payment Date with respect to which such Note remains Outstanding.

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. ***Collection of Money.***

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

Section 10.2. ***Collection Account.***

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously

with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any

Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account*. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account.* Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be applied in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the

Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$150,000 from the gross proceeds of the Offering. At any time before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in August 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in August 2007 (or, at the discretion of the Servicer, on the Payment Date in May 2007), the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Interest Reserve Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$3,000,000 from the gross proceeds of the Offering. At any time on or before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in August 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, (a) pay from amounts on deposit in the Interest Reserve Account an amount necessary such that the amounts referred to in Section 11.1(a)(i)(1) through (20) will be paid in full on each Payment Date occurring on or before the Payment Date in August 2007 or (b) at the discretion of the Servicer, transfer any funds on deposit in the Interest Reserve Account to the Collection Account as Principal Proceeds. On the Payment Date in August 2007 (or, at the discretion of the Servicer, on the Payment Date in May 2007), the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies therefrom on such date) to the Collection Account as Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be held pursuant to Section 10.4(a).

(j) *Class II Preference Share Special Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated

as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Trustee for the benefit of Holders of the Class II Preference Shares, over which the Trustee shall have exclusive control and the sole right of withdrawal. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments, the Trustee will deposit into the Class II Preference Share Special Payment Account amounts equal to the products of (a) the Class II Preference Share Portion for such Payment Date and (b) on any Payment Date during the first two years after the Closing Date or with respect to which the Servicer has notified the Trustee on or before the related Determination Date that it is waiving its Servicing Fee, the Servicing Fees then due and payable, as described in Section 11.1(a) for payment to the Servicer on such Payment Date. The Servicer has agreed to waive such amounts, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date during the first two years following the Closing Date and an amount equal to such waived amounts will be distributed by the Trustee, subject to the laws of the Cayman Islands, to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event, an amount equal to such waived portion will be distributed by the Trustee, subject to the laws of the Cayman Islands, to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. For purposes of any calculation under the Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(k) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(l) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. ***Application of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as

practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such

Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements substantially in the form of Exhibit G; provided, however, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lender shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the Servicing Agreement. The Trustee shall promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be held in Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty or to the extent that any Synthetic Security has an unfunded amount payable by the Issuer that does not by its terms require collateral, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security and, without duplication, an amount equal to the unfunded amount of a Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending April, 2007, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchaser, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchaser) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the "***Monthly Determination Date***"):

(i) *Collateral*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report, and the gain or loss (measured against its Purchase Price) on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value";

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Retention Overcollateralization Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Retention Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Minimum Average Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Minimum Average Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate";

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Initial Purchaser, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Initial Purchaser) the Repository in accordance with Section 14.3(a)(viii), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) *Notes*:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral,

and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting*. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(d) *Irish Stock Exchange*. So long as any Class of Senior Notes is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Senior Notes following each Payment Date and inform the Irish Stock Exchange if any such Class of Senior Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Senior Notes are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof.

(g) *Payments or Transfers from the Payment Account*. Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is

continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before November 17 of each year commencing in 2007, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent

(iv) fees, expenses and indemnities of the Holding Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and ongoing surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other Person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior

Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) FIRST to the payment of accrued and unpaid interest on the Class A-1a Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class A-1a Notes and SECOND to the payment of accrued and unpaid interest on the Class A-1b Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-1b Notes;

(6) to the payment of accrued and unpaid interest on the Class A-2 Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class A-2 Notes;

(7) if the Class A Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes in the Note Payment Sequence in the amount necessary so that all of the Class A Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(8) to the payment of accrued and unpaid interest on the Class B Notes (excluding Class B Deferred Interest, but including interest accrued for the preceding Interest Period on Class B Deferred Interest);

(9) if the Class B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes and the Class B Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(2) on the current Payment Date);

(10) to the payment of Class B Deferred Interest;

(11) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(12) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (12) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(5) on the current Payment Date);

(13) to the payment of Class C Deferred Interest;

(14) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(15) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class D Notes in the amount necessary so that all of the Class Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full, or if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (15) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(6) on the current Payment Date);

(16) to the payment of Class D Deferred Interest;

(17) to deposit in the Collection Account as Principal Proceeds amounts representing Principal Proceeds previously used to pay amounts referred to in clauses (1) through (6), (8), (10), (11), (13), (14) and (16) above and not previously restored to the Collection Account or, if not restored to the Collection Account, used to purchase Collateral Obligations;

(18) during the Replacement Period, if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds the lesser of (i) 50% of the remaining Interest Proceeds available after the payments pursuant to clause (17) above and (ii) the amount necessary to cause the Retention Overcollateralization Test to be satisfied as of such Determination Date, after application of funds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date;

(19) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(20) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and SECOND, to the payment (*pro rata* according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) *pro rata* to each Noteholder entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(21) to the payment of any Defaulted Hedge Termination Payments;

(22) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of

Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12.0%;

(23) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(24) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (22) and (24) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) FIRST, to the payment of the amounts referred to in clauses (1) through (6) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) SECOND, to the payment of amounts referred to in clause (7) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(3) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3), or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(5) to the payment of the amounts referred to in clause (11) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(6) to the payment of the amounts referred to in clause (12) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (6), or until such amounts are paid in full;

(7) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(8) to the payment of the amounts referred to in clause (14) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(9) to the payment of principal of the Notes in the Note Payment Sequence in an amount necessary to (A) cause the Class D Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (9), or until paid in full or (B) if a Rating Confirmation Failure exists on the Payment Date, obtain a Rating Confirmation, or until paid in full;

(10) to the payment of the amounts referred to in clause (16) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(11)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit

into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(12) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(13) after the Replacement Period, (i) FIRST, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) SECOND, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(14) to the extent not previously paid in full under clause (11) above, after the Replacement Period, to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(15) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing

failure as directed by the Servicer unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different Persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

(f) If the Securities held or beneficially owned by any Multiple Class Holder are held or beneficially owned by a trust established on the Closing Date in connection with the transactions contemplated by the Transaction Documents, any ordinary course administrative fees or expenses of such trust shall be paid by the Issuer under this Indenture.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) *Credit Risk Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i), to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance

at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; or

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "**Non-qualifying Collateral Obligation**") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining

Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure*. After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Workout Assets*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) *Supervening Requirement*. Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after

giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the Weighted Average Life Test is satisfied;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the current Moody's Rating on the Class A-1a Notes is “Aaa” and the current Moody’s Ratings on the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes are no lower than one subcategory below their Initial Rating.

Notwithstanding the foregoing, (i) one or more Collateral Obligations may be purchased pursuant to a Portfolio Improvement Exchange effected in compliance with Section 12.1(b) regardless of whether such purchase would otherwise satisfy the Eligibility Criterion set forth in clause (xii) above and (ii) the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement. .

(c) *Certain Permitted Exchanges*. The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Servicer*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Eligible Investments*. Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Article 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Section 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
Class A-1a Notes	A-1b, A-2, B, C, D, Preference Shares*	None
Class A-1b Notes	A-2, B, C, D, Preference Shares*	Class A-1a
Class A-2 Notes	B, C, D, Preference Shares*	Class A-1
Class B	C, D, Preference Shares*	Class A-1, A-2
Class C	D, Preference Shares*	Class A-1, A-2, B
Class D	Preference Shares*	Class A-1, A-2, B, C
Preference Shares	None**	Class A-1, A-2, B, C, D

* Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

** The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of,

and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the

Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Holders of Securities.***

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (provided that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Holders of Securities signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything

done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

(e) With respect to any time period or deadline to deliver any request, demand, authorization, direction, notice, consent, waiver or other communication provided by this Indenture to be given by Holders of the Preference Shares, the Holders of Holding Preference Shares shall not be prejudiced by any delay in delivery of such request, demand, authorization, direction, notice, consent, waiver or other communication from the Holding Preference Shares Paying Agent to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be. If any such Holder of Holding Preference Shares timely delivers such request, demand, authorization, direction, notice, consent, waiver or other communication to the Holding Preference Shares Paying Agent such request, demand, authorization, direction, notice, consent, waiver or other communication shall be deemed to be timely delivered to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at, 200 Clarendon Street, Mail Code EUC 108, Boston, MA 02116, telecopy no. (617) 351-4358, Attention: CDO Services Group, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman KY1-1108, Cayman Islands, telecopy no. (345) 945-6265, Attention: the Directors—Grayson CLO, Ltd., or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Servicer at its address below;

(iii) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) the Initial Purchaser shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Initial Purchaser addressed to them at 11 Madison Avenue, New York, New York 10010, telecopy no. (212) 538-8384,

Attention CDO Group, or at any other address previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of the Initial Purchaser, as the case may be;

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 949-9876, Attention: The Directors; or

(viii) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Any document required to be delivered or made available to the Repository by the Trustee may be made available by providing the operator of the Repository with access to a website containing such document in a format that permits the user to download the document as a pdf file.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A-1 Notes may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A-1 Notes on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A-1 Notes) to the Trustee in substantially the form of Exhibit K specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A-1 Notes (each, an "Insurer"). After receipt of any such notice (in the form of Exhibit K) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

(d) Unless notified to the contrary by Financial Security Assurance Inc. ("FSA") or unless FSA is no longer to direct the vote of at least 58% of the Aggregate Outstanding Amount of the Class A-1a Notes, each of the parties hereto agrees that, so long as any Class A-1a Notes are Outstanding, FSA shall be entitled to receive, and shall be distributed, all reports, notices, certificates, statements and other information (including access to the Trustee's password protected website) that are required to be delivered to any Holder of the Class A-1a Notes (or that any Holder of the Class A-1a Notes is entitled to request) at the same time and in the same manner as such reports, notices, certificates, statements and other information are delivered to each such Holder of Class A-1a Notes, at the following address (or at any other address furnished in writing from time to time by FSA to the parties hereto): Financial Security Assurance Inc., 31 West 52nd Street, New York, NY 10019, Attention: CDO Surveillance, telephone no.: (212) 826-0100; electronic mail: cdoreport@fsa.com, facsimile no.: (212) 339-3581. For the avoidance of doubt, FSA shall be entitled to request directly that the parties hereto provide it with such reports, notices, certificates, statements and other information that are required to be delivered to any Holder of the Class A-1a Notes (or that any Holder of the Class A-1a Notes is entitled to request).

(e) Unless notified to the contrary by CIFG Assurance North America, Inc. ("CIFG"), each of the parties hereto agrees that, so long as any Class A-1a Notes are Outstanding and CIFG provides a credit default swap supporting the payment of principal and/or interest on such Class A-1a Notes, CIFG shall be entitled to receive, and shall be distributed, all reports, notices, certificates, statements and other information (including access to the Trustee's password protected website) that are required to be delivered to any Holder of the Class A-1a Notes (or that any Holder of the Class A-1a Notes is entitled to request) at the same time and in the same manner as such reports, notices, certificates, statements and other information are delivered to each such Holder of Class A-1a Notes, at the following address (or at any other address furnished in writing from time to time by CIFG to the parties hereto): CIFG Assurance North America, Inc., 825 Third Avenue, 6th Floor, New York, New York 10022, Attention: Paul Kwiatkoski, Head of Surveillance, telephone: 212-909-3941, facsimile: 212-909-3958; electronic mail: surveillance@cifg.com and general.counsel@cifg.com. For the avoidance of doubt, CIFG shall be entitled to request directly that the parties hereto provide it with such reports, notices, certificates, statements and other information that are required to be delivered to any Holder of the Class A-1a Notes (or that any Holder of the Class A-1a Notes is entitled to request).

Section 14.4. ***Notices to Noteholders, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register, at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee or at the address of the Holding Preference Shares Paying Agent supplied by the Holding Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder, the Preference Shares Paying Agent or Holding Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer. The Trustee shall deliver to the Holding Preference Shares Paying Agent any information or notice that the Holding Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Holding Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

Where this Indenture provides for notice in any manner, the notice may be waived in writing by any Person entitled to receive the notice, either before or after the event, and the waiver shall be the equivalent of the notice. Waivers of notice by Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

So long as any Senior Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Noteholders, the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to Holders of Holding Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Initial Purchaser all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation relating to the Notes requested by the Initial Purchaser (collectively, the "***Transaction Reports***") and the Issuer consents to the Initial Purchaser providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of

electronic transmissions or posting the Transaction Reports on internet sites maintained by the Initial Purchaser or any of its Affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

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

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9. ***Governing Law.***

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.10. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of Investors Bank & Trust Company (to the attention of Investors Bank & Trust Company, Trustee for Grayson CLO, Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.11. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.12. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

Section 14.13. ***Consent of Posting of Documents on Repository.***

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.14. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.15. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Servicing Agreement; Amendment of Servicing Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(i) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(ii) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations, covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(iii) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h) below.

(v) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(vi) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use its best efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed

Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; provided that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), (c) to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and (d) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the "**Objection Cut-Off Date**"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer and with the consent of a Majority of the Controlling Class, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "A1" or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A2" or higher and a debt rating by Moody's for short-term debt of "P-1" if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or, if the Hedge Counterparty does not have a short-term debt rating by S&P, a long-term debt rating of not less than "A+" (the "***Required Rating***").

(c) If at any time a Hedge Counterparty does not have the Required Rating, then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type specified under the relevant Hedge Agreement; provided that the Hedge Counterparty shall, at the time such collateral is first posted, deliver to the Issuer, the Trustee and the Rating Agencies an Opinion of Counsel of nationally recognized standing in the jurisdiction in which the Hedge Counterparty is incorporated confirming that such collateral will be available in a timely manner upon a bankruptcy of the Hedge Counterparty;

(ii) obtain a guarantor that has a short-term debt rating by S&P of not less than "A-1" and otherwise has the Required Rating, subject to satisfaction of the Rating Condition; or

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to the satisfaction of the Rating Condition.

provided that failure to take any such steps set forth under paragraphs (i) through (iii) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(d) If at any time the Hedge Counterparty has (x) no short-term Moody's rating and a long-term Moody's that is below "A3" or (y) both a short-term and long-term Moody's rating and either the long-term Moody's rating that is below "A3" or the short-term Moody's rating that is below "P-2", then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) obtain a guarantor that has the Required Rating, subject to satisfaction of the Rating Condition; or

(ii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition;

provided that failure to take any such steps set forth under paragraphs (i) and (ii) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(e) If at any time the Hedge Counterparty has a long-term unsecured debt rating by S&P below "BBB-," then the Hedge Counterparty shall be required, within the applicable period specified in the related Hedge Agreement, to replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition; provided that failure to do so shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(f) Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty thereto shall comply with the then currently applicable rating criteria of each Rating Agency from time to time.

(g) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(h) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(i) Except as provided in paragraph (i) of this Section 15.2, the Issuer, at the direction of the Servicer, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(j) Notwithstanding Section 15.2(h), the applicable requirements of Section 15.2(h) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(k) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(l) Each Hedge Agreement may be terminated pursuant to its terms by the Hedge Counterparty upon an Optional Redemption of the Notes, an acceleration of maturity of the Notes followed by the liquidation of any or all of the Collateral after an Event of Default or the entry into certain amendments to the Indenture without the consent of the Hedge Counterparty. The Hedge Agreement will not be permitted to be terminated by the Issuer as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(m) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GRAYSON CLO, LTD.,
AS ISSUER

By: _____
Name: **SCOTT DAKERS**
Title: Director

GRAYSON CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

INVESTORS BANK & TRUST COMPANY, AS TRUSTEE AND AS CUSTODIAN

By: _____
Name: Brian Peterson
Title: Director

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GRAYSON CLO, LTD.,
AS ISSUER

By: _____
Name:
Title:

GRAYSON CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

INVESTORS BANK & TRUST COMPANY, AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor *divided* by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

The Diversity Score for any Structured Finance Obligation that is a collateralized loan obligation is equal to zero.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5%	55%	45%	40%	35%	25%	15%

>2%						
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

RATING OF MOST SENIOR CLASS OF RATED NOTES AT THE TIME OF COMMITMENT TO PURCHASE

Structured Finance Obligation Rating*

Senior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	65.0%	70.0%	80.0%	85.0%	85.0%	85.0%	85.0%
AA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
A	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
BBB	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* If the Structured Finance Obligation is (x) a collateralized debt obligation backed by project finance securities, asset-backed securities, structured finance or real estate securities, distressed debt or other collateralized debt obligations; (y) a market value collateralized debt obligation; or (z) a synthetic collateralized debt obligation, the recovery rate will be assigned by S&P at the time of acquisition.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, then the Moody's Default Probability Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher, or

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories. For purposes of any calculation under this Indenture, if a Moody's Default Probability Rating is withdrawn by Moody's with respect to a Collateral Obligation, the Issuer will continue using the latest Moody's Default Probability Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clause (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be

adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "***Borrower***"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "***Guarantor***") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; provided that, on or prior to each one-year anniversary of the acquisition of any such Collateral Obligation, the Issuer shall submit to S&P a request for a S&P credit rating estimate for such Collateral Obligation, which shall be its S&P Rating, together with all information reasonably required by S&P to perform such estimate; or

(C) if such Collateral Obligation is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Servicer determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; provided that the Servicer must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above. For purposes of any calculation under the Indenture, if a S&P Rating is withdrawn by S&P with respect to a Collateral Obligation, the Issuer will continue using the latest S&P Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

Exhibit A-1

Form of Senior Note

Exhibit A-3

Form of Class D Note

Exhibit B-1

Form of Senior Note Transferee Certificate

Exhibit B-2

Form of Senior Note Transferor Certificate for Regulation S to Rule 144A Transfer

Exhibit B-3

Form of Senior Note Transferor Certificate for Rule 144A to Regulation S Transfer

Exhibit B-4

Form of Class D Note Transferee Certificate

Exhibit C

Form of Latham & Watkins LLP Opinion

Exhibit D

Form of Ogier Opinion

Exhibit E

Form of Nixon Peabody LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G

Form of Securities Account Control Agreement

Exhibit H

Forms of Section 3(c)(7) Notices

Exhibit H-1

Form of Section 3(c)(7) Reminder Notice

Exhibit H-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit I

Form of Beneficial Owner Certificate

Exhibit J

Form of Extension Notice

Exhibit K

Form of Class A-1 Note Notice

EXECUTION COPY

GREENBRIAR CLO, LTD.

Issuer,

GREENBRIAR CLO CORP.

Co-Issuer,

and

STATE STREET BANK AND TRUST COMPANY

Trustee

INDENTURE

Dated as of December 20, 2007

COLLATERALIZED DEBT OBLIGATIONS

U.S.$730,000,000 Class A Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$60,000,000 Class B Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$50,000,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021
U.S.$40,000,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021
U.S.$40,000,000 Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021

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G-2	–	Form of Important Section 3(c)(7) Reminder Notice
Exhibit H	–	Form of Beneficial Owner Certificate
Exhibit I	–	Form of Extension Notice
Exhibit J	–	Form of Insurer Notice

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 14

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
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006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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Clay M. Taylor
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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

INDENTURE, dated as of December 20, 2007, among GREENBRIAR CLO, LTD. (the "***Issuer***"), GREENBRIAR CLO CORP. (the "***Co-Issuer***") and STATE STREET BANK AND TRUST COMPANY, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Class E Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty (and the Collateral Administrator and Preference Shares Paying Agent to the extent of Administrative Expenses payable to such parties as provided hereunder) (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and listed from time to time on such Schedule 1 as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and, together with the Issuer Accounts, the Synthetic Security Collateral Account and the Hedge Counterparty Collateral Account, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (*provided, however*, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money, general intangibles, chattel paper and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the "***Collateral***"). Notwithstanding the foregoing, the Collateral shall not include any Excluded Property.

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (including without limitation, Administrative Expenses, but excluding amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"***25% Limitation***": The limitation imposed so that any purchase or transfer of Class E Notes, Class I Preference Shares and Class II Preference Shares by Benefit Plan Investors from the Initial Purchaser or the Issuer and any subsequent transferee will be limited to less than 25% of the value of each of all Outstanding Class E Notes, Class I Preference Shares and Class II Preference Shares by requiring each such purchaser and

subsequent transferee to make certain representations and/or to agree to certain transfer restrictions regarding their status as Benefit Plan Investors or Controlling Persons.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have the same seniority, maturity and interest rate as the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Loan that constitutes part of the price paid by the Issuer to repay amounts owed to the Pre-Closing Parties in connection with the financing of the Issuer's pre-closing acquisition of such Loan.

"***Act***": The meaning specified in Section 14.2.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.025% of the Maximum Amount on the related Determination Date plus $250,000, *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and of accountants, agents, and counsel for either of the Co-Issuers;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Collateral (requested by the Issuer or the Servicer) or the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other Person (except the Servicer) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Maples Finance Limited, or any successor thereto appointed under the Administration Agreement.

"***Affected Class***": Any Class of Notes that, as a result of the occurrence of a Tax Event, has received, or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Payment Date related to the Due Period with respect to which such Tax Event occurs.

"***Affiliate***" or "***Affiliated***": With respect to a Person,

(i) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the Person; or

(ii) any other Person who is a director, officer, or employee (A) of the Person, (B) of any subsidiary or parent company of the Person or (C) of any Person described in clause (i) above.

For the purposes of this definition, control of a Person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the Person; or

(B) to direct the corporate management and corporate policies of the Person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date. When used with respect to the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto;

(d) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto; and

(e) the Aggregate Outstanding Amount of the Class E Notes at any time shall include all Class E Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, plus in the case of any Class A Notes, the Redemption Premium, and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder on the next succeeding Payment Date) would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares shall be zero.

"***Amendment Buy-Out Purchaser***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the

Initial Purchaser or any of their Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, each of the Co-Issuers. With respect to the Class E Notes and the Preference Shares, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate applicable to the Collateral Obligation and the S&P Recovery Rate applicable to the Collateral Obligation and the current S&P Rating of the Class A Notes.

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations which are also Independent from the Servicer or (ii) if the foregoing set of prices could not be obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations are also Independent from the Servicer or (iii) if the foregoing sets of prices could not be obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

"***Authorized Officer***": With respect to the Issuer or the Co-Issuer, as applicable, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. With respect to the Preference Share Paying Agent, the persons constituting Authorized Officers of the Trustee under this Indenture. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any Person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": State Street Bank and Trust Company, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2007 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": The term "benefit plan investor" includes (a) an employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to the fiduciary responsibility provisions of ERISA, (b) a plan as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, (c) any entity whose underlying assets include "plan assets" by reason of any such employee benefit plan's or plan's investment in the entity or (d) as such term is otherwise defined in any regulations promulgated by the U.S. Department of Labor under Section 3(42) of ERISA.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Calculation Agent***": The meaning specified in Section 7.16.

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

"***CCC+/Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***CCC+/Caa1 Excess Market Value Percentage***": The percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral

Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Class E Note***": The meaning set forth in Section 2.2(e).

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares.

"***Class A Notes***": The Class A Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A/B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A Notes and the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class E Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class E Notes.

"***Class E Deferred Interest***": Deferred Interest with respect to the Class E Notes.

"***Class E Notes***": The Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class I Preference Shares***": The Class I Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class II Preference Share Percentage***": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

"***Class II Preference Share Portion***": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"***Class II Preference Share Senior Special Payment***": For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Special Payment***": Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

"***Class II Preference Share Special Payment Account***": The trust account established pursuant to Section 10.3(i).

"***Class II Preference Share Subordinated Special Payment***": For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Supplemental Special Payment***": For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Shares***"**:** The Class II Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": December 20, 2007.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Servicer, and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administrator***": State Street Bank and Trust Company, in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations that is rated by a nationally-recognized credit rating agency);

(6) not an obligation or security that has been called for redemption and not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r", "t" or "f" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition with respect to S&P has been satisfied with respect to the acquisition thereof;

(9) (a) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (b) in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than four years after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees, facility fees or other similar fees);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and a short-term debt rating by S&P of at least "A-1+" or, if no short-term rating exists, an issuer credit rating by S&P of at least "AA-" or;

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease of the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition); and

(26) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans and Eligible Investments	≥ 90.0%
(2)	Senior Unsecured Loans, Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(3)	Revolving Loans and the unfunded portion of Delayed Drawdown Loans	≤ 12.0%
(4)	DIP Loans	≤ 7.5%
(5)	PIK Securities	≤ 5.0%
(6)	High-Yield Bonds	≤ 7.5%
(7)	Structured Finance Obligations	≤ 5.0%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
	(c) except that Structured Finance Obligations that are (i) collateralized loan obligations primarily backed by other collateralized loan obligations and (ii) collateralized debt obligations primarily backed by one or more credit default swaps (i.e., "Synthetics CDOs") may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
(8)	obligors Domiciled other than in the United States and Canada	≤ 20.0%
(9)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(10)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(11)	obligors Domiciled in all Moody's Group II Countries in the aggregate	≤ 10.0%
(12)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(13)	obligors Domiciled in all Moody's Group III Countries in the aggregate	≤ 5.0%
(14)	obligors organized in a Tax Advantaged Jurisdiction (other than Structured Finance Obligations)	≤ 3.0%
(15)	same S&P Industry Classification	≤ 10.0%
	except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%
(16)	single obligor and any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	except that up to each of five individual obligors and any of their Affiliates (excluding Secondary Risk Counterparties and any obligor under a DIP Loan) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 2.5%

(17)	Fixed Rate Obligations	≤ 7.5%
(18)	Pay interest less frequently than quarterly but no less frequently than semi-annually	≤ 7.5%
(19)	Pay interest less frequently than semi-annually but no less frequently than annually	≤ 3.0%
(20)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	except that Synthetic Securities that reference a single vintage of such index may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.0%
(21)	Participations including Synthetic Letters of Credit structured as a Participation (provided that no Relevant Obligations may be a Participation in a Participation)	≤ 10.0%
(22)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤ 20.0%
(23)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(24)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(25)	Deep Discount Obligations	≤ 7.5%
(26)	CCC+/Caa1 Collateral Obligations	≤ 7.5%
(27)	Long-Dated Collateral Obligations	≤ 2.0%
(28)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(29)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan)	≤ 5.0%

(30)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $75,000,000	≤ 10.0%
(31)	Synthetic Letters of Credit	≤ 5.0%
(32)	Current-Pay Obligations	≤ 5.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Consenting Holder of the Preference Shares***": With respect to any Payment Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date.

"***Controlling Class***": The Class A Notes, (voting together as a Class or group) so long as any Class A Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding; and then the Class E Notes (voting together as a Class or group), so long as any Class E Notes are Outstanding.

"***Controlling Person***": A person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the Issuer or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any Affiliate of such a person.

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116, telecopy no. (617) 937-0517, Attention: CDO Services Group – Greenbriar CLO, or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A/B Coverage Tests, the Class C Coverage Tests, the Class D Coverage Tests and the Class E Coverage Tests applicable as of any Measurement Date.

"***Cov-lite Loan***": A Loan that (i) does not contain any financial covenants or (ii) requires the borrower to comply with an Incurrence Covenant, but does not require the borrower to comply with a Maintenance Covenant.

"***Credit Improved Obligation***": Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; provided that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and provided, further, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (*provided* that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 1.01%), or (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation set forth in clauses (i) through (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation set forth in clauses (i) through (iii) above for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation; or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A Notes or the Class B Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class C Notes, the Class D Notes or the Class E Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; provided that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral

Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer, and (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation; or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn;

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an Officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due;

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its

Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance;

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized all payments of principal and interest payable on the Collateral Obligation;

(v) there is a rating of at least "Caa2" by Moody's (if rated by Moody's) (provided that if such rating is "Caa2," such rating must not be on watch for possible downgrade by Moody's); and

(vi) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace

period or waiver (provided that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Servicer, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor,

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn, or

(C) the obligation is rated "D" by Moody's or was so rated immediately prior to such rating being withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based

would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Defaulted Synthetic Security Termination Payments***": Any termination payment required to be made by the Issuer to a Synthetic Security Counterparty pursuant to a Synthetic Security upon the occurrence of any "event of default" or "termination event" (each as defined in the applicable Synthetic Security) under such Synthetic Security as to which such Synthetic Security Counterparty is the Defaulting Party or the sole Affected Party (each as defined in the applicable Synthetic Security).

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class C Notes, the Class D Notes and the Class E Notes.

"***Definitive Notes***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for purposes of the Concentration Limitations only unfunded portions will count as Delayed Drawdown Loans.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery to the Custodian of the original executed certificate or other writing that constitutes or evidences such Certificated Security (UCC) or Instrument, registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian in blank (unless such Certificated Security or Instrument is in bearer form in which case delivery alone shall suffice),

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to continuously credit such Clearing Corporation Security to the securities account of the Custodian at such Clearing Corporation, and

(B) causing the Custodian to continuously indicate on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of any Financial Asset that is maintained in book-entry form on the records of a Federal Reserve Bank ("***FRB***"),

(A) causing the continuous crediting of such Financial Asset to a securities account of the Custodian at any FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Financial Asset is credited to the applicable Account;

(v) in the case of each Financial Asset not covered by the foregoing subclauses (i) through (iv) and (vi),

(A) causing the transfer of such Financial Asset to the Custodian in accordance with applicable law and regulation, and

(B) causing the Custodian to continuously credit such Financial Asset to the applicable Account; and

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account;

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument or Certificated Security), by:

(1) either

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds in the District of Columbia, Washington, DC, within 10 days after the Closing Date, or

(B) (1) causing the Custodian to become and remain the owner thereof, (2) causing the Custodian to credit and continuously identify such general intangible to the relevant Issuer Account, (3) causing the Custodian to agree to treat such general intangible as a Financial Asset and (4) causing the Custodian to agree pursuant to the Securities Account Control Agreement to comply with Entitlement Orders related thereto originated by the Trustee without further consent by the Issuer; and

(2) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership to the Issuer and the pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan:

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer);

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States; and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that:

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code;

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code;

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets; or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score. For the purposes of calculating the Diversity Test, any Structured Finance Obligation that is (i) a collateralized loan obligation (including any collateralized loan obligation primarily backed by other collateralized loan obligations), (ii) any Synthetic Security with respect to which the Reference Obligation is a collateralized loan obligation or (iii) any Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time will be disregarded.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile***" or "***Domiciled***": With respect to each Collateral Obligation, either (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation with an obligor organized, incorporated or created in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" and a Moody's foreign currency rating of at least "Aa2".

"***Eligible Equity Security***": An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

"***Eligible Investments***": Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity which, even after giving effect to any extendibility feature thereof, does not exceed 183 days from the date of issuance

and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; provided that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's and "AA-" by S&P, and if so rated, such rating is not on watch for downgrade;

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; provided that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market funds (including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture) (i) which funds have at the time of acquisition and throughout the term thereof a credit rating of "Aaa" and "MR1+" by Moody's and "AAA" by S&P, respectively (and not on credit watch with negative implications) or (ii) that are registered as money market funds under Rule 2a-7 under the Investment Company Act and have a credit rating of "Aaa" from Moody's and "AAAm" or "AAAmG" from S&P (and not on credit watch with negative implications);

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes; provided, further, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, any mortgage-backed security or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r", "t", "p", "pi", "q" or "f";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer or depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***Entitlement Order***": The meaning specified in Section 8-102(a)(8) of the UCC.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Established Securities Market***": Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excel Default Model Input File***": An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation or Reference Obligation in the case of a Synthetic Security:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan, Cov-lite Loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Recovery Rate, and

(k) such other information as the Trustee may determine to include in such file.

"***Excess CCC+/Caa1 Collateral Obligations***": The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": (i) U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts, (ii) any amounts credited to the Class II Preference Share Special Payment Account and the Preference Shares Distribution Account from time to time and (iii) any Margin Stock.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Replacement Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in November 2018); provided that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in November 2030.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in November 2025); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in November 2037.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, August 2021); provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in August 2033.

"***Extension***": An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class B Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class C Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class D Notes, 0.25% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (5) in the case of the Class E Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in November 2012).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares shall be zero.

"***Extension Qualifying Purchasers***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchaser or any of its Affiliates acting as principal or agent) designated by the Servicer; *provided, however*, none of the Servicer, the Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction; provided that such Finance Lease shall have a rating by Moody's.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test; and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate.

"***Floating Rate Notes***": The Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security:

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

"***Funded Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan at any time, the aggregate principal amount of advances or other extensions of credit made thereunder by the Issuer that are outstanding and have not been repaid at such time.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": Any counterparty, to the extent that when the Issuer enters into any Hedge Agreement with such counterparty, such counterparty satisfies the requirements of Section 15.2(b) (subject to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***HFP***": Highland Financial Partners, L.P. (an Affiliate of the Servicer).

"***High-Yield Bond***": Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; and of any Preference Share, the person whose name appears in the share register of the Issuer related thereto as the registered holder of such Preference Share.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit G-2.

"***Incurrence Covenant***": A covenant by the borrower to comply with one or more financial covenants only upon the occurrence of certain actions of the borrower including, but not limited to, a debt issuance, dividend payment, share purchase, merger, acquisition or divestiture.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(c) to the Holders of Securities.

"***Initial Purchaser***": Goldman, Sachs &Co.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Institutional Accredited Investor***": An institutional accredit investor as defined in clause (1), (2), (3) or (7) of Rule 501(a) under Regulation D under the Securities Act.

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, minus

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date; provided that the Class A Notes and the Class B Notes shall constitute one Class of Notes for purposes of the Interest Coverage Ratio relating to such Classes of Notes.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A/B Interest Coverage Test	114.5%
Class C Interest Coverage Test	109.6%
Class D Interest Coverage Test	106.1%
Class E Interest Coverage Test	104.0%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments;

(vii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period;

(ix) any recoveries (including interest) received on a Non-Performing Collateral Obligation in excess of the principal balance of such Non-Performing Collateral Obligation (as of the date the related Collateral Obligation became a Non-Performing Collateral Obligation and excluding from such principal balance any deferred interest on Non-Performing Collateral Obligations that are PIK Securities); and

(x) Principal Proceeds designated by the Servicer as Interest Proceeds prior to the Determination Date related to the first Payment Date in an aggregate amount not to exceed U.S.$4,000,000 in accordance with Section 10.2(f).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Section 11.1(a)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"***Interim Targets***" means, with respect to the Collateral on the Interim Targets Date, (i) a Minimum Diversity Score greater than or equal to 60, (ii) a Maximum Weighted Average Moody's Rating Factor less than or equal to 2550, (iii) a Minimum Weighted Average Spread greater than or equal to 2.45%, (iv) the Collateral Obligations have an Aggregate Principal Balance of greater than or equal to U.S.$940,000,000 and (v) a Moody's Minimum Average Recovery Rate equal to or greater than 44.00%.

"***Interim Targets Date***" means February 4, 2008.

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The Person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": The offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Reuters Screen LIBOR01 Page (or 3750) as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Reuters Screen LIBOR01 Page (or 3750) for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Reuters Screen LIBOR01 Page (or 3750) as reported on Bloomberg Financial Market Commodities News (or a page that replaces Reuters Screen LIBOR01 Page (or 3750) for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "***Reference Banks***") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits and synthetic letters of credit) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered; or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated

Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Maintenance Covenant***": A covenant by the borrower to comply with one or more financial covenants during each reporting period, whether or not it has taken any specified action.

"***Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the preceding paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided, that during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to (a) the higher of (i) the S&P Recovery Rate for such Collateral Obligation and the then current S&P Rating of the Class A Notes and (ii) 70% of the Principal Balance of such Collateral Obligation or (b) if the Servicer has determined in its commercially reasonable judgment that the Market Value of such Collateral Obligation is lower than the amount determined pursuant to clause (a), such amount to be determined by the Servicer in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities or Current-Pay Obligations.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

"***Market Value Determination Date***": With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation; *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$992,377,774; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations; *plus*

(B) Cash representing Principal Proceeds on deposit in the Collection Account; *plus*

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6; and,

with respect to any distribution of Eligible Equity Securities only,

(vi) that is the Market Value Determination Date with respect to such distribution of Eligible Equity Securities.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as may be amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

"***Minimum Diversity Score***": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Minimum Weighted Average Spread***": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the lesser of (x) 60% and (y) the number obtained by:

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate;

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations; and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Moody's Priority Category Recovery Rate Matrix" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Moody's Priority Category Recovery Rate Matrix" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Priority Category Recovery Rate Matrix***":

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities.....	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations.....	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below.....	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	**Moody's Senior Secured Loans**	**Moody's Non Senior Secured Loans**	**High-Yield Bonds**
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1,350
Aa2	20	Ba3	1,766
Aa3	40	B1	2,220
A1	70	B2	2,720
A2	120	B3	3,490
A3	180	Caa1	4,770
Baa1	260	Caa2	6,500
Baa2	360	Caa3	8,070
Baa3	610	Ca or lower	10,000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless (1) there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security, or (2) such Collateral Obligation is a Form-Approved Synthetic Security, in which case the Moody's Rating Factor given to such Collateral Obligation at the time of approval of the Form-Approved Synthetic Security shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Obligation shall be equal to: $\frac{A \times 55\%}{1-B}$,

where: "*A*" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"*B*" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"***Moody's Senior Secured Loan***":

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan;

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan; and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow

available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral; or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan;

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan;

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral; and

(iv) has been assigned a Moody's rating equal to or higher than Moody's corporate family rating for such obligor; and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Priority Category Recovery Rate has been or is to be determined on a case-by-case basis.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in November 2009.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year, in each case, following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3", or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-", the earlier of its first payment date or six months, in each case, following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted ERISA Holder***": The meaning specified in Section 2.6(c)(iii).

"***Non-Permitted Holder***": (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class E Notes, a Holder or beneficial owner of an interest in a Class E Note that is not a QIB/QP.

"***Non-qualifying Collateral Obligation***": The meaning specified in Section 12.1(d).

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain (as determined by S&P through application of the S&P CDO Monitor) and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A Notes and the Class B Notes and the ultimate payment of interest on the Class C Notes, the Class D Notes and the Class E Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments.

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Scenario Default Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Noteholder***": A Holder of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A Notes until the Class A Notes have been fully redeemed;

(2) to the Class B Notes until the Class B Notes have been fully redeemed;

(3) to the Class C Notes until the Class C Notes have been fully redeemed;

(4) to the Class D Notes until the Class D Notes have been fully redeemed; and

(5) to the Class E Notes until the Class E Notes have been fully redeemed.

"***Notes***": The Senior Notes and the Class E Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Notice of Refinancing***": The meaning specified in Section 9.7.

"***Objection Cut-Off Date***": The meaning specified in Section 15.1(h)(ii).

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes.

"***Offering Memorandum***": The final offering memorandum, dated December 18, 2007, prepared and delivered in connection with the offer and sale of the Securities.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any paying agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; and

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser; and

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the share register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Securities have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, the Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder

of Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account over which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; provided that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Trustee or the Preference Shares Paying Agent, as applicable, by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares, only Preference Shares that an Authorized Officer of the Preference Shares Paying Agent) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee or the Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee and the Preference Shares Paying Agent.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of such Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it); provided that the Class A Notes and the Class B Notes shall constitute one Class of Notes for purposes of the Overcollateralization Ratio relating to such Classes of Notes.

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect to Collateral Obligations that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the CCC+/Caa1 Excess Market Value Percentage, multiplied by (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A/B Overcollateralization Test	114.5%
Class C Overcollateralization Test	109.6%
Class D Overcollateralization Test	106.1%
Class E Overcollateralization Test	104.0%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and a short-term credit rating by S&P of at least "A-1" or, if no short-term rating exists, a long-term credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in August 2008 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***Person***": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Plan***": An employee benefit plan as defined in Section 3(3) of ERISA that is subject to the provisions of Title I of ERISA or a plan as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code.

"***Plan Asset Regulation***": The regulation issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Improvement Exchange***": The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Class I Preference Shares and the Class II Preference Shares.

"***Preference Shares Distribution Account***": A separate segregated non-interest bearing account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": State Street Bank and Trust Company, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the

Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any Qualified Equity Security and any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account

resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"***Purchase Agreement***": A purchase agreement dated as of November 9, 2007 among the Co-Issuers and the Initial Purchaser, relating to the purchase of the Senior Notes, as modified, amended and supplemented and in effect from time to time.

"***Purchase Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; *provided, however*, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 90th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least U.S.$992,377,774 or (B) the Aggregate Principal

Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least U.S.$992,377,774 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least U.S.$992,377,774.

"***Ramp-Up Notice***": The meaning specified in Section 7.19(e).

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes; *provided* however, that in the case of Refinancing Notes, a Moody's rating will be obtained for such Refinancing Notes and a Rating Confirmation with respect to such Refinancing Notes shall mean (i) with respect to S&P, confirmation in writing from S&P that the rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing and (ii) with respect to Moody's, that the Moody's rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing; *provided further* that if the terms of such Refinancing Notes are the same as the terms of the corresponding Class of Notes subject to Refinancing (other than with respect to the coupon thereof), it is expected that the cost of obtaining such rating from Moody's shall be no more than the cost of obtaining a Rating Confirmation.

"***Rating Confirmation Failure***": The meaning specified in Section 7.19(f) hereof.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different

row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score								
Minimum Weighted Average Spread	**50**	**55**	**60**	**65**	**70**	**75**	**80**	**85**	**90**
2.20%	2150	2175	2200	2210	2240	2280	2300	2315	2335
2.25%	2225	2255	2270	2280	2300	2315	2345	2360	2390
2.30%	2250	2300	2335	2350	2375	2390	2400	2425	2450
2.35%	2275	2325	2355	2375	2405	2415	2430	2450	2480
2.40%	2315	2370	2390	2410	2435	2450	2475	2495	2500
2.45%	2345	2385	2425	2435	2450	2475	2500	2515	2535
2.50%	2360	2415	2445	2500	2515	2530	2535	2555	2575
2.55%	2380	2445	2500	2520	2540	2560	2590	2600	2610
2.60%	2405	2475	2510	2560	2590	2600	2625	2640	2660
2.65%	2440	2495	2520	2580	2610	2625	2640	2660	2680
2.70%	2460	2515	2540	2600	2625	2670	2680	2700	2730
2.75%	2480	2525	2560	2610	2635	2690	2700	2710	2770
2.80%	2505	2545	2590	2630	2660	2705	2725	2735	2800
2.85%	2525	2565	2600	2660	2700	2720	2740	2815	2830
2.90%	2540	2595	2635	2700	2720	2740	2800	2825	2850
2.95%	2560	2615	2655	2730	2765	2785	2825	2850	2875
3.00%	2585	2640	2675	2750	2785	2825	2850	2875	2900
	Maximum Weighted Average Moody's Rating Factor								

"***Recovery Rate Modifier***": As of any Measurement Date, the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 55.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2 or the redemption of a Class of Notes in connection with a Refinancing pursuant to Section 9.7.

"***Redemption Premium***": With respect to an optional redemption or an Amendment Buy-Out of the Class A Notes that occurs during the period beginning on the first day after the Non-Call Period and prior to the first anniversary of such first day after the Non-Call Period (the "***Premium Anniversary***"), an amount equal to the product of (i) the Aggregate Outstanding Amount of such Class A Notes to be redeemed, *multiplied by* (ii) the number of days from (and including) the applicable Redemption Date to (but excluding) the Premium Anniversary divided by 360 *multiplied by* (iii) 0.63%.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a) or any redemption by Refinancing pursuant to Section 9.7(a), an amount equal to:

(i) the outstanding principal amount of the Note being redeemed; plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest); plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note; plus

(iv) any unpaid Extension Bonus Payment in respect of the Note; plus

(v) with respect to the Class A Notes, any applicable Redemption Premium.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; provided that no Reference Obligation shall be a Synthetic Security.

"***Refinancing***": The meaning specified in Section 9.7.

"***Refinancing Date***": The meaning specified in Section 9.7.

"***Refinancing Notes***": The meaning specified in Section 9.7.

"***Refinancing Price***": With respect to any Class of Notes that is subject to a Refinancing, an amount equal to the Redemption Price thereof.

"***Refinancing Proceeds***": The proceeds from any refinancing permitted under this Indenture.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Note***": The meaning specified in Section 2.2(b).

"***Relevant Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security and otherwise the Collateral Obligation.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Replacement Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in November 2014 or, in the case of an Extension, the Extended Replacement Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

"***Required Redemption Percentage***": With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 66⅔% of the Aggregate Outstanding Amount of any Affected Class or at least 66⅔% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

"***Retention Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, excluding any Deferred Interest on any Class of Notes.

"***Retention Overcollateralization Test***": A test that is satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 105.0%.

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 3a-7***": Rule 3a-7 under the Investment Company Act.

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used

to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P CRR***": With respect to any Collateral Obligation, a corporate recovery rate assigned by S&P to such Collateral Obligation.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Rating Confirmation***": Confirmation in writing from S&P that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***S&P Recovery Rate***": As of any date of determination, with respect to any Collateral Obligation, the percentage for such Collateral Obligation set forth in (x) the applicable table below, (y) the row in such table opposite the S&P CRR (or, if the relevant assets have no S&P CRR, the senior secured recovery rating, the U.S. loan recovery rating or the CDO liability rating, as applicable) of such Collateral Obligation (or, in the case of a Form-Approved Synthetic Security, the Reference Obligation unless otherwise specified by S&P) and (z) the column in such table below the initial S&P Rating of the respective Class of Notes; provided, however that (i) with respect to a DIP Loan or a Synthetic Security (other than a Form-Approved Synthetic Security that does not reference an index), the S&P Recovery Rate shall be the recovery rate assigned by S&P and with respect to a Structured Finance Obligation the S&P Recovery Rate shall be the recovery rate determined by reference to Table V or Table VI below, as applicable and (ii) the Issuer or the Servicer may request the assignment of a recovery rate from S&P with respect to any Collateral Obligation, any such assignment by S&P to be in writing (electronic or otherwise); provided, further, that if a Collateral Obligation is a Cov-lite Loan for which there is no S&P CRR and therefore Table IV would apply, the recovery rate for such Collateral Obligation shall be equal to 90% of its recovery rate as of such date of determination, unless otherwise provided by S&P upon request by the Issuer or the Servicer on behalf of the Issuer.

Table I (if the Collateral Obligation has a S&P CRR): Recovery Rates For Assets With Corporate Recovery Ratings

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC

S&P CRR				**(%)**			
1+	100	100	100	100	100	100	100
1	92	94	96	98	100	100	100
2	78	81	84	87	90	90	90
3	58	61	64	67	70	70	70
4	38	41	44	47	50	50	50
5	16	20	24	27	30	30	30
6	6	7	8	9	10	10	10

* As of the Closing Date.

Table II (if the Collateral Obligation is a Senior Unsecured Loan and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. Recovery Rates of Corporate Senior Unsecured Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
Senior secured recovery ratings			**(%)**			
1+	53	55	57	59	61	61
1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	22	24	26	28	30	30
5	8	10	12	14	15	15
6	4	4	4	4	4	4

* As of the Closing Date.

Table III (if the Collateral Obligation is a subordinated obligation and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. Recovery Rates of Corporate Subordinated Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
Senior secured recovery ratings			(%)			
1+	25	25	25	25	25	25
1	22	22	22	22	22	22
2	20	20	20	20	20	20
3	20	20	20	20	20	20
4	10	10	10	10	10	10
5	5	5	5	5	5	5
6	2	2	2	2	2	2

* As of the Closing Date.

Table IV (if none of Table I, Table II or Table III is applicable): S&P's U.S. Tiered Corporate Recovery Rates (for Collateral Obligations that do not have a S&P CRR)

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
U.S. loan recovery rates			(%)			
Senior Secured Loans	56	60	64	67	70	70
Senior Unsecured Loans and Second Lien Loans	40	42	44	46	48	48
Subordinated Loans	22	22	22	22	22	22
Senior Secured Notes	48	49	50	51	52	52
Unsecured Bonds	38	41	42	44	45	45
Subordinated Bonds	19	19	19	19	19	19

* As of the Closing Date.

** The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) that, in the aggregate, represent up to 15% of the Maximum Amount will have the S&P Recovery Rate specified for Second Lien Loans in the table above. The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) in excess of 15% of the Maximum Amount will have the S&P Recovery Rate specified for Subordinated Loans in the table above.

Table V (if the Structured Finance Obligation is the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	80.00%	85.00%	90.00%	90.00%	90.00%	90.00%	90.00%
AA	70.00%	75.00%	85.00%	90.00%	90.00%	90.00%	90.00%
A	60.00%	65.00%	75.00%	85.00%	90.00%	90.00%	90.00%
BBB	50.00%	55.00%	65.00%	75.00%	85.00%	85.00%	85.00%
BB	45.00%	50.00%	55.00%	65.00%	75.00%	75.00%	75.00%
B	25.00%	30.00%	50.00%	55.00%	65.00%	65.00%	50.00%
CCC	0.00%	0.00%	0.00%	0.00%	5.00%	10.00%	10.00%

* As of the Closing Date.

Table VI (if the Structured Finance Obligation is not the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	65.00%	70.00%	80.00%	85.00%	85.00%	85.00%	85.00%
AA	55.00%	65.00%	75.00%	80.00%	80.00%	80.00%	80.00%
A	40.00%	45.00%	55.00%	65.00%	80.00%	80.00%	80.00%
BBB	30.00%	35.00%	40.00%	45.00%	50.00%	60.00%	70.00%
BB	10.00%	10.00%	10.00%	25.00%	35.00%	40.00%	50.00%
B	2.50%	5.00%	5.00%	10.00%	10.00%	20.00%	25.00%
CCC	0.00%	0.00%	0.00%	0.00%	2.50%	5.00%	5.00%

* As of the Closing Date.

Table VII: European Tiered Corporate Recovery Rates (By Asset Class And CDO Liability Rating)

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Senior secured loans (%)						
Group A	68	73	78	81	85	85
Group B	56	60	64	67	70	70
Group C	48	51	55	57	60	60
Mezz./second-lien/senior unsecured loans (%)						
Group A	45	47	50	52	54	54
Group B	40	42	44	46	48	48
Group C	35	37	39	40	42	42
Subordinated loans (%)						
Group A	20	20	20	20	20	20
Group B	20	20	20	20	20	20
Group C	17	17	17	17	17	17
Senior secured bonds (%)						
Group A	60	61	62	63	64	64
Group B	48	49	50	51	52	52
Group C	43	44	45	46	47	47
Senior unsecured bonds (%)						
Group A	40	42	44	46	48	48
Group B	38	41	42	44	45	45
Group C	32	35	36	38	39	40
Subordinated bonds (%)						
Group A	18	18	18	18	18	18
Group B	18	18	18	18	18	18
Group C	15	15	15	15	15	15

* As of the Closing Date.

** Group A: U.K., Ireland, South Africa, and The Netherlands. Group B: Belgium, Germany, Austria, Spain, Portugal, Luxembourg, Denmark, Sweden, Norway, and Finland. Group C: France, Italy, Greece, and Switzerland.

Table VIII: Group A European Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Mezz. loans/second-lien/senior unsecured	**Recovery ratings of senior secured (%)**					

loans						
1+	65	68	71	73	76	76
1	57	60	63	65	68	68
2	50	53	55	57	59	59
3	42	45	47	49	51	51
4	18	18	18	18	18	18
5	8	8	8	8	8	8
6	4	4	4	4	4	4
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4
6	2	2	2	2	2	2

* As of the Closing Date.

Table IX: Group B European Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
CDO liability rating						
Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	53	55	57	59	61	61
1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	18	18	18	18	18	18
5	8	8	8	8	8	8
6	4	4	4	4	4	4
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4
6	2	2	2	2	2	2

* As of the Closing Date.

Table X: Group C European Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
CDO liability rating Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	45	46	48	49	51	51
1	41	43	44	46	47	48
2	37	39	41	42	44	44
3	33	36	37	39	40	41
4	16	16	16	16	16	16
5	6	6	6	6	6	6
6	3	3	3	3	3	3
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	20	20	20	20	20	20
1	17	17	17	17	17	17
2	15	15	15	15	15	15
3	15	15	15	15	15	15
4	8	8	8	8	8	8
5	3	3	3	3	3	3
6	1	1	1	1	1	1

* As of the Closing Date.

In all recovery rate tables above, Note rating categories below "AAA" include rating subcategories (for example, the "AA" column also applies to Notes rated "AA+" and "AA-").

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Scenario Default Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Second Lien Loan***": A Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan, (ii) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets and (iii) if such Loan does not have an S&P Recovery Rate assigned as part of a credit estimate, so long as such credit estimate is in effect, then, solely for purposes of determining the S&P Recovery Rate for such Loan, in the Servicer's commercially reasonable judgment (with such judgment being made in good faith by the Servicer at the time of such Loan's purchase), the specified collateral for such Loan has a value not less than the outstanding principal amount of all debt senior to such Loan plus the S&P Recovery Rate applicable to such Loan multiplied by the outstanding principal amount of such Loan, which value may be derived from, among other things, the enterprise value of the issuer of such Loans (provided that the provisions of the clause (iii) may be amended at any time, subject to Rating Confirmation from S&P, or in order to conform to S&P's then-current criteria for such Loans).

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": With respect to Moody's, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
Aaa	20.0%	20.0%
Aa1	10.0%	10.0%
Aa2	10.0%	10.0%
Aa3	10.0%	10.0%
A1	5.0%	10.0%
A2 or below	0.0%	0.0%

With respect to S&P and solely with respect to Participations and Securities Lending Agreements, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
AAA	20.0%	20.0%
AA+/AA/AA-	10.0%	20.0%
A+	5.0%	20.0%
A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the Investment Company Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit G-1.

"***Secured High-Yield Bond***": A High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

"***Secured Loan***": A Loan that is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Preference Shares.

"***Securities Account Control Agreement***": An agreement dated as of the Closing Date by and among the Issuer, the Trustee and the Bank, as Custodian.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": The meaning specified in Section 8-102(a)(14) of the UCC.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Senior Notes***": The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a valid and perfected first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan and that is not a DIP Loan.

"***Senior Servicing Fee***": A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Unsecured Loan***": A Loan that is not a Senior Secured Loan and is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Servicer***": Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

"***Servicing Agreement***": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended, and supplemented and in effect from time to time.

"***Servicing Fee Portion***": 100% minus a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date; provided that, with respect to the Payment Date in August 2008, such percentage shall, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Closing Date to February 3, 2008.

"***Servicing Fees***": Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"***Share Trustee***": Maples Finance Limited.

"***Share Registrar***": Maples Finance Limited or any successor thereto.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, the Payment Date in November 2021 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

"***Structured Finance Obligation***": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities;"

(G) net interest margin securitizations;

(H) collateralized debt obligations a significant portion of which are backed by high-yield corporate bonds;

(I) collateralized debt obligations a significant portion of which are backed by other collateralized debt obligations, other than collateralized loan obligations a significant portion of which are backed primarily by other collateralized loan obligations; and

(J) obligations secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets where the obligors with respect to such receivables or other assets are non-corporate credit risks; *provided* that, for the avoidance of doubt, collateralized loan obligations shall not be excluded by this clause (J);

(ii) that has an S&P Rating;

(iii) that has a Moody's Rating and a Moody's Priority Category Recovery Rate as specified in Moody's Priority Category Recovery Rate Matrix; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Servicing Fee***": An amount payable on each Payment Date equal to the sum of (i) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments and (ii) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Servicing Fee in clauses (i) and (ii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Substantially Similar Law***": State, local or other federal and non-U.S. laws that are substantially similar to Section 406 of ERISA and Section 4975 of the Code to which governmental plans, certain church plans and non-U.S. plans, while not subject to the fiduciary responsibility provisions of ERISA or the provisions of Section 4975 of the Code, may nevertheless be subject.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Supplemental Servicing Fee***": On each Payment Date, the fee, if any, payable to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on

such Payment Date pursuant to Section 11.1(a)(i)(22) and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(a)(ii)(11)(A) and, if applicable, Section 11.1(a)(ii)(16).

"***Synthetic Letter of Credit***": A facility whereby (i) an agent bank issues or will issue a letter of credit for or on behalf of a borrower pursuant to an Underlying Instrument, (ii) the lender/participant pre-funds in full its obligations thereunder (provided that for the avoidance of doubt if funds are deposited to the Revolving Reserve Account with respect to such Synthetic Letter of Credit, such future funding obligations shall be deemed to be pre-funded) and upon such pre-funding, the lender/participant has no future funding obligations with respect to such Synthetic Letter of Credit and (iii) either (x) in the event that the letter of credit is drawn upon and the borrower does not reimburse the agent bank, the amounts pre-funded by the lender/participant are utilized by the agent bank to reimburse the agent bank for such amounts not funded by the borrower or (y) the agent bank passes on (in whole or in part) the fees it receives for providing the letter of credit to the lender/participant; provided, that, with respect to any Synthetic Letter of Credit, either (i) the related agent bank has confirmed to the Issuer that it will withhold taxes from fees paid to the Issuer, or (ii) if the Issuer, or the Servicer on behalf of the Issuer, determines in its reasonable discretion that it is probable that such Synthetic Letter of Credit will be subject to withholding tax, then the Issuer, or the Servicer on behalf of the Issuer, either (x) disposes of such Synthetic Letter of Credit or (y) establishes an account with the Trustee into which 30% of all fee income from such Synthetic Letter of Credit will be transferred and applied to the payment of any withholding tax imposed on the related fees received by the Issuer (it being understood that such reserved amounts shall be released and applied as Interest Proceeds at any later date if (A) the Issuer has received an Opinion of Counsel to the effect that the Issuer is no longer responsible for any withholding tax payments on such Synthetic Letter of Credit or (B) the Rating Condition with respect to S&P (so long as any Class of Notes is rated by S&P) is satisfied with respect to such release of the reserved amounts).

"***Synthetic Security***": Any swap transaction, structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse Securities (USA) LLC) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

Each Synthetic Security that is a credit default swap the Reference Obligations of which are Loans shall require each such Reference Obligation to be denominated and payable in U.S. Dollars.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security may require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event" and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event."

No Synthetic Security shall provide for termination by the Synthetic Security Counterparty at any time (i) after a declaration of acceleration of Maturity of the Notes has been made upon the occurrence of an Event of Default, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with Section 5.2(c) and liquidation of the Collateral has begun or (ii) upon an Optional Redemption, unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clause 15, and the exception thereto, of the definition of "Concentration Limitations"), and all related definitions, and (ii) any

other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Recovery Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Recovery Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than five days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments that mature no later than the Stated Maturity or (ii) floating rate credit card securitizations that are rated "Aaa" by Moody's and "AAA" by S&P that mature no later than the Stated Maturity in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral; *provided* that any amounts described in clause (ii) above shall be hedged by a guaranteed investment contract or a total return swap which shall be subject to Rating Confirmation by S&P.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto; provided that any Tax Advantaged Jurisdiction that is the jurisdiction of organization of an obligor of a Collateral Obligation other than obligors that are special purpose vehicles or issuers of Structured Finance Obligations shall have a Moody's foreign currency rating of at least "Aa2" and a S&P foreign currency rating of at least "AA-".

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period; or

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation.

"***Tax Opinion of Counsel***": A written opinion addressed to the Issuer (a copy of which will be provided to the Trustee) and, if requested, each Rating Agency that has made such request, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, issued by a nationally recognized law firm reasonably satisfactory to the Trustee, which law firm is experienced in the relevant areas of tax law, and which law firm may be counsel for the Servicer or the Issuer.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transfer Agent***": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"***Transferee Certificate***": A certificate substantially in the form of, with respect to the Senior Notes, Exhibit B-1 or, with respect to the Class E Notes, Exhibit B-4 attached hereto, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unfunded Amount***": With respect to any Revolving Loan or any Delayed Drawdown Loan at any time, the excess, if any, of (a) the Commitment Amount over (b) the Funded Amount thereof.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal

income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. Persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as U.S. Persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor);

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.50%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and August 1, 2017 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 2.5 years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 44.50%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Recovery Rate for each Class of Notes is greater than or equal to: (i) with respect to the Class A Notes, 60%; (ii) with respect to the Class B Notes, 63%; (iii) with respect to the Class C Notes, 66%; (iv) with respect to the Class D Notes, 70% and (v) with respect to the Class E Notes, 72%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (w) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero, (x) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto, (y) for any Revolving Loan or Delayed Drawdown Loan, will be the per annum contract spread for the Funded Amount thereof and the rate of the commitment fee and such other fees payable to the Issuer for any Unfunded Amount thereof and (z) for any synthetic letter of credit, will be the all-in rate (including any fees payable to the Issuer by the underlying obligor) minus the applicable LIBOR), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR;

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and acquisition of Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not used to purchase additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Retention Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Retention Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

Section 1.3. ***Rules of Interpretation.***

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)", refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein", "hereof", "hereto", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either", the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both", not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any", and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including", the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding", and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding", "following", "before", "after", "next" and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES

Section 2.1. ***Forms Generally.***

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

Section 2.2. ***Forms of Notes and Certificate of Authentication.***

(a) The Senior Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A-1.

(b) *Regulation S Global Notes*. The Senior Notes of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (the "***Regulation S Global Notes***"). The global notes shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Notes*. The Senior Notes of each Class initially sold to U.S. persons that are Qualified Institutional Buyers (or, solely in the case of certain Holders purchasing Class E Notes on the Closing Date, Institutional Accredited Investors) and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Book-Entry Provisions*. This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Senior Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Senior Note.

(e) The Class E Notes shall be issued in the form of one or more certificated Class E Notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit A-2, including legends (each, a "***Certificated Class E Note***"), which shall be registered in the name of the owner thereof.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$920,000,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A	B	C	D	E
Original Principal Amount	$730,000,000	$60,000,000	$50,000,000	$40,000,000	$40,000,000
Interest Rate	LIBOR + 0.63%	LIBOR + 1.10%	LIBOR + 1.75%	LIBOR + 2.75%	LIBOR + 5.00%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aa2/AA	A2/A	Baa2/BBB	Ba2/BB

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 20,000 Class I Preference Shares and 60,000 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable, and in accordance with the provisions of the Preference Shares Paying Agency Agreement.

Section 2.4. ***Extension of Replacement Period and Stated Maturity.***

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in

accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); *provided* that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, in connection with an Extension Sale, all, but not part, of the Extension Sale Securities shall be purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that the Initial Purchaser shall not be responsible for causing the Extension Conditions to be satisfied and the Initial Purchaser shall not be liable to any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture. The Trustee shall be entitled to receive and rely conclusively on a certificate of the Issuer as to compliance with the extension provisions, as provided in Section 2.4(e) below.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the "***Extension Notice***"), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent

(for forwarding to the Holders of the Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit I, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable written notice (an "***Extension Sale Notice***") to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the "***Extension Sale Notice Period***") of its intention to sell all or a portion of its Securities to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent) and notified to the Trustee, the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm, as shall be certified to the Trustee by a certificate of an Authorized Officer of the Issuer (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture and the Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in subparagraph (c) above, and other applicable requirements of this Section 2.4 are satisfied, as determined by the Issuer upon consultation with the Servicer (and as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on such determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Initial Purchaser, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Senior Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners, as determined by the Issuer, who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus

Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, such Holder will sell such Class II Preference Shares to the Extension Qualifying Purchaser and such Preference Shares will be redesignated as Class I Preference Shares.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Senior Notes and the Issuer may deliver the Class E Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent, for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) (i) In the case of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, on each day from the date on which a Holder or transferee acquires such Holder's or subsequent transferee's interest in such Notes through and including the date on which such Holder or subsequent transferee disposes of such Holder's or subsequent transferee's interest in such Notes, such Holder or subsequent transferee (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) shall be deemed to represent either that (A) such Holder or subsequent transferee is neither a Plan nor an entity whose underlying assets include "plan assets" by reason of such Plan's investment in the entity, nor a governmental, church, non-U.S. or other plan which is subject to any Substantially Similar Law or (B) (1) in connection with the acquisition, holding and disposition of such Class A Note, Class B Note, Class C Notes or Class D Note, the Holder's or transferee's fiduciary has determined that such Holder or transferee is receiving no less, and paying no more, than "adequate consideration" (within the meaning of Section 408(b)(17)(B) of ERISA and Section 4975(f)(10) of the Code) and (2) such Holder's or transferee's acquisition, holding and disposition of such Notes will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, church, non-U.S. or other plan, a violation of any Substantially Similar Law). Any

purported purchase or transfer of the Senior Notes to a Holder or transferee that does not comply with the requirements of this subsection (i) shall be null and void *ab initio*.

(ii) (A) Each Holder or subsequent transferee of a Class E Note (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) will be required to represent whether such Holder or subsequent transferee is (or is not, as applicable) a Benefit Plan Investor or a Controlling Person. No Benefit Plan Investor or Controlling Person will be permitted to purchase Class E Notes unless such Holder's or subsequent transferee's acquisition, holding and disposition of such Class E Notes, (x) will not cause participation by Benefit Plan Investors to be "significant" within the meaning of the Plan Asset Regulation and (y) (1) in connection with the acquisition, holding and disposition of such Class E Note, the Holder's or subsequent transferee's fiduciary has determined that such Holder or subsequent transferee is receiving no less, and paying no more, than "adequate consideration" (within the meaning of Section 408(b)(17)(B) of ERISA and Section 4975(f)(10) of the Code) and (2) such Holder's or subsequent transferee's acquisition, holding and disposition of such Class E Notes will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. If the Holder or the subsequent transferee is a governmental, church, non-U.S. or other plan that is subject to any Substantially Similar Law, such Holder or subsequent transferee (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) shall represent and warrant that such Holder's or subsequent transferee's acquisition, holding and disposition of a Class E Note will not constitute or result in a non-exempt violation under any such Substantially Similar Law.

(B) In determining whether participation by Benefit Plan Investors is "significant", Class E Notes beneficially held by (1) the Servicer, the Trustee, any of their respective Affiliates, employees of the Servicer or any of their respective Affiliates and any charitable foundation of any such employees or (2) persons that have represented that they are Controlling Persons, will be disregarded and will not be treated as Outstanding for purposes of whether participation by Benefit Plan Investors is "significant" to the extent that persons listed in (1) or (2) are not Benefit Plan Investors.

(C) Each Holder or subsequent transferee (and each fiduciary acting on behalf of a Holder or a subsequent transferee (both in its fiduciary and corporate capacity)) acknowledges that a transfer of the Class E Notes will not be permitted, and no such transfer or exchange will be registered under this Indenture, to the extent that the transfer or exchange would result in Benefit Plan Investors owning 25% or more of the Aggregate Outstanding Amount of the Class E Notes immediately after such transfer or exchange (determined in accordance with the Plan Asset Regulation and this Indenture).

(iii) If any Person shall become the beneficial owner of an interest in a Class E Note who has made a Benefit Plan Investor or Controlling Person representation that is subsequently shown to be false or misleading or whose beneficial ownership otherwise causes a violation of the 25% Limitation (any such person a "***Non-Permitted ERISA Holder***"), the Issuer shall, promptly after discovery that such person is a Non-Permitted ERISA Holder by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), send notice to such Non-Permitted ERISA Holder demanding that such Non-Permitted ERISA Holder transfer its interest to a person that is not a Non-Permitted ERISA Holder within 14 days of the date of such notice. If such Non-Permitted ERISA Holder fails to so transfer its Class E Notes, the Issuer shall have the right, without further notice to the Non-Permitted ERISA Holder, to sell (and shall sell if directed to do so by the Servicer) such Class E Notes or interest in such Class E Notes, to a purchaser selected by the Issuer that is not a Non-Permitted ERISA Holder on such terms as the Issuer may choose. The Issuer, or the Trustee acting on behalf of the Issuer, may select the

purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities similar to the Class E Notes and selling such Class E Notes to the highest such bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Class E Note, the Non-Permitted ERISA Holder and each other Person in the chain of title from the Holder to the Non-Permitted ERISA Holder, by its acceptance of an interest in the Class E Notes, agrees to cooperate with the Issuer and the Trustee to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale, shall be remitted to the Non-Permitted ERISA Holder. The terms and conditions of any sale under this subsection (iii) shall be determined in the sole discretion of the Issuer, and none of the Issuer, the Servicer or the Trustee shall be liable to any Person having an interest in the Class E Notes sold as a result of any such sale or the exercise of such discretion (including for the price of such sale).

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee, the Share Registrar or the Indenture Registrar by a prospective transferee, the Trustee, the Share Registrar or the Indenture Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii) and (iv) of this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note to Regulation S Global Note*. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of:

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the

corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) the transferor shall be deemed to make the representations, warranties and agreements set forth in a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) the transferee shall be deemed to make the representations, warranties and agreements set forth in a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Note to Rule 144A Global Note*. If a Holder of a Senior Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) the transferor shall be deemed to make the representations, warranties and agreements set forth in a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the Person transferring the interest in the Regulation S Global Note reasonably believes that the Person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) the transferee shall be deemed to make the representations, warranties and agreements set forth in a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the

reduction, to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) *Other Exchanges*. If a Global Note is exchanged for a Senior Note in definitive registered form without interest coupons pursuant to Section 2.11, the Senior Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including the certification requirements, intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as the Class E Notes remain Outstanding transfers of such Class E Notes shall only be made in accordance with Section 2.6(c) and this Section 2.6(g) upon receipt by the Indenture Registrar of a certificate in the form of Exhibit B-4 given by the proposed transferee stating that it is a QIB/QP and containing other representations, warranties and agreements of such transferee and a certificate in the form of Exhibit B-5 given by the proposed transferee with respect to such transferee's benefit plan investor and affected bank status.

(h) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(j) (i) Each Person who becomes a beneficial owner of a Senior Note evidenced by: (A) an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such Person's purchase or other acquisition of the relevant Definitive Note and (B) an interest in a Global Note, shall be deemed to make the representations, warranties and agreements set forth in the applicable legends of the Notes set forth in Exhibit A-1 hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note.

(ii) Each Person who becomes a beneficial owner of a Class E Note shall (x) make the representations, warranties and agreements set forth in the Transferee Certificate set forth in Exhibit B-4 and (y) make the representations set forth in the Benefit Plan Investor and Affected Bank Certificate set forth in Exhibit B-5 upon such Person's purchase or other acquisition of such Class E Note.

(k) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(l) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost or Stolen Notes.***

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture).

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class E Notes on any Payment Date to the extent necessary to satisfy the Class E Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note and a Class E Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note and a Class E Note. In the case of a Definitive Note and a Class E Note, its Holder has

provided written wiring instructions to the Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 days nor less than 10 days before the date on which the payment is to be made (or as soon as possible after known by the Trustee to be such final payment), mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Co-Issuer under the Senior Notes and under this Indenture are non-recourse obligations, and the obligations of the Issuer under the Notes and under this Indenture are limited recourse obligations payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any

Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will notify the Trustee and the Share Registrar of any Securities that are owned by the Servicer or any Affiliate of the Servicer.

Section 2.10. ***Cancellation.***

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Definitive Notes.***

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the Corporate Trust Office (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Note***") in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(j), bear the legends in the applicable portion of Exhibit A-1 and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Senior Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

Section 2.12. ***Notes Beneficially Owned by Non-Permitted Holders.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, (i) any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act and (ii) any transfer of a beneficial interest in any Class E Note to a Person that is not a QIB/QP, shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

Section 2.13 ***Tax Purposes***

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Notes on Closing Date.***

(a) The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters*. An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Purchase Agreement and, in the case of the Issuer, the Servicing Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement, the Securities Account Control Agreement and any Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Securities applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Securities except as have been given; provided that the opinions of McKee Nelson, LLP and Maples and Calder, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Servicer's U.S. Counsel Opinion*. Opinions of McKee Nelson LLP, special U.S. counsel to the Co-Issuers, and an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Maples and Calder, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Nixon Peabody LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture*. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Securities applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of any Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Servicing Agreement*. Executed copy of the Servicing Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents*. Executed copy of the Preference Shares Paying Agency Agreement.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Servicer*. A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligations on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(a)(xx)(B);

(xiv) *Rating Letters*. Copies of letters signed by each of the Rating Agencies confirming that the Class A Notes have been rated "Aaa" by Moody's and "AAA" by S&P, that the Class B Notes have been rated at least "Aa2" by Moody's and at least "AA" by S&P, that the Class C Notes have been rated at least "A2" by Moody's and at least "A" by S&P, that the Class D Notes have been rated at least "Baa2" by Moody's and at least "BBB" by S&P, that the Class E Notes have been rated at least "Ba2" by Moody's and at least "BB" by S&P, and that such ratings are in effect on the Closing Date.

(xv) *Accounts*. Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$209,924,014.19 into the Collection Account for use pursuant to Section 7.19 and the deposit of at least U.S.$2,050,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g).

(xvii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Senior Notes to the *Official List* of the Irish Stock Exchange.

(xviii) *Issuer Order for Authentication of Notes*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate*. An Accountants' Certificate satisfactory to the Issuer (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$962,600,000, that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(a)(xix), (D) confirming the weighted average purchase price of the Collateral Obligations and (E) indicating the percentage of Collateral Obligations constituting Deep Discount Obligations.

(xx) *Certificate of the Issuer Regarding Collateral*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the Delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer has good and marketable title to such Collateral Obligation free and clear of any liens, claims, encumbrances or defects of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in such Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in such Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge such Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral;

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Collateral as of the Closing Date is at least 90% of the aggregate par amount thereof; and

(G) the Issuer has made delivery to the Trustee or to a Custodian as contemplated by Section 3.2 of all Collateral Obligations pledged to the Trustee for inclusion in the Collateral on the Closing Date (including any and all promissory notes and other Underlying Instruments related to them to the extent received by the Issuer or on its behalf).

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit G-2.

(xxii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

(b) Any Refinancing Note may be issued from time to time pursuant to Section 9.7 hereof. Any such Refinancing Notes shall be executed by the Applicable Issuer and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee upon and pursuant to Issuer Order delivered to the Trustee, together with delivery to the Trustee by the Issuer of an Opinion of Counsel to the effect that (A) such Refinancing Notes are duly authorized and validly issued by the Applicable Issuer pursuant to the Indenture, constituting the legal, valid and binding obligation of such Applicable Issuer, enforceable against such Issuer in accordance with its terms and (B) all conditions precedent under this Indenture, if any, applicable to the issuance, authentication and delivery of such Notes, have been satisfied.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be State Street Bank and Trust Company. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate

of the Issuer or the Co-Issuer, has a long-term debt rating of at least "Baa1" by Moody's (and not on credit watch with negative implications) and has combined capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into a Securities Account Control Agreement with the Custodian in accordance with Article 8 of the UCC providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

Section 3.3. ***Representations as to Collateral.***

The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the

case of the Loans with respect to which loans were made by Pre-Closing Parties and repaid by the Issuer on the Closing Date, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," "uncertificated securities," "chattel paper" or "securities accounts," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has

received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities accounts," "chattel paper," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost or stolen Notes,

(iii) rights of Noteholders to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares

Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(vii) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement, and

(viii) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of a Tax Opinion of Counsel to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3 and 13.1 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on the Class A Notes or the Class B Notes, or, if no Class A Notes or Class B Notes are Outstanding, a default in the payment of any interest on the Controlling Class, in each case, when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A Notes are Outstanding, the Overcollateralization Ratio with respect to the Class A Notes (which, for purposes of this clause (d), will be calculated without giving effect to clause 5(A) of the definition of "Overcollateralization Ratio Numerator") is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment.

Section 5.2. ***Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment.***

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any

declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable

Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall at the written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall, upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 5.8, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

Section 5.5. ***Optional Retention of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 13 unless:

(i) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i); or

(ii) the Holders of a Super Majority of each of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Initial Purchaser.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the mathematical accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture (to the extent such accountants are willing and able to do so).

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Notes.***

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholders of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity pursuant to this Section 5.8, from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

Section 5.9. ***Unconditional Rights of Noteholders.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee (including the exercise of any remedy specified in Section 5.4(a) or otherwise with respect to the Collateral), or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability or expense unless it has received an indemnity against the liability and expense).

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability or expense (unless the Trustee has received an indemnity against the liabilities and expenses reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Notes.***

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

(a) Except during the continuance of an Event of Default known to the Trustee:

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange and so long as the guidelines of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper

or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of the Notes.***

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as

may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Notes.***

(a) The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

Section 6.6. ***Acquisition of Class E Notes and Preference Shares.***

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Class E Notes and the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Class E Notes or Preference Shares (including pursuant to a Maturity Extension, a Refinancing and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class E Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, this Indenture and the Preference Share Documents). Any Class E Notes or Preference Shares held as principal by the Trustee or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% Limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

Section 6.7. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer (provided that the foregoing shall not relieve the Bank of its obligations under any security or obligation issued by the Bank or any Affiliate thereof).

Section 6.8. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with

respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify the Trustee and its officers, directors, employees and agents for any loss, liability or expense (including reasonable attorney's fees and costs) incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.9. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent "bank" (within the meaning of the Investment Company Act) organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be "affiliated" (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers; provided that the requirements of the preceding sentence shall be met if (a) the Trustee is not "affiliated" (as defined in the preceding sentence) with the Issuer, the Co-Issuer, the Administrator or the Share Registrar, (b) neither the Trustee nor the Issuer has actual knowledge, or has received written notice, that the Trustee is "affiliated" (as defined in the preceding sentence) with any person involved with the organization or operation of either of the Co-Issuers, and (c) the Trustee has not provided and does not provide credit or credit enhancement to either of the Co-Issuers. For purposes of the preceding clause (b), (i) the "actual knowledge" of the Trustee shall mean (x) its knowledge of those persons who have been expressly identified in writing to it by either or both of the Co-Issuers, or the Servicer on their behalf or (y) any persons otherwise actually known to a Responsible Officer of the Trustee, in either case, to be a person involved with the organization or operation either of the Co-Issuers, without any duty of independent inquiry or investigation on the part of the Trustee, and (ii) unless and except to the extent it has been otherwise expressly notified in writing by the Issuer , or the Servicer on its behalf , the Trustee shall be entitled to presume that the Issuer has no knowledge of such an affiliation. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority,

then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days' written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall by Board Resolution (or, if an Event of Default shall have occurred and be continuing, at the direction of a Majority of the Controlling Class) promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by the Co-Issuers as directed by Board Resolution (or, if an Event of Default shall have occurred and be continuing, by an Act of a Majority of the Controlling Class) or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor

Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.11. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.12. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.13. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.14. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or

substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

Section 6.15. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.16. ***Fiduciary for Noteholders Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

Section 6.17. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) *Organization*. The Bank has been duly organized and is validly existing as a Massachusetts trust company and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations*. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility*. The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

Section 6.18. ***Withholding Tax Forms.***

The Issuer hereby agrees to deliver or cause to be delivered, a United States Internal Revenue Service Form W-8BEN (or successor form thereto) or any other appropriate tax certificates to the relevant issuer of its Collateral Obligations and issuer of its Eligible Investments at the time such Collateral Obligations or Eligible Investments are purchased by the Issuer and thereafter as required under the relevant law. In addition, the Issuer hereby agrees to deliver, and the Issuer shall be required to deliver, United States Internal Revenue Service Forms W-8BEN (or successor form thereto) and other appropriate United States tax forms as may be required by the Hedge Counterparty, to the Hedge Counterparty at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form, and shall take any other action appropriate to prevent withholding or backup withholding tax on the Hedge Agreements. The Issuer shall represent, to the Hedge Counterparty in the master agreement, confirmation or schedule to the Hedge Agreement, that the Issuer is a "non-U.S. branch" of a foreign person as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations. The Issuer will request that the Hedge Counterparty provide the Issuer a United States Internal Revenue Service Form W-9 or an appropriate United States Internal Revenue Service Form W-8, as applicable, together with any required attachments, at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form.

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Senior Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint State Street Bank and Trust Company, 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116, telecopy no. (617) 937-0517, Attention: CDO Services Group – Greenbriar CLO, as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served, which office will initially be the office of CT Corporation System, 111 Eighth Avenue, 13th Floor, New York,

New York 10011, and an office or agency outside of the United States where the Notes may be presented and surrendered for payment (written notice of which shall be provided to the Trustee by the Co-Issuers).

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Senior Notes is listed on the Irish Stock Exchange and the guidelines of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Senior Notes and this Indenture may be served and where the Senior Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange, Custom House Administration & Corporate Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Senior Notes, for the payment of principal, interest and other distributions on the Senior Notes and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Senior Notes or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Senior Notes is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Senior Notes of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers at their addresses as provided in Section 14.3

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent other than the Trustee must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect

to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Issuer. The Noteholder shall thereafter look only to the Issuer for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Issuer) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Issuer any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall, to the maximum extent permitted by applicable law, maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the

validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a Tax Opinion of Counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone;

(vi) pay when due all taxes levied or assessed on any part of the Collateral and use commercially reasonable efforts to minimize taxes and any other costs arising in connection with its activities; and

(vii) give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other papers that may be necessary or desirable to create, preserve, perfect or validate the security interest granted pursuant to this Indenture or to enable the Trustee to exercise and enforce its rights hereunder with respect to such pledge and security interest, and hereby authorizes the Trustee to file a UCC financing statement listing 'all assets of the debtor' in the collateral description of such financing statement.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and State Street Bank and Trust Company as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(a)(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank) on such date, or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded at such date, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless (in the case of clause (i) or (ii) of this Section 7.5(b)) the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to such action or actions.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay, or cause to be paid, any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. ***Opinions as to Collateral.***

On or before January 1 in each calendar year, commencing in 2009, the Issuer shall furnish to the Trustee and each of the Rating Agencies, an Opinion of Counsel stating that in the opinion of such counsel as of the date of such opinion under the District of Columbia Uniform Commercial Code, the UCC financing statement(s) filed in connection with the lien and security interests created by this Indenture shall remain effective and no additional financing statements, continuation statements or amendments with respect to such financing statement(s) shall be required to be filed in the District of Columbia from the date thereof through the next twelve months to maintain the perfection of the security interest of this Indenture under the District of Columbia Uniform Commercial Code.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the

Collateral Administration Agreement as initially executed), contract with other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi) and (ix), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including a Refinancing in accordance with Section 9.7 and including, as contemplated hereby, entering into any Hedge Agreements and Securities Lending Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such "non-petition" and "limited recourse" provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before December 15 in each calendar year, commencing in 2008, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc. Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class

(except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and shall have obtained a Tax Opinion of Counsel that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by the restrictions set forth in Annex 1 to the Servicing Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in Annex 1 to the Servicing Agreement, unless, with respect to a particular transaction, it obtains written advice of McKee Nelson LLP or a Tax Opinion of Counsel that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in Annex 1 to the Servicing Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer obtains written advice of McKee Nelson LLP or a Tax Opinion of Counsel that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis and, at the request of the Issuer, the Trustee is hereby authorized to enter into any amendment of Annex 1 to the Servicing Agreement under such circumstances; provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of Annex 1 to the Servicing Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Notes within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event written advice of McKee Nelson LLP or a Tax Opinion of Counsel as described above has been obtained in accordance with the terms hereof, no consent of

any Noteholder or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of Annex 1 to the Servicing Agreement contemplated by such written advice or opinion.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Irish Stock Exchange.***

So long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the regulated market of the ISE; provided that the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

Section 7.14. ***Annual Rating Review.***

So long as any Notes of any Class remain Outstanding, on or before December 1 in each year commencing in 2008, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the Irish Stock Exchange and the guidelines of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the guidelines of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. The Issuer and each Holder and beneficial owner of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes, except (x) as otherwise required by applicable law, (y) to the extent a Holder makes a protective QEF election, or (z) to the extent that a Holder files certain United States tax information returns required of only certain equity owners with respect to various reporting requirements under the Code.

(b) The Issuer will not make an election to be treated as a partnership for U.S. federal income tax purposes, and will take all necessary actions to maintain its status as a corporation for U.S. federal income tax purposes.

(c) The Issuer and Co-Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in the United States or any state thereof except with respect to a return required by a tax imposed under Section 881 of the Code unless it shall have obtained a Tax Opinion of Counsel prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) Upon the Trustee's receipt of a written request of the Issuer's Independent accountants, a Noteholder, or written request of a Person certifying that it is an owner of a beneficial interest in a Note, for the information described in United States Treasury Regulations Section 1.1275-3(b)(1)(i) that is applicable to such Note, it shall notify the Issuer of such request and the Issuer will cause its Independent accountants to provide promptly to the Trustee and such requesting Holder or owner of a beneficial interest in such a Note all of such information. Any additional issuance of Notes shall be accomplished in a manner that will allow the Issuer to accurately provide the same information as the foregoing to the Noteholders of such Notes.

(e) In order to ensure the Holders' and Beneficial Owners' acquisition of the Notes pursuant to this Indenture are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners

of the Notes (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Indenture (including the ownership and disposition of the Notes). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(f) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Noteholder requests information about any such transactions in which the Issuer is a purchaser, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(g) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture and the Preference Shares Paying Agency Agreement.

(h) The Issuer shall provide, upon the request by a Holder of Class E Notes (or any other Class of Notes that may be treated as equity for U.S. federal income tax purposes), such information for the purposes of allowing such Holder to make a protective "qualifying electing fund" election. The Issuer shall provide, upon request of a Holder of Class E Notes, any information that such Holder reasonably requests to assist such Holder with regard to any filing requirements the Holder may have as a result of the controlled foreign corporation rules under the Code. Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(i) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax, accounting and reporting purposes.

(j) Each of the Issuers and the Trustee agrees that it does not intend for this Indenture to represent an agreement to enter into a partnership, a joint venture or any other business entity for U.S. federal income tax purposes. The Issuers and the Trustee shall not represent or otherwise hold themselves out to the United States Internal Revenue Service or other third parties as partners in a partnership or members of a joint venture or other business entity for U.S. federal income tax purposes.

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" or a short-term senior unsecured debt rating of at least "A-1" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchaser or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no

longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor with the required ratings for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including

any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its commercially reasonable efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes and the Class B Notes is at least U.S.$992,377,774.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes and the Class B Notes is at least U.S.$ 992,377,774 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) No later than 10 Business Days after the Ramp-Up Completion Date, the Issuer shall notify each of the Rating Agencies in writing of the occurrence of the Ramp-Up Completion Date (each, a "***Ramp-Up Notice***") and request in writing that each of S&P (with such request sent to CDOEffectivedatePortfolios@sandp.com) and Moody's confirm in writing within 25 days of delivery of such Ramp-Up Notice that it has not reduced or withdrawn the Initial Ratings; provided, however, that the Issuer shall not be required to request a Rating Confirmation from Moody's if, as of the Ramp-Up Completion Date Moody's has received an Accountants' Certificate confirming (i) the Issuer is in compliance with each of the Collateral Quality Tests, the Coverage Tests and the Concentration Limitations and (ii) the Overcollateralization Ratio Numerator of the Collateral Obligations that the Issuer owns or has committed to purchase is at least equal to U.S.$992,377,774. In connection with such request or, in the case of Moody's, in

lieu of such request, the Issuer shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, an Excel Default Model Input File (if applicable)) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Overcollateralization Ratio Numerator of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) Any failure by the Issuer to obtain a Ratings Confirmation pursuant to Section 7.19(e) above shall be a Rating Confirmation Failure (a "***Rating Confirmation Failure***"). If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

(g) On the Ramp-Up Completion Date, S&P shall provide seventeen (17) different S&P CDO Monitors to the Issuer, the Servicer, the Collateral Administrator and the Trustee, such S&P CDO Monitors corresponding to portfolios with weighted average spreads of 2.20%, 2.25%, 2.30%, 2.35%, 2.40%, 2.45%, 2.50%, 2.55%, 2.60%, 2.65%, 2.70%, 2.75%, 2.80%, 2.85%, 2.90%, 2.95% and 3.00%, respectively. After the Ramp-Up Completion Date, the Servicer, by written notice to the Collateral Administrator, the Trustee and S&P, will elect which S&P CDO Monitor shall apply initially and, thereafter, on two Business Days written notice prior to the Measurement Date to the Collateral Administrator, Trustee and S&P, the Servicer will elect to have a different S&P CDO Monitor apply, such S&P CDO Monitor corresponding to a portfolio with a weighted average spread that is equal to or lower than the Weighted Average Spread of the Floating Rate Obligations in the Collateral at the time of such election; provided, that if the Weighted Average Spread of the Floating Rate Obligations in the Collateral at the time of such election is less than 2.20%, then the Servicer on behalf of the Issuer will request S&P to provide a different S&P CDO Monitor which has a weighted average spread equal to or lower then the Weighted Average Spread of the Floating Rate Obligations in the Collateral. For the avoidance of doubt, the selection of an S&P CDO Monitor as described in this paragraph shall be separate and independent of any election of the Servicer with respect to the Ratings Matrix.

(h) On the Interim Targets Date, the Servicer, on behalf of the Issuer, shall submit to Moody's (x) a statement showing compliance with the Interim Targets, or (y) if the Interim Targets are not satisfied, a plan for achieving compliance with such Interim Targets by the Ramp-Up Completion Date.

Section 7.20. ***Secondary Risk Procedures.***

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Balance of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Balance of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Balance of Synthetic Securities with respect to Collateral Obligations the "Aggregate Counterparty Limit" of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.21. ***Section 3(c)(7) Procedures.***

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) *Section 3(c)(7) Notice to Investors*. The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers.* The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Initial Purchaser and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act, to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities, when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in clauses (1) through (23) below, the interests of the Holders of the Securities (except, in the case of clause (12) below, any Holders of Notes subject to the applicable Refinancing) are not materially and adversely affected thereby as provided in this Section 8.1, execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication and delivery of the Notes;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) cause any provision of this Indenture to conform to, or be consistent with, the statements made with respect to such provision in the Offering Memorandum;

(7) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act (including, without limitation, to add provisions for resales and transfers of the Class E Notes and/or Preference Shares under Regulation S) or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(8) with the consent of the Servicer, modify (A) the restrictions on the sales of Collateral Obligations in Section 12.1 or (B) the Eligibility Criteria in Section 12.2 (and the definitions related thereto);

(9) make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the Irish Stock Exchange;

(10) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(11) accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(12) to accommodate a Refinancing effected pursuant to and in compliance with Section 9.7; *provided* that no Holders of Notes or Preference Shares are materially adversely affected thereby, other than Holders of Notes subject to such Refinancing (and provided that the mere occurrence of the Refinancing itself shall be deemed not to constitute such a material adverse effect);

(13) take any appropriate action to prevent the Issuer, the Holders of the Securities, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities, as evidenced by a Tax Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(14) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(15) to amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted under this Indenture;

(16) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(17) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(18) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(19) facilitate hedging transactions;

(20) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(21) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(22) with the consent of the Servicer, enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer to the effect that the modification would not be materially adverse to the Holders of any Class of Securities;

(23) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under this Indenture and the Preference Share Documents; or

(24) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); provided that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer under this Indenture.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified in writing by a Majority of any Class of Notes or a Majority of the Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee shall be entitled to receive and may rely on a certificate of the Servicer or an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency), the Collateral Administrator and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental

indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to S&P, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(1) the Servicer if the supplemental indenture would affect the rights, powers, obligations or duties of the Servicer or would affect the amount or priority of any fees payable to the Servicer under this Indenture;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes; and

(3) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

(b) Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares (other than in the case of any Maturity Extension in connection with an extension of the Replacement Period as described in Section 2.4), reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the

Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section 8.2(b), or to modify other provisions of this Indenture that expressly provide by their terms that they cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

(c) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Collateral Administrator and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee in writing (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(d) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(e) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer, the Servicer (if such Servicer's consent is required hereunder) and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Preference Shares (if the consent of the Holders of the Preference Shares is required hereunder) and the Rating Condition is satisfied or is specifically waived by all consenting parties (and provided that no objection has been received from any Hedge Counterparty after delivery of such proposed supplemental indenture to such Hedge Counterparty at least 10 days prior to execution), all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; provided that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would affect the rights, powers, obligations or duties of the Servicer or would affect the amount or priority of any fees payable to the Servicer under this Indenture unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Any supplemental indenture that would necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Memorandum and Articles of Association to be altered to conform with such proposed amendment.

Section 8.5. ***Reference in Notes to Supplemental Indentures.***

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then the Servicer may direct and, upon such direction and in accordance with the instructions of the Servicer, the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale, each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the applicable Required Redemption Percentage, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

In the event that the Preference Shares Paying Agent, the Trustee and the Issuer receive notice directing an Optional Redemption from any one or more Holders of Preference Shares holding less than a Majority of the Preference Shares, the Preference Shares Paying Agent shall, within five Business Days of receipt of such notice, notify the Holders of the Preference Shares (i) of the receipt of such notice and (ii) that any Holder of Preference Shares may join in directing an optional redemption by notifying the Issuer, the Trustee and the Preference Shares Paying Agent in writing within five Business Days after such Holder's receipt of the Preference Shares Paying Agent's notice.

Upon receipt of a notice of redemption pursuant to the first paragraph of this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Closing Date Expense Account, the Payment Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency in writing of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, so long as all administrative fees and expenses and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings subject to the provisions of the Preference Shares Paying Agency Agreement and Cayman Islands law; or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction subject to the provisions of the Preference Shares Paying Agency Agreement and Cayman Islands law.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3. ***Optional Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the guidelines of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Senior Notes to be redeemed are listed on the Irish Stock Exchange, and the Irish Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Trustee and the Servicer only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares (or, in the case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) to withdraw the notice of redemption delivered by a percentage of the Preference Shares (or, in the case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the

Indenture Register is not sufficient for that purpose, by first class mail) and the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption or the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least 10 Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreement (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to any Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below. For the avoidance of doubt, no Hedge Agreement shall be sold or terminated unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the guidelines of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders whose consent was solicited with respect to such supplemental indenture (the "***Amendment Buy-Out Option***") for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders for the applicable Amendment Buy-Out Purchase Price, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "***Amendment Buy-Out***"). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities to the Amendment Buy-Out Purchaser; *provided* that if any Non-Consenting Holder holds Class II Preference Shares, such Non-Consenting Holder will sell such Class II Preference Shares to the Amendment Buy-Out Purchaser and such Preference Shares will be redesignated as Class I Preference Shares. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities set forth herein and in the Preference Share Documents, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.7. ***Redemption by Refinancing.***

(a) On any Payment Date after the Non-Call Period, any Class of the Notes may be redeemed in whole, but not in part from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares)) with a copy to the Trustee and the Rating Agencies, at least 30 days prior to the Payment Date for such redemption (such date, the "***Refinancing Date***"), to redeem such Notes in accordance with this Section 9.7 (a "***Notice of Refinancing***"), which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be refinanced. Such redemption shall be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes ("***Refinancing Notes***"), the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Issuer, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "***Refinancing***"), and provided that (i) such proposal is approved

by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date.

(b) The Issuer shall obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) (A) a Rating Confirmation has been obtained from each Rating Agency for each Class of Notes not subject to Refinancing and (B) a rating letter has been obtained from each Rating Agency with respect to each class of Refinancing Notes that such Refinancing Notes shall be rated at least as high as the Initial Rating of the Class of Notes subject to the Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Issuer related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the stated maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain limited recourse, non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth herein;

(viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and

(ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for.

(c) The Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3 hereof) shall be fully protected in relying upon an Opinion of Counsel stating that the Refinancing is permitted by this Indenture and that all conditions precedent thereto have been complied with.

(d) Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date pursuant to this Indenture to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; provided that to the extent that any Refinancing Proceeds exceed the amount necessary to redeem the Notes being refinanced (and any associated Administrative Expenses), such excess Refinancing Proceeds will be treated as Principal Proceeds.

(e) If notice of consent by a Majority of the Preference Shares to a Refinancing has been received by the Trustee from the Servicer pursuant to Section 9.7(a) no later than 15 days prior to the Refinancing Date, notice of a Refinancing shall be given by the Trustee by first class mail, postage prepaid, mailed not less than 10 days prior to the proposed Refinancing Date, to each Holder of Notes of the Class to be refinanced at the address in the Indenture Register (with a copy to the Servicer) and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All Notices of Refinancing shall state:

(i) the proposed Refinancing Date, which shall be the applicable Redemption Date in respect of the Notes being redeemed;

(ii) the Refinancing Price, which shall be the applicable Redemption Price in respect of the Notes being redeemed;

(iii) that on such proposed Refinancing Date such Notes will be refinanced and redeemed in full, and that, provided that the Refinancing Proceeds have been deposited with the Trustee for any such payment in full, interest on such Notes being redeemed shall cease to accrue on such date; and

(iv) the place or places where such Notes are to be surrendered for payment of the Refinancing Price which, if not stated, shall be the office or agency of any paying agent as provided in Section 7.2.

provided that no such Notice of Refinancing shall be sent if either (a) the Servicer has withdrawn its consent to such Refinancing or (b) the consent of a Majority of the Holders of Preference Shares to such Refinancing has not been obtained.

(f) Notice of Refinancing shall be given by the Trustee at the expense of the Issuer. Failure to give a Notice of Refinancing, or any defect therein, to any Holder of any Note selected for Refinancing shall not impair or affect the validity of the Refinancing or give rise to any claim based upon such failure or defect.

Any Notice of Refinancing may be withdrawn by the Servicer, on behalf of the Issuer, on or prior to the fourth Business Day prior to the scheduled Refinancing Date by written notice to the Trustee, the Paying Agent, the Preference Shares Paying Agent, the Rating Agencies and the Holders of the Preference Shares. Upon receipt of such notice of withdrawal, the Trustee shall send such notice to the Holders of Notes and, if applicable, the Irish Paying Agent.

(g) If a Notice of Refinancing pursuant to Section 9.7(a) has been given as provided herein and not withdrawn, the Notes to be refinanced shall on the Refinancing Date become due and payable at the Refinancing Price. Each Holder of such Notes shall present and surrender its Note at the place specified in the Notice of Refinancing on or prior to such Refinancing Date; provided that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender.

(h) If any Class of Notes called for Refinancing shall not be so paid upon surrender thereof for Refinancing (or the delivery of the indemnity pursuant to the preceding paragraph) the principal shall, until paid, bear interest from the Refinancing Date at the applicable Interest Rate for each successive Payment Date with respect to which such Note remains Outstanding.

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. ***Collection of Money.***

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this

Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

Each Account shall be established and maintained (a) with a federal or state-chartered depository institution with a short-term rating of at least "A-1" by S&P (or a long-term rating of at least "A+" by S&P if such institution has no short-term rating) and if such institution's short-term rating falls below "A-1" by S&P (or its long-term rating falls below "A+" by S&P if such institution has no short-term rating), the assets held in such Account shall be transferred within 60 calendar days to another institution that has a short-term rating of at least "A-1" by S&P (or which has a long-term rating of at least "A+" by S&P if such institution has no short-term rating) or (b) in segregated trust accounts with the corporate trust department of a federal or state-chartered deposit institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulation Section 9.10(b).

Section 10.2. ***Collection Account.***

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from the Closing Date Expense Account pursuant to Section 10.3(g),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee from the Collateral and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the

Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

(f) On the Determination Date related to the first Payment Date, and at the option of the Servicer, Principal Proceeds in the Collection Account in an amount not to exceed U.S.$4,000,000 may be designated as Interest Proceeds for distribution on the first Payment Date in accordance with Section 11.1(a) to the extent such funds are not required to be applied to cure a Rating Confirmation Failure or applied to a Special Redemption.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account*. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account.* Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be used to purchase Eligible Investments in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty

Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$2,050,000 from the gross proceeds of the Offering. At any time before the Payment Date in November 2008, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in November 2008 (or, at the discretion of the Servicer, on the Payment Date in August 2008), at the direction of the Servicer in its sole discretion, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Interest Proceeds (to the extent such funds are not required to be applied to cure a Rating Confirmation Failure) or Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Class II Preference Share Special Payment Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Trustee for the benefit of Holders of the Class II Preference Shares, over which the Trustee shall have exclusive control and the sole right of withdrawal. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments (but subject to Section 13.1), the Trustee shall deposit into the Class II Preference Share Special Payment Account amounts equal to the Class II Preference Share Special Payments. The Servicer has agreed to waive amounts, which would otherwise be payable to the Servicer as Servicing Fees, from the Closing Date to February 3, 2008 and an amount equal to such waived amounts will be distributed by the Trustee to the Preference Shares Paying Agent, subject to the laws of the Cayman Islands, for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. With respect to any Payment Date after February 3, 2008, the Servicer may, in its sole discretion, at any time waive a portion (or all) of the Servicing Fees then due and payable, in which event, an amount equal to such waived portion will be paid by the Trustee on behalf of the Issuer to the Preference Shares Paying Agent, subject to the laws of the

Cayman Islands, for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments; provided that with respect to the Payment Date in August 2008 such Class II Preference Share Special Payments will, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Closing Date to February 3, 2008. For purposes of any calculation under this Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(j) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(k) In order to comply with its obligations under the USA PATRIOT Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA PATRIOT Act of 2001.

Section 10.4. ***Application of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, use all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account and the Closing Date Expense Account as so directed to purchase Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account or the Closing Date Expense Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business

Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements in accordance with Article 8 of the UCC; provided, however, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lending Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the

Servicing Agreement. The Trustee shall promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be used to purchase Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty or to the extent that any Synthetic Security has an unfunded amount payable by the Issuer that does not by its terms require collateral, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security as directed by the Servicer (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account, from funds or Eligible Investments on deposit in the Collection Account, all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security and, without duplication, an amount equal to the unfunded amount of a Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction, in each case as directed by the Servicer. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing; provided that any Defaulted Synthetic Security Termination Payments shall be paid in accordance with the Priority of Payments. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending March 2008, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchaser, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchaser) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"); provided that a Monthly Report may be provided to any such party by posting such Monthly Report on the Trustee's password-protected website initially located at http://www.cdocalc.com/ibt/cdo/ and providing access thereto to such parties. Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the "***Monthly Determination Date***"):

(i) *Collateral*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The Aggregate Principal Balance of Collateral Obligations that are Cov-lite Loans;

(D) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(E) The obligor of each Workout Asset;

(F) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report on each sale;

(G) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset, a Cov-lite Loan or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(H) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(I) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(J) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Recovery Rate;

(K) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(L) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(M) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(N) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(O) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(P) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(Q) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value;"

(R) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(S) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Retention Overcollateralization Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Retention Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Scenario Default Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P;

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Initial Purchaser, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Initial Purchaser), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) *Notes*:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation

Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting*. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(d) *Irish Stock Exchange*. So long as any Class of Senior Notes is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Senior Notes following each Payment Date and inform the Irish Stock Exchange if any such Class of Senior Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Senior Notes are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File.

(g) *Payments or Transfers from the Payment Account*. Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the

appropriate paying agent on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before December 15 of each year commencing in 2008, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(i) fees and expenses of the Administrator; and then

(ii) fees and expenses of the Co-Issuers (including fees and expenses of counsel and ongoing surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other Person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of accrued and unpaid interest on the Class A Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A Notes;

(6) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class B Notes;

(7) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes and the Class B Notes in the Note Payment Sequence, in each case, in the amount necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(8) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest, but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(9) to the payment of Class C Deferred Interest;

(10) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in the Note

Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (10) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(3) on the current Payment Date);

(11) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(12) to the payment of Class D Deferred Interest;

(13) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (13) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(6) on the current Payment Date);

(14) to the payment of accrued and unpaid interest on the Class E Notes (excluding Class E Deferred Interest but including interest accrued for the preceding Interest Period on Class E Deferred Interest);

(15) to the payment of Class E Deferred Interest;

(16) if the Class E Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class E Notes in the amount necessary so that all of the Class E Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full;

(17) if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (17) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(10) on the current Payment Date);

(18) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and SECOND, to the payment (*pro rata* according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) *pro rata* to each Noteholder entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(19) during the Replacement Period, if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds 50% of the remaining Interest Proceeds available after the payments pursuant to clause (18) above (or, if the amount necessary to cause the Retention Overcollateralization Test to be satisfied as

of such Determination Date is less than 50% of such remaining Interest Proceeds, such necessary amount);

(20) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(21) to the payment *pari passu* of (i) any Defaulted Hedge Termination Payments and (ii) any Defaulted Synthetic Security Termination Payments;

(22) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 14.0%;

(23) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(24) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (22) and (24) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with the Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly. Any payments to the Preference Shares Paying Agent shall be released from the lien of this Indenture and shall be paid in accordance with the provisions of the Preference Shares Paying Agency Agreement.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) FIRST, to the payment of the amounts referred to in clauses (1) through (6) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) SECOND, to the payment of amounts referred to in clause (7) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and, with respect to the Overcollateralization Test with respect to the Class A Notes and the Class B Notes, to the extent necessary to cause the Overcollateralization Test with respect to the Class A Notes and the Class B Notes to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(3) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(4) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and, with respect to the Overcollateralization Test with respect to the Class C Notes, to the extent necessary to cause the Overcollateralization Test with respect to the Class C Notes to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (4), or until such amounts are paid in full;

(5) to the payment of the amounts referred to in clause (11) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(6) to the payment of the amounts referred to in clause (12) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(7) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and, with respect to the Overcollateralization Test with respect to the Class D Notes, to the extent necessary to cause the Overcollateralization Test with respect to the Class D Notes to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (7), or until such amounts are paid in full;

(8) to the payment of the amounts referred to in clause (14) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(9) to the payment of the amounts referred to in clause (15) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(10) to the payment of the amounts referred to in clause (17) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(11) (A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (18), (20) and (21) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder, (iii) the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 14.0%, (iv) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (x) the Class II Preference Share Portion for such Payment Date, if any, and (y) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (x) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (y) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause and (v) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(12) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(13) after the Replacement Period, (i) FIRST, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Risk Obligations and Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) SECOND, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(14) to the extent not previously paid in full under clause (11) above, after the Replacement Period, to the payment of the amounts referred to in clauses (18), (20) and (21) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder;

(15) after the Replacement Period, the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 14.0%;

(16) after the Replacement Period, FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such

Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(17) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

Notwithstanding the foregoing, on any Payment Date occurring (x) after the occurrence of an Event of Default and an acceleration of the Notes pursuant to Section 5.2 that has not been rescinded, or (y) after the occurrence of an Event of Default and an acceleration of the Notes pursuant to Section 5.2 that has not been rescinded and the liquidation of the Collateral pursuant to Sections 5.4 and 5.5, all Interest Proceeds, Principal Proceeds and any other funds in the Accounts, shall be applied in the following order of priority: (1) to the payment of the amounts referred to in clauses (1), (2), (3) and (4) of Section 11.1(a)(i) above (in the priority stated therein); (2) *first*, to the payment, of any accrued and unpaid interest on the Class A Notes and the Aggregate Outstanding Amount of the Class A Notes; *second*, to the payment of any accrued and unpaid interest on the Class B Notes and the Aggregate Outstanding Amount of the Class B Notes; *third*, to the payment of any accrued and unpaid interest (including any Deferred Interest) on the Class C Notes and the Aggregate Outstanding Amount of the Class C Notes; *fourth*, to the payment of any accrued and unpaid interest (including any Deferred Interest) on the Class D Notes and the Aggregate Outstanding Amount of the Class D Notes; *fifth*, to the payment of any accrued and unpaid interest (including any Deferred Interest) on the Class E Notes and the Aggregate Outstanding Amount of the Class E Notes; (3) to the payment of the amounts referred to in clauses (18), (20) and (21) of Section 11.1(a)(i) above (in the same order of priority stated above); (4) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment of dividends *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 14.0%; (5) *first*, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and *then*, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (6) to the Holders of the Preference Shares.

The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Any payments to the Preference Shares Paying Agent shall be released from the lien of this Indenture and shall be paid in accordance with the provisions of the Preference Shares Paying Agency Agreement.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 P.M., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and (subject to Section 6.1(c)(iv)) shall take the action with respect to the continuing failure as directed by the Servicer unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different Persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) *Credit Risk Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i), to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for

this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; and

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "***Non-qualifying Collateral Obligation***") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure*. After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the

Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Workout Assets*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) *Supervening Requirement*. Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test (other than the Weighted Average Rating Factor Test) is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the stated maturity of such Collateral Obligation is equal to or earlier than the stated maturity of the Collateral Obligation being the source of the Unscheduled Principal

Payments or the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable;

(F) the Scenario Default Rate for all Outstanding Classes of Notes is no worse following such purchase; and

(G) the current Moody's Ratings on the Class A Notes and the Class B Notes are no lower than their Initial Rating and the current Moody's Ratings on the Class C Notes and the Class D Notes are no lower than one subcategory below their Initial Rating.

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement.

(c) *Certain Permitted Exchanges*. The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Servicer*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Eligible Investments*. Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Article 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Section 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
A	B, C, D, E, Preference Shares*	None
B	C, D, E, Preference Shares*	A
C	D, E, Preference Shares*	A, B
D	E, Preference Shares*	A, B, C
E	Preference Shares*	A, B, C, D
Preference Shares	None**	A, B, C, D, E

* Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

** The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Holders of Securities.***

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (provided that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Holders of Securities signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the share register of the Issuer.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at, 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116, telecopy no. (617) 937-0517, Attention: CDO Services Group – Greenbriar CLO, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Issuer shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Maples Finance Limited, P.O. Box 1093GT, Boundary Hall, Cricket Square, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: the Directors—Greenbriar CLO, Ltd., or at any other address previously furnished in writing to the other parties hereto by the Issuer, with a copy to the Servicer at its address below;

(iii) the Co-Issuer at 850 Library Avenue, Suite 204, Newark, Delaware 19711, Attention: Director, or at any other address previously furnished in writing by the Co-Issuer;

(iv) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: Todd Travers, or at any other address previously furnished in writing to the other parties hereto;

(v) the Initial Purchaser shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Initial Purchaser addressed to them at One New York Plaza, New York, New York 10004, telecopy no. (212) 256-6362, Attention: Keith Lee, or at any other address

previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of the Initial Purchaser;

(vi) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vii) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 7 World Trade Center at 250 Greenwich Street, New York, New York 10007, Telecopy No. [(212) 553-4170], cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(viii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Maples Finance Limited, P.O. Box 1093GT, Boundary Hall, Cricket Square, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: the Directors—Greenbriar CLO, Ltd.;

(ix) to the Listing Agent at Arthur Cox Listing Services Limited, Earls Fort Center, Earls Fort Terrace, Dublin 2, Ireland, telephone no. +353 1 618 0556, telecopy no. +353 1 618 0618, Attention: Helen Berrill, or at any other address previously furnished in writing by the Listing Agent or e-mailed to helen.berrill@arthurcox.com; and

(x) to the Irish Paying Agent at Custom House Administration & Corporate Services Ltd., 25 Eden Quay, Dublin 1, Ireland, telephone no. +353 1 878 0807, telecopy no. +353 1 878 0827, Attention: Evelyn Meenaghan, or at any other address previously furnished in writing by the Irish Paying Agent.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A Notes may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A Notes on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A Notes) to the Trustee in substantially the form of Exhibit J specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A Notes (each, an "***Insurer***"). After receipt of any such notice (in the form of Exhibit J) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

Section 14.4. ***Notices to Noteholders and the Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders or the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders or the Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event or the Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register or at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder or the Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder or the Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders or the Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders or the Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders or the Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

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

So long as any Senior Notes are listed on the Irish Stock Exchange and the guidelines of the exchange so require, all notices to Noteholders or the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Initial Purchaser all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation

relating to the Notes requested by the Initial Purchaser (collectively, the "***Transaction Reports***") and the Issuer consents to the Initial Purchaser providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Initial Purchaser or any of its Affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

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

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9. ***Governing Law.***

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.10. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of State Street Bank and Trust Company (to the attention of State Street Bank and Trust Company, Trustee for Greenbriar CLO, Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.11. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.12. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

Section 14.13. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co-Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.14. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Servicing Agreement; Amendment of Servicing Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(i) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(ii) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations, covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(iii) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h) below.

(v) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts owed to the Servicer pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may

commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(vi) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use commercially reasonable efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; provided that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and (c) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the "***Objection Cut-Off Date***"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer, may enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering into such Hedge Agreement the Hedge Counterparty has the ratings specified in such Hedge Agreement.

(c) If at any time a Hedge Counterparty does not have the required ratings as set forth in the Hedge Agreement, the Hedge Counterparty shall be required to take such actions as are set forth in the relevant Hedge Agreement.

(d) Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty thereto shall comply with the then currently applicable rating criteria of each Rating Agency from time to time.

(e) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer, or the Servicer on behalf of the Issuer, shall make the demand.

(f) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(g) Except as provided in paragraph (i) of this Section 15.2, the Issuer, at the direction of the Servicer, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(h) Notwithstanding Section 15.2(i), the applicable requirements of Section 15.2(i) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(i) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating

Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(j) Each Hedge Agreement may be terminated pursuant to its terms by the Hedge Counterparty upon an Optional Redemption of the Notes (but only after the applicable notice of redemption may no longer be withdrawn pursuant to Section 9.03), an acceleration of maturity of the Notes after an Event of Default or the entry into certain amendments to this Indenture without the consent of the Hedge Counterparty. The Hedge Agreement will not be permitted to be terminated by the Issuer as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(k) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GREENBRIAR CLO, LTD.,
AS ISSUER

By: _____
Name: Chris Marett
Title: DIRECTOR

GREENBRIAR CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

STATE STREET BANK AND TRUST COMPANY,
AS TRUSTEE AND CUSTODIAN

By: _____
Name:
Title:

240325

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GREENBRIAR CLO, LTD.,
AS ISSUER

By: _____
Name:
Title:

GREENBRIAR CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

STATE STREET BANK AND TRUST COMPANY,
AS TRUSTEE AND CUSTODIAN

By: _____
Name:
Title:

240325

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

GREENBRIAR CLO, LTD.,
AS ISSUER

By: _____
Name:
Title:

GREENBRIAR CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

STATE STREET BANK AND TRUST COMPANY,
AS TRUSTEE AND CUSTODIAN

By: _____
Name: Brian Peterson
Title: Director

240325

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings,

Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor *divided* by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

The Diversity Score for any Structured Finance Obligation that is (i) a collateralized loan obligation, (ii) any Synthetic Security with respect to which the Reference Obligation is a collateralized loan obligation or (iii) any Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, is equal to zero.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	15%
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

RATING OF A CLASS OF NOTES AT THE TIME OF COMMITMENT TO PURCHASE

Structured Finance Obligation Rating*

Senior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	65.0%	70.0%	80.0%	85.0%	85.0%	85.0%	85.0%
AA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
A	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
BBB	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* If the Structured Finance Obligation is (x) a collateralized debt obligation backed by project finance securities, asset-backed securities, structured finance or real estate securities, distressed debt or other collateralized debt obligations; (y) a market value collateralized debt obligation; or (z) a synthetic collateralized debt obligation, the recovery rate will be assigned by S&P at the time of acquisition.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a High-Yield Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, then the Moody's Default Probability Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher, or

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories. For purposes of any calculation under this Indenture, if a Moody's Default Probability Rating is withdrawn by Moody's with respect to a Collateral Obligation and if the Issuer, or the Servicer on behalf of the Issuer, has applied for a rating estimate from Moody's with respect to such Collateral Obligation, the Issuer will continue using the latest Moody's Default Probability Rating available immediately prior to such withdrawal pending receipt of such rating estimate from Moody's; provided, however, that if a Moody's Default Probability Rating is withdrawn and neither the Issuer, nor the Servicer on behalf of the Issuer, have applied for a rating estimate, the provisions of this Schedule 7 with respect to Collateral Obligations whose ratings have been withdrawn will be followed.

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" (as defined by Moody's) for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or High-Yield Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause

(f)(iii), or clause (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or High-Yield Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or High-Yield Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a High-Yield Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used. If no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to Moody's for a Moody's credit rating estimate, which will be its Moody's Rating; provided that, on or prior to each one-year anniversary of the acquisition of any such Collateral Obligation, the Issuer shall submit to Moody's a request for a Moody's credit rating estimate for such Collateral Obligation, which shall be its Moody's Rating, together with all information reasonably required by Moody's to perform such estimate.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "***Borrower***"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "***Guarantor***") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; *provided* that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable); or

(B) if no security or obligation of the issuer or obligor is rated by S&P or Moody's, and the Issuer or the Servicer on behalf of the Issuer has applied to S&P for a rating estimate and provided all relevant Information to S&P (at Credit_estimates@sandp.com) within 30 days of the acquisition (or, if such application is caused as a result of a rating withdrawal by S&P or Moody's, as applicable, the withdrawal of the rating by S&P or Moody's, as applicable) of such security or obligation, such security or obligation, pending receipt from S&P of such rating estimate, shall have an S&P Rating as determined by the Servicer in its commercially reasonable judgment; provided that, if the Servicer does not submit all relevant Information within 30 days of such acquisition or rating withdrawal, as applicable, of such security or obligation, (x) S&P shall endeavor to provide a rating estimate as soon as reasonably practical upon receipt of all relevant Information, (y) during a period of 90 days (or such longer period as agreed to by S&P pursuant to a request made by the Servicer) from the date of such acquisition or rating withdrawal, as applicable, and pending receipt from S&P of a rating estimate, such security or obligation shall have an S&P Rating as determined by the Servicer in its commercially reasonable judgment and (z) if S&P does not provide a rating estimate within 90 days (or such longer period as agreed by S&P pursuant to a request made by the Servicer) of the date of such acquisition or rating withdrawal, as applicable, of such security or obligation, such security or obligation shall be treated as rated "CCC-" by S&P until such time as S&P provides a credit estimate; and

(C) any reference in this definition to an S&P rating estimate or estimated rating must be such rating provided by S&P in writing and any such rating shall expire after one year of its provision by S&P. The Servicer may re-apply for a credit estimate within 30 days prior to the expiration of such credit estimate, subject to the procedures specified in subclause (iii)(B) above; provided that, if an obligation identical to a Collateral Obligation is held in another fund managed by the Servicer and an estimated rating has been assigned by S&P to such obligation held in such other fund (and such estimated rating has not yet expired), such estimated rating, upon request by the Servicer to S&P, shall be applicable to the Collateral Obligation held by the Trustee under this Indenture;

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

"***Information***": S&P's "Credit Estimate Information Requirements" dated June 2007 and any other information S&P reasonably requests in order to produce a credit estimate for a Collateral Obligation.

Exhibit A-1

Form of Senior Note

Exhibit A-2

Form of Class E Note

Exhibit B-1

Form of Senior Note Transferee Certificate

Exhibit B-2

Form of Senior Note Transferor Certificate for Regulation S to Rule 144A Transfer

Exhibit B-3

Form of Senior Note Transferor Certificate for Rule 144A to Regulation S Transfer

Exhibit B-4

Form of Class E Note Transferee Certificate

Exhibit B-5

Form of Benefit Plan Investor and Affected Bank Certificate

Exhibit C

Form of McKee Nelson LLP Opinion

Exhibit D

Form of Maples and Calder Opinion

Exhibit E

Form of Nixon Peabody LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G-1

Form of Section 3(c)(7) Reminder Notice

Exhibit G-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit H

Form of Beneficial Owner Certificate

Exhibit I

Form of Extension Notice

Exhibit J

Form of Insurer Notice

EXECUTION COPY

JASPER CLO LTD.

Issuer,

JASPER CLO CORP.

Co-Issuer,

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Trustee

INDENTURE

Dated as of June 29, 2005

COLLATERALIZED DEBT OBLIGATIONS

U.S.$521,500,000 Class A Floating Rate Senior Secured Extendable Notes Due 2017
U.S.$35,000,000 Class B Floating Rate Senior Secured Extendable Notes Due 2017
U.S.$35,000,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017
U.S.$33,500,000 Class D-1 Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017
U.S.$5,000,000 Class D-2 Fixed Rate Senior Secured Deferrable Interest Extendable Notes Due 2017
U.S.$10,000,000 Class 1 Extendable Composite Securities Due 2017
U.S.$5,000,000 Class 2 Extendable Composite Securities Due 2017

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B-2	–	Form of Note Transferor Certificate for Regulation S to Rule 144A Transfer
B-3	–	Form of Note Transferor Certificate for Rule 144A to Regulation S Transfer
B-4	–	Form of Composite Security Transferee Certificate
B-5	–	Form of Composite Security Transferor Certificate for Regulation S to Rule 144A Transfer
B-6	–	Form of Composite Security Transferor Certificate for Rule 144A to Regulation S Transfer
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Exhibit D	–	Form of Ogier & Boxalls Opinion
Exhibit E	–	Form of Gardere Wynne Sewell LLP Opinion
Exhibit F	–	Form of Orrick, Herrington & Sutcliffe LLP Opinion
Exhibit G	–	Form of Securities Account Control Agreement
Exhibit H	–	Forms of Section 3(c)(7) Notices
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H-2	–	Form of Important Section 3(c)(7) Reminder Notice
Exhibit I	–	Form of Beneficial Owner Certificate
Exhibit J	–	Form of Extension Notice

INDENTURE, dated as of June 29, 2005, among JASPER CLO LTD. (the "***Issuer***"), JASPER CLO CORP. (the "***Co-Issuer***") and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A Notes, the Class B Notes, the Class C Notes, the Class D-1 Notes and the Class D-2 Notes issuable as provided in this Indenture and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Composite Securities issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Composite Securityholders (with respect to the Note Components only), the Trustee, the Portfolio Manager and each Hedge Counterparty (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account, and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from the investment of funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and together with the Issuer Accounts, the Synthetic Security Collateral Account, the Hedge Counterparty Collateral Account and the Securities Lending Account, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Management Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the "***Collateral***").

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Portfolio Manager under the Management Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture. Payments or distributions made or to be made on the Composite Securities in respect of their Components are referred to as payments made or to be made on the Class C Component, the Class D-2 Component and the Preference Share Components.

Except as otherwise specified herein or as the context may otherwise require or dictate or unless the Composite Securities are explicitly addressed in the same context, (A) all references in this Indenture to the "Class C Notes," the "Class D-2 Notes" and the "Preference Shares" include the "Class C Component," the "Class D-2 Component" and the "Preference Share Components," respectively, of the Composite Securities, (B) all references in this Indenture to the rights of the Holders of the Class C Notes, the Holders of the Class D-2 Notes and Holders of the Preference Shares (including with respect to any payments, distributions, redemptions, votes or consents to be given by such Holders) include the rights of the Holders of the Composite Securities to the extent of the Class C Component, the Class D-2 Component and the Preference Share Components, respectively, of the Composite Securities.

"***1940 Act***": The United States Investment Company Act of 1940, as amended.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Portfolio Manager.

" ***Accredited Investor***": The meaning specified in Rule 501(a) of the Securities Act.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Warehoused Loan as part of the price paid by the Issuer to repurchase and terminate the related participation under the Warehouse Agreement.

"***Act***": The meaning specified in Section 14.2.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.05% of the Maximum Investment Amount on the related Determination Date plus $150,000, *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.7), the Administrator, the Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and of accountants, agents, and counsel for either of the Co-Issuers;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Securities owed by either Co-Issuer (including fees and expenses for surveillance, credit estimates, and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Management Fees) of the Portfolio Manager if payable under the Management Agreement;

(vi) fees and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other person (except the Portfolio Manager) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Ogier Fiduciary Services (Cayman) Limited.

"***Affiliate***" or "***Affiliated***": With respect to a person,

(i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(ii) any other person who is a director, officer, or employee (A) of the person, (B) of any subsidiary or parent company of the person, or (C) of any person described in clause (i) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(B) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Management Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date (including (i) in the case of the Class C Notes, the Class C Component and (ii) in the case of the Class D Notes, the Class D-2 Component). When used with respect to the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date (including the Preference Share Component). When used with respect to any of the Composite Securities as of any date, means the sum of the aggregate principal amount of the Notes underlying the Note Component of such Composite Securities and the aggregate Face Amount of the Preference Shares underlying the Preference Share Component of such Composite Securities.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto.

(d) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not

increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Securities or Preference Shares purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) to the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder on the next succeeding Payment Date) would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 15.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders of Preference Shares have received a Preference Share Internal Rate of Return equal to or in excess of 15.0%, the Amendment Buy-Out Purchase Price for such Preference Shares shall be zero, (iii) in the case of the Class 1 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Class D-2 Notes underlying the Class D-2 Component and (y) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 1 Composite Security Preference Share Component, and (iv) in the case of the Class 2 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Class C Notes underlying the Class C Component and (y) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 2 Composite Security Preference Share Component.

"***Amendment Buy-Out Purchaser***": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event that the Portfolio Manager elects not to purchase Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Placement Agents or any of its Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Placement Agents or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, each of the Co-Issuers. With respect to the Preference Shares and the Composite Securities, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified in the tables below. High-Yield Bonds do not include Structured Finance Obligations for this purpose.

Moody's Priority Category	Moody's Priority Category Recovery Rate
Synthetic Securities	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below	As determined by Moody's on a case-by-case basis

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Senior Secured Loans other than Subordinated Lien Loans or DIP Loans	55.0%
Senior Unsecured Loans.....	37.5%
Second Lien Loans.....	37.5%
Subordinated Lien Loans other than a DIP Loan.....	21.5%
senior secured High-Yield Bonds (other than Structured Finance Obligations)....	44.0%
senior unsecured High-Yield Bonds (other than Structured Finance Obligations).....	30.0%
subordinated High-Yield Bonds (other than Structured Finance Obligations)....	18.0%
Structured Finance Obligations.....	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in Schedule 6 by reference to the type of asset and its then S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the Grant of the relevant Collateral Obligation).
Synthetic Securities.....	As assigned by S&P on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above.....	As assigned by S&P on a case-by-case basis

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by the Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio Manager); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Securities, the Trustee or the person designated by the Trustee to authenticate the Securities on behalf of the Trustee pursuant to Section 6.14.

"***Authorized Officer***": With respect to the Issuer or the Co-Issuer, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer, as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Portfolio Manager, any managing member, Officer, manager, employee, partner or agent of the Portfolio Manager who is authorized to act for the Portfolio Manager in matters relating to, and binding on, the Portfolio Manager with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": JPMorgan Chase Bank, National Association, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Security or Regulation S Global Preference Shares as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": Any (i) "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, and including, without limitation, foreign, church and governmental plans, (ii) any "plan" described by Section 4975(e)(1) of the Code, or an entity whose underlying assets include the assets of any plan described in (i) or (ii) by reason of such plan's investment in such entity.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note or the final payment in respect

of any Composite Security, the place of presentation of the Security designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Buy-Out Amount***": The meaning set forth in the Management Agreement.

"***Calculation Agent***": The meaning specified in Section 7.16.

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

"***Caa Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3".

"***CCC/Caa Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Composite Security***": The meaning specified in Section 2.2(d).

"***Certificated Preference Shares***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Securities having the same priority and the same Stated Maturity and all of the Preference Shares.

"***Class 1 Composite Security***": The Class 1 Extendable Composite Securities issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class 1 Composite Security Preference Share Component***": A Component of the Class 1 Composite Securities representing an initial aggregate Face Amount of Preference Shares equal to $5,000,000. The number of Preference Shares to which the Class 1 Composite Security Preference Share Component relates is included in (and are not in addition to) the number of Preference Shares being issued by the Issuer on the Closing Date pursuant to its Memorandum and Articles of Association. Except as otherwise specified or as the context may otherwise require or dictate or unless Composite Securities are explicitly addressed in the same context, all references in this Indenture to the Preference Shares shall include the Class 1 Composite Security Preference Share Component.

"***Class 1 Composite Security Principal Balance***": As of, (i) the Closing Date $10,000,000 and (ii) on any date of determination thereafter, the initial Class 1 Composite Security Principal Balance reduced by an amount equal to (x) the aggregate amount of distributions paid to the Holders of the Class 1 Composite Securities on each Payment Date prior to such date of determination in respect of its related Components pursuant to Section 11.1(a) *minus* (y) the aggregate Class 1 Composite Security Stated Coupon Distributions paid to the Holders of the Class 1 Composite Securities on each Payment Date prior to such date of

determination; provided, however, that, as of any date of determination prior to the Stated Maturity Date, notwithstanding the foregoing, the "Class 1 Composite Security Principal Balance" shall be deemed to be the greater of (i) the outstanding Class 1 Composite Security Principal Balance determined as of such date of determination in accordance with the foregoing definition and (ii) $1,000.

"***Class 1 Composite Security Rated Balance***": With respect to the rating of the Class 1 Composite Securities by Moody's, on the Closing Date $10,000,000 and on any date of determination thereafter, the initial Class 1 Composite Security Rated Balance *minus* the aggregate amount of all distributions paid to the Holders of the Class 1 Composite Securities in respect of its related Components on all prior Payment Dates pursuant to Section 11.1(a).

"Class 1 Composite Security Stated Coupon": With respect to the Class 1 Composite Securities, 2.0 percent per annum in respect of the Outstanding Class 1 Composite Security Principal Balance; provided that the Class 1 Composite Security Stated Coupon will be deemed to be zero beginning on the Payment Date after the Class 1 Composite Security Principal Balance has been reduced to $1,000.

"Class 1 Composite Security Stated Coupon Distribution": With respect to the Class 1 Composite Securities as of any Payment Date, shall be calculated as the amount accrued at the Class 1 Composite Security Stated Coupon rate during the related Interest Period on the Outstanding Class 1 Composite Security Principal Balance as of such Payment Date (without giving effect to any payments to be made on such Payment Date); provided that the Class 1 Composite Security Stated Coupon Distribution will be deemed to be zero beginning on the Payment Date after the Class 1 Composite Security Principal Balance has been reduced to $1,000.

"***Class 2 Composite Security***": The Class 2 Extendable Composite Securities issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class 2 Composite Security Preference Share Component***": A Component of the Class 2 Composite Securities representing an initial aggregate Face Amount of Preference Shares equal to $1,000,000. The number of Preference Shares to which the Class 2 Composite Security Preference Share Component relates is included in (and is not in addition to) the number of Preference Shares being issued by the Issuer on the Closing Date pursuant to its Memorandum and Articles of Association. Except as otherwise specified or as the context may otherwise require or dictate or unless Composite Securities are explicitly addressed in the same context, all references in this Indenture to the Preference Shares shall include the Class 2 Composite Security Preference Share Component.

"***Class 2 Composite Security Rated Balance***": With respect to the rating of the Class 2 Composite Securities by Moody's, (i) on the Closing Date $5,000,000 and (ii) on any date of determination thereafter, the initial Class 2 Composite Security Rated Balance reduced by an amount equal to (x) the aggregate amount of distributions paid to the Holders of the Class 2 Composite Securities on each Payment Date prior to such date of determination in respect of its related Components pursuant to Section 11.1(a) *minus* (y) the aggregate Class 2 Composite Security Rated Coupon Distributions paid to the Holders of the Class 2 Composite Securities on each Payment Date prior to such date of determination; provided that if the amount of distributions paid to the Holders of the Class 2 Composite Securities on any Payment Date is less than the Class 2 Composite Security Rated Coupon Distribution for such Payment Date, then the Class 2 Composite Security Rated Balance shall be increased by such deficiency.

"***Class 2 Composite Security Rated Coupon***": With respect to the Class 2 Composite Securities, 0.25 percent per annum in respect of the Outstanding Principal Balance of such Class 2 Composite Securities.

"Class 2 Composite Security Rated Coupon Distribution": With respect to the Class 2 Composite Securities as of any Payment Date, shall be calculated as the amount accrued at the Class 2 Composite Security Rated Coupon Distribution during the related Interest Period on the Outstanding Class 2 Composite Security Rated Balance as of such Payment Date (without giving effect to any payments to be made on such Payment Date).

"***Class A Notes***": The Class A Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A/B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A Notes and the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Component***": The component of the Class 2 Composite Security having an aggregate initial principal amount of $4,000,000 and representing an equivalent initial principal amount of Class C Notes. The initial principal amount of the Class C Notes to which the Class C Component relates is included in (and is not in addition to) the initial principal amount of Class C Notes being offered on the Closing Date and described in Section 2.3. Except as otherwise specified or as the context may otherwise require or dictate or unless Composite Securities are explicitly addressed in the same context, all references in this Indenture to the Class C Notes shall include the Class C Component.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D-2 Component***": The component of the Class 1 Composite Security having an aggregate initial principal amount of $5,000,000 and representing an equivalent initial principal amount of Class D-2 Notes. The initial principal amount of the Class D-2 Notes to which the Class D-2 Component relates is included in (and is not in addition to) the initial principal amount of Class D-2 Notes being offered on the Closing Date and described in Section 2.3. Except as otherwise specified or as the context may otherwise require or dictate or unless Composite Securities are explicitly addressed in the same context, all references in this Indenture to the Class D-2 Notes shall include the Class D-2 Component.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D-1 Notes and the Class D-2 Notes.

"***Class D-1 Notes***": The Class D-1 Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D-2 Notes***": The Class D-2 Fixed Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": June 29, 2005.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Acquisition Agreement***": The agreement dated as of the Closing Date between the Issuer and the Portfolio Manager, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Portfolio Manager, and the Collateral Administrator, as modified, amended, and supplemented and in effect from time to time.

"***Collateral Administrator***": The Bank in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation, or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security that is exchangeable or convertible at the option of its issuer;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Portfolio Manager has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to

a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than one year after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, a Synthetic Security for which the counterparty or issuer, as the case may be, has a long-term senior unsecured rating by Moody's of at least "A3", and if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "A+";

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Portfolio Manager;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition);

(26) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act;

(27) in the case of a Loan, an obligation that is part of, or a Participation in, a syndicated loan facility that provides for a commitment by the lenders, in the aggregate, of no less than $50,000,000; and

(28) in the case of a Structured Finance Obligation, not a Structured Finance Obligation managed by the Portfolio Manager or one or more of its Affiliates.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event".

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test, and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Component***": The Class C Component, the Class D-2 Component or the Preference Share Component, as the context requires.

"***Composite Securities***": The Class 1 Composite Securities and the Class 2 Composite Securities issued by the Issuer pursuant to this Indenture and the Preference Share Documents and having the characteristics specified in Section 2.3.

"***Composite Securityholder***": A Holder of Composite Securities.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Investment Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Investment Amount:

		Percentage of the Maximum Investment Amount
(1)	Senior Secured Loans (including Moody's Senior Secured Loans) and Eligible Investments	≥ 92.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 5.0%
(4)	Revolving Loans and Delayed Drawdown Loans	≤ 15.0%
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 7.5%
(6)	S&P Unrated DIP Loans	≤ 2.5%
(7)	PIK Securities	≤ 3.0%
(8)	High-Yield Bonds	≤ 7.5%
(9)	Structured Finance Obligations	≤ 7.5%
(10)	Structured Finance Obligations that are collateralized loan obligations	≤ 2.5%
(11)	obligors Domiciled other than in the United States and Canada	≤ 15.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(15)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(16)	same S&P Industry Classification	≤ 8.0%
	(a) except that Investment Obligations belonging to two S&P Industry Classifications (not including Telecommunications) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 12.0%
(17)	single issuer or any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual issuers (including any of their respective Affiliates but excluding issuers that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 2.0%
(18)	Fixed Rate Obligations	≤ 7.5%
(19)	Pay interest less frequently than quarterly but no less frequently than annually	≤ 7.5%
(20)	Synthetic Securities	≤ 20.0%

	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
(21)	Participations (provided, that no Investment Obligations may be a Participation in a Participation)	≤ 20.0%
(22)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 20.0%
(23)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(24)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(25)	Deep Discount Obligations	≤ 5.0%
(26)	CCC/Caa Collateral Obligations	≤ 7.5%
(27)	Long-Dated Collateral Obligations	≤ 4.0%
(28)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(29)	Collateral Obligations providing for interest at a non-London interbank offered rate	≤ 5.0%
(30)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $75,000,000	≤ 10.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in circumstances of the Portfolio Manager to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 15

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

"***Controlling Class***": The Class A Notes (voting together as a Class or group), so long as any Class A Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; and then the Class D Notes (voting together as a Class or group).

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 600 Travis Street, 50th Floor, Houston, Texas 77002, telecopy no. (713) 216-2101, Attention: Worldwide Securities Services—Jasper CLO Ltd. or any other address the Trustee designates from time to time by notice to the Noteholders, the Portfolio Manager, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A/B Coverage Tests, the Class C Coverage Tests and the Class D Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that in the commercially reasonable judgment of the Portfolio Manager, has improved in credit quality; provided, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 101), or (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes and the Class D Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Portfolio Manager, has a significant risk of declining in credit quality and, with a lapse of time, becoming a Defaulted Collateral Obligation.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager, and (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation, or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Portfolio Manager has delivered to the Trustee an officer's certificate to the effect that the Portfolio Manager expects that the obligor will make payments on the Collateral Obligation as they become due,

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance,

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(v) the Portfolio Manager has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Investment Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Portfolio Manager shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Portfolio Manager may, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided, that if the Portfolio Manager certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Portfolio Manager, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which

case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Portfolio Manager, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor, or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Portfolio Manager.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class C Notes and the Class D Notes.

"***Deficiency Amount***": The meaning specified in Section 16.3(a).

"***Deficiency Notice Date***": The meaning specified in Section 16.3(a).

"***Definitive Securities***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to

become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Portfolio Manager on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership and/or pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Portfolio Manager has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Portfolio Manager has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer),

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States, and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code,

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code,

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets, or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile"*** or ***"Domiciled"***: With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the

Portfolio Manager, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": Means: (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country; provided that such country has not imposed currency exchange controls.

"***Eligible Investments***": Any Dollar-denominated investment that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such investment or contractual commitment providing for such investment and throughout the term of the investment, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such investment a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; provided, that, in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, and if so rated, such rating is not on watch for downgrade.

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such investment and throughout the term of the investment; provided, that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such investment and throughout the term of the investment a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar investment vehicle having at the time of investment therein and throughout the term of the investment a credit rating of "MR1+" by Moody's and "AAAm" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment advisor, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes; provided, further, that, at the time of investment therein and throughout the term of the investment, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other investments for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of the investment.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Portfolio Manager;

(2) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excess CCC/Caa Collateral Obligations***": The Principal Balance of all CCC/Caa Collateral Obligations in excess of 7.5% of the Maximum Investment Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Reinvestment Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Reinvestment Period End Date (or, in the case of the

first Extension pursuant to Section 2.4, the Payment Date in August, 2016); provided that the "Extended Reinvestment Period End Date" will in no event be a date later than the Payment Date in August, 2028.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in August, 2021); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in August, 2033.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, August 1, 2018); provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in August 1, 2030.

"***Extension***": An extension of the Reinvestment Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class C Notes (including the Class C Component), 0.25% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (4) in the case of the Class D Notes (including the Class D-2 Component), 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes and Composite Securities (to the extent of the Note Components of the Composite Securities) other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes and Composite Securities (to the extent of the Note Components of the Composite Securities) other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes or the Aggregate Outstanding Amount of the applicable Note Component in the case of the Composite Securities and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in May, 2010).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus

accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 15.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return equal to or in excess of 15.0%, the applicable Extension Purchase Price for such Preference Shares shall be zero, (iii) in the case of the Class 1 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Class D-2 Notes underlying the Class D-2 Component and (y) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 1 Composite Security Preference Share Component and (iv) in the case of the Class 2 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (i) in respect of the Class C Notes underlying the Class C Component and (y) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 2 Composite Security Preference Share Component.

"***Extension Qualifying Purchasers***": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event the Portfolio Manager elects not to purchase Securities or Preference Shares from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Placement Agents or any of their Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Placement Agents, or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Notes***": The Class D-2 Notes.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate, including a Collateral Obligation that does not bear interest on a floating rate index and whose interest rate is scheduled to increase one or more times over the life of the Collateral Obligation.

"***Floating Rate Notes***": The Class A Notes, the Class B Notes, the Class C Notes and the Class D-1 Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P; and

(iii) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Portfolio Manager, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Portfolio Manager receives the notice of withdrawal.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Securities***": Any Regulation S Global Securities or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit,

set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": IXIS Financial Products Inc. or any other counterparty, to the extent that when the Issuer enters into any Hedge Agreement with IXIS Financial Products Inc. or the other counterparty, IXIS Financial Products Inc. or the other counterparty satisfies the requirements of Section 15.2(b) (subject, in the case of any other counterparty, to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***High-Yield Bond***": Any debt security other than a Loan, including any Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note (including any Class C Notes or Class D-2 Notes underlying the Class C Component and the Class D-2 Component, respectively) or Composite Security, the person whose name appears on the Indenture Register as the registered holder of the Note or Composite Security; and of any Preference Share (including any Preference Shares underlying the Preference Share Components), the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit H-2.

"***Incentive Management Fee***": On each Payment Date, the fee payable to the Portfolio Manager in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment pursuant to Section 11.1(a)(i)(19) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Incentive Management Fee pursuant to Section 11.1(a)(ii)(8)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(11) of the Priority of Payments.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee provided notice of a proposed supplemental indenture pursuant to Section 8.2(c) to the Holders of Securities and Preference Shares.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, *minus*

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A/B Interest Coverage Test	120.00%
Class C Interest Coverage Test	115.00%
Class D Interest Coverage Test	110.00%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided, however, that the "Payment Date" solely for purposes of determining the Interest Period for the Fixed Rate Notes will be the 1st

day of each February, May, August and November, regardless of whether such day is a Business Day.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) during the continuance of an "event of default" (under and as defined in the related Securities Lending Agreement), all interest received from the related Securities Lending Collateral;

(vii) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(viii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(ix) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(x) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

If an Interim Ramp-Up Completion Date Failure has occurred and is continuing on the first Payment Date, all Interest Proceeds remaining after application of Interest Proceeds pursuant to clauses (1) through (18) of Section 11.1(a) shall be deemed to be Interest Proceeds received in the

Due Period relating to the second Payment Date and not available for distribution on such first Payment Date.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(i).

"***Interim Ramp-Up Completion Date Failure***": The failure of the Issuer to satisfy the criteria set forth in Section 7.19(e) on or before September 1, 2005 or the failure of the Issuer to satisfy the criteria set forth in Section 7.19(f) on or before November 1, 2005; notwithstanding the foregoing, if the Issuer receives a Rating Confirmation after an Interim Ramp-Up Completion Date Failure but before the first Payment Date, such Interim Ramp-Up Completion Date Failure shall not be deemed to have occurred.

"***Investment Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC/Caa Collateral Obligations exist, the Investment Criteria Adjusted Balance for the Excess CCC/Caa Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Investment Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Portfolio Manager by an Authorized Officer of the Portfolio Manager, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Knowledgeable Employee***": The meaning specified in Rule 3c-5 under the Investment Company Act.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally

accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Portfolio Manager, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": Determined by the Calculation Agent for any Interest Period, the offered rate, as determined by the Calculation Agent, for three month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Portfolio Manager) (the "**Reference Banks**") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that leading banks in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager)).

For the first Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered, or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or Composite Securities or the Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Composite Securities or Preference Shares, as the case may be.

"***Management Agreement***": The Portfolio Management Agreement, dated as of the Closing Date, between the Issuer and the Portfolio Manager, as modified, amended, and supplemented and in effect from time to time.

"***Management Fee***": The Senior Management Fee, the Subordinated Management Fee, and the Incentive Management Fee. The Portfolio Manager may, in its sole discretion:

(i) waive all or any portion of the Management Fee, any funds representing the waived Management Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Portfolio Manager) pursuant to the Priority of Payments; or

(ii) defer all or any portion of the Management Fee, any funds representing the deferred Management Fees to be retained in the Collection Account, when they will become payable in the same manner and priority as their original characterization would have required unless deferred again.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio Manager); provided that if a Market Value of any Collateral Obligation cannot be so determined for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided, further, that during

such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) (if any) the Market Value of such Collateral Obligation as most recently determined by the Portfolio Manager in accordance with the foregoing and (ii) the current market value of such Collateral Obligation as determined by the Portfolio Manager in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Investment Amount (and any amount in excess of 5.0% of the Maximum Investment Amount shall be deemed to have a Market Value of zero).

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation, *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Investment Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$678,000,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations, *plus*

(B) Cash representing Principal Proceeds on deposit in the Collection Account, *plus*

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation,

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation,

(iii) that is a Determination Date,

(iv) that is the Ramp-Up Completion Date, and

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

*"**Minimum Diversity Score**"*: As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

*"**Minimum Weighted Average Spread**"*: As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Portfolio Manager on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

"***Moody's Senior Secured Loan***":

(a) A Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan,

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral, or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan,

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan,

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral, and

(iv) if the Loan has an Assigned Moody's Rating, such Assigned Moody's Rating is not lower than the senior implied Moody's rating of the related obligor,

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in August, 2010.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities or Preference Shares, any Holder or, in the case of Securities or Preference Shares represented by Global Securities, any beneficial owner, that either (i) has declared in writing that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": A Holder or beneficial owner of an interest in a Certificated Composite Security or Global Security that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note, (ii) with respect to the Composite Securities evidenced by a Certificated Composite Security, is not (x) a QIB/QP or (y) an Accredited Investor and a Qualified Purchaser or (iii) does not have an exemption available under the Securities Act.

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.05%
2	Greater than or equal to 2.95% but less than 3.05
3	Greater than or equal to 2.85% but less than 2.95
4	Greater than or equal to 2.75% but less than 2.85%
5	Greater than or equal to 2.65% but less than 2.75%
6	Greater than or equal to 2.55% but less than 2.65%
7	Greater than or equal to 2.45% but less than 2.55%
8	Greater than or equal to 2.35% but less than 2.45%
9	Greater than or equal to 2.25% but less than 2.35%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Note Components***": The Class C Component and the Class D-2 Component.

"***Noteholder***": A Holder of the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to (i) in the case of Notes (other than the Fixed Rate Notes), LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect

to such Notes except in the first Interest Period and (ii) in the case of the Fixed Rate Notes, the rate specified for them in Section 2.3.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A Notes until the Class A Notes have been fully redeemed;

(2) to the Class B Notes until the Class B Notes have been fully redeemed;

(3) to the Class C Notes until the Class C Notes have been fully redeemed; and

(4) to the Class D Notes until the Class D Notes have been fully redeemed (with each of the Class D Notes being redeemed *pro rata* based upon the outstanding principal amount of the Class D-1 Notes and the Class D-2 Notes).

"***Notes***": The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes and the Composite Securities.

"***Offering Memorandum***": The final Offering Memorandum, dated June 27, 2005, prepared and delivered in connection with the offer and sale of the Notes, the Composite Securities and the Preference Shares.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Portfolio Manager, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes and the Composite Securities or any specified Class, as of any date of determination, all of the Notes, all of the Composite Securities, or all of the Notes or Composite Securities of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes and Composite Securities:

(i) Securities canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture and Composite Securities in exchange for or in lieu of which other Composite Securities have been authenticated and delivered pursuant to this Indenture; and

(iv) Securities alleged to have been destroyed, lost, or stolen for which replacement Securities have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Securities are held by a protected purchaser;

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Notes, the Preference Shares or the Composite Securities have given any request, demand, authorization, direction, notice, consent, or waiver under this Indenture,

(1) Holders of Class 1 Composite Securities, except to the extent otherwise expressly provided, will be entitled to vote with the Class D-2 Notes and the Preference Shares to which the Class D-2 Components and the Preference Share Components, respectively, of such Class 1 Composite Securities relate: (i) the Class D-2 Component, in the proportion that the Aggregate Outstanding Amount of the Class D-2 Component bears to the Aggregate Outstanding Amount of all Class D-2 Notes (including the Class D-2 Component); and (ii) the Class 1 Composite Security Preference Shares Component, in the proportion that the number of Preference Shares attributable to such Class 1 Composite Security Preference Shares Component bears to the number of all the Outstanding Preference Shares (including the Class 1 Composite Security Preference Shares Component and the Class 2 Composite Security Preference Shares Component); and

(2) Holders of Class 2 Composite Securities, except to the extent otherwise expressly provided, will be entitled to vote with the Class C Notes and the Preference Shares to which the Class C Components and the Preference Share Components, respectively, of such composite Security relate: (i) the Class C Component, in the proportion that the Aggregate Outstanding Amount of the Class C Component bears to the Aggregate Outstanding Amount of all Class C Notes (including the Class C Component); and (ii) the Class 2 Composite Security Preference Shares Component, in the proportion that the number of Preference Shares attributable to such Class 2

Composite Security Preference Shares Component bears to the number of all the Outstanding Preference Shares (including the Class 1 Composite Security Preference Shares Component and the Class 2 Composite Security Preference Shares Component); and

(3) Notes, Composite Securities or Preference Shares owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and (only (x) with respect to any matter affecting its status as Portfolio Manager, or (y) in any matter respecting an acceleration of any Class of Notes or Composite Securities (to the extent of the Note Component) if the effect of the Portfolio Manager's action or inaction as a Holder of Notes, Composite Securities or Preference Shares would effectively prevent acceleration) the Portfolio Manager and its Affiliates shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent, or waiver, only Notes, Composite Securities or Preference Shares that a Trust Officer of the Trustee has actual knowledge to be so owned or beneficially owned shall be so disregarded. Notes, Composite Securities or Preference Shares so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes, Composite Securities or Preference Shares and that the pledgee is not the Issuer, the Co-Issuer, the Portfolio Manager, the Preference Shares Paying Agent or any Affiliate of the Issuer or the Co-Issuer.

With respect to Components, as of any date of determination, all of the Components represented by Composite Securities that are Outstanding under this Indenture or the Preference Share Documents.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC/Caa Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to

which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect Collateral Obligation that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC/Caa Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC/Caa Collateral Obligations, an amount equal to the product of (i) the lower of (1) 70% and (2) the weighted average Market Value of all CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances *multiplied* by (ii) the Excess CCC/Caa Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A/B Overcollateralization Test	112.7%
Class C Overcollateralization Test	108.0%
Class D Overcollateralization Test	105.0%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any person authorized by the Issuer to pay the principal of or interest on any Notes or to pay any amounts on any Composite Securities on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in November 2005 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Portfolio Manager has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Placed Securities***": The Notes, the Composite Securities and the portion of the Preference Shares, in each case placed by the Placement Agents pursuant to the Placement Agency Agreement.

"***Placement Agency Agreement***": A placement agency agreement dated June 29, 2005 among the Co-Issuers and IXIS Securities North America Inc. as Lead Manager on behalf of the Placement Agents relating to the placement of the Placed Securities, as modified, amended and supplemented and in effect from time to time.

"***Placement Agents***": IXIS Securities North America Inc. and IXIS Corporate & Investment Bank.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Manager***": Highland Capital Management, L.P., and any successor Portfolio Manager pursuant to the Management Agreement.

"***Preference Share Component***": The Class 1 Composite Security Preference Share Component and the Class 2 Composite Security Preference Share Component.

"***Preference Share Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares were purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Shares Notional Amount***": Means, $70,000,000.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": JPMorgan Chase Bank, National Association, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed reinvestment in a Collateral Obligation, as the case may be.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any person that, at the time of its acquisition of Notes or Composite Securities is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the 1940 Act and Rule 2a51-2 under the 1940 Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 179th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $678,000,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $678,000,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least $678,000,000.

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Portfolio Manager (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes or, in the case of Moody's; Composite Securities will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Securities are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency (and with respect to the Composite Securities, from Moody's only) that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes or Composite Securities.

"***Rating Confirmation Failure***": A failure by the Issuer or the Portfolio Manager (on behalf of the Issuer) to obtain confirmation in writing from S&P and written confirmation from Moody's

that it has not reduced, suspended, or withdrawn its Initial Rating of each Class of Notes and, in the case of Moody's, Composite Securities and that it has not placed any Class of Notes or, in the case of Moody's, Composite Securities on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Portfolio Manager on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Portfolio Manager may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score						
Minimum Weighted Average Spread	**50**	**55**	**60**	**65**	**70**	**75**	**80**
2.25%	**2110**	**2140**	**2170**	**2200**	**2230**	**2260**	**2290**
2.35%	**2170**	**2200**	**2230**	**2260**	**2290**	**2320**	**2350**
2.45%	**2230**	**2260**	**2290**	**2320**	**2350**	**2380**	**2410**
2.55%	**2290**	**2320**	**2350**	**2380**	**2410**	**2440**	**2470**
2.65%	**2350**	**2380**	**2410**	**2440**	**2470**	**2500**	**2530**
2.75%	**2410**	**2440**	**2470**	**2500**	**2530**	**2560**	**2590**
2.85%	**2470**	**2500**	**2530**	**2560**	**2590**	**2620**	**2650**
2.95%	**2530**	**2560**	**2590**	**2620**	**2650**	**2680**	**2710**
3.05%	**2590**	**2620**	**2650**	**2680**	**2710**	**2740**	**2770**
	Maximum Weighted Average Moody's Rating Factor						

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Securities pursuant to Section 9.2.

"***Redemption Price***": With respect to any Note (including any Note Component) and any Optional Redemption pursuant to Section 9.2(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed, plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest), plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note, plus

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Composite Security***": Any Composite Security issued in the form of a Regulation S Global Security.

"***Regulation S Global Note***": Any Note issued in the form of a Regulation S Global Security.

"***Regulation S Global Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Regulation S Global Security***": The meaning specified in Section 2.2(b).

"***Reinvestment Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, excluding any Deferred Interest on any Class of Notes.

"***Reinvestment Overcollateralization Test***": A test that is satisfied as of any Measurement Date during the Reinvestment Period on which any Notes remain Outstanding, if the Reinvestment Overcollateralization Ratio as of such Measurement Date is at least equal to 106.3%.

"***Reinvestment Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Portfolio Manager notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Portfolio Manager, that, in light of the composition of the Collateral, general market conditions, and other factors, investments in additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in August, 2012 or, in the case of an Extension, the Extended Reinvestment Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Portfolio Manager to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Reinvestment Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(b)).

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Portfolio Manager and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt

assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that will be satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the reinvestment of the related Sale Proceeds in additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***S&P Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"***S&P Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Portfolio Manager has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Portfolio Manager or the Trustee in connection with the

sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan, or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Second Lien Loan***": A Secured Loan (other than a Senior Secured Loan) that (i) is only subordinated in right of payment to the Senior Secured Loan and (ii) has a junior contractual claim on tangible property (which property is subject to a prior lien (other than customary permitted liens, as such, but not limited to, any tax liens)) to secure payment of a debt or the fulfillment of a contractual obligation.

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the 1940 Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit H-1.

"***Secured Loan***": A Loan that (i) is not subordinated by its terms to other indebtedness of the borrower for borrowed money and (ii) is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Composite Securities.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Management Fee***": A fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.30% per annum of the Maximum Investment Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Management Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral.

"***Senior Unsecured Loan***": A Loan that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Share Trustee***": Ogier Fiduciary Services (Cayman) Limited.

"Share Registrar": Ogier Fiduciary Services (Cayman) Limited.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class and the Composite Securities, the Payment Date in August, 2017 or, upon a Maturity Extension (if any), the applicable Extended Stated

Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes and the Composite Securities; provided that references in this Indenture to the "Stated Maturity" of the Composite Securities mean the date the Notes underlying the Note Component of such Composite Securities will mature at par and the Preference Shares underlying the Preference Share Components of such Composite Securities are scheduled to be redeemed at the Redemption Price thereof by the Issuer in accordance with the Preference Share Documents.

"***Structured Finance Obligation***": Any obligation:

(i) secured directly by, referenced to, or representing ownership of, a pool or portfolio of primarily loans to U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries or Moody's Group III Countries, including portfolio credit default swaps, synthetic collateralized debt obligations, and collateralized debt obligations;

(ii) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Portfolio Manager shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs managed by the same Portfolio Manager or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Management Fee***": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.25% per annum of the Maximum Investment Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments, (ii) on any Payment Date that any part of the Senior Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum and (iii) on any Payment Date that any part of the Subordinated Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Management Fee or Senior Management Fee, as applicable, in clauses (i) through (iii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes, Composite Securities or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes, Composite Securities or Preference Shares, as the case may be.

"***Synthetic Security***": Any swap transaction, structured bond investment, credit linked note, or other derivative financial instrument relating to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse First Boston) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Portfolio Manager's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a weighted average Market Value of at least 85% at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

Synthetic Securities that are credit default swaps, credit linked notes, or other similar instruments may not provide for "restructuring" as a "credit event".

For purposes of the Coverage Tests and the Reinvestment Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Portfolio Manager, on behalf of the Issuer, shall give each applicable Rating Agency not less than 5 days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) investments that satisfy the Rating Condition with respect to Moody's, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period; or

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transfer Agent***": The person or persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Securities.

"**Transferee Certificate**": A certificate substantially in the form of Exhibit B-1 attached hereto or Exhibit B-4, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as United States persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Warehouse Agreement***": The Master Warehousing and Participation Agreement, dated as of March 24, 2005, among MMP-5 Funding, LLC, as the Participant and Warehouse Provider, the Issuer, the Portfolio Manager and IXIS Financial Products Inc., as the Initial TRS Provider, as amended.

"***Warehoused Loans***": Loans acquired by the Issuer before the Closing Date pursuant to the Warehouse Agreement.

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Portfolio Manager on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 8.0%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that will be satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and August 1, 2014 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 3.0 years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 44.5%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 51.7%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum overall rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), determined with respect to any Floating Rate Obligation that does not bear interest based on a three month London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR,

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

For purposes of calculating the Weighted Average Spread, the Principal Balance of each Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan shall not include any of its unfunded amount.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Portfolio Manager, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and reinvestment in Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not reinvested in additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent reinvestment pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Portfolio Manager certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Reinvestment Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral

Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Reinvestment Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Portfolio Manager by notice to the Trustee, during the Reinvestment Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Reinvestment Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until reinvested in an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

(i) The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Section 1.3. ***Rules of Interpretation***.

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.12 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding," "following," "before," "after," "next," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES AND THE COMPOSITE SECURITIES

Section 2.1. ***Forms Generally.***

The Notes, the Composite Securities and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Securities as evidenced by their execution of the Securities.

Section 2.2. ***Forms of Securities and Certificate of Authentication.***

(a) The Securities, including the Certificated Composite Securities, Regulation S Global Securities, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A.

(b) *Regulation S Global Securities*. The Notes of each Class and the Composite Securities sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global securities in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (the "***Regulation S Global Securities***"). The global securities shall be deposited on behalf of the subscribers for the Securities represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Notes*. The Notes of each Class initially sold to U.S. persons that are Accredited Investors and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Certificated Composite Securities*. The Composite Securities initially sold to U.S. persons that are Accredited Investors and (i) Qualified Purchasers, (ii) Knowledgeable Employees or (iii) entities owned exclusively by Knowledgeable Employees shall be issued in the form of certificated securities in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A (each, a "***Certificated Composite Security***"), which shall be registered in the name of their beneficial owner or a nominee of their beneficial owner, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

(e) *Book-Entry Provisions*. This Section 2.2(e) shall apply only to Global Securities deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Securities insofar as interests in the Global Securities are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Security for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$630,000,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The aggregate principal amount of Composite Securities that may be authenticated and delivered under this Indenture is limited to U.S.$15,000,000, except for Composite Securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Composite Securities pursuant to Section 2.6, 2.7, or 8.5.

The Securities shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A	B	C[1]	D-1	D-2[2]	Class 1 Composite Securities[3]	Class 2 Composite Securities[4]
Original Principal Amount	U.S.$521,500,000	U.S.$35,000,000	U.S.$35,000,000	U.S.$33,500,000	U.S.$5,000,000	U.S.$10,000,000[5]	U.S.$5,000,000[6]
Interest Rate	LIBOR + 0.27%	LIBOR + 0.58%	LIBOR + 0.90%	LIBOR + 1.95%	6.2815%	2.0%[7]	0.25%[7]
Initial Rating (Moody's/S&P)	Aaa/AAA	Aa2/AA	A2/A	Baa2/BBB	Baa2/BBB	Baa3/N/A[8]	A2/N/A[9]

1 The initial principal amount of the Class C Notes includes the Class C Component of the Class 2 Composite Securities.
2 The initial principal amount of the Class D-2 Notes includes the Class D-2 Component of the Class 1 Composite Securities.
3 The Class 1 Composite Securities shall consist of the Preference Share Component and the Class D-2 Component.
4 The Class 2 Composite Securities shall consist of the Preference Share Component and the Class C Component.
5 The amount of the Class 1 Composite Securities shown includes the Preference Share Component comprised of 5,000 Preference Shares.
6 The amount of the Class 2 Composite Securities shown includes the Preference Share Component comprised of 1,000 Preference Shares.
7 In the event that the Class 1 Composite Securities Principal Balance is reduced to $1,000 or the Class 2 Composite Securities Rated Balance is reduced to zero, Holders of the Class 1 Composite Securities or the Holders of the Class 2 Composite Securities, as the case may be, will continue to receive payments in accordance with the Priority of Payments to the extent allocated to their related Components, and such payments will be classified as "excess distributions."

8 The Class 1 Composite Securities are rated only as to the ultimate payment of their Class 1 Composite Security Rated Balance. The Class 1 Composite Securities will not be rated as to the payment of the Class 1 Composite Security Stated Coupon.

9 The Class 2 Composite Securities are rated as to the ultimate payment of their Class 2 Composite Rated Balance and the Class 2 Composite Security Rated Coupon.

(c) The Class 1 Composite Securities have 2 Components, the Preference Share Component and the Class D-2 Component. At issuance U.S.$10,000,000 original principal amount of Class 1 Composite Securities represents a Preference Share Component equal to 5,000 Preference Shares combined with the Class D-2 Component equal to an initial principal amount of $5,000,000 Class D-2 Notes.

(d) The Class 2 Composite Securities have 2 Components, the Preference Share Component and the Class C Component. At issuance U.S.$5,000,000 original principal amount of Class 2 Composite Securities represents a Preference Share Component equal to 1,000 Preference Shares combined with the Class C Component equal to an initial principal amount of $4,000,000 Class C Notes.

(e) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount and the Composite Securities will be issuable in minimum denominations of U.S. $100,000 and integral multiples of $10,000 in excess of that amount.

(f) The Issuer will also issue 70,000 Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes and Composite Securities under this Indenture. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares will be released by the Trustee to the Preference Shares Paying Agent in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment (subject to the laws of the Cayman Islands) to Holders of the Preference Shares as dividends or redemption price, as applicable.

Section 2.4. ***Extension of Reinvestment Period and Stated Maturity.***

(a) The Issuer, if directed by the Portfolio Manager, shall be entitled on each Extension Effective Date to extend the Reinvestment Period to the applicable Extended Reinvestment Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Reinvestment Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Securities shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Securities or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Notes, Composite Securities or Preference Shares wishing to sell such Securities or Preference Shares to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that

no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Preference Share Documents immediately after such purchase and the legends on such Securities or Preference Shares and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) either (i) all Coverage Tests and the Selected Collateral Quality Tests are satisfied as of the related Extension Determination Date, the rating of each Class of Securities by Moody's has not been downgraded, withdrawn or qualified from that in effect on the Closing Date (unless it subsequently has been reinstated to the rating assigned on the Closing Date) and the Overcollateralization Ratio Numerator is at least $678,000,000 or (ii) the Rating Condition has been satisfied with respect to Moody's (so long as any Securities are then rated by Moody's); and

(iv) the Issuer has not effected more than three prior Extensions.

The Issuer, the Trustee and, by its acceptance of the Securities or Preference Shares, each Holder of Securities or Preference Shares agrees that the Placement Agents shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such person or Holder of Securities or Preference Shares (whether or not such Holder gave an Extension Sale Notice with respect to its Securities or Preference Shares) or to any other person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) No later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Reinvestment Period (the ***"Extension Notice"***), the Trustee shall mail the Extension Notice to all Holders of Securities and the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares) and each Rating Agency (so long as any rated Securities are Outstanding), in the form of Exhibit J, and shall request the Rating Condition for the Maturity Extension from S&P, if applicable;

(ii) Any Holder of Securities or Preference Shares may give irrevocable notice (an ***"Extension Sale Notice"***) within 30 days after the Trustee has mailed the Extension Notice (the ***"Extension Sale Notice Period"***) of its intention to sell its Securities or Preference Shares to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of

Securities or Preference Shares that has not given such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Preference Shares to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Securities or Preference Shares in compliance with all transfer restrictions in this Indenture and the legends on such Securities or Preference Shares and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied. No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Portfolio Manager, at the expense of the Co-Issuers, shall mail a notice to all Holders of Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager, the Placement Agents, each Rating Agency (so long as any rated Securities are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Securities is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Securities or Preference Shares subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Holder of Notes (including each Holder of Composite Securities with respect to the Note Components) other than Extension Sale Securities shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares (including Holders of Composite Securities with respect to the Preference Share Components) shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Securities shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Securities or did not hold their offices at the date of issuance of the Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer and the Co-Issuer may deliver Securities executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Securities as provided in this Indenture and not otherwise.

Each Security authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Securities that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Securities issued upon transfer, exchange, or replacement of other Securities shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Securities so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Securities so transferred, exchanged, or replaced. If any Security is divided into more than one Security in accordance with this Article 2, the original principal amount of the Security shall be proportionately divided among the Securities delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Security a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Security shall be conclusive evidence, and the only evidence, that the Security has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Securities and the registration of transfers of Securities. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Securities and transfers of the Securities as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Portfolio Manager of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar. The Issuer shall cause the Composite Securities (including the Class C Component and the Class D-2 Component) to be registered and recorded in the Indenture Register and, with respect to the Preference Share Component, in the Preference Share register.

If the Issuer appoints a person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a

certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Holders of the Securities and the principal amounts and number of the Securities.

Upon surrender for registration of transfer of any Securities at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Securities of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their holder, Securities may be exchanged for Securities of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Securities to be exchanged at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2. Whenever any Security is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Securities that the Noteholder or Composite Securityholder making the exchange is entitled to receive.

All Securities issued on any registration of transfer or exchange of Securities shall be the valid obligations of the Applicable Issuers evidencing the same obligations (in the case of the Notes (including the Note Components)), and entitled to the same benefits under this Indenture or, as applicable, the Preference Share Documents, as the Securities surrendered for registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Securities, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Security may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the 1940 Act. None of the Co-Issuers, the Trustee, or any other person shall have any obligation to register the Securities under the Securities Act or any state securities laws.

(c) No Security or interest therein may be transferred to any purchaser or transferee unless such purchase, holding and disposition of such Security will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, foreign or local law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code).

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the 1940 Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee by a prospective transferee, the Trustee shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Securities are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Security remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Security, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii), and (iv) of this Section 2.6(f), transfers of a Global Security shall be limited to transfers of the Global Security in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note to Regulation S Global Note*. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Securities, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Note to Rule 144A Global Note*. If a Holder of a Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream, or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream, or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the person transferring the interest in the Regulation S Global Note reasonably believes that the person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) *Regulation S Global Composite Security to Certificated Composite Security*. If a Holder of a beneficial interest in a Regulation S Global Composite Security wishes at any time to transfer its interest in such Global Security to a person who wishes to take delivery of it in the form of a Certificated Composite Security of the same Class, the Holder may, subject to the rules and procedures of Euroclear, Clearstream, or the Depository, as the case may be, transfer the interest for an equivalent beneficial interest in one or more Certificated Composite Securities of the same Class as described below. Upon receipt by the Indenture Registrar of:

(A) instructions given in accordance with the Depository's procedures from an Agent Member, or instructions from Euroclear, Clearstream, or the Depository, as the case may be, directing the Trustee to deliver one or more Certificated Composite Securities of the same Class, designating the registered name or names, address, payment instructions, the

Class, and the number and principal amounts of the Certificated Composite Securities to be executed and delivered (the Class and the aggregate principal amounts of the Certificated Composite Securities being equal to the aggregate principal amount of such Global Security to be transferred), in authorized denominations,

(B) a certificate in the form of Exhibit B-6 given by the Holder of the beneficial interest and stating that the person transferring the interest in the Global Security reasonably believes that the person acquiring the interest in a Certificated Composite Security is either a Qualified Institutional Buyer or an Accredited Investor, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A or in a transaction not requiring registration under the Securities Act and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and is also either (i) a Qualified Purchaser, (ii) a Knowledgeable Employee or (iii) an entity owned exclusively by Knowledgeable Employees, and

(C) a certificate in the form of Exhibit B-4 given by the transferee of the beneficial interest stating that it is both (x) either a Qualified Institutional Buyer or an Accredited Investor and (y) either (i) a Qualified Purchaser, (ii) Knowledgeable Employee or (iii) an entity owned exclusively by Knowledgeable Employees, and certifying to the other matters addressed in the form of such certificate,

the Indenture Registrar shall instruct the Depository to reduce the applicable Global Security by the aggregate principal amount of the beneficial interest in the Global Security to be transferred and the Indenture Registrar shall record the transfer in the Indenture Register in accordance with Section 2.6(a) and authenticate and deliver one or more Certificated Composite Securities of the appropriate Class registered in the names specified in the certificate described in clause (B) above in principal amounts designated by the transferee (the aggregate of the amounts being equal to the beneficial interest in the Global Securities to be transferred) and in the minimum denominations and integral multiples in excess thereof as specified in Section 2.3.

If a Holder of a beneficial interest in a Regulation S Global Composite Security wishes at any time to exchange the interest in such Global Security for one or more Certificated Composite Securities of the same Class, the Holder may exchange the interest for an equivalent beneficial interest in one or more Certificated Composite Securities of the same Class as provided below. Upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member, or instructions from Euroclear, Clearstream, or the Depository, as the case may be, directing the Trustee to deliver one or more Certificated Composite Securities and

(B) written instructions from the Holder designating the registered name, address, and payment instructions of the Holder and the Class and the face amounts of the Certificated Composite Securities to be executed and delivered to the Holder (the Class and the aggregate face amounts of the

Certificated Composite Securities being the same as the beneficial interest in the Global Security to be exchanged),

the Indenture Registrar shall instruct the Depository to reduce the Global Security by the aggregate principal amount of the beneficial interest in the Global Security to be exchanged, shall record the exchange in the Indenture Register in accordance with Section 2.6(a), and authenticate and deliver one or more Certificated Composite Securities of the appropriate Class registered as specified in the instructions described in clause (A) above, in authorized denominations.

(v) *Other Exchanges*. If a Global Security is exchanged for Securities in definitive registered form without interest coupons pursuant to Section 2.11, the Securities may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as a Certificated Composite Security remains Outstanding, transfers of a Certificated Composite Security, in whole or in part, shall only be made in accordance with Section 2.6(c) and this Section 2.6(g).

(i) *Certificated Composite Security to Regulation S Global Composite Security*. If a Holder of a Composite Security represented by a Certificated Composite Security wishes at any time to exchange the Certificated Composite Security for an interest in the corresponding Regulation S Global Composite Security, or to transfer the Certificated Composite Security to a person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Composite Security, the Holder may exchange or transfer the Security for an equivalent beneficial interest in the corresponding Regulation S Global Composite Security, if the proposed transferee or the person requesting the exchange, as applicable, is not a U.S. person. Upon receipt by the Indenture Registrar of:

(A) the Certificated Composite Security properly endorsed for the transfer, and written instructions from the Holder directing the Indenture Registrar to cause to be credited a beneficial interest in the Regulation S Global Composite Security of the same Class equal to the principal amount of the Certificated Composite Security,

(B) a written order containing information regarding the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-5, given by the Holder of the Certificated Composite Security stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Regulation S Global Composite Security, including that the proposed transferee or the person requesting the exchange, as the case may be, is not a U.S. person and that the proposed transfer is being made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the appropriate form of Exhibit B-4 given by the proposed transferee stating that it is not a U.S. person,

the Indenture Registrar shall cancel the Certificated Composite Security in accordance with Section 2.10, record the transfer in the Indenture Register in accordance with Section 2.6(a), and instruct the Depository to increase the principal amount of Regulation S Global Composite Security by the aggregate principal amount of the Certificated Composite Security to be exchanged or transferred, and to credit to the account of the person specified in the instructions a beneficial interest in the Regulation S Global Composite Security of the same Class equal to the amount specified in the instructions received pursuant to clause (A) above.

(ii) *Certificated Composite Security to Certificated Composite Security*. If a Holder of a Certificated Composite Security wishes at any time to transfer the Certificated Composite Security to a person who wishes to take delivery of it in the form of one or more Certificated Composite Securities of the same Class, the Holder may transfer the Security as provided below. Upon receipt by the Indenture Registrar of

(A) the Holder's Certificated Composite Security properly endorsed for the transfer, and

(B) a certificate in the applicable form of Exhibit B-4 given by the transferee of the Certificated Composite Security,

the Indenture Registrar shall cancel the Certificated Composite Security in accordance with Section 2.10, record the transfer in the Indenture Register in accordance with Section 2.6(a), and upon execution by the Applicable Issuers authenticate and deliver one or more Certificated Composite Securities bearing the same designation as the Certificated Composite Securities endorsed for transfer, registered in the names specified in the assignment described in clause (A) above, in principal amounts designated by the transferee (the aggregate of the principal amounts being equal to the aggregate principal amount of the Certificated Composite Securities surrendered by the transferor), and in authorized denominations.

(iii) *Exchange of Certificated Composite Securities*. If a Holder of one or more Certificated Composite Securities wishes at any time to exchange the Certificated Composite Securities for one or more Certificated Composite Securities of the same Class of different face amounts, the Holder may exchange the Certificated Composite Security for Certificated Composite Securities bearing the same designation as the Certificated Composite Securities endorsed for exchange as provided below. Upon receipt by the Applicable Issuers and the Indenture Registrar of (A) the Holder's Certificated Composite Securities properly endorsed for the exchange and (B) written instructions from the Holder designating the face amounts of the Certificated Composite Securities to be issued (the aggregate of the face amounts being equal to the aggregate face amount of the Certificated Composite Securities surrendered for exchange), then the Indenture Registrar shall cancel the Certificated Composite Securities in accordance with Section 2.10, record the exchange in the Indenture Register in accordance with Section 2.6(a), and upon execution by the Applicable Issuers authenticate and deliver one or more Certificated Composite Securities bearing the same designation as the Certificated Composite Securities endorsed for exchange,

registered in the same names as the Certificated Composite Securities surrendered by the Holder, in different face amounts designated by the Holder, and in authorized denominations.

(h) Exchange of Composite Securities for Underlying Components. A Holder of a beneficial interest in a Composite Security may exchange all or a proportionate amount of each Component of such interest for proportional interests in the Class D-2 Notes and the Preference Shares, in the case of the Class 1 Composite Securities, or Class C Notes and the Preference Shares, in the case of the Class 2 Composite Securities, subject to the minimum denomination requirements and other requirements of this Section 2.6 and in the manner described in (a) this Indenture for exchange for beneficial interests in the Rule 144A Global Notes or Regulation S Global Securities (in the case of the Note Components) and (b) the Preference Share Documents for exchange for Preference Shares (in the case of the Preference Shares Components). The Trustee, upon receipt of appropriate instructions with respect to a Composite Security, shall simultaneously convert (or shall direct the Preference Shares Paying Agent or the Paying Agent, as applicable, to convert) its constituent Components into the Class C Notes, Class D-2 Notes or the Preference Shares represented by such Component, as applicable, and effect such exchange. Thereafter, the Holder of the beneficial interest in a Composite Security so exchanged under this paragraph will be the Holder of the Class D-2 Notes and the Preference Shares, received upon an exchange of the Class 1 Composite Securities, or Class C Notes and the Preference Shares, received upon an exchange of the Class 2 Composite Securities, as the case may be. No Holder of a Class C Note, Class D-2 Note or a Preference Share (including a Holder that received such Class C Note, Class D-2 Note or Preference Share upon an exchange of a Composite Security) will have the right to exchange such Notes or Preference Shares for a Composite Security. No service charge will be made for any such exchange, but the Trustee or the Preference Share Paying Agent may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(i) If the Securities are issued upon the transfer, exchange, or replacement of Securities bearing the applicable legends in the applicable Exhibit A, and if a request is made to remove the legend on the Securities, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Securities comply with the Securities Act, the 1940 Act, ERISA, and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Securities that do not bear the applicable legend.

(j) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Security that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note or a Certificated Composite Security, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Security may only be held through Euroclear or Clearstream.

(k) Each person who becomes a beneficial owner of a Note or Composite Security evidenced by: (i) an interest in a Certificated Composite Security or Definitive Security, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such person's purchase or other acquisition of the relevant Certificated Composite Security or Definitive Security and (ii) an interest in a Global Security, shall be deemed to make (or, in the case of a Class 1 Composite Security or Class 2 Composite Security, represented by a Global Security purchased in the Offering of the Securities, will be required to make) the representations, warranties and agreements set forth in the applicable legends of the Securities set forth in Exhibit A hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 (in the case of a Global Security evidencing an interest in Notes) or Exhibit B-4 (in the case of a Global Security evidencing an interest in Composite Securities) hereto upon such person's purchase or other acquisition of the relevant Global Security.

(l) The aggregate principal amount of any Global Security may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Security, which adjustments shall be conclusive as to the aggregate principal amount of any Global Security.

(m) Any purported transfer of a Security not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost, or Stolen Securities.***

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss, or theft of any Security, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Security is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Security has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Security, a replacement Security, of like tenor and equal principal or face amount.

If, after delivery of the replacement Security or payment on it, a protected purchaser of the predecessor Security presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Security (or the payment on it) from the person to whom it was delivered or any person taking the replacement Security from the person to whom the replacement Security was delivered or any assignee of that person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Security has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Security pay the Security without requiring its surrender except that any mutilated Security shall be surrendered.

Upon the issuance of any new Security under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Security issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Security shall be an original additional contractual obligation (in the case of the Notes and the Note Components) of the Applicable Issuers and the new Security shall be entitled to all the benefits of this Indenture equally and proportionately with all other Securities of the same Class duly issued under this Indenture or the Preference Share Documents, as applicable.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Security and to the Holder or its nominee with respect to a Certificated Composite Security or a Definitive Security, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Security, and to the Holder or its designee with respect to a Certificated Composite Security or a Definitive Security, in the case of a Certificated Composite Security or a Definitive Security, its holder has provided written wiring instructions to the Trustee and, if the payment is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date. Payments in respect of any Preference Share payable to the Preference Shares Paying Agent in accordance with the Priority of Payments for payments on the Preference Shares in accordance with the Preference Share Documents shall be payable by wire transfer in immediately available funds (or by internal transfer if the Trustee and the Preference Shares Paying Agent are the same Person) to the Preference Shares Distribution Account.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. In the case of Components to be redeemed, the related Composite Securities do not need to be surrendered at the office of any paying agent under this Indenture to receive the applicable Redemption Price. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Security.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original

principal amount of Notes and the place where the Notes may be presented and surrendered for payment. The final payment on any Composite Security shall be made only upon surrender of the certificate for the Composite Security to the Trustee at the office designated by the Trustee. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes (including the Note Components) of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated (i) in the case of the Notes (other than the Fixed Rate Notes) on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360 and (ii) in the case of the Fixed Rate Notes on the basis of a 360-day year consisting of twelve 30 day months.

(h) All reductions in the principal amount of a Security (or one or more predecessor Securities) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Security and of any Security issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Security.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Applicable Issuers under the Notes and the Composite Securities (to the extent of the Note Components) and under this Indenture are limited recourse obligations of the Applicable Issuers payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Securities or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Securities or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Securities or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Securities to any Noteholder or Composite Securityholder, as applicable, the tax shall reduce the amount otherwise distributable to the Noteholder or Composite Securityholder, as applicable. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder or Composite Securityholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder or Composite Securityholder shall be treated as Cash distributed to the Noteholder or Composite

Securityholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder or Composite Securityholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder or Composite Securityholder in making the claim by providing information readily available to the Trustee so long as the Noteholder or Composite Securityholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder or Composite Securityholder that the failure by the Noteholder or Composite Securityholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder or Composite Securityholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Securities.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Security the person in whose name any Security is registered on the Indenture Register or the Share Register on the applicable Record Date for the purpose of receiving payments on the Security and on any other date for all other purposes whatsoever (whether or not the Security is overdue), and neither the Issuer, the Co-Issuers, nor the Trustee nor any agent of the Issuer, the Co-Issuer, or the Trustee shall be affected by notice to the contrary. The Portfolio Manager shall notify the Trustee and the Share Registrar of any Affiliate of the Portfolio Manager that owns the Securities or Preference Shares.

Section 2.10. ***Cancellation.***

All Securities surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 2.10, except as expressly permitted by this Indenture and in the case of the Preference Shares, the Preference Share Documents. All canceled Securities held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Co-Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Definitive Securities.***

(a) A Global Security deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Security to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Security or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Security that is transferable in the form of a Definitive Security to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any

other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Security, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Security***") in authorized denominations. Any Definitive Security delivered in exchange for an interest in a Global Security, as applicable, shall, except as otherwise provided by Section 2.6(i), bear the legends in the applicable portion of Exhibit A and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Securities in definitive, fully registered form without interest coupons.

The Definitive Securities shall be in substantially the same form as the Global Securities, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Securities of authorized denominations.

Section 2.12. ***Securities Beneficially Owned by Non-Permitted Holders.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, any transfer of a beneficial interest in any (i) Global Security to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP or (ii) Certificated Composite Security to a U.S. person that is not (x) a Qualified Institutional Buyer or an Accredited Investor and (y) a Qualified Purchaser (or a Knowledgeable Employee or an entity owned exclusively by Knowledgeable Employees), and that is not in each case made pursuant to an applicable exemption under the Securities Act, shall be void and any such purported transfer of which the Issuer, the Co-Issuer, or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer, and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer, or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), that a person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes, Composite Securities, or interest in the Securities, without further notice to the Non-Permitted Holder, the Issuer may sell the Notes, Composite Securities, or interest in the Securities to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Securities, and selling the Securities, or interest in the Securities to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Security, the beneficial owner of each interest in a Security, the Non-Permitted Holder, and each other person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Securities agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to

the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any person having an interest in the Securities sold as a result of any such sale or the exercise of its discretion.

Section 2.13 ***Tax Purposes***

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Securities on Closing Date.***

The Securities to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters.* An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Placement Agency Agreement and, in the case of the Issuer, the Management Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication, and delivery of the Notes and Composite Securities applied for by it and specifying the Stated Maturity, principal amount, and, with respect to the Notes, the Note Interest Rate of each Class of Notes to be authenticated and delivered and (2) evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date, and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval, or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval, or consent of any governmental body is required for the valid issuance of the Securities applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Securities except as have been given; provided that the opinions of Latham & Watkins, LLP and Ogier & Boxalls, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Portfolio Manager's U.S. Counsel Opinion*. An opinion of Latham & Watkins LLP, special U.S. counsel to the Co-Issuers, and Orrick, Herrington & Sutcliffe LLP, counsel to the Portfolio Manager, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Ogier & Boxalls, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Gardere Wynne Sewell LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture*. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Securities applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the Securities have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Management Agreement*. Executed copy of the Management Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents*. An executed counterpart of the Preference Share Paying Agency Agreement.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Portfolio Manager*. A certificate of an Authorized Officer of the Portfolio Manager, dated as of the Closing Date, to the effect that, to the best knowledge of the Portfolio Manager, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Portfolio Manager on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(xx)(B);

(xiv) *Rating Letters*. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Securities rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) *Accounts*. Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$286,000,000 into the Collection Account for use pursuant to Section 7.19, the deposit of approximately U.S.$9,000,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of approximately U.S.$2,500,000 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xvii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Securities to the Daily Official List.

(xviii) *Issuer Order for Authentication of Securities*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Securities in the amounts, in the registered names, and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate*. An Accountants' Certificate (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is at least U.S.$400,000,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to

purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(xix) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xx) *Certificate of the Issuer Regarding Collateral*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Portfolio as of the Closing Date is at least 90% of the aggregate par amount thereof.

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit H-2.

(xxii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Portfolio Manager, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be JPMorgan Chase Bank, National Association. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other investments purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into an agreement with the Custodian substantially in the form of Exhibit G providing, inter alia, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Portfolio Manager on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment, or other investments, the Portfolio Manager (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment, or other investment is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment, or other investment to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such investment that is not a Collateral Obligation, in the Account in which the funds used to purchase the investment are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment, or other investment so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments, or other investments.

Section 3.3. ***Representations as to Collateral.***

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages, and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Warehoused Loans, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion, or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated, or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been

delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any person other than the Trustee.

(xiii) The Accounts are not in the name of any person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture (i) shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver; (ii) the Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

(b) If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Portfolio Manager on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes, the Composite Securities and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost, or stolen Securities,

(iii) rights of Holders of the Notes (including the Note components) to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention, disbursement and reinvestment of Collateral,

(vi) the rights, obligations, and immunities of the Portfolio Manager under this Indenture and under the Management Agreement, and

(vii) the rights of Holders of the Notes (including the Note components) as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Securities theretofore authenticated and delivered to Noteholders and Composite Securityholders (other than (A) Securities that have been destroyed, lost, or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Securities, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Securities must be entitled to the full faith and credit of the United States of America or be

debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Securities that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of an Opinion of Counsel of Independent U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Holders of Notes would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Portfolio Manager and, if applicable, the Noteholders and the Composite Securityholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.6, 6.7, 7.1, 7.3, 13.1, and 14.14 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the person entitled to it and applied by the Trustee in accordance with the Securities and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Securities, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for 3 Business Days;

(d) on any Measurement Date for so long as any Class A Notes are Outstanding, the Aggregate Principal Balance of the Pledged Obligations is less than 100% of the Aggregate Outstanding Amount of the Class A Notes;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the 1940 Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Reinvestment Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Portfolio Manager by the Trustee or to the Issuer, the Co-Issuer, the Portfolio Manager, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by any Rating Agency) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to each Rating Agency is satisfied with respect thereon.

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

(a) If an Event of Default is continuing (other than (i) an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, and upon the written direction of a Majority of the Controlling Class shall, declare the principal of all the Notes and Composite Securities (to the extent of the Note Components) to be immediately payable by notice to the Applicable Issuers, and upon that declaration the unpaid principal of all the Notes and Composite Securities (to the extent of the Note Components), together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Reinvestment Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(b)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes and Composite Securities (to the extent of the Note Components), and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Reinvestment Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(b)).

(b) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent, may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes and Composite Securities (to the extent of the Note Components) then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Management Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes and Composite Securities (to the extent of the Note Components), have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes and Composite Securities (to the extent of the Note Components) has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(b) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Reinvestment Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Reinvestment Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall preserve the Collateral in accordance with this Indenture. If the preservation of the Collateral is rescinded pursuant to Section 5.5, the Notes and Composite Securities (to the extent of the Note Components) may again be accelerated pursuant to Section 5.2(a), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(b)).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(c) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class, or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note or Composite Security, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note or Composite Security (to the extent of the Note Component) for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Holders of the Securities under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements, and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may, and shall at the direction of a Majority of the Controlling Class, institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes or Composite Securities (to the extent of the Note Components) and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may, and shall upon written direction of a Majority of the Controlling Class, proceed to protect and enforce its rights and the rights of the Holders of the Securities by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Holders of the Securities, whether for the

specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.7.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes or Composite Securities (to the extent of the Note Components) under the Bankruptcy Law or any other applicable bankruptcy, insolvency, or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator, or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer, or their respective property or any other obligor on the Notes or Composite Securities (to the extent of the Note Components) or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer, or other obligor on the Notes or Composite Securities (to the extent of the Note Components), or the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes or Composite Securities (to the extent of the Note Components), the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes or Composite Securities (to the extent of the Note Components), and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Holders of the Securities allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes or Composite Securities (to the extent of the Note Components);

(b) unless prohibited by applicable law, vote on behalf of the Holders of the Securities in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation, or other bankruptcy or insolvency Proceedings or person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Holders of the Securities and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian, or other similar official is authorized by each of the Holders of the Securities to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Holders of the Securities, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Security, any plan of reorganization, arrangement, adjustment, or composition affecting the Securities or any Holder of Securities, or to authorize the Trustee to vote on the claim of the Holder of any Security in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes and Composite Securities (to the extent of the Note Components) have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, and shall, upon written direction of a Majority of the Controlling Class, to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes (including the Note Components) or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Holders of the Notes under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Portfolio Manager (subject to the Management Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee, and the Holders of the Securities, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties, or the Holders of the Securities may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes (including the Note Components), institute against, or join any other person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a person other than a Secured Party, or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceeding.

Section 5.5. ***Optional Preservation of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral intact, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of each of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Portfolio Manager. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to preserve the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service), at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Placement Agents.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holders of the Securities, the Co-Issuers, the Portfolio Manager and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Holders of the Notes representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Securities.***

All rights of action and claims under this Indenture or under any of the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Securities.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes (including the Note Components) pursuant to this Article 5 and any money that may then be held or subsequently

received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

No Holder of any Security shall have any right to institute any Proceedings, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy under this Indenture, unless:

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request, and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No one or more Holders of Securities have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Holders of Securities of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of the Securities of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture.

Section 5.9. ***Unconditional Rights of Holders of Notes.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note (including the Note Components) shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note (including the Note Components) as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Holders of Notes (including the Note Components) ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Shares Documents, to the extent legally permitted, on a claim against the

Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee or the Holder of any Security has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee or the Holder of any Security to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Holders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received an indemnity against the liabilities reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use

the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes (including the Note Components), with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Portfolio Manager, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Holder of Notes (including the Note Components).

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Note (including any Note Component) by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Portfolio Manager for any action taken or omitted by it as Trustee or for any action taken or omitted by the Portfolio Manager, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Portfolio Manager, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Holder of Securities for the enforcement of the payment of the principal of or interest on any Note or Composite Security or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Holders of the Securities but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Holders of the Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.7.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes (including the Note Components) or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.7. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage, or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Notes.***

The Trustee's right to seek and recover judgment on the Notes (including the Note Components) or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Holders of the Securities shall be impaired

by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Holders of the Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would use under the circumstances in the conduct of the person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Portfolio Manager in accordance with this Indenture or a Majority (or the other percentage required by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any extraordinary financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed an "extraordinary financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Portfolio Manager and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Holders of Securities, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Securities is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of

bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers, or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of the Securities pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class or of a Rating Agency shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Portfolio Manager, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Portfolio Manager's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate, or information received from the Issuer or Portfolio Manager;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Portfolio Manager, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is

dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent, or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in making or disposing of any investment permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent, or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of Securities.***

The recitals contained in this Indenture and in the Securities, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Securities. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Securities or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Securities.***

The Trustee, any Paying Agent, Indenture Registrar, or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar, or other agent.

Section 6.6. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on investments that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on investments made in accordance with an Issuer Order or a written order or request by the Portfolio Manager, unless such investment is made in an obligation of the Trustee in its corporate capacity.

Section 6.7. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements, and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5, or 10.7, except any such expense, disbursement, or advance attributable to its negligence, willful misconduct, or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Portfolio Manager;

(iii) to indemnify the Trustee and its officers, directors, employees, and agents for any loss, liability, or expense incurred without negligence, willful misconduct, or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves (including reasonable attorney's fees and costs) against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.13.

(b) The Trustee shall receive amounts pursuant to this Section 6.7 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.9, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Holders of the Securities shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.7 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Securities issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.7(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.8. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent entity organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United

States. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.8, it shall resign immediately in the manner and with the effect specified in Section 6.9.

Section 6.9. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Portfolio Manager, the Holders of the Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall at the direction of a Majority of the Controlling Class promptly appoint a successor trustee satisfying the requirements of Section 6.8, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Holder of Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Portfolio Manager. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Holder of a Security, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.8.

(c) The Trustee may be removed (i) at any time by an Act of a Majority of each Class of Securities, (ii) at any time when an Event of Default is continuing by a Majority of the Controlling Class, or (iii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.8 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation,

then, in any such case (subject to Section 6.9(a)), (A) the Co-Issuers, by Issuer Order, may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee, or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If

the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.10, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Portfolio Manager, to each Rating Agency, to the Holders of Securities as their names and addresses appear in the Indenture Register and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.10. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer, and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.8 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.11. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion, or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar, and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Securities have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, or consolidation to the authenticating Trustee may adopt the authentication and deliver the Securities so authenticated with the same effect as if the successor Trustee had itself authenticated the Securities.

Section 6.12. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Holders of the Securities and the, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.12.

The Co-Issuers shall join with the Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged, and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Securities shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash, and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.12, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.12;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Holders of Notes delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.13. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Portfolio Manager in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Portfolio Manager in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Portfolio Manager requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Management Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.13 and the payment shall not be part of the Collateral.

Section 6.14. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Securities in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Securities. For all purposes of this Indenture, the authentication of Securities by an Authenticating Agent pursuant to this Section 6.14 shall be the authentication of the Securities "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.15. ***Fiduciary for Holders of Notes Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Holders of Notes and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Holders of Notes and agent for the other Secured Parties.

Section 6.16. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders and the Composite Securityholders:

(a) *Organization*. The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations*. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery, and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility*. The Bank is eligible under Section 6.8 to serve as Trustee under this Indenture.

Section 6.17. ***Additional Reporting Requirements.***

If the Placement Agents elect to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Portfolio Manager and the Placement Agents.

If the Placement Agents have entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee at the expense of the Issuer shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(viii).

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Securities in accordance with the Securities and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Securities or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Securities or this Indenture.

Amounts properly withheld under the Code or other applicable law by any person from a payment to any Holder shall be considered as having been paid by the applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint JPMorgan Chase Bank, National Association, New York Plaza, Ground Floor, New York, NY 10004, Attn: Worldwide Securities Services (Houston) — Jasper CLO Ltd., as the Co-Issuers' agent where notices and demands on the Co-Issuers in

respect of the Securities or this Indenture may be served and where the Securities may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Securities and this Indenture may be served and an office or agency outside of the United States where the Securities may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Securities to withholding tax.

So long as any Class of Securities is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Securities and this Indenture may be served and where the Securities may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Securities is listed on the Irish Stock Exchange, AIB International Financial Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Securities, for the payment of principal, interest and other distributions on the Securities and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Securities or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Securities is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Securities of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Securities that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Securities.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish no later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Securities held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to

pay the amounts then becoming due on the Securities with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Holders of Securities for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Securities in trust for the benefit of the persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Securities if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Security and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Holder of the Security shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon

cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Securities have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Securities, the Preference Shares Paying Agency Agreement, and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Portfolio Manager or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Holders of the Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a legal opinion from nationally recognized legal counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action, or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other person in a bankruptcy, reorganization, or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries other than the Co-Issuer,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Portfolio Manager, the Trustee, and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Management Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) have any employees (other than their respective directors),

(B) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(C) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Portfolio Manager on behalf of the Issuer will procure any action within the Portfolio Manager's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral.

The Issuer designates the Portfolio Manager as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and JPMorgan Chase Bank, National Association as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b), or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate, or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Portfolio Manager, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Management Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Portfolio Manager on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. ***Opinions as to Collateral.***

On or before July 31 in each calendar year, commencing in 2006, the Issuer shall furnish to the Trustee, the Portfolio Manager and each Rating Agency an Opinion of Counsel from each relevant jurisdiction stating that, in the counsel's opinion, as of the date of the opinion, all actions necessary to maintain the lien and security interest created by this Indenture with respect to the Collateral have been taken and that no further action (other than as specified in the opinion) needs to

be taken for the continued effectiveness and perfection of the lien over the next year. The opinion may be subject to customary assumptions and qualifications.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any person from any of the person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Portfolio Manager under the Management Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Management Agreement and the Collateral Administration Agreement as initially executed), contract with other persons (including the Portfolio Manager, the Trustee, and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Portfolio Manager, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other person to perform, all of their obligations in the Management Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), and (vi), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Management Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Holder of Notes because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Securities and this Indenture and the transactions contemplated by this Indenture (including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements), or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged, or permit any person to be released

from any covenants or obligations with respect to this Indenture or the Securities, except as may be expressly permitted by this Indenture or by the Management Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage, or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of, or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Management Agreement except pursuant to its terms and Section 15.1(f)(iv) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such “non-petition” and “limited recourse” provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange, or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Management Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the 1940 Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Securities to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Portfolio Manager, the Rating Agencies, and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before July 31 in each calendar year, commencing in 2006, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Portfolio Manager and each Holder of Securities making a written request therefor and, upon written request therefor by a Beneficial

Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc., Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other person or transfer or convey all or substantially all of its assets to any person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder and each Composite Securityholder, the due and punctual payment of all amounts on all Securities issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other person or transfer or convey the Collateral or all or substantially all of its assets to any other person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder, each Composite Securityholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Securities issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder or Composite Securitiyholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer, or conveyance and shall have delivered to the Trustee, each Noteholder, each Composite Securityholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer, or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Securities or Preference Shares;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be as an investment company under the 1940 Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the 1940 Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer, or conveyance, the person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up, and liquidated at any time thereafter, and the person thereafter shall be released from its liabilities as obligor and maker on all the Securities and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Securities pursuant to this Indenture and the Preference

Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by the Collateral Acquisition Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in the Collateral Acquisition Agreement, unless, with respect to a particular transaction, the Issuer and the Trustee shall have received an opinion or advice of tax counsel of nationally recognized standing in the United States experienced in such matters that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Collateral Acquisition Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer and the Trustee shall have received an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of the Collateral Acquisition Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Securities within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event an opinion of tax counsel as described above has been obtained in accordance with the terms hereof, no consent of any Holder of the Securities or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of the Collateral Acquisition Agreement contemplated by such opinion of tax counsel.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Irish Stock Exchange.***

So long as any Securities remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Securities on the Irish Stock Exchange.

Section 7.14. ***Annual Rating Review.***

So long as any Securities of any Class remain Outstanding, on or before May, 31 in each year commencing in 2006, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Securities from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Portfolio Manager in writing (and the Trustee shall promptly provide a copy of the notice to the Holders of the Securities) and the

Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Securities has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note or a Holder of a Composite Security, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Security designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Security by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Portfolio Manager (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Securities are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Portfolio Manager, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. The Issuer shall treat the Class 1 Composite Securities as consisting of Preference Shares corresponding to the Preference Share Component and Class D-2 Notes corresponding to the Class D-2 Component. The Issuer shall treat the Class 2 Composite Securities as consisting of Preference Shares corresponding to the Preference Share Component and Class C Notes corresponding to the Class C Component. Each Holder of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes. Each Holder of a Class 1 Composite Security, by its acquisition of the Class 1 Composite Security, agrees to treat the Class 1 Composite Securities as consisting of Preference Shares corresponding to the Preference Share Component and Class D-2 Notes corresponding to the Class D-2 Component, and to treat the Preference Shares as equity in the Issuer and the Class D-2 Component as debt for United States federal income tax purposes. Each Holder of a Class 2 Composite Security, by its acquisition of the Class 2 Composite Security, agrees to treat the Class 2 Composite Securities as consisting of Preference Shares corresponding to the Preference Share Component and Class C Notes corresponding to the Class C Component, and to treat the Preference Shares as equity in the Issuer and the Class C Component as debt for United States federal income tax purposes.

(b) The Issuer will not elect to be treated as a partnership for U.S. federal income tax purposes.

(c) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an Opinion of Counsel from a tax counsel of nationally recognized standing experienced in such matters prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) In order to ensure the Holders' and Beneficial Owners' acquisition of the Securities pursuant to this Agreement are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners of the Securities (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement (including the ownership and disposition of the Securities). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(e) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Holder of a Note or

Composite Security requests information about any such transactions in which the Issuer is an investor, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(f) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Agreement.

(g) Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(h) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Portfolio Manager may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Portfolio Manager. The Securities Lending Counterparties may be Affiliates of the Placement Agents or Affiliates of the Portfolio Manager. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Securities.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Portfolio Manager (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Securities in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.8;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Portfolio Manager) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Portfolio Manager on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Portfolio Manager on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Portfolio Manager on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Portfolio Manager to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Portfolio Manager, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Portfolio Manager in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Portfolio Manager instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Portfolio Manager shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity, or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator is at least $678,000,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Portfolio Manager in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator is at least $678,000,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) On or prior to September 1, 2005, so long as the Ramp-Up Completion Date has not already occurred, the Portfolio Manager shall certify by an order of the Portfolio Manager delivered to the Issuer, the Trustee and Moody's that, as of such date: (i)(A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $500,000,000, or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $500,000,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date, (ii) the Diversity Score is equal to at least 40, (iii) the Weighted Average Rating Factor Test is satisfied and (iv) each of the Coverage Tests is satisfied. If the Portfolio Manager is not able to certify each of the foregoing items, an Interim Ramp-Up Completion Date Failure shall occur.

(f) On or prior to November 1, 2005, so long as the Ramp-Up Completion Date has not already occurred, the Portfolio Manager shall certify by an order of the Portfolio Manager

delivered to the Issuer, the Trustee and Moody's that, as of such date: (i)(A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $600,000,000, or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $600,000,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date, (ii) the Diversity Score is equal to at least 45, (iii) the Weighted Average Rating Factor Test is satisfied and (iv) each of the Coverage Tests is satisfied. If the Portfolio Manager is not able to certify each of the foregoing items, an Interim Ramp-Up Completion Date Failure shall occur.

(g) Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Portfolio Manager (on behalf of the Issuer) shall request a Rating Confirmation on behalf of the Issuer and shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, a Microsoft Excel file of the S&P CDO Monitor input file and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Investment Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in Section 12.2 of this Indenture; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(h) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. ***Posting of Reports on Repository.***

If the Placement Agents have entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Trustee and the Portfolio Manager acknowledges and agrees that each Monthly Report and Valuation Report shall be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee at the expense of the Issuer agrees to make available in

accordance with Section 14.3(a)(viii) each Monthly Report or Valuation Report to the operator of the Repository for posing on the Repository.

Section 7.21. ***Secondary Risk Procedures.***

The Portfolio Manager shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Investment Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Investment Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.22. ***Section 3(c)(7) Procedures.***

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the 1940 Act (provided, that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the 1940 Act):

(a) *Section 3(c)(7) Notice to Investors*. The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the 1940 Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers.* The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Placement Agents and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the

Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information," and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act of 1933, as amended (the "Securities Act") to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act of 1940)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities or the Holders of any Preference Shares, when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Securities, the Co-Issuers and the Trustee may, if it is not materially and adversely affected thereby (and will be bound by a standard of good faith and fair dealing in making such determination) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another person to the Issuer or the Co-Issuer and the assumption by the successor person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Holders of the Securities or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage, or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication, and delivery of the Securities;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.9, 6.10, and 6.12;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) modify the restrictions on and procedures for resales and other transfers of the Securities to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities

Act or the 1940 Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(7) with the consent of the Portfolio Manager, to modify the restrictions on the sales of Collateral Obligations in Section 12.1 or the Eligibility Criteria in Section 12.2 (and the definitions related thereto) in a manner not materially adverse to the Holders of any Class of the Notes, the Composite Securities or the Preference Shares as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of the Notes, the Composite Securities or the Preference Shares;

(8) make appropriate changes for any Class of Securities to be listed on an exchange other than the Irish Stock Exchange;

(9) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(10) accommodate the issuance of the Securities in book-entry form through the facilities of DTC or otherwise;

(11) to take any appropriate action to prevent the Issuer, the Holders of Securities or Preference Shares, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities or Preference Shares to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities or Preference Shares, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(12) to authorize the appointment of any listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities appropriate in connection with the listing of any Class of Securities on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Holder of Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Portfolio Manager, to the effect that the modification would not be materially adverse to the Holders of any Class of Securities;

(13) to amend, modify, enter into, or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement);

(14) to modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(15) to evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(16) to facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(17) to facilitate hedging transactions;

(18) to facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(19) to modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange; or

(20) with the consent of the Portfolio Manager, to enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities or the Holders of Preference Shares as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of Securities or the Holders of Preference Shares.

(b) Without the consent of the Portfolio Manager, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Portfolio Manager under this Indenture or increase the duties or obligations of the Portfolio Manager.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities, or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of the Securities or a Majority of the Holders of Preference Shares that the Class of Securities or Holders of Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Portfolio Manager and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities or Holder of Preference Shares would be materially and adversely affected by any such supplemental indenture. The Trustee shall give notice of the proposed change to the Holders of Securities and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) at least 15 Business Days before execution of any supplemental indenture by the Trustee (or 60 calendar days before execution, in the case of a supplemental indenture for the purpose described in paragraph (7) of Section 8.1(a), which shall be identified as such in a certificate of the Portfolio Manager delivered to the Trustee before the date on which such notice is required to be given).

(d) If any Outstanding Securities are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Portfolio Manager and the Holders of 100% in Aggregate Outstanding Amount of each Class of

Securities the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes or Composite Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note and each Holder of each Outstanding Composite Security informing them of such fact.

(e) At the cost of the Co-Issuers, for so long as any Securities are Outstanding and rated by a Rating Agency, the Trustee shall provide to the Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Hedge Counterparty a copy of any proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee.

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Holders of the Securities under this Indenture with the consent of:

(1) the Portfolio Manager if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes;

(3) a Majority of the Composite Securities adversely affected thereby, by Act of the Holders of the Composite Securities; and

(4) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby, the Holder of each Outstanding Composite Security adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes and the application of proceeds of any Class C Components, Class D-2 Components or Preference Share Components corresponding to their related Components, or to payment to the Preference Shares Paying Agent for payment

to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Composite Securities or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Security of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to preserve the Collateral or rescind the Trustee's election to preserve the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note, Preference Share and Composite Security affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of Notes or Preference Shares (including the Note Components or Preference Share Components, as the case may be) to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

Prior to the entry into any supplemental indenture with respect to which a Rating Confirmation for one or more Classes of Notes or Composite Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note, each Holder of each Outstanding Composite Security and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) informing them of such fact.

(b) At the cost of the Co-Issuers, for so long as any Securities are Outstanding and rated by a Rating Agency, the Trustee shall provide to the Rating Agency a copy of any proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee.

(c) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Holders of the Securities, the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency (so long as any rated Securities are Outstanding) a copy of such supplemental indenture and shall request any

required consent from the applicable Holders of Securities or Preference Shares to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities or Preference Shares, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security or Preference Share, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities or Preference Shares consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Portfolio Manager which Holders of Securities or Preference Shares have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five (5) Business Days after so being notified by the Trustee and the Trustee shall mail such notice to all Holders of Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities or Preference Shares, may consent to the related proposed supplemental indenture within five (5) Business Days of the Amendment Buy-Out.

(d) It shall not be necessary for any Act of Holders of Securities under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(e) The Trustee, at the expense of the Co-Issuers, shall mail to the Holders of the Securities, the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, or immunities under this Indenture or otherwise. The Portfolio Manager shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager unless the Portfolio Manager consents to it in writing, such consent not to be unreasonably withheld or delayed. The Portfolio Manager shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities and Preference Shares theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Section 8.5. ***Reference in Securities to Supplemental Indentures.***

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes and new Composite Securities, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

Section 8.6. ***Composite Securities.***

(a) For purposes of this Article 8, the Class 1 Composite Securities shall only be adversely affected or materially and adversely affected, as the context requires, by any proposed supplemental indenture if the Composite Securities would suffer an adverse effect or material adverse effect, as the context requires, that does not arise directly from an adverse effect or material adverse effect suffered by the the Class D-2 Notes or the Preference Shares.

(b) For purposes of this Article 8, the Class 2 Composite Securities shall only be adversely affected or materially and adversely affected, as the context requires, by any proposed supplemental indenture if the Composite Securities would suffer an adverse effect or material adverse effect, as the context requires, that does not arise directly from an adverse effect or material adverse effect suffered by the Class C Notes or the Preference Shares.

(c) The Holders of the Composite Securities shall not be entitled to voting rights as a separate Class except to the extent such Composite Securities are deemed to be adversely affected or materially and adversely affected, as the context requires, as provided in Section 8.6(a) and (b). Additionally, the Holders of the Composite Securities shall not be entitled to direct the Trustee pursuant to this Indenture except, in the case of the Class 1 Composite Security, with the Holders of the Class D-2 Notes to the extent of their interest in the Note Component and, in the case of the Class 2 Composite Security, with the Holders of the Class C Notes to the extent of their interest in the Note Component or, in the case of either Composite Security, with the Holders of the Preference Shares to the extent of their interest in the respective Preference Shares Components.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Securities, then at the direction and in accordance with the instructions of the Portfolio Manager the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Securities) and to pay all administrative and other fees, expenses, and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares (including the Preference Share Component) will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes (including the Note Components) shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account, and the Delayed Drawdown Reserve Account at the direction of the Holders of a Super Majority of the Aggregate Outstanding Amount of Preference Shares (including the Preference Share Components), which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Portfolio Manager not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Holders of the Notes on relevant

Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

Upon receipt of a notice of redemption pursuant to this Section 9.2(a), the Portfolio Manager in its sole discretion will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account, and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Portfolio Manager's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses, and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date, and the applicable Redemption Prices.

Upon a redemption of the Notes or the Preference Shares, (i) the Class 1 Composite Securities will be redeemed with payments, if any, made in respect of (x) the Class D-2 Notes, with respect to the Class D-2 Component and (y) the Preference Shares, with respect to the Class 1 Composite Security Preference Shares Component and (ii) the Class 2 Composite Securities will be redeemed with payments, if any, made in respect of (x) the Class C Notes, with respect to the Class C Component and (y) the Preference Shares, with respect to the Class 2 Composite Security Preference Shares Component.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares (including the Preference Share Components), the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares (including the Preference Share Components), voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Portfolio Manager will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Portfolio Manager will effect the sale of Collateral Obligations in

accordance with the unanimous direction of the Holders of the Preference Shares (including the Preference Share Components).

Section 9.3. ***Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, a notice of redemption shall be given by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes (including the Note Components) to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Holders of the Composite Securities and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Securities are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Securities pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes (including the Note Components) to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes (including the Note Components), are to be redeemed in full and that interest on the Notes (including the Note Components) to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Securities to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Securities to be redeemed are listed on the Irish Stock Exchange, and the Irish Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Trustee and the Portfolio Manager only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Portfolio Manager does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares to withdraw the notice of redemption delivered by a percentage of the Preference Shares requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, and

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing person to withdraw the applicable notice of redemption if it

receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Holder of Securities (including the Note Components) scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail) and the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Reinvestment Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Reinvestment Period) at the Portfolio Manager's discretion, be reinvested in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Securities (including any Note Components) selected for redemption or the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) shall not impair or affect the validity of the redemption of any other Securities or Preference Shares.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions are satisfied:

(i) At least ten Business Days before the Redemption Date, the Portfolio Manager shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreements (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes (including the Note Components) on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Portfolio Manager shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with

any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes (including the Note Components) on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes (including the Note Components) shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. If a Component is to be redeemed, the related Composite Security does not need to be surrendered at the office of any paying agent under this Indenture to receive the applicable Redemption Price. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Holders of the Notes or Composite Securities (to the extent of the Note Components), or one or more predecessor Notes or Composite Securities, registered as such at the close of business on the relevant Record Date if the

Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes (including the Note Components) shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Reinvestment Period, the Portfolio Manager elects (subject to the Management Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional Collateral Obligations that are deemed appropriate by the Portfolio Manager in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the investment or reinvestment of all or a portion of the funds then in the Collection Account available to be invested in additional Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not reinvested in additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Securities are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Securities pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities or Preference Shares, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities or Preference Shares held by such Holders of the Class of Securities or Preference Shares whose consent was solicited with respect to such supplemental indenture (the ***"Amendment Buy-Out Option"***) for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Securities of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities or Preference Shares of Non-Consenting Holders, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities or Preference Shares the consent of whose Holders is required for such supplemental indenture (an ***"Amendment Buy-Out"***). By its acceptance of its Securities or Preference Shares hereunder, each Holder of Securities or Preference Shares agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities or Preference Shares to the Amendment Buy-Out Purchaser; provided that, if the solicited consent to a supplemental indenture only applies to one Component of a Composite Security, the Non-Consenting Holder will be required to sell, at the Amendment Buy-Out Purchaser's option, its Composite Security as a whole.

Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Securities or Preference Shares as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities or Preference Shares set forth herein and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. ***Collection of Money.***

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Portfolio Manager for convenience in administering the Accounts, the Collateral.

Section 10.2. ***Collection Account.***

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously reinvested in Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously reinvested in accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Reinvestment Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Reinvestment Period, which have not been reinvested in additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Portfolio Manager be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such investment or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments) received after the Reinvestment Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be reinvested pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Portfolio Manager. Within five Business Days of receipt of the notice from the Trustee, the Portfolio Manager, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a person that is not the Portfolio Manager or an Affiliate of the Portfolio Manager and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Portfolio Manager certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Reinvestment Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Reinvestment Period), at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and reinvest (or invest, in the case of funds referred to in Section 7.19) the funds in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Reinvestment Period, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account*. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account.* Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Portfolio Manager, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Portfolio Manager at any time during or after the Reinvestment Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Reinvestment Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Portfolio Manager as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be reinvested pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account

pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be invested in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be reinvested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an

amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Synthetic Security Collateral Account shall be reinvested pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Securities Lending Account shall be reinvested pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$9,000,000 from the gross proceeds of the Offering. At any time before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment

Date in February 2006, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in February 2006 (or, at the discretion of the Portfolio Manager, on the Payment Date in November 2005), the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be reinvested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes and Composite Securities in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Interest Reserve Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$2,500,000 from the gross proceeds of the Offering. At any time on or before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in February 2006, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Interest Reserve Account an amount necessary such that the amounts referred to in Section 11.1(a)(i)(1) through (13) will be paid in full on each Payment Date occurring on or before the Payment Date in February 2006. On the Payment Date in February 2006 (or, at the discretion of the Portfolio Manager, on the Payment Date in November 2005), the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies therefrom on such date) to the Collection Account as Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be reinvested pursuant to Section 10.4(a).

(j) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(k) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. ***Reinvestment of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. Before an Event of Default occurs, if the Issuer has not given investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the investment or (ii) the Business Day before the next Payment Date. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account. Subject to Section 6.6, the Trustee shall not in any way be held liable for the selection of investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution, or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements substantially in the form of Exhibit G; *provided, however* that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lender shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Portfolio Manager any information regularly maintained by the Trustee that the Co-Issuers or the Portfolio Manager may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Portfolio Manager to perform its obligations under the Management Agreement. The Trustee shall promptly forward to the Portfolio Manager copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation, or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be invested in Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.8 and the account satisfies the other requirements of this Section.

As directed in writing by the Portfolio Manager, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Portfolio Manager shall direct any such deposit only during the Reinvestment Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Portfolio Manager in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be invested in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Portfolio Manager in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending September 2005, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Portfolio Manager, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Placement Agents, each Hedge Counterparty, the Rating Agencies, (if so requested by the Placement Agents) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Security who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Portfolio Manager (the "***Monthly Determination Date***"):

(i) *Portfolio*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity, and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion, or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset, or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Portfolio Manager) since the date of the previous Monthly Report, and the gain or loss (measured against its Purchase Price) on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion, or exchange does not satisfy the

requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Portfolio Manager has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation), and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value";

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds), and Uninvested Proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Reinvestment Overcollateralization Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Reinvestment Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Minimum Average Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Minimum Average Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate";

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Investment Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Investment Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value, and (z) its Principal Balance expressed as a percentage of the Maximum Investment Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Portfolio Manager if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Portfolio Manager, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Placement Agents, each Hedge Counterparty, the Rating Agencies, each Noteholder and Composite Securityholder (if so requested by the Placement Agents) the Repository in accordance with Section 14.3(a)(viii), the Depository (with instructions to forward it to each of its Agent Members who are holders of Notes), and upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the

related Payment Date (unless otherwise stated), based in part on information provided by the Portfolio Manager:

(i) *Securities*:

(A) The amount of principal payments to be made on each Class of Securities on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Securities after giving effect to any principal payments on the related Payment Date and, for each Class of Securities, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Securities, the percentage of the initial Aggregate Outstanding Amount of all of the Securities that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Securities that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Securities on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail;

(E) For the Composite Securities, their Class 1 Composite Security Rated Balance, Class 1 Composite Security Principal Balance or Class 2 Composite Security Rated Balance, as applicable; and

(F) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds) and Uninvested Proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Portfolio Manager if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting*. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Portfolio Manager, and the Portfolio Manager shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.7.

(d) *Irish Stock Exchange*. So long as any Class of Securities is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Securities following each Payment Date and inform the Irish Stock

Exchange if any such Class of Securities did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Securities are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Portfolio Manager shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P a Microsoft Excel File of the S&P Monitor input file and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof.

(g) *Payments or Transfers from the Payment Account.* Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

(h) *NAV Calculation.* The Trustee shall forward to the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Placement Agents, each Hedge Counterparty, the Rating Agencies, (if so requested by the Placement Agents) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Security who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), any net asset value report with respect to the Issuer which the Trustee receives from the asset value calculation agent appointed pursuant to Section 10.8(a) hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Portfolio Manager, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Portfolio Manager in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) If no Event of Default is continuing, the Trustee shall upon an Issuer Order executed by an Authorized Officer of the Portfolio Manager deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption, or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Portfolio Manager.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Portfolio Manager of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion, or other similar action (an "***Offer***"). If no Event of Default

is continuing, the Portfolio Manager may direct the Trustee to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b), or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Securities are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's Certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e), and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Portfolio Manager, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Portfolio Manager, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Portfolio Manager, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. In addition, the Issuer shall appoint an net asset value calculation agent to prepare and deliver to the Trustee a net asset value report with respect to the Issuer. The fees of such Independent certified

public accountants, the NAV calculation agent and their respective successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before May, 31 of each year commencing in 2006, the Issuer shall cause to be delivered to the Trustee the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement), and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Portfolio Manager on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Issuer or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other person (except the Portfolio Manager) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Portfolio Manager if payable under the Management Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) to the payment to the Portfolio Manager of any accrued and unpaid Senior Management Fee then payable;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of accrued and unpaid interest on the Class A Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class A Notes;

(6) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class B Notes;

(7) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes and the Class B Notes in the Note Payment Sequence in the amount necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(8) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest, but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(9) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(2) on the current Payment Date);

(10) to the payment of Class C Deferred Interest;

(11) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(12) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class D Notes in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full, or if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (12) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(3) on the current Payment Date);

(13) to the payment of Class D Deferred Interest;

(14) to deposit in the Collection Account as Principal Proceeds amounts representing Principal Proceeds previously used to pay amounts referred to in clauses (1), (3) through (5), (6), (8), (10), (11) and (13) above and not previously restored to the Collection Account or, if not restored to the Collection Account, used to purchase Collateral Obligations;

(15) during the Reinvestment Period, if the Reinvestment Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds the lesser of (i) 50% of the remaining Interest Proceeds available after the payments pursuant to clause (14) above and (ii) the amount necessary to cause the Reinvestment Overcollateralization Test to be satisfied as of such Determination Date, after application of funds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date;

(16) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(17) to the payment (i) first to the Portfolio Manager of accrued and unpaid Subordinated Management Fee then due and payable and (ii) to each Holder of Securities entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(18) to the payment of any Defaulted Hedge Termination Payments;

(19) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the

Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 15.0%;

(20) to the payment to the Portfolio Manager of the Incentive Management Fee, if applicable; and

(21) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously reinvested in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) first, to the payment of the amounts referred to in clauses (1) and (3) through (6) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) second, to the payment of amounts referred to in clause (7) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A/B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent that all of the Coverage Tests would be met on a *pro forma* basis after giving effect to any payments made through this clause (2);

(3) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3), or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder, only to the extent that all of

the Coverage Tests would be met on a *pro forma* basis after giving effect to any payments made through this clause (4);

(5) to the payment of the amounts referred to in clause (11) of Section 11.1(a)(i) to the extent not previously paid in full thereunder, only to the extent that all of the Coverage Tests would be met on a *pro forma* basis after giving effect to any payments made through this clause (5);

(6) to the payment of principal of the Notes in the Note Payment Sequence in an amount necessary to (A) cause the Class D Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (6), or until paid in full or (B) if a Rating Confirmation Failure exists on the Payment Date, obtain a Rating Confirmation, or until paid in full;

(7) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder, only to the extent that all of the Coverage Tests would be met on a *pro forma* basis after giving effect to any payments made through this clause (7);

(8)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (16) through (20) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(9) during the Reinvestment Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(10) after the Reinvestment Period, (i) first, at the discretion of the Portfolio Manager (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of substitute Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) second, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(11) to the extent not previously paid in full under clause (8) above, after the Reinvestment Period, to the payment of the amounts referred to in clauses (16) through (20)

of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(12) after the Reinvestment Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Portfolio Manager unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

(f) On each Payment Date on which distributions are made in respect of the Class C Notes, a portion of such payment will be allocated to the Class 2 Composite Securities in the proportion that the Aggregate Outstanding Amount of the Class C Component bears to the Aggregate Outstanding Amount of the Class C Notes (including the Class C Note Component). The payment of distributions, redemption amounts and any other payments on the Class 2 Composite Securities will be distributed in the same manner as the Class C Notes to which the Class C Component relates.

(g) On each Payment Date on which distributions are made in respect of the Class D-2 Notes, a portion of such payment will be allocated to the Class 1 Composite Securities in the proportion that the Aggregate Outstanding Amount of the Class D-2 Component bears to the Aggregate Outstanding Amount of the Class D-2 Notes (including the Class D-2 Note Component). The payment of distributions, redemption amounts and any other payments on the Class 1 Composite Securities will be distributed in the same manner as the Class D-2 Notes to which the Class D-2 Component relates.

(h) On each Payment Date on which distributions are made in respect of the Preference Shares, a portion of such payment will be allocated to the Composite Securities in the proportion that the aggregate Face Amount of the Preference Share Components bears to the aggregate Face Amount of the Preference Shares (including the Preference Share Components). The payment of distributions, redemption amounts and any other payments on the Composite Securities will be distributed in the same manner as the Preference Shares to which the Preference Share Components relate.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's Certificate of the Portfolio Manager provided to the Trustee, the Issuer may, at the direction of the Portfolio Manager, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Portfolio Manager certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Reinvestment Period, the proceeds shall be reinvested in accordance with Section 12.2.

(a) *Credit Risk Obligations*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Portfolio Manager during the Reinvestment Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Reinvestment Period, the Portfolio Manager believes before the sale that it will be able to cause the Issuer to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Investment Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest); or

(ii) after the Reinvestment Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Investment Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal

balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations and Current-Pay Obligations*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation or Current-Pay Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation or Current-Pay Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price; provided, that, the Principal Balance of any Collateral Obligation purchased with proceeds of any Current-Pay Obligation shall equal or exceed the Principal Balance of such Current-Pay Obligation that was sold.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Portfolio Manager pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure*. After the Portfolio Manager has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Portfolio Manager, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Discretionary Sales*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation:

(i) at any time on or before the Ramp-Up Completion Date (without regard to any restriction specified in clause (ii) below); and

(ii) at any time after the Ramp-Up Completion Date if:

(A) after giving effect to the sale and the sale of any other Collateral Obligations whose sale is pending, the Aggregate Principal Balance of all Collateral Obligations sold pursuant to this Section 12.1(h)(ii) (in each case determined as of the date the direction to sell is given) is not greater than 20% of the Maximum Investment Amount as of January 1 of such calendar year (or, for the first calendar year, as of the Ramp-Up Completion Date); and

(B) during the Reinvestment Period the Portfolio Manager believes before the sale that it will be able to cause the Issuer within 30 days thereafter to reinvest or commit to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Investment Criteria Adjusted Balance of the Collateral Obligation (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest);

and the Trustee shall sell the Collateral Obligations in accordance with such direction. However, if the rating by Moody's of any of the Class A Notes is one or more rating sub-categories below the Initial Rating of the Class A Notes or has been withdrawn or the rating by Moody's of the Class B Notes, the Class C Notes or the Class D Notes is two or more rating sub-categories below the Initial Rating of the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn, the Issuer shall not instruct the Trustee to sell any Collateral Obligations pursuant to this Section 12.1(h). This restriction may be waived by written consent of a Majority of the Controlling Class. For the purposes of this subsection (h), any withdrawal or reduction in rating shall not restrict the sale of any Collateral Obligations pursuant to this subsection (h) if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A Notes or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes and the Class D Notes.

For the purposes of determining the percentage of Collateral Obligations sold during any period in Section 12.1(h)(ii):

(i) the amount of any Collateral Obligation sold shall be reduced:

(A) to the extent of any purchases of Collateral Obligations of the same obligor (that are *pari passu* with the sold Collateral Obligation) occurring within 30 Business Days of the sale (determined based on the date of any relevant trade confirmation or commitment letter) (but only for so long as (x) the Collateral Obligations purchased have not been downgraded by any of the Rating Agencies during the 30 Business Day period, (y) the Collateral Obligations have not been purchased from the Portfolio Manager or any of its Affiliates acting, in each case, as principal or from any funds or accounts advised or managed by the Portfolio Manager or any of its Affiliates, and (z) the purchase price of each Notes purchased Collateral Obligation must not exceed the sale price of the sold Collateral Obligation), and

(B) to the extent of any purchases of Collateral Obligations permitted pursuant to Section 12.2(c); and

(ii) any Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a

diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time that is invested into a substantially similar Synthetic Security but with a later maturity shall be treated as having been sold.

(i) *Workout Assets*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Reinvestment Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Reinvestment Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Reinvestment Period), so long as no Event of Default is continuing, at the direction of the Portfolio Manager, the Issuer may direct the Trustee to invest or reinvest Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Portfolio Manager certifies to the Trustee that, to the best knowledge of the Portfolio Manager, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Portfolio Manager as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Reinvestment Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Reinvestment Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Reinvestment Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Reinvestment Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Reinvestment Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Reinvestment Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Reinvestment Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Reinvestment Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Reinvestment Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Reinvestment Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to reinvestment of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the reinvestment of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Reinvestment Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all Caa Collateral Obligations do not exceed 7.50% of the Maximum Investment Amount;

(D) the maturity date of such Collateral Obligation will occur prior to the Stated Maturity of the Notes;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled

Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the current Moody's Ratings on the Class A Notes are "Aaa" and the current Moody's Ratings on the Class B Notes, the Class C Notes and the Class D Notes are no lower than one subcategory below their Initial Rating.

(c) *Certain Permitted Exchanges*.

The Issuer may, at the direction of the Portfolio Manager, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Portfolio Manager*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Portfolio Manager shall deliver to the Trustee an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Investment in Eligible Investments*. Cash on deposit in the Collection Account may be invested at any time in Eligible Investments in accordance with Section 10.4(a) pending investment in Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Portfolio Manager or a person Affiliated with the Portfolio Manager or any fund or account for which the Portfolio Manager or an Affiliate of the Portfolio Manager acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Management Agreement on terms no less favorable to the Issuer than would be the case if the person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral

Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Portfolio Manager shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Portfolio Manager's certification to the effect that the Portfolio Manager believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
Class A	B, C, D, Preference Shares	None
Class B	C, D, Preference Shares	Class A
Class C	D, Preference Shares	Class A, B
Class D	Preference Shares	Class A, B, C
Preference Shares	None*	Class A, B, C, D

* The Preference Shares will be entitled to certain residual cashflow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Securities to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of the Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of the Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of the Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or

all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of the Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares are subordinate to distributions on the Notes and Preference Shares as described in the Priority of Payments.

(f) The Management Fees shall have priority only to the extent provided in the Priority of Payments.

(g) For purposes of subordination, the Composite Securities shall not be treated as a separate Class, but the Class C Component, Class D-2 Component and Preference Share Components shall be treated as being *pari passu* with the Class C Notes, the Class D-2 Notes and the Preference Shares, respectively.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder or a Composite Securityholder under this Indenture, a Noteholder or a Composite Securityholder shall not have any obligation or duty to any person or to consider or take into account the interests of any person and shall not be liable to any person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, Composite Securityholder, the Issuer, or any other person, except for any liability to which the Noteholder or Composite Securityholder may be subject to the extent the same results from the Noteholder's or Composite Securityholder’s taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer, or the Portfolio Manager may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer, or the Portfolio Manager or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Portfolio Manager, or any other person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Portfolio Manager, or the other person, unless the Officer of the Issuer, Co-Issuer, or the Portfolio Manager or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Noteholders, Composite Securityholders or Holders of Preference Shares.***

(a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Noteholders, Composite Securityholders or Holders of Preference Shares may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by Noteholders, Composite Securityholders or Holders of Preference Shares in person or by agents duly appointed in writing. Except as otherwise expressly provided in this Indenture the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Noteholders, the Composite Securityholders or the Holders of Preference Shares signing the

instruments. Proof of execution of any instrument or of a writing appointing an agent for a Noteholder, Composite Securityholder or Holder of a Preference Share shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the person executing it to act. The fact and date of the execution by any person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Securities and the principal amount and registered numbers of Securities and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted, or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities or Preference Shares.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at its Corporate Trust Office, telecopy no. (713) 216-2101, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Portfolio Manager to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-6265, Attention: The Directors, or to the Co-Issuer addressed to it at 850 Library Avenue, Suite 204, Newark, Delaware, 19711, Attention: Donald J. Puglisi, or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Portfolio Manager at its address below;

(iii) the Portfolio Manager shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Portfolio Manager addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, telecopy

no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) IXIS Securities North America Inc. and IXIS Corporate & Investment Bank as the Placement Agents shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Placement Agents addressed to them at 9 West 57th Street, 36th Floor, New York, New York 10019, Attention: Structured Credit Products Group and 47 quai d' Austerlitz, 75648 Paris Cedex 13, France, respectively or at any other address previously furnished in writing to the Co-Issuers, the Portfolio Manager, and the Trustee by an Officer of the Placement Agents;

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 949-9876, Attention: The Directors; or

(viii) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Any document required to be delivered or made available to the Repository by the Trustee may be made available by providing the operator of the Repository with access to a website containing such document in a format that permits the user to download the document as a pdf file.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other person unless otherwise expressly specified in this Indenture.

Section 14.4. ***Notices to Holders, the Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders, the Composite Securityholders or the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders, the Composite Securityholders or the Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder and Composite Securityholder affected by the event or the Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register or at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder, a Composite Securityholder or the Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Holders of Notes any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expenses of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder, Composite Securityholder or the Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders, Composite Securityholders or the Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders, Composite Securityholders or the Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage, or similar activity or because of any other cause, then the notification to Noteholders, Composite Securityholders or the Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

Where this Indenture provides for notice in any manner, the notice may be waived in writing by any person entitled to receive the notice, either before or after the event, and the waiver shall be the equivalent of the notice. Waivers of notice by Noteholders, Composite Securityholders or the Preference Shares Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

So long as any Securities are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Holders of the Securities or the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Placement Agents all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Portfolio Manager, trustees, paying agents, accountants, or other persons pursuant to this Indenture and other operative documentation relating to the Securities requested by the Placement Agents (collectively, the "***Transaction Reports***") and the Issuer consents to the Placement Agents' providing Transaction Reports received by it to current and prospective investors in the Securities (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Placement Agents or any of their Affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

Except to the extent prohibited by applicable law, in case any provision in this Indenture, in the Securities shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any person, other than the parties hereto and their successors under this Indenture, the Portfolio Manager, the Noteholders, the Composite Securityholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy, or claim under this Indenture.

Section 14.9. ***Legal Holidays.***

If any Payment Date, Redemption Date, or Stated Maturity is not a Business Day, then notwithstanding any other provision of the Notes or this Indenture, payment need not be made on that date, but shall be made on the next Business Day with the same effect as if made on the nominal date of the Payment Date, Redemption Date, or Stated Maturity date, as the case may be, and except as provided in the definition of "Due Period," no interest shall accrue on the payment for the period beginning on the nominal date.

Section 14.10. ***Governing Law.***

(a) THIS INDENTURE AND EACH NOTE (INCLUDING THE NOTE COMPONENTS OF THE COMPOSITE SECURITIES) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE COMPOSITE SECURITIES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITH RESPECT TO THE NOTE COMPONENTS. HOWEVER, THE RIGHTS OF A

HOLDER OF THE COMPOSITE SECURITIES WITH RESPECT TO THE PREFERENCE SHARE COMPONENTS WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE CAYMAN ISLANDS.

Section 14.11. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities, the Preference Shares or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of the Co-Issuers' agent in Section 7.2 and to the Trustee at the Corporate Trust Office. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.12. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.13. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Portfolio Manager on the Issuer's behalf.

Section 14.14. ***Consent of Posting of Documents on Repository.***

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository; and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.15. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Securities or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Securities, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Securities, any other agreement, or otherwise against the other of the Co- Issuers. In

particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.16. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Securities issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF MANAGEMENT AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Management Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Management Agreement, including:

(i) the right to give all notices, consents, and releases under it,

(ii) the right to give all notices of termination pursuant to the Management Agreement and to take any legal action upon the breach of an obligation of the Portfolio Manager under it, including the commencement, conduct, and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases, and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Management Agreement, nor shall any of the obligations contained in the Management Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Management Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Management Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Portfolio Manager in the Management Agreement to the following:

(i) The Portfolio Manager consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Portfolio Manager pursuant to the Management Agreement.

(ii) The Portfolio Manager acknowledges that the Issuer is collaterally assigning all of its interest in the Management Agreement to the Trustee for the benefit of the Secured Parties and the Portfolio Manager agrees that all of the representations, covenants and agreements made by the Portfolio Manager in the Management Agreement are also for the benefit of the Secured Parties.

(iii) The Portfolio Manager shall deliver to the Trustee duplicate original copies of all notices, statements, communications, and instruments delivered or required to be delivered to the Issuer pursuant to the Management Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) Neither the Issuer nor the Portfolio Manager shall select or consent to a successor manager or enter into any agreement amending, modifying, or terminating the Management Agreement (other than an amendment or modification of the type that may be made to this Indenture without Holder consent) without obtaining the consents of Holders that would be required if an amendment or modification of the same type were being made to this Indenture and without the satisfaction of the Rating Condition with respect to each Rating Agency with respect thereto.

(v) Except as otherwise provided in this Indenture and the Management Agreement, subject to the resignation rights of the Portfolio Manager pursuant to Section 12 of the Management Agreement, the Portfolio Manager shall continue to serve as Portfolio Manager under the Management Agreement notwithstanding that the Portfolio Manager shall not have received amounts due it under the Management Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Portfolio Manager agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Portfolio Manager under the Management Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Portfolio Manager may commence any legal action that is not a bankruptcy, insolvency, liquidation, or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation, or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Portfolio Manager or any Affiliate of the Portfolio Manager.

(vi) The Portfolio Manager irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Portfolio Manager irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Portfolio Manager irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Portfolio Manager irrevocably consents to the service of all process in any action or Proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Portfolio Manager agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Portfolio Manager, the Issuer shall use its best efforts to appoint a successor Portfolio Manager, and the Issuer, the Trustee, and the resigning or removed Portfolio Manager shall take any action consistent with the Management Agreement and this Indenture applicable to the Portfolio Manager, necessary to effectuate any such succession.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time after the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture and the Collateral Assignment of Hedge Agreements. The Portfolio Manager, on behalf of the Issuer, shall obtain the approval of each new Hedge Agreement from each Hedge Counterparty to a then-existing Hedge Agreement. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "Aa3" (which rating of "Aa3" is not on credit watch for possible downgrade) or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A1" (which rating of "A1" is not on credit watch for possible downgrade) or higher and a debt rating by Moody's for short-term debt of "P-1" (which rating of "P-1" is not on credit watch for possible downgrade) if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or a long-term debt rating of not less than "A+" (the "***Required Rating***").

(c) If at any time a Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating and that rating is below "Aa3" or is "Aa3" and has been placed on credit watch for possible downgrade by Moody's; or

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is below "A1" or that rating is "A1" and has been placed on credit watch for possible downgrade by Moody's, or

(ii) the short-term Moody's rating is below "P-1" or that rating is "P-1" and has been placed on credit watch for possible downgrade by Moody's

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's to be satisfied;

(ii) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the above criteria;

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty whose short-term and long-term debt ratings equal or exceed the above criteria; or

(iv) take other actions to satisfy the Rating Condition with respect to Moody's;

(d) If at any time the Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating that is "A2" or below or has been suspended or withdrawn;

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is "A3" or below or is suspended or withdrawn, or

(ii) the short-term Moody's rating is "P-2" or below, or

(C) a short-term debt rating by S&P below "A-1" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "A+" or that has been suspended or withdrawn;

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral as required by the Hedge Agreement to secure the Hedge Counterparty's obligations under the Hedge Agreement in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's and S&P to be satisfied; or

(ii) (x) obtain a guarantor that has a Required Rating and that will satisfy the Rating Condition with respect to S&P with respect to its appointment;

(y) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P; or

(z) take such other actions to satisfy the Ratings Condition.

Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty shall comply with the then currently applicable rating criteria published by each Rating Agency from time to time.

(e) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(f) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(g) Except as provided in paragraph (h) of this Section 15.2, the Issuer, at the direction of the Portfolio Manager, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), at the expense of the Issuer and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Portfolio Manager's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Portfolio Manager determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination; or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(h) Notwithstanding Section 15.2(g), the applicable requirements of Section 15.2(g) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(i) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified, or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification, or termination, as the case may be.

(j) Each Hedge Agreement may be terminated pursuant to its terms upon an Optional Redemption of the Notes or an acceleration of maturity of the Notes after an Event of Default. The Hedge Agreement will not be permitted to be terminated as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(k) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

JASPER CLO LTD.,
AS ISSUER

By: _____
Name: Vijayabalan Murugesu
Title: Director

JASPER CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name: SHELLY A. STERLING
Title: VICE PRESIDENT

By: _____
Name: SHELLY A. STERLING
Title: VICE PRESIDENT

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

JASPER CLO LTD.,
AS ISSUER

By: _____
Name:
Title:

JASPER CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor *divided* by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5%	55%	45%	40%	35%	25%	15%

>2%						
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

The S&P Priority Category Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate asset class and liability rating as categorized by S&P:

Senior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
AA	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
A	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BBB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* This table shall not apply to project finance, future flows, synthetics, CDO repacks of ABS or CDOs, guaranteed ABS, distressed debt CDOs, synthetic CDOs, or emerging market CDOs. Recovery rates for such Structured Finance Obligations will be assigned by S&P on a case-by-case basis.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a senior implied rating from Moody's, such senior implied rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof (or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, the rating that is the number of rating subcategories specified by Moody's below such S&P rating); and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a senior implied rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such senior implied rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clauses (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Investment Amount may consist of Investment Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead

to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Portfolio Manager, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "***Borrower***"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "***Guarantor***") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided, that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided, that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that Collateral Obligations constituting no more than 5% of the Maximum Investment Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Portfolio Manager may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; or

(C) if such Collateral Obligation is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Portfolio Manager determines in its sole discretion based on

information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "CCC-"; provided that the Portfolio Manager must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Investment Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Portfolio Manager. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

Exhibit A

Form of Notes

Exhibit B-1

Form of Note Transferee Certificate

Exhibit B-2

Form of Note Transferor Certificate for Regulation S to Rule 144A Transfer

Exhibit B-3

Form of Note Transferor Certificate for Rule 144A to Regulation S Transfer

Exhibit C

Form of Latham & Watkins LLP Opinion

Exhibit D

Form of Ogier & Boxalls Opinion

Exhibit E

Form of Gardere Wynne Sewell LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G

Form of Securities Account Control Agreement

Exhibit H

Forms of Section 3(c)(7) Notices

Exhibit H-1

Form of Section 3(c)(7) Reminder Notice

Exhibit H-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit I

Form of Beneficial Owner Certificate

Exhibit J

Form of Extension Notice

LIBERTY CLO, LTD.

Issuer,

LIBERTY CLO, CORP.

Co-Issuer,

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Trustee

INDENTURE

Dated as of December 8, 2005

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Indenture, dated as of December 8, 2005, among LIBERTY CLO, LTD. (the "Issuer"), LIBERTY CLO, CORP. (the "Co-Issuer") and JPMorgan Chase Bank, National Association, as trustee (together with its permitted successors, the "Trustee").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1A Notes, Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes, the Class A-4 Notes, the Class B Notes, the Class C Notes, the Class Q-1 Securities, the Class P-1 Securities and the Class P-2 Securities, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties and the Class P Securityholders as described herein. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Portfolio Manager and each Hedge Counterparty (collectively, the "Secured Parties"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Class A-1A Funding Account, the Class A-1B Funding Account, the Interest Reserve Account, the Synthetic Security Collateral Account, the Hedge Counterparty Collateral Account, the Closing Date Expense Account, the Expense Reimbursement Account, and the Securities Lending Account (collectively, the "Issuer Accounts") and the Synthetic Security Counterparty Account (subject to, in the case of any Synthetic Security Counterparty Account, any security interest in favor of the applicable Synthetic Security Counterparty), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from the investment of funds in the Issuer Accounts;

(c) the Management Agreement, the Securities Lending Agreements, the Hedge Agreements as set forth in Article 15 and the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(d) all Cash or money delivered to the Trustee (or its bailee);

(e) all securities, investments, investment property, general intangibles, instruments, money and agreements of any nature in which the Issuer has an interest (except for money, securities and

investments in the Issuer's bank account in the Cayman Islands and except the Class P Accounts and any proceeds of any type credited thereto or deposited therein); and

(f) all proceeds with respect to the foregoing.

(all of the property and assets described in the foregoing clauses (a) through (g), but excluding the Class P Collateral, the "Collateral").

The Issuer as a second and separate grant Grants to the Trustee, for the benefit and security solely of the Class P-1 Securityholders, all of its right, title and interest in, to and under, in each case, whether now owned or existing, or hereafter acquired or arising, the Class P-1 Accounts and any property of any type deposited into such accounts (including the Class P-1 U.S. Treasury Component) and all proceeds with respect to the foregoing (all of the foregoing, the "Class P-1 Collateral"), which security interest secures the Issuer's obligations under the Class P-1 Securities to pay in full aggregate amounts equal to the Class P-1 Nominal Principal Outstanding.

The Issuer as a third and separate grant Grants to the Trustee, for the benefit and security solely of the Class P-2 Securityholders, all of its right, title and interest in, to and under, in each case, whether now owned or existing, or hereafter acquired or arising, the Class P-2 Accounts and any property of any type deposited into such accounts (including the Class P-2 U.S. Treasury Component) and all proceeds with respect to the foregoing (all of the foregoing, the "Class P-2 Collateral"), which security interest secures the Issuer's obligations under the Class P-2 Securities to pay in full aggregate amounts equal to the Class P-2 Nominal Principal Outstanding.

For the avoidance of doubt, (i) the Class P Securityholders shall not be secured by the Collateral, (ii) the other Secured Parties shall not be secured by and shall have no claim to, allocation of, or other interest, in the Class P Collateral, (iii) the Class P-1 Securityholders shall not be secured by and shall have no claim to, allocation of, or other interest, in the Class P-2 Collateral and (iv) the Class P-2 Securityholders shall not be secured by and shall have no claim to, allocation of, or other interest in, the Class P-1 Collateral.

These Grants are not intended to and do not transfer any liability under the Collateral or the Class P Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust, to secure the Notes and other obligations listed in the following paragraph in the case of the first grant, only the Class P-1 Securities in the case of the second grant (to the extent provided therein) and only the Class P-2 Securities (to the extent provided therein) in the case of the third grant. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Class P-1 Securities are secured in accordance with their terms by the second grant equally and ratably without prejudice, priority or distinction because of difference in time of issuance or incurrence or otherwise. The Class P-2 Securities are secured in accordance with their terms by the third grant equally and ratably without prejudice, priority or distinction because of difference in time of issuance or incurrence or otherwise.

The first Grant is made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note, because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Class E Certificates and payable to the Class P Securityholders);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Portfolio Manager under the Management Agreement; and

(v) compliance with this Indenture;

all as provided in this Indenture.

For the avoidance of doubt, the Issuer's obligations under the Class E Certificates (including any Class E Certificate Components) shall not be secured by the Collateral or the Class P Collateral.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. Definitions.

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"1940 Act": The United States Investment Company Act of 1940, as amended.

"A/B Exchange": An exchange of one security (the "A Security") for another security (the "B Security") of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"Accounts": The Issuer Accounts and the Class P Accounts.

"Accountants' Certificate": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Portfolio Manager.

"Accredited Investor": The meaning specified in Rule 501(a) of Regulation D of the Securities Act.

"Accrued Interest On Sale": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"Accrued Interest Purchased With Principal": (i) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Warehoused Loan as part of the price paid by the Issuer, if any, to repurchase and terminate the related participation under the Warehouse Agreement.

"Act": The meaning specified in Section 14.2.

"Additional Class E Certificate": The meaning set forth in the Class E Certificates Paying Agency Agreement.

"Additional Class E Certificate Closing Date": The meaning set forth in the Class E Certificates Paying Agency Agreement.

"Administration Agreement": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"Administrative Expense Cap": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.04% of the Maximum Investment Amount on the related Determination Date plus $150,000, over

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date;

provided that the Administrative Expense Cap for each of the first three Payment Dates shall be an amount equal to the excess of:

(a) the sum of (x) 0.04% of the Maximum Investment Amount plus $150,000, *multiplied by* (y) the actual days elapsed from the Closing Date to such Payment Date divided by 360, over

(b) the sum of the amounts paid as Administrative Expenses since (but excluding) the Closing Date.

"Administrative Expenses": Amounts due or accrued representing

(a) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(b) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.7), the Administrator, the Class E Certificates Paying Agent, the Collateral Administrator, the Revolving Note Agent and the Delayed Drawdown Note Agent;

(c) fees, indemnities and expenses of either of the Co-Issuers and of accountants, agents, and counsel for either of the Co-Issuers;

(d) fees and expenses of the Rating Agencies in connection with any rating of the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates, and other fees owing to the Rating Agencies);

(e) expenses and indemnities (but not Management Fees) of the Portfolio Manager if payable under the Management Agreement;

(f) fees, expenses and indemnities for third-party loan pricing services and accountants; and

(g) any other amounts due to any other person (except the Portfolio Manager) if specifically provided for in this Indenture, including fees, expenses and indemnities in connection with any Securities Lending Agreement.

For the avoidance of doubt, any Class P Administrative Expenses shall not constitute Administrative Expenses but rather shall be paid in accordance with Section 11.2.

"Administrator": Walkers SPV Limited or any successor appointed by the Issuer.

"Affiliate" or "Affiliated": With respect to a person,

(a) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(b) any other person who is a director, officer, or employee (A) of the person, (B) of any subsidiary or parent company of the person, or (C) of any person described in clause (i) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(i) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(ii) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Management Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of its Affiliates.

"Agent Members": Members of, or participants in, a Depositary.

"Aggregate Commitment Amount": The aggregate of all Commitments with respect to all Class A-1A Notes.

"Aggregate Outstanding Amount": When used with respect to (i) any of the Notes (other than the Class A-1A Notes and the Class A-1B Notes) as of any date, the aggregate principal amount of the Notes (including, in the case of the Class C Notes, the Class Q-1 Note Component) on that date, (ii) the Class A-1A Notes as of any date, (a) prior to the termination date of the Commitments (x) for purposes of any Overcollateralization Test and the Reinvestment Overcollateralization Test, the aggregate Drawn Amount of Class A-1A Notes *plus* an amount equal to the lesser of (A) the Aggregate Undrawn Amount of the Class A-1A Notes and (B) the Aggregate Unfunded Amount *minus* the amount credited to the Revolving Reserve Account, and (y) for any other purpose, the Aggregate Commitment Amount and (b) after the termination date of the Commitments, for all purposes, the aggregate Drawn Amount, (iii) the

Class A-1B Notes as of any date, (a) prior to the first Payment Date, the Fully Drawn Amount and (b) from and after the first Payment Date, the aggregate principal amount of the Class A-1B Notes on that date, (iv) the Class E Certificates as of any date, means the number of such Class E Certificates Outstanding on such date in respect of such Class E Certificates, and (v) the Class P Securities, the Class P-1 Nominal Principal Outstanding and the Class P-2 Nominal Principal Outstanding, as applicable, on the date of determination.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A-1A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class A-1B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class A-1C Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(d) the Aggregate Outstanding Amount of the Class A-2 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(e) the Aggregate Outstanding Amount of the Class A-3 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(f) the Aggregate Outstanding Amount of the Class A-4 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(g) the Aggregate Outstanding Amount of the Class B Notes at any time shall include all Class B Deferred Interest attributed thereto; and

(h) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto.

"Aggregate Principal Balance": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the sum of the Principal Balances of that portion of the Pledged Obligations.

"Aggregate Principal Reduction Amount": The meaning specified in Section 13.3(a).

"Aggregate Purchase Price Amount": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"Aggregate Undrawn Amount": At any time, (i) with respect to the Class A-1A Notes, the aggregate Undrawn Amounts of all Class A-1A Notes; and (ii) with respect to the Class A-1B Notes, the aggregate Undrawn Amounts of all Class A-1B Notes.

"Aggregate Unfunded Amount": As of any date of determination, the aggregate Unfunded Amounts with respect to all Revolving Loans and Delayed Drawdown Loans held by the Issuer as of such date.

"Allocable Principal Balance": With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"Amendment Buy-Out": The meaning specified in Section 9.6(a).

"Amendment Buy-Out Option": The meaning specified in Section 9.6(a).

"Amendment Buy-Out Purchase Price": The purchase price payable by the Amendment Buy-Out Purchaser for Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of (x) the Notes (other than the Class A-1A Notes and Class A-1B Notes), the Aggregate Outstanding Amount thereof, (y) the Class A-1A Notes, the aggregate Drawn Amount thereof and (z) in the case of the Class A-1B Notes, the aggregate principal amount thereof, plus in the case of each of (x), (y) and (z) accrued and unpaid interest (including Deferred Interest, if any) to the date of purchase by the Amendment Buy-Out Purchaser, payable to the Non-Consenting Holder (giving effect to any amounts paid by the Issuer to the Holder on such date), plus any unpaid Extension Bonus Payment, plus in the case of the Class A-1A Notes, any accrued and unpaid Commitment Fee and in the case of the Class A-1B Notes, any accrued and unpaid Delayed Drawdown Fee, plus in the case of any Class A-1 Notes purchased in an Amendment Buy-Out prior to the end of the Non-Call Period only, an amount equal to the sum of the present values as of the date of the Amendment Buy-Out of the spread portion of the interest amount that would be payable with respect to (x) the aggregate Drawn Amount of such Class A-1A Notes as of the date of the Amendment Buy-Out and (y) the aggregate principal amount of such Class A-1B Notes and the Class A-1C Notes, as applicable, as of the date of the Amendment Buy-Out, in each case on each Payment Date from the date of the Amendment Buy-Out to the end of the Non-Call Period, discounted at the applicable forward LIBOR rate for the period from the date of the Amendment Buy-Out to the relevant Payment Date, (ii) in the case of the Class E Certificates, an amount that, when taken together with all payments and distributions made in respect of such Class E Certificates since the Closing Date (and amounts, if any, that due to the fact that the date of the Amendment Buy-Out is after the related Record Date, are payable to the Non-Consenting Holder on the next succeeding Payment Date notwithstanding the Amendment Buy-Out) would cause such Class E Certificates to have received (as of the date of purchase thereof by the Amendment Buy-Out Purchaser) a Class E Certificate Internal Rate of Return of 12% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders of Class E Certificates have received a Class E Certificate Internal Rate of Return equal to or in excess of 12%, the Amendment Buy-Out Purchase Price for such Class E Certificates shall be zero; and (iii) in the case of the Class Q-1 Securities, based on the respective purchase prices for the relevant Class Q-1 Note Component and the Class Q-1 Class E Certificate Component thereof.

"Amendment Buy-Out Purchaser": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event that the Portfolio Manager elects not to purchase Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser or the Placement Agent or any of its Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Initial Purchaser, the Placement Agent or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"Amendment Buy-Out Trade Date": The meaning specified in Section 9.6(a).

"Applicable Issuer" or "Applicable Issuers": With respect to the Class A Notes, the Class B Notes and the Class C Notes, each of the Co-Issuers. With respect to the Class E Certificates, the Class Q-1 Securities and the Class P Securities, the Issuer only.

"Applicable Note Interest Rate": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"Applicable Percentage": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified in the tables below. High-Yield Bonds do not include Structured Finance Obligations for this purpose.

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
Unsecured DIP Loans and any Collateral Obligations not covered above or below	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if

the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Senior Secured Loans (other than DIP Loans)	55.0%
Senior Unsecured Loans	37.5%
Second Lien Loans	37.5%
Subordinated Lien Loans (other than DIP Loans)	21.5%
Senior secured High-Yield Bonds (other than Structured Finance Obligations)	44.0%
Senior unsecured High-Yield Bonds (other than Structured Finance Obligations)	30.0%
Subordinated High-Yield Bonds (other than Structured Finance Obligations)	18.0%
Structured Finance Obligations	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in Schedule 6 by reference to the type of asset and its then S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the Grant of the relevant Collateral Obligation).

S&P Priority Category	S&P Priority Category Recovery Rate
Synthetic Securities	As assigned by S&P on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above	As assigned by S&P on a case-by-case basis.

"Approved Credit Support Document": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by the Paragraph 13 thereto.

"Approved Pricing Service": Loan Pricing Corporation, LoanX Inc., Markit Group Limited or any other nationally recognized loan pricing service approved in writing by S&P.

"Ask-Side Market Value": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio Manager); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"Assigned Moody's Rating": The meaning set forth in Schedule 7.

"Authenticating Agent": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.14.

"Authorized Class Q-1 Denomination": The meaning specified in Section 2.3.

"Authorized Class P-1 Denomination": The meaning specified in Section 2.3.

"Authorized Class P-2 Denomination": The meaning specified in Section 2.3.

"Authorized Officer": With respect to the Issuer or the Co-Issuer, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer, as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Portfolio Manager, any managing member, Officer, manager, employee, partner or agent of the Portfolio Manager who is authorized to act for the Portfolio Manager in matters relating to, and binding on, the Portfolio Manager with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"Average Life": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(a) the sum of the products of:

(i) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(ii) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, by

(b) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"Bank": JPMorgan Chase Bank, National Association, in its individual capacity and not as Trustee.

"Bankruptcy Code": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"Bankruptcy Law": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"Beneficial Owner": Any person owning an interest in a Global Security as reflected on the books of the Depositary or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"Board Resolution": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"Borrowing": The meaning specified in Section 2.12(a).

"Borrowing Date": The meaning specified in Section 2.12(a).

"Bridge Loan": Any obligation or security incurred in connection with a merger, acquisition, consolidation, sale of all or substantially all of the assets of a person or entity, restructuring or similar transaction, which obligation or security by its terms is required to be repaid within one year of the incurrence thereof with proceeds from additional borrowings or other refinancing (other than any additional borrowing or refinancing if one or more financial institutions shall have provided the issuer of such obligation or security with a binding written commitment to provide the same). For the avoidance of doubt, a DIP Loan will not constitute a Bridge Loan.

"Business Day": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market.

"Buy-Out Amount": The meaning set forth in the Management Agreement.

"Calculation Agent": The meaning specified in Section 7.15.

"Cash": Such coin or currency of the United States of America as at the time shall be legal tender for payment of all public and private debts.

"Cayman Islands Stock Exchange": The Cayman Islands Stock Exchange.

"CCC/Caa Collateral Obligations": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating of "Caa1" or lower and/or (ii) an S&P Rating of "CCC+" or lower.

"Certificate of Authentication": The meaning specified in Section 2.1.

"Certificated Class A-1A Notes": The meaning specified in Section 2.2(d).

"Certificated Class A-1B Notes": The meaning specified in Section 2.2(d)

"Certificated Indenture Securities": The Certificated Class A-1A Notes, the Certificated Class A-1B Notes, the Certificated Class Q-1 Securities and/or the Certificated Class P Securities.

"Certificated Class Q-1 Securities": The meaning specified in Section 2.2(d).

"Certificated Class P Securities": The meaning specified in Section 2.2(d).

"Certificated Class P-1 Securities": The meaning specified in Section 2.2(d).

"Certificated Class P-2 Securities": The meaning specified in Section 2.2(d).

"Certificated Security": The meaning specified in Section 8-102(a)(4) of the UCC.

"Class": With respect to the Securities (other than the Class E Certificates), all of the Securities having the same priority and the same Stated Maturity, with respect to the Class E Certificates, all of the Class E Certificates; provided, however, unless otherwise expressly provided for herein, (i) the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes shall be considered the same Class, (ii) each of the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes shall be a separate Class, and (iii) each of the Class P-1 Securities and the Class P-2 Securities shall be a separate Class.

"Class A Notes": The Class A-1A Notes, the Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes.

"Class A-1 Notes": The Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes.

"Class A-1A Funding Account": The trust account established pursuant to Section 10.3(j).

"Class A-1A Note Purchase Agreement": The Note Purchase Agreement dated as of the Closing Date, entered into among the Issuer, the Co-Issuers, the Revolving Note Agent, the Trustee and the Holders of the Class A–1A Notes, as from time to time amended, modified or supplemented.

"Class A-1A Notes": The Class A-1A Revolving Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class A-1A Principal Reduction Amount": The meaning specified in Section 13.3.

"Class A-1B Funding Account": The trust account established pursuant to Section 10.3(k).

"Class A-1B Note Purchase Agreement": The Note Purchase Agreement dated as of the Closing Date, entered into among the Issuer, the Co-Issuers, the Delayed Drawdown Note Agent, the Trustee and the Holders of the Class A–1B Notes, as from time to time amended, modified or supplemented.

"Class A-1B Notes": The Class A-1B Delayed Drawdown Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class A-1C Notes": The Class A-1C Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class A-2 Notes": The Class A-2 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class A-3 Notes": The Class A-3 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class A-4 Notes": The Class A-4 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class A Coverage Tests": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes (as a single Class).

"Class B Coverage Tests": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class B Notes.

"Class B Deferred Interest": Deferred Interest with respect to the Class B Notes.

"Class B Notes": The Class B Floating Rate Deferrable Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class C Coverage Tests": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"Class C Deferred Interest": Deferred Interest with respect to the Class C Notes.

"Class C Notes": The Class C Floating Rate Deferrable Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class E Certificate Components": Collectively, the Class Q-1 Class E Certificate Component, the Class P-1 Class E Certificate Component and the Class P-2 Class E Certificate Component. All references in this Indenture to the Class E Certificates shall include the Class E Certificate Components, unless the context otherwise requires.

"Class E Certificate Documents": The Issuer's Memorandum and Articles of Association, the Class E Certificates Paying Agency Agreement and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Class E Certificates passed on or before the Closing Date.

"Class E Certificate Internal Rate of Return": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Class E Certificates were purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Class E Certificates on any prior Payment Date and, to the extent necessary to reach the applicable Class E Certificate Internal Rate of Return, the current Payment Date; and

(ii) each distribution of Principal Proceeds made to the Holders of the Class E Certificates on any prior Payment Date and, to the extent necessary to reach the applicable Class E Certificate Internal Rate of Return, the current Payment Date.

"Class E Certificates": The Class E Certificates issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Class E Certificates (and including any Additional Class E Certificates issued pursuant to Section 4.4 of the Class E Certificates Paying Agency Agreement).

"Class E Certificates Distribution Account": A separate segregated non interest bearing trust account established by the Class E Certificates Paying Agent pursuant to the Class E Certificates Paying Agency Agreement into which the Class E Certificates Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Class E Certificates under the Priority of Payments.

"Class E Certificates Paying Agency Agreement": The Class E Certificates Paying Agency Agreement, dated as of the Closing Date, between the Issuer and the Class E Certificates Paying Agent, as amended from time to time in accordance with the terms thereof.

"Class E Certificates Paying Agent": JPMorgan Chase Bank, National Association, in its capacity as Class E Certificates Paying Agent under the Class E Certificates Paying Agency Agreement, unless a successor Person shall have become the Class E Certificates paying agent pursuant to the applicable provisions of the Class E Certificates Paying Agency Agreement, and thereafter "Class E Certificates Paying Agent" shall mean such successor person.

"Class E Certificates Registrar": Walkers SPV Limited.

"Class P Accounts Securities Intermediary": The Class P-1 Accounts Securities Intermediary and/or the Class P-2 Accounts Securities Intermediary, as the context may require.

"Class P Accounts": Collectively, the Class P-1 Accounts and the Class P-2 Accounts.

"Class P Administrative Expenses": Collectively, the Class P-1 Administrative Expenses and the Class P-2 Administrative Expenses.

"Class P Class E Certificate Components": The Class P-1 Class E Certificate Component and the Class P-2 Class E Certificate Component.

"Class P Collateral": The Class P-1 Collateral and the Class P-2 Collateral.

"Class P Redemption Price": The Class P-1 Redemption Price and the Class P-2 Redemption Price.

"Class P Securities": Collectively, the Class P-1 Securities and the Class P-2 Securities.

"Class P Securities Due Period": With respect to any Class P Securities Payment Date, the period commencing on and including the day immediately following the second Business Day prior to the preceding Class P Securities Payment Date (or in the case of the Class P Securities Due Period relating to the first Class P Securities Payment Date, commencing on the Closing Date) and ending on and including the second Business Day prior to such Class P Securities Payment Date (or, in the case of a Class P Securities Due Period that is applicable to the Class P Securities Payment Date relating to the Stated Maturity of any Security, ending on and including the day preceding such Class P Securities Payment Date).

"Class P Securities Payment Date": The tenth Business Day after each Payment Date or, if such Payment Date coincides with the Stated Maturity, the Class P Securities Payment Date will be such Payment Date.

"Class P Securityholders": Collectively, the Class P-1 Securityholders and the Class P-2 Securityholders.

"Class P U.S. Treasury Components": Collectively, the Class P-1 U.S. Treasury Component and the Class P-2 U.S. Treasury Component.

"Class P U.S. Treasury Bid": The current bid-side market price of the applicable U.S. Treasury security represented by the Class P-1 U.S. Treasury Component or the Class P-2 U.S. Treasury Component, as quoted by a dealer in U.S. Treasury securities (which may be the Bank or the Initial Purchaser) to the Trustee.

"Class P-1 Accelerated Payment Notional Amount": With respect to each Class P Securities Payment Date, an amount equal to a portion of the Class P-1 U.S. Treasury Component with a face amount equal to the sum of (rounded down to the nearest U.S.$1,000) (a) the aggregate sum of distributions made with respect to the Class P-1 Class E Certificate Component since the Closing Date up to and including such Class P Securities Payment Date *plus* (b) the aggregate Class P-1 Optional Accelerated Payments and the aggregate Class P-1 Mandatory Accelerated Payments made on all prior Class P Securities Payment Dates *minus* (c) the aggregate face amount of the Class P-1 U.S. Treasury Component liquidated on all prior Class P Securities Payment Dates.

"Class P-1 Accounts": Collectively, the Class P-1 Collection Account, the Class P-1 U.S. Treasury Component Account and the Class P-1 Principal Reserve Account.

"Class P-1 Accounts Securities Intermediary": The Securities Intermediary for the Class P-1 Accounts.

"Class P-1 Administrative Expenses": The administrative fees and expenses (including additional fees of the Trustee set forth in a separate fee letter dated as of the Closing Date by and between the Trustee and the Issuer) attributable to and taxes associated with the liquidation of the U.S. Treasury securities represented by the Class P-1 U.S. Treasury Component and any taxes attributable to the related Class P-1 Collateral.

"Class P-1 Class E Certificate Component": The U.S. $6,180,000 aggregate Face Amount of Class E Certificates comprising the Class P-1 Class E Certificate Component of the Class P-1 Securities.

"Class P-1 Collateral": The meaning specified in the Granting Clauses.

"Class P-1 Collection Account": The trust account designated as the Class P-1 Collection Account established pursuant to Section 10.3(o).

"Class P-1 Components": The Class P-1 U.S. Treasury Component and/or the Class P-1 Class E Certificate Component, as the context may require.

"Class P-1 Mandatory Accelerated Payment": The meaning set forth in Section 11.2(a)(i).

"Class P-1 Net Periodic Distribution": With respect to each Class P Securities Payment Date, an amount equal to the sum of (a) any distributions received with respect to the Class P-1 Class E Certificate Component during the related Class P Securities Due Period *plus* (b) the Class P-1 Mandatory Accelerated Payment (if any) for such Class P Securities Due Period *plus* (c) the Class P-1 Optional Accelerated Payment (if any) for such Class P Securities Due Period *plus* (d) any payments or distributions received with respect to the Class P-1 U.S. Treasury Component during such Class P Securities Due Period net of any Class P-1 Administrative Expenses.

"Class P-1 Nominal Principal Outstanding": With respect to any day on or prior to the first Class P Securities Payment Date, U.S.$20,000,000, and on any date of determination thereafter (i) the Class P-1 Nominal Principal Outstanding on the prior Class P Securities Payment Date *less* (ii) the amount equal to (x) the aggregate amount of all distributions payable to the Class P-1 Securityholders in respect of its related Class P-1 Components on such prior Class P Securities Payment Date pursuant to the Indenture *minus* (y) the Class P-1 Notional Coupon Payment on such prior Class P Securities Payment Date; provided that the amount is greater than zero. For the avoidance of doubt, if the amount in clause (ii) under clause (ii) above is less than zero, the Class P-1 Notional Principal Outstanding will increase by the absolute value of such amount.

"Class P-1 Notional Coupon Payment": With respect to any Class P Securities Payment Date, an amount equal to notional interest for the related period on the Class P-1 Nominal Principal

Outstanding at the Class P-1 Notional Coupon Rate. The Class P-1 Notional Coupon Payment shall be computed for each Interest Period on the basis of a 360-day year consisting of twelve 30-day months.

"Class P-1 Notional Coupon Rate": A rate of 6.5% per annum; provided that no later than 15 Business Days before each Class P Securities Payment Date, the Class P-1 Securityholders representing a Majority of the Class P-1 Securities may, by written notice to the Trustee and the Issuer, alter the Class P-1 Notional Coupon Rate to be applied to such Class P Securities Payment Date, subject to Section 11.2(e).

"Class P-1 Optional Accelerated Payment": The meaning set forth in Section 11.2(a)(i).

"Class P-1 Optional Accelerated Payment Notional Amount": The meaning set forth in Section 11.2(a)(i).

"Class P-1 Principal Reserve Account": The trust account designated as the Class P-1 Principal Reserve Account and established pursuant to Section 10.3(n).

"Class P-1 Rated Principal": As of any Measurement Date, the U.S.$20,000,000 original stated amount of the Class P-1 Securities as of the Closing Date *minus* the aggregate amount of all distributions paid to the Class P-1 Securityholders in respect of the related Class P-1 Components (whether characterized as interest or principal or otherwise) on or prior to such Measurement Date; *provided* that the Class P-1 Rated Principal shall not be less than $1; *provided, further* that the Issuer or the Portfolio Manager on its behalf shall notify Moody's once the Class P-1 Rated Principal is reduced to $1, including a statement as to the face value of the remaining Class P-1 U.S. Treasury Component.

"Class P-1 Redemption Price": With respect to the Class P-1 Securities, in the aggregate (i) a cash distribution in an amount equal to the sum of (x) the amount, if any, payable as the redemption price or otherwise as a final distribution with respect to the Class E Certificates represented by the Class P-1 Class E Certificate Component and (y) any other Class P-1 Collateral other than the Class P-1 U.S. Treasury Component and (ii) a distribution in kind of the Class P-1 U.S. Treasury Component; *provided* that any Class P-1 Securityholder may elect instead of a distribution in kind of its *pro rata* share of the Class P-1 U.S. Treasury Component to enter into another arrangement with the Issuer (satisfactory to the Issuer and the Trustee in their sole discretion) with respect to its *pro rata* share of the Class P-1 U.S. Treasury Component; *provided* that any administrative expenses with respect to such arrangement will be paid by such Class P-1 Securityholder.

"Class P-1 Securities": The U.S. $20,000,000 Class P-1 Extendable Securities (comprised of the Class P-1 U.S. Treasury Component and the Class P-1 Class E Certificate Component) issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class P-1 Securityholder": A Holder of the Class P-1 Securities.

"Class P-1 U.S. Treasury Component": The U.S. $20,000,000 face value of U.S. Treasury securities due November 15, 2013 (CUSIP No. 912833KB5) comprising the Class P-1 U.S. Treasury Component of the Class P-1 Securities.

"Class P-1 U.S. Treasury Component Account": The trust account designated as the Class P-1 U.S. Treasury Component Account established pursuant to Section 10.3(l).

"Class P-2 Accelerated Payment Notional Amount": With respect to each Class P Securities Payment Date, an amount equal to a portion of the Class P-2 U.S. Treasury Component with a face amount equal to the sum of (rounded down to the nearest U.S.$1,000) (a) the aggregate sum of distributions made with respect to the Class P-2 Class E Certificate Component since the Closing Date up to and including such Class P Securities Payment Date *plus* (b) the aggregate Class P-2 Optional Accelerated Payments and the aggregate Class P-2 Mandatory Accelerated Payments made on all prior Class P Securities Payment Dates *minus* (c) the aggregate face amount of the Class P-2 U.S. Treasury Component liquidated on all prior Class P Securities Payment Dates.

"Class P-2 Accounts": Collectively, the Class P-2 Collection Account and the Class P-2 U.S. Treasury Component Account.

"Class P-2 Accounts Securities Intermediary": The Securities Intermediary for the Class P-2 Accounts.

"Class P-2 Administrative Expenses": The administrative fees and expenses (including additional fees of the Trustee set forth in a separate fee letter dated as of the Closing Date by and between the Trustee and the Issuer) attributable to and taxes associated with the liquidation of the U.S. Treasury securities represented by the Class P-2 U.S. Treasury Component and any taxes attributable to the related Class P-2 Collateral.

"Class P-2 Class E Certificate Component": The U.S. $1,500,000 aggregate Face Amount of Class E Certificates comprising the Class P-2 Class E Certificate Component of the Class P-2 Securities.

"Class P-2 Collateral": The meaning specified in the Granting Clauses.

"Class P-2 Collection Account": The trust account designated as the Class P-2 Collection Account established pursuant to Section 10.3(p).

"Class P-2 Components": The Class P-2 U.S. Treasury Component and/or the Class P-2 Class E Certificate Component, as the context may require.

"Class P-2 Mandatory Accelerated Payment": The meaning set forth in Section 11.2(a)(i).

"Class P-2 Net Periodic Distribution": With respect to each Class P Securities Payment Date, an amount equal to the sum of (a) any distributions received with respect to the Class P-2 Class E Certificate Component during the related Class P Securities Due Period *plus* (b) the Class P-2 Mandatory Accelerated Payment (if any) for such Class P Securities Due Period *plus* (c) the Class P-2 Optional Accelerated Payment (if any) for such Class P Securities Due Period *plus* (d) any payments or distributions received with respect to the Class P-2 U.S. Treasury Component during such Class P Securities Due Period net of any Class P-2 Administrative Expenses.

"Class P-2 Nominal Principal Outstanding": With respect to any day on or prior to the first Class P Securities Payment Date, U.S.$5,000,000, and on any date of determination thereafter (i) the Class P-2 Nominal Principal Outstanding on the prior Class P Securities Payment Date *less* (ii) the amount equal to the aggregate amount of all distributions payable to the Class P-2 Securityholders in respect of its related Class P-2 Components on such Class P Securities Payment Date pursuant to the Indenture; provided that the amount is greater than zero.

"Class P-2 Optional Accelerated Payment": The meaning set forth in Section 11.2(a)(ii).

"Class P-2 Optional Accelerated Payment Notional Amount": The meaning set forth in Section 11.2(a)(ii).

"Class P-2 Rated Principal": As of any Measurement Date, the U.S.$5,000,000 original stated amount of the Class P-2 Securities as of the Closing Date *minus* the aggregate amount of all distributions paid to the Class P-2 Securityholders in respect of the related Class P-2 Components (whether characterized as interest or principal or otherwise) on or prior to such Measurement Date; *provided* that the Class P-2 Rated Principal shall not be less than $1; *provided, further* that the Issuer or the Portfolio Manager on its behalf shall notify Moody's once the Class P-2 Rated Principal is reduced to $1, including a statement as to the face value of the remaining Class P-2 U.S. Treasury Component.

"Class P-2 Redemption Price": With respect to the Class P-2 Securities, in the aggregate (i) a cash distribution in an amount equal to the sum of (x) the amount, if any, payable as the redemption price or otherwise as a final distribution with respect to the Class E Certificates represented by the Class P-2 Class E Certificate Component and (y) any other Class P-2 Collateral other than the Class P-2 U.S. Treasury Component and (ii) a distribution in kind of the Class P-2 U.S. Treasury Component; provided that any Class P-2 Securityholder may elect instead of a distribution in kind of its *pro rata* share of the Class P-2 U.S. Treasury Component to enter into another arrangement with the Issuer (satisfactory to the Issuer and the Trustee in their sole discretion) with respect to its *pro rata* share of the Class P-2 U.S. Treasury Component; provided that any administrative expenses with respect to such arrangement will be paid by such Class P-2 Securityholder.

"Class P-2 Securities": The U.S. $5,000,000 Class P-2 Extendable Securities (comprised of the Class P-2 U.S. Treasury Component and the Class P-2 Class E Certificate Component) issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"Class P-2 Securityholder": A Holder of the Class P-2 Securities.

"Class P-2 U.S. Treasury Component": The U.S. $5,000,000 face value of U.S. Treasury securities due November 15, 2013 (CUSIP No. 912833KB5) comprising the Class P-2 U.S. Treasury Component of the Class P-2 Securities.

"Class P-2 U.S. Treasury Component Account": The trust account designated as the Class P-2 U.S. Treasury Component Account and established pursuant to Section 10.3(m).

"Class Q-1 Class E Certificate Component": The U.S. $7,400,000 aggregate Face Amount of Class E Certificates comprising the Class Q-1 Class E Certificate Component of the Class Q-1 Securities.

"Class Q-1 Components": The Class Q-1 Note Component and the Class Q-1 Class E Certificate Component.

"Class Q-1 Note Component": The U.S. $12,600,000 initial aggregate principal amount of Class C Notes comprising the Class Q-1 Note Component of the Class Q-1 Securities.

"Class Q-1 Rated Principal": For the first Interest Period, U.S. $20,000,000 original stated amount of the Class Q-1 Securities as of the Closing Date, and for any Interest Period thereafter, the Class Q-1 Rated Principal for the prior Interest Period minus the aggregate amount of all distributions paid to the Holders of Class Q-1 Securities in respect of the related Class Q-1 Components (whether characterized as interest or principal or otherwise) for the Payment Date occurring at the beginning of such current Interest Period; provided that the Class Q-1 Rated Principal cannot be negative.

"Class Q-1 Securities": The U.S. $20,000,000 Class Q-1 Extendable Securities (comprised of the Class Q-1 Note Component and the Class Q-1 Class E Certificate Component) issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.14.

"Class Scenario Loss Rate": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of such Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"Clearing Agency": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"Clearing Corporation": The meaning specified in Section 8-102(a)(5) of the UCC.

"Clearing Corporation Security": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or Equity Security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"Clearstream": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"Closing Date": December 8, 2005.

"Closing Date Expense Account": The trust account established pursuant to Section 10.3(g).

"Code": The United States Internal Revenue Code of 1986, as amended.

"Co-Issuer": The person named as such on the first page of this Indenture.

"Co-Issuers": The Issuer and the Co-Issuer.

"Collateral": The meaning specified in the Granting Clauses.

"Collateral Administration Agreement": The agreement dated as of the Closing Date among the Issuer, the Portfolio Manager, and the Collateral Administrator, as modified, amended, and supplemented and in effect from time to time.

"Collateral Administrator": The Bank in its capacity as collateral administrator under the Collateral Administration Agreement.

"Collateral Assignment of Hedge Agreements": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"Collateral Obligation": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation, or High-Yield Bond, in each case that is:

(a) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(b) an obligation of an obligor Domiciled in an Eligible Country;

(c) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(d) not an exchangeable or convertible security that is exchangeable or convertible at the option of its issuer;

(e) not an Equity Security or a component of an Equity Security or a security that has a component that is an Equity Security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(f) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(g) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r", "st" or "t" subscript unless S&P otherwise authorizes in writing;

(h) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(i) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation, and in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, is an obligation for which the Portfolio Manager has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(j) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Second Lien Loans or Subordinated Lien Loans;

(k) an obligation that (i) bears simple interest payable in cash no less frequently than annually (although, in the case of a PIK Security, interest may be deferrable) at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(l) except in the case of a Synthetic Security, an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(m) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(n) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(o) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(p) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, the aggregate Balance of all Eligible Investments credited to the Revolving Reserve Account will be at least equal to the Revolver Funding Reserve Amount, and

(B) any Synthetic Security if the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(q) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(r) if such obligation is a Structured Finance Obligation managed by the Portfolio Manager that is other than a collateralized loan obligation primarily secured by Senior Secured Loans, the Rating Condition has been satisfied;

(s) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(t) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index with respect to which the Rating Condition is satisfied;

(u) in the case of a Synthetic Security, a Synthetic Security for which the counterparty or issuer, as the case may be, has a long-term senior unsecured rating by Moody's of at least "A1", and if rated "A1" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "A+";

(v) not Margin Stock;

(w) not a Zero-Coupon Security;

(x) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(y) not a security whose repayment is subject to substantial non-credit related risk as determined by the Portfolio Manager;

(z) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition);

(aa) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of Collateral to be required to be registered as an investment company under the Investment Company Act;

(bb) not an asset, the acquisition (including the manner of acquisition), ownership, enforcement or disposition of which would cause the Issuer to be treated as engaged in a trade or business within the United States for United States federal income tax purposes or otherwise as subject to tax on a net income basis in any jurisdiction outside the Issuer's jurisdiction of incorporation; and

(cc) not a Bridge Loan.

Pursuant to the definition of "Synthetic Security", any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event".

"Collateral Quality Tests": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test, and the S&P CDO Monitor Test.

"Collection Account": The trust account established pursuant to Section 10.2(a).

"Commitment": At any time in respect of any Class A–1A Note, the maximum aggregate outstanding principal amount of advances (whether at the time funded or unfunded) that the Holder of such Class A–1A Note is obligated from time to time under the Class A-1A Note Purchase Agreement to make to the Issuer.

"Commitment Fee": With respect to the Class A–1A Notes, the Commitment Fee Rate multiplied by the Aggregate Undrawn Amount of the Class A–1A Notes for each day during the Draw Period, except that no Commitment Fee shall be paid with respect to the Aggregate Undrawn Amount attributable to a Holder that has breached its obligation to fund a request for a Borrowing from the date of such breach to and until the date such breach has been cured.

"Commitment Fee Amount": With respect to the Class A–1A Notes as of any Payment Date, the sum of (i) the aggregate amount of Commitment Fee accrued and unpaid as of such Payment Date plus (ii) interest accrued for the Interest Period for such Payment Date at the Note Interest Rate of the Class A–1A Notes on any accrued and unpaid Commitment Fees that became payable on any prior Payment Date.

"Commitment Fee Rate": A rate per annum equal to 0.17%.

"Commitment Termination Date": With respect to the Commitments, the earliest of: (i) the Stated Maturity, (ii) the date on which the Commitments are reduced to zero and (iii) any date as of which (x) an Event of Default described in clause (g) or (h) of the definition thereof has occurred and is continuing or (y) (A) any other Event of Default there has occurred and is continuing and (B) the Securities have been declared to be due and payable pursuant to the Indenture (or, in the absence of such declaration, the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Class A-1A Notes have directed the Trustee to give notice to the Issuer of the termination of the Commitments under the Class A-1A Note Purchase Agreement) and in the case of (x) and (y) the Holders of the Class A-1A Notes have satisfied their funding obligations as a result thereof pursuant to the Class A-1A Note Purchase Agreement.

"Components": The Class Q-1 Note Component, the Class Q-1 Class E Certificate Component, the Class P-1 Class E Certificate Component, the Class P-2 Class E Certificate Component, the Class P-1 U.S. Treasury Component and the Class P-2 U.S. Treasury Component, as the context may require.

"Concentration Limitations": The limit set forth below with respect to a particular type of Investment Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Investment Amount:

	Percentage of the Maximum Investment Amount
(1) Senior Secured Loans, Second Lien Loans, Subordinated Lien Loans and Eligible Investments	≥ 92.5%
(a) except that Senior Secured Loans shall meet or exceed the percentage of the Maximum Investment Amount specified in the right column	≥ 87.5%

	Percentage of the Maximum Investment Amount
(2) Unsecured Loans	≤ 3.0%
(3) Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4) High-Yield Bonds	≤ 7.5%
(5) Subordinated Lien Loans, Second Lien Loans and High-Yield Bonds	≤ 15.0%
(6) Revolving Loans and Delayed Drawdown Loans	≤ 15.0%
(7) DIP Loans	≤ 5.0%
(a) except that with satisfaction of the Rating Condition, DIP Loans may constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 7.5%
(8) S&P Unrated DIP Loans	≤ 2.5%
(9) PIK Securities	≤ 3.0%
(10) Structured Finance Obligations	≤ 7.5%
(a) except that Structured Finance Obligations managed by the Portfolio Manager may not exceed the percentage of the Maximum Investment Amount specified in the right column;	≤ 5.0%
(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Investment Amount specified in the right column; and	≤ 3.0%
(c) except that any single issuer whose long-term debt obligations are rated below BBB- by S&P, or are rated BBB- by S&P and are on negative watch for downgrade, other than an issuer with respect to which the Rating Condition has been satisfied, may not exceed the percentage of the Maximum Investment Amount specified in the right column;	0%
(11) obligors Domiciled other than in the United States and Canada	≤ 15.0%
(12) obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%

	Percentage of the Maximum Investment Amount
(13) obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14) obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(15) obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(16) obligations in the same S&P Industry Classification	≤ 8.0%
(a) except that Investment Obligations belonging to two S&P Industry Classifications (not including Telecommunications) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 12.0%
(17) obligations of a single issuer or any of its Affiliates (excluding Secondary Risk Counterparties); provided that	≤ 1.5%
(a) obligations of a single issuer or any of its Affiliates (excluding Secondary Risk Counterparties) that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $75,000,000 may each constitute up to the percentage of the Maximum Investment Amount specified in the right column; and	≤ 1.0%
(b) obligations (other than described in (a) above) of up to each of five individual issuers (including any of their respective Affiliates but excluding issuers that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 2.0%
(18) Fixed Rate Obligations	≤ 7.5%
(19) obligations that pay interest less frequently than quarterly but no less frequently than annually	≤ 7.5%
(20) Synthetic Securities	≤ 20.0%

	Percentage of the Maximum Investment Amount
(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
(b) except that Synthetic Securities that reference a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
(21) Participations (provided, that no Investment Obligations may be a Participation in a Participation)	≤ 20.0%
(22) Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 20.0%
(23) Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(24) Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(25) Deep Discount Obligations	≤ 10.0%
(26) CCC/Caa Collateral Obligations	≤ 7.5%
(27) Long-Dated Collateral Obligations	≤ 4.0%

		Percentage of the Maximum Investment Amount
(28)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(29)	Floating Rate Obligations providing for interest at a non-London interbank offered rate	≤ 5.0%
(30)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $75,000,000	≤ 10.0%
(31)	Collateral Obligations representing units consisting of debt and warrants to purchase equity securities; provided that, with respect to each Collateral Obligation which consists of such unit of debt and warrants, at the time of purchase of such Collateral Obligation, the aggregate value of the warrants included in such unit must be determined by the Portfolio Manager in good faith to be no more than 2% of the outstanding principal amount of the debt included in such unit.	≤ 5.0%
(32)	Finance Leases	≤ 5.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the right of the Portfolio Manager to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"Controlling Class": The Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes (voting together as a single Class), so long as any Class A-1 Notes are Outstanding; then the Class A-2 Notes, so long as any Class A-2 Notes are Outstanding; then the Class A-3 Notes, so long as any Class A-3 Notes are Outstanding; then the Class A-4 Notes, so long as any Class A-4 Notes are Outstanding; then the Class B Notes, so long as any Class B Notes are Outstanding; and then the Class C Notes, so long as any Class C Notes are Outstanding.

"Corporate Trust Office": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 600 Travis Street, 50th Floor, Houston, Texas 77002, telecopy no. (713) 216-2101, Attention: Worldwide Securities Services—Liberty CLO, Ltd. or any other address the Trustee designates from time to time by notice to the Noteholders, the Portfolio Manager, the Class E Certificates Paying Agent, the Issuer and each Rating Agency or the principal corporate trust office of any successor Trustee.

"Coverage Tests": The Overcollateralization Tests and the Interest Coverage Tests.

"Credit Improved Obligation": Any Collateral Obligation that in the commercially reasonable judgment of the Portfolio Manager, has improved in credit quality; provided that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(a) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(b) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(c) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager (provided that this subclause (c)(x) will be deemed satisfied if Market Value increases to 101%), or (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period; or

(d) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (d) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (d) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(a) the Synthetic Security itself is a Credit Improved Obligation or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"Credit Rating Event": An event that is in effect if the rating by Moody's:

(a) of the Class A-1A Notes, the Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes or the Class A-4 Notes has been withdrawn or is one or more rating sub-categories below its respective Initial Rating; or

(b) of the Class B Notes or the Class C Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at

least the Initial Rating in the case of the Class A-1A Notes, the Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes or the Class A-4 Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes and the Class C Notes.

"Credit Risk Obligation": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Portfolio Manager, has a significant risk of declining in credit quality and, with a lapse of time, becoming a Defaulted Collateral Obligation.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(a) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(b) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(c) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager, and (y) in the case of a bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period; or

(d) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (d) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (d) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation, or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"Current-Pay Obligation": A Collateral Obligation as to which:

(a) except with respect to a DIP Loan, an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(b) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Portfolio Manager has delivered to the Trustee an officer's certificate to the effect that the Portfolio Manager expects that the obligor will make payments on the Collateral Obligation as they become due,

(c) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance, (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, but greater than or equal to Caa2 without credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance; provided that if the Moody's Rating of the Collateral Obligation has been withdrawn but the obligation had a Moody's rating of at least "Caa2" without credit watch with negative implications at the time of default, such Collateral Obligation may be treated as a Current Pay Obligation if its Market Value is at least equal to 85% of its Principal Balance, or (C) if the rating by Moody's of the Collateral Obligation is less than "Caa2" or is "Caa2" and on credit watch with negative implications, but greater than or equal to "Caa3" without credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 90% of its Principal Balance; provided that if the Moody's Rating of the Collateral Obligation has been withdrawn but the obligation had a Moody's rating of at least "Caa3" without credit watch with negative implications at the time of default, such Collateral Obligation may be treated as a Current Pay Obligation if its Market Value is at least equal to 90% of its Principal Balance;

(d) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(e) the Portfolio Manager has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Investment Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Portfolio Manager shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Portfolio Manager may, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency but without amendment of this Indenture.

"Current Portfolio": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"Custodial Account": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"Deep Discount Obligation": In the case of any Collateral Obligation, until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any such Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"Default": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"Defaulted Collateral Obligation": Any Collateral Obligation or other obligation included in the Collateral:

(a) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided that, if the Portfolio Manager certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive Business Days), but, in any case, only until such default has been cured;

(b) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(c) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Portfolio Manager, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(d) (1) that is pari passu with or subordinated to other indebtedness for borrowed money owing by its obligor ("Other Indebtedness"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Portfolio Manager (provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred) determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(e) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor, or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 16

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

(f) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "Ca" or below by Moody's but the rating has since been withdrawn;

(g) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (a) through (e) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(h) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (a) through (f) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (h) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (a) through (f) above;

(i) that is a Written-Down Obligation;

(j) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(k) that is declared to be a Defaulted Collateral Obligation by the Portfolio Manager.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than two years after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"Defaulted Hedge Termination Payment": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"Defaulted Interest": Any interest (and in the case of the Class A–1A Notes, the Commitment Fee Amount and in the case of the Class A-1B Notes, the Delayed Drawdown Fee) payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"Defaulted Interest Charge": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"Default Interest Rate": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of such Class.

"Deferred Interest": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"Deferred Interest Notes": The Class B Notes and the Class C Notes.

"Delayed Drawdown Fee": With respect to the Class A–1B Notes and (i) the first Payment Date, the Delayed Drawdown Fee Rate multiplied by the Aggregate Undrawn Amount of the Class A–1B Notes for each day during the Delayed Drawdown Period (except that no Delayed Drawdown Fee shall be paid with respect to the Aggregate Undrawn Amount attributable to a Holder that has breached its obligation to fund a request for a Drawdown from the date of such breach to and until the date such breach has been cured) and (ii) any Payment Date thereafter, any Delayed Drawdown Fee not paid in full on the first Payment Date plus interest accrued thereon for the Interest Period for such Payment Date at the Note Interest Rate of the Class A–1B Notes.

"Delayed Drawdown Fee Rate": A rate per annum equal to 0.17%.

"Delayed Drawdown Loan": A Loan or any Synthetic Security with a Reference Obligation that

(a) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(b) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(c) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its Unfunded Amount is greater than zero.

"Delayed Drawdown Note Agent": The meaning specified in the Class A-1B Note Purchase Agreement.

"Delayed Drawdown Note Agent Expenses": Amounts due to the Delayed Drawdown Note Agent and payable in arrears to the Delayed Drawdown Note Agent pursuant to the Class A-1B Note Purchase Agreement (other than the Delayed Drawdown Note Agent Fee); provided that the Delayed Drawdown Note Agent Expenses will be payable on any Payment Date only to the extent that funds are available for such purpose in accordance with the Priority of Payments.

"Delayed Drawdown Note Agent Fee": Only during the Delayed Drawdown Period, the quarterly fee accrued and payable to the Delayed Drawdown Note Agent on each Payment Date pursuant to the Class A-1B Note Purchase Agreement; provided that the Delayed Drawdown Note Agent Fee will be payable on each Payment Date only to the extent that funds are available for such purpose in accordance with the Priority of Payments.

"Delayed Drawdown Period": The period commencing on and including the Closing Date and ending on the earlier to occur of (a) the date on which the Fully Drawn Amount of Class A-1B Notes is fully drawn and (b) February 27, 2006.

"Deliver" or "Delivered" or "Delivery": The taking of the following steps:

(a) in the case of each Certificated Security (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security or Instrument to the Custodian registered in the name of the Relevant Securities Intermediary or its affiliated nominee or endorsed to the Custodian or in blank,

(B) causing the Relevant Securities Intermediary to continuously indicate on its books and records that such Certificated Security or Instrument is credited to the applicable Account, and

(C) causing the Relevant Securities Intermediary to maintain continuous possession of such Certificated Security or Instrument;

(b) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Relevant Securities Intermediary, and

(B) causing the Relevant Securities Intermediary to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(c) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Relevant Securities Intermediary, and

(B) causing the Relevant Securities Intermediary to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(d) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("FRB") (each such security, a "Government Security"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Relevant Securities Intermediary at such FRB, and

(B) causing the Relevant Securities Intermediary to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(e) in the case of each Financial Asset not governed by clauses (a) through (d) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Relevant Securities Intermediary's securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Relevant Securities Intermediary and continuously indicating on its books and records that such Security Entitlement is credited to the Relevant Securities Intermediary's securities account, and

(C) causing the Relevant Securities Intermediary to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Relevant Securities Intermediary representing such Security Entitlement) is credited to the applicable Account;

(f) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Relevant Securities Intermediary to treat such cash or money as a Financial Asset maintained by such Relevant Securities Intermediary for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Relevant Securities Intermediary to continuously indicate on its books and records that such cash or money is credited to the applicable Account or Class P Account; and

(g) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument) notifying the obligor thereunder of the Grant to the Trustee (unless not applicable law requires such notice);

(h) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(i) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands.

In addition, the Portfolio Manager on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership and/or pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security interest therein.

"Depositary" or "DTC": The Depository Trust Company and its nominees.

"Determination Date": The last day of any Due Period.

"DIP Loan": Any Loan

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Portfolio Manager has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Portfolio Manager has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer),

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "Debtor") organized under the laws of the United States or any state of the United States; and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that:

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code;

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code;

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets; or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"Diversity Score": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"Diversity Test": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score.

"Dollar" or "U.S. Dollar" or "U.S.$": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"Domicile" or "Domiciled": With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Portfolio Manager, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"Draw Period": The period beginning on the Closing Date and ending on the earlier to occur of (a) the later of (i) the end of the Reinvestment Period and (ii) the date on which the Aggregate Unfunded Amount is zero and, (b) the Commitment Termination Date.

"Drawdown": The meaning specified in Section 2.13(a).

"Drawdown Date": The meaning specified in Section 2.13(a).

"Drawn Amount": At any time (a) with respect to the Class A-1A Notes, the aggregate principal amount of the Class A–1A Notes funded on the Closing Date or by one or more Borrowings after the Closing Date and not repaid hereunder and (ii) with respect to the Class A-1B Notes, the aggregate principal amount of the Class A-1B Notes funded on the Closing Date or by one or more Drawdowns after the Closing Date.

"Due Date": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"Due Period": Means: (a) for all purposes other than payments and receipts under Hedge Agreements, with respect to (i) the first Payment Date, the period from and including the Closing Date to and including February 28, 2006, (ii) the second Payment Date, the period from and including March 1, 2006 up to but excluding the Business Day after the eighth Business Day before the second Payment Date and (iii) any Payment Date thereafter, the period from and including the Business Day after the eighth Business Day before the previous Payment Date up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date, and (b) for payments and receipts under Hedge Agreements the period from and including the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) to but excluding the Payment Date).

"Eligibility Criteria": The meaning specified in Section 12.2(b).

"Eligible Collateral": Means: (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"Eligible Country": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country; provided that such country has not imposed currency exchange controls.

"Eligible Investments": Any Dollar-denominated investment that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) [Reserved]

(d) any demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depository institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such investment or contractual commitment providing for such investment and throughout the term of the investment, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that, in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(e) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such investment a credit rating of at least "P-1" by Moody's and "A-1+" by S&P, provided that, in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, and if so rated, such rating is not on watch for downgrade;

(f) unleveraged repurchase obligations (if treated as debt for tax purposes by the issuer thereof or obligor thereon) with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such investment and throughout the term of the investment; provided that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such investment and throughout the term of the investment a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(g) any money market fund or similar investment vehicle having at the time of investment therein and throughout the term of the investment a credit rating of "MR1+" by Moody's and "AAAm" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment advisor, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture; provided that (x) such fund or vehicle is formed and has its principal office outside of the United States and (y) the ownership of an interest in such fund or vehicle will not subject the Issuer to net income tax in any jurisdiction;

(h) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A-1A Notes, the Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes, the Class A-4 Notes, the Class B Notes or the Class C Notes; provided, further, that, at the time of investment therein and throughout the term of the investment, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(i) such other investments with respect to which the Rating Condition is satisfied, if the acquisition (including manner of acquisition), ownership, enforcement and disposition of such investments does not cause the Issuer to be treated as engaged in a trade or business within the United States for United Sates federal income tax purposes;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of the investment.

Eligible Investments on deposit in the Revolving Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(i) any interest-only security, mortgage-backed security, any security purchased at a price in excess of 100% of its par value, or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Portfolio Manager;

(ii) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q" or that does not have a rating assigned by S&P;

(iii) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(iv) any security that is subject to an exchange or tender offer; or

(v) any security that has payments subject to foreign or United States withholding tax, unless the obligor thereof is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee provides services. Eligible Investments may not include obligations principally secured by real property.

"Emerging Market Security": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(a) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(b) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"Equity Security": (a) Any equity security or any other security which is not eligible for purchase by the Issuer and is received with respect to a Collateral Obligation or a Defaulted Collateral Obligation and (b) any similar security purchased as part of a "unit" with a Collateral Obligation and which itself is not eligible for purchase by the Issuer.

"ERISA": The United States Employee Retirement Income Security Act of 1974, as amended.

"ERISA Restricted Indenture Securities": The Class Q-1 Securities, the Class P-1 Securities and the Class P-2 Securities.

"Euroclear": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"Event of Default": The meaning specified in Section 5.1.

"Excess CCC/Caa Collateral Obligations": As of any date of determination, the Principal Balance of all CCC/Caa Collateral Obligations constituting the excess of (a) the greater of (i) the aggregate principal amount of all Collateral Obligations that have S&P Ratings of "CCC+" or lower (other than any Defaulted Securities) and (ii) the aggregate principal amount of all Collateral Obligations that have Moody's Default Probability Ratings of "Caa1" or lower (other than any Defaulted Securities) over (b) 7.5% of the Maximum Investment Amount, as of such date of determination. The Portfolio Manager shall designate in writing to the Trustee the CCC/Caa Collateral Obligations that shall constitute the Excess CCC/Caa Collateral Obligations pursuant to the preceding sentence as the CCC/Caa Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

"Exchange Act": The United States Securities Exchange Act of 1934, as amended.

"Exchange Date": The meaning specified in Section 2.2(b).

"Expense Reimbursement Account": The trust account established pursuant to Section 10.3(c).

"Extended Reinvestment Period End Date": In the case of the first Extension pursuant to Section 2.4, the Payment Date in November 2016, in the case of any subsequent Extension, the sixteenth Payment Date after the then current Extended Reinvestment Period End Date; provided that the "Extended Reinvestment Period End Date" will in no event be a date later than the Payment Date in November 2028.

"Extended Stated Maturity Date": In the case of the first Extended Stated Maturity Date, the Payment Date in November 2021 and in the case of any subsequent Maturity Extension, the sixteenth

Payment Date after the then current Extended Stated Maturity Date; provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in November 2033.

"Extended Weighted Average Life Date": In the case of the first Maturity Extension, the Payment Date in May 2019 and in the case of any subsequent Maturity Extension, the sixteenth Payment Date after the then current Extended Weighted Average Life Date; provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in May 2031.

"Extension": An extension of the Reinvestment Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"Extension Bonus Payment": With respect to each Maturity Extension, a single payment to each applicable Beneficial Owner pursuant to Section 2.4(g), in an amount equal to (1) in the case of the Class A-1A Notes, the Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such Beneficial Owner as of the applicable Extension Effective Date, (2) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such Beneficial Owner as of the applicable Extension Effective Date, (3) in the case of the Class C Notes, 0.5% of the Aggregate Outstanding Amount thereof held by such Beneficial Owner as of the applicable Extension Effective Date and (4) in the case of the Class Q-1 Securities, 0.5% of the Aggregate Outstanding Amount of Class C Notes represented by the Class Q-1 Note Component.

"Extension Bonus Eligibility Certification": With respect to each Maturity Extension and each Beneficial Owner of Notes (including each Beneficial Owner of Class Q-1 Securities to the extent of the Class Q-1 Note Component) other than Extension Sale Securities, the written certification by such Beneficial Owner substantially in the form annexed as enclosure B to Exhibit J to the effect that it held Notes (including Class C Notes represented by the Class Q-1 Note Component) other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder (including tax certifications).

"Extension Conditions": The meaning specified in Section 2.4(c).

"Extension Determination Date": The eighth Business Day prior to each Extension Effective Date.

"Extension Effective Date": In the case of the first Maturity Extension, the Payment Date in November, 2010 and in the case of any subsequent Maturity Extension, the sixteenth Payment Date after the then current Extension Effective Date.

"Extension Notice": The meaning specified in Section 2.4(b).

"Extension Purchase Price": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of (x) the Notes (other than the Class A-1A Notes), the Aggregate Outstanding Amount thereof and (y) the Class A-1A Notes, the aggregate Drawn Amount thereof, plus in the case of both (x) and (y) accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), plus in the case of the Class A-1A Notes, any accrued and unpaid Commitment Fee and in the case of the Class A-1B Notes, any accrued and unpaid Delayed Drawdown Fee, (ii) in the case of the Class E Certificates, an amount that, when taken together with all payments and distributions made in respect of such Class E

Certificates since the Closing Date would cause such Class E Certificates to have received (as of the date of purchase thereof by the Extension Qualifying Purchaser) a Class E Certificate Internal Rate of Return of 12% (assuming such purchase date was a Payment Date); provided, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Class E Certificate Internal Rate of Return equal to or in excess of 12%, the applicable Extension Purchase Price for such Class E Certificates shall be zero; provided, however that in the case of the 3rd or 4th Maturity Extension, for any one Holder of Class E Certificates who holds Class E Certificate with an aggregate "face amount" of at least U.S.$30,000,000 and cannot consent to the Maturity Extension due to tax, regulatory, compliance or accounting rules or investment policies (whether internally or externally governed), the purchase price payable to such Holder for its Extension Sale Securities consisting of its Class E Certificates will be an amount that, when taken together with all payments and distributions made in respect of such Class E Certificates since the Closing Date would cause such Class E Certificates to have received (as of the date of purchase thereof by the Extension Qualifying Purchaser) a Class E Certificate Internal Rate of Return of 15% (assuming such purchase date was a "Payment Date" under the Indenture), provided, that if the applicable Extension Effective Date is on or after the date on which such Holder has received a Class E Certificate Internal Rate of Return equal to or in excess of 15%, the applicable Extension Purchase Price for such Class E Certificates shall be zero; and (iii) in the case of the Class Q Securities, a purchase price determined based on the respective purchase prices for the Class Q-1 Note Component and the Class Q-1 Class E Certificate Component.

"Extension Qualifying Purchasers": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event the Portfolio Manager elects not to purchase Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Placement Agent or any of their Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Initial Purchaser, the Placement Agent, or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"Extension Sale Notice": The meaning specified in Section 2.4(d).

"Extension Sale Notice Period": The meaning specified in Section 2.4(d).

"Extension Sale Securities": The meaning specified in Section 2.4(b).

"Face Amount": With respect to any Class E Certificate, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Class E Certificate.

"Finance Lease": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"Financial Asset": The meaning specified in Section 8-102(a)(9) of the UCC.

"Financing Statements": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"Fixed Rate Excess": As of any Measurement Date, a fraction whose numerator is the product of:

(a) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(b) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"Fixed Rate Obligation": Any Collateral Obligation that bears interest at a fixed rate, including a Collateral Obligation that does not bear interest on a floating rate index and whose interest rate is scheduled to increase one or more times over the life of the Collateral Obligation.

"Floating Rate Obligation": Any Collateral Obligation that bears interest based on a floating rate index.

"Form-Approved Synthetic Security": A Synthetic Security:

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and either (x) is in a form which conforms to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by S&P, has an S&P Recovery Rate assigned by S&P and each of the Reference Obligations of which could be purchased by the Issuer without satisfaction of the Rating Condition or any other action by the Rating Agencies or (y) which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(i) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P; and

(ii) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Portfolio Manager, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Portfolio Manager receives the notice of withdrawal.

"Fully Drawn Amount": The maximum aggregate principal amount that can be drawn under the Class A-1B Notes, in an amount equal to $50,000,000.

"GAAP": The meaning specified in Section 6.3(j).

"Global Securities": Any Temporary Regulation S Global Securities, Temporary Regulation S Global Securities or Rule 144 A Global Notes.

"Grant": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Collateral (including the Pledged Obligations), the Class P Collateral or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of thereof, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Hedge Agreements": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"Hedge Counterparty": Any counterparty which as of the date the Issuer enters into any Hedge Agreement with such counterparty satisfies the requirements of Section 15.2(b) or for which the Rating Condition with respect to each Rating Agency is satisfied.

"Hedge Counterparty Collateral Account": The trust account established pursuant to Section 10.3(d).

"Hedge Termination Receipt": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"High-Yield Bond": Any debt security other than a Loan, including any Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation Section 1.165-12(c)(3).

"Holder": With respect to any Note, Class Q-1 Securities and Class P Securities, the person whose name appears on the Indenture Register as the registered holder of such Security; and with respect to any Class E Certificate, the person whose name appears in the Class E Certificate register related thereto as the registered holder of such Class E Certificate.

"Important Section 3(c)(7) Reminder Notice": A notice substantially in the form of Exhibit H-2.

"Incentive Management Fee": On each Payment Date, the fee payable to the Portfolio Manager in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available for payment in respect of the Incentive Management Fee pursuant to Section 11.1(a)(i)(23) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Incentive Management Fee pursuant to Section 11.1(a)(ii)(9) of the Priority of Payments.

"Indenture": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"Indenture Register": The meaning specified in Section 2.6(a).

"Indenture Registrar": The meaning specified in Section 2.6(a).

"Indenture Securities": Collectively, the Notes, Class Q-1 Securities and Class P Securities.

"Independent": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"Initial Collateral Obligations": The Collateral Obligations purchased by the Issuer on or before the Closing Date.

"Initial Consent Period": The period of 15 Business Days from but excluding the date on which the Trustee provided notice of a proposed supplemental indenture pursuant to Section 8.2(e) to the Holders of Securities.

"Initial Purchaser": With respect to the Notes (other than the Class A-1A Notes and the Class A-1B Notes), the Class Q-1 Securities and the Class P Securities, Citigroup Global Markets Inc.

"Initial Rating": The ratings with respect to each Class of Securities assigned by Moody's and S&P on the Closing Date as set forth in the table in Section 2.3(a).

"Insolvency Event": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"Instrument": The meaning specified in Section 9-102(a)(47) of the UCC.

"Interest Coverage Ratio": With respect to any specified Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes as one Class for this purpose) on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, minus

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes (and the Commitment Fee Amount with respect to the Class A–1A Notes and the Delayed Drawdown Fee with respect to the Class A-1B Notes), and all Notes ranking senior to the Class on the related Payment Date, but excluding any Deferred Interest as of the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"Interest Coverage Test": A test the first Measurement Date for which will be on the Determination Date immediately preceding the second Payment Date and that is satisfied with respect to any specified Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes as one Class for this purpose) if, as of the Determination Date immediately preceding the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding,

the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A Interest Coverage Test	125%
Class B Interest Coverage Test	115%
Class C Interest Coverage Test	110%

"Interest Period": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided that with respect to any Borrowing made under the Class A-1A Notes and any Drawdown made under the Class A-1B Notes, the first Interest Period shall be the period from and including the date of such Borrowing or Drawdown, as applicable, to but excluding the Payment Date following such date, unless in the case of a Borrowing, the date of such Borrowing falls in the period from and including a Determination Date to and including the day prior to the related Payment Date, in which case such first Interest Period shall run from and including the date of such Borrowing to but excluding the second Payment Date following such date.

"Interest Proceeds": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees (including commitment fees with respect to the Unfunded Amount of any Revolving Loan or Delayed Drawdown Loan), and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date other than (x) any amount payable under any Hedge Agreement because of any early termination or notional amount reduction, (y) any Sale Proceeds with respect to any Hedge Agreement (except to the extent that they were purchased with Interest Proceeds) and (z) any payments (including any Sale Proceeds purchased with Interest Proceeds) with respect to any Hedge Agreement used in entering into a replacement Hedge Agreement;

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) during the continuance of an "event of default" (under and as defined in the related Securities Lending Agreement), all interest received from the related Securities Lending Collateral;

(vii) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(viii) all earnings on amounts in the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(ix) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(x) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

For the avoidance of doubt, "Interest Proceeds" shall not include the Class P Collateral or any proceeds thereof.

"Interest Reserve Account": The trust account established pursuant to Section 10.3(i).

"Investment Company Act": The United States Investment Company Act of 1940, as amended.

"Investment Criteria Adjusted Balance": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that the Investment Criteria Adjusted Balance for any Excess CCC/Caa Collateral Obligation shall be the product of (i) its Principal Balance and (ii) the lower of (a) the weighted average Market Value (for this purpose expressed as a percentage of principal balance) of all Excess CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances and (b) 70%.

"Investment Obligation": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"Irish Paying and Listing Agent": The meaning specified in Section 7.2.

"Irish Stock Exchange": The Irish Stock Exchange Limited.

"Issuer": The person named as such on the first page of this Indenture.

"Issuer Accounts": The meaning assigned in the Granting Clauses.

"Issuer Accounts Securities Intermediary": The Securities Intermediary for the Issuer Accounts.

"Issuer Order" and "Issuer Request": A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Portfolio Manager by an Authorized Officer of the Portfolio Manager, on behalf of the Issuer or the Co-Issuer.

"Issuer Ordinary Shares": The ordinary shares, par value $1.00 per share, of the Issuer, which have been issued by the Issuer and are outstanding from time to time.

"Junior Class": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"Knowledgeable Employee": The meaning specified in Rule 3c-5 under the Investment Company Act.

"Leasing Finance Transaction": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Portfolio Manager, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"LIBOR": Determined by the Calculation Agent for any Interest Period, the offered rate, as determined by the Calculation Agent, for three month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 a.m. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Portfolio Manager) (the "Reference Banks") for quotations as of approximately 11:00 a.m. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that leading banks in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager)).

For the first Interest Period, LIBOR shall be 4.44672%. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"Loan": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered, or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation Section 1.165-12(c)(3).

"Long-Dated Collateral Obligation": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes; provided that such Collateral Obligation shall in no event have a stated maturity later than two years after the Stated Maturity of the Notes.

"Majority": With respect to any Class or group of Securities (other than the Class Q-1 Securities and the Class P Securities), the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Securities. Holders of Class Q-1 Securities shall be included in the determination of a Majority of Holders of Class C Notes as if they were Holders of the Class C Notes in the Aggregate Outstanding Amount represented by the Class Q-1 Note Component and in the determination of a Majority of Holders of the Class E Certificates as if they were Holders of the number of Class E Certificates represented by the Class Q-1 Class E Certificate Component. Holders of the Class P-1 Securities and the Class P-2 Securities shall be included in the determination of a Majority of Holders of the Class E Certificates as if they were Holders of the number of Class E Certificates represented by the Class P-1 Class E Certificate Component or the Class P-2 Class E Certificate Component, as applicable. With respect to the Class Q-1 Securities as such, the Class P-1 Securities as such and the Class P-2 Securities as such "Majority" means the Holders of more than 50% of the respective stated amount thereof.

"Management Agreement": The Portfolio Management Agreement, dated as of the Closing Date, between the Issuer and the Portfolio Manager, as modified, amended, and supplemented and in effect from time to time.

"Management Fee": The Senior Management Fee, the Subordinated Management Fee, and the Incentive Management Fee. The Portfolio Manager may, in its sole discretion:

(i) waive all or any portion of the Management Fee, any funds representing the waived Management Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Portfolio Manager) pursuant to the Priority of Payments; or

(ii) defer all or any portion of the Management Fee, any funds representing the deferred Management Fees to be retained in the Collection Account, when they will become payable in the same manner and priority as their original characterization would have required unless deferred again.

"Margin Stock": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock.

"Market Value": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio Manager); provided that if a Market Value of any Collateral Obligation cannot be so determined for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided, further, that during such 30-day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) (if any) the Market Value of such Collateral Obligation as most recently determined by the Portfolio Manager in accordance with the foregoing and (ii) the current market value of such Collateral Obligation as determined by the Portfolio Manager in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Investment Amount (and any amount in excess of 5.0% of the Maximum Investment Amount shall be deemed to have a Market Value of zero).

"Market Value Percentage": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation, by

(ii) the Principal Balance of the Collateral Obligation.

"Maturity": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"Maturity Extension": The meaning specified in Section 2.4(a).

"Maximum Investment Amount": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$900,000,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations; plus

(B) Cash representing Principal Proceeds on deposit in the Collection Account; plus

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account; plus

(D) without duplication, an amount equal to the excess of (x) the Aggregate Undrawn Amount of Class A-1A Notes over (y) the Aggregate Unfunded Amount minus the amount credited to the Revolving Reserve Account; plus

(E) without duplication, an amount equal to the Aggregate Undrawn Amount of the Class A-1B Notes.

"Maximum Weighted Average Moody's Rating Factor": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"Measurement Date": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date; and

(v) as of which the information in a Monthly Report is calculated pursuant to Section 10.6.

"Memorandum and Articles of Association": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"Merging Entity": The meaning specified in Section 7.10.

"Minimum Diversity Score": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"Minimum Weighted Average Commitment Fee": As of any Measurement Date, 0.4%.

"Minimum Weighted Average Spread": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings

Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"Monthly Determination Date": The meaning specified in Section 10.6(a).

"Monthly Report": The meaning specified in Section 10.6(a).

"Moody's": Moody's Investors Service, Inc.

"Moody's Default Probability Rating": The meaning set forth in Schedule 7.

"Moody's Equivalent Senior Unsecured Rating": The meaning set forth in Schedule 7.

"Moody's Group I Country": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"Moody's Group II Country": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"Moody's Group III Country": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"Moody's Industry Classification": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"Moody's Non Senior Secured Loan": Any Loan that is not a Moody's Senior Secured Loan.

"Moody's Obligation Rating": The meaning set forth in Schedule 7.

"Moody's Priority Category": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"Moody's Priority Category Recovery Rate": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"Moody's Rating": The meaning set forth in Schedule 7.

"Moody's Rating Factor": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	**Moody's Rating Factor**	**Moody's Rating**	**Moody's Rating Factor**
Aaa	1	Ba1	940

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Portfolio Manager on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

"Moody's Senior Secured Loan":

(a) A Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan;

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan; and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral; or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan;

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan; and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash

flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral,

provided that such second lien Loan will only constitute a Moody's Senior Secured Loan if it has an Assigned Moody's Rating that is not lower than the corporate family rating by Moody's of the related obligor; and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"Moody's Weighted Average Recovery Rate": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation (other than Defaulted Collateral Obligations) by its respective Moody's Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations (other than Defaulted Collateral Obligations), and

(iii) rounding up to the first decimal place.

"Non-Call Period": The period from the Closing Date to but not including the Payment Date in November 2010.

"Non-Consenting Holder": In connection with any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, with respect to the Holders of the Securities, any such Holder or, in the case of such Securities represented by Global Securities, any Beneficial Owner thereof, that either (i) has declared in writing that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"Non-Performing Collateral Obligation": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it; or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"Non-Permitted Holder": (i) A Holder or Beneficial Owner of an interest in a Global Security or Certificated Indenture Security that is (x) a U.S. person and (A) is not a QIB/QP and that becomes the Beneficial Owner of an interest in a Rule 144A Global Note or (B) does not have an exemption available under the Securities Act or (y) not a U.S. person and is determined not to have acquired such beneficial interest in compliance with the requirements of Regulation S or have another exemption available under the Securities Act and (ii) a Holder of a Certificated Indenture Security that is in material breach of any representation or agreement set forth in the applicable transfer certificate.

"Non-Permitted ERISA Holder": The meaning specified in Section 2.11(d).

"Note Break-Even Loss Rate": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of such Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A-1A Notes, the Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes and the ultimate payment of interest on the Class B Notes and the Class C Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the Adjusted Weighted Average Spread level specified in the applicable row of the table below. The "Adjusted Weighted Average Spread" as of any Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.00%
2	Greater than or equal to 2.90% but less than 3.00%
3	Greater than or equal to 2.80% but less than 2.90%
4	Greater than or equal to 2.70% but less than 2.80%
5	Greater than or equal to 2.60% but less than 2.70%
6	Greater than or equal to 2.50% but less than 2.60%
7	Greater than or equal to 2.40% but less than 2.50%
8	Greater than or equal to 2.30% but less than 2.40%
9	Greater than or equal to 2.20% but less than 2.30%

"Note Class Loss Differential": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for such Class from the then-applicable Note Break-Even Loss Rate (corresponding to the S&P Monitor Test that is created with the Adjusted Weighted Average Spread of the Current Portfolio) for such Class of Notes.

"Noteholder": A Holder of any Class of Notes (which shall include Holders of the Class Q-1 Securities to the extent of the Class Q-1 Note Component).

"Note Interest Rate": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of such Class with respect to each Interest Period equal to LIBOR for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes, except in the first Interest Period.

"Notes": The Class A-1A Notes, the Class A-1B Notes, the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes, the Class A-4 Notes, the Class B Notes and the Class C Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"Offer": The meaning specified in Section 10.7(c).

"Offering": The offering of the Notes and the Class E Certificates.

"Offering Memorandum": The final Offering Memorandum, dated December 7, 2005, prepared and delivered in connection with the offer and sale of the Securities.

"Officer": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"Opinion of Counsel": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Portfolio Manager, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"Optional Redemption": A redemption of the Notes in accordance with Section 9.2.

"Other Indebtedness": The meaning specified in the definition of "Defaulted Collateral Obligation."

"Outstanding": With respect to: (a) the Notes or any specified Class, as of any date of determination, all of the Notes, or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, (ii) with respect to the Class Q-1 Securities, as of any date of determination, all Class Q-1 Securities theretofore authenticated and delivered under the Indenture and (iii) the Class P-1 Securities and the Class P-2 Securities, as of any date of determination, all Class P-1 Securities and Class P-2 Securities, as applicable, theretofore authenticated and delivered under the Indenture, in each case except Notes, Class Q-1 Securities and Class P Securities, as applicable:

(i) canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their

Holders pursuant to Section 4.1(a)(ii) and if such Securities are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture; and

(iv) alleged to have been destroyed, lost, or stolen for which replacement Securities have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Securities are held by a protected purchaser;

(b) the Class E Certificates, as of any date of determination, all of the Class E Certificates theretofore issued under the Class E Certificate Documents and listed in the Class E Certificate register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Notes, Class Q-1 Securities, Class P Securities or the Class E Certificates have given any request, demand, authorization, direction, notice, consent, or waiver under this Indenture:

(i) (A) the Class C Notes represented by the Class Q-1 Note Component shall be considered to be Class C Notes and Holders of Class Q-1 Securities shall be entitled to vote the Class C Notes represented by the Class Q-1 Note Component, and (B) the Class E Certificates represented by any Class E Certificate Component shall be considered to be Class E Certificates and Holders of the Class Q-1 Securities shall be entitled to vote the Class E Certificates represented by the Class Q-1 Class E Certificate Component, Holders of the Class P-1 Securities shall be entitled to vote the Class E Certificates represented by the Class P-1 Class E Certificate Component and Holders of the Class P-2 Securities shall be entitled to vote the Class E Certificates represented by the Class P-2 Class E Certificate Component;

(ii) Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them shall be disregarded and not be Outstanding; and

(iii) only (x) with respect to any matter affecting its status as Portfolio Manager, or (y) in any matter respecting an acceleration of any Class of Securities if the effect of the Portfolio Manager's action or inaction as a Holder of Securities would effectively prevent acceleration, Securities owned or beneficially owned by the Portfolio Manager and its Affiliates and any accounts over which the Portfolio Manager or its Affiliates have discretionary voting authority, shall be disregarded and not be Outstanding,

except that with respect to clause (ii) and clause (iii) above, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent, or waiver, only Securities that a Trust Officer of the Trustee has actual knowledge to be so owned or beneficially owned shall be so disregarded. Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities and that the pledgee is not the Issuer, the Co-Issuer, the Portfolio Manager, the Class E Certificates Paying Agent or any Affiliate of the Issuer or the Co-Issuer.

"Overcollateralization Ratio": With respect to any Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes as one Class for this purpose) on any Measurement Date, the ratio calculated by dividing:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (including, for the avoidance of doubt, any Deferred Interest on the Class of Notes and all Notes ranking senior to it).

"Overcollateralization Ratio Numerator": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC/Caa Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); plus

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); plus

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and, without duplication, the amount of Principal Proceeds on deposit in the Collection Account; plus

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; plus

(5) with respect to Collateral Obligation that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC/Caa Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC/Caa Collateral Obligations, an amount equal to the product of (i) the lower of (1) 70% and (2) the weighted average Market Value of all Excess CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances multiplied by (ii) the Aggregate Principal Balance of the Excess CCC/Caa Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "Applicable Collateral Obligation Amount" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, its outstanding principal amount as of the relevant Measurement Date;

(2) any Synthetic Security, the notional amount specified in such Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its funded principal amount outstanding plus any Unfunded Amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the Unfunded Amount); and

(4) any PIK Security, its outstanding principal amount but excluding any principal amount representing previously deferred or capitalized interest;

provided however, that, for the avoidance of doubt, the Applicable Collateral Obligation Amount with respect to any Collateral Obligation in which the Trustee does not have a first priority perfected security interest shall be zero.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, its outstanding principal amount as of the relevant Measurement Date;

(ii) any Synthetic Security, the notional amount specified in such Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its outstanding principal amount plus any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its outstanding principal amount but excluding any principal amount representing previously deferred or capitalized interest.

"Overcollateralization Test": A test that is satisfied with respect to any Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes as one Class for this purpose) if, as of any Measurement Date, the Overcollateralization Ratio for such Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A Overcollateralization Test	111.7%
Class B Overcollateralization Test	106.0%
Class C Overcollateralization Test	103.8%

"Participating Institution": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"Participation": A Loan acquired as a participation interest created by a Participating Institution.

"Paying Agent": Any person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"Payment Account": The trust account established pursuant to Section 10.3(h).

"Payment Date": (i) The first day of February, May, August and November in each year; *provided* that the first Payment Date shall be March 3, 2006 and the second Payment Date will be May 2, 2006, or, if any such day is not a Business Day, the next following Business Day, (ii) any other date on which the Notes are redeemed or paid before their Stated Maturity, and (iii) the Stated Maturity for the Notes.

"Permitted Offer": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Portfolio Manager has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"Permitted Use": With regard to Class A-1A Note Borrowings, a Borrowing to (i) acquire additional Collateral Obligations during the Ramp-up Period, (ii) acquire substitute Collateral Obligations during the Reinvestment Period (or after the Reinvestment Period pursuant to commitments to purchase made by the Issuer during the Reinvestment Period) and (iii) fund commitments of the Issuer to obligors under Revolving Loans or Delayed Drawdown Loans acquired during the Reinvestment Period.

"Person": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"PIK Cash-Pay Interest": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"PIK Security": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the related PIK Cash-Pay Interest, if any, would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4.0% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"Placed Securities": The Class E Certificates, in each case placed by the Placement Agent pursuant to the Placement Agency Agreement.

"Placement Agency Agreement": A placement agency agreement dated December 7, 2005 between the Issuer and Citigroup Global Markets Inc. relating to the placement of the Placed Securities, as modified, amended and supplemented and in effect from time to time.

"Placement Agent": Citigroup Global Markets Inc.

"Plan": Any "employee benefit plan" within the meaning of Section 3(3) of ERISA subject to Title I of ERISA, any "plan" described by Section 4975(e)(1) of the Code subject to Section 4975 of the Code or any entity whose underlying assets include the assets of any plan by reason of U.S. Department of Labor regulation 2510.3-101 or otherwise.

"Pledged Obligations": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"Portfolio Manager": Highland Capital Management, L.P., and any successor Portfolio Manager pursuant to the Management Agreement.

"Prepayment": Any repayment of principal of the Class A–1A Notes pursuant to Section 9.7 prior to the Maturity of such Notes.

"Prepayment Date": Any date on which a Prepayment occurs.

"Principal Balance": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) any Synthetic Security, the notional amount specified in such Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its outstanding principal amount reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its funded principal amount outstanding plus any Unfunded Amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the Unfunded Amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security and any Collateral Obligation that would be a PIK Security but for the proviso in the definition thereof, its outstanding principal amount but excluding any principal amount representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"Principal Proceeds": With respect to any Due Period, (i) all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds and (ii) the net proceeds received from any issuance of Additional Class E Certificates.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

For the avoidance of doubt, "Principal Proceeds" shall not include the Class P Collateral or any proceeds thereof.

"Priority Class": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"Priority of Payments": The meaning specified in Section 11.1(a).

"Proceeding": Any suit in equity, action at law, or other judicial or administrative proceeding.

"Proposed Portfolio": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed reinvestment in a Collateral Obligation, as the case may be.

"Purchase Agreement": The agreement dated as of December 7, 2005 among the Co-Issuers and the Initial Purchaser relating to the initial purchase of the Notes (other than the Class A-1A Notes and the Class A-1B Notes), the Class Q-1 Securities and the Class P Securities, as amended from time to time.

"Purchase Price": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"Purchase Price Amount": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"QIB/QP": Any person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"Qualified Equity Security": Any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"Qualified Institutional Buyer": The meaning specified in Rule 144A under the Securities Act.

"Qualified Purchaser": The meaning specified in Section 2(a)(51) of the 1940 Act and the rules thereunder (including entities owned exclusively by Qualified Purchasers).

"Ramp-Up Completion Date": The earlier of:

(i) the Business Day prior to March 3, 2006, and

(ii) the first date on which the following conditions are satisfied:

(x) either (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $900,000,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be (provided that with respect to the Initial Collateral Obligations, the date of purchase shall be the Closing Date)) equals at least $900,000,000 (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations after the Closing Date and on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least $900,000,000.

"Ramp-Up Period": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"Rating Agency": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes and, in the case of Moody's ceasing to provide rating services only, a Majority of each of the Class Q-1 Securities, the Class P-1 Securities and the Class P-2 Securities. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"Rating Condition": With respect to any action taken or to be taken under this Indenture, a condition that is satisfied when both Rating Agencies, or, if expressly stated, a specified Rating Agency, has confirmed to the Portfolio Manager (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Securities will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Securities are rated by it.

"Rating Confirmation": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Securities.

"Rating Confirmation Failure": A failure by the Issuer or the Portfolio Manager (on behalf of the Issuer) to obtain confirmation in writing from S&P and written confirmation from Moody's that it has not reduced, suspended, or withdrawn its Initial Rating of each Class of rated Securities and that it has not placed any Class of Securities on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date.

"Rating Criteria": Criteria that will be satisfied on any date with respect to any Holder of Class A–1A Notes and any Holder of Class A-1B Notes, as applicable, if the short-term debt, deposit or similar obligations of such Holder (or its guarantor) are on such date rated at least "P-1" (but not "P-1" on credit watch for downgrade) by Moody's and "A-1" by S&P (but not on "A-1" on credit watch for downgrade).

"Ratings Matrix": The "row/column combination" of the table below selected by the Portfolio Manager on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Portfolio Manager may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score						
Minimum Weighted Average Spread	**50**	**55**	**60**	**65**	**70**	**75**	**80**
2.2%	2070	2100	2130	2160	2190	2220	2250
2.3%	2130	2160	2190	2220	2250	2280	2310
2.4%	2190	2220	2250	2280	2310	2340	2370
2.5%	2250	2280	2310	2340	2370	2400	2430
2.6%	2310	2340	2370	2400	2430	2460	2490
2.7%	2370	2400	2430	2460	2490	2520	2550
2.8%	2430	2460	2490	2520	2550	2580	2610
2.9%	2490	2520	2550	2580	2610	2640	2670
3.0%	2550	2580	2610	2640	2670	2700	2730
	Maximum Weighted Average Moody's Rating Factor						

"Recovery Rate Modifier": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Weighted Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"Record Date": With respect to (a) any Payment Date, the date on which the Holders of Securities entitled to receive a payment on such Payment Date are determined, such date as to any Payment Date being the 15th day (whether or not a Business Day) before the applicable Payment Date; (b) any Prepayment Date, the date on which the Holders of the Class A-1A Notes entitled to receive a Prepayment are determined, such date as to any Prepayment Date being the 15th day (whether or not a Business Day) prior to the applicable Prepayment Date.

"Redemption Date": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2.

"Redemption Price": With respect to any Optional Redemption pursuant to Section 9.2 and

(a) any Note (other than any Class A-1A Note to be redeemed pursuant to Section 9.2), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed; plus

(ii) accrued and unpaid interest on the Note (including any Defaulted Interest and interest on Defaulted Interest); plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note; plus

(iv) in the case of the Class A-1B Notes, any accrued and unpaid Delayed Drawdown Fee; plus

(v) any unpaid Extension Bonus Payment in respect of the Note.

(b) any Class A–1A Note, an amount equal to:

(i) 100% of the Drawn Amount of such Class A–1A Note to be redeemed, plus

(ii) accrued and unpaid interest thereon (including any Defaulted Interest and interest on Defaulted Interest) plus

(iii) and any accrued and unpaid Commitment Fee Amount, plus

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Optional Redemption of the Class E Certificates pursuant to Section 9.2(b), "Redemption Price" means (i) the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as otherwise specified by the unanimous direction of the Holders of the Class E Certificates, in each case, as specified in Section 9.2(b).

"Reference Obligation": An obligation that would, if acquired directly by the Issuer, satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based.

"Reference Obligor": The obligor of a Reference Obligation.

"Registered": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"Registered Office": The registered office of the Issuer, which shall be located outside of the United States.

"Regulation D": Regulation D under the Securities Act.

"Regulation S": Regulation S under the Securities Act.

"Regulation S Global Security": The meaning specified in Section 2.2(b).

"Reinvestment Overcollateralization Ratio": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator by

(ii) the Aggregate Outstanding Amount of the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes, the Class A-4 Notes, the Class B Notes and the Class C Notes (including, for the avoidance of doubt, any Deferred Interest, if any, on those Classes of Notes).

"Reinvestment Overcollateralization Test": A test that is satisfied as of any Measurement Date on which any Notes remain Outstanding, if the Reinvestment Overcollateralization Ratio as of such Measurement Date is at least equal to 104.8%.

"Reinvestment Period": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Portfolio Manager notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Portfolio Manager, that, in light of the composition of the Collateral, general market conditions, and other factors, investments in additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial;

(ii) the Payment Date in November 2012 or, in the case of an Extension, the Extended Reinvestment Period End Date;

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Portfolio Manager to facilitate the liquidation of the Collateral for the Optional Redemption; and

(iv) the date on which the Reinvestment Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(b)).

"Relevant Securities Intermediary": The Issuer Accounts Securities Intermediary, the Class P-1 Securities Intermediary or the Class P-2 Securities Intermediary, as the context may require.

"Removal Buy-Out Purchaser": The meaning specified in Section 2.14(e).

"Replacement Hedge": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"Repository": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"Required Rating": The meaning specified in Section 15.2(b).

"Revolver Funding Reserve Amount": An amount, which cannot be negative, equal to the sum of (a) the Aggregate Unfunded Amount for all Revolving Loans and Delayed Drawdown Loans minus (b) the Aggregate Undrawn Amount of the Class A-1A Notes; provided, however, for purposes of this definition, the Aggregate Undrawn Amount of Class A-1A Notes used in such calculation shall not include the portion of the Aggregate Undrawn Amount attributable to each Holder of Class A-1A Notes at any time and for so long as and to the extent (x) such Holder does not meet the Rating Criteria and (y) has failed to fund the Undrawn Amount of its Class A-1A Notes when required to do so under the Class A-1A Note Purchase Agreement.

"Revolving Loan": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Unfunded Amount is greater than zero.

"Revolving Note Agent": The meaning specified in the Class A-1A Note Purchase Agreement.

"Revolving Note Agent Expenses": Amounts due to the Revolving Note Agent and payable in arrears to the Revolving Note Agent pursuant to the Class A-1A Note Purchase Agreement (other than the Revolving Note Agent Fee); provided that the Revolving Note Agent Expenses shall be payable on each Payment Date only to the extent that funds are available for such purpose in accordance with the Priority of Payments.

"Revolving Note Agent Fee": Only during the Draw Period, the quarterly fee accrued and payable to the Revolving Note Agent on each Payment Date pursuant to the Class A-1A Note Purchase Agreement; provided that the Revolving Note Agent Fee shall be payable on each Payment Date only to the extent that funds are available for such purpose in accordance with the Priority of Payments.

"Revolving Reserve Account": The trust account established pursuant to Section 10.3(b).

"Rule 144A": Rule 144A under the Securities Act.

"Rule 144A Global Note": The meaning specified in Section 2.2(c).

"Rule 144A Information": The meaning specified in Section 7.14.

"S&P": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"S&P CDO Monitor": A dynamic, analytical computer model developed by S&P, that may be modified by S&P from time to time, and provided to the Portfolio Manager and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"S&P CDO Monitor Test": A test that will be satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the reinvestment of the related Sale Proceeds in additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"S&P Industry Classification": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"S&P Priority Category": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"S&P Priority Category Recovery Rate": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"S&P Rating": The meaning set forth in Schedule 7.

"S&P Unrated DIP Loan": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Portfolio Manager has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"S&P Weighted Average Recovery Rate": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"Sale": The meaning specified in Section 5.17.

"Sale Proceeds": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Portfolio Manager or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses. For the avoidance of doubt, "Sale Proceeds" shall not include the Class P Collateral or any proceeds thereof.

"Schedule of Collateral Obligations": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan, or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"Second Lien Loan": A Secured Loan (other than a Senior Secured Loan) that has a junior contractual claim only to a Senior Secured Loan on tangible property (which property is subject to a prior lien (other than customary permitted liens, as such, but not limited to, any tax liens)) to secure payment of a debt or the fulfillment of a contractual obligation.

"Secondary Risk Counterparty": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty and any Securities Lending Counterparty.

"Secondary Risk Table": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"Section 3(c)(7)": Section 3(c)(7) of the 1940 Act.

"Section 3(c)(7) Reminder Notice": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit H-1.

"Secured Loan": A Loan that (i) is not subordinated by its terms to other indebtedness of the borrower for borrowed money and (ii) is secured by a valid and perfected security interest in specified collateral.

"Secured Parties": The meaning specified in the Granting Clauses.

"Securities": Collectively, The Notes, Class Q-1 Securities, Class P Securities and the Class E Certificates.

"Securities Act": The United States Securities Act of 1933, as amended.

"Securities Intermediary": Any clearing corporation or any person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"Securities Lending Account": The trust account established pursuant to Section 10.3(f).

"Securities Lending Agreements": The meaning specified in Section 7.17(a).

"Securities Lending Collateral": The meaning specified in Section 7.17(b).

"Securities Lending Counterparty": The meaning specified in Section 7.17(a).

"Security Entitlement": The meaning specified in Section 8-102(a)(17) of the UCC.

"Selected Collateral Quality Tests": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted

Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"Senior Management Fee": A fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.30% per annum of the Maximum Investment Amount as of the first day of the related Due Period if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Management Fee shall be calculated on the basis of the actual number of days elapsed divided by 360.

"Senior Secured Loan": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral and with respect to which the Portfolio Manager determines that the value of the collateral securing such Secured Loan equal or exceeds the outstanding principal balance of the loan plus the aggregate outstanding balances of all other loans of equal or higher seniority secured by the same collateral.

"Senior Unsecured Loan": A Loan that (i) is not subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) is not secured by a valid and perfected security interest in collateral.

"Share Trustee": Walkers SPV Limited.

"Special Redemption": The meaning specified in Section 9.5.

"Special Redemption Amount": The meaning specified in Section 9.5.

"Special Redemption Date": The meaning specified in Section 9.5.

"Spread Excess": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"Stated Maturity": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, the Class Q-1 Securities and the Class P Securities, the Payment Date in November 2017, or upon a Maturity Extension (if any), the applicable Extended Stated

Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes, Class Q-1 Securities and Class P Securities.

"Structured Finance Obligation": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries or Moody's Group III Countries, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities;"

(G) net interest margin securitizations;

(H) collateralized debt obligations backed by other collateralized debt obligations;

(I) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "synthetic CDOs"); and

(J) collateralized debt obligations a significant portion of which are backed by bonds;

(ii) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Portfolio Manager shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs managed by the same Portfolio Manager or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"Subordinated Lien Loan": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"Subordinated Management Fee": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.25% per annum of the Maximum Investment Amount as of the first day of the related Due Period if and to the extent funds are available for that purpose in accordance with the Priority of Payments, (ii) on any Payment Date that any part of the Senior Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum and (iii) on any Payment Date that any part of the Subordinated Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Management Fee or Senior Management Fee, as applicable, in clauses (i) through (iii) above, as applicable, shall be calculated on the basis of the actual number of days elapsed divided by 360.

"Successor Entity": The meaning specified in Section 7.10(a).

"Super Majority": With respect to any Class or group of Securities (other than the Class Q-1 Securities and the Class P Securities), the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Securities. Holders of Class Q-1 Securities shall be included in the determination of a Super Majority of Holders of Class C Notes as if they were Holders of the Class C Notes in the Aggregate Outstanding Amount represented by the Class Q-1 Note Component and in the determination of a Super Majority of Holders of the Class E Certificates as if they were Holders of the number of Class E Certificates represented by the Class Q-1 Class E Certificate Component. Holders of the Class P-1 Securities and the Class P-2 Securities shall be included in the determination of a Super Majority of Holders of the Class E Certificates as if they were Holders of the number of Class E Certificates represented by the Class P-1 Class E Certificate Component or the Class P-2 Class E Certificate Component, as applicable. With respect to the Class Q-1 Securities as such, the Holders of more than 66-2/3% of the stated amount thereof. With respect to the Class P-1 Securities as such, the Holders of more than 66-2/3% of the stated amount thereof and with respect to the Class P-2 Securities as such, the Holders of more than 66-2/3% of the stated amount thereof.

"Synthetic Security": Any swap transaction, structured bond investment, credit linked note, or other derivative financial instrument relating to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse First Boston) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Portfolio Manager's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "credit risk") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a weighted average Market Value of at least 85% at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount

not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall (i) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (mutatis mutandis) to those contained in this Indenture and (ii) include provisions satisfying Section 15.3 of this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation (except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event) and, unless the Rating Condition is otherwise satisfied, (i) must not provide that its transfer to the Issuer is subject to obtaining any consents, (ii) after giving effect to the delivery thereof would not cause the Concentration Limitations not to be satisfied and (iii) if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan..

Synthetic Securities that are credit default swaps, credit linked notes, or other similar instruments may not provide for "restructuring" as a "credit event".

For purposes of the Coverage Tests and the Reinvestment Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 20 and 20(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

Any Synthetic Security shall be positively indexed to the Reference Obligation on no more than a one-for-one basis (i.e. unleveraged credit exposure).

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Portfolio Manager, on behalf of the Issuer, shall give each applicable Rating Agency not less than 5 days' prior notice of the purchase of or entry into any Synthetic Security.

"Synthetic Security Agreement": The documentation governing any Synthetic Security.

"Synthetic Security Collateral": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) investments that satisfy the Rating Condition with respect to Moody's, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral; provided that Synthetic Security Collateral may not include any investment the acquisition (including the manner of acquisition), ownership, enforcement or disposition of which will subject the Issuer to net income tax in any jurisdiction outside its jurisdiction of incorporation.

"Synthetic Security Collateral Account": The trust account established pursuant to Section 10.3(e).

"Synthetic Security Counterparty": An entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor) to the extent that a Reference Obligor makes payments on a related Reference Obligation and meeting the Synthetic Security Counterparty Ratings Requirement.

"Synthetic Security Counterparty Account": The trust account established pursuant to Section 10.5.

"Synthetic Security Counterparty Ratings Requirement": With respect to the Synthetic Security Counterparty and in respect of a Synthetic Security, a requirement that is satisfied if, at the time the Issuer enters into such Synthetic Security Agreement, the related Synthetic Security Counterparty has a senior unsecured credit rating assigned by S&P for short-term debt of at least "A-1+" or a senior unsecured credit rating assigned by S&P for long-term debt of at least "AA-".

"Tax Advantaged Jurisdiction": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction with respect to which the Rating Condition with respect to each Rating Agency is satisfied.

"Tax Affected Security": Any asset received or otherwise acquired by the Issuer (including, without limitation, an Equity Security, Defaulted Collateral Obligation, ETB/897 Asset and Workout Asset) that will cause the Issuer to be deemed to be engaged in a trade or business in the United States for U.S. federal income tax purposes.

"Tax Event": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("New Withholding Tax Obligations") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("Increased Rate Withholding Tax Obligations") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period; or

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation.

"Temporary Regulation S Global Security": The meaning specified in Section 2.2(b).

"Transaction Reports": The meaning specified in Section 14.4(f).

"Transfer Agent": The person or persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"Treasury Regulations": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"Trust Officer": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"Trustee": As defined in the first sentence of this Indenture.

"UCC": The Uniform Commercial Code as in effect from time to time in the State of New York.

"Uncertificated Security": The meaning specified in Section 8-102(a)(18) of the UCC.

"Underlying Instrument": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"Undrawn Amount": At any time (i) with respect to any Class A-1A Note the excess, if any, of (x) the Commitment relating to such Class A-1A Note over (y) the Drawn Amount under such Class A-1A Note; *provided* that any funds deposited with the Trustee in the Class A-1A Funding Account as a result of the failure of a Holder of such Class A-1A Note to satisfy the Rating Criteria during the Draw Period pursuant to Section 2.12(c) and any subsequent Prepayments in respect of such Holder's Class A-1A Note placed pursuant to the Indenture in a separate subaccount of that reserve account relating to such Holder will for all purposes be part of the Undrawn Amount of such Class A-1A Note and such Holder will be entitled to receive the applicable Commitment Fee thereon, and (ii) with respect to any Class A-1B Note, the excess, if any, of (x) the applicable portion of the Fully Drawn Amount relating to such Class A-1B Note over (y) the Drawn Amount under such Class A-1B Note; provided that any funds deposited with the Trustee in the Class A-1B Funding Account as a result of the failure of a Holder of a Class A-1B Note to satisfy the Rating Criteria during the Delayed Drawdown Period pursuant to Section 2.13(c) will for all purposes be part of the Undrawn Amount of such Class A-1B Note and such Holder will be entitled to receive the applicable Delayed Drawdown Fee thereon.

"Unfunded Amount": At any time, with respect to any Delayed Drawdown Loan or Revolving Loan, the excess, if any, of (i) the amount of the commitment with respect to such obligation over (ii) the funded principal amount outstanding on such obligation.

"Unregistered Securities": The meaning specified in Section 5.17(c).

"Unscheduled Principal Payments": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"U.S. Person": A Beneficial Owner of a Note that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as United States persons.

"Valuation Report": The meaning specified in Section 10.6(b).

"Warehouse Agreement": The Asset Acquisition Agreement and Master Participation Agreement, dated as of August 1, 2005, among Citigroup Financial Products Inc., as the Warehouse Provider, the Issuer and the Portfolio Manager, as amended.

"Warehoused Loans": Loans acquired by the Issuer before the Closing Date pursuant to the Warehouse Agreement.

"Weighted Average Commitment Fee": As of any Measurement Date, an amount (rounded up to the next 0.001%) equal to the weighted average commitment fee on all Revolving Loans and Delayed Drawdown Loans determined by dividing (i) the aggregate of all scheduled amounts (other than interest) of commitment fees or facility fees payable on the Aggregate Unfunded Amount of all Revolving Loans and Delayed Drawdown Loans held by the Issuer as of such Measurement Date by (ii) the Aggregate Unfunded Amount of all Revolving Loans and Delayed Drawdown Loans held by the Issuer as of such Measurement Date; provided that if such quotient is less than the Minimum Weighted Average Commitment Fee for such Measurement Date, there shall be added to the amount set forth in clause (i) above an amount equal to the Spread Excess, if any, as of such Measurement Date (less any portion of the Spread Excess that has been added to the Weighted Average Fixed Rate Coupon as of such Measurement Date pursuant to clause (iv) of the definition of "Weighted Average Fixed Rate Coupon"), and the Weighted Average Commitment Fee as of such Measurement Date shall be the amount calculated after giving effect to such addition.

"Weighted Average Fixed Rate Coupon": As of any Measurement Date, the rate obtained by

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (which (x) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero and (y) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest), using only the effective after-tax interest rate determined by the Portfolio Manager on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"Weighted Average Fixed Rate Coupon Test": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

"Weighted Average Life": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"Weighted Average Life Test": A test that will be satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the number of years (including any fraction of a year) between such Measurement Date and the Payment Date in May 2015 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date.

"Weighted Average Moody's Rating Factor": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"Weighted Average Moody's Recovery Rate Test": A test that is satisfied as of any Measurement Date if the Moody's Weighted Average Recovery Rate is greater than or equal to 44.75%.

"Weighted Average Rating Factor Test": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"Weighted Average S&P Recovery Rate Test": A test that is satisfied as of any Measurement Date if the S&P Weighted Average Recovery Rate is greater than or equal to 51.5%.

"Weighted Average Spread": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (x) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero and (y) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR;

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

For purposes of calculating the Weighted Average Spread, the Principal Balance of each Revolving Loan or Delayed Drawdown Loan shall not include any of its Unfunded Amount.

"Weighted Average Spread Test": A test that is satisfied as of any Measurement Date if (i) the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread and (ii) the Weighted Average Commitment Fee as of the Measurement Date equals or exceeds the Minimum Weighted Average Commitment Fee.

"Workout Assets": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase and that does not qualify as a Collateral Obligation.

"Written-Down Obligation": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Portfolio Manager, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank pari passu with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other pari passu and senior Structured Finance Obligations (excluding defaulted collateral).

"Zero-Coupon Security": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. Assumptions as to Pledged Obligations; Construction Conventions.

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any assets included in the Collateral or the Class P Collateral,
- with respect to the sale of and reinvestment in Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on any assets shall be made on the basis of information as to the terms of each asset and on reports of payments received on the asset that are furnished by or on behalf of the issuer of the asset and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not reinvested in additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent reinvestment pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Portfolio Manager certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Reinvestment Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Reinvestment Overcollateralization

Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes (treating the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes as one Class for this purpose) ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Portfolio Manager by notice to the Trustee, during the Reinvestment Period any Eligible Investment purchased with Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Reinvestment Period, with Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until reinvested in an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

Section 1.3. Rules of Interpretation.

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.12 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding," "following," "before," "after," "next," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to Beneficial Owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

(k) Unless otherwise indicated, all references in this Indenture to (A) the Class C Notes shall include the Class Q-1 Note Component, and (B) the Class E Certificates shall include the Class Q-1 Class E Certificate Component, the Class P-1 Class E Certificate Component and the Class P-2 Class E Certificate Component.

ARTICLE 2

THE NOTES

Section 2.1. Forms Generally.

The Indenture Securities and the Trustee's or Authenticating Agent's certificate of authentication on them (the "Certificate of Authentication") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or

permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Indenture Securities, as applicable, as evidenced by their execution of the Indenture Securities.

Section 2.2. Forms of Indenture Securities and Certificate of Authentication.

(a) The Indenture Securities, including the Temporary Regulation S Global Securities, the Regulation S Global Securities, Rule 144A Global Notes, Certificated Class A-1A Notes, Certificated Class A-1B Notes, Certificated Class Q-1 Securities, Certificated Class P-1 Securities and Certificated Class P-2 Securities and the Certificate of Authentication shall be in the forms of the applicable portion of Exhibit A.

(b) Temporary Regulation S Global Securities and Regulation S Global Securities. The Notes (other than the Class A-1A Notes and the Class A-1B Notes), the Class Q-1 Securities and the Class P Securities initially sold to non-U.S. persons in offshore transactions in reliance on Regulation S shall each be initially represented by one or more temporary global securities in definitive, fully registered form without interest coupons substantially in the form of Exhibit A1-N, Exhibit A1-Q and Exhibit A1-P, as applicable, including legends (the "Temporary Regulation S Global Security"). On or after the first Business Day following the 40th day after the later of the Closing Date and the commencement of the offering of the Notes (the "Exchange Date"), interests in a Temporary Regulation S Global Security will be exchangeable for interests in one or more permanent global notes of the same Class in definitive, fully registered form without interest coupons substantially in the form of Exhibit A2-N, Exhibit A2-Q and Exhibit A2-P, as applicable, including legends (each a "Regulation S Global Security"), upon certification that the beneficial interests in such Temporary Regulation S Global Security are owned by persons that are not U.S. persons. The Temporary Regulation S Global Securities and Regulation S Global Securities shall be deposited on behalf of the subscribers for the Indenture Securities represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depositary for credit to Depositary participants that hold such positions on behalf of Euroclear and Clearstream, for further credit to the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depositary, as the case may be, as hereinafter provided. As used above and in subsection (c) below, "U.S. person" and "offshore transaction" have the meanings assigned to them in Regulation S.

(c) Rule 144A Global Notes. The Notes of each Class (other than the Class A-1A Notes and the Class A-1B Notes) initially sold to U.S. persons that are QIB/QPs shall each be issued initially in the form of one or more permanent global notes per Class in definitive, fully registered form without interest coupons substantially in the form of Exhibit A3, including legends (each, a "Rule 144A Global Note"), which shall be deposited on behalf of the subscribers for the Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depositary, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depositary, as the case may be, as hereinafter provided.

(d) (i) Class A–1A Notes and Class A-1B Notes shall be issued in the form of one or more Certificated Class A-1A Notes or Certificated Class A-1B Notes, as applicable, in definitive, fully registered form without interest coupons substantially in the form of Exhibit A4-A1A or Exhibit A4-A1B, as applicable, (each, a "Certificated Class A–1A Note" or "Certificated Class A–1B Note", as applicable,

and collectively, the "Certificated Class A-1 Notes"), which shall be registered in the name of the beneficial owner or a nominee thereof, duly executed by the Issuer and the Co-Issuer and authenticated by the Trustee as hereinafter provided.

(ii) Class Q–1 Securities initially sold to U.S. persons shall each be issued initially in the form of one or more Certificated Class Q-1 Securities in definitive, fully registered form without interest coupons substantially in the form of Exhibit A4-Q (each, a "Certificated Class Q–1 Security"), which shall be registered in the name of the beneficial owner or a nominee thereof, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

(iii) Class P–1 Securities and Class P-2 Securities initially sold to U.S. persons shall each be issued in the form of one or more Certificated Class P–1 Securities or Certificated Class P–2 Securities, as applicable, in definitive, fully registered form without interest coupons substantially in the form of Exhibit A4-P (each, a "Certificated Class P–1 Security" or "Certificated Class P–2 Security", as applicable, and collectively, the "Certificated Class P Securities"), which shall be registered in the name of the beneficial owner or a nominee thereof, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

(e) Book-Entry Provisions. This Section 2.2(e) shall apply only to Global Securities deposited with or on behalf of the Depositary. The provisions of the "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Temporary Regulation S Global Securities and Regulation S Global Securities insofar as interests in the Global Securities are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Trustee, as custodian for the Depositary and the Depositary may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of such Indenture Security for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Indenture Security.

(f) Notwithstanding anything to the contrary in paragraphs (b) and (c) above, if (i) the Depositary notifies the Co-Issuers that it is unwilling or unable to continue as depository for a Global Security or ceases to be a "Clearing Agency" registered under the Exchange Act and a successor depository is not appointed by the Issuer within 90 days of such notice, (ii) as a result of any amendment to or change in, the laws or regulations of the Cayman Islands or of any authority therein or thereof having power to tax or in the interpretation or administration of such laws or regulations which become effective on or after the Closing Date, the Issuer or the Paying Agent becomes aware that it is or will be required to make any deduction or withholding from any payment in respect of the Securities which would not be required if the Global Securities were in definitive form or (iii) an Event of Default under this Indenture has occurred and is continuing and has not been waived; the Trustee shall execute an agreement with the Issuers amending this Indenture pursuant to Section 8.1 for the purpose of terminating the book entry deposit system and substituting definitive Securities for the Global Securities. Such agreement shall provide for the form and terms of such definitive Securities and the place and manner in which a Securityholder may obtain possession of such definitive Securities; *provided*, that in no event may holders of beneficial interests in the Temporary Regulation S Global Securities receive definitive Securities pursuant to this provision prior to the Exchange Date and each such holder must certify to the Issuers and the Trustee that it is not a U.S. Person. Such agreement shall also provide the procedures for

registration of transfer or exchange of such definitive Securities, as well as such other provisions as the Issuer, the Co-Issuer and the Trustee may agree shall be necessary or appropriate to effect the substitution of definitive Securities for Global Securities and to modify the provisions of this Indenture to provide for the use of definitive Securities in lieu of a book-entry deposit system.

(g) Upon the occurrence of any of the events described in paragraph (f) above, the Trustee shall notify all Holders of the Global Securities and shall advise such Holders of the Global Securities of the procedure by which the Global Securities shall be exchanged for definitive Securities. Each beneficial owner of Global Securities shall be entitled, at no cost to it, to have registered in the name of the beneficial owner of Global Securities one or more definitive Securities representing the same aggregate principal amount of Securities of the relevant Class as its beneficial interest in the related Global Security. Upon the occurrence of any such event, (i) the Trustee at the expense of the Issuer shall obtain from the Depositary a listing of the Participants then holding Book-Entry Securities on the records of the Depositary and (ii) upon surrender by the Depositary to the Trustee of the Global Securities for each Class, the Trustee shall cancel such Global Securities and the Issuers shall execute and deliver to such Participants definitive Securities representing in the aggregate the identical Aggregate Outstanding Amount (or stated amount, as applicable) of beneficial interests in the Global Securities held by such Participants on the records of the Depositary, registered in such names as such Participants shall have provided to the Trustee; *provided, however*, that the Trustee shall not register any such definitive Security or deliver any such definitive Security to a Participant unless and until such Participant shall have provided to the Trustee a certification acceptable to the Trustee that such registration instructions were given, and delivery of such definitive Security will be made, in accordance with the directions of the beneficial owners of Securities represented by such Participant. Neither the Issuers nor the Trustee shall be liable for any delay in delivery of such registration instructions by any Participant and each of them may conclusively rely on, and shall be protected in relying on, (i) information contained in the Participant listing provided by the Depositary regarding the names of the Participants holding beneficial interests in the Global Securities and the Aggregate Outstanding Amount of Securities represented by the beneficial interests in the Global Securities held by each such Participant, and (ii) the foregoing registration instructions and certifications provided by each such Participant with respect to definitive Securities representing the same Aggregate Outstanding Amounts of definitive Securities as the beneficial interests in the Global Securities stated to be held by such Participant in such Participant listing. If definitive Securities are issued in replacement of Notes listed on the Irish Stock Exchange, the Issuer will publish in the Republic of Ireland thereafter information explaining the payment, transfer and exchange procedures for the definitive Securities. The Trustee shall recognize the registered holders of the definitive Securities as Holders of the Securities hereunder. The Registrar shall reflect on its records the issuance of definitive Securities in exchange for the Global Securities.

In the event that certificated Securities for any reason are not so issued by the Co-Issuers to such beneficial owners of interests in Global Securities, the Issuer expressly acknowledges that such beneficial owners shall be entitled to pursue any remedy that the Holders of a Global Security would be entitled to pursue in accordance with the Indenture (but only to the extent of such beneficial owner's interest in the Global Security) as if certificated Securities had been issued. Payments on such certificated Securities will be made by wire transfer in immediately available funds to a Dollar-denominated account maintained by the owner or, if a wire transfer cannot be effected, by a Dollar check delivered to the Holder.

Section 2.3. Authorized Amount; Denominations.

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$827,000,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7 or 8.5 of this Indenture.

The Securities shall be divided into the following Classes (including one class of Class Q-1 Combination Securities and two classes of Class P Securities), having the designations, original principal amounts and other characteristics as follows:

Class	A-1A	A-1B	A-1C	A-2	A-3	A-4	B	C
Original Principal Amount	U.S.$ 50,000,000 [1]	U.S.$ 50,000,000[2]	U.S.$ 446,000,000	U.S.$ 68,500,000	U.S.$ 68,500,000	U.S.$ 43,000,000	U.S.$ 49,000,000	U.S.$ 52,000,000[5]
Interest Rate	LIBOR + 0.29%[3]	LIBOR + 0.25%[4]	LIBOR + 0.25%	LIBOR +0.375%	LIBOR + 0.50%	LIBOR + 0.55%	LIBOR + 0.90%	LIBOR + 1.90%
Initial Rating (Moody's/ S&P)	Aaa/AAA	Aaa/AAA	Aaa/AAA	Aaa/AAA	Aa1/AAA	Aa2/AA	A2/A	Baa2/BBB

1 The original principal amount shown above in respect of the Class A–1A Notes is the Commitment for such Class on the Closing Date. Except as otherwise provided, for purposes of this Indenture, references to the principal of Class A-1A Notes shall mean the Drawn Amount thereof from time to time.

2 The original principal amount shown above in respect of the Class A–1B Notes is the Fully Drawn Amount for such Class. Except as otherwise provided, for purposes of this Indenture, references to the principal of Class A-1B Notes shall mean the Drawn Amount thereof from time to time.

3 The Class A-1A Notes also will be entitled to the Commitment Fee on the Aggregate Undrawn Amount of Class A-1A Notes.

4 The Class A-1B Notes also will be entitled to the Delayed Drawdown Fee on the Aggregate Undrawn Amount of Class A-1B Notes.

5 Includes U.S.$12,600,000 representing the Class Q-1 Note Component.

Class	Class E Certificates[1]	Q-1	P-1	P-2
Face Amount/Stated Amount	U.S.$94,000,000[2]	U.S.$ 20,000,000[3]	U.S.$ 20,000,000[4]	U.S.$ 5,000,000[5]
Interest Rate	N/A	[6]	N/A	N/A
Initial Rating (Moody's/S&P)	N/A	Baa2/N/A	Aaa/N/A	Aaa/N/A

1 The Issuer will also issue Class E Certificates pursuant to the Class E Certificate Documents. The Class E Certificates will be issued with a Face Amount of U.S.$1,000 per certificate. The Class E Certificates are not issued pursuant to or secured by the lien of this Indenture.

2 The aggregate Face Amount of the Class E Certificates includes (i) the U.S.$7,400,000 aggregate Face Amount of Class E Certificates represented by the Class Q-1 Class E Certificate Component, (ii) the U.S.$6,180,000 aggregate Face Amount of Class E Certificates represented by the Class P-1 Class E Certificate Component and (iii) the U.S.$1,500,000 aggregate Face Amount of Class E Certificates represented by the Class P-2 Class E Certificate Component.

3 The Class Q-1 Securities consist of the Class Q-1 Note Component representing U.S.$12,600,000 aggregate principal amount of Class C Notes and the Class Q-1 Class E Certificate Component representing an aggregate Face Amount of Class E Certificates of U.S.$7,400,000.

4 The Class P-1 Securities consist of the Class P-1 Class E Certificate Component representing 6,180 Class E Certificates and the Class P-1 U.S. Treasury Component representing U.S.$20,000,000 (face value) U.S. Treasury securities with zero coupon due November 15, 2013.

5 The Class P-2 Securities consist of the Class P-2 Class E Certificate Component representing 1,500 Class E Certificates and the Class P-2 U.S. Treasury Component representing U.S.$5,000,000 (face value) U.S. Treasury securities with zero coupon due November 15, 2013.

6 The Class Q-1 Note Component bears interest at the same rate as the Class C Notes represented by it and the Class Q-1 Class E Certificate Component bears the right to receive Interest Proceeds in the same manner as the Class E Certificates. Any amounts payable thereon shall be subject to the availability of funds for such payment with respect to the underlying Class Q-1 Components in accordance with the Priority of Payments, and the Class Q-1 Security shall not be entitled to any payments in addition to the payments required to be made on its underlying Class Q-1 Components.

The Notes will be issuable in minimum denominations of U.S.$500,000 principal amount, and integral multiples of U.S.$1,000 in excess of that amount. The Class Q-1 Securities shall be issuable in minimum denominations such that each Class Q-1 Component meets the minimum authorized denomination of the underlying Class and the proportion among the Class Q-1 Components is maintained (an "Authorized Class Q-1 Denomination"), which shall mean that the Authorized Class Q-1 Denomination shall be $1,400,000 in stated amount (consisting of $882,000 Aggregate Outstanding Amount of the Class Q-1 Note Component and $518,000 aggregate Face Amount of the Class Q-1 Class E Certificate Component) and integral multiples of U.S.$100,000 in excess thereof.

The Class P Securities shall be issuable in minimum denominations such that the Class P Class E Certificate Component meets the minimum authorized denomination of 500 Class E Certificates (and the Class P U.S. Treasury Component meets the minimum authorized denominations thereof) and the proportion among the relevant Class P Components is maintained (an "Authorized Class P-1 Denomination" or an "Authorized Class P-2 Denomination", as applicable), which shall mean that the authorized minimum denomination for the Class P-1 Securities shall be U.S.$2,000,000 in stated amount (in which the Class P-1 Class E Certificates Component consist of Class E Certificates with an aggregate Face Amount of U.S.$618,000) and integral multiples of U.S.$1,000,000 in excess thereof and the authorized minimum denomination for the Class P-2 Securities shall be U.S.$1,700,000 in stated amount

(in which the Class P-2 Class E Certificates Component consist of Class E Certificates with an aggregate Face Amount of U.S.$510,000) and integral multiples of U.S.$50,000 in excess thereof.

(b) The Issuer will also issue 94,000 Class E Certificates (with an aggregate Face Amount of U.S.$94,000,000 pursuant to the Class E Certificate Documents, simultaneously with the issuance of the Indenture Securities under this Indenture. The Class E Certificates are not issued pursuant to or secured by the lien of this Indenture. Any payments to be made by the Trustee hereunder with respect to the Class E Certificates will be released by the Trustee to the Class E Certificates Paying Agent in accordance with the Priority of Payments for deposit into the Class E Certificates Distribution Account for payment (subject to the laws of the Cayman Islands) to Holders of the Class E Certificates as dividends or redemption price, as applicable.

Section 2.4. Extension of Reinvestment Period and Stated Maturity.

(a) The Issuer, if directed by the Portfolio Manager, shall be entitled on each Extension Effective Date to extend the Stated Maturity to the applicable Extended Stated Maturity Date if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice to the Trustee of its election to extend the Stated Maturity no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Indenture Securities shall be automatically extended to the related Extended Stated Maturity Date (and the Scheduled Class E Certificate Redemption Date shall be automatically extended to the related Extended Scheduled Class E Certificate Redemption Date), the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date and the Reinvestment Period shall be automatically extended to the related Extended Reinvestment Period End Date, without any requirement for approval or consent of any Holders of Indenture Securities or Class E Certificates or amendment or supplement to this Indenture or the Class E Certificate Documents (the "Maturity Extension"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Indenture Securities or Class E Certificates wishing to sell such Indenture Securities or Class E Certificates to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Indenture Securities and Class E Certificates as to which an Extension Sale Notice has been duly given, "Extension Sale Securities"); provided that in the case of Holders of Class P Securities wishing to sell such Class P Securities to an Extension Qualifying Purchaser, such Class P Securities will be deemed exchanged for their respective Components, only the Class E Certificate represented by the related Class E Certificate Component shall constitute Extension Sale Securities and are to be purchased by an Extension Qualifying Purchaser for a price equal to the Extension Purchase Price, which will in case of such sale be distributed to the related selling Holders of Class P Securities, and such Holders will receive a distribution in kind of the related pro rata amount of the Class P U.S. Treasury Component. Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) The Maturity Extension shall be effective only if the following conditions (the "Extension Conditions") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Prices as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Class E Certificate Documents and the legends on such Notes or Class E Certificates and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) either (i) all Coverage Tests and the Selected Collateral Quality Tests are satisfied as of the related Extension Determination Date, the rating of each Class of Notes then rated by Moody's has not been downgraded, withdrawn or qualified from that in effect on the Closing Date (unless it subsequently has been reinstated to the rating assigned on the Closing Date) and the Overcollateralization Ratio Numerator is at least $900,000,000 or (ii) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's); and

(iv) the Issuer has not effected more than three prior Maturity Extensions.

The Issuer, the Trustee and, by its acceptance of the Indenture Securities or Class E Certificates, each Holder of Indenture Securities or Class E Certificates agrees that neither the Initial Purchaser nor the Placement Agent shall be responsible for causing the Extension Conditions to be satisfied or liable to any such person or Holder of Indenture Securities or Class E Certificates (whether or not such Holder gave an Extension Sale Notice with respect to its Notes or Class E Certificates) or to any other person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) No later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Stated Maturity (the "Extension Notice"), the Trustee shall mail the Extension Notice to all Holders of Indenture Securities and the Class E Certificates Paying Agent (for forwarding to the Holders of the Class E Certificates) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit J, and shall request the Rating Condition for the Maturity Extension from S&P, if applicable;

(ii) Any Holder of Indenture Securities or Class E Certificates may give irrevocable notice (an "Extension Sale Notice") within 30 days after the Trustee has mailed the Extension Notice (the "Extension Sale Notice Period") of its intention to sell its Indenture Securities or Class E Certificates to an Extension Qualifying Purchaser in the case of a Maturity Extension;

(iii) Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of Indenture Securities or Class E Certificates that has not given such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Indenture Securities or Class E Certificates to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iv) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or the Portfolio Manager on its behalf), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or the Portfolio Manager on its behalf) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Indenture Securities or Class E Certificates in compliance with all transfer restrictions in this Indenture (and in the case of the Class A-1A Notes, the Class A-1A Note Purchase Agreement and in the case of the Class A-1B Notes, the Class A-1B Note Purchase Agreement, as applicable) and the legends on such Indenture Securities or Class E Certificates and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date. For the avoidance of doubt, in the case of Class A-1A Notes that are Extension Sale Securities, the purchase thereof by the Extension Qualifying Purchaser shall include the related Commitment thereunder.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied as certified by the Issuer (or the Portfolio Manager on its behalf). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Portfolio Manager, at the expense of the Co-Issuers, shall mail a notice to all Holders of Indenture Securities, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), the Portfolio Manager, the Initial Purchaser, the Placement Agent, each Rating Agency (so long as any rated Notes are Outstanding), the Irish Listing and Paying Agent for forwarding to the Irish Stock Exchange (if and for so long as any Class of Securities is listed thereon) and the Administrator for forwarding to the Cayman Islands Stock Exchange (if and for so long as any Class of Securities is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer or the Portfolio Manager on its behalf shall make any required notifications thereof to the Depositary for any Indenture Securities or Class E Certificates subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Beneficial Owner of Notes (including in the form of the Class Q-1 Note Component) other than Extension Sale Securities shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of the Class E Certificates, Class P-1 Securities and Class P-2 Securities shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying Beneficial Owners who have provided the Trustee with an Extension Bonus Eligibility Certification on or before the 5th Business Day prior to the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Notes. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable

Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

Section 2.5. Execution, Authentication, Delivery, and Dating.

The Indenture Securities shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Indenture Securities may be manual or facsimile.

Indenture Securities bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Indenture Securities or did not hold their offices at the date of issuance of the Indenture Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer and the Co-Issuer may deliver Indenture Securities executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Indenture Securities as provided in this Indenture and not otherwise.

Each Indenture Security authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Indenture Securities that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Indenture Securities issued upon transfer, exchange, or replacement of other Indenture Securities shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount (or, in the case of the Class Q-1 Securities, original stated amount) of the Indenture Securities s so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Indenture Securities so transferred, exchanged, or replaced. If any Indenture Security is divided into more than one Indenture Security in accordance with this Article 2, the original principal amount of the Indenture Security shall be proportionately divided among the Indenture Securities delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Indenture Securities.

No Indenture Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Indenture Security a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Indenture Security shall be conclusive evidence, and the only evidence, that the Indenture Security has been duly authenticated and delivered under this Indenture.

Section 2.6. Registration, Registration of Transfer and Exchange.

(a) The Issuer shall cause a register (the "Indenture Register") to be kept in which the Issuer shall provide for the registration of Indenture Securities and the registration of transfers of Indenture Securities. The Trustee is hereby initially appointed "Indenture Registrar" for the purpose of registering Indenture Securities and transfers of the Indenture Securities as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify

the Portfolio Manager of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Holders of the Indenture Securities and the principal amounts and number of the Indenture Securities.

Upon surrender for registration of transfer of any Indenture Securities at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Indenture Securities of any authorized denomination and of a like original Aggregate Outstanding Amount (or, in the case of the Class Q-1 Securities, original stated amount).

At the option of its holder, Indenture Securities may be exchanged for Indenture Securities of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Indenture Securities to be exchanged at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2. Whenever any Indenture Security is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Indenture Securities that the Holder making the exchange is entitled to receive.

All Indenture Securities issued on any registration of transfer or exchange of Indenture Securities shall be the valid obligations of the Applicable Issuers evidencing the same obligations, and entitled to the same benefits under this Indenture, as the Indenture Securities surrendered for registration of transfer or exchange.

Every Indenture Security presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Indenture Securities, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Indenture Security may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the 1940 Act. None of the Co-Issuers, the Trustee, or any other person shall have any obligation to register the Indenture Securities under the Securities Act or any state securities laws.

(c) (i) Until the end of the Draw Period, transfers of beneficial interests in Class A–1A Notes will be permitted only to transferees that satisfy the Rating Criteria and (ii) until the end of the Delayed Drawdown Period, transfers of beneficial interests in Class A–1B Notes will be permitted only to transferees that satisfy the Rating Criteria. In addition to the requirements of this Section 2.6 (including 2.6(h)) and Section 2.5, all transfers of Class A-1A Notes shall be made in accordance with the Class A-1A Note Purchase Agreement and all transfers of Class A-1B Notes shall be made in accordance with the Class A-1B Note Purchase Agreement if then in effect.

(d) (i) No Note may be transferred to any Plan or any governmental, foreign or church plan subject to any federal, state, local or non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code, unless such Plan's purchase, holding and disposition of such Note will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or, in the case of a governmental, foreign or church plan, any federal, state, local or non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code, for which an exemption is not available, all of the conditions of which are satisfied;

(ii) No ERISA-Restricted Indenture Security may be transferred, and the Trustee shall not register any such proposed transfer, to a proposed transferee that has represented that it is a Plan.

(e) Neither the Trustee nor the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the 1940 Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee by a prospective transferee, the Trustee shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(f) For so long as any of the Indenture Securities are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (f), "U.S. person" has the meaning assigned to it in Regulation S.

(g) So long as a Global Security remains Outstanding and is held by or on behalf of the Depositary, transfers of the Global Security, in whole or in part, shall only be made in accordance with Sections 2.2(b) and (c) and this Section 2.6(g).

(i) Subject to clauses (ii), (iii), (iv) and (v) of this Section 2.6(g), transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to nominees of the Depositary.

(ii) <u>Rule 144A Global Note to Temporary Regulation S Global Security or Regulation S Global Security</u>. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depositary wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security, or to transfer its interest in such Rule 144A Global Note to a person who wishes to take delivery of it in the form of an interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security, such Holder may exchange or transfer such interest for an equivalent beneficial interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security (subject to the rules and procedures of the Depositary) if the Holder after the exchange or transfer is not a U.S. person.

In the case of the transfer of a Rule 144A Global Note, the Indenture Registrar shall instruct the Depositary to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Temporary Regulation S Global Security or Regulation S Global Security, as the case may be, by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged or transferred, but not less than the minimum denomination applicable to the Holder's Notes, and to credit or cause to be credited to the securities account of the person specified in such instructions a beneficial interest in the corresponding Temporary Regulation S

Global Security or Regulation S Global Security equal to the reduction in the principal amount of the Rule 144A Global Security upon receipt by the Indenture Registrar of:

(A) instructions given in accordance with the Depositary's procedures from an Agent Member directing the Indenture Registrar to credit or cause to be credited a beneficial interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security, but not less than the minimum denomination applicable to such Holder's Notes, in an amount equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred;

(B) a written order given in accordance with the Depositary's procedures containing information regarding the participant account of the Depositary and the Euroclear or Clearstream account to be credited with such increase; and

(C) a certificate in the form of Exhibit B1 attached hereto given by the Holder of such beneficial interest stating that the exchange or transfer of such interest has been made in compliance with the transfer restrictions applicable to the Global Securities, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S.

(iii) Temporary Regulation S Global Security or Regulation S Global Security to Rule 144A Global Note. If a Holder of a Note held as a beneficial interest in a Temporary Regulation S Global Security or Regulation S Global Security deposited with the Depositary, Euroclear or Clearstream, as applicable, wishes at any time to exchange its interest in such Temporary Regulation S Global Security or Regulation S Global Security for an interest in the corresponding Rule 144A Global Note or to transfer its interest in such Temporary Regulation S Global Security or Regulation S Global Security to a person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, such Holder may exchange or transfer, or cause the exchange or transfer of, such interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note (subject to the rules and procedures of Euroclear, Clearstream, or the Depositary, as the case may be) if the Holder after the exchange or transfer is a QIB/QP.

In the case of an exchange or transfer of a Temporary Regulation S Global Security or Regulation S Global Security, the Indenture Registrar shall instruct Euroclear, Clearstream, or the Depositary, as the case may be, to reduce, or cause to be reduced, the Temporary Regulation S Global Security or Regulation S Global Security by the aggregate principal amount of the beneficial interest in the Temporary Regulation S Global Security or Regulation S Global Security to be transferred or exchanged and Regulation S Global Security to be exchanged and concurrently with such reduction, the Indenture Registrar shall instruct the Depositary to credit or cause to be credited to the securities account of the person specified in such instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the amount of the Temporary Regulation S Global Security or Regulation S Global Security, in each case upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream and/or the Depositary, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in such Temporary Regulation S Global Security or Regulation S Global Security, but not less than the minimum denomination applicable to such Holder's Notes, to be exchanged or transferred, such instructions to contain information regarding the participant account with the Depositary to be credited with such increase; and

(B) a certificate in the form of Exhibit B2 attached hereto given by the Holder of such beneficial interest and stating that, in the case of a transfer, the person transferring such interest in such Temporary Regulation S Global Security or Regulation S Global Security reasonably believes that the person acquiring such interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and is also a Qualified Purchaser.

(iv) Temporary Regulation S Global Security to Regulation S Global Security. On or after the Exchange Date, interests in a Temporary Regulation S Global Security may be exchanged for interests in the corresponding Regulation S Global Security in the form of the Exhibit A2 hereto. Any such Regulation S Global Security shall be so issued and delivered in exchange for only that portion of the Temporary Regulation S Global Security in respect of which there shall have been presented to the Depositary by Euroclear or Clearstream a certification to the effect that it has received from or in respect of a person entitle to an interest (as shown by its records) therein a certification that the beneficial interests in such Temporary Regulation S Global Security are owned by persons who are not U.S. persons (as defined in Regulation S).

(v) Other Exchanges. If a Global Security is exchanged for the Notes in definitive registered form without interest coupons pursuant to Section 2.11 hereof, the Notes may be exchanged for one another only in accordance with such procedures as are substantially consistent with the provisions above (including certification requirements intended to insure that such transfers are made only to Holders who are Qualified Purchasers acquiring in compliance with Rule 144A or are to non-U.S. persons (as defined in Regulation S) who are non-U.S. residents (as determined for purposes of the Investment Company Act) acquiring in compliance with Regulation S and as may be from time to time adopted by the Co-Issuers and the Trustee.

(h) So long as any Certificated Class A-1A Notes or Certificated Class A-1B Notes remain Outstanding, transfers and exchanges of the Certificated Class A-1 Notes, in whole or in part, shall only be made in accordance with this Section 2.6(h) and the Class A-1A Note Purchase Agreement or Class A-1B Note Purchase Agreement, as applicable, if then in effect.

(i) Transfer of Certificated Class A-1Notes. If a Holder of a Certificated Class A-1 Note wishes at any time to transfer its interest in such Certificated Class A-1 Note, such Holder may transfer or cause the transfer of such interest for an equivalent interest in one or more such Certificated Class A-1 Notes as provided below. Upon receipt by the Issuer and the Trustee, as Indenture Registrar, of:

(A) such Holder's Certificated Class A-1 Note properly endorsed for assignment to the transferee, and

(B) a Transfer Certificate substantially in the form of Exhibit B3 (in the case of Certificated Class A-1A Notes) or Exhibit B4 (in the case of Certificated Class A-1B Notes), as applicable, given by the transferee of such beneficial interest,

the Trustee, as Indenture Registrar, shall cancel such Certificated Class A-1 Note in accordance with Section 2.10, record the transfer in the Indenture Register in accordance with Section 2.6(a) and shall instruct the Co-Issuers to execute the applicable Certificated Class A-1 Notes and the Trustee shall authenticate and deliver applicable Certificated Class A-1 Notes bearing the same designation as the Certificated Class A-1 Notes endorsed for transfer, registered in the names specified in the assignment

described in clause (A) above, in principal amounts designated by the transferee (the aggregate of such amounts being the same as the beneficial interest in the Certificated Class A-1 Note surrendered by the transferor), and in Authorized Denominations. Any purported transfer in violation of the foregoing requirements (including a purported transfer or request to transfer by delivery to the Trustee of any patently false certificate pursuant to clause (C) above) shall be null and void *ab initio*, and the Trustee shall not register any such purported transfer and shall not authenticate and deliver such Certificated Class A-1 Notes.

(ii) Exchange of Certificated Class A-1 Notes. If a holder of a Certificated Class A-1A Note or Certificated Class A-1B Notes wishes at any time to exchange such Certificated Class A-1 Note for one or more such Certificated Class A-1 Notes or Certificated Class A-1B Notes, as applicable of different principal amounts, such holder may exchange or cause the exchange of such interest for an equivalent beneficial interest in Certificated Class A-1A Notes or Certificated Class A-1B Notes, as applicable, bearing the same designation as the Certificated Class A-1A Note or Certificated Class A-1B Note, as applicable, endorsed for exchange as provided below. Upon receipt by the Trustee, as Indenture Registrar, of:

(A) such Holder's Certificated Class A-1A Note or Class A-1B Note, as applicable, properly endorsed for such exchange and

(B) written instructions from such Holder designating the number and principal amounts of the Certificated Class A-1A Notes or Certificated Class A-1B Notes, as applicable, to be issued (the aggregate principal amounts of such Certificated Class A-1A Notes or Class A-1B Notes, as applicable, being the same as the Certificated Class A-1A Note or Certificated Class A-1B Note, as applicable, surrendered for exchange),

the Trustee, as Indenture Registrar, shall cancel such Certificated Class A-1 Note in accordance with Section 2.10, record the exchange in the Indenture Register in accordance with Section 2.6(a) and shall instruct the Co-Issuers to execute the Certificated Class A-1 Notes and the Trustee shall authenticate and deliver one or more Certificated Class A-1 Notes of the same Class bearing the same designation as the Certificated Class A-1 Note endorsed for exchange, registered in the same names as the Certificated Class A-1 Note surrendered by such holder or such different names as are specified in the endorsement described in clause (A) above, in different principal amounts designated by such holder (the aggregate principal amounts being the same as the beneficial interest in the Certificated Class A-1 Notes surrendered by such holder), and in Authorized Denominations.

(i) If the Indenture Securities are issued upon the transfer, exchange, or replacement of Indenture Securities bearing the applicable legends in the applicable portion of Exhibit A, and if a request is made to remove the legend on the Indenture Securities, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Indenture Securities comply with the Securities Act, the 1940 Act, ERISA, and the Code (or applicable exceptions thereform). Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers, shall, after due execution by the Applicable Issuers, authenticate and deliver Indenture Securities that do not bear the applicable legend.

(j) Each initial purchaser and subsequent transferee who is purchasing an interest in a Rule 144A Global Note will be deemed to have represented and agreed as follows:

(i) It (a) is a Qualified Institutional Buyer and is acquiring the Notes in reliance on the exemption from Securities Act registration provided by Rule 144A thereunder, (b) is a Qualified Purchaser and (c) understands the Notes will bear the legend set forth in this Indenture and be represented by one or more Rule 144A Global Notes. In addition, it represents and warrants that it (i) was not formed for the purpose of investing in the Notes, (ii) has received the necessary consent from its beneficial owners if the purchaser is a private investment company formed before April 30, 1996, (iii) is not a broker-dealer that owns and invests on a discretionary basis less than U.S. $25,000,000 in securities of unaffiliated issuers, (iv) is not a partnership, common trust fund, special trust, pension, profit sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants, as applicable, may designate the particular investments to be made, (v) is acquiring its Notes in a transaction that may be effected without loss of any applicable Investment Company Act exemption, (vi) will provide notice to any subsequent transferee of the transfer restrictions applicable to such Notes under this Indenture or provided in the legend of such Notes, (vii) will hold and transfer its beneficial interest in any Note only in a principal amount of not less than the applicable minimum denomination and (viii) will provide the Issuer from time to time such information as it may reasonably request in order to ascertain compliance with this subclause (i).

(ii) The Notes are being purchased or transferred in accordance with the transfer restrictions set forth in this Indenture and pursuant to an exemption from Securities Act registration, and in accordance with applicable state securities laws or securities laws of any other relevant jurisdiction. It understands that the Notes have been offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Notes have not been and will not be registered under the Securities Act or the securities laws of any states, and, if in the future it decides to offer, resell, pledge or otherwise transfer the Notes, such Notes may be offered, resold, pledged or otherwise transferred only in accordance with an exemption from registration under such laws and pursuant to the provisions of this Indenture and the legend on such Notes. In particular, it understands that interests in the Notes may be transferred only to (a) a Qualified Purchaser that is a Qualified Institutional Buyer or (b) a person that is not a "U.S. person" as defined in Regulation S under the Securities Act. Purchasers and transferees who reside in certain states or jurisdictions may be subject to additional suitability standards and/or specific holding periods before the Notes may be resold or otherwise transferred. It acknowledges that no representation is made as to the availability of any exemption under the Securities Act or any state or other securities laws for resale of the Notes.

(iii) In connection with the purchase of the Notes: (a) it understands that none of the Issuer, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Collateral Administrator, the Revolving Note Agent, the Delayed Drawdown Agent or any of their respective affiliates is acting as a fiduciary or financial or investment adviser for such beneficial owner; (b) such beneficial owner is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Issuer, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Trustee, the Class E Certificates Paying Agent, the Collateral Administrator or any of their respective affiliates, agents and independent contractors in their capacities as such other than statements, if any, of such person in a current offering memorandum for the Notes; (c) such beneficial owner has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent it has deemed necessary and has made its own investment decisions based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuer, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Trustee, the Class E Certificates Paying Agent, the Collateral Administrator or any of their respective affiliates, agents and independent contractors in their capacities as such; (d) such beneficial owner's purchase of the Notes will comply with all applicable laws in any jurisdiction in which it resides or is located; (e)

such beneficial owner is acquiring the Notes as principal solely for its own account for investment and not with a view to the resale, distribution or other disposition thereof in violation of the Securities Act; (f) such beneficial owner has made investments prior to the date hereof and was not formed solely for the purpose of investing in the Notes; (g) such beneficial owner shall not hold any Notes for the benefit of any other person, it shall at all times be the sole beneficial owner thereof for purposes of the Investment Company Act and all other purposes and it shall not sell participation interests in the Notes or enter into any other arrangement pursuant to which any other person shall be entitled to a beneficial interest in the distributions on the Notes; (h) all Notes (together with any other securities of the Issuer) purchased and held directly or indirectly by such beneficial owner constitute in the aggregate an investment of no more than 40% of its assets or capital and (i) it is a sophisticated investor and is purchasing the Notes with a full understanding of all of the terms, conditions and risks thereof, and it is capable of assuming and willing to assume those risks.

(iv) On each day from the date on which it acquires its interest in the Notes through and including the date on which it disposes of its interest in such Notes, either (A) it is not, and is not acting on behalf of or using the asset of, a Plan or a governmental, foreign or church plan that is subject to any federal, state, local or non-U.S. law which is substantially similar to the provisions of Section 406 of ERISA or Section 4975 of the Code or (B) its purchase, holding and disposition of such Notes (or interest therein) will not constitute or result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or, in the case of a governmental, foreign or church plan, a violation of any substantially similar federal, state, local or other law, for which an exemption is not available, all of the conditions of which are satisfied.

(v) It understands that this Indenture permits the Issuer to demand that any holder of a beneficial interest in a Rule 144A Global Note who is determined not to be both a Qualified Institutional Buyer and a Qualified Purchaser sell the Notes (a) to a person who is both a Qualified Institutional Buyer and a Qualified Purchaser in a transaction meeting the requirements of Rule 144A or (b) to a Person who will take delivery of the holder's interest in the Rule 144A Global Note in the form of an interest in a Temporary Regulation S Global Note or Regulation S Global Note, as applicable, and who is not a U.S. person (as defined in Regulation S) in a transaction meeting the requirements of Regulation S and, if the holder does not comply with such demand within 30 days thereof, the Issuer may cause such Holder of the beneficial interest to sell such holder's interest in the Note on such terms as the Issuer may choose.

(vi) It acknowledges that it is its intent and that it understands it is the intent of the Issuer that, for purposes of U.S. federal income, state and local income and franchise tax and any other income taxes, the Issuer will be treated as a corporation, the Notes will be treated as indebtedness of the Issuer, the Class E Certificates (in the absence of an administrative determination or judicial ruling to the contrary) will be treated as equity in the Issuer and the Class Q-1 Securities and Class P Securities will be treated as a direct ownership interest in the corresponding components of such Security; it agrees to such treatment and agrees to take no action inconsistent with such treatment.

(vii) It is not purchasing the Securities in order to reduce any United States federal income tax liability or pursuant to a tax avoidance plan. In the case of a purchaser that is a bank (as defined in Section 881(c)(3)(a) of the Code) or an affiliate of such a bank, the purchaser (a) is acquiring the Notes as a capital markets investment and will not for any purpose treat the assets of the Issuer as loans acquired in its banking business, and (b) has not proposed or identified, and will not propose or identify, any security or loan for inclusion in the Collateral.

(viii) In the case of any purchaser that is not a United States person (as defined in Section 7701(a)(30) of the Code), it is not a bank (as defined in Section 881(c)(3)(a) of the Code) or an affiliate of such a bank, unless the purchaser is a person that is eligible for benefits under an income tax treaty with the United States that eliminates United States federal income taxation of United States source interest not attributable to a permanent establishment in the United States.

(ix) It is aware that, except as otherwise provided in this Indenture, the Notes being sold to it will be represented by one or more Global Notes, and that beneficial interests therein may be held only through the Depositary.

(x) It acknowledges that no governmental agency has passed upon the Notes or made any finding or determination as to the fairness of an investment in the Notes.

(xi) It acknowledges that certain persons or organizations will perform services on behalf of the Issuer and will receive fees and/or compensation for performing such services as described in the Offering Memorandum and this Indenture.

(xii) It acknowledges that the Notes do not represent deposits with or other liabilities or obligations of, and are not guaranteed or endorsed by, the Placement Agent, the Initial Purchaser, the Portfolio Manager, the Trustee, the Class E Certificates Paying Agent, the Collateral Administrator or any of their respective affiliates or any entity related to any of them or any other Holder of Notes. It acknowledges that none of such persons will, in any way, be responsible for or stand behind the value or the performance of the Notes or the assets held by the Issuer. It acknowledges that purchase of Notes involves investment risks including possible delay in payment of distributions and loss of income and principal invested.

(xiii) It understands that the maturity of the Notes is subject to up to four extensions of four years each (to a latest possible date of November 1, 2033) without consent of any beneficial owners of Securities if certain conditions are satisfied.

(xiv) It understands that in the case of any amendment to this Indenture that requires consent of one or more holders of Notes, this Indenture permits the Amendment Buy-Out Purchaser to purchase at the Amendment Buy-Out Purchase Price, the beneficial interest in the Notes from any holder thereof that either (i) has declared in writing that it will not consent to such amendment or (ii) had not consented to such amendment by the last day on which consent could be given in accordance with the request therefor, and such holder will be required to sell its beneficial interest in the Notes to the Amendment Buy-Out Purchaser at the applicable Amendment Buy-Out Purchase Price.

(xv) It understands that the Issuer, the Trustee, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Collateral Administrator and their respective counsel will rely upon the accuracy and truth of the foregoing representations, and it hereby consents to such reliance.

(k) Each initial purchaser and subsequent transferee who is purchasing an interest in a Temporary Regulation S Global Note or a Regulation S Global Note will be deemed to have made the representations set forth in Section 2.6(j)(ii), (iii), (iv), (vi), (vii), (viii), (x), (xi), (xii), (xiii) and (xiv), and in addition to have further represented and agreed as follows:

(i) It is aware that the sale of Notes to it is being made in reliance on the exemption from registration provided by Regulation S and understands that the Notes offered in reliance on

Regulation S will bear the legend set forth in the applicable Note. It and each beneficial owner of its Notes is not, and will not be, a U.S. person as defined in Regulation S under the Securities Act, and its purchase of the Notes will comply with all applicable laws in any jurisdiction in which it resides or is located. In addition, it represents and warrants that it will (i) provide notice to any subsequent transferee of the transfer restrictions provided in such legend and in this Indenture, (ii) hold and transfer its beneficial interest in any Note only in a principal amount of not less than the applicable minimum denomination and (iii) provide the Issuer from time to time such information as it may reasonably request in order to ascertain compliance with this subclause (i).

(ii) It understands that this Indenture permits the Issuer to demand that any holder of a beneficial interest in a Temporary Regulation S Global Note or Regulation S Global Note who is determined not to have acquired such beneficial interest in compliance with the requirements of Regulation S or who is a U.S. person (as defined in Regulation S) sell such beneficial interest (a) to a Person who is not a U.S. person (as defined in Regulation S) in a transaction meeting the requirements of Regulation S or (b) to a Person who will take delivery of the holder's beneficial interest in the Temporary Regulation S Global Notes or Regulation S Global Notes in the form of an interest in a Rule 144A Global Note, who is both a Qualified Institutional Buyer and a Qualified Purchaser in a transaction meeting the requirements of Rule 144A under the Securities Act and, if the holder does not comply with such demand within 30 days thereof, the Issuer may cause the holder to sell its beneficial interest on such terms as the Issuer may choose.

(iii) Such beneficial owner is aware that, except as otherwise provided in this Indenture, the Notes being sold to it will be represented (a) initially, by one or more Temporary Regulation S Global Notes and (b) after the Exchange Date, by one or more Regulation S Global Notes, and that beneficial interests therein may be held only through Euroclear or Clearstream.

(iv) A holder of a beneficial interest in a Temporary Regulation S Global Note must provide Euroclear or Clearstream or the participant organization through which it holds such interest, as applicable, with a certificate certifying that the beneficial owner of the interest in the Temporary Regulation S Global Note is a non-U.S. person (as defined in Regulation S) and Euroclear or Clearstream, as applicable, must provide to the Trustee a certificate to such effect, prior to (a) the payment of interest or principal with respect to such holder's beneficial interest in the Temporary Regulation S Global Note and (b) any exchange of such beneficial interest for a beneficial interest in a Regulation S Global Note, and no payment will be made to the holder of any beneficial interest in a Temporary Regulation S Global Note unless such holder has provided Euroclear or Clearstream or such participant organization through which it holds such interest with such certificate.

(v) It understands that any resale or other transfer of beneficial interests in a Temporary Regulation S Global Note or Regulation S Global Note to U.S. persons (as defined in Regulation S) shall not be permitted.

(vi) It understands that the Issuer, the Trustee, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Collateral Administrator and their respective counsel will rely upon the accuracy and truth of the foregoing representations, and it hereby consents to such reliance.

(l) Each initial purchaser and subsequent transferee who is purchasing an interest in a Class Q-1 Security represented by a Temporary Regulation S Global Security or a Regulation S Global Security will be deemed to have represented and agreed as follows:

(i) It is aware that the sale of Class Q-1 Securities to it is being made in reliance on the exemption from registration provided by Regulation S and understands that the Class Q-1 Securities offered in reliance on Regulation S will bear the legend set forth in the applicable Class Q-1 Security. It and each beneficial owner of its Class Q-1 Securities is not, and will not be, a U.S. person as defined in Regulation S under the Securities Act, and its purchase of the Class Q-1 Securities will comply with all applicable laws in any jurisdiction in which it resides or is located. In addition, it represents and warrants that it will (i) provide notice to any subsequent transferee of the transfer restrictions provided in such legend and in the Indenture, (ii) hold and transfer its beneficial interest in any Class Q-1 Securities only in not less than the applicable minimum denomination; and (iii) provide the Issuer from time to time such information as it may reasonably request in order to ascertain compliance with this paragraph (i).

(ii) The Class Q-1 Securities are being purchased or transferred in accordance with the transfer restrictions set forth in this Indenture and pursuant to an exemption from Securities Act registration, and in accordance with applicable state securities laws or securities laws of any other relevant jurisdiction. It understands that the Class Q-1 Securities have been offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Class Q-1 Securities have not been and will not be registered under the Securities Act or the securities laws of any states, and, if in the future it decides to offer, resell, pledge or otherwise transfer the Class Q-1 Securities, such Class Q-1 Securities may be offered, resold, pledged or otherwise transferred only in accordance with an exemption from registration under such laws and pursuant to the provisions of this Indenture and the legend on such Class Q-1 Securities. In particular, it understands that the Class Q-1 Securities may be transferred only (a) in the form of a Certificated Class Q-1 Security to a Qualified Purchaser that is also a Qualified Institutional Buyer or (b) in the form of an interest in a Temporary Regulation S Global Security or Regulation S Global Security to a person that is not a "U.S. person" as defined in Regulation S under the Securities Act. Purchasers and transferees who reside in certain states or jurisdictions may be subject to additional suitability standards and/or specific holding periods before the Class Q-1 Securities may be resold or otherwise transferred. It acknowledges that no representation is made as to the availability of any exemption under the Securities Act or any state or other securities laws for resale of the Class Q-1 Securities.

(iii) In connection with the purchase of the Class Q-1 Securities: (a) it understands that none of the Issuer, the Co-Issuer, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Class E Certificate Paying Agent, the Collateral Administrator, the Revolving Note Agent, the Delayed Drawdown Note Agent and or any of their respective Affiliates is acting as a fiduciary or financial or investment adviser for it; (b) it is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (in each case whether written or oral) of the Co-Issuers, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Trustee, the Class E Certificate Paying Agent, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator or any of their respective Affiliates, agents and independent contractors in their capacities as such other than statements, if any, of such person in a current offering memorandum for the Class Q-1 Securities; (c) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent it has deemed necessary and has made its own investment decisions based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuer, the Initial Purchaser, the Placement Agent, the Portfolio Manager, the Trustee, the Class E Certificates Paying Agent, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator or any of their respective Affiliates, agents and independent contractors in their capacities as such; (d) its purchase of the Class Q-1 Securities will comply with all applicable laws in any jurisdiction in which it resides or is located; (e) it is acquiring the Class Q-1 Securities

as principal solely for its own account for investment and not with a view to the resale, distribution or other disposition thereof in violation of the Securities Act; (f) it has made investments prior to the date hereof and was not formed solely for the purpose of investing in the Class Q-1 Securities; (g) it will not hold any Class Q-1 Securities for the benefit of any other person, it will at all times be the sole beneficial owner thereof for purposes of the Investment Company Act and all other purposes and it will not sell participation interests in the Class Q-1 Securities or enter into any other arrangement pursuant to which any other person shall be entitled to a beneficial interest in the dividends or distributions on the Class Q-1 Securities; (h) all Class Q-1 Securities (together with any other securities of the Co-Issuers) purchased and held directly or indirectly by it constitute in the aggregate an investment of no more than 40% of its assets or capital; and (i) it is a sophisticated investor and is purchasing the Class Q-1 Securities with a full understanding of all of the terms, conditions and risks thereof, and it is capable of assuming and willing to assume those risks.

(iv) On each day from the date on which it acquires its interest in the Class Q-1 Securities through and including the date on which it disposes of its interest in such Class Q-1 Securities, (a) it is not, and is not acting on behalf of or using the assets of, a Plan; (b) if it is a governmental plan (as defined in Section 3(32) of ERISA), church plan (as defined in Section 3(33) of ERISA) or a non-US plan (as described in Section 4(b)(4) of ERISA), its purchase, holding and subsequent transfer of the Class Q-1 Securities will not result in a violation of any applicable laws, rules, regulations, policies and guidelines to which it and its investments are subject; and (c) it and any person causing it to acquire any Class Q-1 Securities agrees to indemnify and hold harmless the Issuer, Co-Issuer, Portfolio Manager, Class E Certificates Paying Agent, Trustee, Collateral Administrator, the Revolving Note Agent, the Delayed Drawdown Note Agent, Placement Agent and Initial Purchaser and their respective Affiliates from any cost, damage or loss, liability, expense, claim, proceeding or excise tax incurred by them as a result of any of the foregoing representations being or becoming untrue. It understands that the Issuer may require any holder of the Class Q-1 Securities that has made a false representation with respect to the foregoing matters to sell the Class Q-1 Securities and, if such holder does not comply with such demand within 30 days thereof, the Issuer may sell such holder's interest in the Class Q-1 Securities. It understands that any transfer effected in connection with such a representation that was false will be of no force and effect, will be void *ab initio*, and will not operate to transfer any rights to the transferee, notwithstanding any instructions to the contrary to the Issuer, the Class E Certificates Paying Agent or any intermediary.

(v) It understands that this Indenture permits the Issuer to demand that any holder of a beneficial interest in Class Q-1 Securities in the form of a Temporary Regulation S Global Security or Regulation S Global Security who is determined not to have acquired such beneficial interest in compliance with the requirements of Regulation S or who is a U.S. person (as defined in Regulation S) sell such beneficial interest (a) to a Person who is not a U.S. person (as defined in Regulation S) in a transaction meeting the requirements of Regulation S or (b) to a Person who will take delivery of the holder's interest in the Temporary Regulation S Global Securities or Regulation S Global Securities in the form of a Certificated Class Q-1 Security, who is both (i) a Qualified Institutional Buyer and (ii) a Qualified Purchaser, in a transaction meeting the requirements of Rule 144A of the Securities Act and, if the holder does not comply with such demand within 30 days thereof, the Issuer may cause the holder to sell its beneficial interest on such terms as the Issuer may choose.

(vi) It agrees to treat the Class Q-1 Security as a direct ownership interest in the different Classes of Securities corresponding to the components of the Class Q-1 Security. It acknowledges that it is its intent and that it understands it is the intent of the Issuer that, for purposes of U.S. federal income tax, state and local income and franchise tax and any other income

taxes, the Issuer will be treated as a corporation, the Notes will be treated as indebtedness of the Issuer and the Class E Certificates (including the Class Q-1 Class E Certificate Component) (in the absence of an administrative determination or judicial ruling to the contrary) will be treated as equity in the Issuer; it agrees to such treatment and agrees to take no action inconsistent with such treatment.

(vii) It acknowledges that the Issuer is not authorized to engage in activities that could cause it to constitute a finance or lending business for federal income tax purposes and agrees that it will report its investment in the Class Q-1 Securities in a manner consistent with such limitation, and in particular will not treat the Issuer as an "eligible controlled foreign corporation" for purposes of Section 954(h) of the Code or as deriving income described in Section 1297(b)(2) of the Code.

(viii) It is not purchasing the Class Q-1 Securities in order to reduce any United States federal income tax liability or pursuant to a tax avoidance plan. In the case of a purchaser that is a bank (as defined in Section 881(c)(3)(A) of the Code) or an affiliate of such a bank, the purchaser (a) is acquiring the Class Q-1 Securities as a capital markets investment and will not for any purpose treat the assets of the Issuer as loans acquired in its banking business and (b) has not proposed or identified, and will not propose or identify, any security or loan for inclusion in the Collateral.

(ix) In the case of any purchaser that is not a United States person (as defined in Section 7701(a)(30) of the Code), the purchaser is not a bank (as defined in Section 881(c)(3)(A) of the Code) or an affiliate of such a bank, unless the purchaser is a person that is eligible for benefits under an income tax treaty with the United States that eliminates United States federal income taxation of United States source interest not attributable to a permanent establishment in the United States.

(x) Such beneficial owner is aware that, except as otherwise provided in this Indenture, the Class Q-1 Securities being sold to it will be represented (a) initially, by one or more Temporary Regulation S Global Securities and (b) after the Exchange Date, by one or more Regulation S Global Securities, and that beneficial interests therein may be held only through Euroclear or Clearstream.

(xi) A holder of a beneficial interest in a Temporary Regulation S Global Security must provide Euroclear or Clearstream or the participant organization through which it holds such interest, as applicable, with a certificate certifying that the beneficial owner of the interest in the Temporary Regulation S Global Security is a non-U.S. person, and Euroclear or Clearstream, as applicable, must provide to the Trustee a certificate to such effect, prior to (a) the payment of interest or principal or other amounts with respect to such holder's beneficial interest in the Temporary Regulation S Global Security and (b) any exchange of such beneficial interest for a beneficial interest in a Regulation S Global Security and no payment will be made to the holder of any beneficial interest in a Temporary Regulation S Global Security unless such holder has provided Euroclear or Clearstream or such participant organization through which it holds such interest with such certificate.

(xii) It understands that any resale or other transfer of beneficial interests in a Temporary Regulation S Global Security or Regulation S Global Security to U.S. persons shall not be permitted.

(xiii) It acknowledges that no governmental agency has passed upon the Class Q-1 Securities or made any finding or determination as to the fairness of an investment in the Class Q-1 Securities.

(xiv) It acknowledges that certain persons or organizations will perform services on behalf of the Co-Issuers and will receive fees and/or compensation for performing such services as described in the Offering Memorandum and this Indenture and Class E Certificate Documents.

(xv) It acknowledges that the Class Q-1 Securities do not represent deposits with or other liabilities or obligations of, and are not guaranteed or endorsed by, the Placement Agent, the Initial Purchaser, the Portfolio Manager, the Trustee, the Class E Certificates Paying Agent, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator or any of their respective Affiliates or any entity related to any of them or any other holder of Class Q-1 Securities. It acknowledges that none of such persons will, in any way, be responsible for or stand behind the value or the performance of the Class Q-1 Securities. It acknowledges that purchase of Class Q-1 Securities involves investment risks including possible delay in payment of distributions and loss of income and principal invested.

(xvi) It understands that the Stated Maturity of the Class Q-1 Securities is subject to up to four extensions of four years each (to a latest possible date of November 1, 2033) without consent of any beneficial owners of Securities if certain conditions are satisfied.

(xvii) It understands that in the case of any amendment to this Indenture that requires consent of one or more holders of Class Q-1 Securities (or holders of any Class of Securities that constitutes a Class Q-1 Component thereof), this Indenture and Class E Certificate Documents permit the Amendment Buy-Out Purchaser to purchase at the Amendment Buy-Out Purchase Price, the Class Q-1 Securities (or the affected Component thereof) from any holder thereof that either (i) has declared in writing that it will not consent to such amendment or (ii) had not consented to such amendment by the last day on which consent could be given in accordance with the request therefor, and such holder will be required to sell its Class Q-1 Securities or the affected Component thereof (at the holder's option) to the Amendment Buy-Out Purchaser at the applicable Amendment Buy-Out Purchase Price. In addition, in the case of any vote by holders of Class E Certificates to remove the Portfolio Manager without cause, the Class E Certificate Documents permit the Removal Buy-Out Purchaser to purchase at the Buy-Out Amount, the Class E Certificates represented by the Class Q-1 Class E Certificate Component from any holder that voted in favor of such removal, and in such case such holder's Class Q-1 Securities will be deemed exchanged into their Components and the resulting Class E Certificates sold to the Removal Buy-Out Purchaser at the applicable Buy-Out Amount.

(xviii) It understands that the Co-Issuers, the Trustee, the Class E Certificates Paying Agent, the Initial Purchaser, the Placement Agent, the Portfolio Manager, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator and their respective counsel will rely upon the accuracy and truth of the foregoing representations, and it hereby consents to such reliance.

(m) Each initial purchaser and subsequent transferee who is purchasing an interest in a Class P Security represented by a Temporary Regulation S Global Security or a Regulation S Global Security will be deemed to have represented and agreed as follows:

(i) It is aware that the sale of Class P Securities to it is being made in reliance on the exemption from registration provided by Regulation S and understands that the Class P Securities

offered in reliance on Regulation S will bear the legend set forth in the applicable Class P Security. It and each beneficial owner of its Class P Securities is not, and will not be, a U.S. person as defined in Regulation S under the Securities Act, and its purchase of the Class P Securities will comply with all applicable laws in any jurisdiction in which it resides or is located. In addition, it represents and warrants that it will (i) provide notice to any subsequent transferee of the transfer restrictions provided in such legend and in this Indenture, (ii) hold and transfer its beneficial interest in any Class P Securities only in not less than the applicable minimum denomination; and (iii) provide the Issuer from time to time such information as it may reasonably request in order to ascertain compliance with this paragraph (i).

(ii) The Class P Securities are being purchased or transferred in accordance with the transfer restrictions set forth in this Indenture and pursuant to an exemption from Securities Act registration, and in accordance with applicable state securities laws or securities laws of any other relevant jurisdiction. It understands that the Class P Securities have been offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Class P Securities have not been and will not be registered under the Securities Act or the securities laws of any states, and, if in the future it decides to offer, resell, pledge or otherwise transfer the Class P Securities, such Class P Securities may be offered, resold, pledged or otherwise transferred only in accordance with an exemption from registration under such laws and pursuant to the provisions of this Indenture and the legend on such Class P Securities. In particular, it understands that the Class P Securities may be transferred only (a) in the form of a Certificated Class P Certificate to a Qualified Purchaser that is a Qualified Institutional Buyer or (b) in the form of an interest in a Temporary Regulation S Global Security or Regulation S Global Security to a person that is not a "U.S. person" as defined in Regulation S under the Securities Act. Purchasers and transferees who reside in certain states or jurisdictions may be subject to additional suitability standards and/or specific holding periods before the Class P Securities may be resold or otherwise transferred. It acknowledges that no representation is made as to the availability of any exemption under the Securities Act or any state or other securities laws for resale of the Class P Securities.

(iii) In connection with the purchase of the Class P Securities: (a) it understands that none of the Issuer, the Co-Issuer, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Class E Certificate Paying Agent, the Collateral Administrator, the Revolving Note Agent, the Delayed Drawdown Note Agent or any of their respective Affiliates is acting as a fiduciary or financial or investment adviser for it; (b) it is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (in each case whether written or oral) of the Co-Issuers, the Portfolio Manager, the Initial Purchaser, the Placement Agent, the Trustee, the Class E Certificates Paying Agent, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator or any of their respective Affiliates, agents and independent contractors in their capacities as such other than statements, if any, of such person in a current offering memorandum for the Class P Securities; (c) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent it has deemed necessary and has made its own investment decisions based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuer, the Initial Purchaser, the Placement Agent, the Portfolio Manager, the Trustee, the Class E Certificates Paying Agent, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator or any of their respective Affiliates, agents and independent contractors in their capacities as such; (d) its purchase of the Class P Securities will comply with all applicable laws in any jurisdiction in which it resides or is located; (e) it is acquiring the Class P Securities as principal solely for its own account for investment and not with a view to the resale, distribution or other disposition thereof in violation of the Securities Act; (f) it has made investments prior to the date hereof and was not formed solely for the purpose of investing in the Class P Securities; (g) it

will not hold any Class P Securities for the benefit of any other person, it will at all times be the sole beneficial owner thereof for purposes of the Investment Company Act and all other purposes and it will not sell participation interests in the Class P Securities or enter into any other arrangement pursuant to which any other person shall be entitled to a beneficial interest in the dividends or distributions on the Class P Securities; (h) all Class P Securities (together with any other securities of the Co-Issuers) purchased and held directly or indirectly by it constitute in the aggregate an investment of no more than 40% of its assets or capital; and (i) it is a sophisticated investor and is purchasing the Class P Securities with a full understanding of all of the terms, conditions and risks thereof, and it is capable of assuming and willing to assume those risks.

(iv) On each day from the date on which it acquires its interest in the Class P Securities through and including the date on which it disposes of its interest in such Class P Securities, (a) it is not, and is not acting on behalf of or using the assets of, a Plan; (b) if it is a governmental plan (as defined in Section 3(32) of ERISA), church plan (as defined in Section 3(33) of ERISA) or a non-US plan (as described in Section 4(b)(4) of ERISA), its purchase, holding and subsequent transfer of the Class P Securities will not result in a violation of any applicable laws, rules, regulations, policies and guidelines to which it and its investments are subject; and (c) it and any person causing it to acquire any Class P Securities agrees to indemnify and hold harmless the Issuer, Co-Issuer, Portfolio Manager, Class E Certificates Paying Agent, Trustee, Collateral Administrator, the Revolving Note Agent, the Delayed Drawdown Note Agent, Placement Agent and Initial Purchaser and their respective Affiliates from any cost, damage or loss, liability, expense, claim, proceeding or excise tax incurred by them as a result of any of the foregoing representations being or becoming untrue. It understands that the representations made by it pursuant to this paragraph (iii) shall be deemed made on each day from the date made through and including the date on which it disposes of its interests in the Class P Securities. It understands that the Issuer may require any holder of the Class P Securities that has made a false representation with respect to the foregoing matters to sell the Class P Securities and, if such holder does not comply with such demand within 30 days thereof, the Issuer may sell such holder's interest in the Class P Securities. It understands that any transfer effected in connection with such a representation that was false will be of no force and effect, will be void *ab initio*, and will not operate to transfer any rights to the transferee, notwithstanding any instructions to the contrary to the Issuer, the Class E Certificates Paying Agent or any intermediary.

(v) It understands that this Indenture permits the Issuer to demand that any holder of a beneficial interest in Class P Securities in the form of a Temporary Regulation S Global Security or Regulation S Global Security who is determined not to have acquired such beneficial interest in compliance with the requirements of Regulation S or who is a U.S. person (as defined in Regulation S) sell such beneficial interest (a) to a Person who is not a U.S. person (as defined in Regulation S) in a transaction meeting the requirements of Regulation S or (b) to a Person who will take delivery of the holder's interest in the Temporary Regulation S Global Securities or Regulation S Global Securities in the form of a Certificated Class P Certificate, who is both (i) a Qualified Institutional Buyer and (ii) a Qualified Purchaser, in a transaction meeting the requirements of Rule 144A of the Securities Act, and, if the holder does not comply with such demand within 30 days thereof, the Issuer may cause the holder to sell its beneficial interest on such terms as the Issuer may choose.

(vi) It agrees to treat the Class P Security as a direct ownership interest in the corresponding components of the Class P Security. It acknowledges that it is its intent and that it understands it is the intent of the Issuer that, for purposes of U.S. federal income tax, state and local income and franchise tax and any other income taxes, the Issuer will be treated as a corporation, the Notes will be treated as indebtedness of the Issuer and the Class E Certificates (in the absence of an

administrative determination or judicial ruling to the contrary) will be treated as equity in the Issuer; it agrees to such treatment and agrees to take no action inconsistent with such treatment.

(vii) It acknowledges that the Issuer is not authorized to engage in activities that could cause it to constitute a finance or lending business for federal income tax purposes and agrees that it will report its investment in the Class P Securities in a manner consistent with such limitation, and in particular will not treat the Issuer as an "eligible controlled foreign corporation" for purposes of Section 954(h) of the Code or as deriving income described in Section 1297(b)(2) of the Code.

(viii) It is not purchasing the Class P Securities in order to reduce any United States federal income tax liability or pursuant to a tax avoidance plan. In the case of a purchaser that is a bank (as defined in Section 881(c)(3)(A) of the Code) or an affiliate of such a bank, the purchaser (a) is acquiring the Class P Securities as a capital markets investment and will not for any purpose treat the assets of the Issuer as loans acquired in its banking business and (b) has not proposed or identified, and will not propose or identify, any security or loan for inclusion in the Collateral.

(ix) In the case of any purchaser that is not a United States person (as defined in Section 7701(a)(30) of the Code), the purchaser is not a bank (as defined in Section 881(c)(3)(A) of the Code) or an affiliate of such a bank, unless the purchaser is a person that is eligible for benefits under an income tax treaty with the United States that eliminates United States federal income taxation of United States source interest not attributable to a permanent establishment in the United States.

(x) Such beneficial owner is aware that, except as otherwise provided in this Indenture, the Class P Securities being sold to it will be represented (a) initially, by one or more Temporary Regulation S Global Securities and (b) after the Exchange Date, by one or more Regulation S Global Securities, and that beneficial interests therein may be held only through Euroclear or Clearstream.

(xi) A holder of a beneficial interest in a Temporary Regulation S Global Security must provide Euroclear or Clearstream or the participant organization through which it holds such interest, as applicable, with a certificate certifying that the beneficial owner of the interest in the Temporary Regulation S Global Security is a non-U.S. person (as defined in Regulation S), and Euroclear or Clearstream, as applicable, must provide to the Trustee a certificate to such effect, prior to (a) the payment of interest or principal or other amounts with respect to such holder's beneficial interest in the Temporary Regulation S Global Security and (b) any exchange of such beneficial interest for a beneficial interest in a Regulation S Global Security and no payment will be made to the holder of any beneficial interest in a Temporary Regulation S Global Note unless such holder has provided Euroclear or Clearstream or such participant organization through which it holds such interest with such certificate.

(xii) It understands that any resale or other transfer of beneficial interests in a Temporary Regulation S Global Security or Regulation S Global Security to U.S. persons (as defined in Regulation S)shall not be permitted.

(xiii) It acknowledges that no governmental agency has passed upon the Class P Securities or made any finding or determination as to the fairness of an investment in the Class P Securities.

(xiv) It acknowledges that certain persons or organizations will perform services on behalf of the Co-Issuers and will receive fees and/or compensation for performing such services as described in the Offering Memorandum and this Indenture and Class E Certificate Documents.

(xv) It acknowledges that the Class P Securities do not represent deposits with or other liabilities or obligations of, and are not guaranteed or endorsed by, the Placement Agent, the Initial Purchaser, the Portfolio Manager, the Trustee, the Class E Certificates Paying Agent, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator or any of their respective Affiliates or any entity related to any of them or any other holder of Class P Securities. It acknowledges that none of such persons will, in any way, be responsible for or stand behind the value or the performance of the Class P Securities. It acknowledges that purchase of Class P Securities involves investment risks including possible delay in payment of distributions and loss of income and principal invested.

(xvi) It understands that the Stated Maturity of the Class P Securities is subject to up to four extensions of four years each (to a latest possible date of November 1, 2033) without consent of any beneficial owners of Securities if certain conditions are satisfied.

(xvii) It understands that in the case of any amendment to this Indenture that requires consent of one or more holders of Class P Securities, this Indenture and Class E Certificate Documents permit the Amendment Buy-Out Purchaser to purchase at the Amendment Buy-Out Purchase Price the Class P Class E Certificate Component of Class P Securities from any holder thereof that either (i) has declared in writing that it will not consent to such amendment or (ii) had not consented to such amendment by the last day on which consent could be given in accordance with the request therefor, and such holder will be required to exchange its Class P Securities for the components thereof and sell the Class E Certificates represented by such Class E Certificate Component to the Amendment Buy-Out Purchaser at the Amendment Buy-Out Purchase Price. In addition, in the case of any vote by holders of Class P Securities to remove the Portfolio Manager without cause, the Class E Certificate Documents permit the Removal Buy-Out Purchaser to purchase at the Buy-Out Amount, the Class P Class E Certificate Component thereof from any holder that voted in favor of such removal, and such holder will be required to exchange its Class P Securities for the components thereof and sell the Class E Certificates represented by such Class E Certificate Component to the Removal Buy-Out Purchaser at the Buy-out Amount.

(xviii) It understands that the Co-Issuers, the Trustee, the Class E Certificates Paying Agent, the Initial Purchaser, the Placement Agent, the Portfolio Manager, the Revolving Note Agent, the Delayed Drawdown Note Agent, the Collateral Administrator and their respective counsel will rely upon the accuracy and truth of the foregoing representations, and it hereby consents to such reliance.

(n) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in Notes in the form of a Temporary Regulation S Global Security or a Regulation S Global Security that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. persons (as defined in Regulation S), shall be limited to transfers made pursuant to the provisions of Section 2.6(g)(iii).

(ii) Beneficial interests in a Temporary Regulation S Global Security or Regulation S Global Security may only be held through Euroclear or Clearstream.

(o) Each person who becomes a beneficial owner of a Note evidenced by an interest in a Global Security, shall be deemed to make the representations, warranties and agreements set forth in the applicable legends of the Notes set forth in Exhibit A1-N, A2-N or A3 hereto, as applicable, hereto upon such person's purchase or other acquisition of the relevant Global Security.

(p) The aggregate principal amount of any Global Security may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Security, which adjustments shall be conclusive as to the aggregate principal amount of any Global Security.

(q) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void and shall not be given effect for any purpose whatsoever.

Section 2.7. Mutilated, Destroyed, Lost, or Stolen Notes.

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss, or theft of any Indenture Security, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Indenture Security is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Indenture Security has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Indenture Security, a replacement Indenture Security, of like tenor and equal principal amount.

If, after delivery of the replacement Indenture Security or payment on it, a protected purchaser of the predecessor Indenture Security presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Indenture Security (or the payment on it) from the person to whom it was delivered or any person taking the replacement Indenture Security from the person to whom the replacement Indenture Security was delivered or any assignee of that person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If any mutilated, destroyed, lost, or stolen Indenture Security has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Indenture Security pay the Indenture Security without requiring its surrender except that any mutilated Indenture Security shall be surrendered.

Upon the issuance of any new Indenture Security under this Section 2.7, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Indenture Security issued pursuant to this Section 2.7 in replacement for any mutilated, destroyed, lost, or stolen Indenture Security shall be an original additional contractual obligation of the Applicable Issuers and the new Indenture Security shall be entitled to all the benefits of this Indenture equally and proportionately with all other Indenture Securities of the same Class duly issued under this Indenture.

The provisions of this Section 2.7 are exclusive and shall preclude (to the extent lawful) all other rights with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Indenture Securities.

Section 2.8. Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.

(a) The Notes of each Class (other than the Class A-1A Notes and, with respect to the first Interest Period only, the Class A-1B Notes) shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (in each case determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day), the Class A-1A Notes shall accrue interest during each Interest Period on their Drawn Amount and the Class A-1B Notes shall accrue interest during the first Interest Period on their Drawn Amount and any Interest Period thereafter on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day), in each case at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments. The Commitment Fee on the Class A-1A Notes shall accrue as specified in the definition thereof and will be payable in arrears on each Payment Date. Interest shall accrue at the Note Interest Rate for the Class A-1A Notes on the accrued and unpaid Commitment Fees as specified in the definition of Commitment Fee Amount and shall be payable in arrears on each Payment Date in accordance with the Priority of Payments. The Delayed Drawdown Fee on the Class A-1B Notes shall accrue as specified in the definition thereof and will be payable in arrears on the first Payment Date. To the extent the Delayed Drawdown Fee is not paid in full on the first Payment Date, interest shall accrue at the Note Interest Rate for the Class A-1B Notes on such accrued and unpaid Delayed Drawdown Fee as specified in the definition thereof and such unpaid Delayed Drawdown Fee and the interest thereon shall be payable in arrears on each Payment Date in accordance with the Priority of Payments until paid in full.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("Deferred Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay such interest shall not be an Event of Default) until the earlier of (i) the Stated Maturity or the date of redemption in full of the relevant Notes and (ii) the first Payment Date on which funds are available to be used for payment of such interest in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for such Class and, to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class (other than the Class A-1A Notes) and in the case of the Class A-1A Notes, the Drawn Amount, matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise (or, with respect to the Class A-1A Notes, as a Prepayment in accordance with the provisions of this Indenture). Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used in certain circumstances to pay principal of the Class C Notes on any Payment Date, prior to the payment in full of Class A Notes and Class B Notes, to the extent necessary to satisfy the Class C Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Indenture Security without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Indenture Security under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) (A) Payments in respect of interest on and principal of any Note (including the Class Q-1 Note Component) shall be made by the Trustee, or by the Irish Paying and Listing Agent, if applicable, in U.S. Dollars to the Depositary or its designee with respect to a Global Security, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depositary. Payments in respect of distributions on any Class E Certificate (including Class E Certificates represented by the Class E Certificate Components) payable to the Class E Certificates Paying Agent in accordance with the Priority of Payments for payments on the Class E Certificates in accordance with the Class E Certificate Documents shall be payable by wire transfer in immediately available funds (or by internal transfer if the Trustee and the Class E Certificates Paying Agent are the same Person) to the Class E Certificates Distribution Account.

(B) On each Payment Date on which payments, whether from Principal Proceeds or Interest Proceeds or upon redemption or otherwise are made on the Class C Notes or distributions are made to the Holders of the Class E Certificates, a portion of such payment and distributions shall be allocated to the Class Q-1 Security (to the extent of the Class Q-1 Note Component and the Class Q-1 Class E Certificate Component) or, in the case of distributions on the Class E Certificates only, allocated to the Class P-1 Securities (to the extent of the Class P-1 Class E Certificate Component) and the Class P-2 Securities (to the extent of the Class P-2 Class E Certificate Component) in the proportion that the principal of such Component bears to the principal of the related Class C Notes or Class E Certificates, as applicable, as a whole (in each case including the Components), and, in accordance with the other conditions set forth for payments on the Notes and distributions on the Class E Certificates pursuant to this Indenture, as applicable. No other payments will be made on the Class Q-1 Securities or Class P Securities (except, with respect to the Class P Securities, payments made in connection with Section 11.2). Such payments on the Class Q-1 Securities or Class P Securities shall be made by wire transfer in immediately available funds to a U.S. dollar account maintained by the related Holder or its nominee or, if wire transfer cannot be effected, by a U.S. dollar check sent to such Holder, at such Holder's address appearing in the

applicable Indenture Register, or its nominee. Final payments in respect of principal on the Class Q-1 Securities and the Class P Securities shall be made only against surrender of such Class Q-1 Securities and Class P Securities at the office designated by any Paying Agent.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of an Indenture Security, its Holder shall present and surrender the Indenture Security at the office designated by the Trustee on or before the Maturity; provided that no presentation of (x) a Class Q-1 Security shall be required until the final payment of the Class Q-1 Class E Certificate Component thereof and (y) a Class P-1 Security or Class P-2 Security shall be required until the later of the final payment of the Class E Certificate Component thereof and the final payment of the Class P U.S. Treasury Component thereof. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Indenture Security has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Class E Certificates Registrar, nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by the Depositary, Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Security.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date. Prepayments to Holders of Class A-1A Notes shall be made in the proportion that the portion of the Drawn Amount in respect of the Class A-1A Note registered on the Record Date for such Prepayment Date bears to the aggregate Drawn Amount of the Class A-1A Notes on such date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on such Note.

(i) (A) Notwithstanding any other provision of this Indenture, (x) the obligations of the Co-Issuers under the Notes and under this Indenture are limited recourse debt obligations of the Issuer and non-recourse obligations of the Co-Issuer, and the obligations of the Issuer under the Class Q-1

Securities (to the extent of the Class Q-1 Note Component) are limited recourse debt obligations of the Issuer, in each case payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes and Class Q-1 Securities or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or Class Q-1 Securities or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Indenture Securities or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(B) The obligations of the Issuer under the Class P-1 Securities (other than in respect of the Class P Class E Certificate Component thereof) are limited recourse debt obligations of the Issuer payable solely from the Class P-1 Collateral in accordance with the terms of this Indenture. Once the Class P-1 Collateral has been realized and applied in accordance with Section 11.2, any such outstanding obligations of the Issuer shall be extinguished. No recourse shall be had for the payment of any amount owing in respect of the Class P-1 Securities or this Indenture against any officer, director, employee, administrator, shareholder or incorporator of the Issuer or any successors or assigns thereof for any amounts payable under the Class P-1 Securities or this Indenture. It is understood that the foregoing provisions of this clause (B) shall not (x) prevent recourse to the Class P-1 Collateral for the sums due or to become due under any security, instrument or agreement which is part of the Class P-1 Collateral, or (y) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Class P-1 Securities or secured by this Indenture, and the same shall continue until paid or discharged. It is further understood that the foregoing provisions of this clause (B) shall not limit the right of any Person to name the Issuer as a party defendant in any action or suit or in the exercise of any other remedy under the Class P-1 Securities or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such Person or entity.

(C) The obligations of the Issuer under the Class P-2 Securities (other than with respect to the Class P Class E Certificate Component thereof) are limited recourse debt obligations of the Issuer payable solely from the Class P-2 Collateral in accordance with the terms of this Indenture. Once the Class P-2 Collateral has been realized and applied in accordance with Section 11.2, any such outstanding obligations of the Issuer shall be extinguished. No recourse shall be had for the payment of any amount owing in respect of the Class P-2 Securities or this Indenture against any officer, director, employee, administrator, shareholder or incorporator of the Issuer or any successors or assigns thereof for any amounts payable under the Class P-2 Securities or this Indenture. It is understood that the foregoing provisions of this clause (B) shall not (x) prevent recourse to the Class P-2 Collateral for the sums due or to become due under any security, instrument or agreement which is part of the Class P-2 Collateral, or (y) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Class P-2 Securities or secured by this Indenture, and the same shall continue until paid or discharged. It is further understood that the foregoing provisions of this clause (B) shall not limit the right of any Person to name the Issuer as a party defendant in any action or suit or in the exercise of any other remedy under the Class P-2 Securities or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such Person or entity.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

(k) For so long as any of the Indenture Securities are listed on any stock exchange, to the extent required by the rules of such stock exchange, either of the Issuer or the Trustee shall notify the applicable listing agent (for forwarding such notice to the applicable stock exchange, if and to the extent such notification is then required by the rules of such stock exchange) in the event that the Notes do not receive scheduled payments of principal or interest on any Payment Date or the Maturity Date.

Section 2.9. Persons Considered Owners.

(a) The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Indenture Security the person in whose name any Indenture Security is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments of principal of and interest on or any other payment with respect to the Indenture Security and on any other date for all other purposes whatsoever (whether or not the Indenture Security is overdue), and neither the Issuer, the Co-Issuer, nor the Trustee nor any agent of the Issuer, the Co-Issuer, or the Trustee shall be affected by notice to the contrary. The Portfolio Manager shall notify the Trustee of any Affiliate of the Portfolio Manager that owns Indenture Securities or Class E Certificates.

(b) The Holders of Class Q-1 Securities shall be entitled to voting rights of the Class C Notes and the Class E Certificates represented by the Class Q-1 Note Component and the Class Q-1 Class E Certificate Component, respectively, in the proportion that such Class Q-1 Component bears to the Aggregate Outstanding Amount of the Class C Notes (in the case of the Class Q-1 Note Component) or to the aggregate number of Class E Certificates (in the case of the Class Q-1 Class E Certificate Component), in each case including the related Components. The Holders of Class Q-1 Securities shall not be entitled to any rights to vote as separate Classes except with respect to matters that only affect Holders of Class Q-1 Securities and as expressly permitted by this Indenture.

(c) The Class P Securityholders shall be entitled to voting rights in the Class E Certificates relating to the Class P-1 Class E Certificate Component or the Class P-2 Class E Certificate Component, as applicable, in the proportion that such Class P Class E Certificate Component bears to the aggregate number of Class E Certificates (including the Class E Certificate Components). The Class P

Securityholders shall not be entitled to any rights to vote as separate Classes except with respect to matters that only affect the Class P Securityholders and as expressly permitted by this Indenture.

Section 2.10. Cancellation.

All Indenture Securities surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Indenture Securities shall be authenticated in lieu of or in exchange for any Indenture Securities canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Indenture Securities held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Co-Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. Indenture Securities Beneficially Owned by Non-Permitted Holders and Non-Permitted ERISA Holders.

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, any transfer of, or transfer of a beneficial interest in, any Indenture Security to (i) a U.S. person (as defined in Regulation S) (for purposes of this Section 2.11 as defined in Regulation S) that is not a QIB/QP and (ii) a non-U.S. person (as defined in Regulation S) which transfer that does not comply with the requirements of Regulation S under the Securities Act, and that is not in each case made pursuant to an applicable exemption under the Securities Act, shall be void *ab initio* and any such purported transfer of which the Issuer, the Co-Issuer, or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer, and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer, or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), that a person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Indenture Securities or interest in the Indenture Securities, without further notice to the Non-Permitted Holder, the Issuer may sell the Indenture Securities or interest in the Indenture Securities to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Indenture Securities, and selling the Indenture Securities, or interest in the Indenture Securities to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Indenture Security, the beneficial owner of each interest in a Indenture Security, the Non-Permitted Holder, and each other person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Indenture Securities agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

(c) Notwithstanding anything to the contrary herein, no purchase by or proposed transfer to any Person of ERISA Restricted Indenture Securities will be permitted if such Person has represented that it is, or is acting on behalf of or using the assets of, a Plan, and the Trustee shall not register or permit the registration of any such purchase or transfer.

(d) If any Person shall become the beneficial owner of an interest in any ERISA Restricted Indenture Securities who has made an ERISA-related representation required by this Indenture that is subsequently shown to be false or misleading (any such person a "Non-Permitted ERISA Holder"), the Issuer shall, promptly after discovery that such person is a Non-Permitted ERISA Holder by the Issuer or the Trustee (and notice by the Trustee to the Issuer, if either of them makes the discovery), send notice to such Non-Permitted ERISA Holder demanding that such Non-Permitted ERISA Holder transfer all of the ERISA Restricted Indenture Securities held by such Person to a Person that is not a Non-Permitted ERISA Holder within 30 days of the date of such notice. If such Non-Permitted ERISA Holder fails to so transfer such ERISA Restricted Indenture Securities the Issuer shall have the right, without further notice to the Non-Permitted ERISA Holder, to sell such ERISA Restricted Indenture Securities or interest in such ERISA Restricted Indenture Securities to a purchaser selected by the Issuer that is not a Non-Permitted ERISA Holder on such terms as the Issuer may choose. The Holder of each ERISA Restricted Indenture Security, the Non-Permitted ERISA Holder and each other Person in the chain of title from the Holder to the Non-Permitted ERISA Holder, by its acceptance of an interest in the ERISA Restricted Indenture Securities agrees to cooperate with the Issuer and the Trustee to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale shall be remitted to the Non-Permitted ERISA Holder. The terms and conditions of any sale under this subsection shall be determined in the sole discretion of the Issuer, and the Issuer shall not be liable to any Person having an interest in the ERISA Restricted Indenture Securities sold as a result of any such sale or the exercise of such discretion.

Section 2.12. Borrowings Under Class A–1A Notes

(a) On any Business Day during the Draw Period, the Co-Issuers may borrow amounts under the Class A–1A Notes (together with amounts, if any, paid by Holders of Class A–1A Notes on the Closing Date and amounts, if any, funded by the Holders of the Class A-1A Notes under Section 2.3 of the Class A-1A Note Purchase Agreement, each a "Borrowing") at the direction of the Portfolio Manager acting pursuant to the Management Agreement for a Permitted Use; provided, in each case that (i) each applicable condition to such Borrowing specified in Section 3 of the Class A-1A Note Purchase Agreement is satisfied on the date of such Borrowing (a "Borrowing Date"), (ii) in no event may the aggregate amount of Borrowings outstanding under the Class A–1A Notes exceed the aggregate amount of Commitments to make advances in respect of the Class A–1A Notes; and (iii) after giving effect to the Borrowing, the amount on reserve in the Revolving Reserve Account will either (x) equal 100% of the Revolver Funding Reserve Amount or (y) the Issuer will deposit therein Principal Proceeds and/or proceeds of the Borrowing in the amount required for clause (x) to be satisfied immediately after the Borrowing.

(b) Notice of any Borrowing shall be given by the Issuer (or the Portfolio Manager on behalf of the Issuer acting pursuant to the Management Agreement) to the Revolving Note Agent, the Portfolio Manager and the Trustee in accordance with the Class A-1A Note Purchase Agreement.

(c) If any Holder of Class A–1A Notes shall at any time during the Draw Period fails to satisfy the Rating Criteria, the Issuer will enforce its rights under the Class A-1A Note Purchase Agreement to require such Holder to fund the full undrawn amount of its Commitment into a reserve account.

Section 2.13. Drawdowns Under Class A–1B Notes

(a) On any Business Day during the Delayed Drawdown Period, the Co-Issuers may draw down amounts under the Class A–1B Notes (together with amounts paid by Holders of Class A–1B Notes on the Closing Date, each a "Drawdown") at the direction of the Portfolio Manager acting pursuant to the

Management Agreement; provided, in each case that (i) each applicable condition to such Drawdown specified in Section 3 of the Class A-1B Note Purchase Agreement is satisfied on the date of such Drawdown (a "Drawdown Date") and (ii) in no event may the aggregate amount of Drawdowns outstanding under the Class A–1B Notes exceed the Fully Drawn Amount.

(b) Notice of any Drawdown shall be given by the Issuer (or the Portfolio Manager on behalf of the Issuer acting pursuant to the Management Agreement) to the Delayed Drawdown Note Agent, the Portfolio Manager and the Trustee in accordance with the Class A-1B Note Purchase Agreement.

(c) If any Holder of Class A–1B Notes shall at any time during the Delayed Drawdown Period fail to satisfy the Rating Criteria, the Issuer will enforce its rights under the Class A-1B Note Purchase Agreement to require such Holder to fund the full undrawn amount of its Commitment into a reserve account.

Section 2.14. Class Q-1 Securities

The provisions of this Section 2.14 shall apply only to the Class Q-1 Securities and shall override any contrary or inconsistent provisions of this Indenture. Subject to the foregoing sentence, the other provisions of Article 2 shall apply to the Class Q-1 Securities to the same extent as to the Notes.

(a) No transfer of a Class Q-1 Security will be permitted to a person that would not be permitted to acquire the Class C Notes and Class E Certificates comprising the Class Q-1 Components of the Class Q-1 Security under this Indenture.

Transfers of Class Q-1 Securities or interests therein may only be made as set forth in this subsection. As used in this subsection, "U.S. person" has the meaning set forth in Regulation S.

(i) Certificated Class Q-1 Security to Certificated Class Q-1 Security. Each purchaser or transferee of a Certificated Class Q-1 Security will be required to provide to the Trustee a properly completed certificate in the form of Exhibit B5-1 (with appropriate modifications acceptable to the Issuer and the Trustee, including in the case of a transfer that is a mortgage, charge, pledge or hypothecation) (a "Class Q-1 Transferee Certificate") in which it shall represent, warrant and agree as set forth therein. If a Holder of a Certificated Class Q-1 Security wishes at any time to transfer such Certificated Class Q-1 Security to a U.S. person, such Person shall take delivery thereof in the form of a Certificated Class Q-1 Security. In such case such Holder may transfer or cause the transfer of such Certificated Class Q-1 Security as follows: Upon receipt by the Indenture Registrar of (A) such Holder's Certificated Class Q-1 Security properly endorsed for assignment to the transferee and (B) a properly completed Class Q-1 Transferee Certificate by the transferee, and any other documentation as may be required thereunder, the Trustee will cancel such Certificated Class Q-1 Security in accordance with this Indenture, cause the Indenture Registrar to record the transfer in the Indenture Register and, upon execution by the Issuer, deliver to the transferee one or more Certificated Class Q-1 Securities in the aggregate stated amount transferred and in the Authorized Class Q-1 Denomination.

(ii) Class Q-1 Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security to Certificated Class Q-1 Security. An interest in a Class Q-1 Security in the form of a Temporary Regulation S Global Security or a Regulation S Global Security may be transferred only to (a) another person that is not a U.S. person who takes delivery in the form of or interest in Temporary Regulation S Global Security or Regulation S Global Security or (b) a U.S. person who takes delivery in the form of a Certificated Class Q-1 Security and is both (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser. If a holder

of a beneficial interest in a Class Q-1 Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security wishes at any time to transfer its interest in such Security, in the United States or to a U.S. person, the transferee must take delivery thereof in the form of a Certificated Class Q-1 Security. Such Holder may, subject to the rules and procedures of the Depositary, transfer or cause the transfer of such interest for an equivalent interest in one or more such Certificated Class Q-1 Securities as described below. Upon receipt by the Indenture Registrar of (A) instructions given in accordance with the Applicable Procedures from a Participant, directing the Indenture Registrar to deliver one or more such Certificated Class Q-1 Securities designating the registered name or names, address, payment instructions, and the number and stated amount (and Aggregate Principal Amount of the related Class Q-1 Components) of such Certificated Class Q-1 Securities to be executed and delivered (the aggregate stated amount of such Certificated Class Q-1 Securities being equal to the aggregate stated amount of the interest in the related Temporary Regulation S Global Security or Regulation S Global Security to be transferred), in an Authorized Class Q-1 Denomination and (B) a properly completed transfer certificate in the form of Exhibit B5-1 and any other documentation as may be required thereunder, then the Indenture Registrar will instruct the Depositary to reduce, or cause to be reduced, the applicable Temporary Regulation S Global Security or Regulation S Global Security by the aggregate stated amount of the beneficial interest in such Temporary Regulation S Global Security or Regulation S Global Security to be transferred and the Indenture Registrar shall record the transfer in the Indenture Register and authenticate and deliver one or more Certificated Class Q-1 Securities, registered in the names specified in the certificate described in clause (B) above in the stated amount designated by the transferee (the aggregate of such stated amount being equal to the beneficial interest in the Temporary Regulation S Global Security or Regulation S Global Security to be transferred) and in the applicable Authorized Class Q-1 Denomination. Any purported transfer in violation of this provision shall be null and void *ab initio*.

(iii) Certificated Class Q-1 Security to Class Q-1 Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security. If a Holder of a Certificated Class Q-1 Security wishes at any time to transfer such Certificated Class Q-1 Security to a person that is not a U.S. person in an offshore transaction in reliance on Regulation S, such Person shall take delivery thereof in the form of an interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security. In such case such Holder may exchange or transfer, or cause the exchange or transfer of, such Certificated Class Q-1 Security for an equivalent beneficial interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security, provided, that such proposed transferee or the person requesting such exchange, as applicable, is not a U.S. person and such transfer is otherwise being made pursuant to and in accordance with Regulation S. Upon receipt by the Indenture Registrar of (A) such Certificated Class Q-1 Security properly endorsed for such transfer, and written instructions from such Holder directing the Indenture Registrar to cause to be credited a beneficial interest in the Temporary Regulation S Global Security or Regulation S Global Security in an amount equal to the stated amount transferred of such Certificated Class Q-1 Security, (B) a written order containing information regarding the Euroclear or Clearstream account to be credited with such increase and (C) a certificate in the form of Exhibit B5-2 attached hereto, given by the Holder of such Certificated Class Q-1 Security stating that the exchange or transfer of such interest has been made in compliance with the transfer restrictions applicable to the Temporary Regulation S Global Security or Regulation S Global Security, including that the proposed transferee or the person requesting such exchange, as the case may be, is not a U.S. person and that the proposed transfer is being made pursuant to and in accordance with Regulation S, then the Indenture Registrar shall cancel such Certificated Class Q-1 Security in accordance with Section 2.10 record the transfer in the Indenture Register in

accordance with Section 2.6(a) and instruct DTC to increase the stated amount of the Temporary Regulation S Global Security or Regulation S Global Security by the aggregate stated amount of the Certificated Class Q-1 Security to be transferred, and to credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Temporary Regulation S Global Security or Regulation S Global Security equal to the amount specified in the instructions received pursuant to clause (A) above. Notwithstanding anything else in this Section 2.14(a)(iii), prior to the Exchange Date a Certificated Class Q-1 Security may only be exchanged or transferred for an equivalent beneficial interest in the corresponding Temporary Regulation S Global Security.

(iv) Notwithstanding anything to the contrary herein, no purchase or proposed transfer of Class Q-1 Securities will be permitted, and the Trustee shall not register or permit the registration of any such purchase or transfer, to a Person that has represented that it is a Plan. Any purported transfer in violation of this provision shall be null and void *ab initio*.

(b) Except as otherwise provided herein, the rights and obligations of Holders of the Class Q-1 Securities shall consist solely of the rights and obligations of Holders of the applicable Class Q-1 Components. References herein to the rights and obligations of the Holders of Class C Notes or Class E Certificates include the rights and obligations of the Holders of Class Q-1 Securities to the extent of the applicable Class Q-1 Components.

(c) A Holder or beneficial owner of a Class Q-1 Security may exchange, subject to the applicable minimum denomination requirements, Class Q-1 Securities for interests in the Class C Notes (in an amount equal to the Class Q-1 Note Component) and Class E Certificates (in an amount equal to the Class Q-1 Class E Certificate Component), as applicable, that comprise the Class Q-1 Components of such Class Q-1 Securities, in the manner provided herein, in the case of the Class Q-1 Note Component, for transfer of beneficial interests to a Rule 144A Global Security, Regulation S Global Security or Temporary Regulation S Global Security, as applicable, and in the case of the Class Q-1 Class E Certificate Component, in the manner provided in the Class E Certificate Documents for transfer of a Certificated Class E Certificate or an interest in a Class E Certificate in the form of a Regulation S Global Security or Temporary Regulation S Global Security, as applicable:

(i) In the case of the exchange by a beneficial owner of an interest in Class Q-1 Securities in the form of a Temporary Regulation S Global Note or a Regulation S Global Security, upon receipt by the Indenture Registrar and the Class E Certificate Paying Agent of instructions given in accordance with the Applicable Procedures from a Participant, directing the Indenture Registrar (with respect to the Class Q-1 Note Component to be exchanged) and the Class E Certificate Paying Agent (with respect to the Class Q-1 Class E Certificate Component to be exchanged) to cause to be credited (to the same Euroclear or Clearstream Account to which the interest in the Class Q-1 Security to be exchanged was credited), (x) a beneficial interest in the Class C Notes in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as applicable, in an amount equal to the aggregate principal amount of the Class Q-1 Note Component being exchanged, and (y) a beneficial interest in the Class E Certificates in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as applicable, in an amount equal to the aggregate Face Amount of the Class Q-1 Class E Certificate Component being exchanged, the Indenture Registrar shall instruct the Depositary to reduce, or cause to be reduced, the Class Q-1 Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as applicable, by the aggregate stated amount of the beneficial interest in such Temporary Regulation S Global Security or Regulation S Global Security to be exchanged and increase the aggregate principal amount of the Class C Notes in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as

applicable, by an amounts equal to the Class P-1 Note Component to be exchanged, and the Class E Certificate Paying Agent shall instruct DTC to increase the aggregate Face Amount of the Class E Certificates in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as applicable, by an amount equal to the Class Q-1 Class E Certificate Component being exchanged, and in each case credit such increases as instructed;

(ii) In the case of the exchange by a Holder of Certificated Class Q-1 Securities, upon receipt by (x) the Indenture Registrar of the Certificated Class Q-1 Security surrendered for exchange and written instructions from such Holder directing the Indenture Registrar to cause to be credited a beneficial interest in the Class C Notes in the form of a Rule 144A Global Security, in an amount equal to the aggregate principal amount of the Class Q-1 Note Component being exchanged, including a written order containing information regarding the account to be credited with such interest in the Class C Notes and (y) written instructions from such Holder, directing the Class E Certificate Paying Agent to cause to be issued to such Holder a Certificated Class E Certificate in an aggregate Face Amount equal to the aggregate Face Amount of the Class Q-1 Class E Certificate Component being exchanged, the Trustee shall cancel such Certificated Class Q-1 Security in accordance with this Indenture and cause the Indenture Registrar to record the exchange in the Indenture Register, the Indenture Registrar shall instruct DTC to increase the aggregate principal amount of the Class C Notes in the form of a 144A Global Security by the applicable amount and credit such increase as instructed and the Class E Certificate Paying Agent shall direct the Class E Certificate Registrar to effect the exchange in accordance with the Class E Certificate Documents by making all necessary entries, if any, in the Register of Members, and shall deliver the Certificated Class E Certificate in a Face Amount equal to the Class Q-1 Class E Certificate Component being exchanged.

(iii) After any such exchange, the Holder of or Beneficial Owner of and interest in the Class Q-1 Security so exchanged will be the Holder of or Beneficial Owner of an interest in, as applicable, the Class C Notes and the Class E Certificates received upon such an exchange. No Holder of or Beneficial Owner of interests in the Class C Notes or Class E Certificates (including following such an exchange) will be entitled to exchange such Class C Notes and Class E Certificates for a Class Q-1 Security. No service charge shall be made for any such exchange of Class Q-1 Securities, but the Issuer or the Trustee may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with such exchange. Each Holder and Beneficial Owner of a Class Q-1 Security, by its acceptance thereof, acknowledges that upon any such exchange, the rating of such Class Q-1 Security by any Rating Agency will not apply to the Securities received in such exchange. Upon the exchange of all outstanding Class Q-1 Securities pursuant to this provision, the Issuer will notify each Rating Agency then rating the Class Q-1 Securities.

(d) Each Holder of a Class Q-1 Security, by its acquisition thereof, acknowledges that the rating of the Class Q-1 Securities by Moody's addresses solely the return of the Class Q-1 Rated Principal.

(e) The Class E Components of Class Q-1 Securities that constitute Directing Class E Certificates (as defined in the Management Agreement) shall be subject to purchase under the terms and conditions set forth in Section 12(c) of the Management Agreement. If the Portfolio Manager or other applicable purchaser under such provisions (the "Removal Buy-Out Purchaser") elects to make such purchase, the Class Q-1 Securities that include such Class E Components shall be deemed exchanged for their respective components, the Class E Certificates represented by such Class E Components shall be so purchased and the applicable Buy-Out Amount shall be distributed to the Holders of such Class Q-1 Securities, and such Holders will receive in accordance with the provisions hereof the Class C Notes represented by the Class Q-1 Note Component of their Class Q-1 Securities.

Section 2.15. Class P Securities

The provisions of this Section 2.15 shall apply only to the Class P Securities and shall override any contrary or inconsistent provisions of this Indenture. Subject to the foregoing sentence, the other provisions of Article 2 shall apply to the Class P Securities to the same extent as the Notes.

(a) No transfer of a Class P Security will be permitted to a person that would not be permitted to acquire Class E Certificates comprising the Class P Class E Certificate Component under the Class E Certificate Documents and this Indenture. Transfers of Class P Securities or interests therein may only be made as set forth in this subsection. As used in this subsection, "U.S. person" has the meaning set forth in Regulation S.

(i) Certificated Class P Security to Certificated Class P Security. Each purchaser or transferee of a Certificated Class P Security will be required to provide to the Trustee a properly completed certificate in the form of Exhibit B6-1 (with appropriate modifications acceptable to the Issuer and the Trustee, including in the case of a transfer that is a mortgage, charge, pledge or hypothecation) (a "Class P Transferee Certificate") in which it shall represent, warrant and agree as set forth therein. If a Holder of a Certificated Class P Security wishes at any time to transfer such Certificated Class P Security to a U.S. person, such Person shall take delivery thereof in the form of a Certificated Class P Security. In such case such Holder may transfer or cause the transfer of such Certificated Class P Security as follows: Upon receipt by the Indenture Registrar of (A) such Holder's Certificated Class P Security properly endorsed for assignment to the transferee and (B) a properly completed Class P Transferee Certificate by the transferee, and any other documentation as may be required thereunder, the Trustee will cancel such Certificated Class P Security in accordance with this Indenture, cause the Indenture Registrar to record the transfer in the Indenture Register and, upon execution by the Issuer, deliver to the transferee one or more Certificated Class P Securities in the aggregate stated amount transferred and in the Authorized Class P-1 Denomination or Class P-2 Denomination, as applicable.

(ii) Class P Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security to Certificated Class P Security. An interest in a Class P Security in the form of a Temporary Regulation S Global Security or a Regulation S Global Security may be transferred only to (a) another person that is not a U.S. person who takes delivery in the form of or interest in a Temporary Regulation S Global Security or Regulation S Global Security or (b) a U.S. Person who takes delivery in the form of a Certificated Class P Security and is both (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser. If a holder of a beneficial interest in a Class P Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security wishes at any time to transfer its interest in such Security, in the United States or to a U.S. person, the transferee must take delivery thereof in the form of a Certificated Class P Security. Such Holder may, subject to the rules and procedures of the Depositary, transfer or cause the transfer of such interest for an equivalent interest in one or more such Certificated Class P Securities as described below. Upon receipt by the Indenture Registrar of (A) instructions given in accordance with the Applicable Procedures from a Participant, directing the Indenture Registrar to deliver one or more such Certificated Class P Securities and designating the registered name or names, address, payment instructions, and the number and stated amount of such Certificated Class P Securities to be executed and delivered (the aggregate stated amount of such Certificated Class P Securities being equal to the aggregate stated amount of the interest in the related Temporary Regulation S Global Security or Regulation S Global Security to be transferred), in an Authorized Class P-1 Denomination or Class P-2 Denomination, as applicable and (B) a properly completed transfer certificate in the form of

Exhibit B6-1 and any other documentation as may be required thereunder, then the Indenture Registrar will instruct the Depositary to reduce, or cause to be reduced, the applicable Temporary Regulation S Global Security or Regulation S Global Security by the aggregate stated amount of the beneficial interest in such Temporary Regulation S Global Security or Regulation S Global Security to be transferred and the Indenture Registrar shall record the transfer in the Indenture Register and authenticate and deliver one or more Certificated Class P Securities, registered in the names specified in the certificate described in clause (B) above in the stated amount designated by the transferee (the aggregate of such stated amount being equal to the beneficial interest in the Temporary Regulation S Global Security or Regulation S Global Security to be transferred) and in the applicable Authorized Class P Denomination. Any purported transfer in violation of this provision shall be null and void *ab initio*.

(iii) Certificated Class P Security to Class P Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security. If a Holder of a Certificated Class P Security wishes at any time to transfer such Certificated Class P Security to a person that is not a U.S. person in an offshore transaction in reliance on Regulation S, such Person shall take delivery thereof in the form of an interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security. In such case such Holder may exchange or transfer, or cause the exchange or transfer of, such Certificated Class P Security for an equivalent beneficial interest in the corresponding Temporary Regulation S Global Security or Regulation S Global Security, provided, that such proposed transferee or the person requesting such exchange, as applicable, is not a U.S. person and such transfer is otherwise being made pursuant to and in accordance with Regulation S. Upon receipt by the Indenture Registrar of (A) such Certificated Class P Security properly endorsed for such transfer, and written instructions from such Holder directing the Indenture Registrar to cause to be credited a beneficial interest in the Temporary Regulation S Global Security or Regulation S Global Security in an amount equal to the stated amount transferred of such Certificated Class P Security, (B) a written order containing information regarding the Euroclear or Clearstream account to be credited with such increase and (C) a certificate in the form of Exhibit B6-2 attached hereto, given by the Holder of such Certificated Class P Security stating that the exchange or transfer of such interest has been made in compliance with the transfer restrictions applicable to the Temporary Regulation S Global Security or Regulation S Global Security, including that the proposed transferee or the person requesting such exchange, as the case may be, is not a U.S. person and that the proposed transfer is being made pursuant to and in accordance with Regulation S, then the Indenture Registrar shall cancel such Certificated Class P Security in accordance with Section 2.10 record the transfer in the Indenture Register in accordance with Section 2.6(a) and instruct DTC to increase the stated amount of the Temporary Regulation S Global Security or Regulation S Global Security by the aggregate stated amount of the Certificated Class P Security to be transferred, and to credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Temporary Regulation S Global Security or Regulation S Global Security equal to the amount specified in the instructions received pursuant to clause (A) above. Notwithstanding anything else in this Section 2.15(a)(iii), prior to the Exchange Date a Certificated Class P Security may only be exchanged or transferred for an equivalent beneficial interest in the corresponding Temporary Regulation S Global Security.

(iv) Notwithstanding anything to the contrary herein, no purchase or proposed transfer of Class P Securities will be permitted, and the Trustee shall not register or permit the registration of any such purchase or transfer, to a Person that has represented that it is a Plan. Any purported transfer in violation of this provision shall be null and void *ab initio*.

(b) References herein to the rights and obligations of the Holders of Class E Certificates include the rights and obligations of the Holders of Class P Securities to the extent of the applicable Class P Class E Certificate Component.

(c) A Holder or Beneficial Owner of a Class P Security may exchange, subject to the applicable minimum denomination requirements, its Class P Securities for interests in the Class E Certificates (in an amount equal to the applicable Class P Class E Certificate Component) and the U.S. Treasury securities represented by the applicable Class P U.S. Treasury Component, as applicable, that comprise such Class P Components of such Class P Securities, in the manner provided herein and in the case of the Class P Class E Certificate Component, in the manner provided in the Class E Certificate Documents for transfer of a Certificated Class E Certificate or an interest in a Class E Certificate in the form of a Regulation S Global Security or Temporary Regulation S Global Security, as applicable:

(i) In the case of the exchange by a beneficial owner of an interest in Class P Securities in the form of a Temporary Regulation S Global Security or a Regulation S Global Security, upon receipt by (x) the Class E Certificate Paying Agent of instructions given in accordance with the Applicable Procedures from a Participant, directing the Class E Certificate Paying Agent (with respect to the Class P Class E Certificate Component to be exchanged) to cause to be credited (to the same Euroclear or Clearstream Account to which the interest in such Class P Security to be exchanged was credited), a beneficial interest in the Class E Certificates in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as applicable, in an amount equal to the aggregate Face Amount of the Class P Class E Certificate Component being exchanged, and (y) the Indenture Registrar of instructions to deliver to such beneficial owner the applicable Class P U.S. Treasury Component, (A) the Class E Certificate Paying Agent shall instruct DTC to increase the aggregate Face Amount of the Class E Certificates in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as applicable, by an amount equal to the Class P Class E Certificate Component being exchanged, and credit such increase as instructed, (B) the Indenture Registrar shall instruct the Depositary to reduce, or cause to be reduced, the Class P Security in the form of a Temporary Regulation S Global Security or Regulation S Global Security, as applicable, by the aggregate stated amount of the beneficial interest in such Temporary Regulation S Global Security or Regulation S Global Security to be exchanged and (C) the Trustee shall deliver to such beneficial owner the applicable Class P U.S. Treasury Component in accordance with market practice for transfer of such asset;

(ii) In the case of the exchange by a Holder of Certificated Class P Securities, upon receipt by (x) the Indenture Registrar of the Certificated Class P Security surrendered for exchange and written instructions to deliver to such Holder the applicable Class P U.S. Treasury Component and (y) the Class E Certificate Paying Agent of written instructions to cause to be issued to such Holder a Certificated Class E Certificate in an aggregate Face Amount equal to the aggregate Face Amount of the Class P Class E Certificate Component being exchanged, the Trustee shall cancel such Certificated Class P Security in accordance with this Indenture (and cause the Indenture Registrar to record the exchange in the Indenture Register) and deliver to such beneficial owner the applicable Class P U.S. Treasury Component in accordance with market practice for such asset and the Class E Certificate Paying Agent shall direct the Class E Certificate Registrar to effect the exchange in accordance with the Class E Certificate Documents by making all necessary entries, if any, in the Register of Members, and shall deliver the Certificated Class E Certificate in a Face Amount equal to the Class P Class E Certificate Component being exchanged.

(iii) A Holder or beneficial owner of a Class P Security will be required to exchange all but not less than all of its interest in a Class P Security for interests in the Class E Certificates (in an amount equal to the applicable Class P Class E Certificate Component) on the Class P Payment Date next following the earlier of the maturity or full liquidation of the U.S. Treasury securities represented by the applicable Class P U.S. Treasury Component, in the manner provided herein and in the manner provided in the Class E Certificate Documents.

(iv) The Class P Securityholders shall cooperate fully with the Trustee, the Indenture Registrar, the Class E Certificate Paying Agent, the Class E Certificate Registrar and the Issuer in effecting any exchange, and shall provide all appropriate transfer forms, representations, delivery instructions and other materials requested by any of them, in connection with such exchange. The Issuer and the Trustee shall use its reasonable efforts to effect any such exchange and shall have no liability for any delay incurred in such exchange or the failure thereof as a result of the Class P Securityholders to provide appropriate documentation or otherwise.

(v) After any such exchange, the Holder of or Beneficial Owner of and interest in the Class P Security so exchanged will be the Holder of or Beneficial Owner of an interest in, as applicable, the Class E Certificates received upon such an exchange. No Holder of or Beneficial Owner of interests in Class E Certificates and U.S. Treasury securities (including following such an exchange) will be entitled to exchange such Class E Certificates and U.S. Treasury securities for any Class P Security. No service charge shall be made for any such exchange of Class P Securities, but the Issuer or the Trustee may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with such exchange. Each Holder and Beneficial Owner of a Class P Security, by its acceptance thereof, acknowledges that upon any such exchange, the rating of such Class P Security by any Rating Agency will not apply to the Securities received in such exchange. Upon the exchange of all outstanding Class P Securities pursuant to this provision, the Issuer will notify each Rating Agency then rating the Class P Securities.

(d) Prior to the issuance of the Class P Securities pursuant to this Indenture, the Trustee shall, in addition to other conditions precedent set forth in this Indenture, have received:

(i) The second Grant and the third Grant pursuant to the Granting Clause hereof of all of the Issuer's right, title and interest in and to the Class P-1 Collateral and the Class P-2 Collateral, respectively, and delivery of the Class P-1 Collateral and Class P-2 Collateral to the Trustee or its nominee, which, if any Class P Collateral is held through an intermediary shall be deemed to have occurred upon receipt of evidence satisfactory to the Trustee that on or before the Closing Date, the Issuer shall have purchased and entered into agreements to purchase such Class P Collateral and the Class P Collateral has been credited by the Class P-1 Accounts Securities Intermediary or the Class P-2 Account Securities Intermediary, as applicable, to the Class P-1 U.S. Treasury Component Account or the Class P-2 U.S. Treasury Component Account.

(ii) A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect of Section 3.1(xix) with respect to each item of Class P Collateral pledged to the Trustee for inclusion in the Class P Collateral.

(e) Each Holder of a Class P-1 Security, by its acquisition thereof, acknowledges that the rating of the Class P-1 Securities by Moody's addresses solely the ultimate payment of the Class P-1 Rated Principal and each Holder of a Class P-2 Security, by its acquisition thereof, acknowledges that

the rating of the Class P-2 Securities by Moody's addresses solely the ultimate payment of the Class P-2 Rated Principal.

(f) The Trustee shall not sell or otherwise dispose of the Class P Collateral or any part thereof, except in accordance with Section 11.2 and this paragraph (f). Upon the occurrence of any Event of Default, the Trustee shall administer the Class P-1 Collateral and Class P-2 Collateral in accordance with Article 5 but solely for the benefit of the applicable Holders of Class P-1 Securities and Class P-2 Securities, respectively. The Majority of the Class P-1 Securityholder will have the right to direct the Trustee as to the exercise of any remedies with respect to the Class P-1 Collateral and the Majority of the Class P-2 Securityholder will have the right to direct the Trustee as to the exercise of any remedies with respect to the Class P-2 Collateral. Any money collected in respect of the Class P-1 Collateral shall be applied solely for the benefit of the Holders of the Class P-1 Securities to make payments solely on the Class P-1 Securities. Any money collected in respect of the Class P-2 Collateral shall be applied solely for the benefit of the Holders of the Class P-2 Securities to make payments solely on the Class P-2 Securities.

(g) The Class E Certificate Components of Class P Securities that constitute Directing Class E Certificates (as defined in the Management Agreement) shall be subject to purchase by the Buy-Out Purchaser under the terms and conditions set forth in Section 12(c) of the Management Agreement. If the Removal Buy-Out Purchaser elects to make such purchase, the Class P Securities that include such Class E Certificate Components shall be deemed exchanged for their respective Components, the Class E Certificates represented by such Class E Certificate Components shall be so purchased and the applicable Buy-Out Amount shall be distributed to the Holders of such Class P Securities, and such Holders will receive a distribution in kind of the related pro rata amount of the Class P U.S. Treasury Component.

ARTICLE 3 CONDITIONS PRECEDENT

Section 3.1. Conditions to Issuance of Notes on Closing Date.

The Indenture Securities to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) Officers' Certificates of the Co-Issuers Regarding Corporate Matters. An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture, the Purchase Agreement, the Class A-1A Note Purchase Agreement, the Class A-1B Note Purchase Agreement and, in the case of the Issuer, the Placement Agency Agreement, the Management Agreement, the Class E Certificates Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication, and delivery of the Indenture Securities applied for by it and specifying the Stated Maturity, principal amount or stated amount, as applicable, and, with respect to the Notes, the Note Interest Rate of each Class of Notes to be authenticated and delivered and (2) evidencing the authorization by Board Resolution of the issuance, terms and number of Class E Certificates issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date, and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) Governmental Approvals. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval, or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval, or consent of any governmental body is required for the valid issuance of the Notes applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Indenture Securities except as have been given; provided that the opinions of Cleary Gottlieb Steen & Hamilton LLP and Walkers substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) Co-Issuers' and Portfolio Manager's U.S. Counsel Opinion. An opinion of Cleary Gottlieb Steen & Hamilton LLP, special U.S. counsel to the Co-Issuers and Orrick, Herrington & Sutcliffe LLP, counsel to the Portfolio Manager, dated the Closing Date, substantially in the forms of Exhibit C, and Exhibit F.

(iv) Issuer's Cayman Counsel Opinion. An opinion of Walkers, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) Trustee's Counsel Opinion. An opinion of Gardere Wynne Sewell LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) Officers' Certificates of Co-Issuers Regarding Indenture. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Indenture Securities applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the issuance, authentication and delivery of the Indenture Securities have been complied with;

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made; and

(D) The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) Hedge Agreements. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) Management Agreement. Executed copy of the Management Agreement.

(ix) Class E Certificates. Copies of executed Class E Certificate certificates to be issued on the Closing Date.

(x) Class E Certificate Documents. An executed counterpart of each of the Class E Certificate Documents.

(xi) Collateral Administration Agreement. Executed copy of the Collateral Administration Agreement.

(xii) Grant of Collateral Obligations. (A) Evidence of the first Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral pledged to the Trustee, on the Closing Date and Delivery of the Collateral (including any promissory notes and all other Underlying Instruments related to such collateral to the extent received by the Issuer) to the Trustee as contemplated by Section 3.2, (B) evidence of the second Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Class P-1 Collateral pledged to the Trustee for the benefit of the Class P-1 Securityholders, on the Closing Date and Delivery of the Class P-1 Collateral (including any promissory notes and all other Underlying Instruments related to such collateral to the extent received by the Issuer) to the Trustee as contemplated by Section 3.2 and (C) evidence of the third Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Class P-2 Collateral pledged to the Trustee for the benefit of the Class P-2 Securityholders, on the Closing Date and Delivery of the Class P-2 Collateral (including any promissory notes and all other Underlying Instruments related to such collateral to the extent received by the Issuer) to the Trustee as contemplated by Section 3.2.

(xiii) Certificate of the Portfolio Manager. A certificate of an Authorized Officer of the Portfolio Manager, dated as of the Closing Date, to the effect that, with respect to the Collateral Obligations pledged to the Trustee for inclusion in the Collateral on the Closing Date, immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Collateral Obligations in the aggregate satisfy the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Portfolio Manager on the Closing Date;

(B) the information with respect to each Collateral Obligation in the Schedule of Collateral Obligations is correct;

(C) each Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(xix)(B); and

(D) no Deep Discount Obligation is included in the Collateral on the Closing Date.

(xiv) *Rating Letters*. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Indenture Securities rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) Accounts. Evidence that each of the Accounts and the Class P Accounts has been established.

(xvi) Issuer Order for Deposit of Funds into Accounts. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of approximately U.S.$75,518,237.99 into the Collection Account for use pursuant to Section 7.18, the deposit of approximately U.S.$16,300,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of approximately U.S.$ 4,100,000 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xvii) Issuer Order for Authentication of Securities. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Securities in the amounts, in the registered names, and with the CUSIP numbers in the Issuer Order.

(xviii) Accountants' Certificate. An Accountants' Certificate (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, by reference to such sources as shall be specified therein (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has committed to purchase in accordance with customary settlement procedures in the relevant markets, is at least U.S.$815,000,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score and, with respect to each such test, specifying the percentage or other numerical value required in order to satisfy the applicable test, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(xviii) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xix) Certificate of the Issuer Regarding Collateral. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, on the Closing Date, immediately before the delivery thereof on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or contemplated by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or contemplated by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligations to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority security interest in the Collateral (subject, in the case of the Synthetic Security Counterparty Account to any lien in favor of the Synthetic Security Counterparty) and the Class P Collateral;

(F) based solely on the Accountant's Certificate set forth in clause (xviii) above, the weighted average purchase price of the Collateral Obligations in the portfolio as of the Closing Date is at least 100.10% of the aggregate par amount thereof; and

(G) based on the certification provided by the Portfolio Manager on the Closing Date pursuant to Section 3.1(xiii), no Deep Discount Obligation is included in the Collateral on the Closing Date.

(xx) Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depositary the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit H-2.

(xxi) Other Documents. Any other documents the Trustee reasonably requires. Nothing in this clause (xxi) shall imply or impose a duty on the part of the Trustee to require any other documents.

Section 3.2. Custodianship; Delivery of Collateral Obligations and Eligible Investments.

(a) (i) The Issuer or the Portfolio Manager on behalf of the Issuer shall Deliver or cause to be Delivered all Collateral, all Class P-1 Collateral and all Class P-2 Collateral. Initially, the Issuer Account Securities Intermediary and the Class P-1 Accounts Securities Intermediary and Class P-2 Accounts Securities Intermediary shall be JPMorgan Chase Bank, National Association. Any successor securities intermediary shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other investments purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into an agreement with the Relevant Securities Intermediary substantially in the form of Exhibit G providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the a jurisdiction acceptable to the Issuer and the Trustee.

(b) Each time that the Issuer, or the Portfolio Manager on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment, or other investments, the Portfolio Manager (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment, or other investment is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment, or other investment to be Delivered to the Trustee to be held in the Custodial Account in the case of property constituting Collateral (or in the case of any such investment that is not a Collateral Obligation, in the Account in which the funds used to purchase the investment are held in accordance with Article 10) and in the relevant Class P Account in the case of property constituting Class P Collateral for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest

of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment, or other investment so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments, or other investments.

Section 3.3. Representations as to Collateral.

(a) The Issuer hereby represents and warrants to the Secured Parties and the Class P Securityholders, as the case may be, as to the Collateral and the Class P Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral and Class P Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral and the Class P Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages, and other encumbrances except as otherwise contemplated herein, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral and Class P Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Securities Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral or the Class P Collateral (or, if any interest in such collateral has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or contemplated by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral and the Class P Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral and the Class P Collateral satisfied the requirements of the definition of "Collateral Obligation" or Class P-1 U.S. Treasury Component or Class P-2 U.S. Treasury Component, as the case may be, as of the date the Issuer committed to purchase the same or, in the case of obligations acquired on or prior to the Closing Date, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion, or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The Relevant Securities Intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in the Collateral and the Class P Collateral pursuant to the Granting Clauses of this Indenture and has

delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee as contemplated by Section 3.2.

(viii) Each item of the Collateral and the Class P Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral and the Class P Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral or the Class P Collateral other than any financing statement (A) relating to the security interest in the Collateral or the Class P Collateral granted to the Trustee under this Indenture, (B) that has been terminated, or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the Relevant Securities Intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral or Class P Collateral have been delivered to the Relevant Securities Intermediary, to the extent received by the Issuer. None of the instruments that are or evidence the Collateral or the Class P Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any person other than the Trustee.

(xiii) The Accounts are not in the name of any person other than the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral or the Class P Collateral have been delivered to the Relevant Securities Intermediary, to the extent received by the Issuer, registered in the name of the Relevant Securities Intermediary or indorsed to the Relevant Securities Intermediary or in blank. The Issuer has received a written acknowledgment from the Relevant Securities Intermediary that the Relevant Securities Intermediary is holding all the certificated securities delivered to it that are or evidence the Collateral or the Class P Collateral solely on behalf and for the benefit of the Trustee.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral or the Class P Collateral to be registered in the name of the Relevant Securities Intermediary.

(xvi) Upon grant by the Issuer, the Trustee has a first priority security interest in the Collateral and the Class P Collateral, subject in the case of the Synthetic Security Counterparty Account to any lien in favor of the Synthetic Security Counterparty.

(xvii) The parties to this Indenture (i) shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver; (ii) shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

(b) If the Issuer acquires Collateral or Class P Collateral that is not "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral or the Class P Collateral, as the case may be, the Issuer (or the Portfolio Manager on behalf of the Issuer) shall notify S&P and the Trustee (with respect to the Collateral, for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral or the Class P Collateral, as the case may be, and the Issuer shall represent to S&P and to the Trustee (with respect to such collateral, for the benefit of the Secured Parties and the Class P Securityholders, as the case may be) as to the category of such collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in such collateral Granted under this Indenture acceptable to S&P.

Section 3.4. Conditions to Issuance of Additional Class E Certificates.

Any Additional Class E Certificates to be issued on an Additional Class E Certificates Closing Date pursuant to Section 4.4 of the Class E Certificates Paying Agency Agreement shall satisfy the conditions precedent set forth in Section 4.4 of the Class E Certificates Paying Agency Agreement.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. Satisfaction and Discharge of Indenture.

This Indenture shall be discharged and shall cease to be of further effect with respect to the Indenture Securities and the Collateral and the Class P Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost, or stolen Notes,

(iii) rights of Holders of the Indenture Securities to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments, as applicable) owing in respect of, the Indenture Securities, as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Class E Certificates remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Class E Certificates or the Class E Certificates Paying Agent on behalf of the Holders of the Class E Certificates, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Class E Certificates remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention, disbursement and reinvestment of Collateral,

(vii) the rights, obligations, and immunities of the Portfolio Manager under this Indenture and under the Management Agreement, and

(viii) the rights of Holders of the Indenture Securities as beneficiaries of this Indenture with respect to the property deposited with the Trustee (other than the Class P Collateral) and payable to any of them and the rights of Class P-1 Securityholders with respect to the Class P-1 Collateral and the rights of the Class P-2 Securityholders with respect to the Class P-2 Collateral (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Indenture Securities theretofore authenticated and delivered (other than (A) Indenture Securities that have been destroyed, lost, or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Indenture Securities for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for such purpose Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated “Aaa” by Moody’s and “AAA” by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Indenture Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of

Indenture Securities that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. The Class Q-1 Securities shall be treated as cancelled for purposes of this Section 4.1(a) if all amounts with respect to the Class Q-1 Components represented thereby have been paid in full. In addition, the Issuer shall cause delivery to the Trustee of an Opinion of Counsel of Independent U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Holders of Notes would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Portfolio Manager and, if applicable, the Securityholders under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.6, 6.7, 7.1, 7.3, 13.1, and 14.14 shall survive.

Section 4.2. Application of Trust Money.

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the person entitled to it and applied by the Trustee in accordance with the Indenture Securities and this Indenture, including, without limitation, the Priority of Payments, to the payment of principal and interest (and any Commitment Fee and Delayed Drawdown Fee), either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties or the Class P-1 Securityholders or Class P-2 Securityholders, as applicable.

Section 4.3. Repayment of Monies Held by Paying Agent.

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. Events of Default.

"Event of Default," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on any of the Class A-1A Notes (or of the Commitment Fee Amount with respect to the Class A–1A Notes), the Class A-1B Notes (or of the Delayed Drawdown Fee with respect to the Class A-1B Notes), the Class A-1C Notes, the Class A-2 Notes, the Class A-3 Notes or the Class A-4 Notes or, after no Class A Notes are Outstanding, on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, any Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date or otherwise (or, in the case of a default in payment due to an administrative error or omission by the Trustee, any Paying Agent or the Indenture Registrar, such default has continued for three Business Days);

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days (or in the case of a failure to disburse such amounts due to an administrative error or omission by the Trustee, any Paying Agent or the Indenture Registrar, such failure continues for six Business Days);

(d) on any Measurement Date for so long as any Class A-1A Notes, Class A-1B Notes, Class A-1C Notes, Class A-2 Notes, Class A-3 Notes or Class A-4 Notes are Outstanding, the Overcollateralization Ratio Numerator is less than 100% of the Aggregate Outstanding Amount of the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes and the Class A-4 Notes;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the 1940 Act;

(f) breach of any other covenant or other agreement or warranty of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Reinvestment Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Portfolio Manager by the Trustee or to the Issuer, the Co-Issuer, the Portfolio Manager, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or the Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or the Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or

answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by Moody's) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to Moody's is satisfied with respect thereto.

Section 5.2. Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g), (h) or (i)), the Trustee may, with the consent of a Majority of the Controlling Class, and upon the written direction of a Majority of the Controlling Class shall, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Reinvestment Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(b)(x)). If an Event of Default specified in Section 5.1(e), (g), (h) or (i) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Reinvestment Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(b)).

(b) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Class E Certificates Paying Agent may rescind the declaration and its consequences if:

(i) The Issuer has paid or deposited with the Trustee a sum sufficient to pay;

(A) all unpaid installments of interest and principal on the Notes then due (other than as a result of the acceleration);

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Management Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the nonpayment of the interest on or principal of the Notes that have become due solely by such acceleration, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(b) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Reinvestment Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Reinvestment Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall preserve the Collateral in accordance with this Indenture. If the preservation of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(a), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(b)).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(c) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class, or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

Section 5.3. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of such Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Holders of such Notes under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements, and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may, and shall at the direction of a Majority of the Controlling Class, institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may, and shall upon written direction of a Majority of the Controlling Class, proceed to protect and enforce its rights and the rights of the Holders of the Notes by any appropriate Proceedings as is deemed most effective (if no direction is received by

the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Holders of the Notes, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.7.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency, or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator, or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer, or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes or the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Holders of the Notes allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Holders of the Notes in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation, or other bankruptcy or insolvency Proceedings or person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Holders of the Notes and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian, or other similar official is authorized by each of the Holders of the Notes to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Holders of the Notes, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment, or composition affecting the Notes or any Holder of Notes, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. Remedies.

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, and shall, upon written direction of a Majority of the Controlling Class, to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Holders of the Notes under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Portfolio Manager (subject to the Management Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee, and the Holders of the Notes, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Secured Parties may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes and the reduction of the Commitment to zero in the case of the Class A-1A Notes, institute against, or join any other person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a person other than a Secured Party, or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceeding.

Section 5.5. Optional Preservation of Collateral.

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral intact, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to any Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by any Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) in the case of an Event of Default other than pursuant Section 5.1 (d), the Holders of a Majority of each of the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes, the Class A-4 Notes, the Class B Notes and the Class C Notes direct the sale and liquidation of the Collateral; or

(iii) in the event of an Event of Default pursuant to Section 5.1(d), a Majority of the Holders of the Class A Notes (voting together as a single Class) direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Portfolio Manager. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to preserve the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service), at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Placement Agent.

The Trustee shall deliver to the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), the Holders of the Notes, the Co-Issuers, the Initial Purchaser, the Portfolio Manager and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Holders of the Notes representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes.

Section 5.7. Application of Money Collected.

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. Limitation on Suits.

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request, and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No one or more Holders of Notes have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Holders of Notes of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of the Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture.

Section 5.9. Unconditional Rights of Holders of Notes.

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on such Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Holders of Notes ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Class E Certificates Paying Agent shall not be entitled to any payment of any

amount for payments to the Holders of the Class E Certificates pursuant to the Class E Certificate Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Class E Certificates Paying Agent in accordance with the Priority of Payments.

Section 5.10. Restoration of Rights and Remedies.

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. Rights and Remedies Cumulative.

No right in this Indenture conferred on or reserved to the Trustee or to the Holders of Notes is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. Delay or Omission Not Waiver.

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Holders of Notes may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Holders.

Section 5.13. Control by Majority of the Controlling Class.

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class, with respect to the Notes, may institute and direct the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes, if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received an indemnity against the liabilities reasonably satisfactory to it) and during the continuance of an Event of Default that has not

been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. Waiver of Past Defaults.

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Portfolio Manager, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Portfolio Manager, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) and each Holder of Notes.

Section 5.15. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Portfolio Manager for any action taken or omitted by it as Trustee or for any action taken or omitted by the Portfolio Manager, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee, the Portfolio Manager, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Holder of Notes for the enforcement of the payment of the principal of or interest or distributions on, as the case may be any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. Waiver of Stay or Extension Laws.

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Holders of the Notes but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. Sale of Collateral.

(a) The power to effect any sale (a "Sale") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Holders of the Notes and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), and shall, at the direction of a Majority of the Controlling Class from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.7.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.7. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes (in the case of the Collateral). The Trustee may hold, lease, operate, manage, or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("Unregistered Securities"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. Action on the Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or

the Holders of the Notes shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. Certain Duties and Responsibilities.

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Holders of the Notes and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would use under the circumstances in the conduct of the person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Portfolio Manager in accordance with this Indenture or a Majority (or the other percentage required by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture); and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any extraordinary financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it

has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed an "extraordinary financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. Notice of Default.

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Portfolio Manager and the Co-Issuers, each Rating Agency, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) and to all Holders of Notes, as their names and addresses appear on the Indenture Register, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee). In addition, (i) if and for so long as any Class of Notes is listed on the Irish Stock Exchange and so long as the rules of such stock exchange so require, notices to the Holders of such Notes shall also be given by the Irish Paying and Listing Agent by publishing in the Irish Stock Exchange's Daily Official List and (ii) the Cayman Islands Stock Exchange, for so long as any Class E Certificates, Class Q-1 Securities or Class P Securities are listed on the Cayman Islands Stock Exchange and so long as the rules of the exchange so require.

Section 6.3. Certain Rights of Trustee.

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers, or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of the Indenture Securities pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class or of a Rating Agency shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Portfolio Manager, to examine the books and records relating to the Notes and the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Portfolio Manager's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate, or information received from the Issuer or Portfolio Manager;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Portfolio Manager, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the

Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("GAAP"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depositary, any Transfer Agent, Custodian, Issuer Accounts Securities Intermediary, Class P-1 Accounts Securities Intermediary, Class P-2 Accounts Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent, or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in making or disposing of any investment permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent, Issuer Accounts Securities Intermediary, Class P-1 Accounts Securities Intermediary or Class P-2 Accounts Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. Not Responsible for Recitals or Issuance of Indenture Securities.

The recitals contained in this Indenture and in the Indenture Securities, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Indenture Securities. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Indenture Securities or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. May Hold Indenture Securities.

The Trustee, any Paying Agent, Indenture Registrar, or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Indenture Securities and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar, or other agent.

Section 6.6. Money Held in Trust.

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on investments that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on investments made in accordance with an

Issuer Order or a written order or request by the Portfolio Manager, unless such investment is made in an obligation of the Trustee in its corporate capacity.

Section 6.7. Compensation and Reimbursement.

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements, and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5, or 10.7, except any such expense, disbursement, or advance attributable to its negligence, willful misconduct, or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Portfolio Manager;

(iii) to indemnify the Trustee and its officers, directors, employees, and agents for any loss, liability, or expense incurred without negligence, willful misconduct, or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves (including reasonable attorney's fees and costs) against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.13.

(b) The Trustee's fees shall be calculated on the basis of the actual number of days elapsed divided by 360.

(c) The Trustee shall receive amounts pursuant to this Section 6.7 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.9, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Holders of the Indenture Securities shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(d) The Trustee agrees not to cause the filing of a petition in bankruptcy against the Issuer for the non-payment to the Trustee of any amounts provided by this Section 6.7 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture (and the reduction of the Commitment in respect of the Class A-1A Notes to zero) and the payment to the Class E Certificates Paying Agent of all amounts

payable with respect to the Class E Certificates in accordance with the Priority of Payments. Nothing in this Section 6.7(d) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.8. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee under this Indenture that is an Independent entity organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.8, it shall resign immediately in the manner and with the effect specified in Section 6.9.

Section 6.9. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Portfolio Manager, the Holders of the Notes, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall at the direction of a Majority of the Controlling Class promptly appoint a successor trustee satisfying the requirements of Section 6.8, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Holder of Notes, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) and the Portfolio Manager. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Holder of a Note, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.8.

(c) The Trustee may be removed (i) at any time (including, for the avoidance of doubt, when an Event of Default is continuing) by a Majority of the Controlling Class, or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.8 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge

or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation,

then, in any such case (subject to Section 6.9(a)), (A) the Co-Issuers, by Issuer Order, may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee, or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.10, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Portfolio Manager, to each Rating Agency, to the Holders of Notes as their names and addresses appear in the Indenture Register and to the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.10. Acceptance of Appointment by Successor.

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer, and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.8 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.11. Merger, Conversion, Consolidation, or Succession to Business of Trustee.

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion, or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Issuer Accounts Securities Intermediary, Class P-1 Accounts Securities Intermediary, Class P-2 Accounts Securities Intermediary, Indenture Registrar, and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.12. Co-Trustees.

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Holders of the Notes and the, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.12.

The Co-Issuers shall join with the Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged, and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash, and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.12, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-

Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.12;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Holders of Notes delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.13. Certain Duties of Trustee Related to Delayed Payment of Proceeds.

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Portfolio Manager in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Portfolio Manager in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Portfolio Manager requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Management Agreement, the release or substitution shall be subject to Section 10.7 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.13 and the payment shall not be part of the Collateral.

Section 6.14. Authenticating Agents.

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of Indenture Securities in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7 and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Indenture Securities by an Authenticating Agent pursuant to this Section 6.14 shall be the authentication of Indenture Securities "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.15. Fiduciary for Holders of Notes Only; Agent for Secured Parties.

With respect to the security interest created under this Indenture, the Delivery of any Pledged Obligation to the Trustee is to the Trustee as fiduciary for the Holders of Notes and agent for the other Secured Parties. With respect to the security interest created under this Indenture, the Delivery of any Class P-1 Collateral to the Trustee is to the Trustee as fiduciary for the Holders of Class P-1 Securities. With respect to the security interest created under this Indenture, the Delivery of any Class P-2 Collateral to the Trustee is to the Trustee as fiduciary for the Holders of Class P-2 Securities.

Section 6.16. Representations and Warranties of the Bank.

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) Organization. The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) Authorization; Binding Obligations. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery, and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) Eligibility. The Bank is eligible under Section 6.8 to serve as Trustee under this Indenture.

Section 6.17. Additional Reporting Requirements.

If the Initial Purchaser elects to enter into a posting dealer agreement pursuant to Section 7.19, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Portfolio Manager and the Initial Purchaser.

If the Initial Purchaser has entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee, on behalf of and at the expense of the Issuer, shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(viii).

ARTICLE 7

COVENANTS

Section 7.1. Payment of Principal and Interest.

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture. The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

All payments under the Class A–1A Notes and the Class A-1B Notes to any Holder thereof will be made by the Issuer without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If the Issuer is so required to deduct or withhold, then the Issuer (or its agent) will: (i) notify each affected Holder of such requirement no later than ten days prior to the date of the payment from which amounts are required to be withheld (*provided* that, despite the failure of the Issuer to give such notice, amounts withheld pursuant to applicable laws shall be considered as having been paid by the Co-Issuers as provided above); (ii) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the affected Holder; and (iii) promptly forward to the affected Holder documentation reasonably acceptable to the affected Holder evidencing such payment to such authorities.

Section 7.2. Maintenance of Office or Agency.

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint JPMorgan Chase Bank, National Association, 600 Travis Street, 50th Floor, Houston, Texas 77002, telecopy no. (713) 216-2101, Attention: Worldwide Securities Services—Liberty CLO, Ltd., as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent and/or appoint any additional agents, including, without limitation, as may be required under the rules of the Irish Stock Exchange or the Cayman Islands Stock Exchange.

So long as any Notes are listed on the Irish Stock Exchange and the rules of such exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands to or upon the Co-Issuers in respect of such Notes and this Indenture may be served.

The Co-Issuers hereby appoint, for so long as any Class of Notes is listed on the Irish Stock Exchange, NCB Stockbrokers (the "Irish Paying and Listing Agent") as Paying Agent and Listing Agent in Ireland with respect to the Notes listed on the Irish Stock Exchange, for the payment of principal and interest on such Notes and as the Co-Issuers' agent where notices and demands to or upon the Co-Issuers in respect of such Notes or this Indenture may be served. In the event that the Irish Paying and

Listing Agent is replaced at any time during such period, notice of the appointment of any replacement will be published in the *Daily Official List* of the Irish Stock Exchange as promptly as practicable after such appointment.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served and an office or agency outside of the United States where Notes may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. Money for Note Payments to be Held in Trust.

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish no later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of “Aa3” (and not on credit watch with negative implications) or higher by Moody’s and “AA-” or higher by S&P or a short-term debt rating of “P-1” (and not on credit watch for possible downgrade) by Moody’s and “A-1+” by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of “Aa3” (and not on credit watch with negative implications) or higher by Moody’s and “AA-” or higher by S&P or a short-term debt rating of “P-1” (and not on credit watch for possible downgrade) by Moody’s and a short-term debt rating of “A-1+” by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to

execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Holders of Notes for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Holder of the Note shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. Existence of Co-Issuers.

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Class E Certificates Paying Agency Agreement, the Class E Certificates or any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction outside the United States reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Portfolio Manager or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Holders of the Notes, the Class E Certificates Paying Agent (for forwarding to the Holders of the Class E Certificates), the Portfolio Manager, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a legal opinion from nationally recognized legal counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding, income or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action, or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other person in a bankruptcy, reorganization, or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries other than an entity the sole asset of which consists of, and the sole activity of which is the acquisition and ownership of, ETB/897 Assets or other Tax Affected Securities;

(ii) the Co-Issuer shall not have any subsidiaries;

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Portfolio Manager, the Trustee, and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Management Agreement, the Administration Agreement, the Class E Certificates Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) have any employees (other than their respective directors),

(B) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(C) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Class E Certificate Documents.

Section 7.5. Protection of Collateral.

(a) The Issuer shall cause the Portfolio Manager, on behalf of the Issuer, to procure any action within the Portfolio Manager's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral and the Class P Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties and Class P Securityholders under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral and Class P Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any rights under any Collateral or Class P Collateral;

(v) preserve and defend title to the Collateral and the Class P Collateral and the rights of the Secured Parties in the Collateral and the Class P Securityholders in the applicable Class P Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral or Class P Collateral.

The Issuer designates the Portfolio Manager as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer hereby authorizes the filing of a financing statement that names the Issuer as "debtor" and JPMorgan Chase Bank, National Association as "secured party" and that describes the Collateral and the Class P Collateral as "all assets in which the debtor now or hereafter has rights."

(b) The Trustee shall not, except in accordance with Section 10.7, permit the removal of any portion of the Collateral or Class P Collateral or transfer any such Collateral or Class P Collateral from the Account to which it is credited, or cause or permit any change in the Delivery made pursuant to Section 3.2 with respect to any Collateral or Class P Collateral, if after giving effect thereto the jurisdiction whose law governs the perfection of the Trustee's security interest in such Collateral or Class P Collateral is different from the jurisdiction whose law governed perfection at the time of delivery of the most recent Opinion of Counsel pursuant to Section 7.6 (or, if no Opinion of Counsel has yet been delivered pursuant to Section 7.6, the Opinion of Counsel delivered at the Closing Date pursuant to Section 3.1(iii), unless the Trustee shall have received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to such property will continue to be maintained after giving effect to such action or actions.

(c) Without at least 30 days' prior written notice to the Trustee and the Portfolio Manager, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Management Agreement, the Collateral Administration Agreement, the Class E Certificates Paying Agency Agreement, each Hedge Agreement, each Securities Lending Agreement and each Synthetic Security Agreement.

(e) The Issuer shall pay any taxes levied because any Collateral or Class P Collateral is owned by the Issuer.

(f) The Portfolio Manager on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. Opinions as to Collateral.

On or before March 31 in each calendar year, commencing in 2007, the Issuer shall furnish to the Trustee, the Portfolio Manager and each Rating Agency an Opinion of Counsel from each relevant jurisdiction stating that, in the counsel's opinion, as of the date of the opinion, all actions necessary to maintain the lien and security interest created by this Indenture with respect to the Collateral and the Class P Collateral have been taken and that no further action (other than as specified in the opinion) needs to be taken for the continued effectiveness and perfection of the lien over the next year. The opinion may be subject to customary assumptions and qualifications.

Section 7.7. Performance of Obligations.

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any person from any of the person's covenants or obligations under any instrument included in the Collateral or Class P Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Portfolio Manager under the Management Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Class E Certificates (except in the case of the Management Agreement and the Collateral Administration Agreement as initially executed), contract with other persons (including the Portfolio Manager, the Trustee, and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Portfolio Manager, the Trustee, the Collateral Administrator, the Class E Certificates Paying Agent and any other person to perform, all of their obligations in the Management Agreement, this Indenture, the Collateral Administration Agreement, the Class E Certificates Paying Agency Agreement or any other agreement.

Section 7.8. Negative Covenants.

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi), (viii), (ix) and (x), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral or Class P Collateral, except as expressly permitted or contemplated by this Indenture and the Management Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Holder of Notes because of the payment of any taxes levied or assessed on any part of the Collateral or Class P Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements), or (B) issue any additional class of securities other than the Class E Certificates issued on or before the Closing Date, except as otherwise permitted by the Class E Certificate Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged, or permit any person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Management Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage, or other encumbrance (other than any lien of or contemplated by this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral or the Class P Collateral, any interest in it, or its proceeds of, or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral or Class P Collateral, subject in the case of a Synthetic Security Counterparty Account, to any lien in favor of the Synthetic Securities Counterparty;

(v) amend the Management Agreement except pursuant to its terms and Section 15.1(f)(v) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Class E Certificate Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees);

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with

customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such provisions without prior satisfaction of the Rating Condition;

(xi) operate so as to be subject to U.S. federal, state or local income or franchise taxes on its net income except that it may acquire Tax Affected Securities as expressly provided herein, pending their sale or transfer in accordance with Section 12.1 hereof); and will not, without limiting the generality of the foregoing, (A) originate or make loans or hold itself out through advertising or otherwise, as originating loans, lending funds or making a market in or dealing in loans or other assets, (B) hold itself out as being willing and able to enter into derivative contracts or otherwise to enter into transactions with customers in the ordinary course of business, (C) solicit, advertise or publish its ability to, or otherwise hold itself out as generally willing to enter into, assume, offset, assign or otherwise terminate positions in, credit default swaps, total return swaps or other derivative transactions at the request of others, or (D) post or publish bid or offer quotations on or otherwise indicate its willingness to enter into or terminate credit default swaps, total return swaps and other derivative transactions on, any regular trading medium or quotation service for credit default swaps, total return swaps or other derivative transactions;

(xii) earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Collateral Obligation or entering into a Synthetic Security except for (A) commitment fees or facility maintenance fees that are received by the Issuer in connection with Revolving Loans or Delayed Drawdown Loans; (B) yield maintenance and prepayment penalty fees; (C) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Collateral Obligations; (D) fees from permitted securities lending; and (E) upfront payments in lieu of periodic payments under a Synthetic Security.

(xiii) except for services provided in connection with permitted fees as described in clause (xii) above, provide services to any Person;

(xiv) purchase any asset (directly or synthetically) that is treated for U.S. federal income tax purposes as: (A) an equity interest in a "partnership"(within the meaning of Section 7701(a)(2) of the Code) or other fiscally transparent entity engaged or deemed to be engaged in a trade or business within the United States, or (B) a "United States real property interest" as defined in Section 897 of the Code and the Treasury Regulations promulgated thereunder; provided that the Issuer may acquire stock of a subsidiary and cause such subsidiary to acquire assets set forth in clauses (A) or (B) above (an "ETB/897 Asset") that are received in connection with the workout of defaulted Collateral Obligations, so long as the acquisition of ETB/897 Assets by such subsidiary will not cause the stock of such subsidiary to be deemed to be an ETB/897 Asset;

(xv) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Indenture hereto;

(xvi) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security Collateral Accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, in each case in accordance with the Indenture, shall not constitute the making of advances);

(xvii) acquire Synthetic Securities that require that the purchaser of credit protection thereunder own the applicable Reference Obligation or require by its terms the delivery of reports

or other information relating to the Reference Obligation if the effect of such requirement is that the purchaser of credit protection thereunder would be required to own the applicable Reference Obligation;

(xviii) purchase any Collateral Obligation primarily for the purpose of entering into a securities lending agreement with respect thereto and will not hold itself out as being willing or able to lend securities in the ordinary course of business;

(xix) register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as a brokerdealer, a bank, an insurance company, financial guarantor, surety bond issuer, or a company engaged in loan origination;

(xx) take any action causing it to be treated as a bank, insurance company, or company engaged in loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

(xxi) hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

(xxii) treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

(xxiii) disclose the identity of any holder of its Securities to any person from whom it purchases Collateral Obligations or attempt to obtain more favorable terms from any seller as a result of the identity of any holder of a Security;

(xxiv) allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Portfolio Manager's or Issuer's decision to invest in a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the Indenture or acquire a Collateral Obligation conditioned upon a particular person or entity holding Securities;

(xxv) acquire any asset whose ownership or disposition (without regard to the Issuer's other activities) would cause the Issuer to be subject to income tax on a net income basis (other than a Tax Affected Security as expressly permitted herein, pending its sale or transfer in accordance with Section 12.1 hereto);

(xxvi) hold any security as nominee for another person; or

(xxvii) buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange, or otherwise dispose of Collateral or Class P Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral or Class P Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Management Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the 1940 Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9. Notice of Default; Statement as to Compliance.

(a) The Co-Issuers shall notify the Trustee, the Portfolio Manager, the Rating Agencies, and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before March 31 in each calendar year commencing in 2007 and prior to the issuance of any Additional Class E Certificates, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Portfolio Manager and each Holder of Notes making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and no Default has existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. Co-Issuers May Consolidate, etc., Only on Certain Terms.

Neither the Issuer nor the Co-Issuer (the "Merging Entity") shall consolidate or merge with or into any other person or transfer or convey all or substantially all of its assets to any person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "Successor Entity"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other person or transfer or convey the Collateral or all or substantially all of its assets to any other person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer, or conveyance and shall have delivered to the Trustee, each Noteholder and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer, or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Notes or Class E Certificates;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) nor the pool of Collateral will be an investment company under the 1940 Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the 1940 Act by any U.S. person.

Section 7.11. Successor Substituted.

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and may exercise every right of, the

Merging Entity under this Indenture with the same effect as if the person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer, or conveyance, the person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up, and liquidated at any time thereafter, and the person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12. No Other Business.

(a) The Issuer shall not engage in any business or activity other than (i) acquisition and disposition of, and investment and reinvestment in, Collateral Obligations, Eligible Investments, other Collateral described in clauses (a) to (g) of the Granting Clauses hereof, for its own account; (ii) entering into, and performing its obligations under, the Indenture, the Class E Certificate Documents, any Hedge Agreements, the Securities Lending Agreements, the Management Agreement, the Collateral Administration Agreement, the Administration Agreement, the Purchase Agreement, the Placement Agreement, the Class A-1A Note Purchase Agreement and the Class A-1B Note Purchase Agreement; (iii) the issuance and sale of the Securities and the Ordinary Shares; (iv) the pledge of the Collateral as security for its obligations in respect of the Notes and any Hedge Agreements; (v) the pledge of the Class P-1 Collateral as security for certain obligations in respect of the Class P-1 Securities and the pledge of the Class P-2 Collateral as security for certain obligations in respect of the Class P-2 Securities; and (vi) undertaking certain other activities incidental to the foregoing and permitted by this Indenture. The Issuer shall not enter into any derivative transaction except as expressly provided in this Indenture. The Issuer shall not engage in any business or activity or purchase any asset that would cause the Issuer to be engaged in a U.S. trade or business for U.S. federal income tax purposes, except as the result of ownership of Tax Affected Securities to the extent permitted herein and pending their sale or transfer in accordance with Section 12.1 hereto.

(b) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. Annual Rating Review.

So long as any Notes of any Class remain Outstanding, the Co-Issuers shall obtain and pay for an ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency. The Co-Issuers shall promptly notify the Trustee and the Portfolio Manager in writing (and the Trustee shall promptly provide a copy of the notice to the Holders of the Notes) and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.14. Reporting.

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "Rule 144A Information" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.15. Calculation Agent.

(a) The Issuer agrees that for so long as any Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "Calculation Agent"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer, the Issuer or the Portfolio Manager (on its behalf) shall promptly appoint a replacement Calculation Agent. The Calculation Agent may not resign its duties without a successor having been duly appointed. For so long as any Class of Notes is listed on the Irish Stock Exchange and the rules of such exchange so require, notice of the appointment of any replacement Calculation Agent shall be published by or on behalf of the Issuer in the *Daily Official List* of the Irish Stock Exchange as promptly as practicable after such appointment.

(b) As soon as possible after 11:00 a.m., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 a.m., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Portfolio Manager, the Depositary and, except for the Note Interest Rate for the Class A–1A Notes and Commitment Fee and the Note Interest Rate for the Class A-1B Notes and Delayed Drawdown Fee, Euroclear, Clearstream and, so long as any of the Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, such information will be published by the Irish Paying and Listing Agent in the *Daily Official List* of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of such information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 p.m., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Class E Certificates.

Section 7.16. Certain Tax Matters.

(a) The Issuer will not elect to be treated as a partnership for U.S. federal income tax purposes and shall make any election necessary to avoid classification as a partnership or disregarded entity for U.S. federal income tax purposes.

(b) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an Opinion of Counsel from a tax counsel of nationally recognized standing experienced in such matters prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(c) Notwithstanding any contrary agreement or understanding, the Portfolio Manager, the Issuers, the Trustee and the Holders and beneficial owners of the Notes (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Indenture and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such tax treatment and tax structure. The foregoing provision shall apply from the beginning of discussions between the parties. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. tax treatment of the transaction under applicable U.S federal, state and local law, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. tax treatment of the transaction under applicable U.S. federal, state and local law.

(d) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Holder of a Security requests information about any such transactions in which the Issuer is an investor, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(e) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture.

(f) Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.16.

(g) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(h) Upon the Trustee’s receipt of a request of a Holder holding a Security that is issued with original issue discount for U.S. Federal income tax purposes for the information described in Treasury regulation section 1.1275-3(b)(1) that is applicable to such Security that is issued with original issue discount for U.S. Federal income tax purposes, the Issuer will cause its independent accountants to provide promptly to the Trustee and such requesting Holder all of such information. Any issuance of additional Securities will be accomplished in a manner that will allow the Issuer to accurately provide the same information as the foregoing to the Holders of such additional Securities.

(i) Each Holder and beneficial owner of a Security, by acceptance of its Security or its interest in a Security, shall be deemed to understand and acknowledge that failure to provide the Paying Agent with the applicable U.S. federal income tax certifications (generally, a United States Internal Revenue Service Form W-9 (or successor applicable form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate United States Internal Revenue Service Form W-8 (or successor applicable form) in the case of a person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) may result in U.S. federal back-up withholding from payments in respect of such Note.

(j) The Issuer and each Holder of a Note shall treat the Notes as debt and the Class E Certificates as equity for U.S. federal income tax purposes and further agrees not to take any action inconsistent with such treatment. The Issuer and each Holder of Class P Securities or Class Q-1 Securities shall treat each Class Q-1 Security and Class P Security as a direct ownership interest in the corresponding components of such Security.

(k) The Issuer shall provide, or cause the independent accountants to provide, within 90 days after the end of the Issuer's tax year, to each Holder of a Security, upon written request and, upon

written request therefor, all information that a U.S. shareholder making a "qualified electing fund" election (as defined in the Code) with respect to the Security is required to obtain from the Issuer for U.S. federal income tax purposes, and a "PFIC Annual Information Statement" as described in United States Treasury Regulation Section 1.1295-1(g)(1) (or any successor Treasury Regulation), including all representations and statements required by such statement, and the Issuer will take or cause the accountants to take any other reasonable steps to facilitate such election by a Holder or beneficial owner of a Security.

(l) The Issuer will provide, or cause its Independent accountants to provide, to a Holder of a Security, upon written request and, upon written request therefor, any information that such Holder or beneficial owner reasonably requests to assist such Holder or beneficial owner with regard to filing requirements that such Holder or beneficial owner is required to satisfy as a result of the controlled foreign corporation rules under the Code.

(m) The Issuer shall not purchase any asset if the acquisition (including the manner of acquisition), ownership, enforcement or disposition of such asset would cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes or otherwise as subject to tax on a net income basis in any jurisdiction outside the Issuer's jurisdiction of incorporation.

Section 7.17. Securities Lending.

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Portfolio Manager may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A+" from S&P (each, a "Securities Lending Counterparty") pursuant to one or more agreements (each, a "Securities Lending Agreement"); provided that Collateral Obligations whose Market Value cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Portfolio Manager. The Securities Lending Counterparties may be Affiliates of the Placement Agent or Affiliates of the Portfolio Manager. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Portfolio Manager (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of Cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "Securities Lending Collateral") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.8;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Portfolio Manager) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Portfolio Manager on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Portfolio Manager on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (mutatis mutandis) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Portfolio Manager on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Portfolio Manager to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Portfolio Manager, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Portfolio Manager in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Portfolio Manager instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Portfolio Manager shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity, or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan

(including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.18. Purchase of Collateral Obligations; Ramp-Up Completion Date.

(a) The Issuer shall use commercially reasonable efforts to purchase (or enter into commitments to purchase (with settlement as soon as practicable after such commitment, but in any event no later than 60 days thereafter) Collateral Obligations for inclusion in the Collateral on any Business Day during the Ramp-Up Period, in each case, such that as of the Business Day prior to March 3, 2006, either (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $900,000,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be (provided that with respect to the Initial Collateral Obligations, the date of purchase shall be the Closing Date)) equals at least $900,000,000 (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations after the Closing Date and on or before the Ramp-Up Completion Date).

(b) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.18, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(c) Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Portfolio Manager (on behalf of the Issuer) shall request a Rating Confirmation and shall provide a report to the Rating Agencies substantially in the form of a Monthly Report as of the Ramp-Up Completion Date identifying the Collateral Obligations then included in the Collateral (and, with respect to S&P, an excel file containing the S&P CDO Monitor input file and with respect to each Collateral Obligation, the name of the related obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof) and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies (together with the delivery of such report), an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each Collateral Obligation owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests is satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Investment Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in Section 12.2 of this Indenture; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(d) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.19. Posting of Reports on Repository.

(a) If the Initial Purchaser has entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer and the Portfolio Manager acknowledges and agrees that each Monthly Report and Valuation Report shall be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee, on behalf of and at the expense of the Issuer, agrees to make available in accordance with Section 14.3(a)(viii) each Monthly Report or Valuation Report to the operator of the Repository for posting on the Repository.

(b) Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer or the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or any other transaction document or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 7.20. [Reserved]

Section 7.21. Section 3(c)(7) Procedures.

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the 1940 Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the 1940 Act):

(a) Section 3(c)(7) Notice to Investors. The Issuer shall (i) request the Depositary to cause, and cooperate with the Depositary in causing, the Depositary's security description and delivery order to include a "3(c)(7) marker" and the Depositary's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the 1940 Act, (ii) request that the Depositary send, and cooperate with the Depositary in causing the Depositary to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-1 as set forth in Section 10.6(a) and (b) and (iii) request that the Depositary cause, and cooperate with the Depositary in causing, the Depositary's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) CUSIP Numbers. The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Placement Agent, the Initial Purchaser and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) Bloomberg and other Third-Party Vendor Screens. The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)", (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information", and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act of 1933, as amended (the "Securities Act") to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act of 1940)". The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

Section 7.22. Listing.

(a) So long as any Class of Notes listed on the Irish Stock Exchange is Outstanding, the Issuer shall (i) use all reasonable efforts to maintain the listing of such Class of Notes on the Irish Stock Exchange; provided, however, that the Issuer will not be required to maintain a listing on the Irish Stock Exchange or any other E.U. stock exchange if compliance with requirements of the European Commission or a relevant Member State becomes commercially unreasonable in the sole judgment of the Portfolio Manager, (ii) notify the Irish Stock Exchange if the rating assigned to any Class of Notes has been qualified, downgraded or withdrawn; and (iii) make available for inspection at the office of the Irish Paying and Listing Agent copies of its Articles, bylaws, and resolutions authorizing the issuance of the Notes and this Indenture.

(b) So long as any Class E Certificates listed on the Cayman Islands Stock Exchange are Outstanding, the Issuer shall (i) use all reasonable efforts to maintain the listing of such Class E Certificates on the Cayman Islands Stock Exchange; provided, however, that the Issuer will not be required to maintain a listing on the Cayman Islands Stock Exchange or any other stock exchange if compliance with requirements of such stock exchange becomes commercially unreasonable in the sole judgment of the Portfolio Manager; and (ii) make available for inspection at the office of the Administrator copies of its Articles, bylaws, and resolutions authorizing the issuance of the Class E Certificates and the Class E Certificate Documents.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. Supplemental Indentures Without Consent of Holders.

(a) Without the consent of the Holders of any Indenture Securities (except as specifically provided in clauses (7), (16) and (17) below) or the Holders of any Class E Certificates, when authorized by respective Board Resolutions, and subject to the requirement provided below in this Section

8.1 with respect to satisfaction of the Rating Condition, the Co-Issuers and the Trustee may execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another person to the Issuer or the Co-Issuer and the assumption by the successor person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Indenture Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Holders of the Indenture Securities or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage, or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication, and delivery of the Indenture Securities;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.9, 6.10, and 6.12;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) modify the restrictions on and procedures for resales and other transfers of the Indenture Securities to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the 1940 Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(7) with the consent of the Portfolio Manager and a Majority of the Controlling Class (by Act of the Holders of the Controlling Class), to modify the restrictions on the sales of Collateral Obligations in Section 12.1 or the Eligibility Criteria in Section 12.2 (and the definitions related thereto) in a manner not materially adverse to the Holders of any Class of the Notes or the Class E Certificates as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of the Notes or the Class E Certificates;

(8) make any changes required by (i) the Irish Stock Exchange (so long as any of the Notes are listed thereon) or (ii) the Cayman Islands Stock Exchange (so long as any of the Class E Certificates, Class Q-1 Securities or Class P Securities are listed thereon) or (iii) any other stock exchange on which any Class of Securities is listed in order to permit or maintain the listing of any Securities thereon;

(9) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture or to conform the Indenture to the Offering Memorandum;

(10) accommodate the issuance of the Securities in book-entry form through the facilities of DTC or otherwise;

(11) to take any appropriate action to prevent the Issuer, the Holders of Securities, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to U.S. federal, state, or local income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(12) to authorize the appointment of any listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities appropriate in connection with the listing of any Class of Securities on the Irish Stock Exchange, the Cayman Islands Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Holder of Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Portfolio Manager, to the effect that the modification would not be materially adverse to the Holders of any Class of the Securities;

(13) to amend, modify, enter into, or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement);

(14) to modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(15) to evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(16) with the consent of a Majority of the Controlling Class (by Act of the Holders of the Controlling Class), modify the calculation of the Collateral Quality Tests, Concentration Limitations or the Coverage Tests or related definitions to correspond with written changes in the guidelines, methodology or standards established by the Rating Agencies or as otherwise permitted by the Rating Agencies;

(17) (a) with the consent of a Majority of the Class A-1A Notes (by Act of the Holders of the Class A-1A Notes), to amend any provisions herein relating solely to the manner, timing and conditions of Borrowings; and (b) with the consent of a Majority of the Class A-1B Notes (by Act of the Holders of the Class A-1B Notes), to amend any provisions herein relating solely to the manner, timing and conditions of Drawdowns;

(18) to facilitate the issuance of participation notes, combination notes, combination securities and other similar securities;

(19) to facilitate hedging transactions;

(20) to facilitate the ability of the Issuer to lend Collateral Obligations pursuant to a Securities Lending Agreement;

(21) to modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(22) with the consent of the Portfolio Manager, to enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of Securities; or

(23) provide for the issuance of Additional Class E Certificates to the extent permitted by the Class E Certificate Documents and to extend to such Additional Class E Certificates the benefits applicable to the Class E Certificates hereunder and under the Class E Certificate Documents.

(b) Without the consent of the Portfolio Manager, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Portfolio Manager under this Indenture or increase the duties or obligations of the Portfolio Manager.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities, or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of the Securities that the Class of Securities would be materially and adversely affected, the Trustee may rely on a certificate of the Portfolio Manager and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture. The Trustee shall give notice of any such supplemental indenture described in Section 8.1 to the Holders of Indenture Securities and to the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) at least 15 Business Days before execution of any supplemental indenture by the Trustee (or 60 calendar days before execution, in the case of a supplemental indenture for the purpose described in paragraph (7), (16) and (17) of Section 8.1(a), which shall be identified as such in a certificate of the Portfolio Manager delivered to the Trustee before the date on which such notice is required to be given).

(d) Except for a supplemental indenture described in Section 8.1(a)(23) above, if any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Portfolio Manager and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental indenture with respect to which a the Rating Condition for one or more Classes of Indenture Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Indenture Security informing them of such fact.

(e) Without limiting any other requirement to deliver notice pursuant to this Section 8.1, at the cost of the Co-Issuers, the Trustee shall provide to each Rating Agency (for so long as any

rated Notes are Outstanding), the Holders of the Indenture Securities and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), the Irish Listing and Paying Agent for forwarding to the Irish Stock Exchange (if and for so long as any Class of Notes is listed thereon), the Administrator for forwarding to the Cayman Islands Stock Exchange (if and for so long as any Class E Certificates, Class Q-1 Securities or Class P Securities are listed thereon) and each Hedge Counterparty a copy of any proposed supplemental indenture pursuant to this Section 8.1 at least 15 Business Days before its execution by the Trustee.

Section 8.2. Supplemental Indentures With Consent of Holders.

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Holders of the Notes under this Indenture with the consent of:

(1) the Portfolio Manager if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager;

(2) a Majority of each Class of Indenture Securities adversely affected thereby, by Act of the Holders of each such Class of Indenture Securities; and

(3) a Majority of the Class E Certificates adversely affected thereby, by Act of the Holders of the Class E Certificates.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Class E Certificate adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Class E Certificates Paying Agent for payment to the Holders of the Class E Certificates, reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Class E Certificate, or change the earliest date on which Notes or Class E Certificates may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Class E Certificates Paying Agent for payment to the Holders of the Class E Certificates, or change any place where, or the coin or currency in which principal, interest or other distributions on Securities are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Class E Certificates whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this

Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or Class P Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to direct remedies or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Class E Certificate affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Class E Certificates Paying Agent for the payment of dividends or other payments on the Class E Certificates on any Payment Date or to affect the rights of the Holders of Notes or Class E Certificates to the benefit of any provisions for the redemption of the Notes or the Class E Certificates contained in this Indenture.

Prior to the entry into any supplemental indenture with respect to which the Rating Condition for one or more Classes of Indenture Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Indenture Security and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) informing them of such fact.

(b) No supplemental indenture may modify the terms of the Class Q-1 Securities as such in a manner that would adversely affect the Class Q-1 Securities without the prior written consent of a majority of the stated amount of the Class Q-1 Securities, or the consent of the Holders of each Outstanding Class Q-1 Security adversely affected thereby as set forth above. Except for any proposed such supplement that would affect the terms of the Class Q-1 Securities as such or as provided in subsection (a) above, Holders of Class Q-1 Securities shall be entitled to vote under this Section 8.2 only as Holders of the respective related Class Q-1 Components.

(c) No supplemental indenture may modify the terms of the Class P-1 Securities or the Class P-2 Securities, in each case as such, in a manner that would adversely affect the Class P-1 Securities or Class P-2 Securities, as applicable, without the prior written consent of a majority of the stated amount of the Class P-1 Securities or Class P-2 Securities, as applicable, or the consent of the Holders of each Outstanding Class Q Security adversely affected thereby as set forth above. Except for any proposed such supplement that would affect the terms of the Class P-1 Securities or Class P-2 Securities, as applicable, as such or as provided in subsection (a) above, Holders of Class P Securities shall be entitled to vote under this Section 8.2 only as Holders of the respective Class E Certificates represented by the related Class P Class E Certificate Component.

(d) At the cost of the Co-Issuers, for so long as any Notes are Outstanding and rated by a Rating Agency, the Trustee shall provide to the Rating Agency a copy of any proposed supplemental indenture pursuant to this Section 8.2 at least 15 Business Days before its execution by the Trustee.

(e) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Holders of the Notes, the Portfolio Manager, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) and each Rating Agency (so long as any rated Notes are Outstanding) a copy of such supplemental indenture and shall request any required consent from the applicable Holders of Notes or Class E Certificates to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Notes or Class E Certificates, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Note or Class E Certificate, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Notes or Class E Certificates consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Portfolio Manager which Holders of Notes or Class E Certificates have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five (5) Business Days after so being notified by the Trustee and the Trustee shall mail such notice to all Holders of Notes and the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates). Any Non-Consenting Holder may give consent (by Act of such Holder) to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Notes or Class E Certificates, may consent to the related proposed supplemental indenture within five (5) Business Days of the Amendment Buy-Out.

(f) It shall not be necessary for any Act of Holders of Notes under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(g) The Trustee, at the expense of the Co-Issuers, shall mail to the Holders of the Indenture Securities, the Portfolio Manager, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and

100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, or immunities under this Indenture or otherwise. The Portfolio Manager shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager unless the Portfolio Manager consents to it in writing, such consent not to be unreasonably withheld or delayed. The Portfolio Manager shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

Section 8.4. Effect of Supplemental Indentures; Certain Required Consents.

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Indenture Securities and Class E Certificates theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Section 8.5. Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. Mandatory Redemption.

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any

subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then the Portfolio Manager, in its sole discretion may direct the Trustee to sell, and if so directed, the Trustee shall sell in accordance with the instructions of the Portfolio Manager, Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) pursuant to the Priority of Payments. Any sale under this Section 9.1 shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Class E Certificates will be redeemed in whole in accordance with the Priority of Payments and the Class E Certificate Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. Optional Redemption.

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account and the Revolving Reserve Account, at the direction of the Holders of at least a Majority of the Aggregate Outstanding Amount of Class E Certificates, which direction must be given to the Class E Certificates Paying Agent, the Trustee, the Issuer and the Portfolio Manager not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Holders of the Notes on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid. The Class A-1A Notes also may be prepaid during the Reinvestment Period.

Upon receipt of a notice of redemption pursuant to this Section 9.2(a), the Portfolio Manager in its sole discretion will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, and the Revolving Reserve Account, will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Portfolio Manager's

reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses, and obligations, no Collateral Obligations shall be sold and the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date, and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Class E Certificates, the Issuer shall cause the Trustee to make payments in redemption of all of the Class E Certificates, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Class E Certificates Paying Agent for distribution to the Holders of the Class E Certificates pro rata in accordance with their respective holdings; or

(ii) at the unanimous direction of the Holders of the Class E Certificates, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Class E Certificates to the Class E Certificates Paying Agent for distribution to the Holders of the Class E Certificates based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Portfolio Manager will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Portfolio Manager will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Class E Certificates.

Section 9.3. Redemption Procedures.

(a) Upon any redemption pursuant to Section 9.2, a notice of redemption shall be given by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, (i) for so long as any Notes are listed on the Irish Stock Exchange and so long as the rules of such exchange so require, notice of such redemption pursuant to Section 9.2 shall also be given to the Noteholders by the Irish Listing and Paying Agent publishing in the *Daily Official List* of the Irish Stock Exchange and (ii) for so long as any Class E Certificates, Class Q-1 Securities or Class P Securities are listed on the Cayman Islands Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Securities pursuant to Section 9.2 shall also be given to the Administrator for forwarding to the Cayman Islands Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying and Listing Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), the Trustee and the Portfolio Manager only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Portfolio Manager does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of Holders of Class E Certificates holding Class E Certificates in an aggregate Face Amount at least equal to the Face Amount of the Holders of Class E Certificates that had requested redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, to withdraw the notice of, and

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Class E Certificates to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing person to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Holder of Notes scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail) and the Class E Certificates Paying Agent (for forwarding to each Holder of Class E Certificates). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Reinvestment Period (and, in respect of Sale Proceeds from Credit Improved Obligations, after the Reinvestment Period) at the Portfolio Manager's discretion, be reinvested in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Note selected for redemption or the Class E Certificates Paying Agent (for forwarding to each Holder of Class E Certificates) shall not impair or affect the validity of the redemption of any other Notes or Class E Certificates.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions are satisfied:

(i) At least ten Business Days before the Redemption Date, the Portfolio Manager shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreements (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Portfolio Manager shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in	100%	75%	65%	55%

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
	each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"				
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. Notes Payable on Redemption Date.

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Holders of the Notes, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. Special Redemption.

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Reinvestment Period, the Portfolio Manager elects (subject to the Management Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional Collateral Obligations that are deemed appropriate by the Portfolio Manager in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the investment or reinvestment of all or a portion of the funds then in the Collection Account available to be invested in additional Collateral Obligations (a "Special Redemption").

On the first Payment Date following the Due Period for which the notice is effective (a "Special Redemption Date"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not reinvested in additional Collateral Obligations (the "Special Redemption Amount") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5

shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, (i) for so long as any Notes are listed on the Irish Stock Exchange and so long as the rules of such exchange so require, notice of Special Redemption shall also be given by the Issuer or, upon Issuer Order, by the Irish Paying and Listing Agent in the name and at the expense of the Co-Issuers, to Noteholders by publication in the *Daily Official List* of the Irish Stock Exchange and (ii) for so long as any Class E Certificates, Class Q-1 Securities or Class P Securities are listed on the Cayman Islands Stock Exchange and so long as the rules of the exchange so require, notice of Special Redemption of Notes shall also be given to the Administrator for forwarding to the Cayman Islands Stock Exchange.

Section 9.6. Amendment Buy-Out.

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders of the Class of Securities whose consent was solicited with respect to such supplemental indenture (the "Amendment Buy-Out Option") for the applicable Amendment Buy-Out Purchase Price. If the Amendment Buy-Out Option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "Amendment Buy-Out"). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities to the Amendment Buy-Out Purchaser; provided that if the solicited consent to a supplemental indenture only applies to one Class Q-1 Component, the Non-consenting Holder will be required to sell, at the Non-consenting Holder's option, its Class Q-1 Security as a whole or solely the affected Class Q-1 Component; provided, further that in the case of the Class P Securities of Non-consenting Holders, such Class P Securities will be deemed exchanged for their respective Components, only the Class E Certificates represented by the related Class E Certificate Component must be sold to an Amendment Buy-Out Purchaser for a price equal to the Amendment Buy-Out Purchase Price, which will be distributed to such Non-consenting Holders, and such Non-Consenting Holders will receive a distribution in kind of the related pro rata amount of the Class P U.S. Treasury Component. In the case of the Class A-1 Notes, if an Amendment Buy-Out occurs on a day (the "Amendment Buy-Out Trade Date") other than a Payment Date, the settlement of such Amendment Buy-Out will be deferred until the next following Payment Date (and, for the avoidance of doubt, the Non-Consenting Holder will be entitled to any payments received on such Payment Date and the Amendment Buy-Out Purchase Price will be calculated as of such Payment Date); provided that all other rights of a Holder or Beneficial Owner of such securities will be deemed transferred to the Amendment Buy-Out Purchaser as of the Amendment Buy-Out Trade Date. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Notes or Class E Certificates as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Indenture Securities or Class E Certificates set forth herein (and in the case of the Class A-1A Notes, the Class A-1A Note Purchase Agreement and in the case of the Class A-1B Notes, the Class A-1B Note Purchase Agreement, as applicable) and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency). For the avoidance of doubt, any Amendment Buy-out of Class A-1A Notes shall include the

related Commitment thereunder and any Amendment Buy-out of Class A-1B Notes shall include the related obligation to fund the Fully Drawn Amount.

Section 9.7. Prepayments of Class A–1A Notes.

(a) During the Reinvestment Period, the Class A–1A Notes may be prepaid without premium on any Business Day (in whole or in part) at the option of the Issuer (at the direction of the Portfolio Manager acting pursuant to the Management Agreement) from (i) Principal Proceeds otherwise available for reinvestment in Collateral Obligations pursuant to the terms hereof or (ii) amounts credited to the Revolving Reserve Account so long as, after giving effect thereto, the aggregate Balance of all Eligible Investments credited to the Revolving Reserve Account will be at least equal to the Revolver Funding Reserve Amount. Furthermore, any amounts repaid may be reborrowed until the Commitment Termination Date.

(b) Any Prepayment shall be made pro rata according to the Drawn Amount of the Class A–1A Notes.

(c) The Issuer will duly and punctually perform each of its obligations under the Note Purchase Agreement.

(d) Subject to the requirement that the Aggregate Principal Balance of all Eligible Investments standing to the credit of the Revolving Reserve Account is at least equal to the Revolver Funding Reserve Amount, the Commitments in respect of the Class A–1A Notes will reduce automatically to the extent that principal is paid on the Class A–1A Notes as the result of a Mandatory Redemption or Special Redemption. Any such reduction will be final.

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. Collection of Money.

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on any item of Collateral, in accordance with the terms of such Collateral. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties or the applicable Class P Securityholders, as the case may be, and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Portfolio Manager for convenience in administering the Accounts or the Collateral or the Class P Collateral

Section 10.2. Collection Account.

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously reinvested in Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account, (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments or (4) used to make Prepayments with respect to the Class A-1A Notes), received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously reinvested in accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Reinvestment Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Reinvestment Period, which have not been reinvested in additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Portfolio Manager be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such investment or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments) received after the Reinvestment Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be reinvested pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Portfolio Manager. Within five Business Days of receipt of the notice from the Trustee, the Portfolio Manager, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a person that is not the Portfolio Manager or an Affiliate of the Portfolio Manager and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Portfolio Manager certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets (other than Tax Affected Securities).

(c) During the Reinvestment Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations, after the Reinvestment Period), at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and reinvest (or invest, in the case of funds referred to in Section 7.18) the funds in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the posting by the Issuer of cash collateral into the Synthetic Security Counterparty Account with (or for the

benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), or use such Principal Proceeds to make Prepayments on the Class A-1A Notes in accordance with Section 9.7, in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Reinvestment Period, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. Other Accounts.

(a) Custodial Account. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties and any funds in the Custodial Account, if invested, shall be invested in Eligible Investments. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) Revolving Reserve Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Portfolio Manager, the Trustee shall deposit and at all times maintain Principal Proceeds and amounts drawn under the Class A-1A Notes into the Revolving Reserve Account, such that the amount of funds on deposit in the Revolving Reserve Account will be at least equal to 100% of the Revolver Funding Reserve Amount. Such Principal Proceeds so deposited shall be considered part of the Purchase Price of the related Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. All principal payments received on any Revolving Loan (except to the extent of any concurrent commitment reduction) will be deposited within two Business Days directly into the Revolving Reserve Account (and will not be available for distribution as Principal Proceeds) to the extent required to maintain the Revolver Funding Reserve Amount (including with respect to the amount of such principal payments that may be re-borrowed under such Revolving Loan). Amounts on deposit in the Revolving Reserve Account shall be reinvested pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited. At the direction of the Portfolio Manager at any time during or after the Reinvestment Period, the Trustee shall withdraw funds from the

Revolving Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. Upon the sale, maturity or termination of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, any funds in the Revolving Reserve Account in excess of the amount needed to maintain the Revolver Funding Reserve Amount shall be transferred from time to time by the Trustee (upon the direction of the Portfolio Manager) to the Collection Account and treated as Principal Proceeds.

(c) Expense Reimbursement Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date other than on the final redemption date of the Class E Certificates transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be invested in accordance with Section 10.4(a). Any funds remaining in the Expense Reimbursement Account as of the Determination Date relating to the final redemption date of the Class E Certificates shall be deposited in the Collection Account as Interest Proceeds for distribution on the Scheduled Class E Certificate Redemption Date as described under Section 11.1(a)(i).

(d) Hedge Counterparty Collateral Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be invested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) Synthetic Security Collateral Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the

Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Synthetic Security Collateral Account shall be invested pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) Securities Lending Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Securities Lending Account shall be invested pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) Closing Date Expense Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the

Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$16,300,000 from the gross proceeds of the Offering. At any time before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in March 2006, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in March 2006, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be invested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) Payment Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. Funds on deposit in the Payment Account, if invested, shall be invested in Eligible Investments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) Interest Reserve Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$4,100,000 from the gross proceeds of the Offering. On the first Payment Date, the Trustee at the direction of the Issuer or the Portfolio Manager on its behalf shall pay from amounts on deposit in the Interest Reserve Account the amount necessary such that the amounts referred to in Section 11.1(a)(i)(1) through (17) will be paid in full on the first Payment Date. In addition, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall deposit all or any portion of the funds remaining on deposit in the Interest Reserve Account after application pursuant to the preceding sentence into the Collection Account as Interest Proceeds and/or as Principal Proceeds (allocated in such proportion as the Portfolio Manager directs in its sole discretion) for distribution on the first Payment Date. On the second Payment Date, the Trustee at the direction of the Issuer or the Portfolio Manager on its behalf shall pay from any funds remaining on deposit in the Interest Reserve Account after the first Payment Date the amount necessary such that the amounts referred to in Section 11.1(a)(i)(1) through (17) will be paid in full on the second Payment Date. The Trustee shall transfer any remaining funds on deposit in the Interest Reserve Account on the second Payment Date (after application of any monies therefrom on such date) to the Collection Account, as directed by the Portfolio Manager in its sole discretion as Interest Proceeds and/or as Principal Proceeds (allocated in such proportion as the Portfolio Manager directs in its sole discretion) for distribution on the second Payment Date and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be invested pursuant to Section 10.4(a).

(j) Class A–1A Funding Account. The Trustee shall, prior to the Closing Date, establish a segregated trust account designated the Class A-1A Funding Account. Any Aggregate Undrawn Amount deposited with the Trustee pursuant to Section 2.12(c) as a result of the failure of a Holder of a Class A-1A Note to satisfy the Rating Criteria during the Draw Period and any subsequent

Prepayments in respect of such Holder's Class A-1A Notes shall be placed in a separate subaccount of the Class A-1A Funding Account relating to such Holder and shall be used by the Trustee to fund such holder's *pro rata* portion of any subsequent Borrowing on the Class A-1A Notes. Amounts so placed in the Class A-1A Funding Account shall, for all purposes under this Indenture, be part of the Aggregate Undrawn Amount and such Holder shall be entitled to receive the applicable Commitment Fee thereon. During the Reinvestment Period, amounts held in each subaccount of the Class A-1A Funding Account shall be invested in Eligible Investments at the direction of the related Holder (or, in the absence of such direction, in investments set forth in clause (i) of the definition of Eligible Investments) and the income from such investments shall be remitted to such Holder on each Payment Date. At the end of the Draw Period or as soon as practical after the Holder (or a transferee of such Holder) satisfies the Rating Criteria, any amounts remaining in the Class A-1A Funding Account or the related subaccount thereof shall be refunded to the related Holder along with any income and proceeds thereon.

(k) Class A–1B Funding Account. The Trustee shall, prior to the Closing Date, establish a segregated trust account designated the Class A-1B Funding Account. Any Aggregate Undrawn Amount deposited with the Trustee pursuant to Section 2.13(c) as a result of the failure of a Holder of a Class A-1B Note to satisfy the Rating Criteria during the Delayed Drawdown Period shall be placed in a separate subaccount of the Class A-1B Funding Account relating to such Holder and shall be used by the Trustee to fund such holder's *pro rata* portion of any subsequent Drawdown under the Class A-1B Notes. Amounts so placed in the Class A-1B Funding Account shall, for all purposes under this Indenture, be part of the Aggregate Undrawn Amount and such Holder shall be entitled to receive the applicable Delayed Drawdown Fee thereon. During the Delayed Drawdown Period, amounts held in each subaccount of the Class A-1B Funding Account shall be invested in Eligible Investments at the direction of the related Holder (or, in the absence of such direction, in investments set forth in clause (i) of the definition of Eligible Investments). Amounts in the Class A-1B Funding Account as of the Business Day prior to the first Payment Date will be automatically converted to constitute Drawn Amounts under the related Class A-1A Notes; provided that to the extent the amount in the Class A-1B Funding Account exceeds the related Holders pro rata share of the Fully Drawn Amount, such excess shall be remitted to such Holder on the first Payment Date.

(l) Class P-1 U.S. Treasury Component Account. The Issuer shall, on or prior to the Closing Date, establish a segregated trust account designated the Class P-1 U.S. Treasury Component Account that shall be held in trust in the name of the Trustee for the benefit of the Class P-1 Securityholders, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Class P-1 U.S. Treasury Component, which Class P-1 U.S. Treasury Component shall be delivered to the Trustee by the Issuer on the Closing Date. All assets or securities at any time on deposit in, or otherwise to the credit of, the Class P-1 U.S. Treasury Component Account shall be held in trust by the Trustee for the benefit of the Class P-1 Securityholders. The only permitted withdrawals from the Class P-1 U.S. Treasury Component Account shall be in accordance with this Indenture. None of the Co-Issuers, the Holders of the Securities (other than the Class P-1 Securityholders) or any other Secured Party shall not have any legal, equitable, or beneficial interest in the Class P-1 U.S. Treasury Component Account other than in accordance with Section 3.2 and the Priority of Payments. Any funds in the Class P-1 U.S. Treasury Account, if invested, shall be invested in Eligible Investments pursuant to Section 11.2(b).

(m) Class P-2 U.S. Treasury Component Account. The Issuer shall, on or prior to the Closing Date, establish a segregated trust account designated the Class P-2 U.S. Treasury Component Account that shall be held in trust in the name of the Trustee for the benefit of the Class P-2 Securityholders, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Class P-2 U.S. Treasury Component, which Class P-2 U.S. Treasury Component shall be delivered to the Trustee by the Issuer on the Closing Date. All assets or

securities at any time on deposit in, or otherwise to the credit of, the Class P-2 U.S. Treasury Component Account shall be held in trust by the Trustee for the benefit of the Class P-2 Securityholders. The only permitted withdrawals from the Class P-2 U.S. Treasury Component Account shall be in accordance with this Indenture. None of the Co-Issuers, the Holders of the Securities (other than the Class P-2 Securityholders) or any other Secured Party shall have any legal, equitable, or beneficial interest in the Class P-2 U.S. Treasury Component Account other than in accordance with Section 3.2 and the Priority of Payments. Any funds in the Class P-2 U.S. Treasury Account, if invested, shall be invested in Eligible Investments pursuant to Section 11.2(b).

(n) Class P-1 Principal Reserve Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class P-1 Principal Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Class P-1 Securityholders, over which the Trustee shall have exclusive control and the sole right of withdrawal. The Trustee shall deposit into the Class P-1 Principal Reserve Account the amounts required to be deposited pursuant to Section 11.2(b). All assets or securities at any time on deposit in, or otherwise to the credit of, the Class P-1 Principal Reserve Account shall be held in trust by the Trustee for the benefit of the Class P-1 Securityholders. The only permitted withdrawals from the Class P-1 Principal Reserve Account shall be in accordance with this Indenture. None of the Co-Issuers, the Holders of the Securities (other than the Class P-1 Securityholders) or any other Secured Party shall have any legal, equitable, or beneficial interest in the Class P-1 Principal Reserve Account. Any funds in the Class P-1 Principal Reserve Account, if invested, shall be invested in Eligible Investments pursuant to Section 11.2(b).

(o) Class P-1 Collection Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class P-1 Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Class P-1 Securityholders, into which the Issuer shall from time to time deposit all proceeds of the Class P-1 Collateral and payments on the Class P-1 Class E Certificate Component. In addition, the Issuer may, but under no circumstances shall be required to, deposit or cause to be deposited from time to time such monies in the Class P-1 Collection Account as it deems, in its sole discretion, to be advisable. All monies deposited from time to time in the Class P-1 Collection Account pursuant to this Indenture shall be held in trust by the Trustee as part of the Class P-1 Collateral and shall be applied to the purposes provided herein. The Trustee agrees to give the Issuer immediate notice if it becomes aware or written notice that the Class P-1 Collection Account or any funds on deposit therein, or otherwise to the credit of the Class P-1 Collection Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. Any funds in the Class P-1 Collection Account, if invested, shall be invested in Eligible Investments pursuant to Section 11.2(b).

(p) Class P-2 Collection Account. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class P-2 Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Class P-2 Securityholders, into which the Issuer shall from time to time deposit all proceeds of the Class P-2 Collateral and payments on the Class P-2 Class E Certificate Component. In addition, the Issuer may, but under no circumstances shall be required to, deposit or cause to be deposited from time to time such monies in the Class P-2 Collection Account as it deems, in its sole discretion, to be advisable. All monies deposited from time to time in the Class P-2 Collection Account pursuant to this Indenture shall be held in trust by the Trustee as part of the Class P-2 Collateral and shall be applied to the purposes provided herein. The Trustee agrees to give the Issuer immediate notice if it becomes aware or written notice that the Class P-2 Collection Account or any funds on deposit therein, or otherwise to the credit of the Class P-2 Collection Account, shall become subject to any writ, order, judgment, warrant of attachment,

execution or similar process. Any funds in the Class P-2 Collection Account, if invested, shall be invested in Eligible Investments pursuant to Section 11.2(b).

(q) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(r) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Holders of Indenture Securities, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. Investment of Funds in Accounts; Reports by Trustee.

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. Before an Event of Default occurs, if the Issuer has not given investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the investment or (ii) the Business Day before the next Payment Date. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account. Subject to Section 6.6, the Trustee shall not in any way be held liable for the selection of investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Revolving Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Revolving Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the

Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution, or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into a securities account control agreement substantially in the form of Exhibit G.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Portfolio Manager any information regularly maintained by the Trustee that the Co-Issuers or the Portfolio Manager may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Portfolio Manager to perform its obligations under the Management Agreement. The Trustee shall promptly forward to the Portfolio Manager copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices

of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

Section 10.5. Synthetic Security Counterparty Account.

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "Synthetic Security Counterparty Account"). In the alternative, a Synthetic Security Counterparty Account may be established with a third party custodian designated by the Synthetic Security Counterparty if such custodian would qualify to be a successor trustee under Section 6.8 and the account satisfies the other requirements of this Section 10.5.

As directed in writing by the Portfolio Manager, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Portfolio Manager shall direct any such deposit only during the Reinvestment Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Portfolio Manager in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be invested in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Portfolio Manager in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. Accountings.

(a) Monthly. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending March 2006, in the case of each month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month, the Issuer

shall cause to be compiled and provided to the Portfolio Manager, the Trustee, the Class E Certificates Paying Agent (for forwarding to each Holder of Class E Certificates), the Placement Agents, each Hedge Counterparty, the Rating Agencies, the Irish Paying and Listing Agent for forwarding to the Irish Stock Exchange (so long as any Notes are listed on the Irish Stock Exchange and the rules of the Irish Stock Exchange so require), the Administrator for forwarding to the Cayman Islands Stock Exchange (so long as any Class E Certificates, Class Q-1 Securities or Class P Securities are listed on the Cayman Islands Stock Exchange and the rules of the Cayman Islands Stock Exchange so require), (if so requested by the Initial Purchaser or the Placement Agent) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "Monthly Report"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of the last day of the applicable month, based in part on information provided by the Portfolio Manager (the "Monthly Determination Date"):

(i) Portfolio:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity, and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion, or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset, or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Portfolio Manager) since the date of the previous Monthly Report, and the gain or loss (measured against its Purchase Price) on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the

definition of "Defaulted Collateral Obligation," that the Portfolio Manager has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation), and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value";

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds), and Uninvested Proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(D) The amount of any Principal Proceeds in the Securities Lending Account; and

(E) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) Hedge Agreements:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) Coverage Tests, Collateral Quality Tests and Reinvestment Overcollateralization Test:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Reinvestment Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Weighted Average Recovery Rate, the S&P Weighted Average Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Weighted Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Weighted Average Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the Adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate";

(v) Concentration Limitations and Withholding Taxes:

(A) The percentage of the Maximum Investment Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) Securities Lending Agreements:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Investment Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value, and (z) its Principal Balance expressed as a percentage of the Maximum Investment Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests;

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Class E Certificates Paying Agent and the Portfolio Manager if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) Payment Date Accounting. The Issuer shall cause to be rendered an accounting report (the "Valuation Report"), determined as of the close of business on each Determination Date, and provided to the Portfolio Manager, the Trustee, the Class E Certificates Paying Agent (for forwarding to each Holder of Class E Certificates), the Issuer, the Placement Agent, each Hedge Counterparty, the Rating Agencies, each Noteholder (if so requested by the Placement Agent), the Repository in accordance with Section 14.3(a)(viii), the Depositary (with instructions to forward it to each of its Agent Members who are holders of Notes), the Irish Paying and Listing Agent for forwarding to the Irish Stock Exchange (so long as any Notes are listed on the Irish Stock Exchange and the rules of the Irish Stock Exchange so require), the Administrator for forwarding to the Cayman Islands Stock Exchange (so long as any Class E Certificates, Class Q-1 Securities or Class P Securities are listed on the Cayman Islands Stock Exchange and the rules of the Cayman Islands Stock Exchange so require), and upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall contain the following information as of the related Determination Date (unless otherwise stated), based in part on information provided by the Portfolio Manager:

(i) Securities:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Class E Certificates Paying Agent for payments on the Class E Certificates on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(F) with respect to the Class Q-1 Securities, (A) the stated amount of the Class Q-1 Securities and (B) the Class Q-1 Rated Principal;

(G) With respect to the Class P Notes, the Class P-1 Nominal Principal Outstanding, the Class P-1 Rated Principal, the Class P-2 Nominal Principal Outstanding and the Class P-2 Rated Principal (in each case, after giving effect to the calculations required in the definition thereof for the next Class P Securities Payment Date);

(ii) Payment Date Payments:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i) and 11.1(a)(ii) itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds) and Uninvested Proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account;

(F) The amount in the Hedge Counterparty Collateral Account; and

(G) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date;

(v) All information required to be contained in the Monthly Report pursuant to Section 10.6(a) determined as of the Determination Date; and

(vi) Any other information the Trustee reasonably requests;

provided that the Determination Date for the Valuation Report for the first Payment Date shall be February 28, 2006 and provided further that with respect to the first Payment Date, (x) the Issuer shall caused to be rendered the Valuation Report not later than March 10th, 2006 and (y) in addition, the Issuer shall cause to be rendered to the persons and in the manner described above not later than the related Payment Date a short form valuation report which shall contain the following information as of the related Determination Date (unless otherwise stated), based in part on information provided by the Portfolio Manager:

(A) The Aggregate Outstanding Amount of each Class of Securities as of the Closing Date;

(B) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(C) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(D) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(E) The interest (Commitment Fee and Delayed Drawdown Fee) payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail;

(F) The amounts to be paid, if any, to the Class E Certificates Paying Agent for payments on the Class E Certificates on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(G) with respect to the Class Q-1 Securities, ((A) the stated amount of the Class Q-1 Securities and (B) the Class Q-1 Rated Principal; and

(H) With respect to the Class P Notes, the Class P-1 Nominal Principal Outstanding, the Class P-1 Rated Principal, the Class P-2 Nominal Principal Outstanding and the Class P-2 Rated Principal (in each case, after giving effect to the calculations required in the definition thereof for the next Class P Securities Payment Date).

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Class E Certificates Paying Agent and the Portfolio Manager if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) Failure to Provide Accounting. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Portfolio Manager, and the Portfolio Manager shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.7.

(d) Quarterly Letter. The Portfolio Manager shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(e) S&P CDO Monitor. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File.

(f) Payments or Transfers from the Payment Account. Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

(g) Net Asset Value Calculation. The Trustee shall forward to the Portfolio Manager, the Class E Certificates Paying Agent (for forwarding to each Holder of Class E Certificates), the Placement Agent, the Initial Purchaser, each Hedge Counterparty, the Rating Agencies, the

Repository (but only if so requested by the Placement Agent) in accordance with Section 14.3(a)(viii) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), any net asset value report with respect to the Issuer which the Trustee receives from the asset value calculation agent appointed pursuant to Section 10.8(a) hereof.

Section 10.7. Release of Collateral.

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. The Issuer may, by Issuer Order executed by an Authorized Officer of the Portfolio Manager, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Portfolio Manager in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall upon an Issuer Order executed by an Authorized Officer of the Portfolio Manager deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption, or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Portfolio Manager.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Portfolio Manager of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion, or other similar action (an "Offer"). If no Event of Default is continuing, the Portfolio Manager may direct the Trustee to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b), or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) Subject to Article 4, the Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding (and the Commitment of the Class A-1A Notes has been reduced to zero) and all

obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's Certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Securities Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e), and (f).

Section 10.8. Reports by Independent Accountants.

(a) At the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Portfolio Manager, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Portfolio Manager, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Portfolio Manager, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. In addition, the Issuer shall appoint an net asset value calculation agent to prepare and deliver to the Trustee a net asset value report with respect to the Issuer. The fees of such Independent certified public accountants, the NAV calculation agent and their respective successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before December 31 of each year commencing in 2006, the Issuer shall cause to be delivered to the Trustee, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), the Portfolio Manager or each Noteholder or Holder of Class E Certificates upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement), and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.8, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Portfolio Manager on behalf of the Issuer.

(c) Upon the written request of the Class E Certificates Paying Agent or any Holder of Class E Certificates, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.8(a) to provide any Holder of Class E Certificates with all information

requested pursuant to Section 7.16(k) and (l) or provide the Issuer with any assistance required in its preparation.

Section 10.9. Reports to Rating Agencies.

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Issuer or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. Disbursements of Monies from Payment Account.

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "Priority of Payments"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

First, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Class E Certificates Paying Agent;

(iv) pro rata, fees, expenses and indemnities of the Revolving Note Agent and the Delayed Drawdown Note Agent; and

Second, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other person (except the Portfolio Manager) if specifically provided for in this

Indenture, and to the expenses (but not fees) of the Portfolio Manager if payable under the Management Agreement;

(2) other than on the final redemption date of the Class E Certificates, the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) to the payment to the Portfolio Manager of any accrued and unpaid Senior Management Fee then due and payable;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) *pro rata* to the payment of (a) accrued and unpaid interest on the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes (in each case *pro rata* in proportion to the respective amounts of interest, Defaulted Interest and Defaulted Interest Charge then due on such Classes), (b) any accrued and unpaid Commitment Fee Amount, and (c) any accrued and unpaid Delayed Drawdown Fee;

(6) to the payment of accrued and unpaid interest on the Class A-2 Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class A-2 Notes;

(7) to the payment of accrued and unpaid interest on the Class A-3 Notes and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-3 Notes;

(8) to the payment of accrued and unpaid interest on the Class A-4 Notes and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-4 Notes;

(9) if either of the Class A Coverage Tests is not satisfied as of the related Determination Date, to the payment of *first*, the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes and *fourth* the principal of the Class A-4 Notes, to the extent necessary to cause both Class A Coverage Tests to be met as of such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(10) to the payment of accrued and unpaid interest on the Class B Notes (excluding Class B Deferred Interest, but including interest accrued for the preceding Interest Period on Class B Deferred Interest);

(11) if either of the Class B Coverage Tests is not satisfied as of the related Determination Date, to the payment of *first*, the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in

Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes, *fourth* the principal of the Class A-4 Notes, *fifth* the Deferred Interest on the Class B Notes and *sixth* the principal of the Class B Notes, to the extent necessary to cause both Class B Coverage Tests to be met as of such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (11) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(12) to the payment of Class B Deferred Interest;

(13) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(14) if either of the Class C Coverage Tests is not satisfied as of the related Determination Date, (1) if the Class A Coverage Tests and the Class B Coverage Tests were satisfied on such Determination Date without giving effect to any payments pursuant to clauses (9) and (11), as applicable, *first* to pay Deferred Interest on the Class C Notes and *second* to pay the principal of the Class C Notes, to the extent necessary to cause both Class C Coverage Tests to be met as of such Determination Date, or (2) if any of the Class A Coverage Tests or the Class B Coverage Tests were not satisfied on such Determination Date without giving effect to any payments pursuant to clauses (9) and (11), as applicable, to the payment of *first*, the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes, *fourth* the principal of the Class A-4 Notes, *fifth* the Deferred Interest on the Class B Notes, *sixth* the principal of the Class B Notes, *seventh* the Deferred Interest on the Class C Notes and *eighth* the principal of the Class C Notes, to the extent necessary to cause both Class C Coverage Tests to be met as of such Determination Date, in each case on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (14) before the application of any Principal Proceeds Section 11.1(a)(ii)(1) on the current Payment Date);

(15) to the payment of Class C Deferred Interest;

(16) in the event of a Rating Confirmation Failure, to the payment of *first*, the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes, *fourth* the principal of the Class A-4 Notes, *fifth* the Deferred Interest on the Class B Notes, *sixth* the principal of the Class B Notes, *seventh* the Deferred Interest on the Class C Notes and *eighth* the principal of the Class C Notes, in each case until and to the extent necessary for each Rating Agency to confirm the ratings assigned by it on the Closing Date to each Class of Notes;

(17) during the Reinvestment Period, if the Reinvestment Overcollateralization Test is not satisfied as of the related Determination Date after giving effect to payments pursuant to clauses (1)-(16), for deposit to the Collection Account as Principal Proceeds for the purchase of additional Collateral Obligations 50%

of the remaining Interest Proceeds available after the payments pursuant to clause (16) above;

(18) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(19) to the payment, to the Portfolio Manager, of accrued and unpaid Subordinated Management Fee then due and payable;

(20) to each Holder of Notes entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(21) to the payment to the Hedge Counterparties of any Defaulted Hedge Termination Payments;

(22) to the Class E Certificates Paying Agent, on behalf of the Issuer, for deposit into the Class E Certificates Distribution Account for distribution to the Holders of the Class E Certificates until the Holders of the Class E Certificates have realized a Class E Certificate Internal Rate of Return of 12.0%;

(23) to the payment to the Portfolio Manager of the Incentive Management Fee, if applicable; and

(24) any remaining Interest Proceeds, to the Class E Certificates Paying Agent, on behalf of the Issuer, for deposit into the Class E Certificates Distribution Account for distribution to the Holders of the Class E Certificates.

Notwithstanding the foregoing, Interest Proceeds shall not be applied in accordance with the Priority of Payments to pay Class P Administrative Expenses, which amounts will be payable only pursuant to Section 11.2.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously reinvested in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2, including for Prepayments on the Class A-1A Notes;

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Synthetic Security Counterparty Account or the Securities Lending Account; and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period;

shall be distributed in the following order of priority:

(1) to the payment of the amounts referred to in clauses (1) through (13) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder, provided, that each payment of any of the amounts referred to in clauses (10), (12) and (13) of Section 11.1(a)(i) may only be made, if and to the extent each Coverage Test is met on a *pro forma* basis after giving effect to such payment;

(2) if any Class C Coverage Test is not satisfied as of the related Determination Date, to the payment of *first* the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes, *fourth* the principal of the Class A-4 Notes, *fifth* the Deferred Interest on the Class B Notes, *sixth* the principal of the Class B Notes, *seventh* the Deferred Interest on the Class C Notes, and *eighth* the principal of the Class C Notes, to the extent necessary to cause both Class C Coverage Tests to be met as of such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full;

(3) to the payment of the amounts referred to in clause (15) of Section 11.1(a)(i) to the extent not previously paid in full thereunder; provided, that such payment may only be made if and to the extent each Coverage Test is met on a *pro forma* basis after giving effect to such payment;

(4) in the event of a Rating Confirmation Failure and to the extent payments pursuant to clause (16) of Section 11.(a)(i) above were not sufficient to cause each Rating Agency to confirm the ratings assigned by it on the Closing Date to each Class of Notes, to the payment of *first* the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes, *fourth* the principal of the Class A-4 Notes, *fifth* the Deferred Interest on the Class B Notes, *sixth* the principal of the Class B Notes, *seventh* the Deferred Interest on the Class C Notes, and *eighth* the principal of the Class C Notes, in each case until and to the extent necessary for each Rating Agency to confirm the ratings assigned by it on the Closing Date to each Class of Notes;

(5) if the Payment Date is a Special Redemption Date, to the payment of *first* the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes, *fourth* the principal of the Class A-4 Notes, *fifth* the Deferred Interest on the Class B Notes, *sixth* the principal of the Class B Notes, *seventh* the Deferred Interest on the Class C Notes, and *eighth* the principal of the Class C Notes, in an aggregate amount equal to the Special Redemption Amount;

(6) (a) during the Reinvestment Period, the remaining Principal Proceeds for deposit to the Collection Account for the purchase of additional Collateral Obligations in accordance with the provisions of Section 7.18 and Article 12 (including any related deposit into the Revolving Reserve Account or the posting by the Issuer of cash collateral into the Synthetic Security Counterparty Account with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), or (b) after the Reinvestment Period, (i) at the discretion of the Portfolio Manager and solely to the extent of Principal Proceeds constituting

Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations, for deposit to the Collection Account for the purchase of additional Collateral Obligations in accordance with the provision of Section 7.19 and Article 12 (including any related deposit into the Revolving Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) when appropriate Collateral Obligations are available and (ii) all other remaining amounts to the payment of *first* the principal of the Class A-1A Notes, the Class A-1B Notes and the Class A-1C Notes, to be allocated as provided in Section 13.3(a), *second* the principal of the Class A-2 Notes, *third* the principal of the Class A-3 Notes, *fourth* the principal of the Class A-4 Notes, *fifth* the Deferred Interest on the Class B Notes, *sixth* the principal of the Class B Notes, *seventh* the Deferred Interest on the Class C Notes, and *eighth* the principal of the Class C Notes;

(7) to the payment of the amounts referred in clauses (18) through (21) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(8) to the Class E Certificates Paying Agent, on behalf of the Issuer, for deposit into the Class E Certificates Distribution Account for payment to the Holders of the Class E Certificates until the Holders of the Class E Certificates have realized a Class E Certificate Internal Rate of Return of 12%;

(9) to the payment to the Portfolio Manager of the Incentive Management Fee, if applicable; and

(10) to the Class E Certificates Paying Agent, on behalf of the Issuer, for deposit into the Class E Certificates Distribution Account for payment to the Holders of the Class E Certificates.

The calculation on any Coverage Test on any Measurement Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Measurement Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Notwithstanding the foregoing, Principal Proceeds shall not be applied in accordance with the Priority of Payments to pay Class P Administrative Expenses, which amounts will be payable only pursuant to Section 11.2.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee on each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates), the Portfolio Manager and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Portfolio Manager unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

Section 11.2. Payments on Class P Securities .

(a) *Mandatory Accelerated Payments; Optional Accelerated Payments.*

(i) On each Payment Date, until the outstanding balance of the Class P-1 U.S. Treasury Component is reduced to $10,000, the Trustee shall obtain an Class P U.S. Treasury Bid on a portion of the Class P-1 U.S. Treasury Component with a face amount equal to the Class P-1 Accelerated Payment Notional Amount as of such Payment Date. If such Class P U.S. Treasury Bid is equal to or higher than the corresponding reference price set forth in Annex A, the Trustee shall liquidate, on behalf of the Class P-1 Securityholders, a portion of the Class P-1 U.S. Treasury Component with a face amount equal to the Class P-1 Accelerated Payment Notional Amount at such Class P U.S. Treasury Bid (such sale proceeds less any transaction costs, the "Class P-1 Mandatory Accelerated Payment") not later than 2 Business Days after such Payment Date; provided, that, not later than 15 Business Days prior to any Payment Date, a Majority of the Class P-1 Securityholders may elect, by written notice to the Trustee, to waive the Class P-1 Mandatory Accelerated Payment for such Payment Date and all Payment Dates thereafter; provided, further, that not later than 15 Business Days prior to any subsequent Payment Date, a Majority of the Class P-1 Securityholders may, by written notice to the Trustee, reinstate the Class P-1 Mandatory Accelerated Payment for such Payment Date and/or all Payment Dates thereafter, as set forth in such notice. If the Class P-1 U.S. Treasury Bid is lower than the corresponding reference price set forth in Annex A, the Trustee shall notify the Class P-1 Securityholders of such Class P-1 U.S. Treasury Bid not later than 2 Business Days after such Payment Date. Not later than 3 Business Days after such notice, the Class P-1 Securityholders representing a Majority of the Class P-1 Securities may instruct the Trustee of a face amount of the Class P-1 U.S. Treasury Component to liquidate (the "Class P-1 Optional Accelerated Payment Notional Amount", which amount shall not exceed the applicable Class P-1 Accelerated Payment Notional Amount) and the minimum acceptable liquidation value. Not later than 2 Business Days after such direction, the Trustee shall liquidate, on behalf of the Class P-1 Securityholders, a portion of the Class P-1 U.S. Treasury Component with a face amount equal to the Class P-1 Optional Accelerated Payment Notional Amount at the then-prevailing Class P U.S. Treasury Bid (such sale proceeds less any transaction costs, the "Class P-1 Optional Accelerated Payment"); provided, that the liquidation value at such Class P U.S. Treasury Bid is equal to or higher than the minimum acceptable liquidation value provided by the Class P-1 Securityholders. If no such direction is given by the Class P-1 Securityholders representing a Majority of the Class P-1 Securities or if the then-prevailing Class P U.S. Treasury Bid would result in a liquidation value that is lower than the minimum

acceptable liquidation value provided by the Class P-1 Securityholders, the Trustee shall not liquidate any portion of the Class P-1 U.S. Treasury Component. All proceeds from the liquidation of the Class P-1 U.S. Treasury Component shall be deposited into the Class P-1 Collection Account.

(ii) On each Payment Date, until the outstanding balance of the Class P-2 U.S. Treasury Component is reduced to $10,000, the Trustee shall obtain an Class P U.S. Treasury Bid on a portion of the Class P-2 U.S. Treasury Component with a face amount equal to the Class P-2 Accelerated Payment Notional Amount as of such Payment Date. If such Class P U.S. Treasury Bid is equal to or higher than the corresponding reference price set forth in Annex B, the Trustee shall liquidate, on behalf of the Class P-2 Securityholders, a portion of the Class P-2 U.S. Treasury Component with a face amount equal to the Class P-2 Accelerated Payment Notional Amount at such Class P U.S. Treasury Bid (such sale proceeds less any transaction costs, the "Class P-2 Mandatory Accelerated Payment") not later than 2 Business Days after such Payment Date; provided, that, not later than 15 Business Days prior to any Payment Date, a Majority of the Class P-2 Securityholders may elect, by written notice to the Trustee, to waive the Class P-2 Mandatory Accelerated Payment for such Payment Date and all Payment Dates thereafter; provided, further, that not later than 15 Business Days prior to any subsequent Payment Date, a Majority of the Class P-2 Securityholders may, by written notice to the Trustee, reinstate the Class P-2 Mandatory Accelerated Payment for such Payment Date and/or all Payment Dates thereafter, as set forth in such notice. If the Class P-2 U.S. Treasury Bid is lower than the corresponding reference price set forth in Annex B, the Trustee shall notify the Class P-2 Securityholders of such Class P-2 U.S. Treasury Bid not later than 2 Business Days after such Payment Date. Not later than 3 Business Days after such notice, the Class P-2 Securityholders representing a Majority of the Class P-2 Securities may instruct the Trustee of a face amount of the Class P-2 U.S. Treasury Component to liquidate (the "Class P-2 Optional Accelerated Payment Notional Amount", which amount shall not exceed the applicable Class P-2 Accelerated Payment Notional Amount) and the minimum acceptable liquidation value. Not later than 2 Business Days after such direction, the Trustee shall liquidate, on behalf of the Class P-2 Securityholders, a portion of the Class P-2 U.S. Treasury Component with a face amount equal to the Class P-2 Optional Accelerated Payment Notional Amount at the then-prevailing Class P U.S. Treasury Bid (such sale proceeds less any transaction costs, the "Class P-2 Optional Accelerated Payment"); provided, that the liquidation value at such Class P U.S. Treasury Bid is equal to or higher than the minimum acceptable liquidation value provided by the Class P-2 Securityholders. If no such direction is given by the Class P-2 Securityholders representing a Majority of the Class P-2 Securities or if the then-prevailing Class P U.S. Treasury Bid would result in a liquidation value that is lower than the minimum acceptable liquidation value provided by the Class P-2 Securityholders, the Trustee shall not liquidate any portion of the Class P-2 U.S. Treasury Component. All proceeds from the liquidation of the Class P-2 U.S. Treasury Component shall be deposited into the Class P-2 Collection Account.

(b) *Deposit in the Class P Accounts.* On each Payment Date, amounts distributable to the Class P Securityholders with respect to the Class P Class E Certificate Components shall be deposited into the Class P-1 Collection Account and the Class P-2 Collection Account, as applicable. The applicable Class P Accounts Securities Intermediary shall promptly invest amounts held in such accounts in the JPMorgan Fleming U.S. Dollar Liquidity Fund Premier #6052, to the extent such investment constitutes an Eligible Investment, or in other Eligible Investments as directed by the Issuer. Subject to clause (e) below, all monies deposited (or to be deposited) in the Class P-1 Collection Account and the proceeds thereof shall be used solely for payments on the Class P-1 Securities and payment of the Class P-1 Administrative Expenses. Subject to clause (e) below, all monies deposited (or to be deposited) in the Class P-2 Collection Account and the proceeds thereof shall be used solely for payments on the Class P-2 Securities and payment of the Class P-2 Administrative Expenses.

(c) *Class P Securities Payment Date.* On each Class P Securities Payment Date, (i) an amount equal to the Class P-1 Net Periodic Distribution for such Class P Securities Payment Date shall

be distributed to the Class P-1 Securityholders and (ii) an amount equal to the Class P-2 Net Periodic Distribution for such Class P Securities Payment Date shall be distributed to the Class P-2 Securityholders. Except as provided in clause (e), no other amounts shall be payable by the Issuer with respect to the Class P Securities.

(d) *Redemption; Liquidation.* Following (i) an Optional Redemption (or other earlier redemption) of the Class E Certificates or (ii) the liquidation and distribution of the Collateral in full, if any Class P Securities are then Outstanding, each Class P Security will be redeemed by the Issuer, in whole, but not in part, on the next following Class P Securities Payment Date from the Class P-1 Collateral or Class P-2 Collateral, as applicable, available for that purpose, in each case, at the applicable Class P-1 Redemption Price or Class P-2 Redemption Price.

(e) *Class P-1 Stated Maturity*. Prior to the Stated Maturity, the Class P-1 Nominal Principal Outstanding shall not be reduced to less than $500,000, and following the reduction of the Class P-1 Nominal Principal Amount Outstanding to $500,000, on each Class P Securities Payment Date an amount equal to the amount that would otherwise be distributed with respect to the Class P-1 Securities on such date *less* the Class P-1 Notional Coupon Payment on the applicable Class P Securities Payment Date (so long as such Class P-1 Notional Coupon Payment is greater than zero) shall be withheld and deposited into the Class P-1 Principal Reserve Account until the balance of the Class P-1 Principal Reserve Account is equal to $500,000. On the Stated Maturity (or, if earlier, redemption of the Class P-1 Securities), the Class P-1 Principal Reserve Account shall be liquidated and distributed to the Class P-1 Securityholders as the final payment on the Class P-1 Securities. The Class P-1 Notional Coupon Rate shall be adjusted upward accordingly should such final payment be higher than the Class P-1 Nominal Principal Outstanding at that time.

(f) In connection with the liquidation of any U.S. Treasury securities represented by a Class P U.S. Treasury Component (or portion thereof), the Class P Securityholders, by their purchase of such Class P Securities, acknowledge and agree that (i) the Trustee may utilize any dealer, including the Initial Purchaser, to accomplish the liquidation of such U.S. Treasury securities (or portion thereof), (ii) the price obtained by the Trustee from such dealer shall be deemed to be the fair market value for such U.S. Treasury securities represented by the Class P U.S. Treasury Component (or portion thereof) and (iii) they shall have no recourse to the Trustee or such dealer in connection with such liquidation..

(g) In the event that (i) the Class P-1 Collateral is not sufficient to pay the Aggregate Outstanding Amount of the Class P-1 Securities or (ii) the Class P-2 Collateral is not sufficient to pay the Aggregate Outstanding Amount of the Class P-2 Securities, the Issuer shall have no obligation whatsoever to pay any such deficiency, except, in each case to the extent of payment with respect to the related Class P Class E Certificate Component in accordance with the Priority of Payments and the Class E Certificate Documents.

(h) For the purpose of determining whether any percentage of Class P-1 Securityholders or Class P-2 Securityholders have consented or instructed the Issuer or the Trustee as provided herein, the Issuer and the Trustee shall exclusively rely and be fully protected when calculating the applicable percentages on the last Class P Certificate of Ownership filed with the Trustee prior to the date the Class P-1 Securityholders or Class P-2 Securityholders, as applicable, instructed the Issuer or the Trustee or granted their consent for any action. The Issuer and the Trustee shall have no knowledge of any beneficial owners except as set forth in the certificate (the "Class P Certificate of Ownership") attached hereto as Exhibit K. On or promptly after the Closing Date, each beneficial owner of the Class P-1 Noteholders or Class P-2 Noteholders shall file with the Trustee a Class P Certificate of Ownership. Upon transfer of its beneficial interest in accordance with this Indenture, the transferor and transferee shall file a new Class P Certificate of Ownership.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS;
PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. Sales of Collateral Obligations.

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's Certificate of the Portfolio Manager provided to the Trustee, the Issuer may, at the direction of the Portfolio Manager, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Portfolio Manager certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1, and the Issuer shall direct the Trustee to sell assets as set forth in paragraph (j) below. In addition, the Issuer (or the Portfolio Manager on its behalf) shall within 5 Business Days of its receipt (or within 5 Business Days after such later date as such asset may first be sold in accordance with its terms and applicable law), sell any Tax Affected Security or transfer such Tax Affected Security to a subsidiary the sole assets of which consist of, and the sole activity of which is the acquisition and ownership of, Tax Affected Securities. If the Issuer sells any Collateral Obligation or Workout Asset during the Reinvestment Period, the proceeds shall be reinvested in accordance with Section 12.2.

(a) Credit Risk Obligations. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a) during the Reinvestment Period, at the direction of the Portfolio Manager, the Issuer shall use commercially reasonable efforts to purchase in compliance with Section 12.2 additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) Credit Improved Obligations. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Reinvestment Period, (x) the Portfolio Manager believes before the sale that it will be able to cause the Issuer to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Investment Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and the Principal Balance of any Collateral Obligation in which the Trustee does not have a first priority perfected security interest shall be its outstanding principal amount) or (y) the Portfolio Manager intends to use the Sale Proceeds to make Prepayments on the Class A-1A Notes; or

(ii) after the Reinvestment Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Investment Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and the Principal Balance of any Collateral Obligation in which the

Trustee does not have a first priority perfected security interest shall be its outstanding principal amount;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) Non-Performing Collateral Obligations and Current-Pay Obligations. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation or Current-Pay Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation or Current-Pay Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price; provided that, the Principal Balance of any Collateral Obligation purchased with proceeds of any Current-Pay Obligation shall equal or exceed the Principal Balance of such Current-Pay Obligation that was sold.

(d) Non-qualifying Collateral Obligations. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) Withholding Tax Sales. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) Optional Redemption. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.8 have confirmed the calculations contained in any required certificate furnished by the Portfolio Manager pursuant to Section 9.3(c). After a Majority of the Class E Certificates have directed an Optional Redemption of the Class E Certificates in accordance with Section 9.2(b), at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or all or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Class E Certificates (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) Rating Confirmation Failure. After the Portfolio Manager has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings of the Notes, the Issuer may, if so directed by the Portfolio Manager in the Portfolio Manager's sole discretion, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) Discretionary Sales. In addition to sales permitted under the foregoing clauses, at the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation, at any time during the Reinvestment Period:

(i) at any time on or before the Ramp-Up Completion Date (without regard to any restriction specified in clause (ii) below); and

(ii) at any time after the Ramp-Up Completion Date if:

(A) after giving effect to the sale and the sale of any other Collateral Obligations whose sale is pending, the Aggregate Principal Balance of all Collateral Obligations sold pursuant to this Section 12.1(h)(ii) in any calendar year (in each case determined as of the date the direction to sell is given) is not greater than 20% of the Maximum Investment Amount as of January 1 of such calendar year (or, for the first calendar year, as of the Ramp-Up Completion Date); and

(B) (x) the Portfolio Manager believes before the sale that it will be able to cause the Issuer within 30 days thereafter to reinvest or commit to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to (i) as long as the Class C Overcollateralization Test is satisfied, the Investment Criteria Adjusted Balance of the Collateral Obligation and (ii) if the Class C Overcollateralization Test is not satisfied, the Aggregate Principal Balance of the sold Collateral Obligation (for the purpose of both (B)(i) and (B)(ii), the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and the Principal Balance of any Collateral Obligation in which the Trustee does not have a first priority perfected security interest shall be its outstanding principal amount) or (y) the Portfolio Manager intends to use the Sale Proceeds to make Prepayments on the Class A-1A Notes;

and the Trustee shall sell the Collateral Obligations in accordance with such direction. However, if the rating by Moody's of any of the Class A-1A Notes, the Class A-1B Notes, Class A-1C Notes, Class A-2 Notes, Class A-3 Notes or the Class A-4 Notes is one or more rating sub-categories below the Initial Rating of the Class A-1A Notes, the Class A-1B Notes, Class A-1C Notes, Class A-2 Notes, Class A-3 Notes or the Class A-4 Notes or has been withdrawn or the rating by Moody's of the Class B Notes or the Class C Notes is two or more rating sub-categories below the Initial Rating of the Class B Notes or the Class C Notes or has been withdrawn, the Issuer shall not instruct the Trustee to sell any Collateral Obligations pursuant to this Section 12.1(h). This restriction may be waived by written consent of a Majority of the Controlling Class. For the purposes of this subsection (h), any withdrawal or reduction in rating shall not restrict the sale of any Collateral Obligations pursuant to this subsection (h) if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1A Notes, the Class A-1B Notes, Class A-1C Notes, Class A-2 Notes, Class A-3 Notes and the Class A-4 Notes or to only one subcategory below their Initial Rating in the case of the Class B Notes and the Class C Notes.

For the purposes of determining the percentage of Collateral Obligations sold during any period in Section 12.1(h)(ii)(A):

(i) the amount of any Collateral Obligation sold shall be reduced:

(A) to the extent of any purchases of Collateral Obligations of the same obligor (that are *pari passu* with the sold Collateral Obligation) occurring within 30 Business Days of the sale (determined based on the date of any relevant trade confirmation or commitment letter) (but only for so long as (x) the Collateral Obligations purchased have not been downgraded by any of the Rating Agencies during the 30 Business Day period, (y) the Collateral Obligations have not been purchased from the

Portfolio Manager or any of its Affiliates acting, in each case, as principal or from any funds or accounts advised or managed by the Portfolio Manager or any of its Affiliates, and (z) the purchase price of each purchased Collateral Obligation must not exceed the sale price of the sold Collateral Obligation), and

(B) to the extent of any purchases of Collateral Obligations permitted pursuant to Section 12.2(c); and

(ii) any Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time that is invested into a substantially similar Synthetic Security but with a later maturity shall be treated as having been sold.

(i) Workout Assets. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Reinvestment Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(j) Margin Stock. Notwithstanding anything to the contrary herein, the Issuer shall direct the Trustee to sell any asset that is Margin Stock within 45 days of the later of (i) the acquisition of such asset by the Issuer or (ii) such asset's becoming Margin Stock, and the Trustee shall sell such asset in accordance with such direction.

Section 12.2. Purchase of Collateral Obligations.

(a) On any date during the Reinvestment Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations, on any date after the Reinvestment Period), so long as no Event of Default is continuing, at the direction of the Portfolio Manager, the Issuer may direct the Trustee to invest or reinvest Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) and the funds available from Borrowings on the Class A-1A Notes and Drawdowns under the Class A-1B Notes in additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Portfolio Manager certifies to the Trustee that the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) Eligibility Criteria. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "Eligibility Criteria") is satisfied as evidenced by a certificate of the Portfolio Manager as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Reinvestment Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of such Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Reinvestment Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Reinvestment Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Reinvestment Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Reinvestment Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Reinvestment Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Reinvestment Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Reinvestment Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Reinvestment Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Reinvestment Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to reinvestment of the proceeds

from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the reinvestment of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Reinvestment Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved;

(C) each Concentration Limitation is maintained or improved;

(D) the maturity date of such Collateral Obligation will occur on or prior to the Stated Maturity of the Notes and the Weighted Average Life Test is satisfied;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the Aggregate Principal Balance of Collateral Obligations to be purchased in connection with such sale or prepayment must be no less than the Aggregate Principal Balance of the Collateral Obligations sold or prepaid.

(c) Certain Permitted Exchanges. The Issuer may, at the direction of the Portfolio Manager (and regardless of the foregoing restrictions), exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) Certification by Portfolio Manager. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Portfolio Manager shall deliver to the Trustee an Officer's certificate of the Portfolio Manager certifying that the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) Investment in Eligible Investments. Cash on deposit in the Collection Account may be invested at any time in Eligible Investments in accordance with Section 10.4(a) pending investment in Collateral Obligations.

Section 12.3. Conditions Applicable to All Sale and Purchase Transactions.

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Portfolio Manager or a person Affiliated with the Portfolio Manager or any fund or account for which the Portfolio Manager or an Affiliate of the Portfolio Manager acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Management Agreement on terms no less favorable to the Issuer than would be the case if the person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation or Class P-1 U.S. Treasury Component or Class P-2 U.S. Treasury Component, each such item of Collateral or Class P Collateral, shall be Delivered to the Trustee pursuant to this Indenture.

Section 12.4. Certain Determinations Relating to Collateral Obligations.

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date. Notwithstanding anything to the contrary in this Indenture, any certifications or other documents required to be delivered by the Portfolio Manager or the Issuer in connection with the purchase or sale of Collateral during the Reinvestment Period may be delivered by the Issuer or the Portfolio Manager on the settlement date for such Collateral even if such date occurs after the Reinvestment Period.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Portfolio Manager shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Portfolio Manager's certification to the effect that the Portfolio Manager believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. Subordination.

(a) With respect to each Class of Notes and the Class E Certificates, the Classes of Notes and the Class E Certificates that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
Class A-1A	A-2, A-3, A-4, B, C, Class E Certificates	None
Class A-1B	A-2, A-3, A-4, B, C, Class E Certificates	None
Class A-1C	A-2, A-3, A-4, B, C, Class E Certificates	None
Class A-2	A-3, A-4, B, C, Class E Certificates	A-1A, A-1B, A-1C
Class A-3	A-4, B, C, Class E Certificates	A-1A, A-1B, A-1C, A-2
Class A-4	B, C, Class E Certificates	A-1A, A-1B, A-1C, A-2, A-3
Class B	C, Class E Certificates	A-1A, A-1B, A-1C, A-2, A-3, A-4
Class C	Class E Certificates	A-1A, A-1B, A_1C, A-2, A-3, A-4, B
Class E Certificates	None*	A-1A, A-1B, A-1C, A-2, A-3, A-4, B, C

* The Class E Certificates will be entitled to certain residual cashflow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of the Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of the Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of the Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect and a day, has elapsed since the payment in full of all Notes issued under the Indenture.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to such Junior Class of Notes has been paid in full in Cash or, to the extent a Majority of the Priority Class consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of a Junior Class of Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of the Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Class E Certificates are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Management Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2. Standard of Conduct.

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any person or to consider or take into account the interests of any person and shall not be liable to any person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer, or any other person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholders taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

Section 13.3. Class A-1 Funding Allocations.

(a) In the event that the Class A-1 Notes are to be redeemed pursuant to the Priority of Payments, including by reason of (i) the failure of a Coverage Test to be satisfied on any date of determination or as contemplated by clause (9), (11) or (14) of Section 11.1(a)(i), (ii) in connection with a Rating Confirmation Failure as contemplated by clause (16) of Section 11.1(a)(i) or clause (4) of Section 11.1(a)(ii), or (iii) in connection with a Special Redemption as contemplated by clause (5) of Section 11.1(a)(ii), the aggregate amount required to be applied to the Class A-1A Notes (the "Aggregate Principal Reduction Amount") shall be applied as follows: (1) the Aggregate Commitment Amount shall be reduced (but not below zero) by an amount equal to (i) the Aggregate Principal Reduction Amount *multiplie*d by (ii) the Aggregate Commitment Amount in effect on the Closing Date *divided* by (iii) the sum of the Aggregate Commitment Amount in effect on the Closing Date *plus* the Aggregate Outstanding Amount of the Class A-1C Notes as of the Closing Date *plus* the Fully Drawn Amount of the Class A-1B Notes (such portion of the Aggregate Principal Reduction Amount, the "Class A-1A Principal Reduction Amount") and the Class A-1A Principal Reduction Amount shall be applied to repay any Drawn Amount on the Class A-1A Notes (with any remaining portion of the Class A-1A Principal Reduction Amount deposited in the Revolving Reserve Account); and (2) the Aggregate Outstanding Amount of the Class A-

1B Notes and the Class A-1C Notes shall be prepaid (but not below zero) in an amount equal to their respective *pro rata* shares (based on the Aggregate Outstanding Amount of the Class A-1B Notes and the Class A-1C Notes) of (i) the Aggregate Principal Reduction Amount *multiplied* by (ii) the sum of the Aggregate Outstanding Amount of the Class A-1C Notes as of the Closing Date and the Fully Drawn Amount of the Class A-1B Notes *divided* by (iii) the sum of the Aggregate Commitment Amount in effect on the Closing Date *plus* the Aggregate Outstanding Amount of the Class A-1C Notes as of the Closing Date *plus* the Fully Drawn Amount of the Class A-1B Notes. Notwithstanding the foregoing, to the extent that the Revolver Funding Reserve Amount after giving effect to any application described in clause (1) above exceeds the amount on deposit in the Revolving Reserve Account any repayment of the Drawn Amount of the Class A-1A Notes and reduction in the Aggregate Commitment Amount will be reduced by an amount that if deposited in the Revolving Reserve Account would cause the aggregate balance of all Eligible Investments credited to the Revolving Reserve Account to equal the Revolver Funding Reserve Amount. Any amount that would have otherwise been applied to prepay the Class A-1A Notes but for such reduction will be deposited into the Revolving Reserve Account in order to satisfy such funding requirement.

(b) The Issuer will apply any advances under the Class A-1A Notes made pursuant to Section 2.3(c) of the Class A-1A Note Purchase Agreement to repay principal of the Class A-1B Notes and the Class A-1C Notes, *pro rata* based on their respective Aggregate Outstanding Amounts, independent of the Priority of Payments. Such payments will be deemed to occur prior to any other principal payments on any date pursuant to the Priority of Payments.

ARTICLE 14
MISCELLANEOUS

Section 14.1. Form of Documents Delivered to Trustee.

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer, or the Portfolio Manager may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, the Co-Issuer or the Portfolio Manager or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Portfolio Manager, or any other person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Portfolio Manager, or the other person, unless the Officer of the Issuer, the Co-Issuer, or the Portfolio Manager or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. Acts of Noteholders or Holders of Class E Certificates.

(a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Noteholders or Holders of Class E Certificates may be embodied in and evidenced by one or more instruments (which may be an electronic document, including but not limited to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Noteholders or Holders of Class E Certificates in person or by agents duly appointed in writing (provided that no signature shall be required on electronic documents, including but not limited to in the form of e-mail). Except as otherwise expressly provided in this Indenture the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Class E Certificates Paying Agent, in the case of the Holders of the Class E Certificates) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "Act" of the Noteholders or the Holders of Class E Certificates signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Noteholder or Holder of a Class E Certificate shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 14.2.

(b) The fact and date of the execution by any person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the person executing it to act. The fact and date of the execution by any person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of Indenture Securities and the principal amount and registered numbers of Indenture Securities and the number of Class E Certificates held by and the number(s) of the Class E Certificate certificate(s) issued to, any Person shall be proved by the Class E Certificate register.

(d) Any Act by the Holder of a Note shall bind every Holder of the same Note and every Note issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted, or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Note or Class E Certificates.

Section 14.3. Notices, etc., to Certain Persons or Parties.

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

(i) the Trustee or Class E Certificates Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Class E Certificates Paying Agent addressed to it at its Corporate Trust Office, telecopy no. (713) 216-2101, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Portfolio Manager to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Walkers SPV Limited, P.O. Box 908GT, Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, facsimile: (345) 945-4757, Attention: The Directors, or to the Co-Issuer addressed to it at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, Attention: Donald J. Puglisi, or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Portfolio Manager at its address below;

(iii) the Portfolio Manager shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Portfolio Manager addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) Citigroup Global Markets Inc. as the Placement Agent and Initial Purchaser shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Placement Agent or Initial Purchaser, as applicable, addressed to them at Citigroup Global Markets Inc., 390 Greenwich Street, 4th Floor, New York, NY 10013, Facsimile Number: 212-723-8671,Attention: Managing Director, Global Portfolio Solutions, respectively or at any other address previously furnished in writing to the Co-Issuers, the Portfolio Manager, and the Trustee by an Officer of the Placement Agent or Initial Purchaser, as applicable;

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., CDO Group, 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring, and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO

Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Walkers SPV Limited, P.O. Box 908GT, Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-4757, Attention: The Directors;

(viii) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Notwithstanding any provision to the contrary contained herein, any document, report, statement or other information required to be delivered or made available to the Repository by the Trustee may be delivered or made available by providing the operator of the Repository with access to the Trustee's website containing such information;

(ix) the Irish Paying and Listing Agent shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by facsimile in legible form, to the Irish Paying and Listing Agent addressed to it at NCB Stockbrokers, 3 George's Dock, Dublin 1, Ireland, or at any other address previously furnished in writing to the other parties hereto by the Irish Paying and Listing Agent; or

(x) the Cayman Island Stock exchange shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by facsimile in legible form, to the Administrator at the contact details set forth above, for forwarding to the Cayman Islands Stock Exchange.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other person unless otherwise expressly specified in this Indenture.

Section 14.4. Notices to Holders, the Class E Certificates Paying Agent; Waiver.

(a) Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders or the Class E Certificates Paying Agent (for forwarding to the Holders of Class E Certificates) of any event,

(i) the notice shall be sufficiently given to the Noteholders or the Class E Certificates Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event or the Class E Certificates Paying Agent, at the address of the Holder as it appears in the Indenture Register or at the address of the Class E Certificates Paying Agent supplied by the Class E Certificates Paying Agent supplied by the Class E Certificates Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; provided, that, in addition, so long as any of the Notes are listed on the Irish Stock Exchange and so long as the rules of such stock exchange so require, notice to the Noteholders shall also be given in the Irish Stock Exchange's Daily

Official List by the Trustee forwarding all notices to the Irish Paying and Listing Agent for publication;

(ii) the notice shall be in the English language; and

(iii) Notices shall be deemed to have been given on the date of their mailing.

(b) Notwithstanding clause (a)(i), a Noteholder or the Class E Certificates Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Class E Certificates Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a)(i) above, as the case may be.

(b) The Trustee shall deliver to the Holders of Notes any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Class E Certificates Paying Agent any information or notice that the Class E Certificates Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Class E Certificates at the expenses of the Issuer.

(c) Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder or the Class E Certificates Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders or the Class E Certificates Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders or the Class E Certificates Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage, or similar activity or because of any other cause, then the notification to Noteholders or the Class E Certificates Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

(d) Where this Indenture provides for notice in any manner, the notice may be waived in writing by any person entitled to receive the notice, either before or after the event, and the waiver shall be the equivalent of the notice. Waivers of notice by Noteholders or the Class E Certificates Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

(e) So long as any Class E Certificates are listed on the Cayman Islands Stock Exchange and the rules of the exchange so require, all notices to the Class E Certificates Paying Agent (for forwarding to Holders of Class E Certificates) shall also be given to the Administrator for forwarding to the Cayman Islands Stock Exchange.

(f) The Issuer shall (and authorizes the Trustee to) deliver to the Initial Purchaser and the Placement Agent all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Portfolio Manager, trustees, paying agents, accountants, or other persons pursuant to this Indenture and other operative documentation relating to the Securities requested by the Initial Purchaser and the Placement Agent (collectively, the "Transaction Reports") and the Issuer consents to the Initial Purchaser and the Placement Agent providing Transaction Reports received by them to current and prospective investors in the Securities (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Initial Purchaser or the Placement Agent or any of their Affiliates).

(g) Until such time as AG Financial Products Inc. ("AGFP") notifies the Trustee in writing that it is no longer providing credit protection to certain initial holders of Class A-1 Notes, the Trustee (without assuming any obligations to AGFP, including for its failure to do so) shall make available to AGFP (including by access to its password protected website) duplicate copies of all reports, notices and statements that the Trustee is required to deliver to any Holder of Class A-1 Notes, at the following address (or at any other address furnished in writing from time to time by AGFP to the Trustee): AG Financial Products Inc., 1325 Avenue of the Americas, New York, New York 10019, Attention: Risk Management Department, Re: Liberty CLO, Ltd., Reference Nos. D-2005-100, D-2005-105, D-2005-106, D-2005-107, Telecopy No.: (212) 581-3266, Confirmation: (212) 974-0100; E-mail: RiskManagementDept@assuredguaranty.com, with a copy to Attention: General Counsel. For the avoidance of doubt, AGFP shall be entitled to request directly that the Trustee provide it with the above-mentioned documents in accordance with this Section 14.4. In addition, the Trustee shall forward to AGFP a copy of the Monthly Reports delivered pursuant to Section 10.6(a) and Valuation Reports delivered pursuant to Section 10.6(b) without the necessity of a request from AGFP for such reports.

Section 14.5. Effect of Headings and Table of Contents.

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

Section 14.6. Successors and Assigns.

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. Separability.

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

Section 14.8. Benefits of Indenture.

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any person, other than the parties hereto and their successors under this Indenture, the Portfolio Manager, the Noteholders, the Holders of Class E Certificates or the Class E Certificates Paying Agent any benefit or any legal or equitable right, remedy, or claim under this Indenture.

Section 14.9. [Reserved].

Section 14.10. Governing Law.

(a) THIS INDENTURE AND THE INDENTURE SECURITIES (EXCEPT WITH RESPECT TO ANY CLASS E CERTIFICATE COMPONENT) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.11. Submission to Jurisdiction.

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Class E Certificates or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of the Co-Issuers' agent in Section 7.2 and to the Trustee at the Corporate Trust Office. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.12. Counterparts.

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.13. Acts of Issuer.

Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Portfolio Manager on the Issuer's behalf.

Section 14.14. Consent to Posting of Documents on Repository

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository; and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.15. Liability of Co-Issuers.

Notwithstanding any other terms of this Indenture, the Notes, or any other agreement entered into by either the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co-Issues. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.16. Indemnity of Co-Issuer.

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF MANAGEMENT AGREEMENT; HEDGE AGREEMENTS

Section 15.1. Assignment of Management Agreement.

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Management Agreement, including:

(i) the right to give all notices, consents, and releases under it,

(ii) the right to give all notices of termination pursuant to the Management Agreement and to take any legal action upon the breach of an obligation of the Portfolio Manager under it, including the commencement, conduct, and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases, and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Management Agreement, nor shall any of the obligations contained in the Management Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Management Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Management Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith.

The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Portfolio Manager in the Management Agreement to the following:

(i) The Portfolio Manager consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Portfolio Manager pursuant to the Management Agreement.

(ii) The Portfolio Manager acknowledges that the Issuer is collaterally assigning all of its interest in the Management Agreement to the Trustee for the benefit of the Secured Parties and the Portfolio Manager agrees that all of the representations, covenants and agreements made by the Portfolio Manager in the Management Agreement are also for the benefit of the Secured Parties.

(iii) The Portfolio Manager shall deliver to the Trustee duplicate original copies of all notices, statements, communications, and instruments delivered or required to be delivered to the Issuer pursuant to the Management Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) The Issuer shall appoint a successor manager at the direction of a Super Majority of the Class E Certificates (excluding any Class E Certificates held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority) only if (a) the Rating Condition with respect to each Rating Agency with respect thereto is satisfied, (b) such successor has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to the Management Agreement, this Indenture and the Collateral Administration Agreement, (c) the written consent of a Majority of the Controlling Class for such appointment has been received and (d) such successor portfolio manager is not objected to within 30 days after notice of such succession by a Majority in Aggregate Outstanding Amount of the Notes (voting as a single Class (excluding any Notes held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio or any of its Affiliates exercise discretionary voting authority)); provided that if two or more successor managers have been so nominated but have not been so appointed by the Issuer within 30 days of the date of notice of removal, termination or resignation of the Portfolio Manager, then the Issuer shall appoint a successor manager at the direction of a Majority of the Controlling Class only if (a) the Rating Condition with respect to each Rating Agency with respect thereto is satisfied, (b) such successor has agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to the Management Agreement and the Indenture and (c) such successor portfolio manager is not objected to within 30 days after notice of such succession by either (x) the Majority of the Class E Certificates (excluding any Class E Certificates held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio Manager or any of its Affiliates exercise discretionary voting authority) or (y) a Majority in Aggregate Outstanding Amount of the Notes (voting as a single Class (excluding any Notes held by the retiring Portfolio Manager or any of its Affiliates and accounts over which the retiring Portfolio or any of its Affiliates exercise discretionary voting authority)).

(v) Neither the Issuer nor the Portfolio Manager shall enter into any agreement amending or modifying the Management Agreement (other than an amendment or modification of the type that may be made to this Indenture without Holder consent) (a) without

satisfying the Rating Condition with respect to each Rating Agency with respect thereto and (b) if a Majority of the Controlling Class or a Majority of the Class E Certificates have objected in writing to such amendment or modification within 30 days of notice thereof.

(vi) Except as otherwise provided in this Indenture and the Management Agreement, subject to the resignation rights of the Portfolio Manager pursuant to Section 12 of the Management Agreement, the Portfolio Manager shall continue to serve as Portfolio Manager under the Management Agreement notwithstanding that the Portfolio Manager shall not have received amounts due it under the Management Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Portfolio Manager agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Portfolio Manager under the Management Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Class E Certificates Paying Agent of all amounts payable with respect to the Class E Certificates in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Portfolio Manager may commence any legal action that is not a bankruptcy, insolvency, liquidation, or similar proceeding against the Issuer or the Co-Issuer or or any of its properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation, or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Portfolio Manager or any Affiliate of the Portfolio Manager.

(vii) The Portfolio Manager irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Class E Certificates or this Indenture, and the Portfolio Manager irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Portfolio Manager irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Portfolio Manager irrevocably consents to the service of all process in any action or Proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Portfolio Manager agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Portfolio Manager, the Issuer shall use its best efforts to appoint a successor Portfolio Manager, and the Issuer, the Trustee, and the resigning or removed Portfolio Manager shall take any action consistent with the Management Agreement and this Indenture applicable to the Portfolio Manager, necessary to effectuate any such succession.

Section 15.2. Hedge Agreements.

(a) At any time and from time to time after the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture and the Collateral Assignment of Hedge Agreements. The Portfolio Manager, on behalf of the Issuer, shall obtain the approval of each new Hedge Agreement from each Hedge Counterparty to a then-existing Hedge Agreement. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay

amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "Aa3" (which rating of "Aa3" is not on credit watch for possible downgrade) or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A1" (which rating of "A1" is not on credit watch for possible downgrade) or higher and a debt rating by Moody's for short-term debt of "P-1" (which rating of "P-1" is not on credit watch for possible downgrade) if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or a long-term debt rating of not less than "A+" (the "Required Rating").

(c) If at any time a Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating and that rating is below "Aa3" or is "Aa3" and has been placed on credit watch for possible downgrade by Moody's; or

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is below "A1" or that rating is "A1" and has been placed on credit watch for possible downgrade by Moody's, or

(ii) the short-term Moody's rating is below "P-1" or that rating is "P-1" and has been placed on credit watch for possible downgrade by Moody's

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's to be satisfied;

(ii) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the above criteria;

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty whose short-term and long-term debt ratings equal or exceed the above criteria; or

(iv) take other actions to satisfy the Rating Condition with respect to Moody's;

(d) If at any time the Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating that is "A2" or below or has been suspended or withdrawn;

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is "A3" or below or is suspended or withdrawn, or

(ii) the short-term Moody's rating is "P-2" or below, or

(C) a short-term debt rating by S&P below "A-1" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "A+" or that has been suspended or withdrawn;

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral as required by the Hedge Agreement to secure the Hedge Counterparty's obligations under the Hedge Agreement in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's and S&P to be satisfied; or

(ii) (x) obtain a guarantor that has a Required Rating and that will satisfy the Rating Condition with respect to S&P with respect to its appointment;

(y) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P; or

(z) take such other actions to satisfy the Ratings Condition;

provided that, if at any time the Hedge Counterparty has a short-term debt rating by S&P below "A-3" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "BBB-" or such Hedge Counterparty's rating has been suspended or withdrawn, then the Hedge Counterparty shall be required, at its sole expense, to within 7 days replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P.

Whenever a Hedge Agreement is being entered into, the Hedge Counterparty shall comply with the then current rating criteria.

(e) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(f) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall

be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Class E Certificates.

(g) Except as provided in paragraph (h) of this Section 15.2, the Issuer, at the direction of the Portfolio Manager, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), at the expense of the Issuer and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Portfolio Manager's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Portfolio Manager determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination; or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(h) Notwithstanding Section 15.2(g), the applicable requirements of Section 15.2(g) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(i) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified, or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification, or termination, as the case may be.

(j) Each Hedge Agreement may be terminated pursuant to its terms upon an Optional Redemption of the Notes or an acceleration of maturity of the Notes after an Event of Default. The Hedge Agreement will not be permitted to be terminated as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded and liquidation of the Collateral has begun pursuant to this Indenture.

(k) The Issuer shall not enter into a hedge agreement (including any Hedge Agreement) unless (i) the Rating Condition with respect to each Rating Agency is satisfied and (ii) the entry into, performance and termination of such hedge agreement will not subject the Issuer to net income tax in any jurisdiction outside its jurisdiction of incorporation.

Section 15.3. Synthetic Securities.

The Issuer shall not enter into a Synthetic Security Agreement with a Synthetic Security Counterparty unless the terms of such Synthetic Security Agreement provide that, if at any time the Synthetic Security Counterparty does not meet the Synthetic Security Counterparty Ratings Requirement, such Synthetic Security Counterparty shall (at the sole cost and expense of the Synthetic Security

Counterparty) take one of the following actions within 30 days following the date on which the Synthetic Security Counterparty fails to meet such Synthetic Security Counterparty Ratings Requirement:

(a) post collateral with the Trustee to secure the Synthetic Security Counterparty's obligations under the Synthetic Security Agreement, in an amount and of the type sufficient to cause the Rating Condition with respect to S&P to be satisfied; *provided* that, if the Synthetic Security Counterparty's senior unsecured credit rating by S&P for long-term debt of such Synthetic Security Counterparty are rated below "BBB+" and the senior unsecured, credit rating by S&P for short-term senior debt of such Synthetic Security Counterparty are rated below "A 2" (if such Synthetic Counterparty has a short term rating from Standard & Poor's), the Synthetic Security Counterparty shall obtain or provide a legal opinion addressed to the Issuer and the Trustee acceptable to S&P to the effect that the collateral will be available to the Trustee and the Noteholders in the event of the insolvency of such Synthetic Security Counterparty;

(b) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the Synthetic Security Counterparty Ratings Requirement;

(c) cause an entity who satisfies the Security Counterparty Ratings Requirement to issue in favor of the Issuer a credit support of such Synthetic Security Counterparty's obligations under the related Synthetic Security acceptable in form and substance to the Issuer and that satisfies the Rating Condition;

(d) replace itself under the related or substantially equivalent Synthetic Security Agreement with a substitute Synthetic Security Counterparty whose short-term and long-term debt ratings equal or exceed the Synthetic Security Counterparty Ratings Requirement; *provided* that, upon successful consummation of any such substitution and assignment, the related Synthetic Security Counterparty's obligations to post collateral contemplated by clause (a) above shall terminate and Issuer shall release its security interest in, and return to the related Synthetic Security Counterparty, any then posted collateral; or

(e) take other actions to satisfy the Rating Condition with respect to S&P.

If the Synthetic Security Counterparty has taken action pursuant to clause (b) above, the Issuer (or the Portfolio Manager on its behalf) shall, in the event that the Synthetic Security Counterparty fails to meet its payment obligations under the Synthetic Security Agreement, demand payment from the guarantor on the day such payment from the Synthetic Security Counterparty is due for the purposes of requiring such guarantor to make payment on such same day.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

LIBERTY CLO, LTD.,
AS ISSUER

By:_____
Name: David Egglishaw
Title: Director

LIBERTY CLO, CORP.,
AS CO-ISSUER

By:_____
Name:
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE

By:_____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

LIBERTY CLO, LTD.,
AS ISSUER

By:_____
Name:
Title:

LIBERTY CLO, CORP.,
AS CO-ISSUER

By:_____
Name: Donald J. Puglisi
Title: President

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE

By:_____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

LIBERTY CLO, LTD.,
AS ISSUER

By:_____
Name:
Title:

LIBERTY CLO, CORP.,
AS CO-ISSUER

By:_____
Name:
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE

By: Elaine Mah
Name: Elaine Mah
Title: Vice President

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "Obligor Par Amount" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "Average Par Amount" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "Equivalent Unit Score" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor divided by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "Aggregate Industry Equivalent Unit Score" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "Industry Diversity Score" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A		Ba	B

				Baa		
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	15%
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital					Ba	

Structure (1)	Aaa	Aa	A	Baa		B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

The S&P Priority Category Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate asset class and liability rating as categorized by S&P:

Senior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
AA	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
A	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BBB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* This table shall not apply to project finance, future flows, synthetics, CDO repacks of ABS or CDOs, guaranteed ABS, distressed debt CDOs, synthetic CDOs, or emerging market CDOs. Recovery rates for such Structured Finance Obligations will be assigned by S&P on a case-by-case basis.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"Assigned Moody's Rating": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"Moody's Default Probability Rating": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof (or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, the rating that is the number of rating subcategories specified by Moody's below such S&P rating); and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"Moody's Equivalent Senior Unsecured Rating": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clauses (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Investment Amount may consist of Investment Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"Moody's Obligation Rating": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"Moody's Rating": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Portfolio Manager, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"S&P Rating": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "Borrower"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "Guarantor") by S&P, the most current issuer credit rating for such Borrower or Guarantor;

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower; or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that Collateral Obligations constituting no more than 5% of the Maximum Investment Amount (which concentration may be increased to 10% upon satisfaction of the Rating Condition with respect to S&P) may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Portfolio Manager may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; or

(C) (1) if such Collateral Obligation (other than a Current-Pay Obligation) is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Portfolio Manager determines in its sole

discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; provided that the Portfolio Manager must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Investment Amount may be given an S&P Rating based on this subclause (C) (after giving effect to the addition of the relevant Collateral Obligation, if applicable) or (2) if such Collateral Obligation is a Current-Pay Obligation and is not rated by Moody's or S&P and no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the S&P Rating will be "CCC-";

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Portfolio Manager. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

Exhibit A1

Form of Temporary Regulation S Global Security

Exhibit A2

Form of Regulation S Global Security

Exhibit A3

Form of Rule 144A Global Note

Exhibit B1

Form of Transfer Certificate for
Rule 144A Global Note to Temporary Regulation S Global Security or Regulation S Global Security

Exhibit B2

Form of Transfer Certificate for
Temporary Regulation S Global Security or Regulation S Global Security to Rule 144A Global Note

Exhibit C

Form of Cleary Gottlieb Steen & Hamilton LLP Opinion

Exhibit D

Form of Walkers Opinion

Exhibit E

Form of Gardere Wynne Sewell LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G

Form of Account Agreement

Exhibit H

Forms of Section 3(c)(7) Notices

Exhibit H-1

Form of Section 3(c)(7) Reminder Notice

Exhibit H-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit I

Form of Extension Notice

EXECUTION COPY

RED RIVER CLO LTD.

Issuer,

RED RIVER CLO CORP.

Co-Issuer,

and

U.S. BANK NATIONAL ASSOCIATION

Trustee

INDENTURE

Dated as of August 3, 2006

COLLATERALIZED DEBT OBLIGATIONS

U.S.$657,000,000 Class A Floating Rate Senior Secured Extendable Notes Due 2018
U.S.$45,000,000 Class B Floating Rate Senior Secured Extendable Notes Due 2018
U.S.$40,500,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2018
U.S.$45,000,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2018
U.S.$31,500,000 Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2018

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 17

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

Vol. 2

Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 28 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346 thru Vol. 27	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
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006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
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Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

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INDENTURE, dated as of August 3, 2006, among RED RIVER CLO LTD. (the "***Issuer***"), RED RIVER CLO CORP. (the "***Co-Issuer***") and U.S. BANK NATIONAL ASSOCIATION, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Class E Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and, together with the Issuer Accounts, the Synthetic Security Collateral Account and the Hedge Counterparty Collateral Account, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the "***Collateral***").

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to

the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

" ***Accredited Investor***": The meaning specified in Rule 501(a) of the Securities Act.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Warehoused Loan as part of the price paid by the Issuer to repurchase and terminate the related participation under the Warehouse Agreements.

"***Act***": The meaning specified in Section 14.2.

"***Adjusted Market Value***": With respect to each CCC+/Caa1 Collateral Obligation, the lower of (x) 100% and (y) the Market Value of such CCC+/Caa1 Collateral Obligation, expressed as a percentage of its outstanding principal balance.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.04% of the Maximum Amount on the related Determination Date plus $150,000, *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers or Investors Corp. (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and Investors Corp. and of accountants, agents, and counsel for each of the Co-Issuers and Investors Corp.;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Notes owed by either Co-Issuer (including fees and expenses for surveillance, credit estimates, and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other person (except the Servicer) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Ogier Fiduciary Services (Cayman) Limited.

"***Affiliate***" or "***Affiliated***": With respect to a person,

(i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(ii) any other person who is a director, officer, or employee (A) of the person, (B) of any subsidiary or parent company of the person or (C) of any person described in clause (i) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(B) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date. When used with respect to the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto;

(d) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto; and

(e) the Aggregate Outstanding Amount of the Class E Notes at any time shall include all Class E Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Transaction Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as applicable, since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder or the Non-Consenting Holding Preference Share Holder, as applicable, on the next succeeding Payment Date) would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders or the Non-Consenting Holding Preference Share Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as

applicable, equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Amendment Buy-Out Purchaser***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Transaction Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Placement Agents, the Investors Corp. Placement Agents or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Placement Agents, the Investors Corp. Placement Agents or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, each of the Co-Issuers. With respect to the Class E Notes and the Preference Shares, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified in the tables below.

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Senior Secured Loans other than Subordinated Lien Loans or DIP Loans	55.0%
Senior Unsecured Loans.....	37.5%
Second Lien Loans.....	37.5%
Subordinated Lien Loans other than a DIP Loan.....	21.5%
Senior Secured High-Yield Bonds.....	44.0%
Senior Unsecured High-Yield Bonds....	30.0%
Subordinated High-Yield Bonds.....	18.0%
Structured Finance Obligations.....	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in Schedule 6 by reference to the type of asset and its then S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the Grant of the relevant Collateral Obligation).
Synthetic Securities.....	As assigned by S&P on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above.....	As assigned by S&P on a case-by-case basis.

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by the Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially

reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

"***Authorized Officer***": With respect to the Issuer, the Co-Issuer or Investors Corp., any Officer or agent who is authorized to act for the Issuer, the Co-Issuer or Investors Corp., as applicable, in matters relating to, and binding on, the Issuer, the Co-Issuer or Investors Corp. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": U.S. Bank National Association, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": Any (i) "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not subject to Title I of ERISA, and including, without limitation, foreign, church and governmental plans, (ii) any "plan" described by Section 4975(e)(1) of the Code, or an entity whose underlying assets include the assets of any plan described in (i) or (ii) by reason of such plan's investment in such entity.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Calculation Agent***": The meaning specified in Section 7.16.

"***Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3".

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

"***CCC+/Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Class E Note***": The meaning set forth in Section 2.2(e).

"***Certificated Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares.

"***Class A Notes***": The Class A Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A/B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A Notes and the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class E Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class E Notes.

"***Class E Deferred Interest***": Deferred Interest with respect to the Class E Notes.

"***Class E Notes***": The Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class I Preference Shares***": The Class I Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class II Preference Share Percentage***": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

"***Class II Preference Share Portion***": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"***Class II Preference Share Senior Special Payment***": For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Special Payment***": Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

"***Class II Preference Share Special Payment Account***": The trust account established pursuant to Section 10.3(j).

"***Class II Preference Share Subordinated Special Payment***": For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Supplemental Special Payment***": For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Shares***": The Class II Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": August 3, 2006.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Acquisition Agreement***": The agreement dated as of the Closing Date between the Issuer and the Servicer, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Servicer, and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administrator***": U.S. Bank National Association, in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a

periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "A+";

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition);

(26) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act; and

(27) in the case of a Loan, an obligation that is part of, or a Participation in, a syndicated loan facility that provides for a commitment by the lenders, in the aggregate, of no less than $25,000,000.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans (including Moody's Senior Secured Loans) and Eligible Investments	≥ 90.0%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4)	Revolving Loans and Delayed Drawdown Loans	≤ 12.0%
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%
(6)	S&P Unrated DIP Loans	≤ 2.5%
(7)	PIK Securities	≤ 3.0%
(8)	High-Yield Bonds	≤7.5%
(9)	Structured Finance Obligations	≤ 12.5%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
(10)	Structured Finance Obligations that are collateralized loan obligations	≤ 7.5%
(11)	obligors Domiciled other than in the United States and Canada	≤ 15.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%

(15)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(16)	same S&P Industry Classification	≤ 8.0%
	(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%
(17)	single issuer or any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual issuers (including any of their respective Affiliates but excluding issuers that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤2.0%
(18)	Fixed Rate Obligations	≤7.5%
(19)	Pay interest less frequently than quarterly but no less frequently than annually	≤ 7.5%
(20)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(21)	Participations (provided that no Relevant Obligations may be a Participation in a Participation)	≤ 20.0%
(22)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤ 20.0%
(23)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(24)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**

(25)	Deep Discount Obligations	≤ 7.5%
(26)	CCC+/Caa1 Collateral Obligations	≤ 7.5%
(27)	Long-Dated Collateral Obligations	≤ 4.0%
(28)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(29)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan)	≤ 5.0%
(30)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of equal to or greater than $25,000,000 but less than $75,000,000	≤ 10.0%
(31)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $25,000,000	≤ 0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Consenting Holder of the Preference Shares***": With respect to any Payment Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date.

"***Controlling Class***": The Class A Notes (voting together as a Class or group), so long as any Class A Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding; and then the Class E Notes (voting together as a Class or group), so long as any Class E Notes are Outstanding.

"***Controlling Person***": The meaning specified in Section 2.6(c).

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of Corporate Trust Services, One Federal Street, 3rd Floor, Mailcode: EX-MA-FED, Boston, Massachusetts 02110-2004, telecopy no. (866) 350-3148, Attention: CDO Unit—Red River CLO Ltd. or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A/B Coverage Tests, the Class C Coverage Tests and the Class D Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; provided that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and provided, further, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 101), or (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; provided that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer, and (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation, or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due,

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance,

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(v) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Servicer, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor, or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class C Notes, the Class D Notes and the Class E Notes.

"***Deficiency Amount***": The meaning specified in Section 16.3(a).

"***Deficiency Notice Date***": The meaning specified in Section 16.3(a).

"***Definitive Notes***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership and/or pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer),

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States, and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code,

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code,

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets, or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score. For the purposes of calculating the Diversity Test, any Structured Finance Obligation that is a collateralized loan obligation will be disregarded.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile***" or "***Domiciled***": With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": Means: (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" by S&P; provided that such country has not imposed currency exchange controls.

"***Eligible Equity Security***": An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

"***Eligible Investments***": Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; provided that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's, and if so rated, such rating is not on watch for downgrade.

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; provided that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of

such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar vehicle having at the time of acquisition and throughout the term thereof a credit rating of "MR1+" by Moody's and "AAAm" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes; provided, further, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Established Securities Market***": Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excel Default Model Input File***": An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Priority Category, and

(k) such other information as the Trustee may determine to include in such file.

"***Excess CCC+/Caa1 Collateral Obligations***": The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": (i) U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts and (ii) any amounts credited to the Class II Preference Share Special Payment Account from time to time.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Replacement Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in August, 2017); provided that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in August, 2029.

"***Extended Scheduled Holding Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Holding Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Holding Preference Shares Redemption Date, the Payment Date in August 2022).

"***Extended Scheduled Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Preference Shares Redemption Date, the Payment Date in August 2022).

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in August, 2022); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in August, 2034.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, August 1, 2019); provided that the "Extended

Weighted Average Life Date" will in no event be a date later than the Payment Date in August, 2031.

"***Extension***": An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class C Notes, 0.25% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class D Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (5) in the case of the Class E Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in May, 2011).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date) and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as the case may be, since the Closing Date would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"***Extension Qualifying Purchasers***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Placement Agents, the Investors Corp. Placement Agents or any of their respective Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Placement Agents, the Investors Corp. Placement Agents or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share or Holding Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share or Holding Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Floating Rate Notes***": The Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Grand Central Warehouse Agreement***": The Master Participation Agreement, dated as of June 5, 2006, among Grand Central Asset Trust, SOH Series, as participant and warehouse provider, the Issuer and the Servicer, as amended.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": IXIS Financial Products Inc. or any other counterparty, to the extent that when the Issuer enters into any Hedge Agreement with IXIS Financial Products Inc. or the other counterparty, IXIS Financial Products Inc. or the other counterparty satisfies the requirements of Section 15.2(b) (subject, in the case of any other counterparty, to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***HFP***": Highland Financial Partners, L.P., an Affiliate of the Servicer.

"***Highland Warehouse Agreement***": The Master Warehousing and Participation Agreement, dated as of April 19, 2006, among Highland Special Opportunities Holding Company, as participant and warehouse provider, the Issuer and the Servicer, as amended.

"***High-Yield Bond***": Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; of any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share; and of any Holding Preference Share, the person whose name appears in the Holding Preference Share register related thereto as the registered holder of such Holding Preference Share.

"***Holding Preference Share Documents***": Investors Corp.'s memorandum and articles of association, the Holding Preference Shares Paying Agency Agreement and the resolutions of Investors Corp.'s board of directors authorizing the issuance of the Holding Preference Shares passed on or before the Closing Date.

"***Holding Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for each distribution made to the Holders of the Holding Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Holding Preference Share Internal Rate of Return, the current Payment Date, assuming all Holding Preference Shares are purchased on the Closing Date at their Face Amount.

"***Holding Preference Shares***": Preference shares issued by Investors Corp. pursuant to the Holding Preference Share Documents.

"***Holding Preference Shares Paying Agency Agreement***": The Holding Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between Investors Corp. and the Holding Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Holding Preference Shares Paying Agent***": U.S. Bank National Association, in its capacity as holding preference shares paying agent under the Holding Preference Shares Paying Agency Agreement, unless a successor Person shall have become the holding preference shares paying agent pursuant to the applicable provisions of the Holding Preference Shares Paying Agency Agreement, and thereafter "Holding Preference Shares Paying Agent" shall mean such successor Person.

"***Holding Share Registrar***": Ogier Fiduciary Services (Cayman) Limited or any successor thereto.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit H-2.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(b) to the Holders of Securities.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, <u>minus</u>

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A/B Interest Coverage Test	120.0%
Class C Interest Coverage Test	115.0%
Class D Interest Coverage Test	110.0%
Class E Interest Coverage Test	105.0%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(vii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(ix) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Section 11.1(a)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(i).

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Investors Corp.***": Red River Investors Corp., an exempted limited liability company incorporated under the laws of the Cayman Islands.

"***Investors Corp. Placement Agency Agreement***": A placement agency agreement dated July 21, 2006 among Investors Corp. and IXIS Securities North America Inc. as Lead Manager on behalf of the Investors Corp. Placement Agents relating to the placement of the Placed Shares, as modified, amended and supplemented and in effect from time to time.

"***Investors Corp. Placement Agents***": IXIS Securities North America Inc. and IXIS Corporate & Investment Bank.

"Investors Corp. Subscription Agreement": A subscription agreement dated July 21, 2006 among Investors Corp. and the Issuer relating to the purchase of the Class I Preference Shares by Investors Corp.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The Person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer, the Co-Issuer or Investors Corp. by an Authorized Officer of the Issuer, the Co-Issuer or Investors Corp., as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***IXIS Placement Agents***": IXIS Securities North America Inc. and IXIS Corporate & Investment Bank.

"***IXIS Warehouse Agreement***": The Master Warehousing and Participation Agreement, dated as of February 2, 2006, among MMP-5 Funding, LLC, as participant and warehouse provider, the Issuer, the Servicer and IXIS Financial Products Inc., as the Initial TRS Provider, as amended.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": The offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "**Reference Banks**") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered, or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or the Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the preceding paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided that, during such 30

day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) the product of (x) the Principal Balance of such Collateral Obligation multiplied by (y) 1.25 multiplied by (z) the applicable S&P Priority Category Recovery Rate and (ii) the current market value of such Collateral Obligation as determined by the Servicer in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

"***Market Value Determination Date***": With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation, *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$880,700,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations, *plus*

(B) Cash representing Principal Proceeds on deposit in the Collection Account, *plus*

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6; and,

with respect to any distribution of Eligible Equity Securities only,

(vi) that is a Market Value Determination Date.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

"***Minimum Diversity Score***": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Minimum Weighted Average Spread***": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Security shall be equal to: $\frac{A \times 55\%}{1-B}$,

where: "A" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"B" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"***Moody's Senior Secured Loan***":

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan,

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral, or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan,

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan,

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral, and

(iv) has been assigned a Moody's Obligation Rating equal to or higher than the applicable Moody's Default Probability Rating, and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in August, 2011.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Consenting Holding Preference Share Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder of Holding Preference Shares that either (i) has directed Investors Corp. not to consent to such supplemental indenture or (ii) has not provided Investors Corp. with any direction with respect to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class E Notes, a Holder or beneficial owner of an interest in a Class E Note that is not a QIB/QP.

"***Non-Permitted Benefit Plan Investor***": The meaning specified in the second paragraph of Section 2.6(c).

"***Non-qualifying Collateral Obligation***": The meaning specified in Section 12.1(d).

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted

Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.05%
2	Greater than or equal to 2.95% but less than 3.05%
3	Greater than or equal to 2.85% but less than 2.95%
4	Greater than or equal to 2.75% but less than 2.85%
5	Greater than or equal to 2.65% but less than 2.75%
6	Greater than or equal to 2.55% but less than 2.65%
7	Greater than or equal to 2.45% but less than 2.55%
8	Greater than or equal to 2.35% but less than 2.45%
9	Greater than or equal to 2.25% but less than 2.35%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Noteholder***": A Holder of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A Notes until the Class A Notes have been fully redeemed;

(2) to the Class B Notes until the Class B Notes have been fully redeemed;

(3) to the Class C Notes until the Class C Notes have been fully redeemed;

(4) to the Class D Notes until the Class D Notes have been fully redeemed and

(5) to the Class E Notes until the Class E Notes have been fully redeemed.

"***Notes***": The Senior Notes and the Class E Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Objection Cut-Off Date***": The meaning specified in Section 15.1(h)(ii).

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes.

"***Offering Memorandum***": The final offering memorandum, dated July 31, 2006, prepared and delivered in connection with the offer and sale of the Securities.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; and

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser;

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

(c) the Holding Preference Shares, as of any date of determination, all of the Holding Preference Shares theretofore issued under the Holding Preference Share Documents and listed in the Holding Preference Share register of Investors Corp. as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Transaction Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Transaction Documents, Transaction Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Transaction Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account for which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; provided that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares and Holding Preference Shares, only Preference Shares and Holding Preference Shares that an authorized officer of the Preference Shares Paying Agent or Holding Preference Shares Paying Agent, as applicable) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Transaction Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Transaction Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee, the Preference Shares Paying Agent and the Holding Preference Shares Paying Agent.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect Collateral Obligation that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the lower of (1) 70% and (2) the weighted average of the Adjusted Market Value of all CCC+/Caa1 Collateral Obligations, multiplied by (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A/B Overcollateralization Test	114.8%
Class C Overcollateralization Test	111.3%
Class D Overcollateralization Test	107.4%
Class E Overcollateralization Test	103.8%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in February 2007 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***Person***": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Placed Notes***": The Notes placed by the Placement Agents pursuant to the Placement Agency Agreement.

"***Placed Shares***": The Holding Preference Shares placed by the Investors Corp. Placement Agents pursuant to the Investors Corp. Placement Agency Agreement.

"***Placement Agency Agreement***": A placement agency agreement dated July 21, 2006 among the Co-Issuers and the Placement Agents, relating to the placement of the Placed Notes, as modified, amended and supplemented and in effect from time to time.

"***Placement Agents***": The IXIS Placement Agents and UBS Placement Agents.

"***Plan Asset Regulation***": The regulation issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Improvement Exchange***": The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and

Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"***Preference Share Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Class I Preference Shares and the Class II Preference Shares.

"***Preference Shares Notional Amount***": As of the Closing Date, $81,000,000, and thereafter as increased each time additional Preference Shares are issued in accordance with the Preference Share Documents.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": U.S. Bank National Association, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"***Purchase Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (i)

the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 120th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $880,700,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $880,700,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments,

principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least $880,700,000.

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***Rating Confirmation Failure***": A failure by the Issuer or the Servicer (on behalf of the Issuer) to obtain confirmation in writing from S&P and written confirmation from Moody's that it has not reduced, suspended, or withdrawn its Initial Rating of each Class of Notes and that it has not placed any Class of Notes on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score						
Minimum Weighted Average Spread	**50**	**55**	**60**	**65**	**70**	**75**	**80**
2.25%	**2120**	**2150**	**2180**	**2210**	**2240**	**2270**	**2300**

2.35%	2180	2210	2240	2270	2300	2330	2360
2.45%	2240	2270	2300	2330	2360	2390	2420
2.55%	2300	2330	2360	2390	2420	2450	2480
2.65%	2360	2390	2420	2450	2480	2510	2540
2.75%	2420	2450	2480	2510	2540	2570	2600
2.85%	2480	2510	2540	2570	2600	2630	2660
2.95%	2540	2570	2600	2630	2660	2690	2720
3.05%	2600	2630	2660	2690	2720	2750	2780
	Maximum Weighted Average Moody's Rating Factor						

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed, plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest), plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note, plus

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Note***": The meaning specified in Section 2.2(b).

"***Relevant Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Replacement Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in August, 2013 or, in the case of an Extension, the Extended Replacement Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Retention Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, excluding any Deferred Interest on any Class of Notes.

"***Retention Overcollateralization Test***": A test that is satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 104.8%.

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 3a-7***": Rule 3a-7 under the Investment Company Act.

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***S&P Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"***S&P Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Scheduled Holding Preference Shares Redemption Date***": July 27, 2018.

"***Scheduled Preference Shares Redemption Date***": July 27, 2018.

"***Second Lien Loan***": A Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan and (ii) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets.

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the Investment Company Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit H-1.

"***Secured High-Yield Bond***": A High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

"***Secured Loan***": A Loan that is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Preference Shares.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any Person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Notes***": The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Senior Secured High-Yield Bond***": A Secured High-Yield Bond that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the High-Yield Bond.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan.

"***Senior Servicing Fee***": A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Unsecured High-Yield Bond***": A High-Yield Bond that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Senior Unsecured Loan***": A Loan that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Servicer***": Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

"***Servicing Agreement***": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended, and supplemented and in effect from time to time.

"***Servicing Fee Portion***": 100% minus (a) for any Payment Date from the Closing Date until (and including) the Payment Date on or immediately preceeding the second anniversary of the Closing Date, the Class II Preference Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date.

"***Servicing Fees***": Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"***Share Trustee***": Ogier Fiduciary Services (Cayman) Limited.

"***Share Registrar***": Ogier Fiduciary Services (Cayman) Limited or any successor thereto.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, July 27, 2018 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

"***Structured Finance Obligation***": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities";

(G) net interest margin securitizations;

(H) collateralized debt obligations backed primarily by other collateralized debt obligations;

(I) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "synthetic CDOs"); and

(J) collateralized debt obligations a significant portion of which are backed by bonds;

(ii) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated High-Yield Bond***": A Secured High-Yield Bond secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Servicing Fee***": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments, (ii) on any Payment Date that any part of the Senior Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum and (iii) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Servicing Fee or Senior Servicing Fee, as applicable, in clauses (i) through (iii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Supplemental Servicing Fee***": On each Payment Date, the fee payable to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment Date pursuant to Section 11.1(a)(i)(22) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(a)(ii)(11)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(14) of the Priority of Payments.

"***Synthetic Security***": Any swap transaction, structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse First Boston) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

Synthetic Securities that are credit default swaps, credit linked notes, or other similar instruments may not provide for "restructuring" as a "credit event."

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a

determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than 5 days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) Collateral Obligations that satisfy the Rating Condition with respect to Moody's, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period;

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation; or

(iii) if the Issuer is at the time treated as a pass-through entity for U.S. federal income tax purposes, that investors in the Preference Shares who are non-U.S. persons not otherwise subject to U.S. net income tax are or have become subject to U.S. net income taxation in respect of income of the Issuer in an amount in excess of 10.0% of the net income of the Issuer in any twelve-month period.

"***Transaction Documents***": Collectively, this Indenture, the Preference Shares Paying Agency Agreement and the Holding Preference Shares Paying Agency Agreement.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transaction Securities***": Collectively, the Securities and the Holding Preference Shares.

"***Transfer Agent***": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"***Transferee Certificate***": A certificate substantially in the form of, with respect to the Senior Notes, Exhibit B-1 or, with respect to the Class E Notes, Exhibit B-4 attached hereto, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UBS Placement Agents***": UBS Securities LLC and UBS Limited, each, a subsidiary of UBS AG and each acting through UBS AG's global investment banking and securities business.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. Persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as U.S. Persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Warehouse Agreements***": Collectively, the IXIS Warehouse Agreement, the Highland Warehouse Agreement and the Grand Central Warehouse Agreement.

"***Warehoused Loans***": Loans acquired by the Issuer before the Closing Date pursuant to the Warehouse Agreements.

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and August 1, 2015 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 3.0 years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 44.30%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 52.42%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (x) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero and (y) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR,

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

For purposes of calculating the Weighted Average Spread, the Principal Balance of each Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan shall not include any of its unfunded amount.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and acquisition of Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not used to purchase additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Retention Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a

Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Retention Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

(i) The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Section 1.3. ***Rules of Interpretation.***

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding," "following," "before," "after," "next," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES

Section 2.1. ***Forms Generally.***

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

Section 2.2. ***Forms of Notes and Certificate of Authentication.***

(a) The Senior Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A-1.

(b) *Regulation S Global Notes*. The Senior Notes of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (the "***Regulation S Global Notes***"). The global notes shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Notes.* The Senior Notes of each Class initially sold to U.S. persons that are Accredited Investors and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Book-Entry Provisions*. This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as

the absolute owner of the Senior Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Senior Note.

(e) The Class E Notes shall be issued in the form of one or more certificated Class E Notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit A-2, including legends (each, a "***Certificated Class E Note***"), which shall be registered in the name of the owner thereof.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$819,000,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A	B	C	D	E
Original Principal Amount	U.S.$657,000,000	U.S.$45,000,000	U.S.$40,500,000	U.S.$45,000,000	U.S.$31,500,000
Interest Rate	LIBOR + 0.27%	LIBOR + 0.45%	LIBOR + 0.72%	LIBOR + 1.65%	LIBOR + 3.75%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aa2/AA	A2/A	Baa2/BBB	Ba2/BB

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 36,000 Class I Preference Shares and 45,000 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable.

Section 2.4. ***Extension of Replacement Period and Stated Maturity.***

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up

to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities (or the related Holding Preference Shares, as applicable) as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture, the Preference Share Documents and the Holding Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that the Placement Agents shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the ***"Extension Notice"***), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit J, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable notice (an ***"Extension Sale Notice"***) to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the ***"Extension Sale Notice Period"***) of its intention to sell all or a portion of its Securities or, with respect to Investors Corp., in its capacity as a Holder of the Class I Preference Shares, all or a portion of Holding Preference Shares, as the case may be, to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Holding Preference Shares, as applicable, to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture, the Preference Share Documents and the Holding Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied (as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Placement Agents, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Senior Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, (i) such Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Extension Qualifying Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Senior Notes and the Issuer may deliver the Class E Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so

transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) (i) No Note or interest therein may be transferred to any purchaser or transferee unless such purchase, holding and disposition of such Note will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, foreign or local law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code).

(ii) No person shall be permitted to acquire any Class E Note if (A) such acquisition would result in persons who have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of the Class E Notes immediately after such sale or transfer (excluding for purposes of such determination any Class E Notes held by any Controlling Person (as defined below) and its affiliates (as defined below)) determined in accordance with the Plan Asset Regulation or (B) such person, or any account on behalf of which such person is acquiring the Class E Notes, is an employee benefit plan or other plan subject to Title I of ERISA or Section 4975 of the Code, including entities whose underlying assets are treated as if they are they assets of such plans. . Under the Plan Asset Regulation, an "affiliate" of a person includes any person, directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person, and "control" with respect to a person other than an individual, means the power to exercise a controlling influence over the management or policies of such person. In making the 25% determination, Class E Notes held by any person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuer or a person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Issuer or any affiliate of any such person (any such person, a "**Controlling Person**") (such as the Class E Notes held by the Servicer or its affiliates) will be disregarded and not treated as outstanding

(iii) Any person described in paragraph (i) and (ii) above is referred to herein as a "**Non-Permitted Benefit Plan Investor**." Any transfer of a beneficial interest to a Non-Permitted Benefit Plan Investor shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee or such Registrar by a prospective transferee, the Trustee and such Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii) and (iv) of this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note to Regulation S Global Note.* If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Note to Rule 144A Global Note.* If a Holder of a Senior Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the Person transferring the interest in the Regulation S Global Note reasonably believes that the Person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) *Other Exchanges.* If a Global Note is exchanged for Senior Notes in definitive registered form without interest coupons pursuant to Section 2.11, the Senior Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as the Class E Notes remain Outstanding transfers of such Class E Notes shall only be made in accordance with Section 2.6(c) and this Section 2.6(g) upon receipt by the Indenture Registrar of (i) a certificate in the form of Exhibit B-4 given by the proposed transferee stating that it is a QIB/QP and containing other representations, warranties and agreements of such transferee and (ii) (A) appropriate documentation required under the Code and

the applicable Treasury regulations establishing that the beneficial owner of the Class E Notes to be transferred is either not a U.S. person (e.g., an IRS Form W-8BEN or an IRS Form W-8IMY with appropriate attachments) or a U.S. person (e.g., an IRS Form W-9) and (B) if such beneficial owner of Class E Notes to be transferred is treated as a partnership, S-corporation or grantor trust for U.S. federal income tax purposes, a written representation from such beneficial owner that (1) there will not be any interests in such beneficial owner where substantially all of the value of such interest is attributable to the value of the Class E Notes proposed to be transferred to such beneficial owner, together with the value of any Class E Notes, Holding Preference Shares and Preference Shares already held by such beneficial owner and (2) such beneficial owner is not a part of any arrangement a principal purpose of which is to cause the Class E Notes and Preference Shares to be treated as owned by 100 persons or less within the meaning of Treasury Regulation section 1.7704-1(h). In addition, neither the Trustee nor the Issuer shall recognize any transfers of Class E Notes, and any such proposed transfer shall be null and void, if (a) the proposed transfer will cause the Issuer to have more than ninety-nine beneficial owners (as determined for purposes of the provisions of Treasury Regulation section 1.7704-1(h)) of its Class E Notes and Preference Shares unless it receives the consent of all of the Holders of the Preference Shares and an Opinion of Counsel to the effect that Holders of the Notes will not recognize gain or loss for U.S. federal income tax purposes as a result of such transfer, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transfer had not been made or (b) such transfer was made pursuant to a trade on an Established Securities Market. The Trustee shall contact the Preference Shares Paying Agent to determine the number of beneficial owners of the Preference Shares. The Trustee shall provide, upon request by the Preference Shares Paying Agent, the number of beneficial owners of the Class E Notes.

(h) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(j) (i) Each Person who becomes a beneficial owner of a Senior Note evidenced by: (A) an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such Person's purchase or other acquisition of the relevant Definitive Note and (B) an interest in a Global Note, shall be deemed to make the representations, warranties and agreements set forth in the applicable legends of the Notes set forth in

Exhibit A-1 hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note.

(ii) Each Person who becomes a beneficial owner of a Class E Note shall make the representations, warranties and agreements set forth in the Transferee Certificate set forth in Exhibit B-4 upon such Person's purchase or other acquisition of such Class E Note.

(k) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(l) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost or Stolen Notes.***

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class E Notes on any Payment Date to the extent necessary to satisfy the Class E Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section

7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note and a Class E Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note and a Class E Note. In the case of a Definitive Note and a Class E Note, its Holder has provided written wiring instructions to the Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Applicable Issuers under the Notes and under this Indenture are limited recourse obligations of the Applicable Issuers payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will

notify the Trustee, the Share Registrar and the Holding Share Registrar of any Affiliate of the Servicer that owns any of the Transaction Securities.

Section 2.10. ***Cancellation.***

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Definitive Notes.***

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Note***") in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(j), bear the legends in the applicable portion of Exhibit A-1 and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Senior Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

Section 2.12. ***Notes Beneficially Owned by Non-Permitted Holders.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, (i) any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act and (ii) any transfer of a beneficial interest in any Class E Note to a Person that is not a QIB/QP, shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

Section 2.13 ***Tax Purposes***

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Notes on Closing Date.***

The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters.* An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Placement Agency Agreement and, in the case of the Issuer, the Servicing Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Notes applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Notes except as have been given; provided that the opinions of Latham & Watkins, LLP and Ogier, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Servicer's U.S. Counsel Opinion*. Opinions of Latham & Watkins LLP, special U.S. counsel to the Co-Issuers, and an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Ogier, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Nixon Peabody LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture*. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Notes applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order

of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Servicing Agreement*. Executed copy of the Servicing Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents*. An executed counterpart of the Preference Shares Paying Agency Agreement.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Servicer*. A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(xx)(B);

(xiv) *Rating Letters*. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that

each Class of Notes rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) *Accounts*. Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$150,000,000 into the Collection Account for use pursuant to Section 7.19, the deposit of approximately U.S.$11,313,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of approximately U.S.$1,147,500 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xvii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Senior Notes to the Daily Official List.

(xviii) *Issuer Order for Authentication of Notes*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate*. An Accountants' Certificate (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$862,000,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(xix) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xx) *Certificate of the Issuer Regarding Collateral*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Collateral as of the Closing Date is at least 90% of the aggregate par amount thereof.

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit H-2.

(xxii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be U.S. Bank National Association. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into an agreement with the Custodian substantially in the form of Exhibit G providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Article 10) for the benefit of the

Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

Section 3.3. ***Representations as to Collateral.***

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Warehoused Loans, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this

Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities entitlements," or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost or stolen Notes,

(iii) rights of Noteholders to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(vi) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement, and

(vii) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of an Opinion of Counsel of Independent U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3, 13.1, and 14.14 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A Notes are Outstanding, the Aggregate Principal Balance of the Pledged Obligations is less than 100% of the Aggregate Outstanding Amount of the Class A Notes;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or

other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by any Rating Agency) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to each Rating Agency is satisfied with respect thereon.

Section 5.2. ***Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment.***

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its

accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c)).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may, and shall at the direction of a Majority of the Controlling Class, institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may, and shall upon written direction of a Majority of the Controlling Class, proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of

negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, and shall, upon written direction of a Majority of the Controlling Class, to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 5.8, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

Section 5.5. ***Optional Retention of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to

discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of each of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes direct the sale and liquidation of the Collateral.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be any of the Placement Agents.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Notes.***

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholers of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for

the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

Section 5.9. ***Unconditional Rights of Noteholders.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received an indemnity against the liabilities reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give

written notice of any such waiver to the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Notes.***

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon

written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however,

that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of the Notes.***

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Notes.***

(a) The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

Section 6.6. ***Acquisition of Class E Notes and Preference Shares***

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Class E Notes and the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Class E Notes or Preference Shares (including pursuant to a Maturity Extension and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class E Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with the Plan Asset Regulation, this Indenture and the Preference Share Documents). Any Class E Notes or Preference Shares held as principal by the Trustee or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

Section 6.7. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer, unless such asset is purchased in an obligation of the Trustee in its corporate capacity.

Section 6.8. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the

Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify the Trustee and its officers, directors, employees and agents for any loss, liability or expense incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves (including reasonable attorney's fees and costs) against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.9. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent entity organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be "affiliated" (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall at the direction of a Majority of the Controlling Class promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by an Act of a Majority of the Controlling Class or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the

Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.11. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.12. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.13. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.14. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

Section 6.15. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.16. ***Fiduciary for Noteholders Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

Section 6.17. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) *Organization*. The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations*. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility*. The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

Section 6.18. ***Additional Reporting Requirements.***

If the Placement Agents elect to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Servicer and the Placement Agents.

If the Placement Agents have entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee at the expense of the Issuer shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(viii).

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Senior Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint U.S. Bank National Association, Corporate Trust Services, One Federal Street, 3rd Floor, Mailcode: EX-MA-FED, Boston, Massachusetts 02110-2004, Attn: CDO Unit — Red River CLO Ltd., as the Co-Issuers' agent where notices and demands

on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served, which office will initially be the office of U.S. Bank Trust National Association, an Affiliate of the Trustee, located at 100 Wall Street, New York, New York 10005, and an office or agency outside of the United States where the Notes may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Senior Notes is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Senior Notes and this Indenture may be served and where the Senior Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange, AIB International Financial Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Senior Notes, for the payment of principal, interest and other distributions on the Senior Notes and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Senior Notes or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Senior Notes is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Senior Notes of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to

deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment

of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Noteholder shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a legal opinion from nationally recognized legal counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement, the Investors Corp. Subscription Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and U.S. Bank National Association as "secured party" (with or without

indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. ***Opinions as to Collateral.***

On or before September 1 in each calendar year, commencing in 2007, the Issuer shall furnish to the Trustee, the Servicer and each Rating Agency an Opinion of Counsel from each relevant jurisdiction stating that, in the counsel's opinion, as of the date of the opinion, all actions necessary to maintain the lien and security interest created by this Indenture with respect to the Collateral have been taken and that no further action (other than as specified in the opinion) needs to be taken for the continued effectiveness and perfection of the lien over the next year. The opinion may be subject to customary assumptions and qualifications.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the Collateral Administration Agreement as initially executed), contract with other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi) and (ix), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending

Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such "non-petition" and "limited recourse" provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before July 31 in each calendar year, commencing in 2007, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc., Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is

not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by the Collateral Acquisition Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in the Collateral Acquisition Agreement, unless, with respect to a particular transaction, the Issuer and the Trustee shall have received an opinion or advice of tax counsel of nationally recognized standing in the United States experienced in such matters that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Collateral Acquisition Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer and the Trustee shall have received an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis and, at the request of the Issuer, the Trustee is hereby authorized to enter into any amendment of the Collateral Acquisition Agreement under such circumstances; provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of the Collateral Acquisition Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Notes within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event an opinion of tax counsel as described above has been obtained in accordance with the terms hereof, no consent of any Noteholder or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of the Collateral Acquisition Agreement contemplated by such opinion of tax counsel.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Irish Stock Exchange.***

So long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the Irish Stock Exchange.

Section 7.14. ***Annual Rating Review.***

So long as any Notes of any Class remain Outstanding, on or before September 30 in each year commencing in 2007, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of

Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. Each Holder of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes.

(b) The Issuer will make an election to be treated as a partnership for U.S. federal income tax purposes, and will take all necessary actions to maintain its status as a partnership (or, if the equity of the Issuer is treated as owned by one person, as a disregarded entity of such person) for U.S. federal income tax purposes.

(c) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an Opinion of Counsel from a tax counsel of nationally recognized standing experienced in such matters prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) In order to ensure the Holders' and Beneficial Owners' acquisition of the Notes pursuant to this Indenture are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners of the Notes (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement (including the ownership and disposition of the Notes). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(e) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Noteholder requests information about any such transactions in which the Issuer is a purchaser, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(f) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture and the Preference Shares Paying Agency Agreement.

(g) Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(h) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(i) The Issuer shall not participate in listing or including the Class E Notes or Preference Shares on or in any Established Securities Markets, and shall not participate in establishing any Established Securities Market for its Class E Notes or Preference Shares. In addition, the Issuer shall not recognize any transfers made on any Established Securities Markets with respect to its Class E Notes or Preference Shares (including any transfers of any financial instrument (other than the Senior Notes) or contract the value of which is determined in whole or in part by reference to the Issuer).

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Placement Agents or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation

is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings

of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$880,700,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$880,700,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Servicer (on behalf of the Issuer) shall request a Rating Confirmation on behalf of the Issuer and shall provide a report to the Rating Agencies identifying the Collateral Obligations then

included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, a Microsoft Excel file of the S&P CDO Monitor input file and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in Section 12.2 of this Indenture; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. ***Posting of Reports on Repository.***

If any of the Placement Agents have entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Trustee and the Servicer acknowledges and agrees that each Monthly Report and Valuation Report shall be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee, at the expense of the Issuer, agrees to make available in accordance with Section 14.3(a)(viii) each Monthly Report or Valuation Report to the operator of the Repository for posting on the Repository. Such Placement Agents will notify the Trustee, the Co-Issuers and the Servicer upon entering into a posting dealer agreement.

Section 7.21. ***Secondary Risk Procedures.***

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.22. ***Section 3(c)(7) Procedures.***

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) *Section 3(c)(7) Notice to Investors.* The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit H-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers.* The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Placement Agents and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act of 1933, as amended (the "Securities Act"), to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities, when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in paragraphs (1) through (22) below, the interests of the Holders of the Securities are not materially and adversely affected thereby (the Co-Issuers and the Trustee will be bound by a standard of good faith and fair dealing in making such determination) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication and delivery of the Notes;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) conform any provision in this Indenture to the related provision in the Offering Memorandum that is intended to be a verbatim recitation of such provision;

(7) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(8) with the consent of the Servicer, modify the restrictions on the sales of Collateral Obligations in Section 12.1 or the Eligibility Criteria in Section 12.2 (and the definitions related thereto);

(9) make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the Irish Stock Exchange;

(10) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(11) accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(12) take any appropriate action to prevent the Issuer, the Holders of the Securities, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(13) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(14) amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement);

(15) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(16) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(17) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(18) facilitate hedging transactions;

(19) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(20) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(21) with the consent of the Servicer, enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if

the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer to the effect that the modification would not be materially adverse to the Holders of any Class of Securities;

(22) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under the Indenture and the Preference Share Documents; or

(23) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); *provided* that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Servicer under this Indenture or increase the duties or obligations of the Servicer.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of Notes or a Majority of the Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Servicer and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding

Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(1) the Servicer if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes; and

(4) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

Prior to the entry into any supplemental indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) informing them of such fact.

(b) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). Any Non-Consenting Holder may give consent to the related

proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(c) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(d) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; provided that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee. The Trustee shall deliver any such amendment or supplement to the Repository in accordance with Section 6.18.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Any supplemental indenture that would necessitate a change to the Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Memorandum and Articles of Association (or the memorandum and articles of association of Investors Corp.) to be altered to conform with such proposed amendment.

Section 8.5. ***Reference in Notes to Supplemental Indentures.***

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then at the direction and in accordance with the instructions of the Servicer the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the Holders of a Super Majority of the Aggregate Outstanding Amount of Preference Shares, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

Upon receipt of a notice of redemption pursuant to this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to

be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3. ***Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Senior Notes to be redeemed are listed on the Irish Stock Exchange, and the Irish Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares), the Trustee and the Servicer only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares to withdraw the notice of redemption delivered by a percentage of the Preference Shares requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail), the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to each Holder of Holding Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to each of Holding Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least ten Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreements (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible

Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such

Holders whose consent was solicited with respect to such supplemental indenture or, with respect to any Class I Preference Shares held by Investors Corp. if the consent of the Holders of Holding Preference Shares has been solicited, to purchase from Non-Consenting Holding Preference Share Holders all Holding Preference Shares held by such Holders (the ***"Amendment Buy-Out Option"***), in each case, for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders and all such Holding Preference Shares of the Non-Consenting Holding Preference Share Holders, as the case may be, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an ***"Amendment Buy-Out"***). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder and any Non-Consenting Holding Preference Share Holder will be required to sell its applicable Transaction Securities to the Amendment Buy-Out Purchaser; provided that if any Non-Consenting Holder holds Class II Preference Shares, (i) such Non-Consenting Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Amendment Buy-Out Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Transaction Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Transaction Securities set forth herein and in the Preference Share Documents or the Holding Preference Share Documents, as applicable, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. *Collection of Money.*

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

Section 10.2. *Collection Account.*

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in

trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may

by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account.* Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account.* Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed

Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be applied in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in

the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$11,800,000 from the gross proceeds of the Offering. At any time before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in May, 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in May, 2007 (or, at the discretion of the Servicer, on the Payment Date in February, 2007), the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Interest Reserve Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$1,147,500 from the gross proceeds of the Offering. At any time on or before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in May, 2007, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of

the Issuer Order the Trustee shall, (a) pay from amounts on deposit in the Interest Reserve Account an amount necessary such that the amounts referred to in Section 11.1(a)(i)(1) through (20) will be paid in full on each Payment Date occurring on or before the Payment Date in May, 2007 or (b) at the discretion of the Servicer, transfer any funds on deposit in the Interest Reserve Account to the Collection Account as Principal Proceeds. On the Payment Date in May, 2007 (or, at the discretion of the Servicer, on the Payment Date in February, 2007), the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies therefrom on such date) to the Collection Account as Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be held pursuant to Section 10.4(a).

(j) *Class II Preference Share Special Payment Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Trustee for the benefit of Holders of the Class II Preference Shares, over which the Trustee shall have exclusive control and the sole right of withdrawal. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments, the Trustee will deposit into the Class II Preference Share Special Payment Account amounts equal to the products of (a) the Class II Preference Share Portion for such Payment Date and (b) on any Payment Date during the first two years after the Closing Date or with respect to which the Servicer has notified the Trustee on or before the related Determination Date that it is waiving its Servicing Fee, the Servicing Fees then due and payable, as described in Section 11.1(a) for payment to the Servicer on such Payment Date. The Servicer has agreed to waive such amounts, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date during the first two years following the Closing Date and an amount equal to such waived amounts will be distributed by the Trustee, subject to the laws of the Cayman Islands, to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event, an amount equal to such waived portion will be distributed by the Trustee, subject to the laws of the Cayman Islands, to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. For purposes of any calculation under the Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(k) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(l) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. ***Application of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in

Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of

Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements substantially in the form of Exhibit G; provided, however, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lender shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the Servicing Agreement. The Trustee shall promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be held in Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending October, 2007, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Placement Agents, each Hedge

Counterparty, the Rating Agencies, (if so requested by the Placement Agents) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the "***Monthly Determination Date***"):

(i) *Collateral*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report, and the gain or loss (measured against its Purchase Price) on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five

highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value";

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Retention Overcollateralization Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Retention Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Minimum Average Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Minimum Average Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate";

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Placement Agents, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Placement Agents) the Repository in accordance with Section 14.3(a)(viii), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) *Notes*:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting.* If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(d) *Irish Stock Exchange.* So long as any Class of Senior Notes is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Senior Notes following each Payment Date and inform the Irish Stock Exchange if any such Class of Senior Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Senior Notes are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof.

(g) *Payments or Transfers from the Payment Account.* Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's Certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before November 17 of each year commencing in 2007, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement

shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other Person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of accrued and unpaid interest on the Class A Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class A Notes;

(6) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, any Defaulted Interest Charge with respect to, the Class B Notes;

(7) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes and the Class B Notes in the Note Payment Sequence in the amount necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(8) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest, but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(9) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(2) on the current Payment Date);

(10) to the payment of Class C Deferred Interest;

(11) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(12) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (12) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(5) on the current Payment Date);

(13) to the payment of Class D Deferred Interest;

(14) to the payment of accrued and unpaid interest on the Class E Notes (excluding Class E Deferred Interest but including interest accrued for the preceding Interest Period on Class E Deferred Interest);

(15) if the Class E Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class E Notes in the amount necessary so that all of the Class E Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full, or if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (15) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(6) on the current Payment Date);

(16) to the payment of Class E Deferred Interest;

(17) to deposit in the Collection Account as Principal Proceeds amounts representing Principal Proceeds previously used to pay amounts referred to in clauses (1) through (6), (8), (10), (11), (13), (14) and (16) above and not previously restored to the Collection Account or, if not restored to the Collection Account, used to purchase Collateral Obligations;

(18) during the Replacement Period, if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds the lesser of (i) 50% of the remaining Interest Proceeds available after the payments pursuant to clause (17) above and (ii) the amount necessary to cause the Retention Overcollateralization Test to be satisfied as of such Determination Date, after application of funds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date;

(19) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(20) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and SECOND, to the payment (*pro*

rata according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) *pro rata* to each Noteholder entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(21) to the payment of any Defaulted Hedge Termination Payments;

(22) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12.0%;

(23) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(24) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (22) and (24) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) FIRST, to the payment of the amounts referred to in clauses (1) through (6) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) SECOND, to the payment of amounts referred to in clause (7) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A/B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(3) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3), or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(5) to the payment of the amounts referred to in clause (11) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(6) to the payment of the amounts referred to in clause (12) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class D Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (6), or until such amounts are paid in full;

(7) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(8) to the payment of the amounts referred to in clause (14) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(9) to the payment of principal of the Notes in the Note Payment Sequence in an amount necessary to (A) cause the Class E Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (9), or until paid in full or (B) if a Rating Confirmation Failure exists on the Payment Date, obtain a Rating Confirmation, or until paid in full;

(10) to the payment of the amounts referred to in clause (16) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(11)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(12) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(13) after the Replacement Period, (i) FIRST, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) SECOND, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(14) to the extent not previously paid in full under clause (11) above, after the Replacement Period, to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(15) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as

directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Servicer unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different Persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's Certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) *Credit Risk Obligations.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i), to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; or

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "**Non-qualifying Collateral Obligation**") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Servicer, the Issuer

shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure.* After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Workout Assets.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) *Supervening Requirement.* Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer

certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the Weighted Average Life Test is satisfied;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the current Moody's Ratings on the Class A Notes are "Aaa"" and the current Moody's Ratings on the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes are no lower than one subcategory below their Initial Rating.

Notwithstanding the foregoing, (i) one or more Collateral Obligations may be purchased pursuant to a Portfolio Improvement Exchange effected in compliance with Section 12.1(b) regardless of whether such purchase would otherwise satisfy the Eligibility Criterion set forth in clause (xii) above and (ii) the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement. .

(c) *Certain Permitted Exchanges*. The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Servicer*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than

the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Eligible Investments*. Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Article 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Section 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification

to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
Class A	B, C, D, E, Preference Shares*	None
Class B	C, D, E, Preference Shares*	Class A
Class C	D, E, Preference Shares*	Class A, B
Class D	E, Preference Shares*	Class A, B, C
Class E	Preference Shares*	Class A, B, C, D
Preference Shares	None**	Class A, B, C, D, E

* Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

** The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes

or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such

certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Holders of Securities.***

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (provided that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Holders of Securities signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

(e) With respect to any time period or deadline to deliver any request, demand, authorization, direction, notice, consent, waiver or other communication provided by this Indenture to be given by Holders of the Preference Shares, the Holders of Holding Preference Shares shall not be prejudiced by any delay in delivery of such request, demand, authorization, direction, notice, consent, waiver or other communication from the Holding Preference Shares Paying Agent to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be. If any such Holder of Holding Preference Shares timely delivers such request, demand, authorization, direction, notice, consent, waiver or other communication to the Holding Preference Shares Paying Agent such request, demand, authorization, direction, notice, consent, waiver or other communication shall be deemed to be timely delivered to the Preference Shares Paying Agent, Trustee or the Issuer, as the case may be.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at its Corporate Trust Office, One Federal Street, 3rd Floor, Mailcode: EX-MA-FED, Boston, Massachusetts, 02110, telecopy no. (866) 350-3148, Attention: CDO Unit—Red River CLO Ltd., or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-6265, Attention: The Directors, or to the Co-Issuer addressed to it at c/o National Corporate Research, Ltd., 615 South DuPont Highway, Dover, Delaware, 19901, telecopy no. (302) 738-7210, Attention: Donald J. Puglisi, or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Servicer at its address below;

(iii) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) the Placement Agents shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the IXIS Placement Agents addressed to them at 9 West 57th Street, 36th Floor, New York, New York 10019, Attention: Structured Credit Products Group and 47 quai d' Austerlitz, 75648 Paris Cedex 13, France, respectively, or to the UBS Placement Agents addressed to them at 1285 Avenue of Americas, 11th Floor, New York, New York 10019, telecopy no. (212) 713-1489, Attention: CDO Group, or at any other address previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of the IXIS Placement Agents or UBS Placement Agents, as the case may be;

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 949-9876, Attention: The Directors; or

(viii) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Any document required to be delivered or made available to the Repository by the Trustee may be made available by providing the operator of the Repository with access to a website containing such document in a format that permits the user to download the document as a pdf file.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A Note may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A Note on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such

acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A Notes) to the Trustee in substantially the form of Exhibit K specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A Note (each, an "Insurer"). After receipt of any such notice (in the form of Exhibit K) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

Section 14.4. ***Notices to Noteholders, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register, at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee or at the address of the Holding Preference Shares Paying Agent supplied by the Holding Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder, the Preference Shares Paying Agent or Holding Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer. The Trustee shall deliver to the Holding Preference Shares Paying Agent any information or notice that the Holding Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Holding Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of

this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

Where this Indenture provides for notice in any manner, the notice may be waived in writing by any Person entitled to receive the notice, either before or after the event, and the waiver shall be the equivalent of the notice. Waivers of notice by Noteholders, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

So long as any Senior Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Noteholders, the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to Holders of Holding Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Placement Agents all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation relating to the Notes requested by the Placement Agents (collectively, the "***Transaction Reports***") and the Issuer consents to the Placement Agents' providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Placement Agents or any of their Affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

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

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9. ***Legal Holidays.***

If any Payment Date, Redemption Date, or Stated Maturity is not a Business Day, then notwithstanding any other provision of the Notes or this Indenture, payment need not be made on that date, but shall be made on the next Business Day with the same effect as if made on the nominal date of the Payment Date, Redemption Date or Stated Maturity date, as the case may be, and except as provided in the definition of "Due Period," no interest shall accrue on the payment for the period beginning on the nominal date.

Section 14.10. ***Governing Law.***

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.11. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of U.S. Bank Trust National Association (to the attention of U.S. Bank National Association, Trustee for Red River CLO Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.12. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.13. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

Section 14.14. ***Consent of Posting of Documents on Repository.***

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the

Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.15. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.16. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Servicing Agreement; Amendment of Servicing Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(i) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(ii) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations, covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(iii) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h) below.

(v) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one

year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(vi) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use its best efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; provided that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), (c) to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and (d) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven

Business Day period, the "**Objection Cut-Off Date**"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time after the Closing Date, the Issuer, at the direction of the Servicer, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture and the Collateral Assignment of Hedge Agreements. The Servicer, on behalf of the Issuer, shall obtain the approval of each new Hedge Agreement from each Hedge Counterparty to a then-existing Hedge Agreement. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "Aa3" (which rating of "Aa3" is not on credit watch for possible downgrade) or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A1" (which rating of "A1" is not on credit watch for possible downgrade) or higher and a debt rating by Moody's for short-term debt of "P-1" (which rating of "P-1" is not on credit watch for possible downgrade) if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or, if the Hedge Counterparty does not have a short-term debt rating by S&P, a long-term debt rating of not less than "A+" (the "***Required Rating***").

(c) If at any time a Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating and that rating is below "Aa3" or is "Aa3" and has been placed on credit watch for possible downgrade by Moody's; or

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is below "A1" or that rating is "A1" and has been placed on credit watch for possible downgrade by Moody's, or

(ii) the short-term Moody's rating is below "P-1" or that rating is "P-1" and has been placed on credit watch for possible downgrade by Moody's

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's to be satisfied;

(ii) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the above criteria;

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty whose short-term and long-term debt ratings equal or exceed the above criteria; or

(iv) take other actions to satisfy the Rating Condition with respect to Moody's;

(d) If at any time the Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating that is "A2" or below or has been suspended or withdrawn;

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is "A3" or below or is suspended or withdrawn, or

(ii) the short-term Moody's rating is "P-2" or below, or

(C) a short-term debt rating by S&P below "A-1" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "A+" or that has been suspended or withdrawn;

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral as required by the Hedge Agreement to secure the Hedge Counterparty's obligations under the Hedge Agreement in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's and S&P to be satisfied; provided that the Hedge Counterparty shall, at the time such collateral is first posted, deliver to the Issuer, the Trustee and the Rating Agencies an Opinion of Counsel of nationally recognized standing in the jurisdiction in which the Hedge Counterparty is incorporated confirming that such collateral will be available in a timely manner upon a bankruptcy of the Hedge Counterparty; or

(ii) (x) obtain a guarantor that has a Required Rating and that will satisfy the Rating Condition with respect to S&P with respect to its appointment;

(y) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P; or

(z) take such other actions to satisfy the Ratings Condition;

provided that failure to take any such steps set forth under paragraphs (i) and (ii) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty shall comply with the then currently applicable rating criteria published by each Rating Agency from time to time.

(e) If at any time the Hedge Counterparty has a long-term unsecured debt rating by S&P below "BBB-," then the Hedge Counterparty shall be required to replace itself within 30 days under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P; provided that failure to do so shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(f) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(g) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(h) Except as provided in paragraph (i) of this Section 15.2, the Issuer, at the direction of the Servicer, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), at the expense of the Hedge Counterparty and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(i) Notwithstanding Section 15.2(h), the applicable requirements of Section 15.2(h) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(j) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(k) Each Hedge Agreement may be terminated pursuant to its terms upon an Optional Redemption of the Notes or an acceleration of maturity of the Notes after an Event of Default. The Hedge Agreement will not be permitted to be terminated as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(l) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

RED RIVER CLO LTD.,
AS ISSUER

By: _____
Name: SCOTT DAKERS
Title: Director

RED RIVER CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

RED RIVER CLO LTD.,
AS ISSUER

By: _____
Name:
Title:

RED RIVER CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

RED RIVER CLO LTD.,
AS ISSUER

By: _____
Name:
Title:

RED RIVER CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name: Thomas H. Belcher
Title: Vice President

By: _____
Name: Thomas H. Belcher
Title: Vice President

SCHEDULES

Schedule 1

List of Collateral Obligations

Issuer	Asset	Commitment Tradec
Acosta, Inc.	Term Loan	4,000,000.00
Acoustical Material Services	Term Loan	3,701,847.10
Affiliated Computer Services, Inc. (ACS)	Term Loan B	3,980,000.00
AGY Holding Corp (fka Advanced Glassfiber Yarns)	First Lien Term Loan	5,985,000.00
Alaska Communications Systems Holdings, Inc.	2006 Incremental Term Loan	1,125,000.00
Alaska Communications Systems Holdings, Inc.	Term Loan	1,000,000.00
Alion Science and Technology Corporation	Incremental Term Loan	3,491,250.00
Alliance Imaging, Inc.	Tranche C1 Term Loan	4,886,950.31
Almatis Holdings 4 B.V.	US$ Facility A2	2,352,385.32
Almatis US Holding Inc.	Facility B3	2,561,926.61
Almatis US Holding Inc.	Facility C3	2,561,926.61
Alon USA Energy, Inc.	Edgington Facility	555,555.56
Alon USA Energy, Inc.	Paramount Facility	4,444,444.44
American Airlines, Inc.	Term Facility	4,056,500.00
Ameritrade Holding Corporation	Term B Advance	7,481,250.00
Amscan Holdings, Inc.	Term Loan B	1,995,000.00
Anchor Glass Container Corporation	Term Facility	3,000,000.00
Angiotech Pharmaceuticals (US), Inc.	Term Loan	1,823,913.16
Aspect Software, Inc.	Second Lien Term Loan	2,000,000.00
Astoria Generating Company Acquisitions, LLC	First Lien Term Loan B	753,344.95
Astoria Generating Company Acquisitions, LLC	Term Letter of Credit	177,664.98
Audatex North America, Inc. (CSG US Buyco and AB2	1st Lien Domestic Term Loan	5,000,000.00
Avis Budget Car Rental, LLC	Term Loan	978,571.43
AWAS Capital, Inc.	First Priority Term Loan	7,180,059.68
AWAS Capital, Inc.	Second Priority Term Loan	2,473,976.59
Babcock & Wilcox Company, The	Synthetic LC	3,000,000.00
Bare Escentuals Beauty, Inc. (MD Beauty)	Second Lien Term Loan	1,797,447.96
Billing Services Group North America, Inc.	US Term Loan	3,456,250.00
Bi-Lo, LLC	Term Loan	1,977,695.17
Black Press Group Ltd.	Term B-2 Tranche	1,133,333.33
Black Press U.S. Partnership	Term B-1 Tranche	1,866,666.67
Blackboard, Inc.	Term Loan	1,990,000.00
Bombardier Recreational Products Inc.	Term Loan	2,000,000.00
Brand Services, Inc.	Term Loan	1,000,000.00
Bresnan Communications, LLC	First Lien Term Loan B	7,000,000.00
Burger King Corporation	Tranche B - 1 Term Loan	350,254.26
Burlington Coat Factory Warehouse Corporation	Term Loan	7,481,250.00
Calpine Corporation	Second Priority DIP Term Loa	2,000,000.00
Capella Healthcare, Inc.	First Lien Term Loan	4,372,673.01
Capital Automotive REIT	Term Loan	1,953,571.94
Casella Waste Systems, Inc	Incremental Term B	3,000,000.00
Cavtel Holdings, LLC (Cavalier Telephone Corporatior	Term Loan	4,488,750.00
CCM Merger Inc. (Motor City Casino)	Term B Loan	3,989,928.24
CCS Medical, Inc. (Chronic Care)	1st Lien Term Loan	995,000.00
Cedar Fair	Term Loan B	4,000,000.00
Centennial Cellular Operating Co.	Term Loan	1,000,000.00
Century California Subsidiary, Inc. (aka Century Theat	Term B	2,000,000.00
Cequel Communications, LLC (aka Cebridge)	Term Loan	7,500,000.00
Checksmart Financial Company (Buckeye Check Cas	First Lien Tranche B Term Loa	2,992,500.00
CMP Susquehanna Corp.	Term Loan	5,871,428.57
Cognis Corporation	Dollar Facility B	3,000,000.00

Coleto Creek Power, LP (aka Coleto Creek WLE, LP)	Synthetic Facility	445,859.87
Coleto Creek Power, LP (aka Coleto Creek WLE, LP)	Term Loan	6,554,140.13
Columbian Chemicals Acquisition LLC/Columbian Che	Tranche B Term Loan	4,500,000.00
CompBenefits Corporation	Tranche B Term Loan	4,937,500.00
Consolidated Communications, Inc.	New Term D Loan	3,000,000.00
Contech Construction Products Inc.	New Term Loan	2,986,666.67
Cooper-Standard Automotive Inc	Term Loan D	995,000.00
Copa Casino of Mississippi, LLC	Term Loan	2,000,000.00
Cricket Communications, Inc. (aka Leap Wireless)	Revolver	3,000,000.00
Cricket Communications, Inc. (aka Leap Wireless)	Term B Facility	5,000,000.00
Crown Castle Operating Company	Term Loan	1,000,000.00
CSC Holdings Inc (Cablevision)	Incremental Term Loan	7,481,250.00
Data Transmission Network Corporation aka DTN Hol	First Lien Tranche B Term Loa	7,481,250.00
Data Transmission Network Corporation aka DTN Hol	Second Lien Term Loan	2,000,000.00
Dayco Products LLC - (Mark IV)	Replacement Term B Loan	1,000,000.00
Delta Airlines, Inc. DIP	Term Loan A	6,000,000.00
Deluxe Entertainment Services Group INC.,	First Lien Tranche B Term Loa	7,207,768.19
DJ Orthopedics, LLC	Tranche B Term Loan	6,982,500.00
Dole Food Company, Inc.	Credit Linked Deposit	651,162.79
Dole Food Company, Inc.	Tranche B Term Loan	1,461,453.49
Dole Food Company, Inc.	Tranche C Term Loan	4,871,511.63
Dundee Holdco Limited (Doncasters)	US Term Loan B1	4,000,000.00
Dundee Holdco Limited (Doncasters)	US Term Loan C	3,000,000.00
Duratek, Inc. (aka EnergySolutions)	Term Loan B	905,660.38
Eastman Kodak Company	Term B-1 Advance	5,951,347.31
Easton-Bell Sports, Inc.	Tranche B Term Loan	2,992,500.00
Eddie Bauer, Inc.	Term Loan	6,575,029.25
Edge Las Vegas Development LLC	1st Lien Term Loan	3,000,000.00
Education Management LLC	Tranche B Term Loan	1,000,000.00
Education Management LLC	Tranche B Term Loan	1,000,000.00
El Paso Corporation	Deposit Loan	2,000,000.00
El Pollo Loco, Inc.	New Term Loan	3,500,000.00
Endurance Business Media, Inc.	First Lien Term Loan	4,000,000.00
Endurance Business Media, Inc.	Second Lien Term Loan	3,000,000.00
EnergySolutions, LLC (aka Envirocare of Utah, LLC)	Synthetic LC	94,339.63
EnergySolutions, LLC (aka Envirocare of Utah, LLC)	Term Loan	2,000,000.00
Environmental Systems Products Holdings Inc.	Term Loan	1,871,548.29
Euramax International, Inc.	1st Lien Domestic Term Loan	6,306,106.94
Euramax International, Inc.	2nd Lien Domestic Loan	3,000,000.00
Fairpoint Communications, Inc.	Replacement B Term Loan	4,000,000.00
FCI SA (France)	Term Loan B2B	245,251.82
FCI SA (France)	Term Loan C2B	245,251.82
FCI International S.A.S	Term Loan B2A	254,748.18
FCI International S.A.S	Term Loan C2A	254,748.18
FCI USA, Inc.	Facility B1	3,750,000.00
FCI USA, Inc.	Facility C1	3,750,000.00
Fender Musical Instruments Corporation	Second Lien Term Loan	3,000,000.00
Fidelity National Information Solutions, Inc.	Term B Loan	982,954.54
Flag Luxury Properties Holdings, LLC	First Lien Term Loan	2,992,500.00
Flatiron Re Ltd.	Closing Date Term Loan	4,715,789.47
Flatiron Re Ltd.	Delayed Draw Term Loan	2,284,210.53
Fresenius Medical Care AG & Co., KGaA/Fresenius M	Tranche B Term Loan	4,488,750.00

Gabriel Communications Finance Company (Nuvox, I	Term B Loan	4,000,000.00
Gainey Corporation	Term Loan	4,000,000.00
Garden Fresh Restaurant Corp.	First Lien Term Loan B	1,975,000.00
Genoa Healthcare Group, LLC	First Lien Term Loan	2,802,850.46
Genoa Healthcare Group, LLC	Second Lien Term Loan	2,500,000.00
Georgia-Pacific Corporation	Term B Loan	8,955,000.00
Ginn LA Conduit Lender, Inc.	First Lien Tranche A Credit-Lir	2,357,142.86
Ginn LA Conduit Lender, Inc.	First Lien Tranche B Term Loa	5,142,857.14
Gleason Works	Second Lien Term Loan	1,000,000.00
Golden Gate National Senior Care, LLC	First Lien Term Loan	997,500.00
Graham Packaging Company, L.P.	Incremental B Term Loan	3,989,873.42
Hawaiian Telcom Communications, Inc.	Tranche B Term Loan	4,490,000.00
HealthSouth Corporation	Term Loan B	7,500,000.00
Helix Energy Solutions Group, Inc.	Term Loan	1,000,000.00
Helix Energy Solutions Group, Inc.	Term Loan	6,000,000.00
Hexion Specialty Chemicals, Inc.	Tranche C-1 Term Loan	5,750,769.23
Hexion Specialty Chemicals, Inc.	Tranche C-2 Term Loan	1,249,230.77
Hillman Group, Inc.	New Term B Loan	1,500,000.00
HIT Entertainment, Inc.	2nd Lien	1,500,000.00
Ineos US Finance LLC	Term A4	2,500,000.00
Ineos US Finance LLC	Term B2	3,500,000.00
Ineos US Finance LLC	Term C2	3,500,000.00
Infor Enterprise Solutions Holdings, Inc. (fka Magellan	Initial US Term Facility	11,000,000.00
Intelsat Corporation (fka PanAmSat Corporation)	Tranche B-2 Term Loan	5,000,000.00
Invista Canada Company	Tranche B-2 Term Loan	1,624,971.26
Invista S.A.R.L.	Tranche B-1 Term Loan	2,193,412.23
iPayment Inc.	Term Facility	5,985,000.00
IPC Acquisition Corp	2nd Lien Term Loan	313,529.19
ISP Chemco Inc.	Term Loan	5,985,000.00
J. Crew Group, Inc.	Initial Term Loan	3,070,175.44
J.G. Wentworth, LLC	Term Loan	2,000,000.00
Jarden Corporation	Term Loan B1	3,811,660.66
Jean Coutu Group (PJC) Inc.	Term B Loan	5,601,770.71
Kerasotes Showplace Theatres, LLC	Term B1 Loan	3,000,000.00
Knology Inc.	New Term Loan	3,490,654.54
Koosharem Corporation (Select Personnel)	First Lien Term Loan	2,000,000.00
Koosharem Corporation (Select Personnel)	Second Lien Term Loan	2,000,000.00
Kuilima Resort Company (Turtle Bay)	First Lien Term Loan	4,969,962.40
Laidlaw International, Inc.	Canada Term B Facility	400,000.00
Laidlaw International, Inc.	Term B Facility	1,600,000.00
Lake at Las Vegas Joint Venture	First Lien Term Loan	7,343,221.25
LBI Media, Inc.	Term Loan B	4,987,500.00
LBREP/L-Suncal Master I LLC	1st Lien	5,472,500.00
Lear Corporation	First Lien Term Loan B	7,500,000.00
Leiner Health Products, Inc.	Tranche B Loan	994,923.86
Lexicon Marketing (USA), Inc.	Term Loan B	4,000,000.00
Liberty Cablevision of Puerto Rico, Ltd.	Term Loan	6,982,500.00
LNR Property Corporation	Initial Tranche B Term Loan	4,000,000.00
LPL Holdings, Inc.	Tranche B Term Loan	1,990,000.00
LSP Gen Finance Co, LLC	First Lien Delayed Draw Term	161,616.16
LSP Gen Finance Co, LLC	First Lien Term Loan B	3,838,383.84
Maritime Telecommunications Network, Inc.	First Lien Term Loan	7,500,000.00

Matria Healthcare, Inc.	First Lien Tranche B Term Loa	4,732,628.20
Matria Healthcare, Inc.	First Lien Tranche C Term Loa	2,064,102.56
Mediacom Broadband Group	Tranche D-1 Term Loan	3,000,000.00
Mediacom Broadband Group	Tranche D-2 Term Loan	2,500,000.00
Mediacom Illinois, LLC (fka Mediacom Communicatior	Tranche C Term Loan	2,000,000.00
MEG Energy Corp.	Delayed Draw Term Loan	3,750,000.00
MEG Energy Corp.	Initial Term Loan	3,740,625.00
MGM Holdings II, Inc./LOC Acquisition Company	Tranche A Term Loan	1,952,380.95
MGM Holdings II, Inc./LOC Acquisition Company	Tranche B Term Loan	4,987,500.00
MMM Holding, Inc./NAMM Holdings, Inc (Aveta Holdin	New Term Loan	644,375.25
MMM Holding, Inc./NAMM Holdings, Inc (Aveta Holdin	Term Loan	6,338,124.75
Montecito Broadcast Group, LLC	First Lien Term Loan	2,985,000.00
Movie Gallery, Inc.	Term A Loan	351,810.42
Movie Gallery, Inc.	Term B Loan	1,546,217.39
Mueller Group, LLC	Term Loan	759,752.34
NACCO Materials Handling Group, Inc.	Term Loan	7,000,000.00
Nash Finch Company	Initial Term Loan	5,000,000.00
Navistar International Corporation	Delay Draw Term Loan	1,000,000.00
Neiman Marcus Group Inc., The	Term Loan	1,424,050.63
NEP Supershooters, LP	First Lien Term A Loan	1,388,202.28
NES Rentals Holdings, Inc.	Second Lien Permanent Term	3,000,000.00
Nevis	Term Loan C	7,500,000.00
New World Restaurant Group, Inc.	First Lien Term Loan	4,970,312.50
NewPage Corporation	Term Loan	1,994,961.87
North American Membership Group, Inc.	First Lien Tranche B Term Loa	4,982,348.68
Northeast Biofuels, LLC	Construction Term Loan	1,365,853.66
Northeast Biofuels, LLC	Synthetic LC	634,146.34
November 2005 Land Investors, LLC (North Las Vega	Second Lien Term Loan	3,000,000.00
NPC International, Inc.	Term Loan	916,666.66
NRG Energy, Inc.	Credit Linked Deposit Februar	1,392,473.12
NRG Energy, Inc.	Term Loan	7,089,758.06
Nutro Products, Inc.	Term Facility	6,982,500.00
Odessa Ector Power Partners	Term Loan	6,714,323.74
Oglebay Norton Company	Delayed Draw Term Loan	400,000.00
Oglebay Norton Company	Tranche B Term Loan	1,600,000.00
Owens-Brockway Glass Container Inc.	Tranche B Term Loan	3,000,000.00
PaeTec Communications, Inc.	2nd Lien Term Loan	3,000,000.00
PaeTec Communications, Inc.	First Lien Initial Term Loan	2,000,000.00
Palmdale Hills Property, LLC (SunCal/Ritter Ranch)	First Lien Term Loan	1,984,974.87
Panolam Industries International, Inc.	Term Loan	915,793.39
PBI Media, Inc.	First Lien Term Loan	2,987,478.91
PBI Media, Inc.	Second Lien Term Loan	1,000,000.00
PBI Media, Inc.	Second Lien Term Loan	1,000,000.00
Pep Boys, The - Manny, Moe & Jack	Term Loan	1,995,000.00
Per-Se Technologies, Inc.	Term Loan	2,655,172.41
PGT Industries, Inc.	First Lien Tranche A-2 Term L	4,450,914.63
Pine Prairie Energy Center, LLC	Delay Draw Term Loan	772,727.27
Pine Prairie Energy Center, LLC	Initial Term Loan	1,227,272.73
Pinnacle Foods Group Inc.	New Term Loan	2,809,882.17
Pinnacle Foods Group Inc.	New Term Loan	4,797,139.68
Pivotal Promontory, LLC	First Lien Term Loan	2,984,962.41
Plum Point Energy Associates, LLC	First Lien Term Loan	3,399,464.27

Plum Point Energy Associates, LLC	Funded Letter of Credit	922,857.15
Ply Gem Industries, Inc	Canadian Term Loan	561,093.75
Ply Gem Industries, Inc	US Term Loan	8,416,406.25
PQ Corporation (fka Niagara Acquisition, Inc.)	Term Loan	1,989,924.43
Propex Fabrics, Inc.	Tranche B Term Loan	2,497,199.52
Protection One Alarm Monitoring, Inc.	Term Loan C	6,289,171.77
Puerto Rico Cable Acquisition Company Inc.	First Lien Term Loan	1,218,750.00
Pure Fishing, Inc	First Lien Term Loan	1,905,445.29
Quintiles Transnational Corp.	First Lien Term B	7,481,250.00
Regal Cinemas Corporation	New Term Loan	1,990,127.00
Rexair LLC	Second Lien Term Loan	1,000,000.00
Reynolds American, Inc.	Term Loan	5,000,000.00
Roundy's Supermarkets, Inc.	Term Loan	997,493.73
Safety-Kleen Systems, Inc.	Synthetic LC	1,101,694.92
Safety-Kleen Systems, Inc.	Term B Loan	3,898,305.08
San Juan Cable, LLC	Second Lien Term Loan	1,625,000.00
Sedgwick CMS Holdings, Inc.	Term B Loan	2,955,000.00
Select Medical Corporation	Tranche B Term Loan	2,977,424.44
Serena Software, Inc.	Term Loan	1,532,812.50
Serena Software, Inc.	Term Loan	4,687,500.00
SIRVA Worldwide, Inc.	Tranche B Term Loan	2,441,695.50
Smurfit-Stone Container Enterprises, Inc.	Tranche C-1 Term Loan	1,989,974.94
Solutia Inc.	New Term Loan B DIP	3,000,000.00
Spanish Peaks Holdings, LLC	Tranche A Credit-Linked Depc	1,224,545.96
Spanish Peaks Holdings, LLC	Tranche B Term Loan	2,641,863.02
Sports Authority, Inc., The	Term Loan B	4,000,000.00
Springer Science+Business Media S.A.	USD Tranche B-2 Add On	1,032,444.44
Springer Science+Business Media S.A.	USD Tranche C-2 Add On	442,111.11
Springer Science+Business Media S.A.	USD Tranche E-2 Add On	442,111.11
Standard Aero Holdings, Inc.	Term Loan	2,672,699.82
Stratos Global Corporation/Stratos Funding LP	Term B Facility	2,000,000.00
Stratos Global Corporation/Stratos Funding LP	Term B Facility	7,000,000.00
SunGard Data Systems Inc (Solar Capital Corp)	U.S. Term Loan	2,992,462.31
Supervalu Inc.	Term Loan B	1,995,000.00
Targa Resources, Inc.	Bridge Term Loan	3,250,000.00
TE/TOUSA Mezzanine, LLC	Senior Mezzanine Loan	1,000,000.00
Tire Rack Holdings, Inc.	Tranche B Term Loan	1,650,375.09
Transport Industries, L.P.	Term B Loan	1,612,410.71
TriMas Corporation	Tranche B Term Loan	1,556,097.56
TriMas Corporation	Tranche B-1 LC	643,902.44
Trizec Cal Holdings, LLC (Trizec Properties, Inc.)	Term Loan	7,500,000.00
TRU 2005 RE Holding Co. I, Ltd.	Term Loan	3,500,000.00
Trussway Industries, Inc.	New Term Loan	2,000,000.00
U.S. Security Holdings, Inc.	Tranche B Term Loan	1,995,000.00
UCG Paper Crafts, Inc. (EK Success)	First Lien Synthetic Facility	600,000.00
UCG Paper Crafts, Inc. (EK Success)	First Lien Term Loan	2,394,000.00
UGS Corp.	Replacement Term Loan	4,761,885.34
Unifrax Corporation	Dollar Term Loan	4,987,500.00
United Air Lines, Inc.	Delayed Draw Tranche B Loa	875,000.00
United Air Lines, Inc.	Tranche B Term Loan	6,125,000.00
United Air Lines, Inc.	Tranche A Revolver	2,000,000.00
UPC Financing Partnership	Facility J2	1,000,000.00

UPC Financing Partnership	Facility K2	1,000,000.00
US Airways Group, Inc.	Term Loan	7,000,000.00
Vanguard Car Rental USA Holding, Inc.	Term Loan	8,000,000.00
Visant Corporation (fka Jostens)	Tranche C Term Loan	5,048,672.11
VJCS Acquisition, Inc.	Term B Facility	1,000,000.00
VML US Finance LLC (aka Venetian Macau)	Term B DD Project Loan	2,000,000.00
VML US Finance LLC (aka Venetian Macau)	Term B Funded Project Loan	5,000,000.00
Walter Industries, Inc.	Term Loan	2,896,384.94
Warner Chilcott Company, Inc.	Dovobet Delayed Draw Term I	139,639.39
Warner Chilcott Company, Inc.	Dovonex Delayed Draw Term	739,301.40
Warner Chilcott Company, Inc.	Tranche B Acquisition Date Te	4,611,203.97
Warner Chilcott Corporation	Tranche C Acquisition Date Te	1,867,110.26
Warner Chilcott Holdings Company III, Limited	Tranche D Acquisition Date Te	862,585.45
WideOpenWest Finance , LLC	First Lien Term Loan	7,500,000.00
Wimar Tahoe Corporation/(Columbia Entertainment)	Term Loan B	2,052,161.66
WMG Acquisitions Corporation	Term Loan	2,859,404.12
		861,166,016.03

Commitment Settled

-
3,701,847.10
3,980,000.00
5,985,000.00
1,125,000.00
1,000,000.00
3,491,250.00
4,886,950.31
2,352,385.32
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2,561,926.61
-
-
4,056,500.00
7,481,250.00
1,995,000.00
4,000,000.00
1,823,913.16
2,000,000.00
753,344.95
177,664.98
5,000,000.00
978,571.43
7,180,059.68
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3,000,000.00
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-
-
-
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2,000,000.00
-
7,000,000.00
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7,481,250.00
-
4,372,673.01
1,953,571.94
-
4,488,750.00
3,989,928.24
995,000.00
-
1,000,000.00
2,000,000.00
7,500,000.00
2,992,500.00
5,871,428.57
3,000,000.00

-
-
4,500,000.00
4,937,500.00
-
2,986,666.67
995,000.00
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3,000,000.00
5,000,000.00
1,000,000.00
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4,000,000.00
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245,251.82
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254,748.18
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3,750,000.00
-
982,954.54
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2,284,210.53
4,488,750.00

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3,989,873.42
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6,000,000.00
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-
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6,982,500.00
5,141,721.51
-
-
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-
-
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915,793.39
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-
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4,450,914.63
772,727.27
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2,928,705.81
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3,399,464.27

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561,093.75
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-
-
-
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288,333.33
288,333.33
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7,000,000.00
-
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-
-
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-
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875,000.00
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2,000,000.00
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-
7,000,000.00
8,000,000.00
-
-
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4,611,203.97
1,867,110.26
862,585.45
7,500,000.00
2,052,161.66
2,859,404.12
719,848,452.94

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes **Personal Transportation**: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor *divided* by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

The Diversity Score for any Structured Finance Obligation that is a collateralized loan obligation is equal to zero.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5%	55%	45%	40%	35%	25%	15%

>2%						
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

The S&P Priority Category Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate asset class and liability rating as categorized by S&P:

Senior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
AA	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
A	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BBB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* This table shall not apply to project finance, future flows, synthetics, CDO repacks of ABS or CDOs, guaranteed ABS, distressed debt CDOs, synthetic CDOs, or emerging market CDOs. Recovery rates for such Structured Finance Obligations will be assigned by S&P on a case-by-case basis.

Schedule 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"Assigned Moody's Rating": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, then the Moody's Default Probability Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher, or

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories. For purposes of any calculation under this Indenture, if a Moody's Default Probability Rating is withdrawn by Moody's with respect to a Collateral Obligation, the Issuer will continue using the latest Moody's Default Probability Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clause (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be

adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "***Borrower***"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "***Guarantor***") by S&P, the most current issuer credit rating for such Borrower or Guarantor (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (provided that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; or

(C) if such Collateral Obligation is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Servicer determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; provided that the Servicer must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above. For purposes of any calculation under the Indenture, if a S&P Rating is withdrawn by S&P with respect to a Collateral Obligation, the Issuer will continue using the latest S&P Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 18

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

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006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXECUTION COPY

RED RIVER CLO LTD.

Issuer

RED RIVER CLO CORP.

Co-Issuer

AND

STATE STREET BANK AND TRUST

Successor Trustee

AMENDMENT NO. 1

TO

INDENTURE

Dated as of October 2, 2007

COLLATERALIZED DEBT OBLIGATIONS

THIS AMENDMENT NO. 1 TO INDENTURE (the "Amendment"), dated as of October 2, 2007, among Red River CLO Ltd. (the "Issuer"), Red River CLO Corp. (the "Co-Issuer") and State Street Bank and Trust, as successor in interest to Investors Bank & Trust Company (the "Successor Trustee"), hereby amends the Indenture, dated as of August 3, 2006, among the Issuer, the Co-Issuer and the Successor Trustee (the "Indenture").

W I T N E S S E T H

WHEREAS, the Issuer, the Co-Issuer and U.S. Bank National Association (the "Original Trustee") entered into the Indenture;

WHEREAS, the Issuer, the Co-Issuer and the Successor Trustee entered into the Supplemental Indenture No. 1, dated as of March 28, 2007, which replaced the Original Trustee with the Successor Trustee;

WHEREAS, the Issuers and the Noteholders desire to amend certain definitions contained in the Indenture;

WHEREAS, Highland Capital Management, L.P. acts as Servicer with respect to the Collateral;

WHEREAS, Section 8.2 of the Indenture provides that the Indenture may be amended by the Issuer, Co-Issuer and the Trustee with the consent of the Servicer, Majority of each Class of Notes adversely affected thereby and a Majority of the Preference Shares adversely affected thereby;

WHEREAS, the necessary consents pursuant to the preceding paragraph have been obtained;

WHEREAS, Section 8.2 of the Indenture provides that the Ratings Agencies shall confirm that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn; and

WHEREAS, the Ratings Agencies have confirmed that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Defined Terms.

For purposes of this Amendment, all capitalized terms which are used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Indenture.

SECTION 2. Amendment.

Section 1.1 of the Indenture is hereby amended to replace in its entirety the definition of Servicing Fee Portion with the following:

"***Servicing Fee Portion***": 100% minus (a) for any Payment Date from the Closing Date until (and including) the Payment Date in February 2008, the Class II Preference Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date; provided that, with respect to the Payment Date in May 2008, such percentage shall be a minimum of the product of (i) the Class II Preference Share Percentage for such Payment Date and (ii) 3.3%.

SECTION 3. Effect of Amendment.

Upon execution of this Amendment, the Indenture shall be, and be deemed to be, modified and amended in accordance herewith and the respective rights, limitations, obligations, duties, liabilities and immunities of the Issuer, Co-Issuer and the Successor Trustee shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this Amendment shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes. Except as modified and expressly amended by this Amendment, the Indenture is in all respects ratified and confirmed, and all the terms, provisions and conditions thereof shall be and remain in full force and effect.

SECTION 4. Binding Effect.

The provisions of this Amendment shall be binding upon and inure to the benefit of the Issuer, the Co-Issuer and the Successor Trustee and each of their respective successors and assigns.

SECTION 5. GOVERNING LAW.

THIS AMENDMENT TO THE INDENTURE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

SECTION 6. Severability of Provisions.

If any one or more of the provisions or terms of this Amendment shall be for any reason whatsoever held invalid, then such provisions or terms shall be deemed severable from the remaining provisions or terms of this Amendment and shall in no way affect the validity or enforceability of the other provisions or terms of this Amendment.

SECTION 7. Section Headings.

The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

SECTION 8. Counterparts.

This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Successor Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

RED RIVER CLO LTD.,
as Issuer

By:_____
Name: VIJAYABALAN MURUGESU
Title: DIRECTOR

RED RIVER CLO CORP.,
as Co-Issuer

By:_____
Name:
Title:

STATE STREET BANK AND TRUST, as
Successor Trustee

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Successor Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

RED RIVER CLO LTD.,
as Issuer

By:_____
Name:
Title:

RED RIVER CLO CORP.,
as Co-Issuer

By:_____
Name: Donald O. Puglisi
Title: President

STATE STREET BANK AND TRUST, as
Successor Trustee

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Successor Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

RED RIVER CLO LTD.,
as Issuer

By:_____
Name:
Title:

RED RIVER CLO CORP.,
as Co-Issuer

By:_____
Name:
Title:

STATE STREET BANK AND TRUST, as
Successor Trustee

By:_____
Name: Brian Peterson
Title: Director

CONSENTED AND AGREED TO BY:

Name: Todd Travers
Title: CEO & CIO
E-mail address: ttravers@hcmlp.com
Aggregate Outstanding Amount/Face Amount of Class II Preferred Shares Held: 45,000,000
CUSIP/ISIN: 75687320 4

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer

By:
Name: Todd Travers
Title: Senior Portfolio Manager
Highland Capital Management, L.P.

EXECUTION COPY

ROCKWALL CDO LTD.,
Issuer

ROCKWALL CDO (DELAWARE) CORP.,
Co-Issuer

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
as Trustee and as Securities Intermediary

INDENTURE

Dated as of May 10, 2006

US_EAST:6212215.13

INDENTURE, dated as of May 10, 2006, among ROCKWALL CDO LTD., an exempted limited liability company incorporated under the laws of the Cayman Islands (the "Company" and, together with its permitted successors and assigns, the "Issuer"), ROCKWALL CDO (DELAWARE) CORP., a Delaware corporation (the "Co-Issuer" and, together with the Issuer, the "Co-Issuers") and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as trustee (together with its permitted successors in the trusts hereunder, the "Trustee") and as Securities Intermediary.

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Notes issuable as provided in this Indenture. All representations, warranties, covenants and agreements made by the Co-Issuers herein are for the benefit and security of the Noteholders and the Trustee. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

It is a condition of issuance of the Notes that the Class A-1LA Notes be rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class X Notes be rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-1LB Notes be rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-2L Notes be rated at least "AA" by Standard & Poor's and at least "Aa2" by Moody's, the Class A-3L Notes be rated at least "A" by Standard & Poor's and at least "A2" by Moody's, the Class A-4L Notes be rated at least "A-" by Standard & Poor's and at least "A3" by Moody's and the Class B-1L Notes be rated at least "BBB" by Standard & Poor's and at least "Baa2" by Moody's. With respect to the Notes, such ratings by Standard & Poor's address solely the likelihood of the timely payment of the Periodic Interest Amount (which consists of interest accrued on the Aggregate Principal Amount of each applicable Class of Notes at the Applicable Periodic Rate) and the ultimate payment of the Aggregate Principal Amount in the case of the Class A-1LA Notes, the Class A-1LB Notes and the Class A-2L Notes, timely payment of Class X Payments and the ultimate payment of the Cumulative Interest Amount and the Aggregate Principal Amount in the case of the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes. Such ratings by Moody's address the ultimate cash receipt of all required payments as provided by the governing documents, and are based on the expected loss to the Noteholders of each Class relative to the promise of receiving the present value of such payments. Notwithstanding the foregoing, the obligation to make any Extension Bonus Payment will not be rated by the Rating Agencies.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with its terms have been done.

GRANTING CLAUSES

The Issuer hereby Grants to the Trustee, for the benefit and security of the Holders of the Notes, the Trustee, the Paying and Transfer Agent, the Default Swap Counterparties, the Servicer, the Collateral Administrator and the Securities Intermediary (collectively, the "Secured Parties"), all of its right, title and interest, whether now owned or

hereafter acquired, in, to and under the following: (a) the Initial Portfolio Collateral listed in Schedule A to this Indenture, all payments thereon or with respect thereto, all Portfolio Collateral (including all Original Portfolio Collateral, all Additional Portfolio Collateral and all Substitute Portfolio Collateral, whether or not any of the same may become at any time or times Defaulted Portfolio Collateral, Credit Risk Portfolio Collateral, Equity Portfolio Collateral or Credit Improved Portfolio Collateral) which may be delivered to the Trustee in the future and all payments thereon or with respect thereto, (b) the Issuer's rights, remedies, powers, privileges and claims under or with respect to the Servicing Agreement as set forth in Article XIV hereof, (c) the Collection Account, the Collateral Account, the Reserve Account, the Expense Reimbursement Account, the Closing Expense Account, the Initial Deposit Account, the Loan Funding Account, each Default Swap Collateral Account, each Default Swap Issuer Account, each Securities Lending Account, and all investment property, money, instruments and other property credited to or carried in such Accounts including, without limitation, the Eligible Investments, (d) the Default Swap Collateral, the Securities Lending Collateral, and the trust accounts described in Section 11.4 hereof, (e) all other assets of the Issuer (other than the Preferred Shares Collection Account and all funds deposited therein or credited thereto, the Issuer's share capital on account of its ordinary issued shares and any transaction fee for issuing the Notes and the Preferred Shares, each held in its account in the Cayman Islands and any interest thereon) and all other property delivered to the Trustee, (f) all accounts, general intangibles, chattel paper, instruments, documents, money, deposit accounts, goods, letters of credit, letter-of-credit rights, oil, gas, and other minerals, and investment property, consisting of, arising from, or relating to any of the foregoing, and (g) all proceeds, profits, rents, products, earnings, interest, dividends (whether in the form of cash, securities, instruments or other property) and distributions (whether of rights, options, stock, warrants, securities or other property) of or with respect to any of the foregoing; *provided that* such Grant shall not extend to any property, cash or other amounts specifically released from the lien of this Indenture or otherwise paid to the Issuer in accordance with the terms hereof; *and provided further that* the rights of each Default Swap Counterparty as a Secured Party shall be limited to only the related Default Swap Collateral, the related Default Swap Collateral Account, and the property credited thereto. The collateral described in the preceding sentence is referred to as the "Trust Estate." Such Grant is made, however, in trust, to secure the Notes equally and ratably without prejudice, priority or distinction, except as expressly provided in this Indenture, between any Note and any other Note by reason of difference in time of issuance or otherwise, and to secure in accordance with the priorities set forth in this Indenture (i) the payment of all amounts due on the Notes in accordance with their terms, (ii) the payment of all other sums payable under this Indenture and all amounts payable to the Servicer under the Servicing Agreement, and (iii) compliance with the provisions of this Indenture and the Servicing Agreement, all as provided in this Indenture.

The Trustee acknowledges such Grant, accepts the trusts hereunder and agrees to perform the duties herein in accordance with the provisions hereof.

ARTICLE I

DEFINITIONS

Section 1.1. Definitions

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Indenture, and the definitions of such terms are equally applicable both to the singular and plural forms of such terms and, where applicable, to the masculine, feminine and neuter genders of such terms. Whenever any reference is made to an amount the determination of which is governed by Section 1.3 hereof, the provisions of Section 1.3 hereof shall be applicable to such determination or calculation, whether or not reference is specifically made to Section 1.3 hereof, unless some other method of calculation or determination is expressly specified in the particular provisions.

"Account Income": Any interest or other earnings on funds in the Collection Account, the Initial Deposit Account, the Loan Funding Account or the Expense Reimbursement Account.

"Accounts": The meaning specified in Section 10.2 hereof.

"Accrued Interest on Sale": Interest accrued on an item of Portfolio Collateral at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of such item of Portfolio Collateral after deducting amounts representing Purchased Accrued Interest on such item of Portfolio Collateral.

"Accountants' Certificate": A certificate of a firm of Independent certified public accountants of national reputation in the United States of America appointed by the Issuer pursuant to Section 10.6(a) hereof.

"Additional Collateral Deposit Requirement": With respect to each Payment Date after the second Payment Date, the amount necessary such that (a) the sum of: (i) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of the Calculation Date relating to such Payment Date, plus (ii) the sum of the Balance of Eligible Investments and cash in the Collection Account representing Collateral Principal Collections *plus* the Balance of Eligible Investments and cash in the Initial Deposit Account *plus* unpaid Purchased Accrued Interest as of such date, less (iii) the Overcollateralization Haircut Amount (if any), equals or exceeds: (b) 107.00% of the amount necessary, after giving effect to the amount applied to any O/C Redemption of the Notes (other than the Class X Notes) to satisfy the Overcollateralization Tests and the Interest Coverage Test (if applicable) on such Payment Date, to repay the Aggregate Principal Amount of the Note (other that the Class X Notes), including any Periodic Rate Shortfall Amounts. Notwithstanding the foregoing, if Additional Collateral Deposit Requirement is a positive number that is more than the amount available therefore in the priority of distributions set forth in Section 11.1, then the amount distributed with respect to the Additional Collateral Deposit Requirements shall be such lesser amount available.

For purposes of the Additional Collateral Deposit Requirement, no item of Equity Portfolio Collateral shall be included as Portfolio Collateral. In addition for purposes of this

requirement, (i) with respect to Defaulted Portfolio Collateral as to which there has occurred a payment default or an event of bankruptcy, only the portion equal to the lesser of (a) the Market Value of such item of Defaulted Portfolio Collateral and (b) the Applicable Percentage multiplied by the Principal Balance of such item of Portfolio Collateral, shall be included as Portfolio Collateral and (ii) with respect to items of Discount Portfolio Collateral, only an amount equal to the original purchase price of such item of Discount Portfolio Collateral shall be included as Portfolio Collateral. For purposes of calculating the Additional Collateral Deposit Requirement, to the extent an item of Portfolio Collateral is considered Defaulted Portfolio Collateral, Discount Portfolio Collateral and/or is included in the Overcollateralization Haircut Amount, such item of Portfolio Collateral will not be discounted multiple times, but will be treated in the category that results in the largest discount to the par amount of the Portfolio Collateral.

"Additional Fee Amount": With respect to each Due Period, an amount equal to 0.35% per annum of the Quarterly Collateral Amount, calculated on the basis of a 360-day year and the actual number of days elapsed.

"Additional Issuance": The issuance and sale of Additional Preferred Shares by the Issuer at any time during the Revolving Period, the proceeds of which (net of any fees and expenses incurred in connection with the issuance thereof, including, without limitation, compensation payable to the Initial Purchaser or any placement agent for any services provided in connection therewith) are used to purchase additional eligible Portfolio Collateral (which may include eligible Portfolio Collateral purchased from any Servicer Entity on an arms-length transaction basis); *provided* that (a) such Additional Issuance will be for an Additional Issuance Percentage; (b) such Additional Preferred Shares must be issued for a cash sales price (the net sale proceeds to be used to purchase eligible Portfolio Collateral (or, pending such application, deposited into the Collection Account and held in Eligible Investments)); (c) the terms (other than the date of issuance, the issue price, the date from which dividends will accrue and similar matters) of such Preferred Shares must be identical to the terms of the applicable Class of Preferred Shares; (d) the Holders of Preferred Shares must be notified in writing 30 days prior to such issuance; (e) the Servicer must consent to such Additional Issuance; and (f) Initial Purchaser must be notified in writing at least 30 days prior to such issuance.

"Additional Issuance Percentage": With respect to any Additional Issuance, a percentage specified by the Servicer of the original issue price of the Preferred Shares issued and Outstanding on the date of such Additional Issuance.

"Additional Portfolio Collateral": Any and all items of Portfolio Collateral which are purchased pursuant to Section 11.3 hereof with Collections (other than Collateral Disposition Proceeds).

"Additional Preferred Shares": Any additional Preferred Shares issued after the Closing Date in accordance with the applicable terms hereof and the Paying and Transfer Agency Agreement.

"Additional Servicing Fee": For any Payment Date, an amount equal to the sum of (a) product of (i) the Additional Fee Amount for such Payment Date and (ii) the Servicing Fee

Portion for such Payment Date plus (b) on any Payment Date that any part of the Base Servicing Fee was not paid on the preceding Payment Date, interest on such unpaid amount in an amount equal to the product of (i) LIBOR for the applicable period plus 3.0% per annum and (ii) the actual number of days in such Due Period, divided by 360 plus (c) on any Payment Date that any part of the Additional Servicing Fee was not paid on the preceding Payment Date, such unpaid Additional Servicing Fee and interest on such unpaid amount in an amount equal to the product of (i) LIBOR for the applicable period plus 3.0% per annum and (ii) the actual number of days in such Due Period divided by 360; *provided* that in the event that the Servicer is removed or resigns, the amount of such fee accrued to the effective date of such removal or resignation will be payable to the Servicer on the next succeeding Payment Date or Payment Dates on which such amount may be paid, in accordance with Section 11.1 (provided that the payment of any fee payable pursuant to this proviso will be *pari passu* with the payment of any servicing fees to the then-current servicer).

"Adjusted Collections": With respect to any Payment Date, the sum of (i) the Adjusted Collateral Interest Collections collected during the applicable Due Period, (ii) the Adjusted Collateral Principal Collections collected during the applicable Due Period and (iii) the available funds in the Expense Reimbursement Account, as each is determined as of the Calculation Date relating to such Payment Date.

"Adjusted Collateral Interest Collections": With respect to any Payment Date, the Collateral Interest Collections collected during the applicable Due Period, as determined as of the Calculation Date relating to such Payment Date, *less* the sum of (i) the amount of the Collateral Interest Collections paid to the Trustee and the Paying and Transfer Agent pursuant to Section 11.1(b) hereof with respect to such Payment Date, (ii) the amount of the Collateral Interest Collections paid to the Issuer or deposited in the Expense Reimbursement Account pursuant to Section 11.1(b) hereof with respect to such Payment Date, (iii) the amount of the Collateral Interest Collections paid to the Servicer pursuant to Section 11.1(b) hereof with respect to such Payment Date and (iv) during any time prior to the Final Maturity Date, any Collateral Interest Collections attributable to the Collateral Purchase Amount held in the Collection Account pending application to purchase Portfolio Collateral.

"Adjusted Collateral Principal Collections": With respect to any Payment Date, the Collateral Principal Collections collected during the applicable Due Period, as determined as of the Calculation Date relating to such Payment Date, *less* the sum of (i) the amount of the Collateral Principal Collections paid to the Trustee and the Paying and Transfer Agent pursuant to Section 11.1(b) hereof with respect to such Payment Date, (ii) the amount of Collateral Principal Collections paid to the Issuer or deposited in the Expense Reimbursement Account pursuant to Section 11.1(b) hereof with respect to such Payment Date, (iii) the amount of Collateral Principal Collections paid to the Servicer pursuant to Section 11.1(b) hereof with respect to such Payment Date, (iv) any Collateral Disposition Proceeds released from the Collection Account for the purchase of Portfolio Collateral during the applicable Due Period pursuant to Section 10.2(e) hereof, and (v) during any time prior to the Final Maturity Date, any amount attributable to the Collateral Purchase Amount held in the Collection Account pending application to purchase Portfolio Collateral.

"Administration Agreement": The Administration Agreement, dated as of May 10, 2006, between the Issuer and the Administrator.

"Administrator": Maples Finance Limited, or any successor thereto appointed by the Issuer.

"Affiliate": With respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing; *provided that* (for the avoidance of doubt) the only Affiliate of the Issuer shall be the Co-Issuer and the only Affiliate of the Co-Issuer shall be the Issuer.

"Aggregate Base Fees and Expenses": For any Payment Date, the total aggregate amount of fees and expenses payable pursuant to Section 11.1(b).

"Aggregate Par Amount": With respect to any date of determination, the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate, including cash and Eligible Investments representing Collateral Principal Collections on deposit in the Collection Account and the Initial Deposit Account.

"Aggregate Principal Amount": With respect to any date of determination, when used with respect to the Portfolio Collateral, the aggregate Principal Balances of such items of Portfolio Collateral on such date of determination. With respect to any date of determination, when used with respect to any Eligible Investments, the Balance of such Eligible Investments on such date of determination. When used with respect to any Note or Class of Notes, as of any date of determination, the original principal amount of such Note or Class of Notes, as applicable, reduced by all prior payments, if any, made with respect to principal of such Note. When used with respect to the Notes in the aggregate, the sum of the Aggregate Principal Amount of each Class of the Outstanding Notes.

"Ambac": Ambac Assurance Corporation.

"Amendment Buy-Out": The purchase of all Notes and Preferred Shares of Non-Consenting Holders by the Amendment Buy-Out Purchaser pursuant to the exercise of the Amendment Buy-Out Option.

"Amendment Buy-Out Option": In the case of any supplemental indenture that requires the consent of one or more Holders of the Notes or Preferred Shares, the right (but not the obligation) of an Amendment Buy-Out Purchaser to purchase from Non-Consenting Holders all Notes and Preferred Shares held by such Holder whose consent was solicited with respect to such supplemental indenture, regardless of the applicable percentage of the Aggregate Principal Amount of the Notes or Preferred Shares the consent of whose Holders is required for such supplemental indenture.

"Amendment Buy-Out Purchase Price": The price payable by the Amendment Buy-Out Purchaser for Notes or Preferred Shares purchased in an Amendment Buy-Out in an amount equal to (i) in the case of Notes, the Aggregate Principal Amount thereof, plus accrued and unpaid interest to the date of purchase payable to the Non-Consenting Holder (giving effect to all amounts paid to such Holder on such date) and plus any unpaid Extension Bonus Payment, and (ii) in the case of the Preferred Shares, an amount that, when taken together with all payments and distributions made in respect of such Preferred Shares since the Closing Date (and any amounts payable, if any to such Holder on the next succeeding Payment Date) would cause such Preferred Shares to have received (as of the date of purchase thereof) an Internal Rate of Return of 12.0% (assuming such date was a Payment Date under the Indenture); *provided that*, after the date on which any Holder of Preferred Shares has received an Internal Rate of Return equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preferred Shares shall be equal to zero.

"Amendment Buy-Out Purchaser": The Servicer (or any of its affiliates acting as principal or agent); *provided that* in the event that the Servicer elects not to purchase Notes or Preferred Shares from Holders pursuant to the Amendment Buy-Out, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser or any of its affiliates acting as principal or agent) designated by the Servicer; *provided, however*, none of the Servicer, the Initial Purchaser or any of their respective affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"Amortization Period": The period beginning on the day following the end of the Revolving Period and ending on the Payment Date upon which the Aggregate Principal Amount of the Notes is paid in full.

"Applicable Percentage": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to such item of Portfolio Collateral as specified in the tables below and in Schedule C hereto:

Moody's Priority Category*	Moody's Priority Category Recovery Rate
Senior Secured Loans:	
+2 or more Rating Subcategories Difference	60%
+1 Rating Subcategories Difference	50%
0 Rating Subcategories Difference	45%
-1 Rating Subcategories Difference	40%
-2 Rating Subcategories Difference	30%
-3 or less Rating Subcategories Difference	20%
DIP Loan (senior secured)	50%

Moody's Priority Category*	Moody's Priority Category Recovery Rate
Non-Senior Secured Loans:	
+2 or more Rating Subcategories Difference	45%
+1 Rating Subcategories Difference	42.5%
0 Rating Subcategories Difference	40%
-1 Rating Subcategories Difference	30%
-2 Rating Subcategories Difference	15%
-3 or less Rating Subcategories Difference	10%
Debt Securities	
+2 or more Rating Subcategories Difference	40%
+1 Rating Subcategories Difference	35%
0 Rating Subcategories Difference	30%
-1 Rating Subcategories Difference	15%
-2 Rating Subcategories Difference	10%
-3 or less Rating Subcategories Difference	2%
Synthetic Securities	In the case of (i) any Synthetic Security under clause (A) or clause (B) of the definition thereof, the "Moody's Priority Category Recovery Rate" referred to in this clause for the related Reference Obligation (or deliverable obligation to the extent such deliverable obligation is not the Reference Obligation), (ii) any Synthetic Security under clause (C) of the definition thereof, the "Moody's Priority Category Recovery Rate" given by Moody's to such Synthetic Security at the time of acquisition of such Synthetic Security, and (iii) any Synthetic Security which has the ability to vary the nature of the deliverable obligation from the time of the initial acquisition, the "Moody's Priority Category Recovery Rate" given by Moody's to such Synthetic Security at such time.
CLO Securities:	

Moody's Priority Category*	Moody's Priority Category Recovery Rate					
Percentage of Total Capitalization	Moody's Default Probability Rating					
	Aaa	Aa	A	Baa	Ba	B
Greater than 70%	85.0%	80.0%	65.0%	55.0%	45.0%	30.0%
Less than or equal to 70%, but greater than 10%	75.0%	70.0%	60.0%	50.0%	40.0%	25.0%
Less than or equal to 10%, but greater than 5%	65.0%	55.0%	50.0%	40.0%	30.0%	20.0%
Less than or equal to 5%, but greater than 2%	55.0%	45.0%	40.0%	35.0%	25.0%	10.0%
Less than or equal to 2%	45.0%	35.0%	30.0%	25.0%	10.0%	5.0%

* For purposes of the Moody's Priority Category, the classification of a Portfolio Loan shall be determined as of each date of determination.

S&P Priority Category	S&P Priority Category Recovery Rate
Senior secured Portfolio Loans	55%
Second lien Portfolio Loans	37.5%
Senior unsecured Portfolio Loans	37.5%
Subordinated Portfolio Loans	21.5%
DIP Loan	To be determined on a case-by-case basis by S&P
Synthetic Securities	The "S&P Priority Category Recovery Rate" given by Standard & Poor's to such Synthetic Security at the time of acquisition of such Synthetic Security.
Debt Securities	
Senior secured Debt Securities	44.0%
Senior unsecured Debt Securities	30.0%
Subordinated Debt Securities	18.0%

"Applicable Periodic Rate": With respect to the Class A-1LA Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 0.30% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class A-1LB Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 0.50% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class A-2L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 0.65% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class A-3L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 1.40% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class A-4L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 1.70% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class B-1L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 2.25% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class X Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 0.36% above LIBOR for such Periodic Interest Accrual Period.

"Applicable Procedures": The meaning specified in Section 2.5(b) hereof.

"Approved Pricing Service": Any pricing service (including any of its successors and assigns) listed as an Approved Pricing Service in Schedule J or otherwise disclosed in writing by the Issuer to the Trustee and the Holders of the Notes, and not objected to by the Requisite Noteholders within 15 days of such disclosure, *provided that* the Rating Condition has been satisfied with respect to any pricing service not included on Schedule J.

"Ask-Side Market Value": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent item of Portfolio Collateral based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such item of Portfolio Collateral determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); *provided* that if the Ask-Side Market Value of any lent item of Portfolio Collateral cannot be so determined then such item of Portfolio Collateral shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"Asset Backed Security": Any obligation that is either (i) a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, and that, by its terms converts into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the holders thereof or (ii) an "asset-backed security" as such term may be defined from time to time in the "General Instructions to Form S-3 Registration Statement" promulgated under the Securities Act, including collateralized bond obligations and collateralized loan obligations. Notwithstanding the foregoing, a Synthetic Security shall not be considered an Asset Backed

Security for purposes of this Indenture unless the related Reference Obligation is an Asset Backed Security.

"Assumed Interest Rate": A rate equal to LIBOR as of the most recent LIBOR Determination Date minus 0.25%, but not less than zero.

"Authenticating Agent": An agent of the Trustee appointed by the Trustee pursuant to Section 2.4 to authenticate the Notes.

"Authorized Officer": With respect to either of the Co-Issuers, any chairman, deputy chairman, president, vice president, managing director, secretary, director, treasurer or other officer thereof or any chairman, deputy chairman, president, vice president, secretary, director, treasurer or other officer of any duly appointed agent thereof who is authorized to act for the Issuer or the Co-Issuer, as the case may be, in matters relating to, and binding upon, such Issuer or the Co-Issuer. With respect to the Servicer, any member, manager, officer, employee or agent of the Servicer, as applicable, who is authorized to act for the Servicer, in matters relating to, and binding upon, the Servicer, with respect to the subject matter of the request, certificate or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of any express trust or as custodian, a Responsible Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and such certification may be considered as in full force and effect until receipt by such other party of written notice to the contrary.

"Balance": On any date, with respect to cash or Eligible Investments in the Collection Account, the Initial Deposit Account, the Loan Funding Account or the Expense Reimbursement Account, the aggregate (i) face amount or current balance, as the case may be, of cash, demand deposits, time deposits, certificates of deposit, bankers' acceptances, federal funds and commercial bank money market accounts; (ii) outstanding principal amount of interest-bearing government and corporate securities; and (iii) purchase price of non-interest-bearing government and corporate securities, commercial paper and repurchase obligations.

"Bankruptcy Code": Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.), as amended, and any successor statute and/or any bankruptcy, insolvency, reorganization or similar law enacted under the laws of the Cayman Islands.

"Base Fee Amount": With respect to each Due Period, an amount equal to 0.20% per annum of the Quarterly Collateral Amount, calculated on the basis of a 360-day year and the actual number of days elapsed.

"Base Servicing Fee": For any Payment Date, an amount equal to the product of (a) the Base Fee Amount for such Payment Date and (b) the Servicing Fee Portion for such Payment Date; *provided* that in the event that the Servicer is removed or resigns, the amount of such fee accrued to the effective date of such removal or resignation will be payable to the Servicer on the next succeeding Payment Date or Payment Dates on which such amount may be paid, in accordance with the priority of payments set forth in Section 11.1 (provided that the payment of any fee payable pursuant to this proviso will be *pari passu* with the payment of any servicing fees to the then-current servicer).

"B Rating Category": Having a Moody's Rating of "B1" or below or an S&P Rating of "B+" or below.

"BB Rating Category": Having a Moody's Rating of "Ba1" or below or an S&P Rating of "BB+" or below.

"Bear Notes": Notes of any Class, if any, initially issued to Bear Stearns or an Affiliate of Bear Stearns on the Closing Date.

"Bear Stearns": Bear, Stearns & Co. Inc., a Delaware corporation.

"Beneficial Owners": The meaning specified in the Investment Company Act and the rules and regulations promulgated thereunder.

"Business Day": Any day that is not a Saturday, Sunday or other day on which commercial banking institutions in the City of New York, the State of New York, or in the city in which the Corporate Trust Office is located, or, to the extent action is required of a Paying Agent or the Paying and Transfer Agent, including the Trustee, in the city of the place of payment, are authorized or obligated by law or executive order to be closed. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when such Irish Paying Agent action is required.

"Calculation Agent": The meaning specified in Section 2.11(a) hereof.

"Calculation Date": The last day of each Due Period.

"CCC/Caa Portfolio Collateral": Portfolio Collateral (excluding Defaulted Portfolio Collateral) that has a Moody's Rating below "B3" or an S&P Rating below "B-".

"CCC Rating Category": Having a Moody's Rating of "Caa1" or below or an S&P Rating of "CCC^{+}" or below.

"CIFG": CIFG Services, Inc.

"Class": Any of the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Class X Notes.

"Class A Notes": The Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes and the Class A-4L Notes.

"Class A Overcollateralization Percentage": 107.00% (for purposes of the Class A Overcollateralization Test).

"Class A Overcollateralization Ratio": As of any date of determination, the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of such date, calculated in accordance with the Overcollateralization Ratio Adjustment, plus (2) the sum of the Balance of Eligible

Investments and cash in the Collection Account, representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amount of the Class A Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to such Classes of Notes not paid when due, until such amounts, if any, are paid in full) as of such date.

"Class A Overcollateralization Test": A test that will be satisfied on any date of determination if the Class A Overcollateralization Ratio is at least equal to the Class A Overcollateralization Percentage.

"Class A-1L Notes": The Class A-1LA Notes and the Class A-1LB Notes.

"Class A-1LA Notes": The U.S. $538,000,000 Class A-1LA Floating Rate Extendable Notes due August 2021 issued hereunder by the Co-Issuers and having the terms described herein.

"Class A-1LB Notes": The U.S. $96,000,000 Class A-1LB Floating Rate Extendable Notes due August 2021 issued hereunder by the Co-Issuers and having the terms described herein

"Class A-2L Notes": The U.S. $76,000,000 Class A-2L Floating Rate Extendable Notes due August 2021 issued hereunder by the Co-Issuers and having the terms described herein.

"Class A-3L Notes": The U.S. $36,500,000 Class A-3L Floating Rate Extendable Notes due August 2021 issued hereunder by the Co-Issuers and having the terms described herein.

"Class A-4L Notes": The U.S. $10,000,000 Class A-4L Floating Rate Extendable Notes due August 2021 issued hereunder by the Co-Issuers and having the terms described herein.

"Class B-1L Notes": The U.S. $21,000,000 Class B-1L Floating Rate Extendable Notes due August 2021 issued hereunder by the Co-Issuers and having the terms described herein.

"Class B-1L Overcollateralization Percentage": 106.00% (for purposes of the Class B-1L Overcollateralization Test).

"Class B-1L Overcollateralization Ratio": As of any date of determination, the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of such date, calculated in accordance with the Overcollateralization Ratio Adjustment less the Overcollateralization Haircut Amount, if any, plus (2) the sum of the Balance of Eligible Investments and cash in the Collection Account, representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amounts of the Class A Notes and the Class B-1L

Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to such Classes of Notes not paid when due, until such amounts, if any, are paid in full) as of such date.

If an item of Portfolio Collateral is both eligible to be included in the Overcollateralization Haircut Amount and is subject to an Overcollateralization Ratio Adjustment, for purposes of calculating the Class B-1L Overcollateralization Ratio, such item of Portfolio Collateral will not be discounted multiple times, but will be treated in the category that results in the largest discount to the par amount of such item of Portfolio Collateral.

"Class B-1L Overcollateralization Test": A test that will be satisfied as of any date of determination if the Class B-1L Overcollateralization Ratio is at least equal to the Class B-1L Overcollateralization Percentage.

"Class I Preferred Shares": The Class I Preferred Shares, par value $0.001 per share, issued by the Issuer; *provided* that any transfer of Class I Preferred Shares to HFP from any third party shall require the exchange and conversion of such Class I Preferred Shares into Class II Preferred Shares.

"Class II Preferred Share Dividend": Class II Preferred Share Base Dividend, Class II Preferred Share Additional Dividend and Class II Preferred Share Supplemental Dividend.

"Class II Preferred Share Additional Dividend": For any Payment Date, an amount equal to the sum of (a) the product of (i) the Additional Fee Amount for such Payment Date and (ii) the Class II Preferred Share Portion for such Payment Date plus (b) on any Payment Date that any part of the Class II Preferred Share Base Dividend was not paid on the preceding Payment Date, interest on such unpaid amount in an amount equal to the product of (i) LIBOR for the applicable period and (ii) the actual number of days in such Due Period, divided by 360 plus (c) on any Payment Date that any part of the Class II Preferred Share Additional Dividend was not paid on the preceding Payment Date, such unpaid Class II Preferred Share Additional Dividend and interest thereon in an amount equal to the product of (i) LIBOR for the applicable period and (ii) the actual number of days in such Due Period divided by 360.

"Class II Preferred Share Base Dividend": For any Payment Date, an amount equal to the product of (a) the Base Fee Amount for such Payment Date and (b) the Class II Preferred Share Portion for such Payment Date.

"Class II Preferred Share Supplemental Dividend": For any Payment Date, an amount equal to the product of (a) the Supplemental Fee Amount for such Payment Date and (b) the Class II Preferred Share Portion for such Payment Date.

"Class II Preferred Share Percentage": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preferred Shares on the Calculation Date related to such Payment Date and the denominator of which is the total number of Outstanding Preferred Shares on such Calculation Date.

"Class II Preferred Share Portion": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"Class II Preferred Shares": The Class II Preferred Shares, par value $0.001 per share, issued by the Issuer and held by HFP; *provided* that any transfer of Class II Preferred Shares by HFP to any third party shall require the exchange and conversion of such shares into Class I Preferred Shares.

"Class X Interest Payment": The Periodic Interest Amount with respect to the Class X Notes.

"Class X Notes": The U.S.$14,000,000 Class X Floating Rate Notes Due August 2013.

"Class X Payment": With respect to each Payment Date; the Class X Interest Payment and the Class X Principal Payment; *provided*, such amount may be reduced in connection with a redemption of the Class X Notes, as set forth in the Indenture.

"Class X Principal Payment": With respect to the Class X Notes and any Payment Date, an amount equal to the Class X Principal Payment for such Payment Date beginning on the Payment Date in November 2007, in accordance with the amortization schedule set forth in Schedule K.

"Class X Shortfall Amount": With respect to the Class X Notes and any Payment Date, any shortfall or shortfalls in the payment of the Class X Payment with respect to any preceding Payment Date or Payment Dates together with interest accrued thereon at the Periodic Interest Rate relating to the Class X Notes (net of all Class X Shortfall Amounts, if any, paid with respect to the Class X Notes prior to such Payment Date).

"Clearance System": The Euroclear System or Clearstream or both.

"Clearstream": Clearstream Banking, *société anonyme*.

"CLO Security": A U.S. dollar-denominated collateralized loan obligation or a similar obligation that entitles the holders thereof to receive payments that depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the CLO Securities) on the credit exposure to, or cash flow from, a portfolio of collateral of which at least 75% consists of commercial loans (including eligible synthetic securities whose reference obligations consist of commercial loans); *provided* that not more than 25% of the Aggregate Principal Amount of any CLO Security may be comprised of Synthetic Securities; and *provided further* that each CLO Security must have a public or an estimated rating from each of the Rating Agencies.

"Closing Date": May 10, 2006.

"Closing Expense Account": The meaning specified in Section 10.2 hereof.

"Closing Expense Deposit": The cash credited to the Closing Expense Account on the Closing Date pursuant to Section 3.2(f) hereof.

"Closing Expenses": The meaning specified in Section 11.1(a) hereof.

"Code": The United States Internal Revenue Code of 1986, as amended.

"Co-Issuer": As defined in the first sentence of this Indenture.

"Co-Issuers": The Issuer and the Co-Issuer.

"Collateral": The Trust Estate.

"Collateral Account": The meaning specified in Section 10.2 hereof.

"Collateral Administration Agreement": The meaning specified in Section 10.5(g) hereof.

"Collateral Administrator": The collateral administrator under the Collateral Administration Agreement, initially JPMorgan Chase Bank, National Association.

"Collateral Agent": The meaning specified in the Paying and Transfer Agency Agreement.

"Collateral Disposition Proceeds": All proceeds (including, to the extent so determined by the Servicer, any payments received in connection with a consent or similar solicitation and including any amounts received in connection with an item of Defaulted Portfolio Collateral up to an amount equal to, in the aggregate, the Principal Balance of such item of Defaulted Portfolio Collateral) received during a Due Period from the sale or other disposition of any Portfolio Collateral included in the Trust Estate, net of any reasonable amounts expended by the Trustee in connection with such sale or other disposition (including without limitation disposition proceeds from liquidation of the Trust Estate pursuant to Section 9.11). Accrued interest may also be treated as Collateral Disposition Proceeds (y) to the extent necessary to pay for the principal amount of or accrued interest on Substitute Portfolio Collateral if the item of sold Portfolio Collateral paid interest before, and in the same Due Period as, the date of sale or (z) to the extent such amounts are Purchased Accrued Interest treated as Collateral Principal Collections hereunder. Amounts received with respect to Equity Portfolio Collateral or in connection with a consent or similar solicitation shall be treated as Collateral Interest Collections to the extent such proceeds are in excess of the Principal Balance (determined immediately prior to such Portfolio Collateral becoming Equity Portfolio Collateral) of the Portfolio Collateral disposed of.

"Collateral Interest Collections": With respect to any Payment Date, the sum of (i) all payments of interest with respect to any Portfolio Collateral (excluding accrued interest classified as Collateral Disposition Proceeds but including any other receipts of accrued interest (including Accrued Interest on Sale) and, to the extent so determined by the Servicer, any payments (other than principal) received in connection with a consent or similar solicitation, fees received in connection with an amendment (but only to the extent such amendment does not

result in diminishing the principal money terms of such item of Portfolio Collateral) and including any commitment, standby or similar fees with respect to the unfunded portion of the Issuer's commitment to make or otherwise fund advances with respect to a Delayed Drawdown Loan or a Revolving Loan which are received during the applicable Due Period, less any Retained Accrued Interest, (ii) the Account Income, if any, in the Collection Account, the Initial Deposit Account and the Loan Funding Account which is received during the applicable Due Period, as each is determined as of the Calculation Date relating to such Payment Date (including, without limitation, Account Income on funds on deposit in the Initial Deposit Account transferred to the Collection Account on the Effective Date pursuant to Section 3.3(a) hereof), (iii) on or after the Effective Date, any funds transferred by the Trustee from the Initial Deposit Account pursuant to Section 10.2(f) hereof and (iv) income on Eligible Investments in and/or the securities credited to the Default Swap Collateral Account (to the extent the Issuer is entitled to receive such income pursuant to the terms hereof).

"Collateral LIBOR": With respect to any item of Portfolio Collateral, the London interbank offered rate for U.S. dollar deposits as determined under the terms of the related Underlying Instrument.

"Collateral Principal Collections": With respect to any Payment Date, all payments of principal of any Portfolio Collateral (including (i) any remaining Deposit (but excluding any Account Income thereon and subject to Section 3.4(d) hereof) not applied to purchase Original Portfolio Collateral or to effect an Initial Deposit Redemption, (ii) any payment of Premium, (iii) to the extent so determined by the Servicer, any payments received in connection with a consent or similar solicitation, fees received in connection with an amendment and including principal received in connection with or any payments received with respect to an item of Credit Risk Portfolio Collateral in connection with any consent or solicitation, (iv) all proceeds received from the sale of any warrant (whether sold as part of a Unit or separately), (v) any Collateral Disposition Proceeds which are received during the applicable Due Period, as determined as of the Calculation Date relating to such Payment Date, (vi) amounts representing Purchased Accrued Interest and (vii) amounts transferred from the Loan Funding Account upon the sale or disposition of Delayed Drawdown Loans or Revolving Loans or upon the expiration of a drawdown or revolving period, (viii) funds (other than income thereon) transferred from a Default Swap Collateral Account to the Collection Account, (ix) any amounts received by the Issuer that do not qualify as Collateral Interest Collections (other than those standing to the credit of any Default Swap Collateral Account or Default Swap Issuer Account) and (x) on or after the Effective Date, any funds in the Initial Deposit Account not considered Collateral Interest Collections pursuant to Section 10.2(f) hereof). Notwithstanding the foregoing, Collateral Principal Collections shall include (A) any other amounts not included in Collateral Interest Collections or Adjusted Collateral Interest Collections, (B) any payments received with respect to an item of Defaulted Portfolio Collateral up to, in the aggregate, the Principal Balance of such item of Defaulted Portfolio Collateral and (C) any amounts recharacterized as Collateral Principal Collections in connection with any distribution of Payment Date Equity Securities.

"Collateral Purchase Amount": With respect to any Payment Date, the aggregate amount of funds deposited into the Collection Account on such Payment Date pursuant to clause NINTH of Section 11.1(c)(i) and clause THIRD of Section 11.1(c)(ii).

"Collateral Quality Formula": The formula set forth in Annex D to be used to interpolate between values or rows of the criteria set forth in the Collateral Quality Matrix. For purposes of such calculation, (i) the Moody's Asset Correlation Test requirement in the applicable row of the Collateral Quality Matrix must be equal to or less than 4.0% and greater than or equal to 3.0%, (ii) the Moody's Minimum Average Recovery Rate requirement in the applicable row of the Collateral Quality Matrix must be less than or equal to 45.5% and greater than or equal to 40.0%, (iii) the Moody's Weighted Average Rating Test requirement in the applicable row of the Collateral Quality Matrix must be equal to or greater than 1500 and less than or equal to 2500 and (iv) the Weighted Average Margin requirement in the applicable row of the Collateral Quality Matrix must be equal to or greater than 1.5% and less than or equal to 3.0%.

"Collateral Quality Matrix": For any date of determination, the row of the table set forth in Annex D that has been selected by the Servicer (in accordance with the procedures described in the next sentence) for use in determining the scores that are required to satisfy the Moody's Asset Correlation Test, the Minimum Average Recovery Rate Test with respect to Moody's, the Moody's Weighted Average Rating Test, the Weighted Average Coupon Test and the Weighted Average Margin Test. The Servicer may elect to (i) have a different row of the table set forth in Annex D apply and (ii) add additional rows to the table set forth in Annex D by interpolating using the Collateral Quality Formula (which may or may not include a combination of existing values), in each case upon providing written notice to the Issuer and the Trustee, so long as, immediately after giving effect to the change in rows, each of the Moody's Correlation Factor Test, the Minimum Average Recovery Rate Test with respect to Moody's, the Moody's Weighted Average Rating Test, the Weighted Average Coupon Test and the Weighted Average Margin Test will be satisfied according to the scores that are prescribed by the newly selected row and the Standard & Poor's CDO Monitor Test would have been satisfied as of the date of the most recent purchase or sale of an item of Portfolio Collateral had such test been calculated using the Current Portfolio, the Proposed Portfolio, and the S&P Scenario Loss Rate that was in effect immediately prior to such purchase or sale, but using the S&P Break-Even Loss Rate applicable to the Notes that would have been applicable after giving effect to the change in combinations; it being agreed that the Servicer shall be under no obligation to elect to change the Collateral Quality Matrix In determining whether the criteria set forth in the Collateral Quality Matrix are satisfied, the Servicer may use the Collateral Quality Formula to interpolate between values of such criteria or may use any other method that is agreed by the Issuer and Moody's with written notice to the Trustee. If a new Standard & Poor's CDO Monitor is required in connection with selecting a new row of the matrix, the Servicer will give notice to S&P and the Trustee at least two weeks prior to the selection of such new row.

"Collateral Quality Tests": The Moody's Correlation Factor Test, the Minimum Average Recovery Rate Test, the Moody's Weighted Average Rating Test, the Weighted Average Coupon Test, the Weighted Average Margin Test, the Weighted Average Life Requirement and the Standard & Poor's CDO Monitor Test.

"Collection Account": The meaning specified in Section 10.2 hereof.

"Collections": With respect to any Payment Date, the sum of (i) the Collateral Interest Collections collected during the applicable Due Period and (ii) the Collateral Principal Collections collected during the applicable Due Period, as each is determined as of the Calculation Date relating to such Payment Date.

"Controlling Class": Shall mean the Class A-1LA Notes and the Class X Notes, so long as any Class A-1LA Notes and Class X Notes are Outstanding, then the Class A-1LB Notes, so long as any Class A-1LB Notes are Outstanding, then the Class A-2L Notes, so long as any Class A-2L Notes are Outstanding, then the Class A-3L Notes, so long as any Class A-3L Notes are Outstanding, then the Class A-4L Notes, so long as any Class A-4L Notes are Outstanding and then the Class B-1L Notes, so long as any Class B-1L Notes are Outstanding.

"Corporate Trust Office": The principal corporate trust office of the Trustee currently located at 600 Travis Street, 50th Floor, Houston, Texas 77002, Attention: Worldwide Securities Services-ROCKWALL CDO, or at such other address as the Trustee may designate by notice to the Noteholders, the Servicer, the Issuer and the Rating Agencies or the principal corporate trust office in the United States of any successor Trustee.

"Coupon Adjustment": To the extent the Weighted Average Coupon of the Fixed Rate Portfolio Collateral exceeds the percentage specified in the row of the Collateral Quality Matrix then in effect for such Weighted Average Coupon, then the Weighted Average Margin Test (as specified in the row of the Collateral Quality Matrix then in effect), will be reduced by a per annum percentage equal to the product of (x) the amount by which the Weighted Average Coupon of the Fixed Rate Portfolio Collateral exceeds the percentage specified in the row of the Collateral Quality Matrix then in effect for such Weighted Average Coupon, times (y) a fraction, the numerator of which is the Aggregate Principal Amount of the Fixed Rate Portfolio Collateral and the denominator of which is the Aggregate Principal Amount of the Floating Rate Portfolio Collateral, times (z) 360/365.

To the extent the Weighted Average Margin of the Floating Rate Portfolio Collateral exceeds the percentage specified in the row of the Collateral Quality Matrix then in effect for such Weighted Average Margin, then the Weighted Average Coupon Test (as specified in the row of the Collateral Quality Matrix then in effect) will be reduced by a per annum percentage equal to the product of (x) the amount by which the Weighted Average Margin exceeds the percentage specified in the current row of the Collateral Quality Matrix, times (y) a fraction, the numerator of which is the Aggregate Principal Amount of the Floating Rate Portfolio Collateral and the denominator of which is the Aggregate Principal Amount of the Fixed Rate Portfolio Collateral, times (z) 365/360.

"Credit Improved Criteria": Shall mean with respect to any item of Portfolio Collateral, in the Servicer's reasonable judgment, such item of Portfolio Collateral has significantly improved in credit quality, and:

(a) Moody's, S&P or Fitch has placed such item of Portfolio Collateral or any other class of security issued together with such item of Portfolio Collateral (or, if such item of Portfolio Collateral is not rated, the issuer thereof) on its credit watch list (or similar list) with the potential for developing positive credit implications since the date the Issuer first acquired such

item of Portfolio Collateral (and for so long as such item of Portfolio Collateral or issuer, as applicable, remains on such list) or there has been an upgrade in the rating of such item of Portfolio Collateral, issuer or other class of security issued together with such item of Portfolio Collateral, as applicable, by Moody's, S&P or Fitch by one or more subcategories from the rating of such item of Portfolio Collateral or issuer, as applicable, by Moody's, S&P or Fitch, as applicable, in effect on the date the Issuer first acquired such item of Portfolio Collateral;

(b) with respect to a Portfolio Loan, since the date on which such Portfolio Loan was first acquired by the Issuer, has increased in price to 101.5% or more of its original purchase price or the spread of which over the related reference rate has been reduced, in each case, in accordance with its Underlying Instruments since the date on which such item of Portfolio Collateral was first acquired by the Issuer by 0.25% or more (in the case of an item of Portfolio Collateral with a spread over the related reference rate less than or equal to 2.00% at the time such item of Portfolio Collateral was first acquired by the Issuer) or 0.50% or more (in the case of an item of Portfolio Collateral with a spread over the related reference rate greater than 2.00% at the time such item of Portfolio Collateral was first acquired by the Issuer) for reasons primarily due to an improvement in the related borrower's financial ratios or financial results and not as a result of general market conditions; or

(c) with respect to any item of Portfolio Collateral which is not a Portfolio Loan, an increase in the market price (expressed as a percentage of par value) since the date of purchase of such item of Portfolio Collateral which, compared to the change in the average market price of a representative sample (as determined by the Servicer) of other debt securities with similar terms and credit characteristics and that would be eligible to be pledged as Portfolio Collateral, is greater than 3.00% of the par value or more relative to such representative sample; or a decrease since the date of purchase of such item of Portfolio Collateral of more than 10.0% in the difference between the yield to worst call on such item of Portfolio Collateral compared to the yield on the relevant United States Treasury security;

provided, however, that the criteria in (b) and (c) above may be used only as corroboration of other bases for the Servicer's Judgment.

"Credit Improved Portfolio Collateral": Any item of Portfolio Collateral which, (a) in the Servicer's commercially reasonable judgment consistent with the standard of care set forth in the Servicing Agreement (provided, that in forming such judgment a decrease in credit spread or an increase in Market Value of such item of Portfolio Collateral may only be utilized as corroboration of other bases of such judgment), has improved in credit quality or otherwise satisfies the Credit Improved Criteria or (b) is sold pursuant to a Portfolio Improvement Exchange; *provided* that the Aggregate Principal Amount of any such Portfolio Collateral sold pursuant to clause (b) shall not exceed, during any twelve-month period, 20% (or such lower amount as determined by the Servicer) of the Aggregate Par Amount as of the first day of such period.

"Credit Risk Criteria": With respect to any item of Portfolio Collateral:

(a) Moody's, Fitch or S&P has placed such item of Portfolio Collateral or any other class of security issued together with such item of Portfolio Collateral (or, if such item of

Portfolio Collateral is not rated, the issuer thereof) on its credit watch list with the potential for developing negative credit implications (or similar list) since the date the Issuer first acquired such item of Portfolio Collateral (and for so long as such item of Portfolio Collateral or issuer, as applicable, remains on such list) or there has been a reduction in the rating of such item of Portfolio Collateral, issuer or other class of security issued together with such item of Portfolio Collateral, as applicable, by Moody's, Fitch or S&P, as applicable, by one or more subcategories from the rating of such item of Portfolio Collateral or issuer, as applicable, by Moody's, Fitch or S&P, as applicable, in effect on the date the Issuer first acquired such item of Portfolio Collateral;

(b) which is a Portfolio Loan, the spread over the applicable reference rate has been increased in accordance with the related Underlying Instruments since the date on which such Portfolio Loan was first acquired by the Issuer by 0.50% or more (in the case of a Portfolio Loan with a spread over the applicable reference rate at the time such Portfolio Loan was first acquired by the Issuer less than or equal to 2.00%) or 0.75% or more (in the case of a Portfolio Loan with a spread over the applicable reference rate at the time such Portfolio Loan was first acquired by the Issuer greater than 2.00%) primarily due to a deterioration in the related borrower's financial ratios or financial results and not as a result of general market conditions; *provided, however*, that the criteria in this paragraph (b) may be used only as corroboration of other bases for the Servicer's judgment;

(c) which is a CLO Security, a decline in the par amount of underlying collateral such that the aggregate par amount of the entire class of securities to which such item of Portfolio Collateral belongs and all other securities secured by the same pool of collateral and that rank senior in priority of payment to such class of securities exceeds the aggregate par amount of all collateral (excluding defaulted collateral) securing such securities; or

(d) it is a Deferred Interest PIK Bond or a partial Deferred Interest PIK Bond.

"Credit Risk Portfolio Collateral": Any item of Portfolio Collateral (other than an item of Defaulted Portfolio Collateral) which, in the Servicer's commercially reasonable business judgment consistent with the standard of care set forth in the Servicing Agreement (which judgment shall not be questioned as a result of subsequent events; *provided*, that in forming such judgment an increase in credit spread or a decrease in Market Value of such item of Portfolio Collateral may only be utilized as corroboration of other bases of such judgment), (i) is likely to decline in credit quality and, with the passage of time, become Defaulted Portfolio Collateral, and (ii) if a Sales Restriction Condition has occurred, otherwise satisfies the Credit Risk Criteria.

"Cumulative Class X Payment": With respect to any Payment Date and the Class X Notes, the Class X Payment with respect to such Payment Date and the Class X Shortfall Amount, if any, with respect to such Payment Date.

"Cumulative Interest Amount": With respect to a Payment Date and any Class of Notes the applicable Periodic Interest Amount with respect to such Payment Date and the applicable Periodic Rate Shortfall Amount, if any, with respect to such Payment Date.

"Current Pay Obligation": An item of Portfolio Collateral that would otherwise be an item of Defaulted Portfolio Collateral but as to which (i) no interest payments (including deferred interest) or scheduled principal payments are due and payable that are unpaid and the Servicer reasonably expects that the issuer or obligor of such item of Portfolio Collateral will continue to make scheduled payments in cash of interest or principal thereon and will pay the principal thereof by maturity, (ii) if the issuer or obligor of such item of Portfolio Collateral is subject to a bankruptcy proceeding, a bankruptcy court has authorized the payment of interest due and payable on such item of Portfolio Collateral, and (iii) either (a) the Market Value of such item of Portfolio Collateral is equal to or greater than 80% of par and the Moody's Rating of such item of Portfolio Collateral is at least "Caa1" or (b) the Market Value of such item of Portfolio Collateral is equal to or greater than 85% of par and the Moody's Rating of such item of Portfolio Collateral is at least "Caa2" (or, if the Moody's Rating has been withdrawn, the Moody's Rating of such item of Portfolio Collateral was at least "Caa2" prior to withdrawal) or (c) if the Moody's Rating of such item of Portfolio Collateral is less than "Caa2" or is "Caa2" and on credit watch with negative implications, but greater than or equal to "Caa3" without credit watch with negative implications, the Market Value of the such item of Portfolio Collateral is at least equal to 90% of its Principal Balance; *provided* that if the Moody's Rating of the item of Portfolio Collateral has been withdrawn but the obligation had a Moody's rating of at least "Caa3" without credit watch with negative implications at the time of default, such item of Portfolio Collateral may be treated as a Current Pay Obligation if its Market Value is at least equal to 90% of its Principal Balance.

"Current Portfolio": Pledged Securities in the Trust Estate immediately prior to the sale, maturity or the other disposition of an item of Portfolio Collateral or immediately prior to the purchase of an item of Portfolio Collateral, as the case may be.

"Custodian": As such term is defined in Section 2.1(b) hereof.

"Debt Security": Each Structured Finance Investment and interests in corporate and other debt securities (including senior secured floating notes) included in the Portfolio Collateral (other than Eligible Investments, CLO Securities and Portfolio Loans) and, for the avoidance of doubt, Portfolio Loans shall not be considered Debt Securities.

"Default": Any event or condition the occurrence or existence of which, with the giving of notice or lapse of time or both, would become an Event of Default.

"Defaulted Portfolio Collateral": Any item of Portfolio Collateral (other than an item of Portfolio Collateral which is a DIP Loan, unless such item of Portfolio Collateral itself is in default since acquisition), including with respect to a Synthetic Security, the related Reference Obligation, with respect to which:

(i) the issuer thereof has defaulted in the payment of principal or interest (in respect of Portfolio Loans only, beyond five Business Days, *provided* the Servicer certifies in writing to the Trustee that it believes, in its reasonable business judgment, that such delay is not credit related), unless, in the case of a failure of such issuer to make required interest payments, such issuer has resumed current cash payments of interest and paid in full all accrued and unpaid interest;

(ii) such item of Portfolio Collateral is *pari passu* with or subordinated to other material indebtedness for borrowed money owing by the issuer thereof ("Other Indebtedness") and such issuer has defaulted in the payment of principal or interest (beyond any applicable grace or notice period and without regard to any waiver of such default) on such Other Indebtedness, unless, in the case of a failure of such issuer to make required interest payments, such issuer has resumed current cash payments of interest and has paid in full any accrued interest due and payable thereon;

(iii) an Insolvency Event has occurred with respect to the issuer thereof;

(iv) the Servicer has knowledge (or such rating information has been published) that the issuer thereof is rated "D" or "SD" by S&P (calculated in accordance with Schedule D) (or S&P has withdrawn its rating which prior to such withdrawal was "D" or "SD");

(v) there has been proposed or effected any distressed exchange or other distressed debt restructuring where the issuer of such Portfolio Collateral has offered the debt holders a new security or package of securities that, in the commercially reasonable judgment of the Servicer amounts to a diminished financial obligation;

(vi) such item of Portfolio Collateral is declared to be an item of Defaulted Portfolio Collateral by the Servicer, but only so long as it remains so designated by the Servicer in its sole discretion; or

(vii) such item of Portfolio Collateral is a CLO Security which is rated "CC" or below by S&P (or S&P has withdrawn its rating which prior to such withdrawal was rated "CC") or rated "Ca" or "C" or below by Moody's;

provided that any item of Portfolio Collateral that is classified as an item of "Defaulted Portfolio Collateral" will cease to be so classified if such item of Portfolio Collateral, at any date thereafter, (a) would not otherwise be classified as an item of Defaulted Portfolio Collateral in accordance with the definition of such term and (b) otherwise meets the collateral criteria described herein as of such date.

"Default Swap": Any U.S. dollar denominated "pay as you go" credit default swap or total return swap with respect to a Reference Obligation, which the Issuer (directly or indirectly) purchased from or entered into with a Default Swap Counterparty, which contains equivalent probability of default, recovery upon default (or a specific percentage thereof), expected loss, maturity, interest rate and other non-credit characteristics as those of the related Reference Obligation (without taking account of such considerations as they relate to the Default Swap Counterparty); *provided* that (i) the Reference Obligation is a CLO Security, (ii) such Default Swap will not cause the Issuer to be treated as engaged in a trade or business in the United States for U.S. Federal income tax purposes or otherwise subject the Issuer (or the beneficial owners thereof) to U.S. Federal income tax on a net income tax basis, (iii) either (a) amounts receivable by the Issuer are not expected to (based on the Servicer's determination, which may include consultation with counsel to the Issuer) be subject to U.S. or foreign withholding tax in respect of the Default Swap or (b) the Default Swap Counterparty is required

to make "gross-up" payments pursuant to the related Underlying Instruments that cover the full amount of any such withholding tax on an after-tax basis (including any tax on such additional payments), (iv) the Issuer has caused to be deposited in a Default Swap Collateral Account an amount in cash at least equal to the aggregate of (or the amount required under the terms of the Synthetic Security to provide for) all further payments (contingent or otherwise) that the Issuer is or may be required to make to the Default Swap Counterparty under the Default Swap; (v) the agreement relating to such Default Swap contains "non-petition" provisions with respect to the Issuer and "limited recourse" provisions limiting the Default Swap Counterparty's rights in respect of the Default Swap Collateral to the funds and other property credited to the Default Swap Collateral Account related to such Default Swap; (vi) the notional amount of such Default Swap is equal to the principal amount of the Reference Obligation; (vii) the agreement relating to such Default Swap Collateral contains provisions to the effect that upon the occurrence of an "Event of Default" or "Termination Event" (other than an "Illegality" or "Tax Event"), if any, where the Default Swap Counterparty is the sole "Defaulting Party" or the sole "Affected Party" ("Event of Default," "Termination Event," "Illegality," "Tax Event," "Defaulting Party" or "Affected Party," as applicable, as such terms are defined in the ISDA Master Agreement relating to such Default Swap), (a) the Issuer may terminate its obligations under such Default Swap and upon such termination and payment of any termination amount payable under the Default Swap, any lien in favor of the Default Swap Counterparty over its related Default Swap Collateral Account will be terminated and (b) upon payment of any termination amount payable under the Default Swap, the Issuer will no longer be obligated to make any payments to the Default Swap Counterparty with respect to such Default Swap, (viii) any Default Swap shall be positively indexed to the related Reference Obligation on no more than a one-to-one basis, (ix) if any Reference Obligation delivered pursuant to any Default Swap does not constitute Portfolio Collateral and it would cause any collateral quality test or concentration limitation not to be satisfied, such Reference Obligation shall be deemed Equity Portfolio Collateral, and (x) (a) such Default Swap shall be documented with a standard ISDA form master agreement, as modified by appropriate schedules and confirmations and (b) (1) such Default Swap is a Form-Approved Synthetic Security or (2) the Rating Condition has been satisfied with respect to the purchase of or entry into such Default Swap.

"Default Swap Collateral": Cash, securities or other collateral purchased or posted by the Issuer in connection with the purchase of a Default Swap, including without limitation a payment of cash or delivery of securities by the Issuer.

"Default Swap Collateral Account": The account established pursuant to Section 10.2 hereof with the Securities Intermediary in the name of the Trustee.

"Default Swap Counterparty": Any entity, whose long term senior unsecured debt or derivatives counterparty rating shall be at least "A2" by Moody's and a long term rating of at least "A" or a short term rating of at least "A-1" by S&P, required to make payments on Synthetic Portfolio Collateral pursuant to the terms of such Default Swap or any guarantee thereof to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"Default Swap Counterparty Termination Payment": An amount payable by the Issuer to a Default Swap Counterparty that is due following the designation of an "Early

Termination Date" (as defined in the related credit default swap) (other than in respect of "Illegality" or a "Tax Event" (each as defined in the related credit default swap)), as to which the Default Swap Counterparty is the sole "Defaulting Party" or the sole "Affected Party" (as each such term is defined in the ISDA Master Agreement related to such Synthetic Security).

"Default Swap Issuer Account": The account established pursuant to Section 10.2 hereof with the Securities Intermediary in the name of the Trustee.

"Deferred Interest PIK Bond": As of any date of determination, any PIK Bond that is not an item of Defaulted Portfolio Collateral that has, in accordance with its terms, deferred or paid "in-kind" any amount of interest for a period equal to:

(a) in the case of an item of Portfolio Collateral that has a Moody's Rating below "Baa3" (or, if rated "Baa3," is on credit watch for possible downgrade) or, if rated by S&P, a rating by S&P below "BBB-" (or, if rated "BBB-," is on credit watch for possible downgrade), the shorter of one accrual period or six months; and

(b) in all other cases, the shorter of two accrual periods or twelve months;

and has not, as of such date of determination, resumed timely payment of current interest in cash and repaid all outstanding deferred or capitalized interest in cash. For the avoidance of doubt, an item of Portfolio Collateral will not constitute a Deferred Interest PIK Bond if it resumes timely payment of current interest in cash and repays all outstanding deferred or capitalized interest in cash on the Payment Date immediately succeeding the end of the interest accrual period(s) set forth above.

"Definitive Notes": Registered definitive notes in substantially the form set forth in Exhibits A-1L-4, A-2L-4, A-3L-4 and B-1L-4.

"Delayed Drawdown Loan": A Portfolio Loan that, pursuant to the related Underlying Instrument or Underlying Loan and Security Agreement and lender or lenders, would obligate the Issuer, if the Issuer were to become a lender thereunder by purchasing such Portfolio Loan for inclusion in the Trust Estate, to make or otherwise fund one or more future advances to the related borrower and meeting the criteria described in Section 3.4; *provided* that, if a Delayed Drawdown Loan has been drawn in full and there are no future advance obligations to the related borrower, such Portfolio Loan will no longer be considered a Delayed Drawdown Loan.

"Deliver" or "Delivery": The taking of the following steps by the Issuer:

(a) with respect to such of the Trust Estate as constitutes an instrument, causing the Trustee to take possession in the State of New York of such instrument, indorsed to the Trustee or in blank by an effective indorsement;

(b) with respect to such of the Trust Estate as constitutes tangible chattel paper, goods, a negotiable document, or money, causing the Trustee to take possession in the State of New York of such tangible chattel paper, goods, negotiable document, or money;

(c) with respect to such of the Trust Estate as constitutes a certificated security in bearer form, causing the Trustee to acquire possession in the State of New York of the related security certificate;

(d) with respect to such of the Trust Estate as constitutes a certificated security in registered form, causing the Trustee to acquire possession in the State of New York of the related security certificate, indorsed to the Trustee or in blank by an effective indorsement, or registered in the name of the Trustee, upon original issue or registration of transfer by the issuer of such certificated security;

(e) with respect to such of the Trust Estate as constitutes an uncertificated security, causing the issuer of such uncertificated security to register the Trustee as the registered owner of such uncertificated security;

(f) with respect to such of the Trust Estate as constitutes a security entitlement, causing the Securities Intermediary to indicate by book entry that the financial asset relating to such security entitlement has been credited to the appropriate Account;

(g) with respect to such of the Trust Estate as constitutes an account or a general intangible, (i) causing the account debtor for such account or general intangible to be notified of the grant to the Trustee of a security interest in such account or general intangible, (ii) causing to be taken any steps necessary to perfect a security interest in such account or general intangible under the laws of the Cayman Islands, and (iii) causing to be filed with the District of Columbia Recorder of Deeds a properly completed UCC financing statement that names the Issuer as debtor and the Trustee as secured party and that covers such account or general intangible;

(h) with respect to such of the Trust Estate as constitutes a deposit account, causing such deposit account to be maintained in the name of the Trustee and causing the bank with which such deposit account is maintained to agree in writing with the Trustee and the Issuer that (i) such bank will comply with instructions originated by the Trustee directing disposition of the funds in such deposit account without further consent of any other person or entity, (ii) such bank will not agree with any person or entity other than the Trustee to comply with instructions originated by any person or entity other than the Trustee, (iii) such deposit account and the property deposited therein will not be subject to any lien, security interest, encumbrance, or right of set-off in favor of such bank or anyone claiming through it (other than the Trustee), (iv) such agreement will be governed by the laws of the State of New York, and (v) the State of New York will be the bank's jurisdiction of such bank for purposes of Article 9 of the UCC; or

(i) in the case of each of paragraphs (a) through (h) above, such additional or alternative procedures as may hereafter become appropriate to grant and perfect a security interest in such items of the Trust Estate in favor of the Trustee, consistent with applicable law or regulations.

In each case of Delivery contemplated herein, the Trustee shall make appropriate notations on its records indicating that such item of the Trust Estate is held by the Trustee pursuant to and as provided herein.

Effective upon Delivery of any item of the Trust Estate, the Trustee shall be deemed to have (i) represented that its purchase of such item of the Trust Estate is made in good faith, and without notice of any adverse claim thereto appearing on the face of such item (if in physical form) or otherwise known to a Responsible Officer of the Trustee; *provided that* such representation shall not impose any other affirmative duty or obligation upon the Trustee with regard to inquiry or investigation of, or constructive notice of, adverse claims; and (ii) acknowledged that it holds such item of the Trust Estate as Trustee hereunder for the benefit of the Holders of the Notes and the other Secured Parties. Any additional or alternative procedures for accomplishing "Delivery" for purposes of paragraph (i) of this definition shall be permitted only upon delivery to the Trustee of an Opinion of Counsel to the effect that such procedures are appropriate to grant and perfect a security interest in the applicable type of collateral in favor of the Trustee.

"Deposit": The cash credited to the Initial Deposit Account on the Closing Date (or with respect to the Post-Closing Sale Collateral, within 10 days of the Closing Date) in accordance with Section 3.2(e) hereof, including any reimbursement for amounts withdrawn from the Initial Deposit Account pursuant to Section 10.2(f), and including the first interest payment received on each Portfolio Loan and on CLO Securities (other than certain CLO Securities, as indicated on Schedule A) purchased on the Closing Date.

"Deposit Account": The meaning specified in Section 10.2 hereof.

"Depository": With respect to the Regulation S Global Notes and the Rule 144A Global Notes, DTC, its nominees, and their respective successors.

"DIP Loan": Any interest in a loan or financing facility (a) which at the time of purchase is an obligation of a debtor-in-possession pursuant to Section 364 of United States the Bankruptcy Code, (b) the terms of which have been approved by an order of a United States Bankruptcy Court, a United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as such terms are defined in the Federal Rules of Bankruptcy Procedure), (c) which has the priority allowed by either Section 364(c) or 364(d) of the Bankruptcy Code, (d) which pays interest in cash on a current basis, and (e) as to which the obligor has paid its most recent scheduled interest and principal payments (if any) and the Servicer reasonably expects that such obligor will continue to pay interest and principal payments. For purposes hereof, a DIP Loan shall not be considered a Current Pay Obligation. Any DIP Loan added as an item of Portfolio Collateral must be assigned a formal or estimated rating by Moody's and S&P.

"Discount Portfolio Collateral": (a) Any Portfolio Loan which had a Moody's Rating of at least “B3” at the time of purchase and which was purchased at a price less than 85% of the Principal Balance thereof, (b) any Portfolio Loan which had a Moody's Rating below “B3” at the time of purchase and which was purchased at a price less than 90% of the Principal Balance thereof, (c) any item of Portfolio Collateral which is not a Portfolio Loan and which had a Moody's Rating of at least “B3” at the time of purchase and which was purchased at a price less than 80% of the Principal Balance thereof, (d) any item of Portfolio Collateral which is not a Portfolio Loan and which had a Moody's Rating below “B3” at the time of purchase and which was purchased at a price less than 85% of the Principal Balance thereof and (e) any CLO

Security which had a Moody's Rating of "Aa3" or greater at the time of purchase or originally rated "Aa3" or greater by Moody's which was purchased at a price less than 92% of the Principal Balance thereof and the provisions of this definition set forth below will not be applicable to these CLO Securities; *provided* that, (i) any item of Portfolio Collateral that would otherwise be considered Discount Portfolio Collateral, but that has a Market Value above 90% of its Principal Balance for 22 consecutive Business Days if it is a Portfolio Loan or above 85% of its Principal Balance for 60 consecutive days if it is a CLO Security, after being purchased by the Issuer, will no longer be considered Discount Portfolio Collateral and (ii) any item of Portfolio Collateral that would otherwise be considered Discount Portfolio Collateral, but that is purchased with the proceeds of sale of an item of Portfolio Collateral that was not an item of Discount Portfolio Collateral at the time of its purchase, so long as such item of Portfolio Collateral (a) was purchased or committed to be purchased within five Business Days of such sale, (b) was purchased at a price (as a percentage of par) equal to or greater than the sale price of the sold item of Portfolio Collateral, (c) was purchased at a purchase price not less than 65% of the Principal Balance thereof and (d) had a rating equal to or greater than the rating of the sold item of Portfolio Collateral, will not be considered Discount Portfolio Collateral. Notwithstanding the foregoing, at no time during the period commencing on the Closing Date through the Final Maturity Date, shall the Aggregate Principal Amount of all items of Discount Portfolio Collateral purchased pursuant to clause (ii) exceed in the aggregate 10% of the Required Portfolio Collateral Amount; *provided* that no more than 3% of the Required Portfolio Collateral Amount of such 10% cumulative limitation may consist of CLO Securities; *provided* that if a Portfolio Loan purchased pursuant to clause (ii) above is repaid in full, is sold for a price equal to at least 97.5% of its unpaid Principal Balance or has a Market Value above 90% of its Principal Balance for at least 22 consecutive Business Days after being purchased, such Portfolio Loan shall not be taken into account for purposes of clause (ii) above; *provided further* that, as of any date of determination, the Aggregate Principal Amount of items of Portfolio Collateral in the Trust Estate purchased pursuant to clause (ii) above, may not exceed (x) 5% of the Aggregate Par Amount or (y) if the weighted average purchase price of Portfolio Collateral purchased pursuant to clause (b) above is less than 75% as of such date of determination, 2.5% of the Aggregate Par Amount.

"Distributable Equity Securities" Any and all Equity Portfolio Collateral, which cannot be sold by the Servicer as a result of the regulatory, market or other restrictions, as determined in good faith by the Servicer, and shall have the value as determined by an independent third party with relevant experience in making such valuation.

"Distribution Compliance Period": The period ending on the 40th day after the later of the conclusion of the offering of the Notes and the Closing Date.

"DTC": The Depository Trust Company, a New York corporation, or any successor thereto.

"Due Date": Each date on which a distribution or payment is due on a Pledged Security (which includes any Eligible Investment).

"Due Period": With respect to any Payment Date, the period beginning on the day following the last day of the immediately preceding Due Period (or, in the case of the Due

Period that is applicable to the first Payment Date beginning on the Closing Date) and ending at the close of business on the seventh Business Day preceding such Payment Date.

"Effective Date": The earlier of (i) the first date on which the Deposit has been applied to the purchase (or committed to the purchase) of Original Portfolio Collateral such that the Aggregate Principal Amount of the Portfolio Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any of the Original Portfolio Collateral on or before the Effective Date) is at least equal to the Required Portfolio Collateral Amount or (ii) September 10, 2006.

"Eligible Investments": Any U.S. dollar denominated investment that is one or more of the following (including security entitlements with respect thereto):

(a) direct registered obligations of, and registered obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America or United States Security Entitlements (as defined in the Indenture) other than obligations or security entitlements of the Federal Home Loan Mortgage Corporation; *provided, however*, that, in the case of obligations or United States Security Entitlements that are rated, each such obligation shall, at the time of its inclusion in the Trust Estate, have a credit rating of "AA-" or better or "A-1+" or better, as applicable, by S&P (except that Eligible Investments in an amount up to 20% of the Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's, and, in each case, is not put on credit watch (with negative implications);

(b) demand and time deposits in, trust accounts with, and certificates of deposit of, any depository institution or trust company (including the Trustee) incorporated under the laws of the United States of America or any state thereof and subject to the supervision and examination by federal and/or state banking authorities so long as the commercial paper and/or debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company) at the time of purchase or contractual commitment providing for such purchase have a credit rating of "AA-" or better, in the case of debt obligations, or "A-1+" or better, in the case of commercial paper, by S&P (except that Eligible Investments in an amount up to 20% of the Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's, and, in each case, is not put on credit watch (with negative implications)**;**

(c) registered securities bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States of America or any state thereof that have a credit rating of "AA-" or better by S&P and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's at the time of purchase or contractual commitment providing for such purchase, and, in each case, is not put on credit watch (with negative implications);

(d) repurchase obligations with respect to any security described in clause (a) above, entered into with a depository institution or trust company (acting as principal) described in clause (b) above (including the Trustee) or entered into with a corporation (acting as principal) whose short-term debt has a credit rating of "A-1+" (except that Eligible Investments in an amount up to 20% of the Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") or better by S&P and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's at the time of purchase in the case of any repurchase obligation for a security having a maturity not more than 183 days from the date of its issuance or whose long-term debt has a credit rating of "AA-"- or better by S&P and "Aa3" or better (if such obligation has a long-term rating) by Moody's at the time of purchase in the case of any repurchase obligation for a security having a maturity more than 183 days from the date of its issuance and, in each case, is not put on credit watch (with negative implications);

(e) commercial paper having at the time of purchase a credit rating of "A-l+" (except that an amount up to 20% of the Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") or better by S&P and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's and that has a maturity of not more than 183 days from its date of issuance; *provided, however,* that in the case of commercial paper with a maturity of longer than 91 days, the issuer of such commercial paper (or, in the case of a principal depository institution in a holding company system, the holding company of such system), if rated by S&P, must have at the time of purchase a long-term credit rating of "AA-" or better by S&P and "Aa3" or better (if such obligation has a long-term rating) by Moody's and, in each case, is not put on credit watch (with negative implications);

(f) off-shore money market funds, which funds have, at all times, the highest credit rating assigned to such investment category by S&P and Moody's; and

(g) such other Eligible Investments acceptable to the Rating Agencies;

provided, however, that: (i) Eligible Investments purchased with funds in the Collection Account shall be held until maturity (or sold only for an amount at least equal to the par amount of such Eligible Investment) and shall include only such obligations or securities as mature no later than the Business Day prior to the next Payment Date and Eligible Investments purchased with funds in the Initial Deposit Account shall be held until maturity (or sold only for an amount at least equal to the par amount of such Eligible Investment) and shall include only such obligations or securities as mature no later than the Business Day prior to the date expected to be used and in any event prior to the Initial Deposit Redemption Date; (ii) none of the foregoing obligations or securities shall constitute Eligible Investments if all, or substantially all, of the remaining amounts payable thereunder shall consist of interest and not principal payments; (iii) none of the S&P ratings required above shall have a subscript of "r", "t", "p", "pi" or "q"; (iv) none of the foregoing obligations or securities shall constitute Eligible Investments if such obligations or securities are mortgage-backed securities; (v) no such obligation may be margin stock, securities which have a mandatory or optional conversion to equity or securities which are subject to an Offer; (vi) no such obligation may have coupons or other payments that are subject to U.S. withholding tax or are subject to foreign withholding under the terms of the underlying instruments where the issuer is not required to make "gross-up" payments sufficient to cause the net amount to be received on the debt obligations to equal the amount that would have been paid

had no such withholding tax applied; and (vii) any such Eligible Investment purchased on the basis of S&P's short-term rating of "A-1" shall mature not later than thirty (30) days after the date of purchase. Eligible Investments may include those Eligible Investments with respect to which the Trustee or its Affiliates provide services.

"Equity Portfolio Collateral": Any security (or any other right, interest or property or security entitlement) which does not entitle the holder thereof to receive periodic payments of interest no less frequently than semiannually and one or more installments of principal, in cash and sufficient to retire in full the stated principal amount thereof on the stated maturity date therefor; *provided, however,* that such definition will not include warrants, profit participations or similar equity-based rights that are a component of a Unit to the extent that the Aggregate Principal Amount of Portfolio Collateral in the Trust Estate with a warrant, profit participation or similar equity-based right attached thereto as a component of a Unit does not exceed 10% of the Aggregate Principal Amount of all Pledged Securities in the Trust Estate.

"ERISA": The United States Employee Retirement Income Security Act of 1974, as amended.

"Euroclear Operator": Euroclear Bank S.A./N.V., as operator of the Euroclear System, and any successor thereto.

"Event of Default": The meaning specified in Section 5.1 hereof.

"Exchange Act": The United States Securities Exchange Act of 1934, as amended.

"Exchange Certificate": The certification delivered in the form of Exhibit F hereto.

"Exchange Offer": With respect to any item of Portfolio Collateral, (i) an offer by the issuer of such item of Portfolio Collateral or by any other Person made to all holders of such item of Portfolio Collateral to exchange such item of Portfolio Collateral held by them for an item of Equity Portfolio Collateral or other debt instruments that do not otherwise satisfy the definition of Portfolio Collateral or (ii) any solicitation by such issuer or other Person to amend, modify or waive any provision of such item of Portfolio Collateral or of the related Underlying Instrument, the effect of which would be to convert such item of Portfolio Collateral into an item of Equity Portfolio Collateral or other debt instruments that do not otherwise satisfy the definition of Portfolio Collateral.

"Excluded Accrued Interest": With respect to any item of Initial Portfolio Collateral, any accrued and unpaid interest thereon (i) which was not included in the purchase price thereof that the Issuer paid on the Closing Date, and (ii) which will be paid by the Trustee from the Trust Estate, as instructed by Bear Stearns, in accordance with the terms of the Indenture.

"Expected Maturity Date": With respect to the Class X Notes, the Payment Date occurring in August 2013.

"Expense Reimbursement Account": The meaning specified in Section 10.2 hereof.

"Extended Final Maturity Date" If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Final Maturity Date (or, in the case of the first Extended Final Maturity Date, the Payment Date in August 2025).

"Extended Revolving Period End Date": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Revolving Period End Date (or, in the case of the first Extension, the Payment Date in August 2015).

"Extended Weighted Average Life Date": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, May 1, 2019).

"Extension": An extension of the Revolving Period, the Final Maturity Date of the Notes and the Weighted Average Life Test in accordance with the Indenture.

"Extension Bonus Payment": With respect to each Maturity Extension, a single payment to each applicable Noteholder as set forth in Sections 11.1(c) and (d) in an amount equal to (1) in the case of the Class A-1LA Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-1LB Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class A-2L Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Date, (4) in the case of the Class A-3L Notes, 0.50% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class A-4L Notes, 0.50% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, and (6) in the case of the Class B-1L Notes, 0.50% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"Extension Bonus Eligibility Certification": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Principal Amount thereof and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"Extension Conditions": As defined under Section 2.3(d).

"Extension Determination Date": The 8th Business Day prior to each Extension Effective Date.

"Extension Effective Date": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in August 2011).

"Extension Notice": The notice given by the Issuer of its election to extend the Revolving Period substantially in the form of Exhibit I.

"Extension Purchase Price": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Principal Amount thereof, plus accrued and unpaid interest as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), (ii) in the case of the Preferred Shares, an amount that, when taken together with all payments and distributions made in respect of such Preferred Shares since the Closing Date would cause such Preferred Shares to have received (as of the date of purchase thereof) an Internal Rate of Return of 12.0% (assuming such purchase date was a "Payment Date" under the Indenture); *provided, however, that* if the applicable Extension Effective Date is on or after the date on which such Holders have received an Internal Rate of Return equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preferred Shares shall be zero.

"Extension Qualifying Purchasers": The Servicer (or any of its Affiliates acting as principal or agent); *provided* that in the event the Servicer elects not to purchase Securities from Holders pursuant to the Extension Conditions set forth in Section 2.3(d); "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchaser or any of its Affiliates acting as principal or agent) designated by the Servicer; *provided, however*, none of the Servicer, the Initial Purchaser, or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"Extension Sale Notice": Irrevocable notice given by any Holder of Notes (other than the Class X Notes) and Preferred Shares of its intention to sell its Notes or Preferred Shares to an Extension Qualifying Purchaser in the case of a Maturity Extension substantially in the form of Enclosure B to Exhibit I.

"Extension Sale Notice Period": Within 30 days after the Issuer has delivered the Extension Notice.

"Extension Sale Securities": Notes or Preferred Shares as to which an Extension Sale Notice has been duly given.

"Final Maturity Date": With respect to each Class of Notes (other than the Class X Notes) the Payment Date occurring in August 2021 and with respect to the Class X Notes, the Payment Date occurring in August 2013 or such earlier date on which the Aggregate Principal Amount of each Class of Notes is paid in full, including in connection with an Optional Redemption; *provided that* the "Final Maturity Date" with respect to the Notes (other than the Class X Notes) will be extended to the applicable Extended Final Maturity Date upon the occurrence of a Maturity Extension.

"Fitch": Fitch Ratings or any successor thereto.

"Fixed Rate Portfolio Collateral": An item of Portfolio Collateral that bears interest at a fixed rate.

"Floating Rate Portfolio Collateral": An item of Portfolio Collateral that bears interest at a floating rate.

"Foreign Intermediaries": The meaning specified in Section 3.5 hereof.

"Form-Approved Synthetic Security": A Synthetic Security (a)(i) the Reference Obligation of which would be eligible for purchase by the Issuer as an item of Portfolio Collateral without any required action by the Rating Agencies or for which the Rating Condition has been satisfied or (ii) the Reference Obligation of which would satisfy clause (i) but for the currency in which it is payable and such Synthetic Security is payable in U.S. Dollars, does not provide for physical settlement and does not expose the Issuer to currency risk, (b) the documentation of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date and other similarly necessary changes) to a form in respect of which the Rating Condition has been satisfied for use in this transaction, (c) which provides that any "credit event" thereunder shall not include restructuring (other than modified restructuring as defined in the 2003 ISDA Credit Derivatives Definitions), repudiation, moratorium, obligation default or obligation acceleration unless such Synthetic Security may be settled only through a physical settlement of a deliverable obligation to the Issuer and not in cash, (d) which has been certified in writing by the Servicer to the Trustee and the Issuer as meeting the requirements of this definition and (e) for which the Issuer has provided the Rating Agencies notice of the purchase of such Synthetic Security no less than five Business Days prior to such purchase; *provided that* each Rating Agency may revoke its consent to a Form-Approved Synthetic Security upon 30 days' written notice to the Trustee and the Issuer.

"Global Note": A Temporary Regulation S Global Note, a Permanent Regulation S Global Note or a Rule 144A Global Note.

"Grant": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create and grant a security interest in and right of set-off against, deposit, set over and confirm. A Grant of any item of the Trust Estate shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including without limitation the immediate and continuing right to claim for, collect, receive and receipt for principal and interest payments in respect of such item of the Trust Estate, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Group A Country": Australia, Canada, the United Kingdom, the Federal Republic of Germany or The Netherlands (so long as the U.S. dollar denominated sovereign debt obligations of such jurisdiction are rated at least "Aa2" by Moody's and the foreign currency issuer credit rating assigned by S&P to such jurisdiction is at least "AA" and, in each case, is not put on credit watch (with negative implications)).

"Group B Country": Austria, Belgium, Bermuda, Denmark, Finland, France, Ireland, Italy, Liechtenstein, Luxembourg, New Zealand, Norway, Portugal, Spain, Sweden or

Switzerland or any other member state of the European Union (as of the Closing Date) identified from time to time by the Servicer and subject to the satisfaction of the Rating Condition with respect to each Rating Agency with respect thereto (so long as the U.S. dollar denominated sovereign debt obligations of such jurisdiction are rated at least "Aa2" by Moody's and the foreign currency issuer credit rating assigned by S&P to such jurisdiction is at least "AA" and, in each case, is not put on credit watch (with negative implications)).

"HFP Shares": Preferred Shares beneficially owned or controlled by Highland Financial Partners, L.P., an affiliate of the Servicer.

"Holder" and "Noteholder": The Person in whose name a Note is registered in the Note Register.

"Indenture": This Indenture, as supplemented or amended in accordance with the terms hereof.

"Independent": When used with respect to any specified Person means such a Person who (a) is in fact independent of the Issuer and any other obligor upon the Notes and the Servicer or any Affiliate of the Issuer or such other obligor or the Servicer, (b) does not have any direct financial interest or any material indirect financial interest in the Issuer or in any such other obligor or the Servicer or in an Affiliate of the Issuer or such other obligor or the Servicer, and (c) is not connected with the Issuer or any such other obligor or the Servicer or any Affiliate of the Issuer or such other obligor or the Servicer as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions. "Independent" when used with respect to any accountant may include an accountant who audits the books of such Person if in addition to satisfying the criteria set forth above the accountant is independent with respect to such Person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants. Whenever it is provided herein that any Independent Person's opinion or certificate shall be furnished to the Trustee, such Person shall be appointed by Issuer Order and such opinion or certificate shall state that the signer has read this definition and that the signer is independent within the meaning thereof. Notwithstanding anything herein to the contrary, Bear Stearns shall be "Independent" for all purposes hereof.

"Initial Consent Period": The period of 15 Business Days from but excluding the date on which the Trustee provided notice of a proposed supplemental indenture pursuant to Section 82 hereof to the Holders of any Notes or Preferred Shares.

"Initial Deposit Redemption": A redemption of the Class X Notes and the Class A-1LA Notes pursuant to Section 3.3 hereof.

"Initial Deposit Redemption Amount": The meaning specified in Section 3.3.

"Initial Deposit Redemption Date": The November 2006 Payment Date.

"Initial Portfolio Collateral": The Portfolio Collateral that, in the case of CLO Securities, will be purchased on or prior to the Closing Date and, in the case of Portfolio Loans, will be purchased on or before the Closing Date or identified by the Issuer and for which commitments will be entered into on or prior to the Closing Date for purchase on or as soon as

practicable after (not scheduled to exceed sixty (60) days after) the Closing Date with the net proceeds from the sale of the Notes and the net proceeds from the sale of the Preferred Shares on the Closing Date, which Initial Portfolio Collateral is set forth on Schedule A hereto.

"Initial Portfolio Collateral Amount": U.S. $765,000,000 (or such larger Aggregate Principal Amount of Portfolio Collateral as may be purchased on the Closing Date by the Issuer).

"Insolvency Event": With respect to any Person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (a) liquidation, reorganization or other relief in respect of such Person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Person or for all or substantially all of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered; or

(ii) such Person shall (a) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (b) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above, (c) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or conservator or for all or substantially all of its assets, (d) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (e) make a general assignment for the benefit of creditors or (f) take any action for the purpose of effecting any of the foregoing.

"Institutional Investor": Any one of the following persons: (i) any bank, trust company or national banking association, acting for its own account or in a fiduciary capacity, (ii) any charitable foundation or eleemosynary institution, (iii) any insurance company, (iv) any pension or retirement trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended from time to time, is acting as trustee or agent, or that manages its own assets, having funds of at least $5,000,000, (v) any investment company, as defined in the Investment Company Act, (vi) any college or university, (vii) any government or public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds, or (viii) any corporation, limited liability company, business trust or partnership having total assets in excess of $5,000,000.

"Interest Coverage Ratio": with respect to any Payment Date after the second Payment Date, a number (expressed as a percentage) calculated by dividing (a) four times the amount by which (i) the Collateral Interest Collections received or scheduled to be received during the Due Period in which such calculation occurs (other than Collateral Interest Collections (including deferred interest thereon) scheduled to be received on any item of Portfolio Collateral that is not paying or expected to pay current interest), exceeds (ii) the

Periodic Reserve Amount (excluding amounts payable on the Class B-1L Notes) as of such Payment Date, by (b) the Aggregate Principal Amount of Class A Notes with respect to such Payment Date, as adjusted, to take into account any O/C Redemption to occur on the Payment Date related to such Due Period pursuant the Indenture pursuant to Section 11.2 hereof.

For purposes of calculating the Interest Coverage Ratio, any item of Portfolio Collateral as to which any interest or other payment thereon is subject to withholding tax or other deductions on account of tax of any jurisdiction, each such payment of interest or other payment thereon will be deemed to be payable net of such withholding tax or other deductions on account of tax unless, in the case of a withholding tax, the issuer thereof or obligor thereon is required to make additional payments to fully compensate the Issuer for such withholding taxes (including in respect of any such additional payments) and on any date of determination, the amount of any scheduled payment due on any future date will be assumed to be made net of any such uncompensated withholding tax or other deductions on account of tax based upon withholding or other applicable tax rates in effect on such date of determination.

"Interest Coverage Test": A test which is applicable on each Payment Date after the second Payment Date and will be satisfied as of such determination date if the Interest Coverage Ratio will be at least 1.5%.

"Internal Rate of Return": With respect to any Payment Date, the annualized discount rate at which the sum of the discounted values of the following cashflows is equal to zero, assuming discounting on a quarterly basis as of each Payment Date: (1) the Notional Amount of the Preferred Shares (which amount will be deemed to be negative for purposes of this calculation), (2) each distribution of Collateral Interest Collections made to the holders of the Preferred Shares on any prior Payment Date and, to the extent necessary to reach the applicable Internal Rate of Return, such Payment Date and (3) each distribution of Collateral Principal Collections made to the holders of the Preferred Shares on any prior Payment Date and, to the extent necessary to reach the applicable Internal Rate of Return, such Payment Date.

"Investment Company Act": The United States Investment Company Act of 1940, as amended.

"Investor Corp.": Rockwall Investors Corp., a Cayman Islands limited liability company, which will hold all of the Class I Preferred Shares, and which will issue its preferred shares to third party investors.

"Investor Representation Letter": A certificate delivered by a prospective transferee of a Note in the form of Exhibit C hereto.

"Irish Paying Agent": RSM Robson Rhodes LLP, or any successors thereto.

"Issuer": The meaning specified in the first sentence of this Indenture.

"Issuer Base Administrative Expenses": With respect to any Payment Date, the administrative expenses paid or payable by the Issuer during the applicable Due Period, including, without limitation, taxes, government fees, indemnities, registered office fees and expenses for third party loan pricing services and accountants, if any, in the following order: (i)

pro rata, taxes of the Co-Issuers, surveillance fees, shadow rating fees and credit estimate fees, if any, of the Rating Agencies; fees due to any Listing and Paying Agent; fees due to any stock exchange on which any Class of the Notes or the Preferred Shares are listed; governmental fees, registered office fees and any other fees which are deemed necessary by the Servicer for administration of the Trust Estate, and (ii) *pro rata* reimbursement of expenses (including indemnities) of the Servicer required to be paid pursuant to the Servicing Agreement; and all expenses of the Administrator, the Listing and Paying Agent, the Securities Intermediary (if not the same person as the Trustee), the accountants and any fiscal agent retained in connection with the issuance of income notes, if any, in which the primary collateral for such income notes are obligations of the Issuer, any expenses of Investor Corp. and all other administrative expenses of the Co-Issuers, each as determined as of the Calculation Date relating to such Payment Date and as set forth in the related Note Valuation Report.

"Issuer Excess Administrative Expenses": With respect to any Payment Date, (i) the Trustee Administrative Expenses for the Due Period relating to such Payment Date in excess of the amount paid pursuant to Clause FIRST of Section 11.1(b) for the corresponding period, (ii) the Preferred Shares Administrative Expenses for the Due Period relating to such Payment Date in excess of the amount paid pursuant to clause FIRST of Section 11.1(b) for the corresponding period and (iii) the administrative expenses or other amounts (including indemnities) paid or payable by the Issuer during the applicable Due Period, as determined as of the Calculation Date relating to such Payment Date and as set forth in the related Note Valuation Report, in excess of the amount of the Issuer Base Administrative Expenses paid pursuant to Clause SECOND of Section 11.1(b).

"Issuer Order" and "Issuer Request": A written order or request dated and signed in the name of the Issuer by an Authorized Officer of the Issuer or a Person designated in writing by an Authorized Officer of the Issuer.

"LIBOR": For any Periodic Interest Accrual Period, the London interbank offered rate for three-month (or, for the period from the Closing Date to the November 2006 Payment Date, as described in Section 2.11 hereof) U.S. dollar deposits, as determined by the Calculation Agent in accordance with the provisions of Section 2.11 hereof.

"LIBOR Determination Date": The second London Business Day prior to the commencement of a Periodic Interest Accrual Period.

"Loan Funding Account": The account specified in Section 10.2 as that maintained by the Trustee into which the Issuer shall remit the full amount of the Issuer's commitment to make or otherwise fund draws related to any Delayed Drawdown Loans or Revolving Loans in the Portfolio Collateral.

"London Business Day": Any day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

"Majority Noteholders": The Holders of more than 50% of the Aggregate Principal Amount of the Outstanding Notes, voting as a single class; *provided that* upon the occurrence of a Default or an Event of Default pursuant to Section 5.1 hereof, "Majority

Noteholders" shall mean the Holders of more than 50% of the Controlling Class, voting together as a single class.

"Majority Preferred Shareholders": The Holders of more than 50% of the outstanding Preferred Shares.

"Mandatory Redemption": An O/C Redemption or a Rating Confirmation Failure Redemption.

"Mandatory Redemption Date": Any Payment Date on which an O/C Redemption or a Rating Confirmation Failure Redemption is required.

"Mandatory Redemption Price": When used with respect to an O/C Redemption or a Rating Confirmation Failure Redemption, an amount equal to the principal amount of the Notes being redeemed (or, in the case of the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes, first to pay any Periodic Rate Shortfall Amount with respect to such Notes and then to pay principal).

"Market Value": On any date of determination with respect to an item of Portfolio Collateral, any of:

(a) the average of the bid-side prices for the purchase of such item of Portfolio Collateral determined by an Approved Pricing Service that derives valuations by polling broker-dealers (Independent from the Servicer); or

(b) the arithmetic average of bid-side quotations for the purchase of such item of Portfolio Collateral obtained by the Servicer from three or more broker-dealers (*provided* if upon reasonable efforts of the Servicer, quotations from three broker-dealers are not available, the lower of the quotations from two broker-dealers may be used), in each case, Independent from the Servicer, in the relevant market; *provided* that one such bid must be from a broker-dealer other than Bear Stearns or an Affiliate of Bear Stearns and any bid received from Bear Stearns or an Affiliate of Bear Stearns hereunder cannot be more than 10% higher than the next highest bid; and

(c) if the determinations of the broker-dealers specified in the foregoing clauses (a) or (b) are not available (as reasonably determined by the Servicer) and so long as the Servicer is subject to the Investment Advisors Act of 1940, as amended, the bid-side market value of such item of Portfolio Collateral as certified by the Servicer as consistent with reasonable and customary market practice; *provided*, that, as of any date of determination (x) no more than 5.0% of the Aggregate Principal Amount of Portfolio Collateral may have market values determined in the manner provided in this clause (c) and (y) if the item of Portfolio Collateral constitutes collateral for any other issuer or account managed or serviced by the Servicer or its Affiliates, the Market Value of such item of Portfolio Collateral determined pursuant to this clause (c) shall be consistent with the market value applied by the Servicer or its Affiliates for such item of Portfolio Collateral for such for such other issuers or accounts; and

(d) if the market value cannot be determined in the manner described in clause (a), (b) or (c) above, an amount equal to the Principal Balance of the Portfolio Collateral as of

such date multiplied by the Applicable Percentage for such item of Portfolio Collateral; *provided*, that if the market value cannot be determined in the manner described in clauses (a), (b) or (c) above for more than thirty (30) Business Days immediately following any date such market value is determined pursuant to this clause (d), then the market value of such item of Portfolio Collateral shall be automatically deemed to be zero following such 30-Business-Day period until the market value can be determined in the manner described in clause (a), (b) or (c) above as of any date of determination;

provided that (A) for purposes of determining Market Value, but subject to clause (b) hereof, Bear Stearns will be deemed to be Independent from the Servicer (*provided that* any quotes received from such entity will be on an arm's-length basis); (B) the Market Value of any item of Portfolio Collateral with respect to which the Issuer has entered into a commitment to sell but has not settled will be deemed to be the agreed sales price therefor (determined exclusive of accrued interest); and (C) the Market Value is determined only for purposes of compliance with covenants, coverage tests, overcollateralization tests, or any other requirements or tests set forth herein, or the determination of redemption prices.

"Maturity": With respect to any Note, the date on which the Aggregate Principal Amount of such Note becomes due and payable as therein and herein provided, whether at the Final Maturity Date or by declaration of acceleration or otherwise.

"Maturity Extension": As defined in Section 2.3(b) hereof.

"Minimum Average Recovery Rate Test": A test that will be satisfied with respect to Moody's, by application of the Collateral Quality Matrix and with respect to S&P, if the S&P Minimum Average Recovery Rate is greater than or equal to the S&P Weighted Average Recovery Rate then applicable in table set forth in the definition of S&P Break-Even Loss Rate.

"Monthly Report": The meaning specified in Section 10.5(a) hereof.

"Moody's": Moody's Investors Service, Inc. or any successor thereto.

"Moody's Default Probability Rating": For a Portfolio Loan which is (i) a Senior Secured Loan, the Moody's corporate family rating for the obligor of such Portfolio Loan and, if any such obligor does not have a Moody's corporate family rating, such rating will be determined in accordance with the methodology described in Schedule F or (ii) a Non-Senior Secured Loan, the Moody's senior unsecured rating for the obligor of such Portfolio Loan and, if any such obligor does not have a Moody's senior unsecured rating, such rating will be determined by reference to the Moody's long-term issuer rating of the obligor of such Portfolio loan and, if such obligor does not have a Moody's senior unsecured rating or a Moody's long-term issuer rating, such rating will be determined in accordance with the methodology described in Schedule F.

"Moody's Asset Correlation Test" or "MAC Test": A test satisfied on each Measurement Date if the Moody's Correlation Factor on such Measurement Date (rounded up to the nearest whole number) is equal to or less than the designated Moody's Correlation Factor determined by application of the Collateral Quality Matrix.

"Moody's Correlation Factor": a single number determined by the Servicer in accordance with the correlation methodology provided to the Servicer and the Collateral Administrator by Moody's, and for which the number of assets represented by (N) on the calculation shall always equal 100.

"Moody's Minimum Average Recovery Rate": The number obtained by summing the products obtained by multiplying the Principal Balance of each item of Portfolio Collateral (excluding Defaulted Portfolio Collateral) by the Applicable Percentage (according to the Moody's Priority Category) applicable to such item of Portfolio Collateral as set forth in the definition above, dividing such sum by the Aggregate Principal Amount of all Portfolio Collateral, and rounding up to the fourth decimal place.

"Moody's Priority Category": Senior Secured Loans, Non-Senior Secured Loans, DIP Loans and/or Synthetic Securities.

"Moody's Priority Category Recovery Rate": For any item of Portfolio Collateral, the percentage specified in the definition of the term "Applicable Percentage" opposite the Moody's Priority Category of such item of Portfolio Collateral, taking into account the Rating Subcategories Difference applicable to such item of Portfolio Collateral.

"Moody's Rating": The rating determined in accordance with the methodology described in Schedule F.

"Moody's Weighted Average Rating": Shall have the meaning set forth in Schedule F.

"Moody's Weighted Average Rating Test": A test that will be satisfied by application of the Collateral Quality Matrix.

"Non-Senior Secured Loan": A Portfolio Loan that is not a Senior Secured Loan.

"Non-Call Period": The period beginning on the Closing Date and ending on August 1, 2010.

"Non-Consenting Holder": With respect to any supplemental indenture proposed pursuant to the Indenture that requires the consent of one or more Holders of the Notes or the Preferred Shares, any such Holder, or, in the case of Notes or Preferred Shares in global form, any beneficial owner, that either (i) has declared in writing that it will not consent to such supplemental indenture or (ii) has not consented to such supplemental indenture within 15 Business Days from the date on which the Trustee provided notice of such proposed supplemental indenture pursuant to the Indenture to such Holder or beneficial owner; *provided*, that in the case of the Non-Call Period, "Non-Consenting Holder" shall exclude any Holder of Class A-1LA Notes (unless such Holder has consented in writing to be designated as a Non-Consenting Holder) and the Amendment Buy-Out Option shall not be applicable to such Class A-1LA Notes.

"Non-U.S. Obligor": An issuer of or obligor on an item of Portfolio Collateral that is located outside the United States and is not a Permitted Non-U.S. Obligor.

"Non-U.S. Person": A Person who is not a U.S. Person.

"Non-U.S. Person Certificate": A certificate substantially in the form of Exhibit G hereto.

"Noteholder" and "Holder": The Person in whose name a Note is registered in the Note Register.

"Noteholder Report": The meaning specified in Section 10.5(c) hereof.

"Note Register" and "Note Registrar": The respective meanings specified in Section 2.5 hereof.

"Note Valuation Report": The meaning specified in Section 10.5(b) hereof.

"Notes": The Class X Notes, the A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes.

"Notice": The meaning specified in Section 13.3 hereof.

"Notional Amount": When used with respect to the Preferred Shares, as of any date of determination, $1.00 per Preferred Share.

"O/C Redemption": The redemption of a Class or Classes of Notes other than the Class X Notes (including, with respect to the Class B-1L Notes, the applicable Periodic Rate Shortfall Amount, as set forth herein), to the extent necessary such that the Overcollateralization Tests and the Interest Coverage Test are satisfied, such tests to be calculated according to the method prescribed by Annex A and Annex B, respectively.

"Offer": With respect to any security, (a) any offer by the issuer of such security or by any other Person made to all of the holders of such class of security to purchase or otherwise acquire all such securities (other than pursuant to any redemption in accordance with the terms of the related Underlying Instruments) or to exchange such securities for any other security or other property or (b) any solicitation by the issuer of such security or any other Person to amend, modify or waive any provision of such security or any related Underlying Instrument.

"Officer": With respect to any corporation or company other than the corporation or company acting as Trustee, the Chief Executive Officer, the President, any Vice President, the Secretary or the Treasurer of such corporation or any other officer duly authorized by the Board of Directors; and with respect to the Trustee (and any other bank or trust company acting as trustee of an express trust or as custodian), any Responsible Officer thereof.

"Officer's Certificate": A certificate signed on behalf of the Issuer, the Co-Issuer or the Servicer by an Authorized Officer of the Issuer, the Co-Issuer or the Servicer, as the case may be.

"Opinion of Counsel": A written opinion, addressed to the Trustee (or on which the Trustee may rely) and in form and substance reasonably satisfactory to the Trustee, of an attorney at law admitted to practice before the highest court of any state of the United States or the District of Columbia or, with respect to matters relating to the laws of the Cayman Islands, the Cayman Islands, which attorney or attorneys may, except as otherwise expressly provided in this Indenture, be counsel for the Issuer, the Servicer or the Trustee and who shall be reasonably satisfactory to the Trustee.

"Optional Redemption": A redemption of the Notes in whole pursuant to Section 9.1 hereof.

"Optional Redemption Date": The Payment Date fixed by the Issuer for an Optional Redemption, which shall be no earlier than the first Payment Date occurring in August 2010.

"Optional Redemption Price": With respect to each Class of Notes, an amount equal to the aggregate of (i) the Aggregate Principal Amount of such Class of Notes as of the Optional Redemption Date, (ii) the applicable Cumulative Interest Amount with respect to the Optional Redemption Date and (iii) any unpaid Extension Bonus Payments in respect of such Notes.

For any Partial Optional Redemption, the Optional Redemption Price shall be equal to the applicable Partial Redemption Percentage of the Optional Redemption Price that would have applied for a Total Optional Redemption occurring on the applicable Optional Redemption Date.

"Original HFP Share Amount": The amount of HFP Shares acquired by the Servicer Entities on the Closing Date.

"Original Portfolio Collateral": The Portfolio Collateral, including the Initial Portfolio Collateral, purchased by the Issuer with the Deposit on or before the Effective Date and, in the case of Portfolio Loans, which will be identified by the Issuer and for which commitments will be entered into on or prior to the Effective Date for purchase on or as soon as practicable thereafter (but not scheduled to exceed sixty (60) days thereafter) pursuant to Section 3.4 hereof.

"Original Portfolio Collateral Criteria": The requirements for the acquisition of Original Portfolio Collateral prior to the Effective Date, as set forth in Section 3.4 hereof.

"Outstanding": With respect to the Preferred Shares, as of the date of determination and subject to the proviso below, "Outstanding" refers to all Preferred Shares issued and indicated in the Share Register as outstanding. With respect to the Notes, as of the date of determination, "Outstanding" refers to all Notes theretofore authenticated and delivered under this Indenture except:

(i) Notes theretofore canceled by the Note Registrar or delivered (or to be delivered pursuant to Sections 2.9 or 9.8 hereof) to the Note Registrar for cancellation;

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

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser; and

(iv) Notes alleged to have been mutilated, destroyed, lost or stolen for which replacement Notes have been issued as provided in Section 2.6 hereof;

provided that, in determining whether the Holders of the requisite Aggregate Principal Amount have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by or pledged to the Issuer, the Trustee or any other obligor upon the Notes or any Affiliate of the Issuer, the Trustee or of such other obligor, and solely for purposes of termination of the Servicer, the Servicer and any Affiliate thereof, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes that a Responsible Officer of the Trustee has actual knowledge to be so owned or pledged shall be so disregarded.

"Overcollateralization Haircut Amount": With respect to any date of determination, an amount equal to the sum of:

(A) the greatest of the following:

(a) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the Aggregate Principal Amount of all CLO Securities (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a Moody's Rating within the CCC Rating Category;

(b) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the excess, if any, of (x) the Aggregate Principal Amount of all CLO Securities included in the pledged Portfolio Collateral (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a Moody's Rating within the B Rating Category or an S&P Rating or a Moody's Rating within the CCC Category over (y) 5.0% of the Aggregate Par Amount as of the date of the applicable Overcollateralization Test; *provided* that at no time during the period commencing on the Closing Date through the Final Maturity Date, shall the Aggregate Principal Amount of all CLO Securities exempt from haircut based on subclause (y) above exceed in the aggregate 5.0% of the Required Portfolio Collateral Amount; and

(c) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the excess, if any, of (x) the Aggregate Principal Amount of all CLO Securities included in the pledged Portfolio Collateral (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a

Moody's Rating within the BB Rating Category, the B Rating Category or the CCC Rating Category over (y) 10.25% of the Aggregate Par Amount as of the date of the applicable Overcollateralization Test; *provided* that if at the date of measurement, Portfolio Loans within the CCC Rating Category is less than 6.25% of the Aggregate Par Amount, then 10.25% will be increased by the difference between 6.25% and percentage of the Aggregate Par Amount representing Portfolio Loans in the CCC Rating Category; *provided* that in no event shall such percentage increase to greater than 15%;

provided that for the avoidance of doubt, for purposes of clauses (a), (b) and (c) above, the applicable Overcollateralization Haircut Percentage shall always be applied first to the lowest rated Portfolio Collateral that falls within such clause, then to the next lowest rated Portfolio Collateral, etc., so that the maximum applicable haircut shall be applied to the Portfolio Collateral;

plus

(B) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the excess, if any, of (x) the Aggregate Principal Amount of all Portfolio Loans included in the pledged Portfolio Collateral (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a Moody's Rating within the CCC Rating Category over (y) 6.25% of the Aggregate Par Amount as of the applicable Overcollateralization Test.

"Overcollateralization Haircut Percentage": (i) With respect to CLO Securities with an S&P Rating or a Moody's Rating falling within the BB Rating Category, 10%, (ii) with respect to CLO Securities with an S&P Rating or a Moody's Rating falling within the B Rating Category, 20%, (iii) with respect to Portfolio Loans with an S&P Rating or a Moody's Rating falling within the CCC Rating Category, the greater of (x) 30% and (y) one minus the weighted average Market Value of all Portfolio Loans with an S&P Rating or a Moody's Rating falling within the CCC Rating Category and (iv) with respect to CLO Securities with an S&P Rating or a Moody's Rating falling within the CCC Rating Category, 50%.

"Overcollateralization Ratio": The Class A Overcollateralization Ratio or the Class B-1L Overcollateralization Ratio, as the context may require.

"Overcollateralization Ratio Adjustment": For purposes of calculating the Overcollateralization Ratios (i) items of Equity Portfolio Collateral shall not be included as Portfolio Collateral, (ii) items of Deferred Interest PIK Bonds and Defaulted Portfolio Collateral shall be included at the lesser of (a) the Market Value of such item of Deferred Interest PIK Bonds, Defaulted Portfolio Collateral and (b) the Applicable Percentage for such item of Deferred Interest PIK Bonds and Defaulted Portfolio Collateral multiplied by its Principal Balance; *provided* that any Portfolio Loan that has been an item of Defaulted Portfolio Collateral for four years shall not be included as Portfolio Collateral and any CLO Security that has been an item of Defaulted Portfolio Collateral for three years shall not be included as Portfolio Collateral, (iii) with respect to items of Discount Portfolio Collateral, an amount equal to the original purchase price of such item of Discount Portfolio Collateral shall be included as Portfolio

Collateral and (iv) to the extent the Aggregate Principal Amount of Current Pay Obligations exceeds 7.5% of the Aggregate Par Amount, such excess shall be included as Defaulted Portfolio Collateral. If an item of Portfolio Collateral could be classified in more than one of the categories set forth in clauses (i) through (iv), such item of Portfolio Collateral will not be discounted multiple times but will be treated in the applicable category that results in the largest discount to the par amount of such item of Portfolio Collateral. Notwithstanding the foregoing, there may be included as Portfolio Collateral (with respect to items (i) through (iv) above) such greater amount as confirmed by the Rating Agencies which will not result in a reduction or withdrawal of the then-current ratings assigned by them to any Class of the Notes.

"Overcollateralization Tests": With respect to any date of determination, tests met when the Class A Overcollateralization Ratio is at least equal to the Class A Overcollateralization Percentage and the Class B-1L Overcollateralization Ratio is at least equal to the Class B-1L Overcollateralization Percentage, each relating to such date of determination.

"Partial Deferred Interest Bonds": Any debt obligation, with respect to which a portion of the interest thereon can be partially deferred without causing a payment default of such debt obligation under its underlying documents. For purposes of calculating the Weighted Average Coupon, the portion of interest that is deferrable with respect to any Partial Deferred Interest Bond will be assumed to be zero.

"Partial Optional Redemption": An Optional Redemption in part, in accordance with the terms specified herein.

"Partial Redemption Percentage": The percentage of Notes that will be subject to redemption *pro rata.*

"Participation": With respect to any Portfolio Loan, a participation interest in a commercial loan purchased from a Selling Institution that does not entitle the holder thereof to direct rights against the obligor.

"Paying Agent": The Trustee, the Irish Paying Agent or any other depository institution or trust company authorized by the Co-Issuers pursuant hereto to pay principal of or any interest that may become payable on any Class of Notes on behalf of the Co-Issuers.

"Paying and Transfer Agency Agreement": The agreement dated as of the Closing Date between the Issuer and the Paying and Transfer Agent with respect to the Preferred Shares.

"Paying and Transfer Agent": JPMorgan Chase Bank, National Association, as Paying and Transfer Agent with respect to (i) the Preferred Shares and (ii) the preferred shares issued by Investor Corp.

"Payment Date": November 1, February 1, May 1 and August 1 of each year, commencing November 1, 2006 (or if any such date is not a Business Day, the next succeeding Business Day).

"Payment Date Equity Securities" shall mean, with respect to any Payment Date, Distributable Equity Securities that the Issuer, in its sole discretion but on the advice of the Servicer, elects to distribute in lieu of cash on such Payment Date to the Holders of Preferred Shares in accordance with the terms hereof.

"Periodic Interest Accrual Period": With respect to any Payment Date, the period commencing on the prior Payment Date (or the Closing Date in the case of the first Payment Date) and ending on the day preceding such Payment Date.

"Periodic Interest Amount": With respect to the Class A-1LA Notes, the Class A-1LB Notes and the Class X Notes on any Payment Date, the aggregate amount of interest accrued at the Applicable Periodic Rate during the related Periodic Interest Accrual Period on (i) with respect to the first Payment Date, the average daily Aggregate Principal Amount of such Class of Notes during such Periodic Interest Accrual Period, and (ii) thereafter, the Aggregate Principal Amount of such Class of Notes on the first day of such Periodic Interest Accrual Period (after giving effect to any payment of principal of such Class of Notes on such day). With respect to each other Class of Notes and any Payment Date, the aggregate amount of interest accrued at the Applicable Periodic Rate during the related Periodic Interest Accrual Period on the Aggregate Principal Amount of such Class on the first day of such Periodic Interest Accrual Period (after giving effect to any payment of principal of such Class of Notes on such date, including in connection with a redemption of a Class of Notes on any date during the related Periodic Interest Accrual Period).

"Periodic Rate Shortfall Amount": With respect to each Class of Notes and any Payment Date, any shortfall or shortfalls in the payment of the Periodic Interest Amount on such Class of Notes with respect to any preceding Payment Date or Payment Dates, together with interest accrued thereon at the Applicable Periodic Rate (net of all Periodic Rate Shortfall Amounts, if any, paid with respect to such Class of Notes prior to such Payment Date).

"Periodic Reserve Amount": As of any date of determination, an amount equal to the sum of (i) the Trustee Administrative Expenses and Preferred Shares Administrative Expenses payable on the next succeeding Payment Date; (ii) without duplication of amounts payable pursuant to clause (i) hereof, the Issuer Base Administrative Expenses payable on the next succeeding Payment Date; (iii) the Base Fee Amount payable on the next succeeding Payment Date; (iv) the Cumulative Interest Amount for the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes and the Periodic Interest Amount for the Class B-1L Notes due on the next succeeding Payment Date; and (v) the Cumulative Class X Payment due on the next succeeding Payment Date.

"Permanent Global Note": The Rule 144A Global Notes and the Permanent Regulation S Global Notes.

"Permanent Regulation S Global Note": With respect to any Class, the permanent global note issued to Non-U.S. Persons in exchange for the Temporary Regulation S Global Note of such Class after the Distribution Compliance Period, the permanent global note substantially in the form attached hereto as Exhibits A-1L-2, A-2L-2, A-3L-2 and B-1L-2.

"Permitted Non-U.S. Obligor": An issuer of or obligor on an item of Portfolio Collateral that is located in (a) a Group A Country or (b)(i) a Group B Country, (ii) any tax advantaged jurisdiction (including the Cayman Islands, Netherlands Antilles, Bermuda, Ireland, Luxembourg and the Channel Islands) or (iii) any tax advantaged jurisdiction or any tax neutral or other jurisdiction subject to Moody's and S&P confirming to the Issuer, the Trustee and the Servicer that an immediate withdrawal, reduction or other adverse action with respect to any then current rating (including any private or confidential rating) of any Class of Notes will not occur as a result of such obligor being a Permitted Non-U.S. Obligor); *provided* that, with respect to the obligors of an item of Portfolio Collateral qualifying as Permitted Non-U.S. Obligors under this clause (b)(ii), at least 80% of such obligor's underlying assets must be domiciled in the United States or another Permitted Non-U.S. Obligor jurisdiction to so qualify as a Permitted Non-U.S. Obligor. For purposes of this definition, the Servicer may specify the location of a Permitted Non-U.S. Obligor to be the country in which at least 80% of such obligor's underlying assets are domiciled, if such assets are domiciled in the United States or another Permitted Non-U.S. Obligor jurisdiction; *provided* that the Aggregate Principal Amount of the Portfolio Collateral as to which the Servicer so specifies the location of a Permitted Non-U.S. Obligor may not exceed 5% of the Aggregate Par Amount. If the location of a Permitted Non-U.S. Obligor is specified by the Servicer to be in a country other than where it is domiciled in accordance with the foregoing sentence, for purposes of the concentration limitations and collateral quality tests described herein, such item of Portfolio Collateral will be considered to be domiciled in the country so specified.

"Person": Any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, government or any agency or political subdivision thereof.

"PIK Bond": Any item of Portfolio Collateral that, pursuant to the terms of the related Underlying Instruments, permits the payment of interest thereon to be deferred and capitalized or otherwise provides that interest will accrue on such deferred interest or that issues identical securities in place of payments of interest in cash.

"Pledged Securities": On any date of determination, the Portfolio Collateral and the Eligible Investments in the Trust Estate.

"Portfolio Collateral": (I) Any United States dollar denominated commercial loan, including participation or assignment interests therein, in Registered form or Registered debt obligation (other than Eligible Investments) of any corporation, limited liability company, partnership, trust or other entity or of the United States government or any agency or instrumentality thereof or of any state or political subdivision or any agency or instrumentality thereof or of any sovereign issuer (including any security entitlement with respect thereto) and any United States Security Entitlement, which obligation, security entitlement or United States Security Entitlement, when Granted to the Trustee or committed to be purchased by the Issuer (with written notice to the Trustee):

(a) is an "eligible asset" as defined in Rule 3a-7;

(b) except as permitted under Section 12.10(b), provides for periodic payments of interest thereon in cash no less frequently than semiannually, or, in the case of Portfolio Loans, quarterly;

(c) provides for a fixed amount of principal to be payable according to a fixed schedule or at maturity;

(d) is not an item of Defaulted Portfolio Collateral, an item of Equity Portfolio Collateral or a margin stock, or, except as permitted under Section 12.4, an item of Credit Risk Portfolio Collateral;

(e) is not a zero-coupon bond, a bond that provides for a combination of no coupon and a fixed coupon, a step-up bond (except for step-up bonds providing for the payment of current interest at a rate no less than 5% *per annum* or Collateral LIBOR, if floating rate), other than with respect to the Initial Portfolio Collateral on the Closing Date, a Partial Deferred Interest Bond (except for such bonds providing for the payment of current interest at a rate no less than 5% *per annum* or Collateral LIBOR, if floating rate);

(f) is not currently the subject of an Offer that would result in (i) the Issuer owning a security not meeting the requirements of Portfolio Collateral, not paying current interest, or, in the reasonable judgment of the Servicer, not expected to pay in full at maturity, or (ii) the Issuer receiving Eligible Investments or cash in a par amount less than that of the original security or the subject of an Exchange Offer;

(g) does not provide for conversion or exchange into equity capital at any time over its life (other than the exercise of any warrant, profit participation or other equity-like interest which is a component of a Unit);

(h) with respect to Portfolio Collateral which consists of Floating Rate Portfolio Collateral, has an interest rate which adjusts periodically in accordance with changes in one or more established indices at least one of which is the London interbank offered rate for one-, two-, three- or six-month U.S. dollar deposits and which adjusts at least semiannually or, with respect to items of Fixed Rate Portfolio Collateral, has an interest rate that remains constant until the maturity of such obligations or is a Reset Debt Security; *provided* that not more than 5.0% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate may include items of Portfolio Collateral the interest rate on which adjusts in accordance with one or more indices that do not include the London interbank offered rate for one-, two-, three-, or six-month U.S. Dollar deposits;

(i) has coupon or other payments that are not subject to U.S. withholding tax and are not at time of purchase subject to foreign withholding tax unless the issuer of the security is required to make "gross-up" payments sufficient to cause the net amount to be received on the debt obligations to equal the amount that would have been paid had no such withholding tax applied;

(j) matures on or before August 1, 2021, or, if a Maturity Extension as occurred, the then applicable Extended Final Maturity Date, except that up to 5.0% of the Aggregate Par Amount may mature after such date but before 5 years after such date; *provided that*, with

respect to Portfolio Loans, no more than 3.0% of the Aggregate Par Amount may mature after August 1, 2021, or, if a Maturity Extension as occurred, the then applicable Extended Final Maturity Date, but before two years after such date and no Portfolio Loans may mature after two years after such date;

(k) the terms of which do not, unless it is a Delayed Drawdown Loan or Revolving Loan, require the Holder to assume or otherwise undertake any funding obligations or liabilities (of a contingent nature or otherwise);

(l) is payable only in United States dollars;

(m) is not a Current Pay Obligation;

(n) is not a Debt Security;

(o) the S&P Rating of which does not include a subscript of "r", "t", "p", "pi" or "q" unless otherwise agreed to by Standard & Poor's in writing and a Moody's Rating that addresses the full amount of principal or interest indicated would be paid;

(p) any, during the Revolving Period, CLO Security has a Moody's Rating of "Ba2" or higher and an S&P Rating of "BB" or higher and, after the Revolving Period, are not CLO Securities;

(q) is not a PIK Bond which is currently deferring interest payments or receiving payments in-kind pursuant to the terms of the Underlying Instrument; and

(r) satisfies, together with the other Portfolio Collateral to be concurrently included in the Trust Estate, the other applicable criteria set forth in this Indenture, including the ratings guidelines and guidelines concerning issuer concentration and industry concentration; or

(II) a Synthetic Security; *provided* that the Servicer concludes, based on advice of counsel, that the Synthetic Security is an "eligible asset" for purposes of Rule 3a-7.

"Portfolio Improvement Exchange": The disposition, during the Revolving Period, of an item of Portfolio Collateral and corresponding acquisition of one or more items of Substitute Portfolio Collateral which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the other collateral criteria set forth in Section 12.2 being satisfied (or bring the total Portfolio Collateral closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Tests or collateral criteria set forth in Section 12.2 is not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the Portfolio Collateral as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Tests and collateral criteria set forth in Section 12.2, and (iii) in the case of each of clause (i) and (ii) not causing any other Collateral Quality Tests, Interest Coverage Test, Overcollateralization Tests or collateral criteria set forth in Section 12.2, to be violated or significantly increase the likelihood of such violation in the future.

"Portfolio Loan": Interests in commercial loans included in the Portfolio Collateral.

"Post-Closing Sale Collateral": An asset acquired by the Issuer which as of the Closing Date has a commitment to be sold by the Issuer within 10 days of the Closing Date.

"Preferred Shares": The 33,200,000 Class I Preferred Shares of the Issuer, par value U.S.$0.001 per share, and the 45,000,000 Class II Preferred Shares of the Issuer, par value U.S.$0.001 per share, that will be issued on the Closing Date pursuant to the Issuer's Memorandum of Association and Articles of Association and any further Preferred Shares issued from time to time by the Issuer.

"Preferred Shares Administrative Expenses": With respect to any Payment Date (including without limitation the Final Maturity Date), the Paying and Transfer Agent's administrative expenses for each of the Issuer and Investor Corp. for the Due Period relating to such Payment Date.

"Preferred Shares Collection Account": The meaning set forth in the Paying and Transfer Agency Agreement.

"Premium": With respect to any item of Portfolio Collateral sold pursuant to the terms hereof or called pursuant to the terms thereof, the excess, if any, of (a) the sale or call price of such item of Portfolio Collateral less any accrued interest with respect to such item of Portfolio Collateral over (b) the Aggregate Principal Amount of such item of Portfolio Collateral.

"Principal Balance": With respect to any Pledged Security, as of any date of determination, the outstanding principal amount of such Pledged Security, *provided* that (i) unless otherwise stated herein or in the Indenture, the "Principal Balance" of any Delayed Drawdown Loan or Revolving Loan shall refer to the sum of the outstanding aggregate principal amount of such Delayed Drawdown Loan or Revolving Loan *plus* the amount of the unfunded portion of the Issuer's commitment to make or otherwise fund advances related thereto (to the extent, and without duplication, of amounts on deposit in the Loan Funding Account available to fund such advances), (ii) the "Principal Balance" of any Synthetic Security shall be equal to (a) in the case of any Synthetic Security other than a Default Swap, the outstanding principal amount of the Reference Obligation or the notional amount of the Synthetic Security related thereto and (b) in the case of any Default Swap, the cash and the principal amount of the securities in the related Default Swap Collateral Account reduced by the amount of any payments due and payable to the Default Swap Counterparty by reason of the occurrence of one or more "credit events" or other similar circumstances to the extent such payments have not yet been made; and (iii) with respect to any item of Equity Portfolio Collateral, the "Principal Balance" shall equal zero.

"Proceedings": Any suit in equity, action at law or other judicial or administrative proceeding.

"Proposed Portfolio": The Aggregate Par Amount resulting from the sale, maturity or other disposition of an item of Portfolio Collateral or a proposed purchase of an item of Portfolio Collateral, as the case may be.

"Purchased Accrued Interest": Interest accrued on or purchased with respect to an item of Portfolio Collateral as part of the price paid by the Issuer to acquire such item of Portfolio Collateral less any amount of Collateral Interest Collections applied by the Issuer to acquire such; *provided* that accrued interest on certain CLO Securities as indicated on Schedule A shall not constitute Purchased Accrued Interest.

"Qualified Institutional Buyer": A "qualified institutional buyer" within the meaning of Rule 144A.

"Qualified Purchaser": A "qualified purchaser" within the meaning of Section 3(c)(7) of the Investment Company Act.

"Quarterly Collateral Amount": With respect to any Due Period, the average of (i) the Aggregate Principal Amount of Portfolio Collateral on the first day of such Due Period and (ii) the Aggregate Principal Amount of Portfolio Collateral on the last day of such Due Period. For purposes of such amounts, Equity Portfolio Collateral and Defaulted Portfolio Collateral shall be excluded in calculating the Aggregate Principal Amount of the Portfolio Collateral.

"Rating Agencies": Standard & Poor's and Moody's, collectively.

"Rating Condition": With respect to any Rating Agency and any action proposed to be taken under this Indenture, a condition that is satisfied when such Rating Agency has confirmed in writing to the Issuer, the Trustee and the Servicer that no withdrawal, reduction or suspension (and not restored) with respect to any then current rating, if any, by such Rating Agency (including any private or confidential rating) of any Class of Notes will occur as a result of such proposed action.

"Rating Confirmation": Written confirmation from each of the Rating Agencies that it has not reduced or withdrawn (and not restored) the rating assigned by it on the Closing Date to any Class of Notes.

"Rating Confirmation Failure": A failure to obtain Rating Confirmation by the 35th day after the Effective Date (or if such day is not a Business Day, the succeeding Business Day).

"Rating Confirmation Failure Redemption": The redemption of a Class or Classes of Notes, as a result of a Rating Confirmation Failure pursuant to Section 9.2.

"Rating Subcategories Difference": The number of ratings subcategories difference between the rating by Moody's or, if not actually rated by Moody's, the Moody's Rating, of an item of Portfolio Collateral and the Moody's Default Probability Rating of such item of Portfolio Collateral.

"Record Date": With respect to any Payment Date, the Business Day immediately preceding such Payment Date; *provided however*, that if any Definitive Notes are issued, the Record Date for such Definitive Notes shall be fifteen calendar days preceding such Payment Date.

"Redemption Date Statement": The meaning specified in Section 10.5(e) hereof.

"Redemption Record Date": With respect to an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date, the Business Day preceding such Optional Redemption Date, Special Redemption Date, Tax Event Redemption Date or Mandatory Redemption Date, and with respect to an Initial Deposit Redemption, the last day of the calendar month preceding the month in which the Initial Deposit Redemption Date occurs.

"Reference Banks": Four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer).

"Reference Obligation": A security or other debt obligation that satisfies the definition of Portfolio Collateral other than as to payment terms; *provided that* notwithstanding the definition thereof, a Reference Obligation may be a loan (but not a participation interest in a loan, except as permitted in the Indenture).

"Reference Obligor": The obligor under a Reference Obligation.

"Registered": When used with respect to any Portfolio Collateral or Eligible Investment, an instrument issued after July 18, 1984, that is in registered form for purposes of the Code.

"Regulation S": Regulation S promulgated under the Securities Act.

"Regulation S Global Note": Temporary Regulation S Global Notes, together with the Permanent Regulation S Global Notes.

"Regulation S Transferor Certificate": A certificate substantially in the form of Exhibit E hereto.

"Relevant Date": The Final Maturity Date, except that if the full amount payable on the Notes has not been duly received by the Trustee or Paying Agent on or prior to the Final Maturity Date, the "Relevant Date" shall be the date on which such monies have been so received.

"Repository": Shall mean the internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com".

"Required Portfolio Collateral Amount": U.S. $850,000,000.

"Requisite Noteholders": The Holders of at least 60% of the Aggregate Principal Amount of the Outstanding Notes (voting as a single class); *provided that* (i) upon the occurrence of a Default or an Event of Default under this Indenture, "Requisite Noteholders" shall mean the Holders of at least 60% of the Aggregate Principal Amount of the Controlling Class. If the Person that is acting as Trustee hereunder is a Holder of any Note for its own account, such Person shall be excluded as a Holder for purposes of this definition in connection

with the consent or approval by Noteholders of any supplemental indenture affecting the provisions hereof relating to the Trustee.

"Reserve Account": The meaning specified in Section 10.2 hereof.

"Reserve Amount": A portion of the proceeds from the sale of the Notes in an amount equal to US$1,600,000 to fund a portion of the payments to be made on any Payment Date in accordance with the Priority of Payments, or to otherwise fund any payments of interest or principal on the Notes at the direction and the sole discretion of the Servicer.

"Reset Debt Security": An item of Portfolio Collateral bearing a rate of interest that varies periodically (including, without limitation, daily), which at the time of its inclusion in the Trust Estate has a minimum rate of interest of at least 5.0% *per annum* with respect to Fixed Rate Portfolio Collateral or Collateral LIBOR with respect to Floating Rate Portfolio Collateral, and which minimum interest rate is not subject to adjustment on or after its inclusion in the Trust Estate, pursuant to the terms of the related Underlying Instrument to a rate of interest which is lower than the rate of interest borne by such item of Portfolio Collateral on the date that such item of Portfolio Collateral was included in the Trust Estate.

"Responsible Officer": When used with respect to the Trustee, any officer within the Corporate Trust Office (or any successor group of the Trustee) including any vice president, assistant vice president, assistant treasurer, assistant secretary, trust officer or any other officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred within the Corporate Trust Office because of his or her knowledge of and familiarity with the particular subject.

"Retained Accrued Interest" Any accrued and unpaid interest with respect to any Portfolio Collateral which was not included in the purchase price for such collateral at the time of purchase.

"Revolving Loan": A Portfolio Loan that, pursuant to the agreement or instrument that governs the rights and obligations of the parties thereto, would obligate the Issuer, if the Issuer were to purchase such Portfolio Loan for inclusion in the Trust Estate, to make or otherwise fund one or more future advances to the related borrower.

"Revolving Period": The period beginning on the Closing Date and ending on the earliest of (i) August 1, 2011 for Portfolio Loans or August 1, 2009 for CLO Securities or, in the case of an Extension, the Extended Revolving Period End Date; *provided* that Portfolio Loans and CLO Securities may be purchased for the period of any such Extension, and (ii) the occurrence and continuance of an Event of Default; *provided* that in no event shall date of termination of the Revolving Period be determined on the basis of the Market Value of the Portfolio Collateral.

"Rule 144A": Rule 144A promulgated under the Securities Act.

"Rule 144A Global Note": With respect to any Class, the permanent global note issued to U.S. Persons.

"Rule 144A Transferor Certificate": A certificate substantially in the form of Exhibit D hereto.

"Rule 3a-7": Rule 3a-7 under the Investment Company Act.

"Sale": The meaning specified in Section 5.18 hereof.

"Sale Restriction Condition": Shall mean (x) with respect to sales of Credit Risk Portfolio Collateral, if the rating of the Class A-1LA Notes, the Class A-1LB or the Class A-2L Notes has been downgraded at least one rating sub-category below the original rating by Moody's (and such original rating has not been restored to the original rating) or the original rating of the Class A-3L Notes, the Class A-4L Notes or the Class B-1L Notes has been downgraded at least two rating sub-categories by Moody's (and has not been restored to a rating no more than one rating sub-category below the original rating of such Class of Notes), or if the Class A Overcollateralization Ratio is less than 90% of the Class A Overcollateralization Percentage or (y) with respect to sales of Credit Improved Portfolio Collateral, if the original rating of the Class A-1LA Notes, the Class A-1LB Notes or the Class A-2L Notes has been downgraded at least one rating sub-category by Moody's (and such original rating has not been restored) or the original rating of the Class A-3L Notes, the Class A-4L Notes or the Class B-1L Notes has been downgraded at least two rating sub-categories by Moody's (and has not been restored to a rating no more than one rating sub-category below the original rating of such Class of Notes).

"Schedule of Portfolio Collateral": The Initial Portfolio Collateral listed on Schedule A hereto, as amended from time to time to reflect Portfolio Collateral in the Trust Estate, including the inclusion of Portfolio Collateral purchased pursuant to Section 3.4(a) hereof, the inclusion of Additional Portfolio Collateral as provided in Section 11.3 hereof, the release of Portfolio Collateral pursuant to Article X hereof, and the inclusion of Substitute Portfolio Collateral as provided in Section 12.4 hereof.

"Scheduled Distribution": With respect to any Pledged Security, for each Due Date after the date of determination, the scheduled payment of principal and/or interest due on such Due Date with respect to such Pledged Security, determined in accordance with the assumptions specified in Section 1.3 hereof.

"Secured Parties": The meaning specified in the Granting Clauses hereof.

"Securities Act": The United States Securities Act of 1933, as amended.

"Securities Intermediary": The meaning specified in Section 6.15 hereof.

"Securities Lending Agreements": The meaning specified in Section 7.19 hereof.

"Securities Lending Collateral": The meaning specified in Section 7.19 hereof.

"Securities Lending Counterparty": The meaning specified in Section 7.19 hereof.

"Selling Institution": The seller of a Participation or, if applicable, its guarantor, which has a long-term senior unsecured debt rating of at least "A2" by Moody's and at least "A" by S&P at the time such Participation is committed to be acquired by the Issuer.

"Senior Class A Notes": The Class A-1LA Notes, the Class A-1LB Notes and the Class A-2L Notes.

"Senior Class Overcollateralization Ratio" With respect to a determination made as of any date of calculation, the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate (other than items of Equity Portfolio Collateral, which shall not be included as Portfolio Collateral) as of such date, *plus* (2) the sum of the Balance of Eligible Investments and cash in the Collection Account representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amount of the Senior Class A Notes (including for this purpose any Periodic Rate Shortfall Amounts with respect to such Class of Notes not paid when due, until such amounts, if any, are paid in full) as of such date.

"Senior Secured Loan": A loan that (i) is not (and by its terms is not permitted to become) subordinate in right of payment to any other debt for borrowed money incurred by the obligor under such loan and (ii) is secured by a valid first priority perfected security interest or lien on specified collateral securing the obligor's obligations under such Senior Secured Loan, which security interest or lien is not subordinate to the security interest or lien securing any other debt for borrowed money. For the avoidance of doubt, any second lien Portfolio Loan which has a Moody's obligation rating at least equal to the Moody's corporate family implied rating of such issuer, will be treated as Senior Secured Loan for the purposes of determining Moody's Priority Category Recovery Rate.

"Servicer": Highland Capital Management, L.P., unless and until a successor Person becomes the servicer pursuant to the provisions of the Servicing Agreement, and thereafter "Servicer" shall mean such successor Person.

"Servicer Entities": Collectively, the Servicer, entities affiliated with the Servicer or clients of the Servicer.

"Servicer Order" and "Servicer Request": A written order or request dated and signed in the name of the Servicer by an Authorized Officer of the Servicer.

"Servicing Agreement": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, and if amended as permitted therein and in Section 14.1(f), as so amended.

"Servicing Fee Portion": 100% minus (a) for any Payment Date prior to the two-year anniversary of the Closing Date, the Class II Preferred Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage selected by the Servicer in its sole discretion.

"Share Register": The register maintained under the Paying and Transfer Agency Agreement for the Preferred Shares and any other shares of the Issuer.

"Share Registrar": Maples Finance Limited or any successor thereto appointed by the Issuer.

"Special Redemption": A redemption of the Notes pursuant to Section 9.4 hereof.

"Special Redemption Date": The Payment Date during the Revolving Period fixed by the Issuer for a Special Redemption.

"Special Redemption Price": When used with respect to a Special Redemption, an amount equal to the principal amount of the Notes being redeemed (or, in the case of the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes, first to pay any Periodic Rate Shortfall Amount with respect to such Notes and then to pay principal).

"Standard & Poor's" or "S&P": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

"Standard & Poor's CDO Monitor": The dynamic, analytical computer model developed by Standard & Poor's and used to estimate default risk of Portfolio Collateral and provided to the Servicer, the Issuer and the Trustee on or before the Effective Date, as it may be modified by Standard & Poor's in connection with its confirmation of the ratings of the Notes following the Closing Date.

"Standard & Poor's CDO Monitor Test": A test that is satisfied if, after giving effect to the sale of an item of Portfolio Collateral or the purchase of an item of Portfolio Collateral (or both), as the case may be (i) the S&P Loss Differential of the Proposed Portfolio is positive or (ii) the S&P Loss Differential of the Proposed Portfolio is greater than the S&P Loss Differential of the Current Portfolio.

"Standard & Poor's Industry Category": When used with respect to an item of Portfolio Collateral, any of the industry categories established by Standard & Poor's set forth in Schedule B hereto, and any additional categories that may be subsequently established by Standard & Poor's.

"Standard & Poor's Preferred Format": A Microsoft Excel file (or such other format agreed by Standard & Poor's) of the Standard & Poor's CDO Monitor input file and, with respect to each item of Portfolio Collateral, the name of each obligor thereon, the CUSIP number thereof (if applicable) and the Standard & Poor's Industry Category thereof.

"Standard & Poor's Rating": The rating determined in accordance with the methodology described in Schedule D.

"S&P Break-Even Loss Rate": At any time, the maximum percentage of defaults which the Current Portfolio or the Proposed Portfolio, as applicable, can sustain, as determined by S&P through application of the Standard & Poor's CDO Monitor, which, after giving effect to S&P's assumptions on recoveries and timing and to the priority of payments, will result in

sufficient funds remaining for the principal repayment of the Notes in full and the timely payment, as applicable, of interest on each Class of Notes. The Issuer shall cause the relevant version of the Standard & Poor's CDO Monitor Test provided by S&P to be run to determine the appropriate S&P Break-Even Loss Rate.

Standard & Poor's CDO Monitor	**Weighted Average Spread**	**S&P Minimum Average Recovery Rate**			
		AAA	**AA**	**A**	**BBB**
1	255	46.48%	47.69%	48.98%	51.21%
2	255	45.80%	47.01%	48.30%	50.53%
3	255	47.90%	48.91%	49.98%	51.84%
4	245	45.80%	47.01%	48.30%	50.53%
5	245	46.48%	47.69%	48.98%	51.21%
6	265	45.80%	47.01%	48.30%	50.53%
7	265	45.50%	46.71%	48.00%	50.24%

"S&P Loss Differential": At any time, the rate calculated by subtracting the S&P Scenario Loss Rate from the S&P Break-Even Loss Rate at such time.

"S&P Minimum Average Recovery Rate": The number obtained by summing the products obtained by multiplying the Principal Balance of each item of Portfolio Collateral (excluding Defaulted Portfolio Collateral) by the Applicable Percentage (according to the S&P Priority Category) applicable to such item of Portfolio Collateral as set forth in the definition above, dividing such sum by the Aggregate Principal Amount of all Portfolio Collateral (excluding Defaulted Portfolio Collateral), and rounding up to the fourth decimal place.

"S&P Priority Category": Senior secured Portfolio Loans and Debt Securities, second lien Portfolio Loans, senior unsecured Portfolio Loans and Debt Securities, subordinated Portfolio Loans and Debt Securities, DIP Loans and Synthetic Securities.

"S&P Priority Category Recovery Rate": For any item of Portfolio Collateral, the percentage specified in the definition of the term "Applicable Percentage" opposite the S&P Priority Category of item of Portfolio Collateral.

"S&P Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with a "AAA" rating of the Class A-1LA Notes, the Class A-1LB Notes and the Class X Notes, a "AA" rating of the Class A-2L Notes, a "A" rating of the Class A-3L Notes, a "A-" rating of the Class A-4L Notes and a "BBB" rating of the Class B-1L Notes, in each case by Standard & Poor's, determined by application of the Standard & Poor's CDO Monitor at such time.

"Subsequent Delivery Date": A date fixed by the Issuer for the delivery of an item of Portfolio Collateral to be included in the Trust Estate after the Effective Date.

"Substitute Portfolio Collateral": An item of Portfolio Collateral that is Delivered to the Trustee under this Indenture as security for the Notes in accordance with Section 12.4 hereof.

"Supplemental Fee Amount": The amount used to pay the Supplemental Servicing Fee pursuant to clause FOURTEENTH(a) of Section 11.1(c)(i) and clause FOURTEENTH(a) of Section 11.(d).

"Supplemental Servicing Fee": For any Payment Date, an amount equal to the product of (a) the Supplemental Fee Amount for such Payment Date and (b) the Servicing Fee Portion for such Payment Date.

"Suspension Trigger Event": As of any date of determination, (I) the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of such date, calculated in accordance with the Overcollateralization Ratio Adjustment less the Overcollateralization Haircut Amount, if any, plus (2) the sum of the Balance of Eligible Investments and cash in the Collection Account, representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amount of the Class A-1L Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to such Classes of Notes not paid when due, until such amounts, if any, are paid in full) as of such date, is than (II) 110%.

"Synthetic Security": Any (I) U.S. dollar denominated swap transaction, security issued by a trust or similar vehicle or other asset purchased from or entered into by the Issuer with a Synthetic Security Counterparty the returns on which (as determined by the Servicer) are linked to the credit performance of a Reference Obligation, but which may provide for a different maturity, payment dates or interest rate or interest rate basis than such Reference Obligation; *provided* that, either (A) (i) such Synthetic Security will not require the Issuer to make any payment to the Synthetic Security Counterparty after the initial purchase thereof by the Issuer, (ii) the ownership of such Synthetic Security, based on the Servicer's determination (which may include consultation with counsel to the Issuer), is not expected to subject the Issuer to withholding tax, (iii) such Synthetic Security terminates on or prior to the redemption or repayment in full of the Reference Obligation, (iv) the principal amount of such Synthetic Security is equal to the principal amount of the Reference Obligation, (v) all scheduled payments made pursuant to the terms of such Synthetic Security are at a fixed or floating interest rate based on an interest rate used for borrowings or financings in domestic or international markets or are linked to the payments on one or more Reference Obligations (which payments are themselves at a fixed interest rate or such floating rate), (vi) the minimum coupon on such Synthetic Security is 6.0%, if such Synthetic Security is fixed rate, (vii) the minimum margin on such Synthetic Security is 0.60%, if such Synthetic Security is floating rate, (viii) the terms of such Synthetic Security provide that upon maturity, acceleration or any early termination of such Synthetic Security, the Synthetic Security Counterparty of such Synthetic Security must deliver the Reference Obligation or an amount greater than or equal to the then par amount of the Reference

Obligation, except (a) the Issuer may accept an amount equal to the fair market value of the Reference Obligation if the Servicer chooses to terminate such Synthetic Security in connection with the sale of such Synthetic Security as Credit Risk Portfolio Collateral, Credit Improved Portfolio Collateral, Defaulted Portfolio Collateral or Equity Portfolio Collateral or pursuant to the right of the Issuer to sell Portfolio Collateral which is not Credit Improved Portfolio Collateral, Credit Risk Portfolio Collateral, Defaulted Portfolio Collateral or Equity Portfolio Collateral or (b) following a credit event with respect to the Reference Obligation, the Issuer may accept an amount equal to the fair market value of such Reference Obligation; *provided, however*, that this clause (viii) shall not apply to an acceleration or early termination upon the exercise of any put or call provision of the Synthetic Security or any Reference Obligation, (ix) upon the exercise of any put or call provision of the Synthetic Security or any Reference Obligation, the holder of such Synthetic Security will receive a Reference Obligation or an amount greater than or equal to the par amount of such Reference Obligation, plus, if the Reference Obligation is a bond, accrued interest, (x) such Synthetic Security will not constitute a commodity option, leverage transaction or futures contract that is subject to the jurisdiction of the U.S. Commodity Futures Trading Commission, (xi) the acquisition of such Synthetic Security would not cause the Issuer to be "engaged in a U.S. trade or business" for Federal income tax purposes or otherwise cause the Issuer (or the beneficial owners thereof) to become subject to U.S. net income tax, (xii) the Underlying Instrument with respect to such Synthetic Security is governed by the laws of the State of New York, contains a non-petition clause and a limited recourse clause, each as against the Issuer, and is documented with a standard ISDA form master agreement, as modified by appropriate schedules and confirmations and (xiii) total payments including termination payments may not exceed the notional amount of such Synthetic Security; *provided* that if any Reference Obligation delivered pursuant to any Synthetic Security does not constitute Portfolio Collateral and would cause a breach of any concentration limitation, such Reference Obligation shall be deemed Equity Portfolio Collateral, and (B) (i) such Synthetic Security is a Form-Approved Synthetic Security or (ii) the Rating Condition has been satisfied with respect to the purchase of such Synthetic Security; *provided further*, that any Synthetic Security shall be positively indexed to the related Reference Obligation on no more than a one-to-one basis and (II) any Default Swap.

"Synthetic Security Counterparty": An entity which is required to make payments to the Issuer on a Synthetic Security to the extent that the issuer of the related Reference Obligation makes payments thereon pursuant to the terms of such Synthetic Security and any Default Swap Counterparty.

"Tax Event Redemption": A redemption of the Notes in whole pursuant to Section 9.5 hereof.

"Tax Event Redemption Date": The Payment Date fixed by the Issuer for a Tax Event Redemption.

"Tax Event Redemption Price": An amount equal to the aggregate of (i) the Aggregate Principal Amount of each Class of Notes as of the Tax Event Redemption Date and (ii) the applicable Cumulative Interest Amount with respect to each Class of Notes as of the Tax Event Redemption Date.

"Temporary Regulation S Global Notes": With respect to any Notes issued to Non-U.S. Persons that will be represented by a temporary global note, the temporary global note substantially in the form attached hereto as Exhibits A-1L-1, A-2L-1, A-3L-1 and B-1L-1.

"Total Optional Redemption": An Optional Redemption in whole, in accordance with the terms specified herein.

"Transaction Documents": This Indenture, the Paying and Transfer Agency Agreement, the Servicing Agreement and the Collateral Administration Agreement.

"Transfer Agent": Any transfer agent appointed by the Issuer.

"Transferor Certificates": Collectively, the Regulation S Transferor Certificate and the Rule 144A Transferor Certificate.

"Trust Estate": The meaning specified in the Granting Clauses of this Indenture.

"Trust Termination Date": The date on which the obligations of the Issuer hereunder are terminated as set forth in Section 4.1 or Section 9.11 hereof.

"Trustee": As defined in the first sentence of this Indenture.

"Trustee Administrative Expenses": With respect to any Payment Date (including without limitation the Final Maturity Date), fees, expenses or other amounts due or accrued and payable to the Trustee for the Due Period relating to such Payment Date, including, but not limited to, all amounts payable to the Trustee under Section 6.7 hereof and all fees and expenses pursuant to duties performed as Collateral Administrator and Paying and Transfer Agent, and as paying and transfer agent of Investor Corp., *provided* such payment pursuant to clause FIRST of Section 11.1(b) shall not exceed on such Payment Date one-quarter of 0.0275% of the Aggregate Par Amount as of the Calculation Date relating to such Payment Date (such amount subject to a minimum of U.S.$74,000 per annum), plus U.S.$7,500 per annum for payments of expenses and certain other amounts under Section 6.7, if any.

"Trustee Fee Letter Agreement": The Trustee fee letter agreement, dated as of May 1, 2006.

"Trustee Payment-Related Event of Default": An Event of Default caused solely by and based solely upon a failure to pay any amounts owing to the Trustee or the Paying and Transfer Agent pursuant to Section 6.7 hereof or to the Paying and Transfer Agent pursuant to Section 11 of the Paying and Transfer Agency Agreement (other than the amount payable to the Trustee as its fee (but not expenses) under the Trustee Fee Letter Agreement).

"UCC": The New York Uniform Commercial Code.

"Underlying Instrument": With respect to any item of Portfolio Collateral, any loan participation agreement, loan assignment agreement, indenture, pooling and servicing agreement, trust agreement, instrument, or other agreement pursuant to which such item of Portfolio Collateral has been created or issued or of which the holders of such item of Portfolio

Collateral are the beneficiaries, and any instrument evidencing or constituting such item of Portfolio Collateral (in the case of Portfolio Collateral evidenced by or in the form of instruments).

"Underlying Loan and Security Agreement": Any agreement (other than an Underlying Instrument) which governs the terms of or guarantees or secures the obligations represented by any Portfolio Collateral or of which the holders of such Portfolio Collateral are the beneficiaries (which in the case of a Portfolio Loan which is a Participation shall include the loan and security documentation with respect to the underlying loan).

"Unit": An item of Portfolio Collateral with a warrant, profit participation or other equity-based feature (including but not limited to convertible bonds) included as a component thereof which otherwise meets the requirements for Portfolio Collateral; *provided* that (i) the value of such warrant, profit participation or other equity-based feature at the time of purchase, as determined by the Servicer in good faith, is less than 2% of the purchase price of such item of Portfolio Collateral and (ii) such warrant, profit participation or other equity-like feature at the time of purchase shall not, relate to or be exchangeable for, margin stock.

"United States Regulations": 31 C.F.R. Part 357, Subpart B; 12 C.F.R. Part 615, Subparts O, R and S; 12 C.F.R. Part 987; 12 C.F.R. Part 1511; 24 C.F.R. Part 81, Subpart H; 31 C.F.R. Part 354; 18 C.F.R. Part 1314; and 24 C.F.R. Part 350.

"United States Security Entitlement": A Security Entitlement as defined in a United States Regulation.

"Unregistered Securities": The meaning specified in Section 5.18(c) hereof.

"Unscheduled Principal Proceeds": Collateral Principal Collections received by the Issuer from an unscheduled prepayment, in whole or in part, by the obligor of an item of Portfolio Collateral prior to the stated maturity date of such item of Portfolio Collateral, including without limitation, any Collateral Disposition Proceeds received from the sale of any item of Portfolio Collateral received in an Offer, Exchange Offer or similar tender, whether such tender required action on the part of the Issuer or otherwise.

"USA PATRIOT Act": The Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

"U.S. Person":

(i) (a) a citizen of the United States;

(b) a natural person who is a resident of the United States or a resident alien of the United States as defined by section 7701(b) of the Code;

(c) any partnership (unless otherwise provided in the regulations), corporation or other entity created, organized or incorporated in or under the laws of the United States, its states, territories or possessions, or the District of Columbia;

(d) any estate or trust as defined by section 7701(a)(30)(D) and (E) of the Code, respectively; or

(ii) as defined in Regulation S, as the context may require.

"Weighted Average Coupon": The amount (rounded up to the nearest 0.001%) determined by summing the products obtained by multiplying, for each item of Fixed Rate Portfolio Collateral then included in the Trust Estate (other than items of Defaulted Portfolio Collateral), the Principal Balance of such item of Portfolio Collateral and the stated rate of interest of such item of Portfolio Collateral and then dividing such sum by the Aggregate Principal Amount of all of the Fixed Rate Portfolio Collateral included in the Trust Estate (other than items of Defaulted Portfolio Collateral) as of such date of determination.

"Weighted Average Coupon Test": A test that will be satisfied by application of the Collateral Quality Matrix, after giving effect to any Coupon Adjustment.

"Weighted Average Life": As of any date of determination, the amount determined by summing the products obtained by multiplying, for each item of Portfolio Collateral (other than items of Defaulted Portfolio Collateral) then included in the Trust Estate, the Principal Balance of such item of Portfolio Collateral and the Average Life (as such term is defined below) of such item of Portfolio Collateral as of such date of determination and then dividing such sum by the Aggregate Principal Amount of all of the Portfolio Collateral included in the Trust Estate as of such date of determination. For any item of Portfolio Collateral (other than items of Defaulted Portfolio Collateral), the "Average Life" shall be equal to the number of years obtained by dividing (a) the Principal Balance of such item of Portfolio Collateral into (b) the sum of the products obtained by multiplying (i) the amount of each of the remaining, required principal payments on such item of Portfolio Collateral by (ii) the number of years (calculated to the nearest one-twelfth) that will have elapsed between such date of determination and the making of such payment.

"Weighted Average Life Requirement": A test that will be satisfied on any date of determination if the Weighted Average Life on such date of all items of Portfolio Collateral (other than items of Defaulted Portfolio Collateral) is equal to or less than the number of years set forth in Schedule I hereto opposite the period set forth in Schedule I hereto in which such test is being measured. Notwithstanding the foregoing, the Weighted Average Life may vary from the restrictions set forth above, if the Rating Agencies have confirmed such variance would not result in a withdrawal or downgrade of any of the then current ratings assigned by them to the Notes.

"Weighted Average Margin": The amount (rounded up to the nearest 0.001%) equal to (i) the sum of the products obtained by multiplying the margin over Collateral LIBOR on each item of Floating Rate Collateral (other than items of Defaulted Portfolio Collateral) as of the date of calculation (which will be determined for items of Floating Rate Collateral that do not bear interest based on Collateral LIBOR by expressing the current interest rate on such Floating Rate Collateral as a margin above or below three-month LIBOR on the date of determination, which margin will be expressed as a negative number if such current interest rate is lower than three-month LIBOR) by the Principal Balance of such item of Floating Rate Collateral (other

than items of Defaulted Portfolio Collateral) as of such date, divided by (ii) the Aggregate Principal Amount of all such Floating Rate Collateral (other than items of Defaulted Portfolio Collateral) on such date. For purposes of calculating the Weighted Average Margin for any Delayed Drawdown Loan or Revolving Loan, the principal balance representing the funded portion will be multiplied by the margin above Collateral LIBOR and the principal balance representing the unfunded portion will be multiplied by the commitment fee related thereto. If an item of Floating Rate Portfolio Collateral does not provide for Collateral LIBOR, the margin for this purpose shall be equal to the then applicable interest rate minus then current LIBOR. If an item of Floating Rate Portfolio Collateral has a Collateral LIBOR floor, the excess of such floor rate over Collateral LIBOR will be added to the margin above Collateral LIBOR for purposes of calculating the Weighted Average Margin of such item of Floating Rate Portfolio Collateral.

"Weighted Average Margin Test": A test that will be satisfied by application of the Collateral Quality Matrix, after giving effect to any Coupon Adjustment.

Section 1.2. Other Definitional Provisions.

All references in this instrument to designated "Annexes," "Articles," "Sections," "Subsections" and other subdivisions are to the designated Annexes, Articles, Sections, Subsections and other subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Annex, Article, Section, Subsection or other subdivision. Unless the context otherwise requires, terms defined in the UCC and not otherwise defined in this Indenture shall have the meanings set forth in the UCC.

Any reference herein to a "beneficial interest" in a security also shall mean, unless the context otherwise requires, a security entitlement with respect to such security, and any reference herein to a "beneficial owner" or "beneficial holder" of a security also shall mean, unless the context otherwise requires, the holder of a security entitlement with respect to such security.

Section 1.3. Assumptions as to Portfolio Collateral and Trust Estate.

Except as otherwise expressly set forth herein, in connection with all calculations required to be made pursuant to this Indenture with respect to Scheduled Distributions on any Pledged Security, or any payments on any other assets included in the Trust Estate, and with respect to the income that can be earned on Scheduled Distributions on such Pledged Securities and on any other amounts that may be received for deposit in the Collection Account, the provisions set forth in this Section 1.3 shall apply.

All calculations with respect to Scheduled Distributions on the Pledged Securities shall be made on the basis of information as to the terms of each such Pledged Security and upon accounting of payments, if any, received on such Pledged Security that are furnished by or on behalf of the issuer of such Pledged Security and such information or report may be conclusively relied upon in making such calculations.

For each Due Period, the Scheduled Distributions on any Pledged Security (excluding any item of Defaulted Portfolio Collateral and Equity Portfolio Collateral, as to which Scheduled Distributions shall be assumed to be zero) shall be the amount required to be paid (including coupon payments, accrued interest, scheduled principal payments, if any, by way of sinking fund payments which are assumed to be on a *pro rata* basis or other scheduled amortization of principal (excluding any optional redemption), return of principal, and redemption premium, if any) that, if paid as scheduled, will be available in the Collection Account at the end of such Due Period. For purposes of calculating interest on Pledged Securities that have a rate of interest which varies with an objective index, the interest to be received thereon shall be assumed to be equal to the interest that would be received on such Pledged Security if the rate of interest accruing on such Pledged Security on the date of determination were to remain constant for each succeeding Due Period.

Each Scheduled Distribution with respect to a Pledged Security shall be assumed to be received on the applicable Due Date, and each such Scheduled Distribution shall be assumed to be immediately deposited in the Collection Account and to earn interest at the Assumed Interest Rate. All funds assumed to earn interest as provided herein shall be assumed to continue to earn interest at the applicable rate until the date on which they are required to be available in the Collection Account for application, in accordance with the terms hereof, to payment of principal of or interest on the Notes or other amounts payable or otherwise for application in accordance with the terms of this Indenture.

Notwithstanding anything to the contrary contained in this Indenture if the Trustee receives an Issuer Order or Issuer Request and also receives a Servicer Order or Servicer Request with respect to the same subject matter, the Issuer Order or Issuer Request, as the case may be, shall supersede any such Servicer Order or Servicer Request and be the controlling order or request hereunder.

ARTICLE II

THE NOTES

Section 2.1. Forms Generally.

(a) The Notes and the Trustee's certificate of authentication thereon shall be in substantially the forms required by this article with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may, consistently herewith, be determined by the Authorized Officer of the Issuer executing such Notes as evidenced by such Authorized Officer's execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

(b) Regulation S Notes. The Class A-1L Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Class X Notes initially sold to Non-U.S. Persons in "offshore transactions" (within the meaning of Regulation S) shall be represented initially by single global notes (the "Temporary Regulation S Global Notes") in fully

registered form without coupons, authenticated and delivered in substantially the forms attached hereto as Exhibit A-1L-1, Exhibit A-2L-1, Exhibit A-3L-1, Exhibit B-1L-1 and [Exhibit X-1], respectively. The Issuer shall deposit such Notes on behalf of the subscribers for such Notes with the Trustee as custodian (in such capacity, the "Custodian") for the Depository, registered in the name of a nominee of the Depository for the accounts of each of the Clearance Systems, for credit by the Clearance Systems to the respective accounts designated by the subscribers of such Notes (or to such other accounts as they may direct) at each of the Clearance Systems. The Temporary Regulation S Global Notes shall be exchanged for interests in the Permanent Regulation S Global Notes as set forth below. The Permanent Regulation S Global Notes shall be substantially in the form set forth as Exhibit A-1L-2, Exhibit A-2L-2, Exhibit A-3L-2, Exhibit B-1L-2 and [Exhibit X].

After the expiration of the Distribution Compliance Period beneficial interests in the Temporary Regulation S Global Note of each Class shall be exchanged for a Permanent Regulation S Global Note for such Class pursuant to and as provided below.

Without unnecessary delay but in any event prior to the termination of the Distribution Compliance Period, the Issuer shall deliver to the Trustee or the Authenticating Agent the Permanent Regulation S Global Notes executed by the Co-Issuers. Upon the termination of the Distribution Compliance Period, any Classes of Temporary Regulation S Global Notes shall be surrendered by the Custodian to the Trustee, in each case as the Issuer's agent for such purpose (or, at the Authenticating Agent's option, the Custodian shall be instructed by the Authenticating Agent or the Trustee to endorse each such Temporary Regulation S Global Note to reduce the principal amount thereof), to be exchanged, in whole or from time to time in part, for a Permanent Regulation S Global Note without charge and the Authenticating Agent shall authenticate and deliver to the Custodian for delivery in exchange for each such Temporary Regulation S Global Note or the portions thereof to be exchanged, an equal aggregate principal amount of a Permanent Regulation S Global Note, as shall be specified by the Custodian; *provided that*, upon such presentation by the Custodian: (i) the Trustee receives a certificate substantially in the form set forth in Exhibit F attached hereto, and signed by the respective Clearance System as to the portions of each Temporary Regulation S Global Note held for the respective accounts of such Clearance System, that it has received from each beneficial owner of the portion of each Temporary Regulation S Global Note then to be exchanged, written certification substantially to the effect set forth in Exhibit G attached hereto, with such changes therein as shall be approved by the Issuer, (ii) none of the Trustee or any Paying Agent have actual knowledge, nor have they received notification from the Issuer with respect to the original issuance and distribution of the Global Notes that such Person has actual knowledge, that such certificate is false, and (iii) the Trustee and any Paying Agent do not have a United States address as the address for payment to any Holder of the Permanent Regulation S Global Note issuable upon such exchange. Notwithstanding the foregoing, in the event of redemption in whole or acceleration of all or any part of the Notes prior to the termination of the Distribution Compliance Period, the Permanent Regulation S Global Notes will not be issuable in respect of the Temporary Regulation S Global Note or portion thereof, and payment thereon will be made as provided in the Temporary Regulation S Global Note. Any Class of Note in the form of a Temporary Regulation S Global Note presented to the Trustee for a Permanent Regulation S Global Note shall be endorsed by the Trustee to reduce the principal amount

thereof by the amount so exchanged, and shall then be returned to the Custodian, pending exchange of the remaining balance thereof pursuant to the terms hereof.

On each Payment Date, if any, that falls on or prior to the date on which all Temporary Regulation S Global Notes shall have been exchanged for Permanent Regulation S Global Notes (the "Exchange Date"), interest, if any, and principal on the Temporary Regulation S Global Notes shall be paid to the Custodian acting on behalf of the Clearance System for the benefit of persons for whom the Clearance System holds the Temporary Regulation S Global Notes on each such Payment Date to the extent the Clearance System has delivered a certificate or certificates, appropriately completed and signed, in substantially the form set forth in Exhibit F attached hereto, which certificate or certificates shall be dated the relevant Payment Date and shall be delivered to the Custodian.

The Issuer will obtain from each Clearance System an agreement that it will credit principal and interest, if any, as of each Payment Date that falls on or prior to the termination of the Distribution Compliance Period, received in respect of each Temporary Regulation S Global Note to the respective accounts of the persons for whom the Clearance System holds a Temporary Regulation S Global Note on each such Payment Date, upon, and only upon, receipt of certificates from such account holders in substantially the form set forth in Exhibit G attached hereto to be dated on or before each relevant Payment Date (copies of such form being available from the offices of Clearstream at 67, Boulevard Grande-Duchesse Charlotte, Luxembourg, the offices of Euroclear at 1 Boulevard du Roi Albert II, B-1210 Brussels, Belgium, and each other Paying Agent of the Issuer).

Upon any such exchange of a portion of any Temporary Regulation S Global Note for a Permanent Regulation S Global Note, the Custodian shall endorse (or, as provided above, the Trustee shall instruct the Custodian) such Temporary Regulation S Global Note to reflect the reduction of the principal amount evidenced thereby.

(c) Rule 144A Global Notes. The Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Class X Notes initially sold to U.S. Persons (within the meaning of Rule 144A) shall be represented by single global notes (the "Rule 144A Global Notes") in fully registered form without coupons, authenticated and delivered in substantially the forms attached hereto as Exhibit A-1L-3, Exhibit A-2L-3, Exhibit A-3L-3, Exhibit B-1L-3 and [Exhibit X-1] respectively, which the Issuer shall deposit on behalf of the subscribers for such Notes with the Custodian for the Depository and registered in the name of Cede & Co., the nominee of DTC. The Aggregate Principal Amount of each Rule 144A Global Note may from time to time be increased or decreased by adjustments made on the records of the Custodian for DTC or its nominees, as the case may be.

(d) Book-Entry Provisions. This Section 2.1(d) shall apply only to Regulation S Global Notes or Rule 144A Global Notes ("Global Notes") deposited with or on behalf of the Depository. On or prior to the Closing Date, the Issuer shall provide to the Trustee or Authenticating Agent (as applicable) an Issuer Order setting forth the amount of Notes (if any) to be issued on the Closing Date in the form of Temporary Regulation S Global Notes and Rule 144A Global Notes for each Class. With respect to the Notes, a Temporary Regulation S Global

Note may be initially issued for each Class with an outstanding principal balance of zero (and the same may be reduced to zero at any time during the Distribution Compliance Period without cancellation).

(e) Definitive Notes. If at any time (including without limitation during the Distribution Compliance Period) (i) the Temporary Regulation S Global Notes or the Permanent Regulation S Global Notes or any of them become immediately due and repayable pursuant to Article Five hereof or (ii) any of DTC, Euroclear or Clearstream (A) is closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or (B) announces an intention permanently to cease business and no alternative clearance system satisfactory to the Issuer is available or (iii) as a result of any amendment to, or change in, the laws or regulations of the Cayman Islands or of any authority therein or thereof having power to tax or in the interpretation or administration of such laws or regulations which becomes effective on or after the Closing Date, the Issuer or any Paying Agent is or will be required to make any deduction or withholding from any payment in respect of the Notes which would not be required were the Notes in definitive registered form or (iv) the Issuer so elects by notice to the Noteholders and Euroclear or Clearstream, as the case may be, does not object (as determined by the Issuer), then the Issuer will issue Definitive Notes in exchange for and to the extent of such Global Notes within 30 days of the occurrence of the relevant event set forth in (i), (ii), (iii) or (iv) above.

If at any time (i) the Notes or any of them become immediately due and payable following an Event of Default hereunder or (ii) DTC notifies the Issuer or the Trustee in writing that it is unwilling or unable to discharge properly its responsibilities as a depository with respect to the Rule 144A Global Notes or it ceases to be a "clearing agency" registered under the Exchange Act, and the Issuer is unable to locate a qualified successor within 90 days after such notice, then the Issuer will issue Definitive Notes in exchange for and to the extent of such Rule 144A Global Notes within 30 days of the occurrence of the relevant event set forth in (i) or (ii) above.

The Issuer shall notify the Trustee forthwith upon the occurrence of any of the events referred to in the two immediately preceding paragraphs and the Issuer shall, unless the Trustee agrees otherwise, promptly give notice thereof and of its obligation to issue Definitive Notes to the Noteholders. Upon giving such notice, the Issuer promptly shall cause the Custodian, as the case may be, to present forthwith for exchange and surrender such Global Note to the Trustee for cancellation, together with appropriate exchange, registration, payment and delivery instructions (identifying according to its records the beneficial holders to whom, and in the amounts, the Definitive Notes are to be registered and delivered), upon which the Trustee shall be entitled to rely conclusively. The Issuer shall prepare, execute and deliver to the Trustee at its specified office a sufficient number of duly executed Definitive Notes not later than the 20th day following the date of such notice, and the Trustee shall then promptly authenticate and deliver the appropriate number and amount of such Definitive Notes in accordance with the instructions received from the Custodian.

(f) Form of Notes. The Notes shall be typed, printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner, all as

determined by the Authorized Officers of the Co-Issuers, as applicable, executing such Notes, as evidenced by the Authorized Officers' execution of such Notes.

Section 2.2. Authorized Amount.

The aggregate principal amount of Class A-1LA Notes, the Class A-1LB Notes, Class A-2L Notes, Class A-3L Notes, Class A-4L Notes, Class B-1L Notes and Class X Notes that may be authenticated and delivered under this Indenture is limited to $538,000,000, $96,000,000, $76,000,000, $36,500,000, $10,000,000, $21,000,000 and $14,000,000, respectively, except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.5, 2.6 or 8.5 hereof.

Section 2.3. Denominations; Extension of Revolving Period and Final Maturity.

(a) Each Class of the Notes shall be issuable on the Closing Date in the forms set forth herein, without coupons, in minimum denominations of $200,000 and integral multiples of $1 in excess thereof (in each case expressed in terms of the stated or principal amounts thereof, as the case may be, at the Closing Date).

(b) The Issuer, if directed by the Board Resolution of the Issuer at the request of the Servicer, shall be entitled on each Extension Effective Date to extend the Revolving Period to the applicable Extended Revolving Period End Date up to a maximum of four times (so that the Notes can only be extended to 2037) if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.3, (ii) the Extension Conditions set forth in Section 2.3(d) are satisfied, (iii) the Issuer has given written notice to the Trustee of its election to extend the Revolving Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date and (iv) no Event of Default has occurred and is continuing. If the Extension Conditions are satisfied, the Final Maturity Date of the Notes (other than the Class X Notes) shall be automatically extended to the related Extended Final Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preferred Shares (other than as may be required pursuant to the Extension Conditions) or amendment or supplement to this Indenture or the Paying and Transfer Agency Agreement (the "Maturity Extension"); *provided* that the Issuer will not be permitted to effect more than four Maturity Extensions. The Final Maturity Date of the Class X Notes is not subject to extension.

(c) In the case of a Maturity Extension, any Holder or Beneficial Owner of Notes (other than Class X Notes) or Preferred Shares wishing to sell such Notes or Preferred Shares to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.3(d) (such Notes and Preferred Shares as to which an Extension Sale Notice has been duly given, "Extension Sale Securities"). The Class X Notes are not subject to sale in connection with a Maturity Extension and the maturity of the Class X Notes is not subject to extension. Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be

purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(d) The Maturity Extension shall be effective only if the following conditions (the "Extension Conditions") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions herein, in the Indenture and the Preferred Share Paying and Transfer Agency Agreement immediately after such purchase and the legends on such Notes and Preferred Shares and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) either (A) the Class B-1L Overcollateralization Ratio is at least 107.5% and the Collateral Quality Tests are satisfied as of the related Extension Determination Date and the Interest Coverage Test was satisfied on the immediately preceding Payment Date, the rating of each Class of Notes by Moody's has not been downgraded, withdrawn or qualified from that in effect on the Closing Date (unless it subsequently has been reinstated to the rating assigned on the Closing Date) or (B) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's); and

(iv) (A) the Holders of 100% of the Outstanding Aggregate Principal Amount of the Class A-1LA Notes have delivered the Extension Sale Notice in the Extension Sale Notice Period or (B) if the Holders of 100% of the Aggregate Outstanding Amount of the Class A-1LA Notes fail to deliver an Extension Sale Notice pursuant to the preceding clause (A), either (x) the Issuer, acting through the Servicer, notifies the Holders of the Class A-1LA Notes in writing not later than the last day of the Extension Sale Notice Period that such Class A-1LA Notes shall constitute "Extension Sale Securities" (as a result of which such Class A-1LA Notes must be purchased by an Extension Qualifying Purchaser) or (y) the Holders of 100% of the Aggregate Outstanding Amount of the Class A-1LA Notes have consented in writing to the Maturity Extension not later than the last day of the Extension Sale Notice Period.

The Issuer, the Trustee and, by its acceptance of the Notes or Preferred Shares, each Holder or Beneficial Owner of Notes or Preferred Shares agrees that the Placement Agent shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such person or Holder of Notes or Preferred Shares (whether or not such Holder gave an Extension Sale Notice with respect to its Notes or Preferred Shares) or to any other person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(e) The following procedure shall apply to effect any extension of the Revolving Period or the Maturity Date, pursuant to Section 2.3:

(i) No later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Revolving Period (the "Extension Notice"), at the cost of the Issuer the Trustee shall deliver the Extension Notice to all Holders of Notes (other than the Class X Notes) and the Preferred Shares Paying and Transfer Agent (for forwarding to the Holders of the Preferred Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form set out in the Indenture, and shall request the Rating Condition for the Maturity Extension from S&P, if applicable. Such Extension Notice shall include a statement to the effect that (i) no Extension Sale Notice delivered after the end of the Extension Sale Notice Period shall be effective and (ii) only the Class A-1LA Notes for which an Extension Sale Notice has been delivered may be treated as Extension Sale Securities pursuant to the Extension Conditions (with the result that the Class A-1LA Notes must be purchased by an Extension Qualifying Purchaser).

(ii) Any Holder of Notes (other than the Class X Notes) or Preferred Shares may give irrevocable notice (an "Extension Sale Notice") within 30 days after the Trustee has delivered the Extension Notice (the "Extension Sale Notice Period") of its intention to sell its Notes or Preferred Shares to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of Notes or Preferred Shares that has not given such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Notes or Preferred Shares to an Extension Qualifying Purchaser in connection with the Maturity Extension.

(iii) If the Holders of 100% of the Outstanding Aggregate Principal Amount of the Class A-1LA Notes have not delivered the Extension Sale Notice to the Trustee by the 20th calendar day after the date of the Extension Notice, the Trustee shall notify the Holders of the Class A-1LA Notes of the date on which the Extension Sale Notice Period shall end and include a statement to the effect that (A) no Extension Sale Notice delivered after the end of the Extension Sale Notice Period shall be effective and (B) the Class A-1LA Notes for which no Extension Sale Notice has been delivered may be treated as Extension Sale Securities pursuant to clause (iv) of the Extension Conditions (as a result of which the Class A-1LA Notes must be purchased by an Extension Qualifying Purchaser).

(iv) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (A) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Notes or Preferred Shares in compliance with all transfer restrictions in the Indenture and the legends on such Notes or Preferred Shares and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (B) whether the requirements of clause (iii) of the Extension Conditions are satisfied as of the applicable Extension Determination

Date and (C) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(v) On each Extension Effective Date, the Maturity Extension shall become effective under the terms of the Indenture; *provided* that all Extension Conditions set forth above are satisfied. No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer, at the expense of the Co-Issuers, shall deliver a notice to all Holders of Notes and the Preferred Shares Paying and Transfer Agent (for forwarding to the Holders of Preferred Shares), the Servicer, the Initial Purchaser, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depositary for any Notes subject to the Maturity Extension. None of the Initial Purchaser, the Servicer or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

(vi) In the case of a Maturity Extension, each Holder of Notes (other than Extension Sale Securities) shall be entitled to receive an amount equal to the applicable Extension Bonus Payment to the extent of available funds and as provided in Section 11.1. Holders of the Preferred Shares shall not be entitled to receive any Extension Bonus Payment. The obligation to make any Extension Bonus Payment shall not be rated by Rating Agencies.

(f) The Extension Bonus Payment shall be payable to any applicable qualifying Beneficial Owners who have provided the Trustee with an Extension Bonus Eligibility Certification on or before the 5th Business Day prior to the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Final Maturity Date and the date of redemption of the Notes (other than the Class X Notes). Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder but are due and payable on the next Payment Date on which funds are due and payable. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Final Maturity Date and the date of redemption in full of the relevant Notes (other than the Class X Notes). Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes (other than the Class X Notes), to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

Section 2.4. Execution, Authentication, Delivery and Dating.

The Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Class X Notes shall be executed on behalf of the Issuer, by an Authorized Officer of each of the Issuer or the Co-Issuer,

as applicable. The signature of such Authorized Officers on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signature of an individual who was at any time the Authorized Officer of the Co-Issuers (as applicable) shall bind the applicable Co-Issuer, notwithstanding the fact that such individual has ceased to hold such office prior to the authentication and delivery of such Notes or did not hold such office at the date of issuance of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Class X Notes to the Trustee for authentication and the Trustee (or an Authenticating Agent on its behalf), upon Issuer Order, shall authenticate and deliver such Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee (or the Authenticating Agent) to or upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose hereunder shall be dated the date of their authentication.

Notes issued upon transfer, exchange or replacement of other Notes shall be issued in authorized denominations reflecting the original aggregate stated or principal amount of the Notes so transferred, exchanged or replaced, but shall represent only the stated or principal amount of the Notes so transferred, exchanged or replaced. If any Note is divided into more than one Note in accordance with this Article II, the stated or original principal amount of such Note shall be proportionately divided among the Notes delivered in exchange therefor and shall be deemed to be the aggregate stated or original principal amount of such subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Note a certificate of authentication, substantially in the form provided for herein, executed by the Trustee (or Authenticating Agent, as provided below) by the manual signature of one of its Authorized Officers, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Upon the request of the Issuer, the Trustee shall and, at the election of the Trustee, the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of Notes in connection with transfers and exchanges thereof hereunder as fully to all intents and purposes as though each such Authenticating Agent had been expressly authorized by this Indenture to authenticate the Notes; *provided that* any such appointment shall be upon terms and conditions reasonably acceptable to the Trustee (with respect to which the Trustee may require, among other things, appropriate indemnification for any damages, losses or reasonable costs arising from acts or omissions of such Authenticating Agent). For all purposes of this Indenture, the authentication of Notes by an Authenticating

Agent pursuant to this Section shall be deemed to be an authentication of such Notes "by the Trustee."

JPMorgan Chase Bank, National Association, is hereby appointed, at the request of the Issuer, as Authenticating Agent for purposes of authenticating Definitive Notes issued in exchange for beneficial interests in the Global Notes.

RSM Robson Rhodes LLP is hereby appointed, at the request of the Issuer, as the initial Irish Paying Agent with respect to the Notes.

Any corporation into which any Paying Agent, Transfer Agent or Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Paying Agent, Transfer Agent or Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Paying Agent, Transfer Agent or Authenticating Agent, shall be the successor of such Paying Agent, Transfer Agent or Authenticating Agent hereunder, without the execution or filing of any further act on the part of the parties hereto or such Paying Agent, Transfer Agent or Authenticating Agent or such successor corporation.

Any Paying Agent, Transfer Agent or Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Paying Agent, Transfer Agent or Authenticating Agent by giving written notice of termination to such Paying Agent, Transfer Agent or Authenticating Agent and the Issuer.

The Trustee shall pay to any Paying Agent, Transfer Agent or Authenticating Agent reasonable compensation and shall reimburse each Paying Agent, Transfer Agent or Authenticating Agent for expenses reasonably incurred by such Paying Agent, Transfer Agent or Authenticating Agent in the performance of its duties as a Paying Agent, Transfer Agent or Authenticating Agent, in each case as and to the extent agreed upon between the Trustee and such Paying Agent, Transfer Agent or Authenticating Agent; *provided that* if the appointment of such Paying Agent, Transfer Agent or Authenticating Agent is at the election or request of the Issuer, the Trustee's obligation to make such payments shall be limited to amounts for which it is entitled to be reimbursed pursuant to Section 6.7(b) or (c). The provisions of Section 6.5 shall be applicable to any Paying Agent, Transfer Agent or Authenticating Agent.

Section 2.5. Registration, Registration of Transfer and Exchange.

(a) The Issuer shall cause to be kept a register (the "Note Register") in which, subject to such reasonable procedures as it may prescribe, the Issuer shall provide for the registration of the Notes and the registration of transfers of the Notes. The Trustee is hereby appointed "Note Registrar" for the purpose of registering and transferring the Notes as herein provided. The Note Registrar shall supply all relevant documents to the Share Registrar necessary for the Share Registrar to maintain the Share Register accordingly and the Share Registrar shall be able to rely upon such information provided by the Note Registrar without any liability on its part. The Issuer will notify the Trustee of any Notes owned by or pledged to the Issuer or any of its Affiliates promptly upon the acquisition thereof or the creation of such

pledge. So long as an Event of Default shall be continuing, the Note Registrar shall promptly, upon the written request of a Noteholder or holder of a Preferred Share, but in no event later than five Business Days following such request, furnish such Noteholder or holder of a Preferred Share with a list of all other Noteholders, holders of Preferred Shares (as applicable); *provided that* the Note Registrar shall have no liability to any person for furnishing the Note Register to any Noteholder or holder of a Preferred Share. The Note Registrar shall, upon request, furnish a copy of the Note Register to the Trustee and the Servicer.

Subject to the provisions of paragraphs (b), (c), (d), (e), (f) and (k) of this Section 2.5, upon surrender for registration of transfer of any Note, the Issuer and the Co-Issuer (as applicable) shall execute, and the Trustee or the Authenticating Agent shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of the same Class, of any authorized denomination and of a like aggregate principal amount.

Subject to the provisions of paragraphs (b), (c), (d), (e), (f) and (k) of this Section 2.5, at the option of the Holder, Notes may be exchanged for other Notes of the same Class, in any authorized denominations and of a like aggregate stated or principal amount, upon surrender of the Notes to be exchanged at the office of the Trustee. Whenever any Notes are so surrendered for exchange, the Issuer and the Co-Issuer (as applicable) shall execute, and the Trustee or the Authenticating Agent shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive.

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

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Co-Issuers (as applicable) and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made to a Holder for any registration of transfer or exchange of Notes, but the Co-Issuers or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes.

(b) No Note may be sold or transferred (including, without limitation by pledge or hypothecation) unless such sale or transfer is exempt from the registration requirements of the Securities Act and is exempt under applicable state securities laws. No purported transfer of any interest in any Note or any portion thereof that is not made in accordance with this Section 2.5 shall be given effect by or be binding upon the Trustee or the Co-Issuers (as applicable) and any such purported transfer shall be null and void *ab initio* and vest in the transferee no rights against the Trustee, the Co-Issuers (as applicable) or the Trust Estate.

By its acceptance of a Note or a beneficial interest in a Note, each owner thereof will be deemed to have represented and agreed that transfer thereof is restricted and agrees that it

shall transfer such Note or beneficial interest in such Note, only in accordance with the terms of this Indenture and such Note and in compliance with applicable law.

The applicable rules, regulations and procedures utilized or imposed by any Clearance System or DTC (collectively, "Applicable Procedures") shall be applicable to the Global Notes insofar as and to the extent beneficial interests in such Global Notes are held by the agent members of or participants in Euroclear, Clearstream or DTC, respectively. Account holders or agent members of or participants in Euroclear, Clearstream and DTC shall have no rights under this Indenture with respect to such Global Notes, and DTC (or its nominee) as registered Holder of any Global Notes may be treated by the Co-Issuers, the Trustee, the Note Registrar, the Authenticating Agent and any other Paying Agent (and any agent of any of the foregoing) as the owner of such Global Notes for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Co-Issuers, the Trustee, the Note Registrar, the Authenticating Agent or any Paying Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or any Clearance System or impair, as between DTC, the Clearance System and its agent members or participants, the operation of customary practices governing the exercise of the rights of a Holder of any Notes. Requests or directions from, or votes of, DTC or any Clearance System with respect to any matter shall not be deemed inconsistent if made with respect to (or in separate proportions corresponding to) different beneficial owners. None of the Trustee, the Transfer Agent, the Note Registrar, the Authenticating Agent, nor the Paying Agent shall have any duty to monitor, maintain records concerning (or determine compliance with any of the restrictions on transfer set forth herein with respect to) owners of beneficial interests in the Global Notes. None of the Trustee, the Transfer Agent, the Note Registrar, the Authenticating Agent, nor the Paying Agent shall have any liability for the accuracy of the records of DTC or any Clearance System, or any actions or omissions of DTC or any Clearance System (or of the agent members of or participants in any Clearance System).

A Noteholder may transfer a Note or its beneficial interest in a Note only in accordance with the following provisions:

(i) Definitive Note to Temporary Regulation S Global Note. To the extent permitted by the Applicable Procedures and subject to the provisions of Section 2.5, if a Holder of a Definitive Note of any Class wishes at any time to transfer its beneficial interest in such Definitive Note to a Non-U.S. Person during the Distribution Compliance Period, such Holder shall, subject to the provisions of this Section 2.5, transfer its interest in such Definitive Note for an equivalent beneficial interest in the Temporary Regulation S Global Note of the same Class. Upon (A) the surrender to the Trustee for cancellation of the Definitive Notes representing the beneficial interest to be so transferred and (B) the receipt by the Trustee and the Co-Issuers of (1) an Investor Representation Letter from such Noteholder's transferee, (2) a Regulation S Transferor Certificate from such Noteholder, and (3) a written order in accordance with the Applicable Procedures containing information regarding the Euroclear or Clearstream account to be credited with the increase in the Regulation S Global Note and the name of such account, the Trustee shall cancel such Definitive Note and, concurrently with such cancellation, instruct the Euro Transfer Agent to adjust the Common Depository's position in the Temporary Regulation S Global Note of the same Class to reflect an increase of the

Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Temporary Regulation S Global Note equal to the Aggregate Principal Amount of the Definitive Note so cancelled. In the event of any partial transfer of an interest in a Definitive Note to a Temporary Regulation S Global Note, the Co-Issuers shall execute and provide to the Trustee, and the Trustee shall authenticate and return to the Holder, a Definitive Note evidencing the remaining balance thereof. After the Distribution Compliance Period, interests in any Definitive Notes may not be transferred or exchanged for interests in a Temporary Regulation S Global Note.

(ii) Definitive Note to Permanent Regulation S Global Note. If a Holder of a Definitive Note wishes at any time after the Distribution Compliance Period to transfer its interest in such Definitive Note to a Non-U.S. Person, such Holder shall, subject to the provisions of this Section 2.5, transfer its interest in such Definitive Note for an equivalent beneficial interest in such Permanent Regulation S Global Note of the same Class. Upon (A) the surrender to the Euro Transfer Agent located in London in the case of the Class B-2L Notes, and the Trustee in the case of any other Class of Notes, of the Definitive Note representing the interest to be so transferred, for cancellation and (B) the receipt by the Trustee and the Co-Issuers of (1) an Investor Representation Letter from such Noteholder's transferee, (2) a Regulation S Transferor Certificate from such Noteholder and (3) a written order in accordance with the Applicable Procedures containing information regarding the Euroclear or Clearstream account to be credited with the increase in the Regulation S Global Note and the name of such account, the Trustee shall cancel such Definitive Note, and, concurrently with such cancellation, in the case of the Class B-2L Notes, instruct the Common Depository and in the case of any other Class of Notes, instruct the Custodian to endorse the Permanent Regulation S Global Note to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Permanent Regulation S Global Note equal to the Aggregate Principal Amount of the Definitive Note so cancelled. In the event of any partial transfer of an interest in a Definitive Note to a Permanent Regulation S Global Note, the Co-Issuers or the Issuer, as applicable, shall execute and provide to the Trustee (or the Euro Transfer Agent located in London), and the Trustee (or the Euro Transfer Agent located in London) shall authenticate and return to the Holder, a Definitive Note evidencing the remaining balance thereof (which Definitive Note shall be so mailed or otherwise delivered from a location outside the United States).

(iii) Temporary Regulation S Global Note to Definitive Note or Rule 144A Global Note. To the extent permitted by DTC and subject to the provisions of Section 2.5(k), if a Holder of a beneficial interest in the Temporary Regulation S Global Note of a particular Class wishes at any time during the Distribution Compliance Period to transfer its beneficial interest in such Temporary Regulation S Global Note to a U.S. Person, such holder shall, subject to the provisions of this Section 2.5, transfer its beneficial interest in such Temporary Regulation S Global Note for an equivalent interest in a Rule 144A Global Note. Upon receipt by the Trustee of (A) a certificate substantially in the form of Exhibit G hereto and (B) a written order given in accordance with the Applicable Procedures, the Trustee shall instruct the Custodian to adjust the Depository's position in

the Temporary Regulation S Global Note to reflect a reduction of the Aggregate Principal Amount thereof by the Aggregate Principal Amount of the beneficial interest thereof to be so transferred and concurrently with such reduction, in the case of a Rule 144A Global Note, instruct the Custodian to adjust the Depository's position in the Rule 144A Global Note of the same Class to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Rule 144A Global Note equal to the Aggregate Principal Amount of the Temporary Regulation S Global Note so reduced, and, in the case of a Definitive Note, the Co-Issuers shall execute and furnish to the Trustee, and the Trustee or the Authenticating Agent shall authenticate and deliver to such Holder, a Definitive Note in a principal amount equal to the amount of the reduction in the Aggregate Principal Amount of the Temporary Regulation S Global Note of such Class.

(iv) Transfer of Interests in a Definitive Note. A Holder of a Definitive Note may at any time transfer its interest in such Definitive Note in accordance with this Section 2.5(b)(iv). Any transfer of an interest in a Definitive Note to a Non-U.S. Person during the Distribution Compliance Period shall be made only pursuant to Section 2.5(b)(iii) above. Otherwise, the Trustee shall require, prior to any such transfer of a Definitive Note, receipt by the Trustee and the Co-Issuers of (A) an Investor Representation Letter from such Noteholder's transferee and (B) a Transferor Certificate from such Noteholder (which shall only be a Regulation S Transferor Certificate for transfers to Non-U.S. Persons during the Distribution Compliance Period). Upon receipt of such letter and certificate, and surrender to the Trustee the Definitive Note representing the interest to be so transferred, the Trustee shall cancel such Definitive Note and the Co-Issuers shall execute and provide to the Trustee, and the Trustee or the Authenticating Agent shall authenticate and deliver, a Definitive Note to such transferee (and, in the event of a partial transfer, the Co-Issuers shall execute and provide to the Trustee, and the Trustee or the Authenticating Agent shall authenticate and deliver, a Definitive Note evidencing the remaining balance to the transferring Holder).

(v) Transfer of Interests in the Temporary Regulation S Global Note. Transfers of beneficial interests in the Temporary Regulation S Global Note may only be made (A) in accordance with Section 2.5(b)(i) above or (B) by book-entry transfer of beneficial interests in the Temporary Regulation S Global Note within the Clearance System (and subject to the Applicable Procedures) to Non-U.S. Persons in accordance with Regulation S in "offshore transactions" (as defined in Regulation S).

(vi) Transfer of Interests in a Permanent Regulation S Global Note. If a Holder of a beneficial interest in the Permanent Regulation S Global Note wishes at any time to transfer its beneficial interest in such Permanent Regulation S Global Note to a U.S. Person, such Holder shall, subject to the provisions of this Section 2.5 and the Applicable Procedures, transfer its beneficial interest in such Permanent Regulation S Global Note for an equivalent interest in a Rule 144A Global Note. Upon receipt by the Trustee of (A) a certificate substantially in the form of Exhibit G hereto and (B) a written order given in accordance with the Applicable Procedures, the Trustee shall instruct the Custodian to adjust the Depository's position in the Permanent Regulation S Global Note to reflect a reduction of the Aggregate Principal Amount thereof by the Aggregate

Principal Amount of the beneficial interest thereof to be so transferred and concurrently with such reduction, in the case of a Rule 144A Global Note, instruct the Custodian to adjust the Depository's position in the Rule 144A Global Note of the same Class to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Rule 144A Global Note equal to the Aggregate Amount Principal amount of the Permanent Regulation S Global Note so reduced, and, in the case of a Definitive Note, the Issuer shall execute and furnish to the Trustee (or Paying Agent, as directed by the Trustee) and the Trustee shall authenticate and deliver to such Holder a Definitive Note in the Aggregate Principal Amount equal to the amount of the reduction in the Aggregate Principal Amount of the Permanent Regulation S Global Note (which Definitive Note shall be mailed or otherwise delivered to such Holder from a location outside the United States). Interests in any Permanent Regulation S Global Note shall not be exchanged for or transferred to a Definitive Note (except pursuant to the preceding sentence or Section 2.1, if applicable).

(vii) Transfer of Interest in a Rule 144A Global Note. Subject to the provisions of Section 2.5(k), transfers of beneficial interests in a Rule 144A Global Note may only be made (A) in accordance with the provisions of this Section 2.5(b)(iv) or (B) by book-entry transfer of beneficial interests in a Rule 144A Global Note within DTC (and subject to the Applicable Procedures) and in accordance with the transfer restrictions contained in the legend on such Rule 144A Global Note. If a Holder of a beneficial interest in a Rule 144A Global Note wishes to transfer its beneficial interest in such Rule 144A Global Note to a Non-U.S. Person, such holder shall, subject to the provisions of this Section 2.5 and the Applicable Procedures, transfer its beneficial interest in such Rule 144A Global Note for an equivalent interest in a Temporary Regulation S Global Note or a Permanent Regulation S Global Note, *provided* such transfer occurs after the Distribution Compliance Period. Upon receipt by the Trustee of (A) a Regulation S Transferor Certificate from such Noteholder and (B) a written order given in accordance with the DTC's Applicable Procedures, the Trustee shall instruct the Custodian to adjust the Depository's position in the Rule 144A Global Note to reflect a reduction of the Aggregate Principal Amount thereof by the Aggregate Principal Amount of the beneficial interest thereof to be so transferred and concurrently with such reduction, instruct the Custodian to adjust the Depository's position in such Temporary Regulation S Global Note or the Permanent Regulation S Global Note of the same Class to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Temporary Regulation S Global Note or Permanent Regulation S Global Note equal to the Aggregate Principal Amount of the Rule 144A Global Note so reduced.

(viii) Initial Sale of Notes. Notwithstanding anything in clauses (i) through (v) of this Section 2.5(b) to the contrary, in connection with any sale of Bear Notes by Bear Stearns, no delivery of an Investor Representation Letter or a Transferor Certificate shall be required so long as each purchaser of Notes executes and delivers a transferee certificate acceptable to Bear Stearns (which certificate shall, in the case of any transfer of Definitive Notes, identify each transferee, including name, address, payment

instructions, Taxpayer information and such other information as the Trustee may reasonably require), which transferee certificate shall be delivered to the Trustee.

(ix) Securities Act. No transfer of any Note or any beneficial interest in any Note shall be made unless such transfer (a) is made pursuant to an effective registration statement under the Securities Act and registration or qualification under applicable state securities laws or (b) is exempt from such registration or qualification requirements.

The Investor Representation Letters (and any alternative certification acceptable to Bear Stearns pursuant to clause (vi) above) and the Transferor Certificates furnished pursuant to this Section may be relied on conclusively by the Trustee in determining whether the provisions of this Section have been complied with. None of the Issuer, the Co-Issuer, the Trustee or any other person shall be required to register the Notes under the Securities Act or any state securities laws.

(c) Unless a prospective Holder of a Note (and each beneficial owner of an interest in a Global Note) otherwise provides another representation acceptable to each of the Trustee, the Servicer and the Issuer, each Holder of a Note (other than each beneficial owner of an interest in a Global Note), by its purchase thereof, shall be deemed to have represented to the Issuer, the Servicer and the Trustee that (a) in the case of the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes or the Class X Notes, either no part of the funds being used to pay the purchase price for such Notes constitutes an asset of any "employee benefit plan" (as defined in Section 3(3) of ERISA) or "plan" (as defined in Section 4975(e)(1) of the Code) that is subject to Title I of ERISA or Section 4975 of the Code (each a "Plan"), including assets held in an insurance company general account, or (b) if the funds being used to pay the purchase price for such Notes include assets of any Plan, an exemption to the prohibited transaction rules applies to the purchase and holding of such Notes, and (b) in the case of the Class B-1L Notes, either (i) such Holder (or such beneficial owner) is not a Plan and is not acquiring the Class B-1L Notes with the assets of the Plan, (ii) such Holder (or beneficial owner) is an insurance company and the funds being used to pay the purchase price for such Notes includes only assets of its general account and its acquisition and holding of such Notes are eligible for exemptive relief under Section I of U.S. Department of Labor Prohibited Transaction Class Exemption ("PTCE") 95-60, or (iii) the acquisition and holding of such Notes by such Holder (or beneficial owner) are eligible for the exemptive relief under PTCE 96-23, 91-38, 90-1 or 84-14.

(d) No Note shall be sold or transferred (including, without limitation, by pledge or hypothecation), except to Non-U.S. Persons in "offshore transactions" in accordance with Regulation S under the Securities Act, unless the purchaser or transferee is a Qualified Purchaser. Notwithstanding anything to the contrary in this Indenture, no transfer of a Note may be made if such transfer would require registration of the Issuer or Co-Issuer under the Investment Company Act (subject, as regards the Trustee's duties, to Section 2.5(f) below).

(e) At any time when the Issuer is not subject to Section 13 or 15(d) of the United States Securities Exchange Act of 1934, as amended, upon the request of any Noteholder, the Issuer shall promptly furnish to such Noteholder or to a prospective purchaser of any Note designated by such Noteholder, as the case may be, the information which the Issuer determines

to be required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act ("Rule 144A Information") in order to permit compliance by such Noteholder with Rule 144A in connection with the resale of such Note by such Noteholder; *provided that* the Issuer shall not be required to provide audited financial statements more than once a year or to furnish Rule 144A Information in connection with any request made on or after the date that is three years from the later of (i) the date such Note (or any predecessor Note) was acquired from the Issuer or (ii) the date such Note (or any predecessor Note) was last acquired from an "affiliate" of the Issuer within the meaning of Rule 144A, in each case as determined by the Issuer. Upon request by the Issuer, the Trustee shall cooperate with the Issuer in mailing or otherwise distributing (at the Issuer's expense) to such Noteholders or prospective purchasers, at and pursuant to the Issuer's written direction, the foregoing materials prepared and provided by the Issuer; *provided that* the Trustee shall be entitled to affix thereto or enclose therewith such disclaimers as the Trustee shall deem reasonably appropriate, at its discretion (such as, for example, a disclaimer that such Rule 144A Information was assembled by the Issuer and not by the Trustee, that the Trustee has not reviewed or verified the accuracy thereof, and that it makes no representation as to the sufficiency of such information under Rule 144A or for any other purpose).

(f) The Trustee shall not be responsible for ascertaining whether any transfer complies with, or otherwise to monitor or determine compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate is specifically required by the terms of this Section to be provided to the Trustee by a prospective transferee, transferor or the Issuer, the Trustee shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section.

(g) If a Responsible Officer of the Trustee becomes aware that (i) a transfer or attempted or purported transfer of any Note or interest therein was consummated in compliance with the provisions of this Section 2.5 on the basis of a materially incorrect certification from the transferor or purported transferee, (ii) a transferee failed to deliver to the Trustee any certificate required to be delivered hereunder or (iii) the Holder of any Note or interest therein is in material breach of any representation or agreement set forth in any certificate or any deemed representation or agreement of such Holder, the Trustee will direct the Note Registrar not to register such attempted or purported transfer and if a transfer has been registered, such transfer shall be absolutely null and void *ab initio* and shall vest no rights in the purported transferee (such purported transferee, a "Disqualified Transferee") and the last preceding Holder of such Note that was not a Disqualified Transferee shall be restored to all rights as a Holder thereof retroactively to the date of transfer of such Note by such Holder.

(h) For so long as one or more Global Notes are Outstanding:

(i) the Trustee and its directors, officers, employees and agents may deal with the Depository for all purposes (including the making of distributions on, and the giving of notices with respect to, the Global Notes);

(ii) unless otherwise provided herein, the rights of beneficial owner in a Global Note shall be exercised only through the respective Depository and shall be

limited to those established by law and agreements between such beneficial owners and the respective Depository;

(iii) for purposes of determining the identity of and Aggregate Principal Amount of Notes beneficially owned by a Holder, the records of the Depository shall be conclusive evidence of such identity and Aggregate Principal Amount and the Trustee may conclusively rely on such records when acting hereunder;

(iv) the Depository will make book-entry transfers among the Depository participants of the Depository and will receive and transmit distributions of principal of and interest on the Global Notes to such Depository participants; and

(v) the Depository participants of the Depository shall have no rights under this Indenture under or with respect to any of the Global Notes held on their behalf by the Depository, and the Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Global Notes for all purposes whatsoever.

(i) Each transferee of a Note (except with respect to a transfer pursuant to Regulation S) will be deemed to represent at time of transfer that the transferee is a Qualified Institutional Buyer and that (i) it is a Qualified Purchaser, (ii) it is not formed for the purpose of investing in the Notes, unless each of its beneficial owners is a Qualified Purchaser, (iii) it is not a dealer described in paragraph (a)(1)(ii) of Rule 144A unless such transferee owns and invests on a discretionary basis at least U.S.$25 million in securities of issuers that are not affiliated persons of such dealer, (iv) it is not a plan referred to in paragraph (a)(1)(i)(D) or (E) of Rule 144A or a trust fund referred to in paragraph (a)(1)(i)(F) of Rule 144A that holds the assets of such plan, unless investment decisions are made solely by the fiduciary, trustee or sponsor of such plan, (v) it and each account for which it is purchasing is purchasing Notes in at least the minimum denomination and (vi) it will provide written notice of the foregoing and any other applicable transfer restrictions to any transferee.

(j) Any Note issued upon the transfer, exchange or replacement of Notes shall bear such applicable legend set forth in the relevant Exhibit hereto unless there is delivered to the Trustee, Note Registrar and the Issuer such satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required by any of the Trustee, Note Registrar and the Issuer to the effect that (i) neither such applicable legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A and to ensure that neither of the Co-Issuers nor the Portfolio Collateral becomes an investment company required to be registered under the Investment Company Act, and (ii) the Co-Issuers and the Portfolio Collateral are exempt from registration under the Investment Company Act other than by reason of Section 3(c)(7) thereof. Upon provision of such satisfactory evidence, the Trustee, at the direction of the Issuer, shall authenticate and deliver Notes that do not bear such applicable legend.

(k) If, notwithstanding the restrictions set forth in this Section 2.5, either of the Co-Issuers determines that any beneficial owner or Holder of a Rule 144A Global Note (i) is a U.S. Person and (ii) is not (A) a Qualified Purchaser or (B) a company beneficially owned

exclusively by Qualified Purchasers, the Co-Issuers may require, by notice to such beneficial owner or Holder, as the case may be, that such beneficial owner or Holder sell all of its right, title and interest to such Note (or interest therein) to a Person that is both (1) a Qualified Institutional Buyer and (2) a Qualified Purchaser or a company beneficially owned exclusively by Qualified Purchasers, with such sale to be effected within 30 days after notice of such sale requirement is given. If such beneficial owner or Holder fails to effect the transfer required within such 30-day period, (x) upon written direction from the Issuer, the Trustee shall, and is hereby irrevocably authorized by such beneficial owner or Holder, as the case may be, to cause its interest in such Note to be transferred in a commercially reasonable sale (conducted by the Trustee or by an investment banking firm selected by the Trustee and approved by the Issuer (whose fees are to be paid exclusively from the proceeds of such sale)), in accordance with Section 9-504(3) of the UCC as applied to securities that are sold on a recognized market or that may decline speedily in value) to a Person that certifies to the Trustee and the Co-Issuers, in connection with such transfer, that such Person is both (1) a Qualified Institutional Buyer and (2) a Qualified Purchaser or a company beneficially owned exclusively by one or more Qualified Purchasers and (y) pending such transfer, no further payments will be made in respect of such Note (or beneficial interest therein) held by such Holder or beneficial owner.

Section 2.6. Mutilated, Destroyed, Lost or Stolen Notes.

If (i) any mutilated Note is surrendered to the Trustee or the Issuer or the Trustee and the Issuer receive evidence to their reasonable satisfaction of the destruction, loss or theft of any Note, and (ii) in the case of a destroyed, lost, or stolen Note, there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any State in the United States with a net worth at least equal to twice the amount of the security or indemnity being deemed sufficient to satisfy such security or indemnity requirement), then, in the absence of notice to the Co-Issuers or the Trustee that such Note has been acquired by a protected purchaser, the Co-Issuers shall execute and, upon a written request therefor by the Issuer, the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of the same Class, tenor and principal amount, bearing a number not contemporaneously outstanding. If, after the delivery of such new Note, a protected purchaser of the original Note in lieu of which such new Note was issued presents such original Note for payment, the Issuer and the Trustee shall be entitled to recover such new Note from the Person to whom it was delivered or any Person taking title therefrom, except a protected purchaser, and the Issuer and the Trustee shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Co-Issuers, or the Trustee, in connection therewith. If any such mutilated, destroyed, lost or stolen Note shall have become or shall be about to become due and payable in full, or shall have been called for redemption in full, instead of issuing a new Note, the Co-Issuers may pay such Note without surrender thereof, except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section 2.6, the Issuer or the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed or any other reasonable expense in relation thereto.

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

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

Section 2.7. Payments on the Notes.

(a) No principal will be payable in respect of the Class A-1L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-1L Notes as described herein. On each Payment Date with respect to the Amortization Period, the principal of the Class A-1L Notes will be payable (to the extent of funds available therefor and in the order of priority described herein) first to the Class A-1LA Notes and then to the Class A-1LB Notes, until the Payment Date on which the Aggregate Principal Amount of such Class A-1L Notes have been paid in full. The unpaid principal amount of the Class A-1L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to any of the Class A-1L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class A-1L Notes, unless earlier paid upon an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-1L Notes as described herein. In addition, all payments of principal on the Class A-1LA Notes that are made in connection with an Initial Deposit Redemption, a Rating Confirmation Failure, a Tax Event Redemption or an Optional Redemption and all payments of interest will be paid on a *pro rata* basis with the Class X Notes as described herein. All outstanding principal of the Class A-1L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(b) No principal will be payable in respect of the Class A-2L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of a Special Redemption, an Optional Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-2L Notes, but only after the Aggregate Principal Amount of the Class A-1L Notes (other than with respect to a Special Redemption or an O/C Redemption) and the Class X Notes have been paid in full. The unpaid principal amount of the Class A-2L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class A-2L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of

available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class A-2L Notes, unless earlier paid upon an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-2L Notes as described herein. All outstanding principal of the Class A-2L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(c) No principal will be payable in respect of the Class A-3L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of a Special Redemption, an Optional Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-3L Notes, but only after the Aggregate Principal Amount of the Class A-1L Notes, the Class A-2L Notes (other than with respect to a Special Redemption or an O/C Redemption) and the Class X Notes have been paid in full. The unpaid principal amount of the Class A-3L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class A-3L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class A-3L Notes, unless earlier paid upon an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-3L Notes as described herein. All outstanding principal of the Class A-3L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(d) No principal will be payable in respect of the Class A-4L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of a Special Redemption, an Optional Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-4L Notes, but only after the Aggregate Principal Amount of the Class A-1L Notes, the Class A-2L Notes, the Class A-3L Notes (other than with respect to a Special Redemption or an O/C Redemption) and the Class X Notes have been paid in full. The unpaid principal amount of the Class A-4L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class A-4L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class A-4L Notes, unless earlier paid upon an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-4L Notes as described herein. All outstanding principal of the Class A-4L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(e) Except in connection with the application of the Additional Collateral Deposit Requirement as described herein, no principal will be payable in respect of the Class B-1L Notes during the Revolving Period, except in the event of a Special Redemption, an Optional

Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class B-1L Notes. The principal amount of the Class B-1L Notes shall be due and payable (to the extent of funds available therefore and in the order of priority as described herein) on each Payment Date during the Amortization Period, but only after the Aggregate Principal Amount of the Class A-1L Notes, the Class A-2L Notes, the Class A-3L, the Class A-4L (other than with respect to a Special Redemption or an O/C Redemption) and the Class X Notes have been paid in full. The unpaid principal amount of the Class B-1L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class B-1L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class B-1L Notes, unless earlier paid upon an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class B-1L Notes as described herein. All outstanding principal of the Class B-1L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(f) The Class X Notes will provide for the Class X Payment (to the extent funds are available therefore as described herein) on each Payment Date, commencing on the November 2006 Payment Date through and including the August 2013 Payment Date. The Aggregate Principal Amount of the Class X Notes will be due and payable on the Final Maturity Date of the Class X Notes. To the extent the Class X Payment will not be paid on any Payment Date, the resulting Class X Shortfall Amount will be paid (as described herein) on one or more subsequent Payment Dates after payment of the Class X Payment with respect to such Class X Notes.

(g) Holders of the Notes of each Class as of the Record Date in respect of a Payment Date or as of the Redemption Record Date with respect to the Initial Deposit Redemption Date, an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date, shall be entitled, to the extent provided for herein, to the interest accrued and payable and principal payable (or Initial Deposit Redemption Price, an Optional Redemption Price, a Special Redemption Price, a Tax Event Redemption Price or a Mandatory Redemption Price payable, as applicable) on such Payment Date or Redemption Record Date with respect to the Initial Deposit Redemption Date, an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date. Payments of principal to Holders entitled thereto shall be made in the proportion that the Aggregate Principal Amount of the Notes of such Class registered in the name of each such Holder on such Record Date or Redemption Record Date with respect to the Initial Deposit Redemption Date, an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date.

(h) Interest accrued with respect to any Class of Notes shall be computed on the basis of a 360-day year and the actual number of days elapsed during each Periodic Interest Accrual Period.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Co-Issuers' under this Indenture and the payment of principal of, interest on and all other amounts payable on or in respect of the Class A-1L Notes, the Class A-2L Notes, the Class A-3L Notes, Class A-4L Notes, the Class B-1L Notes and the Class X Notes will constitute nonrecourse obligations of the Co-Issuers, payable solely from the Trust Estate. Having realized the Collateral and distributed the net proceeds thereof, in each case in accordance with this Indenture, neither the Trustee nor any holders of Notes may take any further steps against the Co-Issuers to recover any sum still unpaid in respect of any claims under this Indenture or the Notes issued under this Indenture and all claims against the Co-Issuers in respect of any such sum due but still unpaid shall be extinguished and shall not revive. Neither of the Co-Issuers, nor any of their respective agents, partners, beneficiaries, officers, directors, employees or any Affiliate of any of them or any of their respective successors or assigns shall be personally liable for any amounts payable, or performance due, under the Notes or this Indenture. It is understood that the foregoing provisions of this paragraph shall not (A) prevent recourse to the Trust Estate for the sums due or to become due under any security, instrument or agreement which is part of the Trust Estate or (B) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture, but the same shall continue until paid or discharged or (C) constitute a waiver of an otherwise valid cause of action with respect to the performance of the Servicer's obligations as set forth in the Servicing Agreement or (D) constitute a waiver of any otherwise valid cause of action against the Co-Issuers wherein the loss complained of is directly attributable to the willful misconduct or fraud of the Co-Issuers in making their respective representations or warranties or the performance of their respective obligations under this Indenture or (E) limit the right of any person to name the Co-Issuers as parties defendant in any action, suit or in the exercise of any other remedy under the Notes or in this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such person or entity.

Section 2.8. Persons Deemed Owners.

The Co-Issuers, the Trustee, the Note Registrar and the Servicer, and any agent of the Co-Issuers, the Trustee, the Note Registrar and the Servicer shall treat the Person in whose name any Note is registered as it appears on the Note Register as the owner of such Note for the purpose of receiving payments on such Note, and for all other purposes whatsoever (whether or not such Note is overdue), and none of the Issuer, the Trustee, the Note Registrar or the Servicer, nor any agent of any of them, shall be affected by notice to the contrary.

Section 2.9. Cancellation.

All Notes surrendered for payment, registration of transfer, exchange or redemption, or deemed destroyed, lost or stolen, shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 2.9, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be destroyed or held by the Trustee in accordance with its standard retention policy unless the Issuer shall direct by an Issuer Order that they be returned to the Issuer.

Section 2.10. Tax Purposes.

Each of the Co-Issuers shall, and each Holder by acceptance of its Note shall be deemed to have agreed to, treat the Notes as debt solely of the Issuer for United States federal income tax purposes.

Section 2.11. Calculation Agent; Determination of LIBOR.

(a) The Issuer hereby agrees that for so long as any of the Notes remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Periodic Interest Accrual Period in accordance with the terms of the Notes. The Issuer has initially appointed JPMorgan Chase Bank, National Association, as agent with respect to the determination of LIBOR (in such capacity, the "Calculation Agent"). The Calculation Agent may be removed by the Issuer at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer, or if the Calculation Agent fails to determine LIBOR for a Periodic Interest Accrual Period, the Issuer will promptly appoint as a replacement Calculation Agent a leading bank which is engaged in transactions in U.S. dollar deposits in the international U.S. dollar market and which does not control or is not controlled by or under common control with the Co-Issuers or their Affiliates. The Calculation Agent may not resign or be removed from its respective duties without a successor having been duly appointed.

(b) The Calculation Agent shall determine LIBOR for each Periodic Interest Accrual Period in accordance with the following provisions:

On each LIBOR Determination Date, LIBOR shall equal the rate, as obtained by the Calculation Agent, for three-month U.S. dollar deposits which appears on Telerate Page 3750 (as reported by Bloomberg Financial Markets Commodities News) or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date. Notwithstanding the foregoing, LIBOR for the initial Periodic Interest Accrual Period shall be determined through the use of straight-line interpolation by reference to two rates calculated in accordance with the provisions above, one of which shall be for five-month U.S. dollar deposits and the other of which shall be for six-month U.S. dollar deposits.

If, on any LIBOR Determination Date, such rate does not appear on Telerate Page 3750 (as reported by Bloomberg Financial Markets Commodities News) or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three-month (or five-month or six-month, as applicable) U.S. dollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in The City of New York selected by the Calculation Agent (after consultation with the Servicer) are quoting on the relevant LIBOR Determination Date for three-month (or five-month or six-month, as applicable) U.S. dollar deposits in an

amount determined by the Calculation Agent that is representative of a single transaction in such market at such time by reference to the principal London offices of leading banks in the London interbank market; *provided that*, if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date. As used herein, "Reference Banks" means four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer).

For purposes of any calculations referred to in this paragraph (b), all percentages resulting from such calculations will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point.

(c) As soon as possible after 11:00 a.m. (New York time) on each LIBOR Determination Date, but in no event later than 11:00 a.m. (New York time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will notify the Issuer, the Trustee, the Irish Paying Agent (as long as any of the Notes are listed on the Irish Stock Exchange) and the Servicer of LIBOR for the next Periodic Interest Accrual Period. The Calculation Agent will also specify to the Issuer the quotations upon which LIBOR is based, and in any event the Calculation Agent shall notify the Issuer before 5:00 p.m. (New York time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining LIBOR or (ii) it has not determined and is not in the process of determining LIBOR together with its reasons therefor.

(d) Upon receipt of notice of LIBOR for each Periodic Interest Accrual Period from the Calculation Agent pursuant to subsection (c) of this Section 2.11, the Trustee shall determine the Applicable Periodic Rate with respect to the Notes for such Periodic Interest Accrual Period and notify the Irish Stock Exchange of the Applicable Periodic Rate for each Class of Note (as long as any of the Notes are listed on the Irish Stock Exchange).

(e) The determination of LIBOR by the Calculation Agent and the Applicable Periodic Rate with respect to the Notes by the Trustee (in the absence of manifest error) shall be final and binding upon all parties.

Section 2.12. Option to Acquire Credit Enhancement.

Holders of any Class of Notes may elect to acquire bond insurance, a surety bond or similar credit enhancement supporting the payment of principal and/or interest on such Class of Notes, on terms and conditions acceptable to such Holders and at the sole expense of such Holders. Any Class of Notes subject to such enhancement will be designated pursuant to a supplemental indenture adopted pursuant to Section 8.1 as "Insured Notes" of such Class. Premiums for any such enhancement (together with any other amounts payable to the issuer of such bond insurance policy, surety bond or similar credit enhancement, including, without limitation, amounts payable to any such issuer to reimburse it for draws thereunder, together with interest thereon), and costs incurred by the Co-Issuers in connection with such enhancement will be payable from amounts otherwise payable to such Class of Insured Notes, or in such other manner chosen by such Holder (*provided that* any such payment does not adversely affect any other Noteholder or holder of a Preferred Share). Any Insured Notes for substantially all other

purposes will be treated as Notes of such Class, except that the issuer of the bond insurance policy, surety bond or other such credit enhancement will generally be deemed to be the Holder of the Notes of such Class, enhanced by such entity and will in such capacity be entitled to exercise the rights otherwise exercisable by Holders of such Notes.

Section 2.13. Prescription.

Payment in respect of any Note will cease to be due if not paid to the Holder of such Note due to insufficient payment instructions from such Holder to the Trustee or the Paying Agent for a period of twenty years from the Relevant Date.

ARTICLE III

AUTHENTICATION AND DELIVERY OF NOTES

Section 3.1. General Provisions.

On the Closing Date, the Notes shall be executed by the Co-Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon the Issuer's written request and upon compliance with the conditions of Section 3.2 hereof, and upon receipt by the Trustee of the following:

(a) an Officers' Certificate of the Co-Issuers evidencing the authorization of the execution, authentication and delivery of the Transaction Documents, the Notes and the Preferred Shares and specifying the Final Maturity Dates, the applicable principal or stated amounts and the interest rates and yields of each Class of the Notes to be authenticated and delivered;

(b) an Opinion or Opinions of Counsel, dated the Closing Date, substantially in the form or forms attached hereto as Schedule G.

(c) an Officer's Certificate or Certificates of the Co-Issuers stating that all representations and warranties of the Co-Issuers set forth in the Transaction Documents are true and correct and neither of the Co-Issuers is in Default under this Indenture and that the issuance of the Notes and the Preferred Shares then applied for will not result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture or other agreement or instrument to which the Issuer or the Co-Issuer, as applicable, is a party or by which the Issuer or the Co-Issuer, as applicable, is bound, or any order of any court or administrative agency entered in any proceeding to which the Issuer or the Co-Issuer, as applicable, is a party or by which the Issuer or the Co-Issuer, as applicable, is bound or to which the Issuer or the Co-Issuer, as applicable, is subject; and that all conditions precedent (other than the deposit of cash by the Trustee in the appropriate accounts as provided in Section 3.2(e), (f) and (g) hereof) provided in this Section 3.1 and all requirements under Section 3.2 hereof and all conditions precedent otherwise provided in this Indenture relating to the authentication and delivery of the Notes applied for have been complied with;

(d) an Accountants' Certificate in form and substance acceptable to the Issuer and the Co-Issuer confirming that the Notes of each Class will be retired by their Final Maturity

Dates in accordance with the assumptions set forth in Section 1.3 hereof and specifying the procedures undertaken by them to review data and computations relating to the foregoing;

(e) an executed counterpart of the Servicing Agreement, the Paying and Transfer Agency Agreement and the Collateral Administration Agreement;

(f) the Initial Portfolio Collateral as provided in Section 3.2(a) hereof;

(g) an Issuer Request directing the Trustee to authenticate the Notes in the amounts set forth therein, registered in the name(s) set forth therein or as otherwise provided to the Trustee by the Issuer or at its direction, and to make delivery thereof to the Issuer or as it may otherwise direct therein;

(h) an Officer's Certificate from the Servicer (i) confirming that Schedule A attached to this Indenture correctly lists the Initial Portfolio Collateral to be granted to the Trustee on the Closing Date (in the case of items of Debt Securities) or scheduled to be granted to the Trustee on or not later than thirty (30) days after the Closing Date (in the case of Portfolio Loans) pursuant to Section 3.2(a) hereof and (ii) confirming such information with respect to each item of Initial Portfolio Collateral as the Issuer reasonably deems necessary to confirm that such item of Initial Portfolio Collateral, individually and in the aggregate, meets the requirements specified in this Indenture; and

(i) such other documents as the Trustee may reasonably require.

Section 3.2. Security for Notes.

On the Closing Date, the following conditions shall have been satisfied:

(a) Delivery of Initial Portfolio Collateral. The Initial Portfolio Collateral to be Granted to the Trustee on such Closing Date, in an amount at least equal to the Initial Portfolio Collateral Amount, shall have been Delivered to the Trustee (or, with respect to Portfolio Loans, trade confirmations, commitment letters, assignment documents or other documents evidencing a commitment to purchase by the Issuer of the Initial Portfolio Collateral on or not later than thirty (30) days after the Closing Date shall have been delivered to the Trustee).

(b) Certificate of the Issuer. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, shall have been delivered to the Trustee to the effect, in the case of each item of Portfolio Collateral and the Deposit included in the Trust Estate on the Closing Date, that as of the Closing Date:

(i) the Issuer is the owner of such item of Portfolio Collateral and the Deposit free and clear of any liens, claims (including any adverse claims) or encumbrances of any nature whatsoever, except for those granted or expressly permitted pursuant to this Indenture and due bills, if any, with respect to interest, or a portion thereof, accrued on such Portfolio Collateral prior to the first payment date and owed by the Issuer to the seller of such Portfolio Collateral;

(ii) the Issuer has acquired its ownership in such item of Portfolio Collateral and the Deposit in good faith without notice of any adverse claim, except as described in paragraph (b)(i) above;

(iii) the Issuer has Delivered such item of Portfolio Collateral to the Trustee and has not assigned, pledged or otherwise encumbered any interest in such Portfolio Collateral or the Deposit other than interests granted or expressly permitted pursuant to this Indenture;

(iv) the Issuer has full right to Grant and does hereby Grant such item of Portfolio Collateral and the Deposit to the Trustee;

(v) the information set forth with respect to such item of Portfolio Collateral in Schedule A hereto is correct;

(vi) such item of Portfolio Collateral satisfies the requirements of the definition of Portfolio Collateral; and

(vii) no such item of Portfolio Collateral is Discount Portfolio Collateral.

(c) Rating Letters. The Trustee shall have received written evidence that the Class X Notes have been rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-1LA Notes have been rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-1LB Notes have been rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-2L Notes have been rated at least "AA" by Standard & Poor's and at least "Aa2" by Moody's, the Class A-3L Notes have been rated at least "A" by Standard & Poor's and at least "A2" by Moody's, the Class A-4L Notes have been rated "A-" by Standard & Poor's and "A3" by Moody's and that the Class B-1L Notes have been rated "BBB" by Standard & Poor's and "Baa2" by Moody's.

(d) Accounts. The Collection Account, the Collateral Account, the Initial Deposit Account, the Reserve Account, the Expense Reimbursement Account, the Closing Expense Account, the Loan Funding Account, the Default Swap Collateral Account, the Default Swap Issuer Account and the Preferred Shares Collection Account shall have been established.

(e) Initial Deposit Account. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of $125,678,543.30 representing the Deposit for inclusion in the Trust Estate and the Trustee shall have credited such cash to the Initial Deposit Account.

(f) Expense Reimbursement Account; Closing Expense Deposit. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of at least $50,000 for inclusion in the Trust Estate and the Trustee shall have credited such cash to the Expense Reimbursement Account. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of $2,512,500 for inclusion in the Trust Estate, and the Trustee shall have credited such cash to the Closing Expense Account (the "Closing Expense Deposit") which, after payment of all closing expenses (according to the list delivered to the Trustee), shall be transferred to the Initial Deposit Account or the Collection Account and applied as set forth in Section 10.2(h).

(g) Loan Funding Account. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of $5,784,684.17 which is equal to the Issuer's commitment to make or otherwise fund draws related to any Delayed Drawdown Loans or Revolving Loans in the Initial Portfolio Collateral and the Trustee shall have credited such cash to the Loan Funding Account.

Section 3.3. Initial Deposit Redemption.

(a) The Issuer shall use reasonable efforts to use on or prior to the Effective Date the available funds and Eligible Investments in the Initial Deposit Account (other than Account Income on funds on deposit in the Initial Deposit Account) to purchase additional Original Portfolio Collateral as permitted pursuant to Section 3.4 hereof taking into account the Initial Portfolio Collateral and Original Portfolio Collateral already purchased by the Issuer in the Trust Estate (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any of the Original Portfolio Collateral on or before the Effective Date). If the remaining Deposit in the Initial Deposit Account as of the Effective Date equals or exceeds $2,000,000 and the Aggregate Principal Amount of the Original Portfolio Collateral (determined in accordance with the foregoing sentence) acquired or committed to be acquired by the Issuer is less than the Required Portfolio Collateral Amount (subject to the second paragraph of Section 3.4(a)), the Issuer shall cause an Initial Deposit Redemption to occur on the Initial Deposit Redemption Date by redeeming the Class A-1LA Notes and the Class X Notes in an aggregate amount equal to the excess of the Required Portfolio Collateral Amount over the par amount of Original Portfolio Collateral; *provided that* the amount applied to such Initial Deposit Redemption shall not exceed the remaining amount of the Deposit (the "Initial Deposit Redemption Amount"). No interest or other amount in excess of the Initial Deposit Redemption Amount, other than the Periodic Interest Amount with respect to the Class A-1LA Notes and the Class X Notes through the Initial Deposit Redemption Date due on the next succeeding Payment Date, shall be payable on or in respect of the Class A-1LA or the Class Notes X Notes redeemed in an Initial Deposit Redemption. If there is a Deposit in the Initial Deposit Account on the Effective Date but no Initial Deposit Redemption is required pursuant to the terms of this Section 3.3(a), the remaining Deposit in the Initial Deposit Account shall be transferred to the Collection Account on the Effective Date and shall, subject to Section 3.4(d), constitute Collateral Principal Collections. Account Income in the Initial Deposit Account shall be transferred to the Collection Account on the Effective Date and shall constitute Collateral Interest Collections.

(b) If an Initial Deposit Redemption is required, the Issuer, not later than the third Business Day immediately following the Effective Date, shall notify the Trustee and each Rating Agency in writing that an Initial Deposit Redemption is required pursuant to Section 3.3(a) hereof and the amount of the Class A-1LA Notes and the Class X Notes required to be redeemed pursuant thereto.

(c) Notice of an Initial Deposit Redemption shall be given by the Trustee by first-class mail, postage prepaid, mailed not less than ten calendar days prior to the Initial Deposit Redemption Date, to each Holder of the Class A-1LA Notes and the Class X Notes to be redeemed at the address for such Holder in the Note Register and so long as any Notes are listed on the Irish Stock Exchange, to the Irish Paying Agent. All notices of Initial Deposit

Redemption shall state the Initial Deposit Redemption Date, the Redemption Record Date with respect thereto, the Aggregate Principal Amount of the Class A-1LA Notes and the Class X Notes to be redeemed, and that no interest or other amount in excess of the Initial Deposit Redemption Amount shall be payable on the amount of the Class A-1LA Notes and the Class X Notes to be redeemed.

(d) If an Initial Deposit Redemption is required, all Eligible Investments in the Initial Deposit Account representing the Deposit not applied to the purchase of Portfolio Collateral on or before the Effective Date shall be liquidated on the Business Day immediately preceding the Initial Deposit Redemption Date and the proceeds thereof shall be held in the Initial Deposit Account. On the Initial Deposit Redemption Date, the Trustee shall withdraw from the Initial Deposit Account all funds therein and apply such funds to the payment of Holders of the Notes in an amount equal to the Initial Deposit Redemption Amount or to a deposit in the Collection Account, as applicable.

Section 3.4. Purchase of Portfolio Collateral between the Closing Date and the Effective Date; Effective Date Conditions.

(a) The Issuer may (i) purchase Original Portfolio Collateral on any Business Day during the period from and including the Closing Date to and including the Effective Date or (ii) enter into a commitment to purchase Original Portfolio Collateral on any Business Day during the period from and including the Closing Date to and including the Effective Date for purchase on or as soon as practicable thereafter (*provided that* the agreed to settlement date shall not be more than thirty (30) days after the Effective Date), in each case, for inclusion in the Trust Estate in an aggregate amount equal to the Deposit in the Initial Deposit Account. Upon receipt of a Servicer Order requesting the purchase of Original Portfolio Collateral the Trustee shall pay out of the Initial Deposit Account, during the period commencing on the Closing Date and ending on the Effective Date, all or a portion of the funds available therein for the purpose of purchasing Original Portfolio Collateral.

No Original Portfolio Collateral may be purchased prior to the Effective Date unless immediately following the purchase of such item of Portfolio Collateral (as certified by Servicer Order), the remaining Deposit in the Initial Deposit Account, after giving effect to such purchase, is sufficient as of the date of determination to purchase Original Portfolio Collateral in an Aggregate Principal Amount at least equal to the Required Portfolio Collateral Amount for delivery into the Trust Estate (taking into account the Initial Portfolio Collateral and Original Portfolio Collateral already in the Trust Estate (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any of the Original Portfolio Collateral on or before the Effective Date)).

Notwithstanding the foregoing, or any other provision hereof, if the Issuer has previously entered into a commitment to purchase an item of Portfolio Collateral to be included in the Trust Estate, such commitment not to exceed thirty (30) days, and at the time of such commitment such an item of Portfolio Collateral complied with the definition of Portfolio Collateral and this Section 3.4(a), then the Issuer may consummate the purchase of such an item

of Portfolio Collateral notwithstanding that such an item of Portfolio Collateral fails to comply with the definition of Portfolio Collateral and such criteria on the date of settlement.

(b) The Servicer shall cause to be delivered to the Trustee on the Effective Date an amended Schedule A to this Indenture listing all Original Portfolio Collateral (including the Initial Portfolio Collateral then in the Trust Estate) and all commitments to purchase Original Portfolio Collateral, which schedule shall supersede any prior Schedule A delivered to the Trustee.

(c) The Issuer will use its commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Original Portfolio Collateral by the Effective Date, that, including the Initial Portfolio Collateral, will satisfy, as of the Effective Date, the Collateral Quality Tests, the criteria set forth in Section 12.2 and the Overcollateralization Tests. Within 5 Business Days after the Effective Date, the Issuer or the Servicer (on behalf of the Issuer) shall request a Rating Confirmation on behalf of the Issuer and shall provide a report to the Rating Agencies identifying the Original Portfolio Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and an electronic file of the Original Portfolio Collateral to S&P) substantially in the form of a Monthly Report as of the Effective Date, an Accountants' Certificate (a) confirming the maturity date, rating, spread, coupon and recovery rate for each item of Original Portfolio Collateral as of the Effective Date and the information provided by the Issuer with respect to every other asset included or to be included in the Trust Estate, by reference to such sources as shall be specified therein, (b) confirming that as of the Effective Date (1) each Overcollateralization Test is met; (2) the Aggregate Principal Amount of the Original Portfolio Collateral that the Issuer owned or committed to purchase as of the Effective Date is at least equal to the Required Portfolio Collateral Amount and (3) the Portfolio Collateral complies with all of the requirements of the Collateral Quality Tests and the criteria set forth in Section 12.2 and (c) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements. If a Rating Confirmation Failure should occur, the Notes will be redeemed pursuant to Section 9.2 hereof.

(d) Notwithstanding any provision in this Indenture to the contrary, if, on the Effective Date, the Aggregate Principal Amount of the Portfolio Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to the Original Portfolio Collateral on or prior to such time) exceeds the Required Portfolio Collateral Amount and there are funds remaining from the Deposit held in the Initial Deposit Account, the Servicer may direct the Trustee to transfer up to the least of (i) 25% of such funds and (iii) $1,000,000, to the Collection Account as additional Collateral Interest Collections; *provided* that the Overcollateralization Tests and the collateral criteria described herein are satisfied and the Interest Coverage Test for the most recent Payment Date was satisfied. The remainder of the Deposit shall be transferred by the Trustee to the Collection Account to be applied as Collateral Principal Collections on the Payment Date immediately following the date of determination.

Section 3.5. Intermediaries.

(a) Notwithstanding anything herein to the contrary, to the extent any items of Portfolio Collateral issued by an issuer that is not the United States of America, an agency or instrumentality thereof, or some other U.S. Person (collectively, "Non-U.S. Portfolio Securities") are Granted to the Trustee, such Non-U.S. Portfolio Securities may be delivered to and held by the Trustee through one or more Foreign Sub-custodians or Foreign Clearance Systems (as those terms are defined in the Section below; collectively, "Foreign Intermediaries") if such Non-U.S. Portfolio Securities cannot be Delivered to the Trustee.

(b) The Trustee, for the purpose of receiving and holding any Non-U.S. Portfolio Securities (as defined in Section 3.5(a)), may appoint one or more banking or securities institutions located outside the United States (each a "Foreign Sub-custodian") and/or clearing agencies or systems located outside the United States (each, a "Foreign Clearance System"), including without limitation Euroclear and Clearstream. With respect to Non-U.S. Portfolio Securities (and related cash) held through Foreign Intermediaries, such Foreign Intermediaries may be authorized to hold Non-U.S. Portfolio Securities in central securities depositories or clearing agencies in which such Foreign Intermediaries participate.

(c) The Trustee's responsibility with respect to the selection or appointment of Foreign Intermediaries shall be limited to a duty to exercise reasonable care in the selection or retention of such Foreign Intermediaries in light of prevailing settlement and securities handling practices, procedures and controls in the relevant market and subject to Section 6.3 hereof; *provided that* the appointment of Euroclear or Clearstream to act as Foreign Intermediary shall be deemed to have been made in the exercise of due care. With respect to any costs, expenses, damages, liabilities, or claims (including, without limitation, attorneys' and accountants' fees) incurred by the Issuer as a result of the acts or the failure to act by any Foreign Intermediaries, the Trustee shall take reasonable action to recover such costs, expenses, damages, liabilities, or claims from such Foreign Intermediaries; *provided that* the Trustee's sole liability in that regard shall be limited to amounts actually received by it from such Foreign Intermediaries (exclusive of related costs and expenses incurred by the Trustee). The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes or fires; floods, wars, civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communication service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1. Satisfaction and Discharge of Indenture.

Provided no Event of Default has occurred and is continuing hereunder, this Indenture shall cease to be of further effect with respect to the Notes except as to (i) rights of registration of transfer and exchange, (ii) substitution of mutilated, destroyed, lost or stolen

Notes, (iii) rights of Noteholders to receive payments of principal thereof and interest thereon, as applicable, and any other amounts payable in respect thereof, (iv) the rights, obligations and immunities of the Trustee hereunder and (v) the rights of Noteholders as beneficiaries hereof with respect to the property deposited with the Trustee and payable to all or any of them and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture when:

(1) Either

(a) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been paid or replaced as provided in Section 2.6 hereof and (ii) Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 7.3 hereof) have been delivered to the Trustee for cancellation; or

(b) all Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable, or (ii) will become due and payable at their Final Maturity Dates within one year;

and the Issuer, in the case of (b)(i) or (ii) above, has (x) irrevocably deposited or caused to be deposited with the Trustee in trust for such purpose, cash or Eligible Investments (any security satisfying the definition of Eligible Investments but for the maturity of such security shall for this purpose be deemed an Eligible Investment), the amount of cash and the Scheduled Distributions on any Eligible Investments being in an amount sufficient to pay and discharge the amount that equals the sum of the Cumulative Interest Amount on each Class of Notes to the date of such deposit or to the Final Maturity Date, as the case may be, and the Aggregate Principal Amount of each Class of Notes not theretofore delivered to the Trustee for cancellation, in each case to the extent not previously paid and (y) delivered an Accountants' Certificate to the Trustee confirming such calculations; *provided that* subsection (b) hereof shall not apply if an election to act in accordance with the provisions of Section 5.5 hereof shall have been made and not rescinded (except that the deposit of cash that would otherwise apply in the case of such subsection (b) shall nevertheless be required); *provided further* that any Eligible Investments deposited hereunder shall at the date of such deposit be rated no lower than the highest rating assigned to any of the Notes then outstanding;

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

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

Section 4.2. Application of Trust Money.

All monies deposited with the Trustee pursuant to Section 4.1 hereof shall be held in trust by the Trustee and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment to the Person entitled thereto of the principal and interest in

accordance with Section 11.1 hereof for whose payment such money has been deposited with the Trustee, and such money shall be held in a non-interest bearing segregated trust account identified as being held in trust for the benefit of the Noteholders. Except as specifically provided herein, the Trustee shall not be responsible for payment of interest upon any monies deposited with it.

ARTICLE V

REMEDIES

Section 5.1. Events of Default.

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

(a) (i) default for a period of four Business Days or more (or, in the case of a default in payment due to an administrative error or omission by the Trustee, any Paying Agent or the Note Registrar, for a period of seven Business Days or more, *provided that* the Trustee has notified each Rating Agency in writing of any such administrative error or omission) in the payment of any amount payable in respect of any Note when due when funds in such amount are available for payment as provided herein, or (ii) the failure to apply funds which are available for payment in accordance with the priority of distribution set forth in Article XI hereof, which failure shall continue for a period of four Business Days (or, in the case of a default in payment due solely to an administrative error or omission by the Trustee, any Paying Agent or the Note Registrar, for a period of seven Business Days or more, *provided that* the Trustee has notified each Rating Agency in writing of any such administrative error or omission), or (iii) default for a period of four Business Days or more (or, in the case of a default in payment due to an administrative error or omission by the Trustee, any Paying Agent or the Note Registrar, for a period of seven Business Days or more, *provided that* the Trustee has notified each Rating Agency in writing of any such administrative error or omission) in the payment of the Periodic Interest Amount due on any Class of Senior Class A Notes or Class X Payment, or, after the Senior Class A Notes and the Class X Notes are paid in full, the Periodic Interest Amount due on any Class A-3L Notes, or after the Senior Class A Notes, the Class X Notes and the Class A-3L Notes are paid in full, the Periodic Interest Amount due on any Class A-4L Notes, or after the Class A Notes and the Class X Notes are paid in full, the Class B-1L Notes, on any Payment Date, or (iv) default in the payment of the Aggregate Principal Amount and the Cumulative Interest Amount, due on any Class of Notes on the Final Maturity Date; or

(b) default in the performance or breach of any covenant, representation, warranty or other agreement of the Co-Issuers (or either one of them), other than compliance with the Overcollateralization Tests, the Interest Coverage Test or the criteria set forth in Section 12.2 hereof or a default in the performance or breach of a covenant, representation, warranty or other agreement which is specifically dealt with elsewhere in this Section or in Article VII hereof, or the failure of any representation or warranty of the Co-Issuers (or either one of them) made in this Indenture or in any certificate or other writing delivered pursuant hereto or in connection

herewith to be correct in all material respects when the same shall have been made, in either case which materially and adversely affects the rights of any Class of Noteholders and continuance of such default, breach or failure for a period of 30 days after written notice thereof shall have been given to the Co-Issuers or the Servicer by the Trustee or to the Co-Issuers, the Servicer and the Trustee by the Majority Noteholders, specifying such default, breach or failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(c) the entry of a decree or order by a court having jurisdiction in the premises adjudging either of the Co-Issuers as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of either of the Co-Issuers under the Bankruptcy Code or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of either of the Co-Issuers or of any substantial part of their respective property, or ordering the winding up or liquidation of their respective affairs, and the continuance of any such decree, order, case or proceeding not dismissed, discharged or stayed and in effect for a period of 60 consecutive days; or

(d) the institution by either of the Co-Issuers of proceedings to be adjudicated as bankrupt or insolvent, or the consent by either of them to the institution of bankruptcy or insolvency proceedings against either of them, or the filing by either of them of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable law, or the consent by either of the Co-Issuers to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of either of the Co-Issuers or of any substantial part of their respective property, or to the ordering of the winding up or liquidation of their respective affairs, or the making by either of them of an assignment for the benefit of creditors, or the admission by either of them in writing of its inability to pay its debts generally as they become due, or the taking of any action by either of the Co-Issuers in furtherance of any such action; or

(e) either of the Co-Issuers or the pool of assets constituting the Trust Estate becomes required to register as an "investment company" under the Investment Company Act; or

(f) the failure to maintain on any Calculation Date a Senior Class A Overcollateralization Ratio greater than or equal to 100%.

Section 5.2. Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default (other than an Event of Default specified in Section 5.1(c) or (d)) with respect to the Notes occurs and is continuing, the Trustee may, with the consent of the Requisite Noteholders, and shall, at the direction of the Requisite Noteholders, declare the principal of the Notes to be immediately due and payable, by a notice in writing to the Issuer and the Servicer. If an Event of Default as specified in Section 5.1(c) or (d) occurs and is continuing, the principal of the Notes shall be and become immediately due and payable without the necessity of notice or any other action of any Person. If the Notes are declared to be immediately due and payable or if an Event of Default specified in Section 5.1(c) or (d) hereof occurs, the Holders of each Class of Notes shall be entitled to receive, as applicable, and in the order of priority set forth in Section 11.1(d), the Cumulative Interest Amount and the Aggregate Principal Amount with respect thereto (in each case as calculated and accrued through the date of

payment in full of the Aggregate Principal Amount of each Class of Notes), and the Servicer shall be entitled to receive the amounts payable to the Servicer under and in the order of priority set forth in Sections 11.1(b) and 11.1(d).

(b) At any time after such a declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as provided in this Article, the Requisite Noteholders, by written notice to the Trustee and the Co-Issuers, may rescind and annul such declaration and its consequences if:

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

(A) all overdue amounts payable on or in respect of the Notes (other than amounts due solely as a result of the acceleration);

(B) to the extent that payment of interest on such amount is lawful, interest on such overdue amounts at the Applicable Periodic Rate; and

(C) all unpaid Trustee Administrative Expenses, Preferred Shares Administrative Expenses, Issuer Base Administrative Expenses, Issuer Excess Administrative Expenses, and other sums paid or advanced by the Trustee and the Paying and Transfer Agent hereunder and under the Paying and Transfer Agency Agreement and the reasonable compensation, expenses, disbursements and advances of the Trustee and the Paying and Transfer Agent, their agents and counsel.

(ii) the Trustee has (A) received written evidence that the sum paid or deposited with the Trustee by the Issuer pursuant to clause (i) above is sufficient, and (B) determined that all Events of Default, other than the nonpayment of such amount that has become due solely by such acceleration, have been (1) cured, and the Requisite Noteholders by written notice to the Trustee have agreed with such determination (which agreement shall not unreasonably be withheld), or (2) waived as provided in Section 5.15 hereof.

Section 5.3. Proceedings.

If an Event of Default has occurred and is continuing and the Notes have been declared due and payable and such declaration and its consequences have not been rescinded and annulled, or at any time on or after the Final Maturity Date, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Noteholders by such appropriate Proceedings, in its own name and as trustee of an express trust, as the Trustee shall deem most effective or as the Trustee may be directed by the Requisite Noteholders to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or for collection of sums due and unpaid, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law, but subject, however, to the terms of Section 5.4 hereof. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee, and its agents and counsel, in connection with any such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4 hereof, shall be reimbursed to the Trustee pursuant to Section 6.7 hereof.

Section 5.4. Remedies.

(a) If the Notes have been declared due and payable and such declaration and its consequences have not been rescinded or annulled, or at any time on or after the Final Maturity Date, the Trustee may, after written notice to the Noteholders, and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, and shall, upon direction by the Requisite Noteholders, to the extent permitted by applicable law, do one or more of the following:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Trust Estate securing the Notes monies adjudged due;

(ii) institute Proceedings for the complete or partial foreclosure of this Indenture with respect to the Trust Estate securing the Notes;

(iii) exercise any remedies of a secured party under the UCC including the sale or liquidation of the Trust Estate in accordance with Section 5.18 hereof and take any other appropriate action to protect and enforce the rights and remedies of the Trustee or the Holders of the Notes hereunder; or

(iv) exercise any other rights and remedies that may be available at law or in equity;

provided that the Trustee may not sell or liquidate the Trust Estate, or any portion thereof, or any rights or interest therein, unless (x) in the case of an acceleration resulting from an Event of Default set forth in Section 5.1(a) hereof, or a sale or liquidation of any portion of the Trust Estate at or greater than its par value (*provided that* Defaulted Portfolio Collateral may be liquidated without reference to, or inclusion in the calculation of, such limitation), the Requisite Noteholders have so directed the Trustee in writing to sell or liquidate the Trust Estate or any portion thereof or (y) in the case of any other Event of Default or resulting sale or liquidation, 100% of the Noteholders have so directed the Trustee in writing to sell or liquidate the Trust Estate or any portion thereof; *provided further* that no Default Swap or Synthetic Security may be terminated so long as a declaration of acceleration may be resending or annulled pursuant to Section 5.2(b). The Trustee shall send written notice to each of the Noteholders, with a copy to the Rating Agencies and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, of any proposed sale or liquidation of the Trust Estate together with a brief description thereof and such written notice shall be accompanied by an Accountant's Certificate (i) confirming the information with respect to such sale or liquidation (to the extent such accountants shall be able and willing to confirm such information) and (ii) specifying the procedures, if any, undertaken by them to review the data and computations relating to such sale or liquidation. The cost of such Accountant's Certificate shall be reimbursed to the Trustee pursuant to Section 6.7 hereof. If the applicable Noteholders direct any sale or liquidation of the Trust Estate, or any portion thereof, the Trustee shall sell or liquidate the Trust Estate, or portion, thereof, in accordance with Section 5.18 hereof at one or more public or private sales conducted in any manner permitted by law.

(b) If an Event of Default as described in Section 5.1(b) hereof has occurred and is continuing, the Trustee may, after written notice to the Noteholders, with a copy to the Rating Agencies, and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, and shall, upon direction of the Requisite Noteholders, institute a Proceeding to compel performance of the covenant or to cure the representation or warranty, the breach of which gave rise to the Event of Default under such Section and enforce any decree or order arising from such Proceeding.

(c) If an Event of Default described in Sections 5.1(a)(iii) or 5.1(a)(iv) hereof has occurred and is continuing, the Trustee shall, upon written direction of the Requisite Noteholders, terminate the services of the Servicer in accordance with the terms of the Servicing Agreement.

Section 5.5. Preservation of Trust Estate.

(a) If an Event of Default has occurred and is continuing or if the Final Maturity Date has occurred and subject to Section 5.4 hereof, the Trustee shall retain the Trust Estate securing the Notes intact, collect and cause the collection of the proceeds thereof and make and apply all payments and deposits and maintain all accounts in respect of the Notes in accordance with the provisions of Sections 10.1, 10.2(a), 10.2(b) and 11.1 hereof (unless and until the Notes have been declared due and payable and the applicable Noteholders have directed the Trustee pursuant to Section 5.4(a) hereof to sell or liquidate the Trust Estate or any portion thereof). The Trustee shall give written notice of the retention of the Trust Estate to the Issuer. If the Notes have been declared due and payable pursuant to Section 5.2 hereof or if the Final Maturity Date has occurred, any such retention pursuant to this Section 5.5(a) may be rescinded at any time by written notice to the Trustee and the Co-Issuers from the applicable Noteholders directing the Trustee to sell or liquidate the Trust Estate or any portion thereof.

(b) Nothing contained in Section 5.5(a) hereof shall be construed to require the Trustee to preserve the Trust Estate securing the Notes if prohibited by applicable law.

Section 5.6. Trustee May File Proofs of Claim.

In case there shall be pending Proceedings relative to the Issuer or any other obligor upon the Notes under the Bankruptcy Code or any other applicable bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or its property or such other obligor or its property, or in case of any other comparable Proceedings relative to the Issuer or other obligor, or in case of any voluntary dissolution, liquidation or winding-up of the Issuer, regardless of whether the principal of any Notes shall then be due and payable as therein expressed or by declaration or otherwise and regardless of whether the Trustee shall have made any demand pursuant to the provisions of Section 5.3 hereof, the Trustee is hereby entitled and empowered to, and may and at the direction of the Requisite Noteholders, shall, by intervention in such Proceedings or otherwise:

(i) file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and to file such other papers or

documents and take such other action, including participating as a member, voting or otherwise, of any committee of creditors, as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made by the Trustee and each predecessor Trustee or any Noteholder, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relative to the Issuer or other obligor upon the Notes or this Indenture or to the creditors or property of the Issuer or such other obligor;

(ii) unless prohibited by applicable law and regulations, upon direction of the Requisite Noteholders vote on behalf of the Holders of the Notes in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings (or person performing similar functions in comparable Proceedings); and

(iii) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute in accordance with Section 5.8 hereof all amounts received with respect to the claims of the Noteholders and the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is hereby authorized by each of the Noteholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Noteholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee or any Noteholder except as a result of negligence or bad faith.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Noteholder any plan of reorganization, arrangement, adjustment or compromise affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy (or person performing similar functions in comparable Proceedings) or to participate as a member of any committee of creditors.

In any Proceedings brought by the Trustee (and also any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes subject to the provisions of this Indenture, and it shall not be necessary to make any Holders of the Notes parties to any such Proceedings.

Section 5.7. Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any Proceeding relating thereto, and any such Proceeding instituted by the

Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as set forth in Section 5.8 hereof.

Section 5.8. Application of Money Collected.

Any money collected by or on behalf of the Trustee with respect to the Notes pursuant to this Article V (including all collections from, and proceeds of the sale or liquidation of, the Trust Estate) shall be applied at the date or dates fixed by the Trustee and in the same order as specified in Sections 11.1(b) and 11.1(d) hereof.

Section 5.9. Limitation on Suits.

Except as otherwise provided in Section 5.10 hereof, no Holder of any Note shall have any right to institute any Proceedings, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

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

(b) the Requisite Noteholders shall have made written request to the Trustee to institute Proceedings in respect of such Event of Default in its own name as Trustee hereunder;

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

(d) the Trustee for 30 days after its receipt of such notice, request and offer of such indemnity has failed to institute any such Proceedings; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 30-day period by the Requisite Noteholders;

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

Section 5.10. Unconditional Rights of Noteholders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture, but subject to the provisions of Sections 2.7 and 11.1 hereof, (a) the Holders of the Class A-1LA Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-1LA Notes and the Class X Notes, as applicable, and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (b) the

Holders of the Class A-1LB Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-1LB Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (c) the Holders of the Class A-2L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-2L Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (d) the Holders of the Class A-3L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-3L Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (e) the Holders of the Class A-4L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-4L Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, and (f) the Holders of the Class B-1L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class B-1L Notes and the accrued and unpaid interest thereon at the Applicable Periodic Rate as any such amounts become due and payable. Furthermore, the Holder of any Note shall have the right, which is absolute and unconditional, to institute Proceedings for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. Notwithstanding any other provision in this Section 5.10 or otherwise in this Indenture to the contrary, (i) Holders of the Class A-3L Notes shall have no right to institute Proceedings for the enforcement of any such payment until such time as no Senior Class A Notes remain Outstanding, (ii) Holders of the Class A-4L Notes shall have no right to institute Proceedings for the enforcement of any such payment until such time as no Senior Class A Notes remain Outstanding, and (iii) Holders of the Class B-1L Notes shall have no right to institute Proceedings for the enforcement of any such payment until such time as no Class A Notes remain Outstanding, and, in each case, any such right to institute Proceedings shall be subject to the provisions of Section 5.9 hereof.

Section 5.11. Restoration of Rights and Remedies.

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

Section 5.12. Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Trustee or to the Holders of the Notes is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right

and remedy given hereunder or now or hereafter existing by law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.13. Delay or Omission Not Waiver.

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

Section 5.14. Control by Noteholders.

Notwithstanding any other provision of this Indenture, the Requisite Noteholders, on behalf of the Holders of all the Notes, shall have the right (a) to cause the institution of and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee or (b) subject to Section 6.3(e) hereof, to direct the Trustee with respect to its exercise of any right, remedy, trust or power conferred on the Trustee; *provided that*:

(i) such direction shall not be in conflict with any rule of law or with any express provision of this Indenture (including, without limitation, any provision hereof providing express personal protection to the Trustee or a limitation on the liability of the Co-Issuers as set forth in Section 2.7(i) hereof), and

(ii) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction; *provided that*, subject to Section 6.1 hereof, the Trustee need not take any action that it reasonably determines might involve it in liability.

Section 5.15. Waiver of Past Defaults.

Prior to the time a judgment or decree for payment of the money due has been obtained by the Trustee, the Requisite Noteholders may on behalf of the Holders of all the Notes waive any past Default and its consequences, with notice to the Rating Agencies, except a Default:

(a) in the payment of the principal of or interest on any Note, or

(b) in respect of a covenant or provision hereof that under Section 8.2 hereof cannot be modified or amended without the consent of the Holder of each Outstanding Note affected.

In the case of any such waiver, the Issuer, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. Upon such waiver, such Default shall cease to exist, and any Event of Default arising therefrom

shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 5.16. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.16 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in Aggregate Principal Amount of the Notes, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note on or after the Final Maturity Date expressed in such Note.

Section 5.17. Waiver of Stay or Execution Laws.

Each of the Co-Issuers covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or execution law wherever enacted, including, but not limited to, filing a voluntary petition under the Bankruptcy Code now or at any time hereafter in force, which may affect the covenants or the performance of or the exercise of any remedies under this Indenture; and each of the Co-Issuers (to the extent that they may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee or any Noteholder, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.18. Sale of Trust Estate.

(a) The power to effect any sale (a "Sale") of any portion of the Trust Estate pursuant to Section 5.4 and Section 5.5 hereof shall not be exhausted by any one or more Sales as to any portion of such Trust Estate remaining unsold, but shall continue unimpaired until the entire Trust Estate securing the Notes shall have been sold or all amounts payable on the Notes under this Indenture with respect thereto shall have been paid. The costs of any such sale of the Trust Estate shall be reimbursable to the Trustee pursuant to Section 6.7 hereof. The Trustee may, upon notice to the Noteholders, and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, and shall, upon direction of the Requisite Noteholders, postpone any Sale by public announcement made at the time of and place of such Sale. The Trustee hereby expressly waives its right to any amount fixed by law as compensation for any Sale.

(b) The Trustee may bid for and acquire any portion of the Trust Estate in connection with a Sale thereof on an arm's length basis to the extent not prohibited by applicable law, and may pay all or part of the purchase price by crediting against amounts owing on the

Notes or other amounts secured by this Indenture, all or part of the net proceeds of such Sale after deducting the reasonable costs, charges and expenses incurred by the Trustee in connection with such Sale notwithstanding the provisions of Section 6.7 hereof. The Notes need not be produced in order to complete any such Sale, or in order for the net proceeds of such Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Trust Estate consists of securities issued without registration under the Securities Act ("Unregistered Securities"), the Trustee may seek an Opinion of Counsel, or, if no such Opinion of Counsel can be obtained and with the consent of the Requisite Noteholders, seek a no-action position from the Securities and Exchange Commission or any other relevant Federal or state regulatory authorities, regarding the legality of a public or private sale of such Unregistered Securities (the costs of which in each case, shall be reimbursable to the Trustee pursuant to Section 6.7 hereof).

(d) The Trustee shall execute and deliver an appropriate instrument of conveyance transferring its interest in any portion of the Trust Estate in connection with a Sale thereof. In addition, the Trustee is hereby irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer and convey its interest in any portion of the Trust Estate in connection with a Sale thereof and to take all action necessary to effect such Sale. No purchaser or transferee at such a Sale shall be bound to ascertain the Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any monies.

Section 5.19. Action on Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders hereunder shall be impaired by the recovery of any judgment by the Trustee.

ARTICLE VI

THE TRUSTEE

Section 6.1. Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default (other than a Trustee Payment-Related Event of Default):

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

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the

requirements of this Indenture; *provided that* in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate or opinion does not so conform. If a corrected certificate or opinion shall not have been delivered to the Trustee within 15 days after such notice from the Trustee, the Trustee shall so notify the Noteholders.

(b) In case an Event of Default (other than a Trustee Payment-Related Event of Default) of which the Trustee has actual knowledge has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Requisite Noteholders, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

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

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer in accordance with this Indenture and/or the Requisite Noteholders (or Holders with such larger percentage as may be required by the terms hereof) relating to the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any extraordinary financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it (provided that the unsecured agreement of any Noteholder that is an Institutional Investor organized under the laws of the United States or any State in the United States shall constitute adequate assurance with respect to repayment and indemnity; *provided that* the aggregate net worth of the Institutional Investors providing such unsecured agreements shall be not less than $200,000,000); *provided that* the reasonable costs of performing its ordinary services under this Indenture shall not be deemed an "extraordinary financial liability" for purposes hereof; and

(5) the Trustee shall not be liable to the Noteholders for any action taken or omitted by it at the direction of the Issuer, the Servicer and/or the Holders of the

Notes under circumstances in which such direction is required or permitted by the terms of this Indenture.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.1 and Section 6.3 hereof.

(e) The Trustee, promptly after receipt by a Responsible Officer, shall transmit by first class mail all Holders of Notes, as their names and addresses appear on the Note Register, all written communications that are required hereunder to be delivered to the Trustee and are received from or on behalf of the Issuer or the Servicer (excluding in the case of the Holders (i) information provided by the Trustee to the Issuer pursuant to Section 10.4 hereof, (ii) so long as no Event of Default (other than a Trustee Payment-Related Event of Default) has occurred and is continuing, Servicer Orders received by the Trustee pursuant to Sections 10.2, 11.3 and 12.4 hereof, and (iii) Monthly Reports received pursuant to Section 10.5(a) hereof, unless, in any such case, requested by any Holder) and any notification or other communication received from any of the Rating Agencies stating that the rating of any Class of Notes has been, or will be, changed or withdrawn.

Section 6.2. Notice of Default.

Promptly (and in no event later than 5 Business Days) after the occurrence of any Default or Event of Default of which a Responsible Officer of the Trustee has actual knowledge or after any declaration of acceleration has been made by or delivered to the Trustee pursuant to Section 5.2 hereof, the Trustee shall transmit by mail to the Rating Agencies, to all Holders of Notes, as their names and addresses appear on the Note Register, and to the Issuer and the Servicer, notice of all Defaults or Events of Default hereunder of which a Responsible Officer of the Trustee has actual knowledge, unless such Default or Event of Default shall have been cured or waived.

Section 6.3. Certain Rights of Trustee.

Except as otherwise provided in Section 6.1 hereof:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document (including but not limited to any reports prepared and delivered under Article X hereunder) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Servicer mentioned herein shall be sufficiently evidenced by a Servicer Request or Servicer Order, as the context may require;

(c) whenever in the administration of this Indenture the Trustee shall (i) deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate or (ii) be required to determine the value of any Collateral or funds hereunder or the cash flows projected to be received

therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accounting firms or other persons qualified to provide the information required to make such determination including nationally recognized dealers in securities of the type being valued and securities quotation services;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture unless such Noteholders shall have offered to the Trustee security reasonably satisfactory to it or indemnity against all costs, expenses and liabilities which might reasonably be incurred by it in compliance with such request or direction (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any state in the United States shall be deemed sufficient; *provided that* the aggregate net worth of the Institutional Investors providing such unsecured agreements shall not be less than $200,000,000);

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or documents received by it, but the Trustee, in its discretion, may and, upon written direction of the Majority Noteholders shall, make such further inquiry or investigation into such facts or matters as it may see fit or as it shall be directed, and the Trustee and any Noteholder (acting solely through the Trustee and at the expense of such Noteholder) shall be entitled, on reasonable prior request (which request shall include a statement of the purpose therefor) made in advance to the Issuer, the Trustee and the Servicer, to examine the books and records of the Issuer and the Servicer relating to the Trust Estate, personally or by agent or attorney during the Issuer's or the Servicer's normal business hours; *provided that* the Trustee or any such Noteholder shall, and shall cause its agents, to hold in confidence all such information, except (i) to the extent disclosure may be required by law, by any regulatory authority, the Transaction Documents or by the National Association of Insurance Commissioners, (ii) a Noteholder may disclose such information to any prospective transferee and to such Noteholder's and transferee's accountants, consultants, attorneys and similar agents; *provided that* all such persons agree in writing to hold such information as confidential and (iii) except to the extent that the Trustee, in its sole judgment, may determine that such disclosure is consistent with its obligations hereunder;

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

(h) to the extent permitted by applicable law, the Trustee shall not be required to give any bond or surety in respect of the execution of this Indenture or otherwise;

(i) the Trustee shall not be deemed to have notice or knowledge of any matter unless a Responsible Officer within the Corporate Trust Office has actual knowledge thereof or unless written notice thereof is received by the Trustee at the Corporate Trust Office and such notice references the Notes generally, the Issuer or this Indenture. Whenever reference is made in this Indenture to a Default or an Event of Default such reference shall, insofar as determining any liability on the part of the Trustee is concerned, be construed to refer only to a Default or an Event of Default of which the Trustee is deemed to have knowledge in accordance with this paragraph;

(j) the permissive right of the Trustee to take or refrain from taking any actions enumerated in this Indenture shall not be construed as a duty;

(k) the Trustee shall not be liable for any action it takes, or omits to take, in good faith that it reasonably believes to be authorized or within its rights or powers hereunder;

(l) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each Paying Agent, Paying and Transfer Agent, Authenticating Agent, Transfer Agent and Note Registrar;

(m) the Trustee shall not be responsible for the accuracy of the books or records of, or acts or omissions of, the Depository, any Transfer Agent (other than the Trustee itself acting in that capacity), Clearstream, Euroclear, any Calculation Agent (other than the Trustee itself acting in that capacity) or any Paying Agent (other than the Trustee itself acting in that capacity); *provided*, the Trustee will make reasonable efforts to correct any errors they become aware of or to notify the appropriate parties of any errors they become aware of; and

(n) the Trustee will not be liable for the actions or omissions of the Servicer, and without limiting the foregoing, the Trustee will not be under any obligation to monitor, evaluate or verify compliance by the Servicer with the terms hereof or the Servicing Agreement, or to verify or independently determine the accuracy of the information received by it from the Servicer (or from any selling institution, agent, bank, trustee or similar source) with respect to the Portfolio Collateral.

Section 6.4. Not Responsible for Recitals or Issuance of Notes.

The recitals contained herein and in the Notes, other than the certificate of authentication thereon, shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture, of the Trust Estate, or of the Notes. The Trustee shall not be accountable for the use or application by the Issuer of the Notes or Preferred Shares or the proceeds thereof.

Section 6.5. May Hold Notes.

(a) JPMorgan Chase Bank, National Association, or any other Person that becomes Trustee hereunder, in any capacity, may become the owner or pledgee of Notes, and

may otherwise deal with the Issuer or any Affiliate thereof with the same rights it would have if it were not Trustee.

(b) The Trustee and its Affiliates may invest in for their own account obligations or securities that would be appropriate for inclusion in the assets as Portfolio Collateral, and the Trustee in making those investments has no duty to act in a way that is favorable to the Issuer or the Holders of the Notes or the Preferred Shares. The Trustee's Affiliates currently serve, and may in the future serve as investment advisor for other issuers of collateralized debt obligations.

(c) The Trustee and its Affiliates are permitted to receive additional compensation that could be deemed to be in the Trustee's economic self interest for (i) serving as investment advisor, administrator, shareholder, servicing agent, custodian or sub-custodian with respect to certain Eligible Investments, (ii) using Affiliates to effect transactions in certain Eligible Investments selected by the Servicer and (iii) effecting transactions in certain Eligible Investments. Such compensation shall not be an amount that is reimbursable or payable pursuant to this Indenture. All purchases of Eligible Investments shall be made in accordance with Section 10.2(b).

Section 6.6. Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds held by the Trustee in trust hereunder except to the extent required herein or required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed upon with the Issuer and except to the extent of income or other gain on Eligible Investments which are deposits in or certificates of deposit of the Trustee in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on investments made in accordance with an Issuer Order or Servicer Order, unless such investment is made in an obligation of the Trustee in its corporate capacity.

Section 6.7. Compensation and Reimbursement.

The Issuer agrees:

(a) to pay the Trustee on each Payment Date (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) in accordance with the Trustee Fee Letter Agreement;

(b) except as otherwise expressly provided herein, to reimburse the Trustee (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee (as such or as Securities Intermediary) in accordance with any provision of this Indenture or in the enforcement of any provision hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel) and expenses related to the maintenance and administration of the Collateral; *provided that* any securities transaction charges to the extent included above shall, in the case of certain Eligible Investments

specified by the Servicer, be waived in the event that any amounts are received by the Trustee during a Due Period from a financial institution in consideration of purchasing such Eligible Investments, except any such expense, disbursement or advance as may be attributable to the Trustee's negligence, willful misconduct or bad faith;

(c) to reimburse the Trustee (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) for its payment of the fees and expenses of any accounting firm or investment banking firm employed by the Trustee to perform the accounting required pursuant to Section 5.4, Section 5.5, Section 6.3(c) or Section 10.6 hereof and for its payment of the fees and expenses of the Irish Paying Agent, Paying Agents or Authenticating Agents appointed by it at the request of the Issuer pursuant to Section 2.4;

(d) to indemnify the Trustee, its directors, officers, employees and agents (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) for, and to hold it harmless against, any loss, liability or expense (including without limitation reasonable attorney's fees and expenses) incurred without negligence, willful misconduct or bad faith arising out of or in connection with the acceptance or administration of this trust and the Transaction Documents, including the costs and expenses of defense against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder (including as Securities Intermediary); and

(e) to pay the Trustee (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) reasonable additional compensation together with its expenses (including reasonable attorneys' fees) for any collection action taken pursuant to Section 6.12 hereof.

Section 6.8. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a bank organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $200,000,000, having a long-term unsecured debt rating of "BBB" or better by Standard & Poor's and "Baa1" or better by Moody's, and subject to supervision or examination by Federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In addition, the Trustee shall not be "affiliated" (as that term is defined in Rule 405 of the Securities Act) with the Co-Issuers or with any person involved in the organization or operation of the Co-Issuers and shall not offer or provide credit or credit enhancement to the Co-Issuers (as provided per Rule 3a-7). If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.8, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

Section 6.9. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10 hereof. The indemnifications in favor of the Trustee in Section 6.7 hereof shall survive any resignation or removal (to the extent of any indemnified liabilities, costs, expenses and other amounts arising or incurred prior to, or arising out of actions or omissions occurring prior to, such resignation or removal).

(b) The Trustee may resign at any time by giving written notice thereof to the Issuer, the Rating Agencies, the Noteholders and the Servicer and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent. Upon receiving such notice of resignation, the Issuer shall at the direction of its board of directors (with the written consent of the Servicer, not to be unreasonably withheld) promptly appoint a successor trustee or trustees by written instrument, in duplicate, executed by an Authorized Officer of the Issuer on behalf of the Issuer, one original copy of which shall be delivered to the Trustee so resigning and one original copy to the successor trustee or trustees, together with a copy to each Noteholder. If no successor trustee shall have been appointed and an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee, or any Holder of a Note, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) Subject to Section 6.9(a) hereof, the Trustee may be removed at any time at the direction the Holders of more than 50% of the Aggregate Principal Amount of the Controlling Class.

(d) The Issuer, at the direction of its board of directors, by Issuer Order, may remove the Trustee petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee, if at any time:

(i) the Trustee shall cease to be eligible under Section 6.8 hereof and shall fail to resign after written request therefor by the Issuer or by the Requisite Noteholders, or

(ii) the Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Trustee for any cause, the Issuer, at the direction of its board of directors, by Issuer Order, shall (with the written consent of the Servicer, not to be unreasonably withheld) promptly appoint a successor Trustee. If no successor Trustee shall have been so appointed by the Issuer and shall have accepted appointment in the manner hereinabove provided, any Noteholder may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Issuer shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by giving facsimile notice of such event, confirmed by first-class mail, postage prepaid, to each Rating Agency, Bear Stearns, the Servicer and to the Holders of the Notes as their names and addresses appear in the Note Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Section 6.10. Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall be required to meet the eligibility requirements set forth in Section 6.8 hereof and shall execute, acknowledge and deliver to the Issuer and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of the retiring Trustee; but, on request of the Issuer, the successor Trustee or the Requisite Noteholders, such retiring Trustee shall, upon payment of its fees, expenses and indemnities then unpaid, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any; provided for in Section 6.13 hereof. Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No appointment of a successor Trustee shall become effective until the date ten days after notice of such appointment has been given to each Noteholder, and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

Section 6.11. Merger, Conversion, Consolidation or Succession to Business of Trustee.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; *provided* such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

Section 6.12. Certain Duties of Trustee Related to Delayed Payment of Proceeds.

If in any month the Trustee shall not have received a payment with respect to any Pledged Security on its Due Date, (a) the Trustee shall promptly notify the Issuer and the Servicer in writing and, (b) unless within three Business Days after such notice such payment

shall have been received by the Trustee, or the Issuer shall have made provision for such payment satisfactory to the Trustee in accordance with Section 10.2(a) hereof, the Trustee shall request the issuer of such Pledged Security, the trustee under the related Underlying Instrument or paying agent designated by either of them, as the case may be, to make such payment as soon as practicable after such request but in no event later than three Business Days after the date of such request. If such payment is not made within such time period, the Trustee shall take such action as the Servicer shall direct in writing; *provided that* any expenses incurred or to be incurred in taking any such action shall be deemed to be an "extraordinary financial liability" under clause (4) of Section 6.1(c) hereof. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. In the event that the Issuer or the Servicer requests a release of a Pledged Security and/or delivers Substitute Portfolio Collateral in connection with any such action under the Servicing Agreement, such release and/or substitution shall be subject to Section 10.3 hereof and Article XII of this Indenture as the case may be. Notwithstanding any other provision hereof the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Security received after the Due Date thereof to the extent the Issuer previously made provisions for such payment satisfactory to the Trustee in accordance with this Section 6.12 and such payment shall not be deemed part of the Trust Estate.

Section 6.13. Non-Petition.

None of the Trustee, the Secured Parties, the Noteholders or the Paying and Transfer Agent, shall cause or join in the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for any reason, including for the nonpayment to any such party of any amounts due hereunder or under the Paying and Transfer Agency Agreement or under the Notes, as applicable, until the expiration of the period which is one year and one day (or such longer preference period as may be in effect) after the final payment on the Notes; *provided, however*, nothing herein shall be deemed to prohibit the Trustee from filing proofs of claim for itself and on behalf of the Noteholders.

Section 6.14. Withholding.

(a) If any withholding tax is imposed on the Co-Issuers' payment (or allocations of income) to any Noteholder, such tax shall reduce the amount otherwise distributable to such Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed by the Trust Estate or the Co-Issuers (as directed to it in writing by the Co-Issuers) (but such authorization shall not prevent the Trustee from contesting any such tax in appropriate Proceedings and withholding payment of such tax, if permitted by law, pending the outcome of such Proceedings), or that the Trustee may otherwise determine it is obligated to withhold under applicable law or regulation. The amount of any withholding tax imposed with respect to any Noteholder shall be treated as cash distributed to such Noteholder at the time it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold such amounts in accordance with this Section 6.14 (a). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with such Noteholder in making such claim so long as such Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred. Nothing in this Section 6.14 shall be construed to impose upon the

Trustee any obligation or duty to determine the tax liability or responsibilities of the Co-Issuers or the Trust Estate other than the duties required under applicable law, or otherwise to perform any related tax administration or return preparation or filing responsibilities, or to impose upon the Trustee any duty or obligation to commence Proceedings to contest any tax.

(b) In order to receive payments on its Note free of U.S. federal withholding and backup withholding tax, each Holder shall timely furnish the Issuer or its agents any U.S. federal income tax form or certification (such as Internal Revenue Service ("IRS") Form W-8BEN (Certification of Foreign Status), Form W-8IMY (Certification of Foreign Intermediary Status), Form W-9 (Request for Taxpayer Identification Number and Certification) or Form W-8ECI (Certification of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms) that the Issuer or its agents may reasonably request and shall update or replace such form or certification in accordance with its terms or its subsequent amendments.

Section 6.15. The Securities Intermediary.

(a) There shall at all times be one or more securities intermediaries appointed for purposes of this Indenture (the "Securities Intermediary"). JPMorgan Chase Bank, National Association, is hereby appointed as the initial Securities Intermediary hereunder (in such capacity, "JPMorgan Chase"), and JPMorgan Chase accepts such appointment.

(b) The Securities Intermediary shall be, and JPMorgan Chase as initial Securities Intermediary hereby represents and warrants that it is as of the date hereof and shall be, for so long as it is the Securities Intermediary hereunder, a corporation or national bank that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity hereunder. The Securities Intermediary shall, and JPMorgan Chase as initial Securities Intermediary does, agree with the parties hereto that each Account shall be an account to which financial assets may be credited and undertake to treat the Trustee as entitled to exercise the rights that comprise such financial assets. The Securities Intermediary shall, and JPMorgan Chase as initial Securities Intermediary does, agree with the parties hereto that each item of property credited to each Account shall be treated as a financial asset. The Securities Intermediary shall, and JPMorgan Chase as initial Securities Intermediary does, agree with the parties hereto that, for purposes of the UCC and the United States Regulations, the securities intermediary's jurisdiction of the Securities Intermediary with respect to the Trust Estate shall be the State of New York. The Securities Intermediary shall, and JPMorgan Chase as initial Securities Intermediary does, represent and covenant that it is not and will not be (as long as it is the Securities Intermediary hereunder) a party to any agreement that is inconsistent with the provisions of this Indenture. The Securities Intermediary shall, and JPMorgan Chase as initial Securities Intermediary does, covenant that it will not take any action inconsistent with the provisions of this Indenture applicable to it. The Securities Intermediary shall, and JPMorgan Chase as initial Securities Intermediary does, agree that any item of property credited to any Account shall not be subject to any security interest, lien, encumbrance or right of setoff in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Trustee).

(c) It is the intent of the Trustee and the Co-Issuers that each Account shall be a securities account of the Trustee and not an account of the Co-Issuers. Nonetheless, the Securities Intermediary shall agree to comply with entitlement orders originated by the Trustee without further consent by the Co-Issuers or any other person or entity, and JPMorgan Chase as initial Securities Intermediary agrees that, for so long as it is the Securities Intermediary hereunder, it will comply with entitlement orders originated by the Trustee without further consent by the Co-Issuers or any other person or entity. The Securities Intermediary shall covenant that it will not agree with any person or entity other than the Trustee that it will comply with entitlement orders originated by any person or entity other than the Trustee, and JPMorgan Chase as initial Securities Intermediary hereby covenants that, for so long as it is the Securities Intermediary hereunder, it will not agree with any person or entity other than the Trustee that it will comply with entitlement orders originated by any person or entity other than the Trustee.

(d) Nothing herein shall imply or impose upon the Securities Intermediary any duties or obligations other than those expressly set forth herein and those applicable to a securities intermediary under the UCC and the United States Regulations (and the Securities Intermediary shall be entitled to all of the protections available to a securities intermediary under the UCC and the United States Regulations). Without limiting the foregoing, nothing herein shall imply or impose upon the Securities Intermediary any duties of a fiduciary nature (such as, without limitation, the fiduciary duties of the Trustee hereunder).

(e) The Securities Intermediary may at any time resign by notice to the Trustee and may at any time be removed by notice from the Trustee; *provided however* that it shall be the responsibility of the Trustee to appoint a successor Securities Intermediary and to cause the Accounts to be established and maintained with such successor Securities Intermediary in accordance with the terms hereof; and the responsibilities and duties of the retiring Securities Intermediary hereunder shall remain in effect until all of the Trust Estate credited to the Accounts held by such retiring Securities Intermediary have been transferred to such successor. Any corporation into which the Securities Intermediary may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which the Securities Intermediary shall be a party, shall be the successor of the Securities Intermediary hereunder, without the execution or filing of any further act on the part of the parties hereto or such Securities Intermediary or such successor corporation.

Section 6.16. Eligible Investments.

Eligible Investments acquired with available funds in an Account shall be credited by the Trustee to such Account.

Section 6.17. Fiduciary For Noteholders; Agent for the Other Secured Parties.

With respect to the security interest created hereunder, the Delivery of any item of Collateral to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any item of Collateral, the indorsement to or registration in the name of the Trustee of any item of Collateral and the status of the Trustee as entitlement holder with respect to the Accounts are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the

other Secured Parties. The Trustee shall not by reason of this Indenture be deemed to be acting as a fiduciary for the Secured Parties other than the Noteholders; *provided that* the foregoing shall not limit any of the express obligations of the Trustee under this Indenture.

ARTICLE VII

COVENANTS

Section 7.1. Payment of Principal and Interest.

The Co-Issuers (as applicable) will duly and punctually pay the principal of, interest on and all other amounts payable on or in respect of the Notes in accordance with the terms of the Notes and this Indenture.

Section 7.2. Maintenance of Office or Agency.

The Trustee will maintain an office or agency in the Borough of Manhattan, the City of New York, the State of New York, where Notes may be presented or surrendered for payment. The Trustee hereby initially appoints the office of JPMorgan Chase Bank, National Association (the "New York Presenting Agent"), currently located at JPMorgan Chase Bank, 4 New York Plaza, ground floor, New York, New York 10004, Attention: WSS Window – WSS (Houston)—Rockwall CDO, as such office or agency. The Trustee shall give prompt written notice to the Co-Issuers and the Noteholders of any change in the location of the New York Presenting Agent. If the location of the New York Presenting Agent changes and such notice is not given or the Trustee fails to maintain any such office or agency, presentations and surrenders of the Notes may be made or served at the Corporate Trust Office.

Section 7.3. Money for Note Payments to Be Held in Trust.

All payments of amounts due and payable with respect to any Notes that are to be made from amounts withdrawn from the Collection Account shall be made on behalf of the Issuer by the Trustee.

Section 7.4. Existence of Co-Issuers; Corporate Formalities.

(a) Each of the Co-Issuers will, to the maximum extent permitted by applicable law, maintain in full force and effect its existence, rights and franchises as a company or corporation incorporated or organized under the laws of the jurisdiction of its incorporation or organization, as the case may be, and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Indenture, the Notes or any of the Pledged Securities or other property included in the Trust Estate. Each of the Co-Issuers shall comply with its charter documents and shall not amend its charter documents without the consent of the Requisite Noteholders if such amendment would have a material adverse effect on the rights of the Noteholders and, for so long as any Notes are then rated, shall notify the Rating Agencies of any amendment and shall not amend its charter document in any material way without satisfaction of the Rating Condition.

(b) The Issuer shall ensure that all corporate or other formalities regarding its existence (including, to the extent required, holding, to the extent required, regular meetings of the board of directors and shareholders) are followed. The Issuer shall not take any action, or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing, (i) the Issuer shall not have any subsidiaries except the Co-Issuer, and (ii) the Issuer shall not (A) have any employees (other than its directors), (B) engage in any transaction with any shareholder that would constitute a conflict of interest, *provided, however, that* the entry into the Administration Agreement and the Paying and Transfer Agency Agreement with Maples Finance Limited shall not be deemed a conflict of interest or (C) pay dividends other than in accordance with the terms of this Indenture, its organizational documents, and with regard to its Preferred Shares, in accordance with the terms of the Paying and Transfer Agency Agreement.

Section 7.5. Protection of Trust Estate.

(a) The Issuer shall authorize, execute, deliver and file all such supplements and amendments hereto and all such financing statements, amendments of financing statements, continuation statements, instruments of further assurance and other instruments and shall take such other action as may be necessary or advisable to:

(i) Grant more effectively all or any portion of the Trust Estate;

(ii) maintain or preserve the lien of this Indenture or to carry out more effectively the purposes hereof;

(iii) perfect, publish notice of, or protect the validity of any Grant made or to be made by this Indenture;

(iv) enforce any of the Pledged Securities or other instruments or property included in the Trust Estate;

(v) preserve and defend title to the Trust Estate and the rights therein of the Secured Parties against the claims of all other Persons; and

(vi) pay any and all taxes levied or assessed upon all or any part of the Trust Estate.

The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements and continuation statements) that name the Issuer as debtor and the Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies the filing of any such financing statements (or amendments of financing statements or continuation statements) that were filed prior to the execution hereof. The Issuer hereby designates the Trustee its agent and attorney-in-fact to take any action or authorize or execute any financing statement, amendment of financing statement, continuation statement or other instrument required pursuant to this Section 7.5; *provided that* such appointment shall not impose upon the Trustee any of the Issuer's obligations under this Section 7.5.

The Trustee shall give written notice to the Issuer, the Servicer and the legal counsel who rendered the most recent Opinion of Counsel received by the Trustee under Section 7.6(a) of the pending expiration of the financing statement filed in connection with the closing of the transaction contemplated herein and any continuation statement relating thereto, no earlier than six months prior to the scheduled expiration date of such financing statement or continuation statement, as applicable, and no later than two months prior to such scheduled expiration date.

(b) The Trustee shall not, except in accordance with the provisions of this Indenture, release any portion of the Trust Estate from the security interest and lien hereunder or remove any portion of the Trust Estate from the jurisdictions indicated in Section 10.3(a) hereof; *provided that* the Trustee shall be entitled to remove the Trust Estate or any portion thereof to a jurisdiction other than the applicable jurisdiction or jurisdictions indicated in Section 10.3(a) hereof if the Trustee shall have first obtained an Opinion of Counsel, at its own expense, to the effect that the lien and security interest created by this Indenture with respect to such property, including the perfection and priority thereof, will continue to be maintained after giving effect to such action, and *provided further that* the Trustee shall thereafter (for so long as such property continues to be so located in such other jurisdiction) obtain at its own expense an annual Opinion of Counsel, on or before the date specified in Section 7.6(a) hereof, confirming the matters required by such Section to the extent governed by the law of such other jurisdiction.

(c) The Issuer shall pay or cause to be paid taxes, if any, levied on account of the beneficial ownership by the Issuer of any Pledged Securities.

(d) The Issuer hereby represents and warrants that its registered office is, and always has been, in the Cayman Islands; it has never had any offices in the United States of America, and the only offices of any type it has ever had have been in the Cayman Islands.

Section 7.6. Opinions and Tax Certificates.

(a) On or before May 31 in each calendar year, commencing in 2007, the Issuer shall cause to be delivered to the Trustee an Opinion of Counsel (and the Trustee shall deliver copies of such to the Servicer and the Rating Agencies), stating that, in the opinion of such counsel, as of the date of such opinion, the Indenture creates in favor of the Trustee a security interest in the Trust Estate and that such security interest is perfected.

(b) If required to prevent the withholding and imposition of United States income tax, the Issuer shall deliver or cause to be delivered (as applicable) a United States Internal Revenue Service Form W-8BEN or W-8IMY (with applicable supporting documentation), or any successor forms thereto, to each issuer of any Portfolio Collateral and each issuer of an Eligible Investment in the Trust Estate at the time such Portfolio Collateral or Eligible Investment is purchased by the Issuer and annually thereafter.

(c) The Issuer will elect to be treated as a partnership for U.S. federal income tax purposes. In the event that the Issuer is treated as a corporation, the Issuer will take all actions necessary in order to permit any holder of a Preferred Share, any holder of equity in the Issuer or any Holder of a Note or other security that is or may reasonably be characterized as an equity

interest in the Issuer for United States federal income tax purposes to make a "qualified electing fund" election for United States federal income tax purposes and to satisfy the ongoing requirements with respect to such an election. Further, in such event, the Issuer will provide, upon the reasonable request of any holder of a Preferred Share, any holder of equity in the Issuer or any such Holder of a Note, any information the Issuer has available to it that assists such holders with regard to filing requirements such holders may have as a result of the controlled foreign corporation rules under the Code.

(d) The Issuer will not take the position that it is engaged in a United States trade or business for federal income tax purposes.

Section 7.7. Performance of Obligations.

(a) The Co-Issuers shall not take any action, and, where applicable, will not consent to any action proposed to be taken by others, that would release any Person from any of such Person's covenants or obligations under any instrument included in the Trust Estate, except in the case of enforcement action taken with respect to any Defaulted Portfolio Collateral in accordance with the provisions hereof and as otherwise required hereby.

(b) The Co-Issuers may contract with other Persons, including JPMorgan Chase Bank, National Association, and the Servicer, for the performance by such Persons of the Issuer's obligations hereunder and under the Servicing Agreement. Notwithstanding any such arrangement, the Issuer shall remain primarily liable with respect thereto. With respect to any such contract, the performance of such obligations by such Persons shall be deemed to be performance of such obligations by the Issuer.

Section 7.8. Negative Covenants.

(a) The Issuer will not:

(1) sell, transfer, exchange or otherwise dispose of, or pledge, mortgage, hypothecate or otherwise encumber (or permit such to occur or suffer such to exist), any part of the Trust Estate, except as expressly permitted by this Indenture and the Servicing Agreement;

(2) claim any credit on, or make any deduction from, the amount payable with respect to the Notes other than amounts withheld pursuant to Section 6.14 hereof, or assert any claim against any present or future Noteholder, by reason of the payment of any taxes levied or assessed upon any part of the Trust Estate;

(3) incur or assume any indebtedness other than pursuant to this Indenture or the Paying and Transfer Agency Agreement, or incur, assume or guaranty the indebtedness of any Person, issue any additional class of securities or issue any additional shares, shares of stock or membership interests;

(4) (A) permit the validity or effectiveness of this Indenture or any Grant hereunder to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from

any covenants or obligations with respect to this Indenture or the Notes, except, in each case, as may be expressly permitted hereby, thereby, or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Trust Estate or any part thereof, any interest therein or the proceeds thereof except as may be expressly permitted hereby, or (C) take any action that would permit the lien of this Indenture not to constitute a valid first priority perfected security interest in the Trust Estate except as may be expressly permitted hereby;

(5) act as agent, negotiator or structurer with respect to any Portfolio Collateral, act as a participant in negotiating the terms of a primary loan agreement, except to the extent provided in the Servicing Agreement, enter into a binding commitment to purchase any Portfolio Collateral prior to the issuance of such Portfolio Collateral or engage in any transaction or activity that would cause the Issuer to be treated as engaged in a trade or business in the United States within the meaning of section 864 of the Code;

(6) change its name or its type or jurisdiction of organization unless it has first (i) made all filings and taken all actions in all relevant jurisdictions under the applicable Uniform Commercial Code and other applicable law as are necessary to continue and maintain the priority and perfection of the security interest of the Trustee in the Trust Estate, and (ii) delivered to the Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the applicable Uniform Commercial Code in all relevant jurisdictions as are necessary to continue and maintain the priority and perfection of the security interest of the Trustee in the Trust Estate;

(7) enter into any agreements or amendments thereto unless such agreements and any amendments thereto contain "non-petition" and "limited recourse" provisions, except with respect to any agreements involving the purchase and sale of Portfolio Collateral having customary purchase or sale terms and documented with customary trading documentation;

(8) enter into any agreements or amendments to the Transaction Documents with respect to the "non-petition" or "limited recourse" provisions without satisfying the Rating Condition; or

(9) commingle any of the Collateral with the assets of any other Person, except as expressly permitted by this Indenture and the Servicing Agreement.

(b) The Co-Issuer will not enter into any agreement, contract or indenture other than this Indenture and shall not incur or assume any indebtedness other than pursuant to or as may be expressly permitted by this Indenture, or incur, assume or guaranty the indebtedness of any Person.

(c) The Trustee shall not sell, transfer, exchange or otherwise dispose of, or enter into or engage in any business with respect to, any part of the Trust Estate, except as expressly permitted by this Indenture or the Servicing Agreement.

(d) Neither of the Co-Issuers shall to the maximum extent permitted by applicable law (i) commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief entered with respect to it, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seek appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or make a general assignment for the benefit of its creditors; neither of the Co-Issuers shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth above; and each of the Co-Issuers shall generally pay debts as they become due and not admit in writing its inability to pay its debts as they become due.

(e) Except as permitted by Section 8.2 hereof, the Issuer shall not waive nor permit the amendment of Section 19 or Section 20 of the Servicing Agreement or Section 20 of the Paying and Transfer Agency Agreement.

Section 7.9. Statement as to Compliance.

On or before July 31 following each calendar year, beginning in 2007, or immediately if there has been a Default under this Indenture, the Issuer shall deliver to the Trustee, and the Trustee in turn shall deliver a copy to the Rating Agencies (and any Noteholder upon receipt by the Trustee of a certificate in the form of Exhibit H), an Officer's Certificate of the Issuer stating that:

(1) a review of the activities of the Issuer during such year and of the Issuer's performance under this Indenture has been made under his or her supervision; and

(2) to the best of his or her knowledge, based on such review, the Issuer has fulfilled all of its obligations under this Indenture throughout such year, or, if there has been a Default hereunder, specifying each such Default known to him or her and the nature and status thereof, including any actions taken to remedy the same.

Section 7.10. Issuer and Co-Issuer May Not Consolidate or Merge.

Neither the Issuer nor the Co-Issuer shall consolidate or merge with or into any other Person.

Section 7.11. No Other Business.

Neither the Issuer nor the Co-Issuer shall engage in any business or activity other than (i) the issuance and redemption of the Notes and the Preferred Shares, the issuance and redemption of its ordinary shares, and acquiring, owning, managing, holding and pledging the Pledged Securities and any other instrument or property included in the Trust Estate and (ii) engaging in any other activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith.

Section 7.12. Purchase of Notes.

Notwithstanding anything contained in this Indenture to the contrary, the Issuer may acquire Notes in open market or privately negotiated transactions or otherwise (and the Issuer shall give prompt written notice thereof to the Trustee): *provided that* so long as any Class A Notes are Outstanding, the Issuer shall not acquire any Class B-1L Notes. Any Notes acquired by the Issuer shall be delivered to the Trustee for cancellation.

Section 7.13. Notice of Rating.

(a) The Issuer shall use reasonable efforts to cause the payment of the Periodic Interest Amount and the Aggregate Principal Amount of the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes and the Class X Notes to be rated by Standard & Poor's and Moody's (as applicable) and the ultimate payment of the Cumulative Interest Amount and the Aggregate Principal Amount of the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes to be rated by Standard & Poor's and Moody's. Notwithstanding anything to the contrary contained herein, the failure by the Issuer to maintain a rating of each Class of the Class A Notes and the Class B-1L Notes shall not constitute a Default or an Event of Default.

(b) The Issuer shall promptly notify the Trustee in writing (and the Trustee shall promptly notify the Noteholders and the Servicer) if at any time the rating of any Class of Notes has been, or the Issuer knows will be, changed or withdrawn.

Section 7.14. Process Agent.

The Issuer irrevocably designates and appoints CT Corporation, 111 Eighth Avenue, New York, New York 10011, as its agent (the "Process Agent") for service of all process served in connection with this Indenture, such service being hereby acknowledged to be effective and binding service upon the Issuer in every respect.

Section 7.15. Additional Covenants.

(a) Each of the Co-Issuers shall comply with all applicable laws, rules, regulations, orders, writs, judgments, injunctions, decrees, determinations and awards (including, without limitation, any fiscal and accounting rules and regulations and any foreign or domestic law, rule or regulation), including, without limitation, in connection with the issuance, offer and sale of the Notes.

(b) The Issuer shall give prompt notice in writing to the Trustee, the Servicer and the Rating Agencies, upon becoming aware of the occurrence of any Event of Default hereunder.

(c) Each of the Co-Issuers shall take all reasonable actions necessary so as to be exempt from registration under the Investment Company Act.

(d) The Co-Issuers shall take all reasonable actions necessary so as to exempt from registration the sale of Notes under the Securities Act or under any applicable United States state securities or "blue sky" laws.

(e) Each of the Co-Issuers shall maintain all licenses, permits, charters and registrations which are material to the conduct of its business.

(f) The Issuer shall maintain its corporate records and books of account outside of the United States separate from any other Person, including, without limitation, any Person which owns more than 50% of its equity securities.

(g) Each of the Co-Issuers shall use its best efforts to minimize taxes and any other costs arising in connection with its activities.

(h) Each of the Co-Issuers shall treat the purchase of Portfolio Collateral as a purchase for tax, accounting and reporting purposes.

(i) Each of the Co-Issuers shall maintain at least one director who is Independent of the Issuer, the Co-Issuer, the Servicer and Bear Stearns.

(j) Each of the Co-Issuers shall only conduct business in its own name as set forth in its organizational documents.

(k) The Issuer shall cause each item of Collateral to be Delivered to the Trustee.

(l) The Issuer shall cause the Schedule of Portfolio Collateral to at all times correctly list all Portfolio Collateral that is included in the Trust Estate, including all Initial Portfolio Collateral, all Original Portfolio Collateral, all Additional Portfolio Collateral, all Substitute Portfolio Collateral, all Defaulted Portfolio Collateral, all Credit Risk Portfolio Collateral, all Equity Portfolio Collateral and all Credit Improved Portfolio Collateral. The Issuer shall cause Schedule A to be amended to reflect the inclusion of Portfolio Collateral purchased pursuant to Section 3.4(a) hereof, the inclusion of Additional Portfolio Collateral as provided in Section 11.3 hereof, the release of Portfolio Collateral pursuant to Article X hereof, and the inclusion of Substitute Portfolio Collateral as provided in Section 12.4 hereof.

Section 7.16. Representations and Warranties of the Co-Issuers.

Each of the Co-Issuers represents and warrants to the Trustee with respect to itself, as of the Closing Date that:

(a) Such Co-Issuer is a corporation duly incorporated or organized, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation and in each jurisdiction where the conduct of its business requires such license, qualification or good standing, except where the failure to be so licensed or qualified or in good standing would not adversely affect the validity or enforceability of this Indenture or the other Transaction Documents to which it is a party, or the ability of such Co-Issuer to perform its obligations hereunder or thereunder.

(b) Such Co-Issuer has the power and authority to execute and deliver the Transaction Documents and all other documents and agreements contemplated hereby and thereby to which it is a party, as well as to carry out the terms hereof and thereof.

(c) Such Co-Issuer has taken all necessary action, including but not limited to all requisite corporate action, to authorize the execution, delivery and performance of the Transaction Documents and all other documents and agreements contemplated hereby and thereby to which it is a party. When executed and delivered by such Co-Issuer and the other parties thereto, each of the Transaction Documents will constitute the legal, valid and binding obligation of such Co-Issuer enforceable in accordance with its terms subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect affecting the enforcement of creditors' rights in general, and except as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity) and to the payment of stamp duty.

(d) All authorizations, licenses, permits, certificates, franchises, consents, approvals and undertakings which are required to be obtained by such Co-Issuer under any applicable law which are material to (i) the conduct of its business, (ii) the ownership, use, operation or maintenance of its properties and (iii) the performance by such Co-Issuer of its obligations under or in connection with the Transaction Documents, the Notes and the Preferred Shares have been received and all such authorizations, licenses, permits, certificates, franchises, consents, approvals and undertakings are in full force and effect.

(e) The execution, issuance and delivery of, and performance by such Co-Issuer of its respective obligations under the Transaction Documents and any and all instruments or documents required to be executed or delivered pursuant to or in connection herewith or therewith were and are within the powers of such Co-Issuer and will not violate any provision of any law, regulation, decree or governmental authorization applicable to such Co-Issuer, or its charter or by-laws or other organizational documents and will not violate or cause a default under any provision of any contract, agreement, mortgage, indenture or other undertaking to which such Co-Issuer is a party or which is binding upon such Co-Issuer or any of its property or assets, and will not result in the imposition or creation of any lien, charge, or encumbrance upon any of its properties or assets of such Co-Issuer pursuant to the provisions of any such contract, agreement, mortgage, indenture or undertaking, other than as specifically set forth herein.

(f) There are no legal, governmental or regulatory Proceedings pending to which such Co-Issuer is a party or of which any of its property is the subject, which if determined adversely to such Co-Issuer would individually or in the aggregate have a material adverse effect on the performance by such Co-Issuer of the Transaction Documents or the consummation of the transactions contemplated hereunder or thereunder; and to the best of its knowledge, no such Proceedings are threatened or contemplated.

(g) Neither the Notes nor the Preferred Shares are required to be registered pursuant to the Securities Act, such Co-Issuer is not required to be registered as an investment company pursuant to the Investment Company Act, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

(h) Except with respect to amounts owed under the Notes and the Preferred Shares and liabilities incurred in connection with the issuance of the Notes, the Preferred Shares and the Transaction Documents, such Co-Issuer has not incurred any indebtedness for borrowed money or any other material liabilities.

(i) The Issuer has no subsidiaries other than the Co-Issuer.

(j) The Issuer is not a securities intermediary, broker, or commodity intermediary as defined in the UCC, or a Participant as defined in the United States Regulations.

Section 7.17. Representations Relating to the Security Interests in the Collateral.

(a) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral:

(i) The Issuer owns and has good and marketable title to such Collateral free and clear of any lien, claim or encumbrance of any person, other than such as are created under, or expressly permitted by, this Indenture.

(ii) Other than the security interest granted to the Trustee pursuant to this Indenture and conveyances permitted by this Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed such Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering such Collateral other than any financing statement relating to the security interest granted to the Trustee hereunder or that has been terminated. The Issuer is not aware of any judgment, Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(iii) Such Collateral is comprised of "instruments", "security entitlements", "general intangibles", "tangible chattel paper", "deposit accounts", "accounts", "certificated securities", "uncertificated securities" or "securities accounts" (each as defined in the applicable Uniform Commercial Code).

(iv) All Accounts constitute "securities accounts" as defined in the applicable Uniform Commercial Code.

(v) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in such Collateral in favor of the Trustee, which security interest is prior to all other liens and is enforceable as such against creditors of and purchasers from the Issuer except as expressly permitted under this Indenture.

(vi) The Issuer has received all consents and approvals required by the terms of such Collateral to the transfer to the Trustee of its interest and rights in such Collateral hereunder.

(b) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing

Collateral that constitutes "securities accounts", the Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Accounts in favor of the Trustee, which security interest is perfected by control (as defined in the applicable Uniform Commercial Code) because the Trustee has control of each security entitlement carried in each Account.

(c) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitute "instruments":

(i) All original executed copies of each promissory note or mortgage note that constitutes or evidences such instruments have been delivered to the Trustee and (ii) none of the promissory notes or the mortgage notes that constitute or evidence such instruments has any marks or notations indicating that it has been pledged, assigned or otherwise conveyed to any person other than the Trustee.

(d) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitute "security entitlements":

(i) All of such security entitlements have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to such Account as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(ii) The Issuer has taken all steps necessary to cause the securities intermediary to identify in its records the Trustee as the person having a security entitlement against the securities intermediary in each of the Accounts.

(iii) The Accounts are not in the name of any person other than the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with the entitlement order of any person other than the Trustee.

(e) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes "general intangibles" or "accounts":

(i) The Issuer has caused or will have caused, within ten days after the Closing Date, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in such general intangibles or accounts granted to the Trustee hereunder.

(f) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes "tangible chattel paper":

(i) (A) All original executed copies of each agreement that constitutes or evidences such tangible chattel paper have been delivered to the Trustee and (B) none of the agreements that constitute or evidence such tangible chattel paper has any marks or notations indicating that it has been pledged, assigned or otherwise conveyed to any person other than the Trustee.

(ii) The Issuer has taken all steps necessary to perfect the security interest against the account debtor in the property securing the agreements that constitute such tangible chattel paper.

(g) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes "deposit accounts":

(i) The Issuer has taken all steps necessary to cause the Trustee to become the account holder of such deposit accounts.

(ii) Such deposit accounts are not in the name of any person other than the Trustee. The Issuer has not consented to the bank maintaining any such deposit account to comply with the instructions of any person other than the Trustee.

(h) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes a certificated security, such certificated security has been delivered to the Trustee and, if in registered form, has been indorsed to the Trustee or in blank by an effective indorsement or has been registered in the name of the Trustee upon original issue or registration of transfer by the issuer of such certificated security.

(i) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes an uncertificated security, the issuer of such uncertificated security has registered the Trustee as the registered owner of such uncertificated security.

(j) None of the provisions of this Section 7.17 shall be waived without the prior written confirmation from S&P that such waiver shall not result in a reduction or withdrawal of the then-current rating of any Class of Notes.

Section 7.18. No "Gross-up" Amounts.

The Co-Issuers shall not be required to pay any "gross-up" or other additional amounts to the Holders of any Class of Notes because taxes or related amounts are required to be withheld from payments on the Notes or any payments to either of the Co-Issuers on any item of Portfolio Collateral or other assets of the Co-Issuers.

Section 7.19. Securities Lending.

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in subsection 12.2(u) would be satisfied, the Servicer may cause Portfolio Collateral that are not Defaulted Portfolio Collateral to be lent for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A+" from S&P (each, a "Securities Lending Counterparty") pursuant to one or more agreements (each, a "Securities Lending Agreement"); *provided* that Portfolio Collateral whose Market Value cannot be determined under clauses (a), (b) or (c) of that definition may not be lent pursuant to a Securities Lending Agreement; *provided, further*, that the gross income from all such transactions during any fiscal year shall not exceed 15% of the gross income of the Issuer for such fiscal year. Upon receipt of an Issuer Order, the Trustee shall release any lent Portfolio Collateral to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Placement Agent or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Final Maturity Date of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Trustee debt obligations that are identical (in terms of issue and class) to the lent items of Portfolio Collateral;

(ii) require that the Securities Lending Counterparty pay to the Trustee amounts equivalent to all interest and other payments that the owner of the lent items of Portfolio Collateral is entitled to for the period during which the Portfolio Collateral is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent item of Portfolio Collateral from the Issuer with no penalty if the Portfolio Collateral becomes Credit Risk Portfolio Collateral or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent item of Portfolio Collateral with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of Cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "Securities Lending Collateral") to secure its obligation to return the Portfolio Collateral;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Portfolio Collateral and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Portfolio Collateral shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the lent Portfolio Collateral;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Portfolio Collateral from the Issuer with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions that survive the termination of the agreement (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Portfolio Collateral lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement at the instruction of the Servicer, and deliver and accept delivery and return of any Portfolio Collateral pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity, or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Portfolio Collateral is on loan pursuant to a Securities Lending Agreement, (a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Portfolio Collateral because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and (b) the lent Portfolio Collateral shall not be disqualified for return to the Trustee as an item of Portfolio Collateral by any change in circumstance or status during the time while on loan (including any change that would cause the Portfolio Collateral to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

ARTICLE VIII

SUPPLEMENTAL INDENTURES

Section 8.1. Supplemental Indentures Without Consent of Noteholders.

Without the consent of the Holders of any Notes, but with the consent of the Servicer, the Co-Issuers and the Trustee, at any time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to correct or amplify the description of any property at any time subject to the lien of this Indenture, or better to assure, convey and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture, or to subject to the lien of this Indenture additional property;

(2) to evidence the succession of another Person to the Issuer or the Co-Issuer, and the assumption by any such successor of the covenants of the Issuer or the Co-Issuer contained herein and in the Notes;

(3) to add to the covenants of the Issuer, the Co-Issuer or the Trustee, for the benefit of the Holders of the Notes, or to surrender any right or power herein conferred upon the Issuer or the Co-Issuer;

(4) to Grant any property to the Trustee;

(5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to facilitate the administration of the Trust Estate by more than one Trustee, pursuant to the requirements of Section 6.9 or 6.10 hereof;

(6) to cure any ambiguity, or to correct, modify or supplement any provision which is defective or inconsistent with any other provision herein;

(7) to take any action necessary or helpful to prevent the Issuer or the Trustee from becoming subject to any withholding or other taxes or assessments or to reduce the risk that the Issuer will be engaged in a United States trade or business or that the Issuer (or the beneficial owners thereof) will be subject to United States income tax on a net income basis;

(8) to correct any manifest error in any provision hereof upon receipt by the Trustee of written direction from the Issuer or Co-Issuer (as to which the Trustee may rely) describing in reasonable detail such error and the modification necessary to correct such error; or

(9) to effectuate the provisions of Section 2.12 hereof *provided that* such amendment shall not, as evidenced by an Officer's Certificate of the Issuer, adversely affect in any material respect the interests of any Noteholder; or

(10) to facilitate the delivery and maintenance of the Notes in accordance with the requirements of DTC, Euroclear or Clearstream;

(11) to authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes required or advisable in connection with the listing of the Notes on the Irish Stock Exchange or any other stock exchange and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for such Notes in connection therewith;

(12) to modify the restrictions on and procedures for resale and other transfer of the Notes in accordance with any change in any applicable law or regulation (or the interpretation thereof) or to enable the Co-Issuers to rely upon any less restrictive exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required thereunder;

(13) evidence the addition of an additional issuer or of a wholly owned subsidiary of the Issuer that, in either case, will acquire securities from the Issuer and pledge its assets to secure the obligations of the Issuer secured by the Trust Estate, to the extent necessary to permit the Issuer to comply with the Bank Holding Company Act of 1956, as amended, and the rules and regulation s thereunder or any other statute, rule or regulation applicable to the Issuer, and the assumption by any such additional issuer or subsidiary of the covenants and obligations of the Issuer in this Indenture; or

(14) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or better assure compliance with the requirements of Rule 3a-7 thereunder; *provided* that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Initial Purchaser shall have received (A) a Rating Condition with respect to such supplemental indenture and (B) a customary, unqualified opinion of counsel from a nationally recognized law firm (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act;

provided further that (A) such amendment for any matters described in clauses (1) through (13) shall not, as evidenced by an Opinion of Counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion), adversely affect in any material respect the interests of any Noteholder and (B) no amendment shall be made that would cause the Issuer to register as an "investment company" under the Investment Company Act.

The Trustee is hereby authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be therein contained. At the cost of the Issuer, the Trustee shall provide to the Servicer and for so long as any Notes are then rated, each Rating Agency then rating any Notes a copy of any proposed supplemental indenture at least 10 days prior to the execution thereof by the Trustee

and request written confirmation that the entering into of such supplemental indenture satisfies the Rating Condition. The Trustee shall not enter into any such supplemental indenture if such supplemental indenture does not satisfy the Rating Condition, and, as soon as practicable after the execution by the Trustee and the Issuer of any such supplemental indenture, the Issuer or the Trustee at the request of the Issuer shall provide to the Servicer and each Rating Agency then rating any Notes a copy of the executed supplemental indenture.

Section 8.2. Supplemental Indentures with Consent of Noteholders.

With the consent of the Requisite Noteholders, the Servicer and the Holders of the Preferred Shares, to the extent described in the Paying and Transfer Agency Agreement, the Co-Issuers and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Holders of the Notes under this Indenture; *provided that*, notwithstanding any Amendment Buy-Out Option described in Section 9.4(b), no such supplemental indenture shall, without the consent of each Noteholder of each Class adversely affected thereby:

(1) change the Final Maturity Date or Payment Date of any Note, or reduce the principal amount, notional principal amount or stated amount thereof, as the case may be, or the means of determining the Applicable Periodic Rate, the Optional Redemption Price, the Special Redemption Price, the Tax Event Redemption Price or the Mandatory Redemption Price, as applicable, with respect thereto, change the provisions of this Indenture relating to the application of proceeds of the Trust Estate to the payment of the Notes or change the jurisdiction where any Note is payable, or the coin or currency in which, any Note or any amount thereunder is payable, or impair the right to institute suit for the enforcement of any such payment on or after the maturity thereof;

(2) reduce the percentage in Aggregate Principal Amount, the consent of the Holders of which is required for the execution of any such supplemental indenture, or the consent of the Holders of which is required for any waiver of compliance with certain provisions of this Indenture or certain Events of Default hereunder and their consequences provided for in this Indenture;

(3) impair or adversely affect the Trust Estate except as otherwise permitted herein;

(4) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Trust Estate or terminate the lien of this Indenture on any property at any time subject hereto (other than pursuant to the terms of this Indenture) or deprive the Holder of any Note or any other party expressly secured hereby of the security afforded by the lien of this Indenture;

(5) reduce the percentage of the Aggregate Principal Amount of the Notes whose Holders must direct the Trustee to preserve the Trust Estate or must consent before any request is made to rescind the Trustee's election to preserve the Trust Estate pursuant to Section 5.5 hereof, or to sell or liquidate the Trust Estate pursuant to Section 5.4, 5.5 or 9.7

hereof or modify the requirement for consent of any other party to which the right to consent is expressly granted hereby;

(6) modify any of the provisions of this Section or Section 5.15 hereof, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note affected thereby;

(7) modify the provisions of Article XI hereof or the definition of the term "Holder," "Noteholder," "Majority Noteholders," "Majority Preferred Shareholders," "Requisite Noteholders" or of the term "Outstanding";

(8) amend any provision of this Indenture relating to the institution of proceedings for the Issuer or the Co-Issuer to be adjudicated as bankrupt or insolvent, or the consent by the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency proceedings against it, or the filing with respect to the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition as to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, respectively;

(9) amend any provision of this Indenture or other such document that provides that the obligations of the Co-Issuer or the Issuer, as the case may be, are non-recourse obligations of the Co-Issuer or the Issuer, respectively, payable solely from the Collateral in accordance with the terms hereof; or

(10) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount or timing of any payment of interest or principal due on any Note on any Payment Date (including the calculation of any of the individual components of such calculation) or to affect the rights of the Holders of Notes to the benefit of any provisions for the redemption of such Notes contained herein.

With respect to any action that requires consent from 100% of the Noteholders, if any Noteholder has notified the Trustee in writing that pursuant to such Noteholder's organizational documents or other documents governing such Noteholder's actions, the Noteholder is not permitted to take any affirmative action approving, rejecting or otherwise acting upon any Issuer request under the Indenture, the failure by such Noteholder to consent to or reject any such requested action will be deemed a consent by such Noteholder to the requested action.

Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section, the Trustee shall mail to the Servicer and, so long as any Notes are then rated by any Rating Agency, to each such Rating Agency, a copy of such supplemental indenture and, if any Notes are then rated, prior to the execution of the proposed supplemental indenture, the Rating Condition must be satisfied with respect to such supplemental indenture.

It shall not be necessary in connection with any consent of Noteholders under this Section for the Noteholders to approve the specific form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article VIII or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel.

Promptly after the execution by the Co-Issuers and the Trustee of any supplemental indenture pursuant to this Section 8.2, the Issuer or the Trustee at the request of the Issuer shall deliver to the Holders of the Notes, the Servicer, each Rating Agency then rating any Notes and the Repository (for posting on the Repository in the manner described in Section 13.17), a copy thereof.

Section 8.3. Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article VIII or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.3(d) hereof) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent applicable thereto under this Indenture have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 8.4. Effect of Supplemental Indentures.

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

Section 8.5. Reference in Notes to Supplemental Indentures.

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

ARTICLE IX

REDEMPTION; TERMINATION OF TRUST

Section 9.1. Optional Redemption. On the Optional Redemption Date, which date shall be considered the Final Maturity Date in the case of a Total Optional Redemption, subject to satisfaction of certain conditions described herein, the Notes will be redeemed, in whole or in part, by the Co-Issuers or the Issuer, as applicable, in accordance with the priority of distributions described herein, if such redemption is directed by the holders of Preferred Shares in the amounts described below.

(a) In the case of a Total Optional Redemption:

(i) the Holders of at least 75% of the outstanding Preferred Shares eligible to vote direct the Co-Issuer or the Issuer to redeem the Notes; *provided* that any Preferred Shares beneficially owned or controlled by the Servicer, entities affiliated with the Servicer Entities in excess of the Original HFP Share Amount, shall be excluded from, and be deemed ineligible to participate in, any such vote to direct any Total Optional Redemption;

(ii) sufficient liquidation proceeds from the Portfolio Collateral must exist to effect the redemption of all Notes in full at their Redemption Price in accordance with the priority of distributions described herein; and

(b) in the case of a Partial Optional Redemption:

(i) the Holders of at least 10% of the outstanding Preferred Shares eligible to vote direct the Co-Issuer or the Issuer to redeem the Notes in part; *provided* that any Preferred Shares beneficially owned or controlled by the Servicer Entities, including any HFP Shares, shall be excluded from, and be deemed ineligible to participate in, any such vote to direct any Partial Optional Redemption;

(ii) the Holders of Preferred Shares directing such Partial Optional Redemption shall specify the Partial Redemption Percentage; *provided* that the Partial Redemption Percentage must be the percentage equivalent to at least 10% of the aggregate outstanding principal amount of the Notes as of the Closing Date; and

(iii) the following conditions must be satisfied:

(1) the Partial Redemption Percentage of the Notes must be redeemed *pro rata* at their respective Optional Redemption Price,

(2) the Collateral Quality Matrix tests, Overcollateralization Tests, Interest Coverage Tests and any other eligibility criteria with respect to the Portfolio Collateral must be satisfied before and after giving effect to such redemption; *provided* that the degree of compliance with the Moody's Weighted Average Rating Test and the Weighted Average Margin Test shall not be diminished after giving effect to such redemption,

(3) any applicable Default Swaps of the Issuer must be modified or terminated in a manner consistent with the economic effect of such redemption and in consideration of the Portfolio Collateral and Eligible Investments that will be owned by the Issuer after giving effect to such redemption, and any net termination payments payable by the Issuer must be paid,

(4) the Rating Condition must be satisfied with respect to each Rating Agency,

(5) not more than three (3) prior Partial Optional Redemptions may have occurred, and

(6) no claims may be pending against the Issuer or the Co-Issuer and no judgments may have been rendered against the Issuer or the Co-Issuer which exceed, or reasonably could be expected to result in liabilities that exceed, in the aggregate, $100,000, unless adequate funds have been reserved or set aside for the payment thereof.

In connection with any Optional Redemption, the Issuer may use all funds credited to the Collection Account to provide for payment of the Optional Redemption Price. If there are not sufficient funds in the Collection Account as of the date the notice of redemption is given to pay the Optional Redemption Price on the Optional Redemption Date and all such payments, fees and expenses (including any termination payments with respect to any Synthetic Securities and any Default Swaps), the Servicer is required to give the Trustee written direction to sell Portfolio Collateral in an amount sufficient to provide funds to pay the Optional Redemption Price in full. The Trustee will give notice of an Optional Redemption to the Company Announcements Office of the Irish Stock Exchange if any Class of Notes is then listed on the Irish Stock Exchange.

The Servicer shall have the right to purchase the Preferred Shares held by any Holder that directs the Issuer to effect a Partial Optional Redemption at a price equal to the liquidation value of such Preferred Shares.

(c) The election of the Issuer to redeem any Notes pursuant to this Section 9.1 shall be set forth in an Issuer Order, given to the Trustee in accordance with Section 9.5 hereof, directing the Trustee to make the payment of the Optional Redemption Price for all the Notes, from funds in the Collection Account and/or from monies deposited with the Trustee by the Issuer pursuant to Section 9.8 hereof.

(d) The Issuer shall, simultaneously with electing to redeem Notes under this Section 9.1, set the Optional Redemption Date and the Redemption Record Date for any redemption pursuant to this Section and give notice thereof to the Trustee pursuant to Section 9.6 hereof.

(e) The Issuer shall have the option to withdraw the notice of redemption until the earlier of the fifth Business Day prior to the proposed Optional Redemption Date and the date on which a forward purchase contract is entered into pursuant to Section 9.8 by written notice to the Trustee and the Servicer on or prior to such earlier day.

(f) On the Optional Redemption Date, the Optional Redemption Price shall be distributed pursuant to Section 11.1(d) after payment of all amounts required to be paid pursuant to Section 11.1(b).

Section 9.2. Mandatory Redemption.

If either the Interest Coverage Test or the Overcollateralization Tests are not satisfied as of any applicable Calculation Date or a Rating Confirmation Failure occurs, all or a portion of the Notes shall be redeemed (or, in the case of the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes, any Periodic Rate Shortfall Amounts shall be paid and then the Notes shall be redeemed) by the Issuer, in the order set forth in Section 11.1 hereof, on the Payment Date immediately following such Calculation Date at the Mandatory Redemption Price (pursuant to the applicable provisions of Sections 11.1 and 11.2 hereof) in an amount sufficient such that the Interest Coverage Test and Overcollateralization Tests are satisfied or a Rating Confirmation is received, as applicable. The amount of any Mandatory Redemption hereunder shall be determined in accordance with the provisions of Section 11.2 hereof.

Section 9.3. Additional Collateral Deposit Requirement.

On each Payment Date after the second Payment Date, the Additional Collateral Deposit Requirement shall be applied by the Issuer in the order set forth in Section 11.1 hereof.

Section 9.4. Special Redemption; Amendment Buy-Out

(a) The Notes (other than Class X) shall be redeemable in part on any Payment Date during the Revolving Period at the option of the Issuer, as directed by and at the discretion of the Servicer, to the extent more than U.S. $2,000,000 of Collateral Principal Collections held in the Collection Account are not applied to the purchase of Additional Portfolio Collateral satisfying the criteria contained in Section 11.3 hereof by the earlier of the last day of the next succeeding Due Period or the last day of the Revolving Period, in the order and priority set forth in Section 11.1 hereof.

(b) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Notes or Preferred Shares, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Notes (other than the Class A-1LA Notes) or Preferred Shares held by such Holders of the Class of Notes or Preferred Shares whose consent was solicited with respect to such supplemental indenture (the "Amendment Buy-Out Option") for the applicable Amendment Buy-Out Purchase Price; *provided, however*, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Security, as applicable, or to change the earliest date on which Notes of any Class or Preferred Shares may be redeemed at the option of the Issuer; *provided further*, that notwithstanding the definition of Non-Consenting Holder, any Holder of Notes (other than the Class A-1LA Notes) or Preferred Shares who fails to respond to any such consent solicitation shall be deemed to have consented to any such supplemental indenture. Notwithstanding the foregoing, during the Non-Call Period, "Non-Consenting Holder" shall exclude any Holder of Class A-1LA Notes (unless such Holder has

consented in writing to be designated as a Non-Consenting Holder) and the Amendment Buy-Out Option shall not be applicable to such Class A-1LA Notes. If the Amendment Buy-Out Option is exercised, the Amendment Buy-Out Purchaser must purchase all such Notes or Preferred Shares of Non-Consenting Holders, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Notes or Preferred Shares the consent of whose Holders is required for such supplemental indenture (an "Amendment Buy-Out"). By its acceptance of its Securities or Preferred Shares hereunder, each Holder of Notes or Preferred Shares agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Notes or Preferred Shares to the Amendment Buy-Out Purchaser. For the avoidance of doubt, nothing described above shall in any way limit or restrict the rights of Holders of the Class A-1LA Notes to consent or withhold their consent to a supplemental indenture or otherwise vote their interest both during and after the Non-Call Period. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or Beneficial Owner of Securities or Preferred Shares as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option. For the avoidance of doubt, (i) nothing described above or in the Indenture shall in any way limit or restrict the rights of the Holders of the Class A-1LA Notes to consent or withhold their consent to a supplemental indenture or to otherwise vote their interest both during and after the Non-Call Period and (ii) the Trustee shall have no responsibility for overseeing the Servicer's compliance with the Amendment Buy-Out provisions herein.

(c) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities or Preferred Shares set forth herein and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.5. Tax Event Redemption.

(a) The Notes shall be redeemable, in whole but not in part, by the Issuer at the direction of 66-2/3% of the Preferred Shares or a majority of the Controlling Class (but only if the Aggregate Principal Balance of Portfolio Collateral is less than 100% of the Class A-1L Notes) on any Payment Date at the Tax Event Redemption Price, if as a result of (i) change in tax law, rule or regulation or the interpretation thereof, the payments to be received on the Portfolio Collateral are reduced as a result of the imposition of withholding tax, (ii) the Issuer is otherwise subjected to tax such that the income of the Issuer is reduced in an amount determined by such holders of Preferred Shares to be material, (iii) (A) one or more items of Portfolio Collateral that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax or the rate of withholding has increased on one or more items of Portfolio Collateral that were subject to withholding tax when the Issuer committed to purchase them and (B) in any Due Period the aggregate of the payments subject to withholding tax on new withholding tax obligations and the increase in payments subject to withholding tax on increased rate withholding tax obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period, or (iv) taxes, fees, assessments or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any 12-month period in excess of $2,000,000, other than liabilities for withholding taxes included in clause (iii) above. No redemption pursuant to this Section 9.5

shall occur unless all Outstanding Notes are redeemed and unless all payments, fees and expenses are paid in full on the date of such redemption.

(b) The election of the Issuer to redeem any Notes pursuant to this Section 9.5 shall be set forth in an Issuer Order, given to the Trustee in accordance with Section 9.6 hereof, directing the Trustee to make the payment of the Tax Event Redemption Price from funds in the Collection Account and/or from monies deposited with the Trustee by the Issuer pursuant to Section 9.8 hereof.

(c) The Issuer shall, simultaneously with electing to redeem Notes under this Section 9.5, set the Tax Event Redemption Date and the Redemption Record Date for any redemption pursuant to this Section 9.5 and give notice thereof to the Trustee pursuant to Section 9.6 hereof.

(d) The Issuer shall have the option to withdraw the notice of redemption until the earlier of the fifth Business Day prior to the proposed Tax Event Redemption Date and the date on which a forward purchase contract is entered into pursuant to Section 9.8(b) hereof by written notice to the Trustee and the Servicer on or prior to such earlier day.

(e) On the Tax Redemption Date, the Tax Event Redemption Price shall be distributed pursuant to Section 11.1(d) hereof after payment of all amounts required to be paid pursuant to Section 11.1(b) hereof.

Section 9.6. Notice to Trustee, Rating Agencies and the Servicer.

(a) The Issuer shall by Issuer Order, in connection with an Optional Redemption pursuant to Section 9.1 or a Tax Event Redemption pursuant to Section 9.5, not later than the twentieth Business Day immediately preceding the proposed Optional Redemption Date or Tax Event Redemption Date, as applicable, notify in writing the Trustee, each Rating Agency then rating any Class of Notes and the Servicer of such proposed Optional Redemption Date or Tax Event Redemption Date, as applicable, and the proposed Redemption Record Date and Optional Redemption Price for each Class of Notes.

(b) If any Mandatory Redemption is required pursuant to Section 9.2 hereof, the Issuer shall, not later than the third Business Day after the related Calculation Date, notify in writing the Trustee, each Rating Agency then rating any Class of Notes, the Servicer and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent that such redemption is required and the amount of the Notes of each Class required to be redeemed pursuant to the provisions of Section 11.2 hereof.

(c) If any Special Redemption is required pursuant to Section 9.4 hereof, the Issuer shall, not later than twentieth Business Day preceding the proposed Special Redemption Date, notify in writing the Trustee, each Rating Agency then rating any Class of Notes, the Servicer and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent that such proposed redemption is required and the amount of the Notes of each Class to be redeemed.

Section 9.7. Notice of Optional Redemption and Tax Event Redemption by the Issuer.

(a) If notice thereof has been received by the Trustee from the Issuer pursuant to Section 9.6 hereof, notice of an Optional Redemption shall be given by the Trustee by first-class mail, postage prepaid, mailed not less than twenty calendar days prior to the proposed Redemption Record Date, to each Holder of Notes to be redeemed at the address in the Note Register (with a copy to the Rating Agencies at the addresses specified in Section 10.7 hereof), and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All notices of Optional Redemption shall state: the proposed Optional Redemption Date; the proposed Redemption Record Date; and that on such proposed Optional Redemption Date, all Outstanding Notes are to be redeemed and paid in full and that applicable interest thereon shall cease to accrue on the date specified in the notice and the place where such Notes may be surrendered for payment of the Optional Redemption Price, which shall be the agency of the Trustee to be maintained as provided in Section 7.2 hereof; and that the Issuer may withdraw such election at any time on or prior to the earlier of the Business Day prior to such proposed Optional Redemption Date and the date before which a forward purchase contract is entered into pursuant to Section 9.8(a) hereof.

At the cost of the Issuer, the Trustee shall give notice of any withdrawal of the notice of redemption pursuant to Section 9.1(d) hereof (to the extent feasible) by overnight courier guaranteeing next day delivery, sent not later than the third Business Day prior to the previously proposed Optional Redemption Date, to each Holder of Notes to be redeemed at the address in the Note Register, and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

Notice of Optional Redemption of the Notes shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name of the Issuer and at the expense of the Issuer. Failure to give notice of redemption or notice of withdrawal, or any defect therein, to any Holder of any Note shall not impair or affect the validity of the redemption of the Notes or give rise to any claim based upon such failure or defect.

(b) If notice thereof has been received by the Trustee from the Issuer pursuant to Section 9.6 hereof, notice of a Tax Event Redemption shall be given by the Trustee by first-class mail, postage prepaid, mailed not less than twenty calendar days prior to the proposed Redemption Record Date, to each Holder of Notes to be redeemed at the address in the Note Register (with a copy to the Rating Agencies at the addresses specified in Section 10.7 hereof), and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All notices of a Tax Event Redemption shall state: the proposed Tax Event Redemption Date; the proposed Redemption Record Date; and that on such proposed Tax Event Redemption Date, all of the Notes (to the extent of the Aggregate Principal Amount) are to be redeemed and paid in full and that interest thereon shall cease to accrue on the date specified in the notice and the place where such Notes may be surrendered for payment of the Tax Event Redemption Price, which shall be the agency of the Trustee to be maintained as provided in Section 7.2 hereof; and that the Issuer may withdraw such election at any time on or prior to the

earlier of the fifth Business Day prior to such proposed Tax Event Redemption Date and the date before which a forward purchase contract is entered into pursuant to Section 9.8(b) hereof.

At the cost of the Issuer, the Trustee shall give notice of any withdrawal of the notice of redemption pursuant to Section 9.5 hereof (to the extent feasible) by overnight courier guaranteeing next day delivery, sent not later than the third Business Day prior to the previously proposed Tax Event Redemption Date, to each Holder of Notes to be redeemed at the address in the Note Register (with a copy to the Rating Agencies at the addresses specified in Section 10.7 hereof), and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

Notice of Tax Event Redemption of the Notes shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name of the Issuer and at the expense of the Issuer. Failure to give notice of redemption or notice of withdrawal, or any defect therein, to any Holder of any Note shall not impair or affect the validity of the redemption of the Notes or the withdrawal thereof or give rise to any claim based upon such failure or defect.

Section 9.8. Deposit of Optional Redemption Price and Tax Event Redemption Price.

(a) In the case of an Optional Redemption, on or before the fifth Business Day preceding the proposed Optional Redemption Date contained in the notice of redemption as provided in Section 9.6 hereof, the Issuer shall deposit with the Trustee cash or Eligible Investments maturing no later than the Business Day prior to the Optional Redemption Date (unless such Eligible Investments are issued by the Person acting as Trustee, in which event they may mature on the Optional Redemption Date), or any combination thereof, in an amount sufficient to provide for payment of the Optional Redemption Price with respect to the Outstanding Notes and all amounts due under Sections 11.1(b) and 11.1(d) hereof. The Issuer may use all available funds in the Collection Account to provide for payment of the Optional Redemption Price in accordance with Section 11.1 hereof. In the event that there are not sufficient available funds in the Collection Account as of the date the notice of redemption is sent out pursuant to Section 9.6 hereof to pay the Optional Redemption Price on the Optional Redemption Date in accordance with Sections 11.1(b) and 11.1(d) hereof, the Servicer shall give the Trustee written direction to sell Portfolio Collateral in an amount sufficient to provide available funds to pay the Optional Redemption Price in full pursuant to Sections 11.1(b) and 11.1(d) hereof, and shall give the Issuer written direction to enter into, as of a date which is not later than five (5) Business Days prior to the Optional Redemption Date, forward contracts (each of which shall provide for "payment versus delivery" and shall direct that payment be made to the Trustee) with a financial institution rated "A-1+" by Standard & Poor's and "P-1" by Moody's to sell such Portfolio Collateral for settlement at least three Business Days prior to the Optional Redemption Date, and shall provide a copy of such contract to the Trustee prior to such Business Day preceding such redemption date; and pursuant to such instruction, the Trustee shall release and sell such Portfolio Collateral for purposes of such redemption. In determining whether the proceeds of any Optional Redemption will be sufficient to pay the Optional Redemption Price on the Optional Redemption Date, the Issuer and the Trustee may rely on the Market Value of the Portfolio Collateral when entering into any forward purchase agreements.

(b) In the case of a Tax Event Redemption, on or before the fifth Business Day preceding the proposed Tax Event Redemption Date contained in the notice of redemption as provided in Section 9.6 hereof, the Issuer shall deposit with the Trustee cash or Eligible Investments maturing no later than the Business Day prior to the Tax Event Redemption Date (unless such Eligible Investments are issued by the Person acting as Trustee, in which event they may mature on the Tax Event Redemption Date), or any combination thereof, in an amount sufficient to provide for payment of the Tax Event Redemption Price with respect to the Outstanding Notes and all amounts due under Sections 11.1(b) and 11.1(d) hereof. The Issuer may use all available funds in the Collection Account to provide for payment of the Tax Event Redemption Price in accordance with Section 11.1 hereof. In the event that there are not sufficient available funds in the Collection Account as of the date the notice of redemption is sent out pursuant to Section 9.6 hereof to pay the Tax Event Redemption Price on the Tax Event Redemption Date in accordance with Sections 11.1(b) and 11.1(d) hereof, the Servicer shall give the Trustee written direction to sell Portfolio Collateral in an amount sufficient to provide available funds to pay the Tax Event Redemption Price in full pursuant to Sections 11.1(b) and 11.1(d) hereof, and shall give the Issuer written direction to enter into, as of a date which is not later than five Business Days prior to the Tax Event Redemption Date, forward contracts (each of which shall provide for "payment versus delivery" and shall direct that payment be made to the Trustee) with a financial institution rated "A-1+" by Standard & Poor's and "P-1" by Moody's to sell such Portfolio Collateral for settlement at least three Business Days prior to the Tax Event Redemption Date, and shall provide a copy of such contract to the Trustee prior to such third Business Day preceding such redemption date; and pursuant to such instruction, the Trustee shall release and sell such Portfolio Collateral for purposes of such redemption.

Section 9.9. Notes Payable on Optional Redemption Date.

In the event that notice of Optional Redemption pursuant to Section 9.1 hereof has been given as provided in Section 9.6 hereof and not withdrawn, all Outstanding Notes shall on the Optional Redemption Date become due and payable at the Optional Redemption Price, and (unless the Issuer shall default in the payment of the Optional Redemption Price) all Outstanding Notes shall cease to bear interest on the Optional Redemption Date. Each Holder shall present and surrender its Note at the place specified in the notice of Optional Redemption on or prior to such Optional Redemption Date; *provided that* if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any state in the United States with a net worth at least twice the amount of the security or indemnity being deemed sufficient to satisfy such security or indemnity requirement) and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer or the Trustee that the applicable Note has been acquired by a protected purchaser, such payment shall be made without presentation or surrender.

If any Note called for redemption shall not be so paid upon surrender thereof for Optional Redemption (or the delivery of the indemnity pursuant to the preceding paragraph), the principal shall, until paid, bear interest from the Optional Redemption Date at the Applicable Periodic Rate.

Section 9.10. Notes Payable on Mandatory Redemption Date.

In the event of a Mandatory Redemption pursuant to Section 9.2 hereof, principal of the Notes (or, in the case of the Class A-3L Notes, Class A-4L Notes and the Class B-1L Notes, any Periodic Rate Shortfall Amount and then any principal) in an amount determined pursuant to Section 11.2 hereof shall on the Mandatory Redemption Date become due and payable, and (unless the Issuer shall default in the payment of the Mandatory Redemption Price) such amounts shall cease to bear interest on the Mandatory Redemption Date.

Section 9.11. Notes Payable on Tax Event Redemption.

In the event that notice of a Tax Event Redemption pursuant to Section 9.5 hereof has been given as provided in Section 9.6 hereof and not withdrawn, all Outstanding Notes shall on the Tax Event Redemption Date become due and payable at the Tax Event Redemption Price, and (unless the Issuer shall default in the payment of the Tax Event Redemption Price) all Outstanding Notes shall cease to bear interest on the Tax Event Redemption Date. Each Holder shall present and surrender its Note at the place specified in the notice of redemption on or prior to such Tax Event Redemption Date; *provided that* if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any state in the United States with a net worth at least twice the amount of the security or indemnity being deemed sufficient to satisfy such security or indemnity requirement) and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer or the Trustee that the applicable Note has been acquired by a bona fide purchaser, such payment shall be made without presentation or surrender.

If any Note called for a Tax Event Redemption shall not be so paid upon surrender thereof for a Tax Event Redemption (or the delivery of the indemnity pursuant to the preceding paragraph), the principal shall, until paid, bear interest from the Tax Event Redemption Date at the Applicable Periodic Rate.

Section 9.12. Initial Deposit Redemption.

The Class A-1LA Notes and the Class X Notes shall be subject to Initial Deposit Redemption pursuant to the terms of Section 3.3 hereof.

Section 9.13. Reserved.

Section 9.14. Notes Payable on Special Redemption Date.

In the event of a Special Redemption pursuant to Section 9.4 hereof, principal of the Notes (or, in the case of the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes, any Periodic Rate Shortfall Amount and then any principal) in an amount determined pursuant to Section 11.1 hereof shall on the Special Redemption Date become due and payable and (unless the Issuer shall default in the payment of the Special Redemption Price) such amounts shall cease to bear interest on the Special Redemption Date.

ARTICLE X

ACCOUNTS, ACCOUNTINGS AND RELEASES

Section 10.1. Collection of Money.

Except as otherwise expressly provided herein, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Securities included in the Trust Estate, in accordance with the terms and conditions of such Pledged Securities. The Trustee shall segregate and hold all such money and property received by it in trust for the Holders of the Notes and shall apply it as provided in this Indenture.

Section 10.2. Accounts.

(a) The Trustee shall, on or prior to the Closing Date, establish ten non-interest bearing segregated trust accounts (collectively, the "Accounts") which shall be designated as the "Collection Account," the "Collateral Account," the "Reserve Account," the "Initial Deposit Account," the "Expense Reimbursement Account," the "Loan Funding Account," the "Closing Expense Account," the "Securities Lending Account," the "Default Swap Collateral Account," and the "Default Swap Issuer Account," respectively, identified as held in trust for the benefit of the Noteholders and the applicable Secured Parties or, in the case of the Default Swap Collateral Account, as held in trust for the benefit of the related Default Swap Counterparty and, to the extent provided in this Indenture, the other Secured Parties. The Trustee may establish any number of sub-accounts to the Collection Account for its convenience in administering the Accounts and Trust Estate.

Each Account (including any sub account) shall be a securities account established with the Securities Intermediary in the name of the Trustee in accordance with Section 6.15.

A Default Swap Collateral Account shall be established for each Default Swap. The Trustee shall credit to each such Default Swap Collateral Account on the Closing Date or on the date any such Default Swap is entered into, as applicable, the amount required to secure the obligations of the Issuer in accordance with the terms of the related Default Swap, as directed by the Servicer, which amount shall be at least equal to the amount referred to in paragraph (iv) of the definition of Default Swap.

Amounts credited to a Default Swap Collateral Account shall be maintained in accordance with the terms and provisions of the related Default Swap. Amounts and property credited to a Default Swap Collateral Account shall be withdrawn by the Trustee and applied to the payment of any amounts payable by, or to the delivery of investment property deliverable by, the Issuer to the related Default Swap Counterparty, as directed by the Servicer, in accordance with the terms of such Default Swap. Income received on amounts credited to a Default Swap Collateral Account will be applied in accordance with the terms of the applicable Default Swap to the payment of any periodic amounts owed by the Issuer to the applicable Default Swap

Counterparty on the date such amounts are due. After application of such amounts, any income then contained in such Default Swap Collateral Account will be withdrawn from such Account and credited to the Collection Account for distribution as Collateral Interest Collections. After payment of all amounts owing by the Issuer to a Default Swap Counterparty in accordance with the terms of the related Default Swap (other than any Default Swap Counterparty Termination Payment) the Trustee shall be directed by the Servicer to withdraw all funds and other property credited to the Default Swap Collateral Account related to such Default Swap and credit such funds and other property to the Collection Account, as Collateral Principal Collections (in the case of cash and Eligible Investments) and the Collateral Account (in the case of Portfolio Collateral and other financial assets) for application as Collateral Principal Collections (other than any income thereon which will be Collateral Interest Collections) in accordance with the terms of the Indenture. Any Default Swap Counterparty Termination Payments owed by the Issuer to the Default Swap Counterparty shall be paid solely from amounts available therefor under the priority of payment provisions described herein.

Except for interest on securities credited to a Default Swap Collateral Account payable to the Issuer as described pursuant to the preceding paragraph, funds and other property standing to the credit of a Default Swap Collateral Account will not be considered to be an asset of the Issuer for purposes of the Interest Coverage Test or the Overcollateralization Tests; *provided, however that* the Default Swap that relates to such Default Swap Collateral Account will be considered an asset of the Issuer for such purposes.

If the terms of any Default Swap require the Default Swap Counterparty to secure its obligations with respect to such Default Swap, the Trustee will cause to be established a Default Swap Issuer Account in respect of such Default Swap. The Trustee shall credit to any such Default Swap Issuer Account all funds and other property received from the applicable Default Swap Counterparty to secure the obligations of such Default Swap Counterparty in accordance with the terms of such Default Swap.

Funds and other property standing to the credit of any Default Swap Issuer Account will not be considered to be an asset of the Issuer for purposes of the Interest Coverage Test or the Overcollateralization Tests; *provided, however that* the Default Swap that relates to such Default Swap Issuer Account will be considered an asset of the Issuer for such purposes.

In accordance with the terms of the applicable Default Swap, funds and other property standing to the credit of the related Default Swap Issuer Account will be withdrawn by the Trustee, as directed by the Servicer, and applied to the payment of any amount owing by the related Default Swap Counterparty to the Issuer. After payment of all amounts owing by the Default Swap Counterparty to the Issuer in accordance with the terms of the related Default Swap, all funds and other property standing to the credit of the related Default Swap Issuer Account will be withdrawn from such Default Swap Issuer Account and paid or transferred to the related Default Swap Counterparty in accordance with the applicable Default Swap.

The Collection Account shall be a segregated trust account (or, at the Trustee's option, may be comprised of two separate, segregated trust accounts, designated for the collection of Collateral Interest Collections and Collateral Principal Collections, respectively), to which money required to be credited to the Collection Account (and Eligible Investments in

which such money may be held from time to time, which Eligible Investments shall be acquired and held pursuant to the terms of Section 6.16 hereof) shall be credited.

All Portfolio Collateral Delivered to the Trustee shall be credited to the Collateral Account.

On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a segregated trust account designated as the Securities Lending Account with respect to any such Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately credited to the Securities Lending Account and posted to a sub-account related to the Securities Lending Account. The only permitted withdrawal from or application of funds credited to the Securities Lending Account shall be: (i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or (ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts credited to the Securities Lending Account shall be applied pursuant to this Section 10.2. To the extent provided in a Securities Lending Agreement, earnings on amounts credited to the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts credited to the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

The Trustee shall credit to the Collection Account (i) all Collections and (ii) all amounts required to be credited thereto pursuant to this Indenture, including but not limited to, Section 10.3(e)(i) hereof.

The Trustee shall credit to the Initial Deposit Account (i) the Deposit received on the Closing Date for credit to the Initial Deposit Account pursuant to Section 3.2(e) hereof, (ii) all amounts required to be credited thereto pursuant to this Indenture, including but not limited to, Sections 3.2(e), 10.3(e)(ii) and 11.3 hereof and (iii) all proceeds received with respect to the sale of the Post-Closing Sale Collateral, notwithstanding anything to the contrary herein.

Upon the purchase of any item of Portfolio Collateral that is a Delayed Drawdown Loan or a Revolving Loan, the Trustee (as instructed by the Servicer) shall credit Collateral Principal Collections to the Loan Funding Account in an amount equal to the Issuer's maximum future funding obligations under the terms of such Delayed Drawdown Loan or a Revolving Loan and the Collateral Principal Collections so credited shall be considered part of the purchase price of such Delayed Drawdown Loan or Revolving Loan for purposes of Article

XII hereof. When Collateral Principal Collections are received by the Trustee with respect to a Delayed Drawdown Loan or a Revolving Loan, the amount of such Collateral Principal Collections that may thereafter be re-borrowed under the terms of the Delayed Drawdown Loan or the Revolving Loan shall be credited to the Loan Funding Account.

The Trustee shall credit to the Expense Reimbursement Account (i) on the Closing Date the $50,000 received on the Closing Date for credit to the Expense Reimbursement Account pursuant to Section 3.2(f) hereof, (ii) all amounts required to be credited thereto from available amounts in the Collection Account pursuant to Section 11.1 hereof and (iii) all amounts required to be credited thereto pursuant to Section 10.3(e)(iii) hereof.

The Trustee shall credit to the Closing Expense Account on the Closing Date the amount specified pursuant to Section 3.2(f) hereof.

In addition, the Issuer may, but under no circumstances shall be required to, credit such monies to the Collection Account as it deems, in its sole discretion, to be advisable in the event that, but for such action, an Event of Default would occur.

All monies, instruments, investment property and other property credited to the Collection Account, the Initial Deposit Account, the Expense Reimbursement Account, the Loan Funding Account, the Closing Expense Account and the Reserve Account pursuant to this Indenture, and all Portfolio Collateral and other property credited to the Collateral Account, shall be held by the Trustee as part of the Trust Estate and shall be applied in the manner set forth herein.

The Trustee shall pay free and clear of the lien of the Indenture, upon receipt (or withdrawal from the Collection Account if previously credited thereto), all Retained Accrued Interest, as directed by Bear Stearns.

(b) Upon Servicer Order (which may be in the form of standing instructions) or, after the occurrence of an Event of Default upon written direction of the Requisite Noteholders, any portion of the monies in the Collection Account, the Initial Deposit Account, the Loan Funding Account, the Expense Reimbursement Account, Reserve Account and the Closing Expense Account in excess of $10,000 (in the aggregate) shall be applied by the Trustee as directed in such Servicer Order (or written direction of Requisite Noteholders, as the case may be) to purchase one or more Eligible Investments, *provided that* Eligible Investments in the Loan Funding Account are to mature no later than one Business Day after the date of such purchase. If the amount in such Accounts is equal to or less than $10,000, such amount shall remain on deposit therein and shall not be held in Eligible Investments. The Servicer and Issuer acknowledge that the selection of Eligible Investments by the Servicer pursuant to the preceding sentence shall be subject to the availability of such Eligible Investment at the depositary institution at which such Account is held. If, prior to the occurrence of an Event of Default, the Servicer shall not have given directions pursuant to this Section 10.2(b) with respect to any amounts in excess of $10,000 for one Business Day, the Trustee, unless otherwise directed by the Issuer within one Business Day, shall apply such monies to purchase Eligible Investments described in paragraph (b) of the definition of Eligible Investments (which, in the case of Eligible Investments in the Loan Funding Account, are to mature no later than one Business Day

after the date of such purchase). If, after the occurrence of an Event of Default, the Requisite Noteholders shall not have given directions pursuant to this Section 10.2(b) with respect to any amounts in excess of $10,000 for one Business Day, the Trustee shall apply such moneys as fully as practicable to purchase Eligible Investments described in paragraph (b) of the definition of Eligible Investments and maturing not later than the earlier of (i) 30 days after the date of such purchase or (ii) the Business Day prior to the next Payment Date (or, in the case of Eligible Investments in the Initial Deposit Account, the Business Day prior to the Effective Date and in the case of Eligible Investments in the Loan Funding Account, one Business Day after the date of such purchase). All income or other gain from such Eligible Investments shall be credited to the Collection Account, the Initial Deposit Account, the Loan Funding Account, the Expense Reimbursement Account, the Reserve Account or the Closing Expense Account, as the case may be (for which the related purchase was made) and any loss resulting from such Eligible Investments shall be charged to the Collection Account, the Initial Deposit Account, the Loan Funding Account, the Expense Reimbursement Account, the Reserve Account or the Closing Expense Account, as the case may be (for which the related purchase was made). The Trustee shall not in any way be held liable by reason of any insufficiency in the Collection Account, the Initial Deposit Account, the Expense Reimbursement Account, the Loan Funding Account or the Closing Expense Account resulting from any loss on any Eligible Investment.

(c) Upon Servicer Order and subject to the provisions of Section 11.3 hereof, on any Business Day, the applicable portion of Collateral Interest Collections shall be released from the Collection Account as specified in such Servicer Order and applied by the Trustee in accordance with such Servicer Order in payment of one or more specified items of Additional Portfolio Collateral purchased in accordance with the provisions of Section 11.3 hereof.

(d) Upon Servicer Order and subject to the provisions of Section 11.3 hereof on any Business Day all or a portion of the Collateral Principal Collections (other than Collateral Disposition Proceeds) shall be released from the Collection Account as specified in such Servicer Order and applied by the Trustee in accordance with such Servicer Order in payment of one or more specified items of Additional Portfolio Collateral purchased in accordance with the provisions of Section 11.3 hereof.

(e) Upon Servicer Order and subject to the provisions of Section 12.4 hereof, on any Business Day all or a portion of the Collateral Disposition Proceeds shall be released from the Collection Account and applied by the Trustee in accordance with such Servicer Order in payment of one or more specified items of Substitute Portfolio Collateral purchased in accordance with the provisions of Section 12.4 hereof.

(f) Upon Servicer Order and subject to the requirements of Section 3.4 hereof, between the Closing Date and the close of business on the Effective Date only, all or a portion of the Deposit available in the Initial Deposit Account shall be released from the Initial Deposit Account and applied by the Trustee in accordance with such Servicer Order in payment for Original Portfolio Collateral purchased in accordance with Section 3.4 hereof. Upon Servicer Order, on the Effective Date and pursuant to Section 3.4(d), all Account Income credited to the Initial Deposit Account shall be released from the Initial Deposit Account and credited to the Collection Account to be applied as Collateral Interest Collections on the next Payment Date and the remainder of such funds shall be considered Collateral Principal Collections.

(g) Upon Servicer Order on behalf of the Issuer, all or a portion of the funds available in the Expense Reimbursement Account shall be released from the Expense Reimbursement Account and applied by the Trustee to the payment to the Issuer for the purpose of paying on or prior to the next Payment Date following the date of delivery of such Servicer Order the Issuer Base Administrative Expenses, as specified therein, which are payable during the Due Period relating to such Payment Date.

(h) On or before the first Payment Date, any remaining portion of the Closing Expense Deposit after the closing expenses have been paid in full (including any Account Income thereon) shall be transferred (i) upon receipt by the Trustee of a Servicer Order to the Initial Deposit Account (and be deemed to be part of the Deposit) or, after the Effective Date, to the Collection Account to be applied as Collateral Interest Collections or (ii) if no such Servicer Order has been received on the Business Day prior to the second Payment Date, to the Collection Account to be applied as Collateral Interest Collections.

(i) Upon Servicer Order on behalf of the Issuer, all or a portion of the funds available in the Loan Funding Account shall be released from the Loan Funding Account and applied by the Trustee to fund amounts drawn under any Delayed Drawdown Loan or Revolving Loan and only funds in the Loan Funding Account shall be used for such purpose. In addition, upon Servicer Order on behalf of the Issuer, all or a portion of the funds available in the Loan Funding Account at any time in excess of the aggregate principal amount of commitments which may be drawn upon all Delayed Drawdown Loans and Revolving Loans in the Portfolio Collateral will be released from the Loan Funding Account and applied by the Trustee to the Collection Account to be applied as Collateral Principal Collections.

(j) On or before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the applicable Secured Parties, and over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall credit to the Reserve Account approximately U.S.$1,600,000 from the net proceeds of the Offering. Amounts credited to the Reserve Account shall be applied pursuant to subclause (b) of this Section 10.2.

Section 10.3. Custody and Release of Portfolio Collateral.

(a) The Issuer shall cause each item of the Trust Estate to be Delivered, and the Trustee shall hold each item of the Trust Estate as Delivered, separate and apart from all other property held by the Trustee. To the extent that such of the Trust Estate as constitutes a deposit account is maintained with JPMorgan Chase, JPMorgan Chase hereby makes the agreements required under the UCC in order for such deposit account to be Delivered. Notwithstanding any other provision of this Indenture, the Trustee shall not hold any part of the Trust Estate through an agent or nominee except as expressly permitted by this Section 10.3(a). Each of the preceding requirements of this Section 10.3(a) is subject to the right of the Trustee to relocate the Trust Estate to another jurisdiction pursuant to and upon compliance with Section 7.5(b) hereof.

(b) If no Event of Default has occurred and is continuing, the Servicer, by a Servicer Order delivered to the Trustee on or before the settlement date for any sale of an item of

Portfolio Collateral, certifying that (i) it has determined that such Portfolio Collateral has become an item of Credit Risk Portfolio Collateral, an item of Credit Improved Portfolio Collateral, an item of Defaulted Portfolio Collateral, an item of Equity Portfolio Collateral or an item of Portfolio Collateral to be sold pursuant to Section 12.1(d) hereof and, in each case, the sale of such Portfolio Collateral is in compliance with Section 12.1 hereof or (ii) based upon receipt of an Issuer Order, on or after the Payment Date occurring in June 2010, the Collections from the sale of such Portfolio Collateral shall be used to effect an Optional Redemption in accordance with Section 9.1 hereof or (iii) based on receipt of an Issuer Order, the Collections from the sale of such Portfolio Collateral shall be used to effect a Tax Event Redemption in accordance with Section 9.5 hereof or (iv) it has determined that such Portfolio Collateral has become subject to withholding or similar tax and its sale is in compliance with Section 12.1 hereof, may direct the Trustee to release from the lien of this Indenture and deliver the Portfolio Collateral specified in such Servicer Order and, upon receipt of such Servicer Order, the Trustee shall release such Portfolio Collateral from such lien and deliver such Portfolio Collateral in accordance with the Servicer Order, in each case against receipt of sale proceeds therefor.

(c) The Trustee on behalf of the Issuer shall notify the Servicer of any Portfolio Collateral that is being redeemed or paid in full. The Trustee, upon Servicer Order, shall release from the lien of this Indenture such Portfolio Collateral and shall deliver such Portfolio Collateral in accordance with the terms of the redemption or payment in full, in each case against receipt of the proceeds of the redemption price therefor or payment in full thereof.

(d) The Trustee on behalf of the Issuer shall notify the Servicer of any Portfolio Collateral that is subject to an Offer. If no Event of Default has occurred and is continuing and subject to the provisions of Article XII hereof, the Servicer shall, by Servicer Order delivered to the Trustee on or before the date set for an exchange, tender or sale of such Portfolio Collateral, set forth in reasonable detail the procedure for response to such Offer and direct the Trustee to release from the lien of this Indenture such Portfolio Collateral in accordance with the terms of the Offer in each case against receipt of payment therefor.

(e) (i)The Trustee shall credit all proceeds received by it from the disposition of Portfolio Collateral to the Collection Account unless simultaneously applied to purchase in Substitute Portfolio Collateral (as directed by the Servicer). The Trustee shall also credit to the Collection Account (A) all Account Income with respect to the Collection Account, (B) all proceeds received by it from the disposition of an Eligible Investment in the Collection Account, (C) any portion of the Deposit remaining in the Initial Deposit Account on the Effective Date if an Initial Deposit Redemption is not required on such date, which shall be deemed Collateral Principal Collections; *provided that*, at the direction of the Servicer, up to 25% of such remaining Deposit may be deemed to be Collateral Interest Collections, pursuant to Section 3.4(d) hereof, and (D) upon Servicer Order pursuant to Section 10.2(f) hereof, all Account Income in the Initial Deposit Account on the Effective Date.

(ii) The Trustee shall credit to the Initial Deposit Account all proceeds received by it from the disposition of an Eligible Investment in the Initial Deposit Account (subject, however, to the terms of Section 10.2(f) regarding the transfer of such Account Income to the Collection Account on the Effective Date).

(iii) The Trustee shall credit to the Expense Reimbursement Account all Account Income with respect to the Expense Reimbursement Account and all proceeds received by it from the disposition of an Eligible Investment in the Expense Reimbursement Account.

(f) The Trustee shall, at such time as there are no Notes Outstanding and all obligations of the Issuer under or pursuant to this Indenture have been satisfied, upon receipt of written notice from the Servicer that all amounts owing to the Servicer have been paid, release the Trust Estate from the lien of this Indenture.

Section 10.4. Reports of Trustee.

Upon written request, the Trustee shall supply to the Issuer and the Servicer at least three (3) Business Days prior to the date required hereunder for delivery of each Note Valuation Report and each Monthly Report, all information that it has received hereunder with respect to the Pledged Securities which is reasonably required for the preparation of the Note Valuation Report and Monthly Report. The Trustee shall supply in a timely fashion to the Issuer, Bear Stearns and the Servicer any other information that the Issuer or the Servicer may reasonably request from time to time that is in the possession of the Trustee and required to be provided by Section 10.5 hereof. The Trustee shall promptly forward to the Issuer, Bear Stearns, and the Servicer copies of notices and other writings received by it from the issuer of any Pledged Security or from any clearing agency with respect to any Pledged Security advising the holders of such security of any rights that the holders might have with respect thereto (including, without limitation, notices of calls and redemptions) as well as all periodic financial reports received from such issuers and clearing agencies with respect to such issuers. Nothing in this Section 10.4 hereof shall be construed to impose upon the Trustee, in such capacity, any duty to prepare any report or statement which the Issuer is required to prepare or provide under Section 10.5 hereof or to calculate, recalculate or verify any information required to be set forth in any such report or statement (other than information regularly maintained by the Trustee by reason of its acting as Trustee hereunder) prepared or required to be prepared by the Issuer or the Servicer. Nothing herein shall be construed to obligate the Trustee to disclose any information concerning its business or its operations which it reasonably considers confidential in nature.

On the date each Monthly Report is delivered or two Business Days prior to the Payment Date if with respect to a Note Valuation Report delivered in a month in which such Payment Date occurs, the Issuer shall cause to be promptly delivered to Standard & Poor's the Standard & Poor's CDO Monitor input file in the Standard & Poor's Preferred Format (provided that the specific parameters identified by Standard & Poor's have been delivered to the Issuer and the Trustee prior to the Closing Date and are limited to the scope herein stated) containing the Current Portfolio as of the date of determination and used to determine the S&P Scenario Loss Rate and the Schedule of Portfolio Collateral to Moody's in electronic format. In addition, the Issuer may provide any such reports in electronic form on a password-protected internet site or such other electronic format as the Issuer deems desirable.

Section 10.5. Accountings.

(a) Monthly. Not later than the (i) the first day of each month (or if such day is not a Business Day on the next succeeding Business Day) for months where no Payment Date occurs or (ii) the related Payment Date, for months in which a Payment Date occurs, commencing in July 2006, the Issuer shall compile and provide, or procure the provision, to the Trustee, the Paying and Transfer Agent, each Noteholder or Beneficial Owner (upon receipt by the Trustee of a certificate in the form of Exhibit H and to any Servicer of such Noteholder or Beneficial Owner to whom such Noteholder or Beneficial Owner has in writing directed the Trustee to send a copy of such report), Bear Stearns, the Servicer, the Repository and each Rating Agency (but only so long as any Class of Notes is rated) a monthly report (the "Monthly Report"), which shall contain the following information and instructions with respect to the Pledged Securities included in the Trust Estate, determined as of the seventh Business Day preceding either (i) the first day of such month (or if such day is not a Business Day on the next succeeding Business Day) or (ii) the Payment Date in months in which a Payment Date occurs (based in part on information provided by the Servicer):

(1) the Aggregate Principal Amount of the Portfolio Collateral, the Principal Balance of each item of Portfolio Collateral, and the annual interest rate, maturity date, the designated seniority, and the LIN, or, with respect to Loan X Inc., the applicable ID (if either is used by the Servicer) or CUSIP Number of each item of Portfolio Collateral in the Trust Estate, as well as the rating by Standard & Poor's and the rating by Moody's (provided that any private confidential credit assessments, including estimated or shadow ratings, shall not be disclosed in any report issued and/or published to any party other than the Issuer, the Trustee and the Servicer) of such item of Portfolio Collateral determined according to the methods prescribed by Schedules D and F, respectively, and the Moody's corporate family rating, senior unsecured rating or long-term issuer rating, as applicable, the Moody's Default Probability Rating and the notch difference, if any, of each item of Portfolio Collateral;

(2) the Balance of the Eligible Investments in the Collection Account, the annual interest rate, maturity date, Principal Balance and issuer of each Eligible Investment in the Trust Estate, as well as the rating by Standard & Poor's and the rating by Moody's of such Eligible Investment;

(3) the nature, source and amount of any Collections in the Collection Account, including the Collateral Interest Collections and Collateral Principal Collections received since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report);

(4) the amount and identity of each item of Portfolio Collateral that was released for sale indicating the reason for such sale; and the amount and identity of each item of Portfolio Collateral that was Granted, since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report);

(5) the identity, principal amount of and Market Value (segregating the Market Value determinations made by the Serving Entities) of each item of Portfolio Collateral in the Trust Estate which is an item of Defaulted Portfolio Collateral and

Deferred Interest PIK Bond and the identity and principal amount of each item of Portfolio Collateral that became an item of Defaulted Portfolio Collateral, Deferred Interest PIK Bond or Equity Portfolio Collateral since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report);

(6) the purchase price of each Pledged Security Granted and the purchase price and sale price of each Pledged Security subject to a sale since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report); whether such Pledged Security is Portfolio Collateral or an Eligible Investment in the Collection Account;

(7) (i) the identity, principal amount, Market Value, purchase price and percentage of the Aggregate Par Amount of each item of Portfolio Collateral included in the Trust Estate which is an item of Discount Portfolio Collateral, since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report) and (ii) the number of consecutive Business Days such item of Discount Portfolio Collateral has traded above (i) 90% of its Principal Balance with respect to Portfolio Loans and (ii) 85% of its Principal Balance with respect to Debt Securities;

(8) after the Effective Date, the calculation of the Class A Overcollateralization Ratio, the Class B-1L Overcollateralization Ratio and the Interest Coverage Ratio and the amount of any Additional Collateral Deposit Requirement and prior to the Effective Date and with respect to the Interest Coverage Ratio and the amount of any Additional Collateral Deposit Requirement, prior to the second Payment Date, listing such information as "not applicable" and with respect to the Interest Coverage Ratio, in months other than months in which a Payment Date occurs, calculated in accordance with the second paragraph of the definition of the Interest Coverage Ratio and listing such results but marking them as "not applicable";

(9) information with respect to the Portfolio Collateral Granted to the Trustee since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report) reasonably necessary to determine whether the eligibility criteria set forth in Section 12.2 were satisfied (at the time of such grant);

(10) the percentage of the Aggregate Par Amount comprised of non-U.S. Portfolio Collateral and the rating of the sovereign country in which the issuer of such non-U.S. Portfolio Collateral is domiciled;

(11) the identity of and the Market Value of each item of Portfolio Collateral which is a Current Pay Obligation and the percentage of the Aggregate par Amount comprised of Current Pay Obligations;

(12) the percentage of Portfolio Loans for which a Facility Rating has been withdrawn by Moody's due to a restructuring of such Portfolio Loan;

(13) the Weighted Average Life, the Moody's Weighted Average Rating (determined in accordance with the procedures set forth in Schedule F), the Weighted Average Coupon of the Fixed Rate Portfolio Collateral and the Weighted Average

Margin of the Floating Rate Portfolio Collateral, the S&P Minimum Average Recovery Rate and the Moody's Minimum Average Recovery Rate of the Portfolio Collateral, the Moody's Correlation Factor of the Portfolio Collateral, the Aggregate Principal Amount and percentage of the Aggregate Par Amount of Portfolio Collateral which consists of DIP Loans, Delayed Drawdown Loans, Revolving Loans and which has a Moody's Rating or Standard & Poor's Rating of "Caa1" or below or "CCC+" or below, respectively, other than Defaulted Portfolio Collateral, and the Applicable Percentage of each item of Portfolio Collateral;

(14) (a) the percentage of the Aggregate Par Amount consisting of obligations of issuers domiciled in a Group A Country, (b) the percentage of the Aggregate Par Amount consisting of obligations of issuers domiciled in a Group B Country and (c) the percentage of the Aggregate Par Amount consisting of obligations of issuers domiciled in any country other than the United States of America, a Group A Country or a Group B Country;

(15) the percentage of the Aggregate Par Amount consisting of Synthetic Securities including the identity of the Synthetic Security Obligors and the Reference Obligation and their rating, and the percentage of the Aggregate Par Amount consisting of Strip Securities;

(16) the Aggregate Principal Amount of the Portfolio Collateral and the percentage of the Aggregate Principal Amount of the Portfolio Collateral consisting of obligations maturing after August 1, 2021;

(17) the par amount of all Portfolio Collateral included in the Trust Estate as of the Effective Date;

(18) the results of the Standard & Poor's CDO Monitor determined in accordance with Schedule D hereto, whether the Standard & Poor's CDO Monitor Test is passed or failed and the S&P Break-Even Loss Rate and the S&P Scenario Loss Rate for each Class;

(19) the Aggregate Principal Amount consisting of CLO Securities, including the Aggregate Principal Amount of each CLO Security with a Moody's Rating below "Baa3" or a Standard & Poor's Rating below "BBB-" and (b) the percentage of the Aggregate Par Amount of CLO Securities managed by any Servicer Entities; and

(20) such other information as the Trustee or the Servicer may reasonably request.

Upon receipt of each Monthly Report, the Servicer shall compare the information contained therein and described in clauses (1) through (19) above to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of each such Monthly Report, notify the Issuer, the Collateral Administrator (if different from the Trustee) and the Trustee in writing of any discrepancies between the information contained in the Monthly Report and the information maintained by the Servicer with respect to the Collateral. If any discrepancy exists, the Issuer and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall cause the Independent Accountants appointed by the Issuer pursuant to Section 10.6 hereof to review such Monthly

Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Issuer's records, the Monthly Report or the Issuer's records shall be revised accordingly and, as so revised, shall be utilized in making all calculations pursuant to this Indenture. Each Rating Agency (in each case only so long as any Class of Notes is rated by it), Bear Stearns and the Servicer shall be notified in writing of any such revisions by the Trustee on behalf of the Issuer.

After the end of the Revolving Period, the Monthly Report shall also contain a statement to the effect that it is not unusual for the eligibility criteria set forth in Section 12.2 hereof not to be satisfied following the Revolving Period as the Portfolio Collateral matures or is otherwise disposed of and principal on the Notes is paid down.

Each of the Issuer, Bear Stearns and the Servicer acknowledges and agrees that each Monthly Report shall be forwarded to the Repository for posting in the manner provided by the Repository.

(b) Payment Date Accounting. With respect to each Calculation Date, the Issuer shall render or cause to be rendered an accounting (the "Note Valuation Report"), determined as of such Calculation Date, and delivered to the Trustee, the Paying and Transfer Agent, Bear Stearns, the Servicer, the Repository, the Collateral Administrator and each Rating Agency (but only so long as any Class of Notes is rated by it), not later than the Business Day prior to the Payment Date related to such Calculation Date. Upon receipt by the Trustee of a certificate in the form of Exhibit H, the Trustee shall make available the Note Valuation Report to the requesting Noteholder or Beneficial Owner. The Note Valuation Report shall contain the following information (based in part on information provided by the Servicer):

(1) The Aggregate Principal Amount of the Portfolio Collateral as of the close of business on such Calculation Date, after giving effect to Collateral Principal Collections received during the related Due Period and applied to purchase Additional Portfolio Collateral or Substitute Portfolio Collateral in accordance with the provisions of this Indenture, the sale or other disposition of each item of Portfolio Collateral during such Due Period and the Grant in favor of the Trustee of each item of Substitute Portfolio Collateral and Additional Portfolio Collateral during such Due Period.

(2) The Aggregate Principal Amount of the Class A-1LA Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LA Notes, and the amount of principal payments to be made on the Class A-1LA Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-1LA Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LA Notes.

(3) The Aggregate Principal Amount of the Class A-1LB Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LB Notes, and the amount of principal payments to be made on the Class A-1LB Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-1LB Notes after giving

effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LB Notes

The Aggregate Principal Amount of the Class A-2L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-2L Notes, and the amount of principal payments to be made on the Class A-2L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-2L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-2L Notes.

(4) The Aggregate Principal Amount of the Class A-3L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-3L Notes, and the amount of principal payments to be made on the Class A-3L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-3L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-3L Notes.

(5) The Aggregate Principal Amount of the Class A-4L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-4L Notes, and the amount of principal payments to be made on the Class A-4L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-4L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-3L Notes.

(6) The Aggregate Principal Amount of the Class B-1L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class B-1L Notes, and the amount of principal payments to be made on the Class B-1L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class B-1L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class B-1L Notes.

(7) The Aggregate Principal Amount of the Class X Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class X Notes, and the amount of principal payments to be made on the Class X Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class X Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class X Notes

(8) The Base Servicing Fee, the Additional Servicing Fee, the Supplemental Servicing Fee (if any), the Trustee Administrative Expenses, the Preferred Shares Administrative Expenses, the Issuer Base Administrative Expenses, any replenishment of the Expense Reimbursement Account and the Issuer Excess Administrative Expenses, in each case

including any amount with respect to any previous Payment Date that was not paid on a previous Payment Date relating to such Calculation Date on an itemized basis.

(9) For the Collection Account:

(a) the Balance in the Collection Account as of such Calculation Date;

(b) the amounts payable from the Collection Account pursuant to Article XI hereof on the Payment Date relating to such Calculation Date (in the aggregate and under each Section and subsection of Article XI hereof); and

(c) the Balance remaining in the Collection Account immediately after giving effect to all payments to be made on the Payment Date relating to such Calculation Date.

(10) For the Loan Funding Account, the Balance in the Loan Funding Account as of such Calculation Date, the amounts, if any, payable from the Loan Funding Account to fund amounts drawn under any Delayed Drawdown Loan or Revolving Loan with respect to such Calculation Date and the amount, if any, transferred from the Loan Funding Account to the Collection Account as Collateral Principal Collections with respect to such Calculation Date.

(11) (A) The Overcollateralization Ratios and the Interest Coverage Ratio (including a break-down of the components of such ratios) and the results of the Overcollateralization Tests, the Interest Coverage Test and the amount of any Additional Collateral Deposit Requirement (which shall not be reported on a pass/fail basis) as of the close of business on such Calculation Date (after giving effect to any payments to be made on the Payment Date relating to such Calculation Date, other than payments of the Mandatory Redemption Price with respect to an O/C Redemption, if any, made pursuant to Section 9.2 hereof and Section 11.2 hereof), (B) if the Interest Coverage Test or any Overcollateralization Test is not met, the amount of O/C Redemption of each Class of Notes on the related Payment Date pursuant to Section 9.2 hereof that would be necessary on the related Payment Date in order to cause the Interest Coverage Test or such Overcollateralization Test to be met (after giving effect to all payments to be made on such Payment Date), (C) the results of the Interest Coverage Test and the Overcollateralization Tests after giving effect to such O/C Redemptions pursuant to Section 9.2 hereof and the other payments, if any, to be made on such Payment Date, (D) if a Rating Confirmation Failure has occurred, the amount of Rating Confirmation Failure Redemption of each Class of Notes on the related Payment Date pursuant to Section 9.2 hereof that would be necessary on the related Payment Date in order to receive a Rating Confirmation (after giving effect to all payments to be made on such Payment Date), and (E) if the Additional Collateral Deposit Requirement is not met, the amount of cash that would be necessary on the related Payment Date to be applied in accordance with Section 11.1 in order to cause the Additional Collateral Deposit Requirement to be met (after giving effect to all payments to be made on such Payment Date); *provided that* the Note Valuation Report need not contain information relating to the Interest Coverage Test or the Additional Collateral Deposit Requirement with respect to the first Calculation Date.

(c) Noteholder Report. With respect to each Calculation Date, the Issuer shall render or cause to be rendered an accounting (the "Noteholder Report"), determined as of such Calculation Date, and completed not later than the Business Day preceding the Payment Date relating to such Calculation Date. The Issuer shall deliver to the Trustee, each Noteholder or Beneficial Owner (upon receipt by the Trustee of a certificate in the form of Exhibit H), each Rating Agency (but only so long as any Class of Notes is rated by such Rating Agency), the Paying and Transfer Agent and the Servicer, a copy of the Noteholder Report promptly after such completion no later than the tenth day after such Calculation Date. The Noteholder Report shall contain the information contained in Section 10.5(b)(1) through (9) and Section 10.5(a)(1) through (19).

Each Noteholder Report shall contain the following statement: "Each holder of a Note (other than those issued pursuant to Regulation S) or any interest therein is required at all times to be "Qualified Institutional Buyer" within the meaning of Rule 144A ("Rule 144A") under the U.S. Securities Act of 1933, as amended (the "Securities Act") who is also a "Qualified Purchaser" within the meaning of Section 3(c)(7) of the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act") and each such holder (i) is not formed for the purpose of investing in the Notes (unless all of its beneficial owners are Qualified Purchasers), (ii) is not a dealer described in paragraph (a)(1)(ii) of Rule 144A (unless such holder owns and invests on a discretionary basis at least U.S. $25 million in securities of issuers that are not affiliated persons of such dealer), (iii) is not a plan referred to in paragraph (a)(1)(i)(D) or (E) of Rule 144A or a trust fund referred to in paragraph (a)(1)(i)(F) of Rule 144A that holds the assets of such plan (unless investment decisions are made solely by the fiduciary, trustee or sponsor of such plan), (iv) each account for which it is holds Notes is holding Notes in at least the minimum denomination set forth in the Indenture and (v) will provide written notice of the foregoing and any other applicable transfer restrictions to any transferee of a Note or any interest therein. The Notes (other than those issued pursuant to Regulation S) and any interest therein may only be transferred to a transferee that can make the foregoing representations and the Co-Issuers have the right, at any time, to force any holder of a Note who is not a Qualified Institutional Buyer and a Qualified Purchaser to sell or redeem its Notes."

After the end of the Revolving Period, the Noteholder Report shall also contain a statement to the effect that it is not unusual for the eligibility criteria set forth in Section 12.2 hereof not to be satisfied following the Revolving Period as the Portfolio Collateral matures or is otherwise disposed of and principal on the Notes is paid down.

(d) Payment Date Instructions. The Note Valuation Report referred to in subsection (b) of this Section 10.5 shall constitute instructions to the Trustee to withdraw on the Payment Date relating to such Note Valuation Report the available funds from the Collection Account and make the payments set forth in the Note Valuation Report in the manner specified, and in accordance with the priorities established, in Article XI hereof.

(e) Optional Redemption Instructions. Not less than three Business Days after an Issuer Order electing an Optional Redemption of the Notes pursuant to Section 9.1 has been delivered to the Trustee, the Issuer shall compute the following information and provide such information in a statement (the "Redemption Date Statement") delivered to the Trustee, the Servicer and the Rating Agencies:

(1) the amounts payable to the Trustee, the Paying and Transfer Agent, the Issuer and the Servicer pursuant to Sections 11.1(b) and (d);

(2) the amount in the Collection Account available for payment of the Optional Redemption Price; and

(3) the Optional Redemption Price.

(f) Tax Event Redemption Instructions. Not later than three Business Days after an Issuer Order electing a Tax Event Redemption of the Notes Pursuant to Section 9.5 has been delivered to the Trustee, the Issuer shall compute the following information and provide such information in a statement (also, a "Redemption Date Statement") delivered to the Trustee, the Servicer and the Rating Agencies.

(1) the amounts payable to the Trustee, the Issuer, the Paying and Transfer Agent and the Servicer pursuant to Sections 11.1(b) and (d);

(2) the amount in the Collection Account available for payment of the Tax Event Redemption Price; and

(3) the Tax Event Redemption Price.

(g) Appointment of Agent. The Issuer may appoint an administrator or other agent to perform its obligations to provide reports pursuant to this Article X and certain calculations pursuant to Article XII. Pursuant and subject to the terms of a collateral administration agreement (the "Collateral Administration Agreement") entered into or to be entered into among the Issuer, the Servicer and JPMorgan Chase Bank, National Association, the Issuer has appointed or shall appoint JPMorgan Chase Bank, National Association, as its initial agent for such purposes and JPMorgan Chase Bank, National Association, has accepted or shall accept such appointment and has agreed or shall agree to perform such obligations, as provided therein.

Section 10.6. Reports by Independent Accountants.

(a) The Issuer will appoint prior to the Effective Date, a nationally recognized firm of accountants as the firm or firms of Independent certified public accountants to prepare and deliver the reports or certificates of such accountants required by this Indenture. Upon any resignation by, or removal of, such firm, the Issuer shall promptly appoint a successor thereto that shall also be a firm of Independent certified public accountants of recognized national reputation in the United States and for so long as any Notes are then rated, provide notice of such successor to each Rating Agency then rating any Notes. If the Issuer shall not have appointed a successor within 30 days of any firm resigning from the position of Independent certified public accountants to the Issuer, the Trustee shall promptly appoint a successor firm of Independent certified public accountants of recognized national reputation in the United States and for so long as any Notes are then rated, provide notice of such successor to each Rating Agency then rating any Notes. The fees of such Independent certified public accountants and its successor shall be payable by the Issuer.

(b) On or before May 31 in 2007 and on or before May 31 in each year thereafter through 2011, the Issuer shall cause to be delivered to the Trustee, the Servicer and each Rating Agency, if any, then rating any Class of Notes a certificate (the "Accountants' Certificate") from the firm of Independent certified public accountants appointed by the Issuer indicating (i) that such firm has reviewed the Note Valuation Reports and Redemption Date Statements relating to the Payment Dates in such period, (ii) that the calculations within such Note Valuation Reports and Redemption Date Statements have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in a statement), (iii) the Aggregate Principal Amount of the Portfolio Collateral securing the Notes as of the Calculation Date relating to such Payment Dates and (iv) the procedures undertaken by such accountants to perform such calculations. In the event such firm requires the Trustee to agree to the procedures performed by such firm, the Servicer shall direct the Trustee in writing to so agree; it being understood and agreed that the Trustee will deliver such letter agreement in conclusive reliance upon the direction of the Servicer, and the Trustee makes no independent inquiry or investigation as to, and shall have no obligation or liability in respect of the sufficiency, validity or correctness of such procedures. Upon receipt by the Trustee of a certificate in the form of Exhibit H, the Trustee shall make available a copy of the Accountant's Certificate to the requesting Noteholder.

(c) Beginning with the year 2007, on or before (i) January 31 of each year or, (ii) if later, on or before any date in each year on which any of the information described below is required to be delivered to the Noteholders under the Code or any other applicable law, but, in any case, not later than March 1 of each year, the Issuer shall cause each Paying Agent in the United States to prepare and deliver a Form 1099 to each Noteholder and the Issuer shall provide or cause to be provided such other information as is requested by a Noteholder, which is necessary to permit such Holder to prepare and file any applicable U.S. income tax returns related to the most recently ended calendar year.

Section 10.7. Reports to Rating Agencies.

For so long as any Class of Notes is rated by a Rating Agency, the Issuer shall provide or cause to be provided to each Rating Agency then rating such Notes with a copy of each Monthly Report, each Note Valuation Report, each Noteholder Report, each Accountants' Certificate and any other notification delivered to any Noteholder pursuant to the provisions of this Indenture and with such additional information as such Rating Agency may from time to time reasonably request and the Issuer determines in its sole discretion may be obtained and provided without unreasonable burden or expense. In addition, upon receipt of actual knowledge thereof, the Trustee shall send to each Rating Agency notice of any Default set forth in Section 5.1 hereof. The Trustee will also give notice to the Rating Agencies, of any removal of the Servicer pursuant to Section 5.4(c). In addition, the Servicer shall provide to the Rating Agencies those notices related to the Issuer's purchase of Synthetic Securities that are contemplated by Section 12.10 (which notices, in the case of notices provided by the Servicer to Moody's, shall be sent to the attention of a "Managing Director" of Moody's CBO/CLO Group); and, if Standard & Poor's or Moody's so requests and if such requesting party did not rate the related Synthetic Securities, the Servicer shall also provide to such requesting party a copy of the transaction documents in its possession, relating to all Synthetic Securities. The Servicer shall also notify Standard & Poor's if more than 10% of the Aggregate Principal Amount of Portfolio Collateral are obligations of issuers domiciled outside the United States. The address of

Standard & Poor's for purposes of notices and reports hereunder shall be as follows: 55 Water Street, New York, New York 10041-0003, (email: cdo_surveillance@sandp.com), Attention: Structured Finance Ratings, or such other address of which the Issuer is notified in writing by Standard & Poor's. The address of Moody's for purposes of notices and reports hereunder shall be as follows: 99 Church Street, New York, New York 10007, email: cdomonitoring@moodys.com, Attention: CBO Monitoring Group or such other address of which the Issuer is notified in writing by Moody's.

ARTICLE XI

APPLICATION OF MONIES

Section 11.1. Disbursements of Monies from Collection Account.

Except as otherwise set forth in Section 10.2 hereof, disbursements of monies from the Closing Expense Account and the Collection Account shall be made at the following times and in the following order of priority:

(a) On the Closing Date, the Trustee shall pay, from the funds deposited in the Closing Expense Account, the fees, commissions and expenses associated with the Closing (collectively, "Closing Expenses") as set forth in an Issuer Order delivered to the Trustee on the Closing Date; *provided that* any such Closing Expenses may in the alternative be paid on any date after the Closing Date and prior to the Payment Date in November 2006 from the Closing Expense Deposit in the Closing Expense Account pursuant to an Issuer Order delivered to the Trustee (which shall state that the amounts called for to be paid therein are Closing Expenses). All payments pursuant to Section 11.1 hereof may be made from the United States. The Issuer may appoint an agent or agents for purposes of making payment of expenses, fees and commissions to be paid on its behalf from outside the United States pursuant hereto and (each such person shall be considered, a "Paying Agent" hereunder). The Issuer hereby initially appoints JPMorgan Chase Bank, National Association, as such Paying Agent for such limited purpose.

(b) On each Payment Date (including the Final Maturity Date and if funds become available after the Final Maturity Date, on any date after the Final Maturity Date) and in accordance with the Note Valuation Report for the Calculation Date immediately preceding such Payment Date, the Trustee shall withdraw from the Collection Account (to the extent of the available funds therein excluding therefrom (I) during the Revolving Period, any Collateral Disposition Proceeds received during the Due Period relating to such Calculation Date to be applied by the Trustee during the related Due Period or the immediately succeeding Due Period as set forth in Section 12.4 hereof and (II) during the Revolving Period or Amortization Period, Collateral Principal Collections in an aggregate amount equal to the agreed purchase prices for Additional Portfolio Collateral with respect to which the Issuer has entered into a commitment (as set forth in the notice from the Servicer to the Trustee) prior to the end of such Due Period for the purchase thereof, but has not settled such purchase by the end of such Due Period, as set forth in Section 11.3 hereof) an amount up to the Collateral Interest Collections and, to the extent the amount of the Collateral Interest Collections is not sufficient, an amount up to the Collateral Principal Collections, and shall make a disbursement in the following order of priority:

FIRST: To the Trustee for the payment in full of the Trustee Administrative Expenses for the related Due Period and any Trustee Administrative Expenses with respect to any previous Payment Date that were not paid on any previous Payment Date, and then to the Paying and Transfer Agent for the payment in full of the Preferred Shares Administrative Expenses for the related Due Period and any Preferred Shares Administrative Expenses with respect to any previous Payment Date that were not paid on any previous Payment Date;

SECOND: To the Issuer for the payment of Issuer Base Administrative Expenses with respect to the related Due Period and any Issuer Base Administrative Expenses with respect to a previous Payment Date that were not paid on a previous Payment Date;

THIRD: For the replenishment of the Expense Reimbursement Account up to an amount equal to U.S. $50,000 to the extent any amount therein has paid the Issuer Base Administrative Expenses for the related Due Period and to the extent any amount so paid for any prior Due Period has not been so replenished; *provided however*, notwithstanding anything to the contrary herein, the amounts set forth in clauses FIRST through this clause THIRD shall not exceed (i) $250,000 per annum plus (ii) the greater of $75,000 per annum and 0.0275% per annum of the Aggregate Par Amount on the related Calculation Date.

FOURTH: To the Servicer for the payment of the Base Servicing Fee with respect to such Payment Date and any Base Servicing Fee with respect to any previous Payment Date that was not paid on a previous Payment Date, and to the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Base Dividend then due and any Class II Preferred Share Base Dividend with respect to any previous Payment Date that was not paid on a previous Payment Date.

Notwithstanding anything herein to the contrary, any amounts to be paid to the Paying and Transfer Agent in its capacity as paying and transfer agent for the Preferred Shares pursuant to the Indenture will be delivered by the Trustee to the Paying and Transfer Agent for deposit in the Preferred Shares Collection Account in accordance with the Paying and Transfer Agency Agreement.

(c) On each Payment Date with respect to the **Revolving Period** and the **Amortization Period** in accordance with the Note Valuation Report for the Calculation Date immediately preceding such Payment Date, the Trustee shall withdraw from the Collection Account (to the extent of the available funds therein, excluding therefrom (I) during the Revolving Period, any Collateral Disposition Proceeds received during the Due Period relating to such Calculation Date to be applied by the Trustee during the related Due Period or the immediately succeeding Due Period as set forth in Section 12.4 hereof and (II) during the Revolving Period, Collateral Principal Collections in an aggregate amount equal to the agreed purchase prices for Additional Portfolio Collateral with respect to which the Issuer has entered into a commitment (as set forth in the notice from the Servicer to the Trustee) prior to the end of such Due Period for the purchase thereof, but has not settled such purchase by the end of such Due Period, as set forth in Section 11.3 hereof) an amount equal to the Adjusted Collections and shall make the following disbursements:

(i) The Trustee shall apply such amounts constituting Adjusted Collateral Interest Collections (to the extent of available funds therefor) in the following order of priority:

FIRST: To the payment, *pari passu*, to (i) the Holders of the Class A-1LA Notes and the Class A-1LB Notes of an amount equal to the applicable Cumulative Interest Amount and, on each Payment Date and (ii) on each Payment Date through the August 1, 2013 Payment Date, the Cumulative Class X Payment with respect to the Class X Notes;

SECOND: To the payment to the Holders of the Class A-2L Notes of an amount equal to the applicable Cumulative Interest Amount;

THIRD: To the payment to the Holders of the Class A-3L Notes of an amount equal to the applicable Cumulative Interest Amount;

FOURTH: To the payment to the Holders of the Class A-4L Notes of an amount equal to the applicable Cumulative Interest Amount;

FIFTH: To the payment of principal in the amount, if any, required to be paid in order to satisfy the Class A Overcollateralization Test and, on each Payment Date after the second Payment Date, the Interest Coverage Test, such amount to be paid first, to the Class A-1LA Notes; second, to the Class A-1LB Notes; third, to the Class A-2L Notes, fourth, to any Periodic Rate Shortfall Amount with respect to the Class A-3L Notes, and then to principal of the Class A-3L Notes; and fifth, to any Periodic Rate Shortfall Amount with respect to the Class A-4L Notes, and then to principal of the A-4L Notes, in that order, until each such Class is paid in full, to the extent required to satisfy the Class A Overcollateralization Test and the Interest Coverage Test;

SIXTH: To the payment of the Periodic Interest Amount with respect to the Class B-1L Notes and such Payment Date;

SEVENTH: To the payment of principal as an O/C Redemption or a Rating Confirmation Failure Redemption in the amount, if any, required to be paid in order to satisfy the Class B-1L Overcollateralization Test or in order to receive a Rating Confirmation, as applicable, such amount to be paid first, *pro rata*, to the Class X Notes, only in connection with a Rating Confirmation Failure Redemption, and to the Class A-1LA Notes; second, to the Class A-1LB Notes; third, to the Class A-2L Notes; fourth, to any Periodic Rate Shortfall Amount with respect to the Class A-3L Notes and then to principal of the Class A-3L Notes; fifth, to any Periodic Rate Shortfall Amount with respect to the Class A-4L Notes and then to principal of the Class A-4L Notes; and sixth, to principal of the Class B-1L Notes, in that order, until each such Class is paid in full, to the extent required to satisfy the Class B-1L Overcollateralization Test or in order to receive a Rating Confirmation, as applicable;

EIGHTH: To the payment to the Holders of the Class B-1L Notes of an amount equal to the Cumulative Interest Amount for the Class B-1L Notes and such Payment Date to the extent not paid to the Holders of the Class B-1L Notes pursuant to clauses SIXTH OR SEVENTH of this Section 11.1(c)(i);

NINTH: (I) During the Revolving Period, on each Payment Date after the second Payment Date to the extent of available funds, *pro rata*, an amount equal to 35% of the funds available up to the Additional Collateral Deposit Requirement to be deposited into the Collection Account and applied to pay principal of the Class B-1L Notes until such Class is paid in full and an amount equal to 65% (or, after the Class B-1L Notes are paid in full, 100%) of the funds available up to the Additional Collateral Deposit Requirement for the purchase of Additional Portfolio Collateral (other than CLO Securities), as directed by the Servicer or the Issuer, pursuant to Section 11.3 hereof during the immediately succeeding Due Period and (II) during the Amortization Period to the extent of available funds, *pro rata*, an amount equal to 35% of the funds available up to the Additional Collateral Deposit Requirement to be deposited into the Collection Account and applied to pay principal of the Class B-1L Notes until such Class is paid in full and an amount equal to 65% (or, after the Class B-1L Notes are paid in full, 100%) of the funds available up to the Additional Collateral Deposit Requirement to the payment of principal of the Notes in the order of priority described in clause SEVENTH above;

TENTH: To the payment to the Default Swap Counterparty any Default Swap Counterparty Termination Payment;

ELEVENTH: To the payment, *first* (a) to the Servicer the Additional Servicing Fee with respect to such Payment Date, and (b) to the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Additional Dividend then due and unpaid, and *second*, to the Holders of the Notes any due and unpaid Extension Bonus Payment;

TWELFTH: To the payment to the Issuer of Issuer Excess Administrative Expenses with respect to such Payment Date and any Issuer Excess Administrative Expenses with respect to any previous Payment Date that were not paid on a previous Payment Date; and

THIRTEENTH: If the Internal Rate of Return of the Preferred Shares as of such Payment Date is less than 12%, to the payment to the Holders of the Preferred Shares, but only up to an amount that would cause the Internal Rate of Return of the Preferred Shares to equal 12%; and

FOURTEENTH: Any remaining amounts, (a) 20% to (x) the payment of the Supplemental Servicing Fee for such Payment Date, and (y) the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Supplemental Dividend then due and unpaid, and (b) 80% to the Holders of the Preferred Shares in accordance with the Paying and Transfer Agency Agreement, as a dividend thereon or as a redemption payment on the Redemption Date, as applicable.

(ii) During the **Revolving Period**, the Trustee shall apply the Adjusted Collateral Principal Collections (to the extent of available funds therefor) in the following order of priority:

FIRST: To the payment of the amounts described in clauses FIRST through SEVENTH of Section 11.1(c)(i) hereof with respect to Collateral Interest Collections

and the Revolving Period, in the order described therein, in each case to the extent such amounts have not been paid from Adjusted Collateral Interest Collections with respect to such Payment Date; *provided however* that, with respect to the payment described in clause THIRD of Section 11.1(c)(i) hereof, so long as any Class X Notes, Class A-1L Notes or Class A-2L are Outstanding, the Class A-3L Notes shall only be entitled to receive an amount sufficient to pay the Periodic Interest Amount (or, after the Class A-2L Notes are paid in full, the Cumulative Interest Amount) due to the Class A-3L Notes for such Payment Date from Collateral Principal Collections, but only to the extent this payment will not cause the failure of the Class B-1L Overcollateralization Test, with respect to clause FOURTH of Section 11.1(c)(i) above, so long as any Class X Notes, Class A-1L Notes, Class A-2L Notes or Class A-3L Notes are Outstanding, the Class A-4L Notes shall only be entitled to receive an amount sufficient to pay the Periodic Interest Amount (or, after the Class A-3L Notes are paid in full, the Cumulative Interest Amount) due to the Class A-4L Notes for such Payment Date from Collateral Principal Collections, and with respect to the payment described in clause SIXTH of Section 11.1(c)(i) hereof, so long as any Class X Notes, Class A-1L Notes, Class A-2L Notes, the Class A-3L Notes or the Class A-4L Notes are Outstanding, the Class B-1L Notes shall only be entitled to receive an amount sufficient to pay the Periodic Interest Amount due to the Class B-1L Notes for such Payment Date from Collateral Principal Collections, but only to the extent this payment will not cause the failure of the Class B-1L Overcollateralization Test; and *provided further*, so long as any Class A-1L Notes or Class A-2L Notes are not Outstanding, the Class A-3L Notes shall be entitled to receive an amount sufficient to pay the Cumulative Interest Amount due to the Class A-3L Notes for such Payment Date from Collateral Principal Collections and, so long as any Class A-1L Notes, Class A-2L Notes or Class A-3L Notes are not Outstanding, the Class A-4L Notes shall be entitled to receive an amount sufficient to pay the Cumulative Interest Amount due to the Class A-4L Notes for such Payment Date from Collateral Principal Collections, and then any remaining amounts shall be distributed pursuant to clauses FIFTH through SEVENTH of Section 11.1(c)(i) hereof, in the order described therein;

SECOND: To pay principal of the Notes in a Special Redemption, such amount to be paid first, (A) to the Class A-1LA Notes; second, to the Class A-1LB Notes; third, to the Class A-2L Notes; fourth, to any Periodic Rate Shortfall Amount with respect to the Class A-3L Notes; fifth, to principal of the Class A-3L Notes; sixth, to any Periodic Rate Shortfall Amount with respect to the Class A-4L Notes; seventh, to principal of the Class A-4L Notes; and eighth, to the Class B-1L Notes, in that order, until each such Class is paid in full; and

THIRD: As directed by the Servicer or the Issuer (or deposited by the Trustee in the Collection Account), to the purchase of Additional Portfolio Collateral meeting the specified requirements no later than the last day of the Due Period relating to the Payment Date next following such Payment Date, such amounts to be applied in the manner described herein.

(iii) During the **Amortization Period**, the Trustee shall apply the Adjusted Collateral Principal Collections (to the extent of available funds therefor and including for purposes of this Section 11.1(c)(iii) any Collateral Disposition Proceeds (other than Collateral Disposition Proceeds received in connection with the sale of an item of Credit Improved Portfolio Collateral to be reinvested pursuant to Section 12.4(a)) received

during the Due Period relating to such Calculation Date to be applied by the Trustee as set forth in this Section 11.1(c)(iii)) in the following order of priority:

FIRST: To the payment of the amounts described in clauses FIRST through SEVENTH of Section 11.1(c)(i) hereof with respect to Collateral Interest Collections and the Amortization Period, in the order described therein, in each case to the extent such amounts have not been paid from Adjusted Collateral Interest Collections with respect to such Payment Date; *provided however* that, with respect to the payment described in clause THIRD of Section 11.1(c)(i) hereof, so long as any Class X Notes, Class A-1L Notes or Class A-2L Notes are Outstanding, the Class A-3L Notes shall only be entitled to receive an amount sufficient to pay the Periodic Interest Amount (or, after the Class A-2L Notes are paid in full, the Cumulative Interest Amount) due to the Class A-3L Notes for such Payment Date from Collateral Principal Collections, but only to the extent this payment will not cause the failure of the Class B-1L Overcollateralization Test, and with respect to clause FOURTH of Section 11.1(c)(i) above, so long as any Class X Notes, Class A-1L Notes, Class A-2L Notes or Class A-3L Notes are Outstanding, the Class A-4L Notes shall only be entitled to receive an amount sufficient to pay the Periodic Interest Amount (or, after the Class A-3L Notes are paid in full, the Cumulative Interest Amount) due to the Class A-4L Notes for such Payment Date from Collateral Principal Collections, but only to the extent this payment will not cause the failure of the Class B-1L Overcollateralization Test, and with respect to clause SIXTH of Section 11.1(c)(i) above, so long as any Class X Notes, Class A-1L Notes, Class A-2L Notes, Class A-3L Notes or Class A-4L Notes are Outstanding, the Class B-1L Notes shall only be entitled to receive an amount sufficient to pay the Periodic Interest Amount due to the Class B-1L Notes for such Payment Date from Collateral Principal Collections but only to the extent this payment will not cause the failure of the Class B-1L Overcollateralization Test, and then any remaining amounts shall be distributed pursuant to clauses FIFTH and SEVENTH of Section 11.1(c)(i) hereof, in the order described therein; and *provided further*, so long as any Class A-1L Notes or Class A-2L Notes are not Outstanding, the Class A-3L Notes shall be entitled to receive an amount sufficient to pay the Cumulative Interest Amount due to the Class A-3L Notes for such Payment Date from Collateral Principal Collections and, so long as any Class A-1L Notes, Class A-2L Notes or Class A-3L Notes are not Outstanding, the Class A-4L Notes shall be entitled to receive an amount sufficient to pay the Cumulative Interest Amount due to the Class A-4L Notes for such Payment Date from Collateral Principal Collections, and then any remaining amounts shall be distributed pursuant to clauses FIFTH through SEVENTH of Section 11.1(c)(i) hereof, in the order described therein;

SECOND: So long as no Event of Default has occurred and is continuing and as directed by the Servicer or the Issuer (or deposited by the Trustee in the Collection Account), to the purchase of Additional Portfolio Collateral from the proceeds of Collateral Principal Collections from any unscheduled prepayment or to the purchase of Substitute Portfolio Collateral from the sales proceeds of Credit Improved Portfolio Collateral, meeting the specified requirements with respect to the Amortization Period no later than ninety days after receipt of such amounts, to be applied in the manner described herein; and

THIRD: To pay the Notes as follows: first, to the Class A-1LA Notes until the Aggregate Principal Amount thereof has been paid in full; second, to the Class A-1LB Notes until the Aggregate Principal Amount thereof has been paid in full; third, to the Class

A-2L Notes until the Aggregate Principal Amount thereof has been paid in full; fourth, to any Periodic Rate Shortfall Amount with respect to the Class A-3L Notes and then to principal of the Class A-3L Notes until the Aggregate Principal Amount thereof has been paid in full; fifth, to any Periodic Rate Shortfall Amount with respect to the Class A-4L Notes and then to principal of the Class A-4L Notes until the Aggregate Principal Amount thereof has been paid in full; and sixth, to any Periodic Rate Shortfall Amount with respect to Class B-1L Notes and then to principal of the Class B-1L Notes until the Aggregate Principal Amount thereof has been paid in full.

(d) On the **Final Maturity Date** (including the Optional Redemption Date, the Tax Event Redemption Date or any other Payment Date on which the Aggregate Principal Amounts of the Notes is paid in full) and, if funds become available after the Final Maturity Date, on any other date after the Final Maturity Date, and in accordance with the Note Valuation Report for the Calculation Date immediately preceding such Payment Date (or in the case of an Optional Redemption or a Tax Event Redemption, in accordance with the related Redemption Date Statement), the Trustee shall withdraw from the Collection Account an amount equal to the Adjusted Collateral Collections (including Collateral Disposition Proceeds) and from the Expense Reimbursement Account and the Loan Funding Account any amount on deposit therein and shall make the following disbursements in the following order of priority:

FIRST: To the payment, *pari passu*, to the Holders of the Class A-1LA Notes of an amount equal to the applicable Cumulative Interest Amount, to the Holders of the Class A-1LB Notes of an amount equal to the applicable Cumulative Interest Amount and to the Holders of the Class X Notes an amount equal to the Class X Shortfall Amount plus the Periodic Interest Amount for the Class X Note;

SECOND: To the payment of principal of the Class A-1LA Notes and the Class X Notes in amounts not to exceed the Aggregate Principal Amounts of the Class A-1LA Notes and the Class X Notes, respectively, and then to the payment of principal of the Class A-1LB Notes in an amount not to exceed the Aggregate Principal Amount of the Class A-1LB Notes;

THIRD: To the payment to the Holders of the Class A-2L Notes of an amount equal to the applicable Cumulative Interest Amount;

FOURTH: To the payment of principal of the Class A-2L Notes in an amount not to exceed the Aggregate Principal Amount of the Class A-2L Notes;

FIFTH: To the payment to the Holders of the Class A-3L Notes of an amount equal to the applicable Cumulative Interest Amount;

SIXTH: To the payment of principal of the Class A-3L Notes in an amount not to exceed the Aggregate Principal Amount of the Class A-3L Notes;

SEVENTH: To the payment to the Holders of the Class A-4L Notes of an amount equal to the applicable Cumulative Interest Amount;

EIGHTH: To the payment of principal of the Class A-4L Notes in an amount not to exceed the Aggregate Principal Amount of the Class A-4L Notes.

NINTH: To the payment of the Holders of the Class B-1L Notes of an amount equal to the applicable Cumulative Interest Amount;

TENTH: To the payment of principal of the Class B-1L Notes in an amount not to exceed the Aggregate Principal Amount of the Class B-1L Notes;

ELEVENTH: To the payment of principal of any Default Swap Counterparty Termination Payments to the Default Swap Counterparty;

TWELFTH: *First*, (a) to the Servicer the Additional Servicing Fee with respect to such Payment Date and (b) to the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Additional Dividend then due and unpaid and, *second*, to the Holders of the Notes any due and unpaid Extension Bonus Payment;

THIRTEENTH: To the payment to the Issuer of amounts due the Issuer for Issuer Excess Administrative Expenses and any such amounts that were due on any prior Payment Date but remain unpaid;

FOURTEENTH: If the Internal Rate of Return of the Preferred Shares as of such Payment Date is less than 12%, to the payment to the Holders of the Preferred Shares, but only up to an amount that would cause the Internal Rate of Return of the Preferred Shares to equal 12%; and

FIFTEENTH: Any remaining amounts, (a) 20% to (x) the payment of the Supplemental Servicing Fee for such Payment Date, and (y) the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Supplemental Dividend then due and unpaid, and (b) 80% to the Holders of the Preferred Shares in accordance with the Paying and Transfer Agency Agreement, as a dividend thereon or as a redemption payment on the Redemption Date, as applicable.

The obligation to pay the foregoing amounts on the Final Maturity Date is absolute and unconditional, but recourse therefor will be limited to the Trust Estate.

(e) Notwithstanding anything in this Indenture to the contrary, with respect to Adjusted Collateral Collections held in the Collection Account in Eligible Investments pending application to purchase Portfolio Collateral, any such amounts not used to purchase Portfolio Collateral by the last day of the Due Period next succeeding the Due Period in which such amounts were collected may be used to purchase Portfolio Collateral in subsequent Due Periods in accordance with Section 11.3 hereof (until otherwise applied pursuant to this Section 11.1).

(f) Notwithstanding anything to the contrary in this Section 11.1, upon the direction of the Servicer (and in the time and manner directed by the Servicer), Payment Date Equity Securities may be distributed on any Payment Date, in lieu of cash on any Payment Date as follows:

(i) Payment Date Equity Securities will be paid as Collateral Interest Collections in accordance with Section 11.1 with respect to the Preferred Shares, and upon such payment, the aggregate amount of Collateral Interest distributable to the Holders of the Preferred Shares on such Payment Date will be reduced by the value of such Payment Date Equity Securities. Payment Date Equity Securities distributed on any Payment Date shall be distributed to the Holders of the Preferred Shares in the same manner as Collateral Interest Collections would be distributable to such Holders of Preferred Shares on such Payment Date and subject to the same restriction as to payment set out in the Paying and Transfer Agency Agreement.

(ii) In calculating the amounts of Collateral Interest Collections and Collateral Principal Collections for such Payment Date, Collateral Interest in an amount equal to the value of Payment Date Equity Securities distributed to the Holders of the Preferred Shares shall be recharacterized as Collateral Principal Collections and disbursed in accordance with Sections 11.1(b) and 11.1(c) of the Indenture.

Section 11.2. Mandatory Redemption With Respect to Overcollateralization Tests, Interest Coverage Test and Rating Confirmation Failure

On any applicable Payment Date with respect to which an Overcollateralization Test or the Interest Coverage Test (as calculated in the Note Valuation Report for the Calculation Date immediately preceding such Payment Date), would not be met (but for this Section 11.2) or, during the Revolving Period, a Rating Confirmation Failure has occurred and is continuing, the Issuer shall redeem the Notes (or, in the case of the Class A-3L Notes, the Class A-4L Notes and the Class B-1L Notes, pay any Periodic Rate Shortfall Amounts and then redeem the Notes pursuant to Section 9.2 hereof), and the Trustee shall pay to the Holders thereof (to be applied against the principal amount thereof) pursuant to the applicable provisions of Section 11.1 hereof, an aggregate amount necessary to cause each of the Overcollateralization Tests to be met as of such Calculation Date, in the case of the Interest Coverage Test, to cause such test to have been met as of such Calculation Date had such redemption been made on the immediately preceding Payment Date or to cause a Rating Confirmation to be received by the Issuer, as applicable.

Section 11.3. Purchase of Additional Portfolio Collateral

(a) The Issuer may purchase Additional Portfolio Collateral on any Business Day during the Revolving Period for inclusion in the Trust Estate in an amount permitted pursuant to the applicable subsection of Section 11.1 hereof subject to the conditions set forth in this Section 11.3. Upon receipt by the Trustee of a Servicer Order with respect thereto, Collateral Principal Collections (or Collateral Interest Collections deposited to the Collection Account pursuant to clause NINTH of Section 11.1(c)(i)), collected during a Due Period (other than Collateral Disposition Proceeds) may be paid out of the Collection Account by the Trustee on any Business Day during such Due Period or the immediately succeeding Due Period for the purpose of purchasing such Additional Portfolio Collateral specified in such Servicer Order; *provided that* as of such date the following conditions shall have been satisfied:

(i) the Balance of the Collection Account remaining after giving effect to any such purchase of Additional Portfolio Collateral shall equal or exceed the Periodic Reserve Amount with respect to the Payment Date relating to such Due Period as shown on the Note Valuation Report for the prior Payment Date;

(ii) (1) each Overcollateralization Test and the Interest Coverage Test are satisfied and (2) the Collateral Quality Tests and the criteria set forth in Section 12.2 hereof are satisfied or if any of the Collateral Quality Tests or the criteria set forth in Section 12.2 is not satisfied, the degree of compliance with such criteria would not be diminished; *provided however*, with respect to Additional Portfolio Collateral purchased with Unscheduled Principal Proceeds, if any of the Overcollateralization Tests or the Interest Coverage Test is not satisfied as set forth in clause (1), the degree of compliance with such tests would not be diminished;

(iii) the Trustee shall have received (i) a certificate of the Servicer dated as of the date of the purchase and the Grant of such Additional Portfolio Collateral to the effect that such purchase is in compliance with the requirements of this Section 11.3 and Section 12.5(a) hereof and (ii) the certificate required pursuant to Section 12.2 hereof.

(b) For purposes of calculating the Collections for this Section 11.3 (and the Balance in the Collection Account for purposes of subsection (a) hereof), Collections shall be deemed to include, as of any date of determination, the sum of 100% of all cash collections actually received in respect of the Portfolio Collateral during such Due Period as of such date of determination and 100% of all Scheduled Distributions to be received (including those which are reasonably expected to be received) in respect of the Portfolio Collateral during such Due Period (excluding, however, any Scheduled Distributions to be received with respect to an item of Defaulted Portfolio Collateral or an item of Equity Portfolio Collateral during such Due Period).

Section 11.4. Trust Account

All monies held by the Trustee in the Collection Account, the Initial Deposit Account, the Closing Expense Account, the Loan Funding Account or the Expense Reimbursement Account pursuant to the provisions of this Indenture, and not used to purchase Portfolio Collateral or Eligible Investments as herein provided, shall be deposited in one or more trust accounts, established in the name of the Trustee, as trustee of the trust created pursuant hereto for the benefit of the Holders of Notes and other Secured Parties hereunder; *provided that* to the extent funds deposited in such accounts exceed the amounts insured by the Federal Deposit Insurance Corporation, such excess shall be used to purchase Eligible Investments (pursuant to and as provided in Section 10.2 hereof). All monies held in the trust accounts described in the first sentence of this Section 11.4 shall be held as part of the Trust Estate subject to the provisions of this Indenture.

ARTICLE XII

SALE OF PORTFOLIO COLLATERAL; SUBSTITUTION

Section 12.1. Sale of Portfolio Collateral

(a) Provided that no Event of Default has occurred and is continuing and subject to the satisfaction of the conditions specified in Section 10.3 hereof and the restrictions in this Article, the Servicer may direct the Trustee, by Servicer Order, to sell, and the Trustee shall release (or cause to be released) from the lien of this Indenture and sell in the manner directed by the Servicer, any Defaulted Portfolio Collateral, Equity Portfolio Collateral, Credit Risk Portfolio Collateral or Credit Improved Portfolio Collateral (as described in such direction) so long as, with respect to an item of Credit Improved Portfolio Collateral or Credit Risk Portfolio Collateral, the Servicer certifies to the Trustee, as applicable, that:

(i) in the case of an item of Credit Improved Portfolio Collateral (including in connection with a Portfolio Improvement Exchange), in writing before the sale, that the Servicer has identified one or more specific manners in which it will be able, in compliance with the criteria set forth in Section 12.2 and the other requirements of Article XII (and in connection with a Portfolio Improvement Exchange, the requirements set forth in the definition of such term), to cause the Issuer to purchase with the applicable Collateral Disposition Proceeds net of accrued interest and costs, no later than the end of the immediately succeeding Due Period (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated), one or more items of Substitute Portfolio Collateral having an Aggregate Principal Balance equal to or greater than the Principal Balance of such Credit Improved Portfolio Collateral; and

(ii) in the case of an item of Credit Improved Portfolio Collateral, after giving effect to such sale and the subsequent purchase described in (a) above, the Servicer is required to certify that it reasonably believes that (x) either the Collateral Quality Tests and the criteria set forth in Section 12.2 hereof are satisfied or if one or more of such Collateral Quality Tests or criteria is not satisfied, the degree of compliance therewith would not be diminished and (y) either the Overcollateralization Tests and the Interest Coverage Test are satisfied or if any Overcollateralization Test or the Interest Coverage Test is not satisfied, the degree of compliance with such tests would not be diminished.

(b) An item of Credit Risk Portfolio Collateral may be sold at any time, subject to the Sale Restriction Condition as set forth below.

(c) Notwithstanding any term hereof to the contrary and *provided that* no Event of Default has occurred and is continuing and subject to compliance with the conditions specified in Section 10.3 hereof, any Portfolio Collateral may be sold upon delivery to the Trustee of a certificate of the Servicer to the effect that it has reasonably determined, which may be based upon the advice of an opinion of counsel (a copy of which opinion shall be included with such certificate), that such Portfolio Collateral is, or may become, subject to a withholding or other similar tax (or to an increased rate of withholding or other similar tax). Further, notwithstanding

anything to the contrary stated herein, the Servicer may direct the sale of an item of Portfolio Collateral that was CCC/Caa Portfolio Collateral or Discount Portfolio Collateral at the time of purchase only if it constitutes Credit Risk Portfolio Collateral or Defaulted Portfolio Collateral, is sold in connection with the Optional Redemption of Notes in whole or if the Servicer reasonably expects that the sale and any related purchase of Substitute Portfolio Collateral will restore compliance with any of the Interest Coverage Test, the criteria set forth in Section 12.2 or the Overcollateralization Tests that would be failed or not satisfied in the absence of such sale and purchase.

(d) During any period after the first Due Period if a Sale Restriction Condition occurs, the Issuer shall send a notice to the Trustee and the Holders of the Notes to the effect that, for so long as the applicable Sale Restriction Condition exists, unless the Holders of at least 60% in Aggregate Principal Amount of the Notes elect to retain the guidelines in effect on the Closing Date for sales of an item of Credit Risk Portfolio Collateral or Credit Improved Portfolio Collateral, as applicable, (i) no item of Credit Risk Portfolio Collateral may be sold unless (A) the rating of the obligor or of any debt or securities issued by the obligor under such an item of Credit Risk Portfolio Collateral has been lowered, withdrawn or put on any "credit watch" list for possible downgrade (or similar list) with negative implications by S&P, Moody's or Fitch or (B) such an item of Credit Risk Portfolio Collateral satisfies the Credit Risk Criteria and is not objected to by the Holders of more than 60% in Aggregate Principal Amount of the Notes within forty-five (45) days of the date of such notice, or such later date as extended by the Trustee at the direction of the Servicer *provided* that in making such determination to sell an item of Credit Risk Portfolio Collateral, an increase in credit spread or a decrease in Market Value of such item of Credit Risk Portfolio Collateral may only be used as corroboration of other bases for such determination or (ii) no item of Credit Improved Portfolio Collateral may be sold unless such item of Credit Improved Portfolio Collateral satisfies the Credit Improved Criteria and is not objected to by the Holders of more than 60% in Aggregate Principal Amount of the Notes within forty-five (45) days of the date of such notice, or such later date as extended by the Trustee at the direction of the Servicer *provided*, that in making such determination to sell such item of Credit Improved Portfolio Collateral, a reduction in credit spread or an increase in Market Value of such item of Credit Improved Portfolio Collateral may only be utilized as corroboration or other bases for such judgment.

(e) Notwithstanding anything to the contrary set forth above, the Servicer may at any time direct the Trustee to sell any item of Portfolio Collateral that (i) was obtained as a result of any reorganization or restructuring of any Credit Risk Portfolio Collateral or other Portfolio Collateral of an issuer under financial distress, or (ii) does not comply with the criteria set forth in Section 12.2.

Notwithstanding anything in this Indenture to the contrary, no acquisition or disposition of Portfolio Collateral or other eligible asset (as defined in Rule 3a-7) shall be effected by or on behalf of the Issuer for the primary purpose of recognizing gains or decreasing losses resulting from market value changes.

Notwithstanding the forgoing, if there is no appointment of a successor Servicer with 90 days after the resignation or termination of the Servicer, any sales or disposition of Portfolio Collateral shall be limited to Credit Risk Portfolio Collateral and Defaulted Portfolio

Collateral and Equity Portfolio Collateral; *provided* that such restriction on the sale or disposition of Portfolio Collateral shall not apply if the Portfolio Collateral is being liquidated in whole or in part in connection with an acceleration or early termination of the Notes.

Section 12.2. Eligibility Criteria and Replacement Restrictions

Subject to Section 3.4 (with respect to Original Portfolio Collateral) in connection with dates occurring prior to the Effective Date, a security to be Granted to the Trustee after the Closing Date for inclusion in the Trust Estate as an item of Portfolio Collateral will be eligible for purchase by the Issuer and inclusion in the Trust Estate only if, as of the date of such Grant of such security the following conditions are met, as certified to the Trustee by Servicer Order, the Overcollateralization Tests, the Interest Coverage Test and the criteria set forth below in this Section 12.2 hereof are satisfied or if one of such tests or criteria is not satisfied, the degree of compliance with such tests or criteria would not be diminished except as otherwise required by Sections 11.3 and 12.4. In addition, if a Suspension Trigger Event is in effect, a majority of the Controlling Class may deliver notice to the Issuer directing the Issuer to suspend any purchases of additional items for inclusion in the Trust Estate as an item of Portfolio Collateral. Such suspension shall automatically terminate once a Suspension Trigger Event is no longer in effect.

(a) Standard & Poor's CDO Monitor. The Standard & Poor's CDO Monitor Test is satisfied. For purposes of the Standard & Poor's CDO Monitor Test, the "Standard & Poor's Rating" of any item of Portfolio Collateral or Eligible Investment shall be as set forth in Schedule D hereto. The Standard & Poor's CDO Monitor Test is not applicable and does not have to be satisfied or maintained when reinvesting the proceeds of Defaulted Portfolio Collateral or Credit Risk Portfolio Collateral.

(b) Minimum Average Recovery Rate Test. The Minimum Average Recovery Rate Test is satisfied.

(c) Moody's Asset Correlation Test and Moody's Weighted Average Rating Test. The Moody's Asset Correlation Test and the Moody's Weighted Average Rating Test are satisfied.

(d) Weighted Average Coupon Test; Weighted Average Margin Test; Weighted Average Life Requirement.

(i) The Weighted Average Coupon Test is satisfied.

(ii) The Weighted Average Margin Test is satisfied.

(iii) The Weighted Average Life Requirement is satisfied.

(e) Limitation on Non-U.S. Debt. After giving effect to the proposed purchase of such Portfolio Collateral:

(i) not more than 10% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors;

(ii) not more than 10% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in any single Group A Country;

(iii) not more than 5% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in all Group B Countries;

(iv) not more than 2% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in any single Group B Country;

(v) not more than 2.5% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in all jurisdictions that are not Group A Countries or Group B Countries;

(vi) not more than 1% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in any single jurisdiction that is not a Group A Country or Group B Country; and

(vii) no Portfolio Collateral may consist of CLO Securities that are obligations of Non-U.S. Obligors.

(f) Rating. After giving effect to the proposed purchase of any Portfolio Collateral: (i) at least 90% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate must be obligations of issuers having at least one class of indebtedness actually rated by Moody's (either publicly or privately) and (ii) at least 90% of the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate must be obligations of issuers having at least one class of indebtedness actually rated by S&P (either publicly or privately).

(g) CCC/Caa Portfolio Collateral Limitation. The proposed purchase of any Portfolio Collateral may not increase the Aggregate Principal Amount of CCC/Caa Portfolio Collateral in the Trust Estate to more than 5.0% of the Aggregate Par Amount; *provided* that the Issuer may purchase CCC/Caa Portfolio Collateral which would increase the Aggregate Principal Amount of CCC/Caa Portfolio Collateral in the Trust Estate above 5.0% of the Aggregate Par Amount with the proceeds of CCC/Caa Portfolio Collateral; and *provided further* that no CLO Securities may be included in the determination of this CCC/Caa Portfolio Collateral Limitation.

(h) Limitation on CLO Securities. After giving effect to the proposed purchase of any Portfolio Collateral, (i) not more than 30% of the Aggregate Par Amount may be CLO Securities; (ii) not more than 10% of the Aggregate Par Amount may consist of CLO Securities that have a Moody's Rating below "Baa3" or an S&P Rating below "BBB-"; *provided* that not more than 2.0% of the Aggregate Par Amount may consist of a single CLO Security with such ratings; (iii) not more than 4.0% of the Aggregate Par Amount may consist of CLO Securities of a single manager which shall not be any of the Servicer Entities, and (iv) not more than 5.0% of the Aggregate Par Amount may consist of CLO Securities managed by any of the Servicer Entities; *provided* that not more than 1.5% of the Aggregate Par Amount may consist of CLO

Securities of a single issuer serviced or managed by the Servicer, and *provided further*, that no CLO Securities may be purchased after August 1, 2009 and after the expiration of the Revolving Period, unless an Extension shall occur in which case CLO Securities may be purchased during the full period of such Extension in accordance with all the criteria and restrictions provided herein that are applicable during the Revolving Period.

(i) Limitation on Semiannual Portfolio Collateral. After the Effective Date, after giving effect to the proposed purchase of any Portfolio Collateral, no more than 5% of the Aggregate Par Amount may include items of Portfolio Collateral that provide for the periodic payment in cash of interest less frequently than quarterly, but not less frequently than semiannually.

(j) Limitation on Participations, Synthetic Securities and Non-U.S. Portfolio Loans. After giving effect to the proposed purchase of any Substitute Portfolio Collateral or Additional Portfolio Collateral, no more than 20% of the Aggregate Par Amount may be Participations, Synthetic Securities, Securities Lending Agreements or Portfolio Loans that are obligations of non-U.S. entities which are not in a Group A Country. Further, no Participation may be purchased from any Selling Institution (including for this purpose the seller of any participation and the seller of any sub-participation) rated below "A" by S&P or "A2" by Moody's. In addition, the table below generally describes limitations on (i) the percentage of the Aggregate Par Amount which consist of Synthetic Securities related to the long-term debt rating of the Synthetic Security Counterparty, (ii) the percentage of the Aggregate Par Amount which consists of Participations related to the long-term debt rating of the related Selling Institution, and (iii) the limitations on the percentage of the Aggregate Par Amount which consists of Participations and Synthetic Securities in the aggregate related to the long-term debt rating of the Selling Institution or Synthetic Security Counterparty, as the case may be:

Rating (S&P/Moody's)	Individual Synthetic Security Counterparty Limit	Individual Participation Selling Institution Limit	Aggregate Synthetic Security Counterparty and Participation Selling Institution Limit
AAA/Aaa	20.0%	20.0%	20.0%
AA+/Aa1	10.0%	10.0%	20.0%
AA/Aa2	10.0%	10.0%	17.5%
AA-/Aa3	10.0%	10.0%	15.0%
A+/A1	5.0%	5.0%	10.0%
A/A2	5.0%	5.0%	7.5%

provided, that no more than 3% of the Aggregate Par Amount may be Synthetic Securities consisting of Default Swaps. For purposes of the foregoing, the limitations shall be calculated separately for each of Standard & Poor's and Moody's and each such limitation must be satisfied.

(k) Limitation on Fixed Rate Portfolio Collateral. No more than 5% of the Aggregate Par Amount may be Fixed Rate Portfolio Collateral.

(l) Portfolio Loans. After giving effect to the proposed purchase of any Portfolio Collateral, (i) at least 70% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate must be Portfolio Loans (including Synthetic Securities, the

Reference Obligations of which are loans); and (ii) not more than 10% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate may be Portfolio Loans that are not Senior Secured Loans (including Synthetic Securities, the Reference Obligations of which are loans).

(m) No Event of Default. No Event of Default shall have occurred and be continuing.

(n) Industry Category Concentration. (i) No more than 8% of the Aggregate Par Amount is in any one Standard & Poor's Industry Category; *provided however*, in the case of three (3) Standard & Poor's Industry Categories, up to 12% of the Aggregate Par Amount may consist of items of Portfolio Collateral that are obligations of obligors in any one Standard & Poor's Industry Category, and (ii) no more than 32% of the Aggregate Par Amount may consist of items of Portfolio Collateral that are obligations of obligors in any three Standard & Poor's Industry Categories.

(o) Original Issue Size. After giving effect to the proposed purchase of any Portfolio Collateral, at least 80% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate will be Portfolio Loans that are part of a senior credit facility whose aggregate original principal amount (whether or not funded and including all tranches thereunder) is not less than U.S.$100,000,000. No item of Portfolio Collateral included in the Trust Estate will be CLO Securities that are part of an issuer's aggregate issuance whose aggregate original principal amount (including all tranches thereunder) is less than U.S.$100,000,000. No item of Portfolio Collateral included in the Trust Estate will be Portfolio Loans that are part of a senior credit facility whose aggregate original principal amount (whether or not funded and including all tranches thereunder) is less than $50,000,000.

(p) Issuer Concentration. (i) After giving effect to the proposed purchase of any Portfolio Loan, no more than 1.50% of the Aggregate Par Amount may represent obligations of any single obligor, *provided* that obligations of not more than five obligors of Portfolio Loans may represent no more than 2.00% of the Aggregate Par Amount and (ii) after giving effect to the proposed purchase of any CLO Security, no more than 2.75% of the Aggregate Par Amount may represent obligations of any single obligor.

(q) Limitations on Step-Up Bonds. No more than 5.0% of the Aggregate Par Amount may include step-up bonds.

(r) Delayed Drawdown Loans and Revolving Loans. After giving effect to the proposed purchase of any Portfolio Collateral, no more than 5% of the Aggregate Par Amount may consist of Delayed Drawdown Loans and no more than 7.5% of the Aggregate Par Amount may consist of Revolving Loans; *provided* that no more than 10% of the Aggregate Par Amount may consist of Delayed Drawdown Loans and Revolving Loans in the aggregate.

(s) DIP Loans. No more than 5.0% of the Aggregate Par Amount may consist of DIP Loans. Each DIP Loan must be assigned a formal or estimated rating by Moody's and S&P.

(t) Collateral Obligations Loaned under Securities Lending Agreements. No more than 15% of the Aggregate Par Amount may include Portfolio Collateral subject to any Securities Lending Agreement pursuant to Section 7.19.

(u) PIK Bonds. No more than 30% of the Aggregate Par Amount may consist of PIK Bonds.

Notwithstanding anything to the contrary set forth in this Section 12.2, if the Portfolio Collateral to be purchased is to be purchased with the Collateral Disposition Proceeds of the disposition of one or more assets that is not an item of Credit Risk Portfolio Collateral, Defaulted Portfolio Collateral, Portfolio Collateral sold pursuant to a Portfolio Improvement Exchange or Portfolio Collateral that has become subject to withholding tax, the purchase of the proposed item of Portfolio Collateral must (i) restore compliance with a Collateral Quality Test, Interest Coverage Test, Overcollateralization Test or a concentration limitation set forth in this Section 12.2 (or bring the Portfolio Collateral closer to compliance with any such test or limitation) not then satisfied or (ii) on a net basis improve the quality of the Portfolio Collateral as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and concentration limitations and (iii) in the case of each of clause (i) and clause (ii) without causing any other Collateral Quality Test, Interest Coverage Test, Overcollateralization Test or concentration limitation to be violated or significantly increasing the likelihood of such a violation in the future.

Notwithstanding the foregoing provisions of this Section 12.2 and Section 11.3, if the Issuer or the Servicer has previously entered into a commitment to purchase an item of Portfolio Collateral to be included in the Trust Estate and at the time of such commitment such item of Portfolio Collateral complied with the definition of Portfolio Collateral and each of the foregoing criteria in this Section 12.2, then the Issuer may consummate the purchase of such item of Portfolio Collateral notwithstanding that such item of Portfolio Collateral fails to comply with the definition of Portfolio Collateral and such criteria on the date of settlement, *provided that* the agreed to settlement date shall not be more than thirty (30) days after the commitment to acquire such item of Portfolio Collateral or, if settlement occurs more than 30 days following the commitment, such item of Portfolio Collateral satisfies the criteria of this Section 12.2 as of the date of settlement.

Notwithstanding the foregoing provisions of this Section 12.2 and Section 11.3, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased or sold (as the case may be) any Portfolio Collateral as of the date on which the Issuer delivers to the Trustee a commitment to purchase or sell (as the case may be) such items of Portfolio Collateral, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive or sell (as the case may be), and requiring the purchaser to purchase (in the case of a sale), such Portfolio Collateral and, in such event, the Issuer shall be deemed to have purchased or sold (as the case may be) such Portfolio Collateral on such date. Under the circumstances described in the immediately preceding sentence, if the transaction contemplated by the commitment referred to therein does not settle on or before the thirtieth (30th) day following the scheduled settlement date, the deemed purchase or sale shall be deemed not to have occurred.

Further, notwithstanding the foregoing provisions of this Section 12.2 and Section 11.3, any certifications or other documents required to be delivered by the Servicer or the Issuer in connection with the purchase or sale of any item of Portfolio Collateral during the Revolving Period may be delivered by the Issuer or the Servicer on the settlement date for such item of Portfolio Collateral even if such date occurs after the Revolving Period.

Section 12.3. Sale of Portfolio Collateral Subject to Offer or Call

(a) The Servicer may only direct the Trustee to sell an item of Portfolio Collateral that is the subject of an Offer or call for redemption, if together with its direction to sell such security, the Servicer certifies to the Trustee that the sales price for such Security is equal to or greater than 1% less than the price available pursuant to such Offer or call and such sale will be treated as if the Offer or call were consummated for purposes of determining the Collections for the Due Period relating to the date on which such sale occurs.

(b) If an item of Portfolio Collateral becomes subject to an Exchange Offer after it has been purchased by the Issuer, the Servicer will be permitted to take such action with respect to the Underlying Instrument or the issuer thereof as may be required to convert such item of Portfolio Collateral into an item of Equity Portfolio Collateral.

Section 12.4. Purchase of Substitute Portfolio Collateral

(a) Upon receipt by the Trustee of a Servicer Order with respect thereto, the Collateral Disposition Proceeds received during any Due Period during the Revolving Period may be paid out of the Collection Account, on any Business Day during such Due Period or the immediately succeeding Due Period, for the purpose of purchasing one or more items of Substitute Portfolio Collateral for inclusion in the Trust Estate in an amount not to exceed the amount of such proceeds and specified in such Servicer Order; *provided that* the Trustee shall have received (i) a certificate of the Servicer dated as of the date of the purchase and the Grant of such Substitute Portfolio Collateral to the effect that such purchase is in compliance with the requirements of this Section 12.4 and Section 12.5(a) hereof and (ii) the certificate required pursuant to Section 12.2 hereof.

(b) In addition to the requirements set forth in 12.4(a), in connection with Substitute Portfolio Collateral purchased with Collateral Disposition Proceeds from the sale of Defaulted Portfolio Collateral, each of the Overcollateralization Tests and the Interest Coverage Test are satisfied, in each case both before and after giving effect to such purchase.

(c) In connection with a sale of an item of Credit Improved Portfolio Collateral after the Revolving Period or the receipt of Collateral Principal Collections due to an unscheduled prepayment after the Revolving Period, the Servicer may enter into commitments to apply such Collateral Disposition Proceeds or such unscheduled prepayments (net of accrued interest and costs) to the purchase of Portfolio Loans as either Additional Portfolio Collateral or Substitute Portfolio Collateral having an Aggregate Principal Amount equal to or greater than the Principal Balance of the original item of Portfolio Collateral within 90 days of receipt of such proceeds, so long as the Servicer certifies as of the date of purchase that it reasonably believes at the time of such commitment that, after giving effect to such sale and subsequent purchase, (A)

each of the Overcollateralization Tests and the other collateral criteria described herein would be satisfied and the Interest Coverage Test was satisfied for the most recent Payment Date, (B) such Portfolio Loan to be purchased has a Moody's Rating equal to or higher than the Moody's Rating of the original item of Portfolio Collateral, (C) such Portfolio Loan to be purchased has an S&P Rating equal to or higher than the S&P Rating of the original item of Portfolio Collateral, (D) such Portfolio Loan to be purchased has a stated maturity on or prior to the final maturity of such original item of Portfolio Collateral and (E) neither Rating Agency has reduced or withdrawn (and not restored) the rating assigned by it on the Closing Date to any Class of Notes.

Section 12.5. Conditions Applicable to all Transactions Involving Purchases of Portfolio Collateral

(a) Any transaction effected under this Article or under Sections 3.4, 10.2, 10.3, 11.3 or 12.4 hereof involving the Servicer and one or more Affiliates of the Servicer shall be conducted on an arm's-length basis. Any such transaction effected with an Affiliate of the Servicer, the Issuer or the Trustee, shall be effected on terms as favorable to the Noteholders as would be the case if such Person were not so affiliated; *provided that* the Trustee shall have no responsibility to oversee compliance with this clause by the Issuer or Servicer.

(b) Upon any purchase or substitution pursuant to this Article or Sections 11.3, 12.3(b) or 12.4 hereof, each such Pledged Security shall be Delivered to the Trustee.

(c) The Issuer hereby represents and warrants and will certify to the Trustee in an Officer's Certificate as of the date of each purchase and Grant to the Trustee of each Portfolio Collateral pursuant to Section 11.3, Section 12.3(b) and Section 12.4 hereof:

(i) the Issuer is the owner of such item of Portfolio Collateral and the Deposit free and clear of any liens, claims (including any adverse claims) or encumbrances of any nature whatsoever, except for those granted or expressly permitted pursuant to this Indenture and due bills, if any, with respect to interest, or a portion thereof, accrued on such Portfolio Collateral prior to the first payment date and owed by the Issuer to the seller of such Portfolio Collateral;

(ii) the Issuer has acquired its ownership in such item of Portfolio Collateral and the Deposit in good faith without notice of any adverse claim, except as described in paragraph (i) above;

(iii) the Issuer has Delivered such item of Portfolio Collateral to the Trustee and has not assigned, pledged or otherwise encumbered any interest in such Portfolio Collateral or the Deposit other than interests granted or expressly permitted pursuant to this Indenture;

(iv) the Issuer has full right to Grant and does hereby Grant such item of Portfolio Collateral and the Deposit to the Trustee;

(v) the information set forth with respect to such item of Portfolio Collateral in Schedule A hereto is correct; and

(vi) such item of Portfolio Collateral satisfies the requirements of the definition of Portfolio Collateral.

Section 12.6. Sale of Warrants

The Servicer may direct the Trustee in writing to sell, and the Trustee shall release from the lien of this Indenture and sell in the manner directed by the Servicer, any warrant that is part of a Unit at any time after such warrant becomes separately tradable.

Section 12.7. Underlying Instruments

(a) With respect to each Portfolio Loan acquired by a Participation, the Issuer shall cause the Trustee to hold at its office in the State of New York an original executed Underlying Instrument entered into between the Issuer and the Selling Institution which, except in the case of a Portfolio Loan evidenced by an instrument (the original of which shall be delivered to the Trustee), may be a copy thereof, which may be sent by telecopier, certified by the Servicer or the Issuer as a true and accurate copy (which in the case of a Participation shall include the loan and security documentation with respect to the underlying loan) as provided to it by the Servicer, and, *provided that* the Trustee has sufficient advance notice of such transaction, the Trustee shall send a notice to the Selling Institution and the underlying obligor of such Floating Rate Portfolio Collateral on or prior to the Business Day on which such Floating Rate Portfolio Collateral is to be included in the Trust Estate.

(b) The Issuer (upon Servicer Order) may enter into any amendment of or supplement to any Underlying Instrument with respect to any item of Portfolio Collateral, without notice to or consent of any Noteholder, but with prior written notice to the Trustee, if the amendment or supplement is required (a) by the provisions of the Underlying Instrument or this Indenture, (b) to cure any ambiguity, inconsistency or formal defect or omission, (c) in connection with any authorized amendment of or supplement to this Indenture, or (d) to make any other change deemed necessary or beneficial by the Issuer (upon Servicer Order); *provided that*, unless such Portfolio Loan is in default, or default is reasonably foreseeable, after giving effect to such amendment or supplement, such item of Portfolio Collateral satisfies the definition of Portfolio Collateral hereunder. The Issuer shall be under no obligation to enter into any such amendment or supplement, and the Servicer and the Issuer shall be under no obligation to provide any Person with any information related thereto (other than to confirm to the Trustee compliance with this Section), to the extent that the Servicer or the Issuer, as the case may be, believes in good faith that any action so taken is necessary in order not to violate any law, regulation or contractual arrangement. The Servicer shall retain any appropriate records of such amendments.

(c) If an amendment of or supplement to any Underlying Instrument without any consent of Noteholders is not permitted by subsection (b), the Issuer may enter into, and the Trustee shall, as directed by the Issuer, accept, or if necessary consent to, such amendment or supplement, with at least 10 days' prior written notice to the Trustee and the Holders of the Notes, unless the Trustee and the Issuer have received notification by the more than 33-1/3% of the Aggregate Principal Amount of the Notes objecting to such amendment or supplement within 10 days of such notice.

(d) If the Servicer determines that any amendment to the Underlying Instrument of a DIP Loan materially affects the credit quality of such DIP Loan, the Servicer shall promptly notify the Rating Agencies of such amendment, prior to execution of such amendment.

Section 12.8. Reserved

Section 12.9. Reserved

Section 12.10. Synthetic Securities; Strip Securities

For purposes of the eligibility criteria and related tests herein, a Synthetic Security will generally be included as an item of Portfolio Collateral having the maturity, interest rate and other payment characteristics of the Synthetic Security and not of the Reference Obligation (including characterization as either an item of Fixed Rate Portfolio Collateral or Floating Rate Portfolio Collateral) and, with respect to all other characteristics, will be included as an item of Portfolio Collateral having the relevant characteristics of the related Reference Obligation and not of the Synthetic Security. The Servicer will notify Moody's and Standard & Poor's in writing or electronically with respect to each purchase of a Synthetic Security not later than the trade date for such Synthetic Security; except that, if, at any time, the rating by Moody's on any Class of Notes then rated by Moody's has been downgraded at least one rating sub-category (and has not been restored) or is put on credit watch (with negative implications), no Synthetic Security will be purchased by the Issuer for inclusion in the Trust Estate unless Moody's has received notice of such purchase and any information necessary to evaluate such purchase, receipt of which shall be acknowledged by a Vice President or more senior member of Moody's CDO Group, in writing or electronically, and after such receipt is acknowledged, either Moody's shall inform the Servicer that such purchase will not cause Moody's to withdraw or further downgrade any of the then-current ratings assigned by Moody's to any of the Notes within 10 Business Days, or after 10 Business Days the Servicer may assume that such purchase will not cause Moody's to withdraw or further downgrade any of the then-current ratings assigned by Moody's to any of the Notes. If after the trade date for any Synthetic Security, there is any modification to the terms of such Synthetic Security, the Servicer will provide notice of such modification to Moody's and Standard & Poor's. Further, unless otherwise agreed by Moody's or as otherwise contemplated in the definition of Synthetic Security in Section 1.1 hereof, upon maturity, acceleration or early termination of a Synthetic Security or the related Reference Obligation, the Issuer will accept only the Reference Obligation or the par amount thereof unless the Reference Obligation would be characterized as Credit Risk Portfolio Collateral, Defaulted Portfolio Collateral or Credit Improved Portfolio Collateral, in which case the Issuer may accept the current fair market value thereof, except in the event of the exercise of any put or call provision of the Synthetic Security or Reference Obligation, in which case the Issuer shall only accept the Reference Obligation or an amount greater than or equal to the par amount thereof, and the Issuer will take all commercially reasonable actions under the Synthetic Security to accomplish the foregoing. Notwithstanding anything in this Indenture to the contrary, in connection with the acquisition of a Synthetic Security and in lieu of all or a portion of the purchase price for such Synthetic Security, the Issuer may grant the related Synthetic Security a first priority security interest in cash and Eligible Investments designated by the Issuer and the proceeds thereof, which may be released from the lien of the Indenture and deposited with such Synthetic Security Obligor (or an intermediary or agent therefor) and invested as provided by the

terms of such Synthetic Security, and the proceeds of which may be applied to make periodic payments under such Synthetic Security. For purposes of this Indenture, the grant of such security interest shall be treated as the payment of a purchase price equal to the value of the cash and Eligible Investments granted, and the Issuer's obligation to make periodic payments under such Synthetic Security shall be disregarded.

Section 12.11. Delayed Drawdown Loans and Revolving Loans

A Delayed Drawdown Loan will not be eligible for purchase by the Issuer for inclusion in the Trust Estate unless the related Underlying Instrument provides (i) that advances may be made for a period not to exceed one (1) year from the date of origination of the Delayed Drawdown Loan and in any event before the end of the Revolving Period; (ii) for a maximum amount that can be borrowed from the Issuer on one or more specified borrowing dates; (iii) that funds borrowed from the Issuer and subsequently repaid may not be reborrowed; and (iv) that the borrower is entitled to such additional advances only upon the achievement of financial performance or other objective criteria established at origination and set forth in such credit agreement.

In addition, simultaneously with the Issuer's purchase of any Delayed Drawdown Loan or Revolving Loan, the Issuer is required to deposit into the Loan Funding Account the full amount of any advances or delayed draws that may be required of the Issuer thereunder and principal repaid under any Revolving Loan is required to be deposited in the Loan Funding Account to the extent the Issuer's obligation to fund any future advances has not been irrevocably reduced.

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Form of Documents Delivered to Trustee

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

Any certificate or opinion of an Authorized Officer of the Issuer or the Servicer may be based, insofar as it relates to legal matters, upon an Opinion of Counsel or a certificate of or representations by such legal counsel, unless such Authorized Officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Authorized Officer of the Issuer or the Servicer, or Opinion of Counsel or certificate of or representations by such legal counsel may be based, insofar as it relates to factual matters, upon a certificate of opinion of, or representations by the Issuer, the Servicer or any other Person, stating that the information with respect to such factual matters is in the

possession of the Issuer, the Servicer or such other Person, unless such Authorized Officer of the Issuer or the Servicer or counsel knows that the certificate or opinion or representations with respect to such matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Authorized Officer of the Issuer or the Servicer, stating that the information with respect to such matters is in the possession of the Issuer or the Servicer, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

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

Section 13.2. Acts of Noteholders

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Noteholders may be embodied in and evidenced by one or more instruments (which may be an electronic document, including but not limited to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by such Noteholders in person or by an agent or proxy duly appointed in writing (*provided* that no signature shall be required on electronic documents, including but not limited to in the form of e-mail); and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Trustee deems sufficient.

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

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

Section 13.3. Notices, etc., to the Trustee, Issuer, Servicer, the Irish Paying Agent and Bear Stearns

Any request, demand, authorization, direction, notice, consent, waiver or other documents provided or permitted by this Indenture to be made upon, given or furnished to, or filed with the Trustee, the Issuer, the Servicer, Bear Stearns, the Irish Paying Agent or the Paying and Transfer Agent shall be sufficient for every purpose hereunder if in writing and mailed by first class mail, sent by overnight courier guaranteeing next day delivery or sent by facsimile transmission in legible form to the Trustee, the Issuer, the Servicer or Bear Stearns, as applicable, at the following addresses:

(1) to the Trustee at its Corporate Trust Office or at any other address furnished in writing to the Issuer or the Noteholders by the Trustee (any request, direction, notice or other communication from the Servicer to the Trustee under Article XII hereof (other than required certification) may be by electronic mail, which shall be deemed to be in writing);

(2) to the Issuer at the offices of Maples Finance Limited, P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, Attention: Directors, or at any other address previously furnished in writing to the Trustee by the Issuer;

(3) to the Co-Issuer at c/o Donald J. Puglisi, 850 Library Avenue, Suite 204, City of Newark, County of New Castle, Delaware 19711, or at any other address previously furnished in writing to the Noteholders, the Trustee or the Issuer by the Co-Issuer;

(4) to the Servicer at the offices of Highland Capital Management, LP, Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, Attention: [_____], or at any other address previously furnished in writing to the Noteholders, the Trustee or the Issuer by the Servicer;

(5) to Bear Stearns at the offices of Bear, Stearns & Co. Inc., 383 Madison Avenue, 7th Floor, New York, New York 10179, Attention: CDO Group, or at any other address previously furnished in writing to the Trustee by Bear Stearns;

(6) to the Irish Paying Agent at the offices of 3 George's Dock, International Financial Services Centre, Dublin, Ireland or at any other address previously furnished in writing to the Trustee by the Irish Paying Agent;

(7) to the Paying and Transfer Agent at the offices of JPMorgan Chase Bank, National Association, at the Trustee's Corporate Trust Office;

(8) to the Rating Agencies as described in Section 10.7 hereof; or

(9) to the Repository at CDO Library c/o The Bond Market Association, 360 Madison Avenue (18th Floor), New York, NY 10017, Electronic mail address: admin@cdolibrary.com or at any other address previously furnished in writing to the Trustee by the operator of the Repository.

The Issuer hereby directs the Trustee and the Trustee agrees that, until it receives written notification from Ambac Assurance Corporation ("Ambac") or CIFG Services, Inc. ("CIFG"), as applicable, it shall deliver, or cause to be delivered, to Ambac and CIFG, at their respective addresses set forth below, a copy of each Monthly Report, Note Valuation Report, other report, accounting, request, demand, authorization, direction, order, notice, consent waiver or other action (each, a "Notice") delivered or required to be delivered to any Holder or any Rating Agency pursuant to this Indenture. Any Notice shall be delivered to Ambac at One State Street Plaza, New York, New York 10004; Attention Portfolio Risk Management, facsimile

(212) 208-3509, e-mail sfcdsurv@ambac.com, or at any other address previously furnished to the Trustee by Ambac, not later than the first day on which such Notice is delivered to any Holder or Rating Agency. Any Notice shall be delivered to CIFG at 825 Third Avenue, 6th Floor, New York, New York 10022; Attention: Paul Kwiatkoski – Head of Surveillance, facsimile 212-909-3958, e-mail "surveillance@cifg.com" and "general.counsel@cifg.com", or at any other address previously furnished to the Trustee by CIFG, not later than the first day on which such Notice is delivered to any Holder or Rating Agency. Any document required to be delivered or made available to Ambac or CIFG may be made available by providing Ambac or CIFG, respectively, with access to a website containing such report in a format that permits the user to download the document as a pdf file.

Section 13.4. Notices to Noteholders; Waiver

Where this Indenture provides for giving a copy of any report or notice to Noteholders (such report or notice a "notice") of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Noteholder affected by such event, at its address as it appears on the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent. In any case where notice to Noteholders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Noteholder shall affect the sufficiency of such notice with respect to other Noteholders, and any notice which is mailed in the manner herein provided shall conclusively be presumed to have been duly given whether or not received. The Trustee shall provide notices directly to any beneficial holder of a Note that so identifies itself and requests receipt of such notices in writing to the Trustee.

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

In the event that, by reason of the suspension of the regular mail service as a result of a strike, work stoppage or similar activity it shall be impractical to mail notice of any event to Noteholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 13.5. Effect of Headings and Table of Contents

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

Section 13.6. Successors and Assigns

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

Section 13.7. Severability

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

Section 13.8. Benefits of Indenture

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

The Servicer and its respective successors and assigns, shall each be third-party beneficiaries of the provisions of this Indenture, and shall be entitled to rely upon this Indenture and directly to enforce such provisions of this Indenture.

Section 13.9. Reserved

Section 13.10. Governing Law; Submission to Jurisdiction; Waiver of Trial by Jury

(a) This Indenture, each indenture supplemental hereto and each Note shall be construed in accordance with and governed by the laws of the State of New York applicable to agreements made and to be performed therein. The State of New York shall be the securities intermediary's jurisdiction of the Securities Intermediary for purposes of the UCC and the United States Regulations.

(b) Each of the Co-Issuers and the Trustee hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Notes or this Indenture, or for recognition or enforcement of any judgment, and each of the Co-Issuers and the Trustee hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the Co-Issuers and the Trustee hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each of the Co-Issuers and the Trustee irrevocably consents to the service of any and all process in any action or proceeding by the mailing or delivery of copies of such process to it at the office of its agent set forth in Section 13.3. Each of the Co-Issuers and the Trustee agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS INDENTURE, ANY OTHER TRANSACTION DOCUMENTS OR ANY INSTRUMENT OR DOCUMENT DELIVERED HEREUNDER OR THEREUNDER.

Section 13.11. Counterparts

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

Section 13.12. No Issuer Office Within the United States

The Issuer (or the Servicer acting in the name or on behalf of the Issuer) shall not maintain an office located within the United States; *provided that* neither the performance by JPMorgan Chase Bank, National Association, as appointed agent for the Issuer of the Issuer's obligation to prepare reports under or pursuant to Article X hereof (and other services rendered by JPMorgan Chase Bank, National Association, pursuant to the Collateral Administration Agreement as described in Section 10.5(f) hereof) at and through the offices of JPMorgan Chase Bank, National Association in the United States nor the services rendered by the Servicer pursuant to the Servicing Agreement at its offices in the United States shall be a violation of this Section 13.12.

Section 13.13. Subordination

(a) Notwithstanding anything in this Indenture to the contrary, the Issuer and the Holders of the Notes agree:

(i) for the benefit of the Holders of the Class A-1LA Notes, the Class X Notes and the Trustee that the Class A-1LB Notes, Class A-2L Notes, the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-1LA Notes, the "Senior Class A Subordinate Interests") shall be subordinate and junior to the Class A-1LA Notes and the Class X Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of, and interest on, the Senior Class A Subordinate Interests, and that the lien of the Trustee with respect to the Senior Class A Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-1LA Notes; and

(ii) for the benefit of the Holders of the Class A-1LB Notes and the Trustee that the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-1LB Notes, the "Class A-1LB Subordinate Interests") shall be subordinate and junior to the Class A-1LB Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of, and interest on, the Class A-1LB Subordinate Interests, and that the lien of the Trustee with respect to the Class A-1LB Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-1LB Notes

(iii) for the benefit of the Holders of the Class A-2L Notes and the Trustee that the Class A-3L Notes, the Class A-4L Notes, the Class B-1L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-2L Notes, the "Class A-2L Subordinate Interests") shall be subordinate and junior to the Class A-2L Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to

payment of principal of, and interest on, the Class A-2L Subordinate Interests, and that the lien of the Trustee with respect to the Class A-2L Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-2L Notes; and

(iv) for the benefit of the Holders of the Class A-3L Notes and the Trustee that the Class A-4L Notes and the Class B-1L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-3L Notes, the "Class A-3L Subordinate Interests") shall be subordinate and junior to the Class A-3L Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of the Class A-3L Subordinate Interests, and that the lien of the Trustee with respect to the Class A-3L Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-3L Notes.

(v) for the benefit of the Holders of the Class A-4L Notes and the Trustee that the Class B-1L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-4L Notes, the "Class A-4L Subordinate Interests") shall be subordinate and junior to the Class A-4L Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of the Class A-4L Subordinate Interests, and that the lien of the Trustee with respect to the Class A-4L Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-4L Notes.

If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article V, the Notes shall be paid in the priority set forth in Section 11.1(d) hereof.

In addition to the foregoing:

(i) the Holders of the Class A-1LB Notes agree, for the benefit of the Holders of the Class A-1LA Notes and the Class X Notes, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay amounts due under the Class A-1LB Notes or hereunder until the payment in full of the Class A-1LA Notes and the Class X Notes

(ii) the Holders of the Class A-2L Notes agree, for the benefit of the Holders of the Class A-1LA Notes, the Class A-1LB Notes and the Class X Notes, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay amounts due under the Class A-2L Notes or hereunder until the payment in full of the Class A-1LA Notes, the Class A-1LB Notes and the Class X Notes;

(iii) the Holders of the Class A-3L Notes agree, for the benefit of the Holders of the Senior Class A Notes, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay amounts due under the Class A-3L Notes or hereunder until the payment in full of the Senior Class A Notes; and

(iv) the Holders of the Class A-4L Notes agree, for the benefit of the Holders of the Senior Class A Notes and the Class A-3L Notes, not to cause the filing of a petition

in bankruptcy against the Issuer for failure to pay amounts due under the Class A-4L Notes or hereunder until the payment in full of the Senior Class A Notes; (iv)

(v) the Holders of the Class B-1L Notes agree, for the benefit of the Holders of the Class A Notes, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay amounts due under the Class B-1L Notes or hereunder until the payment in full of the Class A Notes;

in each case, not before one year and one day, or, if longer, the applicable preference period then in effect, have elapsed since such payment.

If notwithstanding the provisions of this Indenture, any Holder of the Class B-1L Notes shall have received any payment or distribution in respect of the Class B-1L Notes contrary to the provisions of this Indenture, then unless and until the Class A Notes shall have been paid in full in accordance with this Indenture, such payment or distribution shall be received and held in trust for the benefit of, and shall immediately be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the Class A Notes, in accordance with this Indenture.

(b) Each Holder of Class B-1L Notes agrees that such Holder shall not demand, accept, or receive any payment or distribution in respect of such Notes in violation of the provisions of this Indenture. Nothing in this Section shall affect the obligation of the Issuer to pay Holders of such Notes amounts owing in respect thereof.

(c) So long as any Class A Notes remain Outstanding to the extent it may lawfully do so, each Class B-1L Noteholder by its acceptance of a Class B-1L Note:

(i) agrees that it will not step up, plead, claim or in any manner whatsoever take advantage of, any appraisement, valuation, stay, extension or redemption laws, now or hereafter in force in any jurisdiction, which may delay, prevent or otherwise hinder (A) the performance, enforcement or foreclosure of this Indenture, (B) the sale of any of the Trust Estate, or (C) the putting of the purchaser or purchasers thereof into possession of such property immediately after the sale thereof;

(ii) waives all benefit or advantage of any such laws;

(iii) waives and releases all rights to have the Trust Estate marshaled upon any foreclosure, sale or other enforcement of this Indenture; and

(iv) consents and agrees that, subject to the terms of this Indenture, all the Collateral may at any such sale be sold by the Trustee as an entirety.

Section 13.14. Survival of Provisions

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of either Co-Issuer, the Trustee, the Noteholders and other secured parties hereunder under Sections 2.7(h), 2.10, 4.2, 5.19, 6.7, 6.13, 7.3, 7.6, 7.16, 11.1 and 13.15 hereof shall otherwise survive termination of the rights of the parties hereunder.

Section 13.15. Liability of Co-Issuers.

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into between, inter alia, the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other Co-Issuer under this Indenture, the Notes, any such agreement or otherwise and, without prejudice to the generality of the foregoing, neither of the Co-Issuers shall be entitled to take any steps to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any such agreement or otherwise against the other Co-Issuer. In particular, neither of the Co-Issuers shall be entitled to petition or take any other steps for the winding up or bankruptcy of the other Co-Issuer or shall have any claim in respect of any assets of the other Co-Issuer.

Section 13.16. Escheat.

In the absence of a written request from the Co-Issuers to return unclaimed funds to the Co-Issuers, the Trustee shall from time to time deliver all unclaimed funds to or as directed by applicable escheat authorities, as determined by the Trustee in its sole discretion, in accordance with the customary practices and procedures of the Trustee. Any unclaimed funds held by the Trustee pursuant to this section shall be held uninvested and without any liability for interest.

Section 13.17. Posting of Documents on Repository

Any document or report required to be delivered to the Repository or to be made available to the operator of the Repository pursuant to this Indenture shall be made available by providing the operator of the Repository with access to a website containing such document or report in a format that permits the user to download the document as a pdf file.

Section 13.18. Consent to Posting of Documents on Repository

The Issuer hereby consents to (a) the posting of the offering circular related to the Notes and this Indenture and the periodic reports to be delivered pursuant to this Indenture and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository, and (b) the display of its name on the Repository in connection therewith.

ARTICLE XIV

ASSIGNMENT OF SERVICING AGREEMENT

Section 14.1. Assignment of Servicing Agreement

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and the performance and observance of the provisions hereof, hereby assigns, transfers, conveys and sets over to the Trustee, for the benefit of the Noteholders and the other secured parties hereunder, all of the Issuer's estate, right, title and interest in, to and under the Servicing Agreement, including, without limitation, (i) the right to give all notices, consents and releases thereunder, (ii) the right to give all notices of termination and to take any legal action upon the breach of an obligation of the Servicer thereunder, including the commencement,

conduct and consummation of proceedings at law or in equity, (iii) the right to receive all notices, accountings, consents, releases and statements thereunder and (iv) the right to do any and all other things whatsoever that the Issuer is or may be entitled to do thereunder; *provided* so long as no Event of Default has occurred and is continuing hereunder, the Trustee hereby grants the Issuer a license to exercise all of the Issuer's rights pursuant to the Servicing Agreement without notice to or the consent of the Trustee (except as otherwise expressly required by this Indenture, including, without limitation, as set forth in paragraph (f) of this Section 14.1 hereof), which license shall be and is hereby deemed to be automatically revoked upon the occurrence of any Event of Default hereunder until such time, if any, as the Event of Default is cured or waived. The Trustee shall have no liability with respect to any act or failure to act by the Issuer under the Servicing Agreement (provided that this sentence shall not limit or relieve the Trustee from any responsibility it may have under this Indenture upon the occurrence of and during the continuance of any Event of Default).

(b) The assignment made hereby is executed as collateral security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the provisions of the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Trust Estate from the lien of this Indenture, this assignment and all rights herein assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the estate, right, title and interest of the Trustee in, to and under the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence such termination and reversion.

(d) The Issuer represents that it has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it will not take any action which is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer will, upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may specify.

(f) The Issuer hereby agrees, and hereby undertakes to obtain the agreement of the Servicer in the Servicing Agreement, to the following:

(1) The Servicer consents to, and agrees to perform, the provisions hereof applicable to the Servicer.

(2) The Servicer acknowledges that the Issuer is assigning all of its right, title and interest in, to and under the Servicing Agreement to the Trustee for the benefit of the Noteholders and the other Secured Parties hereunder.

(3) The Servicer shall deliver to the Trustee (at substantially the same time as delivered pursuant to the Servicing Agreement) duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement.

(4) Except as set forth in the Servicing Agreement, neither the Issuer nor the Servicer will enter into any agreement amending, modifying or terminating the Servicing Agreement or selecting or consenting to a successor manager (other than an amendment or modification of the type that may be made to this Indenture without Holder consent), (a) without satisfying the Rating Condition and (b) so long as the Requisite Holders have not objected in writing to such amendment or modification within 30 days of notice thereof; and any such amendment, modification, termination, selection or consent (in each case, other than pursuant to the provisions of the Servicing Agreement) without confirmation by the Rating Agencies or if the Requisite Holders have objected shall be void; *provided that* the consent of Requisite Noteholders or confirmation by Moody's and S&P shall not be required for an amendment or modification to cure any ambiguity, to correct or supplement any provisions therein, to comply with any changes in law, or to make any other provisions with respect to matters or questions arising under the Servicing Agreement which shall not be inconsistent with the provisions thereof or of this Indenture, so long as such amendment or modification does not affect in any material respects the interests of any Noteholder (as evidenced by an Opinion of Counsel acceptable to the Trustee) and each of Moody's and S&P is notified in writing of such amendment or modification. Notwithstanding the foregoing, nothing in this subsection shall limit, in any way, any of the rights or remedies available to the Servicer pursuant to the Servicing Agreement.

(5) Except as set forth herein and in the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available hereunder to pay such amounts in accordance with Article XI hereof, and agrees not to cause the filing of a petition in bankruptcy against the Issuer for any reason whatsoever, including without limitation the non-payment to the Servicer, until the payment in full of all Notes issued under this Indenture and the expiration of a period equal to one year and one day following all such payments; *provided that* nothing in this clause shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of the aforementioned one year and one day period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer or its Affiliates, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding. Notwithstanding the foregoing, nothing in this subsection shall limit, in any way, any of the rights or remedies available to the Servicer pursuant to the Servicing Agreement.

(6) The Servicer will perform its obligations with respect to any conflict of interest in accordance with the applicable requirements of the Investment Advisers Act of 1940.

IN WITNESS WHEREOF, we have set our hands as of the 10th day of May, 2006.

EXECUTED AS A DEED BY
ROCKWALL CDO LTD., as Issuer

By: _____
Name: Wendy Ebanks
Title: Director

in the presence of:

_____
witness

ROCKWALL CDO (DELAWARE) CORP., as Co-Issuer

By: _____
Name:
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the 10th day of May, 2006.

EXECUTED AS A DEED BY
ROCKWALL CDO LTD., as Issuer

By: _____
Name:
Title:

in the presence of:

_____
witness

ROCKWALL CDO (DELAWARE) CORP., as Co-Issuer

By: _____
Name: Donald J. Puglisi
Title: President

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the 10th day of May, 2006.

EXECUTED AS A DEED BY
ROCKWALL CDO LTD., as Issuer

By: _____
Name:
Title:

in the presence of:

_____
witness

ROCKWALL CDO (DELAWARE) CORP., as Co-Issuer

By: _____
Name:
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Trustee

By: Bruce C. Boyd
Name: BRUCE C. BOYD
Title: VICE PRESIDENT

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, as Securities Intermediary

By: _____
Name: BRUCE C. BOYD
Title: VICE PRESIDENT

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Schedule A

Initial Portfolio Collateral

Schedule B

Standard & Poor's Industry Classification

Corporate Obligations

Asset Code	Asset Description	LOCAL	REGIONAL	GLOBAL
0	Zero Default Risk			X
1	Aerospace & Defense		X	
2	Air transport			X
3	Automotive			X
4	Beverage & Tobacco		X	
5	Radio & Television		X	
6	Brokers, Dealers & Investment houses	X		
7	Building & Development	X		
8	Business equipment & services		X	
9	Cable & satellite television		X	
10	Chemicals & plastics			X
11	Clothing/textiles		X	
12	Conglomerates			X
13	Containers & glass products		X	
14	Cosmetics/toiletries	X		
15	Drugs			X
16	Ecological services & equipment		X	
17	Electronics/electrical			X
18	Equipment leasing		X	
19	Farming/agriculture	X		
20	Financial intermediaries		X	
21	Food/drug retailers	X		
22	Food products		X	
23	Food service		X	
24	Forest products			X
25	Health care		X	
26	Home furnishings	X		
27	Lodging & casinos		X	
28	Industrial equipment		X	
29	Insurance	X		
30	Leisure goods/activities/movies	X		
31	Nonferrous metals/minerals			X
32	Oil & gas			X
33	Publishing	X		
34	Rail industries		X	
35	Retailers (except food & drug)	X		
36	Steel			X
37	Surface transport	X		

38	Telecommunications			X
39	Utilities		X	

Corporate Structured Obligations

Asset Code	Asset Description	LOCAL	REGIONAL	GLOBAL
50	CDOs		X	

Structured Obligations

Asset Code	Asset Description
51	ABS Consumer
52	ABS Commercial
53	CMBS Diversified (Conduit and CTL)
54	CMBS (Large Loan, Single Borrower, and Single Property)
55	REITs and REOCs
56	RMBS A
57	RMBS B&C, HELs, HELOCs, and Tax Lien
58	Manufactured Housing
59	U.S. Agency (Explicitly Guaranteed)
60	Monoline/FER Guaranteed
61	Non-FER Company Guaranteed
62	FFELP Student Loans (Over 70% FFELP)
63	CLO of SME's

Schedule C

S&P Weighted Average Recovery Rate

With respect to the CLO Securities, if the Portfolio Collateral is a Synthetic Security, the S&P Weighted Average Recovery Rate will be based on the Reference Obligation of such Synthetic Security.

With respect to the CLO Securities, if the Portfolio Collateral or Reference Obligation (other than an item of Portfolio Collateral guaranteed by a corporate guarantor or a monoline financial insurance company) is the senior-most tranche of securities issued by the issuer of such Portfolio Collateral:

S&P Rating of Assets *	**S&P Rating of Liabilities** **						
	AAA	AA	A	BBB	BB	B	CCC
"AAA"	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
"AA-," "AA" or "AA+"	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
"A-," "A" or "A+"	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
"BBB-," "BBB" or "BBB+"	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

With respect to the CLO Securities, if the Portfolio Collateral or Reference Obligation (other than an item of Portfolio Collateral guaranteed by a corporate guarantor or a monoline financial insurance company) is not the senior-most tranche of securities issued by the issuer of such Portfolio Collateral:

S&P Rating of Assets *	**S&P Rating of Liabilities (%)** **						
	AAA	AA	A	BBB	BB	B	CCC
"AA-," "AA" or "AA+"	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
"A-," "A" or "A+"	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
"BBB-," "BBB" or "BBB+"	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
"BB-," "BB" or "BB+"	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%

* Rating upon issuance of such item of Portfolio Collateral.
** Current rating of the applicable Class of Notes.

"B-," "B" or "B+"	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
"CCC+" and below	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

Schedule D

Rating Methodology for the Standard & Poor's Rating

S&P RATING

The S&P Rating of an item of Portfolio Collateral as of any date of determination shall be determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the item of Portfolio Collateral (the "Borrower"), or the guarantor who unconditionally and irrevocably guarantees the item of Portfolio Collateral (the "Guarantor") by S&P, the most current issuer credit rating for such Borrower or Guarantor;

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the item of Portfolio Collateral will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower;

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; provided that item of Portfolio Collateral constituting no more than 5% of the Maximum Investment Amount (which concentration may be increased to 10% upon satisfaction of the Rating Condition with respect to S&P) may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant item of Portfolio Collateral, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; or

(C) (1) if such item of Portfolio Collateral (other than a Current-Pay Obligation) isnot rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Servicer determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; provided that the Servicer must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant item of Portfolio Collateral; provided, further, that items of Portfolio Collateral constituting no more than 5% of the Maximum Investment Amount may be given an S&P Rating based on this subclause (C) (after giving effect to the addition of the relevant item of Portfolio Collateral, if applicable) or (2) if such item of Portfolio Collateral is a Current-Pay Obligation and is not rated by Moody's or S&P and no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the S&P Rating will be "CCC-"; or

(iv) if the item of Portfolio Collateral is a CLO Security (a) if the CLO Security has an S&P credit rating, then the S&P Rating shall be such credit rating; otherwise, (b) the S&P Rating shall be the written credit estimate issued by S&P for that item of Portfolio Collateral;

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of an item of Portfolio Collateral that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of an item of Portfolio Collateral that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and items of Portfolio Collateral shall be determined in a corresponding manner.

Schedule E

Correlation Factor Procedures

The formula used to calculate the Correlation Factor shall be the formula delivered to the Servicer and the Trustee by Moody's.

Schedule F

Moody's Weighted Average Rating Factor Test Procedures

CALCULATION OF WEIGHTED AVERAGE RATING

The "Weighted Average Rating" is determined by summing the products obtained by *multiplying* the principal amount of each item of Portfolio Collateral (excluding Defaulted Portfolio Collateral, but including Current Pay Obligations), *by* its Moody's Rating Factor, *dividing* such sum *by* the aggregate principal amount of all such securities (excluding Defaulted Portfolio Collateral, but including Current Pay Obligations) and rounding the result up to the nearest whole number. The "Moody's Rating Factor" relating to any Portfolio Collateral is the number set forth in the table below opposite the Rating of such Portfolio Collateral.

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Bal	940
Aal	10	Ba2	1,350
Aa2	20	Ba3	1,766
Aa3	40	B1	2,220
Al	70	B2	2,720
A2	120	B3	3,490
A3	180	Caa1	4,770
Baal	260	Caa2	6,500
Baa2	360	Caa3	8,070
Baa3	610	Ca	10,000
		C	10,000

For purposes of the Weighted Average Rating Test, any item of Portfolio Collateral issued or guaranteed by the United States government or any agency or instrumentality thereof is assigned a Moody's Rating Factor of 1. Short-term securities rated "P-1" will be assigned a Moody's Rating Factor equivalent to that of the senior unsecured rating of the issuer. Short-term securities rated "P-1" of an issuer that does not have such a senior unsecured rating will be assigned a Moody's Rating Factor of 120. For purposes of calculating the Weighted Average Rating and the Weighted Average Rating Test, no item of Defaulted Portfolio Collateral will be taken into account in either the denominator or numerator of such test.

The "Moody's Rating" of any item of Portfolio Collateral shall be determined pursuant to the following method:

(a) Reserved.

(b) With respect to any Portfolio Collateral that is a Moody's Senior-Secured Loan, the following:

(i) if the borrower of such Portfolio Collateral, or a guarantor that unconditionally and irrevocably provides a guarantee solely for such Portfolio Collateral, has a Moody's corporate family rating, such rating (regardless of whether there is a published rating by Moody's on the Portfolio Collateral of such borrower held by the Issuer);

(ii) if the borrower of such Portfolio Collateral does not have a Moody's corporate family rating, then the Moody's Rating of such Portfolio Collateral shall be deemed to be the rating thereof as may be assigned by Moody's upon the request of the Issuer or the Servicer;

(iii) if the borrower of such Portfolio Collateral does not have a Moody's corporate family rating, but another security or obligation of the borrower is rated by Moody's and Moody's has not assigned a rating pursuant to subclause (ii) above, then the Moody's Rating of such Portfolio Collateral shall be determined in the following order: (a) if there is a rating on a senior unsecured obligation of the borrower, then the Moody's Rating of such Portfolio Collateral shall equal such rating; (b) if there is a rating on a senior secured obligation of the borrower, then the Moody's Rating of such Portfolio Collateral shall be one subcategory below such rating; or (c) if there is a rating on a subordinated obligation of the borrower, then the Moody's Rating of such Portfolio Collateral shall be one subcategory above such rating; or

(iv) if such Portfolio Collateral is not rated by Moody's, and no other security or obligation of the borrower is rated by Moody's and neither the Issuer nor the Servicer obtains a Moody's Rating for such Portfolio Collateral pursuant to subclause (ii) above, then the Moody's Rating of such Portfolio Collateral may be determined using any one of the methods provided below (provided that no more than 5% of the Aggregate Principal Amount may have a Moody's Rating determined pursuant to subclauses (B), (C), (D) and (E) below):

(A) (1) if there is an issuer rating of the borrower by S&P (excluding a corporate credit estimate), then the Moody's Rating of such Portfolio Collateral shall be (a) one (1) subcategory below Moody's equivalent of such rating assigned by S&P if such rating is "BBB-" or higher by S&P and (b) two (2) subcategories below the Moody's equivalent of the rating assigned by S&P if such rating is "BB+" or lower by S&P; provided that no more than 10% of the Aggregate Principal Amount may be assigned a Moody's Rating as provided in this subclause (A) and clause (b)(iii);

(2) if there is not an issuer rating of the borrower by S&P but a security or obligation of the borrower is rated by S&P (excluding a corporate credit estimate) (a "parallel security"), then the rating of such parallel security shall be determined in accordance with the methodology set forth in subclause (A)(1) above, and the Moody's Rating of such Portfolio Collateral shall be determined in accordance with the methodology set forth in clause (iii) above (for such purposes treating the parallel security as if it were rated by Moody's at the rating determined pursuant to this subclause (A)(2));

(B) if the borrower of such Portfolio Collateral is a U.S. borrower and such Portfolio Collateral is a obligation of the borrower and (1) neither the borrower nor any of its Affiliates is subject to reorganization or bankruptcy proceedings, (2) no debt securities or obligations of the borrower are in default, (3) neither the borrower nor any of its Affiliates have defaulted on any debt during the past two (2) years, (4) the borrower has been in existence for the past five (5) years, (5) the borrower is current on any cumulative dividends, (6) the fixed-charge coverage ratio for the borrower exceeds 125% for each of the past two (2) fiscal years and for the most recent quarter, (7) the borrower had a net profit before tax in the past fiscal year and the most recent quarter, and (8) the annual financial statements of the borrower are unqualified and certified by a firm of independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer, the Moody's Rating of such Portfolio Collateral shall be "B3";

(C) if the borrower of such Portfolio Collateral is a U.S. borrower and such Portfolio Collateral is a obligation of the borrower and (1) neither the borrower nor any of its Affiliates is subject to reorganization or bankruptcy proceedings and (2) no debt security or obligation of the borrower has been in default during the past two (2) years, the Moody's Rating of such Portfolio Collateral shall be "Caa2"; or

(D) if any debt security or obligation of the borrower of such Portfolio Collateral has been in default during the past two (2) years, the Moody's Rating of such Portfolio Collateral shall be "Ca";

(c) With respect to any Portfolio Collateral that is a Non Senior Secured Portfolio Loan, the following:

(i) if such Portfolio Collateral is rated by Moody's, such rating;

(ii) with respect to Portfolio Collateral issued by U.S. issuers if such Portfolio Collateral is not rated by Moody's but another security or obligation of the issuer is rated by Moody's, then the Moody's Rating of such Portfolio Collateral shall be determined as follows:

(A) if there is a rating of an obligation of the issuer of the same priority, then the Moody's Rating of such Portfolio Collateral shall be such rating;

(B) if the rating is on a senior unsecured obligation of the issuer, then,

(1) if such Portfolio Collateral is a senior secured obligation of the issuer, then the Moody's Rating of such Portfolio Collateral shall be one subcategory above such rating, with a rating of "Aaa" remaining the same;

(2) if such rating is "B1" or higher and if such Portfolio Collateral is a subordinated obligation of the issuer, then the Moody's Rating of such Portfolio Collateral shall be two subcategories below such rating;

(3) if such rating is between "B2" and "Ca", inclusive, and if such Portfolio Collateral is a subordinated obligation of the issuer, then the Moody's Rating of such Portfolio Collateral shall be one subcategory below such rating; and

(4) if such rating is lower than "Ca" the Moody's Rating of such Portfolio Collateral shall be "C", if such Portfolio Collateral is a subordinated obligation of the issuer;

(C) if the rating is on a subordinated obligation of the issuer and if such Portfolio Collateral is a senior secured obligation of the issuer, then

(1) if the rating is "Baa3" or higher, the Moody's Rating of such Portfolio Collateral shall be one subcategory above such rating;

(2) if such rating is "B2" or higher but lower than "Baa3", the Moody's Rating of such Portfolio Collateral shall be two subcategories above such rating;

(3) if such rating is "B3", the Moody's Rating of such Portfolio Collateral shall be one subcategory above such rating; and

(4) if such rating is lower than "B3", the Moody's Rating of such Portfolio Collateral shall equal such rating;

(D) if there is a rating on a subordinated obligation of the issuer and if such Portfolio Collateral is a senior unsecured obligation of the issuer, then

(1) if such rating is "B3" or higher, the Moody's Rating of such Portfolio Collateral shall be one subcategory above such rating; and

(2) if such rating is lower than "B3", the Moody's Rating of such Portfolio Collateral shall equal such rating;

(E) if the rating is on a senior secured obligation of the issuer, then,

(1) if such rating is "Ca" or higher and such Portfolio Collateral is a senior unsecured obligation of the issuer, the Moody's Rating of such Portfolio Collateral shall be one subcategory below such rating;

(2) if such rating is "Caa2" or higher and such Portfolio Collateral is a subordinated obligation of the issuer, the Moody's Rating of such Portfolio Collateral shall be two subcategories below such rating, and

(3) if such rating is lower than "Caa2", the Moody's Rating of such Portfolio Collateral shall be "C";

(iii) if such Portfolio Collateral is not rated by Moody's, and no other security or obligation of the issuer is rated by Moody's, then the Moody's Rating of such Portfolio Collateral may be determined using any one of the methods below:

(A) (1) if such Portfolio Collateral is rated by S&P (excluding a corporate credit estimate), then (a) if such rating is "BBB-" or higher, the Moody's Rating of such Portfolio Collateral shall be one subcategory below the Moody's equivalent of such rating assigned by S&P; and (b) if such rating is "BB+" or lower, the Moody's Rating of such Portfolio Collateral shall be two subcategories below the Moody's equivalent of such rating assigned by S&P; and

(2) if such Portfolio Collateral is not rated by S&P but another security or obligation of the issuer is rated by S&P (excluding a corporate credit estimate) (a "parallel security"), then the Issuer or the Servicer on behalf of the Issuer may elect (a) first to establish the Moody's equivalent of the rating of such parallel security determined in accordance with the methodology set forth in clause (iii)(A)(1) above, in which case the Moody's Rating of the Portfolio Collateral shall be determined in accordance with the methodology set forth in clause (ii) above, treating the parallel security as if it were rated by Moody's at the rating determined pursuant to this subclause (2) or (b) to present such Portfolio Collateral to Moody's for an estimate of such Portfolio Collateral's rating factor as provided in clause (B) below;

(B) if such Portfolio Collateral is not rated by Moody's and (x) no other security or obligation of the issuer is rated by Moody's or S&P, or (y) another security or obligation of the issuer is rated by S&P (excluding a corporate credit estimate) and the Issuer or the Servicer on behalf of the Issuer so elects as provided in clause (A)(2)(b) above, then the Issuer or the Servicer on behalf of the Issuer, may, within three (3) Business Days after the later of (a) the date on which the Issuer commits to purchase such Portfolio Collateral and (b) the date on which the Issuer is allocated a commitment to purchase such Portfolio Collateral, present such Portfolio Collateral to Moody's for an estimate of such Portfolio Collateral's rating factor, from which its corresponding Moody's Rating may be determined; provided that after such presentation and pending receipt from Moody's of such estimate, if the Servicer certifies to the Trustee that the Servicer believes that such estimate shall be at least "B3", then such Portfolio Collateral shall have a Moody's Rating of "B3"; and

(iv) with respect to Portfolio Collateral that are Synthetic Securities, the Moody's Rating assigned in connection with the acquisition of such Synthetic Security.

(d) Any item of Portfolio Collateral (other than CLO Securities) that is on any "credit watch" list with positive or negative implications by Moody's shall be deemed to have a rating one sub-category above or below, as the case may be, the actual rating of such item of Portfolio Collateral. Any CLO Security with a Moody's rating of "Aaa" that is on any "credit watch" list with negative implications by Moody's shall be deemed to have a rating two sub-categories below the actual rating of such item of Portfolio Collateral. Any CLO Security with a Moody's rating lower than "Aaa" that is on any "credit watch" list with positive or negative implications by Moody's shall be deemed to have a rating two sub-categories above or below, as the case may be, the actual rating of such item of Portfolio Collateral.

(e) Any item of Portfolio Collateral that is a DIP Loan, shall be deemed to have a rating one sub-category below the actual rating of such item of Portfolio Collateral.

For the avoidance of doubt, all references to "obligor" or "borrower" in this Schedule F shall include such obligor or borrower and any guarantor of the obligations of such obligor or borrower under the applicable underlying instruments, and, for the purposes of determining the Moody's Rating of any item of Portfolio Collateral, the applicable Moody's Rating for such obligor or borrower shall be the rating of such obligor or borrower or of any guarantor of such obligor or borrower, whichever is higher.

Schedule G

Forms of Opinions

Schedule H

Moody's Suggested Industry Classification

Idx	Industry
1	Aerospace & Defense
2	Automobile
3	Banking
4	Beverage, Food & Tobacco
5	Buildings & Real Estate
6	Chemicals, Plastics & Rubber
7	Containers, Packaging & Glass
8	Personal & Non-durable Consumer Projects (Manufacturing Only)
9	Diversified/Conglomerate Manufacturing
10	Diversified/Conglomerate Service
11	Diversified Natural Resources, Precious Metals & Minerals
12	Ecological
13	Electronics
14	Finance
15	Farming & Agriculture
16	Grocery
17	Healthcare, Education & Childcare
18	Home & Office Furnishings, Housewares & Durable Consumer Products
19	Hotels, Motels, Inns and Gaming
20	Insurance
21	Leisure, Amusement, Motion Pictures, Entertainment
22	Machinery (Non-agriculture, Non-construction, Non-electronic)
23	Mining, Steel, Iron & Non-precious Metals
24	Oil & Gas
25	Personal, Food & Misc. Services
26	Printing & Publishing
27	Cargo Transport
28	Retail Stores
29	Telecommunications
30	Textiles & Leather
31	Personal Transportation
32	Utilities
33	Broadcasting & Entertainment

Schedule I

Weighted Average Life Table

Due Period from Closing Date	**Due Period from each Extension Effective Date**	**Maximum Weighted Average Life**
First	not applicable	8.00 years
Second	not applicable	8.00 years
Third	not applicable	8.00 years
Fourth	not applicable	8.00 years
Fifth	First	7.75 years
Sixth	Second	7.50 years
Seventh	Third	7.25 years
Eighth	Fourth	7.00 years
Ninth	Fifth	6.75 years
Tenth	Sixth	6.50 years
Eleventh	Seventh	6.25 years
Twelfth	Eighth	6.00 years
Thirteenth	Ninth	5.75 years
Fourteenth	Tenth	5.50 years
Fifteenth	Eleventh	5.25 years
Sixteenth	Twelfth	5.00 years
Seventeenth	Thirteenth	4.75 years
Eighteenth	Fourteenth	4.50 years
Nineteenth	Fifteenth	4.25 years
Twentieth and Thereafter	Sixteenth and Thereafter	4.00 years

Schedule J

Approved Pricing Services

With Respect to Portfolio Loans:

Loan Pricing Corporation
135 West 50th Street
New York, NY 10020
Tel: (212) 489-5455
http://www.loanpricing.com

Mark-it Partners
7 Times Square
Suite 2503
New York, NY 10036
Tel: (212) 931-4900
http://www.markit.com

Schedule K

Class X Amortization Schedule

Payment Date	Class X Principal Payment	Remaining Balance
11/1/2006	0	14,000,000
2/1/2007	0	14,000,000
5/1/2007	0	14,000,000
8/1/2007	0	14,000,000
11/1/2007	583,333	13,416,667
2/1/2008	583,333	12,833,333
5/1/2008	583,333	12,250,000
8/1/2008	583,333	11,666,667
11/1/2008	583,333	11,083,333
2/1/2009	583,333	10,500,000
5/1/2009	583,333	9,916,667
8/1/2009	583,333	9,333,333
11/1/2009	583,333	8,750,000
2/1/2010	583,333	8,166,667
5/1/2010	583,333	7,583,333
8/1/2010	583,333	7,000,000
11/1/2010	583,333	6,416,667
2/1/2011	583,333	5,833,333
5/1/2011	583,333	5,250,000
8/1/2011	583,333	4,666,667
11/1/2011	583,333	4,083,333
2/1/2012	583,333	3,500,000
5/1/2012	583,333	2,916,667
8/1/2012	583,333	2,333,333
11/1/2012	583,333	1,750,000
2/1/2013	583,333	1,166,667
5/1/2013	583,333	583,333
8/1/2013	583,333	0

Annex A

Methodology for Calculating the Amount of an O/C Redemption

For any Payment Date with respect to which one or more of the Overcollateralization Tests are not satisfied, the amount (the "O/C Redemption Amount") of Available Adjusted Collateral Interest Collections or Available Adjusted Collateral Principal Collections (as applicable) to be applied to the payment of principal of the Class A Notes and the Class B-1L Notes as an O/C Redemption (pursuant to the relevant clause of Section 11.2) in order to satisfy such Overcollateralization Test(s) shall be calculated by the Issuer according to the following formula:

If I >= ((L x R) – A) / (R); then

O/C Redemption Amount = ((L x R) – A) / (R); otherwise

O/C Redemption Amount = I + (((L-I) x R) – A) / (R – 1)

On any Payment Date with respect to which more than one of the Overcollateralization Tests is not satisfied:

(a) the O/C Redemption Amount required to satisfy the Overcollateralization Test relating to the Class A Notes on such Payment Date shall be reduced by the amount of cash in the Collection Account that was applied to the making of an O/C Redemption that results from the failure of the Overcollateralization Test relating to the Class A Notes with respect to such Payment Date; and

(b) the O/C Redemption Amount required to satisfy the Overcollateralization Test relating to the Class B-1L Notes on such Payment Date shall be reduced by the amount of cash in the Collection Account that was applied to the making of an O/C Redemption that results from the failure of the Overcollateralization Test or Tests relating to the Class A Notes with respect to such Payment Date.

For purposes of applying the foregoing formula:

(a) Class A Note O/C Test Redemptions. In connection with an O/C Redemption required to satisfy the Overcollateralization Test relating to the Class A Notes:

"L" (for "liabilities") shall be the Aggregate Principal Amount of the Class A Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to the Class A Notes) as of the related date of calculation;

"R" shall be the required Class A Overcollateralization Percentage;

"A" (for "assets") shall be the Aggregate Par Amount plus unpaid Purchased Accrued Interest as of the related date of calculation; and

"I" (for "interest collections") shall be the amount of Collateral Interest Collections available to cure the Class A Overcollateralization Test.

(b) Class B-1L Note O/C Test Redemptions. In connection with an O/C Redemption required to satisfy the Overcollateralization Test relating to the Class B-1L Notes:

"L" (for "liabilities") shall be the Aggregate Principal Amount of the Class A Notes and the Class B-1L Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to the Class A Notes and the Class B-1L Notes) as of the related Calculation Date;

"R" shall be the required Class B-1L Overcollateralization Percentage;

"A" (for "assets") shall be the Aggregate Par Amount *plus* unpaid Purchased Accrued Interest *less* the Overcollateralization Haircut Amount as of the related date of calculation; and

"I" (for "interest collections") shall be the amount of Collateral Interest Collections available to cure the Class B-1L Overcollateralization Test.

For purposes of making each of the foregoing calculations, the provisions in the Overcollateralization Ratio Adjustment definition shall apply.

Annex B

Methodology for Calculating the Interest Coverage Test Redemption

For any Payment Date with respect to which the Interest Coverage Test is not satisfied, the amount (the "O/C Redemption Amount") of Available Adjusted Collateral Interest Collections or Available Adjusted Collateral Principal Collections (as applicable) to be applied to the payment of principal of the Class A Notes as an O/C Redemption (pursuant to the relevant clause of Section 11.2) in order to satisfy such Interest Coverage Test shall be calculated by the Issuer according to the following formula:

O/C Redemption Amount = [L – 4 x (I- PRA) / (R)]

For purposes of applying the foregoing formula:

(a) I/C Test Redemptions. In connection with an O/C Redemption required to satisfy the Interest Coverage Test:

"L" (for "liabilities") shall be the Aggregate Principal Amount of the Class A Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to the Class A Notes) as of the related Calculation Date;

"R" shall be the required Interest Coverage Ratio;

"PRA" – shall be the Periodic Reserve Amount (but not including amounts payable to the Class B-1L Notes);

"I" (for "interest collections") shall be the amount of Collateral Interest Collections as of any date plus Scheduled Distributions representing Collateral Interest Collections to be received during the next Due Period (plus, if the amount of Collateral Interest Collections is not calculated on a Calculation Date, Scheduled Distributions for the remainder of the then current Due Period) other than Collateral Interest Collections (including deferred interest thereon) scheduled to be received on any Pledged Security that is not paying or expected to pay current interest with respect to such Due Period, divided by two.

Annex C

Methodology for Calculating the Amount Required to Satisfy the Additional Collateral Deposit Requirement

For any Payment Date with respect to which the Additional Collateral Deposit Requirement is a positive number, the amount (the "Additional Coverage Amount") of Available Adjusted Collateral Interest Collections to be applied in accordance with the Indenture shall be calculated by the Issuer according to the following formula:

Additional Coverage Amount = (L x R) – A

For purposes of applying the foregoing formula:

"L" (for "liabilities") shall be, as of the related Calculation Date, the Aggregate Principal Amount of the Class A Notes and the Class B-1L Notes plus any unpaid Periodic Rate Shortfall Amounts plus, if the amount determined under clause (2) under "Assets" below is a negative number, such amount (after giving effect to the amount to be applied to any O/C Redemption of the Class A Notes and the Class B-1L Notes to satisfy the Overcollateralization Tests and the Interest Coverage Test (if applicable) on the related Payment Date);

"R" shall be the percentage described in clause (b) of the definition of the Additional Collateral Deposit Requirement; and

"A" (for "assets") shall be the sum of:

(1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of the related Calculation Date; *plus*

(2) the sum of the Balance of Eligible Investments and cash in the Collection Account representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account, if any, plus unpaid Purchased Accrued Interest as of such date; *less*

(3) the Overcollateralization Haircut Amount (if any).

For purposes of making the foregoing calculations, no item of Equity Portfolio Collateral shall be included as Portfolio Collateral. In addition for purposes of this requirement, (i) with respect to Defaulted Portfolio Collateral as to which there has occurred a payment default or an event of bankruptcy, only the portion equal to the lesser of (a) the Market Value of such item of Defaulted Portfolio Collateral and (b) the Applicable Percentage multiplied by the Principal Balance of such item of Portfolio Collateral, shall be included as Portfolio Collateral and (ii) with respect to items of Discount Portfolio Collateral, only an amount equal to the original purchase price of such item of Discount Portfolio Collateral shall be included as Portfolio Collateral. For purposes of calculating the Additional Collateral Deposit Requirement, to the extent an item of Portfolio Collateral is considered Defaulted Portfolio Collateral, Discount Portfolio Collateral and/or is included in the Overcollateralization Haircut Amount, such item of Portfolio Collateral will not be discounted multiple times, but will be treated in the category that results in the largest discount to the par amount of the Portfolio Collateral.

Annex D
Collateral Quality Formula and Matrix

For purposes of calculating the Collateral Quality Formula, (i) the Moody's Asset Correlation Test will be the lesser of 4.0% and the Moody's Correlation Factor provided that it is a number greater than or equal to 3.0%, (ii) the Minimum Average Recovery Rate Test with respect to Moody's will be the lesser of 45.5% and Moody's Minimum Average Recovery Rate provided that it is a number greater than or equal to 40.0%, (iii) the Moody's Weighted Average Rating Test will be the greater of 1,500 and Moody's Weighted Average Rating provided that it is a number less than or equal to 2,500 and (iv) the Weighted Average Margin Test will be the greater of 1.50% and an amount equal to: ((a) 205.1213 *plus* (b) 1800.774 *times C plus* (c) 0.145185 *times* W *plus* (d) -733.949 *times* R where:

W = Moody's Weighted Average Rating
R = Moody's Minimum Average Recovery Rate
C = Moody's Correlation Factor

Row	Maximum Moody's Correlation Factor	Maximum Moody's Weighted Average Rating	Minimum Weighted Average Margin	Moody's Minimum Average Recovery Rate
1	3.00%	1500	150	45.50%
2	3.00%	1500	175	40.90%
3	3.25%	1500	175	41.50%
4	3.50%	1500	175	42.15%
5	3.75%	1500	175	42.65%
6	4.00%	1500	175	43.15%
7	3.00%	1500	180	40.00%
8	3.25%	1500	183	40.00%
9	3.50%	1500	187	40.00%
10	3.75%	1500	190	40.00%
11	4.00%	1500	193	40.00%
12	4.00%	1545	200	40.00%
13	4.00%	1700	225	40.00%
14	3.00%	1750	217	40.00%
15	3.25%	1750	220	40.00%
16	3.50%	1750	225	40.00%
17	3.75%	1750	230	40.00%
18	4.00%	1750	233	40.00%
19	4.00%	1840	240	40.90%
20	4.00%	1855	250	40.00%
21	4.00%	1915	255	40.90%
22	3.00%	2000	215	45.50%
23	3.00%	2000	255	40.00%
24	3.25%	2000	260	40.00%
25	3.50%	2000	265	40.00%
26	3.75%	2000	270	40.00%
27	4.00%	2000	275	40.00%
28	4.00%	2000	275	40.00%
29	3.15%	2025	220	45.50%

30	3.00%	2025	221	45.00%
31	3.40%	2025	232	44.50%
32	3.25%	2025	233	44.00%
33	3.75%	2030	235	45.00%
34	4.00%	2045	254	43.50%
35	3.00%	2050	221	45.50%
36	3.25%	2050	233	44.50%
37	3.75%	2050	234	45.50%
38	3.00%	2050	236	43.50%
39	3.85%	2050	240	45.00%
40	3.00%	2050	244	42.50%
41	3.25%	2050	249	42.50%
42	3.50%	2050	253	42.50%
43	3.00%	2075	225	45.45%
44	3.25%	2075	233	45.00%
45	3.00%	2075	238	43.75%
46	3.90%	2075	240	45.50%
47	3.50%	2075	262	42.00%
48	3.75%	2075	282	40.00%
49	3.00%	2100	228	45.50%
50	3.50%	2100	250	44.00%
51	3.75%	2100	254	44.00%
52	3.25%	2100	255	42.75%
53	3.35%	2100	255	42.90%
54	3.00%	2100	263	41.00%
55	3.00%	2120	252	42.15%
56	3.25%	2120	252	43.65%
57	3.25%	2120	260	41.50%
58	3.50%	2125	243	45.50%
59	3.30%	2125	245	44.50%
60	3.65%	2125	255	43.75%
61	4.00%	2125	255	44.75%
62	3.00%	2125	270	40.00%
63	3.50%	2125	270	41.25%
64	3.00%	2135	263	41.50%
65	3.00%	2135	273	40.00%
66	3.20%	2140	257	42.75%
67	3.45%	2145	247	45.00%
68	3.00%	2150	235	45.50%
69	3.65%	2150	250	44.95%
70	3.50%	2150	258	43.75%
71	4.00%	2150	278	42.00%
72	3.50%	2150	280	40.50%
73	4.00%	2150	300	40.00%
74	3.35%	2155	245	45.15%
75	3.85%	2155	261	43.85%
76	3.20%	2155	261	42.45%
77	3.25%	2160	245	45.00%
78	3.75%	2160	265	43.50%
79	3.40%	2160	271	41.65%

80	3.15%	2165	241	45.30%
81	3.30%	2165	257	43.45%
82	3.90%	2165	281	41.65%
83	3.45%	2170	246	45.45%
84	3.35%	2170	250	44.65%
85	3.80%	2170	270	42.95%
86	3.20%	2170	272	41.05%
87	3.00%	2175	240	45.50%
88	3.75%	2175	253	45.25%
89	3.50%	2175	265	43.25%
90	3.00%	2175	270	40.75%
91	4.00%	2175	295	40.00%
92	3.35%	2180	255	44.25%
93	3.25%	2180	257	43.65%
94	3.85%	2180	280	41.95%
95	3.55%	2180	283	40.75%
96	3.25%	2185	251	44.60%
97	3.70%	2185	267	43.45%
98	3.25%	2185	272	42.00%
99	3.40%	2185	281	40.80%
100	3.15%	2190	245	45.25%
101	3.95%	2190	261	45.00%
102	3.75%	2190	265	44.00%
103	3.15%	2190	275	41.00%
104	3.20%	2195	247	45.15%
105	3.75%	2195	260	44.75%
106	3.20%	2195	269	42.15%
107	3.50%	2195	276	41.85%
108	3.00%	2200	242	45.50%
109	3.30%	2200	250	44.85%
110	3.00%	2200	263	42.50%
111	4.00%	2200	300	40.00%
112	3.50%	2210	267	43.25%
113	3.00%	2225	252	44.45%
114	3.75%	2225	258	45.50%
115	3.00%	2225	265	42.75%
116	4.00%	2230	293	41.45%
117	3.20%	2235	262	43.65%
118	3.75%	2240	265	45.15%
119	3.00%	2250	250	45.50%
120	3.50%	2250	258	45.50%
121	3.15%	2250	273	42.15%
122	3.80%	2250	273	44.20%
123	3.00%	2250	295	40.00%
124	3.45%	2250	295	40.00%
125	3.25%	2250	300	40.00%
126	3.50%	2250	300	40.75%
127	3.75%	2250	300	41.25%
128	4.00%	2250	300	42.00%
129	3.00%	2270	250	45.50%

130	4.00%	2275	268	45.50%
131	3.25%	2275	269	43.85%
132	3.50%	2275	292	41.25%
133	3.65%	2280	270	44.70%
134	3.45%	2285	280	42.95%
135	3.85%	2290	271	45.25%
136	3.15%	2295	258	45.25%
137	3.00%	2300	263	44.25%
138	3.50%	2300	271	44.50%
139	3.35%	2300	286	42.05%
140	4.00%	2300	289	43.25%
141	3.70%	2300	295	41.75%
142	3.35%	2325	272	44.35%
143	3.50%	2325	294	41.75%
144	3.25%	2350	275	44.25%
145	4.00%	2350	289	44.25%
146	3.50%	2375	274	45.50%
147	3.25%	2375	283	43.50%
148	3.50%	2400	278	45.35%
149	3.00%	2400	297	41.50%
150	3.00%	2425	275	45.00%
151	4.00%	2450	300	45.50%
152	3.50%	2450	300	43.20%
153	3.25%	2475	281	45.50%
154	3.75%	2475	300	45.50%
155	3.00%	2500	300	44.00%
156	3.25%	2500	300	44.50%
157	3.50%	2500	300	45.25%

EXECUTION COPY

ROCKWALL CDO LTD.

Issuer

ROCKWALL CDO (DELAWARE) CORP.

Co-Issuer

AND

STATE STREET BANK AND TRUST

Successor Trustee

AMENDMENT NO. 1

TO

INDENTURE

Dated as of October 2, 2007

COLLATERALIZED DEBT OBLIGATIONS

THIS AMENDMENT NO. 1 TO INDENTURE (the "Amendment"), dated as of October 2, 2007, among Rockwall CDO Ltd. (the "Issuer"), Rockwall CDO (Delaware) Corp. (the "Co-Issuer") and State Street Bank and Trust, as successor in interest to Investors Bank & Trust Company (the "Successor Trustee"), hereby amends the Indenture, dated as of May 10, 2006, among the Issuer, the Co-Issuer and the Successor Trustee (the "Indenture").

W I T N E S S E T H

WHEREAS, the Issuer, the Co-Issuer and JPMorgan Chase Bank, National Association (the "Original Trustee") entered into the Indenture;

WHEREAS, the Issuer, the Co-Issuer and the Successor Trustee entered into the Supplemental Indenture No. 2007-1, dated as of June 8, 2007, which replaced the Original Trustee with the Successor Trustee;

WHEREAS, the Issuers and the Noteholders desire to amend certain definitions contained in the Indenture;

WHEREAS, Highland Capital Management, L.P. acts as Servicer with respect to the Collateral;

WHEREAS, Section 8.2 of the Indenture provides that the Indenture may be amended by the Issuer, Co-Issuer and the Trustee with the consent of the Servicer, the Requisite Noteholders adversely affected thereby and a Majority of Preferred Shares (as such term is defined in the Paying and Transfer Agency Agreement, dated as of May 10, 2006, among the Issuer and the Successor Trustee) affected thereby;

WHEREAS, the necessary consents pursuant to the preceding paragraph have been obtained;

WHEREAS, Section 8.2 of the Indenture provides that the Ratings Agencies shall confirm that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn; and

WHEREAS, the Ratings Agencies have confirmed that this Amendment to the Indenture will not cause the rating of any Class of Notes to be reduced or withdrawn.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Defined Terms.

For purposes of this Amendment, all capitalized terms which are used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Indenture.

SECTION 2. Amendment.

Section 1.1 of the Indenture is hereby amended to replace in its entirety the definition of Servicing Fee Portion with the following:

"***Servicing Fee Portion***": 100% minus (a) for any Payment Date from the Closing Date until (and including) the Payment Date in February 2008, the Class II Preferred Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date; provided that, with respect to the Payment Date in May 2008, such percentage shall be a minimum of the product of (i) the Class II Preferred Share Percentage for such Payment Date and (ii) 3.3%.

SECTION 3. Effect of Amendment.

Upon execution of this Amendment, the Indenture shall be, and be deemed to be, modified and amended in accordance herewith and the respective rights, limitations, obligations, duties, liabilities and immunities of the Issuer, Co-Issuer and the Successor Trustee shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this Amendment shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes. Except as modified and expressly amended by this Amendment, the Indenture is in all respects ratified and confirmed, and all the terms, provisions and conditions thereof shall be and remain in full force and effect.

SECTION 4. Binding Effect.

The provisions of this Amendment shall be binding upon and inure to the benefit of the Issuer, the Co-Issuer and the Successor Trustee and each of their respective successors and assigns.

SECTION 5. GOVERNING LAW.

THIS AMENDMENT TO THE INDENTURE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

SECTION 6. Severability of Provisions.

If any one or more of the provisions or terms of this Amendment shall be for any reason whatsoever held invalid, then such provisions or terms shall be deemed severable from the remaining provisions or terms of this Amendment and shall in no way affect the validity or enforceability of the other provisions or terms of this Amendment.

SECTION 7. Section Headings.

The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

SECTION 8. Counterparts.

This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Successor Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name:
Title: Guy Major
Director

ROCKWALL CDO (DELAWARE) CORP.,
as Co-Issuer

By:_____
Name:
Title:

STATE STREET BANK AND TRUST, as
Successor Trustee

By:_____
Name:
Title:

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 19

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Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

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006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
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007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
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007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
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007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
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007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
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007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
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007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
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008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
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008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
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008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
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Email: clay.taylor@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Successor Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name:
Title:

ROCKWALL CDO (DELAWARE) CORP.,
as Co-Issuer

By:_____
Name: Donald J. Puglisi
Title: President

STATE STREET BANK AND TRUST, as
Successor Trustee

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Issuer, Co-Issuer and the Successor Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

ROCKWALL CDO LTD.,
as Issuer

By:_____
Name:
Title:

ROCKWALL CDO (DELAWARE) CORP.,
as Co-Issuer

By:_____
Name:
Title:

STATE STREET BANK AND TRUST, as
Successor Trustee

By:_____
Name:
Title: Brian Peterson
Director

CONSENTED AND AGREED TO BY:

Name: Todd Travers
Title: CEO; CEO
E-mail address: tatravers@hcmlp.com
Aggregate Outstanding Amount/Face Amount of Class II Preference Shares Held: 45,000,000
CUSIP/ISIN: US3[illegible] 77426119

HIGHLAND CAPITAL MANAGEMENT, L.P., as Servicer

By:
Name: Todd Travers
Title: Senior Portfolio Manager
Highland Capital Management, L.P.

Execution Copy

ROCKWALL CDO II LTD.,
Issuer

ROCKWALL CDO II (DELAWARE) CORP.,
Co-Issuer

and

INVESTORS BANK & TRUST COMPANY,
as Trustee and as Securities Intermediary

INDENTURE

Dated as of May 9, 2007

INDENTURE, dated as of May 9, 2007, among ROCKWALL CDO II LTD., an exempted limited liability company incorporated under the laws of the Cayman Islands (the "Company" and, together with its permitted successors and assigns, the "Issuer"), ROCKWALL CDO II (DELAWARE) CORP., a Delaware corporation (the "Co-Issuer" and, together with the Issuer, the "Co-Issuers") and INVESTORS BANK & TRUST COMPANY, as trustee (together with its permitted successors in the trusts hereunder, the "Trustee") and as Securities Intermediary.

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Notes (other than the Class B-2L Notes and the Combination Notes) issuable as provided in this Indenture. The Issuer is also duly authorized to execute and deliver this Indenture to provide for the Class B-2L Notes and the Combination Notes issuable as provided in this Indenture. All representations, warranties, covenants and agreements made by the Co-Issuers herein are for the benefit and security of the Noteholders and the Trustee. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

It is a condition of issuance of the Notes that the Class A-1LA Notes be rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-1LB Notes be rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-2L Notes be rated at least "AA" by Standard & Poor's and at least "Aa2" by Moody's, the Class A-3L Notes be rated at least "A" by Standard & Poor's and at least "A2" by Moody's, the Class B-1L Notes be rated at least "BBB" by Standard & Poor's and at least "Baa2" by Moody's, the Class B-2L Notes be rated at least "BB" by Standard & Poor's and at least "Ba2" by Moody's and the Combination Notes be rated at least "Baa2" by Moody's with respect to the Rated Balance and the Rated Coupon of the Combination Notes. With respect to the Notes, such ratings by Standard & Poor's address solely the likelihood of the timely payment of the Periodic Interest Amount (which consists of interest accrued on the Aggregate Principal Amount of each applicable Class of Notes at the Applicable Periodic Rate) and the ultimate payment of the Aggregate Principal Amount in the case of the Class A-1LA Notes, the Class A-1LB Notes and the Class A-2L Notes, and the ultimate payment of the Cumulative Interest Amount and the Aggregate Principal Amount in the case of the Class A-3L Notes, the Class B-1L Notes and the Class B-2L Notes. Such ratings by Moody's address the ultimate cash receipt of all required payments as provided by the governing documents, and are based on the expected loss to the Noteholders of each Class relative to the promise of receiving the present value of such payments. Notwithstanding the foregoing, the obligation to make any Extension Bonus Payment will not be rated by the Rating Agencies.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with its terms have been done.

GRANTING CLAUSES

The Issuer hereby Grants to the Trustee, for the benefit and security of the Holders of the Notes (including the Combination Notes), the Trustee, the Paying and Transfer

Agent, the Default Swap Counterparties, each Hedge Counterparty, the Servicer, the Collateral Administrator and the Securities Intermediary (collectively, the "Secured Parties"), all of its right, title and interest, whether now owned or hereafter acquired, in, to and under the following: (a) the Initial Portfolio Collateral listed in Schedule A to this Indenture, all payments thereon or with respect thereto, all Portfolio Collateral (including all Original Portfolio Collateral, all Additional Portfolio Collateral and all Substitute Portfolio Collateral, whether or not any of the same may become at any time or times Defaulted Portfolio Collateral, Credit Risk Portfolio Collateral, Equity Portfolio Collateral or Credit Improved Portfolio Collateral) and all payments thereon or with respect thereto, (b) any Hedge Agreement and the Issuer's rights, remedies, powers, privileges and claims with respect to such Hedge Agreement as more fully described in Article XV herein, (c) the Servicing Agreement and the Issuer's rights, remedies, powers, privileges and claims under or with respect to the Servicing Agreement as set forth in Article XIV hereof, (c) the Collection Account, the Collateral Account, the Reserve Account, the Expense Reimbursement Account, the Closing Expense Account, the Initial Deposit Account, the Loan Funding Account, each Default Swap Collateral Account, each Default Swap Issuer Account, each Securities Lending Account, and all investment property, money, instruments and other property credited to or on deposit in such Accounts including, without limitation, the Eligible Investments, (d) all Securities Lending Agreements, all Default Swaps, all Synthetic Securities, the Default Swap Collateral, the Securities Lending Collateral, the trust accounts described Section 4.2 and in Section 11.4 , and all money, instruments, investment property, and other property on deposit therein or credited thereto, (e) all accounts, general intangibles, chattel paper, instruments, documents, money, deposit accounts, goods, letters of credit, letter-of-credit rights, oil, gas, and other minerals, and investment property, consisting of, arising from, or relating to any of the foregoing, (f) all other assets of the Issuer, including all accounts, chattel paper, deposit accounts, documents, general intangibles, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, and other minerals (other than the Preferred Shares Collection Account and all funds deposited therein or credited thereto, the Issuer's share capital on account of its ordinary issued shares and any transaction fee for issuing the Notes and the Preferred Shares, each held in its account in the Cayman Islands and any interest thereon) and all other property delivered to the Trustee (g) all proceeds, profits, rents, products, earnings, interest, dividends (whether in the form of cash, securities, instruments or other property) and distributions (whether of rights, options, stock, warrants, securities or other property) of or with respect to any of the foregoing, and (h) all proceeds of the foregoing; *provided* that such Grant shall not extend to any property, cash or other amounts specifically released from the lien of this Indenture or otherwise paid to the Issuer in accordance with the terms hereof; *and provided further that* the rights of each Default Swap Counterparty as a Secured Party shall be limited to only the related Default Swap Collateral, the related Default Swap Collateral Account, and the property credited thereto. The collateral described in the preceding sentence is referred to as the "Trust Estate." Such Grant is made, however, in trust, to secure the Notes (including the Combination Notes, but only to the extent of the Note Component) equally and ratably without prejudice, priority or distinction, except as expressly provided in this Indenture, between any Note or Combination Notes and any other Note or Combination Note by reason of difference in time of issuance or otherwise, and to secure in accordance with the priorities set forth in this Indenture (i) the payment of all amounts due on the Notes (including the Combination Notes, but only to the extent of the Note Component) in accordance with their terms, (ii) the payment of all other sums payable under this Indenture and

all amounts payable to the Servicer under the Servicing Agreement and to each Hedge Counterparty under the Hedge Agreements, and (iii) compliance with the provisions of this Indenture, each Hedge Agreement and the Servicing Agreement, all as provided in this Indenture.

The Trustee acknowledges such Grant, accepts the trusts hereunder and agrees to perform the duties herein in accordance with the provisions hereof.

ARTICLE I

DEFINITIONS

Section 1.1. Definitions

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Indenture, and the definitions of such terms are equally applicable both to the singular and plural forms of such terms and, where applicable, to the masculine, feminine and neuter genders of such terms. Whenever any reference is made to an amount the determination of which is governed by Section 1.3 hereof, the provisions of Section 1.3 hereof shall be applicable to such determination or calculation, whether or not reference is specifically made to Section 1.3 hereof, unless some other method of calculation or determination is expressly specified in the particular provisions.

Unless the Combination Notes are explicitly addressed in the same context, references herein to Class B-1L Notes or Class I Preferred Shares shall include a reference to the Note Component and the Preferred Share Component, respectively, of the Combination Notes and references to the rights and obligations of the Holders of the Class B-1L Notes and the Class I Preferred Shares (including with respect to any payments, distributions or redemptions, as applicable, on or of the Class B-1L Notes or the Class I Preferred Shares or votes, notices or consents to be given by such Holders) include the rights and obligations of the Holders of the Combination Notes to the extent of the Note Component and Preferred Share Component, respectively. Unless the Combination Noteholders are explicitly addressed in the same context, references herein to Noteholders or Holders of Preferred Shares shall include a reference to the Combination Noteholders to the extent of the Note Component and Preferred Share Component, as applicable. Unless the Combination Noteholders are explicitly addressed in the same context, Combination Noteholders shall be entitled to participate in any vote or consent of, or any direction or objection by, the Noteholders, the Holders of the Class B-1L Notes or the Holders of the Class I Preferred Shares to the extent of the Note Component and Preferred Share Component, as applicable.

"Account Income": Any interest or other earnings on funds in the Collection Account, the Initial Deposit Account, the Loan Funding Account or the Expense Reimbursement Account.

"Accounts": The meaning specified in Section 10.2 hereof.

"Accrued Interest on Sale": Interest accrued on an item of Portfolio Collateral at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other

disposition price of such item of Portfolio Collateral after deducting amounts representing Purchased Accrued Interest on such item of Portfolio Collateral.

"Accountants' Certificate": A certificate of a firm of Independent certified public accountants of national reputation in the United States of America appointed by the Issuer pursuant to Section 10.6(a) hereof.

"Additional Collateral Deposit Requirement": With respect to each Payment Date after the second Payment Date, the amount necessary such that (a) the sum of: (i) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of the Calculation Date relating to such Payment Date, plus (ii) the sum of the Balance of Eligible Investments and cash in the Collection Account representing Collateral Principal Collections *plus* the Balance of Eligible Investments and cash in the Initial Deposit Account *plus* unpaid Purchased Accrued Interest as of such date, less (iii) the Overcollateralization Haircut Amount (if any), equals or exceeds: (b) 104.63% of the amount necessary, after giving effect to the amount applied to any O/C Redemption of the Notes to satisfy the Overcollateralization Tests and the Interest Coverage Test (if applicable) on such Payment Date, to repay the Aggregate Principal Amount of the Notes, including any Periodic Rate Shortfall Amounts. Notwithstanding the foregoing, if Additional Collateral Deposit Requirement is a positive number that is more than the amount available therefore in the priority of distributions set forth in Section 11.1, then the amount distributed with respect to the Additional Collateral Deposit Requirements shall be such lesser amount available.

For purposes of the Additional Collateral Deposit Requirement, no item of Equity Portfolio Collateral shall be included as Portfolio Collateral. In addition for purposes of this requirement, (i) with respect to Defaulted Portfolio Collateral as to which there has occurred a payment default or an event of bankruptcy, only the portion equal to the lesser of (a) the Market Value of such item of Defaulted Portfolio Collateral and (b) the Applicable Percentage multiplied by the Principal Balance of such item of Portfolio Collateral, shall be included as Portfolio Collateral and (ii) with respect to items of Discount Portfolio Collateral, only an amount equal to the original purchase price of such item of Discount Portfolio Collateral shall be included as Portfolio Collateral. For purposes of calculating the Additional Collateral Deposit Requirement, to the extent an item of Portfolio Collateral is considered Defaulted Portfolio Collateral, Discount Portfolio Collateral and/or is included in the Overcollateralization Haircut Amount, such item of Portfolio Collateral will not be discounted multiple times, but will be treated in the category that results in the largest discount to the par amount of the Portfolio Collateral.

"Additional Fee Amount": With respect to each Due Period, an amount equal to 0.25% per annum of the Quarterly Collateral Amount, calculated on the basis of a 360-day year and the actual number of days elapsed.

"Additional Issuance": The issuance and sale of Additional Preferred Shares by the Issuer at any time during the Revolving Period, the proceeds of which (net of any fees and expenses incurred in connection with the issuance thereof, including, without limitation, compensation payable to any Initial Purchasers or any placement agent for any services provided in connection therewith) are used to purchase additional eligible Portfolio Collateral (which may

include eligible Portfolio Collateral purchased from any Servicer Entity on an arms-length transaction basis); *provided* that (a) such Additional Issuance will be for an Additional Issuance Percentage; (b) such Additional Preferred Shares must be issued for a cash sales price (the net sale proceeds to be used to purchase eligible Portfolio Collateral (or, pending such application, deposited into the Collection Account and held in Eligible Investments)); (c) the terms (other than the date of issuance, the issue price, the date from which dividends will accrue and similar matters) of such Preferred Shares must be identical to the terms of the applicable Class of Preferred Shares; (d) the Holders of Preferred Shares must be notified in writing 30 days prior to such issuance; (e) the Servicer must consent to such Additional Issuance; and (f) Bear Stearns must be notified in writing at least 30 days prior to such issuance.

"Additional Issuance Percentage": With respect to any Additional Issuance, a percentage specified by the Servicer of the original issue price of the Preferred Shares issued and Outstanding on the date of such Additional Issuance.

"Additional Portfolio Collateral": Any and all items of Portfolio Collateral which are purchased pursuant to Section 11.3 hereof with Collections (other than Collateral Disposition Proceeds).

"Additional Preferred Shares": Any additional Preferred Shares issued after the Closing Date in accordance with the applicable terms hereof and the Paying and Transfer Agency Agreement.

"Additional Servicing Fee": For any Payment Date, an amount equal to the sum of (a) product of (i) the Additional Fee Amount for such Payment Date and (ii) the Servicing Fee Portion for such Payment Date plus (b) on any Payment Date that any part of the Base Servicing Fee was not paid on the preceding Payment Date, interest on such unpaid amount in an amount equal to the product of (i) LIBOR for the applicable period plus 3.0% per annum and (ii) the actual number of days in such Due Period, divided by 360 plus (c) on any Payment Date that any part of the Additional Servicing Fee was not paid on the preceding Payment Date, such unpaid Additional Servicing Fee and interest on such unpaid amount in an amount equal to the product of (i) LIBOR for the applicable period plus 3.0% per annum and (ii) the actual number of days in such Due Period divided by 360; *provided* that in the event that the Servicer is removed or resigns, the amount of such fee accrued to the effective date of such removal or resignation will be payable to the Servicer on the next succeeding Payment Date or Payment Dates on which such amount may be paid, in accordance with Section 11.1 (*provided* that the payment of any fee payable pursuant to this proviso will be *pari passu* with the payment of any servicing fees to the then-current servicer).

"Adjusted Collateral Collections": With respect to any Payment Date, the sum of (i) the Adjusted Collateral Interest Collections collected during the applicable Due Period, (ii) the Adjusted Collateral Principal Collections collected during the applicable Due Period and (iii) the available funds in the Expense Reimbursement Account, as each is determined as of the Calculation Date relating to such Payment Date.

"Adjusted Collateral Interest Collections": With respect to any Payment Date, the Collateral Interest Collections collected during the applicable Due Period, as determined as of

the Calculation Date relating to such Payment Date, *plus* any amounts received from any Hedge Counterparty pursuant to the related Hedge Agreement, *less* the sum of (i) the amount of the Collateral Interest Collections paid to the Trustee and the Paying and Transfer Agent pursuant to Section 11.1(b) hereof with respect to such Payment Date, (ii) the amount of the Collateral Interest Collections paid to the Issuer or deposited in the Expense Reimbursement Account pursuant to Section 11.1(b) hereof with respect to such Payment Date, (iii) the amount of the Collateral Interest Collections paid to the Servicer and the Holders of the Class II Preferred Shares pursuant to Section 11.1(b) hereof with respect to such Payment Date and (iv) during any time prior to the Final Maturity Date, any Collateral Interest Collections attributable to the Collateral Purchase Amount held in the Collection Account pending application to purchase Portfolio Collateral.

"Adjusted Collateral Principal Collections": With respect to any Payment Date, the Collateral Principal Collections collected during the applicable Due Period, as determined as of the Calculation Date relating to such Payment Date, *less* the sum of (i) the amount of the Collateral Principal Collections paid to the Trustee and the Paying and Transfer Agent pursuant to Section 11.1(b) hereof with respect to such Payment Date, (ii) the amount of Collateral Principal Collections paid to the Issuer or deposited in the Expense Reimbursement Account pursuant to Section 11.1(b) hereof with respect to such Payment Date, (iii) the amount of Collateral Principal Collections paid to the Servicer and the Holders of the Class II Preferred Shares pursuant to Section 11.1(b) hereof with respect to such Payment Date, (iv) any Collateral Disposition Proceeds released from the Collection Account for the purchase of Portfolio Collateral during the applicable Due Period pursuant to Section 10.2(e) hereof, and (v) during any time prior to the Final Maturity Date, any amount attributable to the Collateral Purchase Amount held in the Collection Account pending application to purchase Portfolio Collateral.

"Administration Agreement": The Administration Agreement, dated as of May 9, 2007, between the Issuer and the Administrator.

"Administrator": Maples Finance Limited, or any successor thereto appointed by the Issuer.

"Affiliate": With respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing; *provided* that (for the avoidance of doubt) the only Affiliate of the Issuer shall be the Co-Issuer and the only Affiliate of the Co-Issuer shall be the Issuer.

"Aggregate Base Fees and Expenses": For any Payment Date, the total aggregate amount of fees and expenses payable pursuant to Section 11.1(b).

"Aggregate Par Amount": With respect to any date of determination, the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate, including cash and

Eligible Investments representing Collateral Principal Collections on deposit in the Collection Account and the Initial Deposit Account.

"Aggregate Principal Amount": With respect to any date of determination, when used with respect to the Portfolio Collateral, the aggregate Principal Balances of such items of Portfolio Collateral on such date of determination. With respect to any date of determination, when used with respect to any Eligible Investments, the Balance of such Eligible Investments on such date of determination. When used with respect to any Note or Class of Notes, as of any date of determination, the original principal amount of such Note or Class of Notes, as applicable, reduced by all prior payments, if any, made with respect to principal of such Note. When used with respect to the Notes in the aggregate, the sum of the Aggregate Principal Amount of each Class of the Outstanding Notes. When used with respect to the Combination Note, as of any date of determination, the original principal amount of the Note Component reduced by all prior payments, if any, made with respect to principal of the Note Component plus the original Notional Amount of the Preferred Share Component, reduced by any payments that reduce the Notional Amount of the Preferred Share Component.

"Ambac": Ambac Assurance Corporation.

"Amendment Buy-Out": The purchase of all Notes and Preferred Shares of Non-Consenting Holders by the Amendment Buy-Out Purchaser pursuant to the exercise of the Amendment Buy-Out Option.

"Amendment Buy-Out Option": As defined in Section 9.4(b).

"Amendment Buy-Out Purchase Price": The price payable by the Amendment Buy-Out Purchaser for Notes or Preferred Shares purchased in an Amendment Buy-Out in an amount equal to (i) in the case of Notes, the Aggregate Principal Amount thereof, plus accrued and unpaid interest to the date of purchase payable to the Non-Consenting Holder (giving effect to all amounts paid to such Holder on such date) and plus any unpaid Extension Bonus Payment, and (ii) in the case of the Preferred Shares, an amount that, when taken together with all payments and distributions made in respect of such Preferred Shares since the Closing Date (and any amounts payable, if any to such Holder on the next succeeding Payment Date) would cause such Preferred Shares to have received (as of the date of purchase thereof) an Internal Rate of Return of 12.0% (assuming such date was a Payment Date); *provided* that, after the date on which any Holder of Preferred Shares has received an Internal Rate of Return equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preferred Shares shall be equal to zero.

"Amendment Buy-Out Purchaser": The Servicer (or any of its affiliates acting as principal or agent); *provided* that in the event that the Servicer elects not to purchase Notes or Preferred Shares from Holders pursuant to the Amendment Buy-Out, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchasers or any of their affiliates acting as principal or agent) designated by the Servicer; *provided, however*, none of the Servicer, the Initial Purchasers or any of their respective affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"Amortization Period": The period beginning on the day following the end of the Revolving Period and ending on the Payment Date upon which the Aggregate Principal Amount of the Notes is paid in full.

"Applicable Percentage": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to such item of Portfolio Collateral as specified in the tables below and in Schedule C hereto:

Moody's Priority Category*	Moody's Priority Category Recovery Rate
Senior Secured Loans:	
+2 or more Rating Subcategories Difference	60%
+1 Rating Subcategories Difference	50%
0 Rating Subcategories Difference	45%
-1 Rating Subcategories Difference	40%
-2 Rating Subcategories Difference	30%
-3 or less Rating Subcategories Difference	20%
DIP Loan (senior secured)	50%
Non-Senior Secured Loans:	
+2 or more Rating Subcategories Difference	45%
+1 Rating Subcategories Difference	42.5%
0 Rating Subcategories Difference	40%
-1 Rating Subcategories Difference	30%
-2 Rating Subcategories Difference	15%
-3 or less Rating Subcategories Difference	10%
Debt Securities	
+2 or more Rating Subcategories Difference	40%
+1 Rating Subcategories Difference	35%
0 Rating Subcategories Difference	30%
-1 Rating Subcategories Difference	15%
-2 Rating Subcategories Difference	10%
-3 or less Rating Subcategories Difference	2%

Moody's Priority Category*	Moody's Priority Category Recovery Rate
Synthetic Securities	In the case of (i) any Synthetic Security under clause (A) or clause (B) of the definition thereof, the "Moody's Priority Category Recovery Rate" referred to in this clause for the related Reference Obligation (or deliverable obligation to the extent such deliverable obligation is not the Reference Obligation), (ii) any Synthetic Security under clause (C) of the definition thereof, the "Moody's Priority Category Recovery Rate" given by Moody's to such Synthetic Security at the time of acquisition of such Synthetic Security, and (iii) any Synthetic Security which has the ability to vary the nature of the deliverable obligation from the time of the initial acquisition, the "Moody's Priority Category Recovery Rate" given by Moody's to such Synthetic Security at such time.

CLO Securities:

Percentage of Total Capitalization	Moody's Default Probability Rating					
	Aaa	Aa	A	Baa	Ba	B
Greater than 70%	85.0%	80.0%	65.0%	55.0%	45.0%	30.0%
Less than or equal to 70%, but greater than 10%	75.0%	70.0%	60.0%	50.0%	40.0%	25.0%
Less than or equal to 10%, but greater than 5%	65.0%	55.0%	50.0%	40.0%	30.0%	20.0%
Less than or equal to 5%, but greater than 2%	55.0%	45.0%	40.0%	35.0%	25.0%	10.0%
Less than or equal to 2%	45.0%	35.0%	30.0%	25.0%	10.0%	5.0%

* For purposes of the Moody's Priority Category, the classification of a Portfolio Loan shall be determined as of each date of determination.

S&P Priority Category	S&P Priority Category Recovery Rate
S&P Senior Secured Portfolio Loans	As determined in accordance with Schedule C
Senior unsecured Portfolio Loans or S&P Second Lien Loans	As determined in accordance with Schedule C
Senior secured Debt Securities	As determined in accordance with Schedule C
Senior unsecured Debt Securities	As determined in accordance with Schedule C
Subordinated Debt Securities	As determined in accordance with Schedule C
Subordinated Portfolio Loans	As determined in accordance with Schedule C
DIP Loan*	As otherwise determined on a case-by-case basis by S&P.
Synthetic Securities	In the case of (i) any Synthetic Security under clause (A) or clause (B) of the definition thereof, the "S&P Priority Category Recovery Rate" referred to in this clause for the related Reference Obligation and (ii) any Synthetic Security under clause (C) of the definition thereof, the "S&P Priority Category Recovery Rate" given by Standard & Poor's to such Synthetic Security at the time of acquisition of such Synthetic Security.
Structured Finance Investments	As determined in accordance with Schedule C

* DIP Loans shall be treated as S&P Senior Secured Portfolio Loans for purposes of determining the S&P Priority Category Recovery Rates therefor unless the Servicer requests an alternate determination of the S&P Priority Category Recovery Rate for a DIP Loan from S&P.

"Applicable Periodic Rate": With respect to the Class A-1LA Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 0.25% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class A-1LB Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 0.55% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class A-2L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 0.70% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class A-3L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 1.00% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class B-1L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 2.25% above LIBOR for such Periodic Interest Accrual Period. With respect to the Class B-2L Notes and for each Periodic Interest Accrual Period, a *per annum* rate equal to 4.25% above LIBOR for such Periodic Interest Accrual Period.

"Applicable Procedures": The meaning specified in Section 2.5(b) hereof.

"Approved Pricing Service": Any pricing service (including any of its successors and assigns) listed as an Approved Pricing Service in Schedule J or otherwise disclosed in writing by the Issuer to the Trustee and the Holders of the Notes and the Combination Notes, and not objected to by the Requisite Noteholders within 15 days of such disclosure, *provided* that the Rating Condition has been satisfied with respect to any pricing service not included on Schedule J.

"Ask-Side Market Value": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent item of Portfolio Collateral based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such item of Portfolio Collateral determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); *provided* that if the Ask-Side Market Value of any lent item of Portfolio Collateral cannot be so determined then such item of Portfolio Collateral shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"Assumed Interest Rate": A rate equal to LIBOR as of the most recent LIBOR Determination Date minus 0.25%, but not less than zero.

"Authenticating Agent": An agent of the Trustee appointed by the Trustee pursuant to Section 2.4 to authenticate the Notes and the Combination Notes.

"Authorized Officer": With respect to either of the Co-Issuers, any chairman, deputy chairman, president, vice president, managing director, secretary, director, treasurer or other officer thereof or any chairman, deputy chairman, president, vice president, secretary, director, treasurer or other officer of any duly appointed agent thereof who is authorized to act for the Issuer or the Co-Issuer, as the case may be, in matters relating to, and binding upon, such Issuer or the Co-Issuer. With respect to the Servicer, any member, manager, officer, employee or agent of the Servicer, as applicable, who is authorized to act for the Servicer, in matters relating to, and binding upon, the Servicer, with respect to the subject matter of the request, certificate or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of any express trust or as custodian, a Responsible Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and such certification may be considered as in full force and effect until receipt by such other party of written notice to the contrary.

"Balance": On any date, with respect to cash or Eligible Investments in the Collection Account, the Initial Deposit Account, the Loan Funding Account or the Expense Reimbursement Account, the aggregate (i) face amount or current balance, as the case may be, of cash, demand deposits, time deposits, certificates of deposit, bankers' acceptances, federal funds and commercial bank money market accounts; (ii) outstanding principal amount of interest-

bearing government and corporate securities; and (iii) purchase price of non-interest-bearing government and corporate securities, commercial paper and repurchase obligations.

"Bankruptcy Code": Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.), as amended, and any successor statute and/or any bankruptcy, insolvency, reorganization or similar law enacted under the laws of the Cayman Islands.

"Base Fee Amount": With respect to each Due Period, an amount equal to 0.30% per annum of the Quarterly Collateral Amount, calculated on the basis of a 360-day year and the actual number of days elapsed.

"Base Servicing Fee": For any Payment Date, an amount equal to the product of (a) the Base Fee Amount for such Payment Date and (b) the Servicing Fee Portion for such Payment Date; *provided* that in the event that the Servicer is removed or resigns, the amount of such fee accrued to the effective date of such removal or resignation will be payable to the Servicer on the next succeeding Payment Date or Payment Dates on which such amount may be paid, in accordance with the priority of payments set forth in Section 11.1 (*provided* that the payment of any fee payable pursuant to this proviso will be *pari passu* with the payment of any servicing fees to the then-current servicer).

"B Rating Category": With respect to any item of Portfolio Collateral, such item of Portfolio Collateral having an S&P Rating of "B+", "B" or "B-" or a Moody's Rating of "B1", "B2" or "B3".

"BB Rating Category": With respect to any item of Portfolio Collateral, such item of Portfolio Collateral, having an S&P Rating of "BB+", "BB" or "BB-" or a Moody's Rating of "Ba1", "Ba2" or "Ba3".

"Bear Stearns": Bear, Stearns & Co. Inc., a Delaware corporation.

"Beneficial Owners": The meaning specified in the Investment Company Act and the rules and regulations promulgated thereunder.

"Business Day": Any day that is not a Saturday, Sunday or other day on which commercial banking institutions in the City of New York, the State of New York, or in the city in which the Corporate Trust Office is located, or, to the extent action is required of a Paying Agent or the Paying and Transfer Agent, including the Trustee, in the city of the place of payment, are authorized or obligated by law or executive order to be closed. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when such Irish Paying Agent action is required.

"Calculation Agent": The meaning specified in Section 2.11(a) hereof.

"Calculation Date": The last day of each Due Period.

"Cantor": Cantor Fitzgerald & Co.

"Cap Agreement": The cap agreement entered into by the Issuer and the Cap Provider for the benefit of the Notes having a notional amount on each Payment Date equal to the Cap Notional Amount and providing for the payment by the Cap Provider to the Issuer on each such Payment Date of the Cap Payment, if any, with respect to such Payment Date, as amended or supplemented in accordance with the terms thereof.

"Cap Notional Amount": The notional amount of the Cap Agreement, which, with regard to each Payment Date commencing with the November 2007 Payment Date and ending with the August 2009 Payment Date, shall be as set forth in Schedule K hereto for the related Payment Date, and, with regard to all other Payment Dates, shall be an amount equal to zero.

"Cap Payment": The amount, if any, payable to the Issuer by the Cap Provider under the Cap Agreement on any Payment Date, being an amount equal to interest on the Cap Notional Amount at a per annum rate equal to the excess, if any, of LIBOR with respect to the related Periodic Interest Accrual Period over the Cap Strike Rate, calculated on the basis of a year of 360 days and the actual number of days elapsed.

"Cap Provider": The counterparty to the Issuer under the Cap Agreement, initially Bear Stearns Capital Markets Inc.

"Cap Strike Rate": 6% per annum.

"Cap Termination Amount": Any lump sum amount payable by the Issuer to the Cap Provider in connection with an "Event of Default" or a "Termination Event" under the Cap Agreement (as such terms are defined under the Cap Agreement), which lump sum amount is based upon, among other things, the notional amount of the Cap Agreement.

"CCC/Caa Portfolio Collateral": Portfolio Collateral (excluding Defaulted Portfolio Collateral) that has a Moody's Rating below "B3" or an S&P Rating below "B-".

"CCC Rating Category": An item of Portfolio Collateral having a S&P Rating of "CCC+", "CCC" or "CCC-" or a Moody's Rating of "Caa1", "Caa2" or "Caa3".

"CDS/TRS Termination Payment Amount": With respect to the Class A-1LA Noteholder in connection with an Optional Redemption, (i) on any Payment Date after the August 2010 Payment Date, an amount equal to the present value (calculated at LIBOR) of each of the remaining scheduled payments of interest up to (and including) the August 2011 Payment Date, calculated by multiplying, for each such remaining scheduled Payment Date, (a) the Applicable Periodic Rate for such Payment Date with respect to the Class A-1LA Notes net of LIBOR and (b) the Aggregate Principal Balance of the Class A-1LA Notes as of the Optional Redemption Date, and (ii) on or after the August 2011 Payment Date, zero.

"Class": Any of the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class B-1L Notes, the Class B-2L Notes and the Combination Notes.

"Class A Notes": The Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes and the Class A-3L Notes.

"Class A Overcollateralization Percentage": 107.0% (for purposes of the Class A Overcollateralization Test).

"Class A Overcollateralization Ratio": As of any date of determination, the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of such date, calculated in accordance with the Overcollateralization Ratio Adjustment, plus (2) the sum of the Balance of Eligible Investments and cash in the Collection Account, representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amount of the Class A Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to such Classes of Notes not paid when due, until such amounts, if any, are paid in full) as of such date.

"Class A Overcollateralization Test": A test that will be satisfied on any date of determination if the Class A Overcollateralization Ratio is at least equal to the Class A Overcollateralization Percentage.

"Class A-1L Notes": The Class A-1LA Notes and the Class A-1LB Notes.

"Class A-1LA Notes": The U.S. $635,000,000 Class A-1LA Floating Rate Extendable Notes due August 2024 issued hereunder by the Co-Issuers and having the terms described herein.

"Class A-1LB Notes": The U.S. $115,000,000 Class A-1LB Floating Rate Extendable Notes due August 2024 issued hereunder by the Co-Issuers and having the terms described herein

"Class A-2L Notes": The U.S. $76,000,000 Class A-2L Floating Rate Extendable Notes due August 2024 issued hereunder by the Co-Issuers and having the terms described herein.

"Class A-3L Notes": The U.S. $48,000,000 Class A-3L Floating Rate Extendable Notes due August 2024 issued hereunder by the Co-Issuers and having the terms described herein.

"Class B Notes": The Class B-1L Notes and the Class B-2L Notes.

"Class B-1L Notes": The U.S. $36,000,000 Class B-1L Floating Rate Extendable Notes due August 2024 issued hereunder by the Co-Issuers and having the terms described herein.

"Class B-1L Overcollateralization Percentage": 106.0% (for purposes of the Class B-1L Overcollateralization Test).

"Class B-1L Overcollateralization Ratio": As of any date of determination, the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of such date, calculated in accordance

with the Overcollateralization Ratio Adjustment, plus (2) the sum of the Balance of Eligible Investments and cash in the Collection Account, representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amounts of the Class A Notes and the Class B-1L Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to such Classes of Notes not paid when due, until such amounts, if any, are paid in full) as of such date.

"Class B-1L Overcollateralization Test": A test that will be satisfied as of any date of determination if the Class B-1L Overcollateralization Ratio is at least equal to the Class B-1L Overcollateralization Percentage.

"Class B-2L Notes": The U.S. $26,000,000 Class B-2L Floating Rate Extendable Notes due August 2024 issued hereunder by the Co-Issuers and having the terms described herein.

"Class B-2L Overcollateralization Percentage": 103.63% (for purposes of the Class B-2L Overcollateralization Test).

"Class B-2L Overcollateralization Ratio": As of any date of determination, the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of such date, calculated in accordance with the Overcollateralization Ratio Adjustment less the Overcollateralization Haircut Amount, if any, plus (2) the sum of the Balance of Eligible Investments and cash in the Collection Account, representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amounts of the Class A Notes, the Class B-1L Notes and the Class B-2L Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to such Classes of Notes not paid when due, until such amounts, if any, are paid in full) as of such date.

If an item of Portfolio Collateral is both eligible to be included in the Overcollateralization Haircut Amount and is subject to an Overcollateralization Ratio Adjustment, for purposes of calculating the Class B-2L Overcollateralization Ratio, such item of Portfolio Collateral will not be discounted multiple times, but will be treated in the category that results in the largest discount to the par amount of such item of Portfolio Collateral.

"Class B-2L Overcollateralization Test": A test that will be satisfied as of any date of determination if the Class B-2L Overcollateralization Ratio is at least equal to the Class B-2L Overcollateralization Percentage.

"Class I Preferred Shares": The Class I Preferred Shares, par value $0.001 per share, issued by the Issuer; *provided* that any transfer of Class I Preferred Shares to HFP from any third party shall require the exchange and conversion of such Class I Preferred Shares into Class II Preferred Shares.

"Class II Preferred Share Dividend": Class II Preferred Share Base Dividend, Class II Preferred Share Additional Dividend and Class II Preferred Share Supplemental Dividend.

"Class II Preferred Share Additional Dividend": For any Payment Date, an amount equal to the sum of (a) the product of (i) the Additional Fee Amount for such Payment Date and (ii) the Class II Preferred Share Portion for such Payment Date plus (b) on any Payment Date that any part of the Class II Preferred Share Base Dividend was not paid on the preceding Payment Date, interest on such unpaid amount in an amount equal to the product of (i) LIBOR for the applicable period and (ii) the actual number of days in such Due Period, divided by 360 plus (c) on any Payment Date that any part of the Class II Preferred Share Additional Dividend was not paid on the preceding Payment Date, such unpaid Class II Preferred Share Additional Dividend and interest thereon in an amount equal to the product of (i) LIBOR for the applicable period and (ii) the actual number of days in such Due Period divided by 360.

"Class II Preferred Share Base Dividend": For any Payment Date, an amount equal to the product of (a) the Base Fee Amount for such Payment Date and (b) the Class II Preferred Share Portion for such Payment Date.

"Class II Preferred Share Supplemental Dividend": For any Payment Date, an amount equal to the product of (a) the Supplemental Fee Amount for such Payment Date and (b) the Class II Preferred Share Portion for such Payment Date.

"Class II Preferred Share Percentage": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preferred Shares on the Calculation Date related to such Payment Date and the denominator of which is the total number of Outstanding Preferred Shares on such Calculation Date.

"Class II Preferred Share Portion": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"Class II Preferred Shares": The Class II Preferred Shares, par value $0.001 per share, issued by the Issuer and held by HFP; *provided* that any transfer of Class II Preferred Shares by HFP to any third party shall require the exchange and conversion of such shares into Class I Preferred Shares.

"Clearance System": The Euroclear System or Clearstream or both.

"Clearstream": Clearstream Banking, *société anonyme*.

"CLO Security": A U.S. dollar-denominated collateralized loan obligation or a similar obligation that entitles the holders thereof to receive payments that depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the CLO Securities) on the credit exposure to, or cash flow from, a portfolio of collateral of which at least 75% consists of commercial loans (including eligible synthetic securities whose reference obligations consist of commercial loans); *provided* that not more than 25% of the Aggregate Principal Amount of any CLO Security may be comprised of Synthetic

Securities; and *provided further* that each CLO Security must have a public or an estimated rating from each of the Rating Agencies.

"Closing Date": May 9, 2007.

"Closing Expense Account": The meaning specified in Section 10.2 hereof.

"Closing Expense Deposit": The cash credited to the Closing Expense Account on the Closing Date pursuant to Section 3.2(f) hereof.

"Closing Expenses": The meaning specified in Section 11.1(a) hereof.

"Code": The United States Internal Revenue Code of 1986, as amended.

"Co-Issuer": As defined in the first sentence of this Indenture.

"Co-Issuers": The Issuer and the Co-Issuer.

"Collateral": The Trust Estate.

"Collateral Account": The meaning specified in Section 10.2 hereof.

"Collateral Administration Agreement": The meaning specified in Section 10.5(g) hereof.

"Collateral Administrator": The collateral administrator under the Collateral Administration Agreement, initially Investors Bank & Trust Company.

"Collateral Agent": The meaning specified in the Paying and Transfer Agency Agreement.

"Collateral Disposition Proceeds": All proceeds (including, to the extent so determined by the Servicer, any payments received in connection with a consent or similar solicitation and including any amounts received in connection with an item of Defaulted Portfolio Collateral up to an amount equal to, in the aggregate, the Principal Balance of such item of Defaulted Portfolio Collateral) received during a Due Period from the sale or other disposition of any Portfolio Collateral included in the Trust Estate, net of any reasonable amounts expended by the Trustee in connection with such sale or other disposition (including without limitation disposition proceeds from liquidation of the Trust Estate pursuant to Section 9.11). Accrued interest may also be treated as Collateral Disposition Proceeds (y) to the extent necessary to pay for the principal amount of or accrued interest on Substitute Portfolio Collateral if the item of sold Portfolio Collateral paid interest before, and in the same Due Period as, the date of sale or (z) to the extent such amounts are Purchased Accrued Interest treated as Collateral Principal Collections hereunder. Amounts received with respect to Equity Portfolio Collateral or in connection with a consent or similar solicitation shall be treated as Collateral Interest Collections to the extent such proceeds are in excess of the Principal Balance (determined immediately prior to such Portfolio Collateral becoming Equity Portfolio Collateral) of the Portfolio Collateral disposed of.

"Collateral Interest Collections": With respect to any Payment Date, the sum of (without duplication) (i) all payments of interest with respect to any Portfolio Collateral (excluding accrued interest classified as Collateral Disposition Proceeds but including any other receipts of accrued interest (including Accrued Interest on Sale) and, to the extent so determined by the Servicer, any payments (other than principal) received in connection with a consent or similar solicitation, fees received in connection with an amendment (but only to the extent such amendment does not result in diminishing the principal money terms of such item of Portfolio Collateral) and including any commitment, standby or similar fees with respect to the unfunded portion of the Issuer's commitment to make or otherwise fund advances with respect to a Delayed Drawdown Loan or a Revolving Loan which are received during the applicable Due Period, less any Retained Accrued Interest, (ii) the Account Income, if any, in the Collection Account, the Initial Deposit Account and the Loan Funding Account which is received during the applicable Due Period, as each is determined as of the Calculation Date relating to such Payment Date (including, without limitation, Account Income on funds on deposit in the Initial Deposit Account transferred to the Collection Account on the Effective Date pursuant to Section 3.3(a) hereof), (iii) on or after the Effective Date, any funds transferred by the Trustee from the Initial Deposit Account pursuant to Section 10.2(f) hereof, (iv) any amounts received, other than with respect to principal, from a Securities Lending Agreement, and (v) income on Eligible Investments in and/or the securities credited to the Default Swap Collateral Account (to the extent the Issuer is entitled to receive such income pursuant to the terms hereof).

"Collateral LIBOR": With respect to any item of Portfolio Collateral, the London interbank offered rate for U.S. dollar deposits as determined under the terms of the related Underlying Instrument.

"Collateral Principal Collections": With respect to any Payment Date, all payments of principal of (without duplication) any Portfolio Collateral (including (i) any remaining Deposit (but excluding any Account Income thereon and subject to Section 3.4(d) hereof) not applied to purchase Original Portfolio Collateral or to effect an Initial Deposit Redemption, (ii) any payment of Premium, (iii) to the extent so determined by the Servicer, any payments received in connection with a consent or similar solicitation, fees received in connection with an amendment and including principal received in connection with or any payments received with respect to an item of Credit Risk Portfolio Collateral in connection with any consent or similar solicitation, (iv) all proceeds received from the sale of any warrant (whether sold as part of a Unit or separately), (v) any Collateral Disposition Proceeds which are received during the applicable Due Period, as determined as of the Calculation Date relating to such Payment Date, (vi) amounts representing Purchased Accrued Interest, (vii) amounts transferred from the Loan Funding Account upon the sale or disposition of Delayed Drawdown Loans or Revolving Loans or upon the expiration of a drawdown or revolving period, (viii) funds (other than income thereon) transferred from a Default Swap Collateral Account to the Collection Account, (ix) any amounts received by the Issuer that do not qualify as Collateral Interest Collections (other than those standing to the credit of any Default Swap Collateral Account or Default Swap Issuer Account) and (x) on or after the Effective Date, any funds in the Initial Deposit Account not considered Collateral Interest Collections pursuant to Section 10.2(f) hereof). Notwithstanding the foregoing, Collateral Principal Collections shall include (A) any other amounts not included in Collateral Interest Collections or Adjusted Collateral Interest Collections, (B) any payments received with respect to an item of Defaulted Portfolio Collateral

up to, in the aggregate, the Principal Balance of such item of Defaulted Portfolio Collateral and (C) any amounts recharacterized as Collateral Principal Collections in connection with any distribution of Payment Date Equity Securities.

"Collateral Purchase Amount": With respect to any Payment Date, the aggregate amount of funds deposited into the Collection Account on such Payment Date pursuant to clause TENTH of Section 11.1(c)(i) and clause FOURTH of Section 11.1(c)(ii).

"Collateral Quality Formula": The formula set forth in Annex D to be used to interpolate between values or rows of the criteria set forth in the Collateral Quality Matrix. For purposes of such calculation, (i) the Moody's Asset Correlation Test requirement in the applicable row of the Collateral Quality Matrix must be equal to or less than 5.5% and greater than or equal to 3.0%, (ii) the Moody's Weighted Average Recovery Rate requirement in the applicable row of the Collateral Quality Matrix must be less than or equal to 46.0% and greater than or equal to 36.5%, (iii) the Moody's Weighted Average Rating Test requirement in the applicable row of the Collateral Quality Matrix must be equal to or greater than 1500 and less than or equal to 2500 and (iv) the Weighted Average Margin requirement in the applicable row of the Collateral Quality Matrix must be equal to or greater than 1.6% and less than or equal to 3.05%.

"Collateral Quality Matrix": For any date of determination, the row of the table set forth in Annex D that has been selected by the Servicer (in accordance with the procedures described in the next sentence) for use in determining the scores that are required to satisfy the Moody's Asset Correlation Test, the Minimum Average Recovery Rate Test with respect to Moody's, the Moody's Weighted Average Rating Test and the Weighted Average Margin Test. The Servicer may elect to (i) have a different row of the table set forth in Annex D apply and (ii) add additional rows to the table set forth in Annex D by interpolating using the Collateral Quality Formula (which may or may not include a combination of existing values), in each case upon providing written notice to the Issuer and the Trustee, so long as, immediately after giving effect to the change in rows, each of the Moody's Asset Correlation Test, the Minimum Average Recovery Rate Test with respect to Moody's, the Moody's Weighted Average Rating Test and the Weighted Average Margin Test will be satisfied according to the scores that are prescribed by the newly selected row and the Standard & Poor's CDO Monitor Test would have been satisfied as of the date of the most recent purchase or sale of an item of Portfolio Collateral had such test been calculated using the Current Portfolio, the Proposed Portfolio, and the S&P Scenario Loss Rate that was in effect immediately prior to such purchase or sale, but using the S&P Break-Even Loss Rate applicable to the Notes that would have been applicable after giving effect to the change in combinations; it being agreed that the Servicer shall be under no obligation to elect to change the Collateral Quality Matrix In determining whether the criteria set forth in the Collateral Quality Matrix are satisfied, the Servicer may use the Collateral Quality Formula to interpolate between values of such criteria or may use any other method that is agreed by the Issuer and Moody's with written notice to the Trustee. If a new Standard & Poor's CDO Monitor is required in connection with selecting a new row of the matrix, the Servicer will give notice to S&P and the Trustee at least two weeks prior to the selection of such new row.

"Collateral Quality Tests": The Moody's Asset Correlation Test, the Minimum Average Recovery Rate Test, the Moody's Weighted Average Rating Test, the Moody's Weighted Average Rating Test for CLO Securities, the Weighted Average Coupon Test, the Weighted Average Margin Test, the Weighted Average Life Requirement and the Standard & Poor's CDO Monitor Test.

"Collection Account": The meaning specified in Section 10.2 hereof.

"Collections": With respect to any Payment Date, the sum of (i) the Collateral Interest Collections collected during the applicable Due Period and (ii) the Collateral Principal Collections collected during the applicable Due Period, as each is determined as of the Calculation Date relating to such Payment Date.

"Combination Notes" The Combination Notes due August 2024 in the Aggregate Principal Amount of U.S.$10,000,000 and having the terms described in Section 2.2, 2.3 and Article XVI hereof.

"Component" or "Component Security": Each of the Note Component and the Preferred Share Component, individually or collectively, as the context may require.

"Controlling Class": Shall mean the Class A-1LA Notes, so long as any Class A-1LA Notes are outstanding, then the Class A-1LB Notes, so long as any Class A-1LB Notes are Outstanding, then the Class A-2L Notes, so long as any Class A-2L Notes are Outstanding, then the Class A-3L Notes, so long as any Class A-3L Notes are Outstanding, then the Class B-1L Notes, so long as any Class B-1L Notes are Outstanding and then the Class B-2L Notes, so long as any Class B-2L Notes are Outstanding.

"Corporate Trust Office": The principal corporate trust office of the Trustee currently located at Investors Bank & Trust Company, 200 Clarendon Street, Boston MA, 02116, Attention: CDO Services Group, or at such other address as the Trustee may designate by notice to the Noteholders, the Servicer, the Issuer and the Rating Agencies or the principal corporate trust office in the United States of any successor Trustee.

"Coupon Adjustment": To the extent the Weighted Average Coupon of the Fixed Rate Portfolio Collateral exceeds the percentage specified in the definition of Weighted Average Coupon Test, then the Weighted Average Margin Test (as specified in the row of the Collateral Quality Matrix then in effect), will be reduced by a per annum percentage equal to the product of (x) the amount by which the Weighted Average Coupon of the Fixed Rate Portfolio Collateral exceeds the percentage specified in the row of the Collateral Quality Matrix then in effect for such Weighted Average Coupon, times (y) a fraction, the numerator of which is the Aggregate Principal Amount of the Fixed Rate Portfolio Collateral and the denominator of which is the Aggregate Principal Amount of the Floating Rate Portfolio Collateral, times (z) 360/365.

To the extent the Weighted Average Margin of the Floating Rate Portfolio Collateral exceeds the percentage specified in the row of the Collateral Quality Matrix then in effect for such Weighted Average Margin, then the Weighted Average Coupon Test will be reduced by a per annum percentage equal to the product of (x) the amount by which the Weighted Average Margin exceeds the percentage specified in the current row of the Collateral

Quality Matrix, times (y) a fraction, the numerator of which is the Aggregate Principal Amount of the Floating Rate Portfolio Collateral and the denominator of which is the Aggregate Principal Amount of the Fixed Rate Portfolio Collateral, times (z) 365/360.

"Credit Improved Criteria": Shall mean with respect to any item of Portfolio Collateral, in the Servicer's reasonable judgment, such item of Portfolio Collateral has significantly improved in credit quality, and:

(a) Moody's, S&P or Fitch has placed such item of Portfolio Collateral or any other class of security issued together with such item of Portfolio Collateral (or, if such item of Portfolio Collateral is not rated, the issuer thereof) on its credit watch list (or similar list) with the potential for developing positive credit implications since the date the Issuer first acquired such item of Portfolio Collateral (and for so long as such item of Portfolio Collateral or issuer, as applicable, remains on such list) or there has been an upgrade in the rating of such item of Portfolio Collateral, issuer or other class of security issued together with such item of Portfolio Collateral, as applicable, by Moody's, S&P or Fitch by one or more subcategories from the rating of such item of Portfolio Collateral or issuer, as applicable, by Moody's, S&P or Fitch, as applicable, in effect on the date the Issuer first acquired such item of Portfolio Collateral;

(b) with respect to a Portfolio Loan, since the date on which such Portfolio Loan was first acquired by the Issuer, has increased in price to 101.0% or more of its original purchase price or the spread of which over the related reference rate has been reduced, in each case, in accordance with its Underlying Instruments since the date on which such item of Portfolio Collateral was first acquired by the Issuer by 0.25% or more (in the case of an item of Portfolio Collateral with a spread over the related reference rate less than or equal to 2.00% at the time such item of Portfolio Collateral was first acquired by the Issuer) or 0.50% or more (in the case of an item of Portfolio Collateral with a spread over the related reference rate greater than 2.00% at the time such item of Portfolio Collateral was first acquired by the Issuer) for reasons primarily due to an improvement in the related borrower's financial ratios or financial results and not as a result of general market conditions; or

(c) with respect to any item of Portfolio Collateral which is not a Portfolio Loan, an increase in the market price (expressed as a percentage of par value) since the date of purchase of such item of Portfolio Collateral which, compared to the change in the average market price of a representative sample (as determined by the Servicer) of other debt securities with similar terms and credit characteristics and that would be eligible to be pledged as Portfolio Collateral, is greater than 3.00% of the par value or more relative to such representative sample; or a decrease since the date of purchase of such item of Portfolio Collateral of more than 10.0% in the difference between the yield to worst call on such item of Portfolio Collateral compared to the yield on the relevant United States Treasury security;

provided, however, that the criteria in (b) and (c) above may be used only as corroboration of other bases for the Servicer's Judgment.

"Credit Improved Portfolio Collateral": Any item of Portfolio Collateral which, (a) in the Servicer's commercially reasonable judgment consistent with the standard of care set forth in the Servicing Agreement (*provided*, that in forming such judgment a decrease in credit spread or an increase in Market Value of such item of Portfolio Collateral may only be utilized as corroboration of other bases of such judgment), has improved in credit quality or otherwise satisfies the Credit Improved Criteria or (b) is sold pursuant to a Portfolio Improvement Exchange.

"Credit Risk Criteria": With respect to any item of Portfolio Collateral:

(a) Moody's, Fitch or S&P has placed such item of Portfolio Collateral or any other class of security issued together with such item of Portfolio Collateral (or, if such item of Portfolio Collateral is not rated, the issuer thereof) on its credit watch list with the potential for developing negative credit implications (or similar list) since the date the Issuer first acquired such item of Portfolio Collateral (and for so long as such item of Portfolio Collateral or issuer, as applicable, remains on such list) or there has been a reduction in the rating of such item of Portfolio Collateral, issuer or other class of security issued together with such item of Portfolio Collateral, as applicable, by Moody's, Fitch or S&P, as applicable, by one or more subcategories from the rating of such item of Portfolio Collateral or issuer, as applicable, by Moody's, Fitch or S&P, as applicable, in effect on the date the Issuer first acquired such item of Portfolio Collateral;

(b) which is a Portfolio Loan, the spread over the applicable reference rate has been increased in accordance with the related Underlying Instruments since the date on which such Portfolio Loan was first acquired by the Issuer by 0.50% or more (in the case of a Portfolio Loan with a spread over the applicable reference rate at the time such Portfolio Loan was first acquired by the Issuer less than or equal to 2.00%) or 0.75% or more (in the case of a Portfolio Loan with a spread over the applicable reference rate at the time such Portfolio Loan was first acquired by the Issuer greater than 2.00%) primarily due to a deterioration in the related borrower's financial ratios or financial results and not as a result of general market conditions; *provided, however*, that the criteria in this paragraph (b) may be used only as corroboration of other bases for the Servicer's judgment;

(c) which is a CLO Security, a decline in the par amount of underlying collateral such that the aggregate par amount of the entire class of securities to which such item of Portfolio Collateral belongs and all other securities secured by the same pool of collateral and that rank senior in priority of payment to such class of securities exceeds the aggregate par amount of all collateral (excluding defaulted collateral) securing such securities; or

(d) it is a Deferred Interest PIK Bond or a partial Deferred Interest PIK Bond.

"Credit Risk Portfolio Collateral": Any item of Portfolio Collateral (other than an item of Defaulted Portfolio Collateral) which, in the Servicer's commercially reasonable business judgment consistent with the standard of care set forth in the Servicing Agreement (which judgment shall not be questioned as a result of subsequent events; *provided*, that in

forming such judgment an increase in credit spread or a decrease in Market Value of such item of Portfolio Collateral may only be utilized as corroboration of other bases of such judgment), (i) is likely to decline in credit quality and, with the passage of time, become Defaulted Portfolio Collateral, and (ii) if a Sales Restriction Condition has occurred, otherwise satisfies the Credit Risk Criteria.

"Cumulative Interest Amount": With respect to a Payment Date and any Class of Notes the applicable Periodic Interest Amount with respect to such Payment Date and the applicable Periodic Rate Shortfall Amount, if any, with respect to such Payment Date.

"Current Pay Obligation": An item of Portfolio Collateral that would otherwise be an item of Defaulted Portfolio Collateral but as to which (i) no interest or principal payments (including deferred interest) are due and payable that are unpaid and the Servicer reasonably expects that the issuer or obligor of such Portfolio Collateral will continue to make scheduled payments of interest thereon and principal thereof and will pay the principal thereof by maturity, (ii) if the issuer or obligor of such item of Portfolio Collateral is subject to a bankruptcy proceeding, a bankruptcy court has authorized the payment of interest due and payable on such item of Portfolio Collateral, and (iii) either (a) the Market Value of such item of Portfolio Collateral is equal to or greater than 80% of par and the Moody's Rating of such item of Portfolio Collateral is at least "Caa1", (b) the Market Value of such item of Portfolio Collateral is equal to or greater than 85% of par and the Moody's Rating of such item of Portfolio Collateral is at least "Caa2" (or, if the Moody's Rating has been withdrawn, the Moody's Rating of such item of Portfolio Collateral was at least "Caa2" prior to withdrawal) or (c) the Market Value of such item of Portfolio Collateral is equal to or greater than 80% of par and the Moody's Rating of such item of Portfolio Collateral is below "Caa2" (or, if the Moody's Rating has been withdrawn, the Moody's Rating of such item of Portfolio Collateral was below "Caa2") prior to withdrawal.

"Current Portfolio": Pledged Securities in the Trust Estate immediately prior to the sale, maturity or the other disposition of an item of Portfolio Collateral or immediately prior to the purchase of an item of Portfolio Collateral, as the case may be.

"Custodian": As such term is defined in Section 2.1(b) hereof.

"Debt Security": Interests in corporate and other debt securities, including senior secured rate floating notes (other than Eligible Investments, CLO Securities and Portfolio Loans), and, for the avoidance of doubt, Portfolio Loans shall not be considered Debt Securities.

"Default": Any event or condition the occurrence or existence of which, with the giving of notice or lapse of time or both, would become an Event of Default.

"Defaulted Portfolio Collateral": Any item of Portfolio Collateral (other than an item of Portfolio Collateral which is a DIP Loan, unless such item of Portfolio Collateral itself is in default since acquisition), including with respect to a Synthetic Security, the related Reference Obligation, with respect to which:

(i) the issuer thereof has defaulted in the payment of principal or interest (in respect of Portfolio Loans only, beyond five Business Days, *provided* the Servicer certifies in writing to the Trustee that it believes, in its reasonable business judgment, that

such delay is not credit related), unless, in the case of a failure of such issuer to make required interest payments, such issuer has resumed current cash payments of interest and paid in full all accrued and unpaid interest;

(ii) such item of Portfolio Collateral is *pari passu* with or subordinated to other material indebtedness for borrowed money owing by the issuer thereof ("Other Indebtedness") and such issuer has defaulted in the payment of principal or interest (beyond any applicable grace or notice period and without regard to any waiver of such default) on such Other Indebtedness, unless, in the case of a failure of such issuer to make required interest payments, such issuer has resumed current cash payments of interest and has paid in full any accrued interest due and payable thereon;

(iii) an Insolvency Event has occurred with respect to the issuer thereof;

(iv) the Servicer has knowledge (or such rating information has been published) that the issuer thereof is rated "D" or "SD" by S&P (calculated in accordance with Schedule D) (or S&P has withdrawn its rating which prior to such withdrawal was "D" or "SD");

(v) such item of Portfolio Collateral is a PIK Bond or Partial Deferred Interest Bond as to which the issuer thereof or obligor thereon (or, in the case of a Synthetic Security, the related Reference Obligor) has previously deferred or capitalized any interest due thereon for (a) the lesser of (i) 6 months and (ii) one Payment Date (except to the extent all interest so deferred or capitalized has subsequently been paid in full in cash, including interest thereon) if such item of Portfolio Collateral has a Moody's Rating below "Baa3" or (b) the lesser of (i) one year and (ii) two consecutive Payment Dates (except to the extent all interest so deferred or capitalized has subsequently been paid in full in cash, including interest thereon) if such item of Portfolio Collateral has a Moody's Rating of "Baa3" or greater;

(vi) there has been proposed or effected any distressed exchange or other distressed debt restructuring where the issuer of such Portfolio Collateral has offered the debt holders a new security or package of securities that, in the commercially reasonable judgment of the Servicer amounts to a diminished financial obligation;

(vii) such item of Portfolio Collateral is declared to be an item of Defaulted Portfolio Collateral by the Servicer, but only so long as it remains so designated by the Servicer in its sole discretion;

(viii) such item of Portfolio Collateral is a CLO Security which is rated "CC" or below by S&P (or S&P has withdrawn its rating which prior to such withdrawal was rated "CC") or has a Moody's Rating of "Ca" or "C" or below;

(ix) such item of Portfolio Collateral is a Participation that would, if the underlying loan were an item of Portfolio Collateral, be an item of Defaulted Portfolio Collateral under any of clauses (i) through (iii) above or with respect to which the Selling Institution has defaulted in the performance of any of its payment obligations under the Participation; or

(x) such item of Portfolio Collateral is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were an item of Portfolio Collateral, be an item of Defaulted Portfolio Collateral under any of clauses (i) through (iv) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security;

provided that any item of Portfolio Collateral that is classified as an item of "Defaulted Portfolio Collateral" will cease to be so classified if such item of Portfolio Collateral, at any date thereafter, (a) would not otherwise be classified as an item of Defaulted Portfolio Collateral in accordance with the definition of such term and (b) otherwise meets the collateral criteria described herein as of such date.

"Default Swap": Any U.S. dollar denominated "pay as you go" credit default swap or total return swap with respect to a Reference Obligation, which the Issuer (directly or indirectly) purchased from or entered into with a Default Swap Counterparty, which contains equivalent probability of default, recovery upon default (or a specific percentage thereof), expected loss, maturity, interest rate and other non-credit characteristics as those of the related Reference Obligation (without taking account of such considerations as they relate to the Default Swap Counterparty); *provided* that (i) the Reference Obligation is a CLO Security, (ii) such Default Swap will not cause the Issuer to be treated as engaged in a trade or business in the United States for U.S. Federal income tax purposes or otherwise subject the Issuer to U.S. Federal income tax on a net income tax basis, (iii) either (a) amounts receivable by the Issuer are not expected to (based on the Servicer's determination, which may include consultation with counsel to the Issuer) be subject to U.S. or foreign withholding tax in respect of the Default Swap or (b) the Default Swap Counterparty is required to make "gross-up" payments pursuant to the related Underlying Instruments that cover the full amount of any such withholding tax on an after-tax basis (including any tax on such additional payments), (iv) the Issuer has caused to be deposited in a Default Swap Collateral Account an amount in cash at least equal to the aggregate of (or the amount required under the terms of the Synthetic Security to provide for) all further payments (contingent or otherwise) that the Issuer is or may be required to make to the Default Swap Counterparty under the Default Swap; (v) the agreement relating to such Default Swap contains "non-petition" provisions with respect to the Issuer and "limited recourse" provisions limiting the Default Swap Counterparty's rights in respect of the Default Swap Collateral to the funds and other property credited to the Default Swap Collateral Account related to such Default Swap; (vi) the notional amount of such Default Swap is equal to the principal amount of the Reference Obligation; (vii) the agreement relating to such Default Swap Collateral contains provisions to the effect that upon the occurrence of an "Event of Default" or "Termination Event" (other than an "Illegality" or "Tax Event"), if any, where the Default Swap Counterparty is the sole "Defaulting Party" or the sole "Affected Party" ("Event of Default," "Termination Event," "Illegality," "Tax Event," "Defaulting Party" or "Affected Party," as applicable, as such terms are defined in the ISDA Master Agreement relating to such Default Swap), (a) the Issuer may terminate its obligations under such Default Swap and upon such termination and payment of any termination amount payable under the Default Swap, any lien in favor of the Default Swap Counterparty over its related Default Swap Collateral Account will be terminated and (b) upon payment of any termination amount payable under the Default Swap, the Issuer will no longer be obligated to make any payments to the Default Swap Counterparty with respect to such Default Swap, (viii) any Default Swap shall be positively indexed to the related Reference Obligation on

no more than a one-to-one basis, (ix) if any Reference Obligation delivered pursuant to any Default Swap does not constitute Portfolio Collateral and it would cause any collateral quality test or concentration limitation not to be satisfied, such Reference Obligation shall be deemed Equity Portfolio Collateral, and (x) (a) such Default Swap shall be documented with a standard ISDA form master agreement, as modified by appropriate schedules and confirmations and (b) (1) such Default Swap is a Form-Approved Synthetic Security or (2) the Rating Condition has been satisfied with respect to the purchase of or entry into such Default Swap.

"Default Swap Collateral": Cash, securities or other collateral, meeting the definition of Eligible Investments, purchased or posted by the Issuer for the benefit of the Default Swap Counterparty in connection with the purchase of a Default Swap, including without limitation a payment of cash or delivery of securities by the Issuer.

"Default Swap Collateral Account": The account established pursuant to Section 10.2 hereof with the Securities Intermediary in the name of the Trustee.

"Default Swap Counterparty": Any entity, whose long term senior unsecured debt or derivatives counterparty rating shall be at least "A2" by Moody's and a long term rating of at least "A" or a short term rating of at least "A-1" by S&P, required to make payments on Synthetic Portfolio Collateral pursuant to the terms of such Default Swap or any guarantee thereof to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"Default Swap Counterparty Termination Payment": An amount payable by the Issuer to a Default Swap Counterparty that is due following the designation of an "Early Termination Date" (as defined in the related credit default swap) (other than in respect of "Illegality" or a "Tax Event" (each as defined in the related credit default swap)), as to which the Default Swap Counterparty is the sole "Defaulting Party" or the sole "Affected Party" (as each such term is defined in the ISDA Master Agreement related to such Synthetic Security).

"Default Swap Issuer Account": The account established pursuant to Section 10.2 hereof with the Securities Intermediary in the name of the Trustee.

"Deferred Interest PIK Bond": As of any date of determination, any PIK Bond that is not an item of Defaulted Portfolio Collateral that has, in accordance with its terms, deferred or paid "in-kind" any amount of interest for a period equal to:

(a) in the case of an item of Portfolio Collateral that has a Moody's Rating below "Baa3" (or, if rated "Baa3," is on credit watch for possible downgrade) or, if rated by S&P, a rating by S&P below "BBB-" (or, if rated "BBB-," is on credit watch for possible downgrade), the shorter of one accrual period or six months; and

(b) in all other cases, the shorter of two accrual periods or twelve months;

and has not, as of such date of determination, resumed timely payment of current interest in cash and repaid all outstanding deferred or capitalized interest in cash. For the avoidance of doubt, an item of Portfolio Collateral will not constitute a Deferred Interest PIK Bond if it resumes timely payment of current interest in cash and repays all outstanding deferred or capitalized interest in

cash on the Payment Date immediately succeeding the end of the interest accrual period(s) set forth above.

"Definitive Notes": Registered definitive notes in substantially the form set forth in Exhibits A-1L-4, A-2L-4, A-3L-4, B-1L-4 and B-2L-4.

"Delayed Drawdown Loan": A Portfolio Loan that, pursuant to the related Underlying Instrument or Underlying Loan and Security Agreement and lender or lenders, would obligate the Issuer, if the Issuer were to become a lender thereunder by purchasing such Portfolio Loan for inclusion in the Trust Estate, to make or otherwise fund one or more future advances to the related borrower and meeting the criteria described in Section 3.4; *provided* that, if a Delayed Drawdown Loan has been drawn in full and there are no future advance obligations to the related borrower, such Portfolio Loan will no longer be considered a Delayed Drawdown Loan.

"Deliver" or "Delivery": The taking of the following steps by the Issuer:

(a) with respect to such of the Trust Estate as constitutes an instrument, causing the Trustee to take possession in the State of New York or the Commonwealth of Massachusetts of such instrument, indorsed to the Trustee or in blank by an effective indorsement;

(b) with respect to such of the Trust Estate as constitutes tangible chattel paper, goods, a negotiable document, or money, causing the Trustee to take possession in the State of New York or the Commonwealth of Massachusetts of such tangible chattel paper, goods, negotiable document, or money;

(c) with respect to such of the Trust Estate as constitutes a certificated security in bearer form, causing the Trustee to acquire possession in the State of New York or the Commonwealth of Massachusetts of the related security certificate;

(d) with respect to such of the Trust Estate as constitutes a certificated security in registered form, causing the Trustee to acquire possession in the State of New York or the Commonwealth of Massachusetts of the related security certificate, indorsed to the Trustee or in blank by an effective indorsement, or registered in the name of the Trustee, upon original issue or registration of transfer by the issuer of such certificated security;

(e) with respect to such of the Trust Estate as constitutes an uncertificated security, causing the issuer of such uncertificated security to register the Trustee as the registered owner of such uncertificated security;

(f) with respect to such of the Trust Estate as constitutes a security entitlement, causing the Securities Intermediary to indicate by book entry that the financial asset relating to such security entitlement has been credited to the appropriate Account;

(g) with respect to such of the Trust Estate as constitutes an account or a general intangible, (i) causing the account debtor for such account or general intangible to be notified of the grant to the Trustee of a security interest in such account or general intangible, (ii) causing to be taken any steps necessary to perfect a security interest in

such account or general intangible under the laws of the Cayman Islands, and (iii) causing to be filed with the District of Columbia Recorder of Deeds a properly completed UCC financing statement that names the Issuer as debtor and the Trustee as secured party and that covers such account or general intangible;

(h) with respect to such of the Trust Estate as constitutes a deposit account, causing such deposit account to be maintained in the name of the Trustee and causing the bank with which such deposit account is maintained to agree in writing with the Trustee and the Issuer that (i) such bank will comply with instructions originated by the Trustee directing disposition of the funds in such deposit account without further consent of any other person or entity, (ii) such bank will not agree with any person or entity other than the Trustee to comply with instructions originated by any person or entity other than the Trustee, (iii) such deposit account and the property deposited therein will not be subject to any lien, claim, security interest, encumbrance, or right of set-off in favor of such bank or anyone claiming through it (other than the Trustee), (iv) such agreement will be governed by the laws of the State of New York, and (v) the State of New York will be the bank's jurisdiction of such bank for purposes of Article 9 of the UCC; or

(i) in the case of each of paragraphs (a) through (h) above, such additional or alternative procedures as may hereafter become appropriate to perfect a security interest in such items of the Trust Estate in favor of the Trustee, consistent with applicable law or regulations.

In each case of Delivery contemplated herein, the Trustee shall make appropriate notations on its records indicating that such item of the Trust Estate is held by the Trustee pursuant to and as provided herein.

Effective upon Delivery of any item of the Trust Estate, the Trustee shall be deemed to have (i) represented that its purchase of such item of the Trust Estate is made in good faith, and without notice of any adverse claim thereto appearing on the face of such item (if in physical form) or otherwise known to a Responsible Officer of the Trustee; *provided* that such representation shall not impose any other affirmative duty or obligation upon the Trustee with regard to inquiry or investigation of, or constructive notice of, adverse claims; and (ii) acknowledged that it holds such item of the Trust Estate as Trustee hereunder for the benefit of the Holders of the Notes and the other Secured Parties. Any additional or alternative procedures for accomplishing "Delivery" for purposes of paragraph (i) of this definition shall be permitted only upon delivery to the Trustee of an Opinion of Counsel to the effect that such procedures are appropriate to perfect a security interest in the applicable type of collateral in favor of the Trustee.

"Deposit": The cash credited to the Initial Deposit Account on the Closing Date (or with respect to the Post-Closing Sale Collateral, within 10 days of the Closing Date) in accordance with Section 3.2(e) hereof, including any reimbursement for amounts withdrawn from the Initial Deposit Account pursuant to Section 10.2(f), and including the first interest payment received on each Portfolio Loan and on CLO Securities (other than certain CLO Securities, as indicated on Schedule A) purchased on the Closing Date.

"Deposit Account": The meaning specified in Section 10.2 hereof.

"Depository": With respect to the Regulation S Global Notes and the Rule 144A Global Notes, DTC, its nominees, and their respective successors.

"DIP Loan": Any interest in a loan or financing facility (a) which at the time of purchase is an obligation of a debtor-in-possession pursuant to Section 364 of United States the Bankruptcy Code, (b) the terms of which have been approved by an order of a United States Bankruptcy Court, a United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as such terms are defined in the Federal Rules of Bankruptcy Procedure), (c) which has the priority allowed by either Section 364(c) or 364(d) of the Bankruptcy Code, (d) which pays interest in cash on a current basis, and (e) as to which the obligor has paid its most recent scheduled interest and principal payments (if any) and the Servicer reasonably expects that such obligor will continue to pay interest and principal payments. For purposes hereof, a DIP Loan shall not be considered a Current Pay Obligation. Any DIP Loan added as an item of Portfolio Collateral must be assigned a formal or estimated rating by Moody's and S&P.

"Discount Portfolio Collateral": (a) Any Portfolio Loan (including a Synthetic Security, the Reference Obligation of which is a Portfolio Loan) which was purchased at a price less than 85% of the Principal Balance thereof, (b) any item of Portfolio Collateral which is a CLO Security (including a Synthetic Security, the Reference Obligation of which is a CLO Security) and which had a Moody's Rating of below "Aa3" at the time of purchase which was purchased at a price less than 80% of the Principal Balance thereof and (c) any item of Portfolio Collateral which is a CLO Security (including a Synthetic Security, the Reference Obligation of which is a CLO Security) and which had a Moody's Rating of "Aa3" or greater at the time of purchase which was purchased at a price less than 92% of the Principal Balance thereof; *provided* that (i) (x) any Portfolio Loan (including a Synthetic Security, the Reference Obligation of which is a Portfolio Loan) that would otherwise be considered Discount Portfolio Collateral, but that has a Market Value above 90% of its Principal Balance for 22 consecutive Business Days after being purchased by the Issuer, will no longer be considered Discount Portfolio Collateral, (y) any item of Portfolio Collateral which is a CLO Security (including a Synthetic Security, the Reference Obligation of which is a CLO Security) and which had a Moody's Rating of below "Aa3" at the time of purchase that would otherwise be considered Discount Portfolio Collateral, but that has a Market Value above 85% of its Principal Balance for 60 consecutive Business Days after being purchased by the Issuer, will no longer be considered Discount Portfolio Collateral, and (z) any item of Portfolio Collateral which is a CLO Security (including a Synthetic Security, the Reference Obligation of which is a CLO Security) and which had a Moody's Rating of "Aa3" or greater at the time of purchase that would otherwise be considered Discount Portfolio Collateral, but that has a Market Value above 95% of its Principal Balance for 60 consecutive days after being purchased by the Issuer will no longer be considered Discount Portfolio Collateral; and (ii) any item of Portfolio Collateral that is a Portfolio Loan (including a Synthetic Security, the Reference Obligation of which is a Portfolio Loan) that would otherwise be considered Discount Portfolio Collateral, but that is purchased with the proceeds of sale of an item of Portfolio Collateral that was not an item of Discount Portfolio Collateral at the time of its purchase, so long as such item of Portfolio Collateral (a) was purchased or committed to be purchased within five Business Days of such sale, (b) was purchased at a price (as a percentage

of par) equal to or greater than the sale price of the sold item of Portfolio Collateral, (c) was purchased at a purchase price not less than 65% of the Principal Balance thereof and (d) had a rating equal to or greater than the rating of the sold item of Portfolio Collateral, will not be considered Discount Portfolio Collateral. Notwithstanding the foregoing, at no time during the period commencing on the Closing Date through the Final Maturity Date, shall the Aggregate Principal Amount of all items of Discount Portfolio Collateral purchased pursuant to clause (ii) exceed in the aggregate 10% of the Required Portfolio Collateral Amount; *provided further that* no more than 3.5% of the Required Portfolio Collateral Amount of such 10% cumulative limitation may consist of CLO Securities; *provided further that*, if an item of Portfolio Collateral that is a Portfolio Loan purchased pursuant to clause (ii) above is repaid in full, is sold for a price equal to at least 97.5% of its unpaid Principal Balance or has a Market Value above 90% of its Principal Balance for at least 22 consecutive Business Days after being purchased, such item of Portfolio Collateral shall not be taken into account for purposes of the 10% limitation in clause (ii) above; *provided further that*, as of any date of determination, the Aggregate Principal Amount of items of Portfolio Collateral that are Portfolio Loans in the Trust Estate purchased pursuant to clause (ii) above, may not exceed (x) 5% of the Aggregate Par Amount or (y) if the weighted average purchase price of items of Portfolio Collateral that are Portfolio Loans purchased pursuant to clause (ii)(b) above is less than 75% as of such date of determination, 2.5% of the Aggregate Par Amount. In addition, when determining whether an Underlying Security purchased in combination with a Coupon Security constitutes, collectively, an item of Discount Portfolio Collateral, the sum of the total dollar purchase prices of such Underlying Security and Coupon Security divided by the face amount of the Underlying Security shall be used to determine whether such item of Portfolio Collateral is an item of Discount Portfolio Collateral.

"Distributable Equity Securities" Any and all Equity Portfolio Collateral, which cannot be sold by the Servicer as a result of the regulatory, market or other restrictions, as determined in good faith by the Servicer, and shall have the value as determined by an independent third party with relevant experience in making such valuation.

"Distribution Compliance Period": The period ending on the 40th day after the later of the conclusion of the offering of the Notes and the Closing Date.

"DTC": The Depository Trust Company, a New York corporation, or any successor thereto.

"Due Date": Each date on which a distribution or payment is due on a Pledged Security (which includes any Eligible Investment).

"Due Period": With respect to any Payment Date, the period beginning on the day following the last day of the immediately preceding Due Period (or, in the case of the Due Period that is applicable to the first Payment Date beginning on the Closing Date) and ending at the close of business on the seventh Business Day preceding such Payment Date. Amounts that would otherwise have been payable in respect of an item of Portfolio Collateral on the last day of a Due Period but for such day's not being designated a business day in the Underlying Instruments and/or as a result of a grace period for payment, if any, extending beyond the last day of a Due Period may, at the Collateral Manager's discretion, be considered included in

collections received during such Due Period provided that such amounts are received by the third Business Day immediately preceding the Payment Date.

"Effective Date": The earlier of (i) the first date on which the Deposit has been applied to the purchase (or committed to the purchase) of Original Portfolio Collateral such that the Aggregate Principal Amount of the Portfolio Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any of the Original Portfolio Collateral on or before the Effective Date) is at least equal to the Required Portfolio Collateral Amount or (ii) November 1, 2007.

"Eligible Guarantor": An entity that has credit ratings at least equal to the Moody's Required Ratings Threshold and S&P Approved Ratings Threshold.

"Eligible Guaranty": An unconditional and irrevocable guaranty of all present and future payment obligations and obligations to post collateral of the related Hedge Counterparty or an Eligible Replacement to such Hedge Counterparty that is provided by an Eligible Guarantor as principal debtor rather than surety and that is directly enforceable by the Issuer, the form and substance of which guaranty are subject to satisfaction of the Rating Condition with respect to S&P.

"Eligible Investments": Any U.S. dollar denominated investment that is one or more of the following (including security entitlements with respect thereto):

(a) direct registered obligations of, and registered obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America or United States Security Entitlements (as defined in the Indenture) other than obligations or security entitlements of the Federal Home Loan Mortgage Corporation; *provided, however,* that, in the case of obligations or United States Security Entitlements that are rated, each such obligation shall, at the time of its inclusion in the Trust Estate, have a credit rating of "AA-" or better or "A-1+" or better, as applicable, by S&P (except that Eligible Investments in an amount up to 20% of the Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's, and, in each case, is not put on credit watch (with negative implications);

(b) demand and time deposits in, trust accounts with, and certificates of deposit of, any depository institution or trust company (including the Trustee) incorporated under the laws of the United States of America or any state thereof and subject to the supervision and examination by federal and/or state banking authorities so long as the commercial paper and/or debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company) at the time of purchase or contractual commitment providing for such purchase have a credit rating of "AA-" or better, in the case of debt obligations, or "A-1+" or better, in the case of commercial paper, by S&P (except that Eligible Investments in an amount up to 20% of the

Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's, and, in each case, is not put on credit watch (with negative implications)**;**

(c) registered securities bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States of America or any state thereof that have a credit rating of "AA-" or better by S&P and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's at the time of such purchase or contractual commitment providing for such purchase, and, in each case, is not put on credit watch (with negative implications);

(d) repurchase obligations with respect to any security described in clause (a) above, entered into with a depository institution or trust company (acting as principal) described in clause (b) above (including the Trustee) or entered into with a corporation (acting as principal) whose short-term debt has a credit rating of "A-1+" (except that Eligible Investments in an amount up to 20% of the Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") or better by S&P and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's at the time of purchase in the case of any repurchase obligation for a security having a maturity not more than 183 days from the date of its issuance or whose long-term debt has a credit rating of "AA-" or better by S&P and "Aa3" or better (if such obligation has a long-term rating) by Moody's at the time of purchase in the case of any repurchase obligation for a security having a maturity more than 183 days from the date of its issuance and, in each case, is not put on credit watch (with negative implications);

(e) commercial paper having at the time of purchase a credit rating of "A-l+" (except that an amount up to 20% of the Aggregate Principal Amount of the Notes Outstanding may be rated "A-1") or better by S&P and "Aa3" or better (if such obligation has a long-term rating) or "P-1" or better by Moody's and that has a maturity of not more than 183 days from its date of issuance; *provided, however,* that in the case of commercial paper with a maturity of longer than 91 days, the issuer of such commercial paper (or, in the case of a principal depository institution in a holding company system, the holding company of such system), if rated by S&P, must have at the time of purchase a long-term credit rating of "AA-" or better by S&P and "Aa3" or better (if such obligation has a long-term rating) by Moody's and, in each case, is not put on credit watch (with negative implications);

(f) off-shore money market funds, which funds have, at all times, the highest credit rating assigned to such investment category by S&P and Moody's; and

(g) such other Eligible Investments acceptable to the Rating Agencies;

provided, however, that: (i) Eligible Investments purchased with funds in the Collection Account shall be held until maturity (or sold only for an amount at least equal to the par amount of such Eligible Investment) and shall include only such obligations or securities as mature no later than the Business Day prior to the next Payment Date and Eligible Investments purchased with funds in the Initial Deposit Account shall be held until maturity (or sold only for an amount at least

equal to the par amount of such Eligible Investment) and shall include only such obligations or securities as mature no later than the Business Day prior to the date expected to be used and in any event prior to the Initial Deposit Redemption Date; (ii) none of the foregoing obligations or securities shall constitute Eligible Investments if all, or substantially all, of the remaining amounts payable thereunder shall consist of interest and not principal payments; (iii) none of the S&P ratings required above shall have a subscript of "r", "t", "p", "pi" or "q"; (iv) none of the foregoing obligations or securities shall constitute Eligible Investments if such obligations or securities are mortgage-backed securities; (v) no such obligation may be margin stock, securities which have a mandatory or optional conversion to equity or securities which are subject to an Offer; (vi) no such obligation may have coupons or other payments that are subject to U.S. withholding tax or are subject to foreign withholding under the terms of the underlying instruments where the issuer is not required to make "gross-up" payments sufficient to cause the net amount to be received on the debt obligations to equal the amount that would have been paid had no such withholding tax applied and the acquisition (including manner of acquisition), ownership or disposition of no such obligation shall cause the Issuer to be engaged or deemed engaged in a U.S. trade or business for U.S. federal income tax purposes; and (vii) any such Eligible Investment purchased on the basis of S&P's short-term rating of "A-1" shall mature not later than thirty (30) days after the date of purchase. Eligible Investments may include those Eligible Investments with respect to which the Trustee or any of its Affiliates provide services or is the obligor or depository institution.

"Eligible Preferred Shares": The Preferred Shares excluding any Preferred Shares owned or controlled by any Servicer Entities in excess of the Original HFP Share Amount.

"Eligible Replacement": An entity that either (i) satisfies the S&P Approved Ratings Threshold and the Moody's Required Ratings Threshold or (ii) provides an Eligible Guaranty from an Eligible Guarantor.

"Equity Portfolio Collateral": Any security (or any other right, interest or property or security entitlement) which does not entitle the holder thereof to receive periodic payments of interest no less frequently than semiannually and one or more installments of principal, in cash and sufficient to retire in full the stated principal amount thereof on the stated maturity date therefor; *provided, however,* that such definition will not include warrants, profit participations or similar equity-based rights that are a component of a Unit to the extent that the Aggregate Principal Amount of Portfolio Collateral in the Trust Estate with a warrant, profit participation or similar equity-based right attached thereto as a component of a Unit does not exceed 10% of the Aggregate Principal Amount of all Pledged Securities in the Trust Estate.

"ERISA": The United States Employee Retirement Income Security Act of 1974, as amended from time to time.

"Euroclear Operator": Euroclear Bank S.A./N.V., as operator of the Euroclear System, and any successor thereto.

"Event of Default": The meaning specified in Section 5.1 hereof.

"Exchange Act": The United States Securities Exchange Act of 1934, as amended.

"Exchange Certificate": The certification delivered in the form of Exhibit F hereto.

"Exchange Offer": With respect to any item of Portfolio Collateral, (i) an offer by the issuer of such item of Portfolio Collateral or by any other Person made to all holders of such item of Portfolio Collateral to exchange such item of Portfolio Collateral held by them for an item of Equity Portfolio Collateral or other debt instruments that do not otherwise satisfy the definition of Portfolio Collateral or (ii) any solicitation by such issuer or other Person to amend, modify or waive any provision of such item of Portfolio Collateral or of the related Underlying Instrument, the effect of which would be to convert such item of Portfolio Collateral into an item of Equity Portfolio Collateral or other debt instruments that do not otherwise satisfy the definition of Portfolio Collateral.

"Excluded Accrued Interest": With respect to any item of Initial Portfolio Collateral, any accrued and unpaid interest thereon (i) which was not included in the purchase price thereof that the Issuer paid on the Closing Date, and (ii) which will be paid by the Trustee from the Trust Estate, as instructed by Bear Stearns, in accordance with the terms of the Indenture.

"Expense Reimbursement Account": The meaning specified in Section 10.2 hereof.

"Extended Final Maturity Date" If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Final Maturity Date (or, in the case of the first Extended Final Maturity Date, the Payment Date in August 2028).

"Extended Revolving Period End Date": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Revolving Period End Date (or, in the case of the first Extension, the Payment Date in August 2018).

"Extended Weighted Average Life Date": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, May 1, 2024).

"Extension": An extension of the Revolving Period, the Final Maturity Date of the Notes and the Weighted Average Life Test in accordance with the Indenture.

"Extension Bonus Payment": With respect to each Maturity Extension, a single payment to each applicable Noteholder as set forth in Sections 11.1(c) and (d) in an amount equal to (1) in the case of the Class A-1LA Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-1LB Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class A-2L Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Date, (4) in the case of the Class A-3L Notes, 0.25% of the Aggregate

Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class B-1L Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (6) in the case of the Class B-2L Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"Extension Bonus Eligibility Certification": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Principal Amount thereof and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"Extension Conditions": As defined under Section 2.3(d).

"Extension Determination Date": The 8th Business Day prior to each Extension Effective Date.

"Extension Effective Date": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in August 2014).

"Extension Notice": The notice given by the Issuer of its election to extend the Revolving Period substantially in the form of Exhibit I.

"Extension Purchase Price": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Principal Amount thereof, plus accrued and unpaid interest as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), (ii) in the case of the Preferred Shares, an amount that, when taken together with all payments and distributions made in respect of such Preferred Shares since the Closing Date would cause such Preferred Shares to have received (as of the date of purchase thereof) an Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); *provided, however, that* if the applicable Extension Effective Date is on or after the date on which such Holders have received an Internal Rate of Return equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preferred Shares shall be zero.

"Extension Qualifying Purchasers": The Servicer (or any of its Affiliates acting as principal or agent); *provided* that in the event the Servicer elects not to purchase Securities from Holders pursuant to the Extension Conditions set forth in Section 2.3(d); "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchasers or any of their Affiliates acting as principal or agent) designated by the Servicer; *provided, however*, none of the Servicer, the Initial Purchasers, or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"Extension Sale Notice": Irrevocable notice given by any Holder of Notes and Preferred Shares of its intention to sell its Notes or Preferred Shares to an Extension Qualifying

Purchaser in the case of a Maturity Extension substantially in the form of Enclosure B to Exhibit I.

"Extension Sale Notice Period": Within 30 days after the Issuer has delivered the Extension Notice.

"Extension Sale Securities": Notes or Preferred Shares as to which an Extension Sale Notice has been duly given.

"Final Maturity Date": With respect to each Class of Notes the Payment Date occurring in August 2024 or such earlier date on which the Aggregate Principal Amount of each Class of Notes is paid in full, including in connection with an Optional Redemption; *provided* that the "Final Maturity Date" with respect to the Notes will be extended to the applicable Extended Final Maturity Date upon the occurrence of a Maturity Extension.

"Firm Offer": With respect to any Hedge Agreement, an offer which, when made, is capable of becoming legally binding upon acceptance.

"Fitch": Fitch Ratings or any successor thereto.

"Fixed Amount": As defined in the Cap Agreement.

"Fixed Rate Portfolio Collateral": An item of Portfolio Collateral that bears interest at a fixed rate.

"Floating Rate Portfolio Collateral": An item of Portfolio Collateral that bears interest at a floating rate.

"Foreign Intermediaries": The meaning specified in Section 3.5 hereof.

"Form-Approved Hedge Agreement": Any Hedge Agreement the documentation of which conforms (except for the amount and timing of payments, the notional amount, the effective date, the termination date and similar terms) in all material respects to a form with respect to which Rating Agency Confirmation was obtained prior to the entry into such Hedge Agreement, including any confirmation entered into after the Closing Date if conforming (except for permitted changes expressly contemplated by such form) in all material respects to those in effect on the Closing Date and any other Hedge Agreement conforming in all material respects (except for permitted changes expressly contemplated by such form) to a form with respect to which Rating Agency Confirmation was obtained; *provided* that any material amendment or other modification (except for permitted changes expressly contemplated by such form) to the form of a Hedge Agreement shall require Rating Agency Confirmation; *provided, further* that each Rating Agency may revoke its consent to a Form-Approved Hedge Agreement upon 30 days' written notice to the Trustee and the Issuer

"Form-Approved Synthetic Security": A Synthetic Security (a)(i) the Reference Obligation of which would be eligible for purchase by the Issuer as an item of Portfolio Collateral without any required action by the Rating Agencies or for which the Rating Condition has been satisfied or (ii) the Reference Obligation of which would satisfy clause (i) but for the

currency in which it is payable and such Synthetic Security is payable in U.S. Dollars, does not provide for physical settlement and does not expose the Issuer to currency risk, (b) the documentation of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date and other similarly necessary changes) to a form in respect of which the Rating Condition has been satisfied for use in this transaction, (c) which provides that any "credit event" thereunder shall not include restructuring (other than modified restructuring as defined in the 2003 ISDA Credit Derivatives Definitions), repudiation, moratorium, obligation default or obligation acceleration unless such Synthetic Security may be settled only through a physical settlement of a deliverable obligation to the Issuer and not in cash, (d) which has been certified in writing by the Servicer to the Trustee and the Issuer as meeting the requirements of this definition and (e) for which the Issuer has provided the Rating Agencies notice of the purchase of such Synthetic Security no less than five Business Days prior to such purchase; *provided* that each Rating Agency may revoke its consent to a Form-Approved Synthetic Security upon 30 days' written notice to the Trustee and the Issuer.

"Global Note": A Temporary Regulation S Global Note, a Permanent Regulation S Global Note or a Rule 144A Global Note.

"Grant": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, grant a security interest in, create a right of set-off against, deposit, set over and confirm. A Grant of any item of the Trust Estate shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including without limitation the immediate and continuing right to claim for, collect, receive and receipt for principal and interest payments in respect of such item of the Trust Estate, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Group A Country": Australia, Canada, the United Kingdom, the Federal Republic of Germany or The Netherlands (so long as the U.S. dollar denominated sovereign debt obligations of such jurisdiction are rated at least "Aa2" by Moody's and the foreign currency issuer credit rating assigned by S&P to such jurisdiction is at least "AA" and, in each case, is not put on credit watch (with negative implications)).

"Group B Country": Austria, Belgium, Bermuda, Denmark, Finland, France, Ireland, Italy, Liechtenstein, Luxembourg, New Zealand, Norway, Portugal, Spain, Sweden or Switzerland or any other member state of the European Union (as of the Closing Date) identified from time to time by the Servicer and subject to the satisfaction of the Rating Condition with respect to each Rating Agency with respect thereto (so long as the U.S. dollar denominated sovereign debt obligations of such jurisdiction are rated at least "Aa2" by Moody's and the foreign currency issuer credit rating assigned by S&P to such jurisdiction is at least "AA" and, in each case, is not put on credit watch (with negative implications)).

"Hedge Agreement": Collectively, the Cap Agreement and each interest rate swap agreement, interest rate cap agreement, interest rate floor agreement, cash flow swap

agreement, coupon timing swap (including in each case related schedules, confirmations and credit support documents) or similar agreements entered into to hedge interest rate exposure or timing or accrual mismatches with respect to the Portfolio Collateral pursuant to Section 2.14.

"Hedge Counterparty": Collectively, the Cap Provider and each other institution with which the Issuer enters into a Hedge Agreement and, except with respect to the Cap Provider, with respect to which Rating Agency Confirmation is obtained, or any permitted assignees or successors thereof with respect to which Rating Agency Confirmation is obtained.

"HFP Shares": Preferred Shares beneficially owned or controlled by Highland Financial Partners, L.P., an affiliate of the Servicer.

"Holder" and "Noteholder": The Person in whose name a Note or a Combination Note is registered in the Note Register or, with respect to a Preferred Share Component of the Combination Notes, the Share Register.

"Indenture": This Indenture, as supplemented or amended in accordance with the terms hereof.

"Independent": When used with respect to any specified Person means such a Person who (a) is in fact independent of the Issuer and any other obligor upon the Notes and the Servicer or any Affiliate of the Issuer or such other obligor or the Servicer, (b) does not have any direct financial interest or any material indirect financial interest in the Issuer or in any such other obligor or the Servicer or in an Affiliate of the Issuer or such other obligor or the Servicer, and (c) is not connected with the Issuer or any such other obligor or the Servicer or any Affiliate of the Issuer or such other obligor or the Servicer as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions. "Independent" when used with respect to any accountant may include an accountant who audits the books of such Person if in addition to satisfying the criteria set forth above the accountant is independent with respect to such Person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants. Whenever it is provided herein that any Independent Person's opinion or certificate shall be furnished to the Trustee, such Person shall be appointed by Issuer Order and such opinion or certificate shall state that the signer has read this definition and that the signer is independent within the meaning thereof. Notwithstanding anything herein to the contrary, Bear Stearns shall be "Independent" for all purposes hereof.

"Initial Consent Period": The period of 15 Business Days from but excluding the date on which the Trustee provided notice of a proposed supplemental indenture pursuant to Section 82 hereof to the Holders of any Notes or Preferred Shares.

"Initial Deposit Redemption": A redemption of the Class A-1LA Notes pursuant to Section 3.3 hereof.

"Initial Deposit Redemption Amount": The meaning specified in Section 3.3.

"Initial Deposit Redemption Date": The November 2007 Payment Date.

"Initial Portfolio Collateral": The Portfolio Collateral that, in the case of CLO Securities, will be purchased on or prior to the Closing Date and, in the case of Portfolio Loans, will be purchased on or before the Closing Date or identified by the Issuer and for which commitments will be entered into on or prior to the Closing Date for purchase on or as soon as practicable after (not scheduled to exceed sixty (60) days after) the Closing Date with the net proceeds from the sale of the Notes and the net proceeds from the sale of the Preferred Shares on the Closing Date, which Initial Portfolio Collateral is set forth on Schedule A hereto.

"Initial Portfolio Collateral Amount": U.S. $900,000,000 (or such larger Aggregate Principal Amount of Portfolio Collateral as may be purchased on the Closing Date by the Issuer).

"Initial Purchaser Notes": Notes of any Class, if any, initially issued to or purchased by any Initial Purchaser or an Affiliate of any such Initial Purchaser on the Closing Date.

"Initial Purchasers": Each of Bear, Stearns & Co. Inc. and Cantor Fitzgerald & Co.

"Insolvency Event": With respect to any Person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (a) liquidation, reorganization or other relief in respect of such Person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Person or for all or substantially all of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered; or

(ii) such Person shall (a) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (b) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above, (c) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or conservator or for all or substantially all of its assets, (d) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (e) make a general assignment for the benefit of creditors or (f) take any action for the purpose of effecting any of the foregoing.

"Institutional Accredited Investor": An Institutional Investor that is also an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under Regulation D.

"Institutional Investor": Any one of the following persons: (i) any bank, trust company or national banking association, acting for its own account or in a fiduciary capacity, (ii) any charitable foundation or eleemosynary institution, (iii) any insurance company, (iv) any pension or retirement trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as

amended from time to time, is acting as trustee or agent, or that manages its own assets, having funds of at least $5,000,000, (v) any investment company, as defined in the Investment Company Act, (vi) any college or university, (vii) any government or public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds, or (viii) any corporation, limited liability company, business trust or partnership having total assets in excess of $5,000,000.

"Interest Coverage Ratio": with respect to any Payment Date after the second Payment Date, a number (expressed as a percentage) calculated by dividing (a) four times the amount by which (i) the Collateral Interest Collections received or scheduled to be received during the Due Period in which such calculation occurs (other than Collateral Interest Collections (including deferred interest thereon) scheduled to be received on any item of Portfolio Collateral that is not paying or expected to pay current interest), exceeds (ii) the Periodic Reserve Amount (excluding amounts payable on the Class B-1L Notes and the Class B-2L Notes) as of such Payment Date, by (b) the Aggregate Principal Amount of Class A Notes with respect to such Payment Date, as adjusted, to take into account any O/C Redemption to occur on the Payment Date related to such Due Period pursuant the Indenture pursuant to Section 11.2 hereof.

For purposes of calculating the Interest Coverage Ratio, any item of Portfolio Collateral as to which any interest or other payment thereon is subject to withholding tax or other deductions on account of tax of any jurisdiction, each such payment of interest or other payment thereon will be deemed to be payable net of such withholding tax or other deductions on account of tax unless, in the case of a withholding tax, the issuer thereof or obligor thereon is required to make additional payments to fully compensate the Issuer for such withholding taxes (including in respect of any such additional payments) and on any date of determination, the amount of any scheduled payment due on any future date will be assumed to be made net of any such uncompensated withholding tax or other deductions on account of tax based upon withholding or other applicable tax rates in effect on such date of determination.

"Interest Coverage Test": A test which is applicable on each Payment Date after the second Payment Date and will be satisfied as of such determination date if the Interest Coverage Ratio will be at least 1.5%.

"Internal Rate of Return": With respect to any Payment Date, the annualized discount rate at which the sum of the discounted values of the following cashflows is equal to zero, assuming discounting on a quarterly basis as of each Payment Date: (1) the Notional Amount of the Preferred Shares (which amount will be deemed to be negative for purposes of this calculation), (2) each distribution of Collateral Interest Collections made to the holders of the Preferred Shares on any prior Payment Date and, to the extent necessary to reach the applicable Internal Rate of Return, such Payment Date and (3) each distribution of Collateral Principal Collections made to the holders of the Preferred Shares on any prior Payment Date and, to the extent necessary to reach the applicable Internal Rate of Return, such Payment Date.

"Investment Company Act": The United States Investment Company Act of 1940, as amended from time to time.

"Investor Representation Letter": A certificate delivered by a prospective transferee of a Note in the form of Exhibit C hereto.

"Irish Paying Agent": RSM Robson Rhodes LLP, or any successors thereto.

"Issuer": The meaning specified in the first sentence of this Indenture.

"Issuer Base Administrative Expenses": With respect to any Payment Date, the administrative expenses paid or payable by the Issuer during the applicable Due Period, including, without limitation, taxes, government fees, indemnities, registered office fees and expenses for third party loan pricing services and accountants, if any, in the following order: (i) *pro rata*, taxes of the Co-Issuers, surveillance fees, shadow rating fees and credit estimate fees with respect to the Notes and any existing or potential Portfolio Collateral, if any, of the Rating Agencies; fees due to any Listing and Paying Agent; fees due to any stock exchange on which any Class of the Notes or the Preferred Shares are listed; governmental fees, registered office fees and any other fees which are deemed necessary by the Servicer for administration of the Trust Estate, and (ii) *pro rata* reimbursement of expenses (including indemnities) of the Servicer required to be paid pursuant to the Servicing Agreement, the Cap Provider required to be paid pursuant to the Cap Agreement, and all expenses of the Administrator, the Listing and Paying Agent, the Securities Intermediary (if not the same person as the Trustee), the accountants and any fiscal agent retained in connection with the issuance of income notes, if any, in which the primary collateral for such income notes are obligations of the Issuer and all other administrative expenses of the Co-Issuers, each as determined as of the Calculation Date relating to such Payment Date and as set forth in the related Note Valuation Report.

"Issuer Excess Administrative Expenses": With respect to any Payment Date, (i) the Trustee Administrative Expenses for the Due Period relating to such Payment Date in excess of the amount paid pursuant to Clause FIRST of Section 11.1(b) for the corresponding period, (ii) the Preferred Shares Administrative Expenses for the Due Period relating to such Payment Date in excess of the amount paid pursuant to clause FIRST of Section 11.1(b) for the corresponding period and (iii) the administrative expenses or other amounts (including indemnities) paid or payable by the Issuer during the applicable Due Period, as determined as of the Calculation Date relating to such Payment Date and as set forth in the related Note Valuation Report, in excess of the amount of the Issuer Base Administrative Expenses paid pursuant to Clause SECOND of Section 11.1(b).

"Issuer Order" and "Issuer Request": A written order or request dated and signed in the name of the Issuer by an Authorized Officer of the Issuer or a Person designated in writing by an Authorized Officer of the Issuer.

"LIBOR": For any Periodic Interest Accrual Period, the London interbank offered rate for three-month (or, for the period from the Closing Date to the November 2007 Payment Date, as described in Section 2.11 hereof) U.S. dollar deposits, as determined by the Calculation Agent in accordance with the provisions of Section 2.11 hereof.

"LIBOR Determination Date": The second London Business Day prior to the commencement of a Periodic Interest Accrual Period.

"Loan Funding Account": The account specified in Section 10.2 as that maintained by the Trustee into which the Issuer shall remit the full amount of the Issuer's commitment to make or otherwise fund draws related to any Delayed Drawdown Loans or Revolving Loans in the Portfolio Collateral.

"London Business Day": Any day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

"Majority Noteholders": The Holders of more than 50% of the Aggregate Principal Amount of the Outstanding Notes, voting as a single class; *provided* that upon the occurrence of a Default or an Event of Default pursuant to Section 5.1 hereof, "Majority Noteholders" shall mean the Holders of more than 50% of the Controlling Class, voting together as a single class.

"Majority Preferred Shareholders": The Holders of more than 50% of the outstanding Preferred Shares.

"Mandatory Redemption": An O/C Redemption or a Rating Confirmation Failure Redemption.

"Mandatory Redemption Date": Any Payment Date on which an O/C Redemption or a Rating Confirmation Failure Redemption is required.

"Mandatory Redemption Price": When used with respect to an O/C Redemption or a Rating Confirmation Failure Redemption, an amount equal to the principal amount of the Notes being redeemed (or, in the case of the Class A-3L Notes, the Class B-1L Notes and the Class B-2L Notes, first to pay any Periodic Rate Shortfall Amount with respect to such Notes and then to pay principal).

"Market Value": On any date of determination with respect to an item of Portfolio Collateral, any of:

(a) the average of the bid-side prices for the purchase of such item of Portfolio Collateral determined by an Approved Pricing Service that derives valuations by polling broker-dealers (Independent from the Servicer); or

(b) the arithmetic average of bid-side quotations for the purchase of such item of Portfolio Collateral obtained by the Servicer from three or more broker-dealers (*provided* if upon reasonable efforts of the Servicer, quotations from three broker-dealers are not available, the lower of the quotations from two broker-dealers may be used), in each case, Independent from the Servicer, in the relevant market; *provided* that one such bid must be from a broker-dealer other than Bear Stearns or an Affiliate of Bear Stearns and any bid received from Bear Stearns or an Affiliate of Bear Stearns hereunder cannot be more than 10% higher than the next highest bid; and

(c) if the determinations of the broker-dealers specified in the foregoing clauses (a) or (b) are not available (as reasonably determined by the Servicer) and so long as the Servicer is subject to the Investment Advisors Act of 1940, as amended, the lesser

of (A) the bid-side market value of such item of Portfolio Collateral as certified by the Servicer as consistent with reasonable and customary market practice and (B) the higher of (X) 70% of the Principal Balance of such item of Portfolio Collateral as of such date and (Y) the Principal Balance of such item of Portfolio Collateral as of such date multiplied by its S&P Priority Category Recovery Rate; *provided*, that, as of any date of determination (x) no more than 5.0% of the Aggregate Principal Amount of Portfolio Collateral may have market values determined in the manner provided in this clause (c) and (y) if the item of Portfolio Collateral constitutes collateral for any other issuer or account managed or serviced by the Servicer or its Affiliates, the Market Value of such item of Portfolio Collateral determined pursuant to this clause (c) shall be consistent with the market value applied by the Servicer or its Affiliates for such item of Portfolio Collateral for such for such other issuers or accounts; and

(d) if the market value cannot be determined in the manner described in clause (a), (b) or (c) above, an amount equal to the Principal Balance of the Portfolio Collateral as of such date multiplied by the Applicable Percentage for such item of Portfolio Collateral; *provided*, that if the market value cannot be determined in the manner described in clauses (a), (b) or (c) above for more than thirty (30) Business Days immediately following any date such market value is determined pursuant to this clause (d), then the market value of such item of Portfolio Collateral shall be automatically deemed to be zero following such 30-Business-Day period until the market value can be determined in the manner described in clause (a), (b) or (c) above as of any date of determination;

provided that (A) for purposes of determining Market Value, but subject to clause (b) hereof, Bear Stearns will be deemed to be Independent from the Servicer (*provided* that any quotes received from such entity will be on an arm's-length basis); (B) the Market Value of any item of Portfolio Collateral with respect to which the Issuer has entered into a commitment to sell but has not settled will be deemed to be the agreed sales price therefor (determined exclusive of accrued interest); and (C) the Market Value is determined only for purposes of compliance with covenants, coverage tests, overcollateralization tests, or any other requirements or tests set forth herein, or the determination of redemption prices.

"Maturity": With respect to any Note or Combination Note, the date on which the Aggregate Principal Amount of such Note or Combination Note becomes due and payable as therein and herein provided, whether at the Final Maturity Date or by declaration of acceleration or otherwise.

"Maturity Extension": As defined in Section 2.3(b) hereof.

"Minimum Average Recovery Rate Test": A test that will be satisfied with respect to Moody's, by application of the Collateral Quality Matrix and with respect to S&P, if the S&P Weighted Average Recovery Rate is initially greater than or equal to (i) with respect to the Class A-1LA Notes, 43.54%, (ii) with respect to the Class A-1LB Notes, 43.54%, (iii) with respect to the Class A-2L Notes 47.27%, (iv) with respect to the Class A-3L Notes, 51.00%, (v) with respect to the Class B-1L Notes, 55.46% and (vi) with respect to the Class B-2L Notes, 59.50%;

provided that such percentages may change from time to time to reflect the levels that correspond with the current S&P CDO Monitor.

"Monthly Report": The meaning specified in Section 10.5(a) hereof.

"Moody's": Moody's Investors Service, Inc. or any successor thereto.

"Moody's Approved Ratings Threshold": With respect to an entity (or its guarantor), (x) if such entity has both a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's and a short-term unsecured and unsubordinated debt rating from Moody's, a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's of at least "A2" and a short-term unsecured and unsubordinated debt rating from Moody's of at least "Prime-1", or (y) if such entity has only a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's, a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's of at least "A1".

"Moody's Asset Correlation Test" or "MAC Test": A test satisfied on each Measurement Date if the Moody's Correlation Factor on such Measurement Date (rounded up to the nearest whole number) is equal to or less than the designated Moody's Correlation Factor determined by application of the Collateral Quality Matrix.

"Moody's Correlation Factor": a single number determined by the Servicer in accordance with the correlation methodology provided to the Servicer and the Collateral Administrator by Moody's, and for which the number of assets represented by (N) on the calculation shall always equal 100.

"Moody's Default Probability Rating": For a Portfolio Loan which is (i) a Senior Secured Loan, the Moody's corporate family rating for the obligor of such Portfolio Loan and, if any such obligor does not have a Moody's corporate family rating, such rating will be determined in accordance with the methodology described in Schedule F or (ii) a Non-Senior Secured Loan, the Moody's senior unsecured rating for the obligor of such Portfolio Loan and, if any such obligor does not have a Moody's senior unsecured rating, such rating will be determined by reference to the Moody's long-term issuer rating of the obligor of such Portfolio loan and, if such obligor does not have a Moody's senior unsecured rating or a Moody's long-term issuer rating, such rating will be determined in accordance with the methodology described in Schedule F.

"Moody's Priority Category": Senior Secured Loans, Non-Senior Secured Loans, DIP Loans and/or Synthetic Securities.

"Moody's Priority Category Recovery Rate": For any item of Portfolio Collateral, the percentage specified in the definition of the term "Applicable Percentage" opposite the Moody's Priority Category of such item of Portfolio Collateral, taking into account the Rating Subcategories Difference applicable to such item of Portfolio Collateral.

"Moody's Rating": The rating determined in accordance with the methodology described in Schedule F.

"Moody's Required Ratings Threshold": With respect to an entity (or its guarantor), (x) if such entity has both a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's and a short-term unsecured and unsubordinated debt rating from Moody's, a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's of at least "A3" or a short-term unsecured and unsubordinated debt rating from Moody's of at least "Prime-2", or (y) if such entity has only a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's, a long-term unsecured and unsubordinated debt rating or counterparty rating from Moody's of at least "A3".

"Moody's Second Level Downgrade": Occurs when no Relevant Entity satisfies the Moody's Required Rating Threshold.

"Moody's Weighted Average Rating": Shall have the meaning set forth in Schedule F.

"Moody's Weighted Average Rating Test": A test that will be satisfied by application of the Collateral Quality Matrix.

"Moody's Weighted Average Rating Test for CLO Securities": Shall have the meaning set forth in Schedule F.

"Moody's Weighted Average Recovery Rate": The number obtained by summing the products obtained by multiplying the Principal Balance of each item of Portfolio Collateral (excluding Defaulted Portfolio Collateral) by the Applicable Percentage (according to the Moody's Priority Category) applicable to such item of Portfolio Collateral as set forth in the definition of "Applicable Percentage" above, dividing such sum by the Aggregate Principal Amount of all Portfolio Collateral, and rounding up to the fourth decimal place.

"Non-Senior Secured Loan": A Portfolio Loan that is not a Senior Secured Loan.

"Non-Call Period": The period beginning on the Closing Date and ending on August 1, 2010.

"Non-Consenting Holder": With respect to any supplemental indenture proposed pursuant to the Indenture that requires the consent of one or more Holders of the Notes or the Preferred Shares, any such Holder, or, in the case of Notes or Preferred Shares in global form, any beneficial owner, that either (i) has declared in writing that it will not consent to such supplemental indenture or (ii) has not consented to such supplemental indenture within 15 Business Days from the date on which the Trustee provided notice of such proposed supplemental indenture pursuant to the Indenture to such Holder or beneficial owner; *provided*, that in the case of the Non-Call Period, "Non-Consenting Holder" shall exclude any Holder of Class A-1LA Notes (unless such Holder has consented in writing to be designated as a Non-Consenting Holder) and the Amendment Buy-Out Option shall not be applicable to such Class A-1LA Notes.

"Non-U.S. Obligor": An issuer of or obligor on an item of Portfolio Collateral that is located outside the United States and is not a Permitted Non-U.S. Obligor.

"Non-U.S. Person": A Person who is not a U.S. Person.

"Non-U.S. Person Certificate": A certificate substantially in the form of Exhibit G hereto.

"Note Component": The Component of the Combination Note representing an interest in Class B-1L Notes having an initial Aggregate Principal Amount of U.S.$6,750,000.

"Noteholder" and "Holder": The Person in whose name a Note or a Combination Note is registered in the Note Register or, with respect to a Preferred Share Component of the Combination Notes, the Share Register.

"Noteholder Report": The meaning specified in Section 10.5(c) hereof.

"Note Register" and "Note Registrar": The respective meanings specified in Section 2.5 hereof.

"Note Valuation Report": The meaning specified in Section 10.5(b) hereof.

"Notes": The A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes, the Class B-1L Notes, the Combination Notes (to the extent of the Class Note Component) and the Class B-2L Notes.

"Notice": The meaning specified in Section 13.3 hereof.

"Notional Amount": When used with respect to the Preferred Shares, as of any date of determination, $1.00 per Preferred Share.

"O/C Redemption": The redemption of a Class or Classes of Notes (including, with respect to the Class B-1L Notes and the Class B-2L Notes, the applicable Periodic Rate Shortfall Amount, as set forth herein), to the extent necessary such that the Overcollateralization Tests and the Interest Coverage Test are satisfied, such tests to be calculated according to the method prescribed by Annex A and Annex B, respectively.

"Offer": With respect to any security, (a) any offer by the issuer of such security or by any other Person made to all of the holders of such class of security to purchase or otherwise acquire all such securities (other than pursuant to any redemption in accordance with the terms of the related Underlying Instruments) or to exchange such securities for any other security or other property or (b) any solicitation by the issuer of such security or any other Person to amend, modify or waive any provision of such security or any related Underlying Instrument.

"Officer": With respect to any corporation or company other than the corporation or company acting as Trustee, the Chief Executive Officer, the President, any Vice President, the Secretary or the Treasurer of such corporation or any other officer duly authorized by the Board of Directors; and with respect to the Trustee (and any other bank or trust company acting as trustee of an express trust or as custodian), any Responsible Officer thereof.

"Officer's Certificate": A certificate signed on behalf of the Issuer, the Co-Issuer or the Servicer by an Authorized Officer of the Issuer, the Co-Issuer or the Servicer, as the case may be.

"Opinion of Counsel": A written opinion, addressed to the Trustee (or on which the Trustee may rely) and in form and substance reasonably satisfactory to the Trustee, of an attorney at law admitted to practice before the highest court of any state of the United States or the District of Columbia or, with respect to matters relating to the laws of the Cayman Islands, the Cayman Islands, which attorney or attorneys may, except as otherwise expressly provided in this Indenture, be counsel for the Issuer, the Servicer or the Trustee and who shall be reasonably satisfactory to the Trustee.

"Optional Redemption": The redemption of the Notes pursuant to an Optional Redemption by Liquidation or an Optional Redemption by Refinancing, as applicable.

"Optional Redemption by Liquidation": A redemption of the Notes in whole pursuant to Section 9.1(a) hereof.

"Optional Redemption by Refinancing": A redemption of the Notes in whole pursuant to Section 9.1(b) hereof.

"Optional Redemption Date": The Payment Date fixed by the Issuer for an Optional Redemption, which shall be no earlier than the first Payment Date occurring in August 2010.

"Optional Redemption Price": With respect to each Class of Notes, an amount equal to the aggregate of (i) the Aggregate Principal Amount of such Class of Notes as of the Optional Redemption Date, (ii) the applicable Cumulative Interest Amount with respect to the Optional Redemption Date, (iii) any unpaid Extension Bonus Payments in respect of such Notes and (iv) the CDS/TRS Termination Payment Amount (only in connection with a redemption including the Class A-1LA Notes).

"Original HFP Share Amount": The amount of HFP Shares acquired by the Servicer Entities on the Closing Date.

"Original Portfolio Collateral": The Portfolio Collateral, including the Initial Portfolio Collateral, purchased by the Issuer with the Deposit on or before the Effective Date and, in the case of Portfolio Loans, which will be identified by the Issuer and for which commitments will be entered into on or prior to the Effective Date for purchase on or as soon as practicable thereafter (but not scheduled to exceed sixty (60) days thereafter) pursuant to Section 3.4 hereof.

"Original Portfolio Collateral Criteria": The requirements for the acquisition of Original Portfolio Collateral prior to the Effective Date, as set forth in Section 3.4 hereof.

"Outstanding": With respect to the Preferred Shares or the Combination Notes (to the extent of the Preferred Share Component), as of the date of determination and subject to the proviso below, "Outstanding" refers to all Preferred Shares or Combination Notes issued and

indicated in the Share Register as outstanding. With respect to the Notes or the Combination Notes (to the extent of the Note Component), as of the date of determination, "Outstanding" refers to all Notes or Combination Notes theretofore authenticated and delivered under this Indenture except:

(i) Notes or Combination Notes theretofore canceled by the Note Registrar or delivered (or to be delivered pursuant to Sections 2.9 or 9.8 hereof) to the Note Registrar for cancellation;

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

(iii) Notes or Combination Notes in exchange for or in lieu of which other Notes or Combination Notes have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Trustee is presented that any such Notes or Combination Notes are held by a protected purchaser; and

(iv) Notes or Combination Notes alleged to have been mutilated, destroyed, lost or stolen for which replacement Notes or Combination Notes have been issued as provided in Section 2.6 hereof;

provided that, in determining whether the Holders of the requisite Aggregate Principal Amount have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes or Combination Notes owned by or pledged to the Issuer, the Trustee or any other obligor upon the Notes or Combination Notes or any Affiliate of the Issuer, the Trustee or of such other obligor, and solely for purposes of termination of the Servicer, the Servicer and any Affiliate thereof, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes Combination Notes that a Responsible Officer of the Trustee has actual knowledge to be so owned or pledged shall be so disregarded.

"Overcollateralization Haircut Amount": With respect to any date of determination, an amount equal to the sum of:

(A) the greatest of the following:

(a) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the Aggregate Principal Amount of all CLO Securities (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a Moody's Rating within the CCC Rating Category;

(b) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the excess, if any, of (x) the Aggregate Principal

Amount of all CLO Securities included in the pledged Portfolio Collateral (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a Moody's Rating within the B Rating Category or an S&P Rating or a Moody's Rating within the CCC Category over (y) 5.0% of the Aggregate Par Amount as of the date of determination; *provided* that at no time during the period commencing on the Closing Date through the Final Maturity Date, shall the Aggregate Principal Amount of all CLO Securities exempt from haircut based on subclause (y) above exceed in the aggregate 5.0% of the Required Portfolio Collateral Amount; and

(c) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the excess, if any, of (x) the Aggregate Principal Amount of all CLO Securities included in the pledged Portfolio Collateral (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a Moody's Rating within the BB Rating Category, the B Rating Category or the CCC Rating Category over (y) 15.0% of the Aggregate Par Amount as of the date of determination;

provided that for the avoidance of doubt, for purposes of clauses (a), (b) and (c) above, the applicable Overcollateralization Haircut Percentage shall always be applied first to the lowest rated Portfolio Collateral that falls within such clause, then to the next lowest rated Portfolio Collateral, etc., so that the maximum applicable haircut shall be applied to the Portfolio Collateral;

plus

(B) the product of (i) the applicable Overcollateralization Haircut Percentage multiplied by (ii) the excess, if any, of (x) the Aggregate Principal Amount of all Portfolio Loans included in the pledged Portfolio Collateral (other than Deferred Interest PIK Bonds and Defaulted Portfolio Collateral) on such date of determination that have an S&P Rating or a Moody's Rating within the CCC Rating Category over (y) 6.25% of the Aggregate Par Amount as of the date of determination.

"Overcollateralization Haircut Percentage": (i) With respect to CLO Securities with an S&P Rating or a Moody's Rating falling within the BB Rating Category, 10%, (ii) with respect to CLO Securities with an S&P Rating or a Moody's Rating falling within the B Rating Category, 20%, (iii) with respect to Portfolio Loans with an S&P Rating or a Moody's Rating falling within the CCC Rating Category, the greater of (x) 30% and (y) one minus the weighted average Market Value of all Portfolio Loans with an S&P Rating or a Moody's Rating falling within the CCC Rating Category and (iv) with respect to CLO Securities with an S&P Rating or a Moody's Rating falling within the CCC Rating Category, 50%.

"Overcollateralization Ratio": The Class A Overcollateralization Ratio, the Class B-1L Overcollateralization Ratio or the Class B-2L Overcollateralization Ratio, as the context may require.

"Overcollateralization Ratio Adjustment": For purposes of calculating the Overcollateralization Ratios (i) items of Equity Portfolio Collateral shall not be included as Portfolio Collateral, (ii) items of Deferred Interest PIK Bonds and Defaulted Portfolio Collateral shall be included at the lesser of (a) the Market Value of such item of Deferred Interest PIK Bonds, Defaulted Portfolio Collateral and (b) the Applicable Percentage for such item of Deferred Interest PIK Bonds and Defaulted Portfolio Collateral multiplied by its Principal Balance; *provided* that any Portfolio Loan that has been an item of Defaulted Portfolio Collateral for four years shall not be included as Portfolio Collateral and any CLO Security that has been an item of Defaulted Portfolio Collateral for three years shall not be included as Portfolio Collateral, (iii) with respect to items of Discount Portfolio Collateral, an amount equal to the original purchase price of such item of Discount Portfolio Collateral shall be included as Portfolio Collateral, (iv) to the extent the Aggregate Principal Amount of Current Pay Obligations exceeds 7.5% of the Aggregate Par Amount, such excess shall be included as Defaulted Portfolio Collateral and (v) items of Portfolio Collateral characterized as Current Pay Obligations in (iii) (c) of the Current Pay Obligation definition shall be included at 95% of the Market Value of such item of Portfolio Collateral. If an item of Portfolio Collateral could be classified in more than one of the categories set forth in clauses (i) through (iv), such item of Portfolio Collateral will not be discounted multiple times but will be treated in the applicable category that results in the largest discount to the par amount of such item of Portfolio Collateral. Notwithstanding the foregoing, there may be included as Portfolio Collateral (with respect to items (i) through (iv) above) such greater amount as confirmed by the Rating Agencies which will not result in a reduction or withdrawal of the then-current ratings assigned by them to any Class of the Notes.

"Overcollateralization Tests": With respect to any date of determination, tests met when the Class A Overcollateralization Ratio is at least equal to the Class A Overcollateralization Percentage, the Class B-1L Overcollateralization Ratio is at least equal to the Class B-1L Overcollateralization Percentage and the Class B-2L Overcollateralization Ratio is at least equal to the Class B-2L Overcollateralization Percentage, each relating to such date of determination.

"Partial Deferred Interest Bonds": Any debt obligation, with respect to which a portion of the interest thereon can be partially deferred without causing a payment default of such debt obligation under its underlying documents. For purposes of calculating the Weighted Average Coupon, the portion of interest that is deferrable with respect to any Partial Deferred Interest Bond will be assumed to be zero.

"Participation": With respect to any Portfolio Loan, a participation interest in a commercial loan purchased from a Selling Institution that does not entitle the holder thereof to direct rights against the obligor.

"Paying Agent": The Trustee, the Irish Paying Agent or any other depository institution or trust company authorized by the Co-Issuers pursuant hereto to pay principal of or any interest that may become payable on any Class of Notes on behalf of the Co-Issuers.

"Paying and Transfer Agency Agreement": The agreement dated as of the Closing Date between the Issuer and the Paying and Transfer Agent with respect to the Preferred Shares.

"Paying and Transfer Agent": Investors Bank & Trust Company.

"Payment Date": February, May, August and November of each year, commencing November 1, 2007 (or if any such date is not a Business Day, the next succeeding Business Day).

"Payment Date Equity Securities" shall mean, with respect to any Payment Date, Distributable Equity Securities that the Issuer, in its sole discretion but on the advice of the Servicer, elects to distribute in lieu of cash on such Payment Date to the Holders of Preferred Shares in accordance with the terms hereof.

"Periodic Interest Accrual Period": With respect to any Payment Date, the period commencing on the prior Payment Date (or the Closing Date in the case of the first Payment Date) and ending on the day preceding such Payment Date.

"Periodic Interest Amount": With respect to the Class A-1LA Notes and the Class A-1LB Notes on any Payment Date, the aggregate amount of interest accrued at the Applicable Periodic Rate during the related Periodic Interest Accrual Period on (i) with respect to the first Payment Date, the average daily Aggregate Principal Amount of such Class of Notes during such Periodic Interest Accrual Period, and (ii) thereafter, the Aggregate Principal Amount of such Class of Notes on the first day of such Periodic Interest Accrual Period (after giving effect to any payment of principal of such Class of Notes on such day). With respect to each other Class of Notes and any Payment Date, the aggregate amount of interest accrued at the Applicable Periodic Rate during the related Periodic Interest Accrual Period on the Aggregate Principal Amount of such Class on the first day of such Periodic Interest Accrual Period (after giving effect to any payment of principal of such Class of Notes on such date, including in connection with a redemption of a Class of Notes on any date during the related Periodic Interest Accrual Period).

"Periodic Rate Shortfall Amount": With respect to each Class of Notes and any Payment Date, any shortfall or shortfalls in the payment of the Periodic Interest Amount on such Class of Notes with respect to any preceding Payment Date or Payment Dates, together with interest accrued thereon at the Applicable Periodic Rate (net of all Periodic Rate Shortfall Amounts, if any, paid with respect to such Class of Notes prior to such Payment Date).

"Periodic Reserve Amount": As of any date of determination, an amount equal to (a) the sum of (i) the Trustee Administrative Expenses and Preferred Shares Administrative Expenses payable on the next succeeding Payment Date; (ii) without duplication of amounts payable pursuant to clause (i) hereof, the Issuer Base Administrative Expenses payable on the next succeeding Payment Date; (iii) the Base Fee Amount payable on the next succeeding Payment Date; and (iv) the Cumulative Interest Amount for the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes and the Class A-3L Notes, and the Periodic Interest Amount for the Class B-1L Notes and the Class B-2L Notes due on the next succeeding Payment Date, *minus* (b) amounts due from any Hedge Counterparty Provider on the next succeeding Payment Date.

"Permanent Global Note": The Rule 144A Global Notes and the Permanent Regulation S Global Notes.

"Permanent Regulation S Global Note": With respect to any Class, the permanent global note issued to Non-U.S. Persons in exchange for the Temporary Regulation S Global Note of such Class after the Distribution Compliance Period, the permanent global note substantially in the form attached hereto as Exhibits A-1L-2, A-2L-2, A-3L-2, B-1L-2 and B-2L-2.

"Permitted Non-U.S. Obligor": An issuer of or obligor on an item of Portfolio Collateral that is located in (a) a Group A Country or (b)(i) a Group B Country, (ii) any tax advantaged jurisdiction (including the Cayman Islands, Netherlands Antilles, Bermuda, Ireland, Luxembourg and the Channel Islands) or (iii) any tax advantaged jurisdiction or any tax neutral or other jurisdiction subject to Moody's and S&P confirming to the Issuer, the Trustee and the Servicer that an immediate withdrawal, reduction or other adverse action with respect to any then current rating (including any private or confidential rating) of any Class of Notes will not occur as a result of such obligor being a Permitted Non-U.S. Obligor, so long as the U.S. Dollar denominated sovereign debt obligations of such jurisdiction are rated at least "Aa2" by Moody's (unless (x) an obligor of such item of Portfolio Collateral is a corporation for which a major source of revenue is from a jurisdiction rated at least "Aa2" by Moody's or (y) such item of the Portfolio Collateral is a CLO Security); *provided* that, with respect to the obligors of an item of Portfolio Collateral qualifying as Permitted Non-U.S. Obligors under this clause (b)(iii), at least 80% of such obligor's underlying assets must be domiciled in the United States or another Permitted Non-U.S. Obligor jurisdiction to so qualify as a Permitted Non-U.S. Obligor. For purposes of this definition, the Servicer may specify the location of a Permitted Non-U.S. Obligor to be the country in which at least 80% of such obligor's underlying assets are domiciled, if such assets are domiciled in the United States or another Permitted Non-U.S. Obligor jurisdiction; *provided* that the Aggregate Principal Amount of the Portfolio Collateral as to which the Servicer so specifies the location of a Permitted Non-U.S. Obligor may not exceed 5% of the Aggregate Par Amount. If the location of a Permitted Non-U.S. Obligor is specified by the Servicer to be in a country other than where it is domiciled in accordance with the foregoing sentence, for purposes of the concentration limitations and collateral quality tests described herein, such item of Portfolio Collateral will be considered to be domiciled in the country so specified.

"Permitted Transfer": A transfer by novation by a Hedge Counterparty to an entity (the "Transferee") of all, but not less than all, of such Hedge Counterparty's rights, liabilities, duties and obligations under related Hedge Agreement, as applicable, with respect to which transfer each of the following conditions is satisfied: (a) the Transferee is an Eligible Replacement that is a recognized dealer in interest rate derivatives or cashflow derivatives, as the case may be, (b) an "Event of Default" or "Termination Event" under such Hedge Agreement (as such terms are defined under the related Hedge Agreement) would not occur as a result of such transfer, (c) pursuant to a written instrument (the "Transfer Agreement"), the Transferee acquires and assumes all rights and obligations of such Hedge Counterparty under the related Hedge Agreement and the related "Transaction" (as defined in the related Hedge Agreement), (d) the related Hedge Counterparty will be responsible for any costs or expenses incurred in connection with such transfer (including any replacement cost of entering into a replacement transaction); (e) either (A) Moody's has been given prior written notice of such transfer and the Rating

Condition is satisfied with respect to S&P or (B) each Rating Agency has been given prior written notice of such transfer and such transfer is in connection with the assignment and assumption of this Agreement without modification of its terms, other than party names, dates relevant to the effective date of such transfer, tax representations and any other representations regarding the status of the substitute counterparty, notice information and account details and other similar provisions; and (f) such transfer otherwise complies with the terms of this Indenture.

"Person": Any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, government or any agency or political subdivision thereof.

"PIK Bond": Any item of Portfolio Collateral that, pursuant to the terms of the related Underlying Instruments, permits the payment of interest thereon to be deferred and capitalized or otherwise provides that interest will accrue on such deferred interest or that issues identical securities in place of payments of interest in cash.

"Pledged Securities": On any date of determination, the Portfolio Collateral and the Eligible Investments in the Trust Estate.

"Portfolio Collateral": (I) Any United States dollar denominated commercial loan, including participation or assignment interests therein, in Registered form or Registered debt obligation (other than Eligible Investments) of any corporation, limited liability company, partnership, trust or other entity or of the United States government or any agency or instrumentality thereof or of any state or political subdivision or any agency or instrumentality thereof or of any sovereign issuer (including any security entitlement with respect thereto) and any United States Security Entitlement, which obligation, security entitlement or United States Security Entitlement, when Granted to the Trustee or committed to be purchased by the Issuer (with written notice to the Trustee):

(a) is an "eligible asset" as defined in Rule 3a-7;

(b) except as permitted under Section 12.10(b), provides for periodic payments of interest thereon in cash no less frequently than semiannually, or, in the case of Portfolio Loans, quarterly;

(c) provides for a fixed amount of principal to be payable according to a fixed schedule or at maturity;

(d) is not an item of Defaulted Portfolio Collateral, an item of Equity Portfolio Collateral, a margin stock or an item of Credit Risk Portfolio Collateral;

(e) is not a zero-coupon bond, a bond that provides for a combination of no coupon and a fixed coupon, a step-up bond (except for step-up bonds providing for the payment of current interest at a rate no less than 5% *per annum* or Collateral LIBOR, if floating rate), other than with respect to the Initial Portfolio Collateral on the Closing Date, a Partial Deferred Interest Bond (except

for such bonds providing for the payment of current interest at a rate no less than 5% *per annum* or Collateral LIBOR, if floating rate);

(f) is not currently the subject of an Offer that would result in (i) the Issuer owning a security not meeting the requirements of Portfolio Collateral, not paying current interest, or, in the reasonable judgment of the Servicer, not expected to pay in full at maturity, or (ii) the Issuer receiving Eligible Investments or cash in a par amount less than that of the original security or the subject of an Exchange Offer;

(g) does not provide for conversion or exchange into equity capital at any time over its life (other than the exercise of any warrant, profit participation or other equity-like interest which is a component of a Unit);

(h) with respect to Portfolio Collateral which consists of Floating Rate Portfolio Collateral, has an interest rate which adjusts periodically in accordance with changes in one or more established indices at least one of which is the London interbank offered rate for one-, two-, three- or six-month U.S. dollar deposits and which adjusts at least semiannually or, with respect to items of Fixed Rate Portfolio Collateral, has an interest rate that remains constant until the maturity of such obligations or is a Reset Debt Security; *provided* that not more than 5.0% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate may include items of Portfolio Collateral the interest rate on which adjusts in accordance with one or more indices that do not include the London interbank offered rate for one-, two-, three-, or six-month U.S. Dollar deposits;

(i) has coupon or other payments (other than commitment fees, facility fees or other similar fees) that are not subject to U.S. withholding tax and are not at time of purchase subject to foreign withholding tax unless the issuer of the security is required to make "gross-up" payments sufficient to cause the net amount to be received on the debt obligations to equal the amount that would have been paid had no such withholding tax applied;

(j) matures on or before August 1, 2024, or, if a Maturity Extension as occurred, the then applicable Extended Final Maturity Date, except that up to 5% of the Aggregate Par Amount may mature after such date but before 5 years after such date; *provided* that, with respect to Portfolio Loans, no more than 3% of the Aggregate Par Amount may mature after August 1, 2024, or, if a Maturity Extension as occurred, the then applicable Extended Final Maturity Date, but before two years after such date and no Portfolio Loans may mature after two years after such date;

(k) the terms of which do not, unless it is a Delayed Drawdown Loan or Revolving Loan, require the Holder to assume or otherwise undertake any funding obligations or liabilities (of a contingent nature or otherwise);

(l) is payable only in United States dollars;

(m) is not a Current Pay Obligation;

(n) is not a Debt Security;

(o) the S&P Rating of which does not include a subscript of "r", "t", "p", "pi" or "q" unless otherwise agreed to by Standard & Poor's in writing and a Moody's Rating that addresses the full amount of principal or interest indicated would be paid;

(p) during the Revolving Period, CLO Security has a Moody's Rating of "Ba2" or higher and an S&P Rating of "BB" or higher and, after the Revolving Period, are not CLO Securities;

(q) are not obligations of Non-U.S. Obligors;

(r) are not a PIK Bond which is currently deferring interest payments or receiving payments in-kind pursuant to the terms of the Underlying Instrument; and

(s) satisfies, together with the other Portfolio Collateral to be concurrently included in the Trust Estate, the other applicable criteria set forth in this Indenture, including the ratings guidelines and guidelines concerning issuer concentration and industry concentration; or

(II) a Synthetic Security; *provided* that the Servicer concludes, based on advice of counsel, that the Synthetic Security is an "eligible asset" for purposes of Rule 3a-7.

"Portfolio Improvement Exchange": The disposition, during the Revolving Period, of an item of Portfolio Collateral and corresponding acquisition of one or more items of Substitute Portfolio Collateral which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the other collateral criteria set forth in Section 12.2 being satisfied (or bring the total Portfolio Collateral closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Tests or collateral criteria set forth in Section 12.2 is not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the Portfolio Collateral as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Tests and collateral criteria set forth in Section 12.2, and (iii) in the case of each of clause (i) and (ii) not causing any other Collateral Quality Tests, Interest Coverage Test, Overcollateralization Tests or collateral criteria set forth in Section 12.2, to be violated or significantly increase the likelihood of such violation in the future.

"Portfolio Loan": Interests in commercial loans included in the Portfolio Collateral.

"Post-Closing Sale Collateral": An asset acquired by the Issuer which as of the Closing Date has a commitment to be sold by the Issuer within 10 days of the Closing Date.

"Preferred Shares": The 42,200,000 Class I Preferred Shares of the Issuer, par value U.S.$0.001 per share, and the 44,000,000 Class II Preferred Shares of the Issuer, par value U.S.$0.001 per share, that will be issued on the Closing Date pursuant to the Issuer's Memorandum of Association and Articles of Association and any further Preferred Shares issued from time to time by the Issuer.

"Preferred Shares Administrative Expenses": With respect to any Payment Date (including without limitation the Final Maturity Date), the Paying and Transfer Agent's administrative fees and expenses (including any indemnities) for the Due Period relating to such Payment Date.

"Preferred Shares Collection Account": The meaning set forth in the Paying and Transfer Agency Agreement.

"Preferred Share Component": The component of the Combination Notes representing 3,250,000 Preferred Shares.

"Premium": With respect to any item of Portfolio Collateral sold pursuant to the terms hereof or called pursuant to the terms thereof, the excess, if any, of (a) the sale or call price of such item of Portfolio Collateral less any accrued interest with respect to such item of Portfolio Collateral over (b) the Aggregate Principal Amount of such item of Portfolio Collateral.

"Principal Balance": With respect to any Pledged Security, as of any date of determination, the outstanding principal amount of such Pledged Security, *provided* that (i) unless otherwise stated herein or in the Indenture, the "Principal Balance" of any Delayed Drawdown Loan or Revolving Loan shall refer to the sum of the outstanding aggregate principal amount of such Delayed Drawdown Loan or Revolving Loan *plus* the amount of the unfunded portion of the Issuer's commitment to make or otherwise fund advances related thereto (to the extent, and without duplication, of amounts on deposit in the Loan Funding Account available to fund such advances), (ii) the "Principal Balance" of any Synthetic Security shall be equal to (a) in the case of any Synthetic Security other than a Default Swap, the outstanding principal amount of the Reference Obligation or the notional amount of the Synthetic Security related thereto and (b) in the case of any Default Swap, the cash and the principal amount of the securities in the related Default Swap Collateral Account reduced by the amount of any payments due and payable to the Default Swap Counterparty by reason of the occurrence of one or more "credit events" or other similar circumstances to the extent such payments have not yet been made; and (iii) with respect to any item of Equity Portfolio Collateral, the "Principal Balance" shall equal zero.

"Proceedings": Any suit in equity, action at law or other judicial or administrative proceeding.

"Proposed Portfolio": The Aggregate Par Amount resulting from the sale, maturity or other disposition of an item of Portfolio Collateral or a proposed purchase of an item of Portfolio Collateral, as the case may be.

"Purchased Accrued Interest": Interest accrued on or purchased with respect to an item of Portfolio Collateral as part of the price paid by the Issuer to acquire such item of Portfolio Collateral less any amount of Collateral Interest Collections applied by the Issuer to acquire such accrued interest at the time of purchase; *provided* that accrued interest on certain CLO Securities as indicated on Schedule A shall not constitute Purchased Accrued Interest.

"Qualified Institutional Buyer": A "qualified institutional buyer" within the meaning of Rule 144A.

"Qualified Purchaser": A "qualified purchaser" within the meaning of Section 3(c)(7) of the Investment Company Act.

"Quarterly Collateral Amount": With respect to any Due Period, the average of (i) the Aggregate Par Amount of Portfolio Collateral and Eligible Investments on the first day of such Due Period and (ii) the Aggregate Par Amount of Portfolio Collateral and Eligible Investments on the last day of such Due Period. For purposes of such amounts, Equity Portfolio Collateral and Defaulted Portfolio Collateral shall be excluded in calculating the Aggregate Par Amount of the Portfolio Collateral.

"Rating Agencies": Standard & Poor's and Moody's, collectively.

"Rated Balance": With respect to the Combination Notes, initially U.S. $10,000,000, reduced by all payments on account of the Rated Balance of the Combination Notes, as provided in Section 16.3.

"Rated Coupon": Interest, at the rate of 1.00% per annum, on the Rated Balance of the Combination Notes.

"Rating Condition": With respect to any Rating Agency and any action proposed to be taken under this Indenture, a condition that is satisfied when such Rating Agency has confirmed in writing to the Issuer, the Trustee and the Servicer that no withdrawal, reduction or suspension (and not restored) with respect to any then current rating, if any, by such Rating Agency (including any private or confidential rating) of any Class of Notes will occur as a result of such proposed action.

"Rating Confirmation": Written confirmation from each of the Rating Agencies that it has not reduced or withdrawn (and not restored) the rating assigned by it on the Closing Date to any Class of Notes.

"Rating Confirmation Failure": A failure to obtain Rating Confirmation by the 35th day after the Effective Date (or if such day is not a Business Day, the succeeding Business Day).

"Rating Confirmation Failure Redemption": The redemption of a Class or Classes of Notes, as a result of a Rating Confirmation Failure pursuant to Section 9.2.

"Rating Subcategories Difference": The number of ratings subcategories difference between the rating by Moody's or, if not actually rated by Moody's, the Moody's

Rating, of an item of Portfolio Collateral and the Moody's Default Probability Rating of such item of Portfolio Collateral.

"Record Date": With respect to any Payment Date, the Business Day immediately preceding such Payment Date; *provided however*, that if any Definitive Notes are issued, the Record Date for such Definitive Notes shall be fifteen calendar days preceding such Payment Date.

"Redemption Date Statement": The meaning specified in Section 10.5(e) hereof.

"Redemption Record Date": With respect to an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date, the Business Day preceding such Optional Redemption Date, Special Redemption Date, Tax Event Redemption Date or Mandatory Redemption Date, and with respect to an Initial Deposit Redemption, the last day of the calendar month preceding the month in which the Initial Deposit Redemption Date occurs.

"Reference Banks": Four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer).

"Reference Obligation": A security or other debt obligation that satisfies the definition of Portfolio Collateral other than as to payment terms; *provided* that notwithstanding the definition thereof, a Reference Obligation may be a loan (but not a participation interest in a loan, except as permitted in the Indenture).

"Reference Obligor": The obligor under a Reference Obligation.

"Refinancing": The meaning specified in Section 9.1(b) hereof.

"Refinancing Date": The meaning specified in Section 9.1(b) hereof.

"Refinancing Proceeds": The meaning specified in Section 9.1(b) hereof.

"Registered": When used with respect to any Portfolio Collateral or Eligible Investment, an instrument issued after July 18, 1984, that is in registered form for purposes of the Code.

"Regulation S": Regulation S promulgated under the Securities Act.

"Regulation S Global Note": Temporary Regulation S Global Notes, together with the Permanent Regulation S Global Notes.

"Regulation S Transferor Certificate": A certificate substantially in the form of Exhibit E hereto.

"Relevant Date": The Final Maturity Date, except that if the full amount payable on the Notes has not been duly received by the Trustee or Paying Agent on or prior to the Final

Maturity Date, the "Relevant Date" shall be the date on which such monies have been so received.

"Relevant Entity": A Hedge Counterparty and any Eligible Guarantor under a related Eligible Guarantee.

"Required Portfolio Collateral Amount": U.S. $1,000,000,000.

"Requisite Noteholders": The Holders of at least 60% of the Aggregate Principal Amount of the Outstanding Notes (voting as a single class including the Combination Notes, to the extent of the Note Component); *provided* that (i) upon the occurrence of a Default or an Event of Default under this Indenture, "Requisite Noteholders" shall mean the Holders of at least 60% of the Aggregate Principal Amount of the Controlling Class, voting together as a single Class. If the Person that is acting as Trustee hereunder is a Holder of any Note for its own account, such Person shall be excluded as a Holder for purposes of this definition in connection with the consent or approval by Noteholders of any supplemental indenture affecting the provisions hereof relating to the Trustee.

"Replacement Transaction": With respect to any Terminated Transaction (as defined in a Hedge Agreement), a transaction or group of transactions that (i) would have the effect of preserving for the related Hedge Counterparty to such Hedge Agreement the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under such Hedge Agreement in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant "Early Termination Date" (as such term is defined in the related Hedge Agreement), have been required after that date, (ii) has terms which are substantially the same as the related Hedge Agreement, including, without limitation, rating triggers, and credit support documentation, as determined by the Issuer, in its sole discretion, acting in a commercially reasonable manner, and (iii) satisfies the Rating Condition.

"Reserve Account": The meaning specified in Section 10.2 hereof.

"Reserve Amount": A portion of the proceeds from the sale of the Notes in an amount equal to US$1,500,000 to fund a portion of the payments to be made on the first Payment Date in accordance with the Priority of Payments, and, any remaining funds, to fund any payments of interest or principal on the Notes or any distributions on the Preferred Shares as described in Section 11.1(b).

"Reset Debt Security": An item of Portfolio Collateral bearing a rate of interest that varies periodically (including, without limitation, daily), which at the time of its inclusion in the Trust Estate has a minimum rate of interest of at least 5.0% *per annum* with respect to Fixed Rate Portfolio Collateral or Collateral LIBOR with respect to Floating Rate Portfolio Collateral, and which minimum interest rate is not subject to adjustment on or after its inclusion in the Trust Estate, pursuant to the terms of the related Underlying Instrument to a rate of interest which is lower than the rate of interest borne by such item of Portfolio Collateral on the date that such item of Portfolio Collateral was included in the Trust Estate.

"Responsible Officer": When used with respect to the Trustee, any officer within the Corporate Trust Office (or any successor group of the Trustee) including any vice president, assistant vice president, assistant treasurer, assistant secretary, trust officer or any other officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred within the Corporate Trust Office because of his or her knowledge of and familiarity with the particular subject.

"Retained Accrued Interest" Any accrued and unpaid interest with respect to any Portfolio Collateral which was not included in the purchase price for such collateral at the time of purchase.

"Revolving Loan": A Portfolio Loan that, pursuant to the agreement or instrument that governs the rights and obligations of the parties thereto, would obligate the Issuer, if the Issuer were to purchase such Portfolio Loan for inclusion in the Trust Estate, to make or otherwise fund one or more future advances to the related borrower.

"Revolving Period": The period beginning on the Closing Date and ending on the earliest of (i) August 1, 2014 for Portfolio Loans or August 1, 2012 for CLO Securities or, in the case of an Extension, the Extended Revolving Period End Date; *provided* that Portfolio Loans and CLO Securities may be purchased for the period of any such Extension, and (ii) the occurrence and continuance of an Event of Default; *provided* that in no event shall date of termination of the Revolving Period be determined on the basis of the Market Value of the Portfolio Collateral.

"Rule 144A": Rule 144A promulgated under the Securities Act.

"Rule 144A Global Note": With respect to any Class (other than the Class B-2L Notes), the permanent global note issued to U.S. Persons.

"Rule 144A Transferor Certificate": A certificate substantially in the form of Exhibit D hereto.

"Rule 3a-7": Rule 3a-7 under the Investment Company Act.

"Sale": The meaning specified in Section 5.18 hereof.

"Sale Restriction Condition": Shall mean (x) with respect to sales of Credit Risk Portfolio Collateral, if the rating of the Class A-1LA Notes, the Class A-1LB or the Class A-2L Notes has been downgraded at least one rating sub-category below the original rating by Moody's (and such original rating has not been restored to the original rating) or the original rating of the Class A-3L Notes, the Class B-1L Notes or the Class B-2L Notes has been downgraded at least two rating sub-categories by Moody's (and has not been restored to a rating no more than one rating sub-category below the original rating of such Class of Notes), or if the Class A Overcollateralization Ratio is less than 90% of the Class A Overcollateralization Percentage or (y) with respect to sales of Credit Improved Portfolio Collateral, if the original rating of the Class A-1LA Notes, the Class A-1LB Notes or the Class A-2L Notes has been downgraded at least one rating sub-category by Moody's (and such original rating has not been

restored) or the original rating of the Class A-3L Notes, the Class B-1L Notes or the Class B-2L Notes has been downgraded at least two rating sub-categories by Moody's (and has not been restored to a rating no more than one rating sub-category below the original rating of such Class of Notes).

"Schedule of Portfolio Collateral": The Initial Portfolio Collateral listed on Schedule A hereto, as amended from time to time to reflect Portfolio Collateral in the Trust Estate, including the inclusion of Portfolio Collateral purchased pursuant to Section 3.4(a) hereof, the inclusion of Additional Portfolio Collateral as provided in Section 11.3 hereof, the release of Portfolio Collateral pursuant to Article X hereof, and the inclusion of Substitute Portfolio Collateral as provided in Section 12.4 hereof.

"Scheduled Distribution": With respect to any Pledged Security, for each Due Date after the date of determination, the scheduled payment of principal and/or interest due on such Due Date with respect to such Pledged Security, determined in accordance with the assumptions specified in Section 1.3 hereof.

"Secured Parties": The meaning specified in the Granting Clauses hereof.

"Securities Act": The United States Securities Act of 1933, as amended.

"Securities Intermediary": The meaning specified in Section 6.15 hereof.

"Securities Lending Account": The meaning specified in Section 10.2 hereof.

"Securities Lending Agreements": The meaning specified in Section 7.19 hereof.

"Securities Lending Collateral": The meaning specified in Section 7.19 hereof.

"Securities Lending Counterparty": The meaning specified in Section 7.19 hereof.

"Selling Institution": The seller of a Participation or, if applicable, its guarantor, which has a long-term senior unsecured debt rating of at least "A2" by Moody's and at least "A" by S&P at the time such Participation is committed to be acquired by the Issuer.

"Senior Class A Notes": The Class A-1LA Notes, the Class A-1LB Notes and the Class A-2L Notes.

"Senior Class A Overcollateralization Ratio" With respect to a determination made as of any date of calculation, the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate (other than items of Equity Portfolio Collateral, which shall not be included as Portfolio Collateral) as of such date, *plus* (2) the sum of the Balance of Eligible Investments and cash in the Collection Account representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amount of the Senior Class A Notes (including for this purpose any Periodic Rate Shortfall Amounts with respect to such Class of Notes not paid when due, until such amounts, if any, are paid in full) as of such date.

"Senior Secured Loan": A loan that (i) is not (and by its terms is not permitted to become) subordinate in right of payment to any other debt for borrowed money incurred by the obligor under such loan and (ii) is secured by a valid first priority perfected security interest or lien on specified collateral securing the obligor's obligations under such Senior Secured Loan, which security interest or lien is not subordinate to the security interest or lien securing any other debt for borrowed money. For the avoidance of doubt, any second lien Portfolio Loan which has a Moody's obligation rating at least equal to the Moody's corporate family implied rating of such issuer, will be treated as Senior Secured Loan for the purposes of determining Moody's Priority Category Recovery Rate.

"Servicer": Highland Capital Management, L.P., unless and until a successor Person becomes the servicer pursuant to the provisions of the Servicing Agreement, and thereafter "Servicer" shall mean such successor Person.

"Servicer Entities": Collectively, the Servicer, entities affiliated with the Servicer or clients of the Servicer.

"Servicer Order" and "Servicer Request": A written order or request dated and signed in the name of the Servicer by an Authorized Officer of the Servicer.

"Servicing Agreement": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, and if amended as permitted therein and in Section 14.1(f), as so amended.

"Servicing Fee Portion": 100% minus (a) for any Payment Date prior to February 3, 2008, the Class II Preferred Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage selected by the Servicer in its sole discretion.

"Share Register": The register maintained under the Paying and Transfer Agency Agreement for the Preferred Shares and any other shares of the Issuer.

"Share Registrar": Maples Finance Limited or any successor thereto appointed by the Issuer.

"Special Redemption": A redemption of the Notes pursuant to Section 9.4 hereof.

"Special Redemption Date": The Payment Date during the Revolving Period fixed by the Issuer for a Special Redemption.

"Special Redemption Price": When used with respect to a Special Redemption, an amount equal to the principal amount of the Notes being redeemed (or, in the case of the Class B-1L Notes and the Class B-2L Notes, first to pay any Periodic Rate Shortfall Amount with respect to such Notes and then to pay principal).

"Standby Directed Investment": Initially, Investors Bank & Trust overnight sweep account, "Investcash", or such other Eligible Investments as may be subsequently designated as the "Standby Eligible Investment" by written instruction of the Servicer to the Trustee.

"Standard & Poor's" or "S&P": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

"Standard & Poor's CDO Monitor": The dynamic, analytical computer model developed by Standard & Poor's and used to estimate default risk of Portfolio Collateral and provided to the Servicer, the Issuer and the Trustee on or before the Effective Date, as it may be modified by Standard & Poor's in connection with its confirmation of the ratings of the Notes following the Closing Date.

"Standard & Poor's CDO Monitor Test": A test that is satisfied if, after giving effect to the sale of an item of Portfolio Collateral or the purchase of an item of Portfolio Collateral (or both), as the case may be (i) the S&P Loss Differential of the Proposed Portfolio is positive or (ii) the S&P Loss Differential of the Proposed Portfolio is greater than the S&P Loss Differential of the Current Portfolio.

"Standard & Poor's Industry Category": When used with respect to an item of Portfolio Collateral, any of the industry categories established by Standard & Poor's set forth in Schedule B hereto, and any additional categories that may be subsequently established by Standard & Poor's.

"Standard & Poor's Preferred Format": A Microsoft Excel file (or such other format agreed by Standard & Poor's) of the Standard & Poor's CDO Monitor input file and, with respect to each item of Portfolio Collateral, the name of each obligor thereon, the CUSIP number thereof (if applicable) and the Standard & Poor's Industry Category thereof.

"Standard & Poor's Rating" or "S&P Rating": The rating determined in accordance with the methodology described in Schedule D.

"S&P Approved Ratings Threshold": With respect to an entity (or its guarantor), a short-term unsecured and unsubordinated debt rating from S&P of at least "A-1", or, if such entity does not have a short-term unsecured and unsubordinated debt rating from S&P, a long-term unsecured and unsubordinated debt rating from S&P of at least "A+".

"S&P Break-Even Loss Rate": At any time, the maximum percentage of defaults which the Current Portfolio or the Proposed Portfolio, as applicable, can sustain, as determined by S&P through application of the Standard & Poor's CDO Monitor Test, which, after giving effect to S&P's assumptions on recoveries and timing and to the priority of payments, will result in sufficient funds remaining for the principal repayment of the Notes in full and the timely payment, as applicable, of interest on each Class of Notes.

"S&P First Level Downgrade": Occurs when no Relevant Entity satisfies the S&P Approved Rating Threshold.

"S&P Loss Differential": At any time, the rate calculated by subtracting the S&P Scenario Loss Rate from the S&P Break-Even Loss Rate at such time.

"S&P Priority Category": Senior secured Portfolio Loans and Debt Securities, second lien Portfolio Loans, senior unsecured Portfolio Loans and Debt Securities, subordinated Portfolio Loans and Debt Securities, DIP Loans and Synthetic Securities.

"S&P Priority Category Recovery Rate": For any item of Portfolio Collateral, the percentage specified in the definition of the term "Applicable Percentage" opposite the S&P Priority Category of item of Portfolio Collateral.

"S&P Required Ratings Threshold": With respect to an entity (or its guarantor), a long-term unsecured and unsubordinated debt rating from S&P of at least “BBB-” or a short-term unsecured and unsubordinated debt rating from S&P of at least "A3".

"S&P Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with a "AAA" rating of the Class A-1L Notes, a "AA" rating of the Class A-2L Notes, a "A" rating of the Class A-3L Notes, a "BBB" rating of the Class B-1L Notes and a "BB" rating of the Class B-2L Notes, in each case by Standard & Poor’s, determined by application of the Standard & Poor’s CDO Monitor at such time.

"S&P Second Level Downgrade": Occurs when no Relevant Entity satisfies the S&P Required Rating Thresholds.

"S&P Weighted Average Recovery Rate": The number obtained by summing the products obtained by multiplying the Principal Balance of each item of Portfolio Collateral (excluding Defaulted Portfolio Collateral) by the Applicable Percentage (according to the S&P Priority Category) applicable to such item of Portfolio Collateral as set forth in the definition of "Applicable Percentage" above, dividing such sum by the Aggregate Principal Amount of all Portfolio Collateral (excluding Defaulted Portfolio Collateral), and rounding up to the fourth decimal place.

"Subsequent Delivery Date": A date fixed by the Issuer for the delivery of an item of Portfolio Collateral to be included in the Trust Estate after the Effective Date.

"Substitute Portfolio Collateral": An item of Portfolio Collateral that is Delivered to the Trustee under this Indenture as security for the Notes in accordance with Section 12.4 hereof.

"Supplemental Fee Amount": The amount used to pay the Supplemental Servicing Fee pursuant to clause FIFTEENTH(a) of Section 11.1(c)(i) and clause FIFTEENTH(a) of Section 11.(d).

"Supplemental Servicing Fee": For any Payment Date, an amount equal to the product of (a) the Supplemental Fee Amount for such Payment Date and (b) the Servicing Fee Portion for such Payment Date.

"Suspension Trigger Event": As of any date of determination, (I) the ratio (expressed as a percentage) obtained by dividing (a) the sum of (1) the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate as of such date, calculated in accordance

with the Overcollateralization Ratio Adjustment less the Overcollateralization Haircut Amount, if any, plus (2) the sum of the Balance of Eligible Investments and cash in the Collection Account, representing Collateral Principal Collections plus the Balance of Eligible Investments and cash in the Initial Deposit Account plus unpaid Purchased Accrued Interest, each as of such date by (b) the sum of the Aggregate Principal Amount of the Class A-1L Notes (including for this purpose any unpaid Periodic Rate Shortfall Amounts with respect to such Classes of Notes not paid when due, until such amounts, if any, are paid in full) as of such date, is less than (II) 110%.

"Synthetic Security": Any (I) U.S. dollar denominated swap transaction, security issued by a trust or similar vehicle or other asset purchased from or entered into by the Issuer with a Synthetic Security Counterparty the returns on which (as determined by the Servicer) are linked to the credit performance of a Reference Obligation, but which may provide for a different maturity, payment dates, interest rate, interest rate basis or other non-credit related terms than such Reference Obligation; *provided* that, (A) (i) such Synthetic Security will not require the Issuer to make any payment to the Synthetic Security Counterparty after the initial purchase of or entry into such Synthetic Security by the Issuer (other than payments to the Synthetic Security Counterparty from the Default Swap Collateral Account), (ii) the ownership of such Synthetic Security, based on the Servicer's determination (which may include consultation with counsel to the Issuer), is not expected to subject the Issuer to withholding tax unless the Synthetic Securities Counterparty is required to make "gross-up" payments sufficient to cause the net amount to be received by the Issuer in respect of such Synthetic Security to equal the amount that would have been paid had no such withholding tax applied, (iii) such Synthetic Security terminates on or prior to the redemption or repayment in full of the Reference Obligation, (iv) such Synthetic Security will not constitute a commodity option, leverage transaction or futures contract that is subject to the jurisdiction of the U.S. Commodity Futures Trading Commission, (v) the acquisition of such Synthetic Security would not cause the Issuer to be "engaged in a U.S. trade or business" for federal income tax purposes or otherwise to become subject to U.S. corporate net income tax, (vi) the Underlying Instrument with respect to such Synthetic Security is governed by the laws of the State of New York, contains a non-petition clause and a limited recourse clause, each as against the Issuer, and is documented with a standard ISDA form master agreement, as modified by appropriate schedules and confirmations and from time to time as determined by the Servicer based on industry practice, and (B) either (i) such Synthetic Security is a Form-Approved Synthetic Security or (ii) the Rating Condition has been satisfied with respect to the purchase of such Synthetic Security; *provided further*, that any Synthetic Security shall be positively indexed to the related Reference Obligation on no more than a one-to-one basis and (II) any Default Swap; *provided, however*, that, with respect to a Synthetic Security other than a Form-Approved Synthetic Security, a Majority of the Controlling Class shall have approved such Synthetic Security; *provided, further* that with respect to a Form-Approved Synthetic Security for which consent by the Rating Agencies to use the form in this transaction has been sought after the Closing Date, a Majority of the Controlling Class shall have consented to the use of such form.

"Synthetic Security Counterparty": An entity which is required to make payments to the Issuer on a Synthetic Security to the extent that the issuer of the related Reference Obligation makes payments thereon pursuant to the terms of such Synthetic Security and any Default Swap Counterparty.

"Tax Event Redemption": A redemption of the Notes in whole pursuant to Section 9.5 hereof.

"Tax Event Redemption Date": The Payment Date fixed by the Issuer for a Tax Event Redemption.

"Tax Event Redemption Price": An amount equal to the aggregate of (i) the Aggregate Principal Amount of each Class of Notes as of the Tax Event Redemption Date and (ii) the applicable Cumulative Interest Amount with respect to each Class of Notes as of the Tax Event Redemption Date.

"Temporary Regulation S Global Notes": With respect to any Notes issued to Non-U.S. Persons that will be represented by a temporary global note, the temporary global note substantially in the form attached hereto as Exhibits A-1L-1, A-2L-1, A-3L-1, B-1L-1 and B-2L-1.

"Transaction Documents": This Indenture, each Hedge Agreement, the Paying and Transfer Agency Agreement, the Servicing Agreement and the Collateral Administration Agreement.

"Transfer Agent": Any transfer agent appointed by the Issuer.

"Transferor Certificates": Collectively, the Regulation S Transferor Certificate and the Rule 144A Transferor Certificate.

"Trust Estate": The meaning specified in the Granting Clauses of this Indenture.

"Trust Termination Date": The date on which the obligations of the Issuer hereunder are terminated as set forth in Section 4.1 or Section 9.11 hereof.

"Trustee": As defined in the first sentence of this Indenture.

"Trustee Administrative Expenses": With respect to any Payment Date (including without limitation the Final Maturity Date), fees, expenses and other amounts (including indemnities) due or accrued and payable to the Trustee for the Due Period relating to such Payment Date, including, but not limited to, all amounts payable to the Trustee under Section 6.7 hereof and all fees and expenses pursuant to duties performed as Collateral Administrator and Paying and Transfer Agent, *provided* such payment pursuant to clause FIRST of Section 11.1(b) shall not exceed on such Payment Date one-quarter of 0.0275% of the Aggregate Par Amount as of the Calculation Date relating to such Payment Date (such amount subject to a minimum of U.S.$74,000 per annum), plus U.S.$7,500 per annum for payments of expenses and certain other amounts under Section 6.7, if any.

"Trustee Fee Letter Agreement": The Trustee fee letter agreement, dated as of April 23, 2007.

"Trustee Payment-Related Event of Default": An Event of Default caused solely by and based solely upon a failure to pay any amounts owing to the Trustee or the Paying and

Transfer Agent pursuant to Section 6.7 hereof or to the Paying and Transfer Agent pursuant to Section 11 of the Paying and Transfer Agency Agreement (other than the amount payable to the Trustee as its fee (but not expenses) under the Trustee Fee Letter Agreement).

"UCC": The New York Uniform Commercial Code.

"Underlying Instrument": With respect to any item of Portfolio Collateral, any loan participation agreement, loan assignment agreement, indenture, pooling and servicing agreement, trust agreement, instrument, or other agreement pursuant to which such item of Portfolio Collateral has been created or issued or of which the holders of such item of Portfolio Collateral are the beneficiaries, and any instrument evidencing or constituting such item of Portfolio Collateral (in the case of Portfolio Collateral evidenced by or in the form of instruments).

"Underlying Loan and Security Agreement": Any agreement (other than an Underlying Instrument) which governs the terms of or guarantees or secures the obligations represented by any Portfolio Collateral or of which the holders of such Portfolio Collateral are the beneficiaries (which in the case of a Portfolio Loan which is a Participation shall include the loan and security documentation with respect to the underlying loan).

"Unit": An item of Portfolio Collateral with a warrant, profit participation or other equity-based feature (including but not limited to convertible bonds) included as a component thereof which otherwise meets the requirements for Portfolio Collateral; *provided* that (i) the value of such warrant, profit participation or other equity-based feature at the time of purchase, as determined by the Servicer in good faith, is less than 2% of the purchase price of such item of Portfolio Collateral and (ii) such warrant, profit participation or other equity-like feature at the time of purchase shall not, relate to or be exchangeable for, margin stock.

"United States Regulations": 31 C.F.R. Part 357, Subpart B; 12 C.F.R. Part 615, Subparts O, R and S; 12 C.F.R. Part 987; 12 C.F.R. Part 1511; 24 C.F.R. Part 81, Subpart H; 31 C.F.R. Part 354; 18 C.F.R. Part 1314; and 24 C.F.R. Part 350.

"United States Security Entitlement": A Security Entitlement as defined in a United States Regulation.

"Unregistered Securities": The meaning specified in Section 5.18(c) hereof.

"Unscheduled Principal Proceeds": Collateral Principal Collections received by the Issuer from an unscheduled prepayment, in whole or in part, by the obligor of an item of Portfolio Collateral prior to the stated maturity date of such item of Portfolio Collateral, including without limitation, any Collateral Disposition Proceeds received from the sale of any item of Portfolio Collateral received in an Offer, Exchange Offer or similar tender, whether such tender required action on the part of the Issuer or otherwise.

"USA PATRIOT Act": The Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

"U.S. Person":

(i) (a) a citizen of the United States;

(b) a natural person who is a resident of the United States or a resident alien of the United States as defined by section 7701(b) of the Code;

(c) any partnership (unless otherwise provided in the regulations), corporation or other entity created, organized or incorporated in or under the laws of the United States, its states, territories or possessions, or the District of Columbia;

(d) any estate or trust as defined by section 7701(a)(30)(D) and (E) of the Code, respectively; or

(ii) as defined in Regulation S, as the context may require.

"Waived Additional Servicing Fee": As defined in Section 11.5.

"Waived Servicing Fees": As defined in Section 11.5.

"Waived Supplemental Servicing Fee": As defined in Section 11.5.

"Weighted Average Coupon": The amount (rounded up to the nearest 0.001%) determined by summing the products obtained by multiplying, for each item of Fixed Rate Portfolio Collateral then included in the Trust Estate (other than items of Defaulted Portfolio Collateral), the Principal Balance of such item of Portfolio Collateral and the stated rate of interest of such item of Portfolio Collateral and then dividing such sum by the Aggregate Principal Amount of all of the Fixed Rate Portfolio Collateral included in the Trust Estate (other than items of Defaulted Portfolio Collateral) as of such date of determination.

"Weighted Average Coupon Test": A test that will be satisfied if the Weighted Average Coupon of the Fixed Rate Portfolio Collateral (after giving effect to any Coupon Adjustment) is at least equal to 7.5% per annum as of the date of determination (or such lower per annum rate that the Rating Agencies have confirmed would not result in a withdrawal or downgrade of any of the then current ratings assigned by them to the Notes).

"Weighted Average Life": As of any date of determination, the amount determined by summing the products obtained by multiplying, for each item of Portfolio Collateral (other than items of Defaulted Portfolio Collateral) then included in the Trust Estate, the Principal Balance of such item of Portfolio Collateral and the Average Life (as such term is defined below) of such item of Portfolio Collateral as of such date of determination and then dividing such sum by the Aggregate Principal Amount of all of the Portfolio Collateral included in the Trust Estate as of such date of determination. For any item of Portfolio Collateral (other than items of Defaulted Portfolio Collateral), the "Average Life" shall be equal to the number of years obtained by dividing (a) the Principal Balance of such item of Portfolio Collateral into (b) the sum of the products obtained by multiplying (i) the amount of each of the remaining, required principal payments on such item of Portfolio Collateral by (ii) the number of years

(calculated to the nearest one-twelfth) that will have elapsed between such date of determination and the making of such payment.

"Weighted Average Life Requirement": A test that will be satisfied on any date of determination if the Weighted Average Life on such date of all items of Portfolio Collateral (other than items of Defaulted Portfolio Collateral) is equal to or less than the number of years set forth in Schedule I hereto opposite the period set forth in Schedule I hereto in which such test is being measured. Notwithstanding the foregoing, the Weighted Average Life may vary from the restrictions set forth above, if the Rating Agencies have confirmed such variance would not result in a withdrawal or downgrade of any of the then current ratings assigned by them to the Notes.

"Weighted Average Margin": The amount (rounded up to the nearest 0.001%) equal to (i) the sum of the products obtained by multiplying the margin over Collateral LIBOR on each item of Floating Rate Collateral (other than items of Defaulted Portfolio Collateral) as of the date of calculation (which will be determined for items of Floating Rate Collateral that do not bear interest based on Collateral LIBOR by expressing the current interest rate on such Floating Rate Collateral as a margin above or below three-month LIBOR on the date of determination, which margin will be expressed as a negative number if such current interest rate is lower than three-month LIBOR) by the Principal Balance of such item of Floating Rate Collateral (other than items of Defaulted Portfolio Collateral) as of such date, divided by (ii) the Aggregate Principal Amount of all such Floating Rate Collateral (other than items of Defaulted Portfolio Collateral) on such date. For purposes of calculating the Weighted Average Margin for any Delayed Drawdown Loan or Revolving Loan, the principal balance representing the funded portion will be multiplied by the margin above Collateral LIBOR and the principal balance representing the unfunded portion will be multiplied by the commitment fee related thereto. If an item of Floating Rate Portfolio Collateral does not provide for Collateral LIBOR, the margin for this purpose shall be equal to the then applicable interest rate minus then current LIBOR. If an item of Floating Rate Portfolio Collateral has a Collateral LIBOR floor, the excess of such floor rate over Collateral LIBOR will be added to the margin above Collateral LIBOR for purposes of calculating the Weighted Average Margin of such item of Floating Rate Portfolio Collateral.

"Weighted Average Margin Test": A test that will be satisfied by application of the Collateral Quality Matrix, after giving effect to any Coupon Adjustment.

Section 1.2. Other Definitional Provisions.

All references in this instrument to designated "Annexes," "Articles," "Sections," "Subsections" and other subdivisions are to the designated Annexes, Articles, Sections, Subsections and other subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Annex, Article, Section, Subsection or other subdivision. Unless the context otherwise requires, terms defined in the UCC and not otherwise defined in this Indenture shall have the meanings set forth in the UCC. Any reference herein to money or other property that is to be deposited in or is on deposit in a securities account shall also mean that such money or other property is to be credited to, or is credited to, such securities account.

Any reference herein to a "beneficial interest" in a security also shall mean, unless the context otherwise requires, a security entitlement with respect to such security, and any reference herein to a "beneficial owner" or "beneficial holder" of a security also shall mean, unless the context otherwise requires, the holder of a security entitlement with respect to such security.

Section 1.3. Assumptions as to Portfolio Collateral and Trust Estate.

Except as otherwise expressly set forth herein, in connection with all calculations required to be made pursuant to this Indenture with respect to Scheduled Distributions on any Pledged Security, or any payments on any other assets included in the Trust Estate, and with respect to the income that can be earned on Scheduled Distributions on such Pledged Securities and on any other amounts that may be received for deposit in the Collection Account, the provisions set forth in this Section 1.3 shall apply.

All calculations with respect to Scheduled Distributions on the Pledged Securities shall be made on the basis of information as to the terms of each such Pledged Security and upon accounting of payments, if any, received on such Pledged Security that are furnished by or on behalf of the issuer of such Pledged Security and such information or report may be conclusively relied upon in making such calculations.

For each Due Period, the Scheduled Distributions on any Pledged Security (excluding any item of Defaulted Portfolio Collateral and Equity Portfolio Collateral, as to which Scheduled Distributions shall be assumed to be zero) shall be the amount required to be paid (including coupon payments, accrued interest, scheduled principal payments, if any, by way of sinking fund payments which are assumed to be on a *pro rata* basis or other scheduled amortization of principal (excluding any optional redemption), return of principal, and redemption premium, if any) that, if paid as scheduled, will be available in the Collection Account at the end of such Due Period. For purposes of calculating interest on Pledged Securities that have a rate of interest which varies with an objective index, the interest to be received thereon shall be assumed to be equal to the interest that would be received on such Pledged Security if the rate of interest accruing on such Pledged Security on the date of determination were to remain constant for each succeeding Due Period.

Each Scheduled Distribution with respect to a Pledged Security shall be assumed to be received on the applicable Due Date, and each such Scheduled Distribution shall be assumed to be immediately deposited in the Collection Account and to earn interest at the Assumed Interest Rate. All funds assumed to earn interest as provided herein shall be assumed to continue to earn interest at the applicable rate until the date on which they are required to be available in the Collection Account for application, in accordance with the terms hereof, to payment of principal of or interest on the Notes or other amounts payable or otherwise for application in accordance with the terms of this Indenture.

Notwithstanding anything to the contrary contained in this Indenture if the Trustee receives an Issuer Order or Issuer Request and also receives a Servicer Order or Servicer Request with respect to the same subject matter, the Issuer Order or Issuer Request, as the case

may be, shall supersede any such Servicer Order or Servicer Request and be the controlling order or request hereunder.

ARTICLE II

THE NOTES

Section 2.1. Forms Generally.

(a) The Notes, the Combination Notes and the Trustee's certificate of authentication thereon shall be in substantially the forms required by this article with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may, consistently herewith, be determined by the Authorized Officer of the Issuer executing such Notes and Combination Notes as evidenced by such Authorized Officer's execution of such Notes and Combination Notes. Any portion of the text of any Note or Combination Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note or Combination Note.

(b) Regulation S Notes. The Class A-1L Notes, the Class A-2L Notes, the Class A-3L Notes, the Class B-1L Notes, the Class B-2L Notes and the Combination Notes initially sold to Non-U.S. Persons in "offshore transactions" (within the meaning of Regulation S) shall be represented initially by single global notes (the "Temporary Regulation S Global Notes") in fully registered form without coupons, authenticated and delivered in substantially the forms attached hereto as Exhibit A-1L-1, Exhibit A-2L-1, Exhibit A-3L-1, Exhibit B-1L-1, Exhibit B-2L-1 and Exhibit C-1 respectively. The Issuer shall deposit such Notes and the Combination Notes on behalf of the subscribers for such Notes with the Trustee as custodian (in such capacity, the "Custodian") for the Depository, registered in the name of a nominee of the Depository, for the accounts of each of the Clearance Systems, for credit by the Clearance Systems to the respective accounts designated by the subscribers of such Notes or Combination Notes (or to such other accounts as they may direct) at each of the Clearance Systems. The Temporary Regulation S Global Notes shall be exchanged for interests in the Permanent Regulation S Global Notes as set forth below. The Permanent Regulation S Global Notes shall be substantially in the form set forth as Exhibit A-1L-2, Exhibit A-2L-2, Exhibit A-3L-2, Exhibit B-1L-2, Exhibit B-2L-2 and Exhibit C-2.

During the Distribution Compliance Period, beneficial interests in Class B-2L Notes and Combination Notes issued in the form of a Temporary Regulation S Global Note may be transferred for an interest in a Definitive Note of such Class pursuant to and as provided in Section 2.5(b), and after the expiration of the Distribution Compliance Period beneficial interests in the Temporary Regulation S Global Note of each Class shall be exchanged for a Permanent Regulation S Global Note for such Class pursuant to and as provided below.

Without unnecessary delay but in any event prior to the termination of the Distribution Compliance Period, the Issuer shall deliver to the Trustee or the Authenticating Agent the Permanent Regulation S Global Notes executed by the Co-Issuers. Upon the

termination of the Distribution Compliance Period any Notes or Combination Notes in the form of a Temporary Regulation S Global Note shall be surrendered by the Custodian to the Trustee, in each case as the Issuer's agent for such purpose (or, at the Authenticating Agent's option, the Custodian shall be instructed by the Authenticating Agent or the Trustee to endorse each such Temporary Regulation S Global Note to reduce the principal amount thereof), to be exchanged, in whole or from time to time in part, for a Permanent Regulation S Global Note without charge, and the Authenticating Agent shall authenticate and deliver to the Custodian for delivery in exchange for each such Temporary Regulation S Global Note or the portions thereof to be exchanged, an equal aggregate principal amount of a Permanent Regulation S Global Note, as shall be specified by the Custodian; *provided* that, upon such presentation by the Custodian: (i) the Trustee receives a certificate substantially in the form set forth in Exhibit F attached hereto, and signed by the respective Clearance System as to the portions of each Temporary Regulation S Global Note held for the respective accounts of such Clearance System, that it has received from each beneficial owner of the portion of each Temporary Regulation S Global Note then to be exchanged, written certification substantially to the effect set forth in Exhibit G attached hereto, with such changes therein as shall be approved by the Issuer, (ii) none of the Trustee or any Paying Agent have actual knowledge, nor have they received notification from the Issuer with respect to the original issuance and distribution of the Global Notes that such Person has actual knowledge, that such certificate is false, and (iii) the Trustee and any Paying Agent do not have a United States address as the address for payment to any Holder of the Permanent Regulation S Global Note issuable upon such exchange. Notwithstanding the foregoing, in the event of redemption in whole or acceleration of all or any part of the Notes prior to the termination of the Distribution Compliance Period, the Permanent Regulation S Global Notes will not be issuable in respect of the Temporary Regulation S Global Note or portion thereof, and payment thereon will be made as provided in the Temporary Regulation S Global Note. Any other Class of Note in the form of a Temporary Regulation S Global Note presented to the Trustee for a Permanent Regulation S Global Note shall be endorsed by the Trustee to reduce the principal amount thereof by the amount so exchanged, and shall then be returned to the Custodian, pending exchange of the remaining balance thereof pursuant to the terms hereof.

On each Payment Date, if any, that falls on or prior to the date on which all Temporary Regulation S Global Notes shall have been exchanged for Permanent Regulation S Global Notes (the "Exchange Date"), interest, if any, and principal on the Temporary Regulation S Global Notes shall be paid to the Custodian, acting on behalf of the Clearance System for the benefit of persons for whom the Clearance System holds the Temporary Regulation S Global Notes on each such Payment Date to the extent the Clearance System has delivered a certificate or certificates, appropriately completed and signed, in substantially the form set forth in Exhibit F attached hereto, which certificate or certificates shall be dated the relevant Payment Date and shall be delivered to the Custodian.

The Issuer will obtain from each Clearance System an agreement that it will credit principal and interest, if any, as of each Payment Date that falls on or prior to the termination of the Distribution Compliance Period, received in respect of each Temporary Regulation S Global Note to the respective accounts of the persons for whom the Clearance System holds a Temporary Regulation S Global Note on each such Payment Date, upon, and only upon, receipt of certificates from such account holders in substantially the form set forth in Exhibit G attached hereto to be dated on or before each relevant Payment Date (copies of such form being available

from the offices of Clearstream at 67, Boulevard Grande-Duchesse Charlotte, Luxembourg, the offices of Euroclear at 1 Boulevard du Roi Albert II, B-1210 Brussels, Belgium and each other Paying Agent of the Issuer).

Interest and principal payable prior to the Exchange Date in respect of any portion of any Temporary Regulation S Global Note representing Class B-2L Notes or Combination Notes as to which no certificate required by the third preceding paragraph hereof has been received from the Clearance System shall be held by the Trustee for payment together with delivery of Permanent Regulation S Global Notes upon receipt of the certification required hereby.

Upon any such exchange of a portion of any Temporary Regulation S Global Note for a Permanent Regulation S Global Note, the Custodian shall endorse (or, as provided above, the Trustee shall instruct the Custodian to endorse) such Temporary Regulation S Global Note to reflect the reduction of the principal amount evidenced thereby.

(c) Rule 144A Global Notes. The Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes and the Class B-1L Notes initially sold to U.S. Persons (within the meaning of Rule 144A) shall be represented by single global notes (the "Rule 144A Global Notes") in fully registered form without coupons, authenticated and delivered in substantially the forms attached hereto as Exhibit A-1L-3, Exhibit A-2L-3, Exhibit A-3L-3, and Exhibit B-1L-3 respectively, which the Issuer shall deposit on behalf of the subscribers for such Notes with the Custodian for the Depository and registered in the name of Cede & Co., the nominee of DTC. The Aggregate Principal Amount of each Rule 144A Global Note may from time to time be increased or decreased by adjustments made on the records of the Custodian for DTC or its nominees, as the case may be.

(d) Definitive Class B-2L Notes and Combination Notes. The Class B-2L Notes and the Combination Notes initially issued to U.S. Persons in transactions exempt from the registration requirements of the Securities Act shall be issued as definitive notes ("Definitive Notes") in fully registered form without coupons, authenticated and delivered in substantially the form attached hereto as Exhibit B-2L-4 and Exhibit C-4, respectively. On or prior to the Closing Date, the Issuer shall provide to the Trustee or Authenticating Agent (as applicable) an Issuer Order setting forth the amount of Class B-2L Notes and the Combination Notes (if any) to be issued on the Closing Date in the form of Definitive Notes and registration and delivery instructions (together with payment, taxpayer identification and other necessary information) for each of the Definitive Notes to be issued on the Closing Date. Interest and principal on the Definitive Notes will be paid to the registered holder thereof as indicated in the Note Register, and, in the case of the Preferred Share Component of the Combination Notes, the Share Register.

(e) Book-Entry Provisions. This Section 2.1(e) shall apply only to Regulation S Global Notes or Rule 144A Global Notes ("Global Notes") deposited with or on behalf of the Depositary. On or prior to the Closing Date, the Issuer shall provide (i) to the Trustee or Authenticating Agent (as applicable) an Issuer Order setting forth the amount of Notes (if any) to be issued on the Closing Date in the form of Temporary Regulation S Global Notes and Rule 144A Global Notes for each Class, and (ii) to the Depositary written instructions

listing the names and addresses of the initial beneficial owners of the Temporary Regulation S Global Notes and the Rule 144A Global Notes of each Class or of the Combination Notes (if any) and the amounts of their respective ownership interests (together with payment instructions, taxpayer information and such other information as DTC reasonably may require). A Temporary Regulation S Global Note may be initially issued for each Class with an outstanding principal balance of zero (and the same may be reduced to zero at any time during the Distribution Compliance Period without cancellation.

(f) Definitive Notes. If at any time (including without limitation during the Distribution Compliance Period) (i) the Temporary Regulation S Global Notes or the Permanent Regulation S Global Notes or any of them become immediately due and repayable pursuant to Article Five hereof or (ii) any of DTC, Euroclear or Clearstream (A) is closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or (B) announces an intention permanently to cease business and no alternative clearance system satisfactory to the Issuer is available or (iii) as a result of any amendment to, or change in, the laws or regulations of the Cayman Islands or of any authority therein or thereof having power to tax or in the interpretation or administration of such laws or regulations which becomes effective on or after the Closing Date, the Issuer or any Paying Agent is or will be required to make any deduction or withholding from any payment in respect of the Notes which would not be required were the Notes in definitive registered form or (iv) the Issuer so elects by notice to the Noteholders and Euroclear or Clearstream, as the case may be, does not object (as determined by the Issuer), then the Issuer will issue Definitive Notes in exchange for and to the extent of such Global Notes within 30 days of the occurrence of the relevant event set forth in (i), (ii), (iii) or (iv) above.

If at any time (i) the Notes or any of them become immediately due and payable following an Event of Default hereunder or (ii) DTC notifies the Issuer or the Trustee in writing that it is unwilling or unable to discharge properly its responsibilities as a depository with respect to the Rule 144A Global Notes or it ceases to be a "clearing agency" registered under the Exchange Act, and the Issuer is unable to locate a qualified successor within 90 days after such notice, then the Issuer will issue Definitive Notes in exchange for and to the extent of such Rule 144A Global Notes within 30 days of the occurrence of the relevant event set forth in (i) or (ii) above.

The Issuer shall notify the Trustee forthwith upon the occurrence of any of the events referred to in the two immediately preceding paragraphs and the Issuer shall, unless the Trustee agrees otherwise, promptly give notice thereof and of its obligation to issue Definitive Notes to the Noteholders. Upon giving such notice, the Issuer promptly shall cause the Custodian, as the case may be, to present forthwith for exchange and surrender such Global Note to the Trustee, for cancellation, together with appropriate exchange, registration, payment and delivery instructions (identifying according to its records the beneficial holders to whom, and in the amounts, the Definitive Notes are to be registered and delivered), upon which the Trustee shall be entitled to rely conclusively. The Issuer shall prepare, execute and deliver to the Trustee at its specified office a sufficient number of duly executed Definitive Notes not later than the 20th day following the date of such notice, and the Trustee shall then promptly authenticate and deliver the appropriate number and amount of such Definitive Notes in accordance with the instructions received from the Custodian.

(g) Form of Notes. The Notes and the Combination Notes shall be typed, printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner, all as determined by the Authorized Officers of the Issuer or Co-Issuers, as applicable, executing such Notes or Combination Notes, as evidenced by the Authorized Officers' execution of such Notes or Combination Notes.

Section 2.2. Authorized Amount.

The aggregate principal amount of Class A-1LA Notes, the Class A-1LB Notes, Class A-2L Notes, Class A-3L Notes, Class B-1L Notes (including such Notes represented by the Note Component) and Class B-2L Notes that may be authenticated and delivered under this Indenture is limited to $635,000,000, $115,000,000, $76,000,000, $48,000,000, $36,000,000 and $26,000,000, respectively, except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.5, 2.6 or 8.5 hereof.

The Combination Notes consisting of the Note Component representing an Aggregate Principal Amount of Class B-1L Notes of U.S. $6,750,000 (which is included in the Class B-1L Notes referred to in the immediately preceding paragraph) and the Preferred Share Component representing 3,250,000 Preferred Shares, shall be authenticated and delivered under this Indenture and shall have an initial Aggregate Principal Amount of U.S. $10,000,000.

Section 2.3. Denominations; Extension of Revolving Period and Final Maturity.

(a) Each Class of the Notes and the Combination Notes shall be issuable on the Closing Date in the forms set forth herein, without coupons, in minimum denominations of $200,000 and integral multiples of $1 in excess thereof (in each case expressed in terms of the stated or principal amounts thereof, as the case may be, at the Closing Date).

(b) The Issuer, if directed by the Board Resolution of the Issuer at the request of the Servicer, shall be entitled on each Extension Effective Date to extend the Revolving Period to the applicable Extended Revolving Period End Date up to a maximum of four times (so that the Notes can only be extended to 2040) if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.3, (ii) the Extension Conditions set forth in Section 2.3(d) are satisfied, (iii) the Issuer has given written notice to the Trustee of its election to extend the Revolving Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date and (iv) no Event of Default has occurred and is continuing. If the Extension Conditions are satisfied, the Final Maturity Date of the Notes and the Combination Notes shall be automatically extended to the related Extended Final Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes, Combination Notes or Preferred Shares (other than as may be required pursuant to the Extension Conditions) or amendment or supplement to this Indenture or the Paying and Transfer Agency Agreement (the "Maturity Extension"); *provided* that the Issuer will not be permitted to effect more than four Maturity Extensions.

(c) In the case of a Maturity Extension, any Holder or Beneficial Owner of Notes, Combination Notes or Preferred Shares wishing to sell such Notes, Combination Notes or Preferred Shares to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.3(d) (such Notes and Preferred Shares as to which an Extension Sale Notice has been duly given, "Extension Sale Securities"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(d) The Maturity Extension shall be effective only if the following conditions (the "Extension Conditions") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions herein, in the Indenture and the Preferred Share Paying and Transfer Agency Agreement immediately after such purchase and the legends on such Notes, Combination Notes and Preferred Shares and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) either (A) the Class B-2L Overcollateralization Ratio is at least 105% and the Collateral Quality Tests are satisfied as of the related Extension Determination Date and the Interest Coverage Test was satisfied on the immediately preceding Payment Date, the rating of each Class of Notes or Combination Notes by Moody's has not been downgraded, withdrawn or qualified from that in effect on the Closing Date (unless it subsequently has been reinstated to the rating assigned on the Closing Date) or (B) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes or Combination Notes are then rated by Moody's); and

(iv) (A) the Holders of 100% of the Outstanding Aggregate Principal Amount of the Class A-1LA Notes have delivered the Extension Sale Notice in the Extension Sale Notice Period or (B) if the Holders of 100% of the Outstanding Aggregate Principal Amount of the Class A-1LA Notes fail to deliver an Extension Sale Notice pursuant to the preceding clause (A), either (x) the Issuer, acting through the Servicer, notifies the Holders of the Class A-1LA Notes in writing not later than the last day of the Extension Sale Notice Period that such Class A-1LA Notes shall constitute "Extension Sale Securities" (as a result of which such Class A-1LA Notes must be purchased by an Extension Qualifying

Purchaser) or (y) the Holders of 100% of the Outstanding Aggregate Principal Amount of the Class A-1LA Notes have consented in writing to the Maturity Extension not later than the last day of the Extension Sale Notice Period; *provided* that if the Extension Conditions are not satisfied because the Holders of the Class A-1LA Notes have failed to deliver an Extension Sale Notice or have failed to provide their written consent to the related Maturity Extension, then the Servicer may extend the Extension Sale Notice Period by seven Business Days if the Servicer reasonably believes that it will receive such Extension Sale Notice or written consent within seven Business Days following the end of the Extension Sale Notice Period.

The Issuer, the Trustee and, by its acceptance of the Notes, Combination Notes or Preferred Shares, each Holder or Beneficial Owner of Notes, Combination Notes or Preferred Shares agrees that the Initial Purchasers or any placement agent shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such person or Holder of Notes, Combination Notes or Preferred Shares (whether or not such Holder gave an Extension Sale Notice with respect to its Notes, Combination Notes or Preferred Shares) or to any other person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(e) The following procedure shall apply to effect any extension of the Revolving Period or the Maturity Date, pursuant to Section 2.3:

(i) No later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Revolving Period (the "Extension Notice"), at the cost of the Issuer the Trustee shall deliver the Extension Notice to all Holders of Notes, Combination Notes and the Preferred Shares Paying and Transfer Agent (for forwarding to the Holders of the Preferred Shares and the Combination Notes with respect to the Preferred Share Component) and each Rating Agency (so long as any rated Notes, Combination Notes are Outstanding), and shall request the Rating Condition for the Maturity Extension from S&P, if applicable. Such Extension Notice shall include a statement to the effect that (i) no Extension Sale Notice delivered after the end of the Extension Sale Notice Period shall be effective and (ii) subject to Section 2.3(d)(iv)(B), only the Class A-1LA Notes for which an Extension Sale Notice has been delivered may be treated as Extension Sale Securities pursuant to the Extension Conditions (with the result that the Class A-1LA Notes must be purchased by an Extension Qualifying Purchaser).

(ii) Any Holder of Notes, Combination Notes or Preferred Shares may give irrevocable notice (an "Extension Sale Notice") within 30 days after the Trustee has delivered the Extension Notice (the "Extension Sale Notice Period") of its intention to sell its Notes, Combination Notes or Preferred Shares to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of Notes (other than the Class A-1LA Notes as described in clause (d)(iv) above) ,

Combination Notes or Preferred Shares that has not given such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Notes, Combination Notes or Preferred Shares to an Extension Qualifying Purchaser in connection with the Maturity Extension.

(iii) If the Holders of 100% of the Outstanding Aggregate Principal Amount of the Class A-1LA Notes have not delivered the Extension Sale Notice to the Trustee by the 20th calendar day after the date of the Extension Notice, the Trustee shall notify the Holders of the Class A-1LA Notes of the date on which the Extension Sale Notice Period shall end and include a statement to the effect that (A) no Extension Sale Notice delivered after the end of the Extension Sale Notice Period shall be effective and (B) the Class A-1LA Notes for which no Extension Sale Notice has been delivered may be treated as Extension Sale Securities pursuant to clause (iv) of the Extension Conditions (as a result of which the Class A-1LA Notes must be purchased by an Extension Qualifying Purchaser).

(iv) If clause (iii)(b)(A) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(v) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (A) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Notes, Combination Notes or Preferred Shares in compliance with all transfer restrictions in the Indenture and the legends on such Notes, Combination Notes or Preferred Shares and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (B) whether the requirements of clause (iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (C) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(vi) On each Extension Effective Date, the Maturity Extension shall become effective hereunder; *provided* that all Extension Conditions set forth above are satisfied. No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer, at the expense of the Co-Issuers, shall deliver a notice to all Holders of Notes and the Preferred Shares Paying and Transfer Agent (for forwarding to the Holders of Preferred Shares), the Servicer, Bear Stearns, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depositary for any Notes subject to the Maturity Extension. None of Bear Stearns, the Servicer or

any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

(vii) In the case of a Maturity Extension, each Holder of Notes (other than Extension Sale Securities) shall be entitled to receive an amount equal to the applicable Extension Bonus Payment to the extent of available funds and as provided in Section 11.1. Holders of the Preferred Shares shall not be entitled to receive any Extension Bonus Payment. The obligation to make any Extension Bonus Payment shall not be rated by Rating Agencies.

(f) The Extension Bonus Payment shall be payable to any applicable qualifying Beneficial Owners who have provided the Trustee with an Extension Bonus Eligibility Certification on or before the 5th Business Day prior to the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Final Maturity Date and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder but are due and payable on the next Payment Date on which funds are due and payable. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Final Maturity Date and the date of redemption in full of the relevant Notes. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

Section 2.4. Execution, Authentication, Delivery and Dating.

The Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes and the Class B-1L Notes shall be executed on behalf of the Issuer, and the Class B-2L Notes and the Combination Notes (to the extent of the Note Component) shall be executed on behalf of the Issuer, by an Authorized Officer of each of the Issuer or the Co-Issuer, as applicable. The signature of such Authorized Officers on the Notes or the Combination Notes may be manual or facsimile.

Notes or the Combination Notes bearing the manual or facsimile signature of an individual who was at any time the Authorized Officer of the Co-Issuers (as applicable) shall bind the applicable Co-Issuer, notwithstanding the fact that such individual has ceased to hold such office prior to the authentication and delivery of such Notes or Combination Notes or did not hold such office at the date of issuance of such Notes or Combination Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Class A-1LA Notes, the Class A-1LB Notes, the Class A-2L Notes, the Class A-3L Notes and the Class B-1L Notes, and the Issuer may deliver the Class B-2L Notes and the Combination Notes, executed by the Co-Issuer (or the Issuer with respect to the Class B-2L Notes and the Combination Notes) to the Trustee for authentication

and the Trustee (or an Authenticating Agent on its behalf), upon Issuer Order, shall authenticate and deliver such Notes and the Combination Notes as provided in this Indenture and not otherwise.

Each Note or Combination Notes authenticated and delivered by the Trustee (or the Authenticating Agent) to or upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes or Combination Notes that are authenticated after the Closing Date for any other purpose hereunder shall be dated the date of their authentication.

Notes or Combination Notes issued upon transfer, exchange or replacement of other Notes or Combination Notes shall be issued in authorized denominations reflecting the original aggregate stated or principal amount of the Notes or Combination Notes so transferred, exchanged or replaced, but shall represent only the stated or principal amount of the Notes so transferred, exchanged or replaced. If any Note or Combination Notes is divided into more than one Note or Combination Notes in accordance with this Article II, the stated or original principal amount of such Note or Combination Note shall be proportionately divided among the Notes or Combination Notes delivered in exchange therefor and shall be deemed to be the aggregate stated or original principal amount of such subsequently issued Notes or Combination Notes.

No Note or Combination Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Note or Combination Notes a certificate of authentication, substantially in the form provided for herein, executed by the Trustee (or Authenticating Agent, as provided below) by the manual signature of one of its Authorized Officers, and such certificate upon any Note or Combination Notes shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Upon the request of the Issuer, the Trustee shall and, at the election of the Trustee, the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of Notes or Combination Notes in connection with transfers and exchanges thereof hereunder as fully to all intents and purposes as though each such Authenticating Agent had been expressly authorized by this Indenture to authenticate the Notes; *provided* that any such appointment shall be upon terms and conditions reasonably acceptable to the Trustee (with respect to which the Trustee may require, among other things, appropriate indemnification for any damages, losses or reasonable costs arising from acts or omissions of such Authenticating Agent). For all purposes of this Indenture, the authentication of Notes or Combination Notes by an Authenticating Agent pursuant to this Section shall be deemed to be an authentication of such Notes "by the Trustee."

Investors Bank & Trust Company, is hereby appointed, at the request of the Issuer, as Authenticating Agent for purposes of authenticating Definitive Notes issued in exchange for beneficial interests in the Global Notes.

RSM Robson Rhodes LLP is hereby appointed, at the request of the Issuer, as the initial Irish Paying Agent with respect to the Notes.

Any corporation into which any Paying Agent, Transfer Agent or Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Paying Agent, Transfer Agent or Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Paying Agent, Transfer Agent or Authenticating Agent, shall be the successor of such Paying Agent, Transfer Agent or Authenticating Agent hereunder, without the execution or filing of any further act on the part of the parties hereto or such Paying Agent, Transfer Agent or Authenticating Agent or such successor corporation.

Any Paying Agent, Transfer Agent or Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Paying Agent, Transfer Agent or Authenticating Agent by giving written notice of termination to such Paying Agent, Transfer Agent or Authenticating Agent and the Issuer.

The Trustee shall pay to any Paying Agent, Transfer Agent or Authenticating Agent reasonable compensation and shall reimburse each Paying Agent, Transfer Agent or Authenticating Agent for expenses reasonably incurred by such Paying Agent, Transfer Agent or Authenticating Agent in the performance of its duties as a Paying Agent, Transfer Agent or Authenticating Agent, in each case as and to the extent agreed upon between the Trustee and such Paying Agent, Transfer Agent or Authenticating Agent; *provided* that the Trustee shall be reimbursed for such fees and expenses pursuant to Section 6.7 and *provided further* that if the appointment of such Paying Agent, Transfer Agent or Authenticating Agent is at the election or request of the Issuer, the Trustee's obligation to make such payments shall be limited to amounts for which it is entitled to be reimbursed pursuant to Section 6.7(b) or (c). The provisions of Section 6.5 shall be applicable to any Paying Agent, Transfer Agent or Authenticating Agent.

Section 2.5. Registration, Registration of Transfer and Exchange.

(a) The Issuer shall cause to be kept a register (the "Note Register") in which, subject to such reasonable procedures as it may prescribe, the Issuer shall provide for the registration of the Notes and the Combination Notes and the registration of transfers of the Notes and the Combination Notes. The Trustee is hereby appointed "Note Registrar" for the purpose of registering and transferring the Notes and the Combination Notes as herein provided. The Note Registrar shall supply all relevant documents to the Share Registrar necessary for the Share Registrar to maintain the Share Register accordingly and the Share Registrar shall be able to rely upon such information provided by the Note Registrar without any liability on its part. For so long as a Combination Note is issued and outstanding, the Note Registrar shall cooperate with the Share Registrar as reasonably requested so as to ensure conformity of registrations and transfers of the Preferred Share Component of the Combination Note. The Issuer will notify the Trustee of any Notes or Combination Notes owned by or pledged to the Issuer or any of its Affiliates promptly upon the acquisition thereof or the creation of such pledge. So long as an Event of Default shall be continuing, the Note Registrar shall promptly, upon the written request of a Noteholder or holder of a Combination Note or a Preferred Share, but in no event later than five Business Days following such request, furnish such Noteholder or holder of a Combination Note or a Preferred Share with a list of all other Noteholders, holders of Combination Notes and

Preferred Shares (as applicable); *provided* that the Note Registrar shall have no liability to any person for furnishing the Note Register to any Noteholder or holder of a Combination Note or Preferred Share. The Note Registrar shall, upon request, furnish a copy of the Note Register to the Trustee and the Servicer.

Subject to the provisions of paragraphs (b), (c), (d), (e), (f) and (k) of this Section 2.5, upon surrender for registration of transfer of any Note or Combination Note, the Issuer and the Co-Issuer (as applicable) shall execute, and the Trustee or the Authenticating Agent shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of the same Class or Combination Note, of any authorized denomination and of a like aggregate principal amount.

Subject to the provisions of paragraphs (b), (c), (d), (e), (f) and (k) of this Section 2.5, at the option of the Holder, Notes or Combination Notes may be exchanged for other Notes of the same Class or Combination Notes, as applicable, in any authorized denominations and of a like aggregate stated or principal amount, upon surrender of the Notes or Combination Notes to be exchanged at the office of the Trustee. Whenever any Notes are so surrendered for exchange, the Issuer and the Co-Issuer (as applicable) shall execute, and the Trustee or the Authenticating Agent shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive.

All Notes (with the exception of the Class B-2L Notes and the Combination Notes) issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Co-Issuers, and the Class B-2L Notes and the Combination Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes or the Combination Notes, as applicable, surrendered upon such registration of transfer or exchange.

Every Note or Combination Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Co-Issuers (as applicable) and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made to a Holder for any registration of transfer or exchange of Notes or Combination Notes, but the Co-Issuers or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes or Combination Notes.

(b) No Note or Combination Notes may be sold or transferred (including, without limitation by pledge or hypothecation) unless such sale or transfer is exempt from the registration requirements of the Securities Act and is exempt under applicable state securities laws. No purported transfer of any interest in any Note or Combination Note or any portion thereof that is not made in accordance with this Section 2.5 shall be given effect by or be binding upon the Trustee or the Co-Issuers (as applicable) and any such purported transfer shall be null and void *ab initio* and vest in the transferee no rights against the Trustee, the Co-Issuers (as applicable) or the Trust Estate.

By its acceptance of a Note or Combination Note or a beneficial interest in a Note or Combination Note, each owner thereof will be deemed to have represented and agreed that transfer thereof is restricted and agrees that it shall transfer such Note or Combination Note or beneficial interest in such Note or Combination Note, only in accordance with the terms of this Indenture and such Note or Combination Note and in compliance with applicable law.

The applicable rules, regulations and procedures utilized or imposed by any Clearance System or DTC (collectively, "Applicable Procedures") shall be applicable to the Global Notes insofar as and to the extent beneficial interests in such Global Notes are held by the agent members of or participants in Euroclear, Clearstream or DTC, respectively. Account holders or agent members of or participants in Euroclear, Clearstream and DTC shall have no rights under this Indenture with respect to such Global Notes and DTC (or its nominee) as registered Holder of any Global Notes may be treated by the Co-Issuers, the Trustee, the Note Registrar, the Authenticating Agent and any other Paying Agent (and any agent of any of the foregoing) as the owner of such Global Notes for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Co-Issuers, the Trustee, the Note Registrar, the Authenticating Agent or any Paying Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or any Clearance System or impair, as between DTC, the Clearance System and its agent members or participants, the operation of customary practices governing the exercise of the rights of a Holder of any Notes. Requests or directions from, or votes of, DTC, or any Clearance System with respect to any matter shall not be deemed inconsistent if made with respect to (or in separate proportions corresponding to) different beneficial owners. None of the Trustee, the Transfer Agent, the Note Registrar, the Authenticating Agent nor the Paying Agent shall have any duty to monitor, maintain records concerning (or determine compliance with any of the restrictions on transfer set forth herein with respect to) owners of beneficial interests in the Global Notes. None of the Trustee, the Transfer Agent, the Note Registrar, the Authenticating Agent nor the Paying Agent shall have any liability for the accuracy of the records of DTC or any Clearance System, or any actions or omissions of DTC or any Clearance System (or of the agent members of or participants in any Clearance System).

A Noteholder may transfer a Note or its beneficial interest in a Note only in accordance with the following provisions:

(i) Definitive Note to Temporary Regulation S Global Note. To the extent permitted by the Applicable Procedures and subject to the provisions of Section 2.5, if a Holder of a Definitive Note of any Class wishes at any time to transfer its beneficial interest in such Definitive Note to a Non-U.S. Person during the Distribution Compliance Period, such Holder shall, subject to the provisions of this Section 2.5, transfer its interest in such Definitive Note for an equivalent beneficial interest in the Temporary Regulation S Global Note of the same Class. Upon (A) the surrender to the Trustee for cancellation of the Definitive Notes representing the beneficial interest to be so transferred and (B) the receipt by the Trustee and the Co-Issuers of (1) an Investor Representation Letter from such Noteholder's transferee, (2) a Regulation S Transferor Certificate from such Noteholder, and (3) a written order in accordance with the Applicable Procedures containing information regarding the Euroclear or Clearstream account to be

credited with the increase in the Regulation S Global Note and the name of such account, the Trustee shall cancel such Definitive Note and, concurrently with such cancellation, instruct the Custodian to adjust the Depository's position in the Temporary Regulation S Global Note of the same Class to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Temporary Regulation S Global Note equal to the Aggregate Principal Amount of the Definitive Note so cancelled. In the event of any partial transfer of an interest in a Definitive Note to a Temporary Regulation S Global Note, the Co-Issuers shall execute and provide to the Trustee, and the Trustee shall authenticate and return to the Holder, a Definitive Note evidencing the remaining balance thereof. After the Distribution Compliance Period, interests in any Definitive Notes may not be transferred or exchanged for interests in a Temporary Regulation S Global Note.

(ii) Definitive Note to Permanent Regulation S Global Note. If a Holder of a Definitive Note wishes at any time after the Distribution Compliance Period to transfer its interest in such Definitive Note to a Non-U.S. Person, such Holder shall, subject to the provisions of this Section 2.5, transfer its interest in such Definitive Note for an equivalent beneficial interest in such Permanent Regulation S Global Note of the same Class. Upon (A) the surrender to the Trustee in the case of any Class of Notes or Combination Notes, of the Definitive Note representing the interest to be so transferred, for cancellation and (B) the receipt by the Trustee and the Co-Issuers of (1) an Investor Representation Letter from such Noteholder's transferee, (2) a Regulation S Transferor Certificate from such Noteholder and (3) a written order in accordance with the Applicable Procedures containing information regarding the Euroclear or Clearstream account to be credited with the increase in the Regulation S Global Note and the name of such account, the Trustee shall cancel such Definitive Note, and, concurrently with such cancellation instruct the Custodian to endorse the Permanent Regulation S Global Note to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Permanent Regulation S Global Note equal to the Aggregate Principal Amount of the Definitive Note so cancelled. In the event of any partial transfer of an interest in a Definitive Note to a Permanent Regulation S Global Note, the Co-Issuers or the Issuer, as applicable, shall execute and provide to the Trustee, and the Trustee shall authenticate and return to the Holder, a Definitive Note evidencing the remaining balance thereof (which Definitive Note shall be so mailed or otherwise delivered from a location outside the United States).

In respect of any transfers involving Combination Notes, the Note Registrar shall ensure that the Note Register is amended in respect of the Note Component of the Combination Notes and request the Share Registrar to amend the Share Register in respect of the Preferred Share Component of the Combination Notes.

(iii) Temporary Regulation S Global Note to Definitive Note or Rule 144A Global Note. To the extent permitted by DTC, if a Holder of a beneficial interest in the Temporary Regulation S Global Note of a particular Class wishes at any time during the Distribution Compliance Period to transfer its beneficial interest in such Temporary Regulation S Global Note to a U.S. Person, such holder shall, subject to the provisions of this Section 2.5, transfer its beneficial interest in such Temporary Regulation S Global Note for an equivalent interest in a Rule 144A Global Note, or, in the case of a Class B-2L Note or a Combination Note, a Definitive Note. Upon receipt by the Trustee of (A) a certificate substantially in the form of Exhibit G hereto and (B) a written order given in accordance with the Applicable Procedures, the Trustee shall instruct the Custodian to adjust the Depository's position in the Temporary Regulation S Global Note to reflect a reduction of the Aggregate Principal Amount thereof by the Aggregate Principal Amount of the beneficial interest thereof to be so transferred and concurrently with such reduction, in the case of a Rule 144A Global Note, instruct the Custodian to adjust the Depository's position in the Rule 144A Global Note of the same Class to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Rule 144A Global Note equal to the Aggregate Principal Amount of the Temporary Regulation S Global Note so reduced, and, in the case of a Definitive Note, the Co-Issuers shall execute and furnish to the Trustee, and the Trustee or the Authenticating Agent shall authenticate and deliver to such Holder, a Definitive Note in a principal amount equal to the amount of the reduction in the Aggregate Principal Amount of the Temporary Regulation S Global Note of such Class.

(iv) Transfer of Interests in a Definitive Note. A Holder of a Definitive Note may at any time transfer its interest in such Definitive Note in accordance with this Section 2.5(b)(iv). Any transfer of an interest in a Definitive Note to a Non-U.S. Person during the Distribution Compliance Period shall be made only pursuant to Section 2.5(b)(iii) above. Otherwise the Trustee shall require, prior to any such transfer of a Definitive Note, receipt by the Trustee and the Co-Issuers of (A) an Investor Representation Letter from such Noteholder's transferee and (B) a Transferor Certificate from such Noteholder (which shall only be a Regulation S Transferor Certificate for transfers to Non-U.S. Persons during the Distribution Compliance Period). Upon receipt of such letter and certificate, and surrender to the Trustee the Definitive Note representing the interest to be so transferred, the Trustee shall cancel such Definitive Note and the Co-Issuers shall execute and provide to the Trustee, and the Trustee or the Authenticating Agent shall authenticate and deliver, a Definitive Note to such transferee (and, in the event of a partial transfer, the Co-Issuers shall execute and provide to the Trustee, and the Trustee or the Authenticating Agent shall authenticate and deliver, a Definitive Note evidencing the remaining balance to the transferring Holder).

(v) Transfer of Interests in the Temporary Regulation S Global Note. Transfers of beneficial interests in the Temporary Regulation S Global Note may only be made (A) in accordance with Section 2.5(b)(i) above or (B) by book-entry

transfer of beneficial interests in the Temporary Regulation S Global Note within the Clearance System (and subject to the Applicable Procedures) to Non-U.S. Persons in accordance with Regulation S in "offshore transactions" (as defined in Regulation S).

(vi) Transfer of Interests in a Permanent Regulation S Global Note. If a Holder of a beneficial interest in the Permanent Regulation S Global Note wishes at any time to transfer its beneficial interest in such Permanent Regulation S Global Note to a U.S. Person, such Holder shall, subject to the provisions of this Section 2.5 and the Applicable Procedures, transfer its beneficial interest in such Permanent Regulation S Global Note for an equivalent interest in a Rule 144A Global Note or, in the case of the Class B-2L Notes or the Combination Note, a Definitive Note. Upon receipt by the Trustee of (A) a certificate substantially in the form of Exhibit G hereto and (B) a written order given in accordance with the Applicable Procedures, the Trustee shall instruct the Custodian to adjust the Depository's position in the Permanent Regulation S Global Note to reflect a reduction of the Aggregate Principal Amount thereof by the Aggregate Principal Amount of the beneficial interest thereof to be so transferred and concurrently with such reduction, in the case of a Rule 144A Global Note, instruct the Custodian to adjust the Depository's position in the Rule 144A Global Note of the same Class to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Rule 144A Global Note equal to the Aggregate Principal Amount of the Permanent Regulation S Global Note so reduced, and, in the case of a Definitive Note, the Issuer shall execute and furnish to the Trustee (or Paying Agent, as directed by the Trustee) and the Trustee shall authenticate and deliver to such Holder a Definitive Note in the Aggregate Principal Amount equal to the amount of the reduction in the Aggregate Principal Amount of the Permanent Regulation S Global Note (which Definitive Note shall be mailed or otherwise delivered to such Holder from a location outside the United States). Interests in any Permanent Regulation S Global Note shall not be exchanged for or transferred to a Definitive Note (except pursuant to the preceding sentence or Section 2.1, if applicable).

(vii) Transfer of Interest in a Rule 144A Global Note. Subject to the provisions of Section 2.5(k), transfers of beneficial interests in a Rule 144A Global Note may only be made (A) in accordance with the provisions of this Section 2.5(b)(iv) or (B) by book-entry transfer of beneficial interests in a Rule 144A Global Note within DTC (and subject to the Applicable Procedures) and in accordance with the transfer restrictions contained in the legend on such Rule 144A Global Note. If a Holder of a beneficial interest in a Rule 144A Global Note wishes to transfer its beneficial interest in such Rule 144A Global Note to a Non-U.S. Person, such holder shall, subject to the provisions of this Section 2.5 and the Applicable Procedures, transfer its beneficial interest in such Rule 144A Global Note for an equivalent interest in a Temporary Regulation S Global Note or a Permanent Regulation S Global Note, *provided* such transfer occurs after the Distribution Compliance Period. Upon receipt by the Trustee of (A) a Regulation

S Transferor Certificate from such Noteholder and (B) a written order given in accordance with the DTC's Applicable Procedures, the Trustee shall instruct the Custodian to adjust the Depository's position in the Rule 144A Global Note to reflect a reduction of the Aggregate Principal Amount thereof by the Aggregate Principal Amount of the beneficial interest thereof to be so transferred and concurrently with such reduction, instruct the Custodian to adjust the Depository's position in such Temporary Regulation S Global Note or the Permanent Regulation S Global Note of the same Class to reflect an increase of the Aggregate Principal Amount thereof by the same amount and to credit or cause to be credited to the account of the transferee a beneficial interest in such Temporary Regulation S Global Note or Permanent Regulation S Global Note equal to the Aggregate Principal Amount of the Rule 144A Global Note so reduced.

(viii) Exchange of Combination Notes into Component Securities. Subject to the provisions of Section 2.5(l), a Holder of a Combination Note may exchange all or a proportionate amount of each Component Security for (i) a Definitive Note of the Class B-1L Notes or for proportional interests in a Rule 144A Global Note or a Regulation S Global Note of the Class B-1L Note (in the Case of the Note Component) in the amount of the Aggregate Principal Amount of the applicable Note Component being exchanged, and (ii) a Class I Preferred Share certificate (in the case of the Preferred Share Component) representing the number of Class I Preferred Shares comprised in the Preferred Share Component being exchanged, in the manner specified in this Indenture. Such exchange is subject to delivery to the Trustee, the Note Registrar, the Share Registrar and the Issuer of written certifications, substantially in the form of Exhibit B and Exhibit C or Exhibit D, as applicable, to the Paying and Transfer Agency Agreement at least 10 Business Days prior to the Payment Date on which such exchange shall become effective.

No Holder of the Combination Notes may exchange or transfer any Note Component or any Preferred Share Component thereof without also exchanging or transferring the proportionate amount of the Preferred Share Component or the Note Component being exchanged or transferred.

The Trustee, upon receipt of such duly completed certificate and such Combination Note, shall (i) cancel such Combination Note (or, by following the procedures of the Depository, decrease the Aggregate Principal Amount of such Combination Note), (ii) authenticate and deliver, without charge, Notes in (or, by following the procedures of the Depositary, increase the Aggregate Principal Amount of the applicable Global Note by) the same Aggregate Principal Amount as the Note Component surrendered for exchange and (iii) direct the Paying and Transfer Agent to deliver (in the case of a Preferred Share sold in reliance on Regulation S, by following the procedures of Euroclear and Clearstream for delivery to the account of the Holder of the Combination Notes) a certificate for the Class I Preferred Shares represented by the face amount of such Preferred Share Component surrendered for exchange. Thereafter, the Holder of

a Combination Note (or a beneficial interest therein) exchanged hereunder shall become the Holder of the Class B-1L Notes and Class I Preferred Shares (or beneficial interests therein) received upon such an exchange. At any time the that the Combination Notes represent interests only in the Preferred Share Components, the Issuer will notify the holders of the Combination Notes and require the exchange of the Combination Notes for the Class I Preferred Shares.

Notwithstanding anything else in this Section 2.5, such Definitive Note or proportional interest in a Rule 144A Global Note or Regulation S Global Note, and such Preferred Share certificate (collectively, "Exchanged Interests") may be in a principal amount or number of shares, as the case may be, smaller than the authorized minimum otherwise applicable thereto; *provided* that the exchanging Holder of such Combination Note may not thereafter transfer any such Exchanged Interest except to a Person that, after giving effect to such transfer, would hold at least the authorized minimum principal amount or number of shares applicable to such Exchanged Interests.

No Holder of any Note or Preferred Share (including a Holder that receives such Note or Preferred Share upon exchange under this Section 2.5(b)(viii)) will have the right to exchange such Note or Preferred Share for a Combination Note.

At any time that the Combination Notes represent interests only in the Preferred Share Component, the Trustee, on behalf of the Issuer, shall send a notice to the Holders of the Combination Notes informing them that the Holders of the Combination Notes must deliver the Combination Notes to the Paying and Transfer Agent for exchange into the Class I Preferred Shares represented by the Preferred Share Component and, upon such delivery, the Paying and Transfer Agent, in accordance with the Paying and Transfer Agency Agreement, shall deliver a certificate representing such Preferred Shares to such Holders within five (5) Business Days of delivery to it of the Combination Notes.

No service charge shall be made for any exchange of Combination Notes into Component Securities, but the Trustee or the Paying and Transfer Agent may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(ix) Initial Sale of Notes. Notwithstanding anything in clauses (i) through (viii) of this Section 2.5(b) to the contrary, in connection with any sale of Initial Purchaser Notes by any Initial Purchaser, no delivery of an Investor Representation Letter or a Transferor Certificate shall be required so long as each purchaser of Notes executes and delivers a transferee certificate acceptable to Bear Stearns (which certificate shall, in the case of any transfer pursuant to Sections 2.5(b)(i) or 2.5(b)(ii), identify each transferee of a beneficial interest in the Temporary Regulation S Global Note, including name, address, payment instructions, Taxpayer information and such other information as the Trustee

reasonably may require), which transferee certificate shall be delivered to the Trustee.

(x) Securities Act. No transfer of any Note or any beneficial interest in any Note shall be made unless such transfer (a) is made pursuant to an effective registration statement under the Securities Act and registration or qualification under applicable state securities laws or (b) is exempt from such registration or qualification requirements.

The Investor Representation Letters (and any alternative certification acceptable to Bear Stearns pursuant to clause (vi) above) and the Transferor Certificates furnished pursuant to this Section may be relied on conclusively by the Trustee in determining whether the provisions of this Section have been complied with. None of the Issuer, the Co-Issuer, the Trustee or any other person shall be required to register the Notes under the Securities Act or any state securities laws.

(c) (i) Unless a prospective Holder of a Note (and each beneficial owner of an interest in a Global Note) otherwise provides another representation acceptable to each of the Trustee, the Servicer and the Issuer, each Holder of a Note other than a Class B-1L Note, a Class B-2L Note or a Combination Note (and each beneficial owner of an interest in a Class B-1L Note, a Class B-2L Note or a Combination Note in the form of a Global Note), by its purchase thereof, shall be deemed to have represented to the Issuer, the Servicer and the Trustee that (a) no part of the funds being used to pay the purchase price for such Notes constitutes an asset of any "employee benefit plan" (as defined in Section 3(3) of ERISA) or "plan" (as defined in Section 4975(e)(1) of the Code) that is subject to Title I of ERISA or Section 4975 of the Code (each a "Plan"), including assets held in an insurance company general account, or (b) if the funds being used to pay the purchase price for such Notes include assets of any Plan, an exemption to the prohibited transaction rules applies to the purchase and holding of such Notes.

(ii) Each Holder of a Class B-1L Note shall be required (and each beneficial owner of an interest in a Class B-1L Note shall be deemed) to represent to the Issuer, the Servicer and the Trustee that either (a) the purchaser or transferee is not a Plan and is not acquiring the Class B-1L Note with assets of a Plan, (b) it is an insurance company and such funds include only assets of its general account, and its acquisition and holding of such Note are eligible for exemptive relief available under Section I of PTCE 95-60, or (c) the acquisition and holding of the Class B-1L Notes by the purchaser or transferee are eligible for the exemptive relief available under any of Section 408(b)(17) of ERISA or PTCE 96-23, 91-38, 90-1 or 84-14.

(iii) Each Holder of a Class B-2L Note or a Combination Note shall be required (and each beneficial owner of an interest in a Class B-2L Note or a Combination Note in global form shall be deemed) to represent to the Issuer, the Servicer and the Trustee that either (a) no part of the funds being used to pay the

purchase price for such Note or Combination Note constitutes "plan assets" of any Plan or other "benefit plan investor" (as defined in Section 3(42) of ERISA) (a "Benefit Plan Investor"), or (b) if the funds being used to pay the purchase price for such Note or Combination Note include "plan assets" of any Plan or other Benefit Plan Investor, (1) it is purchasing the Class B-2L Notes or Combination Notes with assets of an "insurance company general account" within the meaning of PTCE 95-60, its purchase and holding of the Class B-2L Note or Combination Note are eligible for the exemptive relief available under Section I of PTCE 95-60, less than 25% of the assets of such insurance company general account constitute "plan assets" of Benefit Plan Investors, and if, after the initial acquisition of Class B-2L Notes or Combination Notes, during any calendar quarter 25% or more of the assets of such general account (as determined by such insurance company) constitute "plan assets" of Benefit Plan Investors and full exemptive relief from the prohibited transaction prohibitions of Section 406 of ERISA and Section 4975 of the Code is not available under Section 401(c) of ERISA and the regulations thereunder, then such investor will dispose of all of the Class B-2L Notes and Combination Notes then held in such general account by the end of the next following calendar quarter; or (2) its purchase and holding of the Class B-2L Note or a Combination Note are eligible for the exemptive relief available under any of Section 408(b)(17) of ERISA or PTCE 96-23, 91-38, 90-1 or 84-14. No purchase of a Class B-2L Note or a Combination Note by a Plan or a person investing on behalf of or with "plan assets" of a Benefit Plan Investor shall be allowed unless, after giving effect to such transfer and all other purchases occurring simultaneously with such transfer, less than 25% of each of the Class B-2L Notes or the Combination Notes and the Preferred Shares (excluding any such Note, Combination Notes or Preferred Shares held by the Servicer or its affiliates or clients) will be held by Benefit Plan Investors, and each potential Holder of a Class B-2L Note or a Combination Note will furnish to the Issuer and the Trustee information sufficient to ensure that this condition is met. Each potential Holder of a Class B-2L Note or a Combination Note will be required to represent and agree that it will not assign or transfer such Class B-2L Note or Combination Note unless (1) the proposed transferee or assignee delivers a letter to the Trustee evidencing its agreement to the foregoing ERISA representations and covenants with respect to its purchase, holding and transfer of such Class B-2L Note or Combination Note and (2) if the Holder (x) is not, and is not acting on behalf of a Benefit Plan Investor, the assignee or transferee will also not be a Benefit Plan Investor, or (y) is or is acting on behalf of an insurance company general account, the assignee or transferee will be accurately identified in such letter as either another insurance company general account or a person who is not and is not acting on behalf of a Benefit Plan Investor; or (z) is or is acting on behalf of or with "plan assets" of a Benefit Plan Investor (other than an insurance company general account), the assignee or transferee will be accurately identified in such letter as either an insurance company general account, another Benefit Plan Investor or a person who is not and is not acting on behalf of any Benefit Plan Investor; *provided* that for purposes of clauses (x), (y) and (z), a transfer by a Holder (the "Transferring Holder") to Bear Stearns in a secondary market

transaction and subsequent transfers by Bear Stearns to a Holder (the "Transferee Holder"), shall be deemed to be a transfer by the Transferring Holder to the Transferee Holder and Bear Stearns may therefore transfer such Notes to any potential Holder to whom the Transferring Holder would be permitted to transfer.

(d) No Note or Combination Note shall be sold or transferred (including, without limitation, by pledge or hypothecation), except to Non-U.S. Persons in "offshore transactions" in accordance with Regulation S under the Securities Act, who, in the case of the Class B-2L Notes and the Combination Notes are also Qualified Institutional Buyers (or, solely in the case of a Holder purchasing Class B-2L Notes on the Closing Date, is an Institutional Accredited Investor), unless the purchaser or transferee is a Qualified Purchaser. Notwithstanding anything to the contrary in this Indenture, no transfer of a Note or Combination Note may be made if such transfer would require registration of the Issuer or Co-Issuer under the Investment Company Act (subject, as regards the Trustee's duties, to Section 2.5(f) below).

(e) At any time when the Issuer is not subject to Section 13 or 15(d) of the United States Securities Exchange Act of 1934, as amended, upon the request of any Noteholder, the Issuer shall promptly furnish to such Noteholder or to a prospective purchaser of any Note or Combination Note designated by such Noteholder, as the case may be, the information which the Issuer determines to be required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act ("Rule 144A Information") in order to permit compliance by such Noteholder with Rule 144A in connection with the resale of such Note or Combination Note by such Noteholder; *provided* that the Issuer shall not be required to provide audited financial statements more than once a year or to furnish Rule 144A Information in connection with any request made on or after the date that is three years from the later of (i) the date such Note or Combination Note (or any predecessor Note or Combination Note) was acquired from the Issuer or (ii) the date such Note or Combination Note (or any predecessor Note or Combination Note) was last acquired from an "affiliate" of the Issuer within the meaning of Rule 144A, in each case as determined by the Issuer. Upon request by the Issuer, the Trustee shall cooperate with the Issuer in mailing or otherwise distributing (at the Issuer's expense) to such Noteholders or prospective purchasers, at and pursuant to the Issuer's written direction, the foregoing materials prepared and provided by the Issuer; *provided* that the Trustee shall be entitled to affix thereto or enclose therewith such disclaimers as the Trustee shall deem reasonably appropriate, at its discretion (such as, for example, a disclaimer that such Rule 144A Information was assembled by the Issuer and not by the Trustee, that the Trustee has not reviewed or verified the accuracy thereof, and that it makes no representation as to the sufficiency of such information under Rule 144A or for any other purpose).

(f) The Trustee shall not be responsible for ascertaining whether any transfer complies with, or otherwise to monitor or determine compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate is specifically required by the terms of this Section to be provided to the Trustee by a prospective transferee, transferor or the Issuer, the Trustee shall be under a duty to receive and examine the same to determine

whether it conforms substantially on its face to the applicable requirements of this Section.

(g) If a Responsible Officer of the Trustee becomes aware that (i) a transfer or attempted or purported transfer of any Note or Combination Note or interest therein was consummated in compliance with the provisions of this Section 2.5 on the basis of a materially incorrect certification from the transferor or purported transferee, (ii) a transferee failed to deliver to the Trustee any certificate required to be delivered hereunder or (iii) the Holder of any Note or Combination Note or interest therein is in material breach of any representation or agreement set forth in any certificate or any deemed representation or agreement of such Holder, the Trustee will direct the Note Registrar not to register such attempted or purported transfer and if a transfer has been registered, such transfer shall be absolutely null and void *ab initio* and shall vest no rights in the purported transferee (such purported transferee, a "Disqualified Transferee") and the last preceding Holder of such Note or Combination Note that was not a Disqualified Transferee shall be restored to all rights as a Holder thereof retroactively to the date of transfer of such Note or Combination Note by such Holder.

(h) For so long as one or more Global Notes are Outstanding:

(i) the Trustee and its directors, officers, employees and agents may deal with the Depository, with respect to all Global Notes (the "Depository") for all purposes (including the making of distributions on, and the giving of notices with respect to, the Global Notes);

(ii) unless otherwise provided herein, the rights of beneficial owner in a Global Note shall be exercised only through the respective Depository and shall be limited to those established by law and agreements between such beneficial owners and the respective Depository;

(iii) for purposes of determining the identity of and Aggregate Principal Amount of Notes or Combination Notes beneficially owned by a Holder, the records of the Depository shall be conclusive evidence of such identity and Aggregate Principal Amount and the Trustee may conclusively rely on such records when acting hereunder;

(iv) the Depository will make book-entry transfers among the Depository participants of the Depository and will receive and transmit distributions of principal of and interest on the Global Notes to such Depository participants; and

(v) the Depository participants of the Depository shall have no rights under this Indenture under or with respect to any of the Global Notes held on their behalf by the Depository, and the Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Global Notes for all purposes whatsoever.

(i) Each transferee of a Note (excluding any transferee of a Note (other than a Class B-2L Note transferred after the Closing Date or a Combination Note) who is a non-U.S. Person in an offshore transaction under Regulation S but including any transferee of a Class B-2L Note transferred after the Closing Date or a Combination Note who is a non-U.S. Person in an offshore transaction under Regulation S) or a Combination Note will be deemed to represent at time of transfer that the transferee is a Qualified Institutional Buyer and that (i) it is a Qualified Purchaser, (ii) it is not formed for the purpose of investing in the Notes or Combination Notes, unless each of its beneficial owners is a Qualified Purchaser, (iii) it is not a dealer described in paragraph (a)(1)(ii) of Rule 144A unless such transferee owns and invests on a discretionary basis at least U.S.$25 million in securities of issuers that are not affiliated persons of such dealer, (iv) it is not a plan referred to in paragraph (a)(1)(i)(D) or (E) of Rule 144A or a trust fund referred to in paragraph (a)(1)(i)(F) of Rule 144A that holds the assets of such plan, unless investment decisions are made solely by the fiduciary, trustee or sponsor of such plan, (v) it and each account for which it is purchasing is purchasing Notes or Combination Notes in at least the minimum denomination and (vi) it will provide written notice of the foregoing and any other applicable transfer restrictions to any transferee.

(j) Any Note or Combination Note issued upon the transfer, exchange or replacement of Notes or Combination Notes shall bear such applicable legend set forth in the relevant Exhibit hereto unless there is delivered to the Trustee, Note Registrar and the Issuer such satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required by any of the Trustee, Note Registrar and the Issuer to the effect that (i) neither such applicable legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A and to ensure that neither of the Co-Issuers nor the Portfolio Collateral becomes an investment company required to be registered under the Investment Company Act, and (ii) the Co-Issuers and the Portfolio Collateral are exempt from registration under the Investment Company Act other than by reason of Section 3(c)(7) thereof. Upon provision of such satisfactory evidence, the Trustee, at the direction of the Issuer, shall authenticate and deliver Notes or Combination Notes that do not bear such applicable legend.

(k) If, notwithstanding the restrictions set forth in this Section 2.5, either of the Co-Issuers determines that any beneficial owner or Holder of a Rule 144A Global Note (i) is a U.S. Person and (ii) is not (A) a Qualified Purchaser or (B) a company beneficially owned exclusively by Qualified Purchasers, the Co-Issuers may require, by notice to such beneficial owner or Holder, as the case may be, that such beneficial owner or Holder sell all of its right, title and interest to such Note or Combination Note (or interest therein) to a Person that is both (1) a Qualified Institutional Buyer and (2) a Qualified Purchaser or a company beneficially owned exclusively by Qualified Purchasers, with such sale to be effected within 30 days after notice of such sale requirement is given. If such beneficial owner or Holder fails to effect the transfer required within such 30-day period, (x) upon written direction from the Issuer, the Trustee shall, and is hereby irrevocably authorized by such beneficial owner or Holder, as the case may be, to cause its interest in such Note or Combination Note to be transferred in a commercially reasonable sale (conducted by the Trustee or by an investment banking firm selected by the Trustee and approved by the Issuer (whose fees are to be paid

exclusively from the proceeds of such sale)), in accordance with Section 9-504(3) of the UCC as applied to securities that are sold on a recognized market or that may decline speedily in value) to a Person that certifies to the Trustee and the Co-Issuers, in connection with such transfer, that such Person is both (1) a Qualified Institutional Buyer and (2) a Qualified Purchaser or a company beneficially owned exclusively by one or more Qualified Purchasers and (y) pending such transfer, no further payments will be made in respect of such Note or Combination Note (or beneficial interest therein) held by such Holder or beneficial owner.

(l) So long as Combination Notes represented by Regulation S Global Notes remain outstanding and are held by or on behalf of the Depository, transfers and exchanges of the interests in such Regulation S Global Notes shall only be made in accordance with Section 2.1 and 2.5 and any such transfers will be subject to the provisions of this Section 2.5(l). If a transfer of a beneficial interest in Regulation S Global Notes requires the Trustee to instruct the Depository to reduce or increase the Aggregate Principal Amount of Combination Notes that include the Preferred Share Component represented by the Regulation S Global Note, the Issuer shall cancel the Regulation S Global Note and issue a new Regulation S Global Note registered in the name of such Depository representing the Aggregate Principal Amount of the Combination Note after the transfer. The new Regulation S Global Note shall be deposited with the Depository. The Trustee shall ensure that the Note Register is amended, and shall notify the Share Registrar to amend the Share Register, to reflect the transfers of the Class B-1L Notes and Class I Preferred Shares, respectively, represented by the Combination Note in the form of the Regulation S Global Note. The Issuer is not required to issue a Regulation S Global Note at any time that the Aggregate Principal Amount of Combination Notes is zero.

Section 2.6. Mutilated, Destroyed, Lost or Stolen Notes or Combination Notes.

If (i) any mutilated Note or Combination Note is surrendered to the Trustee or the Issuer or the Trustee and the Issuer receive evidence to their reasonable satisfaction of the destruction, loss or theft of any Note or Combination Note, and (ii) in the case of a destroyed, lost, or stolen Note or Combination Note, there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any State in the United States with a net worth at least equal to twice the amount of the security or indemnity being deemed sufficient to satisfy such security or indemnity requirement), then, in the absence of notice to the Co-Issuers or the Trustee that such Note or Combination Note has been acquired by a protected purchaser, the Co-Issuers shall execute and, upon a written request therefor by the Issuer, the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note or Combination Note, a new Note or Combination Note of the same Class, tenor and principal amount, bearing a number not contemporaneously outstanding. If, after the delivery of such new Note or Combination Note, a protected purchaser of the original Note or Combination Note in lieu of which such new Note or Combination Note was issued presents such original Note or Combination Note for payment, the Issuer and the Trustee shall be entitled to recover such new Note or Combination Note from the Person to whom it was delivered or any Person taking title therefrom, except a protected purchaser, and the

Issuer and the Trustee shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Co-Issuers, or the Trustee, in connection therewith. If any such mutilated, destroyed, lost or stolen Note or Combination Note shall have become or shall be about to become due and payable in full, or shall have been called for redemption in full, instead of issuing a new Note, the Co-Issuers may pay such Note or Combination Note without surrender thereof, except that any mutilated Note or Combination Note shall be surrendered.

Upon the issuance of any new Note or Combination Note under this Section 2.6, the Issuer or the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed or any other reasonable expense in relation thereto.

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

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

Section 2.7. Payments on the Notes.

(a) No principal will be payable in respect of the Class A-1L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-1L Notes as described herein. On each Payment Date with respect to the Amortization Period, the principal of the Class A-1L Notes will be payable (to the extent of funds available therefor and in the order of priority described herein) first to the Class A-1LA Notes and then to the Class A-1LB Notes, until the Payment Date on which the Aggregate Principal Amount of such Class A-1L Notes have been paid in full. The unpaid principal amount of the Class A-1L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to any of the Class A-1L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class A-1L Notes, unless earlier paid upon an Initial Deposit Redemption, an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-1L Notes as described herein. All outstanding principal of the Class A-1L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(b) No principal will be payable in respect of the Class A-2L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of a Special Redemption, an Optional Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-2L Notes, but only after the Aggregate Principal Amount of the Class A-1L Notes has been paid in full. The unpaid principal amount of the Class A-2L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class A-2L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class A-2L Notes, unless earlier paid upon an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-2L Notes as described herein. All outstanding principal of the Class A-2L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(c) No principal will be payable in respect of the Class A-3L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of a Special Redemption, an Optional Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-3L Notes, but only after the Aggregate Principal Amount of the Class A-1L Notes and the Class A-2L Notes have been paid in full. The unpaid principal amount of the Class A-3L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class A-3L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class A-3L Notes, unless earlier paid upon an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class A-3L Notes as described herein. All outstanding principal of the Class A-3L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(d) No principal will be payable in respect of the Class B-1L Notes (and principal collections on the Portfolio Collateral will be applied as described herein) during the Revolving Period, except in the event of a Special Redemption, an Optional Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class B-1L Notes, but only after the Aggregate Principal Amount of the Class A Notes have been paid in full. The unpaid principal amount of the Class B-1L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class B-1L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class B-1L Notes, unless earlier paid upon an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory

Redemption of the Class B-1L Notes as described herein. All outstanding principal of the Class B-1L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(e) Except in connection with the application of the Additional Collateral Deposit Requirement or upon the failure of the Class B-2L Overcollateralization Test, as described herein, no principal will be payable in respect of the Class B-2L Notes during the Revolving Period, except in the event of a Special Redemption, an Optional Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class B-2L Notes, but only after the Aggregate Principal Amount of the Class A Notes and Class B-1L Notes have been paid in full. The principal amount of the Class B-2L Notes shall be due and payable (to the extent of funds available therefore and in the order of priority as described herein) on each Payment Date during the Amortization Period, but only after the Aggregate Principal Amount of the Class A Notes and the Class B-1L Notes have been paid in full (except in connection with the application of the Additional Collateral Deposit Requirement or upon the failure of the Class B-2L Overcollateralization Test). The unpaid principal amount of the Class B-2L Notes shall accrue interest at the Applicable Periodic Rate for such Class from the Closing Date until such unpaid principal amount is paid in full and such accrued interest shall be payable on each Payment Date. To the extent there is any shortfall in the payment of accrued interest at the Applicable Periodic Rate on any Payment Date with respect to the Class B-2L Notes, the Periodic Rate Shortfall Amount will be paid (to the extent of available funds therefor and as described herein) on one or more subsequent Payment Dates after payment of the Periodic Interest Amount with respect to the Class B-2L Notes, unless earlier paid upon an Optional Redemption, a Special Redemption, a Tax Event Redemption or a Mandatory Redemption of the Class B-2L Notes as described herein. All outstanding principal of the Class B-2L Notes, together with the other amounts described herein, will be due and payable on the Final Maturity Date.

(f) Payments in respect of the Combination Notes shall be made as set forth in Section 16.3 hereof.

(g) Holders of the Notes of each Class as of the Record Date in respect of a Payment Date or as of the Redemption Record Date with respect to the Initial Deposit Redemption Date, an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date, shall be entitled, to the extent provided for herein, to the interest accrued and payable and principal payable (or Initial Deposit Redemption Price, an Optional Redemption Price, a Special Redemption Price, a Tax Event Redemption Price or a Mandatory Redemption Price payable, as applicable) on such Payment Date or Redemption Record Date with respect to the Initial Deposit Redemption Date, an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date. Payments of principal to Holders entitled thereto shall be made in the proportion that the Aggregate Principal Amount of the Notes of such Class registered in the name of each such Holder on such Record Date or Redemption Record Date with respect to the Initial Deposit Redemption Date, an Optional Redemption Date, a Special Redemption Date, a Tax Event Redemption Date or a Mandatory Redemption Date.

(h) Interest accrued with respect to any Class of Notes shall be computed on the basis of a 360-day year and the actual number of days elapsed during each Periodic Interest Accrual Period.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Co-Issuers' under this Indenture and the payment of principal of, interest on and all other amounts payable on or in respect of the Class A-1L Notes, the Class A-2L Notes, the Class A-3L Notes and the Class B-1L Notes (including, with respect to the Class B-1L Notes, the Note Component) will constitute nonrecourse obligations of the Co-Issuers, and the payment of principal of, interest on and all other amounts payable on or in respect Class B-2L Notes will constitute nonrecourse obligations of the Issuer, payable solely from the Trust Estate. Having realized the Collateral and distributed the net proceeds thereof, in each case in accordance with this Indenture, neither the Trustee nor any holders of Notes or Combination Notes may take any further steps against the Co-Issuers to recover any sum still unpaid in respect of any claims under this Indenture or the Notes or Combination Notes issued under this Indenture and all claims against the Co-Issuers in respect of any such sum due but still unpaid shall be extinguished and shall not revive. Neither of the Co-Issuers, nor any of their respective agents, partners, beneficiaries, officers, directors, employees or any Affiliate of any of them or any of their respective successors or assigns shall be personally liable for any amounts payable, or performance due, under the Notes, Combination Notes or this Indenture. It is understood that the foregoing provisions of this paragraph shall not (A) prevent recourse to the Trust Estate for the sums due or to become due under any security, instrument or agreement which is part of the Trust Estate or (B) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes, Combination Notes or secured by this Indenture, but the same shall continue until paid or discharged or (C) constitute a waiver of an otherwise valid cause of action with respect to the performance of the Servicer's obligations as set forth in the Servicing Agreement or (D) constitute a waiver of any otherwise valid cause of action against the Co-Issuers wherein the loss complained of is directly attributable to the willful misconduct or fraud of the Co-Issuers in making their respective representations or warranties or the performance of their respective obligations under this Indenture or (E) limit the right of any person to name the Co-Issuers as parties defendant in any action, suit or in the exercise of any other remedy under the Notes, Combination Notes or in this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such person or entity.

Section 2.8. Persons Deemed Owners.

The Co-Issuers, the Trustee, the Note Registrar and the Servicer, and any agent of the Co-Issuers, the Trustee, the Note Registrar and the Servicer shall treat the Person in whose name any Note or Combination Note is registered as it appears on the Note Register (or Share Register in the case of the Preferred Share Component of the Combination Notes) as the owner of such Note for the purpose of receiving payments on such Note or Combination Note, and for all other purposes whatsoever (whether or not such Note or Combination Note is overdue), and none of the Issuer, the Trustee, the Note Registrar or the Servicer, nor any agent of any of them, shall be affected by notice to the contrary.

Section 2.9. Cancellation.

All Notes or Combination Notes surrendered for payment, registration of transfer, exchange or redemption, or deemed destroyed, lost or stolen, shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. No Notes or Combination Notes shall be authenticated in lieu of or in exchange for any Notes or Combination Notes cancelled as provided in this Section 2.9, except as expressly permitted by this Indenture. All cancelled Notes or Combination Notes held by the Trustee shall be destroyed or held by the Trustee in accordance with its standard retention policy unless the Issuer shall direct by an Issuer Order that they be returned to the Issuer.

Section 2.10. Tax Purposes.

Each of the Co-Issuers shall, and each Holder by acceptance of its Note shall be deemed to have agreed to, treat the Notes as debt solely of the Issuer for United States federal income tax purposes and to treat the Preferred Shares as equity of the Issuer for United States federal income tax purposes.

Section 2.11. Calculation Agent; Determination of LIBOR.

(a) The Issuer hereby agrees that for so long as any of the Notes remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Periodic Interest Accrual Period in accordance with the terms of the Notes. The Issuer has initially appointed Investors Bank & Trust Company, as agent with respect to the determination of LIBOR (in such capacity, the "Calculation Agent"). The Calculation Agent may be removed by the Issuer at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer, or if the Calculation Agent fails to determine LIBOR for a Periodic Interest Accrual Period, the Issuer will promptly appoint as a replacement Calculation Agent a leading bank which is engaged in transactions in U.S. dollar deposits in the international U.S. dollar market and which does not control or is not controlled by or under common control with the Co-Issuers or their Affiliates. The Calculation Agent may not resign or be removed from its respective duties without a successor having been duly appointed.

(b) The Calculation Agent shall determine LIBOR for each Periodic Interest Accrual Period in accordance with the following provisions:

On each LIBOR Determination Date, LIBOR shall equal the rate, as obtained by the Calculation Agent, for three-month U.S. dollar deposits which appears on Telerate Page 3750 (as reported by Bloomberg Financial Markets Commodities News) or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date. Notwithstanding the foregoing, LIBOR for the initial Periodic Interest Accrual Period shall be determined through the use of straight-line interpolation by reference to two rates calculated in accordance with the provisions above, one of which shall be for five-month U.S. dollar deposits and the other of which shall be for six-month U.S. dollar deposits.

If, on any LIBOR Determination Date, such rate does not appear on Telerate Page 3750 (as reported by Bloomberg Financial Markets Commodities News) or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the

offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three-month (or five-month or six-month, as applicable) U.S. dollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in The City of New York selected by the Calculation Agent (after consultation with the Servicer) are quoting on the relevant LIBOR Determination Date for three-month (or five-month or six-month, as applicable) U.S. dollar deposits in an amount determined by the Calculation Agent that is representative of a single transaction in such market at such time by reference to the principal London offices of leading banks in the London interbank market; *provided* that, if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date. As used herein, "Reference Banks" means four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer).

For purposes of any calculations referred to in this paragraph (b), all percentages resulting from such calculations will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point.

(c) As soon as possible after 11:00 a.m. (New York time) on each LIBOR Determination Date, but in no event later than 11:00 a.m. (New York time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will notify the Issuer, the Trustee, the Irish Paying Agent (as long as any of the Notes are listed on the Irish Stock Exchange) and the Servicer of LIBOR for the next Periodic Interest Accrual Period. The Calculation Agent will also specify to the Issuer the quotations upon which LIBOR is based, and in any event the Calculation Agent shall notify the Issuer before 5:00 p.m. (New York time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining LIBOR or (ii) it has not determined and is not in the process of determining LIBOR together with its reasons therefor.

(d) Upon receipt of notice of LIBOR for each Periodic Interest Accrual Period from the Calculation Agent pursuant to subsection (c) of this Section 2.11, the Trustee shall determine the Applicable Periodic Rate with respect to the Notes for such Periodic Interest Accrual Period and notify the Irish Stock Exchange of the Applicable Periodic Rate for each Class of Note (as long as any of the Notes are listed on the Irish Stock Exchange).

(e) The determination of LIBOR by the Calculation Agent and the Applicable Periodic Rate with respect to the Notes by the Trustee (in the absence of manifest error) shall be final and binding upon all parties.

Section 2.12. Option to Acquire Credit Enhancement.

Holders of any Class of Notes may elect to acquire bond insurance, a surety bond or similar credit enhancement supporting the payment of principal and/or interest on such Class of Notes, on terms and conditions acceptable to such Holders and at the sole expense of such Holders. Any Class of Notes subject to such enhancement will be designated pursuant to a supplemental indenture adopted pursuant to Section 8.1 as "Insured Notes" of such Class. Premiums for any such enhancement (together with any other amounts payable to the issuer of such bond insurance policy, surety bond or similar credit enhancement, including, without limitation, amounts payable to any such issuer to reimburse it for draws thereunder, together with interest thereon), and costs incurred by the Co-Issuers in connection with such enhancement will be payable from amounts otherwise payable to such Class of Insured Notes, or in such other manner chosen by such Holder (*provided* that any such payment does not adversely affect any other Noteholder or holder of a Preferred Share). Any Insured Notes for substantially all other purposes will be treated as Notes of such Class, except that the issuer of the bond insurance policy, surety bond or other such credit enhancement will generally be deemed to be the Holder of the Notes of such Class, enhanced by such entity and will in such capacity be entitled to exercise the rights otherwise exercisable by Holders of such Notes.

Section 2.13. Prescription.

Payment in respect of any Note will cease to be due if not paid to the Holder of such Note due to insufficient payment instructions from such Holder to the Trustee or the Paying Agent for a period of twenty years from the Relevant Date.

Section 2.14. Hedge Agreements.

(a) The Cap Agreement:

(i) On the Closing Date, the Issuer shall execute and deliver the Cap Agreement. The Issuer will make a single payment of the Fixed Amount to the Cap Provider on the Closing Date.

(ii) If, by 4:00 p.m., New York City time, on (i) any Payment Date on which the Trustee has not received from the Cap Provider any amount due from the Cap Provider on such Payment Date, (ii) the Business Day following any such Payment Date if the Trustee has not yet received such amount due from the Cap Provider, (iii) the Business Day on which such failure to pay by the Cap Provider becomes an event of default under the Cap Agreement or (iv) the Business Day on which the Trustee receives from the Cap Provider such amount due, the Trustee shall give prompt written notice thereof to the Cap Provider, S&P and Moody's. If the Cap Agreement has been terminated (such termination being subject to a Rating Confirmation) without a replacement, and any Cap Termination Amount owed to the Cap Provider under the Cap Agreement, if any, have been paid, all rights and liens of the Cap Provider under this Indenture with respect to the Cap Agreement shall terminate and be of no further force and effect. If after the Closing Date the credit rating of the Cap Provider is downgraded or withdrawn, a

Responsible Officer of the Trustee, upon having actual knowledge of such downgrade or withdrawal, shall provide written notice of such downgrade or withdrawal to the Rating Agencies.

(iii) If, at any time, the Aggregate Principal Amount of the Notes is less than the Cap Notional Amount, the Trustee may, at the direction of the Issuer, sell the Issuer's right to receive payments with respect to the Cap Agreement, but only to the extent that the Cap Notional Amount exceeds the Aggregate Principal Balance of the Notes. Proceeds from any such sale will be distributed as Collateral Interest Collections on the Payment Date relating to the Due Period in which such sale occurs.

(iv) The Cap Agreement will provide that in the event that (a) a S&P First Level Downgrade occurs and is continuing, then within 30 days after such rating withdrawal or downgrade, the Cap Provider shall, subject to satisfaction of the Rating Condition with respect to S&P, at its own expense, either (i) procure a Permitted Transfer, (ii) obtain an Eligible Guaranty or (iii) post collateral in accordance with the Cap Agreement; (b) an S&P Second Level Downgrade occurs and is continuing, then within 10 Local Business Days (as defined in the Cap Agreement) after such rating withdrawal or downgrade, the Cap Provider shall, subject to satisfaction of the Rating Condition with respect to S&P, at its own expense, either (i) procure a Permitted Transfer or (ii) obtain an Eligible Guaranty; and (c) a Moody's Second Level Downgrade occurs and is continuing, the Cap Provider shall as soon as reasonably practicable thereafter, at its own expense and using commercially reasonable efforts, either (i) procure a Permitted Transfer or (ii) obtain an Eligible Guaranty.

(v) The Cap Agreement also will provide that the following will constitute "Additional Termination Events" under the Cap Agreement upon the occurrence of which the Issuer will have the right (subject to a Rating Confirmation) to terminate the Cap Agreement: (a) if a S&P First Level Downgrade has occurred and is continuing and the Cap Provider fails to take any action described in clause (a) in the preceding paragraph within the time period specified therein; (b) a S&P Second Level Downgrade has occurred and is continuing and the Cap Provider fails to take any action described in clause (b) in the preceding paragraph within the time period specified therein; (c)(i) a Moody's Second Level Downgrade has occurred and been continuing for 30 or more Local Business Days and (ii) the Cap Provider has failed to comply with or perform any obligation to be complied with or performed by the Cap Provider in accordance with the Cap Agreement; and (d)(i) a Moody's Second Level Downgrade has occurred and been continuing for 30 or more Local Business Days and (ii) either (I) at least one Eligible Replacement has made a Firm Offer to be the transferee or (II) at least one entity that satisfies the Moody's Approved Ratings Threshold has made a Firm Offer to provide an Eligible Guaranty in respect of all of the Cap Provider's present and future obligations under the Cap Agreement.

(vi) In the event of any transfer, assignment or replacement of the Cap Agreement following the occurrence of a "Rating Agency Downgrade" under the Cap Agreement, the Issuer shall use (and cause its agents to use) reasonable commercial efforts to incur only reasonable costs and expenses in connection with such transfer, assignment or replacement including, without limitation, costs and expenses of legal counsel.

(b) Other Hedge Agreements:

(i) On and after the Closing Date, subject to the conditions specified in this Section 2.14(b), the Issuer may enter into additional Hedge Agreements (including, without limitation, interest rate swap, cap or floor agreements, basis swap agreements or, with respect to the Revolving Period only, timing swap agreements) to hedge interest rate exposure or payment timing or accrual mismatches attributable to the Portfolio Collateral, increase or reduce the notional amount of an existing Hedge Agreement, sell all or a portion of any Hedge Agreement or terminate any Hedge Agreement if (x) Rating Agency Confirmation has been obtained or (y) such Hedge Agreement is a Form-Approved Hedge Agreement; *provided, further*, that with respect to a Form-Approved Hedge Agreement for which consent by the Rating Agencies to use the form in this transaction has been sought after the Closing Date, a Majority of the Controlling Class shall have consented to the use of such form.

(ii) Any termination or similar amount payable by a Hedge Counterparty to the Issuer upon any such reduction, increase, amendment, modification or termination pursuant to the related Hedge Agreement shall constitute Collateral Principal Collections in the Due Period in which such payment is received. Any such amount payable by the Issuer to such Hedge Counterparty shall be payable in accordance with Section 11.1 hereof. Any voluntary termination of a Hedge Agreement shall be subject to Rating Agency Confirmation.

(iii) Each Hedge Agreement shall be required to contain limited recourse and non-petition provisions equivalent (*mutatis mutandis*) to those contained in this Indenture.

(iv) Each Hedge Agreement shall provide that if the ratings of the related Hedge Counterparty or its guarantor, as applicable, are reduced to a level below the levels required in such Hedge Agreement, the related Hedge Counterparty (or guarantor, as applicable) shall be required to (x) provide credit support in order to collateralize its obligations under such Hedge Agreement, (y) provide a guarantee of its obligations under such Hedge Agreement from a guarantor having the required ratings or (z) assign such Hedge Agreement to an eligible assignee, in each case as provided in such Hedge Agreement.

(v) Each Hedge Agreement shall provide that the Issuer may terminate such Hedge Agreement (whether or not the Notes have been paid in full prior to

such termination) if, among other things, any of the following events occurs: (w) the bankruptcy, insolvency, receivership, reorganization or similar events with respect to the a Hedge Counterparty, (x) failure of the related Hedge Counterparty to make any payment when due (subject to any applicable grace period), (y) a change in law making it illegal for the Issuer or the related Hedge Counterparty to be party to or perform its obligations under such Hedge Agreement or (z) the failure of the related Hedge Counterparty to take the action or actions required of it (including but not limited to those set forth in clause (iv) hereof) upon a reduction or withdrawal of the ratings of the related Hedge Counterparty or its guarantor below the levels specified in the Hedge Agreement. Each Hedge Agreement shall also provide that it may be terminated pursuant to its terms upon any redemption of the Notes in whole and may provide for the right of the related Hedge Counterparty to terminate such Hedge Agreement upon the occurrence of specified "events of default" or "termination events"; *provided* that no Hedge Agreement may provide for termination upon the occurrence of a Default or an Event of Default under Section 5.1 hereof unless any resulting acceleration of the Notes may no longer be rescinded pursuant to the terms of this Indenture.

(c) The Trustee shall in accordance with each applicable Note Valuation Report pay on each Payment Date amounts due by the Issuer to any Hedge Counterparty under each Hedge Agreement in accordance with the Priority of Payments.

(d) All termination or similar payments required to be paid by the Issuer under any Hedge Agreement shall be payable only on a Payment Date in accordance with Section 11.1 hereof. If a Hedge Counterparty is the sole "defaulting party" or sole "affected party" (as each such term is defined in the related Hedge Agreement), any such termination or similar payment shall be payable by the Issuer only on a subordinated basis in accordance with Section 11.1 hereof. A Hedge Agreement may provide that interest shall accrue on any such subordinated termination or similar payment not paid in full on any Payment Date because insufficient funds are available for such payment on such Payment Date in accordance with Section 11.1.

(e) In addition to the right of the Issuer to enter into additional Hedge Agreements after the Closing Date as set forth in clause (b) hereof, the Issuer may enter into one or more Hedge Agreements in substitution for any terminated Hedge Agreement on terms similar to those of the terminated Hedge Agreement. Any costs attributable to such substitute Hedge Agreement in excess of the termination amounts or similar proceeds received by the Issuer upon termination of the terminated Hedge Agreement shall constitute Aggregate Base Fees and Expenses payable in accordance with Section 11.1 hereof.

(f) Upon the failure of a Hedge Counterparty to pay to the Issuer when due any payment required to be made by such Hedge Counterparty under the related Hedge Agreement, the Issuer or Servicer on its behalf shall promptly make demand for such payment. If such payment is not received by the Business Day immediately following such demand, the Issuer shall provide telephonic notice (promptly confirmed in writing) of such failure to the Trustee and, if applicable, any guarantor of such Hedge Counterparty's obligations under the Hedge Agreement. Upon receipt of such notice (or earlier, if the Trustee has actual knowledge of the failure), the Trustee shall demand payment by such Hedge Counterparty (or guarantor, if

applicable) by 12:30 p.m., New York time, on such day (or, if such demand is made after 11:30 a.m. on any day, by 12:30 p.m. on the next succeeding Business Day). The Trustee shall notify Noteholders if such Hedge Counterparty fails to make any required payment within two Business Days after demand by the Trustee therefor.

(g) Any action provided for in this section to be undertaken by the Issuer with respect to a Hedge Agreement (including, without limitation, entering into, terminating or amending a Hedge Agreement or delivering any notice, demand, request, authorization, consent, waiver or other communication under a Hedge Agreement) may be taken by the Servicer pursuant to the authority granted to the Servicer under the Servicing Agreement.

ARTICLE III

AUTHENTICATION AND DELIVERY OF NOTES

Section 3.1. General Provisions.

On the Closing Date, the Notes (with the exception of the Class B-2L Notes) shall be executed by the Co-Issuers, and the Class B-2L Notes and the Combination Notes shall be executed by the Issuer, and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon the Issuer's written request and upon compliance with the conditions of Section 3.2 hereof, and upon receipt by the Trustee of the following:

(a) an Officers' Certificate of the Co-Issuers evidencing the authorization of the execution, authentication (as applicable) and delivery of the Transaction Documents, the Notes (with the exception of the Class B-2L Notes) and specifying the Final Maturity Dates, the applicable principal or stated amounts and the interest rates and yields of each Class of Notes to be authenticated and delivered;

(b) an Officers' Certificate of the Issuer evidencing the authorization of the execution, authentication and delivery of the Class B-2L Notes, the Combination Notes and the Preferred Shares and specifying the Final Maturity Date, the applicable principal or stated amount and the interest rate and yield of the Class B-2L Notes, the Combination Notes and the Preferred Shares;

(c) an Opinion or Opinions of Counsel, dated the Closing Date, substantially in the form or forms attached hereto as Schedule G.

(d) an Officer's Certificate or Certificates of the Co-Issuers stating that all representations and warranties of the Co-Issuers set forth in the Transaction Documents are true and correct and neither of the Co-Issuers is in Default under this Indenture, that no "Event of Default" or "Termination Event" exists under any Hedge Agreement and that the issuance of the Notes, the Combination Note and the Preferred Shares then applied for will not result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture or other agreement or instrument to which the Issuer or the Co-Issuer, as applicable, is a party or by which the Issuer or the Co-Issuer, as applicable, is bound, or any order of any court or administrative agency entered in any

proceeding to which the Issuer or the Co-Issuer, as applicable, is a party or by which the Issuer or the Co-Issuer, as applicable, is bound or to which the Issuer or the Co-Issuer, as applicable, is subject; and that all conditions precedent (other than the deposit of cash by the Trustee in the appropriate accounts as provided in Section 3.2(e), (f) and (g) hereof) provided in this Section 3.1 and all requirements under Section 3.2 hereof and all conditions precedent otherwise provided in this Indenture relating to the authentication and delivery of the Notes and the Combination Notes applied for have been complied with;

(e) an Accountants' Certificate in form and substance acceptable to the Issuer and the Co-Issuer confirming that the Notes of each Class (including the Note Component with respect to the Combination Notes) will be retired by their Final Maturity Dates in accordance with the assumptions set forth in Section 1.3 hereof and specifying the procedures undertaken by them to review data and computations relating to the foregoing;

(f) an executed counterpart of the Servicing Agreement, the Cap Agreement, the Paying and Transfer Agency Agreement and the Collateral Administration Agreement;

(g) the Initial Portfolio Collateral as provided in Section 3.2(a) hereof;

(h) an Issuer Request directing the Trustee to authenticate the Notes and the Combination Notes in the amounts set forth therein, registered in the name(s) set forth therein or as otherwise provided to the Trustee by the Issuer or at its direction, and to make delivery thereof to the Issuer or as it may otherwise direct therein;

(i) an Officer's Certificate from the Servicer (i) confirming that Schedule A attached to this Indenture correctly lists the Initial Portfolio Collateral to be granted to the Trustee on the Closing Date (in the case of items of Debt Securities) or scheduled to be granted to the Trustee on or not later than thirty (30) days after the Closing Date (in the case of Portfolio Loans) pursuant to the Granting Clauses hereof and (ii) confirming such information with respect to each item of Initial Portfolio Collateral as the Issuer reasonably deems necessary to confirm that such item of Initial Portfolio Collateral, individually and in the aggregate, meets the requirements specified in this Indenture; and

(j) such other documents as the Trustee may reasonably require.

Section 3.2. Security for Notes.

On the Closing Date, the following conditions shall have been satisfied:

(a) Delivery of Initial Portfolio Collateral. The Initial Portfolio Collateral to be Granted to the Trustee on such Closing Date, in an amount at least equal to the Initial Portfolio Collateral Amount, shall have been Delivered to the Trustee (or, with respect to Portfolio Loans, trade confirmations, commitment letters, assignment documents or other documents evidencing a commitment to purchase by the Issuer of the Initial Portfolio

Collateral on or not later than thirty (30) days after the Closing Date shall have been delivered to the Trustee).

(b) Certificate of the Issuer. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, shall have been delivered to the Trustee to the effect, in the case of each item of Portfolio Collateral and the Deposit included in the Trust Estate on the Closing Date, that as of the Closing Date:

(i) the Issuer is the owner of such item of Portfolio Collateral and the Deposit free and clear of any liens, claims (including any adverse claims) or encumbrances of any nature whatsoever, except for those granted or expressly permitted pursuant to this Indenture and due bills, if any, with respect to interest, or a portion thereof, accrued on such Portfolio Collateral prior to the first payment date and owed by the Issuer to the seller of such Portfolio Collateral;

(ii) the Issuer has acquired its ownership in such item of Portfolio Collateral and the Deposit in good faith without notice of any adverse claim, except as described in paragraph (b)(i) above;

(iii) the Issuer has Delivered such item of Portfolio Collateral to the Trustee and has not assigned, pledged or otherwise encumbered any interest in such Portfolio Collateral or the Deposit other than interests granted or expressly permitted pursuant to this Indenture;

(iv) the Issuer has full right to Grant and does Grant pursuant to the Granting Clauses such item of Portfolio Collateral and the Deposit to the Trustee;

(v) the information set forth with respect to such item of Portfolio Collateral in Schedule A hereto is correct;

(vi) such item of Portfolio Collateral satisfies the requirements of the definition of Portfolio Collateral; and

(vii) no such item of Portfolio Collateral is Discount Portfolio Collateral.

(c) Rating Letters. The Trustee shall have received written evidence that the Class A-1LA Notes have been rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-1LB Notes have been rated "AAA" by Standard & Poor's and "Aaa" by Moody's, the Class A-2L Notes have been rated at least "AA" by Standard & Poor's and at least "Aa2" by Moody's, the Class A-3L Notes have been rated at least "A" by Standard & Poor's and at least "A2" by Moody's, the Class B-1L Notes have been rated "BBB" by Standard & Poor's and "Baa2" by Moody's, that the Class B-2L Notes have been rated "BB" by Standard & Poor's and "Ba2" by Moody's and the Combination Notes have been rated at least "Baa2" by Moody's as to the Rated Balance and the Rated Coupon of the Combination Notes.

(d) Accounts. The Collection Account, the Collateral Account, the Initial Deposit Account, the Reserve Account, the Expense Reimbursement Account, the Closing Expense Account, the Loan Funding Account, the Default Swap Collateral Account, the Default Swap Issuer Account and the Preferred Shares Collection Account shall have been established.

(e) Initial Deposit Account. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of $22,356,921 representing the Deposit for inclusion in the Trust Estate and the Trustee shall have credited such cash to the Initial Deposit Account.

(f) Expense Reimbursement Account; Closing Expense Deposit. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of at least $50,000 for inclusion in the Trust Estate and the Trustee shall have credited such cash to the Expense Reimbursement Account. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of $2,879,230 for inclusion in the Trust Estate, and the Trustee shall have credited such cash to the Closing Expense Account (the "Closing Expense Deposit") which, after payment of all closing expenses (according to the list delivered to the Trustee), shall be transferred to the Initial Deposit Account or the Collection Account and applied as set forth in Section 10.2(h).

(g) Loan Funding Account. The Issuer shall have delivered to the Trustee on the Closing Date cash in the amount of $6,213,244 which is equal to the Issuer's commitment to make or otherwise fund draws related to any Delayed Drawdown Loans or Revolving Loans in the Initial Portfolio Collateral and the Trustee shall have credited such cash to the Loan Funding Account.

Section 3.3. Initial Deposit Redemption.

(a) The Issuer shall use reasonable efforts to use on or prior to the Effective Date the available funds and Eligible Investments in the Initial Deposit Account (other than Account Income on funds on deposit in the Initial Deposit Account) to purchase additional Original Portfolio Collateral as permitted pursuant to Section 3.4 hereof taking into account the Initial Portfolio Collateral and Original Portfolio Collateral already purchased by the Issuer in the Trust Estate (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any of the Original Portfolio Collateral on or before the Effective Date). If the remaining Deposit in the Initial Deposit Account as of the Effective Date equals or exceeds $2,000,000 and the Aggregate Principal Amount of the Original Portfolio Collateral (determined in accordance with the foregoing sentence) acquired or committed to be acquired by the Issuer is less than the Required Portfolio Collateral Amount (subject to the second paragraph of Section 3.4(a)), the Issuer shall cause an Initial Deposit Redemption to occur on the Initial Deposit Redemption Date by redeeming the Class A-1LA Notes in an aggregate amount equal to the excess of the Required Portfolio Collateral Amount over the par amount of Original Portfolio Collateral; *provided* that the amount applied to such Initial Deposit Redemption shall not exceed the remaining amount of the Deposit (the "Initial Deposit Redemption Amount"). No interest or other amount in excess of the Initial Deposit Redemption Amount, other than the Periodic Interest Amount with respect to

the Class A-1LA Notes through the Initial Deposit Redemption Date due on the next succeeding Payment Date, shall be payable on or in respect of the Class A-1LA redeemed in an Initial Deposit Redemption. If there is a Deposit in the Initial Deposit Account on the Effective Date but no Initial Deposit Redemption is required pursuant to the terms of this Section 3.3(a), the remaining Deposit in the Initial Deposit Account shall be transferred to the Collection Account on the Effective Date and shall, subject to Section 3.4(d), constitute Collateral Principal Collections. Account Income in the Initial Deposit Account shall be transferred to the Collection Account on the Effective Date and shall constitute Collateral Interest Collections.

(b) If an Initial Deposit Redemption is required, the Issuer, not later than the third Business Day immediately following the Effective Date, shall notify the Trustee and each Rating Agency in writing that an Initial Deposit Redemption is required pursuant to Section 3.3(a) hereof and the amount of the Class A-1LA Notes required to be redeemed pursuant thereto.

(c) Notice of an Initial Deposit Redemption shall be given by the Trustee by first-class mail, postage prepaid, mailed not less than ten calendar days prior to the Initial Deposit Redemption Date, to each Holder of the Class A-1LA Notes to be redeemed at the address for such Holder in the Note Register and so long as any Notes are listed on the Irish Stock Exchange, to the Irish Paying Agent. All notices of Initial Deposit Redemption shall state the Initial Deposit Redemption Date, the Redemption Record Date with respect thereto, the Aggregate Principal Amount of the Class A-1LA Notes to be redeemed, and that no interest or other amount in excess of the Initial Deposit Redemption Amount shall be payable on the amount of the Class A-1LA Notes to be redeemed.

(d) If an Initial Deposit Redemption is required, all Eligible Investments in the Initial Deposit Account representing the Deposit not applied to the purchase of Portfolio Collateral on or before the Effective Date shall be liquidated on the Business Day immediately preceding the Initial Deposit Redemption Date and the proceeds thereof shall be held in the Initial Deposit Account. On the Initial Deposit Redemption Date, the Trustee shall withdraw from the Initial Deposit Account all funds therein and apply such funds to the payment of Holders of the Notes in an amount equal to the Initial Deposit Redemption Amount or to a deposit in the Collection Account, as applicable.

Section 3.4. Purchase of Portfolio Collateral between the Closing Date and the Effective Date; Effective Date Conditions.

(a) The Issuer may (i) purchase Original Portfolio Collateral on any Business Day during the period from and including the Closing Date to and including the Effective Date or (ii) enter into a commitment to purchase Original Portfolio Collateral on any Business Day during the period from and including the Closing Date to and including the Effective Date for purchase on or as soon as practicable thereafter (*provided* that the agreed to settlement date shall not be more than thirty (30) days after the Effective Date), in each case, for inclusion in the Trust Estate in an aggregate amount equal to the Deposit in the Initial Deposit Account. Upon receipt of a Servicer Order requesting the purchase of Original Portfolio Collateral the Trustee shall pay out of the Initial Deposit Account, during the period commencing on the Closing Date and

ending on the Effective Date, all or a portion of the funds available therein for the purpose of purchasing Original Portfolio Collateral.

No Original Portfolio Collateral may be purchased prior to the Effective Date unless immediately following the purchase of such item of Portfolio Collateral (as certified by Servicer Order), the remaining Deposit in the Initial Deposit Account, after giving effect to such purchase, is sufficient as of the date of determination to purchase Original Portfolio Collateral in an Aggregate Principal Amount at least equal to the Required Portfolio Collateral Amount for delivery into the Trust Estate (taking into account the Initial Portfolio Collateral and Original Portfolio Collateral already in the Trust Estate (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any of the Original Portfolio Collateral on or before the Effective Date)).

Notwithstanding the foregoing, or any other provision hereof, if the Issuer has previously entered into a commitment to purchase an item of Portfolio Collateral to be included in the Trust Estate, such commitment not to exceed thirty (30) days, and at the time of such commitment such an item of Portfolio Collateral complied with the definition of Portfolio Collateral and this Section 3.4(a), then the Issuer may consummate the purchase of such an item of Portfolio Collateral notwithstanding that such an item of Portfolio Collateral fails to comply with the definition of Portfolio Collateral and such criteria on the date of settlement.

(b) The Servicer shall cause to be delivered to the Trustee on the Effective Date an amended Schedule A to this Indenture listing all Original Portfolio Collateral (including the Initial Portfolio Collateral then in the Trust Estate) and all commitments to purchase Original Portfolio Collateral, which schedule shall supersede any prior Schedule A delivered to the Trustee.

(c) The Issuer will use its commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Original Portfolio Collateral by the Effective Date, that, including the Initial Portfolio Collateral, will satisfy, as of the Effective Date, the Collateral Quality Tests, the criteria set forth in Section 12.2 and the Overcollateralization Tests. Within 5 Business Days after the Effective Date, the Issuer or the Servicer (on behalf of the Issuer) shall request a Rating Confirmation on behalf of the Issuer and shall provide a report to the Rating Agencies identifying the Original Portfolio Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and an electronic file of the Original Portfolio Collateral to S&P) substantially in the form of a Monthly Report as of the Effective Date, an Accountants' Certificate (a) confirming the maturity date, rating, spread, coupon and recovery rate for each item of Original Portfolio Collateral as of the Effective Date and the information provided by the Issuer with respect to every other asset included or to be included in the Trust Estate, by reference to such sources as shall be specified therein, (b) confirming that as of the Effective Date (1) each Overcollateralization Test is met; (2) the Aggregate Principal Amount of the Original Portfolio Collateral that the Issuer owned or committed to purchase as of the Effective Date is at least equal to the Required Portfolio Collateral Amount and (3) the Portfolio Collateral complies with all of the requirements of the Collateral Quality Tests and the criteria set forth in Section 12.2 and (c) specifying the procedures undertaken by them to review data and computations relating to the foregoing

statements. If a Rating Confirmation Failure should occur, the Notes will be redeemed pursuant to Section 9.2 hereof.

(d) Notwithstanding any provision in this Indenture to the contrary, if, on the Effective Date, the Aggregate Principal Amount of the Portfolio Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to the Original Portfolio Collateral on or prior to such time) exceeds the Required Portfolio Collateral Amount and there are funds remaining from the Deposit held in the Initial Deposit Account, the Servicer may direct the Trustee to transfer up to the least of (i) 25% of such funds and (iii) $1,000,000, to the Collection Account as additional Collateral Interest Collections; *provided* that the Overcollateralization Tests and the collateral criteria described herein are satisfied and the Interest Coverage Test for the most recent Payment Date was satisfied. The remainder of the Deposit shall be transferred by the Trustee to the Collection Account to be applied as Collateral Principal Collections on the Payment Date immediately following the date of determination.

Section 3.5. Intermediaries.

(a) Notwithstanding anything herein to the contrary, to the extent any items of Portfolio Collateral issued by an issuer that is not the United States of America, an agency or instrumentality thereof, or some other U.S. Person (collectively, "Non-U.S. Portfolio Securities") are Granted to the Trustee, such Non-U.S. Portfolio Securities may be delivered to and held by the Trustee through one or more Foreign Sub-custodians or Foreign Clearance Systems (as those terms are defined in the Section below; collectively, "Foreign Intermediaries") if such Non-U.S. Portfolio Securities cannot be Delivered to the Trustee.

(b) The Trustee, for the purpose of receiving and holding any Non-U.S. Portfolio Securities that cannot be Delivered to the Trustee, may appoint one or more banking or securities institutions located outside the United States (each a "Foreign Sub-custodian") and/or clearing agencies or systems located outside the United States (each, a "Foreign Clearance System"), including without limitation Euroclear and Clearstream. With respect to Non-U.S. Portfolio Securities (and related cash) held through Foreign Intermediaries, such Foreign Intermediaries may be authorized to hold Non-U.S. Portfolio Securities in central securities depositories or clearing agencies in which such Foreign Intermediaries participate.

(c) The Trustee's responsibility with respect to the selection or appointment of Foreign Intermediaries shall be limited to a duty to exercise reasonable care in the selection or retention of such Foreign Intermediaries in light of prevailing settlement and securities handling practices, procedures and controls in the relevant market and subject to Section 6.3 hereof; *provided* that the appointment of Euroclear or Clearstream to act as Foreign Intermediary shall be deemed to have been made in the exercise of due care. With respect to any costs, expenses, damages, liabilities, or claims (including, without limitation, attorneys' and accountants' fees) incurred by the Issuer as a result of the acts or the failure to act by any Foreign Intermediaries, the Trustee shall take reasonable action to recover such costs, expenses, damages, liabilities, or claims from such Foreign Intermediaries; *provided* that the Trustee's sole liability in that regard shall be limited to amounts actually received by it from such Foreign Intermediaries (exclusive of related costs and expenses incurred by the Trustee). The Trustee shall not be responsible or

liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes or fires; floods, wars, civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communication service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1. Satisfaction and Discharge of Indenture.

Provided no Event of Default has occurred and is continuing hereunder, this Indenture shall cease to be of further effect with respect to the Notes and the Combination Notes except as to (i) rights of registration of transfer and exchange, (ii) substitution of mutilated, destroyed, lost or stolen Notes or Combination Notes, (iii) rights of Noteholders to receive payments of principal thereof and interest thereon, as applicable, and any other amounts payable in respect thereof, (iv) the rights, obligations and immunities of the Trustee hereunder, and (v) the rights of Noteholders as beneficiaries hereof with respect to the property deposited with the Trustee and payable to all or any of them and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture when:

(1) Either

(a) all Notes and Combination Notes theretofore authenticated and delivered (other than (i) Notes and Combination Notes which have been destroyed, lost or stolen and which have been paid or replaced as provided in Section 2.6 hereof and (ii) Notes and Combination Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 7.3 hereof) have been delivered to the Trustee for cancellation; or

(b) all Notes and Combination Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable, or (ii) will become due and payable at their Final Maturity Dates within one year;

and the Issuer, in the case of (b)(i) or (ii) above, has (x) irrevocably deposited or caused to be deposited with the Trustee in trust for such purpose, cash or Eligible Investments (any security satisfying the definition of Eligible Investments but for the maturity of such security shall for this purpose be deemed an Eligible Investment), the amount of cash and the Scheduled Distributions on any Eligible Investments being in an amount sufficient to pay and discharge the amount that equals the sum of the Cumulative Interest Amount on each Class of Notes to the date of such deposit or to the Final Maturity Date, as the case may be, and the Aggregate Principal Amount of each Class of Notes and Combination Notes not theretofore delivered to the Trustee for cancellation, in each case to the extent not previously paid and (y) delivered an Accountants'

Certificate to the Trustee confirming such calculations; *provided* that subsection (b) hereof shall not apply if an election to act in accordance with the provisions of Section 5.5 hereof shall have been made and not rescinded (except that the deposit of cash that would otherwise apply in the case of such subsection (b) shall nevertheless be required); *provided further* that any Eligible Investments deposited hereunder shall at the date of such deposit be rated no lower than the highest rating assigned to any of the Notes or the Combination Notes then outstanding;

(2) the Issuer has paid or caused to be paid all other sums payable hereunder and under each Hedge Agreement by the Issuer; and

(3) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes and the Combination Notes have been complied with.

Section 4.2. Application of Trust Money.

All monies deposited with the Trustee pursuant to Section 4.1 hereof shall be held in trust by the Trustee and applied by it, in accordance with the provisions of the Notes, the Combination Notes and this Indenture, to the payment to the Person entitled thereto of the principal and interest in accordance with Section 11.1 hereof for whose payment such money has been deposited with the Trustee, and such money shall be held in a non-interest bearing segregated trust account identified as being held in trust for the benefit of the Noteholders and subject to the lien of this Indenture. Except as specifically provided herein, the Trustee shall not be responsible for payment of interest upon any monies deposited with it.

ARTICLE V

REMEDIES

Section 5.1. Events of Default.

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

(a) (i) default for a period of four Business Days or more (or, in the case of a default in payment due to an administrative error or omission by the Trustee, any Paying Agent or the Note Registrar, for a period of seven Business Days or more, *provided* that the Trustee has notified each Rating Agency in writing of any such administrative error or omission) in the payment of any amount payable in respect of any Note when due when funds in such amount are available for payment as provided herein, or (ii) the failure to apply funds which are available for payment in accordance with the priority of distribution set forth in Article XI hereof, which failure shall continue for a period of four Business Days (or, in the case of a default in payment due solely to an administrative error or omission by the Trustee, any Paying Agent or the Note Registrar, for a period of seven Business Days or more, *provided* that the Trustee has notified each

Rating Agency in writing of any such administrative error or omission), or (iii) default for a period of four Business Days or more (or, in the case of a default in payment due to an administrative error or omission by the Trustee, any Paying Agent or the Note Registrar, for a period of seven Business Days or more, *provided* that the Trustee has notified each Rating Agency in writing of any such administrative error or omission) in the payment of the Periodic Interest Amount due on any Class of Senior Class A Notes, or, after the Senior Class A Notes are paid in full, the Periodic Interest Amount due on any Class A-3L Notes, or after the Class A Notes are paid in full, the Periodic Interest Amount due on any Class B-1L Notes, or after the Class A Notes and the Class B-1L Notes are paid in full, the Class B-2L Notes, on any Payment Date, or (iv) default in the payment of the Aggregate Principal Amount and the Cumulative Interest Amount, due on any Class of Notes on the Final Maturity Date; or

(b) default in the performance or breach of any covenant, representation, warranty or other agreement of the Co-Issuers (or either one of them), other than compliance with the Overcollateralization Tests, the Interest Coverage Test or the criteria set forth in Section 12.2 hereof or a default in the performance or breach of a covenant, representation, warranty or other agreement which is specifically dealt with elsewhere in this Section or in Article VII hereof, or the failure of any representation or warranty of the Co-Issuers (or either one of them) made in this Indenture or in any certificate or other writing delivered pursuant hereto or in connection herewith to be correct in all material respects when the same shall have been made, in either case which materially and adversely affects the rights of any Class of Noteholders and continuance of such default, breach or failure for a period of 30 days after written notice thereof shall have been given to the Co-Issuers or the Servicer by the Trustee or to the Co-Issuers, the Servicer and the Trustee by the Majority Noteholders, specifying such default, breach or failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(c) the entry of a decree or order by a court having jurisdiction in the premises adjudging either of the Co-Issuers as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of either of the Co-Issuers under the Bankruptcy Code or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of either of the Co-Issuers or of any substantial part of their respective property, or ordering the winding up or liquidation of their respective affairs, and the continuance of any such decree, order, case or proceeding not dismissed, discharged or stayed and in effect for a period of 60 consecutive days; or

(d) the institution by either of the Co-Issuers of proceedings to be adjudicated as bankrupt or insolvent, or the consent by either of them to the institution of bankruptcy or insolvency proceedings against either of them, or the filing by either of them of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable law, or the consent by either of the Co-Issuers to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of either of the Co-Issuers or of any substantial part of their respective property, or to the ordering of the winding up or

liquidation of their respective affairs, or the making by either of them of an assignment for the benefit of creditors, or the admission by either of them in writing of its inability to pay its debts generally as they become due, or the taking of any action by either of the Co-Issuers in furtherance of any such action; or

(e) either of the Co-Issuers or the pool of assets constituting the Trust Estate becomes required to register as an "investment company" under the Investment Company Act; or

(f) the failure to maintain on any Calculation Date a Senior Class A Overcollateralization Ratio greater than or equal to 100%.

Section 5.2. Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default (other than an Event of Default specified in Section 5.1(c) or (d)) with respect to the Notes occurs and is continuing, the Trustee may, with the consent of the Requisite Noteholders, and shall, at the written direction of the Requisite Noteholders, declare the principal of the Notes to be immediately due and payable, by a notice in writing to the Issuer and the Servicer. If an Event of Default as specified in Section 5.1(c) or (d) occurs and is continuing, the principal of the Notes shall be and become immediately due and payable without the necessity of notice or any other action of any Person. If the Notes are declared to be immediately due and payable or if an Event of Default specified in Section 5.1(c) or (d) hereof occurs, the Holders of each Class of Notes shall be entitled to receive, as applicable, and in the order of priority set forth in Section 11.1(d), the Cumulative Interest Amount and the Aggregate Principal Amount with respect thereto (in each case as calculated and accrued through the date of payment in full of the Aggregate Principal Amount of each Class of Notes), and the Servicer shall be entitled to receive the amounts payable to the Servicer under and in the order of priority set forth in Sections 11.1(b) and 11.1(d).

(b) At any time after such a declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as provided in this Article, the Requisite Noteholders, by written notice to the Trustee and the Co-Issuers, may rescind and annul such declaration and its consequences if:

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

(A) all overdue amounts payable on or in respect of the Notes (other than amounts due solely as a result of the acceleration);

(B) to the extent that payment of interest on such amount is lawful, interest on such overdue amounts at the Applicable Periodic Rate; and

(C) all unpaid Trustee Administrative Expenses, Preferred Shares Administrative Expenses, Issuer Base Administrative Expenses, Issuer Excess Administrative Expenses, and other sums paid or advanced by the Trustee and the Paying and Transfer Agent hereunder and under the Paying and Transfer Agency Agreement and the reasonable compensation, expenses, disbursements

and advances of the Trustee and the Paying and Transfer Agent, their agents and counsel.

(ii) the Trustee has (A) received written evidence that the sum paid or deposited with the Trustee by the Issuer pursuant to clause (i) above is sufficient, and (B) determined that all Events of Default, other than the nonpayment of such amount that has become due solely by such acceleration, have been (1) cured, and the Requisite Noteholders by written notice to the Trustee have agreed with such determination (which agreement shall not unreasonably be withheld), or (2) waived as provided in Section 5.15 hereof.

Section 5.3. Proceedings.

If an Event of Default has occurred and is continuing and the Notes have been declared due and payable and such declaration and its consequences have not been rescinded and annulled, or at any time on or after the Final Maturity Date, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Noteholders by such appropriate Proceedings, in its own name and as trustee of an express trust, as the Trustee shall deem most effective or as the Trustee may be directed in writing by the Requisite Noteholders to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or for collection of sums due and unpaid, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law, but subject, however, to the terms of Section 5.4 hereof. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee, and its agents and counsel, in connection with any such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4 hereof, shall be reimbursed to the Trustee pursuant to Section 6.7 hereof.

Section 5.4. Remedies.

(a) If the Notes have been declared due and payable and such declaration and its consequences have not been rescinded or annulled, or at any time on or after the Final Maturity Date, the Trustee may, after written notice to the Noteholders, and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, and shall, upon written direction by the Requisite Noteholders, to the extent permitted by applicable law, do one or more of the following:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Trust Estate securing the Notes monies adjudged due;

(ii) institute Proceedings for the complete or partial foreclosure of this Indenture with respect to the Trust Estate securing the Notes;

(iii) exercise any remedies of a secured party under the UCC including the sale or liquidation of the Trust Estate in accordance with Section 5.18 hereof and take any other appropriate action to protect and enforce the rights and remedies of the Trustee or the Holders of the Notes hereunder; or

(iv) exercise any other rights and remedies that may be available at law or in equity;

provided that the Trustee may not sell or liquidate the Trust Estate, or any portion thereof, or any rights or interest therein, unless (x) in the case of an acceleration resulting from an Event of Default set forth in Section 5.1(a) hereof, or a sale or liquidation of any portion of the Trust Estate at or greater than its par value (*provided* that Defaulted Portfolio Collateral may be liquidated without reference to, or inclusion in the calculation of, such limitation), the Requisite Noteholders have so directed the Trustee in writing to sell or liquidate the Trust Estate or any portion thereof (y) in the case of an acceleration resulting from an Event of Default set forth in Section 5.1(f) hereof, the Holders of more than 50% of the Aggregate Principal Amount of the Outstanding Senior Class A Notes (or, if the Senior Class A Overcollateralization Ratio is less than 85%, then 60% of the Controlling Class) have so directed the Trustee in writing to sell or liquidate the Trust Estate or any portion thereof or (z) in the case of any other Event of Default or resulting sale or liquidation, 100% of the Noteholders have so directed the Trustee in writing to sell or liquidate the Trust Estate or any portion thereof; *provided further* that no Default Swap, Synthetic Security or Hedge Agreement may be terminated so long as a declaration of acceleration may be rescinded or annulled pursuant to Section 5.2(b). The Trustee shall send written notice to each of the Noteholders, with a copy to the Rating Agencies and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, of any proposed sale or liquidation of the Trust Estate together with a brief description thereof and such written notice shall be accompanied by an Accountant's Certificate (i) confirming the information with respect to such sale or liquidation (to the extent such accountants shall be able and willing to confirm such information) and (ii) specifying the procedures, if any, undertaken by them to review the data and computations relating to such sale or liquidation. The cost of such Accountant's Certificate shall be reimbursed to the Trustee pursuant to Section 6.7 hereof. If the applicable Noteholders direct any sale or liquidation of the Trust Estate, or any portion thereof, the Trustee shall sell or liquidate the Trust Estate, or portion, thereof, in accordance with Section 5.18 hereof at one or more public or private sales conducted in any manner permitted by law.

(b) If an Event of Default as described in Section 5.1(b) hereof has occurred and is continuing, the Trustee may, after written notice to the Noteholders, with a copy to the Rating Agencies and each Hedge Counterparty, and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, and shall, upon written direction of the Requisite Noteholders, institute a Proceeding to compel performance of the covenant or to cure the representation or warranty, the breach of which gave rise to the Event of Default under such Section and enforce any decree or order arising from such Proceeding.

(c) If an Event of Default described in Sections 5.1(a)(iii) or 5.1(a)(iv) hereof has occurred and is continuing, the Trustee shall, upon written direction of the Requisite Noteholders, terminate the services of the Servicer in accordance with the terms of the Servicing Agreement (subject to the term thereof regarding the appointment of a successor servicer). In the event that such a direct to terminated the Servicer is given, the Trustee shall not be under any duty to appoint or cause the appointment of a successor Servicer or to perform or undertake any duties of the terminated Servicer.

Section 5.5. Preservation of Trust Estate.

(a) If an Event of Default has occurred and is continuing or if the Final Maturity Date has occurred and subject to Section 5.4 hereof, the Trustee shall retain the Trust Estate securing the Notes intact, collect and cause the collection of the proceeds thereof and make and apply all payments and deposits and maintain all accounts in respect of the Notes in accordance with the provisions of Sections 10.1, 10.2(a), 10.2(b) and 11.1 hereof (unless and until the Notes have been declared due and payable and the applicable Noteholders have directed the Trustee pursuant to Section 5.4(a) hereof to sell or liquidate the Trust Estate or any portion thereof). If the Notes have been declared due and payable pursuant to Section 5.2 hereof or if the Final Maturity Date has occurred, any such retention pursuant to this Section 5.5(a) may be rescinded at any time by written notice to the Trustee and the Co-Issuers from the applicable Noteholders directing the Trustee to sell or liquidate the Trust Estate or any portion thereof, in accordance with Section 5.4(a).

(b) Nothing contained in Section 5.5(a) hereof shall be construed to require the Trustee to preserve the Trust Estate securing the Notes if prohibited by applicable law.

Section 5.6. Trustee May File Proofs of Claim.

In case there shall be pending Proceedings relative to the Issuer or any other obligor upon the Notes under the Bankruptcy Code or any other applicable bankruptcy, insolvency or other similar law, or in case a receiver, assignee, trustee in bankruptcy, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or its property or such other obligor or its property, or in case of any other comparable Proceedings relative to the Issuer or other obligor, or in case of any voluntary dissolution, liquidation or winding-up of the Issuer, regardless of whether the principal of any Notes shall then be due and payable as therein expressed or by declaration or otherwise and regardless of whether the Trustee shall have made any demand pursuant to the provisions of Section 5.3 hereof, the Trustee is hereby entitled and empowered to, and may and at the direction of the Requisite Noteholders, shall, by intervention in such Proceedings or otherwise:

(i) file one or more claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and to file such other papers or documents and take such other actions, including participating as a member, voting or otherwise, of any committee of creditors, as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made by the Trustee and each predecessor Trustee or any Noteholder, except as a result of negligence or bad faith) and of the Noteholders allowed in such Proceedings;

(ii) unless prohibited by applicable law, upon direction of the Requisite Noteholders vote on behalf of the Holders of the Notes in any election of a trustee, a standby trustee, (or a person performing similar functions); and

(iii) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute in accordance with Section 5.8 hereof all amounts received with respect to the claims of the Noteholders and the Trustee on their behalf; and any trustee, receiver, liquidator, custodian or other similar official is hereby authorized by each of the Noteholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Noteholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee or any Noteholder except as a result of negligence or bad faith.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Noteholder any plan of reorganization, arrangement, adjustment or compromise affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such Proceeding except, as provided in subparagraph (ii) above, to vote for the election of a trustee in bankruptcy (or person performing similar functions) or to participate as a member of any committee of creditors.

In any Proceedings brought by the Trustee (and also any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes subject to the provisions of this Indenture, and it shall not be necessary to make any Holders of the Notes parties to any such Proceedings.

Section 5.7. Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any Proceeding relating thereto, and any such Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as set forth in Section 5.8 hereof.

Section 5.8. Application of Money Collected.

Any money collected by or on behalf of the Trustee with respect to the Notes pursuant to this Article V (including all collections from, and proceeds of the sale or liquidation of, the Trust Estate) shall be applied at the date or dates fixed by the Trustee and in the same order as specified in Sections 11.1(b) and 11.1(d) hereof.

Section 5.9. Limitation on Suits.

Except as otherwise provided in Section 5.10 hereof, no Holder of any Note shall have any right to institute any Proceedings, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

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

(b) the Requisite Noteholders shall have made written request to the Trustee to institute Proceedings in respect of such Event of Default in its own name as Trustee hereunder;

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

(d) the Trustee for 30 days after its receipt of such notice, request and offer of such indemnity has failed to institute any such Proceedings; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 30-day period by the Requisite Noteholders;

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

Section 5.10. Unconditional Rights of Noteholders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture, but subject to the provisions of Sections 2.7 and 11.1 hereof, (a) the Holders of the Class A-1LA Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-1LA Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (b) the Holders of the Class A-1LB Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-1LB Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (c) the Holders of the Class A-2L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-2L Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (d) the Holders of the Class A-3L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class A-3L Notes and accrued and unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, (e) the Holders of the Class B-1L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class B-1L Notes and accrued and

unpaid interest thereon at the Applicable Periodic Rate, as any such amounts become due and payable, and (f) the Holders of the Class B-2L Notes shall have the right, which is absolute and unconditional, to receive an aggregate amount equal to the unpaid Periodic Rate Shortfall Amount, if any, the Aggregate Principal Amount of the Class B-2L Notes and the accrued and unpaid interest thereon at the Applicable Periodic Rate as any such amounts become due and payable. Furthermore, the Holder of any Note shall have the right, which is absolute and unconditional, to institute Proceedings for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. Notwithstanding any other provision in this Section 5.10 or otherwise in this Indenture to the contrary, (i) Holders of the Class A-3L Notes shall have no right to institute Proceedings for the enforcement of any such payment until such time as no Senior Class A Notes remain Outstanding, (ii) Holders of the Class B-1L Notes shall have no right to institute Proceedings for the enforcement of any such payment until such time as no Class A Notes remain Outstanding, and (iii) Holders of the Class B-2L Notes shall have no right to institute Proceedings for the enforcement of any such payment until such time as no Class A Notes or Class B-1L Notes remain Outstanding, and, in each case, any such right to institute Proceedings shall be subject to the provisions of Section 5.9 hereof.

Section 5.11. Restoration of Rights and Remedies.

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

Section 5.12. Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Trustee or to the Holders of the Notes is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing by law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.13. Delay or Omission Not Waiver.

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

Section 5.14. Control by Noteholders.

Notwithstanding any other provision of this Indenture, the Requisite Noteholders, on behalf of the Holders of all the Notes, shall have the right (a) to cause the institution of and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee or (b) subject to Section 6.3(e) hereof, to direct the Trustee with respect to its exercise of any right, remedy, trust or power conferred on the Trustee; *provided* that:

(i) such direction shall not be in conflict with any rule of law or with any express provision of this Indenture (including, without limitation, any provision hereof providing express personal protection to the Trustee or a limitation on the liability of the Co-Issuers as set forth in Section 2.7(i) hereof), and

(ii) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction; *provided* that, subject to Section 6.1 hereof, the Trustee need not take any action that it reasonably determines might involve it in liability.

Section 5.15. Waiver of Past Defaults.

Prior to the time a judgment or decree for payment of the money due has been obtained by the Trustee, the Requisite Noteholders may on behalf of the Holders of all the Notes waive any past Default and its consequences, with notice to the Rating Agencies, except a Default:

(a) in the payment of the principal of or interest on any Note, or

(b) in respect of a covenant or provision hereof that under Section 8.2 hereof cannot be modified or amended without the consent of the Holder of each Outstanding Note affected.

In the case of any such waiver, the Issuer, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. Upon such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 5.16. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party

litigant; but the provisions of this Section 5.16 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in Aggregate Principal Amount of the Notes, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note on or after the Final Maturity Date expressed in such Note.

Section 5.17. Waiver of Stay or Execution Laws.

Each of the Co-Issuers covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or execution law wherever enacted, including, but not limited to, filing a voluntary petition under the Bankruptcy Code now or at any time hereafter in force, which may affect the covenants or the performance of or the exercise of any remedies under this Indenture; and each of the Co-Issuers (to the extent that they may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee or any Noteholder, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.18. Sale of Trust Estate.

(a) The power to effect any sale (a "Sale") of any portion of the Trust Estate pursuant to Section 5.4 and Section 5.5 hereof shall not be exhausted by any one or more Sales as to any portion of such Trust Estate remaining unsold, but shall continue unimpaired until the entire Trust Estate securing the Notes shall have been sold or all amounts payable on the Notes under this Indenture with respect thereto shall have been paid. The costs of any such sale of the Trust Estate shall be reimbursable to the Trustee pursuant to Section 6.7 hereof. The Trustee may, upon notice to the Noteholders, and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent, and shall, upon direction of the Requisite Noteholders, postpone any Sale by public announcement made at the time of and place of such Sale. The Trustee hereby expressly waives its right to any amount fixed by law as compensation for any Sale.

(b) The Trustee may bid for and acquire any portion of the Trust Estate in connection with a Sale thereof on an arm's length basis to the extent not prohibited by applicable law, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by this Indenture, all or part of the net proceeds of such Sale after deducting the reasonable costs, charges and expenses incurred by the Trustee in connection with such Sale notwithstanding the provisions of Section 6.7 hereof. The Notes need not be produced in order to complete any such Sale, or in order for the net proceeds of such Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Trust Estate consists of securities issued without registration under the Securities Act ("Unregistered Securities"), the Trustee may seek an Opinion of Counsel, or, if no such Opinion of Counsel can be obtained and with the consent of the Requisite Noteholders, seek a no-action position from the Securities and Exchange

Commission or any other relevant Federal or state regulatory authorities, regarding the legality of a public or private sale of such Unregistered Securities (the costs of which in each case, shall be reimbursable to the Trustee pursuant to Section 6.7 hereof).

(d) The Trustee shall execute and deliver an appropriate instrument of conveyance transferring its interest in any portion of the Trust Estate in connection with a Sale thereof. In addition, the Trustee is hereby irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer and convey its interest in any portion of the Trust Estate in connection with a Sale thereof and to take all action necessary to effect such Sale. No purchaser or transferee at such a Sale shall be bound to ascertain the Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any monies.

Section 5.19. Action on Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders hereunder shall be impaired by the recovery of any judgment by the Trustee.

ARTICLE VI

THE TRUSTEE

Section 6.1. Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default known to the Trustee (other than a Trustee Payment-Related Event of Default):

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

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided* that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate or opinion does not so conform. If a corrected certificate or opinion shall not have been delivered to the Trustee within 15 days after such notice from the Trustee, the Trustee shall so notify the Noteholders.

(b) In case an Event of Default (other than a Trustee Payment-Related Event of Default) of which the Trustee has actual knowledge has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Requisite Noteholders, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and

skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

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

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer in accordance with this Indenture and/or the Requisite Noteholders (or Holders with such larger percentage as may be required by the terms hereof) relating to the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers (unless such financial liabilities or exercise of any of its rights and powers relate to the performance of its ordinary services under this Indenture), if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it (*provided* that the unsecured agreement of any Noteholder that is an Institutional Investor organized under the laws of the United States or any State in the United States shall constitute adequate assurance with respect to repayment and indemnity; *provided* that the aggregate net worth of the Institutional Investors providing such unsecured agreements shall be not less than $200,000,000); and

(5) the Trustee shall not be liable to the Noteholders for any action taken or omitted by it at the direction of the Issuer, the Servicer and/or the Holders of the Notes under circumstances in which such direction is required or permitted by the terms of this Indenture.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.1 and Section 6.3 hereof.

(e) The Trustee, promptly after receipt by a Responsible Officer, shall transmit by first class mail all Holders of Notes, as their names and addresses appear on the Note Register, all written communications that are required hereunder to be delivered to the Trustee and are received from or on behalf of the Issuer or the Servicer (excluding in the case of the Holders (i) information provided by the Trustee to the Issuer pursuant to Section 10.4 hereof, (ii) so long as no Event of Default (other than a Trustee Payment-Related Event of Default) has

occurred and is continuing, Servicer Orders received by the Trustee pursuant to Sections 10.2, 11.3 and 12.4 hereof, and (iii) Monthly Reports received pursuant to Section 10.5(a) hereof, unless, in any such case, requested by any Holder) and any notification or other communication received from any of the Rating Agencies stating that the rating of any Class of Notes has been, or will be, changed or withdrawn.

Section 6.2. Notice of Default.

Promptly (and in no event later than 5 Business Days) after the occurrence of any Default or Event of Default of which a Responsible Officer of the Trustee has actual knowledge or after any declaration of acceleration has been made by or delivered to the Trustee pursuant to Section 5.2 hereof, the Trustee shall transmit by mail to the Rating Agencies, to all Holders of Notes, as their names and addresses appear on the Note Register, and to the Issuer, each Hedge Counterparty and the Servicer, notice of all Defaults or Events of Default hereunder of which a Responsible Officer of the Trustee has actual knowledge, unless such Default or Event of Default shall have been cured or waived.

Section 6.3. Certain Rights of Trustee.

Except as otherwise provided in Section 6.1 hereof:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document (including but not limited to any reports prepared and delivered under Article X hereunder) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Servicer mentioned herein shall be sufficiently evidenced by a Servicer Request or Servicer Order, as the context may require;

(c) whenever in the administration of this Indenture the Trustee shall (i) deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate or (ii) be required to determine the value of any Collateral or funds hereunder or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accounting firms or other persons qualified to provide the information required to make such determination including nationally recognized investment bankers and dealers in securities of the type being valued and securities quotation services;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture unless such Noteholders shall have offered to the Trustee security

reasonably satisfactory to it or indemnity against all costs, expenses and liabilities which might reasonably be incurred by it in compliance with such request or direction (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any state in the United States shall be deemed sufficient; *provided* that the aggregate net worth of the Institutional Investors providing such unsecured agreements shall not be less than $200,000,000);

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or documents received by it, but the Trustee, in its discretion, may and, upon written direction of the Majority Noteholders shall, make such further inquiry or investigation into such facts or matters as it may see fit or as it shall be directed, and the Trustee and any Noteholder (acting solely through the Trustee and at the expense of such Noteholder) shall be entitled, on reasonable prior request (which request shall include a statement of the purpose therefor) made in advance to the Issuer, the Trustee and the Servicer, to examine the books and records of the Issuer and the Servicer relating to the Trust Estate, personally or by agent or attorney during the Issuer's or the Servicer's normal business hours; *provided* that the Trustee or any such Noteholder shall, and shall cause its agents, to hold in confidence all such information, except (i) to the extent disclosure may be required by law, by any regulatory authority, the Transaction Documents or by the National Association of Insurance Commissioners, (ii) a Noteholder may disclose such information to any prospective transferee and to such Noteholder's and transferee's accountants, consultants, attorneys and similar agents; *provided* that all such persons agree in writing to hold such information as confidential and (iii) except to the extent that the Trustee, in its sole judgment, may determine that such disclosure is consistent with its obligations hereunder;

(g) except as otherwise provided in Section 10.3(a), the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) to the extent permitted by applicable law, the Trustee shall not be required to give any bond or surety in respect of the execution of this Indenture or otherwise;

(i) the Trustee shall not be deemed to have notice or knowledge of any matter unless a Responsible Officer within the Corporate Trust Office has actual knowledge thereof or unless written notice thereof is received by the Trustee at the Corporate Trust Office and such notice references the Notes generally, the Issuer or this Indenture. Whenever reference is made in this Indenture to a Default or an Event of Default such reference shall, insofar as determining any liability on the part of the Trustee is concerned, be construed to refer only to a Default or an Event of Default of which the Trustee is deemed to have knowledge in accordance with this paragraph;

(j) the permissive right of the Trustee to take or refrain from taking any actions enumerated in this Indenture shall not be construed as a duty;

(k) the Trustee shall not be liable for any action it takes, or omits to take, in good faith that it reasonably believes to be authorized or within its rights or powers hereunder;

(l) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each Paying Agent, Paying and Transfer Agent, Authenticating Agent, Transfer Agent and Note Registrar;

(m) the Trustee shall not be responsible for the accuracy of the books or records of, or acts or omissions of, the Depository, any Transfer Agent (other than the Trustee itself acting in that capacity), Clearstream, Euroclear, any Calculation Agent (other than the Trustee itself acting in that capacity) or any Paying Agent (other than the Trustee itself acting in that capacity); *provided*, the Trustee will make reasonable efforts to correct any errors they become aware of or to notify the appropriate parties of any errors they become aware of; and

(n) the Trustee will not be liable for the actions or omissions of the Servicer, and without limiting the foregoing, the Trustee will not be under any obligation to monitor, evaluate or verify compliance by the Servicer with the terms hereof or the Servicing Agreement, or to verify or independently determine the accuracy of the information received by it from the Servicer (or from any selling institution, agent, bank, trustee or similar source) with respect to the Portfolio Collateral.

Section 6.4. Not Responsible for Recitals or Issuance of Notes or the Combination Notes.

The recitals contained herein and in the Notes or the Combination Notes, other than the certificate of authentication thereon, shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture, of the Trust Estate, or of the Notes and the Combination Notes. The Trustee shall not be accountable for the use or application by the Issuer of the Notes, the Combination Notes or the Preferred Shares or the proceeds thereof.

Section 6.5. May Hold Notes and Combination Notes.

(a) Investors Bank & Trust Company, or any other Person that becomes Trustee hereunder, in any capacity, may become the owner or pledgee of Notes and Combination Notes, and may otherwise deal with the Issuer or any Affiliate thereof with the same rights it would have if it were not Trustee.

(b) The Trustee and its Affiliates may invest in for their own account obligations or securities that would be appropriate for inclusion in the assets as Portfolio Collateral, and the Trustee in making those investments has no duty to act in a way that is favorable to the Issuer or the Holders of the Notes, the Combination Notes or the Preferred Shares. The Trustee's Affiliates currently serve, and may in the future serve as investment advisor for other issuers of collateralized debt obligations.

(c) The Trustee and its Affiliates are permitted to receive additional compensation that could be deemed to be in the Trustee's economic self interest for (i) serving as

investment advisor, administrator, shareholder, servicing agent, custodian or sub-custodian with respect to certain Eligible Investments, (ii) using Affiliates to effect transactions in certain Eligible Investments selected by the Servicer and (iii) effecting transactions in certain Eligible Investments. Such compensation shall not be an amount that is reimbursable or payable pursuant to this Indenture. All purchases of Eligible Investments shall be made in accordance with Section 10.2(b).

Section 6.6. Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds held by the Trustee in trust hereunder except to the extent required herein or required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed upon with the Issuer and except to the extent of income or other gain on Eligible Investments which are deposits in, certificates of deposit of, or obligations of the Trustee in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on investments made in accordance with an Issuer Order or Servicer Order, unless such investment is made in an obligation of the Trustee in its corporate capacity.

Section 6.7. Compensation and Reimbursement.

The Issuer agrees:

(a) to pay the Trustee on each Payment Date (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) in accordance with the Trustee Fee Letter Agreement;

(b) except as otherwise expressly provided herein, to reimburse the Trustee (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee (as such or as Securities Intermediary) in accordance with any provision of this Indenture or in the enforcement of any provision hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel) and expenses related to the maintenance and administration of the Collateral; *provided* that any securities transaction charges to the extent included above shall, in the case of certain Eligible Investments specified by the Servicer, be waived in the event that any amounts are received by the Trustee during a Due Period from a financial institution in consideration of purchasing such Eligible Investments, except any such expense, disbursement or advance as may be attributable to the Trustee's negligence, willful misconduct or bad faith;

(c) to reimburse the Trustee (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) for its payment of the fees and expenses of any accounting firm or investment banking firm employed by the Trustee to perform the accounting required pursuant to Section 5.4, Section 5.5, Section 6.3(c) or Section 10.6 hereof and for its

payment of the fees and expenses of the Irish Paying Agent, Paying Agents or Authenticating Agents appointed by it at the request of the Issuer pursuant to Section 2.4;

(d) to indemnify the Trustee, its directors, officers, employees and agents (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) for, and to hold it harmless against, any loss, liability or expense (including without limitation reasonable attorney's fees and expenses) incurred without negligence, willful misconduct or bad faith arising out of or in connection with the acceptance or administration of this trust and the Transaction Documents, including the costs and expenses of defense against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder (including as Securities Intermediary); and

(e) to pay the Trustee (in accordance with the priority of payment provisions set forth in Section 11.1 hereof) reasonable additional compensation together with its expenses (including reasonable attorneys' fees) for any collection action taken pursuant to Section 6.12 hereof.

Section 6.8. Corporate Trustee Required; Eligibility.

(a) There shall at all times be a Trustee hereunder which shall be a bank organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $200,000,000, having a long-term unsecured debt rating of "BBB" or better by Standard & Poor's and "Baa1" or better by Moody's, and subject to supervision or examination by Federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In addition, the Trustee shall not be "affiliated" (as that term is defined in Rule 405 of the Securities Act) with the Co-Issuers or with any person involved in the organization or operation of the Co-Issuers and shall not offer or provide credit or credit enhancement to the Co-Issuers (as provided per Rule 3a-7). The Trustee shall be deemed to be in compliance with the preceding sentence so long as it is not affiliated (within the meaning of the preceding sentence) with (i) the Issuer or the Administrator, or (ii) the Co-Issuer or Puglisi & Associates, in each case based upon the Trustee's records and actual knowledge, unless otherwise expressly notified in writing by the Issuer, Co-Issuer or Servicer, such notice to include the identity of any other Person or Persons with whom the Trustee must not be affiliated for such purpose. If at any time the Trustee has received such notice, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

(b) In addition to the requirements set forth in Section 6.8(a) hereof, any successor Trustee appointed pursuant to Section 6.9(c) hereof shall (i) have total assets of at least $10,000,000,000, (ii) have a long-term unsecured debt rating of "A" or better by Standard & Poor's and "A2" or better by Moody's and (iii) be regularly engaged in providing trustee services to issuers of collateralized loan obligations. The Trustee appointed on the Closing Date shall not be required to satisfy the requirements set forth in this Section 9.8(b).

Section 6.9. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10 hereof. The indemnifications in favor of the Trustee in Section 6.7 hereof shall survive any resignation or removal (to the extent of any indemnified liabilities, costs, expenses and other amounts arising or incurred prior to, or arising out of actions or omissions occurring prior to, such resignation or removal).

(b) The Trustee may resign at any time by giving written notice thereof to the Issuer, the Rating Agencies, the Noteholders and the Servicer, each Hedge Counterparty and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent. Upon receiving such notice of resignation, the Issuer shall at the direction of its board of directors (with the written consent of the Servicer, not to be unreasonably withheld) promptly appoint a successor trustee or trustees by written instrument, in duplicate, executed by an Authorized Officer of the Issuer on behalf of the Issuer, one original copy of which shall be delivered to the Trustee so resigning and one original copy to the successor trustee or trustees, together with a copy to each Noteholder. If no successor trustee shall have been appointed and an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee, or any Holder of a Note, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) Subject to Section 6.9(a) hereof, the Trustee may be removed at any time by the Issuer, at the direction of its board of directors, and shall be removed by the Issuer if at any time the Holders of more than 50% of the Aggregate Principal Amount of the Controlling Class have determined that the Trustee has been delinquent in the performance of its obligations under this Indenture and have notified the Issuer in advance of such determination. In addition, subject to Section 6.9(a) hereof, if an Event of Default shall have occurred and be continuing, the Trustee may be removed by the Holders of more than 50% of the Aggregate Principal Amount of the Controlling Class.

(d) The Issuer, at the direction of its board of directors, by Issuer Order, may also remove the Trustee and/or petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee, if at any time:

(i) the Trustee shall cease to be eligible under Section 6.8 hereof and shall fail to resign after written request therefor by the Issuer or by the Requisite Noteholders, or

(ii) the Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Trustee for any cause, the Issuer, at the direction of its board of directors, by Issuer Order, shall (with the written consent of the Servicer, not to be unreasonably withheld) promptly appoint a successor Trustee. If no successor Trustee shall have been so appointed by the Issuer and shall have accepted appointment in the manner hereinabove provided, any Noteholder may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Issuer shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by giving facsimile notice of such event, confirmed by first-class mail, postage prepaid, to each Rating Agency, Bear Stearns, the Servicer and to the Holders of the Notes as their names and addresses appear in the Note Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Section 6.10. Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall be required to meet the eligibility requirements set forth in Section 6.8 hereof and shall execute, acknowledge and deliver to the Issuer and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of the retiring Trustee; but, on request of the Issuer, the successor Trustee or the Requisite Noteholders, such retiring Trustee shall, upon payment of its fees, expenses and indemnities then unpaid, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee. The retiring Trustee shall promptly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder (subject to payment of amounts owing to it hereunder). Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No appointment of a successor Trustee shall become effective until the date ten days after notice of such appointment has been given to each Noteholder, and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

Section 6.11. Merger, Conversion, Consolidation or Succession to Business of Trustee.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; *provided* such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes or Combination Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to

such authenticating Trustee may adopt such authentication and deliver the Notes or Combination Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes or Combination Notes.

Section 6.12. Certain Duties of Trustee Related to Delayed Payment of Proceeds.

If in any month the Trustee shall not have received a payment with respect to any Pledged Security on its Due Date, (a) the Trustee shall promptly notify the Issuer and the Servicer in writing and, (b) unless within three Business Days after such notice such payment shall have been received by the Trustee, or the Issuer shall have made provision for such payment satisfactory to the Trustee in accordance with Section 10.2(a) hereof, the Trustee shall request the issuer of such Pledged Security, the trustee under the related Underlying Instrument or paying agent designated by either of them, as the case may be, to make such payment as soon as practicable after such request but in no event later than three Business Days after the date of such request. If such payment is not made within such time period, the Trustee shall take such action as the Servicer shall direct in writing; *provided* that any expenses incurred or to be incurred in taking any such action shall be deemed not to relate to the performance of "ordinary services" under clause (4) of Section 6.1(c) hereof. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. In the event that the Issuer or the Servicer requests a release of a Pledged Security and/or delivers Substitute Portfolio Collateral in connection with any such action under the Servicing Agreement, such release and/or substitution shall be subject to Section 10.3 hereof and Article XII of this Indenture as the case may be. Notwithstanding any other provision hereof the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Security received after the Due Date thereof to the extent the Issuer previously made provisions for such payment satisfactory to the Trustee in accordance with this Section 6.12 and such payment shall not be deemed part of the Trust Estate.

Section 6.13. Non-Petition.

None of the Trustee, the Secured Parties, the Noteholders, the beneficial owners of the Notes, or the Paying and Transfer Agent, shall cause or join in the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for any reason, including for the nonpayment to any such party of any amounts due hereunder or under the Paying and Transfer Agency Agreement or under the Notes, as applicable, until the expiration of the period which is one year and one day (or such longer preference period as may be in effect) after the final payment on the Notes; *provided, however,* nothing herein shall be deemed to prohibit the Trustee from filing proofs of claim for itself and on behalf of the Noteholders.

Section 6.14. Withholding.

(a) If any withholding tax is imposed on the Co-Issuers' payment (or allocations of income) to any Noteholder, such tax shall reduce the amount otherwise distributable to such Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed by the Trust Estate or the Co-Issuers (as directed to it in writing by the Co-Issuers) (but such authorization shall not prevent the Trustee from contesting any such tax in

appropriate Proceedings and withholding payment of such tax, if permitted by law, pending the outcome of such Proceedings), or that the Trustee may otherwise determine it is obligated to withhold under applicable law or regulation. The amount of any withholding tax imposed with respect to any Noteholder shall be treated as cash distributed to such Noteholder at the time it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold such amounts in accordance with this Section 6.14 (a). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with such Noteholder in making such claim so long as such Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred. Nothing in this Section 6.14 shall be construed to impose upon the Trustee any obligation or duty to determine the tax liability or responsibilities of the Co-Issuers or the Trust Estate other than the duties required under applicable law, or otherwise to perform any related tax administration or return preparation or filing responsibilities, or to impose upon the Trustee any duty or obligation to commence Proceedings to contest any tax.

(b) Each Holder shall timely furnish the Issuer or its agents any U.S. federal income tax form or certification (such as Internal Revenue Service ("IRS") Form W-8BEN (Certification of Foreign Status), Form W-8IMY (Certification of Foreign Intermediary Status), Form W-9 (Request for Taxpayer Identification Number and Certification) or Form W-8ECI (Certification of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms) that the Issuer or its agents may reasonably request and shall update or replace such form or certification in accordance with its terms or its subsequent amendments.

Section 6.15. The Securities Intermediary.

(a) There shall at all times be a securities intermediary appointed for purposes of this Indenture (the "Securities Intermediary"). Investors Bank & Trust Company is hereby appointed as the initial Securities Intermediary hereunder and accepts such appointment.

(b) The Securities Intermediary represents, warrants, and covenants, and the parties hereto agree, that at all times prior to the termination of this Indenture:

(i) The Securities Intermediary shall be a corporation or national bank that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity hereunder.

(ii) Each Account shall be an account to which financial assets may be credited and the Securities Intermediary shall treat the Trustee as entitled to exercise the rights that comprise such financial assets. The Securities Intermediary shall not change the name or the account number of any Account without the prior written consent of the Trustee.

(iii) Each item of property credited to each Account shall be treated as a financial asset.

(iv) The Securities Intermediary shall comply with entitlement orders originated by the Trustee without further consent by the Issuer or any other person or entity.

(v) The Securities Intermediary shall not agree with any person or entity other than the Trustee that it will comply with entitlement orders originated by any person or entity other than the Trustee.

(vi) The Securities Intermediary shall not be a party to any agreement that is inconsistent with the provisions of this Indenture. The Securities Intermediary shall not take any action inconsistent with the provisions of this Indenture applicable to it.

(vii) Each item of property credited to each Account shall not be subject to any security interest, lien, claim, encumbrance, or right of setoff in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Trustee); *provided, however*, that the Securities Intermediary may set-off the face amount of any checks or other deposit items which have been credited to an Account but are subsequently returned unpaid because of uncollected or insufficient funds.

(viii) For purposes of Article 8 of the UCC, the securities intermediary's jurisdiction of the Securities Intermediary with respect to the Collateral shall be the State of New York.

(c) It is the intent of the Trustee, the Issuer, and the Co-Issuer that each Account shall be a securities account of the Trustee and not an account of the Issuer or the Co-Issuer.

(d) Nothing herein shall imply or impose upon the Securities Intermediary any duties or obligations other than those expressly set forth herein and those applicable to a securities intermediary under the UCC. The Securities Intermediary shall be entitled to all of the protections available to a securities intermediary under the UCC. Without limiting the foregoing, nothing herein shall imply or impose upon the Securities Intermediary any duties of a fiduciary nature (such as, without limitation, the fiduciary duties of the Trustee hereunder).

(e) The Securities Intermediary (i) shall satisfy the requirements of Section 6.8, and (ii) shall not be an Affiliate of the Issuer.

(f) The Securities Intermediary may at any time resign by written notice to the Trustee and may at any time be removed by written notice from the Trustee. The Trustee shall appoint a successor Securities Intermediary that satisfies the provisions of Section 6.15(e). The Trustee shall cause (i) each Account to be established and maintained with such successor Securities Intermediary in accordance with the terms hereof, and (ii) the successor Securities Intermediary to execute and deliver to the parties hereto a written agreement in which it agrees to be the Securities Intermediary hereunder and to be bound by the provisions of this Indenture applicable to the Securities Intermediary. The duties and obligations of the retiring Securities

Intermediary hereunder shall remain in effect until each Account and all of the Collateral credited thereto have been transferred to the successor Securities Intermediary.

(g) Any corporation into which the Securities Intermediary may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which the Securities Intermediary shall be a party, shall be the successor of the Securities Intermediary hereunder, without the execution or filing of any further document on the part of the parties hereto or such successor corporation.

(h) Notwithstanding any other provision of this Section 6.15, each item of the Trust Estate that constitutes a general intangible (including any loan, or any participation or assignment therein, that constitutes a general intangible) shall be Delivered to the Trustee as provided in clause (g) of the Definition of "Delivery" and shall not be credited to any Account.

Section 6.16. Eligible Investments.

Eligible Investments acquired with available funds in an Account shall be credited by the Trustee to such Account.

Section 6.17. Fiduciary For Noteholders; Agent for the Other Secured Parties.

The Trustee shall not by reason of this Indenture be deemed to be acting as a fiduciary for the Secured Parties other than the Noteholders; *provided* that the foregoing shall not limit any of the express obligations of the Trustee under this Indenture.

ARTICLE VII

COVENANTS

Section 7.1. Payment of Principal and Interest.

The Co-Issuers (as applicable) will duly and punctually pay the principal of, interest on and all other amounts payable on or in respect of the Notes and the Combination Notes in accordance with the terms of the Notes, the Combination Notes and this Indenture.

Section 7.2. Maintenance of Office or Agency.

The Issuer will maintain an office or agency in the Borough of Manhattan, the City of New York, the State of New York, where Notes may be presented or surrendered for payment. The Issuer hereby initially appoints the office of Investors Bank & Trust Company (the "New York Presenting Agent"), currently located at 33 Maiden Lane, 4th Floor, New York, NY 10038, Attention: CDO Services (Rockwall CDO II Ltd.), as such office or agency. The Trustee shall give prompt written notice to the Co-Issuers and the Noteholders of any change in the location of the New York Presenting Agent. Each New York Presenting Agent other than Investors Bank & Trust Company shall be a bank or trust company having a capital and surplus of not less than $100,000,000 and be registered as a transfer agent with the Securities and Exchange Commission. If the location of the New York Presenting Agent changes and such

notice is not given or the Issuer fails to maintain any such office or agency, presentations and surrenders of the Notes may be made or served at the Corporate Trust Office.

Section 7.3. Money for Note Payments to Be Held in Trust.

All payments of amounts due and payable with respect to any Notes that are to be made from amounts withdrawn from the Collection Account shall be made on behalf of the Issuer by the Trustee.

Section 7.4. Existence of Co-Issuers; Corporate Formalities.

(a) Each of the Co-Issuers will, to the maximum extent permitted by applicable law, maintain in full force and effect its existence, rights and franchises as a company or corporation incorporated or organized under the laws of the jurisdiction of its incorporation or organization, as the case may be, and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Indenture, the Notes, the Combination Notes or any of the Pledged Securities or other property included in the Trust Estate. Each of the Co-Issuers shall comply with its charter documents and shall not amend its charter documents without the consent of the Requisite Noteholders if such amendment would have a material adverse effect on the rights of the Noteholders and, for so long as any Notes are then rated, shall notify the Rating Agencies of any amendment and shall not amend its charter document in any material way without satisfaction of the Rating Condition.

(b) The Issuer shall ensure that all corporate or other formalities regarding its existence (including, to the extent required, holding, to the extent required, regular meetings of the board of directors and shareholders) are followed. The Issuer shall not take any action, or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing, (i) the Issuer shall not have any subsidiaries except the Co-Issuer and except as provided in Section 7.4(c), and (ii) the Issuer shall not (A) have any employees (other than its directors), (B) engage in any transaction with any shareholder that would constitute a conflict of interest, *provided, however*, that the entry into the Administration Agreement and the Paying and Transfer Agency Agreement with Maples Finance Limited shall not be deemed a conflict of interest or (C) pay dividends other than in accordance with the terms of this Indenture, its organizational documents, and with regard to its Preferred Shares, in accordance with the terms of the Paying and Transfer Agency Agreement.

(c) In addition to the Co-Issuer, the Issuer may have as a subsidiary any entity that (x) meets the then-current general criteria of the Rating Agencies for bankruptcy remote entities, (y) is formed for the sole purpose of holding (1) stock of one or more corporations or other assets that are or may be treated as United States real property interests for purposes of Section 897 of the Code acquired or expected to be acquired in connection with a workout of an Asset (an "897 Subsidiary") or (2) equity interests in "partnerships" (within the meaning Section 7701(a)(2) of the Code), "grantor trusts" (within the meaning of the Code) or entities that are disregarded as separate from their owners for United States federal income tax purposes that are

or may be engaged or deemed to be engaged in a trade or business in the United States, in each case acquired or expected to be acquired in connection with a workout of an Asset (an "ETB Subsidiary") and (z) is a corporation for United States federal income tax purposes; *provided* that any 897 Subsidiary and ETB Subsidiary (i) will be wholly-owned by the Issuer, (ii) will not sell, transfer, exchange or otherwise dispose of, or pledge, mortgage, hypothecate or otherwise encumber (or permit such to occur), any part of its assets, except in compliance with the Issuer's rights and obligations under this Indenture and with such subsidiary's constituent documents, (iii) will not have any subsidiaries, (iv) will not have any employees (other than directors to the extent they are employees) and will not conduct business under any name other than its own, (v) will not incur or guarantee any indebtedness, (vi) will include in its constituent documents a limitation on its business such that it may only engage in the acquisition of assets permitted under this Indenture and the disposition of such assets and the proceeds thereof to the Issuer (and activities ancillary thereto) and (vii) will distribute 100% of the proceeds of the assets acquired by it (net of applicable taxes and expenses payable by such subsidiary) to the Issuer.

Section 7.5. Protection of Trust Estate.

(a) The Issuer shall authorize, execute, deliver and file all such supplements and amendments hereto and all such financing statements, amendments of financing statements, continuation statements, instruments of further assurance and other instruments and shall take such other action as may be necessary or advisable to:

(i) Grant more effectively all or any portion of the Trust Estate;

(ii) maintain or preserve the lien of this Indenture or the priority thereof, or to carry out more effectively the purposes hereof;

(iii) perfect, publish notice of, or protect the validity of any Grant made or to be made by this Indenture;

(iv) enforce any of the Pledged Securities or other instruments or property included in the Trust Estate;

(v) preserve and defend title to the Trust Estate and the rights therein of the Secured Parties against the claims of all other Persons; and

(vi) pay any and all taxes levied or assessed upon all or any part of the Trust Estate.

The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements and continuation statements) that name the Issuer as debtor and the Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies its authorization of the filing of any such financing statements (or amendments of financing statements or continuation statements) that were filed prior to the execution hereof. The Issuer hereby designates the Trustee its agent and attorney-in-fact to take any action or authorize or execute any financing statement, amendment of financing statement, continuation statement or other instrument required pursuant to this Section 7.5; *provided* that such

appointment shall not impose upon the Trustee any of the Issuer's obligations under this Section 7.5.

Provided that the Trustee (on or before, promptly after, the Closing Date) has been provided with a complete and accurate copy of each such financial statement (which copy is stamped to reflect, or is accompanied by, the applicable filing information, including filing number, original date of filing and filing office), the Trustee shall give written notice to the Issuer and the Servicer of the pending expiration of the financing statement filed in connection with the closing of the transaction contemplated herein and any continuation statement relating thereto, no earlier than six months prior to the scheduled expiration date of such financing statement or continuation statement, as applicable, and no later than two months prior to such scheduled expiration date.

(b) The Trustee shall not, except in accordance with the provisions of this Indenture, release any portion of the Trust Estate from the security interest and lien hereunder or remove any portion of the Trust Estate from the jurisdictions indicated in Section 10.3(a) hereof; *provided* that the Trustee shall be entitled to remove the Trust Estate or any portion thereof to a jurisdiction other than the applicable jurisdiction or jurisdictions indicated in Section 10.3(a) hereof if the Trustee shall have first obtained an Opinion of Counsel, at its own expense, to the effect that the lien and security interest created by this Indenture with respect to such property, including the perfection and priority thereof, will continue to be maintained after giving effect to such action, and *provided further* that the Trustee shall thereafter (for so long as such property continues to be so located in such other jurisdiction) obtain at its own expense an annual Opinion of Counsel, on or before the date specified in Section 7.6(a) hereof, confirming the matters required by such Section to the extent governed by the law of such other jurisdiction.

(c) The Issuer shall pay or cause to be paid taxes, if any, levied on account of the beneficial ownership by the Issuer of any Pledged Securities.

(d) The Issuer hereby represents and warrants that its registered office is, and always has been, in the Cayman Islands; it has never had any offices in the United States of America, and the only offices of any type it has ever had have been in the Cayman Islands.

Section 7.6. Opinions and Tax Matters

(a) On or before June 30 in each calendar year, commencing in 2008, the Issuer shall cause to be delivered to the Trustee an Opinion of Counsel (and the Trustee shall deliver copies of such to the Servicer and the Rating Agencies (other than S&P)), stating that, in the opinion of such counsel, as of the date of such opinion, the Indenture creates in favor of the Trustee a security interest in the Trust Estate and that such security interest is perfected.

(b) If required to prevent the withholding and imposition of United States income tax, the Issuer shall deliver or cause to be delivered (as applicable) a United States Internal Revenue Service Form W-8BEN, or any successor form thereto, to each issuer of any Portfolio Collateral, each issuer of an Eligible Investment and each Synthetic Security Counterparty at the time such Portfolio Collateral or Eligible Investment is purchased by the

Issuer or the Synthetic Security is entered into by the Issuer and periodically thereafter (prior to the expiration of the Form previously provided).

(c) The Issuer will take all actions necessary in order to permit any holder of a Preferred Share or any Holder of a Note that is or may reasonably be characterized as an equity interest in the Issuer for United States federal income tax purposes, upon request therefor, to make a "qualified electing fund" election for United States federal income tax purposes and to satisfy the ongoing requirements with respect to such an election. Further, the Issuer will provide, upon the reasonable request of any holder of a Preferred Share or any such Holder of a Note that is or may reasonably be characterized as an equity interest in the Issuer for United States federal income tax purposes, any information the Issuer has available to it that assists such holders with regard to filing requirements such holders may have as a result of the controlled foreign corporation rules under the Code or pursuant to Section 6038, 6038B or 6046 of the Code.

(d) The Issuer will not take the position that it is engaged in a United States trade or business for federal income tax purposes.

(e) By its acceptance of a Note, each Holder and beneficial owner of a Note shall be deemed to have agreed (1) to provide the Issuer, upon request, with such information as may reasonably be requested by the Issuer (including but not limited to information relating to the beneficial owner of the Note) in connection with the Issuer's fulfillment of its tax reporting, notification, withholding and similar obligations arising under the Code (as amended from time to time) or the Transaction Documents; and (2) to treat the Issuer as not being engaged in the active conduct of a banking, financing, insurance or other similar business for purposes of 954(h)(2) of the Code

(f) By its acceptance of a Note, each Holder and beneficial owner of a Note that is not a United States person (as defined in Section 7701(a)(30) of the Code) will be deemed to have represented that (x) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code or an affiliate of a bank or, alternatively, it is such a bank or an affiliate of a bank but it is eligible for benefits under an income tax treaty with the United States that eliminates U.S. federal income taxation of U.S. source interest not attributable to a permanent establishment in the United States and (y) it is not purchasing the Note in order to reduce its U.S. Federal income tax liability or pursuant to a tax avoidance plan within the meaning of Treas. Reg. 1.881-3(b).

(g) Each of the Issuers and each Holder of a Note agrees that it does not intend for this Indenture to represent an agreement to enter into a partnership, a joint venture or any other business entity for United States federal income tax purposes, and none of such parties shall represent or otherwise hold themselves out to the IRS or other third parties as partners in a partnership or members of a joint venture or other business entity for United States federal income tax purposes. The Issuer will not elect for the Issuer to be treated as a partnership or disregarded entity for United States federal income tax purposes.

Section 7.7. Performance of Obligations.

(a) The Co-Issuers shall not take any action, and, where applicable, will not consent to any action proposed to be taken by others, that would release any Person from any of such Person's covenants or obligations under any instrument included in the Trust Estate, except in the case of enforcement action taken with respect to any Defaulted Portfolio Collateral in accordance with the provisions hereof and as otherwise required hereby.

(b) The Co-Issuers may contract with other Persons, including Investors Bank & Trust Company, and the Servicer, for the performance by such Persons of the Issuer's obligations hereunder and under the Servicing Agreement. Notwithstanding any such arrangement, the Issuer shall remain primarily liable with respect thereto. With respect to any such contract, the performance of such obligations by such Persons shall be deemed to be performance of such obligations by the Issuer.

Section 7.8. Negative Covenants.

(a) The Issuer will not:

(1) sell, transfer, exchange or otherwise dispose of, or pledge, mortgage, hypothecate or otherwise encumber (or permit such to occur or suffer such to exist), any part of the Trust Estate, except as expressly permitted by this Indenture and the Servicing Agreement;

(2) claim any credit on, or make any deduction from, the amount payable with respect to the Notes other than amounts withheld pursuant to Section 6.14 hereof, or assert any claim against any present or future Noteholder, by reason of the payment of any taxes levied or assessed upon any part of the Trust Estate;

(3) incur or assume any indebtedness other than pursuant to this Indenture or the Paying and Transfer Agency Agreement, or incur, assume or guaranty the indebtedness of any Person, issue any additional class of securities or issue any additional shares, shares of stock or membership interests;

(4) (A) permit the validity or effectiveness of this Indenture or any Grant hereunder to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except, in each case, as may be expressly permitted hereby, thereby, or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Trust Estate or any part thereof, any interest therein or the proceeds thereof except as may be expressly permitted hereby, or (C) take any action that would permit the lien of this Indenture not to constitute a valid first priority perfected security interest in the Trust Estate except as may be expressly permitted hereby;

(5) act as agent, negotiator or structurer with respect to any Portfolio Collateral, act as a participant in negotiating the terms of a primary loan agreement,

except to the extent provided in the Servicing Agreement, enter into a binding commitment to purchase any Portfolio Collateral prior to the issuance of such Portfolio Collateral or engage in any transaction or activity that would cause the Issuer to be treated as engaged in a trade or business in the United States within the meaning of section 864 of the Code;

(6) change its name, its type or jurisdiction of organization, or its organizational identification number, unless it has first (i) made all filings and taken all actions in all relevant jurisdictions under the applicable Uniform Commercial Code and other applicable law as are necessary to continue and maintain the priority and perfection of the security interest of the Trustee in the Trust Estate, and (ii) delivered to the Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the applicable Uniform Commercial Code in all relevant jurisdictions as are necessary to continue and maintain the perfection of the security interest of the Trustee in the Trust Estate;

(7) enter into any agreements or amendments thereto unless such agreements and any amendments thereto contain "non-petition" and "limited recourse" provisions, except with respect to any agreements involving the purchase and sale of Portfolio Collateral having customary purchase or sale terms and documented with customary trading documentation;

(8) enter into any agreements or amendments to the Transaction Documents with respect to the "non-petition" or "limited recourse" provisions without satisfying the Rating Condition; or

(9) commingle any of the Collateral with the assets of any other Person, except as expressly permitted by this Indenture and the Servicing Agreement.

(b) The Co-Issuer will not enter into any agreement, contract or indenture other than this Indenture and shall not incur or assume any indebtedness other than pursuant to or as may be expressly permitted by this Indenture, or incur, assume or guaranty the indebtedness of any Person.

(c) The Trustee shall not sell, transfer, exchange or otherwise dispose of, or enter into or engage in any business with respect to, any part of the Trust Estate, except as expressly permitted by this Indenture or the Servicing Agreement.

(d) Neither of the Co-Issuers shall to the maximum extent permitted by applicable law (i) commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief entered with respect to it, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seek appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or make a general assignment for the benefit of its creditors; neither of the Co-Issuers shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set

forth above; and each of the Co-Issuers shall generally pay debts as they become due and not admit in writing its inability to pay its debts as they become due.

(e) Except as permitted by Section 8.2 hereof, the Issuer shall not waive nor permit the amendment of Section 19 or Section 20 of the Servicing Agreement or Section 20 of the Paying and Transfer Agency Agreement.

Section 7.9. Statement as to Compliance.

On or before July 31 following each calendar year, beginning in 2008, or immediately if there has been a Default under this Indenture, the Issuer shall deliver to the Trustee, and the Trustee in turn shall deliver a copy to the Rating Agencies (and any Noteholder upon receipt by the Trustee of a certificate in the form of Exhibit H), an Officer's Certificate of the Issuer stating that:

(1) a review of the activities of the Issuer during such year and of the Issuer's performance under this Indenture has been made under his or her supervision; and

(2) to the best of his or her knowledge, based on such review, the Issuer has fulfilled all of its obligations under this Indenture throughout such year without the occurrence of a Default, or, if there has been a Default hereunder, specifying each such Default known to him or her and the nature and status thereof, including any actions taken to remedy the same.

Section 7.10. Issuer and Co-Issuer May Not Consolidate or Merge.

Neither the Issuer nor the Co-Issuer shall consolidate or merge with or into any other Person.

Section 7.11. No Other Business.

Neither the Issuer nor the Co-Issuer shall engage in any business or activity other than (i) the issuance and redemption of the Notes, the Combination Notes and the Preferred Shares, the issuance and redemption of its ordinary shares, and acquiring, owning, managing, holding and pledging the Pledged Securities and any other instrument or property included in the Trust Estate and (ii) engaging in any other activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith.

Section 7.12. Purchase of Notes.

Notwithstanding anything contained in this Indenture to the contrary, the Issuer may acquire Notes in open market or privately negotiated transactions or otherwise (and the Issuer shall give prompt written notice thereof to the Trustee): *provided* that so long as any Class A Notes are Outstanding, the Issuer shall not acquire any Class B Notes. Any Notes acquired by the Issuer shall be delivered to the Trustee for cancellation.

Section 7.13. Notice of Rating.

(a) The Issuer shall use reasonable efforts to cause the payment of the Periodic Interest Amount and the Aggregate Principal Amount of the Class A-1LA Notes, the Class A-1LB Notes and the Class A-2L Notes to be rated by Standard & Poor's and Moody's (as applicable), the ultimate payment of the Cumulative Interest Amount and the Aggregate Principal Amount of the Class A-3L Notes, the Class B-1L Notes and the Class B-2L Notes to be rated by Standard & Poor's and Moody's and the payment of the Rated Balance and the Rated Coupon of the Combination Notes to be rated by Moody's. Notwithstanding anything to the contrary contained herein, the failure by the Issuer to maintain a rating of each Class of the Class A Notes, the Class B Notes and the Combination Notes shall not constitute a Default or an Event of Default.

(b) The Issuer shall promptly notify the Trustee in writing (and the Trustee shall promptly notify the Noteholders and the Servicer) if at any time the rating of any Class of Notes or Combination Notes has been, or the Issuer knows will be, changed or withdrawn.

Section 7.14. Process Agent.

The Issuer irrevocably designates and appoints CT Corporation, 111 Eighth Avenue, New York, New York 10011, as its agent (the "Process Agent") for service of all process served in connection with this Indenture, such service being hereby acknowledged to be effective and binding service upon the Issuer in every respect.

Section 7.15. Additional Covenants.

(a) Each of the Co-Issuers shall comply with all applicable laws, rules, regulations, orders, writs, judgments, injunctions, decrees, determinations and awards (including, without limitation, any fiscal and accounting rules and regulations and any foreign or domestic law, rule or regulation), including, without limitation, in connection with the issuance, offer and sale of the Notes.

(b) The Issuer shall give prompt notice in writing to the Trustee, the Servicer and the Rating Agencies, upon becoming aware of the occurrence of any Event of Default hereunder.

(c) Each of the Co-Issuers shall take all reasonable actions necessary so as to be exempt from registration under the Investment Company Act.

(d) The Co-Issuers shall take all reasonable actions necessary so as to exempt from registration the sale of Notes under the Securities Act or under any applicable United States state securities or "blue sky" laws.

(e) Each of the Co-Issuers shall maintain all licenses, permits, charters and registrations which are material to the conduct of its business.

(f) The Issuer shall maintain its corporate records and books of account outside of the United States separate from any other Person, including, without limitation, any Person which owns more than 50% of its equity securities.

(g) Each of the Co-Issuers shall use its best efforts to minimize taxes and any other costs arising in connection with its activities.

(h) Each of the Co-Issuers shall treat the purchase of Portfolio Collateral as a purchase for tax, accounting and reporting purposes.

(i) Each of the Co-Issuers shall maintain at least one director who is Independent of the Issuer, the Co-Issuer, the Servicer and Bear Stearns.

(j) Each of the Co-Issuers shall only conduct business in its own name as set forth in its organizational documents.

(k) The Issuer shall cause each item of Collateral to be Delivered to the Trustee.

(l) The Issuer shall cause the Schedule of Portfolio Collateral to at all times correctly list all Portfolio Collateral that is included in the Trust Estate, including all Initial Portfolio Collateral, all Original Portfolio Collateral, all Additional Portfolio Collateral, all Substitute Portfolio Collateral, all Defaulted Portfolio Collateral, all Credit Risk Portfolio Collateral, all Equity Portfolio Collateral and all Credit Improved Portfolio Collateral. The Issuer shall cause Schedule A to be amended to reflect the inclusion of Portfolio Collateral purchased pursuant to Section 3.4(a) hereof, the inclusion of Additional Portfolio Collateral as provided in Section 11.3 hereof, the release of Portfolio Collateral pursuant to Article X hereof, and the inclusion of Substitute Portfolio Collateral as provided in Section 12.4 hereof.

Section 7.16. Representations and Warranties of the Co-Issuers.

Each of the Co-Issuers represents and warrants to the Trustee with respect to itself, as of the Closing Date that:

(a) Such Co-Issuer is a corporation duly incorporated or organized, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation and in each jurisdiction where the conduct of its business requires such license, qualification or good standing, except where the failure to be so licensed or qualified or in good standing would not adversely affect the validity or enforceability of this Indenture or the other Transaction Documents to which it is a party, or the ability of such Co-Issuer to perform its obligations hereunder or thereunder.

(b) Such Co-Issuer has the power and authority to execute and deliver the Transaction Documents and all other documents and agreements contemplated hereby and thereby to which it is a party, as well as to carry out the terms hereof and thereof.

(c) Such Co-Issuer has taken all necessary action, including but not limited to all requisite corporate action, to authorize the execution, delivery and

performance of the Transaction Documents and all other documents and agreements contemplated hereby and thereby to which it is a party. When executed and delivered by such Co-Issuer and the other parties thereto, each of the Transaction Documents will constitute the legal, valid and binding obligation of such Co-Issuer enforceable in accordance with its terms subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect affecting the enforcement of creditors' rights in general, and except as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity) and to the payment of stamp duty.

(d) All authorizations, licenses, permits, certificates, franchises, consents, approvals and undertakings which are required to be obtained by such Co-Issuer under any applicable law which are material to (i) the conduct of its business, (ii) the ownership, use, operation or maintenance of its properties and (iii) the performance by such Co-Issuer of its obligations under or in connection with the Transaction Documents, the Notes and the Preferred Shares have been received and all such authorizations, licenses, permits, certificates, franchises, consents, approvals and undertakings are in full force and effect.

(e) The execution, issuance and delivery of, and performance by such Co-Issuer of its respective obligations under the Transaction Documents and any and all instruments or documents required to be executed or delivered pursuant to or in connection herewith or therewith were and are within the powers of such Co-Issuer and will not violate any provision of any law, regulation, decree or governmental authorization applicable to such Co-Issuer, or its charter or by-laws or other organizational documents and will not violate or cause a default under any provision of any contract, agreement, mortgage, indenture or other undertaking to which such Co-Issuer is a party or which is binding upon such Co-Issuer or any of its property or assets, and will not result in the imposition or creation of any lien, charge, or encumbrance upon any of its properties or assets of such Co-Issuer pursuant to the provisions of any such contract, agreement, mortgage, indenture or undertaking, other than as specifically set forth herein.

(f) There are no legal, governmental or regulatory Proceedings pending to which such Co-Issuer is a party or of which any of its property is the subject, which if determined adversely to such Co-Issuer would individually or in the aggregate have a material adverse effect on the performance by such Co-Issuer of the Transaction Documents or the consummation of the transactions contemplated hereunder or thereunder; and to the best of its knowledge, no such Proceedings are threatened or contemplated.

(g) None of the Notes, Combination Notes nor the Preferred Shares are required to be registered pursuant to the Securities Act, such Co-Issuer is not required to be registered as an investment company pursuant to the Investment Company Act, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

(h) Except with respect to amounts owed under the Notes and the Preferred Shares and liabilities incurred in connection with the issuance of the Notes, the Preferred Shares and the Transaction Documents, such Co-Issuer has not incurred any indebtedness for borrowed money or any other material liabilities.

(i) The Issuer has no subsidiaries other than the Co-Issuer or as permitted by Section 7.4(c) hereof.

(j) The Issuer is not a securities intermediary, broker, or commodity intermediary as defined in the UCC, or a Participant as defined in the United States Regulations.

Section 7.17. Representations Relating to the Security Interests in the Collateral.

(a) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral:

(i) The Issuer owns and has good and marketable title to such Collateral free and clear of any lien, claim or encumbrance of any person, other than such as are created under, or expressly permitted by, this Indenture.

(ii) Other than the security interest granted to the Trustee pursuant to this Indenture and conveyances permitted by this Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed such Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering such Collateral other than any financing statement relating to the security interest granted to the Trustee hereunder or that has been terminated. The Issuer is not aware of any judgment, Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(iii) Such Collateral is comprised of "instruments", "security entitlements", "general intangibles", "tangible chattel paper", "deposit accounts", "accounts", "certificated securities", "uncertificated securities" or "securities accounts" (each as defined in the applicable Uniform Commercial Code).

(iv) All Accounts constitute "securities accounts" as defined in the applicable Uniform Commercial Code.

(v) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in such Collateral in favor of the Trustee, which security interest is prior to all other liens and is enforceable as such against creditors of and purchasers from the Issuer except as expressly permitted under this Indenture.

(vi) The Issuer has received all consents and approvals required by the terms of such Collateral to the transfer to the Trustee of its interest and rights in such Collateral hereunder.

(b) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes "securities accounts", the Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Accounts in favor of the Trustee, which security interest is perfected by control (as defined in the applicable Uniform Commercial Code) because the Trustee has control of each security entitlement carried in each Account.

(c) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitute "instruments":

(i) All original executed copies of each promissory note or mortgage note that constitutes or evidences such instruments have been delivered to the Trustee and (ii) none of the promissory notes or the mortgage notes that constitute or evidence such instruments has any marks or notations indicating that it has been pledged, assigned or otherwise conveyed to any person other than the Trustee.

(d) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitute "security entitlements":

(i) All of such security entitlements have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to such Account as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(ii) The Issuer has taken all steps necessary to cause the securities intermediary to identify in its records the Trustee as the person having a security entitlement against the securities intermediary in each of the Accounts.

(iii) The Accounts are not in the name of any person other than the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with the entitlement order of any person other than the Trustee.

(e) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such

Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes "general intangibles" or "accounts":

(i) The Issuer has caused or will have caused, within ten days after the Closing Date, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in such general intangibles or accounts granted to the Trustee hereunder.

(f) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes "tangible chattel paper":

(i) (A) All original executed copies of each agreement that constitutes or evidences such tangible chattel paper have been delivered to the Trustee and (B) none of the agreements that constitute or evidence such tangible chattel paper has any marks or notations indicating that it has been pledged, assigned or otherwise conveyed to any person other than the Trustee.

(ii) The Issuer has taken all steps necessary to perfect the security interest against the account debtor in the property securing the agreements that constitute such tangible chattel paper.

(g) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes "deposit accounts":

(i) The Issuer has taken all steps necessary to cause the Trustee to become the account holder of such deposit accounts.

(ii) Such deposit accounts are not in the name of any person other than the Trustee. The Issuer has not consented to the bank maintaining any such deposit account to comply with the instructions of any person other than the Trustee.

(h) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes a certificated security, such certificated security has been delivered to the Trustee and, if in registered form, has been indorsed to the Trustee or in blank by an effective indorsement or has been registered in the name of the Trustee upon original issue or registration of transfer by the issuer of such certificated security.

(i) The Issuer hereby represents that, as of the Closing Date (which representations and warranties shall survive the execution of this Indenture and, with respect to

Collateral Delivered after the Closing Date, be deemed to be repeated on the date on which such Collateral is Delivered as if made at and as of that time), with respect to the then existing Collateral that constitutes an uncertificated security, the issuer of such uncertificated security has registered the Trustee as the registered owner of such uncertificated security.

(j) None of the provisions of this Section 7.17 shall be waived without the prior written confirmation from S&P that such waiver shall not result in a reduction or withdrawal of the then-current rating of any Class of Notes.

Section 7.18. No "Gross-up" Amounts.

The Co-Issuers shall not be required to pay any "gross-up" or other additional amounts to the Holders of any Class of Notes because taxes or related amounts are required to be withheld from payments on the Notes or any payments to either of the Co-Issuers on any item of Portfolio Collateral or other assets of the Co-Issuers.

Section 7.19. Securities Lending.

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in subsection 12.2(u) would be satisfied, the Servicer may cause Portfolio Collateral that are not Defaulted Portfolio Collateral to be lent for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A+" from S&P (each, a "Securities Lending Counterparty") pursuant to one or more agreements (each, a "Securities Lending Agreement"); *provided* that Portfolio Collateral whose Market Value cannot be determined under clauses (a), (b) or (c) of that definition may not be lent pursuant to a Securities Lending Agreement; *provided, further*, that the gross income from all such transactions during any fiscal year shall not exceed 15% of the gross income of the Issuer for such fiscal year. Upon receipt of an Issuer Order, the Trustee shall release any lent Portfolio Collateral to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchasers or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Final Maturity Date of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Trustee debt obligations that are identical (in terms of issue and class) to the lent items of Portfolio Collateral;

(ii) require that the Securities Lending Counterparty pay to the Trustee amounts equivalent to all interest and other payments that the owner of the lent items of Portfolio Collateral is entitled to for the period during which the Portfolio Collateral is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities

Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and return of any lent item of Portfolio Collateral to the Issuer with no penalty if the Portfolio Collateral becomes Credit Risk Portfolio Collateral or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent item of Portfolio Collateral with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of Cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "Securities Lending Collateral") to secure its obligation to return the Portfolio Collateral;

(x) provide that the value of Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Portfolio Collateral;

(xi) the lent Portfolio Collateral shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement as well as the lent Portfolio Collateral;

(xiii) provide for early termination within 10 days, at the option of the Issuer and with respect to the return of any lent Portfolio Collateral to the Issuer, with no penalty, if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture;

(xiv) contain appropriate limited recourse and non-petition provisions that survive the termination of the agreement (to the extent the Issuer has contractual

payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture; and

(xv) provide for the payment of a fee to the Issuer in consideration for the loan of Portfolio Collateral, at a rate as shall be negotiated with the Securities Lending Counterparty by the Servicer on behalf of the Issuer.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Portfolio Collateral lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement at the instruction of the Servicer, and deliver and accept delivery and return of any Portfolio Collateral pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the

sufficiency, validity, or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Portfolio Collateral is on loan pursuant to a Securities Lending Agreement, (a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Portfolio Collateral because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and (b) the lent Portfolio Collateral shall not be disqualified for return to the Trustee as an item of Portfolio Collateral by any change in circumstance or status during the time while on loan (including any change that would cause the Portfolio Collateral to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

ARTICLE VIII

SUPPLEMENTAL INDENTURES

Section 8.1. Supplemental Indentures Without Consent of Noteholders.

Without the consent of the Holders of any Notes, but with the consent of the Servicer, each Hedge Counterparty (to the extent the amendment would have a material adverse effect on such Hedge Counterparty), the Co-Issuers and the Trustee, at any time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to correct or amplify the description of any property at any time subject to the lien of this Indenture, or better to assure, convey and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture, or to subject to the lien of this Indenture additional property;

(2) to evidence the succession of another Person to the Issuer or the Co-Issuer, and the assumption by any such successor of the covenants of the Issuer or the Co-Issuer contained herein and in the Notes or the Combination Notes;

(3) to add to the covenants of the Issuer, the Co-Issuer or the Trustee, for the benefit of the Holders of the Notes and the Combination Notes, or to surrender any right or power herein conferred upon the Issuer or the Co-Issuer;

(4) to Grant any property to the Trustee;

(5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to facilitate the administration of the Trust Estate by more than one Trustee, pursuant to the requirements of Section 6.9 or 6.10 hereof;

(6) to cure any ambiguity, or to correct, modify or supplement any provision which is defective or inconsistent with any other provision herein;

(7) to take any action necessary or helpful to prevent the Issuer or the Trustee from becoming subject to any withholding or other taxes or assessments or to reduce the risk that the Issuer will be engaged in a United States trade or business or that the Issuer (or the beneficial owners thereof) will be subject to United States income tax on a net income basis;

(8) to correct any manifest error in any provision hereof upon receipt by the Trustee of written direction from the Issuer or Co-Issuer (as to which the Trustee may rely) describing in reasonable detail such error and the modification necessary to correct such error; or

(9) to effectuate the provisions of Section 2.12 hereof *provided* that such amendment shall not, as evidenced by an Officer's Certificate of the Issuer, adversely affect in any material respect the interests of any Noteholder; or

(10) to facilitate the delivery and maintenance of the Notes in accordance with the requirements of DTC, Euroclear or Clearstream;

(11) to authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes required or advisable in connection with the listing of the Notes on the Irish Stock Exchange or any other stock exchange and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for such Notes in connection therewith;

(12) to modify the restrictions on and procedures for resale and other transfer of the Notes or the Combination Notes in accordance with any change in any applicable law or regulation (or the interpretation thereof) or to enable the Co-Issuers to rely upon any less restrictive exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required thereunder;

(13) notwithstanding anything contained in clause (12), to modify the restrictions on, and procedures for, resale and transfer of the Notes in accordance with any change in ERISA;

(14) evidence the addition of an additional issuer or of a wholly owned subsidiary of the Issuer that, in either case, will acquire securities from the Issuer and pledge its assets to secure the obligations of the Issuer secured by the Trust Estate, to the extent necessary to permit the Issuer to comply with the Bank Holding Company Act of 1956, as amended, and the rules and regulations thereunder or any other statute, rule or regulation applicable to the Issuer, and the assumption by any such additional issuer or subsidiary of the covenants and obligations of the Issuer in this Indenture; or

(15) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or better assure compliance with the requirements of Rule 3a-7 thereunder; *provided* that, with respect to this clause (15) only, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and Bear Stearns shall have (A) satisfied the Rating Condition with respect to such supplemental indenture and (B) received a customary, unqualified opinion of counsel from a nationally recognized law firm (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act;

provided further that (A) such amendment for any matters described in clauses (1) through (14) shall not, as evidenced by an Opinion of Counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion), adversely affect in any material respect the interests of any Noteholder and (B) no amendment shall be made that would cause the Issuer to register as an "investment company" under the Investment Company Act. The Trustee shall be entitled to receive and rely upon an opinion of counsel to the effect that a proposed supplemental indenture does not materially adversely affect the interests of the Noteholders of any Class of Notes or the interest of the Preferred Shareholders; *provided* that any such opinion of counsel may rely on an officer's certificate covering any relevant factual matters.

The Trustee is hereby authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be therein contained. At the cost of the Issuer, the Trustee shall provide to the Servicer, the Cap Provider and for so long as any Notes or Combination Notes are then rated, each Rating Agency then rating any Notes or Combination Notes a copy of any proposed supplemental indenture at least 10 days prior to the execution thereof by the Trustee and request written confirmation that the entering into of such supplemental indenture satisfies the Rating Condition. The Trustee shall not enter into any such supplemental indenture if such supplemental indenture does not satisfy the Rating Condition, and, as soon as practicable after the execution by the Trustee and the Issuer of any such supplemental indenture, the Issuer or the Trustee at the request of the Issuer shall provide to the Servicer, each Hedge Counterparty and each Rating Agency then rating any Notes or Combination Notes a copy of the executed supplemental indenture.

In addition, upon the proposal of the Servicer, on behalf of the Issuer, and subject to the consent of at least a Majority of the Eligible Preferred Shares of such proposal or at the direction of such Preferred Shares, the Co-Issuers and the Servicer, the Trustee and the Co-Issuers may enter into one or more supplemental indentures (i) in connection with an Optional Redemption by Refinancing involving the issuance of additional notes, to accommodate the issuance of such additional notes and to establish the terms thereof or (ii) in connection with an Optional Redemption by Refinancing involving secured loans, to accommodate borrowings under such secured loans and to establish the terms thereof; *provided* that, if a supplemental indenture is entered into in connection with the issuance of additional notes or incurrence of secured loans related to an Optional Redemption by Refinancing, such supplemental indenture

shall not be effective unless each of the Rating Agencies has (a) if additional notes are issued in substantially the same capital structure as the Notes issued on the Closing Date, (i) provided a Rating Confirmation and (ii) provided a rating to the additional notes to be issued or the secured loans to be incurred as agreed upon by the purchasers of such additional notes in such Optional Redemption by Refinancing or (b) in any other case, provided a rating to the additional notes to be issued or the secured loans to be incurred as agreed upon by the purchasers of such additional notes in such Optional Redemption by Refinancing.

Notwithstanding anything to the contrary contained herein (so long as the Rating Condition has been satisfied), with the consent of the Servicer and, except as provided in this Section 8.1, without the consent of the Holders of any Notes or the Holders of the Combination Notes or Preferred Shares, the Co-Issuers and the Trustee may enter into an indenture or indentures supplemental thereto (other than as may otherwise be permitted under this Indenture): (a) to add additional rows to the Collateral Quality Matrix (other than in accordance with clause (ii) of the second sentence of the definition of "Collateral Quality Matrix"); (b) to change the definition of Collateral Quality Formula (and any related definitions), (c) to change the definition of Weighted Average Life Requirement (and any related definitions), (d) to change the definition of Minimum Average Recovery Rate Test (and any related definitions) and (e) to change the definition of S&P CDO Monitor Test (and any related definitions); *provided* that the Trustee must receive the consent of a Majority of the Controlling Class with respect to any indenture or supplemental indenture with respect to items (a) (other than in accordance with clause (ii) of the second sentence of the definition of "Collateral Quality Matrix"), (b), (c), (d) and (e) above.

Section 8.2. Supplemental Indentures with Consent of Noteholders.

With the consent of the Requisite Noteholders, the Servicer and the Holders of the Preferred Shares, to the extent described in the Paying and Transfer Agency Agreement, each Hedge Counterparty (to the extent the amendment would have a material adverse effect on each such Hedge Counterparty), the Co-Issuers and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Holders of the Notes under this Indenture; *provided* that, notwithstanding any Amendment Buy-Out Option described in Section 9.4(b), no such supplemental indenture shall, without the consent of each Noteholder of each Class adversely affected thereby:

(1) change the Final Maturity Date or Payment Date of any Note, or reduce the principal amount, notional principal amount or stated amount thereof, as the case may be, or the means of determining the Applicable Periodic Rate, the Optional Redemption Price, the Special Redemption Price, the Tax Event Redemption Price or the Mandatory Redemption Price, as applicable, with respect thereto, change the provisions of this Indenture relating to the application of proceeds of the Trust Estate to the payment of the Notes or the Combination Notes or change the jurisdiction where any Note or Combination Note is payable, or the coin or currency in which, any Note, Combination Note or any amount thereunder is payable, or impair the right to institute suit for the enforcement of any such payment on or after the maturity thereof;

(2) reduce the percentage in Aggregate Principal Amount, the consent of the Holders of which is required for the execution of any such supplemental indenture, or the consent of the Holders of which is required for any waiver of compliance with certain provisions of this Indenture or certain Events of Default hereunder and their consequences provided for in this Indenture;

(3) impair or adversely affect the Trust Estate except as otherwise permitted herein;

(4) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Trust Estate or terminate the lien of this Indenture on any property at any time subject hereto (other than pursuant to the terms of this Indenture) or deprive the Holder of any Note or any other party expressly secured hereby of the security afforded by the lien of this Indenture;

(5) reduce the percentage of the Aggregate Principal Amount of the Notes whose Holders must direct the Trustee to preserve the Trust Estate or must consent before any request is made to rescind the Trustee's election to preserve the Trust Estate pursuant to Section 5.5 hereof, or to sell or liquidate the Trust Estate pursuant to Section 5.4, 5.5 or 9.7 hereof or modify the requirement for consent of any other party to which the right to consent is expressly granted hereby;

(6) modify any of the provisions of this Section or Section 5.15 hereof, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note affected thereby;

(7) modify the provisions of Article XI hereof or the definition of the term "Holder," "Noteholder," "Majority Noteholders," "Majority Preferred Shareholders," "Requisite Noteholders" or of the term "Outstanding";

(8) amend any provision of this Indenture relating to the institution of proceedings for the Issuer or the Co-Issuer to be adjudicated as bankrupt or insolvent, or the consent by the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency proceedings against it, or the filing with respect to the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition as to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, respectively;

(9) amend any provision of this Indenture or other such document that provides that the obligations of the Co-Issuer or the Issuer, as the case may be, are non-recourse obligations of the Co-Issuer or the Issuer, respectively, payable solely from the Collateral in accordance with the terms hereof; or

(10) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount or timing of any payment of interest or principal

due on any Note or Combination Note on any Payment Date (including the calculation of any of the individual components of such calculation) or to affect the rights of the Holders of Notes or Combination Notes to the benefit of any provisions for the redemption of such Notes or Combination Notes contained herein.

With respect to any action that requires consent from 100% of the Noteholders, if any Noteholder has notified the Trustee in writing that pursuant to such Noteholder's organizational documents or other documents governing such Noteholder's actions, the Noteholder is not permitted to take any affirmative action approving, rejecting or otherwise acting upon any Issuer request under the Indenture, the failure by such Noteholder to consent to or reject any such requested action will be deemed a consent by such Noteholder to the requested action. In addition, any consent required from a Noteholder or a Holder of a Preferred Share may be evidenced by one or more instruments (which may be an electronic document, including, but not limited to, in the form of email, to the extent permitted by applicable law), signed by Noteholders or Holders of Preferred Shares in person or by agents duly appointed in writing (*provided* that no signature shall be required on electronic documents, including, but not limited to, in the form of email to the extent permitted by law).

Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section, the Trustee shall mail to the Servicer and, so long as any Notes or Combination Notes are then rated by any Rating Agency, to each such Rating Agency, a copy of such supplemental indenture and, if any Notes or Combination Notes are then rated, prior to the execution of the proposed supplemental indenture, the Rating Condition must be satisfied with respect to such supplemental indenture.

Except for any proposed amendment that would affect the terms of the Combination Notes as such, Holders of the Combination Notes shall be entitled to vote under this Section 8.2 only as Holders of the related Component Securities.

It shall not be necessary in connection with any consent of Noteholders under this Section for the Noteholders to approve the specific form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article VIII or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; *provided* that that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has

received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

Promptly after the execution by the Co-Issuers and the Trustee of any supplemental indenture pursuant to this Section 8.2, the Issuer or the Trustee at the request of the Issuer shall deliver to the Holders of the Notes, the Servicer, each Rating Agency then rating any Notes a copy thereof.

Section 8.3. Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article VIII or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.3(d) hereof) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent applicable thereto under this Indenture have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 8.4. Effect of Supplemental Indentures.

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

Section 8.5. Reference in Notes and Combination Notes to Supplemental Indentures.

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

ARTICLE IX

REDEMPTION; TERMINATION OF TRUST

Section 9.1. Optional Redemption.

(a) The Notes shall be redeemable, in whole but not in part, by the Co-Issuer or the Issuers, as applicable, at the direction of the Holders of at least 66-2/3% of the outstanding Eligible Preferred Shares on any Payment Date after the Non-Call Period at the Optional Redemption Price (such redemption of all the Notes, an "Optional Redemption by Liquidation"). No redemption pursuant to this Section 9.1(a) shall occur unless all Outstanding Notes are

redeemed, all payments, fees and expenses are paid in full on the date of such redemption, all amounts due to or advanced by any Hedge Counterparty under any Hedge Agreement have been paid or reimbursed and the applicable notice requirements provided in the Paying and Transfer Agency Agreement have been satisfied.

(b) Any Class of Notes may be redeemed in whole but not in part, on any Payment Date after the Non-Call Period from the proceeds of a Refinancing (the "Refinancing Proceeds") with the consent of the Holders of at least a Majority of the Eligible Preferred Shares or at the direction of such Holders of Preferred Shares if the Servicer, on behalf of the Issuer, gives written notice thereof to the Holders of all the Preferred Shares (with a copy to the Trustee, the Paying and Transfer Agent and Rating Agencies) at least 30 days prior to the Payment Date fixed by the Issuer for such redemption (such date, the "Refinancing Date"), by obtaining a loan or an issuance of a replacement class of notes, the terms of which loan or issuance will be negotiated by, and acceptable to, the Servicer, on behalf of the Issuer, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided to such loan or issuance, a "Refinancing" and a redemption of the Notes in connection with such Refinancing, an "Optional Redemption by Refinancing") and, if such Refinancing has not been directed by a Majority of the Eligible Preferred Shares, such proposal is approved such Majority of the Preferred Shares prior to the Refinancing Date. The Issuer shall obtain a Refinancing only if the Servicer determines to its satisfaction (and so notifies the Trustee in writing) that: (i) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed plus the fees and administrative expenses of the Issuer related to the Refinancing; (ii) the stated maturity of the obligations providing the Refinancing is no earlier than the Stated Maturity of the Notes being redeemed; (iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being redeemed; (iv) the agreements relating to the Refinancing contain non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth in the Indenture; (v) the proceeds from the Refinancing will be at least sufficient to redeem the applicable Notes (at the Optional Redemption Price therefor) and to pay any fees and administrative expenses of the Issuer related to the Refinancing; (vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes; (vii) the Rating Condition for each Rating Agency shall be satisfied (other than with respect to the Notes being redeemed); (viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and (ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for. Any Refinancing Proceeds shall not constitute Collateral Interest Collections or Collateral Principal Collections but shall be applied directly on the related Refinancing Date pursuant to the Indenture to redeem the Notes being refinanced without regard to the Priority of Payments; *provided* that, to the extent that any Refinancing Proceeds are not applied to redeem the Notes being refinanced, such Refinancing Proceeds shall be treated as Collateral Principal Collections or, if the Rating Condition is satisfied with respect to such application, as Collateral Interest Collections. None of the Co-Issuers, the Trustee or any other Person shall be liable to the Holders of the Preferred Shares for the failure to issue additional notes or to obtain secured loans.

(c) The election of the Issuer to redeem any Notes pursuant to this Section 9.1 shall be set forth in an Issuer Order, given to the Trustee in accordance with Section 9.6 hereof, directing the Trustee to make the payment of the Optional Redemption Price for all (in the case of an Optional Redemption by Liquidation) or the selected Class (in the case of an Optional Redemption by Refinancing) of the Notes, as applicable, from funds in the Collection Account and/or from monies deposited with the Trustee by the Issuer pursuant to Section 9.8 hereof.

(d) The Issuer shall, simultaneously with electing to redeem Notes under this Section 9.1, set the Optional Redemption Date and the Redemption Record Date for any redemption pursuant to this Section and give notice thereof to the Trustee pursuant to Section 9.6 hereof.

(e) The Issuer shall have the option to withdraw the notice of redemption until (i) the earlier of the fifth Business Day prior to the proposed Optional Redemption Date and the date on which a forward purchase contract is entered into pursuant to Section 9.8 or (ii) the fifth Business Day prior to the proposed Refinancing Date, if (A) in the case of an Optional Redemption by Liquidation, the Servicer shall be unable to deliver the forward purchase contract which satisfies the terms of Section 9.8 to the Trustee, in form satisfactory to the Trustee or (B) in the case of an Optional Redemption by Refinancing, the Servicer does not make the determinations required pursuant to Section 9.1(b) or (C) in the case of any Optional Redemption, at least a Majority of the Eligible Preferred Shares direct such notice to be withdrawn, in each case by written notice to the Trustee, the Servicer, each Class of Notes and, for so long as any Class of Notes and the Rating Agencies is listed on any stock exchange and the rules of such stock exchange so require, to such stock exchange, on or prior to such earlier day.

(f) On the Optional Redemption Date, the Optional Redemption Price shall be distributed pursuant to Section 11.1(d) after payment of all amounts required to be paid pursuant to Section 11.1(b).

Section 9.2. Mandatory Redemption.

If either the Interest Coverage Test or the Overcollateralization Tests (other than with respect to a failure of the Class B-2L Overcollateralization Test) are not satisfied as of any applicable Calculation Date or a Rating Confirmation Failure occurs, all or a portion of the Notes shall be redeemed (or, in the case of the Class B-1L Notes and the Class B-2L Notes, any Periodic Rate Shortfall Amounts shall be paid and then the Notes shall be redeemed) by the Issuer, in the order set forth in Section 11.1 hereof, on the Payment Date immediately following such Calculation Date at the Mandatory Redemption Price (pursuant to the applicable provisions of Sections 11.1 and 11.2 hereof) in an amount sufficient such that the Interest Coverage Test and Overcollateralization Tests are satisfied or a Rating Confirmation is received, as applicable. The amount of any Mandatory Redemption hereunder shall be determined in accordance with the provisions of Section 11.2 hereof. If on any Payment Date the Class B-2L Overcollateralization Test is not satisfied, 50% of available Interest Proceeds will be applied to pay principal on the Class B-2L Notes and 50% (or, after the Class B-2L Notes are paid in full, 100%) of available Interest Proceeds will be applied sequentially to pay principal on the Notes according to the priorities described herein until the Class B-2L Overcollateralization Test is satisfied. In

addition, Principal Proceeds will be applied sequentially to pay principal on the Notes, as set forth in clause SECOND of Section 11.1(c)(ii) and 11.1(c)(iii) herein.

Section 9.3. Additional Collateral Deposit Requirement.

On each Payment Date after the second Payment Date, the Additional Collateral Deposit Requirement shall be applied by the Issuer in the order set forth in Section 11.1 hereof.

Section 9.4. Special Redemption; Amendment Buy-Out

(a) The Notes shall be redeemable in part on any Payment Date during the Revolving Period at the option of the Issuer, as directed by and at the discretion of the Servicer, to the extent more than U.S. $2,000,000 of Collateral Principal Collections held in the Collection Account are not applied to the purchase of Additional Portfolio Collateral satisfying the criteria contained in Section 11.3 hereof by the earlier of the last day of the next succeeding Due Period or the last day of the Revolving Period, in the order and priority set forth in Section 11.1 hereof.

(b) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Notes or Preferred Shares, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders (which shall not include any Holders of the Class A-1LA Notes unless such Holders consent to being designated as "Non-Consenting Holders," as described below) all Notes or Preferred Shares held by such Holders of the Class of Notes or Preferred Shares whose consent was solicited with respect to such supplemental indenture (the "Amendment Buy-Out Option") for the applicable Amendment Buy-Out Purchase Price; *provided, however*, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Security, as applicable, or to change the earliest date on which Notes of any Class or Preferred Shares may be redeemed at the option of the Issuer; *provided further*, that notwithstanding the definition of Non-Consenting Holder, any Holder of Notes (other than the Class A-1LA Notes) or Preferred Shares who fails to respond to any such consent solicitation shall be deemed to have consented to any such supplemental indenture. Notwithstanding the foregoing, during the Non-Call Period, "Non-Consenting Holder" shall exclude any Holder of Class A-1LA Notes (unless such Holder has consented in writing to be designated as a Non-Consenting Holder) and the Amendment Buy-Out Option shall not be applicable to such Class A-1LA Notes. If the Amendment Buy-Out Option is exercised, the Amendment Buy-Out Purchaser must purchase all such Notes or Preferred Shares of Non-Consenting Holders, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Notes or Preferred Shares the consent of whose Holders is required for such supplemental indenture (an "Amendment Buy-Out"). By its acceptance of its Securities or Preferred Shares hereunder, each Holder of Notes or Preferred Shares agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Notes or Preferred Shares to the Amendment Buy-Out Purchaser. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or Beneficial Owner of Securities or Preferred Shares as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option. For the avoidance of doubt, (i) nothing described above or in the Indenture shall in any way limit or restrict the rights of the Holders of the Class A-1LA Notes to consent or withhold their consent to a supplemental

indenture or to otherwise vote their interest both during and after the Non-Call Period and (ii) the Trustee shall have no responsibility for overseeing the Servicer's compliance with the Amendment Buy-Out provisions herein.

(c) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities or Preferred Shares set forth herein and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.5. Tax Event Redemption.

(a) The Notes shall be redeemable, in whole but not in part, by the Issuer at the direction of a Majority of the Preferred Shares or a Majority of the Controlling Class (but only if the Aggregate Principal Balance of Portfolio Collateral is less than 100% of the Class A-1L Notes) on any Payment Date at the Tax Event Redemption Price, if as a result of (i) change in tax law, rule or regulation or the interpretation thereof, the payments to be received on the Portfolio Collateral are reduced as a result of the imposition of withholding tax, (ii) the Issuer is otherwise subjected to tax such that the income of the Issuer is reduced in an amount determined by such holders of Preferred Shares to be material, (iii) (A) one or more items of Portfolio Collateral that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax or the rate of withholding has increased on one or more items of Portfolio Collateral that were subject to withholding tax when the Issuer committed to purchase them and (B) in any Due Period the aggregate of the payments subject to withholding tax on new withholding tax obligations and the increase in payments subject to withholding tax on increased rate withholding tax obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period, or (iv) (A) a Hedge Counterparty being required to deduct or withhold from any payment to the Issuer under the related Hedge Agreement for or on account of any tax for whatever reason and such obligor or Hedge Counterparty is not required to pay to the Issuer such additional amount as is necessary to ensure that the net amount actually received by the Issuer (free and clear of taxes, whether assessed against such obligor, such Hedge Counterparty or the Issuer) will equal the full amount that the Issuer would have received had no such deduction or withholding occurred or (B) the Issuer being required to pay to the Hedge Counterparty an additional amount for or on account of any tax for whatever reason, the Issuer does not receive the full amount under a Hedge Agreement that it would otherwise be entitled to receive, or (v) taxes, fees, assessments or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any 12-month period in excess of $2,000,000, other than liabilities for withholding taxes included in clause (iii) above. No redemption pursuant to this Section 9.5 shall occur unless all Outstanding Notes are redeemed, unless all payments, fees and expenses are paid in full on the date of such redemption, all amounts due to or advanced by any Hedge Counterparty under any Hedge Agreement have been paid or reimbursed and unless all other payments, fees and expenses are paid in full.

(b) The election of the Issuer to redeem any Notes pursuant to this Section 9.5 shall be set forth in an Issuer Order, given to the Trustee in accordance with Section 9.6 hereof, directing the Trustee to make the payment of the Tax Event Redemption Price from funds in the

Collection Account and/or from monies deposited with the Trustee by the Issuer pursuant to Section 9.8 hereof.

(c) The Issuer shall, simultaneously with electing to redeem Notes under this Section 9.5, set the Tax Event Redemption Date and the Redemption Record Date for any redemption pursuant to this Section 9.5 and give notice thereof to the Trustee pursuant to Section 9.6 hereof.

(d) The Issuer shall have the option to withdraw the notice of redemption until the earlier of the fifth Business Day prior to the proposed Tax Event Redemption Date and the date on which a forward purchase contract is entered into pursuant to Section 9.8(b) hereof by written notice to the Trustee and the Servicer on or prior to such earlier day.

(e) On the Tax Redemption Date, the Tax Event Redemption Price shall be distributed pursuant to Section 11.1(d) hereof after payment of all amounts required to be paid pursuant to Section 11.1(b) hereof.

Section 9.6. Notice to Trustee, Rating Agencies, the Hedge Counterparty and the Servicer.

(a) The Issuer shall by Issuer Order, in connection with an Optional Redemption pursuant to Section 9.1 or a Tax Event Redemption pursuant to Section 9.5, not later than the twentieth Business Day immediately preceding the proposed Optional Redemption Date or Tax Event Redemption Date, as applicable, notify in writing the Trustee, each Hedge Counterparty, each Rating Agency then rating any Class of Notes and the Servicer of such proposed Optional Redemption Date or Tax Event Redemption Date, as applicable, and the proposed Redemption Record Date and Optional Redemption Price for each Class of Notes.

(b) If any Mandatory Redemption is required pursuant to Section 9.2 hereof, the Issuer shall, not later than the third Business Day after the related Calculation Date, notify in writing the Trustee, each Rating Agency then rating any Class of Notes, the Hedge Counterparty, the Servicer and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent that such redemption is required and the amount of the Notes of each Class required to be redeemed pursuant to the provisions of Section 11.2 hereof.

(c) If any Special Redemption is required pursuant to Section 9.4 hereof, the Issuer shall, not later than twentieth Business Day preceding the proposed Special Redemption Date, notify in writing the Trustee, each Rating Agency then rating any Class of Notes, the Hedge Counterparty, the Servicer and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent that such proposed redemption is required and the amount of the Notes of each Class to be redeemed.

Section 9.7. Notice of Optional Redemption and Tax Event Redemption by the Issuer.

(a) If notice thereof has been received by the Trustee from the Issuer pursuant to Section 9.6 hereof, notice of an Optional Redemption shall be given by the Trustee by first-class mail, postage prepaid, mailed not less than twenty calendar days prior to the proposed

Redemption Record Date, to each Holder of Notes to be redeemed at the address in the Note Register (with a copy to the Rating Agencies at the addresses specified in Section 10.7 hereof), and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All notices of Optional Redemption shall state: the proposed Optional Redemption Date; the proposed Redemption Record Date; and that on such proposed Optional Redemption Date, all Outstanding Notes are to be redeemed and paid in full and that applicable interest thereon shall cease to accrue on the date specified in the notice and the place where such Notes may be surrendered for payment of the Optional Redemption Price, which shall be the agency of the Trustee to be maintained as provided in Section 7.2 hereof; and that the Issuer may withdraw such election at any time on or prior to the earlier of the Business Day prior to such proposed Optional Redemption Date and the date before which a forward purchase contract is entered into pursuant to Section 9.8(a) hereof.

At the cost of the Issuer, the Trustee shall give notice of any withdrawal of the notice of redemption pursuant to Section 9.1(d) hereof (to the extent feasible) by overnight courier guaranteeing next day delivery, sent not later than the third Business Day prior to the previously proposed Optional Redemption Date, to each Holder of Notes to be redeemed at the address in the Note Register, and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

Notice of Optional Redemption of the Notes shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name of the Issuer and at the expense of the Issuer. Failure to give notice of redemption or notice of withdrawal, or any defect therein, to any Holder of any Note shall not impair or affect the validity of the redemption of the Notes or give rise to any claim based upon such failure or defect.

(b) If notice thereof has been received by the Trustee from the Issuer pursuant to Section 9.6 hereof, notice of a Tax Event Redemption shall be given by the Trustee by first-class mail, postage prepaid, mailed not less than twenty calendar days prior to the proposed Redemption Record Date, to each Holder of Notes to be redeemed at the address in the Note Register (with a copy to the Rating Agencies at the addresses specified in Section 10.7 hereof), and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All notices of a Tax Event Redemption shall state: the proposed Tax Event Redemption Date; the proposed Redemption Record Date; and that on such proposed Tax Event Redemption Date, all of the Notes (to the extent of the Aggregate Principal Amount) are to be redeemed and paid in full and that interest thereon shall cease to accrue on the date specified in the notice and the place where such Notes may be surrendered for payment of the Tax Event Redemption Price, which shall be the agency of the Trustee to be maintained as provided in Section 7.2 hereof; and that the Issuer may withdraw such election at any time on or prior to the earlier of the fifth Business Day prior to such proposed Tax Event Redemption Date and the date before which a forward purchase contract is entered into pursuant to Section 9.8(b) hereof.

At the cost of the Issuer, the Trustee shall give notice of any withdrawal of the notice of redemption pursuant to Section 9.5 hereof (to the extent feasible) by overnight courier guaranteeing next day delivery, sent not later than the third Business Day prior to the previously

proposed Tax Event Redemption Date, to each Holder of Notes to be redeemed at the address in the Note Register (with a copy to the Rating Agencies at the addresses specified in Section 10.7 hereof), and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

Notice of Tax Event Redemption of the Notes shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name of the Issuer and at the expense of the Issuer. Failure to give notice of redemption or notice of withdrawal, or any defect therein, to any Holder of any Note shall not impair or affect the validity of the redemption of the Notes or the withdrawal thereof or give rise to any claim based upon such failure or defect.

Section 9.8. Deposit of Optional Redemption Price and Tax Event Redemption Price.

(a) In the case of an Optional Redemption, on or before the fifth Business Day preceding the proposed Optional Redemption Date contained in the notice of redemption as provided in Section 9.6 hereof, the Issuer shall deposit with the Trustee cash or Eligible Investments maturing no later than the Business Day prior to the Optional Redemption Date (unless such Eligible Investments are issued by the Person acting as Trustee, in which event they may mature on the Optional Redemption Date), or any combination thereof, in an amount sufficient to provide for payment of the Optional Redemption Price with respect to the Outstanding Notes and all amounts due under Sections 11.1(b) and 11.1(d) hereof. The Issuer may use all available funds in the Collection Account to provide for payment of the Optional Redemption Price in accordance with Section 11.1 hereof. In the event that there are not sufficient available funds in the Collection Account as of the date the notice of redemption is sent out pursuant to Section 9.6 hereof to pay the Optional Redemption Price on the Optional Redemption Date in accordance with Sections 11.1(b) and 11.1(d) hereof, the Servicer shall give the Trustee written direction to sell Portfolio Collateral in an amount sufficient to provide available funds to pay the Optional Redemption Price in full pursuant to Sections 11.1(b) and 11.1(d) hereof, and shall give the Issuer written direction to enter into, as of a date which is not later than five (5) Business Days prior to the Optional Redemption Date, forward contracts (each of which shall provide for "payment versus delivery" and shall direct that payment be made to the Trustee) with a financial institution rated "A-1+" by Standard & Poor's and "P-1" by Moody's to sell such Portfolio Collateral for settlement at least three Business Days prior to the Optional Redemption Date, and shall provide a copy of such contract to the Trustee prior to such Business Day preceding such redemption date; and pursuant to such instruction, the Trustee shall release and sell such Portfolio Collateral for purposes of such redemption. In determining whether the proceeds of any Optional Redemption will be sufficient to pay the Optional Redemption Price on the Optional Redemption Date, the Issuer and the Trustee may rely on the Market Value of the Portfolio Collateral when entering into any forward purchase agreements.

(b) In the case of a Tax Event Redemption, on or before the fifth Business Day preceding the proposed Tax Event Redemption Date contained in the notice of redemption as provided in Section 9.6 hereof, the Issuer shall deposit with the Trustee cash or Eligible Investments maturing no later than the Business Day prior to the Tax Event Redemption Date (unless such Eligible Investments are issued by the Person acting as Trustee, in which event they may mature on the Tax Event Redemption Date), or any combination thereof, in an amount

sufficient to provide for payment of the Tax Event Redemption Price with respect to the Outstanding Notes and all amounts due under Sections 11.1(b) and 11.1(d) hereof. The Issuer may use all available funds in the Collection Account to provide for payment of the Tax Event Redemption Price in accordance with Section 11.1 hereof. In the event that there are not sufficient available funds in the Collection Account as of the date the notice of redemption is sent out pursuant to Section 9.6 hereof to pay the Tax Event Redemption Price on the Tax Event Redemption Date in accordance with Sections 11.1(b) and 11.1(d) hereof, the Servicer shall give the Trustee written direction to sell Portfolio Collateral in an amount sufficient to provide available funds to pay the Tax Event Redemption Price in full pursuant to Sections 11.1(b) and 11.1(d) hereof, and shall give the Issuer written direction to enter into, as of a date which is not later than five Business Days prior to the Tax Event Redemption Date, forward contracts (each of which shall provide for "payment versus delivery" and shall direct that payment be made to the Trustee) with a financial institution rated "A-1+" by Standard & Poor's and "P-1" by Moody's to sell such Portfolio Collateral for settlement at least three Business Days prior to the Tax Event Redemption Date, and shall provide a copy of such contract to the Trustee prior to such third Business Day preceding such redemption date; and pursuant to such instruction, the Trustee shall release and sell such Portfolio Collateral for purposes of such redemption.

Section 9.9. Notes Payable on Optional Redemption Date.

In the event that notice of Optional Redemption pursuant to Section 9.1 hereof has been given as provided in Section 9.6 hereof and not withdrawn, all Outstanding Notes shall on the Optional Redemption Date become due and payable at the Optional Redemption Price, and (unless the Issuer shall default in the payment of the Optional Redemption Price) all Outstanding Notes shall cease to bear interest on the Optional Redemption Date. Each Holder shall present and surrender its Note at the place specified in the notice of Optional Redemption on or prior to such Optional Redemption Date; *provided* that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any state in the United States with a net worth at least twice the amount of the security or indemnity being deemed sufficient to satisfy such security or indemnity requirement) and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer or the Trustee that the applicable Note has been acquired by a protected purchaser, such payment shall be made without presentation or surrender.

If any Note called for redemption shall not be so paid upon surrender thereof for Optional Redemption (or the delivery of the indemnity pursuant to the preceding paragraph), the principal shall, until paid, bear interest from the Optional Redemption Date at the Applicable Periodic Rate.

Section 9.10. Notes Payable on Mandatory Redemption Date.

In the event of a Mandatory Redemption pursuant to Section 9.2 hereof, principal of the Notes (or, in the case of Class B-1L Notes and the Class B-2L Notes, any Periodic Rate Shortfall Amount and then any principal) in an amount determined pursuant to Section 11.2 hereof shall on the Mandatory Redemption Date become due and payable, and (unless the Issuer

shall default in the payment of the Mandatory Redemption Price) such amounts shall cease to bear interest on the Mandatory Redemption Date.

Section 9.11. Notes Payable on Tax Event Redemption.

In the event that notice of a Tax Event Redemption pursuant to Section 9.5 hereof has been given as provided in Section 9.6 hereof and not withdrawn, all Outstanding Notes shall on the Tax Event Redemption Date become due and payable at the Tax Event Redemption Price, and (unless the Issuer shall default in the payment of the Tax Event Redemption Price) all Outstanding Notes shall cease to bear interest on the Tax Event Redemption Date. Each Holder shall present and surrender its Note at the place specified in the notice of redemption on or prior to such Tax Event Redemption Date; *provided* that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless (an unsecured indemnity agreement of an Institutional Investor organized under the laws of the United States or any state in the United States with a net worth at least twice the amount of the security or indemnity being deemed sufficient to satisfy such security or indemnity requirement) and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer or the Trustee that the applicable Note has been acquired by a bona fide purchaser, such payment shall be made without presentation or surrender.

If any Note called for a Tax Event Redemption shall not be so paid upon surrender thereof for a Tax Event Redemption (or the delivery of the indemnity pursuant to the preceding paragraph), the principal shall, until paid, bear interest from the Tax Event Redemption Date at the Applicable Periodic Rate.

Section 9.12. Initial Deposit Redemption.

The Class A-1LA Notes shall be subject to Initial Deposit Redemption pursuant to the terms of Section 3.3 hereof.

Section 9.13. Reserved.

Section 9.14. Notes Payable on Special Redemption Date.

In the event of a Special Redemption pursuant to Section 9.4 hereof, principal of the Notes (or, in the case of the Class B-1L Notes and the Class B-2L Notes, any Periodic Rate Shortfall Amount and then any principal) in an amount determined pursuant to Section 11.1 hereof shall on the Special Redemption Date become due and payable and (unless the Issuer shall default in the payment of the Special Redemption Price) such amounts shall cease to bear interest on the Special Redemption Date.

ARTICLE X

ACCOUNTS, ACCOUNTINGS AND RELEASES

Section 10.1. Collection of Money.

Except as otherwise expressly provided herein, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Securities included in the Trust Estate, in accordance with the terms and conditions of such Pledged Securities. The Trustee shall segregate and hold all such money and property received by it in trust for the Holders of the Notes and shall apply it as provided in this Indenture.

Section 10.2. Accounts.

(a) The Trustee shall, on or prior to the Closing Date, establish with the Securities Intermediary ten non-interest bearing segregated securities accounts (collectively, the "Accounts") which shall be designated as the "Collection Account," the "Collateral Account," the "Reserve Account," the "Initial Deposit Account," the "Expense Reimbursement Account," the "Loan Funding Account," the "Closing Expense Account," the "Securities Lending Account," the "Default Swap Collateral Account," and the "Default Swap Issuer Account," respectively, identified as held in trust for the benefit of the Noteholders and the applicable Secured Parties or, in the case of the Default Swap Collateral Account, as held in trust for the benefit of the related Default Swap Counterparty and, to the extent provided in this Indenture, the other Secured Parties. The Trustee may establish any number of sub-accounts to the Collection Account for its convenience in administering the Accounts and Trust Estate.

Each Account (including any sub-account) shall be a securities account established with the Securities Intermediary in the name of the Trustee in accordance with Section 6.15.

Pursuant to a Servicer Order, a Default Swap Collateral Account shall be established for each Default Swap. The Trustee shall credit to each such Default Swap Collateral Account on the Closing Date or on the date any such Default Swap is entered into, as applicable, the amount required to secure the obligations of the Issuer in accordance with the terms of the related Default Swap, as directed by the Servicer, which amount shall be at least equal to the amount referred to in paragraph (iv) of the definition of Default Swap, such amounts to be credited to any such Default Swap Collateral Account shall be transferred by the Trustee from the Collection Account or the Initial Deposit Account, as directed by the Servicer.

Amounts credited to a Default Swap Collateral Account shall be maintained in accordance with the terms and provisions of the related Default Swap. Amounts and property credited to a Default Swap Collateral Account shall be withdrawn by the Trustee and applied to the payment of any amounts payable by, or to the delivery of investment property deliverable by, the Issuer to the related Default Swap Counterparty, as directed by the Servicer, in accordance with the terms of such Default Swap. Income received on amounts credited to a Default Swap

Collateral Account will be applied in accordance with the terms of the applicable Default Swap to the payment of any periodic amounts owed by the Issuer to the applicable Default Swap Counterparty on the date such amounts are due, as directed by the Servicer. After application of such amounts, any income then contained in such Default Swap Collateral Account will be withdrawn from such Account, upon direction of the Servicer, and credited to the Collection Account for distribution as Collateral Interest Collections. After payment of all amounts owing by the Issuer to a Default Swap Counterparty in accordance with the terms of the related Default Swap (other than any Default Swap Counterparty Termination Payment) the Trustee shall be directed by the Servicer to withdraw all funds and other property credited to the Default Swap Collateral Account related to such Default Swap and credit such funds and other property to the Collection Account, as Collateral Principal Collections (in the case of cash and Eligible Investments) and the Collateral Account (in the case of Portfolio Collateral and other financial assets) for application as Collateral Principal Collections (other than any income thereon which will be Collateral Interest Collections) in accordance with the terms of this Indenture. Any Default Swap Counterparty Termination Payments owed by the Issuer to the Default Swap Counterparty shall be paid solely from amounts available therefor under the priority of payment provisions described herein.

Except for interest on securities credited to a Default Swap Collateral Account payable to the Issuer as described pursuant to the preceding paragraph, funds and other property standing to the credit of a Default Swap Collateral Account will not be considered to be an asset of the Issuer for purposes of the Interest Coverage Test or the Overcollateralization Tests; *provided, however* that the Default Swap that relates to such Default Swap Collateral Account will be considered an asset of the Issuer for such purposes.

If the terms of any Default Swap require the Default Swap Counterparty to secure its obligations with respect to such Default Swap, upon Servicer Order the Trustee will cause to be established a Default Swap Issuer Account in respect of such Default Swap. The Trustee shall credit to any such Default Swap Issuer Account all funds and other property received from the applicable Default Swap Counterparty to secure the obligations of such Default Swap Counterparty in accordance with the terms of such Default Swap.

Funds and other property standing to the credit of any Default Swap Issuer Account will not be considered to be an asset of the Issuer for purposes of the Interest Coverage Test or the Overcollateralization Tests; *provided, however* that the Default Swap that relates to such Default Swap Issuer Account will be considered an asset of the Issuer for such purposes.

In accordance with the terms of the applicable Default Swap, funds and other property standing to the credit of the related Default Swap Issuer Account will be withdrawn by the Trustee, as directed by the Servicer, and applied to the payment of any amount owing by the related Default Swap Counterparty to the Issuer. After payment of all amounts owing by the Default Swap Counterparty to the Issuer in accordance with the terms of the related Default Swap, all funds and other property standing to the credit of the related Default Swap Issuer Account will be withdrawn from such Default Swap Issuer Account and paid or transferred to the related Default Swap Counterparty, as directed by the Servicer, in accordance with the applicable Default Swap.

The Collection Account shall be a segregated securities account (or, at the Trustee's option, may be comprised of two separate, segregated trust accounts, designated for the collection of Collateral Interest Collections and Collateral Principal Collections, respectively), to which money required to be credited to the Collection Account (and Eligible Investments in which such money may be held from time to time, which Eligible Investments shall be acquired and held pursuant to the terms of Section 6.16 hereof) shall be credited.

All Portfolio Collateral Delivered to the Trustee that consists of security entitlements shall be credited to the Collateral Account.

Pursuant to Servicer Order, on or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a segregated securities account designated as the Securities Lending Account with respect to any such Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty and received by the Trustee in support of its respective obligation under a Securities Lending Agreement shall be immediately credited to the Securities Lending Account. The only permitted withdrawal from or application of funds credited to the Securities Lending Account shall be: (i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or (ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts credited to the Securities Lending Account shall be applied as provided in the preceding paragraph. To the extent provided in a Securities Lending Agreement, earnings on amounts credited to the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty, as directed by the Servicer.

Amounts credited to the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Interest Coverage Test or the Overcollateralization Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

The Trustee shall credit to the Collection Account (i) all Collections received and (ii) all amounts otherwise received by it which are required to be credited thereto pursuant to this Indenture, including but not limited to, Section 10.3(e)(i) hereof.

The Trustee shall credit to the Initial Deposit Account (i) the Deposit received on the Closing Date for credit to the Initial Deposit Account pursuant to Section 3.2(e) hereof, (ii) all other amounts received by the Trustee which are required to be credited thereto pursuant to this Indenture, including but not limited to, Sections 3.2(e), 10.3(e)(ii) and 11.3 hereof and (iii) all proceeds received with respect to the sale of the Post-Closing Sale Collateral.

Upon the purchase of any item of Portfolio Collateral that is a Delayed Drawdown Loan or a Revolving Loan, the Trustee (as instructed by the Servicer) shall credit Collateral Principal Collections to the Loan Funding Account in an amount equal to the Issuer's maximum future funding obligations under the terms of such Delayed Drawdown Loan or Revolving Loan (as identified by the Servicer) and the Collateral Principal Collections so credited shall be considered part of the purchase price of such Delayed Drawdown Loan or Revolving Loan for purposes of Article XII hereof. When Collateral Principal Collections are received by the Trustee with respect to a Delayed Drawdown Loan or a Revolving Loan, the amount of such Collateral Principal Collections that may thereafter be re-borrowed under the terms of the Delayed Drawdown Loan or the Revolving Loan shall be credited to the Loan Funding Account.

The Trustee shall credit to the Expense Reimbursement Account (i) on the Closing Date the $50,000 received on the Closing Date for credit to the Expense Reimbursement Account pursuant to Section 3.2(f) hereof, (ii) all other amounts received by the Trustee which are required to be credited thereto from available amounts in the Collection Account pursuant to Section 11.1 hereof and (iii) all amounts received by it which are required to be credited thereto pursuant to Section 10.3(e)(iii) hereof.

Upon receipt, the Trustee shall credit to the Closing Expense Account on the Closing Date the amount specified pursuant to Section 3.2(f) hereof.

In addition, the Issuer may, but under no circumstances shall be required to, credit such monies to the Collection Account as it deems, in its sole discretion, to be advisable in the event that, but for such action, an Event of Default would occur.

All monies, instruments, investment property and other property credited to the Collection Account, the Initial Deposit Account, the Expense Reimbursement Account, the Loan Funding Account, the Closing Expense Account and the Reserve Account pursuant to this Indenture, and all Portfolio Collateral and other property credited to the Collateral Account, shall be held by the Trustee as part of the Trust Estate and shall be applied in the manner set forth herein.

The Trustee shall pay free and clear of the lien of the Indenture, upon receipt (or withdrawal from the Collection Account if previously credited thereto), all Retained Accrued Interest, as directed by Bear Stearns.

(b) Upon Servicer Order (which may be in the form of standing instructions) or, after the occurrence of an Event of Default upon written direction of the Requisite Noteholders, any portion of the monies in the Collection Account, the Initial Deposit Account, the Loan Funding Account, the Expense Reimbursement Account, Reserve Account and the Closing Expense Account in excess of $10,000 (in the aggregate) shall be applied by the Trustee as directed in such Servicer Order (or written direction of Requisite Noteholders, as the case may be) to purchase one or more Eligible Investments, *provided* that Eligible Investments in the Loan Funding Account are to mature no later than one Business Day after the date of such purchase. If the amount in such Accounts is equal to or less than $10,000, such amount shall remain therein and shall not be held in Eligible Investments. The Servicer and Issuer acknowledge that the

selection of Eligible Investments by the Servicer pursuant to the preceding sentence shall be subject to the availability of such Eligible Investment at the institution at which such Account is held. If, prior to the occurrence of an Event of Default, the Servicer shall not have given directions pursuant to this Section 10.2(b) with respect to any amounts in excess of $10,000 for one Business Day, the Trustee, unless otherwise directed in writing by the Issuer within one Business Day, shall invest such monies in Standby Directed Investments (which, in the case of Eligible Investments in the Loan Funding Account, are to mature no later than one Business Day after the date of such purchase). If, after the occurrence of an Event of Default, the Requisite Noteholders shall not have given directions pursuant to this Section 10.2(b) with respect to any amounts in excess of $10,000 for one Business Day, the Trustee shall apply such moneys as fully as practicable to purchase Standby Directed Investments and maturing not later than the earlier of (i) 30 days after the date of such purchase or (ii) the Business Day prior to the next Payment Date (or, in the case of Eligible Investments in the Initial Deposit Account, the Business Day prior to the Effective Date and in the case of Eligible Investments in the Loan Funding Account, one Business Day after the date of such purchase). All income or other gain from such Eligible Investments shall be credited to the Collection Account, the Initial Deposit Account, the Loan Funding Account, the Expense Reimbursement Account, the Reserve Account or the Closing Expense Account, as the case may be (for which the related purchase was made) and any loss resulting from such Eligible Investments shall be charged to the Collection Account, the Initial Deposit Account, the Loan Funding Account, the Expense Reimbursement Account, the Reserve Account or the Closing Expense Account, as the case may be (for which the related purchase was made). The Trustee shall not in any way be held liable by reason of any insufficiency in the Collection Account, the Initial Deposit Account, the Expense Reimbursement Account, the Loan Funding Account or the Closing Expense Account resulting from any loss on any Eligible Investment. Except as expressly provided herein, the Trustee shall be under no obligation to invest funds held hereunder.

(c) Upon Servicer Order and subject to the provisions of Section 11.3 hereof, on any Business Day, the applicable portion of Collateral Interest Collections shall be released from the Collection Account as specified in such Servicer Order and applied by the Trustee in accordance with such Servicer Order in payment of one or more specified items of Additional Portfolio Collateral purchased in accordance with the provisions of Section 11.3 hereof.

(d) Upon Servicer Order and subject to the provisions of Section 11.3 hereof on any Business Day all or a portion of the Collateral Principal Collections (other than Collateral Disposition Proceeds) shall be released from the Collection Account as specified in such Servicer Order and applied by the Trustee in accordance with such Servicer Order in payment of one or more specified items of Additional Portfolio Collateral purchased in accordance with the provisions of Section 11.3 hereof.

(e) Upon Servicer Order and subject to the provisions of Section 12.4 hereof, on any Business Day all or a portion of the Collateral Disposition Proceeds shall be released from the Collection Account and applied by the Trustee in accordance with such Servicer Order in payment of one or more specified items of Substitute Portfolio Collateral purchased in accordance with the provisions of Section 12.4 hereof.

(f) Upon Servicer Order and subject to the requirements of Section 3.4 hereof, between the Closing Date and the close of business on the Effective Date only, all or a portion of the Deposit available in the Initial Deposit Account shall be released from the Initial Deposit Account and applied by the Trustee in accordance with such Servicer Order in payment for Original Portfolio Collateral purchased in accordance with Section 3.4 hereof. Upon Servicer Order, on the Effective Date and pursuant to Section 3.4(d), all Account Income credited to the Initial Deposit Account shall be released from the Initial Deposit Account and credited to the Collection Account to be applied as Collateral Interest Collections on the next Payment Date and the remainder of such funds shall be considered Collateral Principal Collections.

(g) Upon Servicer Order on behalf of the Issuer, all or a portion of the funds available in the Expense Reimbursement Account shall be released from the Expense Reimbursement Account and applied by the Trustee to the payment to the Issuer for the purpose of paying on or prior to the next Payment Date following the date of delivery of such Servicer Order the Issuer Base Administrative Expenses, as specified therein, which are payable during the Due Period relating to such Payment Date.

(h) On or before the first Payment Date, any remaining portion of the Closing Expense Deposit after the closing expenses have been paid in full, as confirmed by the Issuer, or Servicer on its behalf, (including any Account Income thereon) shall be transferred (i) upon receipt by the Trustee of a Servicer Order to the Initial Deposit Account (and be deemed to be part of the Deposit) or, after the Effective Date, to the Collection Account to be applied as Collateral Interest Collections or (ii) if no such Servicer Order has been received on the Business Day prior to the second Payment Date, to the Collection Account to be applied as Collateral Interest Collections.

(i) Upon Servicer Order on behalf of the Issuer, all or a portion of the funds available in the Loan Funding Account shall be released from the Loan Funding Account and applied by the Trustee to fund amounts drawn under any Delayed Drawdown Loan or Revolving Loan and only funds in the Loan Funding Account shall be used for such purpose. In addition, upon Servicer Order on behalf of the Issuer, all or a portion of the funds available in the Loan Funding Account at any time in excess of the aggregate principal amount of commitments which may be drawn upon all Delayed Drawdown Loans and Revolving Loans in the Portfolio Collateral will be released from the Loan Funding Account and applied by the Trustee to the Collection Account to be applied as Collateral Principal Collections.

(j) On or before the Closing Date, the Trustee shall establish with the Securities Intermediary a single, segregated securities account that shall be designated as the Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the applicable Secured Parties, and over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall credit to the Reserve Account the Reserve Amount from the net proceeds of the Offering. Amounts credited to the Reserve Account shall be applied pursuant to subclause (b) of this Section 10.2.

Section 10.3. Custody and Release of Portfolio Collateral.

(a) The Issuer shall cause each item of the Trust Estate to be Delivered, and the Trustee shall hold each item of the Trust Estate as Delivered, separate and apart from all other property held by the Trustee. To the extent that such of the Trust Estate as constitutes a deposit account is maintained with Investors Bank & Trust Company, the parties hereto hereby make the agreements required pursuant to clause (h) of the definition of Delivery. Notwithstanding any other provision of this Indenture, the Trustee shall not hold any part of the Trust Estate through an agent or nominee except as expressly permitted by this Section 10.3(a). Each of the preceding requirements of this Section 10.3(a) is subject to the right of the Trustee to relocate the Trust Estate to another jurisdiction pursuant to and upon compliance with Section 7.5(b) hereof.

(b) If no Event of Default has occurred and is continuing, the Servicer, by a Servicer Order delivered to the Trustee on or before the settlement date for any sale of an item of Portfolio Collateral, certifying that (i) it has determined that such Portfolio Collateral has become an item of Credit Risk Portfolio Collateral, an item of Credit Improved Portfolio Collateral, an item of Defaulted Portfolio Collateral, an item of Equity Portfolio Collateral or an item of Portfolio Collateral to be sold pursuant to Section 12.1(d) hereof and, in each case, the sale of such Portfolio Collateral is in compliance with Section 12.1 hereof or (ii) based upon receipt of an Issuer Order, on or after the Payment Date occurring in November 2011, the Collections from the sale of such Portfolio Collateral shall be used to effect an Optional Redemption in accordance with Section 9.1 hereof or (iii) based on receipt of an Issuer Order, the Collections from the sale of such Portfolio Collateral shall be used to effect a Tax Event Redemption in accordance with Section 9.5 hereof or (iv) it has determined that such Portfolio Collateral has become subject to withholding or similar tax and its sale is in compliance with Section 12.1 hereof, may direct the Trustee to release from the lien of this Indenture and deliver the Portfolio Collateral specified in such Servicer Order and, upon receipt of such Servicer Order, the Trustee shall release such Portfolio Collateral from such lien and deliver such Portfolio Collateral in accordance with the Servicer Order, in each case against receipt of sale proceeds therefor.

(c) The Trustee on behalf of the Issuer shall notify the Servicer of any Portfolio Collateral for which the Trustee has received notice that such Portfolio Collateral is being redeemed or paid in full. The Trustee, upon Servicer Order, shall release from the lien of this Indenture such Portfolio Collateral and shall deliver such Portfolio Collateral in accordance with the terms of the redemption or payment in full, in each case against receipt of the proceeds of the redemption price therefor or payment in full thereof.

(d) The Trustee on behalf of the Issuer shall notify the Servicer of any Portfolio Collateral for which the Trustee has received notice that such Portfolio Collateral is subject to an Offer. If no Event of Default has occurred and is continuing and subject to the provisions of Article XII hereof, the Servicer shall, by Servicer Order delivered to the Trustee on or before the date set for an exchange, tender or sale of such Portfolio Collateral, set forth in reasonable detail the procedure for response to such Offer and direct the Trustee to release from the lien of this Indenture such Portfolio Collateral in accordance with the terms of the Offer in each case against receipt of payment therefor. Subject to the Trustee's timely receipt of such

direction from the Servicer, the Trustee shall be under no obligation to take any action in respect of such Offer.

(e) (i) The Trustee shall credit all proceeds received by it from the disposition of Portfolio Collateral to the Collection Account unless simultaneously applied to purchase in Substitute Portfolio Collateral (as directed by the Servicer). The Trustee shall also credit to the Collection Account (A) all Account Income with respect to the Collection Account, (B) all proceeds received by it from the disposition of an Eligible Investment in the Collection Account, (C) any portion of the Deposit remaining in the Initial Deposit Account on the Effective Date if an Initial Deposit Redemption is not required on such date, which shall be deemed Collateral Principal Collections; *provided* that, at the direction of the Servicer, up to 25% of such remaining Deposit may be deemed to be Collateral Interest Collections, pursuant to Section 3.4(d) hereof, and (D) upon Servicer Order pursuant to Section 10.2(f) hereof, all Account Income in the Initial Deposit Account on the Effective Date.

(ii) The Trustee shall credit to the Initial Deposit Account all proceeds received by it from the disposition of an Eligible Investment in the Initial Deposit Account (subject, however, to the terms of Section 10.2(f) regarding the transfer of such Account Income to the Collection Account on the Effective Date).

(iii) The Trustee shall credit to the Expense Reimbursement Account all Account Income with respect to the Expense Reimbursement Account and all proceeds received by it from the disposition of an Eligible Investment in the Expense Reimbursement Account.

(f) The Trustee shall, at such time as there are no Notes Outstanding and all obligations of the Issuer under or pursuant to this Indenture have been satisfied, upon receipt of written notice from the Servicer that all amounts owing to the Servicer have been paid, release the Trust Estate from the lien of this Indenture.

Section 10.4. Reports of Trustee.

Upon written request, the Trustee shall supply to the Issuer, Ambac and the Servicer at least three (3) Business Days prior to the date required hereunder for delivery of each Note Valuation Report and each Monthly Report, all information that it has received hereunder with respect to the Pledged Securities which is reasonably required for the preparation of the Note Valuation Report and Monthly Report; such information being in a Microsoft Excel format. The Trustee shall supply in a timely fashion to the Issuer, Bear Stearns, Ambac, each Hedge Counterparty and the Servicer any other information that the Issuer or the Servicer may reasonably request from time to time that is in the possession of the Trustee and required to be provided by Section 10.5 hereof. The Trustee shall promptly forward to the Issuer, Bear Stearns, Ambac and the Servicer copies of notices and other writings received by it from the issuer of any Pledged Security or from any clearing agency with respect to any Pledged Security advising the holders of such security of any rights that the holders might have with respect thereto (including, without limitation, notices of calls and redemptions) as well as all periodic financial reports received from such issuers and clearing agencies with respect to such issuers. Nothing in this

Section 10.4 hereof shall be construed to impose upon the Trustee, in such capacity, any duty to prepare any report or statement which the Issuer is required to prepare or provide under Section 10.5 hereof or to calculate, recalculate or verify any information required to be set forth in any such report or statement (other than information regularly maintained by the Trustee by reason of its acting as Trustee hereunder) prepared or required to be prepared by the Issuer or the Servicer. Nothing herein shall be construed to obligate the Trustee to disclose any information concerning its business or its operations which it reasonably considers confidential in nature.

On the date each Monthly Report is delivered or two Business Days prior to the Payment Date if with respect to a Note Valuation Report delivered in a month in which such Payment Date occurs, the Issuer shall cause to be promptly delivered to Standard & Poor's the Standard & Poor's CDO Monitor input file in the Standard & Poor's Preferred Format (*provided* that the specific parameters identified by Standard & Poor's have been delivered to the Issuer and the Trustee prior to the Closing Date and are limited to the scope herein stated) containing the Current Portfolio as of the date of determination and used to determine the S&P Scenario Loss Rate and the Schedule of Portfolio Collateral to Moody's in electronic format. In addition, the Issuer may provide any such reports in electronic form on a password-protected internet site or such other electronic format as the Issuer deems desirable.

Section 10.5. Accountings.

(a) Monthly. Not later than the (i) the first day of each month (or if such day is not a Business Day on the next succeeding Business Day) for months where no Payment Date occurs or (ii) the related Payment Date, for months in which a Payment Date occurs, commencing in July 2007, the Issuer shall compile and provide, or procure the provision, to the Trustee, the Paying and Transfer Agent, each Noteholder or Beneficial Owner (upon receipt by the Trustee of a certificate in the form of Exhibit H and to any Servicer of such Noteholder or Beneficial Owner to whom such Noteholder or Beneficial Owner has in writing directed the Trustee to send a copy of such report), Bear Stearns, the Servicer, each Hedge Counterparty and each Rating Agency (but only so long as any Class of Notes is rated) a monthly report in a Microsoft Excel format (the "Monthly Report"), which shall contain the following information and instructions with respect to the Pledged Securities included in the Trust Estate, determined as of the seventh Business Day preceding either (i) the first day of such month (or if such day is not a Business Day on the next succeeding Business Day) or (ii) the Payment Date in months in which a Payment Date occurs (based in part on information provided by the Servicer):

(1) the Aggregate Principal Amount of the Portfolio Collateral, the Principal Balance of each item of Portfolio Collateral, and the annual interest rate, maturity date, the designated seniority, and the LIN, or, with respect to Loan X Inc., the applicable ID (if either is used by the Servicer) or CUSIP Number of each item of Portfolio Collateral in the Trust Estate, as well as the rating by Standard & Poor's and the rating by Moody's (*provided* that any private confidential credit assessments, including estimated or shadow ratings, shall not be disclosed in any report issued and/or published to any party other than the Issuer, the Trustee and the Servicer) of such item of Portfolio Collateral determined according to the methods prescribed by Schedules D and F, respectively, and the Moody's corporate family rating, senior unsecured rating or long-

term issuer rating, as applicable, the Moody's Default Probability Rating and the notch difference, if any, of each item of Portfolio Collateral;

(2) the Balance of the Eligible Investments in the Collection Account, the annual interest rate, maturity date, Principal Balance and issuer of each Eligible Investment in the Trust Estate, as well as the rating by Standard & Poor's and the rating by Moody's of such Eligible Investment;

(3) the nature, source and amount of any Collections in the Collection Account, including the Collateral Interest Collections and Collateral Principal Collections received since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report);

(4) the amount and identity of each item of Portfolio Collateral that was released for sale indicating the reason for such sale; and the amount and identity of each item of Portfolio Collateral that was Granted, since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report);

(5) the identity, principal amount of and Market Value (segregating the Market Value determinations made by the Serving Entities) of each item of Portfolio Collateral in the Trust Estate which is an item of Defaulted Portfolio Collateral and Deferred Interest PIK Bond and the identity and principal amount of each item of Portfolio Collateral that became an item of Defaulted Portfolio Collateral, Deferred Interest PIK Bond or Equity Portfolio Collateral since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report);

(6) the purchase price of each Pledged Security Granted and the sale price of each Pledged Security subject to a sale since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report); whether such Pledged Security is Portfolio Collateral or an Eligible Investment in the Collection Account;

(7) (i) the identity, principal amount, Market Value, purchase price and percentage of the Aggregate Par Amount of each item of Portfolio Collateral included in the Trust Estate which is an item of Discount Portfolio Collateral, since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report) and (ii) the number of consecutive Business Days such item of Discount Portfolio Collateral has traded above (i) 90% of its Principal Balance with respect to Portfolio Loans and (ii) 85% of its Principal Balance with respect to Debt Securities;

(8) after the Effective Date, the calculation of the Class A Overcollateralization Ratio, the Class B-1L Overcollateralization Ratio, the Class B-2L Overcollateralization Ratio and the Interest Coverage Ratio and the amount of any Additional Collateral Deposit Requirement and prior to the Effective Date and with respect to the Interest Coverage Ratio and the amount of any Additional Collateral Deposit Requirement, prior to the second Payment Date, listing such information as "not

applicable" and with respect to the Interest Coverage Ratio, in months other than months in which a Payment Date occurs, calculated in accordance with the second paragraph of the definition of the Interest Coverage Ratio and listing such results but marking them as "not applicable";

(9) information with respect to the Portfolio Collateral Granted to the Trustee since the date of determination of the last Monthly Report (or since the Closing Date, in the case of the first such report) reasonably necessary to determine whether the eligibility criteria set forth in Section 12.2 were satisfied (at the time of such grant);

(10) the percentage of the Aggregate Par Amount comprised of non-U.S. Portfolio Collateral and the rating of the sovereign country in which the issuer of such non-U.S. Portfolio Collateral is domiciled;

(11) the identity of and the Market Value of each item of Portfolio Collateral which is a Current Pay Obligation and the percentage of the Aggregate par Amount comprised of Current Pay Obligations;

(12) the percentage of Portfolio Loans for which a Facility Rating has been withdrawn by Moody's due to a restructuring of such Portfolio Loan;

(13) the Weighted Average Life, the Moody's Weighted Average Rating (determined in accordance with the procedures set forth in Schedule F), the Weighted Average Coupon of the Fixed Rate Portfolio Collateral and the Weighted Average Margin of the Floating Rate Portfolio Collateral, the S&P Weighted Average Recovery Rate and the Moody's Weighted Average Recovery Rate of the Portfolio Collateral, the Moody's Correlation Factor of the Portfolio Collateral, the Aggregate Principal Amount and percentage of the Aggregate Par Amount of Portfolio Collateral which consists of DIP Loans, Delayed Drawdown Loans, Revolving Loans and which has a Moody's Rating or Standard & Poor's Rating of "Caa1" or below or "CCC+" or below, respectively, other than Defaulted Portfolio Collateral, and the Applicable Percentage of each item of Portfolio Collateral;

(14) (a) the percentage of the Aggregate Par Amount consisting of obligations of issuers domiciled in a Group A Country, (b) the percentage of the Aggregate Par Amount consisting of obligations of issuers domiciled in a Group B Country and (c) the percentage of the Aggregate Par Amount consisting of obligations of issuers domiciled in any country other than the United States of America, a Group A Country or a Group B Country;

(15) the percentage of the Aggregate Par Amount consisting of Synthetic Securities including the identity of the Synthetic Security Obligors and the Reference Obligation and their rating, and the percentage of the Aggregate Par Amount consisting of Strip Securities;

(16) the Aggregate Principal Amount of the Portfolio Collateral and the percentage of the Aggregate Principal Amount of the Portfolio Collateral consisting of obligations maturing after August 1, 2024;

(17) the par amount of all Portfolio Collateral included in the Trust Estate as of the Effective Date;

(18) the results of the Standard & Poor's CDO Monitor determined in accordance with Schedule D hereto, whether the Standard & Poor's CDO Monitor Test is passed or failed and the S&P Break-Even Loss Rate and the S&P Scenario Loss Rate for each Class;

(19) the Aggregate Principal Amount consisting of CLO Securities, including the Aggregate Principal Amount of each CLO Security with a Moody's Rating below "Baa3" or a Standard & Poor's Rating below "BBB-" and (b) the percentage of the Aggregate Par Amount of CLO Securities managed by any Servicer Entities; and

(20) such other information as the Trustee or the Servicer may reasonably request.

Upon receipt of each Monthly Report, the Servicer shall compare the information contained therein and described in clauses (1) through (19) above to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of each such Monthly Report, notify the Issuer, the Collateral Administrator (if different from the Trustee) and the Trustee in writing of any discrepancies between the information contained in the Monthly Report and the information maintained by the Servicer with respect to the Collateral. If any discrepancy exists, the Issuer and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall cause the Independent Accountants appointed by the Issuer pursuant to Section 10.6 hereof to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Issuer's records, the Monthly Report or the Issuer's records shall be revised accordingly and, as so revised, shall be utilized in making all calculations pursuant to this Indenture. Each Rating Agency (in each case only so long as any Class of Notes is rated by it), Bear Stearns and the Servicer shall be notified in writing of any such revisions by the Trustee on behalf of the Issuer.

After the end of the Revolving Period, the Monthly Report shall also contain a statement to the effect that it is not unusual for the eligibility criteria set forth in Section 12.2 hereof not to be satisfied following the Revolving Period as the Portfolio Collateral matures or is otherwise disposed of and principal on the Notes is paid down.

(b) Payment Date Accounting. With respect to each Calculation Date, the Issuer shall render or cause to be rendered an accounting (the "Note Valuation Report"), determined as of such Calculation Date, and delivered to the Trustee, the Paying and Transfer Agent, Bear Stearns, the Servicer, each Hedge Counterparty, the Collateral Administrator and each Rating Agency (but only so long as any Class of Notes is rated by it), not later than the Business Day prior to the Payment Date related to such Calculation Date. Upon receipt by the Trustee of a certificate in the form of Exhibit H, the Trustee shall make available the Note Valuation Report to the requesting Noteholder or Beneficial Owner. The Note Valuation Report shall contain the following information (based in part on information provided by the Servicer):

(1) The Aggregate Principal Amount of the Portfolio Collateral as of the close of business on such Calculation Date, after giving effect to Collateral Principal Collections received during the related Due Period and applied to purchase Additional Portfolio Collateral or Substitute Portfolio Collateral in accordance with the provisions of this Indenture, the sale or other disposition of each item of Portfolio Collateral during such Due Period and the Grant in favor of the Trustee of each item of Substitute Portfolio Collateral and Additional Portfolio Collateral during such Due Period.

(2) The Aggregate Principal Amount of the Class A-1LA Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LA Notes, and the amount of principal payments to be made on the Class A-1LA Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-1LA Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LA Notes.

(3) The Aggregate Principal Amount of the Class A-1LB Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LB Notes, and the amount of principal payments to be made on the Class A-1LB Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-1LB Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-1LB Notes

(4) The Aggregate Principal Amount of the Class A-2L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-2L Notes, and the amount of principal payments to be made on the Class A-2L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-2L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-2L Notes.

(5) The Aggregate Principal Amount of the Class A-3L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class A-3L Notes, and the amount of principal payments to be made on the Class A-3L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class A-3L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class A-3L Notes.

(6) The Aggregate Principal Amount of the Class B-1L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class B-1L Notes, and the amount of principal payments to be made on the Class B-1L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class B-1L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class B-1L Notes.

(7) The Aggregate Principal Amount of the Class B-2L Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Class B-2L Notes, and the amount of principal payments to be made on the Class B-2L Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Class B-2L Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Class B-2L Notes.

(8) The Periodic Interest Amount and the Periodic Rate Shortfall Amount, if any, for each Class of Notes (including the Note Component) for the Payment Date relating to such Calculation Date for the Payment Date relating to such Calculation Date and the Rated Balance and Rated Coupon (and any accrued and unpaid interest thereon) for the Combination Notes for the Payment Date relating to such Calculation Date.

(9) The Aggregate Principal Amount of the Combination Notes as of the Calculation Date and such Aggregate Principal Amount expressed as a percentage of the original Aggregate Principal Amount of the Combination Notes and the amount of principal payments to be made on the Combination Notes on the Payment Date relating to such Calculation Date and the Aggregate Principal Amount of the Combination Notes after giving effect to such principal payments and expressed as a percentage of the original Aggregate Principal Amount of the Combination Notes.

(10) The Rated Balance of the Combination Notes as of such Calculation Date and payments made on account of such Rated Balance on the Payment Date relating to such Calculation Date.

(11) The Base Servicing Fee, the Additional Servicing Fee, the Supplemental Servicing Fee (if any), the Waived Servicing Fees (if any), the Trustee Administrative Expenses, the Preferred Shares Administrative Expenses, the Issuer Base Administrative Expenses, any replenishment of the Expense Reimbursement Account and the Issuer Excess Administrative Expenses, in each case including any amount with respect to any previous Payment Date that was not paid on a previous Payment Date relating to such Calculation Date on an itemized basis.

(12) The amount of any payment to be received from any Hedge Counterparty on the Payment Date relating to such Calculation Date and any proceeds from the sale of the rights to such payment received during the Due Period relating to such Calculation Date.

(11) For the Collection Account:

(a) the Balance in the Collection Account as of such Calculation Date;

(b) the amounts payable from the Collection Account pursuant to Article XI hereof on the Payment Date relating to such Calculation Date (in the aggregate and under each Section and subsection of Article XI hereof); and

(c) the Balance remaining in the Collection Account immediately after giving effect to all payments to be made on the Payment Date relating to such Calculation Date.

(12) For the Loan Funding Account, the Balance in the Loan Funding Account as of such Calculation Date, the amounts, if any, payable from the Loan Funding Account to fund amounts drawn under any Delayed Drawdown Loan or Revolving Loan with respect to such Calculation Date and the amount, if any, transferred from the Loan Funding Account to the Collection Account as Collateral Principal Collections with respect to such Calculation Date.

(13) (A) The Overcollateralization Ratios and the Interest Coverage Ratio (including a break-down of the components of such ratios) and the results of the Overcollateralization Tests, the Interest Coverage Test and the amount of any Additional Collateral Deposit Requirement (which shall not be reported on a pass/fail basis) as of the close of business on such Calculation Date (after giving effect to any payments to be made on the Payment Date relating to such Calculation Date, other than payments of the Mandatory Redemption Price with respect to an O/C Redemption, if any, made pursuant to Section 9.2 hereof and Section 11.2 hereof), (B) if the Interest Coverage Test or any Overcollateralization Test is not met, the amount of O/C Redemption of each Class of Notes on the related Payment Date pursuant to Section 9.2 hereof that would be necessary on the related Payment Date in order to cause the Interest Coverage Test or such Overcollateralization Test to be met (after giving effect to all payments to be made on such Payment Date), (C) the results of the Interest Coverage Test and the Overcollateralization Tests after giving effect to such O/C Redemptions pursuant to Section 9.2 hereof and the other payments, if any, to be made on such Payment Date, (D) if a Rating Confirmation Failure has occurred, the amount of Rating Confirmation Failure Redemption of each Class of Notes on the related Payment Date pursuant to Section 9.2 hereof that would be necessary on the related Payment Date in order to receive a Rating Confirmation (after giving effect to all payments to be made on such Payment Date), and (E) if the Additional Collateral Deposit Requirement is not met, the amount of cash that would be necessary on the related Payment Date to be applied in accordance with Section 11.1 in order to cause the Additional Collateral Deposit Requirement to be met (after giving effect to all payments to be made on such Payment Date); *provided* that the Note Valuation Report need not contain information relating to the Interest Coverage Test or the Additional Collateral Deposit Requirement with respect to the first Calculation Date.

(c) Noteholder Report. With respect to each Calculation Date, the Issuer shall render or cause to be rendered an accounting (the "Noteholder Report"), determined as of such Calculation Date, and completed not later than the Business Day preceding the Payment Date relating to such Calculation Date. The Issuer shall deliver to the Trustee, each Noteholder or Beneficial Owner (upon receipt by the Trustee of a certificate in the form of Exhibit H), each Rating Agency (but only so long as any Class of Notes is rated by such Rating Agency), the Paying and Transfer Agent, each Hedge Counterparty and the Servicer, a copy of the Noteholder Report promptly after such completion no later than the tenth day after such Calculation Date. The Noteholder Report shall contain the information contained in Section 10.5(b)(1) through (12) and Section 10.5(a)(1) through (19).

Each Noteholder Report shall contain the following statement: "Each holder of a Note (excluding any holder of a Note (other than a Class B-2L Note transferred after the Closing Date or a Combination Note) issued pursuant to Regulation S but including any holder of a Class B-2L Note transferred after the Closing Date or a Combination Note issued pursuant to Regulation S) or a Combination Note or any interest therein is required at all times to be "Qualified Institutional Buyer" within the meaning of Rule 144A ("Rule 144A") under the U.S. Securities Act of 1933, as amended (the "Securities Act") who is also a "Qualified Purchaser" within the meaning of Section 3(c)(7) of the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act") and each such holder (i) is not formed for the purpose of investing in the Notes (unless all of its beneficial owners are Qualified Purchasers), (ii) is not a dealer described in paragraph (a)(1)(ii) of Rule 144A (unless such holder owns and invests on a discretionary basis at least U.S. $25 million in securities of issuers that are not affiliated persons of such dealer), (iii) is not a plan referred to in paragraph (a)(1)(i)(D) or (E) of Rule 144A or a trust fund referred to in paragraph (a)(1)(i)(F) of Rule 144A that holds the assets of such plan (unless investment decisions are made solely by the fiduciary, trustee or sponsor of such plan), (iv) each account for which it is holds Notes is holding Notes in at least the minimum denomination set forth in the Indenture and (v) will provide written notice of the foregoing and any other applicable transfer restrictions to any transferee of a Note or any interest therein. The Notes (excluding Notes (other than Class B-2L Notes transferred after the Closing Date and Combination Notes) issued pursuant to Regulation S but including Class B-2L Notes transferred after the Closing Date and Combination Notes issued pursuant to Regulation S) and the Combination Notes and any interest therein may only be transferred to a transferee that can make the foregoing representations and the Co-Issuers have the right, at any time, to force any holder of a Note who is not a Qualified Institutional Buyer and a Qualified Purchaser to sell or redeem its Notes."

After the end of the Revolving Period, the Noteholder Report shall also contain a statement to the effect that it is not unusual for the eligibility criteria set forth in Section 12.2 hereof not to be satisfied following the Revolving Period as the Portfolio Collateral matures or is otherwise disposed of and principal on the Notes is paid down.

(d) Payment Date Instructions. The Note Valuation Report referred to in subsection (b) of this Section 10.5 shall constitute instructions to the Trustee to withdraw on the Payment Date relating to such Note Valuation Report the available funds from the Collection Account and make the payments set forth in the Note Valuation Report in the manner specified, and in accordance with the priorities established, in Article XI hereof.

(e) Optional Redemption Instructions. Not less than three Business Days after an Issuer Order electing an Optional Redemption of the Notes pursuant to Section 9.1 has been delivered to the Trustee, the Issuer shall compute the following information and provide such information in a statement (the "Redemption Date Statement") delivered to the Trustee, each Hedge Counterparty, the Servicer and the Rating Agencies:

(1) the amounts payable to the Trustee, the Paying and Transfer Agent, the Issuer and the Servicer pursuant to Sections 11.1(b) and (d);

(2) the amount in the Collection Account available for payment of the Optional Redemption Price; and

(3) the Optional Redemption Price.

(f) Tax Event Redemption Instructions. Not later than three Business Days after an Issuer Order electing a Tax Event Redemption of the Notes Pursuant to Section 9.5 has been delivered to the Trustee, the Issuer shall compute the following information and provide such information in a statement (also, a "Redemption Date Statement") delivered to the Trustee, the Servicer and the Rating Agencies.

(1) the amounts payable to the Trustee, the Issuer, the Paying and Transfer Agent and the Servicer pursuant to Sections 11.1(b) and (d);

(2) the amount in the Collection Account available for payment of the Tax Event Redemption Price; and

(3) the Tax Event Redemption Price.

(g) Appointment of Agent. The Issuer may appoint an administrator or other agent to perform its obligations to provide reports pursuant to this Article X and certain calculations pursuant to Article XII. Pursuant and subject to the terms of a collateral administration agreement (the "Collateral Administration Agreement") entered into or to be entered into among the Issuer, the Servicer and Investors Bank & Trust Company, the Issuer has appointed or shall appoint Investors Bank & Trust Company, as its initial agent for such purposes and Investors Bank & Trust Company, has accepted or shall accept such appointment and has agreed or shall agree to perform such obligations, as provided therein.

Section 10.6. Reports by Independent Accountants.

(a) The Issuer will appoint prior to the Effective Date, a nationally recognized firm of accountants as the firm or firms of Independent certified public accountants to prepare and deliver the reports or certificates of such accountants required by this Indenture. Upon any resignation by, or removal of, such firm, the Issuer shall promptly appoint a successor thereto that shall also be a firm of Independent certified public accountants of recognized national reputation in the United States and for so long as any Notes are then rated, provide notice of such successor to each Rating Agency then rating any Notes. If the Issuer shall not have appointed a successor within 30 days of any firm resigning from the position of Independent certified public accountants to the Issuer, the Trustee shall promptly appoint a successor firm of Independent certified public accountants of recognized national reputation in the United States and for so long as any Notes are then rated, provide notice of such successor to each Rating Agency then rating any Notes. The fees of such Independent certified public accountants and its successor shall be payable by the Issuer.

(b) On or before May 31 in 2008 and on or before May 31 in each year thereafter through 2012, the Issuer shall cause to be delivered to the Trustee, the Servicer and each Rating Agency, if any, then rating any Class of Notes a certificate (the "Accountants' Certificate") from the firm of Independent certified public accountants appointed by the Issuer

indicating (i) that such firm has reviewed the Note Valuation Reports and Redemption Date Statements relating to the Payment Dates in such period, (ii) that the calculations within such Note Valuation Reports and Redemption Date Statements have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in a statement), (iii) the Aggregate Principal Amount of the Portfolio Collateral securing the Notes as of the Calculation Date relating to such Payment Dates and (iv) the procedures undertaken by such accountants to perform such calculations. In the event such firm requires the Trustee to agree to the procedures performed by such firm, the Servicer shall direct the Trustee in writing to so agree; it being understood and agreed that the Trustee will deliver such letter agreement in conclusive reliance upon the direction of the Servicer, and the Trustee makes no independent inquiry or investigation as to, and shall have no obligation or liability in respect of the sufficiency, validity or correctness of such procedures. Upon receipt by the Trustee of a certificate in the form of Exhibit H, the Trustee shall make available a copy of the Accountant's Certificate to the requesting Noteholder.

(c) Beginning with the year 2008, on or before (i) January 31 of each year or, (ii) if later, on or before any date in each year on which any of the information described below is required to be delivered to the Noteholders under the Code or any other applicable law, but, in any case, not later than March 1 of each year, the Issuer shall cause each Paying Agent in the United States to prepare and deliver a Form 1099 to each Noteholder and the Issuer shall provide or cause to be provided such other information as is requested by a Noteholder, which is necessary to permit such Holder to prepare and file any applicable U.S. income tax returns related to the most recently ended calendar year.

Section 10.7. Reports to Rating Agencies.

For so long as any Class of Notes is rated by a Rating Agency, the Issuer shall provide or cause to be provided to each Rating Agency then rating such Notes with a copy of each Monthly Report, each Note Valuation Report, each Noteholder Report, each Accountants' Certificate and any other notification delivered to any Noteholder pursuant to the provisions of this Indenture and with such additional information as such Rating Agency may from time to time reasonably request and the Issuer determines in its sole discretion may be obtained and provided without unreasonable burden or expense. In addition, upon receipt of actual knowledge thereof, the Trustee shall send to each Rating Agency notice of any Default set forth in Section 5.1 hereof. The Trustee will also give notice to the Rating Agencies, of any removal of the Servicer pursuant to Section 5.4(c). In addition, the Servicer shall provide to the Rating Agencies those notices related to the Issuer's purchase of Synthetic Securities that are contemplated by Section 12.10 (which notices, in the case of notices provided by the Servicer to Moody's, shall be sent to the attention of a "Managing Director" of Moody's CBO/CLO Group); and, if Standard & Poor's or Moody's so requests and if such requesting party did not rate the related Synthetic Securities or Securities Lending Agreements, the Servicer shall also provide to such requesting party a copy of the transaction documents in its possession, relating to all Synthetic Securities or Securities Lending Agreements. The Servicer shall also notify Standard & Poor's if more than 10% of the Aggregate Principal Amount of Portfolio Collateral are obligations of issuers domiciled outside the United States. The address of Standard & Poor's for purposes of notices and reports hereunder shall be as follows: 55 Water Street, New York, New York 10041-0003, (email: cdo_surveillance@sandp.com), Attention: Structured Finance Ratings,

or such other address of which the Issuer is notified in writing by Standard & Poor's. The address of Moody's for purposes of notices and reports hereunder shall be as follows: 99 Church Street, New York, New York 10007, email: cdomonitoring@moodys.com, Attention: CBO Monitoring Group or such other address of which the Issuer is notified in writing by Moody's.

ARTICLE XI

APPLICATION OF MONIES

Section 11.1. Disbursements of Monies from Collection Account.

Except as otherwise set forth in Section 10.2 hereof, disbursements of monies from the Closing Expense Account and the Collection Account shall be made at the following times and in the following order of priority:

(a) On the Closing Date, the Trustee shall pay, from the funds in the Closing Expense Account, the fees, commissions and expenses associated with the Closing (collectively, "Closing Expenses") as set forth in an Issuer Order delivered to the Trustee on the Closing Date; *provided* that any such Closing Expenses may in the alternative be paid on any date after the Closing Date and prior to the Payment Date in November 2007 from the Closing Expense Deposit in the Closing Expense Account pursuant to an Issuer Order delivered to the Trustee (which shall state that the amounts called for to be paid therein are Closing Expenses). All payments pursuant to Section 11.1 hereof may be made from the United States. The Issuer may appoint an agent or agents for purposes of making payment of expenses, fees and commissions to be paid on its behalf from outside the United States pursuant hereto and (each such person shall be considered, a "Paying Agent" hereunder).

(b) On each Payment Date (including the Final Maturity Date and if funds become available after the Final Maturity Date, on any date after the Final Maturity Date) and in accordance with the Note Valuation Report for the Calculation Date immediately preceding such Payment Date, the Trustee shall withdraw from the Collection Account (to the extent of the available funds therein excluding therefrom (I) during the Revolving Period, any Collateral Disposition Proceeds received during the Due Period relating to such Calculation Date to be applied by the Trustee during the related Due Period or the immediately succeeding Due Period as set forth in Section 12.4 hereof and (II) during the Revolving Period or Amortization Period, Collateral Principal Collections in an aggregate amount equal to the agreed purchase prices for Additional Portfolio Collateral with respect to which the Issuer has entered into a commitment (as set forth in the notice from the Servicer to the Trustee) prior to the end of such Due Period for the purchase thereof, but has not settled such purchase by the end of such Due Period, as set forth in Section 11.3 hereof) an amount up to the Collateral Interest Collections and, to the extent the amount of the Collateral Interest Collections is not sufficient, an amount up to the Collateral Principal Collections, and payments received from any Hedge Counterparties under the Hedge Agreements, and shall make a disbursement in the following order of priority:

FIRST: To the Trustee for the payment in full of the Trustee Administrative Expenses for the related Due Period and any Trustee Administrative Expenses with respect to any previous Payment Date that were not paid on any previous Payment Date, and then to the Paying and Transfer Agent for the payment in full of the Preferred Shares Administrative Expenses for the related Due Period and any Preferred Shares Administrative Expenses with respect to any previous Payment Date that were not paid on any previous Payment Date;

SECOND: To the Issuer for the payment of Issuer Base Administrative Expenses with respect to the related Due Period and any Issuer Base Administrative Expenses with respect to a previous Payment Date that were not paid on a previous Payment Date;

THIRD: For the replenishment of the Expense Reimbursement Account up to an amount equal to U.S. $50,000 to the extent any amount therein has paid the Issuer Base Administrative Expenses for the related Due Period and to the extent any amount so paid for any prior Due Period has not been so replenished; *provided however*, notwithstanding anything to the contrary herein, the amounts set forth in clauses FIRST through this clause THIRD shall not exceed (i) $250,000 per annum plus (ii) the greater of $75,000 per annum and 0.0275% per annum of the Aggregate Par Amount on the related Calculation Date.

FOURTH: To the Servicer for the payment of the Base Servicing Fee with respect to such Payment Date and any Base Servicing Fee with respect to any previous Payment Date that was not paid on a previous Payment Date, and to the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Base Dividend then due and any Class II Preferred Share Base Dividend with respect to any previous Payment Date that was not paid on a previous Payment Date.

FIFTH: To each Hedge Counterparty for the payment of amounts due under any Hedge Agreement (excluding any termination payment due under any such Hedge Agreement in respect of which respective Hedge Counterparty is the sole "Defaulting Party" or sole "Affected Party" as such terms are defined under the related Hedge Agreement), if applicable.

Notwithstanding anything herein to the contrary, any amounts to be paid to the Paying and Transfer Agent in its capacity as paying and transfer agent for the Preferred Shares pursuant to the Indenture will be delivered by the Trustee to the Paying and Transfer Agent for deposit in the Preferred Shares Collection Account in accordance with the Paying and Transfer Agency Agreement.

On the first Payment Date, any funds included in the Reserve Amount that are remaining after the Aggregate Base Fees and Expenses set forth above have been paid, shall be distributed in full as Adjusted Collateral Interest Collections or Adjusted Collateral Principal

Collections in accordance with the Priority of Payments set forth below. The Servicer shall, in its sole discretion, determine the amount, if any, of the remaining Reserve Amount that shall constitute Adjusted Collateral Interest Collections, and the amount, if any, of the remaining Reserve Amount that shall constitute Adjusted Collateral Interest Collections.

(c) On each Payment Date with respect to the **Revolving Period** and the **Amortization Period** in accordance with the Note Valuation Report for the Calculation Date immediately preceding such Payment Date, the Trustee shall withdraw from the Collection Account (to the extent of the available funds therein, excluding therefrom (I) during the Revolving Period or the Amortization Period, any Collateral Disposition Proceeds received during the Due Period relating to such Calculation Date to be applied by the Trustee during the related Due Period or the immediately succeeding Due Period as set forth in Section 12.4 hereof and (II) during the Revolving Period, Collateral Principal Collections in an aggregate amount equal to the agreed purchase prices for Additional Portfolio Collateral with respect to which the Issuer has entered into a commitment (as set forth in the notice from the Servicer to the Trustee) prior to the end of such Due Period for the purchase thereof, but has not settled such purchase by the end of such Due Period, as set forth in Section 11.3 hereof) an amount equal to the Adjusted Collateral Collections and shall make the following disbursements:

(i) The Trustee shall apply such amounts constituting Adjusted Collateral Interest Collections (to the extent of available funds therefor) in the following order of priority:

FIRST: To the payment, *pro rata*, to the Holders of the Class A-1LA Notes and the Class A-1LB Notes of an amount equal to the applicable Cumulative Interest Amount;

SECOND: To the payment to the Holders of the Class A-2L Notes of an amount equal to the applicable Cumulative Interest Amount;

THIRD: To the payment to the Holders of the Class A-3L Notes of an amount equal to the applicable Cumulative Interest Amount;

FOURTH: To the payment of principal as an O/C Redemption in the amount, if any, required to be paid in order to satisfy the Class A Overcollateralization Test and, on each Payment Date after the second Payment Date, the Interest Coverage Test, such amount to be paid first, to the Class A-1LA Notes; second, to the Class A-1LB Notes; third, to the Class A-2L Notes and fourth, to the Class A-3L Notes, in that order, until each such Class is paid in full, to the extent required to satisfy the Class A Overcollateralization Test and the Interest Coverage Test;

FIFTH: To the payment of the Cumulative Interest Amount with respect to the Class B-1L Notes and such Payment Date;

SIXTH: To the payment of principal as an O/C Redemption in the amount, if any, required to be paid in order to satisfy the Class B-1L Overcollateralization Test, such amount to be paid first, to the Class A-1LA Notes; second, to the Class A-1LB Notes; third, to the Class A-2L Notes; fourth, to the Class A-3L Notes; and fifth, to any Periodic Rate Shortfall Amount with respect to the Class B-1L Notes and then to principal of the Class B-1L Notes, in that order, until each such Class is paid in full, to the extent required to satisfy the Class B-1L Overcollateralization Test;

SEVENTH: To the payment of the Cumulative Interest Amount with respect to the Class B-2L Notes and such Payment Date;

EIGHTH: During the Revolving Period, to the payment of principal as Rating Confirmation Failure Redemption, the amount, if any, required to be paid in order to receive a Rating Confirmation, such amount to be paid first, to the Class A-1LA Notes; second, to the Class A-1LB Notes; third, to the Class A-2L Notes; fourth, to the Class A-3L Notes; fifth, to any Periodic Rate Shortfall Amount with respect to the Class B-1L Notes and then to principal of the Class B-1L Notes; and sixth, to any Periodic Rate Shortfall Amount with respect to the Class B-2L Notes and then to principal of the Class B-2L Notes, in that order, until each such Class is paid in full, to the extent required to receive a Rating Confirmation;

NINTH: To the payment of principal as an O/C Redemption in the amount, if any, required to be paid in order to satisfy the Class B-2L Overcollateralization Test, such amount to be paid as follows: (a) 50% of available funds to the payment of principal on the Class B-2L Notes, and (b) 50% (or, after the Class B-2L Notes are paid in full, 100%) of available funds to the sequential payment of principal on the Notes, in amounts necessary to satisfy the Class B-2L Overcollateralization Test on such Payment Date;

TENTH: (I) During the Revolving Period, on each Payment Date after the second Payment Date to the extent of available funds, *pro rata*, an amount equal to 35% of the funds available up to the Additional Collateral Deposit Requirement to be deposited into the Collection Account and applied to pay principal of the Class B-2L Notes until such Class is paid in full and an amount equal to 65% (or, after the Class B-2L Notes are paid in full, 100%) of the funds available up to the Additional Collateral Deposit Requirement for the purchase of Additional Portfolio Collateral (other than CLO Securities), as directed by the Servicer or the Issuer, pursuant to Section 11.3 hereof during the immediately succeeding Due Period and (II) during the Amortization Period to the extent of available funds, *pro rata*, an amount equal to 35% of the funds available up to the Additional Collateral Deposit Requirement

to be deposited into the Collection Account and applied to pay principal of the Class B-1L Notes until such Class is paid in full and an amount equal to 65% (or, after the Class B-1L Notes are paid in full, 100%) of the funds available up to the Additional Collateral Deposit Requirement to the payment of principal of the Notes in the order of priority described in clause SECOND of Section 11.1(c)(ii) below;

ELEVENTH: To the payment to the Default Swap Counterparty or any Hedge Counterparty, any Default Swap Counterparty Termination Payment or any termination payment due under any Hedge Agreement in respect of which the related Hedge Counterparty is the sole "Defaulting Party" or sole "Affected Party" thereunder as such terms are defined under the related Hedge Agreement;

TWELFTH: To the payment, *first* (a) to the Servicer the Additional Servicing Fee with respect to such Payment Date and then any Additional Servicing Fee with respect to any previous Payment Date (excluding any portion thereof included in any Cumulative Deferred Additional Servicing Fees or in any Waived Additional Servicing Fees) that was not paid on a previous Payment Date; *provided however*, the Servicer may at its option waive all or any portion of such Additional Servicing Fee, such amount so waived (the "Waived Additional Servicing Fee") to be applied to the purchase of Additional Portfolio Collateral as directed by the Servicer pursuant to Section 11.3 hereof during the immediately succeeding Due Period, and (b) to the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Additional Dividend then due and unpaid and *second*, to the Holders of the Notes any due and unpaid Extension Bonus Payment;

THIRTEENTH: To the payment to the Issuer of Issuer Excess Administrative Expenses with respect to such Payment Date and any Issuer Excess Administrative Expenses with respect to any previous Payment Date that were not paid on a previous Payment Date;

FOURTEENTH: If the Internal Rate of Return of the Preferred Shares as of such Payment Date is less than 12%, to the pari passu payment to the Holders of all of the Preferred Shares, but only up to an amount that would cause the Internal Rate of Return of the Preferred Shares to equal 12%; and

FIFTEENTH: Any remaining amounts, (a) 20% to (x) the payment of the Supplemental Servicing Fee for such Payment Date (excluding any Current Deferred Supplemental Servicing Fees or any Waived Supplemental Servicing Fees), and (y) the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Supplemental Dividend then due

and unpaid, and (b) 80% to the Holders of the Preferred Shares in accordance with the Paying and Transfer Agency Agreement, as a dividend thereon or as a redemption payment on the Redemption Date, as applicable; *provided however*, the Servicer may at its option waive all or any portion of such Supplemental Servicing Fee, such amount so waived (the "Waived Supplemental Servicing Fee") to be applied to the purchase of Additional Portfolio Collateral as directed by the Servicer pursuant to Section 11.3 hereof during the immediately succeeding Due Period.

(ii) During the **Revolving Period**, the Trustee shall apply the Adjusted Collateral Principal Collections (to the extent of available funds therefor) in the following order of priority:

FIRST: To the payment of the amounts described in clauses FIRST through EIGHTH of Section 11.1(c)(i) hereof with respect to Collateral Interest Collections and the Revolving Period, in the order described therein, in each case to the extent such amounts have not been paid from Adjusted Collateral Interest Collections with respect to such Payment Date; *provided however* that, with respect to clause THIRD of Section 11.1(c)(i) above, the Class A-3L Notes shall be entitled to receive an amount sufficient to pay the Periodic Rate Shortfall Amount due to the Class A-3L Notes for such Payment Date from Collateral Principal Collections but only to the extent this payment will not cause the failure of the Class B-1L Overcollateralization Test, with respect to clause FIFTH of Section 11.1(c)(i) above, the Class B-1L Notes shall be entitled to receive an amount sufficient to pay the Periodic Rate Shortfall Amount due to the Class B-1L Notes for such Payment Date from Collateral Principal Collections but only to the extent this payment will not cause the failure of the Class A Overcollateralization Test, and with respect to the payment described in clause SEVENTH of Section 11.1(c)(i) hereof, the Class B-2L Notes shall be entitled to receive an amount sufficient to pay the Periodic Rate Shortfall Amount due to the Class B-2L Notes for such Payment Date from Collateral Principal Collections, but only to the extent this payment will not cause the failure of the Class A Overcollateralization Test or the Class B-1L Overcollateralization Test;

SECOND: To the payment of principal as an O/C Redemption in the amount, if any, required to be paid in order to satisfy the Class B-2L Overcollateralization Test, such amount to be paid as follows: first, to the Class A-1LA Notes until the Aggregate Principal Amount thereof has been paid in full; second, to the Class A-1LB Notes until the Aggregate Principal Amount thereof has been paid in full; third, to the Class A-2L Notes until the Aggregate Principal Amount thereof has been paid in full; fourth, to the Class A-3L Notes until the Aggregate Principal Amount thereof has been paid in full; fifth, to any Periodic Rate Shortfall Amount with respect to the Class B-1L Notes and then to the Class B-1L Notes until the Aggregate Principal Amount thereof has been

paid in full; and sixth, to any Periodic Rate Shortfall Amount with respect to Class B-2L Notes and then to the Class B-2L Notes until the Aggregate Principal Amount thereof has been paid in full, in each case, to the extent such amounts have not been paid from Adjusted Collateral Interest Collections;

THIRD: To pay principal of the Notes in a Special Redemption, such amount to be paid first, (A) to the Class A-1LA Notes; second, to the Class A-1LB Notes; third, to the Class A-2L Notes; fourth, to the Class A-3L Notes; fifth, to any Periodic Rate Shortfall Amount with respect to the Class B-1L Notes and then to principal of the Class B-1L Notes; and sixth, to any Periodic Rate Shortfall Amount with respect to the Class B-2L Notes and then to principal of the Class B-2L Notes; and

FOURTH: As directed by the Servicer or the Issuer, to the purchase of Additional Portfolio Collateral meeting the specified requirements no later than the last day of the Due Period relating to the Payment Date following such Payment Date (or, if no such direction is given by the Servicer or the Issuer, deposited by the Trustee in the Collection Account, such amounts to be applied in the manner described herein).

(iii) During the **Amortization Period**, the Trustee shall apply the Adjusted Collateral Principal Collections (to the extent of available funds therefor and including for purposes of this Section 11.1(c)(iii) any Collateral Disposition Proceeds (other than Collateral Disposition Proceeds received in connection with the sale of an item of Credit Improved Portfolio Collateral to be reinvested pursuant to Section 12.4(a)) received during the Due Period relating to such Calculation Date to be applied by the Trustee as set forth in this Section 11.1(c)(iii)) in the following order of priority:

FIRST: To the payment of the amounts described in clauses FIRST through EIGHTH of Section 11.1(c)(i) hereof with respect to Collateral Interest Collections and the Revolving Period, in the order described therein, in each case to the extent such amounts have not been paid from Adjusted Collateral Interest Collections with respect to such Payment Date; *provided however* that, with respect to clause THIRD of Section 11.1(c)(i) above, the Class A-3L Notes shall be entitled to receive an amount sufficient to pay the Periodic Rate Shortfall Amount due to the Class A-3L Notes for such Payment Date from Collateral Principal Collections but only to the extent this payment will not cause the failure of the Class B-1L Overcollateralization Test, with respect to clause FIFTH of Section 11.1(c)(i) above, the Class B-1L Notes shall be entitled to receive an amount sufficient to pay the Periodic Rate Shortfall Amount due to the Class B-1L Notes for such Payment Date from Collateral Principal Collections but only to the extent this payment will not cause the failure of the Class A Overcollateralization Test, and with respect to the payment

described in clause SEVENTH of Section 11.1(c)(i) hereof, the Class B-2L Notes shall be entitled to receive an amount sufficient to pay the Periodic Rate Shortfall Amount due to the Class B-2L Notes for such Payment Date from Collateral Principal Collections, but only to the extent this payment will not cause the failure of the Class A Overcollateralization Test or the Class B-1L Overcollateralization Test;

SECOND: To the payment of principal as an O/C Redemption in the amount, if any, required to be paid in order to satisfy the Class B-2L Overcollateralization Test, such amount to be paid as follows: first, to the Class A-1LA Notes until the Aggregate Principal Amount thereof has been paid in full; second, to the Class A-1LB Notes until the Aggregate Principal Amount thereof has been paid in full; third, to the Class A-2L Notes until the Aggregate Principal Amount thereof has been paid in full; fourth, to the Class A-3L Notes until the Aggregate Principal Amount thereof has been paid in full; fifth, to any Periodic Rate Shortfall Amount with respect to the Class B-1L Notes and then to the Class B-1L Notes until the Aggregate Principal Amount thereof has been paid in full; and sixth, to any Periodic Rate Shortfall Amount with respect to Class B-2L Notes and then to the Class B-2L Notes until the Aggregate Principal Amount thereof has been paid in full, in each case, to the extent such amounts have not been paid from Adjusted Collateral Interest Collections;

THIRD: So long as no Event of Default has occurred and is continuing and as directed by the Servicer or the Issuer, to the purchase of Additional Portfolio Collateral from the proceeds of Collateral Principal Collections from any unscheduled prepayment or to the purchase of Substitute Portfolio Collateral from the sales proceeds of Credit Improved Portfolio Collateral, meeting the specified requirements with respect to the Amortization Period no later than ninety days after receipt of such amounts (or, if no such direction is given by the Servicer or the Issuer, deposited by the Trustee in the Collection Account, to be applied in the manner described herein); and

FOURTH: To pay the Notes as follows: first, to the Class A-1LA Notes until the Aggregate Principal Amount thereof has been paid in full; second, to the Class A-1LB Notes until the Aggregate Principal Amount thereof has been paid in full; third, to the Class A-2L Notes until the Aggregate Principal Amount thereof has been paid in full; fourth, to the Class A-3L Notes until the Aggregate Principal Amount thereof has been paid in full; fifth, to any Periodic Rate Shortfall Amount with respect to the Class B-1L Notes and then to principal of the Class B-1L Notes until the Aggregate Principal Amount thereof has been paid in full; and sixth, to any Periodic Rate Shortfall Amount with respect to Class B-2L Notes and then to principal of the Class B-2L Notes until the Aggregate Principal Amount thereof has been paid in full.

(d) On the **Final Maturity Date** (including the Optional Redemption Date, the Tax Event Redemption Date or any other Payment Date on which the Aggregate Principal Amounts of the Notes is paid in full) and, if funds become available after the Final Maturity Date, on any other date after the Final Maturity Date, and in accordance with the Note Valuation Report for the Calculation Date immediately preceding such Payment Date (or in the case of an Optional Redemption or a Tax Event Redemption, in accordance with the related Redemption Date Statement), the Trustee shall withdraw from the Collection Account an amount equal to the Adjusted Collateral Collections (including Collateral Disposition Proceeds) and from the Loan Funding Account any amount on deposit therein and shall make the following disbursements in the following order of priority:

FIRST: To the payment, first, *pro rata*, to the Holders of the Class A-1LA Notes and the Class A-1LB Notes of an amount equal to the applicable Cumulative Interest Amount, and second, if the Final Maturity Date is also an Optional Redemption Date, to pay the CDS/TRS Termination Payment Amount, if any, to the Class A-1LA Notes;

SECOND: To the payment of principal of the Class A-1LA Notes in amounts not to exceed the Aggregate Principal Amounts of the Class A-1LA Notes, and then to the payment of principal of the Class A-1LB Notes in an amount not to exceed the Aggregate Principal Amount of the Class A-1LB Notes;

THIRD: To the payment to the Holders of the Class A-2L Notes of an amount equal to the applicable Cumulative Interest Amount;

FOURTH: To the payment of principal of the Class A-2L Notes in an amount not to exceed the Aggregate Principal Amount of the Class A-2L Notes;

FIFTH: To the payment to the Holders of the Class A-3L Notes of an amount equal to the applicable Cumulative Interest Amount;

SIXTH: To the payment of principal of the Class A-3L Notes in an amount not to exceed the Aggregate Principal Amount of the Class A-3L Notes;

SEVENTH: To the payment of the Holders of the Class B-1L Notes of an amount equal to the applicable Cumulative Interest Amount;

EIGHTH: To the payment of principal of the Class B-1L Notes in an amount not to exceed the Aggregate Principal Amount of the Class B-1L Notes;

NINTH: To the payment of the Holders of the Class B-2L Notes of an amount equal to the applicable Cumulative Interest Amount;

TENTH: To the payment of principal of the Class B-2L Notes in an amount not to exceed the Aggregate Principal Amount of the Class B-2L Notes;

ELEVENTH: To the payment of any Default Swap Counterparty Termination Payments to the Default Swap Counterparty or any termination payment due under any Hedge Agreement to a Hedge Counterparty in respect of which such Hedge Counterparty is the sole "Defaulting Party" or sole "Affected Party" thereunder, as such terms are defined under the related Hedge Agreement;

TWELFTH: *First*, (a) to the Servicer the Additional Servicing Fee with respect to such Payment Date and then any Additional Servicing Fee with respect to any previous Payment Date (excluding any portion thereof included in any Waived Additional Servicing Fee) and (b) to the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Additional Dividend then due and unpaid and *second*, to the Holders of the Notes any due and unpaid Extension Bonus Payment;

THIRTEENTH: To the payment to the Issuer of amounts due the Issuer for Issuer Excess Administrative Expenses and any such amounts that were due on any prior Payment Date but remain unpaid;

FOURTEENTH: If the Internal Rate of Return of the Preferred Shares as of such Payment Date is less than 12%, to the pari passu payment to the Holders of all of the Preferred Shares, but only up to an amount that would cause the Internal Rate of Return of the Preferred Shares to equal 12%; and

FIFTEENTH: Any remaining amounts, (a) 20% to (x) the payment of the Supplemental Servicing Fee for such Payment Date (excluding any Waived Supplemental Servicing Fees), and (y) the Holders of the Class II Preferred Shares in accordance with the Paying and Transfer Agency Agreement, the Class II Preferred Share Supplemental Dividend then due and unpaid, and (b) 80% to the Holders of the Preferred Shares in accordance with the Paying and Transfer Agency Agreement, as a dividend thereon or as a redemption payment on the Redemption Date, as applicable.

The obligation to pay the foregoing amounts on the Final Maturity Date is absolute and unconditional, but recourse therefor will be limited to the Trust Estate.

(e) Notwithstanding anything in this Indenture to the contrary, with respect to Adjusted Collateral Collections held in the Collection Account in Eligible Investments pending application to purchase Portfolio Collateral, any such amounts not used to purchase Portfolio Collateral by the last day of the Due Period next succeeding

the Due Period in which such amounts were collected may be used to purchase Portfolio Collateral in subsequent Due Periods in accordance with Section 11.3 hereof (until otherwise applied pursuant to this Section 11.1).

(f) Notwithstanding anything to the contrary in this Section 11.1, upon the direction of the Servicer (and in the time and manner directed by the Servicer), Payment Date Equity Securities may be distributed on any Payment Date, in lieu of cash on any Payment Date as follows:

(i) Payment Date Equity Securities will be paid as Collateral Interest Collections in accordance with Section 11.1 with respect to the Preferred Shares, and upon such payment, the aggregate amount of Collateral Interest Collections distributable to the Holders of the Preferred Shares on such Payment Date will be reduced by the value of such Payment Date Equity Securities. Payment Date Equity Securities distributed on any Payment Date shall be distributed to the Holders of the Preferred Shares in the same manner as Collateral Interest Collections would be distributable to such Holders of Preferred Shares on such Payment Date and subject to the same restriction as to payment set out in the Paying and Transfer Agency Agreement.

(ii) In calculating the amounts of Collateral Interest Collections and Collateral Principal Collections for such Payment Date, Collateral Interest Collections in an amount equal to the value of Payment Date Equity Securities distributed to the Holders of the Preferred Shares shall be recharacterized as Collateral Principal Collections and disbursed in accordance with Sections 11.1(b) and 11.1(c) of the Indenture.

Section 11.2. Mandatory Redemption With Respect to Overcollateralization Tests, Interest Coverage Test and Rating Confirmation Failure

On any applicable Payment Date with respect to which an Overcollateralization Test (other than with respect to the failure of the Class B-2L Overcollateralization Test) or the Interest Coverage Test (as calculated in the Note Valuation Report for the Calculation Date immediately preceding such Payment Date), would not be met (but for this Section 11.2) or, during the Revolving Period, a Rating Confirmation Failure has occurred and is continuing, the Issuer shall redeem the Notes (or, in the case of the Class B-1L Notes and the Class B-2L Notes, pay any Periodic Rate Shortfall Amounts and then redeem the Notes pursuant to Section 9.2 hereof), and the Trustee shall pay to the Holders thereof (to be applied against the principal amount thereof) pursuant to the applicable provisions of Section 11.1 hereof, an aggregate amount necessary to cause each of the Overcollateralization Tests to be met as of such Calculation Date, in the case of the Interest Coverage Test, to cause such test to have been met as of such Calculation Date had such redemption been made on the immediately preceding Payment Date or to cause a Rating Confirmation to be received by the Issuer, as applicable. On any applicable Payment Date the Class B-2L Overcollateralization Test is not satisfied, 50% of available Interest Proceeds will be applied to pay principal on the Class B-2L Notes and 50% (or, after the Class B-2L Notes are paid in full, 100%) of available Interest Proceeds will be applied sequentially to pay principal on the Notes according to the priorities described herein until the

Class B-2L Overcollateralization Test is satisfied. In addition, Principal Proceeds will be applied sequentially to pay principal on the Notes, as set forth in clause SECOND of Section 11.1(c)(i) and 11.1(c)(ii) herein.

Section 11.3. Purchase of Additional Portfolio Collateral

(a) The Issuer may purchase Additional Portfolio Collateral on any Business Day during the Revolving Period for inclusion in the Trust Estate in an amount permitted pursuant to the applicable subsection of Section 11.1 hereof subject to the conditions set forth in this Section 11.3. Upon receipt by the Trustee of a Servicer Order with respect thereto, Collateral Principal Collections (or Collateral Interest Collections deposited to the Collection Account pursuant to clause TENTH of Section 11.1(c)(i) or deposited to the Collection Account on account of any Waived Servicing Fees), collected during a Due Period (other than Collateral Disposition Proceeds) may be paid out of the Collection Account by the Trustee on any Business Day during such Due Period or the immediately succeeding Due Period for the purpose of purchasing such Additional Portfolio Collateral specified in such Servicer Order; *provided* that as of such date the following conditions shall have been satisfied:

(i) the Balance of the Collection Account remaining after giving effect to any such purchase of Additional Portfolio Collateral shall equal or exceed the Periodic Reserve Amount with respect to the Payment Date relating to such Due Period as shown on the Note Valuation Report for the prior Payment Date;

(ii) (1) each Overcollateralization Test and the Interest Coverage Test are satisfied and (2) the Collateral Quality Tests and the criteria set forth in Section 12.2 hereof are satisfied or if any of the Collateral Quality Tests or the criteria set forth in Section 12.2 is not satisfied, the degree of compliance with such criteria would not be diminished; *provided however*, with respect to Additional Portfolio Collateral purchased with Unscheduled Principal Proceeds, if any, if the Overcollateralization Tests or the Interest Coverage Test is not satisfied as set forth in clause (1), the degree of compliance with such tests would not be diminished; *provided, however*, that Additional Portfolio Collateral or Substitute Portfolio Collateral consisting of CLO Securities may not be purchased with available funds during the period from the August 2011 Payment Date through the August 2012 Payment Date unless each of the Class B-1L Overcollateralization Ratio and the Class B-2L Overcollateralization Ratio are at least equal to levels as of the Effective Date; and

(iii) the Trustee shall have received (a) a certificate of the Servicer dated as of the date of the purchase and the Grant of such Additional Portfolio Collateral to the effect that such purchase is in compliance with the requirements of this Section 11.3 and Section 12.5(a) hereof, and (b) the certificate required pursuant to Section 12.2 hereof.

(b) For purposes of calculating the Collections for this Section 11.3 (and the Balance in the Collection Account for purposes of subsection (a) hereof), Collections shall be deemed to include, as of any date of determination, the sum of 100% of all cash collections actually received in respect of the Portfolio Collateral during such Due Period as of such date of

determination and 100% of all Scheduled Distributions to be received (including those which are reasonably expected to be received) in respect of the Portfolio Collateral during such Due Period (excluding, however, any Scheduled Distributions to be received with respect to an item of Defaulted Portfolio Collateral or an item of Equity Portfolio Collateral during such Due Period).

Section 11.4. Trust Account

All monies held by the Trustee in the Collection Account, the Initial Deposit Account, the Closing Expense Account, the Loan Funding Account or the Expense Reimbursement Account pursuant to the provisions of this Indenture, and not used to purchase Portfolio Collateral or Eligible Investments as herein provided, shall be deposited in one or more trust accounts, established in the name of the Trustee, as trustee of the trust created pursuant hereto for the benefit of the Holders of Notes and other Secured Parties hereunder; *provided* that to the extent funds deposited in such accounts exceed the amounts insured by the Federal Deposit Insurance Corporation, such excess shall be used to purchase Eligible Investments (pursuant to and as provided in Section 10.2 hereof). All monies held in the trust accounts described in the first sentence of this Section 11.4 shall be held as part of the Trust Estate subject to the provisions of this Indenture.

Section 11.5. Waived Servicing Fees.

If the Trustee receives written notification from the Servicer at least four Business Days prior to any Payment Date (other than the Final Payment Date) that it has elected to waive any portion of its Additional Servicing Fee and/or Supplemental Servicing Fee, the Trustee shall waive the payment of all or a portion of any such fees payable to the Servicer on such Payment Date as set forth in such notice from the Servicer (any such waived amount on such Payment Date being the "Waived Additional Servicing Fee" or the "Waived Supplemental Servicing Fee", as applicable, and together, the "Waived Servicing Fees"). Any such Waived Servicing Fees shall be used to purchase Additional Portfolio Collateral as described in Section 11.3. The Servicer shall have no interest in and no reimbursement rights with respect to any Waived Servicing Fees.

ARTICLE XII

SALE OF PORTFOLIO COLLATERAL; SUBSTITUTION

Section 12.1. Sale of Portfolio Collateral

(a) Provided that no Event of Default has occurred and is continuing and subject to the satisfaction of the conditions specified in Section 10.3 hereof and the restrictions in this Article, the Servicer may direct the Trustee, by Servicer Order, to sell, and the Trustee shall release (or cause to be released) from the lien of this Indenture and sell in the manner directed by the Servicer, any Defaulted Portfolio Collateral, Equity Portfolio Collateral, Credit Risk Portfolio Collateral or Credit Improved Portfolio Collateral (as described in such direction) so long as, with respect to an item of Credit Improved Portfolio Collateral or Credit Risk Portfolio Collateral, the Servicer certifies to the Trustee, as applicable, that:

(i) in the case of an item of Credit Improved Portfolio Collateral (including in connection with a Portfolio Improvement Exchange), in writing before the sale, that the Servicer has identified one or more specific manners in which it will be able, in compliance with the criteria set forth in Section 12.2 and the other requirements of Article XII (and in connection with a Portfolio Improvement Exchange, the requirements set forth in the definition of such term), to cause the Issuer to purchase with the applicable Collateral Disposition Proceeds net of accrued interest and costs, no later than the end of the immediately succeeding Due Period (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated), one or more items of Substitute Portfolio Collateral having an Aggregate Principal Balance equal to or greater than the Principal Balance of such Credit Improved Portfolio Collateral; and

(ii) in the case of an item of Credit Improved Portfolio Collateral, after giving effect to such sale and the subsequent purchase described in (a) above, the Servicer is required to certify that it reasonably believes that (x) either the Collateral Quality Tests and the criteria set forth in Section 12.2 hereof are satisfied or if one or more of such Collateral Quality Tests or criteria is not satisfied, the degree of compliance therewith would not be diminished and (y) either the Overcollateralization Tests and the Interest Coverage Test are satisfied or if any Overcollateralization Test or the Interest Coverage Test is not satisfied, the degree of compliance with such tests would not be diminished.

(b) An item of Credit Risk Portfolio Collateral may be sold at any time, subject to the Sale Restriction Condition as set forth below. Following any sale of a Credit Risk Portfolio Collateral pursuant to this Section 12.1(a), at the direction of the Servicer during the Revolving Period, the Issuer shall use commercially reasonable efforts to purchase additional Portfolio Collateral (to the extent the purchase is in the best interest of the Issuer) with an Aggregate Principal Amount at least equal to the sale proceeds received by the Issuer with respect to the Portfolio Collateral sold. For this purpose, the Aggregate Principal Amount of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(c) Notwithstanding any term hereof to the contrary and *provided* that no Event of Default has occurred and is continuing and subject to compliance with the conditions specified in Section 10.3 hereof, any Portfolio Collateral may be sold upon delivery to the Trustee of a certificate of the Servicer to the effect that it has reasonably determined, which may be based upon the advice of an opinion of counsel (a copy of which opinion shall be included with such certificate), that such Portfolio Collateral is, or may become, subject to a withholding or other similar tax (or to an increased rate of withholding or other similar tax). Further, notwithstanding anything to the contrary stated herein, the Servicer may direct the sale of an item of Portfolio Collateral that was CCC/Caa Portfolio Collateral or Discount Portfolio Collateral at the time of purchase only if it constitutes Credit Risk Portfolio Collateral or Defaulted Portfolio Collateral, is sold in connection with the Optional Redemption of Notes in whole or if the Servicer reasonably expects that the sale and any related purchase of Substitute Portfolio Collateral will restore compliance with any of the Interest Coverage Test, the criteria set forth in Section 12.2 or the Overcollateralization Tests that would be failed or not satisfied in the absence of such sale and purchase.

(d) During any period after the first Due Period if a Sale Restriction Condition occurs, the Issuer shall send a notice to the Trustee and the Holders of the Notes to the effect that, for so long as the applicable Sale Restriction Condition exists, unless the Holders of at least 60% in Aggregate Principal Amount of the Notes elect to retain the guidelines in effect on the Closing Date for sales of an item of Credit Risk Portfolio Collateral or Credit Improved Portfolio Collateral, as applicable, (i) no item of Credit Risk Portfolio Collateral may be sold unless (A) the rating of the obligor or of any debt or securities issued by the obligor under such an item of Credit Risk Portfolio Collateral has been lowered, withdrawn or put on any "credit watch" list for possible downgrade (or similar list) with negative implications by S&P, Moody's or Fitch or (B) such an item of Credit Risk Portfolio Collateral satisfies the Credit Risk Criteria and is not objected to by the Holders of more than 60% in Aggregate Principal Amount of the Notes within forty-five (45) days of the date of such notice, or such later date as extended by the Trustee at the direction of the Servicer *provided* that in making such determination to sell an item of Credit Risk Portfolio Collateral, an increase in credit spread or a decrease in Market Value of such item of Credit Risk Portfolio Collateral may only be used as corroboration of other bases for such determination or (ii) no item of Credit Improved Portfolio Collateral may be sold unless such item of Credit Improved Portfolio Collateral satisfies the Credit Improved Criteria and is not objected to by the Holders of more than 60% in Aggregate Principal Amount of the Notes within forty-five (45) days of the date of such notice, or such later date as extended by the Trustee at the direction of the Servicer *provided*, that in making such determination to sell such item of Credit Improved Portfolio Collateral, a reduction in credit spread or an increase in Market Value of such item of Credit Improved Portfolio Collateral may only be utilized as corroboration or other bases for such judgment.

(e) Notwithstanding anything to the contrary set forth above, the Servicer may at any time direct the Trustee to sell any item of Portfolio Collateral that (i) was obtained as a result of any reorganization or restructuring of any Credit Risk Portfolio Collateral or other Portfolio Collateral of an issuer under financial distress, or (ii) does not comply with the criteria set forth in Section 12.2.

Notwithstanding anything in this Indenture to the contrary, no acquisition or disposition of Portfolio Collateral or other eligible asset (as defined in Rule 3a-7) shall be effected by or on behalf of the Issuer for the primary purpose of recognizing gains or decreasing losses resulting from market value changes.

Notwithstanding the forgoing, if there is no appointment of a successor Servicer with 90 days after the resignation or termination of the Servicer, any sales or disposition of Portfolio Collateral shall be limited to Credit Risk Portfolio Collateral and Defaulted Portfolio Collateral and Equity Portfolio Collateral; *provided* that such restriction on the sale or disposition of Portfolio Collateral shall not apply if the Portfolio Collateral is being liquidated in whole or in part in connection with an acceleration or early termination of the Notes.

Section 12.2. Eligibility Criteria and Replacement Restrictions

Subject to Section 3.4 (with respect to Original Portfolio Collateral) in connection with dates occurring prior to the Effective Date, a security to be Granted to the Trustee after the Closing Date for inclusion in the Trust Estate as an item of Portfolio Collateral will be eligible

for purchase by the Issuer and inclusion in the Trust Estate only if, as of the date of such Grant of such security the following conditions are met, as certified to the Trustee by Servicer Order, the Overcollateralization Tests, the Interest Coverage Test and the criteria set forth below in this Section 12.2 hereof are satisfied or if one of such tests or criteria is not satisfied, the degree of compliance with such tests or criteria would not be diminished except as otherwise required by Sections 11.3 and 12.4. In addition, if a Suspension Trigger Event is in effect, a majority of the Controlling Class may deliver notice to the Issuer directing the Issuer to suspend any purchases of additional items for inclusion in the Trust Estate as an item of Portfolio Collateral. Such suspension shall automatically terminate once a Suspension Trigger Event is no longer in effect.

(a) Standard & Poor's CDO Monitor. The Standard & Poor's CDO Monitor Test is satisfied. For purposes of the Standard & Poor's CDO Monitor Test, the "Standard & Poor's Rating" of any item of Portfolio Collateral or Eligible Investment shall be as set forth in Schedule D hereto. The Standard & Poor's CDO Monitor Test is not applicable and does not have to be satisfied or maintained when reinvesting the proceeds of Defaulted Portfolio Collateral or Credit Risk Portfolio Collateral.

(b) Minimum Average Recovery Rate Test. The Minimum Average Recovery Rate Test is satisfied.

(c) Moody's Asset Correlation Test and Moody's Weighted Average Rating Test. The Moody's Asset Correlation Test, the Moody's Weighted Average Rating Test and the Moody's Weighted Average Rating Test for CLO Securities are satisfied.

(d) Weighted Average Coupon Test; Weighted Average Margin Test; Weighted Average Life Requirement.

(i) The Weighted Average Coupon Test is satisfied.

(ii) The Weighted Average Margin Test is satisfied.

(iii) The Weighted Average Life Requirement is satisfied.

(e) Limitation on Non-U.S. Debt. After giving effect to the proposed purchase of such Portfolio Collateral:

(i) not more than 10% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors;

(ii) not more than 10% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in any single Group A Country;

(iii) not more than 5% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in all Group B Countries;

(iv) not more than 2% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in any single Group B Country;

(v) not more than 2.5% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in all jurisdictions that are not Group A Countries or Group B Countries; and

(vi) not more than 1% of the Aggregate Par Amount may consist of items of Portfolio Loans that are obligations of Permitted Non-U.S. Obligors in any single jurisdiction that is not a Group A Country or Group B Country.

(f) Rating. After giving effect to the proposed purchase of any Portfolio Collateral: (i) at least 20% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate must be obligations of issuers having at least one class of indebtedness actually rated by Moody's (either publicly or privately) and (ii) at least 90% of the Aggregate Principal Amount of the Portfolio Collateral in the Trust Estate must be obligations of issuers having at least one class of indebtedness actually rated by S&P (either publicly or privately).

(g) CCC/Caa Portfolio Collateral Limitation. The proposed purchase of any Portfolio Collateral may not increase the Aggregate Principal Amount of CCC/Caa Portfolio Collateral in the Trust Estate to more than 5% of the Aggregate Par Amount; *provided* that the Issuer may purchase CCC/Caa Portfolio Collateral which would increase the Aggregate Principal Amount of CCC/Caa Portfolio Collateral in the Trust Estate above 5% of the Aggregate Par Amount with the proceeds of CCC/Caa Portfolio Collateral; and *provided further* that no CLO Securities may be included in the determination of this CCC/Caa Portfolio Collateral Limitation.

(h) Limitation on CLO Securities. After giving effect to the proposed purchase of any Portfolio Collateral, (i) not more than 35% of the Aggregate Par Amount may be CLO Securities; (ii) not more than 10% of the Aggregate Par Amount may consist of CLO Securities that have a Moody's Rating below "Baa3" or an S&P Rating below "BBB-"; *provided* that not more than 2% of the Aggregate Par Amount may consist of a single CLO Security with such ratings; *provided further* that not more than 2.75% of the Aggregate Par Amount may consist of a single CLO Security having a Moody's Rating of "Baa3" or above or an S&P Rating of "BBB-" or above; (iii) not more than 4.0% of the Aggregate Par Amount may consist of CLO Securities of a single manager which shall not be any of the Servicer Entities, (iv) not more than 5.0% of the Aggregate Par Amount may consist of CLO Securities managed by any of the Servicer Entities; *provided* that not more than 1.5% of the Aggregate Par Amount may consist of CLO Securities of a single issuer serviced or managed by the Servicer, and (v) no more than 3% of the Aggregate Par Amount may consist of "pay as you go" Synthetic Securities; *provided further*, that no CLO Securities may be purchased after August 1, 2012 and after the expiration of the Revolving Period, unless an Extension shall occur in

which case CLO Securities may be purchased during the full period of such Extension in accordance with all the criteria and restrictions provided herein that are applicable during the Revolving Period.

(i) Limitation on Semiannual Portfolio Collateral. After the Effective Date, after giving effect to the proposed purchase of any Portfolio Collateral, no more than 5% of the Aggregate Par Amount may include items of Portfolio Collateral that provide for the periodic payment in cash of interest less frequently than quarterly, but not less frequently than semiannually.

(j) Limitation on Participations, Synthetic Securities and Non-U.S. Portfolio Loans. After giving effect to the proposed purchase of any Substitute Portfolio Collateral or Additional Portfolio Collateral, no more than 20% of the Aggregate Par Amount may be Participations, Synthetic Securities, Securities Lending Agreements or Portfolio Loans that are obligations of non-U.S. entities which are not in a Group A Country. Further, no Participation may be purchased from any Selling Institution (including for this purpose the seller of any participation and the seller of any sub-participation) rated below "A" by S&P or "A2" by Moody's. In addition, the table below generally describes limitations on (i) the percentage of the Aggregate Par Amount which consist of Synthetic Securities related to the long-term debt rating of the Synthetic Security Counterparty, (ii) the percentage of the Aggregate Par Amount which consists of Participations related to the long-term debt rating of the related Selling Institution, and (iii) the limitations on the percentage of the Aggregate Par Amount which consists of Participations and Synthetic Securities in the aggregate related to the long-term debt rating of the Selling Institution or Synthetic Security Counterparty, as the case may be:

Rating (S&P/Moody's)	Individual Synthetic Security Counterparty Limit	Individual Participation Selling Institution Limit	Aggregate Synthetic Security Counterparty and Participation Selling Institution Limit	Securities Lending Counterparty
AAA/Aaa	20%	20%	20%	20%
AA+/Aa1	10%	10%	20%	10%
AA/Aa2	10%	10%	17.5%	10%
AA-/Aa3	10%	10%	15%	10%
A+/A1	5%	5%	10%	5%
A/A2	5%	5%	7.5%	5%

provided, that no more than 3% of the Aggregate Par Amount may be Synthetic Securities consisting of Default Swaps. For purposes of the foregoing, the limitations shall be calculated separately for each of Standard & Poor's and Moody's and each such limitation must be satisfied.

(k) Limitation on Fixed Rate Portfolio Collateral. No more than 5% of the Aggregate Par Amount may be Fixed Rate Portfolio Collateral.

(l) Portfolio Loans. After giving effect to the proposed purchase of any Portfolio Collateral, (i) at least 65% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate must be Portfolio Loans (including

Synthetic Securities, the Reference Obligations of which are loans); and (ii) not more than 10% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate may be Portfolio Loans that are not Senior Secured Loans (including Synthetic Securities, the Reference Obligations of which are loans).

(m) No Event of Default. No Event of Default shall have occurred and be continuing.

(n) Industry Category Concentration. (i) No more than 8% of the Aggregate Par Amount is in any one Standard & Poor's Industry Category; *provided however*, in the case of three (3) Standard & Poor's Industry Categories, up to 12% of the Aggregate Par Amount may consist of items of Portfolio Collateral that are obligations of obligors in any one Standard & Poor's Industry Category, and (ii) no more than 32% of the Aggregate Par Amount may consist of items of Portfolio Collateral that are obligations of obligors in any three Standard & Poor's Industry Categories.

(o) Original Issue Size. After giving effect to the proposed purchase of any Portfolio Collateral, at least 80% of the Aggregate Principal Amount of the Portfolio Collateral included in the Trust Estate will be Portfolio Loans and CLO Securities that are part of a senior credit facility whose aggregate original principal amount (whether or not funded and including all tranches thereunder) is not less than U.S.$100,000,000. No item of Portfolio Collateral included in the Trust Estate will be CLO Securities that are part of an issuer's aggregate issuance whose aggregate original principal amount (including all tranches thereunder) is less than U.S.$100,000,000. No item of Portfolio Collateral included in the Trust Estate will be Portfolio Loans that are part of a senior credit facility whose aggregate original principal amount (whether or not funded and including all tranches thereunder) is less than $50,000,000.

(p) Issuer Concentration. (i) After giving effect to the proposed purchase of any Portfolio Loan, no more than 1.5% of the Aggregate Par Amount may represent obligations of any single obligor, *provided* that obligations of not more than five obligors of Portfolio Loans may represent no more than 2.0% of the Aggregate Par Amount and (ii) after giving effect to the proposed purchase of any CLO Security, no more than 2.75% of the Aggregate Par Amount may represent obligations of any single obligor.

(q) Limitations on Step-Up Bonds. No more than 5% of the Aggregate Par Amount may include step-up bonds.

(r) Delayed Drawdown Loans and Revolving Loans. After giving effect to the proposed purchase of any Portfolio Collateral, no more than 5% of the Aggregate Par Amount may consist of Delayed Drawdown Loans and no more than 7.5% of the Aggregate Par Amount may consist of Revolving Loans; *provided* that no more than 10% of the Aggregate Par Amount may consist of Delayed Drawdown Loans and Revolving Loans in the aggregate.

(s) DIP Loans. No more than 5.0% of the Aggregate Par Amount may consist of DIP Loans. Each DIP Loan must be assigned a formal or estimated rating by Moody's and S&P.

(t) Collateral Obligations Loaned under Securities Lending Agreements. No more than 20% of the Aggregate Par Amount may include Portfolio Collateral subject to any Securities Lending Agreement pursuant to Section 7.19.

(u) PIK Bonds. No more than 35% of the Aggregate Par Amount may consist of PIK Bonds.

Notwithstanding anything to the contrary set forth in this Section 12.2, if the Portfolio Collateral to be purchased is to be purchased with the Collateral Disposition Proceeds of the disposition of one or more assets that is not an item of Credit Risk Portfolio Collateral, Defaulted Portfolio Collateral, Portfolio Collateral sold pursuant to a Portfolio Improvement Exchange or Portfolio Collateral that has become subject to withholding tax, the purchase of the proposed item of Portfolio Collateral must (i) restore compliance with a Collateral Quality Test, Interest Coverage Test, Overcollateralization Test or a concentration limitation set forth in this Section 12.2 (or bring the Portfolio Collateral closer to compliance with any such test or limitation) not then satisfied or (ii) on a net basis improve the quality of the Portfolio Collateral as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and concentration limitations and (iii) in the case of each of clause (i) and clause (ii) without causing any other Collateral Quality Test, Interest Coverage Test, Overcollateralization Test or concentration limitation to be violated or significantly increasing the likelihood of such a violation in the future.

Notwithstanding the foregoing provisions of this Section 12.2 and Section 11.3, if the Issuer or the Servicer has previously entered into a commitment to purchase an item of Portfolio Collateral to be included in the Trust Estate and at the time of such commitment such item of Portfolio Collateral complied with the definition of Portfolio Collateral and each of the foregoing criteria in this Section 12.2, then the Issuer may consummate the purchase of such item of Portfolio Collateral notwithstanding that such item of Portfolio Collateral fails to comply with the definition of Portfolio Collateral and such criteria on the date of settlement, *provided* that the agreed to settlement date shall not be more than thirty (30) days after the commitment to acquire such item of Portfolio Collateral or, if settlement occurs more than 30 days following the commitment, such item of Portfolio Collateral satisfies the criteria of this Section 12.2 as of the date of settlement.

Notwithstanding the foregoing provisions of this Section 12.2 and Section 11.3, the Issuer or the Servicer on behalf of the Issuer shall be deemed, except for purposes of the Granting Clauses, to have purchased or sold (as the case may be) any Portfolio Collateral as of the date on which the Issuer delivers to the Trustee a commitment to purchase or sell (as the case may be) such items of Portfolio Collateral, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive or sell (as the case may be), and requiring the purchaser to purchase (in the case of a sale), such Portfolio Collateral and, in such event, the Issuer shall be deemed to have purchased or sold (as the case may be) such Portfolio Collateral on such date. Under the circumstances described in the immediately preceding sentence, if the transaction contemplated

by the commitment referred to therein does not settle on or before the thirtieth (30th) day following the scheduled settlement date, the deemed purchase or sale shall be deemed not to have occurred.

Further, notwithstanding the foregoing provisions of this Section 12.2 and Section 11.3, any certifications or other documents required to be delivered by the Servicer or the Issuer in connection with the purchase or sale of any item of Portfolio Collateral during the Revolving Period may be delivered by the Issuer or the Servicer on the settlement date for such item of Portfolio Collateral even if such date occurs after the Revolving Period.

Section 12.3. Sale of Portfolio Collateral Subject to Offer or Call

(a) The Servicer may only direct the Trustee to sell an item of Portfolio Collateral that is the subject of an Offer or call for redemption, if together with its direction to sell such security, the Servicer certifies to the Trustee that the sales price for such Security is equal to or greater than 1% of the price available pursuant to such Offer or call and such sale will be treated as if the Offer or call were consummated for purposes of determining the Collections for the Due Period relating to the date on which such sale occurs.

(b) If an item of Portfolio Collateral becomes subject to an Exchange Offer after it has been purchased by the Issuer, the Servicer will be permitted to take such action with respect to the Underlying Instrument or the issuer thereof as may be required to convert such item of Portfolio Collateral into an item of Equity Portfolio Collateral.

Section 12.4. Purchase of Substitute Portfolio Collateral

(a) Upon receipt by the Trustee of a Servicer Order with respect thereto, the Collateral Disposition Proceeds received during any Due Period during the Revolving Period may be paid out of the Collection Account, on any Business Day during such Due Period or the immediately succeeding Due Period, for the purpose of purchasing one or more items of Substitute Portfolio Collateral for inclusion in the Trust Estate in an amount not to exceed the amount of such proceeds and specified in such Servicer Order; *provided* that the Trustee shall have received (i) a certificate of the Servicer dated as of the date of the purchase and the Grant of such Substitute Portfolio Collateral to the effect that such purchase is in compliance with the requirements of this Section 12.4 and Section 12.5(a) hereof and (ii) the certificate required pursuant to Section 12.2 hereof.

(b) In addition to the requirements set forth in 12.4(a), in connection with Substitute Portfolio Collateral purchased with Collateral Disposition Proceeds from the sale of Defaulted Portfolio Collateral, each of the Overcollateralization Tests and the Interest Coverage Test are satisfied, in each case both before and after giving effect to such purchase.

(c) In connection with a sale of an item of Credit Improved Portfolio Collateral after the Revolving Period or the receipt of Collateral Principal Collections due to an unscheduled prepayment after the Revolving Period, the Servicer may enter into commitments to apply such Collateral Disposition Proceeds or such unscheduled prepayments (net of accrued interest and costs) to the purchase of Portfolio Loans as either Additional Portfolio Collateral or Substitute Portfolio Collateral having an Aggregate Principal Amount equal to or greater than the

Principal Balance of the original item of Portfolio Collateral within 90 days of receipt of such proceeds, so long as the Servicer certifies as of the date of purchase that it reasonably believes at the time of such commitment that, after giving effect to such sale and subsequent purchase, (A) each of the Overcollateralization Tests and the collateral criteria described in Section 12.2 would be satisfied and the Interest Coverage Test was satisfied for the most recent Payment Date, (B) such Portfolio Loan to be purchased has a Moody's Rating equal to or higher than the Moody's Rating of the original item of Portfolio Collateral, (C) such Portfolio Loan to be purchased has an S&P Rating equal to or higher than the S&P Rating of the original item of Portfolio Collateral, (D) such Portfolio Loan to be purchased has a stated maturity on or prior to the final maturity of such original item of Portfolio Collateral and (E) neither Rating Agency has reduced or withdrawn (and not restored) the rating assigned by it on the Closing Date to any Class of Notes.

Section 12.5. Conditions Applicable to all Transactions Involving Purchases of Portfolio Collateral

(a) Any transaction effected under this Article or under Sections 3.4, 10.2, 10.3, 11.3 or 12.4 hereof involving the Servicer and one or more Affiliates of the Servicer shall be conducted on an arm's-length basis. Any such transaction effected with an Affiliate of the Servicer, the Issuer or the Trustee, shall be effected on terms as favorable to the Noteholders as would be the case if such Person were not so affiliated; *provided* that the Trustee shall have no responsibility to oversee compliance with this clause by the Issuer or Servicer.

(b) Upon any purchase or substitution pursuant to this Article or Sections 11.3, 12.3(b) or 12.4 hereof, each such Pledged Security shall be Delivered to the Trustee.

(c) The Issuer hereby represents and warrants and will certify to the Trustee in an Officer's Certificate as of the date of each purchase and Grant to the Trustee of each Portfolio Collateral pursuant to Section 11.3, Section 12.3(b) and Section 12.4 hereof:

(i) the Issuer is the owner of such item of Portfolio Collateral and the Deposit free and clear of any liens, claims (including any adverse claims) or encumbrances of any nature whatsoever, except for those granted or expressly permitted pursuant to this Indenture and due bills, if any, with respect to interest, or a portion thereof, accrued on such Portfolio Collateral prior to the first payment date and owed by the Issuer to the seller of such Portfolio Collateral;

(ii) the Issuer has acquired its ownership in such item of Portfolio Collateral and the Deposit in good faith without notice of any adverse claim, except as described in paragraph (i) above;

(iii) the Issuer has Delivered such item of Portfolio Collateral to the Trustee and has not assigned, pledged or otherwise encumbered any interest in such Portfolio Collateral or the Deposit other than interests granted or expressly permitted pursuant to this Indenture;

(iv) the Issuer has full right to Grant and does Grant pursuant to the Granting Clauses such item of Portfolio Collateral and the Deposit to the Trustee;

(v) the information set forth with respect to such item of Portfolio Collateral in Schedule A hereto is correct; and

(vi) such item of Portfolio Collateral satisfies the requirements of the definition of Portfolio Collateral.

Section 12.6. Sale of Warrants

The Servicer may direct the Trustee in writing to sell, and the Trustee shall release from the lien of this Indenture and sell in the manner directed by the Servicer, any warrant that is part of a Unit at any time after such warrant becomes separately tradable.

Section 12.7. Underlying Instruments

(a) With respect to each Portfolio Loan acquired by a Participation, the Issuer shall cause the Trustee to hold at its office in the State of New York or the Commonwealth of Massachusetts an original executed Underlying Instrument entered into between the Issuer and the Selling Institution which, except in the case of a Portfolio Loan evidenced by an instrument (the original of which shall be delivered to the Trustee), may be a copy thereof, which may be sent by telecopier, certified by the Servicer or the Issuer as a true and accurate copy (which in the case of a Participation shall include the loan and security documentation with respect to the underlying loan) as provided to it by the Servicer, and, *provided* that the Trustee has sufficient advance notice of such transaction, the Trustee shall send a notice of the assignment of such Participation to the Selling Institution and the underlying obligor of such Portfolio Loan on or prior to the Business Day on which such Portfolio Loan is to be included in the Trust Estate.

(b) The Issuer (upon Servicer Order) may enter into any amendment of or supplement to any Underlying Instrument with respect to any item of Portfolio Collateral, without notice to or consent of any Noteholder, but with prior written notice to the Trustee, if the amendment or supplement is required (a) by the provisions of the Underlying Instrument or this Indenture, (b) to cure any ambiguity, inconsistency or formal defect or omission, (c) in connection with any authorized amendment of or supplement to this Indenture, or (d) to make any other change deemed necessary or beneficial by the Issuer (upon Servicer Order); *provided* that, unless such Portfolio Loan is in default, or default is reasonably foreseeable, after giving effect to such amendment or supplement, such item of Portfolio Collateral satisfies the definition of Portfolio Collateral hereunder. The Issuer shall be under no obligation to enter into any such amendment or supplement, and the Servicer and the Issuer shall be under no obligation to provide any Person with any information related thereto (other than to confirm to the Trustee compliance with this Section), to the extent that the Servicer or the Issuer, as the case may be, believes in good faith that any action so taken is necessary in order not to violate any law, regulation or contractual arrangement. The Servicer shall retain any appropriate records of such amendments.

(c) If an amendment of or supplement to any Underlying Instrument without any consent of Noteholders is not permitted by subsection (b), the Issuer may enter into, and the Trustee shall, as directed by the Issuer, accept, or if necessary consent to, such amendment or supplement, with at least 10 days' prior written notice to the Trustee and the Holders of the

Notes, unless the Trustee and the Issuer have received notification by the more than 33-1/3% of the Aggregate Principal Amount of the Notes objecting to such amendment or supplement within 10 days of such notice.

(d) If the Servicer determines that any amendment to the Underlying Instrument of a DIP Loan materially affects the credit quality of such DIP Loan, the Servicer shall promptly notify the Rating Agencies of such amendment, prior to execution of such amendment.

Section 12.8. Synthetic Securities

For purposes of the eligibility criteria and related tests herein, a Synthetic Security will generally be included as an item of Portfolio Collateral having the maturity, interest rate and other payment characteristics of the Synthetic Security and not of the Reference Obligation (including characterization as either an item of Fixed Rate Portfolio Collateral or Floating Rate Portfolio Collateral) and, with respect to all other characteristics, will be included as an item of Portfolio Collateral having the relevant characteristics of the related Reference Obligation and not of the Synthetic Security. The Servicer will notify Moody's and Standard & Poor's in writing or electronically with respect to each purchase of a Synthetic Security not later than the trade date for such Synthetic Security; except that, if, at any time, the rating by Moody's on any Class of Notes then rated by Moody's has been downgraded at least one rating sub-category (and has not been restored) or is put on credit watch (with negative implications), no Synthetic Security will be purchased by the Issuer for inclusion in the Trust Estate unless Moody's has received notice of such purchase and any information necessary to evaluate such purchase, receipt of which shall be acknowledged by a Vice President or more senior member of Moody's CDO Group, in writing or electronically, and after such receipt is acknowledged, either Moody's shall inform the Servicer that such purchase will not cause Moody's to withdraw or further downgrade any of the then-current ratings assigned by Moody's to any of the Notes within 10 Business Days, or after 10 Business Days the Servicer may assume that such purchase will not cause Moody's to withdraw or further downgrade any of the then-current ratings assigned by Moody's to any of the Notes. If after the trade date for any Synthetic Security, there is any modification to the terms of such Synthetic Security, the Servicer will provide notice of such modification to Moody's and Standard & Poor's. Further, unless otherwise agreed by Moody's or as otherwise contemplated in the definition of Synthetic Security in Section 1.1 hereof, upon maturity, acceleration or early termination of a Synthetic Security or the related Reference Obligation, the Issuer will accept only the Reference Obligation or the par amount thereof unless the Reference Obligation would be characterized as Credit Risk Portfolio Collateral, Defaulted Portfolio Collateral or Credit Improved Portfolio Collateral, in which case the Issuer may accept the current fair market value thereof, except in the event of the exercise of any put or call provision of the Synthetic Security or Reference Obligation, in which case the Issuer shall only accept the Reference Obligation or an amount greater than or equal to the par amount thereof, and the Issuer will take all commercially reasonable actions under the Synthetic Security to accomplish the foregoing. Notwithstanding anything in this Indenture to the contrary, in connection with the acquisition of a Synthetic Security and in lieu of all or a portion of the purchase price for such Synthetic Security, the Issuer may grant the related Synthetic Security a first priority security interest in cash and Eligible Investments designated by the Issuer and the proceeds thereof, which may be released from the lien of the Indenture and deposited with such

Synthetic Security Obligor (or an intermediary or agent therefor) and invested as provided by the terms of such Synthetic Security, and the proceeds of which may be applied to make periodic payments under such Synthetic Security. For purposes of this Indenture, the grant of such security interest shall be treated as the payment of a purchase price equal to the value of the cash and Eligible Investments granted, and the Issuer's obligation to make periodic payments under such Synthetic Security shall be disregarded.

Section 12.9. Delayed Drawdown Loans and Revolving Loans

A Delayed Drawdown Loan will not be eligible for purchase by the Issuer for inclusion in the Trust Estate unless the related Underlying Instrument provides (i) that advances may be made for a period not to exceed one (1) year from the date of origination of the Delayed Drawdown Loan and in any event before the end of the Revolving Period; (ii) for a maximum amount that can be borrowed from the Issuer on one or more specified borrowing dates; (iii) that funds borrowed from the Issuer and subsequently repaid may not be reborrowed; and (iv) that the borrower is entitled to such additional advances only upon the achievement of financial performance or other objective criteria established at origination and set forth in such credit agreement.

In addition, simultaneously with the Issuer's purchase of any Delayed Drawdown Loan or Revolving Loan, the Issuer is required to deposit into the Loan Funding Account the full amount of any advances or delayed draws that may be required of the Issuer thereunder and principal repaid under any Revolving Loan is required to be deposited in the Loan Funding Account to the extent the Issuer's obligation to fund any future advances has not been irrevocably reduced.

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Form of Documents Delivered to Trustee

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

Any certificate or opinion of an Authorized Officer of the Issuer or the Servicer may be based, insofar as it relates to legal matters, upon an Opinion of Counsel or a certificate of or representations by such legal counsel, unless such Authorized Officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Authorized Officer of the Issuer or the Servicer, or Opinion of Counsel or certificate of or representations by such legal counsel may be based, insofar as it relates to factual matters, upon a certificate of opinion of, or representations by the Issuer, the Servicer or

any other Person, stating that the information with respect to such factual matters is in the possession of the Issuer, the Servicer or such other Person, unless such Authorized Officer of the Issuer or the Servicer or counsel knows that the certificate or opinion or representations with respect to such matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Authorized Officer of the Issuer or the Servicer, stating that the information with respect to such matters is in the possession of the Issuer or the Servicer, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

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

Section 13.2. Acts of Noteholders

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Noteholders may be embodied in and evidenced by one or more instruments (which may be an electronic document, including but not limited to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by such Noteholders in person or by an agent or proxy duly appointed in writing (*provided* that no signature shall be required on electronic documents, including but not limited to in the form of e-mail); and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Trustee deems sufficient.

(c) The ownership of Notes and Combination Notes shall be proved by the Note Register.

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

Section 13.3. Notices, etc., to the Trustee, Issuer, Servicer, the Irish Paying Agent and Bear Stearns

Any request, demand, authorization, direction, notice, consent, waiver or other documents provided or permitted by this Indenture to be made upon, given or furnished to, or filed with the Trustee, the Issuer, the Servicer, Bear Stearns, the Irish Paying Agent or the Paying and Transfer Agent shall be sufficient for every purpose hereunder if in writing and mailed by first class mail, sent by overnight courier guaranteeing next day delivery or sent by facsimile

transmission in legible form to the Trustee, the Issuer, the Servicer or Bear Stearns, as applicable, at the following addresses:

(1) to the Trustee at its Corporate Trust Office or at any other address furnished in writing to the Issuer or the Noteholders by the Trustee (any request, direction, notice or other communication from the Servicer to the Trustee under Article XII hereof (other than required certification) may be by electronic mail, which shall be deemed to be in writing);

(2) to the Issuer at the offices of Maples Finance Limited, P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, Attention: Directors, or at any other address previously furnished in writing to the Trustee by the Issuer;

(3) to the Co-Issuer at c/o Donald J. Puglisi, 850 Library Avenue, Suite 204, City of Newark, County of New Castle, Delaware 19711, or at any other address previously furnished in writing to the Noteholders, the Trustee or the Issuer by the Co-Issuer;

(4) to the Servicer at the offices of Highland Capital Management, LP, Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, Attention: James Dondero, or at any other address previously furnished in writing to the Noteholders, the Trustee or the Issuer by the Servicer;

(5) to Bear Stearns at the offices of Bear, Stearns & Co. Inc., 383 Madison Avenue, 7th Floor, New York, New York 10179, Attention: CDO Group, or at any other address previously furnished in writing to the Trustee by Bear Stearns;

(6) to the Irish Paying Agent at the offices of 3 George's Dock, International Financial Services Centre, Dublin, Ireland or at any other address previously furnished in writing to the Trustee by the Irish Paying Agent;

(7) to the Paying and Transfer Agent at the offices of Investors Bank & Trust Company, at the Trustee's Corporate Trust Office;

(8) to the Rating Agencies as described in Section 10.7 hereof; or

(9) to the Cap Provider as provided for in the Cap Agreement at Bear, Stearns & Co. Inc., 383 Madison Avenue, New York, New York 10179, Attention: Head of Interest Rate Derivatives Marketing, or at any such other address previously furnished in writing to the Trustee by the Cap Provider and to the address furnished by any subsequent Hedge Counterparty.

The Issuer hereby directs the Trustee and the Trustee agrees that, until it receives written notification from Ambac Assurance Corporation ("Ambac") to the contrary, it shall deliver, or cause to be delivered, to Ambac, at its addresses set forth below, a copy of each Monthly Report, Note Valuation Report, other report, accounting, request, demand, authorization, direction, order, notice, consent waiver or other action (each, a "Notice") delivered

or required to be delivered to any Holder or any Rating Agency pursuant to this Indenture. Any Notice shall be delivered to Ambac at One State Street Plaza, New York, New York 10004; Attention: Portfolio Risk Management, facsimile (212) 208-3509, e-mail sfcdsurv@ambac.com, or at any other address previously furnished to the Trustee by Ambac, not later than the first day on which such Notice is delivered to any Holder or Rating Agency. Any document required to be delivered or made available to Ambac may be made available by providing Ambac with access to a website containing such report in a format that permits the user to download the document as a pdf file.

Section 13.4. Notices to Noteholders; Waiver

Where this Indenture provides for giving a copy of any report or notice to Noteholders (such report or notice a "notice") of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Noteholder affected by such event, at its address as it appears on the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice and so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent. In any case where notice to Noteholders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Noteholder shall affect the sufficiency of such notice with respect to other Noteholders, and any notice which is mailed in the manner herein provided shall conclusively be presumed to have been duly given whether or not received. The Trustee shall provide notices directly to any beneficial holder of a Note that so identifies itself and requests receipt of such notices in writing to the Trustee.

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

In the event that, by reason of the suspension of the regular mail service as a result of a strike, work stoppage or similar activity it shall be impractical to mail notice of any event to Noteholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 13.5. Effect of Headings and Table of Contents

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

Section 13.6. Successors and Assigns

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

Section 13.7. Severability

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

Section 13.8. Benefits of Indenture

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder, each Hedge Counterparty, the Servicer and the Noteholders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

The Servicer, the Hedge Counterparty and their respective successors and assigns, shall each be third-party beneficiaries of the provisions of this Indenture, and shall be entitled to rely upon this Indenture and directly to enforce such provisions of this Indenture.

Section 13.9. Reserved

Section 13.10. Governing Law; Submission to Jurisdiction; Waiver of Trial by Jury

(a) This Indenture, each indenture supplemental hereto and each Note (including the Note Component of the Combination Note) shall be construed in accordance with and governed by the laws of the State of New York applicable to agreements made and to be performed therein. The State of New York shall be the securities intermediary's jurisdiction of the Securities Intermediary for purposes of the UCC and the United States Regulations.

(b) Each of the Co-Issuers and the Trustee hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Notes, the Combination Notes or this Indenture, or for recognition or enforcement of any judgment, and each of the Co-Issuers and the Trustee hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the Co-Issuers and the Trustee hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each of the Co-Issuers and the Trustee irrevocably consents to the service of any and all process in any action or proceeding by the mailing or delivery of copies of such process to it at the office of its agent set forth in Section 13.3. Each of the Co-Issuers and the Trustee agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS INDENTURE, ANY OTHER TRANSACTION

DOCUMENTS OR ANY INSTRUMENT OR DOCUMENT DELIVERED HEREUNDER OR THEREUNDER.

Section 13.11. Counterparts

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

Section 13.12. No Issuer Office Within the United States

The Issuer (or the Servicer acting in the name or on behalf of the Issuer) shall not maintain an office located within the United States; *provided* that neither the performance by Investors Bank & Trust Company, as Trustee or use any of in any of its other capacities hereunder, or as appointed agent for the Issuer of the Issuer's obligation to prepare reports under or pursuant to Article X hereof (and other services rendered by Investors Bank & Trust Company, pursuant to the Collateral Administration Agreement as described in Section 10.5(f) hereof) at and through the offices of Investors Bank & Trust Company in the United States nor the services rendered by the Servicer pursuant to the Servicing Agreement at its offices in the United States shall be a violation of this Section 13.12.

Section 13.13. Subordination

(a) Notwithstanding anything in this Indenture to the contrary, the Issuer and the Holders of the Notes agree:

(i) for the benefit of the Holders of the Class A-1LA Notes and the Trustee, that the Class A-1LB Notes, Class A-2L Notes, the Class A-3L Notes, the Class B-1L Notes, the Class B-2L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-1LA Notes, the "Senior Class A Subordinate Interests") shall be subordinate and junior to the Class A-1LA Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of, and interest on, the Senior Class A Subordinate Interests, and that the lien of the Trustee with respect to the Senior Class A Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-1LA Notes; and

(ii) for the benefit of the Holders of the Class A-1LB Notes and the Trustee that the Class A-3L Notes, the Class B-1L Notes, the Class B-2L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-1LB Notes, the "Class A-1LB Subordinate Interests") shall be subordinate and junior to the Class A-1LB Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of, and interest on, the Class A-1LB Subordinate Interests, and that the lien of the Trustee with respect to the Class A-1LB Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-1LB Notes; and

(iii) for the benefit of the Holders of the Class A-2L Notes and the Trustee that the Class A-3L Notes, the Class B-1L Notes, the Class B-2L Notes and the

Issuer's rights in and to the Trust Estate (with respect to the Class A-2L Notes, the "Class A-2L Subordinate Interests") shall be subordinate and junior to the Class A-2L Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of, and interest on, the Class A-2L Subordinate Interests, and that the lien of the Trustee with respect to the Class A-2L Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-2L Notes; and

(iv) for the benefit of the Holders of the Class A-3L Notes and the Trustee that the Class B-1L Notes and the Class B-2L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class A-3L Notes, the "Class A-3L Subordinate Interests") shall be subordinate and junior to the Class A-3L Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of the Class A-3L Subordinate Interests, and that the lien of the Trustee with respect to the Class A-3L Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class A-3L Notes.

(v) for the benefit of the Holders of the Class B-1L Notes and the Trustee that the Class B-2L Notes and the Issuer's rights in and to the Trust Estate (with respect to the Class B-1L Notes, the "Class B-1L Subordinate Interests") shall be subordinate and junior to the Class B-1L Notes and the Trustee to the extent and in the manner set forth herein, including but not limited to payment of principal of the Class B-1L Subordinate Interests, and that the lien of the Trustee with respect to the Class A-4L Subordinate Interests is subordinate to any lien of the Trustee in favor of the holders of Class B-1L Notes.

If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article V, the Notes shall be paid in the priority set forth in Section 11.1(d) hereof.

In addition to the foregoing:

(i) the Holders of the Class A-2L Notes agree, for the benefit of the Holders of the Class A-1L Notes, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay amounts due under the Class A-2L Notes or hereunder until the payment in full of the Class A-1L Notes;

(ii) the Holders of the Class A-3L Notes agree, for the benefit of the Holders of the Senior Class A Notes, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay amounts due under the Class A-3L Notes or hereunder until the payment in full of the Senior Class A Notes;

(iii) the Holders of the Class B-1L Notes agree, for the benefit of the Holders of the Class A Notes, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay amounts due under the Class B-1L Notes or hereunder until the payment in full of the Class A Notes; and

(iv) the Holders of the Class B-2L Notes agree, for the benefit of the Holders of the Class A Notes and the Class B-1L Notes, not to cause the filing of a

petition in bankruptcy against the Issuer for failure to pay amounts due under the Class B-2L Notes or hereunder until the payment in full of the Class A Notes and the Class B-1L Notes;

in each case, not before one year and one day, or, if longer, the applicable preference period then in effect, have elapsed since such payment.

If notwithstanding the provisions of this Indenture, any Holder of any Class B-1L Notes shall have received any payment or distribution in respect of such Class B-1L Notes contrary to the provisions of this Indenture, then unless and until the Class A Notes shall have been paid in full in accordance with this Indenture, such payment or distribution shall be received and held in trust for the benefit of, and shall immediately be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the Class A Notes, in accordance with this Indenture.

(b) Each Holder of Class B-1L Notes or Class B-2L Notes agrees that such Holder shall not demand, accept, or receive any payment or distribution in respect of such Notes in violation of the provisions of this Indenture. Nothing in this Section shall affect the obligation of the Issuer to pay Holders of such Notes amounts owing in respect thereof.

(c) So long as any Class A Notes remain Outstanding to the extent it may lawfully do so, each Class B-1L Noteholder and Class B-2L Noteholder by its acceptance of a Class B-1L Note or a Class B-2L Note, respectively:

(i) agrees that it will not step up, plead, claim or in any manner whatsoever take advantage of, any appraisement, valuation, stay, extension or redemption laws, now or hereafter in force in any jurisdiction, which may delay, prevent or otherwise hinder (A) the performance, enforcement or foreclosure of this Indenture, (B) the sale of any of the Trust Estate, or (C) the putting of the purchaser or purchasers thereof into possession of such property immediately after the sale thereof;

(ii) waives all benefit or advantage of any such laws;

(iii) waives and releases all rights to have the Trust Estate marshaled upon any foreclosure, sale or other enforcement of this Indenture; and

consents and agrees that, subject to the terms of this Indenture, all the Collateral may at any such sale be sold by the Trustee as an entirety.

Section 13.14. Survival of Provisions

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of either Co-Issuer, the Trustee, the Noteholders and other secured parties hereunder under Sections 2.7(h), 2.10, 4.2, 5.19, 6.7, 6.13, 7.3, 7.6, 7.16, 11.1 and 13.15 hereof shall otherwise survive termination of the rights of the parties hereunder.

Section 13.15. Liability of Co-Issuers.

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into between, inter alia, the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other Co-Issuer under this Indenture, the Notes, any such agreement or otherwise and, without prejudice to the generality of the foregoing, neither of the Co-Issuers shall be entitled to take any steps to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any such agreement or otherwise against the other Co-Issuer. In particular, neither of the Co-Issuers shall be entitled to petition or take any other steps for the winding up or bankruptcy of the other Co-Issuer or shall have any claim in respect of any assets of the other Co-Issuer.

Section 13.16. Escheat.

In the absence of a written request from the Co-Issuers to return unclaimed funds to the Co-Issuers, the Trustee shall from time to time deliver all unclaimed funds to or as directed by applicable escheat authorities, as determined by the Trustee in its sole discretion, in accordance with the customary practices and procedures of the Trustee. Any unclaimed funds held by the Trustee pursuant to this section shall be held uninvested and without any liability for interest.

ARTICLE XIV

ASSIGNMENT OF THE SERVICING AGREEMENT

Section 14.1. Assignment of the Servicing Agreement

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and the performance and observance of the provisions hereof, has, pursuant to the Granting Clauses, assigned, transferred, conveyed and set over to the Trustee, for the benefit of the Noteholders and the other secured parties hereunder, all of the Issuer's right, title and interest in, to and under the Servicing Agreement, including, without limitation, (i) the right to give all notices, consents and releases thereunder, (ii) the right to give all notices of termination and to take any legal action upon the breach of an obligation of the Servicer thereunder, including the commencement, conduct and consummation of proceedings at law or in equity, (iii) the right to receive all notices, accountings, consents, releases and statements thereunder and (iv) the right to do any and all other things whatsoever that the Issuer is or may be entitled to do thereunder; *provided* so long as no Event of Default has occurred and is continuing hereunder, the Trustee hereby grants the Issuer a license to exercise all of the Issuer's rights pursuant to the Servicing Agreement without notice to or the consent of the Trustee (except as otherwise expressly required by this Indenture, including, without limitation, as set forth in paragraph (f) of this Section 14.1 hereof), which license shall be and is hereby deemed to be automatically revoked upon the occurrence of any Event of Default hereunder until such time, if any, as the Event of Default is cured or waived. The Trustee shall have no liability with respect to any act or failure to act by the Issuer under the Servicing Agreement (*provided* that this sentence shall not limit or relieve the Trustee from any responsibility it may have under this Indenture upon the occurrence of and during the continuance of any Event of Default).

(b) The assignment made pursuant to the Granting Clauses is made as collateral security, and the shall not in any way impair or diminish the obligations of the Issuer under the provisions of the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Trust Estate from the lien of this Indenture, the assignment pursuant to the Granting Clauses and all rights herein assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the right, title and interest of the Trustee in, to and under the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence such termination and reversion.

(d) The Issuer represents that it has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that the assignment is irrevocable, and that it will not take any action which is inconsistent with such assignment or make any other assignment inconsistent therewith. The Issuer will, upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may specify.

(f) The Issuer hereby agrees, and hereby undertakes to obtain the agreement of the Servicer in the Servicing Agreement, to the following:

(1) The Servicer consents to, and agrees to perform, the provisions hereof applicable to the Servicer.

(2) The Servicer acknowledges that the Issuer is assigning all of its right, title and interest in, to and under the Servicing Agreement to the Trustee for the benefit of the Noteholders and the other Secured Parties hereunder.

(3) The Servicer shall deliver to the Trustee (at substantially the same time as delivered pursuant to the Servicing Agreement) duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement.

(4) Except as set forth in the Servicing Agreement, neither the Issuer nor the Servicer will enter into any agreement amending, modifying or terminating the Servicing Agreement or selecting or consenting to a successor manager (other than an amendment or modification of the type that may be made to this Indenture without Holder consent), (a) without satisfying the Rating Condition and (b) so long as the Requisite Holders have not objected in writing to such amendment or modification within 30 days of notice thereof; and any such amendment, modification, termination, selection or consent (in each case, other than pursuant to the provisions of the Servicing Agreement) without confirmation by the Rating Agencies or if the Requisite Holders have objected shall be void; *provided* that the consent of Requisite Noteholders or confirmation by Moody's and S&P shall not be required for an amendment or modification to cure any ambiguity, to correct or supplement any provisions therein, to

comply with any changes in law, or to make any other provisions with respect to matters or questions arising under the Servicing Agreement which shall not be inconsistent with the provisions thereof or of this Indenture, so long as such amendment or modification does not affect in any material respects the interests of any Noteholder (as evidenced by an Opinion of Counsel acceptable to the Trustee) and each of Moody's and S&P is notified in writing of such amendment or modification. Notwithstanding the foregoing, nothing in this subsection shall limit, in any way, any of the rights or remedies available to the Servicer pursuant to the Servicing Agreement.

(5) Except as set forth herein and in the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available hereunder to pay such amounts in accordance with Article XI hereof, and agrees not to cause the filing of a petition in bankruptcy against the Issuer for any reason whatsoever, including without limitation the non-payment to the Servicer, until the payment in full of all Notes issued under this Indenture and the expiration of a period equal to one year and one day following all such payments; *provided* that nothing in this clause shall preclude, or be deemed to estop, the Servicer (A) from taking any action prior to the expiration of the aforementioned one year and one day period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Servicer or its Affiliates, or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding.

(6) The Servicer will perform its obligations with respect to any conflict of interest in accordance with the applicable requirements of the Investment Advisers Act of 1940.

ARTICLE XV

ASSIGNMENT OF THE HEDGE AGREEMENT

Section 15.1. Assignment of the Hedge Agreements

(a) Pursuant to the Granting Clauses, the Issuer has assigned, transferred, conveyed and set over to the Trustee, for the benefit of the Noteholders and the other Secured Parties hereunder, all of the Issuer's right, title and interest in, to and under each Hedge Agreement, including, without limitation, (i) all of the Issuer's interest in all securities, monies and proceeds held by the related Hedge Counterparty thereunder, (ii) the right to give all notices, consents and releases thereunder, (iii) the right to give all notices of termination and to take any legal action upon the breach of an obligation of the related Hedge Counterparty thereunder, including the commencement, conduct and consummation of proceedings at law or in equity, (iv) the right to receive all notices, accountings, consents, releases and statements thereunder and (v) the right to do any and all other things whatsoever that the Issuer is or may be entitled to do

thereunder; *provided* so long as no Event of Default has occurred and is continuing hereunder, the Trustee hereby grants the Issuer a license to exercise all of the Issuer's rights pursuant to the Hedge Agreement without notice to or the consent of the Trustee (except as otherwise expressly required by this Indenture), which license shall be and is hereby deemed to be automatically revoked upon the occurrence of any Event of Default hereunder until such time, if any, as the Event of Default is cured or waived. The Trustee shall have no liability with respect to any act or failure to act by the Issuer under any Hedge Agreement (*provided* that this sentence shall not limit or relieve the Trustee from any responsibility it may have under this Indenture upon the occurrence of and during the continuance of any Event of Default hereunder).

(b) The assignment made pursuant to the Granting Clauses is made as collateral security, and shall not in any way impair or diminish the obligations of the Issuer under the provisions of any Hedge Agreement, nor shall any of the obligations contained in any Hedge Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Trust Estate from the lien of this Indenture, all rights herein assigned to the Trustee for the benefit of the Noteholders and the other Secured Parties shall cease and terminate and all the right, title and interest of the Trustee in, to and under each Hedge Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence such termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Hedge Agreement.

(e) The Issuer agrees that the assignment set forth in the Granting Clauses is irrevocable, and that it will not take any action which is inconsistent with such assignment or make any other assignment inconsistent herewith. The Issuer will, upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to such assignment as the Trustee may specify.

(f) The Issuer further agrees, with respect to the Hedge Agreement, as follows:

(1) The Issuer will obtain on or before the Closing Date the acknowledgement by each Hedge Counterparty that the Issuer is assigning all of its right, title and interest in, to and under the related Hedge Agreement to the Trustee for the benefit of the Noteholders and the other Secured Parties.

(2) Prior to the occurrence of an Event of Default the Issuer will deliver to the Trustee copies of all notices and communications delivered or required to be delivered to the Issuer pursuant to the related Hedge Agreement, but only if such notice or communication relates to any (i) default under, (ii) early termination of or (iii) amendment of, such Hedge Agreement.

(3) Subject to Section 2.14(d), the Issuer will not enter into any agreement amending, modifying or terminating a Hedge Agreement, without prior written consent of the Requisite Noteholders and written confirmation by the Rating Agencies that such amendment, modification or termination would not cause the ratings

of any Class of Notes to be reduced or withdrawn; *provided* (A) that the consent of Requisite Noteholders and confirmation by the Rating Agencies shall not be required for an amendment or modification to cure any ambiguity or to correct or supplement any provision with respect to matters or questions arising under such Hedge Agreement which shall not be inconsistent with the provisions thereof or of this Indenture, in each case so long as such amendment or modification does not adversely affect in any material respects the interests of any Noteholder (as evidenced by an Opinion of Counsel acceptable to the Trustee) and (B) neither the consent of the Requisite Noteholders, confirmation by the Rating Agencies nor an Opinion of Counsel shall be required with respect to any amendment or modification that either only corrects a manifest error or is principally and manifestly for the benefit of the Noteholders.

ARTICLE XVI

COMBINATION NOTES

Section 16.1. Payments on Combination Notes.

Upon receipt by (i) the Trustee of any payment in respect of the Note Component, or by (ii) the Paying and Transfer Agent of any payment in respect of the Preferred Share Component, the Trustee or the Paying and Transfer Agent, as applicable, shall distribute such payment to the Holders of the Combination Notes by wire transfer to such accounts as the Holders may specify (in writing) to the Trustee and the Paying and Transfer Agent prior to the related Record Date. Payments on the Preferred Share Component of the Combination Notes shall be deposited in the Preferred Shares Collection Account and distributed by the Paying and Transfer Agent to the Holders of the Combination Notes on each Payment Date subject to the provisions of the Paying and Transfer Agency Agreement.

Section 16.2. Rights of Holders of the Combination Notes.

(a) All rights ordinarily allocable to a Holder of a Component Security shall be exercised by the Holder of the Combination Notes, all payments to be made hereunder to a Holder of a Component Security shall be made by the Trustee or the Paying and Transfer Agent, as applicable, directly to such Holder of the Combination Notes, and the Holder of the Combination Notes shall have all the rights, as the Holder of the Component Securities, for all purposes hereunder. All distributions to the Holder of the Combination Notes in respect of the Preferred Share Component shall be made in accordance with the provisions of the Paying and Transfer Agency Agreement.

(b) Except as expressly provided herein, the Holders of the Combination Notes shall not be entitled to vote with respect to matters arising under this Indenture, the Paying and Transfer Agency Agreement or the Servicing Agreement except as Holders of the Component Securities.

(c) All of the obligations of the Issuer under the Combination Notes (to the extent of the Note Component) are limited recourse obligations of the Issuer, payable solely from amounts paid in respect of the related Component Securities. No Holder of a Combination Note

shall have any claim against the Co-Issuers or the Trustee for any amounts payable but not actually received by the Trustee in respect of any Component Security that is not a Note, and the claims and rights of a Holder of a Combination Note in respect of any amounts payable in respect of any Component Security that is a Note shall be identical to the claims and rights of a Holder of the same amount of such Component Security.

(d) The Combination Notes represent interests in the related Component Securities. Notwithstanding anything herein to the contrary, the Combination Notes do not represent an obligation of the Issuer separate from or in addition to the obligation of the Issuer with respect to the related Component Securities.

Section 16.3. Application of Payments on the Combination Notes.

(a) The Aggregate Principal Amount of the Combination Notes shall at all times equal the Aggregate Principal Amount of the Note Component plus the Notional Amount of the Preferred Share Component. After issuance, the Aggregate Principal Amount of the Combination Note shall be reduced by the amount and to the extent the Aggregate Principal Amount of the Note Component or the Notional Amount of the Preferred Share Component is reduced. When a payment causing the reduction of the Aggregate Principal Amount of the Class B-1L Notes is made, the Aggregate Principal Amount of the Note Component shall be reduced based on the proportion that the Note Component bears to the Class B-1L Notes. When a payment causing the reduction of the Notional Amount of the Class I Preferred Shares is made, the Notional Amount of the Preferred Share Component shall be reduced based on the proportion that the Preferred Share Component bears to the Class I Preferred Shares.

(b) Solely for purposes of determining the Rated Balance and the Rated Coupon of the Combination Notes (as applicable), all monies distributed to the Component Securities will be applied, first to interest accrued at the Rated Coupon (with interest thereon) for the related Periodic Interest Accrual Period (calculated on the basis of a 360-day year and the actual number of days elapsed during each Periodic Interest Accrual Period) and then to the Rated Balance, until the Rated Balance has been paid in full and thereafter any payment received will be deemed additional interest on the Combination Notes. The Rated Coupon will accrue on the Rated Balance of the Combination Notes.

Section 16.4. Mandatory Exchange of the Combination Notes

On any date the Issuer elects or the Trustee is instructed by the Issuer or Noteholders or the Holders of the Preferred Shares, as applicable, either to liquidate the Trust Estate, to redeem the Notes in whole pursuant to Article IX or to redeem the Class B-1L Notes pursuant to an Optional Redemption by Refinancing pursuant to Section 9.1(b), each Holder of a Combination Note shall surrender such Combination Note to the Trustee for exchange of such Combination Note for the corresponding Component Securities as provided in Section 2.5(b)(viii) hereof. In connection with such exchange, the respective obligations and responsibilities of the Issuer and the Trustee created hereby with respect to the Combination Notes shall terminate and this Indenture shall cease to be of further effect with respect to the Combination Notes as provided in Section 4.1 hereof.

IN WITNESS WHEREOF, we have set our hands as of the 9th day of May, 2007.

EXECUTED AS A DEED BY
ROCKWALL CDO II LTD., as Issuer

By: _____
Name:
Title:

in the presence of:

_____
witness

ROCKWALL CDO II (DELAWARE) CORP., as Co-Issuer

By: _____
Name:
Title:

INVESTORS BANK & TRUST COMPANY, as Trustee

By: _____
Name:
Title:

INVESTORS BANK & TRUST COMPANY, as
Securities Intermediary

By: _____
Name:
Title:

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Execution Copy

SOUTHFORK CLO LTD.
Issuer,

SOUTHFORK CLO CORP.
Co-Issuer,

ASSURED GUARANTY CORP.
Insurer,

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
Trustee

INDENTURE

Dated as of March 15, 2005

COLLATERALIZED DEBT OBLIGATIONS

U.S.$52,000,000 Class A-1a Floating Rate Senior Secured Extendable Notes Due 2017
U.S.$7,000,000 Class A-1b Fixed Rate Senior Secured Extendable Notes Due 2017
U.S.$400,000,000 Class A-1g Floating Rate Senior Secured Extendable Notes Due 2017
U.S.$42,500,000 Class A-2 Floating Rate Senior Secured Extendable Notes Due 2017
U.S.$23,500,000 Class A-3a Floating Rate Senior Secured Extendable Notes Due 2017
U.S.$2,500,000 Class A-3b Fixed Rate Senior Secured Extendable Notes Due 2017
U.S.$39,000,000 Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017
U.S.$36,300,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2017
U.S.$6,000,000 Class 1 Extendable Composite Securities Due 2017

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INDENTURE, dated as of March 15, 2005, among SOUTHFORK CLO LTD. (the "***Issuer***"), SOUTHFORK CLO CORP. (the "***Co-Issuer***"), ASSURED GUARANTY CORP. (the "***Insurer***") and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1a Notes, the Class A-1b Notes, the Class A-1g Notes, the Class A-2 Notes, the Class A-3a Notes, the Class A-3b Notes, the Class B Notes and the Class C Notes issuable as provided in this Indenture and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Composite Securities issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. Concurrently with the execution of this Indenture and the issuance of the Securities and subject to the terms and conditions contained in the Insurance Agreement, the Insurer will issue and deliver to and in favor of the Trustee for the benefit of each Holder of the Insured Notes, the Policy, which, subject to certain terms and conditions contained therein (including that the Policy is not terminated in accordance with the terms hereof), unconditionally and irrevocably guarantees the Insured Amount to the Trustee for the benefit of the Holders of the Insured Notes to the extent such Insured Amounts become Due for Payment and are not paid as a result of Nonpayment by the Issuer. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Composite Securityholders, the Insurer, the Trustee, the Portfolio Manager and each Hedge Counterparty (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Synthetic Security Collateral Account, the Hedge Counterparty Collateral Account, the Closing Date Expense Account, the Expense Reimbursement Account, and the Securities Lending Account (collectively, the "***Issuer Accounts***"),

Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from the investment of funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and together with the Issuer Accounts, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Management Agreement, the Securities Lending Agreements, the Hedge Agreements as set forth in Article 15, the Collateral Administration Agreement and, solely for the benefit of the Holders of the Class A-1g Notes only, the Insurance Documents to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments and agreements of any nature in which the Issuer has an interest (except for securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Class 1 Collateral (as defined below) and the Excluded Property, the "***Collateral***").

The Issuer as a second and separate grant Grants to the Trustee, for the benefit and security solely of the Holders of the Class 1 Composite Securities (solely to the extent of their Class 1 Component), all of its right, title and interest in, to and under, in each case, whether now owned or existing, or hereafter acquired or arising, the Class 1 Component Account and any property of any type deposited into the Class 1 Component Account and all proceeds with respect to the foregoing (all of the foregoing, the "***Class 1 Collateral***").

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes and the Class 1 Components in the case of the first grant, and only the Class 1 Components in the case of the second grant. Except as provided in Article 13 and the priorities set forth in the Priority of Payments and Section 11.2, the Notes and the Class 1 Components are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note or Class 1 Component and any other Note or the Class 1 Component because of difference in time of issuance or otherwise. The Class 1 Components are secured by the second grant equally and ratably without prejudice, priority or distinction because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments, Article 13 and Article 11.2, as applicable:

(i) the payment of all amounts due on the Notes and the Class 1 Components equally and ratably without prejudice, priority, or distinction between any Note or Class 1 Component and any other Note or Class 1 Component because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of all obligations owing by the Issuer under the Insurance Documents; and

(iv) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture. Payments or distributions made or to be made on the Composite Securities in respect of their Components are referred to as payments made or to be made on the Class 1 Components and the Preference Share Components, as the case may be.

Except as otherwise specified herein or as the context may otherwise require or dictate or unless the Composite Securities are explicitly addressed in the same context, (A) all references in this Indenture to the "Preference Shares" include the "Preference Share Component" of the Class 1 Composite Securities and (B) all references in this Indenture to the rights of the Holders of the Preference Shares (including with respect to any payments, distributions, redemptions, votes or consents to be given by such Holders) include the rights of the Holders of the Class 1 Composite Securities to the extent of the Preference Share Component of the Class 1 Composite Securities.

"***1940 Act***": The United States Investment Company Act of 1940, as amended.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Portfolio Manager.

" ***Accredited Investor***": The meaning specified in Rule 501(a) of the Securities Act.

"***Accrued Insurance Liabilities***": The meaning assigned to the term "Accrued Insurance Liabilities" in the Insurance Agreement.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) Interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Warehoused Loan as part of the price paid by the Issuer to repurchase and terminate the related participation under the Warehouse Agreement.

"***Act***": The meaning specified in Section 14.2.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.05% of the Maximum Investment Amount on the related Determination Date plus $150,000, *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.7), the Administrator, the Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and of accountants, agents, and counsel for either of the Co-Issuers;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Securities owed by either Co-Issuer (including fees and expenses for surveillance, credit estimates, and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Management Fees) of the Portfolio Manager if payable under the Management Agreement;

(vi) expenses and indemnities of the Insurer if payable under Section 4.2(a)(ii) and Section 4.3 of the Insurance Agreement;

(vii) fees and expenses for third-party loan pricing services and accountants; and

(viii) amounts due (other than indemnities) to any other person (except the Portfolio Manager) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Maples Finance Limited.

"***Affected Bank***": A "bank" for purposes of Section 881 of the Code or an entity affiliated with such a bank that is neither (x) a "United States person" within the meaning of Section 7701(a)(30) of the Code (generally an entity created or organized in or under the laws of the United States or any state thereof or the District of Columbia) nor (y) entitled to the benefits of an income tax treaty with the United States under which withholding taxes on interest payments made by obligors resident in the United States to such bank are reduced to 0%.

"***Affiliate***" or "***Affiliated***": With respect to a person,

(i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the person, or

(ii) any other person who is a director, officer, or employee (A) of the person, (B) of any subsidiary or parent company of the person, or (C) of any person described in clause (i) above.

For the purposes of this definition, control of a person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the person, or

(B) to direct the corporate management and corporate policies of the person whether by contract or otherwise (this does not include the Management Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of the Notes on that date. When used with respect to the Preference Shares or the Preference Share Components as of any date, the number of such Preference Shares Outstanding on such date in respect of such Preference Shares or Preference Share Components. When used with respect to any of the Class 1 Composite Securities, as of any date, the aggregate face amount of the Class 1 Composite Securities.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A-1a Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class A-1b Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class A-1g Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(d) the Aggregate Outstanding Amount of the Class A-2 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(e) the Aggregate Outstanding Amount of the Class A-3a Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(f) the Aggregate Outstanding Amount of the Class A-3b Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(g) the Aggregate Outstanding Amount of the Class B Notes at any time shall include all Class B Deferred Interest attributed thereto; and

(h) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 20

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

INDEX

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

Vol. 2

Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Securities or Preference Shares purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) to the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment plus, in the case of the Fixed Rate Notes, the applicable Make-Whole Premium, (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder on the next succeeding Payment Date) would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders of Preference Shares have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares shall be zero and (iii) in the case of the Class 1 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 1 Composite Security Preference Share Component, (y) the Treasury Strip Market Value and (z) the Composite Security Make-Up Amount.

"***Amendment Buy-Out Purchaser***": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event that the Portfolio Manager elects not to purchase Securities or Preference Shares from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser) or any of its Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Senior Class A Notes, the Class A-2 Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes, each of the Co-Issuers. With respect to the Preference Shares and the Composite Securities, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified in the tables below. High-Yield Bonds do not include Structured Finance Obligations for this purpose.

Moody's Priority Category	Moody's Priority Category Recovery Rate
Synthetic Securities.....	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations.....	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below.....	As determined by Moody's on a case-by-case basis

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Secured Loans other than Subordinated Lien Loans or DIP Loans.....	52.0%
Senior Unsecured Loans	31.0%
Subordinated Lien Loans other than a DIP Loan.....	18.0%
senior secured High-Yield Bonds (other than Structured Finance Obligations).....	44.0%
senior unsecured High-Yield Bonds (other than Structured Finance Obligations).....	30.0%
subordinated High-Yield Bonds (other than Structured Finance Obligations).....	18.0%
Structured Finance Obligations.....	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in Schedule 6 by reference to the type of asset and its then S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the Grant of the relevant Collateral Obligation).
Synthetic Securities.....	As assigned by S&P on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above	As assigned by S&P on a case-by-case basis

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by the Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the higher of the ask-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio Manager); provided that if the Ask-Side Market Value of any

lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 8.

"***Authenticating Agent***": With respect to the Securities, the Trustee or the person designated by the Trustee to authenticate the Securities on behalf of the Trustee pursuant to Section 6.14.

"***Authorized Officer***": With respect to the Issuer or the Co-Issuer, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer, as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Portfolio Manager, any managing member, Officer, manager, employee, partner or agent of the Portfolio Manager who is authorized to act for the Portfolio Manager in matters relating to, and binding on, the Portfolio Manager with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Avoided Payment***": The meaning assigned to the term "Avoided Payment" in the Policy.

"***Bank***": JPMorgan Chase Bank, National Association, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Security or Regulation S Global Preference Shares as reflected on the books of the Depository or on the books of an

Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": The meaning specified in the Plan Asset Regulations of the U.S. Department of Labor, 29 CFR 2510.3-101(f).

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note or the final payment in respect of any Composite Security, the place of presentation of the Security designated by the Trustee. To the extent action is required of the Irish Listing and Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when action by the Irish Listing and Paying Agent is required.

"***Buy-Out Amount***": The meaning set forth in the Management Agreement.

"***Calculation Agent***": The meaning specified in Section 7.16.

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

"***CCC/Caa Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Composite Security***": The meaning specified in Section 2.2(d).

"***Certificated Preference Shares***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Securities having the same priority and the same Stated Maturity and all of the Preference Shares. Unless otherwise expressly provided for herein: (i) the Class A-1a Notes, the Class A-1b Notes and the Class A-1g Notes shall be considered as being of the same Class and (ii) each of the Senior Class A Notes, the Class A-2 Notes and the A-3 Notes shall be separate Classes.

"***Class 1 Collateral***": The meaning specified in the Granting Clauses.

"***Class 1 Collateral Principal Balance***": The face value of the Treasury Strip at its maturity date.

"***Class 1 Component***": A Component representing the rights of the Holders of the Class 1 Composite Securities to receive the payments from the Class 1 Component Account upon any redemption of the Class 1 Component.

"***Class 1 Component Account***": The trust account established pursuant to Section 10.3(j).

"***Class 1 Composite Security***": The Class 1 Extendable Composite Securities issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class 1 Composite Security Preference Share Component***": A Component of the Class1 Composite Securities representing an initial aggregate Face Amount of Preference Shares equal to $2,000,000. The number of Preference Shares to which the Class 1 Composite Security Preference Share Component relates is included in (and are not in addition to) the number of Preference Shares being issued by the Issuer on the Closing Date pursuant to its Memorandum and Articles of Association.

"***Class 1 Composite Security Rated Balance***": With respect to the rating of the Class 1 Composite Securities by Moody's, on the Closing Date $6,000,000 and on any date of determination thereafter, the initial Class 1 Composite Security Rated Balance *minus* the aggregate amount of all distributions paid to the Holders of the Class 1 Composite Securities in respect of its related Components on all prior Payment Dates pursuant to Section 11.1(a) and Section 11.2.

"***Class A Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A Notes.

"***Class A Notes***": The Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes.

"***Class A-1a Notes***": The Class A-1a Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-1b Notes***": The Class A-1b Fixed Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-1g Notes***": The Class A-1g Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-2 Notes***": The Class A-2 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-3 Notes***": The Class A-3a Notes and the Class A-3b Notes.

"***Class A-3a Notes***": The Class A-3a Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-3b Notes***": The Class A-3b Fixed Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class B Notes.

"***Class B Deferred Interest***": Deferred Interest with respect to the Class B Notes.

"***Class B Notes***": The Class B Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": March 15, 2005.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Portfolio Manager, and the Collateral Administrator, as modified, amended, and supplemented and in effect from time to time.

"***Collateral Administrator***": The Bank in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation, or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security that is exchangeable or convertible at the option of its issuer;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and in the case of a Collateral

Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Portfolio Manager has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) in the case of a Loan, an obligation that is part of, or a Participation in, a syndicated loan facility that provides for a commitment by the lenders, in the aggregate, of at least U.S.$100 million;

(14) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(15) not an obligation with a maturity later than one year after the Stated Maturity of the Notes;

(16) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(17) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(18) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(19) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(20) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(21) in the case of a Synthetic Security, a Synthetic Security for which the counterparty or issuer, as the case may be, has a long-term senior unsecured rating by Moody's of at least "A3", and if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "A-";

(22) not an obligation that constitutes Margin Stock;

(23) not a Zero-Coupon Security;

(24) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(25) not a security whose repayment is subject to substantial non-credit related risk as determined by the Portfolio Manager;

(26) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition); and

(27) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act.

The Treasury Strip shall not be a Collateral Obligation and it shall not be taken into account in any calculation involving Collateral Obligations.

Pursuant to the definition of "Synthetic Security", unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Obligation when delivered upon a "credit event".

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test, and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Components***": The Preference Share Component and the Class 1 Component, as the context requires.

"***Composite Securities***": The Class 1 Composite Securities issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Composite Securityholder***": A Holder of Class 1 Composite Securities.

"***Composite Security Make-Up Amount***": In connection with determining the Amendment Buy-Out Purchase Price, the Extension Purchase Price or the Buy-Out Amount in respect of all or a portion of the Composite Securities, the greater of: (i) zero and (ii) the sum of (w) the initial principal amount of such Composite Securities as of the Closing Date minus (x) the aggregate of all payments and distributions made in respect of the Composite Securities since the Closing Date minus (y) any amount payable pursuant to clause (ii) of the definition of Amendment Buy-Out Purchase Price (for purposes of determining the Composite Security Make-Up Amount pursuant to clause (iii) of such definition), clause (ii) of the definition of Extension Purchase Price (for purposes of determining the Composite Security Make-Up Amount pursuant to clause (iii) of such definition) or clause (i) of the definition of Buy-Out Amount (for purposes of determining the Composite Security Make-Up Amount pursuant to clause (ii) of such definition) less (z) the Treasury Strip Market Value.

"***Composite Securities Payment Date***": The second Business Day after each Payment Date or, if such Payment Date coincides with the Stated Maturity, the Composite Securities Payment Date shall be such Payment Date.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Investment Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Investment Amount:

		Percentage of the Maximum Investment Amount
(1)	Senior Secured Loans and Eligible Investments	≥ 92.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans	≤ 5.0%
(4)	Revolving Loans and Delayed Drawdown Loans	≤ 15.0%
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 7.5%
(6)	S&P Unrated DIP Loans	≤ 2.5%
(7)	PIK Securities	≤ 3.0%
(8)	High-Yield Bonds	≤ 7.5%
(9)	Structured Finance Obligations	≤ 7.5%
(10)	Structured Finance Obligations that are collateralized loan obligations	≤ 2.5%
(11)	obligors Domiciled other than in the United States and Canada	≤ 15.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%

(14)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(15)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(16)	same S&P Industry Classification	≤ 8.0%
	(a) except that Investment Obligations belonging to two S&P Industry Classifications (not including Telecommunications) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 10.0%
(17)	single issuer or any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual issuers (including any of their respective Affiliates but excluding issuers that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support) may each constitute up to the percentage of the Maximum Investment Amount specified in the right column	≤ 2.0%
(18)	Fixed Rate Obligations	≤ 7.5%
(19)	Pay interest less frequently than quarterly but no less frequently than annually	≤ 7.5%
(20)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 5.0%
(21)	Participations (provided, that no Investment Obligations may be a Participation in a Participation)	≤ 10.0%
(22)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Investment Amount specified in the right column	≤ 20.0%
(23)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*

(24)	Investment Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(25)	Deep Discount Obligations	≤ 5.0%
(26)	CCC/Caa Collateral Obligations	≤ 7.5%
(27)	Long-Dated Collateral Obligations	≤ 2.0%
(28)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(29)	Collateral Obligations providing for interest at a non-London interbank offered rate	≤ 5.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in circumstances of the Portfolio Manager to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Controlling Class***": The Senior Class A Notes (voting together as a Class or group), so long as any Senior Class A Notes are Outstanding; then the Class A-2 Notes (voting together as a Class or group), so long as any Class A-2 Notes are Outstanding; then the Class A-3 Notes (voting together as a Class or group), so long as any Class A-3 Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; and then the Class C Notes (voting together as a Class or group); provided, however, that notwithstanding the foregoing, so long as the Class A-1g Notes are Outstanding and the Policy has not been terminated in accordance with Section 16.8 or any Accrued Insurance Liabilities or Premium are due and owing to the Insurer, and no Insurer Default exists, then the "Controlling Class", the "Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class", the "Majority of the Controlling Class" or the "Super Majority of the Controlling Class" shall, for all purposes, be the Insurer, and the Insurer shall be entitled to exercise all of the rights of the Controlling Class, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, the Majority of the Controlling Class or the Super Majority of the Controlling Class, as applicable, that are provided for herein. In addition to the foregoing, the Insurer's right to exercise all of the rights of the Controlling Class, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, the Majority of the Controlling Class or the Super Majority of the Controlling Class, as applicable, shall be reinstated if a Preference Claim is made for as long as any such Preference Claim is pending during the applicable statutory preference period or, if the Insurer is required to pay the amount of any Avoided Payment, for so long as any Accrued Insurance Liabilities owing to the Insurer have not been paid in full.

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 600 Travis Street, 50th

Floor, Houston, Texas 77002, telecopy no. (713) 216-2101, Attention: Institutional Trust Services—Southfork CLO Ltd. or any other address the Trustee designates from time to time by notice to the Noteholders, the Portfolio Manager, the Preference Shares Paying Agent, the Insurer, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A Coverage Tests, the Class B Coverage Tests and the Class C Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that in the commercially reasonable judgment of the Portfolio Manager, has improved in credit quality; provided, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 101%), or (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Senior Class A Notes, the Class A-2 Notes or the Class A-3 Notes (without giving effect to the Policy) has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class B Notes or the Class C Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes (or the Initial Shadow Rating in the Class of the Class A-1g Notes), or to only one subcategory below their Initial Rating in the case of the Class B Notes and the Class C Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Portfolio Manager, has a significant risk of declining in credit quality and, with a lapse of time, becoming a Defaulted Collateral Obligation.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture,

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Portfolio Manager (such index selection subject to satisfaction of the Rating Condition with respect to Moody's),

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Portfolio Manager, and (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period, or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation, or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn,

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Portfolio Manager has delivered to the Trustee an officer's certificate to the effect that the Portfolio Manager expects that the obligor will make payments on the Collateral Obligation as they become due,

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance,

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation, and

(v) the Portfolio Manager has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Investment Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Portfolio Manager shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Portfolio Manager may, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay

Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided, that if the Portfolio Manager certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Portfolio Manager, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iii) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously

scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Portfolio Manager, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(iv) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor, or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(v) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "C" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vi) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (iv) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(vii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (vii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above;

(viii) that is a Written-Down Obligation;

(ix) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(x) that is declared to be a Defaulted Collateral Obligation by the Portfolio Manager.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity; provided that, any interest paid with the proceeds of the Policy shall not be treated for the purpose of this definition as paid or provided for.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class B Notes and the Class C Notes.

"***Deficiency Amount***": The meaning specified in Section 16.3(a).

"***Deficiency Notice Date***": The meaning specified in Section 16.3(a).

"***Definitive Securities***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security), Instrument or Participation in which the underlying Loan is represented by an Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or its affiliated nominee or endorsed to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(v) in the case of each general intangible (including any Participation in which neither the Participation nor the underlying Loan is represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Portfolio Manager on behalf of the Issuer will obtain any and all consents required by the underlying instruments relating to any such general intangibles for the transfer of ownership and/or pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Portfolio Manager has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Portfolio Manager has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer),

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States, and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code,

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code,

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets, or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile"*** or ***"Domiciled"***: With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Portfolio Manager, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due for Payment***": The meaning set forth in the Policy.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": Means: (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country; provided that such country has not imposed currency exchange controls.

"***Eligible Investments***": Any Dollar-denominated investment that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to

supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such investment or contractual commitment providing for such investment and throughout the term of the investment, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such investment a credit rating of at least "P-1" by Moody's and "A-1+" by S&P, provided, that, in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, and if so rated, such rating is not on watch for downgrade.

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such investment and throughout the term of the investment; provided, that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such investment and throughout the term of the investment a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar investment vehicle having at the time of investment therein and throughout the term of the investment a credit rating of "MR1+" by Moody's and "AAAm" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment advisor, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Senior Class A Notes, the Class A-2 Notes, the Class A-3 Notes, the Class B Notes or the Class C Notes; provided, further, that, at the time of

investment therein and throughout the term of the investment, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other investments for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of the investment.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Portfolio Manager;

(2) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***ERISA***": The U.S. Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Plan***": Any (i) "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, (ii) "plan" (as defined in Section 4975(e)(1) of the Code) which is subject to Section 4975 of the Code and (iii) entity whose underlying assets include "plan assets" by reason of 29 CFR 2510.3-101 or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excess CCC/Caa Collateral Obligations***": The Principal Balance of all CCC/Caa Collateral Obligations in excess of 7.5% of the Maximum Investment Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Reinvestment Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Reinvestment Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in May, 2016).

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in February, 2021).

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, March 15, 2018).

"***Extension***": An extension of the Reinvestment Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner and the Insurer set forth in Section 2.4(g), in an amount equal to (1) in the case of the Senior Class A Notes (other than the Class A-1g Notes), 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-1g Notes, 0.125% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Date (provided, however, if the Policy has been terminated prior to or in connection with such Maturity Extension, each applicable beneficial owner of the Class A-1g Notes will instead receive an amount equal to 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Date), (3) to the Insurer, 0.125% of the Aggregate Outstanding Amount of the Class A-1g Notes as of the applicable Extension Date (provided, however, if the Policy has been terminated prior to or in connection with such Maturity Extension, the Insurer shall not be entitled to an Extension Bonus Payment pursuant to this clause (3)), (4) in the case of the Class A-2 Notes, 0.25% of the Aggregate Outstanding

Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class A-3 Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (6) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (7) in the case of the Class C Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in May, 2010).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date) plus, in the case of the Fixed Rate Notes, the applicable Make-Whole Premium, (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares shall be zero and (iii) in the case of the Class 1 Composite Securities, the sum of (x) the amount that would be payable pursuant to the preceding clause (ii) in respect of the Preference Shares underlying the Class 1 Composite Security Preference Share Component, (y) the Treasury Strip Market Value and (z) the Composite Security Make-Up Amount.

"***Extension Qualifying Purchasers***": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event the Portfolio Manager elects not to purchase Securities or Preference Shares from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchaser or any of its Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager,

the Initial Purchaser, or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share, the amount set forth therein as the "face amount", which "face amount" thereof shall be $1,000 per Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party and relating to the Class 1 Collateral naming the Issuer as debtor and the Trustee on behalf of the Holders of the Class 1 Composite Securities as secured party.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test, and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Notes***": The Class A-1b Notes and the Class A-3b Notes.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate, including a Collateral Obligation that does not bear interest on a floating rate index and whose interest rate is scheduled to increase one or more times over the life of the Collateral Obligation.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P; and

(iii) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Portfolio Manager, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Portfolio Manager receives the notice of withdrawal.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Securities***": Any Regulation S Global Securities or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": JPMorgan Chase Bank, National Association or any other counterparty, to the extent that when the Issuer enters into any Hedge Agreement with JPMorgan Chase Bank, National Association or the other counterparty, JPMorgan Chase Bank, National Association or the other counterparty satisfies the requirements of Section 15.2(b)

(subject, in the case of any other counterparty, to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***High-Yield Bond***": Any debt security other than a Loan, including any Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note or Composite Security, the person whose name appears on the Indenture Register as the registered holder of the Note or Composite Security; and of any Preference Share (including any Preference Share underlying the Preference Share Component), the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit H-2.

"***Incentive Management Fee***": On each Payment Date, the fee payable to the Portfolio Manager in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment pursuant to Section 11.1(a)(i)(21) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Incentive Management Fee pursuant to Section 11.1(a)(ii)(6)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(9) of the Priority of Payments.

"***Indemnification Agreement***": The Indemnification Agreement, dated as of the Closing Date, among the Issuer, the Insurer and J.P. Morgan Securities Inc., as modified, amended and supplemented and in effect from time to time.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee or the Insurer, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee provided notice of a proposed supplemental indenture pursuant to Section 8.2(c) to the Holders of Securities and Preference Shares.

"***Initial Purchaser***": J.P. Morgan Securities Inc.

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes and the Composite Securities provided in the table in Section 2.3(a).

"***Initial Shadow Rating***": With respect to the Class A-1g Notes, that rating or ratings which reflects the ratings assigned to the Class A-1g Notes by Moody's and S&P on the Closing Date without giving effect to the Policy.

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Insurance Agreement***": The Insurance and Indemnity Agreement, dated as of the Closing Date, among the Issuer, the Co-Issuer and the Insurer, as modified, amended, and supplemented and in effect from time to time.

"***Insurance Documents***": The Policy, the Insurance Agreement, the Indemnification Agreement and the Premium Letter.

"***Insured Amount***": The meaning assigned to the term "Insured Amount" in the Policy.

"***Insured Notes***": The Class A-1g Notes.

"***Insurer***": As defined in the first sentence of this Indenture.

"***Insurer Default***": The occurrence and continuation of any one of the following events:

(i) the Insurer fails to make a payment required under the Policy in accordance with its terms;

(ii) the Insurer (A) files any petition or commences any case or Proceeding under any provision or chapter of the Bankruptcy Code or any other similar federal or state law relating to the insolvency, bankruptcy, rehabilitation, liquidation or reorganization, (B) makes a general assignment for the benefit of its creditors, or (C) has an order for relief entered against it under the Bankruptcy Code or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or reorganization which is final and nonappealable; or

(iii) a court of competent jurisdiction, the New York Department of Insurance or other competent regulatory authority enters a final and nonappealable order, judgment or decree (A) appointing a custodian, trustee, agent or receiver for the Insurer or for all or any material portion of its property or (B) authorizing the taking of possession by a custodian, trustee, agent or receiver of the Insurer (or the taking of possession of all or any material portion of the property of the Insurer).

"***Interest Coverage Ratio***": With respect to any specified Class of Notes (treating the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes as one Class for this purpose) on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, *minus*

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) the sum of:

(A) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class (excluding any Deferred Interest) on the related Payment Date, *plus*

(B) any accrued and unpaid Premium on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes (treating the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes as one Class for this purpose) if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A Interest Coverage Test	120.00%
Class B Interest Coverage Test	115.00%
Class C Interest Coverage Test	110.00%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided, however, that the "Payment Date" solely for purposes of determining the Interest Period for the Fixed Rate Notes will be the 1st day of each February, May, August and November, regardless of whether such day is a Business Day.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and

other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) during the continuance of an "event of default" (under and as defined in the related Securities Lending Agreement), all interest received from the related Securities Lending Collateral;

(vii) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(viii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(ix) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(x) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

If an Interim Ramp-Up Completion Date Failure has occurred and is continuing on the first Payment Date, all Interest Proceeds remaining after application of Interest Proceeds pursuant to clauses (1) through (20) of Section 11.1(a) shall be deemed to be Interest Proceeds received in the Due Period relating to the second Payment Date and not available for distribution on such first Payment Date.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(i).

"***Interim Ramp-Up Completion Date Failure***": The failure of the Issuer to satisfy the criteria set forth in Section 7.19(e) on or before July 1, 2005; notwithstanding the foregoing, if the Issuer receives a Rating Confirmation after an Interim Ramp-Up Completion Date Failure but before the first Payment Date, such Interim Ramp-Up Completion Date Failure shall not be deemed to have occurred.

"***Investment Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC/Caa Collateral Obligations exist, the Investment Criteria Adjusted Balance for the Excess CCC/Caa Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Investment Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"***Irish Listing and Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Portfolio Manager by an Authorized Officer of the Portfolio Manager, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Knowledgeable Employee***": The meaning specified in Rule 3c-5 under the Investment Company Act.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Portfolio Manager, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": Determined by the Calculation Agent for any Interest Period, the offered rate, as determined by the Calculation Agent, for three month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Portfolio Manager) (the "**Reference Banks**") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that leading banks in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Portfolio Manager)).

For the first Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered, or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or Composite Securities or the Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Composite Securities or Preference Shares, as the case may be (treating the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes as separate Classes). When used with respect to the Class A-1g Notes, the Insurer if the Insurer is the Controlling Class. When used with respect to the Controlling Class, the Insurer if the Insurer is the Controlling Class, and if the Insurer is not the Controlling Class, the Holders of more than 50% of the Aggregate Outstanding Amount of the Controlling Class.

"***Make-Whole Premium***": With respect to the Fixed Rate Notes, the premium payable to the Holders of the Fixed Rate Notes in connection with (i) an Optional Redemption of such Notes (other than in connection with a Tax Event), (ii) the purchase of such Notes that are Extension Sale Securities in connection with the Maturity Extension, if any, or (iii) the purchase of such Notes in connection with an Amendment Buy-Out, as applicable, in each case in an amount equal to the excess, if any, of (x) the present value (discounted to the Redemption Date, Extension Effective Date or date of Amendment Buy-Out, as applicable, using the Reinvestment Yield as the discount rate on a semi-annual basis using a 360-day year of twelve 30-day months) of the remaining payments of interest and principal due on the Fixed Rate Notes, assuming that the entire outstanding principal amount of the applicable Fixed Rate Notes will be paid at the end of the Remaining Life Date and that each intervening payment of interest on the Fixed Rate Notes will be made on the related Payment Date in its entirety (and therefore there is no Deferred Interest on the Fixed Rate Notes) over (y) the Aggregate Outstanding Amount of the applicable Fixed Rate Notes on the Redemption Date, Extension Effective Date or date of Amendment Buy-Out, as applicable; provided that, in no event shall any Make-Whole Premium be less than zero.

"***Management Agreement***": The Portfolio Management Agreement, dated as of the Closing Date, between the Issuer and the Portfolio Manager, as modified, amended, and supplemented and in effect from time to time.

"***Management Fee***": The Senior Management Fee, the Subordinated Management Fee, and the Incentive Management Fee. The Portfolio Manager may, in its sole discretion:

(i) waive all or any portion of the Management Fee, any funds representing the waived Management Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Portfolio Manager) pursuant to the Priority of Payments; or

(ii) defer all or any portion of the Management Fee, any funds representing the deferred Management Fees to be retained in the Collection Account, when they will

become payable in the same manner and priority as their original characterization would have required unless deferred again.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Portfolio Manager and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation based upon the Portfolio Manager's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Portfolio Manager from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Portfolio Manager from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation determined by an Approved Pricing Service (Independent from the Portfolio Manager) that derives valuations by polling broker-dealers (Independent from the Portfolio Manager); provided that if a Market Value of any Collateral Obligation cannot be so determined for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided, further, that during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) (if any) the Market Value of such Collateral Obligation as most recently determined by the Portfolio Manager in accordance with the foregoing and (ii) the current market value of such Collateral Obligation as determined by the Portfolio Manager in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Investment Amount (and any amount in excess of 5.0% of the Maximum Investment Amount shall be deemed to have a Market Value of zero).

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation, *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Investment Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$663,000,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations, *plus*

(B) Cash representing Principal Proceeds on deposit in the Collection Account, *plus*

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation,

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation,

(iii) that is a Determination Date,

(iv) that is the Ramp-Up Completion Date, and

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

*"**Minimum Diversity Score**"*: As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

*"**Minimum Weighted Average Spread**"*: As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Portfolio Manager (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 8.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 8.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 8.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Rating***": The meaning set forth in Schedule 8.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Portfolio Manager on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

"***Moody's Senior Secured Loan***":

(a) A Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan,

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral, or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan

described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan,

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan, and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Portfolio Manager) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral,

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis, and

(d) if the Loan has an Assigned Moody's Rating, such Assigned Moody's Rating is not lower that the senior implied Moody's rating of the related obligor.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in May, 2010.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities or Preference Shares, any Holder or, in the case of Securities or Preference Shares represented by Global Securities, any beneficial owner, that either (i) has declared in writing that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Nonpayment by the Issuer***": The meaning set forth in the Policy.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": A Holder or beneficial owner of an interest in a Certificated Composite Security or Global Security that is a U.S. person and (i) is not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note, (ii) with respect to the Composite Securities evidenced by a Certificated Composite Security, is not (x) a QIB/QP or (y) an Accredited Investor and a Qualified Purchaser or (iii) does not have an exemption available under the Securities Act.

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes and the ultimate payment of interest on the Class B Notes and the Class C Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date minus the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.05%
2	Greater than or equal to 2.95% but less than 3.05%
3	Greater than or equal to 2.85% but less than 2.95%
4	Greater than or equal to 2.75% but less than 2.85%
5	Greater than or equal to 2.65% but less than 2.75%
6	Greater than or equal to 2.55% but less than 2.65%
7	Greater than or equal to 2.45% but less than 2.55%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Noteholder***": A Holder of the Senior Class A Notes, the Class A-2 Notes, the Class A-3 Notes, the Class B Notes or the Class C Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to (i) in the case of the Notes (other than the Fixed Rate Notes), LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period and (ii) in the case of the Fixed Rate Notes, the rate specified for them in Section 2.3.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Senior Class A Notes until the Senior Class A Notes have been fully redeemed (with each of the Senior Class A Notes being redeemed *pro rata* based

upon the outstanding principal amount of the Class A-1 Notes, the Class A-1b Notes and the Class A-1g Notes);

(2) to the Class A-2 Notes until the Class A-2 Notes have been fully redeemed;

(3) to the Class A-3 Notes until the Class A-3 Notes have been fully redeemed (with each of the Class A-3 Notes being redeemed *pro rata* based upon the outstanding principal amount of the Class A-3a Notes and the Class A-3b Notes);

(4) to the Class B Notes until the Class B Notes have been fully redeemed; and

(5) to the Class C Notes until the Class C Notes have been fully redeemed.

"***Notes***": The Senior Class A Notes, the Class A-2 Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes and the Composite Securities.

"***Offering Circular***": The final Offering Circular, dated March 9, 2005, prepared and delivered in connection with the offer and sale of the Notes, the Composite Securities and the Preference Shares.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee, the Insurer and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Portfolio Manager, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes and the Composite Securities or any specified Class, as of any date of determination, all of the Notes, all of the Composite Securities, or all of the Notes or Composite Securities of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes and Composite Securities:

(i) Securities canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture and Composite Securities in exchange for or in lieu of which other Composite Securities have been authenticated and delivered pursuant to this Indenture; and

(iv) Securities alleged to have been destroyed, lost, or stolen for which replacement Securities have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Securities are held by a protected purchaser;

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Notes, the Preference Shares or the Composite Securities have given any request, demand, authorization, direction, notice, consent, or waiver under this Indenture,

(1) to the extent the Class A-1g Notes have been paid with proceeds of the Policy and subject to Section 16.5, such Class A-1g Notes shall continue to remain Outstanding for purposes of this Indenture until the Insurer has been paid as subrogee hereunder and reimbursed pursuant to the Insurance Agreement, as evidenced by a written notice from the Insurer delivered to the Trustee, and the Insurer shall be deemed the Holder thereof, to the extent of any payments thereon made by the Insurer;

(2) Holders of Composite Securities, except to the extent otherwise expressly provided, will be entitled to vote with the Preference Shares to which the Preference Share Component of such Composite Securities relates, with a face amount equal to the aggregate Face Amount of the Preference Shares relating to such Preference Share Component; and

(3) Notes, Composite Securities or Preference Shares owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and

(only (x) with respect to any matter affecting its status as Portfolio Manager, or (y) in any matter respecting an acceleration of any Class of Notes or Composite Securities if the effect of the Portfolio Manager's action or inaction as a Holder of Notes, Composite Securities or Preference Shares would effectively prevent acceleration) the Portfolio Manager and its Affiliates shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent, or waiver, only Notes, Composite Securities or Preference Shares that a Trust Officer of the Trustee has actual knowledge to be so owned or beneficially owned shall be so disregarded. Notes, Composite Securities or Preference Shares so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes, Composite Securities or Preference Shares and that the pledgee is not the Issuer, the Co-Issuer, the Portfolio Manager, the Preference Shares Paying Agent or any Affiliate of the Issuer or the Co-Issuer.

With respect to Components, as of any date of determination, all of the Components represented by Composite Securities that are Outstanding under this Indenture or the Preference Share Documents.

"***Overcollateralization Ratio***": With respect to any Class of Notes (treating the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes as one Class for this purpose) on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it together with any Deferred Interest on the Notes and all Notes ranking senior to it.

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC/Caa Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect Collateral Obligation that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC/Caa Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC/Caa Collateral Obligations, an amount equal to the product of (i) the lower of (1) 70% and (2) the weighted average Market Value of all CCC/Caa Collateral Obligations, expressed as a percentage of their outstanding principal balances *multiplied* by (ii) the Excess CCC/Caa Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Obligation shall be, if the Defaulted Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes (treating the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes as one Class for this purpose) if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A Overcollateralization Test	113.40%
Class B Overcollateralization Test	108.00%
Class C Overcollateralization Test	106.30%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any person authorized by the Issuer to pay the principal of or interest on any Notes or to pay any amounts on any Composite Securities on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in August 2005 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest

and as to which the Portfolio Manager has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***PIK Security***": Any Collateral Obligation with respect to which its issuer or obligor may defer or capitalize interest due on the Collateral Obligation under the related Underlying Instruments.

"***Plan Asset Regulation***": The regulation issued by the U.S. Department of Labor set forth at 29 CFR 2510.3-101 that, under specified circumstances, requires plan fiduciaries, and entities with certain specified relationships to an ERISA Plan, to "look through" investment vehicles (such as the Issuer) and treat as an "asset" of the plan each underlying investment made by such investment vehicle.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Policy***": The Financial Guaranty Insurance Policy of the Insurer with respect to the Insured Notes, including any endorsements thereto.

"***Policy Payment Account***": The meaning specified in Section 16.6.

"***Portfolio Manager***": Highland Capital Management, L.P., and any successor Portfolio Manager pursuant to the Management Agreement.

"***Preference Claim***": The meaning specified in Section 16.4(b).

"***Preference Share Component***": The Class 1 Composite Security Preference Share Component.

"***Preference Share Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares were purchased on the Closing Date at par:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

For purposes of this definition, distributions in respect of the Preference Share Components shall be deemed to have been received by the Holders of the Composite Securities on the Payment Date preceding the related Composite Securities Payment Date.

"***Preference Shares***": The Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's Board of Directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Shares Distribution Amount***": With respect to each Payment Date, an amount equal to 7.0% per annum of the Preference Shares Notional Amount (such Preference Shares Notional Amount reduced by any distribution prior to such Payment Date pursuant to Section 11.1(a)(ii) made in respect of the Preference Shares). The Preference Shares Distribution Amount shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Preference Shares Notional Amount***": Means, $82,200,000.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": JPMorgan Chase Bank, National Association, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor person.

"***Premium***": The meaning assigned to the term "Premium" in the Premium Letter.

"***Premium Letter***": The letter agreement, dated as of the Closing Date, between the Issuer and the Insurer in respect of the Premium payable by the Issuer in consideration of the issuance of the Policy.

"***Premium Rate***": A per annum rate equal to the per annum rate at which the Premium accrues pursuant to the Premium Letter.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed reinvestment in a Collateral Obligation, as the case may be.

"***Purchase Agreement***": A purchase agreement dated March 14, 2005 among the Co-Issuers and J.P. Morgan Securities Inc. relating to the initial purchase of the Purchased Securities, as modified, amended and supplemented and in effect from time to time.

"***Purchased Securities***": The Notes, the Composite Securities and the portion of the Preference Shares, in each case purchased by the Initial Purchaser pursuant to the Purchase Agreement.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any person that, at the time of its acquisition of Notes or Composite Securities is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the 1940 Act and Rule 2a51-2 under the 1940 Act.

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 179th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $663,000,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased

(or committed to be purchased) by the Issuer with proceeds from the sale of the Securities (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $663,000,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least $663,000,000.

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Portfolio Manager (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes (in the case of the Class A-1g Notes, without giving effect to the Policy) or Composite Securities will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Securities are rated by it.

"***Rating Confirmation***": Confirmation from each Rating Agency (and with respect to the Composite Securities, from Moody's only) that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes or Composite Securities.

"***Rating Confirmation Failure***": A failure by the Issuer or the Portfolio Manager (on behalf of the Issuer) to obtain confirmation from S&P and written confirmation from Moody's that it has not reduced, suspended, or withdrawn its Initial Rating of each Class of Notes and Composite Securities and that it has not placed any Class of Notes or Composite Securities on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Portfolio Manager on the Closing Date to apply initially for purposes of the Diversity Test, the

Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Portfolio Manager may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score						
Minimum Weighted Average Spread	**50**	**55**	**60**	**65**	**70**	**75**	**80**
2.45%	2185	2220	2255	2290	2325	2360	2395
2.55%	2245	2280	2315	2350	2385	2420	2455
2.65%	2305	2340	2375	2410	2445	2480	2515
2.75%	2365	2400	2435	2470	2505	2540	2575
2.85%	2425	2460	2495	2530	2565	2600	2635
2.95%	2485	2520	2555	2590	2625	2660	2695
3.05%	2545	2580	2615	2650	2685	2720	2755
	Maximum Weighted Average Moody's Rating Factor						

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Securities pursuant to Section 9.2.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed, plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest), plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note, plus

(iv) in the case of the Fixed Rate Notes, the applicable Make-Whole Amount; plus

(v) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

With respect to any Class 1 Component and any Optional Redemption pursuant to Section 9.2, "Redemption Price" means the distribution in kind of the Treasury Strip provided for in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Composite Security***": Any Composite Security issued in the form of a Regulation S Global Security.

"***Regulation S Global Note***": Any Note issued in the form of a Regulation S Global Security.

"***Regulation S Global Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Regulation S Global Security***": The meaning specified in Section 2.2(b).

"***Reinvestment Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Senior Class A Notes, the Class A-2 Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes together with any Deferred Interest on any Class of Notes.

"***Reinvestment Overcollateralization Test***": A test that is satisfied as of any Measurement Date during the Reinvestment Period on which Class C Notes remain Outstanding, if the Reinvestment Overcollateralization Ratio as of such Measurement Date is at least equal to 107.30%.

"***Reinvestment Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Portfolio Manager notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Portfolio Manager, that, in light of the composition of the Collateral, general market conditions, and other factors, investments in additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in May, 2012 or, in the case of an Extension, the Extended Reinvestment Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Portfolio Manager to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Reinvestment Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(b)).

"***Reinvestment Yield***": With respect to the Fixed Rate Notes, the rate equal to the sum of (a)(i) for the Class A-1b Notes, 0.155% and (ii) for the Class A-3b Notes, 0.30% and (b) the applicable yield to maturity implied by (i) the yields reported, as of 10:00 a.m. (New York City time) on the tenth Business Day preceding the Redemption Date, Extension Effective Date or date of Amendment Buy-Out, as applicable, on "Notes/Bonds" section on the first page on the display designated as "Govt PX1" on Bloomberg Financial Markets Commodities News (or such other display as may replace such display) for actively traded U.S. Treasury securities (for the avoidance of doubt, excluding U.S. Treasury securities with option features, U.S. Treasury inflation securities and other markets) having a maturity as nearly as practicable equal to the Remaining Life Date or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the tenth Business Day preceding the Redemption Date, Extension Effective Date or date of Amendment Buy-Out, as applicable, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity as nearly as practicable equal to the Remaining Life Date; provided, however, if the maturity of the obligations used in the preceding clauses (i) and (ii) differ by more than one month from the Remaining Life Date, then the yield determined pursuant to the preceding clauses (i) and (ii) shall be determined by using linear interpolation between two maturities, one being the nearest maturity preceding the end of the Remaining Life Date and the other being the nearest maturity next succeeding the end of the Remaining Life Date.

"***Remaining Life Date***": With respect of the Class A-1b Notes, June 1, 2013 and with respect of the Class A-3b Notes, September 1, 2015.

"***Removal Buy-Out***": The meaning specified in Section 9.7(a).

"***Removal Buy-Out Option***": The meaning specified in Section 9.7(a).

"***Removal Buy-Out Purchase Price***": The purchase price payable by the Removal Buy-Out Purchaser for the Class A-1g Notes purchased in an Removal Buy-Out, if any, in an amount equal to the Aggregate Outstanding Amount of such Class A-1g Notes, plus accrued and unpaid interest to the date of purchase payable to the Holder of such Class A-1g Notes (giving effect to any amounts paid to the Holder on such date).

"***Removal Buy-Out Purchaser***": The Portfolio Manager (or any of its Affiliates acting as principal or agent); provided that in the event that the Portfolio Manager elects not to purchase Class A-1g Notes from Holders pursuant to Section 9.7, "Removal Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser) or any of its Affiliates acting as principal or agent) designated by the Portfolio Manager; provided, however, none of the Portfolio Manager, the Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Removal Buy-Out Purchaser.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": A Note issued in the form of a Rule 144A Global Security.

"***Rule 144A Global Securities***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P and provided to the Portfolio Manager and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For

the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that will be satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the reinvestment of the related Sale Proceeds in additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate,

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations, and

(iii) rounding up to the first decimal place.

"***S&P Priority Category***": Each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"***S&P Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"***S&P Rating***": The meaning set forth in Schedule 8.

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Portfolio Manager has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other

dispositions less any reasonable expenses expended by the Portfolio Manager or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan, or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": The table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the 1940 Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit H-1.

"***Secured Loan***": A Loan that (i) is not subordinated by its terms to other indebtedness of the borrower for borrowed money and (ii) is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Composite Securities.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Class A Notes***": The Class A-1a Notes, the Class A-1b Notes and the Class A-1g Notes.

"***Senior Management Fee***": A fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.30% per annum of the Maximum Investment Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Management Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral.

"***Senior Unsecured Loan***": A Loan that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Share Trustee***": Maples Finance Limited.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class and the Composite Securities, the Payment Date in February, 2017 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes and the Composite Securities.

"***Structured Finance Obligation***": Any obligation:

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries or Moody's Group III Countries, including portfolio credit default swaps, synthetic collateralized debt obligations, and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities,

(B) collateralized debt obligations backed by Emerging Market Securities,

(C) collateralized debt obligations primarily backed by asset-backed securities,

(D) market value collateralized debt obligations,

(E) securities backed by "future flow" receivables,

(F) net interest margin securitizations,

(G) collateralized debt obligations backed by other collateralized debt obligations, and

(H) collateralized debt obligations a significant portion of which are backed by Bonds;

(ii) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Portfolio Manager shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs managed by the same Portfolio Manager or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated Lien Loan***": A Secured Loan secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Management Fee***": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Portfolio Manager in arrears on each Payment Date equal to 0.25% per annum of the Maximum Investment Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments, (ii) on any Payment Date that any part of the Senior Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum and (iii) on any Payment Date that any part of the Subordinated Management Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Management Fee or Senior Management Fee, as applicable, in clauses (i) through (iii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Composite Securities, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Composite Securities, as the case may be.

"***Synthetic Security***": Any swap transaction, structured bond investment, credit linked note, or other derivative financial instrument relating to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse First Boston) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Portfolio Manager's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a weighted average Market Value of at least 80% at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Obligation when delivered upon a "credit event and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

Synthetic Securities that are credit default swaps, credit linked notes, or other similar instruments may not provide for "restructuring" as a "credit event".

For purposes of the Coverage Tests and the Reinvestment Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations

(other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct investment by the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Portfolio Manager, on behalf of the Issuer, shall give each applicable Rating Agency not less than 5 days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) investments that satisfy the Rating Condition with respect to Moody's, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to

withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period; or

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transfer Agent***": The person or persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Securities.

"***Transferee Certificate***": The meaning specified in Section 2.6(b).

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Treasury Strip***": The meaning specified in Section 10.3(j).

"***Treasury Strip Market Value***": On any date of determination, the market value of the Treasury Strip underlying the applicable portion of the Class 1 Component of the Class 1 Composite Securities on such date, as determined in a commercially reasonable manner by the Portfolio Manager.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as United States persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Warehouse Agreement***": The Warehouse Agreement, dated as of October 28, 2004, among JPMorgan Chase Bank, National Association (formerly known as JPMorgan Chase Bank), the Issuer, and the Portfolio Manager, as amended.

"***Warehoused Loans***": Loans acquired by the Issuer before the Closing Date pursuant to the Warehouse Agreement.

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest, using only the effective after-tax interest rate determined by the Portfolio Manager on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor),

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 8.0%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that will be satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the number of years (including any fraction of a year) between such Measurement Date and March 15, 2014 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 44.5%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 49.3%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum overall rate at which it pays interest, determined with respect to any Floating Rate Obligation that does not bear interest based on a three month London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR,

(ii) summing the amounts determined pursuant to clause (i),

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date, and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

For purposes of calculating the Weighted Average Spread, the Principal Balance of each Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan shall not include any of its unfunded amount.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Portfolio Manager, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral or the Class 1 Collateral,
- with respect to the sale of and reinvestment in Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to

Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not reinvested in additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent reinvestment pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Portfolio Manager certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Reinvestment Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limits other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Reinvestment Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Portfolio Manager by notice to the Trustee, during the Reinvestment Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Reinvestment Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until reinvested in an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

Section 1.3. ***Rules of Interpretation***.

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.12 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein,"

"hereof," "hereto," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding," "following," "before," "after," "next," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES AND THE COMPOSITE SECURITIES

Section 2.1. ***Forms Generally.***

The Notes, the Composite Securities, and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Securities as evidenced by their execution of the Securities.

Section 2.2. ***Forms of Securities and Certificate of Authentication.***

(a) The Securities, including the Certificated Composite Securities, Regulation S Global Securities, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A.

(b) *Regulation S Global Securities.* The Notes of each Class and the Composite Securities sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global securities in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (the "***Regulation S Global Securities***"). The global securities shall be deposited on behalf of the subscribers for the Securities represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Securities.* The Notes of each Class sold to U.S. persons that are QIB/QPs shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (each, a "***Rule 144A Global Security***"), which shall be deposited on behalf of the subscribers for the Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be

increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Certificated Composite Securities*. The Composite Securities sold to U.S. persons that are either (x) QIB/QPs or (y) both Accredited Investors and Qualified Purchasers, shall be issued in the form of certificated securities in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A (each, a "***Certificated Composite Security***"), which shall be registered in the name of their beneficial owner or a nominee of their beneficial owner, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

(e) *Book-Entry Provisions*. This Section 2.2(e) shall apply only to Global Securities deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Securities insofar as interests in the Global Securities are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$602,800,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

The aggregate principal amount of Composite Securities that may be authenticated and delivered under this Indenture is limited to U.S.$6,000,000, except for Composite Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Composite Securities pursuant to Section 2.6, 2.7, or 8.5.

The Securities shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A-1a	A-1b	A-1g	A-2	A-3a
Original Principal Amount	U.S.$52,000,000	U.S.$7,000,000	U.S.$400,000,000	U.S.$42,500,000	U.S.$23,500,000
Interest Rate	LIBOR + 0.31%	4.685%	LIBOR + 0.25%[1]	LIBOR + 0.50%	LIBOR + 0.60%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aaa/AAA	Aaa/AAA	Aaa/AAA	Aa2/AA

Class	A-3b	B	C	Class 1 Composite Securities[2]
Original Principal/Face Amount	U.S.$2,500,000	U.S.$39,000,000	U.S.$36,300,000	U.S.$6,000,000[3]
Interest Rate	5.068%	LIBOR + 1.05%	LIBOR + 2.10%	N/A
Initial Rating (Moody's/S&P)	Aa2/AA	A2/A	Baa2/BBB	Aaa/N/A[4]

1 Upon the termination of the Policy pursuant to Section 16.8, the Interest Rate for the Class A-1g Notes shall be LIBOR + 0.25% + the Premium Rate.

2 The Class 1 Composite Securities shall consist of the Preference Share Component and the Class 1 Component. The portions of the interest in the Treasury Strip and the Preference Shares that comprise the Class 1 Composite Securities are not separately transferable. On each Composite Securities Payment Date, the Holders of the Class 1 Composite Securities will be entitled to receive the proceeds from the sale of the portion of the Treasury Strip with respect to such Composite Securities Payment Date and a pro rata share of the distribution on the Preference Shares on such date. No other payments will be made on the Class 1 Composite Securities.

3 The amount of the Composite Securities shown includes the Preference Share Component comprised of 2,000 Preference Shares.

4 The Class 1 Composite Securities are rated only as to the ultimate payment of their Class 1 Composite Security Rated Balance.

(b) The Class 1 Composite Securities have 2 Components, the Class 1 Component and the Preference Share Component. At issuance U.S.$6,000,000 original principal amount of Class 1 Composite Securities represents a Preference Share Component equal to 2,000 Preference Shares combined with the Class 1 Component.

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount and the Composite Securities will be issuable in minimum denominations of U.S.$100,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 82,200 Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes and Composite Securities under this Indenture. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares will be released by the Trustee to the Preference Shares Paying Agent in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment (subject to the laws of the Cayman Islands) to Holders of the Preference Shares as dividends or redemption price, as applicable.

Section 2.4. ***Extension of Reinvestment Period and Stated Maturity.***

(a) The Issuer, if directed by the Portfolio Manager, shall be entitled on each Extension Effective Date to extend the Reinvestment Period to the applicable Extended Reinvestment Period End Date if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously affected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Reinvestment Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Securities shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent

of any Holders of Securities or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***").

(b) In the case of a Maturity Extension, any Holder of Notes, Composite Securities or Preference Shares wishing to sell such Securities or Preference Shares to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Preference Share Documents immediately after such purchase and the legends on such Securities or Preference Shares and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) either (i) all Coverage Tests and the Selected Collateral Quality Tests are satisfied as of the related Extension Determination Date, the rating of each Class of Securities by Moody's has not been downgraded, withdrawn or qualified from that in effect on the Closing Date (unless it subsequently has been reinstated to the rating assigned on the Closing Date) and the Overcollateralization Ratio Numerator is at least $663,000,000 or (ii) the Rating Condition has been satisfied with respect to Moody's (so long as any Securities are then rated by Moody's); and

(iv) so long as the Insurer is the Controlling Class, the Portfolio Manager on behalf of the Issuer has obtained the Insurer's consent; provided, however, in the event that the Insurer does not consent to a Maturity Extension, the Holders of 100% of the Insured Notes (after giving effect to the sale of any Insured Notes which are Extension Sale Securities in connection with the proposed Maturity Extension) may, pursuant to Section 16.8, terminate the Policy, upon which, so long as clauses (i) through (iii) above have been satisfied, the Maturity Extension shall be effective.

The Issuer, the Trustee, the Insurer and, by its acceptance of the Securities or Preference Shares, each Holder of Securities or Preference Shares agrees that the Initial Purchaser shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such person or Holder of Securities or Preference Shares (whether or not such Holder gave an Extension Sale Notice with respect to its Securities or Preference Shares)

or to any other person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) No later than three Business Days following receipt by the Trustee of the notice given by the Issuer's election to extend the Reinvestment Period (the ***"Extension Notice"***), the Trustee shall mail the Extension Notice to all Holders of Securities and the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares) and each Rating Agency (so long as any rated Securities are Outstanding), in the form of Exhibit J, and shall request the Rating Condition for the Maturity Extension from S&P, if applicable;

(ii) Any Holder of Securities or Preference Shares may give irrevocable notice (an ***"Extension Sale Notice"***) within 30 days after the Trustee has mailed the Extension Notice (the ***"Extension Sale Notice Period"***) of its intention to sell its Securities or Preference Shares to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of Securities or Preference Shares that has not given such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Preference Shares to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Securities or Preference Shares in compliance with all transfer restrictions in this Indenture and the legends on such Securities or Preference Shares and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied. No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Portfolio Manager, at the expense of the Co-Issuers, shall mail a notice to all Holders of Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager, the Initial Purchaser, each Rating Agency (so long as any rated Securities are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depositary for any Securities or Preference Shares subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Holder of Notes (other than Extension Sale Securities) and the Insurer (so long as the Policy has not been terminated) shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Composite Securities and Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to (i) any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification and (ii) to the Insurer, on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid: (i) in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer and (ii) in the case of the Insurer, to the account specified in the Premium Letter or as otherwise directed by the Insurer in writing.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Securities shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Securities or did not hold their offices at the date of issuance of the Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer and the Co-Issuer may deliver Securities executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Securities as provided in this Indenture and not otherwise.

Each Security authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Securities that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Securities issued upon transfer, exchange, or replacement of other Securities shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Securities so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Securities so transferred, exchanged, or replaced. If any Security is divided into more than one Security in accordance with this Article 2, the original principal amount of the Security shall be proportionately divided among the Securities delivered

in exchange for it and shall be the original aggregate principal amount of the subsequently issued Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Security a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Security shall be conclusive evidence, and the only evidence, that the Security has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Securities and the registration of transfers of Securities. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Securities and transfers of the Securities as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Portfolio Manager of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar. The Issuer shall cause the Composite Securities to be registered and recorded in the Indenture Register and, with respect to the Preference Share Component, in the Preference Share register.

If the Issuer appoints a person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Holders of the Securities and the principal amounts and number of the Securities.

Upon surrender for registration of transfer of any Securities at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Securities of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of its holder, Securities may be exchanged for Securities of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Securities to be exchanged at the office or agency of the Co-Issuers to be maintained pursuant to Section 7.2. Whenever any Security is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Securities that the Noteholder or Composite Securityholder making the exchange is entitled to receive.

All Securities issued on any registration of transfer or exchange of Securities shall be the valid obligations of the Applicable Issuers evidencing the same obligations, and entitled to the same benefits under this Indenture, as the Securities surrendered for registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of Securities, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Security may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the 1940 Act. None of the Co-Issuers, the Trustee, or any other person shall have any obligation to register the Securities under the Securities Act or any state securities laws.

The Trustee shall require, before any registration of transfer of a Composite Security in which delivery is to be made in the form of a Certificated Composite Security, that the Holder's prospective transferee deliver to the Trustee and the Co-Issuers a certificate relating to the transfer in the form of the applicable portion of Exhibit B (each, a "***Transferee Certificate***").

(c) (i) No Note may be transferred, directly or indirectly, to a Benefit Plan Investor unless the purchaser's purchase, holding and disposition of a Note or any beneficial interest therein (x) will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code and (y) in the case of a governmental, church or other plan, will not result in a non-exempt violation of any substantially similar U.S. federal, state, local or non-U.S. law.

(ii) No Composite Security may be transferred, directly or indirectly, to (i) an ERISA Plan or (ii) a Benefit Plan Investor that is not an ERISA Plan but whose purchase, holding or disposition of a Composite Security or any beneficial interest therein will result in a non-exempt violation of any federal, state, local or non-U.S. law substantially similar to Section 406 of ERISA or Section 4975 of the Code.

(d) Neither the Trustee nor the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the 1940 Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee by a prospective transferee, the Trustee shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

Each Holder of a Class 1 Composite Security (other than a Regulation S Global Security) will be required to provide to the Issuer and the Trustee written certification in the form of the applicable portion of Exhibit B as to whether it is an Affected Bank and each subsequent transferee of a Regulation S Global Security will be deemed to represent to the Issuer and to the Trustee that it is not an Affected Bank. No transfer of any Class 1 Composite Security to a transferee that has represented it is an Affected Bank will be effective, and the Trustee will not recognize any such transfer, unless such transfer is specifically authorized by the Issuer in writing; provided, however, that the Issuer shall authorize any such transfer if (x) such transfer would not cause more than 33 1/3% of the aggregate outstanding amount of the Preference Shares (including the Preference Share Components of the Class 1 Composite Securities) to be owned by Affected Banks or (y) the transferor is an Affected Bank previously approved by the Issuer.

(e) For so long as any of the Securities are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Security remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Security, in whole or in part, shall only be made in accordance with Section 2.2(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii), and (iv) of this Section 2.6(f), transfers of a Global Security shall be limited to transfers of the Global Security in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Security to Regulation S Global Security*. If a Holder of a beneficial interest in a Rule 144A Global Security deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Security for an interest in the corresponding Regulation S Global Security, or to transfer its interest in the Rule 144A Global Security to a person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Security, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Security (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Security and to increase the principal amount of the Regulation S Global Security by the aggregate principal amount of the beneficial interest in the Rule 144A Global Security to be exchanged, and to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Regulation S Global Security equal to the reduction in the principal amount of the Rule 144A Global Security upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Security, but not less than the minimum denomination applicable to the Holder's Securities, equal to the beneficial interest in the Rule 144A Global Security to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Securities, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Security to Rule 144A Global Security*. If a Holder of a Note held as a beneficial interest in a Regulation S Global Security deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Security for an interest in the corresponding Rule 144A Global Security or to transfer its interest in the Regulation S Global Security to a person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Security, the Holder may, subject to the rules and procedures of Euroclear, Clearstream, or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Security. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream, or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Security equal to the beneficial interest in the Regulation S Global Security, but not less than the minimum denomination applicable to the Holder's Securities, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and is also a Qualified Purchaser or, in the case of a transfer, the person transferring the interest in the Regulation S Global Security reasonably believes that the person acquiring the interest in a Rule 144A Global Security is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and is also a Qualified Purchaser, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is both a Qualified Institutional Buyer and a Qualified Purchaser,

then the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Security by the aggregate principal amount of the beneficial interest in the Regulation S Global Security to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the securities account of the person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Security equal to the reduction in the principal amount of the Regulation S Global Security.

(iv) *Regulation S Global Composite Security to Certificated Composite Security*. If a Holder of a beneficial interest in a Regulation S Global Composite Security wishes at any time to transfer its interest in such Global Security to a person who wishes to take delivery of it in the form of a Certificated Composite Security of the same Class, the Holder may, subject to the rules and procedures of Euroclear, Clearstream, or the Depository, as the case may be, transfer the interest for an

equivalent beneficial interest in one or more Certificated Composite Securities of the same Class as described below. Upon receipt by the Indenture Registrar of:

(A) instructions given in accordance with the Depository's procedures from an Agent Member, or instructions from Euroclear, Clearstream, or the Depository, as the case may be, directing the Trustee to deliver one or more Certificated Composite Securities of the same Class, designating the registered name or names, address, payment instructions, the Class, and the number and principal amounts of the Certificated Composite Securities to be executed and delivered (the Class and the aggregate principal amounts of the Certificated Composite Securities being equal to the aggregate principal amount of such Global Security to be transferred), in authorized denominations,

(B) a certificate in the form of Exhibit B-6 given by the Holder of the beneficial interest and stating that the person transferring the interest in the Global Security reasonably believes that the person acquiring the interest in a Certificated Composite Security is either a Qualified Institutional Buyer or an Accredited Investor, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A or in a transaction not requiring registration under the Securities Act and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and is also either (i) a Qualified Purchaser, (ii) a Knowledgeable Employee or (iii) an entity owned exclusively by Qualified Purchasers and/or Knowledgeable Employees, and

(C) a certificate in the applicable form of Exhibit B given by the transferee of the beneficial interest stating that it is both (x) either a Qualified Institutional Buyer or an Accredited Investor and (y) either (i) a Qualified Purchaser, (ii) Knowledgeable Employee or (iii) an entity owned exclusively by Qualified Purchasers and/or Knowledgeable Employees, and

then the Indenture Registrar shall instruct the Depository to reduce the applicable Global Security by the aggregate principal amount of the beneficial interest in the Global Security to be transferred and the Indenture Registrar shall record the transfer in the Indenture Register in accordance with Section 2.6(a) and authenticate and deliver one or more Certificated Composite Securities of the appropriate Class registered in the names specified in the certificate described in clause (B) above in principal amounts designated by the transferee (the aggregate of the amounts being equal to the beneficial interest in the Global Securities to be transferred) and in the minimum denominations and integral multiples in excess thereof as specified in Section 2.3.

If a Holder of a beneficial interest in a Regulation S Global Composite Security wishes at any time to exchange the interest in such Global Security for one or more Certificated Composite Securities of the same Class, the Holder may exchange the interest for an equivalent beneficial interest in one or more Certificated Composite Securities of the same Class as provided below. Upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member, or instructions from Euroclear,

Clearstream, or the Depository, as the case may be, directing the Trustee to deliver one or more Certificated Composite Securities and

(B) written instructions from the Holder designating the registered name, address, and payment instructions of the Holder and the Class and the face amounts of the Certificated Composite Securities to be executed and delivered to the Holder (the Class and the aggregate face amounts of the Certificated Composite Securities being the same as the beneficial interest in the Global Security to be exchanged),

then the Indenture Registrar shall instruct the Depository to reduce the Global Security by the aggregate principal amount of the beneficial interest in the Global Security to be exchanged, shall record the exchange in the Indenture Register in accordance with Section 2.6(a), and authenticate and deliver one or more Certificated Composite Securities of the appropriate Class registered as specified in the instructions described in clause (A) above, in authorized denominations.

(v) *Other Exchanges*. If a Global Security is exchanged for Securities in definitive registered form without interest coupons pursuant to Section 2.11, the Securities may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs or are to non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as a Certificated Composite Security remains Outstanding, transfers of a Certificated Composite Security, in whole or in part, shall only be made in accordance with this Section 2.6(g).

(i) *Certificated Composite Security to Regulation S Global Composite Security*. If a Holder of a Composite Security represented by a Certificated Composite Security wishes at any time to exchange the Certificated Composite Security for an interest in the corresponding Regulation S Global Composite Security, or to transfer the Certificated Composite Security to a person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Composite Security, the Holder may exchange or transfer the Security for an equivalent beneficial interest in the corresponding Regulation S Global Composite Security, if the proposed transferee or the person requesting the exchange, as applicable, is not a U.S. person. Upon receipt by the Indenture Registrar of:

(A) the Certificated Composite Security properly endorsed for the transfer, and written instructions from the Holder directing the Indenture Registrar to cause to be credited a beneficial interest in the Regulation S Global Composite Security of the same Class equal to the principal amount of the Certificated Composite Security,

(B) a written order containing information regarding the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-5, given by the Holder of the Certificated Composite Security stating that the exchange or transfer of the

interest has been made in compliance with the transfer restrictions applicable to the Regulation S Global Composite Security, including that the proposed transferee or the person requesting the exchange, as the case may be, is not a U.S. person and that the proposed transfer is being made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the appropriate form of Exhibit B given by the proposed transferee stating that it is not a U.S. person,

the Indenture Registrar shall cancel the Certificated Composite Security in accordance with Section 2.10, record the transfer in the Indenture Register in accordance with Section 2.6(a), and instruct the Depository to increase the principal amount of Regulation S Global Composite Security by the aggregate principal amount of the Certificated Composite Security to be exchanged or transferred, and to credit to the account of the person specified in the instructions a beneficial interest in the Regulation S Global Composite Security of the same Class equal to the amount specified in the instructions received pursuant to clause (A) above.

(ii) *Certificated Composite Security to Certificated Composite Security.* If a Holder of a Certificated Composite Security wishes at any time to transfer the Certificated Composite Security to a person who wishes to take delivery of it in the form of one or more Certificated Composite Securities of the same Class, the Holder may transfer the Security as provided below. Upon receipt by the Indenture Registrar of

(A) the Holder's Certificated Composite Security properly endorsed for the transfer, and

(B) a certificate in the applicable form of Exhibit B given by the transferee of the Certificated Composite Security,

then the Indenture Registrar shall cancel the Certificated Composite Security in accordance with Section 2.10, record the transfer in the Indenture Register in accordance with Section 2.6(a), and upon execution by the Applicable Issuers authenticate and deliver one or more Certificated Composite Securities bearing the same designation as the Certificated Composite Securities endorsed for transfer, registered in the names specified in the assignment described in clause (A) above, in principal amounts designated by the transferee (the aggregate of the principal amounts being equal to the aggregate principal amount of the Certificated Composite Securities surrendered by the transferor), and in authorized denominations.

(iii) *Exchange of Certificated Composite Securities.* If a Holder of one or more Certificated Composite Securities wishes at any time to exchange the Certificated Composite Securities for one or more Certificated Composite Securities of the same Class of different face amounts, the Holder may exchange the Certificated Composite Security for Certificated Composite Securities bearing the same designation as the Certificated Composite Securities endorsed for exchange as provided below. Upon receipt by the Applicable Issuers and the Indenture Registrar of (A) the Holder's Certificated Composite Securities properly endorsed for the exchange and (B) written instructions from the Holder designating the face amounts of the Certificated Composite Securities to be issued (the aggregate of the face amounts being equal to the

aggregate face amount of the Certificated Composite Securities surrendered for exchange), then the Indenture Registrar shall cancel the Certificated Composite Securities in accordance with Section 2.10, record the exchange in the Indenture Register in accordance with Section 2.6(a), and upon execution by the Applicable Issuers authenticate and deliver one or more Certificated Composite Securities bearing the same designation as the Certificated Composite Securities endorsed for exchange, registered in the same names as the Certificated Composite Securities surrendered by the Holder, in different face amounts designated by the Holder, and in authorized denominations.

(h) The Components of the Composite Securities, whether in the form of Certificated Preference Shares, Regulation S Global Preference Shares or the Treasury Strip, are not separately transferable. For the avoidance of doubt, a Holder of a Class 1 Composite Security may not exchange its Class 1 Composite Security for proportional interests in the underlying securities represented by the Components thereof.

(i) If Securities are issued upon the transfer, exchange, or replacement of Securities bearing the applicable legends in the applicable Exhibit A, and if a request is made to remove the legend on the Securities, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Securities comply with the Securities Act, the 1940 Act, ERISA, and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Securities that do not bear the applicable legend.

(j) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Security that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note or a Certificated Composite Security, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Security may only be held through Euroclear or Clearstream.

(k) Each person who becomes a beneficial owner of a Note or Composite Security evidenced by: (i) an interest in a Certificated Composite Security or Definitive Security, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B upon such person's purchase or other acquisition of the relevant Certificated Composite Security or Definitive Security and (ii) an interest in a Global Security, shall be deemed to make (or, in the case of a Class 1 Composite Security, represented by a Global Security purchased in the Offering of the Securities, will be required to make) the representations, warranties and agreements set forth in the applicable legends of the Securities set forth in Exhibit A hereto and in the applicable Transferee Certificate set forth in Exhibit B hereto upon such person's purchase or other acquisition of the relevant Global Security.

(l) The aggregate principal amount of any Global Security may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Security, which adjustments shall be conclusive as to the aggregate principal amount of any Global Security.

(m) Any purported transfer of a Security not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost, or Stolen Securities.***

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss, or theft of any Security, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Security is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Security has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Security, a replacement Security, of like tenor and equal principal amount.

If, after delivery of the replacement Security or payment on it, a protected purchaser of the predecessor Security presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Security (or the payment on it) from the person to whom it was delivered or any person taking the replacement Note from the person to whom the replacement Note was delivered or any assignee of that person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If any mutilated, destroyed, lost, or stolen Security has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Security pay the Security without requiring its surrender except that any mutilated Security shall be surrendered.

Upon the issuance of any new Security under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Security issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Security shall be an original additional contractual obligation of the Applicable Issuers and the new Security shall be entitled to all the benefits of this Indenture equally and proportionately with all other Securities of the same Class duly issued under this Indenture.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or the respective Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture.

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Security without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a person that is not a "United States person" within the meaning

of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Security under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Listing and Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Security and to the Holder or its nominee with respect to a Certificated Composite Security or a Definitive Security, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Security, and to the Holder or its designee with respect to a Certificated Composite Security or a Definitive Security, in the case of a Certificated Composite Security or a Definitive Security, its holder has provided written wiring instructions to the Trustee and, if the payment is to be made by the Irish Listing and Paying Agent, the Irish Listing and Paying Agent, on or before the related Record Date. Payments in respect of interest on and principal of any Preference Share payable to the Preference Shares Paying Agent in accordance with the Priority of Payments for payments on the Preference Shares in accordance with the Preference Share Documents shall be payable by wire transfer in immediately available funds (or by internal transfer if the Trustee and the Preference Shares Paying Agent are the same Person) to the Preference Shares Distribution Account.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. In the case of Components to be redeemed, the related Composite Securities do not need to be surrendered at the office of any paying agent under this Indenture to receive the applicable Redemption Price. Neither the Co-Issuers, the Trustee, nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Security.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment.

The final payment on any Composite Security shall be made only upon surrender of the certificate for the Composite Security to the Trustee at the office designated by the Trustee. If the Trustee and the Issuer have been furnished any security or indemnity they require to save

each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated (i) in the case of the Notes (other than the Fixed Rate Notes) on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360 and (ii) in the case of the Fixed Rate Notes on the basis of a 360-day year consisting of twelve 30-day months.

(h) All reductions in the principal amount of a Security (or one or more predecessor Securities) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Security and of any Security issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Security.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Applicable Issuers under the Notes and the Class 1 Components and under this Indenture are limited recourse obligations of the Applicable Issuers payable solely from the Collateral and the Class 1 Collateral (as applicable) and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Securities or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Securities or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral and the Class 1 Collateral (as applicable) for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or the Class 1 Collateral (as applicable) or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Securities or secured by this Indenture until the Collateral or the Class 1 Collateral (as applicable) have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Securities to any Noteholder or Composite Securityholder, as applicable, the tax shall reduce the amount otherwise distributable to the Noteholder or Composite Securityholder, as applicable. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder or Composite Securityholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder or Composite Securityholder shall be treated as Cash

distributed to the Noteholder or Composite Securityholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder or Composite Securityholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder or Composite Securityholder in making the claim by providing information readily available to the Trustee so long as the Noteholder or Composite Securityholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder or Composite Securityholder that the failure by the Noteholder or Composite Securityholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder or Composite Securityholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Securities.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Security the person in whose name any Security is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments of principal of and interest on the Security and on any other date for all other purposes whatsoever (whether or not the Security is overdue), and neither the Issuer, the Co-Issuers, nor the Trustee nor any agent of the Issuer, the Co-Issuer, or the Trustee shall be affected by notice to the contrary. The Portfolio Manager shall notify the Trustee of any Affiliate of the Portfolio Manager that owns the Securities or Preference Shares.

Section 2.10. ***Cancellation.***

All Securities surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Co-Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Definitive Securities.***

(a) A Global Security deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Security to their beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Security or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Security that is transferable in the form of a Definitive Security to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Security, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Security***") in authorized denominations. Any Definitive Security delivered in exchange for an interest in a Global Security, as applicable, shall, except as otherwise provided by Section 2.6(i), bear the legends in the applicable portion of Exhibit A and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Securities in definitive, fully registered form without interest coupons.

The Definitive Securities shall be in substantially the same form as the Global Securities, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Securities of authorized denominations.

Section 2.12. ***Securities Beneficially Owned by Persons Not QIB/QPs or Qualified Purchasers.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, any transfer of a beneficial interest in any (i) Global Security to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP or (ii) Certificated Composite Security to a U.S. person that is not an Accredited Investor and a Qualified Purchaser, and that is not in each case made pursuant to an applicable exemption under the Securities Act, shall be void and any such purported transfer of which the Issuer, the Co-Issuer, or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer, and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer, or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), that a person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes, Composite Securities, or interest in the Securities, without further notice to the Non-Permitted Holder, the Issuer may sell the Notes, Composite Securities, or interest in the Securities to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Securities, and selling the Securities, or interest in the Securities to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Security, the beneficial owner of

each interest in a Security, the Non-Permitted Holder, and each other person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Securities agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any person having an interest in the Securities sold as a result of any such sale or the exercise of its discretion.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Securities on Closing Date.***

The Securities to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters*. An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Purchase Agreement and, in the case of the Issuer, the Management Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement, the Insurance Documents and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication, and delivery of the Notes and Composite Securities applied for by it and specifying the Stated Maturity, principal amount, and, with respect to the Notes, the Note Interest Rate of each Class of Notes to be authenticated and delivered and (2) evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date, and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval, or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval, or

consent of any governmental body is required for the valid issuance of the Securities applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Securities except as have been given.

(iii) *Co-Issuers' and Portfolio Manager's U.S. Counsel Opinion*. An opinion of McKee Nelson LLP, special U.S. counsel to the Co-Issuers, and Orrick, Herrington & Sutcliffe LLP, counsel to the Portfolio Manager, including 10b-5 letter, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Maples and Calder, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Gardere Wynne Sewell LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture*. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Securities applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the Securities have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Management Agreement*. Executed copy of the Management Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents.* An executed counterpart of each of the Preference Share Documents.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Insurance Documents*. An executed counterpart of each of the Insurance Documents

(xiii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations and the Treasury Strip pledged to the Trustee for inclusion in the Collateral and the Class 1 Collateral, as applicable, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) and the Treasury Strip to the Trustee or the Custodian as contemplated by Section 3.2.

(xiv) *Certificate of the Portfolio Manager*. A certificate of an Authorized Officer of the Portfolio Manager, dated as of the Closing Date, to the effect that, to the best knowledge of the Portfolio Manager, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Portfolio Manager on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(xxi)(B);

(xv) *Rating Letters*. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Securities rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xvi) *Accounts*. Evidence that each of the Accounts has been established.

(xvii) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of approximately U.S.$276,000,000 into the Collection Account for use pursuant to Section 7.19, the deposit of approximately U.S.$18,300,000 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of approximately U.S.$2,000,000 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xviii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Securities to the Daily Official List.

(xix) *Issuer Order for Authentication of Securities*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Securities in the amounts, in the registered names, and with the CUSIP numbers in the Issuer Order.

(xx) *Accountants' Certificate*. An Accountants' Certificate (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has committed to purchase in accordance with customary settlement procedures in the relevant markets, is at least U.S.$497,250,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(xx) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xxi) *Certificate of the Issuer Regarding Collateral*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xx) above, the weighted average purchase price of the Collateral Obligations in the Portfolio as of the Closing Date is at least 90% of the aggregate par amount thereof.

(xxii) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit H-2.

(xxiii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxiii) shall imply or impose a duty on the part of the Trustee to require any other documents.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Portfolio Manager, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be JPMorgan Chase Bank, National Association. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other investments purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into an agreement with the Custodian substantially in the form of Exhibit G providing, inter alia, that the establishment and maintenance of the Account shall be governed by the law of the State of New York. Initially, the Custodian for each Account shall be JPMorgan Chase Bank, National Association.

(b) Each time that the Issuer, or the Portfolio Manager on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment, or other investments, the Portfolio Manager (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment, or other investment is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment, or other investment to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such investment that is not a Collateral Obligation, in the Account in which the funds used to purchase the investment are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment, or other investment so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments, or other investments.

Section 3.3. ***Representations as to Collateral.***

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral and to the Holders of the Class 1 Composite Securities as to the Class 1 Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral or new Class 1 Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral and the Class 1 Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages, and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) The Issuer has good and marketable title to and is the owner of each item of Collateral and Class 1 Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture.

(iii) The Issuer has not assigned, pledged, or otherwise encumbered any interest in the Collateral or the Class 1 Collateral (or, if any interest in the Collateral or the Class 1 Collateral has been assigned, pledged, or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral and the Class 1 Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Warehoused Loans, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion, or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in the Class 1 Collateral and each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered the Class 1 Collateral and each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Class 1 Collateral and the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," "uncertificated securities," each within the meaning of the applicable Uniform

Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral and the Class 1 Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral or the Class 1 Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated, or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral or the Class 1 Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received a written acknowledgment from the Custodian that the Custodian is holding all the instruments delivered to it that are or evidence the Collateral or the Class 1 Collateral solely on behalf and for the benefit of the Trustee. None of the instruments that are or evidence the Collateral or the Class 1 Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any person other than the Trustee.

(xiii) The Accounts are not in the name of any person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral or the Class 1 Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received a written acknowledgment from the Custodian that the Custodian is holding all the certificated securities delivered to it that are or evidence the Collateral or the Class 1 Collateral solely on behalf and for the benefit of the Trustee.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral or the Class 1 Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral and the Class 1 Collateral.

(b) If the Issuer acquires Collateral or Class 1 Collateral that is not "general intangibles," "certificated securities," "instruments," "securities entitlements," "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral or the Class 1 Collateral, the Issuer (or the Portfolio Manager on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral or the Class 1 Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral or the Class 1 Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes, the Composite Securities, the Class 1 Collateral and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost, or stolen Securities,

(iii) rights of Holders of the Notes to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture, rights of Holders of the Class 1 Composite Securities to receive distributions with respect to the Class 1 Component as provided herein and rights of the Insurer to receive any such payments of principal and interest pursuant to Section 16.5,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention, disbursement and reinvestment of Collateral,

(vi) the rights, obligations, and immunities of the Portfolio Manager under this Indenture and under the Management Agreement,

(vii) the rights, obligations, and immunities of the Insurer under this Indenture and under the Insurance Agreement, and

(viii) the rights of Holders of the Notes as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them and the rights of the Holders of the Class 1 Composite Securities as beneficiaries of this Indenture with respect to the Class 1 Collateral (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Securities theretofore authenticated and delivered to Noteholders and Composite Securityholders (other than (A) Securities that have been destroyed, lost, or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Securities, Cash or non-callable obligations of the United States of America. The Treasury Strip is the obligation that must be deposited and held in a segregated trust account with respect to the Class 1 Component, and when distribution is required, will be distributed in kind in complete satisfaction of all obligations to the Holders of the Class 1 Composite Securities for payment on their interest in the Class 1 Component (and the Class 1 Component shall not be entitled to any of the proceeds of any of the other obligations). The obligations deposited under Section 4.1(a)(ii) with respect to the other Securities must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Securities that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with

Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of an Opinion of Counsel of Independent U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Holders of Notes would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture and the Insurance Agreement by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Portfolio Manager, the Insurer, and, if applicable, the Noteholders and the Composite Securityholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.6, 6.7, 7.1, 7.3, 13.1, and 14.14 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the person entitled to it and applied by the Trustee in accordance with the Securities and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Securities, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on any Class of Notes (determined without giving effect to any payments made under the Policy) that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Listing and Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal of any Note (and any Make-Whole Premium, if applicable) (determined without giving effect to any payments made under the Policy) or any distribution with respect to the Class 1 Component under Section 11.2, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for 3 Business Days;

(d) on any Measurement Date for so long as any Senior Class A Notes or Class A-2 Notes are Outstanding, the Overcollateralization Ratio Numerator is less than 102% of the Aggregate Outstanding Amount of the Senior Class A Notes and the Class A-2 Notes;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the 1940 Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Reinvestment Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Portfolio Manager by the Trustee or to the Issuer, the Co-Issuer, the Portfolio Manager, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action;

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by any Rating Agency) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by each Rating Agency) the Rating Condition with respect to each Rating Agency is satisfied with respect thereon; or

(j) the occurrence of an "Event of Default" under (and defined in) the Insurance Agreement.

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

(a) If an Event of Default is continuing (other than (i) an Event of Default specified in Section 5.1(e), (g) or (h) or (ii) an Event of Default with respect to the Class 1 Component under Section 5.1(b)), the Trustee may, and upon the written direction of a Majority of the Controlling Class shall, declare the principal of all the Notes and the Class 1 Component to be immediately payable (and the Class 1 Composite Security Rated Balance shall become immediately payable) by notice to the Applicable Issuers, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Reinvestment Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(b)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes and the Class 1 Component, and other amounts payable under this Indenture, shall automatically become payable (and the Class 1 Composite Security Rated Balance shall become immediately payable) without any declaration or other act on the part of the Trustee or any Noteholder and the Reinvestment Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(b)). If an Event of Default occurs with respect to the Class 1 Component under Section 5.1(b), a Majority of the Holders of the Class 1 Composite Securities may declare the Class 1 Component immediately payable by notice to the Issuer and the Class 1 Composite Security Rated Balance shall become immediately payable. Payment of the Class 1 Composite Security Rated Balance when made shall be made to the Holders of the Class 1 Components as a distribution in kind of a *pro rata* share (based on the Class 1 Composite Security Rated Balance) of each item of the Class 1 Collateral.

(b) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class (or a Majority of the Holders of the Class 1 Composite Securities solely in respect of the acceleration of the Class 1 Component by the Majority of the Class 1 Component) by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent, may rescind the declaration and its consequences if:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due or, in the case of acceleration of the Class 1 Component by the Majority of the Class 1 Component, all distributions with respect to the Class 1 Component under Section 11.2 (other than as a result of the acceleration);

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all unpaid Accrued Insurance Liabilities and unpaid Premium;

(D) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(E) all unpaid Senior Management Fees; and

(F) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the nonpayment of the interest on or principal of the Notes or, in the case of acceleration of the Class 1 Component by the Majority of the Class 1 Component, nonpayment of distributions with respect to the Class 1 Component under Section 11.2 that have become due solely by the acceleration, have been (A) cured, and a Majority of the Controlling Class (or a Majority of the Holders of the Class 1 Composite Securities solely in respect of the acceleration of the Class 1 Component) by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

If a declaration of acceleration is rescinded as described above:

(x) the Reinvestment Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Reinvestment Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall preserve the Collateral and the Class 1 Collateral in accordance with this Indenture. If the preservation of the Collateral or the Class 1 Collateral is rescinded pursuant to Section 5.5, the Notes and the Class 1 Component may again be accelerated pursuant to Section 5.2(a), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(b)).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(c) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class, or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note (determined without giving effect to any payments made under the Policy) or the Class 1 Component, upon demand of the Trustee or the Holder of any affected Note or Class 1 Composite Securities, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note or the Class 1 Composite Securities, the whole amount then payable on the Note or the Class 1 Component for principal and interest with

interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to the Holders of the Securities and the Insurer under this Indenture and the Insurance Agreement, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements, and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may, and shall at the direction of a Majority of the Controlling Class, institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes or the Class 1 Component and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may, and shall upon written direction of a Majority of the Controlling Class, proceed to protect and enforce its rights and the rights of the Holders of the Securities by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Holders of the Securities, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.7.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes or the Class 1 Component under the Bankruptcy Law or any other applicable bankruptcy, insolvency, or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator, or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer, or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer, or other obligor on the Notes or the Class 1 Component, or the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes and the Class 1 Component, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Holders of the Securities allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer, or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Holders of the Securities in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation, or other bankruptcy or insolvency Proceedings or person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Holders of the Securities and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian, or other similar official is authorized by each of the Holders of the Securities to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Holders of the Securities, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Security, any plan of reorganization, arrangement, adjustment, or composition affecting the Securities or any Holder of Securities, or to authorize the Trustee to vote on the claim of the Holder of any Security in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or the Class 1 Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, and shall, upon written direction of a Majority of the Controlling Class, to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Holders of the Securities under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

If an Event of Default is continuing, and the Class 1 Component has been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, and shall, upon written direction of a Majority of the Class 1 Composite Securities, to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Class 1 Component or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Class 1 Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Class 1 Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Class 1 Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Holders of the Securities under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Class 1 Collateral or institute Proceedings in furtherance of the sale or liquidation of the Class 1 Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

The Trustee may, but need not, obtain at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation with demonstrated capabilities in structuring and distributing securities similar to the Securities, which may be the Initial Purchaser, as to the feasibility of any action proposed to be taken in accordance with this Section 5.4 and as to the sufficiency of the proceeds and other amounts receivable with respect to the Collateral or the Class 1 Collateral to make the required payments of principal of and interest on the Securities, which opinion shall be conclusive evidence as to the feasibility or sufficiency.

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Portfolio Manager (subject to the Management Agreement) may bid for and purchase any part of the Collateral and, upon

compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee, and the Holders of the Securities, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties, or the Holders of the Securities may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a person other than a Secured Party, or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceeding.

Section 5.5. ***Optional Preservation of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default has occurred and is continuing, the Trustee shall retain the Class 1 Collateral intact, collect, and cause the collection of the proceeds of the Class 1 Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Class 1 Collateral and the Class 1 Components in accordance with Section 11.2 and Article 10 and shall not sell the Class 1 Collateral in any circumstances unless so directed by all of the Holders of the Class 1 Composite Securities, in which case the Trustee shall sell the Class 1 Collateral to the buyer identified by such Holders of the Class 1 Composite Securities. Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral intact, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty, all amounts owing by

the Issuer to the Insurer under the Insurance Agreement, and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of each of the Senior Class A Notes, the Class A-2 Notes, the Class A-3 Notes, the Class B Notes and the Class C Notes direct the sale and liquidation of the Collateral; provided, however, if an Event of Default specified in 5.1(d) occurs and if the Insurer is the Controlling Class, the Insurer shall have the sole right to direct the sale and liquidation of the Collateral under this clause (ii).

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Portfolio Manager. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to preserve the Collateral or the Class 1 Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service), at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be the Initial Purchaser.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holders of the Securities, the Co-Issuers, the Insurer, the Portfolio Manager and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Holders of the Notes representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all

Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Securities.***

All rights of action and claims under this Indenture or under any of the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Securities.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Any money collected by the Trustee with respect to the Class 1 Component pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Class 1 Component under this Indenture shall be applied in accordance with Section 11.2 at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

No Holder of any Security shall have any right to institute any Proceedings, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy under this Indenture, unless:

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class or, in the case of acceleration of the Class 1 Component by the Majority of the Class 1 Component, the Class 1 Components, of the Class 1 Composite Securities shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request, and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class or, in the case of acceleration of the Class 1 Component by the Majority of the Class 1 Component, the Class 1 Components, of the Class 1 Composite Securities.

No one or more Holders of Securities have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Holders of Securities of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of the Securities of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Securities of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture.

For the avoidance of doubt, this Section 5.8 shall not limit the right of the Insurer to exercise any rights or remedies that the Insurer may have pursuant to Section 16.2.

Section 5.9. ***Unconditional Rights of Holders of Securities.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, (i) the Holder of any Note and a Holder of the Class 1 Composite Securities shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note or the Class 1 Component, as the case may be, as it comes due in accordance with the Priority of Payments or Section 11.2, as the case may be, and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder; and (ii) the Insurer shall have the right, which is absolute and unconditional, to receive payment of all outstanding Accrued Insurance Liabilities in accordance with the Priority of Payments and Section 13.1, and subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Insurer. Holders of Notes ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Shares Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee, the Insurer or the Holder of any Security has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned

for any reason, or has been determined adversely to the Trustee, the Insurer or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee, the Insurer and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee, the Insurer and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee, the Insurer or to the Holders of Securities is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee, the Insurer or the Holder of any Security to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee, the Insurer or to the Holders of Securities may be exercised from time to time, and as often as deemed expedient, by the Trustee, the Insurer or by the applicable Holders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class, with respect to the Notes, or all of the Holders of the Class 1 Composite Securities, with respect to acceleration of the Class 1 Component by the Majority of the Class 1 Component, the Class 1 Components, may institute and direct the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes or the Class 1 Components, as the case may be, if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral, and only a Majority of the Class 1 Component may direct proceedings with respect to the remedies specified in Section 5.4(b) or otherwise with respect to the Class 1 Component.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received an indemnity against the liabilities reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving

directions from a Majority of the Controlling Class or all of the Holders of the Class 1 Components, as the case may be, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral or the Class 1 Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes, or all of the Holders of the Class 1 Composite Securities, with respect to the Class 1 Components, waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or the Class 1 Component, as the case may be, or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note or Class 1 Composite Security adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Portfolio Manager, the Trustee, the Insurer or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Holder of Securities.

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Portfolio Manager for any action taken or omitted by it as Trustee or for any action taken or omitted by the Portfolio Manager, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee, the Portfolio Manager or the Insurer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Holder of Notes for the enforcement of the payment of the principal of or interest on any Note or any other

amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Holders of the Securities but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral or the Class 1 Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral or the Class 1 Collateral remaining unsold, but shall continue unimpaired until the entire Collateral or the Class 1 Collateral is sold or all amounts secured by the Collateral or the Class 1 Collateral have been paid. The Trustee may upon notice to the Holders of the Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral and all of the Holders of the Class 1 Composite Securities with respect to the Class 1 Component, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.7.

(b) The Trustee or the Insurer may bid for and acquire any portion of the Collateral or the Class 1 Collateral in connection with a public Sale of the Collateral or the Class 1 Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes in the case of the Collateral or the Class 1 Components in the case of the Class 1 Collateral or other amounts secured by the Collateral in the case of the Notes or the Class 1 Collateral in the case of the Class 1 Components all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.7. The Securities need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes in the case of the Collateral or the Class 1 Components in the case of the Class 1 Collateral. The Trustee or the Insurer may hold, lease, operate, manage, or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral or the Class 1 Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral or the Class 1 Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral or the Class 1 Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Securities.***

The Trustee's right to seek and recover judgment on the Notes, the Class 1 Component or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee, the Insurer or the Holders of the Securities shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or the Class 1 Collateral or on any of the assets of the Issuer or the Co-Issuer.

Section 5.19. ***Direction by the Insurer.***

Notwithstanding anything contained herein to the contrary, if an Event of Default has occurred and is continuing, so long as the Insurer is the Controlling Class, the Insurer shall have the right (to the exclusion of the Holders of the Insured Notes) to direct the Trustee as to any and all remedies to be sought or taken on behalf of the Holders of the Insured Notes under this Indenture and the Trustee shall not exercise any such remedies unless directed by the Insurer to the extent the Holders of the Insured Notes could control the actions of the Trustee. Each Holder of the Insured Notes shall be deemed to have consented to the Insurer's rights hereunder with respect to an Event of Default. At such time as there exists and is continuing a Insurer Default, the Trustee shall not be bound to continue to comply with any term or condition of this Indenture that requires the consent of or approval or direction from the Insurer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered

to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Holders of the Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would use under the circumstances in the conduct of the person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Portfolio Manager in accordance with this Indenture or a Majority (or the other percentage required by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) or, with respect to the Class 1 Component, the Holders of the Class 1 Composite Securities relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any extraordinary financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed an "extraordinary financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Insurer Default or Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(j) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes or the Class 1 Component generally, the Issuer, the Co-Issuer, the Collateral, the Class 1 Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Upon written request by the Insurer (so long as it is the Controlling Class), the Trustee shall, upon reasonable (but no less than three Business Day's) prior written notice to the Trustee, permit any representative of the Insurer, during the Trustee's normal business hours, to examine all books of account, records, reports and other papers of the Trustee relating to the Securities, to make copies and extracts therefrom (the reasonable out-of-pocket expenses incurred in making any such copies or extracts to be reimbursed to the Trustee by the Insurer) and to discuss the Trustee's actions, as such actions relate to the Trustee's duties with respect to the Securities, with the Trustee's officers and employees responsible for carrying out the Trustee's duties with respect to the Securities.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Portfolio Manager and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Holders of Securities, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Securities is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or Class 1 Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its

part, rely on reports of nationally recognized accountants, investment bankers, or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Insurer or any of the Holders of the Securities pursuant to this Indenture, unless the Insurer or the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class or of a Rating Agency shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Portfolio Manager, to examine the books and records relating to the Notes, the Collateral and the Class 1 Collateral, personally or by agent or attorney, during the Co-Issuers' or the Portfolio Manager's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors and the Insurer in connection with the performance of its responsibilities hereunder;

(g) the Trustee may execute any of the trusts or powers under this Indenture or perform any duties under this Indenture either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any non-Affiliated agent, or non-Affiliated attorney, appointed with due care by it under this Indenture; provided that, except with respect to any authentication agent, subcustodian or any agent or attorney appointed by the Trustee to comply with applicable law, the Trustee shall not delegate its obligations hereunder unless the Trustee shall have received the written consent (or deemed consent, as applicable) of the Insurer (so long as it is the Controlling Class) which consent shall not be unreasonably withheld; provided that, if the Trustee shall have provided written notice of any such proposed delegation to the Insurer and, within five Business Days thereof, the Insurer shall not have objected in writing to such delegation the Insurer shall be deemed to have consented to such delegation; provided, further, that so long as the Trustee shall have received, or shall be deemed to have received, the consent of the Insurer (so long as it is the Controlling Class), the Trustee shall not be responsible to the Insurer for any misconduct or negligence on the part of any agent or attorney appointed by it hereunder; provided, further, that, for the avoidance of doubt, the Trustee shall not be required to obtain the consent of the Insurer for the appointment of legal counsel, accountants or any other service provider which this Indenture permits the Trustee to appoint or rely upon, or that the Trustee deems advisable to perform its obligations hereunder.

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate, or information received from the Issuer or Portfolio Manager;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Portfolio Manager, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent, or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in making or disposing of any investment permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent, or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of Securities.***

The recitals contained in this Indenture and in the Securities, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral, the Class 1 Collateral or the Securities. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Securities or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Securities.***

The Trustee, any Paying Agent, Indenture Registrar, or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar, or other agent.

Section 6.6. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on investments that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on investments made in accordance with an Issuer Order or a written order or request by the Portfolio Manager, unless such investment is made in an obligation of the Trustee in its corporate capacity.

Section 6.7. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements, and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5, or 10.7, except any such expense, disbursement, or advance attributable to its negligence, willful misconduct, or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Portfolio Manager;

(iii) to indemnify the Trustee and its officers, directors, employees, and agents for any loss, liability, or expense incurred without negligence, willful misconduct, or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves (including reasonable attorney's fees and costs) against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.13.

(b) The Trustee shall receive amounts pursuant to this Section 6.7 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.9, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Holders of the Securities shall affect the right of the Trustee to collect

amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.7 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Securities issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.7(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.8. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent entity organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. For so long as the Insurer is the Controlling Class, upon written request by the Insurer, the Trustee shall provide copies of any such reports to the Insurer. If at any time the Trustee ceases to be eligible in accordance with this Section 6.8, it shall resign immediately in the manner and with the effect specified in Section 6.9.

Section 6.9. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days written notice to the Co-Issuers, the Portfolio Manager, the Holders of the Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall at the direction of a Majority of the Controlling Class promptly appoint a successor trustee satisfying the requirements of Section 6.8, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to the Insurer, each Holder of Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Portfolio Manager. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee, the Insurer or any Holder of a Security, on behalf of himself and all others similarly situated, may

petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.8.

(c) The Trustee may be removed (i) at any time by an Act of a Majority of each Class of Securities, (ii) at any time when an Event of Default is continuing by a Majority of the Controlling Class, or (iii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.8 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation,

then, in any such case (subject to Section 6.9(a)), (A) the Co-Issuers, by Issuer Order, may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee, or (B) subject to Section 5.15, the Insurer or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.10, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Portfolio Manager, the Insurer, to each Rating Agency, to the Holders of Securities as their names and addresses appear in the Indenture Register and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.10. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers, the Insurer and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers, the Insurer or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer, and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.8 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.11. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion, or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar, and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Securities have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, or consolidation to the authenticating Trustee may adopt the authentication and deliver the Securities so authenticated with the same effect as if the successor Trustee had itself authenticated the Securities.

Section 6.12. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral or the Class 1 Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral or the Class 1 Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Holders of the Securities and the, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.12.

The Co-Issuers shall join with the Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged, and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Securities shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash, and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.12, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.12;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Holders of Securities delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.13. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Portfolio Manager in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date

of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Portfolio Manager in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Portfolio Manager requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Management Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.13 and the payment shall not be part of the Collateral.

Section 6.14. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of Securities in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Securities. For all purposes of this Indenture, the authentication of Securities by an Authenticating Agent pursuant to this Section 6.14 shall be the authentication of Securities "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.15. ***Fiduciary for Holders of Notes Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Holders of Notes or the Holders of the Class 1 Composite Securities, as the case may be, and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Holders of Notes or the Holders of the Class 1 Composite Securities, as the case may be, and agent for the other Secured Parties. The Trustee shall owe no fiduciary duties to the Insurer other than as subrogee of the Noteholders; provided that, the foregoing shall not limit any of the express obligations of the Trustee under this Indenture.

Section 6.16. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders, the Composite Securityholders and the Insurer:

(a) *Organization*. The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations*. The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery, and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility*. The Bank is eligible under Section 6.8 to serve as Trustee under this Indenture.

Section 6.17. ***Additional Reporting Requirements.***

If the Initial Purchaser elects to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Portfolio Manager and the Initial Purchaser.

If the Initial Purchaser has entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee at the expense of the Issuer shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(viii).

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Securities in accordance with the Securities and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Securities or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Securities or this Indenture.

Amounts properly withheld under the Code or other applicable law by any person from a payment to any Holder shall be considered as having been paid by the applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes and of the Class 1 Component. The Co-Issuers appoint JPMorgan Chase Bank, National Association, 4 New York Plaza, Ground Floor, New York, NY 10004, Attn: ITS (Houston) Southfork CLO Ltd., as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Securities or this Indenture may be served and where Securities may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Securities and this Indenture may be served and an office or agency outside of the United States where Securities may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Securities to withholding tax.

So long as any Class of Securities is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Securities and this Indenture may be served and where the Securities may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Securities is listed on the Irish Stock Exchange, JP Morgan Bank (Ireland) PLC (the "***Irish Listing and Paying Agent***") as Listing Agent and as Paying Agent in Ireland with respect to the Securities, for the payment of principal and interest on the Securities and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Securities or this Indenture may be served. If the Irish Listing and Paying Agent is replaced at any time when any Class of Securities is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Securities of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Securities that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Securities.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish no later than the fifth calendar day after each Record Date a list in

the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Securities held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Securities with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Holders of Securities for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Securities in trust for the benefit of the persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of Securities if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Security or with respect to the Class 1 Component and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Holder of the Security shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Securities have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Securities, the Preference Shares Paying Agency Agreement, the Preference Shares, any of the Collateral or any of the Class 1 Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Portfolio Manager, the Insurer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Holders of the Securities, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager, any Hedge Counterparty, the Insurer and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a legal opinion from nationally recognized legal counsel to the effect that it is not necessary to take the action outside

of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action, or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other person in a bankruptcy, reorganization, or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries other than the Co-Issuer,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Portfolio Manager, the Trustee, and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Management Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) have any employees (other than their respective directors),

(B) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(C) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Portfolio Manager on behalf of the Issuer will procure any action within the Portfolio Manager's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral or the Class 1 Collateral. The Issuer from time to time (and promptly upon the request of the Insurer for so long as the Insurer is the Controlling Class) shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral or the Class 1 Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral and the Class 1 Collateral;

(v) preserve and defend title to the Collateral and the Class 1 Collateral and the rights of the Secured Parties in the Collateral and of the Holders of the Class 1 Composite Securities in the Class 1 Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral and the Class 1 Collateral.

The Issuer designates the Portfolio Manager as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and JPMorgan Chase Bank, National Association as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral and the Class 1 Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b), or (c), remove any portion of the Collateral or the Class 1 Collateral that consists of Cash or is evidenced by an instrument, certificate, or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral or the Class 1 Collateral that consists of book-entry securities to be recorded on the books of a person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Portfolio Manager, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Management Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Portfolio Manager on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Securities or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Securities.

Section 7.6. ***Opinions as to Collateral.***

On or before May, 31 in each calendar year, commencing in 2006, the Issuer shall furnish to the Trustee, the Portfolio Manager, the Insurer and each Rating Agency an Opinion of Counsel from each relevant jurisdiction stating that, in the counsel's opinion, as of the date of the opinion, all actions necessary to maintain the lien and security interest created by this Indenture with respect to the Collateral and the Class 1 Collateral have been taken and that no further action (other than as specified in the opinion) needs to be taken for the continued effectiveness and perfection of the lien over the next year. The opinion may be subject to customary assumptions and qualifications.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any person from any of the person's covenants or obligations under any instrument included in the Collateral or the Class 1 Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Portfolio Manager under the Management Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of the Insurer, a Majority of each Class of Notes, a Majority of the Preference Shares and a Majority of the Class 1 Component (except in the case of the Management Agreement and the Collateral Administration Agreement as initially executed), contract with other persons (including the Portfolio Manager, the Trustee, and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Portfolio Manager, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other person to perform, all of their obligations in the Management Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), and (vi), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral or the Class 1 Collateral, except as expressly permitted by this Indenture and the Management Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes or the Class 1 Component (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Holder of Notes because of the payment of any taxes levied or assessed on any part of the Collateral or the Class 1 Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Securities and this Indenture and the transactions contemplated by this Indenture (including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements), or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged, or permit any person to be released from any covenants or obligations with respect to this Indenture or the Securities, except as may be expressly permitted by this Indenture or by the Management Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage, or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral or the Class 1 Collateral, any interest in it, or its proceeds of, or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral and the Class 1 Collateral;

(v) amend the Management Agreement except pursuant to its terms and Section 15.1(f)(iv) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange, or otherwise dispose of Collateral or Class 1 Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral or Class 1 Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Management Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the 1940 Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Securities to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Portfolio Manager, the Insurer, the Rating Agencies, and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before May, 31 in each calendar year commencing in 2006, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Portfolio Manager and each Holder of Securities making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee), the Insurer and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc., Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other person or transfer or convey all or substantially all of its assets to any person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee, the Insurer and each Noteholder and each Composite Securityholder, the due and punctual payment of all amounts on all Securities issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other person or transfer or convey the Collateral or the Class 1 Collateral or all or substantially all of its assets to any other person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, the Insurer, each Noteholder, each Composite Securityholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all Securities issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee, the Insurer and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral and the Class 1 Collateral, and (ii) the lien of this Indenture

continues to be effective in the Collateral and the Class 1 Collateral; and in each case as to any other matters the Trustee or any Noteholder or Composite Securityholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer, or conveyance and shall have delivered to the Trustee, the Insurer, each Noteholder, each Composite Securityholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer, or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Securities or Preference Shares or the Insurer;

(g) the Merging Entity shall have delivered to the Trustee and the Insurer an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be as an investment company under the 1940 Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the 1940 Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer, or conveyance, the person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up, and liquidated at any time thereafter, and the person thereafter shall be released from its liabilities as obligor and maker on all the Securities and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Securities pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral and the Class 1 Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by Schedule 7 or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of Section 864 of the Code, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and,

with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in Schedule 7 hereto, unless, with respect to a particular transaction, the Issuer and the Trustee shall have received an opinion or advice of tax counsel of nationally recognized standing in the United States experienced in such matters that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of Section 864 of the Code or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in Schedule 7 hereto may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer and the Trustee shall have received an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of Section 864 of the Code or otherwise to be subject to United States federal income tax on a net basis provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of Schedule 7 pursuant to this Section 7.12(b) shall be provided to the Insurer and each Rating Agency then rating any Outstanding Class of Securities within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event an opinion of tax counsel as described above has been obtained in accordance with the terms hereof, no consent of any Holder of the Securities or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of Schedule 7 contemplated by such opinion of tax counsel.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Irish Stock Exchange.***

So long as any Securities remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Securities on the Irish Stock Exchange.

Section 7.14. ***Annual Rating Review.***

So long as any Securities of any Class remain Outstanding, on or before May, 31 in each year commencing in 2006, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Securities (including, in the case of the Insured Notes, the rating thereof without giving effect to the Policy) from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Portfolio Manager in writing (and the Trustee shall promptly provide a copy of the notice to the Holders of the Securities) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Securities has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note or a Holder of a Composite Security, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Security designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Security by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any floating rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Portfolio Manager (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Securities are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange or the Irish Listing and Paying Agent as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of floating rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, the Insurer, each Paying Agent, the Portfolio Manager, Euroclear, Clearstream, the Depository, and, so long as any of the floating rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange or the Listing Agent. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange or the Listing Agent as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange or the Irish Listing and Paying Agent of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of floating rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. The Issuer shall treat the Composite Securities as consisting of Preference Shares corresponding to the Preference Share Component and representing an ownership interest in the Class 1 Collateral. Each Holder of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes. Each Holder of a Composite Security, by its acquisition of the Composite Security, agrees to treat the Composite Securities as consisting of Preference Shares corresponding to corresponding to the Preference Share Component, and representing an ownership interest in the Class 1 Collateral and to treat the Preference Shares as equity in the Issuer for United States federal income tax purposes.

(b) The Issuer will not elect to be treated as a partnership for U.S. federal income tax purposes.

(c) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an opinion of tax counsel of nationally recognized standing experienced in such matters prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) Upon the Trustee's receipt of a request of a Holder holding a Note that is issued with original issue discount for U.S. Federal income tax purposes for the information described in United States Treasury Regulations section 1.1275-3(b)(1) that is applicable to such Note that is issued with original issue discount for U.S. Federal income tax purposes, the Issuer will cause its independent accountants to provide promptly to the Trustee and such requesting Holder all of such information.

(e) Notwithstanding any contrary agreement or understanding, the Portfolio Manager, the Co-Issuers, the Trustee, the Insurer and the Holders and beneficial owners of the Notes and Composite Securities (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Indenture and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such tax treatment and tax structure. The foregoing provision shall apply from the beginning of discussions between the parties. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. tax treatment of the transaction under applicable U.S. federal, state or local law, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. tax treatment of the transaction under applicable U.S. federal, state or local law.

(f) The Issuer and each Holder and each beneficial owner of a Senior Class A Note, Class A-2 Note, Class A-3 Notes, Class B Note or Class C Note (as the case may be), by acceptance of its Senior Class A Note, Class A-2 Note, Class A-3 Notes, Class B Note or Class C Note (as the case may be), or its interest in a Senior Class A Note, Class A-2 Note, Class A-3

Notes, Class B Note or Class C Note (as the case may be), as the case may be, shall be deemed to have agreed to treat, and shall treat, such Senior Class A Note, Class A-2 Note, Class A-3 Notes, Class B Note or Class C Note as debt of the Issuer for United States federal income tax purposes.

(g) Each Holder and beneficial owner of a Note or Composite Security, by acceptance of its Note or Composite Security or its interest in a Note or Composite Security, shall be deemed to understand and acknowledge that failure to provide the Issuer, the Trustee or any Paying Agent with the applicable U.S. federal income tax certifications (generally, a United States Internal Revenue Service Form W-9 (or successor applicable form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate United States Internal Revenue Service Form W-8 (or successor applicable form) in the case of a person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) may result in U.S. federal back-up withholding from payments in respect of such Note or Composite Security.

(h) The Issuer shall cause its independent accountants, within 90 days after the end of each calendar year, to provide to each Holder of Securities and, upon written request therefor certifying that it is a holder of a beneficial interest in a Note or Composite Security, to such holder (or its designee), all information that a U.S. shareholder making a "qualified electing fund" election (as defined in the Code) with respect to the Notes is required to obtain from the Issuer for U.S. federal income tax purposes and a "PFIC Annual Information Statement" as described in United States Treasury Regulation section 1.1295-1(g)(1) (or any successor Treasury Regulation) (including all representations and statements required by such statement), and the Issuer will take or cause to be taken any other reasonable steps to facilitate such election by a Noteholder or Composite Securityholder or beneficial owner of Notes or Composite Securities.

(i) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Holder of a Note or Composite Security requests information about any such transactions in which the Issuer is an investor, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(j) The Issuer shall provide, or cause to be provided, upon the request of a Noteholder or Composite Securityholder and, upon written request certifying that it is a holder of a beneficial interest in a Note or Composite Security, to such holder (or its designee), any information that a Holder or beneficial owner of Notes or Composite Securities reasonably requests to assist such Noteholder, Composite Securityholder or beneficial owner with regard to filing requirements the Noteholder, Composite Securityholder or beneficial owner of Notes or Composite Securities is required to satisfy as a result of the controlled foreign corporation rules under the Code.

(k) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Agreement.

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (28) of the definition of "Concentration Limitations" would be satisfied, the Portfolio Manager may cause Collateral Obligations that are not Defaulted

Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Portfolio Manager. The Securities Lending Counterparties may be Affiliates of the Initial Purchaser or Affiliates of the Portfolio Manager. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Securities.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Portfolio Manager (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Securities in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending***

Collateral") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.8;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Portfolio Manager) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Portfolio Manager on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Portfolio Manager on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Portfolio Manager on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a

rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Portfolio Manager to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Portfolio Manager, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Portfolio Manager in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Portfolio Manager instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Portfolio Manager shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity, or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator is at least $663,000,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Portfolio Manager in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator is at least $663,000,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) On or prior to July 1, 2005, so long as the Ramp-Up Completion Date has not already occurred, the Portfolio Manager shall certify by an order of the Portfolio Manager delivered to the Issuer, the Trustee and Moody's that, as of such date: (i)(A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least $575,000,000, or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Securities (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least $575,000,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date, (ii) the Diversity Score is equal to at least 45, (iii) the Weighted Average Rating Factor Test is satisfied and (iv) each of the Coverage Tests is satisfied. If the Portfolio Manager is not able to certify each of the foregoing items, an Interim Ramp-Up Completion Date Failure shall occur.

(f) Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Portfolio Manager (on behalf of the Issuer) shall request a Rating Confirmation on behalf of the Issuer and shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee, the Insurer and the Rating Agencies, together with the delivery of a report (and an electronic file of the Collateral Obligations to S&P) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Investment Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in Section 12.2 of this Indenture; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(g) If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. ***Posting of Reports on Repository.***

If the Initial Purchaser has entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Trustee and the Portfolio Manager acknowledges and agrees that each Monthly Report and Valuation Report shall be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee at the expense of the Issuer agrees to make available in accordance with Section 14.3(a)(viii) each Monthly Report or Valuation Report to the operator of the Repository for posing on the Repository.

Section 7.21. ***Secondary Risk Procedures.***

The Portfolio Manager shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Investment Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Investment Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully

collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities or the Holders of any Preference Shares, when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Securities, the Co-Issuers and the Trustee may, and the Insurer shall, if it is not materially and adversely affected thereby (and will be bound by a standard of good faith and fair dealing in making such determination) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another person to the Issuer or the Co-Issuer and the assumption by the successor person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Holders of the Securities or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage, or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication, and delivery of the Securities;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.9, 6.10, and 6.12;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) modify the restrictions on and procedures for resales and other transfers of the Securities to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the 1940 Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(7) with the consent of the Portfolio Manager, to modify the restrictions on the sales of Collateral Obligations in Section 12.1 or the Eligibility Criteria in Section 12.2 (and the definitions related thereto) in a manner not materially adverse to the Holders of any Class of the Notes, the Composite Securities or the Preference Shares as evidenced by an Opinion of Counsel (which may be supported as to factual (including

financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of the Notes, the Composite Securities or the Preference Shares;

(8) make appropriate changes for any Class of Securities to be listed on an exchange other than the Irish Stock Exchange;

(9) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(10) accommodate the issuance of the Securities in book-entry form through the facilities of DTC or otherwise;

(11) to take any appropriate action to prevent the Issuer, the Insurer, the Holders of Securities or Preference Shares, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to U.S. federal, state, or local income tax on a net income basis, so long as the action will not cause the Insurer or the Holders of any Securities or Preference Shares to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities or Preference Shares, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(12) to authorize the appointment of any listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities appropriate in connection with the listing of any Class of Securities on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent, or additional registrar for any Class of Securities in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Holder of Securities, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Portfolio Manager, to the effect that the modification would not be materially adverse to the Holders of any Class of Securities;

(13) to amend, modify, enter into, or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement);

(14) to modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(15) to evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(16) to facilitate the issuance of participation notes, combination notes, composite securities, and other similar securities;

(17) to facilitate hedging transactions;

(18) to facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(19) to modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange; or

(20) with the consent of the Portfolio Manager, to enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities or the Holders of Preference Shares as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Portfolio Manager to the effect that the modification would not be materially adverse to the Holders of any Class of Securities or the Holders of Preference Shares.

(b) Without the consent of the Portfolio Manager, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Portfolio Manager under this Indenture or increase the duties or obligations of the Portfolio Manager.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities, or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of the Securities or a Majority of the Holders of Preference Shares that the Class of Securities or Holders of Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Portfolio Manager and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities or Holder of Preference Shares would be materially and adversely affected by any such supplemental indenture. The Trustee shall give notice of the proposed change to the Holders of Securities and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) at least 15 Business Days before execution of any supplemental indenture by the Trustee (or 60 calendar days before execution, in the case of a supplemental indenture for the purpose described in paragraph (7) of Section 8.1(a), which shall be identified as such in a certificate of the Portfolio Manager delivered to the Trustee before the date on which such notice is required to be given).

(d) If any Outstanding Securities are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Portfolio Manager and the Holders of 100% in Aggregate Outstanding

Amount of each Class of Securities the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes or Composite Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note and each Holder of each Outstanding Composite Security informing them of such fact.

(e) At the cost of the Co-Issuers, for so long as any Securities are Outstanding and rated by a Rating Agency, the Trustee shall provide to the Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Hedge Counterparty a copy of any proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee.

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee, the Insurer and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Holders of the Securities under this Indenture with the consent of:

(1) the Portfolio Manager if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes;

(3) a Majority of the Composite Securities adversely affected thereby, by Act of the Holders of the Composite Securities; and

(4) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby, the Holder of each Outstanding Composite Security adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or the Class 1 Component or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares Interests, reduce its principal amount or the rate of interest on it, or the Default Interest Rate or the Redemption Price with respect to any Note, the Class 1 Component or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this

Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes and the application of proceeds of any Class 1 Collateral or Preference Share Component corresponding to their related Components, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Composite Securities or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or the Class 1 Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Security of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to preserve the Collateral or the percentage of the Aggregate Outstanding Amount of Holders of Class 1 Composite Securities whose consent is required to request the Trustee to preserve the Class 1 Collateral or rescind the Trustee's election to preserve the Collateral or the Class 1 Collateral, as the case may be, pursuant to Section 5.5 or to sell or liquidate the Collateral or the Class 1 Collateral, as the case may be, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note, Preference Share and Composite Security affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or the Class 1 Component or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date (or, with respect to the Preference Share Components, the Composite Securities Payment Date) or to affect the rights of the Holders of Notes or Preference Shares or the Holders of the Class 1 Composite Securities to the benefit of any provisions for the redemption of the Notes, the Class 1 Component or the Preference Shares contained in this Indenture.

Prior to the entry into any supplemental indenture with respect to which a Rating Confirmation for one or more Classes of Notes or Composite Securities is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note,

each Holder of each Outstanding Composite Security and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) informing them of such fact.

(b) At the cost of the Co-Issuers, for so long as any Securities are Outstanding and rated by a Rating Agency, the Trustee shall provide to the Rating Agency a copy of any proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee.

(c) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Holders of the Securities, the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency (so long as any rated Securities are Outstanding) a copy of such supplemental indenture and shall request any required consent from the applicable Holders of Securities or Preference Shares to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities or Preference Shares, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security or Preference Share, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities or Preference Shares consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Portfolio Manager which Holders of Securities or Preference Shares have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five (5) Business Days after so being notified by the Trustee and the Trustee shall mail such notice to all Holders of Securities and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities or Preference Shares, may consent to the related proposed supplemental indenture within five (5) Business Days of the Amendment Buy-Out. In the event that the Insurer does not consent to the related proposed supplemental indenture but all of the Holders of the Notes whose consent is required have consented to such proposed supplemental indenture, the Holders of the Insured Notes may, pursuant to Section 16.8, terminate the Policy, upon which, the consent of the Insurer pursuant to this clause (c) shall no longer be required; provided, however, that no such amendment shall decrease the rights of the Insurer (including, but not limited to the right of the Insurer to be reimbursed for Accrued Insurance Liabilities) or increase the duties or obligations of the Insurer, in any case, that survive the termination of the Policy.

(d) It shall not be necessary for any Act of Holders of Securities under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(e) The Trustee, at the expense of the Co-Issuers, shall mail to the Holders of the Securities, the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, or immunities under this Indenture or otherwise. The Portfolio Manager shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Portfolio Manager unless the Portfolio Manager consents to it in writing, such consent not to be unreasonably withheld or delayed. The Portfolio Manager shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and the Insurer and every Holder of Securities and Preference Shares theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Section 8.5. ***Reference in Securities to Supplemental Indentures.***

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes and new Composite Securities, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

Section 8.6. ***Composite Securities.***

For purposes of this Article 8, the Composite Securities shall only be adversely affected or materially and adversely affected, as the context requires, by any proposed supplemental indenture if the Composite Securities would suffer an adverse effect or material adverse effect, as the context requires, that does not arise directly from an adverse effect or material adverse effect suffered by the Preference Shares.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Securities, then at the direction and in accordance with the instructions of the Portfolio Manager the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Securities) and to pay all administrative and other fees, expenses, and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date (or, with respect to the Preference Share Components, the Composite Securities Payment Date) on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account, and the Delayed Drawdown Reserve Account at the direction of the Holders of at least 63% of the Aggregate Outstanding Amount of Preference Shares, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer, the Insurer and the Portfolio Manager not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Holders of the Notes on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

Upon receipt of a notice of redemption pursuant to this Section 9.2(a), the Portfolio Manager in its sole discretion will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account, and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Portfolio Manager's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses, and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Insurer and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date, and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture and the Insurance Documents to the Insurer, and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in

redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon the occurrence of a redemption of the Preference Shares pursuant to this Section 9.2, in whole or in part, the Class 1 Components shall be redeemed by the Issuer, in whole but not in part, on the related Composite Securities Payment Date from the Class 1 Collateral available for that purpose in the Class 1 Component Account at the applicable Redemption Price. All Class 1 Components must be simultaneously redeemed. Upon any redemption of the Class 1 Components, the Holders of Class 1 Composite Securities shall receive the Redemption Price as a distribution in kind of a *pro rata* share (based on the Class 1 Composite Security Rated Balance) of each item of the Class 1 Collateral.

Upon a distribution pursuant to Section 9.2(b)(i), the Portfolio Manager will (subject to the standard of care specified in the Management Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Portfolio Manager will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3. ***Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, a notice of redemption shall be given by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, to the Insurer, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Holders of the Composite Securities and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Securities are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Securities pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes or the Class 1 Component to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where Securities to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Securities to be redeemed are listed on the Irish Stock Exchange, the Irish Listing and Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Trustee, the Insurer and the Portfolio Manager only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Portfolio Manager does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Preference Shares to withdraw the notice of redemption delivered by a percentage of the Preference Shares requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, and

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing person to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Holder of Securities scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail) and the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Reinvestment Period (and, in respect of Sale Proceeds from Credit Improved Obligations, after the Reinvestment Period) at the Portfolio Manager's discretion, be reinvested in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Security selected for redemption or the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) shall not impair or affect the validity of the redemption of any other Securities or Preference Shares.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions are satisfied:

(i) At least ten Business Days before the Redemption Date, the Portfolio Manager shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreements (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch

for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture and the Insurance Agreement to the Insurer, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Portfolio Manager shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Management Fee and the Subordinated Management Fee), all amounts owing under this Indenture and the Insurance Documents to the Insurer, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

	Number of Business Days Between Certification to the Trustee and Sale			
	Same Day	1 to 2	3 to 5	6 to 15

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers, the Trustee and (in the case of the Class A-1g Notes) the Insurer, receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers, the Trustee and (in the case of the Class A-1g Notes) the Insurer, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. If a Component is to be redeemed, the related Composite Security does not need to be surrendered at the office of any paying agent under this Indenture to receive the applicable Redemption Price. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Holders of the Notes, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Reinvestment Period, the Portfolio Manager elects (subject to the Management Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional Collateral Obligations that are deemed appropriate by the Portfolio Manager in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the investment or reinvestment of all or a portion of the funds then in the Collection Account available to be invested in additional Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not reinvested in additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be

applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to the Insurer and each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Securities are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Securities pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities or Preference Shares, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities or Preference Shares held by such Holders of the Class of Securities or Preference Shares whose consent was solicited with respect to such supplemental indenture (the ***"Amendment Buy-Out Option"***) for the applicable Amendment Buy-Out Purchase Price. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities or Preference Shares of Non-Consenting Holders, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities or Preference Shares the consent of whose Holders is required for such supplemental indenture (an ***"Amendment Buy-Out"***). By its acceptance of its Securities or Preference Shares hereunder, each Holder of Securities or Preference Shares agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities or Preference Shares to the Amendment Buy-Out Purchaser; provided that, if the solicited consent to a supplemental indenture only applies to one Component of a Composite Security, the Non-Consenting Holder will be required to sell, at the Non-Consenting Holder's option, its Composite Security as a whole. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Securities or Preference Shares as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities or Preference Shares set forth herein and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.7. ***Removal Buy-Out.***

(a) In the case of any proposed removal of the Portfolio Manager relating to the occurrence of an Event of Default described in Section 5.1(d), pursuant to the first paragraph of Section 14 of the Management Agreement, the Removal Buy-Out Purchaser shall have the right, but not the obligation, to purchase from the Holders of the Class A-1g Notes, all Class A-1g Notes (the ***"Removal Buy-Out Option"***) for the applicable Removal Buy-Out Purchase Price. If such option is exercised, the Removal Buy-Out Purchaser must purchase all such Class A-1g Notes, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Controlling Class required to remove the Portfolio Manager under the first paragraph of Section 14 of the Management Agreement (a ***"Removal Buy-Out"***). By its acceptance of the Class A-1g Notes hereunder, each Holder of Class A-1g Notes agrees that if the Removal Buy-Out Option is exercised, any Holder of Class A-1g Notes will be required to sell its applicable

Class A-1g Notes to the Removal Buy-Out Purchaser. Neither the Removal Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Class A-1g Notes as a result of an election by the Removal Buy-Out Purchaser not to exercise the Removal Buy-Out Option.

(b) All purchases made pursuant to a Removal Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the Class A-1g Notes set forth herein and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

(c) Upon the effectiveness of the Removal Buy-Out, the Removal Buy-Out Purchaser shall be deemed to have exercised its right, without any further action or notice to any Person, to terminate the Policy pursuant to Section 16.8 hereof.

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. ***Collection of Money.***

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Portfolio Manager for convenience in administering the Accounts, the Collateral or the Class 1 Collateral.

Section 10.2. ***Collection Account.***

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously reinvested in Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously reinvested in accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Reinvestment Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Reinvestment Period, which have not been reinvested in additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Portfolio Manager be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such investment or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments) received after the Reinvestment Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be reinvested pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Portfolio Manager. Within five Business Days of receipt of the notice from the Trustee, the Portfolio Manager, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a person that is not the Portfolio Manager or an Affiliate of the Portfolio Manager and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Portfolio Manager certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Reinvestment Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations, after the Reinvestment Period), at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and reinvest (or invest, in the case of funds referred to in Section 7.19) the funds in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Reinvestment Period, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative

Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account*. Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account*. Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Portfolio Manager, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Portfolio Manager at any time during or after the Reinvestment Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Reinvestment Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Portfolio Manager as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be reinvested pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be invested in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be reinvested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee

for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Synthetic Security Collateral Account shall be reinvested pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Portfolio Manager.

Amounts on deposit in the Securities Lending Account shall be reinvested pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$18,300,000 from the gross proceeds of the Offering. At any time before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in November 2005, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in November 2005, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be reinvested pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes and Composite Securities in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses, Premium, Accrued Insurance Liabilities and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Interest Reserve Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$2,000,000 from the gross proceeds of the Offering. At any time on or before the earlier of (i) the Ramp-Up Completion Date and (ii) the Payment Date in November 2005, at the direction of the Portfolio Manager, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Interest Reserve Account an amount necessary such that the amounts referred to in Section 11.1(a)(i)(1) through (14) will be paid in full on each Payment Date occurring on or before the Payment Date in November 2005. On the Payment Date in

November 2005, the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies therefrom on such date) to the Collection Account as Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be reinvested pursuant to Section 10.4(a).

(j) *Class 1 Component Account*. Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class 1 Component Account, that shall be held in trust in the name of the Trustee for the benefit of the Holders of the Class 1 Composite Securities, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the United States Treasury strip security maturing on November 15, 2016 paying a principal amount at maturity equal to the original principal amount of the Class 1 Composite Securities specified in Section 2.3 (the "***Treasury Strip***"), which Treasury Strip shall be delivered to the Trustee by the Issuer on the Closing Date. All assets or securities at any time on deposit in, or otherwise to the credit of, the Class 1 Component Account shall be held in trust by the Trustee for the benefit of the Holders of the Class 1 Composite Securities. The only permitted withdrawals from the Class 1 Component Account shall be in accordance with this Indenture. None of the Co-Issuers, the Noteholders, the Holders of Preference Shares (other than the Holders of the Class 1 Composite Securities, to the extent of their Preference Share Components) or any other Secured Party shall have any legal, equitable, or beneficial interest in the Class 1 Component Account.

(k) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(l) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. ***Reinvestment of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. Before an Event of Default occurs, if the Issuer has not given investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall

invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the investment or (ii) the Business Day before the next Payment Date. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account. Subject to Section 6.6, the Trustee shall not in any way be held liable for the selection of investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Portfolio Manager, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, invest all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All investments on any Business Day shall be subject to the timely receipt of the funds and the availability of any investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give investment directions, the Trustee shall seek instructions from the Portfolio Manager within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Portfolio Manager within five Business Days after transfer of the funds to the account, it shall invest and reinvest the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give investment directions to the Trustee for three

consecutive days, the Trustee shall invest and reinvest the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from the investments shall be deposited in the Collection Account, any gain realized from the investments shall be credited to the Collection Account, and any loss resulting from the investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution, or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into a securities account control agreement substantially in the form of Exhibit G.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Portfolio Manager any information regularly maintained by the Trustee that the Co-Issuers or the Portfolio Manager may from time to time request with respect to the Pledged Obligations, the Accounts, the Class 1 Collateral and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Portfolio Manager to perform its obligations under the Management Agreement or is required pursuant to the Insurance Agreement. The Trustee shall promptly forward to the Portfolio Manager copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation, or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be invested in Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.8 and the account satisfies the other requirements of this Section.

As directed in writing by the Portfolio Manager, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Portfolio Manager shall direct any such deposit only during the Reinvestment Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Portfolio Manager in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be invested in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Portfolio Manager in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending June, 2005, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Portfolio Manager, the Trustee, the Insurer, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchaser, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchaser) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Security who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Portfolio Manager (the "***Monthly Determination Date***"):

(i) *Portfolio*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity, and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion, or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset, or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Portfolio Manager) since the date of the previous Monthly Report, and the gain or loss (measured against its Purchase Price) on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Portfolio Manager has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's

Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Priority Category Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation), and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value";

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds), and Uninvested Proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Reinvestment Overcollateralization Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Reinvestment Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Minimum Average Recovery Rate and, on and after the Ramp-Up Completion

Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Minimum Average Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate";

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Investment Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Investment Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value, and (z) its Principal Balance expressed as a percentage of the Maximum Investment Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Portfolio Manager if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Portfolio Manager, the Trustee, the Insurer, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Initial Purchaser, each Hedge Counterparty, the Rating Agencies, each Noteholder, each Composite Securityholder, (if so requested by the Initial Purchaser) the Repository in accordance with Section 14.3(a)(viii), and upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Portfolio Manager:

(i) *Securities*:

(A) The amount of principal payments to be made on each Class of Notes and Composite Securities on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes and Composite Securities after giving effect to any principal payments on the related Payment Date and, for each Class of Securities, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Securities, the percentage of the initial Aggregate Outstanding Amount of all of the Securities that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Securities that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes and Composite Securities on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail;

(E) For the Composite Securities its Class 1 Composite Security Rated Balance; and

(F) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding Uninvested Proceeds) and Uninvested Proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee or the Insurer reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Portfolio Manager if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Portfolio Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting*. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Portfolio Manager, and the Portfolio Manager shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.7.

(d) *Irish Stock Exchange*. So long as any Class of Securities is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate

Outstanding Amount of each listed Class of Securities following each Payment Date and inform the Irish Stock Exchange if any such Class of Securities did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Securities are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Portfolio Manager shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. Before the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P an electronic copy of the S&P CDO Monitor input file.

(g) *Payments or Transfers from the Payment Account.* Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

(h) *NAV Calculation.* The Trustee shall forward to the Portfolio Manager, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchaser, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchaser) the Repository in accordance with Section 14.3(a)(viii) or each Holder of a Security who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), any net asset value report with respect to the Issuer which the Trustee receives from the asset value calculation agent appointed pursuant to Section 10.8(a) hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Portfolio Manager, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Portfolio Manager in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) If no Event of Default is continuing, the Trustee shall upon an Issuer Order executed by an Authorized Officer of the Portfolio Manager deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption, or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Portfolio Manager.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Portfolio Manager of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion, or other similar action (an "***Offer***"). If no Event of Default is continuing, the Portfolio Manager may direct the Trustee to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b), or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Securities are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's Certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Securities Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e), and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Portfolio Manager, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Portfolio Manager, fails

to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Portfolio Manager, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. In addition, the Issuer shall appoint an net asset value calculation agent to prepare and deliver to the Trustee a net asset value report with respect to the Issuer. The fees of such Independent certified public accountants, the NAV calculation agent and their respective successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before May, 31 of each year commencing in 2006, the Issuer shall cause to be delivered to the Trustee, the Insurer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit I certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement), and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Portfolio Manager on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Issuer or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other person (except the Portfolio Manager) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Portfolio Manager if payable under the Management Agreement and to the fees, expenses and indemnities of the Insurer;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) to the payment to the Portfolio Manager of any accrued and unpaid Senior Management Fee then payable;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements other than any Defaulted Hedge Termination Payments;

(5)

(A) first, *pro rata* to the payment of accrued and unpaid interest on the Senior Class A Notes, accrued and unpaid Premium and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Senior Class A Notes; provided, however, if the amounts available pursuant to this clause (A) are insufficient to pay the foregoing amounts in full, the amount available for distribution under this clause (A) shall be distributed *pro rata* based on the amounts owing to the Class A-1a Notes and the Class A-1b Notes, on the one hand, and to the amounts owing to the Class A-1g Notes and in respect of the Premium, on the other hand, with the amounts distributed to the Insurer and the Holders of the Class A-1g Notes being paid first to the

Insurer in respect of the Premium until paid in full and then in respect of amounts owing to the Class A-1g Notes; provided, further, that distributions in respect of the Class A-1a Notes and the Class A-1b Notes pursuant to this clause (5)(A) shall be made to the Holders thereof *pro rata* based upon the amount of accrued and unpaid interest and accrued and unpaid Defaulted Interest owing in respect of the Class A-1a Notes and the Class A-1b Notes;

(B) second, to the payment of Accrued Insurance Liabilities then payable under the Insurance Agreement;

(6) to the payment of accrued and unpaid interest on the Class A-2 Notes and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-2 Notes;

(7) to the payment of accrued and unpaid interest on the Class A-3 Notes and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-3 Notes (with distributions in respect of the Class A-3 Notes made to the Holders thereof *pro rata* based upon the amount of accrued and unpaid interest and accrued and unpaid Defaulted Interest owing in respect of the Class A-3a Notes and the Class A-3b Notes);

(8) if the Class A Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Senior Class A Notes, the Class A-2 Notes and the Class A-3 Notes in the Note Payment Sequence in the amount necessary so that all of the Class A Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (8) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(9) to the payment of accrued and unpaid interest on the Class B Notes (excluding Class B Deferred Interest, but including interest accrued for the preceding Interest Period on Class B Deferred Interest);

(10) if the Class B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Senior Class A Notes, the Class A-2 Notes, the Class A-3 Notes and the Class B Notes in the Note Payment Sequence and then to the payment of any Class B Deferred Interest, in each case in the amount necessary so that all of the Class B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (10) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(2) on the current Payment Date) (with each of the Senior Class A Notes and the Class A-3 Notes being redeemed *pro rata* based upon the outstanding principal amount of the Class A-1a Notes, the Class A-1b Notes and the Class A-1g Notes (in the case of a redemption of the Senior Class A Notes) and the outstanding principal amount of the Class A-3a Notes and the Class A-3b Notes (in the case of a redemption of the Class A-3 Notes));

(11) to the payment of Class B Deferred Interest;

(12) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(13) if the Class C Coverage Tests are not satisfied on the related Determination Date or if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Notes in the Note Payment Sequence and then to the payment of the Class C Deferred Interest in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (13) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(3) on the current Payment Date, unless a Rating Confirmation is obtained) (with each of the Senior Class A Notes and the Class A-3 Notes being redeemed *pro rata* based upon the outstanding principal amount of the Class A-1a Notes, the Class A-1b Notes and the Class A-1g Notes (in the case of a redemption of the Senior Class A Notes) and the outstanding principal amount of the Class A-3a Notes and the Class A-3b Notes (in the case of a redemption of the Class A-3 Notes));

(14) to the payment of Class C Deferred Interest;

(15) to deposit in the Collection Account as Principal Proceeds amounts representing Principal Proceeds previously used to pay amounts referred to in clauses (1), (3) through (7), (9), (11), (12) and (14) above and not previously restored to the Collection Account or, if not restored to the Collection Account, used to purchase Collateral Obligations;

(16) during the Reinvestment Period, if the Reinvestment Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds the lesser of (i) 50% of the remaining Interest Proceeds available after the payments pursuant to clause (15) above and (ii) the amount necessary to cause the Reinvestment Overcollateralization Test to be satisfied as of such Determination Date, after application of funds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date;

(17) first, to the payment to the Insurer of any remaining Administrative Expenses payable thereto and not paid under clause (1) above, and second, to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(18) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares, an amount not to exceed the Preference Shares Distribution Amount;

(19) to the payment (i) first to the Portfolio Manager of accrued and unpaid Subordinated Management Fee then due and payable and (ii) to the Insurer (if entitled thereto) and to each Holder of Securities entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(20) to the payment of any Defaulted Hedge Termination Payments;

(21) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 10.75%;

(22) to the payment to the Portfolio Manager of the Incentive Management Fee, if applicable; and

(23) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously reinvested in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) first, to the payment of the amounts referred to in clauses (1) and (3) through (7) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) second, to the payment of amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1);

(2) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (2);

(3) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination

Date on a *pro forma* basis after giving effect to any payments made through this clause (3);

(4) to the payment of the amounts referred to in clauses (9) and (11) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder, only to the extent that all of the Coverage Tests would be met on a *pro forma* basis after giving effect to any payments made through this clause (4);

(5) to the payment of the amounts referred to in clauses (12) and (14) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder, only to the extent that all of the Coverage Tests would be met on a *pro forma* basis after giving effect to any payments made through this clause (5);

(6)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed (with each of the Senior Class A Notes and the Class A-3 Notes being redeemed *pro rata* based upon the outstanding principal amount of the Class A-1a Notes, the Class A-1b Notes and the Class A-1g Notes (in the case of a redemption of the Senior Class A Notes) and the outstanding principal amount of the Class A-3a Notes and the Class A-3b Notes (in the case of a redemption of the Class A-3 Notes)), (ii) to the payment of the amounts referred to in clauses (17) through (22) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder, and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full (with each of the Senior Class A Notes and the Class A-3 Notes being redeemed pro rata based upon the outstanding principal amount of the Class A-1a Notes, the Class A-1b Notes and the Class A-1g Notes (in the case of a redemption of the Senior Class A Notes) and the outstanding principal amount of the Class A-3a Notes and the Class A-3b Notes (in the case of a redemption of the Class A-3 Notes));

(7) during the Reinvestment Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(8) after the Reinvestment Period, (i) first, at the discretion of the Portfolio Manager (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of substitute Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) second, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(9) to the extent not previously paid in full under clause (6) above, after the Reinvestment Period, to the payment of the amounts referred to in clauses (17) through (22) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(10) after the Reinvestment Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares.

Amounts referred to in clauses (9) and (12) of Section 11.1(a)(i), to the extent not previously paid in full thereunder, will be added to deferred interest for purposes of calculating the Coverage Tests in clauses (1), (2) and (3) of this Section 11.1(a)(ii).

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 p.m., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Portfolio Manager and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Portfolio Manager unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

(f) On each Payment Date on which distributions are made in respect of the Preference Shares, a portion of such payment will be allocated to the Class 1 Composite Securities in the proportion that the aggregate Face Amount of the Preference Share Component bears to the aggregate Face Amount of the Preference Shares. The payment of distributions, redemption amounts and any other payments on the Class 1 Composite Securities will be distributed in the same manner as the Preference Shares to which the Preference Share Component relates, except that such payment will be made on the Composite Securities Payment Date.

Section 11.2. ***Class 1 Component Distributions.***

(a) On the first Business Day after each Payment Date, the Trustee shall make commercially reasonable efforts to sell a portion or all of the Treasury Strip held in the Class 1 Component Account on the customary open markets in accordance with customary industry standards. The face amount of the Treasury Strip to be sold, if any, on the first Business Day after the relevant Payment Date shall be a calculated amount (rounded down to the nearest $1,000) equal to:

(i) the sum of the distributions allocated to the Preference Share Component of the Class 1 Composite Securities under Sections 11.1(a)(i)(18), (21) and (23) and Sections 11.1(a)(ii)(6)(A), (9) and (10) on such Payment Date; divided by

(ii) one minus the bid-side market price of the Treasury Strip on the first Business Day after such Payment Date expressed as a percentage.

No portion of the Treasury Strip may be sold, if after its sale, the Class 1 Collateral Principal Balance would not be greater than or equal to the Class 1 Composite Security Rated Balance.

(b) On each Composite Securities Payment Date, the Trustee shall disburse (solely from amounts in the Class 1 Component Account attributable to the proceeds from the sale of the Treasury Strip pursuant to Section 11.2(a)) to the Holders of the Class 1 Composite Securities, *pro rata* based on their share of the Class 1 Composite Security Rated Balance, the proceeds from the sale of the Treasury Strip relating to such Composite Securities Payment Date pursuant to Section 11.2(a).

(c) On each Composite Securities Payment Date following a redemption pursuant to Section 9.2(a), the Trustee shall disburse (solely from Class 1 Collateral held in the Class 1 Component Account) to the Holders of the Class 1 Composite Securities, *pro rata* based on their share of the Class 1 Composite Security Rated Balance, the Redemption Price of the Class 1 Component as a distribution in kind of each item of the Class 1 Collateral.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's Certificate of the Portfolio Manager provided to the Trustee, the Issuer may, at the direction of the Portfolio

Manager, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Portfolio Manager certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Reinvestment Period, the proceeds shall be reinvested in accordance with Section 12.2.

(a) *Credit Risk Securities*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Portfolio Manager during the Reinvestment Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Reinvestment Period, the Portfolio Manager believes before the sale that it will be able to cause the Issuer to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Investment Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest); or

(ii) after the Reinvestment Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Investment Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations and Current-Pay Obligations*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation or Current-Pay Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation or Current-Pay Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation at any time during or after the Reinvestment Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Reinvestment Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Portfolio Manager pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Portfolio Manager, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure*. After the Portfolio Manager has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Portfolio Manager, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Discretionary Sales*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Collateral Obligation:

(i) at any time on or before the Ramp-Up Completion Date (without regard to any restriction specified in clause (ii) below); and

(ii) at any time after the Ramp-Up Completion Date if:

(A) after giving effect to the sale and the sale of any other Collateral Obligations whose sale is pending, the Aggregate Principal Balance of all Collateral Obligations sold pursuant to this Section 12.1(h)(ii) (in each case determined as of the date the direction to sell is given) is not greater than 20% of the Maximum Investment Amount as of January 1 of such calendar year (or, for the first calendar year, as of the Ramp-Up Completion Date); and

(B) during the Reinvestment Period the Portfolio Manager believes before the sale that it will be able to cause the Issuer within 30 days thereafter to reinvest or commit to reinvest its Sale Proceeds, in compliance with the Eligibility Criteria, in one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Investment Criteria Adjusted Balance of the Collateral Obligation (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral

Obligations in which the Trustee does not have a first priority perfected security interest);

and the Trustee shall sell the Collateral Obligations in accordance with such direction. However, if the rating by Moody's of any of the Senior Class A Notes (without giving effect to the Policy), the Class A-2 Notes or the Class A-3 Notes is one or more rating sub-categories below the Initial Rating of the Senior Class A Notes (without giving effect to the Policy), the Class A-2 Notes or the Class A-3 Notes or has been withdrawn or the rating by Moody's of the Class B Notes or the Class C Notes is two or more rating sub-categories below the Initial Rating of the Class B Notes or the Class C Notes or has been withdrawn, the Issuer shall not instruct the Trustee to sell any Collateral Obligations pursuant to this Section 12.1(h). This restriction may be waived by written consent of a Majority of the Controlling Class. For the purposes of this subsection (h), any withdrawal or reduction in rating shall not restrict the sale of any Collateral Obligations pursuant to this subsection (h) if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Senior Class A Notes (without giving effect to the Policy), the Class A-2 Notes and the Class A-3 Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes and the Class C Notes.

For the purposes of determining the percentage of Collateral Obligations sold during any period in Section 12.1(h)(ii):

(i) the amount of any Collateral Obligation sold shall be reduced:

(A) to the extent of any purchases of Collateral Obligations of the same obligor (that are *pari passu* with the sold Collateral Obligation) occurring within 30 Business Days of the sale (determined based on the date of any relevant trade confirmation or commitment letter) (but only for so long as (x) the Collateral Obligations purchased have not been downgraded by any of the Rating Agencies during the 30 Business Day period, (y) the Collateral Obligations have not been purchased from the Portfolio Manager or any of its Affiliates acting, in each case, as principal or from any funds or accounts advised or managed by the Portfolio Manager or any of its Affiliates, and (z) the purchase price of each Notes purchased Collateral Obligation must not exceed the sale price of the sold Collateral Obligation), and

(B) to the extent of any purchases of Collateral Obligations permitted pursuant to Section 12.2(c); and

(ii) any Synthetic Security based upon or relating to a senior secured index investment providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time that is invested into a substantially similar Synthetic Security but with a later maturity shall be treated as having been sold.

(i) *Workout Assets*. At the direction of the Portfolio Manager, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Reinvestment Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Reinvestment Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Improved Obligations, on any date after the Reinvestment Period), so long as no Event of Default is continuing, at the direction of the Portfolio Manager, the Issuer may direct the Trustee to invest or reinvest Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) in Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Portfolio Manager certifies to the Trustee that, to the best knowledge of the Portfolio Manager, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Portfolio Manager as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Reinvestment Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Reinvestment Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Reinvestment Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(v) for any date occurring during the Reinvestment Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Reinvestment Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Reinvestment Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Reinvestment Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Reinvestment Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Reinvestment Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Reinvestment Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to reinvestment of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the reinvestment of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Reinvestment Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved;

(C) each Concentration Limitation is maintained or improved;

(D) the maturity date of such Collateral Obligation will occur prior to the Stated Maturity of the Notes; and

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Improved Obligation being the source of Sale Proceeds, as applicable.

(c) *Certain Permitted Exchanges*.

The Issuer may, at the direction of the Portfolio Manager, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Portfolio Manager*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Portfolio Manager shall deliver to the Trustee an Officer's certificate of the Portfolio Manager certifying that, to the best knowledge of the Portfolio Manager, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Investment in Eligible Investments*. Cash on deposit in the Collection Account may be invested at any time in Eligible Investments in accordance with Section 10.4(a) pending investment in Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Portfolio Manager or a person Affiliated with the Portfolio Manager or any fund or account for which the Portfolio Manager or an Affiliate of the Portfolio Manager acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Management Agreement on terms no less favorable to the Issuer than would be the case if the person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Portfolio Manager on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer delivers to the Trustee a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the

"***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Portfolio Manager shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Portfolio Manager's certification to the effect that the Portfolio Manager believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
Senior Class A	A-2, A-3, B, C, Preference Shares	None
A-2	A-3, B, C, Preference Shares	Senior Class A
A-3	B, C, Preference Shares	Senior Class A, A-2
B	C, Preference Shares	Senior Class A, A-2, A-3
C	Preference Shares	Senior Class A, A-2, A-3, B
Preference Shares	None*	Senior Class A, A-2, A-3, B, C

* The Preference Shares will be entitled to certain residual cashflow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Securities to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of the Notes of each Priority Class and (in the case of the Class A-1g Notes) the Insurer with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes and all amounts owed by the Issuer to the Insurer hereunder or under the Insurance Agreement shall be paid in full in Cash (without giving effect to payments on the Policy) or, to the extent a Majority of the Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class and each Class of Notes shall be paid in full in Cash or, to the extent a Majority of the Class consents, other than in Cash, before any further payment or distribution is made on account of the Preference Share Components. The Holders of each

Junior Class of Notes agree, for the benefit of the Holders of the Notes of each Priority Class and (in the case of the Class A-1g Notes) the Insurer in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and all amounts owed by the Issuer to the Insurer hereunder or under the Insurance Agreement, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, and the Insurer has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, and the Insurer in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes and the Insurer that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class and the Insurer has been paid in full, the Holders of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class and the Insurer. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares are subordinate to distributions on the Notes and Preference Shares as described in the Priority of Payments.

(f) The Management Fees shall have priority only to the extent provided in the Priority of Payments.

(g) For purposes of subordination, the Composite Securities shall not be treated as a separate Class, but the Preference Share Component shall be treated as being *pari passu* with the Preference Shares.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder or a Composite Securityholder under this Indenture, a Noteholder or a Composite Securityholder or the Insurer shall not have any obligation or duty to any person or to consider or take into account the interests of any person and shall not be liable to any person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, Composite Securityholder, the Issuer, or any other person, except for any liability to which the Noteholder or Composite Securityholder or the Insurer may be subject to the extent the same results from the Noteholder's or Composite Securityholder 's

taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer, or the Portfolio Manager may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer, or the Portfolio Manager or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Portfolio Manager, or any other person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Portfolio Manager, or the other person, unless the Officer of the Issuer, Co-Issuer, or the Portfolio Manager or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Noteholders, Composite Securityholders or Holders of Preference Shares.***

(a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Noteholders or Holders of Preference Shares may be embodied in and evidenced by one or more instruments of substantially similar

tenor signed by Noteholders or Holders of Preference Shares in person or by agents duly appointed in writing. Except as otherwise expressly provided in this Indenture the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Noteholders or the Holders of Preference Shares signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Noteholder or Holder of a Preference Share shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the person executing it to act. The fact and date of the execution by any person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of Securities and the principal amount and registered numbers of Securities and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted, or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Security or Preference Shares.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at its Corporate Trust Office, telecopy no. (713) 216-2101, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Portfolio Manager to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Maples Finance Limited, P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman,

Cayman Islands, telecopy no. (345) 945-7100, Attention: The Directors, or to the Co-Issuer addressed to it at 1209 Orange Street, Wilmington, Delaware, 19801, Attention: Donald J. Puglisi, or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Portfolio Manager at its address below;

(iii) the Insurer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Insurer addressed to it at Assured Guaranty Corp., 1325 Avenue of the Americas, New York, New York 10019, telephone no. (212) 974-0199, telecopy no. (212) 581-3268, Attention: General Counsel and Attention: Chief Risk Officer, or at any other address previously furnished in writing to the other parties hereto;

(iv) the Portfolio Manager shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Portfolio Manager addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(v) J.P. Morgan Securities Inc. as the Initial Purchaser shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, addressed c/o J.P. Morgan Securities Inc., at 270 Park Avenue, New York, NY 10017, Attention: Structured Credit Products, or at any other address previously furnished in writing to the Co-Issuers, the Portfolio Manager, and the Trustee by an Officer of the Initial Purchaser;

(vi) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vii) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(viii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Maples Finance Limited, P.O. Box 1093 GT

Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: The Directors; or

(ix) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Any document required to be delivered or made available to the Repository by the Trustee may be made available by providing the operator of the Repository with access to a website containing such document in a format that permits the user to download the document as a pdf file.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other person unless otherwise expressly specified in this Indenture.

Section 14.4. ***Notices to Holders, the Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Insurer, the Noteholders, the Composite Securityholders or the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Insurer, the Noteholders, the Composite Securityholders or the Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, to the Insurer, each Noteholder and Composite Securityholder affected by the event or the Preference Shares Paying Agent, at the address of the Insurer set forth in Section 14.3(a)(iii), at the address of the Holder as it appears in the Indenture Register or at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder, Composite Securityholder or the Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Holders of Notes any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expenses of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder, Composite Securityholder or the Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders, Composite Securityholders or the Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders, Composite Securityholders or the Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage, or similar activity or because of any other cause, then the notification to Noteholders, Composite Securityholders or the Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

Where this Indenture provides for notice in any manner, the notice may be waived in writing by any person entitled to receive the notice, either before or after the event, and the waiver shall be the equivalent of the notice. Waivers of notice by Noteholders, Composite Securityholders or the Preference Shares Paying Agent shall be filed with the Trustee but the filing shall not be a condition precedent to the validity of any action taken in reliance on the waiver.

So long as any Securities are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Holders of the Securities or the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) shall also be given to the Company Announcements Office of the Irish Stock Exchange or the Irish Listing and Paying Agent.

The Issuer shall (and authorizes the Trustee to) deliver to J.P. Morgan Securities Inc. all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Portfolio Manager, trustees, paying agents, accountants, or other persons pursuant to this Indenture and other operative documentation relating to the Securities requested by J.P. Morgan Securities Inc. (collectively, the "***Transaction Reports***") and the Issuer consents to J.P. Morgan Securities Inc.'s providing Transaction Reports received by it to current and prospective investors in the Securities (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by J.P. Morgan Securities Inc. or any of its affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

Except to the extent prohibited by applicable law, in case any provision in this Indenture, in the Securities shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any person, other than the parties hereto and their successors under this Indenture, the Portfolio Manager, the Insurer, the Noteholders, the Composite Securityholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy, or claim under this Indenture.

Section 14.9. ***Legal Holidays.***

If any Payment Date, Redemption Date, or Stated Maturity is not a Business Day, then notwithstanding any other provision of the Notes or this Indenture, payment need not be made on that date, but shall be made on the next Business Day with the same effect as if made on the nominal date of the Payment Date, Redemption Date, or Stated Maturity date, as the case may be, and except as provided in the definition of "Due Period," no interest shall accrue on the payment for the period beginning on the nominal date.

Section 14.10. ***Governing Law.***

(a) THIS INDENTURE, EACH NOTE, AND EACH COMPOSITE SECURITY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.11. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities, the Preference Shares or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of the Co-Issuers' agent in Section 7.2 and to the Trustee at the Corporate Trust Office. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.12. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.13. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Portfolio Manager on the Issuer's behalf.

Section 14.14. ***Consent of Posting of Documents on Repository.***

The Issuer hereby consents to (a) the posting of the final Offering Circular, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository; and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.15. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Notes, the Composite Securities, or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, the Composite Securities, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, the Composite Securities, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.16. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Securities issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF MANAGEMENT AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Management Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the

first Granting Clause includes all of the Issuer's interest in the Management Agreement, including:

(i) the right to give all notices, consents, and releases under it,

(ii) the right to give all notices of termination pursuant to the Management Agreement and to take any legal action upon the breach of an obligation of the Portfolio Manager under it, including the commencement, conduct, and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases, and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Management Agreement, nor shall any of the obligations contained in the Management Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the Class 1 Component and the release of the Collateral and the Class 1 Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Management Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Management Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Portfolio Manager in the Management Agreement to the following:

(i) The Portfolio Manager consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Portfolio Manager pursuant to the Management Agreement.

(ii) The Portfolio Manager acknowledges that the Issuer is collaterally assigning all of its interest in the Management Agreement to the Trustee for the benefit

of the Secured Parties and the Portfolio Manager agrees that all of the representations, covenants and agreements made by the Portfolio Manager in the Management Agreement are also for the benefit of the Secured Parties.

(iii) The Portfolio Manager shall deliver to the Trustee duplicate original copies of all notices, statements, communications, and instruments delivered or required to be delivered to the Issuer pursuant to the Management Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) Neither the Issuer nor the Portfolio Manager shall select or consent to a successor manager or enter into any agreement amending, modifying, or terminating the Management Agreement (other than an amendment or modification of the type that may be made to this Indenture without Holder consent) without obtaining the consents of the Insurer and Holders that would be required if an amendment or modification of the same type were being made to this Indenture and without the satisfaction of the Rating Condition with respect to each Rating Agency with respect thereto.

(v) Except as otherwise provided in this Indenture and the Management Agreement, subject to the resignation rights of the Portfolio Manager pursuant to Section 12 of the Management Agreement, the Portfolio Manager shall continue to serve as Portfolio Manager under the Management Agreement notwithstanding that the Portfolio Manager shall not have received amounts due it under the Management Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Portfolio Manager agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Portfolio Manager under the Management Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Portfolio Manager may commence any legal action that is not a bankruptcy, insolvency, liquidation, or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation, or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Portfolio Manager or any Affiliate of the Portfolio Manager.

(vi) The Portfolio Manager irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Portfolio Manager irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Portfolio Manager irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Portfolio Manager irrevocably consents to the service of all process in any action or Proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Portfolio Manager agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be

enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Portfolio Manager, the Issuer shall use its best efforts to appoint a successor Portfolio Manager, and the Issuer, the Trustee, and the resigning or removed Portfolio Manager shall take any action consistent with the Management Agreement and this Indenture applicable to the Portfolio Manager, necessary to effectuate any such succession.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time after the Closing Date, the Issuer, at the direction of the Portfolio Manager, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture and the Collateral Assignment of Hedge Agreements. The Portfolio Manager, on behalf of the Issuer, shall obtain the approval of each new Hedge Agreement from each Hedge Counterparty to a then-existing Hedge Agreement. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "Aa3" (which rating of "Aa3" is not on credit watch for possible downgrade) or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A1" (which rating of "A1" is not on credit watch for possible downgrade) or higher and a debt rating by Moody's for short-term debt of "P-1" (which rating of "P-1" is not on credit watch for possible downgrade) if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or a long-term debt rating of not less than "A+" (the "***Required Rating***").

(c) If at any time a Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating and that rating is below "Aa3" or is "Aa3" and has been placed on credit watch for possible downgrade by Moody's; or

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is below "A1" or that rating is "A1" and has been placed on credit watch for possible downgrade by Moody's, or

(ii) the short-term Moody's rating is below "P-1" or that rating is "P-1" and has been placed on credit watch for possible downgrade by Moody's

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's to be satisfied;

(ii) obtain a guarantor whose short-term and long-term debt ratings equal or exceed the above criteria;

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty whose short-term and long-term debt ratings equal or exceed the above criteria; or

(iv) take other actions to satisfy the Rating Condition with respect to Moody's;

(d) If at any time the Hedge Counterparty has:

(A) no short-term Moody's rating and a long-term Moody's rating that is "A2" or below or has been suspended or withdrawn;

(B) both a short-term and long-term Moody's rating; and either:

(i) the long-term Moody's rating is "A3" or below or is suspended or withdrawn, or

(ii) the short-term Moody's rating is "P-2" or below, or

(C) a short-term debt rating by S&P below "A-1" or, if the Hedge Counterparty has no short-term rating by S&P, a long-term rating by S&P below "A+" or that has been suspended or withdrawn;

then the Hedge Counterparty shall be required, at its sole expense, to, within 30 days, either:

(i) post collateral as required by the Hedge Agreement to secure the Hedge Counterparty's obligations under the Hedge Agreement in an amount and of the type sufficient to cause the Rating Condition with respect to Moody's and S&P to be satisfied; or

(ii) (x) obtain a guarantor that has a Required Rating and that will satisfy the Rating Condition with respect to S&P with respect to its appointment;

(y) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has a Required Rating and the appointment of which will satisfy the Rating Condition with respect to S&P; or

(z) take such other actions to satisfy the Ratings Condition.

(e) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(f) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(g) Except as provided in paragraph (h) of this Section 15.2, the Issuer, at the direction of the Portfolio Manager, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), at the expense of the Issuer and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Portfolio Manager's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Portfolio Manager determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination; or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(h) Notwithstanding Section 15.2(g), the applicable requirements of Section 15.2(g) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(i) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified, or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification, or termination, as the case may be.

(j) Each Hedge Agreement may be terminated pursuant to its terms upon an Optional Redemption of the Notes or an acceleration of maturity of the Notes after an Event of Default. The Hedge Agreement will not be permitted to be terminated as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(k) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

ARTICLE 16

THE POLICY

Section 16.1. ***Miscellaneous.***

(a) So long as no Insurer Default shall have occurred and be continuing, (i) the Trustee shall provide the Insurer copies of each report, notice, Opinion of Counsel, officer's certificate, request for consent or request for amendment to any document related hereto that the Trustee is required to send to the Issuer, the Co-Issuer, any Holder of Securities, the Rating Agencies or the Portfolio Manager promptly upon the Trustee's production or receipt thereof (in each case, to the extent the Insurer is not expressly required to be provided such document directly or to the extent that another party is not responsible for delivery of such document directly to the Insurer), (ii) the Co-Issuers shall provide the Insurer copies of each report, notice, Issuer Order, Opinion of Counsel, officer's certificate, request for consent or request for amendment to any document related hereto that the Issuer is required to send to the Trustee, any Holder of Securities, the Rating Agencies or the Portfolio Manager promptly upon the Co-Issuers' production or receipt thereof (in each case, to the extent the Co-Issuers are not expressly required to be provided such document directly or to the extent that another party is not responsible for delivery of such document directly to the Insurer) and (iii) the Trustee shall forward to the Insurer upon receipt (x) a copy of any notice or order received from the Portfolio Manager pursuant to (A) clause (i) of the definition of "Reinvestment Period", (B) Section 7.19(e) and (C) Section 9.5 or (y) a copy of any instrument received from any Paying Agent pursuant to Section 7.3. All references to the rights of the Insurer to act as the Controlling Class, the Majority of the Controlling Class and the Super Majority of the Controlling Class herein (including, with respect to any action proposed to be taken by the Trustee, the Issuer, the Co-Issuer, or any Person, any requirements that the consent or approval of the Insurer be obtained in connection with the taking of such action) shall exist only so long as (i) the Insured Notes are Outstanding or any Accrued Insurance Liabilities are due and owing to the Insurer (it being understood that such right shall be reinstated if an Avoided Payment is made for so long as any such Avoided Payment is pending during the applicable statutory preference period or, if the Insurer is required to pay the amount of any such Avoided Payment, for so long as any Accrued Insurance Liabilities owing to the Insurer have not been paid in full), (ii) no Insurer Default has occurred and is continuing and (iii) the Policy has not been delivered for cancellation in accordance with Sections 16.8 and 16.9. The satisfaction of clauses (i), (ii) and (iii) of the foregoing sentence shall entitle the Insurer to exercise the rights of the Controlling Class, the Majority of the Controlling Class and the Super Majority of the Controlling Class and to take all such other action to grant or withhold consent to actions proposed to be taken by the Issuer or the Portfolio Manager on behalf of the Issuer to the extent expressly granted to the Controlling Class, the Majority of the Controlling Class and the Super Majority of the Controlling Class in this Indenture. From and after the date on which the Policy expires in

accordance with its terms and all Accrued Insurance Liabilities and any other amounts owing to the Insurer under this Indenture and the Insurance Documents have been paid in full, the Insurer shall have no rights or benefits as the Controlling Class, the Majority of the Controlling Class and the Super Majority of the Controlling Class hereunder.

(b) So long as the conditions set forth in clauses (i), (ii) and (iii) of the second sentence of Section 16.1(a) are satisfied, the Insurer shall have the right to exercise all rights of the Holders of the Insured Notes hereunder or under the Management Agreement (other than the right to grant or withhold any consent under Section 8.2) without any consent of such Holders, and such Holders may exercise such rights (other than the right to grant or withhold any consent under Section 8.2) only with the prior written consent of the Insurer.

Section 16.2. ***Representative of the Noteholder of the Insured Notes.***

Notwithstanding anything contained herein to the contrary, if an Event of Default has occurred and is continuing, so long as the Insurer is the Controlling Class, the Insurer shall have the right (to the exclusion of the Holders of the Insured Notes) to direct the Trustee as to any and all remedies to be sought or taken on behalf of the Holders of the Insured Notes under this Indenture and the Trustee shall not exercise any such remedies unless directed by the Insurer to the extent the Holders of the Insured Notes could control the actions of the Trustee. Each Holder of an Insured Note shall be deemed to have consented to the Insurer's rights hereunder. At such time as there exists and is continuing an Insurer Default the Trustee shall not be bound to continue to comply with any term or condition of this Indenture that requires the consent of or approval or direction from the Insurer.

In addition, the Insurer may exercise any rights and remedies that are available to such Holders of Insured Notes at law or in equity on its own behalf as the representative of the Holders of the Insured Notes, including, without limitation, under the Securities Act and/or the Exchange Act at any time and without preconditions or the further consent of any such Holders of Insured Notes or the Trustee. All proceeds received by Holders of the Insured Notes arising out of any proceeding at law or equity conducted by the Insurer as representative of the Holders of the Insured Notes (including any settlement proceeds in respect of any such proceeding) shall be paid over by such Noteholders to the Trustee and shall be applied by the Trustee to (A) first, make a payment to the Insurer of any amount then due and payable under the Insurance Agreement and (B) second, redeem the Insured Notes at par plus accrued and unpaid interest thereon.

Section 16.3. ***Drawings under Policy.***

(a) If by 11:00 a.m., on the date (a "**Deficiency Notice Date**") that is the third Business Day prior to any Payment Date, the amount then on deposit and available for distribution (or scheduled to be on deposit and available for distribution on such a Payment Date) in the Collection Account is insufficient (based on the information set forth in the Valuation Report prepared as of the Determination Date related to such Payment Date) to pay the Insured Amount (as defined in the Policy) in respect of the Insured Notes on such Payment Date in accordance with the Priority of Payments (the amounts of such deficiency, the "**Deficiency Amount**"), the Trustee shall:

(i) no later than 12:00 noon, New York City time, on the Deficiency Notice Date, give notice (which notice is in the appropriate form and delivered in the manner specified in the Policy) to the Insurer, specifying therein the Deficiency

Amount, and thereupon submit a notice of drawing under the Policy in such amount, all in accordance with the terms of this Indenture and in compliance with the terms of the Policy; and

(ii) on the date on which the Trustee receives payment under the Policy from the Insurer (but not earlier than the applicable Payment Date) in respect of the Deficiency Amount (so long as such payment is received by the Trustee by 10:00 a.m., New York City time, on the applicable Payment Date), pay over to each Holder of an Insured Note, for application by such Holder to amounts due in respect of such Holder's Insured Notes due on the related Payment Date, such Holder's ratable share of the amounts so received by the Trustee.

Any payment by the Insurer under the Policy in respect of amounts due on the Insured Notes shall be applied solely to the payment of amounts due on the Insured Notes.

(b) The Trustee agrees to furnish to the Insurer upon its reasonable request copies of the Trustee's records evidencing the payment of amounts due on the Insured Notes that have been made by the Trustee and subsequently recovered from Holders of the Insured Notes, and the dates on which such payments were made.

(c) The Trustee shall be entitled to enforce on behalf of the Holders of the Insured Notes the obligations of the Insurer under the Policy. Notwithstanding any other provision of this Indenture, the Holders of the Insured Notes are not entitled to make any claims under the Policy or institute proceedings directly against the Insurer.

(d) Notwithstanding anything herein to the contrary, any payment of interest or principal with respect to the Insured Notes made by or on behalf of the Insurer shall not be deemed to be a payment made by the Issuer and shall remain due for payment until payments in respect of such amounts are made by the Issuer in accordance with the Priority of Payments. Subject to and conditional upon payment of any interest or principal with respect to the Insured Notes by or on behalf of the Insurer, the Trustee shall assign to the Insurer all rights to the payment of interest or principal on or with respect to the Insured Notes, which are then due for payment to the extent of all payments made by the Insurer, and the Insurer may exercise any option, vote, right or power to the extent it has made a principal payment pursuant to the Policy in addition to its other rights hereunder. The Trustee and each Holder of an Insured Note by its purchase thereof agrees that the Insurer shall be subrogated to all of the rights to payment of such Holders or in relation thereto to the extent that any payment of principal or interest on or in respect of the Insured Notes was made to such Holders with payments made under the Policy by the Insurer.

Section 16.4. ***Preference Claims and Insolvency Proceedings.***

(a) In the event the Trustee receives a certified copy of an order of the appropriate court that an amount due on an Insured Note constitutes an Avoided Payment, unless the Policy has been terminated in accordance with Section 16.8, the Trustee shall so notify the Insurer, shall comply with the provisions of the Policy to obtain payment from the Insurer of such Avoided Payment, and shall, at the time it provides notice to the Insurer, notify the Holders of the Insured Notes that, in the event that any such Holder's payment is so recoverable, such Holder shall be entitled to payment pursuant to the terms of the Policy. The Trustee shall furnish to the Insurer copies of its records evidencing the payments of amounts due on the Insured Notes, if any, that have been made by the Trustee and subsequently recovered from

Holders of such Notes, and the dates on which such payments were made. The Insurer, however, shall not be obligated to make any payment in respect of any Insured Amount representing a payment of principal avoided as preference prior to the time the Insurer would have been required to make payment in respect of such principal pursuant to the Policy. Pursuant to the terms of the Policy, the Insurer shall make such payment on behalf of such Holders to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order (as defined in the Policy) and not to the Trustee or any such Holder directly (unless the Trustee or any such Holder, as the case may be, has previously paid such preference amount to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in such Order, in which case the Insurer shall make such payment to the Trustee or such Holder, as in the case may be, in accordance with the Policy for distribution to such Holder upon proof of such payment reasonably satisfactory to the Insurer). In the event the Policy is terminated in accordance with Section 16.8, the Insurer will have no further liability under the Policy or otherwise with respect to the Avoided Payment.

(b) The Trustee shall promptly notify the Insurer of any proceeding or the institution of any action (of which the Trustee has actual knowledge) (i) seeking the avoidance as a preferential transfer under the Bankruptcy Code or other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (a "**Preference Claim**") of any distribution made with respect to any amount due on an Insured Note or (ii) the commencement of any proceeding by or against the Issuer commenced under the Bankruptcy Code or other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "**Insolvency Proceeding**"). Each Holder of an Insured Note, by its purchase thereof, and the Trustee hereby agree that, so long as a Insurer Default shall not have occurred and be continuing, the Insurer may at any time during the continuation of any proceeding relating to a Preference Claim in respect of the Insured Notes or Insolvency Proceeding direct all matters relating to such Preference Claim or Insolvency Proceeding, as applicable, including, without limitation, (i) the direction of any appeal of any order relating to any such Preference Claim or Insolvency Proceeding, as applicable, and (ii) the posting of any surety or supersedeas performance bond pending any such appeal. In addition, and without limitation of the foregoing, as set forth in Section 16.5, the Insurer shall be subrogated to, and each Holder of the Insured Notes and the Trustee hereby delegates and assigns, to the fullest extent permitted by law, the rights of the Trustee and such Holder in the conduct of any proceeding with respect to such a Preference Claim or Insolvency Proceeding, as applicable, including, without limitation, all rights of any party to an adversary proceeding action with respect to any court order issued in connection with any such Preference Claim or Insolvency Proceeding, as applicable.

Section 16.5. ***Subrogation.***

Anything in this Indenture to the contrary notwithstanding, any payment with respect to the principal of or interest on or with respect to the Insured Notes that is made with monies received pursuant to the terms of the Policy shall not be considered payment by the Issuer of the Insured Notes and shall not discharge the Issuer in respect of its obligation to make such payment. The Issuer and the Trustee acknowledge that, without the need for any further action on the part of the Insurer, the Issuer, the Trustee or any other Person, to the extent that the Insurer makes payment directly or indirectly on account of principal of or interest on or with respect to the Insured Notes to the Holders thereof, (i) the Insurer shall be fully subrogated to the rights of such Holders to receive such principal and interest from the Issuer and (ii) the Insurer shall be paid such principal and interest in its capacity as Holder of the Insured Notes but only from the sources and in the manner provided in this Indenture for the payment of such principal and interest in accordance with the Priority of Payments; provided, however, that such

subrogation rights shall terminate upon the termination of the Policy pursuant to Section 16.8(b).

Section 16.6. ***Policy Payment Account.***

The Trustee shall, on or prior to the Closing Date, establish in the name of the Trustee a single, segregated trust account which shall be designated as the Policy Payment Account (the "**Policy Payment Account**"), that shall be held in trust in the name of the Trustee for the benefit of the Holders of the Insured Notes, over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall deposit all amounts received from the Insurer under the Policy in the Policy Payment Account. Amounts held in the Policy Payment Account shall not be invested, unless otherwise instructed in writing by the Insurer. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Policy Payment Account shall be to make payments in respect of the amounts due on the Insured Notes on the related Payment Date in respect of which such funds are paid, to the extent such amounts are not paid pursuant to the Priority of Payments. Any monies held in the Policy Payment Account after the distributions made pursuant to this Section 16.6 on any Payment Date shall promptly be remitted (but in no event later than two Business Days after such Payment Date) to the Insurer.

Section 16.7. ***Limited Recourse; Non-Petition.***

The Insurer hereby acknowledges and agrees that the Issuer's obligations under the Insurance Agreement and the Premium Letter shall be solely the obligations of the Issuer, and the Insurer shall not have any recourse to any director, officer, agent, member, limited partner, general partner or Affiliate of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated thereby. Recourse in respect of any obligations of the Issuer under the Insurance Agreement and the Premium Letter shall be limited to the Collateral applied in accordance with the Priority of Payments and on the exhaustion thereof all claims against the Issuer thereunder or any transactions contemplated thereby shall be extinguished and shall not thereafter revive. In addition, the Insurer agrees that it shall not institute against the Issuer any bankruptcy, insolvency, reorganization, receivership or similar proceeding so long as any Securities (including the Insured Notes) shall be Outstanding and there shall have elapsed one year plus one day or, if longer, the applicable preference period then in effect since the last day on which any Securities (including the Insured Notes) shall have been Outstanding; provided that, the Insurer may become a party to and participate in any such proceeding applicable to the Issuer that is initiated by any Person that is not an Affiliate of the Insurer. The agreements contained in this paragraph shall survive the termination of the Insurance Agreement and the Premium Letter and the payment of all obligations under this Indenture.

Section 16.8. ***Termination of the Policy.***

(a) The Policy may be terminated on any Payment Date if: (x) after giving effect to all payments to be made on such Payment Date, all Accrued Insurance Liabilities and all Administrative Expenses payable to the Insurer accrued through the date of termination have been paid and all Premium accrued through such Payment Date has been paid and (y) any of the following events has occurred and is continuing on such date:

(i) the Co-Issuers have elected to extend the Reinvestment Period pursuant to Section 2.4 and have satisfied all of the requirements related thereto (including each

of the Extension Conditions set forth in Section 2.4(c)), other than obtaining the consent of the Insurer to such Extension, and the Insurer has and continues to object to such Extension, and the Holders of 100% of the Insured Notes (after giving effect to the sale of any Insured Notes which are Extension Sale Securities in connection with the proposed Maturity Extension) consent to such termination in accordance with Section 16.9;

(ii) the Co-Issuers have proposed to enter into a supplemental indenture pursuant to Article 8 and have satisfied all of the requirements for the effectiveness thereof, and the Insurer has and continues to object to such amendment and 100% of the Holders of the Insured Notes consent to such termination in accordance with Section 16.9; or

(iii) the Removal Buy-Out Purchaser shall have purchased the Insured Notes for the applicable Removal Buy-Out Purchase Price pursuant to Section 9.7.

(b) If none of the conditions set forth in clause (a)(i) through (iii) above are satisfied, the Policy may be terminated on any Business Day if 100% of the Holders of the Insured Notes consent to such termination in accordance with Section 16.9.

(c) In connection with a termination of the Policy pursuant to Section 16.8(a), any Administrative Expenses payable to the Insurer arising after termination of the Policy shall remain payable from Interest Proceeds and Principal Proceeds in accordance with the Priority of Payments. In connection with a termination of the Policy pursuant to Section 16.8(b), Premium through the date of termination of the Policy and all Administrative Expenses payable to the Insurer shall remain payable from Interest Proceeds and Principal Proceeds in accordance with the Priority of Payments. In connection with a termination of the Policy pursuant to Section 16.8(b), the rights of the Insurer pursuant to Section 16.3(d) and Section 16.5 to be subrogated to the rights of the Holders of the Insured Notes to the extent of any payment of principal or interest on or with respect of the Insured Notes shall terminate, and the Holders of the Insured Notes shall be entitled to the payment of such interest or principal. In connection with any termination of the Policy pursuant to this Section 16.8, the Insurer will continue to be entitled to any Extension Bonus Payment so long as such Extension Bonus Payment was due and payable prior to the termination of the Policy.

(d) Upon termination of the Policy in accordance with the terms of this Section 16.8, (i) all rights of the Insurer to receive notices hereunder shall survive such termination and (ii) no provision hereof (including, without limitation, the Priority of Payments and this Section 16.8) may be amended or otherwise modified in any manner adverse to the Insurer without the prior written consent of the Insurer.

(e) Upon termination of the Policy in accordance with the terms of this Section 16.8, the Insurer shall have no further liability for losses, claims, demands, damages, controversies, losses, costs and expenses of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, under the Policy as of the date of such termination, whether such losses, claims, demands, damages, controversies, losses, costs and expenses occurred prior to or subsequent to the date of such termination, and whether in connection with an Avoided Payment or other amount that has been paid by the Issuer or the Insurer prior to or after termination of the Policy and subsequently is required to be returned as a preference or otherwise.

Section 16.9. ***Termination Procedures.***

(a) If the Issuer or the Holders of at least 25% of the Aggregate Outstanding Amount of the Insured Notes wish to solicit the vote of the Holders of the Insured Notes in connection with a proposed termination of the Policy pursuant to Section 16.8, the Issuer or such Holders shall notify the Trustee at least 45 days prior to the proposed termination date (which in the case of a termination pursuant to Section 16.8(a) must be a Payment Date). If the conditions for termination specified in Section 16.8 are satisfied as of the date of such notice (or are expected to be satisfied as of the proposed date of termination), as certified to the Trustee by an Issuer Order, the Trustee shall, promptly upon receipt thereof, notify the Issuer (in the case of notice to the Trustee by the requisite Holders of the Insured Notes), the Portfolio Manager, and the Insurer and shall send to all Holders of the Insured Notes (with a copy to the Issuer, the Portfolio Manager and the Insurer) a notice of proposed termination that shall state:

1. the notice is being sent at the request of the Issuer or certain Holders of the Insured Notes (as applicable) who wish to solicit the vote of the Holders of the Insured Notes in connection with a termination of the Policy pursuant to Section 16.8;

2. a copy of the Issuer Order stating that the proposed termination is pursuant to Section 16.8(a)(i), Section 16.8(a)(ii), Section 16.8(a)(iii) or Section 16.8(b), and any conditions to such proposed termination have been satisfied;

3. the proposed date of termination (which in the case of a termination pursuant to Section 16.8(a) must be a Payment Date);

4. that from and after termination of the Policy, the Insured Notes will bear interest at a rate of LIBOR + 0.25% + the Premium Rate; and

5. that if the Policy is terminated, the Insurer shall have no further liability for losses, claims, demands, damages, controversies, losses, costs and expenses of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, under the Policy as of the date of such termination, whether such losses, claims, demands, damages, controversies, losses, costs and expenses occurred prior to or subsequent to the date of such termination, and whether in connection with an Avoided Payment or other amount that has been paid by the Issuer or the Insurer prior to or after the termination of the Policy and subsequently is required to be returned as a preference or otherwise.

(b) Each Holder of the Insured Notes that wishes to terminate the Policy must notify the Issuer and Trustee in writing of such determination within 10 Business Days after delivery of the notice of proposed termination. If the Trustee and the Issuer have not received written notification from all of the Holders of the Insured Notes within 10 Business Days of delivery of notice of proposed termination, the solicitation of the vote of the Holders of the Notes will be deemed not to have succeeded. The Trustee shall promptly forward to the Issuer, the Portfolio Manager and the Insurer the solicitation of votes received from the Holders of the Insured Notes. If all Holders of the Insured Notes notify the Issuer and the Trustee that they wish to terminate the Policy, the Issuer shall issue an Issuer Order instructing the Trustee to:

1. surrender the Policy to the Insurer for cancellation on the date of termination;

2. promptly notify each Rating Agency of such termination; and

3. execute, acknowledge and deliver (at the expense of Issuer) such other documents or instruments as the Insurer may reasonably request evidencing the termination of the Policy.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

SOUTHFORK CLO LTD.,
AS ISSUER

By: _____
Name: Phillip Hinds
Title: Director

SOUTHFORK CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

ASSURED GUARANTY CORP.,
AS INSURER

By: _____
Name:
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

SOUTHFORK CLO LTD.,
AS ISSUER

By: _____
Name:
Title:

SOUTHFORK CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

ASSURED GUARANTY CORP.,
AS INSURER

By: _____
Name:
Title:

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name: Richard W. Johnson
Title: Vice President

By: _____
Name: Richard W. Johnson
Title: Vice President

45824

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

SOUTHFORK CLO LTD.,
AS ISSUER

By: _____
Name:
Title:

SOUTHFORK CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J. Puglisi
Title: President

ASSURED GUARANTY CORP.,
AS INSURER

By: _____
Name: Howard W. Albert
Title: Chief Underwriting & Risk Officer

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule 1

List of Collateral Obligations

Schedule 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal **Electronics**: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology

Finance: Investment Brokerage, Leasing, Syndication, Securities

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers

Grocery: Grocery Stores, Convenience Food Stores

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes
Personal Transportation: Air, Bus, Rail, Car, Rental

Utilities: Electric, Water, Hydro Power, Gas, Diversified

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment

Schedule 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53, CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

Schedule 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows:

(i) An "***Obligor Par Amount***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An "***Average Par Amount***" is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An "***Equivalent Unit Score***" is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor *divided* by the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Portfolio Manager reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An "***Aggregate Industry Equivalent Unit Score***" is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An "***Industry Diversity Score***" is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

Schedule 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's:

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10%	65%	55%	45%	40%	30%	20%

>5%						
<=5% >2%	55%	45%	40%	35%	25%	15%
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	Aaa	Aa	A	Baa	Ba	B
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

Schedule 6

S&P Structured Finance Obligation Recovery Rates*

The S&P Priority Category Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate asset class and liability rating as categorized by S&P:

Senior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

Junior Asset Class

	Liability rating						
	AAA	AA	A	BBB	BB	B	CCC
AAA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
AA	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
A	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BBB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* This table shall not apply to project finance, future flows, synthetics, CDO repacks of ABS or CDOs, guaranteed ABS, distressed debt CDOs, synthetic CDOs, or emerging market CDOs. Recovery rates for such Structured Finance Obligations will be assigned by S&P on a case-by-case basis.

Schedule 7

Certain Tax Provisions

Schedule 8

Certain Defined Terms Relating to S&P Rating and Moody's Rating

"***Assigned Moody's Rating***": The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"***Moody's Default Probability Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a senior implied rating from Moody's, such senior implied rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof (or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, the rating that is the number of rating subcategories specified by Moody's below such S&P rating); and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Equivalent Senior Unsecured Rating***": With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then:

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a senior implied rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such senior implied rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clauses (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any

postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Portfolio Manager obtains an estimated rating from Moody's if (A) the Portfolio Manager certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Portfolio Manager on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Investment Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(viii) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Investment Amount may consist of Investment Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

"***Moody's Obligation Rating***": With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(a) With respect to a Moody's Senior Secured Loan:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a Bond:

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"***Moody's Rating***": The Moody's Default Probability Rating; provided that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Portfolio Manager, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"***S&P Rating***": With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "***Borrower***"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "***Guarantor***") by S&P, the most current issuer credit rating for such Borrower or Guarantor;

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower; or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or

lower by Moody's; provided that Collateral Obligations constituting no more than 10% of the Maximum Investment Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Portfolio Manager may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; or

(C) if such Collateral Obligation is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Portfolio Manager determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "CCC-"; provided that the Portfolio Manager must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; provided, further, that Collateral Obligations constituting no more than 5% of the Maximum Investment Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Portfolio Manager. In the case of a Collateral Obligation that is a PIK Security or Structured Finance Obligation, the S&P Rating may not be determined pursuant to clause (iii)(a) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

Exhibit A

Forms of Securities

Exhibit A-1

Form of Note

Exhibit A-2

Form of Composite Security

Exhibit A-3

Form of Note and Composite Security Legends

Exhibit B

Forms of Note and Composite Security Transfer and Exchange Certificates

Exhibit B-1

Form of Note Transferee Certificate

Exhibit B-2

Form of Regulation S Note Transferor Certificate

Exhibit B-3

Form of Non-Regulation S Note Transferor Certificate

Exhibit B-4

Form of Composite Security Transferee Certificate

Exhibit B-5

Form of Regulation S Composite Security Transferor Certificate

Exhibit B-6

Form of Non-Regulation S Composite Security Transferor Certificate

Exhibit C

Form of McKee Nelson LLP Opinion

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 21

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

Exhibit D

Form of Maples and Calder Opinion

Exhibit E

Form of Gardere Wynne Sewell LLP Opinion

Exhibit F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G

Form of Securities Account Control Agreement

Exhibit H

Forms of Section 3(c)(7) Notices

Exhibit H-1

Form of Section 3(c)(7) Reminder Notice

Exhibit H-2

Form of Important Section 3(c)(7) Reminder Notice

Exhibit I

Form of Beneficial Owner Certificate

Exhibit J

Form of Extension Notice

EXECUTION COPY

Dated as of October 25, 2007

STRATFORD CLO LTD.
Issuer,

STRATFORD CLO LLC
Co-Issuer,

STATE STREET BANK AND TRUST COMPANY
Trustee

INDENTURE

FRESHFIELDS BRUCKHAUS DERINGER LLP

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Schedule 2 – Moody's Industry Classification Group List

Schedule 3 – S&P Industry Classifications

Schedule 4 – Diversity Score Calculation

Schedule 5 – Moody's Structured Finance Obligation Recovery Rates

Schedule 6 – S&P Structured Finance Obligation Recovery Rates

Schedule 7 – Certain Defined Terms Relating to S&P Rating and Moody's Rating

Exhibit A – Forms of Notes

Exhibit B – Forms of Note Transfer and Exchange Certificates

B-1 – Form of Note Transferee Certificate

B-2 – Form of Note Transferor Certificate for Regulation S to Rule 144A Transfer

B-3 – Form of Note Transferor Certificate for Rule 144A to Regulation S Transfer

Exhibit C – Form of Freshfields Bruckhaus Deringer LLP Opinions

Exhibit D – Form of Maples and Calder Opinion

Exhibit E – Form of Nixon Peabody LLP Opinion

Exhibit F – Form of Orrick, Herrington & Sutcliffe LLP Opinion

Exhibit G – Forms of Section 3(c)(7) Notices

G-1 – Form of Section 3(c)(7) Reminder Notice

G-2 – Form of Important Section 3(c)(7) Reminder Notice

Exhibit H – Form of Beneficial Owner Certificate

Exhibit I – Form of Extension Notice

Exhibit J – Form of Insurer Notice

THIS INDENTURE, dated as of October 25, 2007, among

(a) **STRATFORD CLO LTD.** (the ***Issuer***),

(b) **STRATFORD CLO LLC** (the ***Co-Issuer***) and

(c) **STATE STREET BANK AND TRUST COMPANY**, as trustee (together with its permitted successors, the ***Trustee***).

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer, each Synthetic Security Counterparty and each Hedge Counterparty (and the Collateral Administrator and Preference Shares Paying Agent to the extent of Administrative Expenses payable to such parties as provided hereunder) (collectively, the ***Secured Parties***), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and listed from time to time on such Schedule 1 as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Synthetic Security Reserve Account, the Revolving Reserve Account, the Delayed

Drawdown Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (collectively, the ***Issuer Accounts***), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Issuer's rights with respect to the Synthetic Security Collateral Account, any Synthetic Security Counterparty Account and any Hedge Counterparty Collateral Account (and, together with the Issuer Accounts, the Class II Preference Share Special Payment Account and the Preference Shares Distribution Account, the ***Accounts***);

(d) the Issuer's rights under the Servicing Agreement, the Securities Lending Agreements, the Hedge Agreements and the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money, general intangibles, chattel paper and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the ***Collateral***). Notwithstanding the foregoing, the Collateral shall not include any Excluded Property.

Except to the extent otherwise provided in this Indenture, the Issuer does hereby constitute and irrevocably appoint the Trustee the true and lawful attorney of the Issuer, with full power (in the name of the Issuer or otherwise), to exercise all rights of the Issuer with respect to the Collateral held for the benefit and security of the Secured Parties and to ask, require, demand, receive, settle, compromise, compound and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of any of the Collateral held for the benefit and security of the Secured Parties, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Trustee may deem to be necessary or advisable in the premises. The power of attorney granted pursuant to this Indenture and all authority hereby conferred are granted and conferred solely to protect the Trustee's interest in the Collateral held for the benefit and security of the Secured Parties and shall not impose any duty upon the Trustee to exercise any power. This power of attorney shall be irrevocable as one coupled with an interest prior to the payment in full of all the obligations secured hereby.

Except to the extent otherwise provided in this Indenture, this Indenture shall constitute a security agreement under the laws of the State of New York applicable to agreements made and to be performed therein. Upon the occurrence of any Event of Default with respect to the Notes, and in addition to any other rights available under this Indenture or any other instruments included in the Collateral held for the benefit and security of the Secured Parties or otherwise available at law or in equity, the Trustee shall have all rights and remedies of a secured party on default under the laws of the State of New York and other applicable law to enforce the assignments and security interests contained herein and, in addition, shall have the right, subject to compliance with any mandatory requirements of applicable law, to sell or apply any rights and other interests assigned or pledged hereby in accordance with the terms hereof at public or private sale.

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Section 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Section 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (including Administrative Expenses payable to the Trustee, the Collateral Administrator and the Preference Shares Paying Agent, but other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the ***Secured Obligations***), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

1. DEFINITIONS

1.1 Definitions

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

A/B Exchange: An exchange of one security (the ***A Security***) for another security (the ***B Security***) of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

Accounts: The meaning specified in the Granting Clauses.

Accountants' Certificate: An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

Accrued Interest On Sale: Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

Accrued Interest Purchased With Principal: (i) interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Loan that constitutes part of the price paid by the Issuer to repay loans made by the Pre-Closing Participant to finance the Issuer's pre-closing acquisition of such Loan.

Act: The meaning specified in Section 14.2.

Administration Agreement: The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

Administrative Expense Cap: An amount on any Payment Date equal to the excess of:

(a) the sum of 0.04% of the Maximum Amount on the related Determination Date plus U.S.$150,000, **over**

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

Administrative Expenses: Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and of accountants, agents, and counsel for either of the Co-Issuers;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Collateral (requested by the Issuer or the Servicer) or the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (including indemnities) to any other Person (except the Servicing Fees) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

Administrator: Maples Finance Limited.

Affected Class: Any Class of Notes that, as a result of the occurrence of a Tax Event, has received, or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Payment Date related to the Due Period with respect to which such Tax Event occurs.

Affiliate or ***Affiliated***: With respect to a Person,

(i) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the Person; or

(ii) any other Person who is a director, officer, or employee (A) of the Person, (B) of any subsidiary or parent company of the Person or (C) of any Person described in clause (i) above.

For the purposes of this definition, control of a Person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the Person; or

(B) to direct the corporate management and corporate policies of the Person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

Agent Members: Members of, or participants in, a Depository.

Aggregate Outstanding Amount: When used with respect to any of the Notes as of any date, the aggregate outstanding principal amount of such Notes on that date. When used with respect to the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A-1 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class A-2 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(d) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto;

(e) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto; and

(f) the Aggregate Outstanding Amount of the Class E Notes at any time shall include all Class E Deferred Interest attributed thereto.

Aggregate Principal Balance: When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

Aggregate Purchase Price Amount: When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

Allocable Principal Balance: With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

Amendment Buy-Out: The meaning specified in Section 9.6(a).

Amendment Buy-Out Option: The meaning specified in Section 9.6(a).

Amendment Buy-Out Purchase Price: The purchase price payable by the Amendment Buy-Out Purchaser for Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, **plus** accrued and unpaid interest (including Defaulted Interest and Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), **plus** any unpaid Extension Bonus Payment, and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder on the next succeeding Payment Date) would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); **provided**, **however**, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares shall be zero.

Amendment Buy-Out Purchaser: The Servicer (or any of its Affiliates acting as principal or agent); **provided** that in the event that the Servicer elects not to purchase Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchasers or any of their Affiliates acting as principal or agent) designated by the Servicer; **provided**, **however**, none of the Servicer, the Initial Purchasers or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

Applicable Issuers or ***Applicable Issuer***: With respect to the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, each of the Co-Issuers. With respect to Preference Shares, the Issuer only.

Applicable Note Interest Rate: With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

Applicable Percentage: The lesser of the Moody's Priority Category Recovery Rate applicable to the Collateral Obligation and the S&P Recovery Rate applicable to the Collateral Obligation and the current S&P Rating of the Class A-1 Notes and the Class A-2 Notes.

Approved Pricing Service: Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

Assigned Moody's Rating: The meaning set forth in Schedule 7.

Authenticating Agent: With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

Authorized Officer: With respect to the Issuer or the Co-Issuer, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any Person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

Average Life: As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

Bank: State Street Bank and Trust Company, in its individual capacity and not as Trustee.

Bankruptcy Code: The U.S. Bankruptcy Code, Title 11 of the United States Code.

Bankruptcy Law: The Bankruptcy Code, Part V of the Companies Law (2007 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

Beneficial Owner: Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

Benefit Plan Investor: Any (i) "employee benefit plan" within the meaning of Section 3(3) of ERISA, that is subject to Title I of ERISA, (ii) any "plan" described by Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, or an entity whose underlying assets include the assets of any plan described in (i) or (ii) by reason of such plan's investment in such entity.

Board Resolution: With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

Bridge Loan: Any Loan that is incurred in connection with a merger, acquisition, consolidation, sale of all or substantially all of the assets of an entity, restructuring or similar transaction, which debt obligation by its terms is required to be repaid within one year of the incurrence thereof with proceeds from additional borrowings or other refinancings (other than any additional borrowing or refinancing if one or more financial institutions will have provided the issuer of or obligor on such debt obligation with a binding written commitment to provide the same).

Business Day: A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; **provided**, **however**, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

Calculation Agent: The meaning specified in Section 7.16.

Caa1 Collateral Obligations: The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3".

Cash: Such coin or currency of the United States of America as at the time shall be legal tender for payment of all public and private debts.

CCC+/Caa1 Collateral Obligations: The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

CCC+/Caa1 Excess Market Value Percentage: The percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

Certificate of Authentication: The meaning specified in Section 2.1.

Certificated Preference Share: The meaning set forth in the Preference Shares Paying Agency Agreement.

Certificated Security (UCC): The meaning specified in Section 8-102(a)(4) of the UCC.

Class: Each of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Preference Shares.

Class A S&P Minimum Weighted Average Recovery Rate Test: A test that is satisfied as of any Measurement Date if the S&P Weighted Average Recovery Rate with respect to the Class A Notes is greater than or equal to S&P Minimum Weighted Average Recovery Rate with respect to the Class A Notes.

Class A Notes: The Class A-1 Notes and the Class A-2 Notes.

Class A Overcollateralization Ratio is the ratio calculated by **dividing**:

(i) the Overcollateralization Ratio Numerator; **by**

(ii) the Aggregate Outstanding Amount of the Class A Notes.

Class A-1 Notes: The Class A-1 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

Class A-2 Notes: The Class A-2 Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

Class A/B Coverage Tests: The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A-1 Notes, the Class A-2 Notes and the Class B Notes.

Class B Notes: The Class B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

Class B S&P Minimum Weighted Average Recovery Rate Test: A test that is satisfied as of any Measurement Date if the S&P Weighted Average Recovery Rate with respect to the Class B Notes is greater than or equal to S&P Minimum Weighted Average Recovery Rate with respect to the Class B Notes.

Class C Coverage Tests: The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

Class C Deferred Interest: Deferred Interest with respect to the Class C Notes.

Class C Notes: The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

Class C S&P Minimum Weighted Average Recovery Rate Test: A test that is satisfied as of any Measurement Date if the S&P Weighted Average Recovery Rate with respect to the Class C Notes is greater than or equal to S&P Minimum Weighted Average Recovery Rate with respect to the Class C Notes.

Class D Coverage Tests: The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

Class D Deferred Interest: Deferred Interest with respect to the Class D Notes.

Class D Notes: The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

Class D S&P Minimum Weighted Average Recovery Rate Test: A test that is satisfied as of any Measurement Date if the S&P Weighted Average Recovery Rate with respect to the Class D Notes is greater than or equal to S&P Minimum Weighted Average Recovery Rate with respect to the Class D Notes.

Class E Coverage Test: The Overcollateralization Test as applied with respect to the Class E Notes.

Class E Deferred Interest: Deferred Interest with respect to the Class E Notes.

Class E Notes: The Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

Class E S&P Minimum Weighted Average Recovery Rate Test: A test that is satisfied as of any Measurement Date if the S&P Weighted Average Recovery Rate with respect to the Class E Notes is greater than or equal to S&P Minimum Weighted Average Recovery Rate with respect to the Class E Notes.

Class I Preference Shares: The Class I Preference Shares issued by the Issuer pursuant to the Issuer Charter and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

Class II Preference Share Percentage: For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

Class II Preference Share Portion: For any Payment Date, 100% **minus** the Servicing Fee Portion for such Payment Date.

Class II Preference Share Senior Special Payment: For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

Class II Preference Share Special Payment: Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

Class II Preference Share Special Payment Account: The Securities Account established pursuant to Section 10.3(i).

Class II Preference Share Subordinated Special Payment: For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

Class II Preference Share Supplemental Special Payment: For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

Class II Preference Shares: The Class II Preference Shares issued by the Issuer pursuant to the Issuer Charter and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

Class Scenario Loss Rate: With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as

applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

Clearing Agency: An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

Clearing Corporation: The meaning specified in Section 8-102(a)(5) of the UCC.

Clearing Corporation Security: A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

Clearstream: Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

Closing Date: October 25, 2007.

Closing Date Expense Account: The Securities Account established pursuant to Section 10.3(g).

Co-Issuer: The person named as such on the first page of this Indenture.

Co-Issuers: The Issuer and the Co-Issuer.

Code: The United States Internal Revenue Code of 1986, as amended.

Collateral: The meaning specified in the Granting Clauses.

Collateral Administration Agreement: The agreement dated as of the Closing Date among the Issuer, the Servicer, and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

Collateral Administrator: State Street Bank and Trust Company, in its capacity as collateral administrator under the Collateral Administration Agreement.

Collateral Assignment of Hedge Agreements: With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

Collateral Obligation: Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that, in either case, is (or in the case of a Synthetic Security, the Reference Obligation is):

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security;

(5) not an equity security or a warrant or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations that is rated by a nationally recognized credit rating agency);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Section 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is not a lease, unless it is a Finance Lease and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) (a) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (b) in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; **provided** that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate,

computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (or, in the case of a Synthetic Security, the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(15) an obligation or security all payments on and proceeds of will be received by the Issuer free and clear of withholding tax, other than (A) withholding tax as to which the obligor or issuer must make additional payments so that the net amount received by the Issuer after satisfaction of such tax is the amount due to the Issuer before the imposition of any withholding tax, (B) withholding taxes on commitment or facility fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans or (C) withholding taxes on fees received on Synthetic Letters of Credit;

(16) not an Unfunded Synthetic Security or a Loan that would require the Issuer after its purchase of the Loan to advance any funds to the related borrower or permit the borrower to require that any future advances be made unless

(A) it is a Revolving Loan, Delayed Drawdown Loan or Synthetic Security, and

(B) after giving effect to the acquisition thereof, (1) the sum of all amounts standing to the credit of the Synthetic Security Reserve Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account and any cash collateral posted with (or for the benefit of) any Synthetic Security Counterparty equals or exceeds (2) the maximum amount of any advances that may be required of the Issuer under the Underlying Instruments in respect of all Collateral Obligations that are Revolving Loans or Delayed Drawdown Loans and any amounts that could become payable by the Issuer in respect of all Collateral Obligations that are Unfunded Synthetic Securities;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "AA-" or a short-term debt rating by S&P of at least "A-1+";

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease of the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition);

(26) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act;

(27) in the case of a Loan that involves Synthetic Letters of Credit, (a) the Issuer prefunds its obligations with respect to such Synthetic Letter of Credit by

delivering cash to the relevant issuing bank, agent bank or deposit bank and has no further obligation to make payments with respect to such Synthetic Letter of Credit, (b) the Issuer is not subject to market value risk with respect to any prefunded amounts and (c) the issuing bank, agent bank or deposit bank in respect of such Synthetic Letters of Credit has a short-term rating of at least "A-1" by S&P (or, if such issuing bank has no short-term rating from S&P, a long-term rating of at least "A+" by S&P);

(28) an obligation that is Registered;

(29) an obligation the acquisition (including the manner of acquisition), ownership, enforcement and disposition of which will not cause the Issuer to be treated as engaged in a U.S. trade or business for U.S. federal income tax purposes or otherwise to be subject to tax on a net income basis in any jurisdiction outside the Issuer's jurisdiction of incorporation;

(30) in the case of an obligation that is a Synthetic Letter of Credit, the acquisition of such Synthetic Letter of Credit does not cause the Issuer to have entered into more than ten currently outstanding Synthetic Letters of Credit; and

(31) in the case of an obligation that is a Synthetic Letter of Credit, (a) such obligation is acquired in connection with the acquisition of another obligation issued under the same credit facility that is not a Synthetic Letter of Credit (a ***Related Obligation***), (b) the amount of the Synthetic Letter of Credit acquired by the Issuer is not more than one-half of the amount of the Related Obligation acquired by the Issuer and (c) the proportionate amount of the Synthetic Letter of Credit acquired by the Issuer is not greater than the proportionate amount of such Related Obligation acquired under the relevant credit facility.

In the case of a Synthetic Security, in addition to the related Reference Obligation meeting the requirements above, the Synthetic Security itself must also meet the requirements of paragraphs (15), (28) and (29); **provided** that a Synthetic Security shall be deemed to meet the requirements of paragraph (28) if the terms of such Synthetic Security require prior written consent of the Issuer or counterparty, as relevant, prior to a transfer.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

Collateral Quality Tests: The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the S&P Minimum Weighted Average

Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

Collection Account: The Securities Account established pursuant to Section 10.2(a).

Concentration Limitations: The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans and Eligible Investments	≥ 87.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4)	Revolving Loans and the unfunded portion of Delayed Drawdown Loan	≤ 12.0 %
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%
	(b) S&P Unrated DIP Loans	≤ 2.5%
(6)	PIK Securities	≤ 3.0%
(7)	High-Yield Bonds	≤ 7.5%
(8)	Structured Finance Obligations	≤ 10.0%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%

	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
	(c) except that Structured Finance Obligations that are (i) collateralized loan obligations primarily backed by other collateralized loan obligations and (ii) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "Synthetics CDOs") may not exceed the percentage of the Maximum Amount specified in the right column.	≤ 3.0%
(9)	Structured Finance Obligations that are collateralized loan obligations	≤ 7.5%
(10)	obligors Domiciled other than in the United States and Canada	≤ 20.0%
	(a) **provided** that obligors Domiciled other than in the United States may not exceed the percentage of the Maximum Amount specified in the right column	≤ 25.0%
(11)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(12)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(13)	obligors Domiciled in all Moody's Group II Countries in the aggregate	≤ 10.0%
(14)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(15)	obligors Domiciled in all Moody's Group III Countries in the aggregate	≤ 5.0%
(16)	obligors organized in a Tax Advantaged Jurisdiction	≤ 10.0%

	(a) except that obligors deriving a substantial portion of revenue from countries other than the United States or Canada may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(17)	same S&P Industry Classification	≤ 8.0%
	(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%
(18)	single obligor and any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual obligors and any of their Affiliates (excluding Secondary Risk Counterparties and any obligor under a DIP Loan) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 2.5%
(19)	Fixed Rate Obligations	≤ 5.0%
	(a) except that with a Rating Confirmation from Moody's, Fixed Rate Obligations may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%
(20)	Pay interest less frequently than quarterly but no less frequently than semi-annually	≤ 7.0%
(21)	Pay interest less frequently than semi-annually but no less frequently than annually	≤ 3.0%
(22)	LCDS Securities or other Synthetic Securities	≤ 15.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%

	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(23)	Participations (**provided** that no Relevant Obligations may be a Participation in a Participation)	≤ 20.0%
(24)	Relevant Obligations of which are (i) Collateral Obligations lent under Securities Lending Agreements and (ii) Participations, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤ 20.0%
(25)	Relevant Obligations of which are (i) Collateral Obligations lent under Securities Lending Agreements and (ii) Participations, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(26)	Relevant Obligations of which are (i) Collateral Obligations lent under Securities Lending Agreements and (ii) Participations, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(27)	Deep Discount Obligations	≤ 7.5%
(28)	CCC+/Caa1 and below Collateral Obligations	≤ 7.5%
(29)	Long-Dated Collateral Obligations	≤ 2.0%

(30)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(31)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the Unfunded Amount of any Revolving Loan or Delayed Drawdown Loan)	≤ 5.0%
(32)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than U.S.$100,000,000	≤ 10.0%
(33)	if such Relevant Obligations are Bridge Loans, (A) such obligations are rated by Moody's and S&P and (B) such Relevant Obligations may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(34)	Relevant Obligations of which are Synthetic Letters of Credit	≤ 5.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

Consenting Holder of the Preference Shares: With respect to any Payment Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date.

Controlling Class: The Class A-1 Notes (voting together as a Class or group), so long as any Class A-1 Notes are Outstanding; then the Class A-2 Notes (voting together as a Class or group), so long as any Class A-2 Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding; and then the Class E Notes (voting together as a Class or group), so long as any Class E Notes are Outstanding.

Corporate Trust Office: The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116, telecopy no. (617) 351-4358, Attention: CDO Services Group, or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

Cov-lite loan: A Loan that (i) does not contain any financial covenants or (ii) requires the borrower to comply with an Incurrence Covenant, but not with a Maintenance Covenant.

Coverage Tests: Collectively, the Class A/B Coverage Tests, the Class C Coverage Tests, the Class D Coverage Tests and the Class E Coverage Test applicable as of any Measurement Date.

Credit Improved Obligation: Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; **provided** that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and **provided**, **further**, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Floating Rate Obligation, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (**provided** that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 1.01%), or (y) in the case of a Fixed Rate Obligation, the Market Value of such Collateral Obligation has changed since its date of acquisition by a

percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation; or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

Credit Rating Event: An event that is in effect if the rating by Moody's:

(i) of the Class A-1 Notes or the Class A-2 Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1 Notes and the Class A-2 Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

Credit Risk Obligation: Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; **provided** that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the

Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00% , (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00%, but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Floating Rate Obligation, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer, and (y) in the case of a Fixed Rate Obligation, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation; or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

Current-Pay Obligation: A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn;

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an Officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due;

(iii) (A) the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) or the rating by Moody's of the Collateral Obligation has been withdrawn but was at least "Caa1" (and not on credit watch with negative implications) immediately prior to the withdrawal and the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance, (B) the rating by Moody's of the Collateral Obligation is "Caa1" (and on credit watch with negative implications) or "Caa2" (and not on credit watch with negative implications) and the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance or (C) the rating by Moody's of the Collateral Obligation is less than "Caa2" but at least "Caa3" (and not on credit watch with negative implications) and the Market Value of the Collateral Obligation is at least equal to 90% of its Principal Balance;

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized all payments of principal and interest payable on the Collateral Obligation; and

(v) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

Current Portfolio: At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

Custodial Account: The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

Custodian: The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

Deep Discount Obligation: Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

Default: Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

Defaulted Collateral Obligation: Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (**provided** that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the Holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor (***Other Indebtedness***) and (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the

Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor,

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn; or,

(C) as to which the obligation is rated "D" or "LD" by Moody's or was so rated immediately prior to such rating being withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; **provided**, **however**, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

Defaulted Hedge Termination Payment: Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

Defaulted Interest: Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

Defaulted Synthetic Termination Payment: With respect to any Synthetic Security, any termination payment (and any accrued interest thereon) payable by the Issuer pursuant to the Underlying Instruments relating thereto as a result of an "Event of Default" or "Termination Event" (other than an "Illegality" or "Tax Event") as to which the relevant Synthetic Security Counterparty is the "Defaulting Party" or the sole "Affected Party" (each as defined in such Underlying Instruments). For the avoidance of doubt, any unpaid amounts owed to such Synthetic Security Counterparty independent of any such termination payment shall be deemed not to be part of the Defaulted Synthetic Termination Payment

Defaulted Interest Charge: To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

Default Interest Rate: With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

Deferred Interest: With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

Deferred Interest Notes: The Class C Notes, the Class D Notes and the Class E Notes.

Deferred Interest PIK Security means a PIK Security (other than a Defaulted Collateral Obligation) (or any Synthetic Security the Reference Obligation of which is a PIK Security) with respect to which payment of interest either in whole or in part has been deferred or capitalized in an amount equal to the amount of interest payable in respect of the lesser of (a) two payment periods and (b) a period of one years, but only until such time as payment of interest on such PIK Security (or any Synthetic Security the Reference Obligation of which is a PIK Security) has resumed and all capitalized and deferred interest has been paid in accordance with the terms of the Underlying Instruments.

Deficiency Amount: The meaning specified in Section 16.3(a).

Deficiency Notice Date: The meaning specified in Section 16.3(a).

Definitive Notes: The meaning specified in Section 2.11(b).

Delayed Drawdown Loan: A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for purposes of the Concentration Limitations only unfunded portions will count as Delayed Drawdown Loans.

Delayed Drawdown Reserve Account: The Securities Account established pursuant to Section 10.3(b).

Deliver or ***Delivered*** or ***Delivery***: The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the Securities Account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank (***FRB***) (each such security, a ***Government Security***),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the Securities Account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's Securities Account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's Securities Account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's Securities Account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's Securities Account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership to the Issuer and the pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

Depository or ***DTC***: The Depository Trust Company and its nominees.

Determination Date: The last day of any Due Period.

DIP Loan: Any Loan:

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P;

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a ***Debtor***) organized under the laws of the United States or any state of the United States; and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that:

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code;

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code;

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets; or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

Discount Note: Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

Diversity Score: A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

Diversity Test: A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score. For the purposes of calculating the Diversity Test, any Structured Finance Obligation that is (i) a collateralized loan obligation, (ii) any Synthetic Security with respect to which the Reference Obligation is a collateralized loan obligation or (iii) any Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the

principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time will be disregarded.

Dollar or ***U.S. Dollar*** or ***U.S.$***: A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

Domicile or ***Domiciled***: With respect to each Collateral Obligation, the jurisdiction of incorporation, organization or creation of the related obligor.

Due Date: Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

Due Period: With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

Eligibility Criteria: The meaning specified in Section 12.2(b).

Eligible Collateral: (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

Eligible Country: (a) The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" and a Moody's foreign currency rating of at least "Aa2" and (b) any country that is in a Tax Advantaged Jurisdiction.

Eligible Equity Security: An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

Eligible Investments: Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; **provided** that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; **provided** that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's and "AA-" by S&P, and if so rated, such rating is not on watch for downgrade;

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; **provided** that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar vehicle having at the time of acquisition and throughout the term thereof a credit rating of "MR1+" by Moody's and "AAA" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (**provided** that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; **provided** that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes; **provided**, **further**, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Synthetic Security Reserve Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, any mortgage-backed security or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r", "t", "p", "pi" or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax or the acquisition (including the manner of acquisition), ownership, enforcement or disposition of which will subject the Issuer to net income tax in any jurisdiction outside the Issuer's jurisdiction of incorporation.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer or depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

Emerging Market Security: A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

Entitlement Holder: the meaning specified in Section 8-102(a)(7) of the UCC.

ERISA: The United States Employee Retirement Income Security Act of 1974, as amended.

Established Securities Market: Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

Euroclear: Euroclear Bank S.A./N.V., as operator of the Euroclear system.

Event of Default: The meaning specified in Section 5.1.

Excel Default Model Input File: An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such

information is not confidential) with respect to each Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation,

(c) the par value of such Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation,

(h) the stated maturity date of such Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation,

(i) the S&P Rating of such Collateral Obligation and, in the case of a Synthetic Security, the related Reference Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Recovery Rate,

(k) identification as a Cov-lite Loan or not, and

(l) such other information as the Trustee may determine to include in such file.

Excess CCC+/Caa1 Collateral Obligations: The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

Exchange Act: The United States Securities Exchange Act of 1934, as amended.

Excluded Property: (i) U.S.$1,000 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$1,000 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts, (ii) any amounts credited to the Class II Preference Share Special Payment Account and the Preference Shares Distribution Account from time to time and (iii) any Margin Stock.

Expense Reimbursement Account: The Securities Account established pursuant to Section 10.3(c).

Extended Replacement Period End Date: If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in November 2018); **provided** that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in November 2030.

Extended Scheduled Preference Shares Redemption Date: If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Preference Shares Redemption Date, November 1, 2025); **provided** that the "Extended Scheduled Preference Shares Redemption Date" will in no event be a date later than the Payment Date in November 2037.

Extended Stated Maturity Date: If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in November 2025); **provided** that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in November 2037.

Extended Weighted Average Life Date: If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, November 1, 2021); **provided** that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in November 2033.

Extension: An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

Extension Bonus Payment: With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A-1 Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-2 Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the

Class B Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class C Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class D Notes, 0.25% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (6) in the case of the Class E Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

Extension Bonus Eligibility Certification: With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

Extension Conditions: The meaning specified in Section 2.4.

Extension Determination Date: The eighth Business Day prior to each Extension Effective Date.

Extension Effective Date: If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in November 2012).

Extension Notice: The meaning specified in Section 2.4.

Extension Purchase Price: The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, **plus** accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); **provided**, **however**, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares shall be zero.

Extension Qualifying Purchasers: The Servicer (or any of its Affiliates acting as principal or agent); **provided** that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying

purchasers (which may include the Initial Purchasers or any of their Affiliates acting as principal or agent) designated by the Servicer; **provided**, **however**, none of the Servicer, the Initial Purchasers or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

Extension Sale Notice: The meaning specified in Section 2.4.

Extension Sale Notice Period: The meaning specified in Section 2.4.

Extension Sale Securities: The meaning specified in Section 2.4.

Face Amount: With respect to any Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be U.S.$1,000 per Preference Share.

Finance Lease: A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

Financial Asset: The meaning specified in Section 8-102(a)(9) of the UCC.

Financing Statements: Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

Fixed Rate Excess: As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test; and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

Fixed Rate Obligation: Any Collateral Obligation that bears interest at a fixed rate.

Floating Rate Notes: The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

Floating Rate Obligation: Any Collateral Obligation that bears interest based on a floating rate index.

Form-Approved Synthetic Security: A Synthetic Security:

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

Funded Amount: With respect to any Revolving Loan or Delayed Drawdown Loan at any time, the aggregate principal amount of advances or other extensions of credit made thereunder by the Issuer that are outstanding and have not been repaid at such time.

GAAP: The meaning specified in Section 6.3(j).

Global Notes: Any Regulation S Global Notes or Rule 144A Global Notes.

Grant: To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and

receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

Hedge Agreements: Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

Hedge Counterparty: Any counterparty, to the extent that when the Issuer enters into any Hedge Agreement with such counterparty, such counterparty satisfies the requirements of Section 15.2(c) (subject to satisfaction of the Rating Condition for each Rating Agency).

Hedge Counterparty Collateral Account: The Securities Account established pursuant to Section 10.3(d).

Hedge Termination Receipt: Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

HFP: Highland Financial Partners, L.P., an Affiliate of the Servicer.

High-Yield Bond: Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

Holder: Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; and of any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share.

Important Section 3(c)(7) Reminder Notice: A notice substantially in the form of Exhibit G-2.

Incurrence Covenant: A covenant by the borrower to comply with one or more financial covenants only upon the occurrence of certain actions of the borrower including, but not limited to, a debt issuance, dividend payment, share purchase, merger, acquisition or divestiture.

Indenture: This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

Indenture Register: The meaning specified in Section 2.6(a).

Indenture Registrar: The meaning specified in Section 2.6(a).

Independent: As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

Initial Consent Period: The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(b) to the Holders of Securities.

Initial Purchasers: CALYON and Calyon Securities (USA) Inc.

Initial Rating: The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

Insolvency Event: With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

Insolvency Proceeding: The meaning specified in Section 16.4(b).

Instrument: The meaning specified in Section 9-102(a)(47) of the UCC.

Interest Coverage Ratio: With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, **minus**

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

Interest Coverage Test: A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes

remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A/B Interest Coverage Test	120.0%
Class C Interest Coverage Test	110.0%
Class D Interest Coverage Test	106.0%

Interest Period: Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

Interest Proceeds: With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) interest, fees and commissions from Defaulted Collateral Obligations and Deferred Interest PIK Securities and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments;

(vii) all earnings on amounts in the Synthetic Security Reserve Account, the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period;

(ix) any recoveries (including interest) received on a Defaulted Collateral Obligation or Deferred Interest PIK Securities in excess of the principal balance of such Defaulted Collateral Obligation or Deferred Interest PIK Securities (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation); and

(x) Principal Proceeds designated by the Servicer as Interest Proceeds prior to the Determination Date related to the first Payment Date in an aggregate amount not to exceed U.S.$2,000,000 in accordance with Section 10.2(f).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Section 11.1(a)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

Interim Ramp-Up Test: The test that is met as of the Interim Ramp-Up Test Date if the Issuer has acquired (or entered into commitments to acquire) Collateral Obligations satisfying the levels specified in the Interim Ramp-Up Test Date table in Section 7.19(g) with respect to the Moody's Weighted Average Recovery Rate, Diversity Score, Weighted Average Moody's Rating Factor, Weighted Average Spread and minimum Aggregate Principal Balance.

Interim Ramp-Up Test Date: The meaning specified in Section 7.19(g).

Investment Company Act: The United States Investment Company Act of 1940, as amended.

Irish Paying Agent: The meaning specified in Section 7.2.

Issuer: The Person named as such on the first page of this Indenture.

Issuer Accounts: The meaning assigned in the Granting Clauses.

Issuer Charter means the Memorandum and Articles of Association of the Issuer, filed under the Companies Law (2007 Revision) of the Cayman Islands, as modified and supplemented and in effect from time to time.

Issuer Order and ***Issuer Request***: A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

Issuer Ordinary Shares: The ordinary shares, par value U.S.$1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

Junior Class: With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

LCDS Security: means a credit default swap the Reference Obligations of which are denominated and payable in U.S. Dollars.

Leasing Finance Transaction: Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

LIBOR: The offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Reuters Screen LIBOR01 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Reuters Screen LIBOR01 for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Reuters Screen LIBOR01 Page as reported on Bloomberg Financial Market Commodities News (or a page that replaces Reuters Screen LIBOR01

Page for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the ***Reference Banks***) for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

Loan: Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits and synthetic or prefunded letters of credit) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered; or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

Long-Dated Collateral Obligation: Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

Maintenance Covenant: A covenant by the borrower to comply with one or more financial covenants during each reporting period, whether or not it has taken any specified action.

Majority: With respect to any Class or group of Notes or Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

Margin Stock: "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

Market Value: As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three broker-dealers Independent from the Servicer and each other active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two broker-dealers Independent from the Servicer and each other active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the preceding paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; **provided**, that during such 30-day period, such Collateral Obligation shall be deemed to have a Market Value equal to (a) the higher of (i) the S&P Recovery Rate for such Collateral Obligation with reference to the then current S&P Rating of the Class A-1 Notes (or the most senior Class of Notes Outstanding and rated by S&P) and (ii) 70% of the Principal Balance of such Collateral Obligation or (b) if the Servicer has determined in its commercially reasonable judgment that the Market Value of such Collateral Obligation is lower than the amount determined pursuant to clause (a), such amount to be

determined by the Servicer in its commercially reasonable judgment; **provided**, **further**, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities or Current-Pay Obligations.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

Market Value Determination Date: With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

Market Value Percentage: For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation; *by*

(ii) the Principal Balance of the Collateral Obligation.

Maturity: With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

Maturity Extension: The meaning specified in Section 2.4.

Maximum Amount: An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$687,400,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations; **plus**

(B) Cash representing Principal Proceeds on deposit in the Collection Account; **plus**

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

Maximum Weighted Average Moody's Rating Factor: As of any Measurement Date, a rate equal to the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column

combination" chosen by the Servicer (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable).

Measurement Date: Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6;

(vi) as reasonably requested by S&P; and,

(vii) with respect to any distribution of Eligible Equity Securities only, that is the Market Value Determination Date with respect to such distribution of Eligible Equity Securities.

Merging Entity: The meaning specified in Section 7.10.

Minimum Diversity Score: As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable).

Minimum Weighted Average Spread: As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable).

Monthly Determination Date: The meaning specified in Section 10.6(a).

Monthly Report: The meaning specified in Section 10.6(a).

Moody's: Moody's Investors Service, Inc.

Moody's Default Probability Rating: The meaning set forth in Schedule 7.

Moody's Equivalent Senior Unsecured Rating: The meaning set forth in Schedule 7.

Moody's Excess Weighted Average Recovery Rate: the greater of (i) zero and (ii) the difference (if positive) between the Moody's Weighted Average Recovery Rate and 43.6%.

Moody's Group I Country: Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

Moody's Group II Country: Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

Moody's Group III Country: Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

Moody's Industry Classification: The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

Moody's Non Senior Secured Loan: Any Loan that is not a Moody's Senior Secured Loan.

Moody's Obligation Rating: The meaning set forth in Schedule 7.

Moody's Priority Category: Each type of Collateral Obligation specified in the definition of "Moody's Priority Category Recovery Rate Matrix" as a "Moody's Priority Category."

Moody's Priority Category Recovery Rate: For any Collateral Obligation, the percentage specified in the definition of "Moody's Priority Category Recovery Rate Matrix" opposite the Moody's Priority Category of the Collateral Obligation.

Moody's Priority Category Recovery Rate Matrix:

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities.....	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by

Moody's Priority Category	Moody's Priority Category Recovery Rate
	Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations.....	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

Moody's Rating: The meaning set forth in Schedule 7.

Moody's Rating Factor: The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless (1) there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security, or (2) such Collateral Obligation is a Form-Approved Synthetic Security, in which case the Moody's Rating Factor given to such Collateral Obligation at the time of approval of the Form-Approved Synthetic Security shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Obligation shall be equal to: $\frac{A \times 55\%}{1 - B}$,

where: "*A*" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"*B*" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

Moody's Senior Secured Loan:

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan;

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan; and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral; or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan;

(ii) is secured by a valid second or lower priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan;

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral; and

(iv) has been assigned a Moody's rating equal to or higher than Moody's corporate family rating for such obligor; and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

Moody's Weighted Average Rating Factor Recovery Rate Modifier: the product of (i) the portion of the Moody's Excess Weighted Average Recovery Rate specified by the Servicer in a notice to the Trustee and (ii) 5250, **provided** that the sum of the amount specified in clause (i) of this definition and clause (i) of the definition of the "Moody's Weighted Average Spread Recovery Rate Modifier" cannot exceed the Moody's Excess Weighted Average Recovery Rate.

Moody's Weighted Average Recovery Rate: As of any Measurement Date, a rate equal to the number obtained by:

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate;

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations; and

(iii) rounding up to the first decimal place.

Moody's Weighted Average Spread Recovery Rate Modifier: the product of (i) the portion of the Moody's Excess Weighted Average Recovery Rate specified by the Servicer in a notice to the Trustee and (ii) 6.0%, **provided** that the sum of the amount specified in clause (i) of this definition and clause (i) of the definition of the "Moody's Weighed Average Rating Factor Recovery Rate Modifier" cannot exceed the Moody's Excess Weighted Average Recovery Rate.

Non-Call Period: The period from the Closing Date to but not including the Payment Date in November 2010.

Non-Consenting Holder: With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

Non-Performing Collateral Obligation: Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3", or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-", the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

Non-Permitted Holder: (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class E Notes, a Holder or beneficial owner of an interest in a Class E Note that is not a QIB/QP.

Non-Permitted Benefit Plan Investor: The meaning specified in the second paragraph of Section 2.6(c).

Non-qualifying Collateral Obligation: The meaning specified in Section 12.1(d).

Note Break-Even Loss Rate: With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A-1 Notes, the Class A-2 Notes and the Class B Notes and the ultimate payment of interest on the Class C Notes, the Class D Notes and the Class E Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date **minus** the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.20%
2	Greater than or equal to 3.10% but less than 3.20%

3	Greater than or equal to 3.00% but less than 3.10%
4	Greater than or equal to 2.90% but less than 3.00%
5	Greater than or equal to 2.80% but less than 2.90%
6	Greater than or equal to 2.70% but less than 2.80%
7	Greater than or equal to 2.60% but less than 2.70%
8	Greater than or equal to 2.50% but less than 2.60%
9	Greater than or equal to 2.40% but less than 2.50%
10	Greater than or equal to 2.30% but less than 2.40%
11	Greater than or equal to 2.20% but less than 2.30%
12	Greater than or equal to 2.10% but less than 2.20%
13	Greater than or equal to 2.00% but less than 2.10%

Note Class Loss Differential: With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

Noteholder: A Holder of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes.

Note Interest Rate: With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to LIBOR for Eurodollar deposits for the applicable Interest Period **plus** the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

Note Payment Sequence: The application of funds in the following order:

(1) to the payment of principal of the Class A-1 Notes until the Class A-1 Notes have been fully redeemed;

(2) to the Class A-2 Notes until the Class A-2 Notes have been fully redeemed;

(3) to the Class B Notes until the Class B Notes have been fully redeemed;

(4) to the Class C Notes until the Class C Notes have been fully redeemed;

(5) to the Class D Notes until the Class D Notes have been fully redeemed; and

(6) to the Class E Notes until the Class E Notes have been fully redeemed.

Notes: The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

Notice of Refinancing: The meaning specified in Section 9.7.

Objection Cut-Off Date: The meaning specified in Section 15.1(h)(ii).

Offer: The meaning specified in Section 10.7(c).

Offering: The offering of the Notes.

Offering Memorandum: The final offering memorandum, dated October 22, 2007, prepared and delivered in connection with the offer and sale of the Securities.

Officer: With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

Opinion of Counsel: A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

Optional Redemption: A redemption of the Notes in accordance with Section 9.2.

Other Indebtedness: The meaning specified in the definition of "Defaulted Collateral Obligation."

Outstanding: With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; and

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser; and

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Securities have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, the Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account over which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; **provided** that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Trustee or the Preference Shares Paying Agent, as applicable, by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares, only Preference Shares that an authorized officer of the Preference Shares Paying Agent) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Securities so owned or beneficially

owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee or the Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee and the Preference Shares Paying Agent.

Overcollateralization Ratio: With respect to any Class of Notes on any Measurement Date, the ratio calculated by **dividing**:

(i) the Overcollateralization Ratio Numerator; **by**

(ii) the Aggregate Outstanding Amount of such Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on such Notes and all Notes ranking senior to such Notes).

Overcollateralization Ratio Numerator: On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); **plus**

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); **plus**

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; **plus**

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; **plus**

(5) with respect to Collateral Obligations that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; **provided** that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the CCC+/Caa1 Excess Market Value

Percentage, **multiplied by** (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, ***Applicable Collateral Obligation Amount*** for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any Unfunded Amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the Unfunded Amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any Unfunded Amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the Unfunded Amount); and

(iv) any PIK Security, its Principal Balance.

Overcollateralization Test: A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A/B Overcollateralization Test	112.14%
Class C Overcollateralization Test	107.59%
Class D Overcollateralization Test	105.79%
Class E Overcollateralization Test	103.91%

Participating Institution: An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

Participation: A Loan (including a Loan involving Synthetic Letters of Credit if structured like a Participation) acquired as a participation interest created by a Participating Institution.

Paying Agent: Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2. (For the avoidance of doubt, this does not include the Irish Paying Agent).

Payment Account: The Securities Account established pursuant to Section 10.3(h).

Payment Date: The first day of February, May, August and November in each year, commencing May 2008 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

Permitted Offer: An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and

unpaid interest and as to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

Person: An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

PIK Cash-Pay Interest: As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

PIK Security: Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, **provided** that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

Plan Asset Regulation: The regulation issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101.

Pledged Obligations: As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

Portfolio Improvement Exchange: The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

Pre-Closing Participant: An Affiliate of the Initial Purchasers that is financing the Issuer's pre-closing acquisition of Collateral Obligations.

Preference Shares Distribution Account: A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

Preference Share Documents: The Issuer Charter, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

Preference Share Internal Rate of Return: With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

Preference Shares: The Class I Preference Shares and the Class II Preference Shares.

Preference Shares Notional Amount: As of the Closing Date, U.S.$63,000,000, and thereafter as increased each time additional Preference Shares are issued in accordance with the Preference Share Documents.

Preference Shares Paying Agency Agreement: The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer, the Preference Shares Paying Agent and the Share Registrar, as amended from time to time in accordance with the terms thereof.

Preference Shares Paying Agent: State Street Bank and Trust Company, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency

Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

Principal Balance: With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include the Unfunded Amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the Unfunded Amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any Qualified Equity Security and obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

Principal Proceeds: With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

Priority Class: With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

Priority of Payments: The meaning specified in Section 11.1(a).

Proceeding: Any suit in equity, action at law, or other judicial or administrative proceeding.

Proposed Portfolio: As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

Purchase Agreement: A purchase agreement dated as of the Closing Date among the Co-Issuers and the Initial Purchasers, relating to the purchase of the Notes and the Class I Preference Shares, as modified, amended and supplemented and in effect from time to time.

Purchase Criteria Adjusted Balance: For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; **provided**, **however**, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

Purchase Price: With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

Purchase Price Amount: With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

QIB/QP: Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

Qualified Equity Security: Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

Qualified Institutional Buyer: The meaning specified in Rule 144A under the Securities Act.

Qualified Purchaser: The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

Ramp-Up Completion Date: The earlier of:

(i) the Business Day after the 90th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least U.S.$687,400,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least U.S.$687,400,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least U.S.$687,400,000.

Ramp-Up Notice: The meaning specified in Section 7.19(e).

Ramp-Up Period: The period from and including the Closing Date to and including the Ramp-Up Completion Date.

Rating Agency: Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization

selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

Rating Condition: With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating (determined in accordance with then current methodology) by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

Rating Confirmation: Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes; **provided** that in the case of Refinancing Notes, a Moody's rating will be obtained for such Refinancing Notes and a Rating Confirmation with respect to such Refinancing Notes shall mean (i) with respect to S&P, confirmation in writing from S&P that the rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing and (ii) with respect to Moody's, that the Moody's rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing; provided further that if the terms of such Refinancing Notes are the same as the terms of the corresponding Class of Notes subject to Refinancing (other than with respect to the coupon thereof), it is expected that the cost of obtaining such rating from Moody's shall be no more than the cost of obtaining a Rating Confirmation.

Rating Confirmation Failure: The meaning specified in Section 7.19(f).

Ratings Matrix: means the table below.

The "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

Minimum Weighted Average Spread (bps)	Minimum Diversity Score: 55	60	65	70	75	80
220	1975	1995	2020	2040	2055	2070
225	2010	2035	2060	2080	2095	2105
230	2045	2075	2095	2115	2130	2145
235	2065	2110	2135	2155	2170	2185
240	2090	2150	2175	2195	2210	2225
245	2110	2170	2205	2230	2250	2260
250	2125	2190	2235	2270	2285	2300
255	2145	2205	2255	2300	2325	2340
260	2165	2225	2280	2320	2360	2380
265	2190	2245	2295	2345	2380	2410
270	2210	2270	2320	2360	2405	2435
275	2230	2290	2335	2385	2420	2455
280	2250	2305	2360	2405	2440	2480
285	2270	2325	2375	2420	2460	2500
290	2285	2345	2395	2440	2480	2520
295	2305	2365	2415	2460	2500	2535
300	2325	2380	2435	2480	2520	2555
305	2345	2400	2455	2500	2540	2570
310	2365	2420	2470	2515	2555	2590
315	2385	2435	2490	2535	2570	2610
320	2400	2455	2505	2550	2590	2630

Maximum Weighted Average Moody's Rating Factor

Record Date: As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

Redemption Date: Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2 or the redemption of a Class of Notes in connection with a Refinancing pursuant to Section 9.7.

Redemption Price: With respect to any Note and any Optional Redemption pursuant to Section 9.2(a) or any redemption by Refinancing pursuant to Section 9.7(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed; **plus**

(ii) accrued interest on such Class of Notes (including any Defaulted Interest and interest on Defaulted Interest); **plus**

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on such Class of Notes; **plus**

(iv) any unpaid Extension Bonus Payment in respect of such Class of Notes.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

Reference Obligation: An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; **provided** that no Reference Obligation shall be a Synthetic Security.

Refinancing: The meaning specified in Section 9.7.

Refinancing Date: The meaning specified in Section 9.7.

Refinancing Notes: The meaning specified in Section 9.7.

Refinancing Price: With respect to any Class of Notes that is subject to a Refinancing, an amount equal to the Redemption Price thereof.

Refinancing Proceeds: The proceeds from any refinancing permitted under this Indenture.

Reference Obligor: The obligor of a Reference Obligation.

Registered: Means in registered form for U.S. federal income tax purposes and issued after July 18, 1984, **provided**, that a certificate of interest in a grantor trust for U.S. federal income tax purposes shall not be treated as Registered unless each of the obligations or securities held by the trust was issued after that date.

Registered Office: The registered office of the Issuer, which shall be located outside of the United States.

Regulation D: Regulation D under the Securities Act.

Regulation S: Regulation S under the Securities Act.

Regulation S Global Note: The meaning specified in Section 2.2(b).

Regulation S Note: The meaning specified in Section 2.2(b).

Relevant Obligation: For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security and otherwise the Collateral Obligation.

Replacement Hedge: A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

Replacement Period: The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in November 2014 or, in the case of an Extension, the Extended Replacement Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

Required Redemption Percentage: With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 51% of the Aggregate Outstanding Amount of any Affected Class or at least 66⅔% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

Required Rating: The meaning specified in Section 15.2(c).

Retention Overcollateralization Ratio: As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator **by**

(ii) the Aggregate Outstanding Amount of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, excluding any Deferred Interest on any Class of Notes.

Retention Overcollateralization Test: A test that is satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 104.91%.

Revolving Loan: A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments. A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its commitment amount is greater than zero.

Revolving Reserve Account: The Securities Account established pursuant to Section 10.3(b).

Rule 3a-7: Rule 3a-7 under the Investment Company Act.

Rule 144A: Rule 144A under the Securities Act.

Rule 144A Global Note: The meaning specified in Section 2.2(c).

Rule 144A Information: The meaning specified in Section 7.15.

S&P: Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

S&P CDO Monitor: A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

S&P CDO Monitor Test: A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

S&P CRR: With respect to any Collateral Obligation, a corporate recovery rate assigned by S&P to such Collateral Obligation.

***S&P CRR Recovery Rate*:** With respect to any Collateral Obligation to which S&P has assigned a S&P CRR, the recovery rate determined in accordance with the definition of S&P Recovery Rate.

S&P Industry Classification: The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

S&P Minimum Weighted Average Recovery Rate: With respect to each Class of Note shall be the rate specified in the table below applicable to such Class of Notes in the row elected by the Servicer from time to time with five Business Days' prior notification to the Trustee and Standard & Poor's; **provided** that such election shall not be effective unless after giving effect to such election, the S&P CDO Monitor test is satisfied.

Rating of Class of Notes	**Class A S&P Minimum Weighted Average Recovery Rate**	**Class B S&P Minimum Weighted Average Recovery Rate**	**Class C S&P Minimum Weighted Average Recovery Rate**	**Class D S&P Minimum Weighted Average Recovery Rate**	**Class E S&P Minimum Weighted Average Recovery Rate**
Row			(%)		
1	50	52	54.5	57	60
2	51	53	55.5	58	61
3	52	54	56.5	59	62
4	53	55	57.5	60	63
5	54	56	58.5	61	64
6	55	57	59.5	62	65
7	56	58	60.5	63	66
8	57	59	61.5	64	67
9	58	60	62.5	65	68
10	59	61	63.5	66	69
11	60	62	64.5	67	70
12	61	63	65.5	68	71
13	62	64	66.5	69	72
14	63	65	67.5	70	73
15	64	66	68.5	71	74
16	65	67	69.5	72	75
17	66	68	70.5	73	76

18	67	69	71.5	74	77
19	68	70	72.5	75	78
20	69	71	73.5	76	79
21	70	72	74.5	77	80
22	71	73	75.5	78	81
23	72	74	76.5	79	82

S&P Minimum Weighted Average Recovery Rate Test: A test that is satisfied as of any Measurement Date if the Class A S&P Minimum Weighted Average Recovery Rate Test, Class B S&P Minimum Weighted Average Recovery Rate Test, Class C S&P Minimum Weighted Average Recovery Rate Test, Class D S&P Minimum Weighted Average Recovery Rate Test and the Class E S&P Minimum Weighted Average Recovery Rate Test is satisfied.

S&P Rating: The meaning set forth in Schedule 7.

S&P Rating Confirmation: Confirmation in writing from S&P that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

S&P Recovery Rate: As of any date of determination, with respect to any Collateral Obligation, the percentage for such Collateral Obligation set forth in (x) the applicable table below, (y) the row in such table opposite the S&P CRR (or, if the relevant assets have no S&P CRR, the senior secured recovery rating, the U.S. loan recovery rating or the CDO liability rating, as applicable) of such Collateral Obligation (or, in the case of a Form-Approved Synthetic Security, the Reference Obligation unless otherwise specified by S&P) and (z) the column in such table below the initial S&P Rating of the respective Class of Notes; **provided**, however that (i) with respect to a DIP Loan or a Synthetic Security (other than a Form-Approved Synthetic Security), the S&P Recovery Rate shall be the recovery rate assigned by S&P and with respect to a Structured Finance Obligation the S&P Recovery Rate shall be the recovery rate determined by reference to Table V or Table VI below, as applicable and (ii) the Issuer or the Servicer may request the assignment of a recovery rate from S&P with respect to any Collateral Obligation, any such assignment by S&P to be in writing (electronic or otherwise).

Table I (if the Collateral Obligation has a S&P CRR): Recovery Rates For Assets With Corporate Recovery Ratings

Rating of Class of	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**

Notes*

S&P CRR				(%)		
1+	100	100	100	100	100	100
1	92	94	96	98	100	100
2	78	81	84	87	90	90
3	58	61	64	67	70	70
4	38	41	44	47	50	50
5	16	20	24	27	30	30
6	6	7	8	9	10	10

* As of the Closing Date.

Table II (if the Collateral Obligation is a Senior Unsecured Loan and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. and Canada Recovery Rates of Corporate Senior Unsecured Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
Senior secured recovery ratings				(%)		
1+	53	55	57	59	61	61
1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	22	24	26	28	30	30
5	8	10	12	14	15	15
6	4	4	4	4	4	4

* As of the Closing Date.

Table III (if the Collateral Obligation is a subordinated obligation and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. and Canada Recovery Rates of Corporate Subordinated Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**

Senior secured recovery ratings				(%)		
1+	25	25	25	25	25	25
1	22	22	22	22	22	22
2	20	20	20	20	20	20
3	20	20	20	20	20	20
4	10	10	10	10	10	10
5	5	5	5	5	5	5
6	2	2	2	2	2	2

* As of the Closing Date.

Table IV (if none of Table I, Table II or Table III is applicable): S&P's U.S. and Canada Tiered Corporate Recovery Rates (for Collateral Obligations that do not have a S&P CRR)

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
U.S. loan recovery rates				(%)		
Senior Secured Loans	56	60	64	67	70	70
Senior Secured Loan that is a Cov-Lite Loan	51	54	57	60	63	63
Senior Unsecured Loans and Second Lien Loans	40	42	44	46	48	48
Subordinated Lien Loans	22	22	22	22	22	22
Senior Secured Bonds	48	49	50	51	52	52
Unsecured Bonds	38	41	42	44	45	45
Subordinated Bonds	19	19	19	19	19	19

* As of the Closing Date.

** The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) that, in the aggregate, represent up to 15% of the Maximum Amount will have the S&P Recovery Rate specified for Second Lien Loans in the table above. The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) in excess of 15% of the Maximum Amount will have the S&P Recovery Rate specified for Subordinated Lien Loans in the table above.

Table V (if the Structured Finance Obligation is the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	80.00%	85.00%	90.00%	90.00%	90.00%	90.00%	90.00%
AA	70.00%	75.00%	85.00%	90.00%	90.00%	90.00%	90.00%
A	60.00%	65.00%	75.00%	85.00%	90.00%	90.00%	90.00%
BBB	50.00%	55.00%	65.00%	75.00%	85.00%	85.00%	85.00%
BB	45.00%	50.00%	55.00%	65.00%	75.00%	75.00%	75.00%
B	25.00%	30.00%	50.00%	55.00%	65.00%	65.00%	50.00%
CCC	0.00%	0.00%	0.00%	0.00%	5.00%	10.00%	10.00%

* As of the Closing Date.

Table VI (if the Structured Finance Obligation is not the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	65.00%	70.00%	80.00%	85.00%	85.00%	85.00%	85.00%
AA	55.00%	65.00%	75.00%	80.00%	80.00%	80.00%	80.00%
A	40.00%	45.00%	55.00%	65.00%	80.00%	80.00%	80.00%
BBB	30.00%	35.00%	40.00%	45.00%	50.00%	60.00%	70.00%
BB	10.00%	10.00%	10.00%	25.00%	35.00%	40.00%	50.00%
B	2.50%	5.00%	5.00%	10.00%	10.00%	20.00%	25.00%
CCC	0.00%	0.00%	0.00%	0.00%	2.50%	5.00%	5.00%

* As of the Closing Date.

Table VII: European Tiered Corporate Recovery Rates (By Asset Class And CDO Liability Rating)

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
CDO liability rating						
Senior secured loans (%)						
Group A	68	73	78	81	85	85
Group B	56	60	64	67	70	70
Group C	48	51	55	57	60	60
Senior Secured Loan that is a Cov-Lite Loan (%)						
Group A	61	66	70	73	77	77
Group B	50	54	58	60	63	63
Group C	43	46	49	52	54	54
Mezz./second-lien/senior unsecured loans (%)						
Group A	45	47	50	52	54	54
Group B	40	42	44	46	48	48
Group C	35	37	39	40	42	42
Subordinated loans (%)						
Group A	20	20	20	20	20	20
Group B	20	20	20	20	20	20
Group C	17	17	17	17	17	17
Senior secured bonds (%)						
Group A	60	61	62	63	64	64
Group B	48	49	50	51	52	52
Group C	43	44	45	46	47	47
Senior unsecured bonds (%)						
Group A	40	42	44	46	48	48
Group B	38	41	42	44	45	45
Group C	32	35	36	38	39	40
Subordinated bonds (%)						
Group A	18	18	18	18	18	18
Group B	18	18	18	18	18	18
Group C	15	15	15	15	15	15

* As of the Closing Date.
** Group A: U.K., Ireland, Finland, Denmark, South Africa, Australia, New Zealand and The Netherlands. Group B: Belgium, Germany, Austria, Spain, Portugal, Luxembourg, Switzerland, Sweden, Norway, Hong Kong and Singapore. Group C: France, Italy, Greece, Japan, Korea and Taiwan.

Table VIII: Group A Europe and Asia Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Senior unsecured debt	**Recovery ratings of senior secured (%)**					
1+	65	68	71	73	76	76
1	57	60	63	65	68	68
2	50	53	55	57	59	59
3	42	45	47	49	51	51
4	18	18	18	18	18	18
5	8	8	8	8	8	8
6	4	4	4	4	4	4
Subordinated debt	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4
6	2	2	2	2	2	2

* As of the Closing Date.

Table IX: Group B Europe and Asia Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Senior unsecured debt	**Recovery ratings of senior secured (%)**					
1+	53	55	57	59	61	61

1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	18	18	18	18	18	18
5	8	8	8	8	8	8
6	4	4	4	4	4	4
Subordinated debt	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4
6	2	2	2	2	2	2

* As of the Closing Date.

Table X: Group C Europe and Asia Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
CDO liability rating						
Senior unsecured debt	**Recovery ratings of senior secured (%)**					
1+	45	46	48	49	51	51
1	41	43	44	46	47	48
2	37	39	41	42	44	44
3	33	36	37	39	40	41
4	16	16	16	16	16	16
5	6	6	6	6	6	6
6	3	3	3	3	3	3
Subordinated debt	**Recovery ratings of senior secured (%)**					
1+	20	20	20	20	20	20
1	17	17	17	17	17	17
2	15	15	15	15	15	15
3	15	15	15	15	15	15
4	8	8	8	8	8	8
5	3	3	3	3	3	3
6	1	1	1	1	1	1

* As of the Closing Date.

In all recovery rate tables above, Note rating categories below "AAA" include rating subcategories (for example, the "AA" column also applies to Notes rated "AA+" and "AA-").

S&P Unrated DIP Loan: A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

S&P Weighted Average Recovery Rate: means, as of any Measurement Date, the number, expressed as a percentage, obtained for each Class of Notes according to the rating assigned to such Class of Notes by Standard & Poor's by:

(a) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Recovery Rate;

(b) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations; and

(c) rounding up to the first decimal place.

Sale: The meaning specified in Section 5.17.

Sale Proceeds: All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

Schedule of Collateral Obligations: The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Section 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

Scheduled Preference Shares Redemption Date: November 1, 2021.

Second Lien Loan: A Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan, (ii) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets and (iii) if such Loan does not have an S&P Recovery Rate assigned as part of a credit estimate, so long as such credit estimate is in effect, then, solely for purposes of determining the S&P Recovery Rate for such Loan, in the Servicer's commercially reasonable judgment (with such judgment being made in good faith by the Servicer at the time of such Loan's purchase), the specified collateral for such Loan has a value not less than the outstanding Principal Amount of all debt senior to such Loan plus the S&P Recovery Rate applicable to such Loan, which value may be derived from, among other things, the enterprise value of the issuer of such Loans (**provided** that the provisions of the clause (iii) may be amended at any time, subject to Rating Confirmation from S&P, or in order to conform to S&P's then-current criteria for such Loans).

Secondary Risk Counterparty: Any Participating Institution and any Securities Lending Counterparty.

Secondary Risk Table: With respect to Moody's, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
Aaa or below	20.0%	20.0%
Aa1 or below	10.0%	10.0%
Aa2 or below	10.0%	10.0%

Aa3 or below	10.0%	10.0%
A1 or below	5.0%	10.0%
A2 or below	0.0%	0.0%

With respect to S&P, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
AAA	20.0%	20.0%
AA+/AA/AA-	10.0%	20.0%
A+	5.0%	20.0%
A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

Section 3(c)(7): Section 3(c)(7) of the Investment Company Act.

Section 3(c)(7) Reminder Notice: A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit G-1.

Secured High-Yield Bond: A High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

Secured Loan: A Loan that is secured by a valid and perfected security interest in specified collateral.

Secured Obligations: The meaning specified in the Granting Clauses.

Secured Parties: The meaning specified in the Granting Clauses.

Securities: The Notes and the Preference Shares.

Securities Account: The meaning specified in Section 8-501(a) of the UCC.

Securities Act: The United States Securities Act of 1933, as amended.

Securities Intermediary: Any clearing corporation or any Person, including a bank or broker, that in the ordinary course of its business maintains Securities Accounts for others and is acting in that capacity.

Securities Lending Account: The Securities Account established pursuant to Section 10.3(f).

Securities Lending Agreements: The meaning specified in Section 7.18.

Securities Lending Collateral: The meaning specified in Section 7.18.

Securities Lending Counterparty: The meaning specified in Section 7.18.

Security Entitlement: The meaning specified in Section 8-102(a)(17) of the UCC.

Selected Collateral Quality Tests: The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

Senior Secured High-Yield Bond: A Secured High-Yield Bond that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the High-Yield Bond.

Senior Secured Loan: A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a valid and perfected first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan **plus** the aggregate outstanding balances of all other loans of equal or higher seniority secured by the same collateral and that is not a DIP Loan.

Senior Servicing Fee: A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% *per annum* of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Senior Unsecured High-Yield Bond: A High-Yield Bond that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

Senior Unsecured Loan: A Loan that is not a Senior Secured Loan and is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

Servicer: Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

Servicing Agreement: The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended, and supplemented and in effect from time to time.

Servicing Fee Portion: 100% **minus** a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date, **provided** that, with respect to the Payment Date in May 2008, such percentage shall, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Closing Date to February 3, 2008.

Servicing Fees: Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

Share Trustee: Maples Finance Limited.

Share Registrar: Maples Finance Limited or any successor thereto.

Special Redemption: The meaning specified in Section 9.5.

Special Redemption Amount: The meaning specified in Section 9.5.

Special Redemption Date: The meaning specified in Section 9.5.

Spread Excess: As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

Stated Maturity: With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the

Collateral Obligation at or above par) and with respect to the Notes of any Class, November 1, 2021 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

Structured Finance Obligation: Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) asset-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities;"

(G) net interest margin securitizations;

(H) collateralized debt obligations a significant portion of which are backed by bonds; and

(I) obligations secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets where the obligors with respect to such receivables or other assets are non-corporate credit risks; provided that, for the avoidance of doubt, collateralized loan obligations shall not be excluded by this clause (I);

(ii) that has an S&P Rating;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

Subordinated High-Yield Bond: A Secured High-Yield Bond secured by a second (or lower) priority security interest in the relevant collateral.

Subordinated Lien Loan: A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

Subordinated Servicing Fee: An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments and (ii) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period **plus** 3.00% per annum. The portion of the Subordinated Servicing Fee in clauses (i) and (ii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Successor Entity: The meaning specified in Section 7.10.

Super Majority: With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

Supplemental Servicing Fee: On each Payment Date, the fee payable to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment Date pursuant to Section 11.1(a)(i)(23) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(a)(ii)(C)(11)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(C)(14) of the Priority of Payments.

Synthetic Letter of Credit: An obligation that is a synthetic or pre-funded letter of credit or includes or supports a letter of credit.

Synthetic Security: Any swap transaction (including any LCDS Security), structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse Securities (USA) LLC) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a

Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, ***credit risk***) to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

Each Synthetic Security that is a credit default swap the Reference Obligation of which are Loans shall require each such Reference Obligation to be denominated and payable in U.S. Dollars.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event" and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event."

No Synthetic Security shall provide for termination by the Synthetic Security Counterparty at any time (i) after a declaration of acceleration of Maturity of the Notes has been made upon the occurrence of an Event of Default, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with Section 5.2(c) and liquidation of the Collateral has begun or (ii) upon an Optional Redemption, unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses (17) and (17)(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor

equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than five days' prior notice of the purchase of or entry into any Synthetic Security.

Synthetic Security Agreement: The documentation governing any Synthetic Security.

Synthetic Security Collateral: With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments that mature no later than the Stated Maturity or (ii) floating rate credit card securitizations that are rated "Aaa" by Moody's and "AAA" by S&P, (that mature no later than the Stated Maturity) in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral; provided that any amounts described in clause (ii) above shall be hedged by a guaranteed investment contract or a total return swap which shall be subject to Rating Confirmation by S&P.

Synthetic Security Collateral Account: The Securities Account established pursuant to Section 10.3(e).

Synthetic Security Counterparty: An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

Synthetic Security Counterparty Account: The Securities Account established pursuant to Section 10.5.

Synthetic Security Reserve Account: The Securities Account established pursuant to Section 10.3(k).

Tax Advantaged Jurisdiction: One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto; **provided** that any Tax Advantaged Jurisdiction that is the jurisdiction of organization of an obligor of a Collateral Obligation other than obligors that are special purpose vehicles or issuers of Structured Finance Obligations shall have a Moody's

foreign currency rating of at least "Aa2" and a S&P foreign currency rating of at least "AA-".

Tax Event: An event that occurs if:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax (***New Withholding Tax Obligations***) (other than a withholding tax on fees received with respect to a letter of credit) or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them (***Increased Rate Withholding Tax Obligations***) and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period;

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation; or

(iii) if the Issuer is at the time treated as a pass-through entity for U.S. federal income tax purposes, investors in the Preference Shares who are non-U.S. Persons not otherwise subject to U.S. net income tax are or have become subject to U.S. net income taxation in respect of income of the Issuer in an amount in excess of 10% of the net income of the Issuer in any twelve-month period.

Tax Opinion of Counsel: A written opinion addressed to the Issuer (a copy of which will be provided to the Trustee) and, if requested, each Rating Agency that has made such request, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, issued by a nationally recognized law firm reasonably satisfactory to the Trustee, which law firm is experienced in the relevant areas of tax law, and which law firm may be counsel for the Servicer or the Issuer.

Transaction Reports: The meaning specified in Section 14.4.

Transfer Agent: The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

Transferee Certificate: A certificate substantially in the form of Exhibit B-1, duly completed as appropriate.

Treasury Regulations: The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

Trust Officer: When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

Trustee: As defined in the first sentence of this Indenture.

UCC: The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

Uncertificated Security: The meaning specified in Section 8-102(a)(18) of the UCC.

Underlying Instrument: The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

Unfunded Amount: With respect to any Revolving Loan or any Delayed Drawdown Loan at any time, the excess, if any, of (a) the commitment amount thereof over (b) the Funded Amount thereof.

Unfunded Synthetic Security: A Synthetic Security with respect to which the Issuer has an obligation to make payments after it acquires such Synthetic Security.

Unregistered Securities: The meaning specified in Section 5.17(c).

Unscheduled Principal Payments: Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

Valuation Report: The meaning specified in Section 10.6(b).

Weighted Average Fixed Rate Coupon: As of any Measurement Date, the rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per

annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor);

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

Weighted Average Fixed Rate Coupon Test: A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

Weighted Average Life: As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

Weighted Average Life Test: A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and November 1, 2017 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 3.0 years.

Weighted Average Moody's Rating Factor: The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

Weighted Average Moody's Recovery Rate Test: A test that is satisfied as of any Measurement Date if the Moody's Weighted Average Recovery Rate is greater than or equal to 43.6 %.

Weighted Average Rating Factor Test: A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to (x) the Maximum Weighted Average Moody's Rating Factor **plus** (y) the Moody's Weighted Average Rating Factor Recovery Rate Modifier.

Weighted Average Spread: As of any Measurement Date, a rate obtained by:

(i) **multiplying** the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (w) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero, (x) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto, (y) for any Revolving Loan or Delayed Draw Loan, will be the per annum contract spread for the Funded Amount thereof and the rate of the commitment fee and such other fees payable to the Issuer for any Unfunded Amount thereof, and (z) for any Synthetic Letter of Credit, will be the all-in rate (including any fees (net of any taxes required to be paid by the Issuer under this Indenture) payable to the Issuer by the underlying obligor **minus** the applicable LIBOR, calculated net of any taxes that could be, or have been, withheld in respect thereof (unless the payer is obligated to indemnify the Issuer for any taxes so withheld) determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR;

(ii) **summing** the amounts determined pursuant to clause (i);

(iii) **dividing** that sum **by** the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, **adding** to that sum the amount of Fixed Rate Excess as of the Measurement Date.

Weighted Average Spread Test: A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds (x) the Minimum Weighted Average Spread **minus** (y) the Moody's Weighted Average Spread Recovery Modifier.

Workout Assets: A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

Written-Down Obligation: As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

Zero-Coupon Security: A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

1.2 Assumptions as to Pledged Obligations; Construction Conventions

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and acquisition of Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not used to purchase additional Collateral Obligations (including any related deposit into the Synthetic Security Reserve Account, the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Section 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Retention Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference

Obligation. For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Retention Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

(i) The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

1.3 Rules of Interpretation

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)", refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein", "hereof", "hereto", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either", the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both", not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any", and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of

one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including", the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding", and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding", "following", "before", "after", "next" and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered Holder is recognized, such as in Section 2.9., references to Noteholders, Holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

2. THE NOTES

2.1 Forms Generally

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the ***Certificate of Authentication***) shall be in substantially the forms required by this Section, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

2.2 Forms of Notes and Certificate of Authentication

(a) The Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A.

(b) **Regulation S Global Notes.** The Notes of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (the ***Regulation S Global Notes***). The global notes shall be deposited on behalf of the subscribers for the Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) **Rule 144A Global Notes.** The Notes of each Class initially sold to U.S. persons that are Qualified Institutional Buyers and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A, including legends (each, a ***Rule 144A Global Note***), which shall be deposited on behalf of the subscribers for the Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) **Book-Entry Provisions.** This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall

prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

2.3 Authorized Amount; Denominations

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$637,000,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A-1	A-2	B	C	D	E
Original Principal Amount	U.S.$417,200,000	U.S.$104,300,000	U.S.$41,300,000	U.S.$37,100,000	U.S.$16,100,000	U.S.$21,000,000
Interest Rate	LIBOR + 0.32%	LIBOR + 0.60%	LIBOR + 1.00%	LIBOR + 2.00%	LIBOR + 3.50%	LIBOR + 4.00%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aaa/AAA	Aa2/AA	A2/A	Baa2/BBB	Baa3/BBB-

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 17,500 Class I Preference Shares and 45,500 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable.

2.4 Extension of Replacement Period and Stated Maturity

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the ***Maturity Extension***); **provided** that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities as to which an Extension Sale Notice has been duly given, ***Extension Sale Securities***). Notwithstanding anything to the contrary herein, in connection with an Extension Sale, all, but not part, of the Extension Sale Securities shall be purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date.

(c) The Maturity Extension shall be effective only if the following conditions (the ***Extension Conditions***) are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that neither of the Initial Purchasers shall be responsible for causing the Extension Conditions to be satisfied and neither of the Initial Purchasers shall be liable to any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the ***Extension Notice***), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit I, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable notice (an ***Extension Sale Notice***) to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the ***Extension Sale Notice Period***) of its intention to sell all or a portion of its Securities to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture and the Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; **provided** that all Extension Conditions set forth in clauses (a) and (c) above are satisfied (as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Initial Purchasers, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility

Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, such Holder will sell such Class II Preference Shares to the Extension Qualifying Purchaser and such Preference Shares will be redesignated as Class I Preference Shares.

2.5 Execution, Authentication, Delivery, and Dating

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Section 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and

the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

2.6 Registration, Registration of Transfer and Exchange

(a) The Issuer shall cause a register (the ***Indenture Register***) to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "Indenture Registrar" for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form

satisfactory to the Indenture Registrar duly executed by its Holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) (i) No Note or interest therein may be transferred to any purchaser or transferee if such purchase, holding and disposition of such Note would result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, foreign or local law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code).

(ii) Any person described in paragraph (i) above is referred to herein as a "Non-Permitted Benefit Plan Investor." Any transfer of a beneficial interest to a Non-Permitted Benefit Plan Investor shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee or such Registrar by a prospective transferee, the Trustee and such Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii) and (iv) of this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) **Rule 144A Global Note to Regulation S Global Note.** If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the Securities Account of the Person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer

has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) **Regulation S Global Note to Rule 144A Global Note.** If a Holder of a Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the Person transferring the interest in the Regulation S Global Note reasonably believes that the Person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or

exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the Securities Account of the Person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) **Other Exchanges.** If a Global Note is exchanged for Notes in definitive registered form without interest coupons pursuant to Section 2.11, the Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) [Reserved]

(h) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) **Restrictions on U.S. Transfers.** Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(j) Each Person who becomes a beneficial owner of a Note evidenced by: (A) an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-

1 upon such Person's purchase or other acquisition of the relevant Definitive Note and (B) an interest in a Global Note, shall be deemed to make the representations, warranties and agreements set forth in the applicable legends of the Notes set forth in Exhibit A hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note.

(k) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(l) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

2.7 Mutilated, Destroyed, Lost or Stolen Notes

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver to the Holder, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

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

2.8 Payment of Principal, Interest and Other Amounts; Rights Preserved; Withholding

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding, with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid (***Deferred Interest***) in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture).

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of

acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class E Notes on any Payment Date to the extent necessary to satisfy the Class E Coverage Test.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note. In the case of a Definitive Note, its Holder has provided written wiring instructions to the Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank

mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than ten days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period **divided by** 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Co-Issuer under the Notes and under this Indenture are non-recourse obligations, and the obligations of the Issuer under the Notes and under this Indenture are limited recourse obligations payable solely from the Collateral and following realization

of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

2.9 Persons Considered Owners

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee shall treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will notify the Trustee and the Share Registrar of any Affiliate of the Servicer that owns any of the Securities.

2.10 Cancellation

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

2.11 Definitive Notes

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a ***Definitive Note***) in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(j),

bear the legends in the applicable portion of Exhibit A and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

2.12 Notes Beneficially Owned by Non-Permitted Holders

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to cooperate with the

Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

2.13 Tax Characterization

The Issuer agrees and each registered holder and beneficial owner, by accepting a Note, agrees to treat the Notes as debt instruments of the Issuer only for accounting, financial reporting and U.S. federal and, to the extent permitted by law, state and local income and franchise tax purposes, to report all income (or loss) in accordance with such treatment and not to take any action inconsistent with such treatment unless otherwise required by any relevant taxing authority.

3. CONDITIONS PRECEDENT

3.1 Conditions to Issuance of Notes on Closing Date

(a) The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) Officers' Certificates of the Co-Issuers Regarding Corporate Matters. An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Purchase Agreement and, in the case of the Issuer, the Servicing Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are

in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) **Governmental Approvals.** From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Notes applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Notes except as have been given; **provided** that the opinions of Freshfields Bruckhaus Deringer LLP and Maples and Calder, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) **Co-Issuers' and Servicer's U.S. Counsel Opinion.** Opinions of Freshfields Bruckhaus Deringer LLP, special U.S. counsel to the Co-Issuers, and an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) **Issuer's Cayman Counsel Opinion.** An opinion of Maples and Calder, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) **Trustee's Counsel Opinion.** An opinion of Nixon Peabody LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) **Officers' Certificates of Co-Issuers Regarding Indenture.** An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Notes applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which

it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) **Hedge Agreements.** Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) **Servicing Agreement.** Executed copy of the Servicing Agreement.

(ix) **Preference Shares.** Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) **Preference Share Documents.** An executed counterpart of the Preference Shares Paying Agency Agreement.

(xi) **Collateral Administration Agreement.** Executed copy of the Collateral Administration Agreement.

(xii) **Grant of Collateral Obligations.** Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) **Certificate of the Servicer.** A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(a)(xix)(B);

(xiv) **Rating Letters.** An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Notes rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) **Accounts.** Evidence that each of the Accounts has been established.

(xvi) **Issuer Order for Deposit of Funds into Accounts.** An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$103,000,000 into the Collection Account for use pursuant to Section 7.19 and the deposit of at least U.S.$2,136,313 into the Closing Date Expense Account for use pursuant to Section 10.3(g).

(xvii) **Irish Listing.** An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Notes to the Official List.

(xviii) **Issuer Order for Authentication of Notes.** An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) **Accountants' Certificate.** An Accountants' Certificate satisfactory to the Issuer (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$659,000,000, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(a)(xix) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xx) **Certificate of the Issuer Regarding Collateral.** A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the

case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in the Collateral as of the Closing Date is at least 90% of the aggregate par amount thereof.

(xxi) **Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice.** A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit G-2.

(xxii) **Other Documents.** Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

(b) Any Refinancing Note may be issued from time to time pursuant to Section 9.7 hereof. Any such Refinancing Notes shall be executed by the Applicable Issuer and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee upon and pursuant to Issuer Order delivered to the Trustee, together with delivery to the Trustee by the Issuer of an

Opinion of Counsel to the effect that (A) such Refinancing Notes are duly authorized and validly issued by the Applicable Issuer pursuant to the Indenture, constituting the legal, valid and binding obligation of such Applicable Issuer, enforceable against such Issuer in accordance with its terms and (B) all conditions precedent under this Indenture, if any, applicable to the issuance, authentication and delivery of such Notes, have been satisfied.

3.2 Custodianship; Delivery of Collateral Obligations and Eligible Investments

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the ***Custodian***), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be State Street Bank and Trust Company. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer, has a short-term rating of at least "A-1" by S&P (or a long-term rating of at least "A+" by S&P if such institution has no short-term rating) and has combined capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Section 10, as to which in each case the Trustee shall have entered into a Securities Account control agreement with the Custodian in accordance with Section 8 of the UCC providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Section 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

3.3 Representations as to Collateral

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Loans with respect to which loans were made by Pre-Closing Participant and repaid by the Issuer on the Closing Date, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets

credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," "uncertificated securities," "chattel paper" or Securities Accounts, each within the meaning of the applicable Uniform Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.2(b).

(ix) The Issuer has caused (or will have caused within 30 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," Securities Accounts, "chattel paper," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

4. SATISFACTION AND DISCHARGE

4.1 Satisfaction and Discharge of Indenture

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost or stolen Notes,

(iii) rights of Noteholders to receive payments of principal or interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Sections 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Sections 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(vii) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement, and

(viii) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust

and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Section 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of a Tax Opinion of Counsel to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the

Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3, 13.1 and 14.13 shall survive.

4.2 Application of Trust Money

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture, including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated Securities Account identified as being held in trust for the benefit of the Secured Parties.

4.3 Repayment of Monies Held by Paying Agent

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

5. REMEDIES

5.1 Events of Default

Event of Default, wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on the Class A-1 Notes, the Class A-2 Notes or the Class B Notes, or, if no Class A-1 Notes, Class A-2 Notes or Class B Notes are Outstanding, a default in the payment of any interest on the Controlling Class, in each case, when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A-1 Notes or Class A-2 Notes are Outstanding, the Class A Overcollateralization Ratio is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 and that remain unstayed, undischarged,

and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment.

5.2 Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

5.3 Collection of Indebtedness and Suits for Enforcement by Trustee

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue installments of interest and all other amounts owing to

the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may, with the consent of the Majority of the Controlling Class, and shall at the written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may, with the consent of the Majority of the Controlling Class, and shall upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor

Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

5.4 Remedies

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may, with the consent of the Majority of the Controlling Class, and shall, upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the written direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 5.8 (and subject to Section 6.3(e)), institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one

day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

5.5 Optional Retention of Collateral

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Section 10 and Section 12 unless:

(i) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination;

(ii) the Holders of a Super Majority of each of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes direct the sale and liquidation of the Collateral; or

(iii) the Class A/B Overcollateralization Ratio is less than 90% and the Holders of a Majority of the Class A-1 Notes, the Class A-2 Notes and the Class B Notes voting together as a single Class direct the sale and liquidation of the Collateral; **provided** that upon such direction, the Trustee shall (x) first sell or liquidate any Collateral for which either (A) two or more bid-side prices have been determined by an Approved Pricing Service or (B) bid-side prices have been obtained from at least two nationally recognized

broker-dealers selected by a Majority of the Controlling Class and (y) thereafter shall sell or liquidate such remaining Collateral to the extent such Collateral can be liquidated or sold in accordance with the Indenture and applicable law; provided that any Collateral consisting of equity securities or Defaulted Collateral Obligations shall not be subject to sale or liquidation pursuant to this clause (iii).

If any Collateral is sold in accordance with clause (a)(iii)(x) above and Highland Capital Management, L.P. is the Servicer, the Servicer shall have the exclusive right to purchase such Collateral for the first two Business Days from the date the last of such bid-prices was determined by an Approved Pricing Service or obtained from a nationally recognized broker-dealer selected by a Majority of the Controlling Class with respect to such Collateral at a price equal to the highest bid-price for such Collateral that was determined by an Approved Pricing Service or obtained from a nationally recognized broker-dealer selected by a Majority of the Controlling Class and, thereafter, the Trustee may sell such Collateral to other parties in accordance with the terms hereof; **provided** that, in any such case, such sale to the Servicer or to any other party is effected in compliance with applicable law, including all notice and other provisions under the UCC.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be either of the Initial Purchasers.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the written request of a Majority of the Controlling Class at any time during which the Trustee retains the Collateral pursuant to Section 5.5(a) (**provided** that to the extent any such request is made more than once per fiscal quarter, the Trustee may require that such determination be at the expense of such requesting Holders). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

5.6 Trustee May Enforce Claims Without Possession of Notes

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

5.7 Application of Money Collected

Any money collected by the Trustee with respect to the Notes pursuant to this Section 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

5.8 Limitation on Suits

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholders of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class pursuant to this Section 5.8, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

5.9 Unconditional Rights of Noteholders

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

5.10 Restoration of Rights and Remedies

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

5.11 Rights and Remedies Cumulative

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

5.12 Delay or Omission Not Waiver

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Section 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

5.13 Control by Majority of the Controlling Class

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability or expense (unless the Trustee has received an indemnity against the liabilities and expenses reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

5.14 Waiver of Past Defaults

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Section 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Servicer, S&P, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

5.15 Undertaking for Costs

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

5.16 Waiver of Stay or Extension Laws

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

5.17 Sale of Collateral

(a) The power to effect any sale (a ***Sale***) of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act (***Unregistered Securities***), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

5.18 Action on the Notes

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or

remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

6. THE TRUSTEE

6.1 Certain Duties and Responsibilities

(a) Except during the continuance of an Event of Default known to the Trustee:

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; **provided** that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

6.2 Notice of Default

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Notes is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon written

request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

6.3 Certain Rights of Trustee

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Section 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders (or other Person authorized or permitted hereby to give such direction) pursuant to this Indenture, unless the Holders (or such Person, as the case may be) have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request,

direction, consent, order, note or other paper or document, but the Trustee, in its discretion, may, and upon the written direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; **provided**, **however**, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles (***GAAP***), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Section 6 shall also be afforded to the Bank acting in those capacities.

6.4 Not Responsible for Recitals or Issuance of the Notes

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

6.5 May Hold Notes

(a) The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

6.6 Acquisition of Preference Shares

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Preference Shares (including pursuant to a Maturity Extension, a Refinancing and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the Aggregate Outstanding Amount of any of the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, this Indenture and the Preference Share Documents). Any Preference Shares held as principal by the Trustee or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

6.7 Money Held in Trust

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer, unless such asset is purchased in an obligation of the Trustee in its corporate capacity.

6.8 Compensation and Reimbursement

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify the Trustee and its officers, directors, employees and agents for any loss, liability or expense (including reasonable attorney's fees and costs) incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this Indenture or the performance of its duties hereunder, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

(d) The indemnification set forth in this Section 6.8 shall survive the termination of this Indenture.

6.9 Corporate Trustee Required; Eligibility

There shall at all times be a Trustee under this Indenture that is an Independent "bank" (within the meaning of the Investment Company Act) organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be "affiliated" (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers; provided that the requirements of the preceding sentence shall be met if (a) the Trustee is not "affiliated" (as defined in the preceding sentence) with the Issuer, the Co-Issuer, the Administrator or the Share Registrar, (b) neither the Trustee nor the Issuer has actual knowledge, or has received written notice, that the Trustee is "affiliated" (as defined in the preceding sentence) with any person involved with the organization or operation of either of the Co-Issuers, and (c) the Trustee has not provided and does not provide credit or credit enhancement to either

of the Co-Issuers. For purposes of the preceding clause (b), (i) the "actual knowledge" of the Trustee shall mean (x) its knowledge of those persons who have been expressly identified in writing to it by either or both of the Co-Issuers, or the Servicer on their behalf or (y) any persons otherwise actually known to a Responsible Officer of the Trustee, in either case, to be a person involved with the organization or operation either of the Co-Issuers, without any duty of independent inquiry or investigation on the part of the Trustee, and (ii) unless and except to the extent it has been otherwise expressly notified in writing by the Issuer, or the Servicer on its behalf , the Trustee shall be entitled to presume that the Issuer has no knowledge of such an affiliation. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

6.10 Resignation and Removal; Appointment of Successor

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Section 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days' written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall by Board Resolution (or, if an Event of Default shall have occurred and be continuing, at the direction of a Majority of the Controlling Class) promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by the Co-Issuers as directed by Board Resolution (or, if an Event of Default shall have occurred and be continuing, by an Act of a Majority of the Controlling Class) or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

(g) If the Trustee resigns or is removed hereunder, unless and except to the extent otherwise expressly agreed by it in writing (which shall include agreement over terms of compensation), the Bank likewise shall automatically and immediately be declared to have resigned or been removed, as the case may be, in all other capacities in which it serves hereunder, and as Collateral Administrator under the Collateral Administration Agreement and Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, and the acceptance of appointment by the Person serving as successor Trustee shall constitute an acceptance of appointment by it in each such other capacity.

6.11 Acceptance of Appointment by Successor

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

6.12 Merger, Conversion, Consolidation, or Succession to Business of Trustee

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

6.13 Co-Trustees

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

6.14 Certain Duties of Trustee Related to Delayed Payment of Proceeds

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a), the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent (save for the Irish Paying Agent) designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or substitution shall be subject to Section 10.6 and Section 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

6.15 Authenticating Agents

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any

Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; **provided**, **however**, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

6.16 Fiduciary for Noteholders Only; Agent for Secured Parties

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as Entitlement Holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

6.17 Representations and Warranties of the Bank

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) **Organization.** The Bank has been duly organized and is validly existing as a Massachusetts trust company and has the power to conduct its business and affairs as a trustee.

(b) **Authorization; Binding Obligations.** The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) **Eligibility.** The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

6.18 Withholding Tax Forms

The Issuer hereby agrees to deliver or cause to be delivered, a United States Internal Revenue Service Form W-8BEN (or successor form thereto) or any other appropriate tax certificates to the relevant issuer of its Collateral Obligations and issuer of its Eligible Investments at the time such Collateral Obligations or Eligible Investments are purchased by the Issuer and thereafter as required under the relevant law. In addition, the Issuer

hereby agrees to deliver, and the Issuer shall be required to deliver, United States Internal Revenue Service Forms W-8BEN (or successor form thereto) and other appropriate United States tax forms as may be required by the Hedge Counterparty, to the Hedge Counterparty at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form, and shall take any other action appropriate to prevent withholding or backup withholding tax on the Hedge Agreements. The Issuer shall represent, to the Hedge Counterparty in the master agreement, confirmation or schedule to the Hedge Agreement, that the Issuer is a "non-U.S. branch" of a foreign person as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations. The Issuer will request that the Hedge Counterparty provide the Issuer a United States Internal Revenue Service Forms W-9 or W-8, as applicable, together with any required attachments, at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form.

6.19 Withholding Tax

If any withholding tax is imposed on the Issuer's payment under the Notes or otherwise to any Noteholder, such tax shall reduce the amount of such payment otherwise distributable to such Noteholder or Beneficial Owner. The Trustee or the applicable paying agent is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed by the Issuer (but such authorization shall not prevent the Trustee from contesting any such tax in appropriate proceedings and withholding payment of such tax, if permitted by law, pending the outcome of such proceedings) and to remit such amounts to the appropriate taxing authorities. The amount of any withholding tax imposed with respect to any Noteholder or Beneficial Owner shall be treated as Cash distributed to such Noteholder or Beneficial Owner at the time it is withheld by the Trustee. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold such amounts in accordance with this Section 6.18. If any Noteholder or Beneficial Owner wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with such Noteholder or Beneficial Owner in making such claim so long as such Noteholder or Beneficial Owner agrees to reimburse the Trustee for any out-of-pocket expenses incurred. Failure of a Holder of a Note to provide the Trustee or any Paying Agent and the Issuer with appropriate tax certificates may result in amounts being withheld from the payment to such Holders. Nothing herein shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes. Amounts withheld pursuant to applicable tax laws shall be considered as having been paid by the Issuer as provided in Section 7.1.

7. COVENANTS

7.1 Payment of Principal and Interest

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

7.2 Maintenance of Office or Agency

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint State Street Bank and Trust Company, 200 Clarendon Street, Mailcode EUC 108, Boston, MA 02116, Attn: CDO Services Group, as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers hereby appoint Corporation Service Company with an address at 1133 Avenue of the Americas, Suite 3100, New York, New York 10036, as the Co-Issuers' agent where service of any and all process in any action or Proceeding may be delivered.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Notes is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent.

The Co-Issuers appoint, for so long as any Class of Notes is listed on the Irish Stock Exchange, Maples Finance Dublin (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Notes. If the Irish Paying Agent is replaced at any time when any Class of Notes is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Notes

of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

7.3 Money for Note Payments to be Held in Trust

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Section 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee

to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 15 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Noteholder shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is

determinable from the records of any Paying Agent, at the last address of record of each Holder.

7.4 Existence of Co-Issuers

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations (or, in the case of the Co-Issuer, as a limited liability company) in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency,

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change,

(D) the Rating Condition with respect to S&P is satisfied, and

(E) the Issuer shall cause to be delivered to the Trustee an Opinion of Counsel stating that, in such counsel's opinion, all necessary filings, if any, and other necessary actions, if any, have been taken to maintain the effectiveness of the perfection of the security interest granted in the Collateral hereunder immediately after such change in the Issuer's jurisdiction of incorporation.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors', shareholders', independent managers' or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result

in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) Except as may be provided in Annex 1 to the Servicing Agreement, the Issuer shall not have any subsidiaries (other than the Co-Issuer),

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

7.5 Protection of Collateral

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and State Street Bank and Trust Company as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(a)(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless (in the case of any of the actions

described in clauses (i) or (ii) of this Section 7.5(b)) the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

7.6 Opinions as to Collateral

On or before November 1 in each calendar year, commencing in 2008, the Issuer shall furnish to the Trustee and each of the Rating Agencies, an Opinion of Counsel stating that in the opinion of such counsel as of the date of such opinion under the District of Columbia Uniform Commercial Code, the UCC financing statement(s) filed in connection with the lien and security interests created by this Indenture shall remain effective and no additional financing statements, continuation statements or amendments with respect to such financing statement(s) shall be required to be filed in the District of Columbia from the date thereof through the next twelve months to maintain the perfection of the security interest of this Indenture under the District of Columbia Uniform Commercial Code.

7.7 Performance of Obligations

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the Collateral Administration Agreement as initially executed), contract with other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture. Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

7.8 Negative Covenants

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi) and (ix), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including a Refinancing in accordance with Section 9.7 and including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with

respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees);

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such "non-petition" and "limited recourse" provisions without prior Rating Confirmation; or

(xi) operate so as to be subject to U.S. federal income taxes on its net income except as a result of ownership of Eligible Equity Securities, securities or other consideration received in an exchange or Defaulted Collateral Obligations pending their sale in accordance with Section 12.1.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as

expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

7.9 Notice of Default; Statement as to Compliance

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty in writing within 10 days of acquiring actual knowledge of Default.

(b) On or before September 15 in each calendar year, commencing in 2008, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

7.10 Co-Issuers May Consolidate, etc. Only on Certain Terms

Neither the Issuer nor the Co-Issuer (the ***Merging Entity***) shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the ***Successor Entity***),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any

lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Section 7 and that all conditions precedent in this Section 7 relating to the transaction have been complied with and shall have obtained a Tax Opinion of Counsel that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. person.

7.11 Successor Substituted

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

7.12 No Other Business

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than (i) acquisition and disposition of Collateral Obligations and Eligible Investments solely for its own account, (ii) entering into, and performing its obligations under, the Indenture, the Preference Share Documents, any Hedge

Agreements, the Securities Lending Agreements, the Servicing Agreement, the Collateral Administration Agreement and the Administration Agreement, (iii) the issuance and sale of the Securities and the Issuer Ordinary Shares, (iv) the pledge of the Collateral as security for its obligations in respect of the Notes and any Hedge Agreements, (v) entering into certain pre-closing warehousing arrangements and the agreements relating thereto, (vi) owning all of the membership interests in the Co-Issuer and (vii) undertaking certain other activities incidental to the foregoing. The Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws (or, in the case of the Co-Issuer, the certificate of formation and limited liability company agreement) if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

7.13 Listing on Irish Stock Exchange

So long as any Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Notes on the regulated market of the ISE; **provided** that the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

7.14 Annual Rating Review

So long as any Notes of any Class remain Outstanding, on or before May in each year commencing in 2008, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

7.15 Reporting

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the

Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. ***Rule 144A Information*** is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

7.16 Calculation Agent

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the ***Calculation Agent***). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

7.17 Certain Tax Matters

(a) The Issuer, the Co-Issuer, the Trustee agree, and each registered Holder and Beneficial Owner of Notes, by accepting a Note, agrees to treat such Notes as indebtedness solely of the Issuer and not of the Co-Issuer for accounting, financial reporting and U.S. federal, and, to the extent permitted by law, state and local income tax purposes, to report all income (or loss) in accordance with such treatment and not to take any action inconsistent with such treatment unless otherwise required by any relevant taxing authority.

(b) The Issuer agrees not to take any action to be treated as other than a corporation for U.S. federal income tax purposes.

(c) The Issuer and Co-Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority.

(d) The Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless the Issuer shall have obtained a Tax Opinion of Counsel prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(e) The Issuer shall not become the owner of any asset if the acquisition (including the manner thereof), ownership or disposition of such asset (without regard to the other activities of the Issuer) would cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for U.S. federal income tax purposes, except as a result of ownership of Eligible Equity Securities, securities or other consideration received in an exchange or Defaulted Collateral Obligations pending their sale in accordance with Section 12.1.

(f) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(g) Each of the Issuers and the Trustee agrees that it does not intend for this Indenture to represent an agreement to enter into a partnership, a joint venture or any other business entity for U.S. federal income tax purposes. The Issuers and the Trustee shall not represent or otherwise hold themselves out to the United States Internal Revenue Service or other third parties as partners in a partnership or members of a joint venture or other business entity for U.S. federal income tax purposes.

(h) If the Issuer or Servicer becomes aware that withholding of United States income tax is required with respect to fees associated with the Synthetic Letters of Credit included in the Collateral and such taxes are not being withheld by an agent for the relevant syndicate of lenders, the Issuer shall cause such taxes to be paid.

7.18 Securities Lending.

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (30) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" or a short-term senior unsecured debt rating of at least "A-1" from S&P (each, a ***Securities Lending Counterparty***) pursuant to one or more agreements (each, a ***Securities Lending Agreement***); **provided** that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchasers or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained as provided in the related Securities Lending Agreement and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within ten days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending

Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer shall take such steps as provided in the related Securities Lending Agreements.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty"). The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(e) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a

notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(f) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

7.19 Purchase of Collateral Obligations; Ramp-Up Completion Date

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A-1 Notes, the Class A-2 Notes and the Class B Notes is at least U.S.$687,400,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A-1 Notes, the Class A-2 Notes and the Class B Notes is at least U.S.$687,400,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or

before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) No later than five Business Days after the Ramp-Up Completion Date, the Issuer shall notify each of the Rating Agencies in writing of the occurrence of the Ramp-Up Completion Date (each, a "***Ramp-Up Notice***") and request in writing that each of S&P and Moody's confirm in writing prior to the Determination Date related to the first Payment Date that it has not reduced or withdrawn the Initial Ratings; **provided**, that the Issuer shall not be required to request a Rating Confirmation from Moody's if, by the Determination Date related to the first Payment Date Moody's has received an Accountants' Certificate confirming (i) the Issuer is in compliance with each of the Collateral Quality Tests, the Coverage Tests and the Concentration Limitations and (ii) the Aggregate Principal Balance of the Collateral Obligations that the Issuer owns or has committed to purchase is at least equal to U.S.$687,400,000. In connection with such request or, in the case of Moody's, in lieu of such request, the Issuer shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, an Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon and the CUSIP number thereof (if applicable)) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate confirming:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) Any failure by the Issuer to obtain a Rating Confirmation pursuant to Section 7.19(e) above shall be a Rating Confirmation Failure (a "***Rating Confirmation Failure***") and will thereafter be deemed to be continuing until the first date thereafter on which the Trustee shall have received evidence of confirmation of the Initial Ratings, on which date it shall be deemed to have been cured. If a Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

(g) On the date occurring 45 days after the Closing Date (the ***Interim Ramp-Up Test Date***), the Servicer, on behalf of the Issuer, shall submit to Moody's a statement showing compliance with the Interim Ramp-Up Test specified in the Interim Ramp-Up Test table below. Should the results of any such Interim Ramp-Up Test fail to comply with the levels established for such Interim Ramp-Up Test Date by the Servicer on behalf of the Issuer, and that are acceptable to Moody's, the Issuer shall discuss a plan with Moody's for achieving compliance with such tests by the Ramp-Up Completion Date at the levels required on the Ramp-Up Completion Date.

Interim Ramp-Up Test

Minimum Moody's Weighted Average Recovery Rate	Minimum Diversity Score	Maximum Weighted Average Moody's Rating Factor	Minimum Weighted Average Spread	Minimum Aggregate Principal Balance
46%	60	2550	250	U.S.$666,800,000

7.20 Secondary Risk Procedures

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term

S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5.0% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20.0% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

7.21 Section 3(c)(7) Procedures

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (**provided** that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) **Section 3(c)(7) Notice to Investors.** The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) **CUSIP Numbers.** The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Initial Purchasers and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) **Bloomberg and other Third-Party Vendor Screens.** The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act, to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

8. SUPPLEMENTAL INDENTURES

8.1 Supplemental Indentures Without Consent of Holders

(a) Without the consent of the Holders of any Securities (other than with respect to the consent of the Majority of the Controlling Class specified in clause (15) below), any Hedge Counterparty (except to the extent such consent is required under the applicable Hedge Agreement) or any Synthetic Security Counterparty (except to the extent such consent is required under the applicable Synthetic Security Agreement), when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in clauses (1) through (23) below, the interests of the Holders of the Securities (except, in the case of clause (12) below, any Holders of Notes subject to the applicable Refinancing) are not materially and adversely affected thereby (the Co-Issuers and the Trustee will be bound by a standard of good faith and fair dealing in making such determination, subject to the terms of this Indenture) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized

amount, terms, and purposes of the issue, authentication and delivery of the Notes;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) cause any provision of this Indenture to conform to, or be consistent with, the statements made with respect to such provision in the Offering Memorandum;

(7) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act (including, without limitation, to add provisions for resales and transfers of the Preference Shares under Regulation S) or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(8) with the consent of the Servicer, modify (A) the restrictions on the sales of Collateral Obligations in Section 12.1 or (B) with the consent of the Majority of the Controlling Class (which consent shall not be unreasonably withheld), the Eligibility Criteria in Section 12.2 (and the definitions related thereto); **provided** that, for the avoidance of doubt, the consent of a Majority of the Controlling Class shall not be required if such amendment also satisfies the requirements of clause (24) below;

(9) make appropriate changes for any Class of Notes to be listed on an exchange other than the Irish Stock Exchange;

(10) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(11) accommodate the issuance of the Notes in book-entry form through the facilities of DTC or otherwise;

(12) to accommodate a Refinancing effected pursuant to and in compliance with Section 9.7; provided that no Holders of Notes or Preference Shares

are materially adversely affected thereby, other than Holders of Notes subject to such Refinancing;

(13) to avoid the imposition of tax on the net income of the Issuer or of withholding tax on any payment to the Issuer;

(14) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Notes on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(15) with the consent of the Majority of the Controlling Class, amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted under the Indenture;

(16) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(17) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(18) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(19) facilitate hedging transactions;

(20) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(21) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(22) with the consent of the Servicer, enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer to the effect that the modification would not be materially adverse to the Holders of any Class of Securities; provided that, for the avoidance of doubt, this clause (22) shall not permit the Co-Issuers and the Trustee to effect any amendment that expressly requires the consent of the Majority of the Controlling Class without such consent;

(23) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under the Indenture and the Preference Share Documents; or

(24) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7);

provided that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Servicer under this Indenture or increase the duties or obligations of the Servicer.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of Notes or a Majority of the

Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Servicer and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

8.2 Supplemental Indentures With Consent of Holders

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(1) the Servicer if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes;

(3) a Majority of the Preference Shares adversely affected thereby;

(4) each Hedge Counterparty (if such consent is required pursuant to the applicable Hedge Agreement); and

(5) each Synthetic Security Counterparty (if such consent is required pursuant to the applicable Synthetic Security Agreement).

Any proposed supplemental indenture that would also necessitate a change to the Issuer Charter may only be made after a Special Resolution (as defined in the Issuer Charter) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares (other than in the case of any Maturity Extension in connection with an extension of the Replacement Period as described in Section 2.4), reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

(b) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), each Hedge Counterparty, each Synthetic Security Counterparty (to the extent required by the terms of the related Synthetic Security) and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee and S&P (which notice shall designate a date for the

Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(c) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(d) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), each Hedge Counterparty, each Synthetic Security Counterparty and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

8.3 Execution of Supplemental Indentures

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Section 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Section 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; **provided** that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this

Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee.

8.4 Effect of Supplemental Indentures; Certain Required Consents

Upon the execution of any supplemental indenture under this Section 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Any supplemental indenture that would necessitate a change to the Issuer Charter may only be made after a Special Resolution (as defined in the Issuer Charter) has been passed to permit the Issuer Charter to be altered to conform with such proposed amendment.

8.5 Reference in Notes to Supplemental Indentures

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Section 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

9. REDEMPTION OF NOTES

9.1 Mandatory Redemption

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then at the direction and in accordance with the instructions of the Servicer the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of

Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

9.2 Optional Redemption

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Closing Date Expense Account, the Synthetic Security Reserve Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the applicable Required Redemption Percentage, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

In the event that the Preference Shares Paying Agent, the Trustee and the Issuer receive notice directing an optional redemption from any one or more Holders of Preference Shares holding less than a Majority of the Preference Shares, the Preference Shares Paying Agent shall, within five Business Days of receipt of such notice, notify the Holders of the Preference Shares (i) of the receipt of such

notice and (ii) that any Holder of Preference Shares may join in directing an optional redemption by notifying the Issuer, the Trustee and the Preference Shares Paying Agent in writing within five Business Days after such Holder's receipt of the Preference Shares Paying Agent's Notice.

Upon receipt of a notice of redemption pursuant to the first paragraph of this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Closing Date Expense Account, the Synthetic Security Reserve Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for

distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

9.3 Optional Redemption Procedures

(a) Upon any redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained in the Borough of Manhattan as provided in Section 7.2 and the Corporate Trust Office or other office designated by the Trustee for surrender).

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Trustee and the Servicer only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares (or, in the case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) to withdraw the notice of redemption delivered by a percentage of the Preference Shares (or, in the case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail) and the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption or the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least 10 Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreement (with (x) a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's, (y) any other entity that has the benefit of a credit facility, a warehouse agreement, a liquidity facility or a similar arrangement with a financial or other institution or entity that satisfies the criteria in sub-clause (x) above and such financial or other institution or entity irrevocably agrees to fund the purchase of all or part of the Collateral as set forth herein or (z) any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing

under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below. For the avoidance of doubt, no Hedge Agreement shall be sold or terminated unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

9.4 Notes Payable on Redemption Date

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and

surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

9.5 Special Redemption

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

9.6 Amendment Buy-Out

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders whose consent was solicited with respect to such supplemental indenture (the "***Amendment Buy-Out Option***") for the applicable Amendment Buy-Out Purchase Price; **provided**, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders for the applicable Amendment Buy-Out Purchase Price, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "***Amendment Buy-Out***"). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities to the Amendment Buy-Out Purchaser; **provided** that if any Non-Consenting Holder holds Class II Preference Shares, such Non-Consenting Holder will sell such Class II Preference Shares to the Amendment Buy-Out Purchaser and such Preference Shares will be redesignated as Class I Preference Shares. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities set forth herein and in the Preference Share Documents, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

9.7 Redemption by Refinancing

(a) On any Payment Date after the Non-Call Period, any Class of the Notes may be redeemed in whole, but not in part from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares)) with a copy to the Trustee and the Rating Agencies, at least 30 days prior to the Payment Date for such redemption (such date, the "***Refinancing Date***"), to redeem such Notes in accordance with this Section 9.7 (a "***Notice of Refinancing***"), which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be Refinanced. Such redemption shall

be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes ("***Refinancing Notes***"), the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Issuer, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "***Refinancing***"), and provided that (i) such proposal is approved by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date.

(b) The Issuer shall obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) a Rating Confirmation has been obtained from each Rating Agency for each class of Refinancing Notes and each Class of Notes not subject to Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Issuer related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the stated maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain limited recourse, non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth herein;

(viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and

(ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for.

(c) The Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3 hereof) shall be fully protected in relying upon an Opinion of Counsel stating that the Refinancing is permitted by this Indenture and that all conditions precedent thereto have been complied with.

(d) Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date pursuant to this Indenture to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; **provided** that to the extent that any Refinancing Proceeds exceed the amount necessary to redeem the Notes being refinanced (and any associated Administrative Expenses), such excess Refinancing Proceeds will be treated as Principal Proceeds.

(e) If notice of consent by a Majority of the Preference Shares to a Refinancing has been received by the Trustee from the Servicer pursuant to Section 9.7(a) no later than 15 days prior to the Refinancing Date, notice of a Refinancing shall be given by the Trustee by first class mail, postage prepaid, mailed not less than 10 Business Days prior to the proposed Refinancing Date, to each Holder of Notes of the Class to be refinanced at the address in the Indenture Register (with a copy to the Servicer) and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All Notices of Refinancing shall state:

(i) the proposed Refinancing Date, which shall be the applicable Redemption Date in respect of the Notes being redeemed;

(ii) the Refinancing Price, which shall be the applicable Redemption Price in respect of the Notes being redeemed;

(iii) that on such proposed Refinancing Date such Notes will be refinanced and redeemed in full, and that, provided that the Refinancing Proceeds have been deposited with the Trustee for any such payment in full, interest on such Notes being redeemed shall cease to accrue on such date; and

(iv) the place or places where such Notes are to be surrendered for payment of the Refinancing Price which, if not stated, shall be the office or agency of any paying agent (save for the Irish Paying Agent) as provided in Section 7.2.

provided that no such Notice of Refinancing shall be sent if either (a) the Servicer has withdrawn its consent to such Refinancing or (b) the consent of a

Majority of the Holders of Preference Shares to such Refinancing has not been obtained.

(f) Notice of Refinancing shall be given by the Trustee at the expense of the Issuer. Failure to give a Notice of Refinancing, or any defect therein, to any Holder of any Note selected for Refinancing shall not impair or affect the validity of the Refinancing or give rise to any claim based upon such failure or defect.

(g) Any Notice of Refinancing may be withdrawn by the Servicer, on behalf of the Issuer, on or prior to the fourth Business Day prior to the scheduled Refinancing Date by written notice to the Trustee, the Paying Agent, the Preference Shares Paying Agent, the Rating Agencies and the Holders of the Preference Shares. Upon receipt of such notice of withdrawal, the Trustee shall send such notice to the Holders of Notes and, if applicable, the Irish Paying Agent.

(h) If a Notice of Refinancing pursuant to Section 9.7(a) has been given as provided herein and not withdrawn, the Notes to be refinanced shall on the Refinancing Date become due and payable at the Refinancing Price. Each Holder of such Notes shall present and surrender its Note at the place specified in the Notice of Refinancing on or prior to such Refinancing Date; **provided** that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender.

(i) If any Class of Notes called for Refinancing shall not be so paid upon surrender thereof for Refinancing (or the delivery of the indemnity pursuant to the preceding paragraph) the principal shall, until paid, bear interest from the Refinancing Date at the applicable Interest Rate for each successive Payment Date with respect to which such Note remains Outstanding.

10. ACCOUNTS, ACCOUNTINGS, AND RELEASES

10.1 Collection of Money

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

10.2 Collection Account

(a) Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from the Closing Date Expense Account pursuant to Section 10.3(g),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Section 12, (2) deposited into the Synthetic Security Reserve Account, the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Section 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee from the Collateral and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in

the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Synthetic Security Reserve Account, the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Section 12 and the Issuer Order.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1); **provided** that the Trustee shall be entitled (but not required), without liability on its part, to refrain from making such a requested payment of an Administrative Expense on a day other than a Payment Date if in the reasonable determination of the Trustee the payment of such amount would leave insufficient funds available to pay in full each of the items described in said Section 11.1(a)(i)(1) in amounts reasonably anticipated by the Trustee to be payable thereunder on the next Payment Date (taking into account the Administrative Expense Cap) or that would result in payments being made that are not in accordance with the Priority of Payments.

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

(f) On the Determination Date related to the first Payment Date, and at the option of the Servicer, Principal Proceeds in the Collection Account in an amount not to exceed U.S.$2,000,000 may be designated as Interest Proceeds for distribution on the first Payment Date in accordance with the Priority of Payments to the extent such funds are not required to be applied to cure a Rating Confirmation Failure or applied to a Special Redemption.

10.3 Other Accounts

(a) **Custodial Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) **Revolving Reserve Account and Delayed Drawdown Reserve Account.** Before the Closing Date, the Trustee shall establish (i) a single, segregated Securities Account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated Securities Account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded commitment amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Section 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed

Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) **Expense Reimbursement Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section 11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be applied in accordance with Section 10.4(a).

(d) **Hedge Counterparty Collateral Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties (other

than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) **Synthetic Security Collateral Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) **Securities Lending Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Securities Lending Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) **Closing Date Expense Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties, over which

the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$2,136,313 from the gross proceeds of the Offering. At any time before the Payment Date in August 2008, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in August 2008 (or, at the discretion of the Servicer, on the Payment Date in May 2008), at the direction of the Servicer in its sole discretion, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Interest Proceeds or Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) **Payment Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) **Class II Preference Share Special Payment Account.** Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of Holders of the Class II Preference Shares, over which the Trustee shall have exclusive control and the sole right of withdrawal. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments, the Trustee will deposit into the Class II Preference Share Special Payment Account amounts equal to the Class II Preference Share Special Payments. With respect to any Payment Date, the Servicer may, in its sole discretion, at any time waive a portion (or all) of the Subordinated Servicing Fee or Supplemental Servicing Fees then due and payable, in which event, an amount equal to such waived portion will be paid by the Trustee on behalf of the Issuer to the Preference Shares Paying Agent for payment, subject to the laws of the Cayman Islands (as provided in the Preference Shares Paying Agency Agreement), for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special

Payments, **provided** that with respect to the Payment Date in May 2008 such Class II Preference Share Special Payments will, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Closing Date to February 3, 2008. For purposes of any calculation under the Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(j) [Reserved]

(k) **Synthetic Security Reserve Account**. Before the Closing Date, the Trustee shall establish a single, segregated Securities Account that shall be designated as the Synthetic Security Reserve Account, which shall be held in trust in the name of the Trustee as Entitlement Holder for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the entry into any Unfunded Synthetic Security, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Synthetic Security Reserve Account equal to the unfunded commitment amount of the Unfunded Synthetic Security, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Unfunded Synthetic Security for purposes of Section 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from Synthetic Security Reserve Account to fund the Issuer's payment obligations under the Unfunded Synthetic Securities. Upon the sale of an Unfunded Synthetic Security in whole or in part or the reduction in part or termination of the Issuer’s commitment thereunder, an amount on deposit in the Synthetic Security Reserve Account specified by the Servicer as being equal to (i) the proportionate amount of the amount on deposit (in the case of a sale in part) or (ii) the amount by which the commitment is reduced (in the case of a reduction thereof in part), shall be transferred by the Trustee to the Collection Account as Principal Proceeds.

Amounts on deposit in the Synthetic Security Reserve Account will be held in Eligible Investments with Stated Maturities as directed by the Servicer (which may be in the form of standing instructions) not later than the Business Day after the date of their purchase. All interest and other income from amounts in the Synthetic Security Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(l) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(m) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

10.4 Application of Funds in Accounts; Reports by Trustee

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account and the Closing Date Expense Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account or the Closing Date Expense Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in the Bank's "LMCS" account (or successor account) or, if the Servicer shall subsequently so direct by standing written instruction to the Trustee, such other Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" as shall be designated in such standing instruction maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account or the Closing Date Expense Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and,

upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Synthetic Security Reserve Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Synthetic Security Reserve Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in the Bank's "LMCS" account (or successor account), or if the Servicer shall subsequently so direct by standing written instruction to the Trustee, such other Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds, as shall be designated in such standing instruction. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in the Bank's "LMCS" account (or successor account), or if the Servicer shall subsequently so direct by standing written instruction to the Trustee, such other Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds, as shall be designated in such standing instruction. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in the Bank's

"LMCS" account (or successor account), or if the Servicer shall subsequently so direct by standing written instruction to the Trustee, such other Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in the Bank's "LMCS" account (or successor account), or if the Servicer shall subsequently so direct by standing written instruction to the Trustee, such other Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with the Custodian or a federal or state-chartered depository institution having (x) a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's, (y) a short-term rating of at least "A-1" by S&P (or a long-term rating of at least "A+" by S&P if such institution has no short-term rating) and (z) combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements in accordance with Section 8 of the UCC; **provided**, **however**, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lender shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the Servicing Agreement. The Trustee shall

promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be invested in Eligible Investments as provided in the applicable provisions of this Section 10.4.

10.5 Synthetic Security Counterparty Account

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the related Synthetic Security Counterparty, the Issuer shall direct the Trustee and the Trustee shall establish a segregated Securities Account which shall be held in the name of the Trustee as Entitlement Holder for such Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal, acting at the direction of the Synthetic Security Counterparty, in accordance with the applicable Synthetic Security and this Indenture (a ***Synthetic Security Counterparty Account***). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security, such deposit to be made from funds held in the Collection Account and available for the purchase of Collateral Obligations hereunder (as instructed by the Servicer). The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security (as instructed by the Servicer), be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty (other than any Defaulted Synthetic Termination Payments) in accordance with the Synthetic Security, as directed by the Servicer in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security (as instructed by the Servicer) shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

10.6 Accountings

(a) **Monthly.** Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending December 2007, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchasers, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchasers) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the ***Monthly Report***). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the ***Monthly Determination Date***):

(i) Collateral:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest

concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure

(Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value;"

(Q) The identity of each Structured Finance Obligation serviced by the Servicer and the Aggregate Principal Balance of all such Collateral Obligations;

(R) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty;

(S) (1) the Aggregate Principal Balance of all Cov-lite Loans and (2) the identify of each Collateral Obligation that is a Cov-lite Loan; and

(T) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account.

(iii) Hedge Agreements:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) Coverage Tests, Collateral Quality Tests and Retention Overcollateralization Test:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Retention Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Weighted Average Recovery Rate, the S&P Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Weighted Average Recovery Rate and S&P Minimum Weighted Average Recovery Rate Test with respect to the S&P Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess

was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate;"

(v) Concentration Limitations and Withholding Taxes:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) Securities Lending Agreements:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) **Payment Date Accounting.** The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Initial Purchasers, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Initial Purchasers), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related

Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) Notes:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) Payment Date Payments:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) Accounts:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Reserve Account;

(F) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(G) The amount of any Principal Proceeds in the Securities Lending Account;

(H) The amount in the Hedge Counterparty Collateral Account; and

(I) The amount in the Expense Reimbursement Account.

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by

the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) **Failure to Provide Accounting.** If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(d) **Irish Stock Exchange.** So long as any Class of Notes is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Notes following each Payment Date and inform the Irish Stock Exchange if any such Class of Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Notes are reduced or withdrawn and the information shall be given to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) **Quarterly Letter.** The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) **S&P CDO Monitor**. On or after the Ramp-Up Completion Date and together with each Monthly Report and Valuation Report, the Issuer shall provide to S&P the Excel Default Model Input File via e-mail and, with respect to each Collateral Obligation, the name of the obligor thereon and the CUSIP number thereof (if applicable).

(g) **Payments or Transfers from the Payment Account**. Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

10.7 Release of Collateral

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent (other than the Irish Listing Agent) on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Synthetic Security Reserve Account, the

Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Section 10 and Section 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

10.8 Reports by Independent Accountants

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before October 15 of each year commencing in 2008, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial

Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent certified public accountants and the Issuer with respect to any matter in this Section 10.8, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.8(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

10.9 Reports to Rating Agencies

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

11. APPLICATION OF MONIES

11.1 Disbursements of Monies from Payment Account

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

first, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

second, in the following order of priority,

(i) fees and expenses of the Administrator; and then

(ii) fees and expenses of the Co-Issuers (including fees and expenses of counsel and ongoing surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other Person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) first, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and second, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of accrued and unpaid interest on the Class A-1 Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-1 Notes;

(6) to the payment of accrued and unpaid interest on the Class A-2 Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-2 Notes;

(7) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class B Notes;

(8) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes and the Class B Notes in accordance with the Note Payment Sequence, in each case, in the amount necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (8) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(C)(1) on the current Payment Date);

(9) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest, but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(10) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes and the Class C Notes in accordance with the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied

pursuant to this clause (10) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(C)(3) on the current Payment Date);

(11) to the payment of Class C Deferred Interest;

(12) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(13) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes in accordance with the Note Payment Sequence, in each case in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (13) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(C)(6) on the current Payment Date);

(14) to the payment of Class D Deferred Interest;

(15) to the payment of accrued and unpaid interest on the Class E Notes (excluding Class E Deferred Interest but including interest accrued for the preceding Interest Period on Class E Deferred Interest);

(16) if the Class E Coverage Test is not satisfied on the related Determination Date, to the payment of principal of the Class E Notes in the amount necessary so that the Class E Coverage Test would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full;

(17) to the payment of Class E Deferred Interest;

(18) if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes in accordance with the Note Payment Sequence, in each case in the amount necessary so that a

Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (18) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(C)(10) on the current Payment Date);

(19) during the Replacement Period, if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds 50% of the remaining Interest Proceeds available after the payments pursuant to clause (18) above (or, if the amount necessary to cause the Retention Overcollateralization Test to be satisfied as of such Determination Date is less than 50% of such remaining Interest Proceeds, such necessary amount);

(20) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(21) first, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and second, to the payment (pro rata according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) pro rata to each Noteholder entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(22) to the payment *pari passu* of any (x) Defaulted Hedge Termination Payments and (y) Defaulted Synthetic Termination Payments;

(23) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12.0%;

(24) first, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(i) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and second, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(25) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment pro rata to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (23) and (25) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Synthetic Security Reserve Account, the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Synthetic Security Reserve Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period, shall be distributed in the following order of priority:

(1) (x) first, to the payment of the amounts referred to in clauses (1) through (7) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) second, to the payment of amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A/B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder; **provided** that after giving effect to such payment, each Coverage Test will be satisfied on a *pro forma* basis;

(3) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3) or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (11) of Section 11.1(a)(i) to the extent not previously paid in full thereunder; **provided** that after giving effect to such payment, each Coverage Test will be satisfied on a *pro forma* basis;

(5) to the payment of the amounts referred to in clause (12) of Section 11.1(a)(i) to the extent not previously paid in full thereunder; **provided** that after giving effect to such payment, each Coverage Test will be satisfied on a *pro forma* basis;

(6) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class D Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (6) or until such amounts are paid in full;

(7) to the payment of the amounts referred to in clause (14) of Section 11.1(a)(i) to the extent not previously paid in full thereunder; **provided** that after giving effect to such payment, each Coverage Test will be satisfied on a *pro forma* basis;

(8) to the payment of the amounts referred to in clause (15) of Section 11.1(a)(i) to the extent not previously paid in full thereunder; **provided** that after giving effect to such payment, each Coverage Test will be satisfied on a *pro forma* basis;

(9) to the payment of the amounts referred to in clause (17) of Section 11.1(a)(i) to the extent not previously paid in full thereunder; **provided** that after giving effect to such payment, each Coverage Test will be satisfied on a *pro forma* basis;

(10) to the payment of the amounts referred to in clause (18) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(11) (A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment of the Redemption Prices of all of the Notes to be redeemed (sequentially, in direct order of seniority), (ii) to the

payment of the amounts referred to in clauses (20) through (24) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment of principal of the Notes (sequentially, in direct order of seniority) in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(12) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Section 12 (and, until so applied (including any related deposit into the Synthetic Security Reserve Account, the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (if so required by the terms of the related Synthetic Security) a Synthetic Security Counterparty Account) or until so applied, to the Collection Account to be held as Principal Proceeds);

(13) after the Replacement Period, (i) *first*, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) *second*, to the payment of principal of Notes (sequentially, in direct order of seniority) until paid in full;

(14) to the extent not previously paid in full under clause (12) above, after the Replacement Period, to the payment of the amounts referred to in clauses (20) through (24) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 22

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
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007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
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007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
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007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
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007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
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007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
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007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

(15) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 P.M., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Servicer (subject to Section 6.1(c)(iv)) unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different Persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

12. SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

12.1 Sales of Collateral Obligations

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's

certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) **Credit Risk Obligations.** At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its Funded Amount.

(b) **Credit Improved Obligations.** At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i), to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its Funded Amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer

and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; and

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its Funded Amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) **Non-Performing Collateral Obligations.** At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) **Non-qualifying Collateral Obligations.** At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "***Non-qualifying Collateral Obligation***") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) **Withholding Tax Sales.** At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) **Optional Redemption.** After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Section 9, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (i) the requirements of Section 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in

the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) **Rating Confirmation Failure.** After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) **Workout Assets.** At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) **Supervening Requirement.** Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes a Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

(j) **Tax Sales**. The Issuer must sell (not merely hedge) any Eligible Equity Security or security or other consideration that is received in an exchange and any Defaulted Collateral Obligation or any other obligation or security that in each case does not comply with paragraphs (15), (28) or (29) of the definition of Collateral Obligation not later than five Business Days after the Issuer's receipt thereof (or within five Business Days of such later date as such security may first be sold of in accordance with its terms and applicable law).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the

Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

12.2 Purchase of Collateral Obligations

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Synthetic Security Reserve Account, the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) **Eligibility Criteria.** No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; **provided** that the Weighted Average Moody's Rating Factor does not exceed 2750 or, if the Weighted Average Moody's Rating Factor exceeds 2750 prior to giving effect to such purchase or sale, the Weighted Average Moody's Rating Factor is not increased;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the S&P Minimum Weighted Average Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; **provided**, **however**, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is satisfied or, in the case of the Diversity Test and the Weighted Average Moody's Recovery Rate Test, maintained or improved; *provided* that if the Weighted Average Moody's Rating Factor exceeds 2750 prior to giving effect to such purchase or sale, the Weighted Average Moody's Rating Factor is not increased and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable;

(E) the current Moody's Rating on the Class A-1 Notes and the Class A-2 Notes is "Aaa" and the current Moody's Ratings on the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes are no lower than one subcategory below their Initial Rating; and

(F) the Stated Maturity of such Collateral Obligation is equal to or earlier than the Stated Maturity of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable.

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement.

(c) **Certain Permitted Exchanges.** The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) **Certification by Servicer.** Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase

complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) **Eligible Investments.** Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

12.3 Conditions Applicable to All Sale and Purchase Transactions

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Section 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Section 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

12.4 Certain Determinations Relating to Collateral Obligations

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in

each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; **provided**, **however**, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

13. NOTEHOLDERS' RELATIONS

13.1 Subordination

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
A-1	A-2, B, C, D, E, Preference Shares*	None
A-2	B, C, D, E, Preference Shares*	A-1
B	C, D, E, Preference Shares*	A-1, A-2
C	D, E, Preference Shares*	A-1, A-2, B
D	E, Preference Shares*	A-1, A-2, B, C
E	Preference Shares*	A-1, A-2, B, C, D
Preference Shares	None**	A-1, A-2, B, C, D, E

* Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

** The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Section 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall

be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

13.2 Standard of Conduct

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

14. MISCELLANEOUS

14.1 Form of Documents Delivered to Trustee

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

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a

certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

14.2 Acts of Holders of Securities

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (**provided** that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Holders of Securities signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

14.3 Notices, etc., to Certain Persons or Parties

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at, 200 Clarendon Street, Mail Code EUC 108, Boston, MA 02116, telecopy no. (617) 351-4358, Attention: CDO Services Group, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under Section 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Maples Finance Limited, P.O. Box 1093GT, Boundary Hall, Cricket Square, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: The Directors—Stratford CLO Ltd., or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Servicer at its address below;

(iii) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James

Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) the Initial Purchasers shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Initial Purchasers addressed to them at 1301 Avenue of the Americas, New York, NY 10019, telecopy no. (212) 526-6713, Attention: Credit Markets & CDOs, or at any other address previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of either Initial Purchaser, as the case may be

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report and Valuation Report, together with the Excel Default Model Input File in each case, shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com (**provided** that the request for rating confirmation pursuant to Section 7.19(e) shall be addressed to CDOEffectiveDatePortfolios@standardandpoors.com) ; or

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to c/o Maples Finance Limited, P.O. Box 1093GT, Boundary Hall, Cricket Square, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: The Directors—Stratford CLO Ltd.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the

notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A-1 Notes or Class A-2 Notes may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A-1 Notes or Class A-2 Notes, as applicable, on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A-1 Notes or Class A-2 Notes, as applicable) to the Trustee in substantially the form of Exhibit J specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A-1 Notes or Class A-2 Notes, as applicable (each, an "***Insurer***"). After receipt of any such notice (in the form of Exhibit J) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

14.4 Notices to Noteholders and the Preference Shares Paying Agent; Waiver

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders or the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders or the Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event or the Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register or at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder or the Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information in its possession or notice received by it and relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information in its possession or notice received by it, and relating to the Indenture that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder or the Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders or the Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders or the Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders or the Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

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

So long as any Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Noteholders or the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Initial Purchasers all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation relating to the Notes requested by the Initial Purchasers (collectively, the "***Transaction Reports***") and the Issuer consents to the Initial Purchasers providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Initial Purchasers or any of their Affiliates).

14.5 Effect of Headings and Table of Contents

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

14.6 Successors and Assigns

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

14.7 Separability

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

14.8 Benefits of Indenture

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

14.9 Governing Law

This Indenture and each Note shall be construed in accordance with, and this Indenture and each Note and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Indenture and each Note shall be governed by, the law of the State of New York.

14.10 Submission to Jurisdiction

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of State Street Bank and Trust Company (to the attention of State Street Bank and Trust Company, Trustee for Stratford CLO Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

14.11 Counterparts

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

14.12 Acts of Issuer

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

14.13 Liability of Co-Issuers

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

14.14 Indemnity of Co-Issuer

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Section 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

15. ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

15.1 Assignment of Servicing Agreement; Amendment of Servicing Agreement

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of

the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(i) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(ii) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations,

covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(iii) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h) below.

(v) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(vi) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies

of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use its best efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; **provided** that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and (c) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the ***Objection Cut-Off Date***). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object

to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

15.2 Hedge Agreements

(a) At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer and with the consent of a Majority of the Controlling Class, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1. The Issuer shall not enter into any Hedge Agreement the payments from which are subject to withholding tax unless the Issuer is not required to make additional payments to the Hedge Counterparty on account of amounts withheld and the Hedge Counterparty is required to make additional payments so that the net amount received by the Issuer after satisfaction of such tax is the amount due to the Issuer before the imposition of withholding tax. The Issuer shall not enter into any Hedge Agreement the entry into, performance or termination of which would subject the Issuer to net income tax in any jurisdiction outside of the Issuer's jurisdiction of incorporation.

(b) If at any time a Hedge Counterparty does not have the Required Rating, then the Hedge Counterparty shall be required to post collateral, obtain a guarantor, replace itself with a substitute Hedge Counterparty or take such other measures as specified in the applicable Hedge Agreement that has been entered into according to Section 15.2(i) below.

(c) Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty thereto shall comply with the then currently applicable rating criteria of each Rating Agency from time to time (the ***Required Rating***).

(d) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(e) Except as provided in paragraph (i) of this Section 15.2, the Issuer, at the direction of the Servicer, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating

Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(f) Notwithstanding Section 15.2(f), the applicable requirements of Section 15.2(f) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(g) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(h) Each Hedge Agreement may be terminated pursuant to its terms by the Hedge Counterparty upon an Optional Redemption of the Notes, (but only after the applicable notice of redemption may no longer be withdrawn pursuant to Section 9.03) an acceleration of maturity of the Notes followed by the liquidation of any or all of the Collateral after an Event of Default or the entry into certain amendments to the Indenture without the consent of the Hedge Counterparty. The Hedge Agreement will not be permitted to be terminated by the Issuer as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(i) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

Executed as a Deed by

STRATFORD CLO LTD.,
as Issuer

By: _____
Name:
Title:

Witness:_____
Name:
Occupation:
Address:

STRATFORD CLO LLC,
as Co-Issuer

By: _____
Name:
Title:

STATE STREET BANK AND TRUST COMPANY,
as Trustee and as Custodian

By: _____
Name:
Title:

SCHEDULE 1

List of Collateral Obligations

Stratford CLO, LTD.

Schedule 1

Issuer	Asset	Commitment	Spread	Maturity	Moody's DPR	Moody's Obligation Rating	S&P Rating
401 North Wabash Venture LLC	Loan	3,000,000	3.75%	6/7/2008	Ba3	Ba3	B
Acquireco LLC (Telesat)	Delayed Draw Term Loan B	236,220	3.00%	10/9/2014	B2	B1	B+
Acquireco LLC (Telesat)	Term Loan B	2,763,780	3.00%	10/9/2014	B2	B1	B+
Acument Global Technologies, Inc. (fka TFS Acquisition)	Term Loan	990,000	3.50%	8/11/2013	B2	B2	B+
Advanced Lighting Technologies, Inc.	Deferred Draw Term Loan (First Lien)	272,727	2.75%	6/1/2013	B2	B1	B
Advanced Lighting Technologies, Inc.	Second Lien Term Loan Note	1,000,000	6.00%	6/1/2014	B2	Caa1	B
Advanced Lighting Technologies, Inc.	Term Loan (First Lien)	1,221,136	2.75%	6/1/2013	B2	B1	B
Affinia Group Inc.	Tranche B Term Loan	951,885	3.00%	11/30/2011	B2	Ba3	B
AIMCO Properties, L.P.	400MM Term Loan	3,166,667	1.50%	3/22/2011	Baa3	Baa3	BB+
Alliance Imaging, Inc.	Tranche C1 Term Loan	899,531	2.50%	12/29/2011	B1	Ba3	B+
Alon USA Energy, Inc.	Edgington Facility	109,722	2.25%	6/22/2013	B2	B1	B+
Alon USA Energy, Inc.	Paramount Facility	877,778	2.25%	6/22/2013	B2	B1	B+
American Achievement Corp.	Tranche B Term Loan	3,362,008	2.25%	3/25/2011	B2	Ba2	B
American Airlines, Inc.	Term 2 Advance	3,482,322	2.00%	12/17/2010	B2	Ba3	B
Aramark Canada Ltd.	Canadian Term Loan	985,038	2.00%	1/26/2014	B1	Ba3	B+
Aramark Corporation	LC Facility Letter of Credit	260,091	2.00%	1/26/2014	B1	Ba3	B+
Aramark Corporation	U.S. Term Loan	3,639,114	2.00%	1/26/2014	B1	Ba3	B+
Arrowhead General Insurance Agency, Inc.	First Lien Term Loan	5,975,526	3.00%	8/8/2012	B2	B2	B
Astoria Generating Company Acquisitions, LLC	First Lien Term Loan B	939,757	2.00%	2/23/2013	B1	B1	B+
AWAS Capital, Inc.	Loan (First Lien)	2,400,495	1.75%	3/15/2013	B2	B2	B+
BakerCorp.	Tranche C Term Loan	1,995,000	2.25%	5/8/2014	B2	B1	B
Berry Plastics Holding Corporation	Term C Loan	497,500	2.00%	4/3/2015	B3	Ba3	B
Berry Plastics Holding Corporation	Term C Loan	1,492,500	2.00%	4/3/2015	B3	Ba3	B
Big West Oil, LLC	Delayed Advance Loan	2,200,000	2.25%	5/15/2014	B1	B1	B+
Big West Oil, LLC	Initial Advance Loan	1,790,000	2.25%	5/15/2014	B1	B1	B+
BioTech Research Labs/Philosophy Merger Sub, Inc	Term Loan (First Lien)	2,979,200	2.00%	3/16/2014	B2	B1	B
Birds Eye Foods, Inc.	Tranche B Term Loan	3,446,667	1.75%	3/22/2013	B1	B1	B+
Blockbuster Inc.	Tranche B Term Loan	1,235,147	4.25%	8/20/2011	Caa1	B3	B-
Bresnan Communications, LLC	Additional Term Loan B (First Lien)	2,500,000	2.00%	6/30/2013	B2	B2	B+
Brickman Group Holdings, Inc.	Tranche B Term Loan	1,487,513	2.00%	1/23/2014	B2	Ba3	B+
Burlington Coat Factory Warehouse Corporation	Term Loan	6,909,414	2.25%	5/28/2013	B2	B2	B
Calpine Corporation	First Priority Term Loan	12,945,000	2.25%	3/29/2009	B1	B1	B+
Caritor, Inc.	Closing Date Term Loan	10,206,977	2.25%	6/4/2013	B1	B1	BB-
Caritor, Inc.	Synthetic LC Loan	767,442	2.25%	6/4/2013	B1	B1	BB-
Celanese US Holdings LLC	Term Loan	5,472,500	1.75%	4/2/2014	Ba3	Ba3	BB-
Cequel Communications, LLC (aka Cebridge)	2nd Lien Tr A TL (Cash Pay)	1,000,000	4.50%	5/5/2014	B2	Caa1	B+
Cequel Communications, LLC (aka Cebridge)	Term Loan	6,965,000	2.00%	11/5/2013	B2	B1	B+
CHG Companies Inc. / CHG Medical Staffing Inc.	First Lien Term Loan B	3,168,020	2.50%	12/20/2012	B1	Ba3	B
CHG Companies Inc. / CHG Medical Staffing Inc.	Second Lien Term Loan	2,000,000	6.00%	12/20/2013	B1	B3	B
CHG Companies Inc. / CHG Medical Staffing Inc.	Synthetic LOC Loan (First Lien)	800,000	2.50%	12/20/2012	B1	Ba3	B
Chiquita Brands L.L.C.	Term C Loan	1,000,000	3.00%	6/28/2012	B3	B1	B-
Clarke American Corp.	Tranche B Term Loan	1,000,000	2.50%	6/30/2014	B2	B1	B+
CNOVA 2007-2A	Floating - 10/2021 - C - 19964QAD8	2,500,000	2.25%	10/15/2021	A2	A2	A
CNOVA 2007-2A	Floating - 10/2021 - D - 19964QAE6	1,500,000	4.50%	10/15/2021	Baa2	Baa2	BBB
Compass Minerals Group, Inc.	Term Loan	786,496	1.50%	12/22/2012	Ba3	Ba2	BB-
Conseco, Inc	New Term Loan	5,939,963	2.00%	10/10/2013	Ba3	Ba3	B+
Consolidated Communications, Inc.	New Term D Loan	2,688,125	1.75%	10/14/2011	B1	Ba3	BB-
Corel Corporation/Corel US Holdings, LLC	Term Loan	2,940,300	4.00%	5/2/2012	B3	B3	B
Crescent Resources, LLC	Term Loan	2,000,000	3.00%	9/7/2012	Ba2	Ba2	BB
Cricket Communications, Inc. (aka Leap Wireless)	Revolver	1,000,000	2.00%	6/16/2011	B2	Ba2	B-
Cricket Communications, Inc. (aka Leap Wireless)	Term B Loan	7,924,812	2.25%	6/16/2013	B2	Ba2	B-
Custom Building Products, Inc.	Term Loan (First Lien)	1,652,244	2.25%	10/20/2011	B1	B1	B
CW Media Holdings Inc	Tranche B Term Loan	5,000,000	3.25%	2/15/2015	B1	Ba1	B
D&E Communications, Inc.	Term Loan B	2,924,839	1.75%	12/31/2011	Ba3	Ba2	BB-
Delphi Corporation	Tranche B Loan	2,000,000	2.25%	12/31/2007	Ba1	Ba1	BB-
Delta Air Lines, Inc.	Second Lien Term Loan	3,000,000	3.25%	4/30/2014	B2	B2	B
Dex Media East LLC	New Tranche B Term Loan	398,920	1.50%	5/8/2009	B1	Ba1	BB-
Discovery Communications Holding, LLC	Term B Loan	6,982,500	2.00%	5/14/2014	Ba2	B1	BB-
Dole Food Company, Inc.	Credit-Linked Deposit	94,306	2.00%	4/12/2013	B2	Ba3	B
Dole Food Company, Inc.	Tranche B Term Loan	209,006	2.00%	4/12/2013	B2	Ba3	B
DS Waters of America, Inc.	Term Loan	1,985,000	2.25%	10/27/2012	B3	Ba3	B-
EL AD IDB Las Vegas LLC	Tranche A1	2,000,000	2.75%	8/10/2008	B3	B3	B
Emerson Reinsurance Ltd.	Series A Loan	3,900,000	1.75%	12/15/2011	A2	A2	A-
Emerson Reinsurance Ltd.	Series B Loan	1,500,000	3.00%	12/15/2011	Baa3	Baa3	BB+
Emerson Reinsurance Ltd.	Series C Loan	600,000	5.25%	12/15/2011	Ba2	Ba2	BB
Ferro Corporation	Term Loan	1,584,830	2.00%	6/6/2012	B1	B1	B+
Flag Luxury Properties Holdings, LLC	First Lien Facility	1,363,541	4.25%	3/21/2011	B2	B1	B
FleetCor Technologies Operating Company, LLC	Tranche 1 Term Loan	2,487,500	2.25%	4/30/2013	B1	Ba3	B+
FleetCor Technologies Operating Company, LLC	Tranche 2 Term Loan	500,000	2.25%	4/30/2013	B1	Ba3	B+
Foamex L.P.	Loan (First Lien)	1,951,588	2.25%	2/12/2013	B2	B1	B
Fontainebleau Las Vegas, LLC	Delayed Draw Term Loan	2,000,000	3.25%	6/6/2014	B2	B1	B
Fontainebleau Las Vegas, LLC	Initial Term Loan	4,000,000	3.25%	6/6/2014	B2	B1	B
Ford Motor Company	Term Loan	7,917,613	3.00%	12/16/2013	B3	Ba3	B+
Freeport-McMoRan Copper & Gold Inc.	8.375% - 04/2017 - 35671DAS4	1,000,000	8.38%	4/1/2017	Ba3	Ba3	BB+
Freeport-McMoRan Copper & Gold Inc.	Floating - 04/2015 - 35671DAT2	1,000,000	3.25%	4/1/2015	Ba3	Ba3	BB+
Freescale Semiconductor, Inc.	Term Loan	1,985,000	1.75%	11/29/2013	Ba3	Baa3	B+
Gambro Holding AB	Facility B2	1,329,356	2.50%	6/5/2014	B2	B3	B-
Gambro Holding AB	Facility C2	1,329,356	3.00%	6/5/2015	B2	B3	B-
Generac Acquisition Corp.	First Lien Term Loan	990,000	2.50%	11/10/2013	B2	B1	B
Generac Acquisition Corp.	Second Lien Term Loan	2,500,000	6.00%	5/10/2014	B2	Caa1	B
General Motors Corporation	Secured Term Loan	1,985,000	2.38%	11/29/2013	B3	Ba3	B+
Genoa Healthcare Group, LLC	Revolver	1,000,000	3.00%	8/10/2010	B2	Ba3	B
Georgia Gulf Corp.	Term Loan	611,787	2.50%	10/3/2013	B1	Ba2	B
Georgia-Pacific LLC	Term B Loan	1,965,000	1.75%	12/20/2012	Ba3	Ba2	BB-
Ginn LA Conduit Lender, Inc.	First Lien Tranche A Credit-Linked Deposit	1,574,127	3.50%	6/8/2011	Caa2	Caa1	CCC+
Ginn LA Conduit Lender, Inc.	First Lien Tranche B Term Loan	3,393,232	3.50%	6/8/2011	Caa2	Caa1	CCC+
Graceway Pharmaceuticals, LLC	Term B Loan (First Lien)	10,816,667	2.75%	5/3/2012	B2	Ba3	B+
Graham Packaging Company, L.P.	New Term Loan	2,000,000	2.25%	10/7/2011	B2	B1	B
Gray Television, Inc.	Term Loan B - DD	4,000,000	1.50%	12/31/2014	Ba3	Ba3	B
Greenwood Racing Inc.	Term Loan	3,970,000	2.25%	11/28/2011	B2	B2	B+
Hanesbrands Inc.	Term B Loan	2,181,250	1.75%	9/5/2013	Ba3	Ba2	B+
Hargray Acquisition Co./DPC Acquisition LLC/HCP Acquisition	Second Lien Term Loan	1,000,000	5.50%	1/29/2015	B2	Caa1	B
Hawker Beechcraft Acquisition Company LLC	LC Facility Deposit	468,085	2.00%	3/26/2014	B2	Ba3	B+
Hawker Beechcraft Acquisition Company LLC	Term Loan	5,504,255	2.00%	3/26/2014	B2	Ba3	B+
HCA Inc.	Tranche B Term Loan	2,917,569	2.25%	11/18/2013	B2	Ba3	B+
Health Management Associates, Inc	Term B Loan	2,487,500	1.75%	2/28/2014	Ba3	Ba2	B+
Healthcare Partners, LLC	New Term Loan	928,571	1.75%	10/31/2013	B1	Ba3	BB
HealthSouth Corporation	Term Loan	293,331	2.50%	3/10/2013	B3	B2	B
Helix Energy Solutions Group, Inc.	Term Loan	9,880,285	2.00%	7/1/2013	B2	B1	BB-
HUB International Limited	Delay Draw Term Loan	183,263	2.50%	6/13/2014	B3	B2	B
HUB International Limited	Initial Term Loan	816,737	2.50%	6/13/2014	B3	B2	B
IAP Worldwide Services, Inc.	Term Loan (First-Lien)	989,924	6.25%	12/30/2012	B3	B2	CCC-
IM US Holdings, LLC (Inverness Medical)	Term Loan (Second Lien)	1,000,000	4.25%	6/26/2015	B2	Caa1	B+

Issuer	Asset	Commitment	Spread	Maturity	Moody's DPR	Moody's Obligation Rating	S&P Rating
Insight Midwest Holdings, LLC	B Term Loan	2,000,000	1.75%	4/7/2014	B1	Ba3	B+
Integra Telecom Holdings, Inc.	Term Loan	4,000,000	4.25%	8/31/2013	B3	Ba3	B-
Interstate Fibernet, Inc.	Term Loan (First Lien)	2,000,000	4.00%	7/31/2013	B3	B2	B-
Iowa Telecommunications Services, Inc.	Tranche B	1,500,000	1.75%	11/23/2011	Ba3	Ba3	BB-
Jarden Corporation	Term Loan B1	1,284,073	1.75%	1/24/2012	B1	Ba3	B+
Kenan Advantage Group, Inc.	Incremental Term Loan	982,508	3.00%	12/16/2011	B3	B3	B+
KKR 2007 - AA	Floating - 10/2017 - C - 482486AE7	4,000,000	2.65%	10/31/2017	A2	A2	A
Knology, Inc.	Term Loan	4,987,500	2.25%	6/30/2012	B2	B2	B
Kuilima Resort Company (Turtle Bay)	First Lien Term Loan	9,138,805	2.75%	9/30/2010	B2	B1	B-
Kyle Acquisition Group, LLC	Facility B	4,386,758	3.50%	7/20/2008	Ba3	Ba3	BB
Kyle Acquisition Group, LLC	Facility C	613,242	3.50%	7/20/2010	Ba3	Ba3	BB
LNR Property Corporation	Initial Tranche B Term Loan	5,000,000	2.75%	7/12/2011	B2	B2	B+
LPL Holdings, Inc.	Tranche D Term Loan	3,813,729	2.00%	6/28/2013	B1	B1	B
Macerich Partnership, L.P., The	Term Loan	666,667	1.50%	4/26/2010	Ba1	Ba1	BBB-
Mach Gen, LLC	Revolver	2,000,000	2.25%	2/22/2012	B2	B2	B
Mach Gen, LLC	Synthetic L/C Loan (First Lien)	374,147	2.00%	2/22/2013	B2	B2	B
Mach Gen, LLC	Term B Loan (First Lien)	3,589,624	2.00%	2/22/2014	B2	B2	B
Maritime Telecommunications Network, Inc.	Term Loan (First Lien)	1,461,154	2.75%	5/11/2012	B2	B2	B
Matrix Acquisition Corp. (MacDermid, Incorporated)	Tranche B Term Loan	1,990,000	2.00%	4/12/2014	B2	B1	B
Maxum Petroleum, Inc. (f/k/a Global Petroleum, Inc.)	Term Loan	987,500	4.50%	9/18/2013	B2	B2	B
MCC Iowa LLC (Mediacom Broadband Group)	Tranche A Term Loan	504,167	1.50%	3/31/2010	B1	Ba3	BB-
Mediacom Illinois, LLC (fka Mediacom Communications, LLC)	Tranche C Term Loan	5,071,978	1.75%	1/31/2015	B1	Ba3	BB-
Merrill Communications LLC	Loan (Second Lien)	1,000,000	6.50%	11/15/2013	B1	B3	B+
Metro-Goldwyn-Mayer Inc.	Tranche B Term Loan	7,680,867	3.25%	4/8/2012	Ba3	Ba3	CCC+
Metro-Goldwyn-Mayer Inc.	Tranche B-1 Term Loan	2,487,500	3.25%	4/8/2012	Ba3	Ba3	CCC+
MetroPCS Wireless, Inc.	New Tranche B Term Loan	8,910,000	2.25%	11/4/2013	B2	Ba3	B-
Mirant North America, LLC	Term Loan	2,058,185	1.75%	1/3/2013	B2	Ba3	B
MultiPlan, Inc.	Term B Loan	1,432,131	2.50%	4/12/2013	B2	B1	B+
MultiPlan, Inc.	Term C Loan	2,130,562	2.50%	4/12/2013	B2	B1	B+
NES Rentals Holdings, Inc.	Permanent Term Loan (Second-Lien)	3,000,000	6.75%	7/20/2013	B3	Caa1	B+
New Aster S.A.R.L. (Flint Group)	Term Loan B9 (USD)	4,000,000	2.25%	12/31/2012	Ba3	Ba3	B
NewPage Corporation	New Term Loan	2,861,882	2.25%	5/2/2011	B1	Ba2	B
Newpark Resources, Inc.	Facility	2,221,933	3.00%	8/18/2011	B1	B2	B+
Nortek, Inc.	Term Loan	992,327	2.25%	8/27/2011	Ba2	Ba2	B
Northwest Airlines, Inc.	Term Loan	10,207,000	2.00%	8/21/2013	B1	Ba3	B+
November 2005 Land Investors, LLC (North Las Vegas Consor	Loan (Second Lien)	1,100,000	7.00%	5/9/2012	B2	Caa1	BB-
NRG Energy, Inc.	Credit-Linked Deposit	1,867,232	1.75%	2/1/2013	Ba3	Ba1	B+
NRG Energy, Inc.	Term Loan	4,486,460	1.75%	2/1/2013	Ba3	Ba1	B+
NRG Holdings, Inc.	Term Loan	3,000,000	2.50%	6/8/2014	Ba3	B2	B+
Nuvox, Inc.	Tranche B Term Loan	997,500	3.25%	5/31/2014	B2	B2	B-
Onex Carestream Finance LP	Term Loan (First Lien)	10,000,000	2.00%	4/30/2013	B1	Ba2	B+
Orbitz Worldwide, Inc.	Term Loan	4,500,000	3.00%	7/25/2014	B2	B1	B
OSHKOSH TRUCK CORPORATION	Term B Loan	2,468,750	1.75%	12/6/2013	Ba3	Ba3	BB
OSI Restaurant Partners, LLC	Incremental Term Loan	5,014,201	2.25%	6/14/2014	B2	B1	B
OSI Restaurant Partners, LLC	Pre-Funded RC Loan	385,159	2.25%	6/14/2013	B2	B1	B
PBM Holdings, Inc.	Term Loan	945,556	2.50%	9/28/2012	B2	B1	B
Penton Media, Inc.	Loan (Second Lien)	2,000,000	5.00%	2/1/2014	B2	Caa1	B
Penton Media, Inc.	Term Loan (First Lien)	1,000,000	2.25%	2/1/2013	B2	B1	B
PGT Industries, Inc.	First Lien Tranche A-2 Term Loan	3,927,789	3.00%	2/14/2012	B2	B2	B
Pharmaceutical Holdings Corp.	Loan	3,900,000	3.25%	1/30/2012	B2	B2	B+
Physiotherapy Associates, Inc. / Benchmark Medical, Inc.	Term Loan	1,995,000	3.00%	6/28/2013	B2	B1	B
Physiotherapy Associates, Inc. / Benchmark Medical, Inc.	Term Loan (Second Lien)	1,000,000	6.50%	12/31/2013	B2	Caa1	B
Pinnacle Foods Finance LLC	Term Loan	7,980,000	2.75%	4/2/2014	B3	B2	B-
Polypore, Inc.	US$ Term Loan	1,995,000	2.25%	7/3/2014	B3	Ba3	B
Port Barre Investments, LLC, d/b/a Bobcat Gas Storage	Term B Loan	1,000,000	2.13%	9/8/2014	B2	B2	B
Prestige Brands, Inc.	Tranche B Loan	584,249	2.25%	4/6/2011	B1	Ba3	B+
RCN Corporation	Initial Term Loan	3,000,000	2.25%	4/25/2014	B1	B1	B-
ReAble Therapeutics Finance, LLC (Encore Medical)	Term Loan (New)	1,980,005	2.50%	11/4/2013	B3	B1	B
Realogy Corporation	Delayed Draw Term B Loan (Funded)	3,000,000	3.00%	10/10/2013	B3	Ba3	B+
Reliant Pharmaceuticals, Inc.	Delayed Draw Term Loan	833,023	3.25%	3/31/2012	B2	B2	B+
Reliant Pharmaceuticals, Inc.	Initial Term Loan	3,146,977	3.25%	3/31/2012	B2	B2	B+
Rental Service Corporation	Second Lien Initial Term Loan	5,178,164	3.50%	11/30/2013	B2	B3	B+
Rexair LLC	First Lien Term Loan	4,740,983	4.25%	6/30/2010	B1	B1	B
Rhodes Companies, LLC, The	First Lien Term Loan	3,646,528	3.50%	11/21/2010	B2	B2	B
Roofing Supply Group, LLC	First Lien Term Loan	990,000	4.00%	8/24/2013	B2	B1	B
Sabre Inc.	Initial Term Loan	6,802,653	2.00%	9/30/2014	B2	B1	B+
Sally Holdings LLC	Term B Loan	5,940,000	2.50%	11/18/2013	B2	B2	B
Secure Computing Corporation	Term Loan	1,244,444	3.25%	8/31/2013	B2	B2	B+
Select Medical Corporation	Tranche B Term Loan	975,000	2.00%	2/24/2012	B2	Ba2	B
Smurfit-Stone Container Enterprises, Inc.	Deposit Funded Commitment	378,430	-0.10%	11/1/2010	B2	Ba2	B
Smurfit-Stone Container Enterprises, Inc.	Tranche B	533,785	2.00%	11/1/2011	B2	Ba2	B
Smurfit-Stone Container Enterprises, Inc.	Tranche C	806,309	2.00%	11/1/2011	B2	Ba2	B
Solo Cup Company	Term B1 Loan	903,077	3.50%	2/27/2011	B3	B1	CCC+
Solutia Inc.	Dip Add-on Term Loan B	2,835,414	3.00%	3/31/2008	B2	B1	BB
Solvest, Ltd. (Dole)	Tranche C Term Loan	696,687	2.00%	4/12/2013	B2	Ba3	B
Spirit Aerosystems, Inc. (fka Mid-Western Aircraft Systems,Inc	Term B Loan	6,823,929	1.75%	9/30/2013	Ba3	Ba3	BB
Spirit Finance Corporation	Loan	10,000,000	3.00%	8/1/2013	B1	B2	BB-
Sports Authority, Inc., The	Term Loan B	3,950,000	2.25%	5/3/2013	B2	B2	B
Standard Pacific Corp.	Term Loan B	1,800,000	1.75%	5/5/2013	Ba3	Ba3	BB
Stiefel Laboratories, Inc.	Delayed Draw Term Loan	1,290,409	2.25%	12/28/2013	B1	B1	B+
Stiefel Laboratories, Inc.	Initial Term Loan (First Lien)	1,687,091	2.25%	12/28/2013	B1	B1	B+
Stile U.S. Acquisition Corp. (aka Masonite)	US Term Loan	975,000	2.00%	4/6/2013	B2	Ba3	B+
Stratos Global Corporation/Stratos Funding LP	Term B Facility	1,237,500	2.75%	2/13/2012	B1	Ba2	B+
SunGard Data Systems Inc (Solar Capital Corp)	Term Loan B	2,481,250	2.00%	2/28/2014	B2	Ba3	B+
Sunshine Acquisition Limited (aka HIT Entertainment)	Term Facility	984,937	2.00%	3/20/2012	B1	Ba3	B
Supervalu Inc.	Term Loan B	1,970,000	1.50%	6/2/2012	Ba3	Ba3	BB-
Talecris Biotherapeutics Holdings Corp.	First Lien Term Loan	9,925,000	3.50%	12/6/2013	B2	B2	B+
Tamarack Resort LLC	Tranche A Credit-Linked Deposit	1,691,549	-0.10%	5/19/2011	B2	B2	B+
Tamarack Resort LLC	Tranche B Term Loan	2,499,264	3.25%	5/19/2011	B2	B2	B+
Targa Resources, Inc.	Synthetic L/C Loan	1,351,691	2.00%	10/31/2012	B1	Ba3	B
Targa Resources, Inc.	Term Loan	5,519,403	2.00%	10/31/2012	B1	Ba3	B
Time Warner Telecom Holdings Inc.	Term Loan B Loan	992,500	2.00%	1/7/2013	B2	Ba2	B
Total Safety U.S., Inc.	Tranche B Term Loan (First Lien)	1,985,000	3.00%	12/8/2012	B2	Ba3	B-
Totes Isotoner Corporation	First Lien Term Loan	995,000	2.50%	1/31/2013	B2	B2	B
Totes Isotoner Corporation	Loan (Second Lien)	2,000,000	6.00%	1/31/2014	B2	Caa1	B
Travelport LLC (F/K/A Travelport Inc.)	Delayed Draw Term Loan	5,596,000	2.25%	8/23/2013	B2	Ba3	B
Travelport LLC (F/K/A Travelport Inc.)	Original Post-First Amendment and Restate	420,459	2.25%	8/23/2013	B2	Ba3	B
Travelport LLC (F/K/A Travelport Inc.)	Tranche B Dollar Term Loan	3,737,129	2.25%	8/23/2013	B2	Ba3	B
Tribune Company	Initial Tranche B Advance	7,581,000	3.00%	5/19/2014	B1	Ba2	B
Tribune Company	Tranche X Advance	5,040,000	2.50%	5/18/2009	B1	Ba2	B
Triumph Healthcare Second Holdings, LLC	Term Loan (First Lien)	997,484	3.00%	7/28/2013	B2	B2	B
Triumph Healthcare Second Holdings, LLC	Term Loan (Second Lien)	1,000,000	8.00%	7/28/2014	B2	Caa1	B
TRU 2005 RE Holding Co. I, LLC	Loan	6,000,000	3.00%	12/9/2008	B2	B2	B
Trump Entertainment Resorts Holdings, L.P.	Term C-1 Facility	730,344	2.50%	5/20/2012	B3	Ba3	B
Trump Entertainment Resorts Holdings, L.P.	Term C-2 Facility	730,344	2.50%	5/20/2012	B3	Ba3	B
Trussway Industries, Inc.	Revolver	1,000,000	2.75%	5/31/2009	B2	B1	B-
Trussway Industries, Inc.	Term Loan	987,137	3.50%	5/31/2009	B2	B3	B-
Tube City IMS Corporation	Credit-Linked Deposit	108,108	2.25%	1/25/2014	B1	Ba3	B+

Issuer	Asset	Commitment	Spread	Maturity	Moody's DPR	Moody's Obligation Rating	S&P Rating
Tube City IMS Corporation	First Lien Term Loan	887,432	2.25%	1/25/2014	B1	Ba3	B+
United Components, Inc.	Tranche D Term Loan	493,182	2.00%	6/30/2012	B3	Ba3	B
United Rentals, Inc.	Initial Term Loan	488,782	2.00%	2/14/2011	B2	Ba2	B+
United Rentals, Inc.	Tranche B Credit-Linked Deposit	223,629	2.25%	2/14/2011	B2	Ba2	B+
Univision Communications Inc.	Delayed Draw Term Loan	285,235	2.25%	9/29/2014	B1	Ba3	B
Univision Communications Inc.	Initial Term Loan	11,597,315	2.25%	9/29/2014	B1	Ba3	B
UPC Financing Partnership	N Facility	4,000,000	1.75%	12/31/2014	Ba3	Ba3	B
US Airways Group, Inc.	Loan	2,000,000	2.50%	3/23/2014	B3	B2	B-
Valleycrest Companies LLC (VCC Holdco II Inc.)	New Term Loan	4,975,000	2.00%	10/4/2013	B1	B1	B+
Verint Systems Inc.	Term Loan	4,692,308	2.75%	5/27/2014	B3	B3	B
Virgin Media Investment Holdings Limited (fka NTL)	B4 Facility	2,500,000	2.00%	9/3/2012	Ba3	Ba2	B
VML US Finance LLC (aka Venetian Macau)	New Project Term Loan	500,000	2.25%	5/25/2013	B1	B1	BB-
VML US Finance LLC (aka Venetian Macau)	Term B Delayed Draw Project Loan	1,955,376	2.25%	5/25/2012	B1	B1	BB-
VML US Finance LLC (aka Venetian Macau)	Term B Funded Project Loan	1,644,624	2.25%	5/25/2013	B1	B1	BB-
Vought Aircraft Industries, Inc.	Term Loan	649,412	2.50%	12/22/2011	B2	Ba2	B-
WAICCS Las Vegas 3 LLC	Loan (First Lien)	4,000,000	3.50%	8/1/2008	B3	B1	B
WAICCS Las Vegas 3 LLC	Loan (Second Lien)	1,500,000	9.00%	8/1/2008	B3	Caa2	B
Warner Chilcott Company, Inc.	Tranche B Acquisition Date Term Loan	8,049,025	2.00%	1/18/2012	B1	Ba3	B+
Warner Chilcott Corporation	Tranche C Acquisition Date Term Loan	2,401,501	2.00%	1/18/2012	B1	Ba3	B+
Water PIK, Inc.	Loan (First Lien)	3,990,000	3.25%	6/15/2013	B3	B1	B-
West Corporation	Term B-2 Loan	6,935,094	2.38%	10/24/2013	B2	B1	B+
WideOpenWest Finance , LLC	Term Loan (First Lien)	4,000,000	2.50%	6/30/2014	B3	B2	B-
Wimar Opco LLC (Tropicana)	Term Loan	2,369,112	2.25%	1/3/2012	B2	Ba3	B
WM. Bolthouse Farms, Inc.	Second Lien Term Loan	1,250,000	5.50%	12/16/2013	B2	Caa1	B
WM. Bolthouse Farms, Inc.	Term Loan (First Lien)	5,560,076	2.25%	12/17/2012	B2	Ba3	B
WMG Acquisitions Corporation	Term Loan	2,912,903	2.00%	2/28/2011	Ba3	Ba2	B+
WP Evenflo Acquisition, Inc.	First Lien Term Loan	1,500,000	2.50%	2/7/2013	B2	B1	B-
Yell Group Plc	Facility B1	3,000,000	2.00%	10/27/2012	Ba3	Ba3	BB-
Yellowstone Mountain Club, LLC	Loan (First Lien)	4,400,113	2.38%	9/30/2010	B1	B1	B+
		659,783,813					

SCHEDULE 2

Moody's Industry Classification Group List

Aerospace and Defense: Major Contractor, Subsystems, Research, Aircraft Manufacturing, Arms, Ammunition.

Automobile: Automotive Equipment, Auto-Manufacturing, Auto Parts Manufacturing, Personal Use Trailers, Motor Homes, Dealers.

Banking: Bank Holding, Savings and Loans, Consumer Credit, Small Loan, Agency, Factoring, Receivables.

Beverage, Food and Tobacco: Beer and Ale, Distillers, Wines and Liquors, Distributors, Soft Drink Syrup, Bottling, Bakery, Mill Sugar, Canned Foods, Corn Refiners, Dairy Products, Meat Products, Poultry Products, Snacks, Packaged Foods, Distributors, Candy, Gum, Seafood, Frozen Food, Cigarettes, Cigars, Leaf/Snuff, Vegetable Oil.

Buildings and Real Estate: Brick, Cement, Climate Controls, Contracting, Engineering, Construction, Hardware, Forest Products (building-related only), Plumbing, Roofing, Wallboard, Real Estate, Real Estate Development, REITs, Land Development.

Chemicals, Plastics and Rubber: Chemicals (non-agriculture), Industrial Gases, Sulfur, Plastics, Plastic Products, Abrasives, Coatings, Paints, Varnish, Fabricating.

Containers, Packaging and Glass: Glass, Fiberglass, Containers made of: Glass, Metal, Paper, Plastic, Wood or Fiberglass.

Personal and Non Durable Consumer Products (Manufacturing Only): Soaps, Perfumes, Cosmetics, Toiletries, Cleaning Supplies, School Supplies.

Diversified/Conglomerate Manufacturing

Diversified/Conglomerate Service

Diversified Natural Resources, Precious Metals and Minerals: Fabricating, Distribution, Mining and Sales.

Ecological: Pollution Control, Waste Removal, Waste Treatment, Waste Disposal.

Electronics: Computer Hardware, Electric Equipment, Components, Controllers, Motors, Household Appliances, Information Service, Communication Systems, Radios, TVs, Tape Machines, Speakers, Printers, Drivers, Technology.

Finance: Investment Brokerage, Leasing, Syndication, Securities.

Farming and Agriculture: Livestock, Grains, Produce, Agricultural Chemicals, Agricultural Equipment, Fertilizers.

Grocery: Grocery Stores, Convenience Food Stores.

Healthcare, Education and Childcare: Ethical Drugs, Proprietary Drugs, Research, Health Care Centers, Nursing Homes, HMOs, Hospitals, Hospital Supplies, Medical Equipment.

Home and Office Furnishings, Housedress, and Durable Consumer Products: Carpets, Floor Coverings, Furniture, Cooking, Ranges.

Hotels, Motels, Inns and Gaming

Insurance: Life, Property and Casualty, Broker, Agent, Surety.

Leisure, Amusement, Entertainment: Boating, Bowling, Billiards, Musical Instruments, Fishing, Photo Equipment, Records, Tapes, Sports, Outdoor Equipment (camping), Tourism, Resorts, Games, Toy Manufacturing, Motion Picture Production, Theatres, Motion Picture Distribution.

Machinery (Non-Agriculture, Non-Construction, Non-Electronic): Industrial, Machine Tools, Steam Generators.

Mining, Steel, Iron and Non-Precious Metals: Coal, Copper, Lead, Uranium, Zinc, Aluminum, Stainless Steel, Integrated Steel, Ore Production, Refractories, Steel Mill Machinery, Mini-Mills, Fabricating, Distribution and Sales.

Oil and Gas: Crude Producer, Retailer, Well Supply, Service and Drilling.

Personal, Food and Miscellaneous

Printing and Publishing: Graphic Arts, Paper, Paper Products, Business Forms, Magazines, Books, Periodicals, Newspapers, Textbooks.

Cargo Transport: Rail, Shipping, Railroads, Rail-car Builders, Ship Builders, Containers, Container Builders, Parts, Overnight Mail, Trucking, Truck Manufacturing, Trailer Manufacturing, Air Cargo, Transport.

Retail Stores: Apparel, Toy, Variety, Drugs, Department, Mail Order Catalogue, Showroom.

Structured Finance

Telecommunications: Local, Long Distance, Independent, Telephone, Telegraph, Satellite, Equipment, Research, Cellular.

Textiles and Leather: Producer, Synthetic Fiber, Apparel Manufacturer, Leather Shoes.

Personal Transportation Air, Bus, Rail, Car, Rental.

Utilities: Electric, Water, Hydro Power, Gas, Diversified.

Broadcasting and Entertainment: Recording Industry, Motion Exhibition Theatres, Motion Picture Production and Distribution, Radio, TV, Cable Broadcasting, Broadcasting Equipment.

SCHEDULE 3

S&P Industry Classifications

Corporate Obligations

0. Zero Default Risk
1. Aerospace & Defense
2. Air transport
3. Automotive
4. Beverage & Tobacco
5. Radio & Television
6. Brokerages, Dealers & Investment houses
7. Building & Development
8. Business equipment & services
9. Cable & satellite television
10. Chemical & plastics
11. Clothing/textiles
12. Conglomerates
13. Containers & glass products
14. Cosmetics/toiletries
15. Drugs
16. Ecological services & equipment
17. Electronics/electrical
18. Equipment leasing
19. Farming/agriculture
20. Financial Intermediaries
21. Food/drug retailers
22. Food products
23. Food service
24. Forest products
25. Health care
26. Home furnishings
27. Lodging & casinos
28. Industrial equipment
29. Insurance
30. Leisure goods/activities/movies
31. Nonferrous metals/minerals
32. Oil & gas
33. Publishing
34. Rail Industries
35. Retailers (except food & drug)
36. Steel
37. Surface transport
38. Telecommunications
39. Utilities

Corporate Structured Obligations

50. CDOs

Structured Obligations

51. ABS Consumer
52. ABS Commercial
53. CMBS Diversified (Conduit and CTL)
54. CMBS (Large Loan, Single Borrower, and Single Property)
55. REITs and REOCs
56. RMBS A
57. RMBS B&C, HELs, HELOCs, and Tax Lien
58. Manufactured Housing
59. U.S. Agency (Explicitly Guaranteed)
60. Monoline/FER Guaranteed
61. Non-FER Company Guaranteed
62. FFELP Student Loans (Over 70% FFELP)
63. CLO of SME's

SCHEDULE 4

Diversity Score Calculation

The Diversity Score for the Collateral Obligations is calculated by summing each of the Industry Diversity Scores, which are calculated as follows

(i) An ***Obligor Par Amount*** is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by summing the par amounts of all Collateral Obligations in the Collateral (other than Defaulted Collateral Obligations) issued by that obligor or any Affiliate of that obligor (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(ii) An ***Average Par Amount*** is calculated by summing the Obligor Par Amounts and dividing by the number of obligors represented. For purposes of calculating the number of issuers of the Collateral Obligations (other than Defaulted Collateral Obligations), any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iii) An ***Equivalent Unit Score*** is calculated for each obligor represented in the Collateral Obligations (other than Defaulted Collateral Obligations) by taking the lesser of (A) one and (B) the Obligor Par Amount for the obligor **divided by** the Average Par Amount. For purposes of calculating the Equivalent Unit Score, any issuers Affiliated with one another shall be considered one issuer (other than obligors that the Servicer reasonably determines are Affiliated but are not dependent upon one another for credit support and are not dependent upon a Person by which they are commonly controlled for credit support).

(iv) An ***Aggregate Industry Equivalent Unit Score*** is then calculated for each of the Moody's industrial classification groups by summing the Equivalent Unit Scores for each obligor in the industry.

(v) An ***Industry Diversity Score*** is then established by reference to the Diversity Score Table shown below for the related Aggregate Industry Equivalent Unit Score. If any Aggregate Industry Equivalent Unit Score falls between any two the scores then the applicable Industry Diversity Score shall be the lower of the two Industry Diversity Scores in the Diversity Score Table.

The Diversity Score for any Structured Finance Obligation that is (i) a collateralized loan obligation, (ii) any Synthetic Security with respect to which the Reference Obligation is a collateralized loan obligation or (iii) any Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default

swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, is equal to zero.

DIVERSITY SCORE TABLE

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
0.0000	0.0000	5.0500	2.7000	10.1500	4.0200	15.2500	4.5300
0.0500	0.1000	5.1500	2.7333	10.2500	4.0300	15.3500	4.5400
0.1500	0.2000	5.2500	2.7667	10.3500	4.0400	15.4500	4.5500
0.2500	0.3000	5.3500	2.8000	10.4500	4.0500	15.5500	4.5600
0.3500	0.4000	5.4500	2.8333	10.5500	4.0600	15.6500	4.5700
0.4500	0.5000	5.5500	2.8667	10.6500	4.0700	15.7500	4.5800
0.5500	0.6000	5.6500	2.9000	10.7500	4.0800	15.8500	4.5900
0.6500	0.7000	5.7500	2.9333	10.8500	4.0900	15.9500	4.6000
0.7500	0.8000	5.8500	2.9667	10.9500	4.1000	16.0500	4.6100
0.8500	0.9000	5.9500	3.0000	11.0500	4.1100	16.1500	4.6200
0.9500	1.0000	6.0500	3.0250	11.1500	4.1200	16.2500	4.6300
1.0500	1.0500	6.1500	3.0500	11.2500	4.1300	16.3500	4.6400
1.1500	1.1000	6.2500	3.0750	11.3500	4.1400	16.4500	4.6500
1.2500	1.1500	6.3500	3.1000	11.4500	4.1500	16.5500	4.6600
1.3500	1.2000	6.4500	3.1250	11.5500	4.1600	16.6500	4.6700
1.4500	1.2500	6.5500	3.1500	11.6500	4.1700	16.7500	4.6800
1.5500	1.3000	6.6500	3.1750	11.7500	4.1800	16.8500	4.6900
1.6500	1.3500	6.7500	3.2000	11.8500	4.1900	16.9500	4.7000

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
1.7500	1.4000	6.8500	3.2250	11.9500	4.2000	17.0500	4.7100
1.8500	1.4500	6.9500	3.2500	12.0500	4.2100	17.1500	4.7200
1.9500	1.5000	7.0500	3.2750	12.1500	4.2200	17.2500	4.7300
2.0500	1.5500	7.1500	3.3000	12.2500	4.2300	17.3500	4.7400
2.1500	1.6000	7.2500	3.3250	12.3500	4.2400	17.4500	4.7500
2.2500	1.6500	7.3500	3.3500	12.4500	4.2500	17.5500	4.7600
2.3500	1.7000	7.4500	3.3750	12.5500	4.2600	17.6500	4.7700
2.4500	1.7500	7.5500	3.4000	12.6500	4.2700	17.7500	4.7800
2.5500	1.8000	7.6500	3.4250	12.7500	4.2800	17.8500	4.7900
2.6500	1.8500	7.7500	3.4500	12.8500	4.2900	17.9500	4.8000
2.7500	1.9000	7.8500	3.4750	12.9500	4.3000	18.0500	4.8100
2.8500	1.9500	7.9500	3.5000	13.0500	4.3100	18.1500	4.8200
2.9500	2.0000	8.0500	3.5250	13.1500	4.3200	18.2500	4.8300
3.0500	2.0333	8.1500	3.5500	13.2500	4.3300	18.3500	4.8400
3.1500	2.0667	8.2500	3.5750	13.3500	4.3400	18.4500	4.8500
3.2500	2.1000	8.3500	3.6000	13.4500	4.3500	18.5500	4.8600
3.3500	2.1333	8.4500	3.6250	13.5500	4.3600	18.6500	4.8700
3.4500	2.1667	8.5500	3.6500	13.6500	4.3700	18.7500	4.8800
3.5500	2.2000	8.6500	3.6750	13.7500	4.3800	18.8500	4.8900
3.6500	2.2333	8.7500	3.7000	13.8500	4.3900	18.9500	4.9000
3.7500	2.2667	8.8500	3.7250	13.9500	4.4000	19.0500	4.9100
3.8500	2.3000	8.9500	3.7500	14.0500	4.4100	19.1500	4.9200
3.9500	2.3333	9.0500	3.7750	14.1500	4.4200	19.2500	4.9300

Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score	Aggregate Industry Equivalent Unit Score	Diversity Score
4.0500	2.3667	9.1500	3.8000	14.2500	4.4300	19.3500	4.9400
4.1500	2.4000	9.2500	3.8250	14.3500	4.4400	19.4500	4.9500
4.2500	2.4333	9.3500	3.8500	14.4500	4.4500	19.5500	4.9600
4.3500	2.4667	9.4500	3.8750	14.5500	4.4600	19.6500	4.9700
4.4500	2.5000	9.5500	3.9000	14.6500	4.4700	19.7500	4.9800
4.5500	2.5333	9.6500	3.9250	14.7500	4.4800	19.8500	4.9900
4.6500	2.5667	9.7500	3.9500	14.8500	4.4900	19.9500	5.0000
4.7500	2.6000	9.8500	3.9750	14.9500	4.5000		
4.8500	2.6333	9.9500	4.0000	15.0500	4.5100		
4.9500	2.6667	10.0500	4.0100	15.1500	4.5200		

SCHEDULE 5

Moody's Structured Finance Obligation Recovery Rates

The Moody's Recovery Rate for a Structured Finance Obligation will be the applicable rate set forth below based on the appropriate sector as categorized by Moody's

Diversified Securities primarily include (1) Automobile Securities; (2) Car Rental Receivable Securities; (3) Credit Card Securities; (4) Student Loan Securities

Residential Securities primarily include (1) Home Equity Loan Securities; (2) Manufactured Housing Securities; (3) Residential A Mortgage Securities; (4) Residential B/C Mortgage Securities

Undiversified Securities primarily include (1) CMBS Conduit; (2) CMBS Credit Tenant Lease; (3) CMBS Large Loan; (4) those ABS Sectors not included in Diversified Securities

Collateralized Debt Obligations include (1) High-diversity CDOs (Diversity Score in excess of 20); (2) Low-Diversity CDOs (Diversity Score of 20 or less)

Diversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	**Aaa**	**Aa**	**A**	**Baa**	**Ba**	**B**
>70%	85%	80%	70%	60%	50%	40%
<=70% >10%	75%	70%	60%	50%	40%	30%
<=10%	70%	65%	55%	45%	35%	25%

Residential Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	**Aaa**	**Aa**	**A**	**Baa**	**Ba**	**B**
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	15%
<=2%	45%	35%	30%	25%	15%	10%

Undiversified Securities

	Initial Rating of Structured Finance Obligation					
% of Underlying Capital Structure (1)	**Aaa**	**Aa**	**A**	**Baa**	**Ba**	**B**
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	55%	45%	35%	25%
<=10% >5%	65%	55%	45%	35%	25%	15%
<=5% >2%	55%	45%	35%	30%	20%	10%
<=2%	45%	35%	25%	20%	10%	5%

High Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	**Aaa**	**Aa**	**A**	**Baa**	**Ba**	**B**
>70%	85%	80%	65%	55%	45%	30%
<=70% >10%	75%	70%	60%	50%	40%	25%
<=10% >5%	65%	55%	50%	40%	30%	20%
<=5% >2%	55%	45%	40%	35%	25%	10%
<=2%	45%	35%	30%	25%	10%	5%

Low Diversity Collateralized Debt Obligations

	Initial Rating of Underlying Asset					
% of Underlying Capital Structure (1)	**Aaa**	**Aa**	**A**	**Baa**	**Ba**	**B**
>70%	80%	75%	60%	50%	45%	30%
<=70% >10%	70%	60%	55%	45%	35%	25%
<=10% >5%	60%	50%	45%	35%	25%	15%
<=5% >2%	50%	40%	35%	30%	20%	10%
<=2%	30%	25%	20%	15%	7%	4%

(1) Initial par amount of tranche to which Structured Finance Obligation relates **divided by** initial par amount of total securities issued by Structured Finance Obligation issuer.

SCHEDULE 6

S&P Structured Finance Obligation Recovery Rates*

	RATING OF A CLASS OF NOTES AT THE TIME OF COMMITMENT TO PURCHASE						
Structured Finance Obligation Rating*							
Senior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%
Junior Asset Class							
	AAA	AA	A	BBB	BB	B	CCC
AAA	65.0%	70.0%	80.0%	85.0%	85.0%	85.0%	85.0%
AA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
A	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
BBB	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* If the Structured Finance Obligation is (x) a collateralized debt obligation backed by project finance securities, asset-backed securities, structured finance or real estate securities, distressed debt or other collateralized debt obligations; (y) a market value collateralized debt obligation; or (z) a synthetic collateralized debt obligation, the recovery rate will be assigned by S&P at the time of acquisition.

SCHEDULE 7

Certain Defined Terms Relating to S&P Rating and Moody's Rating

Assigned Moody's Rating: The monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

Moody's Default Probability Rating: With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority

(a) with respect to a Moody's Senior Secured Loan:

(i) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(ii) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(iii) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(b) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(c) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(d) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, then the Moody's Default Probability Rating shall be

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher, or

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; and

(e) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than

Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories. For purposes of any calculation under this Indenture, if a Moody's Default Probability Rating is withdrawn by Moody's with respect to a Collateral Obligation, the Issuer will continue using the latest Moody's Default Probability Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

Moody's Equivalent Senior Unsecured Rating: With respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority

(a) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(b) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(c) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(d) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating, then

(i) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3", not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating, or

(ii) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(e) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(f) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P

(without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher,

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (f)(iii), or clause (g)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(g) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (c) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (g)(iii), or clauses (f)(iii) or (h)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(h) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be

(i) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(ii) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (d) above; or

(iii) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (A) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within two Business Days of the date of the commitment to purchase the Loan or Bond, (B) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (h)(iii), or clauses (f)(iii) or (g)(iii) does not exceed 5% of the Maximum Amount, and (C) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(i) if the preceding clauses do not apply and each of the following clauses (i) through (viii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1"

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings,

(ii) no debt securities or obligations of the obligor are in default,

(iii) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years,

(iv) the obligor has been in existence for the preceding five years,

(v) the obligor is current on any cumulative dividends,

(vi) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter,

(vii) the obligor had a net profit before tax in the past fiscal year and the most recent quarter, and

(ix) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(j) if the preceding clauses do not apply but each of the following clauses (i) and (ii) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3"

(i) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(ii) no debt security or obligation of such obligor has been in default during the past two years; and

(k) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (f), (g) and (h) above.

Moody's Obligation Rating: With respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority

(a) With respect to a Moody's Senior Secured Loan

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(b) With respect to a Moody's Non Senior Secured Loan or a Bond

(i) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(ii) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(c) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Obligation Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

Moody's Rating: The Moody's Default Probability Rating; **provided** that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in this Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used. If no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to Moody's for a Moody's credit rating estimate, which will be its Moody's Rating; **provided** that, on or prior to each one-year anniversary of the acquisition of any such Collateral Obligation, the Issuer shall submit to Moody's a request for a Moody's credit rating estimate for such Collateral Obligation, which shall be its Moody's Rating, together with all information reasonably required by Moody's to perform such estimate.

S&P Rating: With respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the ***Borrower***), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the ***Guarantor***) by S&P, the most current issuer credit rating for such Borrower or Guarantor (**provided** that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (**provided** that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its

Guarantor, then the S&P Rating may be determined using any one of the methods below

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; **provided** that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (a) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; **provided** that, prior to or on acquisition of any such Collateral Obligation and on or prior to each one year anniversary of the acquisition of such Collateral Obligation, the Issuer shall submit to S&P a request for a S&P credit rating estimate for such Collateral Obligation, which shall be its S&P Rating, together with all information reasonably required by S&P to perform such estimate; or

(C) if such Collateral Obligation is not rated by Moody’s or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody’s and if the Servicer determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (1) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (2) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (3) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be the rating determined by the Servicer, using its commercially reasonable judgment, to be applicable for such Collateral Obligation during such time as the credit estimate is pending; **provided** that (x) if the Issuer submits

all information reasonably required by S&P to perform such estimate within 30 days upon acquisition of any such Collateral Obligation, the aforementioned rating determined by the Servicer will apply until S&P assigns a different rating, (y) if the Issuer does not submits all information reasonably required by S&P to perform such estimate within 30 days upon acquisition of any such Collateral Obligation and if, upon the 90th day following the acquisition of such Collateral Obligation (which 90-day period will be extended by S&P upon request by the Servicer so long as the Servicer has applied to S&P for a S&P credit rating and has provided all the information necessary for S&P to provide a credit rating to such Collateral Obligation prior to or upon acquisition of the such Collateral Obligation), S&P has not assigned a credit rating to such Collateral Obligation, then such Collateral Obligation shall be treated by the Issuer as having a rating of "CCC-" and (z) Collateral Obligations constituting no more than 5% of the Maximum Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

EXHIBIT A

Form of Note

EXHIBIT B-1

Form of Note Transferee Certificate

EXHIBIT B-2

Form of Note Transferor Certificate for Regulation S to Rule 144A Transfer

EXHIBIT B-3

Form of Note Transferor Certificate for Rule 144A to Regulation S Transfer

EXHIBIT C

Form of Freshfields Bruckhaus Deringer LLP Opinion

EXHIBIT D

Form of Maples and Calder Opinion

EXHIBIT E

Form of Nixon Peabody LLP Opinion

EXHIBIT F

Form of Orrick, Herrington & Sutcliffe LLP Opinion

EXHIBIT G

Forms of Section 3(c)(7) Notices

EXHIBIT G-1

Form of Section 3(c)(7) Reminder Notice

EXHIBIT G-2

Form of Important Section 3(c)(7) Reminder Notice

EXHIBIT H

Form of Beneficial Owner Certificate

EXHIBIT I

Form of Extension Notice

EXHIBIT J

Form of Insurer Notice

EXECUTION VERSION
1295285 v14

VALHALLA CLO, LTD.,

Issuer

VALHALLA CLO, INC.,

Co-Issuer

and

JPMORGAN CHASE BANK,

Trustee and Securities Intermediary

INDENTURE

Dated as of

August 18, 2004

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INDENTURE, dated as of August 18, 2004 (as amended, supplemented or modified from time to time, this "Indenture"), among VALHALLA CLO, LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the "Issuer"), VALHALLA CLO, INC., a Delaware corporation (the "Co-Issuer" and, together with the Issuer, the "Issuers") and JPMORGAN CHASE BANK, a banking corporation organized under the laws of New York (the "Trustee").

Each party agrees as follows for the benefit of the other parties and for the benefit of the Noteholders and the Swap Counterparty.

PRELIMINARY STATEMENT

The Issuers are duly authorized to execute and deliver this Indenture to provide for the issuance of the Notes, the Class Q-1 Securities and the Class Q-2 Securities, in each case as provided in this Indenture. All covenants and agreements made by the Issuers herein are for the benefit and security of the Noteholders, the Swap Counterparty, the Collateral Administrator and the Trustee (collectively, the "Secured Parties"). The Issuers are entering into this Indenture, and the Trustee is accepting the trusts created hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Issuers in accordance with its terms have been done.

GRANT OF SECURITY INTEREST

The Issuer hereby grants to the Trustee, for the benefit and security of the Secured Parties, a first priority security interest in all of its right, title and interest in, to and under, in each case, whether now owned or hereafter acquired or arising, all property (other than Excluded Property and the Class Q-2 Securities Collateral (except such described in clause (iii) of the definition thereof at any time prior to the time at which such property is required to be applied to the payment of the Income Notes represented by the Class Q-2 Collateral Asset A)) of any type or nature owned by it or in which the Issuer has an interest, including all accounts, chattel paper, deposit accounts, financial assets, general intangibles, instruments, investment property, letter-of-credit rights and other supporting obligations, and specifically including: (i) each of the Collateral Account, the Collection Account, the Expense Reserve Account, any subaccounts thereof and all financial assets credited to, and amounts on deposit or credit balances carried in, each of them from time to time; (ii) all rights of the Issuer under the Swap Agreement and the Swap Guarantee, including payments made by the Swap Counterparty or the Swap Guarantor thereunder; (iii) all rights of the Issuer under the Collateral Administration Agreement; (iv) all Eligible Investments purchased with funds on deposit in any Trust Account and all income or other proceeds from the investment of funds therein; (v) all cash and Money delivered to the Trustee (directly or through the Securities Intermediary); and (vi) all proceeds, accessions, profits, income, benefits, substitutions and replacements, whether voluntary or involuntary, of and to any of the property of the Issuer described in the preceding clauses (collectively, the "Trust Estate").

Such aforementioned grants are made, however, in trust, to secure, in accordance with the priorities set forth in the Priority of Payments, the Notes equally and ratably without prejudice, priority or distinction, except as expressly otherwise provided in this Indenture, between any Note and any other Note by reason of difference in time of issuance or otherwise, and to secure, in accordance with the priorities set forth in the Priority of Payments, (i) the payment of all amounts payable by the Issuer under the Swap Agreement, (ii) the payment of all amounts due on the Notes in accordance with their terms and (iii) the payment of all amounts payable by the Issuers under this Indenture and compliance by the Issuers with the other provisions hereof, all as provided in this Indenture.

In addition, the Issuer hereby grants to the Trustee, solely for the benefit and security of the Holders of the Class Q-2 Securities, a first priority security interest in all of its right, title and interest in, to and under, in each case whether now owned or hereafter acquired or arising, the Class Q-2 Securities Collateral. Such grants are made, however, in trust, to secure, in accordance with the priorities set forth in the Class Q-2 Priority of Payments, the Class Q-2 Securities equally and ratably without prejudice, priority or distinction, except as expressly otherwise provided in this Indenture, between any Class Q-2 Security and any other Class Q-2 Security by reason of difference in time of issuance or otherwise, and to secure, in accordance with the priorities set forth in the Class Q-2 Priority of Payments, the payment of all amounts due on the Class Q-2 Securities in accordance with their terms.

Except to the extent otherwise provided in this Indenture, this Indenture shall constitute a security agreement under the laws of the State of New York applicable to agreements made and to be performed therein. Upon the occurrence of any Event of Default with respect to the Notes or the occurrence of any Class Q-2 Event of Default with respect to the Class Q-2 Securities, and in addition to any other rights available under this Indenture or any other instruments included in the Trust Estate held for the benefit and security of the Secured Parties, or included in the Class Q-2 Securities Collateral held for the benefit and security of the Holders of Class Q-2 Securities, or otherwise available at law or in equity, the Trustee, for the benefit of the Secured Parties or for the benefit of the Holders of Class Q-2 Securities, as applicable, shall have all rights and remedies of a secured party on default under the laws of the State of New York and other applicable law to enforce the assignments and security interests contained herein and, in addition, shall have the right, subject to compliance with any mandatory requirements of applicable law, to sell or apply any rights and other interests assigned or pledged hereby in accordance with the terms hereof at public or private sale.

It is expressly agreed that, anything herein contained to the contrary notwithstanding, the Issuer shall remain liable under any instruments included in the Trust Estate or the Class Q-2 Securities Collateral to perform all the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and, except as otherwise expressly provided herein or agreed by the Trustee, the Trustee shall not have any obligations or liabilities under such instruments by reason of or arising out of this Indenture, nor shall the Trustee be required or obligated in any manner to perform or fulfill any obligation of the Issuer under or pursuant to such instruments or to make any payment, to make any inquiry as to the nature or sufficiency of any payment received by it, to present or file any claim or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times, except as provided herein.

The Trustee acknowledges the grants of the security interests provided above, accepts the trusts hereunder in accordance with the provisions hereof and agrees to perform the duties herein pursuant to and in accordance with the terms of this Indenture.

ARTICLE I

DEFINITIONS; INTERPRETATION AND ASSUMPTION

SECTION 1.1 Definitions.

Capitalized terms not otherwise defined herein (including in the Preliminary Statement and granting clauses hereof) have the respective meanings set forth in the Schedule of Definitions attached hereto as Schedule A, unless otherwise noted. Unless otherwise defined herein, terms (whether or not capitalized) defined in the UCC are used herein (including in the granting clauses hereof) as therein defined. Capitalized terms used in Sections 8.7, 8.8 and 8.9 and in Schedule A that are not defined herein have the meanings specified in the Swap Agreement.

SECTION 1.2 Interpretation.

Unless otherwise indicated in this Indenture:

(a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);

(b) all references to an "Article," "Section," "Schedule" or "Exhibit" are to an Article or Section hereof or to a Schedule or an Exhibit attached hereto;

(c) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;

(d) the words "hereof," "herein" and "hereunder" and other words of similar import when used in this Indenture shall refer to this Indenture as a whole and not to any particular provision of this Indenture;

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

(f) all time references used herein shall refer to Eastern Standard Time or Eastern Daylight Savings Time, whichever is then in effect;

(g) the word "dollar" and the symbols "US$" and "$" shall mean the lawful currency from time to time of the United States of America; and

(h) for purposes of any calculation or determination hereunder, the result of which is expressed as a percentage, such result shall be rounded to the nearest .00001%, unless otherwise specified herein.

SECTION 1.3 Assumptions as to Eligible Investments and the Swap Agreement.

Except as otherwise expressly set forth herein, the provisions set forth in this Section 1.3 shall be applied in connection with all calculations required to be made pursuant to this Indenture with respect to distributions on any Eligible Investment, or any payments under the Swap Agreement or on any other assets included in the Trust Estate or the Class Q-2 Securities Collateral, and with respect to the income that may be earned on distributions on such Eligible Investments and on any other amounts that may be received for deposit in the Trust Accounts or the Class Q-2 Securities Collateral Account.

(a) All calculations with respect to distributions in respect of the Eligible Investments and payments with respect to the Securities shall be made by the Issuer or its agent, based upon the assumptions that (i) no Eligible Investment will default or be sold and the Swap Counterparty will make the payments required to be made by it under the Swap Agreement in accordance with its terms and (ii) no optional redemption of any Eligible Investment will occur except for those that have actually occurred or as to which irrevocable notice from the obligor of the Eligible Investment to the Issuer thereof shall have been given.

(b) For each Periodic Interest Accrual Period, the distributions on any Eligible Investment shall be the sum of (i) the total amount of payments and collections in respect of such Eligible Investment at the current interest rate and other terms applicable thereto, that, if paid as scheduled, will be available in the Trust Accounts at the end of such period for distribution in accordance with Section 8.6 (or will be available in the Class Q-2 Securities Collateral Account at the end of such period for distribution in accordance with Section 2.17(d), as applicable), plus (ii) any such amounts received in prior such periods that were not disbursed on a previous Payment Date.

(c) With respect to any Eligible Investment as to which any interest or other payment thereon is subject to any withholding tax, each distribution thereon shall, for purposes of the Coverage Tests (for Eligible Investments in the Trust Accounts) or the Class Q-2A Coverage Test (for Eligible Investment in the Class Q-2 Securities Collateral Account), be deemed to be payable net of such withholding tax unless the issuer thereof or obligor thereon is required to make additional payments to fully compensate the Issuers for such withholding taxes (including in respect of any such additional payments). On any date of determination, the amount of any scheduled distribution on the Eligible Investments due on any future date shall be assumed to be made net of any such uncompensated withholding tax based upon applicable withholding tax rates in effect on such date of determination.

ARTICLE II

THE NOTES

SECTION 2.1 Forms Generally.

The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes, the Class C-2 Notes, the Income Notes, the Class Q-1 Securities, the Class Q-2A Securities and the Class Q-2B Securities and the Trustee's certificate of authentication thereon (the "Certificate of Authentication") shall be substantially in the forms required by this Article II, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined and authorized by the Authorized Officers executing and authenticating such Notes, Class Q-1 Securities or Class Q-2 Securities, as evidenced by their execution and authentication thereof. Any portion of the text of any Note, Class Q-1 Security or Class Q-2 Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note, Class Q-1 Security or Class Q-2 Security.

SECTION 2.2 Form of Notes and Certificate of Authentication.

(a) The Senior Notes shall be issued initially as global notes and the form of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes and the Class C-2 Notes issued as Temporary Regulation S Global Notes, Regulation S Global Notes or Rule 144A Global Notes, including the Certificate of Authentication, shall be as set forth respectively as Exhibits A1-1, A1-2, A1-3, A2-1, A2-2, A2-3, B-1, B-2, B-3, C1-1, C1-2, C1-3, C2-1, C2-2, and C2-3 hereto.

(b) (i) Temporary Regulation S Global Notes and Regulation S Global Notes. The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes and the Class C-2 Notes initially sold to non-U.S. Persons (as defined in Regulation S) in offshore transactions in reliance on Regulation S shall be initially issued in the form of one or more temporary global notes in definitive, fully registered form without interest coupons with the applicable legends substantially as set forth in the form of Exhibits A1-1, A2-1, B-1, C1-1 and C2-1, hereto, respectively (each, a "Temporary Regulation S Global Note"), and, on or after the Exchange Date, upon certification in accordance with Rule 903(b)(3)(ii)(B) from the Depositary, Euroclear and Clearstream that the beneficial interests in such Temporary Regulation S Global Notes are owned by Persons who are non-U.S. Persons, shall be exchangeable for interests in one or more permanent global notes of the same Class in definitive, fully registered form without interest coupons with the applicable legends substantially as set forth in the form of Exhibits A1-2, A2-2, B-2, C1-2 and C2-2, hereto, respectively (each, a "Regulation S Global Note"), which Temporary Regulation S Global Notes and Regulation S Global Notes shall be deposited on behalf of the subscribers for such Notes represented thereby with the Trustee as custodian for DTC, the initial Depositary, and registered in the name of Cede & Co., as nominee of DTC, for the respective accounts of Euroclear and Clearstream, duly executed by the Issuers and authenticated by the Trustee as hereinafter

provided. The Aggregate Principal Amount of the Temporary Regulation S Global Notes and the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depositary or its nominee, as the case may be, as hereinafter provided.

(ii) Rule 144A Global Notes. The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes and the Class C-2 Notes initially sold in the United States or to U.S. Persons pursuant to Rule 144A under the Securities Act shall be issued in the form of one or more permanent global notes in definitive, fully registered form without interest coupons with the applicable legends substantially as set forth in the form of Exhibits A1-3, A2-3, B-3, C1-3, and C2-3, respectively (each, a "Rule 144A Global Note"), which shall be deposited with the Trustee as custodian for DTC and registered in the name of Cede & Co., as nominee of DTC, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided. The Aggregate Principal Amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depositary or its nominee, as the case may be, as hereinafter provided.

(c) All Income Notes shall be issued in the form of certificated Notes in definitive, physical certificates in fully registered form without interest coupons with the applicable legends substantially as set forth in the form of Exhibit IN-Certificated (each a "Certificated Income Note"), which shall be registered in the name of the beneficial owner or a nominee thereof, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

(d) The terms and provisions contained in the Securities shall constitute, and are hereby expressly made, a part of this Indenture, and the Issuers and the Trustee, by their execution and delivery of this Indenture, and the Holders of Securities, by their acceptance of the Securities, expressly agree to such terms and provisions and to be bound thereby. To the extent any provision of any Security conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(e) The Certificated Income Notes, the Certificated Class Q-1 Securities, the Certificated Class Q-2 Securities, the Global Notes (including the Class Q-1 Temp Reg S Global Securities and the Class Q-1 Reg S Global Securities) or any definitive notes issued in accordance with Section 2.5(d) and (e) shall be typewritten on bond paper or safety paper, printed, lithographed, engraved or produced by any combinations of these methods, with or without steel engraved borders.

(f) Except as provided in Sections 2.5(d) and (e), owners of beneficial interests in Global Notes will not be entitled to receive physical delivery of definitive Notes; provided, that transferees of Class Q-1 Reg S Global Securities will receive physical delivery of definitive Securities as provided in Section 2.16(c)(iii).

SECTION 2.3 Authorized Amount; Maturity Date; Classification and Priority of Notes; Interest Rate; and Denomination.

(a) The maximum Aggregate Principal Amount of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes, the Class C-2 Notes and the Income Notes that may be authenticated and delivered under this Indenture is limited to U.S. $62,000,000, U.S. $56,000,000, U.S. $39,500,000, U.S. $21,000,000, U.S. $5,000,000 and U.S. $82,000,000 respectively, except for Notes authenticated and delivered upon registration of transfer of, in exchange for, or in lieu of other Notes pursuant to Sections 2.5, 2.6, 2.7, 9.5 or 9.6. The Maturity Date for each Class of Notes is August 1, 2016, or, if the maturity is extended pursuant to Section 2.15 hereof, August 1, 2020. Notwithstanding anything to the contrary herein, the Aggregate Principal Amount of the Income Notes includes the U.S. 25,000,000 Aggregate Principal Amount of Income Notes Delivered to the Class Q-2 Securities Collateral Account on the Closing Date, which shall be deemed to have been issued for all purposes of this Indenture.

(b) The Notes will be issued in Classes, denominated as Class A-1 Floating Rate Senior Extendable Notes (the "Class A-1 Notes"), Class A-2 Floating Rate Senior Extendable Notes (the "Class A-2 Notes"), Class B Floating Rate Deferrable Senior Subordinate Extendable Notes (the "Class B Notes"), Class C-1 Floating Rate Deferrable Senior Subordinate Extendable Notes (the "Class C-1 Notes"), Class C-2 Fixed Rate Deferrable Senior Subordinate Extendable Notes (the "Class C-2 Notes") and Extendable Income Notes (the "Income Notes"). The Income Notes will be subordinate in payment priority hereunder to the Senior Notes. The Class C-1 Notes and the Class C-2 Notes will rank pari passu with each other and (except in certain cases where the Diversion Test is not satisfied) will be subordinate in payment priority hereunder to the Class B Notes, and to the Class A-2 Notes and to the Class A-1 Notes. The Class B Notes will be subordinate in payment priority hereunder (except in certain cases where the Diversion Test is not satisfied) to the Class A-2 Notes and to the Class A-1 Notes. The Class A-2 Notes will be subordinate in payment priority hereunder to the Class A-1 Notes.

(c) The Senior Notes will accrue interest at the following rates:

Class of Notes	Interest Rate
Class A-1 Notes	LIBOR + 0.70% per annum
Class A-2 Notes	LIBOR + 0.80% per annum
Class B Notes	LIBOR + 1.40% per annum
Class C-1 Notes	LIBOR + 2.60% per annum
Class C-2 Notes	7.53% per annum

(d) Each Class of Notes, whether issued in definitive or global form, shall be issuable and transferable in minimum denominations of U.S. $500,000 and integral multiples of U.S. $1,000 in excess thereof. The denominations of the Notes authorized to be issued under this Section 2.4(d) are referred to herein in each case as "Authorized Denominations" and are expressed in terms of the principal amounts thereof at the date of issuance. After issuance, any

Note may fail to be in an Authorized Denomination due to the repayment of principal thereof in accordance with the Priority of Payments or any other applicable provision hereof, and after such repayment the "Authorized Denomination" of any such Note, for purposes of this Indenture, shall mean the original Authorized Denomination reduced by any such repayment.

(e) The Notes will be subject to redemption prior to the Maturity Date solely as provided in Section 2.14.

SECTION 2.4 Issuance of Securities.

(a) The Securities shall be executed on behalf of the Issuer and, in the case of the Senior Notes only, the Co-Issuer by Authorized Officers thereof. The signature of any such Authorized Officers on the Securities may be manual or facsimile.

(b) Securities bearing the manual or facsimile signature of individuals who were Authorized Officers at the time when such signatures shall have been affixed shall bind the Issuer and the Co-Issuer, as applicable, notwithstanding that such individuals or any of them shall have ceased to hold such office prior to the authentication and delivery of such Securities or did not hold such office at the date of issuance of such Securities.

(c) On the Closing Date and from time to time after the execution and delivery of this Indenture, the applicable Issuers shall deliver the Securities executed by such Issuers to the Trustee for authentication; and the Trustee shall authenticate and deliver such Securities as provided in this Indenture and not otherwise.

Each Security authenticated and delivered by the Trustee on the Closing Date shall be dated as of the Closing Date. All other Securities that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

(d) Subject to the second sentence hereof, Securities issued upon transfer, exchange or replacement of other Securities shall be issued in Authorized Denominations reflecting the original Aggregate Principal Amount of the Securities so transferred, exchanged or replaced, but shall represent only the Outstanding Aggregate Principal Amount of the Securities so transferred. If any Security is divided into more than one Security in accordance with this Article II, the original Aggregate Principal Amount of such Security shall be appropriately divided among the Securities delivered in exchange therefor in denominations specified by the Holders thereof; provided, that each Security is in an Authorized Denomination and the Aggregate Principal Amount of each Security is in the aggregate equal to the original Aggregate Principal Amount of such divided Security.

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

SECTION 2.5 Book-Entry Securities.

(a) In the case of the Senior Notes, Class Q-1 Temp Reg S Global Securities and Class Q-1 Reg S Global Securities, unless and until definitive Securities have been issued in accordance with Section 2.5(d) and (e) (i) such Securities, upon original issuance, shall be book-entry Securities ("Book-Entry Securities"), (ii) the Depositary with respect to such Book-Entry Securities shall be DTC or such successor Depositary named in accordance with Section 2.5(c) below and (iii) such Book-Entry Securities shall be maintained on the book-entry deposit system of the Depositary in accordance with the procedures established by the Depositary. Each Class of the Book-Entry Securities shall be represented by a Global Note or Global Notes, which shall at all times be registered on the records of the Trustee and the Registrar in name of the Depositary or its nominee. With respect to the Book-Entry Securities:

(i) the provisions of this Section 2.5(a) shall be in full force and effect and with respect to the Senior Notes represented by Global Notes, to the extent that the provisions of this Section 2.5(a) conflict with any other provisions of this Indenture, the provisions of this Section 2.5(a) shall control;

(ii) the beneficial ownership of such Book-Entry Securities will be evidenced solely through the book-entry record system maintained by the Depositary (by book-entries made in the records of the Depositary, or the records of a Person or entity maintaining an account with the Depositary (either as a Participant or as an Indirect Participant, in accordance with the rules of the Depositary)) and the holdings of Book-Entry Securities of customers (including Indirect Participants) of Participants will not be known to the Trustee, the Issuer, the Co-Issuer or the Depositary;

(iii) the beneficial owners of such Book-Entry Securities will not be recognized by the Trustee or by the Issuers as "Holders of the Securities" or "Securityholders" as such terms are used herein and beneficial owners will only be able to exercise the rights of the Holders of the Securities indirectly through the Depositary and its Participants and Indirect Participants and shall be subject to any agreements between such beneficial owners and the Depositary and/or its Participants and/or Indirect Participants; provided, that the registered Holder of a Global Note may grant proxies and otherwise authorize any person, including agent members and Persons that may hold interests through agent members, to take any action that a Holder is entitled to take under this Indenture or the Securities;

(iv) with respect to Senior Notes represented by Global Notes only, transfers of beneficial ownership of such Book-Entry Securities shall be made on the books and records of the Depositary and/or its Participants and/or Indirect Participants;

(v) beneficial ownership and with respect to Senior Notes represented by Global Notes only transfers of beneficial ownership of such Book-Entry Securities shall be governed by the rules of the Depositary;

(vi) the Issuers and the Trustee may deal with the Depositary as the sole holder of record of such Book-Entry Securities for all purposes, including exercising

the rights of the Holders of the Securities under this Indenture, and requests and directions for and votes of the Depositary (or its Participants) will not be deemed inconsistent if they are made with respect to different beneficial owners; all references in this Indenture to actions taken by the Holders of the Securities refer to actions taken by the Depositary upon instructions of its Participants and/or Indirect Participants;

(vii) neither the Issuers nor the Trustee will have responsibility or liability for any aspect of the records of the Depositary, any Participant or any Indirect Participant relating to the beneficial ownership of the Book-Entry Securities;

(viii) the Issuers and the Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants and by Participants with respect to the beneficial owners of the Securities;

(ix) all payments due on account of or with respect to such Book-Entry Securities shall be made to the Depositary as provided herein, and neither the Issuer, the Co-Issuer, the Trustee nor any agent of any of them shall have any responsibility or liability for the disbursement of such payments by the Depositary or any Participant or Indirect Participant to beneficial owners of Securities;

(x) such Book-Entry Securities may not be exchanged for definitive Notes except under circumstances set forth in Sections 2.5(d) and (e), provided that upon transfers of Class Q-1 Temp Reg S Global Securities and Class Q-1 Reg S Global Securities physical definitive Securities will be delivered to the transferee as provided in Section 2.16(c)(iii); and

(xi) insofar as interests in the Global Notes are held by the agent members of Euroclear or Clearstream, the provisions of the "Operating Procedures of the Euroclear System" and the "Terms and Conditions Governing Use of Participants" of Euroclear and Clearstream, respectively, or any successors thereto shall be applicable. Account holders or participants in Euroclear and Clearstream shall have no rights under this Indenture with respect to such Book-Entry Securities, and the registered nominee of the Depositary will be treated by the Trustee and any agent of the Trustee as the owner of the Global Note or Notes for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Trustee or any agent of the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and Euroclear, Clearstream and their respective agent members, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

(b) The Issuers shall execute and deliver initially the Global Notes registered in the name of DTC or Cede & Co., as DTC's nominee, and the Trustee shall hold such Global Notes as custodian for DTC or pursuant to DTC's instructions, if any.

Notwithstanding anything in this Indenture to the contrary, members of, or Participants in, the Depositary as well as any other Persons on whose behalf such Participants may act (including Euroclear and Clearstream and account holders and participants therein) shall

have no rights under this Indenture with respect to any Global Note held on their behalf or for their benefit by the Depositary, and the Depositary may be treated by the Issuers or the Trustee and any agent of the Issuers or the Trustee as the absolute owner of such Global Note or Global Notes for all purposes whatsoever. Upon the issuance of any Global Note, the Registrar or its duly appointed agent shall record the Depositary's nominee as the registered holder of such Global Note on the Securities Register.

(c) The Issuers may from time to time select a new entity to act as Depositary with respect to the Book-Entry Securities, and if such selection is made, the Issuers shall promptly give the Trustee notice to such effect identifying the new Depositary and the Issuers shall cause the Global Notes to be delivered to the Trustee for cancellation and immediately thereupon, in accordance with Sections 2.4 and 2.6, the Issuers shall execute and deliver to the Trustee and the Trustee shall authenticate, register and deliver to the successor Depositary, or retain as custodian for the successor Depositary, one or more successor Global Notes. Appropriate changes may be made in the form of such Global Notes to reflect the selection of the new Depositary.

(d) Notwithstanding anything to the contrary in paragraphs (a) and (c) above, if, with respect to the Book-Entry Securities, (i)(A) the Depositary notifies the Trustee in writing that it is unwilling or unable to continue as Depositary for the Notes or the Depositary, Euroclear or Clearstream ceases to be a "clearing agency" (as defined in the Exchange Act) registered under the Exchange Act and (B) a successor depository or clearing agency is not appointed by the Trustee within 90 days after receiving such notice; (ii) as a result of any amendment to or change in the laws or regulations of the Cayman Islands, or of any authority therein having power to tax, or in the interpretation or administration of such laws or regulations that become effective on or after the Closing Date, the Issuer, the Trustee, or any Paying Agent is required to make any deduction or withholding from any payment in respect of the Global Notes which would not be required if such Notes were not represented by a global note; or (iii) any Event of Default (as defined in Section 5.1) has occurred and is continuing (and has not been waived); the Trustee shall execute an agreement with the Issuers amending this Indenture pursuant to Section 9.1 for the purpose of terminating the book entry deposit system and substituting definitive Notes for the Global Notes. Such agreement shall provide for the form and terms of such definitive Notes and the place and manner in which a Noteholder may obtain possession of such definitive Notes; provided, that in no event may holders of beneficial interests in the Temporary Regulation S Global Notes or Class Q-1 Temp Reg S Global Securities receive definitive Notes pursuant to this provision prior to the Exchange Date and each such holder must certify to the Issuers and the Trustee that it is a non-U.S. Person. Such agreement shall also provide the procedures for registration of transfer or exchange of such definitive Notes, as well as such other provisions as the Issuer, the Co-Issuer and the Trustee may agree shall be necessary or appropriate to effect the substitution of definitive Notes for Global Notes and to modify the provisions of this Indenture to provide for the use of definitive Notes in lieu of a book-entry deposit system.

(e) Upon the occurrence of any of the events described in paragraph (d) above, the Trustee shall notify all Holders of the Global Notes and shall advise such Holders of the Global Notes of the procedure by which the Global Notes shall be exchanged for definitive Notes. Each beneficial owner of Global Notes shall be entitled, at no cost to it, to have registered in the name of the beneficial owner of Global Notes one or more definitive Notes

representing the same aggregate principal amount of Notes of the relevant Class as its beneficial interest in the related Global Note. Upon the occurrence of any such event, (i) the Trustee at the expense of the Issuer shall obtain from the Depositary a listing of the Participants then holding Book-Entry Securities on the records of the Depositary and (ii) upon surrender by the Depositary to the Trustee of the Global Notes for each Class, the Trustee shall cancel such Global Notes and the Issuers shall execute and deliver to such Participants definitive Notes representing in the aggregate the identical Aggregate Principal Amount of beneficial interests in the Global Notes held by such Participants on the records of the Depositary, registered in such names as such Participants shall have provided to the Trustee; provided, however, that the Trustee shall not register any such definitive Note or deliver any such definitive Note to a Participant unless and until such Participant shall have provided to the Trustee a certification acceptable to the Trustee that such registration instructions were given, and delivery of such definitive Note will be made, in accordance with the directions of the beneficial owners of Notes represented by such Participant. Neither the Issuers nor the Trustee shall be liable for any delay in delivery of such registration instructions by any Participant and each of them may conclusively rely on, and shall be protected in relying on, (i) information contained in the Participant listing provided by the Depositary regarding the names of the Participants holding beneficial interests in the Global Notes and the Aggregate Principal Amount of Notes represented by the beneficial interests in the Global Notes held by each such Participant, and (ii) the foregoing registration instructions and certifications provided by each such Participant with respect to definitive Notes representing the same Aggregate Principal Amounts of definitive Notes as the beneficial interests in the Global Notes stated to be held by such Participant in such Participant listing. If definitive Notes are issued, the Issuer will publish in the Republic of Ireland thereafter information explaining the payment, transfer and exchange procedures for the definitive Notes. The Trustee shall recognize the registered holders of the definitive Notes as Holders of the Notes hereunder. The Registrar shall reflect on its records the issuance of definitive Notes in exchange for the Global Notes.

(f) In the event that definitive Notes are not issued to each beneficial owner promptly after an event described in Section 2.5(d), the Issuers expressly acknowledge, with respect to the rights of any Holder of the Notes to pursue a remedy pursuant to Article V hereof, the right of any beneficial owner of Notes to pursue such remedy with respect to the portion of the Global Notes that represents such beneficial owner's Notes as if such definitive notes had been issued.

SECTION 2.6 Registration of Transfer and Exchange of Securities; Restriction on Transfer.

(a) The Issuers shall cause to be kept a securities register (the "Securities Register") for the Securities in which, subject to such reasonable regulations as they may prescribe, the Issuers shall provide for the registration of the Holders of the Securities and the registration of transfers of the Securities. The Trustee is hereby appointed to be the initial securities registrar (in such capacity, the "Registrar") for the purpose of registering the Securities and the registration of transfers and exchanges of Securities. Upon the resignation of any Registrar, the Issuers shall promptly appoint a successor thereto. The Trustee may prescribe reasonable procedures for carrying out its function as Registrar that do not conflict with the procedures established by the Issuer. In all events, the Trustee shall be entitled to maintain at its Corporate Trust Office within the United States such books and records as it may deem

necessary or appropriate in respect of the performance of its function as Registrar. In the event that the Trustee is no longer acting in the capacity of the Registrar, the Trustee shall promptly inform any such successor Registrar of any transfer of record ownership of a Security so that the successor Registrar may register the same in the Securities Register; and upon request at any time the Registrar shall provide to the Trustee or the Issuers a current list of the Holders of the Securities as reflected in the Securities Register. The Issuer shall notify the Trustee of any Securities owned by or pledged to the Issuer or any of its Affiliates promptly upon the acquisition thereof or the creation of such pledge.

Subject to the provisions of this Section 2.6, at the option of a Holder, Securities may be exchanged for other Securities of the same Class, in any Authorized Denominations and of a like Aggregate Principal Amount, upon surrender of the Securities to be exchanged at the Corporate Trust Office of the Trustee. Whenever any Securities are so surrendered for exchange, the applicable Issuer shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder of Securities making the exchange is entitled to receive. Notwithstanding the foregoing, an interest in a Global Note may be transferred or exchanged for an interest in another Global Note or in definitive Notes only in the limited circumstances set forth in this Section or in Section 2.5(c), 2.5(d), 2.5(e) and 2.16 hereof.

No service charge shall be made for any registration of transfer or exchange of Securities or beneficial interest therein, but the Issuers, the Trustee or the Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Securities or any beneficial interest therein, other than exchanges not involving any transfer.

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

Every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer or exchange substantially in the form of Exhibit D hereto in form satisfactory to the applicable Issuers and the Trustee duly executed by the Holder thereof or its attorney duly authorized in writing.

The preceding provisions of this Section 2.6 notwithstanding, the Issuers shall not be required to transfer or make exchanges, and the Registrar need not register transfers or exchanges, of Securities that are due for repayment within fifteen (15) days of submission to the Trustee for transfer or exchange.

(b) No Security may be sold or transferred (including, without limitation, by mortgage, charge, pledge or hypothecation) unless such sale or transfer is exempt from or not subject to the registration requirements of the Securities Act, would not require the registration of the Issuers under the Investment Company Act, is exempt under applicable state or foreign securities laws and is in compliance with the terms of this Indenture. No Security may be offered, sold or delivered at any time within the United States or to, or for the benefit of, U.S. Persons except in accordance with (i) Rule 144A under the Securities Act, to Persons who are

both Qualified Institutional Buyers and Qualified Purchasers (or, solely in the case of Income Notes, in accordance with an exemption from registration under the Securities Act to Persons who are both Accredited Investors and Qualified Purchasers) and (ii) the provisions of this Article II. In addition, no Security or any beneficial interest therein may be offered, sold or delivered at any time within the United States or to, or for the benefit of, U.S. Persons unless such person (A) was not formed for the purpose of investing in the Securities, (B) has received the necessary consent from its beneficial owners if the purchaser is a private investment company formed before April 30, 1996, (C) is not a broker-dealer that owns and invests on a discretionary basis less than $25,000,000 in securities of unaffiliated issuers, (D) is not a partnership, common trust fund, special trust, pension, profit sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants, as applicable, may designate the particular investments to be made, (E) is acquiring its Securities in a transaction that may be affected without loss of any applicable Investment Company Act exemption, (F) will provide notice to any subsequent transferee of the transfer restrictions applicable to such Securities under the Indenture or provided in the legend set forth on such Securities, (G) will hold and transfer its beneficial interest only in a principal amount of not less than the applicable Authorized Denomination and (H) will provide the Issuer from time to time such information as it may reasonably request in order to ascertain compliance with this paragraph (b). The Securities may be sold in offshore transactions to non-U.S. Persons in reliance on Regulation S under the Securities Act. None of the Issuers, the Trustee or any other Person may register the Securities under the Securities Act or any state or foreign securities laws.

(c) Upon the request of any Holder of a Security (or beneficial owner of a Security), the Issuers shall promptly furnish to such Holder (or beneficial owner of a Security) or to a prospective purchaser of any Security designated by such Holder (or beneficial owner of a Security), as the case may be, the information which the Issuers determine to be required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act ("Rule 144A Information"), in order to permit compliance by such Holder with Rule 144A in connection with the resale of such Security by such Securityholder. Upon request by the applicable Issuers, the Trustee shall cooperate with such Issuers in mailing or otherwise distributing (at the expense of the Issuers) to such Holders of the Securities (or beneficial owners of Securities) or prospective purchasers, at and pursuant to the written direction of such Issuers, the foregoing materials prepared and provided by the Issuers; provided, however, that the Trustee shall be entitled to affix thereto or enclose therewith such disclaimers as the Trustee shall deem reasonably appropriate, at its discretion (such as, for example, a disclaimer to the effect that such Rule 144A Information was assembled by the Issuers and not by the Trustee, that the Trustee has not reviewed or verified the accuracy thereof, and that it makes no representation as to the sufficiency of such information under Rule 144A or for any other purpose).

(d) The Trustee shall not be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, Investment Company Act, applicable state securities laws, ERISA or the Code; except that if a Transfer Letter or a Transferee Certificate or other letter or certificate is specifically required by the terms of this Section 2.6, Section 2.16 or 2.17 to be provided to the Trustee (including in its capacity as Registrar) by a transferor or prospective transferee, as applicable, the Trustee shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of such Section.

(e) For so long as any of the Securities are Outstanding, the Issuer shall not issue or permit the transfer of any Ordinary Shares of the Issuer to U.S. Persons.

(f) So long as any Global Note remains Outstanding and is held by or on behalf of the Depositary, transfers of a beneficial interest in a Global Note in whole or in part, shall only be made in accordance with this Section 2.6(f).

(i) Transfer of Interest in Rule 144A Global Note for Interest in Temporary Regulation S Global Note or Regulation S Global Note. Subject to the provisions of this Section 2.6 and the Applicable Procedures, a holder of a beneficial interest in a Rule 144A Global Note may at any time transfer all or a portion of its beneficial interest in such Rule 144A Global Note to a Person who wishes to take delivery thereof in the form of an equivalent interest in a corresponding Temporary Regulation S Global Note or Regulation S Global Note of the same Class in an offshore transaction in accordance with Rule 903 or 904 of Regulation S; *provided* that the remaining principal amount of the beneficial interest of such holder in the Rule 144A Global Note shall either equal zero or be in an Authorized Denomination. Upon the receipt by the Trustee of (A) instructions given in accordance with the Applicable Procedures from a Participant directing the Registrar to credit or cause to be credited a beneficial interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note in an amount equal to the beneficial interest in such Rule 144A Global Note, in an Authorized Denomination, to be exchanged or transferred, such instructions to contain information regarding the Euroclear or Clearstream account to be credited with such increase and (B) a Transfer Letter substantially in the form of Exhibit E-1 attached hereto given by the transferor of such beneficial interest stating, among other things, that the exchange or transfer of such interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the transferee is not a U.S. Person, and pursuant to and in accordance with Regulation S, then the Registrar shall instruct the Depositary to reduce the principal amount of such Rule 144A Global Note by the Aggregate Principal Amount of the beneficial interest in the Rule 144A Global Note to be transferred, record the transfer in the Securities Register in accordance with Section 2.5(a) and instruct the Depositary concurrently with such reduction to increase the Aggregate Principal Amount of the Temporary Regulation S Global Note or the Regulation S Global Note, as the case may be, by the Aggregate Principal Amount of the beneficial interest in the Rule 144A Global Note to be transferred, and to credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the corresponding Temporary Regulation S Global Note or the Regulation S Global Note equal to the reduction in the Aggregate Principal Amount of the Rule 144A Global Note. In no event shall Persons hold interests in the Temporary Regulation S Notes or Regulation S Global Notes through Participants of DTC other than such Participants maintaining positions on behalf of Euroclear or Clearstream.

(ii) Transfer of Interest in Temporary Regulation S Global Note or Regulation S Global Note for Interest in Rule 144A Global Note. Subject to the provisions of this Section 2.6 and the Applicable Procedures, a holder of a beneficial interest in a Temporary Regulation S Global Note or Regulation S Global Note may

transfer at any time all or a portion of its beneficial interest in such Temporary Regulation S Global Note or Regulation S Global Note in accordance with Rule 144A under the Securities Act to a Person who takes delivery thereof in the form of an interest in the corresponding Rule 144A Global Note; provided, that the remaining principal amount of such holder's beneficial interest in the Temporary Regulation S Global Note or Regulation S Global Note shall either equal zero or be in an Authorized Denomination. Upon receipt by the Trustee of (A) instructions from Euroclear, Clearstream or the Depositary, as the case may be, directing the Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note in an amount equal to the beneficial interest in such Temporary Regulation S Global Note or Regulation S Global Note, but not less than an Authorized Denomination, to be exchanged or transferred, such instructions to contain information regarding the participant account with the Depositary to be credited with such increase and (B) a Transfer Letter substantially in the form of Exhibit E-2 attached hereto given by the transferor of such beneficial interest stating, among other things, that such holder reasonably believes that the proposed transferee is both (i) a Qualified Institutional Buyer and (ii) a Qualified Purchaser, then Euroclear, Clearstream or the Registrar, as the case may be, shall instruct the Depositary to reduce such Temporary Regulation S Global Note or Regulation S Global Note by the Aggregate Principal Amount of the beneficial interest in the Temporary Regulation S Global Note or Regulation S Global Note to be transferred, and the Registrar shall record the transfer in the Securities Register in accordance with Section 2.5(a) and the Registrar shall then instruct the Depositary concurrently with such reduction, to increase the Aggregate Principal Amount of the Rule 144A Global Note by the Aggregate Principal Amount of the beneficial interest in the Regulation S Global Note or Temporary Regulation S Global Note, as the case may be, to be transferred, and to credit or cause to be credited to the account of the Person specified in such instructions, a beneficial interest in the Rule 144A Global Note equal to the reduction in the Aggregate Principal Amount of the Temporary Regulation S Global Note or Regulation S Global Note.

(iii) Transfer of Interest in Rule 144A Global Note for Interest in Rule 144A Global Note. Transfers of interests in a Rule 144A Global Note to transferees maintaining a beneficial interest in such Global Note may only be made in accordance with the provisions of this Indenture, will be effected by book-entry transfer of beneficial interests effected on the records of the Depositary and may be made only to a Person whom the transferor reasonably believes is a Qualified Institutional Buyer and a Qualified Purchaser in a transaction exempt under Rule 144A from the registration requirements of the Securities Act and in accordance with any applicable securities laws of any state of the United States. Each transferee of a Rule 144A Global Note or beneficial interest therein will be deemed to have made the representations and agreements set forth in Section 2.6(g).

(iv) Transfer of Interest in Temporary Regulation S Global Note or Regulation S Global Note for Interest in Temporary Regulation S Global Note or Regulation S Global Note. Transfers of interests in a Temporary Regulation S Global Note or Regulation S Global Note to transferees maintaining a beneficial interest in such Global Note may only be made in accordance with the provisions of this Indenture, will be effected by book-entry transfer of beneficial interests within the Clearance Systems

(and subject to the Applicable Procedures) and may be made only to non-U.S. Persons who acquire the interests in offshore transactions in compliance with Regulation S. In no event shall Persons hold an interest in Temporary Regulation S Global Notes or Regulation S Global Notes through Participants of DTC other than such Participants maintaining positions on behalf of Euroclear or Clearstream. Each transferee of Temporary Regulation S Global Notes or Regulation S Global Notes or beneficial interest therein will be deemed to have made the representations and agreements set forth in Section 2.6(h).

(g) Each transferee of a Rule 144A Global Note or beneficial interest therein will be deemed to have represented and agreed as follows:

(i) It (A) is a Qualified Institutional Buyer and is acquiring the Notes in reliance on the exemption from Securities Act registration provided by Rule 144A thereunder, (B) is a Qualified Purchaser and (C) understands the Notes will bear the legend set forth in the Indenture and be represented by one or more Rule 144A Global Notes. In addition, it represents and warrants that it (1) was not formed for the purpose of investing in the Notes, (2) has received the necessary consent from its beneficial owners if the purchaser is a private investment company formed before April 30, 1996, (3) is not a broker-dealer that owns and invests on a discretionary basis less than $25,000,000 in securities of unaffiliated issuers, (4) is not a partnership, common trust fund, or special trust, pension, profit sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants, as applicable, may designate the particular investments to be made, (5) is acquiring its Notes in a transaction that may be effected without loss of any applicable Investment Company Act exemption, (6) will provide notice to any subsequent transferee of the transfer restrictions applicable to such Notes under the Indenture or provided in such legend, (7) will hold and transfer its beneficial interest only in a principal amount of not less than the applicable Authorized Denomination, and (8) will provide the Issuer from time to time such information as it may reasonably request in order to ascertain compliance with this paragraph (i).

(ii) The Notes are being purchased or transferred in accordance with the transfer restrictions set forth in this Indenture and pursuant to an exemption from Securities Act registration, and in accordance with applicable state securities laws or securities laws of any other relevant jurisdiction. It understands that the Notes have been offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Notes have not been and will not be registered under the Securities Act or any state securities laws, and, if in the future it decides to offer, resell, pledge or otherwise transfer the Notes, such Notes may be offered, resold, pledged or otherwise transferred only in accordance with an exemption from registration under such laws and pursuant to the provisions of the Indenture and the legend on such Notes. In particular, it understands that interests in the Notes may be transferred only to (a) a Qualified Purchaser that is a Qualified Institutional Buyer or (b) a person that is not a "U.S. person" as defined in Regulation S under the Securities Act. Transferees who reside in certain states or jurisdictions may be subject to additional suitability standards and/or specific holding periods before the Notes may be resold or otherwise transferred.

It acknowledges that no representation is made as to the availability of any exemption under the Securities Act or any state securities laws for resale of the Notes.

(iii) In connection with the purchase of the Notes (*provided* that no such representations in clauses (A), (B) or (C) below are made with respect to the Reference Portfolio Manager or its Affiliates by the Reference Portfolio Manager or any Affiliate of the Reference Portfolio Manager or by any account managed or advised by the Reference Portfolio Manager or any such Affiliate of the Reference Portfolio Manager: (A) it understands that none of the Issuers, the Reference Portfolio Manager, the Swap Counterparty, the Swap Guarantor, the Initial Purchaser, the Placement Agent, the Collateral Administrator or any of their respective Affiliates is acting as a fiduciary or financial or investment adviser for such beneficial owner; (B) such beneficial owner is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Issuers, the Reference Portfolio Manager, the Swap Counterparty, the Swap Guarantor, the Initial Purchaser, the Placement Agent, the Trustee, the Collateral Administrator or any of their respective Affiliates, agents and independent contractors in their capacities as such other than any statements, if any, of such person in a current offering circular for the Notes; (C) such beneficial owner has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent it has deemed necessary and has made its own investment decisions based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuers, the Reference Portfolio Manager, the Swap Counterparty, the Swap Guarantor, the Initial Purchaser, the Placement Agent, the Trustee, the Collateral Administrator or any of their respective Affiliates, agents and independent contractors in their capacities as such; (D) such beneficial owner's purchase of the Notes will comply with all applicable laws in any jurisdiction in which it resides or is located; (E) such beneficial owner is acquiring the Notes as principal solely for its own account for investment and not with a view to the resale, distribution or other disposition thereof in violation of the Securities Act; (F) such beneficial owner has made investments prior to the date hereof and was not formed solely for the purpose of investing in the Notes; (G) such beneficial owner shall not hold any Notes for the benefit of any other person, it shall at all times be the sole beneficial owner thereof for purposes of the Investment Company Act and all other purposes and it shall not sell participation interests in the Notes or enter into any other arrangement pursuant to which any other Person shall be entitled to a beneficial interest in the distributions on the Notes; (H) all Securities (together with any other securities of the Issuers) purchased and held directly or indirectly by such beneficial owner constitute in the aggregate an investment of no more than 40% of its assets or capital; and (I) it is a sophisticated investor and is purchasing the Notes with a full understanding of all of the terms, conditions and risks thereof, and it is capable of assuming and willing to assume those risks.

(iv) On each day from the date on which such beneficial owner acquires its interest in the Notes through and including the date on which such beneficial owner disposes of its interest in such Notes, either (A) such beneficial owner is not a Plan, an entity whose underlying assets include the assets of any Plan by reason of Department of Labor regulation Section 2510.3-101 or otherwise, or a governmental plan

that is subject to any federal, state or local law which is substantially similar to the provisions of Section 406 of ERISA or Section 4975 of the Code or (B) such beneficial owner's purchase, holding and disposition of such Notes (or interest therein) will not constitute or result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental plan, any substantially similar federal, state or local law) for which an exemption is not available, all of the conditions of which are satisfied.

(v) It understands that the Indenture permits the Issuer to demand that any holder of a beneficial interest in a Rule 144A Global Note who is determined not to be a Qualified Institutional Buyer and a Qualified Purchaser sell the Notes (A) to a person who is both a Qualified Institutional Buyer and a Qualified Purchaser in a transaction meeting the requirements of Rule 144A or (B) to a Person who will take delivery of the holder's interest in the Rule 144A Global Note in the form of an interest in a Temporary Regulation S Global Note or Regulation S Global Note, as applicable, and who is not a U.S. Person in a transaction meeting the requirements of Regulation S and, if such holder does not comply with such demand within 30 days thereof, the Issuer may cause such holder of the beneficial interest to sell such holder's interest in the Note on such terms as the Issuer may choose.

(vi) It understands that in the case of any supplemental indenture to this Indenture or Swap Agreement Amendment that requires consent of one or more Holders of the Notes, this Indenture permits the Amendment Buy-Out Purchaser to purchase the beneficial interest in the Notes from any Non-consenting Holder thereof at the applicable Amendment Buy-Out Purchase Price; and such Non-consenting Holder will be required to sell its beneficial interest in this Notes to the Amendment Buy-Out Purchaser at such price.

(vii) It understands that the maturity of the Notes is subject to an extension of four years to August 1, 2020 without consent of any holders of Securities at the option of the Swap Counterparty if certain conditions are satisfied.

(viii) It acknowledges that it is its intent and that it understands it is the intent of the Issuer that, for purposes of U.S. federal income, state and local income and franchise tax and any other income taxes, the Issuer will be treated as a corporation, the Senior Notes will be treated as indebtedness of the Issuer, and the Income Notes will be treated as equity in the Issuer; it agrees to such treatment and agrees to take no action inconsistent with such treatment.

(ix) It is not purchasing the Notes in order to reduce any United States federal income tax liability or pursuant to a tax avoidance plan. In the case of a transferee that is a bank (as defined in Section 881(c)(3)(a) of the Code) or an Affiliate of such a bank, the transferee (a) is acquiring the Notes as a capital markets investment and will not for any purpose treat the assets of the Issuer as loans acquired in its banking business, and (b) has not proposed or identified, and will not propose or identify, any security or loan for inclusion in the Reference Portfolio.

(x) In the case of any transferee that is not a United States person (as defined in Section 7701(a)(30) of the Code), the transferee is not a bank (as defined in Section 881(c)(3)(a) of the Code) or an Affiliate of such a bank, unless the transferee is a person that is eligible for benefits under an income tax treaty with the United States that eliminates United States federal income taxation of United States source interest not attributable to a permanent establishment in the United States.

(xi) It acknowledges that the Reference Portfolio Manager will act solely on behalf of the Swap Counterparty and will not act or be deemed to act on behalf of, or have any contractual relationship with, the Issuer or the Holder of Securities.

(xii) It is aware that, except as otherwise provided in the Indenture, the Notes being sold to it will be represented by one or more Global Notes, and that beneficial interests therein may be held only through the Depositary.

(xiii) It acknowledges that no governmental agency has passed upon the Notes or made any finding or determination as to the fairness of an investment in the Notes.

(xiv) It acknowledges that certain persons or organizations will perform services on behalf of the Issuers and will receive fees and/or compensation for performing such services as described in the Offering Circular and Indenture.

(xv) It acknowledges that the Notes do not represent deposits with or other liabilities or obligations of, and are not guaranteed or endorsed by, the Swap Counterparty, the Swap Guarantor, the Placement Agent, the Initial Purchaser, the Reference Portfolio Manager, the Trustee, the Collateral Administrator or any of their respective affiliates or any entity related to any of them or any other holder of Notes. It acknowledges that none of such persons will, in any way, be responsible for or stand behind the value or the performance of the Notes or the assets held by the Issuer. It acknowledges that purchase of Notes involves investment risks including possible delay in payment of distributions and loss of income and principal invested.

(xvi) It understands that the Issuers, the Trustee, the Swap Counterparty, the Swap Guarantor, the Reference Portfolio Manager, the Initial Purchaser, the Collateral Administrator, and their respective counsel will rely upon the accuracy and truth of the foregoing representations, and it hereby consents to such reliance.

(h) Each transferee of a Temporary Regulation S Global Note or a Regulation S Global Note or a beneficial interest therein will be deemed to have made the representations set forth in Sections 2.6(g)(ii), (iii), (iv), (vi), (vii), (viii), (ix), (xi), (xii), (xiii), (xiv), and (xv), and in addition to have represented and agreed that:

(i) It is aware that the sale of Notes to it is being made in reliance on the exemption from registration provided by Regulation S and understands that the Notes offered in reliance on Regulation S will bear the legend set forth on Exhibits A1-1, A2-1, B1-1, B2-1, C1-1 and C2-1 or A1-2, A2-2, B-2, C1-2 and C2-2 as the case may be, to this Indenture. It and each beneficial owner of its Notes is not, and will not be, a U.S. Person

as defined in Regulation S under the Securities Act, and its purchase of the Notes will comply with all applicable laws in any jurisdiction in which it resides or is located. In addition, it represents and warrants that it will provide notice to any subsequent transferee of the transfer restrictions provided in such legend and in the Indenture and will provide the Issuer from time to time such information as it may reasonably request in order to ascertain compliance with this subclause (i).

(ii) It understands that the Indenture permits the Issuer to demand that any holder of a beneficial interest in a Temporary Regulation S Global Note or Regulation S Global Note who is determined not to have acquired such beneficial interest in compliance with the requirements of Regulation S or who is a U.S Person sell such beneficial interest (A) to a Person who is not a U.S. Person in a transaction meeting the requirements of Regulation S or (B) to a Person who will take delivery of the beneficial interest of such holder in the Temporary Regulation S Global Notes or Regulation S Global Notes in the form of an interest in a Rule 144A Global Note, who is both a Qualified Institutional Buyer and a Qualified Purchaser in a transaction meeting the requirements of Rule 144A and, if the holder does not comply with such demand within 30 days thereof, the Issuer may cause the holder to sell its beneficial interest on such terms as the Issuer may choose.

(iii) Such beneficial owner is aware that, except as otherwise provided in the Indenture, the Notes being sold to it will be represented (A) initially, by one or more Temporary Regulation S Global Notes and (B) after the Exchange Date, by one or more Regulation S Global Notes, and that beneficial interests therein may be held only through Euroclear or Clearstream.

(iv) A holder of a beneficial interest in a Temporary Regulation S Global Note must provide Euroclear or Clearstream or the participant organization through which it holds such interest, as applicable, with a certificate certifying that the beneficial owner of the interest in the Temporary Regulation S Global Note is a non-U.S. Person, and Euroclear or Clearstream, as applicable, must provide to the Trustee a certificate to such effect, prior to (A) the payment of interest or principal with respect to the beneficial interest of such holder in the Temporary Regulation S Global Note and (B) any exchange of such beneficial interest for a beneficial interest in a Regulation S Global Note.

(v) It understands that any resale or other transfer of beneficial interests in a Temporary Regulation S Global Note or Regulation S Global Note to U.S. Persons shall not be permitted.

(vi) It will hold and transfer its beneficial interest in any Note only in the applicable Authorized Denomination.

(vii) It understands that the Issuers, the Trustee, the Swap Counterparty, the Reference Portfolio Manager, the Initial Purchaser, the Placement Agent, the Collateral Administrator and their respective counsel will rely upon the accuracy and truth of the foregoing representations, and it hereby consents to such reliance.

(i) Transfers and exchanges of Certificated Income Notes, in whole or in part, shall only be made in accordance with this Section 2.6(i).

(i) Each initial purchaser and, after the Closing Date, each Person that becomes a Holder of Income Notes shall be required to deliver to the Trustee a Transferee Certificate (with appropriate modifications acceptable to the Issuer and the Trustee, including in the case of a transfer that is a mortgage, charge, pledge or hypothecation) in which it shall represent, warrant and agree as set forth therein.

(ii) If a Holder of an Income Note wishes at any time to transfer such Income Note, such Holder may transfer or cause the transfer of such Income Notes represented by one or more Certificated Income Notes as provided below. Upon receipt by the Trustee of (A) such Holder's Certificated Income Note properly endorsed for assignment to the transferee, (B) a Transferee Certificate provided by the transferee of such Certificated Income Note and (C) in the case of a transfer to an Accredited Investor that is not a Qualified Institutional Buyer, if requested by the Issuer, an Opinion of Counsel addressed to the Issuer and the Trustee to the effect that such transfer may be made pursuant to an exemption from registration under the Securities Act and any applicable state securities laws, then the Trustee shall cancel such Certificated Income Note in accordance with Section 2.10, cause the Registrar to record the transfer in the Securities Register in accordance with Section 2.6(a) and upon execution by the Issuer authenticate and deliver one or more Certificated Income Notes registered in the names specified in the assignment described in clause (A) above, in principal amounts designated by the transferee (the aggregate of such principal amounts being equal to the aggregate principal of the Certificated Income Notes transferred by the transferor), and in Authorized Denominations. After giving effect to such transfer, the Trustee shall deliver Certificated Income Notes to the transferor representing the principal amount of the Income Notes represented by the cancelled Certificated Income Note(s) (prior to such transfer) that was retained by such transferor. Any purported transfer of a Certificated Income Note not in accordance with this Section 2.6(i) and Section 2.6(n) shall be null and void ab initio and shall not be given effect for any purpose hereunder.

(iii) If a Holder of one or more Certificated Income Notes wishes at any time to exchange any or all such Certificated Income Notes for one or more Certificated Income Notes representing in the aggregate the same principal amount of Income Notes as are represented by the Certificated Income Notes to be exchanged, such Holder may exchange or cause the exchange of such Certificated Income Note(s) as provided below. Upon receipt by the Trustee of (A) such Holder's Certificated Income Notes properly endorsed for such exchange and (B) written instructions from such Holder designating the number and principal amounts of the Certificated Income Notes to be issued (the aggregate of such principal amounts being equal to the aggregate principal amount of the Certificated Income Notes surrendered for exchange), then the Trustee shall cancel such Certificated Income Notes in accordance with Section 2.10, cause the Registrar to record the exchange in the Securities Register in accordance with Section 2.6(a) and upon execution by the Issuer authenticate and deliver one or more Certificated Income Notes, registered in the same names as the Certificated Income Notes surrendered by such

Holder, in the principal amounts designated by such Holder, and in Authorized Denominations.

(j) The Trustee, the Registrar and the Issuers may (absent actual knowledge to the contrary) conclusively rely on, and assume the continuing accuracy of, the certifications contained in a Transfer Letter, Transferee Certificate, Class Q-1 Certificated Transfer Letter, Class Q-2A Certificated Transfer Letter or Class Q-2B Certificated Transfer Letter or other applicable letter delivered (or, if applicable, the representations set forth in Sections 2.6(g) and (h) and deemed to have made by the transferee) in connection with the purchase or transfer, as applicable, of any Securities or beneficial interests in any Securities and shall have no obligation to investigate the truth and correctness thereof or to verify that any transfer satisfies the requirements of this Section 2.6, Section 2.16(c) or Section 2.17(j), as applicable. In every instance, the Registrar shall also be entitled (but is not under a duty) to require an Opinion of Counsel from any prospective transferee to the effect that such proposed transfer is in compliance with this Section 2.6, Section 2.16(c) or Section 2.17(j), as applicable.

(k) If Securities are issued upon the transfer, exchange or replacement of Securities bearing the applicable legends set forth in the Exhibits hereto, and if a request is made to remove such applicable legend on such Securities, the Securities so issued shall bear such applicable legend, or such applicable legend shall not be removed, as the case may be, unless there is delivered to the Trustee and the Issuers such satisfactory evidence, which may include an Opinion of Counsel acceptable to them, as may be reasonably required by the Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither such applicable legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of the Securities Act, the Investment Company Act, ERISA, the Code or other applicable law. Upon provision of such satisfactory evidence, the Trustee, at the written direction of the Issuers shall, after due execution by the Issuers, authenticate and deliver Securities that do not bear such applicable legend.

(l) So long as a Temporary Regulation S Global Note or Regulation S Global Note remains Outstanding, transfers of beneficial interests therein shall only be made in accordance with this Section 2.6. On or after the Exchange Date, interests in a Temporary Regulation S Global Note or Class Q-1 Temp Reg S Global Security may be exchanged for interests in the corresponding Regulation S Global Note or Class Q-1 Reg S Global Security, as the case may be, in the form of Exhibit A1-2, A2-2, B1-2, B2-2, C1-2, C2-2 or Q1-2 hereto, as the case may be. Any such Regulation S Global Note or Class Q-1 Reg S Global Security shall be so issued and delivered in exchange for only that portion of the Temporary Regulation S Global Note or Class Q-1 Temp Reg S Global Security, as the case may be, in respect of which there shall have been presented to the Depositary by Euroclear or Clearstream through its agent members, as the case may be, a certification to the effect that it has received from or in respect of Persons entitled to an interest (as shown by its records) therein, a certification that the beneficial interests in such Temporary Regulation S Global Note or Class Q-1 Temp Reg S Global Security, as the case may be, are owned by Persons who are non-U.S. Persons.

(m) Invalid Transfers. If a Responsible Officer of the Trustee has actual knowledge that (i) a transfer or attempted or purported transfer of any beneficial interest in any Note was consummated in violation of the provisions of this Indenture or on the basis of a

materially incorrect certification from the transferor or purported transferor or transferee or purported transferee, (ii) the holder of a beneficial interest in such Note failed to deliver to the Trustee the Transfer Letter or Transferee Certificate, if applicable, required to be delivered hereunder or (iii) the holder of any beneficial interest in a Note is in material breach of any representation or agreement set forth in the Transfer Letter or Transferee Certificate, if applicable, or any deemed representation or agreement of such holder of any beneficial interest in a Note, the Trustee will not register such attempted or purported transfer. If any such transfer has been registered, such transfer shall be absolutely null and void *ab initio* and shall vest no rights in the purported transferee (such purported transferee, a "Disqualified Transferee") and the last preceding beneficial owner that was not a Disqualified Transferee shall be restored to all rights as a beneficial owner thereof retroactively to the date of purported transfer of such Note by such beneficial owner (unless any applicable provisions of the rules of the Irish Stock Exchange provide otherwise); provided, however, that this provision shall not be interpreted to confer on any of the Issuer, the Co-Issuer, the Trustee or any Paying Agent any rights against Euroclear or Clearstream to require that Euroclear or Clearstream reverse or rescind any trade completed in accordance with the rules of Euroclear or Clearstream. In furtherance of the foregoing, (a) either of the Issuers shall be entitled to demand that a transferee of a beneficial interest in the Senior Notes that (i) acquired an interest in a Rule 144A Global Note but is not a Qualified Purchaser and a Qualified Institutional Buyer, or (ii) acquired an interest in a Temporary Regulation S Global Note or a Regulation S Global Note but is determined not to have acquired such interest in compliance with Regulation S or is a U.S. Person sell such Notes to a purchaser qualified under this Indenture to purchase such beneficial interest in the Notes and if the transferee does not comply with such demand within 30 days thereof, the Issuer or the Co-Issuer, may sell or cause such transferee to sell such interest of the transferee in the Note to a permitted transferee under this Indenture on such terms as the Issuer or Co-Issuer may choose; and (b) the Issuer shall be entitled to demand that a transferee of a Certificated Income Note that (i) is not both (A) a Qualified Purchaser and (B) a Qualified Institutional Buyer or an Accredited Investor or (ii) is determined not to have acquired such Certificated Income Notes in compliance with Regulation S sell such Certificated Income Notes to a purchaser qualified under this Section 2.6 to purchase such Certificated Income Notes and if the transferee does not comply with such demand within 30 days thereof, the Issuer may sell or cause such transferee to sell such interest of the transferee in the Note to a permitted transferee under this Indenture on such terms as the Issuer may choose.

(n) Notwithstanding anything to the contrary herein, no purchase by or proposed transfer to any person of Income Notes will be permitted, and the Trustee shall not register or permit the registration of any such purchase or transfer, if Holders of the Income Notes that have represented that they are Benefit Plan Investors would own 25% or more of the Aggregate Principal Amount of the Income Notes (excluding Income Notes in the form of the Class Q-1 Income Note Component, Income Notes represented by the Class Q-2 Collateral Asset A and Income Notes held by Controlling Persons) immediately after such purchase or transfer. Notwithstanding anything to the contrary herein, no purchase by or proposed transfer to any person of Class Q-1 Securities or Class Q-2B Securities will be permitted, if such person has represented that it is a Benefit Plan Investor, and the Trustee shall not register or permit the registration of any such purchase or transfer to a Person that has represented that it is a Benefit Plan Investor.

(o) If any Person shall become the beneficial owner of an interest in any ERISA Restricted Note who has made an ERISA-related representation required by this Indenture that is subsequently shown to be false or misleading (any such person a "Non-Permitted ERISA Holder"), the Issuer shall, promptly after discovery that such person is a Non-Permitted ERISA Holder by the Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), send notice to such Non-Permitted ERISA Holder demanding that such Non-Permitted ERISA Holder transfer all or any portion of ERISA Restricted Note held by such Person to a Person that is not a Non-Permitted ERISA Holder within 30 days of the date of such notice. If such Non-Permitted ERISA Holder fails to so transfer such ERISA Restricted Note the Issuer shall have the right, without further notice to the Non-Permitted ERISA Holder, to sell such ERISA Restricted Note or interest in such ERISA Restricted Note to a purchaser selected by the Issuer that is not a Non-Permitted ERISA Holder on such terms as the Issuer may choose. The Holder of each ERISA Restricted Note, the Non-Permitted ERISA Holder and each other Person in the chain of title from the Holder to the Non-Permitted ERISA Holder, by its acceptance of an interest in the ERISA Restricted Notes agrees to cooperate with the Issuer and the Trustee to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale shall be remitted to the Non-Permitted ERISA Holder. The terms and conditions of any sale under this subsection shall be determined in the sole discretion of the Issuer, and the Issuer shall not be liable to any Person having an interest in the ERISA Restricted Notes sold as a result of any such sale or the exercise of such discretion.

SECTION 2.7 Mutilated, Destroyed, Lost or Stolen Notes.

(a) If (i) any mutilated Note is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Trustee and the Issuers such security or indemnity as may be reasonably required by the Trustee and the Issuers to hold the Issuers and the Trustee harmless, then, in the absence of notice to the Issuers, the Registrar or the Trustee that such Note has been acquired by a protected purchaser, the Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a replacement Note of the same Class of a like Aggregate Principal Amount, registered in the same manner, dated the date of its authentication, bearing interest from the date to which interest has been paid on the mutilated, defaced, destroyed, lost or stolen Note and bearing a number not contemporaneously outstanding; provided, however, that if any such destroyed, lost or stolen Note, but not a mutilated Note, shall have become or within seven (7) days shall be due and payable, instead of issuing a replacement Note, the Issuers may pay to the Holder of such destroyed, lost or stolen Note the amount payable thereunder when so due or payable without surrender thereof.

(b) If, after the delivery of a replacement Note or payment in respect of a destroyed, lost or stolen Note pursuant to subsection (a), a protected purchaser of the original Note in lieu of which such replacement Note was issued presents for payment, transfer or exchange such original Note, the Issuers and the Trustee shall be entitled to recover such replacement Note (or such payment) from (i) any Person to which it was delivered; (ii) the Person taking such replacement Note from the Person to which such replacement Note was delivered; or (iii) any assignee of such Person, except a protected purchaser, and the Issuers and the Trustee shall be entitled to recover upon the security or indemnity provided therefor to the

extent of any loss, damage, cost or expense incurred by the Issuers or the Trustee in connection therewith.

(c) In connection with the issuance of any replacement Note under this Section 2.7, the Issuers may require the payment by the Holder of such Note of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including all fees and expenses of the Trustee) connected therewith.

(d) Any duplicate Note issued pursuant to this Section 2.7 in replacement for any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuers, whether or not the mutilated, destroyed, lost or stolen Note shall be found at any time or be enforced by any Person, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of the applicable Class duly issued hereunder.

(e) The provisions of this Section 2.7 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 2.8 Payments on the Notes.

(a) Each Class of Senior Notes shall accrue interest on the Aggregate Principal Amount thereof during each Periodic Interest Accrual Period at the applicable Interest Rate specified in Section 2.3. Subject to the availability of funds in the Trust Estate and to Section 8.6, payments of Periodic Interest shall be paid on each Class of Senior Notes on each Payment Date through the Maturity Date (or, if earlier, the date of redemption or repayment in full of such Class of Notes). In the event that the principal of any of the Senior Notes is not paid in full on the Maturity Date, no interest will accrue on the unpaid principal amount of any Senior Note subsequent to the Maturity Date. So long as any more senior Class of Notes is then Outstanding, any payment of interest due on Class B Notes, Class C-1 Notes or Class C-2 Notes which is not available to be paid ("Deferred Interest" with respect to such Notes) in accordance with Section 8.6 on any Payment Date shall not be considered "due and payable" hereunder (and so long as any more senior Class of Notes is then Outstanding, the failure to pay such interest shall not be an Event of Default unless the Issuer shall fail to pay in full such interest on the earlier of the Maturity Date and the date of redemption in full of the relevant Notes). Deferred Interest on any such Class of Notes shall be payable on the first Payment Date on which funds are available to be used for such purposes in accordance with Section 8.6, but in any event, no later than the earlier of the Maturity Date and such date of redemption. To the extent lawful and enforceable, interest on Deferred Interest with respect to any such Class of Notes shall accrue at the applicable Interest Rate for such Class until paid as provided herein. The Income Notes shall not accrue interest at a stated rate but on each Payment Date shall be entitled to distributions solely to the extent of available funds therefor pursuant to Section 8.6.

(b) The principal amount of the Notes of each Class shall be due and payable in accordance with Section 8.6 on the Maturity Date unless the unpaid principal of the Notes becomes due and payable at an earlier date upon a declaration of acceleration in accordance with Section 5.3, redemption in accordance with Section 2.14 or otherwise. If the unpaid principal

amount of the Notes shall become due and payable upon a declaration of acceleration, the Trustee shall make payments in respect of the principal and interest of the Notes as provided in Section 5.8.

(c) The Issuers shall require any certification from Holders necessary to permit the Issuer, the Trustee or any Paying Agent (A) to make payments to the Holders or others, or to receive payments on Eligible Investments or from the Swap Counterparty or others, without, or at a reduced rate of, withholding, (B) to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments made by or on behalf of the Issuer under any present or future law, rule, regulation or interpretation of the United States or the Cayman Islands or of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirement under any such law or regulation and (C) to comply with any filing, reporting or other requirement under any present or future law, rule, regulation or interpretation of any taxing authority or any political subdivision thereof to avoid the imposition of withholding or deduction of taxes or other charges on payments received by or on behalf of the Issuer, including (i) with respect to a Holder that is a U.S. person for U.S. federal income tax purposes, either a taxpayer identification number or proof of exemption from backup withholding (which shall be deemed satisfied by the delivery of a properly completed and signed Internal Revenue Service Form W-9 (or applicable successor form)) or (ii) with respect to a Holder that is not a U.S. person for U.S. federal income tax purposes, the delivery of a properly completed and signed Internal Revenue Service Form W-8BEN or W-8IMY with appropriate attachments (or in either case the applicable successor form).

(d) Except as otherwise provided herein, payments in respect of interest on and principal of and any other amounts payable, if any, on or in respect of any Note shall be payable by wire transfer in immediately available funds to a United States dollar account maintained at a bank by the Depositary or its nominee with respect to any Global Note and to the Holder or its designee with respect to a definitive Note or a Certificated Income Note shall be payable in accordance with wiring instructions provided to the Trustee or any Paying Agent; provided, that if appropriate instructions for any such wire transfer are not received at least fifteen (15) Business Days prior to the relevant Payment Date, then such payment shall be made by check drawn on a United States bank mailed to the address of the Holder specified in the Securities Register as of the Record Date applicable to such Payment Date. Upon final payment due on the Maturity Date of a Note, the Holder thereof shall present and surrender such Note at the Corporate Trust Office or as otherwise designated by the Trustee for such purpose on or prior to such date; provided, however, that if the Issuers and the Trustee shall have been furnished such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, such final payment shall be made without presentation or surrender. None of the Issuers, the Trustee, any Paying Agent, the Initial Purchaser, the Placement Agent, the Swap Counterparty, the Reference Portfolio Manager or any of their respective Affiliates will have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, the Depositary or any of the Participants or Indirect Participants or their respective participants relating to or for payments made thereby on account of beneficial interests in a Global Note.

(e) Except as otherwise provided herein, interest, principal and other amounts, if any, payable in respect of the Securities of any Class on any Payment Date or the Maturity Date or Class Q-2 Maturity Date, as applicable, shall be paid to the Holders of the Securities of such Class as of the related Record Date.

(f) Interest on the Class A-1 Notes, Class A-2 Notes, Class B Notes, the Class C-1 Notes and the Class Q-2A Securities shall be computed for each Periodic Interest Accrual Period on the basis of a 360-day year and the actual number of days in such Periodic Interest Accrual Period. Interest on the Class C-2 Notes shall be computed for each Periodic Interest Accrual Period on the basis of a 360-day year consisting of twelve 30-day months.

(g) If any Payment Date or the Maturity Date or the Class Q-2 Maturity Date, as applicable, or any other date for the payment of the principal of, or interest on, or any other amount payable on or in respect of, any Security is not a Business Day, then payment need not be made on such date, but shall be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of any such Payment Date or Maturity Date or the Class Q-2 Maturity Date, as applicable, or any other date for the payment of the principal of, or interest on, or any other amount payable on or in respect of, any Security, as the case may be. In the case of the Class A-1 Notes, Class A-2 Notes, Class B Notes and Class C-1 Notes and the Class Q-2A Securities, interest shall accrue on such payment for the period from or after any such nominal date to the next succeeding Business Day and be payable on such Business Day as provided in the definitions of Periodic Interest for such Classes, and in the case of the Class C-2 Notes, no interest shall accrue on such payment for the period from and after any such nominal date to the next succeeding Business Day.

(h) Principal of, interest on and all other amounts payable on or in respect of the Notes or pursuant to this Indenture (other than amounts payable on Class Q-2 Securities, which shall be subject to the limited recourse provision in Section 2.17(i)) shall constitute limited recourse obligations of the Issuer and, in the case of the Senior Notes, non-recourse obligations of the Co-Issuer, payable solely from and to the extent of the Trust Estate, and following the liquidation of the Trust Estate and the application of the proceeds thereof as provided herein, all obligations of each of the Issuers and any claims against either of the Issuers shall be extinguished and shall not thereafter revive. Neither of the Issuers, the Swap Counterparty, the Reference Portfolio Manager, the Trustee, the Collateral Administrator, nor any of their respective agents, partners, beneficiaries, officers, directors, employees or any Affiliate of any of them or any of their respective successors or assigns shall be personally liable for any amounts payable, or performance due, under the Notes or this Indenture. It is understood that the foregoing provisions of this paragraph shall not (i) prevent recourse to the Trust Estate for the sums due or to become due under any security, instrument or agreement for which the Trust Estate is security, or (ii) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until all items in the Trust Estate have been liquidated and applied to the payment of the obligations, whereupon any outstanding indebtedness or obligation shall be extinguished. It is further understood that the foregoing provisions of this paragraph shall not limit the right of any Person to name the Issuers as parties defendant in any action or suit or in the exercise of any other remedy under the Notes or in this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal

liability shall be asked for or (if obtained) enforced against any such Person or entity. The provisions of this Section 2.8(h) shall survive the termination of this Indenture.

(i) For so long as any of the Securities are listed on any stock exchange, to the extent required by the rules of such stock exchange, either of the Issuers or the Trustee shall notify such stock exchange in the event that the Securities do not receive scheduled payments of principal or interest on any Payment Date or the Maturity Date.

(j) Subject to the foregoing provisions of this Section 2.8 and the provisions of Sections 2.6, 2.7, 2.16 and 2.17, as applicable, each Security delivered under this Indenture and upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights of unpaid interest, principal and other applicable amounts that were carried by such other Security.

SECTION 2.9 Persons Deemed Owners.

Except as may be otherwise expressly agreed, prior to due presentment for registration of transfer of any Note, the Issuers and the Trustee, and any agent of the Issuers or the Trustee, shall treat the Person in whose name any Note is registered as it appears on the Securities Register (with respect to payments only, as of the applicable Record Date) as the owner of such Note for the purpose of receiving payments of principal, interest and distributions on such Note and for all other purposes whatsoever (whether or not such Note is overdue), and none of the Issuer, the Co-Issuer, the Trustee, or any agent of any of them, shall be affected by notice to the contrary. The Depositary shall be deemed the owner of the Global Notes, and owners of beneficial interests in Global Notes shall not be considered the owners of any Notes for the purpose of receiving notices.

SECTION 2.10 Cancellation of Notes.

All Notes surrendered for payment, exchange or registration of transfer shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by the Trustee. Either of the Issuers may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer or Co-Issuer, as applicable, may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly canceled by the Trustee. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes may be held or disposed of by the Trustee in accordance with its standard retention or disposal policy as in effect at the time unless the Issuer shall direct the Trustee that they be returned to the Issuers; provided, however, that such direction is timely and the Notes have not been previously disposed of by the Trustee.

SECTION 2.11 Swap Counterparty, Reference Portfolio Manager and Initial Purchaser as Holders.

Without limiting provisions hereof relating to the purchase of any Securities in connection with an Amendment Buy-Out pursuant to Section 9.6 or a Maturity Extension pursuant to Section 2.15 of this Indenture, each of the Swap Counterparty, the Reference Portfolio Manager and the Initial Purchaser and their respective Affiliates, in its individual or

any other capacity, may become an owner of the Securities (provided that such transactions are conducted on an arm's-length basis) and may otherwise deal with the Issuers or their respective Affiliates with the same rights that it would have if it were not the Swap Counterparty, the Reference Portfolio Manager, the Initial Purchaser or such an Affiliate.

SECTION 2.12 Treatment of Senior Notes.

The Issuer and each Holder of a Senior Note or beneficial owner of an interest in a Senior Note, by acquiring any Senior Note or interest therein, (i) expresses its intention that the Senior Notes be treated as evidencing indebtedness, which indebtedness is solely of the Issuer and (ii) unless otherwise required in a final determination by appropriate taxing authorities, agrees to treat the Senior Notes as indebtedness solely of the Issuer, in each case for the purpose of United States federal income taxes, state and local income and franchise taxes and any other taxes imposed upon, measured by or based upon gross or net income.

SECTION 2.13 No Gross Up.

The Issuers shall not be obligated to pay any additional amounts to the Holders or the beneficial owners of the Notes as a result of any withholding or deduction for, or on account of, any present or future taxes, duties, assessments or government charges with respect to the Notes.

SECTION 2.14 Redemption of Notes.

(a) On each Payment Date following the Ramp-up End Date for which a Coverage Test was not met as of the related Determination Date, principal payments on the Senior Notes will be made in accordance with the Priority of Payments.

(b) On each Payment Date, principal payments on the Senior Notes will be made in accordance with the Principal Priority of Payments to the extent of any Note Redemption Amounts for such Payment Date.

(c) In the event that any Rating Agency has not confirmed in writing the rating in effect on the Closing Date of any Class of Notes as of the 30th day following the Ramp-up End Date, principal payments on the Senior Notes will be made on subsequent Payment Dates in accordance with the Priority of Payments until each such rating is confirmed.

(d) If an Indenture Tax Event has occurred and is continuing, at the direction of Holders of a majority of the Aggregate Principal Amount of the Income Notes, the Issuers shall redeem (a "Tax Redemption") the Outstanding Notes on the Payment Date next following receipt of such direction (or, if such direction is received less than 45 Business Days prior to a Payment Date, on the next Payment Date thereafter) by the Trustee (the "Tax Redemption Date"), in the case of the Senior Notes at a price of par plus any accrued and unpaid interest thereon (including any Deferred Interest) to the redemption date; provided that the Swap Counterparty has consented to such redemption in its sole discretion and the Issuers have sufficient funds, after liquidation of Eligible Investments in the Trust Accounts pursuant to Section 8.3, to permit the payment of all Administrative Expenses and Subordinated Administrative Expenses and all Accrued Swap Liabilities as of the Tax Redemption Date and

the repayment in full of the Aggregate Principal Amount of all Classes of Senior Notes then Outstanding and all accrued and unpaid interest (including any Deferred Interest) with respect thereto in accordance with the Priority of Payments and all other amounts ranking senior to the Income Notes payable pursuant to the Priority of Payments. The Issuer shall provide the Rating Agencies and the Investment Agreement Counterparty prior notice of any redemption pursuant to this Section 2.14(d).

(e) After the date that is five and a half years following the Closing Date, at the direction of Holders of at least 66-2/3% in Aggregate Principal Amount of the Income Notes, the Issuers shall redeem (an "Optional Redemption") the Aggregate Principal Amount of all Outstanding Notes, in the case of the Senior Notes at par plus any accrued and unpaid interest (including any Deferred Interest) thereon to the redemption date plus, in the case of the Class C-2 Notes, the applicable Make-whole Premium on the Payment Date next following receipt of such direction by the Trustee (or, if such direction is received less than 45 Business Days prior to a Payment Date, on the next Payment Date thereafter) (the "Optional Redemption Date"); provided that the Issuers shall not so redeem the Notes unless the Issuers will have sufficient funds, after liquidation of Eligible Investments in the Trust Accounts pursuant to Section 8.3, to permit the payment of all Administrative Expenses and Subordinated Administrative Expenses and all Accrued Swap Liabilities as of the Optional Redemption Date (calculated taking into account all accrued and unpaid Base Amount, Subordinate Amount and Incentive Amount for such Optional Redemption Date to the extent provided in the Swap Agreement) and the repayment in full of the Aggregate Principal Amount of all Classes of Senior Notes then Outstanding and all accrued and unpaid interest (including any Deferred Interest) and any applicable Make-whole Premium with respect thereto in accordance with the Priority of Payments. The Issuer shall provide the Rating Agencies and the Investment Agreement Counterparty prior notice of any redemption pursuant to this Section 2.14(e).

SECTION 2.15 Maturity; Extension of Maturity.

The Maturity Date for each Class of Notes and the Class Q-1 Securities is August 1, 2016, unless extended in accordance with this Section 2.15.

(a) If the Swap Termination Date is extended pursuant to the Swap Agreement, on the Extension Effective Date, the Maturity Date of the Notes and the Class Q-1 Securities shall be automatically extended for four years, to August 1, 2020, without any requirement for approval or consent of any Holders of Securities or amendment or supplement to this Indenture; provided that the Extension Conditions are satisfied (the "Maturity Extension").

(b) In the case of a Maturity Extension, any Holder of Notes or Class Q-1 Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to subsection (e) below (such Securities as to which an Extension Sale Notice has been duly given, "Extension Sale Securities"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the Extension Effective Date and the other Extension Conditions are satisfied as of such date.

(c) Extension Conditions. The Maturity Extension shall be effective only if the following conditions (the "Extension Conditions") are satisfied:

(i) The purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the Extension Effective Date;

(ii) All such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture (including, without limitation, the restriction that such Securities may not be purchased (x) in the case of the Class Q-1 Securities by any Person that is a Benefit Plan Investor and (y) in the case of the Income Notes, if Holders of the Income Notes that have represented that they are Benefit Plan Investors would own 25% or more of the Aggregate Principal Amount of the Income Notes (excluding Income Notes in the form of the Class Q-1 Income Note Component, Income Notes represented by the Class Q-2 Collateral Asset A and Income Notes held by Controlling Persons) immediately after such purchase and the legends on such Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency); and

(iii) (a) Rating Confirmation has been obtained from S&P (so long as any Securities are then rated by S&P) (which confirmation shall be based on S&P's applicable rating criteria and models pursuant to which the applicable Securities were rated by S&P as of the Closing Date) and (b) either (i) all Coverage Tests and clauses 17, 18 and 22 of the Reference Portfolio Criteria are satisfied as of the Extension Determination Date and the rating of each Class of Senior Notes by Moody's has not been downgraded, withdrawn or qualified from that in effect on the Closing Date (unless it subsequently has been reinstated to the rating assigned on the Closing Date) or (ii) Rating Confirmation has been obtained from Moody's (so long as any Securities are then rated by Moody's).

The Issuer, the Trustee and, by its acceptance of the Securities, each Holder of Securities agrees that the Swap Counterparty shall not be responsible for causing the Extension Conditions to be satisfied and shall not be liable to any such Person or Holder of Securities (whether or not such Holder gave an Extension Sale Notice with respect to its Securities) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture or a Swap Event of Default.

(d) Extension Procedure.

(i) No later than three (3) Business Days following receipt by the Trustee of the notice given by the Swap Counterparty of the Swap Counterparty's election to extend the Swap Termination Date (the "Extension Notice"), the Trustee shall mail the Extension Notice to all Holders of Securities and each Rating Agency (so long as any rated Securities are Outstanding), in the form of Exhibit N, and shall request Rating Confirmation for the Maturity Extension from S&P, if applicable;

(ii) Any Holder of Securities may give irrevocable notice (an "Extension Sale Notice") within 30 days after the Trustee has mailed the Extension Notice (the "Extension Sale Notice Period") of its intention to sell its Securities to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of Securities that has not given such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b)(i) of the Extension Conditions is not satisfied as of the Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request Rating Confirmation from Moody's, if applicable.

(e) On the Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Securities in compliance with all transfer restrictions in this Indenture and the legends on such Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the Extension Effective Date.

(f) On the Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture, provided that all Extension Conditions set forth in clause (c) above are satisfied. No later than 2 Business Days after the Extension Effective Date, the Trustee, at the expense of the Issuers, shall mail a notice to all Holders of Securities, the Swap Counterparty, the Reference Portfolio Manager, the Investment Agreement Counterparty, each Rating Agency (so long as any rated Securities are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Securities is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depositary for any Securities subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Holder of Senior Notes (including in the form of the Class Q-1 Senior Note Component) other than Extension Sale Securities shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Income Notes shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment on any such Class of Senior Notes shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification, on the first Payment Date from and including the Extension Effective Date on which funds are available to be used for such purposes in accordance with Section 8.6, but in any event, no later than the earlier of the Maturity Date and the date of redemption of such Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with Section 8.6 on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment

on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Maturity Date and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

SECTION 2.16 Class Q-1 Securities.

The provisions of this Section 2.16 shall apply only to the Class Q-1 Securities and shall override any contrary or inconsistent provisions of this Indenture. Subject to the foregoing sentence, the other provisions of Article II shall apply to the Class Q-1 Securities to the same extent as the Notes.

(a) In addition to the Classes of Notes set forth in Section 2.3, the Issuer will issue the Class Q-1 Extendable Securities (the "Class Q-1 Securities"). The maximum initial stated amount of the Class Q-1 Securities that may be executed and delivered under this Indenture is limited to U.S.$ 10,000,000. The Aggregate Principal Amounts of the Components of the Class Q-1 Securities are included in, and are not in addition to, the Aggregate Principal Amounts of the Class C-2 Notes and the Income Notes as set forth in Section 2.3.

(b) All Class Q-1 Securities initially sold in the United States or to U.S. Persons pursuant to Rule 144A under the Securities Act will be issued and may be transferred in the form of certificates (each a "Certificated Class Q-1 Security") in definitive, physical certificates in fully registered form, registered in the name of the beneficial owner thereof or its nominee and in the form of Exhibit Q-1 Certificated hereto. All Class Q-1 Securities initially sold to non-U.S. Persons (as defined in Regulation S) in offshore transactions in reliance on Regulation S will be issued in the form of a temporary global security (the "Class Q-1 Temp Reg S Global Security") in the form of Exhibit Q-1 Temp Reg S, and on or after the Exchange Date, shall be exchangeable for interests in a permanent global security (a "Class Q-1 Reg S Global Security") in the form of Exhibit Q-1 Reg S, subject to the provisions of Sections 2.2, 2.5 and 2.6 to the same extent as other Temporary Regulation S Global Notes and Regulation S Global Notes (but subject to clause (c) below with respect to transfers of any interest therein). Class Q-1 Securities shall only be issued and held in minimum denominations (an "Authorized Class Q-1 Denomination") such that the Class Q-1 Senior Note Component and the Class Q-1 Income Note Component thereof is in an Authorized Denomination, which shall mean that the Authorized Class Q-1 Denomination shall be $1,000,000 in stated amount (consisting of $500,000 Aggregate Principal Amount of the Class Q-1 Senior Note Component and $500,000 Aggregate Principal Amount of the Class Q-1 Income Note Component).

(c) No transfer of a Class Q-1 Security will be permitted to a person that would not be permitted to acquire the Class C-2 Notes and Income Notes comprising the Components of the Class Q-1 Security under this Indenture.

(i) Certificated Class Q-1 Security to Certificated Class Q-1 Security. Each purchaser or transferee of a Certificated Class Q-1 Security will be required to provide to the Trustee a properly completed certificate in the form of Exhibit Q-1

Certificated Transfer Letter. If a Holder of a Certificated Class Q-1 Security wishes at any time to transfer such Certificated Class Q-1 Security, such Holder may transfer or cause the transfer of such Certificated Class Q-1 Security as follows: Upon receipt by the Registrar of (A) such Holder's Certificated Class Q-1 Security properly endorsed for assignment to the transferee and (B) a properly completed certificate by the transferee in the form of Exhibit Q-1 Certificated Transfer Letter, and any other documentation as may be required thereunder, the Trustee will cancel such Certificated Class Q-1 Security in accordance with this Indenture, cause the Registrar to record the transfer in the Securities Register and, upon execution by the Issuer, deliver to the transferee one or more Certificated Class Q-1 Securities in the aggregate stated amount transferred and in the Authorized Class Q-1 Denomination. Notwithstanding anything to the contrary herein, no purchase or proposed transfer of Class Q-1 Securities will be permitted, and the Trustee shall not register or permit the registration of any such purchase or transfer, to a Person that has represented that it is a Benefit Plan Investor. Any purported transfer in violation of this provision shall be null and void *ab initio.*

(ii) Class Q-1 Reg S Global Security to Certificated Class Q-1 Security. If a holder of a beneficial interest in Class Q-1 Securities in the form of a Class Q-1 Temp Reg S Global Security or Class Q-1 Reg S Global Security wishes at any time to transfer its interest in such Security, the transferee must take delivery thereof in the form of a Certificated Class Q-1 Security. Such Holder may, subject to the rules and procedures of the Depositary, transfer or cause the transfer of such interest for an equivalent interest in one or more such Certificated Class Q-1 Securities as described below. Upon receipt by the Registrar of (A) instructions given in accordance with the Applicable Procedures from a Participant, directing the Registrar to deliver one or more such Certificated Class Q-1 Securities, designating the registered name or names, address, payment instructions, and the number and stated amount (and Aggregate Principal Amount of the related Components) of such Certificated Class Q-1 Securities to be executed and delivered (the aggregate stated amount of such Certificated Class Q-1 Notes being equal to the aggregate stated amount of the interest in the Class Q-1 Temp Reg S Global Security or Class Q-1 Reg S Global Security to be transferred), in Authorized Class Q-1 Denominations and (B) a properly completed certificate by the transferee in the form of Exhibit Q-1 Certificated Transfer Letter, and any other documentation as may be required thereunder, then the Registrar will instruct the Depositary to reduce, or cause to be reduced, the applicable Class Q-1 Temp Reg S Global Security or Class Q-1 Reg S Global Security by the aggregate stated amount of the beneficial interest in such Class Q-1 Temp Reg S Global Security or Class Q-1 Reg S Global Security to be transferred and the Registrar shall record the transfer in the Securities Register and authenticate and deliver one or more Certificated Class Q-1 Securities registered in the names specified in the certificate described in clause (B) above in the stated amount designated by the transferee (the aggregate of such stated amount being equal to the beneficial interest in the Class Q-1 Temp Reg S Global Securities or Class Q-1 Reg S Global Securities to be transferred) and in the applicable Authorized Class Q-1 Denomination. Any purported transfer in violation of this provision shall be null and void *ab initio*.

(iii) No Transfer to Class Q-1 Reg S Global Security. Certificated Class Q-1 Securities may not be transferred or exchanged for Class Q-1 Securities in the form of Class Q-1 Temp Reg S Global Securities or Class Q-1 Reg S Global Securities.

(d) Except as otherwise provided herein, the rights and obligations of Holders of the Class Q-1 Securities shall consist solely of the rights and obligations of Holders of the applicable Components. References herein to the rights and obligations of the Holders of Class C-2 Notes, Class C Notes or Income Notes include the rights and obligations of the Holders of Class Q-1 Securities to the extent of the applicable Components.

(i) On each date on which payments are made with respect to the Class C-2 Notes or Income Notes, a portion of such payment or distribution shall be allocated to the Class Q-1 Securities in the proportion that the Aggregate Principal Amount of Notes comprising the applicable Component thereof bears to the Aggregate Principal Amount of the related Class of Notes as a whole (including the related Components) and in accordance with the applicable terms and conditions hereof. No other amounts shall be payable in respect of the Class Q-1 Securities.

(ii) The Holders of Class Q-1 Securities will be entitled to voting rights based on the voting rights of the respective underlying Class C-2 Notes or Income Notes related to any applicable Component in the proportion that the Aggregate Principal Amount of such Class C-2 Notes or Income Notes bears to the Aggregate Principal Amount of all Class C-2 Notes or Income Notes (including such Component), as applicable. Except as expressly provided herein, the Holders of the Class Q-1 Securities shall not be entitled to voting rights as a separate class. Additionally, the Holders of Class Q-1 Securities shall not be entitled to direct the Trustee pursuant to this Indenture except in the capacity as Holders of Class C-2 Notes or Income Notes to the extent of their interest in any applicable Component.

(e) A Holder of a Class Q-1 Security may exchange all or a proportionate amount of each Component for proportionate interests in the Class C-2 Notes and Income Notes, as applicable, that comprise such Components, subject to the Authorized Denominations for the Notes and the Authorized Class Q-1 Denomination and, in the manner provided in Sections 2.2, 2.5 and 2.6 hereof, in the case of the Class Q-1 Senior Note Component, for transfer of beneficial interests to a Rule 144A Global Note, Regulation S Global Note or Temporary Regulation S Global Note, and in the case of the Class Q-1 Income Note Component, for transfer of a Certificated Income Note. The Trustee, upon surrender of a Certificated Class Q-1 Security for such an exchange, shall simultaneously convert the constituent Components into the Class C-2 Notes and Income Notes comprising such Components, as applicable, and effect such exchange. Thereafter, the Holder of the Class Q-1 Security so exchanged will be the Holder of an interest in the Class C-2 Notes and the Income Notes received upon such an exchange. No Holder of Class C-2 Notes or Income Notes (including following such an exchange) will be entitled to exchange such Notes for a Class Q-1 Security. No service charge shall be made for any such exchange of Class Q-1 Securities, but the Issuer or the Trustee may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with such exchange. Each Holder of a Class Q-1 Security, by its acceptance thereof, acknowledges that upon any such exchange, the rating of such Class Q-1 Security by any Rating Agency may not apply to the

Securities received in such exchange. Upon the exchange of all outstanding Class Q-1 Securities pursuant to this provision, the Issuer will notify each Rating Agency then rating the Class Q-1 Securities.

(f) The Class Q-1 Nominal Rate is the rate per annum at which interest is stated to be payable on the Class Q-1 Securities solely for purposes of calculating the Class Q-1 Nominal Principal, and does not limit the entitlement of Holders of the Class Q-2 Securities to receive Class Q-1 Excess Distributions.

Each Holder of a Class Q-1 Security, by its acquisition thereof, acknowledges that the rating of the Class Q-1 Securities by Moody's addresses solely the return of the Class Q-1 Rated Principal.

(g) For purposes of Section 2.12, references to "Senior Notes" shall, with respect to the Class Q-1 Securities, be deemed to refer only to the Class Q-1 Senior Note Component.

(h) If a Responsible Officer of the Trustee has actual knowledge that (i) a transfer or attempted or purported transfer of any interest in any Class Q-1 Security was consummated in violation of this Indenture or on the basis of a materially incorrect certification from the transferee or purported transferee, (ii) the transferee or the purported transferee failed to deliver to the Trustee the certificate in the form of Exhibit Q-1 Certificated Transfer Letter or other purchaser letter or certificate or any other documentation required to be delivered thereunder or hereunder or (iii) the transferee or purported transferee is in material breach of any representation or agreement set forth in the certificate in the form of Exhibit Q-1 Certificated Transfer Letter or other purchaser letter or certificate or in this Indenture, the Trustee will not register such attempted or purported transfer. If any such transfer has been registered, such transfer shall be absolutely null and void *ab initio* and shall vest no rights in the purported transferee (such purported transferee, a "Disqualified Transferee") and the last preceding owner that was not a Disqualified Transferee shall be restored to all rights as a owner thereof retroactively to the date of purported transfer of such Class Q-1 Security by such owner. In furtherance of the foregoing, the Issuer shall be entitled to demand that a transferee of a Class Q-1 Security that (i) acquired an interest in a Class Q-1 Security in reliance on Rule 144A but is not a Qualified Purchaser and a Qualified Institutional Buyer, or (ii) acquired an interest in a Class Q-1 Security in reliance on Regulation S but is determined not to have acquired such interest in compliance with Regulation S or is a U.S. Person sell such Class Q-1 Securities to a purchaser qualified under this Indenture to purchase such Class Q-1 Securities and if the transferee does not comply with such demand within 30 days thereof, the Issuer may sell or cause such transferee to sell such interest of the transferee in the Class Q-1 Security to a permitted transferee under this Indenture on such terms as the Issuer may choose.

SECTION 2.17 Class Q-2 Securities.

The provisions of this Section 2.17 shall apply only to the Class Q-2 Securities and shall override any contrary or inconsistent provisions of this Indenture. Subject to the foregoing sentence, the other provisions of Article II shall apply to the Class Q-2 Securities to the same extent as the Notes.

(a) Authorized Amount; Maturity Date; Denomination.

In addition to the Classes of Notes set forth in Section 2.3 and the Class Q-1 Securities set forth in Section 2.16, the Issuer will issue Class Q-2A Securities and Class Q-2B Securities (collectively, the "Class Q-2 Securities"). The maximum Aggregate Principal Amount of the Class Q-2A Securities and the Class Q-2B Securities that may be executed, authenticated and delivered under this Indenture is limited to U.S. $7,200,000 and U.S. $40,000,000, respectively. The maturity date for the Class Q-2 Securities (the "Class Q-2 Maturity Date") is April 28, 2034. The Class Q-2A Securities will be issuable and transferable in minimum denominations of U.S.$500,000 and integral multiples of U.S. $1,000 in excess thereof. The Class Q-2B Securities will be issuable and transferable in minimum denominations of U.S.$1,000,000 and integral multiples of U.S. $1,000 in excess thereof.

(b) Form of Class Q-2 Securities.

All Class Q-2 Securities shall be issued in the form of certificated securities (each a "Certificated Class Q-2 Security") in definitive, physical certificates in fully registered form without interest coupons with the applicable legends set forth in the form of Exhibit Certificated Class Q-2A and Exhibit Certificated Class Q-2B hereto, as appropriate, which shall be registered in the name of the beneficial owner or a nominee thereof, duly executed by the Issuer and authenticated by the Trustee as provided in Article II of this Indenture.

(c) Payments on the Class Q-2 Securities.

(i) The Class Q-2A Securities shall accrue interest on the Aggregate Principal Amount thereof during each Periodic Interest Accrual Period at a rate equal to LIBOR plus 0.50% per annum (the "Class Q-2A Interest Rate"). Subject to the availability of funds in the Class Q-2 Securities Collateral Account and to clause (d) below, payments of interest shall be paid on the Class Q-2A Securities on each Payment Date through and including the Class Q-2 Maturity Date (or, if earlier, the date of redemption or repayment in full of the Class Q-2A Securities). In the event that the principal of the Class Q-2A Securities is not paid in full on the Class Q-2 Maturity Date, no interest will accrue on the unpaid principal amount thereof subsequent to the Class Q-2 Maturity Date. Any payment of interest due on Class Q-2A Securities which is not available to be paid ("Class Q-2A Deferred Interest") in accordance with clause (d) on any Payment Date shall not be considered "due and payable" hereunder and the failure to pay such interest shall not be a Class Q-2 Event of Default. Class Q-2A Deferred Interest shall be payable on the first Payment Date on which funds are available to be used for such purposes in accordance with clause (d) below. To the extent lawful and enforceable, interest on Class Q-2A Deferred Interest shall accrue at the applicable Class Q-2A Interest Rate until paid as provided herein.

(ii) The Class Q-2B Securities shall not accrue interest at a stated rate but on each Payment Date shall be entitled to distributions solely to the extent of available funds therefor pursuant to clause (d) below.

(iii) The Aggregate Principal Amount of the Class Q-2A Securities shall be due and payable in accordance with clause (d) below on the Class Q-2 Maturity Date unless paid earlier as provided pursuant to clause (d) below.

(d) Class Q-2 Priority of Payments.

(i) Class Q-2 Payment Date Priority of Payments. On each Payment Date, the Trustee shall distribute the Class Q-2 Payment Date Proceeds in the Class Q-2 Securities Collateral Account to make the following payments in the following order of priority (the "Class Q-2 Payment Date Priority of Payments"):

(A) to the Holders of the Class Q-2A Securities, the Class Q-2A Interest Amount;

(B) to the Holders of the Class Q-2A Securities, any Class Q-2A Deferred Interest;

(C) to the Holders of the Class Q-2A Securities, the Aggregate Principal Amount of the Class Q-2A Securities; and

(D) the remainder to the Holders of the Class Q-2B Securities (the "Net Class Q-2B Periodic Return Amount").

(ii) Class Q-2B Target Amount. On each Payment Date, the Trustee shall distribute from Class Q-2 Gross Proceeds other than the Class Q-2 Payment Date Proceeds to the Holder of Class Q-2B Securities the Class Q-2B Target Amount, if any, for such date.

(iii) Class Q-2 Maturity Date Priority of Payments. On the Class Q-2 Maturity Date, the Trustee will distribute any Class Q-2 Collateral Asset B Proceeds and any other amounts on deposit in the Class Q-2 Securities Collateral Account to make the following payments in the following order of priority (the "Class Q-2 Maturity Date Priority of Payments"):

(A) to the Holders of the Class Q-2A Securities, the Aggregate Principal Amount of the Class Q-2A Securities, any accrued and unpaid Class Q-2A Interest Amount and any Class Q-2A Deferred Interest; provided that no more than $7,200,000 shall be payable pursuant to this clause (A) from Class Q-2 Collateral Asset B Proceeds; and

(B) the remainder to the Holders of the Class Q-2B Securities (the "Final Class Q-2B Distribution Amount").

(e) Class Q-2 Securities Collateral Account.

(i) The Trustee shall, on or prior to the Closing Date, establish a segregated trust account in the name of the Trustee for the benefit of the Holders of Class Q-2 Securities, which shall be designated as the Valhalla CLO, Ltd. – Class Q-2

Securities Collateral Account (the "Class Q-2 Securities Collateral Account"). All moneys credited from time to time to the Class Q-2 Securities Collateral Account shall be held by the Trustee as part of the Class Q-2 Securities Collateral and shall be applied for the purposes provided herein.

(ii) On the Closing Date, the Issuer shall cause to be Delivered to the Class Q-2 Securities Collateral Account (i) the Class Q-2 Collateral Asset A and (ii) the Class Q-2 Collateral Asset B.

(iii) Except as otherwise expressly provided in this Indenture, the Trustee shall deposit into the Class Q-2 Securities Collateral Account promptly upon receipt from time to time, all proceeds from the Class Q-2 Collateral Assets, including, without limitation, distributions on the Class Q-2 Collateral Asset A and any proceeds from the sale, redemption or maturity of all or portions of the Class Q-2 Collateral Assets.

(iv) The Trustee shall have the right to establish such subaccounts within the Class Q-2 Securities Collateral Account as the Trustee may deem necessary or appropriate for convenience in administering the Class Q-2 Securities Collateral.

(v) The Trustee shall invest moneys held from time to time in the Class Q-2 Securities Collateral Account in one or more Eligible Investments pursuant to the following sentence, if the Class Q-2A Securities are then Outstanding, and otherwise pursuant to the unanimous written direction of the Holders of the Class Q-2B Securities (which may be in the form of standing instructions). If the Class Q-2A Securities are then Outstanding, or if the Trustee does not receive such written directions within three days of receipt of uninvested moneys (whether by reason of a new deposit of moneys or payments in respect of, or realized upon the maturity of, existing Eligible Investments), the Trustee shall invest such moneys in the JPMorgan Fleming US Dollar Liquidity Fund 6052, provided such fund then meets the requirements of the definition of Eligible Investments, and if such fund then does not meet such requirement, an Eligible Investment that meets the requirements of clause (a) of the definition of Eligible Investments; provided further, that any Eligible Investment in the Class Q-2 Securities Collateral Account shall be required to mature on or before the Business Day prior to the next Payment Date. Each Eligible Investment (other than any Eligible Investment constituting a general intangible, a deposit account or an account) made using money credited to the Class Q-2 Securities Collateral Account shall be credited to the Class Q-2 Securities Collateral Account, and any income or other gain therefrom shall be credited to, and any loss resulting therefrom shall be charged to, the same Class Q-2 Securities Collateral Account. Any Eligible Investments constituting general intangibles, deposit accounts and accounts shall be Delivered to the Trustee. The Trustee shall not be liable by reason of any investment loss realized in connection with any Eligible Investment.

(vi) Section 8.5 shall be applicable to the Class Q-2 Securities Collateral Account with references to a "Trust Account" thereunder being deemed to refer to the Class Q-2 Securities Collateral Account.

(f) Rights with respect to the Class Q-2 Collateral Asset A.

(i) With respect to any matter under this Indenture as to which the Holders of Income Notes are entitled to vote or give any consent or direction, the Trustee shall follow the direction of the Holders of a majority of the Aggregate Principal Amount of the Class Q-2B Securities for purposes of voting or giving such consent or direction for the Income Notes represented by the Class Q-2 Collateral Asset A. The Holders of Class Q-2 Securities shall not otherwise be entitled to direct the Trustee with respect to the Trust Estate pursuant to this Indenture.

(ii) If as a result of any action pursuant to clause (i) the Holder of the Income Notes represented by the Class Q-2 Collateral Asset A would constitute a Non-consenting Holder, the Amendment Buy-Out Purchaser will be entitled to purchase the Income Notes represented by the Class Q-2 Collateral Asset A in accordance with Section 9.6 hereof, and the proceeds of such purchase shall be credited to the Class Q-2 Securities Collateral Account for distribution on the next succeeding Payment Date pursuant to subsection (d) above. The Class Q-2 Securities themselves shall not be subject to an Amendment Buy-Out pursuant to Section 9.6.

(iii) Without limiting clause (i), in the case of the Maturity Extension, if any, pursuant to Section 2.15, the Holders of a majority of the Aggregate Principal Amount of the Class Q-2B Securities shall be entitled to direct the Trustee to provide an Extension Sale Notice with respect to the Income Notes represented by the Class Q-2 Collateral Asset A. Any proceeds from an Extension Sale with respect to the Income Notes represented by the Class Q-2 Collateral Asset A shall be credited to the Class Q-2 Securities Collateral Account for distribution on the applicable Payment Date pursuant to subsection (d) above.

(g) Liquidation of Class Q-2 Collateral Asset A.

If the Class Q-2A Coverage Test is not satisfied on any date of determination (as determined by the Trustee in consultation with the Swap Counterparty or an affiliate of the Swap Counterparty designated by the Swap Counterparty) following the Closing Date, at the unanimous direction of the Holders of the Class Q-2A Securities, the Issuer shall cause the Trustee to liquidate the Class Q-2 Collateral Asset A and credit the proceeds thereof to the Class Q-2 Securities Collateral Account for distribution in accordance with clause (d) above upon receipt of such proceeds as though the date of receipt thereof were a Payment Date.

(h) Exchange of Class Q-2B Securities.

On any Business Day on and after the date on which the Class Q-2A Securities are redeemed or repaid in full, any Holder of a Class Q-2B Security may exchange all but not less than all of its Class Q-2B Securities for its applicable pro rata share of the Class Q-2 Collateral Asset A (subject to the provisions of 2.6(i)(A) regarding acquiring Income Notes in the form of a Certificated Income Note) and the Class Q-2 Collateral Asset B (subject to any restrictions on transfer with respect thereto) and any proceeds thereof in the Class Q-2 Securities Collateral Account. The Trustee, upon surrender of a Certificated Class Q-2B Security by a

Holder for such an exchange, shall simultaneously convert the applicable portion of the Class Q-2 Collateral Asset A into Certificated Income Notes and transfer the applicable portion of the Class Q-2 Collateral Asset B to such Holder in accordance with standard settlement procedures for assets of that type and effect such exchange. Thereafter, the Holder of the Class Q-2B Security so exchanged will be the Holder of the Income Notes received upon such an exchange for purposes of this Indenture. No Holder of Income Notes (including following such an exchange) or CGMHI Notes will be entitled to exchange any such notes for a Class Q-2B Security. No service charge shall be made for any such exchange of Class Q-2B Securities, but the Issuer or the Trustee may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with such exchange.

(i) Limited Recourse.

Principal of, interest on and all other amounts payable on or in respect of the Class Q-2 Securities shall constitute limited recourse obligations of the Issuer and be payable solely from and to the extent of the Class Q-2 Securities Collateral, and following the liquidation of the Class Q-2 Securities Collateral and the application of the proceeds thereof as provided herein, all obligations of the Issuer and any claims against the Issuer shall be extinguished and shall not thereafter revive. Neither of the Issuers, the Swap Counterparty, the Reference Portfolio Manager, the Trustee, the Collateral Administrator, nor any of their respective agents, partners, beneficiaries, officers, directors, employees or any Affiliate of any of them or any of their respective successors or assigns shall be personally liable for any amounts payable, or performance due, under the Class Q-2 Securities or this Indenture. It is understood that the foregoing provisions of this paragraph shall not (i) prevent recourse to the Class Q-2 Securities Collateral for the sums due or to become due under any security, instrument or agreement for which the Class Q-2 Securities Collateral is security, or (ii) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Class Q-2 Securities or secured by this Indenture until all items in the Class Q-2 Securities Collateral have been liquidated and applied to the payment of the obligations, whereupon any outstanding indebtedness or obligation shall be extinguished. It is further understood that the foregoing provisions of this paragraph shall not limit the right of any Person to name the Issuers as parties defendant in any action or suit or in the exercise of any other remedy under the Class Q-2 Securities or in this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such Person or entity. The provisions of this Section 2.17(i) shall survive the termination of this Indenture.

(j) Transfer of Class Q-2 Securities.

(i) Each purchaser or transferee of a Certificated Class Q-2 Security will be required to provide to the Trustee a properly completed certificate in the form of Exhibit Q-2A Certificated Transferee Letter or in the form of Exhibit Q-2B Certificated Transferee Letter, as applicable. Certificated Class Q-2B Securities may only be purchased by or transferred to a Person that is not a U.S. Person in a transaction meeting the requirements of Regulation S and that is an "eligible contract participant" as defined in Section 1a(12) of the U.S. Commodity Exchange Act.

(ii) If a Holder of a Certificated Class Q-2 Security wishes at any time to transfer such Certificated Class Q-2 Security, such Holder may transfer or cause the transfer of such Certificated Class Q-2 Security as follows: Upon receipt by the Registrar of (A) such Holder's Certificated Class Q-2 Security properly endorsed for assignment to the transferee and (B) a properly completed certificate by the transferee in the form of Exhibit Q-2A Certificated Transferee Letter or Exhibit Q-2B Certificated Transferee Letter, as applicable, and any other documentation as may be required thereunder, the Trustee will cancel such Certificated Class Q-2 Security in accordance with this Indenture, cause the Registrar to record the transfer in the Securities Register and, upon execution by the Issuer, deliver to the transferee one or more Certificated Class Q-2 Securities in the aggregate stated amount transferred and in the applicable authorized denomination. Notwithstanding anything to the contrary herein, no purchase or proposed transfer of Class Q-2B Securities will be permitted, and the Trustee shall not register or permit the registration of any such purchase or transfer, to a Person that has represented that it is a Benefit Plan Investor. Any purported transfer in violation of this provision shall be null and void *ab initio.*

(iii) No transfer of a Class Q-2B Security will be permitted to a person that would not be permitted to acquire the Income Notes represented by the Class Q-2 Collateral Asset A under this Indenture.

(iv) If a Responsible Officer of the Trustee has actual knowledge that (i) a transfer or attempted or purported transfer of any interest in any Class Q-2 Security was consummated in violation of this Indenture or on the basis of a materially incorrect certification from the transferee or purported transferee, (ii) the transferee or the purported transferee failed to deliver to the Trustee the certificate in the form of Exhibit Q-2A Certificated Transferee Letter or Exhibit Q-2B Certificated Transferee Letter, as applicable, or any other documentation required to be delivered thereunder or hereunder or (iii) the transferee or purported transferee is in material breach of any representation or agreement set forth in the certificate in the form of Exhibit Q-2 Certificated Transferee Letter or Exhibit Q-2 Certificated Transferee Letter, as applicable, or in this Indenture, the Trustee will not register such attempted or purported transfer. If any such transfer has been registered, such transfer shall be absolutely null and void *ab initio* and shall vest no rights in the purported transferee (such purported transferee, a "Disqualified Transferee") and the last preceding owner that was not a Disqualified Transferee shall be restored to all rights as a owner thereof retroactively to the date of purported transfer of such Class Q-2 Security by such owner. In furtherance of the foregoing, the Issuer shall be entitled to demand that (i) a transferee of a Class Q-2A Security that acquired an interest in a Class Q-2A Security in reliance on Rule 144A but is not a Qualified Purchaser and a Qualified Institutional Buyer, or (ii) a transferee of a Class Q-2A Security or Class Q-2B Security that acquired an interest in such Class Q-2 Security in reliance on Regulation S but is determined not to have acquired such interest in compliance with Regulation S or is a U.S. Person sell such Class Q-2 Securities to a purchaser qualified under this Indenture to purchase such Class Q-2 Securities and if the transferee does not comply with such demand within 30 days thereof, the Issuer may sell or cause such transferee to sell such interest of the transferee in the Class Q-2 Security to a permitted transferee under this Indenture on such terms as the Issuer may choose.

(k) Prior to the issuance of the Class Q-2 Securities pursuant to this Indenture, the Trustee shall, in addition to the other conditions precedent set forth in this Indenture, have received:

(i) The Grant pursuant to the granting clause hereof of all of the Issuer's right, title and interest in and to the Class Q-2 Securities Collateral securing the Class Q-2 Securities and delivery of such Class Q-2 Securities Collateral to the Trustee or its nominee, which, if any Class Q-2 Collateral is held through an intermediary shall be deemed to have occurred upon receipt of evidence satisfactory to the Trustee that on or before the Closing Date, the Issuer shall have purchased or entered into agreements to purchase such Class Q-2 Securities Collateral and that such Class Q-2 Securities Collateral has been credited by the Securities Intermediary to the Class Q-2 Securities Collateral Account.

(ii) A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect of Section 3.2(b) with respect to each Class Q-2 Collateral Asset pledged to the Trustee for inclusion in the Class Q-2 Securities Collateral.

(l) Section 3.3 shall be applicable to the Class Q-2 Securities Collateral (including Eligible Investments on deposit in the Class Q-2 Securities Collateral Account) and the Class Q-2 Securities Collateral Account; provided, that references to (x) Pledged Securities shall be to the Class Q-2 Securities Collateral other than the Class Q-2 Securities Collateral Account and (y) Trust Account shall be to the Class Q-2 Securities Collateral Account.

(m) Class Q-2 Events of Default.

(i) For the purposes of this Indenture, a "Class Q-2 Event of Default" wherever used herein, means any one of the following events (whatever the reason for such Class Q-2 Event of Default, and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(A) a default in the payment, when due and payable, of any Periodic Interest on the Class Q-2A Securities, which default shall continue for a period of five days (provided that the failure to pay Periodic Interest on the Class Q-2A Securities because insufficient funds are available in accordance with the Class Q-2 Priority of Payments will not constitute a Class Q-2 Event of Default);

(B) a default in the payment of principal of any Class Q-2 Security on the Maturity Date; provided that, in the case of a default in such payment due solely to an administrative error or omission by the Trustee or any Paying Agent, such default continues for a period of five days;

(C) a failure to apply, within five days following any Payment Date or Class Q-2 Maturity Date, available amounts in accordance with Section 2.17(d) or a default in payment solely due to an administrative error or omission by the Trustee, which default continues for a period of five days;

(D) either of the Issuers or the Class Q-2 Securities Collateral becomes an investment company required to be registered under the Investment Company Act;

(E) except as otherwise provided in this Section 2.17(m), a default in any respect in the performance, or a breach of any covenant, warranty or other agreement of the Issuers in this Indenture, or the failure of any representation or warranty of the Issuers made in this Indenture or in any certificate or other writing delivered pursuant hereto or in connection herewith to be correct in all respects when the same shall have been made, which default, breach or failure would have a material adverse effect on the Holders of the Class Q-2 Securities and continuance of such default, breach or failure for a period of 30 calendar days after written notice shall have been given to the Issuers by the Trustee or to the Issuers and the Trustee by the Class Q-2 Requisite Securityholders specifying such default, breach or failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; and

(F) an Event of Default pursuant to 5.1(h) or (i) has occurred.

(ii) Acceleration of Maturity; Rescission and Annulment.

(A) If a Class Q-2 Event of Default (other than a Class Q-2 Event of Default specified in clause (i)(D) or (F) hereof) occurs and is continuing, the Trustee shall, at the written direction of Class Q-2 Requisite Securityholders, declare the principal of and any accrued interest on the Class Q-2A Securities to be immediately due and payable, by a notice in writing to the Issuers and the Swap Counterparty, with a copy to the Rating Agencies, and the Reference Portfolio Manager. In the absence of any such written direction, the Trustee shall take no action. If a Class Q-2 Event of Default of the type described in clause (i)(D) or (F) occurs, the principal of and accrued interest on the Class Q-2A Securities automatically shall become immediately due and payable without any action of the Trustee or any other Person.

(B) At any time after such a declaration of acceleration of maturity has been made and before a judgment or decree for payment of the amounts due has been obtained by the Trustee as provided in this clause (m), the Class Q-2 Requisite Securityholders, may rescind and annul such declaration and its consequences by written notice to the Trustee and the Issuers, if (a) the Issuer has paid or deposited with the Trustee a sum sufficient to pay (x) all overdue amounts payable on or in respect of the Class Q-2 Securities (other than amounts due solely as a result of the acceleration); (y) to the extent that payment of interest on such amount is lawful, interest on such overdue amounts at the Class Q-2A Interest Rate (in the case of the Class Q-2A Securities); and (z) (i) the reasonable compensation, expenses, disbursement and advances of the Trustee, its agents and counsel in connection with such Class Q-2 Event of Default and (ii) unpaid Class Q-2 Administrative Expenses, and (b) the Trustee has determined that all Class Q-2 Events of Default, other than the nonpayment of such amount that has become due solely by such acceleration, have been cured, and the Class Q-2 Requisite Securityholders by written notice to the Trustee have agreed with such determination (which agreement shall not unreasonably be withheld), or waived as provided in Section 5.15.

(C) No such rescission shall affect any subsequent Class Q-2 Event of Default or impair any rights consequent thereon.

(iii) Priority of Payment on Acceleration

Upon the acceleration of the Class Q-2A Securities (whether or not the Trustee sells or liquidates the Class Q-2 Securities Collateral), the moneys in the Class Q-2 Securities Collateral Account will thereafter be applied in accordance with the Class Q-2 Priority of Payments pursuant to Section 2.17(d).

Upon the acceleration of the Class Q-2A Securities, if the Class Q-2 Securities Collateral has not been sold or liquidated, the funds in the Class Q-2 Securities Collateral Account, if any, will be applied in accordance with the Class Q-2 Priority of Payments pursuant to Section 2.17(d) on each Payment Date. If the Class Q-2 Securities Collateral is sold or liquidated, a final distribution will be made pursuant thereto on the first Business Day following the last day on which an item of the Class Q-2 Securities Collateral is sold or liquidated (and no interim distributions will be made on any date (including on any Payment Date) during the sale or liquidation process).

The Trustee may fix a record date and payment date for any payment to Holders of Class Q-2 Securities pursuant to this Section 2.17(m)(iii). At least fifteen (15) days before such record date, the Trustee shall mail to each Holder of a Class Q-2 Security a notice that states the record date, the payment date and the amount to be paid.

(iv) Remedies. The provision of Sections 5.4, 5.5, 5.6, 5.7, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18 and 5.20 with the following modifications shall be applicable solely with respect to the Class Q-2 Securities Collateral and the Class Q-2 Securities: (A) references to (1) the Trust Estate shall be to the Class Q-2 Securities Collateral, (2) Event of Default shall be to Class Q-2 Event of Default, (3) the Collection Account shall be to cash in the Class Q-2 Securities Collateral Account; (4) Sections 5.8 and 8.6 with respect to a Class Q-2 Event of Default shall be to Section 2.17(d), (5) Secured Parties shall be to the Holders of Class Q-2 Securities, (6) Requisite Noteholders shall be to Class Q-2 Requisite Securityholders; and the most senior Class of Notes shall be to the Class Q-2A Securities so long as any Class Q-2A Securities are Outstanding and thereafter to the Class Q-2B Securities, (7) the Notes shall be to the Class Q-2 Securities, (8) Noteholders shall be to the Holders of Class Q-2 Securities, (9) the Maturity Date shall be to the Class Q-2 Maturity Date, (10) the Senior Notes shall be to the Class Q-2A Securities, (11) the Income Notes shall be to the Class Q-2B Securities and (12) the Swap Counterparty (except in Section 5.20(b)), Swap Agreement, Accrued Swap Liabilities, Swap Event of Default, Base Amount and Subordinate Amount shall be disregarded and "other Secured Party" shall be disregarded; (B) (1) the reference in Section 5.5(a)(i) to Administrative Expenses shall be to Class Q-2 Administrative Expense, (2) Section 5.5(a)(ii) shall not be applicable, and (3) Section 5.5(a)(iii) shall be replaced with "the Class Q-2 Requisite Securityholders direct the Trustee at any time following the acceleration of the Class Q-2 Securities to sell or liquidate the Class Q-2 Securities Collateral"; and (C) the second sentence of Section 5.5(c) shall not be applicable.

Nothing in this provision shall affect the rights of the Holders of Notes pursuant to Article V of this Indenture. Notwithstanding anything to the contrary herein, no Holder of Class Q-2 Securities will be entitled (i) to direct the Trustee or exercise any right or remedy or bring any proceeding with respect to the Trust Estate pursuant to this Indenture other than through and solely to the extent of the rights pertaining to the Class Q-2 Collateral Asset A under this Indenture or (ii) while the Notes are Outstanding, to bring any Proceeding against the Issuer other than solely in respect of the Class Q-2 Securities Collateral. For the avoidance of doubt, so long as the Notes are Outstanding, any such Proceeding with respect to the Class Q-2 Securities Collateral shall not include any bankruptcy or similar proceedings. The costs of any Proceedings by Holders of Class Q-2 Securities and the costs, charges and expenses incurred by the Trustee in connection with any sale or liquidation of the Class Q-2 Securities Collateral pursuant to this provision shall not be payable from the Trust Estate (except to the extent included in the Class Q-2 Securities Collateral pursuant to the definition thereof).

(n) Rights of Trustee with respect to Class Q-2 Securities Collateral.

Except as provided in Section 6.1, with respect to the security interests created in the Class Q-2 Securities Collateral hereunder, the pledge of any item of property of the Class Q-2 Securities Collateral to the Trustee is to the Trustee as representative of the Holders of the Class Q-2 Securities. In furtherance of the foregoing, the possession by the Trustee of any item of property of the Class Q-2 Securities Collateral and the endorsement to or registration in the name of the Trustee of any item of property of the Class Q-2 Securities Collateral (including without limitation as entitlement holder of the Class Q-2 Securities Collateral Account) are all undertaken by the Trustee in its capacity as representative of the Holders of the Class Q-2 Securities. With respect to the security interest created in the Class Q-2 Securities Collateral hereunder, the Delivery of any part of the Class Q-2 Securities Collateral to the Trustee is to the Trustee as fiduciary of the Holders of Class Q-2 Securities; in furtherance of the foregoing, the possession by the Trustee of any part of the Class Q-2 Securities Collateral and the endorsement to or registration in the name of the Trustee of any part of the Class Q-2 Securities Collateral (including without limitation as entitlement holder of the Class Q-2 Securities Collateral Account) are all undertaken by the Trustee in its capacity as fiduciary of the Holders of the Class Q-2 Securities.

(o) Protection of Class Q-2 Securities Collateral.

The provisions of Sections 7.5, 7.6 and 7.7 shall be applicable to the Class Q-2 Securities Collateral and the rights therein of the Holders of Class Q-2 Securities with the following modifications: references to (1) the Trust Estate shall be to the Class Q-2 Securities Collateral, (2) the Trust Accounts shall be to Class Q-2 Securities Collateral Account; (3) Article VII shall be to Section 2.17(d) and Section 5.8 shall be to Section 2.17(m)(iii), (4) the Secured Parties shall be to the Holders of Class Q-2 Securities, (5) the Notes shall be to the Class Q-2 Securities, (6) the Pledged Securities shall be to the Eligible Investments credited to the Class Q-2 Securities Collateral Account and (7) the Swap Counterparty shall be disregarded.

(p) Class Q-2 Administrative Expenses.

Following the redemption in full of the Notes and Class Q-1 Securities and the liquidation and distribution of the Trust Estate, if the Class Q-2B Securities are then Outstanding, the Holders of Class Q-2B Securities shall either (i) exchange such Class Q-2B Securities pursuant to subsection (h) above or (ii) enter into an arrangement with the Issuer satisfactory to the Issuer for the payment of Class Q-2 Administrative Expenses (and shall be deemed to have elected clause (i) if an arrangement pursuant to clause (ii) has not been entered into within a reasonable time of such redemption, liquidation and distribution).

ARTICLE III

CONDITIONS PRECEDENT TO THE ISSUANCE OF SECURITIES

SECTION 3.1 Conditions Precedent.

On the Closing Date, the appropriate Global Notes, Certificated Income Notes, Certificated Class Q-1 Securities, Class Q-1 Reg S Global Securities and Certificated Class Q-2 Securities shall be executed by the applicable Issuers and delivered to the Trustee for authentication on behalf of the applicable Issuers, and thereupon the same shall be authenticated and delivered by the Trustee upon receipt by the Trustee of the following:

(a) an Officer's Certificate of each of the Issuers (i) evidencing the authorization of the execution and delivery of this Indenture, the Purchase Agreement and the Senior Notes, and specifying the original Aggregate Principal Amount and applicable Interest Rate of each Class of Senior Notes to be authenticated and delivered, (ii) evidencing the authorization of the execution and delivery, in the case of the Issuer, of the Swap Agreement, the Collateral Administration Agreement, the Investment Agreement, the Income Notes (specifying the Aggregate Principal Amount thereof to be authenticated and delivered), the Class Q-1 Securities (specifying the initial stated amount to be authenticated and delivered and nominal rate thereof), the Class Q-2A Securities (specifying the original Aggregate Principal Amount to be authenticated and delivered and Class Q-2A Interest Rate) and the Class Q-2B Securities (specifying the Aggregate Principal Amount thereof to be authenticated and delivered) and (iii) certifying that (A) the attached copy of the resolutions of the board of directors of the Issuer or the Co-Issuer, as applicable, is a true and complete copy thereof, (B) such resolutions have not been rescinded and are in full force and effect on and as of the Closing Date and (C) the Authorized Officers authorized to execute and deliver such documents hold the offices and have the signatures indicated thereon;

(b) either (i) a certificate of each of the Issuer and the Co-Issuer or other official document evidencing the due authorization, approval or consent of any governmental body or bodies, at the time having jurisdiction in the premises and the approval of which is required for the valid issuance of the Securities issued by it, or to the effect that no authorization, approval or consent of any governmental body is required for the valid issuance of such Securities or (ii) an Opinion of Counsel satisfactory in form and substance to the Trustee to the effect that no such authorization, approval or consent of any governmental body is required for the valid issuance of the Securities, as appropriate;

(c) opinions of Cleary, Gottlieb, Steen & Hamilton, special U.S. counsel to the Issuers, dated the Closing Date, substantially in the form of Exhibit F attached hereto;

(d) an opinion of Walkers, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit G attached hereto;

(e) an opinion of in-house counsel to the Swap Counterparty, dated the Closing Date, substantially in the form of Exhibit H attached hereto;

(f) an opinion of Gardere Wynne Sewell, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit I hereto;

(g) an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Reference Portfolio Manager, dated the Closing Date, substantially in the form of Exhibit J hereto;

(h) an Officer's Certificate or Certificates stating that neither of the Issuers is in Default and that the issuance of the Senior Notes and, in the case of the Issuer, the Income Notes, the Class Q-1 Securities and the Class Q-2 Securities, will not result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the organizational documents and any indenture or other agreement or instrument to which the Issuer or the Co-Issuer, as applicable, is a party or by which the Issuer or the Co-Issuer, as applicable, is bound, or any order of any court or administrative agency entered in any Proceeding to which the Issuer or the Co-Issuer, as applicable, is a party or by which the Issuer or the Co-Issuer, as applicable, is bound or to which the Issuer or the Co-Issuer, as applicable, is subject; and that all conditions precedent provided in this Article III, and all conditions precedent otherwise provided in this Indenture relating to the issuance, authentication and delivery of the Notes, the Class Q-1 Securities and the Class Q-2 Securities have been complied with;

(i) a statement from the Independent Accountants in form and substance acceptable to the Issuer and the Swap Counterparty with a copy to the Trustee, the Reference Portfolio Manager and Moody's (i) confirming the information with respect to each Initial Reference Obligation set forth on Annex I to the Swap Agreement and (ii) providing calculations of each of the Reference Portfolio Criteria and of each Overcollateralization Test and specifying the procedures undertaken by them to review data and computations relating to the foregoing;

(j) fully executed counterparts of the Swap Agreement, the Swap Guarantee, the Reference Portfolio Management Agreement, the Collateral Administration Agreement, the Investment Agreement, the Investment Agreement Guaranty and the Administration Agreement;

(k) an Issuer Order to the Trustee directing it to authenticate the Notes, the Class Q-1 Securities and the Class Q-2 Securities, in the amounts set forth therein, and to register the Notes, the Class Q-1 Securities and the Class Q-2 Securities in the name(s) set forth therein or as otherwise provided therein, and to make delivery thereof to the Issuer or as it may otherwise direct therein;

(l) a letter signed by Moody's confirming that the Class A-1 Notes have been rated "Aaa" by Moody's, the Class A-2 Notes have been rated "Aa2" by Moody's, the Class B Notes have been rated "A2" by Moody's, the Class C-1 Notes and the Class C-2 Notes have been

rated "Baa2" by Moody's, the Class Q-1 Securities have been rated "Baa2" by Moody's (subject to the limitations on such rating for the Class Q-1 Securities set forth in such letter) and that such ratings are in full force and effect on the Closing Date;

(m)a letter signed by Standard & Poor's confirming that the Class A-1 Notes have been rated "AAA" by Standard & Poor's, the Class A-2 Notes have been rated "AA" by Standard & Poor's, the Class B Notes have been rated "A" by Standard & Poor's, the Class C-1 Notes, the Class C-2 Notes have been rated "BBB" by Standard & Poor's, and that such ratings are in full force and effect on the Closing Date;

(n) evidence of the establishment of the Trust Accounts and the execution and delivery of the Account Agreement; and

(o) the delivery to the Trustee of a certificate, duly executed by an Authorized Officer of the Issuer, providing for the disposition of the proceeds of the issuance of the Notes, dated the Closing Date.

SECTION 3.2 Security for the Notes.

Prior to the issuance of the Notes pursuant to this Indenture, the Trustee shall, in addition to the other conditions precedent set forth herein, have received the following:

(a) Grant of Eligible Investments. The Grant pursuant to the granting clause hereof of all of the Issuer's right, title and interest in and to the Eligible Investments securing the Notes and delivery of such Eligible Investments to the Trustee or its nominee, which, if any such Eligible Investments are held through an intermediary shall be deemed to have occurred upon receipt of evidence satisfactory to the Trustee that on or before the Closing Date, the Issuer shall have purchased or entered into agreements to purchase Eligible Investments having an aggregate principal balance equal to or greater than $247,500,000, and that such Eligible Investments have been credited by the Securities Intermediary to a Trust Account.

(b) Certificate of the Issuer. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, in the case of each Eligible Investment pledged to the Trustee for inclusion in the Trust Estate on the Closing Date and immediately prior to the delivery thereof on the Closing Date:

(i) the Issuer is the owner of such Eligible Investment free and clear of any liens, claims or encumbrances of any nature whatsoever except for those which are being released on the Closing Date and except for those Granted pursuant to this Indenture;

(ii) the Issuer has acquired its ownership in such Eligible Investment in good faith without notice of any adverse claim, except as described in paragraph (i) above;

(iii) the Issuer has not assigned, pledged or otherwise encumbered any interest in such Eligible Investment (or, if any such interest has been assigned, pledged or

otherwise encumbered, it has been released) other than interests Granted pursuant to this Indenture;

(iv) the Issuer has full right to Grant a security interest in and assign and pledge such Eligible Investment to the Trustee;

(v) the Eligible Investments included in the Trust Estate satisfy the requirements of the definition of Eligible Investment and of Section 3.2(a); and

(vi) upon Grant by the Issuer, the Trustee has a first priority security interest in the Trust Estate.

SECTION 3.3 Custodianship; Delivery of Eligible Investments.

(a) Subject to the limited right to relocate Pledged Securities set forth in Section 7.5(b), the Trustee shall hold all Pledged Securities purchased in accordance with this Indenture in the relevant Trust Account established and maintained pursuant to Article VIII, as to which in each case the Trustee shall have entered into an Account Agreement, providing, *inter alia*, that the establishment and maintenance of such Trust Account will be governed by a law of a jurisdiction satisfactory to the Issuer and the Trustee and such jurisdiction will be the securities intermediary's jurisdiction for purposes of Articles 8 of the UCC and the bank's jurisdiction for purposes of Article 9 of the UCC.

(b) Each time that the Issuer shall direct or cause the acquisition of any Eligible Investment, the Issuer shall, if such Eligible Investment has not already been transferred to the relevant Trust Account, cause such Eligible Investment to be Delivered. The security interest of the Trustee in the funds or other property utilized in connection with such acquisition shall, immediately and without further action on the part of the Trustee, thereupon be released. The security interest of the Trustee shall nevertheless come into existence and continue in such Eligible Investment so acquired, including all rights of the Issuer in and to any contracts related to and proceeds of such Eligible Investment.

(c) Notwithstanding any of the foregoing, any Delivery shall include the taking of such steps as are necessary to ensure that all payments with respect to any item of the Trust Estate shall be made directly to the Trustee for credit to a Trust Account.

SECTION 3.4 The Swap Agreement.

(a) On the Closing Date, the Issuer shall enter into the Swap Agreement with the Swap Counterparty. The Swap Agreement shall terminate, or may be terminated, in accordance with its terms, whether or not the Notes of any Class have been paid in full prior to such termination. If the Swap Agreement has been terminated early while any Class of Notes remains Outstanding, except as provided in paragraphs (b) and (c) below, the Issuer shall use its best efforts to enter into a substitute swap agreement on similar terms to the extent that the Issuer has adequate funds and is otherwise able to enter into such an agreement.

(b) If at any time the Swap Agreement becomes subject to early termination due to the occurrence of a Swap Event of Default with respect to the Swap Counterparty or a Swap

Additional Termination Event with respect to which the Swap Counterparty is the affected party thereunder, the Issuer and the Trustee, upon written direction of the Requisite Noteholders, shall take such actions (following the expiration of any applicable grace period) to enforce the rights of the Issuer and the Trustee under the Swap Agreement and this Indenture as may be permitted by the terms of the Swap Agreement and consistent with the terms hereof. In such case, subject to paragraph (c) below, the Issuer shall apply the proceeds of any such actions (including, without limitation, the proceeds of the liquidation of any collateral pledged by the Swap Counterparty) to enter into a replacement swap agreement on substantially identical terms or on such other terms for which the Issuer receives Rating Confirmation (and with respect to which the Reference Portfolio Manager may, but is not obligated to, propose a replacement swap counterparty); provided that such replacement swap agreement has been approved by both (i) the Holders of a majority of the Aggregate Principal Amount of the Senior Notes (voting together as a single class), and (ii) the Holders of a majority of the Aggregate Principal Amount of the Income Notes. Any costs attributable to entering into a replacement swap agreement which exceed the amount of any termination payment received from the Swap Counterparty upon the termination of the Swap Agreement or to the extent not paid by the Swap Counterparty, shall be borne solely by the Issuer and shall constitute Administrative Expenses payable in accordance with Section 8.6. If any such termination payment received from the Swap Counterparty exceeds the costs attributable to entering into a replacement Swap Agreement, the excess amount will be deposited into the Collateral Account and applied in accordance with Section 8.6(b).

(c) Notwithstanding anything to the contrary herein, if the Swap Agreement has been terminated and the Notes have been accelerated in accordance with Section 5.3, no substitute Swap Agreement will be entered into, and any proceeds received from the Swap Counterparty upon termination of the Swap Agreement will be distributed in accordance with Section 5.8.

ARTICLE IV

SATISFACTION AND DISCHARGE

SECTION 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall be discharged and shall cease to be of further effect (A) with respect to the obligations of the Issuers under the Securities and the Trust Estate securing the obligations of the Issuers under the Securities and (B) with respect to the obligations of the Issuer under the Class Q-2 Securities and the Class Q-2 Securities Collateral securing the obligations of the Issuer under the Class Q-2 Securities, in either case except as to (i) rights of registration of transfer and exchange of Securities, (ii) substitution or replacement of mutilated, destroyed, lost or stolen Securities, (iii) rights of the Swap Counterparty and the Holders and beneficial owners of the Securities to receive payment as provided herein (including as provided in Section 8.6), (iv) the rights, obligations and immunities of the Trustee hereunder, and the obligations of the Trustee with respect to any funds or obligations deposited with the Trustee and (v) the rights of Secured Parties as beneficiaries hereof with respect to the property deposited with the Trustee (other than the Class Q-2 Securities Collateral) and payable to all or any of them and the rights of the Holders of Class Q-2 Securities with respect to the Class Q-2 Securities Collateral; and the

Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

(a) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.7 hereof and (B) Securities for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 7.3(c)) have been delivered to the Trustee for cancellation;

(b) the Issuer has paid or caused to be paid all sums payable hereunder (including amounts payable pursuant to the Swap Agreement and the Collateral Administration Agreement) and no other amounts will become due and payable by the Issuers;

(c) the Issuers have delivered to the Trustee and the Swap Counterparty Officer's Certificates and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with; and

(d) the Swap Agreement has been terminated.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Issuers, the Trustee and, if applicable, the Holders of the Securities, as the case may be, under Articles 2 and 8 and under Sections 4.2, 5.10, 5.18, 6.1, 6.2, 6.6, 7.1, 7.3, and 11.16 shall continue.

SECTION 4.2 Application of Trust Funds.

All funds deposited with the Trustee pursuant to Section 4.1 hereof shall be held in trust by the Trustee and applied by it, in accordance with the provisions of the Securities and this Indenture, including Section 8.6 and Section 2.17(d), to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, and such funds shall be held (i) in a segregated trust account identified as being held in trust for the benefit of the Secured Parties and (ii) in a segregated trust account identified as being held in trust for the benefit of the Holders of the Class Q-2 Securities, as applicable. Except as specifically provided herein, the Trustee shall not be responsible for payment of interest upon any funds deposited with it.

ARTICLE V

DEFAULT AND REMEDIES

SECTION 5.1 Events of Default.

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

(a) a default in the payment, when due and payable, of any Periodic Interest on any Class of Senior Notes, which default in each case shall continue for a period of five days; provided that (except on the Maturity Date and the date of redemption in full of the Class B Notes or Class C Notes), the failure to pay Periodic Interest on the Class B Notes, Class C-1 Notes or Class C-2 Notes, as the case may be, because insufficient funds are available in accordance with the Priority of Payments will not constitute an Event of Default so long as any more senior Class of Notes then remains Outstanding;

(b) a default in the payment of principal of any Senior Note (and any Make-whole Premium, if applicable) on the Maturity Date, Optional Redemption Date or Tax Redemption Date; provided that, in the case of a default in such payment due solely to an administrative error or omission by the Trustee or any Paying Agent, such default continues for a period of five days;

(c) a default in the payment of any net amounts owed by the Issuer to the Swap Counterparty under the Swap Agreement, which default shall continue for a period of two Business Days; provided that the failure to pay any amount payable to the Swap Counterparty pursuant to Section 8.6(a)(xiii) or (xv) or Section 8.6(b)(xvi) or (xvii) because insufficient funds are available in accordance with such Priority of Payments will not constitute an Event of Default, so long as any Senior Notes are then Outstanding;

(d) a failure to apply, within five days following any Payment Date or Maturity Date, Optional Redemption Date or Tax Redemption Date, available amounts in accordance with the Payment Date Priority of Payments or Principal Priority of Payments, as applicable, set forth under Section 8.6 or a default in payment solely due to an administrative error or omission by the Trustee, which default continues for a period of five days;

(e) the early termination of the Swap Agreement and the failure by the Issuer to enter into a replacement Swap Agreement within 60 days of such termination;

(f) either of the Issuers or the Trust Estate becomes an investment company required to be registered under the Investment Company Act;

(g) except as otherwise provided in this Section 5.1, a default in any respect in the performance, or a breach of any covenant, warranty or other agreement of the Issuers in this Indenture, or the failure of any representation or warranty of the Issuers made in this Indenture or in any certificate or other writing delivered pursuant hereto or in connection herewith to be correct in all respects when the same shall have been made, which default, breach or failure would have a material adverse effect on the Holders or beneficial owners of the Notes and continuance of such default, breach or failure for a period of 30 calendar days after written notice shall have been given to the Issuers and the Swap Counterparty by the Trustee or to the Issuers, the Swap Counterparty and the Trustee by the Holders of more than 25% of the Aggregate Principal Amount of the Senior Notes specifying such default, breach or failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(h) the entry of a decree or order by a court having jurisdiction in the premises adjudging either the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect

of either the Issuer or the Co-Issuer under any applicable Bankruptcy Law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of either the Issuer or the Co-Issuer or of any substantial part of their respective property, or ordering the winding up or liquidation of their affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive calendar days; or

(i) the institution by either the Issuer or the Co-Issuer of proceedings to be adjudicated as bankrupt or insolvent, or the consent by either the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency proceedings against it, or the filing by either the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under any Bankruptcy Law, or the consent by either the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of either the Issuer or the Co-Issuer or of any substantial part of their respective property, or to the ordering of the winding up or liquidation of their affairs, or the making by either the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by either the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by either the Issuer or the Co-Issuer in furtherance of any such action.

SECTION 5.2 Rights of Swap Counterparty upon Event of Default. Unless (a) the Swap Agreement has been terminated and all amounts owed to the Swap Counterparty have been paid in full, or (b) a Swap Event of Default has occurred and is continuing as to which the Swap Counterparty is the defaulting party while any Senior Notes are Outstanding, the Swap Counterparty shall have the rights set forth under Sections 5.3, 5.5 and 5.15 upon the occurrence of an Event of Default hereunder.

SECTION 5.3 Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default (other than an Event of Default specified in Section 5.1(f), (h) or (i) hereof) occurs and is continuing, the Trustee shall, at the written direction of the Requisite Noteholders or the Swap Counterparty (unless the Swap Agreement has been terminated and all amounts owed to the Swap Counterparty thereunder have been paid in full or a Swap Event of Default as to which the Swap Counterparty is the defaulting party has occurred and is continuing while any Senior Notes are Outstanding), declare the principal of and any accrued interest on the Notes to be immediately due and payable, by a notice in writing to the Issuers and the Swap Counterparty (if the declaration was made at the direction of the Requisite Noteholders), with a copy to the Rating Agencies, the Investment Agreement Counterparty and the Reference Portfolio Manager. In the absence of any such written direction, the Trustee shall take no action. If an Event of Default of the type described in clause 5.1(f), (h) or (i) occurs, the principal of and accrued interest on the Notes automatically shall become immediately due and payable without any action of the Trustee or any other Person.

(b) At any time after such a declaration of acceleration of maturity has been made and before a judgment or decree for payment of the amounts due has been obtained by the Trustee as provided in this Article V, the Requisite Noteholders, with the written consent of the Swap Counterparty (unless the Swap Agreement has been terminated and all amounts owed to the Swap Counterparty thereunder have been paid in full or a Swap Event of Default as to which

the Swap Counterparty is the defaulting party has occurred and is continuing while any Senior Notes are Outstanding), may rescind and annul such declaration and its consequences by written notice to the Trustee and the Issuers, if:

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

(A) all overdue amounts payable on or in respect of the Notes (other than amounts due solely as a result of the acceleration) and the Swap Agreement;

(B) to the extent that payment of interest on such amount is lawful, interest on such overdue amounts at the applicable Interest Rate (in the case of the Senior Notes) and the applicable default rate under the Swap Agreement (in the case of the Swap Agreement);

(C) all unpaid Administrative Expenses and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(ii) the Trustee has determined that all Events of Default, other than the nonpayment of such amount that has become due solely by such acceleration, have been cured, and the Requisite Noteholders by written notice to the Trustee have agreed with such determination (which agreement shall not unreasonably be withheld), or waived as provided in Section 5.15.

(c) No such rescission shall affect any subsequent Event of Default or impair any rights consequent thereon.

SECTION 5.4 Remedies.

If an Event of Default shall have occurred and be continuing, and the Notes have been declared or have become due and payable and such declaration and its consequences have not been rescinded and annulled, or at any time on or after the Maturity Date, subject to the provisions of Section 5.5, and provided that adequate provision is made for the payment of any expenses incurred by the Trustee in accordance with Section 6.6, the Trustee shall, upon written direction by the Requisite Noteholders, do one or more of the following:

(a) institute Proceedings for the collection of all amounts then payable on the Notes or under this Indenture, whether by declaration or otherwise, enforce any judgment obtained and collect from the Trust Estate moneys adjudged due;

(b) sell all or a portion of the Trust Estate or rights of interest therein at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.20;

(c) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Trust Estate;

(d) exercise any remedies of a secured party under the applicable UCC and take any other appropriate action to protect and enforce the rights and remedies of the Trustee or the Noteholders hereunder; or

(e) exercise any other rights and remedies that may be available at law or in equity.

SECTION 5.5 Retention of Trust Estate.

(a) If an Event of Default has occurred and is continuing, the Trustee shall retain the Trust Estate intact, collect and cause the collection of the proceeds thereof and make and apply all payments and deposits and maintain all amounts in respect of the Trust Estate and the Notes in accordance with the terms of this Indenture (including paying all amounts owed by the Issuer under the Swap Agreement); provided, that if the Notes have been declared or have become due and payable pursuant to Section 5.3, the Trustee shall apply any moneys in the Collection Account pursuant to Section 5.8. The Trustee shall not sell or liquidate the Trust Estate pursuant to Section 5.4 unless the Notes have been declared or have become due and payable pursuant to Section 5.3 or following the Maturity Date and one of the following conditions exists:

(i) The Trustee determines that the anticipated net proceeds of a sale or liquidation of the Trust Estate would be sufficient to pay (a) to the appropriate Persons any accrued and unpaid Administrative Expenses, (b) to the Swap Counterparty all Accrued Swap Liabilities and (c) to the Holders of the Senior Notes the principal of and interest accrued on the Senior Notes to the date of acceleration. The Trustee shall make or cause to be made the calculation required by this paragraph promptly after the acceleration of the Notes and on each monthly anniversary thereafter. In the event that the conditions of this clause (i) are satisfied, the Trustee shall promptly effect the sale or liquidation of the Trust Estate and apply the proceeds as described in Section 5.8;

(ii) Unless the Swap Agreement has been terminated and the Swap Counterparty has been paid in full the amount owed to it thereunder or unless a Swap Event of Default as to which the Swap Counterparty is the defaulting party has occurred and is continuing while any Senior Notes are Outstanding, the Swap Counterparty at any time following the acceleration of the Notes directs the Trustee to sell or liquidate the Trust Estate; or

(iii) If the Swap Agreement has been terminated and the Swap Counterparty has been paid in full the amount owed to it thereunder or if a Swap Event of Default as to which the Swap Counterparty is the defaulting party has occurred and is continuing while any Senior Notes are Outstanding, the Requisite Noteholders direct the Trustee at any time following the acceleration of the Notes to sell or liquidate the Trust Estate.

For purposes of (i) and (iii), the amounts due and payable under the Swap Agreement will be calculated taking into account the amount of any accrued and unpaid Base Amount, Subordinate Amount and Incentive Amount, in each case as provided in the Swap Agreement.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to preserve the Trust Estate securing the obligations of the Issuer under the Notes if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee shall obtain bid prices with respect to each asset in the Trust Estate from two nationally recognized dealers at the time making a market in such assets or similar assets, specified by the Swap Counterparty in writing so long as the Swap Agreement has not been terminated and additional amounts payable to the Swap Counterparty thereunder have been paid in full and otherwise selected by the Requisite Noteholders, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of such bid prices for each such asset. In the case of each calculation made by the Trustee pursuant to Section 5.5(a)(i), the Trustee shall obtain a letter of an independent certified public accountant of national standing confirming the accuracy of the computations of the Trustee and certifying their conformity to the requirements of this Indenture.

The Trustee shall deliver to the Noteholders (with a copy to the Swap Counterparty and the Reference Portfolio Manager) a report stating the results of any determination required pursuant to Section 5.5(a)(i) no later than ten (10) days after making such determination but in any case after such sale or liquidation.

SECTION 5.6 Trustee May File Proofs of Claim.

(a) In case there shall be pending Proceedings relative to the Issuer, the Co-Issuer or any other obligor upon the Notes under any Bankruptcy Law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or such other obligor or its property, or in case of any other comparable Proceedings relative to the Issuer, the Co-Issuer or such other obligor, or in case of any voluntary dissolution, liquidation or winding up of the Issuer, the Co-Issuer or such other obligor, regardless of whether the principal of any Notes shall then be due and payable as therein expressed or by declaration or otherwise and regardless of whether the Trustee shall have made any demand pursuant to the provisions of Section 5.3, the Trustee shall be entitled and empowered to, by intervention in such Proceedings or otherwise:

(i) file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Senior Notes and any distributions owed with respect to the Income Notes, and file such other papers or documents and take such other action, including participating as a member, voting or otherwise, of any committee of creditors, as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee or any Secured Party, except as a result of negligence or bad faith) and of the Secured Parties allowed in any Proceedings relative to the Issuer, the Co-Issuer or other obligor upon the Notes or to the creditors or property of the Issuer, the Co-Issuer or such other obligor;

(ii) unless otherwise directed by the Requisite Noteholders, or prohibited by applicable law and regulations, vote on behalf of the Holders of the Notes in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or person performing similar functions in comparable Proceedings; and

(iii) collect and receive any moneys or other property payable to or deliverable on any such claims, and distribute in accordance with Section 5.8 all amounts received with respect to the claims of the Secured Parties and of the Trustee on their behalf; and any trustee, receiver, liquidator, custodian or other similar official is hereby authorized by each of the Holders of the Notes and the other Secured Parties to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Secured Parties, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee or any Holder of a Note or other Secured Party except as a result of negligence or bad faith of the Trustee.

(b) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Holder of a Note or any other Secured Party any plan of reorganization, arrangement, adjustment or compromise affecting the Notes or the rights of any Holder thereof or any other Secured Party, or to authorize the Trustee to vote in respect of the claim of any Holder of a Note or any other Secured Party in any such Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person or to participate as a member of any committee of creditors.

(c) In any Proceedings brought by the Trustee (and also any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes and all other Secured Parties subject to the provisions of this Indenture, and it shall not be necessary to make any Holders of the Notes or any other Secured Party parties to any such Proceedings.

SECTION 5.7 Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any Proceeding relating thereto, and any such Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as set forth in Section 5.8 hereof.

SECTION 5.8 Priority of Payment on Acceleration.

Upon the acceleration of the Notes (whether or not the Trustee sells or liquidates the Trust Estate), the moneys in the Collection Account (and the moneys in all of the Trust Accounts, in the case of a complete liquidation of the Trust Estate) will thereafter be applied in

the following order of priority, with each priority being fully paid prior to such proceeds being used to pay any lower priority (subject to Section 5.5):

(a) to the payment of any accrued and unpaid Administrative Expenses (in the order set forth in the definition thereof) in an amount not exceeding the Expense Cap Amount;

(b) to the Swap Counterparty, any accrued and unpaid Accrued Swap Liabilities, except any Swap Termination Payment due to the Swap Counterparty upon the early termination of the Swap Agreement as a result of a Swap Event of Default as to which the Swap Counterparty is the defaulting party or as a result of a Swap Additional Termination Event;

(c) after acceleration of the Notes but before the sale or liquidation of the Trust Estate, to the Collateral Account, to the extent required to maintain the same ratio between the Aggregate Reference Value and the sum of (i) Eligible Investments and (ii) moneys credited to the Collateral Account as the ratio in effect on the Closing Date between the Swap Notional Amount and the net proceeds realized from the sale of the Securities that were deposited into the Collateral Account;

(d) to the Holders of the Class A-1 Notes, first accrued and unpaid interest on the Class A-1 Notes to the date of acceleration and then the Aggregate Principal Amount of the Class A-1 Notes;

(e) to the Holders of the Class A-2 Notes, first accrued and unpaid interest on the Class A-2 Notes to the date of acceleration and then the Aggregate Principal Amount of the Class A-2 Notes;

(f) to the Holders of the Class B Notes, first, accrued and unpaid interest (including Deferred Interest) on the Class B Notes and then, the Aggregate Principal Amount of the Class B Notes;

(g) first, on a pro rata basis, to the Holders of the Class C-1 Notes, accrued and unpaid interest (including Deferred Interest) on the Class C-1 Notes and to the Holders of the Class C-2 Notes, accrued and unpaid interest (including Deferred Interest) on the Class C-2 Notes, to the date of acceleration and then, on a pro rata basis, to the Holders of the Class C-1 Notes, the Aggregate Principal Amount of the Class C-1 Notes and to the Holders of the Class C-2 Notes, the Aggregate Principal Amount of the Class C-2 Notes;

(h) to the Swap Counterparty, any Swap Termination Payment due to the Swap Counterparty, to the extent not paid pursuant to clause (b) above;

(i) to the payment first, of any accrued and unpaid Administrative Expenses (in the order set forth in the definition thereof) to the extent not paid pursuant to clause (a) above and then, any accrued and unpaid Subordinated Administrative Expenses;

(j) to the payment of any unpaid Extension Bonus Payments (i) first, to the applicable Holders of Class A-1 Notes, (ii) then, to the applicable Holders of Class A-2 Notes, (iii) then, to the applicable Holders of Class B Notes, and (iv) then, on a pro rata basis, to the applicable Holders of Class C-1 Notes and the applicable Holders of Class C-2 Notes; and

(k) to the Holders of the Income Notes, any remaining funds.

Upon the acceleration of the Notes, if the Trust Estate has not been sold or liquidated, the funds in the Collection Account, if any, will be applied in accordance with the above priority of payments on each Payment Date. If the Trust Estate is sold or liquidated, a final distribution will be made pursuant thereto on the first Business Day following the last day on which an item of the Trust Estate is sold or liquidated (and no interim distributions will be made on any date (including on any Payment Date) during the sale or liquidation process).

The Trustee may fix a record date and payment date for any payment to Noteholders pursuant to this Section 5.8. At least fifteen (15) days before such record date, the Trustee shall mail to each Holder of a Note a notice that states the record date, the payment date and the amount to be paid.

SECTION 5.9 Limitation of Suits.

No Holder of any Note shall have any right to institute any Proceeding, judicial or otherwise, with respect to this Indenture, or to appoint a receiver or trustee, or to seek any other remedy hereunder, unless:

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

(b) the Holders of at least 25% of the Aggregate Principal Amount of the most senior Class of Notes then Outstanding have made written request to the Trustee to institute such Proceeding in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity or security reasonably satisfactory to the Trustee in form and substance against the costs, expenses and liabilities to be incurred in complying with such request;

(d) the Trustee, for 30 days after its receipt of such notice, request and offer of indemnity or security, has failed to institute such Proceedings; and

(e) if Holders of 50% or less of the Aggregate Principal Amount of the most senior Class of Notes have requested initiation of proceedings, no written direction inconsistent with such written request has been given to the Trustee during such 30-day period by the Holders of at least 25% of the Aggregate Principal Amount of the most senior Class of Notes then Outstanding;

it being understood and intended that no one or more Holders of the Notes shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of the same Class or to obtain or to seek to obtain priority or preference over any other such Holders of the same Class (except as otherwise contemplated by this Indenture) or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all such Holders of the same Class, and provided that any such Proceedings will be subject to the limitations on the liquidation of the Trust Estate described in Section 5.5. Subject to the provisions hereof, for the

protection and enforcement of the provisions of this Section 5.9, each and every Holder shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions of this Indenture, if the Trustee shall receive conflicting or inconsistent requests and indemnity from two or more groups of Holders of the most senior Class of Notes then Outstanding under this Section 5.9, each representing 50% or less of the Aggregate Principal Amount of the Notes of that Class, the Trustee shall not take any action.

Notwithstanding anything to the contrary herein, no Holder of Income Notes shall be entitled to institute Proceedings or to seek any other remedy hereunder unless all of the Senior Notes have been redeemed in full and the Swap Agreement has been terminated and any amounts owed to the Swap Counterparty thereunder have been paid in full.

SECTION 5.10 Rights of Noteholders to Receive Principal and Interest.

(a) Notwithstanding any other provision in this Indenture, but subject to the provisions of Sections 2.3(b), 2.8, 5.2, 5.5, 5.8, and 8.6 hereof, the Holder of any Senior Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on such Note as such principal and interest become due and payable in accordance with Sections 2.8, 5.8 and 8.6 and, subject to Sections 5.2, 5.5 and 5.9, to institute Proceedings for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

(b) If collections in respect of the Trust Estate are insufficient to make payments on the Notes, no other assets will be available for payment of the deficiency following realization on the Trust Estate, and the obligations of the Issuers to pay any deficiency shall be extinguished and shall not thereafter revive.

SECTION 5.11 Restoration of Rights and Remedies.

If the Trustee, any Holder of any Note or any other Secured Party has instituted any Proceeding to enforce any right or remedy under this Indenture and such Proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Trustee, to such Holder of a Note or to such other Secured Party, then and in every such case the Issuer, the Co-Issuer, the Trustee, the Holders of the Notes and such other Secured Parties shall, subject to any determination in such Proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee, the Holders of the Notes and such other Secured Parties shall continue as though no such Proceeding has been instituted.

SECTION 5.12 Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Swap Counterparty, the Trustee or to the Holders of the Notes is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or

otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.13 Delay or Omission Not a Waiver.

No delay or omission of the Swap Counterparty, the Trustee or any Holder of a Note to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Subject to Section 5.2, every right and remedy given by this Article V or by law to the Swap Counterparty, the Trustee or to the Holders of the Notes may be exercised from time to time, and as often as may be deemed expedient, by the Swap Counterparty, the Trustee or by the Holders of the Notes, as the case may be.

SECTION 5.14 Control by Noteholders.

Notwithstanding any other provision of this Indenture, but subject to Section 5.2 and Section 5.5, the Requisite Noteholders shall have the right (a) to cause the institution of and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee or (b) subject to Section 6.2(e), to direct the Trustee with respect to its exercise of any right, remedy, trust or power conferred on the Trustee; provided, that:

(a) such direction shall not be in conflict with any rule of law or with any express provision of this Indenture (including without limitation, any provision hereof which expressly provides for a greater percentage of any Class of Notes or an additional Class of Notes to effect an action hereunder and any provision providing express personal protection to the Trustee or a limitation on the liability of the Issuer as set forth in Section 2.8(h) hereof); and

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction; provided, however, that, subject to Section 6.1, the Trustee need not take any action that it reasonably determines might involve it in liability (unless the Trustee has received reasonably satisfactory indemnity or security against such liability as set forth herein). During the continuance of an Event of Default that has not been cured, the Trustee shall, prior to the receipt of directions, if any, from the Swap Counterparty or Requisite Noteholders, as applicable, or any other relevant Noteholders, exercise such of the rights and powers expressly vested in it by this Indenture and use the same degree of care and skill in their exercise, with respect to such Event of Default, as is required by Section 6.1(f) hereof.

SECTION 5.15 Waiver of Past Defaults.

(a) Prior to the declaration of the acceleration of the maturity of the Notes as provided in Section 5.3 and subject to the provisions of Section 5.2, the Requisite Noteholders and the Swap Counterparty may jointly waive any past Default or Event of Default and its consequences except a Default (or an Event of Default arising from such Default) (i) in the payment of principal of or interest on any of the Notes or (ii) in respect of a covenant or provision hereof which cannot be modified or amended without the consent of all of the affected Noteholders. In the case of any such waiver, the Issuer, the Co-Issuer, the Trustee and the Noteholders shall be restored to their former positions and rights hereunder, respectively.

(b) Upon any such waiver, such Default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured and not have occurred, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Swap Counterparty, the Reference Portfolio Manager, each Rating Agency and the Investment Agreement Counterparty.

SECTION 5.16 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by such Holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any Proceeding for the enforcement of any right or remedy under this Indenture, or in any Proceeding against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such Proceeding of an undertaking to pay the reasonable costs of such Proceeding and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such Proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, that the provisions of this Section 5.16 shall not apply to:

(a) any Proceeding instituted by the Trustee;

(b) any Proceeding instituted by any Holder of a Note, or group of Holders of the Notes, in each case holding in the aggregate more than 10% of the Aggregate Principal Amount of the Notes; or

(c) any Proceeding instituted by any Holder of a Note for the enforcement of the payment of principal of or interest on any Note on or after the respective due dates expressed in such Note and in this Indenture.

SECTION 5.17 Waiver of Stay or Extension Laws.

Each of the Issuer and the Co-Issuer covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of or the exercise of any remedies under this Indenture. Each of the Issuer and the Co-Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not hinder, delay or impede the execution of any power herein granted to the Trustee, any Noteholder or the Swap Counterparty, but shall suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 5.18 Action on Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking, obtaining or application of any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee, the Holders of the Notes or any other Secured Party shall be impaired by the

recovery of any judgment by the Trustee against the Issuer, the Co-Issuer or the Swap Counterparty or by the levy of any execution under such judgment upon any portion of the assets of the Issuer, the Co-Issuer or the Swap Counterparty.

SECTION 5.19 Performance and Enforcement of Certain Obligations.

(a) Promptly following a request from the Trustee to do so, the Issuer agrees to take all such lawful action as the Trustee may request to compel or secure the performance and observance by the Swap Counterparty or Swap Guarantor of its obligations to the Issuer under or in connection with the Swap Agreement or Swap Guarantee, as applicable, in accordance with the terms thereof, and to exercise any and all rights, remedies, powers and privileges lawfully available to the Issuer under or in connection with the Swap Agreement or the Swap Guarantee to the extent and in the manner directed by the Trustee, including the transmission of notices of default on the part of the Swap Counterparty or Swap Guarantor thereunder, and the institution of Proceedings to compel or secure performance by the Swap Counterparty of its obligations under the Swap Agreement or Swap Guarantor, as applicable.

(b) If an Event of Default has occurred and is continuing, the Trustee may, and, at the direction (which direction shall be in writing) of the Holders of a majority of the Aggregate Principal Amount of the Senior Notes, voting together, shall, subject to the right of the Trustee to receive indemnity or security in accordance with Section 6.2(e) or otherwise hereunder against costs, expenses and liabilities in form and substance reasonably satisfactory to the Trustee and subject to Section 5.14, exercise all rights, remedies, powers, privileges and claims of the Issuer against the Swap Counterparty and the Swap Guarantor, under or in connection with the Swap Agreement or Swap Guarantee, as applicable, including the right or power to take any action to compel or secure performance or observance by the Swap Counterparty and the Swap Guarantor of its obligations to the Issuer (or to the Trustee) thereunder and to give any consent, request, notice, direction, approval, extension or waiver under the Swap Agreement or Swap Guarantee, as applicable, and any right of the Issuer to take such action shall be suspended.

SECTION 5.20 Sale of Trust Estate.

(a) In effecting any sale or liquidation of the Trust Estate pursuant to Section 5.4 or 5.5 (a "Sale"), the Trustee may retain an independent investment banking firm of national reputation to assist it in effecting such sale or liquidation. The power to effect any Sale of any portion of the Trust Estate pursuant to Section 5.4 and Section 5.5 hereof shall not be exhausted by any one or more Sales as to any portion of such Trust Estate remaining unsold, but shall continue unimpaired until the entire Trust Estate shall have been sold or all amounts payable on the Notes under this Indenture with respect thereto shall have been paid. The Trustee may, upon giving notice on behalf of the Issuer to the Holders of the Notes and the Swap Counterparty, and shall, upon written direction of the Requisite Noteholders (or the Swap Counterparty, if the sale was directed by the Swap Counterparty pursuant to Section 5.5(a)(ii)) from time to time, postpone any Sale by public announcement made at the time of and place of such Sale. The Trustee hereby expressly waives its right to any amount fixed by law as compensation for any Sale; provided, that the Trustee shall be authorized to deduct the reasonable costs, charges and expenses incurred by it (including any fees and expenses incurred in obtaining a letter under Section 5.5(c) hereof) in connection with any Sale from the proceeds thereof notwithstanding the

provisions of Section 6.6 hereof, but without duplication of amounts payable as Administrative Expenses.

(b) The Trustee, the Swap Counterparty and the Reference Portfolio Manager and their respective Affiliates may bid for and acquire for cash any portion of the Trust Estate in connection with a Sale thereof to the extent not prohibited by applicable law, and may pay all or part of the purchase price by crediting against amounts owing on any Notes it holds or other amounts owed to it and secured by this Indenture, to the extent such amounts would have been owing on such obligations in accordance with Section 5.8 or Section 8.6, all or part of the net proceeds of such Sale after deducting the reasonable costs, charges and expenses incurred by the Trustee in connection with such Sale (including any fees and expenses incurred in obtaining a letter under Section 5.5(c) hereof). The Notes need not be produced in order to complete any such Sale, or in order for the net proceeds of such Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Trust Estate consists of securities issued without registration under the Securities Act ("Unregistered Securities"), the Trustee may seek an Opinion of Counsel, or, if no such Opinion of Counsel can be obtained and with the written consent of the Requisite Noteholders and the Swap Counterparty, seek a no-action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private sale of such Unregistered Securities, the cost of which in each case shall be reimbursable to the Trustee in accordance with the terms of this Indenture.

(d) The Trustee shall execute and deliver an appropriate instrument of conveyance transferring its interest in any portion of the Trust Estate in connection with a Sale thereof. In addition, the Trustee is hereby irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer and convey its interest in any portion of the Trust Estate in connection with a Sale thereof and to take all action necessary to effect such Sale. No purchaser or transferee at such a Sale shall be bound to ascertain the authority of the Trustee, inquire into the satisfaction of any conditions precedent or see to the application of any moneys.

ARTICLE VI

THE TRUSTEE

SECTION 6.1 Duties of Trustee.

(a) Subject to Section 6.1(f) below, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(b) Subject to Section 6.1(f) below, in the absence of bad faith, willful misconduct, negligence or reckless disregard of obligations on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed

therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture, and shall promptly, but in any event within three (3) Business Days in the case of a certificate delivered by the Swap Counterparty, notify the party delivering the same if such certificate or opinion does not so conform. If a corrected certificate or opinion shall not have been delivered to the Trustee within 15 days after such notice from the Trustee, the Trustee shall so notify the Holders of the Notes.

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

(i) this Section 6.1(c) does not limit the effect of Section 6.1(a) or (b);

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with the direction of the Issuer, the Co-Issuer, the Requisite Noteholders (or Holders with such larger percentage, or other Class, as may be required by the terms hereof) or the Swap Counterparty pursuant to this Indenture or the Swap Agreement (or the Reference Portfolio Manager on behalf of the Swap Counterparty pursuant to the Swap Agreement), or in exercising any trust or power conferred upon the Trustee under this Indenture.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity or security against such risk or liability is not reasonably assured to it unless such risk or liability relates to the performance of its ordinary services, including under Article 5, under this Indenture. Anything in this Indenture to the contrary notwithstanding, in no event shall the Trustee be liable under this Indenture for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) The Trustee shall not be liable for interest on any money received by it.

(f) In case an Event of Default or Class Q-2 Event of Default known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of written directions, if any, in the case of an Event of Default, from the Swap Counterparty or the Requisite Noteholders and in the case of a Class Q-2 Event of Default, from the Class Q-2 Requisite Securityholders, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would

exercise or use under the circumstances in the conduct of its own affairs; provided, that, in the case of an Event of Default, so long as the Swap Agreement is in effect, the Trustee shall not take any action under this subsection prior to receipt of such directions with respect to an Event of Default (other than to provide notice thereof as provided in Section 6.5) without the prior consent of the Swap Counterparty.

(g) Whether or not therein expressly so provided, every provision of this Indenture relating to the Trustee shall be subject to the provisions of this Section 6.1 and Section 6.2.

SECTION 6.2 Rights of Trustee.

Except as otherwise provided in Section 6.1:

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

(b) any request, consent or direction of the Issuer mentioned herein shall be sufficiently evidenced by an Issuer Order, and any request, consent or direction from the Swap Counterparty mentioned herein shall be sufficiently evidenced by a written request or direction from, or consented to or approved by, an authorized officer of the Swap Counterparty;

(c) whenever in the administration of this Indenture the Trustee shall (i) deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate or (ii) be required to determine the value of any asset of the Trust Estate or the Class Q-2 Securities Collateral or funds hereunder or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part and unless other evidence be herein specifically prescribed, rely on reports of nationally recognized accounting firms or other persons qualified to provide the information required to make such determination including nationally or internationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to the taking or omitting of any action by it hereunder, the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith in reliance thereon; provided, however, that with respect to any payment required to be made to the Swap Counterparty hereunder or under the Swap Agreement, the Trustee shall act in accordance with the direction provided by the Swap Counterparty pursuant to Section 8.3, without first obtaining an Opinion of Counsel. The Trustee shall have no liability for any action, or failure to act, in accordance with the direction provided by the Swap Counterparty pursuant to Section 8.3;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or to honor the request or direction of any of the Holders of the Notes (or any request or direction of the Swap Counterparty, in the case of any provision hereof

which entitles the Swap Counterparty to make such request or give such direction) pursuant to this Indenture unless such parties shall have offered to the Trustee reasonable security or indemnity against all costs, expenses and liabilities which might reasonably be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper documents, but the Trustee, in its discretion, may and, upon written direction of the Requisite Noteholders or the Swap Counterparty shall, make such further inquiry or investigation into such facts or matters as it may see fit or as it shall be directed at the sole expense of the Issuer and the Trustee shall incur no additional liability of any kind by reason of such inquiry or investigation. Upon the occurrence and continuation of an Event of Default or Class Q-2 Event of Default, as applicable, the Trustee, the Swap Counterparty (or its agent) and any Holder or beneficial owner of a Note or Class Q-1 Security (or Class Q-2 Security, as applicable) shall be entitled (but not obligated), on reasonable prior request (which request shall include a statement of the purpose therefor) made in advance to the Issuer to examine the books and records relating to the Trust Estate (or Class Q-2 Securities Collateral, as applicable) of the Issuer personally or by agent or attorney during normal business hours; provided, that the Trustee, the Swap Counterparty or any such Holder or beneficial owner shall, and shall cause its agents, to hold in confidence all such information, except as otherwise required pursuant to this Indenture or to the extent disclosure may be required by law or by any regulatory or judicial authority and, in the case of the Trustee, to the extent the Trustee, in its sole judgment, may determine that such disclosure is consistent with its obligations hereunder;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee may employ or retain such accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder; and the Trustee shall not be responsible for any misconduct or negligence on the part of any non-affiliated agent or adviser appointed or retained or any non-affiliated attorney appointed, with due care by it hereunder;

(h) the Trustee shall not be deemed to have notice or knowledge of any matter (other than an Event of Default described in Sections 5.1(a)-(d)) unless a Responsible Officer within the corporate trust department of the Trustee has actual knowledge thereof or unless written notice thereof is received by the Trustee at its Corporate Trust Office and such notice references the Notes generally, either of the Issuers or this Indenture. Whenever reference is made in this Indenture to an Event of Default or Class Q-2 Event of Default, such reference shall, insofar as determining any liability on the part of the Trustee is concerned, be construed to refer only to an Event of Default or a Class Q-2 Event of Default of which the Trustee is deemed to have knowledge in accordance with this paragraph;

(i) except as expressly set forth herein, the Trustee shall not be obligated to monitor, evaluate, verify or otherwise determine or compel compliance by the Swap Counterparty or any Paying Agent (to the extent the Trustee is not serving as the exclusive Paying Agent) with the requirements, terms or conditions of this Indenture or the Swap

Agreement, as applicable; provided, however, that the Trustee shall be obligated to ensure that all duties appointed to it by the Issuer shall be executed as set forth in this Indenture. The Trustee shall have no liability for the acts or omissions of the Swap Counterparty or any Paying Agent appointed under or pursuant to this Indenture, and shall be under no obligation to verify independently the accuracy of the information it receives from the Swap Counterparty or the Reference Portfolio Manager on behalf of the Swap Counterparty with respect to the Reference Portfolio;

(j) the Trustee shall have no obligation or responsibility for the accuracy of the records of the Depositary, any Clearing Corporation (including Euroclear or Clearstream) or any non-Affiliated Securities Intermediary and shall have no liability for the acts or omissions of the Depositary, any Clearing Corporation (including Euroclear or Clearstream) or any non-Affiliated Securities Intermediary;

(k) with respect to the security interests in the Trust Estate created hereunder, the pledge of any item of property of the Trust Estate to the Trustee is to the Trustee as representative of the Holders of the Notes and as agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any item of property of the Trust Estate and the endorsement to or registration in the name of the Trustee of any item of property of the Trust Estate (including without limitation as entitlement holder of the Collateral Account) are all undertaken by the Trustee in its capacity as representative of the Holders of the Notes and as agent for the other Secured Parties;

(l) the Trustee shall not be under any obligation or duty to become a party to, or to review or evaluate the terms of (or have responsibility for the sufficiency of) any agreement executed pursuant to this Indenture, including but not limited to the Swap Agreement and the Investment Agreement;

(m)the terms of the Swap Agreement shall expressly permit and acknowledge the collateral assignment and pledge by the Issuer of its rights and interests thereunder to the Trustee pursuant to the Indenture; and shall expressly provide that such assignment and pledge is made for collateral security only and shall not impose upon, or be deemed to transfer to (or constitute an assumption by) the Trustee, any liabilities or obligations of the Issuer to the Swap Counterparty;

(n) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably and, after the occurrence and during the continuance of a Default (subject to Section 6.1(f)), prudently believes to be authorized or within its discretion, rights or powers hereunder;

(o) to the extent any defined term hereunder, or any calculation required to be made or determined by the Trustee hereunder, is dependent upon or defined by reference to U.S. generally accepted accounting principles, the Trustee shall be entitled to request and receive (and conclusively rely upon) instruction from the Issuer or the Independent Accountants (and in the absence of its receipt of timely instruction therefrom, shall be entitled to obtain the same directly from an independent accountant at the expense of the Issuer) as to the application of U.S. generally accepted accounting principles in such connection, in any instance;

(p) to the extent permitted by applicable law, the Trustee shall not be required to give any bond or surety in respect of the execution of this Indenture or otherwise; and

(q) the enumeration of any permissible right or power herein available to the Trustee shall not be construed to be the imposition of a duty.

SECTION 6.3 Trustee May Own Notes.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer and the Co-Issuer, the Swap Counterparty or any of their respective Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights.

SECTION 6.4 Trustee's Disclaimer.

The Trustee shall not be responsible for and, except as set forth in Section 6.11, makes no representations as to the validity or adequacy of this Indenture, the other Basic Documents, the Notes or any related documents. It shall not be accountable for the use by the Issuers of the proceeds from the Notes, it shall not be responsible for any statement of the Issuer in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Certificate of Authentication of the Trustee and it shall in no event assume or incur any liability, duty or obligation to any Holder of a Note, other than as expressly provided in this Indenture or by law. Under no circumstances shall the Trustee be liable for indebtedness evidenced by or arising under any of the Basic Documents, including the amounts payable on the Notes.

SECTION 6.5 Notice of Defaults; Events of Default and Acceleration.

Promptly (and in no event later than three (3) Business Days) after the occurrence of any Default or Event of Default or any Class Q-2 Event of Default, in each case known to a Responsible Officer of the Trustee or after any declaration of acceleration has been made by or delivered to the Trustee pursuant to Sections 5.3 or 2.17(m)(ii) hereof, the Trustee shall mail to the Rating Agencies, the Reference Portfolio Manager, the Swap Counterparty, the Investment Agreement Counterparty and each Holder of a Security notice of the Default or Event of Default or Class Q-2 Event of Default, as applicable (unless such Default or Event of Default or Class Q-2 Event of Default shall have been cured or waived, in which case notice of the Default or Event of Default or Class Q-2 Event of Default, as applicable, and that it has been cured or waived shall be promptly provided to each such Person) or notice of any declaration of acceleration. In addition, if and for so long as any Class of the Securities is listed on the Irish Stock Exchange and so long as the rules of such Stock Exchange so require, notices to the Holders of such Securities shall also be given by publication in the Irish Stock Exchange's Daily Official List.

SECTION 6.6 Compensation; Reimbursement; Indemnity.

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date the Trustee Fee (which Trustee Fee shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture or in the enforcement of any provision hereof (including securities transaction charges and the reasonable compensation and the expenses incurred by the Trustee including, without limitation, any legal counsel, investment banking firm, accounting firm or any other agent employed by the Trustee pursuant to this Indenture and reasonable disbursements of its agents and counsel, except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith) and expenses related to the maintenance and administration of the Trust Estate;

(iii) to pay or to reimburse the Trustee for its payment of the fees of any accounting firm or investment banking firm employed by the Trustee as provided herein;

(iv) to indemnify fully and hold harmless each of the Trustee, its directors, officers, employees and agents for, and to hold each of them harmless against, any claims, loss, liability, damages, costs or expense (including without limitation reasonable counsel fees and expenses) incurred without negligence, willful misconduct or bad faith arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defense against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder; and

(v) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees) for any collection action taken pursuant to Section 6.12 hereof.

(b) If on any date when a fee or expense shall be payable to the Trustee pursuant to this Indenture insufficient funds are available for the payment thereof in accordance with Section 8.6, any portion of a fee or expense not so paid shall be deferred and payable on such later date on which a fee or expense shall be payable and sufficient funds are available therefor in accordance with Section 8.6 and the failure to pay such amount will not, by itself, constitute an Event of Default. Subject to Section 6.7 hereof, the Trustee shall continue to serve as Trustee under this Indenture regardless of whether it has received amounts due it hereunder, and the Trustee hereby agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment to the Trustee of any amounts provided by this Section 6.6 until at least one year and one day (or, if longer, the applicable preference period then in effect as confirmed by an Opinion of Counsel provided to the Trustee), after the termination of this Indenture. No

direction by any Holders of the Notes or the Swap Counterparty shall affect the right of the Trustee to collect amounts owed to it under this Indenture.

(c) When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1(h) or Section 5.1(i), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Bankruptcy Law.

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

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under this Section. The indemnifications in favor of the Trustee in Section 6.6 hereof shall survive any resignation or removal (to the extent of any indemnified liabilities, costs, expenses and other amounts arising or incurred prior to, or arising out of actions or omissions occurring prior to, the effectiveness of such resignation or removal) and the termination of this Indenture.

(b) The Trustee may resign at any time by giving 30 days' prior written notice thereof to the Issuers, the Holders of the Notes, the Swap Counterparty, the Reference Portfolio Manager and each Rating Agency.

(c) The Trustee may be removed at any time by the Requisite Noteholders, with the consent of the Swap Counterparty (such consent not to be unreasonably withheld) (or, following the Maturity Date and distribution of the Trust Estate, the Class Q-2 Requisite Securityholders), upon written notice thereof to the Trustee, the Issuers, each Rating Agency, the Reference Portfolio Manager and the Swap Counterparty.

(d) If at any time:

(i) the Trustee shall cease to be eligible under Section 6.10 hereof and shall fail to resign after written request therefor by the Issuers or by the Requisite Noteholders;

(ii) the Trustee shall become incapable of acting;

(iii) a court having jurisdiction in the premises in respect of the Trustee in an involuntary case or proceeding under federal or state banking or bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, shall have entered a decree or order granting relief or appointing a receiver, liquidator, assignee, custodian, trustee, conservator, sequestrator or similar official for the Trustee or for any substantial part of the Trustee's property, or ordering the winding-up or liquidation of the Trustee's affairs, provided any such decree or order shall have continued unstayed and in effect for a period of 30 consecutive days; or

(iv) the Trustee commences a voluntary case under any federal or state banking or bankruptcy laws, as now or hereafter constituted, or any other applicable

federal or state bankruptcy, insolvency or other similar law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, conservator, sequestrator or other similar official for the Trustee or for any substantial part of the Trustee's property, or makes any assignment for the benefit of its creditors or fails generally to pay, or admits in writing its inability to pay, its debts as such debts become due or takes any corporate action in furtherance of any of the foregoing;

then, in any such case, (A) the Issuers, by an Issuer Order, may remove the Trustee, and the Trustee hereby agrees to resign immediately in the manner and with the effect provided in this Section 6.7, or (B) any Noteholder or the Swap Counterparty may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Trustee for any reason, the Issuers shall promptly appoint a successor Trustee by written instrument, in duplicate, executed by an Authorized Officer of each of the Issuers on behalf of the Issuers, one original copy of which shall be delivered to the Trustee so resigning and one original copy to the successor Trustee, together with a copy to each Noteholder, the Swap Counterparty, the Reference Portfolio Manager and the Rating Agencies; provided, that such successor Trustee shall be appointed, only upon the written consent of the Requisite Noteholders and the Swap Counterparty and provided, further, that the Issuer received Rating Confirmation for such appointment. If no successor Trustee shall have been appointed and an instrument of acceptance by a successor Trustee shall not have been delivered to the resigning Trustee within 30 days after the giving of such notice of resignation, the retiring or resigning Trustee, the Swap Counterparty or any Holder of a Note, may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Reference Portfolio Manager, the Swap Counterparty, each Rating Agency and to the Holders of the Notes as their names and addresses appear in the Securities Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

(g) Every successor Trustee appointed hereunder shall be required to meet the eligibility requirements set forth in Section 6.10 and shall execute, acknowledge and deliver to the Issuers and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of the retiring Trustee; but, on request of the Issuers, the successor Trustee, the Swap Counterparty or the Requisite Noteholders, such retiring Trustee shall, upon payment of its fees and expenses then unpaid, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(h) Upon request of any such successor Trustee, the Issuers shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts. Upon acceptance of appointment by a successor Trustee as provided in this Section, the Issuers shall mail notice thereof by first-class mail, postage prepaid, to the Holders of the Notes at their last addresses appearing upon the Securities Register, the Rating Agencies, the Swap Counterparty, the Reference Portfolio Manager and the Investment Agreement Counterparty. If the Issuers fail to mail such notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Issuers.

SECTION 6.8 Merger or Consolidation of Trustee.

Any Person into which the Trustee may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (provided, however, that such Person shall be eligible under the provisions of Section 6.10) without the execution or filing of any instrument or any further act on the part of any of the parties to this Indenture, anything in this Indenture to the contrary notwithstanding.

SECTION 6.9 Appointment of Co-Trustee or Separate Trustee.

(a) Notwithstanding any other provision of this Indenture, at any time, for the purpose of meeting any legal requirement of any jurisdiction in which any part of the Issuer's assets may at the time be located, the Trustee shall have the power and may execute and deliver all instruments to appoint one or more Persons to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Issuer's assets, and to vest in such Person or Persons in such capacity and for the benefit of the Noteholders and the other Secured Parties, such title to the Issuer's assets, or any part hereof, and, subject to the other provisions of this Section 6.9, such powers, duties, obligations, rights and trusts as the Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 6.10 and no notice to Noteholders of the appointment of any co-trustee or separate trustee shall be required under Section 6.7.

(b) Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the assets of the Issuer or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee but solely at the direction of the Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article VI. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Trustee. Every such instrument shall be filed with the Trustee.

(d) Any separate trustee or co-trustee may at any time constitute the Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

SECTION 6.10 Eligibility; Disqualification.

The Trustee shall (a) be a Person organized and doing business under the laws of the United States of America or of any state thereof, (b) be authorized under such laws to exercise corporate trust powers, (c) have an office in the United States, (d) have a combined capital and surplus of at least $200,000,000 and be subject to supervision or examination by federal or state authorities, and (e) have (or have a parent which has) a long-term unsecured debt or deposit rating of at least "Baa1" by Moody's and "BBB+" by Standard & Poor's. If such Person shall publish reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purpose of this Section 6.10, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.10, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.7.

SECTION 6.11 Representations and Warranties of Trustee.

The Trustee, in its individual capacity, represents and warrants as of the Closing Date that:

(a) it is a banking corporation duly organized and validly existing under the laws of the State of New York;

(b) it has full corporate trust power, authority and legal right to execute, deliver and perform its obligations under this Indenture, and has taken all necessary action to authorize

the execution, delivery and performance by it of this Indenture, the Account Agreement and the Investment Agreement;

(c) neither the execution, delivery and performance by it of this Indenture nor the consummation of the transactions contemplated by this Indenture shall violate any provision of its corporate charter or by-laws; and

(d) this Indenture has been duly executed and delivered by it and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect affecting the enforcement of creditors' rights in general and except as such enforceability may be limited by general principles of equity (whether considered in a Proceeding at law or in equity).

SECTION 6.12 Certain Duties of Trustee Related to Delayed Payment of Proceeds.

In the event that in any month the Trustee shall not have received a payment under the Swap Agreement when due or with respect to any Pledged Security on its due date, the Trustee shall promptly notify the Swap Counterparty and the Reference Portfolio Manager in writing and, unless (a) such payment shall subsequently have been received by the Trustee or (b) the Issuers make or cause to be made provisions for such payment satisfactory to the Trustee within three Business Days after such notice, shall request the Swap Counterparty, in the case of the Swap Agreement, or the obligor or issuer of such Pledged Security, the agent or trustee under the related underlying instrument or paying agent designated by any of them, as applicable, to make such payment as soon as practicable after such request but in no event later than three Business Days after the date of such request. In the event that such payment is not made within such time period, the Trustee shall take such action as the Requisite Noteholders (or, unless the Swap Agreement has been terminated and all amounts owed to the Swap Counterparty have been paid, the Swap Counterparty in the case of failure to receive payments in respect of the Pledged Securities) shall reasonably direct in writing (provided, however, that the Trustee shall not be obligated to take any action, including commencement of any legal proceeding, unless it shall have received reasonably satisfactory indemnification or security against expenses and liabilities that may be associated therewith). Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. Notwithstanding any other provision hereof, the Trustee shall deliver to the Issuers or their designee any payment with respect to the Swap Agreement or any Pledged Security received after the due date thereof to the extent the Issuers previously made provisions for such payment satisfactory to the Trustee in accordance with this Section 6.12, and such payment shall not be deemed part of the Trust Estate.

SECTION 6.13 Withholding; Tax Forms.

(a) If any withholding tax is imposed on the payment (or allocations of income) under the Securities by the Issuers to any Holder of a Security, such tax shall reduce the amount otherwise distributable to such Holder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Holder of a Security sufficient moneys for the payment of any withholding tax that is legally owed by the Issuers (but such authorization shall not prevent the Trustee from contesting any such tax in appropriate Proceedings and withholding

payment of such tax, if permitted by law, pending the outcome of such Proceedings). The amount of any withholding tax imposed with respect to any Holder of a Security shall be treated as cash distributed to such Holder at the time it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold such amounts in accordance with this Section 6.13. If any Holder of a Security wishes to apply for a refund of any such withholding tax, the Trustee shall provide to such Holder any information with respect to such withholding tax reasonably available to the Trustee so long as such Holder agrees to reimburse the Trustee for any out-of-pocket expenses incurred. Nothing herein shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuers.

(b) The Issuer shall prepare and file or deliver, or cause to be prepared, filed and delivered, any income tax, franchise tax, information or withholding tax or other tax returns or forms that are required to be filed with or provided to any tax authority, to the Holders or with or to any other person by or on behalf of the Issuer or the Co-Issuer.

SECTION 6.14 Fiduciary for Noteholders Only; Agent for Other Secured Parties.

With respect to the security interest created in the Trust Estate hereunder, the Delivery of any part of the Trust Estate to the Trustee is to the Trustee as fiduciary of the Noteholders and as agent for the other Secured Parties; in furtherance of the foregoing, the possession by the Trustee of any part of the Trust Estate and the endorsement to or registration in the name of the Trustee of any part of the Trust Estate (including without limitation as entitlement holder of the Collateral Account) are all undertaken by the Trustee in its capacity as fiduciary of the Noteholders and agent for the other Secured Parties.

SECTION 6.15 Assignment of Rights; Not Assumption of Duties.

Anything herein contained to the contrary notwithstanding, (a) each of the Issuers shall remain liable under this Indenture and each of the documents contemplated herein and related hereto to which it is a party to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Indenture had not been executed, (b) the exercise by the Trustee, any Noteholder or Noteholders or any other Secured Party of any of their rights, remedies or powers hereunder shall not release the Issuers from any of their duties or obligations under each of such documents to which they are parties and (c) neither the Noteholders nor the Trustee or any other Secured Parties shall have any obligation or liability under any of such documents to which one or both of the Issuers are parties by reason of or arising out of this Indenture, nor shall the Noteholders, the other Secured Parties or the Trustee be obligated to perform any of the obligations or duties of the Issuers thereunder or, except as expressly provided herein with respect to the Trustee, to take any action to collect or enforce any claim for payment assigned hereunder or otherwise.

ARTICLE VII

COVENANTS

SECTION 7.1 Payments on Securities.

The Issuers will duly and punctually pay the principal of and interest on the Securities, and all other amounts payable on or in respect of the Securities, in accordance with the terms of the Securities and this Indenture. Amounts properly withheld under the Code (or any successor statute), and under the laws of any State or other jurisdiction by any Person from a payment to any Holder of a Security of the principal of or interest on the Securities shall be considered as having been paid by the Issuers to the Holder of a Security for all purposes of this Indenture and the Securities.

SECTION 7.2 Maintenance of Office or Agency.

The Trustee will maintain an office or agency in the Borough of Manhattan, The City of New York, the State of New York, where Securities may be presented or surrendered for payment. The Trustee hereby initially designates the Corporate Trust Office as such office or agency. The Trustee will give prompt written notice to the Issuers and the Holders of the Securities of any change in the location of any such office or agency in New York City.

SECTION 7.3 Money for Payments to Be Held in Trust.

(a) All payments of amounts due and payable under this Indenture with respect to the Securities, and payments to be made hereunder with respect to the Swap Agreement, shall be made on behalf of the Issuer by the Trustee or another Paying Agent, in each case from amounts deposited with the Trustee or Paying Agent, as the case may be, by or on behalf of the Issuers for such purpose.

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

(c) The Trustee shall give written notice to the Issuers of any money held by the Trustee or any Paying Agent for the payment of any amount due with respect to any Security and remaining unclaimed for two years after such amount has become due and payable and, subject to applicable abandoned property laws, upon written request of the Issuer such amount shall be deemed discharged from any trust and be paid to the Issuer; and the Holder of such Security shall thereafter look only to the Issuer for payment thereof (but only to the extent of the amounts so paid to the Issuer), and all liability of the Trustee or such Paying Agent with respect to such funds shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment to the Issuer, shall (i) at the expense of the Issuer cause to be published once, in a newspaper published in the English language, customarily

published on each Business Day and of general circulation in New York City, and, in accordance with Section 11.4, in the Irish Stock Exchange's Daily Official List, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining shall be repaid to the Issuer and (ii) mail notice of such repayment to the Holders of the Securities whose right or interest in moneys due and payable but not claimed is determinable from the records of the Trustee or of any Paying Agent, at the last address of record for each such Holder. The Trustee may also adopt and employ, at the expense of the Issuer, any other reasonable means of notification of such repayment.

(d) If and to the extent any funds shall be delivered to it from time to time pursuant to this Indenture for the purpose of making payments on or in respect of the Securities, the Trustee shall be entitled to establish a segregated account for the purpose of holding and disbursing such funds. The Trustee shall have no obligation to invest or pay interest on any such funds held by it (except as and to the extent otherwise expressly provided herein).

SECTION 7.4 Existence of Issuers.

(a) Each of the Issuers will maintain in full force and effect its existence, rights and franchises as a company or corporation incorporated under the laws of the jurisdiction of its incorporation and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Indenture, the Securities or any of the Pledged Securities or other property included in the Trust Estate or in the Class Q-2 Securities Collateral; provided, however, that, subject to Cayman Islands law, the Issuer shall be entitled to change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction (other than the United States or any state or political subdivision thereof or therein) reasonably selected by the Issuer so long as (i) the Issuer determines such change is not disadvantageous in any material respect to the Issuer, the Holders of the Securities or any other Secured Party, (ii) written notice of such change shall have been given by the Issuer to the Trustee, the Reference Portfolio Manager, the Swap Counterparty, the Noteholders and the Rating Agencies at least thirty (30) Business Days prior to such change of jurisdiction, (iii) on or prior to the fifteenth Business Day following such notice the Trustee shall not have received written notice from the Holders of a majority of the Aggregate Principal Amount of each Class of Senior Notes, or the Holders of a majority of the Aggregate Principal Amount of the Income Notes, or the Swap Counterparty, objecting to such change, and (iv) such change shall not cause the Issuer to be in violation of United States or Cayman Islands law. Each of the Issuers shall comply with its organizational documents and shall not amend its organizational documents in any manner that would have a material adverse effect on the rights of the Swap Counterparty or the Holders of any Class of Notes. The Board of Directors of each of the Issuers will at all times have at least one member who is Independent of the Swap Counterparty and the Reference Portfolio Manager. The Issuer shall be entitled to take any action required by this Indenture within the United States, notwithstanding any provision of this Indenture requiring the Issuer to take such action outside of the United States, so long as prior to taking any such action the Issuer receives a legal Opinion of Tax Counsel to the effect that it is not necessary to take such action outside the United States or any political subdivision thereof in order to prevent the Issuer from becoming subject to any United States federal, state or local income or withholding taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular meetings of the board of directors and shareholders, or other similar meetings) are followed. Neither the Issuer nor the Co-Issuer shall take any action, or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceedings. Without limiting the foregoing, (i) neither the Issuer nor the Co-Issuer shall have any subsidiaries and (ii) the Issuer and the Co-Issuer shall not (A) have any employees (other than their respective officers and directors) or (B) engage in any transaction with any shareholder that would constitute a conflict of interest (provided that the Administration Agreement shall not be deemed to be a transaction that would constitute such a conflict of interest).

(c) The Issuer shall notify the Rating Agencies of any amendment of any of the organizational documents of the Issuers and of any redemption in full of any Class of Notes.

SECTION 7.5 Protection of Trust Estate.

(a) The Issuer shall from time to time execute, deliver and file all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance and other instruments and shall take such other action as may be necessary or advisable (including, without limitation, causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's Registered Office in the Cayman Islands) to secure the rights and remedies of the Secured Parties, including to:

(i) Grant more effectively all or any portion of the Trust Estate;

(ii) maintain, preserve and perfect the validity of any Grant made or to be made by this Indenture or to carry out more effectively the purposes hereof;

(iii) perfect, publish notice of, or protect the validity of any Grant made or to be made by this Indenture (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulation);

(iv) enforce the Swap Agreement and any of the Pledged Securities or any other instruments or property included in the Trust Estate;

(v) preserve and defend title to the Trust Estate and the rights therein of the Trustee, the Swap Counterparty, the Collateral Administrator and the Holders of the Notes in such Trust Estate against the claims of all other Persons; and

(vi) pay or cause to be paid any and all taxes levied or assessed upon all or any part of the Trust Estate.

The Issuer hereby designates the Trustee its agent and attorney-in-fact to execute and file (i) a financing statement in connection with the Grant pursuant to this Indenture identifying as collateral "all assets in which the Issuer now or hereafter has rights," and (ii) any other financing statement, continuation statement or other instrument necessary or desirable under this section; provided, however, that the Trustee shall be under no obligation to prepare,

execute or file any such financing statement, continuation statement or other instrument and that such appointment shall not impose upon the Trustee any of the Issuer's obligations under this Section 7.5.

(b) The Trustee shall not, except in accordance with Article VIII and Section 5.8, permit the removal of any portion of the Trust Estate or transfer any such property from a Trust Account to which it is credited, or cause or permit any change in the manner of Delivery of any Pledged Securities, if after giving effect thereto the jurisdiction governing the perfection of the Trustee's security interest in such Pledged Securities is different from the jurisdiction governing perfection at the time of delivery of the most recent Opinion of Counsel pursuant to Section 7.6(a) (or, if no Opinion of Counsel has yet been delivered pursuant to Section 7.6(a), the Opinion of Counsel delivered at the Closing Date pursuant to Section 3.1), unless the Trustee shall have received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to such property will continue to be maintained after giving effect to such action or actions.

(c) The Issuer shall pay or cause to be paid taxes, if any, levied on account of the beneficial ownership by the Issuer of any Pledged Securities.

(d) Without at least thirty (30) days prior written notice to the Trustee, the Issuer shall not change its name, or the name under which it does business, from the name shown on the signature page hereof.

SECTION 7.6 Opinions as to Trust Estate and Tax Certificates.

(a) On or before July 31st in each calendar year commencing in 2005, the Issuer shall cause to be delivered to the Trustee (with a copy to each Rating Agency, the Swap Counterparty and the Reference Portfolio Manager) an Opinion of Counsel with respect to the laws of the State of New York, stating that, in the opinion of such counsel, as of the date of such opinion, (i) the security interest in the Trust Estate created by this Indenture is perfected and, with respect to certain portions of the Trust Estate, of the first priority (subject to reasonable assumptions and qualifications as applicable), and (ii) no further action (other than as specified in such opinion) is required to be taken (under the UCC and applicable federal regulation as in effect on such date) to ensure the continued perfection of such security interest during the succeeding year.

(b) If required to prevent the withholding and imposition of U.S. federal income tax, the Issuer shall deliver or cause to be delivered a United States Internal Revenue Service Form W-8BEN (or any successor thereto) to each issuer of a Pledged Security in the Trust Estate at the time such Pledged Security is purchased by the Issuer and as necessary thereafter. The Issuer similarly shall comply with any information reporting or certification procedures imposed by any state, local or non-U.S. tax law as a precondition to an exemption from, or reduction in the rate of, the withholding and imposition of any tax in respect of a Pledged Security in the Trust Estate.

SECTION 7.7 Performance of Obligations.

(a) Each of the Issuers shall not take any action and shall not consent to any action proposed to be taken by others that would release any Person from any of such Person's covenants or obligations under any instrument or agreement included in the Trust Estate, except in accordance with the provisions hereof.

(b) Either or both Issuers may contract with other Persons, including the Collateral Administrator, for the performance by such Persons of the obligations of either or both Issuers hereunder. Notwithstanding any such arrangement, the Issuers shall remain primarily liable with respect thereto. With respect to any such contract, the performance of such obligations by such Persons shall be deemed to be performance of such obligations by the Issuer or Co-Issuer, as applicable, and the Issuer or Co-Issuer, as applicable, will perform punctually, and will use its best efforts to cause such Persons, to perform punctually their obligations hereunder.

SECTION 7.8 Negative Covenants.

(a) The Issuer will not, and with respect to clauses (ii), (iv), (vi), (vii), (x) and (xii), the Co-Issuer will not:

(i) sell, transfer, exchange or otherwise dispose of, or pledge, mortgage, hypothecate or otherwise encumber (or permit such to occur or suffer such to exist), any part of the Trust Estate or the Class Q-2 Securities Collateral, except as expressly permitted by this Indenture and the Swap Agreement;

(ii) claim any credit on, or make any deduction from or dispute the enforceability of, the amount payable with respect to the Securities other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands, or assert any claim against any present or future Holder of the Securities, by reason of the payment of any taxes levied or assessed upon any part of the Trust Estate or the Class Q-2 Securities Collateral, as applicable;

(iii) (A) incur or assume any indebtedness other than pursuant to this Indenture (including trade debt incidental to the performance of the respective obligations of the Issuers hereunder), (B) incur, assume or guarantee the indebtedness of any other Person or (C) issue any additional shares other than the Ordinary Shares authorized to be issued as of the Closing Date;

(iv) (A) permit the validity or effectiveness of this Indenture or any grant hereunder to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Securities, except, in each case, as may be expressly permitted hereby or thereby, (B) create, permit or suffer to exist any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Trust Estate or the Class Q-2 Securities Collateral, or any part thereof or any interest therein or the proceeds thereof, or (C) take

any action that would permit the lien of this Indenture not to constitute a valid first priority perfected security interest in the Trust Estate or the Class Q-2 Securities Collateral;

(v) directly or through any other Person, engage in any activity that could cause it to be a dealer in securities or to be deemed to be engaged in a finance or lending business for United States federal income tax purposes;

(vi) (A) commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief entered with respect to it, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seek appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or make a general assignment for the benefit of its creditors;

(vii) amend the "non petition" or "limited recourse" provisions of any of the Basic Documents;

(viii) enter into any agreement or contract with any Person unless such contract or agreement contains "limited recourse" provisions and such Person agrees that, prior to the date that is one year and one day after all of the related obligations of the Issuer have been paid in full (or, if longer, the applicable preference period under applicable insolvency law), such Person shall not take any action or institute any proceeding against the Issuer under any insolvency law applicable to the Issuer or which would be reasonably likely to cause the Issuer to be subject to, or seek the protection of, any such insolvency law; provided, however, that such Person shall be permitted to become a party to and to participate in any Proceeding or action under any such insolvency law that is initiated by any Person other than one of its Affiliates;

(ix) declare or pay dividends or other distributions in respect of, or redeem or otherwise purchase, any equity interest of the Issuer, other than as contemplated by this Indenture, or authorize, issue or sell any additional equity interest of the Issuer;

(x) take any action that could cause the Issuer, the Co-Issuer, the Trust Estate or the Class Q-2 Securities Collateral to be required to (A) register as an "investment company" under the Investment Company Act or (B) register any of the issued and outstanding securities of the Issuer or Co-Issuer under the Securities Act or any United States or state securities law;

(xi) designate an Early Termination Date (as defined in the Swap Agreement) other than by reason of a Swap Event of Default or amend the Swap Agreement in any material respect, unless the Issuer receives Rating Confirmation for such designation or amendment; or

(xii) have any employees (except for officers and directors); or

(xiii) commingle its Cash with that of any other Person.

(b) The Issuers shall not enter into any agreement, contract or indenture other than the Basic Documents or in connection with the transactions contemplated by this Indenture; shall not incur or assume any indebtedness other than pursuant to this Indenture (including trade debt incidental to the performance of the respective obligations of the Issuers hereunder), or incur, assume or guarantee the indebtedness of any other Person; and shall not own any securities at any time, other than as contemplated by this Indenture and the Swap Agreement. For purposes of this paragraph (b), "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(c) The Trustee shall not sell, transfer, exchange or otherwise dispose of, or enter into or engage in any business with respect to, any part of the Trust Estate or the Class Q-2 Securities Collateral, except as expressly permitted by this Indenture and except for administrative services performed for the Issuers relating to their administrative duties as contemplated herein.

SECTION 7.9 Statement as to Compliance.

On or before May 31st in each calendar year, beginning May 31st, 2005, or immediately if there has been a Default or Event of Default or Class Q-2 Event of Default under this Indenture, the Issuer shall deliver to the Trustee (who shall deliver a copy to the Swap Counterparty and the Reference Portfolio Manager) an Officer's Certificate stating, as to each signer thereof, that:

(a) a review of the activities of the Issuer during the preceding calendar year and of its performance under this Indenture has been made under his or her supervision; and

(b) to the best of such signer's knowledge, based on such review, there did not exist, as of a date no more than five days prior to the date of the certificate, nor had there existed at any time prior thereto since the date of the last certificate (or in the case of the first such certificate, since the Closing Date), any Event of Default or Class Q-2 Event of Default under this Indenture or any Swap Event of Default or Swap Termination Event with respect to the Issuer under the Swap Agreement or, if such event did then exist or had existed, specifying the same and the nature and the status thereof, including actions undertaken to remedy the same, and that the Issuer has complied with all of its obligations under this Indenture and the Swap Agreement since the date of the last certificate (or in the case of the first such certificate, since

the Closing Date), or if such is not the case, specifying those obligations with which it has not complied.

SECTION 7.10 Consolidation of Issuers.

(a) The Issuer shall not consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law and unless:

(i) the Issuer shall be the surviving entity, or the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or to which all or substantially all of the assets of the Issuer are transferred or conveyed shall be an exempted company incorporated with limited liability and existing under the laws of the Cayman Islands or such other jurisdiction outside the United States as may be approved by the Holders of a majority of the Aggregate Principal Amount of each Class of Notes; provided, that no such approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of organization pursuant to Section 7.4 (any such jurisdiction or any jurisdictions approved pursuant to the preceding clause, "Permitted Other Jurisdictions"), and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, each Holder of a Note and the other Secured Parties, the due and punctual payment of the principal of and interest on all Notes and all payments under the Swap Agreement and the performance of every covenant of this Indenture on the part of the Issuer to be performed or observed, all as provided herein;

(ii) each Rating Agency shall have received written notification of such consolidation, merger, transfer or conveyance and shall have given a Rating Confirmation with respect to such transaction;

(iii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(iv) the Issuer shall have delivered to the Trustee, each Holder of a Note and the Swap Counterparty an Officer's Certificate and an Opinion of Tax Counsel each stating that such consolidation, merger, transfer or conveyance and such supplemental indenture comply with this Section 7.10, that all conditions precedent in this Section 7.10 relating to such transaction have been complied with and that (A) no gain or loss will be recognized for United States federal, Cayman Islands and the Permitted Other Jurisdiction, if any, income tax purposes by the Holders of the Securities or the Swap Counterparty solely as a result therefrom, (B) neither payments on the Swap Agreement nor the net income of the Issuer or the surviving entity shall become subject to United States federal income tax (whether imposed by withholding or otherwise) solely as a result therefrom, (C) no change in the characterization of the Notes as indebtedness for United States federal income tax purposes will result therefrom and (D) neither the Trust Estate, nor the Class Q-2 Securities Collateral, nor the surviving entity (if applicable) shall become subject to income taxes or other applicable taxes solely as a

result therefrom that would reduce in any manner the payments on the Securities or the amount of funds available for such payment;

(v) the Issuer shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to such transaction, neither of the Issuers will be required to register as an investment company under the Investment Company Act; and

(vi) after giving effect to such transaction, no Ordinary Shares will be beneficially owned by U.S. Persons.

(b) The Co-Issuer shall not consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless:

(i) the Co-Issuer shall be the surviving corporation, or the Person (if other than the Co-Issuer) formed by such consolidation or into which the Co-Issuer is merged or to which all or substantially all of the assets of the Co-Issuer are transferred or conveyed shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, the due and punctual payment of the principal of and interest on all Notes and the performance of every covenant of this Indenture on the part of the Co-Issuer to be performed or observed, all as provided herein;

(ii) each Rating Agency shall have received written notification of such consolidation, merger, transfer or conveyance and shall have given a Rating Confirmation for such transaction;

(iii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(iv) the Co-Issuer shall have delivered to the Trustee and each Holder of a Note an Officer's Certificate and an Opinion of Tax Counsel each stating that such consolidation, merger, transfer or conveyance and such supplemental indenture comply with this Section 7.10, that all conditions precedent in this Section 7.10 relating to such transaction have been complied with and that (A) no gain or loss will be recognized for United States federal, Cayman Islands and the Permitted Other Jurisdiction, if any, income tax purposes by the Holders of the Securities or the Swap Counterparty solely as a result therefrom, (B) neither payments on the Swap Agreement nor the net income of the Co-Issuer or the surviving entity shall become subject to United States federal income tax (whether imposed by withholding or otherwise) solely as a result therefrom, (C) no change in the characterization of the Notes as indebtedness for United States federal income tax purposes will result therefrom and (D) neither the Trust Estate, nor the Class Q-2 Securities Collateral, nor the surviving entity (if applicable) shall become subject to income taxes or other applicable taxes solely as a result therefrom that would reduce in any manner the payments on the Securities or the amount of funds available for such payment;

(v) the Co-Issuer shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to such transaction, neither of the Issuers will be required to register as an investment company under the Investment Company Act; and

(vi) after giving effect to such transaction, none of its common stock will be beneficially owned by U.S. Persons.

SECTION 7.11 Successor Substituted.

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer, in accordance with Section 7.10, the Person formed by or surviving such consolidation or merger (if other than the Issuer or the Co-Issuer, as applicable), or the Person to which such transfer or conveyance is made, shall succeed to, and be substituted for, and may exercise every right and power of, and shall be bound by each obligation or covenant of, the Issuer or Co-Issuer, as applicable, under this Indenture with the same effect as if such Person had been named as the Issuer or Co-Issuer, as applicable, herein. In the event of any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or "Co-Issuer", as applicable, in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Article VII may be dissolved, wound-up and liquidated at any time thereafter, and such Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

SECTION 7.12 No Other Business.

(a) The Issuer shall not engage in any business or activity other than (i) issuing and selling its Ordinary Shares, (ii) issuing and selling the Notes, (iii) issuing and selling the Class Q-1 Securities and the Class Q-2 Securities, (iv) entering into the Swap Agreement and engaging in the activities permitted thereunder, (v) entering into the Collateral Administration Agreement, (vi) the acquisition and disposition of Eligible Investments and Class Q-2 Securities Collateral and (vii) engaging in other activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith. The Issuer shall provide prior written notice to each Rating Agency of any proposed amendment to its Articles and shall not amend its Articles unless it has received Rating Confirmation for such amendment.

(b) The Co-Issuer shall not engage in any business or activity other than issuing and redeeming its common stock, issuing the Senior Notes, and engaging in any other activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith. The Co-Issuer shall provide prior written notice to each Rating Agency of any proposed amendment to its Certificate of Incorporation or bylaws and shall not amend such documents unless it has received Rating Confirmation for such amendment.

SECTION 7.13 Purchase of Notes and Class Q Securities.

Notwithstanding anything contained in this Indenture to the contrary, the Issuer may acquire Securities in open market or privately negotiated transactions or otherwise (and the Issuer shall give prompt written notice thereof to the Trustee); provided, however, that it has received Rating Confirmation for such acquisition; provided, further that, the Issuer shall not acquire Notes of any Class if Notes of a more senior Class are then outstanding. Any Securities acquired by the Issuer shall be delivered to the Trustee for cancellation. Any Securities acquired in accordance with this Section 7.13 must be acquired at a price less than par.

SECTION 7.14 Additional Covenants.

(a) Each of the Issuers shall comply with all applicable laws, rules, regulations, orders, writs, judgments, injunctions, decrees, determinations and awards (including, without limitation, any fiscal and accounting rules and regulations and any foreign or domestic law, rule or regulation), including, without limitation, in connection with the issuance, offer and sale of the Notes.

(b) In addition to the notices to be provided under Section 8.11, the Issuers shall give prompt notice in writing to the Trustee, the Reference Portfolio Manager, the Swap Counterparty, the Investment Agreement Counterparty and each Rating Agency upon becoming aware of the occurrence of any Default or Event of Default under this Indenture (or waiver thereof) or any default under any other Basic Document or the Account Agreement (or waiver thereof).

(c) Each of the Issuers shall comply with the terms and conditions of the Basic Documents to which it is a party or by which it is bound. Each of the Issuers shall take all actions as may be necessary to ensure that all of its representations and warranties made pursuant to the Basic Documents are true and correct as of the date hereof and thereof and continue to be true and correct for so long as any Notes are Outstanding. Each of the Issuers further agrees not to authorize or otherwise to permit the Collateral Administrator to act in contravention of the representations, warranties and agreements of the Collateral Administrator under the Collateral Administration Agreement.

(d) To the extent it may lawfully do so, each of the Issuers on behalf of itself agrees it will not (i) commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief entered with respect to it, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; (ii) seek appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or make a general assignment for the benefit of its creditors; or (iii) take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth above; and each of the Issuers shall generally pay its debts as they become due and not admit in writing its inability to pay its debts as they become due.

(e) So long as any Class of Securities listed on the Irish Stock Exchange is Outstanding, the Issuers shall (i) use all reasonable efforts to maintain the listing of such Class of Securities on the Irish Stock Exchange; provided, however, that the Issuer will not be required to maintain a listing on the Irish Stock Exchange or any other E.U. stock exchange if compliance with requirements of the European Commission or a relevant Member State becomes burdensome in the sole judgment of the Swap Counterparty, (ii) notify the Irish Stock Exchange if the rating assigned to any Class of Securities has been qualified, downgraded or withdrawn; and (iii) make available for inspection at the office of the Trustee copies of their respective Articles, bylaws, and resolutions authorizing the issuance of the Notes and this Indenture.

(f) Each Issuer shall only conduct business in its own name as set forth in its organizational documents.

SECTION 7.15 Representations and Warranties of the Issuers.

(a) Each of the Issuers represents and warrants as to itself that it is a company or corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and in each jurisdiction where the conduct of its business requires such license, qualification or good standing, except where the failure to be so licensed or qualified or in good standing would not adversely affect the validity or enforceability of the Basic Documents to which it is a party, or the ability of the Issuer or Co-Issuer, as the case may be, to perform its obligations hereunder or thereunder.

(b) Each of the Issuers represents and warrants as to itself that it has the power and authority to execute and deliver the Basic Documents and all other documents and agreements contemplated hereby and thereby to which it is a party, as well as to carry out the terms hereof and thereof.

(c) Each of the Issuers represents and warrants as to itself that it has taken all necessary action, including but not limited to all requisite corporate action, to authorize the execution, delivery and performance of the Basic Documents and all other documents and agreements contemplated hereby and thereby to which it is a party. When executed and delivered by the Issuer or Co-Issuer, as the case may be, and in the case of the Securities, authenticated by the Trustee as provided herein, assuming due authorization, execution, delivery and/or authentication by each other party thereto, each of the Basic Documents to which it is a party will constitute the legal, valid and binding obligation of the Issuer or Co-Issuer, as the case may be, enforceable in accordance with its terms subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect affecting the enforcement of creditors' rights in general and except as such enforceability may be limited by general principles of equity (whether considered in a Proceeding at law or in equity).

(d) Each of the Issuers represents and warrants as to itself that all authorizations, licenses, permits, certificates, franchises, consents, approvals and undertakings which are required to be obtained by it under any applicable law which are material to (i) the conduct of its business, (ii) the ownership, use, operation or maintenance of its properties or (iii) the performance by the Issuer or Co-Issuer, as the case may be, of its obligations under or in connection with the Basic Documents to which it is a party, have been received and all such authorizations, licenses, permits, certificates, franchises, consents, approvals and undertakings are in full force and effect.

(e) Each of the Issuers represents and warrants as to itself that the execution, issuance and delivery of, and performance by it of its obligations under, the Basic Documents and any and all instruments or documents required to be executed or delivered pursuant hereto or thereto or in connection herewith or therewith to which it is a party were and are within its powers, and will not violate any provision of any law, regulation, decree or governmental authorization applicable to it, or its Articles, or Certificate of Incorporation and By-laws, as the

case may be, and will not violate or cause a default under any provision of any contract, agreement, mortgage, indenture or other undertaking to which it is a party or which is binding upon it or any of its property or assets, and will not result in the imposition or creation of any lien, charge, or encumbrance upon any of its properties or assets, pursuant to the provisions of any such contract, agreement, mortgage, indenture or undertaking, other than as specifically set forth herein.

(f) Each of the Issuers represents and warrants as to itself that there are no legal, governmental or regulatory proceedings pending to which it is a party or of which any of its property is the subject, which if determined adversely to it, would individually or in the aggregate have a material adverse effect on the performance by it, of the Basic Documents to which it is a party or the consummation of the transactions contemplated hereunder or thereunder, and to the best of its knowledge, no such proceedings are threatened or contemplated.

(g) Each of the Issuers represents and warrants as to itself that the Securities issued by it are not required to be registered pursuant to the Securities Act, it is not required to be registered as an investment company pursuant to the Investment Company Act and this Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

SECTION 7.16 Certain Tax Matters.

(a) The Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained an Opinion of Counsel prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(b) The Issuer will not file with the Internal Revenue Service an election to be treated as a partnership for U.S. federal income tax purposes.

(c) The Issuer shall take reasonable steps so as to avoid the acquisition and ownership of "U.S. real property interests," within the meaning of section 897 of the Code, and interests in trusts or partnerships (or similar "pass-through entities") that are engaged in the conduct of a trade or business within the United States for United States federal income tax purposes.

(d) The Issuers do not intend for this Indenture to represent an agreement to enter into a partnership, a joint venture or any other business entity for U.S. federal tax purposes. The Issuers will not represent or otherwise hold themselves out to the Internal Revenue Service or other third parties as partners in a partnership or members of a joint venture or other business entity for U.S. federal tax purposes.

SECTION 7.17 DTC Actions.

The Issuers shall direct DTC to take the following steps in connection with the Global Notes:

(a) The Issuers shall direct DTC to include the "3c7" marker in the DTC 20-character security descriptor and the 48-character additional descriptor for the Rule 144A Global Notes in order to indicate that sales are limited to Qualified Purchasers that are Qualified Institutional Buyers.

(b) The Issuers shall direct DTC to cause each physical DTC delivery order ticket delivered by DTC to purchasers to contain the 20-character security descriptor and shall direct DTC to cause each DTC delivery order ticket delivered by DTC to purchasers in electronic form to contain the "3c7" indicator and the related user manual for participants.

(c) On or prior to the Closing Date, the Issuers will instruct DTC to send the "Important Notice to DTC Participants," in substantially the form of Exhibit K hereto, to all Participants.

(d) The Issuers will request that DTC include the Rule 144A Global Notes in DTC's "Reference Directory" of Section 3(c)(7) offerings.

(e) Upon the request of the Trustee or the Swap Counterparty, the Issuer shall request DTC to deliver a list of all Participants holding an interest in the Rule 144A Global Notes.

SECTION 7.18 Bloomberg Screens, Etc.

The Issuers will from time to time request all applicable third-party vendors to include on screens maintained by such vendors appropriate legends regarding Rule 144A, Regulation S and Section 3(c)(7) restrictions on the Global Notes. Without limiting the foregoing, the Issuer will request that Bloomberg, L.P. include the following on each Bloomberg screen containing information about the Notes as applicable:

(a) The bottom of the "Security Display" pages describing the Rule 144A Global Notes should state: "Iss'd Under 144A/3c7."

(b) The bottom of the "Security Display" page describing the Regulation S Global Notes or Class Q-1 Reg S Global Securities should state: "Iss'd Under Reg S."

(c) The "Security Display" page should have a flashing red indicator stating "Additional Note Pg."

(d) Such indicator for the Rule 144A Global Notes should link to an "Additional Security Information" page, which should state that the Rule 144A Global Notes "are being offered in reliance on the exemption from registration under Rule 144A of the Securities Act to persons that are both (A) "Qualified Institutional Buyers" (as defined in Rule 144A under the Securities Act) and (B) "Qualified Purchasers" (as defined under Section 3(c)(7) of the Investment Company Act)."

(e) Such indicator for the Regulation S Global Notes or Class Q-1 Reg S Global Securities should link to an "Additional Security Information" page, which should state that the

such securities "are being offered to non-U.S. Persons in reliance on the exemption from registration under Regulation S of the Securities Act in offshore transactions."

(f) The "Disclaimer" pages for the Notes should state that the Notes "will not be and have not been registered under the Securities Act, and neither the Issuer nor the Co-Issuer has been registered under the Investment Company Act and these securities may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements and any such offer or sale of these securities must be in accordance with Section 3(c)(7) of the Investment Company Act."

SECTION 7.19 CUSIP.

The Issuers will cause each "CUSIP" or "CINS" number obtained for a Note to have an attached "fixed field" that contains "3c7" and "144A" or "Reg S" indicators, as applicable.

SECTION 7.20 Legends.

The Issuers will not remove the legends set forth on the Securities in the forms set forth in Exhibits A1-1, A2-1, B1-1, B2-1, C1-1, C2-1, A1-2, A2-2, B1-2, B2-2, C1-2, C2-2, A1-3, A2-3, B1-3 , B2-3, C1-3, C2-3, IN-1, Q1-A and Q-2A hereto at any time except as provided in Section 2.6(k).

SECTION 7.21 Regulation S Transfers.

The Issuers will not participate directly or through agents, and will direct the Initial Purchaser not to participate, in any sale or transfer of Temporary Regulation S Global Notes or Regulation S Global Notes (or a beneficial interest therein) to a U.S. Person unless such person is acquiring a beneficial interest in a Rule 144A Global Note.

SECTION 7.22 Listing Agent.

As long as any Securities are listed on the Irish Stock Exchange and the rules of such Exchange shall so require, the Issuers shall maintain a listing agent (a "Listing Agent"), a paying agent and a transfer agent with an office in Dublin, Ireland. The Issuers hereby initially appoint the NCB Stockbrokers as listing agent for Securities listed on the Irish Stock Exchange and initially appoint an Irish paying agent and transfer agent for such Securities as provided in Sections 10.1 and 10.2, respectively, of this Indenture. If the Issuers appoint a new Listing Agent, the Issuers will publish the change, with such publication expected to be made in the *Daily Official List* of the Irish Stock Exchange.

SECTION 7.23 Security Interest Representations and Warranties.

(a) The Issuer hereby represents and warrants as of the Closing Date as follows:

(i) The Issuer owns the Trust Estate and the Class Q-2 Securities Collateral free and clear of any lien, claim or encumbrance of any person, other than such as are created under, this Indenture.

(ii) Except as expressly permitted by this Indenture, other than the assignment and security interest granted to the Trustee pursuant to this Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Trust Estate or the Class Q-2 Securities Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that includes a description of the Trust Estate or Class Q-2 Securities Collateral or any portion thereof other than any financing statement relating to the security interest granted to the Trustee hereunder or that has been terminated. The Issuer is not aware of any judgment, Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(iii) The Issuer has received all consents and approvals required by the terms of any item in the Trust Estate and the Class Q-2 Securities Collateral to transfer to the Trustee its interest and rights in such item in the Trust Estate or Class Q-2 Securities Collateral, as applicable, hereunder, except to the extent that any requirement for consent or approval is rendered ineffective under the applicable Uniform Commercial Code.

(iv) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) (x) in the Trust Estate in favor of the Trustee for the benefit of the Secured Parties, and (y) in the Class Q-2 Securities Collateral in favor of the Trustee for the benefit of the Holders of Class Q-2 Securities, which security interest in either case is prior to all other liens and is enforceable as such against creditors of and purchasers from the Issuer;

(v) The Trust Estate and the Class Q-2 Securities Collateral is comprised of "instruments," "security entitlements," "general intangibles," "securities accounts," "certificated securities," "deposit accounts", "accounts", "chattel paper", financial assets", "letter of credit rights" and/or "uncertificated securities" (each as defined in the applicable Uniform Commercial Code).

(vi) With respect to instruments contained in the Trust Estate or the Class Q-2 Securities Collateral (other than instruments evidencing obligations underlying participations), all original executed copies of each instrument that constitutes or evidences the instruments have been delivered to the Securities Intermediary to be held as a financial asset (within the meaning of the applicable Uniform Commercial Code). None of the instruments have any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Securities Intermediary.

(vii) All Eligible Investments consisting of instruments, security entitlements, certificated securities and uncertificated securities owned by the Issuer and contained in the Trust Estate or the Class Q-2 Securities Collateral (other than instruments evidencing obligations underlying participations) have been credited to one of the Trust Accounts or the Class Q-2 Securities Collateral Account, as applicable. The Securities Intermediary has agreed to treat all assets credited to the Trust Accounts or the Class Q-2 Securities Collateral Account as financial assets within the meaning of the applicable Uniform Commercial Code.

(viii) The Issuer has taken all steps necessary to cause the securities intermediary to identify in its records the Trustee as the person having the security entitlement against the securities intermediary in each of the Trust Accounts and the Class Q-2 Securities Collateral Account. The Trust Accounts and the Class Q-2 Securities Collateral Account are not in the name of any person other than the Issuer or the Trustee. The Issuer has not consented to the Securities Intermediary to comply with entitlement orders or other instructions of any person other than the Trustee.

(ix) The Issuer has caused or will have caused, within ten Business Days of the Closing Date, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Trust Estate and the Class Q-2 Securities Collateral granted to the Trustee hereunder.

(x) All certificated securities (other than a Clearing Corporation Security) have been delivered to the Securities Intermediary to be held as a financial asset and have been endorsed to the Securities Intermediary or in blank or have been registered in the name of the Securities Intermediary upon original issue or registration of transfer by the issuer of such certificated security.

(b) The representations and warranties set forth in this Section 7.23 shall survive the execution of this Indenture and shall be deemed to be repeated on each date on which any item of property is added to the Trust Estate or the Class Q-2 Securities Collateral, as applicable, as if made at and as of that time. The representations and warranties set forth herein may not be waived without receipt of a written Rating Confirmation for such waiver (provided that in the case of the Class Q-2 Securities Collateral, Rating Confirmation shall only be required so long as any Class Q-2 Securities are rated and only from the Rating Agency then rating such Class Q-2 Securities) and, in the case of the Trust Estate only, consent by the Swap Counterparty. This Section 7.23 may not be amended without the written consent of each of the Rating Agencies.

SECTION 7.24 Financing Statements; Registration.

The Issuer shall cause a financing statement describing the Trust Estate and the Class Q-2 Securities Collateral by use of the words "all assets in which the Debtor now or hereafter has rights" and naming the Issuer as “Debtor” and the Trustee as secured party to be filed by or on behalf of the Issuer in the applicable jurisdiction, which is the District of Columbia, within ten (10) days of the Closing Date. The Issuer shall take all actions necessary to continue and maintain the effectiveness of such financing statement and shall notify the Rating Agencies and Trustee in writing 30 days prior to any change in the Issuer’s name, identity, corporate structure, jurisdiction of incorporation or location of its chief executive office. The Issuer shall not authorize the filing of any financing statements naming it as debtor other than financing statements in favor of the Trustee. The Issuer shall cause the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer’s Registered Office in the Cayman Islands.

SECTION 7.25 Reaffirmation of Rating; Annual Rating Review.

(a) On or before the Ramp-up End Date, the Issuers shall request each Rating Agency in writing to confirm its rating of each Class of Senior Notes and request Moody's to confirm its rating of the Class Q-1 Securities, in each case within 30 days after the end of the Ramp-up Period.

(b) The Issuers shall pay for continuous rating surveillance by S&P of the Senior Notes rated by S&P and by Moody's of the Senior Notes and the Class Q-1 Securities rated by Moody's, so long as any of such Securities remain Outstanding. The Issuers shall promptly notify the Trustee in writing (which shall promptly notify the Securityholders, the Swap Counterparty, the Reference Portfolio Manager, the Collateral Administrator and the Investment Agreement Counterparty) if at any time the rating of any Class of Senior Notes or Class Q-1 Securities has been, or is known will be, qualified, downgraded or withdrawn.

SECTION 7.26 Amendment of the Swap Agreement.

The Issuer shall not enter into any amendment to the Swap Agreement (a "Swap Agreement Amendment") except in accordance with this Section 7.26.

(a) Without the consent of the Holders of the Notes, the Issuer and the Swap Counterparty at any time and from time to time, may amend the Swap Agreement, in order to:

(i) cure any ambiguity, or correct, modify or supplement any provision thereof which is defective or inconsistent with any other provision therein or of the Offering Circular;

(ii) take any action necessary or helpful to prevent the Issuer from becoming subject to any withholding or other taxes or assessments or to reduce the risk that the Issuer will be engaged in a United States trade or business or otherwise subject to United States federal income tax on a net income basis; or

(iii) amend, modify or change any test or requirement of any Rating Agency under the Swap Agreement where such amendment, modification or change has been specified or authorized by such Rating Agency (and notice thereof has been provided to the Trustee, the Swap Counterparty and Reference Portfolio Manager);

(b) Except as provided in subsection (a), the Issuer shall not enter into an amendment to the Swap Agreement without the consent of the Holders of a majority of the Aggregate Principal Amount of each Class of Notes.

(c) Not later than 15 Business Days prior to the execution of any proposed Swap Agreement Amendment, subject to subsection (b), the Issuer shall cause the Trustee to be provided, and the Trustee, at the expense of the Issuers, shall mail to the Holders of Securities, the Swap Counterparty, the Reference Portfolio Manager, the Investment Agreement Counterparty and each Rating Agency (so long as any rated Securities are Outstanding) a copy of such proposed Swap Agreement Amendment, and shall request any consent required pursuant to subsection (b) above from the applicable Holders of Securities to be given within the Initial

Consent Period. Any consent given to a proposed amendment to the Swap Agreement by the Holder of any Securities shall be irrevocable and binding on all future Holders and beneficial owners of that Security, irrespective of the execution date of the Swap Agreement Amendment. If Holders of less than the required percentage of the Aggregate Principal Amount of the relevant Securities consent to a proposed Swap Agreement Amendment within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer, the Swap Counterparty, the Amendment Buy-Out Purchaser and the Reference Portfolio Manager which Holders of Securities have consented to the proposed Swap Agreement Amendment, and which Holders and, to the extent such information is reasonably available to the Trustee, which beneficial owners have not consented to the proposed Swap Agreement Amendment. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than ten Business Days after the date of such notice) no later than five (5) Business Days after so being notified by the Trustee and the Trustee shall mail such notice to all Holders of Securities. Any Non-consenting Holder may give consent to the related proposed Swap Agreement Amendment until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-consenting Holder for purposes of the related Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser as Holder or beneficial owner of the applicable Securities may consent to the related proposed Swap Agreement Amendment within five (5) Business Days of the Amendment Buy-Out.

(d) It shall not be necessary in connection with any consent of the Holders of any Securities under this Section 7.26 for such Holders to approve the specific form of any proposed amendment, but it shall be sufficient if such consent shall approve the substance thereof.

(e) Promptly after the execution by the Issuer of any Swap Agreement Amendment in accordance with this Section 7.26, the Issuer shall cause to be provided to the Trustee, and the Trustee, at the expense of the Issuers, shall mail to the Holders of the Securities, the Reference Portfolio Manager, the Swap Counterparty, the Irish Stock Exchange (if and for so long as any Class of Securities is listed thereon), the Investment Agreement Counterparty and each Rating Agency (so long as any rated Securities are Outstanding) a copy thereof.

ARTICLE VIII

TRUST ACCOUNTS; DISTRIBUTIONS

SECTION 8.1 Collection of Money.

Except as otherwise expressly provided herein, the Trustee may demand payment or delivery of, and shall receive and (subject to the terms hereof) collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due in respect of the Swap Agreement and the Pledged Securities, in accordance with the terms and conditions hereof and of the Swap Agreement and the Pledged Securities, and the Trustee shall segregate and hold all such money and property received by it in trust for the benefit of the

Secured Parties and shall apply it as provided in this Indenture. In determining the amount of moneys in any trust account at any time, the Trustee shall assume that all of the Eligible Investments are sold or liquidated at market value on the date of determination. The Trustee shall have the right to establish such subaccounts within the accounts described below as the Trustee may deem necessary or appropriate for convenience in administering the Trust Estate.

SECTION 8.2 Collection Account and Expense Reserve Account.

(a) The Trustee shall, on or prior to the Closing Date, establish a segregated trust account in the name of the Trustee for the benefit of the Secured Parties which shall be designated as the "Valhalla CLO, Ltd.–Collection Account" (the "Collection Account"). All moneys credited from time to time to the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Trust Estate and shall be applied for the purposes provided herein.

(b) Except as otherwise expressly provided in this Indenture, the Trustee shall deposit into the Collection Account promptly upon receipt from time to time, (i) the net amount, if any, paid by the Swap Counterparty for any Payment Date in respect of the Adjusted Reference Portfolio Return Amount and the Fixed Amount, (ii) except as provided in Section 8.3, any Swap Termination Payment paid by the Swap Counterparty in connection with the termination of the Swap Agreement, and (iii) all amounts transferred to the Collection Account pursuant to Section 8.3 and subsection (e) hereof.

(c) On each Payment Date, the Trustee shall distribute applicable Payment Date Proceeds in the Collection Account pursuant to the Payment Date Priority of Payments set forth in Section 8.6(a).

(d) On the Maturity Date and on any Payment Date on which Notes are redeemed pursuant to Section 2.14(b), (d) or (e) or an Income Note Principal Distribution Amount is to be paid, the Trustee, shall in addition to its obligations under clause (c), distribute applicable moneys in the Collection Account pursuant to the Principal Priority of Payments set forth in Section 8.6(b).

(e) The Trustee shall, on or prior to the Closing Date, establish a segregated trust account in the name of the Trustee for the benefit of the Secured Parties which shall be designated as the "Valhalla CLO, Ltd.–Expense Reserve Account" (the "Expense Reserve Account"). On the Closing Date, the Issuer will deposit $17,376,625 in the Expense Reserve Account. On any Business Day from and including the Closing Date to but excluding the last Business Day prior to the first Payment Date, the Trustee shall, upon the written direction of the Initial Purchaser, apply funds from the Expense Reserve Account to pay expenses of the Issuers incurred in connection with the establishment of the Issuers, the structuring and consummation of the offering and the transactions contemplated thereby and the issuance of the Securities. Any funds remaining in the Expense Reserve Account on the last Business Day prior to the first Payment Date will be deposited without further direction by or consent of any Person on such day in the Collection Account for distribution on the first Payment Date in accordance with the Payment Date Priority of Payments and the Expense Reserve Account will be closed. Amounts on deposit in the Expense Reserve Account will be invested in the JPMorgan Fleming US Dollar

Liquidity Fund 6052; provided that such fund then meets the requirements of the definition of Eligible Investment. Any income or other gain from Eligible Investments credited to the Expense Reserve Account shall be credited to, and any loss resulting therefrom shall be charged to, the same Expense Reserve Account.

SECTION 8.3 Collateral Account.

(a) The Trustee shall, on or prior to the Closing Date, establish a segregated trust account in the name of the Trustee for the benefit of the Secured Parties which shall be designated as the "Valhalla CLO, Ltd.–Collateral Account" (the "Collateral Account"). The Issuer shall deposit with the Trustee, and upon receipt the Trustee shall cause to be credited to the Collateral Account, the net proceeds of the Securities (excluding amounts deposited in the Expense Reserve Account pursuant to 8.2(e)). In addition, the Trustee shall deposit into the Collateral Account to the extent received from time to time (i) interest and dividends received in respect of Eligible Investments credited to the Collateral Account and (ii) amounts to be deposited in the Collateral Account pursuant to Section 3.4(b). In addition, on each Payment Date, an amount equal to the Quarterly Aggregate Increase Amount, if any, for such date, will be deposited in the Collateral Account in accordance with the Priority of Payments.

(b) On each Payment Date other than the Maturity Date, Optional Redemption Date or Tax Redemption Date, the Trustee shall transfer from the Collateral Account to the Collection Account (i) an amount equal to the investment income received on the Eligible Investments in the Collateral Account during the related Periodic Interest Accrual Period and (ii) other amounts in the Collateral Account that constitute Payment Date Proceeds for such Payment Date or that are to be disbursed in accordance with the Principal Priority of Payments on such Payment Date.

(c) On the Maturity Date, Optional Redemption Date or Tax Redemption Date, the Trustee shall transfer to the Collection Account all of the moneys in the Collateral Account following sale or liquidation of Eligible Investments pursuant to clause (e).

(d) In the event of the early termination of the Swap Agreement, the Trustee shall apply amounts in the Collateral Account to pay to the Swap Counterparty any Swap Termination Payment owed to it pursuant to the Swap Agreement on the applicable Early Termination Date (as defined in the Swap Agreement), provided that any Swap Termination Payment due to the Swap Counterparty as a result of a Swap Event of Default as to which the Swap Counterparty is the defaulting party or a Swap Additional Termination Event as to which the Swap Counterparty is the affected party will be paid on the next Payment Date in accordance with Section 8.6.

(e) The Trustee shall sell, liquidate or make withdrawals from Eligible Investments in the Trust Accounts to the extent necessary to make any of the payments set forth in paragraphs (b), (c) or (d) above. Any such sales or liquidation shall be made at the direction of the Swap Counterparty (or the direction of the Reference Portfolio Manager on behalf of the Swap Counterparty); provided that the Swap Counterparty (or the Reference Portfolio Manager on its behalf) shall not be entitled to give such direction if (i) a Swap Event of Default as to which the Swap Counterparty is the defaulting party has occurred and is continuing, (ii) a Swap Additional Termination Event has occurred and is continuing or (iii) the Swap Agreement has

been terminated and all amounts owed to the Swap Counterparty thereunder have been paid in full, in each of which cases the Requisite Noteholders shall be entitled to give such direction.

SECTION 8.4 Investment of Moneys.

(a) Except as provided in Section 8.2(e), the Trustee shall invest moneys held from time to time in each Trust Account pursuant to (b) below in one or more Eligible Investments pursuant to the written direction of the Swap Counterparty as Secured Party (or the Reference Portfolio Manager on its behalf) (which may be in the form of standing instructions); provided, that the Swap Counterparty (or the Reference Portfolio Manager on its behalf) shall not be entitled to give such direction if (i) a Swap Event of Default as to which the Swap Counterparty is the defaulting party has occurred and is continuing, (ii) a Swap Additional Termination Event has occurred and is continuing or (iii) the Swap Agreement has been terminated and all amounts owed to the Swap Counterparty thereunder have been paid in full, in each of which cases the Requisite Noteholders shall be entitled to give such direction. If the Trustee does not receive such written directions within three days of receipt of uninvested moneys (whether by reason of a new deposit of moneys or payments in respect of, or realized upon the maturity of, existing Eligible Investments), the Trustee shall invest such moneys in Eligible Investments described in clause (a) of the definition thereof. If a written direction with respect to an investment is not received by the Trustee by 11:00 a.m. (New York City time) on any Business Day, the Trustee shall use its best efforts to effect the investment thereof on such date, but in no event later than the next Business Day. The Trustee shall not be obligated to pay interest on any uninvested moneys. Each Eligible Investment other than any Eligible Investment constituting a general intangible, a deposit account or an account shall be credited to the Trust Account to which the moneys used to make such Eligible Investment were credited, and any income or other gain therefrom shall be credited to, and any loss resulting therefrom shall be charged to, the same Trust Account. Any Eligible Investments constituting general intangibles, deposit accounts and accounts shall be Delivered to the Trustee. The Trustee shall not be liable by reason of any investment loss realized in connection with any Eligible Investment.

(b) The Eligible Investments in the Collateral Account and the Collection Account shall be required to mature and be payable as follows:

(i) The Collateral Account. The Eligible Investments in the Collateral Account (other than the Investment Agreement) shall be required to mature on or before the Business Day prior to the next Payment Date. The initial Eligible Investments in the Collateral Account shall be the Investment Agreement which the Issuer and the Trustee, as requested and directed hereby by the Issuer, will enter into on the Closing Date. The Trustee shall not acquire any replacement Eligible Investments therefor unless the Trustee shall have received Rating Confirmation for any such replacement Eligible Investments. The Trustee shall notify each Rating Agency of any replacement guarantee under the Investment Agreement or any failure by the counterparty to the Investment Agreement to post collateral when required to do so thereunder. The Trustee will perform the functions assigned to the Trustee under the Investment Agreement; provided that the Trustee shall exercise remedies in the event of a default thereunder, or give or withhold (i) any consent of the Trustee to a replacement collateral agent under the Investment Agreement or (ii) approval to a transfer of the Investment Agreement or

withdrawal of the balance of the investment in the case of a downgrade of the Investment Agreement Counterparty, in each case as directed in writing by or on behalf of the Swap Counterparty as a Secured Party under this Indenture (unless the Swap Agreement has been terminated and all amounts owed thereunder to the Swap Counterparty have been paid in full, in which case as directed by the Requisite Noteholders). Additional amounts deposited in the Collateral Account from time to time (including the Quarterly Aggregate Increase Amounts, if any) shall be invested in the Investment Agreement to the extent permitted thereunder.

(ii) The Collection Account. The Eligible Investments in the Collection Account at any time shall be required to mature on or before the Business Day prior to the next Payment Date.

(c) During the term of the Investment Agreement, if there is a replacement of the guarantee or the guarantor pursuant thereto, the Trustee will request Rating Confirmation with respect to such change in guarantee or guarantor, as the case may be.

SECTION 8.5 Status of Account; Securities Intermediary.

(a) Each of the Collection Account, the Expense Reserve Account and the Collateral Account (collectively, the "Trust Accounts") shall be at all times an Eligible Account at an Eligible Institution established as a "securities account" with a "securities intermediary" (each of the foregoing terms in quotations is used as defined in the UCC (and, if different, the Uniform Commercial Code in the securities intermediary's jurisdiction as set forth in the Account Agreement) pursuant to an agreement or arrangement causing the institution with which such securities account is maintained to maintain such securities account in accordance with the Account Agreement. The Trustee is appointed as the initial Securities Intermediary hereunder and the Trustee accepts such appointment.

(b) The Securities Intermediary shall and JPMorgan Chase Bank as initial Securities Intermediary does represent and warrant that it is as of the date it accepts such appointment and shall be for so long as it is the Securities Intermediary hereunder, a corporation or bank that in the ordinary course of business maintains securities accounts for others and is acting in that capacity hereunder. The Trustee shall ensure that each Securities Intermediary with which a Trust Account is maintained, and JPMorgan Chase Bank as initial Securities Intermediary, does (i) agree with the parties hereto that each of the Trust Accounts shall be an account to which "financial assets" may be credited, (ii) undertake to treat the Trustee as the sole "entitlement holder" for each of the Trust Accounts, (iii) agree with the parties hereto that the cash balances in each Trust Account and all other property credited to each Trust Account shall constitute "financial assets" and (iv) agree with the parties hereto that the "Securities Intermediary's jurisdiction" shall be the State of New York (it being understood that each of the foregoing terms in quotations is used as defined in the UCC) and that the establishment and maintenance of each Trust Account will be governed by the law of the State of New York. Each of the accounts shall be a segregated account in the name of the Trustee, and all Eligible Investments shall be Delivered to the Securities Intermediary in accordance with the definition given to that term in this Indenture.

(c) The Securities Intermediary shall and JPMorgan Chase Bank as initial Securities Intermediary does:

(i) covenant that it will not take any action concerning the Trust Accounts that is inconsistent with the provisions of this Indenture;

(ii) represent and covenant that it is not and will not be as long as it is the Securities Intermediary hereunder a party to any agreement concerning a Trust Account that is inconsistent with the provisions of this Indenture; and

(iii) agree that any item of property credited to a Trust Account shall not be subject to any security interest, lien, or right of setoff in favor of the Securities Intermediary, or to the extent within the Securities Intermediary's control, anyone claiming through the Securities Intermediary (other than the Trustee) other than (A) amounts due to the Securities Intermediary in respect of customary fees and expenses for the routine maintenance and operation of the Trust Accounts, (B) the face amount of any checks which have been credited to the Trust Accounts but are subsequently returned unpaid because of uncollected or insufficient funds and (C) any overdraft or advance in respect of the settlement of investments acquired for credit to such account.

(d) The Securities Intermediary may at any time resign by notice to the Trustee, may at any time be removed by notice from the Trustee, and shall be removed by notice from the Trustee within 10 days after the Trustee has actual notice that any Trust Account is no longer an Eligible Account with such Securities Intermediary, that the Securities Intermediary is no longer an Eligible Institution, or that the Securities Intermediary no longer satisfies the requirements of this Indenture. Upon such resignation or removal, the Trustee shall appoint a successor Securities Intermediary satisfying the requirements of this Indenture and shall cause the Trust Accounts to be established and maintained with such successor Securities Intermediary in accordance with the terms hereof, and the responsibilities and duties of the retiring Securities Intermediary hereunder shall remain in effect until all of the Trust Estate credited to the Trust Accounts has been transferred to such successor.

SECTION 8.6 Priority of Payments.

(a) On each Payment Date, the Trustee shall distribute Payment Date Proceeds in the Collection Account in the following order of priority (the "Payment Date Priority of Payments"):

(i) to the payment of any accrued and unpaid Administrative Expenses (in the order set forth in the definition thereof) up to the Expense Cap Amount;

(ii) (x) to the Swap Counterparty, the net amount, if any, payable to the Swap Counterparty under the Swap Agreement on such date in respect of the Adjusted Reference Portfolio Return Amount, the Fixed Amount and any Swap Termination Payment due to the Swap Counterparty (except any Swap Termination Payment due to the Swap Counterparty upon the early termination of the Swap Agreement as a result of a Swap Event of Default as to which the Swap Counterparty is the defaulting party or as a result of a Swap Additional Termination Event, and excluding

any Swap Termination Payment previously paid pursuant to Section 8.3), and any such net amounts not paid from prior Payment Dates and (y) to the Collateral Account, an amount equal to the Quarterly Aggregate Increase Amount, if any, for such Payment Date;

(iii) to the Holders of Class A-1 Notes, the Class A-1 Interest Amount;

(iv) to the Holders of Class A-2 Notes, the Class A-2 Interest Amount;

(v) following the Ramp-up End Date, if any Class A-1 Notes or Class A-2 Notes are then Outstanding and if either the Class A OC Test or the Class A Interest Coverage Test is not satisfied as of the related Determination Date, to the Holders of the Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes, and, following the redemption of all Class A-1 Notes, to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes, such that such tests are satisfied as of the related Determination Date;

(vi) to the Holders of the Class B Notes, the Class B Interest Amount;

(vii) following the Ramp-up End Date, if any Class A-1 Notes, Class A-2 Notes or Class B Notes are then Outstanding and if either the Class B OC Test or the Class B Interest Coverage Test is not satisfied as of the related Determination Date, to the Holders of the Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes, and following the redemption of all Class A-1 Notes, to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes, and following the redemption of all Class A-2 Notes, to the Holders of the Class B Notes, first, all accrued and unpaid Deferred Interest with respect to the Class B Notes and then, the Aggregate Principal Amount of the Class B Notes, such that such tests are satisfied as of the related Determination Date;

(viii) to the Holders of the Class B Notes, all accrued and unpaid Deferred Interest with respect to the Class B Notes;

(ix) on a pro rata basis, to the Holders of the Class C-1 Notes, the Class C-1 Interest Amount and to the Holders of the Class C-2 Notes, the Class C-2 Interest Amount;

(x) following the Ramp-up End Date, if any Class A-1 Notes, Class A-2 Notes, Class B Notes or Class C Notes are then Outstanding and if either the Class C OC Test or the Class C Interest Coverage Test is not satisfied as of the related Determination Date, to the Holders of the Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes, and following the redemption of all Class A-1 Notes, to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes, and following the redemption of all Class A-2 Notes, to the Holders of the Class B Notes, first, all accrued and unpaid Deferred Interest with respect to the Class B Notes and then, the Aggregate Principal Amount of the Class B Notes, and following the redemption of all Class B Notes, first, on a pro rata basis, to the Holders of the Class C-1 Notes, all accrued and unpaid Deferred Interest with respect to the Class C-1 Notes and to

the Holders of the Class C-2 Notes, all accrued and unpaid Deferred Interest with respect to the Class C-2 Notes and then, on a pro rata basis, to the Holders of the Class C-1 Notes, the Aggregate Principal Amount of the Class C-1 Notes and to the Holders of the Class C-2 Notes, the Aggregate Principal Amount of the Class C-2 Notes, such that such tests are satisfied as of the related Determination Date;

(xi) on a pro rata basis, to the Holders of the Class C-1 Notes, all accrued and unpaid Deferred Interest with respect to the Class C-1 Notes and to the Holders of the Class C-2 Notes, all accrued and unpaid Deferred Interest with respect to the Class C-2 Notes;

(xii) in the event that either Rating Agency has not confirmed in writing its rating in effect on the Closing Date on each Class of Senior Notes as of the 30th day following the Ramp-up End Date, to the Holders of the Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes and, following the redemption of all Class A-1 Notes, to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes and, following the redemption of all Class A-2 Notes, to the Holders of the Class B Notes, first, all accrued and unpaid Deferred Interest with respect to the Class B Notes and then, the Aggregate Principal Amount of the Class B Notes, and following the redemption of all Class B Notes, first, on a pro rata basis, to the Holders of the Class C-1 Notes all accrued and unpaid Deferred Interest with respect to the Class C-1 Notes and to the Holders of the Class C-2 Notes all accrued and unpaid Deferred Interest with respect to the Class C-2 Notes and then, on a pro rata basis, to the Holders of the Class C-1 Notes, the Aggregate Principal Amount of the Class C-1 Notes and to the Holders of the Class C-2 Notes, the Aggregate Principal Amount of the Class C-2 Notes, until each such rating is confirmed;

(xiii) to the Swap Counterparty, any Swap Termination Payment due to it upon the early termination of the Swap Agreement as a result of a Swap Event of Default as to which the Swap Counterparty is the defaulting party or as a result of a Swap Additional Termination Event, and excluding any Swap Termination Payment previously paid pursuant to Section 8.3;

(xiv) following the Ramp-up End Date, if any Class B Notes or Class C Notes are then Outstanding and if the Diversion Test is not satisfied as of the related Determination Date, an amount equal to 50% of the remaining Payment Date Proceeds, (i) first, on a pro rata basis, to the Holders of the Class B Notes, all accrued and unpaid Deferred Interest with respect to the Class B Notes, to the Holders of the Class C-1 Notes, all accrued and unpaid Deferred Interest with respect to the Class C-1 Notes and to the Holders of the Class C-2 Notes, all accrued and unpaid Deferred Interest with respect to the Class C-2 Notes, and (ii) then, on a pro rata basis, to the Holders of the Class B Notes, the Aggregate Principal Amount of the Class B Notes, to the Holders of the Class C-1 Notes, the Aggregate Principal Amount of the Class C-1 Notes and to the Holders of the Class C-2 Notes, the Aggregate Principal Amount of the Class C-2 Notes;

(xv) to the payment first of any accrued and unpaid Administrative Expenses (in the order set forth in the definition thereof) to the extent not paid pursuant to

clause (i) above and then, to the payment of any accrued and unpaid Subordinated Administrative Expenses;

(xvi) to the payment of any unpaid Extension Bonus Payments (i) first, to the applicable Holders of Class A-1 Notes, (ii) then, to the applicable Holders of Class A-2 Notes, (iii) then, to the applicable Holders of Class B Notes, and (iv) then, on a pro rata basis, to the applicable Holders of Class C-1 Notes and the applicable Holders of Class C-2 Notes; and

(xvii) the remainder, to the Holders of the Income Notes (the "Net Income Note Periodic Return Amount").

(b) On (A) the Maturity Date, the Optional Redemption Date or the Tax Redemption Date and (B) each other Payment Date on which Senior Notes are to be redeemed pursuant to Section 2.14(b) or, after all Senior Notes are redeemed, an Income Note Principal Distribution Amount is to be paid on the Income Notes, the Trustee will distribute the principal proceeds of Eligible Investments (after payment of any amounts payable therefrom pursuant to the Payment Date Priority of Payments and, in the case of clause (B), using principal proceeds in an amount not to exceed the Note Redemption Amount for such date), and in the case of the Maturity Date, the Optional Redemption Date or the Tax Redemption Date, any other amounts on deposit in the Trust Accounts to make the following payments in the following order of priority (the "Principal Priority of Payments"):

(i) to the payment of any accrued and unpaid Administrative Expenses (in the order set forth in the definition thereof) up to the Expense Cap Amount, to the extent not paid pursuant to the Payment Date Priority of Payments;

(ii) to the Swap Counterparty, the net amount, if any, payable to the Swap Counterparty under the Swap Agreement on such date in respect of the Adjusted Reference Portfolio Return Amount, the Fixed Amount, and any Swap Termination Payment due to the Swap Counterparty (except any Swap Termination Payment due to the Swap Counterparty upon the early termination of the Swap Agreement as a result of a Swap Event of Default as to which the Swap Counterparty is the defaulting party or as a result of a Swap Additional Termination Event), and any such net amounts not paid from prior Payment Dates, in any case to the extent not paid pursuant to the Payment Date Priority of Payments or Section 8.3;

(iii) to the Holders of the Class A-1 Notes, any accrued and unpaid Class A-1 Interest Amount, to the extent not paid pursuant to the Payment Date Priority of Payments;

(iv) to the Holders of the Class A-2 Notes, any accrued and unpaid Class A-2 Interest Amount, to the extent not paid pursuant to the Payment Date Priority of Payments;

(v) following the Ramp-up End Date, if any Class A-1 Notes or Class A-2 Notes are then Outstanding and if either the Class A OC Test or the Class A Interest Coverage Test is not satisfied as of the related Determination Date, to the Holders of the

Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes and, following the redemption of all Class A-1 Notes, to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes, such that such tests are satisfied as of the related Determination Date;

(vi) to the Holders of the Class B Notes, any accrued and unpaid Class B Interest Amount, to the extent not paid pursuant to the Payment Date Priority of Payments;

(vii) following the Ramp-up End Date, if any Class A-1 Notes, Class A-2 Notes or Class B Notes are then Outstanding and if either the Class B OC Test or the Class B Interest Coverage Test is not satisfied as of the related Determination Date, to the Holders of the Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes, and following the redemption of all Class A-1 Notes, to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes, and following the redemption of all Class A-2 Notes, to the Holders of the Class B Notes, first, all accrued and unpaid Deferred Interest with respect to the Class B Notes and then, the Aggregate Principal Amount of the Class B Notes, such that such tests are satisfied as of the related Determination Date;

(viii) on a pro rata basis, to the Holders of the Class C-1 Notes, the accrued and unpaid Class C-1 Interest Amount and to the Holders of the Class C-2 Notes, the accrued and unpaid Class C-2 Interest Amount, to the extent not paid pursuant to the Payment Date Priority of Payments;

(ix) following the Ramp-up End Date, if any Class A-1 Notes, Class A-2 Notes, Class B Notes or Class C Notes are then Outstanding and if either the Class C OC Test or the Class C Interest Coverage Test is not satisfied as of the related Determination Date, to the Holders of the Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes, and following the redemption of all Class A-1 Notes, to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes, and following the redemption of all Class A-2 Notes, to the Holders of the Class B Notes, first, all accrued and unpaid Deferred Interest with respect to the Class B Notes and then, the Aggregate Principal Amount of the Class B Notes, and following the redemption of all Class B Notes, first, on a pro rata basis, to the Holders of the Class C-1 Notes all accrued and unpaid Deferred Interest with respect to the Class C-1 Notes and to the Holders of the Class C-2 Notes all accrued and unpaid Deferred Interest with respect to the Class C-2 Notes and then, on a pro rata basis, to the Holders of the Class C-1 Notes, the Aggregate Principal Amount of the Class C-1 Notes and to the Holders of the Class C-2 Notes, the Aggregate Principal Amount of the Class C-2 Notes, such that such tests are satisfied as of the related Determination Date;

(x) to the Holders of the Class A-1 Notes, the Aggregate Principal Amount of the Class A-1 Notes;

(xi) to the Holders of the Class A-2 Notes, the Aggregate Principal Amount of the Class A-2 Notes;

(xii) to the Holders of the Class B Notes, any accrued and unpaid Deferred Interest with respect to the Class B Notes, to the extent not paid pursuant to the Payment Date Priority of Payments;

(xiii) to the Holders of the Class B Notes, the Aggregate Principal Amount of the Class B Notes;

(xiv) on a pro rata basis, to the Holders of the Class C-1 Notes, any accrued and unpaid Deferred Interest with respect to the Class C-1 Notes and to the Holders of the Class C-2 Notes, any accrued and unpaid Deferred Interest with respect to the Class C-2 Notes, to the extent not paid pursuant to the Payment Date Priority of Payments;

(xv) on a pro rata basis, to the Holders of the Class C-1 Notes, the Aggregate Principal Amount of the Class C-1 Notes and to the Holders of the Class C-2 Notes, the Aggregate Principal Amount of the Class C-2 Notes, and, in the case of the Optional Redemption Date, the Make-whole Premium in respect of the Class C-2 Notes;

(xvi) to the Swap Counterparty, any Swap Termination Payment due to it upon the early termination of the Swap Agreement as a result of a Swap Event of Default as to which the Swap Counterparty is the defaulting party or as a result of a Swap Additional Termination Event, to the extent not paid pursuant to the Payment Date Priority of Payments or Section 8.3;

(xvii) to the payment first of accrued and unpaid Administrative Expenses (in the order set forth in the definition thereof) to the extent not paid pursuant to clause (i) above or pursuant to the Payment Date Priority of Payments and then, to the payment of accrued and unpaid Subordinated Administrative Expenses to the extent not paid pursuant to the Payment Date Priority of Payments;

(xviii) to the payment of any unpaid Extension Bonus Payments (i) first, to the applicable Holders of Class A-1 Notes, (ii) then, to the applicable Holders of Class A-2 Notes, (iii) then, to the applicable Holders of Class B Notes, and (iv) then, on a pro rata basis, to the applicable Holders of Class C-1 Notes and the applicable Holders of Class C-2 Notes, to the extent not paid pursuant to the Payment Date Priority of Payments; and

(xix) to the Holders of the Income Notes, (a) on any Payment Date (other than the Maturity Date, the Optional Redemption Date or the Tax Redemption Date), the remainder, as an Income Note Principal Distribution Amount (the "Income Note Principal Distribution Amount") or (b) on the Maturity Date, the Optional Redemption Date or the Tax Redemption Date, the remainder (the "Final Income Note Distribution Amount").

(c) Anything in this Article VIII to the contrary notwithstanding, upon the occurrence of any Event of Default and the acceleration of the Notes pursuant to Article V hereof, moneys collected or received by the Trustee shall be distributed as provided in Section 5.8 hereof.

(d) For purposes of any paragraph of the Priority of Payments that requires funds to be applied if one or more specified Coverage Tests are not satisfied to the extent necessary to cause such Coverage Tests to be satisfied, satisfaction of such Coverage Tests will be determined as of the related Determination Date giving effect to all payments to be made on the applicable Payment Date prior to the payment of amounts under the applicable paragraph (and for this purpose, all payments made on any Payment Date pursuant to Section 8.6(a) will be deemed made prior to all payments, if any, made on such date pursuant to Section 8.6(b)). Pro rata payments of principal among pari passu Classes of Notes will be based upon the principal amount of such Notes outstanding on the date of payment, and pro rata payments of interest among pari passu Classes of Notes shall be based upon the amount of interest payable on such Notes on the date of payment. Payments with respect to any Class of Notes will be made to all Holders of Notes of such Class on a pro rata basis based on each Holder's holding of such Notes. Pro rata payments of Extension Bonus Payments among Holders of pari passu Classes of Notes shall be based upon the amount of Extension Bonus Payments payable to such Holders on the date of payment. Payments of Extension Bonus Payments will be made to the Holders to which they are payable on a pro rata basis based on each such Holder's holding of the applicable Notes with respect to which the Extension Bonus Payment is determined.

SECTION 8.7 Monthly Reports.

Not later than the 10th Business Day after the Monthly Report Determination Date, commencing in November 2004, the Issuer or its agent will compile and provide to the Trustee, the Swap Counterparty, the Reference Portfolio Manager, the Investment Agreement Counterparty, the Rating Agencies and the Holders of the Securities a report (the "Monthly Report"); provided, that no Monthly Report shall have to be delivered in any month in which a Payment Date Valuation Report is being delivered. Each Monthly Report shall contain the following information with respect to the calendar month in which the Monthly Report Determination Date falls:

(a) Sources and uses of funds during the calendar month:

(i) earnings received on Eligible Investments;

(ii) the Adjusted Reference Portfolio Return Amount payable from or to the Swap Counterparty, if any;

(iii) a calculation in reasonable detail of the Fixed Amount; and

(iv) any other payments made or received during such calendar month.

(b) Collection Account Information:

(i) the amount of funds and Eligible Investments credited to the Collection Account as of the first day of the calendar month; and

(ii) the amount of funds and Eligible Investments credited to the Collection Account as of the last day of the calendar month.

(c) Expense Reserve Account Information:

(i) the amount of funds and investments credited to the Expense Reserve Account as of the first day of the calendar month; and

(ii) the amount of funds and investments credited to the Expense Reserve Account as of the last day of the calendar month.

(d) Collateral Account Information:

(i) the amount of funds and Eligible Investments credited to the Collateral Account as of the first day of the calendar month;

(ii) the amount of funds, if any, deposited into the Collateral Account during the calendar month;

(iii) the amount of funds, if any, withdrawn from the Collateral Account during the calendar month; and

(iv) the amount of funds and Eligible Investments credited to the Collateral Account as of the last day of the calendar month.

(e) Class Q-2 Securities Collateral Account Information:

(i) the amount of funds and Eligible Investments credited to the Class Q-2 Securities Collateral Account as of the first day of the calendar month;

(ii) the amount of funds, if any, deposited into the Class Q-2 Securities Collateral Account during the calendar month;

(iii) the amount of funds, if any, withdrawn from the Class Q-2 Securities Collateral Account during the calendar month; and

(iv) the amount of funds and Eligible Investments credited to the Class Q-2 Securities Collateral Account as of the last day of the calendar month.

(f) Coverage Tests:

(i) the Overcollateralization Ratios as of the last day of the preceding calendar month and as of the last day of the calendar month, and the components thereof;

(ii) the Interest Coverage Ratios as of the last day of the preceding calendar month and as of the last day of the calendar month, and the components thereof;

(iii) the Class Q-2A Coverage Ratio as of the last day of the preceding calendar month and as of the last day of the calendar month, and the components thereof; and

(iv) a statement as to whether each of the Coverage Tests and the Class Q-2A Coverage Test has been satisfied.

(g) Eligible Investments: with respect to each Eligible Investment credited to the Collateral Account, as of the last day of the calendar month, its principal balance or maturity value, its interest rate, stated maturity, issuer, rating by Moody's and rating by Standard & Poor's (including whether such rating is on watch for downgrade or upgrade).

(h) Information regarding the Reference Portfolio (as of the Monthly Report Determination Date):

(i) the identity of each Reference Entity and Reference Obligation;

(ii) the Reference Obligation Calculation Amount and the Reference Value of each Reference Obligation in the Reference Portfolio, and the Aggregate Reference Obligation Calculation Amount and the Aggregate Reference Value;

(iii) the current Moody's Rating and Standard & Poor's Rating of each Reference Obligation and Underlying Obligation;

(iv) the Weighted Average Rating of the Reference Obligations in the Reference Portfolio and the maximum allowed by the Reference Portfolio Criteria;

(v) the Diversity Score for the Reference Portfolio and the minimum allowed by the Reference Portfolio Criteria;

(vi) whether any Reference Obligation is on watch for a rating upgrade or downgrade;

(vii) the current spread payable for each Reference Obligation and the commitment fee on the undrawn portion thereof, if any;

(viii) a reasonably detailed calculation of the Reference Portfolio Criteria, including the methodology used to calculate the Reference Portfolio Criteria, and evidence of compliance with the Reference Portfolio Criteria;

(ix) a statement as to whether each of the Reference Portfolio Criteria has or has not been satisfied;

(x) the level of funding of any Reference Obligations that are Revolving Loans;

(xi) the weighted average Reference Price of all Reference Obligations;

(xii) the weighted average credit spread of all Reference Obligations (including for funded and unfunded portions thereof); and

(xiii) the five Moody's Industry Classification Groups representing the highest concentration of Reference Obligations by Reference Obligation Calculation Amount, and the portion of the Portfolio Calculation Amount represented by each such group.

(i) Defaulted Reference Obligations:

(i) the identity of each Defaulted Reference Obligation and the corresponding Reference Obligation Calculation Amount and Reference Price, as well as the aggregate Reference Obligation Calculation Amount for all Defaulted Reference Obligations;

(ii) the date of the Credit Event;

(iii) the type of Credit Event;

(iv) the Market Value of each Defaulted Reference Obligation; and

(v) the weighted average Reference Price of all Defaulted Reference Obligations.

(j) Modification Activity (during the calendar month):

(i) the identity of each Reference Obligation (and whether the obligation is a Credit Risk Obligation, Credit Improved Obligation or other) that was removed (including the Removal Date), or with respect to which an Amortization occurred, its corresponding Reference Obligation Calculation Amount, the relevant Final Price (in the case of a removal) and the related Obligation Value Increase Amount or Obligation Value Reduction Amount, as applicable;

(ii) the identity, Addition Date, Reference Entity, Reference Price, Reference Obligation Calculation Amount and Reference Value of each Reference Obligation added to the Reference Portfolio; and

(iii) the Accrued Increase/Reduction Amount.

At least four Business Days prior to the date on which such report must be delivered, the Issuer or its agent shall provide a copy of the proposed Monthly Report to the Trustee, the Swap Counterparty and the Reference Portfolio Manager. Upon receipt of such proposed Monthly Report, the Trustee and the Reference Portfolio Manager on behalf of the Swap Counterparty will compare the information contained therein to the information contained in their respective records with respect to the Trust Estate and the Class Q-2 Securities Collateral and the Reference Portfolio and shall, within three Business Days after receipt of such proposed Monthly Report, notify the Issuer or its agent and each other if the information contained in the proposed Monthly Report does not conform to the information maintained by such party with respect to the Trust Estate and the Class Q-2 Securities Collateral and the Reference Portfolio, and detail any discrepancies. In the event that any discrepancy exists, the Issuer or its agent, the Trustee, and the Reference Portfolio Manager shall attempt to promptly resolve the discrepancy.

If such discrepancy cannot be promptly resolved on such third Business Day, the Trustee shall within two Business Days thereafter cause Independent Accountants to be appointed to review such proposed Monthly Report and the records of the Trustee and the Reference Portfolio Manager, as applicable, to determine the cause of such discrepancy. If such review reveals an error in the proposed Monthly Report or the Trustee's or Reference Portfolio Manager's records, the proposed Monthly Report or the Trustee's or Reference Portfolio Manager's records, as the case may be, shall be revised accordingly and, as so revised, shall be utilized in making all further calculations. Pursuant to the Reference Portfolio Management Agreement, the Reference Portfolio Manager has agreed to provide, or cause to be provided, on behalf of the Swap Counterparty, to the Collateral Administrator and/or the Independent Accountants access to all information in the possession of the Reference Portfolio Manager relating to the Reference Portfolio for purposes of compiling (or providing information required for) the Monthly Report.

SECTION 8.8 Payment Date Valuation Reports.

With respect to each Payment Date (and the Maturity Date) the Issuer or its agent shall render an accounting with respect to the Trust Estate, the Class Q-2 Securities Collateral and Reference Portfolio (each such accounting, a "Payment Date Valuation Report"), and provide such Payment Date Valuation Report no later than the related Payment Date (and the Maturity Date) to the Trustee, the Swap Counterparty, the Reference Portfolio Manager, the Investment Agreement Counterparty, the Independent Accountants, the Rating Agencies and the Holders of the Securities (and upon request to the Trustee by a beneficial owner of a Security, to such beneficial owner). The Payment Date Valuation Report shall contain the following information with respect to the related Payment Date determined as of the Determination Date:

(a) Calculation of certain amounts (including shortfalls from prior Payment Dates):

(i) as of the Determination Date, a calculation in reasonable detail of the Overcollateralization Ratios and the Interest Coverage Ratios and a statement as to whether each Coverage Test has or has not been satisfied, and if any Coverage Test has not been satisfied, the amount required for the payment of the Aggregate Principal Amount of each relevant Class of Notes in order to achieve compliance for each such Coverage Test;

(ii) the applicable interest rate in respect of each Class of Notes for such Payment Date and the amount of interest payable for each Class of Notes on such Payment Date;

(iii) the amount of Administrative Expenses (in the categories set forth in the definition thereof) and the Expense Cap Amount for such Payment Date;

(iv) the amount of any Accrued Swap Liabilities payable on such Payment Date;

(v) the Base Amount, Subordinate Amount and Incentive Amount for such Payment Date;

(vi) the amount of any principal payable in respect of any Class of Notes and the Aggregate Principal Amount of each Class of Notes;

(vii) with respect to the Class Q Securities, (A) the stated amount of the Class Q-1 Securities, (B) the Class Q-1 Nominal Principal (and, after the Class Q-1 Nominal Principal has been reduced to $1,000, any amount in excess of the Class Q-1 Nominal Interest, as "additional return on capital" with respect to the Class Q-1 Securities), (C) the Class Q-1 Rated Principal, (D) the Class Q-1 Nominal Interest, (E) the Class Q-1 Excess Distribution, (F) the applicable interest rate in respect of the Class Q-2A Securities and the amount of interest payable for the Class Q-2A Securities on such Payment Date, (G) the amount of any principal payable in respect of the Class Q-2A Securities and the Aggregate Principal Amount of the Class Q-2A Securities, (H) the distributions, if any, in respect of the Class Q-2B Securities for such Payment Date and for the preceding Payment Date, (I) as of the Determination Date, a calculation in reasonable detail of the Class Q-2A Coverage Ratio and a statement as to whether the Class Q-2A Coverage Test has been satisfied and the amount that would be required for the payment of the Aggregate Principal Amount of the Class Q-2A Securities in order to achieve compliance with the Class Q-2A Coverage Test, (J) amounts in the Class Q-2 Securities Collateral Account applied in accordance with the Class Q-2 Priority of Payments, and (K) the amount of funds available in the Class Q-2 Securities Collateral Account as of the first day of the preceding Collection Period and the balance therein remaining on the last day of such preceding Collection Period;

(viii) the distributions, if any, in respect of the Income Notes for such Payment Date and for the preceding Payment Date; and

(viii) the Outstanding Premium for that Payment Date.

(b) Application of amounts in the Collection Account in accordance with the Payment Date Priority of Payments: the amount of funds available in the Collection Account as of the first day of the preceding Collection Period and the balance therein remaining on the last day of such preceding Collection Period.

(c) Application of amounts in the Expense Reserve Account

(d) Application of amounts in the Collateral Account:

(i) the amount of funds and Eligible Investments credited to the Collateral Account as of the first day of the preceding Collection Period;

(ii) the application of such funds during such Collection Period; and

(iii) the balance of funds and Eligible Investments credited to the Collateral Account as of the last day of such Collection Period.

(e) For the Reference Portfolio:

(i) the Aggregate Reference Obligation Calculation Amount and Aggregate Reference Value of the Reference Obligations in the Reference Portfolio as of the close of business on the related Determination Date, after giving effect to any removals or additions of Reference Obligations during such Collection Period;

(ii) the Reference Obligation Calculation Amounts of the Reference Obligations under the Swap Agreement;

(iii) the amount due and received under the Swap Agreement from the Swap Counterparty during the Collection Period;

(iv) the identity of each Defaulted Reference Obligation in the Reference Portfolio; and

(v) the Quarterly Aggregate Increase Amount, the Quarterly Aggregate Reduction Amount, and the Quarterly Amortization Increase Amount

(f) The information required to be contained in a Monthly Report pursuant to Section 8.7 determined as of the Determination Date.

At least four Business Days prior to the date on which such report must be delivered, the Issuer or its agent shall provide a copy of the proposed Payment Date Valuation Report to the Trustee, the Reference Portfolio Manager and the Swap Counterparty. Upon receipt of such proposed Payment Date Valuation Report, the Trustee and the Reference Portfolio Manager on behalf of the Swap Counterparty shall compare the information contained therein to the information contained in their respective records with respect to the Trust Estate and the Class Q-2 Securities Collateral and the Reference Portfolio and shall, within three Business Days after receipt of such Payment Date Valuation Report, notify the Issuer or its agent and each other if the information contained in the proposed Payment Date Valuation Report does not conform to the information maintained by such party with respect to the Trust Estate and the Class Q-2 Securities Collateral and the Reference Portfolio, and detail any discrepancies. In the event that any discrepancy exists, the Issuer or its agent, the Trustee and the Reference Portfolio Manager shall attempt to promptly resolve the discrepancy. If such discrepancy cannot be promptly resolved on such third Business Day, the Trustee shall within two Business Days thereafter cause the Independent Accountants to be appointed to review such proposed Payment Date Valuation Reports and the records of the Trustee and the Reference Portfolio Manager, as applicable, to determine the cause of such discrepancy. If such review reveals an error in the proposed Payment Date Valuation Report or the Trustee's or Reference Portfolio Manager's records, the proposed Payment Date Valuation Report or Trustee's or Reference Portfolio Manager's records, as the case may be, shall be revised accordingly and, as so revised, shall be utilized in making all further calculations. Pursuant to the Reference Portfolio Management Agreement, the Reference Portfolio Manager has agreed to provide, or cause to be provided, on behalf of the Swap Counterparty, to the Collateral Administrator and/or the Independent Accountants access to all information in the possession of the Reference Portfolio Manager

relating to the Reference Portfolio for purposes of compiling (or providing information required for) the Payment Date Valuation Report.

In addition to the foregoing information, each Payment Date Valuation Report shall include a Reminder Notice substantially in the form set forth in Exhibit M hereto (a "Reminder Notice").

SECTION 8.9 Reports by Independent Accountants.

(a) On or before the Closing Date, the Issuer shall appoint a firm of independent certified public accountants of recognized national reputation approved as of such date by the Swap Counterparty (the "Independent Accountants"). Upon any resignation by such firm or removal of such firm, the Issuer shall promptly appoint a successor thereto (with the consent of the Swap Counterparty) that shall also be a firm of independent certified public accountants of recognized national reputation. If the Issuer shall fail to appoint a successor to the Independent Accountants upon their resignation or removal within 15 days after such resignation or removal, the Trustee shall promptly notify the Issuer and the Swap Counterparty of such failure in writing. If the Issuer shall not have appointed a successor within ten days thereafter, the Trustee shall promptly appoint (with the consent of the Swap Counterparty) a successor firm of independent certified public accountants of recognized national reputation with such fees and expenses to be paid as an Administrative Expense.

(b) No later than 30 calendar days following the Ramp-up End Date, the Issuer shall cause to be delivered to the Trustee, Swap Counterparty, Rating Agencies and Reference Portfolio Manager a statement from the Independent Accountants as to whether the Reference Portfolio complied with the Reference Portfolio Criteria as of the Ramp-up End Date (and if not, specifying the respects in which it did not).

SECTION 8.10 Posting of Reports on Repository at Option of the Initial Purchaser. The Issuer acknowledges and agrees that, to the extent requested by the Initial Purchaser, the Issuer shall post each Monthly Report and Payment Date Valuation Report to the Repository for use in the manner provided in the Repository. In connection therewith, the Issuer agrees, upon the request of the Initial Purchaser, to deliver or otherwise make available each Monthly Report and Payment Date Valuation Report to the Repository in the manner provided in Section 11.6 for posting on the Repository.

SECTION 8.11 Notices to Rating Agencies.

In addition to the information and reports specifically required to be provided to the Rating Agencies pursuant to the terms of this Indenture (including pursuant to Section 7.14, 8.7 and 8.8), the Issuer shall provide or cause to be provided to the Rating Agencies (i) written notice of any amendment, modification, termination or assignment of any Basic Document, the Administration Agreement, the Reference Portfolio Management Agreement or the Note Purchase Agreement and of resignation, termination or removal of any party thereto, (ii) notice of the redemption in full of any Class of Securities then rated by such Rating Agency, (iii) any report provided to the Holders of Securities pursuant to this Indenture and (iv) such additional information as the Rating Agencies may from time to time reasonably request in connection with

their ratings of the Senior Notes and the Class Q-1 Securities and the Issuer (or its agent) determines in its sole discretion may be obtained and provided without unreasonable burden or expense.

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.1 Supplemental Indentures Without Consent of Noteholders.

Without the consent of the Holders of the Notes but with the consent of the Swap Counterparty, the Issuers and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, in order to:

(a) evidence the succession of any Person to either the Issuer or Co-Issuer and the assumption by any such successor of the covenants of the Issuer or Co-Issuer in the Securities and the Indenture or to change the name of either of the Issuers;

(b) provide for definitive Notes as contemplated by Section 2.5(d) and (e);

(c) add to the covenants of the Issuers for the benefit of the Holders of the Securities or the Swap Counterparty;

(d) pledge any additional property to or with the Trustee;

(e) evidence and provide for the acceptance of appointment by a successor trustee and to add to or change any of the provisions of this Indenture as shall be necessary to facilitate the administration of the Trust Estate or the Class Q-2 Securities Collateral by more than one trustee;

(f) correct or amplify the description of any property at any time subject to the lien of this Indenture;

(g) cure any ambiguity, or correct, modify or supplement any provision hereof which is defective or inconsistent with any other provision herein or in the Offering Circular;

(h) make any change required by the Irish Stock Exchange (so long as any of the Securities are listed thereon), or any other stock exchange on which any Class of Securities is listed in order to permit or maintain the listing of the Securities thereon;

(i) modify transfer restrictions on any Securities so long as any such modifications comply with the Securities Act, the Investment Company Act, ERISA and other applicable laws and any additional transfer restrictions imposed are reasonably necessary to comply with such laws (or any applicable exemption therefrom);

(j) take any action necessary or helpful to prevent the Issuer or the Trustee from becoming subject to any withholding or other taxes or assessments or to reduce the risk that the

Issuer will be engaged in a United States trade or business or otherwise subject to United States federal income tax on a net income basis;

(k) provide for additional or modified reports to Holders of Securities; or

(l) amend, modify or change any test or requirement of any Rating Agency hereunder where such amendment, modification or change has been specified or authorized by such Rating Agency (and notice thereof has been provided to the Trustee, Swap Counterparty and Reference Portfolio Manager);

provided, that, in each case, the Trustee shall have received Rating Confirmation for such supplemental indenture; provided, further, that the Trustee may, with the consent of the Holders of 100% of the Aggregate Principal Amount of each Class of Senior Notes and Class Q-1 Securities affected thereby and with the consent of the Swap Counterparty, enter into any such supplemental indenture notwithstanding any qualification, downgrade or withdrawal of the then-current ratings of any such Class of Senior Notes or Class Q-1 Securities.

The Trustee is hereby authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be contained therein.

SECTION 9.2 Supplemental Indentures With Consent of Noteholders.

(a) With the consent of the Holders of a majority of the Aggregate Principal Amount of each Class of Notes adversely affected thereby, and the consent of the Swap Counterparty and Rating Confirmation for such action, the Issuers and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Holders of the Notes under this Indenture; *provided*, that the Issuers and the Trustee may, with the consent of Holders of 100% of the Aggregate Principal Amount of each Class of Senior Notes and the Class Q-1 Securities affected thereby, enter into any supplemental indenture notwithstanding that either Rating Agency has stated that such supplemental indenture will result in a qualification, withdrawal or downgrade of its then-current ratings of such Class of Senior Notes or Class Q-1 Securities. However, without the consent of the Swap Counterparty if adversely affected thereby and the Holders of each Outstanding Security adversely affected thereby and without Rating Confirmation for such supplemental indenture or a waiver of such Rating Confirmation by the Holders whose consent is required for such supplemental indenture, no supplemental indenture may:

(i) change the maturity of any Security or the principal of, or the interest on any Senior Note or Class Q-2A Security or reduce the principal amount thereof or the rate of interest thereon or change the time or amount of any other amount payable in respect of any Security;

(ii) reduce the percentage of the Aggregate Principal Amount of Securities, the consent of the Holders of which is required for the authorization of any supplemental indenture or for any waiver of compliance with certain provisions of this Indenture;

(iii) permit the creation of any lien ranking prior to or on parity with the lien of this Indenture with respect to any part of the Trust Estate or the Class Q-2 Securities Collateral or terminate the lien of this Indenture except as otherwise permitted by the Indenture;

(iv) reduce the percentage of the Aggregate Principal Amount of Notes or Class Q-2 Securities, as applicable, held by the Holders of the Notes or Class Q-2 Securities, as applicable, whose consent is required to direct the Trustee to liquidate the Trust Estate (or modify the provisions of this Indenture relating to the Swap Counterparty's authority with respect to any such liquidation) or Class Q-2 Securities Collateral, as applicable;

(v) modify any of the provisions of this Indenture with respect to supplemental indentures or waiver of Events of Default or Class Q-2 Events of Default and their consequences except to increase the percentage of the Aggregate Principal Amount of Notes or Class Q-2 Securities, as applicable, the consent of the Holders of which is required for any such action or to provide that other provisions of the Indenture cannot be modified or waived without the consent of the Holders of each Outstanding Note (or each Outstanding Class Q-2 Security, as applicable) affected thereby;

(vi) modify the provisions of the Priority of Payments, the Class Q-2 Priority of Payments or the definitions of the terms "Holder" or "Outstanding;" or

(vii) modify any of the provisions of the Indenture in such a manner as to affect the calculation of the amount of any payment of principal of or interest on or other amount payable in respect of any Security or to affect the right of the Holders of the Securities to the benefit of any provisions for the payment of such Securities contained therein.

(b) No supplemental indenture may modify the terms of the Class Q-1 Securities, the Class Q-2A Securities or the Class Q-2B Securities as such in a manner that would adversely affect the Class Q-1 Securities, the Class Q-2A Securities or the Class Q-2B Securities without the prior written consent of a majority of the stated amount of the Class Q-1 Securities, aggregate principal amount of the Class Q-2A Securities or Class Q-2B Securities, as applicable, or the consent of the Holders of each Outstanding Class Q-2 Security adversely affected thereby as set forth above. Except for any proposed such supplement that would affect the terms of the Class Q-1 Securities, Class Q-2A Securities or the Class Q-2B Securities as such or as provided in subsection (a) above, Holders of Class Q-1 Securities, Class Q-2A Securities and Class Q-2B Securities shall be entitled to vote under this Section 9.2 only (i) in the case of the Class Q-1 Securities, as Holders of the respective related Components and (ii) in the case of the Class Q-2 Securities, pursuant to Section 2.17(f) with respect to the Income Notes represented by the Class Q-2 Collateral Asset A.

(c) Any supplemental indenture that in the good faith determination of the Swap Counterparty materially adversely affects its rights or duties or creates, supplements, modifies, limits or eliminates any provision of the Indenture affecting the discretion, judgment, conduct, care or role of the Reference Portfolio Manager, including the Coverage Tests and provisions

relating to calculations with respect to the Reference Portfolio, the Swap Counterparty's or the Reference Portfolio Manager's obligations or liabilities, fees or expenses payable by or reimbursable to it or the Reference Portfolio Manager, or otherwise adversely affects it or the Reference Portfolio Manager, will be deemed to adversely affect the Swap Counterparty and therefore will not be effective without the prior consent of the Swap Counterparty.

(d) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section, the Trustee at the expense of the Issuers shall mail to the Holders of Securities, the Swap Counterparty, the Reference Portfolio Manager, the Investment Agreement Counterparty and each Rating Agency (so long as any rated Securities are Outstanding) a copy of such supplemental indenture and shall, (1) request Rating Confirmation from each Rating Agency, as applicable, and (2) request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If Holders of less than the required percentage of the Aggregate Principal Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer, the Swap Counterparty and the Reference Portfolio Manager which Holders of Securities have consented to the proposed supplemental indenture, and, which Holders and, to the extent such information is reasonably available to the Trustee, which beneficial owners have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than ten Business Days after the date of such notice) no later than five (5) Business Days after so being notified by the Trustee and the Trustee shall mail such notice to all Holders of Securities. Any Non-consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-consenting Holder for purposes of the related Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser as Holder or beneficial owner of the applicable Securities may consent to the related proposed indenture within five (5) Business Days of the Amendment Buy-Out.

(e) The Trustee may, consistent with an Opinion of Counsel, determine whether or not the Holders of any Notes would be adversely affected by any supplemental indenture. Such determination shall be conclusive and binding on all present and future Holders. The Trustee shall not be liable for any such determination made in good faith and in reliance in good faith upon an Opinion of Counsel delivered to the Trustee as described in Section 9.3 hereof.

(f) It shall not be necessary in connection with any consent of the Holders of the Securities under this Section 9.2 for such Holders to approve the specific form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

(g) Promptly after the execution by the Issuers and the Trustee of any supplemental indenture pursuant to this Section 9.2, the Trustee, at the expense of the Issuers, shall mail to the Holders of the Securities, the Reference Portfolio Manager, the Swap Counterparty, the Irish Stock Exchange (if and for so long as any Class of Securities is listed thereon), the Investment Agreement Counterparty and each Rating Agency (so long as any rated Securities are Outstanding) a copy thereof.

SECTION 9.3 Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.2) shall be fully protected in relying in good faith upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent applicable thereto under this Indenture have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. If requested by the Initial Purchaser, following the execution of any supplemental indenture under this Article 9, the Issuer shall deliver a copy of such supplemental indenture to the Repository for posting on the Repository in the manner described in Section 11.6.

SECTION 9.4 Effect of Supplemental Indentures.

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

SECTION 9.5 Reference in Notes to Supplemental Indentures.

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

SECTION 9.6 Amendment Buy-Out.

(a) In the case of any supplemental indenture pursuant to Section 9.2 above or a Swap Agreement Amendment pursuant to Section 7.26(b) of this Indenture, in each case that requires the consent of one or more Holders of Notes or Class Q-1 Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-consenting Holders all Securities held by such Holders of the Class of Securities whose consent was solicited with respect to such supplemental indenture or Swap Agreement Amendment, as applicable (the "Amendment Buy-Out Option") for the applicable Amendment Buy-Out Purchase Price. If such option is exercised, the Amendment Buy-Out Purchaser must purchase

all such Securities of Non-consenting Holders, regardless of the applicable percentage of the Aggregate Principal Amount of the Securities the consent of whose Holders is required for such supplemental indenture or Swap Agreement Amendment, as applicable (an "Amendment Buy-Out"). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-consenting Holder will be required to sell its applicable Securities to the Amendment Buy-Out Purchaser; provided that if the solicited consent to a supplemental indenture only applies to one Component of a Class Q-1 Security, the Non-consenting Holder will be required to sell, at the Non-consenting Holder's option, its Class Q-1 Security as a whole or solely the affected Component. The Class Q-2 Securities themselves shall not be subject to an Amendment Buy-Out; provided that the Income Notes represented by the Class Q-2 Collateral Asset A shall be subject to an Amendment Buy-Out as provided in Section 2.17(f)(iii). Neither the Swap Counterparty, nor the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities set forth herein (including, without limitation, the restriction that such Securities may not be purchased (x) in the case of the Class Q-1 Securities, by any Person that is a Benefit Plan Investor and (x) in the case of the Income Notes, if Holders of the Income Notes that have represented that they are Benefit Plan Investors would own 25% or more of the Aggregate Principal Amount of the Income Notes (excluding Income Notes in the form of the Class Q-1 Income Note Component, Income Notes represented by the Class Q-2 Collateral Asset A and Income Notes held by Controlling Persons) immediately after such purchase) and the legends on such Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

ARTICLE X

OTHER AGENTS

SECTION 10.1 Paying Agents.

(a) The Issuers hereby appoint the Trustee and, solely with respect to any Securities listed on the Irish Stock Exchange, the Listing Agent, as Paying Agents.

(b) The Issuers may vary or terminate the appointment of any Paying Agent and/or appoint additional Paying Agents, including, without limitation, as may be required under the rules of the Irish Stock Exchange. Notice of any such variation, termination or appointment, and of any changes in the specified offices, shall be given by the Issuers to the Trustee, the Holders of the Securities, the Swap Counterparty and the Rating Agencies in the manner described in Sections 11.3 and 11.4.

(c) The Issuers will cause each Paying Agent (other than the Trustee and the Listing Agent to the extent the Securities (a) settle through DTC, Euroclear or Clearstream or (b)

are not listed on the Irish Stock Exchange) to execute and deliver to the Trustee and the Issuers an instrument in which each such Paying Agent shall agree with the Issuers that such Paying Agent will:

(i) pay to the Holders of the Securities all amounts due and payable to the extent sufficient funds have been provided therefor by the Issuers or the Trustee;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(iii) maintain such records as may reasonably be requested by the Issuers or the Trustee, and furnish such copies thereof as the Trustee may require;

(iv) abide by all provisions of this Indenture relating to the duties and responsibilities of the Paying Agent;

(v) notify the Trustee, the Swap Counterparty and the Holders of the Notes of any default by the Issuers, and such Paying Agent shall be required to account to the Trustee on all disbursements made by such Paying Agent;

(vi) immediately resign as a Paying Agent and pay to the Trustee all sums held by it in trust for the payment of Notes if at any time it ceases to meet the eligibility requirements required to be met by a Paying Agent in effect at the time of determination; and

(vii) comply with all requirements of the Code applicable to it with respect to the withholding from any payments made by it on any Notes of any applicable withholding taxes imposed thereon, required to be withheld and with respect to any applicable reporting requirements imposed upon and applicable to it under the Code in connection therewith.

(d) The eligibility requirements for a Paying Agent shall be the same as those relating to the Trustee in Section 6.10.

(e) After an Event of Default, the Trustee may require that all funds held by Paying Agents be paid over to the Trustee.

SECTION 10.2 Irish Transfer Agent.

So long as any Securities are listed on the Irish Stock Exchange, the Issuers shall maintain a transfer agent with an office in Ireland, as an agent for the registration of transfers of such Notes (the "Irish Transfer Agent"). The Issuers hereby initially appoint the Listing Agent as the Irish Transfer Agent. If the Issuer appoints a new Transfer Agent, the Issuer will publish notice of the change in an Authorized Newspaper as promptly as practicable after such appointment.

SECTION 10.3 Indenture Calculation Agent.

(a) The Issuers hereby agree that for so long as any of the Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C-1 Notes and Class Q-2A Notes remain Outstanding there will at all times be an agent appointed to calculate LIBOR in respect of each Periodic Interest Accrual Period in accordance with the terms of this Section 10.3 (the "Indenture Calculation Agent"). The Issuers hereby initially appoint the Trustee as Indenture Calculation Agent for purposes of determining LIBOR for each Periodic Interest Accrual Period, and the Trustee, by executing and delivering this Indenture, hereby acknowledges and accepts such appointment. The Indenture Calculation Agent may be removed by the Issuer at any time. If the Indenture Calculation Agent is unable or unwilling to act as such or is removed by the Issuer, or if the Indenture Calculation Agent fails to determine any applicable Interest Rate or the amount of interest payable on each such Class of Securities for any Periodic Interest Accrual Period, the Issuer will promptly appoint as a replacement Indenture Calculation Agent a leading bank which is engaged in transactions in U.S. Dollar deposits in the London interbank market and which is not an Affiliate of the Issuers. The Indenture Calculation Agent may not resign its duties without a successor having been duly appointed. If no successor Indenture Calculation Agent is appointed within thirty (30) days after giving notice of resignation, the resigning Indenture Calculation Agent, the Swap Counterparty, the Holders of a majority of the Aggregate Principal Amount of the Senior Notes or any Holder of a Senior Note or Class Q-2A Security, on behalf of itself and all others similarly situated, may petition a court of competent jurisdiction for the appointment of a successor Indenture Calculation Agent. The Issuer shall notify the Rating Agencies of the appointment of any replacement Indenture Calculation Agent.

(b) As soon as reasonably possible after 11:00 a.m. (London time) on each LIBOR Determination Date, but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination Date, the Indenture Calculation Agent will calculate the Class A-1 Interest Rate, the Class A-2 Interest Rate, the Class B Interest Rate, the Class C-1 Interest Rate and the Class Q-2A Interest Rate for the related Periodic Interest Accrual Period and the amount of interest for such Periodic Interest Accrual Period payable in respect of each U.S. $100,000 by Aggregate Principal Amount of each such Class of Securities (rounded to the nearest cent, with half a cent being rounded upward) on such related Payment Date and cause the same to be provided to the Issuers, the Swap Counterparty, the Reference Portfolio Manager, the Trustee, the Investment Agreement Counterparty, the Paying Agents, the Irish Stock Exchange (if and for so long as any Class of Securities is listed thereon), and, if applicable, Euroclear and Clearstream. The Indenture Calculation Agent will also specify to the Issuers the quotations upon which the applicable Interest Rate for each such Class of Securities is based, and in any event, the Indenture Calculation Agent shall notify the Issuers before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the applicable Interest Rate and the Periodic Interest for each such Class of Securities, or (ii) it has not determined and is not in the process of determining the applicable Interest Rate and the Periodic Interest for each such Class of Securities, together with its reasons therefor. The determination of the applicable Interest Rate for each such Class of Securities by the Indenture Calculation Agent shall (in the absence of manifest error) be final and binding upon all parties.

SECTION 10.4 Other Capacities.

To the extent that the Trustee is acting as Registrar, Paying Agent, Securities Intermediary or Indenture Calculation Agent or other capacity hereunder, the rights, privileges and indemnities set forth in Article VI shall also apply to the Trustee acting in each such capacity.

SECTION 10.5 Certain Actions with Respect to the Reference Portfolio Manager.

(a) At the direction of the Holders of at least 66 2/3% (in Aggregate Principal Amount) of the Income Notes and at least 66 2/3% (in Aggregate Principal Amount) of each Class of Senior Notes, the Issuer will request the Swap Counterparty under the Swap Agreement to remove the Reference Portfolio Manager without cause in accordance with the Reference Portfolio Management Agreement. The Issuer will request the Swap Counterparty under the Swap Agreement to remove the Reference Portfolio Manager for cause in accordance with the Reference Portfolio Management Agreement upon the vote of the Holders of at least $66^{2}/_{3}$% (in Aggregate Principal Amount) of each Class of Senior Notes and at least $66^{2}/_{3}$% (in Aggregate Principal Amount) of the Income Notes. The Issuer shall notify the Rating Agencies of any such request.

(b) If the Swap Counterparty consults with the Issuer as to the appointment of a replacement Reference Portfolio Manager under the Reference Portfolio Management Agreement, the Issuer shall follow the direction of the Holders of a majority in Aggregate Principal Amount of the Income Notes; provided that the Issuer shall not follow such direction as to any replacement Reference Portfolio Manager, if the Holders of at least $66^{2}/_{3}$% of the Aggregate Principal Amount of each Class of Senior Notes object to such replacement Reference Portfolio Manager.

(c) Notwithstanding Section 2.11, for purposes of voting under this Section 10.5 only, Securities beneficially owned by the Reference Portfolio Manager or any of its Affiliates or by an account or fund for which the Reference Portfolio Manager or its Affiliate acts as investment manager with discretionary authority shall be disregarded and deemed not to be Outstanding.

(d) The Issuer shall notify the holders of Securities of any resignation, removal or replacement of the Reference Portfolio Manager or any assignment of the Reference Portfolio Management Agreement, and if it receives notice from the Swap Counterparty of the occurrence of an event that constitutes cause for removing the Reference Portfolio Manager under the Reference Portfolio Management Agreement.

SECTION 10.6 Process Agents.

The Issuer shall designate and appoint Corporation Service Company as its agent (the "Process Agent") in New York for service of all process. The Process Agent may be served in any legal suit, action or Proceeding arising with respect to this Indenture, the Swap Agreement or the Notes or the transactions contemplated hereby or thereby, such service being hereby acknowledged to be effective and binding service in every respect.

The Co-Issuer shall designate and appoint Corporation Service Company as its agent in New York for service of all process. The Process Agent may be served in any legal suit, action or Proceeding arising with respect to this Indenture or the Notes or the transactions contemplated hereby or thereby, such service being hereby acknowledged to be effective and binding service in every respect.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1 Form of Documents Delivered to Trustee.

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

(b) Any certificate or opinion of an Authorized Officer of each of the Issuers may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by counsel, unless such officer knows, or in the exercise of reasonable care should know, that such certificate or opinion or representations with respect to the matters upon which this certificate or opinion is based are erroneous. Any certificate of an Authorized Officer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Issuer, the Co-Issuer or any other Person, as the case may be, stating that the information with respect to such factual matters is in the possession of the Issuer, the Co-Issuer or such other Person, unless such Authorized Officer or counsel knows, or in the exercise of reasonable care should know, that such certificate or opinion or representations with respect to such matters are erroneous.

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

(d) Whenever in this Indenture, in connection with any application or certificate or report to the Trustee, it is provided that the Issuer or the Co-Issuer shall deliver any document as a condition of the granting of such application, or as evidence of compliance of the Issuer or the Co-Issuer with any term hereof, it is intended that the truth and accuracy at the time of the granting of such application or at the effective date of such certificate or report (as the case may be) of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the Issuer or the Co-Issuer to have such application granted or to the sufficiency of such certificate or report. The foregoing shall not, however, be construed to affect the Trustee's right to rely upon the truth and accuracy of any statement or opinion contained in any such document as provided in Article VI.

SECTION 11.2 Acts of Securityholders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by the Holders of the Securities may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing; and except as herein otherwise expressly provided such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of the Securities signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 11.2.

(b) The fact and date of the execution by any person of any such instrument or writing may be proved in any manner that the Trustee deems sufficient.

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

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

SECTION 11.3 Notices, etc., to Trustee, Issuers and Rating Agencies.

Any request, demand, authorization, direction, notice, consent, waiver of any Person, or any Act of the Holders of the Securities or other documents provided or permitted by this Indenture to be made upon, given or furnished to or filed with:

(a) The Trustee by any Holder of the Securities, or by the Issuer or the Co-Issuer or other Person shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration; with such request, demand, authorization, direction, notice, consent, waiver or other communication or document to the Trustee to be deemed effective only upon actual receipt thereof at the Corporate Trust Office;

(b) The Issuer or the Co-Issuer by the Trustee or by any Holder of the Securities shall be sufficient for every purpose hereunder if in writing and either sent by electronic facsimile transmission (with hard copy to follow via first class mail) or mailed, by certified mail, return receipt requested to the Issuer, at: Valhalla CLO, Ltd., c/o Walkers SPV Limited, P.O. Box 908GT, Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, Attention: The Directors, facsimile: (345) 945-4757, or to the Co-Issuer, at: Valhalla CLO, Inc., c/o Puglisi & Associates, 850 Library Avenue, Suite 204, Newark, DE 19711, facsimile: (302) 738-7210, or at any other address previously furnished in writing to the Trustee by the Issuer or the Co-Issuer. Each of the Issuer and the Co-Issuer shall promptly transmit any notice

received by it from the Noteholders to the Trustee, the Swap Counterparty and the Reference Portfolio Manager.

(c) Notices required to be given to the Rating Agencies by the Issuer, the Co-Issuer or the Trustee shall be in writing, personally delivered, sent by electronic facsimile transmission (with hard copy to follow via first class mail) or mailed by certified mail, return receipt requested to: (i) Moody's Investors Service, Inc., CDO Group, 99 Church Street, New York, New York, 10007, electronic copy to CDOmonitoring@moodys.com, facsimile: (212) 553-4170, Attention: CBO/CLO Monitoring, and (ii) Standard & Poor's, 55 Water Street, 40th Floor, New York, New York 10041-0003, electronic copy to CDO_surveillance@sandp.com, facsimile: (212) 438-2665, or at such other addresses as shall be designated by written notice to the other parties. Where this Indenture provides for notice to the Rating Agencies, failure to give such notice shall not affect any other rights or obligations created hereunder, and shall not under any circumstance constitute an Event of Default.

(d) Notices required to be given to the Trustee or the Holders of the Securities shall also be required to be given to the Administrator, the Swap Counterparty and the Reference Portfolio Manager.

(e) Notices required to be given to the Swap Counterparty shall be sent to: Citigroup Financial Products Inc., 390 Greenwich Street, 4th Floor, New York, New York 10013, Attention: Doug Warren, telephone: 212-723-6118, facsimile: 212-723-8578, with a copy to: Legal Department, 77 Water Street, 9th Floor, New York, New York 10004, Attention: Department Head, facsimile: (212) 657-1452.

(f) Notices required to be given to the Reference Portfolio Manager shall be sent to: Highland Capital Management, L.P., 13455 Noel Road, Suite 1300, Dallas, Texas 75240, Attention: Todd Travers, Telephone Number: 972-628-4100, Fax Number: 972-628-4147.

(g) Notices required to be given to the Investment Agreement Counterparty shall be sent to its address as set forth in, or pursuant to, the Investment Agreement and, if at any time the Investment Agreement Guarantor is not an affiliate of the Investment Agreement Counterparty, with a copy to the Investment Agreement Guarantor sent to its address as set forth in, or pursuant to, the Investment Agreement.

SECTION 11.4 Notices to Holders of the Notes; Waiver.

Where this Indenture provides for notice to the Holders of the Notes of any event, such notice shall be given through the Depositary or its nominee as the registered holder of the Notes by first class mail, postage prepaid, at the address appearing on the Securities Register. In addition, so long as any of the Securities are listed on the Irish Stock Exchange and so long as the rules of such Exchange so require, notice to the Holders of the Securities shall also be given by publication in the Irish Stock Exchange's Daily Official List. The Trustee shall forward all notices to the Listing Agent for publication.

Where this Indenture provides for notice in any manner, any such notice may be waived in writing by any Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall

be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 11.5 Consent to Posting of Documents on Repository at the Option of Initial Purchaser.

Each of the Issuers hereby consents, at the option of the Initial Purchaser, to (a) the posting of the Offering Circular, this Indenture (collectively, the "Transaction Documents") and the Monthly Reports and the Payment Date Valuation Reports to be delivered pursuant to the Transaction Documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository; and (b) the display of its name on the Repository in connection therewith.

SECTION 11.6 Posting of Documents on Repository.

Any document requested by the Initial Purchaser to be delivered to the Repository by the Issuer pursuant to this Indenture shall be delivered to the Repository by electronic mail as a pdf (portable document format) file to the following address (or such other address or such other manner as may be specified in writing from time to time by the operator of the Repository to the Issuer):

CDO Library
c/o The Bond Market Association
360 Madison Avenue (18th Floor)
New York, NY 10017
Electronic mail address: admin@cdolibrary.com

SECTION 11.7 Effect of Headings and Table of Contents.

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

SECTION 11.8 Successors and Assigns.

(a) All covenants and agreements in this Indenture and the Notes by the Issuer or the Co-Issuer shall bind its successors and assigns, whether so expressed or not.

(b) All covenants and agreements of the Trustee in this Indenture shall bind its successors and assigns, whether so expressed or not.

SECTION 11.9 Separability.

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

SECTION 11.10 Benefits of Indenture.

Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the Holders of the Notes and the Swap Counterparty and the parties specified in Section 11.18, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 11.11 Governing Law.

THIS INDENTURE, EACH NOTE, EACH CLASS Q SECURITY AND EACH COMPONENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

SECTION 11.12 Submission to Jurisdiction; Waiver of Jury Trial.

THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE NOTES, AND SUCH PARTIES HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THAT THEY MAY LEGALLY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING AND IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING. THE PARTIES HERETO IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OR DELIVERY OF COPIES OF SUCH PROCESS TO THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. THE PARTIES HERETO AGREE THAT A FINAL NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

To the extent that either of the Issuers has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise) with respect to its obligations hereunder, each waives such immunity to the extent permitted by applicable law.

SECTION 11.13 Counterparts.

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

SECTION 11.14 Recording of Indenture.

If this Indenture at any time becomes subject to recording in any appropriate public recording offices, such recording is to be effected by the Issuer and at its expense accompanied by an Opinion of Counsel to the effect that such recording is necessary either for the protection of any of the Secured Parties or Holders of Class Q-2 Securities or for the enforcement of any right or remedy granted to the Trustee under this Indenture.

SECTION 11.15 No Recourse.

No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer or the Co-Issuer, as applicable, in respect of the Securities or under this Indenture or any certificate or other writing delivered in connection herewith or therewith, against:

(a) the Trustee, the Securities Intermediary or the Collateral Administrator in their individual capacities;

(b) any shareholder or any incorporator or past or present officer or director of the Issuer or the Co-Issuer;

(c) any Holder of a Security;

(d) the Swap Counterparty;

(e) the Administrator;

(f) the Initial Purchaser;

(g) the Reference Portfolio Manager;

(h) the Indenture Calculation Agent

(i) the Investment Agreement Counterparty;

(j) the Investment Agreement Guarantor; or

(k) any Affiliate, partner, owner, beneficiary, agent, officer, director, employee or agent of the foregoing, or any holder of a beneficial interest in the Issuer, the Co-Issuer, the Administrator or the Trustee or of any successor or assign of the Administrator or the Trustee in its individual capacity, except that any such partner, owner or beneficiary shall be fully liable, to the extent provided by applicable law, for any unpaid consideration for stock, unpaid capital contribution or failure to pay any installment or call owing to such entity;

except in each case, as any such person may have expressly agreed (it being understood that the Administrator, the Trustee and the Securities Intermediary have no such obligations in their individual capacities other than JPMorgan Chase Bank with respect to any representations or warranties made in its individual capacity hereunder).

SECTION 11.16 No Petition.

The Trustee, by entering into this Indenture, and each Holder of a Security by its acceptance of such Security, hereby covenants and agrees that each shall not, prior to the date which is one year (or the then applicable preference period in the relevant jurisdiction) and one day after the termination of this Indenture with respect to the Securities pursuant to Section 4.1, acquiesce, petition or otherwise invoke or cause the Issuer to invoke the process of any court or government authority for the purpose of commencing or sustaining a case against the Issuer or the Co-Issuer under any United States federal or state bankruptcy, insolvency or similar law (in any applicable jurisdiction) or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Issuer or any substantial part of its property, or making a general assignment for the benefit of creditors, or ordering the winding up or liquidation of the affairs of the Issuer or for the purpose of collecting any of the Trustee's fees and expenses.

SECTION 11.17 Priority of Payments.

Notwithstanding anything herein to the contrary, all payments to be made in accordance with the terms hereof, including without limitation all payments in respect of the Notes and the Class Q-1 Securities and the fees and expenses of the Trustee, shall be paid on the dates, and shall be subject to the priorities, prescribed in Article V and Article VIII of this Indenture or, in the case of payments on the Class Q-2 Securities, as provided in Section 2.17 of this Indenture.

SECTION 11.18 Beneficiaries.

The Holders of the Securities, the Swap Counterparty, the other Secured Parties and the Amendment Buy-Out Purchaser are third party beneficiaries hereunder.

IN WITNESS WHEREOF, the Issuer, the Co-Issuer and the Trustee have caused this Indenture to be duly executed by their respective officers, thereunto duly authorized, all as of the day and year first above written.

Executed as a Deed by:

VALHALLA CLO, LTD., as Issuer

By:_____
Name:
Title: Director

In the presence of:_____
Witness Name:

VALHALLA CLO, INC., as Co-Issuer

By:_____
Name:
Title:

JPMORGAN CHASE BANK,
as Trustee and Securities Intermediary

By: _____
Name:
Title:

Schedule A

SCHEDULE OF DEFINITIONS

Set forth below are definitions of certain defined terms used in this Indenture.

"Account Agreement": An agreement substantially in the form set forth in Exhibit L hereto.

"Accredited Investor": An "accredited investor" as defined in Rule 501(a) under the Securities Act.

"Accrual Date": The meaning specified in the Swap Agreement.

"Accrued Increase/Reduction Amount": For a Measurement Date, an amount (which may be negative) equal to (a) the sum of all Obligation Value Increase Amounts (other than as a result of Amortizations) for Reference Obligations for which the Accrual Date occurred on or prior to such date and on or following the preceding Determination Date minus (b) the sum of all Obligation Value Reduction Amounts (including as a result of Amortizations) for Reference Obligations for which the Accrual Date occurred on or prior to such date and on or following the preceding Determination Date.

"Accrued Swap Liabilities": With respect to any date of determination, the sum of (i) all amounts payable to the Swap Counterparty under the Swap Agreement as of such date of determination and (ii) all amounts payable to the Swap Counterparty under the Swap Agreement on any prior date and unpaid as of such date of determination, in each case other than amounts that constitute Administrative Expenses.

"Adjusted Reference Portfolio Return Amount": The meaning specified in the Swap Agreement.

"Administration Agreement": The Administration Agreement, dated as of the Closing Date, between the Administrator and the Issuer in respect of certain corporate and administrative services provided to the Issuer by the Administrator.

"Administrative Expenses": Amounts due from or accrued for the account of the Issuers with respect to any Payment Date (and, to the extent not paid, from prior Payment Dates) to, in the following order of priority, (i) any Person in respect of any governmental fee, charge or tax (including all filing, registration and annual return fees payable to the Cayman Islands' government and registered office fees); (ii) the Trustee for the Trustee Fee and Trustee Expenses; (iii) the Collateral Administrator for the Collateral Administrator Fee and Collateral Administrator Expenses; (iv) the Administrator as provided in the Administration Agreement; and (v) on a *pari passu* basis, (A) the Independent Accountants, agents and counsel of the Issuers for fees and expenses (including, without limitation, tax reports); (B) any other Person in respect of any other expenses permitted under the Indenture and the documents delivered pursuant to or in connection with the Indenture, the Collateral Administration Agreement and the Securities; (C) any other Person in respect of any other expenses of the Issuers including, without limitation,

fees, expenses or amounts for which the Swap Counterparty is entitled to indemnification from the Issuer under the Swap Agreement, (D) the Rating Agencies for any fees (including on-going monitoring fees and credit estimates) due and payable with respect to their respective rating of the Securities; (E) expenses and other amounts for which the Swap Counterparty is obligated to reimburse or pay the Reference Portfolio Manager under the Reference Portfolio Management Agreement; and (F) expenses for which the Swap Counterparty is entitled to reimbursement in connection with the transfer of its rights and obligations to a replacement swap counterparty or certain other actions upon a downgrade of it or the Swap Guarantor when required to do so under the Swap Agreement, in the case of this clause (F) in an amount not to exceed $50,000 in any calendar year; provided, however, that Administrative Expenses shall not include any amounts due or accrued with respect to actions taken on or prior to the Closing Date, which amounts shall be payable only from the Expense Reserve Account pursuant to Section 8.2(e).

"Administrator": Walkers SPV Limited or any successor appointed by the Issuer.

"Affiliate": With respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. For purposes of this definition, (a) the management of an account by one Person for the benefit of any other Person shall not constitute "control" of such other Person and (b) with respect to the Issuer, "Affiliate" does not include Walkers SPV Limited or any entities which Walkers SPV Limited controls or administers.

"Aggregate Principal Amount": With respect to any date of determination, (a) when used with respect to any Class or Classes of Notes as a whole (or any specified Notes or Components of any such Class), the original principal amount of such Class or Classes (or of such specified Notes or Component, as applicable) reduced, in the case of the Senior Notes only, by all prior payments, if any, made with respect to the principal of such Class or Classes (or such Senior Notes or Class Q-1 Senior Note Component, as applicable), (b) when used with respect to all of the Senior Notes, the sum of (i) the Aggregate Principal Amount of the Class A-1 Notes, (ii) the Aggregate Principal Amount of the Class A-2 Notes, (iii) the Aggregate Principal Amount of the Class B Notes, (iv) the Aggregate Principal Amount of the Class C-1 Notes and (v) the Aggregate Principal Amount of the Class C-2 Notes, (c) when used with respect to all of the Notes, the sum of (i) the Aggregate Principal Amount of the Senior Notes and (ii) the Aggregate Principal Amount of the Income Notes, (d) when used with respect to the Class Q-2A Securities (or any specified Class Q-2A Securities), the original principal amount of the Class Q-2A Securities (or of such specified Class Q-2A Securities) reduced by all prior payments, if any, made with respect to the principal of the Class Q-2A Securities (or of such specified Class Q-2A Securities) and (e) when used with respect to the Class Q-2B Securities (or any specified Class Q-2B Securities), the original principal amount of the Class Q-2B Securities (or of such specified Class Q-2B Securities).

"Aggregate Reference Obligation Calculation Amount": The meaning specified in the Swap Agreement.

"Aggregate Reference Value": The meaning specified in the Swap Agreement.

"Amendment Buy-Out": The meaning specified in Section 9.6(a).

"Amendment Buy-Out Option": The meaning specified in Section 9.6(a).

"Amendment Buy-Out Purchase Price": The purchase price payable by the Amendment Buy-Out Purchaser for Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Senior Notes, the Aggregate Principal Amount thereof, plus accrued interest (including Deferred Interest, if any) to the date of purchase which is not otherwise paid or payable to the Non-consenting Holder, plus any unpaid Extension Bonus Payment, plus, in the case of the Class C-2 Notes, the applicable Make-whole Premium, (ii) in the case of the Income Notes, an amount that, together with any amounts paid to the Non-consenting Holder with respect to those Income Notes from the Closing Date to and including the purchase date (and any amounts payable, if any, to the Non-consenting Holder on the next succeeding Payment Date) shall result in an internal rate of return with respect to those Income Notes of 18% per annum, provided, however, that in any Amendment Buy-Out from and after the date on which the Non-consenting Holders of Income Notes have received an internal rate of return equal to or in excess of 18% per annum, the purchase price for Income Notes shall be zero and (iii) in the case of the Class Q-1 Securities, based on the respective purchase prices for the relevant Class Q-1 Senior Note Component and the Class Q-1 Income Note Component thereof.

"Amendment Buy-Out Purchaser": Citigroup Global Markets Inc. ("CGMI"), or an Affiliate thereof designated by the Swap Counterparty, or a Person designated by CGMI or such Affiliate.

"Applicable Procedures": The procedures of the Depositary, Euroclear and Clearstream applicable to the exchange or transfer of an interest in the Global Notes.

"Articles": The Articles of Association and the Memorandum of Association of the Issuer, as each may be amended and restated from time to time.

"Authorized Class Q-1 Denomination": The meaning specified in Section 2.16(b).

"Authorized Denomination": The meaning specified in Section 2.3(d) hereof.

"Authorized Newspaper": A major newspaper in the official language of the country of publication customarily published at least once a day for at least five days in each calendar week.

"Authorized Officer": With respect to the Issuer or the Co-Issuer, any director or officer thereof or of any other Person who is authorized, by power-of-attorney or otherwise, to act for the Issuer or Co-Issuer, as the case may be, in matters relating to the Issuer or Co-Issuer, as the case may be.

"Bankruptcy Law": Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.), as amended, any successor statute thereto, any federal or state bankruptcy, insolvency,

reorganization or similar law, or any bankruptcy, insolvency, reorganization or similar law enacted under the laws of the Cayman Islands or of any other applicable jurisdiction.

"Base Amount": The meaning specified in the Swap Agreement.

"Basic Documents": The Indenture, the Swap Agreement, the Collateral Administration Agreement and the Investment Agreement.

"Benefit Plan Investor": (i) An employee benefit plan as defined in Section 3(3) of ERISA, whether or not such plan is subject to Title I of ERISA, (ii) a plan described in Section 4975(e)(1) of the Code, whether or not subject to Section 4975 of the Code, or (iii) an entity whose underlying assets include "plan assets" by reason of U.S. Department of Labor regulation Section 2510.3-101 or otherwise.

"Book-Entry Securities": The meaning specified in Section 2.5(a).

"Business Day": Any day that is not a Saturday, Sunday or other day on which commercial banking institutions in New York, New York, Cayman Islands, Dublin, Ireland or the city in which the Corporate Trust Office of the Trustee is located, are authorized or obligated by law or executive order to be closed.

"Cede": Cede & Co.

"Certificate of Authentication": The meaning specified in Section 2.1.

"Certificated Class Q-1 Securities": The meaning specified in Section 2.16(b).

"Certificated Class Q-2 Security": The meaning specified in Section 2.17(b).

"Certificated Class Q-2B Security": The meaning specified in Section 2.17(b).

"Certificated Income Note": The meaning specified in Section 2.2(c).

"CGMHI Notes": U.S. $ 40,000,000 0% EMTNs Due 2034 issued by Citigroup Global Markets Holdings Inc. constituting the Class Q-2 Collateral Asset B.

"Class": When referring to the Notes, Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C-1 Notes, Class C-2 Notes and/or Income Notes, as appropriate. When referring to the Class Q Securities, the Class Q-1 Securities, the Class Q-2A Securities and/or the Class Q-2B Securities, as appropriate. When referring to the Securities, any Class of Notes or Class Q Securities, as appropriate.

"Class A Interest Coverage Ratio": With respect to a Measurement Date, (a) the greater of (i) zero and (ii) Net Interest Coverage Proceeds for such date, divided by (b) the sum of the Class A-1 Interest Amount and the Class A-2 Interest Amount for the next following Payment Date.

"Class A Interest Coverage Test": A test which will be deemed satisfied as of any Measurement Date on which any of the Class A-1 Notes or Class A-2 Notes are Outstanding if the Class A Interest Coverage Ratio for such date equals or exceeds 110%.

"Class A OC Test": A test which will be deemed satisfied as of any Measurement Date on which any of the Class A-1 Notes or Class A-2 Notes are Outstanding if the Class A Overcollateralization Ratio for such date equals or exceeds 157%.

"Class A Overcollateralization Ratio": With respect to a Measurement Date, the quotient obtained by dividing (a) the OC Base Amount as of such date by (b) the sum of (x) the Aggregate Principal Amount of the Class A-1 Notes and (y) the Aggregate Principal Amount of the Class A-2 Notes as of such date.

"Class A-1 Interest Amount" With respect to a Payment Date, (a) the product of (i) the Aggregate Principal Amount of the Class A-1 Notes as of the beginning of the relevant Periodic Interest Accrual Period plus the amount of any unpaid Class A-1 Interest Amount after the prior Payment Date, (ii) the Class A-1 Interest Rate for such period, (iii) the actual number of days in such period and (iv) 1/360 plus (b) the amount of any unpaid Class A-1 Interest Amount after the prior Payment Date.

"Class A-1 Interest Rate": The interest rate specified for the Class A-1 Notes in Section 2.3(c).

"Class A-1 Notes": The meaning specified in Section 2.3(b).

"Class A-2 Interest Amount" With respect to a Payment Date, (a) the product of (i) the Aggregate Principal Amount of the Class A-2 Notes as of the beginning of the relevant Periodic Interest Accrual Period plus the amount of any unpaid Class A-2 Interest Amount after the prior Payment Date, (ii) the Class A-2 Interest Rate for such period, (iii) the actual number of days in such period and (iv) 1/360 plus (b) the amount of any unpaid Class A-2 Interest Amount after the prior Payment Date.

"Class A-2 Interest Rate": The interest rate specified for the Class A-2 Notes in Section 2.3(c).

"Class A-2 Notes": The meaning specified in Section 2.3(b).

"Class B Interest Amount": With respect to a Payment Date, the product of (i) the Aggregate Principal Amount of the Class B Notes as of the beginning of the relevant Periodic Interest Accrual Period plus the aggregate Deferred Interest with respect to the Class B Notes after the preceding Payment Date, (ii) the Class B Interest Rate for such period, (iii) the actual number of days in such period and (iv) 1/360.

"Class B Interest Coverage Ratio": With respect to a Measurement Date, (a) the greater of (i) zero and (ii) Net Interest Coverage Proceeds for such date, divided by (b) the sum of the Class A-1 Interest Amount, the Class A-2 Interest Amount and the Class B Interest Amount for the next following Payment Date.

"Class B Interest Coverage Test": A test which will be deemed satisfied as of any Measurement Date on which any of the Class A-1 Notes, Class A-2 Notes or Class B Notes are Outstanding if the Class B Interest Coverage Ratio for such date equals or exceeds 105%.

"Class B Interest Rate": The interest rate specified for the Class B Notes in Section 2.3(c).

"Class B Notes": The meaning specified in Section 2.3(b).

"Class B OC Test": A test which will be deemed satisfied as of any Measurement Date on which any Class A-1 Notes, Class A-2 Notes or Class B Notes are Outstanding if the Class B Overcollateralization Ratio for such date equals or exceeds 133%.

"Class B Overcollateralization Ratio": With respect to a Measurement Date, the quotient obtained by dividing (a) the OC Base Amount as of such date by (b) the sum of the Aggregate Principal Amounts of the Class A-1 Notes, the Class A-2 Notes and the Class B Notes (together with any Deferred Interest with respect to the Class B Notes) as of such date.

"Class C Interest Coverage Ratio": With respect to a Measurement Date, (a) the greater of (i) zero and (ii) the Net Interest Coverage Proceeds for such date, divided by (b) the sum of the Class A-1 Interest Amount, the Class A-2 Interest Amount, the Class B Interest Amount, the Class C-1 Interest Amount and the Class C-2 Interest Amount for the next following Payment Date.

"Class C Interest Coverage Test": A test which will be deemed satisfied as of any Measurement Date on which any of the Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C-1 Notes or Class C-2 Notes are Outstanding if the Class C Interest Coverage Ratio for such date equals or exceeds 100%.

"Class C OC Test": A test which will be deemed satisfied as of any Measurement Date on which any Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C-1 Notes or Class C-2 Notes are Outstanding if the Class C Overcollateralization Ratio for such date equals or exceeds 116%.

"Class C Overcollateralization Ratio": With respect to a Measurement Date, the quotient obtained by dividing (a) the OC Base Amount as of such date by (b) the sum of the Aggregate Principal Amounts of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes and the Class C-2 Notes (together with any Deferred Interest with respect to the Class B Notes and the Class C Notes) as of such date.

"Class C Notes": The Class C-1 Notes and the Class C-2 Notes, collectively.

"Class C-1 Interest Amount": With respect to a Payment Date, the product of (i) the Aggregate Principal Amount of the Class C-1 Notes as of the beginning of the relevant Periodic Interest Accrual Period plus the aggregate Deferred Interest with respect to the Class C-1 Notes after the preceding Payment Date, (ii) the Class C-1 Interest Rate for such period, (iii) the actual number of days in such period and (iv) 1/360.

"Class C-1 Interest Rate": The interest rate specified for the Class C-1 Notes in Section 2.3(c).

"Class C-1 Notes": The meaning specified in Section 2.3(b).

"Class C-2 Interest Amount": With respect to a Payment Date, interest accrued for the relevant Periodic Interest Accrual Period on an amount equal to the Aggregate Principal Amount of the Class C-2 Notes as of the beginning of the relevant Periodic Interest Accrual Period plus the aggregate Deferred Interest with respect to the Class C-2 Notes after the preceding Payment Date, at a rate equal to the Class C-2 Interest Rate for such period, calculated on the basis of a 360-day year consisting of twelve 30-day months.

"Class C-2 Interest Rate": The interest rate specified for the Class C-2 Notes in Section 2.3(c).

"Class C-2 Notes": The meaning specified in Section 2.3(b).

"Class Q-1 Excess Distribution": For any Payment Date, an amount equal to the excess, if any, of any amounts paid or distributed with respect to the Class Q-1 Securities over the amount of Q-1 Nominal Interest for the related Periodic Interest Accrual Period.

"Class Q-1 Income Note Component": The U.S. $5,000,000 Aggregate Principal Amount of Income Notes comprising the Income Note Component of the Class Q-1 Securities.

"Class Q-1 Nominal Interest": For a Periodic Interest Accrual Period, interest accrued on the Class Q-1 Nominal Principal for such period at the Class Q-1 Nominal Rate calculated on the basis of a 360-day year consisting of twelve 30-day months.

"Class Q-1 Nominal Principal": For the first Periodic Interest Accrual Period, $10,000,000, and for any Periodic Interest Accrual Period thereafter, the Class Q-1 Nominal Principal for the prior Periodic Interest Accrual Period minus the amount of the Class Q-1 Excess Distribution, if any, for the Payment Date occurring at the beginning of such current Periodic Interest Accrual Period, but in no event shall the Class Q-1 Nominal Principal be less than $1,000.

"Class Q-1 Nominal Rate": 2.00% per annum.

"Class Q-1 Rated Principal": For the first Periodic Interest Accrual Period, $10,000,000, and for any Periodic Interest Accrual Period thereafter, the Class Q-1 Rated Principal for the prior Periodic Interest Accrual Period minus any amount paid or distributed with respect to the Class Q-1 Securities for the Payment Date occurring at the beginning of such current Periodic Interest Accrual Period, but in no event shall the Class Q-1 Rated Principal be less than $1.

"Class Q-1 Reg S Global Security": The meaning specified in Section 2.16(b).

"Class Q-1 Securities": The U.S.$ 10,000,000 Class Q-1 Extendable Securities comprised of the Class Q-1 Senior Note Component and the Class Q-1 Income Note Component.

"Class Q-1 Senior Note Component": The U.S. $5,000,000 initial Aggregate Principal Amount of Class C-2 Notes comprising the Senior Note Component of the Class Q-1 Securities.

"Class Q-1 Temp Reg S Global Security": The meaning specified in Section 2.16(b).

"Class Q-2 Administrative Expenses": Any Administrative Expenses accrued while any Class Q-2 Securities remain Outstanding but after the redemption in full of all Senior Notes, Class Q-1 Securities and Income Notes and liquidation and distribution of the Trust Estate.

"Class Q-2 Collateral Asset A": U.S.$ 25,000,000 Aggregate Principal Amount of Income Notes Delivered to the Class Q-2 Securities Collateral Account on the Closing Date.

"Class Q-2 Collateral Asset A Proceeds": With respect to any Payment Date, the sum of (i) all amounts distributed with respect to the Income Notes represented by the Class Q-2 Collateral Asset A for such date and (ii) any amounts received by the Trustee with respect to the sale or redemption of the Class Q-2 Collateral Asset A hereunder, in each case from and after the preceding Payment Date and on or prior to such date.

"Class Q-2 Collateral Asset B": U.S. $ 40,000,000 0% EMTNs Due 2034 issued by Citigroup Global Markets Holdings Inc. ("CGMHI Notes") Delivered to the Class Q-2 Securities Collateral Account on the Closing Date, and any conversion or exchange proceeds thereof.

"Class Q-2 Collateral Asset B Proceeds": Any sales proceeds, conversion or exchange proceeds or maturity proceeds of the Class Q-2 Collateral Asset B.

"Class Q-2 Collateral Assets": Collectively, the Class Q-2 Collateral Asset A and the Class Q-2 Collateral Asset B.

"Class Q-2 Gross Proceeds": As defined in the definition of "Class Q-2 Payment Date Proceeds."

"Class Q-2 Maturity Date": April 28, 2034.

"Class Q-2 Maturity Date Priority of Payments": The meaning specified in Section 2.17(d)(iii).

"Class Q-2 Payment Date Priority of Payments": The meaning specified in Section 2.17(d)(i).

"Class Q-2 Payment Date Proceeds": With respect to any Payment Date, (i) the sum of (a) the Class Q-2 Collateral Asset A Proceeds for such Payment Date and (b) interest and dividends received with respect to Eligible Investments on deposit in the Class Q-2 Securities Collateral Account (collectively, "Class Q-2 Gross Proceeds") minus (ii) the Class Q-2B Target Amount for such Payment Date.

"Class Q-2 Priority of Payments": Collectively, the payment priorities set forth in Section 2.17(d).

"Class Q-2 Requisite Securityholders": The Holders of at least 66 2/3% of the Aggregate Principal Amount of (a) the Class Q-2A Securities so long as any Class Q-2A Securities are Outstanding, and (b) thereafter the Class Q-2B Securities.

"Class Q-2 Securities": The Class Q-2A Securities and the Class Q-2B Securities, collectively.

"Class Q-2 Securities Collateral": Collectively, (i) Class Q-2 Collateral Asset A, (ii) Class Q-2 Collateral Asset B, (iii) the portion of the Trust Estate that in accordance with the provisions in this Indenture is required to be applied to payment of the Income Notes represented by the Class Q-2 Collateral Asset A, at any time on and after such property is required to be applied to the payment of the Income Notes represented thereby, (iv) the Class Q-2 Securities Collateral Account, any subaccounts thereof and all financial assets credited to, and amounts on deposit or credit balances carried in, the Class Q-2 Securities Collateral Account from time to time, (v) all Eligible Investments purchased with funds on deposit in the Class Q-2 Securities Collateral Account and all income and other proceeds from the investment of funds therein; and (vi) all proceeds, accessions, profits, income, benefits, substitutions and replacements, whether voluntary or involuntary, of and to any of the property described in the preceding clauses.

"Class Q-2 Securities Collateral Account": The meaning specified in Section 2.17(c).

"Class Q-2A Coverage Ratio": With respect to any date of determination, the quotient obtained by dividing (a) the market value of Class Q-2 Collateral Asset A as of such date by (b) sum of the Aggregate Principal Amount of the Class Q-2A Securities plus Class Q-2A Deferred Interest, if any, as of such date.

"Class Q-2A Coverage Test": A test which will be deemed satisfied as of any date of determination on which any Class Q-2A Securities are Outstanding, if the Class Q-2A Coverage Ratio for such date equals or exceeds 2.25.

"Class Q-2A Deferred Interest": The meaning specified in Section 2.17(c)(i).

"Class Q-2A Interest Amount": With respect to a Payment Date, the product of (i) the Aggregate Principal Amount of the Class Q-2A Securities as of the beginning of the relevant Periodic Interest Accrual Period, plus the aggregate Class Q-2 Deferred Interest after the preceding Payment Date, (ii) the Class Q-2A Interest Rate for such period, (iii) the actual number of days in such period and (iv) 1/360.

"Class Q-2A Interest Rate": The meaning specified in Section 2.17(c).

"Class Q-2A Securities": The U.S.$7,200,000 Class Q-2A Securities Due 2034.

"Class Q-2B Securities": The U.S.$40,000,000 Class Q-2B Securities Due 2034.

"Class Q-2B Target Amount": With respect to any Payment Date, an amount equal to the lesser of (i) the Class Q-2 Gross Proceeds for such date and (ii) the product of (a) the Aggregate Principal Amount of the Class Q-2B Securities and (b) 1% per annum for the related Periodic Interest Accrual Period, calculated on the basis of a 360-day year consisting of twelve 30-day months.

"Clearance Systems": Euroclear and Clearstream.

"Clearing Corporation": (i) Clearstream, (ii) DTC, (iii) Euroclear and (iv) any entity included within the meaning of "clearing corporation" under the UCC.

"Clearing Corporation Security": An Eligible Investment that is a Financial Asset that is (i) in bearer form or (ii) registered in the name of a Clearing Corporation or the nominee of such Clearing Corporation and, if a Certificated Security, is held in the custody of such Clearing Corporation.

"Clearstream": Clearstream Banking, société anonyme, a corporation organized under the laws of the Grand Duchy of Luxembourg, or any successor thereto.

"Closing Date": August 18, 2004.

"Code": The U.S. Internal Revenue Code of 1986, as amended, and any successor statute thereto.

"Co-Issuer": Valhalla CLO, Inc., a Delaware corporation.

"Collateral": The Trust Estate.

"Collateral Account": The account created and designated as the "Valhalla CLO, Ltd. – Collateral Account" under Section 8.3.

"Collateral Administration Agreement": The collateral administration agreement, dated as of the Closing Date, among the Issuer, the Collateral Administrator, the Swap Counterparty and the Reference Portfolio Manager.

"Collateral Administrator": JPMorgan Chase Bank, as collateral administrator under the Collateral Administration Agreement and its permitted successors.

"Collateral Administrator Expenses": With respect to any Payment Date (including the Maturity Date), an amount equal to the sum of all amounts incurred by or otherwise owing to the Collateral Administrator in the related Collection Period in accordance with the Collateral Administration Agreement other than the Collateral Administrator Fee.

"Collateral Administrator Fee": With respect to any Payment Date (including the Maturity Date), the amount set forth in or determined pursuant to the Collateral Administration Agreement.

"Collection Account": The account created and designated as the "Valhalla CLO, Ltd. – Collection Account" under Section 8.2(a).

"Collection Period": The meaning specified in the Swap Agreement.

"Commission": The United States Securities and Exchange Commission.

"Components": The Class Q-1 Senior Note Component and the Class Q-1 Income Note Component.

"Controlling Person": A Person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuers or that provides investment advice for a fee (direct or indirect) with respect to such assets (or any "affiliate" of such a Person (as defined in Department of Labor regulation Section 2510.3-101(f)(3))).

"Corporate Trust Office": With respect to the Trustee means the principal office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office as of the date of the execution of this Indenture is located at 600 Travis Street, 50th Floor, Houston, Texas 77002, Attention: Institutional Trust Services – Valhalla CLO, Ltd., telephone number (713) 216-4181, or at such other address as the Trustee may designate in writing from time to time by notice to the Holders of Notes, the Swap Counterparty, the Issuer and the Investment Agreement Counterparty, or the principal office of any successor Trustee (the address of which the successor Trustee will notify the Holders of Notes, the Swap Counterparty, the Issuer and the Investment Agreement Counterparty in writing).

"Coverage Tests": The Interest Coverage Tests and the Overcollateralization Tests.

"Credit Event": The meaning specified in the Swap Agreement.

"Default": Any event or condition the occurrence or existence of which would, with the giving of notice or lapse of time or both, become an Event of Default.

"Default Adjustment": (a) On any date of determination with respect to any Defaulted Reference Obligation or any Deferring PIK Obligation that has been a Defaulted Reference Obligation or Deferring PIK Obligation, as applicable, for no more than one month as of such date of determination: (1) the Reference Value of such Defaulted Reference Obligation or Deferring PIK Obligation, minus (2) the product of (x) the lesser of (i) the Moody's Recovery Rate for such Defaulted Reference Obligation or Deferring PIK Obligation (or such lower recovery rate that the Reference Portfolio Manager determines is appropriate during such month) and (ii) the S&P Recovery Rate for such Defaulted Reference Obligation or Deferring PIK Obligation and (y) the Reference Obligation Calculation Amount of such Defaulted Reference Obligation or Deferring PIK Obligation. On any date of determination with respect to any Defaulted Reference Obligation or Deferring PIK Obligation that has been a Defaulted Reference Obligation or Deferring PIK Obligation for longer than one month but less than three years as of such date of determination: (1) the Reference Value of such Defaulted Reference Obligation or Deferring PIK Obligation minus (2) the lesser of (A) the Market Value of such

Defaulted Reference Obligation or Deferring PIK Obligation, as determined by the Reference Portfolio Manager and (B) the product of (x) the lesser of (i) the Moody's Recovery Rate for such Defaulted Reference Obligation or Deferring PIK Obligation and (ii) the S&P Recovery Rate for such Defaulted Reference Obligation or Deferring PIK Obligation and (y) the Reference Obligation Calculation Amount of such Defaulted Reference Obligation or Deferring PIK Obligation. On any date of determination with respect to any Defaulted Reference Obligation or Deferring PIK Obligation that has been a Defaulted Reference Obligation or Deferring PIK Obligation for three years or more as of such date of determination, the Reference Value thereof;

(b) To the extent a Defaulted Reference Obligation or Deferring PIK Obligation is converted or exchanged into an Equity Security, for so long as such Equity Security remains part of the Reference Portfolio, the Default Adjustment shall equal the applicable Reference Value; and

(c) In no event will the Default Adjustment be less than zero.

"Defaulted Reference Obligation": The meaning specified in the Swap Agreement.

"Deferred Interest": The amount of any interest that is not paid on the Class B Notes, Class C-1 Notes or Class C-2 Notes as a result of insufficient funds in accordance with the Priority of Payments.

"Deferring PIK Obligation": (i) Any Reference Obligation (other than a Structured Finance Obligation) that is a PIK Obligation in respect of which interest has been deferred or capitalized (and not subsequently paid) and (ii) any Reference Obligation that is a Structured Finance Obligation and a PIK Obligation (a) rated "Baa3" or higher by Moody's, in respect of which interest has been deferred or capitalized for at least two or more full interest periods or one year, whichever is less (and not subsequently paid) or (b) rated lower than "Baa3" by Moody's, in respect of which interest has been deferred or capitalized for one or more full interest periods or six months, whichever is less (and not subsequently paid).

"Deliver", "Delivered" or "Delivery": When used with respect to the Trust Estate or the Class Q-2 Securities Collateral means the taking of the following steps by the Issuer:

(a) in the case of each Certificated Security or Instrument (other than a Clearing Corporation Security or an Instrument referred to in clause (g) below), (A) causing the delivery of such Certificated Security or Instrument to the Securities Intermediary registered in the name of the Securities Intermediary or its affiliated nominee or endorsed to the Securities Intermediary or in blank, (B) causing the Securities Intermediary to continuously identify on its books and records that such Certificated Security or Instrument is credited to the relevant Trust Account or Class Q-2 Securities Collateral Account, as applicable, and (C) causing the Securities Intermediary to maintain continuous possession of such Certificated Security or Instrument;

(b) in the case of each Uncertificated Security (other than a Clearing Corporation Security), (A) causing such Uncertificated Security to be continuously registered on the books of the obligor thereof to the Securities Intermediary and (B)

causing the Securities Intermediary to continuously identify on its books and records that such Uncertificated Security is credited to the relevant Trust Account or Class Q-2 Securities Collateral Account, as applicable;

(c) in the case of each Clearing Corporation Security, causing (A) the relevant Clearing Corporation to continuously credit such Clearing Corporation Security to the securities account of the Securities Intermediary at such Clearing Corporation and (B) the Securities Intermediary to continuously identify on its books and records that such Clearing Corporation Security is credited to the relevant Trust Account or Class Q-2 Securities Collateral Account, as applicable;

(d) in the case of any Financial Asset that is maintained in book-entry form on the records of a FRB, causing (A) the continuous crediting of such Financial Asset to a securities account of the Securities Intermediary at any FRB and (B) the Securities Intermediary to continuously identify on its books and records that such Financial Asset is credited to the relevant Trust Account or Class Q-2 Securities Collateral Account, as applicable;

(e) in the case of each Financial Asset not covered by the foregoing clauses (a) through (d), causing the transfer of such Financial Asset to the Securities Intermediary in accordance with applicable law and regulation and causing the Securities Intermediary to continuously credit such Financial Asset to the relevant Trust Account or Class Q-2 Securities Collateral Account, as applicable;

(f) in the case of each general intangible (including any participation interest that is not, or the debt underlying which is not, evidenced by an Instrument or Certificated Security), notifying the obligor thereunder of the Grant to the Trustee (unless no applicable law requires such notice);

(g) in the case of each participation interest in a loan as to which the underlying debt is represented by an Instrument, obtaining the acknowledgment of the Person in possession of such Instrument (which may not be the Issuer) that it holds the Issuer's interest in such Instrument solely on behalf and for the benefit of the Trustee;

(h) in the case of any "deposit account" as defined in Article 9 of the UCC, causing the institution with which such deposit account is maintained to maintain such deposit account in accordance with the Account Agreement; and

(i) in the case of any "securities account" causing the institution with which such securities account is maintained to maintain such securities account in accordance with the Account Agreement.

"Depositary": The Depository Trust Company, its nominees and their respective successors, including any depository selected pursuant to Section 2.5.

"Determination Date": With respect to a Payment Date, the eighth Business Day preceding such Payment Date; provided that the final Determination Date will be the last day of the final Collection Period.

"Diversion Test": A test which will be deemed satisfied as of any Determination Date related to any Payment Date following the Ramp-up End Date, if the Class C OC Test is satisfied as of such date, measured for this purpose as of the applicable Determination Date without giving effect to any payments made on the related Payment Date (including those made pursuant to any clause of the Priority of Payments ranking prior to the clause that provides for payments if the Diversion Test is not satisfied).

"Dollar" or "U.S. $" or "$": a dollar of the United States of America.

"DTC": The Depository Trust Company or its successor.

"Eligible Account": Either (a) a domestic segregated account with an Eligible Institution or (b) a domestic segregated trust account with the corporate trust department of a depository institution organized under the laws of the United States of America or any one of the states thereof or the District of Columbia (or any domestic branch of a foreign bank), having corporate trust powers and acting as trustee for funds deposited in such account, so long as any of the securities of such depository institution shall have a credit rating from a nationally recognized statistical rating organization in one of its generic rating categories which signifies investment grade (e.g., in the case of S&P, "BBB-" or higher).

"Eligible Institution": A depository institution organized under the laws of the United States of America or any one of the states thereof or the District of Columbia (or any domestic branch of a foreign bank), including the Trustee, (i) which has either (A) a long-term unsecured debt rating of "AA-," "Aa3" or its equivalent from a nationally recognized statistical rating organization or (B) a certificate of deposit rating of at least "A-1," "P-1" or its equivalent from a nationally recognized statistical rating organization or any other long-term, short-term or certificate of deposit rating acceptable to the Requisite Noteholders and the Swap Counterparty, (ii) whose deposits are insured by the Federal Deposit Insurance Corporation and (iii) whose combined capital and surplus is at least U.S. $200,000,000.

"Eligible Investments": Any U.S. Dollar-denominated investment (other than obligations of the Swap Counterparty or any of its Affiliates) that is one or more of the following (and may include investments for which the Swap Counterparty, the Trustee and/or their respective Affiliates provide services but may not include investments for which the Reference Portfolio Manager provides services):

(a) cash;

(b) direct registered obligations of, and registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt

obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such investment or contractual commitment providing for such investment and throughout the term of the investment, have a credit rating of not less than "Aaa" by Moody's and "AAA" by Standard & Poor's and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by Standard & Poor's in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "AA-" by Standard & Poor's and "Aa3" by Moody's and a short-term rating of "A-1+" by Standard & Poor's and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 91 days from the date of issuance and having at the time of such investment a credit rating of at least "P-1" by Moody's and "A-1+" by Standard & Poor's, provided, that, in any case, the issuer thereof must have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, and if so rated, such rating is not on watch for downgrade.

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by Standard & Poor's and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by Standard & Poor's at the time of such investment and throughout the term of the investment; provided, that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such investment and throughout the term of the investment a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by Standard & Poor's, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar investment vehicle having at the time of investment therein and throughout the term of the investment a credit rating of "MR1+" by Moody's and "AAAm" by Standard & Poor's; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment advisor, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Collection Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or Standard & Poor's is at any time lower than the then current ratings assigned to any Class of Senior Notes; provided, further, that, at the time of investment therein and throughout the term of

the investment, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by Standard & Poor's and a long-term debt rating of at least "AAA" by Standard & Poor's (and not on watch for downgrade);

(h) the Investment Agreement (together with the Investment Agreement Guaranty or any other guaranty in respect thereof); and

(i) such other investments for which Rating Confirmation has been received;

provided that the Eligible Investments in the Collateral Account (except the Investment Agreement) shall be required to mature on or before the Business Day prior to the next Payment Date, and Eligible Investments in the Collection Account shall be required to mature on or before the Business Day prior to the next Payment Date; provided, further that each Eligible Investment must bear a stated rate of interest and any floating rate of interest must reset on or prior to the next Payment Date of the Notes; provided, further that each Eligible Investment provides, at the time of purchase, solely for payments that will not be subject to withholding tax unless the issuer or obligor (and the guarantor, if any) of the security or obligation is required to make "gross-up" payments that cover the full amount of any such withholding tax (or return the invested amount at par); provided, further that ownership of such Eligible Investments will not subject the Issuer or Co-Issuer to net income tax in any jurisdiction where it would not otherwise be subject to tax; provided, further that Eligible Investments may not include (a) any interest-only security, any security purchased at a price in excess of 100% of the par value thereof, any security the repayment of which is subject to substantial non-credit related risk as determined in the business judgment of the Swap Counterparty (or the Reference Portfolio Manager on its behalf) or any security that has a rating assigned by S&P that contains an "r", "t", "p", "pi" or "q" subscript, (b) any floating rate security the interest rate with respect to which is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread or (c) any security subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action.

"Equity Security": The meaning specified in the Swap Agreement.

"ERISA": The U.S. Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Restricted Notes": The Income Notes, the Class Q-1 Securities and the Class Q-2B Securities.

"Euroclear": Euroclear Bank S.A./N.V., as operator of the Euroclear System, or any successor thereto.

"Event of Default": The meaning specified in Section 5.1.

"Exchange Act": The U.S. Securities Exchange Act of 1934, as amended.

"Exchange Date": The first Business Day following the 40th day after the later of the Closing Date and the commencement of the offering of the Notes.

"Excluded Property": Collectively, $1,000 the Issuer received in connection with the issuance of the Ordinary Shares of the Issuer and $1,000 the Issuer received as a fee for issuing the Securities, and the income thereon and the bank account in which such monies are held.

"Expense Cap Amount": With respect to any Payment Date, an amount not to exceed: (a) with respect to Administrative Expenses specified in clause (v)(F) of the definition of "Administrative Expenses" herein, U.S. $50,000 per annum (pro rated for the related Periodic Interest Accrual Period), minus the amount of Administrative Expenses specified in clause (v)(F) paid during the Periodic Interest Accrual Period immediately preceding such Payment Date and (b) with respect to all other Administrative Expenses in the aggregate, 0.04% of the Swap Notional Amount plus $150,000 per annum (pro rated for the related Periodic Interest Accrual Period), minus the amount of Administrative Expenses (other than those specified in clause (v)(F) thereof) paid during the Periodic Interest Accrual Period immediately preceding such Payment Date.

"Expense Reserve Account": The account created and designated as the "Valhalla CLO, Ltd. – Expense Reserve Account" under Section 8.2(e).

"Extension Bonus Eligibility Certification": With respect to a Maturity Extension and each beneficial owner of Senior Notes (including in the form of the Class Q-1 Senior Note Component) other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Trustee to the effect that it held Senior Notes (including in the form of the Class Q-1 Senior Note Component) other than Extension Sale Securities on the Extension Effective Date, including the Aggregate Principal Amount thereof and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"Extension Bonus Payment": With respect to a Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.15(g) in an amount equal to (1) in the case of the Class A-1 Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the Extension Effective Date, (2) in the case of the Class A-2 Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the Extension Effective Date, (3) in the case of the Class B Notes, 0.25% of the Aggregate Principal Amount thereof held by such beneficial owner as of the Extension Effective Date and (4) in the case of the Class C Notes, 0.50% of the Aggregate Principal Amount thereof held by such beneficial owner as of the Extension Effective Date.

"Extension Conditions": The meaning specified in Section 2.15(c).

"Extension Determination Date": The 8th Business Day prior to the Extension Effective Date.

"Extension Effective Date": The Payment Date in August 2009.

"Extension Notice": The meaning specified in Section 2.15(d).

"Extension Qualifying Purchasers": One or more qualifying purchasers (which may include the Swap Counterparty or any of its Affiliates acting as principal or agent) designated by the Swap Counterparty (or its Affiliate) to purchase Securities from Holders pursuant to the Extension Conditions set forth in Section 2.15(c).

"Extension Purchase Price": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with the Maturity Extension, if any, in an amount equal to (a) in the case of the Senior Notes, the Aggregate Principal Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the Extension Effective Date (giving effect to any amounts paid to the Holder on such date), plus, in the case of the Class C-2 Notes, the applicable Make-whole Premium, (b) in the case of the Income Notes, an amount that, together with any amounts paid to the Holders with respect to those Income Notes from the Closing Date to and including the Extension Effective Date, shall result in an internal rate of return with respect to those Income Notes of 18% per annum, provided, however, that if the Extension Effective Date is on or after the date on which such Holders have received an internal rate of return equal to or in excess of 18% per annum, the applicable Extension Purchase Price for Income Notes shall be zero and (c) in the case of the Class Q-1 Securities, an amount determined based on the respective purchase prices for the relevant Class Q-1 Senior Note Component and the Class Q-1 Income Note Component thereof.

"Extension Sale Notice": The meaning specified in Section 2.15(d)(iii).

"Extension Sale Notice Period": The meaning specified in Section 2.15(d)(iii).

"Extension Sale Securities": The meaning specified in Section 2.15(b).

"Final Class Q-2B Distribution Amount": The meaning specified in Section 2.17(iii)(B).

"Final Income Note Distribution Amount": The meaning specified in Section 8.6(b)(xix).

"Fixed Amount": The meaning specified in the Swap Agreement.

"FRB": Any Federal Reserve Bank.

"Global Notes": The Regulation S Global Notes, the Rule 144A Global Notes and the Temporary Regulation S Global Notes (and, unless the context otherwise requires, the Class Q-1 Temp Reg S Global Securities and the Class Q-1 Reg S Global Securities).

"Grant": means to grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create and grant a security interest in and right of set-off against, deposit, set over and confirm. A Grant shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including without limitation the immediate continuing right to claim for, collect and receive principal and interest payments in respect of the subject property, and all other Monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to

do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Holder": With respect to any Note, Class Q-1 Security or Class Q-2 Security, the Person in whose name such Note or Class Q Security is registered in the Securities Register. "Noteholder" and "Securityholder" will have corresponding meanings.

"Incentive Amount": The meaning specified in the Swap Agreement.

"Income Note Principal Distribution Amount": The meaning specified in Section 8.6(b)(xix).

"Income Notes": The meaning specified in Section 2.3(b).

"Indenture Calculation Agent": The meaning specified in Section 10.3.

"Indenture Tax Event": Either (i) the adoption of, or a change in, any tax statute (including the Code), treaty, regulation (whether temporary or final), rule, ruling, practice, procedure or judicial decision or interpretation which results or will result in withholding tax payments in an amount in excess of 10% of the net income of the Issuer during the Collection Period as a result of the imposition of withholding tax on payments to the Issuer with respect to which the obligors are not required to make gross-up payments that cover the full amount of such withholding taxes on an after-tax basis or (ii) a final determination by the Internal Revenue Service or a court of competent jurisdiction or an opinion of nationally recognized tax counsel experienced in such matters acceptable to the Swap Counterparty and the Reference Portfolio Manager to the effect that the Issuer is or has become subject to taxation in an amount in excess of 10% of the net income of the Issuer during the Collection Period, whether as a result of being deemed to be engaged in the conduct of a trade or business within the United States for U.S. federal income tax purposes or otherwise.

"Independent": As to any Person, any other Person (including, in the case of an accountant, or lawyer, a firm of accountants or lawyers and any member thereof) who (i) does not have and is not committed to acquire any material direct or any material indirect financial interest in such Person or in any Affiliate of such Person, and (ii) is not connected with such Person as an officer, employee, promoter, underwriter, voting trustee, partner, director or Person performing similar functions.

"Independent Accountants": The meaning specified in Section 8.9.

"Indirect Participant": A Person who holds an interest in a Global Note through a Participant.

"Initial Consent Period": The period of 15 Business Days from but excluding the date on which the Trustee mailed (i) a proposed supplemental indenture pursuant to Section 9.2(d) or (ii) a proposed amendment to the Swap Agreement pursuant to Section 7.26(c), as applicable, in either case to the Holders of Securities.

"Initial Purchaser": With respect to the Senior Notes, the Class Q-1 Securities and the Class Q-2A Securities, Citigroup Global Markets Inc. The term "initial purchaser" (lower case) refers to the initial purchasers of the Notes, Class Q-1 Securities and Class Q-2 Securities from the Initial Purchaser or through the Placement Agent, as applicable.

"Initial Reference Obligations": The Reference Obligations included in the Reference Portfolio under the Swap Agreement as of the Closing Date.

"Instrument": The meaning given to such term in the UCC.

"Interest Coverage Ratios": The Class A Interest Coverage Ratio, the Class B Interest Coverage Ratio and the Class C Interest Coverage Ratio.

"Interest Coverage Tests": The Class A Interest Coverage Test, the Class B Interest Coverage Test and the Class C Interest Coverage Test.

"Interest Rate": The Class A-1 Interest Rate, the Class A-2 Interest Rate, the Class B Interest Rate, the Class C-1 Interest Rate and the Class C-2 Interest Rate, as the context requires.

"Investment Agreement": The investment agreement (No. 000441) dated as of the Closing Date among the Investment Agreement Counterparty, the Issuer and the Trustee, as may be amended, supplemented and/or otherwise modified and in effect from time to time in accordance with the terms thereof.

"Investment Agreement Counterparty": From time to time, the "Provider" specified in the Investment Agreement, which initially shall be FSA Capital Management Services LLC, a Delaware limited liability company.

"Investment Agreement Guarantor": From time to time, the "Guarantor," if any, specified in the Investment Agreement, which initially shall be Financial Security Assurance Inc., a New York stock insurance company.

"Investment Agreement Guaranty": From time to time, the "Guaranty" in effect, if any, specified in the Investment Agreement, such instrument initially being the Financial Guaranty Insurance Policy, including Endorsement No. 1 thereto (Policy No. No. 90365-N), dated the Closing Date, issued by the initial Investment Agreement Guarantor.

"Investment Company Act": The U.S. Investment Company Act of 1940, as amended.

"Irish Transfer Agent": The meaning specified in Section 10.2.

"ISDA": The International Swaps and Derivatives Association, Inc.

"Issuer": Valhalla CLO, Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands, and its permitted successors and assigns.

"Issuer Order": A written order signed in the name of the Issuer by any one of its Authorized Officers and delivered to the Trustee.

"Issuers": The Issuer and the Co-Issuer. References to "such Issuer," "the applicable Issuer" and the like shall be references to either the Issuer or the Co-Issuer, as the context requires.

"LIBOR": As determined by the Indenture Calculation Agent with respect to each Periodic Interest Accrual Period other than the first Periodic Interest Accrual Period, the rate for three-month U.S. Dollar deposits in Europe which appears on Telerate Page 3750 (as defined in the Annex to the 2000 ISDA Definitions) as reported by Bloomberg Financial Markets Commodities News, or such page as may replace such Telerate Page 3750, as of 11:00 a.m. (London time) on the related LIBOR Determination Date; provided, that if, on any LIBOR Determination Date, such rate does not appear on Telerate Page 3750, or such page as may replace such Telerate Page 3750, the Indenture Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to leading banks in the London interbank market for three-month U.S. Dollar deposits in Europe in an amount determined by the Indenture Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the relevant LIBOR Determination Date. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provides such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Indenture Calculation Agent are quoting on the relevant LIBOR Determination Date for three-month U.S. Dollar deposits in Europe in an amount determined by the Indenture Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; provided, however, that if the Indenture Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be determined by the Indenture Calculation Agent in a commercially reasonable manner.

LIBOR for the Periodic Interest Accrual Period beginning on the Closing Date will be 1.88230% per annum.

"LIBOR Determination Date": The second London Business Day prior to the commencement of a Periodic Interest Accrual Period.

"Listing Agent": The meaning specified in Section 7.22.

"London Business Day": Any Business Day on which commercial banks are open for dealings in deposits in U.S. Dollars in the London interbank market.

"Make-whole Premium": With respect to the Class C-2 Notes, the premium payable to the Holders of the Class C-2 Notes in connection with (i) an Optional Redemption of such Notes, (ii) the purchase of such Notes that are Extension Sale Securities in connection with the Maturity Extension, if any, or (iii) the purchase of such Notes in connection with an Amendment Buy-Out, as applicable, in each case in an amount equal to the excess, if any, of (x) the present value (discounted to the Optional Redemption Date, Extension Effective Date or date

of Amendment Buy-Out, as applicable, using the Reinvestment Yield as the discount rate on a semi-annual basis using a 360-day year of twelve 30-day months) of the remaining payments of interest and principal due on the Class C-2 Notes, assuming that the entire outstanding principal amount of the applicable Class C-2 Notes will be paid on the Payment Date occurring in November 2013 and that each intervening payment of interest on the Class C-2 Notes will be made on the related Payment Date in its entirety (and therefore there is no Deferred Interest on the Class C-2 Notes) over (y) the Aggregate Principal Amount of the applicable Class C-2 Notes on the Optional Redemption Date, Extension Effective Date or date of Amendment Buy-Out, as applicable; provided that in no event shall any Make-whole Premium be less than zero.

"Market Value": The meaning specified in the Swap Agreement.

"Maturity Date": August 1, 2016, or, in the case of a Maturity Extension pursuant to Section 2.15, August 1, 2020.

"Maturity Extension": The meaning specified in Section 2.15(a) hereof.

"Measurement Date": Any of (a) the date of any addition or removal of a Reference Obligation under the Swap Agreement, (b) each Determination Date, (c) each Monthly Report Determination Date and (d) with reasonable prior written notice to the Issuer, the Reference Portfolio Manager and the Trustee, any Business Day that a Rating Agency or the Swap Counterparty requests to be a "Measurement Date;" provided that, if any such date would otherwise fall on a day that is not a Business Day, the relevant Measurement Date will be the immediately following Business Day.

"Money": The meaning specified in Section 1-201(24) of the UCC.

"Monthly Report": The meaning specified in Section 8.7.

"Monthly Report Determination Date": The 15th day of each calendar month (other than the month immediately preceding the month in which a Payment Date occurs).

"Moody's": Moody's Investors Service, Inc. or any successor thereto.

"Moody's Rating": The meaning specified in the Swap Agreement.

"Moody's Recovery Rate": The meaning specified in the Swap Agreement.

"Net Class Q-2B Periodic Return Amount": The meaning specified in Section 2.17(d)(i)(D).

"Net Income Note Periodic Return Amount": The meaning specified in Section 8.6(a)(xvii).

"Net Interest Coverage Proceeds": With respect to any Measurement Date, (i) the amount of Payment Date Proceeds for the next following Payment Date plus (ii) the sum of the Subordinate Amount and the Incentive Amount, if any, for such Payment Date minus (iii) the amounts payable under Sections 8.6(a)(i) and (ii) for such Payment Date. For purposes of

calculating Net Interest Coverage Proceeds on a Measurement Date other than a Determination Date, the amounts described above will be determined assuming that the composition of the Reference Portfolio and Eligible Investments will not change prior to the next Determination Date, that there will be no unscheduled Administrative Expenses after such Measurement Date and prior to the next Determination Date and that no interest will be payable on any Reference Obligation that is a Defaulted Reference Obligation or Deferring PIK Obligation.

"Non-consenting Holder": With respect to any supplemental indenture pursuant to Section 9.2 or amendment to the Swap Agreement pursuant to Section 7.26(a), in each case that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has declared in writing that it will not consent to such supplemental indenture or amendment to the Swap Agreement, as applicable, or (ii) had not consented to such supplemental indenture or amendment to the Swap Agreement, as applicable, within the applicable Initial Consent Period.

"Non-Permitted ERISA Holder": The meaning specified in Section 2.6(o).

"Note Purchase Agreement": The agreement between the Initial Purchaser and the Issuers, dated as of the Business Day preceding the Closing Date.

"Note Redemption Amount": With respect to a Payment Date after the end of the Portfolio Modification Period, the Swap Reduction Amount under the Swap Agreement (plus any Quarterly Aggregate Increase Amount, but minus any Quarterly Aggregate Reduction Amount) for such date (but only to the extent the aggregate of such amounts for such Payment Date and prior Payment Dates exceeds $648,000,000.

"Notes": The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes, the Class C-2 Notes and the Income Notes, collectively.

"Obligation Value Increase Amount": The meaning specified in the Swap Agreement.

"Obligation Value Reduction Amount": The meaning specified in the Swap Agreement.

"OC Base Amount": As of any Measurement Date, the aggregate principal amount of all Eligible Investments in the Collateral Account (other than those representing an investment of interest proceeds of Eligible Investments) as of such date plus the Accrued Increase/Reduction Amount as of such date minus the sum of (1) an amount equal to the aggregate of the Default Adjustments for all Defaulted Reference Obligations and Deferring PIK Obligations as of such date and (2) the Outstanding Premium as of such date.

"Offering Circular": The final offering circular, dated August 17, 2004, with respect to the offering of the Securities, as amended, supplemented or otherwise modified.

"Officer's Certificate": A certificate signed on behalf of the Issuer or the Co-Issuer by any Authorized Officer and delivered to the Trustee. Unless otherwise specified, any

reference in this Indenture to an Officer's Certificate shall be to an Officer's Certificate signed by any Authorized Officer.

"Opinion of Counsel": A written opinion, unless otherwise specified herein addressed to the Trustee, the Swap Counterparty and each Rating Agency and in form and substance reasonably satisfactory to the Trustee, each Rating Agency and the Swap Counterparty, of an attorney at law admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands or other relevant jurisdiction, in the case of an opinion relating to the laws of the Cayman Islands or such jurisdiction), which attorney may, except as otherwise expressly provided in the Indenture, be counsel for the Issuer or the Trustee.

"Opinion of Tax Counsel": An Opinion of Counsel of a nationally recognized tax law firm experienced in the matters addressed in the Opinion.

"Optional Redemption": The meaning specified in Section 2.14(e).

"Optional Redemption Date": The meaning specified in Section 2.14(e).

"Ordinary Shares": 1,000 voting ordinary shares, par value U.S. $1.00 per share, of the Issuer.

"Outstanding": (a) With respect to the Notes, as of any date of determination, "Outstanding" refers to all Notes theretofore authenticated and delivered under this Indenture other than Notes cancelled, redeemed, exchanged or replaced in accordance with the terms of this Indenture and (b) with respect to the Class Q Securities, as of any date of determination, "Outstanding" refers to any and all Class Q Securities theretofore issued and paid for under this Indenture other than the Class Q Securities cancelled, redeemed, exchanged or replaced in accordance with the terms of this Indenture.

"Outstanding Premium": The meaning specified in the Swap Agreement.

"Overcollateralization Ratios": The Class A Overcollateralization Ratio, the Class B Overcollateralization Ratio and the Class C Overcollateralization Ratio, collectively.

"Overcollateralization Tests": The Class A OC Test, the Class B OC Test and the Class C OC Test.

"Participant": With respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Participants holding securities positions on behalf of Euroclear and Clearstream).

"Paying Agent": The Trustee and, so long as any Securities are listed on the Irish Stock Exchange, the Listing Agent or any other Person appointed pursuant to Section 10.1 that meets the eligibility standards for the Trustee specified in Section 6.10 and is authorized by the Issuer and the Co-Issuer to make payments of amounts on the Notes on behalf of the Issuer.

"Payment Date": With respect to a Class of Notes, the 1st day of each February, May, August and November commencing on and including February 1, 2005 (or if any such day is not a Business Day, the first Business Day thereafter), and ending on and including the earlier of the final redemption date for such Class and the Maturity Date.

"Payment Date Priority of Payments": The meaning specified in Section 8.6(a).

"Payment Date Proceeds": With respect to a Payment Date, the total of (i) the net amount, if any, paid by the Swap Counterparty in respect of the Adjusted Reference Portfolio Return Amount and the Fixed Amount for such Payment Date, (ii) interest and dividends received with respect to Eligible Investments in the Trust Accounts (including interest and dividends received on amounts on deposit in the Collateral Account) during the related Periodic Interest Accrual Period, (iii) on the first Payment Date only, all amounts deposited into the Collection Account from the Expense Reserve Account pursuant to Section 8.2(e), and (iv) principal proceeds of Eligible Investments and other amounts on deposit in the Collateral Account, but in the case of this clause (iv) only (A) to the extent of the Quarterly Aggregate Reduction Amount, if any, for that date, and (B) without duplication of clause (A), to the extent other funds are not otherwise available (but in the case of (B) solely for purposes of making payments pursuant to clauses (ii) and (xiii) of the Payment Date Priority of Payments (provided, that no amount pursuant to this clause (iv) will be used to make payments as provided in clause (xiii) of the Payment Date Priority of Payments unless all of the Senior Notes have been retired)).

"Payment Date Valuation Report": The meaning specified in Section 8.8.

"Periodic Interest": The Class A-1 Interest Amount, the Class A-2 Interest Amount, the Class B Interest Amount, the Class C-1 Interest Amount, the Class C-2 Interest Amount and the Class Q-2A Interest Amount, as the context may require.

"Periodic Interest Accrual Period": (a) With respect to the initial Payment Date, the period from and including the Closing Date to but excluding the initial Payment Date, and (b) with respect to each Payment Date thereafter, the period from and including the preceding Payment Date to but excluding such Payment Date; provided that in the case of the Class C-2 Notes, the Periodic Interest Accrual Period will not be adjusted in the event a scheduled Payment Date would otherwise occur on a day that is not a Business Day.

"Person": Any individual, corporation, partnership, limited liability partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

"PIK Obligation": The meaning specified in the Swap Agreement.

"Placement Agent": Citigroup Global Markets Inc.

"Plan": Any (a) "employee benefit plan" (as defined in Section 3(3) of ERISA) subject to the provisions of Title I of ERISA, (b) "plan" (as defined in Section 4975(e)(1) of the Code) subject to the provisions of Section 4975 of the Code or (c) entity whose underlying assets

include "plan assets" by reason of Department of Labor regulation Section 2510.3-101 or otherwise.

"Pledged Securities": As of any date, the Eligible Investments credited to any of the Trust Accounts.

"Portfolio Modification Period": The meaning specified in the Swap Agreement.

"Principal Priority of Payments": The meaning specified in Section 8.6(b).

"Priority of Payments": The Payment Date Priority of Payments and the Principal Priority of Payments.

"Proceeding": Any suit in equity, action at law or other judicial or administrative proceeding.

"Qualified Institutional Buyer": A "qualified institutional buyer" as defined in Rule 144A(a)(1) under the Securities Act.

"Qualified Purchaser": A "qualified purchaser" for purposes of Section 3(c)(7) of the Investment Company Act.

"Quarterly Aggregate Increase Amount": The meaning specified in the Swap Agreement.

"Quarterly Aggregate Reduction Amount": The meaning specified in the Swap Agreement.

"Quarterly Amortization Increase Amount": The meaning specified in the Swap Agreement.

"Ramp-up End Date": The meaning specified in the Swap Agreement.

"Ramp-up Period": The meaning specified in the Swap Agreement.

"Rating Agency": Either of Moody's or Standard & Poor's; "Rating Agencies" shall mean Moody's and Standard & Poor's, collectively.

"Rating Confirmation": With respect to any specified action, the written confirmation by both Rating Agencies, or if expressly stated, by a specified Rating Agency, that such Rating Agency will not qualify, downgrade or withdraw its then-current respective rating of any Class of Senior Notes or the Class Q-1 Securities solely as a result of such action.

"Record Date": With respect to a Payment Date or Maturity Date or the Class Q-2 Maturity Date, as applicable, the close of business on the fifteenth day prior to such date, or if such day is not a Business Day, the close of business on the next Business Day.

"Reference Banks": With respect to the determination of LIBOR by the Indenture Calculation Agent, any four major banks in the London interbank market selected by the Indenture Calculation Agent for such purpose.

"Reference Obligation": The meaning specified in the Swap Agreement.

"Reference Obligation Calculation Amount": The meaning specified in the Swap Agreement.

"Reference Obligation Eligibility Criteria": The meaning specified in the Swap Agreement.

"Reference Portfolio": The meaning specified in the Swap Agreement.

"Reference Portfolio Criteria": The meaning specified in the Swap Agreement.

"Reference Portfolio Management Agreement": The Reference Portfolio Management Agreement, dated as of the Closing Date, between the Swap Counterparty and the Reference Portfolio Manager.

"Reference Portfolio Manager": Highland Capital Management, L.P. and its approved successors and assigns.

"Reference Value": The meaning specified in the Swap Agreement.

"Registrar": The meaning specified in Section 2.6(a).

"Regulation S": Regulation S promulgated under the Securities Act.

"Regulation S Global Note": The meaning set forth in Section 2.2(b)(i).

"Reinvestment Yield": With respect to the Class C-2 Notes, the rate equal to the sum of (a) 1.30% and (b) the applicable yield to maturity implied by (i) the yields reported, as of 10:00 a.m. (New York City time) on the tenth Business Day preceding the Optional Redemption Date, Extension Effective Date or date of Amendment Buy-Out, as applicable, on the display designated as "Govt PX1" on Bloomberg Financial Markets Commodities News (or such other display as may replace such display) for actively traded U.S. Treasury securities having a maturity as nearly as practicable equal to the Payment Date occurring in November 2013 or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the tenth Business Day preceding the Optional Redemption Date, Extension Effective Date or date of Amendment Buy-Out, as applicable, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity as nearly as practicable equal to the Payment Date occurring in November 2013.

"Reminder Notice": The meaning specified in Section 8.8.

"Repository": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at www.cdolibrary.com. or successors thereto.

"Requisite Noteholders": The holders of 66 2/3% or more of the Aggregate Principal Amount of (a) the Class A-1 Notes, so long as any Class A-1 Notes remain Outstanding, (b) thereafter the Class A-2 Notes, so long as any Class A-2 Notes remain Outstanding, (c) thereafter the Class B Notes, so long as any Class B Notes remain Outstanding, (d) thereafter the Class C-1 Notes and the Class C-2 Notes (voting as a single class), so long as any Class C Notes remain Outstanding, and (e) thereafter the Income Notes, so long as any Income Notes remain Outstanding.

"Responsible Officer": With respect to the Trustee, any officer within the Corporate Trust Office of the Trustee who is responsible for the administration of this Indenture, including any Vice President, Assistant Vice President, Assistant Treasurer, Trust Officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular matter, any other officer within the Corporate Trust Office to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Rule 144A": Rule 144A under the Securities Act.

"Rule 144A Global Note": The meaning specified in Section 2.2(b)(ii).

"Rule 144A Information": The meaning specified in Section 2.6(c).

"Sale": The meaning specified in Section 5.2.

"Secured Parties": The meaning specified in the Preliminary Statement to this Indenture.

"Securities": Collectively, the Notes, the Class Q-1 Securities and the Class Q-2 Securities.

"Securities Act": The U.S. Securities Act of 1933, as amended.

"Securities Intermediary": The entity maintaining a Trust Account pursuant to an Account Agreement.

"Securities Register": The meaning specified in Section 2.6(a).

"Senior Notes": The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C-1 Notes and the Class C-2 Notes, collectively

"Share Trustee": Walkers SPV Limited and its permitted successors.

"Standard & Poor's" or "S&P": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

"S&P Recovery Rate": The meaning specified in the Swap Agreement.

"Structured Finance Obligation": The meaning specified in the Swap Agreement.

"Subordinate Amount": The meaning specified in the Swap Agreement.

"Subordinated Administrative Expenses": Technology expenses of the Swap Counterparty and its Affiliates in connection with transactions contemplated hereby and by the Swap Agreement not to exceed $50,000 in any calendar year; provided, however, that Subordinated Administrative Expenses shall not include any amounts due or accrued with respect to actions taken on or prior to the Closing Date which amounts shall be payable only from the Expense Reserve Account pursuant to Section 8.2(e).

"Swap Additional Termination Event": An "Additional Termination Event" or a "Tax Event Upon Merger" under the Swap Agreement as to which the Swap Counterparty is the affected party.

"Swap Agreement": The portfolio swap agreement entered into by the Issuer with the Swap Counterparty, dated as of the Closing Date, which will be documented on the standard form of the 2002 ISDA Master Agreement published by ISDA, as supplemented by the schedule thereto and related documents, and a confirmation for the portfolio swap transaction thereunder, together with the annexes thereto evidencing the Reference Portfolio, as amended or supplemented from time to time.

"Swap Agreement Amendment": The meaning specified in Section 7.26.

"Swap Counterparty": Citigroup Financial Products Inc., or any successor thereto.

"Swap Event of Default": An "Event of Default" under the Swap Agreement.

"Swap Guarantee": The Guarantee, dated as of the Closing Date by the Swap Guarantor in favor of the Issuer with respect to the Swap Agreement.

"Swap Guarantor": Citigroup Global Markets Holdings Inc. or any successor thereto.

"Swap Reduction Amount": The meaning specified in the Swap Agreement.

"Swap Termination Date": The meaning specified in the Swap Agreement.

"Swap Termination Event": A "Termination Event" under the Swap Agreement.

"Swap Termination Payment": The amount, if any, payable by the Issuer or the Swap Counterparty to the other party in respect of an Early Termination Date under the Swap Agreement (as defined therein).

"Tax Redemption": The meaning specified in Section 2.14(d).

"Tax Redemption Date": The meaning specified in Section 2.14(d).

"Temporary Regulation S Global Note": The meaning specified in Section 2.2(b)(i).

"Transferee Certificate": The Transferee Certificate with respect to the Income Notes substantially in the form of Exhibit IN-2 hereto.

"Transfer Letter": The Transfer Letter substantially in the form of Exhibit E-1 or Exhibit E-2 hereto, as applicable.

"Trust Accounts": The Collection Account, the Expense Reserve Account and the Collateral Account, collectively.

"Trust Estate": The meaning set forth under "Grant of Security Interest" on page 1 of this Indenture.

"Trustee": JPMorgan Chase Bank, as trustee under this Indenture and its permitted successors.

"Trustee Expenses": With respect to any Payment Date (including without limitation the Maturity Date), an amount equal to the sum of all amounts incurred by or otherwise owing to the Trustee hereunder in any Collection Period in accordance with the Indenture other than the Trustee Fee.

"Trustee Fee": With respect to any Payment Date, the amount separately agreed to by the Issuer and the Trustee in that certain letter dated as of the Closing Date.

"UCC": The Uniform Commercial Code as in effect from time to time in the State of New York.

"U.S. Person": The meaning assigned to such term in Regulation S under the Securities Act.

CONSENTED TO BY:

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Reference Portfolio Manager
By: Strand Advisors, Inc., its general partner

By: _____
Name: James Dondero
Title: President

22053093 BUSINESS

CONSENTED TO BY:

CITIGROUP FINANCIAL PRODUCTS INC.,
as Swap Counterparty

By: Mitali Sohoni
Name:
Title:

22053093.BUSINESS

EXECUTION

WESTCHESTER CLO, LTD.

Issuer,

WESTCHESTER CLO CORP.

Co-Issuer,

and

INVESTORS BANK & TRUST COMPANY

Trustee

INDENTURE

Dated as of May 31, 2007

COLLATERALIZED DEBT OBLIGATIONS

U.S.$570,500,000 Class A-1-A Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$142,500,000 Class A-1-B Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$80,000,000 Class B Floating Rate Senior Secured Extendable Notes Due 2022
U.S.$53,500,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022
U.S.$36,000,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022
U.S.$37,500,000 Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2022

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INDENTURE, dated as of May 31, 2007, among WESTCHESTER CLO, LTD. (the "***Issuer***"), WESTCHESTER CLO CORP. (the "***Co-Issuer***") and INVESTORS BANK & TRUST COMPANY, as trustee (together with its permitted successors, the "***Trustee***").

PRELIMINARY STATEMENT

The Co-Issuers are duly authorized to execute and deliver this Indenture to provide for the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes and the Class D Notes and the Issuer is duly authorized to execute and deliver this Indenture to provide for the Class E Notes, in each case issuable as provided in this Indenture. All covenants and agreements made by the Co-Issuers in this Indenture are for the benefit and security of the Secured Parties. The Co-Issuers are entering into this Indenture, and the Trustee is accepting the trusts created by this Indenture, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Co-Issuers in accordance with the agreement's terms have been done.

GRANTING CLAUSES

The Issuer Grants to the Trustee, for the benefit and security of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty (and the Collateral Administrator and Preference Shares Paying Agent to the extent of Administrative Expenses payable to such parties as provided hereunder) (collectively, the "***Secured Parties***"), all of its right, title, and interest in, to, and under, in each case, whether now owned or existing, or hereafter acquired or arising:

(a) the Collateral Obligations (listed, as of the Closing Date, in Schedule 1 to this Indenture and listed from time to time on such Schedule 1 as such Schedule 1 may be modified, amended and revised subsequent to the Closing Date by the Issuer) and all Workout Assets, including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto, all payments made or to be made thereon or with respect thereto, and all Collateral Obligations and Workout Assets including any part thereof which consists of general intangibles (as defined in the UCC) relating thereto, which are delivered or credited to the Trustee, or for which a Security Entitlement is delivered or credited to the Trustee or which are credited to one or more of the Issuer Accounts on or after the Closing Date and all payments made or to be made thereon or with respect thereto;

(b) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (collectively, the "***Issuer Accounts***"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(c) the Synthetic Security Counterparty Account (and, together with the Issuer Accounts, the Synthetic Security Collateral Account, the Class II Preference Share Special Payment Account and the Hedge Counterparty Collateral Account, the "***Accounts***") and assets included therein, subject to the terms of the related Synthetic Security (provided, however, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or Securities Intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(d) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the

Hedge Agreements as set forth in Article 15 and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account, the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(e) all Cash or money delivered to the Trustee (or its bailee);

(f) all securities, investments, investment property, instruments, money, general intangibles, chattel paper and agreements of any nature in which the Issuer has an interest (except for money, securities and investments in the Issuer's bank account in the Cayman Islands), including any part thereof which consists of general intangibles or supporting obligations (each as defined in the UCC) relating thereto; and

(g) all proceeds with respect to the foregoing;

(all of the property and assets described in foregoing clauses (a) through (g), but excluding the Excluded Property, the "***Collateral***"). Notwithstanding the foregoing, the Collateral shall not include any Excluded Property.

These Grants are not intended to and do not transfer any liability under the Collateral, which liabilities shall remain the sole obligation of the Issuer. These Grants are made, however, in trust as separate trusts, to secure the Notes. Except as provided in Article 13 and the priorities set forth in the Priority of Payments, the Notes are secured by the first grant equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise. The Grants are made to secure, in accordance with the priorities in the Priority of Payments and Article 13:

(i) the payment of all amounts due on the Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note because of difference in time of issuance or otherwise, in accordance with their terms;

(ii) the payment of all other sums payable under this Indenture (other than amounts payable in respect of the Preference Shares);

(iii) the payment of sums payable to any Hedge Counterparty under a Hedge Agreement;

(iv) the payment of sums payable to the Servicer under the Servicing Agreement; and

(v) compliance with this Indenture;

(collectively, the "***Secured Obligations***"), all as provided in this Indenture.

The Trustee acknowledges the Grants, accepts the trusts under this Indenture in accordance with this Indenture, and agrees to perform its duties in this Indenture in accordance with the provisions hereof.

ARTICLE 1

DEFINITIONS

Section 1.1. ***Definitions.***

Except as otherwise specified in this Indenture or as the context may otherwise require, the following terms have the respective meanings provided below for all purposes of this Indenture.

"***A/B Exchange***": An exchange of one security (the "***A Security***") for another security (the "***B Security***") of the same issuer or issuers, which security shall have substantially identical terms to the A Security except that one or more transfer restrictions applicable to the A Security are inapplicable to the B Security.

"***Accounts***": The meaning specified in the Granting Clauses.

"***Accountants' Certificate***": An agreed upon procedures report of a firm of Independent certified public accountants of international reputation appointed by the Issuer pursuant to Section 10.8(a), which may be the firm of Independent accountants that performs certain accounting services for the Issuer or the Servicer.

"***Accrued Interest On Sale***": Interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"***Accrued Interest Purchased With Principal***": (i) interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Loan that constitutes part of the price paid by the Issuer to repay loans made by the Pre-Closing Parties to finance the Issuer's pre-closing acquisition of such Loan.

"***Act***": The meaning specified in Section 14.2.

"***Administration Agreement***": The Administration Agreement, between the Issuer and the Administrator, providing for the administrative functions of the Issuer, as modified, amended, and supplemented and in effect from time to time.

"***Administrative Expense Cap***": An amount on any Payment Date equal to the excess of:

(a) the sum of 0.04% of the Maximum Amount on the related Determination Date plus $150,000, *over*

(b) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"***Administrative Expenses***": Amounts due or accrued representing

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers (including all filing, registration, and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.8), the Administrator, the Preference Shares Paying Agent and the Collateral Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and of accountants, agents, and counsel for either of the Co-Issuers;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Collateral (requested by the Issuer or the Servicer) or the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other Person (except the Servicer) if specifically provided for in this Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"***Administrator***": Maples Finance Limited.

"***Affected Class***": Any Class of Notes that, as a result of the occurrence of a Tax Event, has received, or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Distribution Date related to the Due Period with respect to which such Tax Event occurs.

"***Affiliate***" or "***Affiliated***": With respect to a Person,

(i) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the Person; or

(ii) any other Person who is a director, officer, or employee (A) of the Person, (B) of any subsidiary or parent company of the Person or (C) of any Person described in clause (i) above.

For the purposes of this definition, control of a Person shall mean the power, direct or indirect,

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the Person; or

(B) to direct the corporate management and corporate policies of the Person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"***Agent Members***": Members of, or participants in, a Depository.

"***Aggregate Outstanding Amount***": When used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date. When used with respect to the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(a) the Aggregate Outstanding Amount of the Class A-1-A Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(b) the Aggregate Outstanding Amount of the Class A-1-B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(c) the Aggregate Outstanding Amount of the Class B Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(d) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto;

(e) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto; and

(f) the Aggregate Outstanding Amount of the Class E Notes at any time shall include all Class E Deferred Interest attributed thereto.

"***Aggregate Principal Balance***": When used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"***Aggregate Purchase Price Amount***": When used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"***Allocable Principal Balance***": With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"***Amendment Buy-Out***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Option***": The meaning specified in Section 9.6(a).

"***Amendment Buy-Out Purchase Price***": The purchase price payable by the Amendment Buy-Out Purchaser for Securities purchased in an Amendment Buy-Out, if any, in an amount equal

to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, plus in the case of the CDS/TRS Purchaser, the applicable CDS/TRS Termination Payment Amount, and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder on the next succeeding Payment Date) would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares shall be zero.

"***Amendment Buy-Out Purchaser***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Securities from Holders pursuant to Section 9.6, "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchasers or any of their Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Initial Purchasers or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"***Applicable Discount Rate***": For purposes of determining the CDS/TRS Termination Payment Amount with respect to the CDS/TRS Purchaser in connection with an Amendment Buy-Out, USD-LIBOR-BBA, as defined in the Annex to the 2000 ISDA Definitions as determined by the CDS/TRS Purchaser on the Business Day preceding the date of purchase of the applicable Notes from the CDS/TRS Purchaser in connection with such Amendment Buy-Out.

"***Applicable Issuers***" or "***Applicable Issuer***": With respect to the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes and the Class D Notes, each of the Co-Issuers. With respect to the Class E Notes and the Preference Shares, the Issuer only.

"***Applicable Note Interest Rate***": With respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"***Applicable Percentage***": The lesser of the Moody's Priority Category Recovery Rate applicable to the Collateral Obligation and the S&P Recovery Rate applicable to the Collateral Obligation and the current S&P Rating of the Class A Notes.

"***Approved Credit Support Document***": A security agreement in the form of the 1994 ISDA Credit Support Annex (ISDA Agreements Subject to New York Law Only), as modified by Paragraph 13 thereto.

"***Approved Pricing Service***": Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"***Ask-Side Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations which are also Independent from the Servicer or (ii) if the foregoing set of prices could not be obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations are also Independent from the

Servicer or (iii) if the foregoing sets of prices could not be obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); provided that if the Ask-Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"***Assigned Moody's Rating***": The meaning set forth in Schedule 7.

"***Authenticating Agent***": With respect to the Notes, the Trustee or the person designated by the Trustee to authenticate the Notes on behalf of the Trustee pursuant to Section 6.15.

"***Authorized Officer***": With respect to the Issuer or the Co-Issuer, as applicable, any Officer or agent who is authorized to act for the Issuer or the Co-Issuer as applicable, in matters relating to, and binding on, the Issuer or the Co-Issuer. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate, or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any Person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"***Average Life***": As of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation, and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation, *by*

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"***Bank***": Investors Bank & Trust Company, in its individual capacity and not as Trustee.

"***Bankruptcy Code***": The U.S. Bankruptcy Code, Title 11 of the United States Code.

"***Bankruptcy Law***": The Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"***Beneficial Owner***": Any person owning an interest in a Global Note as reflected on the books of the Depository or on the books of an Agent Member or on the books of an indirect participant for which an Agent Member acts as agent.

"***Benefit Plan Investor***": Any (i) "employee benefit plan" within the meaning of Section 3(3) of ERISA, that is subject to Title I of ERISA, (ii) any "plan" described by Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, or an entity whose underlying assets include the assets of any plan described in (i) or (ii) by reason of such plan's investment in such entity.

"***Board Resolution***": With respect to the Issuer, a resolution of the board of directors of the Issuer and, with respect to the Co-Issuer, a resolution of the board of directors of the Co-Issuer.

"***Business Day***": A day on which commercial banks and foreign exchange markets settle payments in New York City and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; provided, however, that, for purposes of determining LIBOR, "Business Day" must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"***Calculation Agent***": The meaning specified in Section 7.16.

"***Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3".

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

"***CCC+/Caa1 Collateral Obligations***": The Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"***CCC+/Caa1 Excess Market Value Percentage***": The percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

"***CDS/TRS Purchaser***": Lehman Brothers Special Financing Inc. as a Holder or a beneficial owner of certain of the Notes at the Closing Date that has entered into either a credit default swap or a total return swap with respect to such Notes and has provided the Issuer and the Trustee with a written certification (which shall include wiring instructions for the CDS/TRS Purchaser) regarding its entry into such swap in a form reasonably acceptable to the Issuer (or the Servicer on behalf of the Issuer).

"***CDS/TRS Termination Payment Amount***": With respect to the CDS/TRS Purchaser in connection with an Amendment Buy-Out, (i) on any Payment Date prior to the May 2011 Payment Date, an amount equal to the present value of the Fixed Amounts with respect to the CDS/TRS Purchaser and each Fixed Rate Payor Calculation Period until the last Fixed Rate Calculation Period, discounting each Fixed Amount from the Payment Date following the end of each such Fixed Rate Payor Calculation Period to the date of purchase of the applicable Notes at the Applicable Discount Rate, and (ii) on any Payment Date on and after the May 2011 Payment Date, zero; provided that, in the case of clause (i), the CDS/TRS Termination Payment Amount shall be calculated by the Servicer and subject to the approval of the CDS/TRS Purchaser.

"***Certificate of Authentication***": The meaning specified in Section 2.1.

"***Certificated Class E Note***": The meaning set forth in Section 2.2(e).

"***Certificated Preference Share***": The meaning set forth in the Preference Shares Paying Agency Agreement.

"***Certificated Security (UCC)***": The meaning specified in Section 8-102(a)(4) of the UCC.

"***Class***": All of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares.

"***Class A Allocation***": means, with respect to payments of principal of the Class A Notes, the application of proceeds sequentially, *first*, to the Class A-1-A Notes until the Class A-1-A have been fully redeemed, and, *second*, to the Class A-1-B Notes until the Class A-1-B Notes have been fully redeemed.

"***Class A Notes***": The Class A-1-A Notes and the Class A-1-B Notes.

"***Class A-1-A Notes***": The Class A-1-A Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A-1-B Notes***": The Class A-1-B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class A/B Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A-1-A Notes, the Class A-1-B Notes and the Class B Notes.

"***Class B Notes***": The Class B Floating Rate Senior Secured Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class C Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"***Class C Deferred Interest***": Deferred Interest with respect to the Class C Notes.

"***Class C Notes***": The Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Co-Issuers pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class D Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"***Class D Deferred Interest***": Deferred Interest with respect to the Class D Notes.

"***Class D Notes***": The Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class E Coverage Tests***": The Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class E Notes.

"***Class E Deferred Interest***": Deferred Interest with respect to the Class E Notes.

"***Class E Notes***": The Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes issued by the Issuer pursuant to this Indenture and having the characteristics specified in Section 2.3.

"***Class I Preference Shares***": The Class I Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class II Preference Share Percentage***": For any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

"***Class II Preference Share Portion***": For any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"***Class II Preference Share Senior Special Payment***": For any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Special Payment***": Collectively, the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment.

"***Class II Preference Share Special Payment Account***": The trust account established pursuant to Section 10.3(j).

"***Class II Preference Share Subordinated Special Payment***": For any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Share Supplemental Special Payment***": For any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"***Class II Preference Shares***": The Class II Preference Shares issued by the Issuer pursuant to the Issuer's Memorandum and Articles of Association and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Class Scenario Loss Rate***": With respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"***Clearing Agency***": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"***Clearing Corporation***": The meaning specified in Section 8-102(a)(5) of the UCC.

"***Clearing Corporation Security***": A "security" (as defined in Section 8-102(a)(15) of the UCC) that (i) is a debt or equity security and (ii) is in the custody of or maintained on the books of a Clearing Corporation or its nominee.

"***Clearstream***": Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"***Closing Date***": May 31, 2007.

"***Closing Date Expense Account***": The trust account established pursuant to Section 10.3(g).

"***Co-Issuer***": The person named as such on the first page of this Indenture.

"***Co-Issuers***": The Issuer and the Co-Issuer.

"***Code***": The United States Internal Revenue Code of 1986, as amended.

"***Collateral***": The meaning specified in the Granting Clauses.

"***Collateral Acquisition Agreement***": The agreement dated as of the Closing Date between the Issuer and the Servicer, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administration Agreement***": The agreement dated as of the Closing Date among the Issuer, the Servicer, and the Collateral Administrator, as modified, amended and supplemented and in effect from time to time.

"***Collateral Administrator***": Investors Bank & Trust Company, in its capacity as collateral administrator under the Collateral Administration Agreement.

"***Collateral Assignment of Hedge Agreements***": With respect to each Hedge Agreement, the assignment of all of the Issuer's interest in the Hedge Agreement to the Trustee and acknowledged by the Hedge Counterparty to create a security interest therein in favor of the Trustee.

"***Collateral Obligation***": Any obligation or security that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation, or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(1) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(2) an obligation of an obligor Domiciled in an Eligible Country;

(3) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(4) not an exchangeable or convertible security;

(5) not an equity security or a component of an equity security or a security that has a component that is an equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations that is rated by a nationally-recognized credit rating agency);

(6) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 23

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

exchanged for (i) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (ii) a security that would otherwise qualify for purchase under Article 12;

(7) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(8) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(9) (a) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (b) in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(10) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; provided that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(11) an obligation that (i) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary under the terms of the obligation) and (ii) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(12) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(13) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(14) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(15) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees, facility fees or other similar fees);

(16) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in Section 10.3(b)), and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(17) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(18) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(19) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(20) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "AA-" or a short term debt rating by S&P of at least "A-1+";

(21) not an obligation that constitutes Margin Stock;

(22) not a Zero-Coupon Security;

(23) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(24) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(25) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease of

the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition); and

(26) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

"***Collateral Quality Tests***": The Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test.

"***Collection Account***": The trust account established pursuant to Section 10.2(a).

"***Commitment Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan, the maximum aggregate outstanding principal amount (whether then funded or unfunded) of advances or other extensions of credit that the Issuer could be required to make to the borrower under its Underlying Instruments.

"***Commitment Reduction***": With respect to any Revolving Loan or Delayed Drawdown Loan, a permanent reduction (whether scheduled, mandatory, optional, or otherwise) in the related Commitment Amount.

"***Concentration Limitations***": The limit set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans and Eligible Investments	≥ 87.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4)	Revolving Loans and the unfunded portion of Delayed Drawdown Loans	≤ 12.0%
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%
(6)	S&P Unrated DIP Loans	≤ 2.5%
(7)	PIK Securities	≤ 3.0%
(8)	High-Yield Bonds	≤ 7.5%

(9)	Structured Finance Obligations	≤ 10.0%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
	(c) except that Structured Finance Obligations that are (i) collateralized debt obligations primarily backed by other collateralized debt obligations and (ii) collateralized debt obligations primarily backed by one or more credit default swaps (i.e., "Synthetics CDOs") may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
(10)	Structured Finance Obligations that are collateralized loan obligations	≤ 7.5%
(11)	obligors Domiciled other than in the United States and Canada	≤ 20.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14)	obligors Domiciled in all Moody's Group II Countries in the aggregate	≤ 10.0%
(15)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(16)	obligors Domiciled in all Moody's Group III Countries in the aggregate	≤ 5.0%
(17)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(18)	same S&P Industry Classification	≤ 8.0%
	(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%
(19)	single obligor and any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual obligors and any of their Affiliates (excluding Secondary Risk Counterparties and any obligor under a DIP Loan) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 2.5%
(20)	Fixed Rate Obligations	≤ 5.0%
	(a) except that with a Rating Confirmation from Moody's, Fixed Rate Obligations may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%
(21)	Pay interest less frequently than quarterly but no less frequently than semi-annually	≤ 7.5%
(22)	Pay interest less frequently than semi-annually but no less frequently than annually	≤ 3.0%

(23)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(24)	Participations (provided that no Relevant Obligations may be a Participation in a Participation)	≤ 20.0%
(25)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the Maximum Amount specified in the right column	≤ 20.0%
(26)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(27)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(28)	Deep Discount Obligations	≤ 7.5%
(29)	CCC+/Caa1 and below Collateral Obligations	≤ 7.5%
(30)	Long-Dated Collateral Obligations	≤ 2.0%
(31)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(32)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan)	≤ 5.0%
(33)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $75,000,000	≤ 10.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in Section 1.2(h), solely for the purpose of determining whether the Concentration Limitations

are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

"***Consenting Holder of the Preference Shares***": With respect to any Payment Date, a Holder of Preference Shares that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date.

"***Controlling Class***": The Class A-1-A Notes and the Class A-1-B Notes (voting together as a Class or group), so long as any Class A-1-A Notes or Class A-1-B Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B Notes are Outstanding; then the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding; and then the Class E Notes (voting together as a Class or group), so long as any Class E Notes are Outstanding.

"***Controlling Person***": The meaning specified in Section 2.6(c).

"***Corporate Trust Office***": The corporate trust office of the Trustee at which the Trustee performs its duties under this Indenture, currently having an address of 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116 telecopy no. (617) 351-4358, Attention: CDO Services Group, or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer, and each Rating Agency or the principal corporate trust office of any successor Trustee.

"***Coverage Tests***": Collectively, the Class A/B Coverage Tests, the Class C Coverage Tests, the Class D Coverage Tests and the Class E Coverage Tests applicable as of any Measurement Date.

"***Credit Improved Obligation***": Any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; provided that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and provided, further, that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of

acquisition, as determined by the Servicer (provided that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 1.01%), or (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation; or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"***Credit Rating Event***": An event that is in effect if the rating by Moody's:

(i) of the Class A-1-A Notes or the Class A-1-B Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1-A Notes and the Class A-1-B Notes, or to only one subcategory below their Initial Rating in the case of the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Credit Risk Obligation***": Any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; provided that in forming such judgment, an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under this Indenture;

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute

rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer, and (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation; or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"***Current-Pay Obligation***": A Collateral Obligation as to which:

(i) an Insolvency Event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn;

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an Officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due;

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance;

(iv) if an Insolvency Event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized all payments of principal and interest payable on the Collateral Obligation; and

(v) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more

Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee, and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in this Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"***Current Portfolio***": At any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as Cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"***Custodial Account***": The custodial account established in the name of the Trustee pursuant to Section 10.3(a).

"***Custodian***": The meaning specified in the first sentence of Section 3.2(a) with respect to items of collateral referred to therein, and each entity with which an Account is maintained, as the context may require, each of which shall be a Securities Intermediary.

"***Deep Discount Obligation***": Until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"***Default***": Any Event of Default or any occurrence that, with notice or the lapse of time or both, would become an Event of Default.

"***Defaulted Collateral Obligation***": Any Collateral Obligation or other obligation included in the Collateral:

(i) as to which there has occurred and is continuing a default with respect to the payment of interest or principal with respect to such Collateral Obligation, without giving effect to any applicable grace period or waiver (provided that if the Servicer certifies to the Trustee in writing that such default is for non-credit related reasons, the related Collateral Obligation shall not be treated as a Defaulted Collateral Obligation under this clause (i) unless and until such default has continued for a period of three (3) consecutive business days), but, in any case, only until such default has been cured;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("***Other Indebtedness***"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Servicer, provided that the related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an Insolvency Event has occurred with respect to its obligor,

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn, or

(C) the obligation is rated "D" by Moody's or was so rated immediately prior to such rating being withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; provided, however, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of

each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"***Defaulted Hedge Termination Payment***": Any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***Defaulted Interest***": Any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"***Defaulted Interest Charge***": To the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"***Default Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"***Deferred Interest***": With respect to any specified Class of Deferred Interest Notes, the meaning specified in Section 2.8(a).

"***Deferred Interest Notes***": The Class C Notes, the Class D Notes and the Class E Notes.

"***Deficiency Amount***": The meaning specified in Section 16.3(a).

"***Deficiency Notice Date***": The meaning specified in Section 16.3(a).

"***Definitive Notes***": The meaning specified in Section 2.11(b).

"***Delayed Drawdown Loan***": A Loan or any Synthetic Security with a Reference Obligation that

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments,

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates, and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for purposes of the Concentration Limitations only unfunded portions will count as Delayed Drawdown Loans.

"***Delayed Drawdown Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Deliver***" or "***Delivered***" or "***Delivery***": The taking of the following steps:

(i) in the case of each Certificated Security (UCC) (other than a Clearing Corporation Security) or Instrument,

(A) causing the delivery of such Certificated Security (UCC) or Instrument to the Custodian registered in the name of the Custodian or endorsed, by an effective endorsement, to the Custodian or in blank,

(B) causing the Custodian to continuously indicate on its books and records that such Certificated Security (UCC) or Instrument is credited to the applicable Account, and

(C) causing the Custodian to maintain continuous possession of such Certificated Security (UCC) or Instrument;

(ii) in the case of each Uncertificated Security (other than a Clearing Corporation Security),

(A) causing such Uncertificated Security to be continuously registered on the books of the issuer thereof to the Custodian, and

(B) causing the Custodian to continuously indicate on its books and records that such Uncertificated Security is credited to the applicable Account;

(iii) in the case of each Clearing Corporation Security,

(A) causing the relevant Clearing Corporation to credit such Clearing Corporation Security to the securities account of the Custodian, and

(B) causing the Custodian to continuously indicate by on its books and records that such Clearing Corporation Security is credited to the applicable Account;

(iv) in the case of each security issued or guaranteed by the United States of America or agency or instrumentality thereof and that is maintained in book-entry records of a Federal Reserve Bank ("***FRB***") (each such security, a "***Government Security***"),

(A) causing the creation of a Security Entitlement to such Government Security by the credit of such Government Security to the securities account of the Custodian at such FRB, and

(B) causing the Custodian to continuously indicate on its books and records that such Government Security is credited to the applicable Account;

(v) in the case of each Security Entitlement not governed by clauses (i) through (iv) above,

(A) causing a Securities Intermediary (x) to indicate on its books and records that the underlying Financial Asset has been credited to be the Custodian's securities account, (y) to receive a Financial Asset from a Securities Intermediary or acquiring the underlying Financial Asset for a Securities Intermediary, and in either case, accepting it for credit to the Custodian's securities account or (z) to become obligated under other law, regulation or rule to credit the underlying Financial Asset to a Security Intermediary's securities account,

(B) causing such Securities Intermediary to make entries on its books and records continuously identifying such Security Entitlement as belonging to the Custodian and continuously indicating on its books and records that such Security Entitlement is credited to the Custodian's securities account, and

(C) causing the Custodian to continuously indicate on its books and records that such Security Entitlement (or all rights and property of the Custodian representing such Security Entitlement) is credited to the applicable Account;

(vi) in the case of cash or money,

(A) causing the delivery of such cash or money to the Custodian,

(B) causing the Custodian to treat such cash or money as a Financial Asset maintained by such Custodian for credit to the applicable Account in accordance with the provisions of Article 8 of the UCC, and

(C) causing the Custodian to continuously indicate on its books and records that such cash or money is credited to the applicable Account; and

(vii) in the case of each general intangible (including any Participation in which the Participation is not represented by an Instrument),

(A) causing the filing of a Financing Statement in the office of the Recorder of Deeds of the District of Columbia, Washington, DC, and

(B) causing the registration of this Indenture in the Register of Mortgages of the Issuer at the Issuer's registered office in the Cayman Islands;

in addition, the Servicer on behalf of the Issuer will obtain any and all consents required by the underlying agreements relating to any such general intangibles for the transfer of ownership to the Issuer and the pledge hereunder (except to the extent that the requirement for such consent is rendered ineffective under Section 9-406 of the UCC).

In addition to the methods specified above, any Collateral may be delivered in accordance with any other method specified in an Opinion of Counsel delivered to the Trustee as sufficient to establish a first priority perfected security (subject to customary exceptions and qualifications) interest therein.

"***Depository***" or "***DTC***": The Depository Trust Company and its nominees.

"***Determination Date***": The last day of any Due Period.

"***DIP Loan***": Any Loan:

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer);

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "***Debtor***") organized under the laws of the United States or any state of the United States; and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that:

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code;

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code;

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets; or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"***Discount Note***": Any Note that is treated as being issued with "original issue discount" within the meaning of Section 1271 through 1275 of the Code and Treasury Regulations promulgated thereunder.

"***Diversity Score***": A single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to this Indenture.

"***Diversity Test***": A test that will be satisfied as of any Measurement Date if the Diversity Score equals or exceeds the Minimum Diversity Score. For the purposes of calculating the Diversity Test, any Structured Finance Obligation that is (i) a collateralized loan obligation, (ii) any Synthetic Security with respect to which the Reference Obligation is a collateralized loan obligation or (iii) any Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time will be disregarded.

"***Dollar***" or "***U.S. Dollar***" or "***U.S.$***": A dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

"***Domicile***" or "***Domiciled***": With respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"***Due Date***": Each date on which any payment is due on a Pledged Obligation in accordance with its terms.

"***Due Period***": With respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"***Eligibility Criteria***": The meaning specified in Section 12.2(b).

"***Eligible Collateral***": (i) Cash, (ii) U.S. Treasury obligations, (iii) U.S. agency obligations or (iv) commercial paper obligations rated at least "P-1" by Moody's (and not on watch for downgrade) and "A-1+" by S&P, in each case to collateralize fully on a mark-to-market basis the obligations of a Hedge Counterparty under the related Hedge Agreement.

"***Eligible Country***": The United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" and a Moody's foreign currency rating of at least "Aa2".

"***Eligible Equity Security***": An equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

"***Eligible Investments***": Any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under this Indenture, is one or more of the following:

(a) Cash;

(b) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(c) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; provided that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(d) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; provided that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's and "AA-" by S&P, and if so rated, such rating is not on watch for downgrade;

(e) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (c) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; provided that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(f) any money market fund or similar vehicle having at the time of acquisition and throughout the term thereof a credit rating of "MR1+" by Moody's and "AAA" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (provided that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to this Indenture;

(g) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; provided that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes; provided, further, that, at the time of acquisition and

throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(h) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, any mortgage-backed security or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r", "t", "p", "pi" or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer or depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

"***Emerging Market Security***": A security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean, or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"***ERISA***": The United States Employee Retirement Income Security Act of 1974, as amended.

"***Established Securities Market***": Any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction

where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

"***Euroclear***": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"***Event of Default***": The meaning specified in Section 5.1.

"***Excel Default Model Input File***": An electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Recovery Rate, and

(k) such other information as the Trustee may determine to include in such file.

"***Excess CCC+/Caa1 Collateral Obligations***": The Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"***Exchange Act***": The United States Securities Exchange Act of 1934, as amended.

"***Excluded Property***": (i) U.S.$1,000 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$1,000 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts, (ii) any

amounts credited to the Class II Preference Share Special Payment Account and the Preference Share Distribution Account from time to time and (iii) any Margin Stock.

"***Expense Reimbursement Account***": The trust account established pursuant to Section 10.3(c).

"***Extended Replacement Period End Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension pursuant to Section 2.4, the Payment Date in August 2018); provided that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in August, 2030.

"***Extended Scheduled Preference Shares Redemption Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Preference Shares Redemption Date, August 1, 2026); provided that the "Extended Scheduled Preference Shares Redemption Date" will in no event be a date later than the Payment Date in August, 2038.

"***Extended Stated Maturity Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in August, 2026); provided that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in August, 2038.

"***Extended Weighted Average Life Date***": If a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, August 1, 2021); provided that the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in August, 2033.

"***Extension***": An extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test pursuant to Section 2.4.

"***Extension Bonus Payment***": With respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in Section 2.4(g), in an amount equal to (1) in the case of the Class A-1-A Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-1-B Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class B Notes 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class C Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class D Notes, 0.25% of the Aggregate Outstanding amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (6) in the case of the Class E Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"***Extension Bonus Eligibility Certification***": With respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"***Extension Conditions***": The meaning specified in Section 2.4.

"***Extension Determination Date***": The 8th Business Day prior to each Extension Effective Date.

"***Extension Effective Date***": If an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in May 2012).

"***Extension Notice***": The meaning specified in Section 2.4.

"***Extension Purchase Price***": The purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), and (ii) in the case of the Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since the Closing Date would cause such Preference Shares to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return of 12.0% (assuming such purchase date was a Payment Date); provided, however, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares shall be zero.

"***Extension Qualifying Purchasers***": The Servicer (or any of its Affiliates acting as principal or agent); provided that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in Section 2.4(c), "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchasers or any of their Affiliates acting as principal or agent) designated by the Servicer; provided, however, none of the Servicer, the Initial Purchasers or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"***Extension Sale Notice***": The meaning specified in Section 2.4.

"***Extension Sale Notice Period***": The meaning specified in Section 2.4.

"***Extension Sale Securities***": The meaning specified in Section 2.4.

"***Face Amount***": With respect to any Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share.

"***Finance Lease***": A lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"***Financial Asset***": The meaning specified in Section 8-102(a)(9) of the UCC.

"***Financing Statements***": Financing statements relating to the Collateral naming the Issuer as debtor and the Trustee on behalf of the Secured Parties as secured party.

"***Fixed Amount***": With respect to the CDS/TRS Purchaser and each applicable Fixed Rate Payor Calculation Period, the product of (i) the applicable Fixed Rate Payor Calculation Amount with respect to the CDS/TRS Purchaser, (ii) the applicable Fixed Rate with respect to the CDS/TRS

Purchaser and (iii) a fraction the numerator of which is the actual number of days in such Fixed Rate Payor Calculation Period and the denominator of which is 360.

"***Fixed Rate***": With respect to the CDS/TRS Purchaser, the spread over LIBOR of the applicable Note Interest Rate for the Class of Notes held by the CDS/TRS Purchaser with respect to which the CDS/TRS Purchaser has entered into a credit default swap or a total return swap, as the case may be.

"***Fixed Rate Excess***": As of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test; and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date,

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"***Fixed Rate Obligation***": Any Collateral Obligation that bears interest at a fixed rate.

"***Fixed Rate Payor Calculation Amount***": With respect to the CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, the Aggregate Outstanding Amount of the Notes held by the CDS/TRS Purchaser as of the date of purchase of such Notes in an Amendment Buy-Out (in each case, after giving effect to any principal amounts paid to the CDS/TRS Purchaser on such date).

"***Fixed Rate Payor Calculation Period***": With respect to the CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, initially, the period from and including the date of purchase of such Notes in an Amendment Buy-Out to but excluding the immediately succeeding Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; provided that the last Fixed Rate Payor Calculation Period shall end on the May 2011 Payment Date.

"***Floating Rate Notes***": The Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes.

"***Floating Rate Obligation***": Any Collateral Obligation that bears interest based on a floating rate index.

"***Form-Approved Synthetic Security***": A Synthetic Security:

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under this Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A-1-A Notes and the Class A-1-B Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

"***FSA***": The meaning specified in Section 14.3(d).

"***Funded Amount***": With respect to any Revolving Loan or Delayed Drawdown Loan at any time, the aggregate principal amount of advances or other extensions of credit made thereunder by the Issuer that are outstanding and have not been repaid at such time.

"***GAAP***": The meaning specified in Section 6.3(j).

"***Global Notes***": Any Regulation S Global Notes or Rule 144A Global Notes.

"***Grant***": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create, and grant a security interest in and right of setoff against, deposit, set over, and confirm. A Grant of the Pledged Obligations, or of any other instrument, shall include all rights, powers, and options of the granting party thereunder, including the immediate continuing right to claim for, collect, receive, and receipt for principal and interest payments in respect of the Pledged Obligations, and all other monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"***Hedge Agreements***": Collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to Section 15.2.

"***Hedge Counterparty***": Any counterparty, to the extent that when the Issuer enters into any Hedge Agreement with such counterparty, such counterparty satisfies the requirements of Section 15.2(b) (subject to satisfaction of the Rating Condition for each Rating Agency).

"***Hedge Counterparty Collateral Account***": The trust account established pursuant to Section 10.3(d).

"***Hedge Termination Receipt***": Any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"***HFP***": Highland Financial Partners, L.P., an Affiliate of the Servicer.

"***High-Yield Bond***": Any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Holder***": Of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; and of any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share.

"***Important Section 3(c)(7) Reminder Notice***": A notice substantially in the form of Exhibit G-2.

"***Indenture***": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental to this Indenture entered into pursuant to this Indenture, as so supplemented or amended.

"***Indenture Register***": The meaning specified in Section 2.6(a).

"***Indenture Registrar***": The meaning specified in Section 2.6(a).

"***Independent***": As to any person, any other person (including, in the case of an accountant or lawyer, a firm of accountants or lawyers, and any member of the firm, or an investment bank and any member of the bank) who

(i) does not have and is not committed to acquire any material direct or any material indirect financial interest in the person or in any Affiliate of the person, and

(ii) is not connected with the person as an Officer, employee, promoter, underwriter, voting trustee, partner, director, or person performing similar functions.

"Independent" when used with respect to any accountant may include an accountant who audits the books of the person if in addition to satisfying the criteria above the accountant is independent with respect to the person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent person's opinion or certificate is to be furnished to the Trustee, the opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning of this Indenture.

"***Initial Consent Period***": The period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to Section 8.2(b) to the Holders of Securities.

"***Initial Purchasers***": Lehman Brothers Inc. and Lehman Brothers International (Europe).

"***Initial Rating***": The ratings by Moody's and S&P with respect to each Class of Notes provided in the table in Section 2.3(a).

"***Insolvency Event***": With respect to any person, means that:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking:

(A) liquidation, reorganization, or other relief in respect of the person or its debts, or of all or substantially all of its assets, under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, or

(B) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the person or for all or substantially all of its assets,

and, in any such case, the proceeding or petition shall continue undismissed for 30 days; or an order or decree approving or ordering any of the foregoing shall be entered, or

(ii) the person shall:

(A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) above,

(C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or conservator or for all or substantially all of its assets,

(D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or

(E) make a general assignment for the benefit of creditors.

"***Insolvency Proceeding***": The meaning specified in Section 16.4(b).

"***Institutional Accredited Investor***": An institutional accredit investor as defined in clause (1), (2), (3) or (7) of Rule 501(a) under Regulation D under the Securities Act.

"***Instrument***": The meaning specified in Section 9-102(a)(47) of the UCC.

"***Interest Coverage Ratio***": With respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs, minus

(B) amounts payable under clauses (1), (2), (3) and (4) of Section 11.1(a)(i) on the related Payment Date, by:

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

"***Interest Coverage Test***": A test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level in the table below for the specified Class:

Test	Required Level
Class A/B Interest Coverage Test	120.0%
Class C Interest Coverage Test	110.0%
Class D Interest Coverage Test	106.0%
Class E Interest Coverage Test	105.0%

"***Interest Period***": Initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"***Interest Proceeds***": With respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(vii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b);

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period; and

(ix) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation and excluding from such principal balance any deferred interest on Defaulted Collateral Obligations that are PIK Securities).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to Section 11.1(a)(i) will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"***Interest Reserve Account***": The trust account established pursuant to Section 10.3(i).

"***Investment Company Act***": The United States Investment Company Act of 1940, as amended.

"***Irish Paying Agent***": The meaning specified in Section 7.2.

"***Issuer***": The Person named as such on the first page of this Indenture.

"***Issuer Accounts***": The meaning assigned in the Granting Clauses.

"***Issuer Order***" and "***Issuer Request***": A written order or request dated and signed in the name of the Issuer or the Co-Issuer by an Authorized Officer of the Issuer or the Co-Issuer, as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"***Issuer Ordinary Shares***": The ordinary shares, par value $1.00 per share, of the Issuer which have been issued by the Issuer and are outstanding from time to time.

"***Junior Class***": With respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class, as indicated in Section 13.1.

"***Leasing Finance Transaction***": Any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"***LIBOR***": The offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Reuters Screen LIBOR01 Page as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Reuters Screen LIBOR01 Page for the purpose of displaying comparable rates), as of 11:00 A.M. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Reuters Screen LIBOR01 Page as reported on Bloomberg Financial Market Commodities News (or a page that replaces Reuters Screen LIBOR01 Page for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "**Reference Banks**") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which

rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

"***Loan***": Any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits and synthetic letters of credit) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered; or

(ii) issued by an obligor that is not resident in the United States:

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"***Long-Dated Collateral Obligation***": Any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"***Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Margin Stock***": "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"***Market Value***": As of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the preceding paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; provided, that during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to (a) the higher of (i) the S&P Recovery Rate for such Collateral Obligation and the then current S&P Rating of the Class A-1-A Notes and (ii) 70% of the Principal Balance of such Collateral Obligation or (b) if the Servicer has determined in its commercially reasonable judgment that the Market Value of such Collateral Obligation is lower than the amount determined pursuant to clause (a), such amount

to be determined by the Servicer in its commercially reasonable judgment; provided, further, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph shall not apply to determinations of Market Value of any Eligible Equity Securities or Current Pay Obligations.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or this Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in this Indenture.

"***Market Value Determination Date***": With respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"***Market Value Percentage***": For any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation; *by*

(ii) the Principal Balance of the Collateral Obligation.

"***Maturity***": With respect to any Note, the date on which the unpaid principal of the Note becomes payable as provided in the Note or this Indenture, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

"***Maturity Extension***": The meaning specified in Section 2.4.

"***Maximum Amount***": An amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$981,300,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations; *plus*

(B) Cash representing Principal Proceeds on deposit in the Collection Account; *plus*

(C) Eligible Investments (other than Cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"***Maximum Weighted Average Moody's Rating Factor***": As of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable) plus (ii) the Recovery Rate Modifier.

"***Measurement Date***": Any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to Section 10.6; and,

with respect to any distribution of Eligible Equity Securities only,

(vi) that is the Market Value Determination Date with respect to such distribution of Eligible Equity Securities.

"***Memorandum and Articles of Association***": The memorandum and articles of association of the Issuer, as amended and restated before the Closing Date or in accordance with this Indenture.

"***Merging Entity***": The meaning specified in Section 7.10.

"Minimum Diversity Score": As of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"Minimum Weighted Average Spread": As of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"***Monthly Determination Date***": The meaning specified in Section 10.6(a).

"***Monthly Report***": The meaning specified in Section 10.6(a).

"***Moody's***": Moody's Investors Service, Inc.

"***Moody's Default Probability Rating***": The meaning set forth in Schedule 7.

"***Moody's Equivalent Senior Unsecured Rating***": The meaning set forth in Schedule 7.

"***Moody's Group I Country***": Any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"***Moody's Group II Country***": Any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"***Moody's Group III Country***": Any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"***Moody's Industry Classification***": The industry classifications in Schedule 2 as modified, amended, and supplemented from time to time by Moody's.

"***Moody's Minimum Average Recovery Rate***": As of any Measurement Date, a rate equal to the number obtained by:

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate;

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations; and

(iii) rounding up to the first decimal place.

"***Moody's Non Senior Secured Loan***": Any Loan that is not a Moody's Senior Secured Loan.

"***Moody's Obligation Rating***": The meaning set forth in Schedule 7.

"***Moody's Priority Category***": Each type of Collateral Obligation specified in the definition of "Moody's Priority Category Recovery Rate Matrix" as a "Moody's Priority Category."

"***Moody's Priority Category Recovery Rate***": For any Collateral Obligation, the percentage specified in the definition of "Moody's Priority Category Recovery Rate Matrix" opposite the Moody's Priority Category of the Collateral Obligation.

"***Moody's Priority Category Recovery Rate Matrix***":

Moody's Priority Category	**Moody's Priority Category Recovery Rate**
Synthetic Securities	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's, and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations.....	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the Grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below.....	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

"***Moody's Rating***": The meaning set forth in Schedule 7.

"***Moody's Rating Factor***": The number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless (1) there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security, or (2) such Collateral Obligation is a Form-Approved Synthetic Security, in which case the Moody's Rating Factor given to such Collateral Obligation at the time of approval of the Form-Approved Synthetic Security shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Obligation shall be equal to: $\frac{A \times 55\%}{1-B}$,

where: "*A*" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"*B*" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"***Moody's Senior Secured Loan***":

(a) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan;

(ii) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan; and

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral; or

(b) a Loan that:

(i) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (a) above, with respect to the liquidation of such obligor or the collateral for such loan;

(ii) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan;

(iii) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral; and

(iv) has been assigned a Moody's rating equal to or higher than Moody's corporate family rating for such obligor; and

(c) the Loan is not: (i) a DIP Loan, (ii) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (iii) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"***Non-Call Period***": The period from the Closing Date to but not including the Payment Date in May 2011.

"***Non-Consenting Holder***": With respect to any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"***Non-Performing Collateral Obligation***": Any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it, or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3", or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-", the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"***Non-Permitted Holder***": (a) With respect to the Global Notes, a Holder or beneficial owner of an interest in a Global Note that is a U.S. person and (i) not a QIB/QP and that becomes the beneficial owner of an interest in a Rule 144A Global Note or (ii) does not have an exemption available under the Securities Act and (b) with respect to the Class E Notes, a Holder or beneficial owner of an interest in a Class E Note that is not a QIB/QP.

"***Non-Permitted Benefit Plan Investor***": The meaning specified in the second paragraph of Section 2.6(c).

"***Non-qualifying Collateral Obligation***": The meaning specified in Section 12.1(d).

"***Note Break-Even Loss Rate***": With respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A-1-A Notes, the Class A-1-B Notes and the Class B Notes and the ultimate payment of interest on the Class C Notes, the Class D Notes and the Class E Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date <u>minus</u> the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.00%
2	Greater than or equal to 2.90% but less than 3.00%
3	Greater than or equal to 2.80% but less than 2.90%
4	Greater than or equal to 2.70% but less than 2.80%
5	Greater than or equal to 2.60% but less than 2.70%
6	Greater than or equal to 2.50% but less than 2.60%
7	Greater than or equal to 2.40% but less than 2.50%
8	Greater than or equal to 2.30% but less than 2.40%
9	Greater than or equal to 2.20% but less than 2.30%

"***Note Class Loss Differential***": With respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

"***Noteholder***": A Holder of the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes, the Class D Notes or the Class E Notes.

"***Note Interest Rate***": With respect to any specified Class of Notes, the per annum interest rate payable on the Notes of the Class with respect to each Interest Period equal to LIBOR for Eurodollar deposits for the applicable Interest Period plus the spread specified in the "Interest Rate" rows of the tables in Section 2.3 with respect to such Notes except in the first Interest Period.

"***Note Payment Sequence***": The application of funds in the following order:

(1) to the Class A Notes until the Class A Notes have been fully redeemed (provided that amounts allocated to payment of principal of the Class A Notes shall be paid in accordance with the Class A Allocation);

(2) to the Class B Notes until the Class B Notes have been fully redeemed;

(3) to the Class C Notes until the Class C Notes have been fully redeemed;

(4) to the Class D Notes until the Class D Notes have been fully redeemed; and

(5) to the Class E Notes until the Class E Notes have been fully redeemed.

"***Notes***": The Senior Notes and the Class E Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Notice of Refinancing***": The meaning specified in Section 9.7.

"***Objection Cut-Off Date***": The meaning specified in Section 15.1(h)(ii).

"***Offer***": The meaning specified in Section 10.7(c).

"***Offering***": The offering of the Notes.

"***Offering Memorandum***": The final offering memorandum, dated May 30, 2007, prepared and delivered in connection with the offer and sale of the Securities.

"***Officer***": With respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"***Opinion of Counsel***": A written opinion addressed to the Trustee and each Rating Agency, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, of an attorney at law (or law firm with one or more partners) reasonably satisfactory to the Trustee and admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney (or law firm) may, except as otherwise expressly provided in this Indenture, be counsel for the Servicer, the Issuer or the Co-Issuer. Whenever an Opinion of Counsel is required under this Indenture, the Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory, which opinions of other counsel shall accompany the Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency may rely on it. An Opinion of Counsel may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion.

"***Optional Redemption***": A redemption of the Notes in accordance with Section 9.2.

"***Other Indebtedness***": The meaning specified in the definition of "Defaulted Collateral Obligation."

"***Outstanding***": With respect to:

(a) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under this Indenture, except with respect to Notes:

(i) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(ii) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust for their Holders pursuant to Section 4.1(a)(ii) and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to this Indenture;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture; and

(iv) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser; and

(b) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Securities have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, the Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account over which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; provided that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Trustee or the Preference Shares Paying Agent, as applicable, by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares, only Preference Shares that an authorized officer of the Preference Shares Paying Agent) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee or the Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee and the Preference Shares Paying Agent.

"***Overcollateralization Ratio***": With respect to any Class of Notes on any Measurement Date, the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

"***Overcollateralization Ratio Numerator***": On any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations, and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect to Collateral Obligations that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount

determined by using one of the following methods applicable to such type of Collateral Obligation; provided that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the CCC+/Caa1 Excess Market Value Percentage, multiplied by (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

As used in this definition, "***Applicable Collateral Obligation Amount***" for any Non-Performing Collateral Obligation means:

(a) the lesser of:

(x) the Market Value Percentage of the Non-Performing Collateral Obligation; and

(y) the Applicable Percentage for the Non-Performing Collateral Obligation;

multiplied by:

(b) if the Non-Performing Collateral Obligation is:

(1) any Pledged Obligation other than those in clauses (2) through (4) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(2) a Synthetic Security, the notional amount specified in the Synthetic Security;

(3) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(4) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

"***Overcollateralization Test***": A test that is satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the required level for the specified Class indicated in the table below:

Test	Required Level
Class A/B Overcollateralization Test	112.4%
Class C Overcollateralization Test	106.6%
Class D Overcollateralization Test	106.1%
Class E Overcollateralization Test	102.3%

"***Participating Institution***": An institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"***Participation***": A Loan acquired as a participation interest created by a Participating Institution.

"***Paying Agent***": Any Person authorized by the Issuer to pay the principal of or interest on any Notes on behalf of the Issuer as specified in Section 7.2.

"***Payment Account***": The trust account established pursuant to Section 10.3(h).

"***Payment Date***": The first day of February, May, August and November in each year, commencing in November 2007 or, if any such day is not a Business Day, the next following Business Day, any other date on which the Notes are redeemed or paid before their Stated Maturity, and at the Stated Maturity for the Notes.

"***Permitted Offer***": An Offer pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Servicer has determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the Offer.

"***Person***": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"***PIK Cash-Pay Interest***": As to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"***PIK Security***": Any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash, provided that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"***Plan Asset Regulation***": The regulation issued by the United States Department of Labor and found at 29 C.F.R. Section 2510.3-101.

"***Pledged Obligations***": As of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been Granted to the Trustee that form part of the Collateral.

"***Portfolio Improvement Exchange***": The disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"***Pre-Closing Party***": One or more Affiliates of the Initial Purchasers that financed the Issuer's pre-closing acquisition of Collateral Obligations.

"***Preference Share Distribution Account***": A segregated bank account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"***Preference Share Documents***": The Issuer's Memorandum and Articles of Association, the Preference Shares Paying Agency Agreement and the resolutions of the Issuer's board of directors authorizing the issuance of the Preference Shares passed on or before the Closing Date.

"***Preference Share Internal Rate of Return***": With respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"***Preference Shares***": The Class I Preference Shares and the Class II Preference Shares.

"***Preference Shares Notional Amount***": As of the Closing Date, $80,000,000, and thereafter as increased each time additional Preference Shares are issued in accordance with the Preference Share Documents.

"***Preference Shares Paying Agency Agreement***": The Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"***Preference Shares Paying Agent***": Investors Bank & Trust Company, in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor Person.

"***Principal Balance***": With respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in this Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in this Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any Qualified Equity Security and any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"***Principal Proceeds***": With respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"***Priority Class***": With respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class, as indicated in Section 13.1.

"***Priority of Payments***": The meaning specified in Section 11.1(a).

"***Proceeding***": Any suit in equity, action at law, or other judicial or administrative proceeding.

"***Proposed Portfolio***": As of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as Cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"***Purchase Agreement***": A purchase agreement dated May 31, 2007 among the Co-Issuers and the Initial Purchasers, relating to the purchase of the Notes and the Class I Preference Shares, as modified, amended and supplemented and in effect from time to time.

"***Purchase Criteria Adjusted Balance***": For any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; provided, however, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"***Purchase Price***": With respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"***Purchase Price Amount***": With respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"***QIB/QP***": Any Person that, at the time of its acquisition of Notes is both a Qualified Institutional Buyer and a Qualified Purchaser.

"***Qualified Equity Security***": Any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"***Qualified Institutional Buyer***": The meaning specified in Rule 144A under the Securities Act.

"***Qualified Purchaser***": The meaning specified in Section 2(a)(51) of the Investment Company Act and Rule 2a51-2 under the Investment Company Act (including entities owned exclusively by Qualified Purchasers).

"***Ramp-Up Completion Date***": The earlier of:

(i) the Business Day after the 90th day after the Closing Date, and

(ii) the first date on which the following conditions are satisfied:

(x) (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least U.S.$981,300,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Notes (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least U.S.$981,300,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date); and

(y) the Overcollateralization Ratio Numerator is at least U.S.$981,300,000.

"***Ramp-Up Notice***": The meaning specified in Section 7.19(e).

"***Ramp-Up Period***": The period from and including the Closing Date to and including the Ramp-Up Completion Date.

"***Rating Agency***": Each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in

respect of which the replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in this Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"***Rating Condition***": With respect to any Rating Agency and any action taken or to be taken under this Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of this Indenture at any time when no Outstanding Notes are rated by it.

"***Rating Confirmation***": Confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes; *provided* however, that in the case of Refinancing Notes, a Moody's rating will be obtained for such Refinancing Notes and a Rating Confirmation with respect to such Refinancing Notes shall mean (i) with respect to S&P, confirmation in writing from S&P that the rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing and (ii) with respect to Moody's, that the Moody's rating of each Class of Refinancing Notes will be no lower than the rating on each corresponding Class of Notes subject to such Refinancing; *provided further* that if the terms of such Refinancing Notes are the same as the terms of the corresponding Class of Notes subject to Refinancing (other than with respect to the coupon thereof), it is expected that the cost of obtaining such rating from Moody's shall be no more than the cost of obtaining a Rating Confirmation.

"***Rating Confirmation Failure***": The meaning specified in Section 7.19(f) hereof.

"***Ratings Matrix***": The "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score							
Minimum Weighted Average Spread	**55**	**60**	**65**	**70**	**75**	**80**	**85**	**90**
2.20%	**2185**	**2230**	**2275**	**2320**	**2365**	**2395**	**2430**	**2455**
2.30%	**2230**	**2275**	**2320**	**2365**	**2410**	**2445**	**2480**	**2500**
2.40%	**2275**	**2320**	**2365**	**2410**	**2455**	**2490**	**2525**	**2550**
2.50%	**2320**	**2365**	**2410**	**2455**	**2500**	**2535**	**2570**	**2595**
2.60%	**2370**	**2415**	**2460**	**2505**	**2550**	**2585**	**2620**	**2645**
2.70%	**2425**	**2470**	**2515**	**2560**	**2605**	**2640**	**2675**	**2700**
2.80%	**2480**	**2525**	**2570**	**2615**	**2660**	**2695**	**2730**	**2755**
2.90%	**2535**	**2580**	**2625**	**2670**	**2715**	**2750**	**2785**	**2810**
3.00%	**2570**	**2635**	**2680**	**2725**	**2770**	**2805**	**2820**	**2845**
	Maximum Weighted Average Moody's Rating Factor							

"***Recovery Rate Modifier***": As of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate minus the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) multiplied by (b) 100; and

(ii) 40.

"***Record Date***": As to any Payment Date, the 15th day (whether or not a Business Day) before the Payment Date.

"***Redemption Date***": Any Payment Date specified for an Optional Redemption of Notes pursuant to Section 9.2 or the redemption of a Class of Notes in connection with a Refinancing pursuant to Section 9.7.

"***Redemption Price***": With respect to any Note and any Optional Redemption pursuant to Section 9.2(a) or any redemption by Refinancing pursuant to Section 9.7(a), an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed; plus

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest); plus

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note; plus

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption pursuant to Section 9.2(b), "Redemption Price" means (i) at the direction of a Majority of the Preference Shares, the *pro rata* portion for such Preference Share of the entire remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as specified in Section 9.2(b).

"***Reference Obligation***": An obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; provided that no Reference Obligation shall be a Synthetic Security.

"***Refinancing***": The meaning specified in Section 9.7.

"***Refinancing Date***": The meaning specified in Section 9.7.

"***Refinancing Notes***": The meaning specified in Section 9.7.

"***Refinancing Price***": With respect to any Class of Notes that is subject to a Refinancing, an amount equal to the Redemption Price thereof.

"***Refinancing Proceeds***": The proceeds from any refinancing permitted under this Indenture.

"***Reference Obligor***": The obligor of a Reference Obligation.

"***Registered***": With respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the United States Department of the Treasury ("Treasury") regulations promulgated thereunder.

"***Registered Office***": The registered office of the Issuer, which shall be located outside of the United States.

"***Regulation D***": Regulation D under the Securities Act.

"***Regulation S***": Regulation S under the Securities Act.

"***Regulation S Global Note***": The meaning specified in Section 2.2(b).

"***Relevant Obligation***": For a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security and otherwise the Collateral Obligation.

"***Replacement Hedge***": A replacement hedge agreement that qualifies to be a Hedge Agreement under this Indenture.

"***Replacement Period***": The period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency, and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would either be impractical or not beneficial,

(ii) the Payment Date in August 2014 or, in the case of an Extension, the Extended Replacement Period End Date,

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption, and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to Section 5.2(c)).

"***Repository***": The internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association.

"***Required Redemption Percentage***": With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 66⅔% of the Aggregate Outstanding Amount of any Affected Class or at least 66⅔% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

"***Required Rating***": The meaning specified in Section 15.2(b).

"***Retention Overcollateralization Ratio***": As of any Measurement Date, the ratio obtained by dividing:

(i) the Overcollateralization Ratio Numerator *by*

(ii) the Aggregate Outstanding Amount of the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, excluding any Deferred Interest on any Class of Notes.

"***Retention Overcollateralization Test***": A test that is satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 103.3%.

"***Revolving Loan***": A Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its Underlying Instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its Commitment Amount is greater than zero.

"***Revolving Reserve Account***": The trust account established pursuant to Section 10.3(b).

"***Rule 3a-7***": Rule 3a-7 under the Investment Company Act.

"***Rule 144A***": Rule 144A under the Securities Act.

"***Rule 144A Global Note***": The meaning specified in Section 2.2(c).

"***Rule 144A Information***": The meaning specified in Section 7.15.

"***S&P***": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***S&P CDO Monitor***": A dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"***S&P CDO Monitor Test***": A test that is satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations as provided in Section 12.1(a). For purposes of the S&P CDO Monitor Test,

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC-" and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

"**S&P CRR**": With respect to any Collateral Obligation, a corporate recovery rate assigned by S&P to such Collateral Obligation.

"**S&P CRR Recovery Rate**" With respect to any Collateral Obligation to which S&P has assigned a S&P CRR, the recovery rate determined in accordance with the definition of S&P Recovery Rate.

"***S&P Industry Classification***": The S&P Industry Classifications in Schedule 3 as modified, amended, and supplemented from time to time by S&P.

"***S&P Rating***": The meaning set forth in Schedule 7.

"***S&P Rating Confirmation***": Confirmation in writing from S&P that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"***S&P Recovery Rate***": As of any date of determination, with respect to any Collateral Obligation, the percentage for such Collateral Obligation set forth in (x) the applicable table below, (y) the row in such table opposite the S&P CRR (or, if the relevant assets have no S&P CRR, the senior secured recovery rating, the U.S. loan recovery rating or the CDO liability rating, as applicable) of such Collateral Obligation (or, in the case of a Form-Approved Synthetic Security, the Reference Obligation unless otherwise specified by S&P) and (z) the column in such table below the initial S&P Rating of the respective Class of Notes; provided, however that (i) with respect to a DIP Loan or a Synthetic Security (other than a Form-Approved Synthetic Security), the S&P Recovery Rate shall be the recovery rate assigned by S&P and with respect to a Structured Finance Obligation the S&P Recovery Rate shall be the recovery rate determined by reference to Table V or Table VI below, as applicable and (ii) the Issuer or the Servicer may request the assignment of a recovery rate from S&P with respect to any Collateral Obligation, any such assignment by S&P to be in writing (electronic or otherwise).

Table I (if the Collateral Obligation has a S&P CRR): Recovery Rates For Assets With Corporate Recovery Ratings

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
S&P CRR				**(%)**		
1+	100	100	100	100	100	100
1	92	93	94	96	98	100
2	84	86	88	90	92	94
3	60	63	65	69	72	74
4	40	42	44	46	48	48
5	16	17	19	21	23	24

* As of the Closing Date.

Table II (if the Collateral Obligation is a Senior Unsecured Loan and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. Recovery Rates of Corporate Senior Unsecured Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
Senior secured recovery ratings				(%)		
1+	53	55	57	59	61	61
1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	20	20	20	20	20	20
5	10	10	10	10	10	10

* As of the Closing Date.

Table III (if the Collateral Obligation is a subordinated obligation and has no S&P CRR, but other senior secured corporate debt of the same obligor has a S&P CRR): U.S. Recovery Rates of Corporate Subordinated Debt If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
Senior secured recovery ratings				(%)		
1+	25	25	25	25	25	25
1	22	22	22	22	22	22
2	20	20	20	20	20	20
3	20	20	20	20	20	20
4	10	10	10	10	10	10
5	5	5	5	5	5	5

* As of the Closing Date.

Table IV (if none of Table I, Table II or Table III is applicable): S&P's U.S. Tiered Corporate Recovery Rates (for Collateral Obligations that do not have a S&P CRR)

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
U.S. loan recovery rates						
			(%)			
Senior Secured Loans	56	60	64	67	70	70
Senior Unsecured Loans and Second Lien Loans	40	42	44	46	48	48
Subordinated Loans	22	22	22	22	22	22
Senior Secured Notes	48	49	50	51	52	52
Unsecured Bonds	38	41	42	44	45	45
Subordinated Bonds	19	19	19	19	19	19

* As of the Closing Date.

** The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) that, in the aggregate, represent up to 15% of the Maximum Amount will have the S&P Recovery Rate specified for Second Lien Loans in the table above. The Aggregate Principal Balance of all Second Lien Loans without a S&P CRR (excluding any Defaulted Collateral Obligations) in excess of 15% of the Maximum Amount will have the S&P Recovery Rate specified for Subordinated Loans in the table above.

Table V (if the Structured Finance Obligation is the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	80.00%	85.00%	90.00%	90.00%	90.00%	90.00%	90.00%
AA	70.00%	75.00%	85.00%	90.00%	90.00%	90.00%	90.00%
A	60.00%	65.00%	75.00%	85.00%	90.00%	90.00%	90.00%
BBB	50.00%	55.00%	65.00%	75.00%	85.00%	85.00%	85.00%
BB	45.00%	50.00%	55.00%	65.00%	75.00%	75.00%	75.00%
B	25.00%	30.00%	50.00%	55.00%	65.00%	65.00%	50.00%
CCC	0.00%	0.00%	0.00%	0.00%	5.00%	10.00%	10.00%

* As of the Closing Date.

Table VI (if the Structured Finance Obligation is not the senior-most tranche of securities issued by the issuer of, or obligor on, such Structured Finance Obligation): S&P's Ratings of Collateral Obligations at the Date of Issuance

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B	CCC
Recovery Rate by S&P's Rating of Class of Notes on the Applicable Measurement Date							
AAA	65.00%	70.00%	80.00%	85.00%	85.00%	85.00%	85.00%
AA	55.00%	65.00%	75.00%	80.00%	80.00%	80.00%	80.00%
A	40.00%	45.00%	55.00%	65.00%	80.00%	80.00%	80.00%
BBB	30.00%	35.00%	40.00%	45.00%	50.00%	60.00%	70.00%
BB	10.00%	10.00%	10.00%	25.00%	35.00%	40.00%	50.00%
B	2.50%	5.00%	5.00%	10.00%	10.00%	20.00%	25.00%
CCC	0.00%	0.00%	0.00%	0.00%	2.50%	5.00%	5.00%

* As of the Closing Date.

Table VII: European Tiered Corporate Recovery Rates (By Asset Class And CDO Liability Rating)

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Senior secured loans (%)						
Group A	68	73	78	81	85	85
Group B	56	60	64	67	70	70
Group C	48	51	55	57	60	60
Mezz./second-lien/senior unsecured loans (%)						
Group A	45	47	50	52	54	54
Group B	40	42	44	46	48	48
Group C	35	37	39	40	42	42
Subordinated loans (%)						

Group A	20	20	20	20	20	20
Group B	20	20	20	20	20	20
Group C	17	17	17	17	17	17
Senior secured bonds (%)						
Group A	60	61	62	63	64	64
Group B	48	49	50	51	52	52
Group C	43	44	45	46	47	47
Senior unsecured bonds (%)						
Group A	40	42	44	46	48	48
Group B	38	41	42	44	45	45
Group C	32	35	36	38	39	40
Subordinated bonds (%)						
Group A	18	18	18	18	18	18
Group B	18	18	18	18	18	18
Group C	15	15	15	15	15	15

* As of the Closing Date.

** Group A: U.K., Ireland, South Africa, and The Netherlands. Group B: Belgium, Germany, Austria, Spain, Portugal, Luxembourg, Denmark, Sweden, Norway, and Finland. Group C: France, Italy, Greece, and Switzerland.

Table VIII: Group A European Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	**AAA**	**AA**	**A**	**BBB**	**BB**	**B & CCC**
CDO liability rating						
Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	65	68	71	73	76	76
1	57	60	63	65	68	68
2	50	53	55	57	59	59
3	42	45	47	49	51	51
4	18	18	18	18	18	18
5	8	8	8	8	8	8
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4

* As of the Closing Date.

Table IX: Group B European Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	53	55	57	59	61	61
1	48	50	52	54	56	56
2	43	45	47	49	51	51
3	39	41	43	45	47	47
4	18	18	18	18	18	18
5	8	8	8	8	8	8
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	22	22	22	22	22	22
1	20	20	20	20	20	20
2	18	18	18	18	18	18
3	18	18	18	18	18	18
4	9	9	9	9	9	9
5	4	4	4	4	4	4

* As of the Closing Date.

Table X: Group C European Recovery If Senior Secured Debt Has A Recovery Rating

Rating of Class of Notes*	AAA	AA	A	BBB	BB	B & CCC
CDO liability rating						
Mezz. loans/second-lien/senior unsecured loans	**Recovery ratings of senior secured (%)**					
1+	45	46	48	49	51	51
1	41	43	44	46	47	48
2	37	39	41	42	44	44
3	33	36	37	39	40	41

4	16	16	16	16	16	16
5	6	6	6	6	6	6
Subordinated loans	**Recovery ratings of senior secured (%)**					
1+	20	20	20	20	20	20
1	17	17	17	17	17	17
2	15	15	15	15	15	15
3	15	15	15	15	15	15
4	8	8	8	8	8	8
5	3	3	3	3	3	3

* As of the Closing Date.

In all recovery rate tables above, Note rating categories below "AAA" include rating subcategories (for example, the "AA" column also applies to Notes rated "AA+" and "AA-").

"***S&P Unrated DIP Loan***": A DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"***Sale***": The meaning specified in Section 5.17.

"***Sale Proceeds***": All proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"***Schedule of Collateral Obligations***": The Collateral Obligations listed on Schedule 1, which schedule shall include with respect to each listed Collateral Obligation:

(A) the name of the obligor and a unique Loan or other instrument identifier;

(B) the purchase price;

(C) the Principal Balance;

(D) the classification (including whether the Collateral Obligation is a Loan, a High-Yield Bond, a Synthetic Security, a Participation, a Structured Finance Obligation, a Revolving Loan or a Delayed Drawdown Loan);

(E) the funded amount (stated as a percentage) in respect of a Collateral Obligation that is a Revolving Loan or a Delayed Drawdown Loan;

(F) the coupon or spread (as applicable);

(G) the Stated Maturity;

(H) the Moody's Rating;

(I) the S&P Rating; and

(J) the CUSIP and any ISIN, if applicable,

as the schedule may be amended from time to time to reflect the release of Collateral Obligations pursuant to Article 10 and the inclusion of Collateral Obligations as provided in Section 12.2.

"***Scheduled Preference Shares Redemption Date***": August 1, 2022.

"***Second Lien Loan***": A Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan, (ii) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets and (iii) if such Loan does not have an S&P Recovery Rate assigned as part of a credit estimate, so long as such credit estimate is in effect, then, solely for purposes of determining the S&P Recovery Rate for such Loan, in the Servicer's commercially reasonable judgment (with such judgment being made in good faith by the Servicer at the time of such Loan's purchase), the specified collateral for such Loan has a value not less than the outstanding Principal Amount of all debt senior to such Loan plus the S&P Recovery Rate applicable to such Loan, which value may be derived from, among other things, the enterprise value of the issuer of such Loans (provided that the provisions of the clause (iii) may be amended at any time, subject to Rating Confirmation from S&P, or in order to conform to S&P's then-current criteria for such Loans).

"***Secondary Risk Counterparty***": Any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty, and any Securities Lending Counterparty.

"***Secondary Risk Table***": With respect to Moody's, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
Aaa	20.0%	20.0%
Aa1	10.0%	10.0%
Aa2	10.0%	10.0%
Aa3	10.0%	10.0%
A1	5.0%	10.0%
A2 or below	0.0%	0.0%

With respect to S&P, the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty	Individual Counterparty Limit	Aggregate Counterparty Limit
AAA	20.0%	20.0%
AA+/AA/AA-	10.0%	20.0%
A+	5.0%	20.0%
A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"***Section 3(c)(7)***": Section 3(c)(7) of the Investment Company Act.

"***Section 3(c)(7) Reminder Notice***": A notice from the Issuer to the Noteholders (to be delivered in accordance with Sections 10.6(a) and (b)) substantially in the form of Exhibit G-1.

"***Secured High-Yield Bond***": A High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

"***Secured Loan***": A Loan that is secured by a valid and perfected security interest in specified collateral.

"***Secured Obligations***": The meaning specified in the Granting Clauses.

"***Secured Parties***": The meaning specified in the Granting Clauses.

"***Securities***": The Notes and the Preference Shares.

"***Securities Act***": The United States Securities Act of 1933, as amended.

"***Securities Intermediary***": Any clearing corporation or any Person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"***Securities Lending Account***": The trust account established pursuant to Section 10.3(f).

"***Securities Lending Agreements***": The meaning specified in Section 7.18.

"***Securities Lending Collateral***": The meaning specified in Section 7.18.

"***Securities Lending Counterparty***": The meaning specified in Section 7.18.

"***Security Entitlement***": The meaning specified in Section 8-102(a)(17) of the UCC.

"***Selected Collateral Quality Tests***": The Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"***Senior Notes***": The Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes and the Class D Notes authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"***Senior Secured High-Yield Bond***": A Secured High-Yield Bond that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the High-Yield Bond.

"***Senior Secured Loan***": A Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a valid and perfected first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan and that is not a DIP Loan.

"***Senior Servicing Fee***": A fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments. The Senior Servicing Fee shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Senior Unsecured High-Yield Bond***": A High-Yield Bond that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Senior Unsecured Loan***": A Loan that is not a Senior Secured Loan and is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"***Servicer***": Highland Capital Management, L.P., and any successor Servicer pursuant to the Servicing Agreement.

"***Servicing Agreement***": The Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended, and supplemented and in effect from time to time.

"***Servicing Fee Portion***": 100% minus (a) for any Payment Date from the Closing Date until (and including) the Payment Date in February 2008, the Class II Preference Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date; *provided* that, with respect to the Payment Date in May 2008, such percentage shall be a minimum of the product of (i) the Class II Preference Share Percentage for such Payment Date and (ii) 3.3%.

"***Servicing Fees***": Collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"***Share Trustee***": Maples Finance Limited.

"***Share Registrar***": Maples Finance Limited or any successor thereto.

"***Special Redemption***": The meaning specified in Section 9.5.

"***Special Redemption Amount***": The meaning specified in Section 9.5.

"***Special Redemption Date***": The meaning specified in Section 9.5.

"***Spread Excess***": As of any Measurement Date, a fraction whose:

(i) numerator is the product of:

(A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix, and

(B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date, and

(ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"***Stated Maturity***": With respect to any Collateral Obligation, the maturity date specified in it or the applicable Underlying Instrument (or, if earlier, the first date on which any Person may be required by the Issuer to repurchase the entire principal amount of the Collateral Obligation at or above par) and with respect to the Notes of any Class, August 1, 2022 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. Unless otherwise specified, "Stated Maturity" means the Stated Maturity of the Notes.

"***Structured Finance Obligation***": Any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities;"

(G) net interest margin securitizations;

(H) collateralized debt obligations a significant portion of which are backed by bonds; and

(I) obligations secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets where the obligors with respect to such receivables or other assets are non-corporate credit risks; *provided* that, for the avoidance of doubt, collateralized loan obligations shall not be excluded by this clause (I);

(ii) that has an S&P Rating;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"***Subordinated High-Yield Bond***": A Secured High-Yield Bond secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Lien Loan***": A Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"***Subordinated Servicing Fee***": An amount equal to the sum of (i) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments and (ii) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period plus 3.00% per annum. The portion of the Subordinated Servicing Fee in clauses (i) and (ii) above, as applicable, shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

"***Successor Entity***": The meaning specified in Section 7.10.

"***Super Majority***": With respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"***Supplemental Servicing Fee***": On each Payment Date, the fee payable to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if any, available after making the distributions on such Payment Date pursuant to Section 11.1(a)(i)(22) of the Priority of Payments and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to Section 11.1(a)(ii)(12)(A) of the Priority of Payments and, if applicable, Section 11.1(a)(ii)(15) of the Priority of Payments.

"***Synthetic Security***": Any swap transaction, structured bond, credit linked note or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but

excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse Securities (USA) LLC) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "***credit risk***") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

Each Synthetic Security that is a credit default swap the Reference Obligations of which are Loans shall require each such Reference Obligation to be denominated and payable in U.S. Dollars.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security may require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in this Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under this Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event" and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event."

No Synthetic Security shall provide for termination by the Synthetic Security Counterparty at any time (i) after a declaration of acceleration of Maturity of the Notes has been made upon the occurrence of an Event of Default, unless such declaration and its consequences may no longer be

rescinded and annulled in accordance with Section 5.2(c) and liquidation of the Collateral has begun or (ii) upon an Optional Redemption, unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of this Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than five days' prior notice of the purchase of or entry into any Synthetic Security.

"***Synthetic Security Agreement***": The documentation governing any Synthetic Security.

"***Synthetic Security Collateral***": With respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments that mature no later

than the Stated Maturity or (ii) floating rate credit card securitizations that are rated "Aaa" by Moody's and "AAA" by S&P that mature no later than the Stated Maturity in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral; *provided* that any amounts described in clause (ii) above shall be hedged by a guaranteed investment contract or a total return swap which shall be subject to Rating Confirmation by S&P.

"***Synthetic Security Collateral Account***": The trust account established pursuant to Section 10.3(e).

"***Synthetic Security Counterparty***": An entity required to make payments on a Synthetic Security to the extent that a Reference Obligor makes payments on a related Reference Obligation.

"***Synthetic Security Counterparty Account***": The trust account established pursuant to Section 10.5.

"***Tax Advantaged Jurisdiction***": One of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto; provided that any Tax Advantaged Jurisdiction that is the jurisdiction of organization of an obligor of a Collateral Obligation other than obligors that are special purpose vehicles or issuers of Structured Finance Obligations shall have a Moody's foreign currency rating of at least "Aa2" and a S&P foreign currency rating of at least "AA-".

"***Tax Event***": An event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax ("***New Withholding Tax Obligations***") or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them ("***Increased Rate Withholding Tax Obligations***") and (B) in any Due Period, the aggregate of the payments subject to withholding tax on New Withholding Tax Obligations and the increase in payments subject to withholding tax on Increased Rate Withholding Tax Obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period; or

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S.$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation.

"***Tax Opinion of Counsel***": A written opinion addressed to the Issuer (a copy of which will be provided to the Trustee) and, if requested, each Rating Agency that has made such request, in form and substance reasonably satisfactory to the Trustee and each Rating Agency, issued by a nationally recognized law firm reasonably satisfactory to the Trustee, which law firm is experienced in the relevant areas of tax law, and which law firm may be counsel for the Servicer or the Issuer.

"***Transaction Reports***": The meaning specified in Section 14.4.

"***Transfer Agent***": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"***Transferee Certificate***": A certificate substantially in the form of, with respect to the Senior Notes, Exhibit B-1 or, with respect to the Class E Notes, Exhibit B-4 attached hereto, duly completed as appropriate.

"***Treasury Regulations***": The regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"***Trust Officer***": When used with respect to the Trustee, any officer in the Corporate Trust Office (or any successor group of the Trustee) including any director, vice president, assistant vice president, associate, or any other officer of the Trustee customarily performing functions similar to those performed by such officers in the Corporate Trust Office, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"***Trustee***": As defined in the first sentence of this Indenture.

"***UCC***": The Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"***Uncertificated Security***": The meaning specified in Section 8-102(a)(18) of the UCC.

"***Underlying Instrument***": The loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"***Unfunded Amount***": With respect to any Revolving Loan or any Delayed Drawdown Loan at any time, the excess, if any, of (a) the Commitment Amount over (b) the Funded Amount thereof.

"***Unregistered Securities***": The meaning specified in Section 5.17(c).

"***Unscheduled Principal Payments***": Any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"***U.S. Person***": A beneficial owner of a Security that is, for U.S. federal income tax purposes, a citizen or individual resident of the United States of America, an entity treated for United States federal income tax purposes as a corporation or a partnership created or organized in or under the laws of the United States of America or any state thereof or the District of Columbia, an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source, or a trust if, in general, a court within the United States of America is able to exercise primary supervision over its administration and one or more U.S. Persons have the authority to control all substantial decisions of such trust, and certain eligible trusts that have elected to be treated as U.S. Persons.

"***Valuation Report***": The meaning specified in Section 10.6(b).

"***Weighted Average Fixed Rate Coupon***": As of any Measurement Date, the rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor);

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"***Weighted Average Fixed Rate Coupon Test***": A test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

"***Weighted Average Life***": As of any Measurement Date, the number obtained by

(i) summing the products obtained by multiplying

(A) the Average Life at that time of each Collateral Obligation by

(B) the Principal Balance at that time of the Collateral Obligation and

(ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"***Weighted Average Life Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and August 1, 2017 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 3 years.

"***Weighted Average Moody's Rating Factor***": The summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"***Weighted Average Moody's Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 43.3%.

"***Weighted Average Rating Factor Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

"***Weighted Average S&P Recovery Rate Test***": A test that is satisfied as of any Measurement Date if the S&P Recovery Rate for each Class of Notes is greater than or equal to: (i) with respect to the Class A Notes, 63.0%; (ii) with respect to the Class B Notes, 65.0%; (iii) with respect to the Class C Notes, 67.0%; (iv) with respect to the Class D Notes, 69.0% and (v) with respect to the Class E Notes, 72.0%.

"***Weighted Average Spread***": As of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (w) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero, (x) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto, (y) for any Revolving Loan or Delayed Draw Loan, will be the per annum contract spread for the Funded Amount thereof and the rate of the commitment fee and such other fees payable to the Issuer for any Unfunded Amount thereof and (z) for any synthetic letter of credit, will be the all-in rate (including any fees payable to the Issuer by the underlying obligor) minus the applicable LIBOR), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR;

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

"***Weighted Average Spread Test***": A test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

"***Workout Assets***": A Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"***Written-Down Obligation***": As of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"***Zero-Coupon Security***": A security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

Section 1.2. ***Assumptions as to Pledged Obligations; Construction Conventions.***

This Section 1.2 shall be applied in connection with all calculations required to be made pursuant to this Indenture:

- with respect to the scheduled payment of principal or interest on any Pledged Obligation, or any payments on any other assets included in the Collateral,
- with respect to the sale of and acquisition of Collateral Obligations,
- with respect to the income that can be earned on the scheduled payment of principal or interest on the Pledged Obligations and on any other amounts that may be received for deposit in the Collection Account, and
- with respect to the treatment of Collateral Obligations loaned pursuant to a Securities Lending Agreement.

The provisions of this Section 1.2 shall be applicable to any determination or calculation that is covered by this Section 1.2, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) All calculations with respect to the scheduled payment of principal or interest on the Pledged Obligations shall be made on the basis of information as to the terms of each Pledged Obligation and on reports of payments received on the Pledged Obligation that are furnished by or on behalf of the issuer of the Pledged Obligation and, to the extent they are not manifestly in error, the information or report may be conclusively relied on in making the calculations.

(b) For each Due Period and as of any Measurement Date, the scheduled payment of principal or interest on any Pledged Obligation shall be the sum of

(i) the total amount of payments and collections reasonably expected to be received during the Due Period in respect of the Pledged Obligation that, if paid as scheduled, will be available for payment on the Notes and of certain expenses of the Issuer and the Co-Issuer in the Collection Account at the end of the Due Period; and

(ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date.

Except as provided in paragraph (h) below, a Non-Performing Collateral Obligation shall be assumed to have a scheduled payment of principal and interest of zero.

The total amount of payments and collections reasonably expected to be received includes the proceeds of the sale of the Pledged Obligation received and, in the case of sales which have not yet settled, to be received during the Due Period and not used to purchase additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty, Securities Lending Counterparty, or Hedge Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security, Securities Lending Agreement, or Hedge Agreement) or Eligible Investments or retained in the Collection Account for subsequent application thereof to purchase additional Collateral Obligations pursuant to Section 12.2.

(c) For purposes of the applicable determinations required by Article 12 and the definition of "Interest Coverage Ratio," the expected interest on Collateral Obligations shall be calculated using their then current interest rates.

(d) With respect to any Collateral Obligation, the date on which it "matures" (or its "maturity" date) shall be the earlier of

(i) the stated maturity of the obligation or

(ii) if the Issuer has the right to require the issuer or obligor of the Collateral Obligation to purchase, redeem, or retire the Collateral Obligation at a price of at least par on any one or more dates before its Stated Maturity (a "put right") and the Servicer certifies to the Trustee that it will cause the Issuer to direct the Trustee to exercise the put right on a date, the maturity date shall be the date specified in the certification.

(e) For purposes of calculating compliance with the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), the Coverage Tests, and the Retention Overcollateralization Test and all related definitions, unless otherwise specified in this Indenture a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the Reference Obligation. For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in this Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligations.

(f) Any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Collateral Quality Tests, the Coverage Tests, and the Retention Overcollateralization Test and the Principal Balance of any Collateral Obligation loaned to a Securities Lending Counterparty shall be included in the Aggregate Principal Balance of Collateral Obligations, in each case unless an "event of default" (under and as defined in the related Securities Lending Agreement) is continuing.

(g) If a Class of Notes ceases to be Outstanding, then any Coverage Test computed by reference to the Class of Notes (but not to any subordinate Class of Notes then Outstanding) shall cease to be of any force.

(h) For purposes of calculating compliance with the Eligibility Criteria (other than the Weighted Average Life Test), at the direction of the Servicer by notice to the Trustee, during the Replacement Period any Eligible Investment representing Principal Proceeds received upon the maturity, redemption, sale, or other disposition of a Collateral Obligation (or, after the Replacement Period, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) shall be deemed to have the characteristics of the disposed Collateral Obligation until used to purchase an additional Collateral Obligation. The calculations shall be based on the Principal Balance of the disposed Collateral Obligations except in the case of Defaulted Collateral Obligations and Credit Risk Securities, in which case the calculations will be based on the Principal Proceeds received on the disposition or sale of the Defaulted Collateral Obligation or Credit Risk Obligation.

(i) The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

Section 1.3. ***Rules of Interpretation.***

Except as otherwise expressly provided in this Indenture or unless the context clearly requires otherwise:

(a) Defined terms include, as appropriate, all genders and the plural as well as the singular.

(b) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Indenture, such as "Section 6.13 (a)", refer to the designated article, section, subsection, exhibit, or other subdivision of this Indenture as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein", "hereof", "hereto", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular article, section, exhibit, or other subdivision of this Indenture.

(c) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Indenture. References to law are not limited to statutes. Any reference to any Person includes references to its successors and assigns.

(d) Any party may execute any of the requirements under this Indenture either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Indenture. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Indenture are implicitly available and things may happen from time to time.

(e) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either", the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both", not "either A or B but not both").

(f) A reference to "a thing" or "any of a thing" does not imply the existence or occurrence of the thing referred to even though not followed by "if any", and "any of a thing" is any and all of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until something occurs" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably. The word "shall" is used in its imperative sense, as for instance meaning a party agrees to something or something must occur or exist.

(g) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Indenture, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Indenture shall control.

(h) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including", the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding", and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "on or before." The words "preceding", "following", "before", "after", "next" and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(i) Any reference to the enforceability of any agreement against a party means that it is enforceable against the party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) Except when only the registered holder is recognized, such as in Section 2.9., references to Noteholders, holders, and the like refer equally to beneficial owners who have an interest in a Note but are not reflected in the Indenture Register as the owner.

ARTICLE 2

THE NOTES

Section 2.1. ***Forms Generally.***

The Notes and the Trustee's or Authenticating Agent's certificate of authentication on them (the "***Certificate of Authentication***") shall be in substantially the forms required by this Article, with appropriate insertions, omissions, substitutions, and other variations required or permitted by this Indenture, and may have any letters, numbers, or other marks of identification and any legends or endorsements on them that are consistent with this Indenture, as determined by the Authorized Officers of the Issuer executing the Notes as evidenced by their execution of the Notes.

Section 2.2. ***Forms of Notes and Certificate of Authentication.***

(a) The Senior Notes, including the Regulation S Global Notes, Rule 144A Global Notes and Certificate of Authentication, shall be in the forms of the applicable portion of Exhibit A-1.

(b) *Regulation S Global Notes*. The Senior Notes of each Class sold to non-U.S. persons in off-shore transactions in reliance on Regulation S shall each be represented by one or more global notes in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (the "***Regulation S Global Notes***"). The global notes shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository for the respective accounts of Euroclear and Clearstream, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter

provided. As used above and in subsection (d) below, "U.S. person" and "off-shore transaction" have the meanings assigned to them in Regulation S.

(c) *Rule 144A Global Notes.* The Senior Notes of each Class initially sold to U.S. persons that are Qualified Institutional Buyers (or, solely in the case of certain Holders purchasing Class E Notes on the Closing Date, Institutional Accredited Investors) and Qualified Purchasers shall each be issued initially in the form of one permanent global note per Class in definitive, fully registered form without interest coupons substantially in the form of the applicable portion of Exhibit A-1, including legends (each, a "***Rule 144A Global Note***"), which shall be deposited on behalf of the subscribers for the Senior Notes represented thereby with the Trustee as custodian for, and registered in the name of a nominee of, the Depository, duly executed by the Applicable Issuers and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(d) *Book-Entry Provisions.* This Section 2.2(d) shall apply only to Global Notes deposited with or on behalf of the Depository. The "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Regulation S Global Notes insofar as interests in the Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Trustee, as custodian for the Depository and the Depository may be treated by the Co-Issuers, the Trustee, and any agent of the Co-Issuers or the Trustee as the absolute owner of the Senior Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Co-Issuers, the Trustee, or any agent of the Co-Issuers or the Trustee, from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Senior Note.

(e) The Class E Notes shall be issued in the form of one or more certificated Class E Notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit A-2, including legends (each, a "***Certificated Class E Note***"), which shall be registered in the name of the owner thereof.

Section 2.3. ***Authorized Amount; Denominations.***

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to U.S.$920,000,000, except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.6, 2.7, or 8.5.

(b) The Notes shall be divided into the following Classes, having the designations, original principal amounts and other characteristics as follows:

Class	A-1-A	A-1-B	B	C	D	E
Original Principal Amount	$570,500,000	$142,500,000	$80,000,000	$53,500,000	$36,000,000	$37,500,000
Interest Rate	LIBOR + 0.225%	LIBOR + 0.340%	LIBOR + 0.440%	LIBOR + 0.850%	LIBOR + 2.350%	LIBOR + 4.300%
Initial Rating (Moody's/S&P)	Aaa/AAA	Aaa/AAA	Aa2/AA	A2/A	Baa2/BBB	Ba2/BB

(c) The Notes will be issuable in minimum denominations of U.S.$250,000, and integral multiples of U.S.$1,000 in excess of that amount.

(d) The Issuer will also issue 39,000 Class I Preference Shares and 41,000 Class II Preference Shares pursuant to the Preference Share Documents, simultaneously with the issuance of the Notes under this Indenture. At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and this Indenture pursuant to Section 6 of the Preference Shares Paying Agency Agreement. The Preference Shares are not secured by the lien of this Indenture. Any payments made by the Trustee hereunder with respect to the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) will be released by the Trustee to the Preference Shares Paying Agent on each Payment Date in accordance with the Priority of Payments for deposit into the Preference Shares Distribution Account for payment, subject to Cayman Islands law, to Holders of the Preference Shares as dividends or Redemption Price, as applicable.

Section 2.4. ***Extension of Replacement Period and Stated Maturity.***

(a) The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date in accordance with this Section 2.4 and (ii) the Extension Conditions set forth in Section 2.4(c) are satisfied and the Issuer has given written notice of its election to extend the Replacement Period to the Trustee no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Notes or Preference Shares or amendment or supplement to this Indenture or the Preference Share Documents (the "***Maturity Extension***"); provided that the Issuer will not be permitted to effect more than four Maturity Extensions.

(b) In the case of a Maturity Extension, any Holder of Securities wishing to sell such Securities to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to Section 2.4(d) (such Securities as to which an Extension Sale Notice has been duly given, "***Extension Sale Securities***"). Notwithstanding anything to the contrary herein, in connection with an Extension Sale, all, but not part, of the Extension Sale Securities shall be purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date.

(c) The Maturity Extension shall be effective only if the following conditions (the "***Extension Conditions***") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions in this Indenture and the Preference Share Documents immediately after such purchase and the legends on such Extension Sale Securities and all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) the Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

The Issuer, the Trustee and, by its acceptance of the Notes, each Noteholder agrees that neither of the Initial Purchasers shall be responsible for causing the Extension Conditions to be satisfied and neither of the Initial Purchasers shall be liable to any such Person or Noteholders (whether or not such Holder gave an Extension Sale Notice with respect to its Notes) or to any other Person if the Extension Conditions are not satisfied. Failure of the Extension Conditions to be satisfied shall not constitute a Default or Event of Default under this Indenture.

(d) Extension Procedure.

(i) Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the "***Extension Notice***"), the Trustee shall mail the Extension Notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form of Exhibit I, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable;

(ii) Any Holder of the Securities may deliver an irrevocable notice (an "***Extension Sale Notice***") to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the "***Extension Sale Notice Period***") of its intention to sell all or a portion of its Securities to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of the Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities to an Extension Qualifying Purchaser in connection with the Maturity Extension; and

(iii) If clause (iii)(b) of the Extension Conditions is not satisfied as of the applicable Extension Determination Date as determined by the Issuer (or its agent), the Trustee shall request the Rating Condition to be satisfied with respect to Moody's.

(e) On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in this Indenture and the Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (c)(iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

(f) On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of this Indenture; provided that all Extension Conditions set forth in clauses (a) and (c) above are satisfied (as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer in consultation with the Servicer, at the expense of the Co-Issuers, shall mail a notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Initial Purchasers, each Rating Agency (so long as any rated Notes are Outstanding) and the Irish Stock Exchange (if and for so long as any Class of Senior Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depository for any Notes subject to the Maturity Extension.

(g) In the case of a Maturity Extension, each Noteholder, other than a Holder of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including each Extension Effective Date on which funds are available to be used for such purposes in accordance with Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

(h) If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, such Holder will sell such Class II Preference Shares to the Extension Qualifying Purchaser and such Preference Shares will be redesignated as Class I Preference Shares.

Section 2.5. ***Execution, Authentication, Delivery, and Dating.***

The Notes shall be executed on behalf of each of the Applicable Issuers by one of their respective Authorized Officers. The signature of the Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer, as applicable, shall bind the Issuer and the Co-Issuer, notwithstanding that any of them have ceased to hold their offices before the authentication and delivery of the Notes or did not hold their offices at the date of issuance of the Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Co-Issuers may deliver the Senior Notes and the Issuer may deliver the Class E Notes, in each case executed by the Applicable Issuers to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver the Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange, or replacement of other Notes shall be issued in authorized denominations reflecting the original Aggregate Outstanding Amount of the Notes so transferred, exchanged, or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged, or replaced. If any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of the Note shall be proportionately divided among the Notes delivered in exchange for it and shall be the original aggregate principal amount of the subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on the Note a Certificate of Authentication executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and that certificate on any Note shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated and delivered under this Indenture.

Section 2.6. ***Registration, Registration of Transfer and Exchange.***

(a) The Issuer shall cause a register (the "***Indenture Register***") to be kept in which the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "***Indenture Registrar***" for the purpose of registering Notes and transfers of the Notes as provided in this Indenture. The Issuer may rely conclusively on any such information provided to it by the Trustee. Upon any resignation or removal of the Indenture Registrar, the Issuer shall promptly appoint a successor and notify the Servicer of the appointment or, in the absence of such appointment, assume the duties of Indenture Registrar.

If the Issuer appoints a Person other than the Trustee to be Indenture Registrar, the Issuer will give the Trustee prompt written notice of the appointment of the Indenture Registrar and of the location, and any change in the location, of the Indenture Register. The Trustee may inspect the Indenture Register at all reasonable times and obtain copies of it. The Trustee may rely on a certificate executed on behalf of the Indenture Registrar by an Officer of the Indenture Registrar as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Notes at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2, if the requirements of this Indenture are met the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferees, new Notes of any authorized denomination and of a like original Aggregate Outstanding Amount.

At the option of their Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at the office or agency of the Applicable Issuers to be maintained pursuant to Section 7.2. Whenever any Note is surrendered for exchange, the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued on any registration of transfer or exchange of Notes shall be the valid obligations of the Applicable Issuers evidencing the same obligations and entitled to the same benefits under this Indenture as the Notes surrendered for registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Registrar duly executed by its holder or his attorney duly authorized in writing.

No Holder shall incur a service charge for any registration of transfer or exchange of the Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(b) No Note may be sold or transferred (including by pledge or hypothecation) unless the sale or transfer is exempt from the registration requirements of the Securities Act, is exempt from the registration requirements under applicable state securities laws, and will not cause either of the Co-Issuers to become subject to the requirement that it register as an investment company under the Investment Company Act. None of the Co-Issuers, the Trustee or any other Person shall have any obligation to register the Notes under the Securities Act or any state securities laws.

(c) (i) No Note or interest therein may be transferred to any purchaser or transferee unless such purchase, holding and disposition of such Note will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, foreign or local law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code).

(ii) No person shall be permitted to acquire any Class E Note if such acquisition would result in persons who have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of the Class E Notes immediately after such sale or transfer (excluding, as described below, for purposes of such determination any Class E Notes held by any Controlling Person (as defined below) and its affiliates (as defined below)) determined in accordance with Section 3(42) of ERISA. Under the Plan Asset Regulation, an "affiliate" of a person includes any person, directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person, and "control" with respect to a person other than an individual, means the power to exercise a controlling influence over the management or policies of such person. In making the 25% determination, Class E Notes held by any person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuer or a person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Issuer or any affiliate of any such person (any such person, a "***Controlling Person***") (such as the Class E Notes held by the Servicer or its affiliates) will be disregarded and not treated as outstanding.

(iii) Any person described in paragraph (i) and (ii) above is referred to herein as a "***Non-Permitted Benefit Plan Investor***." Any transfer of a beneficial interest to a Non-Permitted Benefit Plan Investor shall be void and any such purported transfer of which the

Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(d) None of the Trustee, the Share Registrar or the Indenture Registrar shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or the Investment Company Act; except that if a certificate or any other document is specifically required by this Section 2.6 to be provided to the Trustee or such Registrar by a prospective transferee, the Trustee and such Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section 2.6.

(e) For so long as any of the Notes are Outstanding, the Issuer shall not issue or register the transfer of any Issuer Ordinary Shares to U.S. persons and the Co-Issuer shall not issue or register the transfer of any of its shares of the Co-Issuer to U.S. persons. As used in this subsection (e), "U.S. person" has the meaning assigned to it in Regulation S.

(f) So long as a Global Note remains Outstanding and is held by or on behalf of the Depository, transfers of the Global Note, in whole or in part, shall only be made in accordance with Section 2.2(c), Section 2.6(c) and this Section 2.6(f).

(i) Subject to clauses (ii), (iii) and (iv) of this Section 2.6(f), transfers of a Global Note shall be limited to transfers of the Global Note in whole, but not in part, to nominees of the Depository.

(ii) *Rule 144A Global Note to Regulation S Global Note.* If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange its interest in the Rule 144A Global Note for an interest in the corresponding Regulation S Global Note, or to transfer its interest in the Rule 144A Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Regulation S Global Note, the Holder may exchange or transfer the interest for an equivalent beneficial interest in the corresponding Regulation S Global Note (subject to the rules and procedures of the Depository) if the Holder after the exchange or transfer is not a U.S. person.

The Indenture Registrar shall instruct the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, and to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note upon receipt by the Indenture Registrar of

(A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Indenture Registrar to credit a beneficial interest in the corresponding Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred,

(B) a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with the increase,

(C) a certificate in the form of Exhibit B-3 given by the Holder of the beneficial interest stating that the exchange or transfer of the interest has been made in compliance with the transfer restrictions applicable to the Global Notes, including that the Holder or the transferee, as applicable, is not a U.S. person, and that the transfer has been made pursuant to and in accordance with Regulation S, and

(D) in the case of a transfer, a certificate in the applicable form of Exhibit B-1 given by the proposed transferee stating that it is not a U.S. person.

(iii) *Regulation S Global Note to Rule 144A Global Note.* If a Holder of a Senior Note held as a beneficial interest in a Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in the Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in the Regulation S Global Note to a Person who wishes to take delivery of it in the form of an interest in the corresponding Rule 144A Global Note, the Holder may, subject to the rules and procedures of Euroclear, Clearstream or the Depository, as the case may be, exchange or transfer, or cause the exchange or transfer of, the interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Indenture Registrar of:

(A) instructions from Euroclear, Clearstream or the Depository, as the case may be, directing the Indenture Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note, but not less than the minimum denomination applicable to the Holder's Senior Notes, to be exchanged or transferred, the instructions to contain information regarding the participant account with the Depository to be credited with the increase,

(B) a certificate in the form of Exhibit B-2 given by the Holder of the beneficial interest and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and a Qualified Purchaser or, in the case of a transfer, the Person transferring the interest in the Regulation S Global Note reasonably believes that the Person acquiring the interest in a Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining the beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, and a Qualified Purchaser, and

(C) a certificate in the form of Exhibit B-1 given by the proposed transferee stating that it is a QIB/QP,

the Indenture Registrar shall instruct the Depository to reduce the Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Regulation S Global Note to be transferred or exchanged and the Indenture Registrar shall instruct the Depository, concurrently with the reduction, to credit to the securities account of the Person specified in the instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the principal amount of the Regulation S Global Note.

(iv) *Other Exchanges.* If a Global Note is exchanged for Senior Notes in definitive registered form without interest coupons pursuant to Section 2.11, the Senior Notes may be exchanged for one another only in accordance with procedures substantially consistent with the provisions above (including certification requirements intended to insure

that the transfers are made only to Holders who are QIB/QPs or non-U.S. persons, or otherwise comply with Regulation S, as the case may be), and as may be from time to time adopted by the Co-Issuers and the Trustee.

(g) So long as the Class E Notes remain Outstanding transfers of such Class E Notes shall only be made in accordance with Section 2.6(c) and this Section 2.6(g) upon receipt by the Indenture Registrar of a certificate in the form of Exhibit B-4 given by the proposed transferee stating that it is a QIB/QP and containing other representations, warranties and agreements of such transferee.

(h) If the Notes are issued upon the transfer, exchange, or replacement of Notes bearing the applicable legends in the applicable forms in Exhibit A, as applicable, and if a request is made to remove the legend on the Notes, the legend shall not be removed unless the Trustee and the Applicable Issuers received satisfactory evidence, which may include an Opinion of Counsel acceptable to them, reasonably required by the Applicable Issuers (and which shall by its terms permit reliance by the Trustee), to the effect that neither the legend nor the restrictions on transfer in it are required to ensure that transfers of the Notes comply with the Securities Act, the Investment Company Act, ERISA and the Code. Upon provision of satisfactory evidence, the Trustee or its Authenticating Agent, at the written direction of the Applicable Issuers shall, after due execution by the Applicable Issuers authenticate and deliver Notes that do not bear the applicable legend.

(i) Notwithstanding anything contained in this Section 2.6 to the contrary:

(i) Restrictions on U.S. Transfers. Transfers of an interest in a Regulation S Global Note that are not made in an offshore transaction pursuant to Regulation S or are made to U.S. Persons, if such transferees take delivery in the form of an interest in a Rule 144A Global Note, shall be limited to transfers made pursuant to the provisions of Section 2.6(f)(iii) and Section 2.6(f)(iv).

(ii) Beneficial interests in a Regulation S Global Note may only be held through Euroclear or Clearstream.

(j) (i) Each Person who becomes a beneficial owner of a Senior Note evidenced by: (A) an interest in a Definitive Note, shall make the representations, warranties and agreements set forth in the applicable Transferee Certificate set forth in Exhibit B-1 upon such Person's purchase or other acquisition of the relevant Definitive Note and (B) an interest in a Global Note, shall be deemed to make the representations, warranties and agreements set forth in the applicable legends of the Notes set forth in Exhibit A-1 hereto and in the applicable Transferee Certificate set forth in Exhibit B-1 hereto upon such Person's purchase or other acquisition of the relevant Global Note.

(ii) Each Person who becomes a beneficial owner of a Class E Note shall make the representations, warranties and agreements set forth in the Transferee Certificate set forth in Exhibit B-4 upon such Person's purchase or other acquisition of such Class E Note.

(k) The aggregate principal amount of any Global Note may be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC for the Global Note, which adjustments shall be conclusive as to the aggregate principal amount of any Global Note.

(l) Any purported transfer of a Note not in accordance with this Section 2.6 shall be null and void.

Section 2.7. ***Mutilated, Destroyed, Lost or Stolen Notes.***

If the Applicable Issuers, the Trustee, and the relevant Transfer Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and they receive the security or indemnity they require to hold each of them harmless, or if any mutilated Note is surrendered to a Transfer Agent, then, in the absence of notice to the Applicable Issuers, the Trustee, or the Transfer Agent that the Note has been acquired by a protected purchaser, the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, in exchange for the mutilated, destroyed, lost, or stolen Note, a replacement Note, of like tenor and equal principal or face amount.

If, after delivery of the replacement Note or payment on it, a protected purchaser of the predecessor Note presents it for payment, transfer, or exchange, the Applicable Issuers, the Transfer Agent, and the Trustee may recover the replacement Note (or the payment on it) from the Person to whom it was delivered or any Person taking the replacement Note from the Person to whom the replacement Note was delivered or any assignee of that Person, except a protected purchaser, and may recover on the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Applicable Issuers, the Trustee, and the Transfer Agent in connection with it.

If the final payment in respect of any mutilated, destroyed, lost, or stolen Note has become payable, the Applicable Issuers in their discretion may, instead of issuing a new Note pay the Note without requiring its surrender except that any mutilated Note shall be surrendered.

Upon the issuance of any new Note under this Section, the Applicable Issuers or the Trustee may require the payment by its holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance and any other expenses (including the fees and expenses of the Trustee) connected with it.

Every new Note issued pursuant to this Section in replacement for any mutilated, destroyed, lost, or stolen Note shall be an original additional contractual obligation of the Applicable Issuers and the new Note shall be entitled to all the benefits of this Indenture equally and proportionately with all other Notes of the same Class duly issued under this Indenture, as applicable.

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

Section 2.8. ***Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved; Withholding.***

(a) The Notes of each Class shall accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the Applicable Note Interest Rate. Interest shall be payable in arrears on each Payment Date. Payment of interest on each Class of Notes shall be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on the Class of Deferred Interest Notes that is not available to be paid ("***Deferred Interest***") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of this Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of

Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest, until paid as provided in this Indenture).

(b) The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. Notwithstanding the foregoing, the payment of principal of each Class of Notes:

(i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full; and

(ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments;

provided that, notwithstanding the foregoing, Interest Proceeds may be used to pay principal of the Class E Notes on any Payment Date to the extent necessary to satisfy the Class E Coverage Tests.

(c) Principal payments on the Notes shall be made in accordance with the Priority of Payments and Section 9.1.

(d) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Paying Agent shall require the previous delivery of appropriate properly completed and signed original forms United States federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or applicable successor form) in the case of a Person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or applicable successor form) in the case of a Person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, and any Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments on the Note under any present or future law of the United States or any present or future law of any political subdivision of the United States or taxing authority in the United States or to comply with any reporting or other requirements under any such law.

(e) Payments in respect of interest on and principal of any Note shall be made by the Trustee, or by the Irish Paying Agent, if applicable, in U.S. Dollars to the Depository or its designee with respect to a Global Note and to the Holder or its nominee with respect to a Definitive Note and a Class E Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. Dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Definitive Note and a Class E Note. In the case of a Definitive Note and a Class E Note, its Holder has provided written wiring instructions to the

Trustee and, if the payment with respect to a Definitive Note is to be made by the Irish Paying Agent, the Irish Paying Agent, on or before the related Record Date.

If appropriate instructions for the wire transfer are not received by the related Record Date, then the payment will be made by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register. Upon final payment due on the Maturity of a Note, its Holder shall present and surrender the Note at the office designated by the Trustee on or before the Maturity. If the Trustee and the Applicable Issuers have been furnished the security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Applicable Issuers or the Trustee that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Neither the Co-Issuers, the Trustee, the Share Registrar nor any Paying Agent shall have any responsibility or liability for any aspects of the records maintained by Euroclear, Clearstream, or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

In the case where any final payment of principal and interest is to be made on any Note (other than on its Stated Maturity and except as otherwise provided in this Indenture), the Trustee, in the name and at the expense of the Applicable Issuers shall, not more than 30 nor less than 10 days before the date on which the payment is to be made, mail (by first-class mail, postage prepaid) to the Persons entitled thereto at their addresses appearing on the Indenture Register, a notice specifying the date on which the payment will be made, the amount of the payment per U.S.$100,000 original principal amount of Notes and the place where the Notes may be presented and surrendered for payment. If the Trustee and the Issuer have been furnished any security or indemnity they require to save each of them harmless and an undertaking thereafter to surrender the certificate, then, in the absence of notice to the Issuer or the Trustee that the applicable certificate has been acquired by a protected purchaser, final payment shall be made without presentation or surrender of the applicable certificate.

(f) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of the Class registered in the name of each Holder on the applicable Record Date bears to the Aggregate Outstanding Amount of all Notes of the Class on the Record Date.

(g) Interest accrued shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period divided by 360.

(h) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date or Redemption Date shall be binding on all future Holders of the Note and of any Note issued upon the registration of its transfer, exchange, or replacement, whether or not the payment is noted on the Note.

(i) Notwithstanding any other provision of this Indenture, the obligations of the Co-Issuer under the Senior Notes and under this Indenture are non-recourse obligations, and the obligations of the Issuer under the Notes and under this Indenture are limited recourse obligations payable solely from the Collateral and following realization of the assets, application of their proceeds in accordance with this Indenture and the reduction of the proceeds of the Collateral to zero, all obligations of, and any claims against, the Co-Issuers under this Indenture or under the Notes or arising in connection therewith shall be extinguished and shall not thereafter revive. No recourse shall be had against any Officer, director, employee, shareholder, or incorporator of either of the Co-Issuers or their respective successors or assigns for any amounts payable under the Notes or this Indenture. The foregoing provisions of this paragraph (i) shall not (1) prevent recourse to the Collateral for the sums due or to become due under any security, instrument, or agreement that is

part of the Collateral or (2) be a waiver, release, or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture until the Collateral have been realized. The foregoing provisions of this paragraph (i) shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability is sought or (if obtained) enforced against the person.

(j) If any withholding tax is imposed on the Issuer's payment (or allocations of income) under the Notes to any Noteholder, the tax shall reduce the amount otherwise distributable to the Noteholder. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Noteholder sufficient funds for the payment of any tax that is legally owed, or required by law to be collected, by or on behalf of the Issuer (but the authorization shall not prevent the Trustee or the Issuer from contesting any such tax in appropriate proceedings and withholding payment of the tax, if permitted by law, pending the outcome of the proceedings). The amount of any withholding tax imposed with respect to any Noteholder shall be treated as Cash distributed to the Noteholder when it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold the amounts in accordance with this Section 2.8(j). If any Noteholder wishes to apply for a refund of any such withholding tax, the Trustee shall reasonably cooperate with the Noteholder in making the claim by providing information readily available to the Trustee so long as the Noteholder agrees to reimburse the Trustee for any out-of-pocket expenses incurred and provides the Trustee with security reasonably acceptable to the Trustee assuring the reimbursement. The Trustee hereby provides notice to each Noteholder that the failure by the Noteholder to provide the Trustee with appropriate tax certifications may result in amounts being withheld from payments to the Noteholder. Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 2.9. ***Persons Considered Owners.***

The Issuer, the Co-Issuer, the Trustee, and any agent of the Co-Issuers or the Trustee may treat as the owner of the Note the Person in whose name any Note is registered on the Indenture Register on the applicable Record Date for the purpose of receiving payments on the Note and on any other date for all other purposes whatsoever (whether or not the Note is overdue), and neither the Issuer, the Co-Issuer nor the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary. Pursuant to the Servicing Agreement, the Servicer will notify the Trustee and the Share Registrar of any Affiliate of the Servicer that owns any of the Securities.

Section 2.10. ***Cancellation.***

All Notes surrendered for payment, registration of transfer, exchange, or redemption, or lost or stolen, shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.10, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed by the Trustee in accordance with its standard policy unless the Applicable Issuers direct by an Issuer Order delivered to the Trustee prior to cancellation and destruction that they be returned to the Issuer.

Section 2.11. ***Definitive Notes.***

(a) A Global Note deposited with the Depository pursuant to Section 2.2 shall be transferred in the form of a Definitive Note to its beneficial owners only if the transfer complies with Section 2.6 and either

(i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as Depository for the Global Note or

(ii) if at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Co-Issuers within 90 days after the notice.

(b) Any Global Note that is transferable in the form of a Definitive Note to its beneficial owners pursuant to this Section 2.11 shall be surrendered by the Depository to the office of the Trustee's agent located in the City of New York, New York as specified in Section 7.2 (or any other office designated by the Trustee) to be so transferred, in whole or from time to time in part, without charge, and the Applicable Issuers shall execute and the Trustee shall authenticate and deliver, upon the transfer of each portion of the Global Note, an equal aggregate principal amount of definitive physical certificates (pursuant to the instructions of the Depository) (each, a "***Definitive Note***") in authorized denominations. Any Definitive Note delivered in exchange for an interest in a Global Note, as applicable, shall, except as otherwise provided by Section 2.6(j), bear the legends in the applicable portion of Exhibit A-1 and shall be subject to the transfer restrictions referred to in the legends.

(c) The Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Senior Notes, as applicable.

(d) Upon the occurrence of either of the events specified in Section 2.11(a)(i) and (ii), the Co-Issuers shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons.

The Definitive Notes shall be in substantially the same form as the Global Notes, with any changes the Issuer and Trustee agree to and the Applicable Issuers shall execute, and the Trustee shall authenticate and deliver, in exchange therefor, the same aggregate principal amount of Definitive Notes of authorized denominations.

Section 2.12. ***Notes Beneficially Owned by Non-Permitted Holders.***

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, (i) any transfer of a beneficial interest in any Global Note to a U.S. person (for purposes of this Section 2.12 as defined in Regulation S) that is not a QIB/QP and that is not made pursuant to an applicable exemption under the Securities Act and (ii) any transfer of a beneficial interest in any Class E Note to a Person that is not a QIB/QP, shall be void and any such purported transfer of which the Issuer, the Co-Issuer or the Trustee has notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) After discovery by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery) that a Person is a Non-Permitted Holder, the Issuer shall promptly send notice to the Non-Permitted Holder demanding that the Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within

30 days of the date of the notice. If the Non-Permitted Holder fails to so transfer its Notes or interest in the Notes without further notice to the Non-Permitted Holder, the Issuer may sell the Notes or interest in the Notes to a purchaser selected by the Issuer that is a not a Non-Permitted Holder on any terms the Issuer chooses. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting bids (or by appointing an investment bank at the expense of the Issuer to solicit bids) from brokers or other market professionals that regularly deal in securities similar to the Notes, and selling the Notes, or interest in the Notes to the highest bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Note, the beneficial owner of each interest in a Note, the Non-Permitted Holder, and each other Person in the chain of title from the Holder or beneficial owner to the Non-Permitted Holder, by its acceptance of an interest in the Notes agrees to cooperate with the Issuer and the Trustee to effect the transfers. The proceeds of the sale, net of any commissions, expenses of the Trustee or otherwise, and taxes due in connection with the sale shall be remitted to the Non-Permitted Holder. The terms of any sale under this subsection shall be determined in the sole discretion of the Issuer (or the Trustee acting on its behalf), and the Issuer and the Trustee shall not be liable to any Person having an interest in the Notes sold as a result of any such sale or the exercise of its discretion.

Section 2.13 ***Tax Purposes***

The Issuer agrees, and each Holder and each beneficial owner of a Note, by acceptance of its Note or its interest in a Note, as the case may be, shall be deemed to have agreed, to treat, and shall treat, such Note as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1. ***Conditions to Issuance of Notes on Closing Date.***

(a) The Notes to be issued on the Closing Date shall be executed by the Applicable Issuers and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Order and upon receipt by the Trustee of the following:

(i) *Officers' Certificates of the Co-Issuers Regarding Corporate Matters*. An Officer's certificate of each of the Co-Issuers:

(A) (1) evidencing (x) the authorization by Board Resolution of the execution and delivery of this Indenture and the Purchase Agreement and, in the case of the Issuer, the Servicing Agreement, the Preference Shares Paying Agency Agreement, the Collateral Administration Agreement and the Hedge Agreements being entered into on or before the Closing Date (if any), and related transaction documents and (y) the execution, authentication and delivery of the Notes applied for by it and specifying the Stated Maturity, principal amount and the Note Interest Rate of each applicable Class of Notes to be authenticated and delivered and (2) with respect to the Issuer only, evidencing the authorization by Board Resolution of the issuance, terms and number of Preference Shares issued on the Closing Date, and that each of the foregoing is in accordance with the terms of the Board Resolution, and

(B) certifying that (1) the attached copy of the Board Resolution is an accurate copy, (2) the resolutions have not been rescinded and are in full force on and as of the Closing Date and (3) the Officers authorized to execute and deliver the documents hold the offices and have the signatures indicated on the documents.

(ii) *Governmental Approvals*. From each of the Co-Issuers either:

(A) a certificate of the Applicable Issuer or other official document evidencing the due authorization, approval or consent of any governmental bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Applicable Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of the Notes applied for by it, or

(B) an Opinion of Counsel of the Applicable Issuer that no authorization, approval, or consent of any governmental body is required for the valid issuance of the Notes except as have been given; provided that the opinions of Latham & Watkins, LLP and Maples and Calder, substantially in the forms of Exhibit C and Exhibit D, respectively, shall satisfy this clause (B).

(iii) *Co-Issuers' and Servicer's U.S. Counsel Opinion*. Opinions of Latham & Watkins LLP, special U.S. counsel to the Co-Issuers, and an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer, dated the Closing Date, substantially in the forms of Exhibit C and Exhibit F.

(iv) *Issuer's Cayman Counsel Opinion*. An opinion of Maples and Calder, Cayman Islands counsel to the Issuer, dated the Closing Date, substantially in the form of Exhibit D.

(v) *Trustee's Counsel Opinion*. An opinion of Nixon Peabody LLP, counsel to the Trustee, dated the Closing Date, substantially in the form of Exhibit E.

(vi) *Officers' Certificates of Co-Issuers Regarding Indenture*. An Officer's certificate of each of the Co-Issuers stating that, to the best of the Officer's knowledge,

(A) the Applicable Issuer is not in default under this Indenture and that the issuance of the Notes applied for by it will not result in a default or a breach of, or be a default under, its organizational documents, any indenture or other agreement or instrument to which it is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which it is a party or by which it may be bound or to which it may be subject;

(B) all conditions precedent in this Indenture relating to the authentication and delivery of the applicable Notes have been complied with; and

(C) all expenses due or accrued with respect to the Offering or relating to actions taken on or in connection with the Closing Date have been paid or reserves therefor have been made.

The Officer's certificate of the Issuer shall also state that, to the best of the Officer's knowledge, all of its representations and warranties contained in this Indenture are accurate as of the Closing Date.

(vii) *Hedge Agreements*. Executed copies of the Hedge Agreements being entered into on or entered into before the Closing Date, if any.

(viii) *Servicing Agreement*. Executed copy of the Servicing Agreement.

(ix) *Preference Shares*. Copies of executed Preference Share certificates to be issued on the Closing Date.

(x) *Preference Share Documents*. An executed counterpart of the Preference Shares Paying Agency Agreement.

(xi) *Collateral Administration Agreement*. Executed copy of the Collateral Administration Agreement.

(xii) *Grant of Collateral Obligations*. Evidence of the Grant pursuant to the Granting Clauses of this Indenture of all of the Issuer's interest in the Collateral Obligations pledged to the Trustee for inclusion in the Collateral, on the Closing Date and Delivery of the Collateral Obligations (including any promissory notes and all other Underlying Instruments related to them to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(xiii) *Certificate of the Servicer*. A certificate of an Authorized Officer of the Servicer, dated as of the Closing Date, to the effect that, to the best knowledge of the Servicer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the "row/column combination" of the table appearing in the definition of "Ratings Matrix" selected by the Servicer on the Closing Date;

(B) the information with respect to the Collateral Obligation in the Schedule of Collateral Obligations is correct; and

(C) the Collateral Obligation satisfies the requirements of the definition of "Collateral Obligation" and of Section 3.1(a)(xx)(B);

(xiv) *Rating Letters*. An Officer's certificate of the Issuer to the effect that attached is an accurate copy of a letter signed by each Rating Agency and confirming that each Class of Notes rated by the Rating Agency has been assigned the applicable Initial Rating and that the ratings are in full force on the Closing Date.

(xv) *Accounts*. Evidence that each of the Accounts has been established.

(xvi) *Issuer Order for Deposit of Funds into Accounts*. An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, authorizing the deposit of at least U.S.$71,908,337 into the Collection Account for use pursuant to Section 7.19, the deposit of at least U.S.$2,024,384 into the Closing Date Expense Account for use pursuant to Section 10.3(g) and the deposit of at least U.S.$2,500,000 into the Interest Reserve Account for use pursuant to Section 10.3(i).

(xvii) *Irish Listing*. An Officer's certificate of the Issuer to the effect that application has been made to the Irish Stock Exchange to admit the Senior Notes to the Official List.

(xviii) *Issuer Order for Authentication of Notes.* An Issuer Order signed in the name of the Issuer by an Authorized Officer of the Issuer, dated as of the Closing Date, directing the Trustee to authenticate the Notes in the amounts, in the registered names and with the CUSIP numbers in the Issuer Order.

(xix) *Accountants' Certificate.* An Accountants' Certificate satisfactory to the Issuer (A) confirming the information with respect to each Collateral Obligation on the Schedule of Collateral Obligations attached as Schedule 1, (B) confirming that the Aggregate Principal Balance of the Collateral Obligations that the Issuer has purchased or committed to purchase in accordance with customary settlement procedures in the relevant markets, is approximately U.S.$981,300,000, that each Concentration Limitation is satisfied taking into account all of the Collateral Obligations acquired as of the Closing Date (including binding agreements to purchase Collateral Obligations in effect on the Closing Date), that the Weighted Average Spread Test is satisfied as of the Closing Date, that the Weighted Average Rating Factor Test is satisfied as of the Closing Date, that the Weighted Average Life Test is satisfied as of the Closing Date, that each Overcollateralization Test is satisfied as of the Closing Date, that the Weighted Average Moody's Recovery Rate Test is satisfied as of the Closing Date, that the Weighted Average S&P Recovery Rate Test is satisfied as of the Closing Date and that the Weighted Average Fixed Rate Coupon Test is satisfied as of the Closing Date and a calculation of the Diversity Score, (C) specifying the procedures undertaken by them to review data and computations relating to this Section 3.1(a)(xix) and (D) confirming the weighted average purchase price of the Collateral Obligations.

(xx) *Certificate of the Issuer Regarding Collateral.* A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, to the knowledge of the Issuer, in the case of each Collateral Obligation pledged to the Trustee for inclusion in the Collateral, as the case may be, on the Closing Date and immediately before the delivery of the Collateral Obligation on the Closing Date:

(A) the Issuer is the owner of the Collateral Obligation free of any liens, claims, or encumbrances of any nature whatsoever except for those that are being released on the Closing Date and except for those Granted pursuant to or permitted by this Indenture;

(B) the Issuer has acquired its ownership in the Collateral Obligation in good faith without notice of any adverse claim, except as described in paragraph (A) above;

(C) the Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral Obligation (or, if any interest in the Collateral Obligation has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests Granted pursuant to or permitted by this Indenture;

(D) the Issuer has full right to Grant a security interest in and assign and pledge the Collateral Obligation to the Trustee;

(E) upon Grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral Obligations and the other Collateral; and

(F) based solely on the Accountant's Certificate set forth in clause (xix) above, the weighted average purchase price of the Collateral Obligations in

the Collateral as of the Closing Date is at least 90% of the aggregate par amount thereof.

(xxi) *Certificate of the Issuer Regarding Important Section 3(c)(7) Reminder Notice*. A certificate of an Authorized Officer of the Issuer, dated as of the Closing Date, to the effect that, on or prior to the Closing Date the Issuer provided to the Depository the Important Section 3(c)(7) Reminder Notice, substantially in the form of Exhibit I-2.

(xxii) *Other Documents*. Any other documents the Trustee reasonably requires. Nothing in this clause (xxii) shall imply or impose a duty on the part of the Trustee to require any other documents.

(b) Any Refinancing Note may be issued from time to time pursuant to Section 9.7 hereof. Any such Refinancing Notes shall be executed by the Applicable Issuer and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee upon and pursuant to Issuer Order delivered to the Trustee, together with delivery to the Trustee by the Issuer of an Opinion of Counsel to the effect that (A) such Refinancing Notes are duly authorized and validly issued by the Applicable Issuer pursuant to the Indenture, constituting the legal, valid and binding obligation of such Applicable Issuer, enforceable against such Issuer in accordance with its terms and (B) all conditions precedent under this Indenture, if any, applicable to the issuance, authentication and delivery of such Notes, have been satisfied.

Section 3.2. ***Custodianship; Delivery of Collateral Obligations and Eligible Investments.***

(a) The Servicer, on behalf of the Issuer, shall deliver or cause to be delivered to a custodian appointed by the Issuer, which shall be a Securities Intermediary (the "***Custodian***"), all Collateral in accordance with the definition of "Deliver." Initially, the Custodian shall be Investors Bank & Trust Company. Any successor custodian shall be a state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer, has a long-term debt rating of at least "BBB+" by S&P and has capital and surplus of at least U.S.$200,000,000 and is a Securities Intermediary. Subject to the limited right to relocate Pledged Obligations as provided in Section 7.5(b), the Trustee shall hold all Collateral Obligations, Eligible Investments, other assets purchased in accordance with this Indenture (other than Loans, Participations and general intangibles) and Cash in the relevant Account established and maintained pursuant to Article 10, as to which in each case the Trustee shall have entered into a securities account control agreement with the Custodian in accordance with Article 8 of the UCC providing, *inter alia*, that the establishment and maintenance of the Account shall be governed by the law of the State of New York.

(b) Each time that the Issuer, or the Servicer on behalf of the Issuer, directs or causes the acquisition of any Collateral Obligation, Eligible Investment or other assets, the Servicer (on behalf of the Issuer) shall, if the Collateral Obligation, Eligible Investment or other asset is required to be, but has not already been, transferred to the relevant Account, cause the Collateral Obligation, Eligible Investment or other asset to be Delivered to the Custodian to be held in the Custodial Account (or in the case of any such asset that is not a Collateral Obligation, in the Account in which the funds used to purchase the asset are held in accordance with Article 10) for the benefit of the Trustee in accordance with this Indenture. The security interest of the Trustee in the funds or other property used in connection with the acquisition shall, immediately and without further action on the part of the Trustee, be released. The security interest of the Trustee shall nevertheless come into existence and continue in the Collateral Obligation, Eligible Investment or other asset so acquired, including all interests of the Issuer in to any contracts related to and proceeds of the Collateral Obligations, Eligible Investments or other assets.

Section 3.3. ***Representations as to Collateral.***

(a) The Issuer hereby represents and warrants to the Secured Parties as to the Collateral as follows (which representations are repeated on each day on which the Issuer acquires new Collateral):

(i) This Indenture creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code) in the Collateral in favor of the Trustee, which security interest is prior to all other liens, charges, claims, security interests, mortgages and other encumbrances, and is enforceable as such as against creditors of and purchasers from the Issuer.

(ii) Except for any Securities Lending Collateral and Synthetic Securities Collateral, the Issuer has good and marketable title to and is the owner of each item of Collateral free of any liens, claims, or encumbrances of any nature whatsoever except for liens (A) that are being released on the Closing Date and (B) granted pursuant to or permitted by this Indenture. The Issuer has a first priority security interest in all Securities Lending Collateral to secure all obligations of Securities Lending Counterparty under the Securities Lending Agreement and a first priority interest in all Synthetic Securities Collateral to secure all obligations of Synthetic Security Counterparty under the Synthetic Securities Agreement.

(iii) The Issuer has not assigned, pledged or otherwise encumbered any interest in the Collateral (or, if any interest in the Collateral has been assigned, pledged or otherwise encumbered, it has been released before the Closing Date or is being released on the Closing Date) other than interests granted pursuant to or permitted by this Indenture.

(iv) The Issuer has full right, and has received all consents and approvals required by the related Underlying Instruments, to grant a security interest in its rights in the Collateral to the Trustee.

(v) Each Collateral Obligation included in the Collateral satisfied the requirements of the definition of "Collateral Obligation" as of the date the Issuer committed to purchase the same or, in the case of the Loans with respect to which loans were made by Pre-Closing Parties and repaid by the Issuer on the Closing Date, as of the Closing Date.

(vi) All Collateral Obligations, any obligation that at the time of acquisition, conversion or exchange did not satisfy the requirements of a Collateral Obligation, and Eligible Investments (other than, in each case, "general intangibles" within the meaning of the applicable Uniform Commercial Code) have been and will have been credited to one of the Accounts. The securities intermediary for each Account has agreed to treat all assets credited to the Accounts as "financial assets" within the meaning of the applicable Uniform Commercial Code.

(vii) The Issuer has pledged to the Trustee all of the Issuer's interest in each Collateral Obligation included in the Collateral pursuant to the Granting Clauses of this Indenture and has delivered each Collateral Obligation (including any promissory note and all its other Underlying Instruments to the extent received by the Issuer) to the Trustee or the Custodian as contemplated by Section 3.2.

(viii) Each of the Collateral constitutes "general intangibles," "certificated securities," "instruments," "securities entitlements," "uncertificated securities," "chattel paper" or "securities accounts," each within the meaning of the applicable Uniform

Commercial Code, or any other category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under Section 3.3(b).

(ix) The Issuer has caused (or will have caused within 10 days following the Closing Date) the filing of appropriate financing statements in the proper filing offices in the appropriate jurisdictions under applicable law to perfect the security interest in the portion of the Collateral pledged to the Trustee under this Indenture that may be perfected by the filing of financing statements.

(x) The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement (A) relating to the security interest granted to the Trustee under this Indenture, (B) that has been terminated or (C) that names the Trustee as the secured party. On the date of this Indenture, the Issuer is not aware of any judgment or Pension Benefit Guaranty Corporation or tax lien filings against the Issuer.

(xi) The Issuer has delivered to the Trustee a fully executed agreement pursuant to which the securities intermediary for each Account has agreed to comply with all instructions originated by the Trustee relating to the Account without further consent by the Issuer.

(xii) All original executed copies of each "instrument" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer. The Issuer has received confirmation from the Custodian that the Custodian has credited the instruments to one of the Accounts. None of the instruments that are or evidence the Collateral has any marks or notations indicating that they are then pledged or otherwise assigned to any Person other than the Trustee.

(xiii) The Accounts are not in the name of any Person other than the Issuer or the Trustee. The Issuer has not consented to the securities intermediary of any Account to comply with instructions of any Person other than the Trustee.

(xiv) All "certificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral have been delivered to the Custodian, to the extent received by the Issuer, registered in the name of the Custodian or indorsed to the Custodian. The Issuer has received confirmation from the Custodian that the Custodian has credited such certificated securities to one of the Accounts.

(xv) The Issuer has caused all "uncertificated securities" (as defined in each applicable Uniform Commercial Code) that are or evidence the Collateral to be registered in the name of the Custodian.

(xvi) Upon grant by the Issuer, the Trustee has a first priority perfected security interest in the Collateral.

The parties to this Indenture shall not waive any of the representations in this Section 3.3, unless the Rating Condition is satisfied in connection with such waiver. The Issuer shall provide each of the Rating Agencies with prompt written notice of any breach of the representations contained in this Section 3.3 upon becoming aware thereof, and shall not waive a breach of any of the representations in this Section 3.3, unless the Rating Condition is satisfied (as determined after

any adjustment or withdrawal of the ratings following notice of such breach) in connection with such waiver.

If the Issuer acquires Collateral that is not "general intangibles," "certificated securities," "instruments," "securities accounts," "chattel paper," "securities entitlements" or "uncertificated securities," each within the meaning of the applicable Uniform Commercial Code, or another category of collateral under the applicable Uniform Commercial Code as to which the Issuer has complied with its obligations under this Section 3.3(b), then on or before the date on which the Issuer acquires the Collateral, the Issuer (or the Servicer on behalf of the Issuer) shall notify S&P and the Trustee (for the benefit of the Secured Parties) of its acquisition or intended acquisition of the Collateral and the Issuer shall represent to S&P and to the Trustee (for the benefit of the Secured Parties) as to the category of the Collateral under the applicable Uniform Commercial Code and shall make any further representations as to the perfection and priority of the security interest in the Collateral Granted under this Indenture acceptable to S&P.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1. ***Satisfaction and Discharge of Indenture.***

This Indenture shall be discharged and shall cease to be of further effect with respect to the Notes and the Collateral except as to:

(i) rights of registration of transfer and exchange,

(ii) substitution of mutilated, destroyed, lost or stolen Notes,

(iii) rights of Noteholders to receive payments of principal and interest on, or other amounts (including without limitation Extension Bonus Payments) owing in respect of, the Notes as provided in this Indenture,

(iv) the rights, indemnities, and immunities of the Trustee under this Indenture and the obligations of the Trustee under Section 7.3 of this Indenture with respect to the holding and paying of unclaimed funds,

(v) for so long as any Preference Shares remain Outstanding, any provisions hereof conferring any rights or remedies upon the Holders of the Preference Shares or the Preference Shares Paying Agent on behalf of the Holders of the Preference Shares, including but not limited to, the provisions of Articles 7, 8, 10, 11, 12, 14 and 15,

(vi) for so long as any Preference Shares remain Outstanding, the provisions of Articles 10, 11 and 12 relating to the acquisition, retention and disbursement of Collateral,

(vi) the rights, obligations, and immunities of the Servicer under this Indenture and under the Servicing Agreement, and

(vii) the rights of Noteholders as beneficiaries of this Indenture with respect to the property deposited with the Trustee and payable to any of them (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture),

when:

(a) either:

(i) all Notes theretofore authenticated and delivered to Holders of Notes (other than (A) Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (B) Notes for whose payment money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from the trust, as provided in Section 7.3), have been delivered to the Trustee for cancellation; or

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

(A) have become payable, or

(B) will become payable at their Stated Maturity within one year, or

(C) are to be called for redemption pursuant to Article 9 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Applicable Issuers pursuant to Section 9.3,

and the Issuer has irrevocably deposited with the Trustee, in trust for payment of the principal and interest on the Notes, Cash or non-callable obligations of the United States of America. The obligations deposited under Section 4.1(a)(ii) with respect to the other Notes must be entitled to the full faith and credit of the United States of America or be debt obligations that are rated "Aaa" by Moody's and "AAA" by S&P, in an amount sufficient, as verified by a firm of Independent certified public accountants that are nationally recognized, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of the deposit (in the case of Notes that have become payable), or to the respective Stated Maturity or the respective Redemption Date, as the case may be, and the Issuer shall have Granted to the Trustee a valid perfected security interest in the Eligible Investment that is of first priority, free of any adverse claim, and shall have furnished an Opinion of Counsel with respect thereto. Section 4.1(a)(ii) shall not apply if an election to act in accordance with Section 5.5(a) has been made and not rescinded. In addition, the Issuer shall cause delivery to the Trustee of a Tax Opinion of Counsel to the effect that the Noteholders would recognize no income, gain or loss for U.S. federal income tax purposes as a result of the deposit and satisfaction and discharge of this Indenture;

(b) the Issuer has paid all other sums then payable under this Indenture by the Issuer and no other amounts are scheduled to be payable by the Issuer; and

(c) the Co-Issuers have delivered to the Trustee Officer's certificates and an Opinion of Counsel, each stating that all conditions precedent in this Indenture provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Co-Issuers, the Trustee, the Servicer and, if applicable, the Noteholders, as the case may be, under Sections 2.8, 4.2, 5.4(d), 5.9, 5.18, 6.7, 6.8, 7.1, 7.3, 13.1 and 14.13 shall survive.

Section 4.2. ***Application of Trust Money.***

All monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the Person entitled to it and applied by the Trustee in accordance with the Notes and this Indenture,

including the Priority of Payments, to the payment of principal and interest, either directly or through any Paying Agent, as the Trustee may determine. The money shall be held in a segregated non-interest bearing trust account identified as being held in trust for the benefit of the Secured Parties.

Section 4.3. ***Repayment of Monies Held by Paying Agent.***

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all monies then held by any Paying Agent other than the Trustee under this Indenture shall, upon demand of the Co-Issuers, be paid to the Trustee to be held and applied pursuant to Section 7.3 and in accordance with the Priority of Payments and thereupon the Paying Agent shall be released from all further liability with respect to the monies.

ARTICLE 5

REMEDIES

Section 5.1. ***Events of Default.***

"***Event of Default***," wherever used in this Indenture, means any one of the following events whatever the reason:

(a) a default for four Business Days in the payment of any interest on the Class A Notes or the Class B Notes, or, if no Class A Notes or Class B Notes are Outstanding, a default in the payment of any interest on the Controlling Class, in each case, when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note, when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A-1-A Notes, Class A-1-B Notes or Class B Notes are Outstanding, the Class A/B Overcollateralization Ratio is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer in this Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided in this Section 5.1) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer in this Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer, and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer, and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by

registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under this Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment.

Section 5.2. ***Notice of Event of Default; Acceleration of Maturity; Rescission and Annulment.***

(a) Upon the occurrence of an Event of Default, the Trustee shall give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

(b) If an Event of Default is continuing (other than an Event of Default specified in Section 5.1(e), (g) or (h)), the Trustee may, with consent of the Majority of the Controlling Class, and shall, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Applicable Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under this Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement pursuant to Section 5.2(c)). If an Event of Default specified in Section 5.1(e), (g) or (h) occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under this Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement pursuant to Section 5.2(c)).

(c) At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent may rescind the declaration and its consequences:

(i) The Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest and principal on the Notes then due;

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under this Indenture;

(D) all unpaid Senior Servicing Fees;

(E) all amounts then payable to any Hedge Counterparty; and

(ii) The Trustee has determined that all Events of Default, other than the non-payment of the interest on or principal of the Notes, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in Section 5.14.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with this Section 5.2(c) and liquidation of the Collateral has begun.

If a declaration of acceleration is rescinded as described above:

(x) the Replacement Period, if terminated by the declaration, shall re-commence on the date of the rescission (unless the Replacement Period would have otherwise terminated before that date pursuant to clauses (i), (ii), or (iii) of its definition); and

(y) the Trustee shall retain the Collateral in accordance with this Indenture. If the retention of the Collateral is rescinded pursuant to Section 5.5, the Notes may again be accelerated pursuant to Section 5.2(b), notwithstanding any previous rescission of a declaration of acceleration pursuant to this Section 5.2(c).

No rescission shall affect any subsequent Default or impair any right resulting from the Default.

(d) Notwithstanding anything in this Section 5.2 to the contrary, the Notes will not be subject to acceleration by the Trustee, a Majority of the Controlling Class or any other Holders solely as a result of the failure to pay any amount due on Notes that are not of the Controlling Class.

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

The Applicable Issuers covenant that if a default occurs in the payment of any principal of or interest when payable on any Note, upon demand of the Trustee or the Holder of any affected Note, the Applicable Issuers shall pay to the Trustee, for the benefit of the Holder of the Note, the whole amount then payable on the Note for principal and interest with interest on the overdue principal and, to the extent that payments of the interest shall be legally enforceable, on overdue

installments of interest and all other amounts owing to the Noteholders under this Indenture, at the Applicable Note Interest Rate or Default Interest Rate, as applicable, and, in addition, an amount sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and the Holders and their agents and counsel.

If the Issuer or the Co-Issuer fails to pay those amounts immediately on demand, the Trustee, in its own name and as Trustee of an express trust, may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall at the written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), institute a Proceeding for the collection of the sums due, may prosecute the Proceeding to judgment or final decree, and may enforce the same against the Applicable Issuers or any other obligor on the Notes and collect the monies determined to be payable in the manner provided by law out of the Collateral.

If an Event of Default is continuing, the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), proceed to protect and enforce its rights and the rights of the Noteholders by any appropriate Proceedings as is deemed most effective (if no direction is received by the Trustee) or as the Trustee may be directed by a Majority of the Controlling Class, to protect and enforce the rights of the Trustee and the Noteholders, whether for the specific enforcement of any agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law. The reasonable compensation, costs, expenses, disbursements and advances incurred or paid by the Trustee and its agents and counsel, in connection with such Proceeding, including, without limitation, the exercise of any remedies pursuant to Section 5.4, shall be reimbursed to the Trustee pursuant to Section 6.8.

If any Proceedings are pending relating to the Issuer or the Co-Issuer or any other obligor on the Notes under the Bankruptcy Law or any other applicable bankruptcy, insolvency or other similar law, or if a receiver, assignee, or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official has been appointed for or taken possession of the Issuer, the Co-Issuer or their respective property or any other obligor on the Notes or its property, or if any other comparable Proceedings are pending relating to the Issuer, the Co-Issuer or other obligor on the Notes, or the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes, the Trustee, regardless of whether the principal of any Notes is then payable by declaration or otherwise and regardless of whether the Trustee has made any demand pursuant to this Section 5.3, may, by intervention in the Proceedings or otherwise:

(a) file and prove claims for the whole amount of principal and interest owing and unpaid in respect of the Notes, and file any other papers or documents appropriate and take any other appropriate action (including sitting on a committee of creditors) to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys, and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relating to the Issuer, the Co-Issuer, or other obligor on the Notes or to the creditors or property of the Issuer, the Co-Issuer or other obligor on the Notes;

(b) unless prohibited by applicable law, vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency Proceedings or Person performing similar functions in comparable Proceedings; and

(c) collect and receive any monies or other property payable to or deliverable on any such claims, and distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is authorized by each of the Noteholders to make payments to the Trustee, and, if the Trustee consents to making payments directly to the Noteholders, to pay to the Trustee amounts sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee, and their respective agents, attorneys, and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

Nothing in this Indenture shall authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of the Holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or any Noteholder, or to authorize the Trustee to vote on the claim of the Holder of any Note in any Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.3 except according to Section 5.5(a).

Section 5.4. ***Remedies.***

(a) If an Event of Default is continuing, and the Notes have been declared payable and the declaration and its consequences have not been rescinded, or at any time after the Stated Maturity, the Co-Issuers agree that the Trustee may (after giving prior written notice to the Controlling Class and absent the Trustee having received a written direction to the contrary from the Controlling Class), and shall, upon written direction of a Majority of the Controlling Class (subject to Section 6.3(e)), to the extent permitted by applicable law, exercise one or more of the following rights:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral any monies adjudged due;

(ii) sell or liquidate all or a portion of the Collateral or interests in it, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights of the Trustee and the Noteholders under this Indenture; and

(v) exercise any other rights that may be available at law or in equity;

except that the Trustee may not sell or liquidate the Collateral or institute Proceedings in furtherance of the sale or liquidation of the Collateral pursuant to this Section 5.4 except according to Section 5.5(a).

(b) If an Event of Default as described in Section 5.1(f) is continuing the Trustee may, with the consent of, and shall, at the direction of, the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class, subject to Section 5.8, institute a Proceeding solely to

compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under Section 5.1(f), and enforce any equitable decree or order arising from the Proceeding.

(c) Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, any Holders or the Servicer (subject to the Servicing Agreement) may bid for and purchase any part of the Collateral and, upon compliance with the terms of sale, may hold, retain, possess, or dispose of the Collateral in its or their own absolute right without accountability.

Upon any sale, whether made under the power of sale given under this Indenture or by virtue of judicial Proceedings, the receipt of the Trustee, or of the Officer making a sale under judicial Proceedings, shall be a sufficient discharge to the purchasers at any sale for their purchase money, and the purchasers shall not be obliged to see to its application.

Any sale, whether under any power of sale given under this Indenture or by virtue of judicial Proceedings, shall bind the Co-Issuers, the Trustee and the Noteholders, shall operate to divest all interest whatsoever, either at law or in equity, of each of them in the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Trustee, the Secured Parties or the Noteholders may, before the date that is one year and one day (or if longer, any applicable preference period plus one day) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation Proceedings, or other Proceedings under the Bankruptcy Law or any similar laws in any jurisdiction. Nothing in this Section 5.4 shall preclude the Trustee or any Secured Party (i) from taking any action before the expiration of that period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than a Secured Party or (ii) from commencing against the Issuer or the Co-Issuer or any of its properties any legal action that is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

Section 5.5. ***Optional Retention of Collateral.***

(a) Notwithstanding anything to the contrary in this Indenture, if an Event of Default is continuing, the Trustee shall retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes, and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a Replacement Hedge in place), in accordance with the Priority of Payments and Article 10 and Article 12 unless:

(i) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) of Section 11.1(a)(i) and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of each of the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes direct the sale and liquidation of the Collateral; or

(iii) the Class A/B Overcollateralization Ratio is less than 90% and the Holders of a Majority of the Controlling Class direct the sale and liquidation of the Collateral; *provided* that upon such direction by the Controlling Class, the Trustee shall (x) first sell or liquidate any Collateral for which either (A) two or more bid-side prices have been determined by an Approved Pricing Service or (B) bid-side prices have been obtained from at least two nationally recognized broker-dealers selected by a Majority of the Controlling Class and (y) thereafter shall sell or liquidate such remaining Collateral to the extent such Collateral can be liquidated or sold in accordance with the Indenture and applicable law; provided that any Collateral consisting of equity securities or Defaulted Collateral Obligations shall not be subject to sale or liquidation pursuant to this clause (iii).

If any Collateral is sold in accordance with clause (a)(iii)(x) above and Highland Capital Management, L.P. is the Servicer, the Servicer shall have the exclusive right to purchase such Collateral for the first two Business Days from the date the last of such bid-prices was determined by an Approved Pricing Service or obtained from a nationally recognized broker-dealer selected by a Majority of the Controlling Class with respect to such Collateral at a price equal to the highest bid-price for such Collateral that was determined by an Approved Pricing Service or obtained from a nationally recognized broker-dealer selected by a Majority of the Controlling Class and, thereafter, the Trustee may sell such Collateral to other parties in accordance with the terms hereof; *provided* that, in any such case, such sale to the Servicer or to any other party is effected in compliance with applicable law, including all notice and other provisions under the UCC.

The Trustee shall give written notice of the retention of the Collateral to the Issuer with a copy to the Co-Issuer and the Servicer. So long as the Event of Default is continuing, any retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Collateral if the conditions in clause (i) or (ii) of Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to retain the Collateral if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Trustee, in consultation with the Servicer, shall obtain bid prices with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one market maker, that market maker and if there is no market maker, from a pricing service) selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and shall compute the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security. In addition, for the purposes of determining issues relating to the valuation of the Collateral, the satisfaction of the conditions specified in this Indenture, the execution of a sale or liquidation of the Collateral, and the execution of a sale or other liquidation of the Collateral in connection with a determination whether the condition specified in Section 5.5(a)(i) exists, the Trustee may retain, at the Issuer's expense, and rely on an opinion of an Independent investment banking firm of national reputation, which may be either of the Initial Purchasers.

The Trustee shall deliver to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Noteholders, the Co-Issuers, the Servicer and the Hedge Counterparties a report stating the results of any determination required pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) after an Event of Default at the request of a Majority of the Controlling Class at any time during which the Trustee retains the

Collateral pursuant to Section 5.5(a). The Trustee shall obtain (at the Issuer's expense) a letter of a firm of Independent certified public accountants confirming the accuracy of each calculation made by the Trustee pursuant to Section 5.5(a)(i) and certifying their conformity to the requirements of this Indenture.

(d) Notwithstanding anything in this Indenture to the contrary, the Trustee may not, and the Noteholders representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in Section 5.4 or 5.5, may not instruct the Trustee to sell or liquidate or (except in connection with the concurrent execution of a Replacement Hedge) terminate any Hedge Agreement during the continuance of an Event of Default until all Collateral other than the Hedge Agreements has been sold or liquidated and its proceeds applied in accordance with this Indenture.

(e) Collateral may not be sold or liquidated pursuant to Section 5.5(a)(i) after the last date on which the sale or liquidation is permitted under Section 5.5(a)(i) with respect to a determination made pursuant to Section 5.5(a)(i) (the last permitted date being determined by the Trustee under Section 5.5(a)(i)), unless a new determination is made in accordance with Section 5.5(a)(i) and the Collateral is sold or liquidated before the last sale date permitted in accordance with the new determination.

Section 5.6. ***Trustee May Enforce Claims Without Possession of Notes.***

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or their production in any trial or other Proceeding relating to them, and any Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be applied as provided in Section 5.7.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders.

Section 5.7. ***Application of Money Collected.***

Any money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any money that may then be held or subsequently received by the Trustee with respect to the Notes under this Indenture shall be applied, subject to Section 13.1 and in accordance with Section 11.1, at the dates fixed by the Trustee.

Section 5.8. ***Limitation on Suits.***

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

(a) the Holder has previously given to the Trustee written notice of an Event of Default;

(b) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under this Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(c) the Trustee for 30 days after its receipt of the notice, request and offer of indemnity has failed to institute a Proceeding; and

(d) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

No Noteholder shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect the rights of any other Noteholders of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of Notes of the same Class or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 and the Priority of Payments or Section 11.2, as the case may be.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of this Indenture but subject to Section 6.3(e).

Section 5.9. ***Unconditional Rights of Noteholders.***

Notwithstanding any provision of this Indenture other than this Section 5.9 and Sections 2.8(i), 5.4(d), and 13.1, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on the Note as it comes due in accordance with the Priority of Payments and Section 13.1, and, subject to Section 5.8, to institute proceedings for the enforcement of any such payment, and that right shall not be impaired without the consent of the Holder. Noteholders ranking junior to Notes still Outstanding may not institute proceedings for the enforcement of any such payment until no Note ranking senior to their Note remains Outstanding, subject to Section 5.8, and shall not be impaired without the consent of any such Holder. For so long as any Notes are Outstanding, the Preference Shares Paying Agent shall not be entitled to any payment of any amount for payments to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a claim against the Issuer unless there are sufficient funds to pay such amounts to the Preference Shares Paying Agent in accordance with the Priority of Payments.

Section 5.10. ***Restoration of Rights and Remedies.***

If the Trustee or the Holder of any Note has instituted any Proceeding to enforce any right under this Indenture and the Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the Proceeding, the Co-Issuers, the Trustee and the Holder shall be restored to their former positions under this Indenture, and thereafter all rights of the Trustee and the Holder shall continue as though no Proceeding had been instituted.

Section 5.11. ***Rights and Remedies Cumulative.***

No right in this Indenture conferred on or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right, and every right shall, to the extent permitted by law, be cumulative and in addition to every other right given under this Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right under this Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right.

Section 5.12. ***Delay or Omission Not Waiver.***

No delay or omission of the Trustee or the Holder of any Note to exercise any right accruing upon any Event of Default shall impair the right or be a waiver of the Event of Default or an acquiescence in it or of a subsequent Event of Default. Every right given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as deemed expedient, by the Trustee or by the applicable Noteholders.

Section 5.13. ***Control by Majority of the Controlling Class.***

(a) Notwithstanding any other provision of this Indenture, during the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any right of the Trustee with respect to the Notes if:

(i) the direction does not conflict with any rule of law or with any express provision of this Indenture; and

(ii) the Trustee has been indemnified to its reasonable satisfaction (and the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity against the liability).

Notwithstanding the foregoing, only a Majority of the Controlling Class may direct proceedings with respect to remedies specified in Section 5.4(a) or otherwise with respect to the Collateral.

(b) The Trustee may take any other action deemed proper by the Trustee that is not inconsistent with a direction under Section 5.13(a). Subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability or expense (unless the Trustee has received an indemnity against the liabilities and expenses reasonably satisfactory to it) and during the continuance of an Event of Default that has not been cured, or waived, the Trustee shall, before receiving directions from a Majority of the Controlling Class, exercise the rights expressly vested in it by this Indenture and use the same degree of care and skill in their exercise with respect to the Event of Default as is required by Section 6.1(b).

(c) Any direction to the Trustee to undertake a Sale of the Collateral shall be in accordance with Section 5.4 or 5.5.

Section 5.14. ***Waiver of Past Defaults.***

Before a judgment or decree for payment of any money due has been obtained by the Trustee, as provided in this Article 5, a Majority of the Controlling Class may on behalf of the Holders of all the Notes, with respect to the Notes waive any past Default and its consequences, except a Default:

(a) in the payment of the principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(b) with respect to a provision of this Indenture that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(c) in the payment of amounts due to the Servicer, the Trustee or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(d) arising as a result of an Event of Default described in Section 5.1(e), (g) or (h).

Upon any such waiver, the Default shall cease to exist, and any Event of Default arising from it shall be cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Noteholder.

Section 5.15. ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder of any Note by its acceptance of its Note agrees, that in any suit for the enforcement of any right under this Indenture, or in any suit against the Trustee or the Servicer for any action taken or omitted by it as Trustee or for any action taken or omitted by the Servicer, as applicable, any court may in its discretion require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and that the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.15 shall not apply to any suit instituted by the Trustee or the Servicer, to any suit instituted by any Holder, or group of Holders, of Notes holding in the aggregate more than 10% in Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable under this Indenture after the applicable Stated Maturity (or, in the case of redemption, after the applicable Redemption Date).

Section 5.16. ***Waiver of Stay or Extension Laws.***

To the extent that they may lawfully do so, the Co-Issuers covenant that they will not at any time insist on, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any valuation, appraisement, redemption, or marshalling law or rights, in each case wherever enacted, now or at any time hereafter in force, that may affect the covenants, the performance of, or any remedies under this Indenture. To the extent that they may lawfully do so, the Co-Issuers expressly waive all benefit or advantage of any such law or rights, and covenant that they shall not delay or impede the execution of any power in this Indenture granted to the Trustee or the Noteholders but will permit the execution of every power as though the law had not been enacted or rights created.

Section 5.17. ***Sale of Collateral.***

(a) The power to effect any sale (a "***Sale***") of any portion of the Collateral pursuant to Sections 5.4 and 5.5 shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral is sold or all amounts secured by the Collateral have been paid. The Trustee may upon notice to the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), and shall, at the direction of a Majority of the Controlling Class with respect to Collateral, from time to time postpone any Sale by public announcement made at the time and place of the Sale. The Trustee waives its rights to any amount fixed by law as compensation for any Sale. The Trustee may deduct the reasonable expenses (including the reasonable fees and expenses of its agents and attorneys) incurred by it in connection with a Sale from its proceeds notwithstanding Section 6.8.

(b) The Trustee may bid for and acquire any portion of the Collateral in connection with a public Sale of the Collateral, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Collateral all or part of the net proceeds of the Sale after deducting the reasonable expenses incurred by the Trustee in connection with the Sale notwithstanding Section 6.8. The Notes need not be produced to complete any Sale, or for the net proceeds of the Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Collateral consists of securities issued without registration under the Securities Act ("***Unregistered Securities***"), the Trustee may seek an Opinion of Counsel, or, if no Opinion of Counsel can be obtained, seek a no action position from the Securities and Exchange Commission or any other relevant federal or state regulatory authorities, regarding the legality of a public or private Sale of the Unregistered Securities.

(d) The Trustee shall execute and deliver an appropriate instrument of transfer transferring its interest in any portion of the Collateral in connection with its Sale. In addition, the Trustee is irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer its interest in any portion of the Collateral in connection with its Sale, and to take all action necessary to effect the Sale. No purchaser or transferee at a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent, or see to the application of any monies.

Section 5.18. ***Action on the Notes.***

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under the judgment on any portion of the Collateral or on any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1. ***Certain Duties and Responsibilities.***

(a) Except during the continuance of an Event of Default known to the Trustee:

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, on certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; the Trustee shall examine any certificates or opinions that by any provision of this Indenture are specifically required to be furnished to the Trustee to determine whether or not they substantially conform on their face to the requirements of this Indenture and shall promptly notify the party delivering the same if the certificate or opinion does not conform. If a corrected form has not been delivered to the Trustee within 15 days after the

notice from the Trustee, the Trustee shall so notify the Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares).

(b) If the Trustee has actual knowledge that an Event of Default is continuing, the Trustee shall, before the receipt of directions from a Majority of the Controlling Class, exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would use under the circumstances in the conduct of the Person's own affairs.

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

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer or the Co-Issuer or the Servicer in accordance with this Indenture or a Majority (or the other percentage required or permitted by this Indenture) of the Controlling Class (or other Class if required or permitted by this Indenture) relating to the time, method, and place of conducting any Proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights contemplated under this Indenture, if it has reasonable grounds for believing that repayment of the funds or indemnity satisfactory to it against the risk or liability is not reasonably assured to it; provided that the reasonable costs of performing its ordinary services under this Indenture shall not be deemed a "financial liability" for purposes hereof.

(d) For all purposes under this Indenture, the Trustee shall not have notice or knowledge of any Event of Default described in Section 5.1(d) through 5.1(i) or any Default described in Section 5.1(e) through 5.1(i) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge of it or unless written notice of any event that is in fact the an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and the notice references the Notes generally, the Issuer, the Co-Issuer, the Collateral or this Indenture. For purposes of determining the Trustee's responsibility and liability under this Indenture, whenever reference is made in this Indenture to an Event of Default or a Default, the reference shall be construed to refer only to an Event of Default or Default of which the Trustee has notice as described in this Section 6.1.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 6.1 and Section 6.3.

Section 6.2. ***Notice of Default.***

Promptly (and in no event later than five Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit notice of all Defaults under this Indenture known to the Trustee, unless the Default has been cured or waived, and of the declaration by mail to the Servicer and the Co-Issuers, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to all Noteholders, as their names and addresses appear on the Indenture Register, the Irish Stock Exchange, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange and so long as the rules of the exchange so require, and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee).

Section 6.3. ***Certain Rights of Trustee.***

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, or other paper or document (including but not limited to any reports prepared and delivered under Article 10) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned in this Indenture shall be sufficiently evidenced by an Issuer Request or Issuer Order;

(c) whenever in the administration of this Indenture the Trustee

(i) deems it desirable that a matter be proved or established before taking, suffering, or omitting any action under this Indenture, the Trustee may, in the absence of bad faith on its part, rely on an Officer's certificate (unless other evidence is specifically prescribed in this Indenture) or

(ii) is required to determine the value of, or any other matter with respect to, any Collateral or funds under this Indenture or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make the determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to taking or omitting to take any action under this Indenture, the Trustee may consult with counsel and the advice of the counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or omitted by it under this Indenture in good faith and in reliance thereon;

(e) the Trustee need not exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless the Holders have offered to the Trustee security or indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request or direction;

(f) the Trustee need not make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document, but the Trustee, in its discretion, may, and upon the written

direction of a Majority of the Controlling Class, subject to Section 6.3(e), shall, make any the further inquiry or investigation into the facts or matters that it deems appropriate or as it is directed, and the Trustee shall be entitled, on reasonable prior notice to the Co-Issuers and the Servicer, to examine the books and records relating to the Notes, the Collateral, personally or by agent or attorney, during the Co-Issuers' or the Servicer's normal business hours. The Trustee shall, and shall cause its agents to, hold in confidence all such information, except to the extent (i) disclosure may be required by law by any regulatory or administrative authority and (ii) that the Trustee, in its sole judgment, determines that disclosure is consistent with its obligations under this Indenture; provided, however, that the Trustee may disclose on a confidential basis any such information to its agents, attorneys and auditors in connection with the performance of its responsibilities hereunder;

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

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably believes to be authorized or within its rights or powers under this Indenture;

(i) nothing in this Indenture shall be construed to impose an obligation on the Trustee to recalculate, evaluate, or verify any report, certificate or information received from the Issuer or Servicer;

(j) the Trustee may request and receive (and rely on) instruction from the Issuer, the Servicer, or the accountants identified in the Accountants' Certificate (and in the absence of its receipt of timely instruction from them, may obtain from an Independent accountant at the expense of the Issuer) as to the application of GAAP to the extent any defined term in this Indenture, or any calculation required to be made or determined by the Trustee under this Indenture, is dependent on or defined by reference to United States generally accepted accounting principles ("***GAAP***"), in any instance;

(k) the permissive rights of the Trustee to take or refrain from taking any actions enumerated in this Indenture are not duties;

(l) the Trustee is not responsible for the accuracy of the books and records of, or for any acts or omissions of, the Depository, any Transfer Agent, Custodian, Securities Intermediary, Collateral Administrator, Clearstream, Euroclear, Calculation Agent or any Paying Agent (in each case, other than the Bank acting in that capacity);

(m) in purchasing or disposing of any asset permitted by this Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with any one or more of its Affiliates, whether it or the Affiliate is acting as a subagent of the Trustee or for any third Person or dealing as principal for its own account. If otherwise qualified, obligations of the Bank or any of its Affiliates shall qualify as Eligible Investments under this Indenture; and

(n) if the Bank is also acting in the capacity of Paying Agent, Transfer Agent, Custodian, Calculation Agent or Securities Intermediary under this Indenture, the rights protections, immunities, and indemnities afforded to the Trustee pursuant to this Article 6 shall also be afforded to the Bank acting in those capacities.

Section 6.4. ***Not Responsible for Recitals or Issuance of the Notes.***

The recitals contained in this Indenture and in the Notes, other than the Certificate of Authentication, shall be taken as the statements of the Applicable Issuers. The Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations under this Indenture), the Collateral or the Notes. The Trustee shall not be accountable for the use or application by the Co-Issuers of the Notes or their proceeds or any money paid to the Co-Issuers pursuant to this Indenture.

Section 6.5. ***May Hold Notes.***

(a) The Trustee, any Paying Agent, Indenture Registrar or any other agent of the Co-Issuers, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Co-Issuers or any of their Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Indenture Registrar or other agent.

Section 6.6. ***Acquisition of Class E Notes and Preference Shares.***

The Trustee, in its individual or any other capacity, agrees that after the initial distribution of the Class E Notes and the Preference Shares, neither the Trustee nor any of its affiliates (as defined in the Plan Asset Regulation) will acquire any Class E Notes or Preference Shares (including pursuant to a Maturity Extension, a Refinancing and the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class E Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, this Indenture and the Preference Share Documents). Any Class E Notes or Preference Shares held as principal by the Trustee or any of its affiliates shall be disregarded and shall not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such person has represented that it is not a Benefit Plan Investor.

Section 6.7. ***Money Held in Trust.***

Money held by the Trustee under this Indenture shall be held in trust to the extent required in this Indenture. The Trustee shall be under no liability for interest on any money received by it under this Indenture except as otherwise agreed on with the Issuer and except to the extent of income or other gain on assets that are deposits in or certificates of deposit of the Bank in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments. Under no circumstances shall the Trustee be responsible for any losses on assets purchased in accordance with an Issuer Order or a written order or request by the Servicer, unless such asset is purchased in an obligation of the Trustee in its corporate capacity.

Section 6.8. ***Compensation and Reimbursement.***

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date reasonable compensation for all services rendered by it under this Indenture in accordance with its letter agreement with the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided in this Indenture or in its letter agreement with the Trustee, to reimburse the Trustee in a timely manner upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with this Indenture (including securities transaction charges and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.5 or 10.7, except any such expense, disbursement or advance attributable to its negligence, willful misconduct or bad faith) but with respect to securities transaction charges, only to the extent they have not been waived during a Due Period due to the Trustee's receipt of a payment from a financial institution with respect to certain Eligible Investments, as specified by the Servicer;

(iii) to indemnify the Trustee and its officers, directors, employees and agents for any loss, liability or expense (including reasonable attorney's fees and costs) incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties under this Indenture; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees and costs) for any collection action taken pursuant to Section 6.14.

(b) The Trustee shall receive amounts pursuant to this Section 6.8 as provided in Sections 11.1(a)(i) and (ii) but only to the extent that funds are available for their payment. Subject to Section 6.10, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee has not received amounts due to it under this Indenture. No direction by the Noteholders shall affect the right of the Trustee to collect amounts owed to it under this Indenture. If on any date when a fee is payable to the Trustee pursuant to this Indenture insufficient funds are available for its payment any portion of a fee not so paid shall be deferred and payable on the next date on which a fee is payable and sufficient funds are available for it.

(c) The Trustee agrees not to cause the filing of a petition in bankruptcy for the non-payment to the Trustee of any amounts provided by this Section 6.8 until at least one year and one day, or if longer the applicable preference period then in effect plus one day, after the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments. Nothing in this Section 6.8(c) shall prohibit or otherwise prevent the Trustee from filing proofs of claim in any bankruptcy, insolvency or similar proceeding.

Section 6.9. ***Corporate Trustee Required; Eligibility.***

There shall at all times be a Trustee under this Indenture that is an Independent "bank" (within the meaning of the Investment Company Act) organized and doing business under the laws of the United States of America or of any state of the United States, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S.$200,000,000, subject to supervision or examination by federal or state banking authority, having a rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P, and having an office within the United States. In addition, the Trustee shall not be "affiliated" (within the meaning of Rule 405 under the Securities Act) with either of the Co-Issuers or any person involved in the organization or operation of either of the Co-Issuers and shall not provide credit or credit enhancement to either of the Co-Issuers; *provided* that the requirements of the preceding sentence shall be met if (a) the Trustee is not "affiliated" (as defined in the preceding

sentence) with the Issuer, the Co-Issuer, the Administrator or the Share Registrar, (b) neither the Trustee nor the Issuer has actual knowledge, or has received written notice, that the Trustee is "affiliated" (as defined in the preceding sentence) with any person involved with the organization or operation of either of the Co-Issuers, and (c) the Trustee has not provided and does not provide credit or credit enhancement to either of the Co-Issuers. For purposes of the preceding clause (b), (i) the "actual knowledge" of the Trustee shall mean (x) its knowledge of those persons who have been expressly identified in writing to it by either or both of the Co-Issuers, or the Servicer on their behalf or (y) any persons otherwise actually known to a Responsible Officer of the Trustee, in either case, to be a person involved with the organization or operation either of the Co-Issuers, without any duty of independent inquiry or investigation on the part of the Trustee, and (ii) unless and except to the extent it has been otherwise expressly notified in writing by the Issuer , or the Servicer on its behalf , the Trustee shall be entitled to presume that the Issuer has no knowledge of such an affiliation. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9, the combined capital and surplus of the Trustee shall be its combined capital and surplus in its most recent published report of condition. If at any time the Trustee ceases to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10. ***Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11. The indemnification in favor of the Trustee shall survive any resignation or removal of the Trustee.

(b) The Trustee may resign at any time by giving not less than 30 days' written notice to the Co-Issuers, the Servicer, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency. Upon receiving the notice of resignation, the Co-Issuers shall by Board Resolution (or, if an Event of Default shall have occurred and be continuing, at the direction of a Majority of the Controlling Class) promptly appoint a successor trustee satisfying the requirements of Section 6.9, by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the resigning Trustee and one copy to the successor Trustee, together with a copy to each Noteholder, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Servicer. If no successor Trustee has been appointed and an instrument of acceptance by a successor Trustee has not been delivered to the Trustee within 60 days after the giving of the notice of resignation, the resigning Trustee or any Noteholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee satisfying the requirements of Section 6.9.

(c) The Trustee may be removed (i) at any time by the Co-Issuers as directed by Board Resolution (or, if an Event of Default shall have occurred and be continuing, by an Act of a Majority of the Controlling Class) or (ii) by order of a court of competent jurisdiction, delivered to the Trustee and to the Co-Issuers.

(d) If at any time:

(i) the Trustee ceases to be eligible under Section 6.9 and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class; or

(ii) the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property appointed or any public

officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (subject to Section 6.10(a)), (A) the Co-Issuers, by Issuer Order (as directed by Board Resolution), may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee or (B) subject to Section 5.15, or any Holder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers, by Issuer Order (as directed by Board Resolution) or at the direction of a Majority of the Controlling Class, shall promptly appoint a successor Trustee. If the Co-Issuers fail to appoint a successor Trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor Trustee may be appointed by a Majority of the Controlling Class by written instrument delivered to the Issuer and the retiring Trustee. The successor Trustee so appointed shall, upon its acceptance of its appointment, become the successor Trustee and supersede any successor Trustee proposed by the Co-Issuers. If no successor Trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class and accepted appointment pursuant to Section 6.11, subject to Section 5.15, then the Trustee to be replaced, or any Holder, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Co-Issuers shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of the event by first-class mail, postage prepaid, to the Servicer, to each Rating Agency, to the Noteholders as their names and addresses appear in the Indenture Register and to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Co-Issuers fail to mail the notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause the notice to be given at the expense of the Co-Issuers.

Section 6.11. ***Acceptance of Appointment by Successor.***

Every successor Trustee appointed under this Indenture shall execute, acknowledge, and deliver to the Co-Issuers and the retiring Trustee an instrument accepting its appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and the successor Trustee, without any further act, shall become vested with all the rights and obligations of the retiring Trustee; but, on request of the Co-Issuers or a Majority of any Class of Notes or the successor Trustee, the retiring Trustee shall, upon payment of any amounts then due to it, execute and deliver an instrument transferring to the successor Trustee all the rights and obligations of the retiring Trustee, and shall duly assign, transfer and deliver to the successor Trustee all property and money held by the retiring Trustee under this Indenture. Upon request of any successor Trustee, the Co-Issuers shall execute any instruments to more fully and certainly vest in and confirm to the successor Trustee all the rights and obligations of the Trustee under this Indenture.

No successor Trustee shall accept its appointment unless at the time of its acceptance the successor is qualified and eligible under Section 6.9 and either (a) each Rating Agency has been notified and the successor has long-term debt rated within the four highest rating categories by each Rating Agency, or (b) if not rated within the four highest categories by each Rating Agency, the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

Section 6.12. ***Merger, Conversion, Consolidation, or Succession to Business of Trustee.***

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee under this Indenture (and of the Bank under all of its other capacities under this Indenture, including as Custodian, Securities Intermediary, Indenture Registrar and Paying Agent) without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to the authenticating Trustee may adopt the authentication and deliver the Notes so authenticated with the same effect as if the successor Trustee had itself authenticated the Notes.

Section 6.13. ***Co-Trustees.***

At any time, to meet the legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Co-Issuers and the Trustee may appoint a co-trustee (subject to the approval of the Rating Agencies) to act jointly with the Trustee, with respect to all or any part of the Collateral, with the power to file proofs of claim and take any other actions pursuant to Section 5.6 in this Indenture and to make claims and enforce rights of action on behalf of the Noteholders, as the Holders themselves have the right to do, subject to the other provisions of this Section 6.13.

The Co-Issuers shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Co-Issuers do not join in the appointment within 15 days after they receive a request to do so, the Trustee may make the appointment.

Any instruments to more fully confirm a co-trustee's appointment shall, on request, be executed, acknowledged and delivered by the Co-Issuers. The Co-Issuers agree to pay (but only from and to the extent of the Collateral), to the extent funds are available therefor under Section 11.1(a)(i)(1), any reasonable fees and expenses in connection with the appointment.

Every co-trustee shall, to the extent permitted by law, but to that extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights and obligations under this Indenture in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee under this Indenture, shall be exercised solely by the Trustee;

(b) the rights and obligations conferred or imposed on the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed on and exercised or performed by the Trustee or by the Trustee and the co-trustee jointly as provided in the instrument appointing the co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Co-Issuers evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.13, and if an Event of Default is continuing, the Trustee shall have the power to accept the resignation of, or remove, any co-trustee without the concurrence of the Co-Issuers. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.13;

(d) no co-trustee under this Indenture shall be personally liable because of any act or omission of the Trustee under this Indenture;

(e) the Trustee shall not be liable because of any act or omission of a co-trustee; and

(f) any Act of Noteholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.14. ***Certain Duties of Trustee Related to Delayed Payment of Proceeds.***

If in any month the Trustee has not received a payment with respect to any Pledged Obligation on its Due Date:

(a) the Trustee shall promptly notify the Issuer and the Servicer in writing, and

(b) unless the payment is received by the Trustee within three Business Days (or the end of the applicable grace period for the payment, if longer) after the notice, or unless the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), makes provision for the payment satisfactory to the Trustee in accordance with Section 10.2(a),

the Trustee shall request the issuer of the Pledged Obligation, the trustee under the related Underlying Instrument, or paying agent designated by either of them to make the payment as soon as practicable after the request but in no event later than three Business Days after the date of the request. If the payment is not made within that time period, the Trustee, subject to clause (iv) of Section 6.1(c), shall take the action directed by the Servicer in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. If the Issuer or the Servicer requests a release of a Pledged Obligation or delivers a Collateral Obligation in connection with any such action under the Servicing Agreement, the release or substitution shall be subject to Section 10.6 and Article 12. Notwithstanding any other provision of this Indenture, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation or any Collateral Obligation received after its Due Date to the extent the Issuer previously made provisions for the payment satisfactory to the Trustee in accordance with this Section 6.14 and the payment shall not be part of the Collateral.

Section 6.15. ***Authenticating Agents.***

Upon the request of the Co-Issuers, the Trustee shall, and if the Trustee so chooses the Trustee may, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of the Notes in connection with issuance, transfers, and exchanges under Sections 2.4, 2.5, 2.6, 2.7, and 8.5, as fully to all intents and purposes as though each Authenticating Agent had been expressly authorized by those Sections to authenticate the Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 6.15 shall be the authentication of the Notes "by the Trustee."

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to the Authenticating Agent and the Co-Issuers.

The Co-Issuers agree to pay to each Authenticating Agent from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating to its services as an Administrative Expense; provided, however, that if the Trustee elects to appoint an Authenticating Agent without the approval or request of the Co-Issuers, then the Trustee shall pay

such compensation and reimbursement. Sections 2.9, 6.4, and 6.5 shall be applicable to any Authenticating Agent.

Section 6.16. ***Fiduciary for Noteholders Only; Agent for Secured Parties.***

With respect to the security interest created under this Indenture, the delivery of any Pledged Obligation to the Trustee is to the Trustee as representative of the Noteholders and agent for the other Secured Parties. In furtherance of the foregoing, the possession by the Trustee of any Pledged Obligation and the endorsement to or registration in the name of the Trustee of any Pledged Obligation (including as entitlement holder of the Custodial Account) are all undertaken by the Trustee in its capacity as representative of the Noteholders and agent for the other Secured Parties.

Section 6.17. ***Representations and Warranties of the Bank.***

The Bank represents and warrants as follows for the benefit of the Noteholders:

(a) *Organization.* The Bank has been duly organized and is validly existing as a national banking association and has the power to conduct its business and affairs as a trustee.

(b) *Authorization; Binding Obligations.* The Bank has the corporate power and authority to perform the duties and obligations of trustee under this Indenture. The Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Indenture, and all of the documents required to be executed by the Bank pursuant to this Indenture. Upon execution and delivery by the Bank, this Indenture will be the valid and legally binding obligation of the Bank enforceable in accordance with its terms.

(c) *Eligibility.* The Bank is eligible under Section 6.9 to serve as Trustee under this Indenture.

Section 6.18. ***Additional Reporting Requirements.***

If either of the Initial Purchasers elects to enter into a posting dealer agreement pursuant to Section 7.20, upon the effectiveness of the posting dealer agreement, the Issuer shall provide to The Bond Market Association certain documents for posting in the Repository as mutually agreed between the Servicer and such Initial Purchaser.

If either of the Initial Purchasers has entered into a posting dealer agreement, as promptly as possible following the execution of any supplemental indenture under Article 8, the Trustee at the expense of the Issuer shall deliver a copy of such supplemental indenture to the Repository in the manner described in Section 14.3(a)(ix).

Section 6.19. ***Withholding Tax Forms.***

The Issuer hereby agrees to deliver or cause to be delivered, a United States Internal Revenue Service Form W-8BEN (or successor form thereto) or any other appropriate tax certificates to the relevant issuer of its Collateral Obligations and issuer of its Eligible Investments at the time such Collateral Obligations or Eligible Investments are purchased by the Issuer and thereafter as required under the relevant law. In addition, the Issuer hereby agrees to deliver, and the Issuer shall be required to deliver, United States Internal Revenue Service Forms W-8BEN (or successor form thereto) and other appropriate United States tax forms as may be required by the Hedge Counterparty, to the Hedge Counterparty at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form, and shall take any other action appropriate to prevent withholding or backup withholding tax on the Hedge Agreements. The Issuer

shall represent, to the Hedge Counterparty in the master agreement, confirmation or schedule to the Hedge Agreement, that the Issuer is a "non-U.S. branch" of a foreign person as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations. The Issuer will request that the Hedge Counterparty provide the Issuer a United States Internal Revenue Service Forms W-9 or W-8, as applicable, together with any required attachments, at the time the Hedge Agreement is entered into and thereafter prior to the expiration or obsolescence of such form.

ARTICLE 7

COVENANTS

Section 7.1. ***Payment of Principal and Interest.***

The Applicable Issuers shall pay the principal of and interest on the Notes in accordance with the Notes and this Indenture.

The Issuer shall, subject to the Priority of Payments, reimburse the Co-Issuer for any amounts paid by the Co-Issuer pursuant to the Senior Notes or this Indenture. The Co-Issuer shall not reimburse the Issuer for any amounts paid by the Issuer pursuant to the Notes or this Indenture.

Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Holder shall be considered as having been paid by the Applicable Issuers to the Holder for all purposes of this Indenture.

Section 7.2. ***Maintenance of Office or Agency.***

The Co-Issuers appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes. The Co-Issuers appoint Investors Bank & Trust Company, 200 Clarendon Street, Mailcode EUC 108, Boston, MA 02116, Attn: CDO Services Group, as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Notes or this Indenture may be served and where the Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers may at any time and from time to time vary or terminate the appointment of any Paying Agent or appoint any additional agents for all of these purposes.

The Co-Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands on the Co-Issuers in respect of the Notes and this Indenture may be served, which office will initially be the office of Investors Bank & Trust Company, an Affiliate of the Trustee, located at 33 Maiden Lane, 4th Floor, New York, NY 10038, and an office or agency outside of the United States where the Notes may be presented and surrendered for payment.

No paying agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax.

So long as any Class of Senior Notes is listed on the Irish Stock Exchange and the rules of the exchange so require, the Co-Issuers shall maintain in Ireland a Paying Agent and an office or agency where notices and demands on the Co-Issuers in respect of the Senior Notes and this

Indenture may be served and where the Senior Notes may be surrendered for registration of transfer or exchange.

The Co-Issuers appoint, for so long as any Class of Senior Notes is listed on the Irish Stock Exchange, AIB International Financial Services Ltd. (the "***Irish Paying Agent***") as Paying Agent in Ireland with respect to the Senior Notes, for the payment of principal, interest and other distributions on the Senior Notes and as the Co-Issuers' agent where notices and demands on the Co-Issuers in respect of the Senior Notes or this Indenture may be served. If the Irish Paying Agent is replaced at any time when any Class of Senior Notes is listed on the Irish Stock Exchange, notice of the appointment of any replacement shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Co-Issuers shall give prompt written notice to the Trustee, each Rating Agency, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holders of the Senior Notes of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Co-Issuers fail to maintain any required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or fail to furnish the Trustee with their addresses, notices and demands may be served on the Co-Issuers.

Section 7.3. ***Money for Note Payments to be Held in Trust.***

All payments of amounts payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Applicable Issuers by the Trustee or a Paying Agent with respect to payments on the Notes.

When the Applicable Issuers have a Paying Agent that is not also the Indenture Registrar, they shall furnish not later than the fifth calendar day after each Record Date a list in the form the Paying Agent reasonably requests, of the names and addresses of the Holders and of the certificate numbers of individual Notes held by each Holder.

Whenever the Applicable Issuers have a Paying Agent other than the Trustee, they shall, on or before the Business Day before each Payment Date or Redemption Date direct the Trustee to deposit on the Payment Date with the Paying Agent an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for that purpose in the Payment Account), that sum to be held in trust for the benefit of the Persons entitled to it and (unless the Paying Agent is the Trustee) the Co-Issuers shall promptly notify the Trustee of its action or failure so to act. Any monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which the deposit was made shall be paid over by the Paying Agent to the Trustee for application in accordance with Article 10.

Additional or successor Paying Agents shall be appointed by Issuer Order with written notice of the appointment to the Trustee. So long as Notes of any Class are rated by a Rating Agency any Paying Agent must either have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and "A-1+" by S&P or the Rating Condition with respect to each Rating Agency must be satisfied with respect to its appointment. If a successor Paying Agent ceases to have a long-term debt rating of "Aa3" (and not on credit watch with negative implications) or higher by Moody's and "AA-" or higher by S&P or a short-term debt rating of "P-1" (and not on credit watch for possible downgrade) by Moody's and a short-term debt rating of "A-1+" by S&P, the Co-Issuers shall promptly remove the Paying Agent and appoint a successor Paying Agent. The Co-Issuers shall not appoint any Paying Agent that is not, at the time of the appointment, a depository institution or trust company subject to supervision

and examination by federal or state or national banking authorities. The Co-Issuers shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which the Paying Agent agrees with the Trustee, subject to this Section 7.3, that the Paying Agent will:

(i) allocate all sums received for payment to the Noteholders for which it acts as Paying Agent on each Payment Date and any Redemption Date among the Holders in the proportion specified in the applicable report to the extent permitted by applicable law;

(ii) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled to them until they are paid or otherwise disposed of as provided in this Indenture;

(iii) immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of the Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment;

(iv) immediately give the Trustee notice of any default by the Issuer or the Co-Issuer (or any other obligor on the Notes) in the making of any payment required to be made; and

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

To obtain the satisfaction and discharge of this Indenture or for any other purpose, the Co-Issuers may at any time pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Co-Issuers or the Paying Agent, and, upon the payment by any Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to the money paid.

Any money deposited with a Paying Agent and not previously returned that remains unclaimed for 20 Business Days shall be returned to the Trustee. Except as otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or interest on any Note and remaining unclaimed for two years after the principal or interest has become payable shall be paid to the Applicable Issuers. The Noteholder shall thereafter look only to the Applicable Issuers for payment of the amounts due to it as an unsecured general creditor and all liability of the Trustee or the Paying Agent with respect to that money (but only to the extent of the amounts so paid to the Applicable Issuers) shall thereupon cease. The Trustee or the Paying Agent, before being required to release any payment, may, but shall not be required to, adopt and employ, at the expense of the Applicable Issuers any reasonable means of notification of the release of the payment, including mailing notice of the release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in monies payable but not claimed is determinable from the records of any Paying Agent, at the last address of record of each Holder.

Section 7.4. ***Existence of Co-Issuers.***

(a) The Issuer and the Co-Issuer shall maintain in full force their existence and rights as companies incorporated or organized under the laws of the Cayman Islands and the State of Delaware, respectively, and shall obtain and preserve their qualification to do business as foreign corporations in each jurisdiction in which the qualifications are necessary to protect the validity and enforceability of this Indenture, the Notes, the Preference Shares Paying Agency Agreement and any of the Collateral.

However, the Issuer may change its jurisdiction of incorporation from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as:

(A) the Issuer has received a legal opinion (on which the Trustee may rely) to the effect that the change is not disadvantageous in any material respect to the Holders, the Servicer or any Hedge Counterparty,

(B) written notice of the change has been given by the Issuer to the Trustee, the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, any Hedge Counterparty and each Rating Agency, and

(C) on or before the 15th Business Day following its receipt of the notice the Trustee has not received written notice from a Majority of the Controlling Class objecting to the change.

The Issuer may take any action required by this Indenture within the United States notwithstanding any provision of this Indenture requiring the Issuer to take the action outside of the United States so long as before taking the action the Issuer receives a Tax Opinion of Counsel to the effect that it is not necessary to take the action outside of the United States or any political subdivision of the United States to prevent the Issuer from becoming subject to any United States federal, state, or local withholding or other taxes.

(b) The Issuer and the Co-Issuer shall ensure that all corporate or other formalities regarding their respective existences (including holding regular board of directors' and shareholders', or other similar, meetings to the extent required by applicable law) are followed. Neither the Issuer nor the Co-Issuer shall take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or in its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. Without limiting the foregoing,

(i) the Issuer shall not have any subsidiaries,

(ii) the Co-Issuer shall not have any subsidiaries,

(iii) the Issuer shall maintain at all times at least one director who is Independent of the Servicer, the Trustee and any of their respective Affiliates,

(iv) the Issuer shall not commingle its funds with the funds of any other Person, except as expressly permitted by this Indenture, and

(v) except to the extent contemplated in the Servicing Agreement, the Administration Agreement, the Preference Shares Paying Agency Agreement and the declaration of trust by the Share Trustee, the Issuer and the Co-Issuer shall not:

(A) engage in any transaction with any shareholder that would be a conflict of interest (the entry into the Administration Agreement with the Administrator shall not be deemed a conflict of interest), or

(B) pay dividends in violation of this Indenture, the resolutions of its board of directors and the Preference Share Documents.

Section 7.5. ***Protection of Collateral.***

(a) The Servicer on behalf of the Issuer will procure any action within the Servicer's control that is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Collateral. The Issuer from time to time shall execute and deliver any supplements and amendments to this Indenture and shall execute and deliver any Financing Statements, continuation statements, instruments of further assurance, and other instruments and shall take any other action appropriate to secure the rights and remedies of the Secured Parties under this Indenture and to:

(i) Grant more effectively all or any portion of the Collateral;

(ii) maintain or preserve the lien (and its priority) of this Indenture or to carry out more effectively the purposes of this Indenture;

(iii) perfect, publish notice of, or protect the validity of, any Grant made by this Indenture (including any actions appropriate as a result of changes in law);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Secured Parties in the Collateral against the claims of anyone; and

(vi) pay when due all taxes levied or assessed on any part of the Collateral.

The Issuer designates the Servicer as its agent and attorney in fact to execute any Financing Statement, continuation statement, and all other instruments, and take all other actions, required pursuant to this Section 7.5.

The Issuer authorizes the filing without the Issuer's signature a financing statement that names the Issuer as "debtor" and Investors Bank & Trust Company as "secured party" (with or without indicating its capacity as Trustee hereunder) and that describes the Collateral as "all assets of the debtor, whether now owned or hereafter acquired and wherever located."

(b) The Trustee shall not:

(i) except in accordance with Section 10.6(a), (b) or (c), remove any portion of the Collateral that consists of Cash or is evidenced by an instrument, certificate or other writing:

(A) from the jurisdiction in which it was held at the date the most recent Opinion of Counsel was delivered pursuant to Section 7.6 (or from the jurisdiction in which it was held as described in the Opinions of Counsel delivered at the Closing Date pursuant to Section 3.1(a)(iii) if no Opinion of Counsel has yet been delivered pursuant to Section 7.6), or

(B) from the possession of the Person who held it (other than the Bank), or

(ii) cause or permit ownership or the pledge of any portion of the Collateral that consists of book-entry securities to be recorded on the books of a Person (other than the Bank):

(A) located in a different jurisdiction from the jurisdiction in which the ownership or pledge was recorded, or

(B) other than the Person on whose books the ownership or pledge was originally recorded, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to the property and its priority will continue to be maintained after giving effect to the change.

(c) Without at least 30 days' prior written notice to the Trustee and the Servicer, the Issuer shall not change its "location" (as defined in Section 9-307 of the UCC) or change its name from the name shown on the signature pages of this Indenture.

(d) The Issuer shall, subject to the Priority of Payments, enforce all of its material rights and remedies under the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, each Hedge Agreement and each Securities Lending Agreement.

(e) The Issuer shall pay any taxes levied because any Pledged Obligations are owned by the Issuer.

(f) The Servicer on behalf of the Issuer will either exercise the "put" option that prevents a Collateral Obligation from being a Long-Dated Collateral Obligation on the last available date before the Stated Maturity of the Notes or sell the Collateral Obligation for Sale Proceeds at least equal to the Principal Balance of the Collateral Obligation, in either case by the Stated Maturity of the Notes.

Section 7.6. ***Opinions as to Collateral.***

On or before June 1 in each calendar year, commencing in 2008, the Issuer shall furnish to the Trustee and each of the Rating Agencies, an Opinion of Counsel stating that in the opinion of such counsel as of the date of such opinion under the District of Columbia Uniform Commercial Code, the UCC financing statement(s) filed in connection with the lien and security interests created by this Indenture shall remain effective and no additional financing statements, continuation statements or amendments with respect to such financing statement(s) shall be required to be filed in the District of Columbia from the date thereof through the next twelve months to maintain the perfection of the security interest of this Indenture under the District of Columbia Uniform Commercial Code.

Section 7.7. ***Performance of Obligations.***

(a) The Co-Issuers, each as to itself, shall not take any action, and shall use their reasonable commercial efforts not to permit any action to be taken by others, that would release any Person from any of the Person's covenants or obligations under any instrument included in the Collateral, except in the case of enforcement action taken with respect to any Defaulted Collateral Obligation in accordance with this Indenture and actions by the Servicer under the Servicing Agreement and in conformity with this Indenture or as otherwise required by this Indenture.

(b) The Applicable Issuers may, with the prior written consent of a Majority of each Class of Notes and a Majority of the Preference Shares (except in the case of the Servicing Agreement and the Collateral Administration Agreement as initially executed), contract with other Persons (including the Servicer, the Trustee and the Collateral Administrator) for the performance of actions and obligations to be performed by the Applicable Issuers under this Indenture.

Notwithstanding any such arrangement, the Applicable Issuers shall remain primarily liable for performance under this Indenture. The Applicable Issuers shall punctually perform, and use their reasonable commercial efforts to cause the Servicer, the Trustee, the Collateral Administrator, the Preference Shares Paying Agent and any other Person to perform, all of their obligations in the Servicing Agreement, this Indenture, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement or any other agreement.

Section 7.8. ***Negative Covenants.***

(a) The Issuer shall not and, with respect to clauses (ii), (iii), (iv), (vi) and (ix), the Co-Issuer shall not, in each case from and after the Closing Date:

(i) sell, transfer, assign, exchange, or otherwise dispose of, or pledge, mortgage, hypothecate, or otherwise encumber (or permit or suffer the sale, transfer, assignment, exchange, or other disposition of, or pledge, mortgage, hypothecation, or other encumbering of), any part of the Collateral, except as expressly permitted by this Indenture and the Servicing Agreement;

(ii) claim any credit on, make any deduction from, or, to the fullest extent permitted by applicable laws, dispute the enforceability of payment of the principal or interest (or any other amount) payable in respect of the Notes (other than amounts withheld in accordance with the Code or any applicable laws of the Cayman Islands) or assert any claim against any present or future Noteholder because of the payment of any taxes levied or assessed on any part of the Collateral;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated by this Indenture (including a Refinancing in accordance with Section 9.7 and including, as contemplated hereby, entering into the Hedge Agreements and Securities Lending Agreements) or (B) issue any additional class of securities other than the Preference Shares issued on or before the Closing Date, except as otherwise permitted by the Preference Share Documents;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant under this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated, or discharged or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted by this Indenture or by the Servicing Agreement, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise on or burden any part of the Collateral, any interest in it, or its proceeds of or (C) take any action that would permit the lien of this Indenture not to be a valid first priority perfected security interest in the Collateral;

(v) amend the Servicing Agreement except pursuant to its terms and Section 15.1(h) or amend the Collateral Administration Agreement except pursuant to its terms unless the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment or enter into any waiver in respect of any of the foregoing agreements without providing written notice to each Rating Agency and the Trustee (and, with respect to the Collateral Administration Agreement, without the consent of the Trustee);

(vi) to the extent permitted by applicable law, dissolve or liquidate in whole or in part, except as permitted under this Indenture;

(vii) pay any dividends or other distributions other than in accordance with the Priority of Payments and the Preference Share Documents;

(viii) conduct business under any name other than its own;

(ix) have any employees (other than directors and officers to the extent they are employees); or

(x) except for any Underlying Instrument and agreements involving the purchase or sale of Collateral Obligations having customary purchase or sale terms and documented with customary trading documentation (but not excepting any Synthetic Security or Hedge Agreement), enter into any agreement unless the agreement contains "non-petition" and "limited recourse" provisions and shall not amend such "non-petition" and "limited recourse" provisions without prior Rating Confirmation.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Collateral, or enter into an agreement or commitment to do so, or enter into or engage in any business with respect to any part of the Collateral, except as expressly permitted by this Indenture and, with respect to the Issuer, the Servicing Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" as the term is defined in the Investment Company Act, and shall keep all of its assets in Cash.

(d) Neither the Issuer nor the Co-Issuer shall use the proceeds of the Notes to buy or carry Margin Stock.

Section 7.9. ***Notice of Default; Statement as to Compliance.***

(a) The Co-Issuers shall notify the Trustee, the Servicer, the Rating Agencies and each Hedge Counterparty within 10 days of acquiring actual knowledge of Default.

(b) On or before May 15 in each calendar year, commencing in 2008, the Issuer shall deliver to the Trustee (to be forwarded by the Trustee to the Servicer and each Noteholder making a written request therefor and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency) a certificate of an Authorized Officer of the Issuer that, to the best knowledge of the Issuer, no Default exists, and has not existed since the date of the last certificate or, if a Default does then exist or had existed, specifying the same and its nature and status, including actions undertaken to remedy it, and that the Issuer has complied with all of its obligations under this Indenture or, if that is not the case, specifying those obligations with which it has not complied.

Section 7.10. ***Co-Issuers May Consolidate, etc. Only on Certain Terms.***

Neither the Issuer nor the Co-Issuer (the "***Merging Entity***") shall consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by Cayman Islands law (in the case of the Issuer) or United States and Delaware law (in the case of the Co-Issuer) and unless:

(a) the Merging Entity shall be the surviving corporation, or the Person (if other than the Merging Entity) formed by the consolidation or into which the Merging Entity is merged or to which all or substantially all of the assets of the Merging Entity are transferred (the "***Successor Entity***"),

(i) if the Merging Entity is the Issuer, is a company organized and existing under the laws of the Cayman Islands or another jurisdiction approved by a Majority of the Controlling Class (except that no approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of incorporation pursuant to Section 7.4), and

(ii) in any case shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of all amounts on all Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(b) each Rating Agency shall have been notified of the consolidation, merger, transfer, or conveyance and the Rating Condition with respect to each Rating Agency is satisfied with respect to the transaction;

(c) if the Merging Entity is not the surviving corporation, the Successor Entity shall have agreed with the Trustee,

(i) to observe the same legal requirements for the recognition of the formed or surviving corporation as a legal entity separate and apart from any of its Affiliates as are applicable to the Merging Entity with respect to its Affiliates,

(ii) not to consolidate or merge with or into any other Person or transfer or convey the Collateral or all or substantially all of its assets to any other Person except in accordance with this Section 7.10; and

(iii) in any case shall expressly assume by an indenture supplemental to this Indenture, executed and delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the due and punctual payment of all amounts on all the Notes issued by the Merging Entity and the performance and observance of every covenant of this Indenture on its part to be performed or observed, all as provided in this Indenture;

(d) if the Merging Entity is not the surviving corporation, the Successor Entity shall have delivered to the Trustee and each Rating Agency an Officer's certificate and an Opinion of Counsel each stating that it is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; that it has sufficient power and authority to assume the obligations in subsection (a) above and to execute and deliver an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above; that it has duly authorized the execution, delivery, and performance of an indenture supplemental to this Indenture for the purpose of assuming the obligations in subsection (a) above and that the supplemental indenture is its valid and legally binding obligation, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium, and other laws affecting the enforcement of creditors' rights generally and to general principles of equity; if the Merging Entity is the Issuer, that, following the event that causes the Successor Entity to become the successor to the Issuer, (i) the Successor Entity has title, free of any lien, security interest, or charge, other than the lien and security interest of this Indenture, to the Collateral, and (ii) the lien of this Indenture continues to be effective in the Collateral; and in each case as to any other matters the Trustee or any Noteholder reasonably requires;

(e) after giving effect to the transaction, no Default or Event of Default shall be continuing;

(f) the Merging Entity shall have notified each Rating Agency of the consolidation, merger, transfer or conveyance and shall have delivered to the Trustee, each Noteholder and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) an Officer's certificate and an Opinion of Counsel each stating that the consolidation, merger, transfer or conveyance and the supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 relating to the transaction have been complied with and shall have obtained a Tax Opinion of Counsel that no adverse tax consequences will result therefrom to the Holders of the Securities;

(g) the Merging Entity shall have delivered to the Trustee an Opinion of Counsel stating that after giving effect to the transaction, neither of the Co-Issuers (or, if applicable, the Successor Entity) will be required to register as an investment company under the Investment Company Act; and

(h) after giving effect to the transaction, the outstanding stock of the Merging Entity (or, if applicable, the Successor Entity) will not be beneficially owned within the meaning of the Investment Company Act by any U.S. Person.

Section 7.11. ***Successor Substituted.***

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 in which the Merging Entity is not the surviving corporation, the Successor Entity shall succeed to, and be substituted for, and may exercise every right of, the Merging Entity under this Indenture with the same effect as if the Person had been named as the Issuer or the Co-Issuer, as the case may be, in this Indenture. Upon any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor may be dissolved, wound up and liquidated at any time thereafter, and the Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12. ***No Other Business.***

(a) From and after the Closing Date, the Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and the Preference Shares pursuant to the Preference Share Documents and acquiring, owning, holding, and pledging and selling Collateral Obligations and the other Collateral in connection therewith, and shall not act as agent, negotiator or structurer with respect to any Collateral, act as a participant in negotiating terms of a primary loan agreement, enter into a binding commitment to purchase any Collateral prior to the issuance thereof or engage in any transaction or activity not permitted by the Collateral Acquisition Agreement or which the Issuer knows would cause it to be treated as engaged in a trade or business in the United States within the meaning of the Code or subject the Issuer's income to taxation on a net basis in any jurisdiction, and the Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes to be issued by it pursuant to this Indenture and, with respect to the Issuer and the Co-Issuer, other activities appropriate to accomplish the foregoing or incidental thereto or connected therewith.

(b) In furtherance and not in limitation of clause (a) of this Section 7.12, the Issuer shall comply with all of the provisions set forth in the Collateral Acquisition Agreement, unless, with respect to a particular transaction, it obtains written advice of Latham & Watkins LLP or a Tax Opinion of Counsel that, under the relevant facts and circumstances with respect to such transaction, the Issuer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis.

The provisions set forth in the Collateral Acquisition Agreement may be amended, eliminated or supplemented (without execution of a supplemental indenture) if the Issuer obtains written advice of Latham & Watkins LLP or a Tax Opinion of Counsel that the Issuer's compliance with such amended provisions or supplemental provisions or the Issuer's failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States within the meaning of the Code or otherwise to be subject to United States federal income tax on a net basis and, at the request of the Issuer, the Trustee is hereby authorized to enter into any amendment of the Collateral Acquisition Agreement under such circumstances; provided, however, that written notice of any such amendment, elimination or supplementation of or to the provisions of the Collateral Acquisition Agreement pursuant to this Section 7.12(b) shall be provided to each Rating Agency then rating any Outstanding Class of Notes within 90 days of any such amendment, elimination or supplementation. For the avoidance of doubt, in the event written advice of Latham & Watkins LLP or a Tax Opinion of Counsel as described above has been obtained in accordance with the terms hereof, no consent of any Noteholder or satisfaction of the Rating Condition shall be required in order to comply with this Section 7.12(b) in connection with the amendment, elimination or supplementation of any provision of the Collateral Acquisition Agreement contemplated by such written advice or opinion.

(c) The Issuer and the Co-Issuer may amend, or permit the amendment of, their Memorandum and Articles or the Certificate of Incorporation and By-laws if the Rating Condition with respect to each Rating Agency is satisfied with respect to the amendment (but not otherwise).

Section 7.13. ***Listing on Irish Stock Exchange.***

So long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the regulated market of the ISE; provided that the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

Section 7.14. ***Annual Rating Review.***

So long as any Notes of any Class remain Outstanding, on or before May 1 in each year commencing in 2008, the Co-Issuers shall obtain and pay for an annual review or ongoing surveillance of the rating of each Outstanding Class of Notes from each Rating Agency, as applicable. The Co-Issuers shall promptly notify the Trustee and the Servicer in writing (and the Trustee shall promptly provide a copy of the notice to the Noteholders) and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) if at any time the rating of any Class of Notes has been, or is known will be, changed or withdrawn.

Section 7.15. ***Reporting.***

At any time when the Co-Issuers are not subject to Section 13 or 15(d) of the Exchange Act and are not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or Beneficial Owner of any Note, the Co-Issuers shall promptly furnish "Rule 144A Information" to the Holder or Beneficial Owner, to a prospective purchaser of a Note designated by the Holder or Beneficial Owner or to the Trustee for delivery to the Holder or Beneficial Owner or a prospective purchaser designated by the Holder or Beneficial Owner, as the case may be, to permit compliance by the Holder or Beneficial Owner with Rule 144A under the Securities Act in connection with the resale of the Note by the Holder or Beneficial Owner. "***Rule 144A Information***" is the information specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 7.16. ***Calculation Agent.***

(a) The Issuer agrees that for so long as any Floating Rate Notes remain Outstanding an agent will always have been appointed (that does not control and is not controlled by or under common control with the Issuer or its Affiliates) to calculate LIBOR in respect of each Interest Period (the "***Calculation Agent***"). The Issuer has initially appointed the Trustee as Calculation Agent. The Issuer may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer or if the Calculation Agent fails to determine any of the information required to be given to the Company Announcements Office of the Irish Stock Exchange, as described in subsection (b), in respect of any Interest Period, the Issuer or the Servicer (on its behalf) shall promptly appoint a replacement Calculation Agent. For so long as any Floating Rate Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, notice of the appointment of any replacement Calculation Agent shall be given to the Company Announcements Office of the Irish Stock Exchange as promptly as practicable after the appointment. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) As soon as possible after 11:00 A.M., London time, on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 A.M., London time, on the next Business Day, the Calculation Agent shall calculate the Note Interest Rate for each Class of Floating Rate Notes for the next Interest Period. The Calculation Agent shall communicate those rates and amounts to the Co-Issuers, the Trustee, each Paying Agent, the Servicer, Euroclear, Clearstream, the Depository, and, so long as any of the Floating Rate Notes are listed thereon and the rules of the exchange so require, the Irish Stock Exchange. In the latter case, the information shall be given to the Company Announcements Office of the Irish Stock Exchange as soon as possible after its determination. The Calculation Agent shall separately notify the Irish Stock Exchange of the information. The Calculation Agent shall also specify to the Co-Issuers the quotations on which the foregoing rates are based, and in any event the Calculation Agent shall notify the Co-Issuers before 7:00 P.M., London time, on the second Business Day before the first day of each Interest Period that either:

(i) it has determined or is in the process of determining the Note Interest Rate for each Class of Floating Rate Notes, or

(ii) it has not determined and is not in the process of determining any such Note Interest Rate together with its reasons therefor.

The Calculation Agent's determination of the foregoing rates for any Interest Period shall (in the absence of manifest error) be final and binding on all parties and the Holders and Beneficial Owners of the Preference Shares.

Section 7.17. ***Certain Tax Matters.***

(a) For United States federal income tax purposes, the Issuer shall treat the Preference Shares as equity and the Notes as debt. Each Holder of a Note, by its acquisition of that Note, agrees to treat those Notes as debt for United States federal income tax purposes.

(b) The Issuer will not make an election to be treated as a partnership for U.S. federal income tax purposes, and will take all necessary actions to maintain its status as a corporation for U.S. federal income tax purposes.

(c) The Issuer shall file, or cause to be filed, any tax returns, including information tax returns, required by any governmental authority; provided, however, that the Issuer shall not file, or cause to be filed, any income or franchise tax return in any state of the United States unless it shall have obtained a Tax Opinion of Counsel prior to such filing that, under the laws of such jurisdiction, the Issuer is required to file such income or franchise tax return.

(d) In order to ensure the Holders' and Beneficial Owners' acquisition of the Notes pursuant to this Indenture are not treated as offered under conditions of confidentiality, the Holders and Beneficial Owners of the Notes (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement (including the ownership and disposition of the Notes). For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

(e) If the Issuer is aware that it has purchased an interest in a "reportable transaction" within the meaning of Section 6011 of the Code, and a Noteholder requests information about any such transactions in which the Issuer is a purchaser, the Issuer shall provide such information it has reasonably available as soon as practicable after such request.

(f) The Issuer shall not conduct any business other than the business that the Issuer is permitted to conduct under this Indenture and the Preference Shares Paying Agency Agreement.

(g) The Issuer shall provide, upon the request by a Holder of Class E Notes, such information for the purposes of allowing such Holder to make a protective "qualifying electing fund" election. The Issuer shall provide, upon request of a Holder of Class E Notes, any information that such Holder reasonably requests to assist such Holder with regard to any filing requirements the Holder may have as a result of the controlled foreign corporation rules under the Code. Upon written request by the Independent accountants, the Indenture Registrar shall provide to the Independent accountants that information contained in the Indenture Register requested by the Independent accountants to comply with this Section 7.17.

(h) The Issuer will treat each purchase of Collateral Obligations and Eligible Investments as a "purchase" for tax accounting and reporting purposes.

(i) Each of the Issuers and the Trustee agrees that it does not intend for this Indenture to represent an agreement to enter into a partnership, a joint venture or any other business entity for U.S. federal income tax purposes. The Issuers and the Trustee shall not represent or otherwise hold themselves out to the United States Internal Revenue Service or other third parties as partners in a partnership or members of a joint venture or other business entity for U.S. federal income tax purposes.

Section 7.18. ***Securities Lending.***

(a) So long as no Event of Default is continuing and if after the completion of the transaction the limit in clause (31) of the definition of "Concentration Limitations" would be satisfied, the Servicer may cause Collateral Obligations that are not Defaulted Collateral Obligations

to be lent for a term of 90 days or less to banks, broker-dealers and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" or a short-term senior unsecured debt rating of at least "A-1" from S&P (each, a "***Securities Lending Counterparty***") pursuant to one or more agreements (each, a "***Securities Lending Agreement***"); provided that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchasers or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes.

(b) Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except as may be required below) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to this Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement (the "***Securities Lending Collateral***") to secure its obligation to return the Collateral Obligations or in the alternative post the Securities Lending Collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a

securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under Section 6.9;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in this Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (*mutatis mutandis*) to those in this Indenture.

(c) If either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Servicer on behalf of the Issuer, within 10 days of the downgrade, shall

(i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor with the required ratings for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or

(ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or

(iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

(d) In connection with any such direction by the Servicer to enter into a Securities Lending Agreement, the Trustee may receive and rely on an Issuer Order to the effect that the Securities Lending Agreement, and its Securities Lending Counterparty, is each in compliance with the requirements of this Indenture (including the definition of "Securities Lending Counterparty").

The Issuer and the Trustee may enter into any Securities Lending Agreement (and any related account control agreement) at the instruction of the Servicer, and deliver and accept delivery and return of any Collateral Obligations pursuant to the Securities Lending Agreement, or pursuant to instructions from the Servicer in connection with the Securities Lending Agreement. The Trustee may take any actions and exercise any rights and remedies under any Securities Lending Agreement that the Servicer instructs. The Trustee need not enter into any Securities Lending Agreement (or any related account control agreement) that would in its judgment, subject it to any liability, whether financial or otherwise, or cause it to incur or subject it to risk of any cost or disbursement for which it is not, in its judgment, adequately indemnified, or that would impose on it any obligations or administrative burdens that are unacceptable to it. The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in this Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement,

(a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action), and

(b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under this Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

Section 7.19. ***Purchase of Collateral Obligations; Ramp-Up Completion Date.***

(a) The Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes and the Class B Notes is at least U.S.$981,300,000.

(b) No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that each of the Aggregate Principal Balance of the Collateral Obligations and the Overcollateralization Ratio Numerator with respect to the Class A Notes and the Class B Notes is at least U.S.$981,300,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

(c) Notwithstanding the foregoing, or any other provision of this Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included

in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth in this Section 7.19, the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

(d) The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in Section 12.2 of this Indenture and the Overcollateralization Tests.

(e) No later than five Business Days after the Ramp-Up Completion Date, the Issuer shall notify each of the Rating Agencies in writing of the occurrence of the Ramp-Up Completion Date (each, a "***Ramp-Up Notice***") and request in writing that each of S&P and Moody's confirm in writing within 25 days of delivery of such Ramp-Up Notice that it has not reduced or withdrawn the Initial Ratings; *provided,* however, that the Issuer shall not be required to request a Rating Confirmation from Moody's if, as of the Ramp-Up Completion Date Moody's has received an Accountants' Certificate confirming (i) the Issuer is in compliance with each of the Collateral Quality Tests, the Coverage Tests and the Concentration Limitations and (ii) the Aggregate Principal Balance of the Collateral Obligations that the Issuer owns or has committed to purchase is at least equal to $981,300,000. In connection with such request or, in the case of Moody's, in lieu of such request, the Issuer shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, an Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon and the CUSIP number thereof (if applicable)) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an Accountants' Certificate confirming:

(i) confirming the maturity date, rating, spread and recovery rate for each item of Original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

(f) Any failure by the Issuer to obtain a Ratings Confirmation pursuant to Section 7.19(e) above shall be a Rating Confirmation Failure (a "***Rating Confirmation Failure.***" If a

Rating Confirmation Failure occurs, the Notes will be redeemed pursuant to, and to the extent provided in, Section 9.1(a).

Section 7.20. ***Posting of Reports on Repository.***

If either of the Initial Purchasers has entered into a posting dealer agreement with The Bond Market Association relating to the transactions contemplated by this Indenture, each of the Issuer, the Trustee and the Servicer acknowledges and agrees that each Monthly Report and Valuation Report may be posted to the Repository for use in the manner provided in the Repository. In connection therewith, the Trustee, at the expense of the Issuer, agrees to make available in accordance with Section 14.3(a)(ix) each Monthly Report or Valuation Report to the operator of the Repository for posting on the Repository. Such Initial Purchaser will notify the Trustee, the Co-Issuers and the Servicer upon entering into a posting dealer agreement.

Section 7.21. ***Secondary Risk Procedures.***

The Servicer shall notify S&P and request that S&P modify the S&P CDO Monitor accordingly if on any date (as disclosed in the most recent Monthly Report):

(a) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with the same Secondary Risk Counterparty exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite the long-term S&P credit rating of the Secondary Risk Counterparty under the caption "Individual Counterparty Limit," or

(b) the Aggregate Principal Amount of all Collateral Obligations participated from or entered into with Secondary Risk Counterparties with the same long-term credit rating exceeds the percentage of the Maximum Amount in the Secondary Risk Table opposite that rating under the caption "Aggregate Counterparty Limit" (excluding up to 5% by Aggregate Principal Amount of Synthetic Securities with respect to Collateral Obligations the Aggregate Counterparty Limit of which is 20% to the extent that (x) such exposure is fully collateralized with respect to principal and (y) the related Synthetic Security Counterparties are rated at least "A-1+" by S&P).

Section 7.22. ***Section 3(c)(7) Procedures.***

In addition to the notices required to be given under Section 10.6 hereof, the Issuer shall take the following actions to ensure compliance with the requirements of Section 3(c)(7) of the Investment Company Act (provided that such procedures and disclosures may be revised by the Issuer to be consistent with generally accepted practice for compliance with the requirements of Section 3(c)(7) of the Investment Company Act):

(a) *Section 3(c)(7) Notice to Investors*. The Issuer shall (i) request the Depository to cause, and cooperate with the Depository in causing, the Depository's security description and delivery order to include a "3(c)(7) marker" and the Depository's user manual to contain an accurate description of the restrictions on the holding and transfer of the Notes due to the Issuer's reliance on the exclusion to registration provided by Section 3(c)(7) of the Investment Company Act, (ii) request that the Depository send, and cooperate with the Depository in causing the Depository to send, to its Agent Members (x) the Important Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-2 in connection with the initial offering of the Notes and (y) the Section 3(c)(7) Reminder Notice substantially in the form of Exhibit G-1 as set forth in Section 10.6(b) and (iii) request that the Depository cause, and cooperate with the Depository in causing, the Depository's Reference Directory to include each Class of Notes (and the applicable CUSIP numbers for the Notes) in the listing of 3(c)(7) issues together with an attached description of the limitations as to the distribution, purchase, sale and holding of the Notes.

(b) *CUSIP Numbers.* The Issuer shall (a) request of S&P, and shall cooperate with S&P to ensure that all CUSIP numbers identifying the Notes shall have a "fixed field" attached thereto that contains "3c7" and "144A" indicators and (b) take steps to cause the Initial Purchasers and any market makers to require that all "confirms" of trades of the Notes contain CUSIP numbers with such "fixed field" identifiers.

(c) *Bloomberg and other Third-Party Vendor Screens.* The Issuer shall use all reasonable efforts to cause the Bloomberg screen or screens containing information about the Notes to include the following language: (a) the "Note Box" on the bottom of the "Security Display" page describing the Notes shall state: "Iss'd Under 144A/3(c)(7)," (b) the "Security Display" page shall have the flashing red indicator "See Other Available Information" and (c) the indicator shall link to the "Additional Security Information" page, which shall state that the securities are "being offered in reliance on the exemption from registration under Rule 144A of the Securities Act, to persons who are both (x) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (y) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act)." The Issuer shall use all reasonable efforts to require that any other third-party vendor screens containing information about the Notes include substantially similar language to clauses (a) through (c) above.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1. ***Supplemental Indentures Without Consent of Holders.***

(a) Without the consent of the Holders of any Securities (other than with respect to the consent of the Majority of the Controlling Class specified in clause (15) below), when authorized by Board Resolutions, and subject to the requirement provided below in this Section 8.1 with respect to the ratings of any Class of Notes, the Co-Issuers and the Trustee may, if, with respect to any matters described in clauses (1) through (23) below, the interests of the Holders of the Securities (except, in the case of clause (12) below, any Holders of Notes subject to the applicable Refinancing) are not materially and adversely affected thereby (the Co-Issuers and the Trustee will be bound by a standard of good faith and fair dealing in making such determination) execute one or more indentures supplemental to this Indenture, in form satisfactory to the Trustee, to:

(1) evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by the successor Person of the obligations of the Issuer or the Co-Issuer in this Indenture and in the Securities;

(2) add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in this Indenture conferred on the Co-Issuers;

(3) convey, transfer, assign, mortgage or pledge any property to the Trustee, or add to the conditions, limitations, or restrictions on the authorized amount, terms, and purposes of the issue, authentication and delivery of the Notes;

(4) evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee and to add to or change any of the provisions of this Indenture necessary to facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Sections 6.10, 6.11, and 6.13;

(5) correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey, and confirm to the Trustee any property

subject or required to be subject to the lien of this Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of this Indenture any additional property;

(6) cause any provision of this Indenture to conform to, or be consistent with, the statements made with respect to such provision in the Offering Memorandum;

(7) modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act (including, without limitation, to add provisions for resales and transfers of the Class E Notes and/or Preference Shares under Regulation S) or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under this Indenture;

(8) with the consent of the Servicer, modify (A) the restrictions on the sales of Collateral Obligations in Section 12.1 or (B) with the consent of the Majority of the Controlling Class (which consent shall not be unreasonably withheld), the Eligibility Criteria in Section 12.2 (and the definitions related thereto); provided that, for the avoidance of doubt, the consent of a Majority of the Controlling Class shall not be required if such amendment also satisfies the requirements of clause (24) below;

(9) make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the Irish Stock Exchange;

(10) otherwise to correct any inconsistency or cure any ambiguity or errors in this Indenture;

(11) accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(12) to accommodate a Refinancing effected pursuant to and in compliance with Section 9.7; provided that no Holders of Notes or Preference Shares are materially adversely affected thereby, other than Holders of Notes subject to such Refinancing;

(13) take any appropriate action to prevent the Issuer, the Holders of the Securities, or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities, as evidenced by a Tax Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(14) authorize the appointment of any listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the Irish Stock Exchange or any other stock exchange, and otherwise to amend this Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, Transfer Agent, Paying Agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholder, as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and

other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(15) with the consent of the Majority of the Controlling Class, amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted under the Indenture;

(16) modify Section 3.3 to be consistent with applicable laws or Rating Agency requirements;

(17) evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency set forth in this Indenture;

(18) facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(19) facilitate hedging transactions;

(20) facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(21) modify any provision to facilitate an A/B Exchange, including to effect any serial designation relating to the exchange;

(22) with the consent of the Servicer, enter into any additional agreements not expressly prohibited by this Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities as evidenced by an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer to the effect that the modification would not be materially adverse to the Holders of any Class of Securities; provided that, for the avoidance of doubt, this clause (22) shall not permit the Co-Issuers and the Trustee to effect any amendment that expressly requires the consent of the Majority of the Controlling Class without such consent;

(23) provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under the Indenture and the Preference Share Documents; or

(24) prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); provided that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental

indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

(b) Without the consent of the Servicer, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Servicer under this Indenture or increase the duties or obligations of the Servicer.

(c) The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of Notes or a Majority of the Preference Shares that Holders of the Class of the Notes or Holders of the Preference Shares would be materially and adversely affected, the Trustee may rely on a certificate of the Servicer and an Opinion of Counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

(d) If any Outstanding Notes are rated by a Rating Agency, the Trustee shall enter into a supplemental indenture pursuant to this Section 8.1 only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

(e) At the cost of the Co-Issuers, the Trustee shall mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) and each Hedge Counterparty a copy of any such proposed supplemental indenture pursuant to this Section at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in paragraph (8) of Section 8.1(a), which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

Section 8.2. ***Supplemental Indentures With Consent of Holders.***

(a) If the Rating Condition is satisfied with respect to each Rating Agency, the Trustee and the Co-Issuers may execute one or more indentures supplemental to this Indenture to add any provisions to, or change in any manner, or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Noteholders under this Indenture with the consent of:

(1) the Servicer if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer;

(2) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes; and

(3) a Majority of the Preference Shares adversely affected thereby.

Any proposed supplemental indenture that would also necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Issuer's constitutional documents to be altered to conform them to the proposed change to this Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in this Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares (other than in the case of any Maturity Extension in connection with an extension of the Replacement Period as described in Section 2.4), reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of this Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes, or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain defaults under this Indenture or their consequences provided for in this Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of this Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral or rescind the Trustee's election to retain the Collateral, pursuant to Section 5.5 or to sell or liquidate the Collateral, pursuant to Section 5.4 or 5.5;

(v) modify any of the provisions of this Section, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in Section 11.1(a) or Section 13.1; or

(vii) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the

rights of the Holders of the Securities to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in this Indenture.

(b) Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) a copy of such proposed supplemental indenture and shall request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities, as applicable, shall be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee shall notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option pursuant to Section 9.6, the Amendment Buy-Out Purchaser shall so notify the Trustee (which notice shall designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee shall promptly mail such notice to all Noteholders and the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case shall cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities pursuant to Section 9.6 below, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

(c) It shall not be necessary for any Act of Noteholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

(d) The Trustee, at the expense of the Co-Issuers, shall mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency a copy of any supplemental indenture pursuant to this Section 8.2 promptly after its execution by the Co-Issuers and the Trustee. Any failure of the Trustee to mail a copy of any supplemental indenture as provided in this Indenture, or any defect in the mailing, shall not in any way affect the validity of the supplemental indenture.

Section 8.3. ***Execution of Supplemental Indentures.***

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee may receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of the supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent to the execution of such supplemental indenture have been satisfied. In the event that any supplemental indenture is consented to by the Issuer, the Co-Issuer and 100% of the Aggregate Outstanding Amount of each Class of Notes and the Rating Condition is satisfied or is specifically waived by all consenting parties, all conditions precedent to the execution of such supplemental indenture shall be deemed satisfied, the execution

of such supplemental indenture shall be authorized or permitted by this Indenture, and the Trustee shall execute and accept the additional trusts created by such supplemental indenture pursuant to this Article 8 or modification thereby of the trusts created by this Indenture without obtaining an Opinion of Counsel; provided that the Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Servicer shall not be bound by any amendment or supplement to this Indenture that would reduce the rights, decrease the fees or other amounts payable to it under this Indenture or increase the duties or obligations of the Servicer unless the Servicer consents to it in writing, such consent not to be unreasonably withheld or delayed. The Servicer shall follow any amendment or supplement to this Indenture by which it is bound of which it has received written notice from the time it receives a copy of the amendment from the Issuer or the Trustee. The Trustee shall deliver any such amendment or supplement to the Repository in accordance with Section 6.18.

Section 8.4. ***Effect of Supplemental Indentures; Certain Required Consents.***

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and the supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore and thereafter authenticated and delivered under this Indenture shall be bound thereby.

Without the approval of each Hedge Counterparty to a then existing Hedge Agreement (so long as the Hedge Counterparty is not in default under any Hedge Agreement to which it is party), no supplemental indenture will be effective, and the Co-Issuers will not consent to any supplemental indenture, that would have a material adverse effect on the Hedge Counterparty. For purposes of this paragraph, any supplemental indenture will be deemed not to have a material adverse effect on the Hedge Counterparty if it does not object within 10 days of delivery of such supplemental indenture by the Trustee.

Any supplemental indenture that would necessitate a change to the Memorandum and Articles of Association may only be made after a Special Resolution (as defined in the Memorandum and Articles of Association) has been passed to permit the Memorandum and Articles of Association to be altered to conform with such proposed amendment.

Section 8.5. ***Reference in Notes to Supplemental Indentures.***

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in the supplemental indenture. If the Applicable Issuers shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Co-Issuers to any such supplemental indenture, may be prepared and executed by the Applicable Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF NOTES

Section 9.1. ***Mandatory Redemption.***

(a) If either (a) a Coverage Test is not met on any Determination Date or (b) a Rating Confirmation Failure occurs, principal payments on the Notes shall be made on the related Payment Date (without payment of any Redemption Price) in accordance with the Priority of Payments.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then at the direction and in accordance with the instructions of the Servicer the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes and the Preference Shares (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under this Section shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced,

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced, and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

(b) The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes pursuant to Section 9.1(a) results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Section 9.2. ***Optional Redemption.***

(a) Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the Notes shall be redeemed by the Applicable Issuers, in whole but not in part, on any Payment Date from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account at the direction of the applicable Required Redemption Percentage, which direction must be given to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer not later than 45 days before the Payment Date on which the redemption is to be made, at the applicable Redemption Price (exclusive of installments of interest and principal maturing on or before that date, payment of which shall have been made or duly provided for, to the Noteholders on relevant Record Dates or as otherwise provided in this Indenture). All Notes must be simultaneously redeemed, and any termination payments pursuant to Hedge Agreements must be paid.

In the event that the Preference Shares Paying Agent, the Trustee and the Issuer receive notice directing an optional redemption from any one or more Holders of Preference Shares holding less than a Majority of the Preference Shares, the Preference Shares Paying Agent shall, within five Business Days of receipt of such notice, notify the Holders of the Preference Shares (i) of the receipt of such notice and (ii) that any Holder of Preference Shares may join in directing an optional redemption by notifying the Issuer, the Trustee and the Preference Shares Paying Agent in writing within five Business Days after such Holder's receipt of the Preference Shares Paying Agent's Notice.

Upon receipt of a notice of redemption pursuant to the first paragraph of this Section 9.2(a), the Servicer in its sole discretion will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer, direct the sale of the Collateral Obligations so that the proceeds from the sale and all other funds available for such purpose in the Collection Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account will be at least sufficient to redeem all of the Notes and to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations. If, in the Servicer's reasonable discretion, the sale would not be sufficient to redeem the Notes, and to pay the fees, expenses and obligations, the Notes shall not be redeemed.

Upon any redemption pursuant to this Section 9.2(a), the Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

(b) On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture and all amounts owing under this Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged,

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings or

(ii) at the unanimous direction of the Holders of the Preference Shares, voting as a single Class or group, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction.

Upon a distribution pursuant to Section 9.2(b)(i), the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to Section 9.2(b)(ii)), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to Section 9.2(b)(ii), the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Section 9.3. ***Optional Redemption Procedures.***

(a) Upon any redemption pursuant to Section 9.2, the Trustee shall give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC, Euroclear, and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and (in the case of a redemption pursuant to Section 9.2(a)) to each Rating Agency. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of

Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

(b) All notices of redemption delivered pursuant to Section 9.3(a) shall state:

(i) the applicable Redemption Date;

(ii) the Redemption Price of the Notes to be redeemed (in the case of a redemption pursuant to Section 9.2(a));

(iii) in the case of a redemption pursuant to Section 9.2(a), that all of the Notes, are to be redeemed in full and that interest on the Notes to be redeemed shall cease to accrue on the Payment Date specified in the notice; and

(iv) the places where the Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2 and, so long as any Senior Notes to be redeemed are listed on the Irish Stock Exchange, and the Irish Paying Agent.

Any such notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Trustee and the Servicer only if:

(A) in the case of a redemption pursuant to Section 9.2(a), the Servicer does not deliver the sale agreement or certifications (described in Section 9.3(c) and 12.1(f)), as the case may be, in form satisfactory to the Trustee,

(B) in the case of a redemption pursuant to Section 9.2(a) or Section 9.2(b)(i), the Issuer receives the written direction of the Majority of the Preference Shares (or, in the case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) to withdraw the notice of redemption delivered by a percentage of the Preference Shares (or, in the case of an Optional Redemption of the Notes resulting from a Tax Event, the Affected Class) requesting redemption under Section 9.2(a) or Section 9.2(b)(i), as applicable, or

(C) in the case of a redemption pursuant to Section 9.2(b)(ii), the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (B) or this clause (C)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Noteholder scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first class mail) and the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold pursuant to Sections 9.2 and 12.1(f) may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement

Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Notes selected for redemption or the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

(c) The Notes may not be redeemed pursuant to Section 9.2(a) unless either of the following conditions is satisfied:

(i) At least 10 Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreement (with a financial or other institution or entity whose short-term unsecured debt obligations (other than obligations whose rating is based on the credit of a Person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity)) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) Before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under this Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties, and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below. For the avoidance of doubt, no Hedge Agreement shall be sold or terminated unless the third Business Day before the scheduled Redemption Date has passed and no notice of withdrawal has been issued.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1	Cash or other Eligible Investments	100%	100%	100%	100%
2	Loans (other than 5 below)	100%	93%	92%	88%
3	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5	Synthetic Securities	100%	65%	55%	35%

Any certification delivered pursuant to this Section 9.3(c) shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments, or Hedge Agreements and (B) all calculations required by this Section 9.3(c).

Section 9.4. ***Notes Payable on Redemption Date.***

(a) Notice of redemption pursuant to Section 9.3 having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption on or before the Redemption Date unless the Co-Issuers and the Trustee receive the security or indemnity required by them to save each of them harmless and an undertaking thereafter to surrender the Note, and in the absence of notice to the Co-Issuers and the Trustee, that the applicable Note has been acquired by a protected purchaser, the final payment shall be made without presentation or surrender. Payments of interest on Notes so to be redeemed whose Stated Maturity is on or before the Redemption Date shall be payable to the Noteholders, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date if the Record Date is a Business Day (or, if the Record Date is not a Business Day, the close of business on the Business Day before the Record Date) according to Section 2.8(e).

(b) If any Note called for redemption is not paid on its surrender for redemption, its principal shall bear interest from the Redemption Date at the Applicable Note Interest Rate for each successive Interest Period the Note remains Outstanding if the reason for the non-payment is not the fault of the Holder of the Note.

Section 9.5. ***Special Redemption.***

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility

Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations (a "***Special Redemption***").

On the first Payment Date following the Due Period for which the notice is effective (a "***Special Redemption Date***"), the funds in the Collection Account or the Payment Account representing Principal Proceeds that, by operation of the preceding paragraph, are not used to purchase additional Collateral Obligations (the "***Special Redemption Amount***") will be available to be applied in accordance with the Priority of Payments under Section 11.1(a)(ii). Notice of payments pursuant to this Section 9.5 shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of DTC. In addition, for so long as any Senior Notes are listed on the Irish Stock Exchange and so long as the rules of the exchange so require, notice of redemption of Senior Notes pursuant to Section 9.2 shall also be given to the Company Announcements Office of the Irish Stock Exchange.

Section 9.6. ***Amendment Buy-Out.***

(a) In the case of any supplemental indenture pursuant to Section 8.2 that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders whose consent was solicited with respect to such supplemental indenture (the "***Amendment Buy-Out Option***") for the applicable Amendment Buy-Out Purchase Price; provided, however, that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Note or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders for the applicable Amendment Buy-Out Purchase Price, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "***Amendment Buy-Out***"). By its acceptance of its Securities hereunder, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder will be required to sell its applicable Securities to the Amendment Buy-Out Purchaser; provided that if any Non-Consenting Holder holds Class II Preference Shares, such Non-Consenting Holder will sell such Class II Preference Shares to the Amendment Buy-Out Purchaser and such Preference Shares will be redesignated as Class I Preference Shares. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

(b) All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Securities set forth herein and in the Preference Share Documents, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Section 9.7. ***Redemption by Refinancing.***

(a) On any Payment Date after the Non-Call Period, any Class of the Notes may be redeemed in whole, but not in part from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares)) with a copy to the Trustee and the Rating Agencies, at least 30 days prior to the Payment Date for such redemption

(such date, the "***Refinancing Date***"), to redeem such Notes in accordance with this Section 9.7 (a "***Notice of Refinancing***"), which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be Refinanced. Such redemption shall be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes ("***Refinancing Notes***"), the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Issuer, from one or more financial institutions or purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "***Refinancing***"), and provided that (i) such proposal is approved by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date.

(b) The Issuer shall obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) a Rating Confirmation has been obtained from each Rating Agency for each class of Refinancing Notes and each Class of Notes not subject to Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Issuer related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the stated maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain limited recourse, non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth herein;

(viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and

(ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for.

(c) The Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3 hereof) shall be fully protected in relying upon an Opinion of Counsel stating that the Refinancing is permitted by this Indenture and that all conditions precedent thereto have been complied with.

(d) Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date pursuant to this Indenture to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; provided that to the extent that any Refinancing Proceeds exceed the amount necessary to redeem the Notes being refinanced (and any

associated Administrative Expenses), such excess Refinancing Proceeds will be treated as Principal Proceeds.

(e) If notice of consent by a Majority of the Preference Shares to a Refinancing has been received by the Trustee from the Servicer pursuant to Section 9.7(a) no later than 15 days prior to the Refinancing Date, notice of a Refinancing shall be given by the Trustee by first class mail, postage prepaid, mailed not less than 10 Business Days prior to the proposed Refinancing Date, to each Holder of Notes of the Class to be refinanced at the address in the Indenture Register (with a copy to the Servicer) and, so long as any Class of Notes is listed on the Irish Stock Exchange, the Irish Paying Agent.

All Notices of Refinancing shall state:

(i) the proposed Refinancing Date, which shall be the applicable Redemption Date in respect of the Notes being redeemed;

(ii) the Refinancing Price, which shall be the applicable Redemption Price in respect of the Notes being redeemed;

(iii) that on such proposed Refinancing Date such Notes will be refinanced and redeemed in full, and that, provided that the Refinancing Proceeds have been deposited with the Trustee for any such payment in full, interest on such Notes being redeemed shall cease to accrue on such date; and

(iv) the place or places where such Notes are to be surrendered for payment of the Refinancing Price which, if not stated, shall be the office or agency of any paying agent as provided in Section 7.2.

provided that no such Notice of Refinancing shall be sent if either (a) the Servicer has withdrawn its consent to such Refinancing or (b) the consent of a Majority of the Holders of Preference Shares to such Refinancing has not been obtained.

(f) Notice of Refinancing shall be given by the Trustee at the expense of the Issuer. Failure to give a Notice of Refinancing, or any defect therein, to any Holder of any Note selected for Refinancing shall not impair or affect the validity of the Refinancing or give rise to any claim based upon such failure or defect.

Any Notice of Refinancing may be withdrawn by the Servicer, on behalf of the Issuer, on or prior to the fourth Business Day prior to the scheduled Refinancing Date by written notice to the Trustee, the Paying Agent, the Preference Shares Paying Agent, the Rating Agencies and the Holders of the Preference Shares. Upon receipt of such notice of withdrawal, the Trustee shall send such notice to the Holders of Notes and, if applicable, the Irish Paying Agent.

(g) If a Notice of Refinancing pursuant to Section 9.7(a) has been given as provided herein and not withdrawn, the Notes to be refinanced shall on the Refinancing Date become due and payable at the Refinancing Price. Each Holder of such Notes shall present and surrender its Note at the place specified in the Notice of Refinancing on or prior to such Refinancing Date; provided that if there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender.

(h) If any Class of Notes called for Refinancing shall not be so paid upon surrender thereof for Refinancing (or the delivery of the indemnity pursuant to the preceding paragraph) the principal shall, until paid, bear interest from the Refinancing Date at the applicable Interest Rate for each successive Payment Date with respect to which such Note remains Outstanding.

ARTICLE 10

ACCOUNTS, ACCOUNTINGS, AND RELEASES

Section 10.1. ***Collection of Money.***

Except as otherwise expressly provided in this Indenture, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations, in accordance with the terms of the Pledged Obligations. The Trustee shall segregate and hold all money and property received by it in trust for the Secured Parties and shall apply it as provided in this Indenture. Any Account may contain any number of sub-accounts for the convenience of the Trustee or as required by the Servicer for convenience in administering the Accounts, the Collateral.

Section 10.2. ***Collection Account.***

(a) Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Collection Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall from time to time deposit, in addition to the deposits required pursuant to Section 10.7(e), immediately upon the Trustee's receipt thereof:

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to Section 10.3(g) or (2) the Interest Reserve Account pursuant to Section 10.3(i),

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with Article 12, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee,

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with Article 12 or in Eligible Investments), and

(iv) all other funds received by the Trustee from the Collateral and not excluded above.

In addition to the items described above, the Issuer may, but under no circumstances shall be required to, deposit from time to time any monies, securities and other instruments in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts deposited pursuant to this sentence as Principal Proceeds or Interest Proceeds in its discretion). Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth herein or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a

Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments. All monies deposited from time to time in the Collection Account pursuant to this Indenture shall be held by the Trustee as part of the Collateral and shall be applied to the purposes provided in this Indenture. Amounts in the Collection Account shall be held pursuant to Section 10.4(a).

(b) Within one Business Day after receipt of any distribution or other proceeds of the Collateral that are not Cash, the Trustee shall so notify the Issuer and the Servicer. Within five Business Days of receipt of the notice from the Trustee, the Servicer, on behalf of the Issuer, shall sell the distribution or other proceeds for Cash in an arm's length transaction to a Person that is not the Servicer or an Affiliate of the Servicer and deposit its proceeds in the Collection Account. The Issuer need not sell the distributions or other proceeds if it delivers an Issuer Order or an Officer's certificate to the Trustee and the Servicer certifying that the distributions or other proceeds are Collateral Obligations, Eligible Investments, or Workout Assets.

(c) During the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period), at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall withdraw funds on deposit in the Collection Account representing Principal Proceeds (and, to the extent expressly provided in this Indenture, Interest Proceeds) and apply the funds to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), in each case in accordance with the requirements of Article 12 and the Issuer Order.

(d) At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next Payment Date under, and at the level of priority specified by, Section 11.1(a)(i)(1).

(e) The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to Section 11.1(a) or 11.2, as applicable, on or not later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

Section 10.3. ***Other Accounts.***

(a) *Custodial Account.* Before the Closing Date, the Trustee shall establish a single, segregated trust account that shall be designated as the Custodial Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal, and into which the Trustee shall deposit the Collateral Obligations and other Collateral not deposited elsewhere in accordance with this Indenture (other than Loans, Participations and general intangibles, which in the case of Loans and Participations, shall be held by the Trustee as provided in Section 3.2). All assets or securities at any time on deposit in, or otherwise to the credit of, the Custodial Account shall be held in trust by the Trustee for the benefit of the Secured Parties. The only permitted withdrawals from the Custodial

Account shall be in accordance with this Indenture. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Custodial Account other than in accordance with Section 3.2 and the Priority of Payments.

(b) *Revolving Reserve Account and Delayed Drawdown Reserve Account.* Before the Closing Date, the Trustee shall establish (i) a single, segregated non-interest bearing trust account which shall be designated as the Revolving Reserve Account and (ii) a single, segregated non-interest bearing trust account that shall be designated as the Delayed Drawdown Reserve Account, each of which shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded Commitment Amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of Article 12. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent Commitment Reduction) at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account. Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to:

(i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment),

(ii) the proportionate amount of the amount on deposit (in the case of a sale in part), or

(iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part),

shall be transferred by the Trustee to the Collection Account as Principal Proceeds. Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account shall be held pursuant to Section 10.4(b). All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account pursuant to Section 10.4(b) shall be considered Interest Proceeds in the Due Period in which they are so deposited.

(c) *Expense Reimbursement Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Expense Reimbursement Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the Expense Reimbursement Account to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under Section 11.1(a)(i)(1) and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any, of the Administrative Expense Cap over the amounts due under Section 11.1(a)(i)(1) to the Expense Reimbursement Account in accordance with Section

11.1(a)(i)(2). Funds in the Expense Reimbursement Account shall be applied in accordance with Section 10.4(a).

(d) *Hedge Counterparty Collateral Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Hedge Counterparty Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties (other than the Hedge Counterparty pledging the Collateral), over which the Trustee shall have exclusive control, the sole right of withdrawal and a lien for the benefit of the Secured Parties. The Trustee shall deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the Hedge Counterparty Collateral Account. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account shall be:

(i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination, or

(ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Hedge Counterparty Collateral Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(e) *Synthetic Security Collateral Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Synthetic Security Collateral Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Synthetic Security and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Synthetic Security Collateral Account with respect to the Synthetic Security.

All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer by Issuer Order shall direct the Trustee to, and upon receipt of the Issuer Order, the Trustee shall, withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment as provided in the Issuer Order (including any total or partial release of Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be (i) for application to the obligations of the relevant Synthetic Security Counterparty under a Synthetic Security Agreement or (ii) to return Synthetic Security Collateral to the relevant Synthetic Security Counterparty at the termination of the relevant Synthetic Security Agreement or as otherwise required by the Synthetic Security Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account shall be held pursuant to Section 10.4(b) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(f) *Securities Lending Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Securities

Lending Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control, the sole right of withdrawal, and a lien for the benefit of the Secured Parties. On or before the date on which the Issuer enters into a Securities Lending Agreement and delivers a copy of it to the Trustee, the Trustee shall create a sub-account of the Securities Lending Account with respect to the Securities Lending Agreement. All Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement shall be immediately deposited into the Securities Lending Account and posted to the sub-account related to the Securities Lending Agreement.. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Securities Lending Account shall be:

(i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the related Securities Lending Agreement upon any "event of default" under and as defined in the related Securities Lending Agreement, including liquidating the related Securities Lending Collateral, or

(ii) to return the Securities Lending Collateral to the relevant Securities Lending Counterparty when and as required by the relevant Securities Lending Agreement, in each case as directed by the Servicer.

Amounts on deposit in the Securities Lending Account shall be held pursuant to Section 10.4(c). To the extent provided in a Securities Lending Agreement, earnings on amounts on deposit in the Securities Lending Account shall be payable by the Issuer to the related Securities Lending Counterparty.

Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

(g) *Closing Date Expense Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Closing Date Expense Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Closing Date Expense Account approximately U.S.$2,024,384 from the gross proceeds of the Offering. At any time before the Payment Date in February 2008, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall, pay from amounts on deposit in the Closing Date Expense Account any applicable fees and expenses of the Offering. On the Payment Date in February 2008 (or, at the discretion of the Servicer, on the Payment Date in November 2007), at the direction of the Servicer in its sole discretion, the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Interest Proceeds or Principal Proceeds and close the Closing Date Expense Account.

Amounts on deposit in the Closing Date Expense Account shall be held pursuant to Section 10.4(a) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

(h) *Payment Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Payment Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. The only permitted

withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes in accordance with their terms and the provisions of this Indenture and to pay Administrative Expenses and other amounts specified in this Indenture, each in accordance with the Priority of Payments. The Co-Issuers shall not have any legal, equitable, or beneficial interest in the Payment Account other than in accordance with the Priority of Payments.

(i) *Interest Reserve Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Interest Reserve Account, that shall be held in trust in the name of the Trustee for the benefit of the Secured Parties, over which the Trustee shall have exclusive control and the sole right of withdrawal. On the Closing Date, the Trustee, at the direction of the Issuer, shall deposit into the Interest Reserve Account approximately U.S.$2,500,000 from the gross proceeds of the Offering. At any time before the Payment Date in February 2008, at the direction of the Servicer, the Issuer may by Issuer Order direct the Trustee to, and upon receipt of the Issuer Order the Trustee shall transfer any funds on deposit in the Interest Reserve Account to the Collection Account as Interest Proceeds or Principal Proceeds. On the Payment Date in February 2008 (or, at the discretion of the Servicer, on the Payment Date in November 2007), at the direction of the Servicer in its sole discretion, the Trustee shall transfer all funds on deposit in the Interest Reserve Account (after application of any monies therefrom on such date) to the Collection Account as Interest Proceeds or Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account shall be held pursuant to Section 10.4(a).

(j) *Class II Preference Share Special Payment Account.* Before the Closing Date, the Trustee shall establish a single, segregated non-interest bearing trust account that shall be designated as the Class II Preference Share Special Payment Account, that shall be held in trust in the name of the Trustee for the benefit of Holders of the Class II Preference Shares, over which the Trustee shall have exclusive control and the sole right of withdrawal. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments, the Trustee will deposit into the Class II Preference Share Special Payment Account amounts equal to the Class II Preference Share Special Payments. The Servicer has agreed to waive amounts, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date prior to February 3, 2008 and an amount equal to such waived amounts will be distributed by the Trustee to the Preference Shares Paying Agent, subject to the laws of the Cayman Islands, for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. With respect to any Payment Date after February 3, 2008, the Servicer may, in its sole discretion, at any time waive a portion (or all) of the Servicing Fees then due and payable, in which event, an amount equal to such waived portion will be paid by the Trustee to the Preference Shares Paying Agent, subject to the laws of the Cayman Islands, for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments; *provided* that with respect to the Payment Date in May 2008 such Class II Preference Share Special Payments will, at a minimum, include amounts that would otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Payment Date in February 2008 through February 3, 2008. For purposes of any calculation under the Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

(k) In addition to any deposit, withdrawal, transfer or other application of funds with respect to any Account set forth in this Section 10.3 or in Section 10.2, any deposit, withdrawal, transfer or other application of funds with respect to any Account authorized elsewhere in this Indenture is hereby authorized pursuant to this Section 10.3.

(l) In order to comply with its obligations under the USA Patriot Act of 2001, if any, the Trustee shall be entitled to request and verify, and the Noteholders, beneficial owners, the Co-Issuers and other parties related to this Indenture shall be obligated to provide to the Trustee all the necessary information required by the USA Patriot Act of 2001.

Section 10.4. ***Application of Funds in Accounts; Reports by Trustee.***

(a) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times before an Event of Default occurs, direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account and the Interest Reserve Account as so directed in Eligible Investments having Stated Maturities no later than the Business Day before the next Payment Date. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. Before an Event of Default occurs, if the Issuer has not given directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account. If the Trustee does not receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing no later than the Business Day before the next Payment Date. After an Event of Default occurs, if the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (c) of the definition of "Eligible Investments" maturing not later than the earlier of (i) 30 days after the date of the application or (ii) the Business Day before the next Payment Date. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account. Subject to Section 6.7, the Trustee shall not in any way be held liable for the selection of Eligible Investments or because of any insufficiency of the Collection Account, the Hedge Counterparty Collateral Account, the Expense Reimbursement Account, the Closing Date Expense Account or the Interest Reserve Account or any other account that results from any loss relating to any such Eligible Investment.

(b) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, and the Synthetic Security Collateral Account in Eligible Investments having Stated Maturities not later than one Business Day after the date of their purchase. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that are overnight funds. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be

credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(c) By Issuer Order (which may be in the form of standing instructions), at the direction of the Servicer, the Issuer shall at all times direct the Trustee to, and, upon receipt of the Issuer Order, the Trustee shall, apply all funds on deposit in the Securities Lending Account in Eligible Investments having Stated Maturities no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All applications on any Business Day shall be subject to the timely receipt of the funds and the availability of any Eligible Investments. The interest on the Eligible Investments shall be allocated between the Issuer and the Securities Lending Counterparty pursuant to the related Securities Lending Agreement. If before an Event of Default, the Issuer does not give directions, the Trustee shall seek instructions from the Servicer within three Business Days after transfer of any funds to the Securities Lending Account. If the Trustee does not thereupon receive written instructions from the Servicer within five Business Days after transfer of the funds to the account, it shall apply the funds held in the account, as fully as practicable, but only in one or more Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" that mature no later than the Business Day before the stated termination date of the related Securities Lending Agreement. If after an Event of Default, the Issuer does not give directions to the Trustee for three consecutive days, the Trustee shall apply the monies as fully as practicable in Eligible Investments of the type described in clause (e) of the definition of "Eligible Investments" maturing no later than the Business Day before the stated termination date of the related Securities Lending Agreement. All interest and other income from such Eligible Investments shall be deposited in the Collection Account, any gain realized from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such Eligible Investments shall be charged to the Collection Account.

(d) The Trustee agrees to give the Issuer notice as soon as reasonably practicable if a Trust Officer obtains actual knowledge that any Account or any funds on deposit in any Account, or otherwise to the credit of an Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. All Accounts shall remain at all times with the Custodian or a financial institution having a long-term debt rating of at least "Baa1" (and not on credit watch with negative implications) by Moody's and at least "BBB+" by S&P and having combined capital and surplus of at least U.S.$200,000,000 that has entered into one or more securities account control agreements in accordance with Article 8 of the UCC; provided, however, that (i) with respect to the Synthetic Security Collateral Account, the Synthetic Security Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Synthetic Security Collateral Account, (ii) with respect to the Securities Lending Account, the Securities Lender shall be a party to such control agreement and shall consent to the Trustee's control of such Securities Lending Account and (iii) with respect to each Hedge Counterparty Collateral Account, the related Hedge Counterparty shall be a party to such control agreement and shall consent to the Trustee's control of such Hedge Counterparty Collateral Account.

(e) The Trustee shall supply, in a timely fashion, to the Co-Issuers and the Servicer any information regularly maintained by the Trustee that the Co-Issuers or the Servicer may from time to time request with respect to the Pledged Obligations, the Accounts and the Collateral and provide any other requested information reasonably available to the Trustee because of its acting as Trustee under this Indenture and required to be provided by Section 10.6, to permit the Servicer to perform its obligations under the Servicing Agreement. The Trustee shall promptly forward to the Servicer copies of notices and other writings received by it from the issuer of any Collateral Obligation or from any Clearing Agency with respect to any Collateral Obligation which notices or writings advise the holders of the security of any rights that the holders might have with respect to the Collateral Obligation (including requests to vote with respect to amendments or waivers and notices of

prepayments and redemptions) as well as all periodic financial reports received from the issuer and Clearing Agencies with respect to the issuer.

(f) To the extent monies deposited in any Account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or any agencies succeeding to its insurance functions, and are not fully collateralized by direct obligations of the United States of America, the excess shall be held in Eligible Investments as described above.

Section 10.5. ***Synthetic Security Counterparty Account.***

(a) To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty or to the extent that any Synthetic Security has an unfunded amount payable by the Issuer that does not by its terms require collateral, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and this Indenture (a "***Synthetic Security Counterparty Account***"). In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty if that trustee would qualify to be a successor trustee under Section 6.9 and the account satisfies the other requirements of this Section.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security and, without duplication, an amount equal to the unfunded amount of a Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to this Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

(b) As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and this Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

(c) In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

(d) Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the

Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Section 10.6. ***Accountings.***

(a) *Monthly*. Commencing the earlier of (a) the first full month after the Ramp-Up Completion Date and (b) the month ending September 2007, (i) in the case of a month in which there is no Payment Date, not later than the eighth Business Day after the last calendar day of such month and (ii) in the case of a month in which there is a Payment Date, on such Payment Date, the Issuer shall cause to be compiled and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Initial Purchasers, each Hedge Counterparty, the Rating Agencies, (if so requested by the Initial Purchasers) the Repository in accordance with Section 14.3(a)(ix) or each Holder of a Note who makes a written request therefor, and, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, the Beneficial Owner (or its designee), a monthly report (the "***Monthly Report***"). Each Monthly Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Monthly Report shall contain the following information, determined as of (1) in the case of a month in which there is no Payment Date, the last day of the applicable month and (2) in the case of a month in which there is a Payment Date, the Determination Date for such Payment Date, based in part on information provided by the Servicer (the "***Monthly Determination Date***"):

(i) *Collateral*:

(A) The Aggregate Principal Balance (and, in the case of a Revolving Loan or Delayed Drawdown Loan, its funded and unfunded amount), interest rate, Stated Maturity and obligor of each Collateral Obligation;

(B) The stated principal balance of Defaulted Collateral Obligations;

(C) The identity of all Collateral Obligations and all obligations that at the time of acquisition, conversion or exchange do not satisfy the requirements of a Collateral Obligation that were released for sale or other disposition (and, for each obligation sold, indicating whether sold as a Credit Risk Obligation, a Credit Improved Obligation, a Current-Pay Obligation, a Defaulted Collateral Obligation, a Workout Asset or an obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or whether sold in connection with any withholding tax pursuant to Section 12.1(e) or sold as a discretionary sale pursuant to Section 12.1(h)); and the identity of all Collateral Obligations that were acquired, in each case since the date of the previous Monthly Report;

(D) The obligor of each Workout Asset;

(E) The Purchase Price of each Collateral Obligation acquired, the sale price of each Collateral Obligation sold (or the adjusted purchase or sale price with respect to any exchange of securities requiring an allocation by the Servicer) since the date of the previous Monthly Report on each sale;

(F) The identity of each Collateral Obligation (1) that is a Defaulted Collateral Obligation, a Workout Asset or a PIK Security, and in the case of a PIK Security (i) the principal amount of previously deferred or capitalized interest and (ii) the change in the principal amount of previously deferred or capitalized interest since the most recent Monthly Report or (2) in respect of which an obligation that

at the time of acquisition, conversion or exchange does not satisfy the requirements of a Collateral Obligation has been received, in each case indicating the date of such default, as applicable, and reporting any Other Indebtedness, as defined in clause (ii) in the definition of "Defaulted Collateral Obligation," that the Servicer has determined not to be material;

(G) The S&P Industry Classification and the Moody's Industry Classification for each Collateral Obligation and the five highest concentrations of Collateral Obligations in the Moody's Industry Classification groups and the five highest concentrations of Collateral Obligations in the S&P Industry Classification groups;

(H) For each Collateral Obligation, the country of the obligor (and the related foreign currency debt rating) and, in the case of a country other than the United States of America, whether the obligor is Domiciled in a Moody's Group I Country, Moody's Group II Country, or Moody's Group III Country and the percentage of the Aggregate Principal Balance of the Collateral Obligations issued by issuers in the applicable country;

(I) For each Collateral Obligation, the Moody's Priority Category Recovery Rate and S&P Recovery Rate;

(J) For each Collateral Obligation, the S&P Rating, and if any S&P Rating for any Collateral Obligation in any Monthly Report is a credit estimate, "non-public" rating or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable credit estimate, "non-public" rating or "shadow" rating;

(K) For each Collateral Obligation, the Moody's Rating and the Moody's Rating Factor, determined, for this purpose, and set forth both with and without regard to whether the Collateral Obligation has been put on watch for possible upgrade or downgrade, and if any Moody's Rating for any Collateral Obligation in any Monthly Report is an "estimated" or "shadow" rating, the rating shall not be disclosed, but shall be replaced with an asterisk in the place of the applicable "estimated" or "shadow" rating;

(L) The Aggregate Principal Balance of the Collateral Obligations that have a Moody's Rating of "Caa1" or lower;

(M) The Aggregate Principal Balance of the Collateral Obligations that have an S&P Rating of "CCC+" or lower;

(N) For each Collateral Obligation that is a Participation or a Synthetic Security or is loaned pursuant to a Securities Lending Agreement, the related Secondary Risk Counterparty and each Rating Agency's long-term unsecured debt rating of the Secondary Risk Counterparty;

(O) Certain S&P benchmarks relating to the portfolio as provided by S&P in the S&P CDO Monitor regardless whether or not the S&P CDO Monitor passes or fails, including (1) S&P Default Measure (Annualized Portfolio Default Rate), (2) S&P Variability Measure (Annualized Standard Deviation of Portfolio Default Rate), (3) S&P Correlation Measure (Ratio of Standard Deviation of

Portfolio with Correlation to Standard Deviation of Portfolio without Correlation) and (4) Weighted Average Default Correlation;

(P) The identity and Market Value of each Collateral Obligation whose Market Value (in the determination of the Overcollateralization Ratio Numerator) was determined pursuant to last proviso in the definition of "Market Value;"

(Q) The identity of each Collateral Obligation participated from or entered into with a Secondary Risk Counterparty; and

(R) The identity of each Collateral Obligation owned by the Issuer that has not been disposed of within the time limits required by this Indenture.

(ii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds), and unapplied proceeds;

(B) The amount of any Principal Proceeds in the Revolving Reserve Account;

(C) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(D) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(E) The amount of any Principal Proceeds in the Securities Lending Account; and

(F) The amount of any proceeds in the Hedge Counterparty Collateral Account;

(iii) *Hedge Agreements*:

(A) The outstanding notional amount of each Hedge Agreement; and

(B) The amount scheduled to be received and paid by the Issuer pursuant to each Hedge Agreement on the next Payment Date (as specified by the calculation agent under each Hedge Agreement);

(iv) *Coverage Tests, Collateral Quality Tests and Retention Overcollateralization Test*:

(A) The Overcollateralization Ratios and the Overcollateralization Ratios as of the Ramp-Up Completion Date; a statement as to whether each of the Overcollateralization Tests is satisfied and a statement as to whether the Retention Overcollateralization Test is satisfied;

(B) The Interest Coverage Ratios and, on and after the second Payment Date, a statement as to whether each of the Interest Coverage Tests is satisfied;

(C) The Diversity Score and, on and after the Ramp-Up Completion Date, a statement as to whether the Diversity Test is satisfied;

(D) The Weighted Average Life of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Life Test is satisfied;

(E) The Moody's Minimum Average Recovery Rate, the S&P Recovery Rate and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Moody's Recovery Rate Test with respect to the Moody's Minimum Average Recovery Rate and Weighted Average S&P Recovery Rate Test with respect to the S&P Recovery Rate is satisfied;

(F) The Weighted Average Fixed Rate Coupon of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Fixed Rate Coupon Test is satisfied and a statement as to the amount of Spread Excess was used to satisfy the Weighted Average Fixed Rate Coupon Test;

(G) The Weighted Average Spread of the Collateral Obligations and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Spread Test is satisfied and a statement as to the amount of Fixed Rate Excess was used to satisfy the Weighted Average Spread Test;

(H) The Weighted Average Moody's Rating Factor and, on and after the Ramp-Up Completion Date, a statement as to whether the Weighted Average Rating Factor Test is satisfied; and

(I) The S&P CDO Monitor Test and, on and after the Ramp-Up Completion Date, a statement as to whether the S&P CDO Monitor Test is satisfied and the Class Scenario Loss Rate and the then applicable Note Break-Even Loss Rate with respect to each Class of Notes that is rated by S&P and the adjusted Weighted Average Spread level determined as set forth in the definition of "Note Break-Even Loss Rate;"

(v) *Concentration Limitations and Withholding Taxes*:

(A) The percentage of the Maximum Amount itemized against each element of the Concentration Limitations and a statement as to whether each Concentration Limitation is satisfied; and

(B) Any withholding tax on payments under any Collateral Obligation;

(vi) *Securities Lending Agreements*:

(A) Each Collateral Obligation loaned or borrowed pursuant to a Securities Lending Agreement and the percentage of the Maximum Amount that

represents Collateral Obligations that are loaned or borrowed pursuant to Securities Lending Agreements; and

(B) With respect to each Securities Lending Agreement in effect as of the Monthly Determination Date, a list setting forth:

(1) for each Collateral Obligation loaned or borrowed under it as of the first day of the loan, (x) its Principal Balance, (y) its Market Value and (z) its Principal Balance expressed as a percentage of the Maximum Amount,

(2) the term of the loan of the Collateral Obligation,

(3) the expiration date of the Securities Lending Agreement,

(4) the Moody's Rating and S&P Rating for each loaned or borrowed Collateral Obligation,

(5) the principal amount of the related Securities Lending Collateral held in the Securities Lending Account, and

(6) the Eligible Investments held as Securities Lending Collateral pursuant to the related Securities Lending Agreement; and

(vii) Any other information the Trustee reasonably requests.

Upon receipt of each Monthly Report, the Trustee shall compare the information contained in the Monthly Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Monthly Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Monthly Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Monthly Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report or the Trustee's records, the Monthly Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Monthly Report shall be sent as soon as practicable by the Issuer to all recipients of the report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Monthly Report is correct, shall conform the information it maintains to the Monthly Report received.

(b) *Payment Date Accounting*. The Issuer shall cause to be rendered an accounting report (the "***Valuation Report***"), determined as of the close of business on each Determination Date, and provided to the Servicer, the Trustee, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares), the Issuer, the Initial Purchasers, each Hedge Counterparty, the Rating Agencies and each Noteholder (if so requested by the Initial Purchasers) the Repository in accordance with Section 14.3(a)(ix), the Depository (with instructions to forward it to each of its Agent Members who are Noteholders), and upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner and the Beneficial Owner (or its designee) not later than the second Business Day preceding the related Payment Date. Each

Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Valuation Report shall contain the following information as of the related Payment Date (unless otherwise stated), based in part on information provided by the Servicer:

(i) *Notes*:

(A) The amount of principal payments to be made on each Class of Notes on the related Payment Date;

(B) The Aggregate Outstanding Amount of each Class of Notes after giving effect to any principal payments on the related Payment Date and, for each Class of Notes, the percentage of its initial Aggregate Outstanding Amount that amount represents;

(C) For each Class of Notes, the percentage of the initial Aggregate Outstanding Amount of all of the Notes that its initial Aggregate Outstanding Amount represented and, after giving effect to any principal payments on the related Payment Date, the percentage of the Aggregate Outstanding Amount of all of the Notes that its Aggregate Outstanding Amount represents;

(D) The interest payable in respect of each Class of Notes on the related Payment Date (in the aggregate and by Class) and its calculation in reasonable detail; and

(E) The amounts to be paid, if any, to the Preference Shares Paying Agent for payments on the Preference Shares on the related Payment Date, showing separately the payments from Interest Proceeds and the payments from Principal Proceeds;

(ii) *Payment Date Payments*:

(A) The amounts to be distributed under each clause of Sections 11.1(a)(i), 11.1(a)(ii) and 11.2 itemized by clause, and to the extent applicable, by type of distribution under the clause; and

(B) Any amounts payable under the Hedge Agreements by any Hedge Counterparty on or before the related Payment Date and its calculation in reasonable detail (as specified by the calculation agent under the Hedge Agreement);

(iii) *Accounts*:

(A) The amount of any proceeds in the Collection Account, distinguishing between amounts credited as Interest Proceeds, Principal Proceeds (excluding unapplied proceeds) and unapplied proceeds;

(B) The amount in the Collection Account after all payments and deposits to be made on the related Payment Date, distinguishing between amounts credited as Interest Proceeds and as Principal Proceeds;

(C) The amount of any Principal Proceeds in the Revolving Reserve Account;

(D) The amount of any Principal Proceeds in the Delayed Drawdown Reserve Account;

(E) The amount of any Principal Proceeds in the Synthetic Security Collateral Account;

(F) The amount of any Principal Proceeds in the Securities Lending Account;

(G) The amount in the Hedge Counterparty Collateral Account; and

(H) The amount in the Expense Reimbursement Account;

(iv) A notice setting forth LIBOR, as calculated by the Calculation Agent, for the next Interest Period and each Note Interest Rate for the next Payment Date; and

(v) Any other information the Trustee reasonably requests.

Upon receipt of each Valuation Report, the Trustee shall compare the information contained in the Valuation Report to the information contained in its records with respect to the Collateral and shall, within three Business Days after receipt of such Valuation Report, notify the Issuer, the Preference Shares Paying Agent and the Servicer if the information contained in the Valuation Report does not conform to the information maintained by the Trustee with respect to the Collateral, and shall detail any discrepancies. In the event that any discrepancy exists, the Trustee, the Issuer, and the Servicer shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall within five Business Days after notification of such discrepancy cause the Independent accountants appointed by the Issuer pursuant to Section 10.8 to review such Valuation Report and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Valuation Report or the Trustee's records, the Valuation Report or the Trustee's records shall be revised accordingly and, as so revised, shall be used in making all calculations pursuant to this Indenture and notice of any error in the Valuation Report shall be sent as soon as practicable by the Issuer to all recipients of such report. If the review by the Independent accountants does not resolve the discrepancy, the Trustee, upon receipt of an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the information contained in the related Valuation Report is correct, shall conform the information it maintains to the Valuation Report received.

(c) *Failure to Provide Accounting*. If the Trustee shall not have received any accounting provided for in Section 10.6(b) on the first Business Day after the date on which the accounting is due to the Trustee, the Trustee shall notify the Issuer and the Servicer, and the Servicer shall use all reasonable efforts to cause the accounting to be made by the applicable Payment Date. To the extent the Trustee is required to provide any information or reports pursuant to this Section 10.6 as a result of the failure of the Issuer (or anyone acting on the Issuer's behalf) to provide the information or reports, the Trustee may retain an Independent certified public accountant in connection therewith and the reasonable costs incurred by the Trustee for the Independent certified public accountant shall be reimbursed pursuant to Section 6.8.

(d) *Irish Stock Exchange*. So long as any Class of Senior Notes is listed on the Irish Stock Exchange: (i) the Trustee shall communicate to the Irish Stock Exchange the Aggregate Outstanding Amount of each listed Class of Senior Notes following each Payment Date and inform the Irish Stock Exchange if any such Class of Senior Notes did not receive scheduled payments of principal or interest on the Payment Date; (ii) the Trustee shall inform the Irish Stock Exchange if the ratings assigned to the Senior Notes are reduced or withdrawn and the information shall be given

to the Company Announcements Office of the Irish Stock Exchange; and (iii) the Trustee shall inform the Irish Stock Exchange, in advance, of the Note Interest Rate for each such Class, as well as the exact date of the following Payment Date.

(e) *Quarterly Letter*. The Servicer shall provide a quarterly letter to the recipients of the Valuation Report highlighting events occurring during the related quarterly period within 30 days of the date of the delivery of the Valuation Report.

(f) *S&P CDO Monitor*. On or after the Ramp-Up Completion Date and together with each Monthly Report, the Issuer shall provide to S&P the Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon and the CUSIP number thereof (if applicable).

(g) *Payments or Transfers from the Payment Account.* Each Valuation Report shall constitute instructions to the Trustee to withdraw on the related Payment Date from the Payment Account and pay or transfer amounts set forth in such Valuation Report in the manner specified and in accordance with the priority established in Section 11.1 hereof.

Section 10.7. ***Release of Collateral.***

(a) The Trustee shall present Collateral for redemption or payment in full in accordance with the terms of the Collateral upon receipt of an Issuer Order. If no Event of Default is continuing, the Issuer may, by Issuer Order executed by an Authorized Officer of the Servicer, delivered to the Trustee at least two Business Days before the settlement date for any sale of an obligation certifying that the sale of the Collateral is being made in accordance with Sections 12.1 and 12.3 and the sale complies with all applicable requirements of Section 12.1, direct the Trustee to release the Collateral and, upon receipt of the Issuer Order, the Trustee shall deliver any such Collateral, if in physical form, duly endorsed to the broker or purchaser designated in the Issuer Order or otherwise cause an appropriate transfer of it to be made, in each case against receipt of the sales price therefor as specified by the Servicer in the Issuer Order. The Trustee may deliver any such Collateral in physical form for examination pursuant to a bailee letter.

(b) The Trustee shall, upon an Issuer Order executed by an Authorized Officer of the Servicer, deliver any Pledged Obligation that is set for any mandatory call or redemption or payment in full to the appropriate paying agent on or before the date set for the call, redemption or payment, in each case against receipt of its call or redemption price or payment in full and provide notice of it to the Servicer.

(c) Upon receiving actual notice of any Offer, the Trustee on behalf of the Issuer shall notify the Servicer of any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action (an "***Offer***"). If no Event of Default is continuing, the Servicer may direct the Trustee (and if an Event of Default is continuing, the Servicer may advise, and the Trustee may, in consultation with the Servicer, decide) to accept or participate in or decline or refuse to participate in the Offer and, in the case of acceptance or participation, to dispose of the Collateral Obligation in accordance with the Offer against receipt of payment for it. If the consideration to be received by the Issuer for the Collateral Obligation is other than Cash, the consideration must be a Collateral Obligation that would be eligible for purchase by the Issuer pursuant to Section 12.2 assuming for this purpose that the Issuer committed to purchase the same on the date on which the Issuer accepts the Offer.

(d) Upon disposition by the Trustee of Collateral to any Person against receipt of payment therefore as provided in any of the foregoing clauses (a), (b) or (c), the Collateral shall be

free of the lien of this Indenture. The lien shall continue in the proceeds received from the disposition.

(e) As provided in Section 10.2(b), the Trustee shall deposit any proceeds received by it from the disposition of a Pledged Obligation in the Collection Account, unless simultaneously applied to the purchase of additional Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or Eligible Investments as permitted under and in accordance with the requirements of this Article 10 and Article 12.

(f) The Trustee shall, upon receipt of an Issuer Order when no Notes are Outstanding and all obligations of the Co-Issuers under this Indenture have been satisfied, as evidenced by an Officer's certificate or an Opinion of Counsel, release any remaining Collateral from the lien of this Indenture.

(g) The Trustee shall release from the lien of this Indenture any Collateral that is provided directly to a Synthetic Security Counterparty or deposited in a segregated account in accordance with Section 10.5. Any Collateral or proceeds received by or redeposited by the Issuer into the Collection Account in accordance with Section 10.5 shall again be subject to the lien of this Indenture.

Any collateral deposited in a segregated account in accordance with Section 10.3(d), (e), and (f) shall be subject to the lien of this Indenture for the benefit of the Secured Parties. Any collateral withdrawn by the Issuer in accordance with Section 10.3(d), (e), and (f) shall be released from the lien of this Indenture by the Trustee to the extent returned to the appropriate counterparty pursuant to Sections 10.3(d), (e) and (f).

Section 10.8. ***Reports by Independent Accountants.***

(a) At the Closing Date, the Issuer, at the direction of the Servicer, shall appoint a firm of Independent certified public accountants of recognized international reputation for purposes of preparing and delivering the reports or certificates of the accountants required by this Indenture. Within 30 days of any resignation by the firm, the Issuer, at the direction of the Servicer, shall promptly appoint by Issuer Order delivered to the Trustee and each Rating Agency a successor firm that is a firm of Independent certified public accountants of recognized international reputation. If the Issuer, at the direction of the Servicer, fails to appoint a successor to a firm of Independent certified public accountants which has resigned within 30 days after the resignation, the Trustee, in consultation with the Servicer, shall promptly appoint a successor firm of Independent certified public accountants of recognized international reputation. The fees of such Independent certified public accountants and their successors shall be payable by the Issuer as an Administrative Expense.

(b) On or before May 15 of each year commencing in 2008, the Issuer shall cause to be delivered to the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer or each Noteholder or Holder of Preference Shares upon written request therefor, upon written request therefor by a Beneficial Owner in the form of Exhibit H certifying that it is a Beneficial Owner, to the Beneficial Owner (or its designee) and each Rating Agency a statement from a firm of Independent certified public accountants indicating (i) that the firm has reviewed each Valuation Report received since the last review and applicable information from the Trustee, (ii) that the calculations within those Valuation Reports have been performed in accordance with the applicable provisions of this Indenture (except as otherwise noted in the statement) and (iii) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer as of the preceding Determination Date. If a conflict exists between the firm of Independent

certified public accountants and the Issuer with respect to any matter in this Section 10.7, the determination by that firm of Independent public accountants shall be conclusive. The statement shall be in the form of an Accountant's Certificate issued to the Issuer, the form of which shall be agreed on by the Servicer on behalf of the Issuer.

(c) Upon the written request of the Preference Shares Paying Agent or any Holder of Preference Shares, the Issuer shall cause the firm of Independent certified public accountants appointed pursuant to Section 10.7(a) to provide any Holder of Preference Shares with all information requested pursuant to Section 7.17(g) or provide the Issuer with any assistance required in its preparation.

Section 10.9. ***Reports to Rating Agencies.***

In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to this Indenture, the Issuer shall provide each Rating Agency with the Accountants' Certificates delivered to the Trustee under this Indenture, and such additional information as either Rating Agency may from time to time reasonably request. In addition, any notices of restructurings and amendments received by the Issuer or the Trustee in connection with the Issuer's ownership of a DIP Loan shall be delivered by the Servicer (on behalf of the Issuer) or the Trustee, as the case may be, promptly to the Rating Agencies.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1. ***Disbursements of Monies from Payment Account.***

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and to Section 13.1, on each Payment Date, the Trustee shall disburse available amounts from the Payment Account as follows and for application by the Trustee in accordance with the following priorities (the "***Priority of Payments***"):

(i) On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted by Section 10.2) shall be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority,

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

SECOND, in the following order of priority,

(x) fees and expenses of the Administrator; and then

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and ongoing surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other Person (except the Servicer) if specifically provided for in this Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) to the payment of accrued and unpaid interest on the Class A-1-A Notes and the Class A-1-B Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-1-A Notes and the Class A-1-B Notes, in each case, *pro rata* in proportion to the respective amounts of interest, Defaulted Interest and Defaulted Interest Charge then due on each such Class;

(6) to the payment of accrued and unpaid interest on the Class B Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class B Notes;

(7) if the Class A/B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1-A Notes, the Class A-1-B Notes and the Class B Notes in the Note Payment Sequence, in each case, in the amount necessary so that all of the Class A/B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(1) on the current Payment Date);

(8) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest, but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(9) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(3) on the current Payment Date);

(10) to the payment of Class C Deferred Interest;

(11) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(12) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (12) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(6) on the current Payment Date);

(13) to the payment of Class D Deferred Interest;

(14) to the payment of accrued and unpaid interest on the Class E Notes (excluding Class E Deferred Interest but including interest accrued for the preceding Interest Period on Class E Deferred Interest);

(15) if the Class E Coverage Tests are not satisfied on the related Determination Date and all of the Class A/B Coverage Tests and the Class C Coverage Tests are satisfied on such Determination Date, to the payment of principal of the Class E Notes in the amount necessary so that all of the Class E Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (15) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(9) on the current Payment Date);

(16) to the payment of Class E Deferred Interest;

(17) if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A-1-A Notes, the Class A-1-B Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (17) before the application of any Principal Proceeds pursuant to Section 11.1(a)(ii)(11) on the current Payment Date);

(18) during the Replacement Period, if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds 50% of the remaining Interest Proceeds available after the payments pursuant to clause (17) above (or, if the amount necessary to cause the Retention Overcollateralization Test to be satisfied as of such Determination Date is less than 50% of such remaining Interest Proceeds, such necessary amount);

(19) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(20) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and SECOND, to the payment (*pro*

rata according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) *pro rata* to each Noteholder entitled thereto, the applicable Extension Bonus Payment pursuant to, and in accordance with, Section 2.4(g);

(21) to the payment of any Defaulted Hedge Termination Payments;

(22) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12.0%;

(23) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with Section 10.3(j) of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(24) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (22) and (24) above, in whole or in part on any Payment Date, the Servicer, on behalf of the Issuer, shall have the right to direct the Trustee to distribute any Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date shall be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date shall be reduced and the amount of Principal Proceeds available on the relevant Payment Date shall be increased accordingly.

(ii) On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted by Section 10.2,

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, or the Securities Lending Account, and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period,

shall be distributed in the following order of priority:

(1) (x) FIRST, to the payment of the amounts referred to in clauses (1) through (6) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) SECOND, to the payment of amounts referred to in clause (7) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A/B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (8) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(3) to the payment of the amounts referred to in clause (9) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3), or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (10) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(5) to the payment of the amounts referred to in clause (11) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(6) to the payment of the amounts referred to in clause (12) of Section 11.1(a)(i) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class D Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (6), or until such amounts are paid in full;

(7) to the payment of the amounts referred to in clause (13) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(8) to the payment of the amounts referred to in clause (14) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(9) to the payment of the amounts referred to in clause (15) of Section 11.1(a)(i) (regardless whether or not the conditions of sub-clause (i) of such clause (15) are satisfied) to the extent not previously paid in full thereunder and to the extent necessary to cause the Class E Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (9), or until such amounts are paid in full;

(10) to the payment of the amounts referred to in clause (16) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(11) to the payment of the amounts referred to in clause (17) of Section 11.1(a)(i) to the extent not previously paid in full thereunder;

(12)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(13) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the provisions of Section 7.19 and Article 12 (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(14) after the Replacement Period, (i) FIRST, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of this Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) SECOND, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(15) to the extent not previously paid in full under clause (12) above, after the Replacement Period, to the payment of the amounts referred to in clauses (19) through (23) of Section 11.1(a)(i) (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(16) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

(b) If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under Section 11.1(a), subject to Section 13.1, to the extent funds are available therefor.

(c) The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with Section 11.1(a), to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

(d) If the Hedge Counterparty defaults in the payment of its obligations to the Issuer under the respective Hedge Agreements on the date on which any payment is due thereunder, the Trustee shall make a demand on the Hedge Counterparty, or any guarantor, if applicable, demanding payment by 12:30 P.M., New York time, on that date. The Trustee shall give notice to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer and each Rating Agency upon the continuing failure by the Hedge Counterparty to perform its obligations during the two Business Days following a demand made by the Trustee on, the Hedge Counterparty, and shall take the action with respect to the continuing failure as directed by the Servicer unless an Event of Default has occurred and is continuing in which case direction is to be taken pursuant to Section 5.13.

(e) Except as otherwise expressly provided in Section 11.1(a) above, if on any Payment Date, the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by any numbered or lettered paragraph or clause of Section 11.1(a) to different Persons, the Trustee shall make the disbursements called for by the paragraph or clause ratably in accordance with the respective amounts of the disbursements then payable, subject to Section 13.1, to the extent funds are available therefor.

ARTICLE 12

SALE OF COLLATERAL OBLIGATIONS; PURCHASE OF COLLATERAL OBLIGATIONS

Section 12.1. ***Sales of Collateral Obligations.***

Subject to the satisfaction of the conditions specified in Section 10.6, Section 12.1 and Section 12.3 and if no Event of Default is continuing as evidenced by an Officer's certificate of the Servicer provided to the Trustee, the Issuer may, at the direction of the Servicer, direct the Trustee to sell any Collateral Obligation or Workout Asset if the Servicer certifies to the Trustee that the sale meets the requirements of any one of paragraphs (a) through (i) of this Section 12.1. If the Issuer sells any Collateral Obligation or Workout Asset during the Replacement Period, the proceeds shall be applied in accordance with Section 12.2.

(a) *Credit Risk Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to this Section 12.1(a), at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(b) *Credit Improved Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(i) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in Section 12.1(i), to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; and

(ii) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest;

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(c) *Non-Performing Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(d) *Non-qualifying Collateral Obligations*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "***Non-qualifying Collateral Obligation***") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(e) *Withholding Tax Sales*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(f) *Optional Redemption*. After the Issuer has notified the Trustee of an Optional Redemption of the Notes in accordance with Article 9, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if

(i) the requirements of Article 9 are satisfied and (ii) the Independent certified public accountants appointed pursuant to Section 10.7 have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to Section 9.3(c). After a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with Section 9.2(b), at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to Section 9.2(b)(i)) or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to Section 9.2(b)(ii)) and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(g) *Rating Confirmation Failure*. After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in Section 9.1 and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(h) *Workout Assets*. At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(i) *Supervening Requirement*. Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) shall not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (f) above. The Trustee shall have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph (i).

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (a) or (c) above, as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12 of the Servicing Agreement.

Section 12.2. ***Purchase of Collateral Obligations.***

(a) On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the Servicer certifies to the Trustee that, to the best knowledge of the Servicer, the conditions specified in this Section 12.2 and Section 12.3 are met.

(b) *Eligibility Criteria*. No obligations may be purchased unless each of the conditions in the following clauses (i) through (xii) (the "***Eligibility Criteria***") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(i) the obligation is a Collateral Obligation;

(ii) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied, or

(B) if any such Coverage Test is not satisfied, both:

(1) the extent of satisfaction of the Coverage Test is not reduced, and

(2) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation, or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(iii) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(iv) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; *provided* that the Weighted Average Moody's Rating Factor does not exceed 2750 or, if the Weighted Average Moody's Rating Factor exceeds 2750 prior to giving effect to such purchase or sale, the Weighted Average Moody's Rating Factor is not increased;

(v) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(vi) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(vii) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(viii) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(ix) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(x) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(xi) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; provided, however, that this Eligibility Criterion (xi) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(xii) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test (other than the Weighted Average Rating Factor Test) is maintained or improved and the Weighted Average Rating Factor Test is satisfied; *provided* that the Weighted Average Moody's Rating Factor does not exceed 2750 or, if the Weighted Average Moody's Rating Factor exceeds 2750 prior to giving effect to such purchase or sale, the Weighted Average Moody's Rating Factor is not increased and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the Weighted Average Life Test is satisfied;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the current Moody's Rating on the Class A-1-A Notes and the Class A-1-B Notes is "Aaa" and the current Moody's Ratings on the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes are no lower than one subcategory below their Initial Rating.

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant Section 12 of the Servicing Agreement.

(c) *Certain Permitted Exchanges*. The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an A/B Exchange.

(d) *Certification by Servicer*. Not later than the Business Day preceding the settlement date for any Collateral Obligation purchased after the Closing Date (but in any event no later than the release of Cash for the Purchase Price of the purchase), the Servicer shall deliver to the Trustee an Officer's certificate of the Servicer certifying that, to the best knowledge of the Servicer, the purchase complies with this Section 12.2 and with Section 12.3 (determined as of the date that the Issuer commits to make the purchase).

(e) *Eligible Investments*. Cash on deposit in the Collection Account may be held at any time in Eligible Investments in accordance with Section 10.4(a) pending the application thereof to purchase Collateral Obligations.

Section 12.3. ***Conditions Applicable to All Sale and Purchase Transactions.***

(a) Any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a Person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements of Section 5 of the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the Person were not so Affiliated. The Trustee shall have no responsibility to oversee compliance with this clause (a) by the other parties.

(b) Upon any acquisition of any Collateral Obligation, all of the Issuer's interest in the Collateral Obligation shall be Granted to the Trustee pursuant to this Indenture.

(c) Notwithstanding the other provisions of this Article 12, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell or purchase any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to Section 12.1(a) or (c), as applicable) following receipt by the Servicer of notice of removal pursuant to Section 14 of the Servicing Agreement until a successor Servicer is appointed pursuant to Section 12(e) of the Servicing Agreement.

Section 12.4. ***Certain Determinations Relating to Collateral Obligations.***

(a) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

(b) Notwithstanding anything to the contrary contained in this Indenture, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

(c) Under the circumstances described in subsections (a) and (b) above, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "***Deadline***"), the deemed purchase or sale shall be deemed not to have occurred; provided, however, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed

an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

(d) Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1. ***Subordination.***

(a) With respect to each Class of Notes and the Preference Shares, the Classes of Notes and the Preference Shares that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
A-1-A*	A-1-B, B, C, D, E, Preference Shares**	None
A-1-B*	B, C, D, E, Preference Shares**	A-1-A
B	C, D, E, Preference Shares**	A
C	D, E, Preference Shares**	A, B
D	E, Preference Shares**	A, B, C
E	Preference Shares**	A, B, C, D
Preference Shares	None***	A, B, C, D, E

* The payment of interest on the Class A-1-A Notes and the Class A-1-B Notes shall rank *pari passu*, and the Class A-1-A Notes and the Class A-1-B Notes will be allocated principal payments on each Payment Date in accordance with the Class A Allocation.

** Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

*** The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Holders of each Class of Notes that is a Junior Class agree for the benefit of the Holders of Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in this Indenture. If any Event of Default has not been cured or waived and acceleration occurs and is continuing in accordance with Article 5, each Priority Class of Notes shall be paid in full in Cash or, to the extent a Majority of each Class consents, other than in Cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of Notes of each Priority Class in respect of the Junior Class, not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of

Notes, as the case may be, or under this Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be, and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

(c) If, notwithstanding the provisions of this Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of this Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, has been paid in full in Cash or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in Cash in accordance with this Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be, in accordance with this Indenture. If any such payment or distribution is made other than in Cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to this Indenture, including this Section 13.1.

(d) Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of this Indenture including this Section 13.1. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

(e) Distributions to Holders of the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) are subordinate to distributions on the Notes as described in the Priority of Payments.

(f) The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Section 13.2. ***Standard of Conduct.***

In exercising any of its or their voting rights, rights to direct and consent, or any other rights as a Noteholder under this Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1. ***Form of Documents Delivered to Trustee.***

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

Persons as to other matters, and any such Person may certify or give an opinion as to the matters in one or several documents.

Any certificate or opinion of an Officer of the Issuer, the Co-Issuer or the Servicer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Officer knows, or should know that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Officer of the Issuer, Co-Issuer or the Servicer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Servicer or any other Person, stating that the information with respect to the factual matters is in the possession of the Issuer, the Co-Issuer, the Servicer or the other Person, unless the Officer of the Issuer, Co-Issuer or the Servicer or the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer of the Issuer or the Co-Issuer, stating that the information with respect to factual matters is in the possession of the Issuer or the Co-Issuer, unless the counsel knows that the certificate or opinion or representations with respect to factual matters are erroneous.

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

Whenever this Indenture provides that the absence of the continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of either Co-Issuer, then notwithstanding that the satisfaction of the condition is a condition precedent to the Co-Issuer's right to make the request or direction, the Trustee shall be protected in acting in accordance with the request or direction if it does not have knowledge of the continuation of the Default or Event of Default as provided in Section 6.1(d).

Section 14.2. ***Acts of Holders of Securities.***

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited, to in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Holders of Securities in Person or by agents duly appointed in writing (provided that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in this Indenture, the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "***Act***" of the Holders of Securities signing the instruments. Proof of execution of any instrument or of a writing appointing an agent for a Holder of a Security shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any instrument may be proved by an affidavit of a witness to the execution or the certificate of any notary public or other Person authorized by law to acknowledge the execution of deeds. Any certificate on behalf of a jural entity executed by a Person purporting to have authority to act on behalf of the jural entity shall itself be sufficient proof of the authority of the Person executing it to act. The fact and date of the execution by any Person of any instrument may also be proved in any other manner that the Trustee deems sufficient.

(c) The Indenture Register shall prove the ownership of the Notes and the principal amount and registered numbers of Notes and the number of Preference Shares held by and the number(s) of the Preference Share certificate(s) issued to, any Person shall be proved by the Preference Share register.

(d) Any Act by the Holder of a Security shall bind every Holder of the same Security and every Security issued on its transfer or in exchange for it or in lieu of it, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance on the Act, whether or not notation of the action is made on the Securities.

Section 14.3. ***Notices, etc., to Certain Persons or Parties.***

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

(i) the Trustee or Preference Shares Paying Agent shall be sufficient for every purpose under this Indenture if in writing and made, given, furnished, or filed to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery, or by telecopy in legible form, to the Trustee or Preference Shares Paying Agent addressed to it at, 200 Clarendon Street, Mail Code EUC 108, Boston, MA 02116, telecopy no. (617) 351-4358, Attention: CDO Services Group, or at any other address previously furnished in writing to the other parties hereto by the Trustee (any request, direction, order, notice or other communication from the Servicer to the Trustee under Article 12 (other than required certifications) may be by electronic mail, which shall be deemed to be in writing);

(ii) the Co-Issuers shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Issuer addressed to it at c/o Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: the Directors—Westchester CLO, Ltd., or at any other address previously furnished in writing to the other parties hereto by the Issuer or the Co-Issuer, as the case may be, with a copy to the Servicer at its address below;

(iii) the Servicer shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Servicer addressed to it at Two Galleria Tower, 13455 Noel Road, Suite 800, Dallas, Texas 75240, telecopy no. (972) 628-4147, Attention: James Dondero, or at any other address previously furnished in writing to the other parties hereto;

(iv) the Initial Purchasers shall be sufficient for every purpose under this Indenture if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to the Initial Purchasers addressed to them at 745 Seventh Ave., New York, New York 10019, telecopy no. (212) 526-6713, Attention: CDO Banking, or at any other address previously furnished in writing to the Co-Issuers, the Servicer, and the Trustee by an Officer of either Initial Purchaser, as the case may be

(v) any Hedge Counterparty shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed,

first-class postage prepaid, hand delivered or sent by overnight courier service or by telecopy in legible form to the Hedge Counterparty addressed to it at the address specified in the relevant Hedge Agreement or at any other address previously furnished in writing to the Issuer or the Trustee by the Hedge Counterparty;

(vi) the Rating Agencies shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by telecopy in legible form, to each Rating Agency addressed to it at Moody's Investors Service, Inc., 99 Church Street, New York, New York, 10007, Telecopy No. (212) 553-4170, cdomonitoring@moodys.com, Attention: CBO/CLO Monitoring and Standard & Poor's, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Asset Backed-CBO/CLO Surveillance and each Monthly Report shall also be sent to S&P electronically to CDO_Surveillance@standardandpoors.com;

(vii) the Administrator shall be sufficient for every purpose under this Indenture (unless otherwise in this Indenture expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service, or by facsimile in legible form, addressed to Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, telecopy no. (345) 945-7100, Attention: the Directors—Westchester CLO, Ltd.; or

(viii) the Repository shall be sufficient for every purpose under this Indenture if delivered to the Repository at CDO Library, c/o The Bond Market Association, 360 Madison Avenue, 18th Floor, New York, New York 10017, electronic mail address: admin@cdolibrary.com. Any document required to be delivered or made available to the Repository by the Trustee may be made available by providing the operator of the Repository with access to a website containing such document in a format that permits the user to download the document as a pdf file.

(b) If any provision in this Indenture calls for any notice or document to be delivered simultaneously to the Trustee and any other Person, the Trustee's receipt of the notice or document shall entitle the Trustee to assume that the notice or document was delivered to the other Person unless otherwise expressly specified in this Indenture.

(c) Any Holder or beneficial owner of any Class A-1-A Notes or Class A-1-B Notes may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A-1-A Notes or Class A-1-B Notes, as applicable, on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A-1-A Notes or Class A-1-B Notes, as applicable) to the Trustee in substantially the form of Exhibit J specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A-1-A Notes or Class A-1-B Notes, as applicable (each, an "***Insurer***"). After receipt of any such notice (in the form of Exhibit J) by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

(d) Unless notified to the contrary by Financial Security Assurance Inc. ("***FSA***") or unless FSA is no longer to direct the vote of at least the Super Majority of the Class A-1-A Notes, each of the parties hereto agrees that, so long as any Class A-1-A Notes are Outstanding, FSA shall be entitled to receive, and shall be distributed, all reports, notices, certificates, statements and other information (including access to the Trustee's password protected website)

that are required to be delivered to any Holder of the Class A-1-A Notes (or that any Holder of the Class A-1-A Notes is entitled to request) at the same time and in the same manner as such reports, notices, certificates, statements and other information are delivered to each such Holder of Class A-1-A Notes, at the following address (or at any other address furnished in writing from time to time by FSA to the parties hereto): Financial Security Assurance Inc., 31 West 52nd Street, New York, NY 10019, Attention: CDO Surveillance, telephone no.: (212) 826-0100; electronic mail: cdoreport@fsa.com, facsimile no.: (212) 339-3581. For the avoidance of doubt, FSA shall be entitled to request directly that the parties hereto provide it with such reports, notices, certificates, statements and other information that are required to be delivered to any Holder of the Class A-1-A Notes (or that any Holder of the Class A-1-A Notes is entitled to request).

Section 14.4. ***Notices to Noteholders and the Preference Shares Paying Agent; Waiver.***

Except as otherwise expressly provided in this Indenture, where this Indenture provides for notice to the Noteholders or the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) of any event,

(a) the notice shall be sufficiently given to the Noteholders or the Preference Shares Paying Agent if in writing and mailed, first-class postage prepaid, each Noteholder affected by the event or the Preference Shares Paying Agent, at the address of the Holder as it appears in the Indenture Register or at the address of the Preference Shares Paying Agent supplied by the Preference Shares Paying Agent to the Trustee, as applicable, not earlier than the earliest date and not later than the latest date, prescribed for the giving of the notice; and

(b) the notice shall be in the English language.

Notices shall be deemed to have been given on the date of their mailing.

Notwithstanding clause (a), a Noteholder or the Preference Shares Paying Agent may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for the transmission. Thereafter, the Trustee shall give notices to the Holder or the Preference Shares Paying Agent by facsimile transmission. If the notice also requests that notices be given by mail, then the notice shall also be given by mail in accordance with clause (a) above, as the case may be.

The Trustee shall deliver to the Noteholders any information or notice relating to this Indenture requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of any Class of Notes at the expense of the Issuer. The Trustee shall deliver to the Preference Shares Paying Agent any information or notice that the Preference Shares Paying Agent certifies was requested to be so delivered by at least 10% (by Aggregate Outstanding Amount) of the Holders of the Preference Shares at the expense of the Issuer.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Noteholder or the Preference Shares Paying Agent shall affect the sufficiency of the notice with respect to other Noteholders or the Preference Shares Paying Agent. If it is impracticable to give the notice by mail of any event to Noteholders or the Preference Shares Paying Agent when the notice is required to be given pursuant to any provision of this Indenture because of the suspension of regular mail service as a result of a strike, work stoppage or similar activity or because of any other cause, then the notification to Noteholders or the Preference Shares Paying Agent as shall be made with the approval of the Trustee shall be a sufficient notification to the Holders for every purpose under this Indenture.

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

So long as any Senior Notes are listed on the Irish Stock Exchange and the rules of the exchange so require, all notices to Noteholders or the Preference Shares Paying Agent (for forwarding to Holders of Preference Shares) shall also be given to the Irish Paying Agent for publication in the Company Announcements Office of the Irish Stock Exchange.

The Issuer shall (and authorizes the Trustee to) deliver to the Initial Purchasers all periodic reports, notices, demands, and other written information delivered or received by the Issuer, the Servicer, trustees, paying agents, accountants, or other Persons pursuant to this Indenture and other operative documentation relating to the Notes requested by the Initial Purchasers (collectively, the "***Transaction Reports***") and the Issuer consents to the Initial Purchasers providing Transaction Reports received by it to current and prospective investors in the Notes (including by means of electronic transmissions or posting the Transaction Reports on internet sites maintained by the Initial Purchasers or any of their Affiliates).

Section 14.5. ***Effect of Headings and Table of Contents.***

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

Section 14.6. ***Successors and Assigns.***

All covenants and agreements in this Indenture by the Co-Issuers shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7. ***Separability.***

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

Section 14.8. ***Benefits of Indenture.***

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors under this Indenture, the Servicer, the Noteholders, the Holders of Preference Shares or the Preference Shares Paying Agent any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9. ***Governing Law.***

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

Section 14.10. ***Submission to Jurisdiction.***

The Co-Issuers and the Trustee hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Securities or this Indenture, and the Co-Issuers and the Trustee hereby irrevocably agree that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Co-Issuers and the Trustee hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Co-Issuers and the Trustee irrevocably consent to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to the Co-Issuers at the office of Investors Bank & Trust Company (to the attention of Investors Bank & Trust Company, Trustee for Westchester CLO, Ltd.) set out in Section 7.2. The Co-Issuers and the Trustee agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.11. ***Counterparts.***

This Indenture may be executed in any number of copies, and by the different parties on the same or separate counterparts, each of which shall be considered to be an original instrument.

Section 14.12. ***Acts of Issuer.***

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or performed by the Issuer shall be effective if given or performed by the Issuer or by the Servicer on the Issuer's behalf.

Section 14.13. ***Consent of Posting of Documents on Repository.***

The Issuer hereby consents to (a) the posting of the final Offering Memorandum, this Indenture and the periodic reports to be delivered pursuant to the transaction documents and any amendments or other modifications thereto on the Repository for use in the manner provided in the Repository and (b) the display of its name on the Repository in connection therewith. Notwithstanding anything herein to the contrary, none of the Issuer, the Co-Issuer and the Trustee makes any representation or warranty to The Bond Market Association (or any successor thereto) or any affiliate thereof or any Person having or obtaining access to the information maintained in the Repository or to any of such Person's affiliates regarding the accuracy or completeness of any information, document, report or other communication transmitted to the Repository, and no Person having or obtaining access to the information maintained in the Repository shall have any rights under this Indenture or otherwise by reason of the transmission of any such information, document, report or other communication to the Repository.

Section 14.14. ***Liability of Co-Issuers.***

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into by either of the Co-Issuers or otherwise, neither of the Co-Issuers shall have any liability whatsoever to the other of the Co-Issuers under this Indenture, the Notes, any other agreement, or otherwise. Without prejudice to the generality of the foregoing, neither of the Co-Issuers may take any action to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any other agreement, or otherwise against the other of the Co- Issuers. In particular, neither of the Co-Issuers may petition or take any other steps for the winding up or bankruptcy of the other of the Co-Issuers and neither of the Co-Issuers shall have any claim with respect to any assets of the other of the Co-Issuers.

Section 14.15. ***Indemnity of Co-Issuer.***

The Issuer agrees to indemnify the Co-Issuer for any payments that may become due from the Co-Issuer under Article 11 with respect to any Notes issued under this Indenture and any administrative, legal, or other costs incurred by the Co-Issuer in connection with those payments.

ARTICLE 15

ASSIGNMENT OF SERVICING AGREEMENT; HEDGE AGREEMENTS

Section 15.1. ***Assignment of Servicing Agreement; Amendment of Servicing Agreement.***

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties under this Indenture and the performance and observance of the provisions of this Indenture, acknowledges that its Grant pursuant to the first Granting Clause includes all of the Issuer's interest in the Servicing Agreement, including:

(i) the right to give all notices, consents and releases under it,

(ii) the right to give all notices of termination pursuant to the Servicing Agreement and to take any legal action upon the breach of an obligation of the Servicer under it, including the commencement, conduct and consummation of proceedings at law or in equity,

(iii) the right to receive all notices, accountings, consents, releases and statements under it, and

(iv) the right to do all other things whatsoever that the Issuer is or may be entitled to do under it.

Notwithstanding anything in this Indenture to the contrary, the Trustee may not exercise any of the rights in (i) through (iv) above or that may otherwise arise as a result of the Grant until the occurrence of an Event of Default under this Indenture and the authority shall terminate when the Event of Default is cured or waived.

(b) The assignment made hereby is executed as security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the Servicing Agreement, nor shall any of the obligations contained in the Servicing Agreement be imposed on the Trustee.

(c) Upon the retirement of the Notes and the release of the Collateral from the lien of this Indenture, this assignment, and all rights in this Indenture assigned to the Trustee for the benefit of the Noteholders shall cease and terminate and all the interest of the Trustee in the Servicing Agreement shall revert to the Issuer and no further instrument or act shall be necessary to evidence the termination and reversion.

(d) The Issuer represents that the Issuer has not executed any other assignment of the Servicing Agreement.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action that is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further

assurance and all such supplemental instruments with respect to this assignment as the Trustee may reasonably request.

(f) The Issuer agrees to obtain the agreement and consent of the Servicer in the Servicing Agreement to the following:

(i) the Servicer consents to this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to the Servicer pursuant to the Servicing Agreement.

(ii) the Servicer acknowledges that the Issuer is collaterally assigning all of its interest in the Servicing Agreement to the Trustee for the benefit of the Secured Parties and the Servicer agrees that all of the representations, covenants and agreements made by the Servicer in the Servicing Agreement are also for the benefit of the Secured Parties.

(iii) the Servicer shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the Servicing Agreement (other than any of them delivered to the Issuer by the Trustee or the Collateral Administrator).

(iv) the procedure for amending the Servicing Agreement as set forth in Section 15.1(h) below.

(v) except as otherwise provided in this Indenture and the Servicing Agreement, subject to the resignation rights of the Servicer pursuant to Section 12 of the Servicing Agreement, the Servicer shall continue to serve as Servicer under the Servicing Agreement notwithstanding that the Servicer shall not have received amounts due it under the Servicing Agreement because sufficient funds were not then available under this Indenture to pay the amounts pursuant to the Priority of Payments. The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable by the Administrative Agent to the Servicer under the Servicing Agreement until the payment in full of all Notes issued under this Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer.

(vi) the Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or this Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3. The Servicer agrees that a final and non-appealable judgment by a court of competent

jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Following the resignation or removal of the Servicer, the Issuer shall use its best efforts to appoint a successor Servicer, and the Issuer, the Trustee, and the resigning or removed Servicer shall take any action consistent with the Servicing Agreement and this Indenture applicable to the Servicer, necessary to effectuate any such succession.

(h) (i) The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; provided that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

(ii) If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer shall notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee shall mail such notice to (a) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (b) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and (c) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee shall, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the "***Objection Cut-Off Date***"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification shall not be made.

Section 15.2. ***Hedge Agreements.***

(a) At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer and with the consent of a Majority of the Controlling Class, shall enter into the Hedge Agreements and shall assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to this Indenture. The Trustee shall, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with Section 11.1.

(b) The Issuer shall not enter into any Hedge Agreement unless at the time of entering the Hedge Agreement the Hedge Counterparty has:

(i) a debt rating by Moody's for long-term debt of "A1" or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of

"A2" or higher and a debt rating by Moody's for short-term debt of "P-1" if the Hedge Counterparty has both long-term and short-term ratings; and

(ii) a short-term debt rating by S&P of not less than "A-1" or, if the Hedge Counterparty does not have a short-term debt rating by S&P, a long-term debt rating of not less than "A+" (the "***Required Rating***").

(c) If at any time a Hedge Counterparty does not have the Required Rating, then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type specified under the relevant Hedge Agreement (which such Hedge Agreement shall specify that the sufficiency of collateral to be posted shall be subject to Rating Confirmation by S&P); provided that the Hedge Counterparty shall, at the time such collateral is first posted, deliver to the Issuer, the Trustee and the Rating Agencies an Opinion of Counsel of nationally recognized standing in the jurisdiction in which the Hedge Counterparty is incorporated confirming that such collateral will be available in a timely manner upon a bankruptcy of the Hedge Counterparty;

(ii) obtain a guarantor that has a short-term debt rating by S&P of not less than "A-1" and otherwise has the Required Rating, subject to satisfaction of the Rating Condition; or

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to the satisfaction of the Rating Condition.

provided that failure to take any such steps set forth under paragraphs (i) through (iii) above within 30 days shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(d) If at any time the Hedge Counterparty has (x) no short-term Moody's rating and a long-term Moody's that is below "A3" or (y) both a short-term and long-term Moody's rating and either the long-term Moody's rating that is below "A3" or the short-term Moody's rating that is below "P-2", then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) obtain a guarantor that has the Required Rating, subject to satisfaction of the Rating Condition; or

(ii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition;

provided that failure to take any such steps set forth under paragraphs (i) and (ii) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(e) If at any time the Hedge Counterparty has a long-term unsecured debt rating by S&P below "BBB-", then the Hedge Counterparty shall be required, within 10 days, to replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty

that has the Required Rating, subject to satisfaction of the Rating Condition; provided that failure to do so shall be treated as an "Additional Termination Event" under such Hedge Agreement.

(f) Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty thereto shall comply with the then currently applicable rating criteria of each Rating Agency from time to time.

(g) If the Issuer has the right under a Hedge Agreement at any time to demand that the related Hedge Counterparty deliver Eligible Collateral in accordance with an Approved Credit Support Document, the Issuer shall make the demand.

(h) Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Subordinated Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares.

(i) Except as provided in paragraph (i) of this Section 15.2, the Issuer, at the direction of the Servicer, shall, promptly following the early termination of a Hedge Agreement (other than on a Redemption Date) (but no later than 60 days after the early termination), and to the extent possible through application of Hedge Termination Receipts, enter into a Replacement Hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to the non-entry into the a Replacement Hedge. In addition, a Replacement Hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into the agreement, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the Replacement Hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a Replacement Hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with Section 11.1 on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

(j) Notwithstanding Section 15.2(i), the applicable requirements of Section 15.2(i) shall not have to be met if the Rating Condition with respect to each Rating Agency is otherwise satisfied with respect thereto.

(k) The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification or termination, as the case may be.

(l) Each Hedge Agreement may be terminated pursuant to its terms by the Hedge Counterparty upon an Optional Redemption of the Notes (but only after the applicable notice of redemption may no longer be withdrawn pursuant to Section 9.03), an acceleration of maturity of the Notes followed by the liquidation of any or all of the Collateral after an Event of Default or the entry into certain amendments to the Indenture without the consent of the Hedge Counterparty. The Hedge Agreement will not be permitted to be terminated by the Issuer as the result of a Default or

Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to this Indenture.

(m) Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

WESTCHESTER CLO, LTD.,
AS ISSUER

By: _____
Name: Chris Marett
Title: Director

WESTCHESTER CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

INVESTORS BANK & TRUST COMPANY,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

WESTCHESTER CLO, LTD.,
AS ISSUER

By: _____
Name:
Title:

WESTCHESTER CLO CORP.,
AS CO-ISSUER

By: _____
Name: Donald J Puglisi
Title: President

INVESTORS BANK & TRUST COMPANY,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name:
Title:

IN WITNESS WHEREOF, we have set our hands as of the day and year first written above.

EXECUTED AS A DEED BY

WESTCHESTER CLO, LTD.,
AS ISSUER

By: _____
Name:
Title:

WESTCHESTER CLO CORP.,
AS CO-ISSUER

By: _____
Name:
Title:

INVESTORS BANK & TRUST COMPANY,
AS TRUSTEE AND AS CUSTODIAN

By: _____
Name: Brian Peterson
Title: Director

[Indenture]

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 24

John T. Wilson IV
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Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
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006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
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007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
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007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
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007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

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007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
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008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
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008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT E

Grayson CLO, Ltd.
Grayson CLO Corp.

U.S.$1,015,000,000 Class A-1a Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$111,500,000 Class A-1b Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$68,000,000 Class A-2 Floating Rate Senior Secured Extendable Notes Due 2021
U.S.$72,000,000 Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021
U.S.$75,000,000 Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021
U.S.$31,000,000 Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021
52,500 Class I Preference Shares
75,000 Class II Preference Shares

Grayson CLO, Ltd. (the "**Issuer**") and Grayson CLO Corp. (the "**Co-Issuer**" and, together with the Issuer, the "**Co-Issuers**") will issue the Class A-1a Floating Rate Senior Secured Extendable Notes Due 2021 (the "**Class A-1a Notes**"), the Class A-1b Floating Rate Senior Secured Extendable Notes Due 2021 (the "**Class A-1b Notes**" and, together with the Class A-1a Notes, the "**Class A-1 Notes**"), the Class A-2 Floating Rate Senior Secured Extendable Notes (the "**Class A-2 Notes**" and, together with the Class A-1 Notes, the "**Class A Notes**"), the Class B Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021 (the "**Class B Notes**") and the Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes Due 2021 (the "**Class C Notes**" and, together with the Class A Notes and the Class B Notes, the "**Senior Notes**"), and the Issuer will issue the Class D Floating Senior Secured Deferrable Extendable Notes Due 2021 (the "**Class D Notes**" and, together with the Senior Notes, the "**Notes**"), the Class I Preference Shares (the "**Class I Preference Shares**") and the Class II Preference Shares (the "**Class II Preference Shares**" and, together with the Class I Preference Shares, the "**Preference Shares**" and, together with the Notes, the "**Securities**"), U.S.$ 0.01 par value per share, in each case in the aggregate principal amounts or number of Preference Shares as described above. The Notes will be issued on or about November 30, 2006 (the "**Closing Date**") pursuant to an indenture, dated as of the Closing Date (the "**Indenture**"), among the Co-Issuers and Investors Bank & Trust Company, as Trustee (the "**Trustee**"). The Preference Shares will be issued on or about the Closing Date pursuant to and subject to the terms of the Preference Share Documents. The Stated Maturity of the Notes and the Scheduled Preference Shares Redemption Date of the Preference Shares are subject to multiple extensions to the applicable Extended Stated Maturity Date (in the case of the Notes) and the applicable Extended Scheduled Preference Shares Redemption Date (in the case of the Preference Shares), if the Issuer provides timely notice and the Extension Conditions are satisfied as described herein.

The net proceeds of the offering of the Securities will be applied by the Issuer to repurchase participation interests in certain Collateral Obligations sold to finance the purchase of such Collateral Obligations prior to the Closing Date and to purchase additional Collateral Obligations on and after the Closing Date, all of which will be pledged under the Indenture by the Issuer to the Trustee for the benefit of the secured parties named therein. See "Use of Proceeds."

Highland Capital Management, L.P. ("**Highland Capital**" or, in such capacity, the "**Servicer**") will service the Issuer's portfolio.

The initial offer price of the Offered Notes is 100%. The Securities, other than the Offered Notes, are being offered from time to time in negotiated transactions at varying prices determined at the time of each sale.

This Offering Memorandum constitutes a prospectus (the "Prospectus") for the purposes of Directive 2003/71/EC (the "Prospectus Directive"). Application is expected to be made to the Irish Financial Services Regulatory Authority, as competent authority under the Prospectus Directive for this Prospectus to be approved. Application is expected to be made to the Irish Stock Exchange for the Senior Notes to be admitted to the Official List and trading on its regulated market.

For a discussion of certain factors regarding the Co-Issuers and the Securities that, among other things, should be considered by prospective purchasers of the Securities, see "Risk Factors."

CERTAIN PLEDGED ASSETS OF THE ISSUER ARE THE SOLE SOURCE OF PAYMENTS ON THE SECURITIES. THE SECURITIES DO NOT REPRESENT AN INTEREST IN OR OBLIGATIONS OF, AND ARE NOT INSURED OR GUARANTEED BY, THE HOLDERS OF THE PREFERENCE SHARES, THE SERVICER, THE TRUSTEE, ANY PAYING AGENT, THE PREFERENCE SHARES PAYING AGENT, THE INITIAL PURCHASER, ANY HEDGE COUNTERPARTY OR ANY OF THEIR RESPECTIVE AFFILIATES.

THE SECURITIES HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND NEITHER THE ISSUER NOR THE CO-ISSUER WILL BE REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "INVESTMENT COMPANY ACT"). THE SENIOR NOTES WILL BE OFFERED AND SOLD TO NON-U.S. PERSONS (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT ("REGULATION S")) OUTSIDE THE UNITED STATES IN RELIANCE ON REGULATION S. THE SENIOR NOTES MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT TO PERSONS THAT ARE (I) QUALIFIED INSTITUTIONAL BUYERS (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")) (EACH, A "QUALIFIED INSTITUTIONAL BUYER") AND (II) QUALIFIED PURCHASERS FOR PURPOSES OF SECTION 3(c)(7) OF THE INVESTMENT COMPANY ACT ("SECTION 3(c)(7)") (EACH, A "QUALIFIED PURCHASER"). THE CLASS D NOTES AND THE PREFERENCE SHARES WILL BE OFFERED AND SOLD ONLY TO PERSONS THAT ARE (I) QUALIFIED INSTITUTIONAL BUYERS AND (II) QUALIFIED PURCHASERS. THE SECURITIES ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED UNDER "TRANSFER RESTRICTIONS."

The Senior Notes, other than certain Senior Notes offered and sold directly by the Co-Issuers to the Servicer or any of its Affiliates, and certain of the Class D Notes, (the "**Offered Notes**") are being offered, subject to prior sale, when, as and if delivered to and accepted by Credit Suisse Securities (USA) LLC (the "**Initial Purchaser**" or "**Credit Suisse**"). On or about the Closing Date, (i) certain of the Class D Notes will be offered and sold directly by the Issuer to the Servicer and/or one or more of its Affiliates; (ii) all of the Class I Preference Shares will be offered and sold directly by the Issuer to Grayson Investors Corp., an exempted limited liability company incorporated under the laws of the Cayman Islands ("**Investors Corp.**") and (iii) all of the Class II Preference Shares will be offered and sold by the Issuer directly to Highland Financial Partners, L.P. ("**HFP**") (an Affiliate of the Servicer) and/or one or more of its subsidiaries. The Initial Purchaser is not acting as initial purchaser with respect to the offering of certain of the Class D Notes or any of the Preference Shares.

Credit Suisse

The date of this Offering Memorandum is November 28, 2006.

Payment of interest on, and principal of, the Notes will be made by the Issuer in U.S. Dollars on the first day of each February, May, August and November of each year (or if such day is not a Business Day, the next succeeding Business Day) (each such date a "**Payment Date**"), commencing May 1, 2007, to the extent of available cash flow in respect of the Collateral in accordance with the Priority of Payments. Each Class of Notes will bear interest at the per annum rates set forth under "Summary of Terms—Principal Terms of the Securities." The Preference Shares will receive as dividends certain amounts available for distribution to the Holders of the Preference Shares in accordance with the Priority of Payments. In addition, Holders of the Class II Preference Shares are entitled, subject to any restrictions under Cayman Islands law, to the Class II Preference Share Special Payments equivalent to the proceeds that would otherwise constitute Servicing Fees payable to the Servicer during the first two years following the Closing Date. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. See "Description of the Securities—Interest Payments on the Notes and Payments of Dividends on the Preference Shares from Interest Proceeds" and "—Priority of Payments."

The Notes will be subject to Optional Redemption in whole, but not in part, on any Payment Date upon the occurrence of a Tax Event or at any time after the Non-Call Period, in each case at the direction of the applicable Required Redemption Percentage. The Notes will be subject to mandatory redemption on any Payment Date, to the extent that any of the Coverage Tests are not satisfied, as described herein. The Notes will be subject to Special Redemption, at the discretion of the Servicer, to the extent that at any time during the Replacement Period, the Servicer cannot identify satisfactory additional or replacement Collateral Obligations. The Notes will be subject to Refinancing after the fifth anniversary of the Closing Date on the terms and conditions described herein. After redemption in full of the Notes, the Preference Shares will be subject to Optional Redemption in whole or in part on any Payment Date by the Issuer at the direction of the Holders of the requisite percentage of the Preference Shares at the applicable Redemption Price pursuant to the Preference Share Documents, to the extent legally permitted; *provided, however*, that the Preference Shares must be redeemed on or prior to the Scheduled Preference Shares Redemption Date. See "Description of the Securities—Optional Redemption," "Optional Redemption—Redemption by Refinancing," "—Mandatory Redemption of the Notes," "—Special Redemption of Notes If the Servicer Does Not Identify Replacement Collateral Obligations as Contemplated by the Indenture" and "—Priority of Payments." The principal amount of the Notes will be payable at the Stated Maturity, unless redeemed or paid in full prior thereto. The Preference Shares are scheduled to be redeemed at their Redemption Price on the Scheduled Preference Shares Redemption Date, unless redeemed prior thereto.

Application is expected to be made to list the Senior Notes on the regulated market of the Irish Stock Exchange (the "ISE"). However, there can be no assurance that the ISE will in fact accept the listing of the Senior Notes or, if accepted, that such listing will be maintained. Furthermore, the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

It is a condition of the issuance of the Securities that (i) the Class A-1a Notes be rated "Aaa" by Moody's Investors Service, Inc. ("**Moody's**") and "AAA" by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("**S&P**" and, together with Moody's, the "**Rating Agencies**"), (ii) the Class A-1b Notes be rated at least "Aa1" by Moody's and rated "AAA" by S&P, (iii) the Class A-2 Notes be rated at least "Aa2" by Moody's and at least "AA" by S&P, (iv) the Class B Notes be rated at least "A2" by Moody's and at least "A" by S&P, (v) the Class C Notes be rated at least "Baa2" by Moody's and at least "BBB" by S&P and (vi) the Class D Notes be rated at least "Ba2" by Moody's and at least "BB" by S&P. Each of the above ratings assumes that no Maturity Extension occurs after the Closing

Date. A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the assigning Rating Agency. The Preference Shares will not be rated by any credit rating agency.

No person has been authorized to make or provide any representation or information regarding the Co-Issuers or the Securities other than as contained in this Offering Memorandum. Any such representation or information should not be relied upon as having been authorized by the Co-Issuers or the Initial Purchaser. The delivery of this Offering Memorandum at any time does not imply that the information contained in it is correct as of any time subsequent to the date of this Offering Memorandum. The Co-Issuers disclaim any obligation to update such information and do not intend to do so. Unless otherwise indicated, all information in this Offering Memorandum is given as of the date of this Offering Memorandum.

This Offering Memorandum has been prepared by the Co-Issuers solely for use in connection with the listing of the Senior Notes and the offering of the Securities as described herein. Unless as otherwise provided herein, the Co-Issuers have taken reasonable care to ensure that facts stated in this Offering Memorandum are true and accurate in all material respects and that there have not been omitted material facts the omission of which would make misleading in any material respect any statements of fact or opinion herein. The Co-Issuers accept responsibility accordingly.

The information appearing in the sections entitled "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" and "The Servicer" and the information with respect to the Servicer Letter Disclosure has been prepared by the Servicer and has not been independently verified by the Initial Purchaser or the Co-Issuers. The Initial Purchaser and the Co-Issuers do not assume any responsibility for the accuracy, completeness, or applicability of such information, except that the Co-Issuers assume responsibility for accurately reproducing such information in this Offering Memorandum.

None of the Initial Purchaser, the Servicer (except with respect to the sections entitled, "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" and "The Servicer" and with respect to the Servicer Letter Disclosure) or the Trustee makes any representation or warranty, express or implied, as to the accuracy or completeness of the information in this Offering Memorandum. Each person receiving this Offering Memorandum acknowledges that such person has not relied on the Initial Purchaser, the Servicer (except with respect to the section entitled "Risk Factors—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" and "The Servicer" and with respect to the Servicer Letter Disclosure) or the Trustee or any person affiliated therewith, in connection with its investigation of the accuracy of such information or its investment decision. Each person contemplating making an investment in the Securities must make its own investigation and analysis of the creditworthiness of the Co-Issuers and its own determination of the suitability of any such investment, with particular reference to its own investment objectives and experience, and any other factors that may be relevant to it in connection with such investment.

THE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, AND NONE OF THE FOREGOING AUTHORITIES HAS CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

This Offering Memorandum contains summaries of certain documents. The summaries do not purport to be complete and are qualified in their entirety by reference to such documents. Each person receiving this

Offering Memorandum acknowledges that such person has been afforded an opportunity to request from the Issuer and to review, and has received, all additional information considered by such person to be necessary to verify the accuracy and completeness of the information herein. Requests and inquiries regarding this Offering Memorandum or such documents should be directed to the Issuer, in care of the Initial Purchaser at 11 Madison Avenue, New York, New York 10010, Attention: CDO Group. Such requests may also be made to the Listing Agent at the address set forth on the final page of this Offering Memorandum.

The Securities are a new issue of securities. There can be no assurance that a secondary market for any of the Securities will develop, or if a secondary market does develop, that it will provide the Holders of such Securities with liquidity of investment or that it will continue. Accordingly, investors should be prepared to bear the risks of holding the Securities until final payment is made thereon.

THE CONTENTS OF THIS OFFERING MEMORANDUM ARE NOT TO BE CONSTRUED AS ACCOUNTING, LEGAL, BUSINESS OR TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN ACCOUNTANT, ATTORNEY, BUSINESS ADVISOR AND TAX ADVISOR AS TO LEGAL, BUSINESS AND TAX ADVICE. NONE OF THE CO-ISSUERS, THE INITIAL PURCHASER, THE SERVICER OR ANY OF THEIR RESPECTIVE AFFILIATES MAKES ANY REPRESENTATION TO ANY OFFEREE OF THE SECURITIES REGARDING THE LEGALITY OF AN INVESTMENT THEREIN BY SUCH OFFEREE UNDER APPLICABLE LEGAL INVESTMENT OR SIMILAR LAWS OR REGULATIONS OR THE PROPER CLASSIFICATION OF SUCH AN INVESTMENT THEREUNDER.

This Offering Memorandum does not constitute an offer of, or an invitation by or on behalf of, the Co-Issuers or the Initial Purchaser to subscribe to or purchase any of the Securities in any jurisdiction in which it is unlawful to make such an offer or invitation. The distribution of this Offering Memorandum and the offering of the Securities in certain jurisdictions may be restricted by law. Persons into whose possession this Offering Memorandum comes are required by the Co-Issuers and the Initial Purchaser to inform themselves about and to observe any such restrictions. For a description of certain further restrictions on offers and sales of Securities and distribution of this Offering Memorandum, see "Description of the Securities," "Plan of Distribution" and "Transfer Restrictions."

Neither the Issuer nor the Co-Issuer has been registered under the Investment Company Act in reliance on an exclusion from the definition of "investment company" under Section 3(c)(7) under the Investment Company Act ("**Section 3(c)(7)**"). Each purchaser of Senior Notes represented by an interest in a Rule 144A Global Note will be deemed to represent and agree and each purchaser of Class D Notes will be required to represent and agree that (i) the purchaser is acquiring such Notes in a principal amount of not less than U.S.$250,000, and integral multiples of U.S.$1,000 in excess thereof for such purchaser (and, in the case of the Senior Notes, each account for which such purchaser is purchasing such Notes) and (ii) the purchaser (and, in the case of the Senior Notes, each such account), is a Qualified Purchaser for purposes of Section 3(c)(7) ("**Qualified Purchaser**"). Each purchaser of Preference Shares will be required to represent and agree that (i) the purchaser is acquiring such Preference Shares in a number of not less than 100 Preference Shares and in integral multiples of one Preference Share in excess thereof for such purchaser and (ii) the purchaser is a Qualified Purchaser. See "Transfer Restrictions."

The Issuer and the Co-Issuer may, at any time following the Closing Date, rely on exclusion from the definition of "investment company" under Rule 3a-7 under the Investment Company Act ("**Rule 3a-7**") in lieu of the exclusion under Section 3(c)(7) upon (a) receipt of an opinion of counsel from a nationally recognized law firm providing that neither the Issuer nor the Co-Issuer is required to register as an "investment company" under the Investment Company Act in reliance on such exclusion under Rule 3a-7 and (b) notice to the Holders of the Securities in accordance with the Indenture and the Preference

Share Documents. In connection with the Issuer's reliance on Rule 3a-7 in lieu of Section 3(c)(7), the Indenture and the Preference Share Documents may be amended without the consent of any Holders and without regard to whether or not such amendment adversely affects the interest of the Holders of the Securities to prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7). See "Risk Factors—The Servicer May Cause the Issuer to Amend the Indenture to Assure Compliance with Rule 3a-7 Without the Consent of the Holders of the Securities in a Manner That May Adversely Affect the Holders of Securities."

No invitation to subscribe for the Securities may be made to the public in the Cayman Islands.

Prospective purchasers are hereby notified that a seller of the Securities may be relying on an exemption from the registration requirements of Section 5 of the Securities Act provided by Section 4(2) of the Securities Act ("**Section 4(2)**").

In this Offering Memorandum references to "Dollars," "$" and "U.S.$" are dollars or other equivalent units in such coin or currency of the United States of America as at the time shall be legal tender for all debts, public and private.

NO ACTION WAS TAKEN OR IS BEING CONTEMPLATED BY THE CO-ISSUERS THAT WOULD PERMIT A PUBLIC OFFERING OF THE SECURITIES OR POSSESSION OR DISTRIBUTION OF THIS OFFERING MEMORANDUM OR ANY AMENDMENT THEREOF, OR SUPPLEMENT THERETO OR ANY OTHER OFFERING MATERIAL RELATING TO THE SECURITIES IN ANY JURISDICTION (OTHER THAN IRELAND) WHERE, OR IN ANY OTHER CIRCUMSTANCES IN WHICH, ACTION FOR THOSE PURPOSES IS REQUIRED. NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO PURCHASE ANY SECURITIES IN ANY JURISDICTION WHERE IT IS UNLAWFUL TO DO SO ABSENT THE TAKING OF SUCH ACTION OR THE AVAILABILITY OF AN EXEMPTION THEREFROM.

THIS DOCUMENT IS CONSIDERED AN ADVERTISEMENT FOR PURPOSES OF APPLICABLE MEASURES IMPLEMENTING E.U. DIRECTIVE 2003/71/EC. A PROSPECTUS PREPARED PURSUANT TO THE PROSPECTUS DIRECTIVE WILL BE PUBLISHED, WHICH CAN BE OBTAINED FROM THE ISSUER AND THE IRISH PAYING AGENT. SEE "LISTING AND GENERAL INFORMATION."

NOTICE TO NEW HAMPSHIRE RESIDENTS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421–B OF THE NEW HAMPSHIRE REVISED STATUTES (THE "RSA") WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE OF NEW HAMPSHIRE THAT ANY DOCUMENT FILED UNDER RSA 421–B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY, OR TRANSACTION. IT IS

UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER, OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

NOTICE TO CONNECTICUT RESIDENTS

THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE CONNECTICUT SECURITIES LAW. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND SALE.

NOTICE TO FLORIDA RESIDENTS

THE SECURITIES OFFERED HEREBY WILL BE SOLD TO, AND ACQUIRED BY, THE HOLDER IN A TRANSACTION EXEMPT UNDER SECTION 517.061 OF THE FLORIDA SECURITIES ACT ("FSA"). THE SECURITIES HAVE NOT BEEN REGISTERED UNDER SAID ACT IN THE STATE OF FLORIDA. IN ADDITION, IF SALES ARE MADE TO FIVE OR MORE PERSONS IN FLORIDA, ALL FLORIDA PURCHASERS OTHER THAN EXEMPT INSTITUTIONS SPECIFIED IN SECTION 517.061(7) OF THE FSA SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE (3) DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE CO-ISSUERS, AN AGENT OF THE CO-ISSUERS, OR AN ESCROW AGENT.

NOTICE TO GEORGIA RESIDENTS

THE SECURITIES HAVE BEEN ISSUED OR SOLD IN RELIANCE ON PARAGRAPH (13) OF CODE SECTION 10-5-9 OF THE GEORGIA SECURITIES ACT OF 1973, AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION UNDER SUCH ACT.

NOTICE TO RESIDENTS OF AUSTRALIA

NO PROSPECTUS, DISCLOSURE DOCUMENT, OFFERING MATERIAL OR ADVERTISEMENT IN RELATION TO THE SECURITIES HAS BEEN LODGED WITH THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION OR THE AUSTRALIAN STOCK EXCHANGE LIMITED. ACCORDINGLY, A PERSON MAY NOT (A) MAKE, OFFER OR INVITE APPLICATIONS FOR THE ISSUE, SALE OR PURCHASE OF THE SECURITIES WITHIN, TO OR FROM AUSTRALIA (INCLUDING AN OFFER OR INVITATION WHICH IS RECEIVED BY A PERSON IN AUSTRALIA) OR (B) DISTRIBUTE OR PUBLISH THIS INFORMATION MEMORANDUM OR ANY OTHER PROSPECTUS, DISCLOSURE DOCUMENT, OFFERING MATERIAL OR ADVERTISEMENT RELATING TO THE SECURITIES IN AUSTRALIA, UNLESS (I) THE MINIMUM AGGREGATE CONSIDERATION PAYABLE BY EACH OFFEREE IS THE U.S. DOLLAR EQUIVALENT OF AT LEAST A$500,000 (DISREGARDING MONEYS LENT BY THE OFFEROR OR ITS ASSOCIATES) OR THE OFFER OTHERWISE DOES NOT REQUIRE DISCLOSURE TO INVESTORS IN ACCORDANCE WITH PART 6D.2 OF THE CORPORATIONS ACT 2001 (CWLTH) OF AUSTRALIA; AND (II) SUCH ACTION COMPLIES WITH ALL APPLICABLE LAWS AND REGULATIONS.

NOTICE TO RESIDENTS OF AUSTRIA

THIS OFFERING MEMORANDUM IS CIRCULATED IN AUSTRIA FOR THE SOLE PURPOSE OF PROVIDING INFORMATION ABOUT THE SECURITIES TO A LIMITED NUMBER OF SOPHISTICATED INVESTORS IN AUSTRIA. THIS OFFERING MEMORANDUM IS MADE AVAILABLE ON THE CONDITION THAT IT IS SOLELY FOR THE USE OF THE RECIPIENT AS A SOPHISTICATED, POTENTIAL AND INDIVIDUALLY SELECTED INVESTOR AND MAY NOT BE PASSED ON TO ANY OTHER PERSON OR REPRODUCED IN WHOLE OR IN PART. THIS OFFERING MEMORANDUM DOES NOT CONSTITUTE A PUBLIC OFFERING (ÖFFENTLICHES ANGEBOT) IN AUSTRIA AND MUST NOT BE USED IN CONJUNCTION WITH A PUBLIC OFFERING PURSUANT TO THE CAPITAL MARKET ACT (KAPITALMARKTGESETZ) AND/OR THE INVESTMENT FUND ACT (INVESTMENTFONDSGESETZ) IN AUSTRIA. CONSEQUENTLY, NO PUBLIC OFFERS OR PUBLIC SALES MUST BE MADE IN AUSTRIA IN RESPECT OF THE SECURITIES. THE SECURITIES ARE NOT REGISTERED IN AUSTRIA. IN CASE THE SECURITIES ARE QUALIFIED AS SHARES IN A FOREIGN INVESTMENT FUND WITHIN THE MEANING OF THE INVESTMENT FUND ACT, THEY MIGHT BE SUBJECT TO A LESS FAVORABLE TAX TREATMENT THAN SHARES IN INVESTMENT FUNDS ESTABLISHED IN AUSTRIA UNDER THE

INVESTMENT FUND ACT. ALL PROSPECTIVE INVESTORS ARE URGED TO SEEK INDEPENDENT TAX ADVICE. THE INITIAL PURCHASER AND ITS AFFILIATES DO NOT GIVE TAX ADVICE.

ANMERKUNG FÜR EINWOHNER VON ÖSTERREICH

DIESER PROSPEKT WIRD IN ÖSTERREICH NUR ZU DEM ZWECK HERAUSGEGEBEN, UM EINER BESCHRÄNKTEN ANZAHL VON PROFESSIONELLEN MARKTTEILNEHMERN IN ÖSTERREICH INFORMATIONEN ÜBER DIE ANGEBOTENEN WERTPAPIERE ZU GEBEN. DIESER PROSPEKT WIRD UNTER DER BEDINGUNG ZUR VERFÜGUNG GESTELLT, DASS DIESER PROSPEKT AUSSCHLIESSLICH VOM EMPFÄNGER ALS EINEM PROFESSIONELLEN POTENTIELLEN UND EINZELN AUSGEWÄHLTEN ANLEGER VERWENDET WIRD UND ER DARF NICHT AN EINE ANDERE PERSON WEITERGEGEBEN ODER TEILWEISE ODER VOLLSTÄNDIG REPRODUZIERT WERDEN. DIESER PROSPEKT STELLT KEIN ÖFFENTLICHES ANGEBOT IN ÖSTERREICH DAR UND DARF NICHT IN ZUSAMMENHANG MIT EINEM ÖFFENTLICHEN ANGEBOT IN ÖSTERREICH IM SINNE DES KAPITALMARKTGESETZES UND/ODER DES INVESTMENTFONDSGESETZES VERWENDET WERDEN. FOLGLICH DÜRFEN IN ÖSTERREICH KEINE ÖFFENTLICHEN ANGEBOTE ODER VERKÄUFE DER ANGEBOTENEN WERTPAPIEREN DURCHGEFÜHRT WERDEN. DIE WERTPAPIERE SIND NICHT IN ÖSTERREICH ZUGELASSEN. SOLLTEN DIE WERTPAPIERE ALS ANTEILE AN EINEM AUSLÄNDISCHEN INVESTMENTFONDS QUALIFIZIERT WERDEN, KÖNNTEN SIE EINER UNGÜNSTIGEREN BESTEUERUNG ALS ANTEILE AN IN ÖSTERREICH GEMÄSS DEM INVESTMENTFONDSGESETZ ERRICHTETEN INVESTMENTFONDS UNTERLIEGEN. ALLE KÜNFTIGEN ANLEGER WERDEN DAHER AUFGEFORDERT, UNABHÄNGIGE STEUERBERATUNG EINZUHOLEN. DER ERSTKÄUFER UND DIE MIT IHM VERBUNDENEN UNTERNEHMEN ERTEILEN KEINE STEUERLICHE BERATUNG.

NOTICE TO RESIDENTS OF BAHRAIN

EACH OF THE CO-ISSUERS, THE SERVICER, AND THE INITIAL PURCHASER REPRESENTS AND WARRANTS THAT IT HAS NOT MADE AND WILL NOT MAKE ANY INVITATION TO THE PUBLIC IN THE STATE OF BAHRAIN TO SUBSCRIBE FOR THE SECURITIES AND THAT THE DOCUMENT WILL NOT BE ISSUED, PASSED TO, OR MADE AVAILABLE TO THE PUBLIC GENERALLY.

NOTICE TO RESIDENTS OF BELGIUM

THE SECURITIES MAY NOT BE OFFERED, SOLD, TRANSFERRED OR DELIVERED IN OR FROM BELGIUM AS PART OF THEIR INITIAL DISTRIBUTION OR AT ANY TIME THEREAFTER, DIRECTLY OR INDIRECTLY, UNLESS THEY SHALL EACH HAVE A NOMINAL AMOUNT OF EUR 50,000 OR MORE.

ANY OFFER TO SELL OR SALE OF SECURITIES MUST BE MADE IN COMPLIANCE WITH THE PROVISIONS OF THE LAW OF JULY 14, 1991 ON CONSUMER PROTECTION AND TRADE PRACTICES ("SUR LES PRATIQUES DU COMMERCE ET SUR L'INFORMATION ET LA PROTECTION DU CONSOMMATEUR"/"BETREFFENDE DE HANDELSPRAKTIJKEN EN DE VOORLICHTING EN BESCHERMING VAN DE CONSUMENT"), TO THE EXTENT APPLICABLE PURSUANT TO THE ROYAL DECREE OF DECEMBER 5, 2000 "RENDANT APPLICABLES AUX INSTRUMENTS FINANCIERS ET AUX TITRES ET VALEURS CERTAINES DISPOSITIONS DE LA LOI DU 14 JUILLET 1991 SUR LES PRATIQUES DU COMMERCE ET SUR L'INFORMATION ET LA PROTECTION DU CONSOMMATEUR"/"WAARBIJ SOMMIGE BEPALINGEN VAN DE WET VAN 14 JULI 1991 BETREFFENDE DE HANDELSPRAKTIJKEN EN DE VOORLICHTING EN BESCHERMING VAN DE CONSUMENT, VAN TOEPASSING WORDEN VERKLAARD OP FINANCIËLE INSTRUMENTEN, EFFECTEN EN WAARDEN."

NOTICE TO CANADIAN RESIDENTS

RESALE RESTRICTIONS

THE DISTRIBUTION OF THE SECURITIES IN CANADA IS BEING MADE ONLY ON A PRIVATE PLACEMENT BASIS EXEMPT FROM THE REQUIREMENT THAT THE CO-ISSUERS PREPARE AND FILE A PROSPECTUS WITH THE SECURITIES REGULATORY AUTHORITIES IN EACH PROVINCE WHERE TRADES OF SECURITIES ARE MADE. ANY RESALE OF THE SECURITIES IN CANADA MUST BE MADE UNDER APPLICABLE SECURITIES LAWS WHICH WILL VARY DEPENDING ON THE RELEVANT JURISDICTION, AND WHICH MAY REQUIRE RESALES TO BE MADE UNDER AVAILABLE

STATUTORY EXEMPTIONS OR UNDER A DISCRETIONARY EXEMPTION GRANTED BY THE APPLICABLE CANADIAN SECURITIES REGULATORY AUTHORITY. PURCHASERS ARE ADVISED TO SEEK LEGAL ADVICE PRIOR TO ANY RESALE OF THE SECURITIES.

REPRESENTATIONS OF PURCHASERS

BY PURCHASING SECURITIES IN CANADA AND ACCEPTING A PURCHASE CONFIRMATION A PURCHASER IS REPRESENTING TO THE CO-ISSUERS AND THE DEALER FROM WHOM THE PURCHASE CONFIRMATION IS RECEIVED THAT:

- THE PURCHASER IS ENTITLED UNDER APPLICABLE PROVINCIAL SECURITIES LAWS TO PURCHASE THE SECURITIES WITHOUT THE BENEFIT OF A PROSPECTUS QUALIFIED UNDER THOSE SECURITIES LAWS,
- WHERE REQUIRED BY LAW, THAT THE PURCHASER IS PURCHASING AS PRINCIPAL AND NOT AS AGENT,
- THE PURCHASER HAS REVIEWED THE TEXT ABOVE UNDER RESALE RESTRICTIONS, AND
- THE PURCHASER ACKNOWLEDGES AND CONSENTS TO THE PROVISION OF SPECIFIED INFORMATION CONCERNING ITS PURCHASE OF THE SECURITIES TO THE REGULATORY AUTHORITY THAT BY LAW IS ENTITLED TO COLLECT THE INFORMATION.

FURTHER DETAILS CONCERNING THE LEGAL AUTHORITY FOR THIS INFORMATION ARE AVAILABLE ON REQUEST.

RIGHTS OF ACTION – ONTARIO PURCHASERS ONLY

UNDER ONTARIO SECURITIES LEGISLATION, CERTAIN PURCHASERS WHO PURCHASE A SECURITY OFFERED BY THIS OFFERING MEMORANDUM DURING THE PERIOD OF DISTRIBUTION WILL HAVE A STATUTORY RIGHT OF ACTION FOR DAMAGES, OR WHILE STILL THE OWNER OF THE SECURITIES, FOR RESCISSION AGAINST THE CO-ISSUERS IN THE EVENT THAT THIS DOCUMENT CONTAINS A MISREPRESENTATION WITHOUT REGARD TO WHETHER THE PURCHASER RELIED ON THE MISREPRESENTATION. THE RIGHT OF ACTION FOR DAMAGES IS EXERCISABLE NOT LATER THAN THE EARLIER OF 180 DAYS FROM THE DATE THE PURCHASER FIRST HAD KNOWLEDGE OF THE FACTS GIVING RISE TO THE CAUSE OF ACTION AND THREE YEARS FROM THE DATE ON WHICH PAYMENT IS MADE FOR THE SECURITIES. THE RIGHT OF ACTION FOR RESCISSION IS EXERCISABLE NOT LATER THAN 180 DAYS FROM THE DATE ON WHICH PAYMENT IS MADE FOR THE SECURITIES. IF A PURCHASER ELECTS TO EXERCISE THE RIGHT OF ACTION FOR RESCISSION, THE PURCHASER WILL HAVE NO RIGHT OF ACTION FOR DAMAGES AGAINST THE CO-ISSUERS. IN NO CASE WILL THE AMOUNT RECOVERABLE IN ANY ACTION EXCEED THE PRICE AT WHICH THE SECURITIES WERE OFFERED TO THE PURCHASER AND IF THE PURCHASER IS SHOWN TO HAVE PURCHASED THE SECURITIES WITH KNOWLEDGE OF THE MISREPRESENTATION, THE CO-ISSUERS WILL HAVE NO LIABILITY. IN THE CASE OF AN ACTION FOR DAMAGES, THE CO-ISSUERS WILL NOT BE LIABLE FOR ALL OR ANY PORTION OF THE DAMAGES THAT ARE PROVEN TO NOT REPRESENT THE DEPRECIATION IN VALUE OF THE SECURITIES AS A RESULT OF THE MISREPRESENTATION RELIED UPON. THESE RIGHTS ARE IN ADDITION TO, AND WITHOUT DEROGATION FROM, ANY OTHER RIGHTS OR REMEDIES AVAILABLE AT LAW TO AN ONTARIO PURCHASER. THE FOREGOING IS A SUMMARY OF THE RIGHTS AVAILABLE TO AN ONTARIO PURCHASER. ONTARIO PURCHASERS SHOULD REFER TO THE COMPLETE TEXT OF THE RELEVANT STATUTORY PROVISIONS.

ENFORCEMENT OF LEGAL RIGHTS

ALL OF THE ISSUER'S AND CO-ISSUSER'S DIRECTORS AND OFFICERS AS WELL AS THE EXPERTS NAMED HEREIN MAY BE LOCATED OUTSIDE OF CANADA AND, AS A RESULT, IT MAY NOT BE POSSIBLE FOR CANADIAN PURCHASERS TO EFFECT SERVICE OF PROCESS WITHIN CANADA UPON THE CO-ISSUERS OR THOSE PERSONS. ALL OR A SUBSTANTIAL PORTION OF THE CO-ISSUERS' ASSETS AND THE ASSETS OF THOSE PERSONS MAY BE LOCATED OUTSIDE OF CANADA AND, AS A RESULT, IT MAY NOT BE POSSIBLE TO SATISFY A JUDGMENT AGAINST THE CO-ISSUERS OR THOSE PERSONS IN CANADA OR TO ENFORCE A JUDGMENT OBTAINED IN CANADIAN COURTS AGAINST THE CO-ISSUERS OR THOSE PERSONS OUTSIDE OF CANADA.

TAXATION AND ELIGIBILITY FOR INVESTMENT

CANADIAN PURCHASERS OF SECURITIES SHOULD CONSULT THEIR OWN LEGAL AND TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES OF AN INVESTMENT IN THE SECURITIES IN THEIR PARTICULAR CIRCUMSTANCES AND ABOUT THE ELIGIBILITY OF THE SECURITIES FOR INVESTMENT BY THE PURCHASER UNDER RELEVANT CANADIAN LEGISLATION.

NOTICE TO THE PUBLIC OF CAYMAN ISLANDS

NO INVITATION MAY BE MADE TO THE PUBLIC IN THE CAYMAN ISLANDS TO SUBSCRIBE FOR SECURITIES OF THE ISSUER, AND THIS DOCUMENT MAY NOT BE ISSUED OR PASSED TO ANY SUCH PERSON.

NOTICE TO RESIDENTS OF FINLAND

THIS DOCUMENT HAS BEEN PREPARED FOR PRIVATE INFORMATION PURPOSES OF INTERESTED INVESTORS ONLY. IT MAY NOT BE USED FOR AND SHALL NOT BE DEEMED A PUBLIC OFFERING OF THE SECURITIES. THE FINNISH FINANCIAL SUPERVISION AUTHORITY (RAHOITUSTARKASTUS) HAS NOT APPROVED THIS DOCUMENT AND HAS NOT AUTHORIZED ANY OFFERING OF THE SUBSCRIPTION OF THE SECURITIES; ACCORDINGLY, THE SECURITIES MAY NOT BE OFFERED OR SOLD IN FINLAND OR TO RESIDENTS THEREOF EXCEPT AS PERMITTED BY FINNISH LAW. THIS DOCUMENT IS STRICTLY FOR PRIVATE USE BY ITS HOLDER AND MAY NOT BE PASSED ON TO THIRD PARTIES.

NOTICE TO RESIDENTS OF FRANCE

NO PROSPECTUS (INCLUDING ANY AMENDMENT, SUPPLEMENT OR REPLACEMENT THERETO) HAS BEEN PREPARED IN CONNECTION WITH THE OFFERING OF THE SECURITIES THAT HAS BEEN APPROVED BY THE AUTORITÉ DES MARCHÉS FINANCIERS OR BY THE COMPETENT AUTHORITY OF ANOTHER STATE THAT IS A CONTRACTING PARTY TO THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA THAT HAS BEEN RECOGNIZED IN FRANCE; NO SECURITIES HAVE BEEN OFFERED OR SOLD AND WILL BE OFFERED OR SOLD, DIRECTLY OR INDIRECTLY, TO THE PUBLIC IN FRANCE EXCEPT TO QUALIFIED INVESTORS (INVESTISSEURS QUALIFIÉS) AND/OR TO A LIMITED CIRCLE OF INVESTORS (CERCLE RESTREINT D'INVESTISSEURS) ACTING FOR THEIR OWN ACCOUNT AS DEFINED IN ARTICLE L. 411-2 OF THE FRENCH CODE MONÉTAIRE ET FINANCIER AND APPLICABLE REGULATIONS THEREUNDER; NONE OF THIS OFFERING MEMORANDUM OR ANY OTHER MATERIALS RELATED TO THE OFFERING OR INFORMATION CONTAINED THEREIN RELATING TO THE SECURITIES HAS BEEN RELEASED, ISSUED OR DISTRIBUTED TO THE PUBLIC IN FRANCE EXCEPT TO QUALIFIED INVESTORS (INVESTISSEURS QUALIFIÉS) AND/OR TO A LIMITED CIRCLE OF INVESTORS (CERCLE RESTREINT D'INVESTISSEURS) MENTIONED ABOVE; AND THE DIRECT OR INDIRECT RESALE TO THE PUBLIC IN FRANCE OF ANY SECURITIES ACQUIRED BY ANY QUALIFIED INVESTORS (INVESTISSEURS QUALIFIÉS) AND/OR ANY INVESTORS BELONGING TO A LIMITED CIRCLE OF INVESTORS (CERCLE RESTREINT D'INVESTISSEURS) MAY BE MADE ONLY AS PROVIDED BY ARTICLES L. 412-1 AND L. 621-8 OF THE FRENCH CODE MONÉTAIRE ET FINANCIER AND APPLICABLE REGULATIONS THEREUNDER.

NOTICE TO RESIDENTS OF GERMANY

THE SECURITIES MAY ONLY BE ACQUIRED IN ACCORDANCE WITH THE GERMAN WERTPAPIERPROSPEKTGESETZ (SECURITIES PROSPECTUS ACT) AND THE INVESTMENTGESETZ (INVESTMENT ACT). THE SECURITIES ARE NOT REGISTERED OR AUTHORIZED FOR DISTRIBUTION UNDER THE INVESTMENT ACT AND MAY NOT BE, AND ARE NOT BEING OFFERED OR ADVERTISED PUBLICLY OR OFFERED SIMILARLY UNDER THE INVESTMENT ACT OR THE SECURITIES PROSPECTUS ACT. THEREFORE, THIS OFFER IS ONLY BEING MADE TO RECIPIENTS TO WHOM THIS DOCUMENT IS PERSONALLY ADDRESSED AND DOES NOT CONSTITUTE AN OFFER OR ADVERTISEMENT TO THE PUBLIC. THE SECURITIES CAN ONLY BE ACQUIRED FOR A MINIMUM PURCHASE PRICE OF AT LEAST € 50,000 (EXCLUDING COMMISSIONS AND OTHER FEES) PER PERSON. ALL PROSPECTIVE INVESTORS ARE URGED TO SEEK INDEPENDENT TAX ADVICE. NONE OF THE CO-ISSUERS, THE TRUSTEE, THE SERVICER, THE INITIAL PURCHASER OR ANY OF THEIR RESPECTIVE AFFILIATES GIVES ANY TAX ADVICE.

NOTICE TO RESIDENTS OF GREECE

THIS DOCUMENT AND THE SECURITIES TO WHICH IT RELATES AND ANY OTHER MATERIAL RELATED THERETO MAY NOT BE ADVERTISED, DISTRIBUTED OR OTHERWISE MADE AVAILABLE TO THE PUBLIC IN GREECE. THE GREEK CAPITAL MARKET COMMITTEE HAS NOT AUTHORISED ANY PUBLIC OFFERING OF THE SUBSCRIPTION OF THE SECURITIES. ACCORDINGLY, SECURITIES MAY NOT BE ADVERTISED, DISTRIBUTED OR IN ANY WAY OFFERED OR SOLD IN GREECE OR TO RESIDENTS THEREOF EXCEPT AS PERMITTED BY GREEK LAW.

NOTICE TO RESIDENTS OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(A) THE SECURITIES HAVE NOT BEEN OFFERED OR SOLD AND WILL NOT BE OFFERED OR SOLD IN HONG KONG, BY MEANS OF ANY DOCUMENT, OTHER THAN (I) TO PERSONS WHOSE ORDINARY BUSINESS IT IS TO BUY OR SELL SHARES OR DEBENTURES (WHETHER AS PRINCIPAL OR AGENT); (II) TO "PROFESSIONAL INVESTORS" AS DEFINED IN THE SECURITIES AND FUTURES ORDINANCE (CAP. 571) OF HONG KONG AND ANY RULES MADE UNDER THAT ORDINANCE; OR (III) IN OTHER CIRCUMSTANCES WHICH DO NOT RESULT IN THE DOCUMENT BEING A "PROSPECTUS" AS DEFINED IN THE COMPANIES ORDINANCE (CAP. 32) OF HONG KONG OR WHICH DO NOT CONSTITUTE AN OFFER TO THE PUBLIC WITHIN THE MEANING OF THAT ORDINANCE; AND (B) NO ADVERTISEMENT, INVITATION OR DOCUMENT RELATING TO THE SECURITIES HAS BEEN ISSUED OR POSSESSED FOR THE PURPOSES OF ISSUE OR WILL BE ISSUED OR POSSESSED FOR THE PURPOSES OF ISSUE, WHETHER IN HONG KONG OR ELSEWHERE, WHICH IS DIRECTED AT, OR THE CONTENTS OF WHICH ARE LIKELY TO BE ACCESSED OR READ BY, THE PUBLIC OF HONG KONG (EXCEPT IF PERMITTED UNDER THE SECURITIES LAWS OF HONG KONG) OTHER THAN ANY ADVERTISEMENT, INVITATION OR DOCUMENT WITH RESPECT TO SECURITIES WHICH ARE OR ARE INTENDED TO BE DISPOSED OF ONLY TO PERSONS OUTSIDE HONG KONG OR ONLY TO "PROFESSIONAL INVESTORS" AS DEFINED IN THE SECURITIES AND FUTURES ORDINANCE AND ANY RULES MADE UNDER THAT ORDINANCE.

NOTICE TO RESIDENTS OF INDONESIA

THE SECURITIES MAY NOT BE OFFERED AND/OR ONSOLD DIRECTLY OR INDIRECTLY WITHIN THE TERRITORY OF INDONESIA OR TO INDONESIAN CITIZENS OR RESIDENTS IN A MANNER WHICH CONSTITUTES A PUBLIC OFFER UNDER THE LAWS AND REGULATIONS OF INDONESIA.

NOTICE TO RESIDENTS OF ISRAEL

THIS DOCUMENT WILL BE DISTRIBUTED TO ISRAELI RESIDENTS ONLY IN A MANNER THAT WILL NOT CONSTITUTE AN "OFFER TO THE PUBLIC" IN ACCORDANCE WITH SECTIONS 15 AND 15A OF THE SECURITIES LAW 1968. SPECIFICALLY, THIS DOCUMENT MAY ONLY BE DISTRIBUTED TO INVESTORS OF THE TYPES LISTED IN THE FIRST ADDENDUM OF THE SECURITIES LAW 1968 AND IN ADDITION TO NOT MORE THAN 35 OTHER INVESTORS RESIDENT IN ISRAEL DURING ANY GIVEN 12 MONTH PERIOD.

NOTICE TO RESIDENTS OF ITALY

THIS DOCUMENT MAY NOT BE DISTRIBUTED TO MEMBERS OF THE PUBLIC IN ITALY. THE ITALIAN COMMISSIONE NAZIONALE PER LA SOCIETA E LA BORSA HAS NOT AUTHORIZED ANY OFFERING OF THE SUBSCRIPTION OF THE SECURITIES; ACCORDINGLY, THE SECURITIES MAY NOT BE OFFERED OR SOLD IN ITALY OR TO RESIDENTS THEREOF EXCEPT AS PERMITTED BY ITALIAN LAW.

NOTICE TO RESIDENTS OF JAPAN

THE SECURITIES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES AND EXCHANGE LAW OF JAPAN (THE "SEL"), AND THE SECURITIES MAY NOT BE OFFERED OR SOLD, DIRECTLY OR INDIRECTLY, IN JAPAN OR TO, OR FOR THE BENEFIT OF, ANY RESIDENT OF JAPAN (INCLUDING JAPANESE CORPORATIONS) OR TO OTHERS FOR RE-OFFERING OR RESALE, DIRECTLY OR INDIRECTLY, IN JAPAN OR TO ANY RESIDENT OF JAPAN, EXCEPT THAT THE OFFER AND SALE OF THE SECURITIES IN JAPAN MAY BE MADE ONLY THROUGH PRIVATE PLACEMENT SALE IN JAPAN IN ACCORDANCE WITH AN EXEMPTION AVAILABLE UNDER THE SEL AND WITH ALL OTHER APPLICABLE LAWS AND REGULATIONS OF JAPAN. IN THIS CLAUSE, "A

RESIDENT/RESIDENTS OF JAPAN" SHALL HAVE THE MEANING AS DEFINED UNDER THE FOREIGN EXCHANGE AND FOREIGN TRADE LAW OF JAPAN.

NOTICE TO RESIDENTS OF KOREA

THE SECURITIES MAY NOT BE OFFERED OR SOLD, DIRECTLY OR INDIRECTLY, IN KOREA OR TO ANY KOREAN RESIDENT, EXCEPT AS PERMITTED BY APPLICABLE KOREAN LAW. WITHOUT AFFECTING THE GENERALITY OF THE FOREGOING, THE SECURITIES HAVE NOT BEEN OR WILL NOT BE REGISTERED UNDER THE SECURITIES AND EXCHANGE LAW OF KOREA ("SEL"), THUS ANY OFFER OF, OR INVITATION FOR OFFER OF, THE SECURITIES MAY NOT BE MADE TO ANY RESIDENT OF KOREA OTHER THAN INSTITUTIONAL INVESTORS WITHIN THE MEANING OF THE SEL. ANY SECURITY PURCHASED BY ANY KOREAN RESIDENT THROUGH THE OFFERING MAY NOT BE TRANSFERRED TO ANY KOREAN RESIDENT IN PART DURING THE ONE YEAR PERIOD FROM THE ISSUE DATE OF THE SECURITIES.

NOTICE TO RESIDENTS OF NEW ZEALAND

THE SECURITIES HAVE NOT BEEN AND MAY NOT BE OFFERED OR SOLD TO ANY PERSONS IN NEW ZEALAND WHOSE PRINCIPAL BUSINESS IS NOT THE INVESTMENT OF MONEY OR WHO, IN THE COURSE OF AND FOR THE PURPOSES OF THEIR BUSINESS, DO NOT HABITUALLY INVEST MONEY, IN EACH CASE WITHIN THE MEANING OF SECTION 3(2)(A)(III) OF THE SECURITIES ACT 1978.

NOTICE TO RESIDENTS OF OMAN

THE SECURITIES CANNOT BE OFFERED, MARKETED OR SOLD IN THE SULTANATE OF OMAN, WITHOUT THE APPROVAL OF THE CAPITAL MARKET AUTHORITY, AND SUBJECT TO ANY CONDITIONS OR RESTRICTIONS THAT MAY BE IMPOSED BY THAT BODY, AND IF OFFERED, MARKETED OR SOLD THROUGH A BANK LICENSED TO DO INVESTMENT BANKING BUSINESS IN OMAN, THEN WITHOUT THE APPROVAL OF THE CENTRAL BANK OF OMAN AND THE CAPITAL MARKET AUTHORITY, AND SUBJECT TO ANY CONDITIONS AND RESTRICTIONS THAT MAY BE IMPOSED BY THOSE BODIES.

NOTICE TO RESIDENTS OF PEOPLE'S REPUBLIC OF CHINA

THE SECURITIES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES LAW OF THE PEOPLE'S REPUBLIC OF CHINA (AS THE SAME MAY BE AMENDED FROM TIME TO TIME) AND ARE NOT TO BE OFFERED OR SOLD TO PERSONS WITHIN THE PEOPLE'S REPUBLIC OF CHINA (EXCLUDING THE HONG KONG AND MACAU SPECIAL ADMINISTRATIVE REGIONS) UNLESS PERMITTED BY THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA.

NOTICE TO RESIDENTS OF THE PHILIPPINES

THE SECURITIES BEING OFFERED OR SOLD HEREIN HAVE NOT BEEN REGISTERED WITH THE PHILIPPINE SECURITIES AND EXCHANGE COMMISSION (SEC) UNDER THE SECURITIES REGULATION CODE (SRC) AND ARE BEING OFFERED AND SOLD PURSUANT TO SECTION 10.1(I) OF THE SRC. NO WRITTEN CONFIRMATION OF EXEMPTION HAS BEEN OBTAINED FROM THE SEC WITH RESPECT TO THIS MATTER. ANY FUTURE OFFER OR SALE OF THE SECURITIES IS SUBJECT TO REGISTRATION REQUIREMENTS UNDER THE SRC UNLESS SUCH OFFER OR SALE QUALIFIES AS AN EXEMPT TRANSACTION.

NOTICE TO RESIDENTS OF QATAR

NEITHER THE ISSUER NOR THE CO-ISSUER IS AN INVESTMENT COMPANY AUTHORISED TO CONDUCT INVESTMENT BUSINESSES IN THE STATE OF QATAR AS REQUIRED BY QATAR CENTRAL BANK RESOLUTION NO. (15) "SUPERVISION RULES AND EXECUTIVE INSTRUCTIONS FOR INVESTMENT COMPANIES." ACCORDINGLY, EACH OF THE ISSUER AND THE CO-ISSUER WARRANTS AND REPRESENTS THAT IT HAS NOT MADE AND WILL NOT MAKE ANY INVITATIONS TO THE PUBLIC IN THE STATE OF QATAR, AND NEITHER THIS OFFERING MEMORANDUM NOR ANY OTHER OFFERING MATERIAL RELATING TO THE SECURITIES WILL BE ISSUED OR MADE AVAILABLE TO THE PUBLIC GENERALLY.

NOTICE TO RESIDENTS OF THE KINGDOM OF SAUDI ARABIA

THE OFFERING OF THE SECURITIES HAS NOT BEEN APPROVED BY THE MINISTRY OF COMMERCE, THE MINISTRY OF FINANCE OR THE SAUDI ARABIAN MONETARY AGENCY. ACCORDINGLY, THE SECURITIES MAY NOT BE OFFERED IN THE KINGDOM OF SAUDI ARABIA. FURTHER, EACH OF THE CO-ISSUERS, THE SERVICER AND THE INITIAL PURCHASER REPRESENTS AND WARRANTS THAT IT HAS NOT MADE AND WILL NOT MAKE ANY INVITATION TO THE PUBLIC OF THE KINGDOM OF SAUDI ARABIA TO SUBSCRIBE FOR THE SECURITIES AND THAT THIS OFFERING MEMORANDUM WILL NOT BE ISSUED, PASSED TO, OR MADE AVAILABLE TO THE PUBLIC GENERALLY IN THE KINGDOM OF SAUDI ARABIA.

NOTICE TO RESIDENTS OF SINGAPORE

THIS DOCUMENT HAS NOT BEEN REGISTERED AS A PROSPECTUS WITH THE MONETARY AUTHORITY OF SINGAPORE. ACCORDINGLY, THIS DOCUMENT AND ANY OTHER DOCUMENT OR MATERIAL IN CONNECTION WITH THE OFFER OR SALE, OR INVITATION FOR SUBSCRIPTION OR PURCHASE, OF THE SECURITIES MAY NOT BE CIRCULATED OR DISTRIBUTED, NOR MAY THE SECURITIES BE OFFERED OR SOLD, OR BE MADE THE SUBJECT OF AN INVITATION FOR SUBSCRIPTION OR PURCHASE, WHETHER DIRECTLY OR INDIRECTLY, TO PERSONS IN SINGAPORE OTHER THAN (I) TO AN INSTITUTIONAL INVESTOR UNDER SECTION 274 OF THE SECURITIES AND FUTURES ACT, CHAPTER 289 OF SINGAPORE (THE "SFA"), (II) TO A RELEVANT PERSON, OR ANY PERSON PURSUANT TO SECTION 275(1A), AND IN ACCORDANCE WITH THE CONDITIONS, SPECIFIED IN SECTION 275 OF THE SFA OR (III) OTHERWISE PURSUANT TO, AND IN ACCORDANCE WITH THE CONDITIONS OF, ANY OTHER APPLICABLE PROVISION OF THE SFA.

WHERE THE SECURITIES ARE SUBSCRIBED OR PURCHASED UNDER SECTION 275 BY A RELEVANT PERSON WHICH IS:

(A) A CORPORATION (WHICH IS NOT AN ACCREDITED INVESTOR) THE SOLE BUSINESS OF WHICH IS TO HOLD INVESTMENTS AND THE ENTIRE SHARE CAPITAL OF WHICH IS OWNED BY ONE OR MORE INDIVIDUALS, EACH OF WHOM IS AN ACCREDITED INVESTOR; OR

(B) A TRUST (WHERE THE TRUSTEE IS NOT AN ACCREDITED INVESTOR) WHOSE SOLE PURPOSE IS TO HOLD INVESTMENTS AND EACH BENEFICIARY IS AN ACCREDITED INVESTOR, SHARES,

THEN THE DEBENTURES AND UNITS OF SHARES AND DEBENTURES OF THAT CORPORATION OR THE BENEFICIARIES' RIGHTS AND INTEREST IN THAT TRUST SHALL NOT BE TRANSFERABLE FOR 6 MONTHS AFTER THAT CORPORATION OR THAT TRUST HAS ACQUIRED THE SECURITIES UNDER SECTION 275 EXCEPT:

(1) TO AN INSTITUTIONAL INVESTOR UNDER SECTION 274 OF THE SFA OR TO A RELEVANT PERSON, OR ANY PERSON PURSUANT TO SECTION 275(1A), AND IN ACCORDANCE WITH THE CONDITIONS, SPECIFIED IN SECTION 275 OF THE SFA;

(2) WHERE NO CONSIDERATION IS GIVEN FOR THE TRANSFER; OR

(3) BY OPERATION OF LAW.

NOTICE TO RESIDENTS OF SPAIN

NEITHER THE SECURITIES NOR THIS DOCUMENT HAVE BEEN APPROVED OR REGISTERED IN THE ADMINISTRATIVE REGISTRIES OF THE SPANISH SECURITIES MARKETS COMMISSION (COMISIÓN NACIONAL DEL MERCADO DE VALORES). ACCORDINGLY, THE SECURITIES MAY NOT BE OFFERED IN SPAIN EXCEPT IN CIRCUMSTANCES WHICH DO NOT CONSTITUTE A PUBLIC OFFER OF SECURITIES IN SPAIN WITHIN THE MEANING OF ARTICLE 30BIS OF THE SPANISH SECURITIES MARKET LAW OF 28 JULY 1988 (LEY 24/1988, DE 28 DE JULIO, DEL MERCADO DE VALORES), AS AMENDED AND RESTATED, AND SUPPLEMENTAL RULES ENACTED THEREUNDER.

NOTICE TO RESIDENTS OF SWITZERLAND

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NOTICE TO RESIDENTS OF THAILAND

THE SECURITIES MAY NOT BE OFFERED OR SOLD IN THAILAND OTHER THAN TO PERSONS WHO CONSTITUTE COMMERCIAL BANKS WITHIN THE MEANING OF THE COMMERCIAL BANKING ACT OF THAILAND 1962 AND ACCORDINGLY NO TRANSFER OF ANY SECURITIES TO PERSONS WHO ARE NOT COMMERCIAL BANKS WILL BE REGISTERED, RECORDED OR OTHERWISE RECOGNISED BY THE ISSUER, THE CO-ISSUER OR REGISTRAR.

NOTICE TO RESIDENTS OF TURKEY

THE SECURITIES HAVE NOT BEEN, AND WILL NOT BE, REGISTERED WITH THE SERMAYE PIYASASI KURULU (CAPITAL MARKETS BOARD) UNDER THE CAPITAL MARKETS LAW NO. 2499, AS AMENDED, AND RELATED COMMUNIQUES OF THE REPUBLIC OF TURKEY. THE SECURITIES MAY NOT BE OFFERED OR DISTRIBUTED IN A MANNER THAT WOULD CONSTITUTE A PUBLIC OR PRIVATE OFFERING IN TURKEY, AND NEITHER THIS OFFERING MEMORANDUM NOR ANY OTHER OFFERING MATERIAL RELATING TO THE SECURITIES MAY BE DISTRIBUTED IN CONNECTION WITH ANY SUCH OFFERING OR DISTRIBUTION. THE SECURITIES MAY BE ACQUIRED BY RESIDENTS OF TURKEY ONLY PURSUANT TO ARTICLE 15 OF DECREE NO. 32 ON THE PROTECTION OF THE VALUE OF THE TURKISH CURRENCY.

NOTICE TO RESIDENTS OF UNITED ARAB EMIRATES

THE OFFERING OF THE SECURITIES HAS NOT BEEN APPROVED BY THE UAE CENTRAL BANK AND ACCORDINGLY THE SECURITIES MAY NOT BE OFFERED IN THE UNITED ARAB EMIRATES. EACH OF THE CO-ISSUERS, THE SERVICER AND THE INITIAL PURCHASER REPRESENTS AND WARRANTS THAT THE SECURITIES MAY NOT BE OFFERED, SOLD, TRANSFERRED OR DELIVERED TO THE PUBLIC IN THE UNITED ARAB EMIRATES. FURTHER, THIS OFFERING MEMORANDUM IS ADDRESSED ONLY TO THE RECIPIENT PARTY AND MAY NOT BE TRANSFERRED THEREAFTER.

NOTICE TO RESIDENTS OF THE UNITED KINGDOM

THIS DOCUMENT IS ONLY BEING DISTRIBUTED TO AND IS ONLY DIRECTED AT (I) PERSONS WHO ARE OUTSIDE THE UNITED KINGDOM, (II) TO INVESTMENT PROFESSIONALS FALLING WITHIN ARTICLE 19(5) OF THE FINANCIAL SERVICES AND MARKETS ACT OF 2000 ("FSMA") (FINANCIAL PROMOTION) ORDER 2005 (THE "ORDER") OR (III) HIGH NET WORTH ENTITIES, AND OTHER PERSONS TO WHOM IT MAY LAWFULLY BE COMMUNICATED, FALLING WITHIN ARTICLE 49(2) (A) TO (D) OF THE ORDER (ALL SUCH PERSONS TOGETHER BEING REFERRED TO AS "RELEVANT PERSONS"). THE SECURITIES ARE ONLY AVAILABLE AND ANY INVITATION, OFFER, INDUCEMENT OR AGREEMENT TO SUBSCRIBE, PURCHASE OR OTHERWISE ACQUIRE SUCH SECURITIES WILL BE ENGAGED IN ONLY WITH, RELEVANT PERSONS. ANY PERSON WHO IS NOT A RELEVANT PERSON SHOULD NOT ACT OR RELY ON THIS DOCUMENT OR ANY OF ITS CONTENTS.

STABILISATION

IN CONNECTION WITH THE ISSUE OF THE SECURITIES, THE INITIAL PURCHASER (OR PERSONS ACTING ON BEHALF OF THE INITIAL PURCHASER) MAY OVER-ALLOT SECURITIES PROVIDED THAT THE AGGREGATE PRINCIPAL AMOUNT OR FACE AMOUNT OF SECURITIES ALLOTTED DOES NOT EXCEED 105 PER CENT OF THE AGGREGATE PRINCIPAL AMOUNT OR FACE AMOUNT OF THE

SECURITIES OR EFFECT TRANSACTIONS WITH A VIEW TO SUPPORTING THE MARKET PRICE OF THE SECURITIES AT A LEVEL HIGHER THAN THAT MIGHT OTHERWISE PREVAIL. HOWEVER, THERE IS NO ASSURANCE THAT THE INITIAL PURCHASER (OR PERSONS ACTING ON BEHALF OF THE INITIAL PURCHASER) WILL UNDERTAKE STABILISATION ACTION. ANY STABILISATION ACTION MAY BEGIN ON OR AFTER THE DATE ON WHICH ADEQUATE PUBLIC DISCLOSURE OF THE FINAL TERMS OF THE OFFER OF THE SECURITIES IS MADE AND, IF BEGUN, MAY BE ENDED AT ANY TIME, BUT IT MUST END NO LATER THAN 30 DAYS AFTER THE CLOSING DATE.

AVAILABLE INFORMATION

To permit compliance with Rule 144A under the Securities Act ("**Rule 144A**") in connection with the sale of the Securities, the Issuer (and, solely in the case of the Notes, the Co-Issuers) under the Indenture referred to under "Description of the Securities" and the Preference Share Documents will be required to furnish upon request of a holder of a Security to such holder and a prospective purchaser designated by such holder the information required to be delivered under Rule 144A(d)(4) under the Securities Act if at the time of the request the Co-Issuers are not reporting companies under Section 13 or Section 15(d) of the United States Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act. Such information may be obtained directly from the Issuer or through the paying agent in Ireland at the address set forth on the final page of this Offering Memorandum.

INFORMATION AS TO SALE WITHIN THE UNITED STATES

This Offering Memorandum is highly confidential and has been prepared by the Issuer solely for use in connection with this offering. This Offering Memorandum is personal to each offeree to whom it has been delivered by the Co-Issuers, the Initial Purchaser or Affiliates thereof and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the Securities. Distribution of this Offering Memorandum to any persons other than the offeree and those persons, if any, retained to advise such offeree with respect thereto is unauthorized and any disclosure of any of its contents, without the prior written consent of the Issuer, is prohibited. Each prospective purchaser in the United States, by accepting delivery of this Offering Memorandum, agrees to the foregoing and to make no copies of this Offering Memorandum or any documents related hereto and, if the offeree does not purchase Securities or the offering is terminated, to return this Offering Memorandum and all documents attached hereto to the Initial Purchaser at 11 Madison Avenue, New York, New York 10010, Attention: CDO Group.

Notwithstanding anything to the contrary herein, each prospective purchaser of the Securities (and each of their respective employees, representatives or other agents) are hereby permitted to disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions described herein. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income or state and local tax treatment of the transaction, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income or state and local tax treatment of the transaction.

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SUMMARY OF TERMS

The following summary of terms does not purport to be complete and is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere in this Offering Memorandum and the documents referred to in this Offering Memorandum. A Glossary and an Index of Defined Terms appear at the back of this Offering Memorandum.

Principal Terms of the Securities

	Class A-1a Notes	**Class A-1b Notes**	**Class A-2 Notes**	**Class B Notes**	**Class C Notes**	**Class D Notes**	**Class I Preference Shares**	**Class II Preference Shares**
Type	Senior Secured Extendable	Senior Secured Extendable	Senior Secured Extendable	Senior Secured Deferrable Interest Extendable	Senior Secured Deferrable Interest Extendable	Senior Secured Deferrable Interest Extendable	Extendable	Extendable
Issuer(s)	Co-Issuers	Co-Issuers	Co-Issuers	Co-Issuers	Co-Issuers	Issuer	Issuer	Issuer
Principal Amount / Face Amount (U.S.$)	$1,015,000,000	$111,500,000	$68,000,000	$72,000,000	$75,000,000	$31,000,000	$52,500,000[1]	$75,000,000[1]
Expected Moody's Initial Rating	"Aaa"	"Aa1"	"Aa2"	"A2"	"Baa2"	"Ba2"	N/A	N/A
Expected S&P Initial Rating	"AAA"	"AAA"	"AA"	"A"	"BBB"	"BB"	N/A	N/A
Note Interest Rate	LIBOR + 0.245%	LIBOR + 0.36%	LIBOR + 0.41%	LIBOR + 0.70%	LIBOR + 1.55%	LIBOR + 3.60%	N/A	N/A
Stated Maturity / Scheduled Preference Shares Redemption Date[2]	November 1, 2021	November 1, 2021	November 1, 2021	November 1, 2021	November 1, 2021	November 1, 2021	November 1, 2021	November 1, 2021
Minimum Denominations (U.S.$) / Number (Integral Multiples)	$250,000 ($1,000)	$250,000 ($1,000)	$250,000 ($1,000)	$250,000 ($1,000)	$250,000 ($1,000)	$250,000 ($1,000)	N/A	N/A
Priority Class	None	Class A-1a	Class A-1	Class A	Class A, Class B	Class A, Class B, Class C	Class A, Class B, Class C, Class D	Class A, Class B, Class C, Class D
Junior Class	Class A-1b, Class A-2, Class B, Class C, Class D, Preference Shares	Class A-2, Class B, Class C, Class D, Preference Shares	Class B, Class C, Class D, Preference Shares	Class C, Class D, Preference Shares	Class D, Preference Shares	Preference Shares	None	None
Deferred Interest Notes	No	No	No	Yes	Yes	Yes	N/A	N/A

1 The Preference Shares will be issued with a Face Amount of U.S.$1,000 per share.

2 The Stated Maturity of the Notes and the Scheduled Preference Shares Redemption Date of the Preference Shares are subject to multiple extensions to the applicable Extended Stated Maturity Date (in the case of the Notes) and the applicable Extended Scheduled Preference Shares Redemption Date (in the case of the Preference Shares), if the Issuer provides timely notice and the Extension Conditions are satisfied. See "Risk Factors—The Weighted Average Lives of the Notes May Vary," "—A Maturity Extension May Result in a Longer or Shorter Holding Period Than Expected," "Maturity and Prepayment Considerations" and "Description of the Securities—Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date."

The Senior Notes will be non-recourse debt obligations of the Co-Issuers. The Class D Notes will be non-recourse debt obligations of the Issuer. The Notes will be issued pursuant to the Indenture.

The Preference Shares will be part of the issued share capital of the Issuer and, accordingly, will not be secured obligations of the Issuer. Investors Bank & Trust Company will act as the Preference Shares Paying Agent for the Preference Shares and will perform various administrative services pursuant to a Preference Shares Paying Agency Agreement, dated as of the Closing Date (the "**Preference Shares Paying Agency Agreement**") by and between the Issuer and the Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

The Preference Shares will be issued in two classes, which will be identical in respect of rights to distributions except that the Class II Preference Shares (i) are entitled to the Class II Preference Share Special Payments during the first two years following the Closing Date (after the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments) and (ii) have total control with respect to the appointment and removal of the directors of the Issuer as long as the aggregate number of Class II Preference Shares Outstanding as of the relevant Voting Record Date is higher than the aggregate number of Class I Preference Shares Outstanding as of such date. See "Description of the Securities—The Issuer Charter—Voting Rights."

Payments to each Holder of the Notes of each Class shall be made ratably among the Holders of the Notes of that Class in proportion to the Aggregate Outstanding Amount of the Notes of such Class held by each Holder. Payments to each Holder of the Preference Shares shall be made ratably among the Holders of the Preference Shares in proportion to the Aggregate Outstanding Amount of such Preference Shares held by each Holder (*provided* that the Class II Preference Share Special Payments shall be paid solely to the Holders of the Class II Preference Shares in proportion to the Aggregate Outstanding Amount of the Class II Preference Shares held by each Holder).

Except as provided under "Description of the Securities—Priority of Payments," the Class A-1a Notes will be senior in right of interest and principal payments on each Payment Date to the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Preference Shares; the Class A-1b Notes will be senior in right of interest and

principal payments to the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Preference Shares; the Class A-2 Notes will be senior in right of interest and principal payments on each Payment Date to the Class B Notes, the Class C Notes, the Class D Notes and the Preference Shares; the Class B Notes will be senior in right of interest and principal payments on each Payment Date to the Class C Notes, the Class D Notes and the Preference Shares; the Class C Notes will be senior in right of interest and principal payments on each Payment Date to the Class D Notes and the Preference Shares; the Class D Notes will be senior in right of interest and principal payments on each Payment Date to the Preference Shares; and the Class I Preference Shares and the Class II Preference Shares will rank *pari passu* in right of interest and principal payments on each Payment Date except that any payments to the Holders of Class II Preference Shares of the Class II Preference Share Special Payments will have priority to the extent provided under "Description of the Securities—Priority of Payments."

The Securities and certain other obligations of the Co-Issuers will have the priorities of payment described under "Description of the Securities—Priority of Payments."

Co-Issuers ..... The Issuer has been incorporated and exists as an exempted limited liability company under the laws of the Cayman Islands. The Issuer's activities are limited to acquiring Collateral Obligations and Eligible Investments, entering into any Hedge Agreements, issuing the Securities and entering into certain related transactions. The Issuer has been established as a special purpose vehicle for the purpose of issuing asset backed securities.

The Co-Issuer is organized as a corporation under the laws of the State of Delaware for the sole purpose of co-issuing the Senior Notes. The Co-Issuer has been established as a special purpose vehicle for the purpose of issuing asset backed securities.

The Issuer will not have any significant assets other than Collateral Obligations, Eligible Investments, any Hedge Agreements and certain other eligible assets. The Collateral Obligations, Eligible Investments, the rights of the Issuer under any Hedge Agreements and other collateral will be pledged to the Trustee as security for, among other things, the Issuer's obligations under the Notes.

The Co-Issuer is not expected to have any significant assets and will not pledge any assets to secure the Senior Notes.

Investors Corp. ..... On the Closing Date, Grayson Investors Corp. ("**Investors Corp.**"), an exempted limited liability corporation incorporated under the laws of the Cayman Islands, is expected to purchase all

of the Class I Preference Shares and to finance such purchase by issuing preference shares (the "**Holding Preference Shares**") in a number equal to the aggregate number of Class I Preference Shares purchased by it. The Holding Preference Shares will be offered by Investors Corp. to investors pursuant to a separate offering memorandum (the "**Investors Corp. Offering Memorandum**") and are not offered hereby.

Investors Corp. will exercise its consent and voting rights, in its capacity as a Holder of the Class I Preference Shares, in accordance with the directions of the Holders of the Holding Preference Shares; *provided* that Holding Preference Shares held by the Servicer or any of its Affiliates will have no such right to direct Investors Corp. in connection with the removal of the Servicer for "cause" or the appointment of a replacement servicer. For purposes of calculating such consents or votes exercised with respect to the Class I Preference Shares held by Investors Corp., each consent or vote exercised with respect to a Holding Preference Share will count as one consent or vote exercised with respect to a Class I Preference Share held by Investors Corp., as applicable.

Trustee ..... Investors Bank & Trust Company will act as the Trustee under the Indenture on behalf of the Holders of the Notes.

Servicer ..... Certain servicing and administrative functions with respect to the Collateral will be performed by Highland Capital Management, L.P., a Delaware limited partnership ("**Highland Capital**" or, in such capacity, the "**Servicer**"), pursuant to the Servicing Agreement, which may be amended from time to time without the consent of the Holders of the Securities. See "Risk Factors—Relating to the Servicing Agreement" and "The Servicing Agreement."

On the Closing Date, (i) HFP and/or one or more of its subsidiaries are expected to purchase all of the Class II Preference Shares having an aggregate Face Amount equal to U.S. $75,000,000 directly from the Issuer at a discounted purchase price and (ii) Highland Capital or one or more of its Affiliates (other than HFP or any of its subsidiaries) are expected to purchase certain of the Class D Notes having an aggregate principal amount equal to U.S.$16,000,000 directly from the Issuer at a discounted purchase price and are expected to purchase certain of the Holding Preference Shares having an aggregate Face Amount equal to U.S.$20,000,000 directly from Investors Corp., at a discounted purchase price. See "Plan of Distribution."

The Share Registrar will record in the register maintained by it which Preference Shares are held by HFP or any of its subsidiaries. Such Preference Shares will be designated by the Share Registrar as Class II Preference Shares. HFP and/or its

subsidiaries that purchase Class II Preference Shares will agree not to transfer any of the Class II Preference Shares to any Person other than Investors Corp. Any transfer of Class II Preference Shares by HFP or any of its subsidiaries to Investors Corp. will require redesignation by the Share Registrar of such Class II Preference Shares as Class I Preference Shares. Investors Corp. will finance the purchase of any Class II Preference Shares to be redesignated in connection with such transfer by issuing additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such Class II Preference Shares. Any transfer of Class I Preference Shares to HFP or any of its subsidiaries from Investors Corp. will require redesignation by the Share Registrar of such Class I Preference Shares as Class II Preference Shares.

The Servicer or its Affiliates may also acquire Securities upon the occurrence of the Amendment Buy-Out Option or in connection with a Refinancing. In addition, the Servicer or its Affiliates may acquire all or any portion of any Extension Sale Securities in connection with a Maturity Extension. See "The Servicer," "Risk Factors—Relating to the Securities," "—Relating to the Servicer" and "—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer," "Description of the Securities—Amendment Buy-Out," "Description of the Securities—Optional Redemption—Redemption by Refinancing," "Description of the Securities—Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date" and "The Servicing Agreement."

Closing Date..... November 30, 2006.

Use of Proceeds..... The gross proceeds of the offering of the Securities received on the Closing Date are expected to equal approximately $1,495,000,000 and will be used by the Issuer to:

- purchase a portfolio of Collateral Obligations;
- fund a trust account for Revolving Loans (the "**Revolving Reserve Account**") and a trust account for Delayed Drawdown Loans (the "**Delayed Drawdown Reserve Account**") to cover any future draws on Revolving Loans and Delayed Drawdown Loans;
- enter into any Hedge Agreements, as applicable;
- enter into any Securities Lending Agreements (and correspondingly to fund the Securities Lending Account);
- enter into any Synthetic Security Agreements (and correspondingly to fund the related accounts);

- repurchase participations sold to the Pre-Closing Parties to finance the Issuer's pre-closing acquisition of Collateral Obligations;
- fund the Closing Date Expense Account and the Interest Reserve Account;
- pay certain expenses related to the transaction; and
- undertake certain related activities.

See "Use of Proceeds."

Payment Dates ..... Payment of interest on, and principal of, the Notes will be made by the Issuer in U.S. Dollars on the first day of each February, May, August and November of each year (or if such day is not a Business Day, the next succeeding Business Day), commencing May 1, 2007, to the extent of available cash flow in respect of the Collateral in accordance with the Priority of Payments.

Hedge Agreements ..... At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer, shall enter into the Hedge Agreements and will assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee. See "Hedge Agreements."

Interest Payments and Distributions from Interest Proceeds ..... The Notes will accrue interest from the Closing Date. Interest on the Notes will be payable, to the extent of funds available therefor, on each Payment Date.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of interest due on such Class of Deferred Interest Notes that is not available to be paid ("**Deferred Interest**") in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of the Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments. To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for such Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest), until paid. See "Description of the Securities—Interest Payments on the Notes and Payments of Dividends on the

Preference Shares from Interest Proceeds," "—Priority of Payments" and "—The Indenture—Events of Default."

On each Payment Date, the Issuer will make distributions to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares as dividends on the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, to the extent of available Interest Proceeds as described under clauses (22) and (24) under "Description of the Securities—Priority of Payments—Interest Proceeds"; *provided* that, in lieu of payment of such Interest Proceeds, in whole or in part, the Servicer, on behalf of the Issuer, will have the right to direct the Trustee to distribute on any Payment Date Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be distributed on the relevant Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with the Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date will be reduced and the amount of Principal Proceeds available on the relevant Payment Date will be increased accordingly. See "Description of the Securities—Priority of Payments—Interest Proceeds" and "—Preference Shares Paying Agency Agreement—Distribution of Eligible Equity Securities."

In addition, on each Payment Date during the first two years following the Closing Date, Holders of the Class II Preference Shares are entitled to the Class II Preference Share Special Payments. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event an amount equal to such waived portion will be distributed by the Issuer to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. Any Class II Preference Share Special Payment will be paid by the Issuer in accordance with the Priority of Payments described under clauses (3), (20) and (23) under "Description of the Securities—Priority of Payments—Interest Proceeds."

Principal Payments and Distributions from Principal Proceeds ..... The Notes will mature at par on the Payment Date in November, 2021 or, upon a Maturity Extension (if any), the applicable

Extended Stated Maturity Date (the "**Stated Maturity**") and the Preference Shares are scheduled to be redeemed at the Redemption Price thereof by the Issuer on the Payment Date in November, 2021 or, upon a Maturity Extension (if any), the applicable Extended Scheduled Preference Shares Redemption Date (the "**Scheduled Preference Shares Redemption Date**"), in each case unless redeemed or (in the case of the Notes) repaid in full prior thereto. The average life of each Class of Notes is expected to be shorter than the number of years from issuance until Stated Maturity for such Notes. See "Risk Factors—Relating to the Securities—The Weighted Average Lives of the Notes May Vary," "—A Maturity Extension May Result in a Longer or Shorter Holding Period Than Expected" and "Maturity and Prepayment Considerations."

In general, principal payments will not be made on the Notes before the end of the Replacement Period, except in the following circumstances:

- in connection with an Optional Redemption;
- at the option of the Servicer, to effect a Special Redemption of the Notes;
- in connection with a Refinancing;
- pursuant to a redemption made in connection with a Tax Event; or
- following a mandatory redemption of the Notes caused by a failure to meet any of the Coverage Tests or a Rating Confirmation Failure.

See "Description of the Securities—Priority of Payments," "—Optional Redemption," "—Special Redemption of the Notes If the Servicer Does Not Identify Replacement Collateral Obligations as Contemplated by the Indenture," "Optional Redemption—Redemption by Refinancing," "—Mandatory Redemption of the Notes" and "Security for the Notes—Ramp-Up."

No payments of principal will be made on the Class A-1b Notes until the principal of the Class A-1a Notes has been paid in full. No payments of principal will be made on the Class A-2 Notes until the principal of the Class A-1b Notes has been paid in full. No payments of principal will be made on the Class B Notes until the principal of the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes has been paid in full. No payments of principal will be made on the Class C Notes until the principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes and the Class B Notes has been paid in full. No payments of

principal will be made on the Class D Notes until the principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes has been paid in full (other than with respect to the use of Interest Proceeds to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests). However, Principal Proceeds may be used to pay Deferred Interest and other amounts before the payment of principal of the Notes. See "Description of the Securities—Priority of Payments."

No principal of any Class of Notes will be payable on any Payment Date other than in accordance with the Priority of Payments and to the extent funds are available therefor on that Payment Date for that purpose, except that the principal of each Class of Notes will be payable in full at the Stated Maturity, unless repaid before that.

On each Payment Date, the Issuer will make distributions to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares (including, with respect to the Class II Preference Shares, the Class II Preference Share Special Payments) pursuant to the Preference Share Documents, to the extent legally permitted, to the extent of available Principal Proceeds as described under clauses (11)(A), (14) and (15) under "Description of the Securities—Priority of Payments—Principal Proceeds."

For a description of the relative priority of payments and level of subordination of the Securities and certain fees, expenses and other liabilities of the Co-Issuers, see "Description of the Securities—Priority of Payments."

Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date..... The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to a maximum of four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date and (ii) the Extension Conditions are satisfied and the Issuer has given written notice of its election to extend the Replacement Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. For purposes of the foregoing, "**Extension Effective Date**" means if an Extension has occurred, the sixteenth Payment Date after the then current Extension Effective Date (or, in the case of the first Extension Effective Date, the Payment Date in August 2011) and "**Extended Replacement Period End Date**" means, if an Extension has

occurred, the sixteenth Payment Date after the then current Extended Replacement Period End Date (or, in the case of the first Extension, the Payment Date in November, 2017); *provided* that the "Extended Replacement Period End Date" will in no event be a date later than the Payment Date in November 2029.

If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date, the Scheduled Preference Shares Redemption Date shall automatically be extended to the Extended Scheduled Preference Shares Redemption Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Securities or amendment or supplement to the Indenture or the Preference Share Documents (the "**Maturity Extension**"); *provided* that the Issuer will not be permitted to effect more than four Maturity Extensions. For purposes of the foregoing, "**Extended Stated Maturity Date**" means, if a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Stated Maturity Date (or, in the case of the first Extended Stated Maturity Date, the Payment Date in November 2025), "**Extended Scheduled Preference Shares Redemption Date**" means, if a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Scheduled Preference Shares Redemption Date (or, in the case of the first Extended Scheduled Preference Shares Redemption Date, November 1, 2025) and "**Extended Weighted Average Life Date**" means, if a Maturity Extension has occurred, the sixteenth Payment Date after the then current Extended Weighted Average Life Date (or, in the case of the first Extended Weighted Average Life Date, May 1, 2021); *provided* that the "Extended Stated Maturity Date" will in no event be a date later than the Payment Date in November 2037, the "Extended Scheduled Preference Shares Redemption Date" will in no event be a date later than the Payment Date in November 2037 and the "Extended Weighted Average Life Date" will in no event be a date later than the Payment Date in May, 2033.

As a condition to a Maturity Extension, any Holder of Notes or Preference Shares will have the right to offer to sell their Notes or Preference Shares to one or more Extension Qualifying Purchasers for purchase on the applicable Extension Effective Date.

If all Extension Conditions are satisfied and a Maturity Extension is effected, each Noteholder, other than Holders of Extension Sale Securities, will be entitled to receive the applicable Extension Bonus Payment, to the extent of available funds and as provided in the Priority of Payments. Holders of Preference Shares will not be entitled to receive any Extension Bonus Payment.

See "Risk Factors—Relating to the Securities—The Weighted Average Lives of the Notes May Vary," "—A Maturity Extension May Result in a Longer or Shorter Holding Period Than Expected," "Maturity and Prepayment Considerations," and "Description of the Securities—Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date."

Security for the Notes ..... The Notes will be secured by a portfolio having an Aggregate Principal Balance following the Ramp-Up Period of approximately U.S.$1,471,900,000 (in principal amount) and consisting primarily of Collateral Obligations and certain other debt securities, in each case having the characteristics set forth herein. The Notes will also be secured by funds on deposit in the Issuer Accounts, the Issuer's rights under any Hedge Agreements, any Securities Lending Agreements, the Servicing Agreement and the Collateral Administration Agreement. See "Security for the Notes."

The Preference Shares are unsecured equity interests in the Issuer.

Collateral Ramp-Up Period ..... The Issuer expects that, as of the Closing Date, it will have purchased (or entered into commitments to purchase) Collateral Obligations to be included in the anticipated portfolio such that the Overcollateralization Ratio Numerator will be at least U.S.$1,471,900,000 as of the Ramp-Up Completion Date. The "**Ramp-Up Completion Date**" is the earlier of (i) the Business Day after the 90th day after the Closing Date, and (ii) the first day on which the following conditions are satisfied (x) either (A) the Aggregate Principal Balance of the Collateral Obligations owned by the Issuer equals at least U.S.$1,471,900,000 or (B) the Aggregate Principal Balance of the Collateral Obligations purchased (or committed to be purchased) by the Issuer with proceeds from the sale of the Securities (in each case in this clause (B), measured solely as of the date of purchase or commitment, as the case may be) equals at least U.S.$1,471,900,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date) and (y) the Overcollateralization Ratio Numerator is at least U.S.$1,471,900,000.

In anticipation of the issuance of the Securities, the Issuer, the Servicer and one or more Affiliates of the Initial Purchaser (the "**Pre-Closing Parties**") are financing the acquisition of Collateral Obligations by the Issuer pursuant to confirmations entered into by or on behalf of the Issuer confirming the Issuer's commitment to purchase such Loans during the Accumulation

Period. 100% participation in each such Collateral Obligation has been acquired (and will be acquired) by the applicable Pre-Closing Party concurrently with the acquisition of each such Collateral Obligation by the Issuer for a purchase price equal to the purchase price paid by the Issuer for the related Collateral Obligation. On the Closing Date, each eligible Collateral Obligation acquired by the applicable Pre-Closing Party will be repurchased by the Issuer with proceeds of the offering in an amount equal to the purchase price minus any distributions of principal on the obligation received by the applicable Pre-Closing Party. The Servicer or one or more of its Affiliates will be entitled to retain all interest and any fees and commissions (net of any financing fees payable to the Pre-Closing Parties) paid by the obligors of such Collateral Obligations or accrued from the time of purchase to the Closing Date. See "Risk Factors—Relating to the Collateral Obligations—A Substantial Amount of Collateral Obligations Was Acquired Before the Closing Date, and the Terms of the Acquisition May Adversely Affect the Issuer."

See "Security for the Notes—Ramp-Up."

Replacement Period; Acquisition of Replacement Collateral Obligations..... During the Replacement Period, the Issuer may generally (and subject to certain requirements) use Principal Proceeds received with respect to the Collateral to purchase additional or replacement Collateral Obligations in compliance with the Eligibility Criteria (which Eligibility Criteria includes requirements that an item of Collateral purchased by the Issuer meet the definition of "Collateral Obligation" and that the portfolio of Collateral Obligations be in compliance with the Concentration Limitations to the extent provided in the Eligibility Criteria). See "—Collateral Obligations," "—Concentration Limitations" and "Security for the Notes—Eligibility Criteria."

The "**Replacement Period**" will be the period from the Closing Date through and including the first to occur of:

(i) the Payment Date after the date that the Servicer notifies the Trustee, each Rating Agency and the Administrator, in the sole discretion of the Servicer, that, in light of the composition of the Collateral, general market conditions, and other factors, the acquisition of additional Collateral Obligations within the foreseeable future would be impractical;

(ii) the Payment Date in November 2013 or, in the case of an Extension, the Extended Replacement Period End Date;

(iii) the Payment Date on which all Notes are to be optionally redeemed or an earlier date after notice of an Optional Redemption chosen by the Servicer to facilitate the liquidation of the Collateral for the Optional Redemption; and

(iv) the date on which the Replacement Period terminates or is terminated as a result of an Event of Default (subject to the terms of the Indenture).

No acquisition of Collateral Obligations will be made after the termination of the Replacement Period, except that (x) Unscheduled Principal Payments and (y) Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations may be used to purchase Collateral Obligations after the Replacement Period subject to the limitations described under "Security for the Notes—Eligibility Criteria" and "—Sale of Collateral Obligations; Acquisition of Replacement Collateral Obligations." After the termination of the Replacement Period, all Principal Proceeds (other than Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations) must be applied in accordance with the Priority of Payments.

Notwithstanding anything herein to the contrary, no acquisition or disposition of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) shall be effected by or on behalf of the Issuer for the primary purpose of recognizing gains or decreasing losses resulting from market value changes.

Collateral Obligations..... Any obligation or security (a "**Collateral Obligation**") that, when the Issuer commits to purchase (or otherwise acquire) the obligation or security, is a Loan, High-Yield Bond, Structured Finance Obligation or Synthetic Security with a Reference Obligation that is a Loan, a Structured Finance Obligation or High-Yield Bond that is:

(i) denominated and payable in U.S. Dollars and is not convertible by its obligor into any other currency;

(ii) an obligation of an obligor Domiciled in an Eligible Country;

(iii) an obligation that is eligible by its terms to be assigned to the Issuer and pledged by the Issuer to the Trustee for inclusion in the Collateral;

(iv) not an exchangeable or convertible security;

(v) not an equity security or a component of an equity security or a security that has a component that is an

equity security (other than for avoidance of doubt, a pass-through trust certificate in a trust holding Collateral Obligations);

(vi) not an obligation or security that has been called for redemption and is not an obligation or security that is the subject of an Offer other than a Permitted Offer or an exchange offer in which a security that is not registered under the Securities Act is exchanged for (a) a security that has substantially identical terms (except for transfer restrictions) but is registered under the Securities Act or (b) a security that would otherwise qualify for purchase under the Eligibility Criteria;

(vii) an obligation that (a) has a Moody's Rating (including any estimated or confidential rating which is in respect of the full obligation of the obligor and which is monitored) and (b) has an S&P Rating (including any confidential rating which is in respect of the full obligation of the obligor and which is monitored), which S&P Rating does not have a "p", "pi", "q", "r" or "t" subscript unless S&P otherwise authorizes in writing;

(viii) an obligation that is a Finance Lease (if it is a lease) and the Rating Condition has been satisfied with respect to the acquisition thereof;

(ix) (a) an obligation that is not a Current-Pay Obligation, Non-Performing Collateral Obligation or Credit Risk Obligation and (b) in the case of a Collateral Obligation that has a Moody's Rating of "Caa1" or lower or an S&P Rating of "CCC+" or lower, an obligation for which the Servicer has certified in writing that such Collateral Obligation is not a Credit Risk Obligation;

(x) an obligation that (unless it is a High-Yield Bond) is not subordinated by its terms to other indebtedness for borrowed money of the applicable issuer; *provided* that for the avoidance of doubt, this clause shall not prohibit the inclusion as Collateral Obligations of Subordinated Lien Loans or Second Lien Loans;

(xi) an obligation that (a) (unless it is a PIK Security) bears simple interest payable in cash no less frequently than annually at a fixed or floating rate that is paid on a periodic basis on an unleveraged basis and, in the case of a floating rate, computed on a benchmark interest rate plus or minus a spread, if any (which may vary

under the terms of the obligation) and (b) provides for a fixed amount of principal payable in cash according to a fixed schedule (which may include optional call dates) or at maturity (or a fixed notional amount in the case of Synthetic Securities);

(xii) an obligation the payment or repayment of the principal, if any, of which is not an amount determined by reference to any formula or index or subject to any contingency under the terms thereof;

(xiii) an obligation the portion of which to be acquired (including through a Synthetic Security with respect to the Reference Obligation) does not represent, directly or indirectly, more than a 25% interest in the obligation;

(xiv) not an obligation with a maturity later than two years after the Stated Maturity of the Notes;

(xv) an obligation upon which no payments are subject to withholding tax imposed by any jurisdiction unless the obligor thereof or counterparty with respect thereto is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis (other than withholding taxes with respect to commitment fees associated with Collateral Obligations constituting Revolving Loans or Delayed Drawdown Loans);

(xvi) not a Loan or Synthetic Security that would require the Issuer after its purchase of the Loan or Synthetic Security to advance any funds to the related borrower or Synthetic Security Counterparty or permit the borrower or Synthetic Security Counterparty to require that any future advances be made except for:

(A) any Revolving Loan or Delayed Drawdown Loan if, simultaneously with its purchase of the Revolving Loan or Delayed Drawdown Loan, the Issuer deposits into the Revolving Reserve Account or the Delayed Drawdown Reserve Account, respectively, the maximum amount of any advances that may be required of the Issuer under the related Underlying Instrument (as provided in the Indenture); and

(B) any Synthetic Security if, simultaneously with its purchase of the Synthetic Security, the Issuer posts cash collateral with (or for the benefit of) the Synthetic Security Counterparty

simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of any future advances;

(xvii) if such obligation is a Structured Finance Obligation that is a collateralized loan obligation, such obligation:

(A) has been assigned a rating by both Moody's and S&P;

(B) has a Moody's Rating of "Ba3" or higher and an S&P Rating of "BB-" or higher; and

(C) has not been placed on the watch list for possible downgrade by Moody's or S&P;

(xviii) not a Loan that is an obligation of a debtor in possession or a trustee for a debtor in an insolvency proceeding other than a DIP Loan;

(xix) with respect to an obligation that provides for the payment of interest at a floating rate, an obligation for which such floating rate is determined by reference to the U.S. Dollar prime rate or other base rate, London interbank offered rate or similar interbank offered rate, commercial deposit rate or any other index that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto;

(xx) in the case of a Synthetic Security, the Synthetic Security is one for which the counterparty or issuer, as the case may be, has a short-term debt rating by Moody's of at least "P-1" or long-term senior unsecured rating by Moody's of at least "A3" and, if rated "A3" by Moody's, such rating is not on watch for downgrade, and an issuer credit rating by S&P of at least "AA-" or a short term debt rating by S&P of at least "A-1+";

(xxi) not an obligation that constitutes Margin Stock;

(xxii) not a Zero-Coupon Security;

(xxiii) not an obligation that is currently deferring interest or paying interest "in kind" or otherwise has an interest "in kind" balance outstanding at the time of purchase, which interest is otherwise payable in cash, unless the Rating Condition has been satisfied with respect to the acquisition thereof;

(xxiv) not a security whose repayment is subject to substantial non-credit related risk as determined by the Servicer;

(xxv) not an obligation the interest payments of which are scheduled to decrease (although interest payments may decrease due to unscheduled events such as a decrease if the index relating to a Floating Rate Obligation, the change from a default rate of interest to a non-default rate of interest or an improvement in the obligor's financial condition);

(xxvi) not an obligation that will cause the Issuer, the Co-Issuer, or the pool of assets to be required to be registered as an investment company under the Investment Company Act; and

(xxvii) in the case of a Loan, an obligation that is part of, or a Participation in, a syndicated loan facility that provides for a commitment by the lenders, in the aggregate, of no less than $25,000,000.

Pursuant to the definition of "Synthetic Security," unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event."

See "Security for the Notes—Collateral Obligations" and "—Eligibility Criteria."

Concentration Limitations ..... Upon a purchase of a Collateral Obligation, the Eligibility Criteria require that each of the limits set forth below with respect to a particular type of Relevant Obligation (measured by Aggregate Principal Balance) as a percentage of the Maximum Amount (the "**Concentration Limitations**") is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced:

		Percentage of the Maximum Amount
(1)	Senior Secured Loans and Eligible Investments	≥87.5%
(2)	unsecured Loans	≤ 3.0%
(3)	Subordinated Lien Loans and Second Lien Loans	≤ 10.0%
(4)	Revolving Loans and the unfunded portion of Delayed Drawdown Loans	≤12.0%
(5)	DIP Loans	≤ 5.0%
	(a) except that with a Rating Confirmation, DIP Loans may constitute up to the percentage of the Maximum Amount specified in the right column	≤ 7.5%

		Percentage of the Maximum Amount
(6)	S&P Unrated DIP Loans	≤2.5%
(7)	PIK Securities	≤ 3.0%
(8)	High-Yield Bonds	≤ 7.5%
(9)	Structured Finance Obligations	≤ 10.0%
	(a) except that Structured Finance Obligations serviced by the Servicer may not exceed the percentage of the Maximum Amount specified in the right column	≤ 2.5%
	(b) except that a single issuer together with any of its Affiliates (excluding Secondary Risk Counterparties) of a Structured Finance Obligation may not exceed the percentage of the Maximum Amount specified in the right column	≤ 3.0%
(10)	Structured Finance Obligations that are collateralized loan obligations	≤ 7.5%
(11)	obligors Domiciled other than in the United States and Canada	≤ 15.0%
(12)	obligors Domiciled in Canada or any single Moody's Group I Country	≤ 10.0%
(13)	obligors Domiciled in any single Moody's Group II Country	≤ 5.0%
(14)	obligors Domiciled in all Moody's Group II Countries in the aggregate	≤ 10.0%
(15)	obligors Domiciled in any single Moody's Group III Country	≤ 2.5%
(16)	obligors Domiciled in all Moody's Group III Countries in the aggregate	≤ 5.0%
(17)	obligors organized in a Tax Advantaged Jurisdiction	≤ 5.0%
(18)	same S&P Industry Classification	≤ 8.0%
	(a) except that Relevant Obligations belonging to two S&P Industry Classifications may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 12.0%
(19)	single issuer and any of its Affiliates (excluding Secondary Risk Counterparties)	≤ 1.5%
	(a) except that up to each of five individual issuers and any of their Affiliates (excluding Secondary Risk Counterparties) may each constitute up to the percentage of the Maximum Amount specified in the right column	≤ 2.5%
(20)	Fixed Rate Obligations	≤ 7.5%
(21)	Pay interest less frequently than quarterly but no less frequently than semi-annually	≤ 7.5%
(22)	Pay interest less frequently than semi-annually but no less frequently than annually	≤ 3.0%
(23)	Synthetic Securities	≤ 20.0%
	(a) except that Synthetic Securities that provide for settlement other than by physical delivery may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
	(b) except that Synthetic Securities that reference a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time may not exceed the percentage of the Maximum Amount specified in the right column	≤ 5.0%
(24)	Participations (*provided* that no Relevant Obligations may be a Participation in a Participation)	≤ 20.0%
(25)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, in the aggregate may not exceed the percentage of the	≤ 20.0%

		Percentage of the Maximum Amount
	Maximum Amount specified in the right column	
(26)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, a single Secondary Risk Counterparty	≤ respective percentage in Secondary Risk Table under "Individual Counterparty Limit" for applicable rating*
(27)	Relevant Obligations of which are (i) obligors Domiciled other than in the United States, (ii) Collateral Obligations lent under Securities Lending Agreements, (iii) Participations and (iv) Synthetic Securities, entered into with, or issued by, all Secondary Risk Counterparties	≤ respective percentage in Secondary Risk Table under "Aggregate Counterparty Limit" for applicable rating**
(28)	Deep Discount Obligations	≤ 7.5%
(29)	CCC+/Caa1 and below Collateral Obligations	≤ 7.5%
(30)	Long-Dated Collateral Obligations	≤ 2.0%
(31)	Collateral Obligations lent under Securities Lending Agreements	≤ 15.0%
(32)	Collateral Obligations providing for interest at a non-London interbank offered rate (excluding, for the avoidance of doubt, the unfunded amount of any Revolving Loan or Delayed Drawdown Loan)	≤ 5.0%
(33)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of equal to or greater than $25,000,000 but less than $75,000,000	≤ 10.0%
(34)	Collateral Obligations that are Loans that are part of a credit facility with a total global aggregate commitment amount of less than $25,000,000	≤ 0.0%

* Applicable long-term unsecured rating by Moody's or S&P of such Secondary Risk Counterparty (using the limit for the lower of such ratings if different).

** Long-term unsecured rating by Moody's or S&P at or below a level specified in the Secondary Risk Table (using the lower of such ratings for a Secondary Risk Counterparty, if different).

Subject to the rights in certain circumstances of the Servicer to determine otherwise as set out in the Indenture, solely for the purpose of determining whether the Concentration Limitations are met, Eligible Investments and Cash will be treated as Senior Secured Loans and Floating Rate Obligations.

See "Security For the Notes—Eligibility Criteria."

Coverage Tests and the Retention Overcollateralization Test ..... The "**Coverage Tests**" will consist of the Overcollateralization Tests and the Interest Coverage Tests. In addition, the Retention Overcollateralization Test, which is not a Coverage Test, will apply as described herein. See "Security For the Notes—The Coverage Tests—The

Overcollateralization Tests" and "—The Interest Coverage Tests" for the formulations of these tests, which are highly detailed. The ratios on which they are based are also described under such headings. The tests will be used to determine, among other things, whether (i) Notes will be redeemed in certain circumstances as described under "Description of the Securities—Priority of Payments" and (ii) in the case of the Coverage Tests, Collateral Obligations may be acquired as described under "Security for the Notes—Eligibility Criteria."

There will not be any Coverage Test applicable to the Preference Shares.

The Overcollateralization Tests..... The Overcollateralization Tests will consist of the "**Class A Overcollateralization Test**," the "**Class B Overcollateralization Test,**" the "**Class C Overcollateralization Test**" and the "**Class D Overcollateralization Test.**" Each Overcollateralization Test will be satisfied with respect to any Class of Notes if, as of any Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the specified required level for the specified Class indicated in the table below:

Test	Required Level
Class A Overcollateralization Test	110.0%
Class B Overcollateralization Test	105.0%
Class C Overcollateralization Test	103.0%
Class D Overcollateralization Test	102.2%

The Interest Coverage Tests..... The Interest Coverage Tests will consist of the "**Class A Interest Coverage Test**," the "**Class B Interest Coverage Test,**" the "**Class C Interest Coverage Test**" and the "**Class D Interest Coverage Test.**" Each Interest Coverage Test will be satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level specified in the table below for the specified Class:

Test	Required Level
Class A Interest Coverage Test	130.0%
Class B Interest Coverage Test	120.0%
Class C Interest Coverage Test	110.0%
Class D Interest Coverage Test	105.0%

Retention Overcollateralization Test.	A test that will be satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 103.2%.
Collateral Quality Tests.....	The Collateral Quality Tests will be used primarily as criteria for purchasing Collateral Obligations. See "Security for the Notes—Eligibility Criteria." The "**Collateral Quality Tests**" will consist of the Diversity Test, the Weighted Average Life Test, the Weighted Average Moody's Recovery Rate Test, the Weighted Average S&P Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Rating Factor Test and the S&P CDO Monitor Test, as described below.
Diversity Test.....	The Diversity Test will be satisfied as of any Measurement Date, if the Diversity Score equals or exceeds the Minimum Diversity Score.
S&P CDO Monitor Test.....	The S&P CDO Monitor Test will be satisfied as of any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive.
Weighted Average Fixed Rate Coupon Test.....	The Weighted Average Fixed Rate Coupon Test will be satisfied as of any Measurement Date if the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.
Weighted Average Life Test.....	The Weighted Average Life Test will be satisfied as of any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and May 1, 2017 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 4.0 years.
Weighted Average Moody's Recovery Rate Test.....	The Weighted Average Moody's Recovery Rate Test will be satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 43.63%.
Weighted Average Rating Factor Test.....	The Weighted Average Rating Factor Test will be satisfied as of any Measurement Date, if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of such Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

Weighted Average S&P Recovery Rate Test	The Weighted Average S&P Recovery Rate Test will be satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 52.28%.
Weighted Average Spread Test	The Weighted Average Spread Test will be satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread. See "Security for the Notes—The Collateral Quality Tests."
Mandatory Redemption of the Notes for Failure to Satisfy Coverage Tests	If any of the Coverage Tests are not satisfied on the last day of any Due Period (each, a "**Determination Date**"), funds will be used pursuant to the Priority of Payments to redeem the Notes to the extent necessary for such failing Coverage Tests to be satisfied that would otherwise be used: (i) to purchase additional Collateral Obligations during the Replacement Period; or (ii) to make interest and principal payments on the Notes and to make dividend or redemption payments in respect of the Preference Shares. See "Description of the Securities—Mandatory Redemption of the Notes—Mandatory Redemption of the Notes for Failure to Satisfy Coverage Tests."
Certain Consequences of Failure to Satisfy the Retention Overcollateralization Test	If during the Replacement Period, the Retention Overcollateralization Test is not satisfied on any Determination Date, certain funds, as described under clause (18) under "Description of the Securities—Priority of Payments—Interest Proceeds," representing Interest Proceeds that would otherwise be used to make payments on the Preference Shares and pay certain subordinated expenses of the Issuer, will be deposited instead into the Collection Account as Principal Proceeds to the extent necessary to cause the Retention Overcollateralization Test to be satisfied as of that Determination Date after application of Principal Proceeds as described under clause (1) under "Description of the Securities—Priority of Payments—Principal Proceeds."
Mandatory Redemption of the Notes Upon Rating Confirmation Failure	The Issuer will (i) provide certain information to S&P and Moody's with respect to the Collateral Obligations, as required by the Indenture and described herein and (ii) request S&P to confirm in writing, by the Business Day

	after the 29th day after the Ramp-Up Completion Date, that it has not reduced, suspended or withdrawn the Initial Rating of any Class of Notes and that it has not placed any Class of Notes on credit watch with negative implications. If the Trustee either (i) does not receive evidence of confirmation from S&P, or (ii) receives a written notice from Moody's that it has reduced, suspended or withdrawn the Initial Rating of any Class of Notes or that it has placed any Class of Notes on credit watch with negative implications, in each case, before the Business Day following the 29-day period (each such event, a "**Rating Confirmation Failure**"), all Interest Proceeds remaining after payment of amounts referred to in clauses (1) through (14) of "Description of the Securities—Priority of Payments—Interest Proceeds" will be used to pay principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes sequentially in order of their priority on the next Payment Date and each Payment Date thereafter until the Initial Ratings are confirmed. If necessary, after the foregoing payments are made out of Interest Proceeds, Principal Proceeds in accordance with clause (6) under "Description of the Securities—Priority of Payments—Principal Proceeds" will be used to pay principal of each Class of the Notes sequentially in order of their priority on each Payment Date until the Initial Ratings are confirmed. See "Description of the Securities—Mandatory Redemption of the Notes—Mandatory Redemption of the Notes Upon Rating Confirmation Failure."
Non-Call Period.....	The period from the Closing Date to but not including the Payment Date in November 2010 (the "**Non-Call Period**").
Optional Redemption.....	Upon the occurrence of a Tax Event, or at any time after the Non-Call Period, the applicable Required Redemption Percentage may require the Issuer or Co-Issuers, as applicable, to redeem the Notes, in whole but not in part, from Principal Proceeds and all other funds available for that purpose in the Collection Account, the Payment Account, the Interest Reserve Account, the Closing Date Expense Account, the Revolving Reserve Account and the Delayed Drawdown Reserve Account in accordance with the optional redemption procedures described under "Description of the Securities—Optional Redemption." Notes to be redeemed shall, on the Redemption Date, become payable at their Redemption Price. From and after the Redemption Date the redeemed Notes will cease to bear interest.

The redemption price payable in connection with the Optional Redemption of any Class of Notes will be the sum of:

(i) the outstanding principal amount of the portion of the Note being redeemed; *plus*

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest); *plus*

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note; *plus*

(iv) any unpaid Extension Bonus Payment in respect of the Note.

The redemption price payable in connection with the Optional Redemption of the Preference Shares will be (i) at the direction of a Majority of the Preference Shares, the entire remaining amount of available funds after all prior applications or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case, as described under "Description of the Securities—Optional Redemption."

In addition, any Class of Notes may be redeemed in whole, but not in part, on any Payment Date after the Non-Call Period from Refinancing Proceeds obtained from a loan or the issuance of a replacement class of notes, subject to the written consent of a Majority of the Preference Shares (voting as a single class) and to the extent and subject to the restrictions and conditions described herein and set forth in the Indenture.

Special Redemption..... The Notes will be subject to redemption in whole or in part by the Issuer or the Co-Issuer, as applicable, on Payment Dates during the Replacement Period if the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the use of all or a portion of the funds then in the Collection Account available to purchase additional Collateral Obligations (a "**Special Redemption**"). On the first Payment Date following the Due Period for which such notice is effective (a "**Special Redemption Date**"), the funds in the Collection Account or the Payment Account representing Principal Proceeds which cannot be used to purchase additional Collateral Obligations (the "**Special Redemption Amount**") will be available to be applied in accordance with the Priority of

	Payments. See "Description of the Securities—Special Redemption of the Notes If the Servicer Does Not Identify Replacement Collateral Obligations as Contemplated by the Indenture."
Additional Issuance of Preference Shares	At any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the net proceeds to purchase additional Collateral Obligations if the conditions for such additional issuance described under "Description of the Securities—Additional Issuance of Preference Shares" are met. Any amendment to the Indenture, the Preference Share Documents or any other related documents required to provide for or facilitate such additional issuance of Preference Shares will not require the consent of the Holders of Securities. It is expected that Investors Corp. will finance the purchase of any additional Class I Preference Shares issued by the Issuer by issuing additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such additional Class I Preference Shares purchased by it.
The Offering	The Senior Notes are initially being offered (i) in reliance on Regulation S, to non-U.S. Persons in offshore transactions ("**Offshore Transactions**") as such term is defined in Regulation S and (ii) to purchasers that are U.S. persons ("**U.S. Persons**") as such term is defined in Regulation S, that are (I) Qualified Institutional Buyers (as defined in Rule 144A) (each, a "**Qualified Institutional Buyer**") and (II) Qualified Purchasers. Subsequent transferees of the Senior Notes must be (i) non-U.S. Persons that purchase the Senior Notes in Offshore Transactions or (ii)(a) Qualified Institutional Buyers and (b) Qualified Purchasers. The Class D Notes and the Preference Shares are initially offered and may be subsequently transferred only to purchasers that are (i) Qualified Institutional Buyers and (ii) Qualified Purchasers. See "Plan of Distribution" and "Transfer Restrictions."
Form, Registration and Transfer of the Senior Notes	Except as provided herein, the Senior Notes sold in reliance on the exemption from registration provided by Rule 144A and Qualified Purchasers will be represented by one or more permanent global notes in definitive, fully registered form without interest coupons (each, a "**Rule 144A Global Note**") deposited with the Trustee as custodian for, and registered in the name of, a nominee of the Depository. The Depository will credit the account of each of its participants with the principal amount of the Senior Notes being purchased by or through the participant. Beneficial

interests in a Rule 144A Global Note will be shown on, and transfers thereof will be effected only through, records maintained by the Depository and its direct and indirect participants. See "Description of the Securities—Form, Denomination, Registration and Transfer of the Senior Notes."

Except as provided herein, the Senior Notes sold in Offshore Transactions to non-U.S. Persons in reliance on Regulation S will be represented by one or more permanent global notes in definitive, fully registered form without interest coupons (each, a "**Regulation S Global Note,**" and, together with the Rule 144A Global Notes, the "**Global Notes**") which will be deposited with the Trustee as custodian for, and registered in the name of, a nominee of the Depository for the respective accounts of the beneficial owners at Euroclear or Clearstream. Beneficial interests in a Regulation S Global Note may be held only through Euroclear or Clearstream at any time.

Except in the limited circumstances described herein, certificated Senior Notes will not be issued in exchange for beneficial interests in Global Notes. See "Settlement and Clearing."

Transfers of interests in the Senior Notes are subject to certain restrictions and must be made in accordance with the procedures and requirements set forth in the Indenture. See "Description of the Securities—Form, Denomination, Registration and Transfer of the Senior Notes" and "Transfer Restrictions." Each purchaser of Senior Notes in making its purchase will be required to make, or will be deemed to have made, as the case may be, certain acknowledgments, representations and agreements. See "Transfer Restrictions."

Form, Registration and Transfers of the Class D Notes ..... The Class D Notes will be issued in the form of one or more certificated Class D Notes in definitive, fully registered form, registered in the name of the owner thereof (the "**Certificated Class D Notes**").

Transfers of the Class D Notes are subject to certain restrictions and must be made in accordance with the procedures and requirements set forth in the Indenture. See "Description of the Securities—Form, Denomination, Registration and Transfer of the Class D Notes" and "Transfer Restrictions." Each purchaser of Class D Notes in making its purchase will be required to make certain acknowledgments, representations and agreements, and will be required to deliver various tax forms (including applicable IRS Form W-8 or IRS Form W-9) and tax certifications. See "Transfer Restrictions" for more details.

Form, Registration and Transfers of the Preference Shares	The Preference Shares will be issued in the form of one or more certificated Preference Shares in definitive, fully registered form, registered in the name of the owner thereof (the "**Certificated Preference Shares**"). Transfers of the Preference Shares are subject to certain restrictions and must be made in accordance with the procedures and requirements set forth in the Preference Share Documents. See "Description of the Securities—Form, Denomination, Registration and Transfer of the Preference Shares" and "Transfer Restrictions." Each purchaser of Preference Shares in making its purchase will be required to make certain acknowledgments, representations and agreements, and will be required to deliver various tax forms (including applicable IRS Form W-8 or IRS Form W-9) and tax certifications. See "Transfer Restrictions" for more details.
Ratings	It is a condition of the issuance of the Securities that each Class of Notes are rated at least as indicated in the table under "—Principal Terms of the Securities" on the Closing Date. No rating of the Preference Shares has been sought or obtained in connection with the issuance thereof. Each of the above ratings assumes that no Maturity Extension occurs after the Closing Date. A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the assigning Rating Agency. See "Risk Factors—Relating to the Securities—Future Ratings of the Notes Are Not Assured and Limited in Scope; the Preference Shares are Not Rated."
Listing	Application is expected to be made to list each Class of the Senior Notes on the regulated market of the ISE. There can be no assurance that such admission will be granted or maintained. See "Listing and General Information." The issuance and settlement of the Senior Notes on the Closing Date will not be conditioned on the listing of the Notes on the ISE. Furthermore, the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer. In addition, there is currently no market for the Senior Notes and there can be no assurance that a market will develop.

Governing Law	The terms and conditions of the Preference Shares (as set forth in the Issuer Charter and the Resolutions) will be governed by, and construed in accordance with, the law of the Cayman Islands. The Notes, Indenture, any supplemental indenture, the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement and any Hedge Agreements will be governed by, and construed in accordance with, the law of the State of New York.
Tax Status.....	See "Material Income Tax Considerations."
Considerations for Benefit Plans.....	Except as described herein, the Class D Notes and the Preference Shares may not be purchased or held by, or transferred to, any Benefit Plan Investor. See "Considerations for Benefit Plans" and "Transfer Restrictions."

RISK FACTORS

An investment in the Securities involves certain risks. Prospective investors should carefully consider the following factors, in addition to the matters set forth elsewhere in this Offering Memorandum, prior to investing in any Class of Securities.

Investor Suitability

An investment in the Securities will not be appropriate or suitable for all investors. Structured investment products, like the Securities, are complex instruments, and typically involve a high degree of risk and are intended for sale only to sophisticated investors who are capable of understanding and assuming the risks involved. Any investor purchasing Securities should conduct its own investigation and analysis of an investment in the Securities and consult with its own professional advisors as to the risks involved in making such investment.

General; Priorities of Securities

The Issuer intends to acquire securities and other financial assets with certain risk characteristics as provided in the Indenture and the Servicing Agreement. See "Security for the Notes." There can be no assurance that the Issuer will be successful in achieving its objectives to ensure that investors receive their initial investments under the Securities and that they receive a return (and avoid any losses, including total losses) on their investment in the Securities. Prospective investors are therefore advised to review this entire Offering Memorandum carefully and should consider, among other things, the following risk factors (along with, among other things, the inherent risks of investment activities) before deciding whether to invest in the Securities.

Except as is otherwise stated below, the risk factors are generally applicable to all the Securities, although the degree of risk associated with each Class of Securities may vary. In particular, the priorities of payment of the Notes are generally in the order of their alphabetic designation from the Class A-1a Notes (the highest priority) to the Class D Notes (the lowest priority), the priorities of payment of the Notes are higher than priorities of payment of the Preference Shares except with respect to the amount, if any, required for payment of Class II Preference Share Special Payments.

Relating to the Securities

The Securities Will Have Limited Liquidity

There is currently no market for the Securities. There can be no assurance that a secondary market for any Class of Securities will develop, or if a secondary market does develop, that it will provide the Holders of the applicable Class of Securities with liquidity of investment or that it will continue for the life of such Class of Securities. In addition, each Class of Securities is subject to certain transfer restrictions and can only be transferred to certain transferees as described under "Transfer Restrictions." The restrictions on the transfer of the Securities may further limit their liquidity. The Securities are designed for long-term investors and should not be considered a vehicle for short-term trading purposes. Consequently, an investor in the Securities must be prepared to bear the risk of holding such Securities until their Stated Maturity or, in the case of the Preference Shares, the Scheduled Preference Shares Redemption Date. To the extent that any secondary market exists for the Securities in the future, the price (if any) at which Securities may be sold could be at a discount, which in some cases may be substantial, from the principal amount of the Securities. To the extent any market exists for the Securities in the future, significant delays could occur in the actual sale of Securities. In addition, the Securities will not be registered under the Securities Act or any state securities laws, and the Co-Issuers have no plans, and are under no obligation, to register the Securities under the Securities Act. Application is expected to be made to admit each Class of the Senior Notes to the Official List of the ISE. There can be no assurance that any such admission will be granted or maintained.

The Subordination of the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Note and the Preference Shares Will Affect Their Right to Payment in Relation to the More Senior Securities

The Class A-1b Notes are subordinated in right of payment of interest and principal to the Class A-1a Notes in the manner and to the extent described in this Offering Memorandum. Payments of interest on the Class A-1b Notes will not be made until due and unpaid interest on the Class A-1a Notes and certain other amounts (including certain servicing fees payable to the Servicer, certain hedging termination payments and certain administrative fees) have been paid. No payments of principal of the Class A-1b Notes will be made until principal of and due and unpaid interest on the Class A-1a Notes and certain other amounts have been paid in full.

The Class A-2 Notes are subordinated in right of payment of interest and principal to the Class A-1a Notes and the Class A-1b Notes in the manner and to the extent described in this Offering Memorandum. Payments of interest on the Class A-2 Notes will not be made until due and unpaid interest on the Class A-1a and the Class A-1b Notes and certain other amounts (including certain servicing fees payable to the Servicer, certain hedging termination payments and certain administrative fees) have been paid. No payments of principal of the Class A-2 Notes will be made until principal of and due and unpaid interest on the Class A-1a Notes and the Class A-1b Notes and certain other amounts have been paid in full.

The Class B Notes are subordinated in right of payment of interest and principal to the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes in the manner and to the extent described in this Offering Memorandum. Payments of interest on the Class B Notes will not be made until due and unpaid interest on the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes and certain other amounts (including certain servicing fees payable to the Servicer, certain hedging termination payments and certain administrative fees) have been paid. No payments of principal of the Class B Notes will be made until principal of and due and unpaid interest on the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes and certain other amounts have been paid in full, except in connection with the payment of any Class B Deferred Interest.

The Class C Notes are subordinated in right of payment of interest and principal to the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes and the Class B Notes in the manner and to the extent described in this Offering Memorandum. Payments of interest on the Class C Notes will not be made until due and unpaid interest on the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes and the Class B Notes and certain other amounts (including certain servicing fees payable to the Servicer, certain hedging termination payments and certain administrative fees) have been paid. No payments of principal of the Class C Notes will be made until principal of and due and unpaid interest on the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes and the Class B Notes and certain other amounts have been paid in full, except in connection with the payment of any Class C Deferred Interest.

The Class D Notes are subordinated in right of payment of interest and principal to the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes in the manner and to the extent described in this Offering Memorandum. Payments of interest on the Class D Notes will not be made until due and unpaid interest on the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and certain other amounts (including certain servicing fees payable to the Servicer, certain hedging termination payments and certain administrative fees) have been paid. No payments of principal of the Class D Notes will be made until principal of and due and unpaid interest on the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and certain other amounts have been paid in full, except in connection with the payment of any Class D Deferred Interest and the use of Interest Proceeds to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests .

No payments will be made out of Interest Proceeds on the Preference Shares on any Payment Date (other than, as and to the extent described herein, the Class II Preference Share Special Payments),

until due and unpaid interest on the Notes (including any Deferred Interest) and certain amounts (including certain amounts due under the Hedge Agreements, certain servicing fees payable to the Servicer, certain hedging termination payments and certain administrative fees) have been paid on the Payment Date in accordance with the Priority of Payments. No payments will be made out of Principal Proceeds on the Preference Shares (other than, as and to the extent described herein, the Class II Preference Share Special Payments) until principal of each Class of Notes and certain other amounts payable out of Principal Proceeds on each Payment Date have been paid in full. In addition, the Preference Shares will not be redeemed until each Class of Notes and certain other amounts have been paid in full.

In addition, the Co-Issuers will have only nominal equity capitalization. Consequently, to the extent that any losses are suffered by any of the Holders of any Securities, the losses will be borne first by the Holders of the Preference Shares, and then by the Holders of each Class of Notes, serially in inverse order of their alphabetic designations.

See "Description of the Securities."

Interest Will Be Deferred on Deferred Interest Notes if There Are Insufficient Funds under the Priority of Payments for Payment of Interest

So long as any Class A-1a Notes, Class A-1b Notes or Class A-2 Notes are Outstanding, any interest due and accrued on the Class B Notes that remains unpaid on any Payment Date because insufficient funds are available to pay it in accordance with the Priority of Payments will be added to the Aggregate Outstanding Amount of the Class B Notes as Class B Deferred Interest and failure to pay that interest on the Payment Date when it originally became due will not be an Event of Default. Class B Deferred Interest will then be payable on subsequent Payment Dates in accordance with the Priority of Payments, pursuant to which it will remain subordinated to the payment of interest on the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes in the application of Interest Proceeds.

So long as any Class A-1a Notes, Class A-1b Notes, Class A-2 Notes or Class B Notes are Outstanding, any interest due and accrued on the Class C Notes that remains unpaid on any Payment Date because insufficient funds are available to pay it in accordance with the Priority of Payments will be added to the Aggregate Outstanding Amount of the Class C Notes as Class C Deferred Interest and failure to pay that interest on the Payment Date when it originally became due will not be an Event of Default. Class C Deferred Interest will then be payable on subsequent Payment Dates in accordance with the Priority of Payments, pursuant to which it will remain subordinated to the payment of interest on the Class A-1 Notes, the Class A-2 Notes and the Class B Notes in the application of Interest Proceeds.

So long as any Class A-1a Notes, Class A-1b Notes, Class A-2 Notes, Class B Notes or Class C Notes are Outstanding, any interest due and accrued on the Class D Notes that remains unpaid on any Payment Date because insufficient funds are available to pay it in accordance with the Priority of Payments will be added to the Aggregate Outstanding Amount of the Class D Notes as Class D Deferred Interest and failure to pay that interest on the Payment Date when it originally became due will not be an Event of Default. Class D Deferred Interest will then be payable on subsequent Payment Dates in accordance with the Priority of Payments, pursuant to which it will remain subordinated to the payment of interest on the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes in the application of Interest Proceeds.

Interest Proceeds May Be Retained in Priority to any Payments to Holders of Preference Shares

During the Replacement Period, if the Retention Overcollateralization Test is not met on any Determination Date, a portion of the Interest Proceeds that might otherwise have been paid to the Holders of the Preference Shares on the related Payment Date will instead be deposited into the Collection Account as Principal Proceeds, as described under clause (18) under "Description of the Securities—Priority of Payments—Interest Proceeds."

The Controlling Class Will Control Many Rights under the Indenture; However, Some Rights of the Controlling Class to Sell the Collateral in Connection with an Event of Default Are Limited

Under the Indenture, many rights of the Holders of the Notes will be controlled by a Majority of the Controlling Class. Remedies pursued by the Holders of the Controlling Class upon an Event of Default could be adverse to the interests of the Holders of Securities subordinated to the Controlling Class. After any realization on the Collateral, proceeds will be allocated in accordance with the Priority of Payments pursuant to which the Notes and certain other amounts owing by the Co-Issuers will be paid in full before any allocation to the Preference Shares (except, as and to the extent described herein, the Class II Preference Share Special Payments), and each Class of Notes (along with certain other amounts owing by the Co-Issuers) will be paid serially in alphabetic order until it is paid in full before any allocation is made to the next Class of Notes.

However, the ability of the Controlling Class to direct the sale and liquidation of the Collateral is subject to certain limitations. As described under "Description of the Securities—The Indenture—Events of Default," if an Event of Default occurs and is continuing, the Trustee must retain the Collateral intact and collect all payments in respect of the Collateral and continue making payments in accordance with the Priority of Payments and in accordance with the Indenture unless either (A) the Trustee, in consultation with the Servicer, determines that the anticipated net proceeds of a sale or liquidation of the Collateral would be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) under "Description of the Securities—Priority of Payments—Interest Proceeds," and a Majority of the Controlling Class agrees with that determination or (B) the Holders of a Super Majority of each of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes direct, subject to the provisions of the Indenture, the sale and liquidation of the Collateral.

Net Proceeds Less Than Aggregate Amount of the Securities

It is anticipated that the proceeds received by the Issuer on the Closing Date from the issuance of the Securities, net of certain fees and expenses, will be less than the aggregate amount of the Securities. Consequently, it is anticipated that on the Closing Date the Collateral would be insufficient to repay the purchase price of the Securities in the event of an Event of Default under the Indenture on that date.

In addition, during the lifetime of the transaction, except as described herein, excess interest will be distributed to the holders of the Preference Shares, rather than being invested in additional Collateral Obligations. Therefore, it is highly likely that after payments of the Notes and the other amounts payable prior to the Preference Shares under the Priority of Payments, Principal Proceeds will be insufficient to return the initial investment made in the Preference Shares. Therefore, over the passage of time, holders of Preference Shares will have to rely on excess interest for their ultimate return.

The Issuer is Highly Leveraged, which Increases Risks to Investors

The Issuer will be substantially leveraged. The use of leverage in acquiring assets is a speculative technique which increases the risk to holders of the Securities, particularly holders of the subordinated Securities. In certain scenarios, the Notes may not be paid in full and the Preference Shares may be subject to up to 100% loss of invested capital. The leverage provided to the Issuer by the issuance of the Securities will result in interest expense and other costs incurred in connection with the borrowings that may not be covered by the net interest income, dividends and other cash flow in respect of the Collateral Obligations. The use of leverage generally magnifies the Issuer's risk of loss, particularly for the more subordinate Classes of Notes and the Preference Shares. The Preference Shares represent the most junior Securities in a highly leveraged capital structure. As a result, any deterioration in performance of the Collateral, including defaults and losses, a reduction of realized yield or other factors, will be borne first

by holders of the Preference Shares. In addition, the use of leverage can magnify the effects on the Preference Shares of a deterioration in the performance of the Collateral. In certain circumstances, such as in connection with the exercise of remedies following an Event of Default, the Controlling Class may require the Issuer to dispose of some or all of the Collateral Obligations under unfavorable market conditions, thus causing the Issuer to recognize a loss that might not otherwise have occurred. In certain circumstances, the Controlling Class are entitled to direct the sales of Collateral Obligations and may be expected to do so in their own interest, rather than in the interests of the more subordinate Classes of Securities.

Each of the Co-Issuers Is Recently Formed, Has No Significant Operating History, Has No Material Assets Other than the Collateral and Is Limited in Its Permitted Activities

Each of the Issuer and the Co-Issuer is a recently formed entity and has no significant operating history, other than, with respect to the Issuer, in connection with the acquisition of the Collateral Obligations during the period up to the Ramp-Up Completion Date. Accordingly, neither the Issuer nor the Co-Issuer has a performance history for prospective investors to consider. The performance of other CDO vehicles serviced or advised by the Servicer should not be relied upon as an indication or prediction of the performance of the Issuer. Such other CDO vehicles may have significantly different characteristics, including structures, composition of the collateral pool, objectives, management personnel and terms when compared to the Issuer and the Co-Issuer. See "Risk Factors—Relating to the Securities—Performance History of the Servicer May Not Be Indicative of Future Results."

Neither the Issuer nor the Co-Issuer will have any material assets other than, with respect to the Issuer, the Collateral. The Indenture provides that the Issuer is not permitted to engage in any business activity other than the issuance of the Notes, the Preference Shares and the Issuer Ordinary Shares, the acquisition and disposition of Collateral Obligations, certain activities conducted in connection with the payment of amounts in respect of the Securities and the servicing of the Collateral, and other activities incidental or related to the foregoing and that the Co-Issuer is not permitted to engage in any business activity other than the co-issuance and sale of the Senior Notes, the issuance of its share capital, and other activities incidental or related to the foregoing. Income derived from the Collateral will be the Issuer's principal source of cash.

The Securities Are Not Registered Under the Securities Act and the Issuer Is Not Registered under the Investment Company Act

The Issuer has not registered the Securities under the Securities Act and the Issuer is not registered under the Investment Company Act, in each case in reliance upon applicable exemptions to registration under the Securities Act and the Investment Company Act. The Issuer does not expect to register the Securities under the Securities Act nor become registered under the Investment Company Act at any time in the foreseeable future. As such, investors should be aware that the Issuer and the Securities are not subject to many of the regulatory protections and oversight applicable to securities that are registered under the Securities Act or applicable to registered investment companies.

The Notes Are Non-Recourse Debt Obligations; Investors Must Rely on Available Collections from the Collateral and Will Have No Other Source for Payment

The Class A Notes, the Class B Notes and the Class C Notes are non-recourse debt obligations of the Co-Issuers and the Class D Notes are non-recourse debt obligations of the Issuer. The Securities are payable solely from the Collateral pledged by the Issuer to secure the Notes. None of the security holders, members, officers, directors, partners, or incorporators of the Issuer, the Co-Issuer, the Servicer, the Initial Purchaser, the Trustee, the Preference Shares Paying Agent, the Administrator, the Share Registrar, the Share Trustee, any of their respective affiliates, or any other person will be obligated to make payments on the Notes. The Issuer's ability to make interest payments and principal repayments on the Notes will be constrained by the terms of the Indenture. Holders of the Notes must rely solely on collections received on the Collateral pledged to secure the Notes and for the payment of interest and principal on the Notes, and there can be no assurance that those collections will be sufficient to pay all

amounts due on the Notes. If distributions on the Collateral are insufficient to make payments on the Notes, no other assets will be available for payment of the deficiency and, following liquidation of all of the Collateral, the Co-Issuers will not have any obligation to pay any deficiency, which shall be extinguished and shall not revive.

The Preference Shares are not Secured Obligations; Investors Must Rely on Available Collections from the Collateral and Will Have No Other Source for Payment

The Preference Shares will be part of the issued share capital of the Issuer. The Preference Shares are equity in the Issuer and are not secured by the Collateral Obligations or other Collateral securing the Notes. As such, the Holders of Preference Shares will rank behind all creditors, whether secured or unsecured and known or unknown, of the Issuer, including, without limitation, the Holders of the Notes and any Hedge Counterparties (other than, to the extent described under the "Description of the Securities—Priority of Payments," the Holders of the Class II Preference Shares with respect to the Class II Preference Share Special Payments). Except with respect to the obligations of the Issuer to pay the amounts described under the "Description of the Securities—Priority of Payments—Interest Proceeds" and "—Principal Proceeds," the Issuer does not, however, expect to have any creditors though there can be no assurance that this will be the case. In addition, the Issuer is also subject to limitations with respect to the business that it may undertake. See "The Co-Issuers—Business." Payments in respect of the Preference Shares are subject to certain requirements imposed by Cayman Islands law. Any amounts paid by the Preference Shares Paying Agent as dividends on the Preference Shares will be payable only if the Issuer has sufficient distributable profits and/or balance in the Issuer's share premium account. In addition, dividends and the final payment upon redemption of the Preference Shares will be payable only to the extent that the Issuer is and will remain solvent after such dividends or redemption payment is paid. Under Cayman Islands law, a company is generally deemed to be solvent if it is able to pay its debts as they come due.

The Issuer's obligation to pay dividends or to make other distributions to the Holders of the Preference Shares will therefore not be a secured obligation of the Issuer and such Holders will not be entitled to the benefits of the Indenture, nor will the Trustee have any obligation to act on behalf of the Holders of Preference Shares. With the exception of the Class II Preference Share Special Payments, Holders of the Preference Shares will only be entitled to receive amounts available for payment of dividends or other distributions after payment of all amounts payable on each Class of Notes and certain other amounts in accordance with the Priority of Payments and only to the extent of distributable profits of the Issuer and/or any balance in the Issuer's share premium account and (in each case) only to the extent that the Issuer is and will remain solvent following such distributions.

To the extent the requirements under Cayman Islands law described in the preceding paragraphs are not met, amounts otherwise payable to the Holders of the Preference Shares (with the exception of the Class II Preference Share Special Payments) will be retained in the Preference Shares Distribution Account until, in the case of dividends, the next succeeding Payment Date on which the Issuer notifies the Preference Shares Paying Agent such requirements are met and, in the case of any payment on redemption of the Preference Shares, the next succeeding Business Day on which the Issuer notifies the Preference Shares Paying Agent such requirements are met. Amounts on deposit in the Preference Shares Distribution Account will not be available to pay amounts due to the Holders of the Notes, the Trustee, the Collateral Administrator, the Servicer, any Hedge Counterparty or any other creditor of the Issuer whose claim is limited in recourse to the Collateral. However, amounts on deposit in the Preference Shares Distribution Account may be subject to the claims of creditors of the Issuer that have not contractually limited their recourse to the Collateral. The Indenture and the Preference Share Documents will limit the Issuer's activities to the issuance and sale of the Securities, the acquisition and disposition of the Collateral Obligations and Eligible Investments and the other activities related to the issuance and sale of the Securities described under the "The Co-Issuers." The Issuer therefore does not expect to have any significant full recourse liabilities that would be payable out of amounts on deposit in the Preference Shares Distribution Account.

The Issuer May Distribute Eligible Equity Securities to the Holders of the Preference Shares in Lieu of Cash

The Servicer, on behalf of the Issuer, may direct the Trustee to distribute Eligible Equity Securities, in lieu of a distribution of Interest Proceeds, in whole or in part, to the Holders of the Preference Shares who consent to such distribution with respect to any applicable Payment Date to the extent that the Market Value of such Eligible Equity Securities, determined by the Servicer as of the relevant Market Value Determination Date, is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be distributed to such Consenting Holders of the Preference Shares on the relevant Payment Date. The Market Value of any Eligible Equity Securities is subject to fluctuations and may increase or decrease following any distribution of such Eligible Equity Securities to the Consenting Holders of the Preference Shares, which, in certain circumstances, may result in the Consenting Holders of the Preference Shares receiving overall a higher or lower internal rate of return compared with the internal rate of return received by the Holders of the Preference Shares who have not accepted any distribution of the Eligible Equity Securities.

The Issuer May Not Be Able to Apply Available Funds to Acquire Appropriate Collateral

The amount of Collateral Obligations purchased on the Closing Date, the amount and timing of the purchase of additional Collateral Obligations before the Ramp-Up Completion Date, and the subsequent application of Principal Proceeds, will affect the cash flows available to make payments on, and the return to the Holders of, the Securities. Reduced liquidity and relatively lower volumes of trading in certain Collateral Obligations, in addition to restrictions on acquisition represented by the Eligibility Criteria, could result in periods during which the Issuer is not able to fully utilize its available cash to acquire Collateral Obligations, and it is unlikely that the Issuer's available cash will be fully applied in Collateral Obligations at any time. The longer the period before application of cash or cash-equivalents to acquire Collateral Obligations and the larger the amount of such cash or cash equivalents, the greater the adverse impact may be on aggregate interest collected and distributed by the Issuer, thereby resulting in lower yield than could have been obtained if the net proceeds associated with the offering of the Securities and all Principal Proceeds were immediately and fully applied. The associated risk will be borne first by the Holders of the Preference Shares and second by the Holders of the Notes (beginning with the most subordinated Class of Notes). Although the Servicer may mitigate this risk to some degree during the Replacement Period by declaring a Special Redemption, the Servicer is not required to do so, and any Special Redemption may result in a lower yield on the Issuer's assets than could have been obtained if the net proceeds from the offering of the Securities and all Principal Proceeds were immediately and fully applied and no Special Redemption had taken place.

Generally, Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations, and Sale Proceeds received on the Collateral Obligations) will be applied during the Replacement Period (and, Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, may be applied on any date after the Replacement Period, at the discretion of the Servicer) to purchase replacement Collateral Obligations or temporarily held in Eligible Investments pending purchase of replacement Collateral Obligations in accordance with the Priority of Payments. The earnings with respect to replacement Collateral Obligations will depend, among other factors, on interest rates available in the marketplace at the time and on the availability of Collateral Obligations acceptable to the Servicer that satisfy the criteria under "Security for the Notes—Eligibility Criteria." The need to satisfy the criteria and identify acceptable Collateral Obligations may require the purchase of replacement Collateral Obligations having lower yields than those initially acquired or require that Principal Proceeds be held temporarily in cash or Eligible Investments, which will reduce the yield earned by the Issuer. Further, issuers of Collateral Obligations may be more likely to exercise any rights they may have to redeem them when interest rates or spreads are declining. Any decrease in the yield on the Collateral Obligations will reduce the amounts available to make payments of principal and interest on the Notes and payments on the Preference Shares.

The Issuer expects that, as of the Closing Date, it will have purchased (or entered into commitments to purchase) approximately U.S.$1,400,000,000 in Aggregate Principal Balance of the Collateral Obligations to be included in the anticipated portfolio as of the Ramp-Up Completion Date. As such, on the Closing Date, the Issuer is expected to have unapplied proceeds. This will likely reduce the amount of Interest Proceeds that would otherwise be available to distribute to the holders of the Preference Shares, particularly on the first Distribution Date. If the Issuer issues additional Preference Shares after the Closing Date, the Issuer would likely have unapplied proceeds of the offering, pending the purchase of additional Collateral Obligations. The extent to which cash balances remain unapplied will be subject to a variety of factors, including future market conditions and is difficult to predict.

Valuation Information

Neither the Issuer nor any other party will be required to provide periodic pricing or valuation information to investors.

Changes in Tax Law Could Result in the Imposition of Withholding Taxes with Respect to Payments on the Securities, and the Issuer Will Not Gross-Up Payments to Holders

Although no withholding tax is currently imposed by the United States or the Cayman Islands on payments on the Securities, there can be no assurance that, as a result of any change in any applicable law, treaty, rule, regulation, or interpretation thereof, the payments with respect to the Securities would not in the future become subject to withholding taxes. If any withholding tax is imposed on payments on any Securities, the Issuer will not "gross up" payments to their Holders.

The Securities Are Subject to Substantial Transfer Restrictions

The Securities have not been registered under the Securities Act, under any U.S. state securities or "Blue Sky" laws, or under the securities laws of any other jurisdiction and are being issued and sold in reliance upon exemptions from registration provided by those laws. No Securities may be sold or transferred unless: the sale or transfer is exempt from the registration requirements of the Securities Act (for example, in reliance on exemptions provided by Rule 144A or Regulation S) and applicable state securities laws; and the sale or transfer does not cause either of the Co-Issuers or the pool of Collateral to become subject to the registration requirements of the Investment Company Act. See "Transfer Restrictions" and "Considerations for Benefit Plans."

Non-Compliance with Restrictions on Ownership of the Securities and Acquisition or Disposition of Collateral Obligations under the Investment Company Act Could Adversely Affect the Issuer

Neither of the Co-Issuers has registered with the United States Securities and Exchange Commission (the "**SEC**") as an investment company pursuant to the Investment Company Act in reliance on an exclusion from the definition of "investment company" under Section 3(c)(7) for companies organized under the laws of a jurisdiction other than the United States or any of its states whose investors residing in the United States are solely "qualified purchasers" (within the meaning given to such term in the Investment Company Act and related SEC regulations).

The Issuer and the Co-Issuer may, at any time following the Closing Date, rely on exclusion from the definition of "investment company" under Rule 3a-7 in lieu of the exclusion under Section 3(c)(7) upon (a) receipt of an opinion of counsel from a nationally recognized law firm providing that neither the Issuer nor the Co-Issuer is required to register as an "investment company" under the Investment Company Act in reliance on such exclusion under Rule 3a-7 and (b) notice to the Holders of the Securities in accordance with the Indenture and the Preference Share Documents. In connection with this alternate reliance, the Indenture and the Preference Share Documents may be amended without the consent of any Holders to prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7). See "—The Servicer May

Cause the Issuer to Amend the Indenture to Assure Compliance with Rule 3a-7 Without the Consent of the Holders of the Securities in a Manner that May Adversely Affect the Holders of Securities" below.

No opinion or no-action position with respect to the registration of either of the Co-Issuers or the pool of Collateral under the Investment Company Act has been requested of, or received from, the SEC. If the SEC or a court of competent jurisdiction were to find that the Issuer or the Co-Issuer is required, but in violation of the Investment Company Act had failed, to register as an investment company, possible consequences include the following: (i) the SEC could apply to a district court to enjoin the violation; (ii) investors in the Issuer or the Co-Issuer could sue the Issuer or the Co-Issuer, as the case may be, and recover any damages caused by the violation; and (iii) any contract to which the Issuer or the Co-Issuer, as the case may be, is party whose performance involves a violation of the Investment Company Act would be unenforceable by any party to the contract unless a court were to find that under the circumstances enforcement would produce a more equitable result than non-enforcement and would not be inconsistent with the purposes of the Investment Company Act.

In addition, the Issuer's being required to register as an investment company would result in an Event of Default. See "Description of the Securities—The Indenture—Events of Default." Should the Issuer or the Co-Issuer be subjected to any or all of the foregoing, the Issuer or the Co-Issuer, as the case may be, would be materially and adversely affected.

Restrictions on Acquisition or Disposition of Collateral Obligations May Reduce the Earnings of the Holders of the Securities

Rule 3a-7 imposes limitations on the ability of the Issuer to purchase or sell assets, including prohibiting the Issuer from purchasing or selling assets for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. The Indenture will restrict the Issuer from purchasing and selling assets consistent with such requirements of Rule 3a-7. Under these restrictions the Issuer may be required to hold a Collateral Obligation or precluded from acquiring a Collateral Obligation when it would have sold such Collateral Obligation or acquired such Collateral Obligation, as applicable, had it based such determination on the market value changes in the value of such Collateral Obligations. As a result, greater losses on the Collateral may be sustained and there may be insufficient proceeds on any Payment Date to pay in full any expenses of the Issuer or any amounts payable to the Trustee or the Administrator (all of which amounts are payable prior to payments in respect of the Notes) and the payments due on the Securities. See "Security for the Notes—Sale of Collateral Obligations; Acquisition of Collateral Obligations."

The Servicer May Cause the Issuer to Amend the Indenture to Assure Compliance with Rule 3a-7 Without the Consent of the Holders of the Securities in a Manner That May Adversely Affect the Holders of Securities

On the Closing Date, HFP and/or one or more of its subsidiaries will purchase all of the Class II Preference Shares. The Servicer will act as the manager for HFP. HFP and Highland Financial Trust ("**HFT**"), the owner of substantially all of the limited partnership interests of HFP, may need to rely on an exception from the definition of "investment company" and the requirement to register under the Investment Company Act that in turn depends upon the Issuer not being an investment company required to register under the Investment Company Act by reason of Rule 3a-7 thereunder in lieu of the Issuer's reliance on Section 3(c)(7). It is expected that, in connection with certain capital raising activities of Highland Financial Trust, the SEC may consider the applicability of Rule 3a-7 to the Issuer. If it were determined that the Issuer cannot rely on Rule 3a-7, the Servicer may cause the Issuer to amend the Indenture without the consent of the Holders of the Notes and without the consent of the Holders of the Preference Shares to enable the Issuer to rely on Rule 3a-7 or to better assure compliance therewith, which could require additional limitations and prohibitions on the circumstances under which the Issuer may sell assets, on the type of assets that the Issuer may acquire out of the proceeds of assets that mature, are refinanced or otherwise sold, on the period during which such transactions may occur, on the level of transactions that may occur or on other provisions of the Indenture and could adversely affect the earnings of the Issuer and its ability to make payments on the Notes and distributions to the Preference Shares. As

a condition to the effectiveness of any such amendment to the Indenture, the Issuer, the Trustee and the Servicer will receive (i) a Rating Confirmation with respect to such amendment and (ii) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such amendment and assuming compliance with the Indenture as so amended, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on such exemption under Rule 3a-7. Such nationally recognized law firm may also be acting as counsel to the Servicer, certain Holders of Notes and/or Preference Shares. The interests of any such parties may not align with the interest of other Holders of Notes and/or Preference Shares. See "Description of the Securities—The Indenture—Supplemental Indenture."

The Weighted Average Lives of the Notes May Vary

The Stated Maturity of the Notes is November 1, 2021 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date. The weighted average life of each Class of Notes is expected to be shorter than the number of years until their Stated Maturity. See "Description of the Securities." The weighted average life of a Class of Notes will be affected by the amount and timing of payments of principal of the Notes and the amount and timing of payments received on the Collateral Obligations. The amount and timing of payments of principal on the Notes will be affected by, among other things, any Optional Redemption of the Notes, any Refinancing of the Notes, a failure of any Coverage Test, a Rating Confirmation Failure, any failure by the Servicer to apply the proceeds of the offering of the Securities in Collateral Obligations, a redemption of the Securities made in connection with a Tax Event, any Special Redemption of one or more Classes of Notes, and an Event of Default by the Issuer in the payment of the Notes and an acceleration of the principal of the Notes in connection with an Event of Default. The occurrence of any of the foregoing unscheduled principal repayments of the Notes is, in turn, determined by the amount and timing of payments on the Collateral, which will be dependent on, among other things, the financial condition of the obligors on or issuers of the Collateral and the characteristics of the Collateral Obligations, including the existence and frequency of exercise of any prepayment, optional redemption, or sinking fund features, the prevailing level of interest rates, the redemption price, the actual default rate and the actual level of recoveries on any Defaulted Collateral Obligations, the frequency of tender or exchange offers for the Collateral Obligations and any sales of Collateral Obligations, dividends or other distributions received on any obligations that at the time of acquisition, conversion, or exchange do not satisfy the requirements of a Collateral Obligation, as well as the risks unique to Collateral Obligations of foreign issuers. A shortening of the average life of the Notes may adversely affect returns on the Preference Shares. See "Security for the Notes."

The Collateral Obligations actually acquired by the Issuer may be different from those expected to be purchased by the Servicer, on behalf of the Issuer, due to market conditions, availability of such Collateral Obligations and other factors. The actual portfolio of Collateral Obligations owned by the Issuer will change from time to time as a result of sales and purchases of Collateral Obligations.

A Maturity Extension May Result in a Longer or Shorter Holding Period Than Expected

Under the Indenture, the Issuer, if directed by the Servicer, shall be entitled, on each Extension Effective Date, to extend the Replacement Period (a maximum of four times) to the applicable Extended Replacement Period End Date if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date and (ii) the Extension Conditions are satisfied and the Issuer has given written notice of its election to extend the Replacement Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. Under the Indenture and the Preference Share Documents, if the Replacement Period is so extended, the Stated Maturity of the Notes (or, in the case of the Preference Shares, the Scheduled Preference Shares Redemption Date) will be equally extended and the Weighted Average Life Test shall be automatically extended without the requirement for any approval or consent of any Holders of Securities. Holders of Securities will not be able to prevent or prohibit the extension of the Stated Maturity of the Notes (or, in the case of the Preference Shares, the Scheduled Preference Shares Redemption Date) so long as the Extension Conditions are satisfied, which include the ability of

Holders of Securities to sell their Securities at the designated purchase price to a designated purchaser under the Indenture. However, in the case of the Preference Shares, the Indenture provides that Holders of Preference Shares that have received a Preference Share Internal Rate of Return equal to or in excess of 12.0% as of the Extension Effective Date will not receive any payment in exchange for their Preference Shares sold in connection with a Maturity Extension.

As a consequence, if the Servicer elects to extend the Replacement Period and the Extension Conditions are satisfied, the Holders of the Securities may either be required to hold their Securities for a significantly longer period of time or be forced to sell their Securities for the applicable purchase price under the Indenture, resulting in a shorter holding period than expected at the time of investment in the Securities.

An Amendment Buy-Out May Result in a Shorter Holding Period Than Expected

Any Non-Consenting Holder of Securities with respect to an amendment of the Indenture (which includes Holders that fail to respond to a consent solicitation within the applicable period) may be forced to sell its applicable Securities to the Amendment Buy-Out Purchaser at the Amendment Buy-Out Purchase Price, resulting in a shorter holding period than expected at the time of investment in the Securities. However, in the case of the Preference Shares, the Indenture provides that the Amendment Buy-Out Purchase Price will be zero for Non-Consenting Holders that have received a Preference Share Internal Rate of Return equal to or in excess of 12.0% as of the Amendment Buy-Out Date. See "Description of the Securities—Amendment Buy-Out." A Holder's ability to vote against an amendment or affect or influence the amendment process with respect to the Indenture may thus be limited. The Amendment Buy-Out Option may also increase the ability of the Servicer to affect or influence the amendment process.

The Servicer has agreed with one or more Multiple Class Holders that, to the extent an Amendment Buy-Out is effected in connection with any Class of Securities (or Holding Preference Shares, as the case may be) held or, in the case of any Notes represented by Global Notes, beneficially owned by any such Multiple Class Holder and any other Class of Securities (or Holding Preference Shares, as the case may be) held or, in the case of any Notes represented by Global Notes, beneficially owned by such Multiple Class Holder is not considered adversely affected by the applicable amendment and therefore not subject to the Amendment Buy-Out provisions of the Indenture, the Servicer will, at the option of such Multiple Class Holder, purchase such Securities of such non-affected Class (or Holding Preference Shares, as the case may be) from such Multiple Class Holder, in each case, at a price equal to what the Amendment Buy-Out Price would have been with respect to such Class of Securities had such Class of Securities been subject to the Amendment Buy-Out.

The Indenture Requires Mandatory Redemption of the Notes for Failure to Satisfy Coverage Tests

If any of the Coverage Tests are not satisfied on any Determination Date on which the Notes of the relevant Class are Outstanding, Interest Proceeds available on the related Payment Date in accordance with the Priority of Payments (and, to the extent Interest Proceeds are insufficient, Principal Proceeds available on the Payment Date in accordance with the Priority of Payments) are required to be applied to pay principal of the relevant Class of Notes (and any Classes senior to it) to the extent necessary for the relevant Coverage Test to be satisfied. The application of Interest Proceeds and Principal Proceeds to pay principal of the Notes to the extent necessary to restore the Coverage Tests to certain minimum required levels could result in an elimination, deferral or reduction in the amounts available to make distributions on the Preference Shares and interest and principal payments on one or more classes of Notes, which would adversely affect the returns to the Holders of the Securities.

The Indenture Requires Mandatory Redemption of the Notes Upon Rating Confirmation Failure

If any rating of any Class of Notes is reduced or withdrawn or placed on credit watch with negative implications by the Business Day after the 29th day after the Ramp-Up Completion Date by either Rating Agency, Interest Proceeds and, if Interest Proceeds are insufficient, Principal Proceeds, are

required to be diverted in accordance with the Priority of Payments and used to pay the principal of the Notes sequentially in order of their relative priority on the next Payment Date and each Payment Date after that until each rating is reinstated. The application of Interest Proceeds and Principal Proceeds to pay principal of the Notes to the extent necessary for one or more ratings to be reinstated could result in an elimination, deferral, or reduction in one or more payments or distributions on one or more Classes of Securities, which would adversely affect the returns to the Holders of those Classes of Securities.

The Indenture Permits Special Redemption of Notes Based on the Servicer's Inability to Identify Replacement Collateral Obligations

The Servicer is permitted under the Indenture to elect to have all or a portion of the funds then in the Collection Account available to be used to purchase additional Collateral Obligations applied to a Special Redemption of the Notes, in whole or in part, on one or more Payment Dates during the Replacement Period because it has been unable, for a period of at least 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations. On the Special Redemption Date, in accordance with the Indenture, the Special Redemption Amount will be applied in accordance with "Description of the Securities—Priority of Payments—Principal Proceeds," to the extent available (which includes for this purpose unapplied proceeds specified by the Servicer), to pay the principal of the Notes. The application of funds in that manner could result in an elimination, deferral, or reduction of amounts available to make payments on Securities subordinate in priority to the Securities being amortized. See "Description of the Securities—Special Redemption of Notes If the Servicer Does Not Identify Replacement Collateral Obligations as Contemplated by the Indenture."

The Notes Are Subject to Optional Redemption

Subject to satisfaction of certain conditions, on any Payment Date upon the occurrence of a Tax Event or at any time after the Non-Call Period, the applicable Required Redemption Percentage may require that the Notes be redeemed as described under "Description of the Securities—Optional Redemption." In the case of an Optional Redemption of the Notes, the Servicer may be required to aggregate Collateral Obligations to be sold together in one block transaction, thereby possibly resulting in a lower realized value for the Collateral Obligations sold. There can be no assurance that the market value of the Collateral will be sufficient for the applicable Required Redemption Percentage to direct an Optional Redemption of the Notes. A decrease in the market value of the Collateral would adversely affect the Sale Proceeds from their sale. Consequently, the conditions precedent to the exercise of an Optional Redemption may not be met. Moreover, the Holders of the Notes may not be able to invest the proceeds of the redemption of the Notes in investments providing a return equal to or greater than the Holders of the Notes expected to obtain from their investment in the Notes.

The Notes are Subject to Redemption by Refinancing

The Indenture provides that any Class of the Notes may be redeemed in whole, but not in part, on any Payment Date following the fifth anniversary of the Closing Date from Refinancing Proceeds subject to the satisfaction of certain requirements. See "Description of the Securities—Optional Redemption—Redemption by Refinancing" Accordingly, a more junior Class of Notes may be redeemed from Refinancing Proceeds in whole even if a more senior Class of Notes remains outstanding. Holders of Notes that are refinanced (or otherwise optionally redeemed) may not be able to reinvest the proceeds of such Notes in assets with comparable interest rates or maturity. An optional redemption from Refinancing Proceeds may also result in a shorter investment than a Holder of Notes may have anticipated.

The Servicer has agreed with one or more Multiple Class Holders that, to the extent any Class of Notes held or, in the case of any Notes represented by Global Notes, beneficially owned by any such Multiple Class Holder are subject to redemption by the Issuer with Refinancing Proceeds in connection with a Refinancing, the Servicer will, at the option of such Multiple Class Holder, purchase any or all of

the Securities (or Holding Preference Shares, as the case may be) held or, in the case of any Notes represented by Global Notes, beneficially owned by such Multiple Class Holder that are not subject to redemption by the Issuer with Refinancing Proceeds in connection with a Refinancing, in each case, at the applicable Redemption Price therefor.

Future Ratings of the Notes Are Not Assured and Limited in Scope; the Preference Shares Are Not Rated

It is a condition to the issuance of the Notes that they be rated as provided under "Summary of Terms—Principal Terms of the Securities." A credit rating is not a recommendation to buy, sell or hold securities and is subject to revision or withdrawal at any time. There is no assurance that a rating will remain for any given period or that a rating will not be lowered or withdrawn entirely by each Rating Agency if in its judgment circumstances in the future so warrant. Any such action could have an adverse effect on the Holders of the relevant Class of Securities. If a rating initially assigned to a Class of Notes is subsequently lowered for any reason, no person is obligated to provide any additional credit support or credit enhancement. The ratings of the Notes are based on the assumption that no Maturity Extension occurs at any time.

No rating of the Preference Shares will be sought or obtained in connection with their issuance.

The Issuer could be Treated as Engaged in a United States Trade or Business

Prior to the issuance of the Securities, the Issuer will receive an opinion from Latham & Watkins LLP ("**Tax Counsel**"), which opinion is based in part on the safe harbor provided by Section 864(b)(2) of the Code and the Treasury regulations thereunder applying to non-U.S. persons that restrict their activities in the United States to trading in stocks and securities for their own account. The opinion will be to the effect that, although no activity closely comparable to that contemplated by the Issuer has been the subject of any Treasury regulation, revenue ruling or judicial decision and the matter is not free from doubt, assuming compliance with the Issuer's Memorandum and Articles of Association, the Indenture, the Servicing Agreement and other related documents by all parties thereto, the Issuer's permitted activities will not cause it to be treated as engaged in the conduct of a U.S. trade or business under the Code. However, in the absence of authority on point, whether the Issuer is or will be treated as engaged in a trade or business in the United States or not is not entirely free from doubt, and there can be no assurance that positions contrary to those stated in the opinion of Tax Counsel or any other advice or opinion may not be asserted successfully by the Internal Revenue Service (the "**IRS**"). The opinion is based on certain assumptions and on certain representations and agreements regarding restrictions on the future conduct of the activities of the Issuer and the Servicer. Although the Issuer intends to conduct its business in accordance with such assumptions, representations and agreements, if it were nonetheless determined that the Issuer was engaged in a United States trade or business and had taxable income that is effectively connected with such United States trade or business, foreign investors in Preference Shares that would otherwise not be subject to U.S. federal income tax would be subject to U.S. federal income tax on their allocable share of the Issuer's income and the Issuer would be required to withhold on income allocable to such foreign investors of the Preference Shares regardless of whether distributions were made to such holders. Such withholding may reduce the amounts available to make payments on the Notes and would reduce distributions to the holders of the Preference Shares. Investors should note that the Treasury and the IRS recently announced that they are considering taxpayer requests for specific guidance on, among other things, whether a foreign person may be treated as engaged in a trade or business in the United States by virtue of entering into credit default swaps. However, the Treasury and the IRS have not yet provided any guidance on whether they believe entering into credit default swaps may cause a foreign person to be treated as engaged in a trade or business in the United States and if so, what facts and circumstances must be present for this conclusion to apply. Any future guidance issued by the Treasury and/or the IRS may have an adverse impact on the tax treatment of the Issuer. See discussion under the heading "Material Income Tax Considerations—U.S. Federal Income Taxation of the Issuer—U.S. Federal Income Tax" below. There can be no assurance that, if the Issuer were determined to be engaged in a trade or business in the United States, it would be able to make timely payments of interest on, payment of principal and payment of other distributions at the applicable Stated Maturity of the

Securities. In addition, all or a portion of the payments on the Securities to a holder that is not a U.S. Holder (as defined in "Material Income Tax Considerations—General" below) could in such circumstance be subject to a 30% U.S. federal withholding tax. See "Material Income Tax Considerations."

Benefit Plan Investors

Certain transactions involving the Co-Issuers in the ordinary course might be deemed to constitute "prohibited transactions" under the United States Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and Section 4975 of the Code with respect to Benefit Plan Investors (as defined in "Considerations for Benefit Plans") that purchase the Securities, if assets of the Issuer and/or the Co-Issuer were deemed to be "plan assets" subject to Title I of ERISA or Section 4975 of the Code or Similar Law (as defined in "Considerations for Benefit Plans"). The Issuer intends to restrict ownership of the Class D Notes and the Preference Shares by Benefit Plan Investors so that no assets of the Issuer will be deemed to be "plan assets" of a plan subject to Title I of ERISA or Section 4975 of the Code. Specifically, the Issuer, in reliance on purchaser and transferee representations and deemed representations, intends to restrict the acquisition of the Class D Notes and the Preference Shares so that less than 25% of the aggregate outstanding amount of each of the Class D Notes, the Class I Preference Shares and the Class II Preference Shares will be held by Benefit Plan Investors (determined without regard to those Class D Notes and Preference Shares held by Controlling Persons (as defined in "Considerations for Benefit Plans"), such as the Class D Notes and the Class II Preference Shares held by the Servicer or its affiliates and employees thereof). However, there can be no assurance that the ownership of any of the Class D Notes, the Class I Preference Shares or Class II Preference Shares by Benefit Plan Investors will always remain below the 25% threshold established under the Plan Asset Regulation (as defined in "Considerations for Benefit Plans").

Although the Co-Issuers believe that the Senior Notes should be classified as indebtedness (rather than as equity) for purposes of the Plan Asset Regulation (as defined in "Considerations for Benefit Plans") (and thus will allow more than 25% of each class of Senior Notes to be purchased by Benefit Plan Investors), there can be no assurance that the Senior Notes will be so characterized, and the characterization of one or more classes of the Senior Notes could change if the financial condition of the Co-Issuers changes or other terms and conditions of the Senior Notes change.

If the Benefit Plan Investor ownership of any of the Class D Notes, the Class I Preference Shares or the Class II Preference Shares were to meet or exceed the 25% threshold described above, or any class of the Senior Notes were characterized as equity and such threshold were exceeded with respect to such class, resulting in the assets of the Co-Issuers being deemed to be "plan assets," certain transactions that the Co-Issuers might enter into, or may have entered into, in the ordinary course of business, might constitute non-exempt prohibited transactions under ERISA and/or Section 4975 of the Code and might have to be rescinded. Additionally, the Co-Issuers or other "parties in interest" (as defined in Section 3(14) of ERISA) or "disqualified persons" (as defined in Section 4975(e)(2) of the Code) may be subject to other penalties and liabilities with respect to the transaction.

In addition, the acquisition or holding of the Securities by or on behalf of a plan subject to Title I of ERISA or Section 4975 of the Code could give rise to a prohibited transaction if any of the Co-Issuers, the Trustee, the Servicer, the Initial Purchaser, other persons providing services in connection with the Co-Issuers, or any of their respective affiliates, is a "disqualified person" or "party in interest" with respect to that plan. The acquisition or holding of Securities by a governmental, foreign or church plan subject to laws substantially similar to the provisions of Section 406 of ERISA or Section 4975 of the Code could constitute a violation of such similar laws If such transaction is not exempt from ERISA and Section 4975 of the Code or, if applicable, substantially similar laws pertaining to governmental, foreign or church plans, the transaction may have to be rescinded and the Co-Issuers or other "disqualified persons" or "parties in interest" may be subject to other penalties with respect to the transaction. Therefore, each investor in the Securities will be required or deemed to represent and warrant that either (i) it is not, and is not using the assets of, and throughout the holding and disposition of such Securities will not become or transfer its interest to, a plan subject to Title I of ERISA or Section 4975 of the Code,

or an entity that is deemed to hold assets of any of the foregoing or a governmental, foreign or church plan which is subject to any federal, state, foreign or local law that is substantially similar to the provisions of Section 406 of ERISA or Section 4975 of the Code or (ii) its purchase, holding and disposition of such Securities will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, a violation of any substantially similar federal, state, foreign or local law) because such purchase, holding and disposition either (x) is not, and will not become, subject to such laws or (y) is covered by an exemption from all applicable prohibited transactions, all of the conditions of which are and will be satisfied upon the acquisition of, and throughout its holding and disposition of such Securities.

Any transfer in violation of the foregoing representations will be treated as having no force and effect and will be null and void *ab initio*, potentially causing loss to the investor purchasing in violation of these representations.

See "Considerations for Benefit Plans" herein for a more detailed discussion of certain ERISA and related considerations with respect to an investment in the Securities by an employee benefit plan or similar plan or arrangement.

Relating to the Servicing Agreement

The Servicing Agreement May Be Amended Without the Consent of Holders of Securities Whether or Not Such Amendment Adversely Affects Holders of Securities

The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; *provided* that, with respect to any such amendment or modification, (a) the Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification by delivering a notice to the Trustee prior to the relevant Objection Cut-Off Date. Holders of the Securities other than Holders of the Controlling Class of Notes and Holders of the Preference Shares will have no ability to vote against any such amendment or modification. The ability of the Holders of the Controlling Class of Notes and Holders of the Preference Shares to influence the amendment process is limited to the right of a Majority of either such Class to object as described above. To the extent that less than a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares object to the proposed amendment or modification, the Servicer may request that the Issuer enter into such amendment or modification and the Trustee consent thereto, without regard to the fact that certain Holders of the Securities may have objected to such proposed amendment or modification.

Relating to the Servicer

The Issuer Will Depend on the Expertise Available to the Servicer and its Key Personnel

The performance of the Issuer's portfolio of Collateral Obligations depends heavily on the skills of the Servicer in analyzing, selecting and monitoring the Collateral Obligations. As a result, the Issuer will be highly dependent on the financial and servicing experience of certain professionals associated with the Servicer, none of whom is under a contractual obligation to the Issuer to continue to be associated with the Servicer for the term of this transaction. The loss of one or more of these individuals could have a material adverse effect on the performance of the Co-Issuers. Furthermore, the Servicer has informed the Issuer that these professionals are also actively involved in other activities and will not be able to devote all of their time to the Issuer's business and affairs. In addition, individuals not currently associated with the Servicer may become associated with the Servicer and the cash-flow performance of the Collateral Obligations may also depend on the financial and servicing experience of such individuals. See "The Servicing Agreement" and "The Servicer."

The Issuer Will Have Limited Control of the Administration and Amendment of Collateral Obligations

The Servicer will cause the Issuer to exercise or enforce, or refrain from exercising or enforcing, its rights in connection with the Collateral Obligations or any related documents or will refuse amendments or waivers of the terms of any Collateral Obligation and related documents in accordance with its ordinary business practices as if the Servicer were administering the Collateral Obligations for its own account. The authority of the Servicer to cause the Issuer to change the terms of the Collateral Obligations will generally not be restricted by the Indenture or the Servicing Agreement. As a result, the Issuer will be relying on the Servicer's customary standards, policies and procedures with respect to the servicing of the Collateral Obligations. The Holders of the Securities and the Issuer will not have any right to compel the Issuer or the Servicer to take or refrain from taking any actions other than in accordance with its ordinary business practices.

In addition, when the Issuer holds a Participation, the Issuer generally will have no right to enforce compliance by the borrower with the loan or credit agreement or other instrument evidencing the related loan obligation, no rights of set-off against the borrower, no direct interest in the collateral supporting the loan obligation, and no right to vote with respect to amendments of, or waivers of defaults under, the loan obligation. An acquisition by the Issuer of a Synthetic Security related to a Loan involves many of the same considerations relevant to Participations. See "—Relating to the Collateral Obligations—Loans Involve Particular Risks" and "—Synthetic Securities Involve Particular Risks" below.

A modification that would increase the commitment of a lender, reduce the interest rate, or postpone the final maturity of an obligation under a participation agreement, or release all of the collateral for an obligation, generally requires the affirmative vote of the Participating Institution for a loan in which the Issuer owns a Participation, or of the Issuer for a Loan purchased by assignment, for the increase, reduction, or postponement to be binding. The exercise of remedies may also be subject to the vote of a specified percentage of the lenders under the loan obligation. The Servicer will have the authority to cause the Issuer to consent to certain amendments, waivers, or modifications to the Collateral Obligations requested by obligors or the lead agents for participation agreements relating to Participations (subject to operating procedures intended to reduce the risk that the Issuer would be deemed to be engaged in a trade or business in the United States for United States federal income tax purposes). The Servicer may, subject to the transaction documents, cause the Issuer to extend or defer the maturity, adjust the outstanding balance of any Collateral Obligation, reduce or forgive interest or fees, release material collateral or guarantees, or otherwise amend, modify, or waive the terms of any related loan agreement, including its payment terms. The Servicer will make determinations in accordance with its servicing standards under the Servicing Agreement. Any amendment, waiver, or modification of a Collateral Obligation could postpone the expected maturity of the Notes or the expected redemption date of the Preference Shares, or reduce the likelihood of timely and complete payment of interest or principal under the Notes or a full return of an investment in the Preference Shares.

Performance History of the Servicer May Not Be Indicative of Future Results

Any prior results of the Servicer, and the persons associated with it or any other entity may not be indicative of the Issuer's future results. The nature of, and risks associated with, the Issuer's future assets may differ substantially from those assets historically associated with the Servicer, and the persons associated with it or any other entity. There can be no assurance that the Issuer's assets will perform as well as the past assets serviced or managed by the Servicer, and the persons associated with it or any other entity. Moreover, since the criteria that govern the acquisition of the Collateral Obligations do not govern the Servicer's activities generally, the acquisition and disposition of Collateral Obligations conducted in accordance with the criteria contained in the Indenture, and the results they yield, may differ substantially from other assets serviced or managed by the Servicer.

Other accounts, collateralized debt obligations or other funds managed or serviced by the Servicer that are similar to the Issuer ("**Other Debt Funds**") have been structured to comply with the exemption

from registration under the Investment Company Act provided by Section 3(c)(7) thereunder, whereas the Issuer is also structured to comply with the exemption from registration provided by Rule 3a-7 under the Investment Company Act and may in the future, subject to the conditions described herein, rely exclusively on such exemption from registration provided by Rule 3a-7. Rule 3a-7 requires certain additional limitations and restrictions on the buying and selling of assets of the Issuer that are not applicable to the assets of the Other Debt Funds relying on the Section 3(c)(7) exemption from registration. As a result, the Issuer's ability to react to changes in market value of the assets is more limited and the returns on the Issuer's assets and the Securities, including the returns on the Preference Shares, may not be comparable to, and may differ materially from, the performance of the Other Debt Funds.

Notwithstanding the inapplicability of the results obtained and expected to be obtained from the past activities of the Servicer, a period of increased volatility in market conditions, including interest rate environments, can have an adverse effect on the realized and unrealized returns to investors in the past products of the Servicer. There can be no assurance that current economic conditions and the effects of increased interest rate and corresponding price volatility will not adversely impact the investment returns ultimately realized by investors or continued compliance with, among other things, applicable coverage requirements described in this Offering Memorandum.

Relating to the Collateral Obligations

In General, the Collateral Obligations Are Subject to Various Risks

The Collateral Obligations are subject to credit, liquidity, and interest rate risks, among others. The Eligibility Criteria and the Collateral Quality Tests have been established to address certain assumed deficiencies in payment occasioned by defaults with respect to the Collateral Obligations. If any deficiencies exceed certain modeled scenarios, however, payments or distributions on the Securities could be adversely affected. To the extent that a default occurs with respect to any Collateral Obligation securing the Notes and the Issuer (on the advice of the Servicer) sells or otherwise disposes of the Collateral Obligation, it is not likely that the proceeds of the sale or other disposition will be equal to the amount of principal and interest owing to the Issuer on the Collateral Obligation.

The value of the Collateral Obligations generally will fluctuate with, among other things, the financial condition of the obligors on or issuers of the Collateral Obligations and, with respect to Synthetic Securities, both the financial condition of the related Synthetic Security counterparties and the obligors on or issuers of the Reference Obligations, general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry, and changes in prevailing interest rates.

The ability of the Issuer to sell Collateral Obligations before their maturity is subject to certain restrictions under the Indenture including those described under "Security for the Notes—Sale of Collateral Obligations; Acquisition of Collateral Obligations."

Below Investment-Grade Obligations Involve Particular Risks

A substantial amount of the Collateral Obligations will consist of loans, bonds and other obligations that are below investment grade, including high-yield loans and securities. Those Collateral Obligations will have greater credit and liquidity risk than investment-grade obligations. They are also often unsecured and may be subordinated to certain other obligations of their issuer. The lower rating of those Collateral Obligations reflects a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of their issuer to make payments of principal or interest. These Collateral Obligations may be speculative.

Risks of below investment-grade Collateral Obligations may include (among others):

(i) limited liquidity and secondary market support;

(ii) in the case of fixed-rate high-yield debt securities, substantial market place volatility resulting from changes in prevailing interest rates;

(iii) subordination to the prior claims of senior lenders and creditors;

(iv) the operation of mandatory sinking fund or call and redemption provisions during periods of declining interest rates that could cause the Issuer to apply premature redemption proceeds in lower-yielding debt obligations;

(v) the possibility that earnings of the below investment-grade issuer may be insufficient to meet its debt service; and

(vi) the declining creditworthiness and potential for insolvency of a below investment-grade issuer during periods of rising interest rates and economic downturn.

An economic downturn or an increase in interest rates could severely disrupt the market for below investment-grade obligations and could adversely affect the value of outstanding below investment-grade obligations and the ability of their issuers to repay principal and interest.

Issuers that are below investment grade may be highly leveraged and may not have available to them more traditional methods of financing. The risk associated with obligations of below investment-grade issuers is generally greater than is the case with investment-grade issuers. For example, during an economic downturn or a sustained period of rising interest rates, below investment-grade issuers may be more likely to experience financial stress, especially if they are highly leveraged. During those periods, timely service of debt obligations may also be adversely affected by specific issuer developments, or the issuer's inability to meet specific projected business forecasts or the unavailability of additional financing. The risk of loss from default by the issuer is significantly greater for the holders of below investment-grade obligations because those obligations may be unsecured and may be subordinated to obligations owed to other creditors of the issuer. In addition, the Issuer may incur additional expenses to the extent it is required to seek recovery upon a default on such an obligation or participate in its restructuring.

As a result of the limited liquidity of below investment-grade obligations, their prices have at times experienced significant and rapid decline when a substantial number of holders decided to sell. In addition, the Issuer may have difficulty disposing of certain below investment-grade obligations because there may be a thin trading market for them. To the extent that a secondary trading market for below investment-grade obligations does exist, it is generally not as liquid as the secondary market for highly rated obligations. Reduced secondary market liquidity may have an adverse impact on the Issuer's ability to dispose of particular Collateral Obligations in response to a specific economic event, such as a deterioration in the creditworthiness of the issuer of the Collateral Obligation.

All risks associated with the Issuer's purchase of such Collateral Obligations will be borne by the holders of the Securities in reverse order of seniority, beginning with the Preference Shares as the most junior Class.

Limitations of Portfolio Diversification

The Indenture will require that certain levels of diversification are maintained or improved in connection with purchases of Collateral Obligations. The Collateral Obligations are expected to consist primarily of below investment grade debt obligations. To the extent that below investment grade debt obligations as an asset class generally underperform or experience increased levels of credit losses or market volatility, the Collateral Obligations will likely experience credit losses and losses in connection with sales even with significant issuer and industry diversification. In addition, given the leveraged capital structure of the Issuer, any losses resulting from defaults and/or trading losses will be borne first by the Preference Shares, as the most junior Class. Because the value of the obligations of any single issuer or industry sector will represent a higher percentage of the issuance price, as the case may be, of the Preference Shares (or any other junior Class) than it represents in relation to the aggregate principal

amount of the total portfolio, there can be no assurance that the diversification guidelines of the Indenture will be effective in minimizing losses on the junior Classes of Securities, particularly the Preference Shares.

Loans Involve Particular Risks

The Collateral Obligations will consist primarily of Dollar-denominated senior secured and senior unsecured loans, which are required by the Indenture to be obligations of corporations, partnerships, or other entities organized under the laws of the United States (or any of its states) or of foreign obligors meeting specified criteria, or Synthetic Securities the Reference Obligations of which are such loans. See "Security for the Notes—Collateral Obligations."

Loans may become non-performing for a variety of reasons. Non-performing loans may require substantial workout negotiations or restructuring that may entail, among other things, a substantial reduction in the interest rate or a substantial write-down of the principal of a loan. In addition, because of the unique and customized nature of a loan agreement and the private syndication of a loan, loans typically may not be purchased or sold as easily as publicly traded securities, and historically the trading volume in the bank term loan market has been small relative to the corporate bond market. Loans may encounter trading delays due to their unique and customized nature, and transfers may require the consent of an agent bank or borrower. Consequently, there can be no assurance that there will be any market for any Loan if the Issuer is required to sell or otherwise dispose of such Loan. Depending on the terms of the underlying loan documentation, consent of the borrower may be required for an assignment, and a purported assignee may not have any direct right to enforce compliance by the obligor with the terms of the loan agreement in the absence of this consent.

The Issuer may acquire interests in loans either directly (by assignment) or indirectly (by Participation or through Synthetic Securities). The Issuer may not originate any loans. The purchaser of an assignment of a loan obligation typically succeeds to all the rights and obligations of the Participating Institution and becomes a lender under the loan or credit agreement with respect to the debt obligation. In contrast, a Participation acquired by the Issuer in a portion of a loan obligation held by a Participating Institution or a security or other debt obligation typically results in a contractual relationship only with the Participating Institution, not with the borrower. The Issuer would have the right to receive payments of principal, interest, and any fees to which it is entitled under a Participation only from the Participating Institution and only upon receipt by the Participating Institution of those payments from the borrower. Participating Institutions commonly reserve the right to administer the Participations sold by them as they see fit (unless their actions constitute gross negligence or willful misconduct) and to amend the documentation evidencing the obligations in all respects. However, most participation agreements provide that the Participating Institutions may not vote in favor of any amendment, modification or waiver that forgives principal, interest or fees, reduces principal, interest or fees that are payable, postpones any payment of principal (whether a scheduled payment or a mandatory prepayment), interest or fees or releases any material guarantee or security without the consent of the participant (at least to the extent the participant would be affected by any such amendment, modification or waiver). Participating Institutions voting in connection with a potential waiver of a restrictive covenant may have interests different from those of the Issuer, and such Participating Institutions might not consider the interests of the Issuer in connection with their votes. In addition, many participation agreements that provide voting rights to the holder of the Participation further provide that if the holder does not vote in favor of amendments, modifications or waivers, the selling lender may repurchase such Participation at par. The Issuer will be subject to restrictions on the amount of Participations that may be acquired for inclusion in the Collateral. See "Security for the Notes—Eligibility Criteria."

Holders of Participations are subject to additional risks not applicable to a holder of a direct interest in a loan. In the event of the insolvency of the Participating Institution, under the laws of the United States and the various States thereof, a holder of a Participation may be treated as a general creditor of the Participating Institution and may not have any exclusive or senior claim with respect to the Participating Institution's interest in, or the collateral with respect to, the loan. Consequently, the holder of a Participation will be subject to the credit risk of the Participating Institution as well as of the

borrower. Participants also often do not benefit from the collateral (if any) supporting the loans in which they have a participation interest because Participations often do not provide a purchaser with direct rights to enforce compliance by the borrower with the terms of the loan agreement or any rights of set-off against the borrower. The Servicer is not required, and does not expect, to perform independent credit analyses of the Participating Institutions.

Certain of the loans in the Issuer's portfolio may be unsecured or secured by collateral worth less than the outstanding balance of the loan. In addition to the general risks associated with loans described above, unsecured loans will not be secured by substantial collateral or any collateral and secured loans may be substantially under-secured. Without collateral and with materially inadequate collateral, the ability of the holder of the loan to recover amounts due from the borrower may be substantially limited.

Risks Associated with Applying Proceeds of Dispositions

The Issuer's income will decline if and when the Issuer applies the proceeds from matured, prepaid, sold or called Collateral Obligations into lower yielding instruments. A decline in income will affect the amount available for distributions on the Securities. Subject to criteria described herein, the Servicer will have discretion to use Principal Proceeds to purchase Collateral Obligations in compliance with the Eligibility Criteria and other requirements for the acquisition of Collateral Obligations described herein. The yield with respect to such Collateral Obligations will depend on, among other factors, interest rates available at the time, the availability of assets satisfying the Eligibility Criteria and acceptable to the Servicer, and market conditions related to leveraged Loans and high yield bonds in general. The need to satisfy the Eligibility Criteria and other requirements for the acquisition of Collateral Obligations described herein and identify acceptable assets may require the purchase of Collateral Obligations with a lower yield than those replaced, with different characteristics than those replaced (including, but not limited to, coupon, spread, maturity, call features and/or credit quality) or require that such funds be maintained in Eligible Investments pending such replacement of Collateral Obligations, which will further reduce the yield on the Collateral Obligations. Any decrease in the yield on the Collateral Obligations will have the effect of reducing the amounts available to make distributions on the Securities, especially the most junior Class of Securities. There can be no assurance that in the event Collateral Obligations are sold, prepaid, called, or mature, yields on Collateral Obligations that are available and eligible for purchase will be at the same levels as those replaced, that the characteristics of any Collateral Obligations purchased will be the same as those replaced or as to the timing of the purchase of any such Collateral Obligations.

Leveraged Loans and privately placed high yield bonds are not as easily (or as quickly) purchased or sold as publicly traded securities for a variety of reasons, including confidentiality requirements with respect to obligor information, the customized non-uniform nature of loan agreements and private syndication. The reduced liquidity and lower volume of trading in such debt obligations, in addition to restrictions on purchase represented by the Eligibility Criteria, could result in periods of time during which the Issuer is not able to fully apply its cash to purchase Collateral Obligations. The longer the period before the application of cash to purchase Collateral Obligations, the greater the adverse impact will be on aggregate Interest Proceeds collected and distributed by the Issuer, including on the Securities, especially the most junior Class of Securities, thereby resulting in lower yields than could have been obtained if proceeds were immediately applied. In addition, leveraged Loans are often prepayable by the borrowers with no, or limited, penalty or premium. As a result, leveraged Loans generally prepay more frequently than other corporate obligations of the same borrower. Senior leveraged Loans usually have shorter terms than more junior obligations and often require mandatory repayments from excess cash flow, asset dispositions and offerings of debt and/or equity securities. The increased levels of prepayments and amortization of leveraged Loans increase the associated replacement risk on the Collateral Obligations which risk will first be borne by holders of the Securities, beginning with the Preference Shares as the most junior Class.

Defaults and Market Volatility

To the extent that a default occurs with respect to any Collateral Obligation and the Issuer sells or otherwise disposes of that Collateral Obligation, it is likely that the proceeds will be less than its unpaid principal, interest or its purchase price. This could have a material adverse effect on the payments on the Securities. The Issuer also may incur additional expenses to the extent it is required to seek recovery after a default or participate in the restructuring of an obligation. Even in the absence of a default with respect to any of the Collateral Obligations, the market value of the Collateral Obligation at any time will vary, and may vary substantially, from the price at which that Collateral Obligation was initially purchased and from the principal amount of such Collateral Obligation, due to market volatility, changes in relative credit quality, general economic conditions, the level of interest rates, changes in exchange rates, the supply of below investment grade debt obligations and other factors that are difficult to predict. In addition, the Indenture places significant restrictions on the Servicer's ability to buy and sell Collateral Obligations which restrictions may be greater if amendments are made to assure compliance with Rule 3a-7. See "—The Servicer May Cause the Issuer to Amend the Indenture to Assure Compliance with Rule 3a-7 Without the Consent of the Holders of the Securities in a Manner that May Adversely Affect the Holders of Securities".

The market price of below investment grade debt obligations may from time to time experience significant volatility. During certain periods, this market has experienced significant volatility with respect to market prices, a significant increase in issues trading at distressed levels, a significant increase in default rates, and a significant decrease in recovery rates. No assurance can be given that volatility in the below investment grade debt market will not continue in the future. Such volatility can adversely impact the liquidity, market prices and other performance characteristics of leveraged Loans and high yield bonds.

Structured Finance Obligations Involve Particular Risks

A portion of the Collateral Obligations may consist of Structured Finance Obligations. Structured Finance Obligations may present risks similar to those of the other types of Collateral Obligations which the Issuer may purchase and, in fact, the risks may be of greater significance in the case of Structured Finance Obligations. Moreover, purchasing Structured Finance Obligations may entail a variety of unique risks. Among other risks, Structured Finance Obligations may be subject to prepayment risk, credit risk, liquidity risk, market risk, structural risk, legal risk and interest rate risk (which may be exacerbated if the interest rate payable on a Structured Finance Obligation changes based on multiples of changes in interest rates or inversely to changes in interest rates). In addition, certain Structured Finance Obligations (particularly subordinated collateralized bond obligations) may provide that non-payment of interest is not an event of default in certain circumstances and the holders of the securities will therefore not have available to them any associated default remedies. During the period of non-payment, unpaid interest will generally be capitalized and added to the outstanding principal balance of the related security. Furthermore, the performance of a Structured Finance Obligation will be affected by a variety of factors, including its priority in the capital structure of its issuer the availability of any credit enhancement, the level and timing of payments and recoveries on and the characteristics of the underlying receivables, loans, or other assets that are being securitized, bankruptcy remoteness of those assets from the originator or transferor, the adequacy of and ability to realize on any related collateral, and the skill of the manager or the servicer of the Structured Finance Obligation in managing or servicing securitized assets. The price of a Structured Finance Obligation, if required to be sold, may be subject to certain market and liquidity risks for securities of its type at the time of sale. In addition, Structured Finance Obligations may involve initial and ongoing expenses above the costs associated with the related direct purchases.

Synthetic Securities Involve Particular Risks

A portion of the Collateral Obligations may consist of Synthetic Securities the Reference Obligations of which are Loans, Structured Finance Obligations or High-Yield Bonds. Acquiring these types of assets through the purchase of Synthetic Securities present risks in addition to those inherently associated with direct purchases of such assets. With respect to Synthetic Securities, the Issuer will

usually have a contractual relationship only with the counterparty of the Synthetic Security, and not the reference obligor on the Reference Obligation. The Issuer will have no right to enforce compliance by the reference obligor with the Reference Obligation nor any rights of set-off against the reference obligor, nor have any voting or other consensual rights of ownership with respect to the Reference Obligation. The Issuer will not directly benefit from any collateral supporting the Reference Obligation and will not have the benefit of the remedies that would normally be available to a holder of the Reference Obligation.

In addition, in the event of the insolvency of the Synthetic Security Counterparty, the Issuer will be treated as a general creditor of the counterparty and will not have any claim of title with respect to the Reference Obligation. Consequently, the Issuer will be subject to the credit risk of the counterparty as well as that of the reference obligor and concentrations of Synthetic Securities entered into with any one counterparty will subject the Securities to an additional degree of risk with respect to defaults by that counterparty. One or more Affiliates of the Initial Purchaser may act as counterparty with respect to all or a portion of the Synthetic Securities, which relationship may create certain conflicts of interest. See "—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Initial Purchaser" below. In addition, Synthetic Securities may involve initial and ongoing expenses above the costs associated with the related direct acquisitions. The Issuer will be subject to restrictions on the amount of Synthetic Securities it may own at any one time.

Some of the Collateral Obligations Will Be Illiquid

Some of the Collateral Obligations purchased by the Issuer will have no, or only a limited, trading market. The Issuer's acquisition of illiquid Collateral Obligations may restrict its ability to dispose of Collateral Obligations in a timely fashion and for a fair price, as well as its ability to take advantage of market opportunities, although the Issuer is generally prohibited by the Indenture from selling Collateral Obligations except under certain limited circumstances described under "Security for the Notes—Sale of Collateral Obligations; Acquisition of Collateral Obligations." Illiquid Collateral Obligations may trade at a discount from comparable, more liquid assets. The market for below investment grade debt obligations may become illiquid from time to time as a result of adverse market conditions, regulatory developments or other circumstances. In addition, the Issuer may purchase privately placed Collateral Obligations that may or may not be freely transferable under the laws of the applicable jurisdiction or due to contractual restrictions on resale, and even if those privately placed Collateral Obligations are transferable, the prices realized from their sale could be less than those originally paid by the Issuer or less than what may be considered their fair value.

Insolvency Considerations With Respect to Issuers of Collateral Obligations May Affect the Issuer's Rights

Various laws enacted for the protection of creditors may apply to the Collateral Obligations. If, in a lawsuit brought by a creditor or representative of creditors of an obligor under a Collateral Obligation (such as a trustee in bankruptcy), a court were to find that the obligor did not receive fair consideration or reasonably equivalent value for incurring the indebtedness evidenced by the Collateral Obligation and, after giving effect to the indebtedness and the use of the proceeds thereof, the obligor (i) was insolvent, (ii) was engaged in a business for which the remaining assets of the obligor constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay them as they mature, the court could determine to invalidate, in whole or in part, the indebtedness as a fraudulent conveyance, to subordinate the indebtedness to existing or future creditors of the obligor, or to recover amounts previously paid by the obligor in satisfaction of the indebtedness. There can be no assurance as to what standard a court would apply to determine whether the obligor was "insolvent" or that, regardless of the method of valuation, a court would not determine that the obligor was "insolvent," in each case, after giving effect to the incurrence of the Collateral Obligation and the use of its proceeds. In addition, in the event of the insolvency of an obligor under a Collateral Obligation, payments made on the Collateral Obligation may be subject to avoidance as a "preference" if made within a certain period before insolvency (which may be as long as approximately one year).

In general, if payments on a Collateral Obligation are avoidable, whether as fraudulent conveyances or preferences, the payments can be recaptured either from the initial recipient (such as the Issuer) or from subsequent transferees of the payments (such as the Holders of the Securities). To the extent that any payments are recaptured from the Issuer, the resulting reduction in payments on the Securities will be borne by the Holders of the Securities beginning with the Preference Shares as the most junior Class of Securities. A court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any payment from a Holder of the Securities to the extent that the court has jurisdiction over the Holder or its assets. Since there is no judicial precedent relating to structured securities such as the Securities, there can be no assurance that a Holder of Securities will be able to avoid recapture on this basis.

The preceding discussion is based on principles of United States federal and state laws. Insofar as Collateral Obligations that are obligations of non-United States obligors are concerned, the laws of certain foreign jurisdictions may provide for avoidance remedies under factual circumstances similar to, or broader or narrower than, those described above, with consequences that may or may not be analogous to those described above under United States federal and state laws.

Collateral Obligations consisting of obligations of non-U.S. issuers may be subject to various laws enacted in their home countries for the protection of debtors or creditors, which could adversely affect the Issuer's ability to recover amounts owed. These insolvency considerations will differ depending on the country in which each issuer is located and may differ depending on whether the issuer is a non-sovereign or a sovereign entity.

International Collateral Obligations Involve Particular Risks

A portion of the Collateral Obligations may consist of obligations of obligors Domiciled outside the United States. Acquiring assets outside the United States may involve greater risks than acquiring assets in the United States. These risks may include: less publicly available information; varying levels of governmental regulation and supervision; and the difficulty of enforcing legal rights in a foreign jurisdiction and uncertainties as to the status, interpretation and application of laws. Moreover, foreign companies may be subject to accounting, auditing, and financial reporting standards, practices, and requirements different from those applicable to U.S. companies.

There generally is less governmental supervision and regulation of exchanges, brokers and issuers in foreign countries than there is in the United States. For example, there may be no comparable provisions under certain foreign laws with respect to insider trading and similar investor protection securities laws that apply with respect to securities transactions consummated in the United States.

Foreign markets also have different clearance and settlement procedures, and in certain markets there have been times when settlements have failed to keep pace with the volume of securities transactions, making it difficult to conduct transactions. Delays in settlement could result in periods when assets of the Issuer are unapplied and no return is earned on them. The inability of the Issuer to make intended purchases of Collateral Obligations due to settlement problems or the risk of intermediary counterparty failures could cause the Issuer to miss opportunities to acquire Collateral Obligations. The inability to dispose of a Collateral Obligation due to settlement problems could result either in losses to the Issuer due to subsequent declines in the value of the Collateral Obligation or, if the Issuer has entered into a contract to sell the security, could result in possible liability to the purchaser. Transaction costs of buying and selling foreign securities, including brokerage, tax, and custody costs, also are generally higher than those involved in domestic transactions. Furthermore, foreign financial markets, while generally growing in volume, have, for the most part, substantially less volume than U.S. markets, and securities of many foreign companies are less liquid and their prices more volatile than securities of comparable domestic companies.

In certain foreign countries there is the possibility of expropriation, nationalization, or confiscatory taxation; limitations on the convertibility of currency or the removal of securities, property, or other assets of the Issuer; political, economic, or social instability; or adverse diplomatic developments,

each of which could have an adverse effect on the Issuer's purchase of Collateral Obligations in the foreign countries (which may make it more difficult to pay Dollar-denominated obligations such as the Collateral Obligations). The economies of individual non-U.S. countries may also differ favorably or unfavorably from the U.S. economy in such respects as growth of gross domestic product, rate of inflation, volatility of currency exchange rates, depreciation, capital reinvestment, resource self-sufficiency and balance of payments position.

Lender Liability Considerations and Equitable Subordination Can Affect the Issuer's Rights with Respect to Collateral Obligations

In recent years, a number of judicial decisions in the United States have upheld the right of borrowers to sue lenders and bondholders on the basis of various evolving legal theories (collectively termed "**lender liability**"). Generally, lender liability is founded on the premise that a lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to the debtor or has assumed a degree of control over the debtor resulting in the creation of a fiduciary duty owed to the debtor or its other creditors or shareholders. Because of the nature of the Collateral Obligations, the Issuer may be subject to allegations of lender liability. In addition, under common law principles that in some cases form the basis for lender liability claims, a court may elect to subordinate the claim of the offending lender to the claims of the disadvantaged creditors, a remedy called "equitable subordination," if a lender: (i) intentionally takes an action that results in the undercapitalization of a borrower to the detriment of other creditors of the borrower; (ii) engages in other inequitable conduct to the detriment of the other creditors; (iii) engages in fraud with respect to, or makes misrepresentations to, the other creditors; or (iv) uses its influence as a lender to dominate or control a borrower to the detriment of other creditors of the borrower.

Because the Collateral Obligations are primarily Loans, the Issuer may be subject to claims from creditors of an obligor that Collateral Obligations issued by the obligor that are held by the Issuer should be equitably subordinated. However, the Servicer does not intend to engage in conduct that would form the basis for a successful cause of action based on lender liability or the equitable subordination doctrine. Nonetheless, no assurances can be given that actions taken in good faith by the Servicer will not result in losses to issuers of Collateral Obligations, and that the Issuer will not be liable for any such losses. Furthermore, the Issuer and the Servicer may be unable to control the conduct of lenders under a loan syndication agreement requiring less than a unanimous vote, yet the Issuer may be subject to lender liability or equitable subordination for such conduct.

The preceding discussion is based on principles of United States federal and state laws. Insofar as Collateral Obligations that are obligations of non-United States obligors are concerned, the laws of certain foreign jurisdictions may impose liability on lenders or bondholders under factual circumstances similar to, or broader or narrower than, those described above, with consequences that may or may not be analogous to those described above under United States federal and state laws.

Notes May Be Affected by Interest Rate Risks, Including Mismatches Between the Notes and the Collateral Obligations

The Notes bear interest at a rate based on LIBOR as determined on the second Business Day prior to the first day of the relevant Interest Period. The Collateral Obligations will consist primarily of obligations that bear interest at floating rates, which floating rates may be different than the floating rates on the Floating Rate Notes. Accordingly, the Notes are subject to interest rate risk to the extent that there is an interest rate mismatch between the rates at which interest accrues on the Notes and the rates at which interest accrues on the Collateral. In addition, there may be a timing mismatch between the Floating Rate Notes and the Floating Rate Obligations as the interest on the Floating Rate Obligations may adjust more or less frequently, on different dates and based on different indices than the interest rates on the Floating Rate Notes. Furthermore, any payments of principal of or interest on Collateral received during a Due Period will (except to a limited extent specified in the Indenture) be held in Eligible Investments maturing not later than the Business Day immediately preceding the next Payment Date. There is no requirement that Eligible Investments bear interest at LIBOR or a similar rate, and the interest rates available for

Eligible Investments are inherently uncertain. As a result of these mismatches, an increase or decrease in LIBOR for the relevant maturity could adversely affect the ability of the Issuer to make interest payments on the Notes (including due to a rise or a decline in the value of previously issued Collateral Obligations or other Collateral that bear interest at a fixed rate as LIBOR decreases or increases, as applicable) and to make distributions or final distributions on the Preference Shares. To mitigate a portion of the interest rate mismatch, the Issuer may enter into Hedge Agreements that are (in the case of Hedge Agreements entered into on or after the Closing Date) subject to a Rating Confirmation. However, there can be no assurance that the Collateral Obligations and Eligible Investments, together with the Hedge Agreements, will in all circumstances generate sufficient Interest Proceeds to make timely payments of interest on the Notes. Moreover, the benefits of any Hedge Agreements may not be achieved in the event of the early termination of the Hedge Agreements, including termination upon the failure of the related Hedge Counterparty to perform its obligations under the Hedge Agreement. Although any Hedge Counterparty will be a highly rated institution at the time of entering into the applicable Hedge Agreement, there can be no assurance that it will meet its obligations under the applicable Hedge Agreement. In addition, the actual principal balance of any rate mismatch between the Collateral Obligations and the Notes may not exactly match the notional balance under any Hedge Agreement. All risks associated with any rate or notional balance mismatch will be borne by the holders of the Securities, beginning with the Preference Shares as the most junior Class. See "Security for the Notes—Hedge Agreements."

The Servicer may direct the Issuer to reduce the notional amount of, or otherwise adjust the terms of, any Hedge Agreement outstanding at any time, subject, in the case of any reduction or adjustment made on or after the Ramp-Up Completion Date, to obtaining a Rating Confirmation.

Changes in Tax Law Could Result in the Imposition of Withholding Taxes with Respect to Payments on the Collateral Obligations, and the Obligors on the Collateral Obligations will not Gross-Up Payments to the Issuers

The Issuer expects that payments received on the Hedge Agreements, and generally on the Collateral Obligations and Eligible Investments, will not be subject to withholding taxes imposed by the United States or reduced by withholding taxes imposed by any other country from which such payments are sourced unless the obligor is required to make "gross-up" payments that cover the full amount of any such withholding taxes. In the case of Collateral Obligations and Eligible Investments issued by U.S. obligors after July 18, 1984 that are in registered form, payments thereon generally are exempt under current United States tax law from the imposition of United States withholding tax. See "Material Income Tax Considerations—United States Federal Taxation of the Issuer." However, there can be no assurance that, as a result of any change in any applicable law, treaty, rule or regulation or interpretation thereof, the payments on the Hedge Agreements, Collateral Obligations and Eligible Investments would not in the future become subject to withholding taxes imposed by the United States of America or another jurisdiction. In that event, if the obligors of such Hedge Agreements, Collateral Obligations and Eligible Investments were not then required to make "gross-up" payments that cover the full amount of any such withholding taxes, the amounts available to make payments on, or distributions to, the holders of the Notes would accordingly be reduced. There can be no assurance that remaining payments on the Collateral would be sufficient to make timely payments of interest on and payment of principal at the stated maturity of each Class of the Notes or distributions on the Preference Shares.

In the event that any withholding tax is imposed on payments on, or distributions to, the holders of the Securities as a result of any change in any applicable law, treaty, rule or regulation or interpretation thereof, the holders of the Securities will not be entitled to receive "grossed-up" amounts to compensate for such withholding tax.

Upon the occurrence of a Tax Event, the Notes shall be redeemable at the applicable Redemption Price, in whole, but not in part, by the Issuer at the written direction of the applicable Required Redemption Percentage, as described under "Description of the Securities—Optional Redemption."

An investment in the Securities involves complex tax issues (particularly in respect of the subordinated Securities), and delays in distributing important tax information may occur. Investors

should consult their own tax advisors before investing in the Securities. See "Material Income Tax Considerations" herein.

The Issuer Has the Right to Engage in Securities Lending, which Involves Counterparty Risks and Other Risks

The Collateral Obligations may be loaned for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) that have, or are guaranteed by entities that have, long-term and short-term senior unsecured debt ratings or a guarantor with those ratings at the time of the loan, of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" from S&P. See "Security for the Notes—Securities Lending." The loans must be secured by cash or direct registered debt obligations of the United States of America, in an amount at least equal to 102% of the current Ask-Side Market Value of the loaned Collateral Obligations, determined on a daily basis. However, if the borrower of a loaned Collateral Obligation defaults on its obligation to return the loaned Collateral Obligation because of insolvency or otherwise, the Issuer could experience delays and costs in gaining access to the collateral posted by the borrower (and in extreme circumstances could be restricted from selling the collateral). If the borrower defaults, the Issuer could suffer a loss to the extent that the realized value of the cash or securities securing the obligation of the borrower to return a loaned Collateral Obligation (less expenses) is less than the amount required to purchase the Collateral Obligation in the open market. This shortfall could be due to, among other factors, discrepancies between the mark-to-market and actual transaction prices for the loaned Collateral Obligations arising from limited liquidity or availability of the loaned Collateral Obligations and, in extreme circumstances, the loaned Collateral Obligations being unavailable at any price.

The Rating Agencies may downgrade any of the Notes if a borrower of a Collateral Obligation or, if applicable, the entity guaranteeing the performance of the borrower has been downgraded by one of the Rating Agencies such that the Issuer is not in compliance with the Securities Lending Counterparty rating requirements. The Securities Lending Counterparties may be Affiliates of the Initial Purchaser or Affiliates of the Servicer, which may create certain conflicts of interest. See "—Relating to Certain Conflicts of Interest—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" and "—The Issuer Will Be Subject to Various Conflicts of Interest Involving the Initial Purchaser" below.

A Substantial Amount of Collateral Obligations Was Acquired Before the Closing Date, and the Terms of the Acquisition May Adversely Affect the Issuer

In anticipation of the issuance of the Securities, one or more Affiliates of the Initial Purchaser (the "Pre-Closing Parties") are financing the acquisition of Collateral Obligations by the Issuer pursuant to confirmations entered into by or on behalf of the Issuer confirming the Issuer's commitment to purchase such Collateral Obligations during an accumulation period before the Closing Date (the "**Accumulation Period**"). Pursuant to a master participation agreement, such Pre-Closing Parties have acquired (and will acquire) from the Issuer at the time of the Collateral Obligation purchase, a 100% participation interest in each such loan, which participation will be repurchased by the Issuer on the Closing Date at an amount equal to the purchase price minus any distributions of principal on the obligation received by the respective Pre-Closing Party. In consideration for providing financing for the obligations, the Pre-Closing Parties will be paid a financing fee out of interest and any fees and commissions paid by the obligors under such obligations or accrued on such obligations, from the time of purchase through the Closing Date. In addition, in preparation for the closing, one or more Pre-Closing Parties may acquire Collateral Obligations pursuant to confirmations entered into by or on behalf of the Issuer confirming the Issuer's commitment to purchase such Collateral Obligations on the Closing Date at the purchase prices set forth therein, plus the amount of accrued interest thereon in accordance with their terms through the Closing Date. Furthermore, in return for bearing the risk of loss on the Collateral Obligations acquired prior to the Closing Date, the Servicer or one or more if its Affiliates will be entitled to retain all interest and any fees and commissions (net of any financing fees payable to the Pre-Closing Parties) paid by the obligors under such obligations or accrued on such obligations, from the time of purchase through the Closing Date. Accordingly, there can be no assurance that the market value of any

such Collateral Obligation on the Closing Date will be equal to or greater than the price paid by the Issuer, and any net losses, as well as net gains, experienced in respect of any such Collateral Obligation during the period in which they were warehoused will be for the Issuer's account.

Relating to Certain Conflicts of Interest

In General, the Transaction Will Involve Various Potential and Actual Conflicts of Interest

Various potential and actual conflicts of interest may arise from the overall servicing, advisory and other activities of the Servicer and its Affiliates and from the conduct by the Initial Purchaser and their respective Affiliates of other transactions with the Issuer, including acting as counterparty with respect to Hedge Agreements, Securities Lending Agreements, and Synthetic Securities. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts.

The Holders of the Class II Preference Shares Control Appointment and Removal of Directors of the Issuer

HFP and/or one or more of its subsidiaries are expected to purchase all of Class II Preference Shares on the Closing Date. Class II Preference Shares will have total control with respect to the appointment and removal of directors of the Issuer as long as the aggregate number of Class II Preference Shares Outstanding as of the relevant Voting Record Date is higher than the aggregate number of Class I Preference Shares Outstanding as of such date; *provided* that the holders of the Class II Preference Shares may not vote to remove less than all of the directors of the Issuers. The Class I Preference Shares will have no voting rights with respect to the appointment or removal of directors. As of the Closing Date, the Class II Preference Shares Outstanding will constitute a Majority of the Preference Shares Outstanding. HFP and/or its subsidiaries that purchase Class II Preference Shares will agree not to transfer any of the Class II Preference Shares to any Person other than Investors Corp. Any transfer of Class II Preference Shares by HFP or any of its subsidiaries to Investors Corp. will require redesignation by the Share Registrar of such Class II Preference Shares as Class I Preference Shares. If at any time, due to such redesignation upon sale of any Class II Preference Shares by HFP or any of its subsidiaries to Investors Corp., the aggregate number of Class II Preference Shares Outstanding is reduced so that it is equal to or lower than the number of Class I Preference Shares Outstanding, Class II Preference Shares will automatically become non-voting shares and will no longer be entitled to vote with respect to the appointment and removal of directors of the Issuer (and, in such case, the directors will be appointed in accordance with the definition of "Board of Directors").

As long as Class II Preference Shares retain the voting rights with respect to the appointment and removal of directors of the Issuer, HFP and/or one or more of its subsidiaries that have purchased such Class II Preference Shares will be able to appoint and remove any of the directors. The directors appointed by HFP and/or one or more of its subsidiaries may be Affiliates of HFP or the Servicer. No other Holders of the Securities will have any right to vote with respect to such appointments and removals of directors of the Issuer.

The Holders of the Class II Preference Shares May Control or Prevent Removal of the Servicer, Appointment of a Replacement Servicer and Optional Redemption or Refinancing of the Notes

The Class II Preference Shares to be purchased by HFP or any of its subsidiaries at closing are expected to constitute a Majority of the Preference Shares. As such, and absent any express exclusion, so long as HFP and/or one or more of its subsidiaries maintain their position in such Preference Shares, HFP and such subsidiaries, as applicable, will hold the controlling vote on any decision that requires a Majority of the Preference Shares and will hold a blocking position with respect to any decision that requires a higher percentage of Preference Shares.

Pursuant to the Servicing Agreement, such agreement may be terminated and the Servicer may be removed by the Issuer, if directed by the Trustee (acting at the direction of a Super Majority of the

Controlling Class of Notes) or by a Majority of the Preference Shares (excluding Preference Shares held by the Servicer, any of its Affiliates or any account for which the Servicer or its Affiliates have discretionary voting authority (or, with respect to Class I Preference Shares held by Investors Corp. at such time, Holding Preference Shares held by the Servicer, any of its Affiliates or any account for which the Servicer or its Affiliates have discretionary voting authority) other than, with respect to the Class II Preference Shares, HFP or any of its subsidiaries; *provided* that, with respect to the voting authority of the Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Preference Share, a "**Voting Preference Share**"), in each case for "cause" upon 10 days' prior written notice. Further, the Issuer's ability to appoint a successor servicer is subject to, among other things, the written direction of a Majority of the Voting Preference Shares. As such, if the Class II Preference Shares continue to constitute a Majority of Preference Shares, HFP and any of its subsidiaries that hold Class II Preference Shares will collectively control the ability of the Holders of the Preference Shares to both remove the Servicer for "cause" and appoint the Servicer's replacement. Since HFP is managed by the Servicer, HFP may have a conflict of interest and may be less likely to exercise these rights than the Holders of the Class I Preference Shares. In such case, should the Holders of the Class I Preference Shares believe that "cause" exists to remove the Servicer, the Holders of the Class II Preference Shares may prevent their ability to do so.

The Holders of a Majority of the Aggregate Outstanding Amount of the Preference Shares may give written notice to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer directing an optional redemption of the Notes upon the occurrence of a Tax Event or at any time after the Non-Call Period. After such Notes are retired, the Holders of a Majority or of all of the Preference Shares (depending on the form of redemption) may effect an optional redemption of the Preference Shares. As a result of the foregoing, and so long as they hold a controlling block of Preference Shares, the vote of HFP and/or its applicable subsidiaries will be required to redeem the Securities. As an entity managed by the Servicer, HFP may once again have interests that differ from those of the Class I Preference Shares. Should the Holders of the Class I Preference Shares seek to redeem the Securities, the Holders of the Class II Preference Shares may prevent their ability to do so.

In addition, at any time after the Non-Call Period, upon a proposal by the Servicer, the Holders of a Majority of the Preference Shares may consent to a redemption of any Class of Notes pursuant to a Refinancing. As a result of the foregoing, and so long as they hold a controlling block of Preference Shares, the vote of HFP and/or its applicable subsidiaries will be required for such Refinancing. If the Holders of the Class I Preference Shares seek a redemption of Notes pursuant to Refinancing, the Holders of the Class II Preference Shares could prevent their ability to achieve this.

The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer

Various potential and actual conflicts of interest may arise from the overall activities of the Servicer, its Affiliates and the subsidiaries of HFP. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts.

On the Closing Date, (i) HFP and/or one or more of its subsidiaries are expected to purchase all of the Class II Preference Shares directly from the Issuer at a discounted purchase price and (ii) the Servicer or one or more of its Affiliates (other than HFP or any of its subsidiaries) are expected to purchase certain of the Class D Notes directly from the Issuer at a discounted purchase price and are expected to purchase certain of the Holding Preference Shares directly from Investors Corp., at a discounted purchase price. The Initial Purchaser will not be acting as Initial Purchaser with respect to such Class II Preference Shares or other Securities purchased by HFP or any of HFP's subsidiaries or the Servicer or any of its Affiliates, as applicable. On the Closing Date, the Servicer will be reimbursed by the Issuer for certain of its expenses incurred in connection with the organization of the Issuer (including legal fees and expenses). In addition, a broker-dealer Affiliate of the Servicer may receive a fee for placing certain of the Holding Preference Shares and/or certain of the Securities.

Conflicts of interest may arise for the Servicer with respect to its obligations to the Issuer from the overall activities of the Servicer, its Affiliates and the subsidiaries of HFP, for the accounts of its other clients. For example, the Servicer, its Affiliates and their respective clients and the subsidiaries of HFP may acquire loans, securities, and other obligations that would be appropriate for inclusion in the Issuer's portfolio of Collateral Obligations, as well as in loans, securities, and other obligations that are senior to, or have interests different from or adverse to, assets that are pledged to secure the Notes. Furthermore, Affiliates of the Servicer may serve as general partners or managers of special-purpose entities organized to issue other collateralized loan obligations ("**CLO**s") secured primarily by corporate loans and collateralized debt obligations ("**CDO**s") secured by corporate debt obligations or asset backed securities. The Servicer and its Affiliates may also have ongoing relationships with, render services to, or engage in transactions with, companies whose loan obligations or securities are pledged to secure the Notes and may now or in the future own (as portfolio assets or otherwise) loan obligations or equity or debt securities issued by issuers of or obligors on, Collateral Obligations or other Collateral. An Affiliate of the Servicer may earn fees with respect to financial advisory services rendered to companies in connection with workouts or the subsequent restructuring of such companies. Such fees and advice may continue for a period of time after any such workout or restructure. The Issuer may own an interest in the securities of such companies. The Servicer will endeavor to resolve conflicts with respect to opportunities in a manner that it deems equitable to the extent possible under the prevailing facts and circumstances.

The Servicer and its Affiliates may possess information relating to issuers of Collateral Obligations or other Collateral that (i) may constrain the Issuer's asset acquisition as a consequence of the Servicer's inability to use such information for asset acquisition purposes or otherwise to take actions that would be in the best of interests of the Issuer or (ii) is not known to the employees of the Servicer responsible for monitoring the Collateral and performing the other obligations of the Servicer under the Servicing Agreement. The Servicer, its Affiliates and their respective clients and the subsidiaries of HFP may at certain times be simultaneously seeking to purchase or dispose of assets for the respective accounts of the Issuer, any similar entity for which it serves as manager or advisor, and for its clients or Affiliates.

Neither the Servicer nor any of its Affiliates has any affirmative obligation to offer any assets to the Issuer or to inform the Issuer of any assets before offering any assets to other funds or accounts that the Servicer or any of its Affiliates manage or service. Furthermore, the Servicer may be bound by affirmative obligations in the future, whereby the Servicer is obligated to offer certain assets to funds or accounts that it manages or services before or without the Servicer offering those assets to the Issuer.

Pursuant to the terms of the Servicing Agreement, the Servicer will not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the United States Investment Advisers Act of 1940, as amended (the "**Advisers Act**"). The Servicing Agreement also provides that the Servicer will not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Advisers Act.

The Servicer currently serves as the servicer or portfolio manager for a number of special purpose vehicles that have issued securities secured by or referencing collateral consisting of assets similar to the Collateral Obligations, which may create conflicts in allocating its time and services among the Issuer and

the Servicer's other accounts. The Servicer and its Affiliates and the subsidiaries of HFP may own equity or other securities of issuers of or obligors on Collateral Obligations or other Collateral and may have provided and may provide in the future, advisory and other services to issuers of Collateral. In addition, the Servicer and its Affiliates may act as the Securities Lending Counterparty under any Securities Lending Agreement entered into by the Issuer.

The Servicer may resign at any time and may be removed for cause by the Issuer, if directed by the Trustee (acting at the direction of a Super Majority of the Controlling Class of Notes) or by a Majority of the Voting Preference Shares. Upon the resignation or removal of the Servicer, the Issuer, at the written direction of a Majority of the Voting Preference Shares, may appoint a replacement servicer if (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the Servicer, its Affiliates or any account for which the Servicer or its Affiliates have discretionary voting authority other than HFP or any of its subsidiaries; *provided* that, with respect to the voting authority of Notes owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Note, a "**Voting Note**") or (y) a Majority of the Aggregate Outstanding Amount of the Voting Notes (voting as a single Class) do not object to the replacement servicer. See "The Servicing Agreement." Securities (or, with respect to Preference Shares held by Investors Corp. at such time, Holding Preference Shares) held by the Servicer, its Affiliates or any account for which the Servicer or its Affiliates have discretionary voting authority (other than HFP or any of its subsidiaries) will have no voting rights with respect to any vote in connection with removal of the Servicer for "cause" and will be deemed not to be outstanding in connection with any vote to remove the Servicer for "cause" and to appoint a replacement servicer; *provided* that, with respect to the voting authority of Class II Preference Shares or Notes owned by HFP or any of its subsidiaries, such vote shall be determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiary) of HFP or such subsidiary. Except to the extent specified otherwise, Securities (or, with respect to Preference Shares held by Investors Corp. at such time, Holding Preference Shares) held by the Servicer, its Affiliates or any account for which the Servicer or its Affiliates have discretionary voting authority at the time of such vote will have voting rights with respect to all other matters as to which the Holders of the Securities are entitled to vote, including any vote to direct an Optional Redemption or a Refinancing. See "The Servicing Agreement", "Description of the Securities—Optional Redemption" and "Description of the Securities—Optional Redemption—Redemption by Refinancing."

On the Closing Date, (i) HFP and/or one or more of its subsidiaries are expected to purchase Class II Preference Shares having an aggregate Face Amount equal to U.S.$75,000,000 at a discounted purchase price and (ii) the Servicer or its Affiliates are expected to purchase Class D Notes having an aggregate principal amount equal to U.S.$16,000,000 at a discounted purchase price and Holding Preference Shares having an aggregate Face Amount equal to U.S.$20,000,000 at a discounted purchase price. In addition, the Servicer or its Affiliates may also acquire Securities upon the occurrence of an Amendment Buy-Out or a Maturity Extension or Notes upon the occurrence of a Refinancing as described herein. The Servicer has also agreed with one or more Multiple Class Holders to purchase, at the option of each such Multiple Class Holder, Securities (or Holding Preference Shares, as the case may be) held or, in the case of Notes represented by Global Notes, beneficially owned by such Multiple Class Holder in connection with an Amendment Buy-Out or Refinancing, if such Securities (or Holding Preference Shares, as the case may be) are not subject to such Amendment Buy-Out or Refinancing and other Securities (or Holding Preference Shares, as the case may be) held or beneficially owned by such Multiple Class Holder are subject to such Amendment Buy-Out or Refinancing. To the extent that the interests of the Holders of the Notes differ from the interests of the Holders of the Preference Shares, the holding of Preference Shares by the Servicer or its Affiliates may create additional conflicts of interest.

The Servicer will be entitled to receive the Senior Servicing Fee, the Subordinate Servicing Fee and the Supplemental Servicing Fee, as further described herein. The structure of such fees may cause the Servicer to direct the Issuer to purchase more speculative Collateral Obligations than it would

otherwise acquire in the absence of such performance based compensation. See "The Servicing Agreement."

In addition to acting as Servicer to the Issuer, Highland Capital will act as manager for HFP, which will, on the Closing Date, purchase all of the Class II Preference Shares. Because Highland Capital will receive both a Servicing Fee from the Issuer for servicing the Collateral and a management fee from HFP for managing HFP's assets, which will include the Class II Preference Shares (and therefore a residual interest in the Collateral), Highland Capital has agreed, in connection with the capital raising of Highland Financial Trust, to waive a portion of its Servicing Fees from the Issuer for two years following the Closing Date so as not to reduce the income realized by HFP or any of its subsidiaries that hold Class II Preference Shares, as the case may be, in respect of such Class II Preference Shares. Thereafter Highland Capital may at its discretion continue to waive such portion of its Servicing Fees or may elect to receive such Servicing Fees in their entirety. Accordingly, during the first two years following the Closing Date, an amount equal to a portion (representing the percentage ownership of the Preference Shares represented by the Class II Preference Shares) of the amounts that would otherwise be payable to the Servicer as a Servicing Fee will instead be payable as a special payment to the Holders of the Class II Preference Shares in accordance with the Priority of Payments. Thereafter, the Servicer may elect to continue to waive such same portion of the amounts that would otherwise be payable to the Servicer as a Servicing Fee, or any lesser portion of such amounts, and an amount equal to such waived amounts will be paid as a special payment to the Holders of the Class II Preference Shares. The Class II Preference Shares and the Class I Preference Shares will vote together as a single class. Receipt of Servicing Fees in the form of dividends on Class II Preference Shares may cause HFP to have different incentives from the Holders of the Class I Preference Shares.

The Issuer Will Be Subject to Various Conflicts of Interest Involving the Initial Purchaser

The Initial Purchaser or its Affiliates may own positions in and will likely have placed or underwritten certain of the Collateral Obligations (or other obligations of the issuers of Collateral Obligations) when they were originally issued and may have provided or be providing investment banking, asset management, commercial banking or other services to issuers of certain Collateral Obligations. It is expected that from time to time the Servicer will purchase from or sell Collateral Obligations through or to the Initial Purchaser or its Affiliates (including a significant portion of the Collateral Obligations to be purchased on or prior to the Closing Date) and that one or more Affiliates of the Initial Purchaser may act as counterparty with respect to all or a portion of the Synthetic Securities, the Participating Institution with respect to Participations, a counterparty under a Hedge Agreement and/or a counterparty with respect to securities lending transactions (if any). The Initial Purchaser and its Affiliates may act as placement agent and/or initial purchaser in other transactions involving issues of collateralized debt obligations or other investment funds with assets similar to those of the Issuer, which may have an adverse effect on the availability of collateral for the Issuer.

The Trustee, the Initial Purchaser or any Hedge Counterparty or any of their respective Affiliates or employees may purchase the Securities (either upon initial issuance or through secondary transfers) or exercise any Voting Rights to which such Securities are entitled. The Initial Purchaser is acting as initial purchaser with respect to a portion of the Holding Preference Shares. The Initial Purchaser or its Affiliates shall also provide financing to the Servicer or its Affiliates in connection with their purchase of Class II Preference Shares which will be secured by a lien on such financed Class II Preference Shares.

In addition to the foregoing activities, the Initial Purchaser or one of its Affiliates holds equity securities of HFT issued in connection HFT's acquisition of the limited partnership interests in HFP and acted as a co-manager in connection with the offering of such equity securities.

The Issuer's purchase of Collateral Obligations prior to the Closing Date was financed in part through the sale of participation interests therein to Pre-Closing Parties. A portion of the proceeds from the offering of the Securities will be paid to the Pre-Closing Parties to repurchase such participation interests.

The Initial Purchaser and its Affiliates may, by virtue of the relationships described above or otherwise, at the date hereof or at any time hereafter, be in possession of information regarding certain of the issuers of Collateral Obligations and their respective Affiliates, that is or may be material in the context of the Securities and that is or may not be known to the general public. None of the Initial Purchaser or any of its Affiliates has any obligation, and the offering of the Securities will not create any obligation on their part, to disclose to any purchaser of the Securities any such relationship or information, whether or not confidential.

DESCRIPTION OF THE SECURITIES

The Notes will be issued pursuant to the Indenture. The terms of the Preference Shares are contained in the Issuer Charter and in certain resolutions adopted by the Issuer's Board of Directors on or before the Closing Date authorizing and approving the issuance of the Securities, as reflected in the minutes thereof (the "**Resolutions**" and, together with the Issuer Charter and the Preference Shares Paying Agency Agreement, the "**Preference Share Documents**"). The following summary describes certain provisions of the Notes, the Preference Shares, the Indenture and the Preference Share Documents. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the Indenture and the Preference Share Documents. Copies of the Indenture may be obtained by prospective purchasers upon request in writing to the Trustee at 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116 Attention: CDO Services Group, and will be available at the office of AIB International Financial Services Ltd. (in such capacity, the "**Irish Paying Agent**") in the City of Dublin. Copies of the Preference Share Documents may be obtained upon request in writing to the Administrator at P.O. Box 1234, Queensgate House, George Town, Grand Cayman, Cayman Islands, Attention: the Directors—Grayson CLO, Ltd.

Status and Security

The Senior Notes are non-recourse debt obligations of the Co-Issuers. The Class D Notes are non-recourse debt obligations of the Issuer. Each Note within a Class will rank *pari passu* with all other Notes of that Class. Under the Indenture, the Issuer will grant to the Trustee a first-priority security interest in the Collateral to secure the Issuer's obligations under the Indenture, the Notes, Hedge Agreements and the Servicing Agreement (collectively, the "**Secured Obligations**"). The Notes are payable solely from amounts received in respect of the Collateral pledged by the Issuer to secure the Notes. If the amounts received in respect of the Collateral (net of certain expenses) are insufficient to make payments on the Secured Obligations, in accordance with the Priority of Payments, no other assets will be available for payment of the deficiency and, following liquidation of all the Collateral, the obligations of the Issuer or the Co-Issuer, as the case may be, to pay the deficiency will be extinguished.

The Preference Shares are entitled to proceeds of the Collateral only to the extent that any such proceeds are remaining on any Payment Date after payment of all interest and principal payable on each Class of Notes on that Payment Date and the satisfaction of certain other amounts payable in accordance with the Priority of Payments. In addition, the Holders of the Class II Preference Shares will be entitled, as and to the extent set forth herein, to the Class II Preference Share Special Payments pursuant to the priority provided in the Priority of Payments.

In furtherance of the priorities of payments among the Classes of Notes and the Preference Shares, the Indenture contains express subordination provisions pursuant to which the Holders of each Class of Notes that is a Junior Class as described below agree for the benefit of the Holders of the Notes of each Priority Class with respect to the Junior Class that the Junior Class shall be subordinate and junior to the Notes of each Priority Class to the extent and in the manner provided in the Indenture.

If any Event of Default has not been cured or waived and acceleration occurs under and in accordance with the Indenture, each Priority Class of Notes shall be paid in full in cash or, to the extent a Majority of each Class consents, other than in cash, before any further payment or distribution is made on account of any Junior Class of Notes with respect to the Priority Class. The Holders of each Junior Class of Notes agree, for the benefit of the Holders of the Notes of each Priority Class not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for failure to pay to them amounts due to the Junior Class, of the Notes or each Class of Notes, as the case may be, or under the Indenture until the payment in full of the Priority Classes or all the Classes, as the case may be and not before one year and a day, or if longer, the applicable preference period then in effect, has elapsed since the payment.

For purposes of this provision, with respect to each Class of Notes, the Classes of Notes that are Priority Classes and Junior Classes are as follows:

Class	Junior Classes	Priority Classes
A-1a	A-1b, A-2, B, C, D, Preference Shares*	None
A-1b	A-2, B, C, D, Preference Shares*	A-1a
A-2	B, C, D, Preference Shares*	A-1
B	C, D, Preference Shares*	A-1, A-2
C	D, Preference Shares*	A-1, A-2, B
D	Preference Shares*	A-1, A-2, B, C
Preference Shares	None**	A-1, A-2, B, C, D

*Other than with respect to the Class II Preference Share Special Payments, which may be payable to the Holders of the Class II Preference Shares as set forth herein and will have priority to the extent provided in the Priority of Payments.

**The Preference Shares will be entitled to certain residual cash flow after payment of senior obligations in accordance with the Priority of Payments.

If, notwithstanding the provisions of the Indenture, any Holder of Notes of any Junior Class has received any payment or distribution in respect of the Notes contrary to the provisions of the Indenture, then, until each Priority Class with respect to the Junior Class of Notes or each Class of Notes, as the case may be, or, to the extent a Majority of the Priority Class or the Class, as the case may be, consents, other than in cash in accordance with the Indenture, the payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the applicable Priority Classes of Notes or the Holders of all Classes of Notes, as the case may be. If any such payment or distribution is made other than in cash, it shall be held by the Trustee as part of the Collateral and subject in all respects to the Indenture.

Each Holder of Notes of any Junior Class agrees with all Holders of the applicable Priority Classes that the Holder of Junior Class Notes shall not demand, accept, or receive any payment or distribution in respect of the Notes in violation of the Indenture. After a Priority Class has been paid in full, the Holders of Notes of the related Junior Class or Classes shall be fully subrogated to the rights of the Holders of the Priority Class. Nothing in these provisions shall affect the obligation of the Issuer to pay Holders of any Junior Class of Notes.

Distributions to Holders of the Preference Shares are subordinate to distributions on the Notes as described in the Priority of Payments (other than, as and to the extent set forth herein, with respect to distribution of the Class II Preference Share Special Payments).

The Servicing Fees shall have priority only to the extent provided in the Priority of Payments.

Interest Payments on the Notes and Payments of Dividends on the Preference Shares from Interest Proceeds

The Notes of each Class will accrue interest during each Interest Period on their Aggregate Outstanding Amount (determined as of the first day of the Interest Period and after giving effect to any redemption or other payment of principal occurring on that day) at the applicable per annum interest rates for each such Class (the "**Note Interest Rate**") equal to LIBOR for Eurodollar deposits for the applicable Interest Period *plus* the spread, as specified above under "Summary of Terms—Principal Terms of the Securities." Interest accrued on the Notes shall be calculated on the basis of the actual number of days elapsed in the applicable Interest Period *divided by* 360. Payment of interest on each Class of Notes shall

be subordinated to the payments of interest on the related Priority Classes and other amounts in accordance with the Priority of Payments.

So long as any Priority Classes are Outstanding with respect to any Class of Deferred Interest Notes, any payment of Deferred Interest in accordance with the Priority of Payments on any Payment Date shall not be considered "payable" for the purposes of the Indenture (and the failure to pay the interest shall not be an Event of Default) until the Payment Date on which the interest is available to be paid in accordance with the Priority of Payments. Deferred Interest on any Class of Deferred Interest Notes shall be payable on the first Payment Date on which funds are available to be used for that purpose in accordance with the Priority of Payments. To the extent lawful and enforceable, interest on Deferred Interest with respect to any Class of Deferred Interest Notes shall accrue at the Note Interest Rate for the Class (and to the extent not paid as current interest on the Payment Date after the Interest Period in which it accrues, shall thereafter be additional Deferred Interest), until paid.

Interest shall cease to accrue on each Note, or in the case of a partial repayment, on the part repaid, from the date of repayment or its Stated Maturity unless payment of principal is improperly withheld or unless there is some other default with respect to the payments of principal.

On each Payment Date, the Issuer will make distributions to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Preference Shares as dividends on the Preference Shares, pursuant to the Preference Share Documents, to the extent legally permitted, to the extent of available Interest Proceeds as described under clauses (22) and (24) under "Description of the Securities—Priority of Payments—Interest Proceeds."

In addition, on each Payment Date during the first two years following the Closing Date, Holders of the Class II Preference Shares will be entitled to distributions, on a *pro rata* basis, from the Class II Preference Share Special Payment Account, equal to the Class II Preference Share Senior Special Payment, the Class II Preference Share Subordinated Special Payment and the Class II Preference Share Supplemental Special Payment (if any) (collectively, the "**Class II Preference Share Special Payments**"). After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as the Class II Preference Share Special Payments. Any payments to the Holders of Class II Preference Shares of the Class II Preference Share Special Payments will have priority to the extent provided under "Description of the Securities—Priority of Payments."

For purposes of calculating the Class II Preference Share Special Payments, the following definitions shall apply:

"**Class II Preference Share Percentage**" means, for any Payment Date, a fraction, expressed as a percentage, the numerator of which is the number of Outstanding Class II Preference Shares on such Payment Date and the denominator of which is the total number of Outstanding Preference Shares on such Payment Date.

"**Class II Preference Share Portion**" means, for any Payment Date, 100% minus the Servicing Fee Portion for such Payment Date.

"**Class II Preference Share Senior Special Payment**" means, for any Payment Date, an amount equal to the product of (a) the Senior Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"**Class II Preference Share Subordinated Special Payment**" means, for any Payment Date, an amount equal to the product of (a) the Subordinated Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"**Class II Preference Share Supplemental Special Payment**" means, for any Payment Date, an amount equal to the product of (a) the Supplemental Servicing Fee for such Payment Date and (b) the Class II Preference Share Portion for such Payment Date.

"**Servicing Fee Portion**" means 100% minus (a) for any Payment Date from the Closing Date until (and including) the Payment Date on or immediately preceding the second anniversary of the Closing Date, the Class II Preference Share Percentage for such Payment Date and (b) for any other Payment Date, a percentage (between 0% and 100%) selected by the Servicer in its sole discretion and reported to the Trustee in writing on or before the related Determination Date.

For purposes of calculating interest on each Class of Notes, the Issuer will initially appoint the Trustee as calculation agent (the Trustee in that capacity, and each successor calculation agent, the "**Calculation Agent**").

As soon as possible after 11:00 a.m. (London time) on the second Business Day before the first day of each Interest Period, but in no event later than 11:00 a.m. (London time) on the next Business Day, the Calculation Agent will calculate the Note Interest Rate for each Class of Floating Rate Notes for the related Interest Period and the amount of interest for the Interest Period payable in respect of each $100,000 in principal amount of each Class of Floating Rate Notes (in each case rounded to the nearest cent, with half a cent being rounded upward) on the related Payment Date and will communicate the Note Interest Rate for each Class of Floating Rate Notes and the date of the next Payment Date to the Trustee, the Initial Purchaser, each paying agent, Euroclear, Clearstream, the Depository, and (as long as the Senior Notes are listed on the ISE) the ISE.

The Calculation Agent may be removed by the Co-Issuers at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Co-Issuers or if the Calculation Agent fails to determine the Note Interest Rate for each Class of Floating Rate Notes or the amount of interest payable in respect of each Class of Floating Rate Notes for any Interest Period, the Issuer will promptly appoint as a replacement Calculation Agent a leading bank which is engaged in transactions in U.S. Dollar deposits in the international U.S. Dollar market and which does not control and is not controlled by or under common control with the Co-Issuers or any of their respective affiliates. The Calculation Agent may not resign its duties without a successor having been duly appointed. The determination of the Note Interest Rate with respect to each Class of Floating Rate Notes for each Interest Period by the Calculation Agent shall (in the absence of manifest error) be final and binding upon all parties.

"**LIBOR**" means the offered rate, as determined by the Calculation Agent for any Interest Period, for three month Dollar deposits that appears on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Markets Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 a.m. (London time) on the second Business Day before the first day of the relevant Interest Period.

If, on the second Business Day before the first day of any relevant Interest Period, that rate does not appear on Moneyline Telerate Page 3750 as reported on Bloomberg Financial Market Commodities News (or a page that replaces Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks to prime banks in the London interbank market for three month Dollar deposits in Europe, by reference to requests by the Calculation Agent to four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Servicer) (the "**Reference Banks**") for quotations as of approximately 11:00 A.M. (London time) on the second Business Day before the first day of the Interest Period. If at least two of the Reference Banks provide quotations as requested, LIBOR shall equal such arithmetic mean. If fewer than two Reference Banks provide quotations, LIBOR shall be the arithmetic mean of the offered quotations that one or more leading banks in New York City selected by the Calculation Agent (after consultation with the Servicer) are quoting to the principal London offices of leading banks in the London interbank market on the second Business Day before the first day of the relevant Interest Period for three month Dollar deposits.

If the Calculation Agent is unable to determine a rate in accordance with any of the above procedures, LIBOR for the Interest Period shall be calculated on the last day of the Interest Period and shall be the arithmetic mean of the rate of interest for each day during the Interest Period determined by the Calculation Agent as being the rate of interest most recently announced by the Bank at its New York office as its base rate, prime rate, reference rate, or similar rate for Dollar loans (or if the Bank ceases to exist or is not quoting a base rate, prime rate, reference rate, or similar rate for Dollar loans, another major money center commercial bank in New York City selected by the Calculation Agent (after consultation with the Servicer)).

For the first Interest Period and, unless the Maturity Extension occurs, the last Interest Period, LIBOR shall be determined based on the actual number of days in the Interest Period using straight-line interpolation of two rates calculated in accordance with the above procedure, except that instead of using three month deposits, one rate shall be determined using the period for which rates are obtainable next shorter than the Interest Period and the other rate shall be determined using the period for which rates are obtainable next longer than the Interest Period. All calculations shall be calculated to at least four decimal places and rounded to four decimal places.

Principal Payments on the Notes and Distributions on the Preference Shares from Principal Proceeds

The principal of each Note of each Class matures at par and is payable on the Payment Date that is the Stated Maturity for the Class of Notes, unless the unpaid principal of the Note becomes payable at an earlier date by declaration of acceleration, call for redemption, or otherwise. The Preference Shares are scheduled to be redeemed on the Scheduled Preference Shares Redemption Date, unless redeemed prior thereto. The average life of each Class of Notes is expected to be shorter than the number of years from issuance until Stated Maturity for such Notes. See "Risk Factors—Relating to the Securities—The Weighted Average Lives of the Notes Interests May Vary" and "Maturity and Prepayment Considerations." Notwithstanding the foregoing, and except as set forth below, the payment of principal of each Class of Notes: (i) may only occur after principal on each Class of Notes that is a Priority Class with respect to the Class has been paid in full and (ii) is subordinated to the payment on each Payment Date of the principal and interest payable on the Priority Classes, and other amounts in accordance with the Priority of Payments. However, (i) Interest Proceeds may be used to pay principal of the Class D Notes on any Payment Date to the extent necessary to satisfy the Class D Coverage Tests and (ii) Principal Proceeds may be used to pay Deferred Interest and other amounts before the payment of principal of the Notes. See "Description of the Securities—Priority of Payments."

In general, principal payments will not be made on the Notes before the end of the Replacement Period, except in the following circumstances: (i) in connection with an Optional Redemption, (ii) in connection with a Refinancing, (iii) at the option of the Servicer, to effect a Special Redemption of the Notes, (iv) pursuant to a redemption made in connection with a Tax Event or (v) following a mandatory redemption of the Notes caused by a failure to meet any of the Coverage Tests or a Rating Confirmation Failure. After the Replacement Period, Principal Proceeds will be applied on each Payment Date in accordance with the Priority of Payments to pay principal of each Class of Notes (except for Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations which may be applied to purchase Collateral Obligations to the extent described herein). No principal of any Class of Notes will be payable on any Payment Date other than in accordance with the Priority of Payments and to the extent funds are available therefor on that Payment Date for that purpose, except that the principal of each Class of Notes will be payable in full at the Stated Maturity, unless repaid before that.

On each Payment Date, the Issuer will make distributions to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Preference Shares as dividends on the Preference Shares, pursuant to the Preference Share Documents, to the extent legally permitted, to the extent of available Principal Proceeds as described under clauses (11)(A), (14) and (15) under "Description of the Securities—Priority of Payments—Principal Proceeds."

Legal Provisions Applicable to the Payments of Dividends from Interest Proceeds and Dividends or Other Distributions from Principal Proceeds

Interest Proceeds and Principal Proceeds paid to the Preference Shares Paying Agent for payment of dividends on, or the payment of the Redemption Price in respect of, the Preference Shares, will be distributable to the Holders of the Preference Shares only if the Issuer is and will remain solvent following such distribution and Interest Proceeds and Principal Proceeds paid to the Preference Shares Paying Agent for payment of dividends in respect of the Preference Shares will be distributable to the Holders of the Preference Shares only if the Issuer has sufficient distributable profits and/or share premium and if the Issuer is and will remain solvent following such distribution. Payments will be paid by the Trustee to the Preference Shares Paying Agent, on behalf of the Issuer, for payment of dividends and other distributions to the Holders of the Preference Shares pursuant to the Preference Share Documents, to the extent legally permitted, on a *pro rata* basis according to the number of Preference Shares held by each Holder on the Record Date for such Payment Date.

Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date

General

The Issuer, if directed by the Servicer, shall be entitled on each Extension Effective Date to extend the Replacement Period to the applicable Extended Replacement Period End Date up to four times if (i) in the case of an Extension Effective Date occurring after the first Extension Effective Date, the Issuer has previously effected a Maturity Extension for each preceding Extension Effective Date and (ii) the Extension Conditions are satisfied and the Issuer has given the Trustee written notice of its election to extend the Replacement Period no later than 60 days and no earlier than 90 days prior to such Extension Effective Date. If the Extension Conditions are satisfied, the Stated Maturity of the Notes shall be automatically extended to the related Extended Stated Maturity Date, the Scheduled Preference Shares Redemption Date shall be automatically extended to the related Extended Scheduled Preference Shares Redemption Date and the Weighted Average Life Test shall be automatically extended to the related Extended Weighted Average Life Date, without any requirement for approval or consent of any Holders of Securities or amendment or supplement to the Indenture or the Preference Share Documents.

In the case of a Maturity Extension, any Holder of Notes or Preference Shares wishing to sell all or a portion of its Securities (or, with respect to any Preference Shares held by Investors Corp. at such time, any Holder of Holding Preference Shares wishing to sell all or a portion of the Holding Preference Shares held by such Holder) to an Extension Qualifying Purchaser pursuant to the Extension Conditions must provide the applicable Extension Sale Notice within the Extension Sale Notice Period pursuant to "—Extension Procedure" below (such Securities (or Holding Preference Shares, as applicable) as to which an Extension Sale Notice has been duly given, "**Extension Sale Securities**"). Notwithstanding anything to the contrary herein, each Holder providing an Extension Sale Notice shall be deemed to agree that no Extension Sale Securities of any Holder shall be purchased unless all Extension Sale Securities of all Holders are purchased and settled at the applicable Extension Purchase Price on the applicable Extension Effective Date and the other Extension Conditions are satisfied as of such date.

The Maturity Extension shall be effective only if the following conditions (the "**Extension Conditions**") are satisfied:

(i) the purchase of all Extension Sale Securities has been settled by the designated Extension Qualifying Purchasers at the applicable Extension Purchase Price as of the applicable Extension Effective Date;

(ii) all such purchases of Extension Sale Securities individually and in the aggregate comply with the applicable transfer restrictions, in the Indenture, the Preference Share Documents and the Holding Preference Share Documents and described herein immediately after such purchase and the legends on such Extension Sale Securities and

all applicable law, rules and regulations (including, without limitation, rules, regulations and procedures of any applicable securities exchange, self-regulatory organization or clearing agency);

(iii) (a) the Rating Condition has been satisfied with respect to S&P (so long as any Notes are then rated by S&P) and (b) Rating Condition has been satisfied with respect to Moody's (so long as any Notes are then rated by Moody's);

(iv) the Issuer has not effected more than three prior Extensions; and

(v) such extension is not effected for the primary purpose of decreasing losses or recognizing gains resulting from market value changes.

In the case of a Maturity Extension, each Noteholder, other than Holders of Extension Sale Securities, shall be entitled to receive an amount equal to the applicable Extension Bonus Payment. Holders of Preference Shares shall not be entitled to receive any Extension Bonus Payment.

The Extension Bonus Payment shall be payable to any applicable qualifying beneficial owners who have provided the Trustee with an Extension Bonus Eligibility Certification on the first Payment Date from and including the Extension Effective Date on which funds are available for such purpose in accordance with the Priority of Payments, but in any event, no later than the earlier of the Stated Maturity and the date of redemption of the Notes. Extension Bonus Payments which are not available to be paid on a Payment Date in accordance with the Priority of Payments on a Payment Date shall not be considered "due and payable" hereunder. The failure to pay any such Extension Bonus Payment on such date shall not be an Event of Default, unless the Issuer shall fail to pay in full such Extension Bonus Payment on the earlier of the Stated Maturity and the date of redemption in full of the relevant Securities. Unpaid Extension Bonus Payments shall not accrue interest. Such amounts shall be paid, in the case of the Notes, to the accounts designated in the applicable Extension Bonus Eligibility Certification or, to the extent otherwise required by the rules of any applicable securities exchange or clearing agency, in a manner determined by the Issuer.

Extension Procedure

Not later than three Business Days following receipt by the Trustee of the notice given by the Issuer of its election to extend the Replacement Period (the "**Extension Notice**"), the Trustee shall mail the Extension Notice to all Holders of Notes, the Preference Shares Paying Agent (for forwarding to the Holders of the Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding), in the form set out in the Indenture, and shall request the Rating Confirmation for the Maturity Extension from each Rating Agency, if applicable.

Any Holder of Securities may deliver an irrevocable notice (an "**Extension Sale Notice**") to the Issuer and the Trustee within 30 days after the Trustee has mailed the Extension Notice (the "**Extension Sale Notice Period**") of its intention to sell all or a portion of its Securities or, with respect to Investors Corp., in its capacity as a Holder of the Class I Preference Shares, all or a portion of Holding Preference Shares, as the case may be, to an Extension Qualifying Purchaser in the case of a Maturity Extension. Any Extension Sale Notice received by the Trustee after the Extension Sale Notice Period shall be disregarded and deemed not to have been given. No Holder of Securities that has not delivered such an Extension Sale Notice within the Extension Sale Notice Period shall be entitled to sell its Securities or Holding Preference Shares, as applicable, to an Extension Qualifying Purchaser in connection with the Maturity Extension.

If any Holder of Class II Preference Shares delivers an Extension Sale Notice notifying the Issuer and the Trustee of its intention to sell all or a portion of its Class II Preference Shares, (i) such Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a

number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Extension Qualifying Purchaser will purchase such additional Holding Preference Shares in lieu of such redesignated Preference Shares.

On the applicable Extension Determination Date, the Issuer (or its agent) shall confirm (i) whether or not Extension Qualifying Purchasers for all Extension Sale Securities have been designated to purchase such Extension Sale Securities in compliance with all transfer restrictions in the Indenture, the Preference Share Documents and the Holding Preference Share Documents and the legends on such Extension Sale Securities and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency), (ii) whether the requirements of clause (iii) of the Extension Conditions are satisfied as of the applicable Extension Determination Date and (iii) whether all other Extension Conditions can be satisfied as of the applicable Extension Effective Date.

On each Extension Effective Date, the Maturity Extension shall automatically become effective under the terms of the Indenture and the Preference Share Documents; *provided* that all Extension Conditions set forth above are satisfied (as certified to the Trustee by a certificate of an Authorized Officer of the Issuer). No later than two Business Days after each Extension Effective Date, the Trustee based on a determination made by the Issuer, at the expense of the Co-Issuers, shall mail a notice to all Holders of Notes, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Servicer, the Initial Purchaser, each Rating Agency (so long as any rated Notes are Outstanding) and the ISE (if and for so long as any Class of Senior Notes is listed thereon) confirming whether or not the Maturity Extension became effective. If the Maturity Extension became effective, the Issuer shall make any required notifications thereof to the Depositary for any Securities subject to the Maturity Extension.

None of the Initial Purchaser, the Servicer or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

Optional Redemption

Notes. The applicable Required Redemption Percentage may give written notice to the Preference Shares Paying Agent, the Trustee, the Issuer and the Servicer directing an optional redemption of the Notes (with respect to the Notes, an "**Optional Redemption**") upon the occurrence of a Tax Event or at any time after the Non-Call Period. Such notice must be given not later than 45 days before the Payment Date on which the redemption is to be made. In the event that the Preference Shares Paying Agent, the Trustee and the Issuer receive notice directing an optional redemption from any one or more Holders of Preference Shares holding less than a Majority of the Preference Shares, the Preference Shares Paying Agent shall, within 5 Business Days of receipt of such notice, notify the Holders of the Preference Shares and the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Preference Shares) (i) of the receipt of such notice and (ii) that any Holder of Preference Shares may join in directing an Optional Redemption by notifying the Issuer, the Trustee and the Preference Shares Paying Agent in writing within 5 Business Days after such Holder's receipt of the Preference Shares Paying Agent's notice.

Upon receipt of the written notice directing an Optional Redemption of the Notes, the Co-Issuers with respect to the Senior Notes and the Issuer with respect to the Class D Notes are required by the Indenture to redeem the Notes (in whole but not in part) from amounts available therefor in accordance with "—Optional Redemption Procedures" described below. Any Optional Redemption of the Notes shall be made at the applicable Redemption Price. Upon an Optional Redemption of the Notes, the Replacement Period will terminate in accordance with the definition of that term. The Issuer shall, at least 30 days before the Redemption Date (unless the Trustee shall agree to a shorter notice period), notify the Trustee, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency of the Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on the Redemption Date and the applicable Redemption Prices.

Preference Shares. On any Payment Date on or after payment in full of the Notes, all administrative and other fees (without regard to any payment limitations) payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), and all amounts owing under the Indenture and any Hedge Agreement to any Hedge Counterparty have been discharged:

(i) at the direction of a Majority of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all of the Preference Shares, in an aggregate amount equal to all of the proceeds from the sale or other disposition of all of the remaining Collateral less any fees and expenses owed by the Issuer (including the Redemption Price of any Notes being simultaneously redeemed), the aggregate amount to be distributed to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares *pro rata* in accordance with their respective holdings; or

(ii) at the unanimous direction of the Holders of the Preference Shares, the Issuer shall cause the Trustee to make payments in redemption of all or a directed portion (representing less than all) of the Preference Shares to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares based upon such direction,

(with respect to the Preference Shares and each of clauses (i) and (ii) above, an "**Optional Redemption**").

Upon a distribution pursuant to clause (i) above, the Servicer will (subject to the standard of care specified in the Servicing Agreement), on behalf of the Issuer (and subject to clause (ii) above), direct the sale of all remaining Collateral Obligations. Upon a distribution pursuant to clause (ii) above, the Servicer will effect the sale of Collateral Obligations in accordance with the unanimous direction of the Holders of the Preference Shares.

Upon receipt of the written notice directing an Optional Redemption of the Preference Shares, the Issuer is required by the Preference Shares Paying Agency Agreement to redeem the Preference Shares in the applicable manner described above. Any Optional Redemption of the Preference Shares shall be made at the applicable Redemption Price.

Optional Redemption Procedures. The Trustee will give notice of a redemption by first-class mail, postage prepaid, mailed not later than 10 Business Days and not earlier than 30 days before the applicable Redemption Date, to (i) each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and (ii) in the case of an Optional Redemption of the Notes, to each Rating Agency. In addition, for so long as any Senior Notes are listed on the ISE and so long as the rules of the exchange so require, notice of an Optional Redemption of Senior Notes shall also be given to the Company Announcements Office of the ISE.

Notice of redemption having been given as provided above, the Notes to be redeemed shall, on the Redemption Date, become payable at the Redemption Price therein specified and from and after the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date.

Upon final payment on a Note to be so redeemed, the Holder shall present and surrender the Note at the place specified in the notice of redemption to receive the applicable Redemption Price unless the Holder provides an undertaking to surrender the Note thereafter.

The Notes may not be optionally redeemed unless either of the following conditions is satisfied:

(i) at least 10 Business Days before the Redemption Date, the Servicer shall have furnished to the Trustee evidence (in form reasonably satisfactory to the Trustee) that the Issuer has entered into a binding agreements (with a financial or other institution or entity whose short-

term unsecured debt obligations (other than obligations whose rating is based on the credit of a person other than the institution) have a credit rating of at least "A-1" from S&P and of "P-1" (and not on credit watch for possible downgrade) from Moody's (or to any other institution or entity if the Rating Condition with respect to Moody's is satisfied with respect to the other entity) to sell to the financial or other institutions, not later than the Business Day before the Redemption Date in immediately available funds, all or part of the Collateral (directly or by participation or other arrangement) at a Purchase Price at least equal to an amount sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments without regard to any payment limitations (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under the Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties and to redeem the Notes on the Redemption Date at the applicable Redemption Prices; or

(ii) before entering into any binding agreement to sell all or a portion of the Collateral and selling or terminating any Hedge Agreement, the Servicer shall have certified that, in its commercially reasonable judgment, the settlement dates of the sales will be scheduled to occur on or before the Business Day before the Redemption Date and that the expected proceeds from the sales are to be delivered to the Trustee no later than the Business Day before the Redemption Date, in immediately available funds, in an amount (calculated as applicable in the manner provided below) sufficient (together with any Cash and other Eligible Investments not subject to the agreements and maturing on or before the Redemption Date and any payments to be received with respect to the Hedge Agreements on or before the Redemption Date) to pay all administrative and other fees and expenses payable under the Priority of Payments (including the Senior Servicing Fee and the Subordinated Servicing Fee), all amounts owing under the Indenture, all amounts owing under the Hedge Agreements to the Hedge Counterparties and to redeem the Notes on the Redemption Date at the applicable Redemption Prices. For purposes of this paragraph, the amount shall be calculated with respect to the classes of Collateral listed in the table below by multiplying the expected proceeds of sale of the Collateral by the indicated percentage in the table below.

		Number of Business Days Between Certification to the Trustee and Sale			
		Same Day	1 to 2	3 to 5	6 to 15
1.	Cash or other Eligible Investments	100%	100%	100%	100%
2.	Loans (other than 5 below)	100%	93%	92%	88%
3.	High-Yield Bonds (other than 5 below) and Structured Finance Obligations (in each case, other than 4 below)	100%	89%	85%	75%
4.	High-Yield Bonds (other than 5 below) and Structured Finance Obligations, in each case with a Moody's Rating of "B3" and on credit watch with negative implications or below "B3"	100%	75%	65%	55%
5.	Synthetic Securities	100%	65%	55%	35%

Any certification delivered by the Servicer shall include (A) the prices of, and expected proceeds from, the sale of any Collateral Obligations, Eligible Investments or Hedge Agreements and (B) all calculations required by the Indenture.

Any notice of redemption may be withdrawn by the Issuer up to the fourth Business Day before the scheduled Redemption Date by written notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares), the Trustee and the Servicer only if:

(i) in the case of an Optional Redemption of Notes, the Servicer does not deliver the sale agreement or certifications required under the Indenture, as the case may be, in form satisfactory to the Trustee;

(ii) in the case of an Optional Redemption in whole of either the Notes or the Preference Shares as described above in "—Optional Redemption—Notes" and clause (i) of the first paragraph under "—Optional Redemption—Preference Shares," the Issuer receives the written direction of the Preference Shares (or, in the case of an Optional Redemption of the Notes, the Affected Class) to withdraw the notice of redemption delivered by the percentage of the Preference Shares (or, in the case of an Optional Redemption of the Notes, the Affected Class) requesting redemption under "—Optional Redemption—Notes" or clause (i) of the first paragraph under "—Optional Redemption—Preference Shares," as applicable; or

(iii) in the case of an Optional Redemption of Preference Shares as described in clause (ii) of the first paragraph under "Optional Redemption—Preference Shares," the Issuer receives the unanimous written direction of the Holders of the Preference Shares to withdraw the notice of redemption (and the Issuer hereby agrees for the benefit of the directing Holders to withdraw the applicable notice of redemption if it receives the written direction referred to in the preceding clause (ii) or this clause (iii)).

Notice of any withdrawal shall be sent, not later than the third Business Day before the scheduled Redemption Date (assuming that the Trustee has received timely written notice from the Issuer as provided above), by the Trustee, to each Holder of Notes scheduled to be redeemed at the Holder's address in the Indenture Register by overnight courier guaranteeing next day delivery (or, to the extent the address contained in the Indenture Register is not sufficient for that purpose, by first-class mail), the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). If the Issuer so withdraws any notice of redemption or is otherwise unable to complete any redemption of the Notes, the Sale Proceeds received from the sale of any Collateral Obligations sold in accordance with the Indenture may, during the Replacement Period (and, in respect of Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) at the Servicer's discretion, be used to purchase replacement Collateral Obligations in accordance with the Eligibility Criteria.

Notice of redemption shall be given by the Co-Issuers or, upon an Issuer Order, by the Trustee in the name and at the expense of the Co-Issuers. Failure to give notice of redemption, or any defect therein, to any Holder of any Note selected for redemption, the Preference Shares Paying Agent (for forwarding to each Holder of Preference Shares) or the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) shall not impair or affect the validity of the redemption of any other Securities.

Redemption by Refinancing. In addition, any Class of the Notes may be redeemed in whole, but not in part, on any Payment Date following the fifth anniversary of the Closing date from Refinancing Proceeds if the Servicer, on behalf of the Issuer, proposes to the Holders of the Preference Shares in writing (by notice to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and to the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares)) with a copy to the Trustee and the Rating Agencies) at least 30 days prior to the Payment Date for such redemption (such date, the "**Refinancing Date**") to redeem such Notes in accordance with the Indenture, which notice shall, among other things, specify the Refinancing Date and the Class of Notes to be Refinanced. Such redemption will be effected by the Issuer obtaining a loan or an issuance of a replacement class of notes ("**Refinancing Notes**"), the terms of which loan or issuance will be negotiated by the Servicer, on behalf of the Issuer, from one or more financial institutions or

purchasers (which may include the Servicer or its Affiliates) selected by the Servicer (a refinancing provided pursuant to such loan or issuance, a "**Refinancing**"), and provided that (i) such proposal is approved by a Majority of the Preference Shares (voting as a single class) at least 15 days prior to the Refinancing Date and (ii) the Servicer completes such Refinancing and causes the Refinancing Proceeds to be deposited with the Trustee (in immediately available funds) no later than the close of the Business Day immediately preceding the Refinancing Date.

The Issuer will obtain a Refinancing only if the Servicer determines and certifies to the Trustee that:

(i) a Rating Agency Confirmation has been obtained from S&P for such Refinancing;

(ii) the proceeds from the Refinancing will be at least sufficient to pay the Refinancing Price plus any Administrative Expenses of the Issuer related to the Refinancing;

(iii) the interest rate payable in respect of the obligations providing the Refinancing is less than the interest rate payable on the Notes being refinanced;

(iv) the principal amount of any obligations providing the Refinancing is no greater than the principal amount of the Notes being redeemed with the proceeds of such obligations;

(v) the stated maturity of the obligations providing the Refinancing is no earlier than the Stated Maturity of the Notes being refinanced;

(vi) the Refinancing Proceeds will be used (to the extent necessary) to redeem the applicable Notes;

(vii) the agreements relating to the Refinancing contain non-recourse and non-petition provisions, investor qualification provisions and transfer restrictions equivalent to those applicable to the Notes being redeemed, as set forth in the Indenture;

(viii) the obligations providing the Refinancing are subject to the Priority of Payments and do not rank higher in priority pursuant to the Priority of Payments than the Class of Notes being redeemed; and

(ix) the expenses in connection with the Refinancing have been paid or will be adequately provided for.

Any Refinancing Proceeds will not constitute Interest Proceeds or Principal Proceeds but will be applied directly on the related Refinancing Date pursuant to the Indenture to redeem the Notes being refinanced and pay Administrative Expenses in connection with the Refinancing without regard to the Priority of Payments; *provided*, that to the extent that any Refinancing Proceeds exceed the amount necessary to redeem the Notes being refinanced (and any associated Administrative Expenses), such excess Refinancing Proceeds will be treated as Principal Proceeds.

In addition, the Servicer has agreed with one or more Multiple Class Holders to purchase, at the option of each such Multiple Class Holder, Securities (or Holding Preference Shares, as the case may be) held or, in the case of any Notes represented by Global Notes, beneficially owned by such Multiple Class Holder in connection with a Refinancing, if such Securities (or Holding Preference Shares, as the case may be) are not subject to such Refinancing and other Securities (or Holding Preference Shares, as the case may be) held or, in the case of any Notes represented by Global Notes, beneficially owned by such Multiple Class Holder are subject to such Refinancing. See "Risk Factors—Relating to the Securities—The Notes are subject to Redemption by Refinancing".

Refinancing Notes may be issued from time to time pursuant to a Refinancing as described above and subject to and in compliance with the terms of the Indenture. Any such Refinancing Note will be issued by the Issuer and, if any such Refinancing Note is a Senior Note, the Co-Issuer and will be

authenticated by the Trustee upon delivery to the Trustee of an order of the Issuer and the applicable opinion of counsel as set forth in the Indenture.

Special Redemption of Notes If the Servicer Does Not Identify Replacement Collateral Obligations as Contemplated by the Indenture

Principal payments on the Notes shall be made in whole or in part, at par, in accordance with the Priority of Payments if, at any time during the Replacement Period, the Servicer elects (subject to the Servicing Agreement) to notify the Trustee and each Rating Agency that it has been unable, for 45 consecutive Business Days, to identify additional or replacement Collateral Obligations that are deemed appropriate by the Servicer in its sole discretion and meet the Eligibility Criteria in sufficient amounts to permit the application of all or a portion of the funds then in the Collection Account available to be used to purchase additional or replacement Collateral Obligations.

On the Special Redemption Date, the Special Redemption Amount will be available to be applied in accordance with "—Priority of Payments—Principal Proceeds" to the extent of available Principal Proceeds. Notice of payment of the Special Redemption Amount shall be given by first-class mail, postage prepaid, mailed not later than three Business Days before the applicable Special Redemption Date, to each Holder of Notes to be redeemed, at the Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository. In addition, for so long as any Senior Notes are listed on the ISE and so long as the rules of the exchange so require, notice of a Special Redemption of the Senior Notes shall also be given to the Company Announcements Office of the ISE.

In connection with a Special Redemption, the principal of the Notes will be paid from Principal Proceeds in an aggregate amount equal to the Special Redemption Amount (first to any Class A-1a Notes to be redeemed, then to any Class A-1b Notes to be redeemed, then to any Class A-2 Notes to be redeemed, then to any Class B Notes to be redeemed, then to any Class C Notes to be redeemed and then to any Class D Notes to be redeemed, in each case until paid in full) in accordance with the Priority of Payments. See "Description of the Securities—Priority of Payments—Principal Proceeds."

Mandatory Redemption of the Notes

General

In the event of a Rating Confirmation Failure or a failure to meet any Coverage Test on any Determination Date, a mandatory redemption of one or more Classes of Notes in whole or in part will be required. Any mandatory redemption could result in an elimination, deferral or reduction in interest or principal payments to one or more Classes of Securities, which would adversely affect the returns to the Holders of the Class or Classes of Securities. See "Risk Factors—Relating to the Securities—The Indenture Requires Mandatory Redemption of the Interests for Failure to Satisfy Coverage Tests" and "—The Indenture Requires Mandatory Redemption of the Notes Upon Rating Confirmation Failure."

Mandatory Redemption of the Notes for Failure to Satisfy Coverage Tests

Except with respect to payments made pursuant to an Optional Redemption or a redemption made in connection with a Tax Event as described under "—Optional Redemption," on any Payment Date with respect to which any Coverage Test (as described under "Security for the Notes—The Coverage Tests") is not met on any Determination Date, principal payments on the Notes will be made as described under "—Priority of Payments."

Mandatory Redemption of the Notes Upon Rating Confirmation Failure

Upon the event of a Rating Confirmation Failure, all Interest Proceeds remaining after payment of amounts referred to in clauses (1) through (14) of "—Priority of Payments—Interest Proceeds" will be used to pay principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes sequentially in order of their priority on the next Payment

Date and each Payment Date thereafter until the Initial Ratings are confirmed. If necessary, after the foregoing payments are made out of Interest Proceeds, Principal Proceeds in accordance with clause (6) "—Priority of Payments—Principal Proceeds" will be used to pay principal of each Class of the Notes sequentially in order of their priority on each Payment Date until the Initial Ratings are confirmed.

Upon receipt of notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes, at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes, then at the direction and in accordance with the instructions of the Servicer the Trustee shall sell Collateral Obligations so that the proceeds from the sale and all other funds available for the purpose in the Collection Account will be used to redeem the Notes (but only to the extent necessary for each of Moody's and S&P to confirm in writing the Initial Ratings assigned by it on the Closing Date to the Notes) and to pay all administrative and other fees, expenses and obligations payable under the Priority of Payments. Any sale under these provisions shall be conducted in such a manner that:

(i) after giving effect to the sale each Overcollateralization Test is satisfied or, if any Overcollateralization Test is not satisfied, the extent of compliance with the Overcollateralization Test is not reduced;

(ii) if the sale occurs on or after the second Payment Date, after giving effect to the sale each Interest Coverage Test is satisfied or, if any Interest Coverage Test is not satisfied, the extent of compliance with the Interest Coverage Test is not reduced; and

(iii) after giving effect to the sale each Collateral Quality Test is satisfied or, if any Collateral Quality Test is not satisfied, the extent of compliance with the Collateral Quality Test is not reduced.

Redemption of the Preference Shares in Connection with Mandatory Redemption of the Notes

The Preference Shares will be redeemed in whole in accordance with the Priority of Payments and the Preference Share Documents on any Payment Date on which a mandatory redemption of the Notes described under "—Mandatory Redemption of the Notes" results in the payment in full of the Aggregate Outstanding Amount of each Class of Notes.

Priority of Payments

Collections received on the Collateral during the related Due Period will be segregated into Interest Proceeds and Principal Proceeds and applied on each Payment Date in the priority below under "—Interest Proceeds" and "—Principal Proceeds," respectively (collectively, the "**Priority of Payments**").

Interest Proceeds

On each Payment Date, Interest Proceeds with respect to the related Due Period (other than Interest Proceeds previously used during such Due Period to purchase accrued interest in respect of Collateral Obligations or otherwise used as permitted under the Indenture) will be distributed in the following order of priority:

(1) to the payment of any taxes and registration and filing fees owed by the Co-Issuers (without limit) and then to the payment of Administrative Expenses up to the Administrative Expense Cap as follows:

FIRST, in the following order of priority:

(i) fees, expenses and indemnities of the Trustee; and then

(ii) fees, expenses and indemnities of the Collateral Administrator; and then

(iii) fees, expenses and indemnities of the Preference Shares Paying Agent; and

(iv) fees, expenses and indemnities of the Holding Preferences Shares Paying Agent;

SECOND, in the following order of priority;

(x) fees and expenses of the Administrator; and then;

(y) fees and expenses of the Co-Issuers (including fees and expenses of counsel and ongoing surveillance, credit estimate, and other fees owing to the Rating Agencies) and any other person (except the Servicer) if specifically provided for in the Indenture, and to the expenses (but not fees) of the Servicer if payable under the Servicing Agreement;

(2) the excess, if any, of the Administrative Expense Cap over the amounts paid pursuant to clause (1) above to deposit into the Expense Reimbursement Account;

(3) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with "Security for the Notes—The Accounts—Class II Preference Share Special Payment Account" an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Senior Servicing Fee then due and payable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Senior Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause;

(4) to the payment of all amounts due to the Hedge Counterparties under the Hedge Agreements (if any) other than any Defaulted Hedge Termination Payments;

(5) FIRST to the payment of accrued and unpaid interest on the Class A-1a Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-1a Notes and SECOND to the payment of accrued and unpaid interest on the Class A-1b Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-1b Notes;

(6) to the payment of accrued and unpaid interest on the Class A-2 Notes, and any accrued and unpaid Defaulted Interest on, and any Defaulted Interest Charge with respect to, the Class A-2 Notes;

(7) if the Class A Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Note and the Class A-2 Notes in the Note Payment Sequence in the amount necessary so that all of the Class A Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (7) before the application of any Principal Proceeds as described under "—Principal Proceeds" below on the current Payment Date);

(8) to the payment of accrued and unpaid interest on the Class B Notes (excluding Class B Deferred Interest, but including interest accrued for the preceding Interest Period on Class B Deferred Interest);

(9) if the Class B Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes and the Class B Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class B Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (9) before the application of any Principal Proceeds as described under "—Principal Proceeds" below on the current Payment Date);

(10) to the payment of Class B Deferred Interest;

(11) to the payment of accrued and unpaid interest on the Class C Notes (excluding Class C Deferred Interest but including interest accrued for the preceding Interest Period on Class C Deferred Interest);

(12) if the Class C Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes in the Note Payment Sequence, in each case in the amount necessary so that all of the Class C Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full (Interest Proceeds to be applied pursuant to this clause (12) before the application of any Principal Proceeds as described under "—Principal Proceeds" below on the current Payment Date);

(13) to the payment of Class C Deferred Interest;

(14) to the payment of accrued and unpaid interest on the Class D Notes (excluding Class D Deferred Interest but including interest accrued for the preceding Interest Period on Class D Deferred Interest);

(15) if the Class D Coverage Tests are not satisfied on the related Determination Date, to the payment of principal of the Class D Notes in the amount necessary so that all of the Class D Coverage Tests would be met on such Determination Date on a *pro forma* basis after giving effect to any payments in reduction of the principal of Notes made through this clause, or until paid in full, or if a Rating Confirmation Failure exists on the Payment Date, to the payment of principal of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes in the Note Payment Sequence, in each case in the amount necessary so that a Rating Confirmation is obtained, or until paid in full (Interest Proceeds to be applied pursuant to this clause (15) before the application of any Principal Proceeds as described under "—Principal Proceeds" below on the current Payment Date);

(16) to the payment of Class D Deferred Interest;

(17) to deposit in the Collection Account as Principal Proceeds amounts representing Principal Proceeds previously used to pay amounts referred to in clauses (1) through (6), (8), (10), (11), (13), (14) and (16) above and not previously restored to the Collection Account or, if not restored to the Collection Account, used to purchase Collateral Obligations;

(18) during the Replacement Period, if the Retention Overcollateralization Test is not satisfied on the related Determination Date, for deposit to the Collection Account as Principal Proceeds the lesser of (i) 50% of the remaining Interest Proceeds available after the payments pursuant to clause (17) above and (ii) the amount necessary to cause the Retention Overcollateralization Test to be satisfied as of such Determination Date;

(19) to the payment of any remaining Administrative Expenses not paid under clause (1) above in the respective priorities specified in clause (1);

(20) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with "Security for the Notes—The Accounts—Class II Preference Share Special Payment Account" an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) any accrued and unpaid Subordinated Servicing Fee then due and payable and SECOND, to the payment (*pro rata* according to the amounts payable under clauses (x) and (y) below) to: (x) the Servicer of an amount equal to the difference between (i) the accrued and unpaid Subordinated Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and (y) *pro rata* to each Holder of Securities entitled thereto, the applicable Extension Bonus Payment as described under "—Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date;"

(21) to the payment of any Defaulted Hedge Termination Payments;

(22) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares until the Holders of the Preference Shares have realized a Preference Share Internal Rate of Return of 12.0%;

(23) FIRST, to deposit in the Class II Preference Share Special Payment Account for payment in accordance with "Security for the Notes—The Accounts—Class II Preference Share Special Payment Account" of an amount equal to the product of (i) the Class II Preference Share Portion for such Payment Date, if any, and (ii) the Supplemental Servicing Fee, if applicable and SECOND, to the payment to the Servicer of an amount equal to the difference between (i) the accrued and unpaid Supplemental Servicing Fee as of such Payment Date and (ii) the amount deposited to the Class II Preference Share Special Payment Account in accordance with the preceding clause; and

(24) any remaining Interest Proceeds, to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares;

provided that, in lieu of payment of Interest Proceeds referred to under clauses (22) and (24) above, in whole or in part on any Payment Date, the Servicer, on behalf the Issuer, will have the right to direct the Trustee to distribute Eligible Equity Securities *pro rata* to the Consenting Holders of the Preference Shares with respect to such Payment Date to the extent that the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) is equal to or lower than the aggregate amount of Interest Proceeds that would otherwise be due and payable on such Payment Date to such Consenting Holders of the Preference Shares. Interest Proceeds in an amount equal to the Market Value of such Eligible Equity Securities (determined by the Servicer as of the relevant Market Value Determination Date) distributed to the Consenting Holders of the Preference Shares with respect to any such Payment Date will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds available for distribution in accordance with the Priority of Payments on the relevant Payment Date. The amount of Interest Proceeds available on the relevant Payment Date will be reduced and the amount of Principal Proceeds available on the relevant Payment Date will be increased accordingly.

Principal Proceeds

On each Payment Date, Principal Proceeds with respect to the related Due Period other than:

(A) Principal Proceeds previously used to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) or otherwise used as permitted under the Indenture;

(B) Principal Proceeds on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account or the Securities Lending Account; and

(C) Principal Proceeds on deposit in the Collection Account in an aggregate amount equal to the agreed Purchase Prices for Collateral Obligations with respect to which the Issuer has entered into a commitment before the end of the Due Period for their purchase, but has not settled the purchase by the end of the Due Period;

shall be distributed in the following order of priority:

(1) (x) FIRST, to the payment of the amounts referred to in clauses (1) through (6) under "—Interest Proceeds" above (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (y) SECOND, to the payment of amounts referred to in clause (7) under "—Interest Proceeds" above to the extent not previously paid in full thereunder and to the extent necessary to cause the Class A Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (1), or until such amounts are paid in full;

(2) to the payment of the amounts referred to in clause (8) under "—Interest Proceeds" above to the extent not previously paid in full thereunder;

(3) to the payment of the amounts referred to in clause (9) under "—Interest Proceeds" above to the extent not previously paid in full thereunder and to the extent necessary to cause the Class B Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (3), or until such amounts are paid in full;

(4) to the payment of the amounts referred to in clause (10) under "—Interest Proceeds" above to the extent not previously paid in full thereunder;

(5) to the payment of the amounts referred to in clause (11) under "—Interest Proceeds" above to the extent not previously paid in full thereunder;

(6) to the payment of the amounts referred to in clause (12) under "—Interest Proceeds" above to the extent not previously paid in full thereunder and to the extent necessary to cause the Class C Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made through this clause (6), or until such amounts are paid in full;

(7) to the payment of the amounts referred to in clause (13) under "—Interest Proceeds" above to the extent not previously paid in full thereunder;

(8) to the payment of the amounts referred to in clause (14) under "—Interest Proceeds" above to the extent not previously paid in full thereunder;

(9) to the payment of principal of the Notes in the Note Payment Sequence in an amount necessary to (A) cause the Class D Overcollateralization Test to be met as of the related Determination Date on a *pro forma* basis after giving effect to any payments made

through this clause (9), or until paid in full or (B) if a Rating Confirmation Failure exists on the Payment Date, obtain a Rating Confirmation, or until paid in full;

(10) to the payment of the amounts referred to in clause (16) under "—Interest Proceeds" above to the extent not previously paid in full thereunder;

(11)

(A) if the Payment Date is a Redemption Date in the following order of priority: (i) to the payment in the Note Payment Sequence of the Redemption Prices of all of the Notes to be redeemed, (ii) to the payment of the amounts referred to in clauses (19) through (23) under "—Interest Proceeds" above (and in the same manner and order of priority) to the extent not previously paid in full thereunder and (iii) to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment to the Holders of the Preference Shares of the Redemption Price of any Preference Shares to be redeemed; and

(B) if the Payment Date is a Special Redemption Date, to the payment in the Note Payment Sequence of principal of the Notes in an aggregate amount equal to the Special Redemption Amount, in each case until paid in full;

(12) during the Replacement Period, all remaining Principal Proceeds to the acquisition of additional Collateral Obligations in accordance with the Indenture (and, until so applied (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security), to be deposited in the Collection Account as Principal Proceeds);

(13) after the Replacement Period, (i) FIRST, at the discretion of the Servicer (with respect to Unscheduled Principal Payments and Sale Proceeds from the sale of Credit Risk Obligations and Credit Improved Obligations) to the purchase or funding of additional or replacement Collateral Obligations in accordance with the Eligibility Criteria and the applicable provisions of the Indenture when appropriate Collateral Obligations are available, and until such time, to the Collection Account for the purchase of Eligible Investments; and (ii) SECOND, to the payment in the Note Payment Sequence of principal of Notes until paid in full;

(14) to the extent not previously paid in full under clause (11) above, after the Replacement Period, to the payment of the amounts referred to in clauses (19) through (23) under "—Interest Proceeds" above (and in the same manner and order of priority) to the extent not previously paid in full thereunder; and

(15) after the Replacement Period to the Preference Shares Paying Agent, on behalf of the Issuer, for deposit into the Preference Shares Distribution Account for payment *pro rata* to the Holders of the Preference Shares.

The calculation on any Coverage Test on any Determination Date shall be made by giving effect to all payments to be made pursuant to all subclauses of the Priority of Payments as applicable, payable on the Payment Date following such Determination Date. In addition, no Principal Proceeds will be used to pay a subordinated Class on a Payment Date if, after giving effect to such payment, any Coverage Test of a more senior Class of Notes is failing on such Payment Date or would fail as a result of such application of the Principal Proceeds on such Payment Date.

If on any Payment Date the amount available in the Payment Account is insufficient to make the full amount of the disbursements required by the Valuation Report, the Trustee shall make the disbursements called for in the order and according to the priority under "—Interest Proceeds" and "—Principal Proceeds," to the extent funds are available therefor.

The Trustee shall remit funds to pay Administrative Expenses of the Issuer or the Co-Issuer in accordance with the Priority of Payments under "—Interest Proceeds" and "—Principal Proceeds" above, to the extent available, to the Issuer, the Co-Issuer as directed and designated in an Issuer Order (which may be in the form of standing instructions) delivered to the Trustee no later than the Business Day before each Payment Date.

Form, Denomination, Registration and Transfer of the Senior Notes

The Senior Notes sold in Offshore Transactions may only be sold to non-U.S. Persons in reliance on Regulation S. Except as provided below, the Senior Notes sold in reliance on Regulation S will be represented by one or more Regulation S Global Notes. The Regulation S Global Notes will be deposited with the Trustee as custodian for, and registered in the name of, a nominee of the Depository for the respective accounts of the beneficial owners at Euroclear and Clearstream. Beneficial interests in a Regulation S Global Note may be held only through Euroclear or Clearstream. Investors may hold their interests in a Regulation S Global Note directly through Euroclear or Clearstream, if they are participants in such systems, or indirectly through organizations that are participants in such systems. Beneficial interests in a Regulation S Global Note may not be held by a U.S. Person at any time. By acquisition of a beneficial interest in a Regulation S Global Note, the purchaser thereof will be deemed to represent that it is not a U.S. Person and that, if in the future it determines to transfer such beneficial interest, it will transfer such interest only to a person whom the seller reasonably believes to be a non-U.S. Person or to a person who takes delivery in the form of an interest in a Rule 144A Global Note.

The Senior Notes initially sold in non-Offshore Transactions or to U.S. Persons in reliance on the exemption from registration provided by Rule 144A may only be sold to (i) Qualified Institutional Buyers that are also (ii) Qualified Purchasers and, except as provided below, will be represented by one or more permanent Rule 144A Global Notes. Investors may hold their interests in the Rule 144A Global Notes directly through the Depository if they are the Depository participants, or indirectly through organizations that are the Depository participants. The Rule 144A Global Notes will be deposited with the Trustee as custodian for the Depository, and registered in the name of a nominee of the Depository.

Beneficial interests in Senior Notes represented by Global Notes will be subject to certain restrictions on transfer set forth therein and in the Indenture and such Global Notes will bear the applicable legends regarding the restrictions set forth under "Transfer Restrictions." A beneficial interest in a Regulation S Global Note may be transferred to a person who takes delivery in the form of an interest in a Rule 144A Global Note only upon receipt by the Trustee of a written certification from (A) the transferor (in the form provided in the Indenture) to the effect that the transfer is being made to a person whom the transferor reasonably believes is a Qualified Institutional Buyer who is also a Qualified Purchaser and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction and (B) the transferee (in the form provided in the Indenture) to the effect that, among other things, the transferee is both a Qualified Institutional Buyer and a Qualified Purchaser. Beneficial interests in the Rule 144A Global Notes may be transferred to a person who takes delivery in the form of an interest in a Regulation S Global Note only upon receipt by the Trustee of a written certification from (A) the transferor (in the form provided in the Indenture) to the effect that the transfer is being made to a non-U.S. Person in an Offshore Transaction in accordance with Regulation S and (B) the transferee (in the form provided in the Indenture) to the effect that, among other things, the transferee is a non-U.S. Person.

Any beneficial interest in a Regulation S Global Note that is transferred to a person who takes delivery in the form of an interest in a Rule 144A Global Note will, upon transfer, cease to be an interest in such Regulation S Global Note and become an interest in the Rule 144A Global Note and, accordingly, will thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interests

in a Rule 144A Global Note for as long as it remains such an interest. Any beneficial interest in a Rule 144A Global Note that is transferred to a person who takes delivery in the form of an interest in a Regulation S Global Note will, upon transfer, cease to be an interest in the Rule 144A Global Note and become an interest in the Regulation S Global Note and, accordingly, will thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interests in a Regulation S Global Note for as long as it remains such an interest. No service charge will be made for any registration of transfer or exchange of Senior Notes, but the Issuer or Co-Issuers, as the case may be, or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Except in the limited circumstances described in this paragraph, owners of beneficial interests in Senior Notes held in the form of Global Notes will not be entitled to receive delivery of certificated Senior Notes. The Senior Notes are not issuable in bearer form. A Global Note deposited with the Depository pursuant to the Indenture shall be transferred to the beneficial owners thereof only if such transfer complies with the Indenture and either (i) the Depository notifies the Co-Issuers that it is unwilling or unable to continue as depository for a Global Note or ceases to be a "Clearing Agency" registered under the Exchange Act and a successor depository is not appointed by the Issuer within 90 days of such notice or (ii) as a result of any amendment to or change in, the laws or regulations of the Cayman Islands or of any authority therein or thereof having power to tax or in the interpretation or administration of such laws or regulations which become effective on or after the Closing Date, the Issuer or the Paying Agent becomes aware that it is or will be required to make any deduction or withholding from any payment in respect of the Senior Notes which would not be required if the Senior Notes were in definitive form. In addition, the owner of a beneficial interest in a Global Note will be entitled to receive a certificated Note in exchange for such interest if an Event of Default has occurred and is continuing. In the event that certificated Senior Notes are not so issued by the Issuer to such beneficial owners of interests in Global Notes, the Issuer expressly acknowledges that such beneficial owners shall be entitled to pursue any remedy that the Holders of a Global Note would be entitled to pursue in accordance with the Indenture (but only to the extent of such beneficial owner's interest in the Global Note) as if certificated Senior Notes had been issued. Payments on such certificated Senior Notes will be made by wire transfer in immediately available funds to a Dollar-denominated account maintained by the owner or, if a wire transfer cannot be effected, by a Dollar check delivered to the owner. See "Settlement and Clearing."

The Senior Notes will be issued in minimum denominations of U.S$250,000 and integral multiples of U.S$1,000 in excess thereof for each Class of Senior Notes.

Form, Denomination, Registration and Transfer of the Class D Notes

The Class D Notes will be issued in the form of one or more certificated Class D Notes in definitive, fully registered form, registered in the name of the owner thereof (the "**Certificated Class D Notes** ").

The Class D Notes may only be sold to persons who are Qualified Institutional Buyers who are also Qualified Purchasers.

The Class D Notes may be transferred only upon (*inter alia*) receipt by the Trustee of a written certification (in the form provided in the Indenture) from the transferee to the effect that, among other things, the transferee is a Qualified Institutional Buyer who is also a Qualified Purchaser, and such transfer is being made in accordance with any applicable securities laws of any state of the United States or any other jurisdiction. Each initial Holder as well as each transferee of the Class D Notes is also required to provide certain tax forms and other tax-related certifications. See "Transfer Restrictions."

The Class D Notes will be issued in minimum denominations of U.S$250,000 and integral multiples of U.S$1,000 in excess thereof.

Form, Denomination, Registration and Transfer of the Preference Shares

The Preference Shares will be issued in the form of one or more certificated Preference Shares in definitive, fully registered form, registered in the name of the owner thereof (the "**Certificated Preference Shares**").

Preference Shares may only be sold to persons who are Qualified Institutional Buyers who are also Qualified Purchasers.

Preference Shares may be transferred only upon (*inter alia*) receipt by the Preference Shares Paying Agent of a written certification (in the form provided in the Preference Share Documents) from the transferee to the effect that, among other things, the transferee is a Qualified Institutional Buyer who is also a Qualified Purchaser, and such transfer is being made in accordance with any applicable securities laws of any state of the United States or any other jurisdiction. Each initial Holder as well as each transferee of the Preference Shares is also required to provide certain tax forms and other tax-related certifications. See "Transfer Restrictions."

Ogier Fiduciary Services (Cayman) Limited has been appointed and will serve as the registrar with respect to the Preference Shares (the "**Share Registrar**") and will provide for (*inter alia*) the registration of the Preference Shares and the registration of transfers of the Preference Shares in accordance with the Preference Share Documents and the Administration Agreement in the register maintained by it. The Preference Shares will be issued in minimum numbers of 100 Preference Shares per investor and integral multiples of one Preference Share in excess thereof.

The Indenture

The following summary describes certain provisions of the Indenture. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the Indenture.

Events of Default

"**Event of Default**" is defined in the Indenture as:

(a) a default for four Business Days in the payment of any interest on any Class of Notes that is currently part of the Controlling Class when it becomes payable (or in the case of a default in payment due to an administrative error or omission by the Trustee, the Irish Listing and Paying Agent or the Indenture Registrar, after seven Business Days);

(b) a default in the payment of principal (including Deferred Interest) of any Note when the same becomes payable, at its Stated Maturity or on the Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments and the failure continues for three Business Days;

(d) on any Measurement Date for so long as any Class A-1a Notes or Class A-1b Notes are Outstanding, the Class A Overcollateralization Ratio is less than 100%;

(e) either of the Co-Issuers or the pool of Collateral becomes an investment company under the Investment Company Act;

(f) breach of any other covenant or other agreement of the Issuer or the Co-Issuer under the Indenture (other than any failure to satisfy any of the Collateral Quality Tests, any of the Concentration Limitations, any of the Coverage Tests, the Retention Overcollateralization Test, or other covenants or agreements for which a specific remedy has been provided under the

Indenture) in any material respect, or the failure of any representation or warranty of the Issuer or the Co-Issuer made in the Indenture or in any certificate or other writing delivered pursuant thereto, or in connection therewith, to be correct in any material respect when made, and the breach or failure continues for 30 days after either of the Co-Issuers has actual knowledge of it or after notice to the Issuer, the Co-Issuer and the Servicer by the Trustee or to the Issuer, the Co-Issuer, the Servicer and the Trustee by the Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class by registered or certified mail or overnight courier specifying the breach or failure and requiring it to be remedied and stating that the notice is a "Notice of Default" under the Indenture;

(g) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of the Issuer or the Co-Issuer under the Bankruptcy Law or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and if the decree or order remains unstayed and in effect for 45 consecutive days;

(h) the institution by the shareholders of the Issuer or the Co-Issuer of Proceedings to have the Issuer or Co-Issuer, as the case may be, adjudicated as bankrupt or insolvent, or the consent by the shareholders of the Issuer or the Co-Issuer to the institution of bankruptcy or insolvency Proceedings against the Issuer or Co-Issuer, or the filing by the Issuer or the Co-Issuer of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Law or any other similar applicable law, or the consent by the Issuer or the Co-Issuer to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, or the making by the Issuer or the Co-Issuer of an assignment for the benefit of creditors, or the admission by the Issuer or the Co-Issuer in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer or the Co-Issuer in furtherance of any such action; or

(i) one or more final judgments is rendered against the Issuer or the Co-Issuer that exceed in the aggregate U.S.$2,000,000 (or any lesser amount specified by any Rating Agency) and that remain unstayed, undischarged, and unsatisfied for 30 days after the judgments become nonappealable, unless adequate funds have been reserved or set aside for their payment, and unless (except as otherwise specified in writing by Moody's) the Rating Condition with respect to each Rating Agency is satisfied with respect thereon.

Upon the occurrence of an Event of Default, the Trustee must give prompt (and in no event later than five Business Days after becoming aware of such event) notice thereof to the Noteholders.

If an Event of Default is continuing (other than an Event of Default described in clauses (e), (g) or (h) under "—Events of Default" above), the Trustee may, with consent of the Majority of the Controlling Class, and must, upon the written direction of a Majority of the Controlling Class, declare the principal of all the Notes to be immediately payable by notice to the Co-Issuers and the Noteholders, and upon that declaration the unpaid principal of all the Notes, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), and other amounts payable under the Indenture, shall become immediately payable. The Replacement Period shall terminate upon a declaration of acceleration (subject to re-commencement as described below). If an Event of Default described in clauses (e), (g) or (h) above under "—Events of Default" occurs, all unpaid principal, together with all its accrued and unpaid interest (and any applicable Defaulted Interest Charge), of all the Notes, and other amounts payable under the Indenture, shall automatically become payable without any declaration or other act on the part of the Trustee or any Noteholder and the Replacement Period shall terminate automatically (subject to re-commencement as described below).

At any time after the declaration of acceleration of maturity has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, a Majority of the Controlling Class by written notice to the Issuer, the Trustee and the Preference Shares Paying Agent, may rescind the declaration and its consequences if:

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

(A) all unpaid installments of interest and principal on the Notes then due (other than as a result of the acceleration);

(B) to the extent that payment of the interest is lawful, interest on any Deferred Interest and Defaulted Interest at the Applicable Note Interest Rate or Default Interest Rate, as applicable;

(C) all Administrative Expenses of the Co-Issuers and other sums paid or advanced by the Trustee under the Indenture;

(D) all unpaid Senior Servicing Fees; and

(E) all amounts then payable to any Hedge Counterparty; and

(ii) the Trustee has determined that all Events of Default, other than the nonpayment of the interest on or principal of the Notes, that have become due solely by the acceleration, have been (A) cured, and a Majority of the Controlling Class by written notice to the Trustee has agreed with that determination, or (B) waived as provided in the Indenture.

No rescission shall affect any subsequent Default or impair any right resulting from the Default. The Issuer shall not terminate any Hedge Agreement at any time after a declaration of acceleration of Maturity of the Notes has been made, unless such declaration and its consequences may no longer be rescinded and annulled in accordance with the Indenture and liquidation of the Collateral has begun.

If an Event of Default is continuing, the Trustee will retain the Collateral, collect, and cause the collection of the proceeds of the Collateral and make and apply all payments and deposits and maintain all accounts in respect of the Collateral and the Notes and any Hedge Agreements (other than amounts received under a Hedge Agreement that are used in putting a replacement hedge in place) in the manner described under "—Priority of Payments" and the Indenture unless either:

(i) the Trustee, in consultation with the Servicer, determines (bid prices having been obtained with respect to each security contained in the Collateral from two nationally recognized dealers (or if there is only one dealer, that dealer and if there is no dealer, from a pricing service), selected and specified by the Servicer to the Trustee in writing, at the time making a market in those securities, and having computed the anticipated proceeds of sale or liquidation on the basis of the lower of the bid prices for each security) that the anticipated net proceeds of a sale or liquidation of the Collateral would (after deduction of the reasonable expenses of the sale or liquidation) be sufficient to discharge in full the amounts then due and unpaid on the Notes for principal and interest (including Defaulted Interest and Deferred Interest and any interest on the Defaulted Interest and the Deferred Interest), all Administrative Expenses, all other amounts (if any) then payable to the Hedge Counterparty by the Issuer (including any applicable termination payments) net of all amounts then payable to the Issuer by the Hedge Counterparty and all other amounts then payable under clause (3) under "—Priority of Payments—Interest Proceeds," and a Majority of the Controlling Class agrees with that determination; or

(ii) the Holders of a Super Majority of each of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes direct the sale and liquidation of the Collateral.

During the continuance of an Event of Default, a Majority of the Controlling Class may institute and direct the Trustee in the conduct of any proceedings for any remedy available to the Trustee or for the exercise of any right of the Trustee under the Indenture if the direction does not conflict with any rule of law or with any express provision of the Indenture and the Trustee has been indemnified to its reasonable satisfaction. Any direction to the Trustee to undertake a sale of the Collateral shall be by the Holders of Notes representing the requisite percentage of the Aggregate Outstanding Amount of the Notes specified in the Indenture. The Trustee need not take any action that it determines might involve it in liability or expense unless it has received an indemnity reasonably satisfactory to it against the liability or expense.

A Majority of the Controlling Class may on behalf of the Holders of all the Notes, before the time a judgment or decree for the payment of money due has been obtained by the Trustee, waive any past Event of Default or event that, with notice or the lapse of time or both, would become an Event of Default and its consequences, except such a default:

(i) in the payment of principal or Redemption Price of any Note or in the payment of interest (including Defaulted Interest, Deferred Interest, and any interest on Defaulted Interest or Deferred Interest) on the Notes;

(ii) with respect to a provision of the Indenture that cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected by the modification or amendment;

(iii) in the payment of amounts due to the Servicer, the Trustee, or the Hedge Counterparty, which may only be waived with the consent of the affected party; or

(iv) arising as a result of an Event of Default described in clause (e), (g) or (h) under "—Events of Default."

No Holder of any Note may institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture, unless:

(i) the Holder has previously given to the Trustee written notice of an Event of Default;

(ii) the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings with respect to the Event of Default in its own name as Trustee under the Indenture and the Holders have offered to the Trustee indemnity satisfactory to it against the expenses and liabilities to be incurred in compliance with the request;

(iii) the Trustee for 30 days after its receipt of the notice, request, and offer of indemnity has failed to institute a Proceeding; and

(iv) no direction inconsistent with the written request has been given to the Trustee during the 30 day period by a Majority of the Controlling Class.

If the Trustee receives conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee shall take the action requested by the Holders of the largest percentage in Aggregate Outstanding Amount of the Controlling Class, notwithstanding any other provisions of the Indenture but subject to such Holders having offered to the Trustee indemnity satisfactory to it against the costs and liabilities that might reasonably be incurred by it in compliance with the request as provided in the Indenture.

Supplemental Indentures

Without Consent of Holders

Without the consent of the Holders of any Securities (other than with respect to the consent of the Majority of the Controlling Class specified in clause (15) below), but with the consent of the parties the consent of which is required as described in the following paragraph, the Co-Issuers, in each instance when authorized by resolutions of the respective Boards of Directors, and the Trustee, at any time and from time to time subject to the requirement provided below with respect to receipt of a Rating Confirmation, may, if, with respect to any matters described in clauses (1) through (23) below, the interests of the Holders of the Securities (except, in the case of clause (12) below, any Holders of Notes subject to the applicable Refinancing) are not materially and adversely affected thereby (the Co-Issuers and the Trustee will be bound by a standard of good faith and fair dealing in making such determination) enter into one or more indentures supplemental to the Indenture, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another person to the Issuer or the Co-Issuer and the assumption by the successor person of the obligations of the Issuer or the Co-Issuer under the Indenture and in the Securities;

(2) to add to the covenants of the Co-Issuers or the Trustee for the benefit of the Noteholders or to surrender any right in the Indenture conferred on the Co-Issuers;

(3) to convey, transfer, assign, mortgage, or pledge any property to the Trustee, or add to the conditions, limitations or restrictions on the authorized amount, terms and purposes of the issue, authentication and delivery of the Notes;

(4) to evidence and provide for the acceptance of appointment under the Indenture by a successor Trustee and to add to or change any of the provisions of the Indenture necessary to facilitate the administration of the trusts under the Indenture by more than one Trustee, pursuant to the requirements of the Indenture;

(5) to correct or amplify the description of any property at any time subject to the lien of the Indenture, or to better assure, convey, and confirm to the Trustee any property subject or required to be subject to the lien of the Indenture (including all actions appropriate as a result of changes in law) or to subject to the lien of the Indenture any additional property;

(6) to conform any provision in the Indenture to the related provision in this Offering Memorandum that is intended to be a verbatim recitation of such provision;

(7) to modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in applicable law (or its interpretation) or to enable the Co-Issuers to rely on any less restrictive exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required under the Indenture;

(8) with the consent of the Servicer, to modify (A) the restrictions on the sales of Collateral Obligations described in "Security for the Notes—Sale of Collateral Obligations; Acquisition of Replacement Collateral Obligations" or (B) with the consent of the Majority of the Controlling Class (which consent shall not be unreasonably withheld), the Eligibility Criteria described in "Security for the Notes—Eligibility Criteria" (and the related definitions); *provided* that, for the avoidance of doubt, the consent of a Majority of the Controlling Class shall not be required if such amendment also satisfies the requirements of clause (24) below;

(9) to make appropriate changes for any Class of Senior Notes to be listed on an exchange other than the ISE;

(10) otherwise to correct any inconsistency or cure any ambiguity or errors in the Indenture;

(11) to accommodate the issuance of the Senior Notes in book-entry form through the facilities of DTC or otherwise;

(12) to accommodate a Refinancing effected pursuant to and in compliance with the terms of the Indenture, provided that no Holders of Notes or Preference Shares are materially adversely affected thereby, other than Holders of Notes subject to such Refinancing;

(13) to take any appropriate action to prevent the Issuer, the Holders of Securities or the Trustee from becoming subject to withholding or other taxes, fees, or assessments or to prevent the Issuer from being treated as being engaged in a U.S. trade or business or otherwise being subject to U.S. federal, state or local income tax on a net income basis, so long as the action will not cause the Holders of any Securities to be adversely affected to any material extent by any change to the timing, character, or source of the income from the Securities, as evidenced by an opinion of counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion);

(14) to authorize the appointment of any listing agent, transfer agent, paying agent or additional registrar for any Class of Notes appropriate in connection with the listing of any Class of Senior Notes on the ISE or any other stock exchange, and otherwise to amend the Indenture to incorporate any changes required or requested by any governmental authority, stock exchange authority, listing agent, transfer agent, paying agent or additional registrar for any Class of Notes in connection with its appointment, so long as the supplemental indenture would not materially and adversely affect any Noteholders, as evidenced by an opinion of counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an Authorized Officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Notes;

(15) with the consent of the Majority of the Controlling Class, to amend, modify, enter into or accommodate the execution of any contract relating to a Synthetic Security (including posting collateral under a Synthetic Security Agreement) if such particular action is not otherwise permitted under the Indenture;

(16) to modify certain representations as to Collateral in the Indenture in order that it may be consistent with applicable laws or Rating Agency requirements;

(17) to evidence any waiver by any Rating Agency as to any requirement or condition, as applicable, of the Rating Agency in the Indenture;

(18) to facilitate the issuance of participation notes, combination notes, composite securities and other similar securities;

(19) to facilitate hedging transactions;

(20) to facilitate the ability of the Issuer to lend collateral pursuant to a Securities Lending Agreement;

(21) to modify any provision to facilitate an exchange of one security for another security of the same issuers that has substantially identical terms except transfer restrictions, including to effect any serial designation relating to the exchange;

(22) with the consent of the Servicer to enter into any additional agreements not expressly prohibited by the Indenture as well as any amendment, modification, or waiver if the Issuer determines that the amendment, modification, or waiver would not, upon or after becoming effective, materially and adversely affect the rights or interest of the Holders of any Class of Securities, as evidenced by an opinion of counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) or a certificate of an officer of the Servicer, to the effect that the modification would not be materially adverse to the Holders of any Class of Securities; *provided* that, for the avoidance of doubt, this clause (22) shall not permit the Co-Issuers and the Trustee to effect any amendment that expressly requires the consent of the Majority of the Controlling Class without such consent;

(23) to provide for the issuance of additional Preference Shares to the extent permitted by the Preference Share Documents and to extend to such additional Preference Shares the benefits applicable to the Preference Shares under the Indenture and the Preference Share Documents; or

(24) to prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); *provided* that, as a condition to the effectiveness of any such supplemental indenture, each of the Issuer, the Trustee and the Servicer shall have received (A) a Rating Confirmation with respect to such supplemental indenture and (B) a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such supplemental indenture, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

Without the consent of the Servicer, no supplemental indenture may be entered into that would reduce the rights, decrease the fees or other amounts payable to the Servicer under the Indenture or increase the duties or obligations of the Servicer. The Trustee is authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be in the agreements, but the Trustee should not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under the Indenture or otherwise, except to the extent required by law. Unless notified by a Majority of any Class of Securities that the Class of Securities would be materially and adversely affected, the Trustee may rely on a certificate of the Servicer and an opinion of counsel (which may be supported as to factual (including financial and capital markets) matters by any relevant certificates and other documents necessary or advisable in the judgment of counsel delivering the opinion) as to whether the interests of any Holder of Securities would be materially and adversely affected by any such supplemental indenture.

If any Outstanding Notes are rated by a Rating Agency, the Trustee will enter into a supplemental indenture without the consent of Holders only if either (1) the Rating Condition with respect to each Rating Agency is satisfied with respect to the supplemental indenture or (2) the Servicer and the Holders of 100% in Aggregate Outstanding Amount of each Class of Notes the ratings on which would be reduced or withdrawn consent to the supplemental indenture. Prior to the entry into any supplemental Indenture with respect to which a Rating Confirmation for one or more Classes of Notes is not expected to be delivered, the Trustee shall provide written notice to each Holder of each Outstanding Note informing them of such fact.

At the cost of the Co-Issuers, the Trustee will mail to the Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares), each Rating Agency (for so long as any Notes are Outstanding and rated by a Rating Agency) and each Hedge Counterparty a copy of any such proposed supplemental indenture at least 15 Business Days before its execution by the Trustee (or 60 calendar days before execution in the case of a supplemental indenture for the purpose described in clause (8) above, which shall be identified as such in a certificate of the Servicer delivered to the Trustee before the date on which such notice is required to be given).

With Consent of Holders

If the Rating Condition is satisfied with respect to each Rating Agency, with the consent of (a) the Servicer if the supplemental indenture would reduce the rights, decrease the fees or other amounts payable to it under the Indenture or increase the duties or obligations of the Servicer, (b) a Majority of each Class of Notes adversely affected thereby, by Act of the Holders of each such Class of Notes and (c) a Majority of the Preference Shares adversely affected thereby, the Trustee and the Co-Issuers may enter into a supplemental indenture to add any provisions to, or change in any manner or eliminate any of the provisions of, the Indenture or modify in any manner the rights of the Holders of the Notes under the Indenture.

Any proposed supplemental indenture that would also necessitate a change to the Issuer Charter (or the memorandum and articles of association of Investors Corp.) may only be made after a Special Resolution (as defined therein) has been passed to permit the Issuer's (or Investors Corp.'s) constitutional documents to be altered to conform with such proposed change to the Indenture as certified to the Trustee by the Issuer.

Notwithstanding anything in the Indenture to the contrary, without the consent of the Holder of each Outstanding Note adversely affected thereby and the Holder of each Outstanding Preference Share adversely affected thereby, no supplemental indenture shall:

(i) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note or of any payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, reduce the principal amount or the rate of interest on any Note, or the Default Interest Rate or the Redemption Price with respect to any Note or Preference Share, or change the earliest date on which Notes of any Class or Preference Share may be redeemed at the option of the Issuer, change the provisions of the Indenture relating to the application of proceeds of any Collateral to the payment of principal of or interest on Notes or to payment to the Preference Shares Paying Agent for payment to the Holders of the Preference Shares, or change any place where, or the coin or currency in which, Notes or their principal or interest are paid or impair the right to institute suit for the enforcement of any such payment on or after their Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date);

(ii) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or Holders of Preference Shares whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of the Indenture or certain defaults under the Indenture or their consequences provided for in the Indenture;

(iii) permit the creation of any lien ranking prior to or on a parity with the lien of the Indenture with respect to any part of the Collateral or terminate the lien on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the lien of the Indenture;

(iv) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to retain the Collateral pursuant to the Indenture or to sell or liquidate the Collateral pursuant to the Indenture;

(v) modify any of the provisions of the Indenture with respect to supplemental indentures or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note and Preference Share affected thereby;

(vi) modify the definition of "Outstanding," "Controlling Class," or "Majority," or the Priority of Payments in the Indenture; or

(vii) modify any of the provisions of the Indenture in such a manner as to affect the calculation of the amount of any payment of Redemption Price or of interest or principal on any Note or any payment to the Preference Shares Paying Agent for the payment of dividends or other payments on the Preference Shares on any Payment Date or to affect the rights of the Holders of Notes or Preference Shares to the benefit of any provisions for the redemption of the Notes or the Preference Shares contained in the Indenture.

Not later than 15 Business Days prior to the execution of any proposed supplemental indenture pursuant to the above provision, the Trustee, at the expense of the Co-Issuers, will mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency (so long as any rated Notes are Outstanding) a copy of such proposed supplemental indenture and will request any required consent from the applicable Holders of Securities to be given within the Initial Consent Period. Any consent given to a proposed supplemental indenture by the Holder of any Securities will be irrevocable and binding on all future Holders or beneficial owners of that Security, irrespective of the execution date of the supplemental indenture. If the Holders of less than the required percentage of the Aggregate Outstanding Amount of the relevant Securities consent to a proposed supplemental indenture within the Initial Consent Period, on the first Business Day after the Initial Consent Period, the Trustee will notify the Issuer and the Servicer which Holders of Securities have consented to the proposed supplemental indenture and, which Holders (and, to the extent such information is reasonably available to the Trustee, which beneficial owners) have not consented to the proposed supplemental indenture. If it intends to exercise its Amendment Buy-Out Option, the Amendment Buy-Out Purchaser must so notify the Trustee (which notice will designate a date for the Amendment Buy-Out to occur no earlier than 10 Business Days after the date of such notice) no later than five Business Days after the Servicer is so notified by the Trustee and the Trustee will promptly mail such notice to all Noteholders, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). Any Non-Consenting Holder may give consent to the related proposed supplemental indenture until the 5th Business Day prior to the date of the Amendment Buy-Out designated by the Amendment Buy-Out Purchaser, and in such case will cease to be a Non-Consenting Holder for purposes of the Amendment Buy-Out. If the Amendment Buy-Out Purchaser exercises its Amendment Buy-Out Option and purchases the applicable Securities, the Amendment Buy-Out Purchaser, as Holder or beneficial owner of the applicable Securities, may consent to the related proposed supplemental indenture within five Business Days of the Amendment Buy-Out.

It is not be necessary for any Act of Noteholders under the above provision to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if the Act or consent approves its substance.

The Trustee, at the expense of the Co-Issuers, will mail to the Noteholders, the Servicer, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency a copy of any supplemental indenture promptly after its execution by the Co-Issuers and the Trustee.

Additional Issuance of Preference Shares

The Preference Share Documents will provide that, at any time during the Replacement Period, the Issuer may issue and sell additional Preference Shares and use the proceeds from such issuance and sale to purchase additional Collateral Obligations or as otherwise permitted under the Preference Share Documents and the Indenture; *provided* that the following conditions are met: (a) the terms of the Preference Shares issued must be identical to the terms of previously issued Preference Shares and (b) the net proceeds of any additional Preference Shares are used to purchase additional Collateral Obligations. Such additional Preference Shares may be offered and sold at prices that differ from the initial offering prices of the outstanding Preference Shares; *provided* that the initial offering prices of additional Preference Shares shall not be below 100% of the face amount thereof. The Issuer must cause purchases of additional Preference Shares made pursuant to an additional issuance of Preference Shares to comply individually and in the aggregate with the applicable purchase and transfer restrictions for the Preference Shares set forth herein in "Transfer Restrictions" and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

Any additional Preference Shares issued will, to the extent reasonably practicable, be offered by the Issuer first to the existing Holders of the Preference Shares, in such amounts as are necessary to preserve their *pro rata* holdings of the Preference Shares. By its acceptance of the Preference Shares, each Holder of a Preference Share agrees that additional Preference Shares can be issued in accordance with the Preference Share Documents and the Indenture without consent of any Holder of the Securities.

It is expected that Investors Corp. will finance the purchase of any additional Class I Preference Shares issued by the Issuer by issuing additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such additional Class I Preference Shares purchased by it.

Except as contemplated in connection with a Refinancing, the Indenture does not permit the issuance of additional Class A-1a Notes, Class A-1b Notes, Class A-2 Notes, Class B Notes, Class C Notes or Class D Notes or other obligations with terms similar to those of such Classes of Notes. See "—Redemption by Refinancing".

Amendment Buy-Out

In the case of any supplemental indenture that requires the consent of one or more Holders of Securities, the Amendment Buy-Out Purchaser shall have the right, but not the obligation, to purchase from Non-Consenting Holders all Securities held by such Holders of the Class of Securities whose consent was solicited with respect to such supplemental indenture or, with respect to any Class I Preference Shares held by Investors Corp. if the consent of the Holders of Holding Preference Shares has been solicited, to purchase from Non-Consenting Holding Preference Share Holders all Holding Preference Shares held by such Holders (the "**Amendment Buy-Out Option**"), in each case, for the applicable Amendment Buy-Out Purchase Price; *provided, however,* that the Amendment Buy-Out Purchaser may not exercise the Amendment Buy-Out Option during the Non-Call Period in connection with a proposed amendment to reduce the rate of interest on any Securities or to change the earliest date on which Notes of any Class or Preference Shares may be redeemed at the option of the Issuer. If such option is exercised, the Amendment Buy-Out Purchaser must purchase all such Securities of Non-Consenting Holders and all such Holding Preference Shares of the Non-Consenting Holding Preference Share Holders, as the case may be, in each case, for the applicable Amendment Buy-Out Purchase Price, regardless of the applicable percentage of the Aggregate Outstanding Amount of the Securities the consent of whose Holders is required for such supplemental indenture (an "**Amendment Buy-Out**"); *provided* that if any Non-Consenting Holder holds Class II Preference Shares, (i) such Non-Consenting Holder will sell such Class II Preference Shares to Investors Corp. and such Preference Shares will be redesignated as Class I Preference Shares, (ii) Investors Corp. will issue additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such redesignated Preference Shares purchased by it and (iii) the Amendment Buy-Out Purchaser will purchase

such additional Holding Preference Shares in lieu of such redesignated Preference Shares. By its acceptance of its Securities under the Indenture or the Preference Share Documents, as applicable, each Holder of Securities agrees that if the Amendment Buy-Out Option is exercised, any Non-Consenting Holder and any Non-Consenting Holding Preference Share Holder will be required to sell its applicable Transaction Securities to the Amendment Buy-Out Purchaser. Neither the Amendment Buy-Out Purchaser nor any other Person shall have any liability to any Holder or beneficial owner of Transaction Securities as a result of an election by the Amendment Buy-Out Purchaser not to exercise the Amendment Buy-Out Option.

All purchases made pursuant to an Amendment Buy-Out Option individually and in the aggregate must comply with the applicable transfer restrictions for the relevant Transaction Securities set forth herein in "Transfer Restrictions" or in the Investors Corp. Offering Memorandum, as applicable, and all applicable laws, rules and regulations (including, without limitation, any rules, regulations and procedures of any securities exchange, self-regulatory organization or clearing agency).

In addition, the Servicer has agreed with one or more Multiple Class Holders to purchase, at the option of each such Multiple Class Holder, Securities (or Holding Preference Shares, as the case may be) held or, in the case of Notes represented by Global Notes, beneficially owned by such Multiple Class Holder in connection with an Amendment Buy-Out, if such Securities (or Holding Preference Shares, as the case may be) are not subject to such Amendment Buy-Out and other Securities (or Holding Preference Shares, as the case may be) held or beneficially owned by such Multiple Class Holder are subject to such Amendment Buy-Out. See "Risk Factors—Relating to the Securities—An Amendment Buy-Out May Result in a Short holding Period Than Expected".

Notices

Notices to the Holders of the Securities will be given by first-class mail, postage prepaid, to the registered Holders of the Notes at their respective addresses appearing in the Indenture Register, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares) and the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares). If and for so long as any Class of Senior Notes is listed on the ISE and the rules of the exchange so require, notice will also be given to the Company Announcements Office of the ISE.

Any Holder or beneficial owner of any Class A-1 Notes may elect to acquire bond insurance, a surety bond, a credit default swap or similar credit enhancement supporting the payment of principal and/or interest on such Class A-1 Notes on terms and conditions acceptable to such Holder or beneficial owner and at the sole expense of such Holder or beneficial owner. On or after any such acquisition, such Holder or beneficial owner may deliver notice (and if from a beneficial owner, any such notice shall include certification that such owner is a beneficial owner of the Class A-1 Notes) to the Trustee in substantially the form set out in the Indenture, specifying the name and contact information of the insurer, surety, credit protection seller or enhancer of such Class A-1 Notes (each, an "**Insurer**"). After receipt of any such notice by the Trustee, the Trustee shall copy the related Insurer on all notices, reports or other documents delivered to the Noteholders.

Certain Covenants

The Indenture contains certain covenants restricting the conduct of the Co-Issuers, including (i) restrictions on consolidations, mergers and transfers or conveyances of assets involving either Co-Issuer, (ii) restrictions on incurrence of debt other than the Notes and certain obligations incidental to the performance by each Co-Issuer of its obligations under the Indenture, (iii) restrictions on the ability of either Co-Issuer to conduct activities inconsistent with its special-purpose nature and (iv) certain restrictions on amendments of the Collateral Administration Agreement and the Servicing Agreement.

Certain Additional Issues Relating to Listing of Senior Notes

Application will be made to admit each Class of Senior Notes to the Official List of the ISE. There can be no assurance that any such admission will be granted or maintained.

The Indenture provides that, so long as any Senior Notes remain Outstanding, the Co-Issuers shall use all reasonable efforts to obtain and maintain the listing of the Senior Notes on the regulated market of the ISE; *provided* that the Co-Issuers will not be required to maintain a listing on a stock exchange in the European Union if compliance with requirements of the European Commission on a member state becomes burdensome in the sole judgment of the Servicer.

Cancellation

All Securities that are paid in full or redeemed and surrendered for cancellation will forthwith be canceled and may not be reissued or resold.

No Gross-Up

All payments made by the Issuer under the Securities will be made without any deduction or withholding for or on account of any tax unless the deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If the Issuer is so required to deduct or withhold, then the Issuer will not be obligated to pay any additional amounts in respect of the withholding or deduction.

Petitions for Bankruptcy

The Indenture provides that the Trustee, each Hedge Counterparty, the Servicer and the Holders of the Notes may not cause the Issuer or Co-Issuer to petition for bankruptcy before one year and one day have elapsed since the final payments to the Holders of all Notes or, if longer, the applicable preference period then in effect, including any period established pursuant to the laws of the Cayman Islands.

Standard of Conduct

The Indenture provides that, in exercising any of its or their voting rights, rights to direct and consent or any other rights as a Noteholder under the Indenture, subject to the terms and conditions of the Indenture, a Noteholder shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether the action or inaction benefits or adversely affects any Noteholder, the Issuer, or any other Person, except for any liability to which the Noteholder may be subject to the extent the same results from the Noteholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of the Indenture.

Satisfaction and Discharge of Indenture

The Indenture will be discharged with respect to the Collateral upon delivery to the Trustee for cancellation of all of the Notes, or, within certain limitations (including the obligation to pay interest on or principal of the Notes) upon deposit with the Trustee of funds sufficient for the payment or redemption thereof and the payment by the Co-Issuers or the Issuer, as applicable, of all other amounts due under the Indenture.

Trustee

Investors Bank & Trust Company will be the Trustee under the Indenture. The Co-Issuers, the Servicer and their respective Affiliates may maintain other banking relationships in the ordinary course of business with the Trustee and its Affiliates. The payment of the fees and expenses of the Trustee relating

to the Notes is solely the obligation of the Issuer. The payment of the fees and expenses, which will be paid in accordance with the Priority of Payments, is secured by a lien on the Collateral which is senior to the lien of the Holders of the Notes. The Trustee and its Affiliates may receive compensation in connection with the purchase of trust assets in certain Eligible Investments as provided in the Indenture. Eligible Investments may include assets for which the Trustee or its Affiliates provide services. The Indenture contains provisions for the indemnification of the Trustee for any loss, liability or expense (including reasonable attorney's fees and costs) incurred without negligence, willful misconduct or bad faith arising out of or in connection with the acceptance or administration of the Indenture.

Pursuant to the Indenture, as security for the payment by the Issuer of the compensation and expenses of the Trustee and any sums the Trustee may be entitled to receive as indemnification by the Issuer, the Issuer will grant the Trustee a senior lien on the Collateral, which is senior to the lien of the holders of the Secured Obligations on the Collateral.

Pursuant to the Indenture, the Trustee may resign at any time by providing 30 days' written notice to the Co-Issuers, the Servicer, the Holders of each Class of Notes, the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), the Holding Preference Shares Paying Agent (for forwarding to the Holders of Holding Preference Shares) and each Rating Agency, upon receipt of which the Co-Issuers shall, at the direction of a Majority of the Controlling Class, promptly appoint a successor trustee that meets the requirements set forth in the Indenture. If no successor trustee is appointed within 60 days after such notice, the resigning Trustee or any Holder of a Class of Notes may petition any court of competent jurisdiction for the appointment of such successor. The Trustee may be removed (i) at any time by a Majority of the Controlling Class or (ii) by order of a court of competent jurisdiction. If at any time the Trustee ceases to be an eligible trustee under the Indenture and fails to resign after written request by the Co-Issuers or a Majority of the Controlling Class, or the Trustee becomes incapable of acting or is adjudged bankrupt or insolvent, then (A) the Co-Issuers may, and at the direction of a Majority of the Controlling Class shall, remove the Trustee, or (B) any Holder of a Security may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. If the Trustee is removed or becomes incapable of acting, or if a vacancy occurs in the office of the Trustee for any reason (other than resignation), the Co-Issuers shall promptly appoint a successor trustee. If the Co-Issuers fail to appoint a successor trustee within 60 days after the removal or incapability or the occurrence of the vacancy, a successor trustee may be appointed by a Majority of the Controlling Class by written instrument. If no successor trustee has been so appointed by the Co-Issuers or a Majority of the Controlling Class, then the Trustee to be replaced or any Holder of a Security, may petition any court of competent jurisdiction for the appointment of a successor trustee. Notwithstanding anything to the contrary, no resignation or removal of the Trustee will become effective until the acceptance of appointment by a successor trustee pursuant to the terms of the Indenture.

Governing Law

The Notes, the Indenture, the Preference Shares Paying Agency Agreement, the Servicing Agreement, the Collateral Administration Agreement, the Subscription Agreements, the Securities Lending Agreements, and the Hedge Agreements will be governed by the laws of the State of New York. The Administration Agreement and the Issuer Charter will be governed by the laws of the Cayman Islands.

Method of Payments

Payments of principal and interest on any Note or payments on or in respect of the Preference Shares (including any Redemption Price paid on the applicable Redemption Date) and of any payments on any Notes or Preference Shares will be made to the person in whose name the related Note or Preference Share is registered fifteen days before the applicable Payment Date (the "**Record Date**"). Payments will be made (i) in the case of a Global Note, to the Depository or its designee and to the Holder or its nominee with respect to a Definitive Security, by wire transfer in immediately available funds to a United States dollar account maintained by the Depository or its nominee with respect to a Global Note and to the Holder or its designee with respect to a Definitive Security if the Holder has

provided written wiring instructions to the Trustee and, if the payment is to be made by the Irish Paying Agent, the Irish Paying Agent on or before the related Record Date or, (ii) if appropriate wiring instructions are not received by the related Record Date, by check drawn on a U.S. bank mailed to the address of the Holder in the Indenture Register (or, in the case of the Preference Shares, the Preference Share register). Final payments of principal of the Notes or Preference Shares will be made against surrender of the related Notes or Preference Shares at the office designated by the Trustee and the Preference Shares Paying Agent. None of the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Servicer, the Initial Purchaser, any paying agent, or any of their respective affiliates will have any responsibility or liability for any aspects of the records maintained by the Depository or its nominee or any of its direct or indirect participants (including Euroclear or Clearstream or any of their respective direct or indirect participants) relating to payments made on account of beneficial interests in a Global Note.

The Co-Issuers expect that the Depository or its nominee, upon receipt of any payment of principal or interest in respect of a Global Note held by the Depository or its nominee, will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the Global Note as shown on the records of the Depository or its nominee. The Co-Issuers also expect that payments by participants (i.e., direct participants) to owners of beneficial interests in a Global Note held through the participants (i.e., indirect participants) will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees for the customers. The payments will be the responsibility of the participants.

For so long as any Senior Notes are listed on the ISE and the rules of the exchange shall so require, the Issuer and the Co-Issuers, as applicable, will have the Irish Paying Agent for the Senior Notes in Ireland and payments on the Senior Notes may be effected through the Irish Paying Agent. If the Irish Paying Agent is replaced at any time during the period, notice of the appointment of any replacement will be given to the Company Announcements Office of the ISE.

Preference Shares Paying Agency Agreement

General

Pursuant to the Preference Shares Paying Agency Agreement, the Preference Shares Paying Agent will perform various fiscal services with respect to the Preference Shares on behalf of the Issuer, including the maintenance of the Preference Shares Distribution Account and the making of distributions on the Preference Shares. The Preference Shares Paying Agent will deliver or request the Trustee to deliver all Monthly Reports and Valuation Reports prepared pursuant to the Indenture to the Holders of the Preference Shares, and the Preference Shares Paying Agent will deliver, or shall cause the Trustee to deliver, a copy of any other notice or information it receives from the Trustee under the Indenture to the Holders of the Preference Shares, in each case (i) by first-class mail, postage prepaid, to each Holder of a Preference Share at the address appearing in the Preference Share register or (ii) with respect to delivery of Monthly Reports and Valuation Reports, by making such reports available via its internet website, initially located at http://www.cdocalc.com/ibt/cdo/. All information made available on the Preference Shares Paying Agent's website will be restricted and the Preference Shares Paying Agent will only provide access to such reports to those parties entitled thereto pursuant to the Preference Shares Paying Agency Agreement. In connection with providing access to its website, the Preference Shares Paying Agent may require registration and the acceptance of a disclaimer. Questions regarding the Preference Shares Paying Agent's website can be directed to the Preference Shares Paying Agent's customer service desk at (617) 937-5585. The payment of the fees and expenses of the Preference Shares Paying Agent is solely the obligation of the Issuer. The Preference Shares Paying Agency Agreement contains provisions for the indemnification of the Preference Shares Paying Agent for any loss, liability or expense incurred without gross negligence, willful misconduct or bad faith on its part, arising out of or in connection with the performance of its function under the Preference Shares Paying Agency Agreement.

Redemption

On the Scheduled Preference Shares Redemption Date, the Issuer is scheduled to redeem the Preference Shares for a redemption price equal to all amounts distributable to the Preference Shares Paying Agent for distribution to the Holders of the Preference Shares as provided under "—Priority of Payments," unless the Preference Shares have been redeemed earlier through an optional redemption as described herein or otherwise.

Governing Law

The Preference Shares Paying Agency Agreement will be governed by, and construed in accordance with, the laws of the State of New York. The rights of the Holders of the Preference Shares will be governed by, and construed in accordance with, the laws of the Cayman Islands.

Redesignation of Class I Preference Shares and Class II Preference Shares

The Share Registrar will record in the register maintained by it which Preference Shares are held by HFP or any of its subsidiaries. Such Preference Shares will be designated by the Share Registrar as Class II Preference Shares. HFP and its subsidiaries will agree not to transfer any of the Class II Preference Shares to any third party other than Investors Corp. Any transfer of Class II Preference Shares by HFP or any of its subsidiaries to Investors Corp. will require redesignation by the Share Registrar of such Class II Preference Shares into Class I Preference Shares and any transfer of Class I Preference Shares to HFP or any of its subsidiaries from Investors Corp. will require redesignation by the Share Registrar of such Class I Preference Shares into Class II Preference Shares. Investors Corp. will finance the purchase of any Class II Preference Shares to be redesignated in connection with such transfer by issuing additional Holding Preference Shares in a number equal to the aggregate number of, and at a price equal to the price of, such Class II Preference Shares.

Distribution of Eligible Equity Securities

If the Servicer, on behalf of the Issuer, desires to make distributions of Eligible Equity Securities on any Payment Date in lieu of Interest Proceeds that are otherwise available for distribution to the Holders of Preference Shares on such Payment Date pursuant to the Priority of Payments, the Servicer will notify the Trustee, the Preference Shares Paying Agent and the Holding Preference Shares Paying Agent not later than 20 calendar days prior to such Payment Date and provide the Trustee, the Preference Shares Paying Agent (for forwarding on the Record Date or promptly thereafter, but in any event no later than two Business Days after the Record Date, to each Holder of the Preference Shares registered as such on the Record Date for such Payment Date) and the Holding Preference Shares Paying Agent (for forwarding on the Record Date or promptly thereafter, but in any event no later than two Business Days after the Record Date, to each Holder of the Holding Preference Shares registered as such on the Record Date for such Payment Date) with (i) details of the Eligible Equity Securities to be distributed, (ii) the Market Value of such Eligible Equity Securities determined as of the relevant Market Value Determination Date, (iii) any other information considered necessary by the Servicer in connection with such proposed distribution and (iv) any information as otherwise required by the Trustee, the Preference Shares Paying Agent and/or the Holding Preference Shares Paying Agent with respect to such proposed distribution. The Preference Shares Paying Agent will then mail such materials, within two Business Days of its receipt thereof from the Servicer, to each registered Holder of Preference Shares on the Record Date for such Payment Date along with a form of notice and consent (in a form attached to the Preference Shares Paying Agency Agreement) seeking the written consent of each such Holder of Preference Shares to distribute such Eligible Equity Securities to such Holder in lieu of all or a portion of the Interest Proceeds available for distribution to such Holder on such Payment Date. Each Holder of the Preference Shares wishing to receive such Eligible Equity Securities in lieu of a distribution of all or a portion of the Interest Proceeds available for distribution to such Holder on such applicable Payment Date (each such Holder with respect to such Payment Date, a "**Consenting Holder of the Preference Shares**") must deliver to the Preference Shares Paying Agent a written consent (which consent will be irrevocable) not later than five Business Days prior to such Payment Date. If any Holder of Preference Shares does

not timely deliver its written consent to the Preference Shares Paying Agent in the manner set forth in such notice indicating its consent to the receipt of such Eligible Equity Securities in lieu of a distribution of all or a portion of the Interest Proceeds available for distribution to such Holder on such Payment Date, such Holder will be deemed to have not given its consent and shall not be a Consenting Holder of Preference Shares with respect to such Payment Date. On each applicable Payment Date (or as soon thereafter as reasonably practicable), Eligible Equity Securities will be distributed *pro rata* to each Consenting Holder of the Preference Shares with respect to such Payment Date. Each Holder of Preference Shares that is not a Consenting Holder of Preference Shares (and, for the avoidance of doubt, each Consenting Holder of the Preference Shares to the extent the Market Value as of the relevant Market Value Determination Date of the *pro rata* portion of Eligible Equity Securities distributed to it on such Payment Date is less than the *pro rata* portion of the Interest Proceeds that it would have received on such Payment Date had the Eligible Equity Securities not been distributed on such Payment Date) on any applicable Payment Date will receive a distribution of Interest Proceeds to the extent available in accordance with the Priority of Payments on such Payment Date. See "Description of the Securities-Priority of Payments—Interest Proceeds."

Amendment

Without the Consent of Holders. The Preference Shares Paying Agency Agreement may be amended by the parties thereto, without the consent of the Holders of any Preference Shares, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained therein, or in regard to matters or questions arising under the Preference Shares Paying Agency Agreement as the Issuer and the Preference Shares Paying Agent may deem necessary or desirable and which shall not materially adversely affect the interests of Holders of the Preference Shares. In addition, the Preference Shares Paying Agency Agreement may be amended without the consent of any Holders of the Preference Shares and without regard to whether or not such amendment adversely affects the interest of the Holders of the Preference Shares in order to prevent the Issuer from becoming an "investment company" as defined in the Investment Company Act or to better assure compliance with the requirements of Rule 3a-7 and/or to remove transfer restrictions and other requirements relating to Section 3(c)(7); *provided* that, as a condition to the effectiveness of any such amendment, each of the Issuer, the Trustee, the Preference Shares Paying Agent and the Servicer shall have received a customary opinion of counsel (which may be supported as to factual matters by any relevant certificates or other documents necessary or advisable in the judgment of counsel delivering such opinion) from a nationally recognized law firm providing that, after giving effect to such amendment, the Issuer is exempt from registration as an "investment company" under the Investment Company Act in reliance on the exemption provided by Rule 3a-7.

With the consent of Holders. Unless otherwise set forth in the preceding paragraph, the Preference Shares Paying Agency Agreement may be amended with the consent of Holders of a Majority of the Preference Shares materially and adversely affected thereby.

Any amendment to the Preference Shares Paying Agency Agreement must be in writing, executed by each party thereto. The Preference Shares Paying Agent is entitled to receive, and (subject to its duties and obligations in the Preference Shares Paying Agency Agreement) shall be fully protected in relying upon, an opinion of counsel, consent or certificate of the Issuer in determining whether or not any proposed amendment is permitted under Preference Shares Paying Agency Agreement.

Any amendment to the Preference Shares Paying Agency Agreement that would also necessitate a change to the Issuer Charter may only be made after a Special Resolution (as defined in the Issuer Charter) has been passed to permit the Issuer Charter to be altered to conform with such proposed amendment.

The Issuer Charter

The following summary describes certain provisions of the Issuer Charter relating to the Preference Shares that are not referred to elsewhere in this Offering Memorandum.

Voting Rights

Other than as provided below, only the holders of the Issuer Ordinary Shares shall have the right to receive notice of, attend at and vote as a shareholder of the Issuer at any general meeting of the Issuer. Every holder of an Issuer Ordinary Share present at any meeting shall, on a show of hands, be entitled to one vote and, on a poll, shall be entitled to one vote per Issuer Ordinary Share held by such holder.

Other than as provided below, the Holders of the Preference Shares shall have the right to receive notice of, attend at and vote as a shareholder of the Issuer at any general meeting of the Issuer only in respect of a resolution which relates to any circumstance or matter which under the Indenture, the Preference Share Documents or the Servicing Agreement can take place or occur only at the direction of the Holders of the Preference Shares (a "**Preference Share Vote**"). Every Holder of Preference Shares present shall, on a show of hands, be entitled to one vote and, on a poll, shall be entitled to one vote per Preference Share held by such Holder except that, in relation to a Preference Share Vote relating to certain matters (as set out in the Indenture) Preference Shares held by certain Holders (as set out in the Indenture), shall be ignored.

The Class II Preference Shares will have total control with respect to the appointment and removal of the directors of the Issuer as long as the aggregate number of Class II Preference Shares Outstanding as of the relevant Voting Record Date is higher than the aggregate number of Class I Preference Shares Outstanding as of such date. If the aggregate number of Class II Preference Shares Outstanding as of the relevant Voting Record Date is lower than or equal to the aggregate number of Class I Preference Shares Outstanding as of such date, only the Issuer Ordinary Shares will be entitled to vote with respect to the appointment and removal of the directors of the Issuer.

Liquidation

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Issuer:

(i) the Holders of the Issuer Ordinary Shares at the time outstanding will be entitled to receive out of the assets of the Issuer available for distribution to shareholders, before any distribution of assets is made to Holders of the Preference Shares, an amount equal to U.S.$2.00 in respect of each Issuer Ordinary Share held by each such holder; and

(ii) the Holders of the Preference Shares at the time Outstanding will be entitled to the balance of the assets of the Issuer available for distribution to shareholders, after distribution of amounts due to holders of Issuer Ordinary Shares under the above subparagraph, *pro rata* according to the number of Preference Shares held by each such holder.

If the assets available for distribution to holders of the Issuer Ordinary Shares are not sufficient to pay to such holders U.S.$2.00 in respect of each Issuer Ordinary Share, the available assets shall be distributed to holders of the Issuer Ordinary Shares *pro rata* according to the number of Issuer Ordinary Shares held by each such holder.

Transfer

The rights of a Holder of a Preference Share to transfer such Preference Share are subject to restrictions set out in the Preference Share Documents and as described in "Transfer Restrictions."

Petitions for Bankruptcy

Each Holder of a Preference Share will be required to agree (or be deemed to have agreed) not to cause the filing of a petition in bankruptcy or winding up against the Issuer before one year and one day have elapsed since the payment in full of the Notes or, if longer, the applicable preference period then in effect.

USE OF PROCEEDS

The Securities will be issued and sold for Cash on the Closing Date. The gross proceeds from the issuance of such Securities on the Closing Date are expected to equal approximately U.S.$1,495,000,000 and will be used by the Issuer to:

- purchase a portfolio of Collateral Obligations;
- fund the Revolving Reserve Account and the Delayed Drawdown Reserve Account to cover any future draws on Revolving Loans and Delayed Drawdown Loans;
- enter into any Hedge Agreements, as applicable;
- enter into any Securities Lending Agreements (and correspondingly to fund the Securities Lending Account);
- enter into Synthetic Security Agreements (and correspondingly to fund the related accounts);
- repurchase participations sold to the Pre-Closing Parties to finance the Issuer's pre-closing acquisition of loans;
- fund the Closing Date Expense Account and the Interest Reserve Account;
- pay certain expenses related to the transaction; and
- undertake certain related activities.

SECURITY FOR THE NOTES

The Notes and the Issuer's obligations under the Hedge Agreements and the Servicing Agreement will be secured by the following:

(i) the Collateral Obligations and all Workout Assets;

(ii) the Custodial Account, the Collection Account, the Payment Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Interest Reserve Account, the Closing Date Expense Account, the Expense Reimbursement Account and the Securities Lending Account (such accounts, collectively, the "**Issuer Accounts**"), Eligible Investments purchased with funds on deposit in the Issuer Accounts, and all income from funds in the Issuer Accounts;

(iii) the Synthetic Security Counterparty Account (and together with the Issuer Accounts, the Synthetic Security Collateral Account and the Hedge Counterparty Collateral Account, the "**Accounts**") and assets included therein, subject to the terms of the related Synthetic Security (*provided, however*, that any such rights in any Synthetic Security Counterparty Account shall be held in trust by the Trustee (or securities intermediary) first to secure the Issuer's payment obligations to the relevant Synthetic Security Counterparty and second for the benefit of the Secured Parties);

(iv) the Servicing Agreement, the Synthetic Security Collateral Account, the Securities Lending Agreements and all Securities Lending Collateral and the Securities Lending Account, the Hedge Agreements as set forth in the Indenture and all Collateral securing the Hedge Counterparty's obligations thereunder including, without limitation, the Hedge Counterparty Collateral Account and the Collateral Administration Agreement to the extent of any rights of the Issuer therein;

(v) all Cash or money delivered to the Trustee (or its bailee); and

(vi) all proceeds with respect to the foregoing (collectively, the "**Collateral**").

For the avoidance of any doubt, Collateral will exclude (i) amounts released from the Trustee's lien in connection with certain Synthetic Securities, Hedge Agreements and Securities Lending Agreements in accordance with the Indenture and (ii) the Excluded Property.

Purchase of Collateral Obligations

The Indenture will provide that the Servicer will use commercially reasonable efforts to cause the Issuer to purchase or enter into binding commitments to purchase Collateral Obligations that meet certain minimum amounts and characteristics. The composition of the portfolio of Collateral Obligations will be determined by the selections of the Servicer designed to meet the Eligibility Criteria, the Collateral Quality Tests, the Coverage Tests and the requirements provided in paragraphs (i) through (ix) in "—Sale of Collateral Obligations; Acquisition of Collateral Obligations." See "—Eligibility Criteria," "—The Collateral Quality Tests," "—The Coverage Tests" and "—Sale of Collateral Obligations; Acquisition of Collateral Obligations."

The Servicer expects that, by the end of the Ramp-Up Period, the Issuer will have purchased or committed to purchase Collateral Obligations having an Aggregate Principal Balance of approximately $1,471,900,000 (for the avoidance of doubt, without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date).

Eligibility Criteria

On any date during the Replacement Period (and, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, on any date after the Replacement Period), so long as no Event of Default is continuing, at the direction of the Servicer, the Issuer may direct the Trustee to apply Principal Proceeds (together with Interest Proceeds, but only to the extent used to pay for accrued interest on Collateral Obligations) to purchase Collateral Obligations (including any related deposit into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or the posting by the Issuer of cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security) if the conditions specified in the Indenture are satisfied. No obligations may be purchased unless each of the conditions in the following clauses (1) through (12) (the "**Eligibility Criteria**") is satisfied as evidenced by a certificate of the Servicer as of the date the Issuer commits to make the purchase, in each case after giving effect to the purchase and all other purchases and sales previously or simultaneously committed to:

(1) the obligation is a Collateral Obligation;

(2) for any date occurring during the Replacement Period:

(A) each Overcollateralization Test is satisfied and, if the commitment is made on or after the second Payment Date, each Interest Coverage Test is satisfied; or

(B) if any such Coverage Test is not satisfied, both:

(i) the extent of satisfaction of the Coverage Test is not reduced; and

(ii) the Collateral Obligation is being purchased with Principal Proceeds other than:

(x) Principal Proceeds received in respect of a Defaulted Collateral Obligation; or

(y) Principal Proceeds received in respect of a Workout Asset that has been received in exchange for a Defaulted Collateral Obligation;

(3) for any date occurring during the Replacement Period, the Diversity Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(4) for any date occurring during the Replacement Period, the Weighted Average Rating Factor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(5) for any date occurring during the Replacement Period, each of the limits in the definition of "Concentration Limitations" is satisfied or, if any such limit is not satisfied, the extent of satisfaction is not reduced;

(6) for any date occurring during the Replacement Period, the Weighted Average Spread Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(7) for any date occurring during the Replacement Period, the Weighted Average Fixed Rate Coupon Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(8) for any date occurring during the Replacement Period, the Weighted Average Life Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(9) for any date occurring during the Replacement Period, the Weighted Average Moody's Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(10) for any date occurring during the Replacement Period, the Weighted Average S&P Recovery Rate Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced;

(11) for any date occurring during the Replacement Period, the S&P CDO Monitor Test is satisfied or, if not satisfied, the extent of satisfaction is not reduced; *provided*, *however*, that this Eligibility Criterion (11) shall not apply either to the application of the proceeds from the sale of a Credit Risk Obligation, Non-Performing Collateral Obligation or Workout Asset or to the application of Principal Proceeds in respect of Defaulted Collateral Obligations; and

(12) for any date occurring after the Replacement Period:

(A) each Coverage Test is satisfied and the extent of satisfaction is not reduced;

(B) each Collateral Quality Test is maintained or improved and the Weighted Average Rating Factor Test is satisfied;

(C) each Concentration Limitation is maintained or improved and the Aggregate Principal Balance of all CCC+/Caa1 Collateral Obligations do not exceed 7.5% of the Maximum Amount;

(D) the Weighted Average Life Test is satisfied;

(E) the S&P Rating of such Collateral Obligation is at least equal to the S&P Rating of the Collateral Obligation being the source of the Unscheduled Principal Payments or of the Credit Risk Obligations or Credit Improved Obligation being the source of Sale Proceeds, as applicable; and

(F) the current Moody's Rating on Class A-1a Notes is "Aaa" and the current Moody's Ratings on the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes are no lower than one subcategory below their initial rating.

Notwithstanding the foregoing, (i) one or more Collateral Obligations may be purchased pursuant to a Portfolio Improvement Exchange effected in compliance with "—Sale of Collateral Obligations; Acquisition of Replacement Collateral Obligations—Credit Improved Obligations" regardless of whether such purchase would otherwise satisfy the Eligibility Criterion set forth in clause (12) above and (ii) the Issuer (or the Servicer on its behalf) shall not direct the Trustee to purchase any Collateral Obligation following receipt by the Servicer of notice of removal or resignation pursuant to the provisions of the Servicing Agreement until a successor servicer is appointed pursuant to the provisions of the Servicing Agreement. See "The Servicing Agreement."

The Issuer may, at the direction of the Servicer, exchange a Collateral Obligation for another Collateral Obligation in an exchange of one security for another security of the same issuers that has substantially identical terms except transfer restrictions.

Cash on deposit in the Collection Account may be held in Eligible Investments in accordance with this "Eligibility Criteria" section pending the application thereof to purchase Collateral Obligations.

The Indenture provides that any sale or purchase by the Issuer of a Collateral Obligation shall be conducted on an arm's length basis and, if effected with the Servicer or a person Affiliated with the Servicer or any fund or account for which the Servicer or an Affiliate of the Servicer acts as investment adviser, shall be effected in accordance with the requirements the Servicing Agreement on terms no less favorable to the Issuer than would be the case if the person were not so Affiliated.

The Collateral Quality Tests

The Collateral Quality Tests will be used primarily as criteria for purchasing Collateral Obligations. See "—Eligibility Criteria" above and "—Sale of Collateral Obligations; Acquisition of Collateral Obligations" below. The Collateral Quality Tests are described below.

Measurement of the degree of compliance with the Collateral Quality Tests will be required on each Measurement Date on and after the Ramp-Up Completion Date.

The Diversity Test

The "**Diversity Test**" is a test that will be satisfied on any Measurement Date if the Diversity Score as of the Measurement Date equals or exceeds the Minimum Diversity Score. For the purposes of calculating the Diversity Test, any Structured Finance Obligation that is a collateralized loan obligation will be disregarded.

Weighted Average Life Test

The "**Weighted Average Life Test**" is a test that is satisfied on any Measurement Date if the Weighted Average Life on that date of all Collateral Obligations is equal to or less than the greater of (a) the number of years (including any fraction of a year) between such Measurement Date and May 1, 2017 or, in the case of a Maturity Extension, the Extended Weighted Average Life Date and (b) 4.0 years.

Weighted Average Moody's Recovery Rate Test

The "**Weighted Average Moody's Recovery Rate Test**" is a test that is satisfied as of any Measurement Date if the Moody's Minimum Average Recovery Rate is greater than or equal to 43.63%.

Weighted Average S&P Recovery Rate Test

The "**Weighted Average S&P Recovery Rate Test**" is a test that is satisfied as of any Measurement Date if the S&P Minimum Average Recovery Rate is greater than or equal to 52.28%.

"**S&P Minimum Average Recovery Rate**" is a rate, as of any Measurement Date, equal to the number obtained by:

(i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective S&P Priority Category Recovery Rate;

(ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations; and

(iii) rounding up to the first decimal place.

Weighted Average Fixed Rate Coupon Test

The "**Weighted Average Fixed Rate Coupon Test**" is a test that is satisfied if, as of any Measurement Date, the Weighted Average Fixed Rate Coupon equals or exceeds 7.5%.

Weighted Average Spread Test

The "**Weighted Average Spread Test**" is a test that is satisfied as of any Measurement Date if the Weighted Average Spread as of the Measurement Date equals or exceeds the Minimum Weighted Average Spread.

Weighted Average Rating Factor Test

The "**Weighted Average Rating Factor Test**" is a test that is satisfied on any Measurement Date if the Weighted Average Moody's Rating Factor of the Collateral Obligations (excluding Eligible Investments) as of the Measurement Date is less than or equal to the Maximum Weighted Average Moody's Rating Factor.

S&P CDO Monitor Test

The "**S&P CDO Monitor Test**" is a test that is satisfied on any Measurement Date if, after giving effect to the sale of a Collateral Obligation or the purchase of a Collateral Obligation, each Note Class Loss Differential of the Proposed Portfolio is positive. The S&P CDO Monitor Test shall be considered to be improved if each Note Class Loss Differential of the Proposed Portfolio is at least equal to the corresponding Note Class Loss Differential of the Current Portfolio. The S&P CDO Monitor Test is not required to be satisfied or improved upon the sale of a Credit Risk Obligation and the application of the related Sale Proceeds to purchase additional Collateral Obligations. For purposes of the S&P CDO Monitor Test:

(i) the S&P Rating of any S&P Unrated DIP Loan shall be "CCC"; and

(ii) the S&P Industry Classification for a Synthetic Security shall be that of the related Reference Obligation and not the Synthetic Security.

The "**Note Class Loss Differential**" with respect to any Measurement Date and any Class of Notes that is rated by S&P, the rate calculated by subtracting the Class Scenario Loss Rate for the Class from the then-applicable Note Break-Even Loss Rate for the Class of Notes.

The "**Note Break-Even Loss Rate**" with respect to each Class of Notes that is rated by S&P, the maximum percentage of defaults that the Current Portfolio or Proposed Portfolio can sustain and

nevertheless sufficient funds will remain for the payment of principal of the Class of Notes in full by its Stated Maturity and the timely payment of interest on the Class A-1a Notes, the Class A-1b Notes and the Class A-2 Notes and the ultimate payment of interest on the Class B Notes, the Class C Notes and the Class D Notes using S&P's assumptions on recoveries, defaults, and timing, and taking into account the Priority of Payments and the adjusted Weighted Average Spread level specified in the applicable row of the table below. The adjusted Weighted Average Spread as of any Measurement Date is the Weighted Average Spread as of the Measurement Date *minus* the amount of any Spread Excess added to the Weighted Average Fixed Rate Coupon as of the Measurement Date.

Row	Adjusted Weighted Average Spread
1	Greater than or equal to 3.05%
2	Greater than or equal to 2.95% but less than 3.05%
3	Greater than or equal to 2.85% but less than 2.95%
4	Greater than or equal to 2.75% but less than 2.85%
5	Greater than or equal to 2.65% but less than 2.75%
6	Greater than or equal to 2.55% but less than 2.65%
7	Greater than or equal to 2.45% but less than 2.55%
8	Greater than or equal to 2.35% but less than 2.45%
9	Greater than or equal to 2.25% but less than 2.35%

The Coverage Tests

General

The Coverage Tests will be used to determine, among other things, whether Notes will be redeemed in certain circumstances as described under "Description of the Securities—Priority of Payments" and whether additional Collateral Obligations may be acquired as described under "—Eligibility Criteria." There will not be any Coverage Test applicable to the Preference Shares.

The Overcollateralization Tests

The "**Overcollateralization Tests**" will consist of the Class A Overcollateralization Test, the Class B Overcollateralization Test, the Class C Overcollateralization Test and the Class D Overcollateralization Test.

Each Overcollateralization Test will be satisfied with respect to any Class of Notes on any Measurement Date if, as of such Measurement Date, the Overcollateralization Ratio for the Class is at least equal to the specified required level for the Class indicated in the table in "Summary of Terms—The Overcollateralization Tests."

The Overcollateralization Ratio, with respect to each Class of Notes on any Measurement Date, is referred to as an "**Overcollateralization Ratio**," and is the ratio calculated by *dividing*:

(i) the Overcollateralization Ratio Numerator; by

(ii) the Aggregate Outstanding Amount of the Class of Notes and all Notes ranking senior to it (excluding any Deferred Interest on the Notes and all Notes ranking senior to it).

The "**Overcollateralization Ratio Numerator**" is, on any date, the sum of:

(1) the Aggregate Principal Balance of all Collateral Obligations (other than any Excess CCC+/Caa1 Collateral Obligations, any Non-Performing Collateral Obligations, any Deep Discount Obligations and any Collateral Obligations loaned pursuant to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing); *plus*

(2) unpaid Accrued Interest Purchased With Principal (excluding any unpaid Accrued Interest Purchased With Principal in respect of Non-Performing Collateral Obligations); *plus*

(3) the Aggregate Principal Balance of any Eligible Investments that were purchased with Principal Proceeds and the amount of Principal Proceeds on deposit in the Collection Account; *plus*

(4) the Aggregate Principal Balance of Eligible Investments on deposit in a Securities Lending Account that relate to a Securities Lending Agreement with respect to which an "event of default" (under and as defined in the Securities Lending Agreement) is continuing; *plus*

(5) with respect Collateral Obligation that are Non-Performing Collateral Obligations, Deep Discount Obligations or Excess CCC+/Caa1 Collateral Obligations, the amount determined by using one of the following methods applicable to such type of Collateral Obligation; *provided* that if a Collateral Obligation falls within more than one of such types, the Issuer will be required to use the method that results in the smallest amount:

(A) with respect to any Excess CCC+/Caa1 Collateral Obligations, an amount equal to the product of (i) the lower of (1) 70% and (2) the CCC+/Caa1 Excess Market Value Percentage, *multiplied* by (ii) the Excess CCC+/Caa1 Collateral Obligations;

(B) with respect to any Non-Performing Collateral Obligations, the aggregate of the Applicable Collateral Obligation Amounts for all included Non-Performing Collateral Obligations (other than Defaulted Collateral Obligations that have been held by the Issuer for more than three years, which shall be deemed to be zero for purposes of this clause (B)); and

(C) with respect to any Deep Discount Obligations, the Aggregate Purchase Price Amount for all Deep Discount Obligations.

"**Applicable Collateral Obligation Amount**" for any Non-Performing Collateral Obligation means:

(1) the lesser of (x) the Market Value Percentage of the Non-Performing Collateral Obligation and (y) the Applicable Percentage for the Non-Performing Collateral Obligation *multiplied* by:

(2) if the Non-Performing Collateral Obligation is:

(A) any Pledged Obligation other than those in clauses (B) through (D) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(B) a Synthetic Security, the notional amount specified in the Synthetic Security;

(C) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(D) any PIK Security, its Principal Balance.

As used in the calculation of Market Value Percentage of the Non-Performing Collateral Obligation, the Principal Balance of any Defaulted Collateral Obligation shall be, if the Defaulted Collateral Obligation is:

(i) any Pledged Obligation other than those in clauses (ii) through (iv) below, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance including any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount); and

(iv) any PIK Security, its Principal Balance.

The Interest Coverage Tests

The Interest Coverage Test in respect of each Class of Notes (each an "**Interest Coverage Test**") is a test the first Measurement Date for which will be on the second Payment Date and that is satisfied with respect to any specified Class of Notes if, as of the second Payment Date and any Measurement Date thereafter on which any Notes remain Outstanding, the Interest Coverage Ratio equals or exceeds the applicable required level specified in the table in "Summary of Terms— The Interest Coverage Tests."

The "**Interest Coverage Ratio**" with respect to any specified Class of Notes on any Measurement Date, the ratio calculated by dividing:

(i) the sum of:

(A) the Interest Proceeds received or scheduled to be received with respect to the Due Period in which the Measurement Date occurs; *minus*

(B) amounts payable under clauses (1), (2), (3) and (4) of "Description of the Securities—Priority of Payments—Interest Proceeds" on the related Payment Date; by

(ii) all accrued and unpaid interest on the specified Class of Notes and all Notes ranking senior to the Class, including any Deferred Interest on the related Payment Date.

For purposes of the Interest Coverage Ratio, only the amount of any interest payment (including any "gross up" payment) on any Collateral Obligation in excess of any withholding tax or other deductions on account of tax of any jurisdiction on any date of determination shall be included in Interest Proceeds.

Retention Overcollateralization Test

The "**Retention Overcollateralization Test**" is a test that is satisfied as of any Measurement Date during the Replacement Period on which any Notes remain Outstanding, if the Retention Overcollateralization Ratio as of such Measurement Date is at least equal to 103.2%.

Ramp-Up

In connection with the Ramp-Up Completion Date, the Issuer shall use its best efforts to purchase Collateral Obligations on any Business Day during the Ramp-Up Period or enter into commitments to purchase Collateral Obligations on any Business Day during the Ramp-Up Period for purchase on or as soon as practicable thereafter (not to exceed 60 days thereafter), in each case, for inclusion in the Collateral so that the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$1,471,900,000.

No Collateral Obligations may be purchased prior to the Ramp-Up Completion Date unless immediately following the purchase of any Collateral Obligation (as certified by the Servicer in writing), the remaining funds in the Collection Account, after giving effect to such purchase, are sufficient as of the date of determination to purchase Collateral Obligations for inclusion in the Collateral so that the Overcollateralization Ratio Numerator with respect to the Class A Notes is at least U.S.$1,471,900,000 (taking into account the Collateral Obligations already part of the Collateral (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date)).

Notwithstanding the foregoing, or any other provision of the Indenture, if the Issuer has previously entered into a commitment to purchase a Collateral Obligation to be included in the Collateral, such commitment initially not to exceed 60 days, and at the time of the commitment the Collateral Obligation complied with the definition of "Collateral Obligation" and the requirements set forth under "—Ramp-Up," the Issuer may consummate the purchase of the Collateral Obligation notwithstanding that the Collateral Obligation fails to comply with the definition of "Collateral Obligation" and the requirements set out above on the date of settlement.

The Issuer will use commercially reasonable efforts to purchase, or to enter into binding agreements to purchase, Collateral Obligations by the Ramp-Up Completion Date, that, together with the Collateral Obligations purchased on or before the Closing Date and then held by the Issuer, will satisfy, as of the Ramp-Up Completion Date (without giving effect to any reductions of that amount that may have resulted from scheduled principal payments, principal prepayments or dispositions made with respect to any Collateral Obligations on or before the Ramp-Up Completion Date), the Collateral Quality Tests, the Concentration Limitations, the criteria set forth in the Indenture and the Overcollateralization Tests.

Within 5 Business Days after the Ramp-Up Completion Date, the Issuer or the Servicer (on behalf of the Issuer) shall request a S&P Rating Confirmation and shall provide a report to the Rating Agencies identifying the Collateral Obligations then included in the Collateral and the Issuer shall obtain and deliver to the Trustee and the Rating Agencies, together with the delivery of a report (and, with respect to S&P, the Excel Default Model Input File and, with respect to each Collateral Obligation, the name of the obligor thereon, the CUSIP number thereof (if applicable) and the S&P Priority Category thereof) substantially in the form of a Monthly Report as of the Ramp-Up Completion Date, an accountants' certificate:

(i) confirming the maturity date, rating, spread and recovery rate for each item of original Collateral Obligations owned by the Issuer as of the Ramp-Up Completion Date and the information provided by the Issuer with respect to every other asset included in the Collateral, by reference to such sources as shall be specified therein;

(ii) confirming that as of the Ramp-Up Completion Date:

(1) each of the Coverage Tests are satisfied;

(2) the Aggregate Principal Balance of Collateral Obligations that the Issuer owned or committed to purchase as of the Ramp-Up Completion Date is at least equal to the Maximum Amount; and

(3) the Collateral Obligations comply with all of the requirements of the Collateral Quality Tests and the Concentration Limitations and the criteria set forth in "—Eligibility Criteria"; and

(iii) specifying the procedures undertaken by them to review data and computations relating to the foregoing statements.

If a Rating Confirmation Failure should occur, the Notes will be redeemed pursuant to the Indenture and as described in "Description of the Securities—Mandatory Redemption of the Notes—Mandatory Redemption of the Notes upon Rating Confirmation Failure."

Sale of Collateral Obligations; Acquisition of Replacement Collateral Obligations

Pursuant to the Indenture and so long as no Event of Default has occurred and is continuing, the Issuer may, at the direction of the Servicer, direct the Trustee to sell (and the Trustee will sell) any Collateral Obligation or Workout Asset if the sale meets the requirements in paragraphs (i) through (ix) below:

(i) *Credit Risk Obligations.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Risk Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Credit Risk Obligation in accordance with such direction. Following any sale of a Credit Risk Obligation pursuant to the Indenture, at the direction of the Servicer during the Replacement Period, the Issuer shall use commercially reasonable efforts to purchase additional Collateral Obligations (to the extent the purchase is in the best interest of the Issuer) meeting the Eligibility Criteria with an Aggregate Principal Balance at least equal to the Sale Proceeds received by the Issuer with respect to the Collateral Obligation sold. For this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount.

(ii) *Credit Improved Obligations.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Credit Improved Obligation if either:

(1) during the Replacement Period, the Servicer has identified in writing before the sale one or more specific manners in which it will be able, in compliance with the Eligibility Criteria and the requirements set forth in paragraph (ix) below, to cause the Issuer to use the Sale Proceeds (it being understood that such identification shall not be considered either a requirement or an assurance that any specified purchase will be consummated) to purchase one or more additional Collateral Obligations with an Aggregate Principal Balance at least equal to the Purchase Criteria Adjusted Balance of the Credit Improved Obligation by the end of the immediately succeeding Due Period (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest) which in aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Tests, the Overcollateralization Tests and the Concentration Limitations herein being satisfied or if one or more of such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations are not satisfied, the degree of compliance therewith being improved, (ii) the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests and Concentration Limitations being improved on a net basis in the commercially reasonable judgment of the Servicer and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not

being violated or, in the commercially reasonable judgment of the Servicer, the likelihood of such violation in the future not being significantly increased; or

(2) after the Replacement Period, the Sale Proceeds received in respect of the Credit Improved Obligation are at least equal to its Purchase Criteria Adjusted Balance (for this purpose, the Principal Balance of any Revolving Loan or Delayed Drawdown Loan shall only include its funded amount and Principal Balance shall include the principal balance of Collateral Obligations in which the Trustee does not have a first priority perfected security interest);

and the Trustee shall sell the Credit Improved Obligation in accordance with such direction.

(iii) *Non-Performing Collateral Obligations.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Non-Performing Collateral Obligation at any time during or after the Replacement Period without restriction and the Trustee shall sell the Non-Performing Collateral Obligation in accordance with such direction. Non-Performing Collateral Obligations may be sold regardless of price.

(iv) *Non-qualifying Collateral Obligations.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation (the "**Non-Qualifying Collateral Obligation**") at any time during or after the Replacement Period without restriction and the Trustee shall sell that obligation in accordance with such direction.

(v) *Withholding Tax Sales.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Collateral Obligation subject to withholding tax at any time during or after the Replacement Period without restriction and the Trustee shall sell the Collateral Obligation in accordance with such direction.

(vi) *Optional Redemption.* After the Issuer has notified the Trustee of an Optional Redemption of the Notes, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all or a portion of the Collateral Obligations as contemplated therein if (A) the requirements in respect of an Optional Redemption under the Indenture have been satisfied and (B) the independent certified public accountants appointed pursuant to the Indenture have confirmed the calculations contained in any required certificate furnished by the Servicer pursuant to the Indenture's Note redemption procedure provisions. After the Holders of a Majority of the Preference Shares have directed an Optional Redemption of the Preference Shares in accordance with the Indenture, at the direction of the Servicer, the Issuer shall direct the Trustee to sell all of the remaining Collateral Obligations (in the case of an Optional Redemption pursuant to clause (i) under "Description of the Securities—Optional Redemption—Preference Shares") or a portion of the remaining Collateral Obligations in accordance with the unanimous directions of Holders of the Preference Shares (in the case of an Optional Redemption pursuant to clause (ii) under "Description of the Securities—Optional Redemption—Preference Shares") and the Trustee shall sell the remaining Collateral Obligations in accordance with such direction.

(vii) *Rating Confirmation Failure.* After the Servicer has received notice of a Rating Confirmation Failure and if available Interest Proceeds and Principal Proceeds are insufficient to effect the redemption of the Notes at par on any subsequent Payment Date in accordance with the Priority of Payments as and to the extent necessary for each of Moody's and S&P to confirm the Initial Ratings assigned by it on the Closing Date to the Securities, the Issuer may, at the direction of the Servicer, direct the Trustee to sell Collateral Obligations as contemplated in the Indenture and the Trustee shall sell the Collateral Obligations in accordance with such direction.

(viii) *Workout Assets.* At the direction of the Servicer, the Issuer may direct the Trustee to sell any Workout Asset at any time during or after the Replacement Period without restriction and regardless of price and the Trustee shall sell the Workout Assets in accordance with such direction.

(ix) *Supervening Requirement.* Notwithstanding anything herein to the contrary, the Issuer (at the direction of the Servicer or otherwise) will not acquire or dispose of a Collateral Obligation or other eligible asset (as defined in Rule 3a-7) for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. For the avoidance of doubt, the Issuer, at the direction of the Servicer or otherwise, may direct the Trustee to sell any CCC+/Caa1 Collateral Obligation or Deep Discount Obligation only (a) if it constitutes Credit Risk Obligation or Non-Performing Collateral Obligation or (b) in connection with the Optional Redemption as set out in paragraph (vi) above. The Trustee will have no obligation to monitor compliance by the Issuer or the Servicer with respect to the requirement set out in this paragraph.

Notwithstanding the foregoing, the Issuer (or the Servicer on its behalf) shall not direct the Trustee to sell any Collateral Obligation (other than the sale of a Credit Risk Obligation or a Non-Performing Collateral Obligation pursuant to a sale that meets the requirements in paragraph (i) or (iii) above, as applicable) following receipt by the Servicer of notice of removal pursuant to the provisions of the Servicing Agreement until a successor servicer is appointed pursuant to the provisions of the Servicing Agreement. See "The Servicing Agreement."

Certain Determinations Relating to Collateral Obligations

The Indenture provides that, notwithstanding anything to the contrary contained therein, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have purchased any Collateral Obligations as of the date on which the Issuer enters into a contract to purchase, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to receive such Collateral Obligations and, in such event, the Issuer shall be deemed to have acquired, granted or delivered, as the case may be, such Collateral Obligations on such date.

The Indenture provides that, notwithstanding anything to the contrary contained therein, solely for the purpose of calculations in connection with the Eligibility Criteria, the Issuer or the Servicer on behalf of the Issuer shall be deemed to have sold any Collateral Obligations as of the date on which the Issuer enters into a contract to sell, a commitment letter, a confirmation or a due bill for such Collateral Obligation, in each case entitling the Issuer (or the Trustee as assignee thereof) to sell, and requiring the purchaser to purchase, such Collateral Obligations and, in such event, the Issuer shall be deemed to have sold such Collateral Obligations on such date.

Under the circumstances described in the two preceding paragraphs, if the transaction contemplated by the contract, commitment letter, confirmation or due bill referred to therein does not settle on or before the 60th day following the scheduled settlement date (the "**Deadline**"), the deemed purchase or sale shall be deemed not to have occurred; *provided, however*, that the Servicer shall have the right to extend the Deadline for an additional period (not to exceed an additional 60 days) by notice to the Trustee, which notice shall include the Servicer's certification to the effect that the Servicer believes that the settlement shall occur on or before the extended Deadline.

Scheduled distributions with respect to any Pledged Collateral Obligation shall be determined in accordance with the applicable provisions of the Indenture.

The Accounts

The Indenture provides that the Trustee will establish separate segregated non-interest bearing trust accounts, which will be designated as the Collection Account, the Payment Account, the Custodial

Account, the Revolving Reserve Account, the Delayed Drawdown Reserve Account, the Synthetic Security Collateral Account, the Hedge Counterparty Collateral Account, the Closing Date Expense Account, the Expense Reimbursement Account, the Interest Reserve Account, the Securities Lending Account and the Class II Preference Share Special Payment Account. In addition, Synthetic Security Counterparty Accounts may also be established. Any account may contain any number of subaccounts.

Collection Account. The Trustee shall deposit into the "**Collection Account**":

(i) any funds transferred from (1) the Closing Date Expense Account pursuant to the Indenture or (2) the Interest Reserve Account pursuant to the Indenture;

(ii) all Principal Proceeds (unless (1) simultaneously used to purchase Collateral Obligations in accordance with the Indenture, (2) deposited into the Revolving Reserve Account or the Delayed Drawdown Reserve Account or (3) posted by the Issuer as cash collateral with (or for the benefit of) a Synthetic Security Counterparty simultaneously with the Issuer's purchase of or entry into a Synthetic Security or in Eligible Investments) received by the Trustee;

(iii) all Interest Proceeds received by the Trustee (unless simultaneously used to purchase accrued interest in respect of Collateral Obligations in accordance with the Indenture or in Eligible Investments); and

(iv) all other funds received by the Trustee and not excluded above.

The Issuer and the Servicer may, but will not be required to, jointly deposit from time to time any monies in the Collection Account it deems, in its sole discretion, to be advisable (and may designate any amounts so deposited as Principal Proceeds or Interest Proceeds in its discretion).

Any Principal Proceeds received during the Replacement Period, and Sale Proceeds from the sale of Credit Risk Obligations and Credit Improved Obligations and Unscheduled Principal Payments received after the Replacement Period, which have not been used to purchase additional Collateral Obligations on the Business Day of receipt shall be deposited in the Collection Account and shall at the direction of the Servicer be applied to the purchase of additional Collateral Obligations in accordance with the Eligibility Criteria and the other requirements set forth in the Indenture or the purchase of Eligible Investments pending such application or used to enter into additional Hedge Agreements or used in connection with a Special Redemption. Principal Proceeds (other than Sale Proceeds from the sale of Credit Improved Obligations, Credit Risk Obligations and Unscheduled Principal Payments) received after the Replacement Period shall be deposited into the Collection Account and applied to the purchase of Eligible Investments.

The Collection Account shall be maintained for the benefit of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty and amounts on deposit in the Collection Account will be available for application in the order of priority under "Description of the Securities—Priority of Payments" and for the acquisition of Collateral Obligations under the circumstances and pursuant to the requirements in the Indenture. Amounts received in the Collection Account during a Due Period and amounts received in prior Due Periods and retained in the Collection Account under the circumstances stated above in "Description of the Securities—Priority of Payments" will be applied in Eligible Investments with Stated Maturities no later than the Business Day before the next Payment Date as directed by the Servicer (which may be in the form of standing instructions). All proceeds deposited in the Collection Account will be retained therein unless used to purchase Collateral Obligations during the Replacement Period (or, in respect of Principal Proceeds constituting Unscheduled Principal Payments and Sale Proceeds from Credit Risk Obligations and Credit Improved Obligations, after the Replacement Period) in accordance with the Eligibility Criteria, to honor commitments with respect thereto entered into during or after the Replacement Period, or used as otherwise permitted under the Indenture. See "—Eligibility Criteria."

The Trustee shall transfer to the Payment Account from the Collection Account for application pursuant to the Priority of Payments, no later than the Business Day preceding each Payment Date, the amount set forth to be so transferred in the Valuation Report for the Payment Date.

At any time during or after the Replacement Period, at the direction of the Servicer, the Issuer may direct the Trustee to pay from amounts on deposit in the Collection Account on any Business Day during any Interest Period from Interest Proceeds only, any Administrative Expenses that require payment before the next Payment Date to the extent that the amount of the payments does not exceed the aggregate amount that may be paid on the next payment Date under, and at the level of priority specified by, "Description of the Securities—Priority of Payments—Interest Proceeds."

Custodial Account. The Trustee will from time to time deposit collateral into the "**Custodial Account,**" over which the Trustee will have exclusive control and sole right of withdrawal, in accordance with the Indenture. All assets or securities at any time on deposit in or otherwise to the credit of the Custodial Account will be held in trust by the Trustee for the benefit of the Noteholders, the Trustee, the Servicer and each Hedge Counterparty.

Revolving Reserve Account and Delayed Drawdown Reserve Account. Upon the purchase of any Collateral Obligation that is a Revolving Loan or Delayed Drawdown Loan, at the direction of the Servicer, the Trustee shall deposit Principal Proceeds into the Revolving Reserve Account, in the case of a Revolving Loan, and the Delayed Drawdown Reserve Account, in the case of a Delayed Drawdown Loan, each equal to the unfunded commitment amount of the Revolving Loan or Delayed Drawdown Loan, respectively, and the Principal Proceeds so deposited shall be considered part of the Purchase Price of the Revolving Loan or Delayed Drawdown Loan for purposes of the Indenture. At the direction of the Servicer at any time during or after the Replacement Period, the Trustee shall withdraw funds from the Revolving Reserve Account or the Delayed Drawdown Reserve Account to fund extensions of credit pursuant to Revolving Loans or Delayed Drawdown Loans, respectively. In addition, to the extent that the Issuer receives proceeds of a repayment in respect of a Revolving Loan (except to the extent of any concurrent commitment reduction) at any time during or after the Replacement Period, the Trustee shall deposit the proceeds into the Revolving Reserve Account.

Upon the sale of a Revolving Loan or Delayed Drawdown Loan in whole or in part or the reduction in part or termination of the Issuer's commitment thereunder, an amount on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account, as the case may be, specified by the Servicer as being equal to (i) the unfunded amount of the commitment (in the case of a sale in whole or a termination of the commitment), (ii) the proportionate amount of the amount on deposit (in the case of a sale in part) or (iii) the amount by which the commitment is reduced (in the case of a reduction thereof in part), shall be transferred by the Trustee to the Collection Account as Principal Proceeds.

Amounts on deposit in the Revolving Reserve Account or the Delayed Drawdown Reserve Account will be held in Eligible Investments with Stated Maturities as directed by the Servicer (which may be in the form of standing instructions) not later than the Business Day after the date of their purchase. All interest and other income from amounts in the Revolving Reserve Account and the Delayed Drawdown Reserve Account deposited to the Collection Account under the Indenture shall be considered Interest Proceeds in the Due Period in which they are so deposited.

Synthetic Security Collateral Account. On or before the date on which the Issuer enters into a Synthetic Security the Trustee shall create a sub-account of the non-interest bearing trust account established for Synthetic Security Collateral (the "**Synthetic Security Collateral Account**") with respect to the Synthetic Security. All Synthetic Security Collateral posted by any Synthetic Security Counterparty in support of its respective obligation under a Synthetic Security shall be immediately deposited into the Synthetic Security Collateral Account and posted to the sub-account related to the Synthetic Security. On each day on which amounts are payable to the Issuer out of Synthetic Security Collateral, the Issuer shall direct the Trustee to withdraw amounts on deposit in the Synthetic Security Collateral Account in an amount sufficient to make the payment (including any total or partial release of

Synthetic Security Collateral). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Synthetic Security Collateral Account shall be:

(i) for application to obligations of the relevant Synthetic Security Counterparty to the Issuer under a Synthetic Security if the Synthetic Security becomes subject to early termination or in the exercise of remedies under the Synthetic Security upon any "event of default" under and as defined in the terms of the Synthetic Security, including liquidating the related Synthetic Security Collateral Account; or

(ii) to return the Synthetic Security Collateral to the relevant Synthetic Security Counterparty when and as required by the terms of the Synthetic Security, in each case as directed by the Servicer.

Amounts on deposit in the Synthetic Security Collateral Account will be held in Eligible Investments having Stated Maturities not later than one Business Day after their purchase, as directed by the Servicer (which may be in the form of standing instructions), and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

Hedge Counterparty Collateral Account. The Trustee will deposit all collateral received from a Hedge Counterparty under any Hedge Agreement into the "**Hedge Counterparty Collateral Account.**" The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Hedge Counterparty Collateral Account will be (i) for application to obligations of the relevant Hedge Counterparty to the Issuer under a Hedge Agreement if the Hedge Agreement becomes subject to early termination or (ii) to return collateral to the relevant Hedge Counterparty when and as required by the relevant Hedge Agreement, in each case as directed by the Servicer. Amounts on deposit in the Hedge Counterparty Collateral Account will be held in Eligible Investments with Stated Maturities no later than the Business Day before the next Payment Date as directed by the Servicer (which may be in the form of standing instructions) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

Closing Date Expense Account. Amounts deposited in the "**Closing Date Expense Account**" on the Closing Date will be withdrawn to pay certain administrative expenses of the Co-Issuers. On the Payment Date in August 2007 (or, at the discretion of the Servicer, on the Payment Date in May 2007), the Trustee shall transfer all funds on deposit in the Closing Date Expense Account to the Collection Account as Principal Proceeds and close the Closing Date Expense Account. Amounts on deposit in the Closing Date Expense Account shall be held in Eligible Investments with Stated Maturities no later than the Business Day before the second Payment Date as directed by the Servicer (which may be in the form of standing instructions) and shall not be considered an asset of the Issuer for the purposes of the Coverage Tests.

Expense Reimbursement Account. On any Payment Date and on any date between Payment Dates, the Trustee will apply amounts, if any, in the "**Expense Reimbursement Account**" to the payment of expenses and fees that must be paid between Payment Dates or that are due on that Payment Date under clause (1) of "Description of the Securities—Priority of Payments—Interest Proceeds" and the Trustee shall on any Payment Date transfer to the Expense Reimbursement Account an amount equal to the excess, if any of the Administrative Expense Cap over the amounts due under clause (1) of "Description of the Securities—Priority of Payments—Interest Proceeds" to the Expense Reimbursement Account in accordance with clause (2) of "Description of the Securities—Priority of Payments—Interest Proceeds." Amounts on deposit in the Expense Reimbursement Account shall be held in Eligible Investments with Stated Maturities as directed by the Servicer (which may be in the form of standing instructions), no later than the Business Day before the next Payment Date.

Securities Lending Account. The Trustee will deposit all Securities Lending Collateral posted by any Securities Lending Counterparty in support of its respective obligation under a Securities Lending Agreement in a non-interest bearing trust account (the "**Securities Lending Account**"). The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the

Securities Lending Account will be (i) for application to obligations of the relevant Securities Lending Counterparty to the Issuer under a Securities Lending Agreement if the Securities Lending Agreement becomes subject to early termination or in the exercise of remedies under the Securities Lending Agreement upon any "event of default" under and as defined in the Securities Lending Agreement, including liquidating the related Securities Lending Collateral or (ii) to return collateral to the Securities Lending Counterparty when and as required by a Securities Lending Agreement. Amounts on deposit in the Securities Lending Account shall be held in Eligible Investments with Stated Maturities as directed by the Servicer (which may be in the form of standing instructions) no later than the Business Day before the next Payment Date. Amounts on deposit in the Securities Lending Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the loaned security or asset that relates to the Securities Lending Account shall be so considered an asset of the Issuer.

Payment Account. The Trustee will deposit collateral into the "**Payment Account,**" over which the Trustee will have exclusive control and sole right of withdrawal, in accordance with the Indenture. All assets or securities at any time on deposit in or otherwise to the credit of the Payment Account will be held in trust by the Trustee for the benefit of the Noteholders, the Trustee, the Servicer, and each Hedge Counterparty. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be to pay amounts due and payable on the Notes and to pay Administrative Expenses and other amounts specified in the Indenture, each in accordance with the Priority of Payments.

Interest Reserve Account. Amounts deposited in the "**Interest Reserve Account,**" on the Closing Date will be withdrawn (i) to pay amounts necessary such that the amounts referred to in clauses (1) through (20) of "Description of the Securities—Priority of Payments—Interest Proceeds" will be paid in full on each Payment Date occurring on or before the Payment Date in August 2007 or (ii) at any time, to be transferred at the discretion of the Servicer to the Collection Account as Principal Proceeds. On the Payment Date in August 2007 (or, at the discretion of the Servicer, on the Payment Date in May 2007), the Trustee will transfer all funds on deposit in the Interest Reserve Account to the Collection Account as Principal Proceeds and close the Interest Reserve Account. Amounts on deposit in the Interest Reserve Account will be held in Eligible Investments with Stated Maturities as directed by the Servicer (which may be in the form of standing instructions), no later than the Business Day before the second Payment Date.

Class II Preference Share Special Payment Account. On each Payment Date, to the extent of available funds in accordance with the Priority of Payments, the Trustee will deposit into the "**Class II Preference Share Special Payment Account**" amounts equal to the products of (a) the Class II Preference Share Portion for such Payment Date and (b) on any Payment Date during the first two years after the Closing Date or with respect to which the Servicer has notified the Trustee on or before the related Determination Date that it is waiving its Servicing Fee, the Servicing Fees then due and payable, as described in "Description of the Securities—Priority of Payments," for payment to the Servicer on such Payment Date. The Servicer has agreed to waive such amounts, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date during the first two years following the Closing Date and an amount equal to such waived amounts will be distributed by the Trustee to the Preference Shares Paying Agent, subject to the laws of the Cayman Islands, for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive a portion of the Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Trustee to the Preference Shares Paying Agent, subject to the laws of the Cayman Islands, for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. For purposes of any calculation under the Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

Synthetic Security Counterparty Account. To the extent that any Synthetic Security requires the Issuer to secure its obligations to the Synthetic Security Counterparty or to the extent that any Synthetic Security has an unfunded amount payable by the Issuer that does not by its terms require collateral, the Issuer shall direct the Trustee and the Trustee shall establish a segregated non-interest bearing trust account (the "**Synthetic Security Counterparty Account**") for the Synthetic Security which shall be held in trust for the benefit of the related Synthetic Security Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal in accordance with the applicable Synthetic Security and the Indenture. In the alternative, a Synthetic Security Counterparty Account may be established with a trustee designated by the Synthetic Security Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that trustee would qualify to be a successor trustee under the Indenture and the account satisfies the other requirements of a Synthetic Security Counterparty Account under the Indenture.

As directed in writing by the Servicer, the Trustee shall deposit (or deliver for deposit) into each Synthetic Security Counterparty Account all amounts or securities that are required to secure the obligations of the Issuer in accordance with the related Synthetic Security and, without duplication, an amount equal to the unfunded amount of a Synthetic Security, including the entire notional amount of any Synthetic Security in the form of a credit default swap or other similar transaction. The Servicer shall direct any such deposit only during the Replacement Period and only to the extent that monies are available for the purchase of Collateral Obligations pursuant to the Indenture. Any income received on amounts in the Synthetic Security Counterparty Account shall, after application in accordance with the relevant Synthetic Security, be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Interest Proceeds.

As directed by the Servicer in writing and in accordance with the applicable Synthetic Security and the Indenture, amounts on deposit in a Synthetic Security Counterparty Account shall be held in Synthetic Security Collateral.

In connection with the occurrence of a credit event or an event of default or a termination event (each as defined in the applicable Synthetic Security) under the related Synthetic Security, amounts in any Synthetic Security Counterparty Account shall be withdrawn by the Trustee (or the Trustee shall request their withdrawal) and applied toward the payment of any amounts payable by the Issuer to the related Synthetic Security Counterparty in accordance with the Synthetic Security, as directed by the Servicer in writing. Any excess amounts held in a Synthetic Security Counterparty Account, or held directly by a Synthetic Security Counterparty, after payment of all amounts owing from the Issuer to the related Synthetic Security Counterparty in accordance with the related Synthetic Security shall be withdrawn from the Synthetic Security Counterparty Account and deposited in the Collection Account for distribution as Principal Proceeds.

Amounts on deposit in any Synthetic Security Counterparty Account shall not be considered an asset of the Issuer for the purposes of the Coverage Tests, but the Synthetic Security that relates to the Synthetic Security Counterparty Account shall be so considered an asset of the Issuer (with the notional amount as the Principal Balance unless a default exists under the applicable Synthetic Security).

Hedge Agreements

At any time and from time to time on or after the Closing Date, the Issuer, at the direction of the Servicer and with the consent of a Majority of the Controlling Class, shall enter into the Hedge Agreements and will assign its rights (but none of its obligations) under the Hedge Agreements to the Trustee pursuant to the Indenture. The Trustee will, on behalf of the Issuer and in accordance with the Valuation Report, pay amounts due to the Hedge Counterparties under the Hedge Agreements on any Payment Date in accordance with the Priority of Payments.

Each Hedge Counterparty will be required to have (i) a debt rating by Moody's for long-term debt of "A1" or higher if the Hedge Counterparty has only a long-term rating; or a debt rating by Moody's for long-term debt of "A2" or higher and a debt rating by Moody's for short-term debt of "P-1" if the Hedge

Counterparty has both long-term and short-term ratings and (ii) a short-term debt rating by S&P of not less than "A-1" or, if the Hedge Counterparty does not have a short-term debt rating by S&P, a long-term debt rating of not less than "A+" (the "**Required Rating**").

If at any time a Hedge Counterparty does not have the Required Rating, then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) post collateral with the Trustee to secure the Hedge Counterparty's obligations under the Hedge Agreement, in an amount and of the type specified under the relevant Hedge Agreement; *provided* that the Hedge Counterparty shall, at the time such collateral is first posted, deliver to the Issuer, the Trustee and the Rating Agencies an opinion of counsel of nationally recognized standing in the jurisdiction in which the Hedge Counterparty is incorporated confirming that such collateral will be available in a timely manner upon a bankruptcy of the Hedge Counterparty;

(ii) obtain a guarantor that has a short-term debt rating by S&P of not less than "A-1" and otherwise has the Required Rating, subject to satisfaction of the Rating Condition; or

(iii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition.

provided that failure to take any such steps set forth under paragraphs (i) through (iii) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

If at any time the Hedge Counterparty has (x) no short-term Moody's rating and a long-term Moody's that is below "A3" or (y) both a short-term and long-term Moody's rating and either the long-term Moody's rating that is below "A3" or the short-term Moody's rating that is below "P-2", then the Hedge Counterparty shall be required, at its sole expense, to, within the applicable period specified in the related Hedge Agreement, either:

(i) obtain a guarantor that has the Required Rating, subject to satisfaction of the Rating Condition; or

(ii) replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition;

provided that failure to take any such steps set forth under paragraphs (i) and (ii) above shall be treated as an "Additional Termination Event" under such Hedge Agreement.

If at any time the Hedge Counterparty has a long-term unsecured debt rating by S&P below "BBB-," then the Hedge Counterparty will be required, within the applicable period specified in the related Hedge Agreement, to replace itself under the related or substantially equivalent Hedge Agreement with a substitute Hedge Counterparty that has the Required Rating, subject to satisfaction of the Rating Condition; *provided* that failure to do so shall be treated as an "Additional Termination Event" under such Hedge Agreement.

Whenever the Issuer enters into a Hedge Agreement, the Hedge Counterparty thereto shall comply with the then currently applicable rating criteria of each Rating Agency from time to time.

Any payments required to be made under the Hedge Agreements shall be made in accordance with the Priority of Payments. Defaulted Hedge Termination Payments shall be subordinate to interest and principal payments on the Notes and any other payments required to be made by the Issuer under the Hedge Agreements, but senior to distributions to Holders of the Preference Shares pursuant to the Indenture.

Unless the Rating Condition with respect to each Rating Agency is otherwise satisfied, following the early termination of a Hedge Agreement (other than on a Redemption Date) the Issuer, at the direction of the Servicer, shall promptly (but no later than 60 days after the early termination), and to the extent

possible through Hedge Termination Receipts, enter into a replacement hedge, unless, in the exercise of the Servicer's commercially reasonable judgment, to do so would not be in the best interest of the Issuer and the Rating Condition with respect to each Rating Agency is satisfied with respect to not entering into a replacement hedge. In addition, a replacement hedge may not be entered into unless the Issuer provides the Rating Agencies with at least seven Business Days' prior written notice of its intention to enter into a replacement hedge, together with its form and the Rating Condition with respect to each Rating Agency is satisfied with respect to the replacement hedge. The Issuer shall use commercially reasonable efforts to cause the termination of a Hedge Agreement (other than a termination resulting from the bankruptcy, insolvency, or similar event with respect to the Hedge Counterparty) to become effective simultaneously with its entering into a replacement hedge. To the extent that (i) the Servicer determines not to replace the Hedge Agreement and the Rating Condition with respect to each Rating Agency is satisfied with respect to the determination; or (ii) termination is occurring on a Redemption Date, the Hedge Termination Receipts shall become part of Principal Proceeds and be distributed in accordance with the Priority of Payments on the next following Payment Date (or on the Redemption Date, if the Notes are redeemed on the Redemption Date).

The notional amounts of the Hedge Agreements outstanding at any time may be reduced or increased from time to time, by the Issuer, and the Hedge Agreements may be amended, modified, or terminated in accordance with the Hedge Agreements if the Rating Condition with respect to each Rating Agency is satisfied with respect to the reduction, increase, amendment, modification, or termination, as the case may be.

Each Hedge Agreement may be terminated pursuant to its terms by the Hedge Counterparty upon an Optional Redemption of the Notes, an acceleration of maturity of the Notes followed by the liquidation of any or all of the Collateral after an Event of Default or the entry into certain amendments to the Indenture without the consent of the Hedge Counterparty. The Hedge Agreement will not be permitted to be terminated by the Issuer as the result of a Default or Event of Default unless any acceleration of maturity of the Notes resulting from the Event of Default is no longer permitted to be rescinded pursuant to the Indenture.

Except for Hedge Agreements entered into on or before the Closing Date, the Issuer shall not enter into any Hedge Agreement unless the Rating Condition with respect to each Rating Agency is satisfied.

Securities Lending

The Indenture permits the Issuer to engage in a limited number of securities lending transactions as described below.

The Servicer may instruct the Trustee to cause Collateral Obligations that are not Defaulted Collateral Obligations to be lent for a term of 90 days or less to banks, broker-dealers, and other financial institutions (other than insurance companies) having long-term and short-term senior unsecured debt ratings or guarantors with ratings of at least "A1" (and not "A1" but on credit watch with negative implications) and "P-1" (and not on credit watch for possible downgrade) from Moody's and a long-term senior unsecured debt rating of at least "A" from S&P (each, a "**Securities Lending Counterparty**") pursuant to one or more agreements (each, a "**Securities Lending Agreement**"); *provided* that Collateral Obligations the Market Value of which cannot be determined under clause (i), (ii) or (iii) of that definition may not be lent pursuant to a Securities Lending Agreement. Upon receipt of an Issuer Order, the Trustee shall release any lent Collateral Obligations to a Securities Lending Counterparty as directed by the Servicer. The Securities Lending Counterparties may be Affiliates of the Initial Purchaser or Affiliates of the Servicer. The duration of any Securities Lending Agreement shall not exceed the Stated Maturity of the Notes. Collateral Obligations representing no more than 15% (measured by Aggregate Principal Balance) of the Maximum Amount may be loaned pursuant to Securities Lending Agreements at any time.

Each Securities Lending Agreement shall be on market terms as determined by the Servicer (except to the extent specified in the Indenture) and shall:

(i) require that the Securities Lending Counterparty return to the Issuer debt obligations that are identical (in terms of issue and class) to the lent Collateral Obligations;

(ii) require that the Securities Lending Counterparty pay to the Issuer amounts equivalent to all interest and other payments that the owner of the lent Collateral Obligation is entitled to for the period during which the Collateral Obligation is lent and require that any such payments not be subject to withholding tax imposed by any jurisdiction unless the Securities Lending Counterparty is required under the Securities Lending Agreement to make "gross-up" payments to the Issuer that cover the full amount of the withholding tax on an after-tax basis;

(iii) require that the Rating Condition with respect to each Rating Agency shall be satisfied with respect to the execution of the Securities Lending Agreement;

(iv) satisfy any other requirements of Section 1058 of the Code and the Treasury Regulations promulgated under it;

(v) be governed by the laws of New York;

(vi) permit the Issuer to assign its rights under the Securities Lending Agreement to the Trustee pursuant to the Indenture;

(vii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty if the Collateral Obligation becomes a Credit Risk Obligation or is subject to redemption in accordance with its terms;

(viii) provide for early termination and the delivery of any lent Collateral Obligation with no penalty upon any redemption of the Notes in whole;

(ix) require the Securities Lending Counterparty to post with the Trustee collateral consisting of cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the Securities Lending Agreement to secure its obligation to return the Collateral Obligations or in the alternative post that collateral with a custodian for the benefit of the Issuer designated by the Securities Lending Counterparty that satisfies the requirements with respect to being a securities intermediary with respect to the posted collateral if that custodian would qualify to be a successor trustee under the Indenture;

(x) provide that the Securities Lending Collateral shall be maintained at all times in an amount equal to at least 102% of the current Ask-Side Market Value (determined daily and monitored by the Servicer) of the lent Collateral Obligations and if securities are delivered to the Trustee as security for the obligations of the Securities Lending Counterparty under the related Securities Lending Agreement, the Servicer on behalf of the Issuer will negotiate with the Securities Lending Counterparty a rate for the loan fee to be paid to the Issuer for lending the lent Collateral Obligations;

(xi) the lent Collateral Obligations shall be marked-to-market on a daily basis by the Servicer on the basis of their Market Value;

(xii) the Collateral will include the Issuer's rights under the related Securities Lending Agreement rather than the loaned Collateral Obligation;

(xiii) provide for early termination within 10 days at the option of the Issuer and the delivery of any lent Collateral Obligation with no penalty if the Securities Lending Counterparty is no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty and the noncompliance is not cured as provided in the Indenture; and

(xiv) contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Securities Lending Counterparty) equivalent (mutatis mutandis) to those in the Indenture.

In addition, each Securities Lending Agreement must provide that if either Moody's or S&P downgrades a Securities Lending Counterparty such that the Securities Lending Agreements to which the Securities Lending Counterparty is a party are no longer in compliance with the requirements relating to the credit ratings of the Securities Lending Counterparty, then the Issuer, within 10 days of the downgrade, shall (i) terminate its Securities Lending Agreements with the Securities Lending Counterparty unless a guarantor for the Securities Lending Counterparty's obligations under the Securities Lending Agreements has been obtained; or (ii) reduce the percentage of the Aggregate Principal Balance of the Collateral Obligations lent to the downgraded Securities Lending Counterparty so that the Securities Lending Agreements to which the Securities Lending Counterparty is a party, together with all other Securities Lending Agreements, are in compliance with the requirements relating to the credit ratings of Securities Lending Counterparties; or (iii) take any other steps Moody's or S&P may require to cause the Securities Lending Counterparty's obligations under the Securities Lending Agreements to which the Securities Lending Counterparty is a party to be treated by Moody's or S&P, as the case may be, as if the obligations were owed by a counterparty having a rating at least equivalent to the rating that was assigned by Moody's or S&P, as the case may be, to the downgraded Securities Lending Counterparty before its being downgraded.

The Servicer shall instruct the Trustee in writing with respect to the administration of any Securities Lending Agreement (including with respect to any default and the exercise of rights under it). The Trustee shall not have any responsibility for evaluating the sufficiency, validity, or acceptability of any Securities Lending Agreement or for the qualifications or eligibility of any Securities Lending Counterparty. Nothing in the Indenture shall be construed to cause the Trustee to have any fiduciary duties to any Securities Lending Counterparty.

So long as any Collateral Obligation is on loan pursuant to a Securities Lending Agreement, (a) the Trustee shall have no liability for any failure or inability on its part to receive any information or take any action with respect to the Collateral Obligation because of its being on loan (including any failure to take action with respect to a notice of redemption, consent solicitation, exchange or tender offer, or similar corporate action) and (b) the loaned Collateral Obligations shall not be disqualified for return to the Trustee as a Collateral Obligation by any change in circumstance or status during the time while on loan (including any change that would cause the Collateral Obligation to be ineligible for purchase by the Issuer under the Indenture if applied to a proposed purchase of it in the open market at the time of its return from loan).

MATURITY AND PREPAYMENT CONSIDERATIONS

The Stated Maturity of each Class of Notes will be November 1, 2021 or, upon a Maturity Extension (if any), the applicable Extended Stated Maturity Date; *however*, the principal of each Class of the Notes is expected to be paid in full prior to its Stated Maturity (or Extended Stated Maturity Date, as applicable). Average life refers to the average amount of time that will elapse from the date of delivery of a security until each dollar of the principal of such security will be paid to the investor. The average lives of the Notes will be determined by the amount and frequency of principal payments, which are dependent upon, among other things, the amount of sinking fund payments and any other payments received at or in advance of the scheduled maturity of Collateral Obligations (whether through sale, maturity, redemption, default or other liquidation or disposition).

The actual performance of the Securities will also be affected by the financial condition of the obligors on or issuers of the Collateral Obligations and the characteristics of the Collateral Obligations, including the interest rate or other rate of distribution, the actual default rate and actual losses sustained, the existence and frequency of exercise of any prepayment, optional redemption, or sinking fund features and any related premium, the prevailing level of interest rates, any sales of Collateral Obligations, and any unique risks of the Collateral Obligations. Any disposition of a Collateral Obligation may change the composition and characteristics of the portfolio of Collateral Obligations and their rate of payment, and, accordingly, may affect the actual performance of each respective Class of Securities. The ability of the Issuer to apply any Interest Proceeds or Principal Proceeds in the manner described under "Security for the Notes" will also affect the performance of the Securities. Redemptions will also affect the performance of the Securities.

THE SERVICER

The information appearing in this section has been prepared by the Servicer and has not been independently verified by the Co-Issuers or the Initial Purchaser. Accordingly, notwithstanding anything to the contrary herein, neither the Co-Issuers nor the Initial Purchaser assume any responsibility for the accuracy, completeness or applicability of such information.

General

Based in Dallas, Texas, Highland Capital is a registered investment adviser specializing in below investment-grade credit and special situation investing. As of August 31, 2006, Highland Capital managed over $30 billion in leveraged loans, high yield bonds, structured products and other assets for banks, insurance companies, pension plans, foundations and high net worth individuals.

Highland Capital manages or services these assets through a variety of fund structures including separate accounts, CDOs, hedge funds and mutual funds. As of June 30, 2006, Highland Capital invested in approximately 1,200 below investment grade and credit sensitive credit positions, and Highland Capital's 62 person credit team followed approximately 1,400 below investment grade and credit sensitive credit positions across over 36 industries. Highland Capital or an Affiliate or predecessor thereof has been an SEC-registered investment adviser since April 1993.

Philosophy and Process

Highland Capital has a large range and depth of experience. It has expertise in the fields of syndicated loans, high yield bonds, and distressed assets. Highland Capital believes it is in a position to maximize the spread differential between the yields on underlying collateral and the cost of financing. In addition, Highland Capital seeks to construct portfolios to (a) maximize relative value based on its credit views and (b) maximize diversification in order to minimize the effect of isolated credit events on the overall portfolio, utilizing Highland Capital's infrastructure to minimize defaults of underlying assets and to maximize recoveries in the case of defaults. Highland Capital has over $500 million of firm capital exposure to the firm's funds and expects that HFP, an Affiliate of the Servicer, and/or one or more of HFP's subsidiaries will on the Closing Date purchase all of the Class II Preference Shares.

Highland Capital believes that its disciplined selection process minimizes a portfolio's risk and that its analysis seeks to maximize yield spread while limiting downside risk. Portfolio managers actively follow each credit and several times each year the entire staff reviews all positions during multi-day monitoring meetings. Highland Capital diversifies its portfolios with set limits on exposure to any one given industry or issuer. Highland Capital believes that this philosophy and selection process has resulted in positive returns on its underlying loan portfolio and consistent outperformance relative to its indices.

Highland Capital focuses on a "team" approach that it has used since 1990. It is Highland Capital management's belief that this style creates the optimum environment for the exchange of information and the development of all asset management professionals. All aspects of the selection, monitoring and servicing process are coordinated through the senior asset portfolio managers' direct interaction. A

committee of senior portfolio managers and analysts, Highland Capital's Chief Investment Officer and its Head of Structured Products meets every morning to discuss the status of the credits. Collectively, the committee utilizes a selection and monitoring process which is driven by fundamental credit research. Each portfolio manager/analyst makes specific credit recommendations based upon industry coverage. The credit recommendation is then brought to the committee for consideration. Based upon the consensus decision, the portfolio manager with the recommendation will direct Highland traders to execute the trade. Highland Capital has also provided its committee with a strong commitment to technology. The firm developed Wall Street Office® which is a proprietary software system that allows Highland Capital to model, portfolio manage, and trade syndicated loans. This software has been licensed to more than 70 financial institutions that acquire syndicated loans.

Professionals of the Servicer

Set forth below is information regarding certain persons who are currently employed by the Servicer. Such persons may not necessarily continue to be so employed during the entire term of the Servicing Agreement.

Senior Management

James Dondero, CFA, CPA, CMA *– Managing Partner, President*

Mr. Dondero is a Founder and President of Highland Capital. Formerly, Mr. Dondero served as Chief Investment Officer of Protective Life's GIC subsidiary and helped grow the business from concept to over $2 billion between 1989 to 1993. His portfolio management experience includes mortgage-backed securities, investment-grade corporates, leveraged bank loans, emerging markets, derivatives, preferred stocks and common stocks. From 1985 to 1989, he managed approximately $1 billion in fixed income funds for American Express. Prior to joining American Express, he completed the financial training at Morgan Guaranty Trust Company. Mr. Dondero is a Beta Gamma Sigma graduate of the University of Virginia, 1984 with degrees in Accounting and Finance. Mr. Dondero is a Certified Public Accountant, Chartered Financial Analyst and a Certified Management Accountant.

Mark Okada, CFA *– Managing Partner, Chief Investment Officer*

Mr. Okada is a Founder and Chief Investment Officer of Highland Capital. He is responsible for overseeing Highland Capital's investment and servicing activities for its various funds and has over 19 years of experience in the leveraged finance market. Formerly, Mr. Okada served as Manager of Fixed Income for Protective Life's GIC subsidiary from 1990 to 1993. He was primarily responsible for the bank loan portfolio and other risk assets. Protective was one of the first non-bank entrants into the syndicated loan market. From 1986 to 1990, he served as Vice President for Hibernia National Bank, managing over $1 billion of high yield bank loans. Mr. Okada is an honors graduate of the University of California Los Angeles with degrees in Economics and Psychology. He completed his credit training at Mitsui and is a Chartered Financial Analyst. Mr. Okada is also Chairman of the Board of Directors of Common Grace Ministries Inc.

Todd Travers, CFA *– Head of Structured Products, Senior Portfolio Manager*

Mr. Travers is responsible for Highland Capital's CDO business and is the primary portfolio manager for Highland Capital's par debt funds. He is a member of the Credit Committee and heads a team that is responsible for structuring new transactions and implementing additional opportunities in Highland Capital's core businesses. Formerly, Mr. Travers served as Portfolio Manager/Portfolio Analyst from 1994 to 1998 for Highland Capital. In 1999, he was promoted to Senior Portfolio Manager and his duties were expanded beyond sector portfolio management to include the origination, structuring and issuance of new structured vehicles, including all structured vehicles since Highland Loan Funding V Ltd. and Restoration Funding Ltd. His prior responsibilities included managing a portion of Highland Capital's leveraged loan and high yield debt portfolios with an emphasis on

technology and aviation transactions. Prior to joining Highland Capital, Mr. Travers was a Finance Manager at American Airlines. Mr. Travers is a graduate of Iowa State University with a BS in Industrial Engineering. He received his MBA with an emphasis in Finance from Southern Methodist University. Mr. Travers is a Chartered Financial Analyst.

Traders

Brad Borud – *Senior Trader and Co-Director Portfolio Management*

Mr. Borud is a Senior Trader of leveraged loans and high yield bonds. Prior to his current duties, Mr. Borud served as a Portfolio Analyst for Highland Capital from 1996 to 1998. From 1998 to 2003, Mr. Borud was a Portfolio Manager covering a wide range of industries, including Wireline Telecommunications, Wireless Telecommunications, Telecommunication Equipment Manufacturers, Multi-channel Video, and Media. Prior to joining Highland Capital, Mr. Borud worked as a Global Finance Analyst in the Corporate Finance Group at NationsBank from 1995 to 1996 where he was involved in the originating, structuring, modeling, and credit analysis of leveraged transactions for large corporate accounts in the Southwest portion of the United States. During 1994, Mr. Borud also served at Conseco Capital Management as an Analyst Intern in the Fixed Income Research Department following the Transportation and Energy sectors. He has a BS in Business Finance from Indiana University.

Paul Kauffman, CFA, CPA – *Senior Trader and Co-Director of Portfolio Management*

Mr. Kauffman is a Senior Trader for loan and high yield credit products. He joined Highland Capital in 1998 as a Portfolio Analyst and was a Portfolio Manager prior to moving into his current role. At Highland Capital, Paul has followed a variety of industries, including Paper & Packaging, General Industrials, Metals, and the Automotive sector. Prior to Highland Capital, Mr. Kauffman spent four years in the public accounting industry, including two and a half years at KPMG Peat Marwick. At KPMG, Mr. Kauffman gained audit experience in a wide range of industries, with particular focus on the Energy and Cable industries. He was the Supervising Senior Accountant on one of the Dallas offices' largest clients. He received a BBA in Accounting from Baylor University and an MBA from Duke University. Mr. Kauffman is a Chartered Financial Analyst.

Senior Portfolio Managers

Patrick H. Daugherty – *Senior Distressed Portfolio Manager*

Mr. Daugherty is a Senior Portfolio Manager and General Counsel at Highland Capital. He is co-head of the Distressed Group where he is responsible for managing the sourcing, investing, and monitoring process. In addition, he serves as head manager of the Private Equity Group and is responsible for all portfolio companies. Prior to joining Highland Capital in early 1998, Mr. Daugherty served as Vice President in the Corporate Finance Group at NationsBanc Capital Markets, Inc. (now Bank of America Capital Markets, Inc.) where he originated and structured leveraged transactions for a $2.5 billion portfolio of mid-cap companies located in the Southwest. Prior to joining Bank of America, Mr. Daugherty was an Associate with the law firm of Baker, Brown, Sharman and Parker in Houston, Texas where he represented banks and financial institutions in the liquidation of various RTC portfolios. Mr. Daugherty has over 15 years of experience in distressed, high yield and corporate restructuring. He has been involved in over 100 bankruptcy situations and held steering committee positions in over 35 cases. Mr. Daugherty currently serves on the Board of Directors of Norse Merchant Group and its affiliates, Ferrimorac Holdings Limited, Nexpak Corporation and its affiliates (as Chairman), Moll Industries and its affiliates (as Chairman), and is a former board member of Mariner Health Care, Inc. He received a BBA in Finance from The University of Texas at Austin and a Juris Doctorate from The University of Houston School of Law. Mr. Daugherty's professional certifications include membership in the Texas Bar Association and admittance to the American Bar Association in 1992.

John Morgan, CFA – *Senior Portfolio Manager*

Mr. Morgan is a Senior Portfolio Manager covering the Retail, Food & Drug, and Restaurant & Lodging sectors. Prior to joining Highland Capital, Mr. Morgan served as Portfolio Analyst for Falcon Fund Management, LTD from August 1995-February 2000. There he created comparables to assess the attractiveness of companies within industries and across the portfolio. He assisted the portfolio manager in the security selection process and management of the portfolio. Prior to Falcon, he was an Analyst for a Convertible Arbitrage Fund at Q Investments. His primary responsibility included analyzing financial statements and related corporate disclosures and performing analysis on potential investment opportunities. He received both a BS in Biological Sciences and an MBA from Southern Methodist University.

Kurtis S. Plumer, CFA – *Senior Distressed Portfolio Manager*

Mr. Plumer is co-head of the Distressed Group at Highland Capital and is responsible for managing the sourcing and monitoring process. He has over 14 years of experience in distressed, high yield bond and leveraged loan products. Prior to joining Highland Capital in 1999, Mr. Plumer was a distressed high yield bond trader at Lehman Brothers in New York, where he managed a $250 million portfolio invested in global distressed securities. While at Lehman, he also traded emerging market sovereign bonds. Prior to joining Lehman Brothers, Mr. Plumer was a corporate finance banker at NationsBanc Capital Markets, Inc. (now Bank of America Capital Markets, Inc.) where he focused on M&A and financing transactions for the bank's clients. Mr. Plumer earned a BBA in Economics and Finance from Baylor University and an MBA in Strategy and Finance from the Kellogg School at Northwestern University. Mr. Plumer is a Chartered Financial Analyst.

David Walls, CFA – *Senior Portfolio Manager*

Mr. Walls is a Senior Portfolio Manager with oversight of the Cable, Wireless/Wireline Telecom, Satellite, Aerospace/Defense and Equipment Rental sectors. Prior to joining Highland Capital, Mr. Walls worked for Lend Lease Real Estate Investments as an Associate in their Asset Management unit underwriting and structuring acquisitions of bulk portfolios of distressed Korean real estate and corporate debt. Before his international responsibilities at Lend Lease, Mr. Walls performed loan workouts on a domestic portfolio of sub- and non-performing real estate secured assets. Prior to Lend Lease, Mr. Walls worked at U.S. Trust Company of California as an Assistant Vice President, Junior Portfolio Manager in their Fixed Income Portfolio Management group and for Capital Research & Management Company as a fixed income trader. He holds a BA in Economics from Northwestern University and an MBA in Finance and Marketing from the Kellogg School of Management at Northwestern University. Mr. Walls is a member of AIMR and DAIA. Mr. Walls is a Chartered Financial Analyst.

Joe Dougherty, CFA, CPA – *Senior Portfolio Manager*

Mr. Dougherty is a Senior Portfolio Manager. Additionally, Mr. Dougherty heads Highland Capital's retail funds business unit ("Highland Funds") and serves as Senior Vice President and Director of the Firm's two NYSE-listed bond funds, which invest in both investment grade and high yield debt. Additionally, Mr. Dougherty serves as Senior Vice President and Director of the Firm's two 1940 Act Registered floating rate funds, which primarily invest in senior secured floating rate loans. In this capacity, Mr. Dougherty oversees investment decisions for the retail funds, alongside several other Portfolio Managers, and manages the team dedicated to their day-to-day administration. Prior to his current duties, Mr. Dougherty served as Portfolio Analyst for Highland from 1998 to 1999. As a Portfolio Analyst, Mr. Dougherty also helped follow companies within the Chemical, Retail, Supermarket and Restaurant sectors. Prior to joining Highland, Mr. Dougherty served as an Investment Analyst with Sandera Capital Management from 1997 to 1998. Formerly, he was a Business Development Manager at Akzo Nobel from 1994 to 1996 and a Senior Accountant at Deloitte & Touche, LLP from 1992 to 1994. He received a BS in Accounting from Villanova University and an MBA from Southern Methodist University. Mr. Dougherty is a Chartered Financial Analyst and a Certified Public Accountant.

Brett Pope, CFA – *Senior Portfolio Manager*

Mr. Pope is a Senior Portfolio Manager covering the Healthcare, Financial Services, Building Products, and Metals & Mining sectors. Prior to joining Highland, Mr. Pope served as a Senior Equities Analyst in Healthcare at Street Advisor.com from 1999 to 2001. His experience also includes working as a Senior Research Analyst covering the Building Products and Financial Service sectors at Southwest Securities from 1996 to 1999. Prior to 1996, he served as a Senior Financial Analyst with Associates First Capital Corporation. Mr. Pope is a graduate of the University of Texas at Austin where he graduated Magna Cum Laude. Mr. Pope is a Chartered Financial Analyst.

See "Risk Factors—Relating to the Servicer—The Issuer Will Depend on the Managerial Expertise Available to the Servicer and Its Key Personnel."

THE SERVICING AGREEMENT

The following summary describes certain provisions of the Servicing Agreement. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Servicing Agreement.

Pursuant to the terms of the Servicing Agreement, and in accordance with the requirements set forth in the Indenture, the Servicer will select the portfolio of Collateral Obligations and will instruct the Trustee with respect to any acquisition, disposition or sale of a Collateral Obligation or an Eligible Investment. Neither the Initial Purchaser or any Affiliate thereof will select any of the Collateral Obligations.

Pursuant to the terms of the Servicing Agreement, the Servicer will monitor the Collateral Obligations and provide the Issuer with certain information received from the Collateral Administrator with respect to the composition and characteristics of the Collateral Obligations, any disposition or tender of a Collateral Obligation, the application of the proceeds of any such disposition to the purchase of Eligible Investments and with respect to the retention of the proceeds of any such disposition or the application thereof toward the purchase of additional Collateral Obligations. The Servicer will, and will be authorized to, negotiate, on behalf of the Issuer, with respect to all actions to be taken by the Issuer under any Hedge Agreements.

As compensation for the performance of its obligations as Servicer, the Servicer will be entitled to receive:

(i) a fee (the "**Senior Servicing Fee**") that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.30% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments (with the Senior Servicing Fee being calculated on the basis of a 360-day year consisting of twelve 30-day months);

(ii) an amount (the "**Subordinated Servicing Fee**") payable on each Payment Date equal to the sum of (a) a fee that accrues from the Closing Date payable to the Servicer in arrears on each Payment Date equal to 0.25% per annum of the Maximum Amount if and to the extent funds are available for that purpose in accordance with the Priority of Payments and (b) on any Payment Date that any part of the Subordinated Servicing Fee was not paid on the preceding Payment Date, an amount equal to interest on such unpaid amount at a rate of LIBOR for the applicable period *plus* 3.00% per annum (with the portion of the Subordinated Servicing Fee, in clauses (a) and (b) above, as applicable, being calculated on the basis of a 360-day year consisting of twelve 30-day months); and

(iii) a fee (the "**Supplemental Servicing Fee**" and together with the Senior Servicing Fee and the Subordinated Servicing Fee, the " **Servicing Fee**"), if any, payable on each Payment Date to the Servicer in an amount equal to: (i) 20% of the remaining Interest Proceeds, if

any, available after making the distributions on such Payment Date pursuant to clause (22) under "Description of the Securities—Priority of Payments—Interest Proceeds" and (ii) 20% of the remaining Principal Proceeds, if any, available for payment in respect of the Supplemental Servicing Fee pursuant to clause (11)(A) and, if applicable, clause (14), in each case pursuant to "Description of the Securities—Priority of Payments—Principal Proceeds."

On each Payment Date, as and to the extent described under "Description of the Securities—Priority of Payments," the Trustee will deposit the Class II Preference Share Portion of the Servicing Fees into the Class II Preference Share Special Payment Account. The Servicer has agreed to waive such amounts, which would otherwise be payable to the Servicer as Servicing Fees, on each Payment Date during the first two years following the Closing Date and an amount equal to such waived amounts will be paid to the Preference Shares Paying Agent for payment *pro rata* to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments. After the two-year anniversary of the Closing Date, the Servicer may, in its sole discretion, at any time waive the Class II Preference Share Portion of its Servicing Fees then due and payable, in which event an amount equal to such waived portion will be paid by the Issuer as Class II Preference Share Special Payments. For purposes of any calculation under the Indenture and the Servicing Agreement, the Servicer will be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments as described above. See "Security for the Notes—The Accounts—Class II Preference Share Special Payment Account."

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion: (i) waive all or any portion of the Servicing Fee, any funds representing the waived Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments; or (ii) defer all or any portion of the Servicing Fee, any funds representing the deferred Servicing Fees to be retained in the Collection Account, when they will become payable in the same manner and priority as their original characterization would have required unless deferred again.

The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively "**Liabilities**") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person that arise out of or in connection with the performance by the Servicer of its duties under the Servicing Agreement and the Indenture, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the performance, or reckless disregard, of the obligations of the Servicer under the Servicing Agreement and under the terms of the Indenture applicable to it or (ii) with respect to any information included in this Offering Memorandum in the sections entitled "The Servicer" and "Risk Factors—Certain Conflicts of Interest—Conflicts of Interest Involving the Servicer" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "**Servicer Breaches**"). The Servicer will be liable for any non-waivable breaches of applicable securities laws.

The Issuer will indemnify and hold harmless the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "**Indemnified Parties**") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "**Expenses**") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "**Actions**"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the

Offering Memorandum, the Indenture or the Servicing Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; *provided, however*, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Any such indemnification by the Issuer will be paid in accordance with, and subject to, the Priority of Payments.

Pursuant to the terms of the Servicing Agreement, the Servicer will agree that on the Closing Date, (i) HFP and/or one or more of its subsidiaries will purchase all of the Class II Preference Shares having an aggregate Face Amount equal to U.S. $75,000,000 directly from the Issuer at a discounted purchase price and (ii) the Servicer or one or more of its Affiliates (other than HFP or any of its subsidiaries) will purchase certain of the Class D Notes having an aggregate principal amount equal to U.S.$16,000,000 directly from the Issuer at a discounted purchase price and will purchase certain of the Holding Preference Shares having an aggregate Face Amount equal to U.S.$20,000,000 directly from Investors Corp., at a discounted purchase price.

The Issuer may, at the request of the Servicer, enter into an amendment or modification of the Servicing Agreement from time to time, without the consent of the Holders of the Securities and without regard to whether or not the interests of the Holders of the Securities are adversely affected thereby; *provided* that, with respect to any such amendment or modification, (a) a Rating Condition is satisfied and (b) a Majority of the Controlling Class of Notes or a Majority of the Holders of the Preference Shares have not objected in writing to such amendment or modification prior to the relevant Objection Cut-Off Date (as defined below).

If at any time the Servicer desires to amend or modify the Servicing Agreement, the Servicer will notify the Issuer and the Trustee, providing details of such proposed amendment or modification. Not later than five Business Days after receipt of such notice, the Trustee will mail such notice to (i) each Noteholder at such Holder's address in the Indenture Register or otherwise in accordance with the rules and procedures of the Depository, Euroclear and Clearstream, as applicable, (ii) to the Preference Shares Paying Agent (for forwarding to the Holders of Preference Shares), (iii) to the Holding Preference Shares Paying Agent (for forwarding to the Holders of the Holding Preference Shares) and (iv) to each Rating Agency. If any Holder of the Controlling Class of Notes or any Holder of the Preference Shares notifies, by delivering a written notice to the Trustee within 35 days after the Trustee has mailed such notice, that it objects to such proposed amendment or modification, the Trustee will, within two Business Days after receiving such notice of objection, mail a notice of the receipt of such objection to the Issuer, the Servicer and other Holders of the Controlling Class of Notes and other Holders of the Preference Shares. Each Holder of the Controlling Class of Notes and each Holder of the Preference Shares that also wishes to object to such amendment or modification must, by delivering a written notice, so notify the Trustee within seven Business Days after the Trustee has mailed such notice of the receipt of such objection (the last day of such seven Business Day period, the "**Objection Cut-Off Date**"). If a Majority of either the Controlling Class of Notes or the Preference Shares notifies the Trustee in writing on or before the Objection Cut-Off Date that they object to the proposed amendment or modification to the Servicing Agreement, such amendment or modification will not be made.

The Servicing Agreement provides that the Servicer will not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the Advisers Act. The Servicing Agreement also provides that the Servicer will not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no

less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the Advisers Act.

Subject to the provisions for a successor servicer discussed below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer).

The Servicing Agreement will be terminated, and the Servicer will be removed, by the Issuer, if directed by the Trustee (acting at the direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes)) or by a Majority of the Voting Preference Shares, in each case for "cause" upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below. For purposes of determining "cause" with respect to any such termination of the Servicing Agreement, such term shall mean any one of the following events:

(i) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of the Servicing Agreement or any terms of the Indenture applicable to it;

(ii) the Servicer breaches in any material respect any provision of the Servicing Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(iii) certain events of bankruptcy or insolvency occur with respect to the Servicer;

(iv) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or the Servicing Agreement, which breach or default is not cured within any applicable cure period; or

(v) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

No removal or resignation of the Servicer will be effective under the Servicing Agreement unless (A) (i) at the written direction of a Majority of the Voting Preference Shares, the Issuer appoints a successor servicer and such successor servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to the Servicing Agreement and the Indenture and (ii) the successor servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single Class) or (B) if a Majority of the Voting Preferences Shares has nominated two or more successor servicers that have been objected to pursuant to the preceding clause (A)(ii) or has failed to appoint a successor servicer that has not been objected to pursuant to the preceding clause (A)(ii) within 60 days of the date of notice of such removal or resignation of the Servicer, (i) at the written direction of a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes), the Issuer appoints a successor servicer and such successor servicer has agreed in writing to assume all of the Servicer's duties and obligations pursuant to the Servicing Agreement and the Indenture and (ii) the successor servicer is not objected to within 30 days after notice of such succession by either (x) a Majority of the Voting Preference Shares (voting as a single class) or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single

Class); *provided* that if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) have each nominated two or more successor servicers that have been objected to pursuant to the preceding clauses (A)(ii) and (B)(ii) or have otherwise failed to appoint a successor servicer that is not objected to pursuant to the preceding clauses (A)(ii) or (B)(ii) within 120 days of the date of notice of such removal or resignation of the Servicer, any Holder of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor servicer. In addition, any successor servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer under the Servicing Agreement, (ii) is legally qualified and has the capacity to act as Servicer under the Servicing Agreement, as successor to the Servicer under the Servicing Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer under the Servicing Agreement and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as successor servicer under the Servicing Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor servicer shall not cause its then-current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor from payments on the Collateral shall be greater than that paid to the Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Notes and a Majority of the Preference Shares.

The Servicing Agreement, and any obligations or duties of the Servicer under the Servicing Agreement, cannot be delegated by the Servicer, in whole or in part, except to any entity that is both (i) controlled by all or any of James Dondero, Mark Okada and Todd Travers and (ii) one in which all of James Dondero, Mark Okada and Todd Travers (or any Approved Replacement thereof) is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability under the Servicing Agreement.

THE CO-ISSUERS

General

The Issuer was incorporated as an exempted limited liability company on February 7, 2006 in the Cayman Islands under registration number MC-162048. The registered office of the Issuer is at the offices of Ogier Fiduciary Services (Cayman) Limited, P.O. Box 1234, Queensgate House, George Town, Grand Cayman KY1-1108, Cayman Islands. The Issuer's telephone number is (345) 945-6264. The Issuer has no prior operating experience (other than in connection with the acquisition of the Collateral Obligations during the Accumulation Period) and will not have any material assets other than (i) the Collateral pledged to secure the Secured Obligations, and (ii) $500 (of which $250 represents the Issuer's ordinary share capital and $250 represents a fee for issuing the Securities).

The Co-Issuer was incorporated on October 13, 2006 in the State of Delaware under registration number 060941313 as a corporation and has a perpetual existence. The registered office of the Co-Issuer is at c/o National Corporate Research, Ltd., 615 South DuPont Highway, Dover, Delaware, 19901. The Co-Issuer's telephone number is (302) 738-6680. The Co-Issuer has no prior operating history and will not have any material assets.

The Senior Notes are non-recourse debt obligations of the Co-Issuers. The Class D Notes are non-recourse debt obligations of the Issuer and the Preference Shares are equity interests only in the Issuer. The Securities are not obligations of the Trustee, the Preference Shares Paying Agent, the Servicer, the Initial Purchaser, the Administrator, the Holders of the Preference Shares, Ogier Fiduciary

Services (Cayman) Limited, as the share trustee (in such capacity, the "**Share Trustee**"), or any directors or officers of the Co-Issuers or any of their respective Affiliates.

At the Closing Date, the authorized share capital of the Issuer consists of 250 ordinary shares, U.S.$1.00 par value per share (the "**Issuer Ordinary Shares**"), all of which will have been issued prior to the Closing Date, and 127,500 Preference Shares, U.S.$0.01 par value per share, 127,500 of which will be issued on or about the Closing Date. The authorized common stock of the Co-Issuer consists of 1,000 shares of common stock, U.S.$ 0.01 par value (the "**Co-Issuer Common Stock**"), all of which shares will be issued on or about the Closing Date. All of the outstanding Issuer Ordinary Shares and all of the Co-Issuer Common Stock will be held by the Share Trustee. For so long as any of the Securities are Outstanding, no transfer of any Issuer Ordinary Shares or Co-Issuer Common Stock to a U.S. Person shall be registered.

Investors Corp.

On the Closing Date, Grayson Investors Corp. ("**Investors Corp.**"), an exempted limited liability corporation incorporated under the laws of the Cayman Islands, is expected to purchase all of the Class I Preference Shares and to finance such purchase by issuing preference shares (the "**Holding Preference Shares**") in a number equal to the aggregate number of Class I Preference Shares purchased by it. The Holding Preference Shares will be offered by Investors Corp. to investors pursuant to the Investors Corp. Offering Memorandum and are not offered hereby. In case of any transfer of Class II Preference Shares by HFP or any of its subsidiaries to Investors Corp., Investors Corp. is expected to purchase all of such Class II Preference Shares redesignated as Class I Preference Shares and finance such purchase by issuing additional Holding Preference Shares in a number equal to the aggregate number of such Class I Preference Shares purchased by it.

Investors Corp. will exercise its consent and voting rights, in its capacity as a Holder of the Class I Preference Shares, in accordance with the directions of the Holders of the Holding Preference Shares; *provided* that Holding Preference Shares held by the Servicer or any of its Affiliates will have no such right to direct Investors Corp. in connection with the removal of the Servicer for "cause" or the appointment of a replacement servicer. For purposes of calculating such consents or votes exercised with respect to the Class I Preference Shares held by Investors Corp., each consent or vote exercised with respect to a Holding Preference Share will count as one consent or vote exercised with respect to a Class I Preference Share held by Investors Corp., as applicable.

Capitalization

The initial proposed capitalization of the Issuer as of the Closing Date after giving effect to the initial issuance of the Securities and the Issuer Ordinary Shares (before deducting expenses of the offering) is as set forth below.

	Amount (U.S.$)
Class A-1a Notes	$1,015,000,000
Class A-1b Notes	$111,500,000
Class A-2 Notes	$68,000,000
Class B Notes	$72,000,000
Class C Notes	$75,000,000
Class D Notes	$31,000,000
Total Notes	$1,372,500,000
Class I Preference Shares	$52,500,000
Class II Preference Shares	$75,000,000
Issuer Ordinary Shares	$250
Total Equity	$127,500,250
Total Capitalization	$1,500,000,250

The Co-Issuer will be capitalized only to the extent of its common equity of U.S.$10, will have no assets other than its equity capital and will have no debt other than as Co-Issuer of the Senior Notes.

Business

General

The Issuer Charter provides that the objects for which the Issuer is established are limited and the Issuer may exercise the power contained in Section 226 of the Companies Law (2004 Revision). Article III of the Co-Issuer's Certificate of Incorporation provides that the principal purpose of the Co-Issuer is the issuance of the Senior Notes and to engage in any activity and to exercise any powers permitted to corporations organized under Delaware Law, which are incidental to, or connected with, the foregoing and necessary, suitable or convenient to accomplish the foregoing.

The Issuer

The Indenture provides that the activities of the Issuer are limited to the following:

(i) acquisition and disposition of Collateral Obligations and Eligible Investments;

(ii) entering into, and performing its obligations under, the Indenture, the Preference Share Documents, any Hedge Agreements, the Securities Lending Agreements, the Servicing Agreement, the Placement Agency Agreement, the Collateral Administration Agreement and the Administration Agreement;

(iii) the issuance and sale of the Securities and the Issuer Ordinary Shares;

(iv) the pledge of the Collateral as security for its obligations in respect of the Notes and any Hedge Agreements;

(v) entering into certain pre-closing warehousing arrangements and the agreements relating thereto; and

(vi) undertaking certain other activities incidental to the foregoing.

The Co-Issuer

The activities of the Co-Issuer are to be limited to the following:

(i) the co-issuance and sale of the Senior Notes; and

(ii) to engage in any activity and to exercise any powers permitted to corporations organized under Delaware Law, which are incidental to, or connected with, the foregoing and necessary, suitable or convenient to accomplish the foregoing.

Administration

Ogier Fiduciary Services (Cayman) Limited ("**Ogier**"), a Cayman Islands company, will act as the administrator of the Issuer (in such capacity, the "**Administrator**"), the Share Registrar and the Share Trustee. Ogier became the Administrator of the Issuer on October 14, 2006 when it replaced the original administrator of the Issuer, Maples Finance Limited (in such capacity, the "**Original Administrator**"). The office of the Administrator will serve as the principal office of the Issuer. Through this office and pursuant to the terms of an agreement by and between the Administrator and the Issuer (as amended, supplemented and modified from time to time) (the "**Administration Agreement**"), the Administrator will perform various administrative functions on behalf of the Issuer, including the provision of certain clerical and other services including acting as Share Registrar until termination of the Administration Agreement. In consideration of the foregoing, the Administrator will receive various fees and

reimbursement of its expenses. Ogier Fiduciary Services (Cayman) Limited will also act as the administrator of Investors Corp. and the registrar of the Holding Preference Shares.

The activities of the Administrator under the Administration Agreement will be subject to the overview of the Issuer's Board of Directors. The Administration Agreement may be terminated by the Issuer upon 14 days' written notice following the happening of certain events or upon 90 days' written notice in all other cases. Upon the earlier of the termination of the Administration Agreement or the dissolution of the Issuer, the Administrator shall cease to serve in such capacity.

The Administrator's principal office is at P.O. Box 1234, Queensgate House, George Town, Grand Cayman, KY1-1108, Cayman Islands.

Directors

The Issuer will have three directors, each of whom will initially be an employee or officer of the Administrator or an Affiliate of the Administrator.

The directors of the Issuer, who are also the directors of Investors Corp., are Scott Dakers, Evan Burtton and Vijayabalan Murugesu. Holders of the Class II Preference Shares may, for so long as the aggregate number of Class II Preference Shares Outstanding is greater than the number of Class I Preference Shares Outstanding, vote at any time to remove all (but not less than all) of the directors and appoint other directors who may be employees, officers or designees of the Servicer.

Directors of the Issuer may serve as directors of, and provide services to, other special purpose entities that issue collateralized obligations and perform other duties for the Administrator and the Servicer, as the case may be. They may be contacted at the address of the Administrator.

The director of the Co-Issuer is Donald Puglisi. Mr. Puglisi is also the President, Secretary and Treasurer of the Co-Issuer. Mr. Puglisi is a Professor of Finance at the University of Delaware. Mr. Puglisi serves as a director of, and provides services to, a number of special purpose entities. He may be contacted at the address of the Co-Issuer.

PREVENTION OF MONEY LAUNDERING

To ensure compliance with applicable statutory requirements relating to anti-money laundering and anti-terrorism initiatives, the Share Registrar, on behalf of the Issuer, will require verification of identity and source of funds from all prospective purchasers of the Preference Shares. Depending on the circumstances of each purchase, it may not always be necessary to obtain full documentary evidence of identity and/or source of funds where:

1. The purchaser is a licensed entity or financial institution regulated in a country recognized as having an adequate anti-money laundering regime[1];

2. The purchaser is an entity or financial institution listed on the Cayman Islands or other approved stock exchange[2]; or

3. The funds have been paid from an account held in the name of the purchaser at a financial institution based in a country recognized as having an adequate anti-money laundering regime.

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[1] The list of acceptable countries is: Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Iceland, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Arab Emirates, United Kingdom and United States of America.

[2] A list of approved Stock Exchanges can be found under Appendix H of the Cayman Islands Money Laundering Regulations (as amended) which may be accessed on the Cayman Islands Monetary Authority website at www.cimoney.com.ky.

MATERIAL INCOME TAX CONSIDERATIONS

General

The following summary describes the principal U.S. federal income tax and Cayman Islands tax consequences that are expected to be applicable to the purchase, ownership and disposition of the Notes, but does not purport to be a comprehensive description of all the tax considerations that may be relevant to a decision to purchase the Notes. In particular, special tax considerations that may apply to certain types of taxpayers, including, without limitation, securities dealers, banks, financial institutions, partnerships, insurance companies, purchasers of Notes who did not acquire the Notes at the applicable "issue price" (defined below), and subsequent purchasers of the Notes, are not addressed. In addition, this summary does not describe any tax consequences resulting from or relating to the Preference Shares or any tax consequences arising under the laws of any state, locality or taxing jurisdiction other than the U.S. federal government and the Cayman Islands. In general, the summary assumes that a purchaser acquires a Note at original issuance and holds such Note as a capital asset and not as part of a hedge, straddle, or conversion transaction, within the meaning of section 1258 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**").

This summary is based on the U.S. and Cayman Islands tax laws, regulations, rulings and decisions in effect on the date of this Offering Memorandum. All of the foregoing are subject to change, which change may apply retroactively and could affect the continued validity of this summary.

Prospective purchasers of the Notes should note that no ruling from the Internal Revenue Service (the "**IRS**") will be sought with respect to any tax matters discussed herein, and there can be no assurance that the IRS will agree with such statement and conclusions. Prospective purchasers of the Notes should consult their tax advisors as to U.S. federal income tax and Cayman Islands tax consequences of the purchase, ownership and disposition of the Notes and the possible application of state, local, foreign or other tax laws.

As used in this section, "Material Income Tax Considerations," the term "**U.S. Holder**" means a beneficial owner of a Note who is a citizen or individual resident of the United States, a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, or an estate or trust (other than a "foreign estate" or a "foreign trust," each as defined in the Code).

If a partnership (including any entity treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of the Notes, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership.

TO COMPLY WITH TREASURY DEPARTMENT CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS OFFERING MEMORANDUM IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY YOU, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON YOU UNDER THE INTERNAL REVENUE CODE; (B) ANY SUCH DISCUSSION IS INCLUDED HEREIN BY THE ISSUERS IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE ISSUERS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) YOU SHOULD SEEK ADVICE BASED ON YOUR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

U.S. Federal Income Taxation of the Issuer

U.S. Federal Income Tax. Although the Issuer will elect to be treated as a partnership for U.S. federal income tax purposes, there can be no assurance that it will not treated as or become a corporation for U.S. federal income tax purposes. If the Issuer is treated as a partnership, the Issuer will not itself be

subject to U.S. federal income tax. The following discussion assumes that the Issuer will be treated as a partnership of U.S. federal income tax purposes at all times.

Section 864(b)(2) of the Code provides a specific exemption from U.S. federal income tax to non-U.S. persons which either (i) trade stocks or securities through a resident broker, commission agent, custodian or other independent agent or (ii) restrict their activities in the United States to trading in stocks and securities (and any other activity closely related thereto) for their own account, whether such trading (or such other activity) is by such person or its employees or through a resident broker, commission agent, custodian or other agent. This particular exemption described in clause (ii) above does not apply to foreign persons that are dealers in stocks and securities. Moreover, the Treasury and the Internal Revenue Service recently announced that they are considering taxpayer requests for specific guidance on, among other things, whether a foreign person may be treated as engaged in a trade or business in the United States by virtue of entering into credit default swaps. However, the Treasury and the Internal Revenue Service have not yet provided any guidance on whether they believe entering into credit default swaps may cause a foreign person to be treated as engaged in a trade or business in the United States and if so, what facts and circumstances must be present for this conclusion to apply. If any future guidance concludes that foreign persons entering into certain credit default swaps will be treated as engaged in a trade or business in the United States, such guidance may adversely impact the Issuer.

Prior to the issuance of the Securities, the Issuer will receive an opinion from Latham & Watkins LLP ("**Tax Counsel**") based, in part, on the exemption described in the preceding paragraph to the effect that, although no activity closely comparable to that contemplated by the Issuer has been the subject of any Treasury regulation, revenue ruling or judicial decision and the matter is not free from doubt, assuming compliance with the Issuer's Memorandum and Articles of Association, the Indenture, the Servicing Agreement and other related documents (collectively, the "**Documents**") by all parties thereto, the Issuer's permitted activities will not cause it to be treated as engaged in the conduct of a U.S. trade or business under the Code. Investors should note that gain or loss on a disposition by a foreign person of a United States real property interest may be subject to United States federal income tax even if the foreign person is otherwise not engaged in a U.S. trade or business. Because the determination of whether an asset constitutes a United States real property interest is made periodically, although the Issuer is prohibited from acquiring an asset that constitutes a United States real property interest, it is possible that an asset that was not a United States real property interest at the time such asset was acquired by the Issuer will become a United States real property interest after the asset is acquired. Because the Issuer may be treated as engaged in a U.S. trade or business solely with respect to such gain or loss, Tax Counsel's opinion will not address the taxation of the Issuer with respect to such disposition. In addition, in interpreting and complying with the Documents, the Issuer and the Servicer are entitled to rely upon the advice and/or opinions of their selected counsel, and the opinion of Tax Counsel will assume that any such advice and/or opinions, other than advice given by Tax Counsel, are correct and complete. The opinion of Tax Counsel will be based on the Code, the Treasury regulations (final, temporary and proposed) thereunder, the existing authorities, and Tax Counsel's interpretation thereof, all as in effect as of the date of such opinion, and on certain factual assumptions and representations as to the Issuer's contemplated activities. The Issuer intends to conduct its business in accordance with the assumptions, representations and agreements upon which the opinion of Tax Counsel is based. However, opinions and advice of Tax Counsel or other counsel are not binding on the IRS. Accordingly, in the absence of authority on point, whether the Issuer is or will be treated as engaged in a trade or business in the United States or not is not entirely free from doubt, and there can be no assurance that positions contrary to those stated in the opinion of Tax Counsel or any other advice or opinion may not be asserted successfully by the IRS.

U.S. Federal Withholding Taxes. Generally, U.S. source interest income received by a foreign person not engaged in a trade or business within the United States is subject to U.S. withholding tax at the rate of 30% of the amount thereof. The Code provides an exception for interest that constitutes "portfolio interest," which is exempt from withholding tax. The term "portfolio interest" is generally defined as interest paid with respect to debt issued after July 18, 1984 that meets the "registration" requirement, unless the interest constitutes a certain type of contingent interest or is paid to a 10% shareholder of the

payor, to a controlled foreign corporation (a "**CFC**") related to the payor, or to a bank with respect to a loan entered into in the ordinary course of its business. For purposes of applying the 10% shareholder and related CFC rules, certain constructive ownership rules contained in the Code apply. The Issuer intends that all of the Collateral Obligations purchased that consist of obligations of U.S. issuers to the extent that they are treated as debt for U.S. federal income tax purposes will either (i) pay interest qualifying as "portfolio interest" for which federal income withholding tax is not otherwise applicable or (ii) require the obligor to make "gross-up" payments to offset fully any such tax on any such payments. However, withholding tax may be imposed on certain payments received by the Issuer as a result of one or more non-U.S. persons' ownership of Preference Shares. Furthermore, there can be no assurance that the Issuer will not become subject to such withholding without "gross-up" payments as a result of a change in or the adoption of a U.S. tax statute, or any change in or the issuance of a regulation or equivalent authority. Any such change, adoption or issuance may constitute a Withholding Tax Event. See "Description of the Securities—Optional Redemption."

The Issuer may acquire certain types of Collateral Obligations not constituting debt for U.S. federal income tax purposes under the assumption that they are not subject to U.S. withholding tax despite the absence of clear authority that withholding tax is not payable.

Any commitment fees and any lending fees received under a Securities Lending Agreement or similar fees or other items of income (other than interest) received by the Issuer may be subject to U.S. withholding tax. However, the Issuer does not anticipate that it will derive material amounts of any such commitment fees and lending fees or similar fees or other items of income that would be subject to U.S. withholding taxes.

The Issuer may also acquire Collateral Obligations that consist of obligations of non-U.S. issuers. Payments in respect of such Collateral Obligations may be or could become subject to foreign withholding tax. In this regard, the Issuer is not generally permitted to purchase any obligations, the payments on which are subject to withholding tax, unless the issuer of the obligation is required to make "gross-up" payments that cover the full amount of any such withholding tax.

U.S. Federal Income Taxation of U.S. Holders of Notes

Status of the Notes. In the opinion of Tax Counsel, the Senior Notes issued on the Closing Date will be treated as debt for U.S. federal income tax purposes. The Issuer will treat, and each person acquiring an interest in a Note will be deemed to agree to treat, the Notes as debt. The opinion of Tax Counsel is based on current law and certain representations and assumptions and is not binding on the IRS or the courts, and no ruling will be sought from the IRS regarding this, or any other, aspect of the U.S. federal income tax treatment of the Notes. Accordingly, there can be no assurance that the IRS will not contend, and that a court will not ultimately hold, that for U.S. federal income tax purposes one or more Classes of the Notes are properly treated as equity in the Issuer. In that case, there might be adverse U.S. federal income tax consequences to a U.S. Holder of Notes upon the sale, redemption, retirement or other disposition of, or the receipt of certain types of distributions on, the Notes. Except for the discussion under "United States Income Taxation of the Class D Notes if Characterized as Equity" below, the remainder of the discussion assumes that the Notes are properly characterized as debt for U.S. federal income tax purposes.

Maturity Extension and Extension Bonus Payment. Because the Stated Maturity of the Notes may be extended if certain conditions are met, it is unclear whether the Notes should be treated as maturing on November 1, 2021 or November 1, 2037, or on a date between such dates. The Treasury regulations do not provide clear guidance on debt instruments with terms similar to the Notes. Absent further guidance, the Issuer intends to take the position that the Notes should be treated as maturing on November 1, 2021. If the Notes are extended, the Issuer intends to treat each Note, solely for purposes of sections 1272 and 1273 of the Code, as retired and reissued for an amount equal to the adjusted issue price on the date of the new Extension Effective Date. Prospective investors in the Notes should consult their tax advisors regarding whether the Notes should be treated as maturing on a different date and the tax consequences if the Notes have a different maturity date than that chosen by the Issuer.

If the Stated Maturity is extended, the extension of the Stated Maturity would be treated as a modification of the Notes if the Notes may be sold to an Extension Qualifying Purchaser that is related to the Issuer within the meaning of section 267(b) of the Code. If such extension constitutes a modification, there is a significant risk that U.S. Holders who continue to hold their Notes after such extension will be treated as having exchanged their Notes for new Notes ("**New Notes**") in a deemed exchange for U.S. federal income tax purposes (a "**Deemed Exchange**"). Any such Deemed Exchange would be treated as a taxable exchange, resulting in gain or loss, if any. Furthermore, if the Notes are treated as exchanged for New Notes in a Deemed Exchange as a result of a Maturity Extension, whether the New Notes would be treated as debt for U.S. federal income tax purposes will depend on the facts and circumstances existing at the time of such Deemed Exchange. Tax Counsel is unable to opine on whether New Notes treated as received in a Deemed Exchange for the Notes will be treated as debt for U.S. federal income tax purposes. In the event of a Deemed Exchange, U.S. Holders are strongly urged to consult their tax advisors regarding the tax consequences of such Deemed Exchange.

The tax treatment of the Extension Bonus Payment and the CDS/TRS Termination Payment Amount is unclear. The Issuer intends to take the positions that the full amount of the Extension Bonus Payment should be taxable to U.S. Holders as ordinary income in accordance with their method of accounting, that the CDS/TRS Termination Payment, if any, should be treated as part of the amount realized upon a disposition of the Notes and that none of the Extension Bonus Payment, the CDS/TRS Termination Payment Amount or the Issuer's options to extend the Stated Maturity should cause the Notes to be treated as subject to the rules applicable to "contingent payment debt instruments" under Section 1.1275-4 of the Treasury regulation. U.S. Holders should consult their tax advisors regarding the taxation of the Extension Bonus Payment and the CDS/TRS Termination Payment Amount, and the tax consequences of the Notes if they are treated as contingent payment debt instruments.

Taxation of Interest Income. Stated interest on the Notes that is considered "unconditionally payable" (as described below) will be includable in income by a U.S. Holder when received or accrued in accordance with such Holder's method of tax accounting as ordinary interest income from sources outside the United States.

If the "issue price" of any Note is less than the "stated redemption price at maturity" ("**SRPM**") of such Note, the excess of the SRPM over the issue price may constitute original issue discount ("**OID**"). Under a de minimis rule, if the excess of the SRPM of such Note over its issue price is less than one-fourth of one percent of the SRPM multiplied by the weighted average maturity (determined under applicable Treasury regulations) of such Note, such Note will not be treated as issued with OID. If any such Notes are issued at a greater than de minimis discount or are otherwise treated as having been issued with OID, the excess of the SRPM of such Notes over their issue price will constitute OID. Under the Code, a U.S. Holder of such Notes would be required to include the daily portions of OID, if any, in income as interest from sources outside the United States over the term of such Notes under a constant yield method that reflects the time value of money, regardless of such U.S. Holder's method of tax accounting and without regard to the timing of actual payments.

The "issue price" of the Notes is the first price at which a substantial amount of the Notes are sold for money (excluding sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). Treasury regulations provide, for purposes of determining whether a debt instrument is issued with OID, that stated interest must be included in the SRPM of a debt instrument if such interest is not "unconditionally payable" in money at least annually. Interest is considered "unconditionally payable" if reasonable legal remedies exist to compel timely payment or terms and conditions of the debt instrument make the likelihood of late payment (other than late payment that occurs within a reasonable grace period) or nonpayment (ignoring the possibility of nonpayment due to default, insolvency or similar circumstances) a remote contingency. Stated interest on the Class A-1a Notes, the Class A-1b Notes and Class A-2 Notes will be "unconditionally payable" at least annually and thus will be included in income in accordance with a U.S. Holder's method of accounting. Because interest on the Class B Notes, the Class C Notes and the Class D Notes may not be due and payable on any Payment Date to the extent that funds are not available on such Payment Date to

pay the full amount of such interest or in order to satisfy certain Coverage Tests, the Issuer intends to take the position that payment of interest on the Class B Notes, the Class C Notes and the Class D Notes will not be viewed as "unconditionally payable." Assuming such treatment is respected, all interest payments on the Class B Notes, the Class C Notes and the Class D Notes would be required to be included in the SRPM of such Notes and, therefore, accrued by a U.S. Holder pursuant to these OID rules. Accordingly, the Class B Notes, the Class C Notes and the Class D Notes would be subject to the OID rules whether or not they are issued at an issue price equal to their principal amount.

Because the Floating Rate Notes provide for a floating rate of interest, a U.S. Holder of Floating Rate Notes must include in income interest or OID, if any, on the Floating Rate Notes at the floating rate in effect for the first accrual period (assuming the Floating Rate Notes are issued without OID other than any "deemed" discount attributable to the accrual of interest). The amount of interest or OID actually recognized for any applicable period will increase (or decrease) if interest actually paid during the period is more (or less) than the amount accrued at the initial floating rate.

If the Notes of a Class are not issued at an issue price equal to their principal amount, in computing OID with respect to such Notes, the Issuer intends (absent definitive guidance) to determine the amount of OID to be included in income annually by U.S. Holders of such Notes under an income accrual method, prescribed by Section 1272(a)(6) of the Code, applicable to debt instruments payments under which may be accelerated by reason of prepayments of other obligations securing such debt instruments or a pool of debt instruments the yield on which may be affected by reason of prepayments, that uses an assumption as to the expected prepayments on the Notes. The application of section 1272(a)(6) of the Code to debt instruments with prepayment features similar to the Notes is uncertain, however, and may be challenged by the IRS. In the event that the IRS successfully challenged the Issuer's characterization of such Notes as subject to section 1272(a)(6) of the Code, any such Notes might be treated as contingent payment debt instruments. Prospective investors should consult their tax advisors regarding the potential application of the method under section 1272(a)(6) of the Code and the rules governing contingent payment debt instruments for accruing any prospective OID on the Notes.

Disposition of Notes. In general, a U.S. Holder of a Note will have a basis in such Note equal to the cost of such Note to such Holder, increased by any amount includable in income by such Holder as OID and reduced by any payments of principal and interest on such Note, other than payments of stated interest that are not required to be included in the SRPM of such Note.

Upon the sale, exchange, retirement or other disposition of such Note, a U.S. Holder will recognize taxable gain or loss, if any, generally equal to the difference between the amount realized on the sale or other disposition (other than accrued stated interest that was not required to be included in the SRPM of such Note, which interest will be taxable as such) and such U.S. Holder's adjusted tax basis in such Note. Any such gain or loss will generally be long-term capital gain or loss provided that such Note had been held for more than one year at the time of the sale or other disposition. In certain circumstances, U.S. Holders that are individuals may be entitled to preferential treatment for net long-term capital gains; however, the ability of U.S. Holders to offset capital losses against ordinary income is limited.

United States Income Taxation of the Class D Notes if Characterized as Equity. As discussed above, the Issuer will treat, and each person acquiring an interest in a Note will be deemed to agree to treat, the Class D Notes as debt of the Issuer and the discussions above assume that the Class D Notes would be characterized as debt for United States federal income tax purposes. However, the United States federal income tax treatment of the Class D Notes is subject to significant uncertainty and no ruling from the IRS has been sought regarding this issue. Accordingly, there can be no assurances that the IRS will not contend, and that a court will not ultimately hold, that the Class D Notes are equity of the Issuer.

If the Class D Notes were treated as equity, a U.S. Holder of Class D Notes will generally be treated as a partner of the Issuer, and would be generally required to take into account such Holder's allocable share of the Issuer's items of income, gain, loss, deduction and credit for the taxable year of the Issuer ending within or with the taxable year of the U.S. Holder regardless of whether such Holder has received or will receive corresponding distributions from the Issuer. Investors are strongly urged to

consult their tax advisors as to the possible characterization of the Class D Notes as equity, the tax consequences resulting from such characterization, and the advisability of filing an IRS Form 8865.

Tax Treatment of Tax-Exempt U.S. Holders of Notes

U.S. Holders which are tax-exempt entities ("**Tax-Exempt U.S. Holders**") will not be subject to the tax on unrelated business taxable income ("**UBTI**") with respect to interest and capital gains income derived from an investment in the Notes. However, a Tax-Exempt U.S. Holder that also acquires Preference Shares should consider whether interest it receives in respect of the Notes may be treated as UBTI under rules governing certain payments received from controlled entities.

Notwithstanding the discussion in the preceding paragraph, a Tax-Exempt U.S. Holder which incurs "acquisition indebtedness" (as defined in Section 514(c) of the Code) with respect to the Notes may be subject to the tax on UBTI with respect to income from the Notes to the extent that the Notes constitute "debt-financed property" (as defined in Section 514(b) of the Code) of the Tax-Exempt U.S. Holder.

Tax-Exempt U.S. Holders should consult their tax advisors regarding an investment in the Notes.

Transfer Restrictions on the Class D Notes

The Issuer will not recognize any transfer of Class D Notes if the proposed transfer will cause the Issuer to have more than ninety-nine beneficial owners (as determined for purposes of the provisions of Treasury Regulation section 1.7704-1(h)) of its Class D Notes and Preference Shares unless it receives the consent of all of the Holders of the Preference Shares and an opinion of counsel to the effect that Holders of the Notes will not recognize gain or loss for U.S. federal income tax purposes as a result of such transfer, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transfer had not been made. In addition, the Class D Notes may not be traded on an "established securities market," and the Issuer will not recognize any transfers made pursuant to any such trades. For this purpose, the term "established securities market" includes any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise.

Holders of the Class D Notes will not be permitted to transfer any of the Class D Notes they hold unless the transferee provides, among other things, the Trustee (1) appropriate documentation required under the Code and the applicable Treasury regulations establishing that the beneficial owner is either a non-U.S. person (e.g., an IRS Form W-8BEN or an IRS Form W-8IMY with appropriate attachments) or a U.S. person (e.g., an IRS Form W-9), (2) if the beneficial owner is not a U.S. Holder, certification that (i) the beneficial owner either is not a bank or is a person that is eligible for benefits under an income tax treaty with the United States that eliminates U.S. federal income taxation of Unites States source interest not attributable to a permanent establishment in the United States and (ii) the beneficial owner is not purchasing the Class D Notes in order to reduce its United States federal income tax liability or pursuant to a tax avoidance plan, and (3) for a beneficial owner that is treated as a partnership, S-corporation or grantor trust for U.S. federal income tax purposes, a written representation that (i) there will not be any interests in such beneficial owner where substantially all of the value of such interest is attributable to the value of the Class D Notes proposed to be transferred to such beneficial owner, together with the value of any Class D Notes, Holding Preference Shares and Preference Shares already held by such beneficial owner and (ii) the beneficial owner is not a part of any arrangement a principal purpose of which is to cause the Class D Notes and Preference Shares to be treated as owned by 100 persons or less within the meaning of Treasury Regulation section 1.7704-1(h). Each transferee of a Class D Note will also be required to agree to provide a properly completed, newly executed U.S. tax form and other certificate in each of the following circumstances: (i) no later than 120 days prior to the expiration (if applicable) of the

last previously provided U.S. tax form or certificate, (ii) upon any change of circumstance that would cause that the last previously provided U.S. tax form or certificate to be incorrect and (iii) upon a request by the Issuer or the Share Registrar. Each transferee will also be required to agree that if such transferee fails to provide a properly completed, newly executed U.S. tax form or other certificate no later than 120 days prior to the expiration of the last previously provided U.S. tax form or, if earlier, within the time specified in any request by the Issuer or the Share Registrar (which shall not be less than 30 days), the Issuer will have the unconditional right to cause such transferee to sell any and all Class D Notes to the Issuer or to a person chosen by the Issuer or the Issuer's agent on such terms as the Issuer may choose. For this purpose, an IRS Form W-8IMY (or any successor form thereto) will be deemed to expire upon the expiration of any withholding statement or U.S. tax forms associated with such IRS Form W-8IMY.

U.S. Federal Income Taxation of Non-U.S. Holders

The summary contained in this subsection outlines certain significant U.S. federal income tax principles that are likely to apply to a beneficial owner that is treated as a non-resident alien or foreign corporation for U.S. federal income tax purposes (a "**Non-U.S. Holder**"). It assumes that the Non-U.S. Holder's investment in the Issuer is not effectively connected with the conduct by such Non-U.S. Holder of a trade or business in the United States.

Payments on the Notes to a Non-U.S. Holder will generally be exempt from any U.S. federal income or withholding taxes, as will gains derived from the sale, exchange or redemption of the Notes, *provided that* such payments or gains are not effectively connected with a U.S. trade or business of such Holder, and generally, in the case of gain (excluding accrued OID, if any) of a non-resident alien individual Holder, the Holder is not present in the United States for 183 days or more during the taxable year of the sale and certain other conditions are satisfied. However, if it were determined that the Issuer were engaged in a U.S. trade or business, a portion of the payments on the Notes paid to a Non-U.S. Holder may be subject to a 30% U.S. withholding tax.

As discussed above, the United States federal income tax treatment of the Class D Notes is subject to significant uncertainty and no ruling from the IRS has been sought regarding this issue. If the Class D Notes were treated as equity of the Issuer, among other things, a Non-U.S. Holder may be subject to withholding taxes with respect to payments under the Class D Notes. Furthermore, in such event, if the Issuer were engaged in a U.S. trade or business, a Non-U.S. Holder would also be treated as engaged in a U.S. trade or business and would be required to file and pay U.S. federal income taxes on its allocable share of the Issuer's income (and possibly on any gain on a disposition of Class D Notes) that is (or is deemed to be) effectively connected with such U.S. trade or business at graduated U.S. federal income tax rates applicable to U.S. Holders (corporate Non-U.S. Holders may also be subject to the branch profits tax). Investors are strongly urged to consult their tax advisors as to the possible U.S. federal income tax characterization of the Class D Notes as equity and the tax consequences resulting from such characterization.

Information Reporting and Backup Withholding

Information reporting to the IRS generally will be required with respect to payments on the Notes, and proceeds of the sale of the Notes to U.S. Holders other than corporations and other exempt recipients. A "backup" withholding tax generally will apply to those payments if such Holder fails to provide certain identifying information (such as the Holder's taxpayer identification number) to the Trustee. "Non-effectively connected" gain or distributions received by a Non-U.S. Holder will generally not be subject to U.S. information reporting requirements or U.S. "backup" withholding tax, although such Holder may be required to furnish a certificate to the paying agent of the Issuer attesting to their status as a Non-U.S. Holder in order to avoid the application of such information reporting requirements and backup withholding. Backup withholding is not an additional tax and may be refunded (or credited against the Holder's U.S. federal income tax liability, if any) *provided* that certain required information is furnished to the IRS in a timely manner.

Cayman Islands Tax Considerations

The following discussion of certain Cayman Islands income tax consequences of an investment in the Securities is based on the advice of Ogier as to Cayman Islands law. The discussion is a general summary of present law, which is subject to prospective and retroactive change. It assumes that the Issuer will conduct its affairs in accordance with assumptions made by, and representations made to, counsel. It is not intended as tax advice, does not consider any investor's particular circumstances, and does not consider tax consequences other than those arising under Cayman Islands law.

Under existing Cayman Islands laws:

(i) payments of principal and interest on the Notes and dividends and capital in respect of the Preference Shares will not be subject to taxation in the Cayman Islands and no withholding will be required on such payments to any Holder of a Security and gains derived from the sale of Securities will not be subject to Cayman Islands income or corporation tax. The Cayman Islands currently have no income, corporation or capital gains tax and no estate duty, inheritance tax or gift tax;

(ii) no stamp duty is payable in respect of the issue or transfer of Securities although duty may be payable if Notes are executed in or brought into the Cayman Islands; and

(iii) certificates evidencing Securities, in registered form, to which title is not transferable by delivery, should not attract Cayman Islands stamp duty. However, an instrument transferring title to a Note, if brought to or executed in the Cayman Islands, would be subject to Cayman Islands stamp duty.

The Issuer has been incorporated under the laws of the Cayman Islands as an exempted company and, as such, has applied for and obtained an undertaking from the Governor in Cabinet of the Cayman Islands in substantially the following form:

"THE TAX CONCESSIONS LAW
(1999 REVISION)
UNDERTAKING AS TO TAX CONCESSIONS

In accordance with Section 6 of the Tax Concessions Law (1999 Revision) the Governor in Cabinet undertakes with:

Grayson CLO, Ltd. "the Company"

(a) that no Law which is hereafter enacted in the Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Company or its operations; and

(b) in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable

(i) on or in respect of the shares debentures or other obligations of the Company; or

(ii) by way of the withholding in whole or in part of any relevant payment as defined in Section 6(3) of the Tax Concessions Law (1999 Revision).

These concessions shall be for a period of TWENTY years from the 14th day of February, 2006.

GOVERNOR IN CABINET"

The Cayman Islands does not have an income tax treaty arrangement with the U.S. or any other country.

THE PRECEDING DISCUSSION IS ONLY A SUMMARY OF CERTAIN OF THE TAX IMPLICATIONS OF AN INVESTMENT IN THE SECURITIES. PROSPECTIVE INVESTORS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS PRIOR TO INVESTING TO DETERMINE THE TAX IMPLICATIONS OF SUCH INVESTMENT IN LIGHT OF SUCH INVESTORS' CIRCUMSTANCES.

CONSIDERATIONS FOR BENEFIT PLANS

Except as described below, the Preference Shares and the Class D Notes may not be purchased by any Benefit Plan Investor. Subject to the following discussion, the Senior Notes may generally be acquired by Benefit Plan Investors. Any fiduciary or other person contemplating an investment in the Securities by, on behalf of or using the assets of, an employee benefit or similar plan or arrangement, whether or not subject to Title I of ERISA (as defined below) or Section 4975 of the Code, should consider, among other things, the matters described below before deciding whether to invest in any of the Securities.

The United States Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), establishes fiduciary standards for persons having authority or control of the assets of employee benefit plans subject to Title I thereof, including collective investment funds and other entities whose underlying assets are treated as if they were the assets of such plans (collectively, "**ERISA Plans**") pursuant to Section 3(42) of ERISA, and the regulation issued by the United States Department of Labor ("**DOL**") and found at 29 C.F.R. Section 2510.3-101 (the "**Plan Asset Regulation**") or otherwise pursuant to ERISA. Under Title I of ERISA, any person who exercises any authority or control with respect to the management or disposition of the assets of an ERISA Plan is considered to be a fiduciary of such ERISA Plan.

Investments by ERISA Plans are subject to ERISA's general fiduciary requirements, including the requirement of investment prudence and diversification and the requirement that an ERISA Plan's investments be made in accordance with the documents governing the relevant plan. The prudence of a particular investment must be determined by the responsible fiduciary of an ERISA Plan by taking into account the ERISA Plan's particular circumstances and all of the facts and circumstances of the investment. A fiduciary of an ERISA Plan should consider, for example, that in the future there may be no market in which to sell or otherwise dispose of the Securities, whether an investment in the Securities may be too illiquid or too speculative, and whether the assets of the ERISA Plan would be sufficiently diversified.

Section 406 of ERISA and Section 4975 of the Code effectively prohibit certain transactions involving the assets of an ERISA Plan (as well as those plans that are not subject to Title I of ERISA but are subject to Section 4975 of the Code (each such plan or ERISA Plan, a "**Plan**")) and certain persons having certain relationships to such Plans (referred to as "parties in interest" or "disqualified persons"), unless a statutory or administrative exemption applies to the transaction. A violation of these "prohibited transaction" rules may generate excise tax or other penalties and liabilities under ERISA and the Code for such person.

Additionally, the acquisition or holding of Securities by or on behalf of benefit plans that are not subject to Title I of ERISA or Section 4975 of the Code, such as foreign plans, governmental plans (as defined in Section 3(32) of ERISA) and certain church plans (as defined in Section 3(33) of ERISA) could give rise to similar liabilities under federal, state, foreign or local law which may be substantially similar to Section 406 of ERISA or Section 4975 of the Code (a "**Similar Law**"), and/or might be prohibited or otherwise restricted as described herein.

Section 3(42) of ERISA and the Plan Asset Regulation define "plan assets" of a Plan with respect to the Plan's investment in an entity for purposes of certain provisions of ERISA, including the fiduciary

responsibility and prohibited transaction provisions of Title I of ERISA and Section 4975 of the Code. Under Section 3(42) of ERISA and the Plan Asset Regulation, if a Plan invests in an "equity interest" of an entity that is neither a "publicly-offered security" nor a security issued by an investment company registered under the Investment Company Act, the Plan's assets include both the equity interest and an undivided interest in each of the entity's underlying assets, unless it is established that the entity is an "operating company" or that Benefit Plan Investors hold less than 25% of the value of any class of equity interest of the entity, determined as of the most recent acquisition of an equity interest. The term "Benefit Plan Investor" includes (a) an employee benefit plan as defined in Section 3(3) of ERISA, that is subject to Title I of ERISA, (b) a plan described in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code and (c) any entity whose underlying assets include "plan assets" of any of the foregoing by reason of an investment in the entity by such a plan or arrangement (a "**Benefit Plan Investor**"). For purposes of making the 25% determination, the value of any equity interests held by a person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or who provides investment advice for a fee (direct or indirect) with respect to such assets, or any "affiliate" of such a person (as defined under the Plan Asset Regulation), will be disregarded. Under the Plan Asset Regulation, an "affiliate" of a person includes any person, directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person, and "control" with respect to a person other than an individual, means the power to exercise a controlling influence over the management or policies of such person.

An "equity interest" is defined under the Plan Asset Regulation as an interest other than an instrument which is treated as indebtedness under applicable local law and which has no substantial equity features.

Senior Notes

The Co-Issuers believe that, at the time of their issuance, the Senior Notes should be treated as indebtedness without substantial equity features for purposes of the Plan Asset Regulation. This determination is based in part upon the traditional debt features of such Senior Notes, including the reasonable expectation of purchasers of such Senior Notes that they will be repaid when due, as well as the absence of conversion rights, warrants and other typical equity features. The Co-Issuers will therefore not monitor the investment by Benefit Plan Investors in the Senior Notes. It should be noted that the debt treatment of the Senior Notes for ERISA purposes could change subsequent to their issuance (i.e., they could be treated as equity) if the Issuers incur losses or the rating or other terms and conditions of the Senior Notes changes. The risk of recharacterization is enhanced for subordinate classes of the Senior Notes. The Co-Issuers have not obtained an opinion of counsel regarding the debt treatment of Senior Notes under local law or the Plan Asset Regulation.

Regardless of the characterization of the Senior Notes as debt or equity under the Plan Asset Regulation and regardless of the level of Benefit Plan Investor investment in any class of Securities, the acquisition or holding of Senior Notes by or on behalf of a Plan could give rise to a prohibited transaction if any of the Co-Issuers, the Trustee, the Servicer, the Initial Purchaser, the Preference Shares Paying Agent, other persons providing services in connection with the Issuers, or any of their respective affiliates is a "party in interest" or "disqualified person" with respect to that Plan. Persons acting on behalf of Plans that acquire the Securities should also consider that an indirect prohibited transaction could result in connection with the Issuer's acquisition of Collateral from the Initial Purchaser (or one of its affiliates) if the Initial Purchaser is a "disqualified person" or "party in interest" with respect to such Regulated Plans. Certain exemptions from the prohibited transaction rules could be applicable, however, depending in part upon the type of fiduciary making the decision to acquire Senior Notes and the circumstances under which such decision is made. Included among these exemptions are the statutory prohibited transactions exemption under Section 408(b)(17) of ERISA available to "service providers" to the Plan (other than a fiduciary with respect to the Plan assets used to acquire the Senior Notes or any of its affiliates) provided that the transaction is for "adequate consideration", United States Department of Labor ("**DOL**") Prohibited Transaction Class Exemption ("**PTCE**") 84-14, regarding transactions effected by independent "qualified professional asset managers"; PTCE 90-1, regarding investments by insurance company pooled separate

accounts; PTCE 91-38, regarding investments by bank collective investment funds; PTCE 95-60, regarding investments by insurance company general accounts; and PTCE 96-23, regarding transactions effected by certain "in-house asset managers." However, even if the conditions specified in one or more of these exemptions are met, the scope of the relief provided by these exemptions might or might not cover all acts which might be construed as prohibited transactions. There can be no assurance that any of these, or any other exemption, will be available with respect to any particular transaction involving the Senior Notes.

Similarly, the acquisition or holding of Senior Notes by or on behalf of foreign plans, governmental plans (as defined in Section 3(32) of ERISA) and certain church plans (as defined in Section 3(33) of ERISA), which are not subject to Title I of ERISA and/or Section 4975 of the Code, could give rise to a prohibited transaction or other liabilities under Similar Law.

By acquiring a Senior Note, each purchaser and transferee will be deemed to represent, warrant and covenant that either (i) it is not, and is not acquiring such Senior Note with the assets of, a Plan or a foreign, governmental or church plan subject to Similar Law, and throughout the holding and disposition of such Senior Note, it will not become or transfer its interest to any Plan or foreign, governmental or church plan or to an entity using the assets thereof, or (ii) the acquisition, holding and disposition of such Senior Note by the purchaser or transferee, throughout its holding and disposition of such Senior Note, will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a foreign, governmental or church plan, any violation of Similar Law), because such purchase, holding and disposition either (x) is not, and will not become, subject to such laws or (y) is covered by an exemption from all applicable prohibited transactions, all of the conditions of which are and will be satisfied upon its acquisition of, and throughout its holding and disposition of, such Senior Note. Each investor in a Senior Note will be deemed to represent, warrant and covenant that it will not sell, pledge or otherwise transfer such Senior Note in violation of the foregoing, and that it and any person causing it to acquire such Senior Note agree, to the fullest extent permissible under applicable law, to indemnify and hold harmless the Issuer, the Co-Issuer, the Trustee, the Servicer, the Initial Purchaser and their respective Affiliates from any cost, damage or loss incurred by them as a result of such purchaser not satisfying the foregoing or as a result of its transferring its interest to a Person not meeting the foregoing requirements. Any purported transfer of the Senior Note to a purchaser that does not comply with the requirements of the foregoing shall be null and void *ab initio*, and will vest in the transferee no rights against the Trustee or the Co-Issuers.

Class D Notes and Preference Shares

Although the Issuer will treat the Class D Notes as debt, this characterization is subject to uncertainty and the Class D Notes may be characterized as equity interests for purposes of the Plan Asset Regulation. The Preference Shares are equity of the Issuer and will be treated as equity interests for purposes of Section 3(42) of ERISA and the Plan Asset Regulation. Accordingly, the Issuer intends to limit the purchase and holding of each of the Class D Notes, the Class I Preference Shares and the Class II Preference Shares by Benefit Plan Investors to less than 25% of the aggregate outstanding amount of each of the Class D Notes, the Class I Preference Shares and the Class II Preference Shares (excluding for purposes of such determination any Class D Notes or Preference Shares held by "Controlling Persons" as defined below), by requiring each purchaser or transferee thereof to make certain representations and agreements with respect to its status as a Benefit Plan Investor or Controlling Person, and to agree to additional transfer restrictions described under "Transfer Restrictions." In making the 25% determination, Class D Notes and Preference Shares held by any person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuer or a person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Issuer or any "affiliate" (as defined in 29 C.F.R. Section 2510.3-101(f)(3)) of any such person (any such person, a "**Controlling Person**") (such as the Class D Notes and the Class II Preference Shares held by the Servicer or its affiliates and employees thereof) will be disregarded and not treated as outstanding. No purchase of a Class D Note or a Preference Share by, or proposed transfer to, a person that has represented that it is a Benefit Plan Investor or a Controlling Person will be permitted to the extent that such purchase or transfer

would result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of the Class D Notes, the Class I Preference Shares or the Class II Preference Shares, as applicable, (excluding for purposes of such determination any Class D Notes or Preference Shares, as applicable, held by any Controlling Person immediately after such purchase or proposed transfer (determined in accordance with Section 3(42) of ERISA, the Indenture and the Preference Share Documents).

In addition, the Servicer, the Preference Shares Paying Agent and the Trustee will agree that, after the initial distribution of the Class D Notes and the Preference Shares, neither they nor any of their respective affiliates will acquire any Class D Notes or Preference Shares (including pursuant to the Extension Procedure, a Refinancing, or the Amendment Buy-Out Option) unless such acquisition would not, as determined by the Trustee in reliance on representations made in the applicable transfer certificates with respect thereto, result in persons that have represented that they are Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of any of the Class D Notes, the Class I Preference Shares or the Class II Preference Shares immediately after such acquisition (determined in accordance with Section 3(42) of ERISA, the Indenture and the Preference Share Documents). The Class D Notes and the Preference Shares held as principal by the Servicer, the Trustee, any of their respective affiliates (as defined in the Plan Asset Regulation) and persons that have represented that they are Controlling Persons will be disregarded and will not be treated as outstanding for purposes of determining compliance with such 25% limitation to the extent that such Controlling Person is not a Benefit Plan Investor.

Each purchaser and transferee will be further required to represent, warrant and covenant that no transfer of a Class D Note or a Preference Share will be made to a Benefit Plan Investor or Controlling Person except as provided herein, and that it and any fiduciaries or other Person causing it to acquire such Securities agree, to the fullest extent permissible under applicable law, to indemnify and hold harmless the Issuer, the Co-Issuer, the Trustee, the Servicer, the Initial Purchaser, the Preference Shares Paying Agent and their respective Affiliates from any cost, damage or loss incurred by them as a result of any transfer of Class D Notes or Preference Shares, as applicable, in violation of the foregoing.

Independent Review and Consultation with Counsel

Any person proposing to purchase Securities with assets of an employee benefit plan or similar plan or arrangement, including a collective investment fund, insurance company general account or a foreign, governmental or church plan, should consult with its counsel with respect to, among other things, the limitations applicable to Benefit Plan Investors specified herein, and the potential applicability of ERISA, the Code and Similar Law to such investment and whether any exemption from the prohibited transaction provisions of ERISA and Section 4975 of the Code or such Similar Law would be applicable. Each investor must determine on its own whether all conditions of any applicable exemption have been satisfied. Moreover, each ERISA Plan fiduciary should determine whether, under the general fiduciary standards of investment prudence and diversification, an investment in the Securities is appropriate for the ERISA Plan, taking into account the overall investment policy of the ERISA Plan, the composition of the ERISA Plan's investment portfolio, and the risk/return characteristics of the Securities.

PLAN OF DISTRIBUTION

The Initial Purchaser will, pursuant to and subject to the terms and conditions of the Purchase Agreement, agree to purchase all of the Offered Notes. The offering price and other terms of the offering of the Offered Notes (the "Offering") may be changed at any time without notice. Pursuant to the Purchase Agreement, the Initial Purchaser will receive certain fees and expenses on the Closing Date.

On the Closing Date, (i) HFP and/or one or more of its subsidiaries are expected to purchase all of the Class II Preference Shares having an aggregate Face Amount equal to U.S. $75,000,000 directly from the Issuer at a discounted purchase price and (ii) the Servicer or one or more of its Affiliates (other than HFP or any of its subsidiaries) are expected to purchase certain of the Class D Notes having an aggregate principal amount equal to U.S.$16,000,000 directly from the Issuer at a discounted purchase price and are expected to purchase certain of the Holding Preference Shares having an aggregate Face

Amount equal to U.S.$20,000,000 directly from Investors Corp., at a discounted purchase price. In addition, the Issuer will agree to sell, and Investors Corp. will agree to purchase, all of the Class I Preference Shares in privately negotiated transactions. The Initial Purchaser is not acting as a placement agent or initial purchaser with respect to the Notes and the Preference Shares sold by the Issuer to HFP or any of its subsidiaries or the Servicer or any of its Affiliates.

Each purchaser of the Class D Notes and the Preference Shares on the Closing Date will be required to execute and deliver, a subscription agreement, in form and substance satisfactory to the Issuer, which will include, among other things, representations and warranties substantially similar to those described under "Transfer Restrictions."

The Issuer has been advised by the Initial Purchaser that it proposes to resell the Offered Notes (a) only to Qualified Institutional Buyers that are also Qualified Purchasers in reliance on an exemption under the Securities Act and (b) through Credit Suisse Securities (Europe) Limited acting as its sales agent to non U.S. persons in offshore transactions in reliance on Regulation S. Any offer or sale of Offered Notes in the United States in the Offering will be made by the Initial Purchaser or other broker-dealers, including Affiliates of the Initial Purchaser, who are registered as broker-dealers under the Exchange Act.

The Initial Purchaser will represent and agree that it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Offered Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Offered Notes in, from or otherwise involving the United Kingdom.

The Initial Purchaser has represented and agreed that:

(i) it will not underwrite or place Offered Notes otherwise than in conformity with the provisions of the Investment Intermediaries Act, 1995 of Ireland, as amended, including, without limitation, Sections 9 and 23 (including advertising restrictions made thereunder) thereof and the codes of conduct made under Section 37 thereof or, in the case of a credit institution exercising its rights under the Banking Consolidation Directive (2000/12/EC of 20th March, 2000) in conformity with the codes of conduct or practice made under Section 117(1) of the Central Bank Act, 1989, of Ireland, as amended, in each case with respect to anything done by it in relation to the Offered Notes if operating in, or otherwise involving, Ireland;

(ii) in connection with offers or sales of Offered Notes, it has only issued or passed on, and will only issue or pass on, in Ireland, any document received by it in connection with the issue of such Securities to persons who are persons to whom the documents may otherwise lawfully be issued or passed on; and

(iii) in respect of a local offer (within the meaning of Section 38(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 of Ireland (the "2005 Act")) of Offered Notes in Ireland, it has complied and will comply with Section 49 of the 2005 Act.

The Initial Purchaser has agreed that it has not made and will not make any invitation to the public in the Cayman Islands to subscribe for the Offered Notes.

The Issuer extends to each prospective investor the opportunity, prior to the consummation of the sale of the Offered Notes, to ask questions of, and receive answers from the Issuer or a person or persons acting on behalf of the Issuer, including the Initial Purchaser, concerning the Offered Notes and the terms and conditions of this Offering and to obtain any additional information it may consider necessary in making an informed investment decision and any information in order to verify the accuracy of the information set forth herein, to the extent the Issuer possesses the same or can acquire the same without

unreasonable effort or expense. Requests for such additional information can be directed to the Initial Purchaser at 11 Madison Avenue, New York, New York 10010, Attention: CDO Group.

No action is being taken or is contemplated by the Issuer that would permit a public offering of the Offered Notes or possession or distribution of any Offering Memorandum (in preliminary or final form) or any amendment thereof, any supplement thereto or any other offering material relating to the Offered Notes in any jurisdiction where, or in any other circumstances in which, action for those purposes is required. The Initial Purchaser understands and agrees that it is solely responsible for its own compliance with all laws applicable in each jurisdiction in which it offers and sells Offered Notes or distributes any Offering Memorandum (in preliminary or final form) or any amendments thereof or supplements thereto or any other material and it agrees to comply with all of these laws.

The Issuer has agreed to indemnify the Initial Purchaser, the Servicer, the Administrator, the Collateral Administrator, and the Trustee against certain liabilities, including liabilities under the Securities Act, or to contribute to payments it may be required to make in respect thereof.

One or more Affiliates of the Initial Purchaser are financing the acquisition of Collateral Obligations by the Issuer prior to the Closing Date. In return for bearing the risk of loss on the Collateral Obligations acquired prior to the Closing Date the Servicer or one or more of its Affiliates will be entitled to retain all interest and any fees and commissions (net of any financing fees payable to the Pre-Closing Parties) paid by the obligors of such Collateral Obligations or accrued from the time of purchase to the Closing Date. In addition, a broker-dealer Affiliate of the Servicer may receive a fee for placing certain of the Holding Preference Shares and/or certain of the Securities. The Initial Purchaser or its Affiliates shall also provide financing to the Servicer or its Affiliates in connection with their purchase of Class II Preference Shares which will be secured by a lien on such financed Class II Preference Shares.

In addition to the foregoing activities, the Initial Purchaser or one of its Affiliates holds equity securities of HFT issued in connection with HFT's acquisition of the limited partnership interests in HFP and acted as a co-manager in connection with the offering of such equity securities.

The Initial Purchaser or its Affiliates may own positions in and will likely have placed or underwritten certain of the Collateral Obligations (or other obligations of the issuers of Collateral Obligations) when they were originally issued and may have provided or be providing investment banking services and other services to issuers of certain Collateral Obligations. It is expected that from time to time the Servicer will purchase from or sell Collateral Obligations through or to the Initial Purchaser or its Affiliates (including a significant portion of the Collateral Obligations to be purchased on or prior to the Closing Date) and that one or more Affiliates of the Initial Purchaser may act as counterparty with respect to all or a portion of the Synthetic Securities, the Participating Institution with respect to Participations, a counterparty under a Hedge Agreement and/or a counterparty with respect to securities lending transactions (if any). The Initial Purchaser and its Affiliates may act as placement agent and/or initial purchaser in other transactions involving issues of collateralized debt obligations or other investment funds with assets similar to those of the Issuer, which may have an adverse effect on the availability of collateral for the Issuer.

The Initial Purchaser and its Affiliates may purchase Securities for their own account.

SETTLEMENT AND CLEARING

Book Entry Registration of the Global Notes

So long as the Depository, or its nominee, is the registered owner or Holder of a Global Note, the Depository or the nominee, as the case may be, will be considered the sole owner or Holder of the Senior Notes represented by a Global Note for all purposes under the Indenture, the Issuer Charter and the Global Notes, and members of, or participants in, the Depository as well as any other persons on whose behalf the participants may act (including Clearstream and Euroclear and account holders and participants therein) will have no rights under the Indenture, the Issuer Charter or a Global Note. Owners of beneficial interests in a Global Note will not be considered to be owners or Holders of the related Senior

Note under the Indenture or the Issuer Charter. Unless the Depository notifies the Co-Issuers that it is unwilling or unable to continue as depositary for a Global Note or ceases to be a "clearing agency" registered under the Exchange Act, owners of a beneficial interest in a Global Note will not be entitled to have any portion of a Global Note registered in their names, will not receive or be entitled to receive physical delivery of Senior Notes in certificated form and will not be considered to be the owners or Holders of any Senior Notes under the Indenture. In addition, no beneficial owner of an interest in a Global Note will be able to transfer that interest except in accordance with the Depository's applicable procedures (in addition to those under the Indenture and, if applicable, those of Euroclear and Clearstream).

Investors may hold their interests in a Regulation S Global Note directly through Clearstream or Euroclear, if they are participants in Clearstream or Euroclear, or indirectly through organizations that are participants in Clearstream or Euroclear. Clearstream and Euroclear will hold interests in the Regulation S Global Notes on behalf of their participants through their respective depositories, which in turn will hold the interests in Regulation S Global Notes in customers' securities accounts in the depositories' names on the books of the Depository. Investors may hold their interests in a Rule 144A Global Note directly through the Depository if they are participants in the Depository, or in directly through organizations that are participants in the Depository.

Payments of principal of, or interest or other distributions on a Global Note will be made to the Depository or its nominee, as the registered owner thereof. The Co-Issuers, the Trustee, the Preference Shares Paying Agent, the paying agents, the Initial Purchaser, the Servicer and their respective Affiliates will not have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Note or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

The Co-Issuers expect that the Depository or its nominee, upon receipt of any payment of principal, interest, or other distributions in respect of a Global Note representing any Senior Notes, as the case may be, held by it or its nominee, will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the stated aggregate principal amount or number of a Global Note for the Senior Notes, as shown on the records of the Depository or its nominee. The Co-Issuers also expect that payments by participants to owners of beneficial interests in a Global Note held through the participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees for those customers. The payments will be the responsibility of the participants.

Global Note Settlement Procedures

Transfers between the participants in the Depository will be effected in the ordinary way in accordance with the Depository rules and will be settled in immediately available funds. The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests in a Global Note to these persons may be limited. Because the Depository can only act on behalf of participants, who in turn act on behalf of indirect participants and certain banks, the ability of a person holding a beneficial interest in a Global Note to pledge its interest to persons or entities that do not participate in the Depository system, or otherwise take actions in respect of its interest, may be affected by the lack of a physical certificate of the interest. Transfers between participants in Euroclear and Clearstream will be effected in the ordinary way in accordance with their respective rules and operating procedures.

Subject to compliance with the transfer restrictions applicable to the Securities described above and under "Transfer Restrictions," cross-market transfers between the Depository, on the one hand, and directly or indirectly through Euroclear or Clearstream participants, on the other, will be effected in the Depository in accordance with the Depository rules on behalf of Euroclear or Clearstream, as the case may be, by its respective depositary; *however*, the cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in the system in accordance with its rules and procedures and within its established deadlines (Brussels time). Euroclear

or Clearstream, as the case may be, will if the transaction meets its settlement requirements, deliver instructions to its respective depositary to take action to effect final settlement on its behalf by delivering or receiving interests in a Senior Note represented by a Regulation S Global Note in the Depository and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to the Depository. Clearstream participants and Euroclear participants may not deliver instructions directly to the depositories of Clearstream or Euroclear.

Because of time zone differences, cash received in Euroclear or Clearstream as a result of sales of interests in a Regulation S Global Note by or through a Euroclear or Clearstream participant to the Depository participant will be received with value on the Depository settlement date but will be available in the relevant Euroclear or Clearstream cash account only as of the business day following settlement in the Depository.

The Depository has advised the Issuer that it will take any action permitted to be taken by a Holder of Securities (including the presentation of Securities for exchange as described above) only at the direction of one or more participants in the Depository to whose account with the Depository interests in the Securities are credited and only in respect of the portion of the Aggregate Outstanding Amount of the Securities as to which the participant or participants has or have given the direction.

The Depository has advised the Issuer as follows: The Depository is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the UCC and a "Clearing Agency" registered pursuant to the provisions of Section 17A of the Exchange Act. The Depository was created to hold securities for its participants and facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes in accounts of its participants, thereby eliminating the need for physical movement of certificates. Participants in the Depository include securities brokers and dealers, banks, trust companies, and clearing corporations and may include certain other organizations. Indirect access to the Depository system is available to others such as banks, brokers, dealers, and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

Although the Depository, Clearstream and Euroclear have agreed to the foregoing procedures to facilitate transfers of interests in Regulation S Global Notes among participants of the Depository, Clearstream and Euroclear, they are under no obligation to perform or continue to perform the procedures, and the procedures may be discontinued at any time. Neither the Co-Issuers nor the Trustee will have any responsibility for the performance by the Depository, Clearstream, or Euroclear or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

TRANSFER RESTRICTIONS

Because of the following restrictions, purchasers are advised to consult legal counsel prior to making any offer, resale, pledge or transfer of the Securities. Purchasers of Senior Notes represented by an interest in a Regulation S Global Note are advised that such interests are not transferable to U.S. Persons at any time except in accordance with the following restrictions.

Each prospective purchaser of Securities that is a U.S. Person or is purchasing the Securities in a non-Offshore Transaction (a "**U.S. Offeree**"), by accepting delivery of this Offering Memorandum, will be deemed to have represented and agreed as follows:

(1) The U.S. Offeree acknowledges that this Offering Memorandum is personal to the U.S. Offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the Securities other than pursuant to transactions exempt from the registration requirements under the Securities Act or in Offshore Transactions in accordance with Regulation S. Distribution of this Offering Memorandum to any person other than the U.S. Offeree and those persons, if any, retained to advise the U.S. Offeree with respect thereto, and

other persons that are, (a) in the case of the Senior Notes, Qualified Institutional Buyers or non-U.S. Persons or, (b) in the case of the Class D Notes or the Preference Shares, Qualified Institutional Buyers is unauthorized and any disclosure of any of its contents, without the prior written consent of the Co-Issuers, is prohibited.

(2) The U.S. Offeree agrees to make no photocopies of this Offering Memorandum or any documents referred to herein and, if the U.S. Offeree does not purchase the Securities or the offering is terminated, to return this Offering Memorandum and all documents referred to herein to the Initial Purchaser at 11 Madison Avenue, New York, New York 10010, Attention: CDO Group.

Under the Indenture (with respect to the Co-Issuers) and the Preference Share Documents (with respect to the Issuer), the Co-Issuers or the Issuer will agree to comply with the requirements of Rule 144A relative to the dissemination of information to prospective purchasers in the secondary market. See "Available Information."

The Securities have not been registered under the Securities Act and, (a) in the case of the Senior Notes, may not be offered or sold in non-Offshore Transactions or to, or for the account or benefit of, U.S. Persons, except to Qualified Institutional Buyers in transactions exempt from the registration requirements of the Securities Act who are also Qualified Purchasers and, (b) in the case of the Class D Notes or the Preference Shares, may only be offered or sold to Qualified Institutional Buyers in transactions exempt from the registration requirements of the Securities Act who are also Qualified Purchasers.

Any purported transfer of a Security not in accordance with this section shall be null and void and shall not be given effect for any purpose hereunder.

Transfer Restrictions Applicable to Rule 144A Global Notes

Each purchaser of a beneficial interest in Senior Notes represented by a Rule 144A Global Note will be deemed to represent and agree (on its own behalf, or if the purchaser is acquiring the Senior Notes for any account, on behalf of each such account) (and each transferee of a beneficial interest in a Rule 144A Global Note will be required or deemed to represent and agree) as follows (terms used in this paragraph that are defined in Rule 144A or Regulation S are used herein as defined therein):

(1) (A) The purchaser is a Qualified Institutional Buyer and a Qualified Purchaser, (B) the purchaser is purchasing the Senior Notes for its own account or the account of another Qualified Purchaser that is also a Qualified Institutional Buyer as to which the purchaser exercises sole investment discretion, (C) the purchaser and any such account is acquiring the Senior Notes as principal for its own account for investment and not for sale in connection with any distribution thereof, (D) the purchaser and any such account was not formed solely for the purpose of investing in the Senior Notes (except when each beneficial owner of the purchaser or any such account is a Qualified Purchaser), (E) to the extent the purchaser (or any account for which it is purchasing the Senior Notes) is a private investment company formed on or before April 30, 1996, the purchaser and each such account has received the necessary consent from its beneficial owners, (F) the purchaser is not a broker-dealer that owns and invests on a discretionary basis less than $25,000,000 in securities of unaffiliated issuers, (G) the purchaser is not a pension, profit-sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants or affiliates may designate the particular investment to be made, (H) the purchaser agrees that it and each such account shall not hold such Senior Notes for the benefit of any other Person and shall be the sole beneficial owner thereof for all purposes and that it shall not sell participation interests in the Senior Notes or enter into any other arrangement pursuant to which any other Person shall be entitled to a beneficial interest in the distributions on the Senior Notes (except when each beneficial owner of the purchaser or any such account is a Qualified Purchaser), (I) the Senior Notes purchased directly or indirectly by the purchaser or any account for which it is purchasing the Senior Notes constitute an investment of no more than 40% of the

purchaser's and each such account's assets (except when each beneficial owner of the purchaser or any such account is a Qualified Purchaser), (J) the purchaser and each such account is purchasing the Senior Notes in a principal amount of not less than the minimum denomination requirement for the purchaser and each such account, (K) the purchaser will provide notice of the transfer restrictions set forth in the Indenture (including the exhibits thereto) to any transferee of its Senior Notes and (L) the purchaser understands and agrees that any purported transfer of the Senior Notes to a purchaser that does not comply with the requirements of this paragraph (1) shall be null and void *ab initio*.

(2) The purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in Senior Notes, and the purchaser, and any account for which it is acting, are each able to bear the economic risk of the purchaser's or its investment.

(3) The purchaser understands that the Senior Notes are being offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Senior Notes have not been and will not be registered under the Securities Act, and, if in the future the purchaser decides to offer, resell, pledge or otherwise transfer the Senior Notes or any beneficial interest therein, such Senior Notes or any beneficial interest therein may be offered, resold, pledged or otherwise transferred only in accordance with the applicable legend in respect of such Senior Notes set forth in (6) below and the restrictions set forth in the Indenture. The purchaser acknowledges that no representation is made by the Co-Issuers, the Servicer or the Initial Purchaser as to the availability of any exemption under the Securities Act or other applicable laws of any jurisdiction for resale of the Senior Notes.

(4) The purchaser is not purchasing the Senior Notes or any beneficial interest therein with a view to the resale, distribution or other disposition thereof in violation of the Securities Act. The purchaser understands that an investment in the Senior Notes involves certain risks, including the risk of loss of its entire investment in the Senior Notes under certain circumstances. The purchaser has had access to such financial and other information concerning the Co-Issuers, the Senior Notes and the Collateral as it deemed necessary or appropriate in order to make an informed investment decision with respect to its purchase of the Senior Notes or any beneficial interest therein, including an opportunity to ask questions of and request information from the Co-Issuers and the Initial Purchaser.

(5) In connection with the purchase of Senior Notes or any beneficial interest therein (*provided* that no such representation is made with respect to the Servicer by any Affiliate of or account serviced by the Servicer): (i) none of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or the Servicer is acting as a fiduciary or financial or investment adviser for the purchaser, (ii) the purchaser is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or the Servicer or any of their respective Affiliates other than in the Offering Memorandum and any representations expressly set forth in a written agreement with such party; (iii) none of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or the Servicer or any of their respective Affiliates has given to the purchaser (directly or indirectly through any other person) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of the Senior Notes or an investment therein; (iv) the purchaser has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to the Indenture) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or

the Servicer or any of their respective Affiliates; (v) the purchaser has determined that the rates, prices or amounts and other terms of the purchase and sale of the Senior Notes or any beneficial interest therein reflect those in relevant market for similar transactions; (vi) if the purchaser is acting for the account of another investor, the purchaser represents that the investment on behalf of such account is based on a determination that the investment is suitable based on the risks referred to in this Offering Memorandum (including, without limitation, the "Risk Factors" and the "Transfer Restrictions Applicable to Rule 144A Global Notes"), given the investment objectives of the account for which the purchase is being made, and that the investment is consistent with any applicable legal requirements; (vii) the purchaser is purchasing the Senior Notes or any beneficial interest therein with a full understanding of all of the terms, conditions and risks thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; and (viii) the purchaser is a sophisticated investor.

(6) (i) The purchaser understands that the Senior Notes offered to Qualified Institutional Buyers in reliance on the exemption from the registration requirements under the Securities Act provided by Rule 144A (a) will bear the legend substantially in the form set forth below unless the Co-Issuers determine otherwise in accordance with applicable law, (b) will be represented by one or more Rule 144A Global Notes, and (c) may not at any time be resold, pledged or transferred to U.S. Persons that are not Qualified Institutional Buyers and Qualified Purchasers. Before any interest in a Rule 144A Global Note may be offered, resold, pledged or otherwise transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Note, the transferor will be required to provide the Trustee with a written certification as to compliance with the transfer restrictions.

THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND THE CO-ISSUERS HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "**INVESTMENT COMPANY ACT**"). THE PURCHASER HEREOF, BY PURCHASING THIS NOTE, AGREES FOR THE BENEFIT OF THE CO-ISSUERS THAT THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (A)(1) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE IN ACCORDANCE WITH RULE 144A OR (2) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT AND, IN CASE OF CLAUSE (1), TO A PURCHASER THAT (W) IS A QUALIFIED PURCHASER WITHIN THE MEANING OF SECTION 3(c)(7) OF THE INVESTMENT COMPANY ACT THAT WAS NOT FORMED FOR THE PURPOSE OF INVESTING IN THE ISSUER (EXCEPT WITH EACH BENEFICIAL OWNER OF THE PURCHASER IS A QUALIFIED PURCHASER), (X) TO THE EXTENT THE PURCHASER (OR ANY ACCOUNT FOR WHICH IT IS PURCHASING THE NOTES) IS A PRIVATE INVESTMENT COMPANY FORMED ON OR BEFORE APRIL 30, 1996, HAS RECEIVED THE NECESSARY CONSENT FROM ITS BENEFICIAL OWNERS, (Y) IS NOT A BROKER-DEALER THAT OWNS AND INVESTS ON A DISCRETIONARY BASIS LESS THAN $25,000,000 IN SECURITIES OF UNAFFILIATED ISSUERS, AND (Z) IS NOT A PENSION, PROFIT-SHARING OR OTHER RETIREMENT TRUST FUND OR PLAN IN WHICH THE PARTNERS, BENEFICIARIES OR PARTICIPANTS OR AFFILIATES MAY DESIGNATE THE PARTICULAR INVESTMENT TO BE MADE, (B) IN A PRINCIPAL AMOUNT OF NOT LESS THAN U.S.$250,000 FOR THE PURCHASER AND FOR EACH ACCOUNT FOR WHICH IT IS ACTING AND (C) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES. EACH TRANSFEROR OF THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN WILL PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS AS SET FORTH HEREIN TO ITS TRANSFEREE. EACH PURCHASER OF THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN WILL BE

DEEMED TO HAVE MADE THE APPLICABLE REPRESENTATIONS AND AGREEMENTS SET FORTH IN THE INDENTURE. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT AND WILL NOT OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE CO-ISSUERS, THE TRUSTEE OR ANY INTERMEDIARY. IN ADDITION TO THE FOREGOING, THE CO-ISSUERS MAINTAIN THE RIGHT TO RESELL NOTES OR ANY BENEFICIAL INTEREST THEREIN PREVIOUSLY TRANSFERRED TO NON-PERMITTED U.S. HOLDERS (AS DEFINED IN THE INDENTURE) IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THE INDENTURE.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE INDENTURE REGISTRAR FOR REGISTRATION OF TRANSFER OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THE FAILURE TO PROVIDE THE ISSUER, THE TRUSTEE AND ANY PAYING AGENT WITH THE APPLICABLE U.S. FEDERAL INCOME TAX CERTIFICATIONS (GENERALLY, AN INTERNAL REVENUE SERVICE FORM W-9 (OR SUCCESSOR APPLICABLE FORM) IN THE CASE OF A PERSON THAT IS A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(A)(30) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR AN APPLICABLE INTERNAL REVENUE SERVICE FORM W-8 (OR SUCCESSOR APPLICABLE FORM) IN THE CASE OF A PERSON THAT IS NOT A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(A)(30) OF THE CODE) MAY RESULT IN U.S. FEDERAL WITHHOLDING FROM PAYMENTS TO THE HOLDER IN RESPECT OF THIS NOTE.

THE PURCHASER HEREOF, BY PURCHASING THIS NOTE, AGREES FOR THE BENEFIT OF THE CO-ISSUERS THAT THIS NOTE AND ANY BENEFICIAL INTEREST HEREIN MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A PERSON THAT REPRESENTS, WARRANTS AND COVENANTS THAT EITHER (I) IT IS NOT, AND IS NOT USING THE ASSETS OF, AND THROUGHOUT THE HOLDING AND DISPOSITION OF SUCH NOTES WILL NOT BECOME OR TRANSFER ITS INTEREST TO, AN "EMPLOYEE BENEFIT PLAN" WITHIN THE MEANING OF SECTION 3(3) OF THE UNITED STATES EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("**ERISA**"), THAT IS SUBJECT TO TITLE I OF ERISA, A "PLAN" DESCRIBED IN SECTION 4975(e)(1) OF THE UNITED STATES INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "**CODE**") THAT IS SUBJECT TO SECTION 4975 OF THE CODE, OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE THE ASSETS OF ANY SUCH PLAN, OR A GOVERNMENTAL, FOREIGN OR CHURCH PLAN SUBJECT TO ANY FEDERAL, STATE, FOREIGN OR LOCAL LAW THAT IS SUBSTANTIALLY SIMILAR TO THE PROVISIONS OF SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR (II) ITS PURCHASE, HOLDING AND DISPOSITION OF THIS NOTE WILL NOT RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE (OR IN THE CASE OF ANY GOVERNMENTAL, FOREIGN OR CHURCH PLAN, ANY VIOLATION OF FEDERAL, STATE, FOREIGN OR LOCAL LAW SUBSTANTIALLY SIMILAR TO SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE) BECAUSE SUCH PURCHASE, HOLDING AND DISPOSITION OF SUCH NOTE EITHER (A) IS NOT, AND WILL NOT BECOME, SUBJECT TO SUCH LAWS, OR (B) IS COVERED BY AN EXEMPTION FROM ALL APPLICABLE PROHIBITED TRANSACTIONS, ALL OF THE CONDITIONS OF WHICH ARE AND WILL BE SATISFIED UPON THE ACQUISITION OF, AND THROUGHOUT ITS HOLDING AND DISPOSITION OF, THIS NOTE. ANY PURPORTED

TRANSFER OF THIS NOTE THAT DOES NOT COMPLY WITH THESE REQUIREMENTS SHALL BE NULL AND VOID *AB INITIO*.

(ii) In addition, each Regulation S Global Note representing any Senior Note will contain the following additional legend:

EACH TRANSFEREE OF THE NOTE REPRESENTED HEREBY WILL, IF REQUIRED BY THE INDENTURE, BE REQUIRED TO DELIVER A TRANSFEREE CERTIFICATE IN A FORM PRESCRIBED IN THE INDENTURE OR WILL BE DEEMED TO HAVE MADE THE REPRESENTATIONS AND AGREEMENTS SET FORTH IN THE INDENTURE.

(7) The purchaser will provide notice to each person to whom it proposes to transfer any interest in the Senior Notes of the transfer restrictions and representations set forth in the Indenture, including the exhibits referenced therein.

(8) The purchaser understands that the Indenture permits the Issuer to compel any Holder of the Senior Notes or any beneficial interest therein who is a U.S. Person and who is determined not to have been both (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser at the time of acquisition of the Senior Notes or any beneficial interest therein to sell such interest, or to sell such interest on behalf of such purchaser, to a person that is both (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser, in a transaction meeting the requirements of Rule 144A or to a person that is a non-U.S. Person in an Offshore Transaction meeting the requirements of Regulation S.

(9) The purchaser understands that in the case of any supplemental indenture to the Indenture that requires consent of one or more Holders of the Senior Notes, the Indenture permits the Amendment Buy-Out Purchaser to purchase Senior Notes from any Non-Consenting Holder thereof at the applicable Amendment Buy-Out Purchase Price; and such Non-Consenting Holder will be required to sell such Senior Note to the Amendment Buy-Out Purchaser at such price.

(10) The purchaser understands that the Stated Maturity of the Senior Notes is subject to multiple extensions of four years each without consent of any Holders of Securities at the option of the Issuer, if directed by the Servicer, upon satisfaction of certain conditions.

(11) The purchaser acknowledges that no action was taken or is being contemplated by the Co-Issuers that would permit a public offering of the Senior Notes in any jurisdiction. The purchaser further acknowledges that no action was taken or is being contemplated by the Co-Issuers that would permit possession or distribution of the Offering Memorandum or any amendment thereof or supplement thereto or any other offering material relating to the Senior Notes in any jurisdiction (other than Ireland) where, or in any circumstances in which, action for those purposes is required. Nothing contained in the offering memorandum relating to the Senior Notes shall constitute an offer to sell or a solicitation of an offer to purchase any Senior Notes in any jurisdiction where it is unlawful to do so absent the taking of such action or the availability of an exemption therefrom.

(12) The purchaser will not, at any time, offer to buy or offer to sell the Senior Notes or any beneficial interest therein by any form of general solicitation or advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or seminar or meeting whose attendees have been invited by general solicitations or advertising.

(13) (a) Either (i) the purchaser is not, and is not using the assets of, and throughout the holding and disposition of the Senior Notes will not become or transfer its interest to, an employee benefit plan or other fund or arrangement subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), a plan subject to Section 4975(e) of the Internal Revenue Code of 1986 (the "**Code**") or a governmental, foreign or church plan which is subject to any federal, state, foreign or local law that is substantially similar to the provisions of

Section 406 of ERISA or Section 4975 of the Code or (ii) the purchaser's purchase, holding and disposition of such Senior Notes will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any federal, state, foreign or local law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code) because such purchase, holding and disposition of such Senior Notes either (x) is not, and will not become, subject to such laws, or (y) is covered by an exemption from all applicable prohibited transactions, all of the conditions of which are and will be satisfied upon the acquisition of, and throughout its holding and disposition of, such Senior Notes; (b) the purchaser shall not transfer an interest in such Senior Notes to any transferee unless such transferee meets the foregoing requirements; and (c) the purchaser and any fiduciaries or other Person causing it to acquire such Senior Notes agree, to the fullest extent permissible under applicable law, to indemnify and hold harmless the Issuer, the Co-Issuer, the Trustee, the Servicer, the Initial Purchaser, the Preference Shares Paying Agent and their respective Affiliates from any cost, damage or loss incurred by them as a result of such purchaser not meeting the foregoing requirements or as a result of its transferring its interest to a transferee not meeting the foregoing requirements. Any purported purchase or transfer of the Senior Notes to a purchaser or transferee that does not comply with the requirements of this paragraph (13) shall be null and void *ab initio*.

(14) The purchaser understands that the Co-Issuers may receive a list of participants holding positions in its securities from one or more book-entry depositories.

(15) The purchaser agrees that it will not offer or sell, transfer, assign, or otherwise dispose of the Senior Notes or any interest therein except (i) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable state securities laws or the applicable laws of any other jurisdiction and (ii) in accordance with the Indenture, to which provisions the purchaser hereby agrees it is subject.

(16) The purchaser is not a member of the public in the Cayman Islands.

(17) The beneficial owner will agree to treat the Senior Notes as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

(18) To the extent required, as determined by the Issuer or the Servicer on behalf of the Issuer, the Issuer may, upon notice to the Trustee, impose additional transfer restrictions on the Senior Notes to comply with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the U.S. Patriot Act) and other similar laws or regulations, including, without limitation, requiring each transferee of a Senior Note to make representations to the Issuer in connection with such compliance.

(19) The purchaser understands that, to the extent required, as determined by the Co-Issuers, the Co-Issuers may amend the Indenture and, with respect to the Issuer only, the Preference Share Documents, without the consent of any Holders of the Securities and without regard to whether or not such amendment adversely affects the interest of the Holders of the Securities to (i) remove any restrictions and limitations imposed on the Co-Issuers or the Holders of the Securities that solely relate to compliance with Section 3(c)(7) and (ii) add any requirements that are necessary for compliance with Rule 3a-7 if, at any time following the Closing Date, the Co-Issuers elect to rely on exclusion from the definition of "investment company" under Rule 3a-7 in lieu of the exclusion under Section 3(c)(7).

(20) The purchaser understands that the Issuer may enter into amendments or modifications to the Servicing Agreement without the consent of any Holders of the Securities and without regard to whether or not such amendment adversely affects the interest of the Holders of the Securities.

(21) The purchaser agrees not to cause the filing of a petition in bankruptcy or winding up against the Issuer before one year and one day have elapsed since the payment in full of the Notes or, if longer, the applicable preference period in effect.

(22) The purchaser acknowledges that the Co-Issuers, the Servicer, the Initial Purchaser and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations and agreements and agrees that if any of the acknowledgments, representations or agreements deemed to have been made by it by its purchase of the Senior Notes or any beneficial interest therein are no longer accurate, it shall promptly notify the Co-Issuers, the Servicer and the Initial Purchaser. If the purchaser is acquiring any Senior Notes or any beneficial interest therein as a fiduciary or agent for one or more institutional accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing acknowledgments, representations and agreements on behalf of such account.

Transfer Restrictions Applicable to Regulation S Global Notes

Each purchaser of a beneficial interest in a Regulation S Global Note will be further deemed (and each transferee of a beneficial interest in a Regulation S Global Note will be required or deemed), in addition to making the representations set forth in paragraphs (3), (4), (5) and (7) through (22) above in "—Transfer Restrictions Applicable to Rule 144A Global Notes," to represent and agree as follows:

The purchaser is aware that the Senior Notes have not been and will not be registered under the Securities Act or any other applicable state securities law and the sale of such Senior Notes or any beneficial interest therein to it is being made in reliance on the exemption from registration provided by Regulation S and understands that the Senior Notes offered in reliance on Regulation S will bear the appropriate legend set forth in paragraph (6) above in "—Transfer Restrictions Applicable to Rule 144A Global Notes" and will be represented by one or more Regulation S Global Notes. The purchaser acknowledges that no representation is made by the Co-Issuers or the Initial Purchaser as to the availability of any exemption under the Securities Act or other applicable laws of any other jurisdiction for resale of the Senior Notes. The purchaser and each beneficial owner of the Senior Notes or any beneficial interest therein that it holds is not, and will not be, a U.S. Person as defined in Regulation S and its purchase of the Senior Notes or any beneficial interest therein will comply with all applicable laws in any jurisdiction in which it resides or is located and will be in a principal amount of not less than U.S.$ 250,000. The purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in Senior Notes or any beneficial interest therein, and it, and any accounts for which it is acting are each able to bear the economic risk of its investment. Before any interest in a Regulation S Global Note may be offered, resold, pledged or otherwise transferred to a person who takes delivery in the form of an interest in a Rule 144A Global Note, the transferor and the transferee will be required to provide the Trustee with written certifications as to compliance with the transfer restrictions.

Transfer Restrictions Applicable to Class D Notes

Each purchaser of Class D Notes acquiring such Class D Notes in the initial offering will be required to enter into a Subscription Agreement with the Issuer (or otherwise provides the Issuer with a certification) pursuant to which each such purchaser will be required to represent and agree (and each subsequent transferee will be required to represent and agree), on its own behalf as follows (terms used in this paragraph that are defined in Rule 144A are used herein as defined therein):

(1) The purchaser is a Qualified Institutional Buyer and is aware that the sale of Class D Notes to it is being made in reliance on an exemption from the registration requirements provided by Section 4(2) and is acquiring the Class D Notes for its own account (and not for the account of any family or other trust, any family member or any other person). In addition, the purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in Class D Notes, and the purchaser is able to bear the economic risk of the purchaser's investment.

(2) The purchaser understands that the Class D Notes are being offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Class D Notes have not been and will not be registered under the Securities Act, and, if in the future the purchaser decides to offer, resell, pledge or otherwise transfer the Class D Notes, such Class D Notes may be offered, resold, pledged or otherwise transferred only in accordance with the legend in respect of such Class D Notes set forth in (7) below and the restrictions set forth in the Indenture. The purchaser acknowledges that no representation is made by the Issuer, the Servicer or the Initial Purchaser or any of their respective Affiliates as to the availability of any exemption under the Securities Act or other applicable laws of any jurisdiction for resale of the Class D Notes.

(3) The purchaser agrees that it will not offer or sell, transfer, assign, or otherwise dispose of the Class D Notes or any interest therein except (i) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable state securities laws or the applicable laws of any other jurisdiction and (ii) in accordance with the Indenture, to which provisions the purchaser agrees it is subject.

(4) The purchaser is not purchasing the Class D Notes with a view to the resale, distribution or other disposition thereof in violation of the Securities Act. The purchaser understands that the Class D Notes will be highly illiquid and are not suitable for short-term trading. The Class D Notes are a leveraged investment in the Collateral Obligations that may expose the Class D Notes to disproportionately large changes in value. Payments in respect of the Class D Notes are not guaranteed as they are dependent on the performance of the Issuer's portfolio of Collateral Obligations. The purchaser understands that an investment in the Class D Notes involves certain risks, including the risk of loss of all or a substantial part of its investment. The purchaser has had access to such financial and other information concerning the Issuer, the Class D Notes and the Collateral as it deemed necessary or appropriate in order to make an informed investment decision with respect to its purchase of the Class D Notes, including an opportunity to ask questions of and request information from the Issuer and the Initial Purchaser.

(5) In connection with the purchase of Class D Notes (*provided* that no such representation is made with respect to the Servicer by any Affiliate of or account serviced by the Servicer): (i) none of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty or the Servicer is acting as a fiduciary or financial or investment adviser for the purchaser, (ii) the purchaser is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty or the Servicer or any of their respective Affiliates other than in the Offering Memorandum and any representations expressly set forth in a written agreement with such party; (iii) none of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty or the Servicer or any of their respective Affiliates has given to the purchaser (directly or indirectly through any other Person or documentation for the Class D Notes) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of the Class D Notes or an investment therein; (iv) the purchaser has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to the documentation for the Class D Notes) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty or the Servicer or any of their respective Affiliates; (v) the purchaser has determined that the rates, prices or amounts and other terms of the purchase and sale of the Class D Notes reflect those in relevant market for similar transactions; (vi) the purchaser is purchasing the Class D Notes with a full understanding of all of the terms, conditions and risks thereof (economic and otherwise), and it is capable of assuming

and willing to assume (financially and otherwise) those risks; and (vii) the purchaser is a sophisticated investor.

(6) (A) The purchaser is (a) a Qualified Institutional Buyer and (b) a Qualified Purchaser, (B) the purchaser is acquiring the Class D Notes as principal for its own account for investment and not for sale in connection with any distribution thereof, (C) the purchaser was not formed solely for the purpose of investing in the Class D Notes (except when each beneficial owner of the purchaser is a Qualified Purchaser), (D) to the extent the purchaser is a private investment company formed before April 30, 1996, the purchaser has received the necessary consent from its beneficial owners, (E) the purchaser is not a broker-dealer that owns and invests on a discretionary basis less than $25,000,000 in securities of unaffiliated issuers, (F) the purchaser is not a pension, profit-sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants or affiliates may designate the particular investment to be made, (G) the purchaser agrees that it shall not hold such Class D Notes for the benefit of any other Person and shall be the sole beneficial owner thereof for all purposes and that it shall not sell participation interests in the Class D Notes or enter into any other arrangement pursuant to which any other Person shall be entitled to a beneficial interest in the dividends or other distributions on the Class D Notes (except when each such other Person is (a) a Qualified Institutional Buyer and (b) a Qualified Purchaser) and (H) the purchaser understands and agrees that any purported transfer of the Class D Notes to a purchaser that does not comply with the requirements of this paragraph shall be null and void *ab initio*.

(7) The purchaser understands that the Class D Notes (A) will be represented by either one or more Class D Note certificates which will bear the legend substantially in the form set forth below unless the Issuer determines otherwise in accordance with applicable law, and (B) may only be resold, pledged or transferred to Qualified Institutional Buyers who are also Qualified Purchasers. The purchaser understands that before the Class D Notes may be offered, resold, pledged or otherwise transferred, the transferee will be required to provide the Trustee and the Issuer with a written certification as to compliance with the transfer restrictions.

THE NOTES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND THE ISSUER HAS NOT BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "**INVESTMENT COMPANY ACT**"). THE NOTES REPRESENTED HEREBY HAVE NOT BEEN OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, EXCEPT (A) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER ("**QUALIFIED INSTITUTIONAL BUYER**") WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT (IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE IN ACCORDANCE WITH RULE 144A) WHO IS ALSO A QUALIFIED PURCHASER ("**QUALIFIED PURCHASER**") WITHIN THE MEANING OF SECTION 3(c)(7) OF THE INVESTMENT COMPANY ACT THAT WAS NOT FORMED FOR THE PURPOSE OF INVESTING IN THE ISSUER (EXCEPT WHEN EACH BENEFICIAL OWNER OF THE PURCHASER IS A QUALIFIED PURCHASER) AND THAT (1) HAS RECEIVED THE NECESSARY CONSENT FROM ITS BENEFICIAL OWNERS WHEN THE PURCHASER IS A PRIVATE INVESTMENT COMPANY FORMED ON OR BEFORE APRIL 30, 1996, (2) IS NOT A BROKER-DEALER THAT OWNS AND INVESTS ON A DISCRETIONARY BASIS LESS THAN $25,000,000 IN SECURITIES OF UNAFFILIATED ISSUERS AND (3) IS NOT A PENSION, PROFIT-SHARING OR OTHER RETIREMENT TRUST FUND OR PLAN IN WHICH THE PARTNERS, BENEFICIARIES OR PARTICIPANTS OR AFFILIATES MAY DESIGNATE THE PARTICULAR INVESTMENT TO BE MADE, (B) IN A PRINCIPAL AMOUNT OF NOT LESS THAN U.S.$250,000 FOR THE PURCHASER AND (C) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. EACH TRANSFEROR OF THE NOTES REPRESENTED HEREBY OR ANY BENEFICIAL INTEREST

THEREIN WILL PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS AS SET FORTH HEREIN TO ITS PURCHASER. EACH PURCHASER OF THE NOTES REPRESENTED HEREBY WILL BE REQUIRED TO MAKE THE APPLICABLE REPRESENTATIONS AND AGREEMENTS SET FORTH IN THE INDENTURE. THE NOTES REPRESENTED HEREBY MAY BE PURCHASED BY OR TRANSFERRED TO A BENEFIT PLAN INVESTOR OR CONTROLLING PERSON (EACH AS DEFINED IN THE INDENTURE) ONLY UPON THE SATISFACTION OF CERTAIN CONDITIONS SET FORTH IN THE INDENTURE. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT, WILL BE VOID *AB INITIO*, AND WILL NOT OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, THE TRUSTEE OR ANY INTERMEDIARY. IN ADDITION TO THE FOREGOING, THE ISSUER MAINTAINS THE RIGHT TO RESELL ANY NOTES PREVIOUSLY TRANSFERRED TO NON-PERMITTED HOLDERS OR NON-PERMITTED BENEFIT PLAN INVESTORS (AS DEFINED IN THE INDENTURE) IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THE INDENTURE.

THE FAILURE TO PROVIDE THE ISSUER AND ANY PAYING AGENT, WHENEVER REQUESTED BY THE ISSUER OR THE SERVICER ON BEHALF OF THE ISSUER, WITH THE APPLICABLE U.S. FEDERAL INCOME TAX CERTIFICATIONS (GENERALLY, AN INTERNAL REVENUE SERVICE FORM W-9 (OR APPLICABLE SUCCESSOR FORM) IN THE CASE OF A PERSON THAT IS A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(A)(30) OF THE CODE OR AN APPROPRIATE INTERNAL REVENUE SERVICE FORM W-8 (OR APPLICABLE SUCCESSOR FORM) IN THE CASE OF A PERSON THAT IS NOT A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(A)(30) OF THE CODE) MAY RESULT IN THE IMPOSITION OF U.S. FEDERAL WITHHOLDING FROM PAYMENTS TO THE HOLDER IN RESPECT OF THE NOTES REPRESENTED HEREBY.

THE NOTES REPRESENTED HEREBY MAY NOT BE ACQUIRED OR HELD BY (I) ANY "EMPLOYEE BENEFIT PLAN" WITHIN THE MEANING OF SECTION 3(3) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), THAT IS SUBJECT TO TITLE I OF ERISA, (II) ANY "PLAN" DESCRIBED BY SECTION 4975(e)(1) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") THAT IS SUBJECT TO SECTION 4975 OF THE CODE, OR (III) ANY ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" OF ANY PLAN DESCRIBED IN (I) OR (II) BY REASON OF A PLAN'S INVESTMENT IN SUCH ENTITY (EACH OF (I), (II) AND (III), A "BENEFIT PLAN INVESTOR"), EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE.

EACH TRANSFEREE WILL BE REQUIRED TO DELIVER A TRANSFEREE CERTIFICATE IN A FORM PRESCRIBED IN THE INDENTURE.

(8) The purchaser will provide notice to each Person to whom it proposes to transfer any interest in the Class D Notes of the transfer restrictions and representations set forth in the Indenture, including the exhibits referenced in the Indenture.

(9) The purchaser understands that the Indenture permits the Issuer to compel any Holder of the Class D Notes who is determined not to have been (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser, at the time of acquisition of the Class D Notes to sell such Class D Notes, or to sell such Class D Notes on behalf of such purchaser, to a Person that is both (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser, in a transaction exempt from the registration requirements under the Securities Act.

(10) The purchaser acknowledges that no action was taken or is being contemplated by the Issuer that would permit a public offering of the Class D Notes. The purchaser further acknowledges that no action was taken or is being contemplated by the Issuer that would permit possession or distribution of the Offering Memorandum or any amendment thereof or supplement thereto or any other offering material relating to the Securities in any jurisdiction (other than

Ireland) where, or in any circumstances in which, action for those purposes is required. Nothing contained in the offering memorandum relating to the Class D Notes shall constitute an offer to sell or a solicitation of an offer to purchase any Class D Notes in any jurisdiction where it is unlawful to do so absent the taking of such action or the availability of an exemption therefrom.

(11) The purchaser understands that in the case of any supplemental indenture to the Indenture that requires consent of one or more Holders of the Class D Notes, the Indenture permits the Amendment Buy-Out Purchaser to purchase Class D Notes from any Non-Consenting Holder thereof at the applicable Amendment Buy-Out Purchase Price; and such Non-Consenting Holder will be required to sell such Class D Notes to the Amendment Buy-Out Purchaser at such price.

(12) The purchaser understands that the Stated Maturity of the Class D Notes is subject to multiple extensions of four years each without consent of any Holders of Securities at the option of the Issuer, if directed by the Servicer, upon satisfaction of certain conditions.

(13) The purchaser will not, at any time, offer to buy or offer to sell the Class D Notes by any form of general solicitation or advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or seminar or meeting whose attendees have been invited by general solicitations or advertising.

(14) The beneficial owner will agree to treat, for U.S. federal income tax purposes, (a) the Preference Shares as equity of the Issuer, (b) the Notes as indebtedness of the Issuer and (c) the Issuer as a partnership (except to the extent the Issuer can no longer be treated as a partnership as a result of any election by the Issuer, changes in ownership of the Issuer or changes in the manner in which the equity of the Issuer is traded). The beneficial owner will be deemed to have acknowledged that the Issuer is not authorized to engage in activities that could cause it to constitute a finance or lending business for U.S. federal income tax purposes and agrees that it will report its investment in the Notes consistent with such limitation.

(15) The beneficial owner, if not a U.S. Person, either (i) is not a bank (within the meaning of Section 881(c)(3)(A) of the Code (as defined below in paragraph 23)) or (ii) is a person that is eligible for benefits under an income tax treaty with the United States that eliminates United States federal income taxation of Unites States source interest not attributable to a permanent establishment in the United States. The beneficial owner is not purchasing the Class D Notes in order to reduce its United States federal income tax liability or pursuant to a tax avoidance plan.

(16) To the extent required, as determined by the Issuer or the Servicer on behalf of the Issuer, the Issuer may, upon notice to the Trustee and the Indenture Registrar, impose additional transfer restrictions on the Class D Notes to comply with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the U.S. Patriot Act) and other similar laws or regulations, including, without limitation, requiring each transferee of a Class D Note to make representations to the Issuer in connection with such compliance.

(17) The purchaser agrees not to cause the filing of a petition in bankruptcy or winding up against the Issuer before one year and one day have elapsed since the payment in full of the Notes or, if longer, the applicable preference period in effect.

(18) The purchaser is not a member of the public in the Cayman Islands.

(19) The beneficial owner will agree to treat the Class D Notes as unconditional debt of the Issuer for tax, accounting and financial reporting purposes.

(20) The purchaser understands that, prior to any sale or other transfer of any interest in Class D Notes, it (or the transferee, as applicable) will be required to provide to the Issuer and the Trustee a duly executed transfer certificate substantially in the form provided in the Indenture and such other certificates and other information as they may reasonably require to confirm that the proposed transfer complies with the restrictions in the legend placed on each certificate representing the Class D Notes and in the Indenture.

(21) The purchaser understands that, to the extent required, as determined by the Co-Issuers, the Co-Issuers may amend the Indenture and, with respect to the Issuer only, the Preference Share Documents, without the consent of any Holders of the Securities and without regard to whether or not such amendment adversely affects the interest of the Holders of the Securities to (i) remove any restrictions and limitations imposed on the Co-Issuers or the Holders of the Securities that solely relate to compliance with Section 3(c)(7) and (ii) add any requirements that are necessary for compliance with Rule 3a-7 if, at any time following the Closing Date, the Co-Issuers elect to rely on exclusion from the definition of "investment company" under Rule 3a-7 in lieu of the exclusion under Section 3(c)(7).

(22) The purchaser understands that the Issuer may enter into amendments or modifications to the Servicing Agreement without the consent of any Holders of the Securities and without regard to whether or not such amendment adversely affects the interest of the Holders of the Securities.

(23) The purchaser understands and agrees that no purchase or transfer of the Class D Notes (i) to a purchaser or transferee that has represented that it is a Benefit Plan Investor (as defined in Section 3(42) of the Employee Retirement Income Security Act of 1974 ("**ERISA**") or a Controlling Person (as defined under the Indenture) will be effective, and the Issuer or the Indenture Registrar will not recognize or register such purchase or transfer, if such purchase or transfer would result in Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of Class D Notes (determined pursuant to Section 3(42) of ERISA, 29 C.F.R. Section 2510.3-101 and the Indenture) or (ii) will be permitted if such purchase or transfer will result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986 (the "**Code**") (or, in the case of a governmental, foreign or church plan, a violation of any substantially similar federal, state, foreign or local law). The purchaser or transferee further understands and agrees that any transfer in violation of the applicable provisions of the Indenture will be null and void *ab initio*. For purposes of the determination described in clause (i) of the preceding sentence, the Class D Notes held by the Trustee, the Servicer, any of their respective affiliates (as defined in 29 C.F.R. Section 2510.3-101(f)(3)) and any other persons that have represented that they are Controlling Persons will be disregarded and will not be treated as outstanding unless such person is also a Benefit Plan Investor. The purchaser's acquisition, holding and disposition of the Class D Notes will not result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, a violation of any substantially similar federal, state, foreign or local law), because such purchase, holding and disposition either (a) is not, and will not become, subject to such laws or (b) is covered by an exemption from all applicable prohibited transactions, all conditions of which are and will be been satisfied throughout its holding and disposition of such Class D Notes. The purchaser and any fiduciary or other Person causing it to acquire the Class D Notes agree, to the fullest extent permissible under applicable law, to indemnify and hold harmless the Issuer, the Co-Issuer, the Trustee, the Servicer, the Initial Purchaser, the Preference Shares Paying Agent and their respective Affiliates from any cost, damage, or loss incurred by them as a result of a breach of the representations set forth in this paragraph (23) and paragraph (24). If the purchaser is an insurance company investing through its general account as defined in PTCE 95-60, for so long as it holds the Class D Notes, such purchaser represents that the percentage of the assets of such insurance company general account that may be treated as "plan assets" under ERISA and the Code will always remain below 25% (as determined pursuant to ERISA and the Code).

(24) (a) The funds that the purchaser is using or will use to purchase the Class D Notes are___ / are not___ (check one) assets of a person who is or at any time while the Class D Notes are held by the purchaser will be (A) an "employee benefit plan" as defined in Section 3(3) of ERISA, that is subject to Title I of ERISA, (B) a "plan" described in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code or (C) an entity whose underlying assets include "plan assets" of either of the foregoing by reason of the investment by an employee benefit plan or other plan in the entity within the meaning of Section 3(42) of ERISA or 29 C.F.R. Section 2510.3-101 (the plans and persons described in clauses (A), (B) and (C) being referred to as "**Benefit Plan Investors**").

(b) The purchaser is___ / is not___ (check one) the Issuer, the Co-Issuer, the Servicer or any other person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuer or a person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Issuer, or any "affiliate" (as defined in 29 C.F.R. Section 2510.3-101(f)(3)) of any such person (any such person, a "**Controlling Person**").

(25) The purchaser agrees to provide (and agrees it will cause any subsequent transferee of its Class D Notes to provide) the Indenture Registrar (1) appropriate documentation required under the Code and the applicable Treasury regulations establishing that the beneficial owner of the Class D Notes is either a non-U.S. person (e.g., an IRS Form W-8BEN or an IRS Form W-8IMY with appropriate attachments) or a U.S. person (e.g., an IRS Form W-9) and (2) if such beneficial owner is treated as a partnership, S-corporation or grantor trust for U.S. federal income tax purposes, a written representation from such beneficial owner that (i) there will not be any interests in such beneficial owner where substantially all of the value of such interest is attributable to the value of the Class D Notes proposed to be transferred to such beneficial owner, together with the value of any Class D Notes, Holding Preference Shares and Preference Shares already held by such beneficial owner and (ii) such beneficial owner is not a part of any arrangement a principal purpose of which is to cause the Class D Notes and Preference Shares to be treated as owned by 100 persons or less within the meaning of Treasury Regulation section 1.7704-1(h). The purchaser agrees to provide a properly completed, newly executed U.S. tax form and other certificate in each of the following circumstances: (i) no later than 120 days prior to the expiration (if applicable) of the last previously provided U.S. tax form or certificate, (ii) upon any change of circumstance that would cause that the last previously provided U.S. tax form or certificate to be incorrect and (iii) upon a request by the Issuer or the Indenture Registrar. The purchaser agrees that if it fails to provide a properly completed, newly executed U.S. tax form or other certificate no later than 120 days prior to the expiration of the last previously provided U.S. tax form or, if earlier, within the time specified in any request by the Issuer or the Indenture Registrar (which shall not be less than 30 days), the Issuer will have the unconditional right to cause such purchaser to sell any and all Class D Notes to the Issuer or to a person chosen by the Issuer or the Issuer's agent on such terms as the Issuer may choose. For this purpose, an IRS Form W-8IMY (or any successor form thereto) will be deemed to expire upon the expiration of any withholding statement or U.S. tax forms associated with such IRS Form W-8IMY.

(26) The purchaser understands and agrees that the Issuer will not recognize any transfers of Class D Notes if the proposed transfer will cause the Issuer to have more than ninety-nine beneficial owners (as determined for purposes of the provisions of Treasury Regulation section 1.7704-1(h)) of its Class D Notes and Preference Shares unless it receives the consent of all of the Holders of the Preference Shares and an opinion of counsel to the effect that Holders of the Notes will not recognize gain or loss for U.S. federal income tax purposes as a result of such transfer, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transfer had not been made.

(27) The purchaser represents that it has not acquired the Class D Notes pursuant to a trade on an "established securities market" and agrees that it will not trade any Class D Notes on

an "established securities market." For this purpose, the term "established securities market" includes any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise. The purchaser understands and agrees that in the event that the purchaser acquires or trades the Class D Notes on an established securities market, as described above, the Issuer will not recognize any transfers of Class D Notes made pursuant to such acquisition or trade.

(28) The purchaser acknowledges that the Issuer, the Servicer, the Initial Purchaser and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations and agreements and agrees that if any of the acknowledgments, representations or agreements deemed to have been made by it by its purchase of the Class D Notes are no longer accurate, it shall promptly notify the Issuer, the Servicer and the Initial Purchaser.

Transfer Restrictions Applicable to Preference Shares

Each initial purchaser of Preference Shares acquiring such Preference Shares from the Issuer in the initial offering will be required to enter into a Subscription Agreement with the Issuer pursuant to which each such initial purchaser will be required to represent and agree (and each subsequent transferee will be required to represent and agree), on its own behalf as follows (terms used in this paragraph that are defined in Rule 144A are used herein as defined therein):

(1) The purchaser is a Qualified Institutional Buyer and is aware that the sale of Preference Shares to it is being made in reliance on an exemption from the registration requirements provided by Section 4(2) and is acquiring the Preference Shares for its own account (and not for the account of any family or other trust, any family member or any other person). In addition, the purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in Preference Shares, and the purchaser is able to bear the economic risk of its investment.

(2) The purchaser understands that the Preference Shares are being offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Preference Shares have not been and will not be registered under the Securities Act, and, if in the future the purchaser decides to offer, resell, pledge or otherwise transfer the Preference Shares, such Preference Shares may be offered, resold, pledged or otherwise transferred only in accordance with the legend in respect of such Preference Shares set forth in (7) below and the restrictions set forth in the Preference Share Documents. The purchaser acknowledges that no representation is made by the Issuer, the Servicer or the Initial Purchaser or any of their respective Affiliates as to the availability of any exemption under the Securities Act or other applicable laws of any jurisdiction for resale of the Preference Shares.

(3) The purchaser agrees that it will not offer or sell, transfer, assign, or otherwise dispose of the Preference Shares or any interest therein except (i) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable state securities laws or the applicable laws of any other jurisdiction and (ii) in accordance with the Preference Share Documents, to which provisions the purchaser agrees it is subject.

(4) The purchaser is not purchasing the Preference Shares with a view to the resale, distribution or other disposition thereof in violation of the Securities Act. The purchaser understands that the Preference Shares will be highly illiquid and are not suitable for short-term trading. The Preference Shares are a leveraged investment in the Collateral Obligations that may

expose the Preference Shares to disproportionately large changes in value. Payments in respect of the Preference Shares are not guaranteed as they are dependent on the performance of the Issuer's portfolio of Collateral Obligations. The purchaser understands that it is possible that, due to the structure of the transaction and the performance of the Issuer's portfolio of Collateral Obligations, dividends or other distributions in respect of the Preference Shares may be reduced or eliminated entirely. Furthermore, the Preference Shares constitute equity in the Issuer, are not secured by the Collateral and will rank behind all creditors (secured and unsecured and whether known or unknown) of the Issuer, including, without limitation, the Holders of the Notes, and any Hedge Counterparties. The Issuer has assets limited to the Collateral for payment of all Classes of the Notes and dividends and other distributions on the Preference Shares, and the Preference Shares bear, *pro rata*, the first risk of loss. The purchaser understands that an investment in the Preference Shares involves certain risks, including the risk of loss of all or a substantial part of its investment. The purchaser has had access to such financial and other information concerning the Issuer, the Preference Shares and the Collateral as it deemed necessary or appropriate in order to make an informed investment decision with respect to its purchase of the Preference Shares, including an opportunity to ask questions of and request information from the Issuer and the Initial Purchaser.

(5) In connection with the purchase of Preference Shares (*provided* that no such representation is made with respect to the Servicer by any Affiliate of or account serviced by the Servicer): (i) none of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or the Servicer is acting as a fiduciary or financial or investment adviser for the purchaser, (ii) the purchaser is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or the Servicer or any of their respective Affiliates other than in the Offering Memorandum for such Preference Shares and any representations expressly set forth in a written agreement with such party; (iii) none of the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or the Servicer or any of their respective Affiliates has given to the purchaser (directly or indirectly through any other Person or documentation for the Preference Shares) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of the Preference Shares or an investment therein; (iv) the purchaser has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to the documentation for the Preference Shares) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the Co-Issuers, the Trustee, the Initial Purchaser, any Hedge Counterparty, the Preference Shares Paying Agent or the Servicer or any of their respective Affiliates; (v) the purchaser has determined that the rates, prices or amounts and other terms of the purchase and sale of the Preference Shares reflect those in relevant market for similar transactions; (vi) the purchaser is purchasing the Preference Shares with a full understanding of all of the terms, conditions and risks thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; and (vii) the purchaser is a sophisticated investor.

(6) (A) The purchaser is (a) a Qualified Institutional Buyer and (b) a Qualified Purchaser, (B) the purchaser is acquiring the Preference Shares as principal for its own account for investment and not for sale in connection with any distribution thereof, (C) the purchaser was not formed solely for the purpose of investing in the Preference Shares (except when each beneficial owner of the purchaser is a Qualified Purchaser), (D) to the extent the purchaser is a private investment company formed before April 30, 1996, the purchaser has received the necessary consent from its beneficial owners, (E) the purchaser is not a broker-dealer that owns and invests on a discretionary basis less than $25,000,000 in securities of unaffiliated issuers, (F)

the purchaser is not a pension, profit-sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants or affiliates may designate the particular investment to be made, (G) the purchaser agrees that it shall not hold such Preference Shares for the benefit of any other Person and shall be the sole beneficial owner thereof for all purposes and that it shall not sell participation interests in the Preference Shares or enter into any other arrangement pursuant to which any other Person shall be entitled to a beneficial interest in the dividends or other distributions on the Preference Shares (except when each such other Person is (a) a Qualified Institutional Buyer and (b) a Qualified Purchaser) and (H) the purchaser understands and agrees that any purported transfer of the Preference Shares to a purchaser that does not comply with the requirements of this paragraph shall be null and void *ab initio*.

(7) The purchaser understands that the Preference Shares (A) will be represented by either one or more Preference Share certificates which will bear the legend substantially in the form set forth below unless the Issuer determines otherwise in accordance with applicable law, and (B) may only be resold, pledged or transferred to Qualified Institutional Buyers who are also Qualified Purchasers. The purchaser understands that before the Preference Shares may be offered, resold, pledged or otherwise transferred, the transferee will be required to provide the Preference Shares Paying Agent and the Issuer with a written certification as to compliance with the transfer restrictions.

THE PREFERENCE SHARES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND THE ISSUER HAS NOT BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "**INVESTMENT COMPANY ACT**"). THE PREFERENCE SHARES REPRESENTED HEREBY HAVE NOT BEEN OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, EXCEPT (A) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER ("**QUALIFIED INSTITUTIONAL BUYER**") WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT (IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A SO LONG AS THE PREFERENCE SHARES ARE ELIGIBLE FOR RESALE IN ACCORDANCE WITH RULE 144A) WHO IS ALSO A QUALIFIED PURCHASER ("**QUALIFIED PURCHASER**") WITHIN THE MEANING OF SECTION 3(c)(7) OF THE INVESTMENT COMPANY ACT THAT WAS NOT FORMED FOR THE PURPOSE OF INVESTING IN THE ISSUER (EXCEPT WHEN EACH BENEFICIAL OWNER OF THE PURCHASER IS A QUALIFIED PURCHASER) AND THAT (1) HAS RECEIVED THE NECESSARY CONSENT FROM ITS BENEFICIAL OWNERS WHEN THE PURCHASER IS A PRIVATE INVESTMENT COMPANY FORMED ON OR BEFORE APRIL 30, 1996, (2) IS NOT A BROKER-DEALER THAT OWNS AND INVESTS ON A DISCRETIONARY BASIS LESS THAN $25,000,000 IN SECURITIES OF UNAFFILIATED ISSUERS AND (3) IS NOT A PENSION, PROFIT-SHARING OR OTHER RETIREMENT TRUST FUND OR PLAN IN WHICH THE PARTNERS, BENEFICIARIES OR PARTICIPANTS OR AFFILIATES MAY DESIGNATE THE PARTICULAR INVESTMENT TO BE MADE, (B) IN EACH CASE, IN A NUMBER OF NOT LESS THAN 100 PREFERENCE SHARES FOR THE PURCHASER AND (C) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. EACH TRANSFEROR OF THE PREFERENCE SHARES REPRESENTED HEREBY OR ANY BENEFICIAL INTEREST THEREIN WILL PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS AS SET FORTH HEREIN TO ITS PURCHASER. EACH PURCHASER OF THE PREFERENCE SHARES REPRESENTED HEREBY WILL BE REQUIRED TO MAKE THE APPLICABLE REPRESENTATIONS AND AGREEMENTS SET FORTH IN THE PREFERENCE SHARE DOCUMENTS. THE PREFERENCE SHARES REPRESENTED HEREBY MAY BE PURCHASED BY OR TRANSFERRED TO A BENEFIT PLAN INVESTOR OR CONTROLLING PERSON (EACH AS DEFINED IN THE PREFERENCE SHARE DOCUMENTS) ONLY UPON THE SATISFACTION OF CERTAIN CONDITIONS SET FORTH IN THE PREFERENCE SHARE DOCUMENTS. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT, WILL BE VOID *AB INITIO*, AND WILL NOT OPERATE

TO TRANSFER ANY RIGHTS TO THE TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, THE PREFERENCE SHARES PAYING AGENT OR ANY INTERMEDIARY. IN ADDITION TO THE FOREGOING, THE ISSUER MAINTAINS THE RIGHT TO RESELL ANY PREFERENCE SHARES PREVIOUSLY TRANSFERRED TO NON-PERMITTED HOLDERS OR NON-PERMITTED BENEFIT PLAN INVESTORS (AS DEFINED IN THE PREFERENCE SHARE DOCUMENTS) IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THE PREFERENCE SHARE DOCUMENTS.

THE FAILURE TO PROVIDE THE ISSUER AND ANY PAYING AGENT, WHENEVER REQUESTED BY THE ISSUER OR THE SERVICER ON BEHALF OF THE ISSUER, WITH THE APPLICABLE U.S. FEDERAL INCOME TAX CERTIFICATIONS (GENERALLY, AN INTERNAL REVENUE SERVICE FORM W-9 (OR APPLICABLE SUCCESSOR FORM) IN THE CASE OF A PERSON THAT IS A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(A)(30) OF THE CODE OR AN APPROPRIATE INTERNAL REVENUE SERVICE FORM W-8 (OR APPLICABLE SUCCESSOR FORM) IN THE CASE OF A PERSON THAT IS NOT A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(A)(30) OF THE CODE) MAY RESULT IN THE IMPOSITION OF U.S. FEDERAL WITHHOLDING FROM PAYMENTS TO THE HOLDER IN RESPECT OF THE PREFERENCE SHARES REPRESENTED HEREBY.

THE PREFERENCE SHARES REPRESENTED HEREBY MAY NOT BE ACQUIRED OR HELD BY (I) ANY "EMPLOYEE BENEFIT PLAN" WITHIN THE MEANING OF SECTION 3(3) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), THAT IS SUBJECT TO TITLE I OF ERISA, (II) ANY "PLAN" DESCRIBED BY SECTION 4975(e)(1) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") THAT IS SUBJECT TO SECTION 4975 OF THE CODE, OR (III) ANY ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" OF ANY PLAN DESCRIBED IN (I) OR (II) BY REASON OF A PLAN'S INVESTMENT IN SUCH ENTITY (EACH OF (I), (II) AND (III), A "BENEFIT PLAN INVESTOR"), EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE PREFERENCE SHARE DOCUMENTS.

EACH TRANSFEREE WILL BE REQUIRED TO DELIVER A TRANSFEREE CERTIFICATE IN A FORM PRESCRIBED IN THE PREFERENCE SHARE DOCUMENTS.

(8) The purchaser will provide notice to each Person to whom it proposes to transfer any interest in the Preference Shares of the transfer restrictions and representations set forth in the Preference Share Documents, including the exhibits referenced in the Preference Share Documents.

(9) The purchaser understands that the Preference Share Documents permit the Issuer to compel any Holder of the Preference Shares who is determined not to have been (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser, at the time of acquisition of the Preference Shares to sell such Preference Shares, or to sell such Preference Shares on behalf of such purchaser, to a Person that is both (x) a Qualified Institutional Buyer and (y) a Qualified Purchaser, in a transaction exempt from the registration requirements under the Securities Act.

(10) The purchaser acknowledges that no action was taken or is being contemplated by the Issuer that would permit a public offering of the Preference Shares. The purchaser further acknowledges that no action was taken or is being contemplated by the Issuer that would permit possession or distribution of the Offering Memorandum or any amendment thereof or supplement thereto or any other offering material relating to the Securities in any jurisdiction (other than Ireland) where, or in any circumstances in which, action for those purposes is required. Nothing contained in the offering memorandum relating to the Preference Shares shall constitute an offer to sell or a solicitation of an offer to purchase any Preference Shares in any jurisdiction where it is unlawful to do so absent the taking of such action or the availability of an exemption therefrom.

(11) The purchaser understands that in the case of any supplemental indenture to the Indenture that requires consent of one or more Holders of the Preference Shares, the Indenture permits the Amendment Buy-Out Purchaser to purchase Preference Shares from any Non-Consenting Holder thereof (or, with respect to any Preference Shares held by Investors Corp., to purchase the Holding Preference Shares from any Non-Consenting Holding Preference Share Holder thereof), in each case, at the applicable Amendment Buy-Out Purchase Price; and such Non-Consenting Holder or Non-Consenting Holding Preference Shares Holder will be required to sell such Preference Shares or Holding Preference Shares, as the case may be, to the Amendment Buy-Out Purchaser at such price.

(12) The purchaser understands that the Scheduled Preference Shares Redemption Date of the Preference Shares is subject to multiple extensions of four years each without consent of any Holders of Securities at the option of the Issuer, if directed by the Servicer, upon satisfaction of certain conditions.

(13) The purchaser will not, at any time, offer to buy or offer to sell the Preference Shares by any form of general solicitation or advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or seminar or meeting whose attendees have been invited by general solicitations or advertising.

(14) The beneficial owner will agree to treat, for U.S. federal income tax purposes, (a) the Preference Shares as equity of the Issuer, (b) the Notes as indebtedness of the Issuer and (c) the Issuer as a partnership (except to the extent the Issuer can no longer be treated as a partnership as a result of any election by the Issuer, changes in ownership of the Issuer or changes in the manner in which the equity of the Issuer is traded). The beneficial owner will be deemed to have acknowledged that the Issuer is not authorized to engage in activities that could cause it to constitute a finance or lending business for U.S. federal income tax purposes and agrees that it will report its investment in Preference Shares consistent with such limitation.

(15) The beneficial owner, if not a U.S. Person, either (i) is not a bank (within the meaning of Section 881(c)(3)(A) of the Code (as defined below in paragraph 23)) or (ii) is a person that is eligible for benefits under an income tax treaty with the United States that eliminates United States federal income taxation of Unites States source interest not attributable to a permanent establishment in the United States. The beneficial owner is not purchasing the Preference Shares in order to reduce its United States federal income tax liability or pursuant to a tax avoidance plan.

(16) To the extent required, as determined by the Issuer or the Servicer on behalf of the Issuer, the Issuer may, upon notice to the Preference Shares Paying Agent and the Share Registrar, impose additional transfer restrictions on the Preference Shares to comply with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the U.S. Patriot Act) and other similar laws or regulations, including, without limitation, requiring each transferee of a Preference Share to make representations to the Issuer in connection with such compliance.

(17) The purchaser agrees not to cause the filing of a petition in bankruptcy or winding up against the Issuer before one year and one day have elapsed since the payment in full of the Notes or, if longer, the applicable preference period in effect.

(18) The purchaser is not a member of the public in the Cayman Islands.

(19) The purchaser understands that, prior to any sale or other transfer of any interest in Preference Shares, it (or the transferee, as applicable) will be required to provide to the Issuer and the Preference Shares Paying Agent a duly executed transfer certificate substantially in the form provided in the Preference Share Documents and such other certificates and other

information as they may reasonably require to confirm that the proposed transfer complies with the restrictions in the legend placed on each certificate representing the Preference Shares and in the Preference Share Documents.

(20) The purchaser acknowledges that the Issuer has the right pursuant to Section 6 of the Preference Shares Paying Agency Agreement to issue additional Preference Shares.

(21) The purchaser understands that, to the extent required, as determined by the Co-Issuers, the Co-Issuers may amend the Indenture and, with respect to the Issuer only, the Preference Share Documents without the consent of any Holders of the Securities and without regard to whether or not such amendment adversely affects the interest of the Holders of the Securities to (i) remove any restrictions and limitations imposed on the Co-Issuers or the Holders of the Securities that solely relate to compliance with Section 3(c)(7) and (ii) add any requirements that are necessary for compliance with Rule 3a-7 if, at any time following the Closing Date, the Co-Issuers elect to rely on exclusion from the definition of "investment company" under Rule 3a-7 in lieu of the exclusion under Section 3(c)(7).

(22) The purchaser understands that the Issuer may enter into amendments or modifications to the Servicing Agreement without the consent of any Holders of the Securities and without regard to whether or not such amendment adversely affects the interest of the Holders of the Securities.

(23) The purchaser understands and agrees that no purchase or transfer of the Preference Shares to (i) a purchaser or transferee that has represented that it is a Benefit Plan Investor (as defined in Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") or a Controlling Person (as defined under the Indenture) will be effective, and the Issuer or the Share Registrar will not recognize or register such purchase or transfer, if such purchase or transfer would result in Benefit Plan Investors owning 25% or more of the aggregate outstanding amount of Class I Preference Shares or Class II Preference Shares (determined pursuant to Section 3(42) of ERISA, 29 C.F.R. Section 2510.3-101, the Indenture and the Preference Share Documents) or (ii) will be permitted if such purchase or transfer will result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986 (the "**Code**") (or, in the case of a governmental, foreign or church plan, a violation of any substantially similar federal, state, foreign or local law). The purchaser or transferee further understands and agrees that any transfer in violation of the applicable provisions of the Preference Share Documents will be null and void *ab initio*. For purposes of the determination described in clause (i) of the preceding sentence, the Preference Shares held by the Trustee, the Servicer, any of their respective affiliates (as defined in 29 C.F.R. Section 2510.3-101(f)(3)) and any other persons that have represented that they are Controlling Persons will be disregarded and will not be treated as outstanding unless such person is also a Benefit Plan Investor. The purchaser's acquisition, holding and disposition of the Preference Shares will not result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, foreign or church plan, any violation of substantially similar federal, state, foreign or local law), because such purchase, holding and disposition either (a) is not, and will not become, subject to such laws or (b) is covered by an exemption from all applicable prohibited transactions, all conditions of which are and will be been satisfied throughout its holding and disposition of such Preference Shares. The purchaser and any fiduciary or Person causing it to acquire the Preference Shares agree, to the fullest extent permissible under applicable law, to indemnify and hold harmless the Issuer, the Co-Issuer, the Trustee, the Servicer, the Initial Purchaser, the Preference Shares Paying Agent and their respective Affiliates from any cost, damage, or loss incurred by them as a result of a breach of the representations set forth in this paragraph (23) and paragraph (24). If the purchaser is an insurance company investing through its general account as defined in PTCE 95-60, for so long as it holds the Preference Shares, such purchaser represents that the percentage of assets of such insurance company general account that may be treated as "plan assets" under ERISA and the Code will always remain below 25% (as determined pursuant to ERISA and the Code).

(24) (a) The funds that the purchaser is using or will use to purchase the Preference Shares are___ / are not___ (check one) assets of a person who is or at any time while the Preference Shares are held by the purchaser will be (A) an "employee benefit plan" as defined in Section 3(3) of ERISA, that is subject to Title I of ERISA, (B) a "plan" described in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code or (C) an entity whose underlying assets include "plan assets" of either of the foregoing by reason of the investment by an employee benefit plan or other plan in the entity within the meaning of Section 3(42) of ERISA or 29 C.F.R. Section 2510.3-101 or otherwise.

(b) The purchaser is___ / is not___ (check one) the Co-Issuer, the Servicer or any other person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Issuer or a person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Issuer, or any "affiliate" (as defined in 29 C.F.R. Section 2510.3-101(f)(3)) of any such person.

(25) The purchaser agrees to provide (and agrees it will cause any subsequent transferee of its Preference Shares to provide) the Share Registrar (1) appropriate documentation required under the Code and the applicable Treasury regulations establishing that the beneficial owner of the Preference Shares to be transferred is either a non-U.S. person (e.g., an IRS Form W-8BEN or an IRS Form W-8IMY with appropriate attachments) or a U.S. person (e.g., an IRS Form W-9) and (2) if such beneficial owner is treated as a partnership, S-corporation or grantor trust for U.S. federal income tax purposes, a written representation from such beneficial owner that (i) there will not be any interests in such beneficial owner where substantially all of the value of such interest is attributable to the value of the Preference Shares proposed to be transferred to such beneficial owner, together with the value of any Class D Notes, Holding Preference Shares and Preference Shares already held by such beneficial owner and (ii) such beneficial owner is not a part of any arrangement a principal purpose of which is to cause the Class D Notes and the Preference Shares to be treated as owned by 100 persons or less within the meaning of Treasury Regulation section 1.7704-1(h). The purchaser agrees to provide a properly completed, newly executed U.S. tax form and other certificate in each of the following circumstances: (i) no later than 120 days prior to the expiration (if applicable) of the last previously provided U.S. tax form or certificate, (ii) upon any change of circumstance that would cause that the last previously provided U.S. tax form or certificate to be incorrect and (iii) upon a request by the Issuer or the Share Registrar. The purchaser agrees that if it fails to provide a properly completed, newly executed U.S. tax form or other certificate no later than 120 days prior to the expiration of the last previously provided U.S. tax form or, if earlier, within the time specified in any request by the Issuer or the Share Registrar (which shall not be less than 30 days), the Issuer will have the unconditional right to cause such purchaser to sell any and all Preference Shares to the Issuer or to a person chosen by the Issuer or the Issuer's agent on such terms as the Issuer may choose. For this purpose, an IRS Form W-8IMY (or any successor form thereto) will be deemed to expire upon the expiration of any withholding statement or U.S. tax forms associated with such IRS Form W-8IMY.

(26) The purchaser understands and agrees that the Issuer will not recognize any transfers of Preference Shares if the proposed transfer will cause the Issuer to have either (a) exactly one beneficial owner or (b) more than ninety-nine beneficial owners (as determined for purposes of the provisions of Treasury Regulation section 1.7704-1(h)) of its Class D Notes and its Preference Shares unless, in the case of clause (b), it receives the consent of all of the Holders of the Preference Shares and an opinion of counsel to the effect that Holders of the Notes will not recognize gain or loss for U.S. federal income tax purposes as a result of such transfer, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transfer had not been made.

(27) The purchaser represents that it has not acquired the Preference Shares pursuant to a trade on an "established securities market" and agrees that it will not trade any Preference Shares on an "established securities market." For this purpose, the term "established securities market" includes any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended, or exempted from registration because of the limited volume of transaction; any foreign securities exchange that, under the laws of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements imposed under the Securities Exchange Act of 1934; any regional or local exchange; and any interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers, by electronic means or otherwise. The purchaser understands and agrees that in the event that the purchaser acquires or trades the Preference Shares on an established securities market, as described above, the Issuer will not recognize any transfers of Preference Shares made pursuant to such acquisition or trade.

(28) The purchaser is___ / is not___ (check one) Highland Financial Partners, L.P. or any of its subsidiaries.

(29) The purchaser acknowledges that the Issuer, the Servicer, the Initial Purchaser and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations and agreements and agrees that if any of the acknowledgments, representations or agreements deemed to have been made by it by its purchase of the Preference Shares are no longer accurate, it shall promptly notify the Issuer, the Servicer and the Initial Purchaser.

LISTING AND GENERAL INFORMATION

1. The Issuer and the Co-Issuer accept responsibility for the information contained in this document. To the best knowledge and belief of the Issuer and the Co-Issuer, the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.

2. Application will be made to list the Senior Notes on the ISE. However, there can be no assurance that any admission will be granted or maintained. In connection with the listing of the Senior Notes on the ISE, this Offering Memorandum will be filed with the Registrar of Companies of Ireland, pursuant to the ISE Listing Rules and the IFSRA Rules. Prior to the listing, a legal notice relating to the issue of the Senior Notes and copies of the Issuer Charter and the Certificate of Incorporation and By-laws of the Co-Issuer will be deposited with AIB International Financial Services Ltd. and at the principal office of the Issuer, where copies thereof may be obtained, free of charge, upon request.

3. As long as any of the Senior Notes are Outstanding and listed on the ISE, copies of the Issuer Charter and the Certificate of Incorporation and By-laws of the Co-Issuer, the Administration Agreement, the Resolutions, the resolutions of the Board of Directors of the Co-Issuer authorizing the issuance of the Senior Notes, the Indenture, the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, any Hedge Agreement and the Monthly Report will be available for inspection at the offices of the Co-Issuers and the Irish Paying Agent in the City of Dublin, where copies thereof may be obtained upon request in printed form.

4. For fourteen days following the date of listing of the Senior Notes on the ISE, copies of the Issuer Charter and the Certificate of Incorporation and By-laws of the Co-Issuer, the Administration Agreement, the Resolutions, the resolutions of the Board of Directors of the Co-Issuer authorizing the issuance of the Senior Notes, the Indenture, the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement and any Hedge Agreement will be available for inspection at the principal office of the Co-Issuers and the Irish Paying Agent in the City of Dublin and copies thereof may be obtained upon request.

5. Copies of the Issuer Charter and the Certificate of Incorporation and By-laws of the Co-Issuer, the Administration Agreement, the Resolutions, the resolutions of the Board of Directors of the

Co-Issuer authorizing the issuance of the Senior Notes, the Indenture, the Servicing Agreement, the Collateral Administration Agreement, the Preference Shares Paying Agency Agreement, any Hedge Agreement and the Monthly Report prepared by the Servicer on behalf of the Issuer containing information relating to the Collateral will be available for inspection so long as any of the Securities are Outstanding at the Corporate Trust Office of the Trustee.

6. Each of the Co-Issuers represents that as of the date of this Offering Memorandum, there has been no material adverse change in its financial position since its date of incorporation. Since its date of incorporation, neither the Issuer nor the Co-Issuer has commenced operations, other than the Issuer purchasing certain Collateral Obligations and selling participation interests therein pursuant to a master participation agreement preparatory to the offering of the Securities, and no annual reports or accounts have been prepared as of the date of this Offering Memorandum.

7. The Co-Issuers are not involved in any litigation or arbitration proceedings (including any such proceedings which are pending or threatened of which the Co-Issuers are aware) which may have or have had within the last twelve (12) months a significant effect on the financial position of the Co-Issuers.

8. The issuance of the Securities was authorized and approved by the Board of Directors of the Issuer by the Resolutions. The issuance of the Senior Notes was authorized and approved by the Board of Directors of the Co-Issuer by resolutions passed on or before the Closing Date.

9. Since the date of their incorporation, no financial statements of the Co-Issuers have been prepared. The Issuer is not required by Cayman Islands law to publish financial statements, and does not intend to publish any financial statements. The Issuer is required to provide written confirmation to the Trustee, on an annual basis, that no Event of Default or other matter that is required to be brought to the Trustee's attention has occurred.

IDENTIFYING NUMBERS

The Senior Notes sold in offshore transactions in reliance on Regulation S and represented by Regulation S Global Notes have been accepted for clearance under the Common Codes in the table below. The table also lists the CUSIP Numbers and the International Securities Identification Numbers (ISIN).

Security	CUSIP	Common Code	ISIN
Class A-1a Notes			
Rule 144A Global Notes	389669 AA 0	N/A	US389669AA07
Regulation S Global Notes	G40763 AA 5	027591256	USG40763AA52
Class A-1b Notes			
Rule 144A Global Notes	389669 AB 8	N/A	US389669AB89
Regulation S Global Notes	G40763 AB 3	027591299	USG40763AB36
Class A-2 Notes			
Rule 144A Global Notes	389669 AC 6	N/A	US389669AC62
Regulation S Global Notes	G40763 AC 1	027591388	USG40763AC19
Class B Notes			
Rule 144A Global Notes	389669 AD 4	N/A	US389669AD46
Regulation S Global Notes	G40763 AD 9	027591426	USG40763AD91
Class C Notes			
Rule 144A Global Notes	389669 AE 2	N/A	US389669AE29
Regulation S Global Notes	G40763 AE 7	027591469	USG40763AE74
Class D Notes			
Certificated Class D Notes	389668 AA 2	N/A	US389668AA24
Class I Preference Shares			
Certificated Preference Shares	389668 20 3	N/A	US3896682032
Class II Preference Shares			
Certificated Preference Shares	389668 30 2	N/A	US3896683022

LEGAL MATTERS

Certain legal matters will be passed upon for the Co-Issuers and the Initial Purchaser by Latham & Watkins LLP, New York, New York. Certain matters with respect to Cayman Islands corporate law and tax law will be passed upon for the Issuer by Ogier, George Town, Grand Cayman KY1-1108, Cayman Islands. Certain legal matters will be passed upon for the Servicer by Orrick, Herrington & Sutcliffe LLP, Los Angeles, California.

GLOSSARY OF DEFINED TERMS

"**Accrued Interest On Sale**" means interest accrued on a Collateral Obligation at the time of sale or other disposition to the extent paid to the Issuer as part of the sale or other disposition price of the Collateral Obligation after deduction of any amount representing Accrued Interest Purchased With Principal of the Collateral Obligation.

"**Accrued Interest Purchased With Principal**" means (i) interest accrued on or purchased with a Collateral Obligation as part of the price paid by the Issuer to acquire the Collateral Obligation less any amount of Interest Proceeds (applied as Interest Proceeds) applied by the Issuer to acquire the accrued interest at the time of purchase and (ii) interest accrued on a Loan that constitutes part of the price paid by the Issuer to repurchase and terminate participations sold to Pre-Closing Parties to finance the Issuer's pre-closing acquisition of such Loan.

"**Act**" means any request, demand, authorization, direction, notice, consent, waiver or other action to be given or taken by Noteholders or Holders of Preference Shares under the Indenture embodied in and evidenced by one or more instruments (which may be an electronic document, including, but not limited to, in the form of e-mail, to the extent permitted by applicable law) of substantially similar tenor signed by Noteholders or Holders of Preference Shares in person or by agents duly appointed in writing (*provided* that no signature shall be required on electronic documents, including, but not limited to, in the form of e-mail to the extent permitted by law). Except as otherwise expressly provided in the Indenture the action shall become effective when the instruments are delivered to the Trustee (which instrument or instruments may be delivered through the Preference Shares Paying Agent, in the case of the Holders of the Preference Shares) and, if expressly required, to the Issuer. The instruments (and the action embodied in them) are referred to as the "**Act**" of the Noteholders or Holders of Preference Shares signing the instruments.

"**Administrative Expense Cap**" means, an amount on any Payment Date equal to the excess of:

(i) the sum of 0.04% of the Maximum Amount on the related Determination Date plus $150,000; *over*

(ii) the sum of the amounts paid for Administrative Expenses in the twelve months preceding the current Payment Date.

"**Administrative Expenses**" means amounts due or accrued representing:

(i) tax preparation, filing, and registration fees or expenses and any other filing and registration fees owed by the Co-Issuers or Investors Corp. (including all filing, registration and annual return fees payable to the Cayman Islands government and registered office fees);

(ii) fees, indemnities and expenses of the Trustee (including all amounts under Section 6.7 of the Indenture), the Administrator, the Preference Shares Paying Agent, the Holding Preference Shares Paying Agent, the Collateral Administrator and the Original Administrator;

(iii) fees, indemnities and expenses of the Co-Issuers and Investors Corp. and of accountants, agents and counsel for each of the Co-Issuers and Investors Corp.;

(iv) fees and expenses of the Rating Agencies in connection with any rating of the Notes owed by either Co-Issuer (including fees and expenses for ongoing surveillance, credit estimates and other fees owing to the Rating Agencies);

(v) expenses and indemnities (but not Servicing Fees) of the Servicer if payable under the Servicing Agreement;

(vi) fees, indemnities and expenses for third-party loan pricing services and accountants; and

(vii) amounts due (other than indemnities) to any other Person (except the Servicer) if specifically provided for in the Indenture, including fees or expenses in connection with any Securities Lending Agreement.

"**Affected Class**": Any Class of Notes that, as a result of the occurrence of a Tax Event, has received or will receive less than the aggregate amount of principal and interest that would otherwise have been payable to such Class on the Distribution Date related to the Due Period with respect to which such Tax Event occurs.

"**Affiliate**" or "**Affiliated**" means with respect to a Person,

(i) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, the Person; or

(ii) any other Person who is a director, officer or employee (A) of the Person, (B) of any subsidiary or parent company of the Person or (C) of any Person described in clause (i) above.

For the purposes of this definition, control of a Person shall mean the power, direct or indirect:

(A) to vote more than 50% of the securities having ordinary voting power for the election of directors of the Person; or

(B) to direct the corporate management and corporate policies of the Person whether by contract or otherwise (this does not include the Servicing Agreement unless it is amended expressly to provide those services).

For the purpose of this definition, the Administrator and its Affiliates are neither Affiliates of nor Affiliated with the Co-Issuers and the Co-Issuers are neither Affiliates of nor Affiliated with the Administrator, or any of their Affiliates.

"**Aggregate Outstanding Amount**" means, when used with respect to any of the Notes as of any date, the aggregate principal amount of such Notes on that date. When used with respect to the Preference Shares as of any date, means the number of such Preference Shares Outstanding on such date.

Except as otherwise provided herein:

(i) the Aggregate Outstanding Amount of the Class A-1a Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(ii) the Aggregate Outstanding Amount of the Class A-1b Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(iii) the Aggregate Outstanding Amount of the Class A-2 Notes at any time shall include any Defaulted Interest in respect thereof and (to the extent not included in any such Defaulted Interest) accrued interest on such Defaulted Interest;

(iv) the Aggregate Outstanding Amount of the Class B Notes at any time shall include all Class B Deferred Interest attributed thereto;

(v) the Aggregate Outstanding Amount of the Class C Notes at any time shall include all Class C Deferred Interest attributed thereto; and

(vi) the Aggregate Outstanding Amount of the Class D Notes at any time shall include all Class D Deferred Interest attributed thereto.

"**Aggregate Principal Balance**" means, when used with respect to the Pledged Obligations, the sum of the Principal Balances of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Principal Balance means the sum of the Principal Balances of that portion of the Pledged Obligations.

"**Aggregate Purchase Price Amount**" means, when used with respect to the Pledged Obligations, the sum of the Purchase Price Amounts of all the Pledged Obligations. When used with respect to a portion of the Pledged Obligations, the term Aggregate Purchase Price Amount means the sum of the Purchase Price Amounts of that portion of the Pledged Obligations.

"**Allocable Principal Balance**" means, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, the portion of the aggregate Principal Balance of such Synthetic Security that is allocable to each Reference Obligation comprising such index or indices based upon allocating the Principal Balance of such Synthetic Security among such Reference Obligations in the same proportion as each Reference Obligation bears to the aggregate Principal Balance of such Synthetic Security.

"**Amendment Buy-Out Purchase Price**" means, the purchase price payable by the Amendment Buy-Out Purchaser for Transaction Securities purchased in an Amendment Buy-Out, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the date of purchase payable to the Non-Consenting Holder (giving effect to any amounts paid to the Holder on such date), plus any unpaid Extension Bonus Payment, plus in the case of any Notes held or, with respect to any Notes representing Global Notes, beneficially owned, by a CDS/TRS Purchaser, the applicable CDS/TRS Termination Payment Amount, if any, and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares since or Holding Preference Shares, as applicable, the Closing Date (and any amounts payable, if any, to the Non-Consenting Holder or the Non-Consenting Holding Preference Share Holder, as applicable, on the next succeeding Payment Date) would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a Payment Date); *provided, however*, that in any Amendment Buy-Out from and after the date on which the Non-Consenting Holders of Preference Shares or the Non-Consenting Holding Preference Share Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the Amendment Buy-Out Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"**Amendment Buy-Out Purchaser**" means the Servicer (or any of its Affiliates acting as principal or agent); *provided* that in the event that the Servicer elects not to purchase Transaction Securities from Holders pursuant to "Description of the Securities—Amendment Buy-Out," "Amendment Buy-Out Purchaser" shall mean one or more qualifying purchasers (which may include the Initial Purchaser, the Investors Corp. Initial Purchaser or any of their respective Affiliates acting as principal or agent) designated by the Servicer; *provided, however*, none of the Servicer, the Initial Purchaser, the Investors Corp. Initial Purchaser or any of their respective Affiliates shall have any duty to act as an Amendment Buy-Out Purchaser.

"**Applicable Discount Rate**" : means, for purposes of determining the CDS/TRS Termination Payment Amount with respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, USD-LIBOR-BBA, as defined in the Annex to the 2000 ISDA Definitions as determined by the applicable

CDS/TRS Purchaser on the Business Day preceding the date of purchase of the applicable Notes from such CDS/TRS Purchaser in connection with such Amendment Buy-Out.

"**Applicable Note Interest Rate**" means, with respect to the Notes of any Class, the Note Interest Rate with respect to such Class.

"**Applicable Percentage**" means the lesser of the Moody's Priority Category Recovery Rate and the S&P Priority Category Recovery Rate applicable to the Collateral Obligation as specified in the tables below.

Moody's Priority Category	Moody's Priority Category Recovery Rate
Synthetic Securities.....	In the case of: (i) a Form-Approved Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Form-Approved Synthetic Security at the time of approval of the Form-Approved Synthetic Security by Moody's; and (ii) any other Synthetic Security, the "Moody's Priority Category Recovery Rate" given by Moody's to the Synthetic Security at the time of acquisition of the Synthetic Security.
Structured Finance Obligations.....	The Moody's Priority Category Recovery Rate determined in accordance with the Moody's Structured Finance Obligation Recovery Rates set forth in Schedule 5 to the Indenture by reference to the type of asset and its then Moody's Rating (or, with respect to assets to which that schedule does not apply, on a case-by-case basis in connection with the grant of the relevant Collateral Obligation).
unsecured DIP Loans and any Collateral Obligations not covered above or below..	As determined by Moody's on a case-by-case basis.

For High-Yield Bonds, Moody's Senior Secured Loans and Moody's Non Senior Secured Loans, the relevant Moody's Priority Category Recovery Rate is the rate determined pursuant to the table below based on the number of rating subcategories difference between the High-Yield Bond's or Loan's Moody's Obligation Rating and its Moody's Default Probability Rating (for purposes of clarification, if the Moody's Obligation Rating is higher than the Moody's Default Probability Rating, the rating subcategories difference will be positive and if it is lower, negative):

Number of Moody's Rating Subcategories Difference Between the Moody's Obligation Rating and the Moody's Default Probability Rating	Moody's Senior Secured Loans	Moody's Non Senior Secured Loans	High-Yield Bonds
+2 or more	60.0%	45.0%	40.0%
+1	50.0%	42.5%	35.0%
0	45.0%	40.0%	30.0%
-1	40.0%	30.0%	15.0%
-2	30.0%	15.0%	10.0%
-3 or less	20.0%	10.0%	2.0%

If no Moody's Priority Category Recovery Rate has been specifically assigned with respect to a Loan pursuant to the above table, and the Loan is a secured DIP Loan, the relevant Moody's Priority Category Recovery Rate is 50.0%.

S&P Priority Category	S&P Priority Category Recovery Rate
Secured Loans other than Subordinated Lien Loans or DIP Loans	55.0%
Senior Unsecured Loans	37.5%
Second Lien Loans	37.5%
Subordinated Lien Loans other than a DIP Loan	21.5%
Senior Secured High-Yield Bonds	44.0%
Senior Unsecured High-Yield Bonds	30.0%
Subordinated High-Yield Bonds	18.0%
Structured Finance Obligations	The S&P Priority Category Recovery Rate determined in accordance with the S&P Structured Finance Obligation Recovery Rates set forth in S&P Recovery Rate Matrix by reference to the type of asset and its then S&P Rating (or, with respect to assets to which that table does not apply, on a case by case basis in connection with the grant of the relevant Collateral Obligation).
Synthetic Securities	As assigned by S&P on a case-by-case basis in connection with the grant of the relevant Collateral Obligation.
DIP Loans and any Collateral Obligation not covered above	As assigned by S&P on a case-by-case basis.

"**Approved Pricing Service**" means Loan Pricing Corporation, Mark-It-Partners, Inc. or any other nationally recognized loan pricing service approved in writing by S&P.

"**Approved Replacement**" means an individual who shall (x) be proposed by Highland Capital to replace James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) within 30 days after James Dondero, Mark Okada or Todd Travers (or a prior Approved Replacement therefor) fails to be a partner, director, officer or management-level employee of Highland Capital or, following any objection pursuant to the following clause (y) to the first proposed replacement, within 30 days after such objection and (y) not have been objected to by either (A) a Super Majority of the Controlling Class of Notes or (B) a Majority of the Preference Shares (excluding any Preference Shares held by Highland Capital or any of its Affiliates), within 30 days after written notice of such Approved Replacement has been given by the Servicer to the Controlling Class of Notes and the Holders of Preference Shares.

"**Ask-Side Market Value**" means, as of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any lent Collateral Obligation based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the ask-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations which are also Independent from the Servicer or (ii) if the foregoing set of prices could not be obtained, the higher of the ask-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations which are also Independent from the Servicer or (iii) if the foregoing sets of prices could not be obtained, the average of the ask-side prices for the purchase of such Collateral Obligation determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer); *provided* that if the Ask-

Side Market Value of any lent Collateral Obligation cannot be so determined then such Collateral Obligation shall be deemed to have a Market Value equal to the outstanding principal balance thereof.

"**Assigned Moody's Rating**" means the monitored publicly available rating or the monitored estimated rating expressly assigned to a debt obligation (or facility) by Moody's that addresses the full amount of the principal and interest promised.

"**Authorized Officer**" means, with respect to the Issuer, the Co-Issuer or Investors Corp., any Officer or agent who is authorized to act for the Issuer, the Co-Issuer or Investors Corp., as applicable, in matters relating to, and binding on, the Issuer, the Co-Issuer or Investors Corp. With respect to the Servicer, any managing member, Officer, manager, employee, partner or agent of the Servicer who is authorized to act for the Servicer in matters relating to, and binding on, the Servicer with respect to the subject matter of the request, certificate or order in question. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any Person to act, and the certification may be considered as in full force and effect until receipt by the other party of written notice to the contrary.

"**Average Life**" means, as of any Measurement Date with respect to any Collateral Obligation (other than any Defaulted Collateral Obligation), the quotient obtained by dividing:

(i) the sum of the products of:

(A) the number of years (rounded to the nearest hundredth) from the Measurement Date to the respective dates of each successive scheduled payment of principal of the Collateral Obligation; and

(B) the respective amounts of the successive scheduled payments of principal of the Collateral Obligation; by

(ii) the sum of all successive scheduled payments of principal of the Collateral Obligation.

"**Bank**" means Investors Bank & Trust Company in its individual capacity and not as Trustee.

"**Bankruptcy Code**" means the U.S. Bankruptcy Code, Title 11 of the United States Code.

"**Bankruptcy Law**" means the Bankruptcy Code, Part V of the Companies Law (2004 Revision) of the Cayman Islands and the Bankruptcy Law (1997 Revision) of the Cayman Islands.

"**Board of Directors**" means with respect to the Issuer, the directors of the Issuer duly appointed by a resolution of the holders of the Issuer Ordinary Shares or by resolution of the Board of Directors and, with respect to the Co-Issuer, the directors of the Co-Issuer duly appointed by the stockholders of the Co-Issuer; *provided, however,* that notwithstanding the foregoing, if the aggregate number of Class II Preference Shares Outstanding is greater than the aggregate number of Class I Preference Shares Outstanding, the Holders of the Class II Preference Shares may remove all (but not less than all) of the directors of the Issuer and appoint other directors (who may be employees, officers or designees of the Servicer) and thereafter (so long as the aggregate number of Class II Preference Shares Outstanding is greater than the aggregate number of Class I Preference Shares Outstanding) the power to appoint directors of the Issuer shall be exercised by a vote of the Holders of the Class II Preference Shares instead of by resolution of the holders of the Issuer Ordinary Shares.

"**Business Day**" means a day on which commercial banks and foreign exchange markets settle payments in New York City, and any other city in which the Corporate Trust Office of the Trustee is located and, in the case of the final payment of principal of any Note, the place of presentation of the Note designated by the Trustee; *provided, however* that, for purposes of determining LIBOR, "Business Day"

must also be a day on which dealings in deposits in Dollars are transacted in the London interbank market. To the extent action is required of the Irish Listing Agent and Irish Paying Agent, Dublin, Ireland shall be considered in determining "Business Day" for purposes of determining when actions by the Irish Paying Agent are required.

"**Caa1 Collateral Obligations**" means the Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have a Moody's Rating below "B3."

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

"**CCC+/Caa1 Collateral Obligations**" means the Collateral Obligations (excluding any Defaulted Collateral Obligations) that on the relevant date have (i) a Moody's Rating below "B3" and/or (ii) an S&P Rating below "B-".

"**CCC+/Caa1 Excess Market Value Percentage**" means the percentage equivalent of a fraction, the numerator of which is the aggregate Market Value of CCC+/Caa1 Collateral Obligations (in order of ascending Market Value Percentage, starting with the CCC+/Caa1 Collateral Obligation with the lowest Market Value Percentage) with an aggregate Principal Balance equal to Excess CCC+/Caa1 Collateral Obligations and the denominator of which is an amount equal to the Excess CCC+/Caa1 Collateral Obligations.

"**CDS/TRS Termination Payment Amount**" means, with respect to any CDS/TRS Purchaser in connection with an Amendment Buy-Out, as the case may be, (i) on any Payment Date prior to the November 2010 Payment Date, an amount equal to the present value of the Fixed Amounts with respect to such CDS/TRS Purchaser and each Fixed Rate Payor Calculation Period until the last Fixed Rate Calculation Period, discounting each Fixed Amount from the Payment Date following the end of each such Fixed Rate Payor Calculation Period to the date of purchase of the applicable Notes at the Applicable Discount Rate, and (ii) on any Payment Date on and after the November 2010 Payment Date, zero; *provided* that, in the case of clause (i), the CDS/TRS Termination Payment Amount shall be calculated by the Servicer and subject to the approval of such CDS/TRS Purchaser.

"**CDS/TRS Purchaser**": means, a Holder of the Notes or, in the case of Notes represented by Global Notes, any beneficial owner thereof that has entered into either a credit default swap or a total return swap with respect to such Notes and has provided the Issuer and the Trustee with a written certification regarding its entry into such swap in a form reasonably acceptable to the Issuer (or the Servicer on behalf of the Issuer).

"**Class**" means all of the Notes having the same priority and the same Stated Maturity and all of the Preference Shares.

"**Class A Coverage Tests**" means the Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class A-1a Notes, Class A-1b Notes and Class A-2 Notes.

"**Class B Coverage Tests**" means the Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class B Notes.

"**Class B Deferred Interest**" means Deferred Interest with respect to the Class B Notes.

"**Class C Coverage Tests**" means the Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class C Notes.

"**Class C Deferred Interest**" means Deferred Interest with respect to the Class C Notes.

"**Class D Coverage Tests**" means the Overcollateralization Test and the Interest Coverage Test, each as applied with respect to the Class D Notes.

"**Class D Deferred Interest**" means Deferred Interest with respect to the Class D Notes.

"**Class Scenario Loss Rate**" means, with respect to any Class of Notes rated by S&P, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with S&P's rating of the Class of Notes on the Closing Date, determined by application of the S&P CDO Monitor.

"**Clearstream**" means Clearstream Banking, société anonyme, a corporation organized under the laws of the Duchy of Luxembourg.

"**Collateral Administration Agreement**" means the agreement dated as of the Closing Date among the Issuer, the Servicer and the Collateral Administrator, as modified, amended, and supplemented and in effect from time to time.

"**Collateral Administrator**" means the Bank in its capacity as collateral administrator under the Collateral Administration Agreement.

"**Consenting Holder of the Preference Shares**" means, with respect to any Payment Date, a Holder that has consented by delivering an irrevocable written notice to the Preference Shares Paying Agent to a distribution of Eligible Equity Securities in lieu of payment of Interest Proceeds on such Payment Date, as described in "Description of the Securities—Preference Shares Paying Agency Agreement."

"**Controlling Class**" means the Class A-1a Notes (voting together as a Class or group), so long as any Class A-1a Notes are Outstanding; then the Class A-1b Notes (voting together as a Class or group), so long as any Class A-1b Notes are Outstanding; then the Class A-2 Notes (voting together as a Class or group), so long as any Class A-2 Notes are Outstanding; then the Class B Notes (voting together as a Class or group), so long as any Class B are Outstanding; the Class C Notes (voting together as a Class or group), so long as any Class C Notes are Outstanding; and then the Class D Notes (voting together as a Class or group), so long as any Class D Notes are Outstanding.

"**Corporate Trust Office**" means the corporate trust office of the Trustee at which the Trustee performs its duties under the Indenture, currently having an address of 200 Clarendon Street, Mail Code: EUC 108, Boston, MA 02116 telecopy no. (617) 351-4358, Attention: CDO Services Group, or any other address the Trustee designates from time to time by notice to the Noteholders, the Servicer, the Preference Shares Paying Agent, the Issuer and each Rating Agency or the principal corporate trust office of any successor Trustee.

"**Credit Improved Obligation**" is any Collateral Obligation that (a) is sold pursuant to a Portfolio Improvement Exchange or (b) in the commercially reasonable judgment of the Servicer, has improved in credit quality; *provided* that, in forming such judgment, a reduction in credit spread or an increase in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment; and *provided, further,* that, if a Credit Rating Event is in effect, such Collateral Obligation will be considered a Credit Improved Obligation only if in addition to the above:

(i) the Collateral Obligation has been upgraded or has been put on credit watch list with the potential for developing positive credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under the Indenture;

(ii) such Collateral Obligation has experienced a reduction in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such decrease) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread

(prior to such decrease) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has increased by at least 1.00% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer (*provided* that this subclause (iii)(x) will be deemed satisfied if Market Value increases to 101%), or (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more positive than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, plus 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Improved Obligation, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Improved Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Improved Obligation if:

(i) the Synthetic Security itself is a Credit Improved Obligation; or

(ii) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Improved Obligation.

"**Credit Rating Event**" means an event that is in effect if the rating by Moody's:

(i) of the Class A-1a Notes or the Class A-1b Notes has been withdrawn or is one or more rating sub-categories below its Initial Rating; or

(ii) of the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes has been withdrawn or is two or more rating sub-categories below its respective Initial Rating.

For the purposes of this definition, any withdrawal or reduction in rating shall not be effective if after the withdrawal or reduction Moody's has upgraded the reduced or withdrawn rating to at least the Initial Rating in the case of the Class A-1a Notes or the Class A-1b Notes, or to only one subcategory below their Initial Rating in the case of the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"**Credit Risk Obligation**" means any Collateral Obligation (other than a Defaulted Collateral Obligation) that, in the commercially reasonable judgment of the Servicer, has significantly declined in credit quality and has a significant risk, with a lapse of time, of becoming a Defaulted Collateral Obligation; *provided* that in forming such judgment an increase in credit spread or a decrease in Market Value of such Collateral Obligation (whether as described in clauses (ii) or (iii) below or otherwise) may only be utilized as corroboration of other bases for such judgment.

So long as a Credit Rating Event is in effect, no Collateral Obligation shall be eligible to be a Credit Risk Obligation unless in addition to the above, as of the date of determination:

(i) the Collateral Obligation has been downgraded or has been put on credit watch list with the potential for developing negative credit implications by either of the Rating Agencies since the date the Issuer first acquired the Collateral Obligation under the Indenture;

(ii) such Collateral Obligation has experienced an increase in credit spread of (A) 0.25% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) less than or equal to 2.00%, (B) 0.375% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 2.00% but less than or equal to 4.00% or (C) 0.50% or more (on an absolute rather than a relative basis) in the case of a Collateral Obligation with a spread (prior to such increase) greater than 4.00%, in each case compared to the credit spread at the time such Collateral Obligation was acquired by the Issuer, determined by reference to an applicable index selected by the Servicer (such index selection subject to satisfaction of the Rating Condition with respect to Moody's);

(iii) (x) in the case of a Loan, the Market Value of such Collateral Obligation has decreased by at least 2.50% from the Market Value of such Collateral Obligation as of its date of acquisition, as determined by the Servicer, and (y) in the case of a Bond, the Market Value of such Collateral Obligation has changed since its date of acquisition by a percentage more negative, or less positive, as the case may be, than the percentage change in the Merrill Lynch US High Yield Master II Index, Bloomberg ticker H0A0, less 3.00%, over the same period; or

(iv) a Super Majority of the Controlling Class have voted to suspend the limitations on a Collateral Obligation being a Credit Risk Obligation set forth in clauses (i), (ii) and (iii) above, and for each subsequent downgrade by Moody's after a vote to suspend the limitations pursuant to this clause (iv) has occurred, a Super Majority of the Controlling Class must again vote to suspend the limitations on the Collateral Obligation being a Credit Risk Obligation for this clause (iv) to remain applicable.

A Synthetic Security shall be considered a Credit Risk Obligation if:

(a) the Synthetic Security itself is a Credit Risk Obligation; or

(b) the Reference Obligation of the Synthetic Security would, if it were a Collateral Obligation, be a Credit Risk Obligation.

"**Current-Pay Obligation**" means a Collateral Obligation as to which:

(i) an insolvency event has occurred with respect to its obligor or as to which its obligor is rated "D" or "SD" by S&P or its obligor has previously been rated "CCC-" by S&P and the rating has been withdrawn;

(ii) no default as to the payment of principal or interest with respect to the Collateral Obligation is then continuing and the Servicer has delivered to the Trustee an officer's certificate to the effect that the Servicer expects that the obligor will make payments on the Collateral Obligation as they become due;

(iii) (A) if the rating by Moody's of the Collateral Obligation is at least "Caa1" (and not on credit watch with negative implications) the Market Value of the Collateral Obligation is at least equal to 80% of its Principal Balance or (B) if the rating by Moody's of the Collateral Obligation is less than "Caa1" or is "Caa1" and on credit watch with negative implications, the Market Value of the Collateral Obligation is at least equal to 85% of its Principal Balance;

(iv) if an insolvency event has occurred with respect to the obligor of the Collateral Obligation, a bankruptcy court has authorized the payment of interest payable on the Collateral Obligation; and

(v) the Servicer has designated in writing to the Trustee the Collateral Obligation as a Current-Pay Obligation.

If the Aggregate Principal Balance of Collateral Obligations that would otherwise be Current-Pay Obligations exceeds 5% of the Maximum Amount, all or a portion of one or more Collateral Obligations that would otherwise be Current-Pay Obligations with an Aggregate Principal Balance equal to the amount of the excess shall not be Current-Pay Obligations (and will therefore be Defaulted Collateral Obligations). The Servicer shall designate in writing to the Trustee the Collateral Obligations that shall not be Current-Pay Obligations pursuant to the preceding sentence as the Collateral Obligations (or portions thereof) that have the lowest Market Value on any applicable date of determination.

The Servicer may, with the consent of a Majority of the Controlling Class, by notice to the Issuer, the Trustee and the Collateral Administrator, change the definition of "Current-Pay Obligation" or how Current-Pay Obligations are treated in the Indenture, subject to the satisfaction of the Rating Condition with respect to each Rating Agency.

"**Current Portfolio**" means, at any time, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations, Principal Proceeds held as cash on deposit in the Collection Account, and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account that exists before the sale, maturity, or other disposition of a Collateral Obligation or before the acquisition of a Collateral Obligation, as the case may be.

"**Deep Discount Obligation**" means, until the average Market Value Percentage of the Collateral Obligation, as determined daily for any period of 30 consecutive days, equals or exceeds 90%, any Collateral Obligation acquired by the Issuer for a Purchase Price less than 85% of its Principal Balance. For such purpose, the Market Value Percentage of a Collateral Obligation on a day that is not a Business Day shall be deemed to be the Market Value Percentage of the Collateral Obligation on the immediately preceding Business Day.

"**Defaulted Collateral Obligation**" means any Collateral Obligation or other obligation included in the Collateral:

(i) as to which a default in the payment of principal or interest is continuing beyond the lesser of three Business Days and any applicable grace or notice period, unless in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation;

(ii) the maturity of all or a portion of the principal amount of such Collateral Obligation has been accelerated as a consequence of a default (other than any payment default) under the instruments evidencing or relating to such Collateral Obligation; unless such default or event of default has been fully cured or waived and is no longer continuing and such acceleration has been rescinded;

(iii) with respect to which there has been effected any distressed exchange or other debt restructuring where the obligor has offered the holders thereof a new security or instrument or package of securities or instruments that, in the commercially reasonable judgment of the Servicer, either (x) amounts to a diminished financial obligation or (y) has the sole purpose of enabling the obligor to avoid a default;

(iv) (1) that is *pari passu* with or subordinated to other indebtedness for borrowed money owing by its obligor ("**Other Indebtedness**"), (2) the obligor has defaulted in the payment of principal or interest (without regard to any applicable grace or notice period and without regard to any waiver of the default) on the Other Indebtedness, unless, in the case of a failure of the obligor to make required interest payments, the obligor has resumed current Cash payments of interest previously scheduled and unpaid on the Other Indebtedness and has paid in full any accrued interest due and payable thereon, in which case the Collateral Obligation shall cease to be classified as a Defaulted Collateral Obligation and (3) the Servicer, *provided* that the

related Collateral Obligation has not been downgraded after the default on such Other Indebtedness has occurred, determines (in its commercially reasonable judgment) that such Other Indebtedness is material;

(v) (other than a Current-Pay Obligation or a DIP Loan) as to which:

(A) an insolvency event has occurred with respect to its obligor; or

(B) the obligation is rated "D", "SD", "C" or "CC" by S&P or was so rated immediately prior to such rating being withdrawn, or has previously been rated "CCC-" or lower by S&P and the rating has been withdrawn;

(vi) if the Collateral Obligation is a Structured Finance Obligation, it is rated "CC" or below by S&P, or it was rated "CC" or below by S&P but the rating has since been withdrawn, or it is rated "Ca" or below by Moody's, or it was rated "C" or below by Moody's but the rating has since been withdrawn;

(vii) that is a Participation that would, if the underlying Loan were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (v) above or with respect to which the Participating Institution has defaulted in the performance of any of its payment obligations under the Participation;

(viii) that is a Synthetic Security referencing a Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above or with respect to which the Synthetic Security Counterparty has defaulted in the performance of any of its payment obligations under the Synthetic Security; *provided, however*, with respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time: (x) a determination whether the Reference Obligations upon which such Synthetic Security is based would, if such Reference Obligations were Collateral Obligations, be a Defaulted Collateral Obligation, shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each of the Reference Obligations on which such Synthetic Security is based in an amount equal to the Allocable Principal Balance of such Reference Obligation and (y) the "Defaulted Collateral Obligation" for purposes of this clause (viii) shall be limited to the Allocable Principal Balance of each Reference Obligation that would, if the Reference Obligation were a Collateral Obligation, be a Defaulted Collateral Obligation under any of clauses (i) through (vi) above;

(ix) that is a Written-Down Obligation;

(x) that is a DIP Loan as to which an order has been entered converting the debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; or

(xi) that is declared to be a Defaulted Collateral Obligation by the Servicer.

Any Collateral Obligation that is classified as a Defaulted Collateral Obligation shall cease to be so classified if the Collateral Obligation, at any date thereafter,

(1) would not otherwise be classified as a Defaulted Collateral Obligation in accordance with this definition; and

(2) otherwise meets the Eligibility Criteria as of that date.

If any portion of a Collateral Obligation has a maturity later than one year after the Stated Maturity of the Notes due to a change in the payment schedule of the Collateral Obligation occurring after its acquisition by the Issuer, that portion of the Collateral Obligation shall be considered a Defaulted Collateral Obligation.

"**Defaulted Hedge Termination Payment**" means any termination payment required to be made by the Issuer to a Hedge Counterparty pursuant to a Hedge Agreement upon a termination of the Hedge Agreement in respect of which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"**Defaulted Interest**" means any interest payable in respect of any Class of Notes that is not punctually paid or duly provided for on the applicable Payment Date or at Stated Maturity.

"**Defaulted Interest Charge**" means to the extent lawful, interest on any Defaulted Interest at the Default Interest Rate.

"**Default Interest Rate**" means, with respect to any specified Class of Notes, the per annum interest rate equal to the Note Interest Rate payable on the Notes of the Class.

"**Deferred Interest Notes**" means the Class B Notes, the Class C Notes and the Class D Notes.

"**Definitive Security**" means any Note or Certificated Preference Share that is registered in the name of the beneficial owner.

"**Delayed Drawdown Loan**" means a Loan or any Synthetic Security with a Reference Obligation that:

(i) requires the Issuer to make one or more future advances to the borrower under its Underlying Instruments;

(ii) specifies a maximum amount that can be borrowed on one or more fixed borrowing dates; and

(iii) does not permit the re-borrowing of any amount previously repaid.

A Loan or Synthetic Security shall only be considered to be a Delayed Drawdown Loan for so long as its unused commitment amount is greater than zero and for purposes of the Concentration Limits only unfunded portions will count as Delayed Drawdown Loans.

"**Depository**" or "**DTC**" means The Depository Trust Company and its nominees.

"**DIP Loan**" means any Loan:

(i) that has a rating assigned by Moody's (or if the Loan does not have a rating assigned by Moody's, the Servicer has commenced the process of having a rating assigned by Moody's within five Business Days of the date the Loan is acquired by the Issuer) and a rating assigned by S&P (or if the Loan does not have a rating assigned by S&P, the Servicer has commenced the process of having a rating assigned by S&P within two Business Days of the date the Loan is acquired by the Issuer);

(ii) that is an obligation of a debtor in possession as described in Section 1107 of the Bankruptcy Code or a trustee (if appointment of a trustee has been ordered pursuant to Section 1104 of the Bankruptcy Code) (a "**Debtor**") organized under the laws of the United States or any state of the United States; and

(iii) the terms of which have been approved by a final order of the United States Bankruptcy Court, United States District Court, or any other court of competent jurisdiction, the enforceability of which order is not subject to any pending contested matter or proceeding (as those terms are defined in the Federal Rules of Bankruptcy Procedure) and which order provides that:

(A) the Loan is secured by liens on the Debtor's otherwise unencumbered assets pursuant to Section 364(c)(2) of the Bankruptcy Code;

(B) the Loan is secured by liens of equal or senior priority on property of the Debtor's estate that is otherwise subject to a lien pursuant to Section 364(d) of the Bankruptcy Code;

(C) the Loan is fully secured (based on a current valuation or appraisal report) by junior liens on the Debtor's encumbered assets; or

(D) if any portion of the Loan is unsecured, the repayment of the Loan retains priority over all other administrative expenses pursuant to Section 364(c)(1) of the Bankruptcy Code (and in the case of this clause (D), before the acquisition of the Loan, the Rating Condition is satisfied with respect to each Rating Agency).

"**Diversity Score**" is a single number that indicates collateral concentration in terms of both issuer and industry concentration, calculated as set forth in Schedule 4 to the Indenture.

"**Domicile**" or "**Domiciled**" means, with respect to each Collateral Obligation, (i) the jurisdiction of incorporation, organization or creation of the related obligor or (ii) in the case of a Collateral Obligation that would otherwise be considered to be domiciled pursuant to clause (i) in a Tax Advantaged Jurisdiction, the jurisdiction in which, in the commercially reasonable judgment of the Servicer, the related obligor conducts substantially all of its business operations and in which the assets primarily responsible for generating its revenues are located.

"**Due Period**" means, with respect to any Payment Date, for all purposes other than payments and receipts under Hedge Agreements, the period from the Business Day after the eighth Business Day before the previous Payment Date (or in the case of the first Payment Date, from the Closing Date) up to but excluding the Business Day after the eighth Business Day before the Payment Date (or in the case of the final Payment Date or any Payment Date that is a Redemption Date, through the Business Day before the Payment Date and for payments and receipts under Hedge Agreements the period from the day after the previous Payment Date (or in the case of the first Payment Date from the Closing Date) through the Payment Date).

"**Eligible Country**" means the United States, Canada and any country classified by Moody's as a Moody's Group I Country, Moody's Group II Country or Moody's Group III Country and, in each case, has an S&P foreign currency rating of at least "AA" by S&P; *provided* that such country has not imposed currency exchange controls.

"**Eligible Equity Security**" mean an equity security acquired in connection with the workout or restructuring of any Collateral Obligation by, or on behalf of, the Issuer that (i) is publicly traded on an Established Securities Market or (ii) the Market Value of which is higher than the Principal Balance of the Collateral Obligation with respect to which such equity security has been acquired by the Issuer.

"**Eligible Investments**" means any Dollar-denominated obligation or asset that, when it is pledged by the Issuer to the Trustee under the Indenture, is one or more of the following:

(i) Cash;

(ii) direct Registered obligations of, and Registered obligations the timely payment of principal and interest on which is fully and expressly guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are expressly backed by the full faith and credit of the United States, which in each case are not zero coupon securities;

(iii) demand and time deposits in, trust accounts, certificates of deposit payable within 91 days of issuance of, bankers' acceptances payable within 91 days of issuance issued by, or Federal funds sold by any depositary institution or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by Federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company), at the time of such acquisition or contractual commitment providing for such acquisition and throughout the term thereof, have a credit rating of not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade, or "P-1" by Moody's and "A-1+" by S&P in the case of commercial paper and short-term debt obligations; *provided* that in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "AA-" by S&P and "Aa3" by Moody's and a short-term rating of "A-1+" by S&P and "P-1" by Moody's, and if so rated, is not on watch for downgrade;

(iv) commercial paper or other short-term obligations with a maturity of not more than 183 days from the date of issuance and having at the time of such acquisition a credit rating of at least "P-1" by Moody's and "A-1+" by S&P; *provided* that, in any case, the issuer thereof must have at the time of such acquisition a long-term credit rating of not less than "Aa2" by Moody's and "AA-" by S&P, and if so rated, such rating is not on watch for downgrade;

(v) unleveraged repurchase obligations with respect to any security described in clause (b) above entered into with a U.S. federal or state depository institution or trust company (acting as principal) described in clause (iii) above or entered into with a corporation (acting as principal) whose long-term credit rating is not less than "Aaa" by Moody's and "AAA" by S&P and in each case are not on watch for downgrade or whose short-term credit rating is "P-1" by Moody's and "A-1+" by S&P at the time of such acquisition and throughout the term thereof; *provided* that, if such repurchase obligation has a maturity of longer than 91 days, the counterparty thereto must also have at the time of such acquisition and throughout the term thereof a long-term credit rating of not less than "Aa2" by Moody's and "AAA" by S&P, and if so rated, such rating is not on watch for downgrade;

(vi) any money market fund or similar vehicle having at the time of acquisition and throughout the term thereof a credit rating of "MR1+" by Moody's and "AAAm" by S&P; including any fund for which the Trustee or an Affiliate of the Trustee serves as an investment adviser, administrator, shareholder servicing agent, custodian or subcustodian, notwithstanding that (A) the Trustee or an Affiliate of the Trustee charges and collects fees and expenses from such funds for services rendered (*provided* that such charges, fees and expenses are on terms consistent with terms negotiated at arm's length) and (B) the Trustee charges and collects fees and expenses for services rendered, pursuant to the Indenture;

(vii) a guaranteed reinvestment agreement from a bank (if treated as a deposit by such bank), insurance company or other corporation or entity organized under the laws of the United States or any state thereof (if treated as debt by such insurance company or other corporation or entity), providing for periodic payments thereunder during each Due Period; *provided* that each such agreement provides that it is terminable by the purchaser, without premium or penalty, in the event that the rating assigned to such agreement by either Moody's or S&P is at any time lower than the then current ratings assigned to the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes; *provided, further*, that, at the time of acquisition and throughout the term thereof, the issuer of such agreement has a senior unsecured long-term debt rating, issuer rating or counterparty rating of at least "Aaa" by

Moody's, a short-term debt rating of "P-1" by Moody's (and not on watch for downgrade), a short-term debt rating of at least "A-1+" by S&P and a long-term debt rating of at least "AAA" by S&P (and not on watch for downgrade); and

(viii) such other obligations or assets for which Rating Confirmation has been received;

and, in each case, with a stated maturity (giving effect to any applicable grace period) no later than the Business Day before the Payment Date next succeeding the date of acquisition.

Eligible Investments on deposit in the Revolving Reserve Account, the Delayed Drawdown Reserve Account, or the Synthetic Security Collateral Account must have a stated maturity no later than one Business Day after the date of their purchase.

Eligible Investments may not include:

(1) any interest-only security, any security purchased at a price in excess of 100% of its par value, any mortgage-backed security or any security whose repayment is subject to substantial non-credit related risk as determined in the commercially reasonable judgment of the Servicer;

(2) any security whose rating assigned by S&P includes the subscript "r," "t," "p," "pi," or "q";

(3) any floating rate security whose interest rate is inversely or otherwise not proportionately related to an interest rate index or is calculated as other than the sum of an interest rate index plus a spread (which spread may be zero);

(4) any security that is subject to an exchange or tender offer; or

(5) any security that has payments subject to foreign or United States withholding tax.

Eligible Investments may include Eligible Investments for which the Trustee or an Affiliate of the Trustee is the issuer or depository institution or provides services. Eligible Investments may not include obligations principally secured by real property.

"**Emerging Market Security**" means a security or obligation issued by a sovereign or non-sovereign issuer located in a country (excluding the Cayman Islands, Bermuda, the British Virgin Islands, the Netherlands Antilles, and the Channel Islands):

(i) that is in Latin America, Asia, Africa, Eastern Europe, or the Caribbean; or

(ii) the long-term foreign currency debt obligations of which are rated below "Aa2" or "Aa2" and on credit watch with negative implications by Moody's or the foreign currency issuer credit rating of which is below "AA" by S&P.

"**Euroclear**" means Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"**Excel Default Model Input File**" means an electronic spreadsheet file in Microsoft excel format to be provided to S&P, which file shall include the balance of Cash and Eligible Investments in each account and the following information (to the extent such information is not confidential) with respect to each Collateral Obligation:

(a) the name and country of domicile of the issuer thereof and the particular obligation or security held by the Issuer,

(b) the CUSIP or other applicable identification number associated with such Collateral Obligation,

(c) the par value of such Collateral Obligation,

(d) the type of obligation or security (including, by way of example, whether such Collateral Obligation is a bond, loan or asset-backed security), using such abbreviations as may be selected by the Trustee,

(e) a description of the index or other applicable benchmark upon which the interest payable on such Collateral Obligation is based (including, by way of example, fixed rate, step-up rate, zero coupon and LIBOR),

(f) the coupon (in the case of a Collateral Obligation which bears interest at a fixed rate) or the spread over the applicable index (in the case of a Collateral Obligation which bears interest at a floating rate),

(g) the S&P Industry Classification for such Collateral Obligation,

(h) the stated maturity date of such Collateral Obligation,

(i) the S&P Rating of such Collateral Obligation or the issuer thereof, as applicable,

(j) the applicable S&P Priority Category, and

(k) such other information as the Trustee may determine to include in such file.

"**Excess CCC+/Caa1 Collateral Obligations**" means the Principal Balance of all CCC+/Caa1 Collateral Obligations in excess of 7.5% of the Maximum Amount on the relevant Determination Date.

"**Excluded Property**" means (i) U.S.$250 (attributable to the issue and allotment of the Issuer Ordinary Shares) and a U.S.$250 transaction fee paid to the Issuer, the bank account in which those amounts are credited in the Cayman Islands and any interest earned on those amounts; (ii) any amounts credited to the Class II Preference Share Special Payment Account from time to time and (iii) any Margin Stock.

"**Extension**" means an extension of the Replacement Period, the Stated Maturity of the Notes and the Weighted Average Life Test in accordance with the Indenture.

"**Extension Bonus Payment**" means, with respect to each Maturity Extension, a single payment to each applicable beneficial owner set forth in "Description of the Securities— Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date" in an amount equal to (1) in the case of the Class A-1a Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (2) in the case of the Class A-1b Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (3) in the case of the Class A-2 Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (4) in the case of the Class B Notes, 0.25% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date, (5) in the case of the Class C Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date and (6) in the case of the Class D Notes, 0.50% of the Aggregate Outstanding Amount thereof held by such beneficial owner as of the applicable Extension Effective Date.

"**Extension Bonus Eligibility Certification**" means, with respect to each Maturity Extension and each beneficial owner of Notes other than Extension Sale Securities, the written certification by such beneficial owner acceptable to the Issuer to the effect that it held Notes other than Extension Sale

Securities on the applicable Extension Effective Date, including the Aggregate Outstanding Amount thereof in the case of the Notes and wire transfer instructions for the Extension Bonus Payment and any required documentation thereunder.

"**Extension Determination Date**" means the 8th Business Day prior to each Extension Effective Date.

"**Extension Purchase Price**" means the purchase price payable by the Extension Qualifying Purchasers for Extension Sale Securities in connection with each Maturity Extension, if any, in an amount equal to (i) in the case of the Notes, the Aggregate Outstanding Amount thereof, plus accrued and unpaid interest (including Deferred Interest, if any) as of the applicable Extension Effective Date (giving effect to any amounts paid to the Holder on such date), and (ii) in the case of the Preference Shares and the Holding Preference Shares, an amount that, when taken together with all payments and distributions made in respect of such Preference Shares or Holding Preference Shares, as the case may be, since the Closing Date would cause such Preference Shares or Holding Preference Shares, as applicable, to have received (as of the date of purchase thereof) a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, of 12.0% (assuming such purchase date was a "Payment Date" under the Indenture); *provided, however*, that if the applicable Extension Effective Date is on or after the date on which such Holders have received a Preference Share Internal Rate of Return or a Holding Preference Share Internal Rate of Return, as applicable, equal to or in excess of 12.0%, the applicable Extension Purchase Price for such Preference Shares or Holding Preference Shares, as applicable, shall be zero.

"**Extension Qualifying Purchasers**" means the Servicer (or any of its Affiliates acting as principal or agent); *provided* that in the event that the Servicer elects not to purchase Extension Sale Securities from Holders pursuant to the Extension Conditions set forth in "Description of the Securities—Extension of the Replacement Period, the Stated Maturity and the Scheduled Preference Shares Redemption Date"; "Extension Qualifying Purchasers" shall mean one or more qualifying purchasers (which may include the Initial Purchaser, Investors Corp. or any of their respective Affiliates acting as principal or agent) designated by the Servicer; *provided however*, none of the Servicer, the Initial Purchaser, Investors Corp. or any of their respective Affiliates shall have any duty to act as an Extension Qualifying Purchaser.

"**Face Amount**" means, with respect to any Preference Share or Holding Preference Share, the amount set forth therein as the "face amount" thereof, which "face amount" shall be $1,000 per Preference Share or Holding Preference Share.

"**Finance Lease**" means a lease agreement or other agreement entered into in connection with and evidencing a Leasing Finance Transaction.

"**Fixed Amount**": means, with respect to any CDS/TRS Purchaser and each applicable Fixed Rate Payor Calculation Period, the product of (i) the applicable Fixed Rate Payor Calculation Amount with respect to such CDS/TRS Purchaser, (ii) the applicable Fixed Rate with respect to such CDS/TRS Purchaser and (iii) a fraction the numerator of which is the actual number of days in such Fixed Rate Payor Calculation Period and the denominator of which is 360.

"**Fixed Rate**": means, with respect to any CDS/TRS Purchaser, the spread over LIBOR of the Class of Notes held by such CDS/TRS Purchaser with respect to which such CDS/TRS Purchaser has entered into a credit default swap or a total return swap, as the case may be.

"**Fixed Rate Excess**" means, as of any Measurement Date, a fraction whose numerator is the product of:

(i) the greater of zero and the excess of the Weighted Average Fixed Rate Coupon for the Measurement Date over the minimum percentage specified to pass the Weighted Average Fixed Rate Coupon Test; and

(ii) the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date;

and whose denominator is the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date.

In computing the Fixed Rate Excess on any Measurement Date, the Weighted Average Fixed Rate Coupon for the Measurement Date will be computed as if the Spread Excess were equal to zero.

"**Fixed Rate Obligations**" means any Collateral Obligation that bears interest at a fixed rate.

"**Fixed Rate Payer Calculation Amount**": means, with respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, the Aggregate Outstanding Amount of the Notes held by such CDS/TRS Purchaser as of the date of purchase of such Notes in an Amendment Buy-Out (in each case, after giving effect to any principal amounts paid to such CDS/TRS Purchaser on such date).

"**Fixed Rate Payer Calculation Period**": With respect to any CDS/TRS Purchaser for purposes of calculating the applicable CDS/TRS Termination Payment Amount, initially, the period from and including the date of purchase of such Notes in an Amendment Buy-Out to but excluding the immediately succeeding Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date; *provided* that the last Fixed Rate Payer Calculation Period shall end on the November 2010 Payment Date.

"**Floating Rate Notes**" means the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"**Floating Rate Obligation**" means any Collateral Obligation that bears interest based on a floating rate index.

"**Form-Approved Synthetic Security**" means a Synthetic Security:

(i) (A) each of the Reference Obligations of which satisfy the definition of "Collateral Obligation" and could be purchased by the Issuer without any required action by the Rating Agencies, without satisfaction of the Rating Condition or which the Rating Agencies have otherwise approved; or

(B) each of the Reference Obligations of which would satisfy clause (A) above but for the currency in which the Reference Obligation is payable and the Synthetic Security is payable in Dollars, does not provide for physical settlement, and does not expose the Issuer to Dollar currency risk;

(ii) the Synthetic Security Agreement of which conforms (but for the amount and timing of periodic payments, the name of the Reference Obligation, the notional amount, the effective date, the termination date, and other similar necessary changes) to a form that has been expressly identified and approved in writing in connection with a request under the Indenture by Moody's and S&P;

(iii) a copy of the Synthetic Security Agreement of which has been delivered to the Holders of the Class A-1 Notes by the Trustee at the expense of the Co-Issuers and upon being furnished with a copy of the same by the Servicer; and

(iv) that is with a counterparty with respect to which the Rating Condition has been satisfied by each of Moody's and S&P prior to the acquisition of any such Form-Approved Synthetic Security, and such approval has not been withdrawn.

Moody's or S&P may at any time, by notice to the Servicer, withdraw its approval of any such form. A withdrawal of approval shall have no effect on any Synthetic Security acquired, entered into, or committed to before the date on which the Servicer receives the notice of withdrawal.

"**Funded Amount**" means, with respect to any Revolving Loan or Delayed Drawdown Loan at any time, the aggregate principal amount of advances or other extensions of credit made thereunder by the Issuer that are outstanding and have not been repaid at such time.

"**Hedge Agreements**" means, collectively, all interest rate cap or interest rate swap agreements between the Issuer and any Hedge Counterparty, and any replacement agreement entered into pursuant to the Indenture.

"**Hedge Counterparty**" means Rabobank International, Utrecht ("Rabobank"), currently having an address of Croeselaan 18, P.O. 17100, 3500 HG, Utrecht, The Netherlands, or any other counterparty, to the extent that when the Issuer enters into any Hedge Agreement with Rabobank or the other counterparty, Rabobank or the other counterparty satisfies the requirements of the Indenture, including, in the case of any other counterparty, to the satisfaction of the Rating Condition for each Rating Agency.

"**Hedge Termination Receipt**" means any termination payment paid by the Hedge Counterparty to the Issuer upon any early termination of a Hedge Agreement with respect to which the Hedge Counterparty is the sole Defaulting Party or Affected Party (each as defined in the Hedge Agreements).

"**High-Yield Bond**" means any debt security, other than a Loan or a Structured Finance Obligation, that is either Registered or, if not Registered, (i) it is issued by an obligor that is not resident in the United States, (ii) the payments on it are not subject to United States withholding tax and (iii) it is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"**Holder**" means, of any Note, the person whose name appears on the Indenture Register as the registered holder of the Note; of any Preference Share, the person whose name appears in the Preference Share register related thereto as the registered holder of such Preference Share and of any Holding Preference Share, the person whose name appears in the Holding Preference Share register related thereto as the registered holder of such Holding Preference Share.

"**Holding Preference Share Documents**" means Investors Corp.'s memorandum and articles of association, the Holding Preference Shares Paying Agency Agreement and the resolutions of Investors Corp.'s board of directors authorizing the issuance of the Holding Preference Shares passed on or before the Closing Date.

"**Holding Preference Share Internal Rate of Return**" means, with respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for each distribution made to the Holders of the Holding Preference Shares on any prior Payment Date and, to the extent necessary to reach the applicable Holding Preference Share Internal Rate of Return, the current Payment Date, assuming all Holding Preference Shares are purchased on the Closing Date at their Face Amount.

"**Holding Preference Shares Paying Agency Agreement**" means The Holding Preference Shares Paying Agency Agreement, dated as of the Closing Date, by and between Investors Corp. and the Holding Preference Shares Paying Agent, as amended from time to time in accordance with the terms thereof.

"**Holding Preference Shares Paying Agent**" means Investors Bank & Trust Company, in its capacity as holding preference shares paying agent under the Holding Preference Shares Paying Agency Agreement, unless a successor Person shall have become the holding preference shares paying agent pursuant to the applicable provisions of the Holding Preference Shares Paying Agency Agreement, and thereafter "Holding Preference Shares Paying Agent" shall mean such successor Person.

"**Indenture Registrar**" means the Bank in its capacity as Indenture registrar as provided in the Indenture.

"**Indenture Register**" means the register caused to be kept by the Issuer for the purpose of registering Notes and transfers of the Notes as provided in the Indenture.

"**Initial Consent Period**" means the period of 15 Business Days from but excluding the date on which the Trustee mailed notice of a proposed supplemental indenture pursuant to the Indenture to the Holders of Securities.

"**Initial Rating**" means, the ratings by Moody's and S&P with respect to each Class of Notes provided in the table in "Summary of Terms—Principal Terms of the Securities."

"**Interest Period**" means, initially, the period from and including the Closing Date to but excluding the first Payment Date, and, thereafter, each successive period from and including each Payment Date to but excluding the following Payment Date.

"**Interest Proceeds**" means, with respect to any Due Period, the sum (without duplication) of all amounts received in Cash during the Due Period (or as otherwise specified below) by the Issuer with respect to the Collateral that are:

(i) payments of interest, fees, and commissions (excluding (A) Accrued Interest Purchased With Principal, (B) interest and dividends on Workout Assets, (C) fees and commissions from Defaulted Collateral Obligations, and (D) syndication and other up-front fees and any up-front fixed payments received in connection with entering into a Synthetic Security);

(ii) any portion of the Sale Proceeds of a Collateral Obligation (other than a Defaulted Collateral Obligation) representing Accrued Interest On Sale;

(iii) all payments of principal on, or disposition proceeds from the sale of, Eligible Investments to the extent purchased with Interest Proceeds;

(iv) payments with respect to the Hedge Agreements received on or before the related Payment Date (other than any amount payable thereunder because of any early termination or notional amount reduction), but not any Sale Proceeds from any of these instruments (except to the extent that they were purchased with Interest Proceeds);

(v) all fees received pursuant to any Securities Lending Agreements;

(vi) amounts in the Collection Account designated for distribution as Interest Proceeds pursuant to the Priority of Payments (including any amount transferred from the Interest Reserve Account);

(vii) all earnings on amounts in the Delayed Drawdown Reserve Account and the Revolving Reserve Account deposited to the Collection Account in accordance with Section 10.3(b) of the Indenture;

(viii) amounts in the Expense Reimbursement Account on the Payment Date for the relevant Due Period;

(ix) any recoveries (including interest) received on a Defaulted Collateral Obligation in excess of the principal balance of such Defaulted Collateral Obligation (as of the date the related Collateral Obligation became a Defaulted Collateral Obligation).

Interest Proceeds shall not include the Excluded Property and Interest Proceeds shall not include earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

Each reference in the definition of "Interest Proceeds" to a Collateral Obligation shall include a Collateral Obligation that has been loaned pursuant to a Securities Lending Agreement and Interest Proceeds shall include any amounts referred to in clauses (i) through (iii) above received by the Issuer in respect of the Collateral Obligation indirectly from the related Securities Lending Counterparty pursuant to the Securities Lending Agreement.

With respect to any Payment Date, Interest Proceeds in an amount equal to the Interest Proceeds due and payable on such Payment Date to the Consenting Holders of the Preference Shares with respect to such Payment Date that are distributed to such Holders by way of Eligible Equity Securities in lieu of Cash pursuant to "Description of the Securities—Priority of Payments—Interest Proceeds" will be treated for all purposes by the Issuer and the Servicer as Principal Proceeds.

"**Investors Corp. Initial Purchaser**" means Credit Suisse Securities (USA) LLC.

"**Issuer Charter**" means the Memorandum and Articles of Association of the Issuer, as amended and restated before the Closing Date or in accordance with the Indenture.

"**Issuer Order**" and "**Issuer Request**" means a written order or request dated and signed in the name of the Issuer, the Co-Issuer or Investors Corp. by an Authorized Officer of the Issuer, the Co-Issuer or Investors Corp., as applicable, or by the Servicer by an Authorized Officer of the Servicer, on behalf of the Issuer or the Co-Issuer.

"**Junior Class**" means, with respect to a particular Class of Notes, each Class of Notes that is subordinated to that Class.

"**Leasing Finance Transaction**" means any transaction pursuant to which the obligations of the lessee to pay rent or other amounts on a triple net basis under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, are required to be classified and accounted for as a capital lease on a balance sheet of such lessee under generally accepted accounting principles in the United States of America; but only if (a) such lease or other transaction provides for the unconditional obligation of the lessee to pay a stated amount of principal no later than a stated maturity date, together with interest thereon, and the payment of such obligation is not subject to any material non-credit related risk as determined by the Servicer, (b) the obligations of the lessee in respect of such lease or other transaction are fully secured, directly or indirectly, by the property that is the subject of such lease and (c) the interest held by the Issuer in respect of such lease or other transaction is treated as debt for U.S. federal income tax purposes.

"**Loan**" means any interest in a fully committed, senior secured, unsecured, or revolving loan (including loans involving credit linked deposits) that is acquired by assignment or by Participation (including any DIP Loan) that is either:

(i) Registered; or

(ii) issued by an obligor that is not resident in the United States;

(A) whose payments are not subject to United States withholding tax; and

(B) that is held through a financial institution pursuant to the procedures described in Treasury Regulation section 1.165-12(c)(3).

"**Long-Dated Collateral Obligation**" means any Collateral Obligation with a stated maturity later than the Stated Maturity of the Notes other than a Collateral Obligation with a stated maturity later

than the Stated Maturities of the Notes that includes a "put" option to its obligor at a price of at least par payable on or before the Stated Maturity of the Notes.

"**Majority**" means, with respect to any Class or group of Notes or Preference Shares, the Holders of more than 50% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be.

"**Margin Stock**" means "Margin Stock" as defined under Regulation U issued by the Board of Governors of the Federal Reserve System, including any debt security that is by its terms convertible into Margin Stock, but does not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation received pursuant to an offer by an issuer of a Defaulted Collateral Obligation.

"**Market Value**" means, as of any Measurement Date, the market value determined by the Servicer and reported to the Trustee as an amount rather than as a percentage or fraction of par (expressed in Dollars) of any Collateral Obligation (or Eligible Equity Security, as applicable) based upon the Servicer's commercially reasonable judgment and based upon the following order of priority: (i) the average of the bid-side market prices obtained by the Servicer from three Independent broker-dealers active in the trading of such obligations or (ii) if the foregoing set of prices were not obtained, the lower of the bid-side market prices obtained by the Servicer from two Independent broker-dealers active in the trading of such obligations or (iii) if the foregoing sets of prices were not obtained, the average of the bid-side prices for the purchase of the Collateral Obligation (or Eligible Equity Security, as applicable) determined by an Approved Pricing Service (Independent from the Servicer) that derives valuations by polling broker-dealers (Independent from the Servicer).

If a Market Value of any Collateral Obligation cannot be so determined in accordance with the procedures set out in the previous paragraph for a period of 30 consecutive days then such Collateral Obligation shall be deemed to have a Market Value of zero; *provided*, that during such 30 day period, such Collateral Obligation shall be deemed to have a Market Value equal to the lower of (i) the product of (x) the Principal Balance of such Collateral Obligation multiplied by (y) 1.25 multiplied by (z) the applicable S&P Priority Category Recovery Rate and (ii) the current market value of such Collateral Obligation as determined by the Servicer in its commercially reasonable judgment; *provided, further*, that the maximum amount of Collateral Obligations having a Market Value assigned pursuant to the immediately preceding proviso shall be limited to 5.0% of the Maximum Amount (and any amount in excess of 5.0% of the Maximum Amount shall be deemed to have a Market Value of zero). For the avoidance of doubt, the procedures set out in this paragraph should not apply to determinations of Market Value of any Eligible Equity Securities.

The Servicer is under no obligation to determine the Market Value of the Collateral Obligations other than as set forth in the Servicing Agreement or the Indenture or to comply with any of its duties as set forth in the Servicing Agreement or in the Indenture.

"Market Value Determination Date" means, with respect to any distribution of Eligible Equity Securities, one Business Day prior to the date of the notice distributed by the Issuer to the Holders of the Preference Shares in connection with such distribution.

"**Market Value Percentage**" means, for any Collateral Obligation, the ratio obtained by dividing:

(i) the Market Value of the Collateral Obligation; by

(ii) the Principal Balance of the Collateral Obligation.

"**Maximum Amount**" means an amount equal to:

(i) on any Measurement Date during the Ramp-Up Period, U.S.$1,471,900,000; and

(ii) on any Measurement Date after the Ramp-Up Completion Date:

(A) the aggregate Principal Balance of all Collateral Obligations plus the aggregate outstanding principal amount of any Defaulted Collateral Obligations; *plus*

(B) cash representing Principal Proceeds on deposit in the Collection Account; *plus*

(C) Eligible Investments (other than cash) purchased by the Issuer with Principal Proceeds on deposit in the Collection Account.

"**Maximum Weighted Average Moody's Rating Factor**" means, as of any Measurement Date, a rate equal to the sum of (i) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolation between two adjacent rows and/or two adjacent columns, as applicable) *plus* (ii) the Recovery Rate Modifier.

"**Measurement Date**" means any date:

(i) on which the Issuer commits to acquire or dispose of any Collateral Obligation;

(ii) on which a Collateral Obligation becomes a Defaulted Collateral Obligation;

(iii) that is a Determination Date;

(iv) that is the Ramp-Up Completion Date;

(v) that is the date as of which the information in a Monthly Report is calculated pursuant to the Indenture; and,

with respect to any distribution of Eligible Equity Securities only,

(vi) that is the Market Value Determination Date.

"**Minimum Diversity Score**" means, as of any Measurement Date, a score equal to the number set forth in the column entitled "Minimum Diversity Score" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"**Minimum Weighted Average Spread**" means, as of any Measurement Date, the spread equal to the percentage set forth in the row entitled "Minimum Weighted Average Spread" in the Ratings Matrix based upon the applicable "row/column combination" chosen by the Servicer (or the interpolating between two adjacent rows and/or two adjacent columns, as applicable).

"**Monthly Report**" means a monthly report compiled and provided by the Issuer.

"**Moody's Default Probability Rating**" means with respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(i) with respect to a Moody's Senior Secured Loan:

(A) if the Loan's obligor has a corporate family rating from Moody's, such corporate family rating; and

(B) if the preceding clause does not apply, the Moody's Obligation Rating of such Loan;

(C) if the preceding clauses do not apply, the rating that is one subcategory above the Moody's Equivalent Senior Unsecured Rating;

(ii) with respect to a Moody's Non Senior Secured Loan or a Bond, the Moody's Equivalent Senior Unsecured Rating of such Collateral Obligation;

(iii) with respect to a Collateral Obligation that is a DIP Loan, the rating that is one rating subcategory below the Assigned Moody's Rating thereof;

(iv) with respect to a Structured Finance Obligation, the Assigned Moody's Rating thereof (or, if the obligation does not have an Assigned Moody's Rating but has a rating by S&P, then the Moody's Default Probability Rating shall be:

(x) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher, or

(y) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; and

(v) with respect to a Synthetic Security, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down (if on watch for downgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories or adjusted up (if on watch for upgrade) (i) with respect to any Collateral Obligation other than Structured Finance Obligations, one subcategory and (ii) with respect to any Structured Finance Obligation, two subcategories. For purposes of any calculation under the Indenture, if a Moody's Default Probability Rating is withdrawn by Moody's with respect to a Collateral Obligation, the Issuer will continue using the latest Moody's Default Probability Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

"**Moody's Equivalent Senior Unsecured Rating**" means, with respect to any Collateral Obligation that is a Loan or bond and the obligor thereof, as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(i) if the obligor has a senior unsecured obligation with an Assigned Moody's Rating, such Assigned Moody's Rating;

(ii) if the preceding clause does not apply, the Moody's "Issuer Rating" for the obligor;

(iii) if the preceding clauses do not apply, but the obligor has a subordinated obligation with an Assigned Moody's Rating; then

(A) if such Assigned Moody's Rating is at least "B3" (and, if rated "B3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one rating subcategory higher than such Assigned Moody's Rating; or

(B) if such Assigned Moody's Rating is less than "B3" (or rated "B3" and on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be such Assigned Moody's Rating;

(iv) if the preceding clauses do not apply, but the obligor has a senior secured obligation with an Assigned Moody's Rating; then:

(A) if such Assigned Moody's Rating is at least "Caa3" (and, if rated "Caa3," not on watch for downgrade), the Moody's Equivalent Senior Unsecured Rating shall be the rating which is one subcategory below such Assigned Moody's Rating; or

(B) if such Assigned Moody's Rating is less than "Caa3" (or rated "Caa3" and on watch for downgrade), then the Moody's Equivalent Senior Unsecured Rating shall be "C";

(v) if the preceding clauses do not apply, but such obligor has a corporate family rating from Moody's, the Moody's Equivalent Senior Unsecured Rating shall be one rating subcategory below such corporate family rating;

(vi) if the preceding clauses do not apply, but the obligor has a senior unsecured obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), then the Moody's Equivalent Senior Unsecured Rating shall be:

(A) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(D) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower; or

(E) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's of (a) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating no lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (b) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (vi)(C), or clauses (vii)(C) or (viii)(C) does not exceed 5% of the Maximum Amount, and (c) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(vii) if the preceding clauses do not apply, but the obligor has a subordinated obligation (other than a bank loan) with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(A) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(B) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (iii) above; or

(C) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (a) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within five Business Days of the date of the commitment to purchase the Loan or Bond, (b) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (vii)(C), or clauses (vi)(C) or (viii)(C) does not exceed 5% of the Maximum Amount, and (c) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(viii) if the preceding clauses do not apply, but the obligor has a senior secured obligation with a monitored public rating from S&P (without any postscripts, asterisks or other qualifying notations, that addresses the full amount of principal and interest promised), the Assigned Moody's Rating shall be deemed to be:

(A) one rating subcategory below the Moody's equivalent of such S&P rating if it is "BBB–" or higher;

(B) two rating subcategories below the Moody's equivalent of such S&P rating if it is "BB+" or lower, and the Moody's Equivalent Senior Unsecured Rating shall be determined pursuant to clause (iv) above; or

(C) "B3" until the Issuer or the Servicer obtains an estimated rating from Moody's if (a) the Servicer certifies to the Trustee that in its commercially reasonable judgment, it believes an estimated rating equivalent to a rating not lower than "B3" will be assigned by Moody's and the Issuer or the Servicer on its behalf applies for an estimated rating from Moody's within two Business Days of the date of the commitment to purchase the Loan or Bond, (b) the aggregate Principal Balance of Collateral Obligations having an Assigned Moody's Rating pursuant to either this clause (viii)(C), or clause (vi)(C) or (vii)(C) does not exceed 5% of the Maximum Amount, and (c) all the Coverage Tests and the Collateral Quality Tests are satisfied;

(ix) if the preceding clauses do not apply and each of the following clauses (A) through (H) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa1":

(A) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings;

(B) no debt securities or obligations of the obligor are in default;

(C) neither the obligor nor any of its Affiliates has defaulted on any debt during the preceding two years;

(D) the obligor has been in existence for the preceding five years;

(E) the obligor is current on any cumulative dividends;

(F) the fixed-charge ratio for the obligor exceeds 125% for each of the preceding two fiscal years and for the most recent quarter;

(G) the obligor had a net profit before tax in the past fiscal year and the most recent quarter; and

(H) the annual financial statements of such obligor are unqualified and certified by a firm of Independent accountants of international reputation, and quarterly statements are unaudited but signed by a corporate officer;

(x) if the preceding clauses do not apply but each of the following clauses (A) and (B) do apply, the Moody's Equivalent Senior Unsecured Rating will be "Caa3":

(A) neither the obligor nor any of its Affiliates is subject to reorganization or bankruptcy proceedings; and

(B) no debt security or obligation of such obligor has been in default during the past two years; and

(xi) if the preceding clauses do not apply and a debt security or obligation of the obligor has been in default during the past two years, the Moody's Equivalent Senior Unsecured Rating will be "Ca."

Notwithstanding the foregoing, not more than 10% of the Maximum Amount may consist of Relevant Obligations given a Moody's Equivalent Senior Unsecured Rating based on a rating given by S&P as provided in clauses (vi), (vii) and (viii) above.

"**Moody's Group I Country**" means any of the following countries: Australia, the Netherlands, the United Kingdom and any country subsequently determined by Moody's to be a Moody's Group I Country.

"**Moody's Group II Country**" means any of the following countries: Germany, Ireland, Sweden, Switzerland and any country subsequently determined by Moody's to be a Moody's Group II Country.

"**Moody's Group III Country**" means any of the following countries: Austria, Belgium, Denmark, Finland, France, Iceland, Liechtenstein, Luxembourg, Norway, Spain and any country subsequently determined by Moody's to be a Moody's Group III Country.

"**Moody's Minimum Average Recovery Rate**" means, as of any Measurement Date, a rate equal to the number obtained by (i) summing the products obtained by multiplying the Principal Balance of each Collateral Obligation by its respective Moody's Priority Category Recovery Rate, (ii) dividing the sum determined pursuant to clause (i) above by the sum of the Aggregate Principal Balance of all Collateral Obligations and (iii) rounding up to the first decimal place.

"**Moody's Non Senior Secured Loan**" means any Loan that is not a Moody's Senior Secured Loan.

"**Moody's Obligation Rating**" means, with respect to any Collateral Obligation as of any date of determination, the rating determined in accordance with the following, in the following order of priority:

(i) With respect to a Moody's Senior Secured Loan:

(A) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(B) if the preceding clause does not apply, the rating that is one rating subcategory above the Moody's Equivalent Senior Unsecured Rating; and

(ii) With respect to a Moody's Non Senior Secured Loan or a Bond:

(A) if it has an Assigned Moody's Rating, such Assigned Moody's Rating; or

(B) if the preceding clause does not apply, the Moody's Equivalent Senior Unsecured Rating; and

(iii) With respect to a Synthetic Security or a DIP Loan, the Assigned Moody's Rating thereof.

Notwithstanding the foregoing, if the Moody's rating or ratings used to determine the Moody's Default Probability Rating are on watch for downgrade or upgrade by Moody's, such rating or ratings will be adjusted down one subcategory (if on watch for downgrade) or up one subcategory (if on watch for upgrade).

"**Moody's Priority Category**" means each type of Collateral Obligation specified in the definition of "Applicable Percentage" as a "Moody's Priority Category."

"**Moody's Priority Category Recovery Rate**" means for any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the Moody's Priority Category of the Collateral Obligation.

"**Moody's Rating**" means the Moody's Default Probability Rating; *provided* that, with respect to the Collateral Obligations generally, if at any time Moody's or any successor to it ceases to provide rating services, references to rating categories of Moody's in the Indenture shall be deemed instead to be references to the equivalent categories of any other nationally recognized investment rating agency selected by the Servicer, as of the most recent date on which such other rating agency and Moody's published ratings for the type of security in respect of which such alternative rating agency is used.

"**Moody's Rating Factor**" means the number in the table below opposite the rating of the Collateral Obligation (excluding Synthetic Securities where an Assigned Moody's Rating is not available).

Moody's Rating	Moody's Rating Factor	Moody's Rating	Moody's Rating Factor
Aaa	1	Ba1	940
Aa1	10	Ba2	1350
Aa2	20	Ba3	1766
Aa3	40	B1	2220
A1	70	B2	2720
A2	120	B3	3490
A3	180	Caa1	4770
Baa1	260	Caa2	6500
Baa2	360	Caa3	8070
Baa3	610	Ca or lower	10000

The Moody's Rating Factor for Collateral Obligations that are Synthetic Securities shall be determined by Moody's and obtained by the Issuer or the Servicer on a case-by-case basis, unless there is an Assigned Moody's Rating available for such Collateral Obligation that is a Synthetic Security, in which case such Assigned Moody's Rating shall be used to compute the Moody's Rating Factor for such Collateral Obligation that is a Synthetic Security.

The Moody's Rating Factor for any Collateral Obligation that is a Structured Finance Security shall be equal to: $\frac{A \times 55\%}{1-B}$,

where: "*A*" means the number determined with respect to such Collateral Obligation pursuant to the table above; and

"*B*" means the Moody's Priority Category Recovery Rate with respect to such Collateral Obligation.

"**Moody's Senior Secured Loan**" means:

(i) a Loan that:

(A) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan;

(B) is secured by a valid first priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan; and

(C) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal seniority secured by a first lien or security interest in the same collateral; or

(ii) a Loan that:

(A) is not (and cannot by its terms become) subordinate in right of payment to any other obligation of the obligor of the Loan, other than, with respect to a Loan described in clause (i) above, with respect to the liquidation of such obligor or the collateral for such loan;

(B) is secured by a valid second priority perfected security interest or lien in, to or on specified collateral securing the obligor's obligations under the Loan;

(C) the value of the collateral securing the Loan together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow) is adequate (in the commercially reasonable judgment of the Servicer) to repay the Loan in accordance with its terms and to repay all other loans of equal or higher seniority secured by a first or second lien or security interest in the same collateral; and

(D) has been assigned a Moody's Obligation Rating equal to or higher than the applicable Moody's Default Probability Rating; and

(iii) the Loan is not: (A) a DIP Loan, (B) a Loan for which the security interest or lien (or the validity or effectiveness thereof) in substantially all of its collateral attaches, becomes effective, or otherwise "springs" into existence after the origination thereof, or (C) a type of loan that Moody's has identified as having unusual terms and with respect to which its Moody's Recovery Rate has been or is to be determined on a case-by-case basis.

"**Multiple Class Holder**" means any Holder of Securities or, in the case of Notes represented by Global Notes, beneficial owner thereof that holds or has a beneficial interest in more than one Class of Securities (including for this purpose any interest in Holding Preference Shares as an interest in Preference Shares).

"**Non-Consenting Holder**" means with respect to any supplemental indenture pursuant to the Indenture that requires the consent of one or more Holders of Securities, any Holder or, in the case of Securities represented by Global Notes, any beneficial owner, that either (i) has delivered to the Trustee a written notice that it will not consent to such supplemental indenture or (ii) had not consented to such supplemental indenture within the applicable Initial Consent Period.

"**Non-Consenting Holding Preference Share Holder**" means with respect to any supplemental indenture pursuant to the Indenture that requires the consent of one or more Holders of Securities, any Holder of Holding Preference Shares that either (i) has directed Investors Corp. not to consent to such supplemental indenture or (ii) has not provided Investors Corp. with any direction with respect to such supplemental indenture within the applicable Initial Consent Period.

"**Non-Performing Collateral Obligation**" means any Defaulted Collateral Obligation and any PIK Security as to which its issuer or obligor has previously deferred or capitalized any interest due on it and all the interest so deferred or capitalized has not subsequently been paid in full in cash by:

(i) if the PIK Security has a Moody's Rating of "Baa3" (and not on credit watch with negative implications) or above or an S&P Rating of "BBB-" (and not on credit watch with negative implications) or above, the earlier of its second payment date or one year following the date of the initial deferral or capitalization of interest due on it; or

(ii) if the PIK Security has a Moody's Rating of "Baa3" and on credit watch with negative implications or below "Baa3," or an S&P Rating of "BBB-" and on credit watch with negative implications or below "BBB-," the earlier of its first payment date or six months following the date of the initial deferral or capitalization of interest due on it.

"**Notes**" means the Class the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes.

"**Noteholder**" means a Holder of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes or the Class D Notes.

"**Note Payment Sequence**" means the application of funds in the following order:

(1) to the Class A-1a Notes until the Class A-1a Notes have been fully redeemed;

(2) to the Class A-1b Notes until the Class A-1b Notes have been fully redeemed;

(2) to the Class A-2 Notes until the Class A-2 Notes have been fully redeemed;

(3) to the Class B Notes until the Class B Notes have been fully redeemed;

(5) to the Class C Notes until the Class C Notes have been fully redeemed; and

(6) to the Class D Notes until the Class D Notes have been fully redeemed.

"**Offer**" means any Collateral Obligation that is subject to a tender offer, voluntary redemption, exchange offer, conversion or other similar action.

"**Officer**" means, with respect to the Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to the Co-Issuer and any corporation, any director, the Chairman of the board of directors, the President, any Vice President, the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer of the entity; with respect to any partnership, any of its general partners; and with respect to the Trustee, any Trust Officer.

"**Outstanding**" means, with respect to:

(i) the Notes or any specified Class, as of any date of determination, all of the Notes or all of the Notes of the specified Class, as the case may be, theretofore authenticated and delivered under the Indenture, except with respect to Notes:

(A) Notes canceled by the Indenture Registrar or delivered to the Indenture Registrar for cancellation;

(B) Notes for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or any Paying Agent in trust

for their Holders pursuant to Section 4.1(a)(ii) of the Indenture and if the Notes are to be redeemed, notice of redemption has been duly given pursuant to the Indenture;

(C) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to the Indenture; and

(D) Notes alleged to have been destroyed, lost, or stolen for which replacement Notes have been issued as provided in Section 2.7 of the Indenture, unless proof satisfactory to the Trustee is presented that any such Notes are held by a protected purchaser;

(ii) the Preference Shares, as of any date of determination, all of the Preference Shares theretofore issued under the Preference Share Documents and listed in the Preference Share register of the Issuer as outstanding;

(iii) the Holding Preference Shares, as of any date of determination, all of the Holding Preference Shares theretofore issued under the Holding Preference Share Documents and listed in the Holding Preference Share register of Investors Corp. as outstanding;

provided that, in determining whether the Holders of the requisite Aggregate Outstanding Amount of the Transaction Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Transaction Documents, Transaction Securities owned or beneficially owned by the Issuer, the Co-Issuer, any Affiliate of either of them and, with respect to any matter affecting its status as Servicer or appointment of a replacement Servicer or relating to an acceleration of any Class of Notes if the effect of the Servicer's action or inaction as a Holder of Transaction Securities would effectively prevent acceleration, the Servicer, its Affiliates and any account for which the Servicer or its Affiliates have discretionary voting authority (other than, with respect to Notes or Class II Preference Shares, HFP or any of its subsidiaries; *provided* that, with respect to the voting authority of Notes or Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) shall be disregarded and not be Outstanding, except that, in determining whether the Trustee shall be protected in relying on any request, demand, authorization, direction, notice, consent or waiver, only Securities that a Trust Officer of the Trustee (or with respect to the Preference Shares and Holding Preference Shares, only Preference Shares and Holding Preference Shares that an authorized officer of the Preference Shares Paying Agent or Holding Preference Shares Paying Agent, as applicable) has actual knowledge to be so owned or beneficially owned shall be so disregarded. Transaction Securities so owned or beneficially owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee, the Preference Shares Paying Agent or the Holding Preference Shares Paying Agent, as applicable, the pledgee's right so to act with respect to the Transaction Securities and that the pledgee is independent from the Issuer, the Co-Issuer, the Servicer, the Trustee, the Preference Shares Paying Agent and the Holding Preference Shares Paying Agent.

"**Participating Institution**" means an institution that creates a participation interest and that has a long-term senior unsecured rating by Moody's of at least "A3" (and if so rated by Moody's such rating is not on watch for possible downgrade) and an issuer credit rating by S&P of at least "A".

"**Participation**" means a Loan acquired as a participation interest created by a Participating Institution.

"**Permitted Offer**" means a tender offer, voluntary redemption, exchange offer, conversion, or other similar action pursuant to which the offeror offers to acquire a debt obligation (including a Collateral Obligation) in exchange solely for cash in an amount equal to or greater than the full face amount of the debt obligation plus any accrued and unpaid interest and as to which the Servicer has

determined in its commercially reasonable judgment that the offeror has sufficient access to financing to consummate the tender offer, voluntary redemption, exchange offer, conversion, or other similar action.

"**PIK Cash-Pay Interest**" means, as to any PIK Security, the portion of interest required to be paid in cash (and not permitted to be added to the balance of such PIK Security or otherwise deferred and accrued) thereon pursuant to the terms of the related Underlying Instruments.

"**PIK Security**" means any loan or debt obligation on which any portion of the interest accrued for a specified period of time or until the maturity thereof is, or at the option of the obligor may be, added to the principal balance of such loan or debt obligation or otherwise deferred rather than being paid in cash; *provided* that such loan or debt obligation shall not be a PIK Security if the portion, if any, of such interest required pursuant to the terms of the related Underlying Instruments to be paid in Cash would result in the outstanding principal amount of such loan or debt obligation having an effective rate of PIK Cash-Pay Interest at least equal to (i) if such loan or debt obligation is a fixed rate loan or debt obligation, 4% per annum, or (ii) if such loan or debt obligation is a floating rate loan or debt obligation, LIBOR.

"**Pledged Obligations**" means, as of any date of determination, the Collateral Obligations, the Workout Assets, the Eligible Investments, and any other securities or obligations that have been granted to the Trustee that form part of the Collateral.

"**Person**" is an individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"**Portfolio Improvement Exchange**" means, the disposition, during the Replacement Period, of a Collateral Obligation and corresponding acquisition of one or more Collateral Obligations which in the aggregate will result in (i) the Collateral Quality Tests, the Interest Coverage Test, the Overcollateralization Tests and the Concentration Limitations herein being satisfied (or bring the total portfolio of Collateral Obligations closer to compliance with any such test or limitation) or if one or more of such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test or Concentration Limitations are not satisfied, the degree of compliance therewith would be improved and (ii) improving, on a net basis, the quality of the total portfolio of Collateral Obligations as measured by such Collateral Quality Tests, Interest Coverage Test, Overcollateralization Test and Concentration Limitations and (iii) in the case of each of clause (i) and (ii), any other Collateral Quality Tests, Interest Coverage Tests, Overcollateralization Tests or Concentration Limitations not being violated or the likelihood of such violation in the future not being significantly increased.

"**Preference Share Internal Rate of Return**" means, with respect to any Payment Date, the internal rate of return (computed using the "XIRR" function in Microsoft® Excel 2002 or an equivalent function in another software package), stated on a per annum basis, for the following cash flows, assuming all Preference Shares are purchased on the Closing Date at their Face Amount:

(i) each distribution of Interest Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date; and

(ii) each distribution of Principal Proceeds made to the Holders of the Preference Shares (excluding any Class II Preference Share Special Payment distributed to the Holders of the Class II Preference Shares) on any prior Payment Date and, to the extent necessary to reach the applicable Preference Share Internal Rate of Return, the current Payment Date.

"**Preference Shares Paying Agent Agreement**" means a Preference Share Paying Agency Agreement, dated as of November 30, 2006, between the Issuer and Investors Bank & Trust Company, as Preference Shares Paying Agent.

"**Preference Shares Distribution Account**" means a separate segregated non-interest bearing trust account established by the Preference Shares Paying Agent pursuant to the Preference Shares Paying Agency Agreement into which the Preference Shares Paying Agent will deposit all amounts received from the Issuer and payable to the Holders of the Preference Shares under the Priority of Payments.

"**Preference Shares Notional Amount**" means, as of the Closing Date, $127,500,000, and thereafter as increased each time additional Preference Shares are issued in accordance with the Preference Share Documents.

"**Preference Shares Paying Agent**" means Investors Bank & Trust Company in its capacity as Preference Shares Paying Agent under the Preference Shares Paying Agency Agreement, unless a successor Person shall have become the preference shares paying agent pursuant to the applicable provisions of the Preference Shares Paying Agency Agreement, and thereafter "Preference Shares Paying Agent" shall mean such successor person.

"**Principal Balance**" means, with respect to:

(i) any Pledged Obligation other than those specifically covered in this definition, the outstanding principal amount of the Pledged Obligation as of the relevant Measurement Date;

(ii) a Synthetic Security, the notional amount specified in the Synthetic Security;

(iii) any Pledged Obligation in which the Trustee does not have a first priority perfected security interest, zero, except as otherwise expressly specified in the Indenture;

(iv) any Defaulted Collateral Obligation, except as otherwise provided, zero;

(v) any Collateral Obligation that has been loaned, its Principal Balance shall be reduced by the excess of the amount of collateral required over the actual Market Value of the collateral;

(vi) any Revolving Loan or Delayed Drawdown Loan, its Principal Balance shall include any unfunded amount thereof (regardless of the nature of the contingency relating to the Issuer's obligation to fund the unfunded amount), except as otherwise expressly specified in the Indenture;

(vii) any PIK Security, its Principal Balance shall not include any principal amount of the PIK Security representing previously deferred or capitalized interest; and

(viii) any obligation or security that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation, zero.

"**Principal Proceeds**" means with respect to any Due Period, all amounts received in Cash during the Due Period by the Issuer with respect to the Collateral that are not Interest Proceeds.

Principal Proceeds shall include any funds transferred from the Closing Date Expense Account and the Interest Reserve Account into the Collection Account pursuant to Section 10.2 of the Indenture.

Principal Proceeds do not include the Excluded Property or earnings on amounts on deposit in the Securities Lending Account to the extent the earnings are payable by the Issuer to a Securities Lending Counterparty.

At any time when an "event of default" under a Securities Lending Agreement has occurred and is continuing, any payments received by the Issuer from the related Securities Lending Collateral shall be Principal Proceeds.

"**Priority Class**" means, with respect to any specified Class of Notes, each Class of Notes that ranks senior to that Class.

"**Proceeding**" means any suit in equity, action at law, or other judicial or administrative proceeding.

"**Proposed Portfolio**" means, as of any Measurement Date, the portfolio (measured by Aggregate Principal Balance) of Collateral Obligations and Principal Proceeds held as cash on deposit in the Collection Account and other Eligible Investments purchased with Principal Proceeds on deposit in the Collection Account resulting from the sale, maturity, or other disposition of a Collateral Obligation or a proposed purchase of a Collateral Obligation, as the case may be.

"**Purchase Agreement**" means a purchase agreement dated November 30, 2006 among the Issuer and the Initial Purchaser relating to the purchase of the Offered Notes, as modified, amended and supplemented and in effect from time to time.

"**Purchase Criteria Adjusted Balance**" means, for any Collateral Obligation other than Deep Discount Obligations, its Principal Balance; and for any Deep Discount Obligation its Purchase Price; *provided, however*, that if any Excess CCC+/Caa1 Collateral Obligations exist, the Purchase Criteria Adjusted Balance for the Excess CCC+/Caa1 Collateral Obligations shall be the lower of (i) the weighted average Market Value of all CCC+/Caa1 Collateral Obligations, expressed as a percentage of their outstanding principal balances and (ii) the product of (a) 70% and (b) their respective Principal Balance.

"**Purchase Price**" means, with respect to the purchase of any Collateral Obligation (other than any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation), the net purchase price paid by the Issuer for the Collateral Obligation. The net purchase price is determined by subtracting from the purchase price the amount of any Accrued Interest Purchased With Principal and any syndication and other upfront fees paid to the Issuer and by adding the amount of any related transaction costs (including assignment fees) paid by the Issuer to the seller of the Collateral Obligation or its agent.

"**Purchase Price Amount**" means, respect to any Collateral Obligation on any date of determination, the product of (i) the Purchase Price (stated as a percentage) thereof and (ii) the Principal Balance thereof on such date.

"**Qualified Equity Security**" means any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation that is stock or evidence of an interest in or a right to buy stock, or any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation but whose acquisition otherwise is a transaction in stocks or securities within the meaning of Section 864(b)(2)(A)(ii) of the Code and the regulations under the Code. Qualified Equity Securities do not include any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation and that will cause the Issuer to be treated as engaged in or having income from a United States trade or business for United States federal income tax purposes by virtue of its ownership or disposition of the obligation (without regard to the Issuer's other activities).

"**Ramp-Up Period**" means the period from and including the Closing Date to and including the Ramp-Up Completion Date.

"**Rating Agency**" means, each of Moody's and S&P or, with respect to Pledged Obligations generally, if at any time Moody's or S&P ceases to provide rating services with respect to high yield debt securities, any other nationally recognized statistical rating organization selected by the Issuer and reasonably satisfactory to a Majority of each Class of Notes. If at any time Moody's ceases to be a Rating Agency, references to rating categories of Moody's in the Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and Moody's published ratings for the type of security in respect of which the

replacement rating agency is used. If at any time S&P ceases to be a Rating Agency, references to rating categories of S&P in the Indenture shall instead be references to the equivalent categories of the replacement rating agency as of the most recent date on which the replacement rating agency and S&P published ratings for the type of security in respect of which the replacement rating agency is used.

"**Rating Condition**" means, with respect to any Rating Agency and any action taken or to be taken under the Indenture, a condition that is satisfied when the Rating Agency has confirmed to the Servicer (as agent for the Issuer) in writing that no withdrawal, reduction, suspension, or other adverse action with respect to any then current rating by it (including any private or confidential rating) of any Class of Notes will occur as a result of the action. The Rating Condition with respect to any Rating Agency shall be satisfied for all purposes of the Indenture at any time when no Outstanding Notes are rated by it.

"**Rating Confirmation**" means confirmation in writing from each Rating Agency that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"**Ratings Matrix**" means the "row/column combination" of the table below selected by the Servicer on the Closing Date to apply initially for purposes of the Diversity Test, the Weighted Average Spread Test and the Weighted Average Rating Factor Test. Thereafter, on notice to the Trustee, the Servicer may select a different row of the Ratings Matrix to apply, or may interpolate between two adjacent rows and/or two adjacent columns, as applicable, on a straight-line basis and round the results to two decimal points.

	Minimum Diversity Score							
Minimum Weighted Average Spread	**55**	**60**	**65**	**70**	**75**	**80**	**85**	**90**
2.25%	2150	2180	2210	2240	2270	2300	2330	2360
2.35%	2210	2240	2270	2300	2330	2360	2390	2420
2.45%	2270	2300	2330	2360	2390	2420	2450	2480
2.55%	2330	2360	2390	2420	2450	2480	2510	2540
2.65%	2390	2420	2450	2480	2510	2540	2570	2600
2.75%	2450	2480	2510	2540	2570	2600	2630	2660
2.85%	2510	2540	2570	2600	2630	2660	2690	2720
2.95%	2570	2600	2630	2660	2690	2720	2750	2780
3.05%	2620	2660	2690	2720	2750	2780	2810	2840
	Maximum Weighted Average Moody's Rating Factor							

"**Recovery Rate Modifier**" means, as of any Measurement Date, the lesser of 60 and the product of:

(i) (a) the Moody's Minimum Average Recovery Rate *minus* the minimum percentage specified to pass the Weighted Average Moody's Recovery Rate Test (but not less than zero) *multiplied* by (b) 100; and

(ii) 40.

"**Redemption Date**" means any Payment Date specified for an Optional Redemption or the redemption of a Class of Notes in connection with a Refinancing under "Description of the Securities—Optional Redemption."

"**Redemption Price**" means, with respect to any Note and any Optional Redemption or Refinancing, an amount equal to:

(i) the outstanding principal amount of the portion of the Note being redeemed; *plus*

(ii) accrued interest on the Note (including any Defaulted Interest and interest on Defaulted Interest); *plus*

(iii) in the case of any Deferred Interest Note, the applicable Deferred Interest on the Note; *plus*

(iv) any unpaid Extension Bonus Payment in respect of the Note.

With respect to any Preference Share and any Optional Redemption, "Redemption Price" means (i) at the direction of a Majority of the Preference Shares of the remaining amount of available funds after all prior applications pursuant to the Priority of Payments or (ii) as specified by the unanimous direction of the Holders of the Preference Shares, in each case as specified in "Description of the Securities—Optional Redemption—Preference Shares."

"**Reference Obligation**" means an obligation that would otherwise satisfy the definition of "Collateral Obligation" and on which a Synthetic Security is based; *provided* that no Reference Obligation shall be a Synthetic Security.

"**Refinancing Price**" means, with respect to any Class of Notes that is subject to a Refinancing, an amount equal to the Redemption Price therefor.

"**Refinancing Proceeds**" means, the proceeds from any refinancing permitted under the Indenture.

"**Registered**" means, with respect to a Collateral Obligation or Eligible Investment, means that it is issued after July 18, 1984 and is in registered form within the meaning of Section 881(c)(2)(B)(i) of the Code and the Treasury Regulations promulgated thereunder.

"**Regulation D**" means Regulation D under the Securities Act.

"**Relevant Obligation**" means, for a Collateral Obligation that is a Synthetic Security, the Reference Obligation of the Synthetic Security, and otherwise the Collateral Obligation.

"**Removal Buy-Out Purchaser**" means the Servicer (or any of its Affiliates acting as principal or agent).

"**Repository**" means the internet-based password protected electronic repository of transaction documents relating to privately offered and sold collateralized debt obligation securities located at "www.cdolibrary.com" operated by The Bond Market Association. Information on this website is not considered part of this Offering Memorandum in any way.

"**Required Redemption Percentage**": With respect to (a) any Optional Redemption resulting from a Tax Event, the Holders of at least 66 2/3% of the Aggregate Outstanding Amount of any Affected Class or at least 66 2/3% of the Aggregate Outstanding Amount of the Preference Shares and (b) any other Optional Redemption, a Majority of the Preference Shares.

"**Retention Overcollateralization Ratio**" means, as of any Measurement Date, the ratio obtained by dividing: (i) the Overcollateralization Ratio Numerator by (ii) the Aggregate Outstanding Amount of the Class A-1a Notes, the Class A-1b Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes, excluding any Deferred Interest on any Class of Notes.

"**Revolving Loan**" means a Loan or any Synthetic Security with a Reference Obligation (in each case excluding any Delayed Drawdown Loan) that requires the Issuer to make future advances to (or for the account of) the borrower under its underlying instruments (including any letter of credit for which the Issuer is required to reimburse the issuing bank for under it). A Loan or Synthetic Security shall only be considered to be a Revolving Loan for so long as its commitment amount is greater than zero.

"**S&P CDO Monitor**" means a dynamic, analytical computer model developed by S&P (and as may be modified by S&P from time to time) and provided to the Servicer and the Collateral Administrator to be used to calculate the default frequency in terms of the amount of debt assumed to default as a percentage of the original principal amount of the Collateral Obligations consistent with a specified benchmark rating level based on certain assumptions and S&P's proprietary corporate default studies. For the purpose (and only for the purpose) of applying the S&P CDO Monitor to a portfolio of obligations, for each obligation in the portfolio, the rating of the obligation shall be its S&P Rating.

"**S&P Industry Classification**" means the S&P Industry Classifications in Schedule 3 of the Indenture as modified, amended, and supplemented from time to time by S&P.

"**S&P Priority Category**" means each type of Collateral Obligation specified in the definition of "Applicable Percentage" as an "S&P Priority Category."

"**S&P Priority Category Recovery Rate**" means, for any Collateral Obligation, the percentage specified in the definition of "Applicable Percentage" opposite the S&P Priority Category of the Collateral Obligation.

"**S&P Rating**" means, with respect to any Collateral Obligation, as of any date of determination, the rating determined in accordance with the following methodology:

(i) If there is an issuer credit rating of the borrower of the Collateral Obligation (the "Borrower"), or the guarantor who unconditionally and irrevocably guarantees the Collateral Obligation (the "Guarantor") by S&P, the most current issuer credit rating for such Borrower or Guarantor (*provided* that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating);

(ii) (a) if there is not an issuer credit rating of the Borrower or its Guarantor by S&P, but there is a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, then the S&P Rating of the Collateral Obligation will be one subcategory below such rating; (b) if there is not a rating by S&P on a senior secured obligation of the Borrower or its Guarantor, but there is a rating by S&P on a senior unsecured obligation of the Borrower or its Guarantor, then the S&P Rating will be such rating; and (c) if there is not a rating by S&P on a senior obligation of the Borrower or its Guarantor, but there is a rating by S&P on a subordinated obligation of the Borrower or its Guarantor, then the S&P Rating will be two subcategories above such rating if such rating is "BBB-" or higher and will be one subcategory above such rating if such rating is "BB+" or lower (*provided* that with respect to any private or confidential rating, a consent has been granted by such Borrower or Guarantor and a copy of such consent shall be provided to S&P indicating that the issuer can rely on such private or confidential rating); or

(iii) if there is neither an issuer credit rating of the Borrower or its Guarantor by S&P nor a rating by S&P on an obligation of the Borrower or its Guarantor, then the S&P Rating may be determined using any one of the methods below:

(A) if an obligation of the Borrower or its Guarantor is publicly rated by Moody's, then the S&P Rating will be determined in accordance with the methodologies for establishing the Moody's Default Probability Rating, except that the S&P Rating of such obligation will be (1) one subcategory below the S&P equivalent of the rating assigned by Moody's if such security is rated "Baa3" or higher by Moody's and (2) two subcategories below the S&P equivalent of the rating assigned by Moody's if such security is rated "Bal" or lower by Moody's; *provided* that Collateral Obligations constituting no more than 10% of the Maximum Amount may be given a S&P Rating based on a rating given by Moody's as provided in this subclause (A) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

(B) if no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's, then the Servicer may apply to S&P for a S&P credit rating estimate, which will be its S&P Rating; *provided* that, on or prior to each one-year anniversary of the acquisition of any such Collateral Obligation, the Issuer shall submit to S&P a request for a S&P credit rating estimate for such Collateral Obligation, which shall be its S&P Rating, together with all information reasonably required by S&P to perform such estimate; or

(C) if such Collateral Obligation is not rated by Moody's or S&P, no other security or obligation of the Borrower or its Guarantor is rated by S&P or Moody's and if the Servicer determines in its sole discretion based on information available to it after reasonable inquiry that such Borrower (x) is not subject to any bankruptcy or reorganization proceedings nor in default on any of its obligations (unless the subject of a good faith business dispute), (y) is a legally constituted corporate entity having the minimum legal, financial and operational infrastructure to carry on a definable business, deliver and sell a product or service and report its results in generally accepted accounting terms as verified by a reputable audit firm and (z) is not so vulnerable to adverse business, financial and economic conditions that default in its financial or other obligations is foreseeable in the near term if current operating trends continue, then the S&P Rating will be "B-"; *provided* that the Servicer must apply to S&P for a S&P credit rating on such Borrower within 30 days after the addition of the relevant Collateral Obligation; *provided, further*, that Collateral Obligations constituting no more than 5% of the Maximum Amount may be given an S&P Rating based on this subclause (c) (after giving effect to the addition of the relevant Collateral Obligation, if applicable);

provided that, if (i) the relevant Borrower or Guarantor or obligation is placed on any positive "credit watch" list by S&P, such rating will be increased by one rating subcategory or (ii) the relevant Borrower or Guarantor or obligation is placed on any negative "credit watch" list by S&P, such rating will be decreased by one rating subcategory.

Notwithstanding the foregoing, in the case of a Collateral Obligation that is a DIP Loan, the S&P Rating shall be (A) the rating assigned thereto by S&P if the rating is public, (B) the rating assigned by S&P if the rating is confidential, but only if all appropriate parties have provided written consent to its disclosure and use, (C) the rating assigned by S&P thereto through an estimated rating or (D) the rating assigned thereto by S&P in connection with the acquisition thereof upon the request of the Servicer. In the case of a Collateral Obligation that is a PIK Security, Structured Finance Obligation or Synthetic Securities, the S&P Rating may not be determined pursuant to clause (iii)(A) above.

S&P Ratings for entities or obligations relevant hereunder other than Borrowers and Collateral Obligations shall be determined in a corresponding manner.

Notwithstanding the foregoing, if and for so long as the Aggregate Principal Balance of Collateral Obligations consisting in the aggregate of (x) Participations and (y) Synthetic Securities exceeds 20% of the Maximum Amount, then the S&P Rating for the Aggregate Principal Balance of Collateral Obligations representing that excess (determined assuming the excess is comprised of the Collateral Obligations having the lowest S&P Ratings that would otherwise be applicable as determined above) shall be the S&P Rating one sub-category below the S&P Rating of the Collateral Obligations that would otherwise be applicable as determined above. For purposes of any calculation under the Indenture, if a S&P Rating is withdrawn by S&P with respect to a Collateral Obligation, the Issuer will continue using the latest S&P Rating available immediately prior to such withdrawal until a bankruptcy event occurs with respect to such Collateral Obligation.

"S&P Recovery Rate Matrix": With respect to Structured Finance Obligations, the S&P Recovery Rate will be the percentage specified in the table below for the rating of the Structured Finance Obligation under the column with the caption that corresponds to the rating of the most senior Class of Outstanding Notes.

Structured Finance Obligation Rating*	Rating of most senior Class of rated Notes at the time of commitment to purchase						
Senior Asset Class	AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%
Junior Asset Class							
	AAA	AA	A	BBB	BB	B	CCC
AAA	65.0%	70.0%	80.0%	85.0%	85.0%	85.0%	85.0%
AA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
A	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
BBB	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

* If the Structured Finance Obligation is (x) a collateralized debt obligation backed by project finance securities, asset-backed securities, structured finance or real estate securities, distressed debt or other collateralized debt obligations; (y) a market value collateralized debt obligation; or (z) a synthetic collateralized debt obligation, the recovery rate will be assigned by S&P at the time of acquisition.

"**S&P Rating Confirmation**" means confirmation in writing from S&P that it has not reduced, suspended, or withdrawn the Initial Rating assigned by it to any Class of Notes.

"**S&P Unrated DIP Loan**" means a DIP Loan acquired by the Issuer that does not have a rating assigned by S&P and for which the Servicer has commenced the process of having a rating assigned by S&P (as specified in the definition of "DIP Loan").

"**Sale Proceeds**" means all proceeds received (including any proceeds received with respect to any associated interest rate swap or security providing fixed annuity payments) with respect to Collateral Obligations or other Pledged Obligations as a result of their sales or other dispositions less any reasonable expenses expended by the Servicer or the Trustee in connection with the sales or other dispositions, which shall be paid from such proceeds notwithstanding their characterization otherwise as Administrative Expenses.

"**Second Lien Loan**" means a Loan that (i) is not (and cannot by its terms become) subordinated in right of payment to any other obligation of the obligor of the Loan other than a Senior Secured Loan with respect to the liquidation of such obligor or the collateral for such Loan and (ii) is secured by a valid second priority perfected security interest in or lien on specified collateral securing the obligor's obligations under the Loan, which specified collateral does not consist solely of common stock or shares issued by the obligor or any of its Affiliates or intangible assets.

"**Secondary Risk Counterparty**" means any obligor Domiciled other than in the United States, any Participating Institution, any Synthetic Security Counterparty and any Securities Lending Counterparty.

"**Secondary Risk Table**" means the table below:

Long-Term Senior Unsecured Debt Rating of Secondary Risk Counterparty		Individual Counterparty Limit	Aggregate Counterparty Limit
Moody's	S&P		
Aaa	AAA	20.0%	20.0%
Aa1	AA+	10.0%	10.0%
Aa2	AA	10.0%	10.0%
Aa3	AA-	10.0%	10.0%
A1	A+	5.0%	10.0%
A2 or below	A or below	0.0%	0.0%

If any Secondary Risk Counterparty's long-term senior unsecured debt rating or short-term rating is on credit watch for possible downgrade by Moody's or S&P, then for the purposes of the table above, its rating by the Rating Agency putting its rating on credit watch shall be one rating notch lower for that Rating Agency.

"**Secured High-Yield Bond**" means a High-Yield Bond that is secured by a valid and perfected security interest in specified collateral.

"**Secured Loan**" means a Loan that is secured by a valid and perfected security interest in specified collateral.

"**Secured Parties**" means the Noteholders, the Trustee, the Servicer and each Hedge Counterparty.

"**Securities Lending Collateral**" means Cash or direct registered debt obligations of the United States of America that have a maturity date no later than the Business Day preceding the stated termination date of the relevant Securities Lending Agreement and that are pledged by a Securities Lending Counterparty as collateral pursuant to a Securities Lending Agreement.

"**Selected Collateral Quality Tests**" means Weighted Average Moody's Recovery Rate Test, the Weighted Average Fixed Rate Coupon Test, the Weighted Average Spread Test, the Weighted Average Life Test (after taking into consideration any applicable Maturity Extension), the Weighted Average Rating Factor Test and the Diversity Test.

"**Senior Secured High-Yield Bond**" means a Secured High-Yield Bond that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the High-Yield Bond.

"**Senior Secured Loan**" means a Secured Loan that is not subordinated by its terms to indebtedness of the borrower for borrowed money, trade claims, capitalized leases, or other similar obligations, with a first priority security interest in collateral that in the opinion of the Servicer has value at least equal to the amount of the Loan.

"**Senior Unsecured High-Yield Bond**" means a High-Yield Bond that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"**Senior Unsecured Loan**" means a Loan that is not (i) subordinated by its terms to indebtedness of the borrower for borrowed money and (ii) secured by a valid and perfected security interest in collateral.

"**Servicer Letter Disclosure**" means the description of the Servicer's agreement with one or more Multiple Class Holders as set forth in the sections entitled "Risk Factors—An Amendment Buy-Out May Result in a Shorter Holding Period Than Expected" and "—The Notes Are Subject to Redemption By Refinancing", "—The Notes Will Be Subject to Various Conflicts of Interest Involving the Servicer" and "Description of the Securities—Optional Redemption—Redemption By Refinancing" and "—Amendment Buy-Out".

"**Servicing Agreement**" means the Servicing Agreement, dated as of the Closing Date, between the Issuer and the Servicer, as modified, amended and supplemented and in effect from time to time.

"**Spread Excess**" means, as of any Measurement Date, a fraction whose (i) numerator is the product of (A) the greater of zero and the excess of the Weighted Average Spread for the Measurement Date over the Minimum Weighted Average Spread specified in the applicable row of the Ratings Matrix and (B) the Aggregate Principal Balance of all Floating Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date and (ii) denominator is the Aggregate Principal Balance of all Fixed Rate Obligations (excluding any Non-Performing Collateral Obligations) held by the Issuer as of the Measurement Date. In computing the Spread Excess on any Measurement Date, the Weighted Average Spread for the Measurement Date will be computed as if the Fixed Rate Excess were equal to zero.

"**Structured Finance Obligation**" means any obligation (other than the Notes or any other security or obligation issued by the Issuer):

(i) secured directly by, referenced to, or representing ownership of, a pool of receivables or other assets of U.S. obligors, or obligors organized or incorporated in Moody's Group I Countries, Moody's Group II Countries, Moody's Group III Countries or Tax Advantaged Jurisdictions, including portfolio credit default swaps and collateralized debt obligations, but excludes:

(A) residential mortgage-backed securities;

(B) collateralized debt obligations backed by Emerging Market Securities;

(C) collateralized debt obligations primarily backed by asset-backed securities;

(D) market value collateralized debt obligations;

(E) securities backed by "future flow" receivables;

(F) securities backed by "trust preferred securities";

(G) net interest margin securitizations;

(H) collateralized debt obligations backed primarily by other collateralized debt obligations;

(I) collateralized debt obligations primarily backed by one or more credit default swaps (i.e. "synthetic CDOs"); and

(J) collateralized debt obligations a significant portion of which are backed by bonds;

(ii) that has an S&P Rating and an S&P Priority Category Recovery Rate;

(iii) that has a rating and a Moody's Priority Category Recovery Rate assigned by Moody's; and

(iv) whose ownership or disposition (without regard to the Issuer's other activities) by the Issuer will not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

In connection with the purchase of a Structured Finance Obligation, the Servicer shall obtain from Moody's the applicable Moody's Priority Category Recovery Rate.

For purposes of the Diversity Test, multiple Structured Finance Obligations from CDOs serviced by the same Servicer or multiple Structured Finance Obligations issued by the same master trust will be considered to be obligations of one issuer.

"**Subordinated High-Yield Bond**" means a Secured High-Yield Bond secured by a second (or lower) priority security interest in the relevant collateral.

"**Subordinated Lien Loan**" means a Secured Loan (other than a Second Lien Loan) secured by a second (or lower) priority security interest in the relevant collateral.

"**Subscription Agreement**" means a subscription agreement dated between a purchaser and the Issuer entered into on or before the Closing Date for the subscription of a specified number of Class D Notes or Preference Shares, as applicable.

"**Super Majority**" means, with respect to any Class or group of Notes or Preference Shares, the Holders of more than 66⅔% of the Aggregate Outstanding Amount of that Class or group of Notes or Preference Shares, as the case may be; provided that with respect to the Class A-1a Notes, "Super Majority" shall mean at least 58% of the Aggregate Outstanding Amount of the Class A-1a Notes for so long as Financial Security Assurance Inc. is entitled to direct the vote of at least 58% of the Aggregate Outstanding Amount of the Class A-1a Notes.

"**Synthetic Security**" means any swap transaction, structured bond, credit linked note, or other derivative financial instrument providing non-leveraged credit exposure to a debt instrument (but excluding any such instrument relating directly to a basket or portfolio of debt instruments) or an index or indices (such as the "SAMI" index published by Credit Suisse) in connection with a basket or portfolio of debt instruments or other similar instruments entered into by the Issuer with a Synthetic Security Counterparty that has in the Servicer's commercially reasonable judgment, equivalent expected loss characteristics (those characteristics, "**credit risk**") to those of the related Reference Obligations (taking account of those considerations as they relate to the Synthetic Security Counterparty), if (i) it is either a Form-Approved Synthetic Security or the Rating Condition for each Rating Agency is satisfied, and (ii) the Reference Obligations thereof have a Market Value equal to at least 85% of the Principal Balance of the Reference Obligation at the time the Synthetic Security is entered into.

The maturity, interest rate, and other non-credit characteristics of a Synthetic Security may be different from the Reference Obligations to which the credit risk of the Synthetic Security relates.

No Synthetic Security shall require the Issuer to make any payment to the Synthetic Security Counterparty after its initial purchase other than any payments represented by the release of any cash collateral posted by the Issuer from the Collection Account to the Synthetic Security Counterparty Account simultaneously with the Issuer's purchase of or entry into the Synthetic Security in an amount not exceeding the amount of the posted cash collateral. Collateral may be posted only to a Synthetic Security Counterparty Account. No Synthetic Security shall result in the Issuer being a "buyer" of credit protection.

The term Synthetic Security shall not include any Structured Finance Obligation or any Participation, but the Reference Obligation of a Synthetic Security may be a Structured Finance Obligation.

Each Synthetic Security Agreement shall contain appropriate limited recourse and non-petition provisions (to the extent the Issuer has contractual payment obligations to the Synthetic Security Counterparty) equivalent (*mutatis mutandis*) to those contained in the Indenture.

The ownership or disposition of any Synthetic Security (without regard to the Issuer's other activities) must not cause the Issuer to be treated as engaged in a U.S. trade or business for United States federal income tax purposes or otherwise subject the Issuer to net income taxes.

Unless the Rating Condition is otherwise satisfied, any "deliverable obligation" that may be delivered to the Issuer as a result of the occurrence of any "credit event" under any proposed Synthetic Security must not provide that its transfer to the Issuer is subject to obtaining any consents and must qualify (when the Issuer purchases the related Synthetic Security and when such "deliverable obligation" is delivered to the Issuer as a result of the occurrence of any "credit event") as a Collateral Obligation and satisfy the Concentration Limitations under the Indenture, except that such "deliverable obligation" may constitute a Defaulted Collateral Obligation when delivered upon a "credit event" and if the Reference Obligation of the Synthetic Security is a Senior Secured Loan then the "deliverable obligation" under the Synthetic Security must also be a Senior Secured Loan.

No Synthetic Security may provide for any event other than bankruptcy or a failure to pay as a "credit event".

For purposes of the Coverage Tests and the Retention Overcollateralization Test, unless the Rating Condition for each Rating Agency is satisfied in respect of any proposed alternative treatment, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of the Collateral Quality Tests (other than the Diversity Test and the S&P Industry Classification with respect to the S&P CDO Monitor Test), a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not of the related Reference Obligations.

For purposes of calculating compliance with the Concentration Limitations other than limits relating to payment characteristics, and all related definitions, unless otherwise specified in the Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of its Reference Obligations and not the Synthetic Security. For purposes of calculating compliance with the Concentration Limitations relating to payment characteristics, and all related definitions, unless otherwise specified in the Indenture or by the Rating Agencies, a Synthetic Security shall be included as a Collateral Obligation having the characteristics of the Synthetic Security and not its Reference Obligation.

With respect to a Synthetic Security based upon or relating to a senior secured index providing non-leveraged credit exposure to a basket of credit default swaps referencing a diversified group of Reference Obligations, with respect to which the principal or notional amount of the credit exposure to any single Reference Obligation does not increase over time, for purposes of: (i) calculating compliance with the Diversity Test, the S&P Industry Classification with respect to the S&P CDO Monitor Test, and the Concentration Limitations (other than limits relating to payment characteristics and except for clauses 17 and 17(a) of the definition of "Concentration Limitations"), and all related definitions, and (ii) any other provision or definition of the Indenture involving a determination with respect to a Reference Obligation, the characteristics of such Reference Obligations shall be determined by treating such Synthetic Security as a direct interest of the Issuer in each such Reference Obligation in an amount equal to the Allocable Principal Balance of such Reference Obligation. In addition, each Reference Obligation under such Synthetic Security shall be assigned a Moody's Rating Factor equal to the sum of the Moody's

Rating Factor of (i) the related Reference Obligor, (ii) the Synthetic Security Counterparty of such Synthetic Security and (iii) the Synthetic Security Collateral of such Synthetic Security. In addition, the Moody's Priority Category Rate in respect of a Synthetic Security referencing multiple Reference Obligations pursuant to this paragraph shall be the Moody's Priority Category Rate as assigned by Moody's to each Reference Obligation underlying such Synthetic Security. For the avoidance of doubt, Reference Obligations upon which a Synthetic Security is based as described in this paragraph must meet the definition of "Collateral Obligation" to the extent provided in this definition.

If the Rating Condition must be satisfied to execute the purchase of any Synthetic Security, the Servicer, on behalf of the Issuer, shall give each applicable Rating Agency not less than 5 days' prior notice of the purchase of or entry into any Synthetic Security.

"**Synthetic Security Agreement**" means the documentation governing any Synthetic Security.

"**Synthetic Security Collateral**" means, respect to any Synthetic Security, amounts posted to the Synthetic Security Collateral Account by the Synthetic Security Counterparty in support of its obligations under the Synthetic Security, including (i) all Eligible Investments or (ii) floating rate credit card securitizations that are rated "Aaa" by Moody's and "AAA" by S&P, in each case that mature no later than the Stated Maturity, in the Synthetic Security Collateral Account that are purchased with Synthetic Security Collateral.

"**Synthetic Security Counterparty**" means any entity required to make payments on a Synthetic Security to the extent that a reference obligor makes payments on a related Reference Obligation.

"**Tax Advantaged Jurisdiction**" means one of the Cayman Islands, Bermuda, the Netherlands Antilles or the tax advantaged jurisdiction of the Channel Islands, or such other jurisdiction that the Rating Condition with respect to each Rating Agency is satisfied with respect thereto.

"**Tax Event**" means an event that occurs if either:

(i) (A) one or more Collateral Obligations that were not subject to withholding tax when the Issuer committed to purchase them have become subject to withholding tax or the rate of withholding has increased on one or more Collateral Obligations that were subject to withholding tax when the Issuer committed to purchase them and (B) in any Due Period, the aggregate of the payments subject to withholding tax on new withholding tax obligations and the increase in payments subject to withholding tax on increased rate withholding tax obligations, in each case to the extent not "grossed-up" (on an after-tax basis) by the related obligor, represent 5% or more of Interest Proceeds for the Due Period;

(ii) taxes, fees, assessments, or other similar charges are imposed on the Issuer or the Co-Issuer in an aggregate amount in any twelve-month period in excess of U.S$2,000,000, other than any deduction or withholding for or on account of any tax with respect to any payment owing in respect of any obligation that at the time of acquisition, conversion, or exchange does not satisfy the requirements of a Collateral Obligation or Collateral Obligation; or

(iii) if the Issuer is at the time treated as a pass-through entity for U.S. federal income tax purposes, that investors in the Preference Shares who are non-U.S. persons not otherwise subject to U.S. net income tax are or have become subject to U.S. net income taxation in respect of income of the Issuer in an amount in excess of 10% of the net income of the Issuer in any twelve-month period.

"**Transaction Documents**" means, collectively, this Indenture, the Preference Shares Paying Agency Agreement and the Holding Preference Shares Paying Agency Agreement.

"**Transaction Securities**" means, collectively, the Securities and the Holding Preference Shares.

"**Treasury Regulations**" means regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York, and as amended from time to time.

"**Underlying Instrument**" means the loan agreement, indenture, credit agreement, or other agreement pursuant to which a Pledged Obligation has been issued or created and each other agreement that governs the terms of or secures the obligations represented by the Pledged Obligation or of which the holders of the Pledged Obligation are the beneficiaries.

"**Unfunded Amount**" means, with respect to any Revolving Loan or any Delayed Drawdown Loan at any time, the excess, if any, of (a) the Commitment Amount over (b) the Funded Amount thereof.

"**Unscheduled Principal Payments**" means any principal payments received with respect to a Collateral Obligation as a result of optional redemptions, exchange offers, tender offers, other payments or prepayments made at the option of the issuer thereof or that are otherwise not scheduled to be made thereunder.

"**Valuation Report**" means the accounting report, determined as of the close of business on each Determination Date, rendered in accordance with the terms of the Indenture.

"**Voting Record Date**" means, with respect to any vote by the Holders of the Class II Preference Shares in relation to the appointment or removal of the directors of the Issuer, (a) 15 days prior to the relevant shareholders meeting or (b) in the case of any vote by the Holders of the Class II Preference Shares exercised by written consent resolution, the date of such resolution.

"**Weighted Average Fixed Rate Coupon**" means, as of any Measurement Date, the rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Fixed Rate Obligation held by the Issuer as of the Measurement Date by the current per annum rate at which it pays interest (other than, with respect to Collateral Obligations that are not PIK Securities, any interest that is not required to be paid in Cash and may be deferred), using only the effective after-tax interest rate determined by the Servicer on any Fixed Rate Obligation after taking into account any withholding tax or other deductions on account of tax of any jurisdiction and any gross-up paid by the obligor);

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing the sum by the Aggregate Principal Balance of all Collateral Obligations that are Fixed Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to satisfy the Weighted Average Fixed Rate Coupon Test, adding to the sum the amount of any Spread Excess as of the Measurement Date, but only to the extent required to satisfy the Weighted Average Fixed Rate Coupon Test.

"**Weighted Average Life**" means, as of any Measurement Date the number obtained by (i) summing the products obtained by multiplying (A) the Average Life at that time of each Collateral Obligation by (B) the Principal Balance at that time of the Collateral Obligation and (ii) dividing that sum by the Aggregate Principal Balance at that time of all Collateral Obligations.

"**Weighted Average Moody's Rating Factor**" means the summation of the products obtained by multiplying the Principal Balance of each Collateral Obligation (excluding Eligible Investments) by its respective Moody's Rating Factor, dividing that sum by the Aggregate Principal Balance of all Collateral Obligations (excluding Eligible Investments) and rounding the result up to the nearest whole number.

"**Weighted Average Spread**" means, as of any Measurement Date, a rate obtained by:

(i) multiplying the Principal Balance of each Collateral Obligation that is a Floating Rate Obligation held by the Issuer as of the Measurement Date by the current per annum contract spread at which it pays interest (which (x) for PIK Securities for which interest has been deferred or capitalized, will be deemed to be zero, (y) for Collateral Obligations that would be PIK Securities but for the proviso in the definition thereof, will be deemed to be equal to the effective rate of PIK Cash-Pay Interest applicable thereto and (z) for any Revolving Loan or Delayed Draw Loan, will be the per annum contract spread for the Funded Amount thereof and the rate of the commitment fee and such other fees payable to the Issuer for any Unfunded Amount thereof), determined with respect to any Floating Rate Obligation that does not bear interest based on a London interbank offered rate, by expressing the current interest rate on the Floating Rate Obligation as a spread above a three month London interbank offered rate calculated in a manner consistent with the calculation of LIBOR;

(ii) summing the amounts determined pursuant to clause (i);

(iii) dividing that sum by the Aggregate Principal Balance of all Floating Rate Obligations held by the Issuer as of the Measurement Date; and

(iv) if the result obtained in clause (iii) is less than the minimum percentage rate specified to pass the Weighted Average Spread Test, adding to that sum the amount of Fixed Rate Excess as of the Measurement Date.

"**Workout Assets**" means a Loan, High-Yield Bond, or Qualified Equity Security acquired in connection with the workout or restructuring of any Collateral Obligation that the Issuer does not advance any funds to purchase that does not qualify as a Collateral Obligation.

"**Written-Down Obligation**" means as of any date of determination, any Structured Finance Obligation as to which the Issuer or the Servicer, on behalf of the Issuer, has been notified by the issuer of the Structured Finance Obligation that the Aggregate Principal Balance of the Structured Finance Obligation and all other Structured Finance Obligations secured by the same pool of collateral that rank *pari passu* with or senior in priority of payment to the Structured Finance Obligation exceeds the aggregate principal balance (including reserved interest or other amounts available for overcollateralization) of all collateral securing the Structured Finance Obligation and such other *pari passu* and senior Structured Finance Obligations (excluding defaulted collateral).

"**Zero-Coupon Security**" means a security that, at the time of determination, does not make periodic payments of interest. A Zero-Coupon Security shall not include a security that is a PIK Security.

INDEX OF DEFINED TERMS

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EXHIBIT F

General Duties of the Portfolio Manager to Dispose of Collateral

CLO	Provision
Aberdeen	Servicing Agreement § 2(a)(v)
Brentwood	Servicing Agreement § 2(a)(iv)
Eastland	Servicing Agreement § 2(a)(iv)
Gleneagles	Portfolio Management Agreement § 2(a)(iv)
Grayson	Servicing Agreement § 2(a)(iv)
Greenbriar	Servicing Agreement § 2(a)(iv)
Jasper	Amended And Restated Portfolio Management Agreement § 2(i)
Liberty	Portfolio Management Agreement § 2(a)(iv)
Red River	Servicing Agreement § 2(a)(iv)
Rockwall	Servicing Agreement § 2(a)(iv)
Rockwall II	Servicing Agreement § 2(a)(iv)
Southfork	Portfolio Management Agreement § 2(a)(iv)
Stratford	Servicing Agreement § 2(a)(iv)
Loan Funding VII (aka Valhalla)	No provision.
Westchester	Servicing Agreement § 2(a)(iv)

General Duties of the Portfolio Manager to Preserve the Value of the Collateral

CLO	Provision
Aberdeen	Servicing Agreement §2(b)
Brentwood	Servicing Agreement § 2(b)
Eastland	Servicing Agreement § 2(b)
Gleneagles	Portfolio Management Agreement § 2(b)
Grayson	Servicing Agreement § 2(b)
Greenbriar	Servicing Agreement § 2(b)
Jasper	Amended And Restated Portfolio Management Agreement § 2(b)
Liberty	Portfolio Management Agreement § 2(b)
Red River	Servicing Agreement § 2(b)
Rockwall	Servicing Agreement § 2(b)
Rockwall II	Servicing Agreement § 2(b)
Southfork	Portfolio Management Agreement § 2(b)
Stratford	Servicing Agreement § 2(b)
Loan Funding VII (aka Valhalla)	Reference Portfolio Management Agreement § 3(b)
Westchester	Management Agreement § 2(b)

Additional Activities of the Portfolio Manager

CLO	Provision
Aberdeen	Servicing Agreement § 4
Brentwood	Servicing Agreement § 4
Eastland	Servicing Agreement § 4
Gleneagles	Portfolio Management Agreement § 4
Grayson	Servicing Agreement § 4
Greenbriar	Servicing Agreement § 4
Jasper	Amended And Restated Portfolio Management Agreement § 4
Liberty	Portfolio Management Agreement § 4
Red River	Servicing Agreement § 4
Rockwall	Servicing Agreement § 4
Rockwall II	Servicing Agreement § 4
Southfork	Portfolio Management Agreement§ 4
Stratford	Servicing Agreement § 4
Loan Funding VII (aka Valhalla)	Reference Portfolio Management Agreement § 5(e)
Westchester	Servicing Agreement § 4

Limits of Portfolio Manager Responsibility

CLO	Provision
Aberdeen	Servicing Agreement § 10(a)
Brentwood	Servicing Agreement § 10(a)
Eastland	Servicing Agreement § 10(a)
Gleneagles	Portfolio Management Agreement § 10(a)
Grayson	Servicing Agreement § 10(a)
Greenbriar	Servicing Agreement § 10(a)
Jasper	Amended And Restated Portfolio Management Agreement § 10(a)
Liberty	Portfolio Management Agreement § 10(a)
Red River	Servicing Agreement § 10(a)
Rockwall	Servicing Agreement § 10(a)
Rockwall II	Servicing Agreement § 10(a)
Southfork	Portfolio Management Agreement § 10(a)
Stratford	Servicing Agreement § 10(a)
Loan Funding VII (aka Valhalla)	Reference Portfolio Management Agreement § 9(d)
Westchester	Management Agreement § 10(a)

Termination of the Portfolio Manager Not Effective Unless Successor Appointed

CLO	Provision
Aberdeen	Servicing Agreement § 12(e)(i)
Brentwood	Servicing Agreement § 12(e)(i)
Eastland	Servicing Agreement § 12(e)(i)
Gleneagles	Portfolio Management Agreement § 12(f)
Grayson	Servicing Agreement § 12(e)(i)
Greenbriar	Servicing Agreement § 12(e)(i)
Jasper	Amended And Restated Portfolio Management Agreement § 12(d)
Liberty	Portfolio Management Agreement § 12(f)
Red River	Servicing Agreement § 12(e)(i)
Rockwall	Servicing Agreement § 12(e)(i)
Rockwall II	Servicing Agreement § 12(e)(i)
Southfork	Portfolio Management Agreement § 12(g)
Stratford	Servicing Agreement § 12(e)(i)
Loan Funding VII (aka Valhalla)	Reference Portfolio Management Agreement § 7(e)
Westchester	Servicing Agreement § 12(e)(i)

Termination of the Portfolio Manager by the Issuer for Cause

CLO	Provision
Aberdeen	Servicing Agreement § 14
Brentwood	Servicing Agreement § 14
Eastland	Servicing Agreement § 14
Gleneagles	Portfolio Management Agreement § 14
Grayson	Servicing Agreement § 14
Greenbriar	Servicing Agreement § 14
Jasper	Amended And Restated Portfolio Management Agreement § 14
Liberty	Portfolio Management Agreement § 14
Red River	Servicing Agreement § 14
Rockwall	Servicing Agreement § 14
Rockwall II	Servicing Agreement § 14
Southfork	Portfolio Management Agreement § 14
Stratford	Servicing Agreement § 14
Loan Funding VII (aka Valhalla)	Reference Portfolio Management Agreement § 7(b)
Westchester	Servicing Agreement § 14

Definition of "Affiliate"

CLO	Provision
Aberdeen	Indenture § 1.1
Brentwood	Indenture § 1.1
Eastland	Indenture § 1.1
Gleneagles	Indenture § 1.1
Grayson	Indenture § 1.1
Greenbriar	Indenture § 1.1
Jasper	Indenture § 1.1
Liberty	Indenture § 1.1
Red River	Indenture § 1.1
Rockwall	Indenture § 1.1
Rockwall II	Indenture § 1.1
Southfork	Indenture § 1.1
Stratford	Indenture § 1.1
Loan Funding VII (aka Valhalla)	Indenture Schedule A
Westchester	Indenture § 1.1

Sales of Collateral

CLO	Provision
Aberdeen	Indenture § 12.1
Brentwood	Indenture § 12.1
Eastland	Indenture § 12.1
Gleneagles	Indenture § 12.1
Grayson	Indenture § 12.1
Greenbriar	Indenture § 12.1
Jasper	Indenture § 12.1
Liberty	Indenture § 12.1
Red River	Indenture § 12.1
Rockwall	Indenture § 12.1 (a)
Rockwall II	Indenture § 12.1 (a)
Southfork	Indenture § 12.1
Stratford	Indenture § 12.1
Loan Funding VII (aka Valhalla)	No provision.
Westchester	Indenture § 12.1

Supervening requirement

CLO	Provision
Aberdeen	Indenture § 12.1(i)
Brentwood	Indenture § 12.1(i)
Eastland	Indenture § 12.1(i)
Gleneagles	No provision
Grayson	Indenture § 12.1(i)
Greenbriar	Indenture § 12.1(i)
Jasper	No provision
Liberty	No provision
Red River	Indenture § 12.1(i)
Rockwall	Indenture § 12.1(i)
Rockwall II	Indenture § 12.1(i)
Southfork	No provision
Stratford	Indenture § 12.1(i)
Loan Funding VII (aka Valhalla)	No provision
Westchester	Indenture § 12.1(i)

EXHIBIT G

WRITTEN CONSENT
of
THE GENERAL PARTNER
of
HIGHLAND CAPITAL MANAGEMENT, L.P.

Effective September 21, 2020

The undersigned, being all of the directors (the "***Directors***") of Strand Advisors, Inc., a Delaware corporation (the "***General Partner***"), as general partner of Highland Capital Management, L.P., a limited partnership duly organized and existing under the laws of Delaware ("***HCMLP***"), do hereby consent and agree to take the following actions and adopt the following resolutions in lieu of a meeting on behalf of HCMLP:

WHEREAS, HCMLP serves as the investment manager, general partner, or controlling shareholder of each of the entities set forth on Appendix A hereto (collectively, the "***Managed Entities***") and has the exclusive and complete authority thereby to bind, or cause to be bound, each of the Managed Entities, which includes the authority to direct the buying and selling of the Managed Entities' assets;

WHEREAS, on July 6, 2020, after substantial negotiations, HCMLP, on behalf of the Managed Entities, entered into that certain Company Interests Purchase and Sale Agreement (as amended, the "***Agreement***") with Strategic Value Partners ("***SVP***");

WHEREAS, pursuant to the Agreement, the Managed Entities agreed to sell to SVP their interests in OmniMax Holdings, Inc., and certain of its related entities (collectively, "***OmniMax***"), at a price (the "***Purchase Price***") equal to 29.5% of the March 31, 2020 balance of that certain PIK loan issued by OmniMax in favor of such Managed Entities (the "***PIK Loan***");

WHEREAS, as a condition to SVP's agreement to purchase the PIK Loan and pay the Purchase Price, the Managed Entities agreed to pay 50% of certain costs associated with obtaining necessary consents from the holders of interests held by certain entities related to HCMLP which are managed by entities controlled by James Dondero and are predominantly retail funds (the "***Non-HCMLP Parties***"), whether such costs arose in connection with OmniMax entering into bankruptcy pursuant to Chapter 11 of the U.S. Bankruptcy Code (the "***Chapter 11 Process***"), or, upon certain necessary consents being received, outside of a Chapter 11 Process;

WHEREAS, SVP and OmniMax entered into an agreement (the "***Sale Agreement***") pursuant to which SVP agreed to purchase substantially all of the business and operations of OmniMax (the "***Omnimax Sale***") either through a Chapter 11 Process, or, upon certain necessary consents being received, outside of a Chapter 11 Process;

WHEREAS, a necessary consent to consummate the Omnimax Sale outside of a Chapter 11 Process is the consent of the Non-HCMLP Parties;

WHEREAS, the parties engaged in commercially reasonable negotiations with the Non-HCMLP Parties to obtain from such parties their consent and agreement on substantially the same terms as the Agreement, but, despite the clear benefits to all parties, and notwithstanding Mr. Dondero's role at HCMLP and his duties to the Managed Entities, the Non-HCMLP Parties refused or declined to finalize and execute any definitive agreements and instead the Non-HCMLP Parties asserted a hold-out position that would necessitate a Chapter 11 Process;

WHEREAS, following further negotiations, and rather than pursuing a more costly Chapter 11 Process, the Non-HCMLP Parties and SVP agreed to enter into a definitive agreement that would provide, among other things, that the purchase price for the interests of the Non-HCMLP Parties shall be 40.0%, or 10.5% in excess of the Purchase Price (such excess, the "***NHP Premium***");

WHEREAS, pursuant to the Agreement, the Managed Entities and SVP had agreed to share certain costs in connection with either (x) a definitive agreement with the Non-HCMLP Parties (a "***NHP Agreement***"), or (y) in the absence of obtaining a definitive agreement, the Chapter 11 Process;

WHEREAS, to facilitate the purchase of the Non-HCMLP Parties' interests in OmniMax, SVP has requested, pursuant to the Agreement, that the Managed Entities pay 50% of the NHP Premium or, in the absence of such agreement, to pay 50% of the costs of the Chapter 11 Process in accordance with the terms of the Agreement;

WHEREAS, HCMLP has analyzed the costs and its obligations under the Agreement and has determined, with the assistance of counsel, that it is more cost-effective to pay 50% of the NHP Premium than it would be to pay 50% of the costs associated with a Chapter 11 Process;

WHEREAS, HCMLP, on behalf of the Managed Entities, and SVP have agreed to further amend the Agreement to provide that 50% of the NHP Premium will be deducted from the Purchase Price otherwise payable to the Managed Entities (the "***Amended Agreement***").

NOW, THEREFORE, BE IT RESOLVED, that James P. Seery, Jr., HCMLP's chief executive officer and chief restructuring officer, be and hereby is authorized and empowered to act on behalf of HCMLP, as investment manager, general partner, or controlling shareholder of the Managed Entities, to execute the Amended Agreement on behalf of each of the Managed Entities and to take such other actions as Mr. Seery deems appropriate to effectuate the terms and intent of the Amended Agreement.

FURTHER RESOLVED, that immediately preceding authorization shall remain in effect until further written notice from HCMLP.

FURTHER RESOLVED, that the Directors hereby ratify and approve all actions taken by Mr. Seery with respect to OmniMax and the sale, or potential sale, of the Managed Entities' interests in OmniMax prior to the date hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, being all of the Directors of the General Partner, have executed this consent to be effective as of the date first set forth above.

DIRECTORS:

_____
John S. Dubel

_____
James P. Seery, Jr.

_____
Russell F. Nelms

IN WITNESS WHEREOF, the undersigned, being all of the Directors of the General Partner, have executed this consent to be effective as of the date first set forth above.

DIRECTORS:

_____
John S. Dubel

_____
James P. Seery, Jr.

_____
Russell F. Nelms

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 25

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

INDEX

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

Vol. 2

Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 18, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER DENYING MOTION
FOR ORDER IMPOSING TEMPORARY RESTRICTIONS ON DEBTOR'S ABILITY,
AS PORTFOLIO MANAGER, TO INITIATE SALES BY NON-DEBTOR CLO VEHICLES

This matter having come before the Court on the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Dkt. No. 1528] (the "CLO Motion"),[2] filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA"), and NexPoint Advisors, L.P. ("NexPoint, and together with

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the CLO Motion.

HCMFA, the "Advisors"), Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds," and collectively, with the Advisors, the "Movants"); and this Court having considered (a) the CLO Motion and evidence submitted in support thereof, (b) the *Debtor's Response to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Dkt. No. 1578] (the "Opposition"), filed by Highland Capital Management, L.P. (the "Debtor"), and the evidence submitted in support thereof, (c) the oral and documentary evidence admitted into evidence during the hearing held on December 16, 2020 (the "Hearing"), and (d) the arguments made during the Hearing,

It is hereby **ORDERED** that:

1. The CLO Motion is **DENIED** in its entirety.

2. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS 1

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. <u>Defined Terms</u>

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. "*Convenience Claim*" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. "*Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "*Petition Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized

Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. <u>Professional Fee Claims</u>

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee

Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are

investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. <u>Distribution Agent</u>

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH

LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. <u>Waiver of Conditions</u>

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. <u>Dissolution of the Committee</u>

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's

Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. <u>Injunction</u>

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. <u>Duration of Injunctions and Stays</u>

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. <u>Continuance of January 9 Order</u>

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
<u>BINDING NATURE OF PLAN</u>

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however,* that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

PACHULSKI STANG ZIEHL & JONES LLP
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[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" ~~means~~of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code~~ and also includes any other Entity that~~, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such ~~affiliate~~Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management ~~and~~or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. "*Convenience Claim*" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests*" means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. "*Delaware Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. ~~56.~~ "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. ~~57.~~ "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. ~~58.~~ "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. ~~59.~~ "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. ~~60.~~ "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. ~~61.~~ "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. ~~62.~~ "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. ~~63.~~ "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. ~~64.~~ "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. ~~65.~~ "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. ~~66.~~ "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. ~~67.~~ "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. ~~68.~~ "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. ~~69.~~ "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. ~~70.~~ "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. ~~71.~~ "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. ~~72.~~ "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. ~~73.~~ "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. ~~74.~~ "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. ~~75.~~ "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. ~~76.~~ "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. ~~77.~~ "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. ~~78.~~ "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. ~~79.~~ "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. ~~80.~~ "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. ~~81.~~ "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. ~~82.~~ "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. ~~83.~~ "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. ~~84.~~ "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. ~~85.~~ "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. ~~86.~~ "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. ~~87.~~ "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. ~~88.~~ "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. ~~89.~~ "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. ~~90.~~ "*Petition Date*" means October 16, 2019.

92. ~~91.~~ "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. ~~92.~~ "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. ~~93.~~ "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. ~~94.~~ "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. ~~95.~~ "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. ~~96.~~ "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. ~~97.~~ "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. ~~98.~~ "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. ~~99.~~ "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. ~~100.~~ "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. ~~101.~~ "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. ~~102.~~ "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. ~~103.~~ "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. ~~104.~~ "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. ~~105.~~ "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. ~~106.~~ "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. ~~107.~~ "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be

cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. ~~108.~~ "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. ~~109.~~ "*Related Entity*" means, without duplication, (a) ~~James~~ Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including ~~any~~, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is ~~controlled directly or indirectly by James Dondero~~an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, ~~and~~ (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. ~~110.~~ "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present ~~and~~, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, ~~employees,~~ subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. ~~111.~~ "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. ~~112.~~ "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. ~~113.~~ "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. ~~114.~~ "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. ~~115.~~ "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. ~~116.~~ "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. ~~117.~~ "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. ~~118.~~ "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. ~~119.~~ "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. ~~120.~~ "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. ~~121.~~ "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. ~~122.~~ "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. ~~123.~~ "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. ~~124.~~ "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. ~~125.~~ "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. ~~126.~~ "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. ~~127.~~ "*Subordinated Claim*" means any Claim that~~ (i)~~ is~~ or may be~~ subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or ~~Final Order of~~order entered by the Bankruptcy Court~~ or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest~~.

130. ~~128.~~ "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. ~~129.~~ "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. ~~130.~~ "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. ~~131.~~ "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. ~~132.~~ "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. ~~133.~~ "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. ~~134.~~ "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. ~~135.~~ "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim

will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, ~~or (b~~(b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid,

released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

! *Classification*: Class 1 consists of the Jefferies Secured Claim.

! *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

! *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

! *Classification*: Class 2 consists of the Frontier Secured Claim.

! *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

! *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

! *Classification*: Class 3 consists of the Other Secured Claims.

! *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

! *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

! *Classification*: Class 4 consists of the Priority Non-Tax Claims.

! *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

! *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

! *Classification*: Class 5 consists of the Retained Employee Claims.

! *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

! *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

! *Classification*: Class 6 consists of the PTO Claims.

! *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

! *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

! *Classification*: Class 7 consists of the Convenience Claims.

! *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

! *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

! *Classification*: Class 8 consists of the General Unsecured Claims.

! *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

! *Classification*: Class 9 consists of the Subordinated Claims.

~~!~~ *Treatment*: On ~~or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim~~ the Effective Date, Holders of Subordinated Claims shall receive either (i) ~~the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its~~their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee ~~shall have agreed~~may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated

Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

! *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

! *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

! *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

! *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A

Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify~~,~~ or to ~~seek to~~ subordinate~~,~~ any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust

Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust ~~Expenses~~Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. ~~In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.~~The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable

expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan

will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant

Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to ~~a Final Order of the Bankruptcy Court entered~~this Plan on or prior to the ~~Effective~~Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the ~~Effective~~Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the ~~Effective~~Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the ~~Effective~~Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the ~~Effective~~Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff

reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect ~~thereto, which shall be litigated to Final Order~~to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other

than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

! This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

! The Confirmation Order shall have ~~been entered, not subject to stay pending appeal,~~become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as

required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

! All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

! All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

! The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

! The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or

order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

~~**C. Effect of Non-Occurrence of Conditions to Effectiveness**~~

~~Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.~~

C. ~~D.~~ Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of

such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(~~v~~iv); *provided*, *however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee

of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the

Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all ~~holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons,~~**Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all ~~Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are~~**Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to** ~~such~~**any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner**~~, directly or indirectly,~~ **any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor**~~, the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ **or the property of** ~~any of~~ **the Debtor**~~, the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~**, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means**~~, whether directly or indirectly~~**, any judgment, award, decree, or order against the Debtor**~~, the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ **or the property of** ~~any of~~ **the Debtor**~~, the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~**, (iii) creating, perfecting, or otherwise enforcing in any manner,** ~~directly or indirectly,~~ **any security interest, lien or encumbrance of any kind against the Debtor**~~, the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ **or the property of** ~~any of~~ **the Debtor**~~, the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~**, (iv) asserting any right of setoff, directly or indirectly, against any obligation due** ~~from~~**to the Debtor**~~, the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ **or against property or interests in property of** ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust;~~**the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no ~~Entity~~**Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of** ~~this~~**the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such** ~~Entity~~**Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided,***

***however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such ~~Entities~~Employee from the date of appointment of the Independent Directors through the Effective Date. ~~As set forth in ARTICLE XI, the~~The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate ~~any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.~~the underlying colorable claim or cause of action.**

G. ~~Term~~Duration of Injunctions ~~or~~and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions ~~or~~and stays ~~arising under or~~ entered during the Chapter 11 Case ~~under section 105 or 362 of the Bankruptcy Code, or otherwise,~~ and in existence on the Confirmation Date~~,~~ shall remain in full force and effect ~~until the later of the Effective Date and the date indicated in the order providing for such injunction or stay~~in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H.~~H.~~ Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date~~ until the dissolution of each of the Claimant Trust and the Litigation Trust~~.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan ~~as~~to the maximum extent legally permissible, including, without limitation, jurisdiction to:

! allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

! grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

! resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

! make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

! resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

! if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided*, *however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents

necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: ~~November 24, 2020~~January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:_____
James P. Seery, Jr.
Chief Executive Officer and Chief
Restructuring Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
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and

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ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Document comparison by Workshare 9 on Friday, January 22, 2021 4:37:01 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/40509/36
Description	DOCS_NY-#40509-v36-Highland_-_Plan_of_Reorganization
Document 2 ID	PowerDocs://DOCS_NY/40509/39
Description	DOCS_NY-#40509-v39-Highland_-_Plan_of_Reorganization
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	210
Deletions	197
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	415

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing);

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")**. This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis")**. Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

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[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)**). The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber*'s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll*) 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. <u>Defined Terms</u>

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. "*Convenience Claim*" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests*" means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. "*Delaware Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. <u>Company Action</u>

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. <u>Waiver of Conditions</u>

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. <u>Dissolution of the Committee</u>

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. <u>Preservation of Rights of Action</u>

1. *<u>Maintenance of Causes of Action</u>*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *<u>Preservation of All Causes of Action Not Expressly Settled or Released</u>*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. <u>Injunction</u>

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided*, *however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 26

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Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

INDEX

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

Vol. 2

Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. _____

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.'S VERIFIED ORIGINAL COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession ("Plaintiff" or the "Debtor"), by its undersigned counsel, files this *Original Complaint* (the "Complaint") against defendant Mr. James D. Dondero ("Defendant" or "Mr. Dondero") seeking preliminary and permanent injunctive relief pursuant to sections 105(a) and 362 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). In support of its Complaint, the Debtor alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

PRELIMINARY STATEMENT

1. Mr. Dondero is the Debtor's former President and Chief Executive Officer, having surrendered those positions in January 2020 as part of a "corporate governance" settlement approved by the Court. The settlement also resulted in, among other things, the imposition of an independent board of directors at Strand Advisors, Inc., the Debtor's general partner, with sole authority to oversee the Debtor's operations, management of its assets, and bankruptcy proceedings.

2. While Mr. Dondero resigned as an officer, he continued to serve as a portfolio manager and employee of the Debtor until October 2020, when the Board[2] asked for his resignation due to certain actions taken by Mr. Dondero that were adverse to the Debtor's estate. Regrettably, since his resignation, Mr. Dondero interfered with the Debtor's operations by intervening to halt certain trades that were authorized by the Debtor's CEO—while issuing warnings to certain of the Debtor's employees. In addition, promptly after the Debtor exercised its right to demand payment

[2] Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

from Mr. Dondero and certain of his affiliates on almost $30 million of Demand Notes, Mr. Dondero sent a threatening text message to Mr. James R. Seery, Jr. ("Mr. Seery"), the Debtor's CEO and CRO that said simply: "Be careful what you do – last warning."

3. Mr. Dondero cannot be permitted to directly (or indirectly through his corporate entities or anyone else acting on his behalf) control, interfere with, or even influence the Debtor's business and operations or threaten or intimidate the Debtor or any of its directors, officers, employees, professionals, or agents.

4. The Debtor has therefore commenced this adversary proceeding to enjoin Mr. Dondero from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Defendant's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Defendant; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[3]

JURISDICTION AND VENUE

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and § 1334(b). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

[3] The Debtor intends to separately move for a temporary restraining order seeking the same relief.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

7. This adversary proceeding is commenced pursuant to Bankruptcy Rules 7001 and 7065, Bankruptcy Code sections 105(a) and 362, 28 U.S.C. §§ 2201 and 2202, and applicable Delaware law.

THE PARTIES

8. Plaintiff is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Upon information and belief, Defendant is an individual residing in Dallas, Texas. Mr. Dondero is the co-founder of the Debtor and was the Debtor's President and Chief Executive Officer until his resignation on January 9, 2020.

CASE BACKGROUND

10. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

11. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the "Committee") with the following members: (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch (collectively, "UBS"), and (d) Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively, "Acis").

12. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].[4]

[4] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

13. The Debtor has continued to operate and manage its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in this chapter 11 case.

STATEMENT OF FACTS

A. An Independent Board Is Appointed to Oversee the Debtor's Affairs; Mr. Dondero's Role Becomes Limited and Subject to the Board's Oversight; and Mr. Dondero Is Later Asked to Resign

14. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Docket No. 339] (the "Settlement Order").

15. As part of the Settlement Order, this Court also approved a term sheet [Docket No. 354-1] (the "Term Sheet") between the Debtor and the Committee pursuant to which Mr. Seery, Mr. John S. Dubel, and Mr. Russell Nelms (collectively, the "Independent Directors"), were appointed to the board (the "Board") of Strand Advisors, Inc. ("Strand"), the Debtor's general partner.

16. As required by the Term Sheet, on January 9, 2020, Mr. Dondero resigned from his roles as an officer and director of Strand and as the Debtor's President and Chief Executive Officer.

17. While resigning from those roles, Mr. Dondero remained an unpaid employee of the Debtor and retained his title as portfolio manager for each of the investment vehicles and funds managed by the Debtor. However, pursuant to the Term Sheet, Mr. Dondero's authority was subject to oversight and ultimately termination by the Independent Board:

> Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision,

> direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination.

18. Although ultimate decision-making authority remained with the Board, by resolution passed on January 9, 2020, the Board authorized Mr. Seery to work with the Debtor's traders and Mr. Dondero with respect to certain of the Debtor's assets where Mr. Dondero remained portfolio manager.

19. During the pendency of the Debtor's bankruptcy case, it became apparent that it would be more efficient and lead to better financial results to have a traditional corporate-management structure oversee the Debtor's operations and assets. Consequently, after due deliberation, the Board determined that it was in the best interests of the Debtor's estate to appoint Mr. Seery as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). This Court approved Mr. Seery's appointment as CEO and CRO on July 16, 2020. [Docket No. 854].

20. Mr. Seery's appointment as CEO and CRO formalized his role and authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries. Mr. Seery routinely carried out such responsibilities, particularly after the seizure by Jefferies of the Select fund equity account managed by Mr. Dondero as a result of Select's failure to post margin.

21. On August 12, 2020, the Debtor filed its *Plan of Reorganization* [Docket No. 944] (as subsequently amended, the "Plan"). The Plan provides for, among other things, the monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into a mediation with certain of its creditors which resulted in, among other things, a settlement with Josh and Jennifer Terry and Acis.

22. After the Acis settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis settlement, but that a settlement had been reached at all. On October 5, 2020, Mr. Dondero objected [Docket No. 1121] to the Debtor's motion seeking approval of the Acis settlement, thereby creating an actual conflict with the Board and the Debtor.

23. In addition, the Dugaboy Investment Trust—Mr. Dondero's family trust—continued to press its proof of claim alleging that the Debtor, and by extension the Board and Mr. Seery, had mismanaged Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of MSCF's assets in May of 2020. *See, e.g.*, Proof of Claim No. 177; Docket No. 1154.

24. The Debtor concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity while taking positions adverse to the interests of the Debtor's estate. Thus, on October 2, 2020, Mr. Dondero was asked to resign as a portfolio manager at the Debtor and from any roles that he had at MSCF.

25. Mr. Dondero resigned from his positions with the Debtor on October 9, 2020.

B. Mr. Dondero Interferes with the Debtor's Business and Instructs and Threatens Certain of the Debtor's Employees

26. Since tendering his resignation, Mr. Dondero has interfered with the Debtor's operations and the management of the assets under its control, and he has otherwise acted directly and through entities he controls to improperly exert pressure on certain of the Debtor's employees.

27. The Debtor serves as the servicer, portfolio manager, or equivalent of certain pooled collateralized loan obligation vehicles (collectively, the "CLOs"). The Debtor's sole client in these matters is the CLO issuer and not any individual shareholder or noteholder of the CLO.

28. NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") are investment advisors

directly or indirectly controlled by Mr. Dondero. Upon information and belief, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in the CLOs for which the Debtor serves as portfolio manager or servicer.

29. On October 16, 2020, the Advisors wrote to Mr. Seery and, among other things, questioned the Debtor's business judgment and "request[ed] that no CLO assets be sold without prior notice to and prior consent from the Advisors." Mr. Seery did not accede to the Advisors' "request" nor did he otherwise respond to their letter.

30. On November 24, 2020, the Advisors sent another letter where they again questioned the Debtor's business judgment and "re-urge[d] [their] request that no CLO assets be sold without prior notice to and prior consent from the Advisors."

31. The Debtor has no contractual, legal, or other obligation to provide notice to, or obtain the consent of, the Advisors (or any other holder of interests in the CLOs) before exercising its business judgment to manage and service the CLOs, including in connection with the sale of the CLOs' assets.

32. On November 24, 2020, Mr. Dondero personally intervened to prevent sales of certain CLO assets that he knew Mr. Seery had authorized. Upon learning that the trades that Mr. Seery had authorized were being executed, Mr. Dondero sent an e-mail to Mr. Matthew Pearson (with copies to Mr. Hunter Covitz and Mr. Joseph Sowin) in which he said "No…… do not." About an hour later, Mr. Pearson (an HCMFA employee, not an employee of the Debtor) cancelled the trades, but Mr. Dondero warned Mr. Pearson that "HCMFA and DAF has [sic] instructed Highland in writing not to sell any CLO underlying assets . . . there is potential liability, don't do it again please."

33. Mr. Dondero's threat had the intended effect as Mr. Sowin (an HCMFA employee, not an employee of the Debtor) responded by saying that "Compliance should never have approved this order then – will coordinate with them Jim [Dondero]. Post: Please block all orders from Hitting the trading desk for the fun[ds] Jim [Dondero] mentioned."

34. On November 27, 2020, after learning that Mr. Seery had attempted to effectuate the trades, Mr. Dondero continued to interfere with the Debtor's business and engage in threating conduct, this time writing to Thomas Surgent (the Debtor's Chief Compliance Officer) that "I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational. You might want to remind him (and yourself) that the chief compliance officer has personal liability."

35. On December 3, 2020, the Debtor demanded that the Advisors "cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs."

36. The Debtor made the same demand of Mr. Dondero the following day.

C. The Debtor Demands that Mr. Dondero and His Affiliates Satisfy Certain Demand Notes, and Mr. Dondero Issues an Explicit Threat

37. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Funds Advisors, LP, and Highland Capital Management Services, Inc. (collectively, the "Corporate Obligors") are the makers under a series of promissory notes in favor of the Debtor (collectively, the "Corporate Obligors' Notes").

38. In addition, Mr. Dondero, in his personal capacity, is the maker under a series of promissory notes in favor of the Debtor (collectively, the "Dondero Notes" and together with the Corporate Obligors' Notes, the "Demand Notes").

39. Each of the Demand Notes provides, among other things, that (a) all accrued interest and principal "shall be due and payable upon demand," and that (b) the maker shall pay the holder (*i.e.*, the Debtor) all court costs and costs of collection, including reasonable attorneys' fees and expenses, if, among other things, the Note is "collected through a bankruptcy court."

40. On December 3, 2020, Debtor's counsel sent letters to representatives of Mr. Dondero and each of the Corporate Obligors demanding payment of all unpaid principal and accrued interest due under the Demand Notes by December 11, 2020 (collectively, the "Demand Letters"). These demands were made to collect funds that will be required to fund the reorganized Debtor and the trust under the plan of reorganization that is subject to confirmation before this Court in January 2021.

41. Shortly after the Debtor sent the Demand Letters, Mr. Dondero sent a text message to Mr. Seery that stated only: "Be careful what you do – last warning."

CLAIM FOR RELIEF

(For Injunctive Relief -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7065)

42. The Debtor repeats and realleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

43. The Debtor seeks, pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rule 7065, a preliminary and permanent injunction enjoining Mr. Dondero from engaging in the Prohibited Conduct.

44. Bankruptcy Code section 105(a) authorizes the Court to issue "any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

45. Bankruptcy Rule 7065 incorporates by reference rule 65 of the Federal Rules of Civil Procedure and authorizes the Court to issue injunctive relief in adversary proceedings.

46. The interference and threats described herein are embodied in written communications and are without any justification; the Debtor is therefore likely to prevail on its claim for injunctive relief.

47. In the absence of injunctive relief, the Debtor will be irreparably harmed because Mr. Dondero is likely to engage in some or all of the Prohibited Conduct, thereby interfering with the Debtor's operations, management of assets, and pursuit of a plan of reorganization, all to the detriment of the Debtor, its estate, and its creditors.

48. In light of, among other things, (a) the Debtor's status as a debtor in bankruptcy subject to the jurisdiction of this Court, (b) the Settlement Order, (c) the Term Sheet, (d) Mr. Dondero's resignations as the Debtor's President and CEO and later as portfolio manager and an employee, and (e) the authority vested in the Board and Mr. Seery, as CEO and CRO, there is no legal or equitable basis for Mr. Dondero to engage in any of the Prohibited Conduct, and the balance of the equities strongly favors the Debtor in its request to engage in business without Mr. Dondero engaging in any Prohibited Conduct.

49. Injunctive relief would serve the public interest by re-enforcing the implicit mandate in the Bankruptcy Code that debtors are to be managed and controlled only by court-authorized representatives, free from threats and coercion.

50. Based on the foregoing, the Debtor requests that the Court preliminarily and permanently enjoin Mr. Dondero from engaging in any prohibited Conduct.

PRAYER

WHEREFORE, the Debtor prays for judgment as follows:

(a) For a preliminary injunction enjoining Mr. Dondero from engaging in the Prohibited Conduct;

(b) For a permanent injunction enjoining Mr. Dondero from engaging in the Prohibited Conduct; and

(c) For such other and further relief as this Court deems just and proper.

Dated: December 7, 2020.

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Counsel for Plaintiff Highland Capital Management, L.P.

VERIFICATION

I have read the foregoing VERIFIED ORIGINAL COMPLAINT FOR INJUNCTIVE RELIEF and know its contents.

.. I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am the Chief Executive Officer and Chief Restructuring Officer of Highland Capital Management, L.P., the Plaintiff in this action, and am authorized to make this verification for and on behalf of the Plaintiff, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

.. I am one of the attorneys of record for _____, a party to this action. Such party is absent from the county in which I have my office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct as of this 7th day of December 2020.

/s/ James P. Seery, Jr.
James P. Seery, Jr.

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Highland Capital Management, L.P.	James D. Dondero
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward & Associates, PLLC 10501 N. Central Expressway, Suite 106, Dallas, TX 75231 Tel: (972) 755-7110	**ATTORNEYS** (If Known) Bonds Ellis Eppich Schafer Jones LLP 420 Throckmorton St., Suite 1000, Fort Worth, TX 76102 Tel: (817) 405-6900
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☑ Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Request for injunctive relief pursuant to 11 U.S.C. 105(a) and Rule 7065 of the Federal Rules of Bankruptcy Procedure

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☑ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $0.00

Other Relief Sought

Preliminary and permanent injunction against Mr. James D. Dondero

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE December 7, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST MR. JAMES DONDERO

Highland Capital Management, L.P., plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding") and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), by and through its undersigned counsel, files this emergency motion (the "Motion") seeking entry of a temporary restraining order and a preliminary injunction enjoining Mr. James Dondero ("Mr. Dondero" or "Defendant") from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct"). In support of the Motion, the Debtor respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

3. The predicates for the relief requested in the Motion are sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of restraining order attached hereto as **Exhibit A** (the "Proposed Order") pursuant to sections 105(a) and 362(a) of Bankruptcy Code and Bankruptcy Rule 7065.

5. For the reasons set forth more fully in the Debtor's *Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Memorandum of Law") filed contemporaneously with this Motion, the Debtor seeks injunctive relief enjoining Mr. Dondero from (i) directly (or indirectly through his corporate entities or anyone else acting on his behalf) controlling, interfering with, or even influencing the Debtor's business and operations, or (ii) threatening or intimidating the Debtor or any of its directors, officers, employees, professionals, or agents. Absent injunctive relief, the Debtor's ability to operate and execute its Plan for the benefit of its stakeholders will be jeopardized, and the integrity of Debtor's chapter 11 case and estate assets will be severely threatened. Emergency relief is needed to avoid this immediate and irreparable harm that will be caused to the Debtor.

6. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the "Local Rules"), contemporaneously herewith and in support of this Motion, the Debrtor is filing: (a) its Memorandum of Law, (b) the *Declaration of Mr. James P. Seery in Support of the Debtor's Motion for a Temporary Restraining Order against Mr. James Dondero* (the "Seery

Declaration"), and (c) the Debtor's *Motion for Expedited Hearing on Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Motion to Expedite").

7. As is demonstrated by the Memorandum of Law and the evidentiary materials referenced in the Seery Declaration, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to Mr. Dondero. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as Exhibit A granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

Dated: December 7, 2020.

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Counsel for Highland Capital Management, L.P.

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket No. _____

ORDER GRANTING DEBTOR'S MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO

Having considered the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Docket No. ____] (the "Motion"), the *Memorandum of Law* (the "Memorandum of Law")[2] in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against James Dondero* [Docket No. ____] (the "Seery Declaration"), including the exhibits

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and

pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[3]

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[3] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST MR. JAMES DONDERO

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), submits this memorandum of law (the "Memorandum") in support of the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Motion"), pursuant to sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for a temporary restraining order ("TRO") and preliminary injunction enjoining Mr. James Dondero ("Mr. Dondero" or "Defendant") from engaging in any Prohibited Conduct.[2] In support of its Motion, the Debtor states as follows:

I.
INTRODUCTION

1. Highland's immediate need for injunctive relief stems from Mr. Dondero's recent interference with the Debtor's operations, management of assets, and liquidation of its business in this chapter 11 case, and written threats he made to certain of the Debtor's officers and employees.

2. Mr. Dondero is the Debtor's former President and Chief Executive Officer, having surrendered those positions in January 2020 as part of a "corporate governance" settlement approved by the Court. The settlement also resulted in, among other things, the imposition of an independent board of directors at Strand Advisors, Inc., the Debtor's general

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the *Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against Mr. James Dondero*, being filed contemporaneously herewith (the "Seery Dec.").

partner, with sole authority to oversee the Debtor's operations, management of its assets, and bankruptcy proceedings.

3. While Mr. Dondero resigned as an officer, he continued to serve as a portfolio manager and employee of the Debtor until October 2020, when the Board asked for his resignation due to certain actions taken by Mr. Dondero, including objecting to the Acis Settlement and pursuing claims against the Debtor's estate alleging improper management. Regrettably, since his resignation, in the last couple of weeks, Mr. Dondero interfered with the Debtor's operations by intervening to halt certain trades that were authorized by the Debtor's CEO -- while issuing warnings to certain of the Debtor's employees. In addition, promptly after the Debtor exercised its right to demand payment from Mr. Dondero and certain of his affiliates on almost $30 million of Demand Notes, Mr. Dondero sent a threatening text message to Mr. James R. Seery, Jr. ("Mr. Seery"), the Debtor's CEO and CRO that said simply: "Be careful what you do – last warning."

4. Mr. Dondero cannot be permitted to directly (or indirectly through his corporate entities or anyone else acting on his behalf) control, interfere with, or even influence the Debtor's business and operations or threaten or intimidate the Debtor or any of its directors, officers, employees, professionals, or agents.

5. The Debtor has therefore filed the Motion and commenced a separate adversary proceeding to temporarily, preliminarily, and permanently enjoin the Mr. Dondero from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any

of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").

II.
FACTUAL BACKGROUND

A. An Independent Board is Appointed to Oversee the Debtor's Affairs; Mr. Dondero's Role Becomes Limited and Subject to the Board's Oversight; and Mr. Dondero is Later Asked to Resign

6. On December 27, 2019, the Debtor filed that certain Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course [Docket No. 281] (the "Settlement Motion"). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Docket No. 339] (the "Settlement Order"). Seery Dec. ¶3.

7. As part of the Settlement Order, this Court also approved a term sheet (the "Term Sheet") [Docket No. 354-1] between the Debtor and the Committee pursuant to which Mr. Seery, Mr. John S. Dubel, and Mr. Russell Nelms (collectively, the "Independent Directors"), were appointed to the board (the "Board") of Strand Advisors, Inc. ("Strand"), the Debtor's general partner. Seery Dec. ¶4; Exhibit 1.

8. As required by the Term Sheet, on January 9, 2020, Mr. Dondero resigned from his roles as an officer and director of Strand and as the Debtor's President and Chief Executive Officer. Seery Dec. ¶5; Exhibit 2.

9. While resigning from those roles, Mr. Dondero remained an unpaid employee of the Debtor and retained his title as portfolio manager for each of the investment vehicles and funds managed by the Debtor. However, pursuant to the Term Sheet, Mr. Dondero's authority was subject to oversight and ultimately termination by the Independent Board:

> Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination.

Seery Dec. ¶6; Exhibit 1.

10. Although ultimate decision making authority remained with the Board, by resolution passed on January 9, 2020, the Board authorized Mr. Seery to work with the Debtor's traders and Mr. Dondero with respect to certain of the Debtor's assets where Mr. Dondero remained portfolio manager. Seery Dec. ¶7; Exhibit 3.

11. During the pendency of the Debtor's Bankruptcy Case, it became apparent that it would be more efficient and lead to better financial results to have a traditional corporate management structure oversee the Debtor's operations and assets. Consequently, after due deliberation, the Board determined that it was in the best interests of the Debtor's estate to appoint Mr. Seery as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). This Court approved Mr. Seery's appointment as CEO and CRO on July 16, 2020. [Docket No. 854]. Seery Dec. ¶8.

12. Mr. Seery's appointment as CEO and CRO formalized his role and authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries. Mr.

Seery routinely carried out such responsibilities, particularly after the seizure by Jefferies, LLC of the Highland Select Equity Fund, L.P. ("Select") prime brokerage account managed by Mr. Dondero as a result of Select's failure to post margin. Seery Dec. ¶9.

13. On August 12, 2020, the Debtor filed its Plan of Reorganization. [Docket No. 944] (as subsequently amended, the "Plan"). The Plan provides for, among other things, the monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into a mediation with certain of its creditors which resulted in, among other things, a settlement with Josh and Jennifer Terry and Acis. Seery Dec. ¶10.

14. After the Acis settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis settlement, but that a settlement had been reached at all. On October 5, 2020, Mr. Dondero objected to the Debtor's motion seeking approval of the Acis settlement, thereby creating an actual conflict with the Board and the Debtor. [Docket No. 1121]. Seery Dec. ¶11.

15. In addition, the Dugaboy Investment Trust – Mr. Dondero's family trust – continued to press its proof of claim alleging that the Debtor, and by extension the Board and Mr. Seery, had mismanaged Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of MSCF's assets in May of 2020. Seery Dec. ¶12.

16. The Debtor concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity while taking positions adverse to the interests of the Debtor's estate. Thus, on October 2, 2020, Mr. Dondero was asked to resign as a portfolio manager at the Debtor and from any roles that he had at MSCF. Seery Dec. ¶13; Exhibit 4.

17. Mr. Dondero resigned from his positions with the Debtor on October 9, 2020. Seery Dec. ¶14; Exhibit 5.

B. Mr. Dondero Interferes with the Debtor's Business and Instructs and Threatens Certain of the Debtor's Employees

18. Since tendering his resignation, Mr. Dondero has interfered with the Debtor's operations and the management of the assets under its control, and has otherwise acted directly and through entities he controls to improperly exert pressure on certain of the Debtor's employees. Seery Dec. ¶15.

19. The Debtor serves as the servicer, portfolio manager, or equivalent of certain pooled collateralized loan obligation vehicles (collectively, the "CLOs"). The Debtor's sole client in these matters is the CLO issuer, and not any individual shareholder or noteholder of the CLO. Seery Dec. ¶16.

20. NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") are investment advisors directly or indirectly controlled by Mr. Dondero. Upon information and belief, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in the CLOs for which the Debtor serves as portfolio manager or servicer. Seery Dec. ¶17.

21. On October 16, 2020, the Advisors wrote to Mr. Seery and, among other things, questioned the Debtor's business judgment and "request[ed] that no CLO assets be sold without prior notice to and prior consent from the Advisors." Mr. Seery did not accede to the Advisors' "request" nor did he otherwise respond to their letter. Seery Dec. ¶18; Exhibit 6.

22. On November 24, 2020, the Advisors sent another letter where they again questioned the Debtor's business judgment and "re-urge[d] [their] request that no CLO assets be sold without prior notice to and prior consent from the Advisors." Seery Dec. ¶19; Exhibit 7.

23. The Debtor has no contractual, legal, or other obligation to provide notice to, or obtain the consent of, the Advisors (or any other holder of interests in the CLOs) before exercising its business judgment to manage and service the CLOs, including in connection with the sale of the CLOs' assets. Seery Dec. ¶20.

24. On November 24, 2020, Mr. Dondero personally intervened to prevent sales of certain CLO assets that he knew Mr. Seery had authorized. Upon learning that the trades that Mr. Seery had authorized were being executed, Mr. Dondero sent an e-mail to Mr. Matthew Pearson (with copies to Mr. Hunter Covitz and Mr. Joseph Sowin) in which he said "No…… do not." About an hour later, Mr. Pearson cancelled the trades but Mr. Dondero warned Mr. Pearson that "HCMFA and DAF has [sic] instructed Highland in writing not to sell any CLO underlying assets . . . there is potential liability, don't do it again please." Seery Dec. ¶21.

25. Mr. Dondero's threat had the intended effect as Mr. Sowin (an HCMFA employee, not an employee of the Debtor) responded by saying that "Compliance should never have approved this order then – will coordinate with them Jim [Dondero]. Post: Please block all orders from Hitting the trading desk for the fun[ds] Jim [Dondero] mentioned." Seery Dec. ¶22.

26. On November 27, 2020, after learning that Mr. Seery had attempted to effectuate the trades, Mr. Dondero continued to interfere with the Debtor's business and engage in threating conduct, this time writing to Thomas Surgent (the Debtor's Chief Compliance Officer) that "I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational. You might want to remind him (and yourself) that the chief compliance officer has personal liability." Seery Dec. ¶23; Exhibit 8.

27. On December 3, 2020, the Debtor demanded that the Advisors "cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs." Seery Dec. ¶24; Exhibit 9.

28. The Debtor made the same demand of Mr. Dondero the following day. Seery Dec. ¶25; Exhibit 10.

C. The Debtor Demands that Mr. Dondero and his Affiliates Satisfy Certain Demand Notes, and Mr. Dondero Issues an Explicit Threat

29. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Funds Advisors, LP, and Highland Capital Management Services, Inc. (collectively, the "Corporate Obligors") are the makers under a series of promissory notes in favor of the Debtor (collectively, the "Corporate Obligors' Notes"). Seery Dec. ¶26.

30. In addition, Mr. Dondero, in his personal capacity, is the maker under a series of promissory notes in favor of the Debtor (collectively, the "Dondero Notes" and together with the Corporate Obligors' Notes, the "Demand Notes"). Seery Dec. ¶27.

31. Each of the Demand Notes provides, among other things, that (a) all accrued interest and principal "shall be due and payable upon demand," and that (b) the maker shall pay the holder (*i.e.*, the Debtor) all court costs and costs of collection, including reasonable attorneys' fees and expenses, if, among other things, the Note is "collected through a bankruptcy court." Seery Dec. ¶28; Exhibits 11 through 23.

32. On December 3, 2020, Debtor's counsel sent letters to representatives of Mr. Dondero and each of the Corporate Obligors demanding payment of all unpaid principal and accrued interest due under the Demand Notes by December 11, 2020 (collectively, the "Demand Letters"). These demands were made to collect funds that will be required to fund the

reorganized Debtor and the trust under the plan of reorganization that is subject to confirmation before this Court in January 2021. Seery Dec. ¶29; Exhibits 24 through 27.

33. Shortly after the Debtor sent the Demand Letters, Mr. Dondero sent a text message to Mr. Seery that stated only: "Be careful what you do – last warning." Seery Dec. ¶30; Exhibit 28.

34. On December 6, 2020, at Mr. Seery's instruction, the Debtor's counsel sent Mr. Dondero's counsel a letter demanding that Mr. Dondero "cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero." The Debtor specifically put Mr. Dondero on notice that the Debtor intended to file this Motion. Seery Dec. ¶ 32; Exhibit 29.

III.
LEGAL STANDARD

35. Pursuant to section 105(a) of the Bankruptcy Code, bankruptcy courts are authorized to "issue any order, process, of judgment that is necessary or appropriate to carry out the provisions of the Code. *In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012) (quoting 11 U.S.C. § 105); *see also In re OGA Charters, LLC*, 554 B.R. 415, 424 (Bankr. S.D. Tex. 2016) ("The Court may issue injunctions as part of its equitable powers, pursuant to 11 U.S.C. § 105."). In other words, courts have broad authority to take actions necessary to "protect the integrity of the bankruptcy estate" and to "enjoin actions that 'might impede the reorganization process.'" *FiberTower*, 482 B.R. at 182 (quoting *MacArthur Co. v. Johns–Manville Corp. (In re Johns–Manville Corp.)*, 837 F.2d 89, 93 (2d Cir.1988)). "A

preliminary injunction seeks to 'prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits.'" *OGA Charters*, 554 B.R. at 424 (quoting *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir.1985)).

36. Injunctive relief is warranted under section 105(a) where the movant shows: (1) a likelihood that it will prevail on the merits; (2) irreparable injury in the absence of injunctive relief; (3) that the balance of the equities favor the movant; and (4) that the injunction would serve the public interest. *See id.*; *Green v. Wells Fargo Bank, N.A.*, 575 Fed.Appx. 322, 323 n. 3 (5th Cir. 2014) (stating the four prong test for a preliminary injunction as likelihood of success, irreparable harm, balance of the equities, and the public interest); *In re Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1189 (5th Cir. 1986) (same); *La Union Del Pueblo Entero v. Fed. Emergency Mgmt. Agency*, 608 F.3d 217, 219 (5th Cir. 2010) (same).

37. A temporary restraining order should be granted pending a hearing for a preliminary injunction where it appears that "immediate and irreparable injury, loss or damage will result to the movant." *See* Fed. R. Bankr. P. 7065 (incorporating by reference Fed. R. Civ. P. 65); *see also In re Seatco, Inc.*, 259 B.R. 279, 285 (Bankr. N.D. Tex. 2001) (noting that Fed. R. Civ. P. 65 applies in adversary proceedings, "except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor-in-possession without compliance with Rule 65(c)[.]"). The issuance of an injunction is within the broad discretion of the court. *See In re Compton Corp.*, 90 B.R. 798, 806 (Bankr.N.D.Tex. 1988) ("It is [] clear that the issuance of an injunction, as a general matter, is within the discretion of the court."); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074, 1079 (5th Cir. 1986) (noting that the decision to issue or not to issue an injunction is subject to "considerable discretion" in the district court); *Moore v. Consol. Edison Co. of New York, Inc.*, 409 F.3d 506, 511 (2d Cir. 2005) ("The

district court has wide discretion in determining whether to grant a preliminary injunction, and this Court reviews the district court's determination only for abuse of discretion.”).

38. For the reasons that follow, the Debtor satisfies the standard for injunctive relief.

IV.
ARGUMENT

39. Injunctive relief is necessary to prevent the imminent and irreparable harm that would be caused to the Debtor if Mr. Dondero is permitted to engage in any of the Prohibited Conduct.

40. The Debtor is likely to succeed on the merits because Mr. Dondero’s interference, warnings, and threats cannot be disputed (they are in writing), and the relief sought – the protection of its bankruptcy estate during its chapter 11 proceedings – is precisely the type of relief authorized under sections 105 and 362 of the Bankruptcy Code. *See OGA Charters*, 554 B.R. at 432-33 (granting injunctive relief to protect the debtor’s assets during chapter 11 proceedings, and noting that a “preliminary injunction, is, in essence, merely an extension of § 362’s stay” of the debtor’s bankruptcy estate asset).

41. The equities strongly (if not exclusively) favor the Debtor because the Debtor’s ability to operate and execute its Plan for the benefit of its stakeholders will be jeopardized if Mr. Dondero is permitted to engage in the Prohibited Conduct – conduct which Mr. Dondero has no legal or equitable right to engage in.

42. Finally, and for all these same reasons, granting injunctive relief serves the public interest because the Debtor’s chances of a successful liquidation will be severely jeopardized if injunctive relief is not granted.

A. <u>The Debtor will Suffer Irreparable Harm in the Absence of Injunctive Relief</u>

43. The Debtor's estate will be severely injured if Mr. Dondero is not enjoined from interfering with and impeding the Debtor's business, management of its assets, and treatment of claims against the Debtor's estate. Irreparable harm is "a harm 'for which there is no adequate remedy at law.'" *OGA Charters*, 554 B.R. at 424 (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013)); *see also Compass Bank v. Veytia*, EP-11-CV-228-PRM, 2011 WL 13234883, at *2 (W.D. Tex. Sept. 21, 2011) ("The general rule in the Fifth Circuit is that 'harm is irreparable where there is no adequate remedy at law, such as monetary damages'") (quoting *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2010)).

44. In the bankruptcy context, "irreparable harm" refers to either "irreparable harm to the interest of a creditor or irreparable harm to the bankruptcy estate." *In re Hunt*, 93 B.R. 484, 495 (Bankr. N.D. Tex. 1988) (internal quotations omitted). The element of irreparable injury to the debtor's estates is described as "irreparable harm to the creditors and estates from disruption of th[e] Court's exclusive authority to effectively manage the[] cases." *Id*. Moreover, "the mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.'" *Compass Bank*, 2011 WL 13234883, at *2 (citing *Janvey*, 647 F.3d at 600); (holding that "dissipation of assets ... would impair the court's ability to grant an effective remedy").

45. Here, in the absence of injunctive relief, both the Debtor's estate and its creditors will face imminent and irreparable harm that cannot be adequately remedied. If Mr. Dondero continues to engage in the Prohibited Conduct, the Debtor's ability to effectively wind down its business in the chapter 11 proceedings will be impaired. The harm is thus the not

merely "speculative, theoretical, or remote," but imminent and irreparable. *FiberTower Network Services*, 482 B.R. at 187. If Mr. Dondero continues to engage in the Prohibited Conduct, this Court's ability to manage the Debtor's liquidation efforts will also be severely jeopardized. *See Hunt*, 93 B.R. at 496 (finding irreparable harm to debtor where "[h]arm would also result to creditors and the Debtor's estate will result from the other harm attendant to the present continuation of the CFTC Action, on a potentially defeasible theory, is the harm to the creditors and estate from disrupting this court's ability to effectively manage the Debtors' reorganization efforts.").

46. In sum, if Mr. Dondero is not immediately enjoined from engaging in his disruptive conduct, the Debtor's ability to manage its business and execute its Plan for the benefit of all of its stakeholders will be jeopardized.

B. <u>The Debtor Demonstrates Likelihood of Success on the Merits</u>

47. The Debtor is likely to succeed on the merits. To satisfy the likelihood of success element, the movant need only present their "prima facie case." *Janvey*, 647 F.3d at 595 (internal quotations omitted). Moreover, the relevant "merits" question in this case is not whether Debtor is likely to prevail on appeal, but rather "whether this [C]ourt is authorized and likely to grant the requested relief." *FiberTower*, 482 B.R. at 183–84 (citing COLLIER ON BANKRUPTCY ¶ 105.03[1][a] (16th ed. 2012) ("In connection with the 'likelihood' argument, many courts have looked to the purpose of the requested injunction ... the likelihood of success argument will track closely the bankruptcy right sought to be vindicated."); *see also Hunt*, 93 B.R. at 493 ("[t]he inquiry [for success on the merits] for a preliminary injunction necessarily focuses on the outcome of a later proceeding, at which time the merits giving rise to the litigation will be decided" rather than success on the merits "so that reorganization efforts mandated by the

Bankruptcy Code will not be thwarted by the [enforcement] proceeding.") (internal quotations omitted).

48. Here, as discussed above, the Court is authorized to grant the Debtor's requested relief. *See* 11 U.S.C § 105(a) (authorizing the bankruptcy court to "issue any order, process, of judgment that is necessary or appropriate to carry out the provisions of the Code."); *see also* 11 U.S.C. § 362. The Debtor seeks to enjoin Mr. Dondero from attempting to control, manage, or otherwise influence the Board's sale of the Debtor's CLO assets for the purpose of protecting the Board's ability to manage the Debtor's assets, and in turn, to protect the integrity of the Debtor's bankruptcy estate. *See FiberTower*, 482 B.R. at 182. The relief the Debtor seeks here is thus precisely the type contemplated by the Bankruptcy Court's broad powers to grant injunctive relief under Section 105. Moreover, there can be no credible dispute that Mr. Dondero engaged in the conduct complained of because it is reflected in contemporaneous, written communications.

C. <u>The Equities Strongly Favor the Debtor</u>

49. The balance of the equities also tip decisively in the Debtor's favor. In the absence of injunctive relief, the Debtor faces imminent and irreparable harm. If Mr. Dondero is not prevented from continuing to interfere with the Debtor's business and management of its assets and claims, the Debtor's ability to successfully liquidate and satisfy its claims will be put at risk. By contrast, there are no equities that favor denying injunctive relief as Mr. Dondero has no legal or equitable right to engage in any of the Prohibited Conduct, all of which is adverse to the Debtor's interests.

50. In sum, the potential harm to the Debtor in the absence of injunctive relief far outweighs any harm to Mr. Dondero if injunctive relief issues. *See FiberTower*, 482 B.R. at 189 (finding that the balance of equities favored the debtors where "[t]he potential harm to

Debtors … far outweighs the possible harm to Defendant" if injunctive relief is granted "because, among other reasons, the Debtors "face the loss of cash collateral[.]")

D. <u>Injunctive Relief Serves the Public Interest</u>

51. Injunctive relief will further the public interest because it is necessary to protect the Debtor's ability to successfully liquidate its assets and satisfy its claims. "Courts have often held that injunctions that facilitate reorganizations serve the public interest." *FiberTower*, 482 B.R. at 189 (citing *SAS Overseas Consultants v. Benoit*, No. 99–1663, 2000 WL 140611, at *5 (E.D.La. Feb. 7, 2000); *Lazarus Burman Assocs. v. Nat'l Westminster Bank U.S.A. (In re Lazarus Burman Assocs.)*, 161 B.R. 891, 901 (Bankr.E.D.N.Y.1993)). In other words, "[i]n bankruptcy, the public policy is to have an orderly administration of the debtor's assets via their bankruptcy estate, such that the debtor may be able to gain a fresh start, by satisfying valid claims against that estate." *OGA Charters*, 554 B.R. at 426; *see also In re Hunt*, 93 B.R. at 497 ("Chapter 11 expresses the public interest of preserving the going-concern values of businesses, protecting jobs, ensuring the equal treatment of and payment of creditors, and if possible saving something for the equity holders.").

52. To this end, "[t]he Bankruptcy Court is vested with management duties to further this interest and ensure a meaningful process for all of these competing entities." *Id.* (citing *In re Timbers of Inwood Forest Assocs., LTD.*, 808 F.2d 363, 373 (5th Cir.1987) ("Early and ongoing judicial management of Chapter 11 cases is essential if the Chapter 11 process is to survive and the goals of reorganizability on the one hand, and creditor protection, on the other, are to be achieved."). Thus, in general, preventing the dissipation of potential assets belonging to the debtor that, pursuant to 11 U.S.C. § 541, may be brought into the bankruptcy estate is in the public interest. *See OGA Charters*, 554 B.R. at 426 (finding that the "public interest may be served where the purpose of the preliminary injunction is such that it serves to" uphold a core

"pillar of bankruptcy by preserving a debtor's … assets that can be potentially used to satisfy valid claims against the bankruptcy estate.").

53. Here, if Mr. Dondero is not enjoined from engaging in the Prohibited Conduct, the Debtor's liquidation process will be jeopardized at the expense of its creditors. *See FiberTower*, 482 B.R. at 189 (holding that an injunction would serve the public interest where, the "Debtors' chances of successfully reorganizing will be jeopardized unless injunctive relief is granted," further noting that "if the Debtors were to liquidate, their employees and customers would be adversely affected."). By contrast, the public interest would not be served by allowing Mr. Dondero to continue to interfere with the Debtor's reorganization process. The Debtor's management must be able to execute its duties of managing and selling assets so that the Debtor can perform its obligations and satisfy valid claims against the estate.

V.
CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court grant its Motion and enter an Order in the form annexed hereto as Exhibit A, and grant any further relief as the Court deems just and proper.

Dated: December 7, 2020.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST MR. JAMES DONDERO

Highland Capital Management, L.P., plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding") and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), by and through its undersigned counsel, files this emergency motion (the "Motion") seeking entry of a temporary restraining order and a preliminary injunction enjoining Mr. James Dondero ("Mr. Dondero" or "Defendant") from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct"). In support of the Motion, the Debtor respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

3. The predicates for the relief requested in the Motion are sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of restraining order attached hereto as **Exhibit A** (the "Proposed Order") pursuant to sections 105(a) and 362(a) of Bankruptcy Code and Bankruptcy Rule 7065.

5. For the reasons set forth more fully in the Debtor's *Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Memorandum of Law") filed contemporaneously with this Motion, the Debtor seeks injunctive relief enjoining Mr. Dondero from (i) directly (or indirectly through his corporate entities or anyone else acting on his behalf) controlling, interfering with, or even influencing the Debtor's business and operations, or (ii) threatening or intimidating the Debtor or any of its directors, officers, employees, professionals, or agents. Absent injunctive relief, the Debtor's ability to operate and execute its Plan for the benefit of its stakeholders will be jeopardized, and the integrity of Debtor's chapter 11 case and estate assets will be severely threatened. Emergency relief is needed to avoid this immediate and irreparable harm that will be caused to the Debtor.

6. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the "Local Rules"), contemporaneously herewith and in support of this Motion, the Debrtor is filing: (a) its Memorandum of Law, (b) the *Declaration of Mr. James P. Seery in Support of the Debtor's Motion for a Temporary Restraining Order against Mr. James Dondero* (the "Seery

Declaration"), and (c) the Debtor's *Motion for Expedited Hearing on Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Motion to Expedite").

7. As is demonstrated by the Memorandum of Law and the evidentiary materials referenced in the Seery Declaration, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to Mr. Dondero. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as Exhibit A granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

Dated: December 7, 2020.

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket No. _____

ORDER GRANTING DEBTOR'S MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO

Having considered the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Docket No. ____] (the "Motion"), the *Memorandum of Law* (the "Memorandum of Law")[2] in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against James Dondero* [Docket No. ____] (the "Seery Declaration"), including the exhibits

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and

pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[3]

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[3] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

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DEBTOR'S AMENDED MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST MR. JAMES DONDERO

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), submits this amended memorandum of law (the "Memorandum") in support of the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Motion"), pursuant to sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for a temporary restraining order ("TRO") and preliminary injunction enjoining Mr. James Dondero ("Mr. Dondero" or "Defendant") from engaging in any Prohibited Conduct.[2] In support of its Motion, the Debtor states as follows:

I.
INTRODUCTION

1. Highland's immediate need for injunctive relief stems from Mr. Dondero's recent interference with the Debtor's operations, management of assets, and liquidation of its business in this chapter 11 case, as well as written threats Mr. Dondero made to certain of the Debtor's officers and employees.

2. Mr. Dondero is the Debtor's former President and Chief Executive Officer, having surrendered those positions in January 2020 as part of a "corporate governance" settlement approved by the Court. The settlement also resulted in, among other things, the imposition of an independent board of directors at Strand Advisors, Inc., the Debtor's general

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the *Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero*, being filed contemporaneously herewith (the "Seery Dec.").

partner, with sole authority to oversee the Debtor's operations, management of its assets, and bankruptcy proceedings.

3. While Mr. Dondero resigned as an officer, he continued to serve as a portfolio manager and employee of the Debtor until October 2020, when the Board asked for his resignation due to certain actions taken by Mr. Dondero, including objecting to the Acis Settlement and pursuing claims against the Debtor's estate alleging improper management. Regrettably, since his resignation, in the last couple of weeks, Mr. Dondero interfered with the Debtor's operations by intervening to halt certain trades that were authorized by the Debtor's CEO—while issuing warnings to certain of the Debtor's employees. In addition, promptly after the Debtor exercised its right to demand payment from Mr. Dondero and certain of his affiliates on almost $30 million of Demand Notes, Mr. Dondero sent a threatening text message to Mr. James R. Seery, Jr. ("Mr. Seery"), the Debtor's CEO and CRO that said simply: "Be careful what you do – last warning."

4. Mr. Dondero cannot be permitted to directly (or indirectly through his corporate entities or anyone else acting on his behalf) control, interfere with, or even influence the Debtor's business and operations or threaten or intimidate the Debtor or any of its directors, officers, employees, professionals, or agents.

5. The Debtor has therefore filed the Motion and commenced a separate adversary proceeding to temporarily, preliminarily, and permanently enjoin the Mr. Dondero from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any

of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").

II.
FACTUAL BACKGROUND

A. An Independent Board is Appointed to Oversee the Debtor's Affairs; Mr. Dondero's Role Becomes Limited and Subject to the Board's Oversight; and Mr. Dondero is Later Asked to Resign

6. On December 27, 2019, the Debtor filed that certain Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course [Docket No. 281] (the "Settlement Motion"). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Docket No. 339] (the "Settlement Order"). Seery Dec. ¶3.

7. As part of the Settlement Order, this Court also approved a term sheet [Docket No. 354-1] (the "Term Sheet") between the Debtor and the Committee pursuant to which Mr. Seery, Mr. John S. Dubel, and Mr. Russell Nelms (collectively, the "Independent Directors"), were appointed to the board (the "Board") of Strand Advisors, Inc. ("Strand"), the Debtor's general partner. Seery Dec. ¶4; Exhibit 1.

8. As required by the Term Sheet, on January 9, 2020, Mr. Dondero resigned from his roles as an officer and director of Strand and as the Debtor's President and Chief Executive Officer. Seery Dec. ¶5; Exhibit 2.

9. While resigning from those roles, Mr. Dondero remained an unpaid employee of the Debtor and retained his title as portfolio manager for each of the investment vehicles and funds managed by the Debtor. However, pursuant to the Term Sheet, Mr. Dondero's authority was subject to oversight and ultimately termination by the Independent Board:

> Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination.

Seery Dec. ¶6; Exhibit 1.

10. Although ultimate decision making authority remained with the Board, by resolution passed on January 9, 2020, the Board authorized Mr. Seery to work with the Debtor's traders and Mr. Dondero with respect to certain of the Debtor's assets where Mr. Dondero remained portfolio manager. Seery Dec. ¶7; Exhibit 3.

11. During the pendency of the Debtor's Bankruptcy Case, it became apparent that it would be more efficient and lead to better financial results to have a traditional corporate management structure oversee the Debtor's operations and assets. Consequently, after due deliberation, the Board determined that it was in the best interests of the Debtor's estate to appoint Mr. Seery as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). This Court approved Mr. Seery's appointment as CEO and CRO on July 16, 2020. [Docket No. 854]. Seery Dec. ¶8.

12. Mr. Seery's appointment as CEO and CRO formalized his role and authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries. Mr.

Seery routinely carried out such responsibilities, particularly after the seizure by Jefferies, LLC of the Highland Select Equity Fund, L.P. ("Select") prime brokerage account managed by Mr. Dondero as a result of Select's failure to post margin. Seery Dec. ¶9.

13. On August 12, 2020, the Debtor filed its Plan of Reorganization. [Docket No. 944] (as subsequently amended, the "Plan"). The Plan provides for, among other things, the monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into a mediation with certain of its creditors which resulted in, among other things, a settlement with Josh and Jennifer Terry and Acis. Seery Dec. ¶10.

14. After the Acis settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis settlement, but that a settlement had been reached at all. On October 5, 2020, Mr. Dondero objected to the Debtor's motion seeking approval of the Acis settlement [Docket No. 1121], thereby creating an actual conflict with the Board and the Debtor. Seery Dec. ¶11.

15. In addition, the Dugaboy Investment Trust – Mr. Dondero's family trust – continued to press its proof of claim alleging that the Debtor, and by extension the Board and Mr. Seery, had mismanaged Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of MSCF's assets in May of 2020. Seery Dec. ¶12.

16. The Debtor concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity while taking positions adverse to the interests of the Debtor's estate. Thus, on October 2, 2020, Mr. Dondero was asked to resign as a portfolio manager at the Debtor and from any roles that he had at MSCF. Seery Dec. ¶13; Exhibit 4.

17. Mr. Dondero resigned from his positions with the Debtor on October 9, 2020. Seery Dec. ¶14; Exhibit 5.

B. Mr. Dondero Interferes with the Debtor's Business and Instructs and Threatens Certain of the Debtor's Employees

18. Since tendering his resignation, Mr. Dondero has interfered with the Debtor's operations and the management of the assets under its control, and he has otherwise acted directly and through entities he controls to improperly exert pressure on certain of the Debtor's employees. Seery Dec. ¶15.

19. The Debtor serves as the servicer, portfolio manager, or equivalent of certain pooled collateralized loan obligation vehicles (collectively, the "CLOs"). The Debtor's sole client in these matters is the CLO issuer, and not any individual shareholder or noteholder of the CLO. Seery Dec. ¶16.

20. NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") are investment advisors directly or indirectly controlled by Mr. Dondero. Upon information and belief, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in the CLOs for which the Debtor serves as portfolio manager or servicer. Seery Dec. ¶17.

21. On October 16, 2020, the Advisors wrote to Mr. Seery and, among other things, questioned the Debtor's business judgment and "request[ed] that no CLO assets be sold without prior notice to and prior consent from the Advisors." Mr. Seery did not accede to the Advisors' "request" nor did he otherwise respond to their letter. Seery Dec. ¶18; Exhibit 6.

22. On November 24, 2020, the Advisors sent another letter where they again questioned the Debtor's business judgment and "re-urge[d] [their] request that no CLO assets be sold without prior notice to and prior consent from the Advisors." Seery Dec. ¶19; Exhibit 7.

23. The Debtor has no contractual, legal, or other obligation to provide notice to, or obtain the consent of, the Advisors (or any other holder of interests in the CLOs) before exercising its business judgment to manage and service the CLOs, including in connection with the sale of the CLOs' assets. Seery Dec. ¶20.

24. On November 24, 2020, Mr. Dondero personally intervened to prevent sales of certain CLO assets that he knew Mr. Seery had authorized. Upon learning that the trades that Mr. Seery had authorized were being executed, Mr. Dondero sent an e-mail to Mr. Matthew Pearson (with copies to Mr. Hunter Covitz and Mr. Joseph Sowin) in which he said "No…… do not." About an hour later, Mr. Pearson cancelled the trades but Mr. Dondero warned Mr. Pearson that "HCMFA and DAF has [sic] instructed Highland in writing not to sell any CLO underlying assets . . . there is potential liability, don't do it again please." Seery Dec. ¶21.

25. Mr. Dondero's threat had the intended effect as Mr. Sowin (an HCMFA employee, not an employee of the Debtor) responded by saying that "Compliance should never have approved this order then – will coordinate with them Jim [Dondero]. Post: Please block all orders from Hitting the trading desk for the fun[ds] Jim [Dondero] mentioned." Seery Dec. ¶22.

26. On November 27, 2020, after learning that Mr. Seery had attempted to effectuate the trades, Mr. Dondero continued to interfere with the Debtor's business and engage in threating conduct, this time writing to Thomas Surgent (the Debtor's Chief Compliance Officer) that "I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational. You might want to remind him (and yourself) that the chief compliance officer has personal liability." Seery Dec. ¶23; Exhibit 8.

27. On December 3, 2020, the Debtor demanded that the Advisors "cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs." Seery Dec. ¶24; Exhibit 9.

28. The Debtor made the same demand of Mr. Dondero the following day. Seery Dec. ¶25; Exhibit 10.

C. The Debtor Demands that Mr. Dondero and his Affiliates Satisfy Certain Demand Notes, and Mr. Dondero Issues an Explicit Threat

29. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Funds Advisors, LP, and Highland Capital Management Services, Inc. (collectively, the "Corporate Obligors") are the makers under a series of promissory notes in favor of the Debtor (collectively, the "Corporate Obligors' Notes"). Seery Dec. ¶26.

30. In addition, Mr. Dondero, in his personal capacity, is the maker under a series of promissory notes in favor of the Debtor (collectively, the "Dondero Notes" and together with the Corporate Obligors' Notes, the "Demand Notes"). Seery Dec. ¶27.

31. Each of the Demand Notes provides, among other things, that (a) all accrued interest and principal "shall be due and payable upon demand," and that (b) the maker shall pay the holder (*i.e.*, the Debtor) all court costs and costs of collection, including reasonable attorneys' fees and expenses, if, among other things, the Note is "collected through a bankruptcy court." Seery Dec. ¶28; Exhibits 11 through 23.

32. On December 3, 2020, Debtor's counsel sent letters to representatives of Mr. Dondero and each of the Corporate Obligors demanding payment of all unpaid principal and accrued interest due under the Demand Notes by December 11, 2020 (collectively, the "Demand Letters"). These demands were made to collect funds that will be required to fund the

reorganized Debtor and the trust under the plan of reorganization that is subject to confirmation before this Court in January 2021. Seery Dec. ¶29; Exhibits 24 through 27.

33. Shortly after the Debtor sent the Demand Letters, Mr. Dondero sent a text message to Mr. Seery that stated only: "Be careful what you do – last warning." Seery Dec. ¶30; Exhibit 28.

34. On December 6, 2020, at Mr. Seery's instruction, the Debtor's counsel sent Mr. Dondero's counsel a letter demanding that Mr. Dondero "cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero." The Debtor specifically put Mr. Dondero on notice that the Debtor intended to file this Motion. Seery Dec. ¶ 32; Exhibit 29.

III.
LEGAL STANDARD

35. Pursuant to section 105(a) of the Bankruptcy Code, bankruptcy courts are authorized to "issue any order, process, of judgment that is necessary or appropriate to carry out the provisions of the Code. *In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012) (quoting 11 U.S.C. § 105); *see also In re OGA Charters, LLC*, 554 B.R. 415, 424 (Bankr. S.D. Tex. 2016) ("The Court may issue injunctions as part of its equitable powers, pursuant to 11 U.S.C. § 105."). In other words, courts have broad authority to take actions necessary to "protect the integrity of the bankruptcy estate" and to "enjoin actions that 'might impede the reorganization process.'" *FiberTower*, 482 B.R. at 182 (quoting *MacArthur Co. v. Johns–Manville Corp. (In re Johns–Manville Corp.)*, 837 F.2d 89, 93 (2d Cir.1988)). "A

preliminary injunction seeks to 'prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits.'" *OGA Charters*, 554 B.R. at 424 (quoting *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir.1985)).

36. Injunctive relief is warranted under section 105(a) where the movant shows: (1) a likelihood that it will prevail on the merits; (2) irreparable injury in the absence of injunctive relief; (3) that the balance of the equities favor the movant; and (4) that the injunction would serve the public interest. *See Green v. Wells Fargo Bank, N.A.*, 575 Fed.Appx. 322, 323 n. 3 (5th Cir. 2014) (stating the four prong test for a preliminary injunction as likelihood of success, irreparable harm, balance of the equities, and the public interest); *In re Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1189 (5th Cir. 1986) (same); *La Union Del Pueblo Entero v. Fed. Emergency Mgmt. Agency*, 608 F.3d 217, 219 (5th Cir. 2010) (same).

37. A temporary restraining order should be granted pending a hearing for a preliminary injunction where it appears that "immediate and irreparable injury, loss or damage will result to the movant." *See* Fed. R. Bankr. P. 7065 (incorporating by reference Fed. R. Civ. P. 65); *see also In re Seatco, Inc.*, 259 B.R. 279, 285 (Bankr. N.D. Tex. 2001) (noting that Fed. R. Civ. P. 65 applies in adversary proceedings, "except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor-in-possession without compliance with Rule 65(c)"). The issuance of an injunction is within the broad discretion of the court. *See In re Compton Corp.*, 90 B.R. 798, 806 (Bankr.N.D.Tex. 1988) ("It is [] clear that the issuance of an injunction, as a general matter, is within the discretion of the court."); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074, 1079 (5th Cir. 1986) (noting that the decision to issue or not to issue an injunction is subject to "considerable discretion" in the district court); *Moore v. Consol. Edison Co. of New York, Inc.*, 409 F.3d 506, 511 (2d Cir. 2005) ("The

district court has wide discretion in determining whether to grant a preliminary injunction, and this Court reviews the district court's determination only for abuse of discretion.”).

38. For the reasons that follow, the Debtor satisfies the standard for injunctive relief.

IV.
ARGUMENT

39. Injunctive relief is necessary to prevent the imminent and irreparable harm that would be caused to the Debtor if Mr. Dondero is permitted to engage in any of the Prohibited Conduct.

40. The Debtor is likely to succeed on the merits because Mr. Dondero’s interference, warnings, and threats cannot be disputed (they are in writing), and the relief sought – the protection of its bankruptcy estate during its chapter 11 proceedings – is precisely the type of relief authorized under sections 105 and 362 of the Bankruptcy Code. *See OGA Charters*, 554 B.R. at 432-33 (granting injunctive relief to protect the debtor’s assets during chapter 11 proceedings, and noting that a “preliminary injunction, is, in essence, merely an extension of § 362’s stay” of the debtor’s bankruptcy estate asset).

41. The equities strongly (if not exclusively) favor the Debtor because the Debtor’s ability to operate and execute its Plan for the benefit of its stakeholders will be jeopardized if Mr. Dondero is permitted to engage in the Prohibited Conduct – conduct which Mr. Dondero has no legal or equitable right to engage in.

42. Finally, and for all these same reasons, granting injunctive relief serves the public interest because the Debtor’s chances of a successful liquidation will be severely jeopardized if injunctive relief is not granted.

A. <u>The Debtor will Suffer Irreparable Harm in the Absence of Injunctive Relief</u>

43. The Debtor's estate will be severely injured if Mr. Dondero is not enjoined from interfering with and impeding the Debtor's business, management of its assets, and treatment of claims against the Debtor's estate. Irreparable harm is "a harm 'for which there is no adequate remedy at law.'" *OGA Charters*, 554 B.R. at 424 (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013)); *see also Compass Bank v. Veytia*, EP-11-CV-228-PRM, 2011 WL 13234883, at *2 (W.D. Tex. Sept. 21, 2011) ("The general rule in the Fifth Circuit is that 'harm is irreparable where there is no adequate remedy at law, such as monetary damages.'") (quoting *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2010)).

44. In the bankruptcy context, "irreparable harm" refers to either "irreparable harm to the interest of a creditor or irreparable harm to the bankruptcy estate." *In re Hunt*, 93 B.R. 484, 495 (Bankr. N.D. Tex. 1988) (internal quotations omitted). The element of irreparable injury to the debtor's estates is described as "irreparable harm to the creditors and estates from disruption of th[e] Court's exclusive authority to effectively manage the[] cases." *Id*. Moreover, "the mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.'" *Compass Bank*, 2011 WL 13234883, at *2 (citing *Janvey*, 647 F.3d at 600); (holding that "dissipation of assets ... would impair the court's ability to grant an effective remedy").

45. Here, in the absence of injunctive relief, both the Debtor's estate and its creditors will face imminent and irreparable harm that cannot be adequately remedied. If Mr. Dondero continues to engage in the Prohibited Conduct, the Debtor's ability to effectively wind down its business in the chapter 11 proceedings will be impaired. The harm is thus the not

merely "speculative, theoretical, or remote," but imminent and irreparable. *FiberTower Network Services*, 482 B.R. at 187. If Mr. Dondero continues to engage in the Prohibited Conduct, this Court's ability to manage the Debtor's liquidation efforts will also be severely jeopardized. *See Hunt*, 93 B.R. at 496 (finding irreparable harm to debtor where "[h]arm would also result to creditors and the Debtor's estate will result from the other harm attendant to the present continuation of the CFTC Action, on a potentially defeasible theory, is the harm to the creditors and estate from disrupting this court's ability to effectively manage the Debtors' reorganization efforts.").

46. In sum, if Mr. Dondero is not immediately enjoined from engaging in his disruptive conduct, the Debtor's ability to manage its business and execute its Plan for the benefit of all of its stakeholders will be jeopardized.

B. <u>The Debtor Demonstrates Likelihood of Success on the Merits</u>

47. The Debtor is likely to succeed on the merits. To satisfy the likelihood of success element, the movant need only present their "prima facie case." *Janvey*, 647 F.3d at 595 (internal quotations omitted). Moreover, the relevant "merits" question in this case is not whether Debtor is likely to prevail on appeal, but rather "whether this [C]ourt is authorized and likely to grant the requested relief." *FiberTower*, 482 B.R. at 183–84 (citing COLLIER ON BANKRUPTCY ¶ 105.03[1][a] (16th ed. 2012) ("In connection with the 'likelihood' argument, many courts have looked to the purpose of the requested injunction ... the likelihood of success argument will track closely the bankruptcy right sought to be vindicated."); *see also Hunt*, 93 B.R. at 493 ("[t]he inquiry [for success on the merits] for a preliminary injunction necessarily focuses on the outcome of a later proceeding, at which time the merits giving rise to the litigation will be decided" rather than success on the merits "so that reorganization efforts mandated by the

Bankruptcy Code will not be thwarted by the [enforcement] proceeding.") (internal quotations omitted).

48. Here, as discussed above, the Court is authorized to grant the Debtor's requested relief. *See* 11 U.S.C § 105(a) (authorizing the bankruptcy court to "issue any order, process, of judgment that is necessary or appropriate to carry out the provisions of the Code."); *see also* 11 U.S.C. § 362. The Debtor seeks to enjoin Mr. Dondero from attempting to control, manage, or otherwise influence the Board's sale of the Debtor's CLO assets for the purpose of protecting the Board's ability to manage the Debtor's assets, and in turn, to protect the integrity of the Debtor's bankruptcy estate. *See FiberTower*, 482 B.R. at 182. The relief the Debtor seeks here is thus precisely the type contemplated by the Bankruptcy Court's broad powers to grant injunctive relief under Section 105. Moreover, there can be no credible dispute that Mr. Dondero engaged in the conduct complained of because it is reflected in contemporaneous, written communications.

C. <u>The Equities Strongly Favor the Debtor</u>

49. The balance of the equities also tip decisively in the Debtor's favor. In the absence of injunctive relief, the Debtor faces imminent and irreparable harm. If Mr. Dondero is not prevented from continuing to interfere with the Debtor's business and management of its assets and claims, the Debtor's ability to successfully liquidate and satisfy its claims will be put at risk. By contrast, there are no equities that favor denying injunctive relief as Mr. Dondero has no legal or equitable right to engage in any of the Prohibited Conduct, all of which is adverse to the Debtor's interests.

50. In sum, the potential harm to the Debtor in the absence of injunctive relief far outweighs any harm to Mr. Dondero if injunctive relief issues. *See FiberTower*, 482 B.R. at 189 (finding that the balance of equities favored the debtors where "[t]he potential harm to

Debtors … far outweighs the possible harm to Defendant" if injunctive relief is granted "because, among other reasons, the Debtors "face the loss of cash collateral").

D. <u>Injunctive Relief Serves the Public Interest</u>

51. Injunctive relief will further the public interest because it is necessary to protect the Debtor's ability to successfully liquidate its assets and satisfy its claims. "Courts have often held that injunctions that facilitate reorganizations serve the public interest." *FiberTower*, 482 B.R. at 189 (citing *SAS Overseas Consultants v. Benoit*, No. 99–1663, 2000 WL 140611, at *5 (E.D.La. Feb. 7, 2000); *Lazarus Burman Assocs. v. Nat'l Westminster Bank U.S.A. (In re Lazarus Burman Assocs.)*, 161 B.R. 891, 901 (Bankr.E.D.N.Y.1993)). In other words, "[i]n bankruptcy, the public policy is to have an orderly administration of the debtor's assets via their bankruptcy estate, such that the debtor may be able to gain a fresh start, by satisfying valid claims against that estate." *OGA Charters*, 554 B.R. at 426; *see also In re Hunt*, 93 B.R. at 497 ("Chapter 11 expresses the public interest of preserving the going-concern values of businesses, protecting jobs, ensuring the equal treatment of and payment of creditors, and if possible saving something for the equity holders.").

52. To this end, "[t]he Bankruptcy Court is vested with management duties to further this interest and ensure a meaningful process for all of these competing entities." *In re Hunt*, 93 B.R. at 497 (citing *In re Timbers of Inwood Forest Assocs., LTD.*, 808 F.2d 363, 373 (5th Cir.1987) ("Early and ongoing judicial management of Chapter 11 cases is essential if the Chapter 11 process is to survive and the goals of reorganizability on the one hand, and creditor protection, on the other, are to be achieved."). Thus, in general, preventing the dissipation of potential assets belonging to the debtor that, pursuant to 11 U.S.C. § 541, may be brought into the bankruptcy estate is in the public interest. *See OGA Charters*, 554 B.R. at 426 (finding that the "public interest may be served where the purpose of the preliminary injunction is such that it

serves to" uphold a core "pillar of bankruptcy by preserving a debtor's … assets that can be potentially used to satisfy valid claims against the bankruptcy estate.").

53. Here, if Mr. Dondero is not enjoined from engaging in the Prohibited Conduct, the Debtor's liquidation process will be jeopardized at the expense of its creditors. *See FiberTower*, 482 B.R. at 189; *In re Hunt*, 93 B.R. at 497 (holding that an injunction would serve the public interest where, the "Debtors' chances of successfully reorganizing will be jeopardized unless injunctive relief is granted," further noting that "if the Debtors were to liquidate, their employees and customers would be adversely affected."). By contrast, the public interest would not be served by allowing Mr. Dondero to continue to interfere with the Debtor's reorganization process. The Debtor's management must be able to execute its duties of managing and selling assets so that the Debtor can perform its obligations and satisfy valid claims against the estate.

V.
CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court grant its Motion and enter an Order in the form annexed hereto as Exhibit A, and grant any further relief as the Court deems just and proper.

Dated: December 8, 2020.

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CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 10, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION
<u>FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO</u>

Having considered the *Debtor's Motion for a Temporary Restraining Order and*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Preliminary Injunction against James Dondero [Docket No. 6] (the "Motion"), the *Memorandum of Law* (the "Memorandum of Law")[2] in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against James Dondero* [Docket No. 4] (the "Seery Declaration"), including the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[3]

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[3] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S EMERGENCY MOTION
FOR ENTRY OF A PROTECTIVE ORDER

James D. Dondero ("Defendant"), the defendant in the above-captioned adversary proceeding, hereby files this *Emergency Motion for Entry of a Protective Order* (the "Motion"), pursuant to Federal Rules of Civil Procedure (the "Federal Rules") 26(b), 26(c), 26(d), 30(b), and 34, made applicable herein pursuant to Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 7026, 7030, and 7034, for the entry of a protective order protecting Defendant from complying with

Plaintiff's improper discovery requests served on the eve of the four-day Christmas holiday weekend. In support thereof, Defendant respectfully represents as follows:

I. BACKGROUND

1. On October 16, 2019 (the "Petition Date"), Highland Capital Management, L.P. (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

2. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. trustee in Delaware.

3. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

4. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

5. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor's Chief Executive Officer.

6. On December 7, 2020, the Debtor commenced this adversary proceeding by filing *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Dkt. 1] (the "Complaint").

7. Also on December 7, 2020, the Debtor filed *Plaintiff Highland Capital*

Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero [Adv. Dkt. 2] (the "TRO Motion").

8. On December 10, 2020, this Court conducted a hearing and granted the TRO Motion. Later that day, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* [Adv. Dkt. 10] (the "TRO").

9. On December 11, 2020, this Court entered the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* [Adv. Dkt. 18] (the "Scheduling Order").

10. On December 11, 2020, the Court issued the summons of the Complaint. Defendant's deadline to file his answer or other response to the Complaint is Monday, January 11, 2021.

11. On December 11, 2020, the Court set the hearing on Debtor's motion for a preliminary injunction for January 4, 2021 at 1:30 p.m.

12. On December 16, 2020, the Defendant filed his Emergency Motion to Modify the TRO, through which the Defendant was seeking to have the Court modify the terms of the TRO so that Defendant could speak with the Board directly to further advocate for his Pot Plan that would, if adopted, see the Debtor continue to operate as a going concern.

13. The motion was thereafter set by the Court for hearing on January 4, 2021 at 1:30 p.m. Because of the scheduled hearing date, the Defendant believed that the motion was rendered moot and he therefore withdrew the motion on December 23, 2020.

14. At approximately 10:30 p.m. on December 23, 2020, the Debtor served Defendant with (i) Debtor's First Request for the Production of Documents Directed to James Dondero (the "Document Requests"), which requests that Defendant produce documents responsive to the

requests on or before December 28, 2020 by 5:00 p.m.; and (ii) a Notice of Deposition that purports to schedule a deposition of Defendant for December 30, 2020 at 9:30 a.m. (collectively, the "Discovery Requests"). A true and correct copy of the Discovery Requests is attached hereto as "**Exhibit A**."

15. On December 24, 2020, the Debtor filed a Notice of Deposition of James Dondero [Adv. Dkt. 30] and a Notice of Deposition of Andrew Clubok [Adv. Dkt. 31].

16. Through the Discovery Requests, the Debtor seeks to, among other things, obtain confidential and privileged documents and communications exchanged between Defendant and certain of the Debtor's creditors and their attorneys concerning the Defendant's advocacy for his Pot Plan and the parties' confidential and privileged settlement negotiations and mediation discussions. Specifically, the Document Requests seek **all** communications between Defendant and Andrew Clubok, UBS's attorney, from August 1, 2020 to present, a subject and time period which (i) are far outside the scope the Complaint; (ii) involve the confidential mediation and mediation discussions that commenced in August and have been ongoing since that time; and (iii) involve confidential and privileged settlement communications made between parties pursuant to Rule 408.

II. RELIEF REQUESTED AND BASIS FOR RELIEF

17. For the reasons set forth below, Defendant respectfully requests that the Court enter a protective order as to the Debtor's Discovery Requests. First, the discovery sought by the Debtor is not authorized by, and does not comply with, the Federal and Bankruptcy Rules. Second, the requests do not provide Defendant with sufficient time to comply considering less than one business days' notice was provided and the requests were sent immediately before the Christmas holiday weekend at 10:30 p.m. on December 23rd. Third, the information sought by the Debtor is

confidential and/or privileged under Rule 408, the Court's mediation order, and the attorney-client privilege and, even if discoverable, is unduly burdensome, harassing, overbroad, and largely irrelevant and unlikely to lead to admissible evidence. For these reasons, the Court should enter a protective order.

A. The Discovery Sought by the Debtor is Not Authorized by, and Does Not Comply with, the Bankruptcy or Federal Rules

18. First, the Court should enter a protective order because the Debtor's discovery is not authorized under the applicable rules. In adversary proceedings such as this, no discovery may be taken until the Rule 26(f) conference has occurred. While certain exceptions to this general rule exist, none apply in this case. The Rule 26(f) conference has not yet occurred and for this reason the Discovery Requests violate Rules 26, 30, and 34 and a protective order should be entered.

19. Rule 26(d), as incorporated into this adversary proceeding through Bankruptcy Rule 7026, provides that "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B)[1], or when authorized by these rules, by stipulation, or by court order." Fed. R. Civ. P. 26(d).

20. Rule 30, as incorporated into this adversary proceeding through Bankruptcy Rule 7030, provides that a deposition may not be taken prior to the time specified in Rule 26(d) without first obtaining leave of Court, unless the parties have stipulated to the deposition.[2]

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[1] The proceedings exempt from the initial disclosure requirement are "(i) an action for review on an administrative record; (ii) a forfeiture action in rem arising from a federal statute; (iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence; (iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision; (v) an action to enforce or quash an administrative summons or subpoena; (vi) an action by the United States to recover benefit payments; (vii) an action by the United States to collect on a student loan guaranteed by the United States; (viii) a proceeding ancillary to a proceeding in another court; and (ix) an action to enforce an arbitration award." Fed. R. Civ. P. 26(a)(1)(B).

[2] Fed. R. Civ. P. 30(a)(2)(A)(iii) ("A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2) . . . if the parties have not stipulated to the deposition and . . . the party seeks to

21. Rule 34(b)(2) provides that a party has 30 days in which to respond to a request for production of documents made under that rule. Fed. R. Civ. P. 34(b)(2) ("The party to whom the request is directed must respond in writing within 30 days after being served or — if the request was delivered under Rule 26(d)(2) — within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.").

22. In this case, the Debtor's discovery violates Rules 26, 30, and 34 because the parties (i) have not yet conducted the Rule 26(f) conference; (ii) have not stipulated to the discovery; and (iii) have not otherwise agreed to expedited discovery. The Debtor's document requests are particularly improper and prejudicial given that they were served at 10:30 p.m. on December 23 and purport to allow the Defendant less than one business day in which to respond, instead of the thirty (30) day period required under Rule 34.

23. The Debtor's lack of compliance with the Rules and this Court's Scheduling Order is more striking given the Debtor's lack of diligence in seeking discovery in connection with the January 4th hearing. The hearing has been set for weeks, and yet the Debtor did not seek or request any discovery until the start of the four-day holiday weekend—and demanded a response by the following Monday. By way of another example, and again despite having weeks to do so, the Debtor did not move the Court for entry of a scheduling order that would allow discovery to be taken outside the standards governed by the Federal and Bankruptcy Rules. Nor has the Debtor sought or obtained leave to proceed with expedited discovery in this case. The Scheduling Order entered in this case more than two weeks ago does not authorize expedited discovery or allow any party to take discovery before the Rule 26(f) conference has occurred.

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take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time")

24. Here, the Rule 26(f) conference has not yet taken place, and the deadline for the parties to conduct the conference is still approximately 2 weeks away. The Defendant should not be prejudiced by the Debtor's failure to timely develop a discovery plan tailored to its own proceeding. If the Debtor believed early discovery to be necessary, it could have petitioned the Court or conferred with undersigned counsel to make reasonable arrangements. The Debtor did neither. The discovery sought by the Debtor is not yet authorized under Rules 26, 30, and 34 and the Court should enter a protective order.

B. The Discovery Sought is Confidential and/or Privileged and the Discovery Requests are Unduly Burdensome, Harassing, Overbroad, and Largely Irrelevant

25. Alternatively, the Court should enter a protective order because (i) the Debtor's discovery seeks to obtain documents and communications that are confidential and privileged pursuant to Rule 408, this Court's mediation order, and under the attorney-client privilege; and (ii) the Discovery Requests are unduly burdensome, overbroad, harassing, and largely irrelevant and unlikely to lead to admissible evidence.

26. First, the Court should enter a protective order because the sought-after discovery largely seeks confidential and privileged documents and communication. For example, the Document Requests seek **all** communications between Defendant and Andrew Clubok, UBS's attorney, from August 1, 2020 to present, a subject and time period which (i) are far outside the scope the Complaint; (ii) involve the confidential mediation and mediation discussions that commenced in August and have been ongoing since that time; and (iii) involve confidential and privileged settlement communications made between parties pursuant to Rule 408.

27. The Court's Order Directing Mediation [Docket No. 912] provides that "any statements or representations made by the Mediators, any Party, or any client representative (or attorney or agent of a client representative), agent, or attorney of a Party during the course of the

Mediation, are confidential and privileged."

28. Here, any documents and communications made or exchanged between the Defendant and Clubok and/or UBS are confidential and/or privileged pursuant to Rule 408 and/or this Court's mediation order because they involve settlement discussions and negotiations concerning the parties' claims and rights in this bankruptcy case. As the Court is aware, both UBS and Defendant were parties to the August mediation. The communications made between these parties were made concerning their respective rights and claims in the bankruptcy case and/or the mediation and therefore are confidential under Rule 408 and/or the Court's mediation order.

29. The discovery sought by the Debtor concerning MultiStrat is likewise improper. There is a contested matter pending in the main bankruptcy case concerning the proof of claim of The Dugaboy Investment Trust related to MultiStrat and the Debtor's sale of assets held by MultiStrat. Because Defendant is beneficiary of Dugaboy, it would be inappropriate for the Debtor to conduct discovery on that subject in this case as there is already a pending proceeding through which discovery should be taken. Further, the MultiStrat transactions occurred much earlier than anything alleged in the Complaint—May 2020—and therefore the subject is not relevant to the claims in this case. The Debtor has stated that Dugaboy's pursuit of the MultiStrat proof of claim was part of the impetus for its request that Defendant resign as portfolio manager.[3]

30. Finally, the Court should enter a protective order because the discovery is unduly burdensome, harassing, overbroad, and largely irrelevant.

31. The Debtor's discovery was specifically designed to harass the Defendant and to cause him to incur an undue burden and expense in responding to discovery over the Christmas

[3] See Debtor's Amended Memorandum of Law, Adv. Dkt. 7 ("In addition, the Dugaboy Investment Trust – Mr. Dondero's family trust – continued to press its proof of claim alleging that the Debtor, and by extension the Board and Mr. Seery, had mismanaged Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of MSCF's assets in May of 2020.")

holiday weekend. In doing so, the Debtor has propounded discovery that is (i) not authorized by the Rules; (ii) does not allow sufficient time to comply and/or (iii) explicitly violates the provisions of the Federal and Bankruptcy Rules.

32. Second, the discovery is overbroad and largely irrelevant. The requests for communications and documents exchanged between the Defendant and Clubok and/or UBS, for example, do not have any direct bearing on this proceeding and seek confidential and/or privileged information for a large time period that is unrelated to any of the allegations in the Complaint. The request concerning MultiStrat, while narrower in time, is likewise overbroad and irrelevant to this proceeding.

33. Finally, it is unclear whether discovery is even necessary for the Debtor's request for a preliminary injunction. Even assuming that Defendant's testimony might be relevant or necessary, there is no legitimate reason why the testimony of Andrew Clubok—an attorney for a significant creditor in this case—is necessary for a hearing on a preliminary injunction, especially on two business days' notice.

34. Accordingly, even if the discovery propounded by the Debtor is authorized under the Rules, the Court should enter a protective order because the requests do not allow sufficient time to comply, seek confidential and/or privileged information, and impose an undue burden, are overbroad, and largely irrelevant.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court (i) enter an order granting this Motion, (ii) enter a protective order preventing the Defendant's deposition from going forward as scheduled, (iii) enter a protective order protecting Defendant from responding to the Debtor's Document Requests, (iv) enter a protective order protecting the Defendant's confidential

and privileged documents and communications from disclosure pursuant to Rule 408, this Court's mediation order, and the attorney-client privilege; and (v) provide Defendant such other and further relief to which he may be justly entitled.

Dated: December 28, 2020

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on December 27, 2020, I conferred with counsel for Plaintiff in an attempt to resolve the relief requested by this Motion. As of this filing of this Motion, however, the dispute has not been resolved. The Motion is therefore presented to the Court for its consideration.

/s/ Bryan C. Assink
Bryan C. Assink

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on December 28, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT A

PACHULSKI STANG ZIEHL & JONES LLP
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Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS DIRECTED TO JAMES DONDERO

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034, incorporating by reference Federal Rules of Civil Procedure 26 and 36, Highland Capital Management, L.P., the Plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case ("Bankruptcy Case") hereby requests that, in connection with *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Docket No. 2] (the "Motion"), James Dondero, the Defendant in the Adversary Proceeding ("Defendant" or "Mr. Dondero") produce for inspection and copying, the documents identified below, on or before **December 28, 2020 by 5:00 p.m. Central Time** (the "Requests").

INSTRUCTIONS

1. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of these Requests to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

2. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

3. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

4. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs or other media to be mutually agreed by the parties.

5. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs or other media to be mutually agreed by the parties or use an ftp site upload.

6. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

7. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

8. Unless noted otherwise, **the requests for documents set forth herein seek Documents and Communications created between December 10, 2020 and December 28, 2020**.

DEFINITIONS

1. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whomever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

3. "ESI" has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

4. "Hearing" refers to the hearing described in the *Notice of Hearing* filed at Docket No. 16 in the Adversary Proceeding.

5. "MultiStrat" means Highland Multi Strategy Credit Fund, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.).

6. "You" or "Your" refers to Mr. Dondero.

DOCUMENT REQUESTS

Request No. 1:

For the period August 1, 2020, to the present, all Communications between You and Andrew Clubok.

Request No. 2:

For the period August 1, 2020, to the present, all Documents provided to or received from Andrew Clubok.

Request No. 3:

All Communications between You and any person employed by the Debtor.

Request No. 4:

All Documents provided to or received from any person employed by the Debtor.

Request No. 5:

All Documents and Communications concerning MultiStrat.

Request No. 6:

All Documents and Communications that You intended to introduce into evidence at the Hearing.

Dated: December 23, 2020

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure 30, incorporated by reference in Rule 7030 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P., the Plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case ("Bankruptcy Case"), shall take the deposition of James Dondero, the Defendant in the above-captioned Adversary Proceeding ("Defendant" or "Mr. Dondero"), in connection with *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Docket No. 2] (the "Motion") on **December 30, 2020, beginning at 9:30 a.m. Central Time**, or at such other day and time as counsel for the Debtor and counsel for Mr. Dondero agree.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime. Parties who wish to participate in the deposition should contact **John A. Morris**, Pachulski Stang Ziehl & Jones LLP, at jmorris@pszjlaw.com **no fewer than 24 hours before the start of the deposition** for more information regarding participating in this deposition remotely.

Dated: December 23, 2020

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING JAMES DONDERO'S EMERGENCY
MOTION FOR ENTRY OF A PROTECTIVE ORDER

On this date, the Court considered *James Dondero's Emergency Motion for Entry of a Protective Order* (the "Motion")[1] filed by Defendant James Dondero ("Defendant") on December

[1] Capitalized terms used not but otherwise defined herein shall have the meaning ascribed to them in the Motion.

28, 2020. Upon consideration of the Motion, the Discovery Requests attached to the Motion, the arguments of counsel made and the evidenced admitted during the hearing on the Motion, if any, the Court finds that the Motion is well taken and should be granted. It is therefore

ORDERED that the Motion is GRANTED as set forth herein. It is further

ORDERED that Defendant shall not be required to respond to the Document Requests propounded by Plaintiff on December 23, 2020, and such Document Requests are of no further force or effect. It is further

ORDERED that Defendant shall not be required to appear for the deposition noticed by Plaintiff for December 30, 2020, and such deposition notice is of no further force or effect. It is further

ORDERED that further discovery conducted in this adversary proceeding shall only be as authorized under the Federal and Bankruptcy Rules and this Court's Scheduling Order, and no party may conduct any discovery until after the parties have conducted the Rule 26(f) conference.

END OF ORDER

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

REQUEST FOR EMERGENCY HEARING

James Dondero ("Defendant"), the Defendant in the above-captioned adversary proceeding, hereby files this Request for Emergency Hearing (the "Request") on *James Dondero's Emergency Motion for Entry of a Protective Order* (the "Motion") filed by Defendant on December 28, 2020. In support thereof, Defendant respectfully represents as follows:

RELIEF REQUESTED AND BASIS FOR RELIEF

1. Section 105(a) of the Bankruptcy Code provides that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Further, Bankruptcy Rule 9006(d) permits a court to fix any period of notice by order. Thus, the Court has broad latitude to fix the time for presentment of motions, particularly when "necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

2. For the reasons set forth herein and in the underlying Motion, good cause exists to consider the Motion on an immediate basis and schedule an emergency hearing for today, December 28, 2020.

3. At approximately 10:30 p.m. on December 23, 2020, the Debtor served Defendant with (i) Debtor's First Request for the Production of Documents Directed to James Dondero (the "Document Requests"), which requests that Defendant produce documents responsive to the requests on or before December 28, 2020 by 5:00 p.m.; and a (ii) Notice of Deposition that purports to schedule a deposition of Defendant for December 30, 2020 at 9:30 a.m. (collectively, the "Discovery Requests").

4. Because the Document Requests demand a respond by 5:00 p.m. today, December 28, 2020, an emergency hearing on the Motion today is necessary to protect the Defendant from having to respond to the improper Document Requests.

5. An emergency hearing is also necessary to protect the Defendant from having to appear for his deposition which, again, was noticed outside of compliance with the Rules and provides insufficient time for the Defendant to respond, prepare, and appear.

6. Defendant has acted diligently in filing the Motion because today is the first business day after Defendant was served with the Debtor's Discovery Requests and the first day

on which the Court may be available to consider the Motion.

7. While Defendant regrets having to file the Motion and this request for emergency hearing on shortened notice, the Debtor's conduct in serving improper discovery over the holiday weekend has necessitated these filings.

8. Due to the immediate need for the relief requested, Defendant respectfully requests that a hearing be scheduled for today, December 28, 2020.

9. In the event the Court is not available to consider the Motion today, the Defendant respectfully requests that the Court enter an order temporarily protecting Defendant from compliance with the Discovery Requests pending the Court's consideration of the Motion.

WHEREFORE, Defendant respectfully requests entry of an order scheduling a hearing on the Motion on an emergency basis and granting Defendant such other relief as is just and proper.

Dated: December 28, 2020

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on December 27-28, 2020, I conferred with counsel for Plaintiff in an attempt to resolve the relief requested by the Motion and this request for emergency hearing. While the relief requested by the underlying Motion has not been resolved, counsel for the Plaintiff indicated that the Plaintiff does not oppose this request for emergency hearing.

/s/ Bryan C. Assink
Bryan C. Assink

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on December 28, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING REQUEST FOR EMERGENCY HEARING

On this date, the Court considered the *Request for Emergency Hearing* (the "Request") filed by James Dondero (the "Movant") with respect to *James Dondero's Emergency Motion for Entry of a Protective Order* (the "Motion") filed by Movant on December 28, 2020.

Having considered the Request, the Court finds that good and sufficient cause exists for granting the Request and scheduling an emergency hearing to consider the Motion. Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The Request is **GRANTED** as provided herein.

2. A hearing on the Motion shall occur on **December 28, 2020, at _____ _.m.**

3. Movant shall promptly file and serve an appropriate notice of hearing.

END OF ORDER # #

Respectfully submitted by:

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-3190-sgj11 Related to Adv. Dkt. No. 32

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S OBJECTION TO JAMES DONDERO'S EMERGENCY MOTION FOR A PROTCTIVE ORDER

Debtor and debtor-in-possession Highland Capital Management, L.P. (the "Debtor") hereby objects (the "Objection") to *James Dondero's Emergency Motion for a Protective Order* (the "Motion") [Adv. Pro. Docket No. 32] filed by Mr. James Dondero ("Mr. Dondero"), and represents as follows:

SUMMARY OF OBJECTION

1. On December 10, 2020, the Court entered a temporary restraining order (the "TRO") against Mr. Dondero prohibiting him from, among other things, interfering with or impeding the Debtor's business. [Adv. Pro. Docket No. 10]. On December 11, 2020, the Debtor gave notice that its emergency motion for a preliminary injunction against Mr. Dondero would be heard on January 4, 2021 (the "Injunction Hearing"). In his Motion, Mr. Dondero seeks a blanket order preventing the Debtor from taking any discovery in connection with the Injunction Hearing. The Motion is without basis and should be denied.

2. ***First***, contrary to Mr. Dondero's contention (Motion ¶¶18-24), and as plainly stated in the applicable discovery requests, the Debtor seeks discovery in connection with a contested matter -- *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Adv. Pro. Docket No. 2] -- not in connection with the adversary proceeding. See Motion Exhibit A. Thus, pursuant to Federal Rule of Bankruptcy Procedure 9014(c), Federal Rule of Civil Procedure 26(f) does not apply and the Debtor is not prevented from seeking discovery despite the lack of a scheduling conference or order.

3. ***Second***, Mr. Dondero's reliance on Federal Rule of Evidence 408 ("Rule 408") is misplaced. Motion ¶¶25-28. Rule 408 is an evidentiary rule and nothing more; it only bars evidence "to prove or disprove the validity or amount of a disputed claim or to impeach a prior inconsistent statement" through offers of compromise and conduct or statements made about a claim. Moreover, Rule 408 expressly provides that settlement-related evidence *can* be admissible "for another purpose."

4. Here, the Debtor seeks discovery for a purpose other than "prov[ing] or disprov[ing] the validity or amount of a disputed claim or to impeach a prior inconsistent statement." Specifically, the Debtor seeks discovery to determine whether Mr. Dondero has violated the TRO by interfering with and impeding the Debtor's business, including by (a) improperly communicating with the Debtor's employees, and (b) colluding with Mr. Clubok (who represents UBS, a member of the Official Committee of Unsecured Creditors) to purchase redeemed limited partnership interests of Highland Multi Strategy Credit Fund, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.) ("Mulitstrat") based on what the Debtor believes are false pretenses.

5. The Debtor also intends to question Mr. Dondero about the recent interference in the Debtor's business by certain entities that he owns and/or controls – the same entities that brought the recent "frivolous" motion that the Court summarily denied. Among other things, employees of those entities have continued to prevent the Debtor from executing trades, and the entities have threatened to seek to remove the Debtor as the portfolio manager of certain CLOs.[2] No rule, order, or privilege prevents the Debtor from seeking discovery on any of the forgoing issues in connection with the Injunction Hearing.

[2] The Debtor has demanded that these entities retract their threats and cease interfering with the Debtor's contractual rights and obligation by the close of business today. If these entities do not comply with the Debtor's requests, the Debtor will promptly seek temporary, preliminary, and injunctive relief.

6. ***Third***, the Debtor did not sit on its hands; rather, it promptly sought discovery only after obtaining information that caused it to conclude that Mr. Dondero has likely violated the TRO.

7. ***Fourth***, Mr. Dondero's complaints about the scope of the discovery sought are without merit. The Debtor's requests are limited to (a) all documents and communications exchanged between Mr. Dondero and any of the Debtor's employees from December 10, 2020 (the date the TRO was entered) through the present; (b) all documents and communications exchanged with Andrew Clubok from August 1, 2020 to the present; (c) all documents and communications concerning Multistrat for the period December 10, 2020, through the present; (d) all documents that Mr. Dondero intends to introduce into evidence at the Injunction Hearing; and (e) the virtual depositions of Mr. Dondero and Mr. Clubok, respectively, on December 30 (*i.e.*, they are scheduled back-to-back such that neither will last more than four hours).

8. As the Debtor explained to Mr. Dondero's counsel earlier today, the narrow documentary requests could have been complied with in less time than it likely took to write the Motion. For example, it cannot credibly be burdensome for Mr. Dondero to simply forward the entire string of text messages between him and Mr. Clubok; it would likely take less than five minutes with the push of a couple of buttons. Or, Mr. Dondero could simply search for "Clubok" or any of the Debtor's employees for e-mails and documents exchanged during the applicable time period.

9. While the Debtor believes its discovery demands are reasonable (particularly under the circumstances) and should be enforced as written, the Debtor is willing to modify the requests pertaining to Mr. Clubok by limiting the applicable time period to November 1, 2020 to

the present, thereby eliminating three months of documents during which the core of the mediation occurred.

10. Alternatively, (a) Mr. Dondero should be directed to immediately deliver all responsive documents to the Court for an *in camera* review to determine whether any privilege or immunity applies; (b) to the extent no privilege or immunity applies, such documents should be produced to the Debtor; and (c) Mr. Dondero and Mr. Clubok should be made to appear two business days after the non-privileged documents are produced. If the Court accepts this alternative, the Debtor will consent to adjourn the Injunction Hearing to a date prior to the January 13, 2021, confirmation hearing that is convenient for the Court.

Dated: December 28, 2020.

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Counsel for Highland Capital Management, L.P.

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 29, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-3190-sgj11

ORDER RESOLVING JAMES DONDERO'S EMERGENCY MOTION
<u>FOR A PROTCTIVE ORDER</u>

Having considered (a) *James Dondero's Emergency Motion for Entry of a Protective*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Order [Adv. Pro. Docket No. 32] (the "Protective Order Motion"); (b) the *Request for Emergency Hearing on James Dondero's Emergency Motion for Entry of a Protective Order* [Adv. Pro. Docket No. 33]; (c) the *Debtor's Objection to James Dondero's Emergency Motion for Entry of a Protective Order* [Adv. Pro. Docket No. 34]; and (d) all prior proceedings relating to this matter; and after due deliberation, it is **HEREBY ORDERED THAT**:

1. The Protective Order Motion is DENIED in its entirety, except as specifically set forth herein.

2. The Debtor's document requests concerning Andrew Clubok shall be limited in time to the period from November 1, 2020, through December 28, 2020.

3. Documents and communications responsive to the Debtor's requests shall be due on December 31, 2020, at 9:30 a.m. To the extent Mr. Dondero withholds any documents on the basis of privilege, he shall deliver all responsive and allegedly privileged documents to the Court by December 31, 2020 at 9:30 a.m. for an *in camera* review to determine by whether any privilege or immunity applies. To the extent that the Court determines that no privilege or immunity applies, the Court will notify the parties by email communication via the courtroom deputy and such documents shall be produced to the Debtor. The Court will notify the parties by the end of the day January 4, 2021, whether the documents or any portion of them are privileged or otherwise subject to protection.

4. Mr. Dondero and Mr. Clubok shall appear on January 5, 2021, or at such other times as the parties may mutually agree, for depositions.

5. The hearing on *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 2] shall be adjourned to January 8, 2021, at 9:30 a.m.

6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S WITNESS AND EXHIBIT LIST WITH RESPECT TO EVIDENTIARY HEARING TO BE HELD ON JANUARY 8, 2021

Highland Capital Management, L.P. (the "Debtor") submits the following witness and exhibit list with respect to *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Docket No. 2] which the Court has set for hearing at 9:30 a.m. (Central Time) on January 8, 2021 (the "Hearing") in the above-styled adversary proceeding (the "Adversary Proceeding").

A. Witnesses:

1. James Dondero
2. Scott Ellington
3. Isaac Leventon
4. Any witness identified by or called by any other party; and
5. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
A.	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 4]		
B.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 4-6]		
C.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 4-7]		
D.	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 4-8]		
E.	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 4-28]		

Letter	Exhibit	Offered	Admitted
F.	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5]		
G.	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6]		
H.	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7]		
I.	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 38]		
J.	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Docket No. 10]		
K.	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]		
L.	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11]		
M.	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12]		
N.	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13]		
O.	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020		
P.	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15]		
Q.	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16]		
R.	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17]		
S.	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18]		
T.	Email string dated December 24, 2020 re HarbourVest settlement motion		
U.	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020		

Letter	Exhibit	Offered	Admitted
V.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		
W.	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto		
X.	All exhibits necessary for impeachment and/or rebuttal purposes		
Y.	All exhibits identified by or offered by any other party at the Hearing		

Dated: January 6, 2021.

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EXHIBIT A

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DECLARATION OF MR. JAMES P. SEERY, JR. IN SUPPORT OF THE DEBTOR'S MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST MR. JAMES DONDERO

I, James P. Seery, Jr., pursuant to 28 U.S.C. § 1746(a), declare under penalty of perjury as follows:

1. I am a member of the Board of Directors (the "Board") of Strand Advisors, Inc. ("Strand"), the general partner of Highland Capital Management, L.P. (the "Debtor" or "HCMLP"), and the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). I submit this Declaration in support of the Debtor's *Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Motion"), being filed concurrently with this declaration. Unless stated otherwise, this declaration is based on my personal knowledge, my review of the documents described below, and my communications with certain of the Debtor's employees, directors, and counsel.

A. An Independent Board Is Appointed to Oversee the Debtor's Affairs; Mr. Dondero's Role Becomes Limited and Subject to the Board's Oversight; and Mr. Dondero Is Later Forced to Resign

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court"). On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to this Court [Docket No. 186].[2]

3. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No.

[2] All docket numbers refer to the docket maintained by this Court.

281] (the "Settlement Motion"). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Docket No. 339] (the "Settlement Order").

4. As part of the Settlement Order, this Court also approved a term sheet (the "Term Sheet") [Docket No. 354-1] between the Debtor and the Official Committee of Unsecured Creditors (the "Committee") pursuant to which Mr. John S. Dubel, Mr. Russell Nelms, and I were appointed to the Board (collectively, the "Independent Directors"). A true and correct copy of the Term Sheet is attached as **Exhibit 1**.

5. As required by the Term Sheet, on January 9, 2020, Mr. James Dondero resigned from his roles as an officer and director of Strand and as the Debtor's President and Chief Executive Officer. True and correct copies of Mr. Dondero's resignation letters dated January 9, 2020, are attached as **Exhibit 2**.

6. While resigning from those roles, Mr. Dondero remained an unpaid employee of the Debtor and retained his title as portfolio manager for each of the investment vehicles and funds managed by the Debtor. However, pursuant to the Term Sheet, Mr. Dondero's authority was subject to oversight and ultimately termination by the Independent Board:

> Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination.

Exhibit 1 at 3 of 62.

7. Although ultimate decision making authority remained with the Board, by resolution passed on January 9, 2020, the Board authorized me to work with the Debtor's traders and Mr. Dondero with respect to certain of the Debtor's assets where Mr. Dondero remained

portfolio manager. A true and correct copy of the Board's January 9, 2020, resolution is attached as **Exhibit 3**.

8. During the pendency of the Debtor's bankruptcy case, it became apparent that it would be more efficient and lead to better financial results to have a traditional corporate management structure oversee the Debtor's operations and assets. Consequently, after due deliberation, the Board determined that it was in the best interests of the Debtor's estate to appoint me as the Debtor's CEO and CRO. This Court approved my appointment as CEO and CRO on July 16, 2020. [Docket No. 854].

9. My appointment as CEO and CRO formalized my role and my authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries, and I routinely carried out such responsibilities, particularly after the seizure by Jefferies, LLC of the Highland Select Equity Fund, L.P. ("Select") prime brokerage account managed by Mr. Dondero as a result of Select's failure to post margin.

10. On August 12, 2020, the Debtor filed its Plan of Reorganization with this Court [Docket No. 944] (as subsequently amended, the "Plan"). The Plan provides for, among other things, the monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into a mediation with certain of its creditors which resulted in, among other things, a settlement with Josh and Jennifer Terry, Acis Capital Management, L.P. ("Acis LP"), and Acis Capital Management GP LLC ("Acis GP" and together with Acis LP, "Acis").

11. After the Acis settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis settlement, but that a settlement had been reached

at all. On October 5, 2020, Mr. Dondero objected to the Debtor's motion seeking approval of the Acis settlement, thereby creating an actual conflict with the Board and the Debtor. [Docket No. 1121].

12. In addition, the Dugaboy Investment Trust – Mr. Dondero's family trust – continued to press its proof of claim alleging that the Debtor, and by extension the Board and I, had mismanaged Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of the MSCF's assets in May of 2020. *See, e.g.*, Proof of Claim No. 177; Docket No. 1154.

13. It was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity while taking positions adverse to the interests of the Debtor's estate. Thus, on October 2, 2020, I requested that Mr. Dondero resign as a portfolio manager at the Debtor and from any roles that he had at MSCF or he would be removed from the positions in accordance with the Settlement Order. A true and accurate copy of my October 2, 2020, e-mail to Mr. Dondero is attached as **Exhibit 4**.

14. After consultation with his counsel and a review of the Settlement Order, Mr. Dondero resigned from his positions with the Debtor. A true and accurate copy of Mr. Dondero's October 9, 2020, e-mail is attached as **Exhibit 5**.[3]

B. Mr. Dondero Interferes with the Debtor's Business and Instructs and Threatens Certain of the Debtor's Employees

15. Regrettably, since tendering his resignation, Mr. Dondero has interfered with the Debtor's operations and the management of the assets under its control, and has otherwise acted directly and through entities he controls to improperly exert pressure on certain of the Debtor's employees.

[3] Mr. Dondero may still hold certain director positions at some of the Debtor's direct and indirect subsidiaries or managed entities. The Debtor is in the process of removing Mr. Dondero from those positions where advisable and practicable.

16. The Debtor serves as the servicer, portfolio manager, or equivalent of certain pooled collateralized loan obligation vehicles (collectively, the "CLOs"). The Debtor's sole client in these matters is the CLO issuer, and not any individual shareholder or noteholder of the CLO.

17. NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") are investment advisors directly or indirectly controlled by Mr. Dondero. I understand that the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in the CLOs for which the Debtor serves as portfolio manager or servicer.

18. On October 16, 2020, the Advisors wrote to me and, among other things, questioned the Debtor's business judgment and "request[ed] that no CLO assets be sold without prior notice to and prior consent from the Advisors." A true and correct copy of the Advisors's October 16, 2020, letter is attached as **Exhibit 6**. Because the Advisors provided no legal basis for the "request" and I was unaware of any, I did not accede to the Advisors' "request" nor did I otherwise respond to their letter.

19. On November 24, 2020, the Advisors sent another letter where they again questioned the Debtor's business judgment and "re-urge[d] [their] request that no CLO assets be sold without prior notice to and prior consent from the Advisors." A true and correct copy of the Advisors's November 24, 2020, letter is attached as **Exhibit 7**.

20. I am advised that the Debtor has no contractual, legal, or other obligation to provide notice to, or obtain the consent of, the Advisors (or any other holder of interests in the CLOs) before exercising its business judgment to manage and service the CLOs, including in

connection with the sale of the CLOs' assets. Unfortunately, I shortly learned that these "requests" were just a part of Mr. Dondero's attempts to interfere with the Debtor's business.

21. On November 24, 2020, Mr. Dondero personally intervened to prevent sales of certain CLO assets that he knew I had authorized. Upon learning that the trades I had authorized were being executed, Mr. Dondero sent an e-mail to Mr. Matthew Pearson (with copies to Mr. Hunter Covitz and Mr. Joseph Sowin) in which he said "No…… do not." An hour later, Mr. Pearson cancelled the trades but Mr. Dondero warned Mr. Pearson that "HCMFA and DAF has [sic] instructed Highland in writing not to sell any CLO underlying assets . . . there is potential liability, don't do it again please."

22. Mr. Dondero's threat had the intended effect as Mr. Sowin (an HCMFA employee, not an employee of the Debtor) responded by saying that "Compliance should never have approved this order then – will coordinate with them Jim [Dondero]. Post: Please block all orders from Hitting the trading desk for the fun[ds] Jim [Dondero] mentioned."

23. On November 27, 2020, after learning that I had attempted to effectuate the trades, Mr. Dondero continued to interfere with the Debtor's business and engage in threating conduct, this time writing to Thomas Surgent (the Debtor's Chief Compliance Officer) that "I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational. You might want to remind him (and yourself) that the chief compliance officer has personal liability." A true and correct copy of the e-mail string that includes all of the aforementioned communications is attached as **Exhibit 8**.

24. On December 3, 2020, the Debtor demanded that the Advisors "cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to

HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs." A true and correct copy of the Debtor's December 3, 2020, letter to the Advisors' counsel is attached as **Exhibit 9**.

25. The Debtor made the same demand of Mr. Dondero the following day. A true and correct copy of the Debtor's December 4, 2020, letter to Mr. Dondero's counsel is attached as **Exhibit 10**.

C. The Debtor Demands that Mr. Dondero and His Affiliates Satisfy Certain Demand Notes, and Mr. Dondero Issues an Explicit Threat

26. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Funds Advisors, LP, and Highland Capital Management Services, Inc. (collectively, the "Corporate Obligors") are the makers under a series of promissory notes in favor of the Debtor (collectively, the "Corporate Obligors' Notes").

27. In addition, Mr. Dondero, in his personal capacity, is the maker under a series of promissory notes in favor of the Debtor (collectively, the "Dondero Notes" and together with the Corporate Obligors' Notes, the "Demand Notes").

28. Each of the Demand Notes provides, among other things, that (a) all accrued interest and principal "shall be due and payable upon demand," and that (b) the maker shall pay the holder (*i.e.*, the Debtor) all court costs and costs of collection, including reasonable attorneys' fees and expenses, if, among other things, the Note is "collected through a bankruptcy court." True and correct copies of the Demand Notes are attached as **Exhibits 11 through 23**, respectively.

29. On December 3, 2020, at my instruction, the Debtor's counsel sent letters to representatives of Mr. Dondero and each of the Corporate Obligors demanding payment of all unpaid principal and accrued interest due under the Demand Notes by December 11, 2020

(collectively, the "Demand Letters"). True and correct copies of the Demand Letters are attached as **Exhibits 24 through 27**, respectively. These demands were made to collect funds that will be required to fund the reorganized Debtor and the trust under the Plan that is subject to confirmation before this Court in January 2021.

30. Shortly after the Debtor sent the Demand Letters, Mr. Dondero sent a text message to me that stated only: "Be careful what you do – last warning." A true and correct copy of Mr. Dondero's text message is attached as **Exhibit 28**.

31. Mr. Dondero called me the following day, ostensibly to discuss his so-called "pot plan."[4] I immediately expressed my substantial concern regarding Mr. Dondero's text message and told him that his threat was completely unacceptable and likely unlawful. In response, Mr. Dondero suggested that "the lawyers" would address his threatening message and failed to disavow or apologize for the text, saying only (at the end of the conversation) that he did not mean to threaten any physical harm.

32. Later that day on December 4, 2020, at my instruction, Debtor's counsel sent Mr. Dondero's counsel a letter demanding that Mr. Dondero "cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero." The

[4] It is noteworthy that, in an attempt to present potential alternatives to the creditors, I (and the Board) provided material assistance to Mr. Dondero in his efforts to propose a "pot plan" to the creditors. In fact, after Mr. Dondero provided sparse bullet points for his pot plan, I drafted a full term sheet with the assistance of Debtor's counsel. Thereafter, I spent nearly two hours on a Zoom meeting/call with Mr. Dondero and his counsel (Mr. Dondero joined by phone and not video) reviewing my draft term sheet with his material terms. Mr. Dondero's counsel requested that I – and not them – present the term sheet to the Committee, which I subsequently did. After the presentation, I advised Mr. Dondero and his counsel that I had sent the detailed term sheet to the Committee and that I had walked them through the potential terms. There can be no question that I have been supportive of presenting Mr. Dondero's terms to the Committee.

Debtor specifically put Mr. Dondero on notice that the Debtor intended to file this Motion. A true and correct copy of the Debtor's December 4, 2020, letter to Mr. Dondero's counsel is attached as **Exhibit 29**.

D. <u>The Debtor's Request for a Temporary Restraining Order</u>

33. Mr. Dondero cannot be permitted to directly (or indirectly through his corporate entities or anyone else acting on his behalf) control, interfere with, or even influence the Debtor's business and operations or threaten or intimidate the Debtor or any of its directors, officers, employees, professionals, or agents.

34. Based on the foregoing, as a member of the Board and as the Debtor's CEO and CRO, I respectfully request that the Court grant the Motion in its entirety and enter the proposed Order in the form affixed to the Motion.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: December 7, 2020.

/s/ James P. Seery, Jr.
James P. Seery, Jr.

EXHIBIT 1

Highland Capital Management, L.P.

Preliminary Term Sheet

This term sheet ("Term Sheet") outlines the principal terms of a proposed settlement between Highland Capital Management, L.P. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 case captioned In re Highland Capital Mgm't, L.P, Case No. 19-34054 (SGJ) (the "Chapter 11 Case"), pending in the Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), to resolve a good faith dispute between the parties related to the Debtor's corporate governance, and specifically, the Committee's various objections to certain relief being sought by the Debtors in the Chapter 11 Case [Del. Docket No. 125]. *This Term Sheet shall be subject to approval by the Bankruptcy Court.*

Topic	Proposed Terms
Parties	Highland Capital Management, L.P. (the "Debtor"). The Official Committee of Unsecured Creditors of Highland Capital Management, L.P. (the "Committee").
Independent Directors	The Debtor's general partner, Strand Advisors, Inc., will appoint the following three (3) independent directors (the "Independent Directors"): James Seery, John Dubel, and Judge Russell Nelms. The Independent Directors will be granted exclusive control over the Debtor and its operations. Among other things, the Independent Directors shall conduct a review of all current employees as soon as practicable following the Independent Directors' appointment, determine whether and which employees should be subject to a key employee retention plan and/or key employee incentive plan and, if applicable, propose plan(s) covering such employees. The appointment and powers of the Independent Directors and the corporate governance structure shall be pursuant to the documents attached hereto as **Exhibit A**, which documents shall be satisfactory to the Committee. Once appointed, the Independent Directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the Independent Directors, to object to such removal and replacement). The Independent Directors shall be compensated in a manner to be determined with an understanding that the

	source of funding, whether directly or via reimbursement, will be the Debtor. As soon as practicable after their appointments, the Independent Directors shall, in consultation with the Committee, determine whether an interim Chief Executive Officer (the "CEO") should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as practicable, which may be one of the Independent Directors. Once appointed, the CEO cannot be removed without the Committee's written consent or Order of the Court. The Committee shall have regular, direct access to the Independent Directors, provided, however that (1) if the communications include FTI Consulting Inc. ("FTI"), Development Specialists Inc. ("DSI") shall also participate in such communications; and (2) if the communications include counsel, then either Debtor's counsel or, if retained, counsel to the Independent Directors shall also participate in such communications.
Role of Mr. James Dondero	Upon approval of this Term Sheet by the Bankruptcy Court, Mr. Dondero will (1) resign from his position as a Board of Director of Strand Advisors, Inc., (2) resign as an officer of Strand Advisors, Inc., and (3) resign as President and CEO of the Debtor, and (4) will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.
CRO	DSI shall, subject to approval of the Bankruptcy Court, be retained as chief restructuring officer ("CRO") to the

	Debtor and report to and be directed by the Independent Directors and, if and once appointed, the CEO. The retention and scope of duties of DSI shall be pursuant to the Further Amended Retention Agreement, attached hereto as **Exhibit B**. DSI and all other Debtor professionals shall serve at the direction of the CEO, if any, and the Independent Directors.
Estate Claims	The Committee is granted standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing (collectively, the "Estate Claims"); provided, however, that the term Estate Claims will not include any estate claim or cause of action against any then-current employee of the Debtor other than Mr. Dondero.
Document Management, Preservation, and Production	The Debtor shall be subject to and comply with the document management, preservation, and production requirements attached hereto as **Exhibit C**, which requirements cannot be modified without the consent of the Committee or Court order (the "Document Production Protocol"). Solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control ("Shared Privilege"). With respect to determining if any particular document is subject to the Shared Privilege, the following process shall be followed: (i) the Committee will request documents from the Debtor, (ii) the Debtor shall log all documents requested but withheld on the basis of privilege, (iii) the Debtor shall not withhold documents it understands to be subject to the Shared Privilege; (iv) the Committee will identify each additional document on the log that the Committee believes is subject to the Shared Privilege, and (v) a special master or other third party neutral agreed to by the Committee and the Debtor shall make a determination if such documents are subject to the Shared Privilege. The Committee further agrees that the production of any particular document by

	the Debtor under this process will not be used as a basis for a claim of subject matter waiver.
Reporting Requirements	The Debtor shall be subject to and comply with the reporting requirements attached hereto as **Exhibit D**, which reporting requirements cannot be modified without the consent of the Committee or Court order (the "Reporting Requirements").
Plan Exclusivity	The Independent Directors may elect to waive the Debtor's exclusive right to file a plan under section 1121 of the Bankruptcy Code.
Operating Protocols	The Debtor shall comply with the operating protocols set forth in **Exhibit D** hereto, regarding the Debtor's operation in the ordinary course of business, which protocols cannot be modified without the consent of the Committee or Court order.
Reservation of Rights	This agreement is without prejudice to the Committee's rights to, among other things, seek the appointment of a trustee or examiner at a later date. Nothing herein shall constitute or be construed as a waiver of any right of the Debtor or any other party in interest to contest the appointment of a trustee or examiner, and all such rights are expressly reserved.

Exhibit A

Debtor's Corporate Governance Documents

WRITTEN CONSENT OF SOLE STOCKHOLDER AND DIRECTOR

OF

STRAND ADVISORS, INC.

January 9, 2020

Pursuant to the provisions of the General Corporation Law of the State of Delaware (the "DGCL") and consistent with the provisions of the Certificate of Incorporation (the "Certificate") and Bylaws (the "Bylaws") of Strand Advisors, Inc., a Delaware corporation (the "Company"), the undersigned, being the holder of all of the issued and outstanding shares of common stock, par value $0.01 per share, of the Company and the sole director of the Company (the "Stockholder"), acting by written consent without a meeting pursuant to Section 228 of the DGCL and Article IV, Section 6, and Article XII of the Bylaws, does hereby consent to the adoption of the following resolutions and to the taking of the actions contemplated thereby, in each case with the same force and effect as if presented to and adopted at a meeting of the stockholders:

I. AMENDMENT OF BYLAWS

WHEREAS, it is acknowledged that the Board of Directors of the Company (the "Board") has heretofore been fixed at one (1) and that the Board currently consists of James Dondero;

WHEREAS, pursuant to Article XII of the Bylaws, the Stockholder wishes to amend the Bylaws in the manner set forth on **Appendix A** hereto (the "Bylaws Amendment") to increase the size of the Board from one (1) to three (3) directors, and to add certain provisions respecting director qualifications and the removal of directors; and

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws Amendment is hereby authorized and approved, and the Board is increased from one (1) to three (3) directors;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as may be required to effectuate the Bylaws Amendment; and

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate such Bylaws Amendment is hereby authorized and affirmed.

II. ELECTION OF DIRECTORS

WHEREAS, the Stockholder desires to appoint James Seery, John Dubel, and Russell Nelms to the Board and desires that such individuals constitute the whole Board;

NOW, THEREFORE, BE IT RESOLVED, that James Seery, John Dubel, and Russell Nelms, having consented to act as such, be, and each of them hereby is, appointed as a director, to serve as a director of the Company and to hold such office until such director's respective successor shall have been duly elected or appointed and shall qualify, or until such director's death, resignation or removal;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as

may be required to effectuate the appointment of the foregoing directors, including executing an indemnification agreement in favor of such directors in substantially the form attached hereto as **Appendix B** (each, an "Indemnification Agreement");

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate the appointment of such directors, including the execution of an Indemnification Agreement, is hereby authorized and affirmed.

RESOLVED FURTHER, that James Dondero and any other directors of the Company are hereby removed as directors of the Company;

RESOLVED FURTHER, that the directors appointed pursuant to these resolutions shall, pursuant to the terms of the Bylaws, appoint a Chairman of the Board.

III. STIPULATION WITH THE BANKRUPTCY COURT

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. ("HCMLP") filed for chapter 11 bankruptcy protection in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Bankruptcy Case");

WHEREAS, the Company is the general partner for HCMLP;

WHEREAS, the Bankruptcy Case was transferred to the Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-sgj11 (the "Texas Court") by order of the Bankruptcy Court for the District of Delaware on December 4, 2019;

WHEREAS, the Company and the Stockholder wish to enter into a stipulation (the "Stipulation") with HCMLP and the Official Unsecured Creditors Committee appointed in the Bankruptcy Case (the "Committee"), such Stipulation to be approved by the Texas Court, whereby the Stockholder will agree (a) not to transfer or assign his shares in the Company or exercise the voting power of such shares to remove any member of the Board appointed pursuant to these resolutions or further change the authorized number of directors from three (3) directors; (b) to exercise the voting power of his shares so as to cause each member of the Board appointed by these resolutions to be re-elected upon the expiration of his or her term; (c) upon the death, disability, or resignation of a member of the Board, will exercise the voting power of such shares so as to cause the resulting vacancy to be filled by a successor that is both independent and (i) acceptable to the Stockholder and the Committee or (ii) selected by the remaining members of the Board; and (d) not take any action or exercise the voting power of such shares in any way that is inconsistent with the term sheet agreed to by HCMLP and the Committee and any order of the Texas Court approving such agreement and compromise between HCMLP and the Committee;

WHEREAS, for purposes of the Stipulation, "independent" would exclude the Stockholder, any affiliate of the Stockholder, and any member of management of the Company; and

WHEREAS, it is in the intent of the parties that the Stipulation will no longer be effective or bind the Company or the Stockholder following the termination of the Bankruptcy Case.

NOW, THEREFORE, BE IT RESOLVED, that the Company is authorized to take such actions as may be necessary to enter into and effectuate the Stipulation in the manner and on the terms set forth above, including, but not limited to, further amending the Certificate, Bylaws, or any other corporate governance documents; and

RESOLVED FURTHER, that Scott Ellington, as an officer of the Company, is authorized to take any such actions as may be required to enter into and effectuate the Stipulation in the manner set forth herein; and

RESOLVED FURTHER, that any action taken by Scott Ellington or any other officer of the Company on or prior to the date hereof to effectuate such Stipulation is hereby authorized and affirmed.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned has executed this Written Consent as of the respective date and year first appearing above.

STOCKHOLDER:

_____
James Dondero

[Signature Page to Written Consent of Sole Stockholder of Strand Advisors, Inc.]

First Amendment to Bylaws of
Strand Advisors, Inc.

Strand Advisors, Inc. (the "Company"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that the Company's sole stockholder, acting by written consent without a meeting, resolved to amend the Company's Bylaws (the "Bylaws") as follows:

1. Article III, Section 2, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be three (3).

2. Article III, Section 5, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 5. Director Qualifications. Each director appointed to serve on the Board shall (A) (i) be an independent director, (ii) not be affiliated with the corporation's stockholders, and (iii) not be an officer of the corporation; and (B) have been (x) nominated by the official committee of unsecured creditors (the "Committee") appointed in the chapter 11 bankruptcy of Highland Capital Management, L.P. (the "Debtor") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Court"), Case No. 19-34054-sgj11 and reasonably acceptable to the stockholders; (y) nominated by the stockholders and acceptable to the Committee; or (z) selected by the duly appointed independent directors.

3. The following shall be added as Section 6 to Article III of the Bylaws:

> Section 6. Removal of Directors. Once appointed, the independent directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the independent directors, to object to such removal and replacement).

Except as expressly amended hereby, the terms of the Company's Bylaws shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this amendment to be signed this 9th day of January, 2020.

STRAND ADVISORS, INC.

_____
By: Scott Ellington
Its: Secretary

INSERT STRAND ADVISORS, INC. LETTERHEAD

[_____]

[NAME]
[ADDRESS]
[ADDRESS]
[ADDRESS]

Re: Strand Advisors, Inc. – Director Agreement

Dear [_____]:

On behalf of Strand Advisors, Inc. (the "Company"), I am pleased to have you join the Company's Board of Directors. This letter sets forth the terms of the Director Agreement (the "Agreement") that the Company is offering to you.

1. APPOINTMENT TO THE BOARD OF DIRECTORS.

a. Title, Term and Responsibilities.

i. Subject to terms set forth herein, the Company agrees to appoint you to serve as a Director on the Company's Board of Directors (the "Board"), and you hereby accept such appointment the date you sign this Agreement (the "Effective Date"). You will serve as a Director of the Board from the Effective Date until you voluntarily resign, are removed from the Board, or are not re-elected (the "Term"). Your rights, duties and obligations as a Director shall be governed by the Certificate of Incorporation and Bylaws of the Company, each as amended from time to time (collectively, the "Governing Documents"), except that where the Governing Documents conflict with this Agreement, this Agreement shall control.

ii. You acknowledge and understand that the Company is the general partner of Highland Capital Management, L.P. ("HCMLP") and that HCMLP is currently the debtor in possession in a chapter 11 bankruptcy proceeding (the "Bankruptcy") pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). Your rights, duties, and obligations may in certain instances require your involvement, either directly or indirectly, in the Bankruptcy and such rights, duties, and obligations may be impacted in whole or in part by the Bankruptcy.

b. Mandatory Board Meeting Attendance. As a Director, you agree to apply all reasonable efforts to attend each regular meeting of the Board. You also agree to devote sufficient time to matters that may arise at the Company from time to time that require your attention as a Director.

c. Independent Contractor. Under this Agreement, your relationship with the Company will be that of an independent contractor as you will not be an employee of the Company nor eligible to participate in regular employee benefit and compensation plans of the Company.

d. Information Provided by the Company. The Company shall: (i) provide you with reasonable access to management and other representatives of the Company and HCMLP; and (ii) furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company and HCMLP that you request in connection with the services to be provided to the Company. You will rely, without further independent verification,

on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by you in connection with the services performed for the Company. The Company acknowledges and agrees that you are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein, provided that if you become aware of material inaccuracies or errors in any such information you shall promptly notify the Board of such errors, inaccuracies or concerns.

2. COMPENSATION AND BENEFITS.

a. Retainer. The Company will pay you a retainer for each month you serve on the Board (the "Retainer") to be paid in monthly installments of (a) $60,000 for each of the first three months, (b) $50,000 for each of the next three months, and (c) $30,000 for each of the following six months. The parties will re-visit the Retainer after the sixth month. The Company's obligation to pay the Retainer will cease upon the termination of the Term.

b. Expense Reimbursement. The Company will reimburse you for all reasonable travel or other expenses, including expenses of counsel, incurred by you in connection with your services hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

c. Invoices; Payment.

i. In order to receive the compensation and reimbursement set forth in this Section 2, you are required to send to the Company regular monthly invoices indicating your fees, costs, and expenses incurred. Payment of the Retainer will be due on the first business day of each month regardless of whether an invoice has been provided. Reimbursement of expenses will also occur on the first business day of each month, subject to the Company's receipt of appropriate documentation required by the Company's expenses reimbursement policy.

ii. You further agree that the Company's obligation to pay the compensation and reimbursement set forth in this Section 2 is conditioned in all respects on the entry of a final order in the court overseeing the Bankruptcy that authorizes and requires HCMLP to reimburse the Company for all such payments to you.

d. Indemnification; D&O Insurance. You will receive indemnification as a Director of the Company on the terms set forth in that certain Indemnification Agreement, dated [_____], a copy of which is attached hereto as **Appendix A** (the "Indemnification Agreement"). You will also be provided coverage under the Company's directors' and officers' insurance policy as set forth in the Indemnification Agreement.

e. Tax Indemnification. You acknowledge that the Company will not be responsible for the payment of any federal or state taxes that might be assessed with respect to the Retainer and you agree to be responsible for all such taxes.

3. PROPRIETARY INFORMATION OBLIGATIONS.

a. Proprietary Information. You agree that during the Term and thereafter that you will take all steps reasonably necessary to hold all information of the Company, its affiliates, and related entities, which a reasonable person would believe to be confidential or proprietary information, in trust and confidence, and not disclose any such confidential or proprietary information to any third party without first obtaining the Company's express written consent on a case-by-case basis.

b. Third Party Information. The Company has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. You agree to hold such Third Party Information in confidence and not to disclose it to anyone (other than Company personnel who need to know such information in connection with their work for Company) or to use, except in connection with your services for Company under this Agreement, Third Party Information unless expressly authorized in writing by the Company.

c. Return of Company Property. Upon the end of the Term or upon the Company's earlier request, you agree to deliver to the Company any and all notes, materials and documents, together with any copies thereof, which contain or disclose any confidential or proprietary information or Third Party Information.

4. OUTSIDE ACTIVITIES.

a. Investments and Interests. Except as permitted by Section 4(b), you agree not to participate in, directly or indirectly, any position or investment known by you to be materially adverse to the Company or any of its affiliates or related entities.

b. Activities. Except with the prior written consent of the Board, you will not during your tenure as a member of the Company's Board undertake or engage in any other directorship, employment or business enterprise in direct competition with the Company or any of its affiliates or related entities, other than ones in which you are a passive investor or other activities in which you were a participant prior to your appointment to the Board as disclosed to the Company.

c. Other Agreements. You agree that you will not disclose to the Company or use on behalf of the Company any confidential information governed by any agreement between you and any third party except in accordance with such agreement.

5. TERMINATION OF DIRECTORSHIP.

a. Voluntary Resignation, Removal Pursuant to Bylaws. You may resign from the Board at any time with or without advance notice, with or without reason. Subject to any orders or agreements entered into in connection with the Bankruptcy, you may be removed from the Board at any time, for any reason, in any manner provided by the Governing Documents and applicable law.

b. Continuation. The provisions of this Agreement that give the parties rights or obligations beyond the termination of this Agreement will survive and continue to bind the parties.

c. Payment of Fees; Reimbursement. Following termination of this Agreement, any undisputed fees and expenses due to you will be remitted promptly following receipt by the Company of any outstanding invoices.

6. GENERAL PROVISIONS.

a. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal or unenforceable such provision will be reformed, construed and enforced to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

b. Entire Agreement. This Agreement constitutes the entire agreement between you and the Company with respect to your service as a Director and supersedes any prior agreement, promise, representation or statement written between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by the party or parties affected by such modification or amendment.

c. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you and the Company and our respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your rights or duties hereunder.

d. Governing Law. This Agreement will be governed by the law of the State of Delaware as applied to contracts made and performed entirely within Delaware.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer, please sign and date this Agreement below.

Sincerely,

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

[Signature Page Follows]

ACCEPTED AND AGREED:

_____
[NAME]
Date: _____

INDEMNIFICATION AND GUARANTY AGREEMENT

This Indemnification and Guaranty Agreement ("**Agreement**"), dated as of [_____], is by and between STRAND ADVISORS, INC., a Delaware corporation (the "**Company**"), HIGHLAND CAPITAL MANAGEMENT, LP, a Delaware partnership (the "**Debtor**") (solely as to Section 29 hereunder), and [_____] (the "**Indemnitee**").

WHEREAS, the Company is the general partner of the Debtor and, in such capacity, manages the business affairs of the Debtor;

WHEREAS, Indemnitee has agreed to serve as a member of the Company's board of directors (the "**Board**") effective as of the date hereof;

WHEREAS, the Board has determined that enhancing the ability of the Company, on its own behalf and for the benefit of the Debtor, to retain and attract as directors the most capable Persons is in the best interests of the Company and the Debtor and that the Company and the Debtor therefore should seek to assure such Persons that indemnification and insurance coverage is available; and

WHEREAS, in recognition of the need to provide Indemnitee with protection against personal liability, in order to procure Indemnitee's service as a director of the Company, in order to enhance Indemnitee's ability to serve the Company in an effective manner and in order to provide such protection pursuant to express contract rights (intended to be enforceable irrespective of, among other things, any amendment to the Company's Bylaws (as may be amended further from time to time, the "**Bylaws**"), any change in the composition of the Board or any change in control, business combination or similar transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of, and the advancement of Expenses (as defined in Section 1(g) below) to, Indemnitee as set forth in this Agreement and for the coverage of Indemnitee under the Company's directors' and officers' liability or similar insurance policies ("**D&O Insurance**").

NOW, THEREFORE, in consideration of the foregoing and the Indemnitee's agreement to provide services to the Company, the parties (including the Debtor solely as to Section 29 hereunder) agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "**Change in Control**" means the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions (including any merger or consolidation or whether by operation of law or otherwise), of all or substantially all of the properties or assets of the Company and its subsidiaries, to a third party purchaser (or group of affiliated third party purchasers) or (ii) the consummation of any transaction (including any merger or consolidation or whether by operation of law or otherwise), the result of which is that a third party purchaser (or group of affiliated third party purchasers) becomes the beneficial

owner, directly or indirectly, of more than fifty percent (50%) of the then outstanding Shares or of the surviving entity of any such merger or consolidation.

(b) "**Claim**" means:

(i) any threatened, pending or completed action, suit, claim, demand, arbitration, inquiry, hearing, proceeding or alternative dispute resolution mechanism, or any actual, threatened or completed proceeding, including any and all appeals, in each case, whether brought by or in the right of the Company or otherwise, whether civil, criminal, administrative, arbitrative, investigative or other, whether formal or informal, and whether made pursuant to federal, state, local, foreign or other law, and whether or not commenced prior to the date of this Agreement, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of or relating to either (a) any action or alleged action taken by Indemnitee (or failure or alleged failure to act) or of any action or alleged action (or failure or alleged failure to act) on Indemnitee's part, while acting in his or her Corporate Status or (b) the fact that Indemnitee is or was serving at the request of the Company or any subsidiary of the Company as director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise, in each case, whether or not serving in such capacity at the time any Loss or Expense is paid or incurred for which indemnification or advancement of Expenses can be provided under this Agreement, except one initiated by Indemnitee to enforce his or her rights under this Agreement; or

(ii) any inquiry, hearing or investigation that the Indemnitee determines might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism.

(c) "**Controlled Entity**" means any corporation, limited liability company, partnership, joint venture, trust or other Enterprise, whether or not for profit, that is, directly or indirectly, controlled by the Company. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of an Enterprise, whether through the ownership of voting securities, through other voting rights, by contract or otherwise.

(d) "**Corporate Status**" means the status of a Person who is or was a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of the Company or of any other Enterprise which such Person is or was serving at the request of the Company or any subsidiary of the Company. In addition to any service at the actual request of the Company, Indemnitee will be deemed, for purposes of this Agreement, to be serving or to have served at the request of the Company or any subsidiary of the Company as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise if Indemnitee is or was serving as a director, officer, employee, partner, member, manager, fiduciary, trustee or agent of such Enterprise and (i) such Enterprise is or at the time of such service was a Controlled Entity, (ii) such Enterprise is or at the time of such service was an employee benefit plan (or related trust) sponsored or maintained by the Company or a Controlled Entity or (iii) the Company or a

Controlled Entity, directly or indirectly, caused Indemnitee to be nominated, elected, appointed, designated, employed, engaged or selected to serve in such capacity.

(e) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Claim in respect of which indemnification is sought by Indemnitee. Under no circumstances will James Dondero be considered a Disinterested Director.

(f) "**Enterprise**" means the Company or any subsidiary of the Company or any other corporation, partnership, limited liability company, joint venture, employee benefit plan, trust or other entity or other enterprise of which Indemnitee is or was serving at the request of the Company or any subsidiary of the Company in a Corporate Status.

(g) "**Expenses**" means any and all expenses, fees, including attorneys', witnesses' and experts' fees, disbursements and retainers, court costs, transcript costs, travel expenses, duplicating, printing and binding costs, telephone charges, postage, fax transmission charges, secretarial services, delivery services fees, and all other fees, costs, disbursements and expenses paid or incurred in connection with investigating, defending, prosecuting, being a witness in or participating in (including on appeal), or preparing to defend, prosecute, be a witness or participate in, any Claim. Expenses also shall include (i) Expenses paid or incurred in connection with any appeal resulting from any Claim, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 4 only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute thereto, and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

(i) "**Expense Advance**" means any payment of Expenses advanced to Indemnitee by the Company pursuant to Section 4 or Section 5 hereof.

(j) "**Indemnifiable Event**" means any event or occurrence, whether occurring before, on or after the date of this Agreement, related to the fact that Indemnitee is or was a manager, director, officer, employee or agent of the Company or any subsidiary of the Company, or is or was serving at the request of the Company or any subsidiary of the Company as a manager, director, officer, employee, member, manager, trustee or agent of any other Enterprise or by reason of an action or inaction by Indemnitee in any such capacity (whether or not serving in such capacity at the time any Loss is incurred for which indemnification can be provided under this Agreement).

(k) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently performs, nor in the past three (3) years has performed, services for any of: (i) James Dondero, (ii) the

Company or Indemnitee (other than in connection with matters concerning Indemnitee under this Agreement or of other indemnitees under similar agreements), or (iii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) "**Losses**" means any and all Expenses, damages, losses, liabilities, judgments, fines (including excise taxes and penalties assessed with respect to employee benefit plans and ERISA excise taxes), penalties (whether civil, criminal or other), amounts paid or payable in settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other charges paid or payable in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim.

(m) "**Person**" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity and includes the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act.

(n) "**Shares**" means an ownership interest of a member in the Company, including each of the common shares of the Company or any other class or series of Shares designated by the Board.

(o) References to "**serving at the request of the Company**" include any service as a director, manager, officer, employee, representative or agent of the Company which imposes duties on, or involves services by, such director, manager, officer, employee or agent, including but not limited to any employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interests of the Company in Indemnitee's capacity as a director, manager, officer, employee, representative or agent of the Company, including but not limited to acting in the best interest of participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to under applicable law or in this Agreement.

2. Indemnification.

(a) Subject to Section 9 and Section 10 of this Agreement, the Company shall indemnify and hold Indemnitee harmless, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Losses and Expenses if Indemnitee was or is or becomes a party to or participant in, or is threatened to be made a party to or participant in, any Claim by reason of or arising in part out of an Indemnifiable Event, including, without limitation, Claims

brought by or in the right of the Company, Claims brought by third parties, and Claims in which the Indemnitee is solely a witness.

(b) For the avoidance of doubt, the indemnification rights and obligations contained herein shall also extend to any Claim in which the Indemnitee was or is a party to, was or is threatened to be made a party to or was or is otherwise involved in any capacity in by reason of Indemnitee's Corporate Status as a fiduciary capacity with respect to an employee benefit plan. In connection therewith, if the Indemnitee has acted in good faith and in a manner which appeared to be consistent with the best interests of the participants and beneficiaries of an employee benefit plan and not opposed thereto, the Indemnitee shall be deemed to have acted in a manner not opposed to the best interests of the Company.

3. Contribution.

(a) Whether or not the indemnification provided in Section 2 is available, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Claim in which the Company is jointly liable with Indemnitee (or would be if joined in such Claim), the Company shall contribute to the amount of Losses paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Claim arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors, managers or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such Losses, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(b) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, managers or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(c) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes,

amounts paid or to be paid in settlement and/or for Expenses, in connection with any Claim relating to an Indemnifiable Event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Claim in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Claim; and/or (ii) the relative fault of the Company (and its directors, managers, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Advancement of Expenses. The Company shall, if requested by Indemnitee, advance, to the fullest extent permitted by law, to Indemnitee (an "**Expense Advance**") any and all Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any Claim arising out of an Indemnifiable Event (whether prior to or after its final disposition). Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of the foregoing, within thirty (30) business days after any request by Indemnitee, the Company shall, in accordance with such request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. In connection with any request for Expense Advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Execution and delivery to the Company of this Agreement by Indemnitee constitutes an undertaking by the Indemnitee to repay any amounts paid, advanced or reimbursed by the Company pursuant to this Section 4, the final sentence of Section 9(b), or Section 11(b) in respect of Expenses relating to, arising out of or resulting from any Claim in respect of which it shall be determined, pursuant to Section 9, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. No other form of undertaking shall be required other than the execution of this Agreement. Each Expense Advance will be unsecured and interest free and will be made by the Company without regard to Indemnitee's ability to repay the Expense Advance.

5. Indemnification for Expenses in Enforcing Rights. To the fullest extent allowable under applicable law, the Company shall also indemnify against, and, if requested by Indemnitee, shall advance to Indemnitee subject to and in accordance with Section 4, any Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any action or proceeding by Indemnitee for (a) indemnification or reimbursement or advance payment of Expenses by the Company under any provision of this Agreement, or under any other agreement or provision of the Bylaws now or hereafter in effect relating to Claims relating to Indemnifiable Events, and/or (b) recovery under any D&O Insurance maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery, as the case may be. Indemnitee shall be required to reimburse the Company in the event that a final judicial determination is made that such action brought by Indemnitee was frivolous or not made in good faith.

6. Partial Indemnity. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of any Losses in respect of a Claim

related to an Indemnifiable Event but not for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

7. Notification and Defense of Claims.

(a) Notification of Claims. Indemnitee shall notify the Company in writing as soon as reasonably practicable of any Claim which could relate to an Indemnifiable Event or for which Indemnitee could seek Expense Advances, including a brief description (based upon information then available to Indemnitee) of the nature of, and the facts underlying, such Claim, to the extent then known. The failure by Indemnitee to timely notify the Company hereunder shall not relieve the Company from any liability hereunder except to the extent the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure. If at the time of the receipt of such notice, the Company has D&O Insurance or any other insurance in effect under which coverage for Claims related to Indemnifiable Events is potentially available, the Company shall give prompt written notice to the applicable insurers in accordance with the procedures, provisions, and terms set forth in the applicable policies. The Company shall provide to Indemnitee a copy of such notice delivered to the applicable insurers, and copies of all subsequent correspondence between the Company and such insurers regarding the Claim, in each case substantially concurrently with the delivery or receipt thereof by the Company.

(b) Defense of Claims. The Company shall be entitled to participate in the defense of any Claim relating to an Indemnifiable Event at its own expense and, except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any such Claim, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently directly incurred by Indemnitee in connection with Indemnitee's defense of such Claim other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own legal counsel in such Claim, but all Expenses related to such counsel incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's own expense; provided, however, that if (i) Indemnitee's employment of its own legal counsel has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of such Claim, (iii) after a Change in Control, Indemnitee's employment of its own counsel has been approved by the Independent Counsel or (iv) the Company shall not in fact have employed counsel to assume the defense of such Claim, then Indemnitee shall be entitled to retain its own separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any such Claim) and all Expenses related to such separate counsel shall be borne by the Company.

8. Procedure upon Application for Indemnification. In order to obtain indemnification pursuant to this Agreement, Indemnitee shall submit to the Company a written request therefor, including in such request such documentation and information as

is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Claim, provided that documentation and information need not be so provided to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnification shall be made insofar as the Company determines Indemnitee is entitled to indemnification in accordance with Section 9 below.

9. Determination of Right to Indemnification.

(a) Mandatory Indemnification; Indemnification as a Witness.

(i) To the extent that Indemnitee shall have been successful on the merits or otherwise in defense of any Claim relating to an Indemnifiable Event or any portion thereof or in defense of any issue or matter therein, including without limitation dismissal without prejudice, Indemnitee shall be indemnified against all Losses relating to such Claim in accordance with Section 2, and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(ii) To the extent that Indemnitee's involvement in a Claim relating to an Indemnifiable Event is to prepare to serve and serve as a witness, and not as a party, the Indemnitee shall be indemnified against all Losses incurred in connection therewith to the fullest extent allowable by law and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(b) Standard of Conduct. To the extent that the provisions of Section 9(a) are inapplicable to a Claim related to an Indemnifiable Event that shall have been finally disposed of, any determination of whether Indemnitee has satisfied any applicable standard of conduct under Delaware law that is a legally required condition to indemnification of Indemnitee hereunder against Losses relating to such Claim and any determination that Expense Advances must be repaid to the Company (a "**Standard of Conduct Determination**") shall be made as follows:

(i) if no Change in Control has occurred, (A) by a majority vote of the Disinterested Directors, even if less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum or (C) if there are no such Disinterested Directors, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee; and

(ii) if a Change in Control shall have occurred, (A) if the Indemnitee so requests in writing, by a majority vote of the Disinterested Directors, even if less than a quorum of the Board or (B) otherwise, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee.

Subject to Section 4, the Company shall indemnify and hold Indemnitee harmless against and, if requested by Indemnitee, shall reimburse Indemnitee for, or advance to Indemnitee, within thirty (30) business days of such request, any and all Expenses

incurred by Indemnitee in cooperating with the Person or Persons making such Standard of Conduct Determination.

(c) Making the Standard of Conduct Determination. The Company shall use its reasonable best efforts to cause any Standard of Conduct Determination required under Section 9(b) to be made as promptly as practicable. If the Person or Persons designated to make the Standard of Conduct Determination under Section 9(b) shall not have made a determination within ninety (90) days after the later of (A) receipt by the Company of a written request from Indemnitee for indemnification pursuant to Section 8 (the date of such receipt being the "**Notification Date**") and (B) the selection of an Independent Counsel, if such determination is to be made by Independent Counsel, then Indemnitee shall be deemed to have satisfied the applicable standard of conduct; provided that such 90-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the Person or Persons making such determination in good faith requires such additional time to obtain or evaluate information relating thereto. Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of any Claim.

(d) Payment of Indemnification. If, in regard to any Losses:

(i) Indemnitee shall be entitled to indemnification pursuant to Section 9(a);

(ii) no Standard of Conduct Determination is legally required as a condition to indemnification of Indemnitee hereunder; or

(iii) Indemnitee has been determined or deemed pursuant to Section 9(b) or Section 9(c) to have satisfied the Standard of Conduct Determination,

then the Company shall pay to Indemnitee, within thirty (30) business days after the later of (A) the Notification Date or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) is satisfied, an amount equal to such Losses.

(e) Selection of Independent Counsel for Standard of Conduct Determination. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(i), the Independent Counsel shall be selected by the Board and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(ii), the Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, Indemnitee or the Company, as applicable, may, within thirty (3) business days after receiving written notice of selection from the other, deliver to the other a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not satisfy the criteria set forth in the definition of "Independent Counsel" in Section 1(k), and the objection shall

set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the Person or firm so selected shall act as Independent Counsel. If such written objection is properly and timely made and substantiated, (i) the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit; and (ii) the non-objecting party may, at its option, select an alternative Independent Counsel and give written notice to the other party advising such other party of the identity of the alternative Independent Counsel so selected, in which case the provisions of the two immediately preceding sentences, the introductory clause of this sentence and numbered clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no Independent Counsel that is permitted under the foregoing provisions of this Section 9(e) to make the Standard of Conduct Determination shall have been selected within twenty (20) days after the Company gives its initial notice pursuant to the first sentence of this Section 9(e) or Indemnitee gives its initial notice pursuant to the second sentence of this Section 9(e), as the case may be, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware ("**Delaware Court**") to resolve any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or to appoint as Independent Counsel a Person to be selected by the Court or such other Person as the Court shall designate, and the Person or firm with respect to whom all objections are so resolved or the Person or firm so appointed will act as Independent Counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the Independent Counsel incurred in connection with the Independent Counsel's determination pursuant to Section 9(b).

(f) Presumptions and Defenses.

(i) Indemnitee's Entitlement to Indemnification. In making any Standard of Conduct Determination, the Person or Persons making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification, and the Company shall have the burden of proof to overcome that presumption and establish that Indemnitee is not so entitled. Any Standard of Conduct Determination that is adverse to Indemnitee may be challenged by the Indemnitee in the Delaware Court. No determination by the Company (including by its Board or any Independent Counsel) that Indemnitee has not satisfied any applicable standard of conduct may be used as a defense to enforcement by Indemnitee of Indemnitee's rights of indemnification or reimbursement or advance of payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(ii) Reliance as a Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports

or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, manager, officer, agent or employee of the Company (other than Indemnitee) shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(iii) Defense to Indemnification and Burden of Proof. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a claim for Losses incurred in defending against a Claim related to an Indemnifiable Event in advance of its final disposition) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any related Standard of Conduct Determination, the burden of proving such a defense or that the Indemnitee did not satisfy the applicable standard of conduct shall be on the Company.

10. Exclusions from Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated to:

(a) indemnify or advance funds to Indemnitee for Losses with respect to proceedings initiated by Indemnitee, including any proceedings against the Company or its managers, officers, employees or other indemnitees and not by way of defense, except:

(i) proceedings referenced in Section 4 above (unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous); or

(ii) where the Company has joined in or the Board has consented to the initiation of such proceedings.

(b) indemnify Indemnitee if a final decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law.

(c) indemnify Indemnitee for the disgorgement of profits arising from the purchase or sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Exchange Act, or any similar successor statute.

11. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 9 that Indemnitee is not entitled to indemnification under this Agreement, (ii) an Expense Advance is not timely made pursuant to Section 4, (iii) no determination of entitlement to indemnification is made pursuant to Section 9 within 90 days after receipt by the Company of the request for indemnification, or (iv) payment of indemnification is not made pursuant Section 9(d), Indemnitee shall be entitled to an adjudication in a Delaware Court, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such

indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that Indemnitee, pursuant to this Section 11, seeks a judicial adjudication or arbitration of his or her rights under, or to recover damages for breach of, this Agreement, any other agreement for indemnification, payment of Expenses in advance or contribution hereunder or to recover under any director, manager, and officer liability insurance policies or any other insurance policies maintained by the Company, the Company will, to the fullest extent permitted by law and subject to Section 4, indemnify and hold harmless Indemnitee against any and all Expenses which are paid or incurred by Indemnitee in connection with such judicial adjudication or arbitration, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, payment of Expenses in advance or contribution or insurance recovery. In addition, if requested by Indemnitee, subject to Section 4 the Company will (within thirty (30) days after receipt by the Company of the written request therefor), pay as an Expense Advance such Expenses, to the fullest extent permitted by law.

(c) In the event that a determination shall have been made pursuant to Section 9 that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 11 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 9.

(d) If a determination shall have been made pursuant to Section 9 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 11, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

12. Settlement of Claims. The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any threatened or pending Claim related to an Indemnifiable Event effected without the Company's prior written consent, which shall not be unreasonably withheld; provided, however, that if a Change in Control has occurred, the Company shall be liable for indemnification of the Indemnitee for amounts paid in settlement if an Independent Counsel (which, for purposes of this Section 12, shall be selected by the Company with the prior consent of the Indemnitee, such consent not to be unreasonably withheld or delayed) has approved the settlement. The Company shall not settle any Claim related to an Indemnifiable Event in any manner that would impose any Losses on the Indemnitee without the Indemnitee's prior written consent.

13. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a manager of the Company (or is serving at the request of the Company as a director, manager, officer, employee, member, trustee or

agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to an Indemnifiable Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

14. Other Indemnitors. The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by certain private equity funds, hedge funds or other investment vehicles or management companies and/or certain of their affiliates and by personal policies (collectively, the "**Other Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Other Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 14.

15. Non-Exclusivity. The rights of Indemnitee hereunder will be in addition to any other rights Indemnitee may have under the Bylaws, the General Corporation Law of the State of Delaware (as may be amended from time to time, the "**DGCL**"), any other contract, in law or in equity, and under the laws of any state, territory, or jurisdiction, or otherwise (collectively, "**Other Indemnity Provisions**"). The Company will not adopt any amendment to its Bylaws the effect of which would be to deny, diminish, encumber or limit Indemnitee's right to indemnification under this Agreement or any Other Indemnity Provision.

16. Liability Insurance. For the duration of Indemnitee's service as a director of the Company, and thereafter for so long as Indemnitee shall be subject to any pending Claim relating to an Indemnifiable Event, the Company shall use best efforts to continue to maintain in effect policies of D&O Insurance providing coverage that is at least substantially comparable in scope and amount to that provided by similarly situated companies. In all policies of D&O Insurance maintained by the Company, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights

and benefits as are provided to the most favorably insured of the Company's directors. Upon request, the Company will provide to Indemnitee copies of all D&O Insurance applications, binders, policies, declarations, endorsements and other related materials.

17. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment to Indemnitee in respect of any Losses to the extent Indemnitee has otherwise received payment under any insurance policy, any Other Indemnity Provisions or otherwise of the amounts otherwise indemnifiable by the Company hereunder.

18. Subrogation. In the event of payment to Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee. Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

19. Indemnitee Consent. The Company will not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (a) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or a Loss for which Indemnitee is not wholly indemnified hereunder or (b) with respect to any Claim with respect to which Indemnitee may be or is made a party or a participant or may be or is otherwise entitled to seek indemnification hereunder, does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Claim, which release will be in form and substance reasonably satisfactory to Indemnitee. Neither the Company nor Indemnitee will unreasonably withhold its consent to any proposed settlement; provided, however, Indemnitee may withhold consent to any settlement that does not provide a full and unconditional release of Indemnitee from all liability in respect of such Claim.

20. Amendments. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume

and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

22. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or contrary to the DGCL or existing or future applicable law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it valid, enforceable and legal within the requirements of any applicable law, and in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid, unenforceable or illegal provisions.

23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed, by postage prepaid, certified or registered mail:

(a) if to Indemnitee, to the address set forth on the signature page hereto.

(b) if to the Company, to:

Strand Advisors, Inc.
Attention: Isaac Leventon
Address: 300 Crescent Court, Suite 700
Dallas, Texas 75201
Email: ileventon@highlandcapital.com

Notice of change of address shall be effective only when given in accordance with this Section 23. All notices complying with this Section 23 shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

24. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (OTHER THAN ITS RULES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY).

25. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such court lacks subject matter jurisdiction, in the Superior Court of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably

consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

26. Enforcement.

(a) Without limiting Section 15, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(b) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of Expenses under this Agreement other than in accordance with this Agreement.

27. Headings and Captions. All headings and captions contained in this Agreement and the table of contents hereto are inserted for convenience only and shall not be deemed a part of this Agreement.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. Facsimile counterpart signatures to this Agreement shall be binding and enforceable.

29. Guaranty By Debtor. The Debtor guarantees to Indemnitee the performance of the obligations of the Company hereunder (the "**Guaranteed Obligations**"). If the Company does not satisfy any of the Guaranteed Obligations when due, Indemnitee may demand that the Debtor satisfy such obligations and the Debtor shall be required to do so by making payment to, or for the benefit of, Indemnitee. Indemnitee can make any number of demands upon the Debtor and such demands can be made for all or part of the Guaranteed Obligations. This guaranty by the Debtor is for the full amount of the Guaranteed Obligations. The Debtor's obligations under this Agreement are continuing. Even though Indemnitee receives payments from or makes arrangements with the Company or anyone else, the Debtor shall remain liable for the Guaranteed Obligations until satisfied in full. The guaranty hereunder is a guaranty of payment, and not merely of collectability, and may be enforced against the Debtor. The Debtor's liability under this Section 29 is unconditional. It is not affected by anything that might release the Debtor from or limit all or part of its obligations.

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

STRAND ADVISORS, INC.

By: _____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, LP (solely as to Section 29 hereunder)

By: _____
Name:
Title:

INDEMNITEE:

_____

Name: [_____]
Address: _____
_____
_____

Email:

Exhibit B

Amended DSI Retention Letter

January ___, 2020

Attn: Independent Directors
Highland Capital Management, LP
300 Crescent Court, Ste. 700
Dallas, TX 75201

Re: Development Specialists, Inc. ("DSI")
Retention and Letter of Engagement

Dear Members of the Board:

Please accept this letter as our firm's formal written agreement (the "Agreement") to provide restructuring support services to Highland Capital Management, L.P. (the "Company"). This Agreement replaces and supersedes in all respects the letter agreement between DSI and the Company, dated October 7, 2019, as amended and revised by the letter agreement dated October 29, 2019. However, all fees and expenses incurred by DSI prior to the date hereof in accordance with such prior letter agreements will be paid by the Company, subject to allowance of such fees and expenses by the U.S. Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). The Agreement will become effective upon execution by duly authorized representatives of the respective parties and approval of the Bankruptcy Court.

Section 1 – Scope of Work

DSI will provide the following services (the "Services") to the Company:

1. Bradley D. Sharp will act as the Company's Chief Restructuring Officer ("CRO") with other DSI personnel to assist Mr. Sharp in carrying out those duties and responsibilities.
2. Subject to the terms of this Agreement, Mr. Sharp will report to the Independent Directors and, if appointed, the Chief Executive Officer of the Company ("CEO") and will comply with the Company's corporate governance requirements.
3. Mr. Sharp will fulfill such duties as directed by the Independent Directors and/or CEO, if any, of the Company with respect to the Company's restructuring and bankruptcy filed on October 16, 2019 (the "Chapter 11 Case"), including implementation and prosecution of the Chapter 11 Case.
4. Provide other personnel of DSI ("Additional Personnel") to provide restructuring support services as requested or required to the Company, which may include but are not limited to:
    a. assisting the Company in the preparation of financial disclosures required by the Bankruptcy Code, including the Schedules of Assets and Liabilities, the Statements of Financial Affairs and Monthly Operating Reports;

b. advising and assisting the Company, the Company's legal counsel, and other professionals in responding to third party requests;
c. attending meetings and assisting in communications with parties in interest and their professionals, including the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case;
d. providing litigation advisory services with respect to accounting matters, along with expert witness testimony on case related issues; and
e. rendering such other general business consulting services or other assistance as the Company may deem necessary and which are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this case.

DSI's ability to adequately perform the Services is dependent upon the Company timely providing reliable, accurate, and complete necessary information. The Company agrees that CRO will have (i) access to and the ability to communicate with any employee of the Company or any affiliate of the Company and (ii) access to any information, including documents, relating to the Company or any Company affiliate, including, but not limited to, information concerning collections and disbursements. The Company acknowledges that DSI or CRO are not responsible for independently verifying the veracity, completeness, or accuracy of any information supplied to us by or on behalf of the Company.

DSI will submit its evaluations and analyses pursuant to this Agreement in periodic oral and written reports. Such reports are intended to and shall constitute privileged and confidential information, and shall constitute the Company's property.

Although we do not predict or warrant the outcome of any particular matter or issue, and our fees are not dependent upon such outcomes, we will perform the Services with reasonable care and in a diligent and competent manner.

Section 2 – Rates, Invoicing and Retainer

DSI will be compensated at a rate of $100,000 per month, plus expenses (capped at $10,000 per month), for the services of Bradley D. Sharp as CRO and such DSI personnel (including Fred Caruso) as are required to fulfill Mr. Sharp's responsibilities as CRO; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

A number of DSI's personnel have experience in providing restructuring support services and may be utilized as Additional Personnel in this representation. Although others of our staff may also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel. The individuals are:

R. Brian Calvert	$640.00/hr.
Thomas P. Jeremiassen	$575.00/hr.
Eric J. Held	$495.00/hr.
Nicholas R. Troszak	$485.00/hr.
Spencer G. Ferrero	$350.00/hr.
Tom Frey	$325.00/hr.

The above rates are adjusted as of January 1 of each year to reflect advancing experience, capabilities, and seniority of our professionals as well as general economic factors.

We acknowledge receipt of a retainer of $250,000 from the Company. The purpose of the retainer is to secure a portion of our fees and expenses and to retain our status as a non-creditor should such be required for DSI to continue to provide the Services. As such, should a need arise to increase this retainer due to the level of Services DSI is providing or projected to provide, we will send the Company a supplement to this Agreement requesting the necessary increases and discuss with the Company the amount and timing of providing such increase to the retainer.

This retainer will be applied to our final invoice. If the retainer exceeds the amount of our final invoice, we will refund the difference to the Company at that time. In the event that periodic invoices are not paid timely, we will apply the retainer to the amounts owing on such invoices and, if applicable, any related late charges, and we will stop work until the retainer is replenished to the full amount required. If the retainer is not replenished within ten (10) days after the application of the retainer to unpaid balances, we reserve the right to terminate this Agreement in accordance with the provisions of Section 3 of this Agreement.

DSI also will be entitled to reimbursement for its reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

This Agreement shall be presented to the Bankruptcy Court for approval and continuation, pursuant to Bankruptcy Code Section 363 and DSI's then-prospective obligations shall be contingent upon such approval.

Section 3 – Termination

Either the Company or DSI may terminate this Agreement for any reason with ten (10) business days' written notice. Notwithstanding anything to the contrary contained herein, the Company

shall be obligated, in accordance with any orders of or procedures established by the Court, to pay and/or reimburse DSI all fees and expenses accrued under this Agreement as of the effective date of the termination.

Section 4 – Relationship of the Parties, Confidentiality

DSI will provide the Services to and for the Company, with select members of DSI assigned to specific roles for the benefit of the Company. These members will remain as DSI employees during the pendency of this case. Specifically, the parties intend that an independent contractor relationship will be created by this Agreement. Employees of DSI are not to be considered employees of the Company and are not entitled to any of the benefits that the Company provides for the Company's employees.

The Company acknowledges that all advice (written or oral) given by DSI to the Company in connection with DSI's engagement is intended solely for the benefit and use of the Company in considering the transaction to which it relates, and that no third party is entitled to rely on any such advice or communication. DSI will in no way be deemed to be providing services for any person not a party to this Agreement.

DSI agrees that all information not publicly available that is received by DSI from the Company in connection with this Agreement or that is developed pursuant to this Agreement, will be treated as confidential and will not be disclosed by DSI, except as required by Court order, or other legal process, or as may be authorized by the Company. DSI shall not be required to defend any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to the Company so that it may seek appropriate remedies, including a protective order. The Company shall reimburse DSI for all costs and fees (including reasonable attorney's fees) incurred by DSI relating to responding to (whether by objecting to or complying with) any subpoenas or requests for production of information or documents.

Section 5 – Indemnity

The Company shall name Bradley D. Sharp as its Chief Restructuring Officer and shall indemnify him on the same terms as provided to the Company's other officers and directors under the Company partnership agreement or other governing document and applicable state law. Mr. Sharp shall be included as an insured under any insurance policies or coverage available to officers and directors of the Company.

The Company shall additionally indemnify those persons, and only those persons, serving as executive officers on the same terms as provided to the Company's other officers and directors under the Company's partnership agreement or other governing document and applicable state law, along with insurance coverage under the Company's D&O policies. Any such indemnity shall survive the expiration or termination by either party of this Agreement. Except as provided

in this Section and in Section 4, there shall be no indemnification of DSI, its affiliates or the Additional Personnel.

Each and every one of the personnel employed by DSI who works on this particular project, as well as DSI officers, directors, employees and agents (the "DSI Parties") shall not be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination (not subject to further appeal) by a court of competent jurisdiction to be the direct result of the bad faith, self-dealing or intentional misconduct or gross negligence of DSI.

Section 6 – Conflicts

DSI has made diligent inquiries to determine whether it or any of its professionals have any connections with the Company, its creditors, or other parties in interest in the Chapter 11 Case. Based on that review, the review of DSI's conflict files and responses to inquiries from DSI's professional staff, neither DSI nor its professionals have any known conflicts with the parties in this case. DSI will separately provide its connections to parties in this case and/or their professionals.

Section 7 – No Audit

The Company acknowledges that it is hiring DSI to assist and advise the Company in business planning and operations. DSI's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA or other such state and national professional bodies.

Section 8 – Non-Solicitation

The Company agrees not to solicit, recruit or hire any employees or agents of DSI for a period of one year subsequent to the completion and/or termination of this Agreement; provided that the Company shall not be prohibited from (x) making general advertisements for employment not specifically directed at employees of DSI or (y) employees of DSI responding to unsolicited requests for employment.

Section 9 – Survival

The provisions of this Agreement relating to indemnification, the non-solicitation or hiring of DSI employees, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

Section 10 – Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law principles.

Section 11 – Entire Agreement, Amendment

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

If you are in agreement with the foregoing terms and conditions please indicate your acceptance by signing an original copy of this Agreement on the signature lines below, then returning one fully-executed Agreement to DSI's office. The Agreement will become effective upon execution by duly authorized representatives of the respective parties.

Very truly yours,

Bradley Sharp
Development Specialists, Inc.

AGREED AND ACKNOWLEDGED:

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

_____
By: _____, Independent Director
Date: _____

Exhibit C

Document Production Protocol

A. Definitions

a. Electronically stored information" or "ESI" shall include all electronic files, documents, data, and information covered under the Federal Rules of Civil Procedure.

B. Preservation of ESI - Generally

a. Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data.

C. Preservation of ESI – Specific Forms

a. For email, Debtor uses Outlook Email on an Exchange server. Veritas Enterprise Vault is used to archive emails. Journaling is and has been in active use since 2007, and all inbound, outbound, and in-system email communications have been preserved and are not at risk of deletion due to normal document retention practices. Out of an abundance of caution, a copy of the latest email back-up, which was performed two months ago, shall be copied and stored at a secured location.
b. The file server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created and stored on a portable hard drive at a secured location.
c. The Sharepoint server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format that maintains all potentially relevant information and stored at a secured location.
d. The Oracle E-Business Suite (EBS) server used by Debtor was backed up one week ago. A copy of this backup shall be created in a format and stored at a secured location.
e. The Advent Geneva accounting system used by Debtor was backed up approximately one week ago. Upon reasonable notice, the Committee may submit search criteria to Debtor to run searches in Advent Geneva. Subject to Debtor's rights to assert objections as provided by Part G herein, Debtor will provide the data resulting from such agreed searches pursuant to Part F herein.
f. The Siepe Database (data warehouse) used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format and stored at a secured location.
g. For the Box account used by Debtor, to the extent routine data retention practices may result in file deletion, they shall be suspended pending further discussion with the Committee concerning the relevance of such data. Users of the Box account who have the ability to delete files shall be notified of the obligation to suspend deletion of any data stored in Box.
h. Bloomberg data is archived for five years. Debtor shall work with Bloomberg client services to preserve a copy of all such archived material, which shall be stored at a secured location, or otherwise extend the backup window in which Bloomberg preserves the data by reasonable time to be agreed by the parties.

i. Files may be saved locally on laptops/work computers used by employees of Debtor. This practice is discouraged, but may result in the creation of relevant ESI on local systems in a manner that will not be replicated elsewhere. Debtor shall therefore cease the deletion of data (*i.e.*, wiping) of any employee-assigned computer hard drives, such as for departing employees. Debtor shall furthermore instruct current employees not to delete files stored locally on their assigned computers.

D. Not Reasonably Accessible Documents

a. Absent an order from the Court upon a showing of good cause, a Party from whom ESI has been requested shall not be required to search for responsive ESI from sources that are not reasonably accessible without undue burden or cost. The following types of data stores are presumed to be inaccessible and are not subject to discovery, and need not be collected or preserved, absent a particularized need for the data as established by the facts and legal issues of the case:
   i. Deleted, slack, fragmented, or other data only accessible by forensics;
   ii. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system; and
   iii. On-line access data such as temporary internet files, history, cache, cookies, and the like.

b. To conduct collections in a focused and efficient manner, the Parties also agree to exclude the following file types from collection: Standard system file extensions including, but not limited to, BIN, CAB, CHK, CLASS, COD, COM, DLL DRV, EXE, INF, INI, JAVA, LIB, LOG, SYS and TMP and other file extensions and directories that likely do not contain user generated content such as files identified by hash value when compared to the National Software Reference Library reference data set (RDS Hash), a sub-project of the National Institute of Standards and Technology ("NIST"), of known traceable system and application files. This process is commonly referred to as "De-NISTing."

E. Collection and Search Methodology

a. Searches for emails in Debtor's custody shall be conducted by DSI on Debtor's Veritas Enterprise Vault storage using an unrestricted account at the earliest opportunity, but in no event later than seven (7) days after the Committee requests ESI from the Debtor. DSI shall use an add-on component called Discovery Assistant, which enables searches based on email properties, such as senders, recipients, and dates. Discovery Assistant also permits text searching of email contents and the contents of electronic file attachments, although not pictures of text (*e.g.*, scanned PDFs). Debtor did not employ employee message or file encryption that would prevent reasonable operation of the Discovery Assistant search capabilities.

b. The results of email searches shall be produced to the Committee pursuant to Part F below, subject to completion of any review for privilege or other purposes contemplated by this Agreement.

c. A snapshot copy of Debtor databases (Oracle, Siepe) shall be created in a format to be specified later by agreement with the Committee per Part (C)(d), (f), above. Prior to any production of responsive data from such a structured database Debtor will first identify the database type and version number, provide the vendor-originated database dictionary, if any, (identifying all tables in the database, their fields, the meaning of those fields, and any interrelation among fields) and any user manuals, or any other documentation describing the structure and/or content of the database, and a list of all reports that can be generated from the database. The list of reports shall be provided in native Excel (.xis or .xlsx) format.
d. The Geneva system is highly proprietary and shall not be collected, but the Committee will be given reasonable access to that system per Part C(e), above.
e. Debtor and Committee will meet and confer to discuss the scope of any necessary searches on the Box account.
f. Debtor file server contents, where requested by the Committee, shall be produced pursuant to Part F below.
g. Debtor shall propose a format for producing Sharepoint data. The Committee agrees that it is not necessary to reproduce the interface used by Debtor in the ordinary course of business for Sharepoint.

F. Format of Documents Produced

a. Non-database ESI shall be produced as black and white Group 4 TIFF files, with a resolution of 300 DPI. Page size shall be 8.5 x 11 inches unless, in the reasonable judgment of the Producing Party, a particular item requires a different page size, and original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape). A Requesting Party may, in good faith and reasonable judgment, request a color copy of a production document if it is necessary to convey the relevant and responsive information. Such color copies may be produced as single page JPG (JPEG) image files. The Requesting Party will bear the costs for color images.
b. The files shall be accompanied by a metadata load file, in a single standard format to be requested by the Receiving Party prior to any production (e.g., Opticon, Summation DII, or the like) showing the Bates number of each page, the appropriate unitization of the documents, and the entire family range. The Parties agree to meet and confer regarding the requested standard format prior to production.
c. The files shall be accompanied by a .DAT text file including the delimited fields identified in the Metadata List (below). No Party will have any obligation to manually generate information to provide the fields identified in the Metadata List.
d. The Producing Party reserves the right to make hard copy documents available for inspection and copying pursuant to Federal Rule of Civil Procedure 34.
e. In the event that a Party identifies hard copy documents for production, hard copy paper documents shall be scanned and will include, to the extent feasible, the following fields in the .DAT text file: PRODBEG, PRODEND, PAGECOUNT, FULLTEXT, and CUSTODIAN. The Parties agree to share equally in the cost of scanning hard copy documents.

f. For any documents that were scanned from hard copy paper documents, the Parties will produce images of hard copy documents unitized to the extent the original documents appeared to be units in physical form, with attachments following parents, and with information that identifies the holder (or container) structure, to the extent such structure exists and it is reasonable to do so. The Producing Party is not required to OCR (Optical Character Recognition) hard copy documents. If the Receiving Party requests that hard copy documents be OCR'ed, the Receiving Party shall bear the cost of such request, unless the Parties agree to split the cost so that each has an OCR'ed copy of the documents.

g. For ESI that the Producing Party produces in TIFF or JPEG format, the Producing Party shall electronically "burn" a legible, unique Bates number onto each page. The Bates number shall, to the extent reasonably possible: (1) identify the Producing Party; (2) maintain a constant length of nine numeric digits (including 0-padding) across the entire production; (3) contain only alphanumeric characters, no special characters or embedded spaces; and (4) be sequential within a given document. If the Bates number conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

h. For ESI that the Producing Party produces in TIFF format, if the Producing Party is producing the ESI subject to a claim that it is protected from disclosure under any confidentiality order entered in this matter, the Producing Party shall electronically "burn" the appropriate confidentiality designation onto each page of the document. If the designation conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

i. The Parties agree to produce e-mail families intact absent a privilege or work product claim, so long as each document contains responsive information; for all documents that contain a responsive, non-privileged attachment, the following fields will be produced (if available) as part of the metadata load file to indicate the parent child or parent/sibling relationship:

    i. Production Bates begin
    ii. Production Bates end
    iii. Production Bates begin attachment
    iv. Production Bates end attachment

Notwithstanding the aforementioned, all parties acknowledge that Debtor's Veritas Enterprise Vault system does not have the ability to search for the family members of responsive documents, and that Debtor does not have an obligation to manually search for non-responsive family members of otherwise responsive documents.

j. Unless otherwise agreed, all dynamic date and time fields, where such fields are processed to contain a value, and all metadata pertaining to dates and times, will be standardized to Universal Coordinated Time (UTC) or Universal Coordinated Time + 1 (UTC+1) **[TBD]**. The Parties understand and acknowledge that such standardization affects only dynamic fields and metadata values and does not affect, among other things, dates and times that are hard-coded text within a file. Dates and times that are hard-coded text within a file (for example, in an email

thread, dates and times of earlier messages that were converted to body text when subsequently replied to or forwarded; and in any file type, dates and times that are typed as such by users) will be produced as part of the document text in accordance with the provisions herein.

k. Excel spreadsheets shall be produced in native application format, unless redactions are required. The Producing Party will make reasonable efforts to provide a TIFF image of a slip sheet with the Bates number of documents produced natively in its production. The corresponding native file shall be named by using the same Bates number identified on the placeholder TIFF image. Any Excel spreadsheet that requires redaction will be produced in TIFF format only. Certain types of databases are dynamic in nature and may contain information that is irrelevant. These files are sometimes large and would, if rendered to TIFF images completely, produce thousands of pages that would have little utility to a reviewer without the associated database.

l. To the extent information from a structured data repository, such as a database, is requested, responsive information will be produced via a report or export of such data to an appropriate program that is agreeable to the requesting Party. The Parties agree to meet and confer before such data is exported.

G. Production Format Shall Not Alter Authenticity, Admissibility, or Privilege Status

a. No Party shall object that ESI produced pursuant to this Protocol is not authentic by virtue of the ESI having been converted to TIFF. The Parties otherwise reserve all rights regarding their ability to object to the authenticity of documents.

b. Nothing in this Protocol shall be construed to affect in any way the rights of any Party to make any objection as to the production, discoverability, admissibility, or confidentiality of documents and ESI.

c. Nothing in this Protocol shall constitute a waiver by any Party of any claim or privilege or other protection from discovery.

d. Nothing in this Protocol shall be interpreted to in any way limit a Producing Parties right and ability to review documents for responsiveness prior to production.

e. Nothing in the Protocol shall require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity.

Metadata List

File Name	Field Description	Sample Values
BegBates	Bates number for the first page of the document	ABC-0000001
EndBates	Bates number for the last page of the document	ABC-0000002
BegAttach	Bates number for the first page of parent document	ABC-0000001
EndAttach	Bates number for the last page of last attachment	ABC-0000005
Pages	Number of printed pages of the	2

	document	
Global Custodian	Custodian name produced in format: Lastname, Firstname.	Smith, Jane; Taylor, Michael
Confidentiality	Indicates if the document has been designated as "Confidential" or "Highly Confidential" pursuant to the applicable Protective Order	Confidential; Highly Confidential
Redacted	Descriptor for documents that have been redacted: "Yes" for redacted documents; "No" for non-redacted documents	Yes
Email Subject	Subject line of Email or	Text of the subject line
Document Subject	Subject value of documents	Text of the subject line
Date Sent	Date email sent	mm/dd/yyyy
Time Sent	Time email sent	hh:mm:ss AM
Date Last Modified	Date document was last modified	mm/dd/yyyy
Time Last Modified	Time document was last modified	hh:mm:ss AM
Date Created	Date document was first created	mm/dd/yyyy
To	All SMTP address of email recipients, separated by a semi-colon	Larry.murphy@email.com
From	All SMTP address of email author	Bart.cole@email.com
CC	All SMTP address of email "CC" recipients, separated by a semi-colon	Jim.James@gmail.com; bjones@yahoo.com
BCC	All SMTP address of email "BCC" recipients, separated by a semi-colon	mjones@gmail.com
Attach	The file name(s) of the documents attached to emails or embedded in files. Multiple files should be delimited by a semicolon	Filename.doc; filename2.doc
Title	The Title property of a file.	Title
Author	The Author property of a file	John Doe
MessageID	The email message ID	
FILENAME	The original name of the file excluding the path	C:\My Documents\letter.doc
DocType	Email, letter, memo, invoice, etc., if available	
Extension	The file extension	.doc

FileType	The actual file type of the document (Word, Excel, etc.) regardless of the file extension	
HashValue	MD5 Hash value of original file	
FilePath	The directory structure of the original file.	C:\My Documents\ letter.doc
PathToNative	The relative path to a produced native document	C:\VOL001\BATES000000001.xls
PathToText	The relative path to the accompanying text file	C:\VOL001\BATES000000001.txt
Volume	The production number or reference from the production	
Other Custodian	To the extent global deduplication is used, the field indicates the other custodians who also were in possession of the document at the time of collection	

Exhibit D

Reporting Requirements

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the

Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor <u>does not hold a direct or indirect interest</u>

A. **Covered Entities**: See **<u>Schedule A</u>** hereto. **<u>Schedule A</u>** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) <u>Stage 1 and Stage 2</u>: ordinary course determined by the CRO.

b) <u>Stage 3</u>: ordinary course determined by the Debtor.

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

a) Except as set forth in (b) and (c) below, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. Transactions involving Non-Discretionary Accounts

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

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[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VIII. Additional Reporting Requirements – All Stages (to the extent applicable)

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. **Shared Services**

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

EXHIBIT 2

January 9, 2020

HAND DELIVERY

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Resignation of James Dondero

To Whom It May Concern:

I, James Dondero, hereby give notice of my resignation as, and do resign as, the President and Chief Executive Officer of Highland Capital Management, L.P. (the "HCMLP").

My resignation is effective January 9, 2020.

Please ensure that HCMLP's records and any filings with any state or federal authorities are modified as necessary to reflect my resignation.

Sincerely,

James Dondero

January 9, 2020

HAND DELIVERY

Strand Advisors, Inc.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Resignation of James Dondero

To Whom It May Concern:

I, James Dondero, hereby give notice of my resignation as, and do resign as: (1) an officer of Strand Advisors, Inc. (the "Company"), in any and all capacities now or formerly held by me, including as president, and (2) a director of the Company, including as Chairman of the Board of Directors.

My resignation is effective January 9, 2020.

Please ensure that the Company's records and any filings with any state or federal authorities are modified as necessary to reflect my resignation.

Sincerely,

James Dondero

EXHIBIT 3

Minutes of the Meeting of the Independent Directors of Strand Advisors, Ltd.

January 9, 2020 - January 10, 2020

I. Meeting on January 9, 2020

At approximately 3:30 p.m. Central Time, the board of directors (the "Board") of Strand Advisors, Ltd. ("Strand") called their first meeting to order. Directors present in person were John Dubel, James Seery, Jr., and Russell Nelms. No directors were present telephonically.

Also in attendance on January 9, 2020, were (i) Jeff Pomerantz, Ira Kharasch, John Morris, and Greg Demo of Pachulski Stang Ziehl & Jones ("Pachulski"), (ii) Melissa Hayward of Hayward & Associates ("Hayward"), (iii) Brad Sharp, Fred Caruso, James Romey, and Jack Donoghue of Development Specialists, Inc. ("DSI"), and (iv) Isaac Leventon and David Klos of Highland Capital Management, L.P. ("HCMLP").

a. Introductions and Background

The directors commenced the meeting by introducing themselves and welcoming the guests in attendance at the meeting. Mr. Leventon, in house counsel at HCMLP, then provided a brief background of Strand's corporate governance. This presentation included a discussion of James Dondero's resignation as an officer and director of Strand in accordance with the settlement approved by the United States Bankruptcy Court for the Northern District of Texas (the "Court") on January 9, 2020, and the stipulation entered into by and among (i) HCMLP, (ii) the official committee of unsecured creditors in HCMLP's bankruptcy proceeding, (iii) Strand, and (iv) James Dondero, which was filed with the Court on January 9, 2020. The presentation also included an overview of Strand's current officers.

Mr. Leventon then provided a brief overview of HCMLP, HCMLP's employees and management, including Mr. Dondero's prior roles at HCMLP, and HCMLP's status as a registered investment advisor. The directors asked Mr. Leventon various questions concerning the current management of both HCMLP and Strand and a discussion occurred concerning how both HCMLP and Strand would be managed going forward. This discussion also included various questions about the funds and entities managed by HCMLP and how those funds are constituted.

b. DSI Presentation to the Board

Following this discussion, DSI began their presentation to the Board. A copy of DSI's presentation is attached to these minutes as Appendix I. DSI's presentation included, among other things, a detailed overview of HCMLP's balance sheet, cash flows, assets, notes receivable, and HCMLP's valuation process. During the course of DSI's presentation, the directors asked questions and engaged in lengthy dialogue with DSI concerning HCMLP's operations. These conversations also included substantial input from both Mr. Klos and Mr. Leventon of HCMLP and the lawyers from Pachulski and Hayward.

As part of this presentation, the Board and the guests present at the meeting also discussed HCMLP's proprietary trading through its and the Select Equity Fund's prime brokerage accounts with Jefferies, LLC (together, the "Prime Accounts"), and the margin requirements for those accounts. For this discussion, the Board invited Joseph Sowin to join the meeting. Mr. Sowin discussed with the Board and the guests present the various trading issues in the Prime Accounts, the margin calls that had been made to date, and how HCMLP had reacted to those margin calls. This discussion also include a discussion about how the protocols implemented in HCMLP's bankruptcy proceeding affected trading.

During this discussion, the Board adjourned the meeting briefly to hold an executive session. Following their return, Mr. Dubel moved to designate James Seery, Jr., as the Board's representative on issues involving trading in the Prime Accounts and to authorize Mr. Seery to approve any trades made in the Prime Accounts. Judge Nelms seconded, and the Board's resolution designating Mr. Seery as the Board's representative on issues involving trading in the Prime Accounts and authorizing Mr. Seery to approve any trades in the Prime Accounts was passed with unanimous approval.

Following this resolution, Mr. Sowin was excused from the meeting.

c. DSI Engagement

The Board next discussed the engagement of Mr. Sharp and DSI as HCMLP's chief restructuring officer. The Board reviewed DSI's engagement letter and unanimously approved the signing of the DSI engagement letter and the retention of Mr. Sharp and DSI.

d. Open Items and Next Steps

After the execution of the DSI engagement letter, the Board and the guests present at the meeting discussed, on a high level, the open items that needed to be addressed by the Board. Following this discussion, the Board voted to adjourn the meeting for the evening and to reconvene on January 10, 2020, to review the balance of the open items.

The meeting adjourned for the evening at approximately 6:30 p.m. Central Time.

II. Meeting on January 10, 2020

At approximately 7:30 a.m. Central Time, on January 10, 2020, the Board reconvened. Directors present in person were John Dubel, James Seery, Jr., and Russell Nelms. No directors were present telephonically.

Also in attendance on January 10, 2020, were (i) Jeff Pomerantz, Ira Kharasch, and Greg Demo of Pachulski, (ii) Brad Sharp, Fred Caruso, James Romey, and Jack Donoghue of DSI, and (iii) David Klos and Brian Collins of HCMLP.

a. DSI Presentation (Continued)

After the meeting was called to order, the Board asked DSI to continue their presentation. DSI, the Board, and the guests present at the meeting had a lengthy discussion on HCMLP's cash

flows, liquidity, and operating budget. As part of this discussion, Mr. Klos answered a series of questions posed by the Board and there was a lively discussion among all parties concerning HCMLP's operating cash flows, expenses, and liquidity.

b. Human Resources Presentation

Following this discussion, the Board asked for a presentation from Brian Collins, HCMLP's human resources director on certain employee issues, including employee compensation and bonuses. As part of this presentation, Mr. Collins responded to numerous questions from the Board, from DSI, and from attorneys from Pachulski. At the conclusion of this discussion, the Board requested additional information on employee bonuses, which Mr. Collins and DSI said they would provide.

Mr. Collins and Mr. Klos were excused from the meeting.

c. Scheduling of Meetings

The Board next briefly discussed with DSI and the attorneys from Pachulski a few additional open items and asked for separate meetings to be scheduled with the persons having pertinent information on such items.

The Board also scheduled their next meeting for Tuesday, January 14, 2020, and invited representatives from DSI and Pachulski to join that meeting.

Mr. Pomerantz, Mr. Kharasch, and Mr. Demo from Pachulski and DSI were excused from the meeting.

d. Meeting with Senior Management

The Board then had a closed door session with Scott Ellington, HCMLP's general counsel and other members of HMCLP's senior management.

The meeting adjourned at approximately 12:15 p.m. Central Time.

_____
John S. Dubel

_____
James P. Seery, Jr.

_____
Russell F. Nelms

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Mr. Collins and Mr. Klos were excused from the meeting.

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John S. Dubel

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James P. Seery, Jr.

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Mr. Collins and Mr. Klos were excused from the meeting.

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The Board next briefly discussed with DSI and the attorneys from Pachulski a few additional open items and asked for separate meetings to be scheduled with the persons having pertinent information on such items.

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Mr. Pomerantz, Mr. Kharasch, and Mr. Demo from Pachulski and DSI were excused from the meeting.

d. Meeting with Senior Management

The Board then had a closed door session with Scott Ellington, HCMLP's general counsel and other members of HMCLP's senior management.

The meeting adjourned at approximately 12:15 p.m. Central Time.

_____
John S. Dubel

_____
James P. Seery, Jr.

_____
Russell F. Nelms

EXHIBIT 4

From: James Seery [mailto:jpseeryjr@gmail.com]
Sent: Friday, October 02, 2020 5:52 PM
To: Jim Dondero <JDondero@HighlandCapital.com>
Cc: John Dubel <jdubel@dubel.com>; Russell Nelms <rfargar@yahoo.com>
Subject: HCMLP Roles

Jim:

Further to our discussion on September 24, Michael Lynn has advised the Pachulski firm that you or an entity controlled or affiliated with you will be objecting to the HCMLP settlement with Acis and Josh Terry. In addition, one of your trusts has filed a claim against HCMLP related to the management of Multi-Strat.

In light of these facts, we believe it is time for you to resign your portfolio manager position at HCMLP, any remaining roles at Multi-Strat, and certain other positions at entities managed or controlled by HCMLP. As you stated on our call, I agree that over the last few months the PM role has been in title only with most ultimate authority vested in the Board. Nonetheless, it is untenable for you to have a role at the Debtor or the major funds managed by the Debtor while at the same time taking positions in court contrary to what the Board has determined is in the best interest of the estate.

I appreciate your desire to challenge the Acis agreement and obtain final court determination on its reasonableness. Hopefully when that hearing is complete and there is a determination by the court, we will have an opportunity to consider a larger settlement of the case with you. But until the legal fighting is resolved, the Board believes it is in the best interests of the estate, its employees, and all other interested parties that you not be on both sides of the issues, even if in name only.

Please let me know if it preferable to you to resign or if removal by the board at this time is better. Specifically, we would like you to resign or be removed from the portfolio manager role at HCMLP and all roles at the Multi-Strat/Credit Opportunities entities.

I look forward continuing our discussions to resolve the case. If we are unable to do that, I am confident that together we can engineer a smooth and efficient transition that facilitates value maximization for the estate and all of its stakeholders.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

EXHIBIT 5

From: Jim Dondero <JDondero@HighlandCapital.com>
Date: October 9, 2020 at 4:43:44 PM EDT
To: Jim Seery <jpseeryjr@gmail.com>
Cc: John Dubel <jdubel@dubel.com>, Russell Nelms <rfargar@yahoo.com>, "D. Lynn (Judge Lynn)" <michael.lynn@bondsellis.com>
Subject: Re: HCMLP Roles

Counsel has advised me that according to January 9 order, I must at your request resign from Highland. So Therefore, based on your request below I resign.

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Oct 2, 2020, at 5:52 PM, James Seery <jpseeryjr@gmail.com> wrote:

Jim:

Further to our discussion on September 24, Michael Lynn has advised the Pachulski firm that you or an entity controlled or affiliated with you will be objecting to the HCMLP settlement with Acis and Josh Terry. In addition, one of your trusts has filed a claim against HCMLP related to the management of Multi-Strat.

In light of these facts, we believe it is time for you to resign your portfolio manager position at HCMLP, any remaining roles at Multi-Strat, and certain other positions at entities managed or controlled by HCMLP. As you stated on our call, I agree that over the last few months the PM role has been in title only with most ultimate authority vested in the Board. Nonetheless, it is untenable for you to have a role at the Debtor or the major funds managed by the Debtor while at the same time taking positions in court contrary to what the Board has determined is in the best interest of the estate.

I appreciate your desire to challenge the Acis agreement and obtain final court determination on its reasonableness. Hopefully when that hearing is complete and there is a determination by the court, we will have an opportunity to consider a larger settlement of the case with you. But until the legal fighting is resolved, the Board believes it is in the best interests of the estate, its employees, and all other interested parties that you not be on both sides of the issues, even if in name only.

Please let me know if it preferable to you to resign or if removal by the board at this time is better. Specifically, we would like you to resign or be removed from the portfolio manager role at HCMLP and all roles at the Multi-Strat/Credit Opportunities entities.

I look forward continuing our discussions to resolve the case. If we are unable to do that, I am confident that together we can engineer a smooth and efficient transition that facilitates value maximization for the estate and all of its stakeholders.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

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EXHIBIT 6

NEXPOINT

October 16, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to reiterate the concerns we have expressed about the scope and maintenance of quality of the services currently being provided by Highland Capital Management, L.P. ("HCMLP") to NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") under their respective shared services agreements (together, the "Shared Services Agreements" or "Agreements"). As you know, the Shared Services Agreements obligate HCMLP to provide a variety of investment, administrative, legal, and back-office services to the Advisors. These responsibilities on the part of HCMLP are critical to the Advisors' ability to provide top-notch advisory services to the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they have advisory contracts.

In particular, the refusal by HCMLP to allow its employees to work on certain matters that jointly affect HCMLP and the Advisors has resulted in the Advisors incurring additional third-party costs and expenses to procure services that should rightfully be performed by HCMLP under the Shared Services Agreements. These third-party services, for which the Advisors are already compensating HCMLP under the Agreements, represent supplemental costs and expenses that the Advisors should not be obligated to pay.

Additionally, it is our understanding that all HCMLP employees will be given notice that their employment will be terminated effective as of December 31, 2020. If these employees are terminated, or are informed that they will be terminated and elect to resign, HCMLP will no longer be able to carry out its duties and obligations under the Agreements. We would thus like to request assurances from HCMLP that if elects to terminate its employees, it will work in good faith with the Advisors to put in place an orderly transition plan. Such a plan would provide for an effective transfer of services to the Advisors, seek to maximize employee retention, and permit the Advisors (or their affiliates) to hire any and all HCMLP employees, which would ensure the delivery of uninterrupted services previously provided by HCMLP under the Agreements.

Finally, we understand that HCMLP is contemplating the sale of certain assets held in several CLOs, the interests in which are also owned by the Advisors and/or the Funds advised by

NexPoint, HCMFA and/or their affiliates. The sale of such assets has the potential to negatively affect the valuation of the Funds. Specifically, a rush to sell these assets at fire sale prices could result in both the Funds and HCMLP not realizing their full value. Accordingly, we hereby request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

We feel certain that our mutually shared goals are to minimize disruption and costs, to prevent the dislocation of services to the Advisors and the Funds, and to maximize returns for Funds and accounts advised by NexPoint, HCMFA, HCMLP, or any of their affiliates. We believe that through working cooperatively we can achieve these goals.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

EXHIBIT 7

NEXPOINT

November 24, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to follow up on our letter dated October 16, 2020 and to reiterate the concerns we have expressed about the sale of certain assets held in several CLOs, the interests in which are also owned by the NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") and/or the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they and their affiliates have advisory contracts. As we have previously advised, the sale of such assets has the potential to negatively affect the valuation of the Funds, and a rush to sell these assets at fire-sale prices could result in both the Funds and Highland Capital Management, L.P. ("HCMLP") not realizing their full value. In addition, with recent CLO quarterly payments being made and potential upside for the remaining securities held by the CLOs, sales of these securities at this time could further negatively impact the valuation. We have previously requested that no CLO assets be sold without prior notice to and prior consent from the Advisors. We understand that Charitable DAF HoldCo, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

Dustin Norris

cc: Thomas Surgent (tsurgent@highlandcapital.com)
John Dubel (jdubel@dubel.com)
Russell Nelms (rfargar@yahoo.com)

EXHIBIT 8

From: Jim Dondero <JDondero@highlandcapital.com>
Date: November 27, 2020 at 2:46:35 AM EST
To: Thomas Surgent <TSurgent@highlandcapital.com>
Subject: Fwd: SKY equity

I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational.
You might want to remind him (and yourself) that the chief compliance officer has personal liability.

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

Begin forwarded message:

From: Joe Sowin <JSowin@highlandcapital.com>
Date: November 24, 2020 at 3:58:24 PM EST
To: Jim Dondero <JDondero@highlandcapital.com>
Cc: Matt Pearson <MPearson@highlandcapital.com>, Hunter Covitz <HCovitz@highlandcapital.com>, Compliance <Compliance@hcmlp.com>
Subject: Re: SKY equity

+ Conpliance
We did not know that but Understood going forward.

Compliance should never have approved this order then - will coordinate with them Jim

Post: Please block all orders from Hitting the trading desk for the fungus Jim mentioned.

Happy to discuss if needed.
Joe

On Nov 24, 2020, at 2:29 PM, Jim Dondero <JDondero@highlandcapital.com> wrote:

HFAM and DAF has instructed Highland in writing not to sell any CLO underlying assets..... there is potential liability, don't do it again please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 3:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

I've cxl'd both SKY and AVYA sales – only completed a small amount of each

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

From: Jim Dondero
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510
hcovitz@highlandcapital.com | www.highlandcapital.com

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EXHIBIT 9

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TELEPHONE: 302/652 4100

FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory V. Demo
212-561- 7730
gdemo@pszjlaw.com

December 3, 2020

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111

Dear James:

Reference is made to the following recent communications (collectively, the "***Communications***"): (i) the letter, dated October 16, 2020, from Dustin Norris of NexPoint Advisors, L.P. ("***NexPoint***") to James Seery of Highland Capital Management, L.P. ("***HCMLP***"), (ii) the letter, dated November 24, 2020, from Dustin Norris of NexPoint to James Seery of HCMLP, and (iii) the email, dated November 25, 2020, at 6:48pm, from you to me.

We understand that each of NexPoint and Highland Capital Management Fund Advisors, L.P. ("***HCMFA***," and together with NexPoint, the "***Advisors***") is an investment adviser directly or indirectly controlled by James Dondero, and that each such Advisor is no longer an affiliate of HCMLP.

According to the Communications, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in pooled collateralized loan obligation vehicles ("***CLOs***") for which HCMLP serves as portfolio manager or servicer.

In each of the Communications, NexPoint or its counsel "requests" that HCMLP refrain from selling any CLO assets without notice and prior consent from the Advisors. This request is based on the Advisors' apparent belief that the sale of assets by the CLOs has the potential to negatively affect the valuation of the funds that hold their interests by causing the CLOs not to realize "their full value".

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The Advisors do not have the right, either under the documents governing the CLOs or applicable law, to instruct HCMLP with respect to specific portfolio management decisions. As portfolio manager or servicer of the CLOs, HCMLP has contractual and fiduciary duties to each CLO as a whole, and not to any investor in any CLO. If you disagree, please provide the authority that supports your position.

Specifically, please note the following:

- HCMLP in its role as servicer, portfolio manager, or equivalent of each CLO has full discretion to make decisions to purchase and sell assets on behalf of the CLO subject only to the terms of its service agreement, indenture, and the trustees/directors of each respective CLO.

- The sole client of HCMLP is the CLO issuer, and not any individual shareholder or noteholder of the CLO.

- All decisions made by HCMLP in its capacity as servicer, portfolio manager, or equivalent of each CLO, including without limitation the timing and execution of any sale transaction, are made by HCMLP taking into account such factors as HCMLP determines to be appropriate and are not subject to the requests or instructions of any investor or other party.

- There is no legal basis pursuant to which the holders of preferred shares or notes in the CLOs may influence the investment decisions of HCMLP or the CLO.

For these reasons, NexPoint, HCMFA, and their affiliates, including Mr. Dondero, are hereby advised to cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs.

HCMLP reserves and does not waive all of its rights at law and in equity.

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

Please direct all further questions to me.

Sincerely,

Gregory V. Demo

cc: HCMLP Board of Directors (*by e-mail*)
Jeffrey Pomerantz (*by e-mail*)
John Morris (*by e-mail*)

EXHIBIT 10

PACHULSKI STANG ZIEHL & JONES

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FACSIMILE: 212/561 7777

WEB www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 4, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones, LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Dear Judge Lynn:

As you know, my firm represents Highland Capital Management, L.P. ("***HCMLP***"). HCMLP filed bankruptcy on October 16, 2019, and it is currently under the protection of the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj11.

As you also know, HCMLP is currently managed by the board of independent directors (the "***Board***") at Strand Advisors, Inc., HCMLP's general partner, and James P. Seery, Jr., HCMLP's chief executive officer and chief restructuring officer. Your client, James Dondero, resigned from HCMLP at the direction of the Board in October 2020 and has no authority or oversight over HCMLP or the decisions that HCMLP makes with respect to assets under its management.

On November 24, 2020, Mr. Seery, in his capacity as the chief executive officer of HCMLP, directed Hunter Covitz, an HCMLP employee, to cause the sale of certain assets held by certain pooled collateralized loan obligation vehicles ("***CLOs***") for which HCMLP serves as portfolio manager or servicer. Before such sale could be executed, your client, Mr. Dondero, emailed Mr. Covitz, among others, and directed them to halt the sale and to disobey Mr. Seery's direct order to sell. At your client's direction, Mr. Covitz and others

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

stopped the sale and refused to comply with Mr. Seery's direction. Copies of the relevant correspondence are attached hereto as Appendix A. HCMLP also received the following letters: (i) the letter, dated October 16, 2020, from Dustin Norris of NexPoint Advisors, L.P. ("***NexPoint***") to James Seery of HCMLP and (ii) the letter, dated November 24, 2020, from Dustin Norris of NexPoint to James Seery of HCMLP. Copies of these letters are attached as Appendix B. These emails and letters are collectively referred to as the "***Communications***".

We understand that each of NexPoint and Highland Capital Management Fund Advisors, L.P. ("***HCMFA***," and together with NexPoint, the "***Advisors***") is an investment adviser directly or indirectly controlled by James Dondero, and that each such Advisor is no longer an affiliate of HCMLP.

According to the Communications, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in certain of the CLOs.

In addition to Mr. Dondero's correspondence nullifying, impeding, and other contradicting Mr. Seery's order, in certain of the Communications, NexPoint or its counsel "requests" that HCMLP refrain from selling any CLO assets without notice and prior consent from the Advisors. This request is based on the Advisors' apparent belief that the sale of assets by the CLOs has the potential to negatively affect the valuation of the funds that hold their interests by causing the CLOs not to realize "their full value".

Neither Mr. Dondero nor the Advisors has the right, either under the documents governing the CLOs or applicable law, to instruct HCMLP with respect to specific portfolio management decisions. As portfolio manager or servicer of the CLOs, HCMLP has contractual and fiduciary duties to each CLO as a whole, and not to any investor in any CLO. If you disagree, please provide the authority that supports your position.

Specifically, please note the following:

- HCMLP in its role as servicer, portfolio manager, or equivalent of each CLO has full discretion to make decisions to purchase and sell assets on behalf of the

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CLO subject only to the terms of its service agreement, indenture, and the trustees/directors of each respective CLO.

- The sole client of HCMLP is the CLO issuer, and not any individual shareholder or noteholder of the CLO.
- All decisions made by HCMLP in its capacity as servicer, portfolio manager, or equivalent of each CLO, including without limitation the timing and execution of any sale transaction, are made by HCMLP taking into account such factors as HCMLP determines to be appropriate and are not subject to the requests or instructions of any investor or other party.
- There is no legal basis pursuant to which the holders of preferred shares or notes in the CLOs may influence the investment decisions of HCMLP or the CLO.

Your client's actions actively interfered with the management of HCMLP's bankruptcy estate and the property of such estate. Your client's actions also violated the Bankruptcy Code and the order entered by Judge Jernigan on January 9, 2020 [Docket No. 339].

For these reasons, Mr. Dondero and his affiliates and related parties, including NexPoint, HCMFA, and their affiliates, are hereby advised to cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP, its officers, and employees regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs.

On December 3, 2020, a letter to the same effect was sent to counsel for the Advisors.

HCMLP reserves and does not waive all of its rights at law and in equity.

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES

Sincerely,

J. Pomerantz /gvd

Jeffrey N. Pomerantz

Enclosures
cc: HCMLP Board of Directors
John Morris
Gregory Demo

APPENDIX A

Gregory V. Demo

From: James Seery <jpseeryjr@gmail.com>
Sent: Tuesday, November 24, 2020 4:32 PM
To: Hunter Covitz
Cc: Thomas Surgent; Gregory V. Demo
Subject: FW: SKY equity see below from Dondero

Hunter:

I just received a copy of this email. Jim Dondero has no authority over the HCMLP managed CLOs. The purported direction is inappropriate, violative of the Bankruptcy Court orders, and of no effect.

I am the CEO and CRO of HCMLP. HCMLP has full authority to manage the positions in the CLOs. If I direct you to make a sale, please do so. If you cannot, please advise me immediately and explain why.

I will call you at 9:00am ET tomorrow to discuss this issue.

Jim

From: Jim Dondero [mailto:JDondero@HighlandCapital.com]
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

HUNTER COVITZ | HEAD OF STRUCTURED PRODUCTS

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510
hcovitz@highlandcapital.com | www.highlandcapital.com

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Gregory V. Demo

From: Hunter Covitz <HCovitz@HighlandCapital.com>
Sent: Tuesday, November 24, 2020 4:41 PM
To: Jim Seery
Cc: Thomas Surgent; Gregory V. Demo
Subject: RE: AVYA sell-See below comment from Dondero

We sold the following .. just put pencils on the rest down near the end of the trading day to revisit tomorrow.

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

Hunter Covitz
Cell: 214.394.5510

From: James Seery <jpseeryjr@gmail.com>
Sent: Tuesday, November 24, 2020 3:35 PM
To: Hunter Covitz <HCovitz@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Greg Demo <gdemo@pszjlaw.com>
Subject: FW: AVYA sell-See below comment from Dondero
Importance: High

Hunter:

The my prior message applies to this chain as well.

Did you get these and the SKY sales off today? If so, please provide me with a full report on the prints.

Jim

From: Jim Dondero [mailto:JDondero@HighlandCapital.com]
Sent: Tuesday, November 24, 2020 2:18 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: AVYA sell

Why? Let's not please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 1:19 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: AVYA sell

Please sell 213k shares (~$3.8mm) of Avaya in the high 17/18 current context. Please respond with other interest.

Fund	CLO
Aberdeen CLO	4,000
Brentwood CLO Ltd	20,000
Eastland CLO, Ltd.	50,000
Grayson CLO, Ltd.	38,000
Greenbriar CLO LTD	34,000
Red River CLO, Ltd.	5,000
Rockwall II	6,000
South Fork CLO Ltd.	8,000
Stratford CLO, Ltd.	23,000
Westchester CLO, Ltd.	25,000
	213,000.00

HUNTER COVITZ | HEAD OF STRUCTURED PRODUCTS

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510

hcovitz@highlandcapital.com | www.highlandcapital.com

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Gregory V. Demo

From: James Seery <jpseeryjr@gmail.com>
Sent: Friday, November 27, 2020 10:19 AM
To: Gregory V. Demo; Jeff Pomerantz
Cc: John Dubel; Russell Nelms
Subject: FW: SKY equity

[redacted]

Jim Seery
[redacted]

From: Thomas Surgent <TSurgent@HighlandCapital.com>
Date: Friday, November 27, 2020 at 9:28 AM
To: Jim Seery <jpseeryjr@gmail.com>
Subject: Fwd: SKY equity

Please see below. We should discuss

Begin forwarded message:

> **From:** Jim Dondero <JDondero@highlandcapital.com>
> **Date:** November 27, 2020 at 2:46:35 AM EST
> **To:** Thomas Surgent <TSurgent@highlandcapital.com>
> **Subject: Fwd: SKY equity**
>
> I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational.
> You might want to remind him (and yourself) that the chief compliance officer has personal liability.
>
> James Dondero
> Highland Capital Management
> 972-628-4100
> jdondero@highlandcapital.com
> www.highlandcapital.com
>
> Begin forwarded message:
>
> > **From:** Joe Sowin <JSowin@highlandcapital.com>
> > **Date:** November 24, 2020 at 3:58:24 PM EST
> > **To:** Jim Dondero <JDondero@highlandcapital.com>

Cc: Matt Pearson <MPearson@highlandcapital.com>, Hunter Covitz <HCovitz@highlandcapital.com>, Compliance <Compliance@hcmlp.com>
Subject: Re: SKY equity

+ Conpliance
We did not know that but Understood going forward.

Compliance should never have approved this order then - will coordinate with them Jim

Post: Please block all orders from Hitting the trading desk for the fungus Jim mentioned.

Happy to discuss if needed.
Joe

On Nov 24, 2020, at 2:29 PM, Jim Dondero <JDondero@highlandcapital.com> wrote:

HFAM and DAF has instructed Highland in writing not to sell any CLO underlying assets..... there is potential liability, don't do it again please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 3:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

I've cxl'd both SKY and AVYA sales – only completed a small amount of each

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

From: Jim Dondero
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

HUNTER COVITZ | HEAD OF STRUCTURED PRODUCTS

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
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hcovitz@highlandcapital.com | www.highlandcapital.com

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APPENDIX B

NEXPOINT

October 16, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to reiterate the concerns we have expressed about the scope and maintenance of quality of the services currently being provided by Highland Capital Management, L.P. ("HCMLP") to NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") under their respective shared services agreements (together, the "Shared Services Agreements" or "Agreements"). As you know, the Shared Services Agreements obligate HCMLP to provide a variety of investment, administrative, legal, and back-office services to the Advisors. These responsibilities on the part of HCMLP are critical to the Advisors' ability to provide top-notch advisory services to the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they have advisory contracts.

In particular, the refusal by HCMLP to allow its employees to work on certain matters that jointly affect HCMLP and the Advisors has resulted in the Advisors incurring additional third-party costs and expenses to procure services that should rightfully be performed by HCMLP under the Shared Services Agreements. These third-party services, for which the Advisors are already compensating HCMLP under the Agreements, represent supplemental costs and expenses that the Advisors should not be obligated to pay.

Additionally, it is our understanding that all HCMLP employees will be given notice that their employment will be terminated effective as of December 31, 2020. If these employees are terminated, or are informed that they will be terminated and elect to resign, HCMLP will no longer be able to carry out its duties and obligations under the Agreements. We would thus like to request assurances from HCMLP that if elects to terminate its employees, it will work in good faith with the Advisors to put in place an orderly transition plan. Such a plan would provide for an effective transfer of services to the Advisors, seek to maximize employee retention, and permit the Advisors (or their affiliates) to hire any and all HCMLP employees, which would ensure the delivery of uninterrupted services previously provided by HCMLP under the Agreements.

Finally, we understand that HCMLP is contemplating the sale of certain assets held in several CLOs, the interests in which are also owned by the Advisors and/or the Funds advised by

NexPoint, HCMFA and/or their affiliates. The sale of such assets has the potential to negatively affect the valuation of the Funds. Specifically, a rush to sell these assets at fire sale prices could result in both the Funds and HCMLP not realizing their full value. Accordingly, we hereby request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

We feel certain that our mutually shared goals are to minimize disruption and costs, to prevent the dislocation of services to the Advisors and the Funds, and to maximize returns for Funds and accounts advised by NexPoint, HCMFA, HCMLP, or any of their affiliates. We believe that through working cooperatively we can achieve these goals.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

NEXPOINT

November 24, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to follow up on our letter dated October 16, 2020 and to reiterate the concerns we have expressed about the sale of certain assets held in several CLOs, the interests in which are also owned by the NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") and/or the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they and their affiliates have advisory contracts. As we have previously advised, the sale of such assets has the potential to negatively affect the valuation of the Funds, and a rush to sell these assets at fire-sale prices could result in both the Funds and Highland Capital Management, L.P. ("HCMLP") not realizing their full value. In addition, with recent CLO quarterly payments being made and potential upside for the remaining securities held by the CLOs, sales of these securities at this time could further negatively impact the valuation. We have previously requested that no CLO assets be sold without prior notice to and prior consent from the Advisors. We understand that Charitable DAF HoldCo, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

Dustin Norris

cc: Thomas Surgent (tsurgent@highlandcapital.com)
John Dubel (jdubel@dubel.com)
Russell Nelms (rfargar@yahoo.com)

EXHIBIT 11

PROMISSORY NOTE

$100,000 November 27, 2013

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED THOUSAND and 00/100 Dollars ($100,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

EXHIBIT 12

PROMISSORY NOTE

$2,500,000 October 12, 2017

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT 13

PROMISSORY NOTE

$3,825,000 February 2, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of THREE MILLION, EIGHT HUNDRED AND TWENTY-FIVE THOUSAND and 00/100 Dollars ($3,825,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.66%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other

amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 14

PROMISSORY NOTE

$150,000.00 March 28, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars ($150,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.88 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

EXHIBIT 15

PROMISSORY NOTE

$200,000.00 June 25, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO HUNDRED THOUSAND and 00/100 Dollars ($200,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (3.05 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 27

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 28 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346 thru Vol. 27	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241 129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243 130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253 131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267 132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272 133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279 134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285 135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288 136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293 139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: john.wilson@bondsellis.com
Email: clay.taylor@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT 16

PROMISSORY NOTE

$2,500,000 August 1, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 17

PROMISSORY NOTE

$2,500,000 August 13, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 18

EXHIBIT 19

PROMISSORY NOTE

$2,400,000.00 May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars ($2,400,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

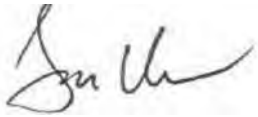

FRANK WATERHOUSE

EXHIBIT 20

PROMISSORY NOTE

$5,000,000.00 May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars ($5,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

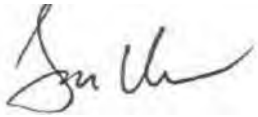

FRANK WATERHOUSE

EXHIBIT 21

PROMISSORY NOTE

$400,000 May 29, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR HUNDRED THOUSAND and 00/100 Dollars ($400,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

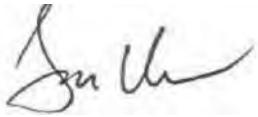

FRANK WATERHOUSE

EXHIBIT 22

PROMISSORY NOTE

$150,000 June 26, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars ($150,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.37%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

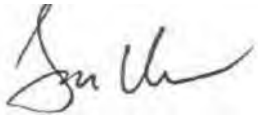

FRANK WATERHOUSE

EXHIBIT 23

PROMISSORY NOTE

$900,000 September 25, 2019

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of NINE HUNDRED THOUSAND and 00/100 Dollars ($900,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

EXHIBIT 24

December 3, 2020

James Dondero
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Demand on Promissory Notes:

Dear Mr. Dondero,

You entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
2/2/18	$3,825,000	$3,687,269.71	$21,003.70	$3,708,273.41
8/1/18	$2,500,000	$2,619,929.42	$27,950.70	$2,647,880.12
8/13/18	$2,500,000	$2,622,425.61	$25,433.94	$2,647,859.55
TOTALS	**$16,725,000**	**$8,929,624.74**	**$74,388.33**	**$9,004,013.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $9,004,013.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain your obligation.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
D. Michael Lynn

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 25

December 3, 2020

Highland Capital Management Fund Advisors, LP
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
5/2/2019	$2,400,000	$2,457,517.15	$35,884.46	$2,493,401.61
5/3/2019	$5,000,000	$5,119,827.40	$74,424.05	$5,194,251.45
TOTALS	**$7,400,000**	**$7,577,344.55**	**$110,308.52**	**$7,687,653.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

[1] Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 26

December 3, 2020

HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)
c/o NexPoint Advisors, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James Dondero

Re: Demand on Promissory Notes:

Dear Mr. Dondero,

HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("Maker") entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
11/27/13	$100,000	$171,542.00	$526.10	$172,068.10
10/12/17	$2,500,000	$3,149,919.12	$41,423.60	$3,191,342.72
10/15/18	$750,000	$874,977.53	$10,931.23	$885,908.76
9/25/19	$900,000	$750,279.14	$12,662.24	$762,941.38
TOTALS	**$4,250,000**	**$4,946,717.79**	**$65,543.17**	**$5,012,260.96**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $5,012,260.96, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 27

December 3, 2020

Highland Capital Management Services, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Services, Inc. ("Maker") entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
3/28/18	$150,000	$158,776.59	$3,257.32	$162,033.91
6/25/18	$200,000	$212,403.27	$2,999.54	$215,402.81
5/29/19	$400,000	$409,586.19	$5,256.62	$414,842.81
6/26/19	$150,000	$153,564.74	$1,675.16	$155,239.90
TOTALS	**$900,000**	**$934,330.79**	**$13,188.64**	**$947,519.43**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $947,519.43, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 28

JD

Jim

office until Monday and will speak with me then.

From Lynn

Tue, Nov 24, 10:39 AM

Update on UBS please

Tue, Nov 24, 1:01 PM

No update. Will let you know if something changes. Assume that you and Lynn are pushing on the Pot plan. Thanks

Tied up this afternoon

Delivered

Today 5:26 PM

Be careful what you do - last warning.

iMessage

EXHIBIT 29

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

LOS ANGELES, CA
SAN FRANCISCO, CA
WILMINGTON, DE
NEW YORK, NY

10100 SANTA MONICA BLVD.
13th FLOOR
LOS ANGELES
CALIFORNIA 90067

TELEPHONE: 310/277 6910

FACSIMILE: 310/201 0760

SAN FRANCISCO
150 CALIFORNIA STREET
15th FLOOR
SAN FRANCISCO
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000
FACSIMILE: 415/263 7010

DELAWARE
919 NORTH MARKET STREET
17th FLOOR
P.O. BOX 8705
WILMINGTON
DELAWARE 19899-8705

TELEPHONE: 302/652 4100
FACSIMILE: 302/652 4400

NEW YORK
780 THIRD AVENUE
34th FLOOR
NEW YORK
NEW YORK 10017-2024

TELEPHONE: 212/561 7700
FACSIMILE: 212/561 7777

WEB: www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 4, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones, LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Dear Judge Lynn:

I write to follow up on our recent communications concerning Mr. Dondero's written threat to Jim Seery and related matters.

As we have informed you, on December 3, just hours after HCMLP sent letters demanding payment on a series of notes tendered by Mr. Dondero and certain of his affiliated entities, Mr. Dondero sent a text message to Mr. Seery that stated "Be careful what you do – last warning." This threat was, and remains, completely unacceptable.

Mr. Dondero called Mr. Seery earlier today, ostensibly to discuss the "pot plan." Early in the call, Mr. Dondero suggested that "the lawyers" would address his threatening message and failed to disavow or apologize for the text, saying only (at the end of the conversation) that he didn't mean to threaten any physical harm.

Mr. Seery and the other members of the Independent Board are disturbed by Mr. Dondero's explicit threat and his lack of contrition. Because Mr. Dondero does not seem to appreciate the seriousness of this matter, the Board has instructed us to prepare an emergency motion seeking injunctive relief, including enjoining Mr. Dondero from communicating directly with any Board member or making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents.

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

In the interim, the Debtor demands that you instruct Mr. Dondero to cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero.

HCMLP reserves and does not waive all of its rights at law and in equity. Please direct all further questions to me.

Sincerely,

J. Pomerantz /bvd

Jeffrey N. Pomerantz

cc: HCMLP Board of Directors (*by e-mail*)
Jeffrey Pomerantz (*by e-mail*)
John Morris (*by e-mail*)
Gregory Demo (*by e-mail*)

EXHIBIT B

NEXPOINT

October 16, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to reiterate the concerns we have expressed about the scope and maintenance of quality of the services currently being provided by Highland Capital Management, L.P. ("HCMLP") to NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") under their respective shared services agreements (together, the "Shared Services Agreements" or "Agreements"). As you know, the Shared Services Agreements obligate HCMLP to provide a variety of investment, administrative, legal, and back-office services to the Advisors. These responsibilities on the part of HCMLP are critical to the Advisors' ability to provide top-notch advisory services to the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they have advisory contracts.

In particular, the refusal by HCMLP to allow its employees to work on certain matters that jointly affect HCMLP and the Advisors has resulted in the Advisors incurring additional third-party costs and expenses to procure services that should rightfully be performed by HCMLP under the Shared Services Agreements. These third-party services, for which the Advisors are already compensating HCMLP under the Agreements, represent supplemental costs and expenses that the Advisors should not be obligated to pay.

Additionally, it is our understanding that all HCMLP employees will be given notice that their employment will be terminated effective as of December 31, 2020. If these employees are terminated, or are informed that they will be terminated and elect to resign, HCMLP will no longer be able to carry out its duties and obligations under the Agreements. We would thus like to request assurances from HCMLP that if elects to terminate its employees, it will work in good faith with the Advisors to put in place an orderly transition plan. Such a plan would provide for an effective transfer of services to the Advisors, seek to maximize employee retention, and permit the Advisors (or their affiliates) to hire any and all HCMLP employees, which would ensure the delivery of uninterrupted services previously provided by HCMLP under the Agreements.

Finally, we understand that HCMLP is contemplating the sale of certain assets held in several CLOs, the interests in which are also owned by the Advisors and/or the Funds advised by

NexPoint, HCMFA and/or their affiliates. The sale of such assets has the potential to negatively affect the valuation of the Funds. Specifically, a rush to sell these assets at fire sale prices could result in both the Funds and HCMLP not realizing their full value. Accordingly, we hereby request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

We feel certain that our mutually shared goals are to minimize disruption and costs, to prevent the dislocation of services to the Advisors and the Funds, and to maximize returns for Funds and accounts advised by NexPoint, HCMFA, HCMLP, or any of their affiliates. We believe that through working cooperatively we can achieve these goals.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

EXHIBIT C

NEXPOINT

November 24, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to follow up on our letter dated October 16, 2020 and to reiterate the concerns we have expressed about the sale of certain assets held in several CLOs, the interests in which are also owned by the NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") and/or the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they and their affiliates have advisory contracts. As we have previously advised, the sale of such assets has the potential to negatively affect the valuation of the Funds, and a rush to sell these assets at fire-sale prices could result in both the Funds and Highland Capital Management, L.P. ("HCMLP") not realizing their full value. In addition, with recent CLO quarterly payments being made and potential upside for the remaining securities held by the CLOs, sales of these securities at this time could further negatively impact the valuation. We have previously requested that no CLO assets be sold without prior notice to and prior consent from the Advisors. We understand that Charitable DAF HoldCo, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

Dustin Norris

cc: Thomas Surgent (tsurgent@highlandcapital.com)
John Dubel (jdubel@dubel.com)
Russell Nelms (rfargar@yahoo.com)

EXHIBIT D

From: Jim Dondero <JDondero@highlandcapital.com>
Date: November 27, 2020 at 2:46:35 AM EST
To: Thomas Surgent <TSurgent@highlandcapital.com>
Subject: Fwd: SKY equity

I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational.
You might want to remind him (and yourself) that the chief compliance officer has personal liability.

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

Begin forwarded message:

From: Joe Sowin <JSowin@highlandcapital.com>
Date: November 24, 2020 at 3:58:24 PM EST
To: Jim Dondero <JDondero@highlandcapital.com>
Cc: Matt Pearson <MPearson@highlandcapital.com>, Hunter Covitz <HCovitz@highlandcapital.com>, Compliance <Compliance@hcmlp.com>
Subject: Re: SKY equity

+ Conpliance
We did not know that but Understood going forward.

Compliance should never have approved this order then - will coordinate with them Jim

Post: Please block all orders from Hitting the trading desk for the fungus Jim mentioned.

Happy to discuss if needed.
Joe

On Nov 24, 2020, at 2:29 PM, Jim Dondero <JDondero@highlandcapital.com> wrote:

HFAM and DAF has instructed Highland in writing not to sell any CLO underlying assets..... there is potential liability, don't do it again please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 3:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

I've cxl'd both SKY and AVYA sales – only completed a small amount of each

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

From: Jim Dondero
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510
hcovitz@highlandcapital.com | www.highlandcapital.com

PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

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EXHIBIT E

JD

Jim

office until Monday and will speak with me then.

From Lynn

Tue, Nov 24, 10:39 AM

Update on UBS please

Tue, Nov 24, 1:01 PM

No update. Will let you know if something changes. Assume that you and Lynn are pushing on the Pot plan. Thanks

Tied up this afternoon

Delivered

Today 5:26 PM

Be careful what you do - last warning.

iMessage

EXHIBIT F

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS DIRECTED TO JAMES DONDERO

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034, incorporating by reference Federal Rules of Civil Procedure 26 and 36, Highland Capital Management, L.P., the Plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case ("Bankruptcy Case") hereby requests that, in connection with *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Docket No. 2] (the "Motion"), James Dondero, the Defendant in the Adversary Proceeding ("Defendant" or "Mr. Dondero") produce for inspection and copying, the documents identified below, on or before **December 28, 2020 by 5:00 p.m. Central Time** (the "Requests").

INSTRUCTIONS

1. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of these Requests to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

2. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

3. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

4. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs or other media to be mutually agreed by the parties.

5. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs or other media to be mutually agreed by the parties or use an ftp site upload.

6. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

7. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

8. Unless noted otherwise, **the requests for documents set forth herein seek Documents and Communications created between December 10, 2020 and December 28, 2020**.

DEFINITIONS

1. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whomever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

3. "ESI" has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

4. "Hearing" refers to the hearing described in the *Notice of Hearing* filed at Docket No. 16 in the Adversary Proceeding.

5. "MultiStrat" means Highland Multi Strategy Credit Fund, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.).

6. "You" or "Your" refers to Mr. Dondero.

DOCUMENT REQUESTS

Request No. 1:

For the period August 1, 2020, to the present, all Communications between You and Andrew Clubok.

Request No. 2:

For the period August 1, 2020, to the present, all Documents provided to or received from Andrew Clubok.

Request No. 3:

All Communications between You and any person employed by the Debtor.

Request No. 4:

All Documents provided to or received from any person employed by the Debtor.

Request No. 5:

All Documents and Communications concerning MultiStrat.

Request No. 6:

All Documents and Communications that You intended to introduce into evidence at the Hearing.

Dated: December 23, 2020

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT G

12:21 5G E

53

Jason >

iMessage
Thu, Dec 10, 6:25 PM

I left your old phone in the top drawer of Tara's desk

Ok

Yesterday 12:31 PM

Monday, December 28

SETTINGS now
iPhone Backup Failed
You don't have enough space in iCloud to back up this iPhone. Add or manage storage now.

SETTINGS now
iPhone Not Backed Up
This iPhone hasn't been backed up. Backups happen when this iPhone is connected to power, locked, and on Wi-Fi.

Call me in 30 minutes please

Delivered

iMessage

EXHIBIT H

9:34

52

Tara >

Colbert

Yesterday 10:41 AM

5 min

Yes sir

Today 10:29 AM

I need you to come in for a couple hours today to work on discovery and miscellaneous

I've been here since early! I promised the girls I'd be home before lunch. Is there something I can do right now? I can come back if you need me to

I'm on my way in....

Delivered

I need to keep my promise and then I can come back, Jim. I know you need me. Let's get a game plan going! Here to help

iMessage

EXHIBIT I

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 29, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	No. 20-3190-sgj11
JAMES D. DONDERO,	§	
Defendant.	§	

ORDER RESOLVING JAMES DONDERO'S EMERGENCY MOTION
FOR A PROTCTIVE ORDER

Having considered (a) *James Dondero's Emergency Motion for Entry of a Protective*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Order [Adv. Pro. Docket No. 32] (the "Protective Order Motion"); (b) the *Request for Emergency Hearing on James Dondero's Emergency Motion for Entry of a Protective Order* [Adv. Pro. Docket No. 33]; (c) the *Debtor's Objection to James Dondero's Emergency Motion for Entry of a Protective Order* [Adv. Pro. Docket No. 34]; and (d) all prior proceedings relating to this matter; and after due deliberation, it is **HEREBY ORDERED THAT**:

1. The Protective Order Motion is DENIED in its entirety, except as specifically set forth herein.

2. The Debtor's document requests concerning Andrew Clubok shall be limited in time to the period from November 1, 2020, through December 28, 2020.

3. Documents and communications responsive to the Debtor's requests shall be due on December 31, 2020, at 9:30 a.m. To the extent Mr. Dondero withholds any documents on the basis of privilege, he shall deliver all responsive and allegedly privileged documents to the Court by December 31, 2020 at 9:30 a.m. for an *in camera* review to determine by whether any privilege or immunity applies. To the extent that the Court determines that no privilege or immunity applies, the Court will notify the parties by email communication via the courtroom deputy and such documents shall be produced to the Debtor. The Court will notify the parties by the end of the day January 4, 2021, whether the documents or any portion of them are privileged or otherwise subject to protection.

4. Mr. Dondero and Mr. Clubok shall appear on January 5, 2021, or at such other times as the parties may mutually agree, for depositions.

5. The hearing on *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 2] shall be adjourned to January 8, 2021, at 9:30 a.m.

6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

EXHIBIT J

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 10, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION
<u>FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO</u>

Having considered the *Debtor's Motion for a Temporary Restraining Order and*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Preliminary Injunction against James Dondero [Docket No. 6] (the "Motion"), the *Memorandum of Law* (the "Memorandum of Law")[2] in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against James Dondero* [Docket No. 4] (the "Seery Declaration"), including the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[3]

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[3] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

EXHIBIT K

PACHULSKI STANG ZIEHL & JONES
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WEB: www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 23, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Re: Termination of James Dondero Access to Office and Services

Dear Judge Lynn:

As you know, on December 10, 2020, a temporary restraining order was entered against Mr. James Dondero by the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "TRO"). Case No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020.

Pursuant to the TRO, Mr. Dondero was, among others things, prohibited from communicating with the employees of Highland Capital Management, L.P. (the "Debtor") (subject to certain limited exceptions) and interfering with or otherwise impeding, directly or indirectly, the Debtor's business. We have discussed with you several instances in which Mr. Dondero breached the terms of the TRO and will not repeat them here.

As you also know, the Debtor manages certain collateralized loan obligations (the "CLOs"). The Debtor sought to cause the CLOs to sell certain publicly-traded equity securities, including AVYA and SKY (tickers), prior to Thanksgiving. Mr. Dondero blocked these trades. That conduct, among other things, caused the TRO to be entered.

These trades were also the subject to the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager,*

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to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528] (the "CLO Motion"), which was filed by, among others, NexPoint Advisors, L.P. ("NPA") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"). At the hearing on December 16, 2020, Judge Jernigan stated both that she agreed that the CLO Motion was brought by "Mr. Dondero, through different entities" and that it was frivolous.

On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs' sale of the AVYA and SKY securities. To justify their conduct, those employees mimicked the frivolous arguments made in the CLO Motion. This conduct violated the TRO, and HCMLP reserves all rights to seek appropriate sanctions with respect to such violation.

As a result of this conduct, among other things, HCMLP has concluded that Mr. Dondero's presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive to HCMLP's continued management of its bankruptcy case to continue.

As a consequence, Mr. Dondero's access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the "Office"), will be revoked effective Wednesday, December 30, 2020 (the "Termination Date"). As of the Termination Date, Mr. Dondero's key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.

Further, as of the Termination Date, Mr. Dondero's access to his @highlandcapital.com email account will be revoked, and Mr. Dondero will no longer have access to that email account or any emails, calendars, or contacts associated with that email account.

In addition, Mr. Dondero's access to the HCMLP system and all services maintained on that system, including his Bloomberg terminal, will be revoked as of the Termination Date.

HCMLP will also terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the "Cell Phones"). HCMLP demands that Mr. Dondero immediately turn over the Cell Phones to HCMLP by delivering them to you; we can make arrangements to recover the phones from you at a later date. The Cell Phones and

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LAW OFFICES

the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or "wiping" any information or messages on the Cell Phone. HCMLP, as the owner of the account and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.

Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by HCMLP will be viewed as an act of trespass, theft, and/or an attempted breach of HCMLP's security protocols.

Finally, HCMLP demands that Mr. Dondero take all steps necessary to retain and protect from loss, destruction, alteration or defacement all documents, communications, and information relating to the Debtor, the Debtor's assets, any assets managed by the Debtor, or the Debtor's employees.

HCMLP reserves all rights that it may have whether at law, equity, or in contract, including the right to restrict the access of HCMFA and NPA employees to the Office and HCMLP-provided services. Nothing herein will be construed as a waiver of any such rights.

Sincerely,

J. Pomerantz/gvd

Jeffrey N. Pomerantz

cc: Ira Kharasch, Esq.
John Morris, Esq.
Gregory Demo, Esq.

EXHIBIT L

From: Jim Dondero <JDondero@HighlandCapital.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: FW: Jefferies recap
Date: Fri, 18 Dec 2020 16:03:32 -0600
Importance: Normal
Inline-Images: image001.jpg; image002.png

From: Joe Sowin
Sent: Friday, December 18, 2020 3:34 PM
To: Jim Dondero ; DC Sauter
Subject: FW: Jefferies recap

JOSEPH R. SOWIN

Co-Chief Investment Officer & Global Head of Equity Trading

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.419.4492 | C: 203.912.5935 | F: 972.628.4147

jsowin@highlandcapital.com| www.highlandcapital.com

From: James Seery <jpseeryjr@gmail.com>
Sent: Friday, December 18, 2020 3:32 PM
To: Steven Haltom <SHaltom@HighlandCapital.com>; Brad Gianiny <bgianiny@jefferies.com>; Cyrus Eftekhari <CEftekhari@HighlandCapital.com>; Christopher A Bianchi <cbianchi@jefferies.com>; James Colasanto <jcolasanto@jefferies.com>; James Romey <jromey@DSIConsulting.com>; Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; NYMO1 <NYMO1@Jefferies.com>; Ronald Wong <rwong@jefferies.com>; R-Settlement <R-Settlement@Highlandfunds.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>
Subject: Re: Jefferies recap

To be clear, Avaya should be allocated evenly to the 10 CLOs that hold it. NO account sold short. Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Jim Seery <jpseeryjr@gmail.com>
Date: Friday, December 18, 2020 at 4:30 PM
To: Steven Haltom <SHaltom@HighlandCapital.com>, Brad Gianiny <bgianiny@jefferies.com>, Cyrus

Eftekhari <CEftekhari@HighlandCapital.com>, Christopher A Bianchi <cbianchi@jefferies.com>, James Colasanto <jcolasanto@jefferies.com>, James Romey <jromey@DSIConsulting.com>, Joseph Sowin <JSowin@HighlandCapital.com>, Matt Pearson <MPearson@HighlandCapital.com>, NYMO1 <NYMO1@Jefferies.com>, Ronald Wong <rwong@jefferies.com>, R-Settlement <R-Settlement@Highlandfunds.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>
Subject: Re: Jefferies recap

The NXRT is out of the HCMLP internal.

SKY should be allocated evenly across Grayson and Greenbriar CLO

Avaya should be allocated pro rata across all of the CLOS except Acis 7.

Please call me with any questions.

Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Steven Haltom <SHaltom@HighlandCapital.com>
Date: Friday, December 18, 2020 at 4:21 PM
To: Brad Gianiny <bgianiny@jefferies.com>, Cyrus Eftekhari <CEftekhari@HighlandCapital.com>, Christopher A Bianchi <cbianchi@jefferies.com>, James Colasanto <jcolasanto@jefferies.com>, Jim Seery <jpseeryjr@gmail.com>, James Romey <jromey@DSIConsulting.com>, Joseph Sowin <JSowin@HighlandCapital.com>, Matt Pearson <MPearson@HighlandCapital.com>, NYMO1 <NYMO1@Jefferies.com>, Ronald Wong <rwong@jefferies.com>, R-Settlement <R-Settlement@Highlandfunds.com>
Subject: RE: Jefferies recap

Brad,

What accounts are these in?

Steven Haltom | Manager, Operations

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

972.628.4178 | shaltom@hcmlp.com | www.hcmlp.com

From: Brad Gianiny <bgianiny@jefferies.com>
Sent: Friday, December 18, 2020 3:02 PM
To: Cyrus Eftekhari <CEftekhari@HighlandCapital.com>; Christopher A Bianchi <cbianchi@jefferies.com>; James Colasanto <jcolasanto@jefferies.com>; Jim Seery

<jpseeryjr@gmail.com>; James Romey <jromey@DSIConsulting.com>; Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; NYMO1 <NYMO1@Jefferies.com>; Ronald Wong <rwong@jefferies.com>; R-Settlement <R-Settlement@Highlandfunds.com>
Subject: Jefferies recap

SKY- sld 22k @ 32.2251

NHF- sld 10k @ 10.5461

AVYA- sld 6412 @ 19.7598

Brad Gianiny

Equity Sales Trader

Jefferies LLC

520 Madison Avenue, 2nd Floor

New York, NY 10022

W: 212-284-2291

C: 770-366-6253

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EXHIBIT M

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WEB: www.pszjlaw.com

Gregory Demo
212-561-7700
gdemo@pszjlaw.com

December 24, 2020

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex)

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the "Motion")[1] on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Movants"). After hearing the sworn testimony of the Movants' witness and the arguments made on the Movants' behalf, Judge Jernigan found that the Motion was "a very, very frivolous motion" and that your firm "wasted [her]

[1] All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

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LAW OFFICES

time." (Transcript, 64:5-12) An order was entered denying the Motion on December 18, 2020 [D.I. 1605].

On December 22, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) re-asserting almost verbatim the frivolous arguments raised in the Motion. Concurrently, we received notice that certain of the Movants' employees would not settle trades on behalf of the CLOs that were authorized by the Debtor acting in its capacity as the CLOs' portfolio manager. The Movants' employees who interfered with the Debtor's directions justified their conduct by asserting – again almost verbatim – the frivolous arguments raised in the Motion.

The Movants have caused the Debtor to incur substantial costs defending itself against the Motion and preparing to defend against the frivolous suits forecasted in the Letter. The Debtor demands that the Movants withdraw the letter by 5:00 p.m. CT on Monday, December 28, 2020, and confirm that the Movants and anyone acting on their behalf will take no further steps to interfere with the Debtor's directions as the CLOs' portfolio manager. If the Movants fail to timely comply with these demands, the Debtor shall seek prompt judicial relief, including seeking sanctions under Federal Rule of Bankruptcy Procedure 9011.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo

Enclosure
cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A

K&L GATES

December 22, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares[1]:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

[1] These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold all, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%*[2]
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

Contractually, the Debtor is obligated to maximize value for the benefit of the preference shareholders. Accordingly, we respectfully request that no further dispositions of CLO interests occur pending the confirmation hearing. While we recognize the Court denied the Advisor and Funds motion on this subject, the Court did not require liquidations occur immediately, and we reserve all rights to and remedies against the Debtor should the Debtor continue to liquidate CLO interests in contravention of this joint request. Given the Advisor, Funds, and CLO Holdco's requests, it is difficult to understand the Debtor's rationale for continued liquidations, or the benefit to the Debtor from pursuing those sales.

As you know, HCMLP's duties are set forth in the portfolio management agreements of the CLOs, which themselves have been adopted under the Investment Advisers Act of 1940 ("Advisers Act"). As HCMLP readily admits, it is: (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced those CLOs; (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan-confirmation; and (iii) adding a replacement manager as subadviser prior to January 31, 2021. The Advisors, Funds, and CLO Holdco assert that those actions run in contravention to HCMLP's duty to maximize value for the holders of preference shares and thus what HCMLP has agreed to under the portfolio management agreement, as well as its duties under the Advisers Act, which ultimately will adversely impact the economic owners noted above.

[2] CLO's marked with an asterisk (*) appear in the foregoing list as well.

For the forgoing and other reasons, we request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

EXHIBIT N

PACHULSKI STANG ZIEHL & JONES
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WEB: www.pszjlaw.com

Gregory Demo
212-561-7700
gdemo@pszjlaw.com

December 24, 2020

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex)

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the "Motion")[1] on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Movants"). After hearing the sworn testimony of the Movants' witness and the arguments made on the Movants' behalf, Judge Jernigan was convinced that the Movants were in fact Mr. James Dondero seeking to disrupt

[1] All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

HCMP's estate by using different controlled entities to accomplish his ends.

On December 23, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) informing us that they were seeking to terminate certain CLO management agreements for "cause." For the reasons set forth herein, among others, such action is sanctionable under the circumstances and is otherwise prohibited by the CLOs' governing documents.

First, the Movants are owned and/or controlled by Mr. Dondero. These facts were disclosed in the Movants' public filings with the Securities and Exchange Commission and confirmed by Mr. Dustin Norris's testimony at the hearing held on December 16, 2020. Consequently, the Movants' attempt to terminate the CLO management agreements violates the order entered on January 9, 2020 [D.I. 339] (the "January Order"), which prohibits Mr. Dondero from "caus[ing] any Related Entity to terminate any agreements with the Debtor." A copy of the January Order is attached as Exhibit B.

Second, "cause" does not exist to terminate the CLO management agreements. The Debtor has a duty under the Investment Advisers Act of 1940 to the CLOs, not to any specific investor in the CLOs. *See, e.g., Goldstein v. SEC*, 451 F.3d 873, 881-82 (D.C. Cir. 2006) ("[t]he adviser owes fiduciary duties only to the fund, not to the fund's investors. . ."). The Debtor has, at all times, fulfilled its statutory and contractual duties to the CLOs and will continue to do so. As counsel, you have a duty to investigate the spurious allegations in your pleadings, but you failed to do so. Your clients' desire to re-assert control over the CLOs is not evidence to the contrary.

Third, the Movants, by their own admission, consider themselves affiliates of the Debtor. Under the management agreements, affiliates of a manager cannot replace a manager, and therefore, are prohibited from removing a manager.

Please confirm to us, in writing, no later than 5:00 p.m. CT on Monday, December 28, 2020, that you are withdrawing the Letter and that the Movants and CLO Holdco, Ltd., commit not to take any

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actions, either directly or indirectly, to terminate the CLO management agreements. If we do not receive such confirmation, the Debtor will seek immediate relief from the bankruptcy court, including an action for contempt for violating the January Order and sanctions under Federal Rule of Bankruptcy Procedure 9011 or otherwise.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo

Enclosure
cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A

K&L GATES

December 23, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares[1]:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

[1] These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%*[2]
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

In pleadings filed with the Bankruptcy Court, you asserted that one or more of the entities identified above lacked the authority to seek a replacement of the Debtor as fund manager because of the alleged affiliate status of the beneficial owners of such entities. We disagree.

Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant trustees and/or issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference for the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362. The basis for initiating the process for such removal includes, but is not limited to, the fact that HCMLP's duties, as set forth in the portfolio management agreements of the CLOs, are subject to the requirements of the Investment Advisers Act of 1940 ("Advisers Act"). HCMLP appears to be acting contrary to those duties under the agreements and where HCMLP is not fulfilling its duties under the portfolio management agreement it is therefore violating the Advisers Act. Thus, because HCMLP is (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced, including key investment professionals identified in the transactional documents for those CLOs (generally Mark Okada and Jim Dondero); (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan confirmation; (iii)

[2] CLO's marked with an asterisk (*) appear in the foregoing list as well.

adding a replacement manager as subadviser prior to January 31, 2021; and (iv) for other cause, the Advisors, Funds, and CLO Holdco have concluded that they have no choice but to initiate HCMLP's removal as fund manager where such entities are contractually and legally permitted or obligated to do so.

Because the process of removal is being initiated, subject to the applicable provisions of the Bankruptcy Code, we respectfully request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing. To the extent there are CLO transactions prior to the confirmation, we intend to fully explore the business justification for doing so, as we do not believe there is any rational business reason to liquidate securities prior to that time.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

Exhibit B

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 9, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket Nos. 7 & 259

ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),[2] filed by the above-captioned debtor and debtor in possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(the "Debtor"); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee's objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) $60,000 for each of the first three months, (ii) $50,000 for each of the next three months, and (iii) $30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor's expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER

EXHIBIT O

From: Jim Dondero <JDondero@HighlandCapital.com>
To: "andrew.clubok@lw.com" <andrew.clubok@lw.com>
Subject: Fwd: Multi Strat est balance sheet
Date: Fri, 4 Dec 2020 16:31:34 -0600
Importance: Normal
Attachments: Multi_Strat_est_summary_balance_sheet_as_of_10.31.20.pdf

---

More detail

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

Begin forwarded message:

From: Isaac Leventon
Date: December 4, 2020 at 5:13:11 PM EST
To: Jim Dondero
Cc: Scott Ellington
Subject: FW: Multi Strat est balance sheet

Subject to Rule 408, created at the request of counsel.

From: David Klos
Sent: Friday, December 4, 2020 3:22 PM
To: Isaac Leventon
Cc: Scott Ellington ; Frank Waterhouse
Subject: Multi Strat est balance sheet

As you requested.

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EXHIBIT P

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Michael Lynn <dmljng@gmail.com>
Cc: Jim Dondero <JDondero@HighlandCapital.com>, John Bonds <john@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>, "John Wilson" <john.wilson@bondsellis.com>
Subject: Re: Possible deal
Date: Sat, 12 Dec 2020 23:55:16 -0600
Importance: Normal

It will be JP Sevilla.
I will tell him that he needs to contact you first thing in morning

Sent from my iPhone

On Dec 12, 2020, at 8:44 PM, Michael Lynn wrote:

That said we MUST have a witness NOW.

Sent from my BlackBerry 10 smartphone.

From: Michael Lynn
Sent: Saturday, December 12, 2020 8:42 PM
To: Jim Dondero; John Bonds; Bryan Assink; John Wilson
Subject: Possible deal

The possible deal with the debtor went nowhere. It llos like trial.

Sent from my BlackBerry 10 smartphone.

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EXHIBIT Q

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Jim Dondero <JDondero@HighlandCapital.com>
Subject: Re: List for joint meeting
Date: Wed, 16 Dec 2020 13:42:51 -0600
Importance: Normal

On it.

Sent from my iPhone

On Dec 16, 2020, at 1:33 PM, Jim Dondero wrote:

I'm going to need you to provide leadership here.

Sent from my iPhone

Begin forwarded message:

From: Michael Lynn
Date: December 16, 2020 at 1:07:50 PM CST
To: Douglas Draper , Jim Dondero
Subject: Re: List for joint meeting

I can't think of any others tassuming Zorada is with K&L Gates). I would contact the lawyers I have no opinion on additional contacts.

I had thought you would be representing more entities than the two trusts.

Sent from my BlackBerry 10 smartphone.
Original Message
From: Douglas Draper
Sent: Wednesday, December 16, 2020 11:13 AM
To: Michael Lynn; Jim Dondero
Subject: List for joint meeting

1) Daf john Kane attny 2) highland capital management fund advisors George Zorada 3) nexpoint advisors Laureen Drawhorn 4) highland clo funding Mark Maloney 5) employees David Neier
Do we want to add or delete anybody from the list. Is the best route to have me call the lawyer or have a someone contact the client contact for the lawyer. Please advise
On another matter I think it would be a good idea to have a second client contact for my two clients. Give me your thoughts

Sent from my iPhone
Due to the current health crisis, the staff of Heller Draper & Horn . LLC will be working remotely and there may be some delay in responding to your email.
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EXHIBIT R

53

Melissa >

Sat, Dec 12, 2:24 PM

Buyers agreed to February 1st it's a done deal counter has been signed! Very good news.

Ok, thanks....
Has JP reviewed Maplewood

Sat, Dec 12, 7:21 PM

We had him review the lease to make sure we gave proper notice.

Mon, Dec 14, 10:52 AM

Please check your mail for the Acura title. Thanks !

Ok haven't seen it yet...

Wed, Dec 16, 5:18 PM

No dugaboy details without subpoena

Thu, Dec 17, 2:49 PM

iMessage

EXHIBIT S

9:26 5G

53

Isaac >

iMessage
Wed, Dec 16, 4:36 PM

Was there any mention today of DAF 18mm demand on Trussway?

Tue, Dec 22, 3:55 PM

Send me Clemente contact info please

And baker McKenzie contact person please

Delivered

Matthew A. Clemente
Sidley Austin LLP
MC >

iMessage

EXHIBIT T

From: Jim Dondero
Sent: Thursday, December 24, 2020 7:59 PM
To: Scott Ellington
Subject: Fwd: Highland's Motion to Compromise Controversy with HarbourVest

Sent from my iPhone

Begin forwarded message:

From: Jim Dondero
Date: December 24, 2020 at 5:55:17 PM MST
To: Michael Lynn
Subject: Re: Highland's Motion to Compromise Controversy with HarbourVest

Holy bananas..... make sure we object

Sent from my iPhone

On Dec 24, 2020, at 3:21 PM, Michael Lynn wrote:

Fyi

Sent from my BlackBerry 10 smartphone.

From: Bryan Assink
Sent: Thursday, December 24, 2020 4:14 PM
To: Michael Lynn; John Bonds
Cc: John Wilson
Subject: Highland's Motion to Compromise Controversy with HarbourVest

Judge, attached is the 9019 motion filed today by Highland to compromise the HarbourVest claims. The matter has been set at the same time as confirmation (even though that's less than 21 days' notice) on January 13, 2021 at 9:30 a.m. The notice of hearing states that responses to the 9019 motion shall be filed no later than January 11, 2021 at 5:00 p.m.
The material terms of the settlement as stated in the motion are listed below:
The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of $45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of $35 million and shall vote its Class 9 claim in that amount to support the Plan;

- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of $45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases

Bryan C. Assink, Associate
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton St. **|** Suite 1000 **|** Fort Worth, Texas 76102
office 817.779.4297 **|** fax 817.405.6902
bryan.assink@bondsellis.com

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EXHIBIT U

BONDS ELLIS EPPICH SCHAFER JONES LLP
ATTORNEYS & COUNSELORS

D. MICHAEL LYNN | D: 817.405.6915 | MICHAEL.LYNN@BONDSELLIS.COM

December 29, 2020

Via Email:
Jeffrey Pomerantz
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com

Re: ***In re: Highland Capital Management, L.P.* – Case No. 19-34054**

Dear Jeff:

I am in receipt of your letter sent via email on the evening of December 23, 2020.

In response to the Debtor's demand concerning Mr. Dondero's cell phone, it is our understanding that the phone Dondero is currently using was purchased by Dondero several weeks ago and that the Debtor is not paying for the use of that phone. We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor, but we are not prepared to turn it over without ensuring that the privacy of attorney-client communications by text or email is protected. We are, however, willing to have an independent third party review any items that we would designate as privileged. Our office would need to review what is on the phone to determine what we would designate as privileged before it could reach such a person. In that regard, virtually all communications made between myself and other attorneys employed by Bonds Ellis Eppich Schafer Jones LLP have been through that phone and in many cases are preserved either as texts or emails.

Sincerely,

/s/ D. Michael Lynn

D. Michael Lynn

Cc: Jim Dondero
John Bonds

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
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Los Angeles, CA 90067
Telephone: (310) 277-6910
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HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
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ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLAINTIFF'S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding") and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), by and through its undersigned counsel, files this motion (the "Motion") seeking entry of an order requiring Mr. James Dondero (hereinafter, "Mr. Dondero") to show cause why he should not be held in civil contempt for violating the Court's *Order Granting Debtor's Motion for a Temporary Restraining Order against James Dondero* (Adv. Pro. Docket No. 10) (the "TRO"). In support of the Motion, the Debtor respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

3. The predicates for the relief requested in the Motion are sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 7065 and 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of order to show cause, attached hereto as **Exhibit A** (the "Proposed Order"), pursuant to sections 105(a) and 362(a) of the Bankruptcy Code and Rules 7001 and 7065 of the Bankruptcy Rules.

5. The evidence and arguments supporting the Motion are set forth in the Debtor's *Memorandum of Law in Support of Its Motion for an Order Requiring Mr. James Dondero to*

Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO (the "Memorandum of Law"), and the *Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Morris Declaration"), and the exhibits annexed thereto, filed contemporaneously with this Motion. For the reasons set forth the Memorandum of Law, the Debtor requests that the Court (i) find and hold Mr. Dondero in contempt for violating the TRO; (ii) direct Mr. Dondero to produce to the Debtor and the UCC, within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) direct Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion, payable within three calendar days of presentment of an itemized list of expenses; (iv) impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (v) grant the Debtor such other and further relief as the Court deems just and proper under the circumstances.

6. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the "Local Rules"), contemporaneously herewith and in support of this Motion, the Debtor is filing: (a) its Memorandum of Law, (b) the Morris Declaration, and (c) the Debtor's *Motion for Expedited Hearing on Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Motion to Expedite").

7. Based on the exhibits annexed to the Morris Declaration, and the arguments contained in the Memorandum of Law, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to Mr. Dondero. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

Dated: January 7, 2021.

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO

Having considered (a) the Debtor's *Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. __] (the "Motion"); [2] (b) the *Debtor's Memorandum of Law in Support of Its Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. __] (the "Memorandum of Law"); (c) the exhibits annexed to the *Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. __] (the "Morris Declaration"); and (d) all prior proceedings relating to this matter, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Docket No. 6] (the "TRO Hearing") and the hearing (the "Restriction Motion Hearing") on the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Bankr. Case Docket No. 1528] that was brought by certain financial advisory firms and investment funds that are represented by the law firm K&L Gates (collectively, the "K&L Gates Clients"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sanctions are warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. Mr. Dondero shall show cause before this Court on **Friday, January 8, 2021 at 9:30 a.m. (Central Time)** why an order should not be granted: (i) finding and holding Mr. Dondero in contempt for violating the TRO; (ii) directing Mr. Dondero to produce to the Debtor and the UCC within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) directing Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and this Motion (*e.g.*, responding to the K&L Gates Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition), payable within three (3) calendar days of presentment of an itemized list of expenses, (iv) imposing a penalty of three (3) times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (iv) granting the Debtor such other and further relief as the Court deems just and proper under the circumstances.

3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), submits this memorandum of law (the "Memorandum") in support of the *Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Motion"), pursuant to sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order requiring Mr. James Dondero (hereinafter "Mr. Dondero") to show cause why he should not be held in civil contempt for violating the Court's *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* (Adv. Pro. Docket No. 10) (the "TRO"). In support of its Motion, the Debtor states as follows:

PRELIMINARY STATEMENT

1. On December 10, 2020, this Court issued the TRO temporarily restraining Mr. Dondero from, among other things, (a) communicating with any of the Debtor's employees, (b) interfering with or otherwise impeding the Debtor's operations and management of its assets, and (c) causing or encouraging any entity owned or controlled by Mr. Dondero from, directly or indirectly, interfering with the Debtor's operations and disposition of its assets.

2. The evidence (including documents and Mr. Dondero's brash admissions made during a deposition earlier this week) demonstrates that Mr. Dondero cavalierly violated the TRO a substantial number of times, and in substantial ways; it also shows that he has no

regard for this Court or these proceedings. Indeed, at least as of the time of his deposition, Mr. Dondero had not even bothered to read the TRO or make any attempt to understand its scope.

3. In the four short weeks since the TRO was entered, Mr. Dondero (a) "disposed" of (*i.e.*, threw in the garbage) a cell phone bought and paid for by the Debtor in what the Debtor believes was an attempt to evade discovery; (b) trespassed on the Debtor's property after the Debtor evicted him from its offices precisely because he was interfering with its business; (c) interfered with the Debtor's efforts to execute certain transactions in its capacity as portfolio manager of certain CLOs (despite knowing of this Court's ruling just six days earlier in which it denied as "frivolous" a related motion brought by the K&L Gates Clients (as defined below)); (d) otherwise knew of and supported the K&L Gates Clients when they sent three separate letters to the Debtor making further demands and threats; (e) colluded with Scott Ellington and Isaac Leventon (before they were terminated as Debtor's in-house counsel) to coordinate legal strategy against the Debtor; and (f) interfered with the Debtor's obligation to produce certain documents that were requested by the Official Committee of Unsecured Creditors (the "UCC") and that were in the Debtor's possession, custody, and control.[2]

4. There is ample, admissible evidence to support the Motion. Based on that evidence, the Debtor requests that the Court (i) find and hold Mr. Dondero in contempt for violating the TRO; (ii) direct Mr. Dondero to produce to the Debtor and the UCC within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) direct Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and this Motion (*e.g.*, responding to the K&L Gates

[2] The Debtor's investigation of Mr. Dondero's conduct, and the roles played by Mr. Ellington and Mr. Leventon, is ongoing and the Debtor reserves the right to identify additional bases to support the Motion and/or to assert claims against anyone who wrongfully acted against the Debtor's interests.

Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition), payable within three calendar days of presentment of an itemized list of expenses, (iv) impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (v) grant the Debtor such other and further relief as the Court deems just and proper under the circumstances.

FACTUAL BACKGROUND

A. The TRO is Entered but Mr. Dondero Does Not Read It or Understand its Terms

5. On December 10, 2020, the Court issued the TRO prohibiting Mr. Dondero from engaging in certain conduct with respect to the Debtor's operations in order to prevent irreparable harm to the Debtor pending the hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Docket No. 6], scheduled for January 8, 2021 (the "Hearing"). Specifically, the TRO temporarily enjoined and restrained Mr. Dondero from:

> (2)(a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication;
>
> (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents;
>
> (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero;
>
> (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan;
> (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, (a)-(e) constitutes the "Prohibited Conduct"); and
>
> (3) causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

See **Morris Dec. Exhibit J**.[3]

6. Mr. Dondero could not care less about the Debtor's request for a temporary restraining order against him, or the Court's issuance of the TRO. Among other things, Mr. Dondero never (at least as of the time of his deposition on January 4, 2021):

* reviewed the Declaration of James P. Seery, Jr., the Debtor's Chief Executive Officer, in support of the Debtor's motion for the temporary restraining order;
* attempted to learn of the allegations made against him;
* thought about the fact that the Debtor was seeking a restraining order against him;
* listened to the hearing where the Court admitted evidence and heard argument on the Debtor's motion;
* read the transcript of the hearing where the Court granted the Debtor's motion for the TROr;
* read the TRO after it was entered; or
* made any meaningful effort to understand the scope of the TRO.

Morris Dec. Ex. Z at 12:17-15:14.

7. Mr. Dondero's willful ignorance of the TRO, and the evidence supporting the entry of the TRO, is itself contemptible.

B. Mr. Dondero Violated the TRO by Throwing Away his Cell Phone after the TRO was entered

8. Mr. Dondero had a cell phone that was bought and paid for by the Debtor (the "Debtor's Phone"). The cell phone ATT account to which the phone and number were attached is also the Debtor's property. In early December, Mr. Dondero had the telephone number associated with the Debtor's Phone transferred to his personal account and – after the TRO was entered – "disposed" of the phone, likely by throwing it in the garbage. Incredibly, Mr. Dondero could not recall at his deposition (a) who decided to throw the Debtor's Phone

[3] "Morris Dec." refers to the Declaration of John A. Morris, duly executed on January 7, 2021, and submitted contemporaneously herewith in support of the Debtor's Motion.

away, (b) who actually threw it away; or (c) when, after the TRO was entered, the Debtor's Phone was "disposed" of.

9. Mr. Dondero was apparently not candid with his own lawyers concerning the whereabouts of the Debtor's Phone. On December 23, 2020, the Debtor demanded, among other thing, the return of the Debtor's Phone for the express purpose of obtaining the text messages on it. Mr. Dondero's counsel responded six days later to report that the Debtor's Phone could not be located; no mention was made of it having been "disposed" of. **Morris Dec. Exs. G, K, U, and Z at 71:24-76:2; 86:4-87:15**.

10. Mr. Dondero obviously communicates by text message. Based on his conduct, the Court should find that Mr. Dondero has attempted to spoil evidence and draw a negative inference.

C. Mr. Dondero Violated the TRO by Trespassing on the Debtor's Property

11. On December 23, 2020, the Debtor informed Mr. Dondero that he was being evicted from the Debtor's offices and would not be permitted entry as of December 30, 2020, precisely because the Debtor believed he was interfering with the Debtor's business.

12. Despite the unambiguous nature of the Debtor's eviction notice, on January 5, 2021, Mr. Dondero walked right into the Debtor's offices and sat down in the Debtor's conference room to give his deposition; he even had the audacity to keep over 20 lawyers waiting while he spent 35 minutes making phone calls from the Debtor's offices.

13. Mr. Dondero did not seek or obtain the Debtor's permission to enter their premises. **Morris Dec. Exs. K, Z at 9:3-19**. And the Debtor has no knowledge as to when he left that day, whether he met with any of the Debtor's employees, and whether he has been in the Debtor's offices at other times.

D. Mr. Dondero Violated the TRO by Interfering with the Debtor's Trading as Portfolio Manager of Certain CLOs

14. As this Court may recall from recent hearings, Mr. Dondero owns and/or controls certain financial advisory firms and investment funds that are represented by the law firm K&L Gates (those entities are collectively referred to as the "K&L Gates Clients"). The financial advisory firms owned by Mr. Dondero caused the investment funds controlled by Mr. Dondero to invest in certain CLOs that are managed by the Debtor pursuant to written agreements. In a repeat of his performance around Thanksgiving, and notwithstanding his knowledge of this Court's dismissal of the "frivolous" motion brought by the K&L Gates Clients, on December 22, 2020, Mr. Dondero personally intervened to prevent the Debtor from executing certain securities transactions authorized by Mr. Dondero. **Morris Dec. Exs. K, L, Z at 89:21-93:20**.

E. Mr. Dondero Violated the TRO by "Pushing and Encouraging" the K&L Gates Clients to Make Further Demands and Threats Against the Debtor

15. On December 22, 23, and 30, 2020, the K&L Gates Clients sent letters in which they made various demands and threats including, among other things, threats to take steps to terminate the Debtor's CLO management agreement and to hold the Debtor liable for purported damages arising from the Debtor's decision to evict Mr. Dondero from its offices. As the court will recall from the testimony of Dustin Norris, Mr. Dondero owns and/or controls each of the K&L Gates Client.

16. Mr. Dondero knew these letters were being sent and he "pushed" and "encouraged" the K&L Gates Clients to send them, with knowledge of the Court's December 16, 2020, ruling denying as "frivolous" the K&L Gates Clients' related motion. **Morris Dec. Exs. M, N, X, and Z at 94:19-106:16**. Indeed, the evidence will show that Mr. Dondero believes that

a class action lawsuit against Mr. Seery or a referral to market regulators are among the options available to the K&L Gates Clients. *See, e.g.*, **Morris Dec. Ex. Z at 62:19-63:22**.

F. Mr. Dondero Violated the TRO by Communicating with the Debtor's Employees to Coordinate Their Legal Strategy Against the Debtor

17. The Debtor will never be able to count the number of times that Mr. Dondero violated the TRO by communicating with the Debtor's employees, but the evidence currently available shows that he communicated with Mr. Ellington and Mr. Leventon (after the TRO was entered on December 10, 2020), in at least the following ways:

- On December 12, Mr. Ellington was actively involved in identifying a witness to support Mr. Dondero's interests at the December 16 hearing (**Morris Dec. Ex. P**);
- On December 15, Mr. Ellington and Mr. Leventon collaborated with Mr. Dondero's lawyers in preparing a "common interest" agreement (**Morris Dec. Exs. Q, Z at 116:21-120:14**);
- On December 16, Mr. Dondero solicited Mr. Ellington's help in coordinating all of the lawyers representing Mr. Dondero's interests, telling Mr. Ellington that he needed him to "show leadership" (which Mr. Ellington eagerly agreed to do) (**Morris Dec. Ex. W**);
- On December 23, Scott Ellington and Grant Scott communicated in connection with efforts to schedule a call with Mr. Dondero and K&L Gates (**Morris Dec. Ex. Y**);
- And in late December, Mr. Dondero communicated with Mr. Leventon to obtain the contact information for Mr. Ellington's and Mr. Leventon's new lawyers at Baker & McKenzie for the explicit purpose of advancing the "mutual shared defense agreement." (**Morris Dec. Exs. S, Z at 136:8-139:5**).

G. Mr. Dondero Violated the TRO by Preventing the Debtor from Completing its Document Production

18. Mr. Dondero knew that several times in the last year "several entities" had requested the Dugaboy financial statements. The documents (and those of Get Good) are on the Debtor's system, apparently in a place few people know about. In keeping with the Debtor's policies, those documents on the Debtor's system are the Debtor's property. After the TRO was

entered, Mr. Dondero personally interfered with the Debtor's search for these documents and told one of the Debtor's employees that the records could not be produced without a subpoena. Notably, Mr. Dondero was instructed not to answer questions about whether he had discussed the production of these documents with Mr. Ellington or Mr. Leventon, and he followed his counsel's instructions. **Morris Dec. Exs. R, Z at 124:25-135:11**.[4]

ARGUMENT

19. "The power to impose sanctions for contempt of an order is an inherent and well-settled power of all federal courts—including bankruptcy courts." *In re SkyPort Global Comm's, Inc.*, No. 08-36737-H4-11, 2013 WL 4046397, at *1 (Bankr. S.D.Tex. Aug. 7, 2013), aff'd., 661 Fed. Appx. 835 (5th Cir. 2016); *see also In re Bradley*, 588 F.3d 254, 255 (5th Cir. 2009) (noting that "civil contempt remains a creature of inherent power[,]" to "prevent insults, oppression, and experimentation with disobedience of the law[,]" and it is "widely recognized" that contempt power extends to bankruptcy) (quoting 11 U.S.C. § 105(a), which states, in pertinent part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); *Placid Refining Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 613 (5th Cir.1997) ("[W]e assent with the majority of the circuits … and find that a bankruptcy court's power to conduct civil contempt proceedings and issue orders in accordance with the outcome of those proceedings lies in 11 U.S.C. § 105."). A bankruptcy court's power to sanction those who "flout [its] authority is both necessary and integral" to the court's performance of its duties. *SkyPort Global*, 2013 WL 4046397, at *1. Indeed, without such power, the court would be a "mere board[ ] of arbitration, whose judgments and decrees would be only advisory." *Id.* (internal quotations omitted); *see*

[4] As the Court may recall, on August 12, 2020, the Court entered an *Order Resolving Discovery Motions and Objections Thereto* [Docket No., 942] that supposedly addressed issues of shared services and "ownership" arguments made by related parties.

also Bradley, 588 F.3d at 266 (noting that contempt orders are both necessary and appropriate where a party violates an order for injunctive relief, noting such orders "are important to the management of bankruptcy cases, but have little effect if parties can irremediably defy them before they formally go into effect.").

20. "A party commits contempt when [they] violate[] a definite and specific order of the court requiring [them] to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Travelhost*, 68 F.3d at 961. Thus, the party seeking an order of contempt in a civil contempt proceeding need only establish, by clear and convincing evidence: "(1) that a court order was in effect, and (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court's order." *F.D.I.C. v. LeGrand*, 43 F.3d 163, 170 (5th Cir. 1995); *see also Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir.1992) (same); *Travelhost*, 68 F.3d at 961 (same). "To support a contempt finding in the context of a TRO, the order must delineate 'definite and specific' mandates that the defendants violated." *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000) (citing Fed. R. Civ. P. 65). The court need not, however, "anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated." *Id.* Moreover, "[t]he contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court's order. *Id.* (citing *N.L.R.B. v. Trailways, Inc.*, 729 F.2d 1013, 1017 (5th Cir.1984).

21. To that end, judicial sanctions in civil contempt proceedings may be employed for either or both of two purposes: "to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *Am. Airlines*, 228 F.3d at 586 (internal quotations omitted). "Compensatory civil contempt reimburses the injured party for the losses and expenses incurred because of [their] adversary's noncompliance." *Norman*

Bridge Drug Co. v. Banner, 529 F.2d 822, 827 (5th Cir.1976); *see also Travelhost*, 68 F.3d at 961 (noting that "[b]ecause the contempt order in the present case is intended to compensate [plaintiff] for lost profits and attorneys' fees resulting from the contemptuous conduct, it is clearly compensatory in nature."); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613 (affirming court's decision to impose sanctions for violating injunction and awarding plaintiff costs and fees incurred in connection with prosecuting defendant's conduct); *F.D.I.C.*, 43 F.3d 168 (affirming court's imposition of sanctions requiring defendant to pay movant attorneys' fees). Ultimately, courts have "broad discretion in the assessment of damages in a civil contempt proceeding." *Am. Airlines*, 228 F.3d at 585; *see also F.D.I.C., 43 F.3d 168* (reviewing lower court's contempt order for "abuse of discretion" under the "clearly erroneous standard."); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613 ("The bankruptcy court's decision to impose sanctions is discretionary[]"). For the reasons that follow, the Debtor shows—clearly and convincingly—that Mr. Dondero committed contempt.

22. The Debtor easily meets the foregoing standards. Based on the evidence, there can be no dispute that Mr. Dondero has wantonly and intentionally violated the TRO on many occasions, in many ways. Mr. Dondero's conduct cannot be justified or explained away and there is no basis to oppose this relief requested herein.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court grant its Motion and enter an Order in the form annexed hereto as Exhibit A, and grant any further relief as the Court deems just and proper.

Dated: January 7, 2021.

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLAINTIFF'S MOTION FOR EXPEDITED HEARING ON ITS MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding") and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), by and through its undersigned counsel, files this motion (the "Motion to Expedite") requesting that an expedited hearing be set on Debtor's *Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Adversary Proceeding Docket No. 48] (the "Motion") as soon as counsel can be heard. In support of the Motion to Expedite, the Debtor respectfully states the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

3. The predicates for the relief requested in the Motion are section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

II. BACKGROUND

4. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

5. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].[2]

6. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 Bankruptcy Case.

7. On January 7, 2021, the Debtor filed the Motion[3] seeking entry of an order requiring Mr. James Dondero (hereinafter, "Mr. Dondero") to show cause why an order should not be granted: (i) finding and holding Mr. Dondero in contempt for violating the TRO; (ii) directing Mr. Dondero to produce to the Debtor and the UCC, within three (3) days, all financial statements and records of Dugaboy and Get Good for the last five (5) years; (iii) directing Mr. Dondero to pay the Debtor's estate an amount of money equal to two (2) times the Debtor's actual expenses incurred in bringing this Motion and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and this Motion (*e.g.*, responding to the K&L Gates Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition), payable within three (3) calendar days of presentment of an itemized list of expenses, (iv) imposing a penalty of three (3) times the Debtor's actual expenses incurred in connection with any future

[2] All docket numbers refer to the docket maintained by this Court.

[3] Capitalized terms not otherwise defined in this Motion have the meanings ascribed to them in the *Debtor's Memorandum of Law in Support of Its Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not be Held in Civil Contempt for Violating the TRO* [Adversary Proceeding Docket No. __] (the "Memorandum of Law"), filed contemporaneously with the Motion.

violation of any order of this Court; and (v) granting the Debtor such other and further relief as the Court deems just and proper under the circumstances.

III. ARGUMENT AND AUTHORITIES

8. Pursuant to section 105(a) of the Bankruptcy Code, the Court "may issue any order … that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Furthermore, pursuant to Bankruptcy Rule 9006, the Court may, for cause shown, reduce the notice period required prior to a hearing.

10. A prompt hearing is necessary because absent the relief requested in the Motion, the Debtor's ability to adequately and independently manage its operations and fulfill its contractual obligations pursuant to its CLO management agreements without interference or threats from Mr. Dondero will be compromised. Moreover, absent the relief requested in the Motion, Mr. Dondero could continue to engage in the Prohibited Conduct, in violation of the TRO, which could jeopardize the Debtor's efforts to confirm its Plan and put the Debtor's assets and creditors' recoveries at risk. In brief, absent sanctions, there is substantial risk that the Debtor's estate will be harmed. It is therefore vital that the Court consider the Motion on an expedited basis.

11. Moreover, the evidence the Debtor intends to adduce in support of the Motion is a subset of the evidence that will be offered tomorrow on the Debtor's separate motion for a preliminary injunction (the "PI Motion"). In light of that, no additional preparation should be required and by conducting the hearing together with the PI Motion, substantial resources will be saved because the Court and the parties will not be forced to litigate the exact same factual issues twice.

12. Notice of the proposed expedited hearing will be provided to counsel for Mr. Dondero by email and overnight mail. Such notice is sufficient because the relief requested in the Motion is sought against Mr. Dondero.

13. The Debtor is requesting an expedited hearing on the Motion at the earliest available opportunity.

Dated: January 7, 2021.

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on January 7, 2021, counsel for the Debtor communicated with counsel for Mr. Dondero regarding the relief requested in the foregoing Motion to Expedite. Counsel for Mr. Dondero advised that he is strongly opposed to the relief requested in the Motion to Expedite.

/s/ Zachery Z. Annable
Zachery Z. Annable

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S RESPONSE IN OPPOSITION TO
DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION

James D. Dondero ("Defendant" or "Mr. Dondero"), the defendant in the above-captioned adversary proceeding, hereby files *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* in opposition to *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr.*

James Dondero [Docket Nos. 2 and 6] (the "Motion"). In support thereof, Defendant respectfully represents as follows:

1. Mr. Dondero regrets his communications with Mr. Seery and others that precipitated the Court's entry of the TRO. While Dondero understands why the TRO was entered, he believes that the scope of the proposed preliminary injunction is too broad and nonspecific and deprives him and potentially other non-parties of various legal and due process rights. Accordingly, Mr. Dondero respectfully requests that, if the Court is inclined to grant the Debtor's Motion, it narrow the scope of the injunction to preserve these rights, strike certain non-specific provisions from the order, and remove the provisions that purport to restrain the acts of third parties.

2. First, the scope of the proposed injunction restricting Mr. Dondero's communication with the Debtor's employees is too broad and impairs Mr. Dondero's freedom of speech under the First Amendment to the U.S. Constitution. The Supreme Court has directed judges to scrutinize injunctions restricting speech carefully and ensure that they are "no broader than necessary to achieve [their] desired goals. *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 764-65, 114 S. Ct. 2516 (1994). Here, the scope of this provision of the injunction is too broad because it restricts all communications, of any kind, and of any nature, between Mr. Dondero and anyone employed by the Debtor. Accordingly, the injunction should, at minimum, be narrowed to allow Mr. Dondero to (i) communicate with Debtor's employees on personal or other routine matters unrelated to the Debtor's business or the bankruptcy case; (ii) communicate with employees of the Debtor who also serve in other capacities for Mr. Dondero, such as his personal assistants; and, for the avoidance of doubt, to (iii) communicate with employees of the Debtor once their employment with the Debtor ceases. *See Carroll v. President & Comm'rs of Princess Anne*,

393 U.S. 175, 183 (1968) ("An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted.").

3. Second, the provision of the proposed injunction that prohibits Mr. Dondero from "interfering with or otherwise impeding, directly or indirectly, with the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan" is too broad and potentially restricts Mr. Dondero's ability to exercise his legal rights in this case, including (i) his pursuit of an alternative plan that would see the Debtor survive as a going concern, rather than the liquidation proposed under the Debtor's Fifth Amended Plan; (ii) his communications with creditors and others regarding the terms of the Pot Plan; and (iii) the pursuit of any other legal rights he may have, whether in this Court or outside of it. The Debtor has been fully aware of Mr. Dondero's efforts to promote the Pot Plan and has repeatedly encouraged those efforts. Accordingly, the terms of any injunction should make clear that Mr. Dondero is not barred from attempting to pursue his Pot Plan or in preventing confirmation of the Debtor's Fifth Amended Plan, including communicating with others about doing so provided he does not offer consideration for doing so.

4. Third, the provision of the proposed injunction that enjoins and restrains Mr. Dondero from "causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in the Prohibited Conduct" is likewise too broad, nonspecific, vague, and may, or purport to, enjoin unidentified third parties that are not a party to this proceeding and have complex rights and interests independent from Mr. Dondero. It would be overly simplistic and a violation of due process to lump in potentially any entity in which Mr. Dondero has an ownership or management

interest without giving those separate legal entities an opportunity to respond and be heard on this Motion. Because these entities are not a party to this suit and the Debtor's proposed injunction does not specifically identify any entities besides Dondero, fair notice has not been provided and the Court should make clear that any injunctive restrictions apply only to Dondero in his personal capacity and do not purport to bind the actions of an alleged unnamed multitude of separate legal entities.

5. The general rule is that an injunction "is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Fed. R. Civ. P. 65(d). However, active concert applies "only for assisting the enjoined party in violating the injunction," and not "from engaging in independent conduct." *See Additive Controls & Measurement Sys. v. Flowdata, Inc.*, 96 F.3d 1390, 1394 (Fed. Cir. 1996) ("courts may not grant an injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law"). While having a relationship to an enjoined party may expose that party to liability if it *assists* an enjoined party *in that party's* violation of an injunction, the non-party itself may not be subject to the injunction in its separate capacity, and its independent conduct cannot be restricted. *See id.* ("because they were not parties . . . [they] could not be enjoined from engaging in independent conduct with respect to the subject matter of that suit").

6. Further, it is not clear that the public interest is served by the entry of the broad injunction proposed by the Debtor. While the Debtor states public interest favors entry of the injunction because it may "facilitate reorganizations" and "preserve going-concern values of business" and "protect[] jobs," that is the exact opposite of what the Debtor's Plan proposes. Mr.

Dondero, on the other hand, is seeking to preserve the value of Debtor's assets, its going concern value, and the jobs of the Debtor's employees. The broad injunction sought by the Debtor may impair Mr. Dondero's ability to do just that by preventing him from (i) advocating for his Pot Plan; (ii) negotiating with creditors and other parties in interest concerning the terms of the Plan and the potential resolution of their claims against the estate; and (iii) otherwise pursuing his legal rights, whether in this Court or outside of it. While a footnote to the TRO states that Dondero shall not be prevented from seeking judicial relief before the Court or filing an objection to any motion, this limited carve out is far too narrow and does not protect Mr. Dondero's legitimate due process and legal rights in this case or his ability to engage in settlement negotiations and discussions with other parties in this case. By way of example, the Debtor has used this proceeding as a pretext to conduct discovery into the legitimate settlement communications exchanged between Mr. Dondero and Andrew Clubok, UBS's attorney, concerning the terms of a Pot Plan that are wholly irrelevant to the relief requested in this proceeding. The Debtor should not be allowed to use this proceeding to conduct broad (and irrelevant) discovery concerning Mr. Dondero's efforts to develop a plan different from that proposed by the Debtor.

7. In addition, while Mr. Dondero is bound to respect the automatic stay, the provision of the requested injunction that seeks to prevent Mr. Dondero from "violating section 362(a) of the Bankruptcy Code" is nonspecific, lacking in detail, and too vague as to be enforceable. There are no specific prohibited actions listed, and it is unclear what actions the Debtor may assert violate the automatic stay. Therefore, this provision of the injunction does not describe in reasonable detail the acts restrained and, in explicit violation of Rule 65(d), makes reference to an outside source.[1]

[1] *See* Fed. R. Civ. P. 65(d) ("Every order granting an injunction and every restraining order must . . . describe in reasonable detail—and **not by referring to the complaint or other document**—the act or acts restrained or required.") (emphasis added).

Accordingly, in the event the Court enters an order granting the Motion and allowing the injunction, it should strike this provision from the order.

8. Finally, in the event the Court is inclined to grant the Motion, it should set a definitive termination date of the injunction so fair notice of length and scope of the injunction is provided.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court deny the Motion or, in the event the Court is inclined to grant the Motion, narrow the scope of the proposed injunction as requested herein, and grant Defendant such other and further relief to which he may be justly entitled.

Dated: January 7, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 7, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

NOTICE OF APPEAL AS OF RIGHT OR, ALTERNATIVELY,
NOTICE OF APPEAL WITH MOTION FOR LEAVE TO APPEAL

NOTICE IS HEREBY GIVEN that, pursuant to rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), 28 U.S.C § 158(a), and 28 U.S.C. § 1292(a) or, alternatively, pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C § 158(a)(3), James Dondero hereby appeals to the United States District Court for the Northern District of Texas (the

"District Court") from the *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction") entered by the United States Bankruptcy Court for the Northern District of Texas on January 12, 2021. A copy of the Preliminary Injunction is attached hereto.

In the alternative, in the event that the District Court finds that leave to appeal is required, Appellant hereby moves the District Court for leave to appeal the Preliminary Injunction pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C. § 158(a)(3).

Good cause exists to grant Appellant leave to appeal the Preliminary Injunction. The injunction, which effectively permanently fixes Appellant's rights in the bankruptcy case, is overbroad, nonspecific, and inconsistent with applicable law. Among other things, the injunction violates Appellant's First Amendment rights by prohibiting all communication of any nature between Appellant and the Debtor's employees. The injunction's other restrictions are also overbroad, unclear as to the specific acts restrained, and potentially unlimited in scope. Granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by or in the Preliminary Injunction.

The parties to this matter and the names and addresses of their respective attorneys are as follows:

Party	**Counsel of Record**
James Dondero, Defendant in the above-captioned adversary proceeding and a creditor, indirect equity holder, and party in interest in the above-captioned bankruptcy case Appellant	D. Michael Lynn State Bar I.D. No. 12736500 John Y. Bonds, III State Bar I.D. No. 02589100 John T. Wilson, IV State Bar I.D. No. 24033344 Bryan C. Assink State Bar I.D. No. 24089009 BONDS ELLIS EPPICH SCHAFER JONES LLP 420 Throckmorton Street, Suite 1000

	Fort Worth, Texas 76102 (817) 405-6900 telephone (817) 405-6902 facsimile Email: michael.lynn@bondsellis.com Email: john@bondsellis.com Email: john.wilson@bondsellis.com Email: bryan.assink@bondsellis.com
Highland Capital Management, L.P., Plaintiff in the above-captioned adversary proceeding and the Debtor in the above-captioned bankruptcy case Appellee	Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*) Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*) John A. Morris (NY Bar No. 266326) (*pro hac vice*) Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*) PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Email:jpomerantz@pszjlaw.com ikharasch@pszjlaw.com jmorris@pszjlaw.com gdemo@pszjlaw.com and Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) HAYWARD PLLC 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Telephone: (972) 755-7100 Email:MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com

Dated: January 12, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
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John Y. Bonds, III
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John T. Wilson, IV
State Bar I.D. No. 24033344
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Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 12, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

AMENDED NOTICE OF APPEAL AS OF RIGHT OR, ALTERNATIVELY,
NOTICE OF APPEAL WITH MOTION FOR LEAVE TO APPEAL

NOTICE IS HEREBY GIVEN that, pursuant to rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), 28 U.S.C § 158(a), and 28 U.S.C. § 1292(a) or, alternatively, pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C § 158(a)(3), James Dondero hereby appeals to the United States District Court for the Northern District of Texas (the

"District Court") from the *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction") entered by the United States Bankruptcy Court for the Northern District of Texas on January 12, 2021. A copy of the Preliminary Injunction is attached hereto as "**Exhibit 1**".

In the alternative, in the event that the District Court finds that leave to appeal is required, Appellant hereby moves the District Court for leave to appeal the Preliminary Injunction pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C. § 158(a)(3). A motion for leave to appeal is being filed contemporaneously herewith and Appellant respectfully requests that the Bankruptcy Clerk transmit the Notice of Appeal and the motion to the District Court for its consideration.

The parties to this matter and the names and addresses of their respective attorneys are as follows:

Party	**Counsel of Record**
James Dondero, Defendant in the above-captioned adversary proceeding and a creditor, indirect equity holder, and party in interest in the above-captioned bankruptcy case Appellant	D. Michael Lynn State Bar I.D. No. 12736500 John Y. Bonds, III State Bar I.D. No. 02589100 John T. Wilson, IV State Bar I.D. No. 24033344 Bryan C. Assink State Bar I.D. No. 24089009 BONDS ELLIS EPPICH SCHAFER JONES LLP 420 Throckmorton Street, Suite 1000 Fort Worth, Texas 76102 (817) 405-6900 telephone (817) 405-6902 facsimile Email: michael.lynn@bondsellis.com Email: john@bondsellis.com Email: john.wilson@bondsellis.com Email: bryan.assink@bondsellis.com

Highland Capital Management, L.P., Plaintiff in the above-captioned adversary proceeding and the Debtor in the above-captioned bankruptcy case Appellee	Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*) Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*) John A. Morris (NY Bar No. 266326) (*pro hac vice*) Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*) PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Email:jpomerantz@pszjlaw.com ikharasch@pszjlaw.com jmorris@pszjlaw.com gdemo@pszjlaw.com and Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) HAYWARD PLLC 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Telephone: (972) 755-7100 Email:MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com

Dated: January 13, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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Email: bryan.assink@bondsellis.com

ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 13, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

APPELLANT JAMES DONDERO'S MOTION FOR LEAVE TO APPEAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

James D. Dondero ("Appellant"), the defendant in the above-captioned adversary proceeding and appellant in connection with the Notice of Appeal filed concurrently herewith, hereby, in the alternative and in the event the District Court finds that leave to appeal the

Preliminary Injunction[1] is required, files this *Motion for Leave to Appeal* (the "Motion") pursuant to Rules 8002 and 8004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and 28 U.S.C. § 158(a)(3). In support thereof, Appellant respectfully represents as follows:

I. BACKGROUND

1. On October 16, 2019 (the "Petition Date"), Highland Capital Management, L.P. (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

2. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. trustee in Delaware.

3. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

4. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

5. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor's Chief Executive Officer.

6. On December 7, 2020, the Debtor commenced this adversary proceeding by filing

[1] As defined below.

Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief [Adv. Dkt. 1] (the "Complaint").

7. Also on December 7, 2020, the Debtor filed *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Adv. Dkt. 2] (the "TRO Motion").

8. On December 10, 2020, this Court conducted a hearing and granted the TRO Motion. Later that day, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* [Adv. Dkt. 10] (the "TRO").

9. On December 11, 2020, this Court entered the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* [Adv. Dkt. 18] (the "Scheduling Order").

10. On December 11, 2020, the Court issued the summons of the Complaint. Defendant's deadline to file his answer or other response to the Complaint is Monday, January 11, 2021.

11. On December 11, 2020, the Court set the hearing on Debtor's motion for a preliminary injunction for January 4, 2021 at 1:30 p.m.

12. On December 16, 2020, the Defendant filed his Emergency Motion to Modify the TRO, through which the Defendant was seeking to have the Court modify the terms of the TRO so that Defendant could speak with the Board directly to further advocate for his Pot Plan that would, if adopted, see the Debtor continue to operate as a going concern.

13. The motion was thereafter set by the Court for hearing on January 4, 2021 at 1:30 p.m. Because of the scheduled hearing date, the Defendant believed that the motion was rendered moot and he therefore withdrew the motion on December 23, 2020.

14. On January 7, 2021, Dondero filed *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Dkt. 52].

15. On January 8, 2021, the Court conducted a hearing on Debtor's motion for a preliminary injunction and found that a preliminary injunction should be entered against Appellant.

16. On January 11, 2021, Appellant filed his answer to the Complaint.

17. On January 12, 2021, the Court entered its *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction"). A true and correct copy of the Preliminary Injunction is attached hereto as "**Exhibit A**."

18. Among other things, the Preliminary Injunction enjoins and restrains Appellant from "(a)communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication, (b)making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting, (c)communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct")."

19. The Preliminary Injunction also purports to restrain Appellant from taking other actions, including "from causing, encouraging, or conspiring with (a)any entity owned or controlled by him, and/or (b)any person or entity acting with him or on his behalf, to, directly or

indirectly, engage in any Prohibited Conduct."

20. The Preliminary Injunction also prevents Appellant from speaking with two former employees of the Debtor and from entering Debtor's office space or using any of the Debtor's computer, email, or information systems.

21. Finally, during the preliminary injunction hearing, the Court ordered Appellant to attend all future hearings in the Bankruptcy Case despite no party having requested this relief in connection with the Motion or during the hearing.

II. RELIEF REQUESTED AND BASIS FOR RELIEF

22. In the alternative, and to the extent the District Court finds that leave to appeal the Preliminary Injunction is required, the District Court should grant Appellant leave to appeal the Preliminary Injunction pursuant to 28 U.S.C. §158(a)(3) and Rules 8002 and 8004 of the Federal Rules of Bankruptcy Procedure.

23. Good cause exists to grant Appellant leave to appeal the Preliminary Injunction. The injunction, which effectively permanently fixes Appellant's rights in the bankruptcy case, is overbroad, nonspecific, and inconsistent with applicable law. Among other things, the injunction violates Appellant's First Amendment rights by prohibiting all communication of any nature between Appellant and the Debtor's employees. The injunction's other restrictions are also overbroad, unclear as to the specific acts restrained, and potentially unlimited in scope. Granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by or in the Preliminary Injunction.

24. Given the broad restrictions contained in the Preliminary Injunction, including the restriction on Appellant's First Amendment rights and the potentially limitless scope of the injunction, relief from the restrictions as soon as practicable is warranted.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that, in the event that the District Court finds that leave to appeal the Preliminary Injunction is required, the District Court (i) enter an order granting this Motion, (ii) provide Appellant with leave to appeal the Preliminary Injunction, (iii) consider the appeal and relief requested as soon as practicable, and (iv) provide Appellant such other and further relief to which he may be justly entitled.

Dated: January 13, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
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Email: john@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 13, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

BTXN 049 (rev. 03/15)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Highland Capital Management, L.P. Debtor(s)	§	Case No.: 19−34054−sgj11 Chapter No.: 11
Highland Capital Management, L.P. Plaintiff(s)	§	Adversary No.: 20−03190−sgj
vs. James D. Dondero Defendant(s)	§	Civil Case No.:
James Dondero Appellant(s)	§	
vs. Highland Capital Management, LP Appellee(s)	§	

NOTICE OF TRANSMITTAL

I am transmitting:

- ☐ The Motion for leave to Appeal 28 U.S.C. § (USDC Civil Action No. DNC Case).
- ☐ The Motion for Stay Pending Appeal (USDC Action No. − DNC Case).
- ☐ The Proposed Findings of Fact and Conclusions of Law.
- ☐ The Motion to Extend Time To File Designation (USDC Civil Action No DNC Case).
- ☐ On , the Record on Appeal was transmitted. The designation of record or item(s) designated by were not filed when the record was transmitted. The item(s) were filed on awaiting instructions from the assigned district judge.
- ☐ Other
- ☑ Copies of: Amended notice of appeal, Notice of appeal, appealed order [59] and supporting documents

TO ALL ATTORNEYS: File all subsequent papers captioned and numbered with the appropriate division of the United States District Clerk's Office. Any questions concerning this proceeding should be directed to the U.S. District Clerk's Office at (214) 753−2200.

DATED: 1/20/21

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

BTXN 116 (rev. 07/08)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

APPEAL SERVICE LIST

Transmission of the Record

BK Case No.: 19-34054-sgj11

Adversary No.: 20-03190-sgj

Received in District Court by: _____

Date: _____

Volume Number(s): _____

cc: Stacey G. Jernigan
Robert Schaaf
Michael Edmond
Attorney(s) for Appellant
US Trustee

Appellant James Dondero

Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone

Appellee Highland Capital Management, LP

Zachery Z. Annable (TX Bar No. 24053075)
HAYWARD PLLC
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100

BTXN 150 (rev. 11/10)

In Re: Highland Capital Management, L.P	§	
	Debtor(s) §	Case No.: 19-34054-sgj11 Chapter No.: 11
Highland Capital Management, L.P	Plaintiff(s) §	Adversary No.: 20-03190-sgj
vs. James D. Dondero	Defendant(s) §	

CIVIL CASE COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) **APPELLANT**
James Dondero

APPELLEE
Highland Capital Management, LP

(b) County of Residence of First Listed Party:
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Party:
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone

Attorney's (If Known)
Zachery Z. Annable (TX Bar No. 24053075)
HAYWARD PLLC
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100

II. BASIS OF JURISDICTION

- ○ 1 U.S. Government Plaintiff
- ○ 2 U.S. Government Defendant
- ◉ 3 Federal Question (U.S. Government Not a Party)
- ○ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

Citizen of This State	○ 1	○ 1	Incorporated *or* Principal Place of Business In This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated *and* Principal Place of Business In Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. NATURE OF SUIT

- ◉ 422 Appeal 28 USC 158
- ○ 423 Withdrawal 28 USC 157
- ○ 890 Other Statutory Actions

V. ORIGIN

- ◉ 1 Original Proceeding
- ○ 2 Removed from State Court
- ○ 3 Remanded from Appellate Court
- ○ 4 Reinstated or Reopened
- ○ 5 Transferred from another district
- ○ 6 Multidistrict Litigation
- ○ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity):**
422 Appeal 28 USC 158

Brief description of cause:
Notice of appeal of a bankruptcy court order

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

Judge: Star Docket Number: 3:20-003390-X

DATED: 1/19/21

FOR THE COURT:
Robert P. Colwell, Clerk of Court
by: /s/J. Blanco, Deputy Clerk

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
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Fort Worth, Texas 76102
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(817) 405-6902 facsimile

ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

AMENDED NOTICE OF APPEAL AS OF RIGHT OR, ALTERNATIVELY,
NOTICE OF APPEAL WITH MOTION FOR LEAVE TO APPEAL

NOTICE IS HEREBY GIVEN that, pursuant to rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), 28 U.S.C § 158(a), and 28 U.S.C. § 1292(a) or, alternatively, pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C § 158(a)(3), James Dondero hereby appeals to the United States District Court for the Northern District of Texas (the

"District Court") from the *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction") entered by the United States Bankruptcy Court for the Northern District of Texas on January 12, 2021. A copy of the Preliminary Injunction is attached hereto as "**Exhibit 1**".

In the alternative, in the event that the District Court finds that leave to appeal is required, Appellant hereby moves the District Court for leave to appeal the Preliminary Injunction pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C. § 158(a)(3). A motion for leave to appeal is being filed contemporaneously herewith and Appellant respectfully requests that the Bankruptcy Clerk transmit the Notice of Appeal and the motion to the District Court for its consideration.

The parties to this matter and the names and addresses of their respective attorneys are as follows:

Party	**Counsel of Record**
James Dondero, Defendant in the above-captioned adversary proceeding and a creditor, indirect equity holder, and party in interest in the above-captioned bankruptcy case Appellant	D. Michael Lynn State Bar I.D. No. 12736500 John Y. Bonds, III State Bar I.D. No. 02589100 John T. Wilson, IV State Bar I.D. No. 24033344 Bryan C. Assink State Bar I.D. No. 24089009 BONDS ELLIS EPPICH SCHAFER JONES LLP 420 Throckmorton Street, Suite 1000 Fort Worth, Texas 76102 (817) 405-6900 telephone (817) 405-6902 facsimile Email: michael.lynn@bondsellis.com Email: john@bondsellis.com Email: john.wilson@bondsellis.com Email: bryan.assink@bondsellis.com

Highland Capital Management, L.P., Plaintiff in the above-captioned adversary proceeding and the Debtor in the above-captioned bankruptcy case Appellee	Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*) Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*) John A. Morris (NY Bar No. 266326) (*pro hac vice*) Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*) PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Email:jpomerantz@pszjlaw.com ikharasch@pszjlaw.com jmorris@pszjlaw.com gdemo@pszjlaw.com and Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) HAYWARD PLLC 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Telephone: (972) 755-7100 Email:MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com

Dated: January 13, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
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Email: michael.lynn@bondsellis.com
Email: john@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 13, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	No. 20-03190-sgj
JAMES D. DONDERO,	§	
Defendant.	§	

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

---

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

NOTICE OF APPEAL AS OF RIGHT OR, ALTERNATIVELY,
NOTICE OF APPEAL WITH MOTION FOR LEAVE TO APPEAL

NOTICE IS HEREBY GIVEN that, pursuant to rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), 28 U.S.C § 158(a), and 28 U.S.C. § 1292(a) or, alternatively, pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C § 158(a)(3), James Dondero hereby appeals to the United States District Court for the Northern District of Texas (the

"District Court") from the *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction") entered by the United States Bankruptcy Court for the Northern District of Texas on January 12, 2021. A copy of the Preliminary Injunction is attached hereto.

In the alternative, in the event that the District Court finds that leave to appeal is required, Appellant hereby moves the District Court for leave to appeal the Preliminary Injunction pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C. § 158(a)(3).

Good cause exists to grant Appellant leave to appeal the Preliminary Injunction. The injunction, which effectively permanently fixes Appellant's rights in the bankruptcy case, is overbroad, nonspecific, and inconsistent with applicable law. Among other things, the injunction violates Appellant's First Amendment rights by prohibiting all communication of any nature between Appellant and the Debtor's employees. The injunction's other restrictions are also overbroad, unclear as to the specific acts restrained, and potentially unlimited in scope. Granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by or in the Preliminary Injunction.

The parties to this matter and the names and addresses of their respective attorneys are as follows:

Party	**Counsel of Record**
James Dondero, Defendant in the above-captioned adversary proceeding and a creditor, indirect equity holder, and party in interest in the above-captioned bankruptcy case Appellant	D. Michael Lynn State Bar I.D. No. 12736500 John Y. Bonds, III State Bar I.D. No. 02589100 John T. Wilson, IV State Bar I.D. No. 24033344 Bryan C. Assink State Bar I.D. No. 24089009 BONDS ELLIS EPPICH SCHAFER JONES LLP 420 Throckmorton Street, Suite 1000

	Fort Worth, Texas 76102 (817) 405-6900 telephone (817) 405-6902 facsimile Email: michael.lynn@bondsellis.com Email: john@bondsellis.com Email: john.wilson@bondsellis.com Email: bryan.assink@bondsellis.com
Highland Capital Management, L.P., Plaintiff in the above-captioned adversary proceeding and the Debtor in the above-captioned bankruptcy case Appellee	Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*) Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*) John A. Morris (NY Bar No. 266326) (*pro hac vice*) Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*) PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Email:jpomerantz@pszjlaw.com ikharasch@pszjlaw.com jmorris@pszjlaw.com gdemo@pszjlaw.com and Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) HAYWARD PLLC 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Telephone: (972) 755-7100 Email:MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com

Dated: January 12, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 12, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	No. 20-03190-sgj
JAMES D. DONDERO,	§	
Defendant.	§	

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

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[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	No. 20-03190-sgj
JAMES D. DONDERO,	§	
Defendant.	§	

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

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5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

---

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

EXHIBITS, APPEAL

U.S. Bankruptcy Court
Northern District of Texas (Dallas)
Adversary Proceeding #: 20−03190−sgj

Assigned to: Stacey G. Jernigan
Lead BK Case: 19−34054
Lead BK Title: Highland Capital Management, L.P.
Lead BK Chapter: 11
Demand: 0
Nature[s] of Suit: 72 Injunctive relief − other

Date Filed: 12/07/20

Plaintiff

Highland Capital Management, L.P.

represented by **Zachery Z. Annable**
Hayward PLLC
10501 N. Central Expressway
Suite 106
Dallas, TX 75231
(972) 755−7108
Fax : (972) 755−7108
Email: zannable@haywardfirm.com
LEAD ATTORNEY

V.

Defendant

James D. Dondero

represented by **Bryan C. Assink**
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton St., Suite 1000
Fort Worth, TX 76102
(817) 405−6900
Fax : (817) 405−6902
Email: bryan.assink@bondsellis.com

Filing Date	Docket Text
12/07/2020	1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount $350 (Attachments: # 1 Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief − other). (Annable, Zachery)
12/07/2020	Receipt of filing fee for Complaint(20−03190−sgj) [cmp,cmp] (350.00). Receipt number 28321214, amount $ 350.00 (re: Doc# 1). (U.S. Treasury)
12/07/2020	2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery)

12/07/2020	3 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.).
12/07/2020	4 Declaration re: *(Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29) (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.).
12/07/2020	5 Motion for expedited hearing(related documents 2 Motion for preliminary injunction) *(Plaintiff Highland Capital Management, L.P.'s Motion for Expedited Hearing on Its Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified to add linkage on 12/8/2020 (Ecker, C.).
12/07/2020	6 Motion for temporary restraining order filed by Plaintiff Highland Capital Management, L.P. (Ecker, C.). Modified on 12/8/2020 (Ecker, C.). (Entered: 12/08/2020)
12/08/2020	7 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*. 6 Motion for protective order). (Annable, Zachery)
12/08/2020	8 Notice of hearing *(Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, (Annable, Zachery)
12/09/2020	9 Order granting motion for expedited hearing (Related Doc5)(document set for hearing: 6 Motion for protective order) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, Entered on 12/9/2020. (Ecker, C.). Modified to correct links on 12/9/2020 (Ecker, C.).
12/10/2020	10 Order granting motion for temporary restraining order against James Dondero (related document # 6) Entered on 12/10/2020. (Rielly, Bill)
12/10/2020	11 Request for transcript regarding a hearing held on 12/10/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/10/2020	12 TRO Hearing held on 12/10/2020. (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (Appearances: j. Dondero and J. Morris for Debtor; M. Lynn and J. Bonds for J. Dondero; M. Clemente for UCC; J. Bain for CLO Issuers; J. Wright for NexPoint entities. Evidentiary hearing. Motion granted. Preliminary injunction hearing set

	for 1/4/21. Counsel to upload order.) (Edmond, Michael)
12/10/2020	13 Hearing held on 12/10/2020., Hearing continued (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero), filed by Plaintiff Highland Capital Management, L.P., Preliminary Injunction Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2). (Edmond, Michael)
12/10/2020	14 Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
12/10/2020	15 Certificate of service re: *Documents Served on December 7, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Plaintiff Highland Capital Management, L.P., 3 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P., 4 Declaration re: *(Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29) (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P., 5 Motion for expedited hearing(related documents 2 Motion for preliminary injunction) *(Plaintiff Highland Capital Management, L.P.'s Motion for Expedited Hearing on Its Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery). Related document(s) 6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.. Modified to add linkage on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	16 Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2. (Annable, Zachery)
12/11/2020	17 Summons issued on James D. Dondero Answer Due 1/10/2021 (Ellison, T.)
12/11/2020	18 Scheduling order setting deadlines. Discovery and all exhibits except impeachment documents: 45 days prior to Docket Call, pre−trial order: 7 calendar days prior to Docket Call, proposed findings of fact and conclusions of law: 7 days prior to first scheduled docket call (RE: related document(s)1 Complaint filed by Plaintiff Highland Capital

	Management, L.P.). Trial Docket Call date set for 5/10/2021 at 01:30 PM at Dallas Judge Jernigan Ctrm. Entered on 12/11/2020 (Ellison, T.)
12/11/2020	19 Transcript regarding Hearing Held 12/10/2020 (58 pages) RE: Motion for Preliminary Injunction; Motion for Temporary Restraining Order. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 12 TRO Hearing held on 12/10/2020. (RE: related document(s)1 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief − other). filed by Plaintiff Highland Capital Management, L.P.) (Appearances: j. Dondero and J. Morris for Debtor; M. Lynn and J. Bonds for J. Dondero; M. Clemente for UCC; J. Bain for CLO Issuers; J. Wright for NexPoint entities. Evidentiary hearing. Motion granted. Preliminary injunction hearing set for 1/4/21. Counsel to upload order.), 13 Hearing held on 12/10/2020., Hearing continued (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero), filed by Plaintiff Highland Capital Management, L.P., Preliminary Injunction Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2),). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)
12/11/2020	20 Certificate of service re: *Documents Served on December 9, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)6 Motion for temporary restraining order filed by Plaintiff Highland Capital Management, L.P. (Ecker, C.). Modified on 12/8/2020 (Ecker, C.). filed by Plaintiff Highland Capital Management, L.P., 7 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*, 6 Motion for protective order). filed by Plaintiff Highland Capital Management, L.P., 8 Notice of hearing *(Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)6 Motion for protective order filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	21 Certificate of service re: *Order Granting Plaintiff Highland Capital Management, L.P.'s Motion for Expedited Hearing on Its Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)9 Order granting motion for expedited hearing (Related Doc5)(document set for hearing: 6 Motion for protective order) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, Entered on 12/9/2020. (Ecker, C.). Modified to correct links on 12/9/2020 (Ecker, C.).). (Kass, Albert)
12/11/2020	22 BNC certificate of mailing − PDF document. (RE: related document(s)9 Order granting motion for expedited hearing (Related Doc5)(document set for hearing: 6 Motion for protective order) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 6, Entered on 12/9/2020. (Ecker, C.). Modified to correct links on 12/9/2020 (Ecker, C.).) No. of Notices: 1. Notice Date 12/11/2020. (Admin.)
12/12/2020	23 BNC certificate of mailing − PDF document. (RE: related document(s)10 Order granting motion for temporary restraining order against James Dondero (related document 6) Entered on 12/10/2020.) No. of Notices: 1. Notice Date 12/12/2020. (Admin.)
12/16/2020	

	24 WITHDRAWN per # 29 Motion for leave *(James Dondero's Emergency Motion to Modify Temporary Restraining Order)* (related document(s) 10 Order on motion for protective order) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/16/2020	25 Certificate of service re: *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)10 Order granting motion for temporary restraining order against James Dondero (related document 6) Entered on 12/10/2020.). (Kass, Albert)
12/16/2020	26 Certificate of service re: *Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Motion for a Preliminary Injunction Against Mr. James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)16 Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2, filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/17/2020	27 Summons service executed on James D. Dondero 12/15/2020 (Annable, Zachery)
12/21/2020	28 Notice of hearing filed by Defendant James D. Dondero (RE: related document(s)24 Motion for leave *(James Dondero's Emergency Motion to Modify Temporary Restraining Order)* (related document(s) 10 Order on motion for protective order) filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 24, (Assink, Bryan)
12/23/2020	29 Withdrawal filed by Defendant James D. Dondero (RE: related document(s)24 Motion for leave *(James Dondero's Emergency Motion to Modify Temporary Restraining Order)* (related document(s) 10 Order on motion for protective order)). (Assink, Bryan)
12/24/2020	30 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/24/2020	31 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/28/2020	32 Motion for protective order*(James Dondero's Emergency Motion for Entry of a Protective Order)* filed by Defendant James D. Dondero (Attachments: # 1 Ex. A – Discovery Requests # 2 Proposed Order) (Assink, Bryan)
12/28/2020	33 Motion for expedited hearing(related documents 32 Motion for protective order) *(Request for Emergency Hearing)* filed by Defendant James D. Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
12/28/2020	34 Objection to (related document(s): 32 Motion for protective order*(James Dondero's Emergency Motion for Entry of a Protective Order)* filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/28/2020	35 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/28/2020	36 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
12/29/2020	37 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, (Annable, Zachery)

12/29/2020	38 Order resolving James Dondero's emergency motion for a protective order and resetting hearing on preliminary injunction (RE: related document(s)32 Motion for protective Order and 2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, Entered on 12/29/2020 (Okafor, M.)
12/30/2020	39 Certificate of service re: *1) Notice of Deposition; and 2) Notice of Deposition* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)30 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 31 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/30/2020	40 Certificate of service re: *1) Debtor's Objection to James Dondero's Emergency Motion for a Protective Order; 2) Amended Notice of Deposition; and 3) Amended Notice of Deposition* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)34 Objection to (related document(s): 32 Motion for protective order*(James Dondero's Emergency Motion for Entry of a Protective Order)* filed by Defendant James D. Dondero) filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 35 Notice to take deposition of James Dondero filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 36 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
12/31/2020	41 BNC certificate of mailing – PDF document. (RE: related document(s)38 Order resolving James Dondero's emergency motion for a protective order and resetting hearing on preliminary injunction (RE: related document(s)32 Motion for protective Order and 2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, Entered on 12/29/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 12/31/2020. (Admin.)
01/04/2021	42 Certificate of service re: *1) Amended Notice of Hearing on Plaintiff Highland Capital Management, L.P.'s Motion for a Preliminary Injunction Against Mr. James Dondero; and 2) Order Resolving James Dondero's Emergency Motion for a Protective Order* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)37 Amended Notice of hearing filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, filed by Plaintiff Highland Capital Management, L.P., 38 Order resolving James Dondero's emergency motion for a protective order and resetting hearing on preliminary injunction (RE: related document(s)32 Motion for protective Order and 2 Motion for preliminary injunction filed by Plaintiff Highland Capital Management, L.P.). Hearing to be held on 1/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2, Entered on 12/29/2020 (Okafor, M.)). (Kass, Albert)
01/05/2021	43 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
01/06/2021	44 Notice *(Highland Capital Management, L.P.'s Notice of Subpoena to James D. Dondero)* filed by Plaintiff Highland Capital Management, L.P.. (Annable, Zachery)
01/06/2021	45 Witness and Exhibit List *(Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20

	Exhibit T # 21 Exhibit U) (Annable, Zachery)
01/07/2021	46 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)45 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit Y) (Annable, Zachery)
01/07/2021	47 Witness and Exhibit List filed by Defendant James D. Dondero (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Assink, Bryan)
01/07/2021	48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery)
01/07/2021	49 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Annable, Zachery)
01/07/2021	50 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Attachments: # 1 Exhibit G # 2 Exhibit K # 3 Exhibit L # 4 Exhibit M # 5 Exhibit N # 6 Exhibit P # 7 Exhibit Q # 8 Exhibit R # 9 Exhibit S # 10 Exhibit U # 11 Exhibit W # 12 Exhibit X # 13 Exhibit Y # 14 Exhibit Z) (Annable, Zachery)
01/07/2021	51 Motion for expedited hearing(related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. (Annable, Zachery)
01/07/2021	52 Response opposed to (related document(s): 2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)* filed by Plaintiff Highland Capital Management, L.P.) filed by Defendant James D. Dondero. (Assink, Bryan)
01/08/2021	53 Request for transcript regarding a hearing held on 1/8/2021. The requested turn−around time is hourly. (Edmond, Michael)
01/08/2021	54 Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
01/08/2021	55 Certificate of service re: *1) Second Amended Notice of Deposition of Andrew Clubok; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3)*

	WebEx Meeting Invitation to participate electronically in the hearing on Friday January 8, 2021 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)43 Notice to take deposition of Andrew Clubok filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	66 Hearing held on 1/8/2021. (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P., (Appearances: J. Morris and J. Pomeranz for Debtor; M. Lynn and J. Bonds for J. Dondero; M. Clemente for UCC; F. Smith for certain employees; D. Rukavina for certain non−Debtor Highland advisors and funds. Evidentiary hearing. Motion granted, with FOFs and COLs announced orally. Counsel to upload order consistent with courts ruling.) (Edmond, Michael) (Entered: 01/15/2021)
01/11/2021	56 Transcript regarding Hearing Held 01/08/2021 (205 pages) RE: Preliminary Injunction Hearing (#2). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/12/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 13 Hearing held on 12/10/2020., Hearing continued (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero), filed by Plaintiff Highland Capital Management, L.P., Preliminary Injunction Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 2),). Transcript to be made available to the public on 04/12/2021. (Rehling, Kathy)
01/11/2021	57 Answer to complaint filed by James D. Dondero. (Assink, Bryan)
01/12/2021	58 Certificate of service re: *1) Highland Capital Management, L.P's Notice of Subpoena to James D. Dondero; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)44 Notice *(Highland Capital Management, L.P.'s Notice of Subpoena to James D. Dondero)* filed by Plaintiff Highland Capital Management, L.P.. filed by Plaintiff Highland Capital Management, L.P., 45 Witness and Exhibit List *(Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)2 Motion for preliminary injunction *(Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U) filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
01/12/2021	59 Order granting motion for preliminary injunction against James Dondero (related document # 2) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	60 Notice of appeal . Fee Amount $298 filed by Defendant James D. Dondero (RE: related document(s)59 Order on motion for preliminary injunction). Appellant Designation due by 01/26/2021. (Attachments: # 1 Preliminary Injunction)(Assink, Bryan)
01/12/2021	Receipt of filing fee for Notice of appeal(20−03190−sgj) [appeal,ntcapl] (298.00). Receipt number 28409400, amount $ 298.00 (re: Doc# 60). (U.S. Treasury)
01/12/2021	61 Certificate of service re: *Documents Served on January 7, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)46 Amended Witness and Exhibit

	List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)45 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit Y) filed by Plaintiff Highland Capital Management, L.P., 48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Plaintiff Highland Capital Management, L.P., 49 Brief in support filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). filed by Plaintiff Highland Capital Management, L.P., 50 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)* filed by Plaintiff Highland Capital Management, L.P. (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order *(Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO)*). (Attachments: # 1 Exhibit G # 2 Exhibit K # 3 Exhibit L # 4 Exhibit M # 5 Exhibit N # 6 Exhibit P # 7 Exhibit Q # 8 Exhibit R # 9 Exhibit S # 10 Exhibit U # 11 Exhibit W # 12 Exhibit X # 13 Exhibit Y # 14 Exhibit Z) filed by Plaintiff Highland Capital Management, L.P., 51 Motion for expedited hearing(related documents 48 Motion for Contempt) filed by Plaintiff Highland Capital Management, L.P. filed by Plaintiff Highland Capital Management, L.P.). (Kass, Albert)
01/13/2021	62 Clerk's correspondence requesting File a separate motion for leave from attorney for appellant. (RE: related document(s)60 Notice of appeal . Fee Amount $298 filed by Defendant James D. Dondero (RE: related document(s)59 Order on motion for preliminary injunction). Appellant Designation due by 01/26/2021. (Attachments: # 1 Preliminary Injunction)) Responses due by 1/15/2021. (Blanco, J.)
01/13/2021	63 Amended notice of appeal filed by Defendant James D. Dondero (RE: related document(s)60 Notice of appeal). (Attachments: # 1 Ex. 1 – Preliminary Injunction)(Assink, Bryan)
01/13/2021	64 Motion for leave to appeal (related document(s): 59 Order on motion for preliminary injunction, 60 Notice of appeal filed by Defendant James D. Dondero) filed by Defendant James D. Dondero (Assink, Bryan)
01/14/2021	65 BNC certificate of mailing – PDF document. (RE: related document(s)59 Order granting motion for preliminary injunction against James Dondero (related document 2) Entered on 1/12/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/14/2021. (Admin.)
01/15/2021	67 Certificate of service re: *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)59 Order granting motion for preliminary injunction against James Dondero (related document 2) Entered on 1/12/2021. (Ecker, C.)). (Kass, Albert)

BTXN 049 (rev. 03/15)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Highland Capital Management, L.P. Debtor(s)	§	Case No.: 19−34054−sgj11 Chapter No.: 11
Highland Capital Management, L.P. Plaintiff(s)	§	Adversary No.: 20−03190−sgj
vs. James D. Dondero Defendant(s)	§	Civil Case No.: 3:21−CV−00132−E
James Dondero Appellant(s)	§	
vs. Highland Capital Management, LP Appellee(s)	§	

NOTICE OF TRANSMITTAL

I am transmitting:

- ☐ The Motion for leave to Appeal 28 U.S.C. § (USDC Civil Action No. DNC Case).
- ☐ The Motion for Stay Pending Appeal (USDC Action No. − DNC Case).
- ☐ The Proposed Findings of Fact and Conclusions of Law.
- ☐ The Motion to Extend Time To File Designation (USDC Civil Action No DNC Case).
- ☐ On , the Record on Appeal was transmitted. The designation of record or item(s) designated by were not filed when the record was transmitted. The item(s) were filed on awaiting instructions from the assigned district judge.
- ☐ Other
- ☑ Copies of: Motion to leave to appeal filed 01/13/2021

TO ALL ATTORNEYS: File all subsequent papers captioned and numbered with the appropriate division of the United States District Clerk's Office. Any questions concerning this proceeding should be directed to the U.S. District Clerk's Office at (214) 753−2200.

DATED: 1/20/21

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
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(817) 405-6902 facsimile

ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

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	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

APPELLANT JAMES DONDERO'S MOTION FOR LEAVE TO APPEAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

James D. Dondero ("Appellant"), the defendant in the above-captioned adversary proceeding and appellant in connection with the Notice of Appeal filed concurrently herewith, hereby, in the alternative and in the event the District Court finds that leave to appeal the

Preliminary Injunction[1] is required, files this *Motion for Leave to Appeal* (the "Motion") pursuant to Rules 8002 and 8004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and 28 U.S.C. § 158(a)(3). In support thereof, Appellant respectfully represents as follows:

I. BACKGROUND

1. On October 16, 2019 (the "Petition Date"), Highland Capital Management, L.P. (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

2. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. trustee in Delaware.

3. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

4. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

5. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor's Chief Executive Officer.

6. On December 7, 2020, the Debtor commenced this adversary proceeding by filing

[1] As defined below.

Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief [Adv. Dkt. 1] (the "Complaint").

7. Also on December 7, 2020, the Debtor filed *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Adv. Dkt. 2] (the "TRO Motion").

8. On December 10, 2020, this Court conducted a hearing and granted the TRO Motion. Later that day, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* [Adv. Dkt. 10] (the "TRO").

9. On December 11, 2020, this Court entered the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* [Adv. Dkt. 18] (the "Scheduling Order").

10. On December 11, 2020, the Court issued the summons of the Complaint. Defendant's deadline to file his answer or other response to the Complaint is Monday, January 11, 2021.

11. On December 11, 2020, the Court set the hearing on Debtor's motion for a preliminary injunction for January 4, 2021 at 1:30 p.m.

12. On December 16, 2020, the Defendant filed his Emergency Motion to Modify the TRO, through which the Defendant was seeking to have the Court modify the terms of the TRO so that Defendant could speak with the Board directly to further advocate for his Pot Plan that would, if adopted, see the Debtor continue to operate as a going concern.

13. The motion was thereafter set by the Court for hearing on January 4, 2021 at 1:30 p.m. Because of the scheduled hearing date, the Defendant believed that the motion was rendered moot and he therefore withdrew the motion on December 23, 2020.

14. On January 7, 2021, Dondero filed *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Dkt. 52].

15. On January 8, 2021, the Court conducted a hearing on Debtor's motion for a preliminary injunction and found that a preliminary injunction should be entered against Appellant.

16. On January 11, 2021, Appellant filed his answer to the Complaint.

17. On January 12, 2021, the Court entered its *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction"). A true and correct copy of the Preliminary Injunction is attached hereto as "**Exhibit A**."

18. Among other things, the Preliminary Injunction enjoins and restrains Appellant from "(a)communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication, (b)making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting, (c)communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct")."

19. The Preliminary Injunction also purports to restrain Appellant from taking other actions, including "from causing, encouraging, or conspiring with (a)any entity owned or controlled by him, and/or (b)any person or entity acting with him or on his behalf, to, directly or

indirectly, engage in any Prohibited Conduct."

20. The Preliminary Injunction also prevents Appellant from speaking with two former employees of the Debtor and from entering Debtor's office space or using any of the Debtor's computer, email, or information systems.

21. Finally, during the preliminary injunction hearing, the Court ordered Appellant to attend all future hearings in the Bankruptcy Case despite no party having requested this relief in connection with the Motion or during the hearing.

II. RELIEF REQUESTED AND BASIS FOR RELIEF

22. In the alternative, and to the extent the District Court finds that leave to appeal the Preliminary Injunction is required, the District Court should grant Appellant leave to appeal the Preliminary Injunction pursuant to 28 U.S.C. §158(a)(3) and Rules 8002 and 8004 of the Federal Rules of Bankruptcy Procedure.

23. Good cause exists to grant Appellant leave to appeal the Preliminary Injunction. The injunction, which effectively permanently fixes Appellant's rights in the bankruptcy case, is overbroad, nonspecific, and inconsistent with applicable law. Among other things, the injunction violates Appellant's First Amendment rights by prohibiting all communication of any nature between Appellant and the Debtor's employees. The injunction's other restrictions are also overbroad, unclear as to the specific acts restrained, and potentially unlimited in scope. Granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by or in the Preliminary Injunction.

24. Given the broad restrictions contained in the Preliminary Injunction, including the restriction on Appellant's First Amendment rights and the potentially limitless scope of the injunction, relief from the restrictions as soon as practicable is warranted.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that, in the event that the District Court finds that leave to appeal the Preliminary Injunction is required, the District Court (i) enter an order granting this Motion, (ii) provide Appellant with leave to appeal the Preliminary Injunction, (iii) consider the appeal and relief requested as soon as practicable, and (iv) provide Appellant such other and further relief to which he may be justly entitled.

Dated: January 13, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 13, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	No. 20-03190-sgj
JAMES D. DONDERO,	§	
Defendant.	§	

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

---

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S EMERGENCY MOTION FOR CONTINUANCE OF HEARING

James D. Dondero ("Defendant"), the defendant in the above-captioned adversary proceeding, hereby files this *Emergency Motion for Continuance of Hearing* (the "Motion") requesting that the Court grant a continuance of the hearing on the Debtor's Contempt Motion[1] for the reasons set forth below. In support thereof, Defendant respectfully represents as follows:

[1] As defined below.

I. BACKGROUND

1. On October 16, 2019 (the "Petition Date"), Highland Capital Management, L.P. (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

2. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. trustee in Delaware.

3. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

4. Appellant is the Debtor's co-founder. As of the Petition Date, Appellant was the Debtor's CEO and the President of Strand Advisors, Inc., the Debtor's General Partner. In January 2020, under the terms of a settlement, Appellant was replaced by an independent board of directors (the "Board"). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor's Chief Executive Officer.

5. On December 7, 2020, the Debtor commenced this adversary proceeding by filing *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Dkt. 1] (the "Complaint").

6. Also on December 7, 2020, the Debtor filed *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Adv. Dkt. 2] (the "TRO Motion").

7. On December 10, 2020, this Court conducted a hearing and granted the TRO Motion. Later that day, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* [Adv. Dkt. 10] (the "TRO").

8. On January 7, 2021, the Debtor filed *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 48] and *Debtor's Memorandum of Law in Support of Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 49] (collectively, the "Contempt Motion").

9. On January 8, 2021, the Court conducted a hearing on Debtor's motion for a preliminary injunction and found that a preliminary injunction should be entered against Appellant.

10. On January 12, 2021, the Court entered its *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction").

11. On January 12, 2021, the same day the Preliminary Injunction was entered, Defendant filed with the Bankruptcy Court the *Notice of Appeal as of Right or, Alternatively, Notice of Appeal with Motion for Leave to Appeal* [Adv. Dkt. 60]. The following day, the Bankruptcy Clerk instructed Defendant to separately file the notice of appeal and the motion for leave to appeal.

12. Accordingly, on January 13, 2021, Defendant filed the *Amended Notice of Appeal as of Right or, Alternatively, Notice of Appeal with Motion for Leave to Appeal* [Adv. Dkt. 63] and *Appellant James Dondero's Motion for Leave to Appeal* [Adv. Dkt. 64].

13. On January 20, 2021, the Bankruptcy Clerk transmitted the amended notice of appeal and motion for leave to the District Court and docketed the appeal of the Preliminary Injunction. The Defendant thereafter filed a motion for expedited appeal with the District Court, which remains pending.

14. On January 26, 2021, the Court commenced a hearing on the Debtor's motion for

a preliminary injunction against the Funds and Advisors[2] in the separate adversary proceeding styled *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P., et al.*, adversary proceeding no. 21-03000.

15. At the conclusion of the time allotted for the January 26, 2021 hearing, the Court determined that the remainder of the hearing on the preliminary injunction against the Funds and Advisors should be set at the same time as the Contempt Motion on February 5, 2021 at 9:30 a.m.

II. RELIEF REQUESTED AND BASIS FOR RELIEF

16. For the reasons set forth below, Defendant respectfully requests a continuance of the Contempt Hearing. Good cause exists for the continuance of the Contempt Hearing. First, there is no exigent need for the hearing to occur quickly, as the Contempt Hearing has no bearing on confirmation and can be heard at any time after confirmation and allowing a continuance will allow all parties and this Court to focus on confirmation and related plan matters. Second, Defendant and his counsel are cognizant of the Court's schedule and limited time, and believe that under the current setting there will be insufficient time for the parties to fully and completely present their cases and evidence on the Contempt Motion. Third, given that Defendant has appealed the injunction, continuance of the Contempt Motion until the District Court has considered the appeal may be practical as it allows additional time for the District Court to consider whether the injunction complies with applicable law before this Court rules on whether contempt under the TRO is proper.

17. Defendant and his counsel certainly recognize and appreciate the Court's comments made at the close of the hearing on January 26, 2021 that there may be certain overlapping evidence between the Preliminary Injunction proceeding against the Funds and Advisors and the Contempt

[2] As defined in that proceeding.

Motion against Defendant.

18. But any efficiencies that may be provided by having the hearings held concurrently should not prejudice Defendant from fully presenting his defenses to the Contempt Motion or prevent him from having sufficient time to present full case in chief.

19. As the Court is aware, the Debtor utilized almost the entire hearing on January 26, 2021 to present its case in chief, leaving virtually no time for the Funds and Advisors to present their case. This is, at least in part, what necessitated the continuance to February 5, 2021.

20. Given that the Funds and Advisors have not had time to present their case in chief, it appears likely that at least the entire morning of February 5, 2021 would be utilized by the parties to complete the preliminary injunction hearing, with the Contempt Motion not even moving forward until the afternoon. If that is the case, then there will almost certainly not be sufficient time to fully hear the evidence on the Contempt Motion on February 5. For example, if the Debtor takes as long as it did during the January 26th hearing, then Dondero will not even have time to call his first witness, and likely will have very little time for cross examination. Dondero expects that the presentation of his case in chief is likely to take at least half of a day (depending on the Debtor's presentation), given the magnitude and extraordinary breadth of the relief sought by the Debtor in the Contempt Motion. In order to provide Dondero due process and sufficient time to present his defenses and case in chief, the hearing would have to be continued to a later date. In that instance, the primary impetus for continuing the Preliminary Injunction hearing to February 5 no longer exists as the parties would have to reconvene at a later date to complete the hearing on the Contempt Motion.

21. Given these issues, Defendant believes good cause exists to continue the hearing on the Contempt Motion. While Defendant understands that there may be some overlapping

evidence between the two matters, the key issues at the heart of the Contempt Motion are distinctly different than those underlying the preliminary injunction. In the Contempt Motion, the Court is going to look closely at whether the acts complained of by the Debtor actually violate the TRO. This is going to be an extremely fact intensive inquiry, and most of the relevant evidence is not going to relate to whether there is cause to enter a preliminary injunction against the Funds and Advisors, but instead will center on the details surrounding the alleged violations of the TRO. Given the Debtor's conduct in past hearings, if both matters are heard concurrently, Defendant is concerned that the Debtor will monopolize the Court's time and distract the Court from what factual issues are actually relevant to the Contempt Motion. A continuance of the hearing will allow for the Court to devote an entire day to the Contempt Motion, which the Court should allocate evenly between the Debtor and the Defendant. To the extent the Court believes that evidence presented from the preliminary injunction hearing is necessary or relevant to the determination of the Contempt Motion, such evidence can be utilized later via transcript and Defendant would agree to same.

22. In addition, Defendant does not believe that there exists any emergency or pressing need to have the hearing on the Contempt Motion on February 5, 2021. At this stage, the parties and the Court are working hard to prepare for the upcoming hearing on confirmation and in attending to issues related to the Plan. Continuing the Contempt Motion will allow the parties and the Court to focus on these more pressing matters. There is no imminent need to have the hearing on the Contempt Motion during a week where the parties are all trying to focus on confirmation and related matters.

23. Finally, a continuance also makes sense in light of the Defendant's pending appeal of the Preliminary Injunction. As the Court may be aware, the Defendant has appealed the

Preliminary Injunction and has moved in the District Court for that appeal to be considered on an expedited basis. For this reason, a continuance of the Contempt Motion until the District Court has considered the appeal is practical as it allows additional time for the District Court to consider whether the injunction complies with applicable law.

24. For the foregoing reasons, Defendant respectfully requests that the Court continue the hearing on the Contempt Motion until after the appeal of the Preliminary Injunction has been decided or, in the alternative, continue the hearing to the week following February 5, 2021 to allow Defendant time to fully and completely present his defenses to the Contempt Motion and his case in chief during a full day hearing devoted solely to the Contempt Motion. Defendant believes that, absent a continuance, he will be prejudiced from defending himself and presenting his case in chief. Conversely, a continuance of the hearing on the Contempt Motion is not likely to prejudice the Debtor as such hearing can be held at any time after confirmation.

25. This motion is not sought for delay, but so that justice may be done.

26. Given that the hearing on the Contempt Motion is set to occur soon on February 5, 2021, the Defendant respectfully requests that the Court consider this Motion as quickly as possible and, if desired, set a hearing on the Motion as soon as the Court has availability prior to the February 5 hearing.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court (i) enter an order granting this Motion, (ii) continue the hearing on the Contempt Motion until after the appeal of the Preliminary Injunction has been decided or, in the alternative, continue the hearing to the week following February 5, 2021 to allow Defendant time to fully and completely present his defenses

to the Contempt Motion and present his case in chief, and (iii) provide Defendant such other and further relief to which he may be justly entitled.

Dated: January 27, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on January 27, 2021, I conferred with counsel for Plaintiff in an attempt to resolve the relief requested by this Motion. Counsel for the Plaintiff indicated that Plaintiff is opposed to this request for continuance.

/s/ Bryan C. Assink
Bryan C. Assink

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 27, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING JAMES DONDERO'S
EMERGENCY MOTION FOR CONTINUANCE OF HEARING

Having considered the *Emergency Motion for Continuance of Hearing* (the "Motion")[1] filed by James Dondero ("Movant"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion, any and all other documents filed in support of the Motion and any responses thereto; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. The hearing on the Contempt Motion is hereby CONTINUED from February 5, 2021 at 9:30 a.m. to _____ _, 2021 at _:__.

END OF ORDER

Respectfully submitted by:

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Joshua N. Eppich
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLAINTIFF'S OBJECTION TO JAMES DONDERO'S EMERGENCY MOTION FOR CONTINUANCE OF HEARING

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding") and the debtor and debtor-in-possession (the "Debtor" or the "Plaintiff") in the above-captioned chapter 11 case ("Bankruptcy Case"), by and through its undersigned counsel, files this objection (the "Objection") to *James Dondero's Emergency Motion for Continuance of Hearing* [Adv. Pro. Docket No. 75] (the "Motion") pursuant to which Mr. James Dondero ("Mr. Dondero") seeks a continuance of the evidentiary hearing scheduled for February 5, 2021 (the "Hearing") on *Plaintiff's Motion for an Order Requiring Mr. Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Adv. Pro. Docket No. 48] (the "Contempt Motion"). In support of the Objection, the Debtor respectfully states the following::

SUMMARY OF OBJECTION

1. On January 7, 2021, the Debtor filed the Contempt Motion. In response to Mr. Dondero's objection to the Debtor's request that the hearing on the Contempt Motion be combined with the Debtor's motion for a preliminary injunction the following day, and for the specific purpose of protecting Mr. Dondero's due process rights, the Court set the Contempt Motion for February 5, 2021, four weeks later. Mr. Dondero will have had ample time to prepare, his arguments are without merit, and the Motion should be denied.

2. ***First***, Mr. Dondero's contention that there is no "exigent need" for the Hearing is belied by the record in this matter. There is ample evidence already in the record that Mr. Dondero has violated the TRO by, among other things, (a) discarding evidence, (b) interfering with the Debtor's business, and (c) soliciting the Debtor's former in-house counsel to marshal and coordinate his team of lawyers representing him and the entities he owns and/or controls (together, examples, of "Harmful Conduct"). Regrettably, Mr. Dondero has not shown any contrition, nor

has he acknowledged or taken any responsibility for his wrongful conduct. To the contrary, Mr. Dondero defiantly testified on January 26, 2021 that he believed his interference in the Debtor's business was completely justified – and his Chief Compliance Officer candidly admitted that he has not and will not take any steps to stop him. Under these circumstances, an "exigent need" surely does exist as Mr. Dondero needs to be held to account.

3. ***Second***, Mr. Dondero's concerns about time do not justify adjourning the Hearing on the Contempt Motion – a hearing scheduled four weeks after the Contempt Motion was filed for the singular purpose of addressing Mr. Dondero's due-process concerns and providing him with adequate time to prepare. Notably, the Debtor has rested its case in the preliminary injunction matter and does not expect to engage in lengthy cross-examinations of Messrs. Dondero and Post. In addition, the Debtor does not expect to repeat much of the testimony already in the record to support its Contempt Motion and is likely to call only two other witnesses, Scott Ellington and Isaac Leventon.[2] Thus, the Debtor is hopeful that all of the evidence can come in on February 5.

4. If the Court is concerned, there are several alternatives available to address the matter other than pushing the Contempt Motion even further into the future, including (a) proceeding exactly as scheduled, and continuing the matter to the following week if more time is needed; (b) putting the parties "on the clock;" or (c) adjourning the completion of the preliminary injunction hearing to the following week because the TRO will remain in place until February 15, 2021,[3] thereby giving the parties the entire day on February 5, 2021 to present their respective cases on the Contempt Motion.

---

[2] The Debtor has asked Mr. Dondero to disclose his expected witnesses so the Debtor has a reasonable opportunity to depose them and to avoid undue surprise, but the Debtor has received no response.

[3] *See Agreed Order Granting Debtor's Motion for a Temporary Restraining Order against Certain Entities Owned and/or Controlled by Mr. Dondero*, Adv. Pro. 21-03000, Docket No. 20.

5. The one thing that *should not occur* is the further delay of the Debtor's Contempt Motion.

6. ***Finally***, it would be a perversion of justice to delay the Hearing based on Mr. Dondero's own decision to appeal an interlocutory order. Notably, Mr. Dondero failed to timely appeal entry of the TRO, so it is unclear how the appeal would impact the Hearing on the Contempt Motion in any event. And, in the extraordinarily unlikely event that (i) the District Court modified the preliminary injunction, and (ii) the modification trickled down to the TRO (even though that Order was never appealed), there is no chance that such modifications would suddenly render lawful the Harmful Conduct.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court deny the Motion and grant any further relief as the Court deems just and proper.

Dated: January 29, 2021.

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-and-

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 28

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S WITNESS AND EXHIBIT LIST WITH RESPECT TO EVIDENTIARY HEARING TO BE HELD ON FEBRUARY 5, 2021

Highland Capital Management, L.P. (the "Debtor") submits the following witness and exhibit list with respect to *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. 48] which the Court has set for hearing at 9:30 a.m. (Central Time) on February 5, 2021 (the "Hearing") in the above-styled adversary proceeding (the "Adversary Proceeding").

A. Witnesses:

1. James P. Seery, Jr.;
2. James Dondero;
3. Scott Ellington;
4. Isaac Leventon;
5. Any witness identified by or called by any other party; and
6. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
1.	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]		
2.	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]		
3.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]		
4.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]		

Letter	Exhibit	Offered	Admitted
5.	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]		
6.	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]		
7.	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]		
8.	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]		
9.	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]		
10.	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]		
11.	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Docket No. 46-10]		
12.	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]		
13.	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]		
14.	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]		
15.	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]		
16.	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]		
17.	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]		
18.	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17]		
19.	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]		

Letter	Exhibit	Offered	Admitted
20.	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Docket No. 46-19]		
21.	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]		
22.	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]		
23.	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]		
24.	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Docket No. 46-23]		
25.	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]		
26.	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]		
27.	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]		
28.	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]		
29.	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland		
30.	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland		
31.	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland		
32.	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland		
33.	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]		
34.	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules		

Letter	Exhibit	Offered	Admitted
	of Bankruptcy Procedure 7026 and 7034 [Docket 810]		
35.	Transcript of 07/21/20 Hearing		
36.	Transcript of 01/08/21 Hearing		
37.	Transcript of 01/26/21 Hearing		
38.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		
39.	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto		
40.	All exhibits necessary for impeachment and/or rebuttal purposes		
41.	All exhibits identified by or offered by any other party at the Hearing		

Dated: February 1, 2021.

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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S AMENDED WITNESS AND EXHIBIT LIST WITH RESPECT TO EVIDENTIARY HEARING TO BE HELD ON JANUARY 8, 2021

Highland Capital Management, L.P. (the "Debtor") submits the following amended witness and exhibit list with respect to *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Docket No. 2] which the Court has set for hearing at 9:30 a.m. (Central Time) on January 8, 2021 (the "Hearing") in the above-styled adversary proceeding (the "Adversary Proceeding").

A. Witnesses:

1. James Dondero
2. Scott Ellington
3. Isaac Leventon
4. Any witness identified by or called by any other party; and
5. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
A.	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 4]		
B.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 4-6]		
C.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 4-7]		
D.	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 4-8]		

Letter	Exhibit	Offered	Admitted
E.	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 4-28]		
F.	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5]		
G.	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6]		
H.	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7]		
I.	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 38]		
J.	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Docket No. 10]		
K.	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]		
L.	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11]		
M.	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12]		
N.	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13]		
O.	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020		
P.	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15]		
Q.	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16]		
R.	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17]		
S.	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18]		
T.	Email string dated December 24, 2020 re HarbourVest settlement motion		

Letter	Exhibit	Offered	Admitted
U.	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020		
V.	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington		
W.	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement		
X.	Letter from K&L Gates to J. Pomerantz dated December 31, 2020		
Y.	Email string dated December 23, 2020 re Dondero call		
Z.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		
AA.	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto		
BB.	All exhibits necessary for impeachment and/or rebuttal purposes		
CC.	All exhibits identified by or offered by any other party at the Hearing		

Dated: January 7, 2021.

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DECLARATION OF MR. JAMES P. SEERY, JR. IN SUPPORT OF THE DEBTOR'S MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST MR. JAMES DONDERO

I, James P. Seery, Jr., pursuant to 28 U.S.C. § 1746(a), declare under penalty of perjury as follows:

1. I am a member of the Board of Directors (the "Board") of Strand Advisors, Inc. ("Strand"), the general partner of Highland Capital Management, L.P. (the "Debtor" or "HCMLP"), and the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). I submit this Declaration in support of the Debtor's *Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* (the "Motion"), being filed concurrently with this declaration. Unless stated otherwise, this declaration is based on my personal knowledge, my review of the documents described below, and my communications with certain of the Debtor's employees, directors, and counsel.

A. An Independent Board Is Appointed to Oversee the Debtor's Affairs; Mr. Dondero's Role Becomes Limited and Subject to the Board's Oversight; and Mr. Dondero Is Later Forced to Resign

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court"). On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to this Court [Docket No. 186].[2]

3. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No.

[2] All docket numbers refer to the docket maintained by this Court.

281] (the "Settlement Motion"). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Docket No. 339] (the "Settlement Order").

4. As part of the Settlement Order, this Court also approved a term sheet (the "Term Sheet") [Docket No. 354-1] between the Debtor and the Official Committee of Unsecured Creditors (the "Committee") pursuant to which Mr. John S. Dubel, Mr. Russell Nelms, and I were appointed to the Board (collectively, the "Independent Directors"). A true and correct copy of the Term Sheet is attached as **Exhibit 1**.

5. As required by the Term Sheet, on January 9, 2020, Mr. James Dondero resigned from his roles as an officer and director of Strand and as the Debtor's President and Chief Executive Officer. True and correct copies of Mr. Dondero's resignation letters dated January 9, 2020, are attached as **Exhibit 2**.

6. While resigning from those roles, Mr. Dondero remained an unpaid employee of the Debtor and retained his title as portfolio manager for each of the investment vehicles and funds managed by the Debtor. However, pursuant to the Term Sheet, Mr. Dondero's authority was subject to oversight and ultimately termination by the Independent Board:

> Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination.

Exhibit 1 at 3 of 62.

7. Although ultimate decision making authority remained with the Board, by resolution passed on January 9, 2020, the Board authorized me to work with the Debtor's traders and Mr. Dondero with respect to certain of the Debtor's assets where Mr. Dondero remained

portfolio manager. A true and correct copy of the Board's January 9, 2020, resolution is attached as **Exhibit 3**.

8. During the pendency of the Debtor's bankruptcy case, it became apparent that it would be more efficient and lead to better financial results to have a traditional corporate management structure oversee the Debtor's operations and assets. Consequently, after due deliberation, the Board determined that it was in the best interests of the Debtor's estate to appoint me as the Debtor's CEO and CRO. This Court approved my appointment as CEO and CRO on July 16, 2020. [Docket No. 854].

9. My appointment as CEO and CRO formalized my role and my authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries, and I routinely carried out such responsibilities, particularly after the seizure by Jefferies, LLC of the Highland Select Equity Fund, L.P. ("Select") prime brokerage account managed by Mr. Dondero as a result of Select's failure to post margin.

10. On August 12, 2020, the Debtor filed its Plan of Reorganization with this Court [Docket No. 944] (as subsequently amended, the "Plan"). The Plan provides for, among other things, the monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into a mediation with certain of its creditors which resulted in, among other things, a settlement with Josh and Jennifer Terry, Acis Capital Management, L.P. ("Acis LP"), and Acis Capital Management GP LLC ("Acis GP" and together with Acis LP, "Acis").

11. After the Acis settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis settlement, but that a settlement had been reached

at all. On October 5, 2020, Mr. Dondero objected to the Debtor's motion seeking approval of the Acis settlement, thereby creating an actual conflict with the Board and the Debtor. [Docket No. 1121].

12. In addition, the Dugaboy Investment Trust – Mr. Dondero's family trust – continued to press its proof of claim alleging that the Debtor, and by extension the Board and I, had mismanaged Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of the MSCF's assets in May of 2020. *See, e.g.*, Proof of Claim No. 177; Docket No. 1154.

13. It was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity while taking positions adverse to the interests of the Debtor's estate. Thus, on October 2, 2020, I requested that Mr. Dondero resign as a portfolio manager at the Debtor and from any roles that he had at MSCF or he would be removed from the positions in accordance with the Settlement Order. A true and accurate copy of my October 2, 2020, e-mail to Mr. Dondero is attached as **Exhibit 4**.

14. After consultation with his counsel and a review of the Settlement Order, Mr. Dondero resigned from his positions with the Debtor. A true and accurate copy of Mr. Dondero's October 9, 2020, e-mail is attached as **Exhibit 5**.[3]

B. Mr. Dondero Interferes with the Debtor's Business and Instructs and Threatens Certain of the Debtor's Employees

15. Regrettably, since tendering his resignation, Mr. Dondero has interfered with the Debtor's operations and the management of the assets under its control, and has otherwise acted directly and through entities he controls to improperly exert pressure on certain of the Debtor's employees.

[3] Mr. Dondero may still hold certain director positions at some of the Debtor's direct and indirect subsidiaries or managed entities. The Debtor is in the process of removing Mr. Dondero from those positions where advisable and practicable.

16. The Debtor serves as the servicer, portfolio manager, or equivalent of certain pooled collateralized loan obligation vehicles (collectively, the "CLOs"). The Debtor's sole client in these matters is the CLO issuer, and not any individual shareholder or noteholder of the CLO.

17. NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") are investment advisors directly or indirectly controlled by Mr. Dondero. I understand that the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in the CLOs for which the Debtor serves as portfolio manager or servicer.

18. On October 16, 2020, the Advisors wrote to me and, among other things, questioned the Debtor's business judgment and "request[ed] that no CLO assets be sold without prior notice to and prior consent from the Advisors." A true and correct copy of the Advisors's October 16, 2020, letter is attached as **Exhibit 6**. Because the Advisors provided no legal basis for the "request" and I was unaware of any, I did not accede to the Advisors' "request" nor did I otherwise respond to their letter.

19. On November 24, 2020, the Advisors sent another letter where they again questioned the Debtor's business judgment and "re-urge[d] [their] request that no CLO assets be sold without prior notice to and prior consent from the Advisors." A true and correct copy of the Advisors's November 24, 2020, letter is attached as **Exhibit 7**.

20. I am advised that the Debtor has no contractual, legal, or other obligation to provide notice to, or obtain the consent of, the Advisors (or any other holder of interests in the CLOs) before exercising its business judgment to manage and service the CLOs, including in

connection with the sale of the CLOs' assets. Unfortunately, I shortly learned that these "requests" were just a part of Mr. Dondero's attempts to interfere with the Debtor's business.

21. On November 24, 2020, Mr. Dondero personally intervened to prevent sales of certain CLO assets that he knew I had authorized. Upon learning that the trades I had authorized were being executed, Mr. Dondero sent an e-mail to Mr. Matthew Pearson (with copies to Mr. Hunter Covitz and Mr. Joseph Sowin) in which he said "No…… do not." An hour later, Mr. Pearson cancelled the trades but Mr. Dondero warned Mr. Pearson that "HCMFA and DAF has [sic] instructed Highland in writing not to sell any CLO underlying assets . . . there is potential liability, don't do it again please."

22. Mr. Dondero's threat had the intended effect as Mr. Sowin (an HCMFA employee, not an employee of the Debtor) responded by saying that "Compliance should never have approved this order then – will coordinate with them Jim [Dondero]. Post: Please block all orders from Hitting the trading desk for the fun[ds] Jim [Dondero] mentioned."

23. On November 27, 2020, after learning that I had attempted to effectuate the trades, Mr. Dondero continued to interfere with the Debtor's business and engage in threating conduct, this time writing to Thomas Surgent (the Debtor's Chief Compliance Officer) that "I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational. You might want to remind him (and yourself) that the chief compliance officer has personal liability." A true and correct copy of the e-mail string that includes all of the aforementioned communications is attached as **Exhibit 8**.

24. On December 3, 2020, the Debtor demanded that the Advisors "cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to

HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs." A true and correct copy of the Debtor's December 3, 2020, letter to the Advisors' counsel is attached as **Exhibit 9**.

25. The Debtor made the same demand of Mr. Dondero the following day. A true and correct copy of the Debtor's December 4, 2020, letter to Mr. Dondero's counsel is attached as **Exhibit 10**.

C. The Debtor Demands that Mr. Dondero and His Affiliates Satisfy Certain Demand Notes, and Mr. Dondero Issues an Explicit Threat

26. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Funds Advisors, LP, and Highland Capital Management Services, Inc. (collectively, the "Corporate Obligors") are the makers under a series of promissory notes in favor of the Debtor (collectively, the "Corporate Obligors' Notes").

27. In addition, Mr. Dondero, in his personal capacity, is the maker under a series of promissory notes in favor of the Debtor (collectively, the "Dondero Notes" and together with the Corporate Obligors' Notes, the "Demand Notes").

28. Each of the Demand Notes provides, among other things, that (a) all accrued interest and principal "shall be due and payable upon demand," and that (b) the maker shall pay the holder (*i.e.*, the Debtor) all court costs and costs of collection, including reasonable attorneys' fees and expenses, if, among other things, the Note is "collected through a bankruptcy court." True and correct copies of the Demand Notes are attached as **Exhibits 11 through 23**, respectively.

29. On December 3, 2020, at my instruction, the Debtor's counsel sent letters to representatives of Mr. Dondero and each of the Corporate Obligors demanding payment of all unpaid principal and accrued interest due under the Demand Notes by December 11, 2020

(collectively, the "Demand Letters"). True and correct copies of the Demand Letters are attached as **Exhibits 24 through 27**, respectively. These demands were made to collect funds that will be required to fund the reorganized Debtor and the trust under the Plan that is subject to confirmation before this Court in January 2021.

30. Shortly after the Debtor sent the Demand Letters, Mr. Dondero sent a text message to me that stated only: "Be careful what you do – last warning." A true and correct copy of Mr. Dondero's text message is attached as **Exhibit 28**.

31. Mr. Dondero called me the following day, ostensibly to discuss his so-called "pot plan."[4] I immediately expressed my substantial concern regarding Mr. Dondero's text message and told him that his threat was completely unacceptable and likely unlawful. In response, Mr. Dondero suggested that "the lawyers" would address his threatening message and failed to disavow or apologize for the text, saying only (at the end of the conversation) that he did not mean to threaten any physical harm.

32. Later that day on December 4, 2020, at my instruction, Debtor's counsel sent Mr. Dondero's counsel a letter demanding that Mr. Dondero "cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero." The

[4] It is noteworthy that, in an attempt to present potential alternatives to the creditors, I (and the Board) provided material assistance to Mr. Dondero in his efforts to propose a "pot plan" to the creditors. In fact, after Mr. Dondero provided sparse bullet points for his pot plan, I drafted a full term sheet with the assistance of Debtor's counsel. Thereafter, I spent nearly two hours on a Zoom meeting/call with Mr. Dondero and his counsel (Mr. Dondero joined by phone and not video) reviewing my draft term sheet with his material terms. Mr. Dondero's counsel requested that I – and not them – present the term sheet to the Committee, which I subsequently did. After the presentation, I advised Mr. Dondero and his counsel that I had sent the detailed term sheet to the Committee and that I had walked them through the potential terms. There can be no question that I have been supportive of presenting Mr. Dondero's terms to the Committee.

Debtor specifically put Mr. Dondero on notice that the Debtor intended to file this Motion. A true and correct copy of the Debtor's December 4, 2020, letter to Mr. Dondero's counsel is attached as **Exhibit 29**.

D. <u>The Debtor's Request for a Temporary Restraining Order</u>

33. Mr. Dondero cannot be permitted to directly (or indirectly through his corporate entities or anyone else acting on his behalf) control, interfere with, or even influence the Debtor's business and operations or threaten or intimidate the Debtor or any of its directors, officers, employees, professionals, or agents.

34. Based on the foregoing, as a member of the Board and as the Debtor's CEO and CRO, I respectfully request that the Court grant the Motion in its entirety and enter the proposed Order in the form affixed to the Motion.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: December 7, 2020.

/s/ James P. Seery, Jr.
James P. Seery, Jr.

EXHIBIT 1

Highland Capital Management, L.P.

Preliminary Term Sheet

This term sheet ("Term Sheet") outlines the principal terms of a proposed settlement between Highland Capital Management, L.P. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 case captioned In re Highland Capital Mgm't, L.P, Case No. 19-34054 (SGJ) (the "Chapter 11 Case"), pending in the Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), to resolve a good faith dispute between the parties related to the Debtor's corporate governance, and specifically, the Committee's various objections to certain relief being sought by the Debtors in the Chapter 11 Case [Del. Docket No. 125]. *This Term Sheet shall be subject to approval by the Bankruptcy Court.*

Topic	Proposed Terms
Parties	Highland Capital Management, L.P. (the "Debtor"). The Official Committee of Unsecured Creditors of Highland Capital Management, L.P. (the "Committee").
Independent Directors	The Debtor's general partner, Strand Advisors, Inc., will appoint the following three (3) independent directors (the "Independent Directors"): James Seery, John Dubel, and Judge Russell Nelms. The Independent Directors will be granted exclusive control over the Debtor and its operations. Among other things, the Independent Directors shall conduct a review of all current employees as soon as practicable following the Independent Directors' appointment, determine whether and which employees should be subject to a key employee retention plan and/or key employee incentive plan and, if applicable, propose plan(s) covering such employees. The appointment and powers of the Independent Directors and the corporate governance structure shall be pursuant to the documents attached hereto as **Exhibit A**, which documents shall be satisfactory to the Committee. Once appointed, the Independent Directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the Independent Directors, to object to such removal and replacement). The Independent Directors shall be compensated in a manner to be determined with an understanding that the

	source of funding, whether directly or via reimbursement, will be the Debtor. As soon as practicable after their appointments, the Independent Directors shall, in consultation with the Committee, determine whether an interim Chief Executive Officer (the "CEO") should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as practicable, which may be one of the Independent Directors. Once appointed, the CEO cannot be removed without the Committee's written consent or Order of the Court. The Committee shall have regular, direct access to the Independent Directors, provided, however that (1) if the communications include FTI Consulting Inc. ("FTI"), Development Specialists Inc. ("DSI") shall also participate in such communications; and (2) if the communications include counsel, then either Debtor's counsel or, if retained, counsel to the Independent Directors shall also participate in such communications.
Role of Mr. James Dondero	Upon approval of this Term Sheet by the Bankruptcy Court, Mr. Dondero will (1) resign from his position as a Board of Director of Strand Advisors, Inc., (2) resign as an officer of Strand Advisors, Inc., and (3) resign as President and CEO of the Debtor, and (4) will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.
CRO	DSI shall, subject to approval of the Bankruptcy Court, be retained as chief restructuring officer ("CRO") to the

	Debtor and report to and be directed by the Independent Directors and, if and once appointed, the CEO. The retention and scope of duties of DSI shall be pursuant to the Further Amended Retention Agreement, attached hereto as **Exhibit B**. DSI and all other Debtor professionals shall serve at the direction of the CEO, if any, and the Independent Directors.
Estate Claims	The Committee is granted standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing (collectively, the "Estate Claims"); provided, however, that the term Estate Claims will not include any estate claim or cause of action against any then-current employee of the Debtor other than Mr. Dondero.
Document Management, Preservation, and Production	The Debtor shall be subject to and comply with the document management, preservation, and production requirements attached hereto as **Exhibit C**, which requirements cannot be modified without the consent of the Committee or Court order (the "Document Production Protocol"). Solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control ("Shared Privilege"). With respect to determining if any particular document is subject to the Shared Privilege, the following process shall be followed: (i) the Committee will request documents from the Debtor, (ii) the Debtor shall log all documents requested but withheld on the basis of privilege, (iii) the Debtor shall not withhold documents it understands to be subject to the Shared Privilege; (iv) the Committee will identify each additional document on the log that the Committee believes is subject to the Shared Privilege, and (v) a special master or other third party neutral agreed to by the Committee and the Debtor shall make a determination if such documents are subject to the Shared Privilege. The Committee further agrees that the production of any particular document by

	the Debtor under this process will not be used as a basis for a claim of subject matter waiver.
Reporting Requirements	The Debtor shall be subject to and comply with the reporting requirements attached hereto as **Exhibit D**, which reporting requirements cannot be modified without the consent of the Committee or Court order (the "Reporting Requirements").
Plan Exclusivity	The Independent Directors may elect to waive the Debtor's exclusive right to file a plan under section 1121 of the Bankruptcy Code.
Operating Protocols	The Debtor shall comply with the operating protocols set forth in **Exhibit D** hereto, regarding the Debtor's operation in the ordinary course of business, which protocols cannot be modified without the consent of the Committee or Court order.
Reservation of Rights	This agreement is without prejudice to the Committee's rights to, among other things, seek the appointment of a trustee or examiner at a later date. Nothing herein shall constitute or be construed as a waiver of any right of the Debtor or any other party in interest to contest the appointment of a trustee or examiner, and all such rights are expressly reserved.

Exhibit A

Debtor's Corporate Governance Documents

WRITTEN CONSENT OF SOLE STOCKHOLDER AND DIRECTOR

OF

STRAND ADVISORS, INC.

January 9, 2020

Pursuant to the provisions of the General Corporation Law of the State of Delaware (the "DGCL") and consistent with the provisions of the Certificate of Incorporation (the "Certificate") and Bylaws (the "Bylaws") of Strand Advisors, Inc., a Delaware corporation (the "Company"), the undersigned, being the holder of all of the issued and outstanding shares of common stock, par value $0.01 per share, of the Company and the sole director of the Company (the "Stockholder"), acting by written consent without a meeting pursuant to Section 228 of the DGCL and Article IV, Section 6, and Article XII of the Bylaws, does hereby consent to the adoption of the following resolutions and to the taking of the actions contemplated thereby, in each case with the same force and effect as if presented to and adopted at a meeting of the stockholders:

I. AMENDMENT OF BYLAWS

WHEREAS, it is acknowledged that the Board of Directors of the Company (the "Board") has heretofore been fixed at one (1) and that the Board currently consists of James Dondero;

WHEREAS, pursuant to Article XII of the Bylaws, the Stockholder wishes to amend the Bylaws in the manner set forth on **Appendix A** hereto (the "Bylaws Amendment") to increase the size of the Board from one (1) to three (3) directors, and to add certain provisions respecting director qualifications and the removal of directors; and

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws Amendment is hereby authorized and approved, and the Board is increased from one (1) to three (3) directors;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as may be required to effectuate the Bylaws Amendment; and

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate such Bylaws Amendment is hereby authorized and affirmed.

II. ELECTION OF DIRECTORS

WHEREAS, the Stockholder desires to appoint James Seery, John Dubel, and Russell Nelms to the Board and desires that such individuals constitute the whole Board;

NOW, THEREFORE, BE IT RESOLVED, that James Seery, John Dubel, and Russell Nelms, having consented to act as such, be, and each of them hereby is, appointed as a director, to serve as a director of the Company and to hold such office until such director's respective successor shall have been duly elected or appointed and shall qualify, or until such director's death, resignation or removal;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as

may be required to effectuate the appointment of the foregoing directors, including executing an indemnification agreement in favor of such directors in substantially the form attached hereto as **Appendix B** (each, an "Indemnification Agreement");

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate the appointment of such directors, including the execution of an Indemnification Agreement, is hereby authorized and affirmed.

RESOLVED FURTHER, that James Dondero and any other directors of the Company are hereby removed as directors of the Company;

RESOLVED FURTHER, that the directors appointed pursuant to these resolutions shall, pursuant to the terms of the Bylaws, appoint a Chairman of the Board.

III. STIPULATION WITH THE BANKRUPTCY COURT

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. ("HCMLP") filed for chapter 11 bankruptcy protection in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Bankruptcy Case");

WHEREAS, the Company is the general partner for HCMLP;

WHEREAS, the Bankruptcy Case was transferred to the Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-sgj11 (the "Texas Court") by order of the Bankruptcy Court for the District of Delaware on December 4, 2019;

WHEREAS, the Company and the Stockholder wish to enter into a stipulation (the "Stipulation") with HCMLP and the Official Unsecured Creditors Committee appointed in the Bankruptcy Case (the "Committee"), such Stipulation to be approved by the Texas Court, whereby the Stockholder will agree (a) not to transfer or assign his shares in the Company or exercise the voting power of such shares to remove any member of the Board appointed pursuant to these resolutions or further change the authorized number of directors from three (3) directors; (b) to exercise the voting power of his shares so as to cause each member of the Board appointed by these resolutions to be re-elected upon the expiration of his or her term; (c) upon the death, disability, or resignation of a member of the Board, will exercise the voting power of such shares so as to cause the resulting vacancy to be filled by a successor that is both independent and (i) acceptable to the Stockholder and the Committee or (ii) selected by the remaining members of the Board; and (d) not take any action or exercise the voting power of such shares in any way that is inconsistent with the term sheet agreed to by HCMLP and the Committee and any order of the Texas Court approving such agreement and compromise between HCMLP and the Committee;

WHEREAS, for purposes of the Stipulation, "independent" would exclude the Stockholder, any affiliate of the Stockholder, and any member of management of the Company; and

WHEREAS, it is in the intent of the parties that the Stipulation will no longer be effective or bind the Company or the Stockholder following the termination of the Bankruptcy Case.

NOW, THEREFORE, BE IT RESOLVED, that the Company is authorized to take such actions as may be necessary to enter into and effectuate the Stipulation in the manner and on the terms set forth above, including, but not limited to, further amending the Certificate, Bylaws, or any other corporate governance documents; and

RESOLVED FURTHER, that Scott Ellington, as an officer of the Company, is authorized to take any such actions as may be required to enter into and effectuate the Stipulation in the manner set forth herein; and

RESOLVED FURTHER, that any action taken by Scott Ellington or any other officer of the Company on or prior to the date hereof to effectuate such Stipulation is hereby authorized and affirmed.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned has executed this Written Consent as of the respective date and year first appearing above.

STOCKHOLDER:

_____
James Dondero

[Signature Page to Written Consent of Sole Stockholder of Strand Advisors, Inc.]

First Amendment to Bylaws of
Strand Advisors, Inc.

Strand Advisors, Inc. (the "Company"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that the Company's sole stockholder, acting by written consent without a meeting, resolved to amend the Company's Bylaws (the "Bylaws") as follows:

1. Article III, Section 2, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be three (3).

2. Article III, Section 5, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 5. Director Qualifications. Each director appointed to serve on the Board shall (A) (i) be an independent director, (ii) not be affiliated with the corporation's stockholders, and (iii) not be an officer of the corporation; and (B) have been (x) nominated by the official committee of unsecured creditors (the "Committee") appointed in the chapter 11 bankruptcy of Highland Capital Management, L.P. (the "Debtor") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Court"), Case No. 19-34054-sgj11 and reasonably acceptable to the stockholders; (y) nominated by the stockholders and acceptable to the Committee; or (z) selected by the duly appointed independent directors.

3. The following shall be added as Section 6 to Article III of the Bylaws:

> Section 6. Removal of Directors. Once appointed, the independent directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the independent directors, to object to such removal and replacement).

Except as expressly amended hereby, the terms of the Company's Bylaws shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this amendment to be signed this 9th day of January, 2020.

STRAND ADVISORS, INC.

_____

By: Scott Ellington
Its: Secretary

INSERT STRAND ADVISORS, INC. LETTERHEAD

[_____]

[NAME]
[ADDRESS]
[ADDRESS]
[ADDRESS]

Re: Strand Advisors, Inc. – Director Agreement

Dear [_____]:

On behalf of Strand Advisors, Inc. (the "Company"), I am pleased to have you join the Company's Board of Directors. This letter sets forth the terms of the Director Agreement (the "Agreement") that the Company is offering to you.

1. APPOINTMENT TO THE BOARD OF DIRECTORS.

a. Title, Term and Responsibilities.

i. Subject to terms set forth herein, the Company agrees to appoint you to serve as a Director on the Company's Board of Directors (the "Board"), and you hereby accept such appointment the date you sign this Agreement (the "Effective Date"). You will serve as a Director of the Board from the Effective Date until you voluntarily resign, are removed from the Board, or are not re-elected (the "Term"). Your rights, duties and obligations as a Director shall be governed by the Certificate of Incorporation and Bylaws of the Company, each as amended from time to time (collectively, the "Governing Documents"), except that where the Governing Documents conflict with this Agreement, this Agreement shall control.

ii. You acknowledge and understand that the Company is the general partner of Highland Capital Management, L.P. ("HCMLP") and that HCMLP is currently the debtor in possession in a chapter 11 bankruptcy proceeding (the "Bankruptcy") pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). Your rights, duties, and obligations may in certain instances require your involvement, either directly or indirectly, in the Bankruptcy and such rights, duties, and obligations may be impacted in whole or in part by the Bankruptcy.

b. Mandatory Board Meeting Attendance. As a Director, you agree to apply all reasonable efforts to attend each regular meeting of the Board. You also agree to devote sufficient time to matters that may arise at the Company from time to time that require your attention as a Director.

c. Independent Contractor. Under this Agreement, your relationship with the Company will be that of an independent contractor as you will not be an employee of the Company nor eligible to participate in regular employee benefit and compensation plans of the Company.

d. Information Provided by the Company. The Company shall: (i) provide you with reasonable access to management and other representatives of the Company and HCMLP; and (ii) furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company and HCMLP that you request in connection with the services to be provided to the Company. You will rely, without further independent verification,

on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by you in connection with the services performed for the Company. The Company acknowledges and agrees that you are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein, provided that if you become aware of material inaccuracies or errors in any such information you shall promptly notify the Board of such errors, inaccuracies or concerns.

2. COMPENSATION AND BENEFITS.

a. Retainer. The Company will pay you a retainer for each month you serve on the Board (the "Retainer") to be paid in monthly installments of (a) $60,000 for each of the first three months, (b) $50,000 for each of the next three months, and (c) $30,000 for each of the following six months. The parties will re-visit the Retainer after the sixth month. The Company's obligation to pay the Retainer will cease upon the termination of the Term.

b. Expense Reimbursement. The Company will reimburse you for all reasonable travel or other expenses, including expenses of counsel, incurred by you in connection with your services hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

c. Invoices; Payment.

i. In order to receive the compensation and reimbursement set forth in this Section 2, you are required to send to the Company regular monthly invoices indicating your fees, costs, and expenses incurred. Payment of the Retainer will be due on the first business day of each month regardless of whether an invoice has been provided. Reimbursement of expenses will also occur on the first business day of each month, subject to the Company's receipt of appropriate documentation required by the Company's expenses reimbursement policy.

ii. You further agree that the Company's obligation to pay the compensation and reimbursement set forth in this Section 2 is conditioned in all respects on the entry of a final order in the court overseeing the Bankruptcy that authorizes and requires HCMLP to reimburse the Company for all such payments to you.

d. Indemnification; D&O Insurance. You will receive indemnification as a Director of the Company on the terms set forth in that certain Indemnification Agreement, dated [_____], a copy of which is attached hereto as **Appendix A** (the "Indemnification Agreement"). You will also be provided coverage under the Company's directors' and officers' insurance policy as set forth in the Indemnification Agreement.

e. Tax Indemnification. You acknowledge that the Company will not be responsible for the payment of any federal or state taxes that might be assessed with respect to the Retainer and you agree to be responsible for all such taxes.

3. PROPRIETARY INFORMATION OBLIGATIONS.

a. Proprietary Information. You agree that during the Term and thereafter that you will take all steps reasonably necessary to hold all information of the Company, its affiliates, and related entities, which a reasonable person would believe to be confidential or proprietary information, in trust and confidence, and not disclose any such confidential or proprietary information to any third party without first obtaining the Company's express written consent on a case-by-case basis.

b. Third Party Information. The Company has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. You agree to hold such Third Party Information in confidence and not to disclose it to anyone (other than Company personnel who need to know such information in connection with their work for Company) or to use, except in connection with your services for Company under this Agreement, Third Party Information unless expressly authorized in writing by the Company.

c. Return of Company Property. Upon the end of the Term or upon the Company's earlier request, you agree to deliver to the Company any and all notes, materials and documents, together with any copies thereof, which contain or disclose any confidential or proprietary information or Third Party Information.

4. OUTSIDE ACTIVITIES.

a. Investments and Interests. Except as permitted by Section 4(b), you agree not to participate in, directly or indirectly, any position or investment known by you to be materially adverse to the Company or any of its affiliates or related entities.

b. Activities. Except with the prior written consent of the Board, you will not during your tenure as a member of the Company's Board undertake or engage in any other directorship, employment or business enterprise in direct competition with the Company or any of its affiliates or related entities, other than ones in which you are a passive investor or other activities in which you were a participant prior to your appointment to the Board as disclosed to the Company.

c. Other Agreements. You agree that you will not disclose to the Company or use on behalf of the Company any confidential information governed by any agreement between you and any third party except in accordance with such agreement.

5. TERMINATION OF DIRECTORSHIP.

a. Voluntary Resignation, Removal Pursuant to Bylaws. You may resign from the Board at any time with or without advance notice, with or without reason. Subject to any orders or agreements entered into in connection with the Bankruptcy, you may be removed from the Board at any time, for any reason, in any manner provided by the Governing Documents and applicable law.

b. Continuation. The provisions of this Agreement that give the parties rights or obligations beyond the termination of this Agreement will survive and continue to bind the parties.

c. Payment of Fees; Reimbursement. Following termination of this Agreement, any undisputed fees and expenses due to you will be remitted promptly following receipt by the Company of any outstanding invoices.

6. GENERAL PROVISIONS.

a. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal or unenforceable such provision will be reformed, construed and enforced to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

b. Entire Agreement. This Agreement constitutes the entire agreement between you and the Company with respect to your service as a Director and supersedes any prior agreement, promise, representation or statement written between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by the party or parties affected by such modification or amendment.

c. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you and the Company and our respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your rights or duties hereunder.

d. Governing Law. This Agreement will be governed by the law of the State of Delaware as applied to contracts made and performed entirely within Delaware.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer, please sign and date this Agreement below.

Sincerely,

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

[Signature Page Follows]

ACCEPTED AND AGREED:

_____
[NAME]
Date: _____

INDEMNIFICATION AND GUARANTY AGREEMENT

This Indemnification and Guaranty Agreement ("**Agreement**"), dated as of [_____], is by and between STRAND ADVISORS, INC., a Delaware corporation (the "**Company**"), HIGHLAND CAPITAL MANAGEMENT, LP, a Delaware partnership (the "**Debtor**") (solely as to Section 29 hereunder), and [_____] (the "**Indemnitee**").

WHEREAS, the Company is the general partner of the Debtor and, in such capacity, manages the business affairs of the Debtor;

WHEREAS, Indemnitee has agreed to serve as a member of the Company's board of directors (the "**Board**") effective as of the date hereof;

WHEREAS, the Board has determined that enhancing the ability of the Company, on its own behalf and for the benefit of the Debtor, to retain and attract as directors the most capable Persons is in the best interests of the Company and the Debtor and that the Company and the Debtor therefore should seek to assure such Persons that indemnification and insurance coverage is available; and

WHEREAS, in recognition of the need to provide Indemnitee with protection against personal liability, in order to procure Indemnitee's service as a director of the Company, in order to enhance Indemnitee's ability to serve the Company in an effective manner and in order to provide such protection pursuant to express contract rights (intended to be enforceable irrespective of, among other things, any amendment to the Company's Bylaws (as may be amended further from time to time, the "**Bylaws**"), any change in the composition of the Board or any change in control, business combination or similar transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of, and the advancement of Expenses (as defined in Section 1(g) below) to, Indemnitee as set forth in this Agreement and for the coverage of Indemnitee under the Company's directors' and officers' liability or similar insurance policies ("**D&O Insurance**").

NOW, THEREFORE, in consideration of the foregoing and the Indemnitee's agreement to provide services to the Company, the parties (including the Debtor solely as to Section 29 hereunder) agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "**Change in Control**" means the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions (including any merger or consolidation or whether by operation of law or otherwise), of all or substantially all of the properties or assets of the Company and its subsidiaries, to a third party purchaser (or group of affiliated third party purchasers) or (ii) the consummation of any transaction (including any merger or consolidation or whether by operation of law or otherwise), the result of which is that a third party purchaser (or group of affiliated third party purchasers) becomes the beneficial

owner, directly or indirectly, of more than fifty percent (50%) of the then outstanding Shares or of the surviving entity of any such merger or consolidation.

(b) "**Claim**" means:

(i) any threatened, pending or completed action, suit, claim, demand, arbitration, inquiry, hearing, proceeding or alternative dispute resolution mechanism, or any actual, threatened or completed proceeding, including any and all appeals, in each case, whether brought by or in the right of the Company or otherwise, whether civil, criminal, administrative, arbitrative, investigative or other, whether formal or informal, and whether made pursuant to federal, state, local, foreign or other law, and whether or not commenced prior to the date of this Agreement, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of or relating to either (a) any action or alleged action taken by Indemnitee (or failure or alleged failure to act) or of any action or alleged action (or failure or alleged failure to act) on Indemnitee's part, while acting in his or her Corporate Status or (b) the fact that Indemnitee is or was serving at the request of the Company or any subsidiary of the Company as director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise, in each case, whether or not serving in such capacity at the time any Loss or Expense is paid or incurred for which indemnification or advancement of Expenses can be provided under this Agreement, except one initiated by Indemnitee to enforce his or her rights under this Agreement; or

(ii) any inquiry, hearing or investigation that the Indemnitee determines might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism.

(c) "**Controlled Entity**" means any corporation, limited liability company, partnership, joint venture, trust or other Enterprise, whether or not for profit, that is, directly or indirectly, controlled by the Company. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of an Enterprise, whether through the ownership of voting securities, through other voting rights, by contract or otherwise.

(d) "**Corporate Status**" means the status of a Person who is or was a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of the Company or of any other Enterprise which such Person is or was serving at the request of the Company or any subsidiary of the Company. In addition to any service at the actual request of the Company, Indemnitee will be deemed, for purposes of this Agreement, to be serving or to have served at the request of the Company or any subsidiary of the Company as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise if Indemnitee is or was serving as a director, officer, employee, partner, member, manager, fiduciary, trustee or agent of such Enterprise and (i) such Enterprise is or at the time of such service was a Controlled Entity, (ii) such Enterprise is or at the time of such service was an employee benefit plan (or related trust) sponsored or maintained by the Company or a Controlled Entity or (iii) the Company or a

Controlled Entity, directly or indirectly, caused Indemnitee to be nominated, elected, appointed, designated, employed, engaged or selected to serve in such capacity.

(e) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Claim in respect of which indemnification is sought by Indemnitee. Under no circumstances will James Dondero be considered a Disinterested Director.

(f) "**Enterprise**" means the Company or any subsidiary of the Company or any other corporation, partnership, limited liability company, joint venture, employee benefit plan, trust or other entity or other enterprise of which Indemnitee is or was serving at the request of the Company or any subsidiary of the Company in a Corporate Status.

(g) "**Expenses**" means any and all expenses, fees, including attorneys', witnesses' and experts' fees, disbursements and retainers, court costs, transcript costs, travel expenses, duplicating, printing and binding costs, telephone charges, postage, fax transmission charges, secretarial services, delivery services fees, and all other fees, costs, disbursements and expenses paid or incurred in connection with investigating, defending, prosecuting, being a witness in or participating in (including on appeal), or preparing to defend, prosecute, be a witness or participate in, any Claim. Expenses also shall include (i) Expenses paid or incurred in connection with any appeal resulting from any Claim, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 4 only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute thereto, and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

(i) "**Expense Advance**" means any payment of Expenses advanced to Indemnitee by the Company pursuant to Section 4 or Section 5 hereof.

(j) "**Indemnifiable Event**" means any event or occurrence, whether occurring before, on or after the date of this Agreement, related to the fact that Indemnitee is or was a manager, director, officer, employee or agent of the Company or any subsidiary of the Company, or is or was serving at the request of the Company or any subsidiary of the Company as a manager, director, officer, employee, member, manager, trustee or agent of any other Enterprise or by reason of an action or inaction by Indemnitee in any such capacity (whether or not serving in such capacity at the time any Loss is incurred for which indemnification can be provided under this Agreement).

(k) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently performs, nor in the past three (3) years has performed, services for any of: (i) James Dondero, (ii) the

Company or Indemnitee (other than in connection with matters concerning Indemnitee under this Agreement or of other indemnitees under similar agreements), or (iii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) "**Losses**" means any and all Expenses, damages, losses, liabilities, judgments, fines (including excise taxes and penalties assessed with respect to employee benefit plans and ERISA excise taxes), penalties (whether civil, criminal or other), amounts paid or payable in settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other charges paid or payable in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim.

(m) "**Person**" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity and includes the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act.

(n) "**Shares**" means an ownership interest of a member in the Company, including each of the common shares of the Company or any other class or series of Shares designated by the Board.

(o) References to "**serving at the request of the Company**" include any service as a director, manager, officer, employee, representative or agent of the Company which imposes duties on, or involves services by, such director, manager, officer, employee or agent, including but not limited to any employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interests of the Company in Indemnitee's capacity as a director, manager, officer, employee, representative or agent of the Company, including but not limited to acting in the best interest of participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to under applicable law or in this Agreement.

2. Indemnification.

(a) Subject to Section 9 and Section 10 of this Agreement, the Company shall indemnify and hold Indemnitee harmless, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Losses and Expenses if Indemnitee was or is or becomes a party to or participant in, or is threatened to be made a party to or participant in, any Claim by reason of or arising in part out of an Indemnifiable Event, including, without limitation, Claims

brought by or in the right of the Company, Claims brought by third parties, and Claims in which the Indemnitee is solely a witness.

(b) For the avoidance of doubt, the indemnification rights and obligations contained herein shall also extend to any Claim in which the Indemnitee was or is a party to, was or is threatened to be made a party to or was or is otherwise involved in any capacity in by reason of Indemnitee's Corporate Status as a fiduciary capacity with respect to an employee benefit plan. In connection therewith, if the Indemnitee has acted in good faith and in a manner which appeared to be consistent with the best interests of the participants and beneficiaries of an employee benefit plan and not opposed thereto, the Indemnitee shall be deemed to have acted in a manner not opposed to the best interests of the Company.

3. Contribution.

(a) Whether or not the indemnification provided in Section 2 is available, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Claim in which the Company is jointly liable with Indemnitee (or would be if joined in such Claim), the Company shall contribute to the amount of Losses paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Claim arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors, managers or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such Losses, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(b) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, managers or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(c) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes,

amounts paid or to be paid in settlement and/or for Expenses, in connection with any Claim relating to an Indemnifiable Event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Claim in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Claim; and/or (ii) the relative fault of the Company (and its directors, managers, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Advancement of Expenses. The Company shall, if requested by Indemnitee, advance, to the fullest extent permitted by law, to Indemnitee (an "**Expense Advance**") any and all Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any Claim arising out of an Indemnifiable Event (whether prior to or after its final disposition). Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of the foregoing, within thirty (30) business days after any request by Indemnitee, the Company shall, in accordance with such request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. In connection with any request for Expense Advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Execution and delivery to the Company of this Agreement by Indemnitee constitutes an undertaking by the Indemnitee to repay any amounts paid, advanced or reimbursed by the Company pursuant to this Section 4, the final sentence of Section 9(b), or Section 11(b) in respect of Expenses relating to, arising out of or resulting from any Claim in respect of which it shall be determined, pursuant to Section 9, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. No other form of undertaking shall be required other than the execution of this Agreement. Each Expense Advance will be unsecured and interest free and will be made by the Company without regard to Indemnitee's ability to repay the Expense Advance.

5. Indemnification for Expenses in Enforcing Rights. To the fullest extent allowable under applicable law, the Company shall also indemnify against, and, if requested by Indemnitee, shall advance to Indemnitee subject to and in accordance with Section 4, any Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any action or proceeding by Indemnitee for (a) indemnification or reimbursement or advance payment of Expenses by the Company under any provision of this Agreement, or under any other agreement or provision of the Bylaws now or hereafter in effect relating to Claims relating to Indemnifiable Events, and/or (b) recovery under any D&O Insurance maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery, as the case may be. Indemnitee shall be required to reimburse the Company in the event that a final judicial determination is made that such action brought by Indemnitee was frivolous or not made in good faith.

6. Partial Indemnity. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of any Losses in respect of a Claim

related to an Indemnifiable Event but not for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

7. Notification and Defense of Claims.

(a) Notification of Claims. Indemnitee shall notify the Company in writing as soon as reasonably practicable of any Claim which could relate to an Indemnifiable Event or for which Indemnitee could seek Expense Advances, including a brief description (based upon information then available to Indemnitee) of the nature of, and the facts underlying, such Claim, to the extent then known. The failure by Indemnitee to timely notify the Company hereunder shall not relieve the Company from any liability hereunder except to the extent the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure. If at the time of the receipt of such notice, the Company has D&O Insurance or any other insurance in effect under which coverage for Claims related to Indemnifiable Events is potentially available, the Company shall give prompt written notice to the applicable insurers in accordance with the procedures, provisions, and terms set forth in the applicable policies. The Company shall provide to Indemnitee a copy of such notice delivered to the applicable insurers, and copies of all subsequent correspondence between the Company and such insurers regarding the Claim, in each case substantially concurrently with the delivery or receipt thereof by the Company.

(b) Defense of Claims. The Company shall be entitled to participate in the defense of any Claim relating to an Indemnifiable Event at its own expense and, except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any such Claim, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently directly incurred by Indemnitee in connection with Indemnitee's defense of such Claim other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own legal counsel in such Claim, but all Expenses related to such counsel incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's own expense; provided, however, that if (i) Indemnitee's employment of its own legal counsel has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of such Claim, (iii) after a Change in Control, Indemnitee's employment of its own counsel has been approved by the Independent Counsel or (iv) the Company shall not in fact have employed counsel to assume the defense of such Claim, then Indemnitee shall be entitled to retain its own separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any such Claim) and all Expenses related to such separate counsel shall be borne by the Company.

8. Procedure upon Application for Indemnification. In order to obtain indemnification pursuant to this Agreement, Indemnitee shall submit to the Company a written request therefor, including in such request such documentation and information as

is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Claim, provided that documentation and information need not be so provided to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnification shall be made insofar as the Company determines Indemnitee is entitled to indemnification in accordance with Section 9 below.

9. Determination of Right to Indemnification.

(a) Mandatory Indemnification; Indemnification as a Witness.

(i) To the extent that Indemnitee shall have been successful on the merits or otherwise in defense of any Claim relating to an Indemnifiable Event or any portion thereof or in defense of any issue or matter therein, including without limitation dismissal without prejudice, Indemnitee shall be indemnified against all Losses relating to such Claim in accordance with Section 2, and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(ii) To the extent that Indemnitee's involvement in a Claim relating to an Indemnifiable Event is to prepare to serve and serve as a witness, and not as a party, the Indemnitee shall be indemnified against all Losses incurred in connection therewith to the fullest extent allowable by law and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(b) Standard of Conduct. To the extent that the provisions of Section 9(a) are inapplicable to a Claim related to an Indemnifiable Event that shall have been finally disposed of, any determination of whether Indemnitee has satisfied any applicable standard of conduct under Delaware law that is a legally required condition to indemnification of Indemnitee hereunder against Losses relating to such Claim and any determination that Expense Advances must be repaid to the Company (a "**Standard of Conduct Determination**") shall be made as follows:

(i) if no Change in Control has occurred, (A) by a majority vote of the Disinterested Directors, even if less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum or (C) if there are no such Disinterested Directors, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee; and

(ii) if a Change in Control shall have occurred, (A) if the Indemnitee so requests in writing, by a majority vote of the Disinterested Directors, even if less than a quorum of the Board or (B) otherwise, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee.

Subject to Section 4, the Company shall indemnify and hold Indemnitee harmless against and, if requested by Indemnitee, shall reimburse Indemnitee for, or advance to Indemnitee, within thirty (30) business days of such request, any and all Expenses

incurred by Indemnitee in cooperating with the Person or Persons making such Standard of Conduct Determination.

(c) Making the Standard of Conduct Determination. The Company shall use its reasonable best efforts to cause any Standard of Conduct Determination required under Section 9(b) to be made as promptly as practicable. If the Person or Persons designated to make the Standard of Conduct Determination under Section 9(b) shall not have made a determination within ninety (90) days after the later of (A) receipt by the Company of a written request from Indemnitee for indemnification pursuant to Section 8 (the date of such receipt being the "**Notification Date**") and (B) the selection of an Independent Counsel, if such determination is to be made by Independent Counsel, then Indemnitee shall be deemed to have satisfied the applicable standard of conduct; provided that such 90-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the Person or Persons making such determination in good faith requires such additional time to obtain or evaluate information relating thereto. Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of any Claim.

(d) Payment of Indemnification. If, in regard to any Losses:

(i) Indemnitee shall be entitled to indemnification pursuant to Section 9(a);

(ii) no Standard of Conduct Determination is legally required as a condition to indemnification of Indemnitee hereunder; or

(iii) Indemnitee has been determined or deemed pursuant to Section 9(b) or Section 9(c) to have satisfied the Standard of Conduct Determination,

then the Company shall pay to Indemnitee, within thirty (30) business days after the later of (A) the Notification Date or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) is satisfied, an amount equal to such Losses.

(e) Selection of Independent Counsel for Standard of Conduct Determination. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(i), the Independent Counsel shall be selected by the Board and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(ii), the Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, Indemnitee or the Company, as applicable, may, within thirty (3) business days after receiving written notice of selection from the other, deliver to the other a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not satisfy the criteria set forth in the definition of "Independent Counsel" in Section 1(k), and the objection shall

set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the Person or firm so selected shall act as Independent Counsel. If such written objection is properly and timely made and substantiated, (i) the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit; and (ii) the non-objecting party may, at its option, select an alternative Independent Counsel and give written notice to the other party advising such other party of the identity of the alternative Independent Counsel so selected, in which case the provisions of the two immediately preceding sentences, the introductory clause of this sentence and numbered clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no Independent Counsel that is permitted under the foregoing provisions of this Section 9(e) to make the Standard of Conduct Determination shall have been selected within twenty (20) days after the Company gives its initial notice pursuant to the first sentence of this Section 9(e) or Indemnitee gives its initial notice pursuant to the second sentence of this Section 9(e), as the case may be, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware ("**Delaware Court**") to resolve any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or to appoint as Independent Counsel a Person to be selected by the Court or such other Person as the Court shall designate, and the Person or firm with respect to whom all objections are so resolved or the Person or firm so appointed will act as Independent Counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the Independent Counsel incurred in connection with the Independent Counsel's determination pursuant to Section 9(b).

(f) Presumptions and Defenses.

(i) Indemnitee's Entitlement to Indemnification. In making any Standard of Conduct Determination, the Person or Persons making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification, and the Company shall have the burden of proof to overcome that presumption and establish that Indemnitee is not so entitled. Any Standard of Conduct Determination that is adverse to Indemnitee may be challenged by the Indemnitee in the Delaware Court. No determination by the Company (including by its Board or any Independent Counsel) that Indemnitee has not satisfied any applicable standard of conduct may be used as a defense to enforcement by Indemnitee of Indemnitee's rights of indemnification or reimbursement or advance of payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(ii) Reliance as a Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports

or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, manager, officer, agent or employee of the Company (other than Indemnitee) shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(iii) Defense to Indemnification and Burden of Proof. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a claim for Losses incurred in defending against a Claim related to an Indemnifiable Event in advance of its final disposition) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any related Standard of Conduct Determination, the burden of proving such a defense or that the Indemnitee did not satisfy the applicable standard of conduct shall be on the Company.

10. Exclusions from Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated to:

(a) indemnify or advance funds to Indemnitee for Losses with respect to proceedings initiated by Indemnitee, including any proceedings against the Company or its managers, officers, employees or other indemnitees and not by way of defense, except:

(i) proceedings referenced in Section 4 above (unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous); or

(ii) where the Company has joined in or the Board has consented to the initiation of such proceedings.

(b) indemnify Indemnitee if a final decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law.

(c) indemnify Indemnitee for the disgorgement of profits arising from the purchase or sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Exchange Act, or any similar successor statute.

11. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 9 that Indemnitee is not entitled to indemnification under this Agreement, (ii) an Expense Advance is not timely made pursuant to Section 4, (iii) no determination of entitlement to indemnification is made pursuant to Section 9 within 90 days after receipt by the Company of the request for indemnification, or (iv) payment of indemnification is not made pursuant Section 9(d), Indemnitee shall be entitled to an adjudication in a Delaware Court, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such

indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that Indemnitee, pursuant to this Section 11, seeks a judicial adjudication or arbitration of his or her rights under, or to recover damages for breach of, this Agreement, any other agreement for indemnification, payment of Expenses in advance or contribution hereunder or to recover under any director, manager, and officer liability insurance policies or any other insurance policies maintained by the Company, the Company will, to the fullest extent permitted by law and subject to Section 4, indemnify and hold harmless Indemnitee against any and all Expenses which are paid or incurred by Indemnitee in connection with such judicial adjudication or arbitration, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, payment of Expenses in advance or contribution or insurance recovery. In addition, if requested by Indemnitee, subject to Section 4 the Company will (within thirty (30) days after receipt by the Company of the written request therefor), pay as an Expense Advance such Expenses, to the fullest extent permitted by law.

(c) In the event that a determination shall have been made pursuant to Section 9 that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 11 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 9.

(d) If a determination shall have been made pursuant to Section 9 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 11, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

12. Settlement of Claims. The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any threatened or pending Claim related to an Indemnifiable Event effected without the Company's prior written consent, which shall not be unreasonably withheld; provided, however, that if a Change in Control has occurred, the Company shall be liable for indemnification of the Indemnitee for amounts paid in settlement if an Independent Counsel (which, for purposes of this Section 12, shall be selected by the Company with the prior consent of the Indemnitee, such consent not to be unreasonably withheld or delayed) has approved the settlement. The Company shall not settle any Claim related to an Indemnifiable Event in any manner that would impose any Losses on the Indemnitee without the Indemnitee's prior written consent.

13. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a manager of the Company (or is serving at the request of the Company as a director, manager, officer, employee, member, trustee or

agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to an Indemnifiable Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

14. Other Indemnitors. The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by certain private equity funds, hedge funds or other investment vehicles or management companies and/or certain of their affiliates and by personal policies (collectively, the "**Other Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Other Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 14.

15. Non-Exclusivity. The rights of Indemnitee hereunder will be in addition to any other rights Indemnitee may have under the Bylaws, the General Corporation Law of the State of Delaware (as may be amended from time to time, the "**DGCL**"), any other contract, in law or in equity, and under the laws of any state, territory, or jurisdiction, or otherwise (collectively, "**Other Indemnity Provisions**"). The Company will not adopt any amendment to its Bylaws the effect of which would be to deny, diminish, encumber or limit Indemnitee's right to indemnification under this Agreement or any Other Indemnity Provision.

16. Liability Insurance. For the duration of Indemnitee's service as a director of the Company, and thereafter for so long as Indemnitee shall be subject to any pending Claim relating to an Indemnifiable Event, the Company shall use best efforts to continue to maintain in effect policies of D&O Insurance providing coverage that is at least substantially comparable in scope and amount to that provided by similarly situated companies. In all policies of D&O Insurance maintained by the Company, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights

and benefits as are provided to the most favorably insured of the Company's directors. Upon request, the Company will provide to Indemnitee copies of all D&O Insurance applications, binders, policies, declarations, endorsements and other related materials.

17. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment to Indemnitee in respect of any Losses to the extent Indemnitee has otherwise received payment under any insurance policy, any Other Indemnity Provisions or otherwise of the amounts otherwise indemnifiable by the Company hereunder.

18. Subrogation. In the event of payment to Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee. Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

19. Indemnitee Consent. The Company will not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (a) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or a Loss for which Indemnitee is not wholly indemnified hereunder or (b) with respect to any Claim with respect to which Indemnitee may be or is made a party or a participant or may be or is otherwise entitled to seek indemnification hereunder, does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Claim, which release will be in form and substance reasonably satisfactory to Indemnitee. Neither the Company nor Indemnitee will unreasonably withhold its consent to any proposed settlement; provided, however, Indemnitee may withhold consent to any settlement that does not provide a full and unconditional release of Indemnitee from all liability in respect of such Claim.

20. Amendments. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume

and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

22. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or contrary to the DGCL or existing or future applicable law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it valid, enforceable and legal within the requirements of any applicable law, and in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid, unenforceable or illegal provisions.

23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed, by postage prepaid, certified or registered mail:

(a) if to Indemnitee, to the address set forth on the signature page hereto.

(b) if to the Company, to:

Strand Advisors, Inc.
Attention: Isaac Leventon
Address: 300 Crescent Court, Suite 700
Dallas, Texas 75201
Email: ileventon@highlandcapital.com

Notice of change of address shall be effective only when given in accordance with this Section 23. All notices complying with this Section 23 shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

24. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (OTHER THAN ITS RULES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY).

25. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such court lacks subject matter jurisdiction, in the Superior Court of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably

consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

26. Enforcement.

(a) Without limiting Section 15, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(b) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of Expenses under this Agreement other than in accordance with this Agreement.

27. Headings and Captions. All headings and captions contained in this Agreement and the table of contents hereto are inserted for convenience only and shall not be deemed a part of this Agreement.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. Facsimile counterpart signatures to this Agreement shall be binding and enforceable.

29. Guaranty By Debtor. The Debtor guarantees to Indemnitee the performance of the obligations of the Company hereunder (the "**Guaranteed Obligations**"). If the Company does not satisfy any of the Guaranteed Obligations when due, Indemnitee may demand that the Debtor satisfy such obligations and the Debtor shall be required to do so by making payment to, or for the benefit of, Indemnitee. Indemnitee can make any number of demands upon the Debtor and such demands can be made for all or part of the Guaranteed Obligations. This guaranty by the Debtor is for the full amount of the Guaranteed Obligations. The Debtor's obligations under this Agreement are continuing. Even though Indemnitee receives payments from or makes arrangements with the Company or anyone else, the Debtor shall remain liable for the Guaranteed Obligations until satisfied in full. The guaranty hereunder is a guaranty of payment, and not merely of collectability, and may be enforced against the Debtor. The Debtor's liability under this Section 29 is unconditional. It is not affected by anything that might release the Debtor from or limit all or part of its obligations.

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

STRAND ADVISORS, INC.

By: _____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, LP (solely as to Section 29 hereunder)

By: _____
Name:
Title:

INDEMNITEE:

_____

Name: [_____]
Address: _____
_____
_____

Email:

Exhibit B

Amended DSI Retention Letter

January ___, 2020

Attn: Independent Directors
Highland Capital Management, LP
300 Crescent Court, Ste. 700
Dallas, TX 75201

Re: Development Specialists, Inc. ("DSI")
Retention and Letter of Engagement

Dear Members of the Board:

Please accept this letter as our firm's formal written agreement (the "Agreement") to provide restructuring support services to Highland Capital Management, L.P. (the "Company"). This Agreement replaces and supersedes in all respects the letter agreement between DSI and the Company, dated October 7, 2019, as amended and revised by the letter agreement dated October 29, 2019. However, all fees and expenses incurred by DSI prior to the date hereof in accordance with such prior letter agreements will be paid by the Company, subject to allowance of such fees and expenses by the U.S. Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). The Agreement will become effective upon execution by duly authorized representatives of the respective parties and approval of the Bankruptcy Court.

Section 1 – Scope of Work

DSI will provide the following services (the "Services") to the Company:

1. Bradley D. Sharp will act as the Company's Chief Restructuring Officer ("CRO") with other DSI personnel to assist Mr. Sharp in carrying out those duties and responsibilities.
2. Subject to the terms of this Agreement, Mr. Sharp will report to the Independent Directors and, if appointed, the Chief Executive Officer of the Company ("CEO") and will comply with the Company's corporate governance requirements.
3. Mr. Sharp will fulfill such duties as directed by the Independent Directors and/or CEO, if any, of the Company with respect to the Company's restructuring and bankruptcy filed on October 16, 2019 (the "Chapter 11 Case"), including implementation and prosecution of the Chapter 11 Case.
4. Provide other personnel of DSI ("Additional Personnel") to provide restructuring support services as requested or required to the Company, which may include but are not limited to:
    a. assisting the Company in the preparation of financial disclosures required by the Bankruptcy Code, including the Schedules of Assets and Liabilities, the Statements of Financial Affairs and Monthly Operating Reports;

b. advising and assisting the Company, the Company's legal counsel, and other professionals in responding to third party requests;
c. attending meetings and assisting in communications with parties in interest and their professionals, including the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case;
d. providing litigation advisory services with respect to accounting matters, along with expert witness testimony on case related issues; and
e. rendering such other general business consulting services or other assistance as the Company may deem necessary and which are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this case.

DSI's ability to adequately perform the Services is dependent upon the Company timely providing reliable, accurate, and complete necessary information. The Company agrees that CRO will have (i) access to and the ability to communicate with any employee of the Company or any affiliate of the Company and (ii) access to any information, including documents, relating to the Company or any Company affiliate, including, but not limited to, information concerning collections and disbursements. The Company acknowledges that DSI or CRO are not responsible for independently verifying the veracity, completeness, or accuracy of any information supplied to us by or on behalf of the Company.

DSI will submit its evaluations and analyses pursuant to this Agreement in periodic oral and written reports. Such reports are intended to and shall constitute privileged and confidential information, and shall constitute the Company's property.

Although we do not predict or warrant the outcome of any particular matter or issue, and our fees are not dependent upon such outcomes, we will perform the Services with reasonable care and in a diligent and competent manner.

Section 2 – Rates, Invoicing and Retainer

DSI will be compensated at a rate of $100,000 per month, plus expenses (capped at $10,000 per month), for the services of Bradley D. Sharp as CRO and such DSI personnel (including Fred Caruso) as are required to fulfill Mr. Sharp's responsibilities as CRO; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

A number of DSI's personnel have experience in providing restructuring support services and may be utilized as Additional Personnel in this representation. Although others of our staff may also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel. The individuals are:

R. Brian Calvert	$640.00/hr.
Thomas P. Jeremiassen	$575.00/hr.
Eric J. Held	$495.00/hr.
Nicholas R. Troszak	$485.00/hr.
Spencer G. Ferrero	$350.00/hr.
Tom Frey	$325.00/hr.

The above rates are adjusted as of January 1 of each year to reflect advancing experience, capabilities, and seniority of our professionals as well as general economic factors.

We acknowledge receipt of a retainer of $250,000 from the Company. The purpose of the retainer is to secure a portion of our fees and expenses and to retain our status as a non-creditor should such be required for DSI to continue to provide the Services. As such, should a need arise to increase this retainer due to the level of Services DSI is providing or projected to provide, we will send the Company a supplement to this Agreement requesting the necessary increases and discuss with the Company the amount and timing of providing such increase to the retainer.

This retainer will be applied to our final invoice. If the retainer exceeds the amount of our final invoice, we will refund the difference to the Company at that time. In the event that periodic invoices are not paid timely, we will apply the retainer to the amounts owing on such invoices and, if applicable, any related late charges, and we will stop work until the retainer is replenished to the full amount required. If the retainer is not replenished within ten (10) days after the application of the retainer to unpaid balances, we reserve the right to terminate this Agreement in accordance with the provisions of Section 3 of this Agreement.

DSI also will be entitled to reimbursement for its reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

This Agreement shall be presented to the Bankruptcy Court for approval and continuation, pursuant to Bankruptcy Code Section 363 and DSI's then-prospective obligations shall be contingent upon such approval.

Section 3 – Termination

Either the Company or DSI may terminate this Agreement for any reason with ten (10) business days' written notice. Notwithstanding anything to the contrary contained herein, the Company

shall be obligated, in accordance with any orders of or procedures established by the Court, to pay and/or reimburse DSI all fees and expenses accrued under this Agreement as of the effective date of the termination.

Section 4 – Relationship of the Parties, Confidentiality

DSI will provide the Services to and for the Company, with select members of DSI assigned to specific roles for the benefit of the Company. These members will remain as DSI employees during the pendency of this case. Specifically, the parties intend that an independent contractor relationship will be created by this Agreement. Employees of DSI are not to be considered employees of the Company and are not entitled to any of the benefits that the Company provides for the Company's employees.

The Company acknowledges that all advice (written or oral) given by DSI to the Company in connection with DSI's engagement is intended solely for the benefit and use of the Company in considering the transaction to which it relates, and that no third party is entitled to rely on any such advice or communication. DSI will in no way be deemed to be providing services for any person not a party to this Agreement.

DSI agrees that all information not publicly available that is received by DSI from the Company in connection with this Agreement or that is developed pursuant to this Agreement, will be treated as confidential and will not be disclosed by DSI, except as required by Court order, or other legal process, or as may be authorized by the Company. DSI shall not be required to defend any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to the Company so that it may seek appropriate remedies, including a protective order. The Company shall reimburse DSI for all costs and fees (including reasonable attorney's fees) incurred by DSI relating to responding to (whether by objecting to or complying with) any subpoenas or requests for production of information or documents.

Section 5 – Indemnity

The Company shall name Bradley D. Sharp as its Chief Restructuring Officer and shall indemnify him on the same terms as provided to the Company's other officers and directors under the Company partnership agreement or other governing document and applicable state law. Mr. Sharp shall be included as an insured under any insurance policies or coverage available to officers and directors of the Company.

The Company shall additionally indemnify those persons, and only those persons, serving as executive officers on the same terms as provided to the Company's other officers and directors under the Company's partnership agreement or other governing document and applicable state law, along with insurance coverage under the Company's D&O policies. Any such indemnity shall survive the expiration or termination by either party of this Agreement. Except as provided

in this Section and in Section 4, there shall be no indemnification of DSI, its affiliates or the Additional Personnel.

Each and every one of the personnel employed by DSI who works on this particular project, as well as DSI officers, directors, employees and agents (the "DSI Parties") shall not be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination (not subject to further appeal) by a court of competent jurisdiction to be the direct result of the bad faith, self-dealing or intentional misconduct or gross negligence of DSI.

Section 6 – Conflicts

DSI has made diligent inquiries to determine whether it or any of its professionals have any connections with the Company, its creditors, or other parties in interest in the Chapter 11 Case. Based on that review, the review of DSI's conflict files and responses to inquiries from DSI's professional staff, neither DSI nor its professionals have any known conflicts with the parties in this case. DSI will separately provide its connections to parties in this case and/or their professionals.

Section 7 – No Audit

The Company acknowledges that it is hiring DSI to assist and advise the Company in business planning and operations. DSI's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA or other such state and national professional bodies.

Section 8 – Non-Solicitation

The Company agrees not to solicit, recruit or hire any employees or agents of DSI for a period of one year subsequent to the completion and/or termination of this Agreement; provided that the Company shall not be prohibited from (x) making general advertisements for employment not specifically directed at employees of DSI or (y) employees of DSI responding to unsolicited requests for employment.

Section 9 – Survival

The provisions of this Agreement relating to indemnification, the non-solicitation or hiring of DSI employees, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

Section 10 – Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law principles.

Section 11 – Entire Agreement, Amendment

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

If you are in agreement with the foregoing terms and conditions please indicate your acceptance by signing an original copy of this Agreement on the signature lines below, then returning one fully-executed Agreement to DSI's office. The Agreement will become effective upon execution by duly authorized representatives of the respective parties.

Very truly yours,

Bradley Sharp
Development Specialists, Inc.

AGREED AND ACKNOWLEDGED:

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

_____
By: _____, Independent Director
Date: _____

Exhibit C

Document Production Protocol

A. Definitions

a. Electronically stored information" or "ESI" shall include all electronic files, documents, data, and information covered under the Federal Rules of Civil Procedure.

B. Preservation of ESI - Generally

a. Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data.

C. Preservation of ESI – Specific Forms

a. For email, Debtor uses Outlook Email on an Exchange server. Veritas Enterprise Vault is used to archive emails. Journaling is and has been in active use since 2007, and all inbound, outbound, and in-system email communications have been preserved and are not at risk of deletion due to normal document retention practices. Out of an abundance of caution, a copy of the latest email back-up, which was performed two months ago, shall be copied and stored at a secured location.
b. The file server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created and stored on a portable hard drive at a secured location.
c. The Sharepoint server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format that maintains all potentially relevant information and stored at a secured location.
d. The Oracle E-Business Suite (EBS) server used by Debtor was backed up one week ago. A copy of this backup shall be created in a format and stored at a secured location.
e. The Advent Geneva accounting system used by Debtor was backed up approximately one week ago. Upon reasonable notice, the Committee may submit search criteria to Debtor to run searches in Advent Geneva. Subject to Debtor's rights to assert objections as provided by Part G herein, Debtor will provide the data resulting from such agreed searches pursuant to Part F herein.
f. The Siepe Database (data warehouse) used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format and stored at a secured location.
g. For the Box account used by Debtor, to the extent routine data retention practices may result in file deletion, they shall be suspended pending further discussion with the Committee concerning the relevance of such data. Users of the Box account who have the ability to delete files shall be notified of the obligation to suspend deletion of any data stored in Box.
h. Bloomberg data is archived for five years. Debtor shall work with Bloomberg client services to preserve a copy of all such archived material, which shall be stored at a secured location, or otherwise extend the backup window in which Bloomberg preserves the data by reasonable time to be agreed by the parties.

i. Files may be saved locally on laptops/work computers used by employees of Debtor. This practice is discouraged, but may result in the creation of relevant ESI on local systems in a manner that will not be replicated elsewhere. Debtor shall therefore cease the deletion of data (*i.e.*, wiping) of any employee-assigned computer hard drives, such as for departing employees. Debtor shall furthermore instruct current employees not to delete files stored locally on their assigned computers.

D. Not Reasonably Accessible Documents

a. Absent an order from the Court upon a showing of good cause, a Party from whom ESI has been requested shall not be required to search for responsive ESI from sources that are not reasonably accessible without undue burden or cost. The following types of data stores are presumed to be inaccessible and are not subject to discovery, and need not be collected or preserved, absent a particularized need for the data as established by the facts and legal issues of the case:
   i. Deleted, slack, fragmented, or other data only accessible by forensics;
   ii. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system; and
   iii. On-line access data such as temporary internet files, history, cache, cookies, and the like.

b. To conduct collections in a focused and efficient manner, the Parties also agree to exclude the following file types from collection: Standard system file extensions including, but not limited to, BIN, CAB, CHK, CLASS, COD, COM, DLL DRV, EXE, INF, INI, JAVA, LIB, LOG, SYS and TMP and other file extensions and directories that likely do not contain user generated content such as files identified by hash value when compared to the National Software Reference Library reference data set (RDS Hash), a sub-project of the National Institute of Standards and Technology ("NIST"), of known traceable system and application files. This process is commonly referred to as "De-NISTing."

E. Collection and Search Methodology

a. Searches for emails in Debtor's custody shall be conducted by DSI on Debtor's Veritas Enterprise Vault storage using an unrestricted account at the earliest opportunity, but in no event later than seven (7) days after the Committee requests ESI from the Debtor. DSI shall use an add-on component called Discovery Assistant, which enables searches based on email properties, such as senders, recipients, and dates. Discovery Assistant also permits text searching of email contents and the contents of electronic file attachments, although not pictures of text (*e.g.*, scanned PDFs). Debtor did not employ employee message or file encryption that would prevent reasonable operation of the Discovery Assistant search capabilities.

b. The results of email searches shall be produced to the Committee pursuant to Part F below, subject to completion of any review for privilege or other purposes contemplated by this Agreement.

c. A snapshot copy of Debtor databases (Oracle, Siepe) shall be created in a format to be specified later by agreement with the Committee per Part (C)(d), (f), above. Prior to any production of responsive data from such a structured database Debtor will first identify the database type and version number, provide the vendor-originated database dictionary, if any, (identifying all tables in the database, their fields, the meaning of those fields, and any interrelation among fields) and any user manuals, or any other documentation describing the structure and/or content of the database, and a list of all reports that can be generated from the database. The list of reports shall be provided in native Excel (.xis or .xlsx) format.
d. The Geneva system is highly proprietary and shall not be collected, but the Committee will be given reasonable access to that system per Part C(e), above.
e. Debtor and Committee will meet and confer to discuss the scope of any necessary searches on the Box account.
f. Debtor file server contents, where requested by the Committee, shall be produced pursuant to Part F below.
g. Debtor shall propose a format for producing Sharepoint data. The Committee agrees that it is not necessary to reproduce the interface used by Debtor in the ordinary course of business for Sharepoint.

F. Format of Documents Produced

a. Non-database ESI shall be produced as black and white Group 4 TIFF files, with a resolution of 300 DPI. Page size shall be 8.5 x 11 inches unless, in the reasonable judgment of the Producing Party, a particular item requires a different page size, and original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape). A Requesting Party may, in good faith and reasonable judgment, request a color copy of a production document if it is necessary to convey the relevant and responsive information. Such color copies may be produced as single page JPG (JPEG) image files. The Requesting Party will bear the costs for color images.
b. The files shall be accompanied by a metadata load file, in a single standard format to be requested by the Receiving Party prior to any production (e.g., Opticon, Summation DII, or the like) showing the Bates number of each page, the appropriate unitization of the documents, and the entire family range. The Parties agree to meet and confer regarding the requested standard format prior to production.
c. The files shall be accompanied by a .DAT text file including the delimited fields identified in the Metadata List (below). No Party will have any obligation to manually generate information to provide the fields identified in the Metadata List.
d. The Producing Party reserves the right to make hard copy documents available for inspection and copying pursuant to Federal Rule of Civil Procedure 34.
e. In the event that a Party identifies hard copy documents for production, hard copy paper documents shall be scanned and will include, to the extent feasible, the following fields in the .DAT text file: PRODBEG, PRODEND, PAGECOUNT, FULLTEXT, and CUSTODIAN. The Parties agree to share equally in the cost of scanning hard copy documents.

f. For any documents that were scanned from hard copy paper documents, the Parties will produce images of hard copy documents unitized to the extent the original documents appeared to be units in physical form, with attachments following parents, and with information that identifies the holder (or container) structure, to the extent such structure exists and it is reasonable to do so. The Producing Party is not required to OCR (Optical Character Recognition) hard copy documents. If the Receiving Party requests that hard copy documents be OCR'ed, the Receiving Party shall bear the cost of such request, unless the Parties agree to split the cost so that each has an OCR'ed copy of the documents.

g. For ESI that the Producing Party produces in TIFF or JPEG format, the Producing Party shall electronically "burn" a legible, unique Bates number onto each page. The Bates number shall, to the extent reasonably possible: (1) identify the Producing Party; (2) maintain a constant length of nine numeric digits (including 0-padding) across the entire production; (3) contain only alphanumeric characters, no special characters or embedded spaces; and (4) be sequential within a given document. If the Bates number conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

h. For ESI that the Producing Party produces in TIFF format, if the Producing Party is producing the ESI subject to a claim that it is protected from disclosure under any confidentiality order entered in this matter, the Producing Party shall electronically "burn" the appropriate confidentiality designation onto each page of the document. If the designation conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

i. The Parties agree to produce e-mail families intact absent a privilege or work product claim, so long as each document contains responsive information; for all documents that contain a responsive, non-privileged attachment, the following fields will be produced (if available) as part of the metadata load file to indicate the parent child or parent/sibling relationship:

    i. Production Bates begin
    ii. Production Bates end
    iii. Production Bates begin attachment
    iv. Production Bates end attachment

Notwithstanding the aforementioned, all parties acknowledge that Debtor's Veritas Enterprise Vault system does not have the ability to search for the family members of responsive documents, and that Debtor does not have an obligation to manually search for non-responsive family members of otherwise responsive documents.

j. Unless otherwise agreed, all dynamic date and time fields, where such fields are processed to contain a value, and all metadata pertaining to dates and times, will be standardized to Universal Coordinated Time (UTC) or Universal Coordinated Time + 1 (UTC+1) **[TBD]**. The Parties understand and acknowledge that such standardization affects only dynamic fields and metadata values and does not affect, among other things, dates and times that are hard-coded text within a file. Dates and times that are hard-coded text within a file (for example, in an email

thread, dates and times of earlier messages that were converted to body text when subsequently replied to or forwarded; and in any file type, dates and times that are typed as such by users) will be produced as part of the document text in accordance with the provisions herein.

k. Excel spreadsheets shall be produced in native application format, unless redactions are required. The Producing Party will make reasonable efforts to provide a TIFF image of a slip sheet with the Bates number of documents produced natively in its production. The corresponding native file shall be named by using the same Bates number identified on the placeholder TIFF image. Any Excel spreadsheet that requires redaction will be produced in TIFF format only. Certain types of databases are dynamic in nature and may contain information that is irrelevant. These files are sometimes large and would, if rendered to TIFF images completely, produce thousands of pages that would have little utility to a reviewer without the associated database.

l. To the extent information from a structured data repository, such as a database, is requested, responsive information will be produced via a report or export of such data to an appropriate program that is agreeable to the requesting Party. The Parties agree to meet and confer before such data is exported.

G. Production Format Shall Not Alter Authenticity, Admissibility, or Privilege Status

a. No Party shall object that ESI produced pursuant to this Protocol is not authentic by virtue of the ESI having been converted to TIFF. The Parties otherwise reserve all rights regarding their ability to object to the authenticity of documents.

b. Nothing in this Protocol shall be construed to affect in any way the rights of any Party to make any objection as to the production, discoverability, admissibility, or confidentiality of documents and ESI.

c. Nothing in this Protocol shall constitute a waiver by any Party of any claim or privilege or other protection from discovery.

d. Nothing in this Protocol shall be interpreted to in any way limit a Producing Parties right and ability to review documents for responsiveness prior to production.

e. Nothing in the Protocol shall require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity.

Metadata List

File Name	Field Description	Sample Values
BegBates	Bates number for the first page of the document	ABC-0000001
EndBates	Bates number for the last page of the document	ABC-0000002
BegAttach	Bates number for the first page of parent document	ABC-0000001
EndAttach	Bates number for the last page of last attachment	ABC-0000005
Pages	Number of printed pages of the	2

	document	
Global Custodian	Custodian name produced in format: Lastname, Firstname.	Smith, Jane; Taylor, Michael
Confidentiality	Indicates if the document has been designated as "Confidential" or "Highly Confidential" pursuant to the applicable Protective Order	Confidential; Highly Confidential
Redacted	Descriptor for documents that have been redacted: "Yes" for redacted documents; "No" for non-redacted documents	Yes
Email Subject	Subject line of Email or	Text of the subject line
Document Subject	Subject value of documents	Text of the subject line
Date Sent	Date email sent	mm/dd/yyyy
Time Sent	Time email sent	hh:mm:ss AM
Date Last Modified	Date document was last modified	mm/dd/yyyy
Time Last Modified	Time document was last modified	hh:mm:ss AM
Date Created	Date document was first created	mm/dd/yyyy
To	All SMTP address of email recipients, separated by a semi-colon	Larry.murphy@email.com
From	All SMTP address of email author	Bart.cole@email.com
CC	All SMTP address of email "CC" recipients, separated by a semi-colon	Jim.James@gmail.com; bjones@yahoo.com
BCC	All SMTP address of email "BCC" recipients, separated by a semi-colon	mjones@gmail.com
Attach	The file name(s) of the documents attached to emails or embedded in files. Multiple files should be delimited by a semicolon	Filename.doc; filename2.doc
Title	The Title property of a file.	Title
Author	The Author property of a file	John Doe
MessageID	The email message ID	
FILENAME	The original name of the file excluding the path	C:\My Documents\letter.doc
DocType	Email, letter, memo, invoice, etc., if available	
Extension	The file extension	.doc

FileType	The actual file type of the document (Word, Excel, etc.) regardless of the file extension	
HashValue	MD5 Hash value of original file	
FilePath	The directory structure of the original file.	C:\My Documents\ letter.doc
PathToNative	The relative path to a produced native document	C:\VOL001\BATES000000001.xls
PathToText	The relative path to the accompanying text file	C:\VOL001\BATES000000001.txt
Volume	The production number or reference from the production	
Other Custodian	To the extent global deduplication is used, the field indicates the other custodians who also were in possession of the document at the time of collection	

Exhibit D

Reporting Requirements

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

      (2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

   a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the

Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor <u>does not hold a direct or indirect interest</u>

A. **Covered Entities**: See **<u>Schedule A</u>** hereto. **<u>Schedule A</u>** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) <u>Stage 1 and Stage 2</u>: ordinary course determined by the CRO.

b) <u>Stage 3</u>: ordinary course determined by the Debtor.

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

a) Except as set forth in (b) and (c) below, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. Transactions involving Non-Discretionary Accounts

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

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[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VIII. Additional Reporting Requirements – All Stages (to the extent applicable)

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. **Shared Services**

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

EXHIBIT 2

January 9, 2020

HAND DELIVERY

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Resignation of James Dondero

To Whom It May Concern:

I, James Dondero, hereby give notice of my resignation as, and do resign as, the President and Chief Executive Officer of Highland Capital Management, L.P. (the "HCMLP").

My resignation is effective January 9, 2020.

Please ensure that HCMLP's records and any filings with any state or federal authorities are modified as necessary to reflect my resignation.

Sincerely,

James Dondero

January 9, 2020

HAND DELIVERY

Strand Advisors, Inc.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Resignation of James Dondero

To Whom It May Concern:

I, James Dondero, hereby give notice of my resignation as, and do resign as: (1) an officer of Strand Advisors, Inc. (the "Company"), in any and all capacities now or formerly held by me, including as president, and (2) a director of the Company, including as Chairman of the Board of Directors.

My resignation is effective January 9, 2020.

Please ensure that the Company's records and any filings with any state or federal authorities are modified as necessary to reflect my resignation.

Sincerely,

James Dondero

EXHIBIT 3

Minutes of the Meeting of the Independent Directors of Strand Advisors, Ltd.

January 9, 2020 - January 10, 2020

I. Meeting on January 9, 2020

At approximately 3:30 p.m. Central Time, the board of directors (the "Board") of Strand Advisors, Ltd. ("Strand") called their first meeting to order. Directors present in person were John Dubel, James Seery, Jr., and Russell Nelms. No directors were present telephonically.

Also in attendance on January 9, 2020, were (i) Jeff Pomerantz, Ira Kharasch, John Morris, and Greg Demo of Pachulski Stang Ziehl & Jones ("Pachulski"), (ii) Melissa Hayward of Hayward & Associates ("Hayward"), (iii) Brad Sharp, Fred Caruso, James Romey, and Jack Donoghue of Development Specialists, Inc. ("DSI"), and (iv) Isaac Leventon and David Klos of Highland Capital Management, L.P. ("HCMLP").

a. Introductions and Background

The directors commenced the meeting by introducing themselves and welcoming the guests in attendance at the meeting. Mr. Leventon, in house counsel at HCMLP, then provided a brief background of Strand's corporate governance. This presentation included a discussion of James Dondero's resignation as an officer and director of Strand in accordance with the settlement approved by the United States Bankruptcy Court for the Northern District of Texas (the "Court") on January 9, 2020, and the stipulation entered into by and among (i) HCMLP, (ii) the official committee of unsecured creditors in HCMLP's bankruptcy proceeding, (iii) Strand, and (iv) James Dondero, which was filed with the Court on January 9, 2020. The presentation also included an overview of Strand's current officers.

Mr. Leventon then provided a brief overview of HCMLP, HCMLP's employees and management, including Mr. Dondero's prior roles at HCMLP, and HCMLP's status as a registered investment advisor. The directors asked Mr. Leventon various questions concerning the current management of both HCMLP and Strand and a discussion occurred concerning how both HCMLP and Strand would be managed going forward. This discussion also included various questions about the funds and entities managed by HCMLP and how those funds are constituted.

b. DSI Presentation to the Board

Following this discussion, DSI began their presentation to the Board. A copy of DSI's presentation is attached to these minutes as Appendix I. DSI's presentation included, among other things, a detailed overview of HCMLP's balance sheet, cash flows, assets, notes receivable, and HCMLP's valuation process. During the course of DSI's presentation, the directors asked questions and engaged in lengthy dialogue with DSI concerning HCMLP's operations. These conversations also included substantial input from both Mr. Klos and Mr. Leventon of HCMLP and the lawyers from Pachulski and Hayward.

As part of this presentation, the Board and the guests present at the meeting also discussed HCMLP's proprietary trading through its and the Select Equity Fund's prime brokerage accounts with Jefferies, LLC (together, the "Prime Accounts"), and the margin requirements for those accounts. For this discussion, the Board invited Joseph Sowin to join the meeting. Mr. Sowin discussed with the Board and the guests present the various trading issues in the Prime Accounts, the margin calls that had been made to date, and how HCMLP had reacted to those margin calls. This discussion also include a discussion about how the protocols implemented in HCMLP's bankruptcy proceeding affected trading.

During this discussion, the Board adjourned the meeting briefly to hold an executive session. Following their return, Mr. Dubel moved to designate James Seery, Jr., as the Board's representative on issues involving trading in the Prime Accounts and to authorize Mr. Seery to approve any trades made in the Prime Accounts. Judge Nelms seconded, and the Board's resolution designating Mr. Seery as the Board's representative on issues involving trading in the Prime Accounts and authorizing Mr. Seery to approve any trades in the Prime Accounts was passed with unanimous approval.

Following this resolution, Mr. Sowin was excused from the meeting.

c. DSI Engagement

The Board next discussed the engagement of Mr. Sharp and DSI as HCMLP's chief restructuring officer. The Board reviewed DSI's engagement letter and unanimously approved the signing of the DSI engagement letter and the retention of Mr. Sharp and DSI.

d. Open Items and Next Steps

After the execution of the DSI engagement letter, the Board and the guests present at the meeting discussed, on a high level, the open items that needed to be addressed by the Board. Following this discussion, the Board voted to adjourn the meeting for the evening and to reconvene on January 10, 2020, to review the balance of the open items.

The meeting adjourned for the evening at approximately 6:30 p.m. Central Time.

II. Meeting on January 10, 2020

At approximately 7:30 a.m. Central Time, on January 10, 2020, the Board reconvened. Directors present in person were John Dubel, James Seery, Jr., and Russell Nelms. No directors were present telephonically.

Also in attendance on January 10, 2020, were (i) Jeff Pomerantz, Ira Kharasch, and Greg Demo of Pachulski, (ii) Brad Sharp, Fred Caruso, James Romey, and Jack Donoghue of DSI, and (iii) David Klos and Brian Collins of HCMLP.

a. DSI Presentation (Continued)

After the meeting was called to order, the Board asked DSI to continue their presentation. DSI, the Board, and the guests present at the meeting had a lengthy discussion on HCMLP's cash

flows, liquidity, and operating budget. As part of this discussion, Mr. Klos answered a series of questions posed by the Board and there was a lively discussion among all parties concerning HCMLP's operating cash flows, expenses, and liquidity.

b. Human Resources Presentation

Following this discussion, the Board asked for a presentation from Brian Collins, HCMLP's human resources director on certain employee issues, including employee compensation and bonuses. As part of this presentation, Mr. Collins responded to numerous questions from the Board, from DSI, and from attorneys from Pachulski. At the conclusion of this discussion, the Board requested additional information on employee bonuses, which Mr. Collins and DSI said they would provide.

Mr. Collins and Mr. Klos were excused from the meeting.

c. Scheduling of Meetings

The Board next briefly discussed with DSI and the attorneys from Pachulski a few additional open items and asked for separate meetings to be scheduled with the persons having pertinent information on such items.

The Board also scheduled their next meeting for Tuesday, January 14, 2020, and invited representatives from DSI and Pachulski to join that meeting.

Mr. Pomerantz, Mr. Kharasch, and Mr. Demo from Pachulski and DSI were excused from the meeting.

d. Meeting with Senior Management

The Board then had a closed door session with Scott Ellington, HCMLP's general counsel and other members of HMCLP's senior management.

The meeting adjourned at approximately 12:15 p.m. Central Time.

_____
John S. Dubel

_____
James P. Seery, Jr.

_____
Russell F. Nelms

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Mr. Collins and Mr. Klos were excused from the meeting.

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John S. Dubel

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Mr. Collins and Mr. Klos were excused from the meeting.

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The Board next briefly discussed with DSI and the attorneys from Pachulski a few additional open items and asked for separate meetings to be scheduled with the persons having pertinent information on such items.

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Mr. Pomerantz, Mr. Kharasch, and Mr. Demo from Pachulski and DSI were excused from the meeting.

d. Meeting with Senior Management

The Board then had a closed door session with Scott Ellington, HCMLP's general counsel and other members of HMCLP's senior management.

The meeting adjourned at approximately 12:15 p.m. Central Time.

_____
John S. Dubel

_____
James P. Seery, Jr.

_____
Russell F. Nelms

EXHIBIT 4

From: James Seery [mailto:jpseeryjr@gmail.com]
Sent: Friday, October 02, 2020 5:52 PM
To: Jim Dondero <JDondero@HighlandCapital.com>
Cc: John Dubel <jdubel@dubel.com>; Russell Nelms <rfargar@yahoo.com>
Subject: HCMLP Roles

Jim:

Further to our discussion on September 24, Michael Lynn has advised the Pachulski firm that you or an entity controlled or affiliated with you will be objecting to the HCMLP settlement with Acis and Josh Terry. In addition, one of your trusts has filed a claim against HCMLP related to the management of Multi-Strat.

In light of these facts, we believe it is time for you to resign your portfolio manager position at HCMLP, any remaining roles at Multi-Strat, and certain other positions at entities managed or controlled by HCMLP. As you stated on our call, I agree that over the last few months the PM role has been in title only with most ultimate authority vested in the Board. Nonetheless, it is untenable for you to have a role at the Debtor or the major funds managed by the Debtor while at the same time taking positions in court contrary to what the Board has determined is in the best interest of the estate.

I appreciate your desire to challenge the Acis agreement and obtain final court determination on its reasonableness. Hopefully when that hearing is complete and there is a determination by the court, we will have an opportunity to consider a larger settlement of the case with you. But until the legal fighting is resolved, the Board believes it is in the best interests of the estate, its employees, and all other interested parties that you not be on both sides of the issues, even if in name only.

Please let me know if it preferable to you to resign or if removal by the board at this time is better. Specifically, we would like you to resign or be removed from the portfolio manager role at HCMLP and all roles at the Multi-Strat/Credit Opportunities entities.

I look forward continuing our discussions to resolve the case. If we are unable to do that, I am confident that together we can engineer a smooth and efficient transition that facilitates value maximization for the estate and all of its stakeholders.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

EXHIBIT 5

From: Jim Dondero <JDondero@HighlandCapital.com>
Date: October 9, 2020 at 4:43:44 PM EDT
To: Jim Seery <jpseeryjr@gmail.com>
Cc: John Dubel <jdubel@dubel.com>, Russell Nelms <rfargar@yahoo.com>, "D. Lynn (Judge Lynn)" <michael.lynn@bondsellis.com>
Subject: Re: HCMLP Roles

Counsel has advised me that according to January 9 order, I must at your request resign from Highland. So Therefore, based on your request below I resign.

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Oct 2, 2020, at 5:52 PM, James Seery <jpseeryjr@gmail.com> wrote:

Jim:

Further to our discussion on September 24, Michael Lynn has advised the Pachulski firm that you or an entity controlled or affiliated with you will be objecting to the HCMLP settlement with Acis and Josh Terry. In addition, one of your trusts has filed a claim against HCMLP related to the management of Multi-Strat.

In light of these facts, we believe it is time for you to resign your portfolio manager position at HCMLP, any remaining roles at Multi-Strat, and certain other positions at entities managed or controlled by HCMLP. As you stated on our call, I agree that over the last few months the PM role has been in title only with most ultimate authority vested in the Board. Nonetheless, it is untenable for you to have a role at the Debtor or the major funds managed by the Debtor while at the same time taking positions in court contrary to what the Board has determined is in the best interest of the estate.

I appreciate your desire to challenge the Acis agreement and obtain final court determination on its reasonableness. Hopefully when that hearing is complete and there is a determination by the court, we will have an opportunity to consider a larger settlement of the case with you. But until the legal fighting is resolved, the Board believes it is in the best interests of the estate, its employees, and all other interested parties that you not be on both sides of the issues, even if in name only.

Please let me know if it preferable to you to resign or if removal by the board at this time is better. Specifically, we would like you to resign or be removed from the portfolio manager role at HCMLP and all roles at the Multi-Strat/Credit Opportunities entities.

I look forward continuing our discussions to resolve the case. If we are unable to do that, I am confident that together we can engineer a smooth and efficient transition that facilitates value maximization for the estate and all of its stakeholders.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

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EXHIBIT 6

NEXPOINT

October 16, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to reiterate the concerns we have expressed about the scope and maintenance of quality of the services currently being provided by Highland Capital Management, L.P. ("HCMLP") to NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") under their respective shared services agreements (together, the "Shared Services Agreements" or "Agreements"). As you know, the Shared Services Agreements obligate HCMLP to provide a variety of investment, administrative, legal, and back-office services to the Advisors. These responsibilities on the part of HCMLP are critical to the Advisors' ability to provide top-notch advisory services to the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they have advisory contracts.

In particular, the refusal by HCMLP to allow its employees to work on certain matters that jointly affect HCMLP and the Advisors has resulted in the Advisors incurring additional third-party costs and expenses to procure services that should rightfully be performed by HCMLP under the Shared Services Agreements. These third-party services, for which the Advisors are already compensating HCMLP under the Agreements, represent supplemental costs and expenses that the Advisors should not be obligated to pay.

Additionally, it is our understanding that all HCMLP employees will be given notice that their employment will be terminated effective as of December 31, 2020. If these employees are terminated, or are informed that they will be terminated and elect to resign, HCMLP will no longer be able to carry out its duties and obligations under the Agreements. We would thus like to request assurances from HCMLP that if elects to terminate its employees, it will work in good faith with the Advisors to put in place an orderly transition plan. Such a plan would provide for an effective transfer of services to the Advisors, seek to maximize employee retention, and permit the Advisors (or their affiliates) to hire any and all HCMLP employees, which would ensure the delivery of uninterrupted services previously provided by HCMLP under the Agreements.

Finally, we understand that HCMLP is contemplating the sale of certain assets held in several CLOs, the interests in which are also owned by the Advisors and/or the Funds advised by

NexPoint, HCMFA and/or their affiliates. The sale of such assets has the potential to negatively affect the valuation of the Funds. Specifically, a rush to sell these assets at fire sale prices could result in both the Funds and HCMLP not realizing their full value. Accordingly, we hereby request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

We feel certain that our mutually shared goals are to minimize disruption and costs, to prevent the dislocation of services to the Advisors and the Funds, and to maximize returns for Funds and accounts advised by NexPoint, HCMFA, HCMLP, or any of their affiliates. We believe that through working cooperatively we can achieve these goals.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

EXHIBIT 7

NEXPOINT

November 24, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to follow up on our letter dated October 16, 2020 and to reiterate the concerns we have expressed about the sale of certain assets held in several CLOs, the interests in which are also owned by the NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") and/or the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they and their affiliates have advisory contracts. As we have previously advised, the sale of such assets has the potential to negatively affect the valuation of the Funds, and a rush to sell these assets at fire-sale prices could result in both the Funds and Highland Capital Management, L.P. ("HCMLP") not realizing their full value. In addition, with recent CLO quarterly payments being made and potential upside for the remaining securities held by the CLOs, sales of these securities at this time could further negatively impact the valuation. We have previously requested that no CLO assets be sold without prior notice to and prior consent from the Advisors. We understand that Charitable DAF HoldCo, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

Dustin Norris

cc: Thomas Surgent (tsurgent@highlandcapital.com)
John Dubel (jdubel@dubel.com)
Russell Nelms (rfargar@yahoo.com)

EXHIBIT 8

From: Jim Dondero <JDondero@highlandcapital.com>
Date: November 27, 2020 at 2:46:35 AM EST
To: Thomas Surgent <TSurgent@highlandcapital.com>
Subject: Fwd: SKY equity

I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational.
You might want to remind him (and yourself) that the chief compliance officer has personal liability.

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

Begin forwarded message:

From: Joe Sowin <JSowin@highlandcapital.com>
Date: November 24, 2020 at 3:58:24 PM EST
To: Jim Dondero <JDondero@highlandcapital.com>
Cc: Matt Pearson <MPearson@highlandcapital.com>, Hunter Covitz <HCovitz@highlandcapital.com>, Compliance <Compliance@hcmlp.com>
Subject: Re: SKY equity

+ Conpliance
We did not know that but Understood going forward.

Compliance should never have approved this order then - will coordinate with them Jim

Post: Please block all orders from Hitting the trading desk for the fungus Jim mentioned.

Happy to discuss if needed.
Joe

On Nov 24, 2020, at 2:29 PM, Jim Dondero <JDondero@highlandcapital.com> wrote:

HFAM and DAF has instructed Highland in writing not to sell any CLO underlying assets..... there is potential liability, don't do it again please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 3:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

I've cxl'd both SKY and AVYA sales – only completed a small amount of each

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

From: Jim Dondero
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510
hcovitz@highlandcapital.com | www.highlandcapital.com

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EXHIBIT 9

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TELEPHONE: 302/652 4100

FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory V. Demo
212-561- 7730
gdemo@pszjlaw.com

December 3, 2020

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111

Dear James:

Reference is made to the following recent communications (collectively, the "***Communications***"): (i) the letter, dated October 16, 2020, from Dustin Norris of NexPoint Advisors, L.P. ("***NexPoint***") to James Seery of Highland Capital Management, L.P. ("***HCMLP***"), (ii) the letter, dated November 24, 2020, from Dustin Norris of NexPoint to James Seery of HCMLP, and (iii) the email, dated November 25, 2020, at 6:48pm, from you to me.

We understand that each of NexPoint and Highland Capital Management Fund Advisors, L.P. ("***HCMFA***," and together with NexPoint, the "***Advisors***") is an investment adviser directly or indirectly controlled by James Dondero, and that each such Advisor is no longer an affiliate of HCMLP.

According to the Communications, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in pooled collateralized loan obligation vehicles ("***CLOs***") for which HCMLP serves as portfolio manager or servicer.

In each of the Communications, NexPoint or its counsel "requests" that HCMLP refrain from selling any CLO assets without notice and prior consent from the Advisors. This request is based on the Advisors' apparent belief that the sale of assets by the CLOs has the potential to negatively affect the valuation of the funds that hold their interests by causing the CLOs not to realize "their full value".

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The Advisors do not have the right, either under the documents governing the CLOs or applicable law, to instruct HCMLP with respect to specific portfolio management decisions. As portfolio manager or servicer of the CLOs, HCMLP has contractual and fiduciary duties to each CLO as a whole, and not to any investor in any CLO. If you disagree, please provide the authority that supports your position.

Specifically, please note the following:

- HCMLP in its role as servicer, portfolio manager, or equivalent of each CLO has full discretion to make decisions to purchase and sell assets on behalf of the CLO subject only to the terms of its service agreement, indenture, and the trustees/directors of each respective CLO.

- The sole client of HCMLP is the CLO issuer, and not any individual shareholder or noteholder of the CLO.

- All decisions made by HCMLP in its capacity as servicer, portfolio manager, or equivalent of each CLO, including without limitation the timing and execution of any sale transaction, are made by HCMLP taking into account such factors as HCMLP determines to be appropriate and are not subject to the requests or instructions of any investor or other party.

- There is no legal basis pursuant to which the holders of preferred shares or notes in the CLOs may influence the investment decisions of HCMLP or the CLO.

For these reasons, NexPoint, HCMFA, and their affiliates, including Mr. Dondero, are hereby advised to cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs.

HCMLP reserves and does not waive all of its rights at law and in equity.

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES

Please direct all further questions to me.

Sincerely,

Gregory V. Demo

cc: HCMLP Board of Directors (*by e-mail*)
Jeffrey Pomerantz (*by e-mail*)
John Morris (*by e-mail*)

EXHIBIT 10

PACHULSKI STANG ZIEHL & JONES

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FACSIMILE: 212/561 7777

WEB www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 4, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones, LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Dear Judge Lynn:

As you know, my firm represents Highland Capital Management, L.P. ("***HCMLP***"). HCMLP filed bankruptcy on October 16, 2019, and it is currently under the protection of the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj11.

As you also know, HCMLP is currently managed by the board of independent directors (the "***Board***") at Strand Advisors, Inc., HCMLP's general partner, and James P. Seery, Jr., HCMLP's chief executive officer and chief restructuring officer. Your client, James Dondero, resigned from HCMLP at the direction of the Board in October 2020 and has no authority or oversight over HCMLP or the decisions that HCMLP makes with respect to assets under its management.

On November 24, 2020, Mr. Seery, in his capacity as the chief executive officer of HCMLP, directed Hunter Covitz, an HCMLP employee, to cause the sale of certain assets held by certain pooled collateralized loan obligation vehicles ("***CLOs***") for which HCMLP serves as portfolio manager or servicer. Before such sale could be executed, your client, Mr. Dondero, emailed Mr. Covitz, among others, and directed them to halt the sale and to disobey Mr. Seery's direct order to sell. At your client's direction, Mr. Covitz and others

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

stopped the sale and refused to comply with Mr. Seery's direction. Copies of the relevant correspondence are attached hereto as Appendix A. HCMLP also received the following letters: (i) the letter, dated October 16, 2020, from Dustin Norris of NexPoint Advisors, L.P. ("***NexPoint***") to James Seery of HCMLP and (ii) the letter, dated November 24, 2020, from Dustin Norris of NexPoint to James Seery of HCMLP. Copies of these letters are attached as Appendix B. These emails and letters are collectively referred to as the "***Communications***".

We understand that each of NexPoint and Highland Capital Management Fund Advisors, L.P. ("***HCMFA***," and together with NexPoint, the "***Advisors***") is an investment adviser directly or indirectly controlled by James Dondero, and that each such Advisor is no longer an affiliate of HCMLP.

According to the Communications, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in certain of the CLOs.

In addition to Mr. Dondero's correspondence nullifying, impeding, and other contradicting Mr. Seery's order, in certain of the Communications, NexPoint or its counsel "requests" that HCMLP refrain from selling any CLO assets without notice and prior consent from the Advisors. This request is based on the Advisors' apparent belief that the sale of assets by the CLOs has the potential to negatively affect the valuation of the funds that hold their interests by causing the CLOs not to realize "their full value".

Neither Mr. Dondero nor the Advisors has the right, either under the documents governing the CLOs or applicable law, to instruct HCMLP with respect to specific portfolio management decisions. As portfolio manager or servicer of the CLOs, HCMLP has contractual and fiduciary duties to each CLO as a whole, and not to any investor in any CLO. If you disagree, please provide the authority that supports your position.

Specifically, please note the following:

- HCMLP in its role as servicer, portfolio manager, or equivalent of each CLO has full discretion to make decisions to purchase and sell assets on behalf of the

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CLO subject only to the terms of its service agreement, indenture, and the trustees/directors of each respective CLO.

- The sole client of HCMLP is the CLO issuer, and not any individual shareholder or noteholder of the CLO.
- All decisions made by HCMLP in its capacity as servicer, portfolio manager, or equivalent of each CLO, including without limitation the timing and execution of any sale transaction, are made by HCMLP taking into account such factors as HCMLP determines to be appropriate and are not subject to the requests or instructions of any investor or other party.
- There is no legal basis pursuant to which the holders of preferred shares or notes in the CLOs may influence the investment decisions of HCMLP or the CLO.

Your client's actions actively interfered with the management of HCMLP's bankruptcy estate and the property of such estate. Your client's actions also violated the Bankruptcy Code and the order entered by Judge Jernigan on January 9, 2020 [Docket No. 339].

For these reasons, Mr. Dondero and his affiliates and related parties, including NexPoint, HCMFA, and their affiliates, are hereby advised to cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP, its officers, and employees regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs.

On December 3, 2020, a letter to the same effect was sent to counsel for the Advisors.

HCMLP reserves and does not waive all of its rights at law and in equity.

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

Sincerely,

J. Pomerantz /gvd

Jeffrey N. Pomerantz

Enclosures
cc: HCMLP Board of Directors
John Morris
Gregory Demo

APPENDIX A

Gregory V. Demo

From: James Seery <jpseeryjr@gmail.com>
Sent: Tuesday, November 24, 2020 4:32 PM
To: Hunter Covitz
Cc: Thomas Surgent; Gregory V. Demo
Subject: FW: SKY equity see below from Dondero

Hunter:

I just received a copy of this email. Jim Dondero has no authority over the HCMLP managed CLOs. The purported direction is inappropriate, violative of the Bankruptcy Court orders, and of no effect.

I am the CEO and CRO of HCMLP. HCMLP has full authority to manage the positions in the CLOs. If I direct you to make a sale, please do so. If you cannot, please advise me immediately and explain why.

I will call you at 9:00am ET tomorrow to discuss this issue.

Jim

From: Jim Dondero [mailto:JDondero@HighlandCapital.com]
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

HUNTER COVITZ | HEAD OF STRUCTURED PRODUCTS

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510
hcovitz@highlandcapital.com | www.highlandcapital.com

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Gregory V. Demo

From: Hunter Covitz <HCovitz@HighlandCapital.com>
Sent: Tuesday, November 24, 2020 4:41 PM
To: Jim Seery
Cc: Thomas Surgent; Gregory V. Demo
Subject: RE: AVYA sell-See below comment from Dondero

We sold the following .. just put pencils on the rest down near the end of the trading day to revisit tomorrow.

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

Hunter Covitz
Cell: 214.394.5510

From: James Seery <jpseeryjr@gmail.com>
Sent: Tuesday, November 24, 2020 3:35 PM
To: Hunter Covitz <HCovitz@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Greg Demo <gdemo@pszjlaw.com>
Subject: FW: AVYA sell-See below comment from Dondero
Importance: High

Hunter:

The my prior message applies to this chain as well.

Did you get these and the SKY sales off today? If so, please provide me with a full report on the prints.

Jim

From: Jim Dondero [mailto:JDondero@HighlandCapital.com]
Sent: Tuesday, November 24, 2020 2:18 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: AVYA sell

Why? Let's not please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 1:19 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: AVYA sell

Please sell 213k shares (~$3.8mm) of Avaya in the high 17/18 current context. Please respond with other interest.

Fund	CLO
Aberdeen CLO	4,000
Brentwood CLO Ltd	20,000
Eastland CLO, Ltd.	50,000
Grayson CLO, Ltd.	38,000
Greenbriar CLO LTD	34,000
Red River CLO, Ltd.	5,000
Rockwall II	6,000
South Fork CLO Ltd.	8,000
Stratford CLO, Ltd.	23,000
Westchester CLO, Ltd.	25,000
	213,000.00

HUNTER COVITZ | HEAD OF STRUCTURED PRODUCTS

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510

hcovitz@highlandcapital.com | www.highlandcapital.com

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Gregory V. Demo

From: James Seery <jpseeryjr@gmail.com>
Sent: Friday, November 27, 2020 10:19 AM
To: Gregory V. Demo; Jeff Pomerantz
Cc: John Dubel; Russell Nelms
Subject: FW: SKY equity

[redacted]

Jim Seery
[redacted]

From: Thomas Surgent <TSurgent@HighlandCapital.com>
Date: Friday, November 27, 2020 at 9:28 AM
To: Jim Seery <jpseeryjr@gmail.com>
Subject: Fwd: SKY equity

Please see below. We should discuss

Begin forwarded message:

> **From:** Jim Dondero <JDondero@highlandcapital.com>
> **Date:** November 27, 2020 at 2:46:35 AM EST
> **To:** Thomas Surgent <TSurgent@highlandcapital.com>
> **Subject: Fwd: SKY equity**
>
> I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational.
> You might want to remind him (and yourself) that the chief compliance officer has personal liability.
>
> James Dondero
> Highland Capital Management
> 972-628-4100
> jdondero@highlandcapital.com
> www.highlandcapital.com
>
> Begin forwarded message:
>
> > **From:** Joe Sowin <JSowin@highlandcapital.com>
> > **Date:** November 24, 2020 at 3:58:24 PM EST
> > **To:** Jim Dondero <JDondero@highlandcapital.com>

Cc: Matt Pearson <MPearson@highlandcapital.com>, Hunter Covitz <HCovitz@highlandcapital.com>, Compliance <Compliance@hcmlp.com>
Subject: Re: SKY equity

+ Conpliance
We did not know that but Understood going forward.

Compliance should never have approved this order then - will coordinate with them Jim

Post: Please block all orders from Hitting the trading desk for the fungus Jim mentioned.

Happy to discuss if needed.
Joe

On Nov 24, 2020, at 2:29 PM, Jim Dondero <JDondero@highlandcapital.com> wrote:

HFAM and DAF has instructed Highland in writing not to sell any CLO underlying assets..... there is potential liability, don't do it again please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 3:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

I've cxl'd both SKY and AVYA sales – only completed a small amount of each

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

From: Jim Dondero
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

HUNTER COVITZ | HEAD OF STRUCTURED PRODUCTS

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
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hcovitz@highlandcapital.com | www.highlandcapital.com

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APPENDIX B

NEXPOINT

October 16, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to reiterate the concerns we have expressed about the scope and maintenance of quality of the services currently being provided by Highland Capital Management, L.P. ("HCMLP") to NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") under their respective shared services agreements (together, the "Shared Services Agreements" or "Agreements"). As you know, the Shared Services Agreements obligate HCMLP to provide a variety of investment, administrative, legal, and back-office services to the Advisors. These responsibilities on the part of HCMLP are critical to the Advisors' ability to provide top-notch advisory services to the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they have advisory contracts.

In particular, the refusal by HCMLP to allow its employees to work on certain matters that jointly affect HCMLP and the Advisors has resulted in the Advisors incurring additional third-party costs and expenses to procure services that should rightfully be performed by HCMLP under the Shared Services Agreements. These third-party services, for which the Advisors are already compensating HCMLP under the Agreements, represent supplemental costs and expenses that the Advisors should not be obligated to pay.

Additionally, it is our understanding that all HCMLP employees will be given notice that their employment will be terminated effective as of December 31, 2020. If these employees are terminated, or are informed that they will be terminated and elect to resign, HCMLP will no longer be able to carry out its duties and obligations under the Agreements. We would thus like to request assurances from HCMLP that if elects to terminate its employees, it will work in good faith with the Advisors to put in place an orderly transition plan. Such a plan would provide for an effective transfer of services to the Advisors, seek to maximize employee retention, and permit the Advisors (or their affiliates) to hire any and all HCMLP employees, which would ensure the delivery of uninterrupted services previously provided by HCMLP under the Agreements.

Finally, we understand that HCMLP is contemplating the sale of certain assets held in several CLOs, the interests in which are also owned by the Advisors and/or the Funds advised by

NexPoint, HCMFA and/or their affiliates. The sale of such assets has the potential to negatively affect the valuation of the Funds. Specifically, a rush to sell these assets at fire sale prices could result in both the Funds and HCMLP not realizing their full value. Accordingly, we hereby request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

We feel certain that our mutually shared goals are to minimize disruption and costs, to prevent the dislocation of services to the Advisors and the Funds, and to maximize returns for Funds and accounts advised by NexPoint, HCMFA, HCMLP, or any of their affiliates. We believe that through working cooperatively we can achieve these goals.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

308062413.3

NEXPOINT

November 24, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to follow up on our letter dated October 16, 2020 and to reiterate the concerns we have expressed about the sale of certain assets held in several CLOs, the interests in which are also owned by the NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") and/or the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they and their affiliates have advisory contracts. As we have previously advised, the sale of such assets has the potential to negatively affect the valuation of the Funds, and a rush to sell these assets at fire-sale prices could result in both the Funds and Highland Capital Management, L.P. ("HCMLP") not realizing their full value. In addition, with recent CLO quarterly payments being made and potential upside for the remaining securities held by the CLOs, sales of these securities at this time could further negatively impact the valuation. We have previously requested that no CLO assets be sold without prior notice to and prior consent from the Advisors. We understand that Charitable DAF HoldCo, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

Dustin Norris

cc: Thomas Surgent (tsurgent@highlandcapital.com)
John Dubel (jdubel@dubel.com)
Russell Nelms (rfargar@yahoo.com)

EXHIBIT 11

PROMISSORY NOTE

$100,000 November 27, 2013

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED THOUSAND and 00/100 Dollars ($100,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

EXHIBIT 12

PROMISSORY NOTE

$2,500,000 October 12, 2017

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT 13

PROMISSORY NOTE

$3,825,000 February 2, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of THREE MILLION, EIGHT HUNDRED AND TWENTY-FIVE THOUSAND and 00/100 Dollars ($3,825,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.66%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other

amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 14

PROMISSORY NOTE

$150,000.00 March 28, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars ($150,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.88 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

EXHIBIT 15

PROMISSORY NOTE

$200,000.00 June 25, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO HUNDRED THOUSAND and 00/100 Dollars ($200,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (3.05 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

EXHIBIT 16

PROMISSORY NOTE

$2,500,000 August 1, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 17

PROMISSORY NOTE

$2,500,000 August 13, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 18

EXHIBIT 19

PROMISSORY NOTE

$2,400,000.00 May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars ($2,400,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

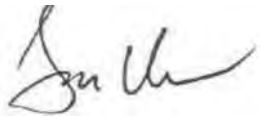

FRANK WATERHOUSE

EXHIBIT 20

PROMISSORY NOTE

$5,000,000.00 May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars ($5,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

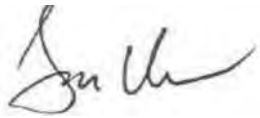

FRANK WATERHOUSE

EXHIBIT 21

PROMISSORY NOTE

$400,000 May 29, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR HUNDRED THOUSAND and 00/100 Dollars ($400,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

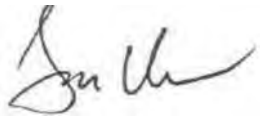

FRANK WATERHOUSE

EXHIBIT 22

PROMISSORY NOTE

$150,000 June 26, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars ($150,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.37%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

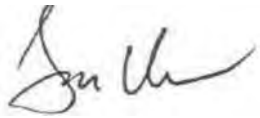

FRANK WATERHOUSE

EXHIBIT 23

PROMISSORY NOTE

$900,000 September 25, 2019

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of NINE HUNDRED THOUSAND and 00/100 Dollars ($900,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

EXHIBIT 24

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

James Dondero
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Demand on Promissory Notes:

Dear Mr. Dondero,

You entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
2/2/18	$3,825,000	$3,687,269.71	$21,003.70	$3,708,273.41
8/1/18	$2,500,000	$2,619,929.42	$27,950.70	$2,647,880.12
8/13/18	$2,500,000	$2,622,425.61	$25,433.94	$2,647,859.55
TOTALS	**$16,725,000**	**$8,929,624.74**	**$74,388.33**	**$9,004,013.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $9,004,013.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain your obligation.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
D. Michael Lynn

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 25

December 3, 2020

Highland Capital Management Fund Advisors, LP
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
5/2/2019	$2,400,000	$2,457,517.15	$35,884.46	$2,493,401.61
5/3/2019	$5,000,000	$5,119,827.40	$74,424.05	$5,194,251.45
TOTALS	**$7,400,000**	**$7,577,344.55**	**$110,308.52**	**$7,687,653.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

[1] Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 26

December 3, 2020

HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)
c/o NexPoint Advisors, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James Dondero

Re: Demand on Promissory Notes:

Dear Mr. Dondero,

HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("Maker") entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
11/27/13	$100,000	$171,542.00	$526.10	$172,068.10
10/12/17	$2,500,000	$3,149,919.12	$41,423.60	$3,191,342.72
10/15/18	$750,000	$874,977.53	$10,931.23	$885,908.76
9/25/19	$900,000	$750,279.14	$12,662.24	$762,941.38
TOTALS	**$4,250,000**	**$4,946,717.79**	**$65,543.17**	**$5,012,260.96**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $5,012,260.96, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 27

December 3, 2020

Highland Capital Management Services, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Services, Inc. ("Maker") entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
3/28/18	$150,000	$158,776.59	$3,257.32	$162,033.91
6/25/18	$200,000	$212,403.27	$2,999.54	$215,402.81
5/29/19	$400,000	$409,586.19	$5,256.62	$414,842.81
6/26/19	$150,000	$153,564.74	$1,675.16	$155,239.90
TOTALS	**$900,000**	**$934,330.79**	**$13,188.64**	**$947,519.43**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $947,519.43, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 28

JD

Jim

office until Monday and will speak with me then.

From Lynn

Tue, Nov 24, 10:39 AM

Update on UBS please

Tue, Nov 24, 1:01 PM

No update. Will let you know if something changes. Assume that you and Lynn are pushing on the Pot plan. Thanks

Tied up this afternoon

Delivered

Today 5:26 PM

Be careful what you do - last warning.

iMessage

EXHIBIT 29

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

LOS ANGELES, CA
SAN FRANCISCO, CA
WILMINGTON, DE
NEW YORK, NY

10100 SANTA MONICA BLVD.
13th FLOOR
LOS ANGELES
CALIFORNIA 90067

TELEPHONE: 310/277 6910

FACSIMILE: 310/201 0760

SAN FRANCISCO
150 CALIFORNIA STREET
15th FLOOR
SAN FRANCISCO
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000
FACSIMILE: 415/263 7010

DELAWARE
919 NORTH MARKET STREET
17th FLOOR
P.O. BOX 8705
WILMINGTON
DELAWARE 19899-8705

TELEPHONE: 302/652 4100
FACSIMILE: 302/652 4400

NEW YORK
780 THIRD AVENUE
34th FLOOR
NEW YORK
NEW YORK 10017-2024

TELEPHONE: 212/561 7700
FACSIMILE: 212/561 7777

WEB: www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 4, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones, LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Dear Judge Lynn:

I write to follow up on our recent communications concerning Mr. Dondero's written threat to Jim Seery and related matters.

As we have informed you, on December 3, just hours after HCMLP sent letters demanding payment on a series of notes tendered by Mr. Dondero and certain of his affiliated entities, Mr. Dondero sent a text message to Mr. Seery that stated "Be careful what you do – last warning." This threat was, and remains, completely unacceptable.

Mr. Dondero called Mr. Seery earlier today, ostensibly to discuss the "pot plan." Early in the call, Mr. Dondero suggested that "the lawyers" would address his threatening message and failed to disavow or apologize for the text, saying only (at the end of the conversation) that he didn't mean to threaten any physical harm.

Mr. Seery and the other members of the Independent Board are disturbed by Mr. Dondero's explicit threat and his lack of contrition. Because Mr. Dondero does not seem to appreciate the seriousness of this matter, the Board has instructed us to prepare an emergency motion seeking injunctive relief, including enjoining Mr. Dondero from communicating directly with any Board member or making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents.

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES

In the interim, the Debtor demands that you instruct Mr. Dondero to cease and desist from (a) communicating directly with any Board member without counsel for the Debtor, (b) making any further threats against HCMLP or any of its directors, officers, employees, professionals, or agents, or (c) communicating with any of HCMLP's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero.

HCMLP reserves and does not waive all of its rights at law and in equity. Please direct all further questions to me.

Sincerely,

J. Pomerantz /bvd

Jeffrey N. Pomerantz

cc: HCMLP Board of Directors (*by e-mail*)
Jeffrey Pomerantz (*by e-mail*)
John Morris (*by e-mail*)
Gregory Demo (*by e-mail*)

EXHIBIT 3

NEXPOINT

October 16, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to reiterate the concerns we have expressed about the scope and maintenance of quality of the services currently being provided by Highland Capital Management, L.P. ("HCMLP") to NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") under their respective shared services agreements (together, the "Shared Services Agreements" or "Agreements"). As you know, the Shared Services Agreements obligate HCMLP to provide a variety of investment, administrative, legal, and back-office services to the Advisors. These responsibilities on the part of HCMLP are critical to the Advisors' ability to provide top-notch advisory services to the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they have advisory contracts.

In particular, the refusal by HCMLP to allow its employees to work on certain matters that jointly affect HCMLP and the Advisors has resulted in the Advisors incurring additional third-party costs and expenses to procure services that should rightfully be performed by HCMLP under the Shared Services Agreements. These third-party services, for which the Advisors are already compensating HCMLP under the Agreements, represent supplemental costs and expenses that the Advisors should not be obligated to pay.

Additionally, it is our understanding that all HCMLP employees will be given notice that their employment will be terminated effective as of December 31, 2020. If these employees are terminated, or are informed that they will be terminated and elect to resign, HCMLP will no longer be able to carry out its duties and obligations under the Agreements. We would thus like to request assurances from HCMLP that if elects to terminate its employees, it will work in good faith with the Advisors to put in place an orderly transition plan. Such a plan would provide for an effective transfer of services to the Advisors, seek to maximize employee retention, and permit the Advisors (or their affiliates) to hire any and all HCMLP employees, which would ensure the delivery of uninterrupted services previously provided by HCMLP under the Agreements.

Finally, we understand that HCMLP is contemplating the sale of certain assets held in several CLOs, the interests in which are also owned by the Advisors and/or the Funds advised by

NexPoint, HCMFA and/or their affiliates. The sale of such assets has the potential to negatively affect the valuation of the Funds. Specifically, a rush to sell these assets at fire sale prices could result in both the Funds and HCMLP not realizing their full value. Accordingly, we hereby request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

We feel certain that our mutually shared goals are to minimize disruption and costs, to prevent the dislocation of services to the Advisors and the Funds, and to maximize returns for Funds and accounts advised by NexPoint, HCMFA, HCMLP, or any of their affiliates. We believe that through working cooperatively we can achieve these goals.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

308062413.3

EXHIBIT 4

NEXPOINT

November 24, 2020

Mr. James Seery
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Dear Jim:

We are writing to follow up on our letter dated October 16, 2020 and to reiterate the concerns we have expressed about the sale of certain assets held in several CLOs, the interests in which are also owned by the NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA," and together with NexPoint, the "Advisors") and/or the mutual funds, closed-end funds, and other investment vehicles (collectively, the "Funds") with which they and their affiliates have advisory contracts. As we have previously advised, the sale of such assets has the potential to negatively affect the valuation of the Funds, and a rush to sell these assets at fire-sale prices could result in both the Funds and Highland Capital Management, L.P. ("HCMLP") not realizing their full value. In addition, with recent CLO quarterly payments being made and potential upside for the remaining securities held by the CLOs, sales of these securities at this time could further negatively impact the valuation. We have previously requested that no CLO assets be sold without prior notice to and prior consent from the Advisors. We understand that Charitable DAF HoldCo, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Thank you for your prompt attention to this matter.

Sincerely,

Dustin Norris

Dustin Norris

cc: Thomas Surgent (tsurgent@highlandcapital.com)
John Dubel (jdubel@dubel.com)
Russell Nelms (rfargar@yahoo.com)

EXHIBIT 5

From: Jim Dondero <JDondero@highlandcapital.com>
Date: November 27, 2020 at 2:46:35 AM EST
To: Thomas Surgent <TSurgent@highlandcapital.com>
Subject: Fwd: SKY equity

I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational.
You might want to remind him (and yourself) that the chief compliance officer has personal liability.

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

Begin forwarded message:

From: Joe Sowin <JSowin@highlandcapital.com>
Date: November 24, 2020 at 3:58:24 PM EST
To: Jim Dondero <JDondero@highlandcapital.com>
Cc: Matt Pearson <MPearson@highlandcapital.com>, Hunter Covitz <HCovitz@highlandcapital.com>, Compliance <Compliance@hcmlp.com>
Subject: Re: SKY equity

+ Conpliance
We did not know that but Understood going forward.

Compliance should never have approved this order then - will coordinate with them Jim

Post: Please block all orders from Hitting the trading desk for the fungus Jim mentioned.

Happy to discuss if needed.
Joe

On Nov 24, 2020, at 2:29 PM, Jim Dondero <JDondero@highlandcapital.com> wrote:

HFAM and DAF has instructed Highland in writing not to sell any CLO underlying assets..... there is potential liability, don't do it again please

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 3:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

I've cxl'd both SKY and AVYA sales – only completed a small amount of each

SKY 4.5k @ $32.05
AVYA 2,269 @ $17.81

From: Jim Dondero
Sent: Tuesday, November 24, 2020 2:19 PM
To: Matt Pearson <MPearson@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Gatekeeper <Gatekeeper@hcmlp.com>; Joe Sowin <JSowin@HighlandCapital.com>
Subject: Re: SKY equity

No..... do not

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

On Nov 24, 2020, at 2:20 PM, Matt Pearson <MPearson@highlandcapital.com> wrote:

ok

From: Hunter Covitz
Sent: Tuesday, November 24, 2020 12:40 PM
To: Gatekeeper <Gatekeeper@hcmlp.com>
Cc: Matt Pearson <MPearson@HighlandCapital.com>; Joe Sowin <JSowin@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: SKY equity

Please sell ~half of the positons in Gleneagles and Grayson in the current 32+ context.

Please sell ~48,500 shares in each CLO, ~97k shares total.

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4124 | C: 214.394.5510
hcovitz@highlandcapital.com | www.highlandcapital.com

PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

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EXHIBIT 6

JD

Jim

office until Monday and will speak with me then.

From Lynn

Tue, Nov 24, 10:39 AM

Update on UBS please

Tue, Nov 24, 1:01 PM

No update. Will let you know if something changes. Assume that you and Lynn are pushing on the Pot plan. Thanks

Tied up this afternoon

Delivered

Today 5:26 PM

Be careful what you do - last warning.

iMessage

EXHIBIT 7

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS DIRECTED TO JAMES DONDERO

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034, incorporating by reference Federal Rules of Civil Procedure 26 and 36, Highland Capital Management, L.P., the Plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case ("Bankruptcy Case") hereby requests that, in connection with *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Docket No. 2] (the "Motion"), James Dondero, the Defendant in the Adversary Proceeding ("Defendant" or "Mr. Dondero") produce for inspection and copying, the documents identified below, on or before **December 28, 2020 by 5:00 p.m. Central Time** (the "Requests").

INSTRUCTIONS

1. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of these Requests to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

2. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

3. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

4. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs or other media to be mutually agreed by the parties.

5. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs or other media to be mutually agreed by the parties or use an ftp site upload.

6. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

7. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

8. Unless noted otherwise, **the requests for documents set forth herein seek Documents and Communications created between December 10, 2020 and December 28, 2020**.

DEFINITIONS

1. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whomever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

3. "ESI" has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

4. "Hearing" refers to the hearing described in the *Notice of Hearing* filed at Docket No. 16 in the Adversary Proceeding.

5. "MultiStrat" means Highland Multi Strategy Credit Fund, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.).

6. "You" or "Your" refers to Mr. Dondero.

DOCUMENT REQUESTS

Request No. 1:

For the period August 1, 2020, to the present, all Communications between You and Andrew Clubok.

Request No. 2:

For the period August 1, 2020, to the present, all Documents provided to or received from Andrew Clubok.

Request No. 3:

All Communications between You and any person employed by the Debtor.

Request No. 4:

All Documents provided to or received from any person employed by the Debtor.

Request No. 5:

All Documents and Communications concerning MultiStrat.

Request No. 6:

All Documents and Communications that You intended to introduce into evidence at the Hearing.

Dated: December 23, 2020

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT 8

12:21 5G

53

Jason >

iMessage
Thu, Dec 10, 6:25 PM

I left your old phone in the top drawer of Tara's desk

Ok

Yesterday 12:31 PM

Monday, December 28

SETTINGS now
iPhone Backup Failed
You don't have enough space in iCloud to back up this iPhone. Add or manage storage now.

SETTINGS now
iPhone Not Backed Up
This iPhone hasn't been backed up. Backups happen when this iPhone is connected to power, locked, and on Wi-Fi.

Call me in 30 minutes please

Delivered

iMessage

Pay

EXHIBIT 9

52

Tara >

Colbert

Yesterday 10:41 AM

5 min

Yes sir

Today 10:29 AM

I need you to come in for a couple hours today to work on discovery and miscellaneous

I've been here since early! I promised the girls I'd be home before lunch. Is there something I can do right now? I can come back if you need me to

I'm on my way in....

Delivered

I need to keep my promise and then I can come back, Jim. I know you need me. Let's get a game plan going! Here to help

iMessage

EXHIBIT 10

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 29, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	No. 20-3190-sgj11
JAMES D. DONDERO,	§	
Defendant.	§	

ORDER RESOLVING JAMES DONDERO'S EMERGENCY MOTION
FOR A PROTCTIVE ORDER

Having considered (a) *James Dondero's Emergency Motion for Entry of a Protective*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Order [Adv. Pro. Docket No. 32] (the "Protective Order Motion"); (b) the *Request for Emergency Hearing on James Dondero's Emergency Motion for Entry of a Protective Order* [Adv. Pro. Docket No. 33]; (c) the *Debtor's Objection to James Dondero's Emergency Motion for Entry of a Protective Order* [Adv. Pro. Docket No. 34]; and (d) all prior proceedings relating to this matter; and after due deliberation, it is **HEREBY ORDERED THAT**:

1. The Protective Order Motion is DENIED in its entirety, except as specifically set forth herein.

2. The Debtor's document requests concerning Andrew Clubok shall be limited in time to the period from November 1, 2020, through December 28, 2020.

3. Documents and communications responsive to the Debtor's requests shall be due on December 31, 2020, at 9:30 a.m. To the extent Mr. Dondero withholds any documents on the basis of privilege, he shall deliver all responsive and allegedly privileged documents to the Court by December 31, 2020 at 9:30 a.m. for an *in camera* review to determine by whether any privilege or immunity applies. To the extent that the Court determines that no privilege or immunity applies, the Court will notify the parties by email communication via the courtroom deputy and such documents shall be produced to the Debtor. The Court will notify the parties by the end of the day January 4, 2021, whether the documents or any portion of them are privileged or otherwise subject to protection.

4. Mr. Dondero and Mr. Clubok shall appear on January 5, 2021, or at such other times as the parties may mutually agree, for depositions.

5. The hearing on *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 2] shall be adjourned to January 8, 2021, at 9:30 a.m.

6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

EXHIBIT 11

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 10, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION
<u>FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO</u>

Having considered the *Debtor's Motion for a Temporary Restraining Order and*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Preliminary Injunction against James Dondero [Docket No. 6] (the "Motion"), the *Memorandum of Law* (the "Memorandum of Law")[2] in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against James Dondero* [Docket No. 4] (the "Seery Declaration"), including the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[3]

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[3] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

EXHIBIT 12

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

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WEB: www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 23, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Re: Termination of James Dondero Access to Office and Services

Dear Judge Lynn:

As you know, on December 10, 2020, a temporary restraining order was entered against Mr. James Dondero by the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "TRO"). Case No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020.

Pursuant to the TRO, Mr. Dondero was, among others things, prohibited from communicating with the employees of Highland Capital Management, L.P. (the "Debtor") (subject to certain limited exceptions) and interfering with or otherwise impeding, directly or indirectly, the Debtor's business. We have discussed with you several instances in which Mr. Dondero breached the terms of the TRO and will not repeat them here.

As you also know, the Debtor manages certain collateralized loan obligations (the "CLOs"). The Debtor sought to cause the CLOs to sell certain publicly-traded equity securities, including AVYA and SKY (tickers), prior to Thanksgiving. Mr. Dondero blocked these trades. That conduct, among other things, caused the TRO to be entered.

These trades were also the subject to the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager,*

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to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528] (the "CLO Motion"), which was filed by, among others, NexPoint Advisors, L.P. ("NPA") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"). At the hearing on December 16, 2020, Judge Jernigan stated both that she agreed that the CLO Motion was brought by "Mr. Dondero, through different entities" and that it was frivolous.

On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs' sale of the AVYA and SKY securities. To justify their conduct, those employees mimicked the frivolous arguments made in the CLO Motion. This conduct violated the TRO, and HCMLP reserves all rights to seek appropriate sanctions with respect to such violation.

As a result of this conduct, among other things, HCMLP has concluded that Mr. Dondero's presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive to HCMLP's continued management of its bankruptcy case to continue.

As a consequence, Mr. Dondero's access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the "Office"), will be revoked effective Wednesday, December 30, 2020 (the "Termination Date"). As of the Termination Date, Mr. Dondero's key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.

Further, as of the Termination Date, Mr. Dondero's access to his @highlandcapital.com email account will be revoked, and Mr. Dondero will no longer have access to that email account or any emails, calendars, or contacts associated with that email account.

In addition, Mr. Dondero's access to the HCMLP system and all services maintained on that system, including his Bloomberg terminal, will be revoked as of the Termination Date.

HCMLP will also terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the "Cell Phones"). HCMLP demands that Mr. Dondero immediately turn over the Cell Phones to HCMLP by delivering them to you; we can make arrangements to recover the phones from you at a later date. The Cell Phones and

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LAW OFFICES

the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or "wiping" any information or messages on the Cell Phone. HCMLP, as the owner of the account and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.

Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by HCMLP will be viewed as an act of trespass, theft, and/or an attempted breach of HCMLP's security protocols.

Finally, HCMLP demands that Mr. Dondero take all steps necessary to retain and protect from loss, destruction, alteration or defacement all documents, communications, and information relating to the Debtor, the Debtor's assets, any assets managed by the Debtor, or the Debtor's employees.

HCMLP reserves all rights that it may have whether at law, equity, or in contract, including the right to restrict the access of HCMFA and NPA employees to the Office and HCMLP-provided services. Nothing herein will be construed as a waiver of any such rights.

Sincerely,

J. Pomerantz/gvd

Jeffrey N. Pomerantz

cc: Ira Kharasch, Esq.
John Morris, Esq.
Gregory Demo, Esq.

EXHIBIT 13

From: Jim Dondero <JDondero@HighlandCapital.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: FW: Jefferies recap
Date: Fri, 18 Dec 2020 16:03:32 -0600
Importance: Normal
Inline-Images: image001.jpg; image002.png

From: Joe Sowin
Sent: Friday, December 18, 2020 3:34 PM
To: Jim Dondero ; DC Sauter
Subject: FW: Jefferies recap

JOSEPH R. SOWIN

Co-Chief Investment Officer & Global Head of Equity Trading

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.419.4492 | C: 203.912.5935 | F: 972.628.4147

jsowin@highlandcapital.com| www.highlandcapital.com

From: James Seery <jpseeryjr@gmail.com>
Sent: Friday, December 18, 2020 3:32 PM
To: Steven Haltom <SHaltom@HighlandCapital.com>; Brad Gianiny <bgianiny@jefferies.com>; Cyrus Eftekhari <CEftekhari@HighlandCapital.com>; Christopher A Bianchi <cbianchi@jefferies.com>; James Colasanto <jcolasanto@jefferies.com>; James Romey <jromey@DSIConsulting.com>; Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; NYMO1 <NYMO1@Jefferies.com>; Ronald Wong <rwong@jefferies.com>; R-Settlement <R-Settlement@Highlandfunds.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>
Subject: Re: Jefferies recap

To be clear, Avaya should be allocated evenly to the 10 CLOs that hold it. NO account sold short. Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Jim Seery <jpseeryjr@gmail.com>
Date: Friday, December 18, 2020 at 4:30 PM
To: Steven Haltom <SHaltom@HighlandCapital.com>, Brad Gianiny <bgianiny@jefferies.com>, Cyrus

Eftekhari <CEftekhari@HighlandCapital.com>, Christopher A Bianchi <cbianchi@jefferies.com>, James Colasanto <jcolasanto@jefferies.com>, James Romey <jromey@DSIConsulting.com>, Joseph Sowin <JSowin@HighlandCapital.com>, Matt Pearson <MPearson@HighlandCapital.com>, NYMO1 <NYMO1@Jefferies.com>, Ronald Wong <rwong@jefferies.com>, R-Settlement <R-Settlement@Highlandfunds.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>
Subject: Re: Jefferies recap

The NXRT is out of the HCMLP internal.

SKY should be allocated evenly across Grayson and Greenbriar CLO

Avaya should be allocated pro rata across all of the CLOS except Acis 7.

Please call me with any questions.

Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Steven Haltom <SHaltom@HighlandCapital.com>
Date: Friday, December 18, 2020 at 4:21 PM
To: Brad Gianiny <bgianiny@jefferies.com>, Cyrus Eftekhari <CEftekhari@HighlandCapital.com>, Christopher A Bianchi <cbianchi@jefferies.com>, James Colasanto <jcolasanto@jefferies.com>, Jim Seery <jpseeryjr@gmail.com>, James Romey <jromey@DSIConsulting.com>, Joseph Sowin <JSowin@HighlandCapital.com>, Matt Pearson <MPearson@HighlandCapital.com>, NYMO1 <NYMO1@Jefferies.com>, Ronald Wong <rwong@jefferies.com>, R-Settlement <R-Settlement@Highlandfunds.com>
Subject: RE: Jefferies recap

Brad,

What accounts are these in?

Steven Haltom | Manager, Operations

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

972.628.4178 | shaltom@hcmlp.com | www.hcmlp.com

From: Brad Gianiny <bgianiny@jefferies.com>
Sent: Friday, December 18, 2020 3:02 PM
To: Cyrus Eftekhari <CEftekhari@HighlandCapital.com>; Christopher A Bianchi <cbianchi@jefferies.com>; James Colasanto <jcolasanto@jefferies.com>; Jim Seery

<jpseeryjr@gmail.com>; James Rooney <jrooney@DSIConsulting.com>; Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; NYMO1 <NYMO1@Jefferies.com>; Ronald Wong <rwong@jefferies.com>; R-Settlement <R-Settlement@Highlandfunds.com>
Subject: Jefferies recap

SKY- sld 22k @ 32.2251

NHF- sld 10k @ 10.5461

AVYA- sld 6412 @ 19.7598

Brad Gianiny

Equity Sales Trader

Jefferies LLC

520 Madison Avenue, 2nd Floor

New York, NY 10022

W: 212-284-2291

C: 770-366-6253

http://www.jefferies.com/salesandtradingdisclaimer/
http://extwebdev.qa.jefco.com/europeandasiasalesandtradingdisclaimer/

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EXHIBIT 14

PACHULSKI STANG ZIEHL & JONES
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FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory Demo
212-561-7700
gdemo@pszjlaw.com

December 24, 2020

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex)

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the "Motion")[1] on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Movants"). After hearing the sworn testimony of the Movants' witness and the arguments made on the Movants' behalf, Judge Jernigan found that the Motion was "a very, very frivolous motion" and that your firm "wasted [her]

[1] All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

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LAW OFFICES

time." (Transcript, 64:5-12) An order was entered denying the Motion on December 18, 2020 [D.I. 1605].

On December 22, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) re-asserting almost verbatim the frivolous arguments raised in the Motion. Concurrently, we received notice that certain of the Movants' employees would not settle trades on behalf of the CLOs that were authorized by the Debtor acting in its capacity as the CLOs' portfolio manager. The Movants' employees who interfered with the Debtor's directions justified their conduct by asserting – again almost verbatim – the frivolous arguments raised in the Motion.

The Movants have caused the Debtor to incur substantial costs defending itself against the Motion and preparing to defend against the frivolous suits forecasted in the Letter. The Debtor demands that the Movants withdraw the letter by 5:00 p.m. CT on Monday, December 28, 2020, and confirm that the Movants and anyone acting on their behalf will take no further steps to interfere with the Debtor's directions as the CLOs' portfolio manager. If the Movants fail to timely comply with these demands, the Debtor shall seek prompt judicial relief, including seeking sanctions under Federal Rule of Bankruptcy Procedure 9011.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo

Enclosure
cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A

K&L GATES

December 22, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares[1]:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

[1] These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold all, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%*[2]
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

Contractually, the Debtor is obligated to maximize value for the benefit of the preference shareholders. Accordingly, we respectfully request that no further dispositions of CLO interests occur pending the confirmation hearing. While we recognize the Court denied the Advisor and Funds motion on this subject, the Court did not require liquidations occur immediately, and we reserve all rights to and remedies against the Debtor should the Debtor continue to liquidate CLO interests in contravention of this joint request. Given the Advisor, Funds, and CLO Holdco's requests, it is difficult to understand the Debtor's rationale for continued liquidations, or the benefit to the Debtor from pursuing those sales.

As you know, HCMLP's duties are set forth in the portfolio management agreements of the CLOs, which themselves have been adopted under the Investment Advisers Act of 1940 ("Advisers Act"). As HCMLP readily admits, it is: (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced those CLOs; (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan-confirmation; and (iii) adding a replacement manager as subadviser prior to January 31, 2021. The Advisors, Funds, and CLO Holdco assert that those actions run in contravention to HCMLP's duty to maximize value for the holders of preference shares and thus what HCMLP has agreed to under the portfolio management agreement, as well as its duties under the Advisers Act, which ultimately will adversely impact the economic owners noted above.

[2] CLO's marked with an asterisk (*) appear in the foregoing list as well.

For the forgoing and other reasons, we request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

308494123.3

EXHIBIT 15

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES
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FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory Demo
212-561-7700
gdemo@pszjlaw.com

December 24, 2020

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex)

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the "Motion")[1] on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Movants"). After hearing the sworn testimony of the Movants' witness and the arguments made on the Movants' behalf, Judge Jernigan was convinced that the Movants were in fact Mr. James Dondero seeking to disrupt

[1] All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

HCMP's estate by using different controlled entities to accomplish his ends.

On December 23, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) informing us that they were seeking to terminate certain CLO management agreements for "cause." For the reasons set forth herein, among others, such action is sanctionable under the circumstances and is otherwise prohibited by the CLOs' governing documents.

First, the Movants are owned and/or controlled by Mr. Dondero. These facts were disclosed in the Movants' public filings with the Securities and Exchange Commission and confirmed by Mr. Dustin Norris's testimony at the hearing held on December 16, 2020. Consequently, the Movants' attempt to terminate the CLO management agreements violates the order entered on January 9, 2020 [D.I. 339] (the "January Order"), which prohibits Mr. Dondero from "caus[ing] any Related Entity to terminate any agreements with the Debtor." A copy of the January Order is attached as Exhibit B.

Second, "cause" does not exist to terminate the CLO management agreements. The Debtor has a duty under the Investment Advisers Act of 1940 to the CLOs, not to any specific investor in the CLOs. *See, e.g.*, *Goldstein v. SEC*, 451 F.3d 873, 881-82 (D.C. Cir. 2006) ("[t]he adviser owes fiduciary duties only to the fund, not to the fund's investors. . ."). The Debtor has, at all times, fulfilled its statutory and contractual duties to the CLOs and will continue to do so. As counsel, you have a duty to investigate the spurious allegations in your pleadings, but you failed to do so. Your clients' desire to re-assert control over the CLOs is not evidence to the contrary.

Third, the Movants, by their own admission, consider themselves affiliates of the Debtor. Under the management agreements, affiliates of a manager cannot replace a manager, and therefore, are prohibited from removing a manager.

Please confirm to us, in writing, no later than 5:00 p.m. CT on Monday, December 28, 2020, that you are withdrawing the Letter and that the Movants and CLO Holdco, Ltd., commit not to take any

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

actions, either directly or indirectly, to terminate the CLO management agreements. If we do not receive such confirmation, the Debtor will seek immediate relief from the bankruptcy court, including an action for contempt for violating the January Order and sanctions under Federal Rule of Bankruptcy Procedure 9011 or otherwise.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo

Enclosure
cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A

K&L GATES

December 23, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares[1]:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

[1] These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%*[2]
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

In pleadings filed with the Bankruptcy Court, you asserted that one or more of the entities identified above lacked the authority to seek a replacement of the Debtor as fund manager because of the alleged affiliate status of the beneficial owners of such entities. We disagree.

Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant trustees and/or issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference for the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362. The basis for initiating the process for such removal includes, but is not limited to, the fact that HCMLP's duties, as set forth in the portfolio management agreements of the CLOs, are subject to the requirements of the Investment Advisers Act of 1940 ("Advisers Act"). HCMLP appears to be acting contrary to those duties under the agreements and where HCMLP is not fulfilling its duties under the portfolio management agreement it is therefore violating the Advisers Act. Thus, because HCMLP is (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced, including key investment professionals identified in the transactional documents for those CLOs (generally Mark Okada and Jim Dondero); (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan confirmation; (iii)

[2] CLO's marked with an asterisk (*) appear in the foregoing list as well.

adding a replacement manager as subadviser prior to January 31, 2021; and (iv) for other cause, the Advisors, Funds, and CLO Holdco have concluded that they have no choice but to initiate HCMLP's removal as fund manager where such entities are contractually and legally permitted or obligated to do so.

Because the process of removal is being initiated, subject to the applicable provisions of the Bankruptcy Code, we respectfully request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing. To the extent there are CLO transactions prior to the confirmation, we intend to fully explore the business justification for doing so, as we do not believe there is any rational business reason to liquidate securities prior to that time.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

Exhibit B

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 9, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket Nos. 7 & 259

ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),[2] filed by the above-captioned debtor and debtor in possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(the "Debtor"); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee's objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) $60,000 for each of the first three months, (ii) $50,000 for each of the next three months, and (iii) $30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor's expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 29

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State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33

				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
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(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: john.wilson@bondsellis.com
Email: clay.taylor@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT 16

From: Jim Dondero <JDondero@HighlandCapital.com>
To: "andrew.clubok@lw.com" <andrew.clubok@lw.com>
Subject: Fwd: Multi Strat est balance sheet
Date: Fri, 4 Dec 2020 16:31:34 -0600
Importance: Normal
Attachments: Multi_Strat_est_summary_balance_sheet_as_of_10.31.20.pdf

---

More detail

James Dondero
Highland Capital Management
972-628-4100
jdondero@highlandcapital.com
www.highlandcapital.com

Begin forwarded message:

From: Isaac Leventon
Date: December 4, 2020 at 5:13:11 PM EST
To: Jim Dondero
Cc: Scott Ellington
Subject: FW: Multi Strat est balance sheet

Subject to Rule 408, created at the request of counsel.

From: David Klos
Sent: Friday, December 4, 2020 3:22 PM
To: Isaac Leventon
Cc: Scott Ellington ; Frank Waterhouse
Subject: Multi Strat est balance sheet

As you requested.

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EXHIBIT 17

From: Scott Ellington <SEllington@HighlandCapital.com>

To: Michael Lynn <dmljng@gmail.com>

Cc: Jim Dondero <JDondero@HighlandCapital.com>, John Bonds <john@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>, "John Wilson" <john.wilson@bondsellis.com>

Subject: Re: Possible deal

Date: Sat, 12 Dec 2020 23:55:16 -0600

Importance: Normal

It will be JP Sevilla.
I will tell him that he needs to contact you first thing in morning

Sent from my iPhone

On Dec 12, 2020, at 8:44 PM, Michael Lynn wrote:

That said we MUST have a witness NOW.

Sent from my BlackBerry 10 smartphone.

From: Michael Lynn
Sent: Saturday, December 12, 2020 8:42 PM
To: Jim Dondero; John Bonds; Bryan Assink; John Wilson
Subject: Possible deal

The possible deal with the debtor went nowhere. It llos like trial.

Sent from my BlackBerry 10 smartphone.

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EXHIBIT 18

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Jim Dondero <JDondero@HighlandCapital.com>
Subject: Re: List for joint meeting
Date: Wed, 16 Dec 2020 13:42:51 -0600
Importance: Normal

On it.

Sent from my iPhone

On Dec 16, 2020, at 1:33 PM, Jim Dondero wrote:

I'm going to need you to provide leadership here.

Sent from my iPhone

Begin forwarded message:

From: Michael Lynn
Date: December 16, 2020 at 1:07:50 PM CST
To: Douglas Draper , Jim Dondero
Subject: Re: List for joint meeting

I can't think of any others tassuming Zorada is with K&L Gates). I would contact the lawyers I have no opinion on additional contacts.

I had thought you would be representing more entities than the two trusts.

Sent from my BlackBerry 10 smartphone.
Original Message
From: Douglas Draper
Sent: Wednesday, December 16, 2020 11:13 AM
To: Michael Lynn; Jim Dondero
Subject: List for joint meeting

1) Daf john Kane attny 2) highland capital management fund advisors George Zorada 3) nexpoint advisors Laureen Drawhorn 4) highland clo funding Mark Maloney 5) employees David Neier
Do we want to add or delete anybody from the list. Is the best route to have me call the lawyer or have a someone contact the client contact for the lawyer. Please advise
On another matter I think it would be a good idea to have a second client contact for my two clients. Give me your thoughts

Sent from my iPhone
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EXHIBIT 19

53

Melissa >

Sat, Dec 12, 2:24 PM

Buyers agreed to February 1st it's a done deal counter has been signed! Very good news.

Ok, thanks....
Has JP reviewed Maplewood

Sat, Dec 12, 7:21 PM

We had him review the lease to make sure we gave proper notice.

Mon, Dec 14, 10:52 AM

Please check your mail for the Acura title. Thanks !

Ok haven't seen it yet...

Wed, Dec 16, 5:18 PM

No dugaboy details without subpoena

Thu, Dec 17, 2:49 PM

iMessage

EXHIBIT 20

9:26 5G

53

Isaac >

iMessage
Wed, Dec 16, 4:36 PM

Was there any mention today of DAF 18mm demand on Trussway?

Tue, Dec 22, 3:55 PM

Send me Clemente contact info please

And baker McKenzie contact person please

Delivered

Matthew A. Clemente
Sidley Austin LLP
MC >

iMessage

EXHIBIT 21

From: Jim Dondero
Sent: Thursday, December 24, 2020 7:59 PM
To: Scott Ellington
Subject: Fwd: Highland's Motion to Compromise Controversy with HarbourVest

Sent from my iPhone

Begin forwarded message:

From: Jim Dondero
Date: December 24, 2020 at 5:55:17 PM MST
To: Michael Lynn
Subject: Re: Highland's Motion to Compromise Controversy with HarbourVest

Holy bananas..... make sure we object

Sent from my iPhone

On Dec 24, 2020, at 3:21 PM, Michael Lynn wrote:

Fyi

Sent from my BlackBerry 10 smartphone.

From: Bryan Assink
Sent: Thursday, December 24, 2020 4:14 PM
To: Michael Lynn; John Bonds
Cc: John Wilson
Subject: Highland's Motion to Compromise Controversy with HarbourVest

Judge, attached is the 9019 motion filed today by Highland to compromise the HarbourVest claims. The matter has been set at the same time as confirmation (even though that's less than 21 days' notice) on January 13, 2021 at 9:30 a.m. The notice of hearing states that responses to the 9019 motion shall be filed no later than January 11, 2021 at 5:00 p.m.
The material terms of the settlement as stated in the motion are listed below:
The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of $45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of $35 million and shall vote its Class 9 claim in that amount to support the Plan;

- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of $45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases

Bryan C. Assink, Associate
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton St. **|** Suite 1000 **|** Fort Worth, Texas 76102
office 817.779.4297 **|** fax 817.405.6902
bryan.assink@bondsellis.com

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EXHIBIT 22

BONDS ELLIS EPPICH SCHAFER JONES LLP
ATTORNEYS & COUNSELORS

D. MICHAEL LYNN | D: 817.405.6915 | MICHAEL.LYNN@BONDSELLIS.COM

December 29, 2020

Via Email:
Jeffrey Pomerantz
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com

Re: ***In re: Highland Capital Management, L.P.* – Case No. 19-34054**

Dear Jeff:

I am in receipt of your letter sent via email on the evening of December 23, 2020.

In response to the Debtor's demand concerning Mr. Dondero's cell phone, it is our understanding that the phone Dondero is currently using was purchased by Dondero several weeks ago and that the Debtor is not paying for the use of that phone. We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor, but we are not prepared to turn it over without ensuring that the privacy of attorney-client communications by text or email is protected. We are, however, willing to have an independent third party review any items that we would designate as privileged. Our office would need to review what is on the phone to determine what we would designate as privileged before it could reach such a person. In that regard, virtually all communications made between myself and other attorneys employed by Bonds Ellis Eppich Schafer Jones LLP have been through that phone and in many cases are preserved either as texts or emails.

Sincerely,

/s/ D. Michael Lynn

D. Michael Lynn

Cc: Jim Dondero
John Bonds

EXHIBIT 23

From: Sarah Goldsmith <SGoldsmith@HighlandCapital.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: FW: Schedule Call
Date: Tue, 8 Dec 2020 08:32:05 -0600
Importance: Normal
Inline-Images: image001.jpg

Please let me know if I need to send anything to Douglas re org chart

Best,

SARAH BELL GOLDSMITH | EXECUTIVE ASSISTANT

O: 972.628.4102 | M: 214.642.3487

From: Douglas Draper
Sent: Tuesday, December 8, 2020 8:14 AM
To: Michael Lynn
Cc: Sarah Goldsmith
Subject: Re: Schedule Call

Please send me the org chart with the list of potential clients.

Sent from my iPhone

On Dec 7, 2020, at 1:00 PM, Michael Lynn <michael.lynn@bondsellis.com> wrote:

6:30 is ok.

Sent from my BlackBerry 10 smartphone.

From: Sarah Goldsmith

Sent: Monday, December 7, 2020 12:26 PM

To: Michael Lynn; ddraper@hellerdraper.com

Subject: Schedule Call

Judge Lynn and Douglas,

I am reaching out on behalf of Scott Ellington to schedule a call tonight. Please let me know if are available today (12/07) at 6:30pm CT or 7:00pm CT. Once you confirm your availability, I will circulate a calendar invite with a dial-in.

Best,

SARAH BELL GOLDSMITH | EXECUTIVE ASSISTANT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4102 | F: 972.628.4147

sgoldsmith@highlandcapital.com | www.highlandcapital.com

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HIGHLAND CAPITAL
MANAGEMENT

EXHIBIT 24

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: Fwd: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement
Date: Tue, 15 Dec 2020 15:47:38 -0600
Importance: Normal
Attachments: Common_Interest_Agreement_-_Dondero_(00374777-2xBDDDE)_(002)_(Bonds_Ellis_comments).docx

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Sent from my iPhone

Begin forwarded message:

From: Bryan Assink
Date: December 15, 2020 at 3:42:42 PM CST
To: Michael Lynn , Scott Ellington , John Bonds , John Wilson , Douglas Draper
Subject: RE: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

All,

Attached is the Common Interest Agreement with our comments.

Best,
Bryan

From: Michael Lynn
Sent: Tuesday, December 15, 2020 2:53 PM
To: Scott Ellington ; John Bonds ; Bryan Assink ; John Wilson
Subject: Fw: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

Bryan or John will review the agreement for us.

Sent from my BlackBerry 10 smartphone.

From: Deborah Hepting <dhepting@hellerdraper.com>

Sent: Tuesday, December 15, 2020 2:16 PM

To: 'Jim Dondero'; Michael Lynn

Subject: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

Please note from Douglas:

Attached please find the form agreement. Please review and advise who I should contact about being a party. Please forward for me to Scott Ellington. As you send me names, we will contact the lawyer to get this moving.

Thanks,

Douglas S. Draper
Heller, Draper & Horn, L.L.C.
650 Poydras Street, Suite 2500
New Orleans, LA 70130

Office: (504) 299-3300

Direct: (504) 299-3333

Fax: (504) 299-3399

Email: ddraper@hellerdraper.com

Due to the current health crisis, the staff of Heller Draper & Horn . LLC will be working remotely and there may be some delay in responding to your email.

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EXHIBIT 25

K&L GATES

R. Charles Miller
202.778.9372
chuck.miller@klgates.com

December 31, 2020

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Re: Termination of Dondero access to office and services

Dear Counsel:

We are writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc. and the other retail funds advised by the Advisors (together, the "Funds").

We have been provided a copy of your December 23, 2020 letter to Mr. Lynn regarding the termination of Mr. Dondero's access to the office and services. We are extremely concerned that the loss of such access by Mr. Dondero could have serious effects for our clients and do unintended damage to their interests. In particular, the Funds, many of which are publicly-listed, registered with and regulated by the Securities and Exchange Commission, and have thousands of shareholders, may be economically disadvantaged to the extent that the Debtor's actions deny Mr. Dondero the access and ability to provide the necessary and contractual services to them.

Mr. Dondero is portfolio manager and/or officer of various entities which occupy space in the premises and have shared access to email accounts, computers and other relevant material pursuant to the terms of various shared services agreements (the "Agreements"), which the Debtor has not rejected and for which such entities pay the Debtor significant fees. We are not aware of any provisions under the Agreements which give the Debtor the power to determine which employees of NexPoint Advisors,

L.P. and other entities may enter the premises or have access to the email and related systems. If there are, please direct us to those provisions. The Debtor has given written notice to the Advisors and the Funds that the Agreements will remain in place until January 31, 2021, at which time they will terminate, and our clients have been and are acting in reliance on those written representations from the Debtor.

Mr. Dondero is the lead (and in some cases the sole) portfolio manager for certain of the Funds. He is intimately involved in the day-to-day operations and investment decisions regarding those Funds and in the operations of the Advisors. We believe that denying Mr. Dondero access to the premises, email and related systems will materially and adversely affect the function and reputation of the Advisors and the Funds. We ask that the Debtor reconsider its position refusing Mr. Dondero necessary access to the email, operating systems and building required to serve the Funds and the Advisors.

Sincerely,

/s R. Charles Miller

R. Charles Miller

Cc:

D. Michael Lynn (via email)

EXHIBIT 26

From: Grant Scott <gscott@scottlawgroupllc.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: FW: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?
Date: Wed, 23 Dec 2020 15:02:50 +0000
Inline-Images: image001.jpg

FYI, now

From: John J. Kane
Sent: Wednesday, December 23, 2020 9:58 AM
To: Grant Scott ; dsauter@nexpointadvisors.com; A. Lee Hogewood
Cc: Brian Clark
Subject: Re: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

866-399-4184

Conf Id: 5549564

Sent from my iPhone

On Dec 23, 2020, at 8:52 AM, Grant Scott <gscott@scottlawgroupllc.com> wrote:

FYI

From: DC Sauter <DSauter@NexPointadvisors.com>
Sent: Wednesday, December 23, 2020 9:51 AM
To: Grant Scott <gscott@scottlawgroupllc.com>
Cc: Jason Post <JPost@NexpointAdvisors.com>; Hogewood, III, A. Lee <A.Lee.HogewoodIII@klgates.com>
Subject: RE: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

Yes. Copied here. Is there a dial-in?

D.C. Sauter

O: 972.628.4117 | C: 469.877.6440

From: Grant Scott <gscott@scottlawgroupllc.com>
Sent: Wednesday, December 23, 2020 8:48 AM
To: DC Sauter <DSauter@NexPointadvisors.com>
Subject: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

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NEXPOINT

EXHIBIT 27

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

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NEW YORK, NY

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FACSIMILE: 310/201 0760

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SAN FRANCISCO
CALIFORNIA 94111-4500

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34th FLOOR
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NEW YORK 10017-2024

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FACSIMILE: 212/561 7777

WEB: www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 23, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Re: Termination of James Dondero Access to Office and Services

Dear Judge Lynn:

As you know, on December 10, 2020, a temporary restraining order was entered against Mr. James Dondero by the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "TRO"). Case No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020.

Pursuant to the TRO, Mr. Dondero was, among others things, prohibited from communicating with the employees of Highland Capital Management, L.P. (the "Debtor") (subject to certain limited exceptions) and interfering with or otherwise impeding, directly or indirectly, the Debtor's business. We have discussed with you several instances in which Mr. Dondero breached the terms of the TRO and will not repeat them here.

As you also know, the Debtor manages certain collateralized loan obligations (the "CLOs"). The Debtor sought to cause the CLOs to sell certain publicly-traded equity securities, including AVYA and SKY (tickers), prior to Thanksgiving. Mr. Dondero blocked these trades. That conduct, among other things, caused the TRO to be entered.

These trades were also the subject to the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager,*

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LAW OFFICES

to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528] (the "CLO Motion"), which was filed by, among others, NexPoint Advisors, L.P. ("NPA") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"). At the hearing on December 16, 2020, Judge Jernigan stated both that she agreed that the CLO Motion was brought by "Mr. Dondero, through different entities" and that it was frivolous.

On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs' sale of the AVYA and SKY securities. To justify their conduct, those employees mimicked the frivolous arguments made in the CLO Motion. This conduct violated the TRO, and HCMLP reserves all rights to seek appropriate sanctions with respect to such violation.

As a result of this conduct, among other things, HCMLP has concluded that Mr. Dondero's presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive to HCMLP's continued management of its bankruptcy case to continue.

As a consequence, Mr. Dondero's access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the "Office"), will be revoked effective Wednesday, December 30, 2020 (the "Termination Date"). As of the Termination Date, Mr. Dondero's key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.

Further, as of the Termination Date, Mr. Dondero's access to his @highlandcapital.com email account will be revoked, and Mr. Dondero will no longer have access to that email account or any emails, calendars, or contacts associated with that email account.

In addition, Mr. Dondero's access to the HCMLP system and all services maintained on that system, including his Bloomberg terminal, will be revoked as of the Termination Date.

HCMLP will also terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the "Cell Phones"). HCMLP demands that Mr. Dondero immediately turn over the Cell Phones to HCMLP by delivering them to you; we can make arrangements to recover the phones from you at a later date. The Cell Phones and

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or "wiping" any information or messages on the Cell Phone. HCMLP, as the owner of the account and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.

Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by HCMLP will be viewed as an act of trespass, theft, and/or an attempted breach of HCMLP's security protocols.

Finally, HCMLP demands that Mr. Dondero take all steps necessary to retain and protect from loss, destruction, alteration or defacement all documents, communications, and information relating to the Debtor, the Debtor's assets, any assets managed by the Debtor, or the Debtor's employees.

HCMLP reserves all rights that it may have whether at law, equity, or in contract, including the right to restrict the access of HCMFA and NPA employees to the Office and HCMLP-provided services. Nothing herein will be construed as a waiver of any such rights.

Sincerely,

J. Pomerantz/gvd

Jeffrey N. Pomerantz

cc: Ira Kharasch, Esq.
John Morris, Esq.
Gregory Demo, Esq.

EXHIBIT 28

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
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HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DECLARATION OF JOHN A. MORRIS
IN SUPPORT OF THE DEBTOR'S MOTION FOR AN ORDER REQURIING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO

I, John A. Morris, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declares as follows:

1. I am a partner in the law firm Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Motion") being filed contemporaneously herewith.[2] I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit G** is a true and correct copy of certain text messages between James Dondero and Jason Rothstein.[3]

3. Attached as **Exhibit K** is a true and correct copy of a letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn, dated December 23, 2020.

4. Attached as **Exhibit L** is a true and correct copy of an e-mail string dated December 18, 2020, concerning certain trading activity.

5. Attached as **Exhibit M** is a true and correct copy of the Response to K&L Gates LLP, dated December 22, 2020.

---

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

[3] Because this Motion is related to the Debtor's motion for a preliminary injunction that will be heard on January 8, 2021, for the convenience of the Court and the parties, the Debtor adopts for this Motion the order of exhibits set forth in the *Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021*. [Adv. Pro. Docket No. 45], and any amendments thereto.

6. Attached as **Exhibit N** is a true and correct copy of the Response to K&L Gates LLP, dated December 23, 2020.

7. Attached as **Exhibit P** is a true and correct copy of an e-mail string dated December 12, 2020, concerning a possible deal.

8. Attached as **Exhibit Q** is a true and correct copy of an e-mail string dated December 16, 2020 regarding list for joint meeting.

9. Attached as **Exhibit R** is a true and correct copy of certain text messages between James Dondero and Melissa Schroth

10. Attached as **Exhibit S** is a true and correct copy of certain text messages between James Dondero and Isaac Leventon.

11. Attached as **Exhibit U** is a true and correct copy of a letter from Bonds Ellis to J. Pomerantz, dated December 29, 2020.

12. Attached as **Exhibit W** is a true and correct copy of an e-mail string dated December 15, 2020, concerning The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement.

13. Attached as **Exhibit X** is a true and correct copy of a letter dated December 30, 2020, from K&L Gates to Pachulski Stang Ziehl and Jones.

14. Attached as **Exhibit Y** is a true and correct copy of an e-mail between Grant Scott and Scott Ellington dated December 23, 2020.

15. Attached as **Exhibit Z** is a true and correct copy of the transcript of the deposition of Mr. James Dondero, dated January 5, 2021.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: January 7, 2021.

/s/ John A. Morris
John A. Morris

EXHIBIT G

12:21 5GE

53

Jason >

iMessage
Thu, Dec 10, 6:25 PM

I left your old phone in the top drawer of Tara's desk

Ok

Yesterday 12:31 PM

Monday, December 28

SETTINGS now
iPhone Backup Failed
You don't have enough space in iCloud to back up this iPhone. Add or manage storage now.

SETTINGS now
iPhone Not Backed Up
This iPhone hasn't been backed up. Backups happen when this iPhone is connected to power, locked, and on Wi-Fi.

Call me in 30 minutes please

Delivered

iMessage

EXHIBIT K

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

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TELEPHONE: 212/561 7700

FACSIMILE: 212/561 7777

WEB: www.pszjlaw.com

Jeffrey N. Pomerantz
310.772.2336
jpomerantz@pszjlaw.com

December 23, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Re: Termination of James Dondero Access to Office and Services

Dear Judge Lynn:

As you know, on December 10, 2020, a temporary restraining order was entered against Mr. James Dondero by the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "TRO"). Case No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020.

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PACHULSKI STANG ZIEHL & JONES
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the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or "wiping" any information or messages on the Cell Phone. HCMLP, as the owner of the account and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.

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HCMLP reserves all rights that it may have whether at law, equity, or in contract, including the right to restrict the access of HCMFA and NPA employees to the Office and HCMLP-provided services. Nothing herein will be construed as a waiver of any such rights.

Sincerely,

J. Pomerantz/gvd

Jeffrey N. Pomerantz

cc: Ira Kharasch, Esq.
John Morris, Esq.
Gregory Demo, Esq.

EXHIBIT L

From: Jim Dondero <JDondero@HighlandCapital.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: FW: Jefferies recap
Date: Fri, 18 Dec 2020 16:03:32 -0600
Importance: Normal
Inline-Images: image001.jpg; image002.png

From: Joe Sowin
Sent: Friday, December 18, 2020 3:34 PM
To: Jim Dondero ; DC Sauter
Subject: FW: Jefferies recap

JOSEPH R. SOWIN

Co-Chief Investment Officer & Global Head of Equity Trading

HIGHLAND CAPITAL
MANAGEMENT
FUND ADVISORS

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.419.4492 | C: 203.912.5935 | F: 972.628.4147

jsowin@highlandcapital.com| www.highlandcapital.com

From: James Seery <jpseeryjr@gmail.com>
Sent: Friday, December 18, 2020 3:32 PM
To: Steven Haltom <SHaltom@HighlandCapital.com>; Brad Gianiny <bgianiny@jefferies.com>; Cyrus Eftekhari <CEftekhari@HighlandCapital.com>; Christopher A Bianchi <cbianchi@jefferies.com>; James Colasanto <jcolasanto@jefferies.com>; James Romey <jromey@DSIConsulting.com>; Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; NYMO1 <NYMO1@Jefferies.com>; Ronald Wong <rwong@jefferies.com>; R-Settlement <R-Settlement@Highlandfunds.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>
Subject: Re: Jefferies recap

To be clear, Avaya should be allocated evenly to the 10 CLOs that hold it. NO account sold short. Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Jim Seery <jpseeryjr@gmail.com>
Date: Friday, December 18, 2020 at 4:30 PM
To: Steven Haltom <SHaltom@HighlandCapital.com>, Brad Gianiny <bgianiny@jefferies.com>, Cyrus

Eftekhari <CEftekhari@HighlandCapital.com>, Christopher A Bianchi <cbianchi@jefferies.com>, James Colasanto <jcolasanto@jefferies.com>, James Romey <jromey@DSIConsulting.com>, Joseph Sowin <JSowin@HighlandCapital.com>, Matt Pearson <MPearson@HighlandCapital.com>, NYMO1 <NYMO1@Jefferies.com>, Ronald Wong <rwong@jefferies.com>, R-Settlement <R-Settlement@Highlandfunds.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>
Subject: Re: Jefferies recap

The NXRT is out of the HCMLP internal.

SKY should be allocated evenly across Grayson and Greenbriar CLO

Avaya should be allocated pro rata across all of the CLOS except Acis 7.

Please call me with any questions.

Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Steven Haltom <SHaltom@HighlandCapital.com>
Date: Friday, December 18, 2020 at 4:21 PM
To: Brad Gianiny <bgianiny@jefferies.com>, Cyrus Eftekhari <CEftekhari@HighlandCapital.com>, Christopher A Bianchi <cbianchi@jefferies.com>, James Colasanto <jcolasanto@jefferies.com>, Jim Seery <jpseeryjr@gmail.com>, James Romey <jromey@DSIConsulting.com>, Joseph Sowin <JSowin@HighlandCapital.com>, Matt Pearson <MPearson@HighlandCapital.com>, NYMO1 <NYMO1@Jefferies.com>, Ronald Wong <rwong@jefferies.com>, R-Settlement <R-Settlement@Highlandfunds.com>
Subject: RE: Jefferies recap

Brad,

What accounts are these in?

Steven Haltom | Manager, Operations

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

972.628.4178 | shaltom@hcmlp.com | www.hcmlp.com

From: Brad Gianiny <bgianiny@jefferies.com>
Sent: Friday, December 18, 2020 3:02 PM
To: Cyrus Eftekhari <CEftekhari@HighlandCapital.com>; Christopher A Bianchi <cbianchi@jefferies.com>; James Colasanto <jcolasanto@jefferies.com>; Jim Seery

<jpseeryjr@gmail.com>; James Romey <jromey@DSIConsulting.com>; Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; NYMO1 <NYMO1@Jefferies.com>; Ronald Wong <rwong@jefferies.com>; R-Settlement <R-Settlement@Highlandfunds.com>
Subject: Jefferies recap

SKY- sld 22k @ 32.2251

NHF- sld 10k @ 10.5461

AVYA- sld 6412 @ 19.7598

Brad Gianiny

Equity Sales Trader

Jefferies LLC

520 Madison Avenue, 2nd Floor

New York, NY 10022

W: 212-284-2291

C: 770-366-6253

http://www.jefferies.com/salesandtradingdisclaimer/
http://extwebdev.qa.jefco.com/europeandasiasalesandtradingdisclaimer/

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EXHIBIT M

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WEB: www.pszjlaw.com

Gregory Demo
212-561-7700
gdemo@pszjlaw.com

December 24, 2020

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex)

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the "Motion")[1] on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Movants"). After hearing the sworn testimony of the Movants' witness and the arguments made on the Movants' behalf, Judge Jernigan found that the Motion was "a very, very frivolous motion" and that your firm "wasted [her]

[1] All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

time." (Transcript, 64:5-12) An order was entered denying the Motion on December 18, 2020 [D.I. 1605].

On December 22, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) re-asserting almost verbatim the frivolous arguments raised in the Motion. Concurrently, we received notice that certain of the Movants' employees would not settle trades on behalf of the CLOs that were authorized by the Debtor acting in its capacity as the CLOs' portfolio manager. The Movants' employees who interfered with the Debtor's directions justified their conduct by asserting – again almost verbatim – the frivolous arguments raised in the Motion.

The Movants have caused the Debtor to incur substantial costs defending itself against the Motion and preparing to defend against the frivolous suits forecasted in the Letter. The Debtor demands that the Movants withdraw the letter by 5:00 p.m. CT on Monday, December 28, 2020, and confirm that the Movants and anyone acting on their behalf will take no further steps to interfere with the Debtor's directions as the CLOs' portfolio manager. If the Movants fail to timely comply with these demands, the Debtor shall seek prompt judicial relief, including seeking sanctions under Federal Rule of Bankruptcy Procedure 9011.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo

Enclosure
cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A

K&L GATES

December 22, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares[1]:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

[1] These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold all, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%*[2]
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

Contractually, the Debtor is obligated to maximize value for the benefit of the preference shareholders. Accordingly, we respectfully request that no further dispositions of CLO interests occur pending the confirmation hearing. While we recognize the Court denied the Advisor and Funds motion on this subject, the Court did not require liquidations occur immediately, and we reserve all rights to and remedies against the Debtor should the Debtor continue to liquidate CLO interests in contravention of this joint request. Given the Advisor, Funds, and CLO Holdco's requests, it is difficult to understand the Debtor's rationale for continued liquidations, or the benefit to the Debtor from pursuing those sales.

As you know, HCMLP's duties are set forth in the portfolio management agreements of the CLOs, which themselves have been adopted under the Investment Advisers Act of 1940 ("Advisers Act"). As HCMLP readily admits, it is: (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced those CLOs; (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan-confirmation; and (iii) adding a replacement manager as subadviser prior to January 31, 2021. The Advisors, Funds, and CLO Holdco assert that those actions run in contravention to HCMLP's duty to maximize value for the holders of preference shares and thus what HCMLP has agreed to under the portfolio management agreement, as well as its duties under the Advisers Act, which ultimately will adversely impact the economic owners noted above.

[2] CLO's marked with an asterisk (*) appear in the foregoing list as well.

For the forgoing and other reasons, we request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

308494123.3

EXHIBIT N

PACHULSKI STANG ZIEHL & JONES
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FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory Demo
212-561-7700
gdemo@pszjlaw.com

December 24, 2020

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

Re: *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj (Bankr. N.D. Tex)

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the "Motion")[1] on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Movants"). After hearing the sworn testimony of the Movants' witness and the arguments made on the Movants' behalf, Judge Jernigan was convinced that the Movants were in fact Mr. James Dondero seeking to disrupt

[1] All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

HCMP's estate by using different controlled entities to accomplish his ends.

On December 23, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) informing us that they were seeking to terminate certain CLO management agreements for "cause." For the reasons set forth herein, among others, such action is sanctionable under the circumstances and is otherwise prohibited by the CLOs' governing documents.

First, the Movants are owned and/or controlled by Mr. Dondero. These facts were disclosed in the Movants' public filings with the Securities and Exchange Commission and confirmed by Mr. Dustin Norris's testimony at the hearing held on December 16, 2020. Consequently, the Movants' attempt to terminate the CLO management agreements violates the order entered on January 9, 2020 [D.I. 339] (the "January Order"), which prohibits Mr. Dondero from "caus[ing] any Related Entity to terminate any agreements with the Debtor." A copy of the January Order is attached as Exhibit B.

Second, "cause" does not exist to terminate the CLO management agreements. The Debtor has a duty under the Investment Advisers Act of 1940 to the CLOs, not to any specific investor in the CLOs. *See, e.g., Goldstein v. SEC*, 451 F.3d 873, 881-82 (D.C. Cir. 2006) ("[t]he adviser owes fiduciary duties only to the fund, not to the fund's investors. . ."). The Debtor has, at all times, fulfilled its statutory and contractual duties to the CLOs and will continue to do so. As counsel, you have a duty to investigate the spurious allegations in your pleadings, but you failed to do so. Your clients' desire to re-assert control over the CLOs is not evidence to the contrary.

Third, the Movants, by their own admission, consider themselves affiliates of the Debtor. Under the management agreements, affiliates of a manager cannot replace a manager, and therefore, are prohibited from removing a manager.

Please confirm to us, in writing, no later than 5:00 p.m. CT on Monday, December 28, 2020, that you are withdrawing the Letter and that the Movants and CLO Holdco, Ltd., commit not to take any

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

actions, either directly or indirectly, to terminate the CLO management agreements. If we do not receive such confirmation, the Debtor will seek immediate relief from the bankruptcy court, including an action for contempt for violating the January Order and sanctions under Federal Rule of Bankruptcy Procedure 9011 or otherwise.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo

Enclosure
cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A

K&L GATES

December 23, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares[1]:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

[1] These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%*[2]
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

In pleadings filed with the Bankruptcy Court, you asserted that one or more of the entities identified above lacked the authority to seek a replacement of the Debtor as fund manager because of the alleged affiliate status of the beneficial owners of such entities. We disagree.

Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant trustees and/or issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference for the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362. The basis for initiating the process for such removal includes, but is not limited to, the fact that HCMLP's duties, as set forth in the portfolio management agreements of the CLOs, are subject to the requirements of the Investment Advisers Act of 1940 ("Advisers Act"). HCMLP appears to be acting contrary to those duties under the agreements and where HCMLP is not fulfilling its duties under the portfolio management agreement it is therefore violating the Advisers Act. Thus, because HCMLP is (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced, including key investment professionals identified in the transactional documents for those CLOs (generally Mark Okada and Jim Dondero); (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan confirmation; (iii)

[2] CLO's marked with an asterisk (*) appear in the foregoing list as well.

adding a replacement manager as subadviser prior to January 31, 2021; and (iv) for other cause, the Advisors, Funds, and CLO Holdco have concluded that they have no choice but to initiate HCMLP's removal as fund manager where such entities are contractually and legally permitted or obligated to do so.

Because the process of removal is being initiated, subject to the applicable provisions of the Bankruptcy Code, we respectfully request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing. To the extent there are CLO transactions prior to the confirmation, we intend to fully explore the business justification for doing so, as we do not believe there is any rational business reason to liquidate securities prior to that time.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

Exhibit B

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 9, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket Nos. 7 & 259

ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),[2] filed by the above-captioned debtor and debtor in possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(the "Debtor"); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee's objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) $60,000 for each of the first three months, (ii) $50,000 for each of the next three months, and (iii) $30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor's expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER

EXHIBIT P

From: Scott Ellington <SEllington@HighlandCapital.com>

To: Michael Lynn <dmljng@gmail.com>

Cc: Jim Dondero <JDondero@HighlandCapital.com>, John Bonds <john@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>, "John Wilson" <john.wilson@bondsellis.com>

Subject: Re: Possible deal

Date: Sat, 12 Dec 2020 23:55:16 -0600

Importance: Normal

It will be JP Sevilla.
I will tell him that he needs to contact you first thing in morning

Sent from my iPhone

On Dec 12, 2020, at 8:44 PM, Michael Lynn wrote:

That said we MUST have a witness NOW.

Sent from my BlackBerry 10 smartphone.

From: Michael Lynn
Sent: Saturday, December 12, 2020 8:42 PM
To: Jim Dondero; John Bonds; Bryan Assink; John Wilson
Subject: Possible deal

The possible deal with the debtor went nowhere. It llos like trial.

Sent from my BlackBerry 10 smartphone.

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EXHIBIT Q

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Jim Dondero <JDondero@HighlandCapital.com>
Subject: Re: List for joint meeting
Date: Wed, 16 Dec 2020 13:42:51 -0600
Importance: Normal

On it.

Sent from my iPhone

On Dec 16, 2020, at 1:33 PM, Jim Dondero wrote:

I'm going to need you to provide leadership here.

Sent from my iPhone

Begin forwarded message:

From: Michael Lynn
Date: December 16, 2020 at 1:07:50 PM CST
To: Douglas Draper , Jim Dondero
Subject: Re: List for joint meeting

I can't think of any others tassuming Zorada is with K&L Gates). I would contact the lawyers I have no opinion on additional contacts.

I had thought you would be representing more entities than the two trusts.

Sent from my BlackBerry 10 smartphone.
Original Message
From: Douglas Draper
Sent: Wednesday, December 16, 2020 11:13 AM
To: Michael Lynn; Jim Dondero
Subject: List for joint meeting

1) Daf john Kane attny 2) highland capital management fund advisors George Zorada 3) nexpoint advisors Laureen Drawhorn 4) highland clo funding Mark Maloney 5) employees David Neier
Do we want to add or delete anybody from the list. Is the best route to have me call the lawyer or have a someone contact the client contact for the lawyer. Please advise
On another matter I think it would be a good idea to have a second client contact for my two clients. Give me your thoughts

Sent from my iPhone
Due to the current health crisis, the staff of Heller Draper & Horn . LLC will be working remotely and there may be some delay in responding to your email.
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EXHIBIT R

53

Melissa >

Sat, Dec 12, 2:24 PM

Buyers agreed to February 1st it's a done deal counter has been signed! Very good news.

Ok, thanks....
Has JP reviewed Maplewood

Sat, Dec 12, 7:21 PM

We had him review the lease to make sure we gave proper notice.

Mon, Dec 14, 10:52 AM

Please check your mail for the Acura title. Thanks !

Ok haven't seen it yet...

Wed, Dec 16, 5:18 PM

No dugaboy details without subpoena

Thu, Dec 17, 2:49 PM

iMessage

EXHIBIT S

53

Isaac >

iMessage
Wed, Dec 16, 4:36 PM

Was there any mention today of DAF 18mm demand on Trussway?

Tue, Dec 22, 3:55 PM

Send me Clemente contact info please

And baker McKenzie contact person please

Delivered

Matthew A. Clemente
Sidley Austin LLP
MC >

iMessage

EXHIBIT U

BONDS ELLIS EPPICH SCHAFER JONES LLP
ATTORNEYS & COUNSELORS

D. MICHAEL LYNN | D: 817.405.6915 | MICHAEL.LYNN@BONDSELLIS.COM

December 29, 2020

Via Email:
Jeffrey Pomerantz
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com

Re: ***In re: Highland Capital Management, L.P.* – Case No. 19-34054**

Dear Jeff:

I am in receipt of your letter sent via email on the evening of December 23, 2020.

In response to the Debtor's demand concerning Mr. Dondero's cell phone, it is our understanding that the phone Dondero is currently using was purchased by Dondero several weeks ago and that the Debtor is not paying for the use of that phone. We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor, but we are not prepared to turn it over without ensuring that the privacy of attorney-client communications by text or email is protected. We are, however, willing to have an independent third party review any items that we would designate as privileged. Our office would need to review what is on the phone to determine what we would designate as privileged before it could reach such a person. In that regard, virtually all communications made between myself and other attorneys employed by Bonds Ellis Eppich Schafer Jones LLP have been through that phone and in many cases are preserved either as texts or emails.

Sincerely,

/s/ D. Michael Lynn

D. Michael Lynn

Cc: Jim Dondero
John Bonds

EXHIBIT W

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: Fwd: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement
Date: Tue, 15 Dec 2020 15:47:38 -0600
Importance: Normal
Attachments: Common_Interest_Agreement_-_Dondero_(00374777-2xBDDDE)_(002)_(Bonds_Ellis_comments).docx

---

Sent from my iPhone

Begin forwarded message:

From: Bryan Assink
Date: December 15, 2020 at 3:42:42 PM CST
To: Michael Lynn , Scott Ellington , John Bonds , John Wilson , Douglas Draper
Subject: RE: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

All,

Attached is the Common Interest Agreement with our comments.

Best,
Bryan

From: Michael Lynn
Sent: Tuesday, December 15, 2020 2:53 PM
To: Scott Ellington ; John Bonds ; Bryan Assink ; John Wilson
Subject: Fw: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

Bryan or John will review the agreement for us.

Sent from my BlackBerry 10 smartphone.

From: Deborah Hepting <dhepting@hellerdraper.com>

Sent: Tuesday, December 15, 2020 2:16 PM

To: 'Jim Dondero'; Michael Lynn

Subject: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

Please note from Douglas:

Attached please find the form agreement. Please review and advise who I should contact about being a party. Please forward for me to Scott Ellington. As you send me names, we will contact the lawyer to get this moving.

Thanks,

Douglas S. Draper
Heller, Draper & Horn, L.L.C.
650 Poydras Street, Suite 2500
New Orleans, LA 70130

Office: (504) 299-3300

Direct: (504) 299-3333

Fax: (504) 299-3399

Email: ddraper@hellerdraper.com

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EXHIBIT X

K&L GATES

R. Charles Miller
202.778.9372
chuck.miller@klgates.com

December 31, 2020

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Re: Termination of Dondero access to office and services

Dear Counsel:

We are writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HMCFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc. and the other retail funds advised by the Advisors (together, the "Funds").

We have been provided a copy of your December 23, 2020 letter to Mr. Lynn regarding the termination of Mr. Dondero's access to the office and services. We are extremely concerned that the loss of such access by Mr. Dondero could have serious effects for our clients and do unintended damage to their interests. In particular, the Funds, many of which are publicly-listed, registered with and regulated by the Securities and Exchange Commission, and have thousands of shareholders, may be economically disadvantaged to the extent that the Debtor's actions deny Mr. Dondero the access and ability to provide the necessary and contractual services to them.

Mr. Dondero is portfolio manager and/or officer of various entities which occupy space in the premises and have shared access to email accounts, computers and other relevant material pursuant to the terms of various shared services agreements (the "Agreements"), which the Debtor has not rejected and for which such entities pay the Debtor significant fees. We are not aware of any provisions under the Agreements which give the Debtor the power to determine which employees of NexPoint Advisors,

L.P. and other entities may enter the premises or have access to the email and related systems. If there are, please direct us to those provisions. The Debtor has given written notice to the Advisors and the Funds that the Agreements will remain in place until January 31, 2021, at which time they will terminate, and our clients have been and are acting in reliance on those written representations from the Debtor.

Mr. Dondero is the lead (and in some cases the sole) portfolio manager for certain of the Funds. He is intimately involved in the day-to-day operations and investment decisions regarding those Funds and in the operations of the Advisors. We believe that denying Mr. Dondero access to the premises, email and related systems will materially and adversely affect the function and reputation of the Advisors and the Funds. We ask that the Debtor reconsider its position refusing Mr. Dondero necessary access to the email, operating systems and building required to serve the Funds and the Advisors.

Sincerely,

/s R. Charles Miller

R. Charles Miller

Cc:

D. Michael Lynn (via email)

EXHIBIT Y

From: Grant Scott <gscott@scottlawgroupllc.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: FW: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?
Date: Wed, 23 Dec 2020 15:02:50 +0000
Inline-Images: image001.jpg

FYI, now

From: John J. Kane
Sent: Wednesday, December 23, 2020 9:58 AM
To: Grant Scott ; dsauter@nexpointadvisors.com; A. Lee Hogewood
Cc: Brian Clark
Subject: Re: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

866-399-4184

Conf Id: 5549564

Sent from my iPhone

On Dec 23, 2020, at 8:52 AM, Grant Scott <gscott@scottlawgroupllc.com> wrote:

FYI

From: DC Sauter <DSauter@NexPointadvisors.com>
Sent: Wednesday, December 23, 2020 9:51 AM
To: Grant Scott <gscott@scottlawgroupllc.com>
Cc: Jason Post <JPost@NexpointAdvisors.com>; Hogewood, III, A. Lee <A.Lee.HogewoodIII@klgates.com>
Subject: RE: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

Yes. Copied here. Is there a dial-in?

D.C. Sauter

O: 972.628.4117 | C: 469.877.6440

From: Grant Scott <gscott@scottlawgroupllc.com>
Sent: Wednesday, December 23, 2020 8:48 AM
To: DC Sauter <DSauter@NexPointadvisors.com>
Subject: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

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NEXPOINT

EXHIBIT Z

1

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
IN RE:)
4) CHAPTER 11
HIGHLAND CAPITAL)
5 MANAGEMENT, L.P.,) CASE NO.
) 19-34054-sgj11
6 Debtor.)
_____)
7
HIGHLAND CAPITAL)
8 MANAGEMENT, L.P.,)
) Adversary Proceeding
9 Plaintiff,) No. 20-3190-sgj11
)
10 v.)
)
11 JAMES D. DONDERO,)
)
12 Defendant.)
_____)
13

14 REMOTE VIDEO-RECORDED DEPOSITION OF

15 JAMES D. DONDERO

16 TUESDAY, JANUARY 5, 2021

17

18

19

20

21

22

23 REPORTED BY:

24 MICHAEL E. MILLER, FAPR, RDR, CRR

25 JOB NO. 188154

Tuesday, January 5, 2021
9:50 a.m. CST

REMOTE ORAL VIDEO-RECORDED DEPOSITION OF JAMES D. DONDERO, held via Zoom conference pursuant to the Federal Rules of Civil Procedure before Michael E. Miller, Fellow of the Academy of Professional Reporters, Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Texas.

REMOTE APPEARANCES:

PACHULSKI STANG ZIEHL & JONES
Attorneys for Debtor
780 Third Avenue
New York, NY 10017
BY: JOHN MORRIS, ESQ.
HAYLEY WINOGRAD, ESQ.
JEFFREY POMERANTZ, ESQ.
GREGORY DEMO, ESQ.
IRA KHARASCH, ESQ.

LATHAM & WATKINS
Attorney For UBS
885 Third Avenue
New York, NY 10022
BY: SHANNON MCLAUGHLIN, ESQ.
ZACHARY PROULX, ESQ.

JENNER & BLOCK
Attorney for Redeemer Committee
353 North Clark Street
Chicago, IL 60654
BY: TERRI MASCHERIN, ESQ.

REMOTE APPEARANCES:

SIDLEY AUSTIN
Attorneys For the Creditors Committee
2021 McKinney Avenue
Dallas, TX 75201
BY: PENNY REID, ESQ.
PAIGE MONTGOMERY, ESQ.
MATTHEW CLEMENTE, ESQ.
ALYSSA RUSSELL, ESQ.

KING & SPALDING
Attorney for Highland CLO Funding, Ltd.
500 West 2nd Street
Austin, TX 78701
BY: REBECCA MATSUMURA, ESQ.

BONDS ELLIS EPPICH SCHAFER JONES
Attorneys for James Dondero
420 Throckmorton Street
Fort Worth, TX 76102
BY: JOHN BONDS, ESQ.
BRYAN ASSINK, ESQ.

REMOTE APPEARANCES:

DEBEVOISE & PLIMPTON
Attorneys for HarbourVest Partners
919 Third Avenue
New York, NY 10022
BY: ERICA WEISGERBER, ESQ.

CARLYON CICA CHARTERED
Attorneys for Integrated Financial Associates Inc.
265 East Warm Springs Road
Las Vegas, NV 89119
BY: CANDACE CARLYON, ESQ.

ALSO PRESENT:
La Asia Canty, Paralegal
Pachulski Stang Ziehl & Jones LLP

VIDEOGRAPHER:
Rick Richey, TSG Reporting Inc.

1
2 ---
3 PROCEEDINGS
4 January 5, 2021, 9:50 a.m. CST
5 ---
6 THE VIDEOGRAPHER: Good morning,
7 ladies and gentlemen. My name is Rick Richey.
8 I'm a legal videographer in association with
9 TSG Reporting Inc.
10 Due to the severity of the COVID-19
11 and following the practice of social distancing,
12 I will not be in the same room with the witness.
13 Instead, I will record this videotaped deposition
14 remotely.
15 The court reporter, Mike Miller, also
16 will not be in the same room and will swear the
17 witness remotely.
18 Do all parties stipulate to the
19 validity of this video recording and remote
20 swearing and that it will be admissible in the
21 courtroom as if it had been taken following Rule
22 30 of the Federal Rules of Civil Procedure and
23 the state rules where the case is pending?
24 Do all agree?
25 MR. MORRIS: Yes.

1
2 MR. BONDS: Yes.
3 MR. MORRIS: Does anyone not agree?
4 (Pause.)
5 MR. MORRIS: Having heard nothing,
6 let's proceed. Thank you.
7 THE VIDEOGRAPHER: This will be the
8 start of Media No. 1 in the video-recorded
9 deposition of James Dondero. Today's date is
10 January 5th, 2021. It's 9:52 a.m. Central
11 Standard Time.
12 The case is In re Highland Capital
13 Management LP, Debtor, Chapter 11, Case
14 No. 19-34054-sgj11 in the United States
15 Bankruptcy Court for the Northern District of
16 Texas, Dallas Division.
17 The attorneys' appearances have
18 already been noted on the steno record, so would
19 the court reporter please swear the witness.
20 MR. BONDS: Wait just one second.
21 There's an adversary proceeding that this case is
22 actually -- or this deposition is actually being
23 taken in. It's 20-03190-sgj. Thank you.
24 ///
25 ///

1 J. DONDERO
2 ---
3 JAMES D. DONDERO,
4 having been duly sworn,
5 testified as follows:
6 ---
7 EXAMINATION
8 ---
9 BY MR. MORRIS:
10 Q. Good morning, Mr. Dondero. Can you
11 hear me okay?
12 A. Yes.
13 Q. Okay. My name is John Morris from
14 Pachulski Stang Ziehl & Jones, counsel for the
15 debtor.
16 Where are you located this morning,
17 sir?
18 A. Highland Capital Management's
19 conference room, same as last time.
20 Q. Is there anybody in the room with you
21 right now?
22 A. No.
23 Q. Do you have a telephone with you?
24 A. Yes.
25 Q. Is the phone off?

1 J. DONDERO
2 A. Yes.
3 Q. Are you aware that the debtor sent a
4 letter to your lawyers instructing you not to be
5 on the premises after December 31st, 2020?
6 A. Yes.
7 Q. Did you get the debtor's permission
8 to enter the premises this morning?
9 A. Implicitly for this depo, I believe.
10 Q. Okay. Did you get any explicit
11 consent or approval for you to be in the offices
12 this morning?
13 A. Not that I'm aware of.
14 Q. Did you ask or did anybody on your
15 behalf ask the debtors if you could participate
16 in today's deposition at the Highland offices?
17 A. I don't know.
18 Q. You're not aware of that, right?
19 A. Correct.
20 Q. Okay. John Bonds is defending you
21 today; is that right?
22 A. Yes.
23 Q. And he's at the Bonds Ellis firm,
24 right?
25 A. Yes.

1 J. DONDERO
2 Q. And the Bonds Ellis firms represents
3 you in your individual capacity, correct?
4 A. Yes.
5 Q. Is there any other law firm that
6 represents you in your individual capacity in the
7 Highland bankruptcy or in the adversary
8 proceeding?
9 A. I don't believe so.
10 Q. Okay. Does the Bonds Ellis firm
11 represent any entity in which you have an
12 ownership or control interest, or do they just
13 represent you in your individual capacity?
14 A. I don't know for sure.
15 Q. Okay. But as you sit here right now,
16 do you have any reason to believe that the Bonds
17 Ellis firm represents anybody other than you in
18 your individual capacity in connection with the
19 bankruptcy case?
20 A. I don't know.
21 Q. Okay. You understand that we're here
22 today for your deposition, right?
23 A. Yes.
24 Q. And do you understand that today's
25 deposition is being taken in connection with the

1 J. DONDERO
2 debtor's motion for – (audio malfunction) –
3 (Clarification requested by the
4 stenographer.)
5 MR. MORRIS: I'll ask it again.
6 BY MR. MORRIS:
7 Q. Mr. Dondero, do you understand that
8 today's deposition is being taken in connection
9 with the debtor's motion for preliminary
10 injunction against you?
11 A. Yes.
12 Q. Do you intend to participate in the
13 hearing on the debtor's motion for preliminary
14 injunction?
15 MR. BONDS: Objection, form.
16 MR. MORRIS: You can answer.
17 A. I don't know.
18 BY MR. MORRIS:
19 Q. Do you intend to make – do you
20 intend to testify at the debtor's hearing for
21 preliminary injunction?
22 MR. BONDS: Objection, form.
23 A. I don't know.
24 BY MR. MORRIS:
25 Q. You may or you may not; is that

1 J. DONDERO
2 right?
3 A. Yes.
4 Q. Okay. Are you on any drugs or any
5 medication right now?
6 A. No.
7 Q. Is there anything that you're aware
8 of that might affect your memory today?
9 A. No.
10 Q. Are you aware of anything that would
11 prevent you from testifying competently today to
12 the best of your ability?
13 A. No.
14 Q. You understand that you're under oath
15 right now?
16 A. Yes.
17 Q. Are you aware that on December 10th
18 the debtor obtained a temporary restraining order
19 against you?
20 A. Roughly.
21 Q. Okay. Did you ever personally read a
22 copy of the temporary restraining order?
23 A. No.
24 Q. So you've never seen the order
25 itself; is that right?

1 J. DONDERO
2 MR. BONDS: Objection, form.
3 A. Correct.
4 BY MR. MORRIS:
5 Q. Do you have an understanding of what
6 the order restrains you from doing?
7 A. Just in the most general sense.
8 Q. Tell me your understanding of what
9 the temporary order restrains you from doing.
10 A. Talking to the independent board
11 directly or talking directly to Highland
12 employees.
13 Q. Is there any other aspect of the
14 temporary restraining order that you're aware of
15 that would otherwise constrain or restrain your
16 conduct?
17 A. Those are the points I remember.
18 Q. Do you recall that before the Court
19 entered the temporary restraining order, it held
20 a hearing to consider the debtor's request?
21 A. I – I don't know.
22 Q. Did you listen to the hearing?
23 A. No.
24 Q. Did you read a transcript of the
25 hearing?

J. DONDERO

A. No.

Q. Do you respect the Court's authority in this case?

MR. BONDS: Objection, form.

A. Yes.

BY MR. MORRIS:

Q. Is there any particular reason why you didn't take the time to read the Court's temporary restraining order that was entered against you?

A. No.

Q. James Seery is a member of the board of Strand Advisors, the debtor's general partner, right?

A. Yes.

Q. And you've been aware of that since at least last January, correct?

A. Yes.

Q. And you're also aware that Mr. Seery is the debtor's CEO and CRO, right?

A. Yes.

Q. And you've been aware of that since last July, correct?

A. Yes.

J. DONDERO

Q. Did you ever review the declaration that Mr. Seery submitted in connection with the debtor's motion for a temporary restraining order against you?

MR. BONDS: Objection, form.

A. No.

BY MR. MORRIS:

Q. Do you know what Mr. Seery alleged in his declaration -- withdrawn.

Do you know the substance of what Mr. Seery alleged in his declaration in support of the debtor's motion for the TRO?

A. No.

Q. Did you care that the debtor was seeking a TRO against you?

A. I didn't think about it.

Q. Have you thought about it since the order was entered?

A. Not really.

Q. Okay. You didn't submit a declaration of your own in opposition of the motion for TRO, right?

A. I don't know.

Q. You don't recall signing anything, do you?

J. DONDERO

A. I've signed a lot of things, but I'm -- I don't recall an opposition.

Q. Let's talk about some of the events that led to the entry of the TRO.

The debtor serves -- (audio malfunction) --

(Clarification requested by the stenographer.)

THE WITNESS: I didn't touch the microphone at this end and it's six inches or eight inches from my mouth.

MR. MORRIS: Yeah, let's try again, Mr. Dondero. Thank you.

BY MR. MORRIS:

Q. The debtor serves as the portfolio manager for certain collateralized loan obligation vehicles; isn't that right?

A. I don't want to testify to that.

Q. Does the -- does the debtor manage CLOs?

MR. BONDS: Objection, form.

MR. MORRIS: Withdrawn.

///

J. DONDERO

BY MR. MORRIS:

Q. Can we agree that CLO stands for collateralized loaning obligations?

A. Yes.

Q. Okay. And does the debtor -- is the debtor party to certain contracts that gives it the right and responsibility to manage certain CLO vehicles?

MR. BONDS: Objection, form.

MR. MORRIS: You can answer.

A. Yes.

BY MR. MORRIS:

Q. And you're aware of that because you personally signed some of those contracts and agreements, right?

A. I don't know.

Q. Okay. NexPoint Advisors LP, are you familiar with that firm?

A. Yes.

Q. That's an advisory firm; is that right?

A. Yes.

Q. And we'll just refer to that as NexPoint; is that okay?

1 J. DONDERO
2 A. Yes.
3 Q. You have a direct or indirect
4 economic or ownership interest in NexPoint,
5 correct?
6 MR. BONDS: Objection, form.
7 MR. MORRIS: You can answer.
8 A. Yes.
9 BY MR. MORRIS:
10 Q. You're the president of NexPoint,
11 correct?
12 A. I believe so.
13 Q. And you own NexPoint's general
14 partner; is that right?
15 A. I don't know.
16 Q. Do you know who owns NexPoint's
17 general partner?
18 A. No.
19 Q. As the president of NexPoint, is it
20 fair to say that you control that entity?
21 A. Generally.
22 Q. Highland Capital Management Fund
23 Advisors LP, are you familiar with that firm?
24 A. Yes.
25 Q. And that's also an advisory firm,

1 J. DONDERO
2 correct?
3 A. Yes.
4 Q. And we'll refer to that firm as Fund
5 Advisors; is that fair?
6 A. Sure.
7 Q. And we'll refer to Fund Advisors and
8 NexPoint together just as "the advisors"; is that
9 fair?
10 A. I think you should be more specific
11 than that, but --
12 Q. Okay. I apologize. Are you
13 finished?
14 If at any time I ask a question and
15 you don't understand, will you let me know that?
16 A. Yes.
17 Q. Okay. You have a direct or indirect
18 economic or ownership interest in Fund Advisors,
19 correct?
20 A. Yes.
21 Q. You're the president of Fund
22 Advisors; is that true?
23 A. I believe so.
24 Q. And you own Fund Advisors' general
25 partner; is that right?

1 J. DONDERO
2 A. I don't believe I own as much of it
3 as I own of NexPoint, but I don't know the
4 numbers.
5 Q. Okay. As one of the two beneficial
6 owners of Fund Advisors and as the president of
7 Fund Advisors, is it fair to say that you control
8 that entity?
9 A. Yes.
10 Q. Okay. And Fund Advisors and NexPoint
11 manage certain investment funds; is that right?
12 A. I'm sorry, I missed the point of that
13 question.
14 Q. Didn't hear? Okay.
15 Fund Advisors, which we've talked
16 about, and NexPoint, which we've talked about,
17 those two entities manage certain investment
18 funds; is that right?
19 A. Yes.
20 Q. And one of the investment funds that
21 the advisors manage is Highland Income Fund. Do
22 I have that right?
23 A. Yes. I'm not sure which fund that
24 is, but yes, that's -- that's one of them.
25 Q. Are you the portfolio manager of the

1 J. DONDERO
2 Highland Income Fund?
3 A. I believe so.
4 Q. Do you hold any titles at the
5 Highland Income Fund other than portfolio
6 manager?
7 MR. BONDS: To the extent you know.
8 Don't speculate.
9 A. I don't -- I don't know. I know I'm
10 portfolio manager on virtually all of the funds.
11 BY MR. MORRIS:
12 Q. Is there any fund that you're not the
13 portfolio manager for that you're aware of?
14 A. I don't know.
15 Q. Are you the portfolio manager of
16 NexPoint Capital Inc.?
17 A. If that name refers to a fund, I
18 believe so.
19 Q. Okay. You're not sure if that refers
20 to a fund?
21 A. There's a fund with the symbol NHF.
22 If that's the name -- which I don't think you
23 have the exact name. If that's the name of it,
24 then I believe -- I believe I'm the portfolio
25 manager. The name that you just gave sounded

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1 J. DONDERO
2 more like a holding company name or a subsidiary
3 name for NexPoint. If it's not a fund, I'm not
4 the portfolio manager. If it is a fund, I
5 believe I am.
6 Q. Okay. Do you hold -- are you
7 familiar with an entity called NexPoint
8 Capital Inc.?
9 A. No.
10 Q. Okay. How about NexPoint Strategic
11 Opportunities Fund, is that a fund that is
12 managed by one of the advisors?
13 A. I believe that's the name for NHF.
14 That's what I thought you were referring to.
15 That's the one that's a fund, and that's the one
16 that I'm portfolio manager on.
17 Q. Okay. Do you hold any titles at
18 NexPoint Strategic Opportunity Fund other than
19 portfolio manager?
20 A. I don't know.
21 Q. The advisors caused each of the funds
22 to invest in certain CLOs that are managed by the
23 debtor, right?
24 MR. BONDS: To the extent you know.
25 Don't speculate.

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1 J. DONDERO
2 MR. MORRIS: John, if there's an
3 objection, I welcome it. If there's a direction
4 not to answer, I welcome it. But what I don't
5 welcome is guiding the witness. If he doesn't
6 remember, he's done this so many times, he knows
7 what he's doing.
8 You want me to ask the question
9 again, Mr. Dondero?
10 THE WITNESS: Please.
11 BY MR. MORRIS:
12 Q. The two advisors that we talked
13 about, they manage funds, right?
14 A. Yes.
15 Q. And those funds have invested in
16 certain CLOs that are managed by the debtor,
17 correct?
18 A. The problem I have with that question
19 and the part that I don't want to testify as
20 agreeing to or acknowledging is that the debtor
21 manages those CLOs, because I won't testify to
22 the debtor being in good standing, and I won't
23 testify to the debtor not being in default, and I
24 won't testify to the debtor having the capability
25 to manage those CLOs --

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1 J. DONDERO
2 Q. Will you -- I'm sorry to interrupt.
3 Go ahead.
4 A. No, I mean, that's -- so I won't -- I
5 won't testify affirmatively to the second half of
6 that question.
7 Q. Okay. But you will admit, won't you,
8 that the debtor has -- is party to contracts that
9 give it the right to manage CLOs in which the
10 advisors caused the funds to invest, right?
11 MR. BONDS: Objection, form.
12 MR. MORRIS: You can answer.
13 A. The beginning and end of what I want
14 to testify to is that the advisor is parties --
15 party to contracts. The contracts have --
16 provide the ability to manage assets in the CLO
17 subject to a bunch of different things, subject
18 to not being in default, subject to the ability,
19 subject to the capability and being registered
20 advisor, et cetera, et cetera.
21 I don't want to have any testimony
22 that implies that the advisor is in good standing
23 or able or capable of managing those CLOs or that
24 Jim Seery is even an investment professional.
25 ///

Page 25

1 J. DONDERO
2 BY MR. MORRIS:
3 Q. Okay. I think I understand.
4 When you used the word "advisor" in
5 your last answer, you were referring to the
6 debtor; is that right?
7 MR. BONDS: Objection, form.
8 BY MR. MORRIS:
9 Q. It's the debtor that has -- let me
10 try again.
11 It's the debtor that has the
12 contracts with the CLO, right?
13 A. Yes.
14 Q. But it's your contention that the
15 debtor is in default and that Mr. Seery and the
16 debtor otherwise don't have the capability to
17 manage the CLOs. That's what you're saying,
18 right?
19 A. I don't want to argue, and it's for
20 the lawyers and the Court to decide, but I don't
21 want to be affirmatively acknowledging that
22 Seery's an investment professional. I don't want
23 to be affirmatively acknowledging that he has any
24 employees and staff when he's told them all
25 they're being terminated in the next few weeks.

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1 J. DONDERO
2 I don't want to acknowledge that he
3 is in compliance and can operate those contracts
4 if I believe those contracts are in default
5 because, A, the advisor's in bankruptcy, and B,
6 none of the key man provisions are being adhered
7 to by the advisor.
8 I don't want to in any form or
9 fashion acknowledge or represent or somehow be
10 twisted into testifying that he is in good
11 standing or has the ability to manage those CLOs.
12 It may be found by somebody that he is, but I
13 don't want to be in any way inferred to be
14 sanctioning it.
15 Q. Okay. Are you aware -- have any of
16 the contracts pursuant to which the CLOs and the
17 debtor are the parties, have any of those
18 contracts been terminated, to the best of your
19 knowledge, since the petition date?
20 A. I believe they're subject to stays,
21 among other things, but I'm not -- I'm not a
22 lawyer.
23 Q. Has anybody sought to lift the stay
24 in order to terminate the contracts, to the best
25 of your knowledge?

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1 J. DONDERO
2 A. I don't know where -- I don't know.
3 Q. Has any of the CLOs ever contended
4 that the debtor was in breach in their agreement?
5 A. I believe the beneficial holders
6 have.
7 Q. I understand that --
8 A. But I don't know -- I don't know if
9 the CLOs have.
10 Q. Okay. I'm asking you a different
11 question, and just answer my question.
12 To the best of your knowledge, has
13 any CLO contended that the debtor is in breach of
14 any of the agreements that they have between
15 them?
16 MR. BONDS: Objection, form.
17 A. I don't know.
18 BY MR. MORRIS:
19 Q. You're not aware of any such
20 contention, right?
21 A. I don't know.
22 Q. You're not aware of any contention by
23 the CLOs that the debtor is in default under any
24 CLO contract, correct?
25 MR. BONDS: Objection, form.

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1 J. DONDERO
2 A. I don't know regarding the CLOs.
3 BY MR. MORRIS:
4 Q. Did you ever ask them? Withdrawn.
5 Did you ever ask anybody on behalf of
6 the CLOs whether they were going to declare a
7 default under the CLO management agreements?
8 MR. BONDS: Objection, form.
9 A. I don't know.
10 BY MR. MORRIS:
11 Q. You don't know if you asked? I'm
12 just asking you if you ever asked the question.
13 A. Not of the CLOs. Those questions
14 were asked regarding the beneficial owners, and I
15 think the beneficial owners did that, but I
16 didn't have direct knowledge or contact with the
17 CLOs.
18 Q. Okay. And the beneficial owners are
19 not parties to the CLO management agreements
20 between the CLOs and the debtor, correct?
21 MR. BONDS: Objection, form.
22 A. I don't want to draw a legal
23 conclusion of the rights of the beneficial owners
24 and the people who have the risk and the people
25 who have the ultimate decision authority whether

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1 J. DONDERO
2 or not they can be circumvented or ignored by an
3 intermediate nonfinancial -- nonfinancially
4 interested party. I don't want to -- I don't
5 want to speculate on that.
6 MR. MORRIS: Okay. I move to strike.
7 And I'm not asking for a legal
8 conclusion; I'm asking for your understanding.
9 BY MR. MORRIS:
10 Q. Is it your understanding that
11 beneficial owners are parties to the CLO
12 management agreements between the debtor and the
13 CLOs?
14 MR. BONDS: Objection to form.
15 MR. MORRIS: You can answer.
16 A. I think that asks for a legal
17 conclusion.
18 BY MR. MORRIS:
19 Q. It does not. I'm asking you as a
20 factual matter based on your understanding as the
21 portfolio manager of the funds and the president
22 of the advisors who made these investments. I'm
23 asking you --
24 MR. BONDS: Objection, form.
25 ///

1 J. DONDERO
2 BY MR. MORRIS:
3 Q. – in that capacity.
4 In that capacity, do you have any
5 understanding that the beneficial owners are
6 parties to the CLO management agreements between
7 the debtor and the CLOs?
8 MR. BONDS: Objection, form.
9 A. My understanding is that the
10 beneficial owner should always be considered.
11 MR. MORRIS: Okay. I move to strike.
12 I'm not asking you whether they should be
13 considered.
14 BY MR. MORRIS:
15 Q. I'm asking you very specifically
16 whether you believe that they are parties to the
17 contract.
18 MR. BONDS: Objection, form, asked
19 and answered.
20 A. Yeah, I believe you're asking me for
21 a legal conclusion, and I won't give one.
22 BY MR. MORRIS:
23 Q. Okay.
24 MR. MORRIS: La Asia, can we please
25 put up Exhibit 1. Let's share the screen and put

1 J. DONDERO
2 up Exhibit 1.
3 (Dondero Deposition Exhibit 1
4 marked.)
5 BY MR. MORRIS:
6 Q. Mr. Dondero, I appreciate that it's
7 difficult to do this remotely, and as we
8 discussed last time, the one thing that I'm
9 certainly not doing today is playing gotcha with
10 documents.
11 So I'm going to put documents up on
12 the screen from time to time, and to the extent
13 that you think you need to read more of the
14 document in order to have full context, will you
15 let me know that?
16 A. Sure.
17 Q. Okay. This is a letter dated
18 October 16th from NexPoint to Mr. Seery.
19 Do you see that?
20 A. Yep.
21 Q. Okay. Are you familiar with this
22 document? Have you ever seen it before?
23 A. Generally. I'm generally familiar
24 with it, but I haven't seen it before.
25 Q. Okay. Do you recall when you first

1 J. DONDERO
2 learned that this document was sent? Was it at
3 or around the time the document was sent?
4 A. It was at or around the time, yes.
5 Q. Did you discuss with NexPoint any of
6 the substance that is in this letter? And again,
7 I'm happy to scroll through it if that would be
8 helpful.
9 MR. BONDS: Objection, form.
10 A. Just generally.
11 BY MR. MORRIS:
12 Q. Did you – I don't want to know about
13 any conversations, but did you speak with anybody
14 at K&L Gates about this particular letter, just
15 yes or no?
16 A. My primary conversation was with
17 internal counsel. K&L Gates might have been on
18 some phone call or two.
19 Q. Okay. Whose idea was it to send this
20 out?
21 MR. BONDS: Objection, form.
22 A. Whose idea? I – I don't think
23 anybody viewed it as an idea as much as a
24 regulatory necessity.
25 ///

1 J. DONDERO
2 BY MR. MORRIS:
3 Q. And did you authorize the sending of
4 this particular letter?
5 A. Not specifically.
6 Q. Did you generally support the sending
7 of the letter?
8 A. Yes.
9 Q. And you knew the letter was being
10 sent; is that fair?
11 A. Yes.
12 Q. And you didn't object to the sending
13 of this letter, right?
14 A. I did not object.
15 Q. Okay. And since learning that the
16 letter was sent, have you ever directed NexPoint
17 to withdraw the letter?
18 A. No.
19 Q. You have the power to do that, don't
20 you, sir?
21 A. I – I don't believe so. When the
22 chief compliance officer believes it's a breach
23 of regulatory compliance, the chief compliance
24 officer in financial institutions has personal
25 liability, and I don't believe that other C-suite

1 J. DONDERO
2 executives can overrule the chief compliance
3 officer.
4 Q. Who is the chief compliance officer?
5 A. Jason Post.
6 Q. Did Mr. Post ever say that he would
7 not withdraw the letter because of regulatory
8 compliance?
9 MR. BONDS: Objection, form.
10 A. I -- not that I know of.
11 BY MR. MORRIS:
12 Q. Did you ever discuss with Mr. Post
13 whether or not this letter should be withdrawn?
14 A. Again, I didn't believe I had the
15 authority to.
16 Q. Okay. And he never told you that he
17 couldn't; that's just the implicit conclusion
18 that you drew because he was the chief compliance
19 officer; is that fair?
20 A. Implicit conclusion? It's more the
21 understanding I have of compliance from having
22 lived it the last 20 years.
23 MR. MORRIS: Okay. Let's put up
24 Exhibit 2, please.
25 (Dondero Deposition Exhibit 2

1 J. DONDERO
2 marked.)
3 MS. CANTY: Do you see it, John?
4 MR. MORRIS: I think we still have
5 Exhibit 1.
6 MS. CANTY: Okay. Give me a second.
7 BY MR. MORRIS:
8 Q. Okay. This is another letter that
9 was sent by NexPoint to Mr. Seery, this one dated
10 November 24, 2020.
11 Do you see that, sir?
12 A. Yes.
13 Q. And you saw this letter at or around
14 the time it was sent, right?
15 A. I didn't see the letter specifically,
16 but I'm aware of it.
17 Q. And you knew it was going to be sent;
18 is that fair?
19 A. Yes.
20 Q. And did you authorize this letter to
21 be sent on behalf of the advisors and the funds
22 that are listed there?
23 MR. BONDS: Objection, form.
24 A. Let me give the consistent testimony
25 I gave last time. It wasn't an authorization. I

1 J. DONDERO
2 was aware of it. It was, I believe, a continued
3 regulatory breach from the standpoint of the --
4 of compliance that drove the letter.
5 BY MR. MORRIS:
6 Q. When there's a regulatory breach, is
7 there an obligation to alert anybody other than
8 the portfolio manager?
9 A. I know that's being investigated. I
10 don't know the answer regarding a breach like
11 this.
12 Q. Are you aware of any notification
13 that NexPoint made to anybody in the world, other
14 than Mr. Seery, with respect to the matters set
15 forth in Exhibit 1 and Exhibit 2?
16 MR. BONDS: Objection, form.
17 A. I don't know, and I'm not in a
18 position to comment at this point.
19 BY MR. MORRIS:
20 Q. I'm just asking you if you know
21 whether -- I'm asking for your knowledge.
22 Do you know whether NexPoint ever
23 advised anybody, other than Mr. Seery, of the
24 allegations that are set forth in Exhibit 1 and
25 Exhibit 2?

1 J. DONDERO
2 MR. BONDS: Objection, form.
3 A. I don't know, nor would I necessarily
4 be informed if compliance self-reports this to
5 the SEC or other regulatory bodies. But I do not
6 know.
7 BY MR. MORRIS:
8 Q. And nobody told you that, right?
9 A. I don't know.
10 Q. Is there -- did you see any written
11 analysis or memorandum that was prepared by
12 your -- by the chief compliance officer with
13 respect to the matters set forth in Exhibit 1 and
14 Exhibit 2?
15 A. I know there was a multipage analysis
16 that was done, but I've never seen it.
17 Q. And was it written by the chief
18 compliance officer or was it written by legal
19 staff?
20 A. I was told he did it in conjunction
21 with external counsel.
22 Q. But you've never seen it?
23 A. I've never seen it.
24 Q. Did you support the sending of this
25 letter?

J. DONDERO

A. Yes.

Q. Since learning that this letter was sent, have you directed NexPoint to withdraw this letter?

A. No, I have not.

Q. Okay. Around Thanksgiving you learned that Mr. Seery was seeking to sell certain securities that were owned by certain CLOs managed by the debtor, right?

A. I believe I was informed after the fact.

Q. You were informed that certain sales of securities owned by the CLOs were being sold at Mr. Seery's direction, right?

A. Yes.

MR. BONDS: Objection, form.

BY MR. MORRIS:

Q. Okay. And at around that time, once you learned that, you personally intervened to stop those trades, right?

MR. BONDS: Objection, form.

A. Yes.

MR. MORRIS: Can we put up Exhibit 3, please.

J. DONDERO

(Dondero Deposition Exhibit 3 marked.)

BY MR. MORRIS:

Q. This is an e-mail string. We're going to start at the bottom and work up, just so we can get it in order. And you'll see the bottom begins with an e-mail from Hunter Covitz. Do you see that?

A. Yes.

Q. Who is Mr. Covitz?

A. Covitz, Hunter Covitz manages our CLO asset -- or our CLO assets, primarily.

Q. Is he a High- -- is he a debtor employee or is he employed by any other entity?

A. I believe he's a debtor employee.

Q. Okay. Do you see there's a reference there to gatekeeper@hcmlp.com?

A. Yes.

Q. Are you -- withdrawn. Is that -- withdrawn. Is it your understanding that that's kind of a basket of different e-mail addresses that are held together by the Gatekeeper address?

A. I wouldn't describe it that way, but

J. DONDERO

it is a bucket of e-mails.

Q. Okay. And is your e-mail address or was your e-mail address included within Gatekeeper?

A. Historically, it was.

Q. And do you know when that stopped being the case?

A. I do not know.

Q. Was it after the time that you resigned from your position at the debtor?

A. I do not know.

Q. Okay. Matt Pearson is below Gatekeeper. Do you know who Mr. Pearson is?

A. He is a -- generally an equity trader that works for Joe Sowin.

Q. And are Mr. Pearson and Mr. Sowin employees of the debtor?

A. I don't believe so. I don't believe Joe is. I don't know if Matt is. I don't know.

Q. Okay. But is it fair to say that pursuant to this e-mail, Mr. Covitz is giving direction to sell certain securities held by the CLOs?

A. Yes.

J. DONDERO

Q. Can we scroll to the e-mail above that, please. And then Mr. Pearson acknowledged that e-mail a little bit later in the day, right?

A. Yes.

Q. Okay. And if we can --

(Interruption by the videographer.)

MR. MORRIS: It's okay. Let's proceed and we'll do the best we can.

BY MR. MORRIS:

Q. Mr. Covitz's e-mail was the -- do you see the subject matter is Sky Equity?

A. Yes.

Q. And do you have an understanding of what Sky Equity refers to?

A. It's a -- it's a post-restructured equity that the funds have held for years.

Q. Okay. So if we could scroll up to your e-mail that's right there, did you receive a copy of Mr. Covitz's original e-mail?

A. It appears so.

Q. Okay. And did you give the instruction to the recipients of Mr. Hunter Covitz's e-mail not to sell the Sky Equity as had been instructed by Mr. Seery?

J. DONDERO

A. Yes.

Q. And you understood at the time that you gave the instruction to the people on this e-mail that they were trying to execute trades that Mr. Seery had authorized, right?

MR. BONDS: Objection, form.

THE WITNESS: Can you repeat the question, please.

MR. MORRIS: Sure.

BY MR. MORRIS:

Q. At the time that you gave the instruction, no, do not, you knew that you were stopping trades that had been authorized and directed by Mr. Seery, correct?

A. Yes.

Q. Did you speak with Mr. Seery before instructing the recipients of your e-mail not to execute the SKY transactions?

A. No, I did not.

Q. Did you take any steps to seek the debtor's consent before instructing the recipients of this e-mail not to execute the SKY transactions?

A. I'm sorry, please repeat that again.

J. DONDERO

The -- I missed the first part of the sentence.

Q. No problem.

Did you take any steps to seek the debtor's consent before instructing the recipients of your e-mail --

MR. BONDS: Objection, form.

BY MR. MORRIS:

Q. -- to stop the SKY transactions, to stop executing the SKY transactions?

A. No.

Q. Thank you.

Can we scroll up to the response. Okay. Stop there.

Mr. Pearson responded later that afternoon. Do you see that?

A. Yes.

Q. And in response, he canceled all of the SKY and AVYA sales that the debtor had directed but which had not yet been executed, right?

A. Yes.

Q. And if we can scroll up to the e-mail above that, you responded to that as well, didn't you?

J. DONDERO

A. Yep.

Q. Can you please read your response out loud.

A. HFAM and DAF -- or HFAM and DAF has instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again, please.

Q. All right. The written instructions, is that a reference to the first two exhibits that we looked at? And if you want to go back and check them out, we can, but I'm trying to -- I want to know what writings you're referring to. Withdrawn.

Are the writings that you're referring to the two exhibits that we just looked at, Exhibit 1 and Exhibit 2?

MR. BONDS: Objection, form.

A. Generally, yes.

BY MR. MORRIS:

Q. Are you --

A. I don't know if -- I don't know if there were more than those two, but generally, letters of those substances -- well, generally, letters of those substance -- of that substance

J. DONDERO

is what I'm referring to.

Q. I appreciate that, Mr. Dondero.

Do you recall any other writings that you were referring to at the time you sent this e-mail?

A. I'm just saying I don't know if there were others or if there were other e-mails. I don't know. But there were -- they would have been similar in terms of substance as those two.

Q. Okay. Do you see the reference there in the latter portion of your e-mail, quote, there is potential liability, don't do it again?

A. Yes.

Q. Who was the intended recipient of that message?

A. At this juncture, it's to Matt Pearson, I believe.

Q. And why would Matt Pearson have personal liability -- withdrawn.

Why did you decide to tell Mr. Pearson that he had potential liability for executing the transactions that Mr. Seery had directed?

MR. BONDS: Objection, form.

J. DONDERO

A. Yeah, to be clear, it doesn't say personal liability. I said potential liability. I believe this is -- I believe what was done here is bona fide typical class action activity that we've suffered from historically, when the interests of beneficial holders are ignored when assets are sold for no business purpose. No business purpose. No definable, discernible, articulated business purpose.

There's -- I think there's potential liability for the manager, the fund complex, you know, and sometimes for the individuals involved. But my potential liability was a general statement.

THE WITNESS: You know what, guys, listen. I've got a couple of calls I've got to make that I'm ten minutes late for, so we're going to need to take a break for a few minutes here, ideally now, or after the next question, please.

MR. MORRIS: I'm happy to take a break now. How long are you thinking, though?

THE WITNESS: Ten or 15 minutes.

MR. MORRIS: Yeah, that's perfectly

J. DONDERO

fine, Mr. Dondero. Can you just state on the record that you will not talk to any Highland employee, including Mr. Ellington or Mr. Leventon, you will not communicate with them or their counsel in any way with respect to this deposition?

THE WITNESS: Yeah, I promise. I haven't -- yeah. I will not talk to them. The only Highland employee I might talk to is Jerome, who's handling the systems for this call, and that's it.

MR. MORRIS: I'm fine with that, but really, I'm requesting not only Highland employees but not to talk to anybody about the testimony today. I'm going to accommodate you and --

THE WITNESS: I won't. Nobody cares about this deposition. I won't talk to anybody.

MR. MORRIS: Okay.

THE WITNESS: I'll be back in ten or 15 minutes, okay?

MR. MORRIS: Okay.

THE VIDEOGRAPHER: 10:41 a.m. Central Standard Time, we're off the record.

J. DONDERO

(Recess taken, 10:41 a.m. to 11:16 a.m. CST)

THE VIDEOGRAPHER: 11:16 a.m., we're back on the record.

BY MR. MORRIS:

Q. Mr. Dondero, can you hear me?

A. Yes.

Q. Okay. Are you aware that the deposition taking place today is pursuant to Court order?

A. Yes.

Q. Did you schedule meetings and telephone calls during the day today, notwithstanding the Court's order?

A. I didn't formally schedule anything.

Q. Okay. So you have nothing scheduled for the rest of the day; is that right? You're here to answer questions?

A. Correct.

MR. MORRIS: Okay. Can we get the last exhibit back up on the screen, please. Okay. Can we scroll --

BY MR. MORRIS:

Q. We were last looking at your e-mail.

J. DONDERO

Can we see the response above that, please? Okay. And that's Mr. Sowin responding. Do you see that?

A. Yes.

Q. And Mr. Sowin was following your instructions; is that right?

A. His response is what it is. I'm not -- what do you mean by following my instructions?

Q. Well, he issued an order -- it says, quote: Please block all orders from hitting the trading desk for the -- I assume he meant funds -- Jim mentioned. Do you see that?

A. Yes.

MR. BONDS: Objection, form.

BY MR. MORRIS:

Q. And that's exactly what you wanted to happen, right?

A. I'm sorry, could you unhighlight that? It's hard for me to read with the highlight. Okay. Thank you. Yeah, they -- I think he tried to figure out a way to prevent it from inadvertently

1 J. DONDERO
2 happening.
3 Q. Okay. And Mr. Sowin's -- the
4 substance of Mr. Sowin's e-mail is consistent
5 with your intent to prevent any further trades
6 from the CLOs, right?
7 MR. BONDS: Objection, form.
8 A. My intent was to prevent trades that
9 weren't in the best interests of investors, that
10 investors -- the beneficial holders had
11 articulated they didn't want sold while these
12 funds were in transition, and that the -- there
13 was no business purpose or benefit to the debtor
14 to sell these assets.
15 BY MR. MORRIS:
16 Q. That --
17 A. So that's -- that was the rationale I
18 was trying to capture.
19 THE WITNESS: Hold on for me one
20 second. Jerome just stepped in. What does the
21 systems guy want Jerome to do?
22 MR. MORRIS: Figure out a way to turn
23 the lights on.
24 (Technical comments off the
25 stenographic record.)

1 J. DONDERO
2 MR. MORRIS: Let's go forward.
3 THE WITNESS: So we're okay with
4 Jerome? That's it for now?
5 MR. MORRIS: Yeah.
6 THE WITNESS: All right. Thank you.
7 BY MR. MORRIS:
8 Q. You didn't correct anything that
9 Mr. Sowin did -- said in this e-mail, did you?
10 A. No.
11 Q. You didn't tell --
12 MR. BONDS: Can you repeat the
13 question? I didn't understand it.
14 MR. MORRIS: That's okay.
15 BY MR. MORRIS:
16 Q. Mr. Dondero, you didn't correct
17 anything that Mr. Sowin wrote in this e-mail, did
18 you?
19 A. No.
20 Q. You didn't tell Mr. Sowin that he
21 misunderstood your intent, did you?
22 A. I don't believe so.
23 Q. And you didn't give any explanation
24 to him as to why you did not want to sell any CLO
25 underlying assets except for what you wrote in

1 J. DONDERO
2 that e-mail below, right?
3 MR. BONDS: Objection, form.
4 A. I -- I believe I -- well, the e-mails
5 stand on their own. I think the reasons below
6 are sufficient. I think I had a conversation
7 with Joe besides that, and there was an
8 unawareness on the trading desk and with Hunter
9 that the interest of investors had been expressed
10 and ignored by Seery, you know, so -- they
11 weren't aware of that. They thought that was
12 unusual and inappropriate.
13 BY MR. MORRIS:
14 Q. In your role as portfolio manager, is
15 it -- do you believe it's your responsibility to
16 always defer to the desires of your investors?
17 Do you cede -- do you cede -- withdrawn.
18 Do you cede responsibility and your
19 business judgment for making transactions to your
20 investors?
21 MR. BONDS: Objection, form.
22 A. In this case, it would be
23 appropriate. In general, it would depend.
24 BY MR. MORRIS:
25 Q. Okay. A few days later, you learned

1 J. DONDERO
2 that Mr. Seery was trying a work-around to
3 effectuate the trades anyway, right?
4 A. Yes.
5 Q. And you wrote to Thomas Surgent to
6 let him know that you were aware that Seery was
7 trying a work-around to effectuate the trades,
8 right?
9 A. I believe there was such an e-mail.
10 Q. Okay. Can you just scroll up and see
11 that e-mail, please. All right. Stop right
12 there.
13 Who is Mr. Surgent?
14 A. He's the chief compliance officer of
15 Highland Capital.
16 Q. The debtor?
17 A. Yes.
18 Q. Okay. And how long has he held that
19 position to the best of your recollection?
20 A. A long time. More than five years.
21 Q. What does it mean to -- when you
22 wrote that Mr. Seery was, quote, working on a
23 work-around to trade these securities? What does
24 that mean?
25 A. As a noninvestment professional and

1 J. DONDERO
2 as a nontrader and as a nonportfolio manager, he
3 set up an account for himself, I believe,
4 directly with Jefferies to trade the securities
5 in the CLOs.
6 Q. How did you learn that?
7 A. I think we still get trade reports
8 from Jefferies, or Jefferies -- the Jefferies
9 trades get reported back into the system and have
10 to be input by Joe, and so Joe sees the trades
11 come back from Jefferies at the end of the day.
12 Q. And Joe is Joe Sowin?
13 A. Yes.
14 Q. And he works for you; is that right?
15 MR. BONDS: Objection, form.
16 MR. MORRIS: Withdrawn.
17 BY MR. MORRIS:
18 Q. He works for one of the advisors; is
19 that right?
20 A. I believe he works for HFAM, but I'm
21 not a hundred percent certain.
22 Q. And the work-around was -- is that
23 another way of saying that Mr. Seery tried to do
24 the trades that he thought were appropriate
25 without your interference?

1 J. DONDERO
2 MR. BONDS: Objection, form.
3 A. I'm not going to agree with that
4 speculation. If you want me to speculate, I
5 think Seery had no business purpose and he was
6 doing it to tweak myself and everybody else.
7 BY MR. MORRIS:
8 Q. Did he tell you that?
9 A. No. I'm speculating.
10 Q. Okay. Do you have any idea why he
11 made the trades?
12 A. He -- he had no --
13 Q. Withdrawn. I'm sorry.
14 Do you have any idea why he wanted to
15 make the trades?
16 A. I didn't speak to him directly.
17 Q. Okay.
18 A. Indirectly -- I didn't speak to him.
19 I didn't speak to him directly. It was --
20 Q. Do you have any personal knowledge as
21 you sit here right now as to why Mr. Seery wanted
22 to effectuate the trades that you were blocking?
23 MR. BONDS: Objection, form.
24 A. I've thought about it at length. I
25 can't come up with a business purpose that would

1 J. DONDERO
2 supersede an account that's in transition and the
3 beneficial owners have made it clear that the
4 manager's not in compliance, they're moving the
5 accounts, and knowing the individual assets that
6 were sold, I can't -- I couldn't think of a
7 business purpose that Seery would be operating
8 under.
9 MR. MORRIS: Okay. I move to strike.
10 I'm not asking you for what you think. I'm
11 asking you for facts.
12 BY MR. MORRIS:
13 Q. Do you have any knowledge of any
14 facts as to the business justification or
15 rationale for why Mr. Seery wanted to make these
16 trades?
17 MR. BONDS: Objection, form.
18 A. No, I don't believe there are any.
19 BY MR. MORRIS:
20 Q. And you never asked him; is that
21 right?
22 A. Correct.
23 Q. And you never instructed anybody on
24 your behalf or on behalf of the advisors or on
25 behalf of the funds to ask Mr. Seery why he

1 J. DONDERO
2 wanted to make these trades, right?
3 A. That's not correct.
4 Q. Nobody ever told you that they'd had
5 a conversation with Mr. Seery in which
6 Mr. Seery -- (audio malfunction) --
7 (Clarification requested by the
8 stenographer.)
9 BY MR. MORRIS:
10 Q. Did anybody ever tell you that they
11 had spoken with Mr. Seery and Mr. Seery had
12 provided an explanation, a business rationale for
13 the transactions that he wanted to effectuate?
14 MR. BONDS: Objection, form.
15 A. Yes. Yes.
16 BY MR. MORRIS:
17 Q. Who was that?
18 A. Joe Sowin.
19 Q. When did he tell you about this
20 conversation?
21 A. It was at or about this time in...
22 Q. And what did Mr. Sowin tell you?
23 A. Seery told him it was for risk
24 minimization or risk reduction.
25 Q. Did he tell him anything else?

J. DONDERO

A. No. He said risk reduction was why he was selling the securities.

Q. That's the only rationale that Mr. Seery gave to Mr. Sowin; is that your testimony?

A. Yes.

Q. Okay. Did Mr. Sowin tell you that he asked any questions of Mr. Seery?

A. He asked him why he was selling them.

Q. And you've given me the entirety of the answer as conveyed by Mr. Sowin to you; is that right?

A. Yes.

Q. Is Mr. Sowin's conversation with Mr. Seery about the justification for these trades reflected in any document or any e-mail anywhere that you can recall?

A. Not that I recall.

Q. Did K&L Gates explain their understanding of the business rationale of these trades in any of the letters that they sent on behalf of the funds or any of the advisors?

A. Not that I'm aware of. I'm not aware.

J. DONDERO

Q. Do you know Dustin Norris?

A. Yes.

Q. Do you know that he testified in December in connection with this bankruptcy matter?

A. Yes.

Q. Did you ever tell Dustin Norris about the conversation Mr. Sowin had with Mr. Seery that you've described here?

A. I believe he was aware of it.

Q. Do you know -- did you talk to him in advance of his testimony?

A. I talk to Dustin most every day.

Q. And did you tell Dustin that he should make sure to alert the Court about this conversation with Mr. Sowin and Mr. Seery?

A. No.

Q. Did you think it was important that the Court know Mr. Seery's business rationale?

A. I thought it was a nonsensical answer on Seery's part. I didn't have an opinion on whether or not the Court should know.

Q. Now, you -- at the time, you were speaking to Mr. Seery directly; isn't that right?

J. DONDERO

A. Rarely. I didn't -- since the injunction or since -- rarely. I can't remember the last time I've spoken to him. Scott Ellington has been the appropriate go-between as far as I understand it.

Q. Okay. Was there anything that prevented you in November 2020 from picking up the phone to talk to Mr. Seery about his desire to effectuate these transactions?

A. No. The last time I -- yeah, I'm remembering, the last time I talked to Seery was the day after Thanksgiving.

Q. Okay. Is there anything that you're aware of that prevented you from picking up the phone and asking Mr. Seery for his business justification for these trades prior to December 10, 2020?

MR. BONDS: Objection, form.

A. No. I expressed my disapproval via e-mail.

BY MR. MORRIS:

Q. Okay. Why did you decide to write to Mr. Surgent on November 27th?

A. I wasn't sure he was aware of Seery's

J. DONDERO

work-around, and I know Thomas has an acute awareness of his personal liability for regulatory breaches or doing things that aren't in the best interests of investors, and I don't believe he has the extra insurance and indemnities that Seery has.

Q. If he was acutely aware of it, why did you feel the need to remind him of that in your e-mail to him?

A. Because I don't think he was aware that Seery was doing a work-around on behalf of the debtor that he was compliance officer of. I wasn't convinced he was aware, so I included him on the e-mail.

Q. Did you intend to suggest that by following Mr. Seery's orders to execute the trades, that Mr. Surgent faced personal liability?

A. That's the way it works.

Q. Okay. And you wanted him to know that, right?

A. I wanted him to know that Seery was doing inappropriate trades and doing inappropriate work-around, in my opinion. I

1 J. DONDERO
2 didn't think Thomas was aware. I thought Seery
3 was operating independently.
4 Thomas might have been aware, but I
5 didn't think so. I don't talk to -- I haven't
6 talked to Thomas in I don't know when, so I
7 thought it was important for him to know.
8 Q. Okay. You have communicated with
9 Mr. Seery from time to time via text message,
10 right?
11 A. Yes.
12 MR. MORRIS: Can we put up Exhibit 4,
13 please.
14 (Dondero Deposition Exhibit 4
15 marked.)
16 MR. MORRIS: And if we can scroll
17 down a little bit. Okay.
18 BY MR. MORRIS:
19 Q. This is a text that you sent at the
20 bottom there at 5:26 p.m. to Mr. Seery; is that
21 right?
22 A. Yes.
23 Q. Can you just read that text, that
24 5:26 out loud?
25 A. Be careful what you do, last warning.

1 J. DONDERO
2 Q. Why did you write that?
3 A. Because all the reasons we just went
4 over. And I think he's violating the Advisers
5 Act. He's putting the funds and the debtor at
6 risk, in jeopardy of class action lawsuits, and
7 he's going against the interests of investors
8 that are in transition, and expressed a desire to
9 not have their assets sold, especially when
10 there's no business reason.
11 And for all the reasons articulated
12 below -- I mean, for all the reasons we just went
13 over, and there are a few others I probably
14 haven't remembered off the top of my head, but
15 it's -- I think it's -- I think his activities
16 regarding the CLOs is incredibly inappropriate,
17 unfounded and malicious, and he hadn't sold that
18 many securities at that point in time, somewhat
19 de minimis amounts, but it was a warning to tell
20 him to stop; otherwise, rightfully, the
21 beneficial owners would take more significant
22 actions, which I think they should and they will.
23 Q. What significant action are the
24 beneficial owners going to take?
25 A. I don't know. But there's a lot more

1 J. DONDERO
2 things that they can push on, like you were
3 suggesting earlier, asking earlier in terms of
4 self-reporting to the SEC.
5 Q. But you haven't done that yet, to the
6 best of your knowledge; is that right?
7 A. I'm not aware.
8 Q. You wrote there that it's the last
9 warning.
10 Do you see that?
11 A. Yes.
12 Q. How many other warnings have you
13 given Mr. Seery?
14 A. All the e-mails we just went over.
15 Q. Anything else?
16 A. No.
17 Q. Okay. You got document requests in
18 this -- in connection with this matter; isn't
19 that right?
20 A. Yes.
21 MR. MORRIS: Okay. Can we put up
22 Exhibit 5, please.
23 BY MR. MORRIS:
24 Q. You know, before we look at that,
25 earlier this morning you mentioned -- you made a

1 J. DONDERO
2 reference to internal counsel.
3 Do you recall that?
4 A. Yes.
5 Q. Okay. Who were you referring to?
6 A. D.C. Sauter.
7 Q. And D.C. Sauter is internal counsel
8 for who?
9 A. I'm sorry, was there a question
10 there?
11 Q. Yes. I apologize.
12 D.C. Sauter is internal counsel for
13 who, for which entity?
14 A. NexPoint.
15 Q. Okay. Were you referring to anybody
16 else?
17 A. No.
18 Q. Okay. You mentioned Scott Ellington
19 earlier, right?
20 A. Yes.
21 Q. And who is Mr. Ellington?
22 A. He's general counsel at Highland
23 historically. I think his role has been
24 redefined as settlement counsel, that's how it
25 was described to me, I guess, six, nine months

J. DONDERO

ago, six months ago.

Q. Mr. Ellington is employed by the debtor, right?

A. Yes.

Q. And do you know when he first became employed by the debtor?

A. Over a decade ago.

Q. Do you know whether Mr. Ellington has any employer other than the debtor?

A. I don't know.

Q. He never told you that he had an employer other than the debtor, did he?

A. I don't know.

Q. You know if he told you or not, right? Did he ever tell you that?

A. He never told me he did, no.

Q. And you have no facts or reason to believe, as you sit here right now, that the debtor is -- withdrawn.

You have no facts or reason to believe right now that Mr. Ellington has any employer other than the debtor, correct?

MR. BONDS: Objection, form.

A. I'd like to stick with: I don't

J. DONDERO

know.

BY MR. MORRIS:

Q. You have no reason to believe that; is that fair?

A. Correct, I don't know.

Q. Okay. He's not -- Mr. Ellington is not your personal lawyer, right?

A. No.

Q. He's never represented Jim Dondero personally; is that right?

A. No.

MR. MORRIS: Let's look at the document request, please, Exhibit 5.

(Dondero Deposition Exhibit 5 marked.)

BY MR. MORRIS:

Q. If we could go -- let me just ask you generally, Mr. Dondero.

Have you ever seen this document before?

A. No.

Q. Are you aware that the debtor served document requests on the Bonds Ellis firm for documents in connection with its motion for a

J. DONDERO

preliminary injunction?

A. Yes.

Q. How did you learn that?

A. I heard about it from my lawyers.

Q. Okay. Did you oversee the search for responsive documents?

A. Response -- I know we were responsive and compliant, but I delegated it to my assistants and the employees at Bonds Ellis.

Q. Which assistants did you delegate this to?

A. Tara Loiben. I think primarily Tara Loiben.

Q. And who is Ms. Loiben?

A. She's my assistant.

Q. And who is she --

A. I'm sorry?

Q. Who is she employed by?

A. I -- I don't know for sure. I think Highland, but I don't know. I don't want to speculate.

Q. What instructions -- (audio malfunction) --

(Clarification requested by the

J. DONDERO

stenographer.)

BY MR. MORRIS:

Q. What instructions did you give her in order to search for documents?

A. I didn't -- I didn't give her any. She worked with that and she had -- she has full access to my e-mail, and I gave her my phone for the better part of a couple days in the office.

Q. You -- until the end of 2020, you had an e-mail address with an HCMLP or a Highland e-mail address, right?

A. Yes.

Q. Have you stopped -- has that e-mail address ceased to be in use?

A. I've switched to an e-mail at the bank as of -- whatever it was, last week or...

Q. In the year 2020, did you use any e-mail address other than the Highland e-mail address?

A. No.

Q. You don't have a Gmail address or any other personal e-mail address?

A. I have an old Gmail address, but it's dormant. I haven't logged on to it in years.

J. DONDERO

Q. Okay. And you understood that the debtor's document request called for the production of all text messages that were responsive to the requests, right?

A. Yes.

Q. Can we just scroll down to the requests themselves? Right there.

Do you see Request No. 3 is for all communications between you and any person employed by the debtor?

A. Yes.

Q. And did you understand that the request was limited to the time period of, I think, December 10th, 2020 to the end of the month?

A. I didn't read the details of this. I didn't get into it. I didn't do the document production that I believe was completed and responsive. I delegated that.

Q. Did you review the documents before they were produced? Do you know what was produced? Withdrawn. Two different questions.

Did you review the documents for completeness before your lawyers delivered them

J. DONDERO

to my firm?

A. Only in the most general -- when she'd print out a stack of them, I'd just thumb through the stack of them, and that was it. But other than that, no.

Q. Did you do anything to satisfy yourself that you had produced all responsive documents?

A. I trust Tara's work ethic and capabilities, and I trust the lawyers at Bonds Ellis, so I didn't -- I didn't intervene or supersede or supervise.

Q. So you didn't do anything to make sure -- you didn't do anything personally -- withdrawn.

You didn't take any steps personally to make sure that all responsive documents had been produced, right?

MR. BONDS: Objection, form.

A. I wasn't involved personally, but I do believe it was responsive and complete.

BY MR. MORRIS:

Q. Until early December, you had a phone that was bought and paid for by the debtor,

J. DONDERO

right?

A. Yes.

Q. What happened to that phone?

A. It was disposed of as part of getting a replacement phone in anticipation of potentially a transition.

Q. Who decided to dispose of it?

A. That's historically what we've done with all of our historic phones, when we've gotten new phones. I've gotten a new phone, I guess, every four or five years, and the old ones have always been destroyed.

Q. Who decided to destroy this -- withdrawn.

When you say it was disposed of, what does that mean?

A. As far as I know, it was disposed of in the garbage, but I don't know if it was recycled or whatever.

Q. And who decided to throw it in the garbage?

A. We've always -- we've always done that when we've gotten new phones, versus trading them in, for the senior executives.

J. DONDERO

Q. I appreciate that, but I'm just talking about the very specific phone that the debtor bought and paid for for your benefit. Who made the decision to dispose and throw that phone away?

MR. BONDS: Objection, form.

A. I -- like I said, I understood it to be our standard process and protocol. I don't know. I can't label anybody with the decision.

BY MR. MORRIS:

Q. Well, who threw it away?

A. I don't know.

Q. You don't know if you threw the phone away?

A. No, I -- I don't know. No, I don't remember throwing it away, but I don't know who did.

Q. Did you have conversations with anybody about the decision to throw away the phone?

A. Like I said, it wasn't a decision or a new decision. It's been the process, as far as I understand it, every time we've upgraded phones over the last 30 years.

J. DONDERO

Q. You just throw it in the garbage? You don't try to get a credit for it by returning it?

A. No.

Q. Okay. Did you ever speak with Mr. Ellington about your phone that was bought and paid for by the debtor?

A. I think Ellington's phone and my phone and I think -- I think right around the same time, in anticipation, in case there was a transition or in case there was a liquidation plan, it was time to move the phone ownership away from the estate. The estate wasn't going to pay for it anymore anyway in another couple of weeks so, I --

Q. Were you aware --

A. I'm sorry, what's your question?

Q. Are you aware that the UCC had asked for your text messages before the time that you disposed of your phone?

A. No.

Q. Nobody ever told you that the UCC wanted your phone?

A. No.

J. DONDERO

Q. When exactly did you dispose of your phone?

A. On or about when I got my new phone.

Q. Who at the debtor did you tell that you disposed of your phone?

A. I don't -- I don't remember who. Was it Jason Rothstein was involved in getting my new phone and knew that I was disposing of my old phone? I don't know who else knew. But again, it was standard procedure.

Q. Did it ever occur to you to get the debtor's consent before doing this?

MR. BONDS: Objection, form.

A. No.

BY MR. MORRIS:

Q. Did you have the phone number transferred to your personal account?

A. Yes.

Q. Did you ever ask the debtor for its permission to do that?

A. No.

Q. Did you ever give the debtor notice that you were doing that?

A. I didn't believe it was necessary or

J. DONDERO

appropriate.

Q. So you wanted it to be a secret?

MR. BONDS: Objection, form.

A. No. No, I wouldn't describe it as a secret. I would say I didn't think it was necessary or appropriate.

Every executive that's ever left Highland has always kept their phone number, period. Highland's never said, no, we're keeping the phone number, ever, out of the two or 300 people that have come through Highland. And I don't believe most businesses try and retain the phone number of employees when they leave. It's ludicrous on its surface.

BY MR. MORRIS:

Q. Okay. So let me just make sure that I understand this.

You threw the phone -- withdrawn.

Somebody threw the phone that the debtor bought and paid for in the garbage without the debtor's knowledge or consent; is that right?

MR. BONDS: Objection, form.

A. I'd just repeat my testimony, that it's always been our process to destroy old

J. DONDERO

phones when we get new phones.

BY MR. MORRIS:

Q. You were no longer an employee of the debtor at the time, correct?

A. At the time? I believe I was an employee of the debtor since January.

Q. Well, you stayed on as an unpaid employee until mid October; isn't that right?

A. Right, but I -- but I don't even think my phone was paid for by the debtor. I think my phone was paid for by shared services by NexPoint. I -- I don't know what you're -- I don't know what you're getting at or what you're -- you're asking me.

Q. It's not complicated.

Did you tell the debtor that you threw away your phone at any time until this deposition?

A. Did I tell the debtor? Like I said, I didn't think it was the debtor's phone. No, I did not tell the debtor or get permission. No, I did not.

Q. And did you tell the debtor that you were changing the phone number?

J. DONDERO

A. No.

Q. And did Mr. Ellington help you change the phone number?

MR. BONDS: Objection, form.

A. I didn't change the phone number.

BY MR. MORRIS:

Q. Withdrawn.

Did Mr. Ellington help you have the phone number transitioned to your personal account?

MR. BONDS: Objection, form.

A. No. No. It was Jason – Jason Rothstein handles the technology stuff and the phone stuff.

BY MR. MORRIS:

Q. Did Mr. Ellington also change his phone number to his own personal account?

A. My understanding was there was numerous senior executives that changed their phone in anticipation of being terminated by the debtor shortly.

Q. Who else did it?

A. I don't know. I thought it was – I didn't think it was just Ellington and I. I

J. DONDERO

thought it was a bunch of senior execs. But –

Q. What's the basis –

A. – who cares? Who cares? I didn't care. I don't know. I mean –

Q. I don't care if you care or not. I'm asking you questions.

What is the basis for your statement that other people besides you and Mr. Ellington changed the phone numbers?

MR. BONDS: Objection, form.

A. That was my understanding. That was my understanding. But I don't – I don't recall specifics. I didn't pay attention.

BY MR. MORRIS:

Q. What is the basis for the understanding? Did somebody tell you that?

MR. BONDS: Can you repeat the question?

BY MR. MORRIS:

Q. What is the basis for your understanding? Did somebody tell you that employees of Highland other than Mr. Ellington had changed the phone numbers?

A. Yes. My understanding was everybody

J. DONDERO

had to move their phones in the next 30 days or next 25 days, based on Seery's termination notice.

Q. Did Jim Seery – withdrawn. I'm perfectly fine.

MR. MORRIS: Can we put up Exhibit 6, please.

(Dondero Deposition Exhibit 6 marked.)

BY MR. MORRIS:

Q. That's Jason Rothstein.

Do you see that?

A. Yes.

Q. He didn't throw the phone in the garbage, did he?

A. I don't know.

Q. Well, according to the text that he sent you on December 10th, he left your own – old phone in the drawer of Tara's desk.

Do you see that?

A. Yes.

Q. So he didn't think that it was his responsibility as of December 10th to throw it in the garbage, did he?

J. DONDERO

A. I don't know.

Q. He left it in Tara's desk, didn't he?

A. On December 10th. But I don't know what he did on December 11th.

Q. Did you tell him to do anything?

A. I don't – all I know is the phone's been disposed of. That's all I know.

Q. Okay. Did you tell Mr. Rothstein to take the phone out of Tara's desk and throw it in the garbage?

A. I did not.

Q. Did you tell Tara to take the phone out of her desk and throw it in the garbage?

A. I did not.

MR. MORRIS: Okay. Can we put up Exhibit 7, please.

(Dondero Deposition Exhibit 7 marked.)

MR. MORRIS: Can we just scroll down a little bit.

BY MR. MORRIS:

Q. Is this a text message from you to Tara?

A. Yep.

J. DONDERO

Q. If we could scroll up just a little bit so we can see the date.

Well, it doesn't have a date, but do you recall when you asked Tara to come in to work -- (audio malfunction) --

(Clarification requested by the stenographer.)

BY MR. MORRIS:

Q. -- to come in to work on discovery. Do you recall when you sent this text message, Mr. Dondero?

A. No.

Q. Do you know how Tara -- withdrawn.

Did Tara come in to work on discovery at any time?

A. Yes.

Q. And did you give her any instructions on what to do?

A. Again, just generally.

Q. What were the general instructions that you gave her?

A. Work with the Bonds Ellis guys. Here's the access to my computer and my phone. Be complete and be responsive.

J. DONDERO

Q. Did you ever speak with Mr. Ellington about your document production?

A. No.

Q. Did Mr. Ellington play any role in searching for, reviewing or producing responsive documents?

A. Nope.

Q. Did you ever speak with Mr. Leventon about your document production?

A. Nope.

Q. Did Mr. Leventon play any role in searching for, reviewing or producing responsive documents?

A. Nope.

Q. Did you ever speak with anybody employed by the debtor, other than Tara, about your document production?

A. Tara's got an assistant, or my other assistant that works with Tara, Kelly, would have been the only other person.

She might have been -- Tara had to go back and see her girls during lunch, so I think she used Kelly to do some of the legwork.

Q. Let's talk about the TRO for a

J. DONDERO

second.

MR. MORRIS: Can we put up Exhibit 9, please.

(Dondero Deposition Exhibit 9 marked.)

BY MR. MORRIS:

Q. This is the temporary restraining order that was signed on December 10th.

Do you see that?

If we could scroll down just a little bit. Yeah.

A. Okay.

Q. You've never seen this document before, right?

A. Yes, I haven't read it.

Q. And I know I asked you earlier today what your understanding was of how this order restrained you.

Do you remember those questions?

A. Yes.

Q. Okay. Is there anything, upon reflection, that you need to add in order to make the record complete as to your understanding of the scope of the injunction?

J. DONDERO

A. Not at this moment.

MR. MORRIS: Can you put up Exhibit 10, please.

(Dondero Deposition Exhibit 10 marked.)

BY MR. MORRIS:

Q. All right. Have you seen this letter before, sir?

A. No. I mean, not specifically. I probably received it, but I haven't read it.

Q. All right. I just want to go back to the phone for a second to see if I can nail this down.

Did you dispose of the phone somewhere around December 10th, 2020?

A. I -- I don't know. Probably.

Q. Well, we just looked at that e-mail, right, that was from Mr. Rothstein.

MR. MORRIS: Can we get that back?

A. Yes.

MR. MORRIS: I just want to see what the date of that was. Yes. Okay.

BY MR. MORRIS:

Q. So that's December 10th at 6:25 p.m.,

J. DONDERO

right?
A. Yes.
Q. Okay. So according to Mr. Rothstein, as of that date at that time, your phone was in Tara's desk, right?
A. Yes.
Q. You have no reason to disbelieve that, do you?
MR. BONDS: Can you repeat the question? I'm sorry.
MR. MORRIS: Withdrawn.
BY MR. MORRIS:
Q. So is it fair to say, then, that the phone was disposed of and thrown in the garbage sometime after December 10th?
A. I don't know.
Q. Well, as of December 10th, Mr. Rothstein told you that it was in Tara's desk, right?
A. Yes.
Q. Okay. So if he – Jason's not a liar, is he?
A. No.
Q. Do you have any reason to believe

J. DONDERO

that the phone was anywhere other than Tara's desk at 6:25 p.m. on December 10th?
A. I don't know.
Q. You have no reason to believe that that statement by Mr. Rothstein is untrue, correct?
A. Correct.
Q. Do you know how it came to be that the phone was disposed of in the manner that you've described?
A. Nope.
Q. You can't tell me who did it; is that right?
A. Correct.
Q. And you can't tell me when, after December 10th, that happened, right?
A. Correct.
Q. Okay. Thank you. Let's go back to, I guess, Exhibit 10. If we can just scroll down a little bit.
I understand that you haven't seen this document before. Go to the next page, please – no. Yeah, next page.
Do you see the first full paragraph

J. DONDERO

there beginning "On December 22nd"?
A. I'm going to have to get up and read that. Just hold on a sec.
Q. Okay. Take your time.
A. Yes, I see that.
Q. Okay. Having read that paragraph, do you have any basis to dispute any of the statements in that paragraph?
MR. BONDS: I'm sorry. Can you read it again or can you ask your question again?
MR. MORRIS: Sure. I'd like to know if Mr. Dondero has any basis to dispute any assertion made in that paragraph.
A. I disagree with every sentence in that paragraph based on my 30 years of experience and understanding how to operate a registered investment advisor and how to do it in the interest of performance, investors and a registered investment advisor.
BY MR. MORRIS:
Q. All right. Let's try this differently. I shouldn't have done that.
The first sentence, do you have any basis to disagree with any aspect of the first

J. DONDERO

sentence of that paragraph? And let me just read it aloud, if I may.
A. That – all right. What's your question?
Q. Is there anything inaccurate about the first sentence?
A. I believe my instructions in the e-mails we went over were to not do the trades. You know, that sentence implies not settle the trade, which means to not do the trades once they were already bona fide. I – I don't recall that ever being my contention.
I would have preferred they be reversed, but my instructions, I believe, in everything we went over were to not do the trades, stop doing trades that are adverse to the interests of investors, but it wasn't regarding settling outstanding trades. So I think that sentence on its face is in error.
Q. Okay. So but it's true, then, that you instructed employees of NPA and HCMFA on or around December 22nd to stop doing the trades of Avaya and Sky, correct?
A. Yes.

J. DONDERO

Q. Near the closing bell on -- we're going to go back in time just a couple of days -- on Friday the 18th, Mr. Sowin informed you that Seery wanted to sell these securities, right?

A. I don't recall that specifically.

MR. MORRIS: Okay. Can we put up Exhibit 11, please.

(Dondero Deposition Exhibit 11 marked.)

MR. MORRIS: Okay. And if we can just go down to the bottom of it. Yeah.

BY MR. MORRIS:

Q. So that e-mail at the bottom, that's Mr. Seery's direction to sell Avaya securities from the CLOs, right?

A. I don't know what's happening here. I don't know if this is fuzzy or my eyes are getting worse, but can we enlarge these a little bit, or I'm going to have to get up each time.

Yeah. This is nutty and vindictive. I think everybody realizes that there's no liquidity in the markets the three days before Thanksgiving and Christmas. There's no urgency or reason to sell any of these securities that

J. DONDERO

couldn't have waited until January or February.

There's no business purpose in selling any of those securities, yet he's pushing them through for self-serving or vindictive reasons. I -- or maybe trying to get more issues in front of the judge. I have no idea, but this -- this stuff makes absolutely no sense and no business purpose.

But I'm sorry, what's your question?

MR. MORRIS: Okay. I move to strike and I'd ask you to listen to my question.

BY MR. MORRIS:

Q. It's simply that you learned, just before the closing bell on Friday, December 18th, that Mr. Seery wanted to sell Avaya securities out of the CLOs?

MR. BONDS: Objection, form.

THE WITNESS: Yeah, hold on. I need to interrupt for a second. When you strike something, does that mean it doesn't end up in the record?

MR. MORRIS: The judge will decide whether or not it does. It's my request that the judge strike it from the record. She'll make the

J. DONDERO

ruling.

THE WITNESS: Okay. But then my lawyer can ask to put it in as my understanding of something at the end or something of the deposition or...

MR. MORRIS: I don't want to give you legal advice, Mr. Dondero, but yes, that's generally how it works.

THE WITNESS: Okay. Thank you.

BY MR. MORRIS:

Q. So again, the question is simply whether you learned near the closing bell on Friday, December 18th, that Mr. Seery wanted to sell Avaya shares out of the CLOs?

MR. BONDS: Objection, form.

A. It appears so.

BY MR. MORRIS:

Q. Okay. And can you just scroll up above that, please. And -- okay.

Do you see that Mr. Sowin, in fact, forwards this right to you?

A. Yes.

Q. And it was on the basis of this that you instructed the NPA and HCMFA employees not to

J. DONDERO

execute these sales?

A. Yes.

Q. After the TRO was issued, did you ever instruct any employees of NPA or HCMFA not to interfere or impede with the debtor's management of the CLOs?

A. No.

Q. To the best of your knowledge, did anyone ever instruct the employees of NPA and HCMFA not to interfere or impede with the debtor's management of the CLOs?

A. No.

Q. Did you ever provide a copy of the TRO to any employees of NPA and HCMFA?

A. I did not.

Q. Do you know if anybody ever provided a copy of the TRO to any of the employees of NPA and HCMFA?

A. I do not know.

MR. MORRIS: Okay. Can we put up Exhibit 12, please.

(Dondero Deposition Exhibit 12 marked.)

///

J. DONDERO

BY MR. MORRIS:

Q. Okay. This is a letter that was sent to K&L Gates.

Do you know who K&L Gates represents in connection with this matter?

A. Some of the retail funds.

Q. And do they also represent the two advisors?

A. Yes. I believe they're one of – yes.

Q. Attached to this letter, there's an Exhibit A, if we can go down, and we'll find a letter from K&L Gates there. Okay.

This is another letter from K&L Gates dated December 22nd, 2020. Are you able to see that, sir? Can we scroll down a little bit?

A. Yes. Yes, I can see the letter.

Q. Okay. Were you aware that this letter was sent at the time that it was?

A. I was aware, yes.

Q. And these are the same entities, except for CLO Holdco, that had filed the prior motion that was denied by the Court, right?

A. I'm sorry, ask that question again.

J. DONDERO

These were –

Q. Yeah, let me just do a little background.

A couple of – about a week before this letter was sent, the entities represented by K&L Gates, except for CLO Holdco, had made a motion in the bankruptcy court, right?

A. Yes.

Q. They had asked the Court to pause, to impose a pause on the debtor from selling any CLO assets; is that right?

A. I don't – I don't know what exactly – I don't know the details of what they requested.

Q. Okay. Did you authorize the filing of that motion?

A. Authorize the filing? I championed – I pushed and encouraged the chief compliance officer and the general counsel to do what they believed was right as rigorously as possible, and it manifested itself in the letters that you're speaking of.

Q. And you – and you approved of these letters, right?

J. DONDERO

A. I – not directly and not specifically, but I encouraged them to do what they thought was right.

Q. Okay. And you were aware that letters with the substance contained in them were going to be sent – (audio malfunction) –

(Clarification requested by the stenographer.)

BY MR. MORRIS:

Q. – to the debtor?

THE STENOGRAPHER: And the answer again, please?

MR. BONDS: And I objected as to form.

THE STENOGRAPHER: And the answer again, please?

A. I was aware that letters were being sent, and I was aware that motions – or a motion was being filed.

BY MR. MORRIS:

Q. This letter was also sent on behalf of CLO Holdco, Ltd.

Do you see that?

A. Yes.

J. DONDERO

Q. Are you the direct or indirect economic or beneficial owner of CLO Holdco, Ltd.?

A. No.

Q. Who is?

A. I believe the DAF and HarbourVest.

Q. And who controls the DAF?

A. Grant Scott.

Q. Who is the beneficial owner of the DAF?

A. Three char- – three or four charitable organizations.

Q. And who controls CLO Holdco?

A. I don't know exactly.

Q. Do you?

A. No.

Q. And who are the possibilities?

A. CLO Holdco, my understanding is it was a – it was an investment amalgamation between HarbourVest and the DAF, so with the DAF having the primary – or the largest ownership interest.

Q. And with that largest ownership interest, is the DAF able to control CLO Holdco?

A. I don't know. Maybe.

J. DONDERO

Q. You've never asked that question?
A. Nope.
Q. Did you ever instruct any of the advisors or funds to withdraw this letter?
MR. BONDS: Objection, form.
A. No.
BY MR. MORRIS:
Q. To the best of your knowledge, has anyone on behalf of the advisors, the funds or CLO Holdco ever instructed K&L Gates to withdraw this letter?
A. Not that I'm aware of.
Q. Okay. I want to just see if I can refresh your recollection a bit.
When you talked about the DAF and HarbourVest, is it possible that you're confusing that with HCLOF?
A. You know, you're right. It could be. Maybe it is CLO Holdco -- you know what, let me just -- let me not speculate. But the CLO Holdco might just be the DAF, and the combined entity might be the level above that. I -- I don't know exactly. Let me leave it at that.
Q. Okay. That's fair.

J. DONDERO

This is the -- I think you've testified -- I'm trying to speed this up a little bit, believe it or not -- that you supported the sending of this particular letter, right? And if you need to read more of it, let me know.
A. No, I -- again, the thrust of it, the theme of it, the -- when you think bad or illegal or regulatorily inappropriate stuff has happened, what did you do, when you knew it, et cetera. And I think the responsibilities of that transcend a lot of things, you know.
Q. But you are aware that these very same entities, except for CLO Holdco, had advanced the very same arguments to the bankruptcy court just six days earlier and their motion is denied, right?
MR. BONDS: Objection, form.
A. Yes. And with all due respect to the Court, it doesn't mean that it was wrong or inappropriate to advance the argument.
BY MR. MORRIS:
Q. Okay. But having advanced the argument on December 16th and having had it rejected, you support these entities pressing the

J. DONDERO

same arguments again against the debtor, right?
A. We try and do what's right.
MR. MORRIS: Okay. Can we put up Exhibit 13, please.
(Dondero Deposition Exhibit 13 marked.)
MR. MORRIS: And if we can go to Exhibit A on the back. Thanks.
BY MR. MORRIS:
Q. This is another letter sent the next day, right, on December 23rd, from K&L Gates? And we can scroll down further, again.
Do you recall that there was yet another letter sent on the 23rd?
A. Yeah, I don't recall specifically, but...
Q. Can we scroll down a little bit further in this document.
Do you recall that there came a time when K&L Gates, on behalf of the advisors and the funds, told the debtor and its counsel that it was considering initiating the process for removing the debtor as portfolio manager of the CLOs?

J. DONDERO

MR. BONDS: Objection, form.
A. I believe they -- I don't know if you're asking me a reservation of rights or whatever, but I think they should do everything as rigorously as possible to try and protect the investors.
BY MR. MORRIS:
Q. Are you aware of any prohibition of doing what you're -- withdrawn.
Are you aware that the debtor made an offer to assign the CLO management agreements to NexPoint back in the beginning of December?
A. I -- I do remember that, and I did get a summary of that, and it was untenable in terms of what it was wrapped in.
Q. What was untenable about it?
A. Off the top of my head, it would give Seery releases for bad acts or inappropriate trades. It required a reimbursement for, I think, a million dollars of Pachulski fees relative to this subject, and I think it also wanted an up-front payment for the present value of the future management fees to be paid to the estate.

1 J. DONDERO
2 Q. And who made the decision to reject
3 the debtor's offer?
4 A. Made a decision to reject the --
5 reject the -- it wasn't a rejection of the offer
6 as much as a disagreement that that is the way
7 CLO contracts transfer, that the manager doesn't
8 have the right to extort from the next manager
9 when the investors want to transfer.
10 So there's a facilitation that
11 Highland could provide, but Highland is not in a
12 position, based on our understanding of the
13 market, to demand consideration.
14 Q. Okay. Who made the decision to
15 reject the offer?
16 A. I was involved in that. It wasn't a
17 formal rejection, but it was a view that it was
18 an inappropriate offer.
19 Q. Did anybody decide or suggest that
20 maybe we should make an appropriate offer?
21 A. Not yet.
22 Q. Was there any reason why, for the
23 past month, when the debtor has provided an
24 opportunity to transfer these CLO management
25 contracts, that none of the advisors or anybody

1 J. DONDERO
2 representing them has sought fit to make an
3 appropriate counteroffer?
4 A. We can get an appropriate
5 counteroffer out tomorrow.
6 Q. Okay. Is there anything that's
7 prevented that over the last month instead of
8 writing letters and engaging in this litigation?
9 A. The fundamental prerequisites were so
10 inappropriate that it dissuaded us from putting a
11 normal, commercial, reasonable thing forward.
12 But we'll put something commercial, reasonable
13 and appropriate through tomorrow, and we'll see
14 how far it goes.
15 Q. Did you support the sending of this
16 particular letter at the time it was sent?
17 A. I -- generally, yes.
18 Q. Okay. Have you authorized any of the
19 entities on this letter to initiate the process
20 to remove the debtor as the fund manager of any
21 CLO?
22 MR. BONDS: Objection, form.
23 A. That's not my position, and it's not
24 without legal considerations regarding what's
25 subject to a stay and what's appropriate at this

1 J. DONDERO
2 juncture.
3 But -- but I believe, subject to
4 whatever is legally appropriate, they should and
5 they will be moving to replace the manager as
6 quickly as possible and holding the manager
7 responsible for bad acts prior to transfer.
8 BY MR. MORRIS:
9 Q. Have you authorized any of the
10 parties that are signatory to this letter to
11 initiate the process to remove the debtor as the
12 fund manager for the CLOs?
13 A. I am not that involved. I haven't
14 authorized it per se. Again, I'm encouraging the
15 executives in charge to do the right thing, given
16 the circumstances and what's best for investors,
17 especially their retail investors and their
18 obligations under the '40 Act.
19 Q. You're the president of the two
20 advisors, right?
21 A. Yes.
22 Q. And you're the portfolio manager of
23 the funds, right?
24 A. Yes.
25 Q. Couldn't you give the direction to

1 J. DONDERO
2 take steps to initiate the process to remove the
3 debtor?
4 MR. BONDS: I'm sorry, can you repeat
5 the question?
6 BY MR. MORRIS:
7 Q. Don't you have the power to do that?
8 MR. BONDS: I'm sorry. I couldn't
9 hear your question.
10 MR. MORRIS: Withdrawn.
11 BY MR. MORRIS:
12 Q. Did you ever discuss with any -- with
13 anybody about whether to initiate the process to
14 remove the debtor as the portfolio manager of the
15 CLOs?
16 A. I think it's a logical remedy, and I
17 believe the executives, and particularly like the
18 executives -- the chief compliance officer always
19 has personal liability, and I think Jason Post
20 knows that, and I think he's pushing as hard as
21 he can for the benefit of investors in a
22 situation where people are moving against the
23 best interests of investors.
24 And I encourage him to move as
25 aggressively as possible subject to whatever the

1 J. DONDERO
2 limits of bankruptcy court is, but I can't be --
3 I've got too many other things to do to be
4 directly involved in the details, so I'm not
5 involved in the details.
6 Q. I see.
7 Did you ever instruct the parties
8 that are signatory -- withdrawn.
9 Did you ever instruct K&L Gates to
10 withdraw this letter?
11 A. No.
12 Q. To the best of your knowledge, has
13 anybody on behalf of the advisors, the funds or
14 CLO Holdco ever instructed K&L Gates to withdraw
15 this letter?
16 A. No.
17 Q. Will you commit that each of the
18 entities on whose behalf this letter was sent
19 will cease and desist from taking any steps to
20 initiate the process to remove the debtor as the
21 CLO manager?
22 MR. BONDS: Objection, form.
23 A. Say that again.
24 BY MR. MORRIS:
25 Q. Will you commit on behalf of each of

1 J. DONDERO
2 the funds and the advisors to cease and desist
3 from taking any steps to replace the debtor as
4 the portfolio manager of the CLOs?
5 A. That would be inappropriate. I'm not
6 sure it would be illegal, but I think it would be
7 a regulatory breach, and I think it would not be
8 in the best interest of investors if we were to
9 agree to anything like that. I think that's nuts
10 and it's nutty to ask that.
11 Q. People say that about me all the
12 time.
13 Did you ever exchange any e-mails or
14 texts with any employee of the parties on this
15 document, on the issue of whether or how to
16 remove the debtor as the CLO's fund manager?
17 A. Not that I recall.
18 Q. Did you ever discuss with any
19 employee of the debtor the topic of removing the
20 debtor as the portfolio manager of the CLOs?
21 A. Not that I recall.
22 MR. MORRIS: Okay. It's 1:35. Can
23 we just take a ten-minute break and resume -- is
24 it 12:35 where you are, Mr. Dondero? We'll
25 resume at 1:45 Eastern, 12:45 Central.

1 J. DONDERO
2 THE WITNESS: I'm sorry, I can't hear
3 you. We return at what time?
4 MR. MORRIS: In ten minutes, at
5 12:45.
6 MR. BONDS: And I want to say too,
7 John, that your notice showed that there was a
8 1:30 deposition Central Time of somebody else,
9 and we intend -- I mean, we planned on that, so
10 we're going to need to be through at 1:30.
11 MR. MORRIS: Yeah, you can do that if
12 you want. You can do that if you want, but the
13 record will also reflect that we started at least
14 20 minutes late and we took at least a 35-minute
15 break for Mr. Dondero. So you leave whenever you
16 want, but be guided by that.
17 Let's take a break.
18 MR. BONDS: Well, I'm telling you
19 that if you want to go forward, you can.
20 MR. MORRIS: I will. Thank you. I
21 appreciate that.
22 THE WITNESS: All right. See you
23 guys in 10 minutes.
24 THE VIDEOGRAPHER: 12:36 p.m.,
25 Central Standard Time. We're off the record.

1 J. DONDERO
2 (Recess taken, 12:36 p.m. to
3 12:49 p.m. CST)
4 THE VIDEOGRAPHER: 12:49 p.m.,
5 Central Standard Time. We're back on the record.
6 BY MR. MORRIS:
7 Q. All right. Can you hear me,
8 Mr. Dondero?
9 A. Yes.
10 Q. Is it fair -- do you think it's fair
11 to say that your personal interests are adverse
12 to the debtor's?
13 A. No.
14 Q. They asked for your resignation back
15 in October, right?
16 A. Yes.
17 Q. And you opposed the debtor's plan on
18 file, right?
19 A. Yes.
20 Q. And you objected to the debtor's
21 settlement with ACIS; is that right?
22 A. Yes.
23 Q. And you're going to object to the
24 debtor's settlement with HarbourVest; is that
25 right?

1 J. DONDERO
2 MR. BONDS: Objection, form.
3 A. I don't know for sure. I believe so.
4 I don't know.
5 BY MR. MORRIS:
6 Q. And the debtor commenced an adversary
7 proceeding against you; is that right?
8 MR. BONDS: Objection, form.
9 A. I'm not aware of that in particular.
10 BY MR. MORRIS:
11 Q. The debtor sought and obtained a TRO
12 against you; isn't that right?
13 A. Oh. Okay, yes.
14 Q. And they also started a lawsuit?
15 They filed a complaint against you -- is that
16 right -- for preliminary and permanent injunctive
17 relief?
18 A. I'm aware of it, yes.
19 Q. And the debtor has removed you from
20 its offices, right?
21 A. Yes.
22 Q. And based on all of that, would you
23 agree that your personal interests are adverse to
24 the debtor?
25 A. No.

1 J. DONDERO
2 Q. Okay. Since the TRO was entered,
3 have you ever discussed your litigation strategy
4 with Mr. Ellington?
5 A. Not -- no. Not that I'm aware of.
6 That's not the subject of our conversations.
7 He's more of a go-between, and he's more of an
8 overall strategist.
9 Q. And he's a strategist for your -- you
10 know, for the defense and prosecution of your
11 personal interests, right?
12 A. No.
13 Q. No?
14 Do you remember that there were
15 actually two motions on the calendar on
16 December 16th? There was the motion that you
17 brought that was called, I guess, the active
18 ordinary course transactions motion, and then
19 there was the motion brought by the K&L Gates
20 firm on behalf of -- (audio malfunction) --
21 (Clarification requested by the
22 stenographer.)
23 BY MR. MORRIS:
24 Q. -- the advisors and the funds, where
25 they sought the pause of the sale of CLO assets.

1 J. DONDERO
2 Do you remember that those two
3 motions were on the calendar a couple of weeks
4 ago?
5 A. I remember that K&L Gates one. The
6 first one, I don't remember.
7 Q. Do you remember discussing with
8 Mr. Ellington the need for a witness for one of
9 those motions?
10 A. No. I don't remember the motion.
11 Q. Do you remember that Mr. Ellington
12 suggested that J.P. Sevilla serve as a witness
13 for one of those motions?
14 A. I don't remember that.
15 MR. MORRIS: Put up Exhibit 15,
16 please.
17 (Dondero Deposition Exhibit 15
18 marked.)
19 BY MR. MORRIS:
20 Q. If we can go down here, do you see
21 that on Saturday, December 12th, Mr. Lynn wrote
22 to you and said: It looks like a trial?
23 A. Yes.
24 Q. Can you scroll up above that, please.
25 Keep going. And then Mr. Lynn -- I'm sorry, not

1 J. DONDERO
2 so much.
3 And then Mr. Lynn wrote: That said,
4 we must have a witness now.
5 Do you see that?
6 A. Yes.
7 Q. Now, go up to the top, and
8 Mr. Ellington writes to you and to others: It
9 will be J.P. Sevilla. I will tell him that he
10 needs to contact you first thing in the morning.
11 Have I read that correctly?
12 A. Yes.
13 Q. Now, this is after the TRO is
14 entered, right?
15 A. Like I said, I'm not -- I see my name
16 on the cc list. I don't have an awareness of
17 what this is about, so...
18 Q. Okay. Do you know what trial
19 Mr. Sevilla was going to testify at?
20 A. No.
21 Q. You didn't produce --
22 A. You can refresh my memory, but I
23 don't have a recollection from this.
24 Q. To be fair, Mr. Dondero, I don't
25 know. This is discovery, and I'm just asking a

1 J. DONDERO
2 question, if you know.
3 A. Okay.
4 Q. Do you recall if you produced this
5 e-mail in discovery?
6 A. I have no idea.
7 Q. Do you recall looking to
8 Mr. Ellington for leadership in helping to
9 coordinate all the lawyers acting on your behalf
10 and on behalf of the entities owned and
11 controlled by you?
12 A. I know I needed some coordination,
13 but I think I went in a different direction, and
14 that's why I brought on Douglas Draper, and he's
15 been functioning in that role of joint defense
16 and coordination.
17 Q. But you did tell Mr. Ellington, after
18 the TRO was entered, that you needed him to
19 provide leadership with respect to the
20 coordination of your litigation interests, right?
21 A. I – I don't – I don't remember.
22 Like I said, I ended up going in a different
23 direction, but I – I don't – I don't know as
24 far as your question is concerned.
25 MR. MORRIS: Okay. Can we put up

1 J. DONDERO
2 Exhibit 16, please.
3 (Dondero Deposition Exhibit 16
4 marked.)
5 MR. MORRIS: Scroll down to the
6 bottom. Not that far. Right there.
7 BY MR. MORRIS:
8 Q. So this is an e-mail from Mr. Draper
9 to you on December 16th.
10 Do you see that?
11 A. Yes.
12 MR. BONDS: I'm going to object.
13 Mr. Draper is a lawyer.
14 MR. MORRIS: He is. I understand
15 that.
16 MR. BONDS: Anything that was
17 produced that relates to Douglas Draper and Mike
18 Lynn and Jim Dondero is attorney-client
19 privileged.
20 MR. MORRIS: You're entitled to make
21 that assertion, but if we just look at the top so
22 we can clear this up. All the way to the top.
23 Mr. Dondero forwards this to Mr. Ellington.
24 Mr. Ellington is not Mr. Dondero's personal
25 lawyer. He is the lawyer for the debtor, and

1 J. DONDERO
2 your firm doesn't represent any business
3 interest, so there's no claim that this is
4 somehow provided pursuant to a shared services
5 agreement. Unless you can tell me that there's a
6 common -- (audio malfunction) --
7 (Clarification requested by the
8 stenographer.)
9 MR. MORRIS: -- a common interest
10 between Mr. Ellington and Mr. Dondero,
11 Mr. Dondero has waived the privilege. State your
12 position, and I'm happy to state mine, but I need
13 to ask questions.
14 Can we go back down to the bottom,
15 please. All right.
16 BY MR. MORRIS:
17 Q. So on December 16th, Mr. Draper is
18 looking to get a joint meeting together, right?
19 Do you remember that?
20 A. I'm sorry, what's the question?
21 Q. Do you recall that on or around
22 December 16th, Mr. Draper was looking to get a
23 joint meeting among all the lawyers representing
24 you and your business interests as well as the
25 employees for Highland?

1 J. DONDERO
2 A. What I do know is Douglas Draper has
3 put together a mutual defense agreement, and I
4 think the 16th is right about when he came on
5 board. He had to reach out and get people's
6 e-mails and contact information and be able to
7 coordinate it.
8 But he's now fully engaged and fully
9 functional in that role. Ellington is not
10 involved in that role at all. Can you -- but I
11 don't know exact time frames or exactly who said
12 what to who when, but go ahead, ask me whatever
13 you want.
14 Q. You mentioned a mutual defense
15 agreement. Do I have that right?
16 MR. BONDS: Objection --
17 A. I don't know what -- I don't know
18 what the legal term is.
19 BY MR. MORRIS:
20 Q. Okay. But there's a joint --
21 MR. BONDS: Don't talk about that,
22 Jim.
23 MR. MORRIS: Okay.
24 BY MR. MORRIS:
25 Q. Let me ask you this: Did Scott

J. DONDERO

Ellington participate in the drafting of the joint interest or mutual defense agreement?

A. No.

Q. Did Isaac Leventon participate in the drafting of a joint defense or mutual defense agreement?

A. No.

Q. Did you ever discuss with either of them the topic of a joint defense or a mutual defense agreement?

A. That was entirely with Draper.

Q. Okay. Let's scroll up the page a little bit. There's a response from Mr. Lynn. Do you see that?

A. Yes.

Q. And then if we scroll up a little further, you forward it to Mr. Ellington, right? If we can go to the --

A. Yes.

Q. And you said: I'm going to need you to provide leadership here. Have I read that correctly?

A. Yes.

Q. Why did you send this e-mail string

J. DONDERO

to Mr. Ellington on December 16th?

A. I don't remember.

Q. What leadership were you looking for?

A. I can't piece it together from here. I don't remember. I can't piece it together from the e-mail, and I don't remember.

Q. Why did you need Mr. Ellington to provide leadership?

A. I don't know.

Q. Does --

A. I don't remember.

Q. Okay. Does looking at the topic, a list for a joint meeting, refresh your recollection that you wanted Mr. Ellington to coordinate all of the lawyers working on your behalf and on behalf of the entities in which you own an interest?

A. No. I mean, because that was the beginning of the string, but the middle of the string starts going in different directions. I can't say -- I can't say what I wanted him to have leadership with.

Q. Can you think of any -- any issue at all, looking at this e-mail string, as to what he

J. DONDERO

would be providing leadership for if it's not to coordinate your defense counsel?

A. I don't want to speculate, but again -- I don't want to speculate, but again, the middle of the string looks like it goes in different directions than just forming the mutual defense thing.

Q. Okay. So you have no recollection why you forwarded this e-mail to Mr. Ellington on December 16th and why you told him that you need him to provide leadership here; is that your testimony?

A. Correct.

Q. Is Mr. Ellington a party to any joint defense or mutual defense agreement that you're a party to?

A. I believe the employees' counsel is part of the working group, although I've been on calls when the employees' counsel has been on and when it hasn't. But I don't even -- I think the employee group is divided into a couple different groups, and I don't know if Ellington is part of both groups. But I -- Ellington individually is

J. DONDERO

not part of the working group, and I'm not sure which, if one or both, of the employee groups he's in.

Q. So there's two employee groups; is that right?

A. I'm beyond my involvement and expertise, but I thought there were two employee groups, but I don't even know that for sure.

Q. And has your counsel conferred with counsel for either or both of the employee groups?

MR. BONDS: I'm sorry, can you repeat the question?

MR. MORRIS: Yes.

BY MR. MORRIS:

Q. Has your counsel at Bonds Ellis conferred with counsel for either or both of the employee groups?

A. I don't know.

MR. MORRIS: John, I would call for the immediate production of any --

MR. BONDS: I don't think we have it, but I can check on that.

MR. MORRIS: I would call for the

J. DONDERO
immediate production of any joint defense or mutual defense agreement to which any debtor employee is a party --
MR. BONDS: I don't think that there are any.
MR. MORRIS: And I would call for any drafts, okay?
MR. BONDS: Again, I don't think there are any.
MR. MORRIS: Okay. You can give me that representation.
BY MR. MORRIS:
Q. Let's look at the top, at Mr. Ellington's response. And what did he tell you in response to your statement that you need him to provide leadership?
A. You mean the two words there?
Q. Yep.
A. It looks like he typed back: On it.
Q. Yeah.
Did Mr. Ellington subsequently provide leadership, as you had asked?
A. I don't remember. Nothing I can recall.

J. DONDERO
Q. Did Mr. Ellington ever participate in any conference calls with your counsel at Bonds Ellis?
A. Not that -- not that I recall. Ellington's time has been spent primarily, the vast majority, representing and working with the employee group. I know that. It's been difficult to get his attention on anything else so --
Q. Listen carefully to my question. I'm not asking you to tell me what Mr. Ellington does. I'm simply asking whether you know that Mr. Ellington has participated in conference calls with your counsel at Bonds Ellis at any time after December 10th.
A. I don't know.
Q. Did you ever participate in any calls with Mr. Ellington and any lawyer at Bonds Ellis?
A. Over the year, for sure. There have been -- earlier in the year there were several times, but I can't recall one recently.
Q. So you have no recollection of ever participating in a phone call with Mr. Ellington and any lawyer at Bonds Ellis at any time since

J. DONDERO
December 10th; is that your testimony?
A. I -- I can't recall. I'm willing to be refreshed. I can't recall. There were -- there were -- some of the calls that stick out in my mind I believe occurred prior to that date, so I can't -- I can't recall any post that date.
Q. Okay. You didn't produce this e-mail in response to the Court's order, did you?
A. I don't know.
Q. And that's because you didn't take the time to look at the production before it was delivered to my firm, right?
A. I -- I believe the -- yeah, I mean, it's a process I don't -- I don't get directly involved in. Counsel has to decide what's responsive, what's privileged, what's complete, what's appropriate. That's not my job.
Q. Are you aware that any documents for which a privilege was asserted were supposed to be delivered to the Court last December 31st?
A. I'm not saying that's what -- I have no idea whether we produced this or didn't produce it. And if we didn't, I don't know why.
Q. Do you know that the UCC has asked

J. DONDERO
for the financial statements for Dugaboy and Get Good?
MR. BONDS: Objection, you're going far afield from where we're -- this TRO.
MR. MORRIS: You can take that position if you want, but I assure you, when I'm done, you'll understand.
MR. BONDS: I'm going to instruct the witness not to answer the question.
MR. MORRIS: You're not going to let him answer as to whether or not the UCC wanted the Dugaboy and Get Good financial statements?
MR. BONDS: I can't hear you.
MR. MORRIS: Yeah, I apologize. It's -- it's not me, John. Let me just ask again. Are you -- you're going to instruct your witness not to answer the question of whether he knew that the UCC wanted the Dugaboy and Get Good financial statements?
MR. BONDS: I'll let you go one -- you can ask that one question. But anything further into Dugaboy is not something that is for the Court to determine at this point in this case.

1 J. DONDERO
2 MR. MORRIS: Okay.
3 So you can answer that question, sir.
4 A. I think there have been several times
5 over the last year that Dugaboy financials have
6 been requested by a variety of entities. I don't
7 know when or recently or if the UCC requested it
8 recently.
9 BY MR. MORRIS:
10 Q. You know a number of different
11 parties have asked for the Dugaboy and Get Good
12 financial statements; is that right?
13 MR. BONDS: I'm going to object to
14 any answer that you may give following up on
15 Dugaboy. Dugaboy is not subject to the TRO and
16 you're stuck with your adversary proceeding.
17 MR. MORRIS: John, there is a text
18 message that we're going to get to in a moment,
19 so I'll end the suspense. Mr. Dondero
20 specifically says: Don't produce the Dugaboy
21 financial statements without a subpoena. Those
22 documents were in the debtor's possession. I
23 will tell you that I personally made at least a
24 half a dozen requests of Mr. Ellington and
25 Mr. Leventon for those documents.

1 J. DONDERO
2 I will tell you that Jim Seery
3 instructed them to provide those documents
4 because they're in the debtor's possession,
5 custody and control.
6 I will tell you that there's no
7 shared services agreement between Dugaboy or Get
8 Good and the debtor, and there is no basis for
9 those -- for Mr. Ellington and Mr. Leventon to
10 have obstructed the debtor's obligation to
11 provide those documents except in Mr. Dondero's
12 hands.
13 MR. BONDS: I'm going to instruct the
14 witness not to answer the question.
15 MR. MORRIS: I think that might be a
16 good idea. On what basis?
17 MR. BONDS: I don't need to give a
18 basis. I think that you've gone far, far from
19 what we're here on today, which is --
20 MR. MORRIS: I believe that it's --
21 MR. BONDS: -- specifically --
22 MR. MORRIS: I'm sorry to interrupt.
23 Go ahead, John.
24 MR. BONDS: Specifically, it's the
25 TRO and the injunction.

1 J. DONDERO
2 MR. MORRIS: Correct. And the TRO
3 specifically -- I know Mr. Dondero doesn't know
4 this because he hasn't read the document, but in
5 addition to the things that he mentioned, it also
6 prevents him from interfering with the debtor's
7 business.
8 The debtor is a litigant here. The
9 debtor has an obligation to provide these
10 documents. And he interfered with that
11 obligation.
12 Let me ask my questions and you can
13 direct him not to answer every single time if you
14 want, okay?
15 MR. BONDS: Okay.
16 BY MR. MORRIS:
17 Q. Do you know a woman named Melissa,
18 Mr. Dondero?
19 A. Yes.
20 Q. And who is that?
21 A. She's my personal accountant.
22 Q. Does she work at the Highland
23 offices?
24 A. Yes.
25 Q. Is she employed by the debtor?

1 J. DONDERO
2 A. I believe so.
3 Q. Do you know what her title is?
4 A. No.
5 Q. Do you directly or indirectly
6 control -- withdrawn.
7 Do you directly or indirectly own
8 Dugaboy?
9 A. No.
10 Q. Who owns Dugaboy?
11 MR. BONDS: I'm going to instruct the
12 witness not to answer that question.
13 MR. MORRIS: Are you going to follow
14 your counselor's advice?
15 THE WITNESS: Yes.
16 BY MR. MORRIS:
17 Q. Who controls Dugaboy?
18 MR. BONDS: I'm going to instruct the
19 witness not to answer that question, for the
20 second time.
21 MR. MORRIS: Are you going to
22 follow -- yeah, we'll do this every time, John,
23 just for the record.
24 MR. BONDS: That's fine.
25 MR. MORRIS: So I apologize. I

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1 J. DONDERO
2 appreciate, you know, you do your job, I'll do
3 mine.
4 Mr. Dondero, are you going to follow
5 your counsel's advice?
6 THE WITNESS: Yes.
7 BY MR. MORRIS:
8 Q. To the best of your knowledge,
9 Dugaboy does not have a shared services agreement
10 with the debtor, correct?
11 You can answer, sir.
12 THE WITNESS: I'm not answering,
13 right? I'm not answering any questions on this
14 subject.
15 MR. MORRIS: Only if your lawyer
16 instructs you to do that, and he hasn't done that
17 for this question.
18 MR. BONDS: I'm going to instruct the
19 witness not to answer the question.
20 MR. MORRIS: You're not going to let
21 him answer whether Dugaboy has a shared services
22 agreement with the debtor?
23 MR. BONDS: I think that you're
24 entitled to that, so Jim, you can answer that
25 question.

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1 J. DONDERO
2 A. I – I don't know.
3 BY MR. MORRIS:
4 Q. Okay. Are you familiar with an
5 entity called Get Good?
6 A. Yes.
7 Q. Do you directly or indirectly own Get
8 Good?
9 A. No.
10 Q. Do you control, directly or
11 indirectly, Get Good?
12 A. I don't believe so.
13 Q. Who owns Get Good?
14 MR. BONDS: I'm going to instruct the
15 witness not to answer the question.
16 MR. MORRIS: Are you going to follow
17 your counselor's advice?
18 THE WITNESS: Yes.
19 BY MR. MORRIS:
20 Q. Who controls Get Good?
21 MR. BONDS: Instruct the witness not
22 to answer the question.
23 MR. MORRIS: Are you going to follow
24 your counselor's advice, Mr. Dondero?
25 THE WITNESS: I'm going to follow his

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1 J. DONDERO
2 advice, yes.
3 BY MR. MORRIS:
4 Q. To the best of your knowledge, Get
5 Good does not have a shared services agreement
6 with the debtor, does it?
7 THE WITNESS: Can I answer that or
8 not answer that one?
9 MR. BONDS: Yes, you can.
10 A. I don't know.
11 BY MR. MORRIS:
12 Q. Did you ever discuss the request by
13 any party to produce the financial statements of
14 Get Good and Dugaboy with Scott Ellington?
15 MR. BONDS: I'm going to tell you –
16 advise you not to answer the question.
17 MR. MORRIS: Are you going to follow
18 your counselor's advice?
19 THE WITNESS: Yes.
20 BY MR. MORRIS:
21 Q. Did you ever communicate with
22 Mr. Leventon on the subject matter of whether or
23 not the financial statements for Get Good and
24 Dugaboy needed to be produced by the debtor?
25 MR. BONDS: I'm going to advise the

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1 J. DONDERO
2 witness not to answer the question.
3 MR. MORRIS: Are you going to follow
4 your counselor's advice?
5 THE WITNESS: Yes.
6 BY MR. MORRIS:
7 Q. Did you ever communicate with anybody
8 at any time who was employed by the debtor
9 regarding the production of the Dugaboy and Get
10 Good financial statements?
11 MR. BONDS: I'm going to instruct the
12 witness not to answer the question.
13 MR. MORRIS: Are you going to follow
14 your counselor's advice?
15 THE WITNESS: Yes.
16 BY MR. MORRIS:
17 Q. Melissa is Melissa Schroth, right?
18 A. Yes.
19 Q. She's an executive accountant
20 employed by the debtor, right?
21 A. Yes.
22 Q. And after December 10th, 2020
23 Ms. Schroth told you that a request had been made
24 for the production of the Dugaboy financial
25 statements, correct?

J. DONDERO

MR. BONDS: You can answer the question.

A. I don't remember.

MR. MORRIS: Okay. Can we put up Exhibit 17, please.

(Dondero Deposition Exhibit 17 marked.)

MR. MORRIS: Can you scroll down a little bit? I'm sorry. Scroll up so we can see who this text was sent to.

BY MR. MORRIS:

Q. Is that Melissa Schroth?

A. Yes.

Q. And if we scroll back down, do you see that you tell Ms. Schroth on December 16th: No Dugaboy details without a subpoena?

A. Yes.

Q. That's a text that you sent to her on December 16th, correct?

A. I believe so.

Q. What prompted you to send this text?

A. I don't know.

Q. You don't have any recollection as to why you would tell Melissa, quote, no Dugaboy

J. DONDERO

details without a subpoena?

A. No, but that would – I mean, I stand behind that response, but I don't remember why.

Q. Do you remember who was asking for the documents?

A. Nope.

Q. Do you remember any discussion with any person at any time concerning the production of the Dugaboy or Get Good financial statements?

A. Nope.

Q. Do you have any objection to the debtor producing the Dugaboy and Get Good financial statements?

A. I'm sorry, say that again?

Q. Would you consent to the debtor's production of the Get Good and Dugaboy financial statements?

A. With a subpoena. I stand by that statement, yeah.

Q. Okay. Do you know of any reason why Mr. Ellington and Mr. Leventon would have failed to respond to Mr. Seery's instruction to produce the Dugaboy and Get Good financial statements that were requested by the – (audio

J. DONDERO

malfunction) –

(Clarification requested by the stenographer.)

BY MR. MORRIS:

Q. – UCC?

A. I don't want to speculate.

Q. Have you heard of the law firm Baker & McKenzie?

A. Yes.

Q. Does that firm or any lawyer at that firm represent you in your individual capacity?

A. No.

Q. Does that firm or any lawyer at that firm represent any entity in which you have a direct or indirect ownership interest?

A. No. Not that I'm aware of, no.

Q. I'm sorry, one second.

Does that firm or any lawyer at that firm represent any entity that you directly or indirectly control?

A. Not that I'm aware of.

Q. Do you recall asking Isaac Leventon for the contact information for the – for the lawyers at Baker & McKenzie?

J. DONDERO

A. I – I don't – I don't – it might have been for part of the shared defense, mutual defense, whatever, agreement, but that's – that's the only reason why I would have asked for it.

Q. Okay. What's your understanding as to – (audio malfunction) –

(Clarification requested by the stenographer.)

BY MR. MORRIS:

Q. – the parties to that mutual defense agreement that you just referred to, or shared defense?

A. I – it's what I've testified already, Douglas Draper is coordinating it. I'm – I'm not sure whether the employees are on it or not, and I'm not sure if there's one employee group or two employee groups, and I'm not sure if one or both of them are part of that agreement or not.

But the – in recent history, my only awareness of Baker McKenzie is with regard to representing the employees. That's my only awareness of that firm.

J. DONDERO

Q. Have you ever spoken with an attorney at Baker McKenzie?

A. No, I have not.

MR. MORRIS: Okay. Can you put up Exhibit 18, please.

(Dondero Deposition Exhibit 18 marked.)

BY MR. MORRIS:

Q. That's Mr. Leventon. Do I have that right?

A. Yes.

Q. And you're communicating with him on or around -- after December 10th, right?

A. Yes.

Q. Okay. And if you could scroll down a little bit, right there, on December 22nd, you asked Mr. Leventon to send you the Baker & McKenzie contact person, right?

A. Yes.

Q. And if you scroll down a little bit. Did he ever send that to you?

A. I'm sorry?

Q. Did he ever send that to you?

A. I don't know. I don't remember.

J. DONDERO

Q. Why did you want the Baker & McKenzie contact information?

A. I was trying to help Draper coordinate the mutual shared defense agreement.

Q. And it was your intent and desire to have the Baker McKenzie firm participate in that agreement, right?

A. No. I'm not a lawyer. The appropriateness of who's in that group under what circumstances representing who was a legal decision made by Draper.

Q. So why didn't you just have Draper deal with this? Why did you deal with it?

A. He was scurrying around, moving quickly, trying to get contact information for potential various different parties. I was just helping him get the contact information.

Q. And you --

MR. BONDS: I'm going to instruct you not to say anything relating to this as far as what he and Draper discussed.

BY MR. MORRIS:

Q. You were aware at the time that you asked for the Baker & McKenzie contact

J. DONDERO

information that Baker & McKenzie was a law firm that -- that employees were considering retaining for their personal interests, right?

A. I knew they were involved with the employees. Whether -- whether or when they were engaged and by which employee group and -- I don't have details like that. I never did.

Q. But the one thing that you did know, when you asked for the Baker & McKenzie contact information, is that Baker & McKenzie would be representing some group of Highland employees, correct?

A. Or they might be. Or they were being interviewed at the time. I think they weren't formally engaged until later. I don't know these details and never did.

MR. BONDS: I'm going to instruct the witness --

THE WITNESS: I'm sorry, what?

MR. BONDS: You need to stop.

THE WITNESS: Okay.

MR. MORRIS: Why is that? Please don't interrupt the witness. Assert the privilege if you want, direct him not to answer,

J. DONDERO

but don't interrupt his answers.

BY MR. MORRIS:

Q. Baker McKenzie was ultimately retained by some group of the debtor's employees, correct?

A. I believe so.

Q. Do you know how Baker McKenzie got their retainer, their retainer money?

A. No idea.

Q. Do you know -- are you familiar with an entity called Gov Re?

A. Yes.

Q. What's Gov Re?

A. It's a Bermuda-based reinsurance company.

Q. Do you have an ownership interest in Gov Re?

A. I don't know.

Q. Do any -- do any entities in which you have an interest have an ownership interest in Gov Re?

A. I don't know.

Q. Do you know who controls Gov Re?

A. I don't know.

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1 J. DONDERO
2 Q. Do you make any decisions on behalf
3 of Gov Re?
4 A. Not recently. Not in the last year.
5 In prior years, I think I've helped them with
6 investments and some strategy, but not recently.
7 Q. Do you know whether Gov Re has made
8 any payment to Baker & McKenzie in the last
9 30 days?
10 A. I have no idea.
11 Q. Did you ever have a communication
12 with anybody at any time in the last 30 days as
13 to – (audio malfunction) –
14 (Clarification requested by the
15 stenographer.)
16 BY MR. MORRIS:
17 Q. – as to whether Gov Re would pay
18 money to Baker & McKenzie on behalf of some of
19 the debtor's employees?
20 A. Nope. No, I have no idea. I've
21 never heard the daisy chain you're connecting.
22 I've never heard it before.
23 MR. MORRIS: Let's take a break. I
24 might be finished. The time now is 2:32, or 1:32
25 Central. Let's just come back sharply at 1:45,

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1 J. DONDERO
2 or 2:45.
3 THE VIDEOGRAPHER: 1:32 p.m. Central
4 Standard Time. We're off the record.
5 (Recess taken, 1:32 p.m. to
6 1:50 p.m. CST)
7 THE VIDEOGRAPHER: 1:50 p.m. Central
8 Standard Time. We're back on the record.
9 BY MR. MORRIS:
10 Q. I just have a few more minutes here.
11 Going back to Gov Re, Mr. Dondero,
12 are you on the board of that entity?
13 A. I don't know.
14 Q. Can you identify any person who sits
15 on that board?
16 A. No.
17 Q. Do you know how many people sit on
18 that board?
19 A. No.
20 Q. Do you have an understanding as to
21 who makes decisions as to whether or not Gov Re
22 should make – (audio malfunction) –
23 (Clarification requested by the
24 stenographer.)
25 MR. MORRIS: Withdrawn.

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1 J. DONDERO
2 BY MR. MORRIS:
3 Q. Mr. Dondero, do you know who makes
4 decisions on behalf of Gov Re as to whether or
5 not to make payments on claims?
6 A. No.
7 Q. Did you ever participate in any
8 decisions concerning the payment of claims made
9 under a Gov Re policy?
10 A. Not in five years. I think I was
11 more involved five years ago, but I don't
12 remember.
13 Q. So you don't know if you sit on the
14 board of directors, you don't know who makes
15 decisions to pay claims, and you can't identify
16 any members of the board; is that right?
17 A. Correct.
18 Q. Okay. And you don't know if you have
19 an indirect or direct ownership interest in
20 Gov Re; is that right?
21 A. Correct.
22 Q. Okay. You've spent some time over
23 the last months trying to put together a
24 so-called pot plan; is that right?
25 A. Yes.

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1 J. DONDERO
2 Q. Since December 10th, 2020, have you
3 had any communications with any employee of the
4 debtor concerning the pot plan?
5 A. It's been a struggle to put together
6 a pot plan. There's been an intentional block of
7 any information, even assets, at Highland, so any
8 pot plan is a stab in the dark for me when I put
9 it forward, relative to current assets and likely
10 outcome.
11 But developing the pot plan has been
12 something I think that's been applauded by the
13 judge; at different times it's been encouraged by
14 creditors, you know. But the only people – Dave
15 Klos has helped with creating the model so that
16 the model makes sense and adds up and is
17 distributable. Dave Klos has been the person
18 that I've accessed throughout the year regarding
19 the pot plan.
20 Q. And is it fair to say that you've
21 communicated with Mr. Klos about the pot plan
22 since December 10th, 2020?
23 A. Probably. You know, to the extent
24 that the pot plan has come up, been considered or
25 distributed, yes.

J. DONDERO

Q. Okay. Can you identify any other employees of the debtor with whom you've discussed the pot plan with since December 10th, 2020?

A. No.

Q. Did you discuss it with Mr. Waterhouse?

A. Mr. Waterhouse is Klos' direct supervisor. He probably had an awareness of it from those conversations. I don't recall. I mean, I don't – maybe – I mean, there have been, maybe, peripherally, not significant, I don't think, since the 16th, but I don't recall.

Q. Did you ever get any balance sheets or financial information about MultiStrat from Scott Ellington?

A. No.

Q. Did you ever get any financial information, including balance sheets, concerning MultiStrat, from Isaac Leventon?

A. No. They – I wouldn't believe that those guys would have it. I wouldn't even think to ask them for it. It wouldn't be – I don't think it's natural for them to have it. But no,

J. DONDERO

I never did, no.

MR. MORRIS: Okay. I have no further questions, just two points that I'd like to make.

John, will you agree on behalf of Mr. Dondero to have him appear at Friday's hearing when the preliminary injunction takes place or do I need to serve a subpoena?

MR. BONDS: No, we haven't made that decision yet.

MR. MORRIS: Okay. Will you accept a subpoena on behalf of Mr. Dondero?

MR. BONDS: Sure.

MR. MORRIS: Okay. We'll get that over to you tomorrow.

And then lastly, the deposition of Andrew Clubok has been adjourned to a date to be determined.

MR. BONDS: Okay.

MR. MORRIS: Thank you very much, all.

MR. BONDS: Thanks.

THE VIDEOGRAPHER: 1:56 p.m. – 1:57 p.m. Central Standard Time. We're off the record. This concludes the deposition.

J. DONDERO

(Time noted: 1:57 p.m. CST)

_____

JAMES D. DONDERO

Subscribed and sworn to before me this _____ day of _____, 20____.

C E R T I F I C A T E

I, MICHAEL E. MILLER, FAPR, RDR, CRR, Notary Public in and for the State of Texas, do hereby certify:

That JAMES D. DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness;

That pursuant to FRCP Rule 30, signature of the witness was not requested by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on January 5, 2021.

_____

MICHAEL E. MILLER, FAPR, RDR, CRR
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

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2 ERRATA SHEET FOR THE TRANSCRIPT OF:
3 Case Name: IN RE HIGHLAND/HIGHLAND v. DONDERO
4 Dep. Date: January 5, 2021
5 Deponent: JAMES D. DONDERO
6 Pg. Ln. Now Reads Should Read Reason
7 ___ ___ _____ _____ _____
8 ___ ___ _____ _____ _____
9 ___ ___ _____ _____ _____
10 ___ ___ _____ _____ _____
11 ___ ___ _____ _____ _____
12 ___ ___ _____ _____ _____
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14 ___ ___ _____ _____ _____
15 ___ ___ _____ _____ _____
16 ___ ___ _____ _____ _____
17
18
19 _____
20 Signature of Deponent
21 SUBSCRIBED AND SWORN BEFORE ME
22 THIS _____ DAY OF _____, 20____.
23
24 _____
25 (Notary Public) MY COMMISSION EXPIRES: _____

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EXHIBIT 29

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	Case No. 19-12239 (CSS)
Debtor.	

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
EXPEDITED REQUESTS FOR PRODUCTION OF DOCUMENTS TO HIGHLAND

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure as made applicable by Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure, the Official Committee of Unsecured Creditors in the above captioned bankruptcy case (the "Committee") hereby serves the following expedited requests for production of documents to Highland Capital Management, L.P. ("Request(s)").

DEFINITIONS

1. "BBVA" means BBVA USA and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing, including without limitation Account No. 342, as referenced in the First Day Declaration.

2. "Communication(s)" means any written or oral communication of any kind or character, including, by way of example and without limitation, e-mails, instant messages, text messages, voicemail or voice messages, audio recordings, personal conversations, telephone conversations, letters, meetings, memoranda, telegraphic and telex communications or transmittals of Documents, whether such communication was sent, received, or created, in final

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

or in draft, and all Documents concerning or memorializing such written or oral communications.

3. "Concerning" means consisting of, reflecting, referring to, regarding, related to, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection with (whether to support or rebut) the subject matter designated in any of these Requests. A request for documents "concerning" a specified subject matter always shall include communications, notes, and memoranda (whenever prepared) relating to the subject matter of the request.

4. "Debtor," "You," and "Your" means Highland Capital Management, L.P.

5. "Debtor's Application for Retention of Foley" means the *Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* filed with the Bankruptcy Court on October 29, 2019 [Docket No. 69].

6. "Debtor's Application for Retention of Lynn Pinker" means the *Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date* filed with the Bankruptcy Court on October 29, 2019 [Docket No. 70].

7. "Debtor's Ordinary Course of Business Motion" means *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* filed with the Bankruptcy Court on October 29, 2019 [Docket No. 77].

8. "Document(s)" means, without limitation, the original and all copies, prior drafts, and translation of information in any written, typed, printed, recorded or graphic form, however

produced or reproduced, of any type or description, regardless of origin or location, including without limitation all Electronically Stored Information, Communications, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes, lists, calendar and diary entries, letters (sent or received), contracts, statements, bills, checks, vouchers, video tapes, photographs, tape recordings, other mechanical records, transcripts or logs of any such recordings, and all other data compilations from which information can be obtained. The term "Document(s)" is intended to be at least as broad in meaning and scope as the usage of the term in or pursuant to the Federal Rules of Civil Procedure.

9. "Dondero" means James D. Dondero.

10. "First Day Declaration" means the *Declaration of Frank Waterhouse in Support of First Day Motions* filed with the Bankruptcy Court on the Petition Date [Docket No. 9].

11. "Frontier Bank" means Frontier State Bank and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

12. "HCM Korea" means Highland Capital Management Korea Limited any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

13. "HCM Latin America" means Highland Capital Management Latin America, L.P. any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors,

attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

14. "HCM Singapore" means Highland Capital Management (Singapore) Pte Ltd. any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

15. "Highland Entity" and "Highland Entities" means the Debtor and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing, including without limitation the entities referenced in the First Day Declaration, paragraphs five and six.

16. "Highland Multi Strategy Credit Fund, L.P." means Highland Multi Strategy Credit Fund, L.P. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

17. "Highland Select Equity Fund, L.P." means Highland Select Equity Fund, L.P. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing, including Highland Select Equity Fund GP, L.P.

18. "Hunter Mountain Trust" means Hunter Mountain Trust and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, trustees, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing, including Crown Global Investments.

19. "Identify" means to state, to the extent known (or, if not known, to so state,) the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

20. "Intercompany Transactions" means any transaction between the Debtor and other Highland Entities, including without limitation transactions between the Debtor and any or all of Highland Multi Strategy Credit Fund, L.P., HCM Korea, HCM Latin America, and HCM Singapore, as referenced in the First Day Declaration, paragraph 59(a) through 59(d), as well as transactions between Highland Entities and each or all of Highland Entities' owners, partners, shareholders, and/or principals, including transactions between Highland Entities and Dondero and Okada.

21. "Jefferies" means Jefferies, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

22. "NexBank" means NexBank, SSB and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing, including without

limitation NexBank Account No. 130, Account No. 513, Account No. 891, Account No. 735, and Account No. 668, as referenced in the First Day Declaration.

23. "Okada" means Mark Okada.

24. "Petition Date" means October 16, 2019.

25. "Prime Account" means the prime brokerage account the Debtor maintains with Jefferies, as referenced in the First Day Declaration, paragraph 11.

26. "Relating to" means consisting of, reflecting, referring to, regarding, concerning, involving, evidencing, constituting, or having any legal, logical, evidential, or factual contention with (whether to support or to rebut) the subject matter designated in any of these Requests. A request for documents "relating to" a specified subject matter always shall include communications, notes and memoranda (whenever prepared) relating to the subject matter of the request.

INSTRUCTIONS

1. The Committee requests production of the following documents and information on an immediate, expeditious, and rolling basis, with all documents to be received by November 12, 2019.

2. Unless otherwise indicated, all documents shall be produced for the relevant time period, which shall be the last five years prior to the Petition Date, including any documents having an earlier origin, if in use during the relevant time period.

3. The obligation to produce documents responsive to these Requests shall be continuing in nature, and a producing party is required promptly to product any documents requested herein that it locates or obtains after responding to these Requests, up to the conclusion of the Chapter 11 Case.

4. You are requested to produce not only those documents in Your physical possession, but also those documents within Your custody and control, including, without limitation, documents in the possession of Your agents, employees, affiliates, advisors, or consultants and any other person or entity acting on Your behalf.

5. If You have no documents responsive to a particular Request, or if for some other reason You are unable to produce responsive documents, Your response to that Request should specifically so state. Accordingly, You should respond to each and every Request herein. If You have certain documents that are responsive to a Request, but believe that additional documents not now available to You would also be responsive, You should provide the documents You now have and specifically state when the remainder of the documents will be provided.

6. Where an objection is made to any document request, the objection shall state with specificity all grounds for objection.

7. Where a claim of privilege is asserted in objecting to the production of any document and a document called for by these Requests is withheld on the basis of such assertion, the objecting party shall identify the nature of the privilege (including work product) that is being claimed and, if the privilege is governed by state law, indicate the state's privilege being invoked. In addition, the objecting party shall provide the following information with respect to any document so withheld: (i) the type of document, e.g. letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; (iv) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addresses of the document, and any other recipients shown in the

document, and, where not apparent, the relationship of the author, addresses, and recipients to each other.

8. In the event that a requested document has been lost, destroyed, discarded and/or otherwise disposed of; the parties will identify the document by identifying: (i) its author or preparer; (ii) all persons to whom distributed or shown; (iii) date; (iv) subject matter; (v) attachments or appendices; (vi) date, manner, and reason for destruction or other disposition; (vii) person authorizing destruction or other disposition; (viii) the document request or requests to which the document is responsive.

9. Produce all responsive documents as they are kept in the usual course of business, or organize and label them to correspond with the request to which they are responsive.

10. With respect to Electronically Stored Information, the producing party shall confer with the Committee to develop parameters, including custodians and search terms, to identify responsive documents. This shall be done in accordance with Rule 7026-3 in the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

DOCUMENTS REQUESTED

1. Provide the Debtor's and any Highland Entity's current "Legal Entities List" and the "Legal Entities List" from the five years prior, including any and all Documents or Communications relating to these "Legal Entities Lists."

2. Any and all Documents or Communications relating to any organizational charts of the Debtor and Highland Entities, including without limitation Highland Entities owned or managed in whole or in part by affiliate entities, Dondero, or Okada.

3. Any and all Documents or Communications relating to ownership of each Highland Entity, including who is responsible for managing each entity.

4. Any and all Documents or Communications relating to the Debtor's financial statements and financial statements for each Highland Entity, including without limitation detailed calculations of all management fees for the past five years.

5. Any and all Documents or Communications relating to Debtor's monthly closing packages or operating reports.

6. Any and all Documents or Communications relating to Intercompany Transactions, including without limitation any and all Documents and Communications relating to Highland Multi Strategy Credit Fund, L.P., HCM Korea, HCM Latin America, and HCM Singapore, as referenced in the First Day Declaration, paragraphs 59 through 66 and Debtor's Ordinary Course of Business Motion, paragraphs 39 through 42.

7. Any and all Documents or Communications evidencing or relating to any fees received and expenses incurred by Debtor for shared services, including without limitation any and all shared services agreements and calculations of shared services allocation.

8. Any and all Documents or Communications relating to Hunter Mountain Trust, including without limitation Documents and Communications relating any notes owed to Hunter Mountain Trust by the Debtor, any agreements between or among Hunter Mountain, the Hunter Mountain Trustee, Dondero, and Okada, and Hunter Mountain's ownership structure.

9. Any and all Documents or Communications relating to bank accounts that the Debtor, Dondero, or Okada have a direct or indirect interest in, including without limitation Documents or Communications relating to the Highland Select Equity Fund, L.P. bank or brokerage accounts, NexBank bank accounts, and BBVA bank accounts.

10. Any and all Documents or Communications relating to Frontier Bank, including without limitation all Documents and Communications relating to any loan agreements or amended loan agreements, as referenced in the First Day Declaration, paragraphs 13 through 15.

11. Any and all Documents or Communications relating to the ordinary course operations of Highland Select Equity Fund, L.P. and Highland Select Equity Fund GP, L.P. by the Debtor.

12. Any and all disbursements and transactions effectuated by the Debtor since the Chapter 11 Petition Date.

13. Any and all Documents or Communications relating to the Debtor's critical vendor list, including without limitation the identity of the Debtor's critical vendors, whether such critical vendors are affiliated with Debtor or any Highland Entity, and all Documents and Communications related to determining the designation of such vendor as a critical vendor.

14. Any and All Documents or Communications relating to Debtor's periodic payment summary statements, including without limitation the amount of compensation paid to Debtor's clients, entities, or affiliates and the amount reimbursed by such clients, entities, or affiliates.

15. Any and all Documents or Communications relating to payment of Debtor's employee Workforce Compensation, Benefit Programs, and bonus plans, as defined and referenced in the First Day Declaration, paragraphs 67 through 99.

16. Any and all Documents or Communications identifying Debtor's involvement in any current or prior litigation, including without limitation any Documents and Communications relating to any proposed or retained representation.

17. Any and all Documents or Communications relating to representation for which you seek the retention and employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, as referenced in Debtor's Application for Retention of Lynn Pinker, including without limitation any prior and proposed engagement letters and bills.

18. Any and all Documents or Communications relating to representation for which you seek the retention and employment of Foley Gardere, Foley & Lardner LLP as Special Texas Litigation Counsel, as referenced in Debtor's Application for Retention of Foley, including without limitation any prior and proposed engagement letters and bills.

19. Any and all Documents or Communications relating to any redemption notices proposed and issued to the Debtor, including without limitation the name of the entity proposing and issuing the notices, in the one year prior to the Petition Date.

20. Any and all Documents or Communications evidencing or relating to any transactions or proposed transactions where the Debtor, any Highland Entities, Dondero, or Okada have offered to buyout investors of any Highland Entity or affiliates.

21. Any and all Documents or Communications evidencing or relating to securities, interests, holdings, debt, positions, or contracts, sold, transferred, novated, assigned, or purchased by Debtor in the one year prior to the Petition Date.

22. Any and all Documents or Communications relating to transfers made by or to Debtor to or from any Highland Entity or any Highland Entity affiliates, including without limitation the transfer of any assets, contracts, responsibilities, rights, or obligations.

23. Any and all Documents or Communications relating to any obligation of Debtor or any indebtedness of Debtor to any Highland Entity or any Highland Entity affiliates in the five

years prior to the Petition Date, including without limitation intercompany reimbursement agreements.

24. Any and all Documents or Communications relating to any debt owed to Debtor by any of its principals or affiliates.

25. Any and all Documents or Communications relating to any guarantee of debt owed to Debtor by any of its principals or affiliates and of any principals or affiliates guaranteed by Debtor.

26. Any and all Documents or Communications evidencing or relating to fees received and expenses incurred by Debtor from money management and advisory services in the five years prior to the Petition Date, as referenced in the First Day Declaration, paragraph 8.

27. Any and all Documents or Communications evidencing or relating to funds received by Debtor through the sale of non-debtor subsidiaries.

28. Any and all Documents or Communications relating to account statements from Jefferies, including without limitation the Prime Account.

29. Debtor's governing documents and the governing documents of any Highland Entity and Highland Entity affiliates in existence in the last five years.

Date: November 10, 2019
Wilmington, Delaware

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Proposed Counsel for the Official Committee of Unsecured Creditors

EXHIBIT 30

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Rule 7034 of the Federal Rules of Bankruptcy Procedure, and the Amended Term Sheet, the Official Committee of Unsecured Creditors in the above captioned bankruptcy case (the "Committee") hereby serves the following requests for production of documents to Highland Capital Management, L.P. ("Request(s)"). These requests are made pursuant to the Amended Term Sheet to which the Committee and Highland Capital Management, L.P., have agreed (Dkts. 354, 354-1) ("Term Sheet").

DEFINITIONS

1. "Atlas IDF" means Atlas IDF, LP, Atlas IDF GP, LLC, and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

2. "Beacon Mountain" means Beacon Mountain, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

3. "Boyce" means Patrick Boyce.

4. "Communication(s)" means any written or oral communication of any kind or character, including, by way of example and without limitation, e-mails, instant messages, text messages, voicemail or voice messages, audio recordings, personal conversations, telephone conversations, letters, meetings, memoranda, whether such communication was sent, received, or created, in final or in draft, and all Documents concerning or memorializing such written or oral communications.

5. "Concerning" means consisting of, reflecting, referring to, regarding, related to, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection with (whether to support or rebut) the subject matter designated in any of these Requests. A request for documents "concerning" a specified subject matter always shall include communications, notes, and memoranda (whenever prepared) relating to the subject matter of the request.

6. "Crown Global Insurance Company" means Crown Global Insurance Company and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

7. "Debtor," "You," and "Your" means Highland Capital Management, L.P.

8. "Document(s)" means, without limitation, the original and all copies, prior drafts, and translation of information in any written, typed, printed, recorded or graphic form, however produced or reproduced, of any type or description, regardless of origin or location, including

without limitation all Electronically Stored Information, Communications, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes, lists, calendar and diary entries, letters (sent or received), contracts, statements, bills, checks, vouchers, video tapes, photographs, tape recordings, other mechanical records, transcripts or logs of any such recordings, and all other data compilations from which information can be obtained. The term "Document(s)" is intended to be at least as broad in meaning and scope as the usage of the term in or pursuant to the Federal Rules of Civil Procedure.

9. "Document Production Protocol" means the protocols agreed to and described in Exhibit C of Final Term Sheet, Docket 354-1.

10. "Dolomiti, LLC" means Dolomiti, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

11. "Dondero" means James D. Dondero.

12. "Due from Affiliates Chart" means the document Bates stamped as Highland_PEO-010365 – Highland_PEO-010365 and produced by the Debtor.

13. "Dugaboy" means Dugaboy Investment Trust and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all trustees, officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

14. "Ellington" means Scott B. Ellington.

15. "HCRE Partners, LLC" means the HCRE Partners, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any

and all officers, directors, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing, including without limitation NexPoint Real Estate Partners, LLC.

16. "Highland Capital Management Korea Limited" means Highland Capital Management Korea Limited and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing

17. "Highland Capital Management Fund Advisors, L.P." means Highland Capital Management Fund Advisors, L.P. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

18. "Highland Capital Management Services" means Highland Capital Management Services, Inc. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

19. "Highland Entity" and "Highland Entities" means the Debtor and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, owners,

partners, principals, shareholders, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

20. "Hunter Mountain Secured Promissory Note" means the document Bates stamped Highland010645 – Highland010651 and produced by the Debtor, also referenced in Exhibit A.

21. "Hunter Mountain Trust" means Hunter Mountain Trust and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, trustees, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing, including Crown Global Investments.

22. "Highland Multi Strategy Credit Fund, L.P." means Highland Multi Strategy Credit Fund, L.P. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

23. "Identify" means to state, to the extent known (or, if not known, to so state,) the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

24. "Klos" means David Klos.

25. "Leventon" means Isaac Leventon.

26. "Loans Receivable Chart" means the document Bates stamped Highland_PEO-010366 – Highland_PEO-010366 and produced by the Debtor.

27. "Parker" means Trey Parker.

28. "NexPoint Advisors, L.P." means NexPoint Advisors, L.P. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

29. "Okada" means Mark Okada.

30. "Okada Family Trusts" means Mark and Pamela Okada Family Trusts and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, trustees, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

31. "Petition Date" means October 16, 2019.

32. "Rand PE Fund I, L.P." means Rand PE Fund I, L.P. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

33. "Relating to" means consisting of, reflecting, referring to, regarding, concerning, involving, evidencing, constituting, or having any legal, logical, evidential, or factual contention with (whether to support or to rebut) the subject matter designated in any of these Requests. A request for documents "relating to" a specified subject matter always shall include communications, notes and memoranda (whenever prepared) relating to the subject matter of the request.

34. "Siepe, LLC" means Siepe, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers,

directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

35. "SSP Holding, LLC" means SSP Holding, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

36. "Surgent" means Tom Surgent.

37. "Trussway Holdings, LLC" means Trussway Holdings, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on their behalf of any of the foregoing.

38. "Waterhouse" means Frank Waterhouse.

INSTRUCTIONS

1. The Committee requests production of the following documents and information pursuant to the Term Sheet and Document Production Protocol contained therein as Exhibit C.

2. The Committee requests production of the following documents and information on an immediate and rolling basis. Pursuant to the Term Sheet, Debtor shall search for emails at the earliest opportunity and in no event no later than seven days after the date of these Requests.

3. Unless otherwise indicated, all documents shall be produced for the relevant time period, which shall be the five years before the Petition Date, including any documents having an earlier origin, if in use during the relevant time period.

4. The obligation to produce documents responsive to these Requests shall be continuing in nature, and a producing party is required promptly to product any documents

requested herein that it locates or obtains after responding to these Requests, up to the conclusion of the above-captioned Chapter 11 Case.

5. Pursuant to the Term Sheet's Document Production Protocol, the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control to the extent they are responsive to these requests.

DOCUMENTS REQUESTED

1. Any and all Documents or Communications relating to any employment or severance agreements with current or former executives, officers, or directors of the Debtor and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of the Debtor, including without limitation agreements with Boyce, Dondero, Ellington, Klos, Leventon, Okada, Parker, Surgent, and Waterhouse.

2. Any and all Documents or Communications, including without limitation proof of payment and business purpose justification, relating to payments, distributions, or withdrawals credited or given to insiders by the Debtor in the one year prior to the Petition Date, as included in Statement 30 of the Statement of Financial Affairs for Highland Capital Management, L.P. (Dkt. 248) ("SOFA").

3. Any and all Documents or Communications, including without limitation proof of payment and business purpose justification, relating to payments or transfers to creditors by the Debtor, including without limitation payments made by the Debtor to any Highland Entities or any Highland Entity affiliates, in the ninety days prior to the Petition Date, as included in Statement 3 of the SOFA.

4. Any and all Documents or Communications, including proof of payment and business purpose justification, relating to payments or other transfers of property made by the

Debtor in the one year prior to the Petition Date that benefited any insider, as included in Statement 4 of the SOFA.

5. Any and all Documents or Communications relating to any debt owed to the Debtor by any of its principals or affiliates, including the notes specified in Exhibit A.

6. Any and all Documents or Communications, including business purpose justifications, relating to transactions giving rise to loans made by the Debtor to any Highland Entities or Highland Entity affiliates, including without limitation those identified in Exhibit A.

7. Any and all Documents or Communications relating to negotiations regarding the terms of loans made by the Debtor to any Highland Entities or Highland Entity affiliates, including without limitation those identified in Exhibit A.

8. Any and all Documents or Communications relating to the determination of and business purpose justifications for the principal amounts and interest rates of loans made by the Debtor to any Highland Entities or Highland Entity affiliates, including without limitation those provided in Exhibit A.

9. Any and all Documents or Communications relating to the holders of the notes provided in Exhibit A, including without limitation all Documents and Communications supporting schedules of amortization, relating to financial support acknowledgment, and acting as security to principal and interest payable.

10. Any and all Documents or Communications relating to any debt owed to the Debtor by any of the following entities:

a. Atlas IDF,

b. Beacon Mountain,

c. Crown Global Insurance Company,

d. Dolomiti, LLC,

e. Dugaboy,

f. Hunter Mountain Trust,

g. HCRE Partners, LLC,

h. Highland Capital Management Fund Advisors,

i. Highland Capital Management Korea Limited,

j. Highland Capital Management Services, Inc.,

k. Highland Multi Strategy Credit Fund, L.P.

l. Okada Family Trusts,

m. Rand PE Fund I, L.P.,

n. Siepe, LLC,

o. SSP Holdings, LLC,

p. Trussway Holdings, LLC, and

q. Any other Highland Entity.

11. Any and all Documents or Communications sufficient to identify the complete management structure of:

a. Atlas IDF,

b. Beacon Mountain,

c. Crown Global Insurance Company,

d. Dolomiti, LLC,

e. Dugaboy,

f. HCRE Partners, LLC,

g. Highland Capital Management Fund Advisors,

h. Highland Capital Management Services, Inc.,

i. Hunter Mountain Trust,

j. Okada Family Trusts,

k. Rand PE Fund I, L.P.,

l. Siepe, LLC,

m. SSP Holdings, LLC, and

n. Trussway Holdings, LLC.

12. Any and all Documents or Communications sufficient to identify any and all owners or beneficiaries of:

a. Atlas IDF,

b. Beacon Mountain,

c. Crown Global Insurance Company,

d. Dolomiti, LLC,

e. Dugaboy,

f. HCRE Partners, LLC,

g. Highland Capital Management Fund Advisors,

h. Highland Capital Management Korea Limited,

i. Highland Capital Management Services, Inc.,

j. Highland Multi Strategy Credit Fund, L.P.,

k. Hunter Mountain Trust,

l. Okada Family Trusts,

m. Rand PE Fund I, L.P.,

n. Siepe, LLC,

o. SSP Holdings, LLC, and

p. Trussway Holdings, LLC.

13. Any and all Documents or Communications relating to any debt owed to Debtor by Hunter Mountain Trust, including without limitation all Documents or Communications relating to business purpose justifications, the Contribution Agreement referenced in the Hunter Mountain Secured Promissory Note, and any other evidence or valuation of collateral.

14. Any and all Documents or Communications relating to debt, including without limitation any unsecured claims, owed by the Debtor to any current or former executives, officers, or directors of the Debtor, Highland Entity, or Highland Entity affiliate, aside from salary and bonus compensation to be paid in the ordinary course, or to any Highland Entity, or Highland Entity affiliate, including without limitation any payment schedules, business purpose justifications, and related correspondence.

15. Any and all Documents or Communications relating to any redemption notices proposed and issued to the Debtor since the Chapter 11 Petition Date and not yet produced by the Debtor.

16. Any and all disbursements and transactions effectuated by the Debtor since the Chapter 11 Petition Date and not yet produced by the Debtor.

17. A current and updated Loans Receivable Chart.

18. A current and updated Due from Affiliates Chart.

19. Any and all documents, including but not limited to emails, containing the following search terms, as well as those terms to which the Committee and Debtor previously agreed (*see* Nov. 29, 2019 Email from P. Foley to J. Morris (addressing email search parameters)):

"Atlas IDF"
"Beacon Mountain"

"Crown Global"
Crown
Dolomiti
Dugaboy
"Highland Capital Management Fund Advisors"
"HCMFA"
"HCM Fund Advisors"
"HCRE"
"Highland Capital Management Korea"
"Highland Capital Management Services"
"HCM Services"
"Hunter Mountain"
"NexPoint"
Nex w/5 Point
"Okada Family Trust*"
Promissory w/5 note*
Rand
Honis
"SSP Holdings"
"Siepe"
"Trussway"

Dated: February 3, 2020

/s/ Penny P. Reid

Penny P. Reid
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EXHIBIT 31

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
THIRD REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Rule 7034 of the Federal Rules of Bankruptcy Procedure, and the Amended Term Sheet, the Official Committee of Unsecured Creditors in the above captioned bankruptcy case (the "Committee") hereby serves the following requests for production of documents to Highland Capital Management, L.P. ("Request(s)"). These requests are made pursuant to the Amended Term Sheet to which the Committee and Highland Capital Management, L.P., have agreed (Dkts. 354, 354-1) ("Term Sheet").

DEFINITIONS

1. "Communication(s)" means any written or oral communication of any kind or character, including, by way of example and without limitation, e-mails, instant messages, text messages, voicemail or voice messages, audio recordings, personal conversations, telephone conversations, letters, meetings, memoranda, whether such communication was sent, received, or created, in final or in draft, and all Documents concerning or memorializing such written or oral communications.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

2. "Concerning" means consisting of, reflecting, referring to, regarding, related to, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection with (whether to support or rebut) the subject matter designated in any of these Requests. A request for documents "concerning" a specified subject matter always shall include communications, notes, and memoranda (whenever prepared) relating to the subject matter of the request.

3. "Debtor," "You," and "Your" means Highland Capital Management, L.P.

4. "Document(s)" means, without limitation, the original and all copies, prior drafts, and translation of information in any written, typed, printed, recorded or graphic form, however produced or reproduced, of any type or description, regardless of origin or location, including without limitation all Electronically Stored Information, Communications, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes, lists, calendar and diary entries, letters (sent or received), contracts, statements, bills, checks, vouchers, video tapes, photographs, tape recordings, other mechanical records, transcripts or logs of any such recordings, and all other data compilations from which information can be obtained. The term "Document(s)" is intended to be at least as broad in meaning and scope as the usage of the term in or pursuant to the Federal Rules of Civil Procedure.

5. "Document Production Protocol" means the protocols agreed to and described in Exhibit C of Final Term Sheet, Docket 354-1.

6. "Relating to" means consisting of, reflecting, referring to, regarding, concerning, involving, evidencing, constituting, or having any legal, logical, evidential, or factual contention with (whether to support or to rebut) the subject matter designated in any of these Requests. A request for documents "relating to" a specified subject matter always shall include

communications, notes and memoranda (whenever prepared) relating to the subject matter of the request.

INSTRUCTIONS

1. The Committee requests production of the following documents and information pursuant to the Term Sheet and Document Production Protocol contained therein as Exhibit C.

2. The Committee requests production of the following documents and information on an immediate and rolling basis. Pursuant to the Term Sheet, Debtor shall search for emails at the earliest opportunity and in no event no later than seven days after the date of these Requests.

3. Unless otherwise indicated, all documents shall be produced for the relevant time period, which shall be the five years before the Petition Date, including any documents having an earlier origin, if in use during the relevant time period.

4. The obligation to produce documents responsive to these Requests shall be continuing in nature, and a producing party is required promptly to product any documents requested herein that it locates or obtains after responding to these Requests, up to the conclusion of the above-captioned Chapter 11 Case.

5. Pursuant to the Term Sheet's Document Production Protocol, the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control to the extent they are responsive to these requests.

DOCUMENTS REQUESTED

1. Any and all Communications relating to or concerning a list of trading activity, and containing the phrase "Previous Day Trades," or a variant of such phrase, within the subject line of the email.

2. Any and all Communications relating to or concerning a list of movements of assets within a particular fund and their values, including, without limitation, email communications that

contain the term "Highwire," or a variant of such term, within the subject line of the email. For the avoidance of doubt, an email containing the subject line "Crusader Highwire," for example, would be responsive to this request.

Dated: February 24, 2020

/s/ Penny P. Reid

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EXHIBIT 32

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
FOURTH REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Rule 7034 of the Federal Rules of Bankruptcy Procedure, and the Amended Term Sheet, the Official Committee of Unsecured Creditors in the above captioned bankruptcy case (the "Committee") hereby serves the following requests for production of documents to Highland Capital Management, L.P. ("Request(s)"). The Requests are made pursuant to the Amended Term Sheet to which the Committee and Highland Capital Management, L.P., have agreed (Dkts. 354, 354-1) (the "Final Term Sheet") and which the Court has entered through an Order (Dkt. 339). Moreover, because this is the fourth formal request for production, preceded by three prior formal requests as well as informal discussion among the parties that have not been fulfilled, and the Court has requested that the Committee file certain adversary proceedings within 90 days of its order dated January 9, 2020, any Documents or Communications responsive to these Requests should be included in the production subject to the *Unsecured Creditors' Motion to Compel Production of the Debtor*, filed on July 8, 2020.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEFINITIONS

1. "Atlas IDF GP" means Atlas IDF GP, LLC, and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

2. "Atlas IDF, LP" means Atlas IDF, LP and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

3. "Beacon Mountain" means Beacon Mountain, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

4. "Charitable DAF Fund" means Charitable DAF Fund, LP, any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

5. "Charitable DAF GP" means Charitable DAF GP, LLC, any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents,

advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

6. "Charitable DAF HoldCo" means Charitable DAF HoldCo, Ltd., any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

7. "Class A Limited Partners" means the limited partners of the Debtor, as identified in Exhibit A of the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (Bates numbers Highland/PEO-003550 – Highland/PEO-003585).

8. "Class B Limited Partnership Interests" means the partnership interests held by Class B Limited Partners, as identified in Exhibit A of the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (Bates numbers Highland/PEO-003550 – Highland/PEO-003585).

9. "CLO HoldCo" means CLO HoldCo, Ltd. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

10. "CLO HoldCo Transaction" means a series of transactions executed on December 28, 2016, in which the following transfers occurred, upon information and belief:

a. The transfer of approximately a 97.6835% interest in a $24 million promissory note with Dugaboy (the "Dugaboy Note") from Get Good to the Debtor, and the transfer of the Transferred Interests (defined below) from the Debtor to Get Good, pursuant

to the Purchase and Sale Agreement (Bates numbers Highland/PEO-032722 – Highland/PEO-032737 (the "Purchase and Sale Agreement")) amended by the Amendment to Purchase and Sale Agreement (Bates numbers Highland/PEO-032712 – Highland/PEO-032721 (the "Amended Purchase and Sale Agreement")), or any other Document, Communication, or agreement (the "Debtor/Get Good Transfer");

b. The transfer of the Transferred Interests from Get Good to Highland Dallas Foundation, pursuant to the Exercise of Discretion by Trustee with Respect to Distribution to Charitable Beneficiary (Bates numbers Highland/PEO-032707 – Highland/PEO-032711 (the "Exercise of Discretion")) and the Donative Assignment of Interests (Bates numbers Highland/PEO-032698 – Highland/PEO-032702 (the "Donative Assignment of Interests")), or any other Document, Communication, or agreement (the "Get Good/Highland Dallas Foundation Transfer");

c. The transfer of the Transferred Interests from Highland Dallas Foundation to Charitable DAF HoldCo, pursuant to the Unanimous Written Consent of Directors in Lieu of Meeting (Bates numbers Highland/PEO-032603 – Highland/PEO-032608 (the "Unanimous Consent")), or any other Document, Communication, or agreement (the "Highland Dallas Foundation/Charitable DAF Transfer"); and

d. The transfer of the Transferred Interests from Charitable DAF HoldCo to Charitable DAF Fund, and then to CLO HoldCo, pursuant to the Omnibus Assignment Agreement (Bates numbers Highland/PEO-032686 – Highland/PEO-032692 (the "Omnibus Assignment Agreement")) and by written resolutions executed by

Charitable DAF HoldCo, Charitable DAF GP, and CLO HoldCo (Bates numbers respectively Highland/PEO-032822 – Highland/PEO-032827, Highland/PEO-032810 – Highland/PEO-032815, and Highland/PEO-032816 – Highland/PEO-032821 (collectively, the "Written Resolutions")), or any other Document, Communication, or agreement (the "Charitable DAF/CLO HoldCo Transfer").

11. "Communication(s)" means any written or oral communication of any kind or character, including, by way of example and without limitation, e-mails, instant messages, text messages, voicemail or voice messages, audio recordings, personal conversations, telephone conversations, letters, meetings, memoranda, telegraphic and telex communications or transmittals of Documents, whether such communication was sent, received, or created, in final or in draft, and all Documents concerning or memorializing such written or oral communications.

12. "Concerning" means consisting of, reflecting, referring to, regarding, related to, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection with (whether to support or rebut) the subject matter designated in any of these Requests. A request for documents "concerning" a specified subject matter always shall include communications, notes, and memoranda (whenever prepared) relating to the subject matter of the request.

13. "Contribution Agreement" means the Contribution Agreement between the Debtor and Hunter Mountain Investment Trust, dated as of December 21, 2015.

14. "Crown Global" means Crown Global Insurance Company and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

15. "Debtor," "You," and "Your" means the Highland Capital Management, L.P., the Debtor in the above-captioned case, and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

16. "Document(s)" means, without limitation, the original and all copies, prior drafts, and translation of information in any written, typed, printed, recorded or graphic form, however produced or reproduced, of any type or description, regardless of origin or location, including without limitation, all Electronically Stored Information, Communications, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes, lists, calendar and diary entries, letters (sent or received), contracts, statements, bills, checks, vouchers, video tapes, photographs, tape recordings, other mechanical records, transcripts or logs of any such recordings, and all other data compilations from which information can be obtained. The term "Document(s)" is intended to be at least as broad in meaning and scope as the usage of the term in or pursuant to the Federal Rules of Civil Procedure.

17. "Dondero" means James Dondero and all entities under his control, including without limitation, Dugaboy, Get Good, and the Get Better Trust.

18. "Dugaboy" means Dugaboy Investment Trust, any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, trustees, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, beneficiaries, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

19. "Dynamic Income CLO HoldCo Side Letter" means the letter agreement dated January 10, 2017 (Bates numbers Highland/PEO-032703 – Highland/PEO-032705).

20. "Dynamic Income Fund" means Highland Dynamic Income Fund, L.P., any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

21. "Eames Ltd." means Eames Ltd., any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

22. "Empower Dallas Foundation" means Empower Dallas Foundation, created in February 2015 as a tier one supporting organization to the Dallas Foundation.

23. "Get Better Trust" means The Get Better Trust, any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, trustees, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, beneficiaries and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

24. "Get Good" means The Get Good Nonexempt Trust, any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, trustees, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, beneficiaries, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

25. "Guaranty Agreements" means the various guaranty agreements executed by Rand PE Fund I, L.P. as part of the Hunter Mountain Transaction, including without limitation, the guaranty agreement between Hunter Mountain Trust, the Debtor, and Rand PE Fund I, L.P. dated December 21, 2015; the guaranty agreement between Hunter Mountain Trust, The Mark and Pamela Okada Family Trust – Exempt Trust #1, and Rand PE Fund I, L.P. dated December 24, 2015; the guaranty agreement between Hunter Mountain Trust, The Mark and Pamela Okada Family Trust – Exempt Trust #2, and Rand PE Fund I, L.P. dated December 24, 2015; the guaranty agreement between Hunter Mountain Trust, Mark K. Okada, and Rand PE Fund I, L.P. dated December 24, 2015; and the guaranty agreement between Hunter Mountain Trust, The Dugaboy Investment Trust, and Rand PE Fund I, L.P. dated December 24, 2015.

26. "Highland Capital Loan Fund" means Highland Capital Loan Fund, L.P., any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

27. "Highland Capital Loan Fund GP" means Highland Capital Loan Fund GP, LLC, any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

28. "Highland Dallas Foundation" means Highland Dallas Foundation, Inc., any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees, representatives, agents,

advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

29. "Highland Entity" and "Highland Entities" means the Debtor and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

30. "Highland Kansas City Foundation" means the Highland Kansas City Foundation, Inc. listed as a "Supporting Organization" in the DAF/CLO HoldCo Structure Chart (Bates number Highland/PEO-002398).

31. "Highland Loan Fund" means Highland Loan Fund, Ltd., a party signatory to Dynamic Income CLO HoldCo Side Letter, of which Trey Parker was a director in January 2017 and signed on behalf of the Highland Loan Fund in the Dynamic Income CLO HoldCo Side Letter.

32. "Highland Loan Master Fund" means Highland Loan Master Fund, L.P., any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, owners, partners, principals, shareholders, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

33. "Highland Santa Barbara Foundation" means Highland Santa Barbara, Inc. listed as a "Supporting Organization" in the DAF/CLO HoldCo Structure Chart (Bates number Highland/PEO-002398).

34. "Honis" means John Honis, who as of December 2015 was the sole member of Atlas IDF GP, LLC, and the sole member of Rand PE Fund Management, LLC, among other entities with which he is involved.

35. "Hunter Mountain Trust" means Hunter Mountain Investment Trust and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, trustees, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, beneficiaries, and all other persons and entities acting or purporting to act on behalf of any of the foregoing, including Crown Global Insurance.

36. "Hunter Mountain Transaction" means the transactions between Debtor and Hunter Mountain Trust on December 21, 2015, whereby Hunter Mountain Trust entered into a Contribution Agreement with Debtor to receive 55% of the limited partnership interest in Debtor, and on December 24, 2015, whereby Hunter Mountain Trust received an additional 44.5% limited partnership interest in the Debtor by cash purchase and notes payable to the Limited Partners.

37. "Identify" means to state, to the extent known (or, if not know, to so state,) the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

38. "Jalonick" means Mary Jalonick, who as of December 2016 was a director of Highland Dallas Foundation, among other entities with which she is and/or was involved.

39. "Limited Partner" or "Limited Partners" means the limited partners in the Debtor prior to the Hunter Mountain Transaction, including Mark Okada, The Mark and Pamela Okada Family Trust - Exempt Trust #1 ("Okada Family Trust #1"), The Mark and Pamela Okada Family Trust – Exempt Trust # 2 ("Okada Family Trust #2"), and Dugaboy.

40. "Multi Strat" means Highland Multi Strategy Credit Fund, L.P., any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

41. "Okada" means Mark Okada and any entities under his control, including without limitation, Okada Family Trust #1 and Okada Family Trust #2.

42. "Okada Family Foundation" means the Okada Family Foundation, Inc., created in February 2015 as a tier one supporting organization to the Dallas Foundation.

43. "Petition Date" means October 16, 2019.

44. "Rand Advisors" means Rand Advisors, LLC, of which John Honis is the investment manager, and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

45. "Rand PE Fund I, L.P." means Rand PE Fund, I, L.P. and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all partners, officers, directors, shareholders, members, employees, representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

46. "Rand PE Fund Management, LLC" means Rand PE Fund Management, LLC and any direct or indirect predecessors or successors in interest, parents, subsidiaries or affiliates of any of them, and any and all officers, directors, shareholders, members, employees,

representatives, agents, advisors, attorneys, and all other persons and entities acting or purporting to act on behalf of any of the foregoing.

47. "Relating to" means consisting of, reflecting, referring to, regarding, concerning, involving, evidencing, constituting, or having any legal, logical, evidential, or factual contention with (whether to support or to rebut) the subject matter designated in any of these Requests. A request for documents "relating to" a specified subject matter always shall include communications, notes and memoranda (whenever prepared) relating to the subject matter of the request.

48. "Scott" means Grant James Scott, who as of December 2016 was the trustee of Get Good, a director of CLO HoldCo, the managing member of Charitable DAF GP, and a director of Charitable DAF HoldCo, among other entities with which he is and/or was involved.

49. "Transferred Interests" means the $2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund (the "Series A Interests"), any ownership and/or participation interest in the call options of American Airlines Group, Inc. (the "American Airlines Call Options"), the participation interests in certain shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd. and tracking interests in certain participating shares of Highland Crusader Fund L.P. (the "Participation and Tracking Interests"), as defined in the Purchase and Sale Agreement and Amended Purchase and Sale Agreement, transferred on December 28, 2016 from the Debtor to Get Good, to Highland Dallas Foundation, to Charitable DAF HoldCo, to Charitable DAF Fund, and to CLO HoldCo.

INSTRUCTIONS

1. The Committee requests production of the following documents and information pursuant to the Final Term Sheet and Document Production Protocol contained therein as Exhibit C.

2. The Committee requests production of the following documents and information on an immediate and rolling basis. Pursuant to the Final Term Sheet, the Debtor shall search for ESI at the earliest opportunity and, in no event, later than seven days after the date of these Requests.

3. Unless otherwise indicated, all documents shall be produced for the relevant time period, which shall be the five years before the Petition Date, including any documents having an earlier origin, if in use during the relevant time period.

4. The obligation to produce documents responsive to these Requests shall be continuing in nature, and a producing party is required promptly to produce any documents requested herein that it locates or obtains after responding to these Requests, up to the conclusion of the above-captioned Chapter 11 Cases.

5. Pursuant to the Final Term Sheet's Document Production Protocol, the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control to the extent they are responsive to these requests.

6. You are requested to produce not only those documents in Your physical possession, but also those documents within Your custody and control, including, without limitation, documents in the possession of Your agents, partners, shareholders, members, employees, affiliates, advisors, or consultants and any other person or entity acting on Your behalf.

7. If You have no documents responsive to a particular Request, or if for some other reason You are unable to produce responsive documents, Your response to that Request should specifically so state. Accordingly, You should respond to each and every Request herein. If You have certain documents that are responsive to a Request, but believe that additional documents not

now available to You would also be responsive, You should provide the documents You now have and specifically state when the remainder of the documents will be provided.

8. Where an objection is made to any document request, the objection shall state with specificity all grounds for objection.

9. In the event that a requested document has been lost, destroyed, discarded and/or otherwise disposed of; You will identify the document by identifying: (i) its author or preparer; (ii) all persons to whom distributed or shown; (iii) date; (iv) subject matter; (v) attachments or appendices; (vi) date, manner, and reason for destruction or other disposition; (vii) person authorizing destruction or other disposition; (viii) the document request or requests to which the document is responsive.

DOCUMENTS REQUESTED

1. Any and all Documents or Communications, including without limitation, accounting-level information in Oracle, bank statements, accounting statements, journals, or ledgers documenting transactions, relating to cash transfers into, out of, or on behalf of the Debtor from 2014 to present. For the avoidance of doubt, this Request includes any Chart of Accounts, Receivables and Payables sub-ledgers, Cash Receipts and Disbursements sub-ledgers, Data Dictionary, and Filed Value Lookup Tables providing definitions for coded field values.

2. Any and all spreadsheets or other Documents used and listed in the source field of the general ledger printout previously produced by Debtor.

3. Any and all Vendor Master Files or control files that contain basic information about vendors including address, date added, contact information, and other similar data.

4. Any and all Documents or Communications, including without limitation, accounting-level information in Oracle, bank statements, accounting statements, journals, or ledgers documenting transactions relating to cash transfers into, out of, or on behalf of Hunter

Mountain Trust, Beacon Mountain, Rand PE Fund I, L.P., Rand PE Fund Management, LLC, Atlas IDF, LP, and Atlas IDF GP, LLC. For the avoidance of doubt, this Request includes any Chart of Accounts, Receivables and Payables sub-ledgers, Cash Receipts and Disbursements sub-ledgers, Data Dictionary, and Filed Value Lookup Tables providing definitions for coded field values.

5. Any and all Documents or Communications relating to the Hunter Mountain Transaction, including without limitation, the following:

a. any and all Documents or Communications relating to the creation of Hunter Mountain Trust,

b. any basis or purposes for the Hunter Mountain Transaction,

c. the valuation of the Debtor's limited partnership interests at the time of the Hunter Mountain Transaction, and

d. the source of funds used by Hunter Mountain Trust to purchase the Debtor's limited partnership interests as part of the Hunter Mountain Transaction.

6. Any and all Documents or Communications relating to the ownership and management structure of Hunter Mountain Trust, including without limitation, governance documents for Hunter Mountain Trust, Beacon Mountain, Rand PE Fund I, L.P., Rand PE Fund Management, LLC, Atlas IDF, LP, Atlas IDF GP, LLC, and Crown Global.

7. Any and all Documents or Communications relating to the negotiations of the terms of the Hunter Mountain Transaction, including without limitation, the negotiations of the terms of the Contribution Agreement between Hunter Mountain Trust and the Debtor, and the notes payable executed by Hunter Mountain to the Debtor and to the Limited Partners as part of the Hunter Mountain Transaction.

8. Any and all Documents or Communications relating to the determination of and any basis or purposes for the principal amounts, interest rates, and payment schedules of the notes payable from Hunter Mountain Trust to the Debtor and to the Limited Partners as part of the Hunter Mountain Transaction.

9. Any and all Documents or Communications relating to the determination and calculation of any distributions (regardless of currency or categorization) from the Debtor to Hunter Mountain Trust, including without limitation, distributions of equity or for tax purposes.

10. Any and all Documents or Communications relating to any subsequent transfer of the limited partnership interest in the Debtor that Hunter Mountain Trust received as part of the Hunter Mountain Transaction, including without limitation, the negotiations relating to the terms of any said transfers, the value received by Hunter Mountain Trust as part of any said transfer, and any basis or purposes of any said transfer.

11. Any and all Documents or Communications relating to financial statements, accounting, budgets or audits of the Debtor from 2014 to present, including without limitation,

a. any and all audited and unaudited financial statements of the Debtor (including any consolidating financial statements at year-end);

b. any representation letters provided to independent auditors;

c. any engagement letters with outside accounting firms (including for audit services);

d. any lawyers' letters provided to auditors in connection with their audits;

e. any workpapers or packages prepared for audits/auditors;

f. any projections, forecasts, budgets prepared during this period; and

g. any valuations of the Debtor or any of the Debtor's assets, including investments, for the year ended December 31, 2014 through present.

12. Any and all management reports from 2014 to present of the Debtor, including without limitation,

a. any asset management reports;

b. any cash reports;

c. any financing reports;

d. any strategic planning reports; and

e. any variance reports.

13. Any and all Documents or Communications relating to the Guaranty Agreements.

14. Any and all Documents or Communications relating to any participation agreements, subscription agreements, and/or governance documents (e.g., bylaws, articles of incorporation, or any other governance documents), between Crown Global and Atlas IDF, LP, including without limitation, the participation and subscription agreements, insurance policies, private placement memoranda, any basis or purposes for the agreements, and negotiations relating to the terms of the agreements.

15. Any and all Documents or Communications relating to any subscription agreements, governance documents (e.g., bylaws, articles of incorporation, or any other governance documents), and/or partnership agreements between Atlas IDF, LP and Rand PE Fund I, LP, including without limitation, the subscription and partnership agreements, any basis or purposes for the agreements, and negotiations relating to the terms of the agreements.

16. Any and all Documents or Communications relating to any subscription agreements, governance documents (e.g., bylaws, articles of incorporation, or any other governance documents), and/or partnership agreements between Rand PE Fund I, LP, and Beacon

Mountain, LLC, including without limitation, the subscription and partnership agreements, any basis or purposes for the agreements, and negotiations relating to the terms of the agreements.

17. Any and all Documents or Communications relating to any subscription agreements, governance documents (e.g., bylaws, articles of incorporation, or any other governance documents), and/or partnership agreements relating to Atlas IDF GP, LLC and Rand PE Fund Management, LLC including without limitation, the subscription and partnership agreements, any basis or purposes for the agreements, and negotiations relating to the terms of the agreements.

18. Any and all Documents or Communications between Rand Advisors and the Debtor in the Debtor's role as the documented administrator of Rand PE Fund I, L.P.

19. Any and all Documents or Communications relating to valuation of collateral concerning any debt owed to the Debtor by Hunter Mountain Trust.

20. Any and all Documents or Communications relating to payments, distributions, investments, transfers, or the remittance of anything of value from the Debtor to Hunter Mountain Trust, any Limited Partner, Beacon Mountain, Rand PE Fund I, L.P., Rand PE Fund Management, LLC, Atlas IDF, LP, Atlas IDF GP, LLC, Crown Global, Honis, Empower Dallas Foundation, or Okada Family Foundation from 2014 to present, including without limitation, the amount of the payments, distributions, or value, the date of the transfers, and any basis or purposes for the transfers.

21. Any and all Documents or Communications relating to payments, distributions, investments, transfers, or the remittance of anything of value to the Debtor from Hunter Mountain Trust, any Limited Partner, Beacon Mountain, Rand PE Fund I, L.P., Rand PE Fund Management,

LLC, Atlas IDF, LP, Atlas IDF GP, LLC, Crown Global, Honis, Empower Dallas Foundation, or Okada Family Foundation from 2014 to present.

22. Any and all Documents or Communications relating to any position held by or compensation received by Honis in any transactions involving the Debtor, Hunter Mountain Trust, Beacon Mountain, Rand PE Fund I, L.P., Rand PE Fund Management, LLC, Atlas IDF, LP, Atlas IDF GP, LLC, Crown Global, Empower Dallas Foundation, or Okada Family Foundation, including without limitation, Honis's role as the sole member of the Atlas IDF GP, LLC, as sole member of Rand PE Fund Management, LLC, and as administrator of Hunter Mountain Trust.

23. Any and all Documents or Communications relating to the creation, governance, and funding of Empower Dallas Foundation and Okada Family Foundation, including without limitation, bylaws, articles of incorporation, financial statements, investment management agreements, tax returns and related tax work papers, and any agreements with Crown Global Insurance.

24. Any and all Documents or Communications relating to any tax treatment, any tax benefits and/or any tax planning process of the Debtor, Dondero, or Okada in connection with the Hunter Mountain Transaction.

25. Any and all Documents or Communications, including without limitation, internal and external email and memorandum and work papers, addressing the amount of tax distributions made by the Debtor to any of the Limited Partners for tax years 2015 to present.

26. Any and all Documents or Communications relating to any changes in year-to-date tax distributions for the Debtor's 2015 tax year for the benefit of the Debtor's Class A Limited Partners.

27. Any and all Documents or Communications, including without limitation, internal and external email and memorandum, addressing whether the Debtor experienced a technical termination of the partnership in 2015 under then applicable federal tax law as a result of the Hunter Mountain Transaction.

28. Any and all Documents or Communications relating to the issuance of Class B Limited Partnership Interests.

29. Any and all Documents or Communications relating to tax planning for the Debtor from 2011 to present, including without limitation,

a. any tax planning memos;

b. any engagements with third parties;

c. any work papers;

d. any tax returns; and

e. any engagement letters with outside firms relating to tax services.

30. Any and all Documents or Communications relating to the CLO HoldCo Transaction, including without limitation, any negotiations of the terms of the CLO HoldCo Transaction, any Communications between or among the Debtor, Get Good, Highland Dallas Foundation, Charitable DAF HoldCo, Charitable DAF Fund, CLO HoldCo, Dondero, Okada, Scott, and Jalonick, and any basis or purposes for the CLO HoldCo Transaction, including without limitation, any Documents or Communications explaining why there were separate transfers, the rationale for each transfer, and any tax considerations for the various transfers.

31. Any and all Documents or Communications relating to the Debtor/Get Good Transfer, including without limitation, any Documents or Communications relating to the negotiation of the terms of the transfer, valuation of the Series A Interests, valuation of the

American Airlines Call Options, valuation of the Participation and Tracking Interests, and any basis or purpose for the transfer.

32. Any and all Documents or Communications relating to the Purchase and Sale Agreement between the Debtor and Get Good, including without limitation, certain documents discussed therein the Purchase and Sale Agreement such as the Joint Plan of Distribution of the Crusader Funds, the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, and any Documents or Communications relating to Eames Ltd.'s ownership of the Participation and Tracking Interests, as referenced and defined in the Purchase and Sale Agreement.

33. Any and all Documents or Communications relating to the Dugaboy Note, including without limitation, the original Dugaboy Note, dated June 29, 2001, any amendments to the Dugaboy Note, any negotiation of the Dugaboy Note terms, original business purpose and value received for the original Dugaboy Note, any basis for paydowns on the Dugaboy Note any basis or purposes for the transfer of the Dugaboy Note from Get Good to the Debtor, any Documents or Communications explaining the basis or purposes of transferring only a portion (approximately 97.6835%) of the Dugaboy Note to the Debtor, any underwriting or investigation of the Dugaboy Note performed by the Debtor or Get Good, and any Documents or Communications evidencing Dugaboy's ability to pay the Dugaboy Note.

34. Any and all Documents or Communications relating to the creation or ownership and management structure of Highland Capital Loan Fund, including without limitation, the Limited Partnership Agreement of Highland Capital Loan Fund, as referenced in the Purchase and Sale Agreement, any amended Limited Partnership Agreement of Highland Capital Loan Fund,

any revised Limited Partnership Agreement executed after Highland Capital Loan Fund changed its name to Dynamic Income Fund, and any other governance documents.

35. Any and all Documents or Communications relating to the creation or ownership and management structure of Get Good, including without limitation, The Get Good Nonexempt Trust Agreement, dated June 29, 2001, as referenced in the Exercise of Discretion, and any other governance documents.

36. Any and all Documents or Communications relating to the Get Good/Highland Dallas Foundation Transfer, including without limitation, any and all Documents or Communications relating to the Exercise of Discretion, the Donative Assignment of Interests, negotiations of the terms of the transfer, any basis or purposes for the transfer, any claims of a charitable deduction for tax purposes or otherwise, and the Amended Purchase and Sale Agreement.

37. Any and all Documents or Communications relating to the Highland Dallas Foundation/Charitable DAF Transfer, including without limitation, any and all Documents or Communications relating to the Unanimous Consent, any negotiations of the terms of the transfer, and any basis or purpose for the transfer.

38. Any and all Documents or Communications relating to the Charitable DAF/CLO HoldCo Transfer, including without limitation, any and all Documents or Communications relating to the Omnibus Assignment Agreement, the Written Resolutions, any basis or purposes for the transfer, and any negotiations of the terms of the transfers, including without limitation, the decision to bind the parties by the terms of the Multi Strat Governing Documents, as defined and referenced in the Omnibus Assignment Agreement.

39. Any and all Documents or Communications relating to the Dynamic Income CLO HoldCo Side Letter, including without limitation, any negotiations of the terms of the letter, any basis or purposes for the letter, and Highland Capital Loan Fund's Confidential Private Placement Memorandum, as defined and referenced in the Dynamic Income CLO HoldCo Side Letter.

40. Any and all Documents or Communications relating to the approximately $42.3 million received by Highland Dallas Foundation in 2016 and/or the approximately $5.1 million received by Highland Dallas Foundation in 2018.

41. Any and all Documents or Communications relating to the creation, ownership, management structure, or governing documents of Dugaboy; Highland Dallas Foundation; Charitable DAF HoldCo; Charitable DAF Fund; CLO HoldCo; Dynamic Income Fund; Highland Loan Fund, Ltd.; Highland Capital Loan Fund GP; Highland Loan Master Fund; Eames, Ltd.; and Multi Strat.

42. Any and all Documents or Communications relating to any transfers between or among the Debtor, Get Good, Highland Dallas Foundation, Charitable DAF HoldCo, Charitable DAF Fund, and CLO HoldCo since the inception of Charitable DAF GP, Charitable DAF HoldCo, Charitable DAF Fund, and CLO HoldCo, including without limitation, any agreements or related documents pertaining to the separately managed account that HCMLP managed on behalf of the Charitable DAF Fund LP.

43. Any and all Documents or Communications relating to any investments or ownership interests that CLO HoldCo has made in any funds or business entities relating to the Debtor, Dondero, or any related parties, including without limitation, a complete list of transactions, financial statements, communications to control persons, supporting foundations or any other relevant stakeholder, books and records (including general ledger details).

44. Any and all Documents or Communications relating to financial reporting and financial statements for Get Good, Dugaboy, and the Get Better Trust.

45. Any and all Documents or Communications relating to investment management agreements between the Highland Dallas Foundation, the Highland Kansas City Foundation, and/or the Highland Santa Barbara Foundation, and the Charitable DAF Fund, Charitable DAF GP, and/or Charitable DAF HoldCo.

50. Any and all Documents or Communications relating to the creation, ownership, management structure, or governing documents of all entities connected to the DAF/CLO Holdco Structure (Bates number Highland/PEO-002398).

51. Any and all Documents or Communications relating to payments, distributions, investments, transfers, or the remittance of anything of value to, from or between the Debtor, Hunter Mountain Trust, any Limited Partner, Beacon Mountain, Rand PE Fund I, L.P., Rand PE Fund Management, LLC, Atlas IDF, LP, Atlas IDF GP, LLC, Crown Global, Honis, Empower Dallas Foundation, Okada Family Foundation, and any of the entities connected to the DAF/CLO Holdco Structure (Bates number Highland/PEO-002398) since the inception of Charitable DAF GP, Charitable DAF HoldCo, Charitable DAF Fund, and CLO HoldCo.

Dated: July 8, 2020

Respectfully submitted,

/s/ Mustafa Abdul-Jabbar

EXHIBIT 33

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Counsel for the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-34054-sgj11
Debtor.	)	

OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
EMERGENCY MOTION TO COMPEL PRODUCTION BY THE DEBTOR

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1. Pursuant to Rule 37 of the Federal Rules of Civil Procedure, made applicable by Rules 7037 and 9014 of the Federal Rules of Bankruptcy Procedure, and 11 U.S.C. § 105(a), the Official Committee of Unsecured Creditors (the "Committee") in the above-captioned bankruptcy case moves to compel production of certain electronic information by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor").

2. Pursuant to the Final Term Sheet,[2] attached as Exhibit A to the *Notice of Final Term Sheet* [Dkt. No. 354-1], outlining the principal terms of a proposed settlement between the Debtor and the Committee, the Committee has sought discovery related to defined Estate Claims and other potential claims against third parties for the benefit of the Debtor's estate. For approximately eight months, the Committee has attempted to work cooperatively with Debtor to obtain documents and communications needed to investigate those claims, with the understanding that a turbulent market and pandemic have presented unique challenges. Despite the Committee's efforts, the Debtor has not yet provided the Committee with the electronically stored information ("ESI") it has requested.

3. Debtor's failure to produce email communications or other ESI has significantly hindered the Committee's ability properly to investigate the Estate Claims that it has explicit standing to investigate and pursue on behalf of the Debtor. In consideration of repeated failed negotiations, time constraints,[3] and a depletion of the Debtor's estate resources that is bound to continue without court intervention, the Committee moves to compel production of the Debtor's

[2] Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Final Term Sheet.

[3] On June 30, 2020, this Court held a hearing related to CLO Holdco Ltd.'s ("CLO Holdco") motion to release certain funds held in the court registry. The Court held that the Committee must submit any complaint against CLO Holdco within 90 days of that ruling. Without access to the Debtor's documents, the Committee cannot properly investigate and bring any claims against CLO Holdco.

documents and communications of nine custodians pursuant to the protocol proposed by the Committee to the Debtor on June 25, 2020 (the "Proposed Protocol").[4]

ADDITIONAL BACKGROUND

4. On January 14, 2020, the Debtor and the Committee entered into the Final Term Sheet, which explicitly granted the Committee standing to pursue the Estate Claims, defined as "any and all estate claims and causes of actions against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities,[5] including promissory notes held by any of the foregoing." (Dkt. 354-1, at 4.) The parties also agreed that the Committee would receive any privileged documents or communications that relate to the Estate Claims so that the Committee could bring those claims. In short, the Committee stands in Debtors' shoes with respect to the Estate Claims.

5. The Final Term Sheet deferred any disputes relating to documents' relevance or with regard to any attorney–client protection unrelated to the Estate Claims. (*See* Dkt. 354-1, at 48 ("Nothing in the Protocol shall require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity.").)

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[4] The Proposed Protocol is fully defined *infra*, at Paragraph 10.

[5] The Final Term Sheet defines "Related Entities," as, collectively, "(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis . . . has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis . . . ; (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative . . . of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, . . .; and (viii) to the extent not included in [the above], any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing")." (Dkt. 354-1, at 52.) The Related Entities Listing lists thousands of entities related to the Debtor. CLO Holdco in a shareholder and limited partner of various entities on the Related Entities Listing.

6. Shortly after the Final Term Sheet was completed and entered by the Court, the Committee began requesting documents and communications from the Debtor necessary to investigate the Estate Claims.[6] In particular, the Committee has spent a considerable amount of time attempting to obtain any production of emails, chats, texts, or other ESI or communications from the Debtor. In November 2019, the Committee further provided the Debtor with search terms to run across various platforms, and provided an updated search term list on February 3, 2020, in an attempt to jump-start at least some production (the "Search Term Requests"). To date, the Committee has not received any documents responsive to the Search Term Requests.

7. Since November 2019, the Committee has attempted to work cooperatively with the Debtor to obtain communications that are necessary to investigate the Estate Claims. Indeed, on November 10, 2019, February 3, 2020, and February 24, 2020, the Committee served the Debtor with Requests for Production of Documents, including categories of documents related to certain Estate Claims. Unfortunately, despite the considerable time that has gone by and the number of communications the parties have had on the topic, no actual production of emails, chats, or other ESI has occurred. After months of discussion and negotiation, on June 2, 2020, the Debtor provided the Committee with a proposed review protocol for the Search Term Requests contemplating unduly stringent relevance and privilege reviews.

[6] On February 3, 2020, the Committee served the Debtor with the *Official Committee of Unsecured Creditors' Second Request for Production of Documents*, requesting documents related to various promissory notes held by and among the Debtor and Related Entities. On February 24, 2020, the Committee served the Debtor with the *Official Committee of Unsecured Creditors' Third Request for Production of Documents*, requesting certain ESI production related to the Estate Claims. The Committee has only received partial responses to the February 3 request and has not received any responses to the February 24 request, despite representations from the Debtor's counsel that production related to the February 24 requests would begin the week of April 6, 2020.

8. Under the Debtor's protocol, the Debtor would use continuous machine learning only on documents responsive to a list of specified search terms,[7] and then have contract attorneys, previously unfamiliar with the Debtor, this bankruptcy case, or the thousands of Related Entities, review those documents for "relevance." Then, if a document were determined to be relevant, it would be subject to a privilege review.

9. The Committee strongly believes that this type of relevance and privilege review significantly increases the likelihood that documents related to the Estate Claims will not be produced because relevance is not readily apparent from the face of the document, especially in light of the Debtor's deliberately convoluted affiliate structure and the complexity of its transactions. Moreover, it adds unnecessary time and expense to the review process by doubling the review of "relevant documents"—once by the Debtor and then by the Committee—and requires iterative discovery requests as the nature and focuses of the investigation shift with time.

10. Given its concerns about the risks of stonewalling and increased expense, on June 25, 2020, the Committee spoke with Debtor's counsel and also sent the Debtor the following Proposed Protocol to facilitate the Committee's investigation of the Estate Claims and preserve estate resources:

a. all custodial data for nine identified custodians[8] would be provided to the e-discovery vendor for inclusion in its repository workspace;

b. a set of mutually agreeable privilege terms (those likely to identify attorney-client privileged communications or attorney work product) would be run across that workspace, with any

[7] Ordinarily, continuous machine learning is applied to *all* custodial files such that anything the program determines is relevant for review would be queued for review even if it did not include a search term.

[8] These nine custodians are Patrick Boyce, Jim Dondero, Scott Ellington, David Klos, Isaac Leventon, Mark Okada, Trey Parker, Tom Surgent, and Frank Waterhouse. For avoidance of doubt, the Committee is requesting all ESI for the nine custodians, including without limitation, email, chat, text, Bloomberg messaging, or any other ESI attributable to the custodians.

disagreements regarding those terms to be determined by a special master or other third-party neutral;[9]

c. any document not including one of the agreed privilege terms would be produced to the Committee for review, subject to the Agreed Protective Order's provisions on "No Waiver" and "Claw Back of Inadvertently Produced Protected Materials" (Dkt. 382), thus protecting the Debtor from any inadvertent production or subject-matter waiver; and

d. all documents including any such privilege term would then be isolated for review by Debtor's contract attorneys.

(i) Non-privileged documents and privileged documents related to the Estate Claims would be produced to the Committee on a rolling basis.

(ii) Documents that are privileged and unrelated to the Estate Claims would be listed on a privilege log so that the Committee can probe those claims of privilege as needed.[10]

11. The Debtor did not respond to the Committee's proposal. On July 1, 2020, the Committee again requested a response, informing the Debtor it would file this motion to compel to seek the Court's assistance if the parties could not agree on review protocols in a timely fashion. On July 2, 2020, the Debtor informed the Committee that it would respond shortly and requested that the Committee not file a motion to compel until the parties could confer. On July 3, 2020, the Debtor responded with a proposal that would still limit any production of documents to those containing search terms. After discussion that day, the Debtor notified the Committee that it would consider production of all ESI for the agreed custodians and let the Committee know of its decision. On July 7, 2020, having heard nothing with regard to the open issues, the Committee once again let the Debtor know that time was of the essence and that it had no choice but to seek relief from the Court. Late on July 7, 2020, after repeated requests and indications that the

[9] This provision is consistent with the Final Term Sheet. (Dkt. 354-1, at 4).

[10] Pursuant to the Final Term Sheet, any disputes regarding withheld documents will be determined by a special master or other third-party neutral agreed to by the parties. (Dkt. 354-1, at 4).

Committee would seek relief from the Court, Debtor circulated a draft motion purporting to address amicably the issues raised in this Motion. Instead, that draft motion merely retained the so-called "relevance" review that the Committee believes will unnecessarily tax the remaining assets of the estate.

12. Time is running out. The Committee cannot keep waiting for the Debtor to provide it with the data that is required for the Committee to do its work. As a result, the Committee has brought this issue to the Court for resolution. The Committee strongly believes the Proposed Protocol is the most fair, efficient, and cost effective proposal, and allows the Committee the ability properly to investigate and pursue Estate Claims. Accordingly, the Committee respectfully requests that this Court compel the Debtor to produce documents pursuant to the Committee's Proposed Protocol.

ARGUMENT AND AUTHORITIES

13. The Committee respectfully submits that sufficient cause exists for the Court to compel the Debtor to produce documents pursuant to the Proposed Protocol so that the Committee can properly investigate potential Estate Claims. The Debtor previously agreed that the Estate Claims will be prosecuted by the Committee and that the Committee is entitled even to privileged documents related to those Estate Claims. The range of the Committee's investigation is necessarily broad in light of Debtor's structure and operations, as is the scope of potential Estate Claims that may be brought on Debtor's behalf. The Debtor's continued arguments regarding "relevance" are a red herring—the Committee stands in the Debtor's shoes with regard to the Estate Claims and is best able to determine whether a document is relevant to its investigation

given that it has no incentive to obfuscate or hide evidence of possible wrongdoing by current or former employees of the Debtor.[11]

I. The Court Should Compel Discovery Because the Documents Are Relevant to the Estate Claims Investigation.

14. Rule 37, made applicable by Bankruptcy Rule 7037, allows "[a] party seeking discovery [to] move for an order compelling . . . production. . . . [if] a party fails to produce documents . . . as requested under Rule 34." Fed. R. Civ. P. 37(a)(3)(B). "A party resisting discovery is swimming against a strong upstream policy current. The policy underlying the discovery rules encourages *more* rather than less discovery, and discourages obstructionist tactics." *In re Tex. Bumper Exch., Inc.*, 333 B.R. 135, 139–40 (Bankr. W.D. Tex. 2005) (emphasis in original). Rule 7037 ensures that this policy is enforced. *Id.* at 140.

15. Courts have "broad discretion in discovery matters." *Hamilton v. First Am. Title Ins. Co.*, No. 3:07-CV-1442-G, 2010 WL 791421, at *4 (N.D. Tex. Mar. 8, 2010) (quoting *Winfun v. Daimler Chrysler Corp.*, 255 F. App'x 772, 773 (5th Cir. 2007) (per curiam). Rule 26 of the Federal Rules of Civil Procedure, applicable through Bankruptcy Rule 7026, facilitates broad-ranging discovery, allowing discovery of any "nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the" investigation. Fed. R. Civ. P. 26(b)(1). Relevance "is broadly construed, especially in the context of discovery requests, which should be considered relevant if there is *any possibility* that the information sought may be relevant to the claim or defense." *In re Adkins Supply, Inc.*, 555 B.R. 579, 589 (Bankr. N.D. Tex. 2016) (emphasis in original). "Information sought only fails the relevance test if it is clear that it could have no possible bearing on the claim." *Id.* Indeed, "[i]nformation within this scope of discovery need not

[11] This is specifically a matter of concern given that one of the ESI custodians has himself been heavily involved in the discussions regarding the terms of the ESI production.

be admissible in evidence to be discoverable," and the party resisting discovery bears the burden of showing that the discovery sought is irrelevant or non-proportional. *See Orchestrate HR, Inc. v. Trombetta*, 178 F. Supp. 3d 476, 504–06 (N.D. Tex. 2016).

16. The documents sought from the nine custodians proposed under the Proposed Protocol are relevant to the Committee's investigation and potential Estate Claims. This investigation encompasses, among other claims and causes of action, potential fraudulent transfers, preferential transfers, breaches of fiduciary duties, usurpation of corporate opportunities, misappropriation of assets, and abuses of the corporate form by and among insiders—which include certain of the proposed custodians—and Related Entities. Their documents are therefore relevant to the subject matter of the Estate Claims. Fed. R. Civ. P. 26(b)(1).

17. Moreover, the Committee is not seeking privileged documents to which it is not already entitled under the Final Term Sheet. The Final Term Sheet explicitly grants the Committee access to privileged documents and communications in the Debtor's possession, custody, or control specifically related to the investigation and pursuit of the Estate Claims. (Dkt. 354-1, at 4.) The Committee's Proposed Protocol allows the Debtor to withhold documents responsive to agreed-upon privilege terms and review those presumptively privileged documents before turning them over to the Committee. The Proposed Protocol requires the Debtor produce only those documents that are non-privileged, or privileged and related to the Estate Claims, and provides that a third-party neutral will resolve any privilege disputes as originally agreed upon under the Final Term Sheet. There is therefore no issue regarding privilege waiver.[12]

[12] The Proposed Protocol also recognizes the Agreed Protective Order's "No Waiver" and "Claw Back of Inadvertently Produced Protected Materials" (Dkt. 382) provisions, which provide additional privilege protections to the Debtor.

II. The Proposed Protocol is Necessary to the Committee's Investigation of the Estate Claims.

18. Further, section 105(a) of the Bankruptcy Code empowers this Court to "issue an order . . . that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

19. Implementation of the Proposed Protocol is necessary for the Committee to fulfil its statutory mandates under section 1103(c) of the Bankruptcy Code. As fiduciary for all unsecured creditors, the Committee is granted broad statutory powers to, among other things, "investigate the acts, conduct, assets, and liabilities and financial condition of the debtor, . . . and any other matters relevant to the case or to the formulation of a plan." *Id.* at § 1103(c)(2); *see also* Dkt. 354-1, at 4 (granting the Committee standing to investigate and pursue Estate Claims on behalf of the Debtor). Ordering the Debtor to turn over all documents of the nine custodians, subject to a limited privilege review, is necessary for the Committee properly to carry out this mandate.

20. To date, the Debtor has not produced any documents or communications in response to the February 24 requests or the Search Term Requests, despite extended negotiations to facilitate such productions. This has impeded the Committee's ability to exercise its duty to investigate the acts and conduct of the Debtor. An order compelling production is therefore necessary for the Committee sufficiently to carry out its Estate Claim investigation.

21. The Proposed Protocol is the most cost effective and efficient way to obtain documents relevant to the Estate Claims, avoiding the cost, delay, and risk of false negatives associated with contract attorneys' relevance review. Rather than use estate resources to conduct a double relevance review proposed by the Debtor—reviewed once by the Debtor and again by the Committee—the Committee's Proposed Protocol calls for only one round of privilege review and

the targeted searches for relevant documents that the Committee will conduct as it carries out its investigation. The Proposed Protocol also obviates the need for additional document requests and repeated negotiations with the Debtor about additional collection and review for the specified custodians. The Committee's investigation will necessarily evolve, and the Proposed Protocol would allow the Committee to run search terms on data already collected and contained within the e-discovery vendor's repository with minimal additional cost. It further ensures that all documents will be preserved in the interim.

22. An order by this Court implementing the Proposed Protocol is necessary to "preserve a right elsewhere provided in the [Bankruptcy] Code." *See In re Royce Homes, LP*, No. 09-32467-H4-7, 2009 WL 3052439, at *4–5 (Bankr. S.D. Tex. Sept. 22, 2009) (compelling a debtor's production under 11 U.S.C. § 105(a) to allow the trustee to perform its duties under the Bankruptcy Code). The Proposed Protocol will allow the Committee access to documents and communications relevant to the Estate Claims without fear that the Debtor will withhold relevant documents pursuant to an unduly broad relevance review. Considering the circumstances of this case and the history of the Debtor, the Proposed Protocol is necessary for the Committee to fulfill its duty to investigate the Estate Claims.

CONCLUSION

23. For the reasons set forth above, the Committee respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A,** (a) compelling the Debtor to produce documents under the Proposed Protocol, and (b) granting such other and further relief as the Court may deem just and proper.

[*Signature Page Follows*]

Dated: July 8, 2020
Dallas, Texas

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COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER COMPELLING THE DEBTOR TO PRODUCE DOCUMENTS

Upon the consideration of the *Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor* (the "Motion), it is hereby **ORDERED** that:

1. The Motion is GRANTED as set forth herein.

2. The Debtor must produce all ESI, without limitation, for the custodians Patrick Boyce, Jim Dondero, Scott Ellington, David Klos, Isaac Leventon, Mark Okada, Trey Parker, Tom Surgent, and Frank Waterhouse (collectively, the "Custodian Data") to the e-discovery vendor in this matter no later than seven days after the entry of this Order.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

3. The Parties must meet and confer regarding a set of mutually agreeable privilege terms within 7 days of the date of this Order. Any disagreements regarding those terms will be determined by a special master or other third-party neutral within 21 days of the date of this order;

4. Within 7 days of the finalization of the privilege terms, any Custodian Data not including one of the agreed privilege terms will be produced to the Committee for review, subject to the Agreed Protective Order's provisions on "No Waiver" and "Claw Back of Inadvertently Produced Protected Materials" (Dkt. 382);

5. Any Custodian Data including any such privilege term will be reviewed by Debtor's contract attorneys.

a. Non-privileged documents and privileged documents related to the Estate Claims will be produced to the Committee on a rolling basis.

b. Documents that are privileged and unrelated to the Estate Claims will be listed on a privilege log provided to the committee within 45 days of this Order.

6. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

End of Order # #

CERTIFICATION OF GOOD FAITH CONFERENCE

The undersigned counsel to the Committee hereby certifies that the Committee's counsel has attempted in good faith to confer with the Debtor's counsel in an effort to resolve the dispute without court action.

/s/ *Paige Holden Montgomery*
Paige Holden Montgomery
SIDLEY AUSTIN LLP

Counsel for the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I, Paige Holden Montgomery, hereby certify that on the 8th day of July 2020, a true and correct copy of the foregoing *Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor* was sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case, and by first-class mail to the Debtor, attention James Seery.

/s/ Paige Holden Montgomery
Paige Holden Montgomery
SIDLEY AUSTIN LLP

Counsel for the Official Committee of Unsecured Creditors

EXHIBIT 34

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DEBTOR'S MOTION FOR ENTRY OF (I) A PROTECTIVE ORDER, OR, IN THE ALTERNATIVE, (II) AN ORDER DIRECTING THE DEBTOR TO COMPLY WITH CERTAIN DISCOVERY DEMANDS TENDERED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 7026 AND 7034

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned chapter 11 bankruptcy case (the "Case"), hereby moves this Court (the "Motion"), pursuant to Federal Rules of Civil Procedure 26(b), 26(c), and 34, made applicable herein pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034, the for the entry of (I) a protective order, or, in the alternative (II) an order directing the Debtor to comply with certain of the discovery demands tendered by the Official Committee of Unsecured Creditors (the "Committee"). In support of the Motion, the Debtor respectfully represents as follows:

I. PRELIMINARY STATEMENT

1. On July 8, 2020, the Committee filed its *Emergency Motion to Compel Production by the Debtor*. Docket No. 808. Despite the adversarial nature of this case, this was the ***first*** discovery motion filed against the Debtor, and it is regrettable. There is one issue that the parties have been unable to resolve, an issue that was raised by the Committee for the first time on June 26, 2020; the Committee knew that the Debtor intended to seek a judicial determination to resolve the issue and even provided the Committee with a copy of this Motion. Yet, for reasons that remain unclear, the Committee went ahead with its own motion.

2. The Debtor brings this Motion to have the Court resolve two conflicting obligations arising from the Committee's request for e-mail discovery: (1) the obligation to comply with certain confidentiality agreements on the one hand, and (2) the obligation to provide discovery to the Committee on the other hand. Resolution of these conflicting obligations will allow the Debtor to complete the last part of discovery requested by the Committee to date.[2]

3. In January 2020, the Debtor and the Committee reached an agreement pursuant to which the Committee was granted standing to pursue Estate Claims (as that term is

[2] As discussed below, the Debtor informed the Committee in mid-April 2020 that it was "substantially complete" with the production of all documents except for the e-mails.

defined in the Term Sheet (as defined below)). The Committee thereafter served discovery demands seeking certain documents and e-mails relating to Estate and non-Estate Claims.

4. To the best of its knowledge, the Debtor completed the production of all non-privileged, non-email documents responsive to the Committee's requests by mid-April, regardless of whether the documents related to Estate Claims or non-Estate Claims. For reasons discussed below, however, the review and production of e-mails has proved more difficult; nevertheless, the Debtor believed it was on the verge of reviewing and producing the e-mails but for one issue: it has written confidentiality obligations that, if adhered to, will take time to address and increase the cost of production.

5. This issue crystallized near the end of June when the Committee demanded that the Debtor dispense with any process that would allow it to comply with its confidentiality obligations. The Committee had reserved its right to object to the Debtor's proposed approach to document review; while the demand came late in the process, the Debtor understands the Committee's desire to move this process forward but has been placed in an untenable position with conflicting obligations. Thus, so that issue is properly joined, the Debtor has given notice of this Motion to all contract parties with whom it believes it has written confidentiality obligations.

6. By this Motion, the Debtor asks the Court to resolve these competing obligations by either (a) entering a protective order that will enable the Debtor to comply with its written contractual confidentiality obligations, or (b) enter an order directing the Debtor to comply with the Committee's demands notwithstanding its contractual confidentiality obligations.

II. RELIEF REQUESTED

7. By this Motion, the Debtor seeks the entry of (I) a protective order, or, in the alternative (II) an order directing the Debtor to comply with certain of the discovery demands tendered by the Committee, thereby clearing the way for the Debtor to complete the review and production of e-mails identified utilizing the Committee's search parameters.[3]

III. JURISDICTION AND VENUE

8. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

IV. BACKGROUND

9. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

10. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Case to this Court [Docket No. 186].[4]

11. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections

[3] The Committee has reserved the right to seek further e-mail discovery using different search criteria.

[4] All docket numbers refer to the docket maintained by this Court.

1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 Case.

12. On January 9, 2020, the Court held a hearing on that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] during which the Debtor presented a Term Sheet (the "Term Sheet").

13. The final version of the Term Sheet [Docket No. 354] provided, among other things, that (a) the Committee was granted standing to pursue Estate Claims; (b) the Committee would be entitled to privileged communications concerning Estate Claims; and (c) that the Debtor's document management, preservation, and production would be governed by an agreed-upon set of "Document Production Protocols" (the "Protocols"). Docket No. 354-1.

14. The Protocols provide, among other things, that (a) the Debtor's production of e-mails is "subject to completion of any review for privilege or other purposes contemplated by this Agreement," and (b) that nothing in the Protocols impacts the Debtor's right to, among other things, (i) object to the production, discoverability, and confidentiality of documents and ESI, (ii) assert any privilege or other protection from discovery, or (iii) "limit a Producing Parties [sic] right and ability to review documents for responsiveness" prior to production. *See* Docket No. 354-1, Protocols ¶¶ E.b, G.b-d.

15. In short, the Debtor and the Committee agreed that the Committee would have broad discovery rights with respect to Estate Claims, including the right to obtain privileged communications related to Estate Claims, but that the Debtor otherwise reserved its rights with respect to discovery unrelated to Estate claims. That dichotomy made sense since the Committee

was only granted standing to pursue "Estate Claims" on behalf of the Debtor, as that term was specifically defined in the Term Sheet.

V. RELEVANT FACTS

A. The Committee Seeks Broad Discovery of E-mails

16. In early February, the Committee served *The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland* (the "Requests"). The Committee's requests included nineteen separate requests for documents and information that covered Estate Claims and non-estate claims.

17. Request No. 19 sought "[a]ny and all Documents, including emails, contain[ing]" approximately 23 separate search terms (the "E-mail Requests"). The search terms for the E-mail Requests included broad terms such as "Beacon Mountain, "Crown," "HCMFA," "Hunter Mountain," "NexPoint," "Promissory w/5 Note" and "Trussway."

18. On or around March 5, 2020, the Debtor timely served its written responses and objections to the Committee's Requests. Morris Ex. A. With respect to the E-mail Requests, the Debtor proffered the following response and objection:

> The Debtor objects to each Request to the extent it calls for the production of "[a]ny and all . . . Communications" on the grounds that such Requests are overly broad, unduly burdensome, and fail to comply with Federal Rule of Civil Procedure 26(b). At the Committee's specific requests, the Debtor has conducted multiple searches for e-mails responsive to Request No. 19. Each search has yielded over 1,200,000 unique e-mail "hits" (a number that potentially could double if attachments were included in the searches) and the parties continue to confer on ways to limit the e-mails searches in a manner that will be efficient and not wasteful of estate resources. The Debtor has also offered to begin searching for e-mails related to transactions already known to the Committee, such as the so-called insider loans, that constitute Estate Claims (as that term is defined in the Term sheet). The Committee has thus far declined the Debtor's offer, choosing instead to focus on the broadest searches contained in the Requests (i.e., Request No. 19), even though Request No. 19 does not appear to be related to any Estate Claim for which the Committee has standing to pursue. Nevertheless, the Debtor has informed the Committee that it will (a) create searches for transactions identified as potential Estate Claims, and (b) use historic data to identify asset

> transfers to or from the Debtor to or from James Dondero, Mark Okada or any Related Entity during the last five years as potential Estate Claims

Ex. A, General Objection No. 5.

19. The Committee has never taken issue with this objection or asked for the targeted e-mails searches related to Estate Claims that the Debtor offered to provide. In addition, the Committee never proposed any targeted searches limited to Estate Claims despite the Debtor's requests. Instead, over time, the parties worked together on various versions of the search terms and time periods until the number of "hits" approached approximately 800,000 in early May (the approximately 800,000 e-mails identified by deploying the Committee's modified search terms and time period are collectively referred to as the "E-mails").

20. To be clear, while the Debtor believes that targeted searches focused on known transactions constituting Estate Claims would have been more efficient, the Debtor acknowledges the Committee's right to proceed in any manner it sees fit and has never objected to the production of documents or e-mails on the ground that the Requests went beyond Estate Claims.

B. The Debtor's Written Confidentiality Obligations

21. The Debtor is a service provider and in that capacity has entered into various agreements that, among other things, obligate it to maintain certain information in confidence or otherwise concern the ownership of documents and information. Specifically, as of the Petition Date, the Debtor was party to the following shared services agreements (collectively, the "Shared Services Agreements"):

- *Third Amended and Restated Shared Services Agreement*, dated September 26, 2017 and effective September 1, 2017, between HCMLP on the one hand and NexBank Capital, Inc., NexBank Securities, Inc., NexBank Title, Inc., NexBank SSB on the other hand (the "NexBank Agreement," a copy of which is annexed hereto as Morris Ex. B);

- *Amended and Restated Shared Services Agreement*, effective January 1, 2018, between HCMLP and NexPoint Advisors, L.P. (the "NexPoint Agreement," a copy of which is annexed hereto as Morris Ex. C);

- *Second Amended and Restated Shared Services Agreement*, effective January 1, 2017, between HCMLP on the one hand, and Charitable DAF Fund, L.P. and Charitable DAF GP, LLC, on the other hand (the "DAF SSA," a copy of which is annexed hereto as Morris Ex. D); and

- *Second Amended and Restated Shared Services Agreement*, effective as of February 8, 2013, between HCMLP and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P. (the "Fund Advisors Agreement," a copy of which is annexed hereto as Morris Ex. E, and together with the NexBank Agreement, the NexPoint Agreement, the DAF SSA, and the DAF IAA, the "Shared Services Agreements").

22. The Debtor is obligated under the Shared Services Agreements to maintain certain information in confidence or has otherwise entered agreements concerning the ownership of certain information. *See* NexBank Agreement ¶¶ 3.1(a), (b), (c)(iii), and 3.2(a); NexPoint Agreement ¶ 5.02; DAF SSA ¶ 4.02; and Fund Advisors Agreement ¶ 6.02 (collectively, the "Debtor's Confidentiality Obligations").

23. As previously explained to the Committee, the Debtor complied with its Confidentiality Obligations with respect to the production of non-e-mail discovery utilizing the following process (the "Compliance Process"): if the Debtor identified a responsive, non-privileged document that was subject to a Confidentiality Obligation, it gave written notice to the counter-party of the Debtor's intention to produce the document absent the counter-party's objection.

24. The Debtor utilized the Compliance Process on a handful of occasions but, as previously explained to the Committee, never withheld any non-e-mail document subject to the Confidentiality Obligations because no counter-party ever objected.

C. The Debtor Confers with the Committee on Its Document Review Guidelines and Prepares to Seek Court Approval to Retain a Third-Party Vendor to Review Documents and Begin Production

25. The Debtor has been cooperative and has put extensive effort towards negotiating an agreed email search and production protocol with the Committee. The proposals exchanged from February through June 25 were premised on the ideas that the Debtor (a) would gather emails from its server based on key word searches provided by the Committee, (b) review the resulting email "hits" for relevance and privilege, and (c) then produce the responsive, non-privileged emails. The Committee's June 25 proposal was the first time that Committee sought blanket access, subject only to privilege review, for the nine custodian's entire email files. Just as the Committee and the Debtor were on the precipice of finalizing a deal on email discovery, the Committee completely changed the proposed terms.

26. The Committee's Requests served on February 3 proposed that the Debtor search key custodian's emails for specific search terms. After Debtor expressed concern about the breadth of the search terms, the Committee sent narrowed proposed terms to the Debtor on February 26. Debtor reran all of its searches using these revised terms, and informed the Committee on March 3 that the terms still returned over 1.5 million emails. On March 5, the Committee responded that the Debtor should consider sending the 1.5 million emails to a third-party vendor to apply further limits to the number of documents to be reviewed. The next day, March 6, Debtor responded that the Committee's additional search terms would expand the review set beyond the initial 1.5 emails and also asked the Committee to confirm that the outside vendor would be used "to greatly reduce the number of emails that will actually have to be reviewed and ultimately produced."

27. As of mid-March, the momentum on discovery negotiations slowed. On March 17, the Committee responded to the Debtor's March 5 communication. Notably, this

included the Committee standing that it understood the Debtor would produce documents "found to be responsive." Again, the Debtor had to rerun all of its searches based on new search parameters from the Committee, which was completed by March 30. Debtor followed up with additional information regarding the search results on April 3 and the parties had a meet-and-confer call on April 10. With the final search parameters still undefined, the Committee went silent until mid-May.

28. In mid-May, the parties agreed to final search parameters. After culling the e-mails using the Committee's final search parameters, and with the Committee's knowledge and approval, the Debtor retained Meta-E to serve as the host for the production of the Debtor's e-mails. Shortly thereafter, the Debtor delivered copies of all of the culled emails to Meta-E.

29. As discussed with the Committee, the Debtor intended to hire an outside, third-party vendor who would provide contract attorneys to undertake a "first line" review of the e-mails. The Committee was supportive of this concept. Thereafter, the Debtor solicited bids from three third-party vendors.

30. While soliciting the vendors, and again with the Committee's knowledge and understanding, the Debtor was also working on a memorandum (the "Document Review Memorandum") that would be used by the contract attorneys to identify the relevant players (including the "Related Parties" who would be subject to "Estate Claims," as those terms are defined in the Protocols) and issues concerning confidentiality and privilege. The Document Review Memorandum was intended to (a) assist the contract attorneys in their review of documents, (b) provide a mechanism for the Debtor to comply with its confidentiality obligations under the Shared Services Agreements (the confidentiality review), and (c) to complete the

review and production of the e-mails, whether or not they concerned "Estate Claims," as quickly and efficiently as possible.

31. To be transparent, on June 2, 2020, the Debtor shared an initial draft of the Document Review Memorandum together with a comprehensive list of attorneys and law firms that would have to be checked for privilege purposes.[5] The Document Review Memorandum included, among other things, mechanisms for performing a review designed to enable the Debtor to comply with the confidentiality obligations under the Shared Services Agreements; once e-mails subject to the Confidentiality Obligations were identified, the Debtor expected to use the same Compliance Process that it had effectively used with respect to non-e-mail document production.

32. The Committee provided certain comments to the Debtor via e-mail and in the form of a mark-up of the draft Document Review Memorandum while reserving its right to object to the Debtor's method of reviewing the e-mails. The Debtor incorporated nearly all of the Committee's specific changes that it requested with respect to the Document Review Memorandum, and provided a detailed explanation for the one change it did not accept. Morris Ex. F.

33. At around the same time, the Independent Directors considered the bids for the provision of contract attorneys and exercised their business judgment to retain Robert Half Legal, a business division of Robert Half International Inc. ("RHL"), to conduct the initial review of documents.

[5] The Committee has not objected to, or otherwise provided any comments with respect to, the list of lawyers and law firms created for this purpose.

34. On June 19, the Debtor informed the Committee of this decision and presented a form of notice pursuant to which the Debtor intended to seek court approval to retain RHL as an ordinary course professional (the "OCP Notice").

35. Thus, as of June 19, 2020, the Debtor believed that its receipt of the Committee's comments the OCP Notice, if any, was the last step before commencing the review and production of e-mails.

D. The Committee Asks the Debtor to Dispense with a Confidentiality Review Thereby Putting the Debtor in an Untenable Position

36. However, on June 25, the Committee informed the Debtor that it wanted to take a different approach to the review and production of e-mails. Morris Ex. G. The most problematic demand was that the Debtor forego the confidentiality review described in the Document Review Memorandum. On July 3, 2020, the Debtor explained to the Committee why it could not comply with this demand and proposed to file this Motion. *Id.*

37. The Debtor understands the Committee's desire to dispense with the confidentiality review, but cannot unilaterally comply with that request without creating potential liability. Specifically, the Committee's demand would leave the Debtor with no ability to comply with its confidentiality obligations under the Shared Services Agreements.

VI. ARGUMENT

A. The Court Could Enter a Protective Order so the Debtor Can Comply with Its Confidentiality Obligations

38. Federal Rule of Civil Procedure 26(c)(1), made applicable to the Committee's Requests pursuant to Bankruptcy Rule 7026, provides, among other things, that a court may issue a protective order upon "good cause" shown and may fashion such protective order to fit the needs of the case. FED. R. CIV. P. 26(c)(1). As pertinent here, a court may require that confidential information be "revealed only in a specified way." FED. R. CIV. P. 26(c)(1)(G).

39. To enable the Debtor to comply with its Confidentiality Obligations, the Court should enter a protective order authorizing the Debtor to (a) engage in the confidentiality review set forth in Document Review Memorandum, and, with the documents identified from such review, (b) effectuate the Compliance Process described above. Such a protective order would provide the counterparties to the Shared Services Agreements with specific notice of production and an opportunity to object if they choose.

40. Good cause exists for the Court to enter such an order. The Debtor has binding, written Confidentiality Obligations which, if ignored, could subject it to litigation and potential liability, all to the detriment of the Debtor's creditors.

B. Alternatively, the Court Could Deny the Debtor's Request for a Protective Order and Direct the Debtor to Comply with the Committee's E-mail Requests

41. If the Court declines to enter a protective order that would enable the Debtor to comply with its Confidentiality Obligations, the Court should direct the Debtor to produce the e-mails while providing the Debtor with protection from any claims that such production will violate any of the Shared Services Agreements.

42. The rules provide for such an order. In particular, Federal Rule of Civil Procedure 26(c)(2), made applicable to the Committee's Requests pursuant to Bankruptcy Rule 7026, provides, among other things, that if a court denies a motion for the entry of a protective order, in whole or in part, the court "may, on just terms, order that any party or person provide or permit discovery." FED. R. CIV. P. 26(c)(2).

43. Thus, if the court declines to enter a protective order as described above, it may order the Debtor to produce the e-mails on "just terms." Here, if the Court declines to enter the protective order, the Debtor respectfully requests that any order directing it to produce the E-Mails to the Committee specifically state that compliance is (a) mandatory, (b) pursuant to this

Court's order, (c) not in violation of the Confidentiality Obligations or any other agreed-upon restriction on production; but (d) with such production remaining subject to the attorney-client privilege and related protections to the extent the E-Mails are unrelated to Estate Claims.

VII. NOTICE

44. Notice of this Motion will be provided to: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) the Debtor's principal secured parties; (d) counsel to the Committee; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002.

VIII. PRAYER

WHEREFORE, the Debtor respectfully requests the entry of (I) a protective order, or, in the alternative (II) an order directing the Debtor to comply with the Committee's E-Mail Requests on the "just terms" described above.

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Dated: July 9, 2020.

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 30

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT 35

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	) Case No. 19-34054-sgj11
	) Chapter 11
	)
HIGHLAND CAPITAL	) Courtroom 1
MANAGEMENT, L.P.,	) 1100 Commerce Street
	) Dallas, Texas 75242-1496
	)
	) July 21, 2020
	) 1:38 p.m.

TRANSCRIPT OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS EMERGENCY MOTION TO COMPEL PRODUCTION BY THE DEBTOR (808); DEBTORS MOTION FOR ENTRY OF (I) A PROTECTIVE ORDER, OR, IN THE ALTERNATIVE, (II) AN ORDER DIRECTING THE DEBTOR TO COMPLY WITH CERTAIN DISCOVERY DEMANDS TENDERED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 7026 AND 7034 (810)
BEFORE HONORABLE JUDGE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY JUDGE

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* * *

1 **(IN INSTANCES WHERE CONNECTION IS FADING IN AND OUT, AN**
2 **INAUDIBLE RESULTED DUE TO THE LACK OF AUDIBILITY. IN INSTANCES**
3 **OF MUFFLED VOICES OR REVERBERATION OF THE TELEPHONIC**
4 **PARTICIPANTS ON CHANNEL 2, AN INDISCERNIBLE RESULTED)**
5 THE COURT: This is Judge Jernigan, and we are ready
6 to start a hearing today in Highland. Before I take
7 appearances, let me just kind of say where I think we are.
8 We have a document production dispute on the calendar
9 today, primarily between the Unsecured Creditors' Committee and
10 the debtor. Basically it's an ESI protocol dispute, as I
11 understand it.
12 We have had eight other parties in interest weigh in
13 on the dispute with pleadings. So I'll do a roll call.
14 (The Court engaged in off-the-record unrelated colloquy)
15 THE COURT: I'm a little hamstrung here because I
16 don't have my glasses, but my law clerk is working on that. I
17 guess I do have a magnifying glass here.
18 All right, well, why don't we do a roll call while
19 he's getting my glasses, of the different parties in interest.
20 I'm going to call parties one-by-one to avoid talking overlap.
21 For the Committee, it looks like we have Mr.
22 Clemente, is that correct?
23 (No audible response heard)
24 THE COURT: Oh, you're on mute.
25 MR. CLEMENTE: My apologies, Your Honor. Matt

Clemente from Sidley on behalf of the Committee. My partner, Paige Montgomery, is also here with me, and she will be addressing the Court today, as well.

THE COURT: Okay. Very good. For the debtor, who do we have participating today?

MR. KHARASCH: Good morning, Your Honor. It's Ira Kharasch of Pachulski Stang, and we also have John Morris from Pachulski Stang, as well.

THE COURT: Okay; good afternoon.

All right. Mr. Dondero's counsel weighed in. Who do we have appearing for Mr. Dondero this afternoon?

MR. LYNN: Yes, Your Honor. Michael Lynn and John Bonds for Jim Dondero.

THE COURT: Okay, very good.

Now I'm going to go through the seven other parties that have weighed in. For the party Atlas, do we have Paul Keiffer or some other lawyer participating?

MR. KEIFFER: Yes, Your Honor, Paul Keiffer here.

THE COURT: All right; good afternoon.

For H.C. and Fund Advisors, who do we have appearing?

MR. WRIGHT: Good afternoon, Your Honor. You have James Wright and Steve Topetzes at K&L Gates.

THE COURT: Okay; very good.

All right, CCS Medical, who do we have appearing?

MS. STRATFORD: Your Honor, it's Tracy Stratford from

Jones Day.

THE COURT: Okay; thank you.

MS. STRATFORD: Thank you.

THE COURT: CLO Holding, who do we have?

MR. KANE: Your Honor, John Kane for CLO Holdco, Limited.

THE COURT: Okay, Holdco, excuse me; thank you.

What about NexPoint?

(No audible response heard)

THE COURT: Anyone appearing for NexPoint? Jason Rudd, Lauren Drawhorn perhaps?

(No audible response heard)

MR. WRIGHT: Your Honor, this is James Wright again at K&L Gates. We represent one of the NexPoint entities, NexPoint Advisors. But I understand there are some other NexPoint entities that we don't represent, and they may have a separate objection, just to be clear.

THE COURT: Okay. Yes, there was a separate objection. The same firm, Wick Phillips, filed an objection by MGM.

So, again, I'll ask, is there anyone on the phone for those clients?

(No audible response heard)

THE COURT: All right, well, we may -- oh, I see Lauren Drawhorn on the video; are you muted, Ms. Drawhorn? Ms.

Drawhorn, we can see you but we can't hear you. Cannot hear you. We definitely see you.

If we can't -- yes, if you could call on your cell phone, we can hear you that way, and you can keep your visual on, as well.

Okay, I'll go on. What about HCLOF, do we have someone from King & Spalding?

(No audible response heard)

THE COURT: Okay. I'm not hearing anyone from King & Spalding.

MR. MALONE: Your Honor, this is Mark Malone. I'm not sure if you can hear me, I'm only dialed in on my phone.

THE COURT: Okay, I --

MR. MALONE: Can you hear me?

THE COURT: I do hear you, Mr. Malone; thank you.

MR. MALONE: Yes, and Rebecca Matsumura is trying -- I suspect feverishly, I don't have the video. I know she's plugged in on the video. She'll be handling any argument, assuming we can get her on. If not, I'm happy to handle it. But we are here, Your Honor; thank you.

THE COURT: All right, thank you.

MS. MATSUMURA: Can y'all hear me now?

THE COURT: Yes. Who is that?

MS. MATSUMURA: This is --

THE COURT: Was that Ms. Matsumura?

MS. MATSUMURA: This is Rebecca Matsumura; sorry about that.

THE COURT: Okay, we hear you and we see you; very good.

All right. I'll go back to Ms. Drawhorn, do we have you on the phone yet?

(No audible response heard)

THE COURT: All right. Well, hopefully -- hopefully we can get whatever technical difficulties there worked out.

I'll ask, for the record, are there any other parties in interest wishing to make an appearance? And I'm going to forewarn you that I'm not going to be inclined to let any other party make an argument today unless you give me a reason I should that absolutely knocks my socks off. So I assume we might have people wanting to appear, but who are not going to make an argument. If so, go ahead.

MR. ANNABLE: Your Honor, this is Zachary Annable and Melissa Hayward of Hayward & Associates, local counsel for the debtor. We just wanted to let you know we're here, too.

THE COURT: All right; thank you.

Anyone else?

MS. MASCHERIN: Yes, Your Honor. Terri Mascherin and Marc Hankin from Jenner & Block on behalf of the Redeemer Committee of the Highland Crusader Fund.

THE COURT: All right; thank you, Ms. Mascherin.

MR. SLADE: Your Honor, it's Jared Slade and Jonathan Edwards of Alston & Bird. We're here on behalf of NexBank. And I'm not sure if it's going to knock your socks off, but we were engaged just this week by NexBank as a party in interest, the issue about the ESI disclosures. We have been negotiating with the Creditors' Committee about the issues, and we hope to have an opportunity to present a minute or two at the end about why we were differently situated than some of the other objectors, if the Court entertains it.

THE COURT: Okay.

MR. SLADE: Thank you.

THE COURT: Thank you.

MR. CLUBOK: And, Your Honor, Andrew Clubok and Kimberly Posin for UBS.

THE COURT: Okay; thank you.

MS. PATEL: Good afternoon, Your Honor. Rakhee Patel and Annmarie Chiarello on behalf of Acis Capital Management, but we don't intend on making any presentation, Your Honor, unless anyone specifically asks to address things. Our matters are after this.

THE COURT: Okay, correct.

Anyone else?

(No audible response heard)

THE COURT: All right. Well, let's talk --

MS. DRAWHORN: Your Honor?

1 THE COURT: Oh, go ahead.
2 MS. DRAWHORN: This is Lauren Drawhorn, I got my --
3 I'm sorry, I got the audio -- the speaking to work.
4 THE COURT: Okay.
5 MS. DRAWHORN: I'm appearing on behalf of the
6 NexPoint Real Estate entities, there's 15 of them. I can go
7 through them, if you want, or -- they're listed on Docket 847.
8 And then I'm also appearing on behalf of MGM
9 Holdings, Inc.
10 THE COURT: Okay, thank you, Ms. Drawhorn. We've got
11 you loud and clear now.
12 All right, well, I want to talk for a moment about
13 how we are going to proceed here today, and I'm hoping we don't
14 go late, late, late with ten or so parties wanting to weigh in
15 on document production because we do have the Acis status
16 conference regarding the September 10th setting on the
17 objection to Acis's proof of claim, I want to make sure we get
18 to that today.
19 And then I do want to talk a little bit about where
20 we stand on getting the mediation going.
21 So for everyone's benefit, I'm just going to let you
22 know that I think I have a handle on the primary disputes
23 between the Committee and the debtor. There's a lot of finger-
24 pointing that is going on in the papers.
25 The UCC is suggesting that the debtor has been

1 dragging its heels; and the debtor saying no, it hasn't.
2 I really don't want to get bogged down by that today.
3 I really just want to focus on the handful of things that seem
4 to be in dispute between the Committee and the debtor, and so
5 we're going to obviously start with the Committee and the
6 debtor. I want to hear about are we going to have evidence
7 today. I know there were a couple of declarations filed.
8 And then I'm inclined to, thereafter, just give these
9 eight or nine other parties five or ten minutes each to present
10 any arguments that they think I need to hear.
11 But I'll tell you, I closely read the Committee's
12 pleadings, I closely read the debtor's pleadings, Mr. Dondero's
13 pleading.
14 And then, frankly, I skimmed very rapidly the other
15 seven or so pleadings because of being pressed for time, but I
16 do think I get the gist of them. And I think a lot of them
17 kind of have the same theme.
18 But before turning to the debtor and the Committee,
19 let me just tell you what my understanding is that we're going
20 to primarily focus on:
21 We're obviously talking about emails of nine
22 different custodians of the debtor, three of which I understand
23 to be in-house lawyers. And whether it's the Committee's
24 protocol that should be ordered here, or the debtor's protocol,
25 and the way I see the two protocols differing is the debtor

1 wants independent contract -- or contract attorneys for the
2 debtor to do a relevance review. UCC says no, that's going to
3 be time-consuming, and strangers can't meaningfully do that.
4 It looks like there's a dispute about the search term
5 request. Committee thinks what debtor is wanting is too
6 stringent.
7 And then, of course, we have some competing views
8 about how the privilege review process would work, and the
9 debtor has obviously this overriding concern about
10 confidentiality obligations it has, either contractually and/or
11 shared services agreements, or through other law.
12 So now I will, at long last, turn -- I'm going to, I
13 guess, start with the Committee because it is first in time
14 with its pleading the motion to compel. And then, of course,
15 the debtor came quickly behind that pleading with its own
16 motion for protective order.
17 And so -- I don't know, Mr. Montgomery, or Mr.
18 Clemente, let me hear from you on how you --
19 MR. MORRIS: Your Honor?
20 THE COURT: -- want to go forward today.
21 MR. MORRIS: Your Honor, this is John Morris from
22 Pachulski. I greatly apologize for interrupting, but I have a
23 slightly different suggestion.
24 We had made a proposal to try to resolve our disputes
25 with the Committee a few days ago. The Committee responded

with its own proposal about an hour before this hearing, and we'd like an opportunity to confer with them. But under -- even under the -- even if we were to reach an agreement, I think the Court needs to rule on the other objections.

So my suggestion, subject to the Committee's acceptance and Your Honor's acceptance, of course, is that we allow the Committee to proceed and let the --

(Technical interference)

THE COURT: Okay.

MR. MORRIS: Let the other objectors be heard.

And then after the conclusion, and the resolution of those objections, some of which I understand may have been resolved already, we take a short break, and allow me to confer with Ms. Montgomery to see if we can resolve the balance of the issues, that's my suggestion.

THE COURT: Okay. So start with the Committee, hear their argument, and then any objectors who haven't otherwise been taken care of through agreements, hear from them, all right. Well, I am perfectly happy to go forward this way, especially if it means that we'll save some time in court, and the debtor and Committee can get on the same page without the Court ordering something.

So will it be Ms. Montgomery or Mr. Clemente? Which one of you wants to start us off?

MR. CLEMENTE: Your Honor, it's Matt Clemente. My

colleague, Ms. Montgomery, will be handling it. So I'll turn it over to her, please.

THE COURT: All right. Ms. Montgomery?

(Pause)

MS. MONTGOMERY: ... the objection that the debtor has filed --

THE COURT: All right. Ms. Montgomery, I'm going to ask you to start from the beginning, we missed the first few seconds, okay?

MS. MONTGOMERY: Sure. Can you hear me now?

THE COURT: Yes.

MS. MONTGOMERY: So consistent with the proposal that Mr. Morris laid out, I plan to reserve any arguments with regard to the dispute between the Committee and the debtors for now in the hopes that we can get those resolved at the conclusion, and we'll just focus on the objections, if that works for the Court.

THE COURT: Okay, that's fine.

MS. MONTGOMERY: We've been working diligently with all of the objectors that Your Honor is aware of, as well as a few that did not file objections over the last week or so in an attempt to resolve as many of their concerns as possible before today's hearing.

And we're happy to tell the Court that we have resolved some of those objections. We were able to negotiate

1 an out-of-court resolution with regard to an entity called
2 Omnimax International, Inc. without them filing an objection.
3 And we have resolved the objection of Highland CLO
4 Funding Ltd. And pursuant to that agreement with Highland CLO
5 Funding, Highland CLO Funding has requested that the Court
6 order, at the end of today's argument, include a statement that
7 any documents that they produce pursuant to joint privilege
8 aren't subject to a privilege waiver by virtue of their
9 production to the Committee.
10 THE COURT: Okay.
11 MS. MONTGOMERY: And if I missed anything there, I'm
12 sure that counsel for Highland CLO will correct me at the end.
13 THE COURT: Okay.
14 MS. MONTGOMERY: We also have an agreement in
15 principle with Highland Capital Management Fund Advisors, LP
16 and the remaining entities that submitted their objections at
17 Docket 841.
18 Pursuant to that agreement in principle, we have no
19 objection to those entities being treated as parties to a
20 protective order or to having certain data being isolated from
21 review as a preliminary matter subject to reservation of
22 rights.
23 What we don't have an agreement on, Your Honor, is
24 how those documents will be isolated. And we intend to
25 continue working with Highland Capital Management Fund Advisors

and K&L Gates to try to knock out the details of that in the coming days. We preliminarily don't believe that it's necessary for you to hear the details of that objection for today.

THE COURT: Okay.

MS. MONTGOMERY: So with regard to the remaining objections -- my apologies, Your Honor.

There are essentially three categories of documents that make up the assorted objections -- the issues that are set forth in the objections. There are some documents that are allegedly confidential, and I think that Your Honor has probably read quite a bit about that in the pleadings that have been submitted to the Court.

It's our position, Your Honor, that there's a very strong protective order in place in this case. And that the protective order should be sufficient to handle any confidentiality concerns that have arisen pursuant to the objections.

We also believe, Your Honor, that a number of the documents at issue are subject to a joint privilege, and we've briefed this, and it sounds like Your Honor is very familiar with the materials that we've submitted to the Court. And as a result of that joint privilege, we believe that many of the documents that are included in the ESI that we've requested should be made available to the Committee.

As you know, Your Honor, there are thousands of companies that have been identified as affiliates of the debtor. Many of those affiliates have shared service agreements with the debtor, in which the debtor provided business functions for these purportedly separate entities.

And if you look at my briefing, there isn't any segregation of employees of the debtor that represent each of these affiliates. And instead, the debtor maintains a centralized pool, and whoever can perform the service for the affiliate does so.

The basis for most of the remaining objections that we're talking about here today is that these shared service agreements include provision of legal services. And in some instances, for shared IT -- like shared service servers for emails and other documents.

Under those shared service agreements, the debtor's in-house legal department provides legal advice to these thousands of entities on as-needed basis. And you're going to hear from the objectors in a moment some of those separate companies are objecting to production of their documents by the debtor, even though those documents are on the debtor's servers, in the debtor's employees' files, and generally available to debtor personnel.

We wanted to begin, Your Honor, with the objections to NexPoint Real Estate Advisors. We previously -- we

1 previously discussed NexPoint Advisors and its affiliates,
2 represented by K&L Gates, but obviously there's also a separate
3 objection for NexPoint Real Estate Advisors and affiliated
4 entities.
5 NexPoint Real Estate Advisors argues that it would be
6 unduly burdened if the debtor were to produce documents related
7 to it to the Committee. It's unclear, however, how NexPoint
8 would be burdened by the debtor producing documents, nor is it
9 clear what expense NexPoint would incur as a result of that
10 production.
11 In fact, it appears that NexPoint is attempting to
12 raise defenses that belong to the debtor instead. This may be
13 because NexPoint shares many things with the debtor under the
14 shared services agreement:
15 First, they have shared employees who are employed
16 both by the debtor and NexPoint Real Estate. Although pursuant
17 to the shared service agreement, only the debtor pays the
18 salaries of those shared employees. It shares back- and
19 middle-office services, it shares administrative services,
20 including cohabitating in the same office space on information
21 and belief, and it also shares IT services, possibly including
22 servers, and in-house counsel that provide assistance with
23 advice with respect to legal issues.
24 Despite all of the shared services, NexPoint is
25 arguing that it should be given a separate and independent

1 opportunity to review all documents possibly related to it, and
2 to decide what it relevant, responsive, and privileged.
3 Your Honor, it's the Committee's position that
4 NexPoint chose to commingle its data with that of the debtor;
5 to share in-house counsel with the debtor; to co-office with
6 the debtor; to share employees with the debtor; and to
7 generally allow the debtor to provide many of its services.
8 But now it believes it has a separate ability to review
9 documents in the debtor's possession before they're produced to
10 the Committee. And this is the sort of gamesmanship that we've
11 been trying to avoid through the motion to compel.
12 NexPoint may very well be the subject of estate
13 claims, it's impossible for us to know at this point because we
14 don't have access to the data that's necessary for us to
15 determine what estate claims might exist. And we don't believe
16 that NexPoint should also have the ability to dictate to the
17 estate which documents the estate -- that the estate already
18 possesses and needs to investigate those claims.
19 With regard to the various Rand entities and Atlas, I
20 believe Your Honor referenced Atlas when we began. Essentially
21 the same argument appears to apply with Rand, although to a
22 somewhat lesser extent.
23 The objection for Rand is slightly different in that
24 it focuses on the shared IT infrastructure with the debtor, and
25 not necessarily the custodial data for nine individuals that

1 were the subject of the motion to compel.
2 Unlike with NexPoint, it doesn't appear that Rand has
3 legal services provided by the debtor.
4 And their objection primarily focuses on the
5 potential that there is Rand data on servers that are
6 accessible by the debtor which, in itself is an indication that
7 the data may not have been maintained separately as to Rand
8 and, therefore, confidentially. And as such, any privilege
9 related to data contained on that server as to Rand would be
10 waived.
11 That said, we are amenable to their request to be
12 made party to the protective order. And that all data related
13 to them be produced as highly confidential as a preliminary
14 matter, subject, of course, to our ability to request a de-
15 designation of that data where the default designation appears
16 to be improper.
17 The next objection is CLO Holdco. CLO Holdco also
18 argues that there may be data among that of the nine
19 custodians, all of whom are employees of the debtor, that
20 relate to a privilege held exclusively by CLO Holdco. We don't
21 believe that that position is tenable.
22 The briefing on this particular objection, Your
23 Honor, includes some back and forth with regard to Teleglobe,
24 and related cases.
25 Teleglobe is one of the foundational cases on the

1 issue of privilege with regard to business affiliates. And it
2 provides that communications between affiliates can maintain
3 privilege because the members of a corporate family are joint
4 clients, and this reflects both the separateness of the entity
5 and the reality that they are all represented by the same in-
6 house counsel.
7 We don't believe that Teleglobe stands for the
8 position that there can be completely separate privileges held
9 by affiliates with the in-house counsel that is employed by the
10 parent company, or any other member of an affiliate family.
11 As a result, either the communications are subject to
12 a joint privilege, and the debtor having access to the
13 communications isn't a waiver of confidentiality requirements
14 of privilege, or there is no common interest. There is no
15 joint client interest, and the debtor having access to the
16 documents is a waiver. But either way, the Committee should be
17 provided with the documents under the terms of the final term
18 sheet because the Committee is standing in the debtor's shoes
19 with regard to those estate claims, and the debtor has
20 conceded, and the Court has, you know, ordered that those
21 documents should be -- that the privilege isn't waived. The
22 privilege should be shared with the Committee, it's not
23 waived.
24 Separately, CLO Holdco has argued that it should be
25 able to conduct an independent review of the documents. As you

1 know, and I think we referenced in our hearing last week, the
2 impetus for the motion to compel is specifically the need for
3 expedited access to documents related to CLO Holdco so that we
4 can comply with the Court's 90-day deadline.
5 CLO Holdco entered into the shared service agreement,
6 it agreed to allow the debtor have access to this material, the
7 debtor has that data. And we don't think they can now seek to
8 claw back access to the ESI that's in the debtor's possession.
9 The remaining objectors, Your Honor, stand in a
10 slightly different position. CCS Medical and MGM, in
11 particular, are bringing objections, not based on the shared
12 service agreement, but based upon the facts that there are
13 employees of the debtor that have served in board positions for
14 each of those entities.
15 But, you know, based on the information that we have
16 to date, we understand that that -- that those board positions
17 were obtained pursuant to investments or other relationships
18 with the debtor, and that the debtor has or had relationship
19 with those entities outside of the board position. And those
20 additional relationships that are separate from board
21 membership make it very difficult to craft searches that would
22 exclude only outside information related to board service.
23 And so while the Committee doesn't necessarily have
24 an objection to attempts to isolate the communications that are
25 truly related to board service, we've had difficulty

1 negotiating the terms of what that would look like with MGM, at
2 least. We haven't had an opportunity to speak with CCS Medical
3 because -- because of its overlap, Your Honor.
4 We also think -- and this is set forth in our
5 documents -- that it's possible that the documents that were
6 shared with the debtor are -- have been waived, to the extent
7 that there was any privilege associated with it because of the
8 way that the debtor maintains its email servers.
9 And then I believe finally, the last objection that
10 has been filed with the Court for today is from Mr. Dondero.
11 And he argues that any data related to information that's being
12 produced under the protocols should not be made available to
13 Josh Terry, Acis Capital Management GP LLC, or Acis Capital
14 Management LP.
15 But there's nowhere in Dondero's briefing that sets
16 forth a basis of law for a categorical restriction of that
17 nature. And as you know, Mr. Dondero and his affiliated
18 entities are at the center of the Committee's investigation of
19 the estate claims. And we believe imposing a categorical
20 confidentiality ban against one member of a Committee would
21 considerably complicate and impede that investigation.
22 We understand a desire to have any documents that are
23 created in connection with pending litigation between Acis and
24 the debtor, Dondero, and other Dondero-related parties, that
25 that information be marked as attorneys' eyes only, highly

1 confidential so that only outside counsel has access to it, but
2 that's not really the basis for Mr. Dondero's objection, and as
3 a result, we don't believe that objection has value.
4 And then, Your Honor, I don't know to the extent you
5 intend to hear from NexBank Capital and its affiliates, and so
6 if -- I would like to reserve any sort of response to them --
7 THE COURT: Okay.
8 MS. MONTGOMERY: -- to the extent that you allow them
9 to speak.
10 But, you know, in concluding, Your Honor, the debtor
11 and its affiliates have interwoven so much of their operations,
12 their legal services, and even their data storage, that it's
13 incredibly difficult to try to pick apart the data, with the
14 exception of MGM and CCS, the objectors here today agreed to
15 those shared services, and now they want to argue that what was
16 shared was actually separate.
17 The Committee has been tasked with investigating the
18 estate's claims against the very affiliates that now seek to
19 unwind their information and said that unnecessary burdens to
20 production. And as a result, we request that those objections
21 be overturned, that the motion be granted, and that the ESI
22 subject to the motion to compel be produced to the Committee.
23 THE COURT: All right. Well, let me -- I'm just
24 going to go down the list of objectors.
25 Let me start with the two that Ms. Montgomery

1 announced have been resolved: Highland CLO Funding Limited.
2 Matsumura, were you going to be the one to weigh in on
3 confirming that?
4 MS. MATSUMURA: Yes, Your Honor. I can confirm we've
5 reached an agreement with the Committee that the documents that
6 are -- contain confidential and privileged information of HCLOF
7 will be produced on a highly confidential designation under the
8 protective order, so that will be only the Committee's
9 professionals.
10 And that as Ms. Montgomery stated, any of the
11 documents produced by the debtor pursuant to this agreement
12 will not be construed as a waiver of any privilege that the
13 funds share of those documents.
14 THE COURT: Okay; thank you.
15 All right, what about HMC Fund Advisors? I
16 understand that your issues have been resolved, you're still
17 working out a couple of things, but who wants to weigh in on
18 that to confirm that?
19 MR. WRIGHT: Good afternoon, Your Honor. It's James
20 Wright at K&L Gates for -- actually a number of entities that
21 are all at Docket 841. There was an objection at 841 that's
22 HMC Fund Advisors, NexPoint Advisors, and then a number of
23 individual funds, and I will not burden the record with listing
24 each of them out.
25 THE COURT: Thank you.

MR. WRIGHT: I agree with the Committee's summary, that we have made a lot of progress.

There are some technical things that we're still working out, but I think that we're -- you know, we've been -- we've made a lot of progress, we've been working in good faith, and -- get there -- but we just need a minute to -- we were on the phone with them, frankly, ten minutes before this hearing started, I think we just need a little bit more time.

THE COURT: Okay; thank you.

All right. Well, why don't we start with Mr. Dondero, and your objection which I understand deals mostly with Acis and Josh Terry.

Go ahead.

MR. LYNN: Thank you, Your Honor.

As you've gathered, our concerns are somewhat different from the other parties who are objecting. Mr. Dondero agreed to the arrangement involving shared privilege in allowing the Committee the kind of discovery that they're seeking here.

And accordingly, we would (indiscernible) object to what they're doing.

But as I understand the Committee's response to the Dondero response to the motion to compel, (indiscernible) because, first, there is no basis in law (indiscernible) Acis and Mr. Terry (indiscernible) and participate (indiscernible)

in consideration of the estate claims.

And second, (indiscernible) and I quote, "considerably complicate and impede the Committee's investigation."

Even assuming for a minute that Acis and Mr. Terry are so central to the investigation that their absence from it could not be tolerated by a Committee, just as there may be nothing in the statute that permits the Court specifically to restrict Mr. Terry and Acis's access to information so, too, there's nothing in the Bankruptcy Code or the Bankruptcy Rules that prevents the Court from doing so.

There is (indiscernible) the authority for the Bankruptcy Court to grant what Mr. Dondero asks, which is that Acis and Mr. Terry be excluded from the information gained by the Committee during the course of its investigation. Section 105, as this Court is acutely aware, is the problem-solving section of the Bankruptcy Code that allows the Court to fashion results that may be necessary to fill in gaps that the Code leaves open.

There was nothing in the law that authorized it, even before the passage of Section (indiscernible) of the Code, it was common for (indiscernible) representatives are (indiscernible). And, indeed, (indiscernible) representatives are also (indiscernible) in other (indiscernible).

Similarly, I know of nothing in the Code or the Rules

that provides for the retention of a Chief Restructuring Officer. Yet, Section 105 has allowed for that necessary post, as is true (indiscernible) which are also not provided for in the law.

In this case, (indiscernible) Section 105 has been used to justify an independent board, and to justify the very same privilege that is at the root of the disputes. Section 105 (indiscernible) to justify the removal by a court of a member of the Creditors' Committee. That's in the First Republic Bank Corporation case, Judge Felsenthal determined that he had the authority to remove, and he chose to remove, a member of the Creditors' Committee. A similar result was reached in the MAP International case out of the Eastern District of Pennsylvania, and a similar result (indiscernible) following Judge Felsenthal was reached by the Bankruptcy Court for the District of Arizona in In Re America West Airlines.

If the Bankruptcy Court has authority pursuant to Section 105 to remove a Committee member, clearly Section 105 gives authority to the Court to eliminate a member's access to and involvement in an investigation that will give that Committee member a leg-up in discovery in another case.

In the litigation commenced by Acis is, indeed, in another case, not in this case, and the litigation is intended to provide a benefit -- a windfall to Mr. Terry, not to provide (indiscernible) who he is supposed to be representing as a

1 member of the Creditors' Committee.
2 As pointed out in an article in The Review of Banking
3 and Financial Services in October of 2016, "Members of a
4 Creditors' Committee may not use their positions as Committee
5 members to advance their individual interests." And I'm
6 quoting there the MAP International case. Similarly, that
7 fight has been made by Collier in Paragraph 1102.05[3] of the
8 Collier treatise.
9 Indeed, the Acis litigation may not only drain assets
10 from Highland, it may reduce the (indiscernible) Dondero and
11 other potential defendants in the same causes of action as to
12 their ability to (indiscernible) any judgment that defendants
13 may manage to obtain.
14 Under those circumstances, unsecured creditors
15 represented by Acis and Mr. Terry will have their recovery
16 reduced by virtue of those judgments.
17 It is clear that the Bankruptcy Court may restrict a
18 committee member's access to information, as Collier points
19 out, where a member of a committee is a competitor of the
20 debtor, as, indeed, Acis is, the member may be restricted as to
21 the information that the member gets so it does not obtain
22 competitive advantage.
23 I recognize that the same claims may be, indeed, a
24 central concern of the Committee, (indiscernible) with Acis and
25 Mr. Terry creates serious problems, perhaps Mr. Terry should

1 resign from the Committee or be removed.
2 In fact, in this case, when UBS filed the motion for
3 relief from stay in order to pursue litigation in New York,
4 very properly, UBS excluded itself -- recused itself from
5 discussion of the motion for relief from stay. And Mr. Terry,
6 I respectfully submit, should do the same here.
7 Further, as far as complicating and repeating the
8 Committee's investigation, and the Committee did not elucidate
9 how that would happen, whatever trouble or cost (indiscernible)
10 Acis and Mr. Terry may cost is nothing compared to the trouble
11 and cost to the debtor of complying with a request for millions
12 and millions of communications.
13 In conclusion, Your Honor, in litigation such as that
14 being pursued by Acis in the Acis case, as courts have said,
15 the Federal Rules were designed to create, quote, "a level
16 playing field," end quote.
17 A couple of those cases, the Hillsborough Holding
18 decision of the Bankruptcy Court out of the Middle District of
19 Florida; Allstate Insurance versus Electrolux out of the
20 Northern District of Illinois; and Passlogix, Inc. versus 2FA
21 Tech out of the Southern District of New York.
22 Yet the motion to compel is brought without
23 protection from (indiscernible) that Acis seeks, there clearly
24 will be no level playing field in that litigation. And the
25 commitment of this Court (indiscernible) in general to

(indiscernible) litigation processes will be undermined.

Your Honor, if anybody wants cites to any of these authorities that I provided to the Court, I'll be happy to provide them.

THE COURT: All right. Thank you, I appreciate that.

I'm going to go next to --

MR. LYNN: Your Honor, I didn't hear you.

THE COURT: Pardon? I thanked you for your argument, and I do not need those case cites.

I'm going to go next to CLO Holdco. Mr. Kane, will you be making the argument there?

MR. KANE: Yes, Your Honor, I will; thank you for the time. This is John Kane for CLO Holdco, for the record.

And first, I want to start by kind of acknowledging that we really did take to heart what you said previously in attempts to avoid unnecessary litigation. I've been working with Ms. Montgomery for over a week now in an effort to try and resolve some of our concerns about the discovery requests, at the same time trying to be mindful of what I believe to be my client's privileges and our right (indiscernible) the party that reviews documents and produces them.

We are -- CLO Holdco is subject to a request for production of documents from the Committee. We are working to prepare a review, to obtain all of the requisite documents to

have a fulsome production to the Committee. And Ms. Montgomery and I have had conversations about how that production will take place. While we acknowledge that there are obviously some timing concerns here given the 90 days relating to that registry order that was relatively recently entered.

So we've mindful of all of those issues, and our dispute here is about whether we're giving up privileged documents or whether we aren't.

It's our position that since that request for production of documents to CLO Holdco, CLO Holdco has a right to review those documents, and to produce documents in accordance with the Federal Rules. And that the request by the Committee to have all ESI produced by these various custodians basically provides an end around to the request for production of documents delivered to CLO Holdco. And it does look through the guise of this joint client privilege exception to the general privilege rules.

But we've got a fundamental misunderstanding of the law by the Committee as the exception applies to the general rule of privilege. And it basically breaks down to a simple analogy, one we can apply to the case of law. The analogy would be like if our firm, Kane Russell Coleman and Logan, represented Texas Capital Bank and Wells Fargo on a bunch of separate matters, and then because we had a great relationship with both, we are going to represent Texas Capital Bank in a

1 merger with Wells Fargo, and we are going to be retained as
2 kind of a mutual third party counsel by both sides to help
3 manage this merger.
4 Now if that merger representation turned into a later
5 dispute between the parties, the correspondence between Wells
6 Fargo and Kane Russell Coleman and Logan, and the
7 correspondence between Texas Capital Bank and Kane Russell
8 Coleman and Logan would not be precluded from production to
9 either party as long as it were (indiscernible) representation.
10 They have the same counsel for the same representation. So
11 that this idea of privilege doesn't really apply the same way.
12 Those documents pass back and forth, I have a duty to both of
13 those clients equally.
14 But what they wouldn't be able to obtain is, let's
15 say, Texas Capital Bank's request for production of documents
16 to me, counsel, seeking all correspondence that I have ever had
17 with Wells Fargo on any other matter, regardless of whether it
18 was -- it was related to or unrelated to a joint
19 representation. And really, that's what the Committee is
20 trying to do here, they want all ESI, there are no parameters.
21 So it doesn't matter if there's a joint representation on a
22 specific matter between CLO Holdco and the debtor, what the
23 Committee is asserting is because they use the same counsel,
24 that all matters or all correspondence between counsel for the
25 debtor, all internal counsel, and counsel for CLO Holdco, since

it was essentially the same person, the same people, all of that is subject to production.

So here's an example of how this plays out, Your Honor. At our last hearing, you heard a bunch of testimony about a transfer of Highland, the debtor's interest in the Dynamic fund, and how on December 28, 2016, with one document, we can trace -- I'm sorry -- we can trace this trail of transfers from Highland to CLO Holdco, and we know that Highland's internal counsel was representing both sides of the deal. They were representing the debtor, they were also representing CLO Holdco as the creation of those documents was done for both parties by the same entity and the same transaction, that's critical.

So do I have an assertion of privilege for CLO Holdco in that situation? No, I don't believe that I do. I think that joint client exception that's addressed in Teleglobe, and Nguyen, and in the Nester decision that's cited by the Committee in their pleadings precludes me from stopping the -- or the disclosure of documents that were between internal counsel and CLO Holdco as they're related to that dynamic transaction because internal counsel at Highland represented both sides of the deal.

But there are other representations taken up by internal counsel for Highland under the shared services agreement between CLO Holdco and Highland that really don't

have anything to do with Highland. So much (indiscernible) litigation, we'll say, between CLO Holdco and some other party like U.S. Bank that does not have Highland Capital Management as a party to that litigation, and could not have Highland Capital Management as a party to that litigation.

(Indiscernible) under this joint client privilege exception that the Committee is asserting should control this entire deal. So in a situation like that, I would still be able to review and withhold documents that were privileged, attorney-client communications, or work product communications without having to disclose those to the Committee even though the Committee stands in the debtor's shoes. Because there is this isolation, Highland is not a party that is jointly represented in that transaction.

So all of the documents that have been exchanged between CLO Holdco and the debtor in representations where the debtor is not an active participant as a party in a joint representation, all of that documentation is the sole property of CLO Holdco. It shouldn't be subject to disclosure simply because one of these custodians engaged in correspondence with CLO Holdco.

So, for instance, the Argentina Bank, let's say, if Highland is not being represented in a transaction with CLO Holdco related to the Argentina Bank, and Grant Scott, as trustee of CLO Holdco, inquires internally about a -- let's say

a NAV statement related to its interest, that's not necessarily a document that would have to be produced to the Committee because it is a potentially privileged communication if it was with one of the attorneys in-house.

Now that doesn't mean that everything is going to be privilege, or that there aren't going to be a significant number of these joint client privilege exceptions where we have to disclose attorney-client communications because Highland was on the other side of the transaction, but that's something that I should be reviewing as CLO Holdco's attorney, and identifying documents for a privilege log, and then having a conversation with the Committee's counsel about whether these are subject to the joint client privilege exception, or whether they are truly privileged documents or not.

So we've already got a request for production out there. I mean presumably, Your Honor, this is already -- you know, this is already underway. What we just want to do is try and protect the documents that are actually privileged communications or work product communications from disclosure to the Committee.

THE COURT: All right; thank you, Mr. Kane.

Let me hear next from NexPoint Real Estate Financial.

(No audible response heard)

THE COURT: All right. I can't hear you. Is this Ms. Drawhorn who will be addressing this one?

MS. DRAWHORN: Can you hear me -- can you --

THE COURT: Yes.

MS. DRAWHORN: Can you hear me now?

THE COURT: I can.

MS. DRAWHORN: Okay. I had to unmute both my phone and the -- and the computer, okay.

Lauren Drawhorn on behalf of NexPoint Real Estate Finance and the 15 related entities and -- that are listed on Docket 847, I won't go through them all.

So our -- one of the -- we've got a couple issues with the motion to compel relative to our shared services agreement with the debtor, and largely because of the breadth of the request wanting ESI from all nine of these custodians. And we have concerns that because there are no limits on that request, that we've got our confidentiality and privilege issues that are concerned about.

The real estate entities are -- NexPoint Real Estate entities are typically traded, and there are some regulatory constraints that we have on the dissemination of information and it being public. And so obviously we need to protect those interests and try and prohibit the disclosure of information.

While there -- while the NexPoint Real Estate entities do -- did have a shared services agreement, it is the businesses unrelated to and separate from Highland, except for

1 the occasional times when they co-invested.
2 So generally speaking, they were separate businesses.
3 Any use of services from Highland employees under the shared
4 services would be for separate deals. And so because they're
5 separate, we believe that it's unlikely that they would be
6 relevant to the estate claims.
7 In other words, the request should be narrowed to
8 limit the amount of information that's not related to the
9 Committee's estate claims, (indiscernible) related to NexPoint
10 Real Estate entities' deals and confidential information and
11 business information.
12 The other issue we have in connection with
13 confidentiality is in connection with NexPoint Real Estate's
14 entities business operations. They continue to receive
15 information electronically from third parties that have been
16 the subject -- that information was provided subject to
17 confidentiality agreements there. So under those agreements
18 with other parties, there are requirements and obligations for
19 NexPoint Real Estate entities to notify those parties and
20 provide them an opportunity to object.
21 So we are wanting the additional protections and
22 limits on the discovery to protect this confidential
23 information and our obligations to other parties, and to
24 regulatory entities.
25 We also have concerns on the privilege -- any

1 privilege information, again, since these custodians were
2 counsel, and provided -- occasionally provided legal advice in
3 connection with NexPoint Real Estate entities' deals that,
4 again, were unrelated to Highland and separate from the debtor.
5 That information will be -- would be privileged and
6 (indiscernible) NexPoint Real Estate entities' privilege
7 (indiscernible) position you just heard, and the Committee's
8 response is that that was waived or part of this joint client,
9 and we disagree with that. Where the legal advice was given on
10 a separate matter, there would be no joint privilege between
11 the NexPoint Real Estate entities and the debtor. We think
12 that that privilege should be protected, and the privileged
13 documents should be withheld from the production.
14 The Committee responded by their -- that we -- that
15 NexPoint Real Estate entities are not burden. We did argue in
16 our objection that this request, under 26(b) (indiscernible)
17 because it was also an undue burden because it's so broad -- so
18 broad. And that burden (indiscernible), as you know, isn't
19 required to be the physical burden of us going through and
20 producing documents. An undue burden encompasses the invasion
21 of confidential information and privilege concerns. So we
22 think that there is a good basis to limit the information that
23 is being produced to protect NexPoint Real Estate entities'
24 confidential information and business information.
25 So what we're requesting we suggested in our

1 objection was to allow NexPoint -- the NexPoint Real Estate
2 entities to have input on the search terms that would narrow
3 the production and potentially exclude the NexPoint Real Estate
4 entities' confidential information, information that would be
5 unrelated to the Committee's estate claims.
6 We also requested that NexPoint be given an
7 opportunity to review the documents -- the NexPoint documents
8 before produced -- and this is similar to what is my
9 understanding the debtor would -- for all of the -- the
10 previous production that was provided. So it is my
11 understanding that before the debtor produced any document that
12 instituted the shared services agreement, confidentiality
13 privileges, they contacted that party and said "Here's this
14 document that we're going to produce, are you okay with it?
15 Are you okay with it, is there any objection?"
16 And so that's all we're requesting is an opportunity
17 that the NexPoint documents that -- that are potentially giving
18 -- to make sure that they're designated correctly under the
19 protective order, so as highly confidential versus
20 confidential, again, because of those confidentiality concerns
21 that I mentioned earlier. And then also to confirm the
22 privilege designation and to make sure anything privileged is
23 not being produced.
24 And then the last request we have is just to make
25 NexPoint a party to the protective order so that we are able to

obtain those protections as the highly confidential and confidential designations.

THE COURT: All right; thank you, Ms. Drawhorn.

All right, let's see. How about we hear from Atlas IDF GP next.

MR. KEIFFER: Thank you, Your Honor. Paul Keiffer for the Atlas IDF entities and parties located at -- or I should say named at Docket Number 837, I won't burden the Court, as others have not done, as well, with the full list of parties.

And also taking in mind -- or keeping in mind what the Committee has done as far as discussing issues, I want to -- I have just a few points:

First off is that my clients don't have a specific concern with the ESI request. The shared privileges and the joint privilege is supposed to hold, we want that to hold as it has been requested for everybody else, and I think that was the intent of the Committee in regard to that point.

It's also, as the Committee indicated, between the debtor and the -- I'm sorry -- between the Committee and the Rand Advisors' related entities that they want to be expressly involved or brought into the agreed protective order. Lots of documents are being requested, not so much through the electronic -- the ESI, but through the fourth production of documents request that we got that -- which we received on the

1 9th of July that gave us six days to respond to, and that's why
2 we started talking and having discussions with the Committee
3 about this.
4 But there -- there there's all these document
5 requests, and we have our own fiduciary duties, we -- either
6 contractually, statutorily, or regulatorily. And as the
7 Committee noted, they'd be perfectly fine with having us being
8 brought into (indiscernible) -- whatever you want to call the
9 right under the coverage of agreed protective order. We're not
10 expressly under it because we're -- we're not a specific party
11 to it, but we need to be -- we feel it's the most appropriate
12 for us, too, in this context, and they've acknowledged that
13 it's a reasonable step to be added to the agreed protective
14 order, so we're happy with that.
15 As far as the documents being produced, the only --
16 the principal attached -- the principal issue for Rand Advisors
17 there is that it's principally its email server issue. Rand
18 Advisors, and the others, have their on documents on its own
19 servers, as best as I understand. And so it's really more
20 documents that would be appended to emails and discussions
21 between the parties, either in the context of (indiscernible)
22 some of the nine individuals that are custodians, that they're
23 described as custodians or otherwise.
24 But the UCC has agreed to let whatever documents are
25 produced in that context, both through the ESI and through the

1 request for production that's outlined there, that we're having
2 to respond to under the shared services agreement with the
3 debtor. But those would also be subject to highly confidential
4 status, subject to the Committee seeking to downgrade to
5 confidential, or not confidential at all.
6 Now the other issue is the attorney-client privilege
7 where Rand Advisors and the others were generally using
8 RandAdvisors.com suffix, would have negotiations and
9 discussions with its own private counsels. And the question
10 here, we don't -- I'm not sure whether or not the shared -- I
11 mean the servers are or are not sufficiently silo'd or
12 otherwise.
13 But we really don't have that hard of an issue here -
14 - that difficult of an issue here as we only -- there's only
15 three defined suffixes that are out there that would be of
16 concern to the Rand Advisor entities, and those are suffixes
17 such as romclaw.com, our law firm, we didn't realize that that
18 was the case. Also, there would be maybe Sadis -- Sadis or --
19 another law firm, maybe three or five suffixes we need to have
20 set aside for attorney-client privilege review. And if we have
21 those, I think that the Rand Advisor group has gotten what they
22 -- what they think is reasonably appropriate under the
23 circumstances.
24 And we're not asking the Court to, you know -- well,
25 we don't see this as truly a request for production, it's kind

of a hybrid kind of a (indiscernible). But under the shared services and the final term sheet, and that allows access, lets the Committee be the debtor and get to many things, but yet they use request for productions as a methodology to say what they're looking for, but they're not really requests for production, per se, because it's -- I've already got it now, this is (indiscernible) debtor, it's what we can look at.

And so we're wanting to make sure that we have under our side of this relationship under the shared service agreement some modicum of protection for its specific attorney-client issues that it has. We recognize the joint privilege issue, that's going to (indiscernible). But there are three to five very simple suffixes as we can give to the Committee for doing its search (indiscernible) romclaw.com, that's my law firm, it would know not to go -- you know, set those aside. There's one or two other law firms that they deal with specifically, and if they go through the next step, and it turns out that there's three or four other people on the email that aren't part of Rand Advisor that's something with the debtor or some third party altogether, then sure, there's no privilege there.

But if it's the discussions between Rand Advisor entities and its counsels specifically, then it should be something that's set aside and reviewed in a different manner. And I don't think it's really even close to burdensome in the

1 context of how much is going on in this case, and how many
2 documents are going to be reviewed.
3 That's principally our concern. We are -- that's
4 another suggested solution to deal with the two elements that
5 we raised in our response on Pages 6 and 8 to a likely
6 solution, which is to basically deal with attorney-client
7 privileges, subpart C, is just to have these exclusion --
8 exclusionary suffixes to address that, very simple.
9 The rest of this, as far as having a log to keep
10 produced items in its context, to be able to (indiscernible)
11 what documents were produced, well, that's probably a bridge
12 too far. We don't need to have that, we don't think that's
13 (indiscernible) concern for us.
14 So keeping up with the few things, the agreed
15 protective order being made expressly applicable to us so that
16 for our purposes, when we have to deal with issues of
17 confidentiality regarding our clients contractually,
18 statutorily, or regulatorily, that's the (indiscernible) I
19 think there's always a legal process (indiscernible).
20 Two, that everything gets a highly confidential
21 status initially, and subject to being downgraded, obviously
22 with notice and opportunity to object.
23 And then lastly, just that the three suffixes be
24 added to the review standard so that -- three to five suffixes,
25 and I'll have those easily enough in the next few days to give

to the Committee to allow me to preserve its attorney-client privilege without having to go into the issue of whether or not this is a means by which Rule 34, or the other appropriate discovery rules, are really being invoked or not in this context, or whether this is just "I'm standing in the debtor's shoes, and I should be able to do these things." It's -- that's an odd -- we can bypass that oddity by dealing with those requested suffixes being set aside.

THE COURT: Okay; thank you.

All right, let's hear from CCS, please.

MS. STRATFORD: Good afternoon, Your Honor. This is Tracy Stratford from Jones Day on behalf of CCS Medical.

THE COURT: Okay.

MS. STRATFORD: Our concern is relatively narrow and unique. CCS is one of the country's leading providers of home delivery medical services. And so they deliver things like insulin pumps and orthotics to people in their homes.

Two of Highland's employees, Mr. Parker and Mr. Dondero, were directors of CCS Medical. And so CCS Medical sent information to them, sensitive business information about the strategic direction of the business, about pricing, about what the business would be doing or wouldn't be doing, about decision-making that would happen within CCS Medical. That sensitive information was sent to the director, including these two individuals who were employed by Highland at their Highland

email addresses.

All we're asking is for the ability to look through these emails first so that we can identify anything that is competitively sensitive, so that we can identify anything that is privileged, and talk to the Committee about it separately.

We don't know, frankly, what the claims are that the Committee is looking to press, so I can't say that none of it is relevant, although it doesn't seem to be particularly relevant to what's being discussed today.

But to the extent that some of those documents might be relevant, the non-privileged ones, but commercially sensitive ones, we want to have that discussion. We would like the ability to look at those documents first, and that would be at our cost, so there's no cost to the estate. We don't think it would take particularly long.

And we would have offered the solution directly to the Committee, but they wouldn't return our phone calls. So we've sent emails, we've called them, and heard nothing back. We would have loved to have negotiated this, but that didn't happen.

The only argument that the Committee makes in response to our suggestion, which were laid out pretty clearly in our very short objection, is that there's a privilege waiver here, or a waiver of confidentiality because we sent this information to these two board members who were employed by

1 Highland. (Inaudible) as a matter of law. And the very case
2 that they cite in their papers explains that.
3 If you take a look at the In Re Royce Homes case that
4 they cite in their response to the objection, what they say is
5 that once you send confidential information to another
6 corporation, the privilege is automatically waived. That's not
7 the case.
8 In fact, if you look at that case, it's very lengthy
9 because the Court looks at a number of factors. And amongst
10 those factors is the expectation that the sender has that the
11 recipient will be able to maintain the information as
12 confidential or protected.
13 Here we have two executives at Highland who were
14 receiving information as members of the board of directors,
15 they controlled the company, they had the ability to control
16 who reviewed their email, and CCS Medical had every reason to
17 believe that those two directors would preserve their duty of
18 loyalty to the company and maintain their individual emails as
19 confidential. There's no waiver under that circumstance.
20 But to the extent that this issue is one that needs
21 to be decided, it can't be decided on these papers because none
22 of those facts are before the Court. None of the factors that
23 are discussed in the In Re Royce Homes case are -- have been
24 briefed.
25 And so to the extent that we're going to discuss a

1 waiver, we would like the opportunity to do that. We don't
2 think the Court ever needs to reach this issue because we think
3 that we can, in a very efficient and effective way, screen the
4 emails by just having the vendor search for particular domains,
5 review them ourselves, identify what's privileged. And what's
6 not privileged, we can turn over.
7 To the extent there's any dispute later on, we can
8 bring it before the Court at that time, but we think this is an
9 easy problem to solve, Your Honor.
10 THE COURT: Thank you.
11 MS. STRATFORD: Thank you.
12 THE COURT: All right.
13 Well, let's see who I missed. Ms. Drawhorn, did you
14 have a separate argument for MGM?
15 MS. DRAWHORN: Yes, Your Honor.
16 THE COURT: Okay, go ahead.
17 MS. DRAWHORN: I do.
18 THE COURT: All right.
19 MS. DRAWHORN: And so MGM is in a similar situation
20 to the party you just heard. And the only reason that MGM is
21 being pulled into the discovery dispute is because Mr. Dondero
22 served as a director on the -- on the board of directors for
23 MGM.
24 So we also believe -- and we have been in discussions
25 with the Committee about potentially pulling out or excluding

1 certain MGM information just by providing a list of the emails,
2 the dot-com of the other executives, or executive assistants,
3 or other board of directors members who would be sending
4 confidential information that was circulated just because --
5 for purposes of the board of directors of MGM and for MGM
6 business matters.
7 So we -- we agree and -- or disagree with the
8 Committee, and agree with the position you just heard. The
9 Committee's response to our -- to MGM's objection is that we
10 waived by sending confidential MGM information to Mr. Dondero's
11 account at Highland, that waived conference or privilege, and
12 we disagree with that. We -- we just heard that sending to an
13 employer's email account in and of itself is not sufficient to
14 waive privilege or confidentiality. There are a multitude of
15 factors that need to be considered, including the expectation
16 of privacy in considering the fiduciary duties of board of
17 directors under California law, which is where MGM operates.
18 That that confidentiality is one of the fiduciary duties.
19 We would expect that sending information to our
20 directors would remain confidential. And just the mere fact
21 that he utilized his -- Mr. Dondero utilized his Highland email
22 account would not be sufficient to waive any confidentiality or
23 any privilege.
24 And then I -- I -- it is hard to believe that
25 anything MGM-related would be extremely relevant to the

1 Committee's claims, but regardless, I think there's an easy way
2 to pull that information and make sure that nothing is being
3 disclosed, which would be by providing these specific email
4 addresses of outside counsel to MGM's board of directors.
5 We've got, you know, two -- two counsels that would not have
6 provided any services to the debtor, that we can say anything
7 at those email addresses should get excluded from production.
8 Same with the outside advisors to the MGM board, we
9 can easily provide that email address and have that information
10 excluded.
11 And then as to the other confidential MGM
12 information, we have a list of the executives and their
13 assistants, we would have provided -- and other board members,
14 we would have provided that. I just think it should be fairly
15 easy to give those email addresses and exclude them from the
16 production, and make sure that that confidentiality and
17 privilege is maintained and protected.
18 THE COURT: All right; thank you, Ms. Drawhorn.
19 Okay, NexBank's counsel, you were going to try to
20 knock my socks off with a reason why I should hear your
21 argument today when you didn't file an objection. So, Counsel,
22 now's your chance.
23 MR. SLADE: I appreciate it, Your Honor; thank you
24 very much. Jared Slade of Alston & Bird for NexBank.
25 NexBank advances the same arguments about concern of

1 counterparty confidential information, as well as attorney-
2 client privilege concerns. And to that end, it's requested
3 some preview time to be able to review the documents and
4 provide the appropriate search terms.
5 I think there are three things which will happen in
6 the next 50 seconds that make us differently situated:
7 The first is unlike the other objectors, our shared
8 services agreement provides expressly that debtor shall take
9 all options, legal or otherwise, that are necessary to prevent
10 the disclosure of confidential information by the receiving
11 party or any of its representatives. So we have a different
12 legal basis that was addressed in part in the debtor's motion
13 originally on this issue.
14 The reason we have that is because we're a bank, and
15 we have two other categories of information that are
16 particularly sensitive and we're concerned about being
17 disclosed:
18 The first are bank examination materials. Privilege
19 is a part of those, and we are very concerned about an issue or
20 problem with our regulators in connection with the fact that we
21 have, in fact, taken appropriate steps to try to protect those
22 and treat those as privileged and confidential information.
23 The other category of information is consumer
24 information. We're talking about things protected by
25 (indiscernible) and other consumer information which are

1 protected in the statutes.
2 Again, we're willing to go through the effort and
3 expense to be given an opportunity to be able to review that
4 because (indiscernible) that any of that is going to be
5 relevant to what the Creditors' Committee is looking at, that
6 we understand where we are. And provided that we are able to
7 do that, and are also afforded an opportunity by the Court to
8 be a party to the protective orders so we can take advantage of
9 the designations and not be prohibited from the (indiscernible)
10 third party beneficiary provision, we should be able to meet
11 our obligation.
12 Thank you, Your Honor.
13 THE COURT: All right; thank you.
14 All right, Ms. Montgomery, I'm going to turn back to
15 you. And let me make sure I understand entirely your position
16 on all of these objectors.
17 You have said -- correct me if I'm wrong -- the
18 Committee has no problem with making all of these objectors
19 subject to the protective order that was negotiated with the
20 debtor way back when in January, or did I overspeak -- overstep
21 on that one?
22 (No audible response heard)
23 THE COURT: Ms. Montgomery, I can't hear you.
24 (No audible response heard)
25 THE COURT: Ms. Montgomery, you must be on mute.

Michael, is she still on there?

ECRO: (Inaudible).

THE COURT: Okay. Ms. Montgomery, we're showing you're on mute. There you are, okay.

MS. MONTGOMERY: Can you -- can you understand me now?

THE COURT: Yes.

MS. MONTGOMERY: Okay. I don't know what happened, I didn't touch anything.

THE COURT: That's okay.

MS. MONTGOMERY: Technology.

No, Your Honor, you're accurate -- that is accurate. We don't have any problem with any of the objectors being made parties to the protective order for purposes of, you know, for their clients to be subject to the same -- the same protections.

THE COURT: All right. And then my next thing I wanted to confirm is that protective order, is it already worded that it's UCC professionals' eyes only or no?

MS. MONTGOMERY: So the current -- the current protective order has two tiers.

THE COURT: Okay.

MS. MONTGOMERY And the highly confidential tier has a very -- a much more limited disclosure group, it includes the Court, it includes the outside professionals, so I guess it

1 would be also FTI, etc.
2 And then, you know, other parties that would be, you
3 know, fundamentally necessary for us to use those -- that data,
4 like court reporters. It does not include the members of the
5 Committee.
6 THE COURT: All right, so you said it's two tiers.
7 You mean like there's highly confidential, that's professionals
8 and those people you named only; and then there's a second
9 tier, confidential, then the Committee members, the actual
10 businesspeople could see it?
11 MS. MONTGOMERY: That's absolutely right, but the
12 confidential data would still be subject to protection. So we
13 think it's a strong protective order, and should meet the needs
14 of all of the objectors.
15 THE COURT: Okay. Let me -- I'm giving you the last
16 word. You can respond in any way you want to all of these
17 eight or so separate arguments, but I would like you to start
18 first with CCS Medical and MGM. I think you acknowledged at
19 the beginning they're in a little bit different category, but
20 now that you've heard their lawyers articulate how they are
21 different, do you think that at least with these two, their
22 ability to first review anything you produce, or the debtor is
23 going to produce, relating to CCS Medical and MGM might be
24 reasonable?
25 MS. MONTGOMERY: Yes, Your Honor.

1 I'd even go a step further. I mean we were working
2 to negotiate with MGM, and my apologies to Ms. Stratford
3 because I must have missed her communications, it was not
4 intentional; we would have happily negotiated the same with
5 regard to her. That those documents might even just be
6 excluded from the review subject to some specific, you know,
7 protections so that we can make sure that things aren't being
8 overly included.
9 So I think that the UCC would be open to a limited
10 review. The devil's in the details with all ESI, Your Honor,
11 so it would really just be determining to make that as targeted
12 as possible so it's not -- you know, it's not including
13 documents that don't have anything to do with the board's
14 service.
15 THE COURT: Okay. It's -- let me ponder what you
16 just said.
17 It would exclude anything not having to do with their
18 board service, Dondero or Trey Parker's board service.
19 MS. MONTGOMERY: Yes. So we believe that because the
20 debtor has separate relationships potentially with these other
21 entities, we understand the concern with regard to the data
22 that's related to their role as a director.
23 But, for example, if there is communications between
24 Mr. Dondero and someone else at the debtor that just says like,
25 you know, "MGM stock is trending up," I don't know that that's

1 necessarily related to his status as a director as I don't know
2 that it's related to an estate claim. It's perhaps a bad
3 example, but the concept remains, Your Honor, we think that
4 there has to be a way to slice that so that all the parties are
5 getting the protection that they need for their confidential
6 board communications without overly dipping into the data
7 that's otherwise in the debtor's position.
8 THE COURT: All right.
9 Well, let me -- let me go to Mr. Keiffer's client.
10 I'd like to hear your specific rebuttal to his idea that maybe
11 you can come up with three or five categories, suffix as he
12 called them, to just, at the outset, carve them out from the
13 possibility of Committee review.
14 MS. MONTGOMERY: So I'm not entirely certain that I
15 completely understood the proposal, Your Honor, and my
16 apologies for that. But I don't know that Mr. Keiffer is
17 suggesting that those categories be excluded from these nine
18 custodians that are the subject to the motion to compel, or if
19 he was requesting that there be some sort of exclusion that
20 applies to data that's otherwise produced related to his client
21 by the debtor, so maybe it's not in the nine custodians' data.
22 In any case, Your Honor, we're open to discussions to
23 try to resolve any of these objections. I don't know that
24 we've specifically discussed that with Mr. Keiffer, but we're
25 happy to do so. If it's limited in nature, and it's not going

to unnecessarily slow down production, you know, we're open to talking about it.

THE COURT: Okay. Well, let me -- let me make sure I understand -- and I know this is subject to discussion with the debtor when we break, but the UCC's proposed protocol here was -- let me go through a couple of mechanics.

All the files of the nine custodians would be provided to this E discovery vendor to put in a repository. And then hopefully the debtor and the Creditors' Committee would come up with a set of mutually agreeable privilege terms to hopefully identify what would -- you agree be attorney-client privilege or work product privilege so that the search terms don't get to that privileged information.

If you have disputes, you're going to have a third party neutral, you've discussed, to resolve the disputes about those search terms.

And then all documents, not including those agreed privilege terms, would get produced to the Committee, obviously subject to the earlier agreed upon protective order, and then the debtors contract attorneys would review the held back files to see if they're really privileged, or not. And if not, they'd be produced. And if they are, they would -- if they think they are, a privilege log would be produced, and then any disputes could be resolved by this neutral third party.

I don't know if that's still your protocol on the

1 table, but that's how I understood it to work from your papers.
2 I guess what I'm getting at is -- I'm pondering Mr.
3 Keiffer's argument, and really a few others. I mean if this is
4 what you're still holding fast to, I mean there's a lot of
5 opportunities along the way to protect attorney-client
6 privilege information of these affiliated entities, right?
7 You're going to first try to craft appropriate search terms so
8 as not to get at privileged information. If you can't get
9 agreements on those, you'll have the third party neutral weigh
10 in.
11 And then the documents that are turned up ultimately
12 through the search, the debtor's going to get a chance to
13 review for privilege and hold back.
14 I guess -- I guess the thought is the debtor's only
15 going to be looking towards its own privileged information,
16 not necessarily NexPoint, or Highland, CLO Funding, and the
17 others.
18 So -- I mean if you could address -- first off, is
19 that the protocol that's still on the table? Did I correctly
20 described the Creditors' Committee's proposed protocol?
21 MS. MONTGOMERY: Sorry. Yes, Your Honor, that's
22 what's set forth in our motion. We've been working with the
23 debtors to try to make that more functional; we haven't reached
24 an agreement yet. Perhaps we'll be able to do that when we
25 take a break in just a moment.

But, you know, we've been trying to figure out, Your Honor, if there are ways that we can further limit the production based on search terms in some way so that we can limit the privilege logging and review that has to occur. But like I said, that's -- that's outstanding at the moment, and I don't know that the parties have an agreement or would be able to reach an agreement. We're hopeful, but I'm not entirely certain.

But otherwise, yes, Your Honor, I think you've pretty well explained the protocol, with one exception, which is that the privilege review that was proposed, that review would be to determine whether or not the documents that were being produced -- that were, you know, presumptively privileged were related to estate claims. And if they were related to estate claims, then those would be produced to the Committee under the terms of the final term sheet.

If they are attorney-client privileged, and not related to estate claims, then those would be withheld and logged.

THE COURT: All right.

Well, let's go back to Mr. Keiffer's suggestion. I mean if he -- okay. I was confused; I think Ms. Montgomery was confused, too.

Mr. Keiffer, you had talked about these three or four suffixes, and one of them would be your law firm if -- I think

what I was understanding, communications that went between Atlas and your law firm; communications that went between Atlas and one or two other outside counsel. Is that encapsulating what you think could be crafted in here --

MR. KEIFFER: Yes, Your Honor.

THE COURT: -- and excluded?

MR. KEIFFER: Yes, Your Honor, that's exactly what we're talking about.

The reason I used "suffixes" just as a term because after the act. So it's ROMCLAW.com is the suffix. And so if you look for that -- if that is the part of the search terms and, you know, you see that, and that means set aside, you see my law firm's suffix on the email somewhere in that, then you know that that's something you need to set aside, as well as another law firm that they had would be SGLawyers.com, those are the -- that's what was referencing, it's just an easy way.

We don't have a lot in our specific circumstance -- and I think it was also some of the more attenuating parties that come in and -- complaining have been -- would be looking for something like that, so if they had a -- maybe that's the same thing that they're kind of looking for. But for us, it is very simple terms, it's what the law firm email addresses are. And when they show up, that's the search term that pushes them aside.

THE COURT: All right.

MR. KEIFFER: Because that would okay, it's probably something -- because before we even knew what was going on, we were working on putting that proof of claim together that we filed, we would have emails out there concerning circumstances between myself and my client. And those would -- those ostensibly would be available under the -- under the -- if it were (indiscernible) litigated, and the Committee won that issue, those would be available.

But we think the easier thing to do is just set them side, let's not go down that road.

The other -- we think there's very few of those, and we'll be happy to give them -- the suffixes in a few days. I'll make sure Mr. Honis -- that my client representative gives me all of those.

THE COURT: All right.

Well, Ms. Montgomery, again, I'm just looking through my notes of your early comments. I mean you had put Mr. Keiffer's client in a little bit of a separate category, right? Saying it didn't appear that Atlas or Rand entities -- they're one in the same, right? Or -- well, same group of clients or same group of entities: Rand, Atlas --

MR. KEIFFER: They are, Your Honor, that's all -- they're all in my group.

THE COURT: Okay. So you had made the comment, Ms. Montgomery, that they did not appear to share legal counsel.

1 MS. MONTGOMERY: I did.
2 THE COURT: In other words, the three in-house
3 lawyers that are custodians, right?
4 MS. MONTGOMERY: That's right, Your Honor. And I
5 think that our position would be because they don't share legal
6 counsel, if there were communications essentially from these
7 three law -- like law firm email addresses that are in these
8 nine custodial data, then those documents might not be
9 privileged.
10 If what Mr. Keiffer's concerned about is
11 communications not to these nine custodians that involve those
12 three or four addresses where there isn't sort of a debtor
13 representative involved, then I think that's a separate
14 situation, and we'd be more than willing to reach an agreement
15 regarding how those documents should be treated, whether it's
16 by review by Mr. Keiffer in logging or just exclusion from
17 review.
18 MR. KEIFFER: Your Honor, may I ask for one quick
19 clarification. We still want to maintain that to the extent I
20 don't know for sure whether -- what extent legal services were
21 or were not provided.
22 And to the extent that their joint privileges waived,
23 a way around those things, that's the better way of doing it
24 than to say that they've been waived and things. So let's just
25 let the joint client privilege point, which we previously

discussed, be the main means by which those go through. There might be (indiscernible) discussions with one of the nine folks that -- when Highland was involved in the transaction. There may be a common interest privilege, etc. I think it has to stay at that highly confidential level just because it's (indiscernible) had it lowered in its tier -- I mean a tier -- or possible references, whether it's confidential, highly confidential, confidential or not confidential at all.

THE COURT: Okay. I just --

MR. KEIFFER: That's the only --

THE COURT: I just got very confused. I think we were discussing if -- if there are --

MR. KEIFFER: May I, Your Honor?

THE COURT: Yeah, I -- I -- well, if there are communications from folks at Highland to these three or so law firms that Atlas uses, then there could be an agreement those are cut out -- carved out.

But if there is -- if there are communications from the six other custodians who are not lawyers to Rand entity -- or -- or these law firms --

MR. KEIFFER: No, Your Honor --

THE COURT: I -- I --

MR. KEIFFER: Pardon me, Your Honor. The law firms aren't really the issue here. Only the issue with regard to seeking things through what is the shared server circumstance

in the email server.

An example may be that when there's an email that comes in from Isaac to my client saying "You've got some production requirements," and I'm on that email, I would initially show up on that email, but that wouldn't be one that would be as part of a shared services type of potential legal discussions about current circumstances and telling me, "Oh, by the way, we've been requested for this information under a shared services agreement, you have X days to produce."

If, on the other hand, it's -- some years ago, back when things were happening, not current, but years ago when things were going on, that there was -- that there was an email between my client's counsel and the debtor's counsel, there would be the shared privilege or the joint privilege element that would keep it at a different level, even though there may be some other issues in regard to the shared services related to privilege.

What we mentioned earlier -- and I think the Committee's okay with this -- with the joint client privilege is not affected by the process. And so that -- the only thing that's really, really out here that adds to the circumstance is where emails show the three to five dot-com addresses. That they get set aside to go through a different -- go through a process of review, you know, to see if they're attorney client between myself and my client, or between previous counsels and

my clients, just as between them.

THE COURT: All right.

MR. KEIFFER: That's all we're really looking for in that.

THE COURT: Okay.

Ms. Montgomery, again, I'm giving you the last word in rebuttal to any of this you want to say at this point. But I do hope you'll address one more thing as part of that, and that is Mr. Dondero's arguments about Acis. I just want to clarify I understand where you stand on that.

MS. MONTGOMERY: Yes, Your Honor. With regard to Mr. Dondero's arguments regarding Acis, we have no qualms with the position that communications that are related to the Acis litigation should be treated as outside counsel or highly confidential -- at the highly confidential level, right? That makes sense, Your Honor, and we're not trying to bypass discovery on behalf of any of the members of the Committee, or anything of that nature.

Our concern with the objection was that's not what's being asked for. If Mr. Dondero had asked that communications or documents that relate to the underlying litigation be not provided to the members of the Committee, and held at only the lawyers' eyes only, we wouldn't have had a problem with that.

Instead, what he's asking is that all documents not be shared with one of the members of the Committee, and we

1 think that's overly broad. And, frankly, I'm unclear as to why
2 that would be necessary.
3 THE COURT: Okay; all right. Anything else you want
4 to say?
5 MS. MONTGOMERY: Only to the extent that you have
6 questions about any of the arguments that they made, Your
7 Honor. We don't want to take up more of your time than
8 necessary.
9 THE COURT: All right. Well, I'm going to carve out
10 three specific areas, and then I'll just give you the more
11 broad ruling.
12 With regard to CCS Medical and MGM, I think they have
13 shown themselves to be in a more unique -- a unique situation
14 in contrast to the others since we certainly don't have any
15 issues of shared in-house lawyers, shared IT, and whatnot. We
16 just have the board connection to Mr. Dondero and Trey Parker
17 on CCS Medical, and with regard to Mr. Dondero and MGM.
18 So I do think these objectors should have the
19 independent ability to review before disclosure to the
20 Creditors' Committee, at their own cost, any information
21 pertaining to those two entities to make sure there's not any
22 privileged information they want to argue should be held back
23 or commercially sensitive information.
24 So, again, hopefully you all can amicably work out
25 the wording of that, but that is the concept of the ruling of

1 the Court.
2 Second, with regard to the Atlas/Rand parties, I
3 think that they should be entitled to a separate review of any
4 items that involve those dot-com law firm names to weigh in on
5 whether those are privileged.
6 And, of course, these are all subject to further
7 Court review and litigation before the Court if people cannot
8 agree on that. I say that, or the third party neutral, I guess
9 that would hopefully be the first step before any of this comes
10 to the Court.
11 So that is the special category as to Atlas/Rand.
12 As far as the Dondero argument, I do like the
13 suggestion, Ms. Montgomery, that you made that if there is any
14 documentation relating to Acis litigation that is produced to
15 the Committee, that it should be considered in that first
16 category that it's highly confidential, so it's for
17 professional eyes only; Mr. Terry or Acis businesspeople cannot
18 see that. But that it -- that's just a special category of
19 documents, any ESI that pertains to the Acis litigation,
20 wherever that litigation is pending, this Court, Guernsey,
21 State Court, wherever.
22 So all other objections are overruled except --
23 obviously I do think it's important to do, Ms. Montgomery, what
24 you said you would do, and make all of these objectors
25 expressly parties who are subject to the original agreed

1 protective order. Okay, so I think that gives them some level
2 of protection. But I have been strongly persuaded in
3 everything I've heard today that there is a very strong chance
4 with regard to most of these entities that share legal counsel
5 with Highland, and share IT, and servers that we have had a
6 waiver of privilege, we have common interest privilege, joint
7 privilege, something of that regard to have impaired their
8 privilege arguments. So I'm just throwing that out there for
9 the benefit of everyone as far as future disputes that there
10 might be.
11 All right, Ms. Montgomery, do you have any questions
12 about that ruling?
13 MS. MONTGOMERY: (No audible response heard).
14 THE COURT: No? All right.
15 MS. MATSUMURA: Your Honor, may I make one brief
16 comment? This is Rebecca Matsumura for Highland CLO Funding.
17 THE COURT: Yes.
18 MS. MATSUMURA: I just wanted to clarify, we didn't
19 make it as an explicit part of our deal with the Committee that
20 we also be made party to the protective order. But we'd also
21 ask for that relief, as well as, you know, such being given to
22 all of the objectors.
23 THE COURT: Okay, the Court grants that request.
24 All right, Ms. Montgomery, anything else?
25 MS. MONTGOMERY: (No audible response heard).

THE COURT: Shall we break now to let the Committee counsel and debtor counsel talk about their remaining unresolved issues? How long of a break, Ms. Montgomery, do you think you will need?

MS. MONTGOMERY: (No audible response heard).

THE COURT: Okay. I think you're on mute.

MR. MORRIS: Your Honor, this is John Morris from Pachulski on behalf of the debtor.

THE COURT: Oh, okay.

MR. MORRIS: I just -- yeah, I just need to put some -- a couple of bells and whistles, it will probably take me two minutes to finish-up an email from Ms. Montgomery. And then if we could just -- I would suggest give us until -- 45 -- until I guess 3:45 --

THE COURT: All right.

MR. MORRIS: -- local time.

THE COURT: All right. Well --

MR. MORRIS: And then see -- hopefully we'll know -- at least narrow the issues, if not reached a complete agreement, by that time.

THE COURT: Okay. I'll come back at 3:45.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

(Recess 3:23 p.m./Reconvene 3:46 p.m.)

THE COURT: All right. This is Judge Jernigan again. I'm going back on the record in Highland Capital. Do we have

at least Mr. Morris and Ms. Montgomery available from their session?

MS. MONTGOMERY: Can you guys -- can you hear me, Your Honor?

THE COURT: I can hear you now; thank you.

MS. MONTGOMERY: Okay, I have no idea why it keeps muting, so my apologies for that.

We just briefly met. We need just a few more minutes, Your Honor, to run one issue past our client, but we do believe we're going to have at least one matter outstanding for the Court to consider hopefully, but we've managed to resolve everything else.

THE COURT: Okay. So do you literally mean one minute, or were you being general? Do we need five minutes or --

MS. MONTGOMERY: I think five would be sufficient, Your Honor.

THE COURT: All right. Well, I'll take another break. I'll be back in five minutes.

MS. MONTGOMERY: My apologies.

THE COURT: Okay; no problem.

(Recess 3:47 p.m./Reconvene 3:59 p.m.)

THE COURT: All right. This is Judge Jernigan, we're back on the record in Highland after a break.

Mr. Morris, I see you there. And do we have positive

news to report?

MR. MORRIS: I think we do. We haven't completely resolved every single issue, there is still one remaining one that we'd like to present to the Court.

THE COURT: Okay.

MR. MORRIS: But we have otherwise, I think, reached an agreement with respect to all other matters.

Ms. Montgomery, I don't know if you want to share with the Court or -- I don't even know if Your Honor wants us to present the agreement to her or we'll just submit it in a proposed order later.

THE COURT: Well, if you could just hit the highlights so we have it on the record that we have an agreement, and the pertinent points.

MR. MORRIS: Okay. So I'll just -- I'm just reading from the email.

The Requested ESI will be securely delivered to Meta-e. Meta-e is a third-party service provider, (indiscernible) the Committee. So the requested ESI for the nine custodians will be delivered to Meta-e.

Number two, the debtor will proceed with the production of the 800,000 e-mails previously identified by use of agreed search terms, subject to the Court's prior rulings with respect to the third party objections, and subject further to a privilege review using terms agreed by the parties, with

the resolution of any disputes on those privileged terms resolved on an expedited basis in accordance with the Committee's proposal in their motion to compel. And that really is just longhand, I guess, for a special master.

If and when the UCC wants to conduct further searches on the requested e-mails, it will give the debtor with three business days to consent to the search terms, with such consent not to be unreasonably withheld. In the absence of any objection, the e-mails will be produced subject to the Court's rulings on the third-party objections, as well as privilege review previously described. Search terms need not necessarily be tied to formal requests for production, and may be provided to the debtor on a rolling basis.

If debtor does not consent to search terms, it must lodge an objection with the Committee. The parties shall confer in good faith and if no resolution is reached within two business days, the debtor may seek judicial review on an expedited basis. It will be debtor's burden to establish that the search terms are not reasonably designed to identify data relevant to Estate Claims. Initial caps because the "Estate Claims" is from the governance settlement back in January.

All ESI containing search terms not subject to objection will be produced to the Committee pending determinations on those terms, if any, as to which there is disagreement.

1 Next, Your Honor, taking into account the speed with
2 which the parties intend to proceed and the volume of
3 documents, all ESI produced that is not subject to the
4 privilege term search shall be produced on a "highly
5 confidential" basis under the protective order, and the debtor
6 shall respond within two business days to any designation
7 challenge by the UCC. Documents that have been reviewed for
8 privilege will be categorized by debtor in the first instance
9 as either highly confidential, confidential, or not subject to
10 confidentiality.
11 Next, all persons or entities who objected to the
12 UCC's motion to compel or who are otherwise identified in the
13 debtor's motion for a protective order shall be deemed to be
14 parties to the court-ordered protective order that was entered
15 in January.
16 All documents from any custodian -- any of the non-
17 custodians that are related to or otherwise concern the pending
18 Acis litigation shall be marked "highly confidential" and not
19 subject to privilege challenge.
20 And finally, any disputes regarding the privilege
21 review process will be resolved by the special master and both
22 parties expressly reserve their rights thereto.
23 So there’s one last issue --
24 THE COURT: Can I -- before we --
25 MR. MORRIS: Of course.

THE COURT: -- go on and I forget, can we call this human being a third party neutral instead of a special master? And I'm -- I'm splitting hairs on that because there is a rule somewhere -- is it -- is it in 105 or is it a rule that says a bankruptcy judge can't appoint a special master?

MR. MORRIS: I don't know, but let's just call him or her a third party neutral.

THE COURT: Yeah, I'm not crazy, isn't that -- I think it's in one of the 9000 rules.

MR. MORRIS: I'm sure you're right.,

THE COURT: I'm not sure how different this third party neutral is in substance from a special master, but it will just make me feel better.

MR. MORRIS: Yeah, it's just somebody who can --

THE COURT: If the Fifth Circuit ever looks at it --

MR. MORRIS: Yeah, it's just somebody who can help us resolve either issues of creating these privilege terms or resolving any other disputes so that we don't have to burden the Court with such issues.

THE COURT: Okay; very good.

Well, let's hear the unresolved issue then.

MR. MORRIS: Okay. So the last issue, Your Honor, is as Your Honor knows -- Your Honor, I need to, if I may, just provide some perspective here because these issues are very, very important to the debtor. I take personal responsibility

for all discovery matters in this case. I've had the support of the independent board, and of all of Highland's employees who have worked very hard to get these documents in this case.

We produced -- really we were substantially complete with all (indiscernible), and we did it with the following principles in mind: We wanted to, of course, eliminate or at least limit any potential liability exposure to the debtor, and that's what prompted us to make the motion to compel. And as Your Honor saw, there were eight separate objections brought by 40 or 50 different parties, and it's exactly for that reason that we were seeking the ability to do the review initially because we have -- you know, we may have wound up disagreeing with some third parties as to the scope of their obligations, but we knew there were obligations that existed and the board was very specific in instructing me to make sure that we (indiscernible) liability (indiscernible). So I'm really pleased that the objecting party stepped up, and that the Court issued its rulings. But that was really one of our (indiscernible) principles.

Another one is to make sure that we protect the privilege to non-estate claims. We negotiated very (indiscernible) term sheet with the Committee. We gave the Committee standing to pursue estate claims. We gave the Committee a shared privilege to all privileged communications of estate claims.

But what we did not do, what we did not agree to was to waive the privilege with respect to non-estate claims. So that's the second principle that we've been trying to protect because the board and (indiscernible) we have an obligation to the estate and to the Committee, so we're trying to protect the estate's privilege for non-estate claims.

And the third thing is just to make sure this process runs as efficiently as it could. You know, I don't know that going from 800,000 emails to eight million is -- can be categorized as a success, but that's what the Committee's wanted to do, and the board has been very specific not to be obstructionist here, but just to be guided by the principles that I've articulated. And that's kind of how we got here.

And so the last issue here, Your Honor, touches on the principles that I just described, and that is the nine custodians at issue, three of them are lawyers: Scott Ellington, Isaac Leventon, and Mr. Surgent. They're all lawyers, they're all licensed to practice law, they all give legal advice, they give legal advice to the board, they give legal advice on countless issues that are completely unrelated to estate claims for which the Committee does not have standing to pursue, and for which the Committee does not have a shared privilege.

So the third issue, Your Honor, is just to say that for those three out of nine custodians, we actually do a real

1 privilege review on a document-by-document basis.
2 Now I'll just leave it at that, that's what the issue
3 is. And the Committee, I think -- I'll let them speak for
4 itself.
5 THE COURT: Okay. I -- I didn't know there was any
6 disagreement about debtor lawyers or debtor contract lawyers
7 doing a privilege review. I thought it was just a -- you know,
8 the two-tier, first a relevance review and then a privilege
9 review.
10 MR. MORRIS: It's in our objection, Your Honor.
11 THE COURT: Pardon?
12 MR. MORRIS: We did raise it -- we did raise the
13 issue in our objection.
14 THE COURT: Oh.
15 MR. MORRIS: This isn't the first time I --
16 THE COURT: Well, no, no, no, no, I thought --
17 MR. MORRIS: Maybe I'm mistaken.
18 THE COURT: I thought it was already part of the
19 UCC's proposed protocol that there be a privilege review by
20 debtor's lawyers.
21 MR. MORRIS: That's right, and that's just using kind
22 of garden variety search terms. What I'm saying is that when
23 it comes to -- and that's fine to take the six non-lawyers,
24 that's fine for Mr. Dondero, that's fine, you know, for Mr.
25 Waterhouse, and for the other non-lawyers. But for a lawyer,

1 Your Honor, I think -- I think -- I mean this is of such vital
2 importance, and is -- almost everything they do is -- not
3 everything; I overstated. Sometimes they're engaged in
4 business advice. But for the most part, they're practicing
5 lawyers.
6 And I think we just need a heightened standard of
7 protection for those individuals, and it's just the three of
8 the nine. I mean it's for three of the nine who are licensed
9 lawyers, and we're asking for a wholesale privilege review for
10 those three people, not just searching to see if their email
11 says they privilege or work product, you know, there are other
12 search terms that may come up.
13 THE COURT: Okay. Ms. Montgomery, elaborate on where
14 the difference is on your proposed procedure versus the
15 debtor's, all right?
16 MS. MONTGOMERY: Yes, Your Honor.
17 The proposal that is before the Court, you're
18 correct, does provide for a privilege review. We've never
19 argued that there shouldn't be a privilege review. We
20 understand that the creditors stand only in the shoes of the
21 debtor with regard to the estate claims, and not more broadly.
22 The dispute really here, Your Honor, is on the nature
23 of the search when it comes down to these three custodians that
24 are attorneys. And Mr. Morris is suggesting that all of the
25 documents -- every document that has a custodial file, is in

1 their custodian file should be touched by the debtor so that
2 they could look at it and determine whether or not it is
3 privileged. And if it is privileged, whether or not it's
4 related to an estate claim.
5 And our position, Your Honor, is that that's
6 unnecessary, and that it's going to cost a lot of money, and
7 also slow down the review process.
8 And the basis, Your Honor, for our position is that
9 this sort of assumption stands on the ground that every
10 document a lawyer touches can be -- you know, is automatically
11 privileged. And as a general rule, we all know that that's not
12 the case. Not every document a lawyer touches is protectable.
13 And that's particularly true with regard to in-house counsel.
14 Their roles by their nature involve providing both legal advice
15 and business advice, and only the legal advice is protectable.
16 Several courts have held that the presumption might -
17 - regarding privilege that might exist for law firm counsel is
18 not the same presumption that should be held with regard to in-
19 house counsel. In fact, the presumption should be that the
20 advice is business advice, unless it's establishing legal
21 advice.
22 And of the three custodians that the debtor
23 discussed, two of them -- they're all, in fact, licensed
24 attorneys. But one of them is not in the legal department, he
25 is acting as the head of compliance. And as you know, the case

1 law on compliance is fairly well-settled that there isn't a
2 presumption of privilege with regard to the compliance issues.
3 And so as a result, we think it's most appropriate to
4 use robust privilege terms. You know, think of things like
5 privilege, lawyer, attorney-client, work product, etc., and
6 we've proposed a list of those terms to the debtor, and we're
7 willing to continue to work that out with this third party
8 neutral.
9 But we don't believe that it's appropriate for every
10 single document that is related to these three custodians be
11 reviewed for privilege purposes, that's just excessive and
12 expensive.
13 MR. MORRIS: Your Honor, if I may?
14 THE COURT: You may.
15 MR. MORRIS: I dare say that not ten percent of what
16 I write has the word "privilege," "attorney-client," "work
17 product" in my emails. That is -- you will never be able to
18 create a list that's sufficient to protect a lawyer from
19 producing privileged communications.
20 There's no dispute here that the Committee's rights
21 extend no further than estate claims. And I might feel
22 differently here, Your Honor, and maybe there's some wiggle
23 room here, but they can create six terms that are actually
24 designed to elicit information relating to estate claims,
25 right? And we've asked them to do that for many months. And

if they're -- if I thought that they were actually looking for information that related to estate claims for which the debtor has agreed the Committee would share the privilege, my concerns would be much more modest in scope.

But here, you have individuals who have been acting as lawyers for five years. To expect them to write the word "lawyer," or "privilege," or "work product" in every email, or to suggest that if they haven't done that, then it's fair game. Even if you have no idea if it relates to an estate claim is just -- it's just (indiscernible). It's just -- it's not right.

They're getting the emails of six custodians. They're getting the emails using the search terms with the six custodians. It is costly, it will slow it down for three of the nine people, but that's because they haven't given us -- they haven't given us search terms that are designed to elicit estate claims. They're just -- they're asking for everything. And I've never ever seen anybody -- any court allow, you know, the unfettered access subject to only search terms that may or may not be sufficient. I just -- we feel very, very strongly about this. They're getting six out of nine custodians, and we're not even saying that they won't get the lawyers in these three custodians' emails. We'll give them whatever relates to estate claims.

MS. MONTGOMERY: Very briefly. I think what Mr.

Morris has raised is dealt with by virtue of the agreement that we just told you about, which is that we're going to be using search terms that are aimed at identifying estate claims. And that the review and the production process to us would be only of the documents that contained that search term, and the privilege would be for the subset of documents that contain that search term and also contain a privilege term.

And it's not limited to just privilege, Your Honor. There are things in there like "lawsuit," or "litigation," or "claim," or -- and we're open to continue to discuss those.

Like I said, we only object to a wholesale review of every document, we don't really think that that's necessary.

MR. MORRIS: We're -- we're -- and I just want to clarify, we're not talking about reviewing every document. We're only talking about the documents that would come up using whatever search terms the Committee devises.

So by our count, there's between one point five and two million emails from the three lawyers. We're not suggesting that we would look at every one of them, there would be no need to do that.

But what we would do is review the emails that are the subject of search terms to make sure there (indiscernible).

THE COURT: Okay. Let me -- at the risk of repeating myself -- go through the explicit protocol the UCC had in its pleading:

1 Number one, all files of the nine custodians,
2 including those three lawyers, would be provided over to the E-
3 discovery vendor to put in a repository.
4 Then you come up with this robust list of privilege
5 terms to ferret out what might be privileged. You try to agree
6 on that robust set of privilege terms. If you can't, you get
7 the third party neutral to work out your disagreement,
8 hopefully.
9 So you get that resolved, and the search protocol is
10 executed, and all documents, not including one of those
11 robustly created privilege terms, get produced to the Committee
12 subject to that agreed protective order from January, 2020
13 where there's carve out and, you know, ability to pull back,
14 right, if there's inadvertent production of privilege, right?
15 That's an essential term, right? If something accidentally
16 gets produced that shouldn't, then there's always a mechanism
17 to pull it back.
18 And then the debtor's contract attorneys would review
19 all of the held back documents, the documents held back, you
20 know, because the privilege terms were triggered, and they were
21 held back, to determine if they are really privileged. If not,
22 then they get produced.
23 But if you decide they are, in fact, privilege, then
24 you create a privilege log, and that gets shared with the
25 Committee. And if there are disputes about that, then you go

to the third party neutral to resolve those.

Okay, is there anything I misstated about what the Committee has proposed?

(No audible response heard)

THE COURT: Is there anything I've misstated? Ms. Montgomery's shaking her head no.

MS. MONTGOMERY: No, Your Honor, I don't believe so.

MR. MORRIS: So --

THE COURT: So I really am -- if that's the case, I'm not getting, Mr. Morris, why --

MR. MORRIS: Let me try one more time, because --

THE COURT: You're going to get your chance to review stuff that's --

MR. MORRIS: No, but -- but we're not, and here's -- here's the gap in what you have just described. Everything you have just described is perfectly fine for the six non-lawyers.

Our concern is if you don't have -- if -- there's no question that the lawyers have engaged in the provision of legal services, there's no question that the provision of legal services extended beyond estate claims.

And the concern is no matter how hard you devise search terms, and this is just a matter of practice in my experience, you're always going to get documents that don't get captured by the search terms.

And so what you've described works very well if the

1 document -- if the search terms actually work.
2 What our concern is for lawyers only, that that's not
3 sufficient. That we will lose too many documents that will not
4 be captured using the search terms for which, you know,
5 clawback -- clawback issues are just -- we're talking about
6 millions of documents that are going to be reviewed and
7 produced. Under these circumstances, more than any other, Your
8 Honor, these lawyers privileged communications that do not
9 relate to estate claims should be subject to protection. They
10 should be subject to more protection than non-lawyers are
11 getting.
12 THE COURT: The clawback --
13 MR. MORRIS: And given --
14 THE COURT: The clawback isn't enough. The clawback
15 isn't enough.
16 MR. MORRIS: It's not enough. You can't unring the
17 bell, Your Honor.
18 And given the massive amount of information that the
19 Committee is seeking that we are willing to provide, frankly, I
20 don't think it's unreasonable to say, yeah, no, we're going to
21 treat lawyers like lawyers.
22 THE COURT: So balance is you think, you know, those
23 lawyer eyes that can't unsee what they see, okay, if they get
24 it, yeah, you can claw it back, but they can't unsee it. And
25 so somehow, it's going to, you know, be harmful.

But the flip side of that is -- well --

MR. MORRIS: I did try to create a little more --

THE COURT: A great delay and expense, right, for you all to first go through the gazillion documents, and then, you know, there's a privilege log that might be --

MR. MORRIS: I --

THE COURT: -- much larger than --

MR. MORRIS: I did --

THE COURT: Go ahead.

MR. MORRIS: I did try to create a little space for Your Honor, a little comfort zone, and that is that the Committee actually use search terms that was designed to get communications related to estate claims, right? Because these lawyers have countless emails, for example, relating to the board's deliberations on settlement with UBS, or with the Redeemer Committee, or with Acis, these things have been going on for months. That shouldn't be subject to clawback, they should never be produced.

And so if there's -- you know, if the Committee were to devise actual search terms that were intended to get estate claim information, like I said before, that may make more -- that might provide a little bit more comfort. But to allow them to just use, you know, regular search terms on those emails when you have non-estate claim information, and they have -- I'm telling Your Honor, just countless emails over the

1 last six months with the board, responding to board inquiries,
2 responding to claims dispute resolutions, responding to all
3 kinds of things.
4 You know, at a minimum, I would want -- I would want
5 it to stop as of the petition date. But I think -- but I think
6 even beyond that, they're lawyers, they're licensed
7 practitioners who are rendering legal advice, and they're doing
8 so in the kind of context that have nothing to do with estate
9 claims. And you have six other custodians, six, with whom the
10 Committee's proposal is completely acceptable.
11 THE COURT: Well, this is a hard one. This is a very
12 hard one, Ms. Montgomery. What -- I mean what do you have to
13 offer me other than delay/expense? And that's -- you know,
14 those are not small considerations, but that's really what it
15 boils down to, right?
16 MS. MONTGOMERY: Well, there's delay, there's
17 expense, and then there's the protections that are already put
18 forth in the protective order, Your Honor, which we think are,
19 as we've said already today, robust.
20 We understand their concern with regard to clawback.
21 They have an attorneys' eyes only highly confidential
22 designation that they can use, and that will be used under the
23 agreement we've reached with regard to any document that they
24 haven't looked at. So those will only be going to outside
25 counsel and the Committee's professionals.

And I just don't know -- you know, I think the protections are there, and that the cost, you know, when balanced against what we're really asking them to do and the protections that are in place for them, just -- they don't -- they don't balance out, Your Honor.

MR. MORRIS: Your Honor, with all due respect, it's a little -- it's a little difficult for me to listen to cost being a concern when you have a Committee who's asked for the emails of nine custodians over a five-year period. Actually they've asked for ESI, the eight million number is just emails. So it's not -- it's emails and attachments.

So the notion that cost is now an impediment while we've gone from 800,000 emails to eight million doesn't (indiscernible) with me.

THE COURT: All right. Well, again, I don't find this to be at all easy. But I am going to sustain the debtor's objection on this, if that's the right way to say it. I'm going to accept the position, and order that these three custodians, Scott Ellington, Isaac Leventon, and Tom Surgent, that before any production, those three individuals' files can go through, will go through separate review by the debtor. So they're carved out of the rest of these protocols, and presumably as promptly as possible, there will be rolling production. Debtor will produce non-privileged files and will create a privilege log.

And if there are disputes about that privilege log, either the third party neutral will work them out or I guess I'm the ultimate arbiter, if need be. I don't know exactly how you have those mechanics. Maybe you don't have the judge involved; I don't know.

Why don't you tell me so I can know whether to be expecting a request to weigh in. Do you have it set up where the third party neutral's the final say on things like whether something belongs on a privilege log or if it's really privileged?

MR. MORRIS: I don't think we've addressed that, Your Honor.

THE COURT: Okay.

MR. MORRIS: But I'm sure we can --

MS. MONTGOMERY: I think it may be already be covered in the protective order, Your Honor; I'm just checking to see.

THE COURT: Okay. And I just want to say that I understand very well from my months working on the Acis bankruptcy that these in-house lawyers -- I'm inclined to say they wear many hats. I don't know if that's the right way -- I had Mr. Ellington on the witness stand once; I had Mr. Leventon on the witness stand many times. And I will tell you the Court's impression is that they are both businesspeople, as well as lawyers. And I never had Surgent, the compliance fellow, in here.

But I'm just letting you know I hope there aren't, you know, umpteen disputes about things held back as privilege. The way I view it, there may be things that are privileged, and things that absolutely were not -- are not. I know we've got privilege related to estate causes of action versus attorney-client privilege or work product that doesn't relate to causes of action. And I'm already bracing myself for how hard is that going to be to ferret out is it related to an estate cause of action or not.

I'm really -- while I feel good that we've worked out a lot today, I am really bracing myself because I don't think this is the last discovery dispute I'm going to see. I just don't. We have a lot of things that kind of sound good when you say them fast, but just -- you know my view. Well, you know my views. I've seen two of these in-house lawyers on the witness stand before. And, again, part businessperson, part lawyer, and I know what the case law says. If it's really a communication that is about rendering legal advice, that's one thing.

But if it has nothing to do with that, or little to do with that, it's mainly in their role as a business consultant, or other capacities, there might not be a privilege.

MR. PATEL: Your Honor, this is --

THE COURT: Go ahead.

MS. PATEL: Your Honor, this is Rakhee Patel. If I can briefly be heard on a point of clarification on the agreement.

THE COURT: Well, okay, what are you talking about on the agreement?

MS. PATEL: Well, Your Honor, what I heard as part of the agreement reached between the Committee and the debtor is that all Acis information will be designated as highly confidential determination, and certainly --

THE COURT: Okay. Acis litigation. If it's related to Acis litigation. If they misspoke, that's what I ordered earlier. You didn't misspeak, right?

MR. MORRIS: I don't believe so, Your Honor. I think that's --

THE COURT: Okay.

MR. MORRIS: That's what was --

THE COURT: Okay.

MR. MORRIS: I think it was relating to or concerning the Acis litigation matters.

THE COURT: Is that --

MS. PATEL: Understood, Your Honor. Yeah, and I just wanted to clarify because what I heard, and apologies if I caught a bit of it, but is that Acis litigation will be designated as highly confidential, and that it is not subject to further review. And I wrote that down because I wanted to

1 just, again, clarify what "not subject to further review"
2 means.
3 My concerns, Your Honor, are kind of twofold:
4 Number one is that certain documentation, as Your
5 Honor just referenced, and you'll recall Mr. Ellington and Mr.
6 Leventon testify during the Acis bankruptcy case that during
7 the involuntary and then during the case in chief, were
8 generally testifying as fact witnesses. And my concern is is
9 that there are other things, for example, in Acis's bankruptcy
10 case, the original schedules were signed by Mr. Leventon.
11 THE COURT: Right.
12 MS. PATEL: Well, some of these are Acis's documents
13 or Acis's information, and Acis is the holder of the privilege
14 on those.
15 So to say that they're highly confidential and
16 they're privileged, that they're -- it's our privilege, I
17 should be allowed to assert my own privilege with respect to
18 those documents, and waive my own privilege -- my client's
19 privilege with respect to that even though --
20 THE COURT: Okay. Can I cut this off? I -- I --
21 what I believe is the deal, someone correct me if I'm wrong, is
22 that with regard to documents produced, ESI produced to the
23 Committee, if it pertains to Acis litigation matters, okay,
24 litigation between Acis and any Highland -- Highland or
25 Highland affiliate or Highland insiders, that is going to be

1 designated as highly confidential, meaning only professionals
2 for the Committee get to see it, not Committee
3 members/businesspeople. That's the whole agreement with regard
4 to Acis, right?
5 MR. MORRIS: Yes.
6 MS. PATEL: And that was going to be my only point,
7 Your Honor, was that we can -- Acis is obviously going to be
8 able to go get it if necessary. In other words, we -- this
9 isn't about prejudice to Acis's rights to even get it because
10 it is our privileged information anyway; or, number two, we can
11 get it in the ordinary discovery process.
12 Obviously we've got a claim objection that may go to
13 trial, and we may need to seek these documents separately.
14 THE COURT: Right. That -- this doesn't mean -- this
15 does not mean Acis never gets to see it.
16 MS. PATEL: Okay.
17 THE COURT: If Acis requests something in discovery
18 with regard to the claim objection or other litigation, then
19 that's subject to a whole different agreement or order, right,
20 Mr. Morris?
21 MR. MORRIS: Yes. Yes, Your Honor.
22 THE COURT: Okay.
23 MS. PATEL: Thank you, Your Honor.
24 THE COURT: All right. Well, I -- I kind of lost my
25 train of thought, but I guess I'm trying to signal, for

whatever it's worth, that if there are disputes down the road regarding files from these three individuals -- Ellington, Leventon, Surgent -- and the debtor is saying they're privileged, you know, and not related to estate causes of action, and the Committee is disagreeing, be prepared to make your best argument. Because I am expecting that some communications, even if they're unrelated to estate causes of action, may very well be in the nature of business type communications because I've seen with my two eyes that they fulfill different roles in that organization.

So I hope we don't get bogged down because of my ruling on this today.

The other thing I wanted you to kind of keep dangling in your mind is as I was reading the pleadings, preparing for this afternoon, I was very much fixated on -- we had this protocol and a compromise worked out with the Committee way back, at the end of last year, finalized in January and, you know, the agreement was that the Committee would have standing to pursue the estate causes of action, and would get privileged documents related -- you know, communications related to these estate causes of action. And that was to avoid a Chapter 11 trustee, which we all know under case law, Weintraub would inherit all privileges, all attorney-client privilege information.

So I guess what I'm getting at is I thought -- I

1 thought we had an agreement last January, and that we were
2 going to be smoothly going down this road of document
3 production. And here we are in mid-July, and we're having this
4 fight. That doesn't make me very happy because I was happy not
5 to appoint a Chapter 11 trustee last January because I thought,
6 okay, we have this major compromise with the Committee, they're
7 going to go forward, and evaluate estate causes of action,
8 they're going to get documents that are subject to attorney-
9 client privilege. And, you know, it just -- again, I said
10 earlier I didn't want to get into the he said and she said, but
11 the facts speak for themselves that were in July, and just now
12 finalizing this protocol.
13 And I guess the one more thing I will say on that is
14 I know I gave a 90-day deadline for the Committee to either
15 bring causes of action against CLO Holdco -- and I forget the
16 other entity -- or the money in the registry of the Court would
17 be released.
18 I didn't know we still had so far to go with document
19 production when I ruled that. So if someone asks for an
20 extension after today, I think I'd probably be inclined to give
21 an extension. Not a huge, huge, huge extension, but I was a
22 little bit -- not appreciating where the Committee was with
23 regard to getting documents when I said that that day.
24 All right. So I'll be looking for your form of
25 order, hopefully in the next day or two on this.

Is there anything further on this topic? Or shall we go to the Acis status conference?

MR. MORRIS: Your Honor, just a couple of things.

THE COURT: Yes?

MR. MORRIS: Number one, I do want to give the Court some comfort of knowing that while Mr. Surgent is the Chief Compliance Officer, he's also the Deputy General Counsel at Highland, so he is -- he is (indiscernible).

Number two, as you may have seen from our papers, the board considered three outside vendors to do the document review, and ultimately selected one, and we had prepared a stipulation. The Court should expect to see, hopefully in the next day or two, a stipulation pursuant to which the debtor seeks its authority to retain a third party vendor named Robert Hass (phonetic) to assist with the document review. This has all been discussed with the Committee, the Committee has consented to the theory of the retention, but I would ask them to go back perhaps and look at the stipulation so we can get that signed up and get people to work as quickly as possible.

THE COURT: Okay, very good.

Now what about the third party neutral, do you have that person identified?

MR. MORRIS: No, we haven't talked about that. I'm sure we can get that resolved as we're discussing the form of order.

THE COURT: Okay, very good.

All right, well, if there's nothing further, again, let's roll to Acis.

And I guess actually -- maybe we should briefly talk about mediation, where things stand, in case there are people on the call who don't want to stick around for the Acis discussion. I don't know, maybe everyone wants to hear the whole hearing today.

So let me just tell you where things stand: We have -- my courtroom deputy reached out to you all late last week, and let you all know that both Sylvia Mayer from Houston, as well as retired Bankruptcy Judge Allan Gropper, are interested in being co-mediators on this, and that was subject to doing their conflicts review.

And then the next thing after that, they were going to reach out to the lawyer contacts, and give their, quote, "initial disclosures."

I emailed about 9:30 last night with Sylvia Mayer, and she was making sure she had all the right contact people. I gave her lawyers for the debtor, for the Committee, for Acis, for UBS, for Dondero, and the Redeemer Committee -- Crusader Redeemer Committee.

Right now, it's my view that that is the universe of parties to participate, although I can see the co-mediators rolling in more people. Like someone suggested Mark Okada, and

-- I think probably it would be premature in the beginning, but maybe he'll be rolled in. You know, if the UBS proof of claim is resolved in mediation, and the Acis -- and/or the Acis proof of claim are resolved in mediation, and then -- you know, I think those are kind of the highest priorities here of the mediation, then certainly he might be brought in, but right now, I'm not going to order that.

So about 9:30 last night, I sent Sylvia Mayer the lawyer people to email, the co-mediators' disclosures. And she was going to be in a mediation all day today, but I would suspect probably tonight, if y'all haven't gotten anything yet -- I haven't looked at my email during this hearing, but I would suspect maybe tonight or tomorrow you're probably going to get that communication from Sylvia Mayer with whatever their disclosures are for the parties to consider. And, you know, assuming everyone gets comfortable with that, then the administrative people at the triple A, the American Arbitration Association, we're going to get going with, you know, the administrative side of this, and you all would talk about scheduling.

So all this to say I hope here in the next few days there is an active effort to get things scheduled and get the dialogue going with those co-mediators.

The only other thing I would add is I don't necessarily anticipate that Sylvia Mayer would mediate the,

say, Acis proof of claim, and Judge Gropper would mediate, say, the UBS proof of claim. I think -- I don't think it necessarily breaks down that way. I think you would probably just have co-mediators doing the whole ball of wax here because, among other things, the plan treatment discussion is probably going to roll into proof of claim allowance discussions.

So that is, I think, what this would shape up to be. That you would have co-mediators working on all of this.

So any questions at this point?

(No audible response heard)

THE COURT: Again, I know -- if you haven't gotten an email by the end of today, it's surely going to be in the next day or two that you'll get their email reaching out about their disclosures. Okay?

UNIDENTIFIED ATTORNEY: Yes, Your Honor.

MR. CLUBOK: Your Honor --

MS. MASCHERIN: Your Honor, this is Terri Mascherin on behalf of the Redeemer Committee.

Just a quick question: Did I hear correctly that you have given the mediators our contact information? Because we have not been copied on the email -- the emails that have gone around.

In fact, we haven't been copied on any of the emails that have gone around about the mediation.

1 THE COURT: Okay; thank you, Ms. Mascherin.
2 Let me make sure you're completely in the loop. So I
3 did have my courtroom deputy reach out to debtor, Committee,
4 Dondero, UBS, and Acis last week, their counsel, regarding the
5 interest of both Sylvia Mayer and former Judge Gropper.
6 And at the time she did that, I was thinking since
7 the Redeemer Committee had an agreement with the debtor, you
8 all have announced at the last hearing or two you had an
9 agreement that perhaps you all would not be participating.
10 And I actually did have some lawyers respond to my
11 courtroom deputy that, no, we think they very much need to be
12 involved.
13 So that was just a missed step, I would say, on my
14 part, not having that email go out to you originally. So I
15 will make sure when we get out of this hearing that my
16 courtroom deputy forwards to you the little bit of email
17 traffic there was. There were not a lot of emails, but maybe
18 her email and three or four responses of other lawyers.
19 So the co-mediators have been given your name. If
20 others, besides you, want to be on her contact list, you know,
21 certainly Mr. Hankin or Mr. Platt, you can let her know when
22 you get the initial -- her, Sylvia Mayer, know when you get the
23 initial email from her. But you're on the list now, and I --
24 again, it was just a mistaken belief on my part that maybe you
25 wouldn't be part of the mediation since your claim had been

agreed to with the debtor, so --

MS. MASCHERIN: Okay. I appreciate it, and thank you for clarifying, Your Honor.

THE COURT: Okay; thank you.

MR. CLUBOK: Your Honor --

THE COURT: All right --

MR. CLUBOK: Your Honor, this is -- Your Honor, may I speak briefly?

THE COURT: Certainly.

MR. CLUBOK: Thank you, Your Honor. This is Andrew Clubok on behalf of UBS.

And I apologize if you did not see the email that we sent to Ms. Ellison this morning. But we -- our position is we very much are fine with Crusader, or frankly any other major creditor, involving the overall mediation.

But the issue of reaching an overall plan, the so call grand bargain that Mr. (indiscernible) talked about. What we don't -- and we just want to be sure that no one takes it that you're ordering this or thinks it's appropriate, because in the first instance to have a productive discussion on our specific claim with the debtor, it's not going to be helpful and productive -- in fact, it would be counterproductive -- to have other creditors in our class sitting in listening to that, weighing in. You know, obviously their position will all be make it as low as possible. It's not helpful to have a whole

nother set of lawyers doing that, and I just want to make sure people don't come away thinking that you've ordered -- I hope you have not ordered that, and if you have, I would like to speak to that.

But just like we wouldn't be sitting in -- we were not permitted to sit in when the debtor spoke with Crusader about setting their claim, we're not -- we have not been part of the discussion with Acis and if the debtors have discussions -- with Acis. The other parties, we were actually told before they would not be involved in (indiscernible) first instance.

There is a time -- an appropriate time for a creditor to object, but we don't even know what the settlement is with Redeemer. Once we hear it, we may have an objection; hopefully not. Hopefully it will be perfectly fine.

And we understand that once we reach an agreement with the debtor, that's subject to an objection process, and everyone is going to have a chance to weigh in. It's just not, we think, going to be effective, and I set this out in an email that I sent earlier but -- just today. And so I just want to make sure that, you know, people aren't taking from what you said that Crusader is just going to be able to sit in our (indiscernible), Acis does or does not (indiscernible) specifically their claim, etc.

THE COURT: All right. Well, let me tell you how I usually do this, and how I expect to do it here.

1 Once everything is nailed down with the mediators,
2 and I say that because they're going to send you their
3 disclosures, and hopefully everybody's going to be fine with
4 everything. When I get the green light that, yes, we're going
5 to go forward, I have a standard form of mediation order. And
6 it pretty much gives discretion to the mediators to run this
7 the way they want to. And, for example, if they want
8 participants to submit a white paper, you know, no more than 25
9 pages in length, or whatever, you know, the mediators can
10 instruct that.
11 And it has all of the usual bells and whistles about
12 confidentiality that nobody can subpoena the mediators, or
13 compel them to testify. And I'm not going to talk to them
14 about the substance.
15 I just want a report, either things settled or not.
16 People negotiated in good faith or not.
17 And so I don't think there will be any ambiguity
18 about the rules of the road, it's just what I think is a fairly
19 normal mediation order.
20 And, therefore, you know, I think the confidentiality
21 that you're concerned about will be built into that order, and
22 will be kind of the usual -- what I think is the usual
23 protocol. That if you want the mediator to keep something
24 confidential, and not share it with another party, then it's --
25 that's the way it's going to be.

1 MR. CLUBOK: Okay. I believe -- we certainly agree
2 the mediators will different roles. We just -- I just -- and
3 the mediator may have different sessions, different breakout
4 sessions. But we just believe that if our claim, or any
5 creditor's claim, with the debtor in the first instance, to
6 have a productive mediation, settlement should be done the way
7 the (indiscernible) claim is (indiscernible), which is directly
8 with the debtor. And that we'd have a chance to see if that --
9 if that gets somewhere and results in something. We're --
10 we're -- that's our input about about meeting our specific
11 claim to maximize the chance of avoiding litigation and
12 resolving it.
13 THE COURT: Well, again, I fully suspect they're
14 going to reach out to all of you all and get all of your ideas
15 about the sequence of the mediation, you know, whether it's all
16 together with people in separate rooms on day one, or hey,
17 let's start with UBS, let's start with Acis. I mean it would
18 be expected that the co-mediators will reach out to you all
19 from day one with everybody's ideas about what would be the
20 most productive format. So I hope that answers your question.
21 You know, to a large extent, this is to be
22 determined. But, you know, the ground rules I'm giving them is
23 let's try to get this UBS proof of claim resolved. Let's try
24 to get the Acis proof of claim resolved. Let's try to get to a
25 grand bargain on what a plan looks like, and the treatment of

all the unsecured creditors.

So I think these are extremely experienced people who will be pretty skilled at how to proceed.

MR. CLUBOK: That does answer our question; thank you, Your Honor.

THE COURT: Okay.

MR. CLUBOK: That's all I wanted to clarify. That you weren't directing them to do anything in terms of how they proceed, and we'll pick it up with them.

THE COURT: Okay; very good.

MR. CLUBOK: Thank you.

THE COURT: Anyone else want to say anything about this?

(No audible response heard)

THE COURT: All right. Well, let's turn then to the status conference that both the debtor and Acis wanted to have today. Back on the 14th, I guess it was, Mr. Pomerantz, I think, raised the issue that the Acis proof of claim, which at that point the debtor had objected to, and now Mr. Dondero has objected to, was set for hearing, I think, August 6th. But there had been a discussion about continuing that hearing to September 10th to hopefully focus primarily on mediation.

But then we wanted to have a status conference today to kind of talk about what the September 10th hearing would look like. We don't want it to just be a status conference.

And, Mr. Pomerantz, I don't know if you're on the line, but you said there were legal issues as well as factual issues. And so my brain was kind of going down the trail of are you suggesting motions for summary judgment might be a first step on September 10th? I have no idea what you had in mind.

So who -- is it going to be Mr. Morris taking the lead on this --

MR. KHARASCH: Your Honor --

THE COURT: -- or Mr. Pomerantz?

MR. KHARASCH: Your Honor, it's Mr. Kharasch.

THE COURT: Oh.

MR. KHARASCH: It's Ira Kharasch.

THE COURT: Oh, Mr. Kharasch.

MR. KHARASCH: Yeah.

THE COURT: Okay, there you are.

MR. KHARASCH: I --

THE COURT: You appeared earlier.

MR. KHARASCH: I did. I did. So two things, Your Honor:

First, Mr. Pomerantz wanted me to express to Your Honor that he would have loved to have been here today, as he's been here in the past, however, he is in the hospital with a medical condition, we think things will work out just fine, but --

THE COURT: I'm sorry to hear that.

MR. KHARASCH: Thank you, Your Honor.

THE COURT: Please express my best wishes.

MR. KHARASCH: Absolutely. But he just wanted to let you know why he's not here.

So, number two, I think, Your Honor, at the last week, I think we mentioned that the continued hearing on the claim objection would be September 17. There's a little confusion about that versus September 10. I don't know if Ms. Patel is in agreement about that. I think we're both in agreement that it was September 17th, but I'm not completely sure of the different dates.

THE COURT: Okay. I did not run that date by my courtroom deputy. I just -- I looked at the transcript from the hearing. Y'all said September 10th, but maybe someone misspoke.

What do you think, Ms. Patel?

MS. PATEL: Your Honor, I think the confusion might be -- I believe the original hearing was August the 10th, and that's what's getting moved off. And so September 17th is -- I've seen a September 19th date, as well, but I think that's a Sunday or --

MR. KHARASCH: It's a Saturday. I think it's a Saturday.

MS. PATEL: Saturday. So I think September 17th is

the day that Acis is amenable to -- to -- the process we're about to discuss with the date being the 17th of September.

THE COURT: Okay; very good.

MR. KHARASCH: Thank you, Your Honor.

THE COURT: Okay.

MR. KHARASCH: And --

THE COURT: So 17th, okay.

MR. KHARASCH: Yeah. And, Your Honor, I think the good news here is the debtor and Acis's counsels are in agreement subject to your blessing of that agreement as to how we want to approach things.

Again, we did continue the hearing to today and the purpose, Your Honor, is to give us a chance to discuss with the Acis team how we both thought -- how to proceed in a manageable way to make this September 17th hearing date a productive hearing, and manageable, and easily understandable, and easy for the Court to deal with, because we're dealing with a massive claim, and a very big claim objection.

So what we come up with is the following way that we think should be a productive way to handle it. We would like to have another status conference on or about August 14, which is, I think, just after Ms. Patel's vacation. If it has to be a few days later, that's fine.

And during that time, we'll also be seeing a draft response to our claim objection. But the purpose is before

that status conference on the 14th, Your Honor, we would propose the following:

That a few days before, we file a joint statement that would propose the following to the Court: We would come up come up with respect to the September 17 hearing date, that we would come up with a list of issues for summary adjudication that both parties would like to deal with by summary adjudication on the September 17 hearing date. We would set those forth in the joint statement for the Court to review.

We'd also set out a list of issues that are not subject -- we don't believe are not subject to summary adjudication. That would be dealt with later, if not through a trial or otherwise, if not dealt with by the summary adjudication proceeding, depending on how that goes.

We would also propose for that status conference, that joint statement, Your Honor, a proposed discovery and pretrial schedule that would occur after the September 17 summary adjudication, and a proposed trial date.

Just for the record, both parties do want to move as quickly as possible after the September 17th hearing date in terms of discovery, and get to a trial as quickly as possible, maybe even before plan confirmation. But this would be part of the greater discussion, then we'd starting pinning down proposed dates for Your Honor to talk about at the next status conference here, Your Honor, on or about August 14th.

We'd also address the Acis request that the debtor file an answer to the Acis second amended complaint in the Acis case. We had talked about that, that was a new topic of discussion.

And that's really the -- that's what we would propose to get before the Court. We'd file it -- it's August 14, we'd file it two days before the hearing because that's soon after Ms. Patel's vacation. If it's a few days later, we'd give the Court -- we would file it a few days earlier to give the Court more time to look at the joint statement.

To the extent we can't agree on all of these issues that I just enumerated in the joint statement, the joint statement would address those issues that we haven't agreed on, and the unilateral position of the parties to be discussed before the Court at the continued status conference.

So we think in that way, Your Honor, we can make everyone's life easier to go forward and get something done at the September 17 claim objection date.

THE COURT: All right. Well, Ms. Patel, do you agree with everything you just heard?

MS. PATEL: Yes, generally speaking, Your Honor. Just a couple of things.

THE COURT: All right. Mr. Bonds, I'm going to ask you to put your phone on mute. I think we're getting some disruption from your end.

MR. BONDS: It is on mute; I'm sorry.

THE COURT: Okay. Well, Mike, I don't know where that's coming from.

ECRO: I think it's Mr. Ira's phone. He's on mute now.

THE COURT: Okay.

ECRO: That's where it's coming from.

THE COURT: Ms. Patel, go ahead.

MS. PATEL: Thank you, Your Honor.

Just a couple of things, again, so the Court -- just so I can set the Court's expectations a little bit on where we're going to head, and these were discussions we had with Mr. Kharasch over the (indiscernible) yesterday. But I wanted to, again, reiterate the parties' expectation is that if we're going to go down this path -- a double (indiscernible) path while we're doing things by summary adjudication at the September 17th hearing which issues -- you know, we'll decide which buckets of issues are appropriate for September 17th, that nevertheless, that there would be an expeditious trial setting, and that's what I think the parties are anticipating coming back to the Court and asking for in August.

And that that trial setting would be at some juncture, preferably before plan confirmation. But if it has to go to trial, that's certainly no (inaudible), so make that simultaneous with the plan confirmation.

But just -- that's just a little bit of foreshadowing, I suppose, Your Honor, more than anything else.

We also requested that basically we would just go through one -- what we'll call summary adjudication process. And Your Honor hit on a great question of is this a motion for summary judgment? I'm not sure that we really necessarily defined it as a motion for summary judgment, as much as this is intended to be a "there's not going to be anymore motions to dismiss or motions for (indiscernible) pleading, etc." The September 17th hearing is intended to be the full shot of "let's go through all the issues that can be determined on September 17th by agreement, and then that's it, other than that, we're going to be talking about trial."

The other point that I would just raise again just to enlighten the Court, this isn't -- the summary adjudication would not just be issues that Highland has raised in its objection to Acis's claim, but it could also be summary adjudication with respect to Acis's affirmative claims as against the estate. So it's a two-way street with respect to that.

And then finally, Your Honor, Acis just requested that we at least have a discussion with respect to the Highland Capital Management filing an answer with respect to Acis's complaint. And as Your Honor recalls, the proof of claim that Acis filed is -- attaches the second amended complaint that's

pending in the adversary. That complaint has never had an answer filed with respect to it, so we need an answer really as kind of a responsive pleading. And the hope was that that would help streamline the issues so -- and, frankly, I think it would be helpful from my perspective to decide what are the appropriate issues for the summary adjudication basket to be heard on September 17th, and what are the appropriate -- what's the appropriate basket that is going to have to go trial.

And that was -- that was my thinking with respect to that. But we'll continue to have those discussions, and foster that.

But beyond that, that's just some things that I wanted to sort of foreshadow, I guess, for the Court, just to (indiscernible) the Court's expectations as to what's going to happen at the August hearing, and where things are headed.

THE COURT: All right. Well, just a couple of things I'll throw in.

Before we get off, I'll make sure September 17th is available.

(The Court engaged in off-the-record colloquy)

THE COURT: So we'll circle back and make sure that's good.

As far as this process, I like everything I heard.

As far as getting the summary adjudication on certain issues, I kind of like the idea of not cross-motions for

1 summary judgment, no, please. Maybe instead, you just come up
2 with a set of stipulated facts, and then based on these
3 stipulated facts, we think you can rule as a matter of law on
4 A, B, and C, and then the other side disagrees that you can
5 based on A, B, and C.
6 But on the other hand, you think we can -- you can
7 rule in front of us because of D, E, F. And then the other
8 side -- so I guess what I'm saying is -- hmmm, I'm trying to
9 avoid the whole cumbersome summary judgment process, but -- can
10 we --
11 MR. KHARASCH: Your Honor, can --
12 THE COURT: Mr. Kharasch, do you have an idea?
13 MR. KHARASCH: Yes. We've been thinking about that
14 very point, Your Honor, and that's something I'm going to talk
15 to Ms. Patel about, you know, prior to that status conference
16 hearing.
17 We agree with you, we don't want to recreate the
18 wheel on a bunch of paper that's already before the Court. We
19 might come up with a proposal, Your Honor, where we just submit
20 a short statement of why we think -- you know, before the
21 September hearing date, here's what's going to be argued on
22 summary adjudication, we'll cross-reference what's already in
23 front of the Court in terms of our claim objection, point you
24 to different parts of it, rather than me filing things.
25 Hopefully stipulate to certain facts to make your life easier,

and to, you know, just make sure everything's easily directed.

But that's the kind of thing we'd like -- I think we're going to be talking about to make things easier and more streamlined.

THE COURT: Okay. Ms. Patel, you agree that's a goal to shoot for? Rather than cross motions for summary judgment, and responses, and replies, and giant appendixes, just have something like a set of stipulated facts, and here are the contested issues of law?

MS. PATEL: Yes, Your Honor. I think that would be sort of the general goal.

THE COURT: Okay, all right. Well, that -- that sounds like a good game plan.

So I like this overall idea, we'll kind of check in on August 14th. A few days before that, you'll file the joint statement of what you think the list of issues of law are that would be argued on the 17th.

And then as far as the answer to the Acis adversary proceeding, that adversary proceeding is technically subject to the automatic stay, and there are other parties in the litigation. So as I've mentioned before, we have drafted back in chambers a giant report and recommendation on a motion to withdraw the reference that was filed way long ago by -- I think it was jointly by Highland and HCLOF. But I may be wrong, it may have only been HCLOF, it's been so long since

I've looked at it.

But my point is it's stayed. So I mean as a technical matter, if you want to agree that Highland will file an answer, I mean I guess you'll have to do an agreed order lifting the stay, maybe just for the limited purpose of allowing Highland to do an answer with you all agreeing it's not going to go any further than that at this juncture. Or -- I mean I'm just asking, frankly, because we've got other parties involved who want to know the answer to that question maybe.

And then I've got a report and recommendation that I've got to dust off, and finalize, and send in to the District Court if we're lifting the stay for all purposes.

I assume you just want to do a limited lifting the stay to let them file an answer, but everything else is still on hold?

MS. PATEL: Your Honor, I think that would be the general concept. And to be fair, it's a concept that I was, you know, late in the day yesterday with Mr. Kharasch, and so we haven't really quite formulated exactly how we Proceed forward with it. So I don't -- I'm not trying to ambush him on the issue.

But I think we can either craft something that to the extent that it is an answer, a very traditional answer, you know, concept in the adversary proceeding, then, yes, I agree

that I think it would be appropriate to do a very limited agreed order lifting the stay for the limited purpose of filing the answer, and that's it. Again, just so we have the pleading.

Or if we -- that perhaps maybe Mr. Kharasch and I can come and put our creative brains together and see if we can come up with something that acts an awful lot like an answer, but is here and filed in the Highland bankruptcy case that kind of functions similarly.

THE COURT: Okay.

MR. KHARASCH: Yeah, just to be clear, Your Honor, we haven't agreed to anything; we heard about this concept yesterday. I have not really had a chance to think it through. I'm not -- I'm not saying absolutely no, we have to discuss it with our client. (Indiscernible) but we have an open mind, and will continue our discussions.

One thing, Your Honor, do we definitely have the August 14 date as a status conference? And if so, at what time?

THE COURT: It is available. Let's do it at 9:30, and I'm not going to give you a ton of time that day because I have a bear of a trial that next week that I'm going to need to be in mostly hibernation preparing for. So let's say 9:30 on Friday, August 14th.

MR. KHARASCH: That's fine, Your Honor; thank you

very much.

THE COURT: And then I -- on September 17th at 9:30, I also have available.

MR. KHARASCH: That's great.

THE COURT: The morning only, I've got a full afternoon.

All right, so I was going to ask you to do sort of like a mini scheduling order, reflective of what we discussed today. And it sounds like you'll have a few things to iron out after we get off the phone, but I think we've got enough here to kind of have a partial scheduling order, or something to that effect, dealing with objections to Acis's proof of claim.

Mr. Bonds, you're on there, I see now, for Mr. Dondero. I think you've joined in the -- I don't know if you call it a joint, or you filed your separate objection to the Acis proof of claim, correct?

MR. BONDS: (No verbal response).

THE COURT: Okay. You're on mute, if you could unmute yourself.

MR. BONDS: Your Honor --

THE COURT: We're getting some echo, but is there anything you want to add to this discussion?

MR. BONDS: Your Honor, there is. We believe that we are entitled to participate in the Acis claim of because it's so intertwined with the underlying lawsuit -- Your Honor, I'm

sorry.

THE COURT: All right. Well, I understand you filed an objection. Is there any -- is there any -- well, is there any objection to the Dondero -- I don't know if he's going to say anything separate from the debtor, but Dondero being involved as an objecting party.

MR. BONDS: (Indiscernible). I'm sorry.

THE COURT: Okay. We're having real terrible --

(The Court engaged in off-the-record colloquy)

THE COURT: Okay. We have two feeds that say D. Michael Lynn, and that's causing a feedback loop, according to the younger smarter people here behind me. Like maybe you have a phone and a computer? All right, well, I've actually turned to Mr. Kharasch and Ms. Patel, do you all have any problem with Dondero kind of joining in, and -- I haven't reviewed his objection to see how it differs from the debtor's.

MR. KHARASCH: Yeah, frankly, Your Honor -- Ira Kharasch. We have not spent time reviewing that objection, as well, so we haven't really thought about it.

I mean it's out there, I'm not sure I see the problem with it. But we would like some time to see how -- what it looks like, and how it plays into it. I'm not -- I'd be surprised if -- well, I'm not even going to say anything as to what's in it because I just haven't read it.

THE COURT: Okay, all right. Ms. Patel?

MS. PATEL: Your Honor, from Acis's perspective, same. I, frankly, have not given it enough consideration. And just out of the gate, I think one of the issues is going to be Mr. Dondero's standing to kind of join in on the claim objection, but it's something that, frankly, I just truly haven't spent enough time thinking that issue through, or whether there's going to be an issue. So I'm just not sure.

THE COURT: All right. Well, I'll try one more time. Mr. Bonds, do you have a good connection now?

MR. BONDS: (No audible response heard).

THE COURT: All right. I'm just going to direct you all to visit with Mr. Bonds or Mr. Lynn, and see if you can come up with any agreements. And if you can't, then maybe Mr. Dondero's counsel can request a status conference. I'm not inclined to want to do another one before August 14, but maybe we can just hear what they have to say on August 14th about the process.

MR. KHARASCH: I think that makes sense, Your Honor. And we'll -- and we'll talk to them.

THE COURT: Okay.

MR. KHARASCH: We'll talk to them beforehand.

THE COURT: Okay, all right.

MS. PRESTON: Your Honor, may I briefly be heard?

THE COURT: Who is this?

MS. PRESTON: This is Katherine Preston from Winston

& Strawn, I represent Mr. Ellington, Mr. Leventon, and some of the other Highland employees.

THE COURT: Okay.

MS. PRESTON: And I apologize, I tried to appear earlier and had some technical difficulties.

THE COURT: Okay.

MS. PRESTON: We just wanted to ask regarding mediation. We've discussed with some of the parties to that mediation dissipating, and so we just wanted to be included, as well, in any of those discussions and communications.

THE COURT: All right. And I guess the party in interest status would be that you've been sued by Acis, is that -- is there any --

MS. PRESTON: That's correct.

THE COURT: Okay. Well, I think what I'm going to do is think about that one a bit.

I almost put that one in the same category as Mark Okada. I'm just trying to be as productive as possible in the way this goes forward where the primary issues are the UBS proof of claim and the Acis proof of claim. And granted, there's a lot of satellite litigation out there, and -- and that might be a factor as far as -- let me think about that one, okay?

Your request is duly noted, and I'm going to think about that, and I'll let you all know through my courtroom

deputy what I decide on that. But I'm leaning towards that might be a second stage of mediation if we have wonderful breakthroughs on the Acis and UBS proof of claim sides, so that's my answer on that.

MS. PRESTON: Thank you.

THE COURT: Uh-huh. Anything else?

MS. PRESTON: Thank you, Your Honor.

THE COURT: All right. Well, it's a little bit late, it's 5:19 central time, and if there's nothing further, we're adjourned, and we'll look for all the orders to be electronically submitted.

Thank you.

MULTIPLE SPEAKERS: Thank you.

(Whereupon, at 5:20 p.m., the hearing was adjourned.)

CERTIFICATE OF TRANSCRIBER

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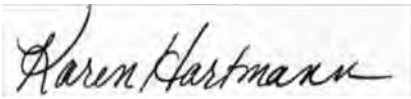

Karen Hartmann, AAERT CET**D0475 Date: July 24, 2020
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EXHIBIT 36

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Friday, January 8, 2021 9:30 a.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES D. DONDERO, Defendant.	**Adversary Proceeding 20-3190-sgj** PRELIMINARY INJUNCTION HEARING [#2]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - JANUARY 8, 2021 - 9:41 A.M.

THE COURT: All right. We are here for Highland Capital Management, L.P. versus James Dondero, a preliminary injunction hearing. This is Adversary 20-3190.

All right. Let's start out by getting appearances from counsel. First, for the Plaintiff/Debtor, who do we have appearing?

MR. MORRIS: Your Honor, John Morris; Pachulski Stang Ziehl & Jones. I'm here with my partner, Jeff Pomerantz, and others.

THE COURT: All right. Good morning. All right. For Mr. Dondero, who do we have appearing?

MR. LYNN: Michael Lynn, together with John Bonds, for Mr. Dondero.

THE COURT: Good morning.

All right. I know we have a lot of parties in interest represented on the video or phone today. I'm not going to go through a roll call, other than I'll see if we have the Committee, the Unsecured Creditors' Committee counsel on the line. Do we have anyone appearing for them?

MR. CLEMENTE: Yes, good morning, Your Honor. Matthew Clemente from Sidley Austin on behalf of the Committee.

THE COURT: Okay. Thank you. All right.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: Well, as I said, I'm not going to do a roll call. I don't think we had any specific parties in interest, you know, file a pleading, or any other parties other than the Debtor and Mr. Dondero in this adversary. So I'll just let the others kind of listen in without appearing.

All right. Mr. Morris, are you going to start us off this morning with, I don't know, an opening statement or any housekeeping matters?

MR. MORRIS: I have both an opening statement and housekeeping matters. I just wanted to see if Mr. Pomerantz has anything he wants to convey to the Court before I begin.

MR. POMERANTZ: (garbled)

THE COURT: Mr. Pomerantz, if you could take your device off mute, please.

THE CLERK: He's off mute. I don't know what --

THE COURT: Okay. Well, we're showing you're not on mute, but we can't hear you. What now?

THE CLERK: He's not on mute now. He's --

THE COURT: Okay. Go ahead, Mr. Pomerantz.

(Pause.)

THE CLERK: He's not coming through.

THE COURT: We're -- you're not coming through, and we're not sure what the problem is. We're not showing you on mute.

(Pause.)

THE COURT: All right. Should we have him call back in on his phone? All right. If you could, if you have a phone, maybe you can try calling in on your phone and speak through your phone, not your computer.

MR. MORRIS: You know what, Your Honor? I'm going to proceed, and Mr. Pomerantz will address the Court at the conclusion of the hearing on the motion.

THE COURT: Okay. Very good. We usually hear him loud and clear, so I don't know what's going on this morning. Go ahead, Mr. Morris.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. MORRIS: Yes. Thank you very much, Your Honor. John Morris; Pachulski Stang; for the Debtor.

We are here this morning, Your Honor, on the Debtor's motion for preliminary injunction against Mr. Dondero. We filed last night also an emergency motion for an order to show cause as to why this Court should not hold Mr. Dondero in contempt of court --

THE COURT: All right.

MR. MORRIS: -- for violating a previously-issued TRO.

THE COURT: Yes. Let me just interject, in case there's any confusion by anyone. I am not going to hear the motion for show cause order this morning. While I understand you think there might be some efficiency and overlap in

evidence, it's not enough notice. So we'll talk about scheduling that at the end of the presentations this morning. All right?

MR. MORRIS: Thank you for addressing that, Your Honor.

THE COURT: Okay.

MR. MORRIS: Your Honor, then let's just proceed right to the preliminary injunction motion. There is ample evidence to support the Debtor's motion for a preliminary injunction. There would have been substantial evidence to support it based on the conduct that occurred prior to the issuance of the TRO, but the conduct that did occur following the TRO only emphasizes the urgent need for an injunction in this case.

I want to begin by just telling Your Honor what evidence we intend to introduce here today. We filed at Docket 46 in the adversary proceeding our witness and exhibit list. The exhibit list contains Exhibits A through Y. And at the appropriate time, I will move for the admission into evidence of those exhibits.

The exhibit list and the witness list also identifies three witnesses for today. Mr. Dondero. Mr. Dondero is here today. Notwithstanding Your Honor's comments on December 10th and on December 16th, when I deposed him on Tuesday he was unsure whether he was going to come here today to testify.

And he will inform Your Honor of that on cross-examination. And so the Debtor was forced to prepare and serve a subpoena to make sure that he was here today. But Mr. Dondero is here today.

Following the conclusion of Mr. Dondero's deposition on Tuesday, and based in part on the evidence adduced during that deposition, the Debtor terminated for cause Scott Ellington and Isaac Leventon. We had asked counsel for those former employees to accept service of a trial subpoena so that they would appear today. We were told that they would do so if we gave them a copy of the transcript of Mr. Dondero's deposition.

We thought that was inappropriate and we declined to do so, and they declined to accept service of the subpoenas. We have spent two days with a professional process server attempting to effectuate service of the trial subpoenas for Mr. Ellington and Mr. Leventon, but we were unsuccessful in doing that. So we'll only have one witness today, unless we have cause to call anybody on rebuttal, and that witness will be Mr. Dondero.

I want to talk for a few moments as to what Mr. Dondero will testify to and what the evidence will show. Mr. Dondero will testify that he never read the TRO, Your Honor. He will testify that he didn't participate in the motion on the hearing for the TRO, that he never read Mr. Seery's

declaration in support of the Debtor's motion for the TRO, that he never bothered to read the transcript of the proceedings on December 10th so that he could understand the evidence that was being used against him. He had no knowledge of the terms of the TRO when he was deposed on Tuesday.

And that's the backdrop of what we're doing here today, because he didn't know what he was enjoined from doing, other than speaking to employees. He actually did testify and he will testify that he knew he wasn't supposed to speak with the Debtor's employees, but he spoke with the Debtor's employees in all kinds of ways, as the evidence will show.

The evidence will also show that Mr. Dondero violated the TRO by throwing away the cell phone that the company bought and paid for after the TRO was entered into. He's going to be unable to tell you who threw it away. He's going to be unable to tell you who gave the order to throw it away. He's going to be unable to tell you when after the TRO was entered the phone was thrown away.

But we do have as one fact and as I believe one violation of the TRO --

MR. POMERANTZ: So, I'm on a WebEx.

MR. MORRIS: Jeff, --

THE COURT: Mr. Pomerantz, we heard you. We heard you say something. So, apparently, you got your audio working.

All right. Mr. Morris, continue.

MR. MORRIS: Yeah. And what Mr. Dondero may tell you, Your Honor, is that it's really Mr. Seery's fault that the phone got thrown away, because Mr. Seery announced that all of the employees were going to be terminated at the end of January, and because Mr. Seery did that, he and I believe Mr. Ellington thought it was appropriate to just throw their phones away, without getting the Debtor's consent, without informing the Debtor, and switching the phone numbers that were in the Debtor's account to their own personal names. So that's Item No. 1.

Item No. 2 -- and this is in no particular order, Your Honor. I don't want you to think that I'm bringing these things up in terms of priority. But they're just the order in which they came up in the deposition, and so I'm just following it as well.

Item No. 2 is trespass. On December 22nd, you will hear evidence that Mr. Dondero personally intervened to yet again stop trades that Mr. Seery was trying to effectuate in his capacity as portfolio managers of the CLOs. He did that just six days after Your Honor dismissed as frivolous a motion brought by the very Advisors and Funds that he owns and controls.

Therefore, the very next day, the Debtor sent him a letter, sent through counsel a letter, evicting him from the

1 premises, demanding the return of the phone, and telling him
2 that he had to be out by December 30th.
3 I was stunned, Your Honor, stunned, when I took his
4 deposition on Tuesday and he was sitting in Highland's
5 offices. He hadn't asked for permission to be there. He
6 hadn't obtained consent to be there. But he just doesn't care
7 what the Debtor has to say here. He just doesn't.
8 I don't know when he got there or when he left. I don't
9 know if he spoke to anybody while he was there. But he just
10 took it upon himself to show up in the Debtor's office,
11 notwithstanding the very explicit eviction notice that he got
12 on December 23rd.
13 Mr. Dondero, as I mentioned, clearly violated the TRO by
14 knowingly and intentionally and purposely interfering with the
15 Debtor's trading as the portfolio manager of the CLOs. This
16 has just gone on too long. There have been multiple hearings
17 on this matter, but he doesn't care. So he gave the order to
18 stop trades that Mr. Seery had effectuated. That's a clear
19 violation of the TRO, and it certainly supports the imposition
20 of a preliminary injunction.
21 Mr. Seery -- Mr. Dondero is going to testify that multiple
22 letters -- that I'm going to refer to them, Your Honor, as the
23 K&L Gates Parties, and those are the two Advisors and the
24 three investment funds and CLO Holdco that are all owned and/
25 or controlled by Mr. Dondero -- after that hearing on the

1 16th, K&L Gates, the K&L Gates Parties sent not one, not two,
2 but three separate letters. They said they may take steps to
3 terminate the CLO management agreements. After we evicted Mr.
4 Dondero, sent a letter suggesting that we would be held liable
5 for damages because we were interfering with their business.
6 And Mr. Dondero is going to tell you, Your Honor, that he
7 encouraged the sending of those letters, that he approved of
8 those letters, that he thought those letters were the right
9 things to send to the Debtor, even after -- even with the
10 knowledge of what happened on December 16th.
11 He's going to tell you he knew about that hearing and he
12 still, he still approves of those letters, and never bothered
13 to exercise his control to have those letters withdrawn upon
14 the Debtor's request. We asked them to withdraw it, and when
15 they wouldn't do it, Your Honor, that's what prompted the
16 filing of yet another adversary proceeding. And we're going
17 to have another TRO hearing next Wednesday because they won't
18 stop.
19 Next, a preliminary injunction should issue because Mr.
20 Dondero violated the TRO by communicating with the Debtor's
21 employees to coordinate their legal strategy against the
22 Debtor. The evidence will show, in documents and in
23 testimony, that on December 12th, while he was prohibited from
24 speaking to any employee except in the context of shared
25 services, you're going to see the documents and you're going

to hear the evidence that on December 12th Scott Ellington was actively involved in identifying a witness to support Mr. Dondero's interests at the December 16th hearing.

You will receive evidence that on December 15th Mr. Ellington and Mr. Leventon collaborated with Mr. Dondero's lawyers to prepare a common interest agreement.

You will hear evidence that on the next day, December 16th, the day of that hearing, that Mr. Dondero solicited Mr. Ellington's help to coordinate all of the lawyers representing Mr. Dondero's interests, telling Mr. Ellington that he needed to show leadership, and Mr. Ellington readily agreed to do just that.

You will hear evidence that on December 23rd Mr. Ellington and Grant Scott communicated in connection with calls that were being scheduled with Mr. Dondero and with K&L Gates, the very K&L Gates Clients who filed the frivolous motion that was heard on December 16th and that persisted in sending multiple letters threatening the Debtor thereafter.

You will hear evidence that late in December Mr. Dondero sought contact information for Mr. Ellington and Mr. Leventon's lawyer, and he will tell you that he did it for the explicit purpose of advancing their mutual shared interest agreement, while they were employed by the Debtor. While they were employed by the Debtor.

Finally, you will hear evidence, and it will not be

1 disputed, you will see the evidence, it's on the documents,
2 that Mr. Dondero personally intervened to stop the Debtor from
3 producing the financial statements of Get Good and Dugaboy,
4 two entities that he controls, that the U.C.C. had been asking
5 for for some time, that the Debtor had been asking of its
6 employees for some time to produce. And it was only when we
7 got, frankly, the discovery from Mr. Dondero when there's a
8 text message that says, Not without a subpoena.
9 The documents are on the Debtor's system. We just don't
10 know where they are because they're hidden someplace. But Mr.
11 Dondero knows where they are. He can certainly force -- he
12 can certainly get them produced. And one of the things we'll
13 be asking for when we seek the contempt motion is the
14 production of those very documents.
15 So, Your Honor, that's what the evidence is going to show.
16 I don't think there's going to be any question that a
17 preliminary injunction ought to issue. But I do want to spend
18 just a few minutes rebutting some of the assertions made in
19 the filing by Mr. Dondero last night.
20 Of course, they offer no evidence. There is no
21 declaration. There is no document. There is merely argument.
22 It's been that way throughout this case. For a year, Mr.
23 Dondero has never stood before Your Honor to tell you why
24 something was wrong being done to him, why -- he hasn't
25 offered to be here at all, and he's here today, again, only

because he got a subpoena. That's the only reason we know he's here today.

So let's just spend a few minutes talking about the assertions made in the document last night. Mr. Dondero complains about the scope of the injunction, and I say to myself, in all seriousness, Are you kidding me? You didn't even read the TRO and you're going to be concerned about what the scope of the injunction is? You didn't even have enough respect for the Court to read the TRO and we're going to worry about the scope of some future injunction? Doesn't make any sense to me.

But let's talk about the specific arguments that they make.

Third parties. They're concerned that somehow third parties don't have notice of the injunction. Your Honor, third parties are not impacted by the injunction. The only third parties that are impacted by the injunction are those that are owned and/or controlled by Mr. Dondero. If he doesn't tell them, that's his breach of duty. He created the Byzantine empire of over 2,000 entities, and he wants the Debtor to have the burden of notifying all of them so that they can all come in here and make 2,000 arguments as to why they shouldn't be enjoined?

He owns and controls them. They are the only third parties who are impacted by this proposed preliminary

1 injunction, and he has the responsibility, he has the duty to
2 inform them, because he owns and controls them.
3 We know of the K&L Gates Parties. We know Get Good and
4 Dugaboy are in this courtroom. We know CLO Holdco. So many
5 of these parties have been so -- they're on the phone now.
6 They don't have notice? It is insulting, frankly, to suggest
7 that the Debtor somehow has some obligation to figure out who
8 Mr. Dondero owns and controls. He should know that. That's
9 number one.
10 Number two, there is a statement in there about employees
11 and how he should be able to speak with them about personal
12 and routine matters. As to that, Your Honor, he has forfeited
13 that opportunity. He cannot be trusted. There cannot be any
14 communication because nobody can police it. And so we think a
15 complete bar to any discussion with any employee, except as it
16 relates to shared services -- because we do have a contractual
17 obligation; that's what was in it -- ought to be barred.
18 That's number one.
19 Number two, there's a reference in the objection to Mr.
20 Dondero's personal assistant. I'd like to know who that is,
21 Your Honor. I wasn't aware that he still was using a personal
22 assistant at the Debtor. I want to know specifically who that
23 is. I don't know that they -- you know, I just -- we need to
24 cut that off. And he should not be communicating with any
25 employee. The Debtor should not be paying for his personal

1 assistant.
2 It's offensive to think that he's still doing that,
3 particularly after he was terminated or his resignation was
4 requested back in October precisely because his interests were
5 adverse to the Debtor.
6 Number three, he's concerned that the Debtor is somehow
7 preventing him from speaking to former employees. We now
8 know, Your Honor, that that's a, I'm sure, a very specific
9 reference to Mr. Ellington and Mr. Leventon. Right? He wants
10 a green light to be able to do that. And you know, I'll leave
11 it to Your Honor as to whether that's appropriate. I'll leave
12 it to their counsel as to whether, going forward, colluding
13 together against the Debtor at this point in time is in
14 anybody's best interest. But I will -- what I will demand in
15 the preliminary injunction is a very explicit statement that
16 Mr. Ellington and Mr. Leventon are not to share any
17 confidential or privileged information that they received in
18 their capacity as general counsel and assistant general
19 counsel of the Debtor.
20 The pot plan. He's afraid somehow the order is going to
21 prevent him from pursuing the pot plan. He's had over a year
22 to pursue this pot plan, Your Honor. Frankly, I don't, you
23 know, I don't know what to say. He has never made a proposal
24 that has gotten any traction with the only people who matter.
25 And it's not the Debtor. It's the creditors. It's the

Creditors' Committee.

If you want to put in an exception that he can call Matt Clemente, I don't mean to put this on Mr. Clemente, he can decide whether or not that's appropriate, but the creditors are the only ones who matter here. Your Honor, it's not the Debtor.

And I'll let Mr. Dondero's counsel explain to Your Honor why he thinks he still needs to pursue a pot plan, and Your Honor can decide. I trust Your Honor to decide what boundaries and what guardrails might be appropriate for him to continue to pursue his pot plan.

That's all I have, Your Honor. Not much.

THE COURT: All right.

MR. MORRIS: But I think there's going to be -- there's going to be an awful lot of evidence. This is going to be a lengthy examination. I ask the Court for your patience.

THE COURT: I've got --

MR. MORRIS: But that's all I have.

THE COURT: I've got all day, if we need it.

MR. MORRIS: Okay.

THE COURT: I hope we don't, but I've got all day if we need it. All right.

MR. MORRIS: That's what I have, Your Honor.

THE COURT: All right. Mr. Dondero's counsel, your

opening statement?

MR. BONDS: Your Honor, I would reserve my opening statement to the end of the hearing.

I would also point out that anything that Mr. Morris just said was not evidence, and we think that the evidence will show completely differently than argued or articulated by Mr. Morris.

THE COURT: All right.

MR. BONDS: That's all.

THE COURT: Thank you, Mr. Bonds.

Mr. Morris, you may call your witness.

MR. MORRIS: The Debtor calls James Dondero.

THE COURT: All right. Mr. Dondero, this is Judge Jernigan. I would ask you to say, "Testing, one, two," so we pick up your video so I can swear you in.

All right. Mr. Dondero, if you're speaking up, we're not hearing you, so please make sure you're unmuted and have your video --

(Echoing.)

MR. DONDERO: Hello. One, two.

THE COURT: Okay. We got you.

MR. DONDERO: One, two three.

THE COURT: We got you now.

JAMES D. DONDERO, PLAINTIFF'S WITNESS, SWORN

THE COURT: All right. Thank you.

Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

(Echoing.)

THE COURT: I'm going to ask everyone except Mr. Dondero and Mr. Morris to put your device on mute. We're getting a little distortion.

All right. Go ahead.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. Can you hear me?

A Yes.

(Echoing.)

THE COURT: Ooh. Okay. We're having a little echo when you speak, Mr. Dondero. Do you have -- well, first, you have headphones. That always helps.

(Echoing.)

THE COURT: Okay. That may help as well.

(Pause.)

THE COURT: Okay. Let's try again. If you could say, "Testing, one, two."

THE WITNESS: Is that better?

THE COURT: That is better, yes.

All right. Go ahead.

THE WITNESS: Okay. Great.

MR. MORRIS: Thank you.

BY MR. MORRIS:
Q Can you hear me, Mr. Dondero?
A You're a bit faint. Give me one second. Okay. Got you.
Q Okay. Thank you. Who is in the room with you right now?
A Bonds, Lynn, and a tech.
A VOICE: Bryan Assink.
THE WITNESS: Oh, is Assink here? Oh, okay, I'm sorry. All right. I'm sorry. Bonds, Lynn, and Bryan Assink.
BY MR. MORRIS:
Q Okay. You're testifying today pursuant to a subpoena, correct?
A Yes.
Q Okay.
MR. MORRIS: And Your Honor, that subpoena can be found at Docket No. 44 in the adversary proceeding.
THE COURT: All right.
BY MR. MORRIS:
Q In the absence of a subpoena, in the absence of a subpoena, you didn't know if you would show up to testify at this hearing; is that right?
A I -- I do what my counsel directs me to do, and I didn't know at that time whether they would direct me to come or not.
Q Okay. And when I -- when I deposed you earlier this week, you agreed that you may or may not testify; is that right?
A It depends on what counsel instructs me to do, correct. I

didn't know at the time.

Q Okay. And you didn't mention anything about counsel when I asked you the questions earlier this week, correct?

A That was the undertone in almost all my answers, that I relied on counsel.

MR. MORRIS: Your Honor, I move to strike. I'm asking very specific questions. And if I need to go to the deposition transcript, I'm happy to do that.

THE COURT: All --

MR. MORRIS: Just going forward, Your Honor, this is cross-examination. It's really yes or no at this point. That's what I would request, anyway.

THE COURT: All right. Mr. Dondero, do you understand --

(Echoing.)

THE COURT: Do you understand what Mr. Morris was raising there? We really need you to give specific answers -- and usually they're going to be yes or no answers -- to Mr. Morris's questioning. Okay? So let's try again. Mr. Morris, go ahead.

THE WITNESS: Yeah.

BY MR. MORRIS:

Q Mr. Dondero, you're aware that Judge Jernigan granted the Debtor's request for a TRO against you on December 10th, correct?

A Yes.
Q But you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for a TRO, correct?
A I relied on counsel.
Q Sir, you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for a TRO, correct?
A Correct.
Q You didn't even know the substance of what Mr. Seery alleged in his declaration at the time that I deposed you on Tuesday, correct?
A Correct.
Q And that's because you didn't even think about the fact that the Debtor was seeking a TRO against you; isn't that right?
A No.
Q That's not right?
A No.
Q All right.
MR. MORRIS: Your Honor, could I ask my assistant, Ms. Canty, to put up on the screen what had been designated as the Debtor's Exhibit Z in connection with the motion for contempt? Exhibit Z is the transcript from Tuesday's hearing.
THE COURT: All right.
MR. MORRIS: And I would like to -- I'd like to cross-examine Mr. Dondero on his testimony on Tuesday.

THE COURT: All right. You may.

MR. MORRIS: Can we put up Page 15, please? And go to Lines 15 through 17.

BY MR. MORRIS:

Q Sir, you recall being deposed on Tuesday by my -- by me, correct?

A Yes.

Q Okay. Did you hear this question and did you hear this answer?

"Q Did you care that the Debtor was seeking a TRO against you?

"A I didn't think about it."

Q Is that -- is that your testimony from the other day?

A Yes.

Q You didn't dial in to the hearing when the Court considered the Debtor's motion for a TRO against you, did you?

A I -- I don't recall. I don't think so.

Q You never read the transcript in order to understand what took place in this courtroom when Judge Jernigan decided to enter a TRO against you; isn't that right?

A I relied on counsel, which has been my testimony all along.

MR. MORRIS: Can we go to Page 13 of the transcript, please? Beginning at Line 24.

BY MR. MORRIS:

Q (reading)

"Q Did you read a transcript of the hearing?

"A No."

Q Did you testify on Tuesday that you did not read a transcript of the hearing?

A Yes.

Q In fact, as of at least last Tuesday, you hadn't even bothered to read the TRO that this Court entered against you. Isn't that right?

MR. BONDS: Your Honor, I'm going to object.

(Echoing.)

THE COURT: Okay. We're getting that echo from you now, Mr. Bonds. So maybe you need to turn your volume down a little. But what is the basis for your objection?

(Echoing.)

MR. BONDS: Leading and rhetorical.

MR. MORRIS: I think it's because they're in the same room.

THE COURT: Okay. Do you have -- I don't know what you're doing. I guess you're moving to a different room?

MR. BONDS: I am, Your Honor.

THE COURT: Okay.

(Echoing.)

THE COURT: Okay. I'm waiting for the objection basis.

1 MR. BONDS: The basis of the objection, Your Honor,
2 is that --
3 (Echoing.)
4 THE COURT: Okay. We're going to have to do
5 something different here. We can't have this issue for the
6 entire hearing. Do you need to get a tech person in there, or
7 maybe call in on your phone? I don't know.
8 MR. BONDS: Your Honor, I'm going into the conference
9 room.
10 (Pause.)
11 THE COURT: Okay. Are we going to try again here?
12 MR. BONDS: Yes. Is this working?
13 THE COURT: Yes.
14 MR. BONDS: Perfect. Your Honor, my objection is
15 that Mr. Dondero has already testified that he relied on his
16 lawyers. I don't know where Mr. Morris is going with this,
17 but it's pretty clear that Mr. Dondero simply relies on his
18 lawyers to tell him what happened. I don't know that that's
19 that different than any other layperson.
20 MR. MORRIS: Your Honor, if this is --
21 THE COURT: Well, --
22 MR. MORRIS: If I may?
23 THE COURT: Yes.
24 MR. MORRIS: I believe it's terribly relevant to know
25 how seriously Mr. Dondero takes this Court and this Court's

1 proceedings and this Court's orders. If the Court decides
2 that it doesn't matter whether or not he read the transcript,
3 you're the fact-finder and you'll make that decision. But I
4 believe it's at least relevant.
5 THE COURT: Okay. I agree and I overrule the
6 objection.
7 Go ahead.
8 BY MR. MORRIS:
9 Q Mr. Dondero, as of at least Tuesday, you never bothered to
10 read the TRO that was entered against you, correct?
11 A I'm sorry. We're dealing with some tech stuff here for a
12 second. Can you repeat the question?
13 Q Yes.
14 (Echoing.)
15 Q As of Tuesday, you had not bothered to read the TRO that
16 was entered against you?
17 (Echoing.)
18 MR. MORRIS: Your Honor, can we take a break? I
19 can't do this. I just --
20 THE COURT: Okay. I agree. Okay. Mr. Bonds, what
21 do we need to do to fix these technical problems? Do I need
22 to get my IT guy in here and help you? This is terrible.
23 This connection is terrible. And I understand people have
24 technical problems sometimes, but we've been doing these video
25 hearings since March, so --

MR. BONDS: Your Honor, I have simply gone to another conference room. The Debtor (garbled) I think that Mr. Dondero should be fine.

THE COURT: Okay. I don't know what you said except that you think Mr. Dondero should be fine. I --

MR. MORRIS: Is there anybody in that room with a cell phone on, Mr. Dondero?

THE WITNESS: No.

MR. BONDS: And I'm completely over in --

THE COURT: Okay.

MR. MORRIS: Can I try and proceed?

THE COURT: Try to proceed.

MR. MORRIS: Okay.

(Echoing.)

BY MR. MORRIS:

Q Mr. Dondero, as of Tuesday you only had a general view of what this Court restrained you from doing; is that correct?

(Echoing.)

MR. MORRIS: I'd still -- I -- there's too much noise, Your Honor. I can't do it.

THE COURT: Okay. We're going to take a five-minute break. Mr. Bonds, can you get a technical person there to work through these problems?

And Mike, let's get Bruce up here to --

THE CLERK: It's because they're in the same room.

That's the problem.

THE COURT: They're -- they're --

THE CLERK: Judge Jernigan, this is Traci. Bruce is on his way up there.

THE COURT: Thank you.

Mike, explain it to me, because I don't understand. You're saying if they have two devices on in the same room?

THE CLERK: The same -- that's the problem. They're so close. And they're trying to use the same device, give it back to you.

A VOICE: He has a phone on in the room.

MR. MORRIS: I asked that question.

THE COURT: Okay.

MR. MORRIS: Please instruct the witness to exclude everybody from the room, to turn off all electronic devices except the device that's being used for this (garbled). At least have --

THE COURT: All right. So, the consensus of more technical people than me is you've got two devices on in the same room and that's what's causing the distortion and echo. So I don't know if it's somebody's phone that needs to be turned off or if you have two iPads or laptops.

(Court confers with Clerk.)

(Pause.)

MR. BONDS: I think I'm unmuted. Can people hear me?

THE WITNESS: Yes.

(Pause.)

THE COURT: Okay. Bruce, can you walk their office through? They have, I think, two devices in the same room. It's a horrible echo. So, Mr. Bonds or some --

MR. BONDS: Yes, Your Honor.

THE COURT: We have a lawyer and the lawyer's client who is testifying right now in the same room.

I.T. STAFF: Uh-huh.

THE COURT: And --

I.T. STAFF: Yeah. Yeah. Because -- is one a call-in user on a telephone?

THE COURT: I don't know. I don't --

I.T. STAFF: Yeah. Whatever's coming -- the audio is feeding back in. They need to separate if they're both on. Or just use one and the attorney can slide over and the client can --

THE COURT: Okay.

I.T. STAFF: -- go in his place. Just use one --

THE COURT: Our IT person is confirming what everyone else has been saying, that you really can only have one device in the same room. It's just unavoidable, the echoing.

I.T. STAFF: Unless everybody has --

THE COURT: Unless everyone has headphones on.

I.T. STAFF: Right.

THE COURT: So we either need everyone to have headphones on, or one device in the room. And you all, awkward as it is, just have to share. Or I guess you could have two laptops, but one person has to --

I.T. STAFF: Has to have a headset.

THE COURT: Has to --

I.T. STAFF: Because the other one, the audio is going to be feeing into the microphone of the other one.

THE COURT: Okay. So, Mr. Bonds, I don't know if you've heard any of that, but --

THE CLERK: He needs to unmute himself.

THE COURT: You're on mute, Mr. Bonds.

MR. BONDS: I'm sorry, Your Honor. I'm going to sit next to Mr. Dondero and answer any questions that may come up.

THE COURT: Okay.

MR. BONDS: If any objections --

THE COURT: Okay. So we're going to have one device?

MR. BONDS: Yes.

THE COURT: Okay. Let's try again.

Okay. Go ahead, Mr. Morris.

BY MR. MORRIS:

Q Mr. Dondero, is Mr. Ellington listening to this hearing?

THE COURT: I didn't hear you, Mr. Morris. What?

BY MR. MORRIS:

Q Mr. Dondero, is Mr. Ellington listening to this hearing?

A I have no idea.
Q Is Mr. Leventon listening to this hearing?
A I have no idea. I haven't spoken with him.
Q Okay. So let's try again. At least as of today, you never bothered to read the TRO that was entered against you, correct?
A Correct.
Q As of Tuesday, you only had a general understanding of what the Court restrained you from doing, correct?
(Echoing.)
A I had an adequate understanding.
Q You had a what?
A Adequate understanding.
Q Your understanding --
A VOICE: Your Honor?
BY MR. MORRIS:
Q -- was that you were prohibited from speaking to the Debtor's board without counsel and from speaking to the Debtor's employees; is that right?
A No.
Q Okay.
MR. MORRIS: Can we go to Page 13, Line 8, please?
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q Tell me your understanding of what the temporary

1 restraining order restrains you from doing.
2 "A To talk to Independent Board directly or talking
3 directly with employees.
4 "Q Is there any other aspect of the temporary
5 restraining order that you're aware of that would
6 otherwise constrain or restrain your conduct?
7 "A Those are the points I (garbled)."
8 Q Did you give those answers to the questions that I asked?
9 A Yes.
10 Q And even with that general understanding, you went ahead
11 and communicated directly (garbled) employees many, many, many
12 times after the TRO was entered?
13 A Only with regard to shared services, pot plan, and
14 Ellington, the settlement counsel.
15 Q Does the restraining order permit you to speak with
16 Debtor's employees about the pot plan?
17 (Echoing.)
18 THE COURT: Mr. Morris, let me stop.
19 MR. MORRIS: Yeah. I appreciate that, Your Honor.
20 THE COURT: Even --
21 MR. MORRIS: It's not working.
22 THE COURT: Even your sound is not coming through
23 clearly. And I think it's the echo coming out of their
24 speakers, Mr. Dondero and Mr. Bonds' speakers. But before we
25 conclude that, would you turn off your video and ask your

1 question again and see if it's any better, just to confirm
2 it's not a bandwidth issue on your end? I doubt it is, but --
3 okay. So, try asking your question again, and I'm going to
4 see if it's still distorted.
5 BY MR. MORRIS:
6 Q There's nothing in the TRO that permitted you to speak
7 with Debtor employees about the pot plan, correct?
8 THE COURT: Okay. Mr. Morris, it's not at your end.
9 It's -- it's their end. Okay. So you can turn your video
10 back on.
11 Mr. Bonds?
12 MR. BONDS: Yes, ma'am.
13 THE COURT: You all are going to have to use earbuds,
14 apparently. We're getting -- we're getting a feedback loop,
15 okay? Whenever Mr. Morris talks or I talk, we're hearing
16 ourselves echo through your speakers.
17 MR. BONDS: Can you check right now to see if it's
18 true, if we're experiencing the same problem?
19 THE WITNESS: In other words, is this better? We
20 unplugged the cord here.
21 THE COURT: Well, when you all speak, it's -- it's
22 better now. But when --
23 MR. MORRIS: It is better.
24 THE COURT: But when Mr. Morris asks a question, it's
25 echoing through your speakers. But I don't hear myself

echoing through your speakers.

I.T. STAFF: Can Mr. Morris say something, please?

THE COURT: Mr. Morris, say something.

MR. MORRIS: They may have solved the problem. They may have solved the problem. How's that?

THE COURT: Okay. I think the problem is solved, whatever you did, so let's try once again.

Go ahead, Mr. Morris. Repeat your last question. I didn't hear it.

BY MR. MORRIS:

Q Mr. Dondero, the temporary restraining order doesn't permit you to speak with the Debtor's employees about a pot plan; isn't that right?

A There was a presentation on the pot plan given to the Independent Board after the restraining order was put in place. What are you implying, that that wasn't proper?

MR. MORRIS: Your Honor, I move to strike. It's a very simple question.

THE COURT: Okay. Sustained. If you could just answer the specific question, Mr. Dondero.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Fair enough. Sir, let's talk about some of the events that led up to the imposition of the TRO. I appreciate the fact that you hadn't read Mr. Seery's declaration or any of

the evidence that was submitted in connection with the TRO, so let's spend some time talking about that now. CLO stands for Collateralized Loan Obligation, correct?

A Yes.

Q And the Debtor is party to certain contracts that give it the exclusive right and responsibility to manage certain CLOs, correct?

A Yes.

Q NexPoint Advisors, LP is an advisory firm. Do I have that right?

A Yes.

Q And we can refer to that, that firm, as NexPoint; is that fair?

A Yes.

Q You have a direct or indirect ownership interest in NexPoint, correct?

A Yes.

Q You're the president of NexPoint; isn't that right?

A Yes.

Q And as the president of NexPoint, it's fair to say that you control that entity, correct?

A To a certain extent.

Q Sir, as the president of NexPoint, it's fair to say that you control that entity, correct?

A To a certain extent.

1 MR. MORRIS: Can we go to Page 18 of the transcript,
2 please? Lines 19 and 21.
3 BY MR. MORRIS:
4 Q Were you asked this question and did you give this answer?
5 "Q As the president of NexPoint, it's fair to say
6 that you control that entity?
7 "A Generally."
8 Q Is that the right answer that you gave the other day?
9 A I think it's similar to what I just said, yeah, yeah.
10 Q Sir, you're familiar with Highland Capital Management Fund
11 Advisors, LP; is that right?
12 A Yes.
13 Q And we'll call that Fund Advisors; is that fair?
14 A Yes.
15 Q And we'll refer to Fund Advisors and NexPoint together as
16 the Advisors; is that okay?
17 A Yes.
18 Q Fund Advisors is also an advisory firm, correct?
19 A Yes.
20 Q You have a direct or indirect ownership interest in Fund
21 Advisors, correct?
22 A Yes.
23 Q You're the president of Fund Advisors, correct?
24 A Yes.
25 Q And you also have an ownership interest in the general

1 partner of Fund Advisors; isn't that right?
2 A I believe so.
3 Q It's fair to say that you control Fund Advisors, correct?
4 A Generally.
5 Q NexPoint and Fund Advisors manage certain investments
6 funds; is that right?
7 A Yes.
8 Q Among the funds that they manage are High Point Income
9 Fund; is that right?
10 A I don't think that's a name that we manage.
11 Q Let's put it this way. There are three funds that are
12 represented by K&L Gates that are managed by the Advisors,
13 correct?
14 A I don't know.
15 Q Okay. You're the portfolio manager of the investment
16 funds advised by NexPoint and Fund Advisors, correct?
17 A Largely.
18 Q And NexPoint and Fund Advisors caused the investment funds
19 that they manage to invest in CLOs that are managed by the
20 Debtors, correct?
21 A Years ago, they bought the equity interests, if that -- if
22 that's what you're asking me, in various CLOs.
23 Q The two Advisors that you own and control caused the
24 investment funds to purchase interests in CLOs that are
25 managed by the Debtor, correct?

A Not recently. Not recently. Years ago. Yes.
Q And they still hold those interests today, correct?
A Yes.
Q And K&L Gates represents all of those entities, correct?
A Yes.
Q And we'll call those the K&L Gates Clients; is that fair?
A Yes.
Q Before the TRO was entered, the K&L Gates Clients sent two letters to the Debtor concerning the Debtor's management of certain CLOs, right?
A Yes.
Q Okay.
MR. MORRIS: Your Honor, I just want to take a moment now, because we're going to start to look at some documents. The Debtor would respectfully move into evidence Exhibits A through Y that are on their exhibit list.
THE COURT: All right.
MR. BONDS: Your Honor, we have no objection.
THE COURT: A through Y are admitted. And for the record, these appear at Docket No. 46 in this adversary.
(Plaintiff's Exhibits A through Y are received into evidence.)
MR. MORRIS: Okay. Can we please put up Exhibit B as in boy? (Pause.) Ms. Canty? If you need a moment, just let us know.

MS. CANTY: Yeah. I'm pulling it up right now.

MR. MORRIS: Thank you. (Pause.) Can you scroll down just a bit?

BY MR. MORRIS:

Q All right. Can you see this letter was sent on October 16th?

A Yes.

Q And we see the entities that are reflected on this letter. We've got Highland Capital Management, LP. That's the question that they're asking. And the questions and the statements are being asserted on behalf of NexPoint Advisors, LP. Do you see that?

A Yes.

Q And Highland Capital Management Fund Advisors, LP. Those are the two Advisors that you own and control, correct?

A Control to a large extent.

Q Okay.

MR. MORRIS: And can we put up Exhibit C, please?

BY MR. MORRIS:

Q This is a second letter sent by NexPoint on November 24th. Do you see that?

A Yes.

Q Okay. And you're familiar with the substance of these letters, correct?

A Yes.

Q And you were familiar -- you were aware of these letters before they were sent. Is that correct?
A Yes.
Q And you generally discussed the substance of these letters with NexPoint; is that right?
A Generally, yes.
Q And you discussed the substance of the letters with the Advisors' internal counsel; is that right?
A Yes.
Q That's D.C. Sauter?
A Yes.
Q And you have been on some calls with K&L Gates about these letters, right?
A I believe so.
Q And you knew these letters were being sent, correct?
A Yeah, they're -- they're reported.
Q You knew these letters for being sent; isn't that right, sir?
A Yes.
Q And you didn't object to the sending of these letters, correct?
A No.
Q In fact, you supported the sending of these letters. Is that right?
A Yes.

Q And you have never directed NexPoint to withdraw these letters, correct?
A No.
Q Around Thanksgiving, you learned that Mr. Seery had given a direction to sell certain securities owned by the CLOs managed by the Debtors, correct?
A Yes.
Q And when you learned that, you personally intervened to stop the trades, correct?
A Yes. I believe they were inappropriate.
MR. MORRIS: I move to strike the latter part of the answer, Your Honor.
THE COURT: It's stricken.
MR. MORRIS: Can we put up Exhibit D, please?
BY MR. MORRIS:
Q We looked at this email string the other day. Do you recall that?
A Yes.
MR. MORRIS: Can we start at the bottom, please?
BY MR. MORRIS:
Q There's an email from Hunter Covitz. Do you see that?
A Yes.
Q Now, this is November 24th. It's before the TRO. Is that fair?
A Yes.

Q Mr. Covitz is an employee of the Debtor, right?
A I believe so.
Q And Mr. Covitz helps manage the CLOs on behalf of the Debtor. Is that your understanding?
A Yes.
Q And Mr. Covitz in this email is giving directions to Matt Pearson and Joe Sowin to sell certain securities held by the CLOs. Is that correct?
A No. He's giving Jim Seery's direction.
MR. BONDS: And Your Honor, I'm going to object. This is all before the TRO was ever entered. It doesn't have anything to do with today's hearing.
THE COURT: Overruled.
MR. MORRIS: May I respond, Your Honor?
THE COURT: I --
MR. MORRIS: Okay. Thank you.
THE COURT: I think it's relevant. Go ahead.
MR. MORRIS: Thank you. Okay.
BY MR. MORRIS:
Q Mr. Seery is the CEO of the Debtor; is that right?
A Yes.
Q And the Debtor is the contractual party with the CLOs charged with the exclusive responsibility of managing the CLOs, correct?
A I don't believe so. The Debtor is in default of the

1 agreements.
2 MR. MORRIS: I move to strike, Your Honor.
3 THE COURT: Sustained.
4 BY MR. MORRIS:
5 Q Sir, the Debtor has the exclusive contractual right and
6 obligation to manage the CLOs, correct?
7 A I don't agree with that.
8 Q Okay.
9 MR. MORRIS: Can we scroll up to the -- just --
10 BY MR. MORRIS:
11 Q Do you see that Mr. Pearson acknowledges receipt of Mr.
12 Covitz's email?
13 A Yes.
14 Q And you received a copy of Mr. Covitz's email, did you --
15 did you not?
16 A Yes.
17 MR. MORRIS: Can you scroll up a little bit, please?
18 BY MR. MORRIS:
19 Q And can you just read for Judge Jernigan your response
20 that you provided to Mr. Pearson, Mr. Covitz, and Mr. Sowin on
21 November 24th?
22 A (reading) No, do not.
23 Q You instructed the recipients of Mr. Covitz's email not to
24 sell the SKY securities as had been specifically instructed by
25 Mr. Seery, correct?

A Yes.
Q And you understood when you gave that instruction that the people on the email were trying to execute trades that Mr. Seery had authorized, correct?
A No. I -- no, that isn't how I would describe it.
MR. MORRIS: A second, Your Honor?
THE COURT: Okay.
(Pause.)
BY MR. MORRIS:
Q Sir, when you gave the instruction reflected in this email, you knew that you were stopping trades that were authorized and directed by Mr. Seery, correct?
A I don't think -- I -- I wasn't -- I wasn't sure at the moment I did that. I didn't find out until later that it was Seery who directed it.
MR. MORRIS: Can we please go back to the deposition transcript, Debtor's Exhibit Z, at Page 42? Line 12.
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q At the time that you gave the instruction, "No, do not," you knew that you were stopping trades that had been authorized and directed by Mr. Seery, correct?
"A Yes."
Q Did you give that answer to my question on Tuesday?
A I'd like to clarify it, but yes, I did give that answer.

Q Okay. You didn't speak with Mr. Seery before sending your instructions interfering with his trade, the trades that he had authorized, correct?
A No, I did not.
Q And you took no steps to seek the Debtor's consent before instructing the recipients of your email to stop executing the SKY transactions that had been authorized by Mr. Seery, correct?
A I'm sorry. Can you repeat the question?
Q You took no steps to seek the Debtor's consent before stepping in to stop the trades that Mr. Seery had authorized, correct?
A I took other actions instead.
Q Okay. But you didn't seek the Debtor's consent? That's not one of the actions you took, right?
A No, I educated the traders as to why it was inappropriate.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Sir, did you seek the Debtor's consent before stepping in to stop the trades that Mr. Seery had authorized?
A No, I did not seek consent.
Q In response to your instruction, Mr. Pearson canceled all of the trades that Mr. Seery had authorized, correct?
A Yes.

MR. MORRIS: Can we go back to the exhibit, please? And if we could just scroll -- stop right there.

BY MR. MORRIS:

Q That's -- that's Mr. Pearson's response to your email, confirming that he had canceled both the SKY and the AVAYA trades that had not yet been executed, correct?

A Yes.

MR. MORRIS: Can we scroll to the response to that?

BY MR. MORRIS:

Q Is this your response?

A Yes.

Q Can you read that aloud, please?

A (reading) HFAM and DAF have instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again, please.

Q The writings that you're referring to are the two letters from NexPoint, Exhibits B and C that we just looked at, correct?

A Yeah. There might have been a third letter. I don't know. But, yes, generally, those letters.

Q Okay. And at this juncture, the reference to potential liability was a statement intended for Mr. Pearson. Is that correct?

A Um, I -- no. Pearson wouldn't have had any personal liability. It was -- it was meant for the -- there was

1 potential liability to the Debtor or to the compliance
2 officers at the Debtor.
3 MR. MORRIS: Can we go to Page 45 of the deposition
4 transcript, please? Line -- beginning at Line 11, through 18.
5 BY MR. MORRIS:
6 Q Did I ask these questions and did you give these answers?
7 "Q Do you see the reference there in the latter
8 portion of your email, 'There is potential liability.
9 Don't do it again'?
10 "A Yes.
11 "Q Who was the intended recipient of that message?
12 "A At this juncture, it's Matt Pearson, I believe."
13 Q Did you give those answers to my questions on Tuesday?
14 A Yeah. That's not inconsistent.
15 MR. MORRIS: Let's go back to the email, please.
16 BY MR. MORRIS:
17 Q Mr. Sowin responded to your email; is that right?
18 MR. MORRIS: Can we scroll up?
19 BY MR. MORRIS:
20 Q Okay. Who's Mr. Sowin?
21 A He's the head trader.
22 Q Who's he employed by?
23 A I believe he's employed by HFAM but not the Debtor.
24 Q Okay. So he's -- he's somebody who's employed by one of
25 the Advisors; is that right?

A I believe so.
Q And Mr. Sowin responded to your email and he indicated that he would follow your instructions. Is that right?
A Yeah. He understands that it's inappropriate. That's what he's reflecting. Yes.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Sir, Mr. Sowin responded and indicated that he would follow your instructions, correct?
A (no audible response)
Q Did you answer? I'm sorry.
A No, I didn't answer. It's -- I don't know if you could expressly say that from that email. Maybe we should read the email.
MR. MORRIS: Let's just move on, Your Honor.
THE COURT: Okay.
BY MR. MORRIS:
Q A few days later, you learned -- you learned that Mr. Seery was trying a workaround to effectuate the trades anyway, correct?
A I believe so.
Q Uh-huh. And when you learned that, you wrote to Thomas Surgent; is that right?
A I -- I believe so.

Q I don't -- I don't mean to -- this is not a test here.

MR. MORRIS: Can we just scroll up to the next email, please? Okay. Stop right there.

BY MR. MORRIS:

Q When you -- when you learned that Mr. Seery was trying a workaround, you wrote to Mr. Surgent when you learned that, right?

A Yes.

Q And Mr. Surgent is an employee of the Debtor; is that correct?

A I believe he's still the chief compliance officer of the Debtor.

Q Okay. Now, as a factual matter, you never asked Mr. Seery why he wanted to make these trades; isn't that right?

A I -- I did not.

Q Okay. And before the TRO was entered, there was nothing that prevented you from picking up the phone and asking Mr. Seery why he wanted to make these trades, correct?

A That's not true.

MR. MORRIS: One second, please, Your Honor.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Can we go to Page 60 of the transcript? Mr. Bonds says -- beginning at Line 14. There is an objection there, Your Honor, and I would ask that the Court rule on the

1 objection before I read from the transcript.
2 THE COURT: Okay.
3 MR. MORRIS: There you go.
4 THE COURT: (sotto voce) (reading) Is there
5 anything that you're aware of that prevented you from picking
6 up the phone and asking Mr. Seery for his business
7 justification for these trades prior to December 10.
8 Objection, form.
9 I overrule the objection to the form of that question.
10 MR. MORRIS: Okay.
11 BY MR. MORRIS:
12 Q Mr. Dondero, were you asked this question and did you give
13 this answer?
14 "Q Is there anything that you're aware of that
15 prevented you from picking up the phone and asking Mr.
16 Seery for his business justification for these trades
17 prior to December 10, 2010?
18 "A No. I expressed my disapproval via email."
19 Q Is that right?
20 A I'd like to adjust that answer to the answer I just gave.
21 Q Okay.
22 MR. MORRIS: And I move to strike.
23 BY MR. MORRIS:
24 Q I'm just asking you if that's the answer you gave on
25 Tuesday.

1 THE COURT: Sustained.
2 THE WITNESS: Yes.
3 BY MR. MORRIS:
4 Q Thank you. Now, you wrote to Mr. Surgent because you
5 wanted to remind him of his personal liability for regulatory
6 breaches and for doing things that aren't in the best interest
7 of investors, correct?
8 A Yes.
9 Q And you actually thought about this and you -- because you
10 didn't believe that Mr. Surgent had extra insurance and
11 indemnities like Mr. Seery, right?
12 A No.
13 Q Didn't you testify to that the other day?
14 A I don't remember, but that isn't the only reason.
15 Q I didn't ask you if it was the only reason. Listen
16 carefully to my question. Did you send this email because you
17 -- because you wanted to remind him of his personal liability
18 for regulatory breaches and for doing things that aren't in
19 the -- I apologize. Withdrawn.
20 You did not believe at the time that you sent this email
21 that he, Mr. Surgent, had insurance and indemnities like Mr.
22 Seery, correct?
23 A Yes.
24 Q Okay.
25 MR. MORRIS: Can we go back to the email, please?

BY MR. MORRIS:
Q Can you just read the entirety of your email to Mr. Surgent out loud?
A (reading) I understand Seery is working on a workaround to trade these securities anyway, trades that contradict investor desires and have no business purpose or investment rationale. You might want to remind him and yourself that the chief compliance officer has personal liability.
Q Okay. That's -- that's the message you wanted to convey to Mr. Surgent, right?
A Yes.
Q And, again, you never bothered to ask Mr. Seery what his businessperson -- purpose or investment rationale was, correct?
A I -- I didn't believe I could talk to him directly.
Q This is before the --
A That's why I never picked up the phone.
Q Okay. You intended to convey the message to Mr. Surgent that, by following Mr. Seery's orders to execute the trades, that Mr. Surgent faced personal liability, correct?
A Yes, he does.
Q And that's the message you wanted to send to him, right?
A It's a true and accurate message, yes.
Q Okay. Just a few days earlier, you also threatened Mr. Seery, right?

A I wouldn't use the word "threatened."
Q Okay. Let's let -- let's let it speak for itself.
MR. MORRIS: Can we go to Exhibit E, please? Keep scrolling down just a bit.
BY MR. MORRIS:
Q This is an email that you sent to Mr. Seery on November 24th. And as always, Mr. Dondero -- this is the third time we're meeting -- if there's something in the document that you need to see, please just let me know, because I don't -- I don't mean to test your memory if the document can help refresh your recollection.
MR. MORRIS: Can we just scroll up a little bit further to the top to see the date?
BY MR. MORRIS:
Q Okay. So, Jim, there, JD, who is that?
A That's me.
Q Okay. And can you tell by the substance of the email, of the text messages, this is communications between you and Mr. Seery, right?
A Yes.
Q Okay. And you see that it's dated November 24th there?
A Yes. Right after we were discussing the pipeline. Or right when we were working on the pipeline.
Q Okay.
MR. MORRIS: Can you scroll down a little bit,

please?
BY MR. MORRIS:
Q At 5:26 p.m., you sent Mr. Seery a text, correct?
A Yes.
Q Can you read that, please?
A (reading) Be careful what you do. Last warning.
Q Okay. This was a warning telling Mr. Seery to stop selling assets out of the CLOs or the beneficial owners would take more significant action against him, correct?
A It was a general statement that what he was doing was regulatorily inappropriate and ethically inappropriate and he was in breach of the contracts he was operating.
Q Neither you nor any entity owned or controlled by you are parties to the contracts you just referred to; isn't that correct?
A I believe they're indirectly parties to those contracts, especially when they're in default.
Q Neither you nor any entity owned or controlled by you is a signatory to any CLO management contract pursuant to which the Debtor is a party, correct?
A I -- I don't know and I don't want to make legal conclusions on that.
Q Okay. At the deposition the other day, some of the things that you suggested the beneficial owners of the CLO interests might do against Mr. Seery and the Debtor are class action

lawsuits. Is that right?
A I -- I did not suggest the entities I control would do that. If anybody on this call were to call a class action lawsuit -- a class action law firm and tell them what's been going on with the CLOs, I think a class action law firm would file it on their own regard, not on the behalf of my entities.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Let's talk about that cell phone. Okay? Until at least December 10th, the day the TRO was entered, you had a cell phone that was bought and paid by the Debtor, right?
A Yes.
Q But sometime after December 10th, your phone was disposed of or thrown in the garbage; is that right?
A Yes.
Q And you don't know when after December 10th the cell phone that was the Debtor's property was disposed of, right?
A I don't believe at that point it was the Debtor's property. I think I paid it off in full and the Debtor had announced that they were canceling everybody's cell phones so it was appropriate for me to get another one.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
MR. BONDS: Your Honor, at some point, I mean, Mr.

Morris just ought to go on and testify.

MR. MORRIS: No, this is Mr. Dondero's testimony, Your Honor. He gave it the other day. I'm just asking him to confirm it, basically.

THE COURT: Okay. I overrule the objection, if any there was, on the part of Mr. Bonds.

BY MR. MORRIS:

Q Sometime after December 10th, the cell phone that prior to that time had been owned and paid for by the Debtor was thrown in the garbage or otherwise disposed of, correct?

A Yes.

Q And you don't know when after December 10th that was -- the phone was disposed of, correct?

A It was on or about that date, I'm sure.

Q Well, we know it was after December 10th, right?

A Okay. Or about that date.

Q You testified the other day that you just don't know who made the decision to throw your phone away, right?

A I could find out, but I don't know. I would have to talk to employees.

Q Did you make any request of the Debtor since your deposition to try to find out the answer as to who made the decision to throw your phone away?

A No.

Q How did you learn that your phone was thrown away?

A As I testified, it's standard operating procedures every time a senior executive gets a new phone.

Q Hmm. You don't know exactly who threw the phone away; is that right?

A No, but I can find out.

Q Okay. I'm just asking -- I'm not asking you to find out. I'm just asking you if you know. Do you know who threw your phone away?

A No.

Q Do you know who made the decision to throw your phone away?

A It -- there wasn't a decision. It was standard operating procedure.

MR. MORRIS: I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:

Q You and Mr. Ellington disposed of your phones at the same time, correct?

A I don't have specific awareness regarding what Mr. Ellington did with his phone.

Q It never occurred to you to get the Debtor's consent before throwing the phone that they had purchased away, right?

A I'm not permitted to talk to the Debtor.

Q Sir, it never occurred to you to get the Debtor's consent before throwing the phone away, correct?

A I'm going to stick with the answer I just gave.

MR. MORRIS: Can we go to Page 75 of the transcript? Lines 12 through 15. There is an objection there, Your Honor. I would respectfully request that the Court rule on the objection before I read the testimony.

THE COURT: Okay. Starting at Line 12?

MR. MORRIS: 12.

THE COURT: (sotto voce) (reading) Did it ever occur to you to get the Debtor's consent before doing this? Objection, form.

That objection is overruled.

BY MR. MORRIS:

Q All right. Mr. Dondero, did you give this answer to my question on Tuesday?

"Q Did it ever occur to you to get the Debtor's consent before doing this?

"A No."

A Yes, I gave that testimony.

Q Okay. And you also had the phone number changed from the Debtor's account to your own personal account; is that right?

A The phone number changed? The phone number stayed the same.

Q But you had the number changed from the Debtor's account to your own personal account, correct?

A The Debtor said they wouldn't pay for it anymore. Who

else could I change it to?

MR. MORRIS: Your Honor, I move to strike. It's a very simple question.

THE COURT: Sustained.

BY MR. MORRIS:

Q I'll ask it one more time, Mr. Dondero. You had the phone number changed from the Debtor's account to your personal account, correct?

A I didn't change the number. I had the billing changed to my personal account versus the company account.

Q And you never asked the Debtor for permission to do that, correct?

A No.

Q And you never told Debtor you were doing that, correct?

A No.

Q And nobody ever told Mr. Seery or anybody at my firm that the phone was being thrown in the garbage, correct?

A Well, --

MR. BONDS: To the extent he knows.

THE WITNESS: Yeah. I have no idea. But I didn't.

BY MR. MORRIS:

Q You didn't believe it was necessary to give the Debtor notice that you were taking the phone number for your own personal account and throwing the phone in the garbage, correct?

A Correct.
Q The phone --
MR. BONDS: Your Honor, I'm going to object. He -- Mr. Dondero did not testify he personally threw the phone in the garbage.
MR. MORRIS: Withdrawn.
THE COURT: Okay.
BY MR. MORRIS:
Q Mr. Dondero, the phone was in Highland's offices on December 10th, the date the TRO was in effect, correct?
A I -- I don't -- I -- I -- I don't know. You know, I don't know. It's -- I remember going over to -- well, anyway, I -- I don't know. We'll leave it at that.
MR. MORRIS: Can we go to Exhibit G, please?
BY MR. MORRIS:
Q Who's Jason Rothstein, while we wait?
A Jason, Jason is our -- is the Highland head of technology.
Q Okay. And did you text with him from time to time? On or about December 10th?
A Yes.
Q Okay.
MR. MORRIS: Can we just scroll up a little bit?
BY MR. MORRIS:
Q Is that Mr. Rothstein there?
A Yes. Yeah.

Q Okay. And do you see that there's a text message that you sent to him on December 10th, right at the top? Can you read -- can you read the text message Mr. Rothstein --
A He sent that to me. At the top.
Q I apologize. Thank you for the correction. Can you read what Mr. Rothstein told you on December 10th?
A That my old phone is in the top drawer of Tara's desk.
Q And who's Tara?
A My assistant.
Q Is she still your assistant today?
A Yes.
Q And has she been serving as your assistant since the TRO was entered into on December 10th?
A Yes.
Q Okay. Is it fair to say that you were informed on December 10th that the phone was not thrown in the garbage, had not been disposed of, but was instead sitting in Tara's desk?
A As of that moment, yes.
Q Okay. And it's also fair to say that, as of December 10th, Mr. Rothstein didn't take it upon himself to throw your old phone in the garbage, right?
A Not as of that moment. But like I said, I can find out how it was disposed of.
Q If you were curious to do that, would you have done that

before today?
A I haven't been curious.
Q Thank you very much. Someone you can't identify made the decision after December 10th to throw the phone in the garbage without asking the Debtor for permission or seeking the Debtor's consent, correct?
MR. BONDS: I'm going to object, Your Honor. To the extent that the witness knows, he can answer.
THE COURT: I -- I didn't hear --
THE WITNESS: I don't know.
THE COURT: I didn't hear what your objection was, Mr. Bonds. Repeat.
MR. BONDS: Your Honor, my objection was along the lines of to the extent that the witness knows, he could testify, but if he doesn't know, he doesn't need to speculate.
THE COURT: All right. Well, I don't hear an objection there, but go ahead, Mr. Dondero, if you have knowledge and can answer the question.
THE WITNESS: I don't know.
BY MR. MORRIS:
Q Do you recall that the Debtor subsequently gave notice to you to vacate its offices and to return its cell phone?
A I don't know.
Q Did you ever --
A I know I -- I know I was told to vacate the offices. I

didn't see the specific --

Q Uh-huh. Your lawyer -- your lawyers never told that Debtor that the cell phone had been disposed of or thrown in the garbage, consistent with company practice, right?

A I don't know.

MR. MORRIS: Can we put up Exhibit K, please?

BY MR. MORRIS:

Q This is the letter that my firm sent to your lawyer on December 23rd. Do you see that?

A Yeah, I see it.

Q Okay.

MR. MORRIS: Can we scroll down a little bit? Keep going. Okay. Stop right there.

BY MR. MORRIS:

Q Do you see that it says that, as a result of the conduct described above, that the Debtor "has concluded that Mr. Dondero's presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive"?

A Yeah, I see it.

Q And this is the letter that gave you notice that you had to vacate the premises by December 30th, correct?

A I believe so.

MR. MORRIS: Can we scroll down a little bit?

BY MR. MORRIS:

Q You see at the bottom there's a reference to a defined term of "cell phones"?
A Yes.
Q And it says that the Debtor "will also terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero." Do you see that?
A Yes. Yeah.
Q Have I read that accurately?
A Yes.
Q And then my colleagues went on to write, "HCMLP demands that Mr. Dondero immediately turn over the cell phones to HCMLP by delivering them to you, Mr. Lynn." Do you see that?
A Yes.
Q Have I read that accurately?
A Yes.
Q The last sentence on the page begins, "The cell phones and."
MR. MORRIS: And let's scroll down further.
BY MR. MORRIS:
Q "The cell phones and the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or wiping any information or messages on the cell phone. HCMLP, as the owner of the account and cell phones, intends to recover all information related to the cell phones and

accounts, and reserves the right to use the business-related information." Have I read that accurately?

A Yes.

Q Okay. We were a couple of weeks too late, huh?

A It sounds like it.

Q Yeah. Because the phones were already in the garbage, right?

A Yes.

Q Uh-huh. But that's not what Mr. Lynn told the Debtor on your behalf, right?

A I don't know.

Q Mr. Lynn -- all right. Let's -- let's see what Mr. Lynn said.

MR. MORRIS: Can we go to Exhibit U, please?

BY MR. MORRIS:

Q It took Mr. Lynn six days to write a one-paragraph letter in response, right? December 29th, he responded?

MR. MORRIS: Can we scroll down a bit?

BY MR. MORRIS:

Q Let me read beginning with the second sentence of the first substantive paragraph. "We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor, but we are not prepared to turn it over without ensuring the privacy of the attorney-client communications." And then he goes on.

Have I read that correctly?
A Yes.
Q Okay. So Mr. Lynn didn't say anything about the phone being thrown in the garbage, right?
A No.
Q He didn't say that it was disposed of, did he?
A No.
Q He didn't refer to any company practice or policy, right?
A No.
Q Mr. Lynn's not a liar, is he?
A No, he's not.
Q He's a decent and honest professional. Wouldn't you agree with that?
A Yes.
Q And is it fair to say that he conveyed only the information that he had at the time?
A I don't know.
Q Do you have any reason to believe that Mr. Lynn would withhold from the Debtor the information that the cell phone had been thrown in the garbage, consistent with company practice?
A No, I don't believe he would withhold whatever he knew.
Q All right. Let's talk about -- let's talk about other matters. You do know, sir, do you not, that the Debtor is subject to the Bankruptcy Court's jurisdiction?

A Yes.
Q Okay. And we just saw in the December 23rd letter that the Debtor demanded that you vacate their offices a week later, right?
A Yes.
Q And you knew that at or around the time the letter was sent on December 23rd, correct?
A I -- I don't remember when I knew.
Q Well, in fact, in fact, you or through counsel asked for an accommodation and asked for an extension of time to December 31st; isn't that right?
A I had to pack up 30 years of stuff in three days. I -- I know we asked for some forbearance. I don't think we got any. I don't remember the details. I don't understand why it's important.
Q Okay. It was actually -- withdrawn. The Debtor actually gave you seven days' notice, right? They sent the letter on December 23rd and asked you to vacate on December 30th, correct?
A I don't -- I don't remember. But, again, I think the initial response was it was inconsistent with shared services agreement. No Highland employees are coming into the office anyway. So kicking me out of my office was -- seemed vindictive and overreaching. And we tried to get some, you know, forbearance.

Q Okay.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, you were given seven days' notice before -- before you were going to be barred from the Debtor's office, correct?

A I don't know.

Q Okay.

MR. MORRIS: Can we go back to Exhibit K, please? Oh, actually, it's okay.

BY MR. MORRIS:

Q We just read, actually, the piece from the Debtor's letter of December 23rd barring you from the Debtor's office. Do you remember that? And we can go back and look at it if you want.

A Yes.

Q Was there anything ambiguous that you recall about the Debtor's demand that you not enter their offices after December 30th?

A Ambiguous? I can tell you what my understanding was or I can tell you what the letter says. What would you like to know?

Q I'd just like to know if, as you sit here right now, you believe there was anything ambiguous about the Debtor's demand that you vacate the offices as of December 30th?

A I mean, I did vacate the offices as of December 30th.
Q Correct. And you knew that -- and you were complying with the Debtor's demand you do that, right?
A Well, with the Court's demand, I guess.
Q Okay. And it's your understanding that you would not be permitted in the Debtor's offices after that time, correct?
A Um, (pause), uh, I don't know how to answer that question. I knew I wouldn't be residing in the offices anymore. But for legitimate business purposes, to visit the people at NexPoint who were in the office, since there are no Highland people in the office, or to handle a deposition, you know, there was nothing I thought inappropriate about that.
Q Did the Debtor tell you that they would allow you to enter the offices any time you just believed that it would be appropriate to do that?
A I used my business judgment.
MR. MORRIS: I move to strike.
BY MR. MORRIS:
Q I'm asking you a very --
THE COURT: Sustained.
BY MR. MORRIS:
Q -- specific question, sir. Did the Debtor ever tell you that they -- that you would be permitted to enter their offices after December 30th if you, in your own personal discretion, believed it to be appropriate?

A No.
Q Did the Debtor provide you any exception to their demand that you vacate the offices, without access, by and after December 30th?
A I always do what I think is appropriate and in the best interests. I don't know. I didn't know the specifics of the Debtor's -- okay, yeah, what the specifics of the Debtor was.
Q Despite the unambiguous nature of the Debtor's demands letter, on Tuesday you just walked right into the Debtor's office and sat for the deposition, correct?
A I believe that was reasonable, yes.
Q Okay. But you didn't -- you didn't have the Debtor's approval to do that, correct?
A We didn't have technology to do it anywhere else, so if the deposition was going to occur, it had to occur there.
Q Sir, --
MR. MORRIS: Move to strike.
THE COURT: Sustained.
BY MR. MORRIS:
Q And I ask you to just listen very carefully. And if it's not clear to you, please let me know. You did not have the Debtor's approval to enter their offices on Tuesday to give your deposition, correct?
A No.
Q And you did not even bother to ask the Debtor for

1 permission, correct?
2 A I'm prohibited from contacting them, so no, I did not.
3 Q Okay. Let's talk about other events that occurred after
4 the entry of the TRO. We talked earlier about how you
5 interfered with Mr. Seery's trading activities on behalf of
6 the CLOs around Thanksgiving. Do you remember that?
7 A Yes.
8 Q But after the TRO was entered, the K&L Gates Clients also
9 interfered with the Debtor's trading activities, correct?
10 A No.
11 MR. MORRIS: Can we go to Exhibit K, please? Can we
12 start at the first page? And scroll down just a bit.
13 BY MR. MORRIS:
14 Q Do you see there's an explanation there about the Debtor's
15 management of CLOs?
16 A Yes.
17 Q And there's a recitation of the history that we talked
18 about earlier, where around Thanksgiving you intervened to
19 block those trades?
20 A Yes.
21 Q And then the next paragraph refers to the prior motion
22 that was brought by the CLO entities? I mean, the K&L Gates
23 entities, right?
24 A Yes.
25 Q And you were aware of that motion at the time it was made,

right?
A Yes.
Q And you were supportive of the making of that motion, right?
A Supportive? Yes.
MR. MORRIS: And scroll down to the next paragraph, please.
BY MR. MORRIS:
Q Okay. So, my colleague wrote that, "On December 22nd, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLO sale of the AVAYA and SKY securities." Have I read that right?
A Yes.
Q And that took place six days after the motion that the Court characterized as frivolous was denied on December 16th?
A Yes. I wasn't aware of that, for what that's worth.
Q Okay. You personally instructed the employees -- withdrawn. NPA -- that refers to NexPoint, correct?
A Yes.
Q That's an entity you own and control, right?
A I -- largely.
Q And that's one of the Advisors we defined earlier, right?
A Yes.
Q And HCMFA, that's Fund Advisors, another advisory firm that you own and control, correct?

A Yes.
Q And you personally instructed, on or about December 22nd, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect SKY and AVAYA, right?
A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle trades that occurred. But that's a different ball of wax.
Q Okay. But you did instruct them not to execute trades that had not been made yet, right?
A Yeah. Trades that I thought were inappropriate, for no business purpose, I -- I told them not to execute.
Q Okay. You actually learned that Mr. Seery wanted to effectuate these trades the Friday before, right?
A I don't know, but what did I do? When did I know it? What did I do? When I knew things are inappropriate, I reacted immediately. I don't -- I don't -- whenever -- whenever I found out about inappropriate things, I reacted to the best of my ability.
Q Okay.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
Mr. Dondero, I'm going to -- I'm going to interject some instructions once again here. Remember we talked about early

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 31

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

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006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
			Transcripts	
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

on, and I know you've testified before, but I'll repeat it: You need to just give direct yes or no answers.

And let me just say that we see witnesses all the time do what you're doing here, and that is they feel they need to say more than yes or no. They feel the need to clarify or supplement the yes or no answer they give. And just to remind you how this works, your lawyer, Mr. Bonds, is going to be given the opportunity when Mr. Morris is through to ask you all the questions he wants, and that will be your chance to clarify yes and no answers to the extent he asks you to revisit certain of these questions and answers. Okay?

So I'm going to remind you once again: yes or no or direct -- you know, other appropriate direct answers. Mr. Bonds can let you clarify later. All right?

Mr. Morris, continue.

MR. MORRIS: Okay. Thank you, Your Honor.

Can we please put up on the screen Exhibit L? And at the, I guess, the bottom of Page 1.

BY MR. MORRIS:

Q This is an email string. And --

MR. MORRIS: Go to the email below that, please. Yeah. Okay. Right there.

BY MR. MORRIS:

Q This is an email from Mr. Seery dated December 18th at (garbled) :30 p.m. Do you see that?

A Yes.
Q And in the substantive portion of his email, continuing on to the next page, he's giving instructions to sell certain SKY and AVAYA securities that are held by CLOs, correct?
A Yes.
Q And Mr. Sowin forwarded this email to you, right?
A Yes.
MR. MORRIS: If we can scroll up.
BY MR. MORRIS:
Q And you forwarded it to Mr. Ellington, right? I'm sorry. Let's just give Ms. Canty a chance.
MR. MORRIS: Keep scrolling up.
BY MR. MORRIS:
Q So, Mr. Sowin forwarded it to you at 3:34 p.m. Do you see that?
A Yes.
Q And if we scroll up, you turn around and give it to Mr. Ellington a few minutes later, right?
A Yes.
Q So that you and Mr. Ellington and Mr. Sowin are all aware that Mr. Seery wants to sell AVAYA and SKY securities on behalf of the CLOs, right?
A Yes.
Q Why did you decide to forward this email to Mr. Ellington?
A Ellington's role has been of settlement counsel that

1 supposedly everybody is able to talk to to try and bridge some
2 kind of settlement. Ellington, I thought, should be aware of
3 things that would make settlement more difficult or create
4 liabilities for the Debtor. And so I thought it was
5 appropriate for him to know.
6 Q Okay. This is the email that caused you to put a stop to
7 the trades that Mr. Seery wanted to effectuate, correct?
8 A This is the -- I'm sorry. Ask the question again. This
9 is the email that what?
10 Q This is -- this is how you learned that Mr. Seery wanted
11 to effectuate rates in AVAYA and SKY securities, right?
12 A I -- I learned about it pretty early on of him trading it.
13 I don't know if it was this email or -- or one of the others.
14 But yes, it was from -- it was from Joe Sowin.
15 Q And you would agree with me, would you not, that you
16 personally instructed the employees of the Advisors not to
17 execute the very trades that Mr. Seery identifies in this
18 email, correct?
19 A Yes.
20 Q At no time after December 10th, when the TRO was entered
21 into, did you instruct the employees of the Funds that you own
22 and control not to interfere or impede the Debtor's management
23 of the CLOs, correct?
24 MR. BONDS: Can you repeat the question? I'm sorry.
25 BY MR. MORRIS:

Q At no time after December 10th, when the TRO was entered, did Mr. Dondero instruct any employee of either of the Advisors that he owns and controls not to interfere or impede with the Debtor's business and management of the CLOs, correct?

A I did not.

Q Okay. Neither you nor anybody that you know of ever provided a copy of the TRO to the employees of the Advisors that you own and control, correct?

A I don't know.

Q Okay. After the TRO was entered, the K -- after the TRO was entered, and after the hearing on December 16th, the K&L Gates Clients sent three more letters to the Debtor, right?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, those are Exhibits M as in Mary, N as in Nancy, and X as in x-ray.

THE COURT: Okay.

MR. MORRIS: Unless the witness thinks there is a need to look at them specifically -- oh, let me just ask a couple of questions.

BY MR. MORRIS:

Q Mr. Dondero, in those letters, it's your understanding that the K&L Gates Clients again requested that the Debtor not trade any securities on behalf of the CLOs, right?

A Yes.
Q And it's your understanding that in those letters the K&L Gates Clients suggested that they might seek to terminate the CLO management agreements to which the Debtor was a party, correct?
A I don't know specifically, but that wouldn't surprise me.
Q Okay.
A So, --
Q Is it your understanding that the K&L Gates Clients also sent the letter a Debtor -- the Debtor a letter in which they asserted that your eviction from the offices might cause them damages and harm?
A I know there was objections to me -- I assume so. I don't know specifically.
Q And you were aware of these letters at the time that they were being sent, right?
A I'm sorry, what?
Q You were aware of these letters at the time they were being sent by the K&L Gates Clients, right?
A Generally, yes.
Q And you were generally supportive of the sending of those letters, right?
A I'm always supportive of doing what we believe is the right thing, yes.
Q And in this case, you were supportive of the sending of

these three letters, correct?
A I -- yes.
Q In fact, you pushed and encouraged the chief compliance officer and the general counsel to send these letters, right?
A I push them to do the right thing. I didn't push them specifically.
Q Okay. At the time the letters were sent, you were aware that the K&L Gates Clients had filed that motion that was heard on the 16th of December, correct?
A Yes.
Q And you were aware that they advanced the very same -- withdrawn. You're aware that in the letters they advance some of the very same arguments that Judge Jernigan had dismissed as frivolous just six days earlier, right?
A I wasn't at the hearing. I don't know if it was the same arguments or similar arguments. I -- I can't -- I can't corroborate the similarity or contrast the differences between the two.
Q All right. So it's fair to say, then, that you were supportive of the sending of these letters, you were aware of the December 16 argument, but you didn't take the time to see whether or not any of the arguments being advanced in the letters were consistent or any different from the arguments that were made at the December 16th hearing, correct?
A Correct. I wasn't directly involved, but still believed

1 that fundamentally Seery's behavior was wrong.
2 Q You never instructed the K&L Gates Clients to withdraw the
3 three letters that were sent after December 10th, correct?
4 A No.
5 Q And you're aware that the Debtor had demanded that those
6 letters be withdrawn or it would seek a temporary restraining
7 order against the K&L Gates Clients, correct?
8 A I'm not aware of the back and forth.
9 Q Okay. Let's talk about your communications with Mr.
10 Ellington and Mr. Leventon. You communicated with them on
11 numerous occasions after December 16th, correct?
12 A No.
13 Q No, you didn't communicate with them many times after
14 December 10th?
15 A You're lumping in Ellington and Isaac, and numerous times
16 is a bad clarifier, so the answer is no.
17 Q I appreciate that. You communicated many times with Mr.
18 Ellington after December 10th, right?
19 A Not -- not outside shared services, pot plan, and him
20 being the go-between between me and Seery. I would say
21 virtually none.
22 Q Okay. On Saturday, December 12th, two days after the
23 temporary restraining order was entered against you, Mr.
24 Ellington was involved in discussions with your personal
25 counsel about who would serve as a witness at the upcoming

December 16th hearing, correct?
A I don't -- I don't remember.
Q Let's see if we can refresh your recollection.
MR. MORRIS: Can we please put up Exhibit P? Can we scroll down? Okay.
BY MR. MORRIS:
Q Do you see where Mr. Lynn writes you an email on Saturday, December 12th, and he says, among other things, it looks like trial?
A Yes.
Q And then if we scroll up a little bit, he wrote further, "That said, we must have a witness now." Have I read that accurately?
A Yes.
Q Okay.
MR. MORRIS: Can we scroll back up?
BY MR. MORRIS:
Q And this is Mr. Ellington's response, right?
A Yes.
Q Can you read Mr. Ellington's response for Judge Jernigan?
A (reading) It will be J.P. Sevilla. I'll tell him that he needs to contact you first thing in the morning.
Q Is it your testimony that this email relates to -- withdrawn. Mr. Ellington is not your personal lawyer, right?
A No. Mr. Ellington has been functioning as settlement

1 counsel, trying to bridge settlement, --
2 Q Okay.
3 A -- which is what this email looks like to me.
4 Q Okay. I'll let -- I'll let the judge --
5 MR. MORRIS: I move to strike, Your Honor.
6 THE COURT: Sustained.
7 BY MR. MORRIS:
8 Q So, after the TRO was entered, you and Mr. Ellington not
9 only communicated but Mr. Ellington was actively involved in
10 identifying witnesses to testify on behalf of your interests
11 at the December 16th hearing, correct?
12 A I -- I don't know what the witness was for, but I believe
13 Ellington was doing his job as settlement counsel, trying to
14 facilitate settlement. I don't -- I have no reason to think
15 this was anything more nefarious.
16 Q Okay. You looked to Mr. Ellington for leadership in
17 coordinating with all of the lawyers who were working for you
18 and your personal interests, right?
19 A I'm not agreeing with that.
20 Q No? All right.
21 MR. MORRIS: Let's look at the next exhibit. I think
22 it's Exhibit Q. And if we could stop right there.
23 BY MR. MORRIS:
24 Q There's an email from Douglas Draper, do you see that, on
25 December 16th?

A Yes.
Q So this is after the TRO was entered into, right?
A I believe so.
Q And Mr. Draper represents Get Good and Dugaboy; is that right?
A I believe so.
Q And he was new to the case at that moment in time, right?
A On or about, I believe so.
Q And he was looking to -- he was looking for a joint meeting among all of the lawyers representing your personal interests, right?
A No. I think he was trying to coordinate -- coordinate or understand whatever. But not everybody -- he doesn't just talk to lawyers around my interests. I mean, and he hasn't sought agreements with just lawyers reflecting my interests.
Q You forwarded Mr. Draper's email to Mr. Ellington, right?
A Yes.
Q But you can't remember why you did that, right, or at least -- withdrawn. You couldn't remember as of Tuesday's deposition why you forwarded this email to Mr. Ellington, right?
A Not specifically. But, again, Ellington is settlement counsel.
MR. MORRIS: I move to strike, Your Honor, after the initial phrase "Not specifically."

THE COURT: Sustained.

MR. MORRIS: Can we scroll up a little bit, please?

BY MR. MORRIS:

Q Mr. Lynn responded initially with a reference to the assumption that a particular lawyer was with K&L Gates, right?

A Yes.

MR. MORRIS: And if we could scroll up a little bit.

BY MR. MORRIS:

Q That's where you forward this email to Mr. Ellington, right?

A Yes.

Q And can you read to Judge Jernigan what you wrote at 1:33 p.m.?

A (reading) I'm going to need you to provide leadership here.

Q But at least as of Tuesday's deposition, you couldn't remember why you needed Mr. Ellington to provide leadership, right?

A Correct. Nor if he did.

MR. MORRIS: I move to strike the latter portion of the answer, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q So you have no --

(Echoing.)

MR. MORRIS: We're getting --

THE WITNESS: Can I -- can I hold -- can I hold on for one second here? Can I just put you guys on mute, please?

MR. MORRIS: Sure.

(Pause.)

THE COURT: All right.

THE CLERK: John, there's some feedback again. I'm sorry.

MR. MORRIS: That's okay.

THE COURT: Mr. Bonds, --

MR. MORRIS: We lost Mr. --

THE COURT: Mr. Bonds, what's going on?

MR. MORRIS: We've lost -- the screen --

THE COURT: You know you can't counsel your client in the middle of court testimony. I thought maybe Mr. Dondero had some non-legal thing going on in the background. Mr. Bonds?

MR. BONDS: Your Honor, I -- I did not in any way counsel Mr. Dondero.

THE COURT: Okay. Well, I'll take your representation on that. Are we ready to go forward?

MR. MORRIS: I'll readily accept Mr. Bonds' representation as well, Your Honor.

THE COURT: Okay.

MR. MORRIS: But I'd ask that it not happen again.

THE COURT: Well, fair enough. I think Mr. Bonds understands.

BY MR. MORRIS:

Q Mr. Dondero, you have no recollection of why you forwarded this email to Mr. Ellington and why you told him you needed him to provide leadership, correct?

A Correct.

MR. MORRIS: And if we can scroll up, can we just see how Mr. Ellington responded?

BY MR. MORRIS:

Q All right. And can you just read for Judge Jernigan what Mr. Ellington said on December 16th in response to your statement that you're going to need him to provide leadership here?

A (reading) On it.

Q Thank you. In your deposition, you testified without qualification that Scott Ellington and Isaac Leventon did not participate in the drafting of a joint interest or mutual defense agreement. Do you recall that testimony?

A Yes, as far as I knew.

Q And you also testified that you never discussed with either of them the topic of a joint defense or mutual defense agreement; is that right?

A Correct. That was Draper.

Q Okay.

MR. MORRIS: Can we put up Exhibit 11, please? I apologize. It's Exhibit W. Okay. Can we stop right there?

BY MR. MORRIS:

Q This is an email between some of your counsel and Mr. Ellington. Do you see that?

A Yes.

Q And a common interest agreement is attached to the communication. Is that a fair reading of the portion of the exhibit that's on the screen?

A Yes.

MR. MORRIS: And can we scroll to the top of the exhibit, please?

BY MR. MORRIS:

Q And do you see that there is an email exchange between Mr. Ellington and Mr. Leventon concerning the common interest agreement?

A Yes.

Q Okay. So it's your testimony that this email may exist but you had no idea that Mr. Ellington and Mr. Leventon were working with your lawyers to draft a common interest agreement? Is that your testimony?

A I wasn't part of this. It looks to me like they were just included in a -- a final draft. And, again, Ellington is settlement counsel. I -- but I don't want to speculate why or what they were doing.

Q Do you remember that I asked you a few questions the other day about Multi-Strat financial statements and whether or not you'd ever given -- you'd ever received any of those documents from Mr. Ellington and Mr. Leventon?

A Yes.

Q Okay. And you testified under oath that you never got any financial information, including balance sheets, concerning Multi-Strat from either of those lawyers, correct?

A I -- hmm. I -- I don't remember. Yeah, I don't remember. I may have to clarify that, but I don't remember.

Q You testified under oath the other day that you wouldn't even think to ask them for financial information relating to Multi-Strat because it's not natural for them to have it, right?

A I -- I'm sorry.

THE WITNESS: Your Honor, do I just have to answer these questions yes or no, or is that the -- can I clarify at all, or can I --

THE COURT: Well, I mean, if the question simply directs a yes or no answer, that's correct, you just answer yes or no. And I think this one did.

Again, your lawyer is going to have the chance to do follow-up examination later.

BY MR. MORRIS:

Q So let me try again. During your deposition, you

1 testified under oath without qualification that you never got
2 any financial information, including balance sheets,
3 concerning Multi-Strat from Scott Ellington or Isaac Leventon,
4 correct?
5 A I believe I might have misspoken there.
6 Q Okay. But that was your testimony the other day, right?
7 A Yes.
8 Q And today, you believe you might have gotten that
9 information from them, right?
10 A Only because Ellington was supposed to be the go-between
11 and I couldn't go directly to somebody. But he wouldn't
12 normally have that information, which is what I was saying.
13 MR. MORRIS: Your Honor, I have an exhibit that's not
14 on the Debtor's exhibit list, and I was going to use it for
15 impeachment purposes to establish the fact that Mr. Ellington
16 and Mr. Leventon in fact gave to Mr. Dondero, after December
17 10th, financial information concerning Multi-Strat, which Mr.
18 Dondero had previously denied receiving. May I -- may I use
19 that document to impeach Mr. Dondero?
20 THE COURT: You may.
21 MR. BONDS: Your Honor, I'm going to object. This is
22 pretty clearly something that should have been disclosed and
23 it wasn't.
24 THE COURT: Well, he says it's purely to impeach the
25 testimony that Mr. Dondero just now gave. So we'll -- we'll

1 see the document and, you know, I'll either agree with that
2 being impeachment or not. So, he may proceed.
3 MR. BONDS: Your Honor, I think that the testimony
4 -- Your Honor, I'm sorry. I think that the testimony that was
5 (inaudible) given was that he thought that he may have talked
6 to Scott or Isaac, not that he did not.
7 MR. MORRIS: Your Honor, if I may, the testimony the
8 other day was unequivocal and unambiguous that not only didn't
9 he get this information from the two lawyers, but that he had
10 no reason to believe he would ever get the information from
11 those two lawyers.
12 I appreciate the fact that Mr. Dondero today is suggesting
13 that he may have, but I -- I would still like to use this
14 document to refresh his recollection and to impeach even the
15 possibility that he's giving this qualified testimony that he
16 may have.
17 THE COURT: All right.
18 MR. MORRIS: There's no doubt that he did.
19 THE COURT: I overrule the objection. You can go
20 forward.
21 MR. MORRIS: Can we please put up on the screen -- I
22 believe it's Debtor's Exhibit AA. And if we can scroll down,
23 please. And just stop, yeah, towards the top. All right.
24 Stop right there.
25 BY MR. MORRIS:

Q Do you see in the first email Mr. Klos -- he's an employee of the Debtor, right?
A Yes.
Q And he provides Multi-Strat balance sheet and financial information to Mr. Leventon, Mr. Ellington, and Mr. Waterhouse. Do you see that?
A Yes. He's the person I would normally go to.
Q Okay. And they're all Debtor employees, right?
A Yes.
Q Okay. And then Mr. Leventon sends it to you and Mr. Ellington on February 4th, 2020; is that correct?
A Yes.
Q And this is confidential information; is that fair?
A No.
Q Okay. Let's -- let's talk about the next --
A No, it's not -- wait, wait, hold on a second. Judge, I need to clarify this. I -- it's not confidential information. It's available to every investor, of which I was one of them. Okay? So, let's -- let's not mischaracterize this as some corporate secret.
Q Okay. You interfered with the Debtor's production of documents; isn't that right?
A No.
Q Several times in the last year, various entities have requested that Dugaboy produce its financial statements,

correct?
A Dugaboy is my personal trust. It's not an entity of the Debtor in any form or fashion.
Q Sir, you're aware that several times in the last year various entities requested that the Debtor produce Dugaboy financial information, correct?
A The Debtor is not in a position to do it. I -- I don't know if it's been several times or whatever, but it's not appropriate.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q I'll try one more time. If we need to go to the transcript, we can. It's a very simple question. You knew and you know that several times in the last year various entities have requested that the Debtor produce Dugaboy financial statements, correct?
A Yes.
Q Do you recall at the deposition the other day I asked you whether you had ever discussed with Mr. Ellington and Mr. Leventon whether or not the Dugaboy financial statements needed to be produced, and you were directed not to answer the question by counsel and you followed those directions?
A Yes.
Q But you communicated with at least one employee concerning

the production of the Dugaboy financial statements, correct?
A Yes.
Q And that's Melissa Schroth; is that right?
A Yes.
Q She's an executive accountant employed by the Debtor, right?
A Yes.
Q And on December 16th, after the TRO was entered into, you instructed Ms. Schroth not to produce the Dugaboy financials without a subpoena, correct?
A That was the advice I had gotten from counsel, yes.
Q Okay. The Dugaboy and Get Good financial statements are on the Debtor's platform, correct?
A I do not know.
Q There is no shared services agreement between Dugaboy or Get Good and the Debtor, correct?
A I don't know.
Q You're not aware of any; is that fair?
A Yes.
Q Okay.
MR. MORRIS: Can we put on the screen Exhibit R? And can you scroll down a bit?
BY MR. MORRIS:
Q Okay. That's Melissa Schroth at the top there; is that right?

A Yes.
Q And these are texts that you exchanged with her after the TRO was entered into, correct?
A Yes.
MR. MORRIS: Can we scroll down a little bit?
BY MR. MORRIS:
Q And do you see on December 16th you sent Ms. Schroth an email -- I apologize -- a text that says, "No Dugaboy details without subpoena"?
A Yeah.
Q But you can't remember why you sent this text, correct? At least you couldn't as of Tuesday?
A I believe it was on advice of counsel.
Q But that's not what you said on Tuesday, correct?
A I don't remember.
Q You sent this text even though you knew that various entities had requested the Dugaboy financials, but you have no recollection of ever talking to anyone at any time about the production of those documents, right?
A Can you repeat the question?
Q I'll move on. Let me just -- last topic, and then I'm going to respectfully request that we just take a short break. You're familiar with the law firm of Baker & McKenzie; is that right?
(Echoing.)

A I'm sorry. You broke up on us there.
Q No problem. You're familiar with the law firm Baker & McKenzie, correct?
A Yes.
Q That firm has never -- never represented you or any entity in which you have an ownership interest, correct?
A Correct.
Q But in December, the Employee Group, of which Mr. Leventon and Mr. Ellington was a part, was considering changing counsel from Winston & Strawn to Baker & McKenzie, right?
A I believe so.
Q And you asked -- and because of that, you specifically asked Mr. Leventon for the contact information for the lawyers at Baker & McKenzie, right?
A I believe so.
Q Okay.
MR. MORRIS: Can we put up Exhibit S, please?
BY MR. MORRIS:
Q And who is that email sent from? I apologize. Withdrawn. Who is that text message exchange with?
A Isaac Leventon.
Q Okay. And Mr. Leventon was an employee of the Debtor after December 10th, correct?
A Yes.
MR. MORRIS: Can we scroll down a little bit?

BY MR. MORRIS:
Q And on December 22nd, you asked Mr. Leventon for the contact information at Baker & McKenzie, correct?
A Yes.
Q And the reason you asked Mr. Leventon for the contact information, that was in connection with the shared defense or mutual defense agreement, right?
A I -- I don't remember why. It might have just been for my records. I don't know.
Q The only reason that you could think of for asking for this information was for the shared defense or mutual defense agreement, correct?
A I -- no, it -- I don't know and I don't want to speculate. I don't want to -- I don't want to speculate. I -- did -- I don't think I ever got -- I don't know what your point is.
MR. MORRIS: May we please go back to the transcript at Page 136? At the bottom, Line 23.
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q Do you recall asking Isaac Leventon for the contact information for the -- for the lawyers at Bakers & McKenzie?
"A I -- I don't -- I don't -- it might have been for part of the shared defense, mutual defense whatever agreement, but that's -- that's the only reason I would

1 have asked for it."
2 Q Did you give that answer to my question?
3 A Yeah. I shouldn't have speculated.
4 Q Okay. But that's the answer you gave the other day; is
5 that right?
6 A I shouldn't have speculated. That's my answer today.
7 Q And today -- withdrawn. In fact, you wanted the Baker
8 contact information in order to help Mr. Draper coordinate the
9 mutual defense agreement, correct?
10 A I don't want to speculate.
11 MR. MORRIS: Can we go to Page 139, please? Lines 2
12 to 5.
13 BY MR. MORRIS:
14 Q Did you -- did you hear this question and did you give
15 this answer on Tuesday?
16 "Q Why did you want the Baker & McKenzie contact
17 information?
18 "A I was trying to help Draper coordinate the mutual
19 shared defense agreement, period."
20 Q Did you give that answer to my question on Tuesday?
21 A Yes.
22 MR. MORRIS: Your Honor, I'd respectfully request a
23 short break to see if I've got anything more.
24 THE COURT: All right. Well, I was going to ask you
25 how much more do you think you have. We've been going almost

two hours.

So we'll take a break. Let's make it a ten-minute break. And then, depending on how much more you have and how much Mr. Bonds is going to have, we'll figure out are we going to need a lunch break in just a bit.

All right. So it's 12:00 noon Central. We'll come back at 12:10. Ten minutes.

MR. MORRIS: Your Honor, may I have an instruction of the witness not to check his phone for any purposes, not to make -- not to communicate with anybody until -- until his testimony is completed?

THE COURT: All right. Any -- any --

MR. BONDS: Your Honor, he's going to speak with me.

THE COURT: Pardon?

MR. BONDS: I assumed he will speak to me about just general events. I mean, I don't want to be in breach of some order.

MR. MORRIS: Yeah. I would -- I would -- I would ask for -- you know, it's not -- he's on the stand. He's still on the stand.

THE COURT: Yeah. He --

MR. MORRIS: He shouldn't be conferring with counsel, either. No disrespect to Mr. Bonds at all.

THE COURT: Exactly. I mean, you all can talk about, you know, the national champion football game or whatever, but

it would be counseling your client in the middle of testimony if you -- if you talk about this case at the moment. So, you know, --

MR. BONDS: I understand, Your Honor.

THE COURT: All right.

MR. BONDS: I just didn't want to be --

THE COURT: All right. So now we'll come back at 12:11.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(A recess ensued from 12:01 p.m. until 12:12 p.m.

THE CLERK: All rise.

THE COURT: Please be seated. This is Judge Jernigan. We're going back on the record in Highland Capital versus Dondero. We have taken an 11-minute break. It looks like we have Mr. Dondero and counsel back. And Mr. Morris, are you out there, ready to proceed?

MR. MORRIS: I am, Your Honor. And I do have just a few more questions.

THE COURT: Okay. I'm sorry. Mr. Lynn, I see you're there in the room with Mr. Dondero. Now, did you want to --

MR. LYNN: Here's Mr. Bonds. I apologize. He was in the restroom.

THE COURT: Okay. All right. Everyone ready to proceed?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Can you hear me, Mr. Dondero?

A Yes.

Q Did you ever discuss the request of any party to produce the financial statements of Get Good and Dugaboy with Scott Ellington?

A Not that I recall.

Q Did you ever communicate with Mr. Leventon on the subject matter of whether or not the financial statements for Get Good and Dugaboy needed to be produced by the Debtor?

A No.

Q Those are the two questions that you were directed not to answer the other day, right?

A I don't remember.

Q Okay. You mentioned that Mr. Ellington serves in some capacity as settlement counsel. Do I have that right?

A Yes.

Q Do you know if there's any exception in the TRO that permits you to communicate directly with Mr. Ellington in his so-called capacity as settlement counsel?

A There was no change in his status in the TRO. It's -- and

I think he was still used by both the Debtor and by me in that function.

Q You said that -- you testified earlier that you understood that you were prohibited from speaking with the Debtor's employees, correct?

A Except for -- except for with regard to the pot plan, shared services, and Ellington as settlement counsel. But I continued to talk to employees about the pot plan as recently as the end of the year, and I continued to talk to employees about shared services based on the shared services proposal that was sent to Ellington and forwarded to me as recently as two days ago.

Q You never -- you never read the TRO, right?

A No.

MR. MORRIS: Can we have it put up on the screen? I don't know the exhibit number, Ms. Canty, but hopefully it's clear on the exhibit list.

MS. CANTY: I'm sorry, John. Can you repeat what you're looking for?

MR. MORRIS: The TRO. (Pause.) Can we scroll down to Paragraph 2, please? Okay.

BY MR. MORRIS:

Q I appreciate the fact that you've never seen this before, Mr. Dondero, but let me know if I'm reading Section 2(c) correctly. "James Dondero is temporarily enjoined and

1 refrained from" -- subparagraph (c) -- "communicating with any
2 of the Debtor's employees, except for specifically -- except
3 as it specifically relates to shared services currently
4 provided to affiliates owned or controlled by Mr. Dondero."
5 Have I read that correctly?
6 A Yes.
7 Q Does that provide for any exceptions concerning the pot
8 plan?
9 A The Independent Board requested a meeting on the pot plan.
10 Q Okay. But does it -- I appreciate that, and we'll talk
11 about that in a moment, but my question is very specifically
12 looking at the order. And I, again, appreciate that you've
13 never seen it before. But looking at the order now, is there
14 any exception for you to communicate with the Debtor's
15 employees concerning the pot plan?
16 A I would think the pot plan would fall under that, since
17 some of the pot plan value is coming from affiliated entities
18 that are subject to the shared services agreement. I would
19 think that would be reasonable, again, plus the -- well, it
20 was the subject of a meeting with the Independent Board at the
21 end of the month.
22 Q Okay.
23 A I still think it's the best alternative for this estate.
24 Q Okay. Did you -- did you ever -- did you ever ask
25 anybody, on your behalf, have asked the Debtors whether they

1 agreed with what you believed was a reasonable interpretation
2 of the restraining order?
3 A I did not.
4 Q Okay. And let's just deal with the notion of settlement
5 counsel. Do you see anywhere in this TRO -- and if you want
6 to read anything more, please let me know -- do you see
7 anything in this TRO that would permit you to speak with Mr.
8 Ellington in his so-called role as settlement counsel?
9 A Well, I would say, more importantly, I don't see anything
10 that takes away his role as settlement counsel, which was
11 formally done six months ago.
12 Q Okay. I did read Section 2(c) correctly, right?
13 A Yes.
14 Q And the only exception that's in Judge Jernigan's
15 restraining order that she entered against you relates to
16 shared services. Have I read that correctly?
17 A Yes.
18 Q Okay. Let's talk about the pot plan for a moment. After
19 the TRO was entered, you were interested in continuing to
20 pursue the pot plan; is that right?
21 A I still believe it's the best possible result for this
22 estate.
23 Q And you sought a forum with the Debtor's board, correct?
24 A Yes.
25 Q And you knew that you couldn't speak directly with any

1 member of the Debtor's board unless your counsel and the
2 Debtor's counsel was -- was present at the same time.
3 Correct?
4 A Yeah. As a matter of fact, I didn't go. I just had
5 counsel go.
6 Q And the Debtor's board gave Mr. Lynn a forum for him to
7 present your pot plan after the TRO was entered. Isn't that
8 right?
9 A I believe so.
10 Q And are you aware that the Debtor's board spent more than
11 an hour and a half with Mr. Lynn talking about your pot plan
12 after the TRO was entered?
13 A Yes.
14 Q And is it fair to say that, notwithstanding Mr. Lynn's
15 goodwill and Mr. Lynn's efforts to try to get to a successful
16 resolution here, the terms on which the pot plan were offered
17 were unacceptable to the Debtor?
18 A I wasn't there. I -- I don't know.
19 Q The Debtor never made a counteroffer, did it?
20 A Not that I heard.
21 Q You'll admit, will you not, that over the last year you or
22 others acting on behalf -- on your behalf have made various
23 pot plan proposals to the Official Committee of Unsecured
24 Creditors?
25 A Quite generous pot plans that I think will exceed any

other recoveries.

Q Okay. So you're aware that your pot plan was delivered either by you or on your behalf to the U.C.C., correct?

A I -- some were. Some, I don't know.

Q Okay. Has the U.C.C. ever made a counterproposal to you?

A Nope.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Pass the witness.

Mr. Bonds, do you have any time estimate for me, guesstimate?

MR. BONDS: My guess is, Your Honor, it'll be about an hour. I would hope that we could take some type of a break, just because I'm a diabetic and need to have some --

THE COURT: All right. Well, --

MR. MORRIS: I have no objection, Your Honor. Whatever suits the Court. I'm willing to accommodate Mr. Bonds always.

THE COURT: Okay. Let's take a 45-minute break. Forty-five minutes. So, it's 12:22. We'll come back at seven minutes after 1:00 Central time.

All right. We're in recess.

THE CLERK: All rise.

(A luncheon recess ensued from 12:23 p.m. to 1:15 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. This is Judge

Jernigan. We are going back on the record in Highland Capital Management versus Dondero. We took a lunch break. And when we broke, Mr. Bonds was going to have the chance to examine Mr. Dondero.

Let me just make sure we have, first, Mr. Dondero and Mr. Bonds. Are you there?

MR. BONDS: Yes, we are.

THE COURT: All right. Very good. I don't see your video yet, but -- there you are. All right. Mr. Morris, are you there?

MR. MORRIS: I am here. Can you hear me, Your Honor?

THE COURT: I can. All right.

MR. MORRIS: Thank you.

THE COURT: Well, we've got lots of other people, but that's all I'll make sure we have at this moment. All right. Mr. Bonds, you may proceed.

And, Mr. Dondero, I know you know this, but I'm required to remind you you're still under oath.

Okay, go ahead.

CROSS-EXAMINATION

BY MR. BONDS:

Q Before you resigned as portfolio manager, how long had you had with Highland Capital Management?

A Since inception in 1994.

Q Okay. And how long have your offices been at the

Crescent?
A Eight years.
Q Okay. Before you resigned as portfolio manager, did you spend a lot of time in the office?
A Yes. I spent every business day this -- or 2020, including COVID, in the office.
Q Okay. And this is the first time that you are not in the office, is that right, in decades?
A Yes.
Q Can you tell us about the shared services agreement that exists between the Debtor and the other entities in which you have an interest?
A NexPoint, NexBank, the DAF, HFAM, primarily. I don't know what other entities paid. Shared services, which is typical in finance, for centralized tax, accounting, RICO function, so that we don't have to have redundant, multiple high-paid people in different entities. We'd have them centralized and with collective experience and collective functionality. And so, historically and recently, they pay Highland for those -- fees for those services. And I, as a non-paid employee, or a non-employee of Highland but a paid employee of NexBank -- of NexPoint, was -- and my occupancy and support were part of those shared services agreement.
Q What do those agreements allow those entities to do?
A Would it allow those entities to do? Well, to access the

1 Highland functionality as appropriate, because most of those
2 entities, as is typical in finance, did not have their own
3 functionality, legal, tax, and -- legal, tax, and accounting,
4 but although they've been -- they've been building it lately
5 in anticipation of the pot plan not going through at Highland.
6 Q Okay. Do those agreements allow you to share office space
7 with --
8 MR. MORRIS: Objection --
9 THE WITNESS: Yes.
10 MR. MORRIS: -- to the form of the question, Your
11 Honor. I think the exhibits and the agreements themselves
12 would be the best evidence. They're not in evidence. They
13 haven't been offered in evidence. I have no way to challenge
14 the witness on anything he's saying. And on that basis, I'd
15 -- it's not fair to the Plaintiff.
16 THE COURT: All right. Mr. Bonds, can I ask you to
17 repeat your question? It was muffled and I was about to ask
18 you to repeat it before I got the objection. So, repeat the
19 question so I can --
20 MR. BONDS: Okay. I'm going to repeat it and amend
21 it.
22 THE COURT: Okay.
23 BY MR. BONDS:
24 Q Is it your understanding that those agreements allow you
25 to share office space with the Debtor?

A Yes. Virtually all of NexPoint's employees share the Highland office space as part of a shared services agreement.
Q Do those agreements allow you to share -- I'm sorry, excuse me. Strike that. What else do they allow?
A Typically is used in coordination of systems, servers, software, cloud software, Internet software, office software, tax, accounting, and legal functionality are all part of the shared services agreement, although, you know, much of -- much of that was stripped, you know, four or five months ago, especially legal functionality and the accounting functionality, without the concurrent adjustment in the building.
Q Okay. And you previously testified that you generally control NexPoint; is that correct?
A Generally. And the distinction I was trying to make is, you know, following the financial crisis in '08, compliance and the chief compliance officer has personal liability. along with the rest of the C Suite, and operates independently, with primary loyalty to the regulatory bodies. And they're -- they're not controlled, bamboozled, or segued away from their responsibility. And at all times, they're supposed to be doing what they believe is right, regulatorily-compliant, and in the best interest of investors.
So that was the distinction I was drawing between, A, what I was trying to remind Thomas of, that he should be

1 independent of Seery, in terms of following what he believes
2 is correct and regulatory-compliant. And I don't have to push
3 the NexPoint compliance people and general counsel to do
4 anything specific, nor could I. They are supposed to do what
5 is right from a regulatory investor standpoint, and I believe
6 that's what they've done.
7 Q All right. And what do you mean by the term or the usage
8 of the word "generally"?
9 A Well, that's the distinction I was just drawing. I mean,
10 generally, on regular business strategy, you know, major
11 investments, you know, other business items, I'm in control of
12 those entities. But in terms of the content and allegations,
13 regulatory opinions that come from compliance and the general
14 counsel, that is their best views on their own, knowing they
15 have compliance obligations and personal liability.
16 Q Do you believe that NexPoint and its other owners and
17 interest holders have rights independent from your own in this
18 case?
19 A Right, yes, and obligations, and responsibilities to
20 investors. I believe the attempt by the Debtor or Seery to
21 hide behind contracts that the Debtor has with the CLOs are --
22 are a spurious, incomplete argument. You know, they're not in
23 compliance with those contracts. Bankruptcy alone is an event
24 of default. Not having the key man -- the key men, the
25 required requisite professionals that they're obligated to

1 contractually have working at the Debtor is a clear breach, in
2 violation of those CLO contracts. Not having adequate staff
3 or investment professionals to analyze, evaluate, or follow
4 the investments in the portfolio is a clear violation. And
5 specifically telling investors in the marketplace that you
6 plan to terminate all employees, a date certain January 24th,
7 is a proclamation that you're not going to be in any form able
8 to be a qualified registered investment advisor or qualified
9 in any which way to manage the portfolio or be in compliance
10 with the CLO contracts.
11 I would -- I would further add that the selling of the
12 securities, and the SKY securities, represent incomplete
13 intentional incurring of loss against the investors. You have
14 securities that are less liquid with, you know, restructured
15 securities that have been owned for ten years, and they were
16 sold during the most illiquid weeks of the year, the couple
17 days before and after Thanksgiving, couple days before and
18 after Christmas, where the investors could have gotten 10 or
19 15 percent more on their monies if they were just sold in a
20 normal week. It's -- it's preposterous to me. It's
21 consistent with Seery not being an investment (garbled).
22 But it's preposterous to me that -- that this treatment of
23 investors is allowed or being camouflaged as some kind of
24 contractual obligation, when the investors have said these
25 funds are clearly in transition and the manager clearly is

1 incapable of managing them. You know, please don't transact
2 until the transition is complete. But Jim Seery has traded
3 every day, including -- I don't know about today, but every
4 day this week, selling securities for no investment rationale
5 and no business purpose.
6 Q Are you also portfolio manager for NexPoint?
7 A Yeah, I'm a portfolio manager for the closed-end retail
8 funds, which do have a higher fiduciary obligation than
9 anything on the institutional side. I'm a portfolio manager
10 for those '40 Act funds that are the primary owners of the
11 CLOs that Seery is selling securities in for some unknown
12 reason.
13 Q And what shared service agreements exist between NexPoint
14 and the Debtor?
15 A Those are the shared service agreements I spoke of. I
16 don't want to repeat myself.
17 Q And I'm going to call Highland Capital Management Fund
18 Advisors, LP just Fund Advisors. Is that okay with you?
19 A Yes.
20 Q Okay. And you testified generally -- that you generally
21 control Fund Advisors; is that correct?
22 A Yes.
23 Q Do you believe that Fund Advisors and its owners and
24 interest holders have rights independent from your own in this
25 case?

A Yes.
Q Are you the portfolio manager for Fund Advisors?
A Yes.
Q What shared services agreements exist between Fund Advisors and the Debtor?
MR. MORRIS: Objection, Your Honor. The agreements themselves are the best evidence of the existence in terms of any agreement between the Debtor and these entities.
MR. BONDS: Your Honor, I can fix that.
THE COURT: Okay.
BY MR. BONDS:
Q I'm just asking: What is your understanding, Mr. Dondero, of the shared service agreements between the Debtor and Fund Advisors?
A It's similar to the agreement I mentioned earlier. It covers a broad range of centralized services historically provided by Highland, but now those, while still paying smaller than historic fees, those entities now have been required to incur the expenses of duplicating those functions.
Q Okay. Do you recall the email string dated November 24th regarding SKY equity that the Debtor talked about?
A Yes.
Q What did you mean when you sent that email about the trade? What did you mean, I'm sorry?
A I was trying to inform the traders, and once they knew --

1 they weren't willing to do the trades anymore once they knew
2 that the underlying investors had requested that their
3 accounts not being traded until the transition be -- until the
4 transition of the CLOs was effectuated.
5 It's -- it's standard by, you know, statute or
6 understanding, in the money and management business, when
7 you're moving accounts from one asset manager to another, and
8 someone requests that you don't do anything to their account,
9 you don't trade it whimsically. And so I was -- I was making
10 sure the traders knew that the underlying investors had
11 requested that no trades occur in their accounts.
12 And then I believed it was a clear violation of the
13 Registered Investment Adviser's Act. I believe that people
14 involved at a senior level or at a compliance level could have
15 material liability, and could create material liability for
16 the Debtor. And I think if, as I said before, I think if
17 anybody on this call were to call the SEC, they would start on
18 audit on this.
19 MR. MORRIS: Your Honor, I move to strike the first
20 portion of the answer prior to when he started to describe
21 what he believes and what he thinks. The first portion of the
22 answer was devoted to testifying about what is in the
23 knowledge of the people who he was communicating with.
24 There's no evidence. Mr. Dondero, of course, was free to call
25 any witness he wanted. He could have called the chief

compliance officer. He could have called the general counsel. He could have called all the people he's now testifying on behalf of, and he did not.

So I move to strike anything in the record that purports to reflect or suggest the knowledge on behalf of any party other than Mr. Dondero.

THE COURT: Okay. I'm --

MR. BONDS: Let me rephrase -- Your Honor, I'm going to rephrase the question.

THE COURT: Okay. Very well.

MR. BONDS: I'm sorry.

THE COURT: So the motion to strike is granted. If you're going to rephrase, go ahead.

MR. BONDS: Okay.

BY MR. BONDS:

Q Mr. Dondero, what did you mean when you said -- that the emails about the trade?

A Okay. I'll give my intention by sending emails to stop the trade and my basis for those emails. My intentions were to inform the traders and to inform the compliance people that I believe there was a trade that wasn't in the best interest of the employees that had no business purpose for its occurring. And the people involved weren't aware that the investors had sent over requests not to trade their accounts while they were in transition.

So I made the traders aware of that. I made compliance aware of that also. And it's my belief, based on 30 years' experience in the industry, that it is entirely inappropriate to trade the accounts of investors that are in transition, and especially when you're not -- you're not contractually -- you are contractually in default with that client, to trade their account whimsically, for no business purpose. And I thought it was a clear breach of both regulatory, ethical, and fairness with regard to the investors.

So I -- what did you know, when did you know it, what did you do? I did what I felt was the right thing, which I try and do every day, and made all the relevant parties aware of what was going on.

Q Mr. Dondero, do you recall the text message you sent to Mr. Seery in which you said, "Be careful what you do"?

A Yes.

Q What did you mean by that message?

A It's -- I even said, Last warning. I mean, I -- he's doing things against the interests of investors. He's purposely incurring losses by trading in days and weeks and time of the year, the day before and after Thanksgiving, where any novice knows the markets are illiquid and anybody who can read a computer screen can see you get ten percent less -- five or ten percent less than you would the week before or the week after. And with as much professional umbrage as

1 possible, I was recommending that he stop.
2 Q Did you intend to personally threaten Mr. Seery in any
3 way?
4 A No. It was bad -- bad intentional professional acts
5 against the interests of investors that flow through to '40
6 Act retail mom-and-pop investors. I was trying to prevent
7 those losses and those bad acts from occurring. And I believe
8 everybody who's -- everybody around that issue should be
9 ashamed of themselves, in my opinion.
10 Q Do you now regret sending the text?
11 A No. No, I mean, I could have worded it differently. I
12 was angry on behalf of the investors.
13 Q And Mr. Dondero, you have management ownership interest in
14 that entity; is that right?
15 A Yes.
16 Q Do you believe the interests or other entities in which
17 you are involved are independent from your personal rights in
18 this case?
19 A Yes.
20 Q And do you believe you caused anyone to violate the TRO?
21 A No. I've been -- I've been very conscious to just try and
22 champion the thing that -- things that I think are important
23 and the things that I've been tasked to do, like an attractive
24 pot plan to help resolve this case. I spend time on that.
25 But every once in a while, do I have to access, let's say,

1 David Klos, who is the person who put the model together, who
2 has been working on it for six or nine months, and no one else
3 S has a copy of? Yes. Yeah, I have to -- I have to access
4 him. I don't believe that's the -- inappropriate or in any
5 way violating the spirit of the TRO.
6 I believe settlement in this case is only going to happen
7 with somebody fostering communication. And Ellington's role,
8 which I thought was a good one and I thought he was performing
9 well as settlement counsel, was an important role. And I used
10 him for things like -- and Seery also used him for things. As
11 recently as two days before Ellington was fired, Seery gave
12 him a shared services proposal to negotiate with me.
13 Ellington has always been the go-between from a settlement and
14 a legal standpoint. I think his role there was -- it was
15 valued. To try to honor the TRO was things like Multi-Strat,
16 that I didn't remember correctly. Ninety percent of the time
17 or for the last 20 years I would have gone directly to
18 Accounting and Dave Klos for it, but I purposely went to
19 settlement counsel in terms of Ellington in order to get the
20 Multi-Strat information which we needed in order to put the
21 pot plan together that we went to the Independent Board with
22 at the end of December.
23 Q (faintly) And do you recall the questions that Debtor's
24 counsel had regarding the letters sent by K&L Gates to clients
25 of the Debtor?

MR. MORRIS: I'm sorry, Your Honor. I had trouble hearing that question.

THE COURT: Please repeat.

MR. BONDS: Sure.

BY MR. BONDS:

Q Do you recall the questions Debtor's counsel had regarding the letters sent by K&L Gates to the clients of the Debtor -- to the Debtor?

A Yes.

Q You testified on direct that the letters were sent to do the right thing; is that correct?

A Yes.

Q What did you mean by that?

A I don't want to repeat too much of what I just said, but the Debtor has a contract to manage the CLOs, which in no way is it not in default of. It doesn't have the staff. It doesn't have the expertise. Seery has no historic knowledge on the investments. The investment staff of Highland has been gutted, with me being gone, with Mark Okada being gone, with Trey Parker being gone, with John Poglitsch being gone.

And there's -- there's a couple analysts that are a year or two out of school. The overall portfolio is in no way being understood, managed, or monitored. And for it to be amateur hour, incurring losses for no business purpose, when the investors have requested numerous times for their account

not to be traded, is crazy to me. Where the investors say, We just want our account left alone. We just want to keep the exposure. And Jim Seery decides no, there's -- I'm going to turn it into cash for no reason. I'm just going to sell your assets and turn them to cash and incur losses by doing it the week of Thanksgiving and the week of Christmas. I think it's -- it's shameful. I'm glad the compliance people and the general counsel at HFAM and NexPoint saw it the same way. I didn't edit their letters, proof their letters, tell them how to craft their letters. They did that themselves, with regulatory counsel and personal liability. They put forward those letters.

MR. MORRIS: Your Honor (garbled) the testimony that Mr. Dondero just gave about these people saw it. They're not here to testify how they saw it. We know that Mr. Dondero personally saw and approved the letters before they went out. He can testify what he thinks, what he believes. I have no problem with that. But there should be no evidence in the record of what the compliance people thought, believed, understood, anything like that. It's not right.

THE COURT: All right. That's essentially a --

MR. BONDS: Your Honor?

THE COURT: -- a hearsay objection, I would say, or lack of personal knowledge, perhaps. Mr. Bonds, what is your response?

MR. BONDS: Your Honor, my response would be that there are several exhibits the Debtor introduced today that stand for the proposition that the compliance officers were concerned. So I think there is ample evidence of that in the record.

THE COURT: I didn't --

MR. MORRIS: Your Honor, the letter --

THE COURT: I did not understand what you said is in the record. Say again.

MR. BONDS: Your Honor, I'm sorry. The -- there are -- there are references that are replete in the record that have to do with the compliance officers' understanding of the transactions.

THE COURT: I don't know what you're referring to.

THE WITNESS: Your Honor?

THE COURT: I've got a lot of exhibits. You're going to have to point out what you think --

THE WITNESS: Can I -- can I -- can I -- can I answer for -- that for a second? The letters that were signed by the compliance people or by the businesspeople at NexPoint and HFAM objecting to the transactions, those letters were their beliefs, their researched beliefs. They weren't --

THE COURT: Okay.

THE WITNESS: -- micromanaged by me. You know, they weren't -- I agree with them, but those weren't my beliefs

that they've stated. Those were their own beliefs and their own research, --

THE COURT: All right.

THE WITNESS: -- and the record should reflect --

THE COURT: This is clearly hearsay. I mean, it's one thing to have a letter, but to go behind the letter and say, you know, what the beliefs inherent in the words were is inadmissible. All right? So I strike that.

THE WITNESS: Maybe ask your question again.

BY MR. BONDS:

Q Yeah. What is your understanding of the rights that these parties had and what do you believe that was intended to be conveyed by the compliance officers?

MR. MORRIS: Objection. Calls -- calls for Mr. Dondero to divine the intent of third parties. Hearsay.

THE COURT: I sustain.

MR. BONDS: Your Honor, --

MR. MORRIS: No foundation.

MR. BONDS: -- I don't agree. I think that this is asking Mr. Dondero what he thinks.

MR. MORRIS: The letters speak for themselves, Your Honor.

THE COURT: Okay. I sustain --

MR. MORRIS: And Mr. --

THE COURT: I sustain the objection.

MR. MORRIS: All right. Thank you.

THE WITNESS: Ask me what I know. Or ask me what my concerns --

BY MR. BONDS:

Q Let me ask you this. What were your concerns relating to the compliance officers' exhibit?

A My concerns regarding the transaction, the transactions, which may repeat what I've said before, but I do want to make sure it gets in the record. So if we have to make a -- these were my concerns, whether or not they were the compliance people's concerns. I believe they were, and I believe they were similar, but I'm just going to say these are -- these were my concerns.

The Debtor, with its contractual -- with its contract with the CLOs, were in no way -- was in no way compliant with that contract or not in default of that contract. Bankruptcy is a reason for default. Not having the key men specified in the contract currently employed by the Advisor is a violation. Not having adequate investment staff to manage the portfolio is a violation of that contract. Announcing that you're laying off everybody and will no longer be a registered investment advisor is proclaiming that you, if you even have any -- any -- pretend that you're qualified or in compliance with the contract now, you're broadcasting that you won't be in three weeks, are -- are all mean that you're not in good

1 standing. Okay? Number one.
2 Number two, when the investors know that it's in
3 transition, you're not in compliance as a manager, you're not
4 going to be an RIA in three weeks, the accounts are going to
5 have to transition to somebody else in three weeks, and the
6 investors ask you, Please don't trade my accounts between now
7 and then, that is -- that is a -- if it's not a *per se*, it's
8 an ethical and a spirit violation of any relationship between
9 an investor and an asset manager.
10 To then sell assets -- not replace assets, just sell
11 assets for cash -- and purposely do it on the least liquid
12 days of the year -- the day before Thanksgiving, the day after
13 Thanksgiving, the week of Christmas, this past week, whatever
14 -- to purposely incur losses so that the investors suffer ten
15 or fifteen percent losses that other -- on each of those sales
16 that they wouldn't otherwise have to incur, and for no stated
17 business purpose, for no investment rationale, with no staff
18 to even say whether the investment is potentially going up or
19 down, is -- is -- is -- I've never seen anything else like it.
20 And I will stand up and say it every day: I'm glad the
21 letters went out from HFAM and from NexPoint. I would never
22 recommend they get retracted. And I believe everybody who
23 signed those letters meant everything in those letters. And I
24 believe the letters are correct. And I believe the whole
25 selling of CLO assets is a travesty.

My personal opinion, we need an examiner or somebody here to look at this junk and look at some of the junk that occurred earlier this year. This -- this stuff is unbelievable to me.

Q Generally, who holds interests in the CLOs?

A A vast majority of the CLOs that we're speaking of that Seery has been selling the assets of are owned by the two mutual funds, the two '40 Act -- the two '40 Act mutual funds and the DAF. Between them, I think out of -- eleven out of the sixteen CLOs, they own a vast majority, and then I think, whatever, two or three they own a hundred percent, and I think two or three they own a significant minority.

And just because they don't own a hundred percent doesn't somehow allow a registered investment advisor to take advantage of an investor. And I -- I've never understood that defense. I wouldn't be able -- in my role of 30 years, I wouldn't be able to tell that to an investor, that, hey, you had a contract with us, we did something that wasn't in your best interest, but we got away with it because you didn't own a hundred percent, you only owned eighty percent.

MR. MORRIS: Your Honor, I move to strike. There's no contract between the Debtor and Mr. Dondero's -- and the entities that he owns and controls for purposes of the CLO. The only contract is between the Debtor and the CLOs themselves.

THE COURT: All right. Well, I overrule whatever objection that is. Again, if you want to bring something out on cross-examination or through Mr. Seery, you know, you're entitled to do that.

All right. Please continue.

BY MR. BONDS:

Q Do you believe these letters were sent by the Funds to the Advisors because they are trying to protect the independent entities?

A They're trying to protect their investors. They were trying to protect their regulatory liability for activities they see that are not in the best interests of investors.

MR. MORRIS: Objection, Your Honor. I move to strike. He's again testifying as to the intent of the people who sent the letters who are not here to testify today.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, what is your belief as to the letters that were sent by the Funds and Advisor? Is -- are they trying to protect their independent interests?

MR. MORRIS: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

THE WITNESS: Ask me --

BY MR. BONDS:

Q What is your understanding of why the letters were sent?

MR. MORRIS: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, would you have sent the letters?

A I would have sent the letters exactly or very similar or probably even more strongly than the letters were stated, for the purposes of protecting investors, to protecting mom-and-pop mutual fund investors from incurring unnecessary losses by an entity that was no longer in compliance with their -- with their asset management contract and because the investors had requested that their account just be frozen until it was transitioned.

That's why I would have sent the letter. That's why I believe the letter should be sent. That's why I'm happy they were sent. That's why we've never retracted.

Q Mr. Dondero, who is Jason Rothstein?

THE COURT: I did not hear the question.

THE WITNESS: Jason -- Jason --

MR. BONDS: Who --

THE COURT: Please repeat.

MR. BONDS: Yes. I asked Mr. Dondero who Jason Rothstein was.

THE WITNESS: Jason Rothstein heads up our systems

department at Highland Capital.
BY MR. BONDS:
Q Can you explain what your text message to Mr. Rothstein was about?
A Which text message? The one where it was in the drawer?
Q Yeah.
A Uh, --
Q And that was actually from him, not you.
A Yeah. That was from him. I think he transferred icons or set up personal stuff to the new phone, and he was just saying that the old phone was in Tara's drawer.
Q And you don't know whether -- what's happened to the phones, do you?
A No. Like I said, I believe they've been destroyed, but I -- I can find out. I mean, I can query and find out who destroyed it, if that's important.
Q And you understood that you were not supposed to talk to the Debtor's employees; is that correct?
A Like I said, except for my roles regarding shared services, the pot plan, and trying to reach some type of settlement, I've had painfully few conversations with the Debtor's employees.
Q When you talked to certain employees, did you think it was an -- under an exception to the TRO, like shared services, related to the pot plan, or settlement communications?

A Yes.

MR. MORRIS: Your Honor, I move to strike. Mr. Dondero never read the TRO. He's got no basis to say what the TRO required and didn't require.

MR. BONDS: That wasn't the -- that wasn't the question.

THE COURT: Okay.

MR. BONDS: I'm sorry.

THE COURT: Okay. Rephrase the question, please.

MR. BONDS: Okay. I'm sorry.

BY MR. BONDS:

Q When you talked to these -- to certain employees, did you think it was under an exception to the TRO, like shared services, relating to the pot plan, or settlement communications?

A Yes. Absolutely.

MR. MORRIS: I object. No foundation.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, do you understand -- did your lawyers explain to you the TRO?

A Yes.

Q And who was the lawyer that explained the TRO to you?

MR. MORRIS: Your Honor, I don't know if we're getting into a waiver of privilege, but I just want to tell

you that my antenna are up very high.

THE COURT: Okay. Mine are as well, Mr. Bonds. Are you about to waive the privilege?

MR. BONDS: No, Your Honor, I am not.

THE COURT: Okay. Well, it sounded like perhaps we were about to have the witness testify about conversations he had with lawyers.

MR. BONDS: I'm sorry, Your Honor. That was not my intention. Again, I'm asking Mr. Dondero to explain for us his contact with -- or, his impression of the TRO.

BY MR. BONDS:

Q What did the TRO mean to you?

A The TRO meant to me that I was precluded from talking to Highland employees -- which, again, very few, if any, were coming into the office. I was not talking to Highland employees with any regularity anyway. But there was an exception with regard to Scott Ellington regard -- Scott Ellington in terms of him functioning as settlement attorney to try and bridge the U.C.C., the Independent Board, Jim Seery, other people, and things that impacted me or other entities.

I also viewed that there was an exception for the pot plan, which had been presented and gone over as recently as December 18th and 20th. And -- or December 18th, I think, was the date.

And you know what, I want to clarify a characterization of the pot plan. I still believe it's the best and most likely alternative for this estate in the long run. I think what we've proposed numerous times is more generous than what anyone will receive in a liquidation and in a more timely fashion.

And the last time we presented it to the Independent Board, the Independent Board thought it was attractive and thought we should go forward with it to the U.C.C. and other parties.

MR. MORRIS: Your Honor, I move to strike the last portion of the answer that purports to describe what the Independent Board thought.

THE COURT: Well, --

MR. MORRIS: No foundation. Hearsay.

THE COURT: What is your response to the hearsay objection, Mr. Bonds?

MR. BONDS: Your Honor, I don't have one.

THE COURT: Okay. I sustain.

BY MR. BONDS:

Q What exceptions did you believe there were for communications with employees?

A Okay. Thank you. Yeah. Like I said, I covered Scott Ellington and settlement counsel. I covered the pot plan.

Q Okay.

A My -- my view of the pot plan as -- my view of the pot plan was that it was very attractive, and I had received encouragement to go forward with it as something that should be workable. That's my testimony on that.

And then -- and we talk about negotiating shared services. So, there's shared services in terms of overlap in functionality, but there's also, in terms of negotiating the shared services agreement, which, as I said, was something that Ellington was put in charge of three or four days ago by Jim Seery to negotiate with us. And he reached out to me to negotiate it. And I think the Pachulski deadline on it was three days later. That whole process was something that I viewed as separate from the TRO, especially since it was initiated by Jim Seery, DSI, et cetera, and consistent with what Scott Ellington's role had been for the last six, nine months.

Q As to the Debtor's request that you vacate the office space, did you comply with this request?

A Yes.

Q What did you think that vacating meant?

A I moved out all my -- my personal items to a new office at NexBank.

Q (faintly) And, in fact, did you work on the last day over to 3:00 a.m.?

A Yes. 4:00.

THE COURT: Mr. Bonds, I didn't hear your question. I didn't hear your question.

MR. BONDS: Okay. I'm sorry.

BY MR. BONDS:

Q Did -- isn't it true that you worked through the night, to 3:00 or 4:00 a.m., to vacate the premises?

A Yes. Until 4:00 a.m. on the last day, to organize and pack up all my stuff, yes.

Q Did you think your presence in the office, with no other employees there, violated the spirit of the TRO?

A No. I thought it was over the top and meant to tweak me, but, yeah, there's no -- there's not Debtor employees coming in since COVID.

Q (faintly) Okay. And you thought you could talk to Mr. Ellington and -- as settlement counsel; is that correct?

MR. MORRIS: I'm having trouble hearing it, Your Honor.

THE WITNESS: Yes.

THE COURT: Yeah. We're -- Mr. Bonds, please make sure you speak into the device.

MR. BONDS: I'm sorry. I'll try to get closer. Okay. I asked the Debtor -- or I, excuse me, I asked Mr. Dondero if he thought he could talk to Ellington as a go-between or settlement counsel. And I asked him if that was correct.

1 THE WITNESS: Yes. For settlement, shared services,
2 the pot plan. Nothing that interrupts or affects the Debtor,
3 but for those purposes, as has consistently occurred for the
4 last six months.
5 BY MR. BONDS:
6 Q Okay. And you saw the texts and emails presented by the
7 Debtor between you and Mr. Leventon; is that correct?
8 A The one regarding Multi-Strat?
9 Q Yes.
10 A Yes.
11 Q In your understanding, did you believe those
12 communications were allowed under the TRO?
13 A Well, yes. And, again, to clarify my -- my contrasting
14 testimony, I would never typically have gone to them for that
15 kind of information, but to be compliant with the TRO, for
16 Multi-Strat information, which I needed in order to put
17 together the pot plan that the Independent Board audienced on
18 December 18, I needed the information on Multi-Strat, and I
19 requested it as appropriate through settlement counsel
20 Ellington. And I think Ellington requested it from Isaac, who
21 requested it from David Klos.
22 The whole purpose, I believe -- my belief is the whole
23 purpose of this TRO is to make it impossible for us to get
24 information to come up with alternatives other than a -- the
25 plan proposed by Jim Seery. It's our -- if -- if -- without

Ellington in the go-between, which he's now no longer an employee, I assume the only way we get any information, balance sheet or anything from Highland Capital, is with a subpoena.

And as much as I've tried to engage or make an attractive pot plan for everybody, each one of them has been a complete shot in the dark, without even knowing the assets and liabilities of Highland, but just estimating where they were or were likely to be.

Q Do you believe your text message with Leventon caused any harm to the Debtor's business?

A No. It potentially fostered a pot plan, because, you have to know, the pot plan needed -- one of the aspects of the pot plan was the --

Q Do you still want to advocate for your pot plan?

A I think that's eventually where we ultimately end up. Or -- or should end up. Otherwise, I fear it's going to be an extended, drawn-out process.

Q And how much did you initially propose to pay creditors in this case?

A The most recent -- the most recent pot plan?

Q No. The -- initially.

A The initial pot plan, I believe, was $160 million.

Q And what about the notes?

A There was $90 [million] of cash and I believe $70

[million] of notes.
Q And what is Multi-Strat?
A Multi-Strat is a fund that's managed by Highland. They used to have $40 or $50 million in value. It used to contain a lot of life settlement policies. And I believe now has $5 or $6 million of value, after assets have been sold.
Q Do you recall the email Debtor's counsel presented regarding the balance sheet today?
A The balance sheet of Multi-Strat?
Q Correct.
A Yes.
Q Do you believe you were entitled to see that document?
A Yes. It's just -- again, for the pot plan, I needed it. But also I'm an investor in that fund and I'm entitled to it. It's -- there was nothing in there that was improper or untoward or in any way damaged the Debtor.
Q And you recall the request for documents sent by the Debtor; is that correct?
A On my -- my personal estate plan?
Q No, on Multi-Strat.
A The Debtor's request on -- I'm sorry. What was that?
Q The Debtor sent you a request for Multi-Strat. For Duga -- I'm sorry.
A For Dugaboy? Okay.
Q Dugaboy.

A Yeah. There's -- there's personal estate planning trusts. Some are active. Some are inactive. Some have been around for 15 years. But they're -- they're not assets or anything that's related to the estate. And that was -- that was my text to Melissa that said, you know, Not without a subpoena.

Q Mr. Dondero, if you remember back on Exhibit K, there was some request that you terminate your offices at the Crescent, and I think you were given seven days' notice to do that. Do you know if Christmas occurred during that time?

A I believe it did.

Q So, if Christmas and Christmas Eve are both holidays, how many days, business days, did they give you to terminate or to get out of the space?

A There would have been three business days. It was Monday through Wednesday that I moved out.

MR. BONDS: Your Honor, I'll pass the witness.

THE COURT: All right. Mr. Morris?

THE WITNESS: Take a break. I hope.

MR. BONDS: Your Honor, I'm sorry, can I take a ten-minute break? I think that I'm going to be through, but I don't know.

THE COURT: All right. I'll give you a ten-minute break.

MR. BONDS: All right. Thank you, Your Honor.

THE COURT: We're coming back at 2:15.

THE CLERK: All rise.

(A recess ensued from 2:06 p.m. until 2:16 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in Highland versus Dondero. Mr. Bonds, do you have more examination?

MR. BONDS: Your Honor, I have one question.

THE COURT: Okay.

MR. BONDS: And that's --

MR. LYNN: And one more witness.

MR. BONDS: And one more witness.

CROSS-EXAMINATION, RESUMED

BY MR. BONDS:

Q Do you think that Scott Ellington and Isaac Leventon were treated appropriately by the Debtor?

A No, I do not. I don't think they've been treated fairly, nor do I think other senior employees have been treated fairly. I've never seen a bankruptcy like this where, during complex unwinding of 20 years of various different entities and structures, relying on the staff, working them hard, working overtime, a lot of investment professionals like lawyers and DSI just putting their name on the work of stuff that was done by internal employees, getting to the end of the year, trying to pay people zero bonuses and retract prior years' bonuses, and try and come up with legal charges against

1 those people is unusual to this case and my experience, in the
2 bankruptcies we've been involved in, where typically
3 management teams get paid multiples of current salary to stay
4 on and be the experts.
5 I also think they were put in difficult spots from the
6 very beginning. It was Jim Seery that made Scott Ellington
7 the settlement counsel six, seven months ago. It was a
8 broadly-defined role that was never retracted, never adjusted,
9 never modified, yet somehow he and Isaac violated it. I don't
10 know. I haven't spoken to them since they've been terminated.
11 They aren't allowed to speak to me, from what I hear. But I
12 wish them luck in their claims.
13 THE COURT: Okay. You pass the witness?
14 MR. BONDS: Yes, Your Honor.
15 THE COURT: All right. Mr. Morris, do you have
16 further examination?
17 MR. MORRIS: Just a few questions.
18 REDIRECT EXAMINATION
19 BY MR. BONDS:
20 Q Mr. Dondero, you knew about this hearing for some time,
21 right?
22 A No.
23 Q When did you first learn this hearing was going to take
24 place?
25 A Two days ago.

Q Two days ago?
A When was the depo, three days ago? Whatever.
Q And you didn't know prior to the deposition that we would be having a hearing today on the Debtor's motion for a preliminary injunction?
A No. I thought it was going to be postponed or canceled. I was waiting for the text last night.
Q You had an opportunity to call any witness in the world you wanted to today, right?
A I guess.
Q You could have called -- you could have called the chief compliance officer at the Advisors if you thought the Court should hear from him as to the compliance issues that you've testified to, right?
A I think their letters stand on their own.
Q Okay. So you didn't think that it was important for the Court to hear from Mr. Sowin directly, correct?
A Sowin is a trader.
Q I'm sorry. Who's the chief compliance officer of the Advisors?
A Jason Post, as far as NexPoint is concerned. He's the one that would have been behind the K&L -- K&L letters.
Q And he is not here today to testify, right?
A I think his letters stand on their own and I think everybody should read them, make sure they read them.

Q Okay. But Mr. Post is not here to answer any questions; is that right?
A I don't know if there are any questions beyond what's obviously stated in the letters. You should read the letters carefully. They're -- they're -- they talk about clear violations.
MR. MORRIS: Your Honor, I move to strike. It's a very simple question.
THE COURT: Sustained. That was another yes or no answer, Mr. Dondero. Go ahead.
THE WITNESS: I'm sorry.
BY MR. MORRIS:
Q Mr. Dondero, Mr. Post is not here to testify in order to explain to the Court what he thinks the regulatory issues are, correct?
A He's not here today.
Q And you could have called him as a witness, correct?
A Yes.
Q And you thought Mr. Ellington and Mr. Leventon were treated unfairly, right?
A Yes.
Q And there's no reason why they couldn't have come today to testify, correct?
A I guess they could have.
Q And there's no reason why anybody on behalf of the K&L

Gates clients couldn't have been here to testify, correct?
A I didn't deem it necessary, I guess.
Q Okay. You could have offered into evidence, at least offered into evidence, any document you wanted, right?
A Yes.
Q And you could have offered the judge, for example, the shared services agreement, the shared services agreements for which you gave the Court your understanding, right?
A Which shared services, the one that Seery gave Ellington three days ago or the original one from years ago?
Q Any of the ones -- any of the ones that you have referred to today. You could have given any of them to the judge, right?
A Correct.
Q And you didn't, right?
A I did not.
Q In fact, there's not a single piece of evidence in the record that corroborates anything you say; isn't that right?
A I -- I believe all those documents are in the record. They're just not in the record of this TRO. But they're all --
Q Oh.
A They're all in the record.
Q Do you remember that there was a hearing on December 16th? I think you -- you testified that you're fully aware of that

hearing that was brought by the K&L Gates Clients. Do you remember that?

A Yes.

Q Who testified at that hearing on behalf of the K&L Gates Clients? Dustin Norris?

A I believe -- I believe Dustin Norris testified.

Q Uh-huh. And what's Mr. Norris's role at the Advisors?

A He's one of the senior managers.

Q Is he a compliance officer?

A No.

Q Is he a trader?

A No. But he's one of the senior managers.

Q Okay. They could have called anybody they wanted, to the best of your understanding, right?

A I don't think they got a chance to. Wasn't it an abbreviated hearing?

Q They offered Mr. Norris as a witness. Do you understand that?

A I -- all I -- I wasn't there. I didn't attend virtually. I -- but I did know that Norris testified. But I don't know who else was called, wasn't called, was going to be called, was on the witness list. I have no awareness.

Q Okay. You were pretty critical of the trades that Mr. Seery wanted to make that you interfered to stop, right?

A I think he's subsequently done most of those trades.

Q And you called them preposterous because he wanted to do it around Thanksgiving or around Christmas, at least based on your testimony, correct?
A That's when it did occur.
Q And is it your testimony -- is it your testimony that every single person in the world who trades securities near a holiday is making a preposterous trade?
A I think it's amateur and not what an investment professional would do.
Q So you never trade on holidays; is that your testimony? You've never done it once in your life?
A Very rarely, unless there's another overriding reason. And there was no overriding reasons, period.
Q How would you know that when you didn't even ask Mr. Seery why he wanted to make the trades?
A I asked Joe Sowin, who asked Jim Seery. And Joe Sowin said that Jim Seery just said for risk reduction.
MR. MORRIS: I move to strike on the grounds that it's hearsay, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q You never asked Mr. Seery why he wanted to make the trades, correct?
A I'm not allowed to talk to Mr. Seery.
Q You certainly were around Thanksgiving; isn't that right?

A I don't know.
Q There was no TRO in place at that time, correct?
A That's true.
Q You're pretty critical of Mr. Seery and his capabilities; is that right?
A He's a lawyer. He's not an investment professional.
Q Did you object to his appointment as the CEO of the Debtor?
A No.
Q Have you made any motion to the Court to have him removed as unqualified?
A Not yet.
Q Okay. But with all the knowledge of all the preposterous things that he's been doing for months now, you haven't done it, right?
A No.
Q When you -- when -- before you threw the phone in the garbage, did you back it up?
A No.
Q Did it occur to you that maybe you should save the data?
A No.
Q You said that the only way you think you might be able to get information going forward is through a subpoena. Do I have that right?
A I mean, that's how it seems. I mean, it seems at every

1 turn -- and now with Scott Ellington being gone and Isaac
2 being gone -- I have no idea how the Debtor is ever going to
3 defend against UBS.
4 THE COURT: I did not --
5 THE WITNESS: I have no idea how --
6 THE COURT: I didn't hear the answer after with
7 Ellington and Leventon being gone. I didn't hear the rest of
8 the answer. Could you repeat?
9 THE WITNESS: I said I have no idea how the Debtor is
10 ever going to defend itself against UBS. But I also have no
11 idea how we're ever going to get any information or ever push
12 forward any kind of settlement without having any access to
13 information or anybody to talk to.
14 BY MR. MORRIS:
15 Q Do you trust Judge Lynn?
16 (Echoing.)
17 A Yes.
18 Q Is he a good advocate?
19 A Yes. If anybody returns his phone calls.
20 Q Do you recall that on October 24th Judge Lynn specifically
21 asked my law firm to provide information on your behalf in
22 connection with the Debtor's financial information, their
23 assets and their liabilities?
24 A Yes.
25 Q Do you recall that the Debtor simply asked that you

1 acknowledge in an email between and among counsel that you
2 would abide by the confidentiality agreement that was entered
3 by the Court?
4 A I wasn't involved in those details.
5 Q Didn't you send an email in which you agreed to receive
6 the financial information subject to the protective order that
7 this Court entered?
8 A I'm sure I would. I just don't remember.
9 Q That was a condition that the Debtors made. That doesn't
10 refresh your recollection?
11 A I'm not denying it. I just don't remember, and --
12 Q Okay. And --
13 A (overspoken)
14 Q I'm sorry, I don't mean to cut you off. And in fact, on
15 December 30th, the day you were supposed to vacate the office,
16 the Debtor voluntarily provided to Judge Lynn all of the
17 information that had been requested on your behalf without the
18 need for a subpoena, right?
19 A Yeah. It took a week. It's 40,000 pages of mixed
20 gobbledygook that we're -- we're going through. But it should
21 provide enough information for us to negotiate a pot plan if
22 anybody so chose.
23 Q So you didn't need to (echoing) the 40,000 pages of
24 financial information from the Debtor; all you needed was an
25 agreement that you would abide by the protective order.

Correct?
A I think that was the first thing that was ever produced on request that I can remember. But yes.
Q And it was just a week ago, right?
A Yes.
MR. MORRIS: I have no further questions, Your Honor.
THE COURT: All right. Mr. Bonds, do you have anything else?
MR. BONDS: I do not, Your Honor, as to this witness. I have one other witness.
THE COURT: All right.
MR. MORRIS: Your Honor, I don't know who they plan on calling, but he's not on the witness list.
THE COURT: All right. Well, --
MR. BONDS: Your Honor, this other witness --
THE COURT: Just a moment. This concludes, for the record, Mr. Dondero's testimony. But, obviously, stick around, because we're going to have a lot to talk about when this is finished as far as the evidence.
All right. Now, who are you wanting to call that you did not identify?
MR. BONDS: I'd like to call Mike Lynn for the purpose -- or, to -- as a rebuttal witness.
THE COURT: Lawyer as witness?
MR. MORRIS: Your Honor?

THE COURT: Well, you know, first off, rebuttal of what? Rebuttal --

MR. MORRIS: Exactly. He's going to rebut his own client, Your Honor? He's going to rebut his own client? There's only been one witness to testify here. He was on their exhibit list. How do they call a witness to rebut their own client?

THE COURT: Yes. What -- I don't --

MR. BONDS: Your Honor?

THE COURT: Go ahead.

MR. BONDS: Mr. Morris testified or attempted to testify that the pot plan didn't gain any traction. We will submit Mike Lynn on that issue.

THE COURT: No.

MR. MORRIS: Your Honor?

THE COURT: I'm not going to allow a lawyer to testify to rebut lawyer argument. That's very inappropriate, in my view. So, not going to happen.

MR. LYNN: (garbled)

MR. BONDS: Your Honor, he would be a fact witness to discussions with the other side.

MR. MORRIS: Your Honor, I strenuously object. They're -- he's only rebutting -- my questions are not evidence. The only evidence in the record is Mr. Dondero's testimony. Mr. Dondero is their client. Mr. Dondero was on

their witness list. They should not be permitted to call any witness, with all due respect to Mr. Lynn, to rebut their own witness.

THE COURT: All right.

MR. BONDS: Your Honor, we're not rebutting our witness. We are rebutting the testimony that Mr. Morris gave.

THE COURT: Mr. Morris is a lawyer. He makes argument. He asks questions. He was not a witness today. Okay?

So if you want to say whatever you want to say as lawyers in closing arguments, then obviously you can do that. But I'm not going to allow a lawyer to be a witness to rebut something another lawyer said in argument or in a question. I -- it's -- so, I disallow that.

Anything else, then?

MR. BONDS: No.

THE COURT: Okay. And while we're talking about procedure, actually, Mr. Morris, it's the Debtor's motion, and I'm not even sure that's all of your evidence. So, do you have any more evidence as Movant?

MR. MORRIS: No, Your Honor. The Plaintiff and the Debtor rest.

THE COURT: All right. So, at the risk of repeating, now that the Movant has rested, it would be Mr. Dondero's chance to put on supplemental evidence. But what I'm hearing

from Mr. Morris is there were no witnesses identified on your witness list?

MR. BONDS: Other than Mr. Dondero, Your Honor.

THE COURT: Okay. All right. Well, was there any stipulated documentary evidence that -- that you had --

MR. BONDS: No, Your Honor.

THE COURT: All right. Well, I guess we're done with evidence.

Mr. Morris, your closing argument?

MR. MORRIS: All right. Before I get to that, Your Honor, I just want to make a very brief statement. When the Debtor objected to Mr. Dondero's emergency motion for a protective order, the Debtor stated that it sought discovery from Mr. Dondero to determine whether Mr. Dondero may have violated the TRO by interfering and impeding the Debtor's business, including by potentially colluding with UBS. After that motion was decided, both Mr. Dondero and UBS produced documents to the Debtor.

Based on the review of that information, the Debtor found no evidence that Mr. Dondero and UBS colluded to purchase redeemed limited partnership interests of Multi-Strat, nor any inappropriate conduct by UBS or its counsel.

The Debtor appreciates the opportunity to clear that part of the record.

THE COURT: All right.

1 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF
2 MR. MORRIS: Now, with respect to the motion at hand
3 today, Your Honor, I want to take you back just about a month
4 ago to December 10th, 2020. At that time, we had a hearing on
5 the Debtor's motion for a TRO. The motion had been filed in
6 advance. Mr. Dondero had filed an objection. He had concerns
7 about the scope and the language of the terms of the proposed
8 TRO.
9 And at that hearing, Your Honor, if you'll recall, you
10 listened carefully to the arguments that were made on behalf
11 of Mr. Dondero. You heard carefully -- you listened carefully
12 to the proposed changes that he sought to make. And you went
13 through that proposed TRO word by word, Paragraph 2 and 3, and
14 you read them out loud, and you made decisions at that time as
15 to whether the Court believed any portion of that was
16 ambiguous or whether it was clear. You made determinations at
17 that time whether or not the provisions were reasonable.
18 Mr. Dondero wasn't there. He didn't read the transcript.
19 He has no idea what you said. But his lawyers were there, and
20 they had an opportunity to object and they had an opportunity
21 to make comments, and the order is what the order is. And for
22 whatever reason, Mr. Dondero chose not to read it, or,
23 frankly, even understand it, based on his testimony.
24 The fact is, Your Honor, the one thing that the evidence
25 shows very clearly here is that Mr. Dondero thinks that he is

the judge. He believes that he is the decider. He believes that he decides what the TRO means, even though he never read it. He believes that he decides what exceptions exist in the TRO, even though he never read it.

He believes that he decides that it's okay to ditch the Debtor's cell phone without even seeking, let alone obtaining, the Debtor's consent. I guess he decides that he can ditch the phone and trash it without seeking to back it up or informing the Debtor.

Mr. Dondero believes that he gets to decide that it's okay to take a deposition from the Debtor's office, even when the Debtor specifically says you're evicted and you're not allowed to have access.

Mr. Dondero believes that he gets to decide that Mr. Seery has no justification for making trades, even though he couldn't take the time to pick up the phone or otherwise inquire as to why Mr. Seery wanted to do that.

Mr. Seery -- Mr. Dondero believes that he is the arbiter and the decision-maker and gets to decide to stop trades, notwithstanding the TRO, notwithstanding the CLO agreements that he is not a party to, that his entities are not a party to.

Mr. Dondero thinks that he gets to decide that the Debtor has breached the agreements with the CLOs. He gets to decide that the Debtor is in default under those agreements. He gets

1 to decide that it's perfectly fine for Ellington and Leventon
2 to support his interests while they have obvious duties of
3 loyalty to the Debtor.
4 It is not right, Your Honor. It is not right. I stood
5 here, I sat here, about four hours ago, five hours ago, and
6 told the Court what the evidence was going to show, and it
7 showed every single thing that I expected it to show and
8 everything I just described for the Court about Mr. Dondero's
9 belief that he's the decider.
10 He's not the decider, Your Honor. You are. And you made
11 a decision on June -- on December 10th that he ignored.
12 There is ample evidence in the record to support the
13 imposition of a preliminary injunction. And Your Honor, I'm
14 putting everybody on notice now that we're amending our
15 complaint momentarily to add all of the post-petition parties,
16 because this has to stop. The threats have to stop. The
17 interference has to stop. Mr. Dondero can always make a
18 proposal if he thinks that there's something that will capture
19 the imagination and the approval -- more importantly, the
20 approval -- of the Debtor's creditors. We have no interest in
21 stopping him from doing that. He's got very able and
22 honorable counsel, and he can go to them and through them any
23 time he wants.
24 But the record is crystal clear here that, notwithstanding
25 Your Honor's order, one entered after serious deliberation, is

of no meaning to him. And we'll be back at the Court's convenience on the Debtor's motion to hold him in contempt. It'll just be a repeat of what we've heard today, because, frankly, the evidence is exactly the same.

With that, Your Honor, unless you have any questions, the Debtor rests.

THE COURT: All right. I do not.

Mr. Bonds?

MR. BONDS: Your Honor, we would like to divide our time between Mike Lynn and myself. Is that a problem?

THE COURT: That's fine. Go ahead.

MR. LYNN: Are we on mute?

MR. BONDS: No.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. LYNN: Your Honor, I'm taking a leaf out of Mr. Phelan's book. I happened to read the confirmation hearing in the *Acis* case regarding what was referred to as Clients A, B, and C. And Mr. Phelan, who testified, really gave an oral argument to the Court which was very persuasive and very thorough. So I'm going to sort of do the reverse, because I hope that the Court would find useful some information regarding the pot plan about which you've heard many words spoken but very little to do with what that plan was or how it came about.

The pot plan was proposed by Mr. Dondero for the first

1 time in September of 2020, shortly after the conclusion of the
2 first round of mediations. Though there had been versions of
3 it before, and lesser versions, the pot plan was finally in
4 the form that would more or less survive it in September.
5 Under the pot plan, Mr. Dondero proposed to come up with $90
6 million of cash and $70 million in promissory notes, and that
7 was to form a pot which creditors would share in.
8 The proposal was provided to the Debtor and then shared
9 with the Committee. Mr. Seery responded with a degree, a
10 degree only, of enthusiasm to the pot plan, and indeed
11 provided a counter-term sheet to the pot plan. He also, so he
12 said, and I believe him, approached the Committee and said
13 this is a proposal to be taken seriously.
14 He proposed some improvements in his view to the pot plan.
15 No response was received from the Creditors' Committee at that
16 time.
17 After going back and forth with the Debtor -- and Mr.
18 Seery, not unreasonably, was unwilling to propose the pot plan
19 without some support on the Creditors' Committee -- I
20 contacted Matt Clemente. We had a nice conversation. And at
21 that time, Mr. Clemente raised two particular concerns. The
22 $160 million, which creditors did not think was enough, was
23 not enough, in part, because that included no consideration
24 for the acquisition of promissory notes executed some by Mr.
25 Dondero and some by entities controlled by Mr. Dondero, which

notes total approximately $90 million.

The second concern was that Mr. Dondero would get a release under the plan. During that call, I said the issue of the notes is subject to negotiation and might well result in a transfer of those notes, possibly with some amendments, to the pot, and that Mr. Dondero was prepared, in all likelihood, to forego a release.

Mr. Clemente agreed to get back to me. He did. And he said to me, I have talked to the Committee about this and they would like you to go to or they want you to go first to Mr. Seery, work off of his revised timesheet -- or term sheet, sorry -- and after you have reached an agreement with him, come to us, come to the Committee, and we'll negotiate with you.

Now, I might have agreed that that was a reasonable approach if there were a possibility that Mr. Seery would propose a plan without the agreement of creditors. But the way I took it was that the Committee was saying go make a deal with Seery and then we'll start negotiating, and we know, correctly, that Mr. Seery will not propose a plan that does not have our support.

So, effectively, we get to go through two rounds of negotiations, even though effectively everything that is in the estate, everything -- causes of action against Mr. Dondero, promissory notes from Mr. Dondero -- everything that

they would get under a plan or under a liquidation, they would get under the pot plan.

Now, I wanted you to know that, Your Honor, not because I'm now trying to get you or anyone else to sell the pot plan. But I think it's important that Your Honor know that Mr. Dondero's approach in this case has not been a hostile approach.

I know the Court had what it found to be an unsatisfactory experience with Mr. Dondero in the *Acis* case. But from the time I became involved in this case and Mr. Bonds became involved, we have been quiet, we have said nothing, and we've done virtually nothing in the case, up until the time after the mediation, when negotiations regarding a pot plan broke down.

Since that time, regrettably, there has been a good deal of hostility, and it's spreading. I would like to see it stop spreading. I will do what I can to make it stop spreading. But I need others to help me on that. And it's my hope that I can count on the Pachulski law firm, the Sidley law firm, and the firms representing the major creditors to help make that happen.

I do not think, and I would submit that it is not to the benefit of the estate, it is not to the likely workout of this case, that it would be best served by entering a preliminary injunction, which it appears to me prevents Mr. Dondero from

1 saying good morning to one of the employees of the Debtor that
2 he knows.
3 It seems to me, Your Honor, that the injunction, by its
4 terms, as Mr. Morris would have it, is an injunction that
5 would prevent Mr. Dondero from discussing politics with Mr.
6 Ellington. And it seems to me that an injunction that broad,
7 that extensive, and one which lasts, as far as I can tell,
8 until infinity, that such an injunction is not the right thing
9 to do, given, if nothing else, the First Amendment to the
10 United States Constitution.
11 That will conclude my presentation, and I will turn it
12 over to the wiser and better-spoken colleague, John Bonds.
13 Thank you, Your Honor.
14 THE COURT: Thank you. Mr. Bonds, what else do you
15 have to say?
16 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT
17 MR. BONDS: Your Honor, has the Debtor met the
18 requirements for the issuance of a preliminary injunction? We
19 submit that they have not. And the Fifth Circuit's rules are
20 fairly clear as to the awarding of a preliminary injunction.
21 First, let's look at the type of preliminary injunction
22 that the Debtor would like you to enter today. It provides
23 that Mr. Dondero cannot talk to any employee, regardless of
24 what is being communicated. Mr. Dondero can pass an employee
25 on the street, but he can't acknowledge the employee, with

whom he may have worked for years. Nor can he talk to his personal assistants, again, which he has worked with for years. Does that violate the First Amendment of the Constitution?

What about the shared services agreement? What about the pot plan which he is advocating as a means of reorganizing the Debtor? Not the liquidation proposed by the Debtor. Can Mr. Dondero communicate with creditors about the pot plan and the other proposals without violating the TRO or the preliminary injunction which deals with interfering with the Debtor's business?

Your Honor, I think it's important to note that a preliminary injunction is an extraordinary remedy that may only be awarded upon a clear showing that the Plaintiff is entitled to such relief. Plaintiffs are entitled to a preliminary injunction if they show, one, a substantial likelihood that they will prevail on the merits of their claims; two, a substantial threat that they will suffer an irreparable injury if the injunction is not granted; three, their threatened injury outweighs the harm to the estate or the other party; and four, the public interest will not be disserved, misserved, if the preliminary injunction is granted.

The party seeking the preliminary injunction bears the burden of persuasion on all four requirements. We believe

that the Debtor today has failed to carry its burden of persuasion of proof with regard to the second element, which I'm going to refer to as the irreparable injury requirement. In order to show irreparable harm to the Court, the Plaintiff must prove that if the District Court denied the grant of a preliminary injunction, irreparable harm would be the result. Injuries are irreparable only when they cannot be undone through monetary remedies. There is no evidence before the Court today that Mr. Dondero cannot respond to any judgment that is rendered against him by this Court.

Your Honor, this preliminary injunction does not involve real property. Unlike the *Saldana* case, this request for the issuance of a preliminary injunction involves personal property only. The request that Mr. Dondero cease and desist all contact with employees is just wrong and may violate the First Amendment of the Constitution, as I previously stated.

We have other concerns regarding the issuance of a preliminary injunction. We feel that the preliminary injunction is too broad. It lacks a beginning and an end. When does the preliminary injunction terminate? What about the former employees? Once they are terminated, can Mr. Dondero speak to them? What about the pot plan? Is it gone forever? Can Mr. Dondero talk with the mediators about the pot plan? Can Mr. Dondero speak with the members of the U.C.C.?

It is easy to criticize Mr. Dondero. Did he violate the TRO? We submit that he didn't and the Debtor says that he did. What matters going forward is the lack of evidence of irreparable harm.

Mr. Seery sure wants to keep Mr. Dondero from talking to anyone in this case. Why is that? Does Mr. Seery believe that the only way to get his liquidation plan confirmed is to keep Mr. Dondero from talking to anyone? How will the preliminary injunction help the Debtor's creditors? Does keeping Mr. Dondero from talking with anyone mean that there will be a greater return to the creditor body? Does precluding Mr. Dondero from talking about his pot plan mean that the creditors will take home more money on their claims, or does it eliminate the possibility that they may take home more money on their claims?

Your Honor, what we are seeing here today is an attempt by a group to destroy what Mr. Dondero has built over the last few years. That isn't the way Chapter 11 should work.

Just one last thing to keep in mind, Your Honor. Mr. Seery's plan is a liquidation of the Debtor. Mr. Dondero's pot plan is a reorganization of the Debtor.

Thank you, Your Honor.

THE COURT: All right. Mr. Morris, you get the last word. Anything in rebuttal?

MR. MORRIS: I would just point out, Your Honor, that

nobody here has objected to the Debtor's motion for the entry of a preliminary injunction except Mr. Dondero. While I appreciate that this is an adversary proceeding, anybody who felt strongly about the matter certainly could have moved to intervene. The Creditors' Committee could have moved to intervene. Mr. Clemente could have stood at the podium and begged Your Honor not to impose the injunction because he thought it was in the best interest of creditors to allow Mr. Dondero to interfere with the Debtor's business and to speak with their employees. Nobody has done that, Your Honor. Nobody's here speaking on behalf of Mr. Dondero. Nobody's here to testify on his behalf. Nobody's -- there's no evidence in the record that supports or corroborates anything that he said at all, Your Honor.

Unless Your Honor has any specific questions, the Debtor is prepared to rest.

THE COURT: All right. I do not have any follow-up questions.

All right. I have a lot to say. I'm sorry, I apologize in advance, but I've got a heck of a lot to say right now. I'm going to give you a ruling on the motion before me, but I've got a lot to add onto that, so I hope all the key parties in interest are listening carefully. Mr. Bonds, in the video, I can only see you. I hope Mr. Dondero is just right there out of the video camera view. Okay, there you are. I wanted

1 to make sure you didn't wander off to take a bathroom break or
2 anything. So, again, I have a whole lot to say here today.
3 First, I'm going to rule on the motion. The Court does
4 find there is sufficient compelling evidence to grant a
5 preliminary injunction that is completely consistent with the
6 prior TRO. Okay? So, specifically, the Court today is going
7 to continue to prevent Mr. Dondero from (a) communicating in
8 any way, directly or indirectly, with any of the Debtor's
9 board members -- I think that's really Strand board members --
10 unless Mr. Dondero's counsel and counsel for the Debtor are
11 included. Okay. I'm saying those words slowly and carefully.
12 There is no bar on Mr. Dondero talking to the board about a
13 pot plan or anything else in the universe Mr. Dondero wants to
14 talk to them about. There's just a preclusion from him doing
15 it without his counsel and the Debtor's counsel present.
16 Okay?
17 I did that before and I'm doing it now because I've seen
18 concerning evidence that some communications to Mr. Seery and
19 others had an intimidating tone, a threatening tone one or two
20 times, an interfering tone. So, guess what, we're just going
21 to have lawyers involved if any more conversations happen.
22 Okay.
23 So (b) the preliminary injunction, just as the TRO did, is
24 going to prevent Mr. Dondero from making any threats of any
25 nature against the Debtor or any of its directors, officers,

1 employees, professionals, or agents. Okay. It's almost
2 embarrassing having to say that or order that with regard to
3 such an accomplished and sophisticated person, but, you know,
4 I saw the evidence. I've got to do what I've got to do. You
5 know, words in a text like, Don't do it, this is your last
6 warning, and some of the other things, that has a threatening
7 tone, so I'm going to order this.
8 Third, the preliminary injunction will prevent Mr. Dondero
9 from communicating with any of the Debtor's employees except
10 as it specifically relates to shared services provided to
11 affiliates owned or controlled by Mr. Dondero.
12 Now, I'm going to elaborate in a couple of ways here. I
13 think in closing argument there was a suggestion that he can't
14 even talk to his friend, Mr. Ellington, about anything. Well,
15 I heard today that Mr. Ellington and Mr. Leventon are no
16 longer employees of the Debtor, so actually that's not an
17 issue. But while this is very restrictive, while this
18 prevents Mr. Dondero from engaging in small talk with Debtor
19 employees about the weather or the football game or whatever,
20 it's regrettable, but I feel like I'm forced to order this
21 now, because, again, the communications that were put in the
22 record. Okay? We just can't take any chances, as far as I'm
23 concerned, with regard to there being potential interference
24 with the Debtor's operations that might be harmful or contrary
25 to creditors' interests.

1 Fourth, the preliminary injunction, just like the TRO,
2 will prevent Mr. Dondero from interfering with or otherwise
3 impeding the Debtor's business, including but not limited to
4 the Debtor's decisions concerning its operations, management,
5 treatment of claims, disposition of assets owned or controlled
6 by the Debtor, and pursuit of any plan or alternative to the
7 plan.
8 Now, I understand the argument that this is pretty broad
9 and might be, I don't know, subject to some disputes regarding
10 was it interference, did it impede the Debtor's business or
11 not? You know what, if you follow the other prongs of the
12 preliminary injunction, that you don't talk to the board
13 without your counsel, Mr. Dondero, and the Debtor's counsel,
14 and you don't talk to Debtor's employees except with regard to
15 matters pertaining to the shared services agreement, and,
16 bottom line, if you just run everything by your attorneys,
17 you'll be okay. We won't have this ambiguous, vague,
18 problematic territory.
19 Fifth, I will go ahead and, for good measure, belts and
20 suspenders, whatever you want to call it, prevent Mr. Dondero
21 from otherwise violating Section 362(a) of the Bankruptcy
22 Code.
23 Now, I read the response filed at 9:30 last night by Mr.
24 Dondero's counsel. It's a good response. It makes legal
25 arguments about that being, you know, it just being too vague.

1 Well, to the contrary, it just restates what's already in the
2 Bankruptcy Code, right? Persons are prohibited from violating
3 Section 362(a) of the Bankruptcy Code. If anything, it's the
4 sky is blue, right, just stating what is true. But I
5 understand Debtor wanting some clarity in an order, because we
6 want you to take this seriously, Mr. Dondero, and not just do
7 something and then say, well, you didn't know what was in the
8 Code. You know, you need to consult with your lawyer. That's
9 going to be in there.
10 Bottom line, I want that language in there because, Mr.
11 Dondero, I want you to see an order that this Court expects
12 you to comply with the Bankruptcy Code. And again, if you
13 don't understand, if you're unsure whether you can take action
14 *x* or *y*, consult with your very capable lawyers.
15 I note that if you listened carefully to these words,
16 there was nothing in here that stopped Mr. Dondero from
17 talking to the Creditors' Committee about a pot plan. Nothing
18 in this injunction, nothing in the previous TRO, ever
19 prohibited that.
20 Last, with regard to the ruling -- and again, I've got a
21 lot more to say when I'm done -- I am going to further enjoin
22 Mr. Dondero from what we said in the TRO: causing,
23 encouraging, or conspiring with any entity controlled by him
24 and/or any person or entity acting on his behalf from directly
25 or indirectly engaging in any of the aforementioned items.

1 This is not an injunction as to nonparties to the adversary
2 proceeding. It is an injunction as to Mr. Dondero from doing
3 the various enjoined acts that I previously listed under the
4 guise of another entity or a person that he controls.
5 Again, if you're dealing with and through your attorneys,
6 Mr. Dondero, I don't think this will be hard to maneuver.
7 I guess I'm actually not through with my ruling yet. I do
8 want to add that the Court rules that the injunction shall
9 last through the time of confirmation of a plan in this case
10 unless otherwise ordered by this Court.
11 And as to the legal standards, I want to be clear for the
12 record that the Court believes this injunction is necessary to
13 avoid immediate and irreparable harm to the Debtor's estate
14 and to its reorganization prospects. I believe that there's a
15 strong likelihood the Debtor will succeed in a trial on the
16 merits of this adversary proceeding. I believe the public
17 interest strongly favors this injunction. And I believe the
18 balance of harms weighs in favor of the Debtor on all of these
19 various issues.
20 Again, I want to reiterate, the intimidation and
21 interference that came through in some of these email and text
22 communications was concerning to the Court and is a motivation
23 for this preliminary injunction.
24 Now, I'm going to add on a couple of things today. The
25 first thing I'm going to add on -- and I want this, Mr.

Morris, in the order you submit. You didn't ask me for this, but I'm going to do it. I'm going to order you, Mr. Dondero, to attend all future hearings in this bankruptcy case unless and until this Court orders otherwise. And I'm doing this -- it's not really that unusual a thing for me to do. I sometimes order this in cases when I'm concerned about, you know, is the businessperson paying attention to what's going on in the case and is he engaged, is he invested, is he available when we need him?

In this case in particular, the evidence was that you didn't read the TRO. You were not aware of its basic terms and you didn't read it. Okay? So that was what sent me over the edge as far as requiring this new element that you're going to attend every hearing. Obviously, we're doing video court, so that's not that much of a burden or imposition. You can pretty much be anywhere in the world and patch in by video, since we're in the pandemic and not doing live court. But I think it's necessary so I know you hear what I rule and what goes on in this case.

I will tell you that I was having a real hard time during your testimony deciding if I believe you didn't read the TRO or know about the different things that were prohibited. You know, I was thinking maybe you're not being candid to help yourself in a future contempt hearing, or actually maybe you're being a hundred percent honest and candid but you're

kind of hiding behind your lawyers so that you can argue the old plausible deniability when it suits you.

But no more. No more. I'm not going to risk this situation again of you not knowing what's in an order that affects you. So you must be in court by video until I order otherwise.

Second, and I regret having to do this, but I want it explicit in the preliminary injunction that Mr. Dondero shall not enter Highland Capital Management's offices, regardless of whether there are subleases or agreements of Highland affiliates or Dondero-controlled entities to occupy the office, unless Mr. Dondero has explicit written permission that comes from Highland's bankruptcy counsel to Dondero's bankruptcy counsel. Okay? If he does, it will be regarded as trespassing.

And, I don't know, are there security guards on the premises? I mean, gosh, I hate to be getting into this minutia, but -- well, I just want it explicit in the order that Mr. Dondero, I'm sorry, but you can't go to these offices without written permission. And again, that can only be given from Debtor's counsel to Mr. Dondero's counsel. Okay? So it's going to be trespassing. You know, someone can call the Dallas Police Department and have you escorted out. Again, I hate having to do that. It's just, it's embarrassing for me. I think it's embarrassing for everyone. But I'm backed up in

that corner.

Next, I am going to ask that it be clear that Mr. Dondero can deal with the Unsecured Creditors' Committee and its professionals with regard to talking about a pot plan.

And next, I'm going to add -- and I think, Mr. Morris, you requested this at some point today in oral argument -- Mr. Ellington and Mr. Leventon shall not share any confidential information that they received as general counsel, assistant general counsel for the Debtor, without Debtor's counsel's explicit written permission. Okay? So we've got that in writing.

And, you know, that's a little awkward because they're not here, they weren't parties to the injunction, but they were Debtor employees until recently. If they want to risk violating that and come back to the Court and argue about whether they got notice and whatnot of that, they can argue that, but I want it in the order regardless.

So that is the ruling. And now I want to kind of talk about a few other things. And before we're done here, Mr. Morris, I'll ask do you have questions, does Mr. Bonds have questions, does anyone have questions about the ruling. But I want to talk about a couple of things. And again, I hope that I'm coming through loud and clear, Mr. Bonds, in your office for Mr. Dondero to hear this. It's really, really important that he heard what I'm about to say. I'm going to say some

kind of unpleasant things and then I'm going to say some hopeful things, okay?

Mr. Dondero? Okay. Mr. Dondero, I'm going to -- Mr. Morris, you've got your hands on your head. Did I miss something?

MR. MORRIS: No. I was just surprised to see Mr. Dondero on his phone. I apologize, Your Honor.

THE COURT: Oh, my goodness. Were you on your phone, Mr. Dondero?

MR. DONDERO: No, I was not.

THE COURT: Okay. I want you to listen to this really closely, and then I promise I'm going to have something hopeful to say after this very unpleasant stuff. You know, I keep a whiteboard up at my bench. I don't know if you can read it. But sometimes I hear something in a hearing and I think, okay, this is one of my major takeaways from what I heard today. And I've got two, I've got two big takeaways here. Number one on my whiteboard is Dondero's spoliated evidence. Game-changer for all future litigation. Okay.

MR. DONDERO: I'm sorry. I didn't hear that. I didn't hear that. Could you repeat that, please?

THE COURT: Mr. Dondero, spoliated evidence, game-changer in future litigation.

Okay. Let me tell you, the throwing away of the phone, that was the worst thing I heard all day. That was far and

1 away the worst thing I heard all today. I don't know what I'm
2 going to hear down the road to fix this, but if it's really
3 gone, let me tell you how bad this is. We have all sorts of
4 Federal Rules of Civil Procedure that talk about this being a
5 bad thing, but I wrote an opinion a couple years ago dealing
6 with spoliation of electronic evidence, and I think it might
7 be helpful for everyone to read. It was called *In re Correra*,
8 C-O-R-R-E-R-A. I have no idea what the cite on it is. But in
9 this case, *Correra*, we had a debtor who had a laptop, and he
10 gave the laptop to his personal assistant, who took it away to
11 another state. And at some point during the case, parties
12 discovered, oh, there's a laptop that may have a treasure
13 trove of information. Who knows? Maybe it does; maybe it
14 doesn't. But there's a laptop that we just now learned about
15 that the personal assistant has.
16 And so I issued an order that she turn it over, and there
17 were subpoenas and depositions, blah, blah, blah. Long story
18 short, the evidence ended up being that she deleted everything
19 on the laptop, and then -- this would almost be funny if it
20 wasn't so serious -- she downloaded thousands of pictures of
21 cats onto the laptop. I kid you not, cats. Meow, meow, cats.
22 And she downloaded a hundred-something full-length movies.
23 And we had two days of forensic experts come in and take the
24 witness stand and tell me about how, okay, this is like an
25 amateurish -- you've talked about amateur hour today -- this

is kind of an amateurish way of deleting data, right. You first delete all the files on the laptop and then you cover over all the space to make sure the information is not retrievable. You know, this genius ended up retrieving some of the information.

But the long story short is I sanctioned the debtor and his assistant jointly and severally. You'll have to go back and look at the opinion. I'm pretty sure it was over a million dollars. And I can't remember if that was attorneys' fee-shifting only, or monetary, like penalty on top of the attorneys' fees-shifting. I just can't remember. But maybe poor Tara needs to be advised of that opinion, too. I mean, --

But the other reason I put game-changer in future litigation is, in my *Correra* case, it wasn't just the monetary million-dollar sanction or whatever it was; it was a game-changer in future litigation because the adverse party to the debtor ended up arguing -- and it was the state of New Mexico, by the way -- they ended up saying, in all future litigation, we want you -- some adversaries, we want you to make an adverse inference. In other words, for all of these elements that we're trying to prove in our fraudulent transfer litigation and whatever else was going on, we want you to make an adverse inference that there would have been evidence there on that laptop that would have supported some of our causes of

action and it was destroyed to keep us from having that evidence.

And they brought forth all kinds of case law. It's a hard area. It's a really, really hard area. But I ended up -- again, it's not in the main opinion. It was in subsequent orders. I ended up saying, yeah, I think you've met the standard here to draw adverse inferences.

So, again, this is a very unpleasant message for me to deliver today. But the destruction of the phone is my biggest takeaway of concern today, how that might have ramifications. You know, there are other bad things, too, about that. I'm not even going to go there right now. But the, you know, Title 18, you can ask your lawyer what that means, but okay.

My second big takeaway before we get to the hopeful stuff is -- and this is kind of harsh, what I'm about to say -- but Ellington and Leventon maybe care more about you, Mr. Dondero, than their law license. You know, I guess it's great to have people in your life who are very, very loyal to you. I mean, loyalty is a wonderful thing. But I am just so worried about things I've heard. Again, the phone and in-house lawyers. The biggest concerns in my brains right now. I have worried about them for a while.

You all will -- well, Mr. Dondero, you might not know this. But we had a hearing a few months ago, maybe September, October, where the Creditors' Committee was trying to get

discovery of documents. And we had some sort of hearing, maybe a motion to compel production. And we had many, many entities that you control file objections: NexPoint, NexBank. I can't even remember. We just had a whole slew. CLO Holdco. Many, many of these entities objected. And I was trying to figure out that day who was instructing them. And oh my goodness, I hope the in-house layers are not involved in this document discovery dispute, because, you know, they have fiduciary duties. And are -- you know, is it -- it feels like it's breaching a duty to the bankruptcy estate when it's in the bankruptcy estate's best interest to get these documents if you're meanwhile hiring lawyers for these other entities, Holdco, et cetera, and saying, Fight this.

I never really pressed it very hard back then, but I raised the issue and I said, I'm really, really concerned about this. And I continue to be concerned about it. I had experiences with Mr. Ellington in the *Acis* case where he testified on the witness stand, and later it looked a heck of a lot like he might have committed perjury. I hate to use such blunt terms. But I let it go. I'm just like, you know, I'm not going to -- you know, I'm going to just hope for the best that he misspoke.

But I'm getting a really bad taste in my mouth about Ellington and Leventon, and I hope that they will be careful and you will be careful, Mr. Dondero, in future actions.

Is Mr. -- I can't see Mr. Dondero. I want to make sure he's not on the phone. Okay. Okay. Thank you.

So where was I going to head next? I guess I want to say a couple of things now that I would describe as a little bit more hopeful, and that is pertaining to this whole pot plan thing.

You know, I tend to think, without knowing what's being said outside the courtroom, that a pot plan would be the best of all worlds, okay, because the plan that we have set for confirmation next week, I understand we have a lot of objections, and if I approve it, if I confirm the plan, we're going to have a lot of appeals and motions for stay pending appeal, and no matter how that turns out, we're going to have a lot of litigation. Okay? You know, we're going to have adversaries. And we have a not-very-workable situation here where we have these Dondero-controlled affiliates questioning Mr. Seery's every move.

I would love to have a pot plan that would involve, Mr. Dondero, you getting to keep your baby, okay? I acknowledge, everyone here acknowledges, you are the founder of this company. This is your baby. You created a multi-billion-dollar empire, okay? I would be shocked if you didn't want to keep your baby. Okay? If there was a reasonable pot plan, I would love it.

But I'm telling you, the numbers I heard didn't impress me

a heck of a lot. I'm not an economic stakeholder. It's not my claim that would be getting paid. But I can see where these Creditor Committee members, they're not going to think $160 million -- $90 million in cash, $70 million in notes, or vive-versa -- is nearly enough. Okay?

So I am going -- what just happened? What just happened? I lost Mr. Dondero. Okay. This is getting kind of humorous, almost.

Okay. I am going to order that between now and the end of the day Tuesday there be good-faith, and I'll say face-to-face -- Zoom, WebEx, whatever -- negotiations between Mr. Dondero and his counsel and at least the Committee and its professionals regarding this pot plan.

Now, the train is leaving the station next Wednesday, okay? If we don't have Creditors' Committee and Debtor and Dondero rushing in here saying, Please continue the confirmation hearing next Wednesday, if we don't have like unanimous sentiment to do that, you know, this is a 15-month-old case, I'm going to go forward with the plan that's on file.

And it's been a long, expensive case. I had great mediators try to give it their best shot to get a grand compromise. I just, I'm not going to drag this out unless you all tell me Wednesday morning, We want you to continue this a week or two.

And let me tell you -- this may be the stars lining up, or it may not be -- I was supposed to have a seven-day trial starting the week after next, and then I was supposed to have a four- or five-day day trial starting immediately after that. And all of those lawyers came in and asked for a continuance because of COVID. They wanted a face-to-face trial, and so I've put them off until April.

So if you wanted to postpone the confirmation hearing to the following week or even the following week, I have the gift of time to give you. But I'm not going to do it lightly. I'm, again, I'm just going to order face-to-face meetings. And I said Dondero and his counsel and the Committee and its professionals. You know, if -- I'm not slighting the Debtor here or Mr. Seery, but I'm kind of taking a cue from what Mr. Morris, I think I heard you say, that at this point it's the Committee, it's the Committee's money, and I think that's the starting place. And if they want to join the Debtor in at the beginning or midway through, you know, wonderful, but I think it needs --

MR. POMERANTZ: Your Honor, this is Jeff -- this is Jeff Pomerantz. I hate to interrupt, and I never do that to a judge, but I did have something to say in my comments about a continuance that we've talked about with the Committee and some other developments in the case.

THE COURT: Oh.

MR. POMERANTZ: I'm happy to wait. But it has -- it has nothing to do with the comments you said, although, as I think you've heard from me before, the Debtor has been a supporter, a supporter of a pot plan. Mr. Seery has done a tremendous amount of work working with Mr. Dondero, working with Mr. Lynn, to try to make that happen. And if the Committee is willing to engage in a pot plan, we would definitely support that. Because we do agree with Your Honor that, absent a pot plan, we are looking at a lot of litigation.

Some of the issues you're going to have to deal with at the confirmation hearing if we do not have a peace-in-the-valley settlement is exculpations, releases, moratoriums on litigation, extensions of your January 9th order --

THE COURT: Uh-huh.

MR. POMERANTZ: -- with respect to pursuing certain people.

So, we get it, and we've gotten it from the beginning. And Mr. Seery, sometimes even at a fault, has been singlehandedly focused on trying to get that done. It's just unfortunate where we are here.

But having said that, I wanted to first apprise the Court of a recent major development in the case. I'm pleased to report that the Debtor and UBS have reached a settlement in principle which will resolve all of UBS's claims against the

1 estate, all of UBS's claims against Multi-Strat. The parties
2 are working on documentation. The settlement is subject to
3 internal approvals from UBS, but we've been led to believe
4 those approvals will occur, and we would hope to file a Rule
5 9019 motion in the near future.
6 I'm sure Your Honor is quite pleased to hear that. The
7 UBS matters have taken a substantial amount of time. And with
8 the settlement of UBS's claims, the only material unresolved
9 claim, unrelated to Mr. Dondero or the employees, are Mr.
10 Daugherty. And Mr. Seery will continue to work with Mr.
11 Daugherty to try to settle that.
12 THE COURT: Okay.
13 MR. POMERANTZ: With respect to the scheduling, with
14 respect to the scheduling, Your Honor, there are three
15 significant matters on for hearing on the 13th. The first is
16 the Debtor's motion to approve a settlement with HarbourVest,
17 which Mr. Dondero is contesting. Depositions are being
18 conducted on Monday, and we anticipate an evidentiary hearing
19 in connection therewith.
20 The Debtors, as Mr. Morris indicated earlier on in the
21 hearing, have also filed a complaint and a motion for a
22 temporary restraining order against certain of the Advisors
23 and Funds owned and controlled by Mr. Dondero which relate to
24 the CLO management agreements for which Your Honor has heard a
25 lot of testimony today. We also expect that TRO to be

contested and for the Court to have an evidentiary hearing.

And as Your Honor mentioned, the confirmation of the plan was scheduled for Wednesday, and there were 15 objections. I would point out, Your Honor, all but four of which were Mr. Dondero, his related entities that he owns or controls, and employees or former employees.

The Court previously gave us time on the 13th and the 14th, I think anticipating that we would have a lot and it may be necessary to go into two days. However, Your Honor, those two days are not going to be enough to deal with all the issues that we have before Your Honor.

So what we suggest, and we've spoken to the Committee and the Committee is supportive, that we continue confirmation to a day around January 27th. This will enable the Debtor to not only -- and the Committee -- not only to take Your Honor up on what you'd like to see accomplished in the next few days. I'm sure the Debtor is supportive and will be supportive, and we hope the Committee will engage in good-faith negotiations, and if there's a way to do a pot plan, we are all for it. It'll give time for that to happen.

But at the same time, and I think what you'll hear from Mr. Clemente, that we're willing to give a continuance, we all know that if there is not a settlement to be had, if there is not a pot plan to be had, this case has to confirm, it has to exit bankruptcy, and at least from the Debtor's perspective, a

lot of protections will have to be in place that basically this has not just been a pit stop in Bankruptcy Court and we return to the litigation ways that Highland is involved in.

So, Your Honor, we believe that the two evidentiary hearings on for next week probably will fill up both days. We would suggest that the first day be the complaint and the TRO against the Advisors and the Funds for the 13th, and the 14th be the HarbourVest.

We also recognized as we were preparing for today, Your Honor, looking ahead, that we thought it was not fair for us, although we know Your Honor works tirelessly and as hard as anyone on this hearing and that Your Honor would be prepared for confirmation and would be prepared for each of those trials, given the gravity of these issues, the extensive pleadings, pleadings that you would get in confirmation on Monday from the Debtor, that it made sense to continue the hearing.

So, again, fully supportive of Your Honor's mandate to try to see if we could work things out, fully supportive of a continuance until the 27th, if that date works for Your Honor, but we believe we do need to go ahead with the two matters that are on for calendar next week.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. May I be heard briefly?

THE COURT: Oh my goodness. Who do you represent,

Mr. Rukavina?

MR. RUKAVINA: And I apologize -- Your Honor, I am the new counsel who will be representing the Funds and Advisors. I will probably be taking the laboring oar at confirmation.

I apologize I'm not wearing a suit and tie. I did not anticipate speaking right now.

I support -- to the extent that that's an oral motion for continuance by Mr. Pomerantz, I certainly support that. I would suggest that the Court give us an understanding of that today, because we do have depositions and discovery lined up which we can then push if the hearing on confirmation is pushed to the 27th. And we have no problem going forward on the other matters on the 13th.

So, I am co-counsel to K&L Gates, Your Honor, so whoever the K&L Clients are, they're now my clients as well. I just wanted to be heard briefly that we support the recommendation by Mr. Pomerantz and just urge that the Court give us finality on that issue today so that we're not burning the midnight oil, many sets of lawyers preparing for confirmation on the 13th.

Thank you for hearing me, Your Honor.

THE COURT: All right. So, just to be clear, the proposal is that we go forward next Wednesday on the newest request for a TRO with regard to -- is -- the CLO Funds and

the Advisors. I'm forgetting the exact names. And then that would take likely the whole day, but whether it does or does not, we would roll over to Wednesday of next week -- that'd be the 14th -- to do the HarbourVest. It's a compromise motion, right? Is there anything else?

MR. POMERANTZ: No, correct, it's the compromise motion, Your Honor. There are two pending objections on this and discovery scheduled for Monday.

THE COURT: All right. Well, as far as --

MR. CLEMENTE: Your Honor?

THE COURT: Yes, who is that?

MR. CLEMENTE: Oh, Your Honor, it's Matt Clemente at Sidley on behalf of the Committee. I'm here, and I thought maybe I'd offer just a couple of comments at this point, but I'm happy to hold them.

THE COURT: Well, --

MS. SMITH: And Your Honor, this is Frances Smith. I would also like to be heard before you wrap up.

THE COURT: Okay. Well, I guess generally I want to know, does anyone have any objection -- I can't imagine they would -- but any objection to pushing confirmation out to around the 27th? I'm going to say that because I have an issue middle of the day the 28th. If we do it the 27th, I could only go a day and a half, okay? I have to go out of town the evening of the 28th, and I would be out the 29th as

well. That's Thursday and Friday. So we'll talk about that. But anyone, Mr. Clemente or anyone else, want to say anything about continuing the confirmation?

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. No, Your Honor, we're supportive of that schedule.

And Your Honor, just briefly, I heard my name discussed quite a bit at this hearing as well as the Committee. I'm not going to get into it unless Your Honor would like me to, but let me be very clear: The committee has taken very seriously the pot plan proposals that Mr. Dondero has presented, and there's much more to the discussion other than what Mr. Lynn suggested in his remarks.

So I'm not going to get into all that unless Your Honor thinks it's necessary. I think it's of no moment here. But I did want Your Honor to know that we have carefully considered the pot plan proposals and have communicated a variety of issues about that to Mr. Lynn and will continue to take the direction of Your Honor and engage on a pot plan, Your Honor. But I did not want there to be any suggestion that we did not take it seriously and that there was much, much more consideration and discussion about it than what was suggested.

THE COURT: Uh-huh.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: All right.

MS. SMITH: Your Honor, this is Frances Smith.

1 THE COURT: Who do you represent, Ms. Smith?
2 MS. SMITH: Your Honor, we were recently retained by
3 the four senior employees: Tom Surgent, Frank Waterhouse,
4 Scott Ellington, Isaac Leventon, along with Baker & McKenzie,
5 and I believe we have the Baker & McKenzie lawyers Deb
6 Dandeneau and Michelle Hartmann on the line.
7 Your Honor, we have listened to the whole hearing. And I
8 was not going to make an appearance. I was following your
9 instructions and listening carefully. But Your Honor, I --
10 first of all, we hate to be before you for the first time in a
11 discovery dispute. We did file a very limited objection to
12 the plan because of the disparate treatment of our clients,
13 which we are not arguing today, of course. We received -- it
14 is our usual practice, Your Honor -- you've known me for a
15 long time -- to cooperate on having witnesses appear. We got
16 -- we were notified very late Tuesday that the Debtor's
17 counsel would like two of our clients to appear. We made what
18 we thought was a reasonable request for a copy of the
19 transcript from the deposition. We were invited to the
20 deposition and then told we could not attend, or our clients
21 could not attend. When we offered to make it lawyers-only,
22 they said no. So we did not produce our clients without a
23 subpoena.
24 Our clients have not been evading service. As far as we
25 know, they were each attempted service one time, late

Wednesday, when they were -- around dinnertime. Mr. Leventon was home all day today. Didn't go any -- or yesterday. Didn't go anywhere. Was not served. Wasn't served this morning. The same, as far as we know, with Mr. Ellenton.

Your Honor, on the order that you just entered, I am a little unclear of where your findings of fact stopped. First of all, I do not think that you can enjoin Mr. Ellenton and Mr. Leventon. They are not parties to the adversary proceeding.

You know, we did some very quick research. There's a Seventh Circuit case, a district court may not enjoin nonparties who are not either acting in concert with an enjoined party nor in the capacity of agents, employees, officers of the enjoined party. Mr. Ellington and Mr. Leventon are not agents, employees, officers of Mr. Dondero. So I think that, Your Honor, you cannot make that ruling.

Of course, you can rule that Mr. Dondero cannot talk to Mr. Leventon and Mr. Ellington. That might be a way to fix that one part. But as nonparties, I don't believe that you can enjoin them.

Also, Your Honor, there was just no evidence against them to support that. Out of more than two dozen exhibits, there was one mention of Mr. Leventon, where all he did was give Mr. Dondero Matt Clemente's phone number. And you yourself ruled, Your Honor, that Mr. Dondero could speak with the Committee,

so that wouldn't even have been a violation of your orders. There's three related to Mr. Ellington, but no evidence of confidential information.

And, Your Honor, I'm very concerned about the comments that you made about Mr. Ellington and perjury. I just want to make sure that it's clear on the record that those were not findings of fact. That did not -- there was no evidence about that today. And I understand Your Honor's frustration. I was -- but I just want to be very clear on the record that those were not findings of fact that you were making during that part of your comments. I was a little unclear about where the ruling exactly stopped when you said you wanted to add onto the order and then you were going to make a few more comments.

So that's all I have, Your Honor.

THE COURT: Okay.

MS. SMITH: Thank you for listening and --

THE COURT: Thank you. Fair comments, one and all. I'm first going to tweak. I was concerned. You heard me express concern about, you know, Ellington and Leventon aren't parties to this adversary. Not here. So here's -- Mr. Morris, I assume you're the scrivener. Let's change what I said earlier and have the injunction read that Mr. Dondero shall not request that Mr. Ellington or Mr. Leventon share any confidential information they received as general counsel or assistant general counsel for the Debtor without Debtor's

1 counsel's explicit written permission, nor accept any
2 confidential information that the two of them may have
3 received as general counsel or assistant general counsel for
4 the Debtor. Okay? So the injunction is --
5 MR. MORRIS: Your Honor, if I may, --
6 THE COURT: Who?
7 MR. MORRIS: Your Honor, if I may, that is not
8 sufficient for us, because that means that they can actually
9 share it with him as long as he doesn't request it. I'm a
10 little surprised --
11 THE COURT: No. You didn't hear the accept -- the
12 last part.
13 MR. MORRIS: Okay.
14 THE COURT: I added on at the end, nor shall Mr.
15 Dondero accept any confidential information. They -- he shall
16 not request that they share it, nor shall he accept it. Okay?
17 I --
18 MR. MORRIS: So, but that -- my concern is that that
19 makes Mr. Dondero the arbiter of what's confidential and
20 what's privileged. And I think that's improper. I think it's
21 really reasonable, and I'm surprised -- you know, we're all
22 advocates here, so I take no issue with counsel, but the order
23 was going to be pretty simple: Don't disclose privileged or
24 confidential information. If they don't like that, that's
25 fine. Just bar Mr. Dondero from speaking to either one of

them, period, full stop. Because we should not be in a position where he doesn't request it but somehow they send it to him. It is confidential.

I mean, who's deciding what's confidential here? Mr. Ellington? Mr. Leventon? Mr. Dondero? Just stop their communication. Mr. Dondero is subject to the Court's order. He's the one who's subject to this motion. Bar him from speaking to either one of them. It's a very -- very simple solution.

MR. BONDS: Your Honor, I agree that it's a simple solution. It's, I mean, not correct to assume that Mr. Dondero is in any way going to breach his obligations to the Court or to Mr. Ellington and Mr. Leventon. I don't see where -- what we're talking about.

MS. SMITH: Also, Your Honor, I have to object to him disparaging my clients that way. There's been no evidence that they improperly shared any information. They are licensed lawyers and they know the Rules of Professional -- they know the rules of professionalism, so --

THE COURT: Okay. I, you know, I didn't make a finding earlier when I held out my two giant takeaways, to get to your later question, no findings. But I really hope you share with them everything I said, the concerns I expressed. Maybe get the transcript.

MS. SMITH: Absolutely, Your Honor.

THE COURT: Because I have huge concerns about conflicts of interest here. Okay? Huge, huge concerns. I had them back when we had the discovery fight, Committee wanting documents, and, you know, and I still have them. You know, did Ellington know about the TRO?

MS. SMITH: Understood, Your Honor.

THE COURT: Okay. So let me backtrack. We already had a TRO that prevented Mr. Dondero from talking to any employees of the Debtor unless it was about shared services agreement.

So, Mr. Bonds, I'm going to flip it back to you on this one. Why shouldn't I at this point just say, okay, guess what, no talking to Mr. Leventon or Ellington for the time being? Why --

MR. BONDS: First of all, --

MS. SMITH: Your Honor, that's acceptable to us.

THE COURT: Okay. What's wrong with that, Mr. Bonds?

MR. BONDS: Your Honor, we don't believe that Mr. Dondero has violated the TRO.

And secondly and more importantly, we don't believe that there's any way that you can enter an order that singles out two former employees. I mean, that's bizarre.

THE COURT: If I'm concerned that it's thwarting the reorganization efforts and there are conflicts of interest here, why can't I?

1 You know, this is -- I hate to say it, but I feel like
2 I've been in the role of a divorce judge today. We have very
3 much a corporate divorce that has been in the works, unless we
4 get this pot plan on track, okay, and I'm a judge having to
5 enter interim orders keeping one spouse away from the other,
6 keeping one spouse out of the house, keeping one spouse away
7 from the kids. It's not pleasant at all. But I don't -- the
8 more I think about it, the more I have authority to do it just
9 to protect, to protect the nest egg here.
10 MS. SMITH: Your Honor, we are perfectly fine with
11 you enjoining Mr. Dondero from speaking to our clients, and we
12 will convey that to our clients.
13 THE COURT: Okay. Mr. Bonds, I can't hear you.
14 MR. BONDS: I'm sorry, Your Honor. What evidence is
15 there of irreparable harm as to Mr. Dondero talking with
16 either Mr. Leventon or Mr. Ellington?
17 THE COURT: Okay. Do I need to parse through the
18 communications I saw? Do I need to parse-
19 MR. BONDS: Yeah, I think so. I mean, I don't
20 understand.
21 THE COURT: Okay. I never authorized Mr. Ellington
22 to be the settlement lawyer or whatever, okay? I never would
23 have, okay? And maybe Mr. Seery, you know, said something to
24 -- early on in the case to make him think he had that
25 authority, but no, we're done. Okay? And I feel like it's

1 causing more harm than good right now. Okay?
2 I don't know who instructed all of these Dondero-
3 controlled entities to hire lawyers. I don't know if
4 Ellington and Leventon have been giving instructions to these
5 entities. But we've got conflicts everywhere now. Okay?
6 We've got -- and by the way, I'm just going to list them now.
7 We have, of course, Bonds Ellis representing Dondero. We have
8 Doug Draper, Heller Draper, now representing these trusts, Get
9 Good Trust, Dugaboy Investment Trust. We have K&L Gates and
10 now Munsch Hardt also representing the Advisors, NexPoint and
11 the various CLO or other Funds. We have CLO Holdco
12 represented by Kane Russell Coleman Logan. We have NexPoint
13 Real Estate represented by Wick Phillips. Who have I left --
14 and, of course, the employees, Baker & McKenzie and Ms. Smith.
15 We have Spencer Fane in there for other current or former
16 employees. We have Loewinsohn Flegle in there for certain
17 former or current employees.
18 I mean, the proliferation of lawyers. And again, I don't
19 know if Mr. Ellington and Mr. Leventon have had a role in
20 hiring counsel, wearing their hat for these other entities or
21 not. Can anyone tell me? Maybe I'm worried about something I
22 shouldn't be worried about.
23 MR. DONDERO: You're worried about something you
24 shouldn't worry about, Your Honor.
25 THE COURT: Okay. So Ellington --

MR. MORRIS: Your Honor, I would just point to the evidence that's in the record, Your Honor. You have Mr. Dondero asking Mr. Ellington to show leadership in coordinating all of the lawyers you just mentioned. It's in the record.

THE COURT: Yes. I'm just going to, until otherwise ordered, no conversations between Dondero and Ellington and Leventon, and that's just going to be my ruling until further order. That's what I feel best about.

Now, let me ask you, knowing that I could only give you a half a day on the 28th of January, if we start the confirmation hearing on whatever the plan looks like on January 27th, I mean, do people want to go with that, --

MR. POMERANTZ: Your --

THE COURT: -- even knowing we might not finish that day, or no?

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. Maybe if we could start on the 26th, have the 26th, 27th, and then maybe half of the 28th. I would think two and a half days should be enough, notwithstanding the volume of objections, because I think you'll find that, while there may be some evidence, I think the majority of the objections are really legal in nature.

THE COURT: All right. Traci, are you out there in video-land?

THE CLERK: Yes, I'm here.

THE COURT: Okay. Have I overcommitted the 26th? If we start the 26th at 9:30 in the morning, can we do that? Or --

MR. BONDS: Your Honor?

THE CLERK: That'd be fine.

THE COURT: Okay.

THE CLERK: Just remember that you have an appointment at lunchtime that day at noon on the 26th.

THE COURT: Okay. I --

THE CLERK: You don't have any court hearings.

THE COURT: Okay.

MR. BONDS: Your Honor, I'm sorry.

THE COURT: Go ahead.

MR. BONDS: Your Honor, I'm sorry. This is John Bonds. I have a hearing on the 26th that I can't miss.

THE COURT: Well, can someone else --

MR. POMERANTZ: Your Honor, we would request, right, that Mr. Lynn lead the confirmation hearing. There's a lot of lawyers. If we try to look at everyone's calendar, we're never going to be able --

THE COURT: Yes.

MR. POMERANTZ: -- to get something that's good for everyone.

THE COURT: Okay. Yes. Well, Mr. Lynn or Mr. Assink

can handle it, Mr. Bonds.

So we're going to start the 26th at 9:30. We'll go all day, except I have something at lunchtime, apparently. And then we'll go all day on the 27th, and then I can give you half a day on the 28th.

So you'll upload immediately a notice to that effect, Mr. Pomerantz.

MR. POMERANTZ: Yes, we would.

Your Honor, in terms of our documents in support of confirmation, we want to make it convenient with the Court. We know your Court would at least need one business day, so we would prefer to file, say, by 2:00 Central on the 24th, on a Sunday. Everyone will have it, and have one business day. I mean, the old order only had one business day in advance as well. So that's what we would propose for our confirmation documents to be filed.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. An important issue here is how the creditors have voted, and I have no idea how they have voted. The voting deadline has expired. So I have no problem with what Mr. Pomerantz suggests, but I do think that the Debtor should file its tabulation of votes sooner rather than later so we all know one of the central elements for the hearing that we'll have.

THE COURT: Okay.

MR. POMERANTZ: That's fair, Your Honor. We're

prepared to file the summary of voting and tabulation by the 15th of January.

THE COURT: Okay. Very good.

So, backing up, Mr. Pomerantz, you asked that I approve you filing any plan modifications by noon on Sunday, the 24th? Is that what you said?

MR. POMERANTZ: Yeah. So, there's a couple of things. There's our confirmation brief.

THE COURT: Uh-huh.

MR. POMERANTZ: There is our -- any evidence we would submit, although I suspect we are likely to provide live testimony, as opposed to a declaration. There was our summary of ballots, which we will now do on the 15th. And to the extent we have any modifications, we would provide them on Sunday by 12:00 noon Central time as well. Yes.

THE COURT: All right.

MR. RUKAVINA: Well, Your Honor, this is Davor Rukavina. Does that mean the witness and exhibit lists also will not be due until Sunday at noon? Because I would request that we have the normal period of time to exchange exhibits and witnesses.

MR. BONDS: Your Honor, I think that the normal time period is also important in this case.

THE COURT: Okay. I'm going to --

MR. POMERANTZ: Your Honor, we could -- if everyone

agrees on witness lists, we could do those by 5:00 p.m. Central on the 22nd.

THE COURT: Okay. Let's do that. Okay.

MR. POMERANTZ: But that -- but that needs to be for everybody.

THE COURT: Oh, it will be for everyone.

MR. RUKAVINA: Your Honor, no problem.

THE COURT: Okay. Let's --

MR. POMERANTZ: 5:00 p.m. Central Standard Time.

THE COURT: No more discussions. That'll be the ruling, okay? Everything is going to be due by 5:00 p.m. Central time on Friday, the 22nd. All right.

MR. POMERANTZ: Your Honor, is that our brief as well, or --

THE COURT: Yes.

MR. POMERANTZ: -- was that just the witness list?

THE COURT: Everything. Brief, witness list, and --

MR. POMERANTZ: Okay.

THE COURT: -- plan mods.

Let me look through my notes and see if there's anything else I want to say. You know, let me do some quick math here. I know there was one other thing I wanted to say that involves math. Okay. I think my math is right here. Okay. You know, I mentioned the proliferation of lawyers. And let me just say this. We had -- we've had about 90 people on the -- showing

1 up on the video screen today -- 89, 90, 91, 92. A few, a
2 little over 90. Okay? So let's say 90. It's been up to 95
3 earlier. But let's pretend that 60 of those are lawyers
4 billing by the hour. That's very conservative. Probably many
5 more than 60. And let's assume conservatively that the
6 average billing rate is $700 an hour. That's probably very
7 low, right? We probably don't have many baby lawyers on the
8 phone. So that's a very low average. So, 60 lawyers times
9 $700 an hour, $42,000 an hour this hearing has cost. And then
10 we've been going over seven hours. So let's say seven,
11 conservatively, times $42,000. This hearing has cost $294,000
12 today. A preliminary injunction hearing. I mean, no one
13 thinks that's chump change. I don't know, maybe some people
14 do. This just seems like a ridiculous way to spend resources.
15 No offense to all the wonderful lawyers, but this is just --
16 it's crazy-town, right? It is crazy-town. So I implore you,
17 okay, how about I use that word, I implore you to have these
18 good-faith discussions on a pot plan.
19 Please, Mr. Dondero, I mean, don't waste people's time.
20 $160 million, I know that's not going to cut it. Okay? So
21 it's going to have to be more meaningful. I just know that in
22 my gut.
23 But having said that, I mean, I honestly mean I think a
24 pot plan -- I think you getting your baby back is the best
25 thing for everyone. Okay? I think it's the best thing for

everyone. So I want you all to --

MR. DONDERO: Judge, I -- Judge, I just need to interject for a second, because no one follows the big picture. We filed for bankruptcy with $450 million of assets. $360 million of third-party net assets, $90 million of affiliated notes. The third-party assets are down to $130 million and falling fast.

MR. POMERANTZ: Your Honor, I hate to interrupt Mr. Dondero, but that is not the purpose of this hearing.

THE COURT: Well, --

MR. POMERANTZ: Mr. Dondero's statement of the assets and value is just not something that the Debtors would agree and support. I'm sure it's not something the creditors -- I think we understand what Your Honor is saying. I think the Committee understands. And Your Honor knows that the Debtor and the Committee are close to the asset values. And Mr. Dondero should be making his argument to the Debtor and the Committee, not Your Honor, in this open forum.

THE COURT: Okay.

MR. POMERANTZ: It's just not appropriate.

THE COURT: And I understand where you're both coming from. And he's saying that because I made the comment I made about $160 million not being enough.

I've seen the evidence. I've heard the evidence at prior hearings, Mr. Dondero. We've had a lot of hearings. And I

1 remember writing that down. Wow, why did that happen? Seeing
2 the dissipation of value. I couldn't remember the exact
3 numbers, but I thought it was like $500 million something and
4 then $300 million or whatever. And I remember Multi-Strat,
5 that being sold, and blah, blah, blah, blah.
6 But having said that, there are a lot of causes of action
7 that have been hinted at by the Creditors' Committee and
8 others. So, causes of action is one of the things they are
9 looking at when they start thinking about what's appropriate
10 value.
11 So I just, I get where everyone is coming from. I get
12 where everyone is coming from. But, again, let's take one
13 more stab at this, please. Okay?
14 MR. POMERANTZ: Yeah. And Your Honor, my last
15 comment. We're commercial people. The creditors are
16 commercial people. I think we've done a tremendous job in
17 being able to resolve most every one of the significant
18 claims. I think the Court should trust the process. Mr.
19 Dondero should trust the process.
20 And again, if there's a commercial deal to be worked out,
21 I don't think there's anyone more than of course the Debtor
22 and the people on the Committee, who have been litigating in
23 many cases with Mr. Dondero and Highland for ten years, I
24 don't think it's anyone's desire. So if there's a reasonable,
25 rational proposal that the creditors can get behind and want

to engage, then there'll be a discussion. If they don't believe it's a reasonable, rational proposal, they won't.

THE COURT: Yes. All right. Well, I do feel very good about what I've heard about the UBS issues being worked out. I mean, we have come a long way in 15 months, even though it's frustrating to me and others. But, again, I know you all are going to do what you need to do. And I'll look for the form of order. I'm going to see you all, Mr. Dondero, including you, next Wednesday. And if there's nothing else, we stand adjourned.

MS. SMITH: Your Honor, I'd like to review the form of order as it regards my clients before it's submitted.

THE COURT: Okay.

MS. SMITH: If I could have a courtesy copy, please.

THE COURT: Yes. Well, yes. I'm not going to require 90 lawyers to get the order, but I will ask Mr. Pomerantz, Mr. Morris, make sure Ms. Smith gets it and obviously Mr. Dondero's counsel gets it. And I probably won't get it until Monday, it sounds like, but --

MR. POMERANTZ: That's likely.

THE COURT: But I'll be on the lookout for it. Okay. Thank you. We stand adjourned.

MS. SMITH: Thank you, Your Honor.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

MR. BONDS: Thank you, Your Honor.

(Proceedings concluded at 4:09 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **01/11/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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EXHIBIT 37

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Tuesday, January 26, 2021 9:30 a.m. Docket MOTION FOR ENTRY OF ORDER AUTHORIZING DEBTOR TO IMPLEMENT KEY EMPLOYEE PLAN [1777]
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al. Defendants.	**Adversary Proceeding 21-3000-sjg** PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST CERTAIN ENTITIES OWNED AND/OR CONTROLLED BY MR. JAMES DONDERO [5]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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DALLAS, TEXAS - JANUARY 26, 2021 - 9:40 A.M.

THE COURT: All right. We have Highland settings this morning: a Motion for Approval of a KERP, which I didn't see objections to, and then a Preliminary Injunction hearing. Let me get appearances from the parties who have filed pleadings.

For the Debtor team, I see Mr. Morris. Who do we have appearing?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz and John Morris appearing on behalf of the Debtor. I will handle the KERP motion, which we'll propose goes first and quickly, and then Mr. Morris will handle the adversary proceeding.

THE COURT: All right. Very good.

All right. Let me get appearances from the Defendants in the preliminary injunction matter. Do we have Mr. Kane or someone for CLO Holdco?

MR. KANE: Yes, Your Honor. John Kane for CLO Holdco, Ltd.

THE COURT: All right. What about for the Funds and Advisors? I guess we have a couple of law firms involved. Who do we have appearing for the K&L Gates firm?

MR. HOGEWOOD: Good morning, Your Honor. This is Lee Hogewood with K&L Gates, and also with our firm appearing today is Emily Mather.

THE COURT: Okay. I didn't get Emily's last name. Could you repeat that?

MR. HOGEWOOD: I'm sorry, Your Honor. Emily Mather, M-A-T-H-E-R.

THE COURT: Thank you.

All right. For the Munsch Hardt team, do we have Mr. Rukavina or someone else appearing?

MR. RUKAVINA: Your Honor, good morning. This is Davor Rukavina. I represent all of the Defendants in the adversary except CLO Holdco.

Pursuant to the Court's instructions, Mr. Dondero is also present here in my conference room, so he is here. He is not on the camera, but he is here.

THE COURT: Okay. All right. And does Mr. Dondero have counsel, his individual counsel appearing today?

MR. WILSON: Your Honor, John Wilson for Jim Dondero.

THE COURT: Okay. Thank you. Do we have Creditors' Committee lawyers on the phone today?

MR. CLEMENTE: Yes, Your Honor. Good morning. Matthew Clemente; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. Thank you.

All right. Well, obviously, if any other lawyer is dying to chime in at some point today, I will consider letting that happen. But, again, I think we've got the parties who have

filed pleadings having appeared at this point. So, let's turn to the KERP motion. Mr. Pomerantz?

MR. POMERANTZ: Yes, Your Honor. Good morning again. On January 19th, the Debtor filed its motion for approval of a Key Employee Retention Program which would substitute out its annual bonus plan.

We have not received any opposition to the motion, although the United States Trustee did ask some questions which we are prepared to address in connection with the proposed proffer of Mr. Seery's testimony. I'm happy to make a full presentation of the motion to Your Honor, if you would like, or I could just present Mr. Seery's proffer, which I should -- which I believe will establish the factual predicate and the evidence to support the motion.

THE COURT: All right. Let's just go straight to the proffer, please.

MR. POMERANTZ: Okay. Thank you, Your Honor.

PROFFER OF TESTIMONY OF JAMES P. SEERY

MR. POMERANTZ: Mr. Seery is on the video today, and if he was called to testify he would testify that his name is James P. Seery, Jr. and that he is the chief executive officer and chief restructuring officer of Highland Capital Management.

He would also testify that he was one of the independent directors appointed to the Court on January 9th, 2020.

Because of his role with the Debtor, he is familiar with the company's day-to-day operations, including its -- the company's employee and wage benefit and bonus plans relating to the employees.

He would testify that he has been involved in the negotiation and drafting of the company's plan of reorganization, and is familiar with the expected operation of the Claimant Trust and Reorganized Debtor post-confirmation in connection with the plan.

He would testify that the plan generally provides for the monetization of the company's assets for the benefit of creditors and stakeholders, and he would testify that, as part of the plan process, he worked closely with DSI, the company's financial advisor, to assess both the costs of the Debtor's current employee base and the projected cost of operations in connection with the Reorganized Debtor and Claimant Trust following the effective date.

He would testify that, to ensure the continued smooth operation of the company in connection with the continuation and consummation of the plan for the benefit of all stakeholders, that he worked with DSI to determine the appropriate staffing needs necessary for the company's remaining operations.

He would testify that he analyzed the current employees to determine which, if any, would need to be continued to be

retained by the Debtor and operate during the Reorganized Debtor and Claimant Trust period following the effective date of the plan.

He would testify as part of that analysis he reviewed the roles and functions of the non-insider employees with respect to the services that they needed, and he reviewed the wages, benefits, and bonuses for those remaining non-insider employees necessary for those functions.

He would testify, that based upon his review, the company determined that it was in the best interests of the estate to terminate the existing annual bonus plan, as it was no longer necessary to effectively incentivize the remaining non-insider employees who would be terminated prior to being entitled to any further payments under the annual bonus plan.

He would testify that, instead, the company developed a new retention plan that was designed to incentivize the non-insider employees to remain with the company for as long as they are needed to assist in the effectuation of the plan.

He would testify that Mr. Waterhouse and Surgent, arguably two insiders of the Debtor, are not eligible for the retention plan, and that's not because there is any concern regarding their loyalty, but the Debtor is looking at ways to appropriately incentivize and compensate those people as appropriate in the future.

He would testify that there are a few persons on the list

of people who are part of the retention plan with a title that includes director or manager; however, he would testify that none of those individuals are corporate officers or directors of the Debtors -- the Debtor, and that the titles are for convenience only. He would testify that the individuals who are employed in these roles do not have any authority whatsoever to make any decisions on behalf of the Debtor.

He would testify that in connection with the new retention plan, the non-insider employees may be offered the opportunity to enter into a termination agreement with the company that will provide specified benefits and payments in return for the non-insider employee remaining as an employee in good standing with the company through the separation date.

He would testify that a key component of the retention plan is that non-insider employees will be entitled to the specific bonus payments provided that they do not voluntarily terminate their employment with the Debtor prior to the separation date and are not terminated for cause.

He would testify that that is in contrast to the existing or the prior annual bonus plan, which provided that non-insider employees would not receive their bonus payments if they were not employed by the Debtor on the vesting date for any reason except on account of disability, including termination without cause.

Mr. Seery would further testify that the retention plan is

being offered to approximately 53 employees, and the projected aggregate amount of payments under the retention plan is approximately $1,481,000, which is $32,000 approximately less than the amount that would have been paid to such employees under the annual bonus plan.

He would testify that the retention plan includes 20 employees who are not entitled to benefits under the annual bonus plan. Fourteen employees are entitled to receive more under the retention plan than they would have received under the annual bonus plan.

With respect to the 20 employees I've previously mentioned who are not otherwise entitled to receive anything under the annual bonus plan, the vast majority of those -- 18 -- will be entitled to payments of $2,500 each, and the other two entitled to payments of $10,000 and $7,500, respectively.

Mr. Seery would testify that he believes that these additional payments are reasonable in light of the current status of the company and the value to be added to the estate through the retention of these employees, and that this plan is more accurately and narrowly-tailored to achieve the company's reorganization goals.

On this basis, Your Honor, Mr. Seery would testify that he presented the proposed retention plan to the independent directors and they agreed with Mr. Seery's assessment that entry into the retention plan was in the best interests of the

estate and its creditors.

He would also testify that he had negotiations with the Creditors' Committee and its advisors regarding the retention plan and that the Committee is supportive of the retention plan.

And that would conclude my proffer of testimony from Mr. Seery, Your Honor.

THE COURT: All right. Mr. Seery, if you could say "Testing, one, two" so we can catch your audio and video, please?

MR. SEERY: Testing, one, two, Your Honor.

THE COURT: All right. There you are. Please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Is there anyone who has questions at this time for Mr. Seery?

(No response.0

THE COURT: All right. Well, I'll just double-check with the Committee. It's been represented that you all are in support of this. Mr. Clemente, if you could confirm that on the record?

MR. CLEMENTE: That's correct, Your Honor. The Committee has no objection to the motion, so Mr. Pomerantz's statements are accurate.

THE COURT: All right. Anyone else?

MS. LAMBERT: This is Lisa Lambert for the United States Trustee. The U.S. Trustee has reviewed the actual data about the comparatives, and the U.S. Trustee, based on the stipulations, has no objection.

THE COURT: All right. Thank you. Anyone else?

All right. Well, the Court will approve this motion. First, while the notice was expedited, the Court finds that it was sufficient under the circumstances. We are many months into the case, it's been vetted by the Committee, and the Court is satisfied with the level of notice here.

The Court finds that this is a KERP that is justified by all the facts and circumstance of this case, to use the wording of Section 503(c)(3) of the Bankruptcy Code. There also appears to be a very sound business purpose justifying the proposed KERP. It appears to be reasonable in all ways, and fair under the circumstances, so I do approve it.

All right. So if you all will get the order uploaded electronically, I will promise to sign it promptly.

MR. POMERANTZ: We will do so, Your Honor. Thank you.

THE COURT: All right. So, the preliminary injunction. Mr. Morris, I heard you were going to be taking the lead on that, so go ahead.

MR. MORRIS: Indeed. Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

THE COURT: Good morning.

MR. MORRIS: A few items before I give what I hope will be an informative opening statement. I trust that Your Honor has not had the opportunity, because it was just filed a moment ago, to see that the Debtor filed on the docket notice of a settlement with CLO Holdco, Ltd., one of the Defendants here today.

THE COURT: I have not seen that. Okay.

MR. MORRIS: Right. So you'll find that at Docket 1838.

THE COURT: Okay.

MR. MORRIS: It really is a very simple settlement, Your Honor. In exchange for the withdrawal of CLO Holdco's objection to the Debtor's plan of reorganization, the Debtor is dismissing CLO Holdco from this adversary proceeding with prejudice. There are, you know, some other bells and whistles there, the most important of which to the Debtor is simply that, under the CLO management agreements, most of them but not all of them require that a level of cause be established before the contracts can be terminated, and CLO Holdco has agreed that, before it seeks to terminate a contract for cause, there will be a gating provision or a gatekeeping provision that requires them to come to this Court to simply establish whether or not there is a colorable claim -- not for a determination on the merits, but simply to protect the

Debtor from frivolous lawsuits.

So that's really the sum and substance of it. Mr. Kane is on the line now, and if I've either inaccurately or incompletely characterized the settlement, I'm sure he'll take the opportunity to supplement the record. But we don't see any need, really, to go through a full 9019 motion here. There's no releases. There's no exchange of money. It's the withdrawal of a plan objection in consideration for the dismissal of an injunctive proceeding.

So we did want to alert you to that. And as a result, there was one witness that we intended to call today, Grant Scott. Mr. Scott is the director of CLO Holdco. And with the resolution of the issues between the Debtor and CLO Holdco, we have no intention of calling Mr. Scott today. But I'd like to give Mr. Kane an opportunity to be heard just in case he's got anything to add.

THE COURT: All right. Mr. Kane, can you confirm? Do you have anything to change about what you heard?

MR. KANE: Your Honor, I do not. The settlement agreement speaks for itself. We did reach an agreement with Debtor's counsel and the Debtor yesterday evening, fairly late in the evening. Mr. Morris's synopsis of the proposed settlement is accurate. The Debtor has agreed to dismiss CLO Holdco from the preliminary injunction adversary proceeding with prejudice.

THE COURT: All right. Well, thank you. I've pulled it up on my screen. It's very short and to the point. And I agree with the comment of Mr. Morris that I don't think a formal 9019 motion is required here, given no consideration is going back and forth, or releases. It's just exactly as you described orally. So, I appreciate that. It simplifies a little bit what we have set today. And we will accept this settlement as being in place as we roll forward. All right? Thank you.

MR. MORRIS: Thank you, Your Honor.

So, before I get to the substance of the argument, I would like to take care of some housekeeping items relative to today's proceedings.

THE COURT: Okay.

MR. MORRIS: You know, this has been a bit of a challenge for me personally, and it's going to be a little bit of a challenge today for Ms. Canty, my assistant, in part because it's almost like Groundhog's Day. This is, I think, the third time that we're covering some of the same issues. We had covered them the first time on December 16th in connection with what I'll now just simply refer to as the Defendants, the Defendants' motion to try to limit the Debtor from trading the CLO assets. We heard a lot of what we're going to hear today again on January 8th in connection with the preliminary injunction motion against Mr. Dondero. And so

there's already a ton of evidence in the record. We do believe that we need to present our evidence today, but one of the challenges that we'll face, and I think we'll be able to do it efficiently, Your Honor, is there may just be some back and forth between various documents. But everything's gone pretty smoothly, and I'm optimistic we'll get through that part of it today.

So I want to deal with the exhibits themselves, Your Honor. As you may have seen, there have been a number of different filings relating to the Debtor's exhibits for this particular motion, and I just want to go through the exhibits and make sure that we're all on the same page here. I want to tell the Court exactly what happened and why and where we are today.

The Debtor timely filed its original witness and exhibit list on January 22nd. They filed that witness and exhibit list at Docket 39 in this Adversary Proceeding 21-3000. The exhibit list referenced Exhibits A through I'll just say AAAAA. It was a lot of exhibits, and somebody had the wise idea to convert them to numbers, but it wasn't me, so I can't take credit. But we're left with letters, and they go from A through AAAAA.

After filing that initial exhibit list, we realized that --

(Interruption.)

THE COURT: All right. Does someone have their device unmuted? Okay. It went away. Go ahead, Mr. Morris.

MR. MORRIS: Thank you. So, shortly after filing that initial exhibit list, we realized that we forgot to file among the exhibits AAAAA. So at Docket #40 in the adversary proceeding, the Court can find Debtor's Exhibit AAAAA.

And then we're going to -- I'm going to refer in a few minutes -- I'm going to use in a few minutes some demonstrative exhibits, and I'm going to use them again with Mr. Seery. And these exhibits concern trading in AVYA and SKY securities that you've heard about previously.

But I'm pointing that out now because I'm kind of old school, Your Honor, and I won't use a demonstrative exhibit if it doesn't have the evidence in the record. And what we realized, Your Honor, is we made two additional mistakes on Friday with all the papers that we filed. The backup for these demonstratives was mistakenly included on the exhibit list for the confirmation hearing as opposed to the preliminary injunction hearing. That was error number one. And error number two, we hadn't redacted the information to show only the SKY and AVYA.

And that's why, Your Honor, at Docket #48, you will find our amended exhibit list that includes what we have identified as Exhibits BBBBB as in boy through SSSSS as in Sam. And those exhibits, Your Honor, are the backup to the

demonstrative exhibits. I don't expect to use them at all, but I do believe strongly that one should not use a demonstrative exhibit unless the evidence is in the record to support it, and now it is.

So that's why, Your Honor, I do appreciate your court staff. I do appreciate Your Honor. I think you either had before you and you may have signed an order on redacting. This is what it was all about. It was just to make sure we had the proper evidence in the record, so I appreciate that.

At this time, Your Honor, I think, just because I'll be referring to it in the opening, the Debtor would move for the admission into evidence of Exhibits A through SSSSS.

THE COURT: All right. Is there any objection?

MR. RUKAVINA: Your Honor, there is. Your Honor, I object to UUUU. I'll object to VVVV as in Victor. I object to AAAAA. That's it, Your Honor.

I will note that there are several exhibits in here of relevance to CLO Holdco that may not be relevant to my clients, but those are my limited objections for now.

THE COURT: All right. Before we ask the nature of your objection, let me ask Mr. Morris: Shall we just --

MR. MORRIS: Yeah.

THE COURT: -- carve these out for now, and then if you want to offer them the old-fashioned way, we'll hear the objection then?

MR. MORRIS: Yes, although I can make it very clear that UUUU should not be in there precisely because it's demonstrative. We had talked that yesterday and I agreed; I just forgot that. UUUU should not be part of the record.

THE COURT: Okay. And so you'll just decide later do you want to offer VVVV and AAAAA the old-fashioned way?

MR. MORRIS: Correct.

THE COURT: All right. So, for the record, I am admitting by stipulation -- with three exceptions I'll note -- all of the exhibits of the Debtor that appear at Exhibits 39 and, well, and 48. And we're carving out of that admission UUUU, VVVV, and AAAAA, which actually appears at Exhibit -- Docket Entry 40. Those are not admitted at this time.

(Debtor's Exhibits A through SSSSS, exclusive of Exhibits UUUU, VVVV, and AAAAA, are received into evidence.)

THE COURT: All right. Go ahead, Mr. Morris.

MR. MORRIS: Yes.

MR. RUKAVINA: Well, Your Honor, while we're talking about housekeeping -- Mr. Morris, I apologize. Is there more housekeeping?

MR. MORRIS: I'd like to continue. I was going to describe the witnesses.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: So, Your Honor, the Debtor is going to call three witnesses today. The first witness will be Mr.

Dondero, the second will be Jason Post, and then the third will be Mr. Seery.

Obviously, Mr. Dondero and Mr. Seery are very familiar to the Court and they will cover much but not all of the same ground that you've heard previously.

Mr. Post, I believe, is a new witness appearing in this court for the first time. I understand that he is the chief compliance officer of each of the Debtors [sic]. He had worked at Highland Capital Management, the Debtor, for more than a decade, I believe, but moved over to NexPoint to work with Mr. Dondero shortly after Mr. Dondero resigned from Highland Capital on or about October 10th last year.

So those are the three witnesses that we plan to present today, and I'd like to describe briefly kind of what we think the evidence will show.

The theme from our perspective here, Your Honor, is that this is a case that is about power and not rights. The Debtor brings this motion for preliminary injunction in order to protect itself from the interference of Mr. Dondero and the Defendants, entities that there will be no dispute he owns and controls.

You may have read in the papers, and I suspect you will hear today from the Defendants, the clarion call for contractual rights and the need for this Court to protect their contractual rights. This is a red herring, Your Honor.

1 There are no contractual rights at issue here. What Mr.
2 Dondero and the Defendants really want is to maintain control,
3 or at least to deny Mr. Seery from exercising the Debtor's
4 valuable contractual rights. If there are any contractual
5 rights at issue here, it is the Debtor's. The Debtor is the
6 party to the CLO management agreements, and it's those very
7 rights that are being infringed upon.
8 This was supposed to have been resolved 53 or 54 weeks ago
9 now, Your Honor, when Mr. Dondero agreed and this Court
10 ordered that Mr. Dondero could not use related entities to
11 terminate any of the Debtor's agreements. There is no dispute
12 that each of the Defendants is a related entity for purposes
13 of the January 9th order, since Mr. Dondero and Mr. Norris
14 have already testified that the Defendants are owned and/or
15 controlled by Mr. Dondero.
16 Notwithstanding the plain language of the January 9th
17 order, which Mr. Dondero not only agreed to, but it may be one
18 of the very few orders in this case that he hasn't appealed,
19 notwithstanding the plain language, Your Honor, he persists,
20 and that is why we are here.
21 How do we know that this is about power and not rights?
22 How do we know that everything that's going to be described
23 for you, what the evidence is going to show that this is about
24 power and not rights, is very simple. Mr. Dondero and Mr.
25 Post will testify -- I'm just going to give four, five, six

examples here -- are going to testify that Mr. Seery's AVYA trades were not in the Funds' best interests. It's an irrelevant point, Your Honor. There is no contractual right that gives them the ability to terminate because they don't like trades that are being made. They can sell. If they don't like it, they can sell. That's what's really funny about this.

But what's -- what makes it even more clear that this is about power and not rights is the evidence is going to show that Mr. Dondero sold AVYA shares throughout 2020. He sold those shares right up until the day he resigned. And yet six days after resigning, NexPoint sends a letter saying, Don't sell any assets.

Ms. Canty, can we put up Exhibit number -- Demonstrative Exhibit 1, please?

Okay, Your Honor. We have redacted this to shield from public disclosure the name of each fund that's trading, but the backup, as I alluded to earlier, in Exhibits BBBBB through SSSSS, some portion of those documents, that's where these demonstrative figures come from.

And as you can see, beginning on January 29, 2000, continuing through the bottom of the page, October 9th, 2020, when Mr. Dondero left Highland Capital, he traded millions and millions and millions of dollars in AVYA stock.

Can we go to Demonstrative Exhibit #2, please?

This chart is really -- no, I apologize if I -- the other one. The AVYA trading activity chart. Yeah.

This one is really interesting, Your Honor, because it shows the trading throughout the year of AVYA stock, and you can see the brown bars there represent Mr. Dondero's trades. And you can see just how many trades there are. There are over a million shares, I think, if you added it up. They're represented by the brown bars. You can see him selling AVYA stock throughout the period, sometimes at a price really near its bottom.

And then Mr. Seery tries and actually does sell some stock toward the end of the year. That's the green bars on the right. A very, very tiny amount compared to Mr. Dondero. And he sells it at a substantially greater price than Mr. Dondero sold the AVYA stock. And yet they're here telling you, Your Honor, that somehow Mr. Seery is mismanaging the CLOs and they disagree with what he's doing and he's not acting in the best interests of the investors. That's what they want -- but this is what the evidence shows, Your Honor.

With respect to SKY, if we could go to the next slide, please.

So this is SKY. Now, Mr. Dondero did not trade any SKY securities, but Mr. Seery did. And this was another security -- and we'll get to the evidence in a moment -- that Mr. Dondero interfered with and tried to stop. So Mr. Seery

succeeded sometimes and he was stopped sometimes, but the point is, Your Honor, look at the price that Mr. Seery sold.

And remember, you heard this before and you're going to hear it again. Nobody from the Defendants ever asked Mr. Seery, Why do you want to trade this? Not that they even had to. Not that Mr. Seery needs to defend himself, frankly. He's got the authority under the management contracts to act in the way that he thinks is in the best interest. But look at this chart. He made these sales, Your Honor, at more than twice the price of the bottom.

How can they have any credibility? How can Mr. Dondero and Mr. Post come into this courtroom and assert that Mr. Seery is doing anything other than a fabulous job? He is selling at the top of the market. Because they think that some high -- in the future, it's going to go higher? It's prudent, Your Honor.

Mr. Seery is going to tell you the work that he did. He is going to give you the rationale for his decisions. And the only conclusion that I hope and believe the Court will be able to reach is that these were not only rational decisions but they were prudent, taking some money off the table when the stock was near its high.

That's how we know, this is more evidence how we know this is about power. It's not about rights. It's not about justice. It's not about anything having to do with anything

other than Mr. Dondero wanting to maintain control.

How else do we know? What other evidence is there that this is about power and not rights? Again, the timing. The calendar here is going to be very, very important. The first demand from NexPoint from the Defendants that Mr. Seery stop trading came on October 16th. It was less than a week after Mr. Dondero -- like, where does this come from? There's no right to demand stopping of trading. You don't get to do it. And they're going to minimize it. They're going to spend the whole day, Your Honor, either -- either focusing on the law or trying to minimize. And they'll say, well, it was just a request, Your Honor. And if it was a third-party request, I bet Mr. Seery -- Mr. Seery is going to tell you, if it was a third party, he wouldn't care. But when you put all of this together, it is oppressive. It is an exertion -- it's an attempt at exertion of control. That's how it's perceived and that's actually what happened.

Do you need more evidence? Again, they'll talk about termination for cause and how they have the right and the Court -- you, Your Honor, don't have the power to infringe upon their contractual rights. But there will be no evidence. Absolutely none. Mr. Post is going to tell you, in fact, that he has no evidence of any breach, of any default, of any reason whatsoever that cause might exist for the termination of these contracts. That's how you know this is about power

and not rights.

Last point on the issue of power versus rights: Who were the counterparties to the CLO agreements? Did the CLO Issuers -- where are they? They're not here. They're not here to tell the Court that Mr. Seery is breaching his duty. They're not here to tell the Court that the Debtor is in default. In fact, what Mr. Seery is going to tell you, and it won't be rebutted, is that the CLO Issuers are close to finalizing a deal that will permit the Debtor to assume the CLO management contracts.

Mr. Post or Mr. Dondero might get up on the stand today and say, oh, because people have left the firm, that somehow they don't have the ability to service the contracts anymore. You know who doesn't believe that? The contractual counterparty, the Issuers. It's about power, Your Honor. It's not about rights.

There is substantial evidence that warrants the imposition of a preliminary injunction, substantial evidence, much of which you've heard already.

The October and November letters demanding or requesting that the Debtor halt trades. There's no right to that.

Mr. Dondero's interference with the support of Joe Sowin, the Advisors' trader, around Thanksgiving, when they actively moved in. And it's in the emails. It's in the record. We'll put in the record again.

1 And then he made the threat to Thomas Surgent -- Mr.
2 Dondero made the threat to Thomas Surgent about potential
3 personal liability.
4 The ridiculous -- remember the ridiculous motion that was
5 heard on December 16th, a motion so devoid of factual or legal
6 basis that the Court granted the Debtor a directed verdict and
7 dismissed the motion as frivolous? Notably, neither Mr.
8 Dondero nor Mr. Post testified at that hearing. Yet, within a
9 week, Your Honor -- the hearing was on a Wednesday. The
10 hearing was on Wednesday, December 16th. The Court entered
11 the order on Friday, December 18th. On Monday, December 21st,
12 the next business day, Mr. Dondero and Mr. Post and the
13 lawyers for the Defendants held conference calls to figure out
14 what to do next.
15 And the very next day, the evidence is going to show --
16 it's already in the record -- Mr. Dondero again actively
17 stopped Mr. Seery's trades from being effectuated. They sent
18 their first letter. This is less than a week after that
19 hearing, Your Honor. They sent another letter asking the
20 Debtor -- again, they requested -- minimize -- this is what
21 you're going to hear: Well, we just sent a letter requesting
22 no more trading.
23 What happened the next day, December 23rd? They send
24 another letter and they say, We're thinking about terminating
25 the contracts. Now we think we're going to terminate the

1 contracts. And we just want to let you know we're thinking
2 about terminating the contracts.
3 And we call them -- and Mr. Seery is going to testify to
4 this -- we say, What are you doing? Every time we just said,
5 Please withdraw your letter. There's no basis for doing this.
6 Leave us alone and let us do our job. They wouldn't -- they
7 refused to withdraw the letter.
8 And finally -- again, Mr. Seery will testify to this -- we
9 told them, If you think you really have a basis for
10 terminating the contract, make your motion to lift the stay.
11 And if you don't, the Debtor will file the motion that brings
12 us here today.
13 And that's how we got here, because they continued to
14 interfere with the trading. They continued to send these
15 specious letters that are implicit threats. Mr. Seery is
16 going to tell you that every one of these, he -- is an
17 implicit threat. We asked them, Just withdraw the letters and
18 stop it. We asked them to make their own motion if you think
19 so strongly of it. They wouldn't do that, either. They just
20 want it hanging out there. They just want it all hanging out
21 there over Mr. Seery's head so that he knows somebody's --
22 somebody's watching and somebody's planning, you know, to take
23 action.
24 It's not right, Your Honor. They have no right to any of
25 this. There's nothing in the contract that allows them to

make even a good-faith -- to make any claim that they have cause to terminate the contract. They have no right under any circumstances to stop Mr. Seery from trading.

What they are going to tell you is there's no agreement between the Advisors and the Debtor that requires the Advisors to execute the trades. And they're right about that. They're actually right about that. But here's the thing, Your Honor. What Mr. Seery is going to tell you is that Advisors has the trading desk. For more than a decade, they executed the trades. Through the entirety of this bankruptcy case, until Mr. Dondero left Highland, they executed the trades. Even after Mr. Dondero left Highland in October, they continued to execute the trades. And on December 22nd, they fold their hands and they say, Nope, I don't care about the course of dealing, I don't care what impact it has, you can't make me do it. So Mr. Seery has tried end-arounds, and that'll be in the record, too, and that's when the threats to Surgent come. That's when the threat to Surgent come, when we try to do the workaround. Cannot do it.

This is just not right, Your Honor. It's just not right. There's order -- there's the January 9th order. There was the TRO that was in effect that we're going to hear about again, because that TRO not only applied to Mr. Dondero, it prevented him from conspiring with or even encouraging a related entity from engaging in prohibited conduct. And that prohibited

conduct, as Your Honor knows, because it's your order, is plain and as unambiguous as can possibly be: Don't interfere with the Debtor's business. It's all we're asking for. It's the only reason we're here today.

Interestingly, Your Honor, probably the best piece of evidence that I'll put in front of you today are going to be the words out of Mr. Post's mouth, because basically what he's going to tell you is that, as chief compliance officer, he has never once in the history of his employment told Mr. Dondero to stop. In fact, what he's going to tell you is that he defers to the investment professionals, and that but for the TRO that is consensually in place today, it would depend on the facts and circumstances as to whether or not he actually does anything as chief compliance officer to stop this conduct. Depends on the -- maybe he can explain to Your Honor what facts and circumstances he thinks, as chief compliance officer, would allow the Advisors to interfere with the Debtor's business. It'll be interesting to hear him answer that question.

That's all I have, Your Honor. I look forward to presenting the evidence today. I'd like this done once and for all. It's time to move on. And the Debtor -- the Debtor is in bankruptcy. Your Honor, I think, has every power, every right, and frankly, you know -- I feel very strongly about this, obviously, Your Honor -- the Debtor needs the breathing

space and to be left alone so it can do its job. And we'll respectfully request at the end of this that the Court enter an order allowing it to do so.

Thank you, Your Honor.

THE COURT: All right. We were hearing some distortion there, I'm not sure where it was coming from, but we'll try to keep it reined in.

Mr. Rukavina, your opening statement.

MR. RUKAVINA: Your Honor, thank you. Can the Court hear me?

THE COURT: Yes.

OPENING STATEMENT ON BEHALF OF CERTAIN DEFENDANTS

MR. RUKAVINA: Your Honor, I think it's important first to note a few obvious things. One, what we're talking about today is enjoining future rights, future rights under a contract. Hearing Mr. Morris's opening, it sounds like we're trying a breach of contract case. There is no declaratory relief sought for whether there is grounds for a breach of contract case. And prior to assumption and prior to confirmation, the automatic stay applies.

So let me be clear that what they're asking the Court to do today is to excise from these contracts our rights in the future, effectively for all time, as I'll explain.

The second thing that merits real consideration is that it is the Funds, Your Honor, not the Advisors, it is the Funds

that have the right to remove the Debtor as manager.

Those Funds, as you will hear, have independent boards. Mr. Dondero doesn't own those Funds. He's not on those boards. He doesn't control them.

When Mr. Morris talks about Mr. Norris's prior testimony, that testimony was limited to the Advisors. And yes, Mr. Dondero does own the Advisors, and Mr. Dondero, while I won't say controls the Advisors, certainly has a lot of input. That is not the case for the Funds, which are the ones with the contractual powers here to remove the Debtor.

You will hear that those -- that that board or those boards meet frequently, they have independent counsel, and they take separate actions, including very recently where they did not do something that was advised and acted independently.

And the third thing that makes this case different and that all of us should bear in mind is that we're talking today about other people's money. There's more than one billion dollars of investment funds, retirement funds, pension funds, firefighter funds, school funds, wealthy individuals, having nothing in the world to do with Mr. Dondero or anyone in this case.

So what we're talking about here today, Your Honor, is that if my retirement manager files bankruptcy, that I for all time would be effectively enjoined from removing him, no matter what he may do in the future, just because he needs

1 that revenue.
2 That is an absolutely inappropriate use of a preliminary
3 injunction. It is the modification of a contract that the
4 Debtor seeks to assume, and there is going to be no evidence
5 on the underlying elements that the Court must consider.
6 I say that, Your Honor, because I'm new to -- I'm late to
7 this case but I have studied in detail what Your Honor did in
8 the *Acis* case. And I think that we have to qualitatively
9 differentiate today from *Acis*. In *Acis*, there were
10 allegations of fraudulent transfer. When Your Honor enjoined
11 future actions, I believe in part it was because the
12 legitimate owner of those rights might not have been having
13 those rights.
14 So that was a very important difference. Here, there's no
15 question that we have more than billion dollars of other
16 people's funds at issue.
17 Also in *Acis*, as confirmed by the District Court, there
18 was the exercise of an optional redemption right, which could
19 have very well been used as a weapon to strip the manager of
20 its rights. That's not the case here today. We are talking
21 about removing the Debtor in the future -- not today, not
22 prior to assumption, in the future -- for such things as if
23 the Debtor commits fraud, if Mr. Seery is indicted for
24 felonies, if the Debtor absconds with our funds. We are
25 talking about potential hypothetical actions in the future

that are not even ripe based on the Debtor's potential wrongful actions, not based anything on our motivations or our intentions.

So this is a different case than Your Honor has heard so far in these cases. And what it boils down to, Your Honor, is will the Court give judicial immunity to the post-assumption, post-confirmation Debtor over the next two or three years as it manages and liquidates more than a billion dollars of other people's funds? It is their money at issue.

So, in order to do this, the Debtor first has to tell Your Honor that it has a likelihood of merits on the success [sic] of some claim. The Debtor cannot just come to you -- because the Debtor knows Your Honor's opinion on 105(a) and the Supreme Court law -- and the Debtor cannot just say, Judge, please give us an injunction because it's convenient or because we don't want to comply with our obligations. So they concoct a tortious interference claim. They argue that there is an automatic stay violation, which, as Your Honor knows, all of us bankruptcy lawyers take most seriously. And they argue that, well, whatever Mr. Dondero has been enjoined from doing, somehow we *a priori* are also enjoined. Basically, an alter ego with no facts, law, trial, or due process.

On the tortious interference, Your Honor will hear absolute evidence that cannot be refuted that all that we did, all that we did was we refused, our employees refused to make

a ministerial entry into a computer program of two trades that Mr. Seery authorized. Those trades closed exactly as Mr. Seery wanted. Those trades closed, were executed, before Mr. Seery asked our employees to do his bidding. And the reason why our employees were instructed not to do what Mr. Seery wanted was because our chief compliance officer looked at it, those employees looked at it, and they all said, What is this? Our internal protocols were not followed. We don't know anything about these trades. We have fiduciary duties, we have SEC obligations, and Mr. Seery has his own employees whom he can instruct to enter these two trades into the computer and our employees aren't going to do it. It's as simple as that.

Mr. Dondero did not command that decision. Mr. Dondero did not instruct that decision.

Our employees not doing what Mr. Seery requested of them is not tortious interference. It is not interference as a matter of law. There was no breach of contract as a result.

So the two elements -- two of the elements required for tortious interference, there will be zero evidence on. But in the bigger picture, what they're talking about again is restraining our rights in the future. And whether -- whether we are party to these contracts or a third-party beneficiary, it doesn't matter, because we are not a stranger to these contracts. These contracts expressly give us rights. And a

1 party exercising their right under a contract, it could be
2 breaching that contract, but it cannot be tortious
3 interference as a matter of law.
4 And if Your Honor is concerned about us tortiously
5 interfering in the future, then the Court should enjoin us
6 from tortious interference in the future, not excise from the
7 contract the remedies that the Debtor must accept if it wants
8 to assume these contracts.
9 Moving to the automatic stay issue, the sole and exclusive
10 argument for why we violated the stay is because our counsel,
11 a seasoned, gentlemanly bankruptcy lawyer of many years'
12 experience, sent two letters to seasoned veteran bankruptcy
13 lawyers for the Debtor. Communications. Communications
14 amongst counsel.
15 The first, the December 22nd letter, is a request: Okay,
16 we lost in front of Judge Jernigan, Judge Jernigan called our
17 motion frivolous, we get that, but we ask you to please stop
18 trading until the plan is confirmed. A request which the
19 Debtor ignored. Or that's not true, didn't ignore: refused
20 to comply with.
21 The second letter, a day later, after various
22 communications, was: Okay, we are going to initiate the
23 process of terminating you as the servicer.
24 Mr. Dondero had nothing in the world to do with these
25 letters. Mr. Dondero did not direct these letters. This was

1 professional advice from outside counsel and the independent
2 boards of the Advisors believing that their fiduciary duty
3 compelled that.
4 And guess what, that letter even said: subject to the
5 automatic stay. You heard from Mr. Morris that they basically
6 said, File your stay motion.
7 Our follow-up letter clarified anything that we might do
8 is subject to the automatic stay. We never said we're going
9 to act in a way that the stay doesn't permit. We said we're
10 going to come to this Court first.
11 But even all that, all those communications, while it may
12 be interesting, are irrelevant, because we never took any
13 action. You will hear that we never communicated with the
14 CLOs, the Trustees, or the Issuers, anything like we went over
15 with the Debtor, anything like, Please start the process of
16 removing the Debtor. We have done nothing of the sort, we
17 will do nothing of the sort, precisely because of the
18 automatic stay.
19 So I equate this, Your Honor, to your average home lender
20 whose lawyer sends a letter to the borrower saying, You don't
21 have insurance; we're going to start the process of
22 foreclosure. You're past due on your post-petition adequate
23 protection payments; we're going to start the foreclosure
24 process; we're going to go seek a list of stay. That is not
25 actionable. It is not a stay violation. Those are

1 communications, not actions. And that is precisely what
2 seasoned professional counsel should be doing.
3 And now, Your Honor, we move to the Mr. Dondero issue.
4 The argument is, well, on January the 9th, Mr. Dondero,
5 apparently for all time, in perpetuity, agreed that he will
6 not cause the related entities to terminate these agreements.
7 And then the argument is, well, the Court entered a TRO
8 against Mr. Dondero and the Court entered a preliminary
9 injunction against Mr. Dondero. Okay?
10 I don't see where the problem is. Mr. Dondero is
11 prohibited from causing us to terminate these agreements.
12 There are many ways, with independent boards, that Mr. Dondero
13 has nothing to do with that. And he will have nothing to do
14 with that in the future. So if the concern is enjoining us
15 because of an injunction against Mr. Dondero, enjoin Mr.
16 Dondero. Just like if the concern is that we're going to
17 tortiously interfere, you enjoin us from tortious
18 interference. Or if we're going to violate the stay, enjoin
19 us from violating the stay. But do not for all time assume
20 that any right that we may exercise in the future will
21 necessarily be tainted and the corrupt product of Mr.
22 Dondero's instructions. You will see today on the evidence
23 that that has not happened and it will not happen.
24 And whatever Mr. Dondero may have agreed to, we are
25 separate entities. Again, the Funds have -- are not

1 controlled or owned, and Mr. Dondero is not on the board. So
2 whatever he may have agreed to is between the Court and the
3 Debtor and him, but he never agreed to that on behalf of the
4 Funds. He never agreed to that on behalf of the Advisors, who
5 have their own independent fiduciary duties and duties under
6 the law.
7 So, Your Honor, there will be no substantial likelihood of
8 success on the merits. There will be no likelihood of success
9 on the merits. And I'm talking about the post-assumption,
10 post-confirmation time frame. The issue is fundamentally
11 different pre-assumption and pre-confirmation. But post-
12 assumption and post-confirmation, the Debtor will not show a
13 likelihood of success on the merits. The Debtor will not show
14 any irreparable injury. None.
15 Mr. Seery will testify that managing these agreements for
16 the coming couple or three years will have some value to the
17 Debtor. He doesn't know what the profitability of that is to
18 the Debtor. You will hear that, in fact, managing these
19 contracts for the next two years does not bring any
20 profitability to the Debtor. The Debtor will lose money
21 managing of them. But whatever damages there are are monetary
22 damages, and monetary damages are not an irreparable injury as
23 a matter of law.
24 Now, the Debtor says, well, the Court can enter an
25 injunction in the aid of restructuring, but this injunction

1 will happen after restructuring.
2 On the balance of harm and public interest, Your Honor, I
3 think we're dealing with more than a billion dollars of clean,
4 innocent third-party funds. The balance of harm here weighs
5 against granting this injunction. If we try to do anything in
6 the post-confirmation world, the Debtor has all of its rights
7 and remedies to contest what we do. If we do it wrong, we're
8 liable in contract or in tort, there's monetary damages, and
9 the Debtor has already successfully organized.
10 But if the Debtor does something wrong in the future and
11 we cannot take action to stop a gross mismanagement or a
12 denution [sic] of the Debtor or an abscondence with funds,
13 then think about the harm to the innocent investors here.
14 Because if we even go to court, your Court, any court, we will
15 be in violation of a federal court injunction.
16 Your Honor, this is not the appropriate purpose of an
17 injunction for the preservation of the status quo. The status
18 quo, by definition, cannot extend post-assumption or post-
19 confirmation. This is not a proper exercise of equity. We
20 have done nothing wrong, we have threatened to do nothing
21 wrong, and we will do nothing wrong to justify forever being
22 prejudiced and enjoined from exercising our contractual and
23 statutory rights.
24 Your Honor, this TRO extends through February the 15th.
25 We asked the Debtor to continue this hearing. We asked the

Debtor to go to our independent boards and seek approval of the same settlement that the Debtor has with CLO Holdco, which we learned about last night. We simply haven't had the time to get those boards aligned up and present a settlement to them. We're trying to put together a competing plan.

Your Honor, there is no reason to go forward today except, like Mr. Morris said, power. Power. Mr. Seery's power, Your Honor. Not ours. Mr. Seery's power in perpetuity or for judicial immunity, get out of jail free card. Thank you.

THE COURT: All right. Mr. Morris, you may call your witness.

MR. MORRIS: Yeah. I just want to make a motion to strike the notion of a get out of jail free card. I appreciated everything counsel had to say, but I think that's a little -- a little over the top.

We call Mr. James Dondero, please.

THE COURT: Mr. Dondero, --

MR. RUKAVINA: Your Honor, bear with me.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, bear with me. I'm going to get out of this chair. Mr. Dondero will get in this chair. And so that there's no reverberation, I will be sitting next to Mr. Dondero in case I have to make any objections.

THE COURT: Okay. All right. Good morning, Mr. Dondero.

MR. DONDERO: Good morning.

THE COURT: Please raise your right hand.

JAMES DONDERO, DEBTOR'S WITNESS, SWORN

THE COURT: Thank you. Mr. Morris, go ahead.

MR. MORRIS: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. Okay. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor. Can you hear me okay, sir?

A Yes.

Q There are no board members here on behalf of any of the Funds to testify or offer any evidence; isn't that right?

A Not that I'm aware of.

Q Okay. And you knew the hearing was going to be today on the preliminary injunction, right?

A Yes.

Q And you had an opportunity to confer with the boards of the Funds in advance of this hearing, right?

A No.

Q There's no -- there's no -- no board member is expected to testify, fair?

A Correct.

Q So the Court isn't going to hear any evidence as to the

1 board's perception of what's happening here, right?
2 A Not that I'm aware of.
3 Q Okay. Until January 9th, 2020, you controlled the debtor
4 Highland Capital Management, LP; isn't that right?
5 A I don't remember exactly when these -- when the
6 independent board was put in place, but up until around that
7 time, I believe.
8 Q Okay. So, January 2020?
9 A Yes.
10 Q And during that month, you completed an agreement with the
11 Creditors' Committee where you ceded control of the Debtor
12 pursuant to a court order, right?
13 A Pursuant to a court ...? I thought it was pursuant to a
14 negotiation where they would have fiduciary responsibility to
15 the estate in my absence. That's -- that's what I think the
16 (garbled).
17 Q Okay. You're aware -- so you entered into an agreement
18 with the Creditors' Committee pursuant to which you ceded
19 control of the Debtor, right?
20 MR. RUKAVINA: Your Honor, I'll object. That
21 agreement speaks for itself. And if Mr. Morris wants to
22 present it to Mr. Dondero, he can.
23 THE COURT: Um, --
24 MR. MORRIS: Sure. Ms. Canty, can we please put up
25 --

THE COURT: All right. Well, I --

MR. MORRIS: I'm happy to put it up, Your Honor.

THE COURT: I overrule that objection. You can ask. And then if he's not sure, you can present the agreement. All right? Go ahead.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Mr. Dondero, is there any doubt in your mind that in January of 2020 you gave up control of Highland in favor of an independent board at the Strand Advisors level?

A No. I -- yes, I agree with that.

Q Okay. And do you recall that, in connection with that agreement, the Court entered an order?

A Several orders. Which one?

Q Okay.

MR. MORRIS: Can we please put up Docket No. 339?

MS. CANTY: Sure, just one second.

MR. RUKAVINA: And you have it here.

John, I have the order if just want Mr. Dondero to review it.

MR. MORRIS: I think -- I think everybody should have the benefit of seeing it. But thank you very much.

Your Honor, while we take this moment, can you just remind me of when the Court needs to take a break today, so that I'm mindful of that and respectful of your time?

THE COURT: 11:30.

MR. MORRIS: Okay. And what time will we reconvene?

THE COURT: Well, I have said 1:00. I hope it can be a little sooner, but let's just plan on 1:00, okay, so there's no confusion.

MR. MORRIS: Okay. All right. All right. So, on the screen here, we have Exhibit OOOO, which is in the record.

BY MR. MORRIS:

Q This is an order that was entered by the Court on January 9th, 2020. Do you see that, sir?

A Yes.

MR. MORRIS: Can we scroll down to Paragraph 9, please? (Pause.) Are you having problems, Ms. Canty?

MS. CANTY: It's on the screen. You can't see it?

MR. MORRIS: Yeah. Can you scroll down to Paragraph 9?

MS. CANTY: It's on Paragraph --

MR. MORRIS: That's on Page 2, I believe.

MS. CANTY: Yeah, I have it up. I'm not sure what the disconnect is, because I can see it on my screen. I'm going to stop it and reshare it.

MR. MORRIS: Thank you very much.

(Pause.)

MS. CANTY: Do you see it now?

MR. MORRIS: Okay. Beautiful.

BY MR. MORRIS:
Q Mr. Dondero, if you'd just read Paragraph 9 out loud.
A (reading) Mr. Dondero shall not cause any related entity to terminate any agreements with the Debtor.
Q Okay. So you understood, as part of the corporate governance settlement pursuant to which you avoided the imposition of a trustee, that you agreed that you wouldn't cause any related entity to terminate any agreements with the Debtor, right?
A Uh, --
Q Is that correct? You understood that paragraph?
A Yes.
Q Okay. And you didn't appeal this particular order, did you, sir?
A I -- I believe I've refuted -- I've adhered to that order entirely.
Q Okay. NexPoint Advisors LP, is one of the defendants in this matter, right?
A Yes.
(Pause.)
Q Can you hear me, sir?
A Yes. Yes, I said, "Yes."
MR. NICHOLSON: Well, John, did you -- did you ask a question? Because you went offline for a few seconds there.
MR. MORRIS: I asked whether NexPoint Advisors, LP

was an advisory firm.

THE WITNESS: Yes.

BY MR. MORRIS:

Q And you have a direct or indirect ownership interest in NexPoint Advisors, LP, correct?

A Yes.

Q And you understand that, based on that direct or indirect ownership interest, NexPoint Advisors, LP is a related entity under Paragraph 9 of this order, right?

A Yes.

Q Okay. Highland Capital Management Fund Advisors, LP is one of the other defendants in this case, right?

A Yes.

Q And we'll refer to that entity as Fund Advisors; is that fair?

A Yes.

Q And we'll refer to Fund Advisors together with NexPoint Advisors, LP as the Advisors; is that fair?

A Yes.

Q Okay. Fund Advisors is also an advisory firm; is that (audio gap)?

A I missed that last question.

MR. RUKAVINA: John, you're freezing up on us. Is it on our end, Your Honor, or is it on Mr. Morris's end?

MR. MORRIS: Just let me know -- just let me know

when it happens.

THE COURT: Yes. I'm hearing him. But go ahead, Mr. Morris. Let's try again.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q You have a direct or indirect ownership interest in Fund Advisors, correct, sir?

A Yes.

Q (audio garbled) And based on that direct or indirect interest, you would agree that Fund Advisors is a related entity for purposes of this order, correct?

A Yes.

Q In addition to your ownership interest, you're also the president of Fund Advisors; is that (audio gap)?

THE COURT: All right. Now --

THE WITNESS: I believe so.

THE COURT: Yes. Now I'm starting to have some trouble, Mr. Morris. Every once in a while, you're freezing towards the end of a sentence. So I don't know what can be done, but it's --

MR. MORRIS: All right. Let me know if that continues.

THE COURT: Okay.

BY MR. MORRIS:

Q To use your words -- to use your words, Mr. Dondero, it's

fair to say that you generally control Fund Advisors, right?
A Yes.
Q And based on that, you acknowledge that Fund Advisors is a related entity under the Court's order, correct?
A Yes.
Q And together, the Advisors that you own and control manage certain investment funds, correct?
A Yes.
Q And three of those funds are defendants in this case, correct?
A Yes.
Q And you are the portfolio manager of each of those funds; is that right?
A I believe so.
Q Okay. Let's talk about the events that led to this matter. CLO stands for Collateralized Loan Obligations, correct?
A I'm sorry. Repeat that, please?
Q Sure. CLO stands for Collateralized Loan Obligations, correct?
A Yes.
Q Years ago, the Advisors that you own and control caused the investment funds that they manage to buy the interests in CLOs that are managed by the Debtor, correct?
A Yes. Yes.

Q Okay. And those Funds still hold an equity interest today, correct?
A Yes.
Q And K&L Gates is one of the law firms that represents the Advisors and the Funds that are managed by the Advisors, correct?
A Yes.
Q You would agree that the Debtor is party to certain contracts that give it the right and the responsibility to manage certain CLO assets, right?
A Yes.
Q And you recall that --
MR. RUKAVINA: Your Honor, Mr. Morris is frozen on our end.
THE COURT: Yes. Mr. Morris, you just froze.
MR. RUKAVINA: We heard nothing, Mr. Morris.
THE COURT: Yes.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q Sir, do you recall that you resigned from the Debtor on or around October 10th, 2020?
A Yes.
Q Okay. And shortly thereafter, K&L Gates sent a couple of letters to the Debtor on behalf of the Advisors and the Funds, correct?

A Yes.
Q Okay.
MR. MORRIS: Can we take a look at these? These are documents that were admitted into evidence in a different matter, but they're actually referred to in his prior testimony, which is in evidence in this case. So I would just ask Ms. Canty to go to Trial Exhibit B, which was filed in the Adversary Proceeding 20-3190 at Docket 46. And for the record, it's PDF Page #184 out of 270. I just want to take a look at these two letters.
BY MR. MORRIS:
Q Okay. Do you see this letter, sir?
A Yes.
Q And NexPoint is one of the defendants here; is that right?
A Yes.
Q And that's one of the Advisors that you own and generally control, correct?
A Yes.
Q And so this letter is sent less than a week after you've left Highland Capital Management, right?
A Yes.
Q Do you recall this particular letter?
A No.
Q Can -- you're familiar with the substance of this letter and the other one that was sent in November, correct?

A Could you pull it a little higher and let me read it?
Q Yes. Sure.
MR. RUKAVINA: If this is an exhibit, I can show it to him as an exhibit, Mr. Morris.
MR. MORRIS: I don't know that this is one of the marked exhibits. It's one of the exhibits that's used within his prior testimony. So, but I want to give Mr. Dondero a chance to review it. And please let us know if you need to scroll further down.
(Pause.)
MR. RUKAVINA: You're going to have to scroll down.
THE WITNESS: Scroll down a little further, please.
(Pause.)
MR. RUKAVINA: Mr. Morris, can you please scroll down? Neither Mr. Dondero nor I can read the balance.
BY MR. MORRIS:
Q There you go. (Pause.) So, you see at the top of the page there there is a reference to the sale of assets and a, quote, "a rush to sell these assets at fire sale prices." Is that what you think -- did you think that Mr. Seery was selling (audio garbled) CLO assets at fire sale prices in October 2020, --
MR. RUKAVINA: Your Honor, --
MR. MORRIS: -- less than a week after --
MR. RUKAVINA: Your Honor, I'll object. We did not

hear Mr. Morris's question.

THE COURT: All right. Could you repeat the question?

MR. MORRIS: Okay. Yes, Your Honor.

BY MR. MORRIS:

Q Mr. Dondero, on or about October 16th, did you personally believe that Mr. Seery was in a rush to sell CLO assets at fire sale prices?

A I believe he had no business purpose to sell any of the assets, which I believe he stated that to Joe Sowin, our trader. I -- I -- there was no business purpose stated or ever given or obvious from the sales. And --

Q Okay.

A -- I (indecipherable) draft this letter.

Q Okay.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question --

THE COURT: Sustained.

MR. MORRIS: -- and it has to do solely with Mr. Dondero's state of mind.

BY MR. MORRIS:

Q Mr. Dondero, on or about October 16th, did you personally believe that Mr. Seery was in a rush to sell CLO assets at fire sale prices?

A He was in a rush to sell them for some reason with no

business purpose. I don't know the reason.

THE COURT: All right. Can you --

BY MR. MORRIS:

Q Okay. And you never asked him, right?

THE COURT: Yes. Yes or no answer, Mr. Dondero.

THE WITNESS: Never asked him.

MR. MORRIS: Okay. Can we turn to the next exhibit, which is Exhibit C on that same docket?

(Pause.)

BY MR. MORRIS:

Q While we're waiting, can you just read the last sentence of the paragraph that ends at the top of the page, Mr. Dondero, beginning, "Accordingly"?

A (reading) Accordingly, we hereby request that no CLO assets be sold without prior notice and prior consent from the Advisors.

Q Are you aware of any contractual provision pursuant to which the Funds or the Advisors can -- can expect that the Debtor will refrain from any -- selling any assets without giving prior notice and obtaining prior consent from those entities?

A I think the documents have an overall good-faith/fair-dealing clause which would cover something like this, I believe.

Q Your -- is it your testimony, sir, that the duty of good

faith and fair dealing requires the Debtor to give notice to the Advisors and to obtain the Advisors' prior consent before they can sell any CLO assets?

A Well, I think -- yes, I do. I think --

Q All right.

A Yes. Yeah.

Q Okay. And then the next month, another letter was sent by NexPoint to Mr. Seery. Do you recall that?

A Not specifically. If you bring it up, we can talk about it.

MR. MORRIS: Can we scroll down a little bit?

(Pause.)

MS. CANTY: John, are you talking to me? I was frozen out. I just got back on. I apologize.

MR. MORRIS: That's okay. Can we just scroll down so Mr. Dondero can see more of this particular letter?

MS. CANTY: Okay.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Can you just read out loud, Mr. Dondero, out loud the last two sentences, please, beginning with, "We understand"?

A (reading) We understand that Charitable DAF Holdco, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Q What's the Charitable DAF Holdco, Ltd.?
A I think that's who you settled with yesterday.
Q Do you have an interest in that entity?
A No. It's a bona fide charity. It was one of the largest in Dallas before it got cut in half by Acis.
Q Does -- are you familiar with the Get Good and the Dugaboy Investment Trusts?
MR. RUKAVINA: Your Honor, at this time I would object to relevance. I don't see what this has to do with tortious interference and stay violation on December 22nd and December 23rd, 2020.
THE COURT: Response?
MR. MORRIS: Your Honor, I'm trying to establish that Charitable DAF Holdco, Ltd. is another entity in which Mr. Dondero holds a beneficial interest.
THE COURT: Okay. Overrule the objection.
MR. RUKAVINA: John, you're not only frozen, now you're off.
MR. MORRIS: Yeah, I can see myself. You can't hear me?
MR. RUKAVINA: We can now, but Your Honor, we lost Mr. Morris for a bit there.
THE COURT: All right. I think we were --
MR. MORRIS: Okay.
THE COURT: -- waiting on an answer from Mr. Dondero,

actually.

THE WITNESS: We didn't hear the question at --

BY MR. MORRIS:

Q Sure. Are you familiar with the Get Good and Dugaboy Investment Trusts?

A Yes.

Q Are you the beneficiary of those trusts?

MR. RUKAVINA: Your Honor, again, objection to relevance. These are non-parties, and what his personal interests are has no relevance to this.

THE COURT: Overruled.

THE WITNESS: The Get Good Trust, Get -- I believe those are defective grantor trusts. I don't believe I have any interest whatsoever in those. Dugaboy is a perpetual Delaware trust. I don't know how that's set up, but I believe I do have an interest there until I pass.

BY MR. MORRIS:

Q In fact, you're -- you're the sole beneficiary of the Dugaboy Investment Trust, right?

A Until I pass. It's a -- it's a estate planning trust.

Q I appreciate that. And the Dugaboy and the Get Good Trusts are the owners of the Charitable DAF Holdco Ltd., correct?

A No. Not as far as I know.

Q Okay.

A (garbled) time at all.
Q All right. So we just looked at these two letters, sir. And you were familiar with the substance of the letters before they were sent, right?
A Uh, just --
MR. MORRIS: You can take it down, Ms. Canty.
THE WITNESS: Just generally. Again, I wasn't involved directly with the letters.
BY MR. MORRIS:
Q You were aware of the letters before they were sent, right?
A Yes.
Q And you discussed the substance of the letters with NexPoint, correct?
A Not the substance of the letters, just the substance of the issue.
Q You actually discussed the substance of the letters with NexPoint, correct?
A I -- Again, I remember it being the substance of the issue. Generally, at most, the substance of the letters.
Q And you discussed the substance of the letters with the Advisors' internal counsel, too, right?
A The sub -- generally, the substance, yes, but more the issue than the letter.
Q Okay. If I pull up your transcript from the TRO hearing,

would that refresh your recollection that you discussed the substance of these letters with NexPoint and with the Advisors' internal counsel?

A I'd like to clarify with the testimony I just gave.

Q Okay. Would you -- do you have any reason to believe that you did not previously testify that you discussed the substance of the letters with NexPoint and with NexPoint Advisors' internal counsel?

A I repeat the same testimony. Generally. Like, those letters that you put on the screen, I have no recollection of those specifically.

MR. MORRIS: Ms. Canty, can we please call up on the screen Exhibit NNNN, which was the transcript from the January 8th, 2021 preliminary injunction hearing?

MR. RUKAVINA: Mr. Morris, just one sec. I'm trying to find it on paper.

MR. MORRIS: Yeah. It's four Ns.

MR. RUKAVINA: One, two, three, four. (inaudible) put that on the screen.

MS. CANTY: John, I'm not sure what's going on, but it won't come up on the screen. I've tried three times. I'm going to keep trying.

MR. MORRIS: All right. I have it in front of me. Do you have it, too?

MR. RUKAVINA: Yes, the witness has it --

MR. MORRIS: Okay.

MR. RUKAVINA: -- in front of him. This is NNNN, just to confirm?

MR. MORRIS: Yes. And it is the January 8th transcript.

BY MR. MORRIS:

Q Mr. Dondero, were you asked these questions and did you give these answers? Question: Are you familiar with --

MR. RUKAVINA: Where are you, John? Where are you? Where are you? We -- we -- we --

MR. MORRIS: I apologize. Page 40. I'm going to read Page 40, Lines 1 through 14.

MR. RUKAVINA: Okay. He has it in front of him, if you just want him to read it.

BY MR. MORRIS:

Q Did you give these answers at Page 40, beginning Line 1:

"Q And were you -- and you were familiar, you were aware of these letters before they were sent; is that correct?

"A Yes.

"Q And you generally discussed the substance of these letters with NexPoint; is that right?

"A Generally, yes.

"Q You discussed the letters with the internal counsel; is that right?

"A Yes.
"Q That's D.C. Sauter?
"A Yes.
"Q And you have been on some calls with K&L Gates about these letters, right?
"A I believe so.
"Q And you knew these letters were being sent, correct?
"A Yeah. They're -- they're reported.
Q Did you give those answers to those questions at the prior hearing?
A I -- I believe it's what I -- it's almost exactly what I just said, but yes.
Q And you supported the sending of the letters; isn't that right?
A Absolutely.
Q And you encouraged the sending of the letters, right?
A Absolutely.
Q Around Thanksgiving, you learned that Mr. Seery had given a direction to sell certain securities owned by CLOs managed by the Debtor, correct?
A Yes.
Q And when you learned that, you personally intervened to stop the trades, correct?
A Yes.

Q Let's -- I want to look at that email string that we looked at once before. It can be found at Trial Exhibit D found on Docket No. 46 in the adversary proceeding. It's PDF Number -- it's PDF Page 189 of two (garbled).

MR. RUKAVINA: Did you catch that?

THE COURT: Which -- which exhibit number -- letter is it?

MR. MORRIS: It's on the docket in the Adversary Proceeding 20-3190. And in that adversary proceeding, at Docket No. 46, you've got the Debtor's exhibit list. And Exhibit D, which can be found at PDF Page 189 of 270, is the email string I'm looking for.

I apologize, Your Honor. It wasn't until I was reading the transcript yesterday that I realized I needed these documents. But they are in the record. Obviously, they're referred to in the transcript that is in the record.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, I would like to interject for the record here that this is the first time my clients have been sued. They have a right to be confronted with the witnesses and testimony and evidence against them. So if Mr. Morris wants to introduce this as an exhibit here today, that's one thing, but I object to any notion that there's a prior record that is going to tie my clients' hands. It might tie Mr. Dondero's hands, but not my clients' hands.

MR. MORRIS: I'd move for the introduction into evidence of this document that has emails not only from Mr. Dondero, but from Joe Sowin, the head trader of the Defendants.

MR. RUKAVINA: And Your Honor, I have no problem with that admission. I just want to make it clear that we're not conceding that whatever happened in this case previous to this is a part of today's record. That's all. So I do not have a problem with the admission of this. I would, however, ask you, Mr. Morris, to have someone email it to us so that I can use it today if I need to.

THE COURT: All right.

MR. MORRIS: Okay. Will do.

THE COURT: So, I'll --

MR. MORRIS: We'll do that at the --

THE COURT: I'll admit it into evidence. You'll need to not only email it Mr. Rukavina, but you'll need to file a supplement to your exhibit and witness list after the hearing showing the admission of --

MR. RUKAVINA: And Mr. Morris, if you could email it to Mr. -- if you could email it to Mr. Vasek as well, because obviously I can't get to it now. Thank you.

MR. MORRIS: Sure.

THE COURT: All right. So this --

MR. MORRIS: Okay. So, --

THE COURT: For the record, let's just be clear what the record is -- this is going to be called on the record. I think you are up to SSSSS, so this would be TTTTT when you file it on the record. All right? Go ahead.

MR. MORRIS: Thank you very much, Your Honor.

(Debtor's Exhibit TTTTT is received into evidence.)

BY MR. MORRIS:

Q Mr. Dondero, you recall looking at this email string at the last hearing, right?

A Yes.

Q Let's start at the bottom, please, with Mr. Covitz's email.

(Pause.)

MR. RUKAVINA: Hey, John, real quick, now we've lost you. We've lost you and we're not seeing anything from your assistant. Do you have the email, Mr. Vasek?

MR. MORRIS: I'm here. Can you hear me?

MS. CANTY: I'm here. (garbled) on the screen.

MR. MORRIS: Yeah. Can we scroll down to the bottom?

MS. CANTY: I did. I don't know why it's not showing on you guys' screen.

MR. MORRIS: Hopefully this gets fixed. Yeah. We've never had this problem before, Your Honor. I'm not sure what the issue is, but I do apologize.

THE COURT: All right. Well, I can hear you, but we

1 don't see movement of the exhibit.
2 MR. MORRIS: Yeah. When I began earlier today by
3 suggesting that this was going to be challenging, this was not
4 one of the challenges I anticipated.
5 THE COURT: Okay. All right.
6 MR. RUKAVINA: Do you have the email yet?
7 MS. CANTY: I'm sorry. I don't know what's happening
8 on this end. I have three streams of Internet going, and I
9 don't think it's the Internet. I don't know what's going on.
10 MR. MORRIS: Hmm.
11 MR. RUKAVINA: Yeah, John, what I'm suggesting is
12 that you have an associate email it to Mr. Vasek immediately
13 and then we can present it to Mr. Dondero.
14 MR. MORRIS: I'll tell you what. While that -- one
15 more try.
16 MR. CANTY: Can you see it now?
17 MR. MORRIS: Okay. Yes.
18 BY MR. MORRIS:
19 Q All right. Mr. Dondero, Hunter Covitz is an employee of
20 the Debtor, right?
21 MR. RUKAVINA: Hold on a sec. Hold on a sec.
22 Your Honor, I believe that I have the right to see the
23 full email here. I believe that Mr. Dondero does. And we've
24 just seen the first little bit and now some middle piece.
25 THE COURT: All right. So are you saying --

MR. MORRIS: And in the order that --

THE COURT: -- you want to see the whole string?

MR. RUKAVINA: Well, I think -- Mr. Dondero, do you need to see the whole string? I don't know what this is, but maybe you do.

MR. DONDERO: It depends on what the question is. I can answer some questions off of this email.

THE COURT: Okay, let's go.

MR. MORRIS: Yeah.

BY MR. MORRIS:

Q All right. So, for the moment, Mr. Covitz is an employee of the Debtor, correct?

A Yes.

Q And he's the author of this email in front of us, correct?

A Yes.

Q And Mr. Covitz helps to manage the CLO assets on behalf of the Debtor, correct?

A Yes.

Q Mr. Covitz is giving directions to Matt Pearson and Joe Sowin to sell certain securities held by the CLOs, correct?

A Yes.

Q And if we can scroll up, I think we can see that you received a copy of this email?

(Pause, 11:15 a.m.)

MR. MORRIS: What I would like to do instead, we'll

take a break in about 15 or 20 (audio gap). When we disconnect, we'll get a better connection after the break. And in the interim, I've got testimony that I would like that's already been admitted into the record but there's portions of which I would like to read into the record from Dustin Norris, who is the executive vice president for each of the Defendants. And maybe it would be easiest for me to do that.

THE COURT: Okay.

MR. MORRIS: All right. On Docket No. 39.

MR. RUKAVINA: Your Honor, I apologize. Your Honor, I apologize. We did not hear --

MR. MORRIS: I'm going to read into the record a portion of Mr. Norris' testimony from the December 16th hearing.

MR. RUKAVINA: Your Honor, I do not see that transcript in the exhibits. If Mr. Morris could give me an exhibit.

MR. MORRIS: Exhibit B as in boy.

MR. RUKAVINA: Thank you.

MR. MORRIS: All right. Instead of putting it on the screen, if we could take the exhibit down, Ms. Canty. He can just follow along. Beginning at Page 38, Line 7 through -- 7 through 17.

Are you there, Mr. Rukavina?

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 32

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
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006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
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006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
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007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

1 MR. RUKAVINA: I am. Thank you. I have it in front
2 of Mr. Dondero.
3 MR. MORRIS: Okay. Page 38, Lines 7 through 17:
4 "Q I think you testified that you're one of the
5 executive vice presidents at NexPoint Advisors, one of
6 the Movants. Is that right?
7 "A That's right.
8 "Q Who is the president of NexPoint Advisors, LP?
9 "A Mr. Dondero.
10 "Q And you report directly to him; is that right?
11 "A I do.
12 "Q You're also the executive vice president of Fund
13 Advisors, another Movant; is that right?
14 "A Correct."
15 MR. MORRIS: Beginning on Page 38, Line 25:
16 "Q You're also the executive vice president (audio
17 gap) that are managed by the Advisors here, right?
18 "A Yes. That is correct."
19 MR. MORRIS: Then going back to Page 35, beginning at
20 Line 15:
21 "Q To be clear here, there are five moving parties;
22 is that right?
23 "A That's correct. The two Advisors and the three
24 Funds.
25 "Q And one of the advisory firms is Highland Capital

Management Fund Advisors, LP; is that right?

"A That's correct.

"Q And I'll refer to that as Fund Advisors; is that okay?

"A That's great.

"Q James Dondero and Mark Okada are the beneficial owners of Fund Advisors, correct?

"A That is my understanding.

"Q And your understanding is that Mr. Dondero controls Fund Advisors, correct?

"A That's correct.

"Q And the other advisory firm that brought the motion is NexPoint Advisors, LP; is that right?

"A That is correct.

"Q And Mr. Dondero is the beneficial owner of NexPoint; is that right?

"A A family trust where Jim is the sole beneficiary, I believe, controls or owns NexPoint Advisors.

"Q Okay. And Mr. Dondero --

"A Or 99 percent of NexPoint Advisors.

"Q Mr. Dondero controls NexPoint; is that right?

"A Correct."

MR. MORRIS: Continuing at Line 16 on Page 36:

"Q All right. And I'm going to refer to Fund Advisors and NexPoint as the Advisors going forward; is

1 that fair?
2 "A That's fair.
3 "Q Each of the Advisors manages certain funds; is
4 that right?
5 "A That is correct.
6 "Q And three of those funds that are managed by the
7 Advisors are Movants on this motion, correct?
8 "A Correct.
9 "Q All right. The Advisors caused these three Funds
10 to invest in CLOs that are managed by the Debtor; is
11 that right?"
12 "A --"
13 MR. RUKAVINA: Your Honor, I object. Is there a
14 question at the end of this? I mean, Mr. Dondero can't
15 possibly remember all this and then be asked a question.
16 MR. MORRIS: He doesn't have to answer any questions.
17 I'm just reading the evidence into the record.
18 THE COURT: Okay.
19 MR. RUKAVINA: Your Honor?
20 MR. MORRIS: Since we're having difficulty --
21 MR. RUKAVINA: Your Honor, that's a matter for
22 summation. That's -- this is a question and answer, I submit.
23 THE COURT: Well, I overrule.
24 MR. MORRIS: Your Honor, here's -- here's --
25 THE COURT: This has been admitted into --

1 MR. MORRIS: Yeah.
2 THE COURT: -- evidence. And if he wants to
3 highlight to the Court portions of the evidence, he can.
4 Go ahead.
5 MR. MORRIS: Thank you, Your Honor.
6 "A The portfolio managers working for the Advisors
7 did. That's correct.
8 "Q And Mr. Dondero is the portfolio manager of the
9 Highland Income Fund; is that right?
10 "A He is one of the portfolio managers for that Fund.
11 "Q And he's also --
12 "A I believe there are two.
13 "Q And he's also a portfolio manager of NexPoint
14 Capital, Inc., one of the Movants here, right?
15 "A That is correct.
16 "Q And he's also the portfolio manager of NexPoint
17 Strategic Opportunities Fund, another Movant; is that
18 right?
19 "A Yes. That is correct."
20 MR. MORRIS: Going to Line -- Page 41, Lines 6
21 through 9:
22 "Q The whole idea for this motion initiated with Mr.
23 Dondero; isn't that right?
24 "A The concern, yes, the concern originated, and his
25 concern was voiced to our legal and compliance team."

1 MR. MORRIS: Page 42, Lines 4 through 11:
2 "Q None of the Movants are parties to the agreements
3 between the Debtor and each of the Debtors pursuant --
4 each of the CLOs pursuant to which the Debtor serves as
5 portfolio manager; is that correct?
6 "A I believe that is correct. One, I think,
7 important -- even though they're not (audio gap), they
8 are the -- they have the economic ownership of each of
9 these CLOs.
10 "Q But they're not party to the agreement; is that
11 right?
12 "A Not that I am aware of."
13 MR. MORRIS: Page 42, Line 25:
14 "Q Okay. It's your understanding, in fact, that
15 nobody other than the Debtor has the right or the
16 authority to buy and sell assets on behalf of the CLOs
17 listed on Exhibit B, correct?
18 "A That is my understanding.
19 "Q Okay. And it's also your understanding, your
20 specific understanding, that holders of preferred
21 shares do not make investment decisions on behalf of
22 the CLO; is that right?
23 "A (audio gap)
24 "Q And that's something the Advisors knew when they
25 decided to invest in the CLOs on behalf of the Movant

1 Funds; is that fair?
2 "A That's right. And at that time, the knowledge in
3 the purchase was with Highland Capital Management, LP
4 and the portfolio management team at the time.
5 "Q And it's still with Highland Capital Management,
6 LP; isn't that right?
7 "A That's correct. I'm not sure that the portfolio
8 management team looks the same, but it was HCMLP."
9 MR. MORRIS: Moving on to Page 46, Line 22:
10 "Q The only holders of preferred shares that are
11 pursuing this motion are the three Funds managed by the
12 Advisors, right?
13 "A In this motion, yes.
14 "Q You're not aware of any holder of preferred shares
15 pursuing this motion other than the three Funds managed
16 by the Advisors, correct?
17 "A No, I'm not aware of any others.
18 "Q You didn't personally inform any holder of
19 preferred shares, other than the Funds that are the
20 Movants, that this motion would be filed, did you?
21 "A No, I did not.
22 "Q You're not aware of any steps taken by either of
23 the Advisors to provide notice to holders of preferred
24 shares that this motion was going to be filed, are you?
25 "A I'm not, no.

1 "Q And you're not aware of any attempt that was made
2 to obtain the consent of all of the noteholder -- of
3 all the holders of the preferred shares to seek the
4 relief that is sought in this motion, correct?
5 "A That's correct.
6 "Q You don't have any personal knowledge, personal
7 knowledge, as to whether any holder of preferred shares
8 other than the Funds managed by the Advisors wants the
9 relief sought in this motion, correct?
10 "A Correct.
11 "Q You don't have any personal knowledge as to
12 whether any of the CLOs that are subject to the
13 contracts that you described want the relief that's
14 being requested in this motion, right?
15 "A That's correct. I have not spoken or been
16 involved at all directly with the CLOs. I'm
17 representing the Funds."
18 MR. MORRIS: Moving to Page 49. I just have a bit
19 more, Your Honor. Page 49, Line 9. And this is the reference
20 to his declaration.
21 "Q And Paragraph 9 refers to a transaction involving
22 SSP Holdings, LLC; do I have that right?
23 "A That's correct.
24 "Q Do you know what SSP stands for?
25 "A See if we say it in there. SSP Holdings, LLC.

"Q Right. Do you know what SSP stands for?

"A I don't. Something Steel Products. I --

"Q Okay. You don't need to guess. These are the only two transactions that the Movants question; is that right?

"A These transactions, as well as certain transactions around Thanksgiving time.

"Q Okay. We'll talk about those. But those transactions about -- around Thanksgiving time aren't in your (audio gap)?

"A Not specifically mentioned by name.

"Q Okay. Let's talk about the two that are mentioned by name, Trussway and SSP. The Movants do not contend that either transaction was the product of fraudulent conduct, do they?

"A No.

"Q The Movants do not contend that the Debtor breached any agreement by effectuating these transactions, do they?

"A I don't believe so.

"Q In fact, the Movants do not contend that the Debtor violated any agreement at any time in the management of the CLOs listed on Exhibit B; is that right?

"A That's right.

1 "Q The Movants don't even question the Debtor's
2 business judgment, only the results of the trans -- of
3 these two transactions. Is that right?
4 "A That's right. And the results is the key here,
5 and the approach."
6 MR. MORRIS: Moving on to Page 51, Line 8:
7 "Q Sir, you never asked the Debtor what factors it
8 considered in making these trades, right?
9 "A I did not.
10 "Q And you have no reason to believe that anyone on
11 behalf of the Movants ever asked the Debtor why it
12 executed these (audio gap), right?
13 "A I don't have any knowledge. There could have been
14 somebody from (audio gap) Movants. But I do not."
15 MR. MORRIS: Page 54, Line 19:
16 "Q Let's just talk briefly about the transactions
17 that occurred (garbled) Thanksgiving. They're not
18 specifically referred to in your declaration; is that
19 right?
20 "A That's correct.
21 "Q And you have no knowledge about any transaction
22 that Mr. Seery wanted to execute around Thanksgiving;
23 is that right?
24 "A I know there were transactions and there were
25 concerns from our management team, but I'm not aware of

what those transactions were.

"Q In fact, you can't even identify the assets that Mr. Seery wanted to sell around Thanksgiving, or at least you couldn't at the time of your deposition yesterday. Is that right?

"A That's correct.

"Q And you have no knowledge as to why Mr. Seery wanted to make particular trades around Thanksgiving?

"A No, I don't.

"Q And in fact, you don't even know if the transactions that Mr. Seery wanted to close around Thanksgiving ever in fact closed. Is that fair?

"A Correct."

MR. MORRIS: Last one. Page 56, Line 1:

"Q Okay. To the best of your knowledge, does this document accurately reflect the composition of the boards of each of the three Movant Funds?

"A Yes, it does.

"Q Okay. John Honis, I think you mentioned him earlier. He's on all three boards. Is that right?

"A Yeah, that's correct. And the reason we're -- we're being -- we have a unitary board structure, so -- which is very common in '40 Act Fund land, where the board sits, for efficiency purposes, on multiple fund boards, and there's a lot of economies of scale from an

1 operating standpoint. So, yes, they sit on multiple
2 boards.
3 "Q Okay. And for purposes of the '40 Act, Mr. Honis
4 has been deemed to be an interested trustee. Is that
5 right?
6 "A That's correct.
7 "Q Okay. But you don't specifically know what (audio
8 gap) caused that designation; you only know that the
9 designation exists. Right?
10 "A That's right. And I know they are disclosed in
11 the proxy -- or, in the -- the relative filings related
12 to those Funds.
13 "Q Okay. Three other people are common to all three
14 Movant Funds. I think you've got Dr. Froehlich, Ethan
15 Powell, --
16 MR. MORRIS: I think he -- pronunciation.
17 "A Froehlich.
18 "Q Ethan Powell and Bryan Ward. Right?
19 "A That is correct.
20 "Q Okay. All three of those individuals actually
21 serve on the 11 or 12 boards that you mentioned earlier
22 that are managed by the Advisors, right?
23 "A That is correct.
24 "Q And they're the same Funds for which you serve as
25 the executive vice president, right?

"A This is correct -- yes. That's correct.
"Q So, for all of the Funds that are managed by the Advisors, you serve as executive vice president and all four of these directors -- trustees serve as trustees on the boards, right?
"A Yes, that's correct.
"Q Okay. In exchange for serving on all of these boards, the three individuals -- Dr. Froehlich, Mr. Ward, and Mr. Powell -- each receive $150,000 a year for services across the Highland complex; is that right?
"A That's correct.
"Q Dr. Froehlich has been serving as a board member across the Highland complex for seven or eight years now; is that right?
"A That's correct.
"Q Mr. --
"A I believe it's about seven or eight years.
"Q Mr. Powell, he actually was employed by Highland related -- Highland or related entities from about 2007 or 2008 until 2015, right?
"A That's correct.
"Q And Mr. Ward, the third of the independent trustees, he's been serving on a board or various of -- on various Highland-related funds on a continuous basis

since about 2004. Do I have that right?

"A Yeah, I believe that's correct."

MR. MORRIS: Your Honor, that concludes the reading of the portions of Mr. Norris's testimony that I wanted to present to the Court.

I know it's 11:30 now, and I would respectfully request that we simply adjourn and let Your Honor tend to your business.

THE COURT: Okay.

MR. MORRIS: And hopefully when we come back at 1:00 o'clock, we'll have a better connection.

THE COURT: All right. So, we are going to go into recess until 1:00 o'clock Central. Mike, can people just stay connected, or should they --

THE CLERK: Yes. They can stay. Yes.

THE COURT: You can stay or reconnect, whichever you want. But we'll see you at 1:00.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(A luncheon recess ensued from 11:33 a.m. until 1:37 p.m.)

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good afternoon. Please be seated. Apologies. I was a little ambitious in my time estimate. So,

anyway, I didn't have any control over getting in and out of Parkland Hospital, so I'm just grateful to be here.

All right. We were in the middle of direct examination of Mr. Dondero. Mr. Morris, are you ready to proceed?

MR. MORRIS: I am, Your Honor, and I'm hopeful that the computer issues have resolved themselves. It remains to be seen once we try. If problems arise again, I plan on just putting this on mute and dialing in through the telephone, kind of the other alternative.

THE COURT: All right.

MR. MORRIS: So (garbled) and I apologize to Mr. Dondero, too. I know I'm testing his patience. But it's not for any reason other than technological.

THE COURT: All right.

MR. MORRIS: And Your Honor, you don't have to apologize for keeping us waiting. That's okay.

THE COURT: Okay.

MR. MORRIS: But thank you.

THE COURT: All right. Mr. Dondero, --

MR. MORRIS: All right. So, --

THE WITNESS: Yeah.

THE COURT: I was just going to remind you, I have to remind you you're still under oath.

Are you ready, Mr. Morris?

MR. MORRIS: I am, Your Honor.

THE COURT: All right. You may proceed.

MR. MORRIS: And we're going to begin with the document that we had difficulty scrolling through earlier, which we have now sent to counsel, and that would be what was marked as Exhibit D on Docket No. 46.

THE COURT: All right.

MR. MORRIS: That's the email string that we had seen earlier that I think Your Honor admitted into evidence. Do I have that right?

THE COURT: Yes.

MR. MORRIS: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q So, let's just start at the bottom and see if we can do this more easily, Mr. Dondero. And again, I apologize for keeping you waiting before. Starting at the bottom, that's an email from Hunter Covitz. Do you see that?

A Yeah, I see it.

Q And he's an employee of the Debtor, right?

A Yes.

Q And your understanding is that Mr. Covitz actually helps the Debtor manage the CLO assets, right?

A Yes.

Q And in this email, Mr. Covitz is giving directions to Matt Pearson and Joe Sowin regarding certain securities held by the

CLOs, right?
A Yes.
Q And if we could scroll up, hopefully, we can see that you received a copy of this email.
MR. MORRIS: Yeah. Right there.
BY MR. MORRIS:
Q Do you see that?
A Yes.
Q And then -- and then you instructed the recipients of Mr. Covitz's email not to sell the SKY securities as had been instructed by Mr. Seery, correct?
A Yes.
Q And you understood when you gave that instruction that the people on the email were trying to execute trades that Mr. Seery had authorized, correct?
A Incorrect.
Q You didn't know that, sir?
A What I knew was that Seery had not authorized the trade, he had orchestrated the trade. Hunter is not an analyst with any particular knowledge. I called Hunter, why would he sell those? And he said Seery told him to sell those. So it wasn't that Seery authorized Hunter trading it. It was Seery told Hunter to trade it, which is -- which is a material difference in my mind.
Q Okay. So I'll ask you again. At the time you gave the

instruction, "No, do not," you knew that you were stopping trades that had been authorized and directed by Mr. Seery, correct?

A Yes.

Q You didn't speak with Mr. Seery before sending this email, did you?

A No.

Q And you took no steps to seek the Debtor's consent before instructing the recipients of this email to stop executing the SKY transactions. Is that right?

A I'm sorry. I missed the first part of that question.

Q Okay. You took no steps to seek the Debtor's consent before instructing the recipients of this email to stop executing the SKY transactions that were authorized by Mr. Seery, correct?

A I don't -- I'm not sure I was permitted to talk to Seery at this point, but I don't recall specifically, no.

Q You didn't seek consent, did you, before stopping these trades?

A No.

Q Okay. In response to your instruction --

MR. MORRIS: If we could scroll up to the next response.

BY MR. MORRIS:

Q You see the response from Mr. Pearson?

A Yes.
Q And in response to your instructions, Mr. Pearson canceled all of the SKY and AVYA sales that the Debtor had directed but which had not yet been executed, right?
A Yes.
Q Okay.
MR. MORRIS: Can we scroll up to the next email, please?
BY MR. MORRIS:
Q And you responded again, right? That's your response?
A Yes.
Q Can you read your response out loud, please?
A (reading) HFAM and DAF have instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again, please.
Q And the writings that you refer to there are the two letters that we looked at earlier, the October 16 and the November 24 letter, right?
A I believe so. If not, if there's a third or fourth letter, all the letters in aggregate.
Q All right. And you, you interpreted those letters not as requests but, as you tell the recipients of your email here, that they were actually instructions, right?
A That was -- that was my choice of words. I don't know if I thought about it that clearly.

Q Okay. But the reci... you have no reason to believe that the recipient of this email wouldn't understand that you believed that Highland had been instructed not to do these trades, right?

A I'm sorry. Can you ask that again? I had no reason to believe what?

Q That's okay. I'll move on. At this juncture, the reference to potential liability was intended for Mr. Pearson, right?

A Frankly, when you violate the Advisers Act, the CFO has liability. I mean, I'm sorry, the chief compliance officer has liability, and anybody who has an awareness that it violates the Advisers Act has potential liability also.

Q And is it -- is it your testimony and your position that Mr. Pearson had potential liability under the Advisers Act for carrying out Mr. Seery's trade requests?

A Yes, once he was informed that the underlying investors didn't want assets sold and Seery had stated he had no business purpose in selling those assets.

MR. MORRIS: I move to strike the latter part of the answer, Your Honor. Mr. Dondero has testified repeatedly multiple times that he has never communicated with Mr. Seery about why he wanted to make these transactions.

THE COURT: I grant that.

BY MR. MORRIS:

Q Mr. Sowin responded and indicated that he would follow your instructions, right, if we scroll to the next email?
A I'm sorry. What part are you saying, or what part are you referring to?
Q Mr. Sowin. Who is Mr. Sowin?
A He's Matt Pearson's boss. He's the head trader.
Q And he works for the Advisors, right?
A Yes.
Q He's one of your employees, right?
A Yes.
Q Mr. Sowin followed your instructions as set forth in this email, right?
A He did a bunch of things, but, yes, I believe -- yes, that's a fair way to characterize.
Q And the only information that you know of that he's relying upon to state that Compliance should never have approved this order was your email that preceded it, right?
A No.
Q No? There's nothing else on this email other than your email that preceded it, correct?
A Correct.
Q Okay. A few days later, you learned that Mr. Seery was trying a workaround to effectuate the trades anyway, right?
A I believe so.
MR. MORRIS: Can we scroll up to the next email?

BY MR. MORRIS:
Q This is your response to Mr. Surgent, right?
A Yes.
Q Now, Mr. Surgent hasn't written anything. He is not part of this conversation, is he?
A No.
Q But you bring him into the conversation, right?
A Because he's the chief compliance officer at Highland, yes.
Q He's not -- he's not the chief compliance officer for the Advisors. He's the chief compliance officer for a company that you no longer work for, right?
A Correct, but he has personal liability for violations of the Advisers Act.
Q Okay. And you thought it was your responsibility to remind him of that, right?
A It was my view of the situation, and at least he could evaluate it himself if I reminded him of it, yes.
Q Uh-huh. What does it mean to do a workaround? What did you mean by that?
A There's a concept in compliance called you can't do something indirectly that you can't do directly, and that's what I was referring to there.
Q Does that mean that he was trying to effectuate the trade without the assistance of the Advisors?

A I believed he was trying to do it without compliance and without proper regard for investors, so that's why I described it as a workaround.

MR. MORRIS: I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:

Q I'm asking you a very specific question.

MR. MORRIS: Can I have a ruling, Your Honor? Thank you.

THE COURT: Yes.

BY MR. MORRIS:

Q Did you, when you used the phrase workaround, did you mean that he was trying to effectuate the trade without relying on the Advisors' employees?

A No.

Q Okay. But you found out about the trade and you thought it was a good idea to send Mr. Surgent this email, right?

A Yes.

Q Can you read the last line of your email?

A (reading) You might want to remind him and yourself that the chief compliance officer has personal liability.

Q Personal liability for effectuating a trade that Mr. Seery had authorized, correct?

A For violating the Advisers Act, is what I meant.

Q Uh-huh. Did you report anybody to the SEC?

A I would be happy to if it's permitted by the Court.
Q But you didn't -- you never asked the Court to do that, right?
A No.
Q It didn't seem important enough for you to take that step, right? But you wanted -- you had to make sure that you told Mr. Surgent that he might be personally liable, right? That was what you needed to do?
A Could you repeat that question, please?
Q You needed to make sure that Mr. Surgent knew that you were threatening him with personal liability if he followed Mr. Seery's instructions, right?
A No.
Q As a factual matter, you never asked Mr. Seery why he wanted to make these trades, right?
A I asked Joe Sowin to ask him.
Q As a factual matter, you never asked Mr. Seery why he wanted to make these trades, correct?
A I believe I wasn't permitted to talk to him.
Q In November 2020? What would have prevented that?
A I believe Scott Ellington was the go-between at that point in time.
Q Is it your testimony that you never spoke with Jim Seery in November 2020?
A I believe in an unauthorized fashion, the day after

Thanksgiving I talked to him, but that's the only day I can remember.

Q Should we call up the email where you threatened him not to do it again?

A That was an email.

Q Ah. So you could communicate by email? Did you ever send Mr. Seery an email and say, Why do you want to do these trades?

A No.

Q But somehow you thought you couldn't even speak to him? You couldn't speak to him but you can send him emails? That's the world that you live in, right? That's what you think?

A I have no comment on that.

Q All right. So, after this exchange, --

MR. MORRIS: And this is what I read out-of-order before, Your Honor. We moved to the December 16th hearing.

BY MR. MORRIS:

Q And you remember, Mr. Dondero, that the Defendants made that motion that asked the Court to stop the Debtor from trading in the CLO assets? Do you remember that?

A I'm sorry. You're asking me do I remember letters were sent? Yes.

Q No. Do you remember that there was a hearing in mid-December?

A Yes.

Q Okay.

MR. MORRIS: And Your Honor, for the record, Exhibit A is the Debtor -- is the Defendants' motion. Exhibit B is the transcript that we had looked at earlier or that I had read portions of earlier.

THE COURT: Okay.

MR. MORRIS: And Exhibit C is the order that the Court entered denying the Defendants' motion.

Can we call up Exhibit C, please?

BY MR. MORRIS:

Q All right. Do you see --

MR. MORRIS: If we could scroll to the very top, please. All right.

BY MR. MORRIS:

Q Do you see this document is dated December 18th, sir?

A Yes.

Q And if we scroll down, this is the order denying the motion of the Advisors and the Funds for an order trying to temporarily restrict the Debtor's ability as portfolio manager from initiating sales. Do you see that?

A Yes.

Q Okay. So, this is December 18th. And if you'll recall, the TRO was issued against you on December 10th. Do you remember that?

A I don't believe it was the 10th.

Q Okay. It was in December, and it was just before this. Is that fair?

A I believe there was an intent, and then the actual filing I think was much later. I don't have -- I don't have the knowledge. I don't have the knowledge of when the TRO was put in place.

Q Okay. (Pause.) Okay. We talked earlier about how you interfered with Mr. Seery's trading activities around Thanksgiving. Do you remember that?

A Yes, I do. I do remember the trading then, also.

Q Okay. And do you remember that just before Christmas you interfered with Mr. Seery's tradings again?

A Yes.

Q Okay.

MR. MORRIS: If we can call up Exhibit K from Docket No. 46, which I have shared with counsel?

THE WITNESS: You know what?

BY MR. MORRIS:

Q Yeah.

A Let's handle these each incident one at a time. And I don't want to use the word "interfering" or accept the word "interfering" as an answer because I think my participation in each situation was very different.

MR. MORRIS: All right. Can we scroll down?

BY MR. MORRIS:

Q This is a letter that my firm wrote to Mr. Lynn. Mr. Lynn is your lawyer. Is that right?
A Yes.
MR. MORRIS: And if we could start down at the first page. We've seen these letter before. A little further.
BY MR. MORRIS:
Q Do you see there is a reference there to the Debtor's management of CLOs?
A Yes.
Q And there is a recitation of the history that we talked about a bit earlier. If we -- if we look further in that paragraph to around Thanksgiving, when you intervened to block the trades.
A Yes, I see that sentence.
Q Okay.
MR. MORRIS: And then if we can go to the next page, the next paragraph. Yeah, that's where.
BY MR. MORRIS:
Q Then we referred to the December 16th hearing, right? And then the next paragraph says, "On December 22, 2020" --
MR. MORRIS: Can you scroll down just a little bit? Nope, the other way. Yeah, right there.
BY MR. MORRIS:
Q "On December 22, 2020, employees of NPA and HCMFA" -- those are the Advisors, right?

A Yes.
Q -- "notified the Debtor that they would not settle the CLO's sale of the AVYA and SKY security." Have I read that correctly?
A Yes.
Q All right. On or about December 22nd, you personally instructed employees of the Advisors not to trade the SKY and AVYA securities that Mr. Seery had authorized. Is that right?
A No.
Q You personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA, right?
A No. You know, we need to look at source documents. My recollection is I encouraged Compliance to look at those trades. But I'm willing to be -- I'm willing to be -- get source documents again, if you'd like.
Q All right. My source document is your prior testimony.
MR. MORRIS: Can we please call up Exhibit NNNN at Page 73? Beginning at Line 2? Okay.
BY MR. MORRIS:
Q Page 73, beginning at Line 2, did you give the following answer to my question?
"Q And you personally instructed, on or about December 22nd, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized

with respect to SKY and AVYA, right?

"A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle the trades that occurred, but that's a different ball of wax."

Q Did you give that answer, sir?

A I believe I confused dates or misspoke there, but I did give that answer.

Q Okay. Thank you. Stated a different way, you personally instructed the Advisors' employees not to execute the trades that Mr. Seery had authorized but which had not yet been made, right?

A No. Not -- not on December 22nd. That was in November. November 22nd, I did not do that.

Q Okay.

MR. MORRIS: Can we go to Page 76, please? Line 15.

BY MR. MORRIS:

Q Did you give this answer to my question?

"Q And you would agree with me, would you not, that you instructed the employees of the Advisors not to execute the very trades that Mr. Seery identifies in this email, correct?

"A Yes."

Q Did you give that answer, sir?

A Well, like I said, I -- I confused the Thanksgiving

trades, the week of Thanksgiving, with my more nuanced responses to later trades.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question.

THE COURT: Granted.

BY MR. MORRIS:

Q Did you give that answer to my question, sir?

A I -- yes, I did.

Q Thank you. Now, all of this is just a week after that December 16th hearing, right?

A Yes.

Q And right after that hearing, the K&L Gates firm sent, on behalf of the Defendants, more letters to the Debtors, right?

A Yes.

MR. MORRIS: Can we please pull up the first letter? It's Exhibit DDDD. And if we can go not to our response but to the original letter that was sent that's attached to this. I think it is Exhibit A. Right there.

BY MR. MORRIS:

Q That's the first of the letters, December 22, 2020. Do you see that?

A Yes.

MR. MORRIS: And can we scroll down to the end of the letter to see what the request is here? Right there.

BY MR. MORRIS:

Q Can you read the end of that letter right there, sir?
A (reading) Sincerely, A. Lee Hogewood, III.
Q Nice. I meant the actual substance.
A (reading) For the foregoing and other reasons, we request that no further CLO transactions occur, at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.
Q Okay. And that's similar in substance to the letter that was sent on behalf of the Defendants on October 16th that you saw and approved, right?
A I did not see and approve.
Q All right. The record will speak for itself. And it's similar in substance to the letter that was sent on November 24th by the K&L Gates clients on behalf of the Defendants, right?
A I don't know.
Q We looked at it before. Should we get it again?
A It's a -- all the letters, as far as I understand, were similar in requesting that the -- the beneficial owners of the CLOs were requesting that no wholesale liquidation of their assets occur. That's how I understand it.
Q And that's --
A You asked my understanding. That's my understanding.
Q Okay. And notwithstanding the request in this letter, when you were -- when you were talking to the traders at your

shop, you actually told them that the Debtor was instructed not to do these trades, right?

A Are you parsing "instructed" versus "requested"? I don't understand the question.

Q I am, in fact. You used a very different phrase when speaking to your employees than you did -- then your lawyers did when they wrote to the Debtor, right?

A It seems to be a difference, yes.

Q Okay. So, this is on December 22nd. Now, the night before, you participated in a meeting with Grant Scott and with the lawyers for the Defendants, right, to talk about what you guys were going to do with respect to the Debtor's management of the CLOs. Isn't that right?

A I don't remember specifically.

Q Okay. But is it fair to say it's true, is it not, that during the week leading up to Christmas you participated in several phone calls with the K&L Gates firm and with other members of the Defendants' -- the Advisors, Mr. Sowin or Mr. Post or Mr. Sauter, and the lawyers, right? You were all together talking about these issues during the week before Christmas, right?

MR. RUKAVINA: Your Honor, I'm going to object. If counsel is asking what was discussed with counsel present for the purpose of legal advice, that is an inappropriate question.

THE COURT: Okay.

MR. MORRIS: I'm certainly not. I'm asking if the conversations took place.

MR. RUKAVINA: And the conversations -- the question was, did they discuss what to do with respect to the CLOs? That would be privileged, Your Honor. If they discussed football, that's not privileged, but what to do with the CLO management agreements is privileged.

THE COURT: Okay. I sustain.

MR. MORRIS: Can we please call up Exhibit TT? I'm sorry, TTT. Nope, TTTT. TTTT. Can you scroll down a bit? Right there.

BY MR. MORRIS:

Q Do you see -- this is an email from Grant Scott to Scott Ellington; do you see that?

A Yes.

Q And at this point, Mr. Ellington is still working for the Debtor, right?

A Yes. I believe he was settlement counsel.

Q Uh-huh. And do you see that this is an email that refers to your availability for a 9:00 a.m. call?

A Yes.

Q And do you see that there's a question as to whether the K&L people can make it?

A Yes.

Q And you understand that refers to K&L Gates, right?
A I -- I guess so.
Q And so does this refresh your recollection that at or around Christmas, or in the days leading up to Christmas, you participated in calls with Mr. Scott, with Scott Ellington, and with the K&L Gates folks?
A I -- I don't know. I don't know if -- if I actually did or not. But I was highly concerned with inappropriate behavior.
Q And you were available -- and did you tell somebody that you were available for this call on the morning of the 23rd?
A I don't know.
Q This is the day after you stopped the trades, right?
A Again, I didn't stop the trades on the 23rd.
Q You stopped them on the 22nd, right?
A No, I stopped them on the week of Thanksgiving.
MR. MORRIS: Can we go back to Exhibit NNNN, the transcript? Page 73?
BY MR. MORRIS:
Q Let me see if I can refresh your recollection. Tab 2. Did you give this answer to this question:
"Q And you personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA, right?

"A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them."
Q Did you give that answer to the question?
A Yes.
Q Okay.
A But we -- we corrected.
Q All right. You didn't correct it at the preliminary injunction hearing, did you?
A No, I did not.
Q Okay. So as far as the Court knows as of this moment, that's the only testimony that you've ever given on the topic, right?
A I'm trying to give some now.
Q Okay. And on December 22nd, that's the date that the first letter was also sent, right, we just looked at?
A All right. Okay.
Q You agree with that, right?
A I don't remember the date on the letter. If you want to pull it up, I'll say it is the 22nd or the 23rd, whatever it says. I don't know.
Q Sure.
MR. MORRIS: Let's go back to DDDD, please. And if we can just go to the top of the letter. Thank you.
BY MR. MORRIS:
Q K&L Gates. December 22nd. That's the letter, right?

A Yes.
Q And according to the testimony that you gave at the preliminary injunction hearing on January 8th, that's the day that you also stopped AVYA and SKY trades, right?
A I'm not agreeing to that testimony. I am changing the testimony.
Q Okay. And then we just saw that other exhibit where they were trying to arrange a phone call with you, the K&L Gates lawyers, and Mr. Ellington and Grant Scott for the 23rd. Do you remember that one we just looked at?
A Yes.
Q And then later on the day on the 23rd, K&L Gates sends another letter, right?
MR. MORRIS: Can we call up EEEE? And can we scroll to the Exhibit A, to our response? Right there.
BY MR. MORRIS:
Q That's the 23rd. Do you see that letter?
A Yes.
Q Again, this is one week after the hearing, right?
A Yes.
Q Okay. And this is a letter where K&L Gates states on behalf of the Defendants that they are contemplating taking steps to terminate the CLO management agreements, right?
A I don't know. Can you scroll down, if you want to ask me --

Q Sure.

MR. MORRIS: Can we flip to the next page, please? Keep going. Right there.

BY MR. MORRIS:

Q Can you read the first sentence of the paragraph beginning, "Consequently"?

A (reading) Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant Trustees and/or Issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference to the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362.

Q Okay. So, on December 23rd, the Defendants told the Debtor that they intended to notify the relevant Trustees and/or the Issuers that the process of removing the Debtor as the fund manager should be initiated, right?

A That's what it says.

Q And then the K&L Gates firm sent yet another letter to the Debtor, right? Do you remember that?

A No.

MR. MORRIS: Can we get up FFFF, please?

BY MR. MORRIS:

Q This is dated December 31st. Do you see that?

A Yes.

MR. MORRIS: Can we scroll down a bit?

BY MR. MORRIS:

Q Do you recall this is the letter where they claim that they've been damaged by the Debtor's eviction of you from the Highland offices?

A I don't remember specifically, but that's true.

Q Okay. So we just saw these three letters, in addition to your -- the -- at least the testimony you gave regarding your conduct on the 22nd of December. You were aware that all of these letters were being sent by K&L Gates, correct?

A Yes, generally.

Q And you were supportive of the sending of these letters, right?

A Absolutely. They were appropriate.

Q And you pushed and encouraged the chief compliance officer and the general counsel to send these letters, right?

A I'd like to think that they believed and they acted largely on their own judgment, but I strongly believed it was a violation of the Advisers Act, and stated that numerous times.

Q Sir, you pushed and encouraged the chief compliance officer and the general counsel to send these letters, correct?

A No, I wouldn't use those words.

Q Do you understand that the Debtor demanded that the K&L Gates clients or the Defendants withdraw these letters?
A I believe they requested it. I didn't -- I didn't know the former, what you mean by demand, but --
Q Well, it's fair to say you never instructed the K&L Gates clients or the Defendants to withdraw these letters, right?
A No. I still believe they are appropriate and accurate. I wouldn't withdraw them today.
Q Okay. Sir, throughout 2020, when you were still the portfolio manager at Highland Capital Management, it's true that you sold AVYA shares on numerous occasions on behalf of both the CLOs and on behalf of the Funds outside of the holdings of the CLOs?
A Always with a business purpose, yes. That is still a small percentage of our total AVYA holdings, and we still liked AVYA.
Q Sir, I'm going to ask you just one more time. In 2020, you sold AVYA stock many times on behalf of the CLOs and on behalf of the Funds?
A Yes.
Q Thank you.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Rukavina?
MR. RUKAVINA: Your Honor, I will reserve my questions to my case in chief, and I would request a very

1 short restroom break.
2 THE COURT: All right. Mr. Dondero, we're --
3 MR. RUKAVINA: And I do mean short. I will --
4 THE COURT: I'm sorry. What?
5 MR. RUKAVINA: And I do mean short, Your Honor. I
6 just need to run and be back -- I can be back in three
7 minutes.
8 MR. MORRIS: No problem, Your Honor.
9 THE COURT: Okay. You're finished for now, Mr.
10 Dondero, but you're going to be recalled, so hang tight.
11 Your next witness, Mr. Morris?
12 MR. MORRIS: The Debtor calls Jason Post.
13 MR. RUKAVINA: Your Honor, may I be excused to run to
14 the restroom and Mr. Vasek take over for a few minutes?
15 THE COURT: Oh. Okay. I'm sorry. If you made that
16 request, I didn't hear you. So that's fine.
17 All right. Mr. Post, --
18 MR. MORRIS: Your Honor, can we just -- I apologize
19 for interrupting. Can we just direct Mr. Dondero not to speak
20 with anybody about anything at any time? Not by phone, not by
21 text, not by email, not by meeting, not by anything? Because
22 he's still on the stand.
23 MR. RUKAVINA: Well, Your Honor, anything at any
24 time. I think I know that Mr. Morris is being facetious, but
25 if he's trying to get the rule invoked, that's different.

MR. MORRIS: Okay. I'm trying to get the rule invoked.

THE COURT: Okay. All right. I'm not going to make that instruction. All right. So, --

MR. RUKAVINA: I've got to run to the restroom. I'll be -- listen for the instructions.

THE COURT: Jason Post, you've been called to the witness stand. Could you say, "Testing, one, two"?

MR. POST: (Indiscernible.)

THE COURT: All right. Please raise --

MR. POST: Testing, one, two.

THE COURT: Thank you. Please raise your right hand.

JASON POST, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Mr. Morris, go ahead.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Post. We met the other day. Do you remember that?

A I do.

Q Okay. So, again, just to remind you, my name is John Morris. I'm an attorney at Pachulski, Stang, Ziehl & Jones. We represent the Debtor here. You're the chief compliance officer for each of the Defendants; is that right?

A I am.

Q And in your role as the chief compliance officer, your job

is to act as a liaison between regulatory bodies and internal working groups with respect to the rules and regulations for the funds advised by the Advisors; is that correct?

A Correct, that's -- that's the (inaudible). Correct.

Q All right. And internally, you report to Mr. Dondero. Isn't that right?

A Correct.

Q And you've been working with Mr. Dondero since 2008 when you joined Highland Capital Management, correct?

A I worked at Mr. Dondero's firm since 2008, but I reported to other direct reports during that time outside of Mr. Dondero. I started to report to him directly in October of 2020.

Q Okay.

A (overspoken)

Q But you've -- you've worked at Highland -- you worked at Highland since 2008, fair?

A Yes.

Q Okay. And you were employed by Highland up until October 2020, correct?

A Yes.

Q Okay. And at that time, Mr. Dondero left and he went to NexPoint and you went to NexPoint. Is that right?

A Shortly after Mr. Dondero left Highland, I transitioned over to NexPoint.

Q And that's where Mr. Dondero is, right?
A Correct.
Q Okay. You joined Highland in 2008, and in around 2011 you joined Highland's internal legal and compliance team, correct?
A That's correct.
Q And in 2015, while still employed by Highland, Mr. Dondero appointed you as the chief compliance officer of the Advisors and the Funds, right?
A Technically, the retail board appointed me the CCO of the Funds, and then I was appointed internally. I believe Mr. Dondero was part of that decision for the Advisors.
Q Had you ever worked with the retail boards before that?
A There was about -- I worked with them for about a year prior to that.
Q Okay. And you've served as the CCO, the chief compliance officer, of each of the Advisors and each of the Funds since September 2015 on a continuous basis, right?
A That is correct.
Q You know Thomas Surgent; is that right?
A I do.
Q Mr. Surgent has been the Debtor's chief compliance officer since around 2013 or 2014; is that right?
A I believe -- uh -- I -- I think that's correct. It may be a year or two off. He took the role after the former CO resigned, which I don't know if that was 2011 or 2012. I

can't recall specifically.
Q Okay. But he's been -- he's been in that position for a long time, right? Fair enough?
A Yes, that's fair.
Q And during the whole time that you were employed by Highland and serving as the chief compliance officer for the Funds and the Advisors, you reported to Mr. Surgent?
A Internally. Yes, that's correct.
Q Yeah. And you respect Mr. Surgent; isn't that right?
A During the time I reported to him, yes.
Q Yeah. And you believed that he did his job well, right?
A As far as I could see, yes.
Q You viewed it as -- you viewed him as a mentor, did you not?
A Yes. I mean, when I joined the legal compliance team, you know, he was there. He was a senior member on the team. And he, you know, helped educate me, along with other, you know, external sources, et cetera, on the compliance function.
Q Uh-huh. He trained you for the work you're doing now, right?
A With respect to the on-the-job training, yes.
Q Uh-huh. Despite all of that, throughout all the proceedings, the court hearings, all of the issues that we're talking about in this case, you never, ever stopped to discuss any of these issues with your former mentor, Mr. Surgent; is

1 that right?
2 A The -- with respect to, for example, the trade (garbled)
3 that you were talking about earlier?
4 Q Let's do it this way. From the time that you left
5 Highland until today, you've never discussed with Mr. Surgent
6 Mr. Seery's trades; is that right?
7 A I believe there was a discussion after -- I can't recall
8 exactly the context. There was a discussion after the trades
9 in the November time frame. And then I believe there was a --
10 I responded to an email exchange in the December time frame
11 regarding booking of the trades.
12 Q Sir, you -- you've never spoken with Mr. Surgent about any
13 issue concerning the Debtor's management of the CLOs, correct?
14 A I don't recall directly, no.
15 Q In fact, you're not aware of anyone acting on behalf of
16 the Advisors or the Funds who has reached out to Mr. Surgent
17 to get his views on any of the issues related to this motion.
18 Isn't that right?
19 A I believe previously there's correspondence that Mr.
20 Dondero had with Surgent. But aside from that, I'm not aware
21 of any.
22 Q Is that the email where he reminded him of his personal
23 liability? Is that the one you're thinking of?
24 A Correct.
25 Q Yeah. Do you know of any other communication -- do you

1 know of any other communication that any of the Defendants had
2 with Mr. Surgent concerning the Debtor's management of the
3 CLOs?
4 A With Mr. Surgent directly, I don't -- I don't -- I don't
5 believe so.
6 Q Yeah. You graduated from Baylor; is that right?
7 A Correct.
8 Q But you don't have any certifications or licenses
9 applicable to your work, correct?
10 A Correct.
11 Q You don't have any specialized training or education
12 that's relevant to your work as a chief compliance officer,
13 correct?
14 A Correct.
15 Q Your job -- your training is limited to on-the-job
16 training; isn't that right?
17 A That is correct.
18 Q You've never spoken at any conferences on compliance
19 matters, have you?
20 A Spoken, no. Attended, yes.
21 Q You don't recall presenting any papers at any compliance-
22 related conferences, do you?
23 A That is correct.
24 Q You've never published anything in connection with your
25 work as a compliance officer; isn't that right?

A Not that I can recall.
Q Let's talk about the CLO management agreements briefly. You're aware that the Debtor is party to certain management agreements pursuant to which it serves as the portfolio manager for certain CLOs, correct?
A Correct.
Q And until your lawyers recently asked you to review them, you last had reason to review a CLO management agreement about five or six years ago; isn't that right?
A I believe that's correct.
Q And the request from your lawyers to look at the CLO management agreements, that request came in late November/ early December; isn't that right?
A I believe that's around the right time frame.
Q And the portions of the management agreements that you read were the portions that your counsel asked you to read; isn't that right?
A Correct.
Q And other than the general recollection of having read something about the rights of preference shareholders, you don't recall much about the agreements at all; isn't that right?
A I mean, the agreements are very lengthy in nature. You know, I think it was probably rights that the preference shareholders had, and, you know, possibly indemnification

1 provisions. But aside from that, I don't recall anything else
2 specifically right now.
3 Q As the chief compliance officer of the Advisors and the
4 Funds, you don't know whether any of them are party to the CLO
5 management agreements between the Debtors and -- between the
6 Debtor and the Issuers, correct?
7 MR. RUKAVINA: And Your Honor, I would just object to
8 the extent that that calls for a legal conclusion. This
9 witness is not a lawyer.
10 THE COURT: Overruled.
11 THE WITNESS: I'm sorry. Can you repeat the
12 question, please?
13 BY MR. MORRIS:
14 Q Sure. As the chief compliance officer for each of the
15 Defendants, you don't know whether any of them are party to
16 the CLO management agreements between the Debtor and the
17 Issuers, correct?
18 A They're not the named collateral manager, but they're a
19 security holder of the CLOs, so they should be entitled to,
20 you know, the rights that those security holders are afforded
21 under those agreements.
22 MR. MORRIS: I move to strike, Your Honor.
23 THE COURT: Granted.
24 BY MR. MORRIS:
25 Q All right. So, now, Mr. Post, I know this is difficult,

and I do appreciate that it's difficult just to focus on the question. Your counsel will have the opportunity to ask you whatever he wants. But I would respectfully request that you listen to my question and only answer my question. It really is very likely to require just a yes or no answer.

So, let me try again. As the chief compliance officer of the Advisors and the Funds, you don't know whether any of them are a party to the CLO management agreements between the Debtor and the Issuers, correct?

A I don't believe they are, correct.

Q Okay. Let's talk about that prior hearing. Now, by the way, Mr. Post, did you listen in to Mr. Dondero's testimony earlier?

MR. RUKAVINA: Mr. Post was here with me --

MR. MORRIS: Yeah.

MR. RUKAVINA: -- as my representative..

MR. MORRIS: Okay. I -- there's no problem. I just -- I just -- that way there's some background and he has some context. That's the only reason I asked.

BY MR. MORRIS:

Q You're aware that the Funds and the Advisors previously filed a motion in the Bankruptcy Court asking the Court to institute a pause in the Debtor's ability to sell CLO assets, correct?

A Correct.

Q And you recall that that happened in mid-December, around December 16th; is that right?
A That sounds correct.
Q And in connection with that motion, you provided information to counsel that they requested from you, right?
A Yes. I was part of the working -- internal working group, with internal and external counsel.
Q Other than providing that information, you generally agreed with the position being taken that it wasn't in the best interest of the Funds involved for Highland to make any trades; isn't that right?
A Yes. And that was based off of discussions with the investment professionals.
Q And the investment professionals are Mr. Sowin and Mr. Dondero, correct?
A Correct.
Q Okay. So you're the chief compliance officer, and they made a motion that was based on the idea that the fund manager, Highland Capital Management, shouldn't trade any assets in the CLOs. Do I have that right?
A I believe that's what the motion contained.
Q But you don't even remember who authorized the filing of the motion; isn't that right?
A I believe it was pursuant to discussions internally and with external counsel, and I believe Mr. Norris signed the

1 filing, if I -- if I recall correctly.
2 Q Sir, you don't remember who authorized the filing of the
3 motion, correct?
4 A It -- it was pursuant to a discussion with the investment
5 professionals and counsel, and it was in the best interest of
6 the Funds to make the filing. So I think it was a
7 collaborative determination.
8 MR. MORRIS: I move to strike, Your Honor.
9 THE COURT: Granted.
10 MR. MORRIS: Ms. Canty, can we please pull up Mr.
11 Post's deposition transcript? And let's go to Page 35. Line
12 21. Okay.
13 BY MR. MORRIS:
14 Q Do you remember giving the following answer to the
15 following question:
16 "Q Who authorized the filing of this motion?
17 "A I can't recall specifically who authorized it."
18 Q Did you give that answer to my question just the other
19 day?
20 A That's -- that's what it says there, yes.
21 Q And it says that because that's, in fact, what you
22 testified to under oath the other day, right?
23 A Correct.
24 Q Okay. And the one thing that you know for certain is that
25 you didn't authorize the filing of the motion; isn't that

1 right?
2 A I didn't sign anything in connection with the filing.
3 Q All right. Listen carefully to my question. The one
4 thing that you're certain of is that you did not authorize the
5 filing of the motion as the chief compliance officer of the
6 Debtors, correct?
7 A Correct.
8 Q Okay. But you did participate in conversations with Mr.
9 Dondero and counsel concerning the motion; is that fair?
10 A There were conversations with Mr. Dondero initially, and
11 then the conversations were then more so with internal and
12 external counsel in terms of the filing.
13 Q Okay. So they started just with Mr. Dondero, and then
14 they moved on to counsel. Is that what you're saying?
15 A I can't recall specifically. It may have been part of a
16 discussion internally with internal counsel and Mr. Dondero.
17 I just -- I can't recall the specifics.
18 Q Okay. But Mr. Dondero certainly supported the filing of
19 the motion, right?
20 A Yes. From an investment perspective, it was in the best
21 interest of the Funds in terms of the sales that were
22 occurring.
23 Q Okay.
24 MR. MORRIS: I move to strike.
25 THE COURT: Granted.

BY MR. MORRIS:
Q It's a very simple question. Mr. Dondero supported the filing of the motion; is that correct?
A Yes.
Q You did not file a declaration in support of the motion; is that correct?
A Me personally, no.
Q Okay. So you're the chief compliance officer of the Defendants; is that right?
A Correct.
Q But instead of you filing a declaration, Mr. Norris filed the declaration. Do I have that right?
A Correct. My understanding is one person needs to sign the declaration.
Q And remind me, what is Mr. Norris's position? He's the executive vice president, right?
A Correct.
Q What responsibilities does he have? Does he have trading responsibility?
A He does not.
Q Does he have compliance responsibility?
A Not directly, no.
Q Does he have investment responsibility?
A He's familiar with the composition of the portfolios in his role as a product strategy team member.

1 Q Does he have investment responsibility, sir?
2 A He is not making direct investments for the -- for the
3 Funds.
4 Q Okay. So he doesn't -- and he's not a compliance person,
5 right?
6 A Correct.
7 Q And he's not a lawyer, right?
8 A Correct.
9 Q But nevertheless, as the chief compliance officer, you
10 believed that Mr. Norris's declaration contained all of the
11 information that was relevant to support the motion, right?
12 A It was a determin... or a collaborative determination in
13 conjunction with counsel. But I, you know, I don't -- yeah,
14 it was -- it was a collaborative determination. There were
15 multiple elements that went into that -- the letter.
16 Q Okay. You believed that the motion and Mr. Norris's
17 declaration contained all the relevant facts that supported
18 the Advisors and the Funds' requests to the Court, correct?
19 A Yes.
20 Q In fact, you believed that Mr. Norris was the most
21 knowledgeable person to testify on behalf of the Movants;
22 isn't that right?
23 A I think it was -- he was identified pursuant to
24 discussions with counsel to be the most knowledgeable.
25 Q I'm going to ask you just about you and not counsel. You

1 believed at the time that Mr. Norris was the most
2 knowledgeable witness to testify on behalf of the Movants;
3 isn't that right?
4 A Yes.
5 Q And you didn't testify -- not only didn't you submit a
6 declaration, but you didn't testify at the hearing, did you?
7 A Correct on both.
8 Q Okay. And you listened to parts of the hearing, but not
9 all of it, because you were busy doing other stuff, right?
10 A Correct.
11 Q You didn't listen to Mr. Norris's testimony at all, right?
12 A I don't believe I did.
13 Q You didn't listen to the Court when the Court rendered its
14 decision, did you?
15 A I don't -- I don't believe I did.
16 Q And you didn't read the transcript from the hearing, did
17 you?
18 A I don't -- correct. I did not.
19 Q Okay. So in your capacity as the chief compliance
20 officer, you didn't believe that you should take the time to
21 review the transcript, did you?
22 A Correct. I mean, just it was filed based off of the
23 belief that the -- that the trades weren't in the best
24 interest, and I -- and no, I didn't read it personally.
25 Q And you didn't believe, in -- that in your capacity as the

1 CCO, the chief compliance officer, that it was in the scope of
2 your responsibility to listen to the hearing, correct?
3 A I was -- I wasn't asked to listen, and quite frankly, I
4 don't -- I don't recall if I remember the timing, but I did
5 not listen.
6 Q Okay. And in your capacity as the chief compliance
7 officer, you didn't believe that it was in the scope of your
8 responsibilities to listen to the hearing; isn't that right?
9 A Correct.
10 Q And because you didn't listen to the hearing or review the
11 transcript, you were unaware of what the Court said or how
12 Judge Jernigan described the motion or the people involved in
13 presenting the case on behalf of the Defendants, right?
14 A Correct, but I -- I believe I probably would have received
15 some guidance from counsel who attended or listened to the
16 hearing.
17 Q Well, after the hearing was over, you did speak to Mr.
18 Norris, right?
19 A Very briefly.
20 Q In fact, --
21 A Very --
22 Q In fact, the only thing you can remember about your
23 conversation with Mr. Norris following the hearing was
24 discussing with him how long the hearing took. Isn't that
25 right?

A Correct, because I -- I believe I heard it was a short hearing.

Q And that's -- that's all -- that's all you asked Mr. Norris about, about the hearing, right? That's all you remember talking to him about?

A I believe so, correct.

Q You don't recall discussing with Mr. Norris any other aspect of the hearing other than the length of time it took to conduct, correct?

A I don't recall specifically.

Q And you have no recollection of ever discussing with Mr. Dondero what happened at the hearing, right?

A I don't think I talked with Jim, Jim Dondero about that.

Q Nor did you talk to Mr. Dondero about the Court's ruling; isn't that right?

A Correct.

Q Okay. Let's talk about the events that occurred after the hearing, in the two weeks following the hearing. The Defendants for which you serve as the chief compliance officer sent three separate letters to the Defendant [sic], correct?

A If you could bring them up, I can confirm.

Q Sure.

MR. MORRIS: Let's start with DDDD, please. Okay. Okay. Can we scroll to the attachment, please?

BY MR. MORRIS:

Q All right. So this is the first letter, Mr. Post. Do you recall, on or about December 22nd, the K&L Gates firm sent, on behalf of the Advisors and Funds for which you serve as the chief compliance officer, a letter to the Debtors?

A Yes.

Q Okay.

MR. MORRIS: And can we call the next exhibit? I guess it's EEEE.

And I don't mean to be quick about these. If there's any reason that you want to read them, I wasn't planning on asking any questions about the substance of the letters of this witness.

BY MR. MORRIS:

Q But Mr. Post, I don't mean to be quick here. So if you think there's a benefit to you to reading the letters, please let me know.

Do you see, December 23rd, the next day, another letter was sent by K&L Gates?

A Yes.

Q Okay. And do you recall generally that the Advisors and Funds for which you serve as chief compliance officer told the -- told the Debtor that they were going to begin the process of seeking to terminate the CLO management agreements?

A I believe -- I believe that was contained in the letter, so long as it was done in compliance with the Court.

Q Uh-huh. And do you remember there was a third letter that was sent?
A If you wouldn't mind pulling it up.
Q Yeah, not at all.
MR. MORRIS: Can we get the December 31st letter? I think it might be -- yeah.
BY MR. MORRIS:
Q Now, here's the December 31st letter. Do you remember the December 31st letter was the one where K&L Gates suggested that the Advisors and the Funds had suffered damages because the Debtor evicted Mr. Dondero from the Highland suite of offices?
A I -- I had heard of that letter being drafted, but I don't recall -- I obviously don't recall a specific date. But if it says December 31st, --
Q Okay. Mr. Dondero was one of the main voices in the decision to send these letters, correct?
A He was part of the preliminary conversation and expressed his opinion, and then myself and others internally, and with external counsel, then worked to draft the letters.
THE COURT: All right. Mr. Post, I am going to interject. I have heard Mr. Morris give you this instruction many times. Maybe it's time for me to. Maybe it's past time for me to.
Most of his questions simply require a yes or no answer.

If you feel like there are other things that you want to supplement your testimony with, Mr. Rukavina is going to have a chance to question you, and that would be the situation where maybe you could give more fulsome answers. But please listen to the question. If it's a yes or no answer, that's all we want you to give right now. Okay? Got it?

THE WITNESS: Understood.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

BY MR. MORRIS:

Q Mr. Post, Mr. Dondero was one of the main voices in the decision to send the letters; isn't that correct?

A He was a voice.

THE COURT: That was not a yes --

BY MR. MORRIS:

A And he was -- he --

THE COURT: Okay.

THE WITNESS: I'm --

THE COURT: Please, just a yes or no answer, okay?

THE WITNESS: No.

MR. MORRIS: Okay. Can we go to Mr. Post's transcript, please, Page 47? Line 22?

And Your Honor, when we pull it up on the screen, there is an objection, and I would respectfully request that the Court rule on the objection before I read the question and the

1 answer.
2 THE COURT: All right.
3 MR. MORRIS: So if we could just call up Page 47
4 beginning at Line 22.
5 MR. RUKAVINA: Page 47, Line 22.
6 THE COURT: Okay.
7 MR. MORRIS: One moment. Give her a moment. She's
8 not there.
9 MR. RUKAVINA: Do you remember what exhibit this is?
10 MR. MORRIS: Yeah. There it is. Beginning at Line
11 22, "Do you know?" And there is Mr. Rukavina's objection.
12 MR. RUKAVINA: Your Honor, it's very simple. He
13 can't go into Mr. Dondero's head. But he -- but if Mr.
14 Dondero told him something, that's different. So I think
15 counsel can rephrase the question and it's perfectly fine, but
16 he can't go into Mr. Dondero's state of mind.
17 MR. MORRIS: Your Honor, I'm not asking for Mr.
18 Dondero's state of mind. I'm asking for Mr. Post's knowledge.
19 "Do you know?"
20 THE COURT: Okay. I'll overrule the objection. He
21 can answer.
22 BY MR. MORRIS:
23 Q All right. So, Mr. Post, do you remember giving this
24 answer to the following question:
25 "Q Do you know whether Mr. Dondero supported the

1 sending of each of these three letters?
2 "A I don't -- I don't recall specifically. I think
3 he had his views on certain of the transactions that
4 were occurring, and he wasn't in agreement with those
5 transactions, as one of the main voices."
6 Q Do you see that?
7 A I do.
8 Q Does that refresh your recollection that Mr. -- that you
9 testified that Mr. Dondero was one of the main voices?
10 A Yes.
11 Q Okay. Mr. Dondero --
12 MR. MORRIS: You can take that down now for the
13 moment, please.
14 BY MR. MORRIS:
15 Q Mr. Dondero had his views on certain of the transactions
16 that were occurring, and he wasn't in agreement with those
17 transactions. Isn't that right?
18 A Yes.
19 Q All right. Going back to the letters that we just looked
20 at quickly, you recall the Debtor responded to each of those
21 letters, but as the chief compliance officer, you couldn't
22 really recall what the Debtor said in response. Is that fair?
23 A I'm -- I believe they -- I'm sorry. I can't recall
24 specifically without seeing the letters.
25 Q Okay. So you don't recall that, in response, the Debtor

1 requested that the Advisors and the Funds withdraw the
2 letters, right?
3 A I believe that was requested in the letters.
4 Q Okay. But the Funds and the Advisors didn't comply with
5 that request, right?
6 A To my knowledge, they have not withdrawn the letters.
7 Q You do recall that the Debtor specifically asked the
8 Defendants to file their lift stay motion so that they could
9 finally resolve the issue of whether or not the Advisors and
10 the Funds could actually terminate the agreement, right?
11 A I -- I'm sorry. Can you repeat that question, please?
12 Q Do you recall that the Funds and the Advisors informed the
13 Debtor that they were going to initiate steps to terminate the
14 CLO management agreements, including moving to lift the stay?
15 A I think they indicated that they were going to take steps,
16 but it would be pursuant to what was permitted in the court.
17 Q And do you remember that the Debtor specifically asked the
18 Defendants to do exactly that, to bring this matter to a
19 conclusion, to file the motion so that the Court could resolve
20 the issue of whether or not they had a right to terminate the
21 agreement? You remember that, right?
22 MR. RUKAVINA: Objection, compound, Your Honor.
23 THE WITNESS: I can't --
24 THE COURT: I'm sorry.
25 MR. MORRIS: I can't recall.

THE COURT: Was there an objection?

MR. RUKAVINA: Yes, Your Honor. That's four questions in one. That's compound.

MR. MORRIS: I'll rephrase, Your Honor.

THE COURT: Okay. And let me interject a minute. Mr. Post, you have this habit of not looking squarely at the camera but looking over to your right. And in a normal courtroom setting, that might be fine, but I have no way of knowing if some lawyer or some other person is -- you're looking at them and they're somehow instructing you. I would certainly hope that's not what's going on, but it just kind of leaves room for me to wonder when you're not looking squarely at the camera. So can you start looking squarely at the camera, please?

MR. RUKAVINA: Your Honor, I can explain that, and certainly there's no funny business going on. There are two cameras on Mr. Post. One is on a laptop. We're looking at the Court on the big camera. I'm sitting behind Mr. Post. So if the Court would prefer that Mr. Post look directly into the laptop, then that's what he'll do, or if the Court would prefer that he look into the big camera.

THE COURT: Okay. Well, I prefer he look into the big camera just because it --

MR. RUKAVINA: So keep looking there? Yeah.

THE COURT: No, no, no, no. Okay. I don't know what

-- I thought -- okay. Do you see what I'm seeing? I don't know if you can see what I'm seeing.

MR. MORRIS: Yes.

THE COURT: I'm seeing the left side of his face.

THE WITNESS: I'm sorry. I'll just look at the laptop. Sorry. I was -- I was looking at who was speaking to me.

THE COURT: Okay. Well, I don't --

MR. MORRIS: Okay.

THE COURT: I don't know the setup, so it was confusing to me.

All right. This is better. Thank you.

THE WITNESS: Yeah. I apologize.

MR. RUKAVINA: We'll focus on the laptop, Judge.

BY MR. MORRIS:

Q All right. So the question, Mr. Post, is: You do recall that the Debtor specifically asked the Defendants to file their motion to lift the stay so that the issue could finally be resolved; isn't that right?

A I can't recall that specifically.

Q You believe that may be one of the options that the Debtor specifically proposed, right?

A It -- yes.

Q Okay. But the Defendants never filed their lift stay motion to terminate the agreements; isn't that right?

A I don't believe so.
Q Right. So the Debtor filed its complaint and its request for the injunction, right?
A Correct.
Q As the CO -- as the CCO, you may have reviewed the Debtor's complaint and motion, but you can't recall, given all the documentation that's involved, right?
A Correct.
Q You can't recall any facts that the Debtor asserted in support of its motion; isn't that right?
A I can't recall specifically. Correct.
Q But the one thing you do know is that the Debtor's motion is based on its entitlement to transact business pursuant to their arrangement with the CLOs as collateral manager, correct?
A Yes.
Q Now, you heard that there was supposed to be an initial hearing on the Debtor's motion for a temporary restraining order against the Defendants, right?
A Correct.
Q But you don't believe the motion for the TRO got heard, and you presume it got resolved, right?
A I don't believe it was heard.
Q Okay. And you understand that there is a TRO in place now, pursuant to which the Advisors and the Funds are

1 prevented from interfering with the Debtor's execution of its
2 rights under the CLO management agreements, right?
3 A Correct.
4 Q Before the TRO was resolved, you weren't personally
5 involved in the process of deciding what witnesses would be
6 called and what exhibits would be offered into evidence; is
7 that right?
8 A No.
9 MR. MORRIS: During the deposition, Your Honor,
10 subject to correction from Mr. Rukavina, I believe that the
11 Defendants and the Debtor reached the following two
12 stipulations.
13 First, the Defendants and the Debtor stipulate that Mr.
14 Post was not going to be called as a witness at the TRO
15 hearing.
16 MR. RUKAVINA: That is correct.
17 MR. MORRIS: And second, the Defendants and the
18 Debtor stipulate that the Defendants were not going to offer
19 into evidence any exhibits other than those specifically
20 listed on their witness and exhibit list.
21 MR. RUKAVINA: That being the witness and exhibit
22 list filed before the TRO. That is correct.
23 MR. MORRIS: Okay.
24 BY MR. MORRIS:
25 Q Let's talk about Mr. Seery for a minute. You know who Mr.

Seery is, correct?
A Correct.
Q You understand he's an independent director and the CEO of the Debtor, right?
A Correct.
Q And you also understand that his -- in his capacity as the Debtor's CEO, Mr. Seery is authorized to sell certain securities and assets that are owned by the CLOs, correct?
A Correct.
Q In your opinion as the CCO, the chief compliance officer of the Advisors and the Funds, Mr. Seery has the knowledge and experience to trade securities on behalf of the CLOs, correct?
A Correct.
Q But you don't believe that it's in the Funds' best interest for Mr. Seery to sell SKY and AVYA securities, right?
A Correct.
Q But even though you reached that decision about Mr. Seery, you have no knowledge as to whether Mr. Dondero ever traded either of those securities before he resigned from Highland; isn't that right?
A I saw some trades that were shown on the screen earlier. I don't think I recalled at the time I was asked on Friday.
Q As of the time -- as of Friday, you had no knowledge as to whether Mr. Dondero had traded in AVYA securities prior to his departure from Highland, correct?

A Correct.
Q And before, before forming your view as the chief compliance officer that Mr. Seery's trading of AVYA was not in the best interest of the Funds, you made no effort to see if Mr. Dondero had sold the exact same securities Mr. Seery was selling, correct?
A Correct.
Q And the sole source of information that you relied upon to reach your opinion that the trades weren't in the best interest of the Funds is Jim Dondero and Joe Sowin, correct?
A I'm sorry. Can you repeat that? You kind of cut out at the beginning.
Q Sure. And please, any time that happens, let me know. We had some problems this morning.
The sole source of information that you relied upon to reach your opinion that the trades weren't in the best interest of the funds is Jim Dondero and Joe Sowin; isn't that correct?
A Correct. They're the investment professionals, yes.
Q And you have no understanding as to why Mr. Seery wanted to sell the AVYA and SKY securities, do you?
A I was told that -- I don't know why he wanted to sell them personally, correct.
Q Okay. In fact, before reaching your conclusion as the CCO that Mr. Seery's trades were not in the best interest of the

1 Fund, you did not undertake any investigation of any kind to
2 try to determine why Mr. Seery wanted to sell AVYA or SKY
3 stock, correct?
4 A Correct. I didn't reach out to Mr. Seery.
5 Q All right. You believe that Mr. Dondero and Mr. Sowin's
6 opinion that Mr. Seery's trades aren't in the Funds' best
7 interest should be heard pursuant to the Advisers Act, right?
8 A Correct.
9 Q Specifically, Section 2000 -- 206 of the Advisers Act,
10 right?
11 A Correct.
12 Q Have you ever read Section 206 of the Advisers Act?
13 A Yes.
14 Q Okay.
15 MR. MORRIS: Ms. Canty, can you please put up the
16 demonstrative for Section 206 of the Advisers Act?
17 MR. RUKAVINA: Your Honor, the witness just asked me
18 for water. Nothing more.
19 THE COURT: Okay.
20 MR. MORRIS: Yeah. No problem.
21 BY MR. MORRIS:
22 Q I've put on the screen Section 206 of the Advisers Act,
23 Mr. Post. Can you please tell the Court what provision of 206
24 you believe Mr. Seery allegedly breached when he sought to
25 sell AVYA and SKY securities?

A It would be Number 4.
Q Do you believe that Mr. Seery engaged in fraudulent, deceptive, or manipulative practices by trying to trade AVYA and SKY securities?
A The -- as collateral manager for the CLOs, they're supposed to maximize returns for the preference shares, which we didn't believe the sales reflected that, and so they weren't acting, --
THE COURT: Okay.
THE WITNESS: -- you know, pursuant to their duties --
THE COURT: Here I -- here I go --
THE WITNESS: -- under the collateral management --
THE COURT: Here I go again. Here you go again.
THE WITNESS: I'm sorry.
THE COURT: It really was a yes or no question. All right?
BY MR. MORRIS:
Q You're the -- you're the chief compliance officer, right?
A Yes.
Q And this is the provision in Section 4 that you cite to as the provision that Mr. Seery violated when he attempted to sell SKY and AVYA securities, correct?
A Yes.
Q Did Mr. Seery engage in an act, practice, or course of

1 business which was fraudulent when he looked to sell those
2 securities?
3 A No.
4 Q Do you believe that Mr. Seery engaged in an act, a
5 practice, or a course of business which was deceptive when he
6 went to sell the SKY and the AVYA securities?
7 A Yes.
8 Q Who did he deceive?
9 A The investors of the CLOs, --
10 Q How?
11 A -- the preference shareholders.
12 Q How?
13 A By selling securities that the preference shareholder
14 investors believed had further upside to them.
15 Q Did he lie to them?
16 A I don't believe he talked to the investors.
17 Q But you're putting your reputation on the line here and
18 you're swearing under oath that Mr. Seery deceptively tried to
19 sell SKY and AVYA securities?
20 A I believe that based off of a review and discussion with
21 counsel.
22 Q Do you think he was manipulative?
23 A No.
24 Q Did you -- did you check in with the SEC to tell them that
25 you had a bad actor here?

A No.
Q You first formed your view that the Debtor violated Section 206 of the Advisers Act after the sales started to occur in the CLOs, correct?
A Correct.
Q But you don't know when the sales actually started, right?
A I believe there were sales --
Q And I assume, since you were the chief compliance officer since 2015, you don't believe that Mr. Dondero's sale of AVYA stock was deceptive, right?
A You would have to ask Mr. Dondero that, but I believe he was selling for cash, cash needs for other funds.
MR. MORRIS: Okay. I move to strike. I'm asking him not --
THE COURT: Sustained.
BY MR. MORRIS:
Q I'm asking about you. I'm asking about you. You're the chief compliance officer, right?
A Yes.
Q And you don't believe that when Mr. Dondero sold AVYA stock that he was engaged in deceptive practices, do you?
A No.
Q And that's because you don't even know whether he sold AVYA stock; isn't that right?
A On Friday, I -- that is correct.

Q In fact, the only reason you learned that Mr. Seery wanted to sell AVYA and SKY stock is because Mr. Dondero told you; isn't that right?
A I believe I was forwarded the email after -- after there was communications on the sales.
Q And that's the email where Mr. Dondero told Mr. Surgent that he had personal liability, correct?
A I -- I believe it was an email prior to that about were trades being requested and Mr. Dondero responding.
Q You're familiar with the email where Mr. Dondero interfered with Mr. Seery's trades?
A Yes.
Q Okay. And you're aware that Mr. Dondero told Mr. Surgent that he faced potential liability if he continued to follow Mr. Seery's instructions, correct?
A Correct. Based off of Mr. Dondero's view.
Q Notwithstanding all of that, in your capacity as the chief compliance officer, you don't believe it's ever appropriate for an investor to step in and impede transactions that have been authorized by the portfolio manager unless the contract permits the investor to step in; isn't that right?
A I believe -- I'm sorry, can you repeat that, please? There was a lot of question.
Q Sure. Sure. In your capacity as the chief compliance officer, you don't believe it's ever appropriate for an

1 investor to step in and impede transactions that were
2 authorized by the portfolio manager unless the contract
3 permits the investor to do so; isn't that correct? Isn't that
4 correct?
5 A Yes.
6 Q Okay. I know you're not a lawyer, but you are the chief
7 compliance officer of the Funds; isn't that right?
8 A Correct.
9 Q And you can't point to anything in any contract that gives
10 Mr. Dondero the right to step in and impede transactions that
11 have been authorized by Mr. Seery; isn't that correct?
12 A He's entitled rights as preference shareholders for the --
13 for the Funds that hold those preference shareholders. So,
14 indirectly, he should be afforded those rights as portfolio
15 manager for those Funds.
16 Q Sir, you can't point to anything in any contract that
17 gives Mr. Dondero the right to step in and impede transactions
18 that have been authorized by Mr. Seery; isn't that correct?
19 A Correct.
20 Q Okay. But yet you have never told Mr. Dondero that he
21 should not interfere with Mr. Seery's trades; isn't that a
22 fact?
23 A Correct.
24 Q In fact, you never personally took any steps at any time
25 to make sure that there would be no further interference with

1 the Debtor's trading activities; isn't that correct?
2 A Correct.
3 Q And that's because you believe, as the chief compliance
4 officer of the Funds, that Mr. Dondero should have the leeway
5 to make the determination as to whether or not the
6 transactions are appropriate; isn't that correct?
7 A He should be able to be heard in the transactions that are
8 being made, correct.
9 Q Sir, not to be heard, but to make the determination. Let
10 me ask the question again. You believe, as the CO -- CCO of
11 the Funds, that Mr. Dondero should have the leeway to make the
12 determination as to whether or not the transactions are
13 appropriate; isn't that correct?
14 A Yes.
15 Q Okay. And you completely deferred to Mr. Dondero; isn't
16 that right?
17 A For the investment determination, yes.
18 Q And based on that deference, you never took any steps at
19 any time to make sure no one on behalf of the Advisors or the
20 Funds impeded or stopped transactions authorized by Mr. Seery,
21 correct?
22 A Correct.
23 Q You understand there's a TRO in place today that prevents
24 Mr. Dondero and the Advisors and the Funds from interfering
25 with Mr. Seery's trading activities; isn't that right?

1 MR. RUKAVINA: I'm going to object to that, Your
2 Honor, to the extent that calls for a legal conclusion. And I
3 do think it mischaracterizes the testimony. I'm sorry. The
4 TRO.
5 THE COURT: Overruled.
6 BY MR. MORRIS:
7 Q You can answer, sir. Would you like me to repeat the
8 question?
9 A Yes, please.
10 Q You understand that there is a TRO in place -- TRO in
11 place today that prevents Mr. Dondero, the Advisors, and the
12 Funds from interfering with Mr. Seery's trading activities on
13 behalf of the CLOs, correct?
14 A Correct.
15 Q But in the absence of the TRO, in your view, whether you
16 tell Mr. Dondero not to interfere with Mr. Seery's trades
17 depends on the facts and circumstances that exist at the time,
18 right?
19 A Correct. From a -- yes.
20 Q Okay. And up until this point, there have been no facts
21 and circumstances that have caused you to tell Mr. Dondero not
22 to interfere with Mr. Seery's trades on behalf of the CLOs,
23 correct?
24 A He can't because of the TRO.
25 Q Correct. But if the TRO wasn't in place, it's possible

1 that you wouldn't take any steps to stop Mr. Dondero from
2 impeding Mr. Seery's trades; isn't that right?
3 A I mean, if Mr. Dondero or other investment professionals
4 have a view, that they should be -- they should have a right
5 to be heard as preference shareholders of the CLOs.
6 Q Okay. But if the TRO wasn't in place, you wouldn't act to
7 stop Mr. Dondero from interfering or impeding the Debtor's
8 trades on behalf of the CLO; isn't that right?
9 A He would -- if he would be permitted to talk to Mr. Seery.
10 Q Okay. Prior to the imposition of the TRO, you took no
11 steps to stop Mr. Dondero from interfering with Mr. Seery's
12 trades, correct?
13 A Correct.
14 Q And if the TRO wasn't in place, it's possible you wouldn't
15 take any steps to stop Mr. Dondero from impeding -- impeding
16 Mr. Seery's trades again; isn't that right?
17 A If there's an investment rationale as to why they feel the
18 trades shouldn't be done, I -- again, I feel like Mr. Dondero
19 or the other investment professionals should be able to raise
20 those points with Mr. Seery.
21 Q Do you think they should be able to stop the trades?
22 A I -- I -- I think they should be able to question the
23 trades. But flat-out stop them, I'd probably say no.
24 Q Then why didn't you do anything before the TRO was
25 entered?

A Um, I'm sorry, can you repeat the -- do anything in -- in what manner?
Q Why didn't you take any steps before the TRO was entered to stop Mr. Dondero from interfering and stopping and impeding the Debtor's trades?
A I think, as I recall, there was only one -- one set of trades in question that he stepped in on.
Q So, one is okay? How about two?
A Or, sorry. There were two trades on one day that -- that, you know, he questioned. Or stepped in on. I don't -- I don't recall him stopping any other trades thereafter.
Q That's all you know about, right?
A Correct.
Q And with that knowledge, it never occurred to you to tell Mr. Dondero to knock it off, did it?
A He believed the trades weren't in the best interest for the investors, so I did not.
Q And that's what you mean by deferring to him; isn't that right?
A From the investment perspective, yes.
Q Thank you for your -- thank you for your honesty. As the CCO, you have never communicated with the Issuers about the Debtor's performance under the CLO management agreements; isn't that right?
A Correct.

Q And that's because you didn't believe it was in your responsibility as the CCO to check with the Issuers to see if the Issuers believed that the Debtor was in compliance with the CLO management agreements, correct?

A That communication would have involved counsel and that communication didn't occur. I wouldn't have reached out to them directly.

Q Yeah. You didn't believe it was within your responsibility as the chief compliance officer to communicate with the Issuers to see if they had any views as to Mr. Seery's performance as portfolio manager, correct?

A Correct, because it would have involved me working with counsel and there was never direction to do that.

Q As the chief compliance officer of the Defendants, you have no idea if anyone on behalf of the Advisors or the Funds ever asked the Issuers whether they believed the Debtor was in default under the CLO management agreements, correct?

A Correct.

Q As the CCO, you have no idea if anyone on behalf of the Advisors or the Funds ever asked the Issuers whether they believed was in breach under the CLO management agreements, correct?

A Correct. I believe there was a call that I wasn't a part of, that it was just involving lawyers, that I don't know what was discussed on the call. So, correct.

Q As the CCO, you have no idea if anyone on behalf of the Advisors or Funds ever asked the Issuers whether they believed it was appropriate to try to take steps to terminate the CLO management agreements; isn't that right?

A Correct.

Q None of the Issuers joined any of the letters that were sent on behalf of the Funds and the Advisors, right?

A I didn't -- I don't recall seeing their names listed.

Q As the CCO, you don't have any understanding as to what the standard is for terminating the CLO management agreements unless you get legal advice; isn't that right?

A Yes. It was -- it would be a discussion with counsel, given the complexity of the agreements.

Q But as a factual matter, you're not aware of any facts that would support the termination of the CLO management agreements except that there were trades that Mr. Dondero didn't think were in the best interests of the Funds; isn't that right?

A Yes. And because the belief was those trades weren't maximizing value for the preference shareholders.

MR. MORRIS: I move to strike everything after the word yes, Your Honor.

THE COURT: Granted.

MR. MORRIS: I have no further questions.

THE COURT: All right. Mr. Rukavina?

MR. RUKAVINA: Your Honor, I'll reserve my questions for my case in chief.

THE COURT: All right. Mr. Post, that concludes your testimony for now. Stick around.

Mr. Morris?

MR. MORRIS: Your Honor, last witness, and I hope it's rather brief, actually. The Debtor calls James Seery.

MR. RUKAVINA: Your Honor, may we have a brief restroom break, all of us in this room, before we start the next witness?

THE COURT: All right. We'll take a five-minute restroom break. I know part of the long day is because of my commitment at the lunch hour, but you all did estimate three or four hours for this hearing, right? That's what I recall.

MR. MORRIS: We did.

MR. RUKAVINA: Your Honor, I was never consulted on a time estimate. I had no idea that someone said three to four hours.

THE COURT: All right.

MR. MORRIS: And part -- part of that is my fault and the technological problems we had this morning, so I take responsibility for that, Your Honor, and I sincerely apologize.

THE COURT: Okay. Well, just so you know, we cannot come back tomorrow. I've got two -- too booked today tomorrow

to come back, so --

MR. MORRIS: I don't expect Mr. Seery to be more than about 15 minutes.

THE COURT: Okay. We'll take a five-minute break.

THE CLERK: All rise.

(A recess ensued from 3:22 p.m. until 3:32 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. I wanted to clarify one thing I said, just so no one is confused. I know that originally you had today, Wednesday, and Thursday, 26th, 27th, and 28th, for confirmation. So if anyone thought, oh, we're coming back tomorrow on this if we don't finish, because originally you had all three of those days, you know, as soon as we continued the confirmation hearing, we started filling in Wednesday. So we have three different Chapter 11 case matters set tomorrow. And so it was, you know, you give up time and we have people usually wanting to get that time, so that's what happened.

But anyway, people, we'll talk fast and we'll get it done today, right?

MR. RUKAVINA: Your Honor, my -- Your Honor? Oh, wait. I need to --

THE COURT: Ooh, it sounds like you're in a cave. Let's get those headphones on.

MR. MORRIS: I promise to be as quick as I can, Your

Honor.

THE COURT: Okay. Mr. Rukavina, were you trying to say something?

MR. RUKAVINA: I was, Your Honor. Can you hear me?

THE COURT: Yes.

MR. RUKAVINA: This darn video. Too many -- Your Honor, we have an agreed TRO that goes through February the 15th. And I'm certainly not suggesting taking any more of the Court's time than is necessary, but I cannot commit to finishing today, especially because Mr. Morris has taken so much time. So I think we will do our best, but I just want the Court to know that there's no urgency to this, and if we have to come back at some point after Tuesday or Wednesday, there's no possible harm to the Debtor.

MR. MORRIS: Your Honor, it's my hope that we can get this done, and I think the sooner we begin the better.

THE COURT: Okay. Well, we're going to try to get it done. All right, Mr. Seery. You've called Mr. Seery to the stand now?

MR. MORRIS: Yes, Your Honor. The Debtor calls James Seery.

THE COURT: All right. Mr. Seery, please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you.

MR. MORRIS: May I proceed?

THE COURT: You may.

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Seery. Can you hear me okay?

A I can, yes.

Q Okay. Let's just cut to the chase here. You're the CEO of the Debtor; is that right?

A That's correct.

Q And in that capacity, do you understand that the Debtor is party to contracts pursuant to which it manages certain CLO assets?

A Yes.

Q And are you personally involved in the management of those assets?

A Yes.

Q Do you have any prior experience managing other people's money or other people's assets?

A Yes.

Q Can you please explain to the Court your experience and your knowledge as to investing other people's money?

A Yes. I was a finance lawyer -- I'll go quickly, if it's okay. I can fill in later, if you like. I was a finance and bankruptcy lawyer for ten years before I went to Lehman on the

business side in 1999.

In that role, I started immediately in distressed investing. I worked as part of a team of analysts and traders to build distressed positions in prop (phonetic) business, trading Lehman Brothers balance sheet at the time. This was in 1999 and 2000. We were one of the most significant investors on the Street, and I was part of that team, and a leading part of the team, putting on significant investments of our balance sheet, which was Lehman's money, into different kinds of stressed, distressed, high yield investments. That included bonds, that included loans, unsecured, subordinated. Sometimes equity. Typically, we stayed in credit, but a lot of this was very distressed credit, which often ended up as reorg equity.

After that, I began running different teams for making distressed loans to companies that no one else would lend money to. These investments were significant, anywhere from fifty to a billion dollars. Some of the largest transactions in the world at the time were transactions I ran, like a rescue loan to PG&E for a billion dollars. That was in 2000.

After that, I continued to grow my career there, running distressed investments. In 2005, I took over the loan business at Lehman. That included all high-grade loans, high-yield loans, trading and sales of those loans; managing that portfolio, which was in excess of $10 or $20 billion,

1 depending on the time; exposure both in committed transactions
2 as well as funded loans; the hedging of that portfolio;
3 traders and salespeople working for me. In addition, I had
4 significant responsibility for the distressed book, as well as
5 all restructuring business at Lehman.
6 After Lehman, I -- and I was one of the people who sold
7 Lehman -- I became a senior investing partner at RiverBirch
8 Capital. We were about a billion and a half dollar long/short
9 investor, mostly stressed and distressed, but a lot of high-
10 grade trades as well, particularly in preferred stocks. That
11 was a global business, but primarily U.S., Europe, some Asian
12 investments as well.
13 Since then, I've gotten to Highland. I've been
14 responsible for Highland's investments. After the first
15 quarter, when the performance managed by Mr. Dondero was
16 absolutely disastrous -- we lost about $80 million in equity
17 securities, positions that he managed, about $50 million in
18 the Select Equity Fund, and about $30 million in the -- in the
19 Highland internal account. After Jefferies seized the Select
20 account, I took over the --
21 A VOICE: I think Mr. Seery has sort of gone beyond
22 the question of his background.
23 THE WITNESS: He's asked me if I was experienced in
24 investing other people's money. I was giving that background.
25 But we -- I can stop or I can keep going, if you like.

1 THE COURT: Okay. If that was an objection, --
2 MR. MORRIS: Let's --
3 THE COURT: -- I overrule it. Go ahead.
4 THE WITNESS: I've been managing that portfolio. In
5 addition, after Mr. Dondero left, but I actually started
6 looking at it before that, started taking over the CLO
7 portfolio, or taking a look at it, frankly. We have a -- we
8 have an experienced professional sitting on top of it, Hunter
9 Covitz, who manages the day-to-day exposure. But those
10 portfolios -- we call them CLOs, Your Honor, but I think
11 you've heard testimony before, they're not really. Acis 7 is
12 a CLO. The 1.0 CLOs are very old investment vehicles that are
13 primarily structured as, right now, closed-end investment
14 funds. They don't have the typical diverse portfolio of loans
15 that a CLO has. They have mostly reorg equity or positions in
16 real estate and in MGM. So the -- the securities we've been
17 talking about in these trades are publicly-traded liquid
18 securities that Highland took as post-reorganization equity.
19 Q Thank you, Mr. Seery. Let's cut to the chase on the AVYA
20 and the SKY. Nobody seems to have asked you this question,
21 but did you -- have you looked to sell AVYA and SKY securities
22 since the time that Mr. Dondero left in October?
23 A I have, yes.
24 Q Can you please explain to the Court your investment
25 rationale, the reason why you wanted to sell -- let's just

take them one at a time. Let's start with AVYA. In the last couple of months, why have you wanted to sell AVYA?

A Well, the original impetus to sell AVYA came from Mr. Covitz when it started moving up as a post-reorg security in the communications space that had -- had really performed extremely poorly post its Chapter 11. Mr. Covitz over the summer felt we should start lightening up on that position. I agreed. He did that. And Mr. Dondero eventually cut him off.

As it got to the fall, what I did was I got Mr. Covitz, as well as then the analyst -- the analyst on that is Kunal Sachdev. That's the Highland analyst on the position -- as well as Joe Sowin and Matthew Gray, who's another senior analyst. And I looked at all of the equity positions in the CLOs and wondered why we had them. What was the view? Were they worth keeping?

Primarily, the ones we looked at were four of the post-reorg equities that were liquid. A company called Vistra, a company called Arch Coal. Vistra is the old TXU, a well-known bankruptcy. Arch Coal, another well-known bankruptcy. Avaya, a bankruptcy; and Sky Champion, a less -- less-known bankruptcy but came out of there.

Mr. Gray is the analyst on Vistra and Arch. We determined, based upon his recommendations, not to sell those. Mr. Sachdev was the analyst on Avaya, and he believed that it had reached its peak, and even though it could continue to go

1 up or down -- stocks often do that -- he did not think that
2 the value was there. His recommendation was to sell.
3 Mr. Sowin was in those meetings. Prior testimony to the
4 contrary or any statements that were said before are
5 completely false, they're completely made up, so I know it's
6 frustrating and I apologize for -- for being frustrated.
7 So we decided that we would sell the Sky Champion. A
8 pretty simple answer. Highland didn't have an analyst.
9 Literally didn't have an analyst. Nobody had a view as to
10 what the stock was. It just sat in there, in two CLOs,
11 without anybody paying any attention to it.
12 I had Matthew Gray take a look. He felt that it was at
13 fair value. I did my own work on it, felt it was at fair
14 value, notwithstanding some good tailwinds in -- secular
15 tailwinds in the home building space, and determined that that
16 CLO should sell those securities.
17 Q Thank you, sir. Prior to his departure at Highland, did
18 Mr. Dondero have responsibility over the management of any of
19 the CLO assets?
20 A He did, yes.
21 Q And do you understand, do you know whether Mr. Dondero
22 sold AVYA securities on behalf of the CLOs and on behalf of
23 the Funds during the time that he was employed as the
24 portfolio manager from January until October 2020?
25 A I do. And he did sell those securities. The chart you

1 put up, based upon our business record, is accurate, and he
2 engaged in significant sales of those securities throughout
3 the year.
4 Q Okay.
5 MR. MORRIS: Can we please put upon Demonstrative #1?
6 BY MR. MORRIS:
7 Q Okay. And can you just explain to the Court what this
8 document is?
9 A It's a trade report, one of Highland's -- this shows the
10 whole platform, so it's the aggregate sales. The name of the
11 email -- I apologize, I forgot the system; it just left my
12 mind. But the email you saw before is anybody on the platform
13 used for various trades if they're part of a trading group.
14 And that's to make sure that, across the portfolio, in its
15 corporate platform, you aren't running into either compliance
16 problems or allocation problems that could lead to a
17 compliance problem.
18 Q So this shows sales of Avaya on these particular dates.
19 The trade is -- the trade symbol is AVYA. This is a liquid
20 security. Trades in, you know, liquid equity markets. I
21 believe its average trading volume is somewhere about a
22 million and a half a day, approximately. So you have a trade
23 date. You have the type of transaction. It could be a buy or
24 a sell. These are all sales. The quantity. And then the
25 price. And then it would have the Fund, and then the

aggregate dollars, which is simply multiplying the price times the quantity.

Q And if we just scroll down to the end of the document, October 9th, is that around the time that Mr. Dondero left Highland?

A Right around that time. This was coming into a number of hearings that we thought it was most important to have Mr. Dondero depart, particularly in light of some of the positions that he and his companies were taking vis-à-vis the Debtor.

MR. MORRIS: Can we put up Demonstrative Exhibit #2, please?

BY MR. MORRIS:

Q Can you explain to the Court what this is?

A Uh, --

MR. MORRIS: And again, just for -- just for the record -- sorry to interrupt, Mr. Seery -- the backup for this information can be found at Debtor's Exhibits BBBBB to SSSSS

BY MR. MORRIS:

Q Go ahead, sir. Could you explain to the Court what this is?

A Yeah. This is just a pretty straightforward chart showing the bars being sales and the lines being the -- the closing sale price of a buy on that day. And so you can see, you know, with the market fallout in the early part of the year, AVYA hit a low, but like most of the securities in the market,

it has come back very strongly. And you see Mr. Dondero's trades earlier in the year, the rest of it during the middle part of the year, sales in the third quarter, and then, when he's gone, I began selling in November and December.

Q Now, so is it fair to say that Mr. Dondero and the Defendants didn't completely impede and stop the Debtor from selling AVYA shares?

A That's fair. What -- there's a little bit of confusion. The way the trading desk worked previously is that you have these separate companies but they're not really separate companies. HCFMA is populated by about seven employees. Many of them have functions across a number of different companies. HCFMA exists solely because Highland funds it. They haven't paid fees of about three million bucks this year. They owe $10 million related to a disastrous bailout of what was an open-end fund called Global Al a couple years ago where the SEC, you know, came in and took significant action, almost shut significant parts of Highland down. And these traders do the trading of all the equities across the platform.

So I typically would call them, and this is how we worked in the spring when I took over the internal account after the seizure by Jefferies of Mr. Dondero's management of the Select Equity account. I would work with Joe Sowin as the trader, make decisions on what we wanted to do for the day, he would execute those trades by going out in the market with a broker,

selling them to -- to the dealer on the other side, run it through our automated system, and then the trades get closed with the back office.

So there's the trade, which is your agreement to buy or sell at a particular dollar price. That gets inputted into the OMS system, and then from there it's the back office takes over, and then ultimately securities are delivered versus payment to the counterparty.

Q Okay. And can you just describe, you know, in one or two sentences, your interpretation of this chart and how your sales and the green bars compare to Mr. Dondero's sales and the brown bars?

A Well, the two simple obvious answers are, one, they're smaller, and two, they're at higher prices.

Q Okay. You also traded, since Mr. Dondero's departure, securities known as SKY; is that right?

A That's correct. It's Sky Champion Corp. The ticker is SKY.

Q And did Mr. -- to the best of your knowledge, Dr. Mr. Dondero trade in SKY securities prior to his departure?

A I don't believe so. As I said earlier, we didn't appear to have an analyst on that for some time. I don't even know how far back it goes. It was a bit of an orphan security sitting in the portfolio. It's only -- it was only in two of the CLOs.

Q Okay.

MR. MORRIS: Can we please put up Demonstrative #3, please? Okay.

BY MR. MORRIS:

Q And can you just explain to the judge what's depicted on this page?

A Again, similar to the last chart, you have the dollar price of the security at the close each day, throughout the year, and then the green bar showing where we began to sell securities for those CLOs.

Q And so, again, is it fair to say that Mr. Dondero and the Defendants haven't completely stopped the Debtor from engaging in SKY transactions?

A That's correct. What we did was the so-called workaround previously mentioned, was that we decided that I would have to do the trading directly. So I'd literally look at the stock each day, talk to the broker at Jefferies, determine what level to sell at, communicate with him throughout the day, work through transactions. Then he reports in whether he's been able to sell and execute on our behalf. When he's done that, then we have the back office manually enter the trades, as opposed to doing it from the automated trading desk, and then have those trades close. So, so far, knock on wood, we haven't failed on any trades.

Q Okay.

MR. MORRIS: We can the demonstrative down, please.

BY MR. MORRIS:

Q Just two more topics here, sir. Can we talk briefly about what efforts, if any, the Debtors have made to avoid this litigation? I'll just ask them one at a time. Has the Debtor made any attempt to transfer the CLO management agreements to the Defendants or to others?

A Well, our original construct of our plan was to do that. We've since determined, when we tried to do that, we got virtually no response from the Dondero interests. The structure of the original thought of the plan was if we didn't get a grand bargain we would effectively transition a significant part of the business to Dondero entities, they would assume employee responsibilities and the operations, and then assure that the third-party funds were not impacted.

As I think I testified on the -- I can't recall if it was the deposition or my prior testimony in court -- Mr. Dondero, true to his word, told me that would be very difficult, he would not agree, and he has made that very difficult.

So we examined it. We've determined that we're going to maintain the CLOs and assume them. But we originally tried to contemplate a way to assign those management agreements. We've had --

Q All right.

A -- significant discussions with the CLO Issuers, and

they're supportive of us retaining them.

Q Okay. You were on the -- you've been participating or listening in to the hearing throughout the day; is that right?

A I have, yes. I apologize. I didn't leave the screen on because I didn't want to suck up bandwidth.

Q Are you familiar with all of the K&L Gates letters that that were reviewed today?

A I am, yes.

Q Did the Debtor request that the Defendants withdraw those letters?

A Yes, we did.

Q Had the Defendants withdrawn those letters, might that have avoided this whole litigation?

A I think it would have. What we wanted to have here is a withdrawal of the letters and an agreement by the clients for the -- the K&L Gates clients that they wouldn't interfere with the operations of the Debtor and our drive towards a plan. They could take their legal positions and object to the plan, if they like, but interfering on a day-to-day basis was unacceptable to us in terms of trying to operate this business in the most efficient manner.

We specifically requested that they do that. This is, I don't think, lost on anybody, certainly not on me in my experience here for years: These entities are all dominated and controlled by Mr. Dondero, and each of these attacks is

specifically coordinated for the purpose of diverting the Debtor, causing confusion, and forcing us to spend estate resources.

Q Do you know if the Debtor also asked the Defendants to avoid this whole injunction proceeding by simply filing their motion to lift the stay and see if they could actually win a motion to terminate the contract?

A Well, what we did was we contemplated the best, most efficient way out, and it was either withdrawing the agreement; if they didn't agree, then we'd said you should file your stay motion immediately and let's have this determined. We told them, short of that, if they weren't willing to do that, then we would have to put this in front of the Court to try to make sure that we could operate the business.

Q All right. So, just to summarize, you attempted to sell the CLO management agreements, but were unable to do so; is that right?

A I would say assign. We would have looked for a payment, there is a cure payment that we have to make, but we didn't we didn't conduct an auction for the CLO assets.

Q And to the best of your knowledge, the Defendants never withdrew the letters; is that right?

A They did not.

Q And to the best of your knowledge, the Debtors -- the

1 Defendants never brought their contemplated lift stay motion,
2 right?
3 A They have not, no.
4 Q And so why did the Debtor bring this action?
5 A Well, quite clearly, to try to prevent the managers and
6 Mr. Dondero and the Funds from interfering with the way that
7 we operate the business. We intend to continue to manage the
8 CLOs, we intend to assume those contracts, we intend to manage
9 them post-confirmation, after exit from bankruptcy. And
10 causing confusion among the employees, preventing the Debtor
11 from consummating trades in the ordinary course, deferring
12 those transactions, we thought put the estate at significant
13 risk, in addition to the cost.
14 Q Did you hear Mr. Rukavina in the opening suggest that
15 these might, in fact, be money-losing contracts?
16 A I did, yes.
17 Q Why would the Debtor want to assume money-losing
18 contracts?
19 A They're not money losing contracts.
20 Q And why, why do you say that?
21 A They generate fee income. So the fees on each of these
22 CLOs get paid to the Debtor. Now, not all of these CLOs, as I
23 mentioned earlier, are -- none of them are ordinary CLOs,
24 other than Acis 7. But not all -- because they don't all have
25 liquid assets that are able to pay their fees each quarter,

1 some are deferred. There are some CLOs that will probably
2 never pay any deferred fee because they are underwater. Those
3 are not CLOs that Mr. Dondero or the Funds own any of. That's
4 not really a surprise. But we will continue to manage those
5 and look for ways to exit for those investors who are
6 noteholders who are underwater in those CLOs.
7 Q Okay. Can you describe for the Court the Debtor's
8 contentions as to how the conduct that has been adduced
9 through today's evidence, how is the Debtor harmed by Mr.
10 Dondero's interference in the trades and the sending of these
11 letters?
12 A I think it's clear in terms of operational risk. Being
13 forced to construct a workaround to consummate trades that we
14 think are in the best interest of the Funds.
15 It's telling not only that neither Mr. Dondero nor Mr.
16 Sowin nor -- Mr. Sowin was on the calls and agreed to the
17 analyst view, by the way -- nor anybody from MHF ever asked me
18 a question, their lawyers in the deposition never asked me why
19 we were selling these securities. They simply want to get in
20 the way, cause additional risk to the estate, and cause
21 additional exposure with respect to legal fees, divert our
22 attention from trying to consummate the case. I think that's,
23 in my opinion, that's pretty clear.
24 Q Is there any concern on the part of the Debtor that
25 that Mr. Dondero's emails and conduct is creating uncertainty

among the staff as to who's in charge?

A I think they did initially, and if they continued, they would. Right now, the workaround is working pretty well. We still do keep Mr. Sowin on the emails to make sure that, you know, from a compliance perspective, that our sales, he knows about; that we're not stepping on each other's markets, if you will; that we're not getting in the way that -- in the way if he wants to sell assets from a different MHF other managed asset holding, but we do have a workaround that works right now.

I think the biggest risk is, because it's much more manual, you have risk of so-called fat-finger trades, where you think you're selling a thousand and you sell 10,000, you think you're executing a sale and you're executing a buy, you think you're executing from an account that has the securities and end up selling short from an account that doesn't. So we've got to be very careful of that, but the team is doing that now. There certainly was confusion at the start.

Q And can you just explain to the Court your view as to how the Debtor is able to -- how the Debtor will be able to service the contract on a go-forward basis?

A The CLO contracts?

Q Yes.

A We'll have a team of folks able to manage these assets with professionals that are experienced credit analysts,

1 equity analysts. I think we'll be able to manage this --
2 these assets in a pretty straightforward manner. It's not
3 going to be very difficult.
4 Q Has the Debtor been harmed through the diversion of your
5 personal attention as CEO in responding to all of this?
6 A I like to think that I can juggle a lot of different
7 things. I would prefer not to have to be looking at the
8 securities levels each day and feeding out securities that we
9 determine to sell through the broker at Jefferies, who,
10 notwithstanding, is doing a great job. It's the job of the
11 trader to actually do that and day-to-day -- throughout the
12 day monitor the markets and look for the best place to sell.
13 So do I think I'm getting the best execution? I think the
14 trader at Jefferies is excellent. Do I think if a trader on
15 the Highland side was involved every step of the way, I think
16 it would be better.
17 Q Have the Debtor's professionals' attention and resources
18 been diverted to deal with all of this stuff?
19 A That -- I think that's -- that's quite clear as well.
20 It's a significant expense.
21 Q Okay.
22 MR. MORRIS: Your Honor, I have no further questions
23 of this witness.
24 THE COURT: All right. Mr. Rukavina?
25 MR. HOGEWOOD: Your Honor, if you please, Lee

Hogewood from North Carolina. You've admitted me *pro hac vice*. If I may do cross-examination, I would appreciate it.

THE COURT: All right. Go ahead.

MR. HOGEWOOD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HOGEWOOD:

Q Mr. Seery, let me ask you about the letters that came from our firm, and especially from me, beginning on December 22nd. I think you spoke about those generally. If you need them to be called up, I think my questions will be crisp as to the letters generally, but we could certainly look at them specifically, if need be.

There was initially a letter dated December 22nd, 2020, that's Debtor's Exhibit DDDD, at Docket 39. I take it you've read that letter?

A I have, yes.

Q And it's fair to say that was a request you had seen before?

A I don't think that's fair to say, no.

Q You had not seen a request to discontinue trades until the confirmation hearing?

A I don't believe so, no.

Q Okay. So that, that was the first time a request had been made not to trade in the CLO securities prior to confirmation?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: I --

THE COURT: Go ahead. You can answer.

THE WITNESS: I don't recall you sending me a letter before that, but I -- if you have, then I apologize. I thought I was pretty familiar with them, but I don't recall you sending me that request previously.

BY MR. HOGEWOOD:

Q Okay. I'm sorry. That was the first request you had received from me, is that -- that's correct?

A Yes.

Q But there had been prior requests of a similar nature?

A Not to my recollection. Is there a letter?

Q All right. Well, let me -- let me move on. You weren't intimidated by my letter, were you?

A Was I intimidated by your letter? No, I was not intimidated.

Q And it didn't cause -- the letter itself did not cause you or the Debtor to alter your investment strategy?

A It did not, no.

Q And it did not cause you or the Debtor to refrain from operating the company in the manner that you perceived to be in its best interest?

A It did not.

Q It did not cause you to change any of your trading

1 decisions?
2 A No.
3 Q You and your counsel responded -- or, your counsel
4 responded to the letter a couple of days later; isn't that
5 correct?
6 A Yes.
7 Q And the response rejected the request that had been made
8 and demanded that the letter be withdrawn; is that right?
9 A Yes.
10 Q So the range of communication is a set of lawyers
11 representing adverse parties asserting their respective
12 positions? Is that a fair characterization of that set of
13 communications?
14 A No.
15 Q Okay. Would you characterize it differently?
16 A Yes.
17 Q All right. How so?
18 A I believe you sent a letter with no good-faith basis,
19 knowing what the contracts say as an experienced lawyer,
20 knowing there was not cause, yet still making the same
21 threats, basically couching them as a request. But I don't
22 think there was any good-faith exchange of ideas. No one even
23 asked me why I was making the trades. I think you were aware
24 of that.
25 Q You -- but you testified that, nonetheless, the letter did

not cause you to conduct yourself in any other manner than you would have conducted had you not received the letter; isn't that right?

A That's correct.

Q So I think there's some confusion, then, and I just want to clear this up. There was earlier testimony, both at your deposition, that -- that my clients actually interfered with and caused trades not to occur on or around December 22nd and 23rd of 2020. And that's not correct.

MR. MORRIS: Objection. Your Honor, the evidence is in the record.

MR. HOGEWOOD: Okay. Well, let me --

THE COURT: All right. You're going to have to rephrase.

BY MR. HOGEWOOD:

Q Yeah. Let me -- let me say it differently. Focusing solely on December of 2020, every trade that you initiated closed; isn't that correct?

A Every trade. Yes. We did not fail one trade.

Q Okay. And so the issue that you have raised in your pleading is that there were -- there was an expectation that employees of my clients would book trades, which is essentially a backroom operation, after the trade has closed. Isn't that right?

A That's incorrect.

Q Okay. So, once again, let me just get -- there were no trades that you initiated that failed to close; is that right?
A That's correct.
Q And nothing that was done by the Defendants resulted in a trade that you wished to make in December of 2020 to fail to occur or fail to close; isn't that right?
A That incorrect.
Q So you initiated a trade that did not close?
A Yes.
Q In December of 2020? And when was that?
A I believe that's the case, yes.
Q And specifically what trade did not close that you initiated?
A I'd have to check the notes, but the specific trades were my attempt to initiate the trade with the desk. Then the trading desk goes into the market and makes the sale. Once it's inputted into the order management system, referred to as an OMS, then it gets processed for closing. In November and in December, Mr. Dondero instructed those employees not to initiate those trades. So there was never an agreement. When I initiated a trade, which was the workaround you saw referred to, I quite simply called Jefferies directly and I had the back-office folks manually input it instead of the trading desk.
Sorry. I just wanted to make sure we cleared that up.

Q No, just -- that -- that's helpful to understand. But I think, focusing again solely on December, every trade you initiated closed?

A Every trade that I actually went and made in the market closed.

Q And indeed, if --

MR. HOGEWOOD: I observed your demonstrative exhibits, and if I could ask that the one related to the Avaya trades be called up, Mr. Morris. is that possible?

MR. MORRIS: Yeah, sure. Is that the first one with Mr. Dondero's trades, or do you want the chart?

MR. HOGEWOOD: The -- the -- I think it was your Demonstrative #2 that showed the timeline of the trades.

MR. MORRIS: Yeah. You bet.

(Pause.)

MR. HOGEWOOD: Thank you. Thank you very much.

BY MR. HOGEWOOD:

Q So, just so I understand this document, the bottom axis is the passage of time, and when we get into the period between November of 2020 and the end of 2020, 12/31/2020, there are -- there's a green bar that has the numbers 50,000 at the top of it. That reflects what, Mr. Seery? The number of shares or the dollar amount of the trades?

A Number of shares.

Q And while this is not date-specific, do you know when

1 those sets of $50,000 trades happened? Or --
2 A I don't --
3 Q -- 50,000 shares trades happened?
4 A I don't know the specific dates off the top of my head,
5 no.
6 Q But looking at it just in comparison to the calendar, that
7 -- that's awfully close to December 22nd and 23rd, is it not?
8 A It appears to be, yes.
9 MR. HOGEWOOD: And Mr. Morris, if the I guess it's
10 the SKY document could be pulled up as well? I just want to
11 be clear --
12 MR. MORRIS: Demonstrative #3, please.
13 MR. HOGEWOOD: Yes. Thank you.
14 BY MR. HOGEWOOD:
15 Q The timeline on this demonstrative is similar, is it not?
16 A Yes, it is.
17 Q It's showing trades by day throughout the course of the
18 year?
19 A That's correct.
20 Q And again, there are a significant number of trades in SKY
21 on what looks awfully close to the few days before Christmas
22 of 2020; is that right?
23 A That's correct.
24 Q Okay. And this is the period of time that we're talking
25 about there being interference by the Defendants' employees;

is that right?
A Yes.
Q Okay. I'll move on. So, the next letter in question was one that came the day after, on December 23rd. Again, that was a letter from me to your counsel. Do you recall that letter?
A Yes.
Q And the letter of the 23rd, if we need to look at it, is the EEEE, Docket 39. You read that letter as well?
A Yes.
Q And you disagreed with the position taken in the letter?
A I'm trying to remember the specific position in that one. Was that the one threatening to try to terminate the CLOs without having checked whether there's cause? I just don't recall.
Q Why don't we call it up, if we can?
MR. HOGEWOOD: Mr. Morris, if you could help us, because it's one of your exhibits, that would be great. But Ms. Mather has got it up, so that's great.
BY MR. HOGEWOOD:
Q Mr. Seery, can you see the December 23rd letter?
A I can, yes.
Q And I think you referred to it as a threat to terminate the portfolio management contracts?
A I wasn't sure. That's why I was just asking if this was

that one. I don't -- I don't recall.
Q Right. And if you review the first page and the second page, does that confirm your recollection that that is the one related to portfolio management contracts?
A I can't see the second page. I believe it is. I'm not trying to --
Q Yeah, no, --
A If you represent, I'll accept it.
Q Take your time.
A (Pause.) Yes.
Q Okay. And I think you already said this: You strenuously disagreed with the positions stated in the letter?
A Yes.
Q But again, you were not intimidated by the letter?
A Intimidated? No.
Q The letter didn't cause you to change your investment strategy?
A No.
Q It didn't cause you to trade or not trade in a particular manner?
A No.
Q You continued to function the Debtor's operations as you deemed appropriate?
A Yes.
Q To your knowledge, no CLO or Issuer has taken any steps to

remove the Debtor as the portfolio manager?
A The CLO or the Issuers?
Q Yeah. No one's -- no one's taken a position that you should -- that the Debtor should be removed as a portfolio manager?
A Not -- not from the Issuers, no.
Q And -- or, I'm sorry. And so when you -- when you brought a distinction between the Issuer and the CLO, are you -- are you referring to CLO Holdco?
A No.
Q Okay. Has a CLO taken steps to remove the Debtor as a portfolio manager?
A The CLO is the Issuer.
Q Okay.
A So the answer is no.
Q Okay. So no one has -- no one has acted to take any -- to do anything as it relates to the removal of the Debtor as the portfolio manager?
MR. MORRIS: Objection to the form of the question.
THE COURT: Overruled.
THE WITNESS: I'm quite sure the CLO Issuers haven't, as they agreed and we've been working with them on an assumption. With respect to what your clients have done, I don't know.
BY MR. HOGEWOOD:

1 Q But you don't have any evidence that my clients have taken
2 any action in violation of the automatic stay to -- to move or
3 encourage the removal of the Debtor as the portfolio manager,
4 do you?
5 A Other than the letter? No.
6 Q Other than the letter between me and your counsel?
7 A Correct.
8 Q All right. So, and that letter expressly states that any
9 of those actions that would be taken are subject to the
10 automatic stay and the Bankruptcy Code; is that right?
11 A That's correct.
12 Q And as we sit here today, the Debtor is not in breach of
13 any contract with any of the Issuers; is that right?
14 A That's correct.
15 Q And the letter didn't cause the Debtor to breach any
16 contract with any Issuer, did it?
17 A Did not.
18 Q And I think you've already testified today and you also
19 testified in deposition that you anticipate that the -- all of
20 the CLOs will consent to the assumption of the portfolio
21 management agreements in the context of confirmation; is that
22 right?
23 A Yes.
24 Q And the plan supplement that you recently filed, you
25 provide a mechanism by which the issue of for-cause

1 termination is to be resolved, do you not?
2 A I don't recall if there's a specific provision in the plan
3 supplement. We certainly have, either in the plan or in the
4 plan supplement, a provision related to the gatekeeper
5 function.
6 Q And that's similar to the settlement that you entered into
7 with CLO Holdco in terms of resolving both their objection to
8 confirmation and the lawsuit against them today; is that
9 right?
10 A I believe it's similar.
11 Q Okay. And the gatekeeper is the Bankruptcy Court to
12 determine, short of a full-blown trial, that if cause exists,
13 isn't that correct, under the plan?
14 A Among other functions, yes.
15 Q So if the Court confirms the plan, then the concerns that
16 you have are resolved by the gatekeeper function that is the
17 subject of this motion; is that right?
18 A I think it depends on the contents of the confirmation
19 order.
20 Q And if the Court denies confirmation, then the stay
21 remains in effect and the letter related to the removal of the
22 portfolio manager was expressly subject to the stay; isn't
23 that right?
24 A If the letter says it's subject to the stay? It does say
25 that, but it says other false things as well, so I'm not sure

-- I don't know exactly what you're asking me there.
Q All right. It wasn't a very good question, frankly.
Your counsel responded to the December 23rd letter as well and demanded a retraction; isn't that right?
A Yes.
Q And that was sort of a separate (audio gap) with counsel?
A I'm sorry. You broke up for a second there, sir. I'm sorry.
Q I'm sorry. That -- that' -- let's just skip that. You had testified that neither letter was withdrawn?
A I believe that's correct, yes.
Q Are you familiar -- and -- are you familiar with the fact that, in the response letters, your counsel insisted that there be a response and withdrawal by not later than, I believe, 5:00 on December 28th? Do you recall that?
A I don't recall that specifically, but I accept your representation.
Q And do you know whether or not there was a response dated December 28th?
A I don't believe there was a written response. I don't -- I don't recall.
Q All right.
MR. HOGEWOOD: Ms. Mather, can you call up Defendant's Exhibit 84, which is at Docket 45, please? Thank you.

BY MR. HOGEWOOD:
Q So, Mr. Seery, have you ever seen this letter dated December 28?
A I believe I have, yes.
Q And this letter was not attached to the complaint nor your declaration nor the request for a TRO or preliminary injunction, was it?
A If you say it wasn't. I don't recall specifically.
Q Okay. So, you, by seeing this, you realize now there was a response by the 28th. Is that right?
A Yes.
Q And in the -- let me just direct your attention to the final sentence of the first paragraph. It says -- it makes once again clear that the -- any efforts to remove the Debtor as manager would be subject to applicable orders of the pending bankruptcy case, provisions of the Bankruptcy Code, and specifically, the automatic stay. Do you see that?
A I apologize. I don't see it. Which paragraph?
Q I'm at the very last sentence of the first paragraph. There's a sentence that --
A (reading) Subject to applicable orders in the pending bankruptcy case, provisions of the Bankruptcy Code, specifically, the automatic stay.
I read that, yes.
Q Yes. Okay. There was some testimony about the letter

1 related to Mr. Dondero's eviction. I don't intend to belabor
2 that. But once again, that was a letter between counsel, was
3 it not?
4 A I believe it -- I believe it was. I don't recall
5 specifically now. I assume -- I assume all of these were
6 directed to counsel.
7 Q Right. And again, the fact that counsel wrote a letter
8 requesting that the eviction not occur did not change your
9 process and you proceeded with the eviction, did you not?
10 A I think the letter came after Mr. Dondero was no longer
11 permitted. Eviction is an odd word. He was no longer an
12 employee, so employee not being able to come into the office
13 and hang around and disrupt business isn't exactly an
14 eviction. So I disagree with your characterization there.
15 Q Okay. Well, so I'll just leave that. I mean, the --
16 since this exchange of letters, are you aware -- I mean, there
17 was some testimony about the Debtors presenting the Defendants
18 with the choice of either filing a motion for relief from stay
19 or this injunction proceeding would be brought. Isn't that
20 right?
21 A Yes.
22 Q And no motion for relief from stay was filed, and
23 therefore this injection proceeding was brought. Is that
24 correct?
25 A Yes.

Q So the other thing that you know was filed by the Defendants was an objection to confirmation, which was due on January 5th of 2020, correct?
A I'm sorry, Mr. Hogewood. You broke up. Did you say the other paper or pleading that was filed?
Q The pleading that was filed by the -- these who are Defendants as well as other parties to this case was an objection to confirmation, the deadline for which was January 5, 2020. Are you familiar that an objection to confirmation was filed?
A I'm familiar that one was filed, yes.
Q And so the objection to confirmation raised many of these same issues regarding the circumstances under which the various CLO agreements could be assumed; isn't that right?
A I'm not aware of the specifics of the objection.
Q Okay. But nonetheless, my client was under no obligation to initiate yet another motion or lawsuit or pleading against the Debtor beyond objecting to confirmation, was it?
A An obligation? No.
Q And since the objection to confirmation has been filed, there have been a number of pleadings filed in the case. We obviously were required to respond to the motion for preliminary injunction, and it says there's been an objection filed to that. Are you aware of that?
A That -- that you objected to the preliminary injunction?

Q Yes.
A Yes, yes, I'm aware of that.
Q And --
A I'm very aware.
Q And you're aware that there was a proposed settlement with HarbourVest; is that correct?
A We have an approved settlement with HarbourVest.
Q Right. And there were objections filed to that particular -- or, to that particular settlement agreement, were there not?
A Yes.
Q But none of my clients participated in that objection, did they?
A I don't recall the specifics of your clients versus the other Dondero entities, but I'm certain Mr. Dondero participated.
Q But the De... the parties that we represent did not object to the settlement?
A I don't recall specifically.
Q Okay. And another motion that was filed was for an examiner. Isn't that correct?
A I believe that's the case, yes.
Q Yeah. And my clients didn't join that motion, either?
A No. It's a bit of whack-a-mole, but they did not -- they did not -- I don't -- I don't know. To be honest, I don't

1 know if they did or not.
2 Q All right. Toward the end of your testimony, you were
3 giving some information about the value of these management
4 contracts in terms of income over the course of the coming
5 year or two. What is the projected revenue with respect to
6 these management contracts?
7 A Do you mean the CLO 1.0 management contracts?
8 Q Yes.
9 A They generate about four-and-a-half to five million
10 dollars a year, depending on the asset base in total, but
11 that's accrual, as I mentioned earlier. It doesn't all come
12 in in cash. It depends on the waterfall. Expect about two-
13 and-a-half to 2.7 million to come in per year during the
14 course of the projected time period.
15 (Echoing.)
16 Q Have you done any sort of profitability analysis on the
17 management contracts?
18 A Not specifically on those contracts, no. We look at the
19 --
20 Q Okay.
21 A -- aggregate of the Debtor's receipts versus its costs.
22 Q Can you -- so, --
23 MR. HOGEWOOD: Ms. Mather, can you call up the
24 disclosure statement? This is Docket 1473. And in
25 particular, Page 176.

BY MR. HOGEWOOD:
Q So, I'm, Mr. Seery, I'm trying to square the 779 for the month ended -- month period ended in March '21 and no further revenue coming in on management fees with what you just said.
A I'm not -- I'm not sure why. This should -- certainly should have the management fees according to the CLOs if this was included in the assumption of those. We have revenue, they do generate revenue, they currently generate and they will continue to generate.
Q But this is the disclosure statement approved by the Court, right?
A Yes. I'll have to come back and check why that for the year doesn't have it, unless we were assuming that we wouldn't receive any into the -- into this vehicle. I just, I don't know the answer.
MR. HOGEWOOD: Your Honor, that's all the questions I have. Thank you very much.
THE COURT: All right. Redirect?
MR. MORRIS: Can we just leave this up on the screen for a second, very quickly, for Mr. Seery? Can we put the document back?

REDIRECT EXAMINATION

BY MR. MORRIS:
Q Mr. Seery, do you recall that the disclosure statement was approved back in November?

A Yes.

THE COURT: Could you repeat the question? I couldn't hear it.

MR. MORRIS: Yeah. That is -- I don't know if somebody's phone is not on mute.

THE COURT: Yes. Please put your device on mute if you're not the one talking. Okay. Someone did. Go ahead.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q Mr. Seery, do you recall that this disclosure statement was approved back in November?

A Yeah. What I'd said earlier was that I'm not sure if the -- this plan projection conforms with our decision to maintain the CLO management contracts, and so there certainly should be revenue, while it comes in quarterly on the management fee, the base management fee. And it's not always -- each CLO is not always able to pay it in cash. It will depend on our ability to monetize assets, because they don't -- a lot of the assets are not cash-generative. Some are. For example, the Trussway loan is cash generative. The CCS loan is not.

But I'm just not sure why this doesn't show the management fees at all. At least for the whole year, we certainly will have them, unless this is prior to the determination to assume those agreements.

Q Okay. So if the assumption in November was that the

1 agreements would be assigned, there would be no revenue shown.
2 Is that fair?
3 A That would have been the assumption prior to us
4 determining that we wanted to assume them, yes.
5 Q Okay. And do you recall whether the Debtor became more
6 convinced that it would assume the contracts rather than
7 assign them before or after the disclosure statement was
8 approved?
9 A I don't recall the specific timing, but a number of things
10 happened around this time. First, the Dondero entities were
11 unwilling to even engage on assignment because they were on a
12 much more aggressive, quote, blow up the place strategy.
13 That's Mr. Dondero's quote.
14 Number two, we settled with HarbourVest, and that
15 significantly increased the value of maintaining the CLO
16 management. The HarbourVest -- or the HCLOF entities own
17 significant preferred shares in the 1.0 CLO structures, and
18 having management of those and being able to monetize those in
19 accordance with the agreement, maximizing value for the
20 benefit of HCLOF, would be far, far better for the estate than
21 letting these assets just sit. We're not trying to drive the
22 price down, because we wouldn't be in the business of trying
23 to buy back those securities on the cheap. We're in the
24 business of trying to maximize value.
25 Q All right.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: Any recross on that redirect?

MR. HOGEWOOD: No, thank you, Your Honor. Appreciate the opportunity to appear before you.

THE COURT: All right. Thank you.

Mr. Seery, before we let you go, I have a couple of follow-up questions.

EXAMINATION BY THE COURT

THE COURT: These CLOs, I mean, you've said a couple of times they're not really traditional CLOs, except for the Acis 7 one. But I have this question. I've learned back in the Acis case most of what I know about CLOs, I suppose. And what the witnesses told me there were they typically had a 12-year life, and then, yeah, there was some period, you know, the first five years, seven years, something like that, where it was in a reinvestment/refinancing phase, but then after that, you know, we couldn't do that anymore and it was kind of heading towards wind-down.

Anyway, my long-winded question is: Do these CLOs work generally like that or not? Because you said they're atypical.

THE WITNESS: They -- they --

THE COURT: Go ahead.

THE WITNESS: They used to.

THE COURT: Okay.

THE WITNESS: So these are extremely old. These go back to 2006, '07, '08. These are very old CLOs. So they're far beyond their investment periods. Some of them are coming up on their maturities on their debt. Many of them don't have any debt at all.

So you'll recall, Your Honor, that a CLO is a vehicle where you take x-hundred million -- we'll use 400 for fun -- million dollars. You ramp up $400 million of assets. You sell off, for our purposes, $350 million of securities. You have the AAA securities, the AAs, all the way down. And then you have these preference shares.

During a period of time, as cash is generated in the CLO, the CLO is entitled to reinvest it. And that keeps it going. And then it gets beyond its reinvestment period and it's in what folks usually refer to as its harvest period. That's when oftentimes, depending on where rates are, depending on asset value, the rates for the debt obligations or the rate you can receive on your assets, you may see refinancings or resets. Otherwise, the CLOs begin to wind down. They have -- they don't have a life, like a partnership with a final date, but there's maturities on the debt and then there's an expectation that they would wind down.

These CLOs -- which typically CLOs only invest in performing loans, and oftentimes, particularly Highland -- and I could regale you with stories how Highland would take

virtually non-interest-bearing, seventh lien debt -- that's a bit of an exaggeration -- but just to keep the fees going, and not actually convert to equity. A lot of these, that wasn't an option, so they've converted to equity. So I just have one that I happen to have on my screen, Your Honor, Gleneagles. The assets in Gleneagles (echoing) are 16 -- MGMs.

THE COURT: Okay. Someone needs to put their phone on mute. All right. I'm sorry.

THE WITNESS: So it has -- it has -- the specifics aren't particularly important, but its assets are -- just this one I just pulled up; they're all a little different, and -- but mostly the same -- MGM stock. This is MGM Studios, which you read about with James Bond, a very valuable asset. Across the Highland platform, there's roughly $500 million worth of stock. It doesn't pay off any income. So if it had debt -- and I'm not sure if Gleneagles still has any; I'd have to switch screens; I don't believe it does; if it does, it's small -- it wouldn't get any income-generating -- that's not income generating asset.

Vistra, which is the TXU stock I talked about before, is the next biggest asset. Skyline Corporation, which was the one we were selling. That's no longer in there. TCI portfolio, which is a Dondero real estate asset it has, it's an old Las Vegas and Phoenix, Arizona real estate developments. Not income-generating. Not that they don't

have value, but this is much more like what would be referred to as a closed-end fund. It's not going to go out and buy anything. It can't. It can only generate cash by selling assets, give that cash to the trustee, and then the trustee pays it through the waterfall. And that's the way all of these CLOs work.

Now, some of them do have debt. And some of them have a lot of debt, and the preferred shares will never be worth any money, so we refer to those as being underwater. No surprise, the Dondero-related entities don't own any of those junior securities.

The -- some do have debt. A lot of that debt is going to get paid off in the first half of the year because there'll be refinancings at Trussway and a refinancing at Cornerstone. They own debt, and that'll generate cash. It'll go to the CLOs, go to the trustee. First it goes to pay the obligations for the outstanding debt of the CLO, and then the asset dollars, they get put through the waterfall to pay the more junior securities.

THE COURT: Okay. And --

THE WITNESS: And I --

THE COURT: The --

THE WITNESS: I was going to give you -- I contrast that to a more typical CLO, which is whether it's beyond its investment period or not, will have something like 150 to 250,

1 sometimes more, loans in it. 150 would be on the loan side.
2 It'll own -- own those in smaller amounts. It has
3 requirements as to what its concentrations are in different
4 buckets of types of assets. It has to return -- it has to
5 have an income-generating ability to satisfy certain covenants
6 in its debt obligations and in the indenture. And then it
7 will, once it gets past its investment period, it will start
8 to harvest those assets.
9 There are different ways for the CLO manager to swap
10 assets, to stay in compliance, to extend out the tenure, but
11 usually markets start to move and there's some reason for the
12 CLO manager to do something like a reset or a refinancing or
13 to call the CLO.
14 So you'll see a number -- there was one this week, and
15 there'll be a number because of the conditions in the market
16 -- of CLOs called by the, effectively, the equity, saying,
17 Great time to sell, I don't need the short income, call the
18 CLO, do a BWIC or some other way to get dollars for all of the
19 assets, pay off all of my debt, and give me the balance of the
20 proceeds.
21 THE COURT: Okay. All right. And the plan
22 contemplates that these will all be wound down over a two-year
23 period, correct?
24 THE WITNESS: It's not a hard -- it's not a hard
25 period.

THE COURT: Okay.

THE WITNESS: So it's not a two-year period. We're going to -- we're going to manage these assets, as any asset manager would, and we've had direct discussions with some of the underlying holders, including one of the biggest investors in the world who's an investor in the CLO but also has a couple separate accounts which they want us to manage, and we'll look for opportunities, depending on the market. We're not going to -- we're not going to just sell. It's not a liquidation. We're going to find opportunities where, if we believe it's the right value, we'll sell. That doesn't mean we'll sell it all in a big chunk. We may manage pieces. We may hold on to some.

Some of them may perform -- some of the assets may actually do things differently than others. For example, Cornerstone, for unknown reasons, has $60 million of MGM stock, not an asset that you'd think you'd stuff into a healthcare business, but this is Highland. That may be sold before, for example, Gleneagles sells its MGM. It'll just depend on, you know, market and the need of the specific investor.

THE COURT: All right. Thank you. That's all the questions I have.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. So, Mr. Seery, I think we're

done with you, but we hope you'll stick around for however longer this goes.

THE WITNESS: I will indeed.

THE COURT: Okay.

THE WITNESS: Thank you.

THE COURT: Does the Debtor rest, Mr. Morris?

MR. MORRIS: Yes, Your Honor. There were those couple of documents that we had used from the different docket that we'll certainly put on the docket with the supplement witness and exhibit list. I just wanted to point that out. And I, you know, I don't recall, frankly, if I moved into evidence each of those extras, and I'm happy to go through it, but it's very important to me that those documents be part of the record. So --

THE COURT: Okay. I think what you added was TTTTT, and I think I admitted it. You moved to admit it, and I said yes, but you're going to have to file it on the docket --

MR. MORRIS: Yeah.

THE COURT: -- as a supplemental exhibit.

MR. MORRIS: Right. And then there were the couple from the other -- let me see if I can get them.

THE COURT: I admitted everything else that you filed on the docket except UUUU, VVVV, and AAAAA.

MR. HOGEWOOD: Yeah. And that's fine.

Can we, Ms. Canty, going from Docket No. 46, can we just

call up Exhibit K to make sure that that's in evidence? Docket 46 from the Dondero adversary proceeding.

Okay. So this was the letter, Your Honor, that I used earlier today with Mr. Dondero. If you scroll down, where I examined him on the trading. This is what led into the December 22nd trading, if you go to the next page. So if it's not in evidence, I would respectfully request that this document be admitted into evidence, Your Honor.

MR. RUKAVINA: Your Honor, I object. This document is hearsay of Mr. Pomerantz.

THE COURT: Okay.

MR. MORRIS: Mr. Dondero has already -- I'm sorry, Your Honor.

THE COURT: Okay. So this is -- I wholesale-admitted all of your exhibits with those three carved out that I mentioned. So you're saying I've not admitted this one yet?

MR. MORRIS: I just don't recall, because this wasn't on the exhibit list. I will point out that we had no objection to the entry into the evidence of all of K&L Gates letters, and I'm really a little surprised, having heard the testimony from Mr. Dondero on this particular letter, that there would be an objection. But I would respectfully request that it be admitted as an exception to the hearsay rule.

THE COURT: All right. Well, I'm going to overrule the objection. I'll admit it.

So, again, it has to be supplemented on the docket.

(Debtor's Exhibit K is received into evidence)

MR. MORRIS: Yes. And there's just one other document, Your Honor, from that same docket. It's Exhibit D, Ms. Canty. I just want to make sure that's in the record as well. And I do apologize again, Your Honor.

THE COURT: Okay.

MR. MORRIS: I didn't realize until I was reading --

THE COURT: We're getting terrible distortion. I don't know where it's coming from, but --

MR. MORRIS: Okay. And this is, this is the email that I -- it's Mr. Dondero's own statement, so it's not even hearsay, but I just want to make sure this is part of the evidentiary record, Your Honor. So I move for the admission of this document as well to our exhibit list.

MR. RUKAVINA: I believe this document has been admitted. I believe -- I believe --

(Echoing.)

MR. RUKAVINA: Is that us? Testing.

THE COURT: All right. Mike, where is that coming from?

(Clerk advises.)

THE COURT: Okay. Mike thinks it's Mr. Morris, but -- so put yourself on mute.

Mr. Rukavina, go ahead.

MR. RUKAVINA: Your Honor, I think this exhibit is in already. If it's not, no objection.

THE COURT: All right. So it will be admitted, and again, you need to file it as a supplement, Mr. Morris.

(Debtor's Exhibit D is received into evidence)

MR. MORRIS: Yeah. Thank you, Your Honor. The Debtor rests.

THE COURT: All right. Mr. Rukavina, I want to go a while longer, so let's at least -- do you have Mr. Dondero as well as Mr. Post?

MR. RUKAVINA: I do, Your Honor. I have both.

THE COURT: Okay. Well, let's go. You may call your witness.

MR. RUKAVINA: Your Honor, we'll call Jason Post.

THE COURT: All right. Mr. Post, I swore you in earlier and I consider you still under oath. Do you understand that?

MR. POST: I do.

THE COURT: All right. Go ahead.

JASON POST, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

MR. RUKAVINA: Oh, turn on the video. Can you see how to do that? Is Jason on the video? Okay. All right. Mr. Post? Hold on a second. I'm hearing myself.

THE WITNESS: I'm hearing the same.

MR. RUKAVINA: Let me turn down my volume. Testing.

Okay. Mr. Post, can you hear me?

THE WITNESS: Yes.

MR. RUKAVINA: Okay.

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q You were asked about some of your background and qualifications. Just so that the record is clear, you are the chief compliance officer for both two Advisors and each of the Funds, correct?

A Correct.

Q And I think we refer to these three defendant funds as retail funds; is that correct?

A Correct.

Q Describe what we mean or what you mean by a retail fund.

A I look at it two ways. There's private funds, which are institutional in nature, and retail funds, which are comprised of open-end funds, closed-end funds, BDCs, ETFs, and that constitutes the suite of funds that are advised by Highland Capital Management Fund Advisors and NexPoint Advisors. And they generally have a broad swath of investors, including institutional investors, but also, you know, just regular mom-and-pop investors.

Q Okay. So, for the Highland -- I'm sorry, for the three retail funds, how much in ballpark investments do they have in the CLOs that are at issue today? Ballpark.

A Maybe call it a hundred million, ballpark. Or a hundred million, give or take.
Q Okay. And for all of the CLOs that Highland manages that the Advisors and other Funds have an interest in, do you have an estimate of how much it manages of CLO assets?
A I believe it's approximately a billion, a little over a billion that HCMLP manages for its CLO assets.
Q Do you have an estimate of how many individual investors there are in the three retail funds?
A I -- thousands. I don't have an exact number.
Q Okay. And I think you mentioned some of the types. Do you have any names of the types of investors that Her Honor might know or have heard of before?
A Off the top of my head, I do not, just -- but they're generally constituted or characterized of the investor types that I mentioned earlier.
Q Okay. Now, these three retail funds, do they own voting preference shares in any of the CLOs that the Debtor manages?
A Yes.
Q Okay. Do they own a majority in any of those CLOs' voting preference shares?
A In aggregate, across the three, they would.
Q Okay.
A With other CLOs.
Q What are those three CLOs, sir?

A I believe it's Greenbrier, Graceland, and Stratford, if I recall correctly.

MR. RUKAVINA: Your Honor, have you received a couriered binder of our exhibits?

THE COURT: I have. I've got them right here.

MR. RUKAVINA: Now I can't hear the judge. What's she saying?

THE COURT: Yes. I've got them.

MR. RUKAVINA: I think you're on mute, Judge.

MR. VASEK: No, you turned your volume down.

MR. RUKAVINA: Oh. I apologize, Your Honor.

So, Mr. Vasek, if you'll please put Exhibit 2 up.

BY MR. RUKAVINA:

Q Mr. Post, are you the custodian of records for the Funds and Advisors?

A Yes. We're required to keep records of ownership and trades for the Funds involved.

Q And you are an actual officer of these Funds and Advisors, correct?

A Correct.

Q Okay. Are you familiar with this Exhibit 2?

A I am.

Q Did you participate in pulling together the underlying information with others to prepare Exhibit 2?

A I did.

1 Q Does Exhibit 2 accurately reflect the current ownership of
2 the various CLOs by the three retail funds that are --
3 A At the time it was put together, I believe it did.
4 Q And approximately when was that?
5 A I believe it was in the November time frame, middle of
6 November, end of November.
7 Q Do you have reason to believe that the numbers we're
8 referring to would be materially different today?
9 A I don't believe they would be materially different.
10 MR. RUKAVINA: Your Honor, I move for the admission
11 of Exhibit 2 as a summary of underlying data.
12 THE COURT: All right. Any objection?
13 MR. MORRIS: Yes, Your Honor. It's hearsay. I
14 understand that the witness has testified to it, but just as I
15 put in the backup for my demonstrative, where's the backup?
16 We're just supposed to take his word for it? There's no
17 ability to check this. This is not evidence. It's a
18 demonstrative.
19 THE COURT: All right. Mr. Rukavina, do you have
20 backup?
21 MR. RUKAVINA: Let me ask the witness a couple more
22 questions.
23 BY MR. RUKAVINA:
24 Q What would be the backup for this Exhibit 2?
25 A We'd have to pull the holdings from the intranet and that

1 would identify the quantity that's held by each of the
2 respective funds and then an aggregate that, over the
3 preference shares outstanding, would give you the percentages
4 that are outlined in this exhibit.
5 Q Okay. And is that a database that you have personal
6 access and authority over?
7 A I have personal access to it. Yes.
8 Q Okay.
9 MR. MORRIS: Your Honor, *voir dire*?
10 BY MR. RUKAVINA:
11 Q Can you easily take that data from a computer and show it
12 to the Court here today?
13 A Yes. It would just require the CUSIPs for each of the
14 preference shares and then plug it into the intranet and then
15 that would provide a screenshot of the ownership of the CLOs.
16 Q And is this what that is, basically?
17 A This is an aggregation -- or, this is a percentage of the
18 shares outstanding, the preference shares. So what would be
19 shown on the intranet would be the quantity and then you'd
20 have to tie that back to the shares outstanding and that would
21 give you the percentages that are shown on this exhibit.
22 MR. MORRIS: *Voir dire*, Your Honor?
23 THE COURT: I'm sorry?
24 MR. MORRIS: May I inquire before this --
25 THE COURT: Mr. Morris, is that you? Okay. You want

1 to take him on *voir dire*?
2 MR. MORRIS: Yes.
3 THE COURT: Go ahead. Uh-huh.
4 VOIR DIRE EXAMINATION
5 BY MR. MORRIS:
6 Q Yes. Mr. Post, did you prepare this document?
7 A I provided information and the document was ultimately
8 prepared by counsel.
9 Q So you didn't personally prepare this, right?
10 A I didn't personally put this chart together.
11 Q And you didn't personally make the calculations on this
12 chart, right?
13 A I would have supplied or assisted in supplying the
14 holdings with reference to the shares outstanding and then
15 they would have done the math to place the percentages.
16 Q I'm asking a very specific question. You didn't do the
17 calculations necessary to come up with the percentages on this
18 chart, right?
19 A Me personally, no, I did not.
20 Q And you can't verify that this chart is accurate, can you?
21 A I provided, provided the information. Then it's a
22 mathematical calculation.
23 Q Okay. You didn't take any steps to determine the accuracy
24 of this chart, right? You relied on others?
25 A There's a -- I would have cross -- you know, maybe cross-

1 referenced some of the percentages against another spreadsheet
2 that was -- that we had internally.
3 Q Sir, I didn't want to know what you would have done. You
4 didn't do anything to confirm the accuracy of all of the
5 numbers on this page, correct?
6 A I believe I may have spot-checked a couple of them. I
7 can't recall specifically.
8 MR. MORRIS: Your Honor, not only don't we have the
9 backup, but this witness isn't even competent to testify to
10 the accuracy of the chart. I renew my objection.
11 THE COURT: All right. I sustain the objection.
12 MR. RUKAVINA: Your Honor, I'll --
13 THE COURT: It's not allowed.
14 MR. RUKAVINA: Going back to the -- take that down.
15 THE COURT: All right. Mr. Rukavina, we're -- our
16 connection to your office is suddenly not very good. Both you
17 and Mr. Post are very hard to hear. So let's see what we can
18 to improve.
19 MR. RUKAVINA: Is it a question of loudness or
20 quality?
21 THE COURT: Quality. And I heard you fine just then,
22 but -- so let's try again.
23 DIRECT EXAMINATION, RESUMED
24 BY MR. RUKAVINA:
25 Q Mr. Post, let's go back to those retail funds. How are

1 those funds managed at the top level?
2 A They're overseen by a board of trustees.
3 Q Okay. Do you interact with that board of trustees
4 periodically?
5 A I do.
6 Q Okay. Approximately how often?
7 A At least quarterly, and generally intervening periods.
8 I'd probably say anywhere from every five to six weeks, if not
9 more frequent.
10 Q Have you been communicating with them more frequently
11 recently?
12 A Yes.
13 Q As the CCO of the funds, who do you ultimately report to?
14 A The board.
15 Q Is Mr. Dondero on any of those boards?
16 A He is not.
17 Q Okay. Are those boards capable, to your experience, of
18 making independent decisions?
19 MR. MORRIS: Objection to the form of the question.
20 THE COURT: Overruled.
21 THE WITNESS: I think the question, is are they
22 capable of making independent determinations? Yes.
23 BY MR. RUKAVINA:
24 Q Okay. Explain the interaction between the Fund Advisors
25 and the retail funds. What -- what does the one do for the

other, if you will?
A I'm sorry. Can you repeat that? I didn't -- I didn't hear the question.
Q So, we have the three retail funds.
A Yes.
Q What relationship, if any, is there between the two Advisor defendants and any retail fund defendants?
A So, there's an investment advisory agreement that the Funds have entered into with the investment advisor, and the investment advisor performs investment functions on behalf of those Funds, along with other noninvestment functions.
Q Okay. So is it fair to conclude that, for investment purposes, the Advisors make pretty much all, if not all, decisions for the three Funds?
A Yes.
Q Okay. What about other matters that the board might consider? Do the Funds make -- I'm sorry. Do the Advisors make other decisions for the Funds, or is it an advisory role?
A The Advisors may make other decisions or recommendations, which they then set forth to the board for their approval, if needed.
Q Okay. Does the board have independent counsel?
A They do.
Q Okay. Have you interacted before?
A I have.

Q And is it fair to conclude that the board not only is capable of making independent decisions but has made independent decisions recently?

MR. MORRIS: Objection. Leading.

THE COURT: Sustained.

THE WITNESS: They have.

MR. RUKAVINA: Okay.

THE COURT: That was --

MR. RUKAVINA: And we'll get --

THE COURT: You don't answer.

MR. RUKAVINA: Go into that in another bit.

THE WITNESS: Oh. Sorry.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Explain to the Court what your role as the chief compliance officer for the Advisors and the Funds is.

A I think, as you mentioned earlier, it's interaction with the board. Also with regulatory bodies to the extent examinations occur. It could be to ensure oversight and compliance with a fund's prospectus and SAI limitations, and then it's establishing policies and procedures and ensuring that those policies and procedures are adequate to detect any sort of violations that could occur by the Funds.

Q And are you an attorney?

A I am not.

Q Do you frequently work with attorneys?
A I do.
Q Both in-house and external?
A Yes.
Q Good. And do you frequently rely on the advice of counsel?
A I do. At times will present, you know, if there is a question or an issue, present the background to either internal or external counsel and then request their advice on certain matters.
Q So when counsel was asking about why you wouldn't appear at a hearing or listen to a hearing or read a transcript of a hearing, are those the kinds of things that you would rely on counsel?
A Yes. If counsel were to tell me to, you know, attend the hearing, I would have attended the hearing.
Q Okay. Does -- do the Funds and Advisors also have in-house counsel?
A Yes.
Q I think we established that's D.C. Sauter?
A He's been the primary point of in-house counsel more recently, I'd say, within the past three to four months.
Q Okay. And would you expect that perhaps he would be attending hearings and reading transcripts instead of you for some of these litigated matters?

1 MR. MORRIS: Objection to the form of the question.
2 THE COURT: Overruled.
3 MR. MORRIS: Leading.
4 THE COURT: Overruled.
5 THE WITNESS: I believe he would be.
6 BY MR. RUKAVINA:
7 Q Okay. Well, the implication was made, Mr. Post, that
8 somehow you were negligent as CCO by not following the
9 December 16th hearing. I'd like to know, --
10 THE COURT: Okay. Could you -- could you repeat --
11 BY MR. RUKAVINA:
12 Q -- Did you have counsel at the hearing and did you hear
13 from --
14 THE COURT: Mr. Rukavina, start over with your
15 question. It was a little hard to hear.
16 MR. RUKAVINA: Okay.
17 BY MR. RUKAVINA:
18 Q Mr. Post, the implication had been made that, because you
19 weren't at the December 16th hearing and because you had not
20 read the transcript, that you were somehow deficient as a CCO.
21 I'd like to know, Did you have the benefit of outside
22 counsel's views both before and after that hearing as to that
23 hearing and what happened?
24 A Yes.
25 Q It's not that you put your head in the sand and ignored

1 what's happening, is it?
2 A That is correct.
3 Q Okay. And is it fair to say that when you deal with
4 compliance, you deal with complicated statutes and
5 regulations?
6 A That is correct.
7 Q Okay.
8 MR. RUKAVINA: Mr. Vasek, if you'll please pull up
9 (garbled).
10 (Pause.)
11 BY MR. RUKAVINA:
12 Q Okay. Taking you back to Mr. Morris's questions, do you
13 recall Mr. Morris asking you whether you believe that any of
14 the trades that were being discussed were deceptive?
15 MR. MORRIS: Hold on one second, Your Honor. What
16 exhibit is this?
17 THE COURT: I don't know. What is it?
18 MR. RUKAVINA: Can you hear me, Mr. Post?
19 THE WITNESS: They're asking a question as to what
20 exhibit this is.
21 MR. RUKAVINA: Your Honor, this is not an exhibit.
22 This is a Commission Interpreting Regarding Standard of
23 Conduct for Investment Advisors, an SEC regulation in
24 conjunction with 17 CFR 276.
25 THE COURT: Okay. How are we --

1 MR. RUKAVINA: So, Your Honor, these are the actual
2 regulations.
3 THE COURT: I mean, it's -- okay. The answer to the
4 question is it's not an exhibit. You have pulled up 17 CFR
5 part 276. Is that what the answer is?
6 MR. RUKAVINA: Yes, Your Honor. And I haven't
7 offered this as an exhibit.
8 THE COURT: All right.
9 MR. MORRIS: You have -- Your Honor, I don't know why
10 this is being put up on the screen now. It's not an exhibit.
11 It's not in the record like a couple of those that I had. I
12 used the statute that he relied on to cross-examine him with
13 the 206. I don't know what this is. I don't know if it's
14 accurate. I don't know anything about it.
15 MR. RUKAVINA: Your Honor, this is a rule and
16 regulation. This is not an exhibit. If it is an exhibit, I
17 haven't moved to admit it yet. I'm going to use this to
18 refresh his memory and explain why he believed that the
19 actions were deceptive, a door opened solely by Mr. Morris.
20 MR. MORRIS: His recollection hasn't -- there's no
21 need to refresh it yet. He hasn't even answered a question
22 where he says, "I don't remember."
23 THE COURT: Okay. I sustain the objection here. I
24 mean, you can ask him a question, but, again, it's kind of
25 hard for us to tell what this is, actually. I mean,

1 Commission Interpretation Regarding Standard of Conduct for
2 Investment Advisors. I mean, is this actually a -- I mean,
3 it's not a statute. I'm not even sure it's a reg. It's --
4 MR. MORRIS: Okay.
5 THE COURT: I don't know what it is. So, --
6 MR. RUKAVINA: Your Honor, we'll lay a predicate
7 later. First, let me ask some other questions.
8 BY MR. RUKAVINA:
9 Q Again, you recall that you were asked whether, pursuant to
10 Section 206 of the Advisers Act, you believed the trades that
11 have been discussed were deceptive. Do you recall?
12 A Yes.
13 Q Okay. And you answered that you believed that they were
14 deceptive?
15 A Correct. I did.
16 Q As the CCO, do you have an understanding of what role, if
17 any, conflicts of interest play in an advisor's duties under
18 the Advisers Act?
19 A Yes.
20 Q Okay. What is your understanding?
21 A All -- all known material conflicts of interests need to
22 be disclosed -- need to be disclosed by the advisor to the
23 underlying investors.
24 Q Okay. And why, why do those conflicts of interests have
25 to be disclosed?

1 A Because an advisor could have a view that may deviate from
2 the underlying investors' view of how the portfolio could be
3 managed and in contradiction to it.
4 Q And do you have an understanding as to whether, pursuant
5 to your experience as the CEO [sic], the Advisers Act and the
6 SEC regulations (garbled) it require an advisor to adopt the
7 principal's goals as opposed to his or her own goals?
8 MR. MORRIS: Objection to the form of the question.
9 Your Honor, he has not been offered as an expert. He
10 shouldn't be permitted to provide -- this is -- this would be,
11 at best, expert testimony. I asked him 30 different questions
12 about his background. He's got no training. He's got no
13 licenses. He's taken no special courses. He doesn't have
14 anything except on-the-job training. This is not right.
15 MR. RUKAVINA: Your Honor, Mr. Morris got to ask yes-
16 and-no questions all day, leading questions, and the witness
17 was told that he could explain his answers. The Court told
18 him that. And I am trying to explain his answer as to why he
19 believed that these transactions were deceptive, especially
20 because the allegation is that we willfully and intentionally
21 violated the stay by sending letters that this witness
22 authorized. So understanding his understanding is very
23 important to Your Honor's determination of the actual --
24 THE COURT: Well, I sustain the objection.
25 MR. RUKAVINA: And Mr. Morris opened this door.

1 THE COURT: You can ask him why he thought the
2 actions were deceptive, but he's starting to go into what may
3 or may not be CFRs and conflicts of interest. No. This is
4 going well beyond asking him, Why do you think it was
5 deceptive? And I agree: It's straying into expert testimony.
6 BY MR. RUKAVINA:
7 Q Mr. Post, you are familiar with the December 22nd AVYA
8 and SKY sales and transactions which you were asked about by
9 Mr. Morris and that you previously have testified about,
10 correct?
11 A Correct.
12 Q Okay. How are you familiar with those sales and
13 transactions as they were occurring? How did you learn about
14 them?
15 A There was some internal email correspondence. If I recall
16 from memory, at the bottom it provided fill information that
17 Jefferies provided to, I believe, Mr. Seery and others on the
18 email. And then it kind of worked its way up to get the
19 trades that had been executed administratively booked into the
20 OMS.
21 Q Why did you get involved with those transactions?
22 A They were requesting that employees of HCMFA book those --
23 I'm sorry, Highland Capital Management Fund Advisors -- book
24 those into the system. And those employees were not a party
25 to the trade. I don't believe --

Q Well, let me pause you. Let me pause you. Those two employees, who were they?
A Joe Sowin and Matt Pearson.
Q Were they at that time employees of the Debtor?
A They were not.
Q Okay. So, how did you come to learn about this ask that those two employees book -- book it?
A I believe there was an email that was sent to me, or I was on it. I can't recall specifically.
Q Okay. And did you undertake any review as to whether those two employees should or should not do what was being asked of them?
A Once it was brought to my attention, I discussed with -- I looked at it. It looked like, pursuant to prior correspondence with -- that Joe Sowin made, he wasn't aware of the trades.
You know, I also had a discussion with K&L based off of -- our legal counsel based off of a prior letter that was sent, and just it didn't -- it didn't look right that they would be booking trades on behalf of the two Advisors that are named in the letters when they had nothing to do with it and weren't -- weren't a part of any of the pre-trade compliance checks, et cetera.
Q What is a pre-trade compliance check?
A Well, there's an electronic system, a -- or a management

1 system we have, the OMS, which is called Verda (phonetic).
2 And generally, trades are entered into the system by the
3 portfolio manager, and they then go through pre-trade
4 compliance checks. And once those compliance checks are
5 passed, they're then routed to the trading desk for direction
6 or execution, where the executing brokers and the trading desk
7 will then monitor that execution over the course of the day.
8 And at the conclusion of the trading day, those trades, if
9 they weren't already allocated, would be allocated, and then a
10 trade would be sent to custodian prime brokers to identify the
11 trades that occurred in the respective Funds for those -- or,
12 on that day, and then they would then be dropped into the
13 database and our -- the settlement team would kind of work to
14 settle those trades or ensure that those trades were settled
15 based off of the stipulated time frame for settlement on the
16 trades.
17 Q So, in all that course of a transaction, what exactly was
18 it that those two employees of the Advisors were being asked
19 to do on behalf of the Debtor? What exactly were they being
20 asked to do?
21 A To just book them in the system because they are trades
22 that already have been executed.
23 Q Did you stop that?
24 A I believe I responded and said, you know, it -- they're
25 employees of, if I recall, employees of one of the named

Advisors, and believe those trades are in the best interest of those Advisors, and separately, you know, the Debtor has designated operators/traders that should be able to enter those trades as well, aside from Mr. Sowin and Matt Pearson.

Q So can you think of any reason why Mr. Seery would ask your employees, as with his own employees, to book these trades?

A I believe based off of past practice.

Q Okay. But nevertheless, those two trades did not comply with internal compliance?

A They weren't run through the OMS. We try and route trades through the order management system because there's pre-trade compliance checks that can be performed, and it reduces any sort of back-end reallocation or trade errors that may occur as a result of, you know, trades being entered after the fact, because quantities could be, you know, referenced incorrectly or funds could be identified incorrectly.

Q Based on prior practices, have these internal policies been followed when perhaps employees of the Debtor asked employees of the Advisors to take a particular action in the course of a transaction?

A Yes.

Q When internal practices are not followed, what is your job? What are you supposed to do?

A When internal practices are followed, --

Q Are not followed.
A Oh. Not followed? To the extent that they're not followed, we would question, you know, number one, why weren't they followed? You know, we -- we try and have all trades booked in the OMS so that the necessary checks could be performed, and as I mentioned earlier, to avoid any reallocation or trade errors. So I would then question, you know, why was this done outside of the system?
Q And if you did not get an appropriate response back to your question, what are you supposed to do?
A If I didn't get an appropriate response, would, you know, research it further and elevate it to senior management and/or any of the board if it was ultimately an issue.
Q Are you supposed to stop trades or stop the process if you see something that you believe is not compliant with your obligations and the fiduciary obligations of the Advisors?
A Yes.
Q Have you done that in the past?
A Yes.
Q Have you done that frequently, or infrequently?
A I would say it's -- it's infrequent, but they do occur. For example, if a fund is trading in a security that it's not permitted to invest in based off of a prospectus limitation, it would get flagged in the OMS and we would then not permit the trade to go forward because it could cause the breach to

1 go further offsides or it could cause it to go offsides.
2 Q Okay. And these December 22nd trades, were they the type
3 of, in your past experience, problematic trades like you have
4 interfered or stopped or intervened to stop in other
5 situations in the past? Do you understand my question? That
6 was an inartful question. Do you understand it?
7 A If the question is because they were done outside of the
8 system?
9 Q Yes.
10 A And repeatedly?
11 Q Yes.
12 A I would have raised the question with the trading desk or
13 the portfolio manager as to why that's being done, because it
14 was not in -- not consistent with how we instruct trades be
15 booked.
16 Q Did Mr. Dondero, for these December 22nd transactions,
17 tell these two employees not to book the trades?
18 THE COURT: Okay. Please repeat the question. It
19 was garbled.
20 MR. RUKAVINA: Thank you, Your Honor.
21 BY MR. RUKAVINA:
22 Q For these December 22nd trades, did Mr. Dondero tell those
23 two employees not to book the trades?
24 MR. MORRIS: I object, Your Honor. No foundation.
25 This witness has no personal knowledge to testify to this --

to answer this question.

THE COURT: Overruled. If he knows.

THE WITNESS: I do not know.

BY MR. RUKAVINA:

Q Okay. Do you have a reason to believe that he did?

A I don't know. I just saw the email traffic and Mr. Sowin, I believe, was questioning the trades, you know, more in the sense that he wasn't aware of them. So, I don't -- I don't know what kind of conversations, what happened in the background, just that he -- he didn't recognized that rates.

Q Let me try it this way. You determined that these trade would have violated the Advisors' policies and procedures, correct?

A Yes, because they were done outside of the OMS.

Q Did Mr. Dondero tell you to come to that conclusion?

A He did not.

Q Did Mr. Dondero pressure you to come to that conclusion?

A He did not. He had indicated that there -- there are these trades, and you should take a look at it from a legal compliance perspective, which I did.

Q And you talked to K&L Gates?

A Correct.

Q And when Mr. Dondero told you to look at these trades, did he suggest to you in any way, shape, or form what you should conclude or decide to do, if anything, with respect to these

1 trades?
2 A I don't believe so.
3 Q Okay. Let's go back to that question about your view that
4 some of what Mr. Seery was doing was deceptive under the 1940
5 Investors Act. When did you form that view?
6 A I believe it was after it was identified that there was
7 not (inaudible) on certain of the trades that were entered
8 into at the end of the November time frame, the SKY and AVYA
9 trades.
10 Q And why did you form the opinion that those trades that
11 Mr. Seery was attempting to do or had done were deceptive
12 under the statute that Mr. Morris asked you about?
13 A It was pursuant to reviewing them and supplemental
14 discussion. A review with the portfolio managers and then
15 supplemental discussion with K&L be it from a (inaudible)
16 perspective, through, you know, perform in the best interest
17 of your clients, it was expressed that, at least with respect
18 to preference shareholders, they were supposed to maximize
19 value, and those sales, they're not really maximizing value.
20 And it was also identified that the Debtor was planning to
21 liquidate the CLOs based off of a filing within the Court
22 within a few-year period. And the investors -- or, the Funds
23 that invested and the preference shareholders, or preference
24 shares, had a longer-time view in those assets.
25 So the sales, coupled with the short duration, or the

1 anticipated, you know, two-year duration, didn't line up with
2 the investment objective that they were seeking to maximize
3 returns.
4 Q To your understanding and your experience, does the
5 servicer of the CLOs owe fiduciary duties to anyone?
6 THE COURT: Okay. I cannot -- someone is flipping
7 paper. Please stop flipping paper. Okay. Repeat your
8 question, Mr. Rukavina.
9 MR. RUKAVINA: Thank you, Your Honor.
10 BY MR. RUKAVINA:
11 Q In your experience and in your knowledge, does the
12 servicer of the CLOs owe fiduciary duties to anyone?
13 A They should, yeah, the underlying investors in the CLO,
14 whether it be the Debtor or the equity holders.
15 Q Do the Advisors owe fiduciary duties to anyone?
16 MR. MORRIS: Your Honor, I'm sorry, I apologize. I
17 really do move to strike. He's not a lawyer. There is no
18 foundation. He's not here as an expert. There's no basis for
19 this witness to be talking about who owes who fiduciary
20 duties. I don't even think that's the law, what's just been
21 stated.
22 THE COURT: Okay. I sustain.
23 MR. RUKAVINA: Okay.
24 BY MR. RUKAVINA:
25 Q Well, let me make it very easy, then. Do you have an

1 understanding as to whether Advisors subject to the 1940 Act
2 owe a fiduciary duty?
3 A Yes.
4 Q Do you have an understanding of how a conflict of interest
5 plays into a fiduciary duty?
6 A Yes.
7 Q What is your understanding?
8 A If there's a material conflict of interest, it should be
9 disclosed.
10 Q And what did you conclude with respect to Mr. Seery and
11 the Debtor once the Debtor stated that it will liquidate
12 within two years?
13 A That's not the investment horizon that the underlying
14 preference shareholders have, especially with respect to the
15 underlying assets held in those CLOs. More or less, you're --
16 they're now put on a clock, and those preference shareholders
17 may have a longer-term view on the underlying assets of those
18 CLOs.
19 Q Let's move on to those December 22nd and December twenty
20 -- well, let me strike that. You heard Mr. Seery testify that
21 those December 22nd trades closed, correct?
22 A I did.
23 Q And did you independently look at whether that's true?
24 A I did.
25 Q And what did you conclude?

A They showed a sale in the -- on the intranet.
Q Okay. Let's move on to the December 22nd and December 23rd letters. Are you familiar with those letters from K&L Gates to counsel for the Debtor?
A I am.
Q And did you participate in preparing those letters?
A I did.
Q Okay. And I think Mr. Morris asked you and I think you testified you supported or agreed with the sending of those letters. Is that generally accurate?
A Yes.
Q Why? Why did you support sending those letters?
A It wasn't in the best interest of the Funds pursuant to discussions with the portfolio managers and the investment objectives that they were looking to seek any of those investment in the preference -- preference securities and CLOs.
Q Was that a purpose that you were trying to achieve by sending those?
THE COURT: Repeat the question.
THE WITNESS: Ah, --
THE COURT: Repeat the question.
BY MR. RUKAVINA:
Q Was that a purpose that you were trying to achieve by sending those letters?

A Yes. I believe there was something towards the end of one or both letters that said, to the extent, you know, transactions occur, if, for lack of better words, a courtesy heads up could be given to the Funds and the Advisor.

Q Did you intend in any way to intimidate the Debtor by authorizing or supporting the sending of those letters?

A No.

Q Did you intend in any way to violate the automatic stay by sending those letters?

A No.

Q Were you trying to engage the Debtor in a dialogue at that time as to what to do with these CLO management agreements?

A Yes. I believe that was stated at one -- at the end of one or both of the letters.

Q And I think Mr. Morris discussed with you that the Debtor sent back letters asking you to withdraw these two letters. Do you recall that discussion?

A Yes.

Q And do you recall saying that we never withdrew these letters, right?

A Correct.

Q Why did we not withdraw these letters?

A Because we don't believe that the trades that are being entered into are in the best interest of the shareholders -- *i.e.*, the Funds.

Q To your knowledge, did we ever, or did you ever, communicate to the Trustees or Issuers anything in the nature of instructing them to terminate the CLO management agreements with the Debtor?

A I did not.

Q To your knowledge, did anyone, for the Funds or Advisors?

A I don't believe so.

Q Did you or anyone to your knowledge communicate to the Issuers or Trustees that the process of removing the Debtor as manager should commence?

A I don't believe so.

Q Okay. To your knowledge, have any of the Issuers or Trustees undertaken any steps to remove the Debtor or terminate these contracts?

MR. MORRIS: Objection to the extent it calls for the conduct or knowledge of the Issuers.

THE COURT: Overruled. He can answer if he knows.

THE WITNESS: I don't believe so.

BY MR. RUKAVINA:

Q Had they, is that something that you would have expected them to inform the Funds of?

A Yes. The Funds would have received some type of notification if there was a new Advisor on the CLOs.

Q So, other than these two letters -- let me stop there. Did any discussion of trying to terminate these contracts

1 basically cease with the sending of these two letters and the
2 Debtor's responsive letters?
3 A That's my understanding, yes.
4 Q Okay. And we never did file a motion for lift stay. Can
5 you explain to the judge why we didn't file a motion for
6 relief from the stay?
7 A It's my understanding that the intent was that the
8 management of the CLOs was going to be heard in conjunction
9 with the confirmation hearing.
10 Q And do you recall when that confirmation hearing was
11 originally set for?
12 A I believe it was supposed to start today. Or tomorrow.
13 Q Well, wasn't it earlier in January? Around January 11th?
14 A Uh, I -- I don't recall specifically.
15 MR. RUKAVINA: Mr. Vasek, if we could pull up the
16 Form CLO agreement. What exhibit is that?
17 (Pause. Counsel confer.)
18 MR. RUKAVINA: No, that's not.
19 THE COURT: Can I ask what we're about to start
20 doing?
21 MR. RUKAVINA: Eight.
22 THE COURT: Can I ask what we are about to start
23 doing?
24 MR. RUKAVINA: Your Honor, I apologize. I'm trying
25 to find one of the CLO portfolio management agreements. I'm

trying to pull it up for you.

THE COURT: Okay.

MR. RUKAVINA: It should be in your binder.

THE COURT: All right. Well, --

MR. RUKAVINA: Where is it, Julian?

MR. VASEK: It should be 8.

MR. RUKAVINA: I'm sorry?

MR. VASEK: 8.

MR. RUKAVINA: Your Honor, it's Exhibit 8 in your binder.

THE COURT: Exhibit --

BY MR. RUKAVINA:

Q And Mr. Post, you have that in front of you, right?

MR. RUKAVINA: Mr. Vasek, if you'll go to Page 14, please. Section 14. Termination by the Issuer for Cause.

MR. VASEK: Okay.

MR. RUKAVINA: Your Honor, the contract speaks for itself, and I'm not about to read the contract to the Court. The Court can read. I want to ask him certain questions about this. And you'll note that the contract gives the requisite holders of voting preference shares certain rights.

MR. MORRIS: Your Honor, respectfully, the witness has testified that he hadn't seen any of these contracts for five or six years, until the lawyers asked him to look at it, and they told him which specific provisions to look at.

1 The document does speak for itself. Counsel should just
2 make it part of his closing argument. There's no evidence
3 that there's a quote/unquote Form CLO Management Agreement.
4 And I would just respectfully suggest that this is better
5 saved for closing argument.
6 THE COURT: Yes. What are we going to do here? He
7 did not seem like he was an expert on these CLOs in his
8 earlier testimony. He hadn't read much of them until
9 recently. So where are we going with this?
10 MR. RUKAVINA: Well, Your Honor, the question, again,
11 is -- can you hear me? The question again is, Are we going to
12 be enjoined from exercising any rights in the future, so I
13 would like to take the witness through the importance from a
14 regulatory perspective and a fiduciary perspective of some of
15 these rights. If Your Honor thinks that that's for closing
16 argument, that's fine. But I will note that that Your Honor
17 allowed Mr. Morris for some forty minutes to read prior
18 testimony into the record.
19 MR. MORRIS: I'm happy to respond if Your Honor needs
20 me to.
21 THE COURT: Go ahead.
22 MR. MORRIS: There is a complete difference, Your
23 Honor. To read statements against interest, to read defense's
24 own sworn statements that they made at a prior proceeding, as
25 opposed to trying to get a witness who has admitted that he's

not familiar with these documents, to try to convince the Court that they said something that the witness doesn't have any personal knowledge or expertise about. It's completely different.

THE COURT: All right. I sustain the objection. You can make whatever argument you want in the closing arguments about whatever provisions of whichever CLO agreements justify actions. I guess that's where we're going.

MR. RUKAVINA: Then, if you could pull up Exhibit 78, and if Your Honor could turn to Exhibit 78.

THE COURT: All right.

MR. RUKAVINA: Is this a confidential -- Julian, what does it mean, it's confidential? 78. Is this confidential?

MR. VASEK: It says confidential on the --

MR. RUKAVINA: Your Honor, apparently this is a confidential document, so how does the Court want to proceed on this WebEx?

THE COURT: All right. We're stopping. We're stopping. We have protocols in place in this case, and people usually file motions to present things under seal or redactions. My patience is shot, so we're going to stop. Let's talk about where we go from here.

MR. MORRIS: If I may, Your Honor?

THE COURT: Yes.

MR. MORRIS: John Morris from Pachulski Stang --

THE COURT: Uh-huh.

MR. MORRIS: -- for the Debtor.

MR. RUKAVINA: We filed this under seal, right?

MR. MORRIS: We were --

MR. RUKAVINA: Oh, I thought we had.

MR. MORRIS: -- hoping that we would get this finished today, Your Honor, and the Debtor was really hoping to get a ruling before confirmation. But given all that's in front of us, including the contempt hearing next Friday, just a couple of days after the confirmation hearing, I think the Debtor at this point is prepared to agree, if it's okay with the Defendants' counsel, to push this to the following week, since the -- you know, with the understanding that everybody stipulate on the record that the TRO stays in place. And if we could have this particular motion heard, I guess, somewhere -- it's the week of February 8th, the Debtor would consent to that.

THE COURT: All right. Do we already have a --

MR. RUKAVINA: Your Honor, can the Court --

THE COURT: -- setting that week? Because I know we have confirmation, what, are we set for the 2nd, 3rd, and 4th? Three days next week.

MR. MORRIS: I believe -- yeah. I think it's just two, Your Honor. I think --

THE COURT: Okay.

MR. MORRIS: -- confirmation is the 2nd and the 3rd, and then I think the 5th is the contempt hearing. I'm not aware, but I don't -- I don't profess to know the entirety of the calendar. I'm not aware of anything that's on for the following week.

THE COURT: Does it make sense to continue this to the 5th? Because the issues are so overlapping here. I feel like it's been a contempt hearing half of today, actually.

MR. MORRIS: Yeah.

THE COURT: So, shall we just set it for -- is it Friday, the 5th?

MR. MORRIS: It is.

THE COURT: At 9:30?

MR. MORRIS: And I think that's a great idea, yeah. Yeah.

THE COURT: What do you want to say about that, Mr. Rukavina?

MR. RUKAVINA: Thank you, Your Honor. We're fine with that.

Let me just point out, so that if the Court is impatient or frustrated, we did move Exhibit 78 to be filed under seal. The Court did enter an order allowing it to be filed under seal. So that the Court doesn't think that somehow we were negligent in that.

But February the 5th works for us.

THE COURT: Okay. All right. So I have an unredacted clean copy up here, which, if and when I admit it, we will put it under seal in our exhibit room, or I guess our electronic exhibit room.

So, we'll come back on the 5th at 9:30. But I am not -- I am not done. Yes, I am frustrated. Yes, I'm impatient. I have asked myself "Why are we here?" so many times today. Why are we here? I mean, I've had this conversation before. I mean, we had a, as you know, a very lengthy hearing on the motion for a TRO or preliminary injunction against Mr. Dondero personally. And I think it was Mr. Morris who said, it's a little bit like Groundhog Day. You know, that was actually a more flattering way of describing it than I might have. I might have said this is reminding me of Albert Einstein's definition of insanity. You all know what I'm talking about? When you're doing the same thing over and over again and expecting a different result.

And, you know, no offense, Mr. Dondero, if you're still there listening, but that's what it feels like to me. I mean, it is -- it's the same thing over and over again. And we've spent very, very, very little time talking about the January 9th, 2020 corporate governance settlement agreement. Of course, it was mentioned extensively in the pleadings, at least by the Debtor. But, you know, I've heard all of this evidence today, and I'm going to hear more evidence,

1 apparently, on the 5th. But Paragraph -- was it 9? --
2 Paragraph 9 of the January 9th, 2020 settlement agreement.
3 The order directed Mr. Dondero not to "cause any related
4 entity to terminate any agreements with the Debtor."
5 And, you know, I thought to myself as I was reading,
6 preparing for this hearing, that, you know, I seem to remember
7 those words meant so, so much to me. And then this reply
8 brief was filed by the Debtor at 6:00 or 7:00 o'clock last
9 night, and it gave an excerpt of the transcript, the hearing
10 where I approved this corporate governance settlement
11 agreement, and I said, that language is so important to me
12 because of my history in the *Acis* case, I want it in the
13 order. I don't even -- I don't want it merely in the term
14 sheet, and then, of course, the order cross-references,
15 approves the term sheet. I want that in the order. Because,
16 you know, I knew, even with this highly-qualified independent
17 board of directors, and even with this very sophisticated
18 Creditors' Committee with very sophisticated professionals
19 monitoring everything that happened, and having not just the
20 monitoring rights but the standing to pursue things, I knew,
21 even with this great system that had been negotiated in the
22 January term sheet, there was the possibility of things
23 happening through Dondero-controlled entities indirectly. And
24 so that's why we had that Paragraph 9. So, --
25 (Interruption.)

THE COURT: I don't know what that was I just heard, but someone needs to put me on mute.

So, I mean, we've heard a lot. We've heard a lot, but --

MR. DONDERO: Hello? Your Honor? Your Honor?

THE COURT: Okay. I --

MR. DONDERO: Hi. Jim Dondero.

THE COURT: Oh, okay. I'm still talking. I'm still talking. But I --

MR. DONDERO: Okay.

THE COURT: But I said --

MR. DONDERO: I'm sorry.

THE COURT: I said at the hearing on the preliminary injunction as to Mr. Dondero personally, do you remember what I said, I said life changed when you put your company in Chapter 11. And, you know, even if you had stayed on as president of the Debtor, life changed. Okay? Because you're a debtor-in-possession. You have to say, "Mother, may I?" to the Court. Creditors get to object to things. So things changed.

But things really, really, really changed, you know, they changed in October 2019, and then they changed dramatically in January 2020, when independent board members were put in place and you were taken out of management.

So, the reason I'm coming back to that concept is this: I've heard a lot about the preferred shareholders didn't like

the trades Mr. Seery was implementing, the sale of AVYA, the sale of SKY. They didn't like it. Well, I mean, I hate to say something flippant like tough luck, but really: Tough luck. Okay? We all know that with a company like this, with a company like Acis, it's complicated, right? Because you've got a fiduciary duty to your creditors to maximize value of the estate so creditors get paid in Chapter 11, right? But meanwhile, you know, you've got to have fiduciary duties, I don't know if it's directly to preferred shareholders or just to the CLOs. But whatever it is, you know, there may be differing views that individual preferred shareholders have. But Mr. Seery is in charge. The Debtor is in charge. You don't like it, I'm sorry, but he's in charge.

So, you know, I thought, am I going to come in here today and see all kinds of specific contractual references, where, I don't know, somehow you have an argument that you can control buys and sells? Of course, in this case, it would just be sells at this point. You know, no. I knew I wasn't going to see that. And I haven't.

So I don't know what I'm going to hear more on the 5th that is going to tilt me a different way, but right now, if I had to rule right now, this would be a total no-brainer to issue this preliminary injunction. Okay? I feel like it's been teed up almost like find Dondero in contempt, find these entities in contempt. What I'm here on today is whether I

should issue a preliminary injunction, and the December letters, the emails, the communications, they lead me to believe that this preliminary injunction is needed because someone doesn't understand that Mr. Seery is in charge and the preferred shareholders, the Funds, the Advisors, they don't have the ability to interfere with what he's doing in running the company.

And the threats of we're going to, you know, direct -- we may direct the CLO Issuer to terminate the Debtor: I mean, it's just -- there's no sound business justification for that. Okay? I don't know what we're doing, where we're going.

Mr. Dondero, I said to you in December, you know, I really wanted to encourage good-faith negotiations on your possible pot plan because I thought you wanted to save your baby. But the more I hear, the more I feel you're just trying to burn the house down. Okay? Maybe it's an either/or proposition with you: I'll either get my company back or I'll burn the house down. That's what it feels like. And I have no choice but to enter preliminary injunctions with this kind of behavior.

So, I'm very frustrated. I'm very frustrated. I don't know if anyone wants to say anything or we just end it on this frustrating note.

Mr. Rukavina, did you want to let your client speak, or no?

MR. RUKAVINA: Your Honor?

THE COURT: Not your client.

MR. RUKAVINA: No, but --

THE COURT: The client representative.

MR. RUKAVINA: Your Honor, I take issue with what the Court has said, but we did file a motion yesterday to file a plan under seal. It is -- Mr. Dondero, can you mute your phone? The Court should have seen that by now. It is a pot plan with much more cash consideration. We have discussed it with the Debtor and the Committee. We are in earnest negotiations. I have no reason to believe or disbelieve that we're close to a settlement.

But recall what I said at the beginning. We asked the Debtor to continue this hearing. We said, You have a TRO that ends February the 15th. Why are you doing this? Well, the Debtor did it to smear Mr. Dondero on a very carefully crafted record, without telling you the other half of it. And when I tried to have Mr. Post explain it, opposing counsel won't let me even tell you our views. So there is a competing plan. We want to try --

THE COURT: You tried to get him to testify about comments to CFRs when he has shown no expertise whatsoever --

MR. RUKAVINA: That's fine.

THE COURT: -- to permit that.

MR. RUKAVINA: And I understand, Your Honor. I don't

want -- Your Honor has made her evidentiary rulings. I'm not here to second-guess them.

I'm telling you that Mr. Dondero -- and more importantly, the other companies, *i.e.*, NexPoint -- we heard you loud and clear. We did not just send forward some cocktail-napkin term sheet. I spent the weekend and Friday preparing a comprehensive plan and disclosure statement. I hope that the Court will allow it to be filed under seal. Exclusivity has expired. I am asking to file it under seal only.

THE COURT: Tell me what utility that has. What utility does that have if you don't have one plan supporter? I mean, where are we going with this? I have invited, I have encouraged, I have directed good-faith negotiations with the Committee. If you don't have the Committee on board, what utility is there in allowing you to file a plan under seal?

MR. RUKAVINA: Well, if it's filed under seal, Your Honor, then, really, no one is going to be prejudiced or hurt. But we have not been told --

THE COURT: Then why --

MR. RUKAVINA: -- from the Committee --

THE COURT: Then why are we doing it? Help me to understand the strategy. Maybe I'm just naïve.

MR. RUKAVINA: Your Honor, there is no strategy and the Court is not naïve. Pursuant to an agreement of the Committee and the Debtor, I sent that draft plan to them over

1 the weekend, and they agree it's not solicitation. It has not
2 gone to the creditors. No one has seen it.
3 The reason why we sent it to the Committee and the Debtor
4 was to foster ongoing negotiations. We had negotiations last
5 night. The Committee and the Debtor had negotiations last
6 night. We've been promised a response in the next couple of
7 days, and we have a follow-up meeting scheduled for Thursday.
8 The reason why I wanted the plan filed under seal is so
9 that there is a record of what is being discussed so the U.S.
10 Trustee can see it, if she wants to, and so that other key
11 constituents, if they want to or have a reason to, can see it.
12 But I agree with you: That plan ain't going nowhere if we
13 don't have some material creditor support. We won't know that
14 for a couple more days.
15 So my only point in saying this to Your Honor is that we
16 are working earnestly, we are increasing our consideration, we
17 have heard you loud and clear, and all the parties are
18 negotiating.
19 Again, we did not want this hearing to happen today
20 because it's a step backwards from negotiations, not a step
21 forward. Thank you.
22 MR. POMERANTZ: Your Honor, may I be heard?
23 THE COURT: Go ahead, Mr. Pomerantz. Go ahead.
24 MR. POMERANTZ: Mr. Rukavina sent us over the plan,
25 and we had no problem with it being sent to the Committee. He

1 then sent us over the motion. Now, aside from the fact that
2 the motion contains some statements which the Debtor strongly
3 disagrees with, with respect to the ability of administrative
4 claims or other claims to be assumed, but putting that aside,
5 we were concerned that the filing of a plan on the docket,
6 unsealed, would be a distraction.
7 Having said that, we also saw utility in the plan being
8 put in the hands of the largest creditors so that they can
9 evaluate what was being proposed.
10 We told Mr. Rukavina we have no problem if the plan was
11 filed under seal, stayed under seal until after confirmation,
12 and then, in exchange, we would agree to something that we
13 don't think we had to agree: That he could send the plan to
14 UBS, to Acis, to Redeemer, to Meta-e, to HarbourVest, and
15 Daugherty. Essentially, all the players in the case. Mr.
16 Rukavina said he would consider that, and then just filed his
17 motion.
18 We don't have any problem with him doing that still,
19 sending it to the six creditors so they can look at it. We
20 don't think it should be unsealed on the docket.
21 And the discussion of status of negotiations, Your Honor,
22 as we've told you many times before, we would love there to be
23 a plan. We would love there to be support of a plan. Mr.
24 Dondero asked to approach the board and speak to the board
25 yesterday. We heard him out. The plan essentially is the

same document and the same term sheet, I think, that has been floating around for several weeks.

Having said that, we said, We are not going to stand in the way of Mr. Dondero and the Creditors' Committee. And if the Creditors' Committee and Mr. Dondero have a meeting of the minds, if there's any desire of them to have more time, we would be supportive of it. I'll let Mr. Clemente respond as to whether there's any negotiation -- (echoing.) But when Mr. Rukavina said that last night there were negotiations between the Debtor and Mr. Dondero, that's just not accurate. We, we look at ourselves as the honest broker. But at the end of the day, as Your Honor has remarked many times throughout this case and just remarked a few moments ago, unless the Creditors' Committee supports this plan, it is DOA. And we have communicated that several times to Mr. Dondero and his team.

So, I just wanted to speak to correct the record. We're, again, supportive of a plan if there can be one. But at this point, we haven't seen anything, the parties coming any closer or any more negotiations, and we just have to get confirmed sooner rather than later (echoing), prepared to go forward.

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. I'm happy to make some comments to Your Honor, --

THE COURT: Okay.

MR. CLEMENTE: -- if you -- if you wish.

THE COURT: Please do.

MR. CLEMENTE: I think it's fair to say that the Committee believes the plan needs to go forward next week, Your Honor. We have, of course, taken your direction very seriously, and we very seriously consider all of the communications we get from Mr. Dondero. There exists still a material value gap in what is being offered under Mr. Dondero's plan, as well as a quality of the value.

So, Your Honor, while we continue to consider the plan and what we receive from Mr. Dondero, I do not want to leave Your Honor with the impression that the Committee feels like we are close to an agreement, and we anticipate going forward with the plan next week.

That being said, we of course will respond to Mr. Dondero as we review the plan, but as I sit here today, I don't believe that we are close. But, again, the Committee will continue to review it, and we should anticipate going forward with confirmation next week.

THE COURT: All right. So, you don't have any problem with the plan being filed under seal?

MR. CLEMENTE: Your Honor, we -- the Committee does have the plan, and I guess I'm not sure I'd see the point of having it filed it under seal. I think it serves to confuse issues. But, you know, hearing what Your Honor said earlier, I don't think we need to continue to bring different fights in

1 front of Your Honor, so I'm not sure that I see necessarily
2 the harm in a plan being filed under seal, again, with the
3 idea that, you know, why bring -- continue to bring fights to
4 Your Honor if we don't need to?
5 THE COURT: All right.
6 MR. CLEMENTE: But what I do think is clear, Your
7 Honor, that I do want to express to you is that the
8 representations in that motion the Committee do not believe
9 are accurate. We do not believe that there's been a
10 significant value increase. We do not believe that we are
11 close. That would be the point that I would make in
12 connection with a response to that motion. So, but in terms
13 of filing it under seal, I'm not sure the Committee has a
14 strong feeling that that should not happen.
15 THE COURT: Yes.
16 MR. RUKAVINA: And Your Honor, very quickly, --
17 THE COURT: The words --
18 MR. RUKAVINA: -- I never represented that we're
19 close.
20 THE COURT: The words I remember in the motion were
21 significant value increase, something to that effect. But
22 also more recovery than the plan that's on file.
23 (Echoing.)
24 THE COURT: So I was kind of darn curious to see it
25 just for that.

MR. RUKAVINA: And Your Honor, obviously, because there's many people on this call, I don't want to run afoul of any kind of procedures. I'd be happy to walk Your Honor through, but I can't, not with 90 people on the call.

THE COURT: Right.

MR. RUKAVINA: I did not represent that we're close to a settlement in that motion, and I did not send the plan to those people that Mr. Pomerantz mentioned.

So, right now, the Committee, the Debtor, and the employees, because they requested it after Mr. Pomerantz approved it, have what I would like to file under seal. I'm not suggesting here today that it go any farther than being filed under seal, but at least it be there for some record.

THE COURT: Well, didn't you -- did I dream this? -- didn't you say that there would be something like 48 hours for people to object or then it would be filed not under seal? Did I dream that?

MR. RUKAVINA: Your Honor, that was my proposal, and Your Honor can certainly reject that. Mr. Pomerantz asked that the plan should never be unsealed pending confirmation of the Debtor's plan. I have a different proposal. Your Honor will rule and we'll comply with Your Honor's ruling.

MR. DONDERO: Jim Dondero here. Can I have two -- two quick minutes and just say two quick things?

THE COURT: Well, only if your counsel permits it. I

1 don't want to get in --
2 MR. RUKAVINA: I just don't -- yeah. Mr. Dondero, if
3 you would please just not describe the substance, the economic
4 substance of our proposed plan, not with so many people on the
5 line.
6 MR. DONDERO: Sure. I just want to make two quick
7 points. I couldn't apologize more for taking the Court's time
8 today. It wasn't our 'druthers. You heard, I think, at least
9 five or six hours from the Debtor. You never once heard them
10 say that their activities didn't violate the Advisers Act.
11 And they never once said that violating the Advisers Act
12 wasn't a big deal. You know, they never said that.
13 What they tried to say, oh, we have these other contracts.
14 Let's try and turn this into an injunction against Dondero
15 interfering. But they never -- they never denied that Dondero
16 and the NexPoint team was trying to do what was in the best
17 interest of investors and that they had violated the Advisers
18 Act.
19 I think, in normal course, each side would have had an
20 expert and you could have opined on whether it was a violation
21 of the Advisers Act, but they know they did something wrong so
22 they're trying to make it an injunction against me. Okay.
23 That's all I have to say about that point.
24 As far as the alternative plan, Your Honor, we heard you
25 loud and clear. And the economics that we put forward, I

can't talk them about specifically, but they're at least 20 percent better than what the Debtor has put forward as far as a plan. And what we put forward is elegant, it's simpler, it treats the employees fairly, it gives the business continuity, it gives investors continuity, and it's not just a harsh, punitive liquidation that's going to end up in a myriad of litigation.

We're paying a premium, it's a capitulation price, to try and get to some kind of settlement. And I encourage you to look at it. It's elegant. It's straightforward. It's simple. And now that you've encouraged and gotten us up to a number that's well in excess of the Debtor, maybe a little pressure on other people to treat employees fairly, maybe not liquidate a business that's important in Dallas, that has been a big business for a number of years, doing enormous good things for a lot of people.

You know, we went into bankruptcy with $450 million of assets and almost no debt. And we've been driven into the ground by the process. And then the plan is to just harshly liquidate going forward. I -- I -- it's crazy. I don't know what else to do to stop the train other than what we've offered.

THE COURT: All right. Well, I hear what you're saying, and I do, just because -- I don't know if you left the room or not, but we did have discussion of Section 206 of the

1 Investment Advisers Act today. It was put on the screen. Mr.
2 Post was asked what was unlawful as far as what had happened
3 here, what was going on here, what was fraudulent, deceptive,
4 or manipulative, in parsing through the words of the statute.
5 And he said Mr. Seery engaged in deceptive acts because he
6 wasn't trying to maximize value. Okay? I'm not an expert on
7 the Investment Advisers Act, but I know that that was not a
8 deceptive act.
9 And so I'll allow the plan to be filed under seal, but
10 it's not going to be unsealed absent an order of the Court.
11 Okay? So we'll just leave it at that for now. And while I
12 still encourage good-faith negotiations here, I've said it
13 umpteen times, where you're tired of the cliché, probably:
14 The train is leaving the station. And if you want the Court
15 to have patience in the process and if you want the parties to
16 cooperate in good faith, it might help if we didn't have
17 things like Dugaboy and Get Good Trust filing a motion for an
18 examiner 15 months into the case.
19 I mean, it feels to me, Mr. Dondero, whether I'm right or
20 wrong, that it's like you've got a twofold approach here: I
21 either get the company back or I burn the house down. And I'm
22 telling you right now, if we don't have agreements, --
23 MR. DONDERO: That's not true.
24 THE COURT: -- if we don't have agreements and we
25 come back on the 5th for a continuation of this hearing and a

1 motion to hold you in contempt, you know, I'm leaning right
2 now, based on what I've heard so far, and I know I haven't
3 heard everything, but I'm leaning right now towards finding
4 contempt and shifting a whole bundle of attorneys' fees.
5 That, to me, seems like the likely place we're heading.
6 I mean, I commented at the December hearing on the
7 preliminary injunction against you personally that it had been
8 like a $250,000 hearing, I figured, okay, just guesstimating
9 everybody's billable rate times the hours we spent. Well,
10 here we were again, and I know we've got all this time outside
11 the courtroom preparing, taking depositions. I mean, what
12 else is a judge to think except, by God, let's drive up
13 administrative expenses as much as we can; if we can't win,
14 we're going to go down fighting? That's what this looks like.
15 Okay? So if it's not really what's going on, then you've got
16 to work hard to change my perceptions at this point.
17 MR. RUKAVINA: Your Honor, I hear everything what
18 you're saying, and I'm going to discuss it very bluntly with
19 my clients. But we're being asked not to exercise contract
20 rights in the future. This is not a contempt hearing. And
21 Your Honor, we did ask and offered the estate a million
22 dollars, found money, plus to waive almost all our plan
23 objections, if they would just put this case on pause for 30
24 days.
25 So we are trying. We are trying creative solutions here.

We know that the train is leaving. We've put our money where our mouth is. We will continue trying. But Your Honor, this is not a contempt proceeding, and my clients are not Mr. Dondero. You've heard they're independent boards.

MR. POMERANTZ: I can't leave that last comment without a response. Yes, there was an offer of a million dollars, by an entity that owes the estate multiples of that. So they are offering to pay us something that they already owe us. So Mr. Rukavina continues try to do this. We will not stand for it.

MR. RUKAVINA: That is not a fair statement, sir. I misrepresented nothing. We were offering you a million dollars, with no conditions, earned upon receipt, with no credit, no deduction for any of our liability. So you're free to say no, sir, but you're not going to tell the judge that I misrepresented something.

THE COURT: All right.

MR. POMERANTZ: Should tell the Court --

THE COURT: You know what?

MR. POMERANTZ: -- that that entity owed the Debtor.

THE COURT: You know what? You know what? I am more focused on, Mr. Rukavina, your comment that this Court can't enjoin your clients from exercising contractual rights when, again, in January of 2020, the representation was made and it was ordered, "Mr. Dondero shall not cause any related entity

1 to terminate any agreements with the Debtor." Okay? That was
2 -- go back and look at the transcript. That was so meaningful
3 to me.
4 We were facing a possible trustee. And that's what I did
5 in the *Acis* case. Okay? I had a Chapter 11 trustee. And it
6 was not a perfect fit, to be sure. But it is where we were
7 heading in this case, had the lawyers and parties not
8 negotiated what they did. That was a very important
9 provision, convincing me that, you know what, I think the
10 structure they've got will be better than a trustee. And it
11 has, for the most part. But the fees have gone out the roof,
12 and I lay that at the feet of Mr. Dondero, for the most part.
13 Okay? We have a bomb thrown every five minutes by either him
14 personally or the Dugaboy or the Get Good Trust or the Funds
15 or the Advisors or I don't know who else. Okay?
16 So the train is leaving the station, unless you all come
17 to me and say, okay, we've maybe got a -- Mr. Pomerantz's word
18 -- grand solution here. Okay? If you get there in the next
19 few days, wonderful. Okay? But I don't know what else to say
20 except I'm tired of the carpet-bombing, and if I had to rule
21 this minute, there would be a huge amount of fee-shifting for
22 what we went through today, for what we went through in
23 December, for the restriction motion that, after I called it
24 frivolous, the lawyers were sending letters pretty much
25 regurgitating the same arguments. All right. So, not a happy

1 camper.
2 But upload your order on the motion to seal the plan.
3 And, again, it's not going to be unsealed absent a further
4 order of the Court. And if you all come to me next week and
5 say, hey, we've got something in the works here, okay, I'll
6 consider unsealing it and letting you go down a different
7 path. But I'm not naïve. I feel like this is just more
8 burning the house down, maybe. I don't know. I hope I'm
9 wrong. I hope I'm wrong. But all right. So I guess we'll
10 see you next week.
11 MR. POMERANTZ: Thank you, Your Honor.
12 MR. MORRIS: Thank you, Your Honor.
13 THE COURT: All right. We're adjourned.
14 MR. RUKAVINA: Thank you, Your Honor.
15 THE CLERK: All rise.
16 (Proceedings concluded at 6:08 p.m.)
17 --oOo--
18
19
20 CERTIFICATE
21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the above-entitled matter.
23 **/s/ Kathy Rehling** **01/28/2021**
24 _____ _____
25 Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 33

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
Vol. 26 006233	10.	Adv. Dkt. 1	12/7/20	Debtor's Complaint for Injunctive Relief
006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that the following matter is scheduled for hearing on **February 17, 2021 at 9:30 a.m. (Central Time)** (the "Hearing") in the above-captioned adversary proceeding (the "Adversary Proceeding"):

1. *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Dkt. No. 48] (the "Motion").

The Hearing on the Motion will be held before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom No. 1, Dallas, Texas 75242-1496.

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Dated: February 5, 2021.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S SUPPLEMENTAL WITNESS AND EXHIBIT LIST WITH RESPECT TO EVIDENTIARY HEARING TO BE HELD ON FEBRUARY 23, 2021

Highland Capital Management, L.P. (the "Debtor") submits the following witness and exhibit list with respect to *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. 48] which the Court has set for hearing at 9:30 a.m. (Central Time) on February 23, 2021 (the "Hearing") in the above-styled adversary proceeding (the "Adversary Proceeding").

A. Witnesses:

1. James P. Seery, Jr.;
2. James Dondero;
3. Scott Ellington;
4. Isaac Leventon;
5. Any witness identified by or called by any other party; and
6. Any witness necessary for rebuttal.

B. Exhibits:

Number	Exhibit	Offered	Admitted
1.	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]		
2.	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]		
3.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]		
4.	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]		

Number	Exhibit	Offered	Admitted
5.	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]		
6.	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]		
7.	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]		
8.	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]		
9.	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]		
10.	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]		
11.	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]		
12.	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]		
13.	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]		
14.	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]		
15.	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]		
16.	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]		
17.	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]		
18.	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]		
19.	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]		

Number	Exhibit	Offered	Admitted
20.	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]		
21.	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]		
22.	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]		
23.	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]		
24.	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]		
25.	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]		
26.	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]		
27.	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]		
28.	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]		
29.	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland		
30.	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland		
31.	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland		
32.	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland		
33.	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]		
34.	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official		

Number	Exhibit	Offered	Admitted
	Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]		
35.	Transcript of 07/21/20 Hearing		
36.	Transcript of 01/08/21 Hearing		
37.	Transcript of 01/26/21 Hearing		
38.	Highland – PSZJ Billing Detail (December 2020) [Bates Nos. HCMLP 000740-000785] **(PRECISE FORM STILL UNDER REVIEW)**		
39.	Highland – PSZJ Billing Detail (January 2021) [Bates Nos. HCMLP 000786-000828] **(PRECISE FORM STILL UNDER REVIEW)**		
40.	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]		
41.	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]		
42.	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]		
43.	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]		
44.	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]		
45.	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]		
46.	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]		
47.	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]		
48.	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]		

Number	Exhibit	Offered	Admitted
49.	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]		
50.	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]		
51.	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]		
52.	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]		
53.	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]		
54.	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012		
55.	Highland Capital Management Employee Handbook		
56.	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**		
57.	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**		
58.	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)		
59.	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)		
60.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		
61.	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto		
62.	All exhibits necessary for impeachment and/or rebuttal purposes		
63.	All exhibits identified by or offered by any other party at the Hearing		

Dated: February 17, 2021.

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EXHIBIT 40

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ATTORNEYS FOR JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054**
	§	
	§	
Debtor.	§	**Chapter 11**

RESPONSE OF JAMES DONDERO TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EMERGENCY MOTION TO COMPEL PRODUCTION BY THE DEBTOR
[Relates to Docket No. 808]

James Dondero ("Dondero"), a party in interest, hereby files this Response to the *Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor* [Docket No. 808] (the "Motion"). In support thereof, Dondero respectfully represents as follows:

BACKGROUND

1. Through the Motion, the Committee seeks the production by the Debtor of a wide variety of documents, including emails, to aid in its investigation of potential Estate Claims[1] and other potential causes of action against third parties, which includes "any and all estate claims and causes of action against Dondero, [Mark] Okada, other insiders of the Debtor, and each of the

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Related Entities,[2] including promissory notes held by any of the foregoing." In accordance with the Final Term Sheet, the Committee also seeks "any privileged documents or communications that related to the Estate Claims."

2. The Final Term Sheet grants the Committee access to privileged documents and communications in the Debtor's possession, custody, or control specifically related to the investigation and pursuit of the Estate Claims. The term sheet provides that "solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control ("Shared Privilege")."

3. Accordingly, the Proposed Protocol of the Committee seeks, among other things, documents, emails, and other electronically stored information (ESI) exchanged from or between nine different custodians, who include Dondero.[3] The Committee has requested all ESI for the nine custodians, including without limitation, email, chat, text, Bloomberg messaging, or any other ESI attributable to the custodians.

4. The Debtor's document production to the Committee in this case is subject to the terms and conditions of the Agreed Protective Order [Docket No. 382] entered into between the Committee and the Debtor on January 21, 2020. Under this protective order and the Committee's

[2] As described in the Motion, "[t]he Final Term Sheet defines "Related Entities," as, collectively, "(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis . . . has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis . . . ; (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative . . . of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, . . .; and (viii) to the extent not included in [the above], any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing")." (Dkt. 354-1, at 52.) The Related Entities Listing lists thousands of entities related to the Debtor. CLO Holdco i[s] a shareholder and limited partner of various entities on the Related Entities Listing."

[3] These nine custodians are Patrick Boyce, Jim Dondero, Scott Ellington, David Klos, Isaac Leventon, Mark Okada, Trey Parker, Tom Surgent ("Surgent"), and Frank Waterhouse.

Proposed Protocol, any document not including one of the agreed-upon set of privilege terms (that is, those likely to identify attorney-client privileged communications or attorney work product, but not those related to the Estate Claims) would be produced to the Committee for review, subject to the Agreed Protective Order's provisions on "No Waiver" and "Claw Back of Inadvertently Produced Protected Materials." Thereafter, after review by Debtor's contract attorneys, the Committee's Proposed Protocol suggests that non-privileged documents and "privileged documents related to the Estate Claims would be produced to the Committee on a rolling basis."

5. While the Agreed Protective Order provides these and other protections to the Debtor related to the production of documents and information in this proceeding, the order provides that it does not apply to any third-party beneficiaries. Specifically, the order states that it "precludes non-Debtor affiliates, and their Representatives, including any entity affiliated with, owned by, or controlled in any way, directly or indirectly, by James Dondero and his affiliates (the "Dondero Parties") from seeking to enforce or rely on this Order in any way, unless any of the Dondero Parties is asked (formally or informally) to produce or receive Discovery Materials thereby becoming a "Party" as defined herein."[4]

6. On July 9, 2020, Highland Capital Management, L.P. (the "Debtor" or "Highland") filed *Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (II) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034* [Docket No. 810].

7. Because the production of certain privileged information is implicated by the Committee's Motion, including as it relates to Dondero, both individually and in connection with

[4] *See* Agreed Protective Order [Docket No. 382], para. 17.

his affiliated entities, Dondero is a Party that may seek relief with this Court in connection with the Agreed Protective Order.

RESPONSE

8. While Dondero takes no position as to the relief requested by the Committee in the Motion, he files this Response to ensure his rights are protected in connection with the production of any confidential or privileged documents and other information sought by the Committee.

9. Under the Final Term Sheet, the Committee is entitled to "privileged documents and communications that are within the Debtor's possession, custody, or control" with respect to its investigation and pursuit of Estate Claims. In turn, members of the Committee will be entitled to access and review such information. Because of the broad scope of access granted to the Committee through the Final Term Sheet and the Shared Privilege, each of the committee members will have access to much more material than in the typical case.

10. One such member, Joshua Terry ("Terry"), along with his wholly-owned or controlled entities, Acis Capital Management GP, LLC, and Acis Capital Management, L.P. (collectively, "Acis"), would enjoy access to this privileged and confidential information. As the Court is aware, Terry and Acis have commenced a number of proceedings against Dondero, Highland, and various related parties, which are not intended to benefit Highland's creditors generally, but are meant to benefit primarily Terry himself. Because of these pending actions, if the Court grants the Motion, the Court should restrict Terry and Acis's access to the information sought by the Committee, especially that which is privileged or confidential.

11. While Dondero has found no case law directly on point, there is an analogous situation. Under Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Court may order the examination of any entity. Fed. R. Bankr. P. 2004. Rule 2004

further provides that the Court may order the examination and the production of documentary evidence concerning any matter that relates "to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or . . . any matter relevant to the case or the formulation of a plan." Fed. R. Bankr. P. 2004(b).

12. The scope of discovery under Rule 2004 is very broad. Courts have likened the examination to be in the nature of a "fishing expedition." *In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008).

13. Although discovery under Rule 2004 is extremely broad, "once an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by Rule 2004." *In re SunEdison, Inc.*, 572 B.R. 482, 490 (Bankr. S.D.N.Y. 2017); *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) (citing *Snyder v. Soc'y Bank*, 181 B.R. 40, 42 (S.D. Tex. 1994), aff'd sub nom. *In re Snyder*, 52 F.3d 1067 (5th Cir. 1995)); *In re Bennett Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996) ("The well recognized rule is that once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to the Fed. R. Bankr. P. 7026 *et seq.*, rather than by a [Rule] 2004 examination."). Because Rule 2004 is designed to provide the examining party with "broad power to investigate the estate, it does not provide the procedural safeguards offered by Fed. R. Bankr. P. 7026." *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996).

14. In this case, the Committee and the Debtor have, through the Final Term Sheet, agreed to allow the Committee to conduct broad discovery concerning the Debtor's assets and financial affairs (akin to a 2004 examination) to aid in the Committee's investigation and pursuit of potential Estate Claims and other causes of action. Thus, to the extent there are pending

proceedings to which the Committee or any of its members is a party, they may be affected by this discovery.

15. While the Committee itself has not commenced an adversary proceeding or contested matter against the Debtor, Dondero, or any related entities, Terry has done so. Terry, either on behalf of himself or his wholly-owned and controlled entity, Acis, has commenced a number of adversary proceedings and state court lawsuits against the Debtor, Dondero, a number of Debtor's employees, and certain related entities. These proceedings remain pending and discovery may (for the most part) be taken by the parties.

16. Specifically, the pending proceedings commenced by Terry are (i) by Terry, related to his 401(k), in state court against Dondero and Surgent; (ii) by Acis in state court against former Highland attorneys including in-house counsel; (iii) by Acis in this Court against Highland and its related parties (stayed by Highland's chapter 11 filing); (iv) by Acis against Dondero and certain Highland employees, recently commenced in this Court; and (v) the frivolous motion for contempt by Acis against Dondero, Highland, and certain Highland employees and others, if Acis ever gets around to actually filing it (it has been before the Court as an exhibit to the motion for relief from stay filed in connection with it).

17. If the Committee and each of its members is given access to the confidential and privileged information of Dondero and his affiliates related to the Estate Claims, Terry and by extension his wholly owned and controlled entity, Acis, Highland's competitor and litigation adversary, stand to gain an unfair advantage by accessing proprietary, confidential, or privileged information of Dondero and related parties for the purposes of pending litigation. Allowing Terry to participate in such discovery in Highland's bankruptcy case would circumvent the procedural

protections provided by Bankruptcy Rule 7026 and give Terry unprecedented access to sensitive information he may use to gain undue leverage in these various actions.

18. Moreover, with the existence of the multitude of the pending actions commenced by Terry and Acis against Dondero and Highland's employees, there is another significant problem posed by Terry's service on the Committee: now that Terry has sued (sometimes in a different case) not only Dondero but numerous other Highland employees, Terry's access to the Committee's privileged information in the Highland case may create significant problems for Dondero and Highland's employees in fulfilling their duties to Highland.

19. The successful operations of Highland, especially during this critical time, require the close attention and candid disclosures of its employees, including in-house counsel, to the Independent Board and the Committee. Dondero, for example, often exchanges views with the Independent Directors. In doing so he must be cognizant of the possibility that his words may prejudice him in pending litigation.

20. The foregoing concerns were first brought to the Court's attention by Dondero in his filed Comment[5] to the *Motion for Leave to File Redacted Quarterly Operating Reports* [Acis Docket No. 1161] (the "QOR Motion") filed by Acis in the Acis case, pursuant to which Acis seeks to conceal critical portions of its quarterly operating report from all creditors and interested parties in the Acis case while at the same time utilizing this Court's time and resources to pursue litigation against Dondero, Highland, its employees, and certain related parties. The QOR Motion remains pending. As discussed in the Comment to the QOR Motion, the advantages to Terry resulting from the Shared Privilege and access to information provided to the Committee are significant.

[5] *See* Docket No. 1168 filed in the Acis case.

21. The observations and concerns raised by Dondero in that Comment are even more striking and relevant in this contested matter. If Terry and Acis are allowed access to the privileged and confidential information being sought by the Committee, such information will undoubtedly be utilized by Terry and Acis in their pursuit of Dondero and Highland. Terry, either on behalf of himself or Acis, has litigation pending against (i) Highland; (ii) Highland's founder, Mr. Dondero; (iii) various Highland related entities; (iv) Highland's former attorneys; and (v) Highland's own employees. Given the extraordinary breadth of these actions, there is an existential threat of abuse by Terry of his access to the information available to the Committee, including through the Shared Privilege, to the detriment of Dondero, the Debtor-related parties, Debtor's employees, and the Debtor's estate.

CONCLUSION

For the reasons set forth above, in the event the Court grants the Motion, Dondero respectfully requests that the Court bar Terry's access to the information sought by the Committee in the Motion. The information sought may be used by Terry and Acis to circumvent the discovery protections under Bankruptcy Rule 7026 to gain an unfair advantage in the litigation Terry has commenced against Dondero, Highland, Highland's employees, and various related parties.

Dated: July 14, 2020

Respectfully submitted,

/s/ D. Michael Lynn

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Email: bryan.assink@bondsellis.com

ATTORNEYS FOR JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 14, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Committee, the Debtor, and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT 41

From: "John A. Morris" <jmorris@pszjlaw.com>
To: "'ileventon@highlandcapital.com'" <ileventon@highlandcapital.com>, "'Stephanie Vitiello (SVitiello@highlandcapital.com)'" <SVitiello@highlandcapital.com>
Cc: "Gregory V. Demo" <GDemo@pszjlaw.com>
Subject: RE: Highland: Privilege Terms Searches
Date: Mon, 26 Oct 2020 18:23:19 +0000
Importance: Normal
Inline-Images: image001.jpg

And if anyone has one, when was it issued/provided?

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

PACHULSKI STANG ZIEHL & JONES
Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

---

From: John A. Morris
Sent: Monday, October 26, 2020 2:23 PM
To: ileventon@highlandcapital.com; Stephanie Vitiello (SVitiello@highlandcapital.com)
Cc: Gregory V. Demo
Subject: FW: Highland: Privilege Terms Searches

Isaac/Stephanie:

Please see below.

Who among the Highland custodians has a Highland-issued phone?

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

PACHULSKI STANG ZIEHL & JONES
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From: John A. Morris
Sent: Monday, October 26, 2020 2:08 PM
To: 'Montgomery, Paige'; Rognes, Chandler; Foley, Patrick G.
Cc: Reid, Penny
Subject: RE: Highland: Privilege Terms Searches

Taking Meta-e off.

The only possibility that I'm aware of and we've discussed is the cell phone/text.

As previously mentioned, there is a strict policy prohibiting the conduct of business on phone/text (you have the policies), and (b) nearly all of the employee's phones are personal, not company issued.

Nevertheless, I will follow up and see whether any of the custodians have company-issued phones.

Thanks,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

PACHULSKI STANG ZIEHL JONES
Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

---

From: Montgomery, Paige [mailto:pmontgomery@sidley.com]
Sent: Monday, October 26, 2020 1:36 PM
To: Margaret Wolf; Adam Magazine; Rognes, Chandler; Foley, Patrick G.
Cc: McVoy, Paul (NON-SIDLEY @METAEDISCOVERY.COM); Reid, Penny; John A. Morris
Subject: RE: Highland: Privilege Terms Searches

Thank you.

John-can you confirm that there was data collected and provided to Meta-E other than just emails and Bloomberg chats? We just want to make sure that the depository now has all data attributable to the custodians under the Court's order.

Thanks,

Paige

PAIGE HOLDEN MONTGOMERY

SIDLEY AUSTIN LLP
+1 214 969 3500
pmontgomery@sidley.com

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EXHIBIT 42

From: "John A. Morris" <jmorris@pszjlaw.com>
To: "'Isaac Leventon'" <ILeventon@HighlandCapital.com>, "Stephanie Vitiello" <SVitiello@HighlandCapital.com>
Subject: RE: Highland: Document Production issues
Date: Fri, 13 Nov 2020 17:07:49 +0000
Importance: Normal
Inline-Images: image001.jpg

Just want to make sure we're addressing, and I have the correct information on:

1. Grant Scott issues
2. JP Sevilla issues
3. DSI/FTI issues (SV's response)
4. HarbourVest issues
5. Cell phone issues (who has company cell phones)

Most of these have been covered, but I want to prepare a singular response and a call will be easier to whip through this.

Let me see if there is anything else.

Thanks,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

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Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

---

From: Isaac Leventon [mailto:ILeventon@HighlandCapital.com]
Sent: Friday, November 13, 2020 12:04 PM
To: Stephanie Vitiello; John A. Morris
Subject: RE: Highland: Document Production issues

Out of curiosity John, what is the production issue?

From: Stephanie Vitiello
Sent: Friday, November 13, 2020 11:00 AM
To: John A. Morris <jmorris@pszjlaw.com>
Cc: Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: Re: Highland: Document Production issues

Yes. I have a hard stop at 3:30.

Sent from my iPhone

On Nov 13, 2020, at 10:54 AM, John A. Morris <jmorris@pszjlaw.com> wrote:

Stephanie:

Can we speak at 3 pm eastern about document production issues?

Let me know.

Thanks.

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

<image001.jpg>

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EXHIBIT 43

From: John A. Morris
Sent: Thursday, December 03, 2020 5:30 PM
To: ileventon@highlandcapital.com
Cc: Stephanie Vitiello (SVitiello@highlandcapital.com); Thomas P. Jeremiassen; jromey@DSIConsulting.com
Subject: Highland: Firm Phones

Isaac,

The UC is still pushing for text messages.

I know you've told me that few people have firm-issued phones, but I'm following up on my requests and need to know who has firm-issued phones.

Please let me know as soon as possible.

Thanks.

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

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EXHIBIT 44

From: Isaac Leventon <ILeventon@HighlandCapital.com>
To: Helen Kim <HKim@HighlandCapital.com>, Melissa Schroth <MSchroth@HighlandCapital.com>
Subject: Trusts
Date: Thu, 3 Dec 2020 14:52:29 -0600
Importance: Normal
Inline-Images: image001.jpg

Do either Dugaboy or Get Good have services and/or management agreements with HCMLP or any other entity that utilizes HCMLP employees?

ISAAC LEVENTON | ASSISTANT GENERAL COUNSEL

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4100 | D: 972.419.4482 | F: 972.628.4147

ileventon@highlandcapital.com | www.highlandcapital.com

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EXHIBIT 45

From: Isaac Leventon <ILeventon@HighlandCapital.com>
To: John Bonds <john@bondsellis.com>
Subject: FW: Dugaboy Investment Trust
Date: Fri, 4 Dec 2020 14:02:34 -0600
Importance: Normal
Embedded: Fwd:_Note_valuation
Inline-Images: image001.jpg

From: Isaac Leventon
Sent: Thursday, December 3, 2020 3:56 PM
To: 'John Bonds'
Cc: Stephanie Vitiello ; Bryan Assink ; Michael Lynn
Subject: RE: Dugaboy Investment Trust

John - Please see attached what has already been produced. The October 28 draft that the report is addressed to Hunton & Williams and the note, at the time, was between the Dugaboy Investment Trust and the Get Good Trust. Debtor was not a party, and therefore did not retain Hunton. Therefore, communications with Hunton are not the Debtor's and cannot be subject to the Debtor's waiver of privilege for Estate Claims. Debtor believes there are other bases for claiming privilege has been waived, and asked me to locate, and provide for production to the UCC, the final version of the draft report. If Dugaboy believes that any of these documents are its privileged materials, then please contact John Morris (jmorris@pszjlaw.com).

Thanks, Isaac

From: John Bonds <john@bondsellis.com>
Sent: Thursday, December 3, 2020 3:44 PM
To: Isaac Leventon <ILeventon@HighlandCapital.com>; John J. Kane <jkane@krcl.com>
Cc: Stephanie Vitiello <SVitiello@HighlandCapital.com>; Bryan Assink <bryan.assink@bondsellis.com>; Michael Lynn <dmljng@gmail.com>
Subject: RE: Dugaboy Investment Trust

Isaac,

Can you send it to us? Thanks,

John

From: Isaac Leventon <ILeventon@HighlandCapital.com>
Sent: Thursday, December 3, 2020 1:27 PM
To: John Bonds <john@bondsellis.com>; John J. Kane <jkane@krcl.com>
Cc: Stephanie Vitiello <SVitiello@HighlandCapital.com>
Subject: Dugaboy Investment Trust

Johns:

I need to give notice to Dugaboy of the production of related documents. I know that Mr. Bonds represents Dondero (beneficiary of the Trust) and Mr. Kane represents Mr. Scott (trustee for the Trust). Please let me

know which of you (or neither) should be given notice on behalf of the Trust.

Thanks,

ISAAC LEVENTON | ASSISTANT GENERAL COUNSEL

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

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EXHIBIT 46

From: Michael Lynn <michael.lynn@bondsellis.com>
To: Douglas Draper <ddraper@hellerdraper.com>
Cc: Isaac Leventon <ileventon@sasmgt.com>, "dmljng@gmail.com" <dmljng@gmail.com>, Bryan Assink <bryan.assink@bondsellis.com>, Jim Dondero <JDondero@highlandcapital.com>
Subject: Re: Engagement
Date: Mon, 7 Dec 2020 02:13:02 +0000

Jim Dondero should get the engagement letter. I am happy to talk at your convenience. I suggest though that you talk with Jim first.

Sent from my BlackBerry 10 smartphone.

From: Douglas Draper
Sent: Sunday, December 6, 2020 8:05 PM
To: Michael Lynn
Cc: Isaac Leventon; dmljng@gmail.com; Bryan Assink
Subject: Re: Engagement

Judge Lynn should I send you the engagement letter ? Now that I have read some of the forwarded material would like to talk with you and the client to get a better idea of what is expected and how I can prioritize. The material to digest is significant.

Sent from my iPhone

On Dec 5, 2020, at 6:58 PM, Michael Lynn wrote:

Bryan will be in touch if necessary.

Sent from my BlackBerry 10 smartphone.

From: Isaac Leventon
Sent: Saturday, December 5, 2020 4:58 PM
To: Douglas Draper
Cc: dmljng@gmail.com; Michael Lynn
Subject: Re: Engagement

Douglas - I think we start with an EL with James D Dondero personally. Judge Lynn, please let me know if Bryan Assink needs any help gathering materials for Douglas.

Thanks, Isaac
Sent from my iPhone

On Dec 5, 2020, at 4:53 PM, Douglas Draper wrote:

I have talked with judge Lynn. What is the next step to 1) figure out who I will be representing 2) exactly what I need to do and 3) prepare a retention letter etc.
I look forward to taking the next steps.

Sent from my iPhone

On Dec 5, 2020, at 12:39 PM, Isaac Leventon wrote:

Douglas – Mr. Dondero would like to get you engaged as soon as reasonably possible. Please contact Judge Lynn at the email above or at 817-405-6915.

Thanks,

Isaac Leventon, Esq.

SAS Asset Recovery Ltd.

Grand Pavilion Commercial Centre

802 West Bay Road

Grand Cayman KY1-1102

(o) 972.419.4482

ileventon@sasmgt.com

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EXHIBIT 47

From: Sarah Goldsmith <SGoldsmith@HighlandCapital.com>
To: "sellington@sasmgt.com" <sellington@sasmgt.com>
Subject: FW: AT&T Post Call Notification Summary of Change(s) to Your Account
Date: Mon, 11 Jan 2021 12:07:02 -0600
Importance: Normal
Inline-Images: image001.png

Best,

Sarah Bell Goldsmith | Executive Assistant

O: 972.628.4102 | M: 214.642.3487

From: Sarah Goldsmith
Sent: Wednesday, December 9, 2020 2:37 PM
To: Scott Ellington
Subject: FW: AT&T Post Call Notification Summary of Change(s) to Your Account

Your number has officially been switched! Thank you so much ☺

Best,

Sarah Bell Goldsmith | Executive Assistant

O: 972.628.4102 | M: 214.642.3487

From: AT&T Account Management <update@emaildl.att-mail.com>
Sent: Wednesday, December 9, 2020 2:33 PM
To: Sarah Goldsmith <SGoldsmith@HighlandCapital.com>
Subject: AT&T Post Call Notification Summary of Change(s) to Your Account

SCOTT ELLINGTON

Thank you for using AT&T!

It was my pleasure to help you today. Below is a summary of our discussion:

- We've completed your request to assume financial responsibility for 2146495475.

  As I mentioned to you during our call today, we'll bill you for your monthly service charges and all applicable taxes and fees, including the monthly Regulatory Cost Recovery Fee of up to $1.25 and any local surcharges.

If we can help you further, please refer to http://www.att.com/biz or call us at (888)-444-4410.

Sincerely,

Marco D.
BCSS-Business Mobility Enablement
(888)-444-4410

Freedom to change! Authorized users who have access to Premier Online Care (POC) can change rate plans, add or remove features and reinstate wireless service after voluntary suspension. Make these account changes today! Login at: https://www.wireless.att.com/businesscare/login. Authorized users of POC may include your company's Telecom Manager, Billing Account Number Administrators and/or authorized Corporate Responsibility Users. To learn more about POC or Premier Online Store go to: http://www.wireless.att.com/businesscenter/premier. Interested in having an AT&T Premier Enterprise Portal for your business? Contact your sales team for assistance. Get account support right from your mobile device: - Download the myAT&T Business application to view usage, make a payment, get technical support, and more! Visit www.att.com/BusinessMobile. (via smartphone only)

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EXHIBIT 48

From: Michael Lynn <dmljng@gmail.com>

To: Scott Ellington <SEllington@highlandcapital.com>

Cc: Jim Dondero <JDondero@highlandcapital.com>, John Wilson <john.wilson@bondsellis.com>

Subject: Testimony

Date: Fri, 11 Dec 2020 12:02:54 -0600

Scott, you were going to talk with John Wilson of our firm or have JP do so. He needs to speak today so we know whom to put on the witness and exhibit list and will be waiting for a call. Thanks.

Sent from my BlackBerry 10 smartphone.

EXHIBIT 49

From: Michael Lynn <dmljng@gmail.com>
To: Bryan Assink <bryan.assink@bondsellis.com>, John Wilson <john.wilson@bondsellis.com>, Scott Ellington <SEllington@highlandcapital.com>, Jim Dondero <JDondero@highlandcapital.com>
Subject: Re: Witnesses for hearing
Date: Sat, 12 Dec 2020 19:33:18 -0600

As you can see, we are getting into a real bind and probably harming ourselves in the process.

As to deposing both directors, we will go with Dubel, but we reserve the right to call Nelms at trial. Tell Morris that and that I am hoping for a resolution and am waiting to hear from Jeff Pomerantz. Meantime we must as he must go forward.

Sent from my BlackBerry 10 smartphone.

From: Bryan Assink
Sent: Saturday, December 12, 2020 7:22 PM
To: John Wilson
Cc: Michael Lynn
Subject: Witnesses for hearing

John, have you heard from Ellington or Sevilla yet? We really need to let the other side know if we are going to call one of them as a witness. I can list either/or on the exhibit list and tell that to Morris but he is insisting on being able to depose one of them before the hearing, but telling them one or the other (when we really haven't confirmed that) does not help him.

Judge, do you have any way of contacting Sevilla so he can talk to John?

Bryan C. Assink, Associate
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton St. | Suite 1000 | Fort Worth, Texas 76102
office 817.779.4297 | fax 817.405.6902
bryan.assink@bondsellis.com

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EXHIBIT 50

From: Jim Dondero <JDondero@highlandcapital.com>
To: "D. Lynn (Judge Lynn)" <michael.lynn@bondsellis.com>, Scott Ellington <SEllington@HighlandCapital.com>, "ddraper@hellerdraper.com" <ddraper@hellerdraper.com>
Subject: Spoke with Clubok for 30 mins
Date: Tue, 15 Dec 2020 22:34:39 -0600
Importance: Normal

---

2 takeaways:
Redeemer filed a intervene request yesterday with district court (I'm not a lawyer, don't know what that means) regarding UBS objection to their 9019.... but Clubok asked us to support his objection or write amicus brief
Give him evidence of Seery ineptitude or improper asset sales (life settlement, Omni max, SSP) and he will run with it...

Sent from my iPhone

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EXHIBIT 51

From: Michael Lynn <dmljng@gmail.com>

To: Scott Ellington <SEllington@highlandcapital.com>

Subject: Call

Date: Wed, 16 Dec 2020 15:19:13 -0600

Please give me a call when you get a minute.

Sent from my BlackBerry 10 smartphone.

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EXHIBIT 52

From: Jim Dondero <JDondero@HighlandCapital.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: Fwd: Highland -- Letters to and From K&L Gates
Date: Thu, 24 Dec 2020 18:58:45 -0600
Importance: Normal

Sent from my iPhone

Begin forwarded message:

From: Jim Dondero
Date: December 24, 2020 at 5:53:30 PM MST
To: Michael Lynn
Cc: John Bonds , Bryan Assink
Subject: Re: Highland -- Letters to and From K&L Gates

Who knows how Jernigan reacts but they are not correct re the inappropriateness of Seery activities.....

Sent from my iPhone

On Dec 24, 2020, at 3:49 PM, Michael Lynn wrote:

Sent from my BlackBerry 10 smartphone.

Original Message

From: Jeff Pomerantz

Sent: Thursday, December 24, 2020 4:40 PM

To: Michael Lynn

Cc: Jeff Pomerantz

Subject: Re: Highland -- Letters to and From K&L Gates

Michael --

At the hearing on 12-16 we clearly established to Judge Jernigan's satisfaction, thorugh Dustin Norris, K&L Gates' witness, that Jim Dondero makes the material investment decisions for all the entities that filed the Motion and whom K&L Gates represents. Accordingly we do believe these issues directly implicate your client, the January 9, 2020 order which is being violated by any efforts to terminate the Debtor and the Temporary Restraining Order that the Court recently entered.

Best,

Jeff

On 12/24/20, 2:33 PM, "Michael Lynn" wrote:

Thank you for providing these. I had not seen them and have had no contact with K&L Gates (though Bryan Assink did regarding certain claims). I do not have familiarity with the Investors Act but do not agree with some of the statements in your letters; as I am not involved, however, that is a matter for you and K&L Gates.

I have not reviewed the transcript of the December 16 hearing, so I do not know on what evidence Judge Jernigan based her conclusion that my client engineered the motion then heard. While there are relationships between my client and some of the movants, I believe they are separate entities and should be treated as such.

Sent from my BlackBerry 10 smartphone.

Original Message

From: Jeff Pomerantz

Sent: Thursday, December 24, 2020 4:02 PM

To: Michael Lynn

Cc: Jeff Pomerantz

Subject: Highland -- Letters to and From K&L Gates

Michael –

Attached are two letters we received from K&L Gates and the Debtor's response that I believe will be of interest to you and your client.

Best.

Jeff

Jeff Pomerantz

Pachulski Stang Ziehl & Jones LLP

Tel: 310.277.6910 | Cell: 310.489.0285 | Fax: 310.201.0760

jpomerantz@pszjlaw.com

vCard | Bio | LinkedIn

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EXHIBIT 53

From: Jim Dondero <JDondero@HighlandCapital.com>
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: Fwd: Highland - Letter & Discovery Requests
Date: Thu, 24 Dec 2020 11:34:24 -0600
Importance: Normal
Attachments: Letter_to_D.M._Lynn_-_12.23.20.pdf; DOCS_NY-_41817-v3-Document_Requests_Dondero.pdf; DOCS_NY-_41819-v3-Depo_Notice_Dondero.pdf
Inline-Images: image001.jpg

Sent from my iPhone

Begin forwarded message:

From: Michael Lynn
Date: December 24, 2020 at 9:57:02 AM MST
To: Jim Dondero , John Bonds
Cc: Bryan Assink
Subject: Fw: Highland - Letter & Discovery Requests

Please see the attachments. I think much of what's on Jim's phone is privileged and must be protected. John, you may want to take this up with Morris.

Sent from my BlackBerry 10 smartphone.

From: Gregory V. Demo
Sent: Wednesday, December 23, 2020 10:19 PM
To: Michael Lynn; Michael Lynn; Bryan Assink
Cc: Jeff Pomerantz; Ira Kharasch; John A. Morris; Hayley R. Winograd
Subject: Highland - Letter & Discovery Requests

Dear Judge Lynn,

Please see attached letter and discovery requests.

Best,

Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
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Jeffrey N. Pomerantz
310.772.2336
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December 23, 2020

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

Re: Termination of James Dondero Access to Office and Services

Dear Judge Lynn:

As you know, on December 10, 2020, a temporary restraining order was entered against Mr. James Dondero by the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "TRO"). Case No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020.

Pursuant to the TRO, Mr. Dondero was, among others things, prohibited from communicating with the employees of Highland Capital Management, L.P. (the "Debtor") (subject to certain limited exceptions) and interfering with or otherwise impeding, directly or indirectly, the Debtor's business. We have discussed with you several instances in which Mr. Dondero breached the terms of the TRO and will not repeat them here.

As you also know, the Debtor manages certain collateralized loan obligations (the "CLOs"). The Debtor sought to cause the CLOs to sell certain publicly-traded equity securities, including AVYA and SKY (tickers), prior to Thanksgiving. Mr. Dondero blocked these trades. That conduct, among other things, caused the TRO to be entered.

These trades were also the subject to the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager,*

to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528] (the "CLO Motion"), which was filed by, among others, NexPoint Advisors, L.P. ("NPA") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"). At the hearing on December 16, 2020, Judge Jernigan stated both that she agreed that the CLO Motion was brought by "Mr. Dondero, through different entities" and that it was frivolous.

On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs' sale of the AVYA and SKY securities. To justify their conduct, those employees mimicked the frivolous arguments made in the CLO Motion. This conduct violated the TRO, and HCMLP reserves all rights to seek appropriate sanctions with respect to such violation.

As a result of this conduct, among other things, HCMLP has concluded that Mr. Dondero's presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive to HCMLP's continued management of its bankruptcy case to continue.

As a consequence, Mr. Dondero's access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the "Office"), will be revoked effective Wednesday, December 30, 2020 (the "Termination Date"). As of the Termination Date, Mr. Dondero's key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.

Further, as of the Termination Date, Mr. Dondero's access to his @highlandcapital.com email account will be revoked, and Mr. Dondero will no longer have access to that email account or any emails, calendars, or contacts associated with that email account.

In addition, Mr. Dondero's access to the HCMLP system and all services maintained on that system, including his Bloomberg terminal, will be revoked as of the Termination Date.

HCMLP will also terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the "Cell Phones"). HCMLP demands that Mr. Dondero immediately turn over the Cell Phones to HCMLP by delivering them to you; we can make arrangements to recover the phones from you at a later date. The Cell Phones and

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES

the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or "wiping" any information or messages on the Cell Phone. HCMLP, as the owner of the account and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.

Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by HCMLP will be viewed as an act of trespass, theft, and/or an attempted breach of HCMLP's security protocols.

Finally, HCMLP demands that Mr. Dondero take all steps necessary to retain and protect from loss, destruction, alteration or defacement all documents, communications, and information relating to the Debtor, the Debtor's assets, any assets managed by the Debtor, or the Debtor's employees.

HCMLP reserves all rights that it may have whether at law, equity, or in contract, including the right to restrict the access of HCMFA and NPA employees to the Office and HCMLP-provided services. Nothing herein will be construed as a waiver of any such rights.

Sincerely,

J. Pomerantz/gvg

Jeffrey N. Pomerantz

cc: Ira Kharasch, Esq.
John Morris, Esq.
Gregory Demo, Esq.

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS DIRECTED TO JAMES DONDERO

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034, incorporating by reference Federal Rules of Civil Procedure 26 and 36, Highland Capital Management, L.P., the Plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case ("Bankruptcy Case") hereby requests that, in connection with *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Docket No. 2] (the "Motion"), James Dondero, the Defendant in the Adversary Proceeding ("Defendant" or "Mr. Dondero") produce for inspection and copying, the documents identified below, on or before **December 28, 2020 by 5:00 p.m. Central Time** (the "Requests").

INSTRUCTIONS

1. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of these Requests to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

2. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

3. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

4. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs or other media to be mutually agreed by the parties.

5. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs or other media to be mutually agreed by the parties or use an ftp site upload.

6. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

7. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

8. Unless noted otherwise, **the requests for documents set forth herein seek Documents and Communications created between December 10, 2020 and December 28, 2020**.

DEFINITIONS

1. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whomever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

3. "ESI" has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

4. "Hearing" refers to the hearing described in the *Notice of Hearing* filed at Docket No. 16 in the Adversary Proceeding.

5. "MultiStrat" means Highland Multi Strategy Credit Fund, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.).

6. "You" or "Your" refers to Mr. Dondero.

DOCUMENT REQUESTS

Request No. 1:

For the period August 1, 2020, to the present, all Communications between You and Andrew Clubok.

Request No. 2:

For the period August 1, 2020, to the present, all Documents provided to or received from Andrew Clubok.

Request No. 3:

All Communications between You and any person employed by the Debtor.

Request No. 4:

All Documents provided to or received from any person employed by the Debtor.

Request No. 5:

All Documents and Communications concerning MultiStrat.

Request No. 6:

All Documents and Communications that You intended to introduce into evidence at the Hearing.

Dated: December 23, 2020

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/s/ Zachery Z. Annable

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure 30, incorporated by reference in Rule 7030 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P., the Plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case ("Bankruptcy Case"), shall take the deposition of James Dondero, the Defendant in the above-captioned Adversary Proceeding ("Defendant" or "Mr. Dondero"), in connection with *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Docket No. 2] (the "Motion") on **December 30, 2020, beginning at 9:30 a.m. Central Time**, or at such other day and time as counsel for the Debtor and counsel for Mr. Dondero agree.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime. Parties who wish to participate in the deposition should contact **John A. Morris**, Pachulski Stang Ziehl & Jones LLP, at jmorris@pszjlaw.com **no fewer than 24 hours before the start of the deposition** for more information regarding participating in this deposition remotely.

Dated: December 23, 2020

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Counsel for Highland Capital Management, L.P.

EXHIBIT 54

To: All employees of Highland Capital Management, L.P. ("Highland")
Re: Highland's New Cell Phone Reimbursement Policy
Date: March 27, 2012

As of March 27, 2012, Highland will be implementing a new policy regarding monthly employee reimbursement for cell phone expenses. This policy supersedes all prior cell phone reimbursement policies, agreements, and understandings, oral or written, between employees and Highland.

Under the new policy, in consideration for Highland subsidizing employees' cell phone expenses, employees must provide Highland with online access information (user ID and password) for their cell phone bills and records. Employees who choose to provide online access to Highland must do so within five (5) days of the date of execution below by submitting the requisite information, in writing, to Human Resources. Employees may not change their submitted access information without concurrently notifying Human Resources, in writing, of their new access information. Participating employees who fail to provide Highland with sufficient online access will be in ineligible for reimbursement and liable to Highland for repayment of the full reimbursement amount received during any month in which Highland is unable gain access. Participating employees expressly authorize Highland to make any deductions from their compensation necessary to fulfill repayment obligations.

Participation in this policy is entirely voluntary. Should you wish to participate, please sign and date below and return the executed document to Human Resources. Employees who choose not to participate are no longer eligible to be reimbursed by Highland for cell phone expenses. Employees who choose to participate in this policy may later terminate their participation, and forego future reimbursement, by providing at least fourteen (14) days advance written notice to Human Resources. Your obligations under this policy shall terminate upon the termination of your employment, provided that you will remain obligated to furnish historical call records covering the period through the date of your termination, as requested following the termination of your employment.

Employees participating in this policy should have no expectation of privacy regarding e-mail, voice mail, text messages, graphics, and other electronic data composed, sent, and/or received on their cell phones. Notwithstanding the foregoing, Highland agrees not to review any call records on an employee's bill other than those associated with the phone number of employee. Further, regardless of whether employees choose to participate in this policy, all e-mail, voice mail, text messages, graphics, and other electronic data composed, sent, and/or received **related to company business** remain the property of the Highland. Finally, employees are reminded that, at all times, they are expected to abide by Highland's applicable codes of conduct and employment policies.

By signing below, you also agree to waive any and all claims you may have against Highland or any of its affiliates related to this new policy, including, but not limited to, claims for invasion of privacy, and authorize Highland to access, view, and possess your cell phone records and billing information.

EMPLOYEE:

Printed Name: _____

Signature: _____

Date: _____

EXHIBIT 55

Employee Handbook

HIGHLAND CAPITAL
MANAGEMENT

This Employee Handbook applies to all employees of Highland Capital Management, L.P, Highland Capital Management Fund Advisors, L. P., Highland Capital Funds Distributor, Inc., Highland Capital of New York, Inc., NexPoint Advisors, L.P., and NexPoint Residential Trust, Inc.

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THE PURPOSE AND SCOPE OF THIS HANDBOOK

This Handbook (the "Handbook") is designed to inform employees of Highland Capital Management, L.P. and its Affiliates (collectively "Highland" or the "Company") of the company's policies and practices. You should read the contents of this Handbook carefully and consult your supervisor if you have questions or desire additional information. Affiliates ("Affiliates") is defined to include Highland Capital Management Fund Advisors, L. P., Highland Capital Funds Distributor, Inc., Highland Capital of New York, Inc., NexPoint Advisors, L.P., and NexPoint Residential Trust, Inc.

This Employee Handbook is only a general guide to Highland's current employment policies and to some of your responsibilities as an employee. It is informational only and is not intended to be and should not be construed as a contract of employment. From time to time, Highland reviews and makes revisions to its policies, procedures and benefits without notice. Highland reserves the right to modify the policies and procedures contained in this Handbook at any time.

Included as part of this handbook is an Acknowledgment form. After you have read this handbook, you must sign and return the form to Human Resources.

(Revised 06-15-17)

HIGHLAND EMPLOYMENT POLICIES

Equal Employment Opportunity

Highland is committed to a policy of equal employment opportunity. This means that employment decisions affecting applicants and employees will not be based upon the individual's race, color, religion, gender, national origin, age, disability or any other unlawful basis. Employees who engage in such discrimination will be subject to disciplinary action, up to and including discharge from employment. If you feel you have been discriminated against, you should notify your supervisor, the Human Resources department, or any other person in management whom you are comfortable in approaching.

Harassment and Discrimination

(Please see Sexual Harassment Addendum in New Hire Packet)

Highland will not tolerate harassment or discrimination of its employees, whether committed by a fellow employee, a member of management, or a visitor to our workplace, such as a vendor, supplier or customer. Harassment or discrimination based on race, color, religion, gender, national origin, age, disability, sexual orientation or any other unlawful basis violates Company policy. All employees are responsible for ensuring that the workplace is free from harassment and discrimination. This policy also applies to work-related settings outside of the workplace, such as during business trips, business meetings and business-related

social events. All employees, including managers and supervisors, will be subject to disciplinary action, up to and including discharge from employment, for any act of harassment or discrimination they commit.

Examples of prohibited harassment include, but are not limited to:

- Use of slurs, epithets or words that degrade an individual or group of individuals, even when used in a joking fashion;
- Unwelcome advances, demands or requests for sexual acts or favors, and other verbal or physical conduct of an offensive nature, such as leering, touching, gestures and graphic comments about another person's body or personal conduct;
- Display of cartoons, email, photographs, drawings, pin-ups, posters, calendars, or images that are offensive or degrading to others;
- Conduct that has the purpose or effect of substantially interfering with an individual's work performance or which creates an intimidating, hostile or offensive work environment; or
- Conditioning hire, continued employment, or terms and conditions of employment (such as raises, promotions, assignments) upon submission to sexual advances or requests for sexual favors.

It is also unacceptable to shun or exclude an individual from participation in work or work-related social events in order to avoid allegations of harassment.

If you feel you are being harassed or discriminated against, or if you have knowledge of harassment or discrimination of a co-worker, you should take immediate action to bring the matter to the attention of the Human Resources Department. If you are comfortable doing so, you should also advise the offender that his or her behavior is unwelcome and request that it stop. This approach is effective in situations where the offender truly does not realize that his or her conduct is offensive to others. If this does not work, or if you are not comfortable confronting the offender, notify your supervisor. If for any reason you do not feel comfortable discussing the matter with your supervisor, contact the Human Resources Department or any member of management whom you feel comfortable in approaching. All reports will be promptly investigated in as confidential a manner as possible. Based upon the findings of the investigation, Highland will take prompt and appropriate action to remedy any violations of this policy. Remedial action may include, but is not limited to, individual counseling, verbal warning, written warning, suspension, and discharge from employment, depending upon the nature of the offense.

No employee who brings a good faith report of harassment or discrimination to the attention of the Company will suffer retaliation or other adverse employment

actions as a consequence. Any employee, including managers and supervisors, who is found to have retaliated against an employee who reported a violation of this policy, in good faith, will be subject to disciplinary action up to and including discharge from employment. It is important for employees to report incidents of harassment or discrimination because, without your assistance, violations could go undetected and uncorrected. Furthermore, if you feel you are being subjected to retaliation, please notify your supervisor, the Human Resources department, or any other member of management.

Fraternization

Consenting romantic or sexual relationships between a supervisor or manager and an employee may at some point lead to complications and significant difficulties for all concerned – the employee, the supervisor or manager, co-workers, and the Company. The problems can range from actual or perceived favoritism, lowered productivity, unfair alliances, to domestic disputes that can enter the workplace.

As a result, the Company discourages such relationships and any conduct that is designed or may reasonably be expected to lead to the formation of a romantic or sexual relationship between a supervisor or manager and an employee. If such a relationship should exist or develop, the supervisor or manager must disclose the existence of the relationship to Human Resources within 2 weeks. The involved employee may also make the disclosure, but the burden of disclosure rests upon the supervisor or manager who is in the relationship with the employee. Upon notice, Human Resources may take all steps deemed necessary. At a minimum, the supervisor or manager and the employee will not be permitted to work together on the same matters, and the supervisor or manager must withdraw from participation in activities or decisions (including but not limited to hiring, evaluations, promotions, compensation, work assignments, discipline and discharge) that may reward or disadvantage the employee with whom the supervisor or manager is involved.

The Company does not intend this policy to inhibit or discourage friendships or social activities that are or should be an important part of the work environment. This policy is not to be relied upon as justification or excuse for a supervisor or manager to refuse to engage in appropriate social interaction with employees.

This policy will apply without regard to gender or sexual orientation of the parties to the romantic or sexual relationship.

Non-Disparagement

Highland is committed to promoting a culture of collaboration and ensuring a workplace where everyone is treated with dignity and respect, and Highland expects its employees to support that commitment by helping to maintain a workplace based on mutual understanding and cooperation. This means that employees should not make statements or remarks, whether oral or written, about other employees or former employees that could be found offensive,

discriminatory, disparaging, profane, derogatory, abusive, or maliciously false. Engaging in such conduct, or encouraging or instructing others to engage in such conduct, is strictly prohibited and will not be tolerated. However, to be very clear, nothing in this or any other Highland policy should be construed as prohibiting employees from engaging in concerted activity protected by the National Labor Relations Act.

(Revised 03-29-17)

Highland - An "At-Will" Employer

The fact that you have been hired as an employee at Highland does not imply that the company has established any form of contractual arrangement with you. To the contrary, your employment relationship with the company is considered an "employment at-will" arrangement that either you or Highland may terminate at any time and for any reason. (Certain employees may have written employment contracts that govern the terms and conditions of their employment. If you are one of these employees, you will have been notified of your status as a contract employee at the time you were hired.) No employee except the President of the Company's general partner may change or alter the at-will nature of the employment relationship, and then only by a written document signed by the President.

Hiring Policies

The Handbook Acknowledgment

Each of Highland's employees, both existing and new, must sign a Handbook acknowledgment. At the end of this booklet is a form acknowledging receipt of the Handbook. After you have completely reviewed this Handbook, this form must be detached from the Handbook, signed by you and returned to Human Resources. In addition, you will be expected to re-read and acknowledge compliance with the Employee Handbook at a minimum annually as a part of continued employment

(Revised 03-29-17)

Items to be covered for Each New Employee

- Read the Highland Employee Handbook and sign the Acknowledgment Form
- Learn about and sign required payroll and employment forms (I-9, tax forms, etc.)
- Learn about your benefits and sign benefit enrollment forms

- Learn about your specific job responsibilities and performance standards
- Learn your work and lunch hours and the procedures to follow in case of absence

Once you accept employment with Highland, you are required to provide evidence of your right to work and verification of your identification within seventy-two hours of your hire date. Without appropriate documentation (completed and approved federal government Form I-9) you are subject to immediate termination of employment.

Applicant Screening

All new employees are required to undergo a background screening process, which includes providing historical Form W-2s and Wage and Tax Statements as part of their application. The purpose of applicant screening is to confirm past employment and research any other issues that Highland may consider relevant for employment qualification. These issues may include licenses and educational certifications, criminal records, driving records and others. In most cases the applicant screening process will be completed prior to the first day of Highland employment. Our offer of employment and your employment is contingent on the completion of applicant background screening to the satisfaction of Highland.

(Revised 04-17-12)

Nepotism

There will be no hiring of close relatives such as spouses, parents, grandparents, siblings and children as full-time or part-time regular employees.

HOURS OF WORK, PAYROLL INFORMATION & PERSONNEL POLICIES

Employment Classifications

Employees at Highland are classified in several ways. Please see your supervisor if you have any questions concerning your employment status.

Position Type

***Non-Exempt*:** Employees classified as hourly or non-exempt are paid for the actual number of hours they work and are eligible to receive overtime pay after working more than 40 hours in a work week.

Exempt: Employees classified as exempt are paid annual salaries which are divided into semi-monthly payments. They are not eligible to receive overtime pay.

Work Schedule

Full-time: Full-time employees are scheduled to work an average of 40 hours or more per week on a continuing basis.

Part-time: Part-time employees are scheduled to work an average of 20 hours or more but less than 40 hours per week on a continuing basis.

The Standard Work Day and Work Schedules

Highland is open for business, meaning the switchboard is covered and the doors are open, between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday. Arrival and departure time for staff is determined by the business needs and schedules of each department and may be flexible in nature. Full-time hourly employees are generally expected to work a minimum of 50 hours per week. The department manager will set each individual's specific work hours.

(Revised 12-16-13)

Overtime and Holiday Pay

Hourly employees will be paid at the rate of 1 and 1/2 times their regular rate of pay for all hours actually worked in excess of 40 hours in any week. Paid time off and holidays are "hours worked" for purposes of calculating overtime pay, while unpaid leave is not included in "hours worked." Overtime pay will normally be included in the paycheck following the pay period during which an employee works overtime hours. Exempt employees are not eligible for overtime compensation.

If an employee is required to work on a holiday and he or she is a full-time hourly employee, they will have the option to be paid for all hours actually worked plus an additional eight hours at their regular rate of pay regardless of whether they have worked 40 hours or more in that work week, or to receive an extra floating PTO day to be used during the year and be paid for hours actually worked on the holiday**.**

Pay Periods

Highland employees are paid twice a month, on the 15th and last day of the month. Upon hire, you will receive your first paycheck (prorated for number of days) on the regularly scheduled pay date. If you are scheduled to be on leave for a certain payday, see Human Resources to make arrangements for your paycheck to be held or deposited. Checks will not be issued in advance.

If payday falls on a Holiday or weekend, you will be paid on the last scheduled workday prior to the Holiday or weekend.

(Revised 12-16-16)

Direct Deposit

Direct deposit is available to qualified NexBank customers. Employees may elect to have their paycheck deposited directly into their NexBank checking account, savings account, or a combination of these accounts. Direct deposit request forms are available from Human Resources. For further information regarding direct deposit, please see the Human Resources Department. Included below is the direct deposit policy and process:

1. Establish an account through NexBank for direct deposit. NexBank will provide Highland Capital employees with free checking.

2. For those employees who wish to use direct deposit to more than one account, Highland will permit employees to allocate their payroll checks through direct deposit in the following manner: direct deposit through their non-NexBank account of $200.00 per payroll check, and the balance through a NexBank account.

3. In lieu of direct deposit as outlined above, employees may elect to receive their physical payroll checks which will be distributed at work on regularly scheduled payroll dates.

(Revised 04-17-12)

Payroll Deductions

Highland will deduct all amounts required by law, such as federal income tax, social security and Medicare (FICA), or ordered by the court, such as wage garnishment. Highland will also deduct amounts authorized by employees in writing. If an employee believes there was an improper deduction from their pay, they should report it to Human Resources immediately so that any error can be promptly corrected or a proper deduction can be explained.

Reimbursement of Business Expenses

Employees will be reimbursed for all ordinary, reasonable and necessary business expenses they incur while conducting authorized Highland business. Please check with your Administrative Assistant or the Intranet for the specific policies and procedures for reimbursement of business expenses.

(Revised 04-17-12)

COMPENSATION & CAREER OPPORTUNITIES

Career Growth, Transfers and Promotions

Highland is a growing company that encourages teamwork, initiative and continuous improvement. As such, employees are expected to become knowledgeable and involved in all aspects of the business and to stretch across department boundaries in their daily work and in their career development.

It is Highland's policy to fill positions, where possible, through transfers and promotions of current employees. Open positions may be posted and an opportunity made available for an employee to express their interest in applying for the position. Employees are encouraged to pursue such opportunities for advancement. Employees should remain in a position for a minimum of one year before applying for an internal position. Also, employees must be in good standing (i.e., not on a corrective action plan or have been the recipient of a written warning within the last 12 months) in order to apply for an internal position. To apply for an internal position, employees must obtain manager approval and submit an Employee Transfer Request Form (available on the intranet) to Recruiting.

(Revised 09-17-08)

EMPLOYEE BENEFITS

Introduction

Highland offers you a wide variety of benefits, depending on your employment status with the Company. Highland will provide Summary Plan Descriptions ("SPD") regarding certain benefits. Please see the actual Plans or SPD, if applicable, for details concerning eligibility and benefits. Set out below is a list of benefits available upon eligibility.

Health and Life • Comprehensive Medical & Dental Benefits • Short and Long Term Disability Benefits • Life Insurance (GTL) and AD&D ***Leave Benefits*** • Paid Time Off • Paid Holidays	***Retirement*** • 401k Plan with company match • Discretionary Profit Sharing ***Other Benefits*** • Professional Membership Reimbursement • Health Club Membership • Employer Matching Gifts • Worker's Compensation Insurance • Employee Referral Gift • Paid Parking • Cell Phone Co-Pay/ Reimbursement • In-Office Lunch

(Revised 12-16-16)

Differential Pay

All New York employees will receive differential pay of $20.00 per day after 9:00 p.m. EST to cover meals and cab fares.

Cell Phone Benefit

In order to be eligible for the $100/month cell phone service reimbursement, Highland employees are required to update their billing address with the cell carrier to the Highland Dallas office address and you must also request that detailed paper billing be activated. A paper copy of the detailed bill should be mailed by the carrier to Highland's Dallas office.

The Highland / AT&T co-pay plan is no longer accepting new entrants due to AT&T policies.

(Revised 12-16-16)

In consideration for Highland subsidizing employees' cell phone expenses, employees must direct their cell phone carrier to activate detailed paper billing for their mobile phone that is subsidized by Highland and also direct the carrier to send the detailed paper bill to Highland's Dallas office address (300 Crescent Court, Suite 700, Dallas, TX 75201). Employees who choose to activate detailed paper billing and to have the paper bill sent to Highland must initiate the change with AT&T within five (5) days of the date that they choose to participate in this policy. Participating employees may not change the paper billing settings without

concurrently notifying Human Resources, in writing, of the change. Participating employees for whom Highland does not receive a detailed paper bill will be ineligible for reimbursement and liable to Highland for repayment of the full reimbursement amount received during any month in which Highland does not receive the detailed paper bill. Participating employees expressly authorize Highland to make any deductions from their compensation necessary to fulfill repayment obligations.

Participation in this policy is entirely voluntary. Should you wish to participate, you must complete the steps above and then send Human Resources an email confirming you have completed these steps. Employees who choose not to participate will have the level of applicable reimbursement limited to that set forth in the table below. Employees who choose to participate in this policy may later terminate their participation, and have future reimbursement limited to that set forth in the table below, by providing at least fourteen (14) days advance written notice to Human Resources. Your obligations under this policy shall terminate upon the termination of your employment, provided that you will remain obligated to furnish historical call records covering the period through the date of your termination, as requested, following the termination of your employment.

Employees participating in this policy should have no expectation of privacy regarding e-mail, voice mail, text messages, graphics, and other electronic data composed, sent, and/or received on their cell phones. Notwithstanding the foregoing, Highland agrees not to review any call records on an employee's bill other than those associated with the phone number of employee. Further, regardless of whether employees choose to participate in this policy, all e-mail, voice mail, text messages, graphics, and other electronic data composed, sent, and/or received related to company business remain the property of Highland. Finally, employees are reminded that, at all times, they are expected to abide by Highland's applicable codes of conduct and employment policies.

You also agree to waive any and all claims you may have against Highland or any of its Affiliates related to this new policy, including, but not limited to, claims for invasion of privacy, and authorize Highland to access, view, and possess your cell phone records and billing information.

Non- Participating Employee Reimbursement Limits

Fixed reimbursement of $5/month for data
$0.09 / minute reimbursement for business related mobile calls
Must submit detailed invoice with business calls highlighted
Reimbursement provided once per quarter upon submission of appropriate documents

(Revised 12-16-16)

Professional Membership Reimbursement Program

In addition to encouraging you to continue your education and training, Highland also supports your involvement and participation in professional groups and associations that represent your field. With the written permission of your supervisor, Highland may pay up to 100% for any reasonable professional organization membership dues or fees. Where the company has specifically requested that you join an organization, 100% of your membership dues or fees will be paid. See Human Resources for more information on this program.

Employee Referral Awards Program

If you know someone who is qualified for an open position at Highland, please submit his/her name to Recruiting. If the person you identified is hired, you will receive a gift from Highland after the referred individual has been an employee with Highland for six months. The hiring manager of a referred employee is not eligible to receive a referral award.

(Revised 09-17-08)

Matching Charitable Gifts

Highland is committed to supporting the work of charitable, non-profit organizations. Therefore, Highland will match employee contributions to qualified organizations up to a maximum of $300 per employee per calendar year. Please note that this policy does not include gifts to political campaign funds.

Contact Highland Capital Management's Fund Accounting team to submit your request for a matching charitable gift. Requests for charitable donations that exceed the $300 annual threshold should be submitted to the Corporate Accounting team for review by the President.

(Revised 04-17-12)

Paid Time Off

Employees that work 20 or more hours per week may be eligible for paid time off (PTO). PTO is awarded at the beginning of the year and accrues throughout the year. PTO is awarded each calendar year as follows:

Employment Classification	**Annual Days Earned**
Non-exempt	15
Exempt	17
Managing Directors, tenured Directors*	19
New Team Leaders	22

Tenured Team Leaders/Partners	24

**Directors with 3+ years of Highland tenure*

New hires will receive a prorated amount of PTO to use between the date of hire and the end of the calendar year. Part-time employees receive a prorated amount of PTO based on their target hours.

Highland reserves the right to modify or terminate the PTO policy at any time.

(Revised 04-17-12)

Approval for PTO

Please note that, as with other planned leaves, employees must notify their Manager prior to taking PTO. All vacation requests must be submitted through TimeKeeper and approved by the employee's Manager. Generally, a minimum of two weeks prior notice is required to receive approval for taking paid time off. Exceptions to this notice period may be made for personal or family emergencies. Failure to directly notify an employee's supervisor in advance of taking PTO may result in the request for leave being denied, the leave being without pay, or corrective action, up to and including termination of employment.

PTO for Non-Exempt Employees

Each day of PTO will be compensated at ten (10) hours for non-exempt, full-time (50 hours/week) employees. A day of PTO for a part-time hourly employee will be based upon their weekly hours (e.g., 30 hours/week receives 6 hours for PTO day). PTO is treated as "hours worked" for purposes of calculating overtime pay.

PTO for Team Leader, Managing Directors, and tenured Directors

Team Leaders, Managing Directors and tenured Directors must take a portion of their PTO during the following periods:

- Week of Spring Break
- Week of July 4th
- Any two weeks in August
- Rosh Hashanah
- Week of Thanksgiving
- Any two weeks in December
- Any Friday before or Monday following a 3-day weekend

On an annual basis, Managing Directors and tenured Directors should take 9 days of PTO or floating days during the periods listed above. Team Leaders should take 19 days of PTO or floating days during the periods listed above.

(Revised 12-16-16)

Rollover and Borrowed PTO

Employees should use their PTO in the year it was granted, but up to ten (10) days of Regular PTO may be rolled over each calendar year. Additional rollover may be authorized by the President. An employee's cumulative rollover PTO balance may exceed ten days if he or she has accumulated rollover from more than one year.

An employee may borrow PTO from the upcoming year with approval from the President. Employees must use all remaining PTO prior to requesting borrowed PTO.

(Revised 04-17-12)

Boondoggle Time Off

Some employees receive additional time off for boondoggles. Boondoggle PTO hours should be used for non-work activities with clients, such as hunting trips, golf outings, skiing trips, etc. Boondoggle time is not eligible for rollover.

Unpaid Time Off

Under special circumstances, employees may request unpaid time off. Unpaid time off requests should be approved by the President. Employees must use all remaining PTO prior to requesting unpaid time off. Unauthorized unpaid time off may result in corrective action, up to and including termination.

PTO at Termination

Accrued unused PTO is paid out to employees that resign or retire and give their supervisor at least two weeks written notice. After providing written notice employees must work a reasonable transition period, as determined by their supervisor, of up to two weeks.

Employees who provide notice of resignation or retirement when their direct supervisor is not physically present in the office (e.g., on vacation or a business trip) are not entitled to accrued unused PTO upon termination of employment. Also, employees who are involuntarily terminated by Highland are not entitled to accrued unused PTO upon termination of employment.

Entitlement to accrued unused PTO upon termination of employment is also contingent, where applicable, upon compliance with the Post-Employment Contact with Investors, Prospective Investors, and Counterparties policy, which can found in this Employee Handbook.

If, upon termination, an employee has used more than their leave accrual for the year, Highland will deduct the amount of the overage from their final paycheck.

(Revised 04/17/2012)

Holidays and Floating Days

Scheduled Holidays

Highland observes eleven (11) paid holidays each year. Highland's scheduled holidays are as follows:

- New Year's Day
- Martin Luther King, Jr. Day
- Presidents Day
- Good Friday
- Memorial Day
- Independence Day
- Friday before Labor Day
- Labor Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

The holidays will be compensated at ten (10) hours for non-exempt, full-time employees (50 hours/week). Holidays are "hours worked" for purposes of calculating overtime pay.

If a holiday falls during an employee's scheduled vacation (PTO), the day will be counted as holiday instead of PTO. If a holiday falls on a Saturday or Sunday, the company will designate, in advance, what day will be treated as a holiday. Paid holidays are not granted during unpaid leaves of absence.

(Revised 12-16-16)

Floating Days

Employees are also eligible for two (2) floating holidays each year to be used at their discretion. Unused floating days may not be carried over to the next calendar year. Generally, a minimum of two weeks prior notice to the employee's supervisor is required to receive approval for the floating day. Failure to directly notify a supervisor in advance may result in the request for a floating day being denied, the leave being without pay, or corrective action, up to and including termination of employment.

(Revised 09-17-08)

Workers' Compensation

Highland provides workers' compensation coverage for employees who have been injured on the job or who have sustained an occupational illness. Every employee who is injured on the job should report the injury immediately to his or her supervisor. The supervisor will complete an accident investigation report and

coordinate with the Human Resources Department toward the completion of the necessary paperwork to apply for workers' compensation benefits.

Long and Short Term Disability Policies

Highland has long-term and short-term disability plans. The Company will provide a Summary Plan Description regarding these plans.

FMLA Policy

Purpose

Highland Capital Management, L.P. complies with the provisions of the Family and Medical Leave Act ("FMLA"). Where State or local family and medical leave laws offer more protections or benefits to employees, the protections or benefits provided by such laws will apply. Highland Capital Management, L.P. has created this policy to outline the conditions under which an employee may request time off without pay for a limited period with job protection and no loss of accumulated service if the employee returns to work.

Scope

This policy applies to all family and medical leaves of absence including leaves that are covered under paid employment benefit plans or policies for any part of the leave to which the employee may be entitled under this policy. In other words, if an employee is entitled to both FMLA leave and paid leave under another benefit plan or policy, the employee is required to use all applicable paid leave plans or policies before unpaid leave and the FMLA leave and the paid leave will run concurrently.

Employee Eligibility

To be eligible for leave under this policy, an employee must have been employed here for at least 12 months and must have worked at least 1,250 hours during the 12-month period preceding the beginning of the leave. An employee must also establish the existence of a qualifying event in order to be entitled to leave under this policy.

Qualifying Events

Eligible employees are entitled to a total of 12 workweeks of leave during any calendar year when leave is taken for one or more of the following qualifying events:

(1) birth and care of the employee's newborn child;

(2) placement of a child with the employee for adoption, or by the State for foster care;

(3) to care for the employee's spouse, child or parent (called a "Covered Relation") with a serious health condition (this does not include in-laws);

(4) the employee's own serious health condition which prevents him or her from performing the essential functions of the job, including workers' compensation leaves;

(5) existence of a "Qualifying Exigency"; or

(6) To care for "covered service member."

A "child" does not have to be a biological child. A "parent" does not need to be a biological parent as long as the person stood "in loco parentis" (in the place of the parent) to the employee when the employee was a "son" or "daughter." FMLA leave may be taken to care for adopted children, foster children, legal wards, or a niece, nephew or grandchild whom the employee is actively raising. A "son or daughter" includes a child 18 years or over who is "incapable of self-care because of a mental or physical disability." An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities.

For FMLA purposes, a "spouse" is defined in accordance with applicable state law and may include common-law spouses in states where common-law marriages are recognized. Unmarried domestic partners generally do not qualify as spouses under the FMLA.

Serious Health Condition

For FMLA purposes, when an employee takes FMLA leave for his/her own serious health condition, this means the employee has a mental or physical illness, injury or impairment that involves inpatient care (including any ensuing period of incapacity) or continued treatment by a health care provider. Continued treatment by a health care provider means the following: (1) incapacity for more than three calendar days plus two or more doctor's visits or one visit plus treatment (prescribed medication or therapy); (2) incapacity due to pregnancy, or for prenatal care; (3) incapacity due to a chronic condition involving periodic medical visits for treatment of recurring or episodic conditions (such as asthma, diabetes or epilepsy); (4) permanent or long-term incapacity (such as Alzheimer's, severe stroke or terminal stages of a disease); or (5) an absence to receive treatment for restorative surgery after an accident or other injury, or for treatment of a condition that would result in incapacity if left untreated (such as chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

Qualifying Exigency

A right to Qualifying Exigency leave arises when a child, spouse or parent of an employee is on active duty or has been notified of an impending call to active duty in support of a contingency operation. A contingency operation includes:

- any operation designated by Secretary of Defense in which the armed forces are or may become involved in military actions, operations or restitutions against an enemy of the U.S.; or
- results in the active duty of members of the armed forces during a war or national emergency declared by the President or Congress; or
- action in response to events such as natural disasters, turnout or subservice activities or required military operations.

Examples of Qualifying Exigencies include the following: arranging for child or elder care in the service member's absence, assisting with economic or legal concerns, attending official ceremonies/programs, attending the service member's farewell or arrival, attending to affairs caused by the missing status or death of a service member.

Covered Service Member

A right to leave under this provision of the policy arises when an employee must care for a child, spouse, parent or next of kin of an employee, who is a member of the armed forces and that service member is undergoing medical treatment, recuperation or therapy, is on outpatient status of a military medical treatment facility, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of covered service member leave, a "serious illness or injury" means an injury or illness incurred while on active duty in the armed forces which renders the service member medically unfit to perform the duties of their office, grade, rank or rating.

Amount of Leave

Eligible employees may take up to twelve weeks of leave during a rolling twelve month period for the first five categories of leave outlined above.

Eligible employees may take up to 26 weeks of leave to care for a covered service member during a 12 month period. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. For example, employees who have used 12 weeks of FMLA for any of the other categories described above are only entitled to 14 weeks of covered service member leave. In addition,

Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

For purposes of determining whether employees have exhausted their FMLA leave entitlement under this policy, the twelve month period is determined by measuring backward from the date an employee takes any FMLA leave. In other words, any FMLA leave that was taken by the employee during the 12 months preceding the date that the employee takes additional FMLA leave will be counted to determine the amount of FMLA leave remaining.

Both Spouses Working for the Company

Spouses who are employed by the Company, and who request FMLA leave for the birth, adoption, or foster care placement of a child with the employee, are eligible for a combined twelve weeks between the two employees. For example, both employees continue to be eligible for twelve weeks of leave apiece for their own serious health condition, but may only take twelve weeks between them for the birth or placement of a child. If the leave is for birth, adoption or foster placement of a child with the employee, available leave can be taken before the event and any time during the 12 months after the birth or placement

Similarly, spouses who are employed by the Company, and who request FMLA leave to care for a covered servicemember, are eligible for a combined 26 weeks between the two employees. In other words, both employees may only take twenty-six weeks of leave between them for this event.

Conditions of Leave

Employee Notification and Reporting Requirements

If the reason for the FMLA leave is foreseeable (such as planned surgeries or normal births), the employee is to give the Company at least 30 days written notice. Similarly, if the need for exigency leave is foreseeable, such as receipt of advance notification of impending call to active duty, the employee must give the company advance written notice of the need for leave. If the need for leave is not foreseeable (such as a car accident or premature birth or injury of a covered service member), the employee is expected to notify the Company as soon as possible and, in no event, more than (2) two business days after knowing of the need for leave, except in extraordinary circumstances. Failure to provide such notice may be grounds for delay of leave. Additionally, if you are planning a medical treatment you must consult with the Company first regarding the dates of such treatment. The Company has Request for

Family/Medical Leave forms available from the Human Resources Department. You should use these forms when requesting leave.

If you take leave because of your own serious health condition or to care for a Covered Relation, you may be required to contact the Company on a regular basis regarding the status of the condition and your intention to return to work. A reporting schedule will be worked out with the Human Resources Department.

Intermittent and Reduced Schedule Leave

Leave because of a serious health condition, Qualifying Exigency, or covered service member leave may be taken intermittently (in separate blocks of time or on a reduced leave schedule, reducing the usual number of hours you work per workweek or workday) if medically necessary. In addition, while you are on an intermittent or reduced schedule leave, the Company may temporarily transfer you to an available alternative position which better accommodates your recurring leave and has equivalent pay and benefits.

Medical Certification

If you are requesting leave because of your own or a Covered Relation's serious health condition, you may obtain a Medical Certification Form from the Human Resources Department. You and the relevant health care provider must supply appropriate medical certification to the Human Resources Department within 15 calendar days of receiving the Medical Certification Form. If you provide at least thirty (30) days' notice of medical leave, you should also provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave.

Highland Capital Management, L.P., at its expense, may require an examination by a second health care provider designated by the Company, if it reasonably doubts the medical certification you initially provide. If the second health care provider's opinion conflicts with the original medical certification, the Company, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. The Company may require subsequent medical recertification. Failure to provide requested certification within fifteen (15) days of the Company’s request, if such is practicable, may result in delay of further leave until it is provided.

Certification for Exigency Leave

Employees seeking exigency leave will be required to provide confirmation of the service member's activation or active duty status and certification that leave is needed due to a Qualifying Exigency.

Certification for Covered Service Member Leave

Employees seeking leave to care for a covered service member must provide certification to establish that a service member has a serious injury or illness incurred in the line of duty while in active status.

Status of Employee Benefits During Leave of Absence

Medical and Other Benefits

During an approved family/medical leave, Highland Capital Management, L.P. will maintain your medical, dental, and life benefits as if you continued to be actively employed. If you elect not to return to work for at least thirty (30) calendar days at the end of the leave period, you may be required to reimburse the Company for the cost of the benefit premiums paid by the Company for maintaining coverage during your unpaid leave, unless you cannot return to work because of a serious health condition or other circumstances beyond your control.

An employee will not accrue vacation during a FMLA leave. An employee on FMLA leave is not eligible for holiday pay for a holiday which falls during a FMLA leave.

Leave Is Unpaid

Leave provided under this policy is unpaid leave, although you may be eligible for short or long-term disability payments and/or workers' compensation benefits under those insurance plans or policies if you are taking leave for your own serious health condition. If you are entitled to receive money from these sources, your leave will be considered "paid leave" for the period during which you receive that money.

If your leave is "unpaid" leave you will be required to substitute paid time off (vacation, personal days) for "unpaid" FMLA leave as described below. If you request leave because of a birth, adoption or foster care placement of a child, any accrued paid vacation and personal days first will be substituted for unpaid family/medical leave. If you request leave because of your own serious health condition, or to care for a Covered Relation with a serious health condition, any accrued paid vacation and personal days first will be substituted for any unpaid family/medical leave. The substitution of paid leave time for unpaid leave time does not extend the 12-week leave period. Further, in no case can the substitution of paid leave time for unpaid leave time result in your receipt of more than 100% of your salary. Your family/medical leave runs concurrently with other types of leave (i.e., paid vacation, state family leave laws, etc.). Those other leaves may provide for paid leave.

No Work While on Leave

The taking of another job while on family/medical leave or any other authorized leave of absence is grounds for immediate termination, to the extent permitted by law.

Return to Work and Reinstatement

If you take leave because of your own serious health condition (except if you are taking intermittent leave), you are required to provide medical certification that you are fit to resume work. You may obtain Return to Work Medical Certification Forms from the Human Resources Department. Employees failing to provide the Return to Work Medical Certification Form will not be permitted to resume work until it is provided. In addition, you must give notice as soon as practicable (within two (2) business days if feasible) if the dates of leave change or are extended or initially were unknown.

If the employee cannot return to work at the end of the employee's FMLA leave, there is no guarantee of reinstatement. If an employee has been medically released to return to work and fails to report to work or call in with a satisfactory explanation, the Company will treat this as a voluntary resignation.

If the employee returns to work on or before expiration of available FMLA leave, the employee will normally be returned to his or her former position or an equivalent position.

Key Employees

The FMLA provides a significant exemption for "key employees." The Company is not required to offer key employees reinstatement to a similar position following the end of their leave. Key employees are those salaried employees who are among the highest paid 10% of the employees paid by the Company within 75 miles of the facility at which the employee is employed and must be the highest paid 10% of all salaried and non-salaried, eligible and ineligible employees. Year-to-date earnings as of the date leave is requested are used to determine who are the highest paid.

An eligible key employee may be denied reinstatement of employment after leave has been taken if:

(1) such denial is necessary to avoid substantial and grievous economic injury to the operations of the Company,

(2) the Company notified the key employee of its intent to deny restoration on such basis when the Company determined that such injury would occur, and

(3) if the leave has commenced, the employee elects not to return to employment after receiving such notice.

The employee will be notified by the Company of his status as a key employee upon requesting leave if a chance exists that the Company may deny reinstatement after the leave.

An employee may also be regarded as a key employee if the employee is the most highly compensated employee at a facility even if the employee is not among the highest paid 10% of the employees in the Company. If the employee is among the highest paid 10% of employees at a remote facility, the employee could be denied reinstatement of employment and benefits even if the employee's salary fell within the middle range of overall employee salaries.

(Revised 09-17-08)

New York Paid Family Leave

Effective January 1, 2018 Highland and its affilates' New York-based employees are covered under the New York Paid Family Leave Policy. ***Please see separate New York Paid Family Leave Policy for details.***

(Revised 06-14-18)

Jury or Witness Leave

An employee who is summoned to serve on a jury will be allowed time off to fulfill his or her civic duty. Employees must use Personal Time Off (PTO) for any time away from work while serving on a jury. This policy is subject to review by the President on a case-by-case basis.

As soon you receive the summons, present it to your supervisor so that arrangements can be made for your absence. If you are released from jury duty during a workday, you are expected to return to work. Upon completion of jury duty, bring your supervisor the court-issued receipt, if one is available, reflecting the day(s) of service.

An employee who receives a subpoena to serve as a witness in a civil, criminal, legislative or administrative proceeding will be given time off. Employees must use PTO for time away from work while serving as a witness unless the employee is testifying on behalf of Highland or one of its Affiliates. This policy is subject to review by the President on a case-by-case basis.

(Revised 09-17-08)

Voting Leave

Highland encourages its employees who are eligible voters to exercise their right to vote in general, primary and special elections at the federal, state and local

level. The Company will provide time off in which to vote if you do not have two consecutive nonworking hours while the polls are open, which is generally 7 a.m. to 7 p.m., on Election Day. If you do not have two consecutive nonworking hours while the polls are open, and have not voted early or absentee, you must notify your supervisor at least one day before Election Day. Your supervisor will designate a time, either at the start or end of your normal workday, in which to vote. You may be asked to provide proof that you have voted if you were absent during your regular work hours.

Military Leave

As required by the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), Highland's applicants and employees who apply or perform military service, whether on a voluntary or involuntary basis, will not be denied initial employment, reemployment, retention in employment, promotion or any benefit of employment on the basis of the performance of military service.

Eligible military service includes performance of a duty on a voluntary or involuntary basis in a uniformed service, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period of time for which the employee is absent to determine fitness for duty or to perform funeral honors duty.

Any employee who enters the uniformed services of the United States will be granted a military leave of absence. To qualify for reemployment, an employee must have:

- Given Highland written or verbal notice in advance of service, unless the giving of notice is precluded by military necessity;
- A cumulative length of absence, including any previous military absence while employed by Highland, which does not exceed five years; and
- Applied for reemployment with Highland according to these guidelines:

Length of Period of Service	Reapply No Later Than
Less than 31 days	Next regular work day after completion of service and time to travel from place of service to residence, plus eight hours.
More than 30 days, but less than 181 days	Fourteen days after completion of service.
More than 180 days	Ninety days after completion of service.

Upon reemployment, the employee will be placed in the position he or she would have attained were it not for the break in employment, unless the employee is not qualified to perform that job and cannot be trained through reasonable efforts of Highland. If not so qualified, the employee will be placed in the position the employee held when the military leave commenced, or a position of like seniority, status and pay. If a disability incurred during or aggravated by military service prevents the employee from performing the job he or she would have held were it not for the break in service, despite Highland efforts at reasonable accommodation of the disability, the employee will be placed in a position of like seniority, status and pay, if one is available. If no such position is available, the employee will be placed in a job which is the nearest approximation of like seniority, status and pay.

Military leaves are unpaid, but the employee may use accrued PTO, floating holidays, etc. pay during the absence. Employees will be allowed to continue health care coverage at their current level of coverage by paying the employee contribution during the absence. Coverage will continue until the earlier of (1) twenty-four months from the date the military absence began; or (2) the day after the date on which the employee was to have applied for reemployment, as defined above. Upon reemployment, any break in employment due to military service will not be treated as a break in service for purposes of determining forfeiture of accrued benefits and accrual of benefits under any retirement plan.

Limitation On Leaves Of Absence

Except as required by law, if any employee away from work on a leave of absence of any type does not return to work, or is unable to return to work to an available position for which the employee is qualified for any reason (including, without limitation, for lack of a health care provider's release to return to work), within six (6) months of the date the absence commenced, the employee's employment will automatically terminate at the end of the six month leave period. A "leave of absence" is defined as an approved absence from work under specific circumstances for a defined period of time.

This policy applies from the date of its implementation, June 2006, forward. It applies to all current and future employees, including, without limitation, employees currently out on a leave of absence.

Employees whose employment terminates under this policy are welcome to re-apply for employment after their discharge.

OTHER IMPORTANT HIGHLAND POLICIES & EMPLOYEE RESPONSIBILITIES

Attendance

Occasionally it may be necessary for you to be absent from work as a result of illness or unavoidable personal reasons. In the case of an unexpected absence, you are expected to notify your supervisor as soon as possible, and no later than an hour before your normal starting time.

If you fail to follow proper procedures for notifying Highland of your absence, the absence may be considered unexcused. Unexcused absence can result in disciplinary action up to and including termination of employment. In addition, Highland will consider three consecutive days of unexcused, unapproved absence to be a voluntary termination of employment. Excused absences will be charged to your PTO accounts depending on the reason for your absence.

TimeKeeper

Please see separate TimeKeeper Policy for details.

Professional Appearance

Highland employees should maintain a neat and professional appearance at all times in the office, with clients, at work-related activities, at company-sponsored events, or at any meetings/events where the employee is representing Highland.

On most days, Highland has a Semi-Business Casual dress policy. However, there are times that employees will be required to follow a Business Casual dress policy. Highland will generally attempt to notify employees when Business Casual dress is required. There may also be days throughout the year where the more formal business attire (suit, tie, dress) will be required. However, in all work-related situations, employees should use good judgment to determine appropriate dress and maintain a well-groomed appearance. Employees should approach their manager or Human Resources with any questions regarding appropriate professional appearance.

The employee's manager or Human Resources has the sole discretion to determine appropriateness in appearance. Employees who do not meet a

professional standard may be sent home to change and may not be paid for that time off. Violations of this policy may result in corrective action.

General Guidelines

- Clothing should be worn and fit in such a manner that it is not revealing or suggestive (e.g., does not expose the abdomen, chest or back, etc.). Employees should avoid wearing tank tops, sleeveless shirts, halter tops, strapless tops, spaghetti straps, crop tops, and clothing made out of see-through material.

- Clothing should not be excessively tight or form-fitting nor excessively baggy or loose.

- Clothing should not be distracting or offensive. Clothing should be free from sexually-related references, foul language, or the suggestion or promotion of the use of illegal drugs.

- Clothing should be neat, clean and in good condition. Employees should avoid clothing that has holes, is torn or is ripped.

- Skirts and dresses should be of appropriate and tasteful length.

- Body piercing jewelry should be limited to jewelry on the ear. No other body piercing jewelry should be visible.

- Jewelry, make-up, and perfume or cologne should be used in good taste and clothes should be free from offending odors.

Semi-Business Casual Attire

The following are guidelines of what may generally be considered acceptable Semi-Business Casual attire and are the minimum dress requirements which are expected from all employees any day of the workweek:

- It would be appropriate to wear jeans, khakis, casual slacks and trousers, and casual skirts or dresses for women. Clothing should not be torn or ripped in any way.

- Appropriate tops include long sleeve button-up shirts with collars, long-sleeve blouses, sweaters, and turtlenecks. During the months of May through September, short sleeve button-up shirts, short sleeve blouses, and polo style shirts with a collar are acceptable. All other months, any short sleeved attire must be worn with a cover up (i.e. cardigan, blazer, jacket, sweater, & etc.).

- Closed toed shoes must be worn by men, and women can wear open toed shoes with a strap, and must have polished and

presentable toes. Conservative athletic or walking shoes, loafers, boots, flats, and dress heels are acceptable.

- It would not be appropriate to wear shorts, sweatpants, T-shirts, flip flops, sandals or hats/caps.

Business Casual Attire

The following guidelines define acceptable Business Casual attire which is expected from all employees on days that are designated as Business Casual dress:

- It would be appropriate to wear khakis, casual slacks, dress slacks, and dress skirts or dresses for women.
- Appropriate tops include long sleeve button-up shirts with collars, long sleeve blouses, or sweater sets.
- Closed toed dress shoes must be worn by men. Open toed shoes worn by women are acceptable as long as they have a strap on the top.
- It would not be appropriate to wear short sleeve shirts, jeans, shorts, sweatpants, T-shirts, flip flops, sandals, athletic shoes, open toe shoes or open heel, or hats/cap.

(Revised 04-28-17)

Information Technology Acceptable Use Policy

Highland provides computer systems and various other equipment and information systems to employees at the Company's expense in order for employees to access information for the benefit of the Company and its customers. This includes, but is not limited to, personal computers (e.g., desktops, laptops, and tablets), email, Internet, Intranet, telephones, cellular phones, facsimile, voicemail, PDAs, smart phones (e.g., iPhones and similar Android devices). Every employee is expected to use these tools in a productive, appropriate, and responsible manner to maintain and enhance the Company's image, and in accordance with Company policies. The following guidelines are established toward meeting this purpose.

Acceptable Uses

The Company's electronic communications systems are part of the business technology platform and are primarily intended to be used for business purposes. Limited, reasonable, and appropriate use of these systems for personal purposes is allowed.

Unacceptable Uses

General:

These systems are not to be used for personal gain or the advancement of individual views. All messages must be communicated using your name and not an assumed name. The Company forbids the storage, transmission or viewing of "adult materials" on any Company system or in any other form, whether done on the Company's premises or using the Company's equipment. Creating, sending or forwarding verbal or graphic messages which are intimidating, harassing, offensive, profane or hostile on the basis of race, gender, color, national origin, religion, disability, age or any other protected status is also prohibited. These systems may not be used for gambling, participation in chat rooms, and viewing webcams or excessive personal use. Also, any investment research opinions, conclusions and/or advice distributed to outside parties via anonymous or broad distribution such as email or chat rooms are prohibited.

The Company recognizes that the use of a cell/smart phone while driving a motor vehicle can cause distraction to the driver, which can result in accident and injury. Employees are required to comply with all state and local laws regarding the use of cell/smart phones while driving in the course of performing any duties for the Company, including receiving or making any cellular, digital or other wireless business calls while driving at any time. Whenever possible, employees should not make or receive any telephone calls while driving in the course of business for the Company, nor should employees make or receive business-related telephone calls while driving at any time. Employees should let incoming calls go to their voicemail and then find a safe place to pull over and park before initiating a call. If phone usage while driving is unavoidable, a hands-free device must be utilized. Further, under no circumstances should employees use phones, even with a hands-free device, while driving in adverse weather or difficult traffic conditions. The Company takes its cell/smart phone usage policy seriously. Any violations of this policy will subject employees to corrective action, up to and including termination of employment.

Internet:

Highland maintains a strict internet usage policy. All internet access is based upon business need and specific site approval. The following actions as it pertains to internet access are strictly prohibited:

- Attempting to bypass Highland IT security systems, including the firewall and proxy, in an effort to gain unapproved internet access.
- Accessing public proxy sites that would allow bypassing internet security systems.
- Modifying your computer or network in any way, including adjunctive hardware or telecom equipment, allowing for unfettered internet access.

- Using any remote control software to remote to external sources in order to gain internet access.

Computer Usage:

- Installing software on your computer without first gaining approval of the Highland IT department is strictly prohibited.
- Removing network documents, either from network share or the mail system, either through removable media or mail transmission, and transporting them outside company premises is strictly prohibited unless explicit authorization has been granted by your manager.
- Installing tools that would allow you remote access to your computer from outside the Highland corporate LAN is strictly prohibited.

Security Issues:

All messages created, sent or retrieved on the Company's systems are the property of Highland. All electronic data stored, sent, received or created on Highland's computer system or other electronic equipment is the exclusive property of Highland and can be accessed by Highland at any time. Employees do not have privacy right in any matter that is stored, created, sent or retrieved on the Company's systems. The Company will monitor these systems and access any message in order to assure superior service to our customers and to enforce this policy. You must provide your password(s) to the Company, as your mailbox may need to be accessed in your absence. You must not, however, disclose your password, messages or other information gained via the Company's systems to unauthorized personnel. Consider the proprietary or confidential nature of the Company's and its customers' information before relaying it via email. Do not presume that the information will be kept confidential. To minimize the introduction of viruses into the Company's systems, all downloads will be done through Highland's IT department.

Copyright Issues:

Copyrighted materials, including but not limited to software, belonging to entities other than the Company may not be copied or transmitted on the Internet or via email. Failure to observe copyright or license agreements may result in disciplinary action by the Company, legal action by the copyright or license owner, or both.

Any investment research opinions, conclusions and/or advice can only be released outside the office through authorized channels and for normal authorized business purposes.

Engaging in an unacceptable use of the Company's systems will result in disciplinary action, up to and including immediate discharge from employment without prior warning.

(Revised 12-16-16)

Workplace Audio and Video Recording Policy

Purpose

An employee's use of audio and video recording can pose risks to the protection of Highland Capital Management, L.P.'s and its affiliates' ("Highland" or the "Company") confidential and proprietary information, reputation, and brands, together with those of its clients and the investors therein. More troublesome, it can jeopardize the Company's compliance with business rules and laws. At the same time, Highland recognizes that in some limited cases, such as for authorized marketing activities, video and audio recording can provide a unique opportunity to participate in interactive communication and share information on particular topics using a wide variety of social media, such as Facebook, LinkedIn, Twitter, Pinterest, Tumblr, blogs, and wikis, of course to the extent used consistent with Company policy.

To minimize these business and legal risks, avoid loss of productivity and distraction from employees' job performance, and ensure that the Company's, its clients and the investors' therein confidential data and sensitive information are protected, Highland expects its employees to adhere to the following guidelines and rules regarding video and audio recording.

Restrictions on Employee Audio and Video Recording

Unauthorized audio or video recording of employees is disruptive to employee morale and inconsistent with the respectful treatment required of the Company's employees. For this reason, no employee may record the conversation of another employee or service provider without his or her full knowledge and consent. In addition, the employee planning to record another employee or service provider must request consent in advance for any recording from Human Resources and receive written consent (via email is acceptable) from Human Resources prior to recording. Secret recordings are strictly prohibited.

In addition, the following policies should be kept in mind:

- Employees are prohibited from bringing cameras, tape recorders, or other audio or visual recording devices into areas where client privacy may be compromised. Please note that cell phones with camera, video and audio recording capabilities are permitted, however, the video and audio recording functions are prohibited from use.

- Employees may only record workplace activities where such recording would not be prohibited by law, does not compromise confidential information, and does not violate this policy as described above.

- Any recordings made, whether or not in accordance with this policy, shall at all times remain the exclusive property of the Company. Accordingly, Employees are required to surrender to Human Resources originals of any such recordings immediately following creation. Furthermore, no copies of any such recordings made be retained or otherwise distributed by Employee, except to the extent (i) expressly permitted under this policy, (ii) expressly permitted in writing by Highland's Human Resources department, or (iii) as may be required under applicable law. Employees agree to surrender to Highland's Director of IT any electronic equipment or other media upon which any non-permitted copies may be stored or contained so that such deletion can be confirmed.

Any violation of this provision may result in disciplinary action up to termination.

Scope

This policy is not intended to preclude or dissuade employees from engaging in legally protected activities/activities protected by state or federal law, including the National Labor Relations Act, or from making disclosures that are protected under whistleblower provisions of law.

Company Monitoring

Highland may find it necessary to monitor work areas with security cameras when there is a specific job- or business-related reason to do so. The Company will do so only after first ensuring that such action is in compliance with state and federal laws. Highland reserves the right to install security cameras in work areas for specific business reasons, such as security, theft protection, or protection of proprietary information.

Employees should not have any expectation of privacy in work-related areas. Employee privacy in non-work areas will be respected to the extent possible.

If an employee suspects one or more employees may be conducting unauthorized recordings, they must contact Highland's Human Resource department immediately.

Employees should contact their supervisor or the human resource department if they have questions about this policy.

(Revised 01-05-17)

Safety and Health

Highland is committed to providing a safe and healthy work environment. All work-related injuries and accidents, no matter how slight they may appear, must be reported at once to your supervisor. Please report all hazardous conditions and unsafe practices to Human Resources immediately.

Drug and Alcohol Policy

Please see separate Drug Testing Policy for details on Highland's testing procedures and further prohibitions.

It is Highland's policy to provide a drug-free work environment. Employees who violate this policy will be subject to disciplinary action up to and including termination of employment.

Illegal Drugs

It is against Highland policy for employees, guests, and/or other third parties to unlawfully possess, use, purchase, manufacture, sell, dispense, distribute or be under the influence of any controlled substance in the workplace. "Illegal Drugs" and "Controlled substances" include but are not limited to illegal inhalants, amphetamines, barbiturates, cocaine, narcotics, opiates, heroin, morphine, codeine, methadone, PCP and other hallucinogens and marijuana. "Workplace" is defined as any and all premises and property owned, operated or managed by Highland or its Affiliates and includes any place where company business is conducted.

Prescription Drugs

The possession and use of prescription drugs in the workplace is permitted if such drugs are legally obtained and they are being used in the prescribed manner.

Alcohol

The possession, distribution, use or being under the influence of alcohol by Highland employees in the workplace or on Company business is strictly prohibited except at company sanctioned events so long as the event is authorized in advance by a department director and the alcohol is served and consumed in moderation. Under no circumstances should an employee operate a motor vehicle while impaired by alcohol.

Highland encourages alcohol-free activities. However, in certain circumstances such as annual holiday parties, the entertainment of clients and business-related travel, the responsible consumption of alcoholic beverages by employees of lawful age may be permitted. Highland strongly encourages employees to drink non-alcoholic beverages, eat food when

consuming alcohol, stop the consumption of alcohol at least one hour before the end of the event and make arrangements for alternative transportation. After participating in a business-related event where alcoholic beverages are served, employees will be reimbursed for the reasonable cost of using alternate transportation to get home from the event.

Fitness for duty

Any employee that reports to work while intoxicated or who is found to be under the influence of alcohol or illegal drugs/controlled substances, or who is otherwise considered by his/her supervisor to be unfit for safe and effective performance of work will be subject to disciplinary action up to and including termination of employment. He/She will be prevented from entering or remaining in the workplace and/or will be sent home with alternative transportation, if appropriate.

Assistance for Drug and Alcohol Abuse

Employees are encouraged to seek treatment for drug and alcohol abuse and related problems from the Highland health plan.

(Revised 09-17-08)

Solicitation and Distribution

In order to avoid disruption of work, no employee shall be permitted to engage in solicitation for any purpose during his or her working time or the working time of the person being solicited. Working time means time that employees are expected to be performing their job. Likewise, employees shall not engage in distribution of any material, during his or her working time or in working areas. Literature, notices, or other material of any kind may not be posted or distributed in the working areas of any employees at any time. Persons who are not employees of the Company will not be permitted to come upon Company premises for the purposes of making solicitations of any kind to employees, or posting or distributing literature, notices, messages, or material of any kind.

Outside Employment ("Moonlighting") and Conflicts of Interest

Outside employment ("moonlighting") by full time employees is discouraged and you must report outside employment to your supervisor. Approval for outside employment may be withdrawn if work performance or attendance becomes unsatisfactory. Outside employment that results in, or could potentially result in, a conflict of interest with Highland is expressly forbidden.

Press and Media Relations

Communications with the media regarding Highland must be managed via designated Highland communications personnel. Employees are not permitted to respond to media requests and enquiries without prior approval from designated

Highland communications personnel or Highland's external public relations firm. This includes all on the record (attributed quotes/comments) and off the record (on background or anonymous) conversations. All requests from the media should be documented (name, contract information, subject matter) and passed on immediately to communications personnel via the Media Enquires email distribution list. This includes formal requests for interviews as well as enquiries, and includes all media – TV/radio, newspapers, magazines, local/national and trade media and internet sites. Communications personnel will either respond on Highland's behalf, or assist in identifying the appropriate person from Highland to handle the response.

Personal Representation in the Media

It is recognized that from time to time, employees may be approached by the media on topics related to their personal interests or non-work related activities. Employees may participate in such interviews. However, in order to avoid any confusion about whether an employee is speaking on their own behalf or on behalf of Highland, employees may not reference Highland or their role with the company, unless they have obtained prior approval to do so from the Highland. In addition, employees must alert designated Highland communications personnel anytime they communicate with the media on topics related to their personal interests or non-work related activities.

(Revised 04-17-2012)

Personal Phone Calls

Highland's telephones are important business tools. As such, every effort should be made to minimize personal telephone usage. You are expected to reimburse Highland for any personal toll calls you make.

Use and Care of Highland Assets and Records

Company records and papers are valuable and confidential. You are expected to keep all records, files and valuables properly secured. No company records or equipment are to be taken from the premises without permission from your supervisor. Special care should be taken to secure electronic data by following appropriate procedures.

Confidentiality

Employees may have, may be furnished with or may have access to private information that relates to the financial condition of the company, trade secrets, trademarks, patents, proprietary databases and client lists, and other confidential information that is not easily available from public sources. Except for any information which at the time of disclosure to the employee was or thereafter became publicly available or a matter of public knowledge, all such information

shall be considered as proprietary and confidential. Employees will not disclose any proprietary information except in the course of their duties for the Company, and where the employee reasonably, and in good faith, believes that any such disclosure is in the best interests of the company. In addition, employees shall not remove proprietary or confidential information from the company's premises without a valid business purpose or use such information for their own benefit or for the benefit of a third party.

Employees acknowledge that all proprietary and/or confidential information used or generated during the course of working for the company is the exclusive property of the company. Employees must deliver to the company all documents and other tangible items, including storage media containing proprietary or confidential information, including all copies of such documents or tangibles, immediately upon notice of termination of employment with the company. Employees assign the entire right, title and interest in any invention, technique, process, device, discovery, improvement or know-how for which a patent is obtained or that is patentable which is created using the company's facilities, supplies, information, trade secrets or time which directly relates to the company's business or actual or anticipated research and development and directly results from any work performed by the employee. Nothing in this Handbook prohibits Employees from reporting possible violations of federal law or regulation to any government agency or entity or making other disclosures that are protected under whistleblower provisions of law. Employee does not need prior authorization to make such reports or disclosures and is not required to notify the Company that he/she has made any such report or disclosure.

Notwithstanding the above, all employees will be required to sign a non-disclosure agreement (NDA) upon beginning employment. To the extent these provisions are inconsistent with the NDA, the NDA will govern all provisions.

(Revised 12-16-16)

JOB PERFORMANCE

General Expectations

Your manager will clarify the expectations Highland has for you and for your job and the impact your performance has on the business. Communication, feedback and objectivity are important in ensuring your best performance and effective work relationships. You are expected to share in the responsibility for your success, your training and your career growth. Toward this end, Highland expects its employees to achieve results by:

- Exceeding Performance Expectations
- Demonstrating Initiative and Creativity
- Making Continuous Improvements
- Demonstrating Teamwork and Professionalism

- Demonstrating Responsibility to Clients and Community

Problem Resolution

Employees who believe they have a problem or situation affecting their work or job performance and who would like advice and counsel are encouraged to discuss these problems with Highland management, Human Resources, Compliance or Legal teams without fear of reprisal. If you are experiencing such a situation, you are urged to discuss the problem first with your immediate supervisor. You may submit a request, in writing or verbally, for a meeting with a second level supervisor or another upper level manager if the situation you have presented cannot be resolved by your immediate supervisor or if you believe it is inappropriate to raise the matter with your immediate supervisor. The Human Resources Department is also in a position to listen to and direct your concerns. An unresolved work-related problem may be pursued to the Executive Management level. Employees should describe the situation in writing in a letter to the senior manager of their department. All efforts will be made to review the situation quickly and arrive at a final decision.

(Revised 03-29-17)

Corrective and Disciplinary Action

Highland employees are expected to maintain high standards of job performance and conduct. These standards may be applied in any situation deemed necessary by Highland, including but not limited to situations where the employee's performance or conduct may impact Highland's operations, reputation or relationship with clients. In the event that an employee's performance or conduct fails to meet Company expectations, corrective action may be taken in the Company's sole discretion.

Highland may utilize, but is not obligated to, one or more forms of corrective action, including but not limited to verbal warnings, written warnings, final warnings and/or immediate termination.

Verbal Warning

A verbal warning may be given by an employee's manager regarding concerns about performance or conduct. The manager and/or employee may develop a plan for improvement.

Written Warning

A written warning is prepared by the manager and describes the performance or behavior issue and expected change. The manager and employee will discuss a plan for improvement and the consequence of failing to successfully complete the corrective action plan. The employee will sign the written warning to acknowledge that he/she has been notified of the concern.

Final Warning

A final warning is given in situations which require corrective action just short of termination. The employee is notified through a final warning that any additional infractions or failure to successfully complete a corrective action plan will result in termination.

Issues which may require corrective action will be determined by the Company on a case-by-case basis in its sole discretion, and may include, but are not limited to: substandard job performance, work of unacceptable quality or quantity, violations of company policies, misconduct, insubordination, unauthorized release of confidential information, threatening or disrespectful treatment of co-workers or clients, poor attitude, and unethical or illegal conduct.

Performance or conduct problems can be addressed using a progressive approach so that the employee is given coaching and time to improve. However, this policy does not guarantee progressive corrective action and in some cases, in the Company's sole discretion, immediate termination may be warranted or appropriate, and nothing in this policy alters or should be construed to alter the at-will nature of employees' employment.

(Revised 09-17-08)

Causes for Corrective Action and/or Immediate Dismissal

Listed below are some examples of performance or behavior which may result in immediate dismissal. (This list in not inclusive of all reasons for immediate dismissal and should not be construed as limiting Highland's freedom to act in any way.)

- Failure to provide evidence of right to work at time of employment
- Unauthorized release of confidential information
- Intentional misrepresentation in order to receive Highland benefits
- Willful or negligent damage, destruction, theft or unauthorized use of Highland property
- Deliberate falsification of records or reports
- Unauthorized possession, distribution or use of weapons, drugs or alcohol while on Highland premises
- Immoral or indecent conduct while on Highland premises, or away from Highland's premises which causes damage to the reputation of the Company
- Conviction for criminal conduct while employed by Highland
- Fighting or other disorderly conduct while on Highland premises
- Violation of Highland's Equal Employment Opportunity on Harassment and Discrimination Policy

- Excessive absence and/or lateness
- Violation of Highland's IT Acceptable Use Policy
- Unsatisfactory job performance or behavior
- Violation of Highland's Code of Ethics and Business Practices
- Being unfit for work as judged by your immediate supervisor
- Improper use of Highland leave or other benefits
- Solicitation and distribution during work hours
- Other violations of Highland policy
- Threatening or intimidating conduct

References and Verification of Employment

The only personnel authorized to give recommendations on behalf of Highland for former employees are Team Leaders and Back Office Leaders. No other personnel are authorized to speak on behalf of Highland with regard to recommendations.

If a positive recommendation is not warranted for a former employee, the policy is to confirm only dates of employment, job title and salary for an employee or former employee and to provide no further information.

(Revised 09-17-08)

LEAVING THE COMPANY

Voluntary Termination

To allow time to make proper arrangements in the work schedule and begin the process of recruitment, employees are requested to give at least two weeks notice of resignation or retirement, in writing. Employees are requested to give notice of resignation or retirement only when their direct supervisor is physically present in the office (i.e. not on vacation or a business trip).

(Revised 03-26-09)

Involuntary Termination

Whenever possible and appropriate, you will be notified in advance of your termination date and informed by your supervisor of any benefits to which you are entitled. Immediate dismissal may be warranted in certain cases.

Exit Interviews

Whenever possible, an Exit Interview will be conducted when leaving the Company. Either the employee's immediate supervisor or Human Resources will conduct the interview. It is to your advantage to have this interview so that you may receive complete information on the benefits to which you are entitled and what procedures are applicable upon leaving Highland.

Return of Company Property

On your last day of employment, you are required to return all company property to Human Resources. Company property includes all keys, equipment, office supplies and any other materials that are owned or leased by Highland. Employees must deliver to the company all documents and other tangible items, including storage media, containing proprietary information, including all copies of such documents or tangibles, immediately upon notice of termination of employment with the company. Any questions regarding this policy should be directed to your supervisor or Human Resources.

(Revised 09-17-08)

Benefits Continuation (COBRA)

The Consolidated Omnibus Budget Reconciliation Act (COBRA) ensures that an employee who faces a reduction of work hours or who is terminated from Highland (for reasons other than gross misconduct) has the option to continue Health/ Dental coverage for a fixed period of time at his/her own expense. This law is specifically designed to help bridge any gap which you or your dependents might experience if you end your employment with the company, if your hours are reduced making you no longer eligible for insurance coverage, or if the status of your marital or dependent relationships change.

To the extent required by law, you may continue your coverage under Highland's Health / Dental plan. The cost of COBRA coverage is borne entirely by you. You will be notified of your COBRA rights soon after termination and will then be required to either accept or reject COBRA continuation. See Human Resources for further details.

Post-Employment Contact with Investors, Prospective Investors, and Counterparties

Effective immediately, upon the earlier of notice of resignation or termination of employment, and continuing for thirty (30) calendar days following the earlier of notice of resignation or termination of employment (the "Non-Contact Period"), former employees are prohibited from contacting any of Highland Capital Management, L.P. ("Highland" or the "Company") or its Affiliates' (including any other corporation, partnership, limited liability company, joint venture, or other entity of which an aggregate of 25 percent or more of the issues and outstanding capital stock or other equity interest is now or at any time afterward owned, of record or beneficially, directly or indirectly, by Highland) (the "Affiliates"), current investors, prospective investors, or current counterparties without receiving advance written permission from Highland. Regardless of the duration of an employee's notice of resignation period, in no event shall the Non-Contact Period extend less than fourteen (14) days following termination of employment. For purposes of this policy, current investors include any investing entity or individual who has invested with Highland or its Affiliates within the subject former

employee's previous twenty-four (24) months of employment, and prospective investors include any investing entity or individual contacted by Highland or its Affiliates regarding a potential investment within the subject former employee's previous twenty-four (24) months of employment, regardless of whether that entity or individual ultimately invested. For purposes of this policy, investors do not include individuals who are solely invested in Highland's or its Affiliates' retail funds. All Highland employees must enter into and agree to this policy as a condition of employment. However, Highland reserves the right to enforce this policy only against employees that it so chooses, and Highland will notify those employees accordingly at the appropriate time.

In order to receive consideration for permission to contact current investors, prospective investors or counterparties, former employees must submit a written request via e-mail or physical mail to Highland's Human Resources Department, HR@hcmlp.com or Human Resources, 300 Crescent Court, Suite 700, Dallas, TX 75201, at least fourteen (14) days in advance of any proposed contact. Such request must include the name of the entity or individual that the former employee wishes to contact and state the purpose of the proposed contact. Former employees will then be notified, in writing (at their last known e-mail address or mailing address), whether permission has been granted. Should current investors, prospective investors or counterparties contact former employees (without former employees contacting them first), former employees must immediately notify Highland's Human Resources Department (at the above addresses), in writing, of the contact and request permission from Highland to respond if they so desire. Former employees will then be notified, in writing (at their last known e-mail or mailing address), whether permission has been granted.

Employees who terminate with either at least two weeks notice of resignation or who are involuntarily terminated are entitled to their regular base pay for the duration of the Non-Contact Period that follows their last day of employment, subject to their adherence to this policy. Employees who resign without at least two weeks notice are not eligible for their base pay during the Non-Contact Period.

Adherence to this policy is also a material condition of former employees being entitled to and receiving payment for any paid time off ("PTO") that is accrued but unused as of the conclusion of employment. If former employees fully adhere to this policy for the entirety of the Non-Contact Period, they will receive payment for any accrued but unused PTO within ten (10) business days following the proscribed period.

This policy is understood to be clear and enforceable as written. However, should any former employee later challenge any provision as unclear, unenforceable, or inapplicable to any contact that former employee intends to engage in, he or she will first notify Highland's Human Resources Department (at the above addresses), in writing, and meet with a Highland representative to discuss resolution of any disputes between the parties. Former employees will provide this notification at least fourteen (14) days before they engage in any activity contact that could

foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive former employees' rights to challenge the reasonable scope, clarity, applicability, or enforceability of this policy and its restrictions at a later time. All rights of both parties will be preserved if this early resolution conference requirement is complied with even if no agreement is reached in the conference.

If employees are not chosen by Highland to have this policy enforced against them, they are not entitled to receive additional base pay beyond the conclusion of their employment, and the condition of adherence to this policy to receive payment for any accrued but unused PTO is inapplicable. By entering into and agreeing to this policy, you expressly acknowledge and agree that any and all investor and counterparty information you have acquired or will acquire during your employment with Highland, including, but not limited to, investor and counterparty contact information, is Highland's confidential and proprietary information and property, and, moreover, because you are entering into this policy, Highland will be providing you with additional confidential and proprietary information, including, but not limited to investor and counterparty contact information, which you would not otherwise be entitled to. Finally, you expressly acknowledge and agree that the covenants contained herein are reasonable and necessary agreements for the protection of Highland and its Affiliates' business interests covered in the fully enforceable, ancillary agreements set forth in this policy.

(Revised 06-22-17)

HIGHLAND CODE OF ETHICS AND BUSINESS PRACTICES

Introduction

Highland employees are expected to maintain the highest standards of ethical conduct and professionalism. Employees are expected to:

- perform all job duties and responsibilities with integrity and in good faith;
- engage in and encourage honesty at all times;
- make every effort to exercise good judgment in all matters;
- comply with all applicable laws, rules and regulations;
- avoid actual or potential conflicts of interest between personal and professional relationships;
- uphold the firm's public image and reputation;
- treat every individual with respect, dignity, and courtesy;
- maintain truthfulness in all communication so as to preserve the trust of other employees, clients, the public, etc.;
- abide by the Company's moonlighting policies and expend all of their regular business time and efforts to the business of the Company,

avoid creating any conflict of interest with the Company or otherwise contravening their duty of loyalty to the Company; and
- safeguard the confidentiality of all Company information and materials.

The Code of Ethics and Business Practices is not exhaustive and is not designed to anticipate every situation. Highland will interpret and apply these standards as it deems appropriate. Compliance with this Code of Ethics and Business Practices is a condition of employment. Failure to adhere to this Code of Ethics and Business Practices can result in corrective or disciplinary action, up to and including termination. Violations of this Code of Ethics and Business Practices may also constitute violations of law, which may expose both the employee and the firm to criminal or civil penalties.

Actual or potential violations of this Code of Ethics and Business Practices must be promptly reported to the employee's manager, Human Resources, or the Chief Compliance Officer. Highland prohibits retaliation for reports of ethical misconduct that are made in good faith.

(Revised 09-17-08)

Proper Recording Of Assets And Disbursements

Making false or fictitious entries on the books and records of Highland and/or issuing false or misleading reports about Highland and its operations, whether intentionally or in a grossly negligent manner, are prohibited. No employee shall knowingly engage in any transaction that requires or contemplates such prohibited activities. All funds, disbursements, assets and liabilities of Highland shall be accurately recorded on the appropriate corporate books and records.

Business Solicitation Practices

All business solicitations by Highland employees must be in accordance with Highland's approved business plans. If a representative of a business contact or potential business contact makes overtures or suggests that a Highland employee make any direct or indirect payment, gift or gratuity in order to obtain business, such an overture or suggestion must be reported to the Chief Compliance Officer. However, the extension of normal business courtesies in accordance with ethical business practices is not prohibited.

Relationships With Government Officials

No payment (including business gifts, business meals and reimbursements of any expenses) shall be made to any federal, state or local government official or employee in circumstances where it may be construed as an attempt to influence the judgment of the recipient or to obtain preferential treatment for Highland.

Conflicts Of Interest - Outside Activities

A Highland employee:

- May not engage in an outside interest, activity or investment that places his or her economic interests in significant, actual or potential conflict with those of Highland except for those activities that are approved by the Chief Compliance Officer; or
- May not solicit or accept salaries, fees, commissions or other types of compensation, rebate or reward from contractors, suppliers, customers, consultants, or other persons, firms or organizations doing business with Highland.

Political Campaign Laws

No political contribution, at any level of government, shall be made out of any Highland fund or account, whether directly or indirectly, by reimbursement or otherwise without the express prior approval of Highland's President and Chief Compliance Officer. No corporate political contribution of any kind shall be made in violation of any applicable law or regulation. However, nothing in Highland's policies prohibits employees from engaging in political activities in their individual capacities on their own time and at their own expense or from making political contributions or expenditures of their own personal funds.

(Revised 09-17-08)

Antitrust Law And Competitive Practices

National antitrust laws and regulations (including but not limited to the Hart-Scott-Rodino pre-merger notification requirements) shall, where applicable, be observed at all times, in all situations, by all employees of Highland. Particularly, price-fixing or bid-rigging acts or arrangements with competitors to divide or allocate markets or customers or exclude others from a market are absolutely prohibited.

Trade Secrets And Other Proprietary Information

All Highland employees must act affirmatively to maintain the confidentiality of Highland's trade secrets and proprietary information. Some of the types of information that must be kept confidential (unless disclosure is properly authorized) include proprietary software, customer and tenant lists, investor lists, planning materials, marketing plans and much of the technical information that Highland generates in its business.

Compliance With Laws And Regulations

All activities of Highland shall be conducted in compliance with all applicable laws and regulations of the United States (federal, state and local) and of the countries where Highland might transact business.

Implementation

Any questions about interpretation of this Code of Ethics and Business Practices, or any need for legal advice concerning compliance with this Code or about any law or regulation to which Highland is subject, should be referred to the President.

Trading Policy

Please refer to the separate Highland Capital Management, L.P. Compliance Manual and Highland Capital Management, L.P. Personal Trading Policy for details.

HIGHLAND EMPLOYEE HANDBOOK ACKNOWLEDGMENT FORM

Highland Employee Handbook and "Employment at Will"

INSTRUCTIONS:

This form must be completed and signed by all Highland Capital Management, L.P. ("Highland") employees within 15 days of receipt. By signing this form you are acknowledging that you have received, read and understand the Highland Employee Handbook ("Handbook") and also that your employment with Highland is at-will.

Please READ, SIGN and RETURN to Human Resources:

I have received a copy of the Handbook. I understand it is my responsibility to read the Handbook and to bring any questions I may have about its provisions to my supervisor, Human Resources, or an appropriate member of Highland senior management prior to signing this acknowledgment. I further understand that if I do not abide by the policies and procedures outlined in the Handbook that my actions might result in the termination of my employment at Highland.

I understand that Highland may change, modify, amend, add to or subtract from any or all of the contents of this Handbook at any time, in its sole discretion, and with or without notice, and that this Handbook replaces and supersedes any previous Handbooks that I have received or that have been issued by Highland. I understand I will be required to read and acknowledge this Handbook on at least an annual basis.

I understand that absent a signed written agreement by the President of Highland providing a guaranteed term of employment, my employment with Highland is at-will, which means it is not for any guaranteed period of time and is terminable at any time by either Highland or myself. Accordingly, I understand that Highland may terminate my employment at any time with or without cause and with or without notice. Further, I understand that neither the Handbook, any other company documents, nor any oral agreement or representation by an employee or representative of Highland constitutes an employment contract or guarantee of employment for any period of time, or otherwise alters the at-will nature of my employment at Highland. No one at Highland, other than the President of its general partner, may alter or change the at-will nature of the employment relationship, and then only by a written agreement signed by the President.

_____	_____	_____
Employee Name	**Signature**	**Date**

EXHIBIT 56

Document Name:	**Annual Certification and Conflicts of Interest Disclosure 2019**	**Due Date:**	**02/07/2020**
Employee Group:	**General**		
Attachments:			
Effective Date:	**01/02/2020**		
Employee Name:	**James Dondero**	**Send Email Reminder:**	**Every 4 day(s) before due date 02/07/2020 and on Effective date**

Document:

Do you currently conduct any outside business activities?	Yes
If yes, please disclose your current outside business activity and whether or not you received pre-clearance from the Compliance Department.	1905 Wylie LLC 3801 Shenandoah, L.P. 3820 Goar Park LLC, 4201 Locust, L.P. 5833 Woodland, L.P. 401 AME LP, Apex Care, L.P Ascendant Advisors Dallas Lease and Finance, L.P. Dolomiti, LLC, DrugCrafters, L.P. Dugaboy Management, LLC Dugaboy Project Management GP, LLC Empower Dallas Foundation, Inc. Gardens of Denton II, L.P. Gardens of Denton III, L.P. Gardens of Denton, L.P. HCRE Partners, LLC, 201 Tarrant Partners, HCREP WP, LLC, HCBH Rent Investors, LLC, HCBH 11611 Ferguson LLC, HCREF-IX Holding Corp. HCREF-V Holding Corp. HCREF-VI Holding Corp. HCREF-VII Holding Corp. HCREF-VIII Holding Corp, Heron Pointe, LLC, Jewelry Ventures I, LLC JMIJM, LLC Markham Fine Jewelers, L.P. Nexbank Capital Inc., Park Central Residential LLC, PCMG Trading Partners XXIII, L.P. Pharmacy Ventures I, LLC Pharmacy Ventures II, LLC PWM1 Holdings, LLC PWM1, LLC Serena Residential Partners, LLC, Sevilla Residential Partners, LLC, Strand Advisors III, Inc. Strand Advisors IV, LLC Strand Advisors IX, LLC Strand

	Advisors V, LLC Strand Advisors VI, LLC,Strand Advisors XIII, LLC Strand Advisors XVI, Inc. Strand Advisors, Inc., SV TIC Residential Partners, LLC The Dugaboy Investment Trust The Get Good Non-Exempt Trust No. 1 The Get Good Non-Exempt Trust No. 2, The Get Good Trust VB Holding, LLC Yellow Metal Merchants, Inc. SLHC Trust, 11 Estates Lane, LLC, 1110 Waters, LLC, 140 Albany, LLC, 3409 Rosedale, LLC,3801 Maplewood, LLC, 4312 Belclaire, LLC,7758 Ronnie, LLC,7759 Ronnie, LLC,Camelback Residential Investors, LLC,HCBH Buffalo Pointe, LLC,HCBH Buffalo Pointe II, LLC,HCRE 1775 James Ave, LLC,HCRE Addison, LLC (fka HWS Addison, LLC),HCRE Hotel Partner, LLC (fka HCRE HWS Partner, LLC),HCRE Las Colinas, LLC (fka HWS Las Colinas, LLC),HCRE Plano, LLC (fka HWS Plano, LLC),Heron Pointe Investors, LLC,Powderhorn, LLC, Meritage Residential Partners, LLC,Rundberg Residential Partners, LLC,Rundberg Residential Partners SM, Inc.,Tuscany Acquisition, LLC, NexVest LLC, NexStrat LLC
Do you or any of your immediate family members serve on the Board of Directors, Credit Committee, Advisory Board of, act as a Trustee, Officer, Director, Senior Executive of, or hold any position or have any business relationship with a publicly or privately traded entity?	Yes
If yes, please disclose the name(s), entity and positons(s) held.	CCS Medical Chairman Cornerstone Healthcare Group Holdings Chairman Metro-Goldwyn-Mayer Director Nexbank Capital, Inc. Chairman and Director Nexbank SSB Chairman and Director Jernigan Capital NYSE: JCAP Director Reasoning Mind North Texas Regional Board Director Edwin L Cox School of Business Director Triple T Director

Are any of your immediate family members employed by a financial services business, broker/dealer, investment adviser, fund administrator or other private investment vehicle (i.e. hedge fund, private equity firm, etc.)?	No
Have you received any gifts or participated in any entertainment events during the past year which were outside the scope of the Gifts and Entertainment Policy?	No
Did you or your spouse make any political contributions over the amount of $350 for a local candidate that you can vote for, $150 for a local candidate that you cannot vote for, or $2,700 for a federal candidate which were not disclosed to Compliance?	No
Do you hold any professional certifications currently?	Yes
If yes, please list all current professional certifications including the date that you last renewed.	CMA #113851 Certified Management Acct. 12/01/19-11/30/20 CPA #10473 VA CPA license renewal 4/30/19-4/30/20 CFA #10443 Certified Financial Analyst 06/30/19-06/30/20
Are there any other existing or potential conflicts of interest as they relate to your employment with Highland Capital Management, L.P.?	No
Did you invest in or hold any private offerings or funds in 2019?	No
I hereby certify that the below is a complete and accurate record of all of my holdings as of December 31, 2019.	Yes

Holdings

Unconfirmed Holdings

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

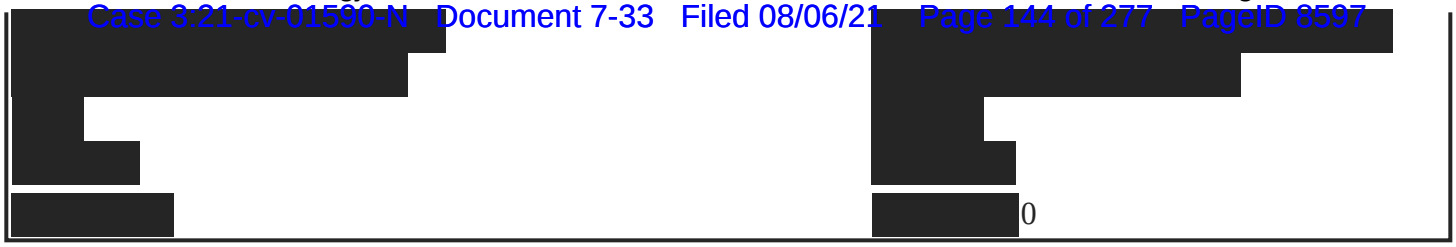

Note: If any of this information is incorrect or any securities are missing, please contact Compliance before attesting to this form. In addition, please be sure to include any private offerings or funds that you are invested in or hold.

Confirmed Holdings

No record found.

Note:

I hereby certify that I have disclosed all existing and potential conflicts of interest, for which I am aware, as they relate to my employment with Highland Capital Management, L.P. Should any additional conflicts of interest arise, I agree to promptly notify the Chief Compliance Officer. I also certify that I have read, understood and will continue to comply with the most current version, as provided on the firm's intranet, of the Compliance Manual, Code of Ethics and Privacy Policy. I have received, have access to, and have read a copy of the Employee Handbook (the “Handbook”) and I am in compliance with the obligations applicable to employees set forth therein. I understand it is my responsibility to read the Handbook and to bring any questions I may have about its provisions to my supervisor, Human Resources, or an appropriate member of Highland senior management prior to signing this acknowledgment. I further understand that if I do not abide by the policies and procedures outlined in the Handbook that my actions might result in the termination of my employment at Highland. I understand that Highland may change, modify, amend, add to or subtract from any or all of the contents of this Handbook at any time, in its sole discretion, and with or without notice, and that the current Handbook replaces and supersedes any previous Handbooks that I have received or that have been issued by Highland. I understand and acknowledge that my employment is at-will, and nothing contained in the Handbook in any way alters the at-will employment relationship between me and Highland and I acknowledge and agree that neither Highland nor any affiliate of Highland has made any statements altering the at-will nature of employment, and have not made guarantees or promises of continuing employment.

Printed By: Cyrus Eftekhari
Tue Feb 16 2021 16:31:56

EXHIBIT 57

Document Name: Q3 2020 Questionnaire and Transactions Certification

Due Date: 12/11/2020

Employee Group: General

Attachments:

Effective Date: 10/07/2020

Send Email Reminder: Every 3 day(s) before due date 12/11/2020 and on Effective date

Employee Name: James Dondero

Document:

Have you been convicted, within the past ten years (or five years, in the case of the Funds affiliated issuers), of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of any false filing with the SEC, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment advisor or paid solicitor of purchasers of securities?	No
Are you subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past five years, that currently restrains or enjoins you from engaging or continuing to engage in any conduct or practice in connection with the purchase or sale of any security, involving the making of any false filing with the SEC, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities?	No
Are you subject to a final order of a state securities commission (or an agency or officer of a state performing like functions), a state authority that supervises or examines banks, savings associations, or credit unions, a state insurance commission (or an agency or officer of a state performing like functions), an appropriate federal banking agency, the U.S. Commodity Futures Trading Commission, or the National Credit Union Administration that currently bars you from association with an entity regulated by such commission, authority, agency or officer, engaging in the business of securities, insurance or banking, engaging in savings association or credit union activities, or constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the past ten years?	No
Are you subject to an order of the SEC entered pursuant to Section 15(b) or 15B(c) of the Securities Exchange Act of 1934, as amended (the Exchange Act), or Section 203(e) or 203(f) of the Investment Advisers Act of 1940, as amended (the Advisers Act) that currently suspends or revokes your registration as a broker, dealer, municipal securities dealer or investment adviser, places limitations on the activities, functions or operations of, or imposes civil money penalties on, such person, or bars you from being associated with any entity or from participating in the offering of any penny stock?	No
Are you subject to any order of the SEC, entered within the past five years, that, currently orders you to cease and desist from committing or causing a violation or future violation of any scienter-based anti-fraud provision of the federal securities laws, including, without limitation, Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10(b)(5) thereunder, Section 15(c)(1) of the Exchange Act and Section 206(1) of the Advisers Act or any other rule or regulation thereunder or Section 5 of the Securities Act?	No
Are you currently suspended or expelled from membership in, or suspended or barred from association with a member of, a securities self regulatory organization (e.g., a registered national securities exchange or a registered national or affiliated securities association) for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade?	No
Have you filed (as a registrant or issuer), or were you named as an underwriter in any registration statement or Regulation A offering statement filed with the SEC that, within the past five years, was the subject of a refusal order, stop order, or order suspending the	No

Regulation A exemption, or is currently the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued?	
Are you subject to a United States Postal Service false representation order entered within the past five years, or are you currently subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations?	No
Are you the subject of any ongoing proceeding, arbitration, action, indictment or charge that if resolved against you or such person could result in a yes answer to any of the above questions?	No
If you responded yes to any of the questions above, have you obtained a waiver from disqualification under Rule 506(d) either (i) from the SEC or (ii) from the court or regulatory authority that entered the relevant order, judgment or decree?	NA
I hereby certify that the below is a complete and accurate record of all of my reportable securities transactions. This is for the quarter beginning July 1, 2020 and ending September 30, 2020.	Yes

Transactions

Unconfirmed Transactions

No record found.

Note:

Confirmed Transactions

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Note:

I hereby certify that the above information is true and accurate. I hereby certify to continue to comply with obligations as set forth in the firm's Compliance Manual, including without limitation, provisions around confidentiality and reporting compliance violations if they occur. I have received, have access to, and have read a copy of the Employee Handbook (the “Handbook”) and I am in compliance with the obligations applicable to employees set forth therein. I understand it is my responsibility to read the Handbook and to bring any questions I may have about its provisions to my supervisor, Human Resources, or an appropriate member of Highland senior management prior to signing this acknowledgment. I further understand that if I do not abide by the policies and procedures outlined in the Handbook that my actions might result in the termination of my employment at Highland. I understand that Highland may change, modify, amend, add to or subtract from any or all of the contents of this Handbook at any time, in its sole discretion, and with or without notice, and that the current Handbook replaces and supersedes any previous Handbooks that I have received or that have been issued by Highland. I understand and acknowledge that my employment is at-will, and nothing contained in the Handbook in any way alters the at-will employment relationship between me and Highland and I acknowledge and agree that neither Highland nor any affiliate of Highland has made any statements altering the at-will nature of employment, and have not made guarantees or promises of continuing employment.

Printed By: Cyrus Eftekhari
Tue Feb 16 2021 16:26:12

EXHIBIT 58

Document Name: **Annual Certification and Conflicts of Interest Disclosure 2019**

Due Date: **02/07/2020**

Employee Group: **General**

Attachments:

Effective Date: **01/02/2020**

Send Email Reminder: **Every 4 day(s) before due date 02/07/2020 and on Effective date**

Employee Name: **Scott Ellington**

Document:

Do you currently conduct any outside business activities?	No
Do you or any of your immediate family members serve on the Board of Directors, Credit Committee, Advisory Board of, act as a Trustee, Officer, Director, Senior Executive of, or hold any position or have any business relationship with a publicly or privately traded entity?	No
Are any of your immediate family members employed by a financial services business, broker/dealer, investment adviser, fund administrator or other private investment vehicle (i.e. hedge fund, private equity firm, etc.)?	No
Have you received any gifts or participated in any entertainment events during the past year which were outside the scope of the Gifts and Entertainment Policy?	No
Did you or your spouse make any political contributions over the amount of $350 for a local candidate that you can vote for, $150 for a local candidate that you cannot vote for, or $2,700 for a federal candidate which were not disclosed to Compliance?	No
Do you hold any professional certifications currently?	Yes
If yes, please list all current professional certifications including the date that you last renewed.	Juris Doctor
Are there any other existing or potential conflicts of interest as they relate to your employment with Highland Capital Management, L.P.?	No
Did you invest in or hold any private offerings or funds in 2019?	No
I hereby certify that the below is a complete and accurate record of all of my holdings as of December 31, 2019.	Yes

Holdings

Unconfirmed Holdings

No record found.

Note: If any of this information is incorrect or any securities are missing, please contact Compliance before attesting to this form. In addition, please be sure to include any private offerings or funds that you are invested in or hold.

Confirmed Holdings

No record found.

Note:

I hereby certify that I have disclosed all existing and potential conflicts of interest, for which I am aware, as they relate to my employment with Highland Capital Management, L.P. Should any additional conflicts of interest arise, I agree to promptly notify the Chief Compliance Officer. I also certify that I have read, understood and will continue to comply with the most current version, as provided on the firm's intranet, of the Compliance Manual, Code of Ethics and Privacy Policy. I have received, have access to, and have read a copy of the Employee Handbook (the “Handbook”) and I am in compliance with the obligations applicable to employees set forth therein. I understand it is my responsibility to read the Handbook and to bring any questions I may have about its provisions to my supervisor, Human Resources, or an appropriate member of Highland senior management prior to signing this acknowledgment. I further understand that if I do not abide by the policies and procedures outlined in the Handbook that my actions might result in the termination of my employment at Highland. I understand that Highland may change, modify, amend, add to or subtract from any or all of the contents of this Handbook at any time, in its sole discretion, and with or without notice, and that the current Handbook replaces and supersedes any previous Handbooks that I have received or that have been issued by Highland. I understand and acknowledge that my employment is at-will, and nothing contained in the Handbook in any way alters the at-will employment relationship between me and Highland and I acknowledge and agree that neither Highland nor any affiliate of Highland has made any statements altering the at-will nature of employment, and have not made guarantees or promises of continuing employment.

Printed By: Cyrus Eftekhari
Tue Feb 16 2021 16:29:50

EXHIBIT 59

Document Name: **Q3 2020 Questionnaire and Transactions Certification**

Due Date: **12/11/2020**

Employee Group: **General**

Attachments:

Effective Date: **10/07/2020**

Send Email Reminder: **Every 3 day(s) before due date 12/11/2020 and on Effective date**

Employee Name: **Scott Ellington**

Document:

Have you been convicted, within the past ten years (or five years, in the case of the Funds affiliated issuers), of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of any false filing with the SEC, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment advisor or paid solicitor of purchasers of securities?	No
Are you subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past five years, that currently restrains or enjoins you from engaging or continuing to engage in any conduct or practice in connection with the purchase or sale of any security, involving the making of any false filing with the SEC, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities?	No
Are you subject to a final order of a state securities commission (or an agency or officer of a state performing like functions), a state authority that supervises or examines banks, savings associations, or credit unions, a state insurance commission (or an agency or officer of a state performing like functions), an appropriate federal banking agency, the U.S. Commodity Futures Trading Commission, or the National Credit Union Administration that currently bars you from association with an entity regulated by such commission, authority, agency or officer, engaging in the business of securities, insurance or banking, engaging in savings association or credit union activities, or constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the past ten years?	No
Are you subject to an order of the SEC entered pursuant to Section 15(b) or 15B(c) of the Securities Exchange Act of 1934, as amended (the Exchange Act), or Section 203(e) or 203(f) of the Investment Advisers Act of 1940, as amended (the Advisers Act) that currently suspends or revokes your registration as a broker, dealer, municipal securities dealer or investment adviser, places limitations on the activities, functions or operations of, or imposes civil money penalties on, such person, or bars you from being associated with any entity or from participating in the offering of any penny stock?	No
Are you subject to any order of the SEC, entered within the past five years, that, currently orders you to cease and desist from committing or causing a violation or future violation of any scienter-based anti-fraud provision of the federal securities laws, including, without limitation, Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10(b)(5) thereunder, Section 15(c)(1) of the Exchange Act and Section 206(1) of the Advisers Act or any other rule or regulation thereunder or Section 5 of the Securities Act?	No
Are you currently suspended or expelled from membership in, or suspended or barred from association with a member of, a securities self regulatory organization (e.g., a registered national securities exchange or a registered national or affiliated securities association) for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade?	No
Have you filed (as a registrant or issuer), or were you named as an underwriter in any registration statement or Regulation A offering statement filed with the SEC that, within the past five years, was the subject of a refusal order, stop order, or order suspending the	No

Regulation A exemption, or is currently the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued?	
Are you subject to a United States Postal Service false representation order entered within the past five years, or are you currently subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations?	No
Are you the subject of any ongoing proceeding, arbitration, action, indictment or charge that if resolved against you or such person could result in a yes answer to any of the above questions?	No
If you responded yes to any of the questions above, have you obtained a waiver from disqualification under Rule 506(d) either (i) from the SEC or (ii) from the court or regulatory authority that entered the relevant order, judgment or decree?	NA
I hereby certify that the below is a complete and accurate record of all of my reportable securities transactions. This is for the quarter beginning July 1, 2020 and ending September 30, 2020.	Yes

Transactions

Unconfirmed Transactions

No record found.

Note:

Confirmed Transactions

No record found.

Note:

I hereby certify that the above information is true and accurate. I hereby certify to continue to comply with obligations as set forth in the firm's Compliance Manual, including without limitation, provisions around confidentiality and reporting compliance violations if they occur. I have received, have access to, and have read a copy of the Employee Handbook (the “Handbook”) and I am in compliance with the obligations applicable to employees set forth therein. I understand it is my responsibility to read the Handbook and to bring any questions I may have about its provisions to my supervisor, Human Resources, or an appropriate member of Highland senior management prior to signing this acknowledgment. I further understand that if I do not abide by the policies and procedures outlined in the Handbook that my actions might result in the termination of my employment at Highland. I understand that Highland may change, modify, amend, add to or subtract from any or all of the contents of this Handbook at any time, in its sole discretion, and with or without notice, and that the current Handbook replaces and supersedes any previous Handbooks that I have received or that have been issued by Highland. I understand and acknowledge that my employment is at-will, and nothing contained in the Handbook in any way alters the at-will employment relationship between me and Highland and I acknowledge and agree that neither Highland nor any affiliate of Highland has made any statements altering the at-will nature of employment, and have not made guarantees or promises of continuing employment.

Printed By: Cyrus Eftekhari
Tue Feb 16 2021 16:31:15

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S SECOND AMENDED WITNESS AND EXHIBIT LIST

Defendant James Dondero ("Dondero") hereby files this Second Amended Witness and Exhibit List with respect to the hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should not be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 48] and *Debtor's Memorandum of Law in Support of Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating*

the TRO [Adv. Dkt. 49] (collectively, the "Contempt Motion") set for hearing on February 23, 2021 at 9:30 a.m. (the "Hearing") in the above-styled adversary proceeding (the "Adversary Proceeding").

A. Documents that Dondero may use as exhibits:

Dondero Exhibit No.	Description	Offered	Objection	Admitted by Agreement	Admitted
1.	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.				
2.	Second Amended and Restated Shared Services Agreement by and between Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013				
3.	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.				
4.	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021				
5.	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021				
6.	Employee Handbook of Highland Capital Management, L.P.				
7.	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing				

	for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]				
8.	Term Sheet [Dkt. 354 and 354-1]				
9.	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020				
10.	Dondero's Objections and Responses to Debtor's First Request for Production				
11.	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020				
12.	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.				
13.	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.				
14.	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.				
15.	Transcript of December 10, 2020 Hearing				
16.	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020				

17.	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020				
18.	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020				
19.	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020				
20.	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021				
	Any document or pleading filed in the above-captioned bankruptcy case or adversary proceeding				
	Any exhibit necessary for impeachment or rebuttal purposes				
	Any and all documents identified or offered by any other party				

Dondero reserves the right to supplement this Exhibit List should he determine that any other document may be helpful to the trier of fact, whether in his case in chief or rebuttal.

B. Witnesses that Dondero may call to testify:

1. James Dondero;
2. James P. Seery, Jr.;
3. Scott Ellington;
4. Isaac Leventon;
5. Jason Post;
6. Any and all other witnesses identified or called by any other party; and
7. Any witness necessary for rebuttal.

Dondero reserves the right to supplement this Witness List should he determine that any other witness may be helpful to the trier of fact, whether in his case in chief or rebuttal.

Dated: February 20, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
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(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: michael.lynn@bondsellis.com
Email: john@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 20, 2021, a true and correct copy of the foregoing document with exhibits was served via the Court's CM/ECF system on all parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

AMENDED AND RESTATED SHARED SERVICES AGREEMENT

This Amended and Restated Shared Services Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this "Agreement"), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the "Management Company"), and Highland Capital Management, L.P., a Delaware limited partnership ("Highland"), as the staff and services provider hereunder (in such capacity, the "Staff and Services Provider" and together with the Management Company, the "Parties").

RECITALS

WHEREAS, the Staff and Services Provider is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act");

WHEREAS, the Staff and Services Provider and the Management Company are engaged in the business of providing investment management services;

WHEREAS, the Parties entered into that certain Shared Services Agreement, dated effective as of January 1, 2013 (the "Original Agreement");

WHEREAS, the Parties desire to amend and restated the Original Agreement and the Staff and Services Provider is hereby being retained to provide certain back- and middle-office services and administrative, infrastructure and other services to assist the Management Company in conducting its business, and the Staff and Services Provider is willing to make such services available to the Management Company, in each case, on the terms and conditions hereof;

WHEREAS, the Management Company may employ certain individuals to perform portfolio selection and asset management functions for the Management Company, and certain of these individuals may also be employed simultaneously by the Staff and Services Provider during their employment with the Management Company; and

WHEREAS, each Person employed by both the Management Company and the Staff and Services Provider as described above (each, a "Shared Employee"), if any, is and shall be identified on the books and records of each of the Management Company and the Staff and Services Provider (as amended, modified, supplemented or restated from time to time).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, and the Original Agreement is hereby amended, restated and replaced in its entirety as follows.

ARTICLE I

DEFINITIONS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

007700

Dondero Ex. 1

"Affiliate" shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term "control" means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

"Applicable Asset Criteria and Concentrations" means any applicable eligibility criteria, portfolio concentration limits and other similar criteria or limits which the Management Company instructs in writing to the Staff and Services Provider in respect of the Portfolio or one or more Accounts, as such criteria or limits may be modified, amended or supplemented from time to time in writing by the Management Company;

"Applicable Law" shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

"Client or Account" shall mean any fund, client or account advised by the Management Company, as applicable.

"Covered Person" shall mean the Staff and Services Provider, any of its Affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)).

"Governmental Authority" shall mean (i) any government or quasi-governmental authority or political subdivision thereof, whether national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

"Indebtedness" shall mean: (a) all indebtedness for borrowed money and all other obligations, contingent or otherwise, with respect to surety bonds, guarantees of borrowed money, letters of credit and bankers' acceptances whether or not matured, and hedges and other derivative contracts and financial instruments; (b) all obligations evidenced by notes, bonds, debentures, or similar instruments, or incurred under bank guaranty or letter of credit facilities or credit agreements; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to any property of the Management Company or any subsidiary; (d) all capital lease obligations; (e) all indebtedness guaranteed by such Person or any of its subsidiaries; and (f) all indebtedness guaranteed by such Person or any of its subsidiaries.

"Operating Guidelines" means any operating guidelines attached to any portfolio management agreement, investment management agreement or similar agreement entered into between the Management Company and a Client or Account.

"Portfolio" means the portfolio of securities and other assets, including without limitation, financial instruments, equity investments, collateral loan obligations, debt securities, preferred return notes and other similar obligations held directly or indirectly by, or on behalf of, Clients and Accounts from time to time;

"Securities Act" shall mean the Securities Act of 1933, as amended.

Section 1.02 Interpretation. The following rules apply to the use of defined terms and the interpretation of this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) "or" is not exclusive (unless preceded by "either") and "include" and "including" are not limiting; (iii) unless the context otherwise requires, references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented, waived and otherwise modified from time to time; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor; (v) a reference to a Person includes its successors and assigns; (vi) a reference to a Section without further reference is to the relevant Section of this Agreement; (vii) the headings of the Sections and subsections are for convenience and shall not affect the meaning of this Agreement; (viii) "writing", "written" and comparable terms refer to printing, typing, lithography and other shall mean of reproducing words in a visible form (including telefacsimile and electronic mail); (ix) "hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; and (x) references to any gender include any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE II

SERVICES

Section 2.01 General Authority. Highland is hereby appointed as Staff and Services Provider for the purpose of providing such services and assistance as the Management Company may request from time to time to, and if applicable, to make available the Shared Employees to, the Management Company in accordance with and subject to the provisions of this Agreement and the Staff and Services Provider hereby accepts such appointment. The Staff and Services Provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Section 2.02 Provision of Services. Without limiting the generality of Section 2.01 and subject to Section 2.04 (Applicable Asset Criteria and Concentrations) below, the Staff and Services Provider hereby agrees, from the date hereof, to provide the following back- and middle-office services and administrative, infrastructure and other services to the Management Company.

(a) *Back- and Middle-Office*: Assistance and advice with respect to back- and middle-office functions including, but not limited to, investment research, trade desk services,

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;

(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion

(b) Notwithstanding that the Shared Employees, if any, shall be employed by both the Staff and Services Provider and the Management Company, the Parties acknowledge and agree that any and all salary and benefits of each Shared Employee shall be paid exclusively by the Staff and Services Provider and shall not be paid or borne by the Management Company and no additional amounts in connection therewith shall be due from the Management Company to the Staff and Services Provider.

(c) To the extent that a Shared Employee participates in the rendering of services to the Management Company's clients, the Shared Employee shall be subject to the oversight and control of the Management Company and such services shall be provided by the Shared Employee exclusively in his or her capacity as a "supervised person" of, or "person associated with", the Management Company (as such terms are defined in Sections 202(a)(25) and 202(a)(17), respectively, of the Advisers Act).

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(e) Where a Shared Employee provides services hereunder through both Parties, the Parties shall cooperate to ensure that all such services are performed consistently with Applicable Law and relevant compliance controls and procedures designed to prevent, among other things, breaches in information security or the communication of confidential, proprietary or material non-public information.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(g) The Parties will cooperate to ensure that information about the Shared Employees is adequately and appropriately disclosed to clients, investors (and potential investors), investment banks operating as initial purchaser or placement agent with respect to any Client or Account, and regulators, as applicable. To facilitate such disclosure, the Staff and Services Provider agrees to provide, or cause to be provided, to the Management Company such information as is deemed by the Management Company to be necessary or appropriate with respect to the Staff and Services Provider and the Shared Employees (including, but not limited to, biographical information about each Shared Employee).

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.

(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the

Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company

and the Staff and Services Provider's powers and duties hereunder (which for the avoidance of doubt shall in no way involve the discretion and/or authority of the Management Company with respect to investments). Any such power shall be revocable in the sole discretion of the Management Company.

ARTICLE III

CONSIDERATION AND EXPENSES

Section 3.01 Consideration. As compensation for its performance of its obligations as Staff and Services Provider under this Agreement, the Staff and Services Provider will be entitled to receive a flat fee of $168,000 per month (the "Staff and Services Fee"), payable monthly in advance on the first business day of each month.

Section 3.02 Costs and Expenses. Each party shall bear its own expenses; *provided* that the Management Company shall reimburse the Staff and Services Provider for any and all costs and expenses that may be borne properly by the Management Company.

Section 3.03 Deferral. Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any all and amounts payable to the Staff and Services Provider pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

Section 4.01 Representations. Each of the Parties hereto represents and warrants that:

(a) It has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(c) no consent, approval, authorization or order of or declaration or filing with any Governmental Authority is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(d) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (i) its constituting and organizational documents; or (ii) the terms

of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

ARTICLE V

COVENANTS

Section 5.01 Compliance; Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

Section 5.02 Records; Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its

rating of notes issued by a CLO or supplying credit estimates on any obligation included in the Portfolio, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity, (iv) as required by (A) Applicable Law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Staff and Services Provider or any of its Affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Staff and Services Provider on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Staff and Services Provider may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any Client or Account, (ix) information relating to performance of the Portfolio as may be used by the Staff and Services Provider in the ordinary course of its business or (xx) such information as is routinely disclosed to the trustee, custodian or collateral administrator of any Client or Account in connection with such trustee's, custodian's or collateral administrator's performance of its obligations under the transaction documents related to such Client or Account. Notwithstanding the foregoing, it is agreed that the Staff and Services Provider may disclose without the consent of any Person (1) that it is serving as staff and services provider to the Management Company, (2) the nature, aggregate principal amount and overall performance of the Portfolio, (3) the amount of earnings on the Portfolio, (4) such other information about the Management Company, the Portfolio and the Clients or Accounts as is customarily disclosed by staff and services providers to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Staff and Services Provider, the Clients or Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

ARTICLE VI

EXCULPATION AND INDEMNIFICATION

Section 6.01 Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Management Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Management Company, and the Management Company will not have any rights in or to such ventures or the income or profits derived therefrom

Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a "Disabling Conduct") on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated ("Claims"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or

arising out of this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 6.03 regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

Section 6.04 Other Sources of Recovery etc. The indemnification rights set forth in Section 6.03 are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the Clients or Accounts has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained.

Section 6.05 Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 6.03 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

Section 6.06 Reliance. A Covered Person shall incur no liability to the Management Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

ARTICLE VII

TERMINATION

Section 7.01 Termination. Either Party may terminate this Agreement at any time upon at least thirty (30) days' written notice to the other.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by each Party.

Section 8.02 Assignment and Delegation.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 8.02, without the prior written consent of the other Party and (ii) in accordance with Applicable Law.

(b) Except as otherwise provided in this Section 8.02, the Staff and Services Provider may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with Applicable Law.

(c) The Staff and Services Provider may, without satisfying any of the conditions of Section 8.02(a) other than clause (ii) thereof, (1) assign any of its rights or obligations under this Agreement to an Affiliate; *provided* that such Affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Staff and Services Provider pursuant to this Agreement and (ii) has the legal right and capacity to act as Staff and Services Provider under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Staff and Services Provider under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Staff and Services Provider in another corporate or similar form and has

substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.

Section 8.04 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The Parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) The Parties irrevocably agree for the benefit of each other that the courts of the State of Texas and the United States District Court located in the Northern District of Texas in Dallas are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that accordingly any action arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection which they may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in such courts shall be conclusive and binding upon the Parties and may be enforced in the courts of any other jurisdiction.

Section 8.05 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

Section 8.06 Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties.

Section 8.07 No Waiver. The performance of any condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other Party. Any failure by any Party to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

Section 8.08 Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written or electronic form of communication, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.

Section 8.09 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the Parties hereto and such permitted assigns, any legal or equitable rights hereunder. For avoidance of doubt, this Agreement is not for the benefit or and is not enforceable by any Shared Employee, Client or Account or any investor (directly or indirectly) in the Management Company.

Section 8.10 No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the Parties. Except as expressly provided herein or in any other written agreement between the Parties, no Party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other Party.

Section 8.11 Independent Contractor. Notwithstanding anything to the contrary, the Staff and Services Provider shall be deemed to be an independent contractor and, except as expressly provided or authorized herein, shall have no authority to act for or represent the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity in any manner or otherwise be deemed an agent of the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity.

Section 8.12 Written Disclosure Statement. The Management Company acknowledges receipt of Part 2 of the Staff and Services Provider's Form ADV, as required by Rule 204-3 under the Advisers Act, on or before the date of execution of this Agreement.

Section 8.13 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.14 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to such subject matter.

Section 8.15 Notices. Any notice or demand to any Party to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail or email transmission or by delivering it by hand as follows:

(a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Staff and Services Provider:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

or to such other address or email address as shall have been notified to the other Parties.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as of the date hereof by its duly authorized representative.

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this "***Agreement***") is entered into to be effective as of 8th day of February, 2013 (the "***Effective Date***") by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 4.01.

"***Applicable Margin***" shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm's length value of the particular service or item allocated.

"***Change***" has the meaning set forth in Section 2.02(a).

"***Change Request***" has the meaning set forth in Section 2.02(b).

"***Code***" means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

Dondero Ex. 2

"***Effective Date***" has the meaning set forth in the preamble.

"***Governmental Entity***" means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"***Liabilities***" means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"***Loss***" means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term "***Loss***" will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

"***New Shared Service***" has the meaning set forth in Section 2.03.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

"***Quarterly Report***" has the meaning set forth in Section 5.01.

"***Recipient***" means HCMFA and any of HCMFA's direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

"***Service Provider***" means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

"***Service Standards***" has the meaning set forth in Section 6.01.

"***Shared Assets***" shall have the meaning set forth in Section 3.02.

"***Shared Services***" shall have the meaning set forth in Section 2.01.

"***Subsidiary***" means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

"***Term***" has the meaning set forth in Section 7.01.

ARTICLE II
SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on **Annex A** attached hereto, the "***Shared Services***"), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider's performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a "***Change***"). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a "***Change Request***") and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider's provision or quality of such Shared Service in any material respect or increase Recipient's cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a "***New Shared Service***"). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a "***Shared Service***" for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III
SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the "***Shared IP Rights***") pursuant to third party intellectual property Agreements ("***Third Party IP Agreements***"), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the "***Future Shared Assets***" and collectively with the Shared IP Rights, the "***Shared Assets***").

ARTICLE IV
COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means:

(a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;

(b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and

(c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar qaurter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the "***Quarterly Report***").

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI
SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE VII
TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII
LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: James Dondero
Title: President

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance
- General compliance
- Compliance systems

Facilities
- Equipment
- General Overhead
- Office Supplies
- Rent & Parking

Finance & Accounting
- Book keeping
- Cash management
- Cash forecasting
- Credit facility reporting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management

HR
- Drinks/snacks
- Lunches
- Recruiting

IT
- General support & maintenance (OMS, development, support)
- Telecom (cell, phones, broadband)
- WSO

Legal
- Corporate secretarial services
- Document review and preparation
- Litigation support
- Management of outside counsel

Marketing and PR
- Public relations

Tax
- Tax audit support
- Tax planning
- Tax prep and filing

Investments
- Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTORS' RESPONSES AND OBJECTIONS TO DEFENDANT JAMES DONDERO'S FIRST SET OF DISCOVERY REQUESTS DIRECTED TO HIGHLAND CAPITAL MANAGEMENT L.P.

Plaintiff, Highland Capital Management, L.P. ("HCMLP" or the "Debtor") hereby responds to *the First Set of Discovery Requests Directed to Highland Capital Management, L.P.* (the "Requests")[2] served by defendant James D. Dondero ("Dondero" or "Defendant"). The Debtor's responses and objections to the Requests (the "Responses") are made pursuant to Federal Rules of Civil Procedure ("FRCP") 26, 33, and 24 as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

GENERAL OBJECTIONS

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by the Debtor.

2. The Debtor objects to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity. All references in these objections and responses to the Debtor's agreement to produce documents shall be construed to mean non-privileged documents.

3. The Debtor objects to the Requests to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more readily

[2] Capitalized terms not defined herein shall have the meanings set forth in the Requests.

available to Dondero from another source or for which the burden of obtaining such information is not substantially greater for Dondero than it is for HCMLP.

4. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

5. The Debtor objects to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

6. The Debtor's agreement to produce documents with respect to a specific Request shall not be construed as a representation that such documents actually exist or are within Plaintiff's possession, custody or control.

7. The Debtor objects to the Requests on the ground that they are voluminous and demand compliance in less than seven (7) calendar days even though the Contempt Motion was filed on January 7, 2021. The Debtor will use reasonable efforts under the circumstances to search for and produce responsive documents and information.

8. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

DEFINITIONS

1. "Adversary Proceeding" means the adversary proceeding styled *Highland Capital Management, L.P. v. James Dondero*, 20-03190-sgj11.

2. "Declaration" means the *Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why he Should Not be Held in Civil Contempt for Violating the TRO*, filed at Docket No. 50 in the Adversary Proceeding.

3. "Exhibit List" means the *Debtor's Amended Witness and Exhibit List with Respect to the Evidentiary Hearing to be Held on January 8, 2021*, filed at Docket No. 46 in the Adversary Proceeding.

4. "Filings" means the Declaration, the Exhibit List, and the Transcripts.

5. "Transcripts" means the transcripts from the following hearings: (a) January 8, 2021 (*see* Docket No. 56 in the Adversary Proceeding), and (b) January 26, 2021 (see Docket No. 56 in Adversary Proceeding No. 21-03000-sgj).

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

Request for Production No. 1:

Produce all documents and communications that support the Contempt Motion.

Response to Request for Production No. 1

Subject to the General Objections, the Debtor refers the Defendant to the Filings. The Debtor's investigation of these matters is ongoing and the Debtor reserves the right to supplement this response, to produce additional responsive, non-privileged documents, and to offer into evidence documents not contained within the Filings.

Request for Production No. 2:

Produce all communications between Defendant and any other party that support the alleged violations of the TRO.

Response to Request for Production No. 2

Subject to the General Objections, the Debtor refers the Defendant to the Filings. The Debtor's investigation of these matters is ongoing and the Debtor reserves the right to supplement this response, to produce additional responsive, non-privileged documents, and to offer into evidence documents not contained within the Filings.

Request for Production No. 3:

Produce all communications between the Defendant and any employee of the Debtor you assert violated the TRO.

Response to Request for Production No. 3

The Debtor objects to Request for Production No. 3 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case.

Request for Production No. 4:

Produce all attorney's fee statements, invoices, bills, prebills, and any other document that evidences the attorney's fees and expenses incurred by the Debtor in the Bankruptcy Case from the date of December 10, 2020 to the present.

Response to Request for Production No. 4

The Debtor objects to Request for Production No. 4 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case.

Request for Production No. 5:

Produce all attorney's fee statements, invoices, bills, prebills, and any other document that evidences the attorney's fees and expenses incurred by the Debtor in this Adversary Proceeding from the date of December 10, 2020 to the present.

Response to Request for Production No. 5

Subject to and without waiving the General Objections, including without limitation, the General Objections relating to the attorney client privilege and the work product doctrine, documents responsive to Request for Production No. 5 will be produced.

Request for Production No. 6:

Produce a copy of any and all expert witness statements, reports, damage models, and any other document prepared by an expert witness in connection with the Contempt Motion or this Adversary Proceeding.

Response to Request for Production No. 6

Subject to and without waiving the General Objections, the Debtor states that it does not intend to call any expert witness in connection with the Contempt Motion and otherwise reserves all rights with respect to the Adversary Proceeding.

Request for Production No. 7:

Produce all documents supporting the Debtor's claim for damages as asserted in the Contempt Motion.

Response to Request for Production No. 7

Subject to and without waiving the General Objections, including without limitation, the General Objections relating to the attorney client privilege and the work product doctrine, documents responsive to Request for Production No. 7 will be produced.

Request for Production No. 8:

Produce all documents and communications exchanged between the Debtor and any other party related to the transactions referenced in the following portion of the Contempt Motion: "[O]n December 22, 2020, Mr. Dondero personally intervened to prevent the Debtor from executing certain securities transactions authorized by Mr. Dondero."

Response to Request for Production No. 8

Subject to the General Objections, the Debtor refers the Defendant to the Filings. The Debtor's investigation of these matters is ongoing and the Debtor reserves the right to supplement this response, to produce additional responsive, non-privileged documents, and to offer into evidence documents not contained within the Filings.

Request for Production No. 9:

Produce all communications and documents exchanged between the Debtor and the Official Committee of Unsecured Creditors (the "UCC") regarding "the Debtor's obligation to produce certain documents requested by the UCC" related to The Dugaboy Investment Trust and/or The Get Good Trust for the period from August 13, 2020 to the present.

Response to Request for Production No. 9

Subject to and without waiving the General Objections, documents responsive to Request No. 9 will be produced.

Request for Production No. 10:

Produce all documents evidencing "the Debtor's actual expenses incurred in bringing [the Contempt Motion] and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and [the Contempt Motion] (e.g., responding to the K&L Gates Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition)" as alleged in the Contempt Motion.

Response to Request for Production No. 10

Subject to and without waiving the General Objections, including without limitation, the General Objections relating to the attorney client privilege and the work product doctrine, documents responsive to Request for Production No. 10 will be produced.

Request for Production No. 11:

Produce all documents and communications you intend to introduce into evidence, or refer to, at the hearing on the Contempt Motion.

Response to Request for Production No. 11

Subject to the General Objections, the Debtor refers the Defendant to the Filings and otherwise intends to timely file and serve its Witness and Exhibit list in this matter. The Debtor's investigation of these matters is ongoing and the Debtor reserves the right to supplement this response, to produce additional responsive, non-privileged documents, and to offer into evidence documents not contained within the Filings.

Request for Production No. 12:

Produce all documents and communications exchanged between the Debtor and the UCC regarding the Contempt Motion.

Response to Request for Production No. 12

Without waiving, and subject to the foregoing General Objections, the Debtor has not identified any non-privileged documents responsive to Request for Production No. 12.

Request for Production No. 13:

Produce all non-privileged documents and communications exchanged between the Debtor and any other party regarding the Contempt Motion.

Response to Request for Production No. 13

Without waiving, and subject to the foregoing General Objections, the Debtor has not identified any non-privileged documents responsive to Request for Production No. 13.

Request for Production No. 14:

Produce all internal policy documents, memorandums, communications, agreements, contracts, directives, and any other document related to the Debtor's policy in effect as of the Petition Date, if any, related to employee use of mobile phones allegedly supplied by the Debtor to its employees.

Response to Request for Production No. 14

Subject to and without waiving the General Objections, documents responsive to Request No. 14 will be produced. **[DSI to confirm whether responsive documents exist].**

Request for Production No. 15:

Produce all purchase agreements, purchase orders, agreements, invoices, contracts, statements, bills, and any other documents related to the Debtor's claim of ownership of the mobile phone it alleges Debtor disposed of for the period from the Petition Date to the present.

Response to Request for Production No. 15

Subject to and without waiving the General Objections, documents responsive to Request No. 15 will be produced. **[DSI to confirm whether responsive documents exist].**

Request for Production No. 16:

Produce all internal policy documents, memorandums, communications, contracts, directives, and any other document related to the Debtor's policy, if any, as referenced in the following sentence from the Contempt Motion: "In keeping with the Debtor's policies, those documents on the Debtor's system are the Debtor's property."

Response to Request for Production No. 16

Subject to and without waiving the General Objections, documents responsive to Request No. 16 will be produced. **[DSI to confirm whether responsive documents exist].**

Request for Production No. 17:

Produce a copy of any and all requests, formal or informal, that require the Debtor to produce documents of The Dugaboy Investment Trust and/or The Get Good Trust to the UCC or any other party for the period from the Petition Date to the present.

Response to Request for Production No. 17

Subject to and without waiving the General Objections, documents responsive to Request No. 17 will be produced.

Request for Production No. 18:

As alleged in the Contempt Motion, produce an itemized list, separated by each category below, of attorney's fees and expenses the Debtor alleges it incurred in:

1. "bringing [the Contempt Motion]"
2. "addressing Mr. Dondero's conduct that lead to the imposition of the TRO and [the Contempt Motion]"
3. "responding to the K&L Gates Clients' frivolous motion and related demands and threats"
4. "taking Mr. Dondero's deposition" and
5. any other amounts the Debtor alleges it incurred as a result of alleged violations of the TRO.

Response to Request for Production No. 18

Subject to and without waiving the General Objections, including without limitation, the General Objections relating to the attorney client privilege and the work product doctrine, documents responsive to Request for Production No. 18 will be produced.

Request for Production No. 19:

Produce all communications from the Debtor to Defendant in which the Debtor requested that the Defendant retain his cell phone.

Response to Request for Production No. 19

Subject to and without waiving the General Objections, documents responsive to Request No. 19 will be produced.

Request for Production No. 20:

Produce all internal policy documents, memorandums, communications, contracts, directives, and any other document related to the Debtor's policy in effect as of December 10, 2020, if any, related to employee use of mobile phones allegedly supplied by the Debtor to its employees.

Response to Request for Production No. 20

.Subject to and without waiving the General Objections, documents responsive to Request No. 14 will be produced. **[DSI to confirm whether responsive documents exist].**

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

Interrogatory No. 1:

Identify all actions of Defendant that you assert violated the TRO.

Response to Interrogatory No. 1:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 1 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 2:

Identify all transactions conducted by or on behalf of the Debtor, including the sale of securities, that the Defendant interfered with.

Response to Interrogatory No. 2:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 2 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 3:

Identify or describe in detail all actions of Defendant that violated 11 U.S.C. § 362(a).

Response to Interrogatory No. 3:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 3 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 4:

Identify all provisions of the TRO that Defendant violated.

Response to Interrogatory No. 4:

Without waiving and subject to the General Responses and Objections, the evidence will establish that the Defendant violated sections 2(b), 2(c), 2(d), 2(e), 3(a), and 3(b) of the TRO..

Interrogatory No. 5:

Identify or describe in detail how "Mr. Dondero Violated the TRO by Trespassing on the Debtor's Property" as alleged in the Contempt Motion.

Response to Interrogatory No. 5:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 5 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 6:

Identify or describe in detail all actions taken by Defendant that you contend caused the Debtor's business to suffer monetary losses, other than, to the extent applicable, attorney's fees and expenses incurred by the Debtor in connection with the Bankruptcy Case or this Adversary Proceeding.

Response to Interrogatory No. 6:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 6 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 7:

Identify any and all contracts or written agreements between the Debtor and any other party that were terminated after the TRO was entered.

Response to Interrogatory No. 7:

Without waiving and subject to the General Responses and Objections, the Debtor objects to Interrogatory No. 7 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case.

Interrogatory No. 8:

Identify any and all contracts or written agreements between the Debtor and any other party that the Debtor breached after the TRO was entered.

Response to Interrogatory No. 8:

Without waiving and subject to the General Responses and Objections, the Debtor objects to Interrogatory No. 8 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case.

Interrogatory No. 9:

Identify any and all contracts or written agreements between the Debtor and any other party that Defendant interfered with after the TRO was entered.

Response to Interrogatory No. 9:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 9 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 10:

Identify all actions of Defendant that violated the following portion of the TRO: "(d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan."

Response to Interrogatory No. 10:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 10 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 11:

Identify all actions of Defendant that violated the following portion of the TRO: "(3) causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b)

any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct."

Response to Interrogatory No. 11:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 11 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 12:

Identify all actions of Defendant that violated the TRO but are not identified, described, or listed in the Contempt Motion.

Response to Interrogatory No. 12:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 12 are contained in other non-privileged documents that the Debtor will produce in response to the Requests.

Interrogatory No. 13:

Describe in detail the relief being sought by the Debtor concerning the following statement from the Contempt Motion: "Based on his conduct, the Court should find that Mr. Dondero has attempted to spoil evidence and draw a negative inference."

Response to Interrogatory No. 13:

The Debtor seeks to have the Court draw a negative inference every time the Debtor (and any successor including, but not limited to the Liquidating Trust) is unable to determine whether

relevant text messages were sent to or from Mr. Dondero on or before December 10, 2020, and is otherwise unable to obtain such text messages.

Interrogatory No. 14:

Describe the legal basis for the following request for relief from the Contempt Motion: "[T]he Debtor requests that the Court . . . impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court."

Response to Interrogatory No. 14:

The Debtor objects to Interrogatory No. 14 on the grounds that it seeks a legal conclusion.

Interrogatory No. 15:

Identify or describe in detail the harm (monetary, financial or otherwise) that the Debtor's business, operations, or its assets suffered as a result of any communications allegedly made between Defendant and any employee of the Debtor.

Response to Interrogatory No. 15:

Without waiving and subject to the General Responses and Objections, the Debtor exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 15 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 16:

Identify or describe in detail the harm (monetary, financial or otherwise) that the Debtor's business, operations, or its assets suffered as a result of the December 22, 23, and 30, 2020 letters sent by the K&L Gates Clients (as defined in the Contempt Motion).

Response to Interrogatory No. 16:

Without waiving and subject to the General Responses and Objections, the Debtors exercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made

applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 16 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Interrogatory No. 17:

Identify or describe in detail the harm (monetary, financial or otherwise) that the Debtor's business, operations, or its assets suffered as a result of the Defendant's alleged interference with the Debtor's business or operations.

Response to Interrogatory No. 17:

Without waiving and subject to the General Responses and Objections, the Debtorsexercises its rights pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, made applicable by Rule 7033 of the Federal Rules of Bankruptcy Procedure, and states that documents from which the information requested in Interrogatory No. 17 are contained in the Filings and other non-privileged documents that the Debtor will produce in response to the Requests. The Debtor also refers the Defendant to the Debtor's pleadings in the Adversary Proceeding.

Dated: February __, 2020.

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Counsel for Highland Capital Management, L.P.

VERIFICATION

I hereby certify that I have read the foregoing *Responses to Defendant James Dondero's First Set of Interrogatories* and that the facts stated in it are true and correct to the best of my knowledge, information and belief.

_____

November 30, 2020

NexPoint Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201

RE: Termination of Amended and Restated Shared Services Agreement, dated January 1, 2018, and among Highland Capital Management, L.P. ("HCMLP"), and NexPoint Advisors, L.P. (the "Agreement").

To Whom It May Concern:

As set forth in Section 7.01 of the Agreement, the Agreement is terminable at will upon at least 30 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective January 31, 2021. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

DOCS_NY:41547.2 36027/002

November 30, 2020

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel

RE: Termination of Second Amended and Restated Shared Services Agreement, effective as of February 8, 2013, by and among Highland Capital Management, L.P. ("HCMLP"), and Highland Capital Management Fund Advisors, L.P. (the "Agreement").

To Whom It May Concern:

As set forth in Section 7.02 of the Agreement, the Agreement is terminable at will upon at least 60 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective January 31, 2021. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

Employee Handbook

HIGHLAND CAPITAL
MANAGEMENT

This Employee Handbook applies to all employees of Highland Capital Management, L.P, Highland Capital Management Fund Advisors, L. P., Highland Capital Funds Distributor, Inc., Highland Capital of New York, Inc., NexPoint Advisors, L.P., and NexPoint Residential Trust, Inc.

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THE PURPOSE AND SCOPE OF THIS HANDBOOK

This Handbook (the "Handbook") is designed to inform employees of Highland Capital Management, L.P. and its Affiliates (collectively "Highland" or the "Company") of the company's policies and practices. You should read the contents of this Handbook carefully and consult your supervisor if you have questions or desire additional information. Affiliates ("Affiliates") is defined to include Highland Capital Management Fund Advisors, L. P., Highland Capital Funds Distributor, Inc., Highland Capital of New York, Inc., NexPoint Advisors, L.P., and NexPoint Residential Trust, Inc.

This Employee Handbook is only a general guide to Highland's current employment policies and to some of your responsibilities as an employee. It is informational only and is not intended to be and should not be construed as a contract of employment. From time to time, Highland reviews and makes revisions to its policies, procedures and benefits without notice. Highland reserves the right to modify the policies and procedures contained in this Handbook at any time.

Included as part of this handbook is an Acknowledgment form. After you have read this handbook, you must sign and return the form to Human Resources.

(Revised 06-15-17)

HIGHLAND EMPLOYMENT POLICIES

Equal Employment Opportunity

Highland is committed to a policy of equal employment opportunity. This means that employment decisions affecting applicants and employees will not be based upon the individual's race, color, religion, gender, national origin, age, disability or any other unlawful basis. Employees who engage in such discrimination will be subject to disciplinary action, up to and including discharge from employment. If you feel you have been discriminated against, you should notify your supervisor, the Human Resources department, or any other person in management whom you are comfortable in approaching.

Harassment and Discrimination

(Please see Sexual Harassment Addendum in New Hire Packet)

Highland will not tolerate harassment or discrimination of its employees, whether committed by a fellow employee, a member of management, or a visitor to our workplace, such as a vendor, supplier or customer. Harassment or discrimination based on race, color, religion, gender, national origin, age, disability, sexual orientation or any other unlawful basis violates Company policy. All employees are responsible for ensuring that the workplace is free from harassment and discrimination. This policy also applies to work-related settings outside of the workplace, such as during business trips, business meetings and business-related

social events. All employees, including managers and supervisors, will be subject to disciplinary action, up to and including discharge from employment, for any act of harassment or discrimination they commit.

Examples of prohibited harassment include, but are not limited to:

- Use of slurs, epithets or words that degrade an individual or group of individuals, even when used in a joking fashion;
- Unwelcome advances, demands or requests for sexual acts or favors, and other verbal or physical conduct of an offensive nature, such as leering, touching, gestures and graphic comments about another person's body or personal conduct;
- Display of cartoons, email, photographs, drawings, pin-ups, posters, calendars, or images that are offensive or degrading to others;
- Conduct that has the purpose or effect of substantially interfering with an individual's work performance or which creates an intimidating, hostile or offensive work environment; or
- Conditioning hire, continued employment, or terms and conditions of employment (such as raises, promotions, assignments) upon submission to sexual advances or requests for sexual favors.

It is also unacceptable to shun or exclude an individual from participation in work or work-related social events in order to avoid allegations of harassment.

If you feel you are being harassed or discriminated against, or if you have knowledge of harassment or discrimination of a co-worker, you should take immediate action to bring the matter to the attention of the Human Resources Department. If you are comfortable doing so, you should also advise the offender that his or her behavior is unwelcome and request that it stop. This approach is effective in situations where the offender truly does not realize that his or her conduct is offensive to others. If this does not work, or if you are not comfortable confronting the offender, notify your supervisor. If for any reason you do not feel comfortable discussing the matter with your supervisor, contact the Human Resources Department or any member of management whom you feel comfortable in approaching. All reports will be promptly investigated in as confidential a manner as possible. Based upon the findings of the investigation, Highland will take prompt and appropriate action to remedy any violations of this policy. Remedial action may include, but is not limited to, individual counseling, verbal warning, written warning, suspension, and discharge from employment, depending upon the nature of the offense.

No employee who brings a good faith report of harassment or discrimination to the attention of the Company will suffer retaliation or other adverse employment

actions as a consequence. Any employee, including managers and supervisors, who is found to have retaliated against an employee who reported a violation of this policy, in good faith, will be subject to disciplinary action up to and including discharge from employment. It is important for employees to report incidents of harassment or discrimination because, without your assistance, violations could go undetected and uncorrected. Furthermore, if you feel you are being subjected to retaliation, please notify your supervisor, the Human Resources department, or any other member of management.

Fraternization

Consenting romantic or sexual relationships between a supervisor or manager and an employee may at some point lead to complications and significant difficulties for all concerned – the employee, the supervisor or manager, co-workers, and the Company. The problems can range from actual or perceived favoritism, lowered productivity, unfair alliances, to domestic disputes that can enter the workplace.

As a result, the Company discourages such relationships and any conduct that is designed or may reasonably be expected to lead to the formation of a romantic or sexual relationship between a supervisor or manager and an employee. If such a relationship should exist or develop, the supervisor or manager must disclose the existence of the relationship to Human Resources within 2 weeks. The involved employee may also make the disclosure, but the burden of disclosure rests upon the supervisor or manager who is in the relationship with the employee. Upon notice, Human Resources may take all steps deemed necessary. At a minimum, the supervisor or manager and the employee will not be permitted to work together on the same matters, and the supervisor or manager must withdraw from participation in activities or decisions (including but not limited to hiring, evaluations, promotions, compensation, work assignments, discipline and discharge) that may reward or disadvantage the employee with whom the supervisor or manager is involved.

The Company does not intend this policy to inhibit or discourage friendships or social activities that are or should be an important part of the work environment. This policy is not to be relied upon as justification or excuse for a supervisor or manager to refuse to engage in appropriate social interaction with employees.

This policy will apply without regard to gender or sexual orientation of the parties to the romantic or sexual relationship.

Non-Disparagement

Highland is committed to promoting a culture of collaboration and ensuring a workplace where everyone is treated with dignity and respect, and Highland expects its employees to support that commitment by helping to maintain a workplace based on mutual understanding and cooperation. This means that employees should not make statements or remarks, whether oral or written, about other employees or former employees that could be found offensive,

discriminatory, disparaging, profane, derogatory, abusive, or maliciously false. Engaging in such conduct, or encouraging or instructing others to engage in such conduct, is strictly prohibited and will not be tolerated. However, to be very clear, nothing in this or any other Highland policy should be construed as prohibiting employees from engaging in concerted activity protected by the National Labor Relations Act.

(Revised 03-29-17)

Highland - An "At-Will" Employer

The fact that you have been hired as an employee at Highland does not imply that the company has established any form of contractual arrangement with you. To the contrary, your employment relationship with the company is considered an "employment at-will" arrangement that either you or Highland may terminate at any time and for any reason. (Certain employees may have written employment contracts that govern the terms and conditions of their employment. If you are one of these employees, you will have been notified of your status as a contract employee at the time you were hired.) No employee except the President of the Company's general partner may change or alter the at-will nature of the employment relationship, and then only by a written document signed by the President.

Hiring Policies

The Handbook Acknowledgment

Each of Highland's employees, both existing and new, must sign a Handbook acknowledgment. At the end of this booklet is a form acknowledging receipt of the Handbook. After you have completely reviewed this Handbook, this form must be detached from the Handbook, signed by you and returned to Human Resources. In addition, you will be expected to re-read and acknowledge compliance with the Employee Handbook at a minimum annually as a part of continued employment

(Revised 03-29-17)

Items to be covered for Each New Employee

- Read the Highland Employee Handbook and sign the Acknowledgment Form
- Learn about and sign required payroll and employment forms (I-9, tax forms, etc.)
- Learn about your benefits and sign benefit enrollment forms

- Learn about your specific job responsibilities and performance standards
- Learn your work and lunch hours and the procedures to follow in case of absence

Once you accept employment with Highland, you are required to provide evidence of your right to work and verification of your identification within seventy-two hours of your hire date. Without appropriate documentation (completed and approved federal government Form I-9) you are subject to immediate termination of employment.

Applicant Screening

All new employees are required to undergo a background screening process, which includes providing historical Form W-2s and Wage and Tax Statements as part of their application. The purpose of applicant screening is to confirm past employment and research any other issues that Highland may consider relevant for employment qualification. These issues may include licenses and educational certifications, criminal records, driving records and others. In most cases the applicant screening process will be completed prior to the first day of Highland employment. Our offer of employment and your employment is contingent on the completion of applicant background screening to the satisfaction of Highland.

(Revised 04-17-12)

Nepotism

There will be no hiring of close relatives such as spouses, parents, grandparents, siblings and children as full-time or part-time regular employees.

HOURS OF WORK, PAYROLL INFORMATION & PERSONNEL POLICIES

Employment Classifications

Employees at Highland are classified in several ways. Please see your supervisor if you have any questions concerning your employment status.

Position Type

***Non-Exempt*:** Employees classified as hourly or non-exempt are paid for the actual number of hours they work and are eligible to receive overtime pay after working more than 40 hours in a work week.

Exempt: Employees classified as exempt are paid annual salaries which are divided into semi-monthly payments. They are not eligible to receive overtime pay.

Work Schedule

Full-time: Full-time employees are scheduled to work an average of 40 hours or more per week on a continuing basis.

Part-time: Part-time employees are scheduled to work an average of 20 hours or more but less than 40 hours per week on a continuing basis.

The Standard Work Day and Work Schedules

Highland is open for business, meaning the switchboard is covered and the doors are open, between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday. Arrival and departure time for staff is determined by the business needs and schedules of each department and may be flexible in nature. Full-time hourly employees are generally expected to work a minimum of 50 hours per week. The department manager will set each individual's specific work hours.

(Revised 12-16-13)

Overtime and Holiday Pay

Hourly employees will be paid at the rate of 1 and 1/2 times their regular rate of pay for all hours actually worked in excess of 40 hours in any week. Paid time off and holidays are "hours worked" for purposes of calculating overtime pay, while unpaid leave is not included in "hours worked." Overtime pay will normally be included in the paycheck following the pay period during which an employee works overtime hours. Exempt employees are not eligible for overtime compensation.

If an employee is required to work on a holiday and he or she is a full-time hourly employee, they will have the option to be paid for all hours actually worked plus an additional eight hours at their regular rate of pay regardless of whether they have worked 40 hours or more in that work week, or to receive an extra floating PTO day to be used during the year and be paid for hours actually worked on the holiday**.**

Pay Periods

Highland employees are paid twice a month, on the 15th and last day of the month. Upon hire, you will receive your first paycheck (prorated for number of days) on the regularly scheduled pay date. If you are scheduled to be on leave for a certain payday, see Human Resources to make arrangements for your paycheck to be held or deposited. Checks will not be issued in advance.

If payday falls on a Holiday or weekend, you will be paid on the last scheduled workday prior to the Holiday or weekend.

(Revised 12-16-16)

Direct Deposit

Direct deposit is available to qualified NexBank customers. Employees may elect to have their paycheck deposited directly into their NexBank checking account, savings account, or a combination of these accounts. Direct deposit request forms are available from Human Resources. For further information regarding direct deposit, please see the Human Resources Department. Included below is the direct deposit policy and process:

1. Establish an account through NexBank for direct deposit. NexBank will provide Highland Capital employees with free checking.

2. For those employees who wish to use direct deposit to more than one account, Highland will permit employees to allocate their payroll checks through direct deposit in the following manner: direct deposit through their non-NexBank account of $200.00 per payroll check, and the balance through a NexBank account.

3. In lieu of direct deposit as outlined above, employees may elect to receive their physical payroll checks which will be distributed at work on regularly scheduled payroll dates.

(Revised 04-17-12)

Payroll Deductions

Highland will deduct all amounts required by law, such as federal income tax, social security and Medicare (FICA), or ordered by the court, such as wage garnishment. Highland will also deduct amounts authorized by employees in writing. If an employee believes there was an improper deduction from their pay, they should report it to Human Resources immediately so that any error can be promptly corrected or a proper deduction can be explained.

Reimbursement of Business Expenses

Employees will be reimbursed for all ordinary, reasonable and necessary business expenses they incur while conducting authorized Highland business. Please check with your Administrative Assistant or the Intranet for the specific policies and procedures for reimbursement of business expenses.

(Revised 04-17-12)

COMPENSATION & CAREER OPPORTUNITIES

Career Growth, Transfers and Promotions

Highland is a growing company that encourages teamwork, initiative and continuous improvement. As such, employees are expected to become knowledgeable and involved in all aspects of the business and to stretch across department boundaries in their daily work and in their career development.

It is Highland's policy to fill positions, where possible, through transfers and promotions of current employees. Open positions may be posted and an opportunity made available for an employee to express their interest in applying for the position. Employees are encouraged to pursue such opportunities for advancement. Employees should remain in a position for a minimum of one year before applying for an internal position. Also, employees must be in good standing (i.e., not on a corrective action plan or have been the recipient of a written warning within the last 12 months) in order to apply for an internal position. To apply for an internal position, employees must obtain manager approval and submit an Employee Transfer Request Form (available on the intranet) to Recruiting.

(Revised 09-17-08)

EMPLOYEE BENEFITS

Introduction

Highland offers you a wide variety of benefits, depending on your employment status with the Company. Highland will provide Summary Plan Descriptions ("SPD") regarding certain benefits. Please see the actual Plans or SPD, if applicable, for details concerning eligibility and benefits. Set out below is a list of benefits available upon eligibility.

Health and Life	***Retirement***
• Comprehensive Medical & Dental Benefits • Short and Long Term Disability Benefits • Life Insurance (GTL) and AD&D	• 401k Plan with company match • Discretionary Profit Sharing
Leave Benefits	***Other Benefits***
• Paid Time Off • Paid Holidays	• Professional Membership Reimbursement • Health Club Membership • Employer Matching Gifts • Worker's Compensation Insurance • Employee Referral Gift • Paid Parking • Cell Phone Co-Pay/ Reimbursement • In-Office Lunch

(Revised 12-16-16)

Differential Pay

All New York employees will receive differential pay of $20.00 per day after 9:00 p.m. EST to cover meals and cab fares.

Cell Phone Benefit

In order to be eligible for the $100/month cell phone service reimbursement, Highland employees are required to update their billing address with the cell carrier to the Highland Dallas office address and you must also request that detailed paper billing be activated. A paper copy of the detailed bill should be mailed by the carrier to Highland's Dallas office.

The Highland / AT&T co-pay plan is no longer accepting new entrants due to AT&T policies.

(Revised 12-16-16)

In consideration for Highland subsidizing employees' cell phone expenses, employees must direct their cell phone carrier to activate detailed paper billing for their mobile phone that is subsidized by Highland and also direct the carrier to send the detailed paper bill to Highland's Dallas office address (300 Crescent Court, Suite 700, Dallas, TX 75201). Employees who choose to activate detailed paper billing and to have the paper bill sent to Highland must initiate the change with AT&T within five (5) days of the date that they choose to participate in this policy. Participating employees may not change the paper billing settings without

concurrently notifying Human Resources, in writing, of the change. Participating employees for whom Highland does not receive a detailed paper bill will be ineligible for reimbursement and liable to Highland for repayment of the full reimbursement amount received during any month in which Highland does not receive the detailed paper bill. Participating employees expressly authorize Highland to make any deductions from their compensation necessary to fulfill repayment obligations.

Participation in this policy is entirely voluntary. Should you wish to participate, you must complete the steps above and then send Human Resources an email confirming you have completed these steps. Employees who choose not to participate will have the level of applicable reimbursement limited to that set forth in the table below. Employees who choose to participate in this policy may later terminate their participation, and have future reimbursement limited to that set forth in the table below, by providing at least fourteen (14) days advance written notice to Human Resources. Your obligations under this policy shall terminate upon the termination of your employment, provided that you will remain obligated to furnish historical call records covering the period through the date of your termination, as requested, following the termination of your employment.

Employees participating in this policy should have no expectation of privacy regarding e-mail, voice mail, text messages, graphics, and other electronic data composed, sent, and/or received on their cell phones. Notwithstanding the foregoing, Highland agrees not to review any call records on an employee's bill other than those associated with the phone number of employee. Further, regardless of whether employees choose to participate in this policy, all e-mail, voice mail, text messages, graphics, and other electronic data composed, sent, and/or received related to company business remain the property of Highland. Finally, employees are reminded that, at all times, they are expected to abide by Highland's applicable codes of conduct and employment policies.

You also agree to waive any and all claims you may have against Highland or any of its Affiliates related to this new policy, including, but not limited to, claims for invasion of privacy, and authorize Highland to access, view, and possess your cell phone records and billing information.

Non- Participating Employee Reimbursement Limits

Fixed reimbursement of $5/month for data
$0.09 / minute reimbursement for business related mobile calls
Must submit detailed invoice with business calls highlighted
Reimbursement provided once per quarter upon submission of appropriate documents

(Revised 12-16-16)

Professional Membership Reimbursement Program

In addition to encouraging you to continue your education and training, Highland also supports your involvement and participation in professional groups and associations that represent your field. With the written permission of your supervisor, Highland may pay up to 100% for any reasonable professional organization membership dues or fees. Where the company has specifically requested that you join an organization, 100% of your membership dues or fees will be paid. See Human Resources for more information on this program.

Employee Referral Awards Program

If you know someone who is qualified for an open position at Highland, please submit his/her name to Recruiting. If the person you identified is hired, you will receive a gift from Highland after the referred individual has been an employee with Highland for six months. The hiring manager of a referred employee is not eligible to receive a referral award.

(Revised 09-17-08)

Matching Charitable Gifts

Highland is committed to supporting the work of charitable, non-profit organizations. Therefore, Highland will match employee contributions to qualified organizations up to a maximum of $300 per employee per calendar year. Please note that this policy does not include gifts to political campaign funds.

Contact Highland Capital Management's Fund Accounting team to submit your request for a matching charitable gift. Requests for charitable donations that exceed the $300 annual threshold should be submitted to the Corporate Accounting team for review by the President.

(Revised 04-17-12)

Paid Time Off

Employees that work 20 or more hours per week may be eligible for paid time off (PTO). PTO is awarded at the beginning of the year and accrues throughout the year. PTO is awarded each calendar year as follows:

Employment Classification	**Annual Days Earned**
Non-exempt	15
Exempt	17
Managing Directors, tenured Directors*	19
New Team Leaders	22

Tenured Team Leaders/Partners	24

**Directors with 3+ years of Highland tenure*

New hires will receive a prorated amount of PTO to use between the date of hire and the end of the calendar year. Part-time employees receive a prorated amount of PTO based on their target hours.

Highland reserves the right to modify or terminate the PTO policy at any time.

(Revised 04-17-12)

Approval for PTO

Please note that, as with other planned leaves, employees must notify their Manager prior to taking PTO. All vacation requests must be submitted through TimeKeeper and approved by the employee's Manager. Generally, a minimum of two weeks prior notice is required to receive approval for taking paid time off. Exceptions to this notice period may be made for personal or family emergencies. Failure to directly notify an employee's supervisor in advance of taking PTO may result in the request for leave being denied, the leave being without pay, or corrective action, up to and including termination of employment.

PTO for Non-Exempt Employees

Each day of PTO will be compensated at ten (10) hours for non-exempt, full-time (50 hours/week) employees. A day of PTO for a part-time hourly employee will be based upon their weekly hours (e.g., 30 hours/week receives 6 hours for PTO day). PTO is treated as "hours worked" for purposes of calculating overtime pay.

PTO for Team Leader, Managing Directors, and tenured Directors

Team Leaders, Managing Directors and tenured Directors must take a portion of their PTO during the following periods:

- Week of Spring Break
- Week of July 4th
- Any two weeks in August
- Rosh Hashanah
- Week of Thanksgiving
- Any two weeks in December
- Any Friday before or Monday following a 3-day weekend

On an annual basis, Managing Directors and tenured Directors should take 9 days of PTO or floating days during the periods listed above. Team Leaders should take 19 days of PTO or floating days during the periods listed above.

(Revised 12-16-16)

Rollover and Borrowed PTO

Employees should use their PTO in the year it was granted, but up to ten (10) days of Regular PTO may be rolled over each calendar year. Additional rollover may be authorized by the President. An employee's cumulative rollover PTO balance may exceed ten days if he or she has accumulated rollover from more than one year.

An employee may borrow PTO from the upcoming year with approval from the President. Employees must use all remaining PTO prior to requesting borrowed PTO.

(Revised 04-17-12)

Boondoggle Time Off

Some employees receive additional time off for boondoggles. Boondoggle PTO hours should be used for non-work activities with clients, such as hunting trips, golf outings, skiing trips, etc. Boondoggle time is not eligible for rollover.

Unpaid Time Off

Under special circumstances, employees may request unpaid time off. Unpaid time off requests should be approved by the President. Employees must use all remaining PTO prior to requesting unpaid time off. Unauthorized unpaid time off may result in corrective action, up to and including termination.

PTO at Termination

Accrued unused PTO is paid out to employees that resign or retire and give their supervisor at least two weeks written notice. After providing written notice employees must work a reasonable transition period, as determined by their supervisor, of up to two weeks.

Employees who provide notice of resignation or retirement when their direct supervisor is not physically present in the office (e.g., on vacation or a business trip) are not entitled to accrued unused PTO upon termination of employment. Also, employees who are involuntarily terminated by Highland are not entitled to accrued unused PTO upon termination of employment.

Entitlement to accrued unused PTO upon termination of employment is also contingent, where applicable, upon compliance with the Post-Employment Contact with Investors, Prospective Investors, and Counterparties policy, which can found in this Employee Handbook.

If, upon termination, an employee has used more than their leave accrual for the year, Highland will deduct the amount of the overage from their final paycheck.

(Revised 04/17/2012)

Holidays and Floating Days

Scheduled Holidays

Highland observes eleven (11) paid holidays each year. Highland's scheduled holidays are as follows:

- New Year's Day
- Martin Luther King, Jr. Day
- Presidents Day
- Good Friday
- Memorial Day
- Independence Day
- Friday before Labor Day
- Labor Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

The holidays will be compensated at ten (10) hours for non-exempt, full-time employees (50 hours/week). Holidays are "hours worked" for purposes of calculating overtime pay.

If a holiday falls during an employee's scheduled vacation (PTO), the day will be counted as holiday instead of PTO. If a holiday falls on a Saturday or Sunday, the company will designate, in advance, what day will be treated as a holiday. Paid holidays are not granted during unpaid leaves of absence.

(Revised 12-16-16)

Floating Days

Employees are also eligible for two (2) floating holidays each year to be used at their discretion. Unused floating days may not be carried over to the next calendar year. Generally, a minimum of two weeks prior notice to the employee's supervisor is required to receive approval for the floating day. Failure to directly notify a supervisor in advance may result in the request for a floating day being denied, the leave being without pay, or corrective action, up to and including termination of employment.

(Revised 09-17-08)

Workers' Compensation

Highland provides workers' compensation coverage for employees who have been injured on the job or who have sustained an occupational illness. Every employee who is injured on the job should report the injury immediately to his or her supervisor. The supervisor will complete an accident investigation report and

coordinate with the Human Resources Department toward the completion of the necessary paperwork to apply for workers' compensation benefits.

Long and Short Term Disability Policies

Highland has long-term and short-term disability plans. The Company will provide a Summary Plan Description regarding these plans.

FMLA Policy

Purpose

Highland Capital Management, L.P. complies with the provisions of the Family and Medical Leave Act ("FMLA"). Where State or local family and medical leave laws offer more protections or benefits to employees, the protections or benefits provided by such laws will apply. Highland Capital Management, L.P. has created this policy to outline the conditions under which an employee may request time off without pay for a limited period with job protection and no loss of accumulated service if the employee returns to work.

Scope

This policy applies to all family and medical leaves of absence including leaves that are covered under paid employment benefit plans or policies for any part of the leave to which the employee may be entitled under this policy. In other words, if an employee is entitled to both FMLA leave and paid leave under another benefit plan or policy, the employee is required to use all applicable paid leave plans or policies before unpaid leave and the FMLA leave and the paid leave will run concurrently.

Employee Eligibility

To be eligible for leave under this policy, an employee must have been employed here for at least 12 months and must have worked at least 1,250 hours during the 12-month period preceding the beginning of the leave. An employee must also establish the existence of a qualifying event in order to be entitled to leave under this policy.

Qualifying Events

Eligible employees are entitled to a total of 12 workweeks of leave during any calendar year when leave is taken for one or more of the following qualifying events:

(1) birth and care of the employee's newborn child;

(2) placement of a child with the employee for adoption, or by the State for foster care;

(3) to care for the employee's spouse, child or parent (called a "Covered Relation") with a serious health condition (this does not include in-laws);

(4) the employee's own serious health condition which prevents him or her from performing the essential functions of the job, including workers' compensation leaves;

(5) existence of a "Qualifying Exigency"; or

(6) To care for "covered service member."

A "child" does not have to be a biological child. A "parent" does not need to be a biological parent as long as the person stood "in loco parentis" (in the place of the parent) to the employee when the employee was a "son" or "daughter." FMLA leave may be taken to care for adopted children, foster children, legal wards, or a niece, nephew or grandchild whom the employee is actively raising. A "son or daughter" includes a child 18 years or over who is "incapable of self-care because of a mental or physical disability." An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities.

For FMLA purposes, a "spouse" is defined in accordance with applicable state law and may include common-law spouses in states where common-law marriages are recognized. Unmarried domestic partners generally do not qualify as spouses under the FMLA.

Serious Health Condition

For FMLA purposes, when an employee takes FMLA leave for his/her own serious health condition, this means the employee has a mental or physical illness, injury or impairment that involves inpatient care (including any ensuing period of incapacity) or continued treatment by a health care provider. Continued treatment by a health care provider means the following: (1) incapacity for more than three calendar days plus two or more doctor's visits or one visit plus treatment (prescribed medication or therapy); (2) incapacity due to pregnancy, or for prenatal care; (3) incapacity due to a chronic condition involving periodic medical visits for treatment of recurring or episodic conditions (such as asthma, diabetes or epilepsy); (4) permanent or long-term incapacity (such as Alzheimer's, severe stroke or terminal stages of a disease); or (5) an absence to receive treatment for restorative surgery after an accident or other injury, or for treatment of a condition that would result in incapacity if left untreated (such as chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

Qualifying Exigency

A right to Qualifying Exigency leave arises when a child, spouse or parent of an employee is on active duty or has been notified of an impending call to active duty in support of a contingency operation. A contingency operation includes:

- any operation designated by Secretary of Defense in which the armed forces are or may become involved in military actions, operations or restitutions against an enemy of the U.S.; or
- results in the active duty of members of the armed forces during a war or national emergency declared by the President or Congress; or
- action in response to events such as natural disasters, turnout or subservice activities or required military operations.

Examples of Qualifying Exigencies include the following: arranging for child or elder care in the service member's absence, assisting with economic or legal concerns, attending official ceremonies/programs, attending the service member's farewell or arrival, attending to affairs caused by the missing status or death of a service member.

Covered Service Member

A right to leave under this provision of the policy arises when an employee must care for a child, spouse, parent or next of kin of an employee, who is a member of the armed forces and that service member is undergoing medical treatment, recuperation or therapy, is on outpatient status of a military medical treatment facility, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of covered service member leave, a "serious illness or injury" means an injury or illness incurred while on active duty in the armed forces which renders the service member medically unfit to perform the duties of their office, grade, rank or rating.

Amount of Leave

Eligible employees may take up to twelve weeks of leave during a rolling twelve month period for the first five categories of leave outlined above.

Eligible employees may take up to 26 weeks of leave to care for a covered service member during a 12 month period. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. For example, employees who have used 12 weeks of FMLA for any of the other categories described above are only entitled to 14 weeks of covered service member leave. In addition,

Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

For purposes of determining whether employees have exhausted their FMLA leave entitlement under this policy, the twelve month period is determined by measuring backward from the date an employee takes any FMLA leave. In other words, any FMLA leave that was taken by the employee during the 12 months preceding the date that the employee takes additional FMLA leave will be counted to determine the amount of FMLA leave remaining.

Both Spouses Working for the Company

Spouses who are employed by the Company, and who request FMLA leave for the birth, adoption, or foster care placement of a child with the employee, are eligible for a combined twelve weeks between the two employees. For example, both employees continue to be eligible for twelve weeks of leave apiece for their own serious health condition, but may only take twelve weeks between them for the birth or placement of a child. If the leave is for birth, adoption or foster placement of a child with the employee, available leave can be taken before the event and any time during the 12 months after the birth or placement

Similarly, spouses who are employed by the Company, and who request FMLA leave to care for a covered servicemember, are eligible for a combined 26 weeks between the two employees. In other words, both employees may only take twenty-six weeks of leave between them for this event.

Conditions of Leave

Employee Notification and Reporting Requirements

If the reason for the FMLA leave is foreseeable (such as planned surgeries or normal births), the employee is to give the Company at least 30 days written notice. Similarly, if the need for exigency leave is foreseeable, such as receipt of advance notification of impending call to active duty, the employee must give the company advance written notice of the need for leave. If the need for leave is not foreseeable (such as a car accident or premature birth or injury of a covered service member), the employee is expected to notify the Company as soon as possible and, in no event, more than (2) two business days after knowing of the need for leave, except in extraordinary circumstances. Failure to provide such notice may be grounds for delay of leave. Additionally, if you are planning a medical treatment you must consult with the Company first regarding the dates of such treatment. The Company has Request for

Family/Medical Leave forms available from the Human Resources Department. You should use these forms when requesting leave.

If you take leave because of your own serious health condition or to care for a Covered Relation, you may be required to contact the Company on a regular basis regarding the status of the condition and your intention to return to work. A reporting schedule will be worked out with the Human Resources Department.

Intermittent and Reduced Schedule Leave

Leave because of a serious health condition, Qualifying Exigency, or covered service member leave may be taken intermittently (in separate blocks of time or on a reduced leave schedule, reducing the usual number of hours you work per workweek or workday) if medically necessary. In addition, while you are on an intermittent or reduced schedule leave, the Company may temporarily transfer you to an available alternative position which better accommodates your recurring leave and has equivalent pay and benefits.

Medical Certification

If you are requesting leave because of your own or a Covered Relation's serious health condition, you may obtain a Medical Certification Form from the Human Resources Department. You and the relevant health care provider must supply appropriate medical certification to the Human Resources Department within 15 calendar days of receiving the Medical Certification Form. If you provide at least thirty (30) days' notice of medical leave, you should also provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave.

Highland Capital Management, L.P., at its expense, may require an examination by a second health care provider designated by the Company, if it reasonably doubts the medical certification you initially provide. If the second health care provider's opinion conflicts with the original medical certification, the Company, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. The Company may require subsequent medical recertification. Failure to provide requested certification within fifteen (15) days of the Company’s request, if such is practicable, may result in delay of further leave until it is provided.

Certification for Exigency Leave

Employees seeking exigency leave will be required to provide confirmation of the service member's activation or active duty status and certification that leave is needed due to a Qualifying Exigency.

Certification for Covered Service Member Leave

Employees seeking leave to care for a covered service member must provide certification to establish that a service member has a serious injury or illness incurred in the line of duty while in active status.

Status of Employee Benefits During Leave of Absence

Medical and Other Benefits

During an approved family/medical leave, Highland Capital Management, L.P. will maintain your medical, dental, and life benefits as if you continued to be actively employed. If you elect not to return to work for at least thirty (30) calendar days at the end of the leave period, you may be required to reimburse the Company for the cost of the benefit premiums paid by the Company for maintaining coverage during your unpaid leave, unless you cannot return to work because of a serious health condition or other circumstances beyond your control.

An employee will not accrue vacation during a FMLA leave. An employee on FMLA leave is not eligible for holiday pay for a holiday which falls during a FMLA leave.

Leave Is Unpaid

Leave provided under this policy is unpaid leave, although you may be eligible for short or long-term disability payments and/or workers' compensation benefits under those insurance plans or policies if you are taking leave for your own serious health condition. If you are entitled to receive money from these sources, your leave will be considered "paid leave" for the period during which you receive that money.

If your leave is "unpaid" leave you will be required to substitute paid time off (vacation, personal days) for "unpaid" FMLA leave as described below. If you request leave because of a birth, adoption or foster care placement of a child, any accrued paid vacation and personal days first will be substituted for unpaid family/medical leave. If you request leave because of your own serious health condition, or to care for a Covered Relation with a serious health condition, any accrued paid vacation and personal days first will be substituted for any unpaid family/medical leave. The substitution of paid leave time for unpaid leave time does not extend the 12-week leave period. Further, in no case can the substitution of paid leave time for unpaid leave time result in your receipt of more than 100% of your salary. Your family/medical leave runs concurrently with other types of leave (i.e., paid vacation, state family leave laws, etc.). Those other leaves may provide for paid leave.

No Work While on Leave

The taking of another job while on family/medical leave or any other authorized leave of absence is grounds for immediate termination, to the extent permitted by law.

Return to Work and Reinstatement

If you take leave because of your own serious health condition (except if you are taking intermittent leave), you are required to provide medical certification that you are fit to resume work. You may obtain Return to Work Medical Certification Forms from the Human Resources Department. Employees failing to provide the Return to Work Medical Certification Form will not be permitted to resume work until it is provided. In addition, you must give notice as soon as practicable (within two (2) business days if feasible) if the dates of leave change or are extended or initially were unknown.

If the employee cannot return to work at the end of the employee's FMLA leave, there is no guarantee of reinstatement. If an employee has been medically released to return to work and fails to report to work or call in with a satisfactory explanation, the Company will treat this as a voluntary resignation.

If the employee returns to work on or before expiration of available FMLA leave, the employee will normally be returned to his or her former position or an equivalent position.

Key Employees

The FMLA provides a significant exemption for "key employees." The Company is not required to offer key employees reinstatement to a similar position following the end of their leave. Key employees are those salaried employees who are among the highest paid 10% of the employees paid by the Company within 75 miles of the facility at which the employee is employed and must be the highest paid 10% of all salaried and non-salaried, eligible and ineligible employees. Year-to-date earnings as of the date leave is requested are used to determine who are the highest paid.

An eligible key employee may be denied reinstatement of employment after leave has been taken if:

(1) such denial is necessary to avoid substantial and grievous economic injury to the operations of the Company,

(2) the Company notified the key employee of its intent to deny restoration on such basis when the Company determined that such injury would occur, and

(3) if the leave has commenced, the employee elects not to return to employment after receiving such notice.

The employee will be notified by the Company of his status as a key employee upon requesting leave if a chance exists that the Company may deny reinstatement after the leave.

An employee may also be regarded as a key employee if the employee is the most highly compensated employee at a facility even if the employee is not among the highest paid 10% of the employees in the Company. If the employee is among the highest paid 10% of employees at a remote facility, the employee could be denied reinstatement of employment and benefits even if the employee's salary fell within the middle range of overall employee salaries.

(Revised 09-17-08)

New York Paid Family Leave

Effective January 1, 2018 Highland and its affilates' New York-based employees are covered under the New York Paid Family Leave Policy. ***Please see separate New York Paid Family Leave Policy for details.***

(Revised 06-14-18)

Jury or Witness Leave

An employee who is summoned to serve on a jury will be allowed time off to fulfill his or her civic duty. Employees must use Personal Time Off (PTO) for any time away from work while serving on a jury. This policy is subject to review by the President on a case-by-case basis.

As soon you receive the summons, present it to your supervisor so that arrangements can be made for your absence. If you are released from jury duty during a workday, you are expected to return to work. Upon completion of jury duty, bring your supervisor the court-issued receipt, if one is available, reflecting the day(s) of service.

An employee who receives a subpoena to serve as a witness in a civil, criminal, legislative or administrative proceeding will be given time off. Employees must use PTO for time away from work while serving as a witness unless the employee is testifying on behalf of Highland or one of its Affiliates. This policy is subject to review by the President on a case-by-case basis.

(Revised 09-17-08)

Voting Leave

Highland encourages its employees who are eligible voters to exercise their right to vote in general, primary and special elections at the federal, state and local

level. The Company will provide time off in which to vote if you do not have two consecutive nonworking hours while the polls are open, which is generally 7 a.m. to 7 p.m., on Election Day. If you do not have two consecutive nonworking hours while the polls are open, and have not voted early or absentee, you must notify your supervisor at least one day before Election Day. Your supervisor will designate a time, either at the start or end of your normal workday, in which to vote. You may be asked to provide proof that you have voted if you were absent during your regular work hours.

Military Leave

As required by the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), Highland's applicants and employees who apply or perform military service, whether on a voluntary or involuntary basis, will not be denied initial employment, reemployment, retention in employment, promotion or any benefit of employment on the basis of the performance of military service.

Eligible military service includes performance of a duty on a voluntary or involuntary basis in a uniformed service, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period of time for which the employee is absent to determine fitness for duty or to perform funeral honors duty.

Any employee who enters the uniformed services of the United States will be granted a military leave of absence. To qualify for reemployment, an employee must have:

- Given Highland written or verbal notice in advance of service, unless the giving of notice is precluded by military necessity;
- A cumulative length of absence, including any previous military absence while employed by Highland, which does not exceed five years; and
- Applied for reemployment with Highland according to these guidelines:

Length of Period of Service	Reapply No Later Than
Less than 31 days	Next regular work day after completion of service and time to travel from place of service to residence, plus eight hours.
More than 30 days, but less than 181 days	Fourteen days after completion of service.
More than 180 days	Ninety days after completion of service.

Upon reemployment, the employee will be placed in the position he or she would have attained were it not for the break in employment, unless the employee is not qualified to perform that job and cannot be trained through reasonable efforts of Highland. If not so qualified, the employee will be placed in the position the employee held when the military leave commenced, or a position of like seniority, status and pay. If a disability incurred during or aggravated by military service prevents the employee from performing the job he or she would have held were it not for the break in service, despite Highland efforts at reasonable accommodation of the disability, the employee will be placed in a position of like seniority, status and pay, if one is available. If no such position is available, the employee will be placed in a job which is the nearest approximation of like seniority, status and pay.

Military leaves are unpaid, but the employee may use accrued PTO, floating holidays, etc. pay during the absence. Employees will be allowed to continue health care coverage at their current level of coverage by paying the employee contribution during the absence. Coverage will continue until the earlier of (1) twenty-four months from the date the military absence began; or (2) the day after the date on which the employee was to have applied for reemployment, as defined above. Upon reemployment, any break in employment due to military service will not be treated as a break in service for purposes of determining forfeiture of accrued benefits and accrual of benefits under any retirement plan.

Limitation On Leaves Of Absence

Except as required by law, if any employee away from work on a leave of absence of any type does not return to work, or is unable to return to work to an available position for which the employee is qualified for any reason (including, without limitation, for lack of a health care provider's release to return to work), within six (6) months of the date the absence commenced, the employee's employment will automatically terminate at the end of the six month leave period. A "leave of absence" is defined as an approved absence from work under specific circumstances for a defined period of time.

This policy applies from the date of its implementation, June 2006, forward. It applies to all current and future employees, including, without limitation, employees currently out on a leave of absence.

Employees whose employment terminates under this policy are welcome to re-apply for employment after their discharge.

OTHER IMPORTANT HIGHLAND POLICIES & EMPLOYEE RESPONSIBILITIES

Attendance

Occasionally it may be necessary for you to be absent from work as a result of illness or unavoidable personal reasons. In the case of an unexpected absence, you are expected to notify your supervisor as soon as possible, and no later than an hour before your normal starting time.

If you fail to follow proper procedures for notifying Highland of your absence, the absence may be considered unexcused. Unexcused absence can result in disciplinary action up to and including termination of employment. In addition, Highland will consider three consecutive days of unexcused, unapproved absence to be a voluntary termination of employment. Excused absences will be charged to your PTO accounts depending on the reason for your absence.

TimeKeeper

Please see separate TimeKeeper Policy for details.

Professional Appearance

Highland employees should maintain a neat and professional appearance at all times in the office, with clients, at work-related activities, at company-sponsored events, or at any meetings/events where the employee is representing Highland.

On most days, Highland has a Semi-Business Casual dress policy. However, there are times that employees will be required to follow a Business Casual dress policy. Highland will generally attempt to notify employees when Business Casual dress is required. There may also be days throughout the year where the more formal business attire (suit, tie, dress) will be required. However, in all work-related situations, employees should use good judgment to determine appropriate dress and maintain a well-groomed appearance. Employees should approach their manager or Human Resources with any questions regarding appropriate professional appearance.

The employee's manager or Human Resources has the sole discretion to determine appropriateness in appearance. Employees who do not meet a

professional standard may be sent home to change and may not be paid for that time off. Violations of this policy may result in corrective action.

General Guidelines

- Clothing should be worn and fit in such a manner that it is not revealing or suggestive (e.g., does not expose the abdomen, chest or back, etc.). Employees should avoid wearing tank tops, sleeveless shirts, halter tops, strapless tops, spaghetti straps, crop tops, and clothing made out of see-through material.

- Clothing should not be excessively tight or form-fitting nor excessively baggy or loose.

- Clothing should not be distracting or offensive. Clothing should be free from sexually-related references, foul language, or the suggestion or promotion of the use of illegal drugs.

- Clothing should be neat, clean and in good condition. Employees should avoid clothing that has holes, is torn or is ripped.

- Skirts and dresses should be of appropriate and tasteful length.

- Body piercing jewelry should be limited to jewelry on the ear. No other body piercing jewelry should be visible.

- Jewelry, make-up, and perfume or cologne should be used in good taste and clothes should be free from offending odors.

Semi-Business Casual Attire

The following are guidelines of what may generally be considered acceptable Semi-Business Casual attire and are the minimum dress requirements which are expected from all employees any day of the workweek:

- It would be appropriate to wear jeans, khakis, casual slacks and trousers, and casual skirts or dresses for women. Clothing should not be torn or ripped in any way.

- Appropriate tops include long sleeve button-up shirts with collars, long-sleeve blouses, sweaters, and turtlenecks. During the months of May through September, short sleeve button-up shirts, short sleeve blouses, and polo style shirts with a collar are acceptable. All other months, any short sleeved attire must be worn with a cover up (i.e. cardigan, blazer, jacket, sweater, & etc.).

- Closed toed shoes must be worn by men, and women can wear open toed shoes with a strap, and must have polished and

presentable toes. Conservative athletic or walking shoes, loafers, boots, flats, and dress heels are acceptable.

- It would not be appropriate to wear shorts, sweatpants, T-shirts, flip flops, sandals or hats/caps.

Business Casual Attire

The following guidelines define acceptable Business Casual attire which is expected from all employees on days that are designated as Business Casual dress:

- It would be appropriate to wear khakis, casual slacks, dress slacks, and dress skirts or dresses for women.
- Appropriate tops include long sleeve button-up shirts with collars, long sleeve blouses, or sweater sets.
- Closed toed dress shoes must be worn by men. Open toed shoes worn by women are acceptable as long as they have a strap on the top.
- It would not be appropriate to wear short sleeve shirts, jeans, shorts, sweatpants, T-shirts, flip flops, sandals, athletic shoes, open toe shoes or open heel, or hats/cap.

(Revised 04-28-17)

Information Technology Acceptable Use Policy

Highland provides computer systems and various other equipment and information systems to employees at the Company's expense in order for employees to access information for the benefit of the Company and its customers. This includes, but is not limited to, personal computers (e.g., desktops, laptops, and tablets), email, Internet, Intranet, telephones, cellular phones, facsimile, voicemail, PDAs, smart phones (e.g., iPhones and similar Android devices). Every employee is expected to use these tools in a productive, appropriate, and responsible manner to maintain and enhance the Company's image, and in accordance with Company policies. The following guidelines are established toward meeting this purpose.

Acceptable Uses

The Company's electronic communications systems are part of the business technology platform and are primarily intended to be used for business purposes. Limited, reasonable, and appropriate use of these systems for personal purposes is allowed.

Unacceptable Uses

General:

These systems are not to be used for personal gain or the advancement of individual views. All messages must be communicated using your name and not an assumed name. The Company forbids the storage, transmission or viewing of "adult materials" on any Company system or in any other form, whether done on the Company's premises or using the Company's equipment. Creating, sending or forwarding verbal or graphic messages which are intimidating, harassing, offensive, profane or hostile on the basis of race, gender, color, national origin, religion, disability, age or any other protected status is also prohibited. These systems may not be used for gambling, participation in chat rooms, and viewing webcams or excessive personal use. Also, any investment research opinions, conclusions and/or advice distributed to outside parties via anonymous or broad distribution such as email or chat rooms are prohibited.

The Company recognizes that the use of a cell/smart phone while driving a motor vehicle can cause distraction to the driver, which can result in accident and injury. Employees are required to comply with all state and local laws regarding the use of cell/smart phones while driving in the course of performing any duties for the Company, including receiving or making any cellular, digital or other wireless business calls while driving at any time. Whenever possible, employees should not make or receive any telephone calls while driving in the course of business for the Company, nor should employees make or receive business-related telephone calls while driving at any time. Employees should let incoming calls go to their voicemail and then find a safe place to pull over and park before initiating a call. If phone usage while driving is unavoidable, a hands-free device must be utilized. Further, under no circumstances should employees use phones, even with a hands-free device, while driving in adverse weather or difficult traffic conditions. The Company takes its cell/smart phone usage policy seriously. Any violations of this policy will subject employees to corrective action, up to and including termination of employment.

Internet:

Highland maintains a strict internet usage policy. All internet access is based upon business need and specific site approval. The following actions as it pertains to internet access are strictly prohibited:

- Attempting to bypass Highland IT security systems, including the firewall and proxy, in an effort to gain unapproved internet access.
- Accessing public proxy sites that would allow bypassing internet security systems.
- Modifying your computer or network in any way, including adjunctive hardware or telecom equipment, allowing for unfettered internet access.

- Using any remote control software to remote to external sources in order to gain internet access.

Computer Usage:

- Installing software on your computer without first gaining approval of the Highland IT department is strictly prohibited.
- Removing network documents, either from network share or the mail system, either through removable media or mail transmission, and transporting them outside company premises is strictly prohibited unless explicit authorization has been granted by your manager.
- Installing tools that would allow you remote access to your computer from outside the Highland corporate LAN is strictly prohibited.

Security Issues:

All messages created, sent or retrieved on the Company's systems are the property of Highland. All electronic data stored, sent, received or created on Highland's computer system or other electronic equipment is the exclusive property of Highland and can be accessed by Highland at any time. Employees do not have privacy right in any matter that is stored, created, sent or retrieved on the Company's systems. The Company will monitor these systems and access any message in order to assure superior service to our customers and to enforce this policy. You must provide your password(s) to the Company, as your mailbox may need to be accessed in your absence. You must not, however, disclose your password, messages or other information gained via the Company's systems to unauthorized personnel. Consider the proprietary or confidential nature of the Company's and its customers' information before relaying it via email. Do not presume that the information will be kept confidential. To minimize the introduction of viruses into the Company's systems, all downloads will be done through Highland's IT department.

Copyright Issues:

Copyrighted materials, including but not limited to software, belonging to entities other than the Company may not be copied or transmitted on the Internet or via email. Failure to observe copyright or license agreements may result in disciplinary action by the Company, legal action by the copyright or license owner, or both.

Any investment research opinions, conclusions and/or advice can only be released outside the office through authorized channels and for normal authorized business purposes.

Engaging in an unacceptable use of the Company's systems will result in disciplinary action, up to and including immediate discharge from employment without prior warning.

(Revised 12-16-16)

Workplace Audio and Video Recording Policy

Purpose

An employee's use of audio and video recording can pose risks to the protection of Highland Capital Management, L.P.'s and its affiliates' ("Highland" or the "Company") confidential and proprietary information, reputation, and brands, together with those of its clients and the investors therein. More troublesome, it can jeopardize the Company's compliance with business rules and laws. At the same time, Highland recognizes that in some limited cases, such as for authorized marketing activities, video and audio recording can provide a unique opportunity to participate in interactive communication and share information on particular topics using a wide variety of social media, such as Facebook, LinkedIn, Twitter, Pinterest, Tumblr, blogs, and wikis, of course to the extent used consistent with Company policy.

To minimize these business and legal risks, avoid loss of productivity and distraction from employees' job performance, and ensure that the Company's, its clients and the investors' therein confidential data and sensitive information are protected, Highland expects its employees to adhere to the following guidelines and rules regarding video and audio recording.

Restrictions on Employee Audio and Video Recording

Unauthorized audio or video recording of employees is disruptive to employee morale and inconsistent with the respectful treatment required of the Company's employees. For this reason, no employee may record the conversation of another employee or service provider without his or her full knowledge and consent. In addition, the employee planning to record another employee or service provider must request consent in advance for any recording from Human Resources and receive written consent (via email is acceptable) from Human Resources prior to recording. Secret recordings are strictly prohibited.

In addition, the following policies should be kept in mind:

- Employees are prohibited from bringing cameras, tape recorders, or other audio or visual recording devices into areas where client privacy may be compromised. Please note that cell phones with camera, video and audio recording capabilities are permitted, however, the video and audio recording functions are prohibited from use.

- Employees may only record workplace activities where such recording would not be prohibited by law, does not compromise confidential information, and does not violate this policy as described above.

- Any recordings made, whether or not in accordance with this policy, shall at all times remain the exclusive property of the Company. Accordingly, Employees are required to surrender to Human Resources originals of any such recordings immediately following creation. Furthermore, no copies of any such recordings made be retained or otherwise distributed by Employee, except to the extent (i) expressly permitted under this policy, (ii) expressly permitted in writing by Highland's Human Resources department, or (iii) as may be required under applicable law. Employees agree to surrender to Highland's Director of IT any electronic equipment or other media upon which any non-permitted copies may be stored or contained so that such deletion can be confirmed.

Any violation of this provision may result in disciplinary action up to termination.

Scope

This policy is not intended to preclude or dissuade employees from engaging in legally protected activities/activities protected by state or federal law, including the National Labor Relations Act, or from making disclosures that are protected under whistleblower provisions of law.

Company Monitoring

Highland may find it necessary to monitor work areas with security cameras when there is a specific job- or business-related reason to do so. The Company will do so only after first ensuring that such action is in compliance with state and federal laws. Highland reserves the right to install security cameras in work areas for specific business reasons, such as security, theft protection, or protection of proprietary information.

Employees should not have any expectation of privacy in work-related areas. Employee privacy in non-work areas will be respected to the extent possible.

If an employee suspects one or more employees may be conducting unauthorized recordings, they must contact Highland's Human Resource department immediately.

Employees should contact their supervisor or the human resource department if they have questions about this policy.

(Revised 01-05-17)

Safety and Health

Highland is committed to providing a safe and healthy work environment. All work-related injuries and accidents, no matter how slight they may appear, must be reported at once to your supervisor. Please report all hazardous conditions and unsafe practices to Human Resources immediately.

Drug and Alcohol Policy

Please see separate Drug Testing Policy for details on Highland's testing procedures and further prohibitions.

It is Highland's policy to provide a drug-free work environment. Employees who violate this policy will be subject to disciplinary action up to and including termination of employment.

Illegal Drugs

It is against Highland policy for employees, guests, and/or other third parties to unlawfully possess, use, purchase, manufacture, sell, dispense, distribute or be under the influence of any controlled substance in the workplace. "Illegal Drugs" and "Controlled substances" include but are not limited to illegal inhalants, amphetamines, barbiturates, cocaine, narcotics, opiates, heroin, morphine, codeine, methadone, PCP and other hallucinogens and marijuana. "Workplace" is defined as any and all premises and property owned, operated or managed by Highland or its Affiliates and includes any place where company business is conducted.

Prescription Drugs

The possession and use of prescription drugs in the workplace is permitted if such drugs are legally obtained and they are being used in the prescribed manner.

Alcohol

The possession, distribution, use or being under the influence of alcohol by Highland employees in the workplace or on Company business is strictly prohibited except at company sanctioned events so long as the event is authorized in advance by a department director and the alcohol is served and consumed in moderation. Under no circumstances should an employee operate a motor vehicle while impaired by alcohol.

Highland encourages alcohol-free activities. However, in certain circumstances such as annual holiday parties, the entertainment of clients and business-related travel, the responsible consumption of alcoholic beverages by employees of lawful age may be permitted. Highland strongly encourages employees to drink non-alcoholic beverages, eat food when

consuming alcohol, stop the consumption of alcohol at least one hour before the end of the event and make arrangements for alternative transportation. After participating in a business-related event where alcoholic beverages are served, employees will be reimbursed for the reasonable cost of using alternate transportation to get home from the event.

Fitness for duty

Any employee that reports to work while intoxicated or who is found to be under the influence of alcohol or illegal drugs/controlled substances, or who is otherwise considered by his/her supervisor to be unfit for safe and effective performance of work will be subject to disciplinary action up to and including termination of employment. He/She will be prevented from entering or remaining in the workplace and/or will be sent home with alternative transportation, if appropriate.

Assistance for Drug and Alcohol Abuse

Employees are encouraged to seek treatment for drug and alcohol abuse and related problems from the Highland health plan.

(Revised 09-17-08)

Solicitation and Distribution

In order to avoid disruption of work, no employee shall be permitted to engage in solicitation for any purpose during his or her working time or the working time of the person being solicited. Working time means time that employees are expected to be performing their job. Likewise, employees shall not engage in distribution of any material, during his or her working time or in working areas. Literature, notices, or other material of any kind may not be posted or distributed in the working areas of any employees at any time. Persons who are not employees of the Company will not be permitted to come upon Company premises for the purposes of making solicitations of any kind to employees, or posting or distributing literature, notices, messages, or material of any kind.

Outside Employment ("Moonlighting") and Conflicts of Interest

Outside employment ("moonlighting") by full time employees is discouraged and you must report outside employment to your supervisor. Approval for outside employment may be withdrawn if work performance or attendance becomes unsatisfactory. Outside employment that results in, or could potentially result in, a conflict of interest with Highland is expressly forbidden.

Press and Media Relations

Communications with the media regarding Highland must be managed via designated Highland communications personnel. Employees are not permitted to respond to media requests and enquiries without prior approval from designated

Highland communications personnel or Highland's external public relations firm. This includes all on the record (attributed quotes/comments) and off the record (on background or anonymous) conversations. All requests from the media should be documented (name, contract information, subject matter) and passed on immediately to communications personnel via the Media Enquires email distribution list. This includes formal requests for interviews as well as enquiries, and includes all media – TV/radio, newspapers, magazines, local/national and trade media and internet sites. Communications personnel will either respond on Highland's behalf, or assist in identifying the appropriate person from Highland to handle the response.

Personal Representation in the Media

It is recognized that from time to time, employees may be approached by the media on topics related to their personal interests or non-work related activities. Employees may participate in such interviews. However, in order to avoid any confusion about whether an employee is speaking on their own behalf or on behalf of Highland, employees may not reference Highland or their role with the company, unless they have obtained prior approval to do so from the Highland. In addition, employees must alert designated Highland communications personnel anytime they communicate with the media on topics related to their personal interests or non-work related activities.

(Revised 04-17-2012)

Personal Phone Calls

Highland's telephones are important business tools. As such, every effort should be made to minimize personal telephone usage. You are expected to reimburse Highland for any personal toll calls you make.

Use and Care of Highland Assets and Records

Company records and papers are valuable and confidential. You are expected to keep all records, files and valuables properly secured. No company records or equipment are to be taken from the premises without permission from your supervisor. Special care should be taken to secure electronic data by following appropriate procedures.

Confidentiality

Employees may have, may be furnished with or may have access to private information that relates to the financial condition of the company, trade secrets, trademarks, patents, proprietary databases and client lists, and other confidential information that is not easily available from public sources. Except for any information which at the time of disclosure to the employee was or thereafter became publicly available or a matter of public knowledge, all such information

shall be considered as proprietary and confidential. Employees will not disclose any proprietary information except in the course of their duties for the Company, and where the employee reasonably, and in good faith, believes that any such disclosure is in the best interests of the company. In addition, employees shall not remove proprietary or confidential information from the company's premises without a valid business purpose or use such information for their own benefit or for the benefit of a third party.

Employees acknowledge that all proprietary and/or confidential information used or generated during the course of working for the company is the exclusive property of the company. Employees must deliver to the company all documents and other tangible items, including storage media containing proprietary or confidential information, including all copies of such documents or tangibles, immediately upon notice of termination of employment with the company. Employees assign the entire right, title and interest in any invention, technique, process, device, discovery, improvement or know-how for which a patent is obtained or that is patentable which is created using the company's facilities, supplies, information, trade secrets or time which directly relates to the company's business or actual or anticipated research and development and directly results from any work performed by the employee. Nothing in this Handbook prohibits Employees from reporting possible violations of federal law or regulation to any government agency or entity or making other disclosures that are protected under whistleblower provisions of law. Employee does not need prior authorization to make such reports or disclosures and is not required to notify the Company that he/she has made any such report or disclosure.

Notwithstanding the above, all employees will be required to sign a non-disclosure agreement (NDA) upon beginning employment. To the extent these provisions are inconsistent with the NDA, the NDA will govern all provisions.

(Revised 12-16-16)

JOB PERFORMANCE

General Expectations

Your manager will clarify the expectations Highland has for you and for your job and the impact your performance has on the business. Communication, feedback and objectivity are important in ensuring your best performance and effective work relationships. You are expected to share in the responsibility for your success, your training and your career growth. Toward this end, Highland expects its employees to achieve results by:

- Exceeding Performance Expectations
- Demonstrating Initiative and Creativity
- Making Continuous Improvements
- Demonstrating Teamwork and Professionalism

- Demonstrating Responsibility to Clients and Community

Problem Resolution

Employees who believe they have a problem or situation affecting their work or job performance and who would like advice and counsel are encouraged to discuss these problems with Highland management, Human Resources, Compliance or Legal teams without fear of reprisal. If you are experiencing such a situation, you are urged to discuss the problem first with your immediate supervisor. You may submit a request, in writing or verbally, for a meeting with a second level supervisor or another upper level manager if the situation you have presented cannot be resolved by your immediate supervisor or if you believe it is inappropriate to raise the matter with your immediate supervisor. The Human Resources Department is also in a position to listen to and direct your concerns. An unresolved work-related problem may be pursued to the Executive Management level. Employees should describe the situation in writing in a letter to the senior manager of their department. All efforts will be made to review the situation quickly and arrive at a final decision.

(Revised 03-29-17)

Corrective and Disciplinary Action

Highland employees are expected to maintain high standards of job performance and conduct. These standards may be applied in any situation deemed necessary by Highland, including but not limited to situations where the employee's performance or conduct may impact Highland's operations, reputation or relationship with clients. In the event that an employee's performance or conduct fails to meet Company expectations, corrective action may be taken in the Company's sole discretion.

Highland may utilize, but is not obligated to, one or more forms of corrective action, including but not limited to verbal warnings, written warnings, final warnings and/or immediate termination.

Verbal Warning

A verbal warning may be given by an employee's manager regarding concerns about performance or conduct. The manager and/or employee may develop a plan for improvement.

Written Warning

A written warning is prepared by the manager and describes the performance or behavior issue and expected change. The manager and employee will discuss a plan for improvement and the consequence of failing to successfully complete the corrective action plan. The employee will sign the written warning to acknowledge that he/she has been notified of the concern.

Final Warning

A final warning is given in situations which require corrective action just short of termination. The employee is notified through a final warning that any additional infractions or failure to successfully complete a corrective action plan will result in termination.

Issues which may require corrective action will be determined by the Company on a case-by-case basis in its sole discretion, and may include, but are not limited to: substandard job performance, work of unacceptable quality or quantity, violations of company policies, misconduct, insubordination, unauthorized release of confidential information, threatening or disrespectful treatment of co-workers or clients, poor attitude, and unethical or illegal conduct.

Performance or conduct problems can be addressed using a progressive approach so that the employee is given coaching and time to improve. However, this policy does not guarantee progressive corrective action and in some cases, in the Company's sole discretion, immediate termination may be warranted or appropriate, and nothing in this policy alters or should be construed to alter the at-will nature of employees' employment.

(Revised 09-17-08)

Causes for Corrective Action and/or Immediate Dismissal

Listed below are some examples of performance or behavior which may result in immediate dismissal. (This list in not inclusive of all reasons for immediate dismissal and should not be construed as limiting Highland's freedom to act in any way.)

- Failure to provide evidence of right to work at time of employment
- Unauthorized release of confidential information
- Intentional misrepresentation in order to receive Highland benefits
- Willful or negligent damage, destruction, theft or unauthorized use of Highland property
- Deliberate falsification of records or reports
- Unauthorized possession, distribution or use of weapons, drugs or alcohol while on Highland premises
- Immoral or indecent conduct while on Highland premises, or away from Highland's premises which causes damage to the reputation of the Company
- Conviction for criminal conduct while employed by Highland
- Fighting or other disorderly conduct while on Highland premises
- Violation of Highland's Equal Employment Opportunity on Harassment and Discrimination Policy

- Excessive absence and/or lateness
- Violation of Highland's IT Acceptable Use Policy
- Unsatisfactory job performance or behavior
- Violation of Highland's Code of Ethics and Business Practices
- Being unfit for work as judged by your immediate supervisor
- Improper use of Highland leave or other benefits
- Solicitation and distribution during work hours
- Other violations of Highland policy
- Threatening or intimidating conduct

References and Verification of Employment

The only personnel authorized to give recommendations on behalf of Highland for former employees are Team Leaders and Back Office Leaders. No other personnel are authorized to speak on behalf of Highland with regard to recommendations.

If a positive recommendation is not warranted for a former employee, the policy is to confirm only dates of employment, job title and salary for an employee or former employee and to provide no further information.

(Revised 09-17-08)

LEAVING THE COMPANY

Voluntary Termination

To allow time to make proper arrangements in the work schedule and begin the process of recruitment, employees are requested to give at least two weeks notice of resignation or retirement, in writing. Employees are requested to give notice of resignation or retirement only when their direct supervisor is physically present in the office (i.e. not on vacation or a business trip).

(Revised 03-26-09)

Involuntary Termination

Whenever possible and appropriate, you will be notified in advance of your termination date and informed by your supervisor of any benefits to which you are entitled. Immediate dismissal may be warranted in certain cases.

Exit Interviews

Whenever possible, an Exit Interview will be conducted when leaving the Company. Either the employee's immediate supervisor or Human Resources will conduct the interview. It is to your advantage to have this interview so that you may receive complete information on the benefits to which you are entitled and what procedures are applicable upon leaving Highland.

Return of Company Property

On your last day of employment, you are required to return all company property to Human Resources. Company property includes all keys, equipment, office supplies and any other materials that are owned or leased by Highland. Employees must deliver to the company all documents and other tangible items, including storage media, containing proprietary information, including all copies of such documents or tangibles, immediately upon notice of termination of employment with the company. Any questions regarding this policy should be directed to your supervisor or Human Resources.

(Revised 09-17-08)

Benefits Continuation (COBRA)

The Consolidated Omnibus Budget Reconciliation Act (COBRA) ensures that an employee who faces a reduction of work hours or who is terminated from Highland (for reasons other than gross misconduct) has the option to continue Health/ Dental coverage for a fixed period of time at his/her own expense. This law is specifically designed to help bridge any gap which you or your dependents might experience if you end your employment with the company, if your hours are reduced making you no longer eligible for insurance coverage, or if the status of your marital or dependent relationships change.

To the extent required by law, you may continue your coverage under Highland's Health / Dental plan. The cost of COBRA coverage is borne entirely by you. You will be notified of your COBRA rights soon after termination and will then be required to either accept or reject COBRA continuation. See Human Resources for further details.

Post-Employment Contact with Investors, Prospective Investors, and Counterparties

Effective immediately, upon the earlier of notice of resignation or termination of employment, and continuing for thirty (30) calendar days following the earlier of notice of resignation or termination of employment (the "Non-Contact Period"), former employees are prohibited from contacting any of Highland Capital Management, L.P. ("Highland" or the "Company") or its Affiliates' (including any other corporation, partnership, limited liability company, joint venture, or other entity of which an aggregate of 25 percent or more of the issues and outstanding capital stock or other equity interest is now or at any time afterward owned, of record or beneficially, directly or indirectly, by Highland) (the "Affiliates"), current investors, prospective investors, or current counterparties without receiving advance written permission from Highland. Regardless of the duration of an employee's notice of resignation period, in no event shall the Non-Contact Period extend less than fourteen (14) days following termination of employment. For purposes of this policy, current investors include any investing entity or individual who has invested with Highland or its Affiliates within the subject former

employee's previous twenty-four (24) months of employment, and prospective investors include any investing entity or individual contacted by Highland or its Affiliates regarding a potential investment within the subject former employee's previous twenty-four (24) months of employment, regardless of whether that entity or individual ultimately invested. For purposes of this policy, investors do not include individuals who are solely invested in Highland's or its Affiliates' retail funds. All Highland employees must enter into and agree to this policy as a condition of employment. However, Highland reserves the right to enforce this policy only against employees that it so chooses, and Highland will notify those employees accordingly at the appropriate time.

In order to receive consideration for permission to contact current investors, prospective investors or counterparties, former employees must submit a written request via e-mail or physical mail to Highland's Human Resources Department, HR@hcmlp.com or Human Resources, 300 Crescent Court, Suite 700, Dallas, TX 75201, at least fourteen (14) days in advance of any proposed contact. Such request must include the name of the entity or individual that the former employee wishes to contact and state the purpose of the proposed contact. Former employees will then be notified, in writing (at their last known e-mail address or mailing address), whether permission has been granted. Should current investors, prospective investors or counterparties contact former employees (without former employees contacting them first), former employees must immediately notify Highland's Human Resources Department (at the above addresses), in writing, of the contact and request permission from Highland to respond if they so desire. Former employees will then be notified, in writing (at their last known e-mail or mailing address), whether permission has been granted.

Employees who terminate with either at least two weeks notice of resignation or who are involuntarily terminated are entitled to their regular base pay for the duration of the Non-Contact Period that follows their last day of employment, subject to their adherence to this policy. Employees who resign without at least two weeks notice are not eligible for their base pay during the Non-Contact Period.

Adherence to this policy is also a material condition of former employees being entitled to and receiving payment for any paid time off ("PTO") that is accrued but unused as of the conclusion of employment. If former employees fully adhere to this policy for the entirety of the Non-Contact Period, they will receive payment for any accrued but unused PTO within ten (10) business days following the proscribed period.

This policy is understood to be clear and enforceable as written. However, should any former employee later challenge any provision as unclear, unenforceable, or inapplicable to any contact that former employee intends to engage in, he or she will first notify Highland's Human Resources Department (at the above addresses), in writing, and meet with a Highland representative to discuss resolution of any disputes between the parties. Former employees will provide this notification at least fourteen (14) days before they engage in any activity contact that could

foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive former employees' rights to challenge the reasonable scope, clarity, applicability, or enforceability of this policy and its restrictions at a later time. All rights of both parties will be preserved if this early resolution conference requirement is complied with even if no agreement is reached in the conference.

If employees are not chosen by Highland to have this policy enforced against them, they are not entitled to receive additional base pay beyond the conclusion of their employment, and the condition of adherence to this policy to receive payment for any accrued but unused PTO is inapplicable. By entering into and agreeing to this policy, you expressly acknowledge and agree that any and all investor and counterparty information you have acquired or will acquire during your employment with Highland, including, but not limited to, investor and counterparty contact information, is Highland's confidential and proprietary information and property, and, moreover, because you are entering into this policy, Highland will be providing you with additional confidential and proprietary information, including, but not limited to investor and counterparty contact information, which you would not otherwise be entitled to. Finally, you expressly acknowledge and agree that the covenants contained herein are reasonable and necessary agreements for the protection of Highland and its Affiliates' business interests covered in the fully enforceable, ancillary agreements set forth in this policy.

(Revised 06-22-17)

HIGHLAND CODE OF ETHICS AND BUSINESS PRACTICES

Introduction

Highland employees are expected to maintain the highest standards of ethical conduct and professionalism. Employees are expected to:

- perform all job duties and responsibilities with integrity and in good faith;
- engage in and encourage honesty at all times;
- make every effort to exercise good judgment in all matters;
- comply with all applicable laws, rules and regulations;
- avoid actual or potential conflicts of interest between personal and professional relationships;
- uphold the firm's public image and reputation;
- treat every individual with respect, dignity, and courtesy;
- maintain truthfulness in all communication so as to preserve the trust of other employees, clients, the public, etc.;
- abide by the Company's moonlighting policies and expend all of their regular business time and efforts to the business of the Company,

avoid creating any conflict of interest with the Company or otherwise contravening their duty of loyalty to the Company; and
- safeguard the confidentiality of all Company information and materials.

The Code of Ethics and Business Practices is not exhaustive and is not designed to anticipate every situation. Highland will interpret and apply these standards as it deems appropriate. Compliance with this Code of Ethics and Business Practices is a condition of employment. Failure to adhere to this Code of Ethics and Business Practices can result in corrective or disciplinary action, up to and including termination. Violations of this Code of Ethics and Business Practices may also constitute violations of law, which may expose both the employee and the firm to criminal or civil penalties.

Actual or potential violations of this Code of Ethics and Business Practices must be promptly reported to the employee's manager, Human Resources, or the Chief Compliance Officer. Highland prohibits retaliation for reports of ethical misconduct that are made in good faith.

(Revised 09-17-08)

Proper Recording Of Assets And Disbursements

Making false or fictitious entries on the books and records of Highland and/or issuing false or misleading reports about Highland and its operations, whether intentionally or in a grossly negligent manner, are prohibited. No employee shall knowingly engage in any transaction that requires or contemplates such prohibited activities. All funds, disbursements, assets and liabilities of Highland shall be accurately recorded on the appropriate corporate books and records.

Business Solicitation Practices

All business solicitations by Highland employees must be in accordance with Highland's approved business plans. If a representative of a business contact or potential business contact makes overtures or suggests that a Highland employee make any direct or indirect payment, gift or gratuity in order to obtain business, such an overture or suggestion must be reported to the Chief Compliance Officer. However, the extension of normal business courtesies in accordance with ethical business practices is not prohibited.

Relationships With Government Officials

No payment (including business gifts, business meals and reimbursements of any expenses) shall be made to any federal, state or local government official or employee in circumstances where it may be construed as an attempt to influence the judgment of the recipient or to obtain preferential treatment for Highland.

Conflicts Of Interest - Outside Activities

A Highland employee:

- May not engage in an outside interest, activity or investment that places his or her economic interests in significant, actual or potential conflict with those of Highland except for those activities that are approved by the Chief Compliance Officer; or

- May not solicit or accept salaries, fees, commissions or other types of compensation, rebate or reward from contractors, suppliers, customers, consultants, or other persons, firms or organizations doing business with Highland.

Political Campaign Laws

No political contribution, at any level of government, shall be made out of any Highland fund or account, whether directly or indirectly, by reimbursement or otherwise without the express prior approval of Highland's President and Chief Compliance Officer. No corporate political contribution of any kind shall be made in violation of any applicable law or regulation. However, nothing in Highland's policies prohibits employees from engaging in political activities in their individual capacities on their own time and at their own expense or from making political contributions or expenditures of their own personal funds.

(Revised 09-17-08)

Antitrust Law And Competitive Practices

National antitrust laws and regulations (including but not limited to the Hart-Scott-Rodino pre-merger notification requirements) shall, where applicable, be observed at all times, in all situations, by all employees of Highland. Particularly, price-fixing or bid-rigging acts or arrangements with competitors to divide or allocate markets or customers or exclude others from a market are absolutely prohibited.

Trade Secrets And Other Proprietary Information

All Highland employees must act affirmatively to maintain the confidentiality of Highland's trade secrets and proprietary information. Some of the types of information that must be kept confidential (unless disclosure is properly authorized) include proprietary software, customer and tenant lists, investor lists, planning materials, marketing plans and much of the technical information that Highland generates in its business.

Compliance With Laws And Regulations

All activities of Highland shall be conducted in compliance with all applicable laws and regulations of the United States (federal, state and local) and of the countries where Highland might transact business.

Implementation

Any questions about interpretation of this Code of Ethics and Business Practices, or any need for legal advice concerning compliance with this Code or about any law or regulation to which Highland is subject, should be referred to the President.

Trading Policy

Please refer to the separate Highland Capital Management, L.P. Compliance Manual and Highland Capital Management, L.P. Personal Trading Policy for details.

HIGHLAND EMPLOYEE HANDBOOK ACKNOWLEDGMENT FORM

Highland Employee Handbook and "Employment at Will"

INSTRUCTIONS:

This form must be completed and signed by all Highland Capital Management, L.P. ("Highland") employees within 15 days of receipt. By signing this form you are acknowledging that you have received, read and understand the Highland Employee Handbook ("Handbook") and also that your employment with Highland is at-will.

Please READ, SIGN and RETURN to Human Resources:

I have received a copy of the Handbook. I understand it is my responsibility to read the Handbook and to bring any questions I may have about its provisions to my supervisor, Human Resources, or an appropriate member of Highland senior management prior to signing this acknowledgment. I further understand that if I do not abide by the policies and procedures outlined in the Handbook that my actions might result in the termination of my employment at Highland.

I understand that Highland may change, modify, amend, add to or subtract from any or all of the contents of this Handbook at any time, in its sole discretion, and with or without notice, and that this Handbook replaces and supersedes any previous Handbooks that I have received or that have been issued by Highland. I understand I will be required to read and acknowledge this Handbook on at least an annual basis.

I understand that absent a signed written agreement by the President of Highland providing a guaranteed term of employment, my employment with Highland is at-will, which means it is not for any guaranteed period of time and is terminable at any time by either Highland or myself. Accordingly, I understand that Highland may terminate my employment at any time with or without cause and with or without notice. Further, I understand that neither the Handbook, any other company documents, nor any oral agreement or representation by an employee or representative of Highland constitutes an employment contract or guarantee of employment for any period of time, or otherwise alters the at-will nature of my employment at Highland. No one at Highland, other than the President of its general partner, may alter or change the at-will nature of the employment relationship, and then only by a written agreement signed by the President.

_____	_____	_____
Employee Name	**Signature**	**Date**

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	**Re: Docket No. 1439**

DEBTOR'S RESPONSE TO MR. JAMES DONDERO'S MOTION FOR ENTRY OF AN ORDER REQUIRING NOTICE AND HEARING FOR FUTURE ESTATE TRANSACTIONS OCCURRING OUTSIDE THE ORDINARY COURSE OF BUSINESS

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor in possession (the "Debtor") hereby submits this response (the "Response") to *James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Docket No. 1439] (the "Motion").[2] In support of the Response, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT

1. Through the Motion, Mr. James Dondero seeks entry of an order requiring the Debtor to obtain court approval before engaging in transactions outside the ordinary course of its business. Essentially, the Motion argues that the Protocols, which were approved by the Court approximately eleven months ago with Mr. Dondero's consent, permit the Debtor to engage in transactions that violate 11 U.S.C. § 363. The Motion reflects a profound misunderstanding of the Protocols and the types of transactions the Bankruptcy Code requires be brought to the Court for approval.

2. Given the Debtor's business as an investment manager, the Debtor proactively sought Court approval at the beginning of the case to define which of the Debtor's day-to-day activities were ordinary course and could be completed without Court oversight. After weeks of negotiations, the Debtor and the Committee agreed on the Protocols, which govern those ordinary course transactions. The Protocols provided the Committee with enhanced notice rights with respect to what would otherwise be ordinary course transactions and which would not require Court approval. The Debtor never intended the Protocols to apply to out of the ordinary course transactions for which separate approval would be required under section 363(b). In fact, the Debtor emphasized this point to the Court at the January 9, 2020, hearing at which the Court

[2] All capitalized terms used but not defined herein have the meanings given to them in the Motion.

approved the Protocols.

3. Regardless, the Motion's real argument is that certain transactions superficially identified in the Motion were outside of the ordinary course of business and required Court approval. The Motion, however, conflates the Debtor's obligation to seek Court approval for out of the ordinary course transactions involving the sale of the *Debtor's assets* with restrictions on the Debtor's ability to exercise its role as an investment manager and to sell assets of the Debtor's managed investment vehicles. There is no restriction on the Debtor fulfilling its role as an investment manager in the Bankruptcy Code.

4. On December 10, 2020, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order against James Dondero*, Adv. Proc. No. 20-03190-sgj [Adv. Docket No. 10] (the "TRO"). The TRO was necessitated by Mr. Dondero's unlawful interference in the Debtor's business operations and threats made by Mr. Dondero to Mr. Seery and the Debtor's employees. Faced with the impending confirmation of the Debtor's Plan and the rejection of Mr. Dondero's alternative plan, Mr. Dondero is again attempting to impede the Debtor's operations and the Debtor's efforts to maximize value. The Court should see through Mr. Dondero's pre-textual arguments for transparency and deny the Motion.[3]

REPLY

I. The Protocols Do Not Authorize Sales Outside of the Ordinary Course

5. In the Motion, Mr. Dondero contends that the Protocols allow the Debtor to sell assets outside of the ordinary course of business without having to satisfy the requirements of the Bankruptcy Code. That contention is false. The Protocols were instituted as part of a global

[3] Mr. Dondero's Motion also seeks relief similar to that sought by Mr. Dondero's two other registered investment advisors (NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P. (collectively, the "Advisors")) in the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Docket No. 1522] (the "CLO Motion"). In the CLO Motion, the Advisors seek a stay on the Debtor's ability to cause its managed CLOs to sell assets without the Advisors' consent.

settlement with the Committee and were intended to limit the Debtor's ability to transfer assets away from the estate and the reach of the Debtor's creditors. The Protocols were adopted because of the myriad and substantial allegations that the Debtor – then under the control of Mr. Dondero – had engaged in repeated fraudulent and impermissible transfers intended to frustrate creditor recoveries and hide assets. In negotiating the Protocols, the Debtor and the Committee intended the Protocols to apply only to (i) transactions within the "ordinary course of business" (*i.e.*, transactions that the Debtor could have completed without the need to come to this Court) or (ii) transactions occurring at non-Debtor entities that were otherwise arguably outside of this Court's jurisdiction and oversight. The Debtor was clear about this at the hearing approving the Protocols.[4]

6. The Protocols do not apply to transactions "outside of the ordinary course of business" because those transactions would *always* be subject to this Court's jurisdiction and require notice and a hearing. In other words, the Debtor and the Committee did not need to negotiate safeguards with respect to transactions outside the ordinary course. Those safeguards were already imposed by the Bankruptcy Code and have been honored by the Debtor (and the Committee) throughout this case. Further, the Protocols were approved by Mr. Dondero and have not been challenged by any party until now.

7. Again, the Protocols do not allow transactions outside the ordinary course of

[4] *See* Transcript, January 9, 2020 (14:16-25; 15: 1-10):

> The third major aspect of the term sheet, Your Honor, was the agreement on operating protocols, and it really relates to the ground rules for the Debtor's operations going forward and when notice to the Committee is required of certain transactions that would otherwise be in the ordinary course of business.
>
> Importantly, Your Honor, we are not trying to modify the Bankruptcy Code in any way. Any transactions out of the ordinary course of business would still be subject to Your Honor's approval.
>
> However, in this case. . . whether or not something is ordinary is not straightforward in a case such as the Debtor's, given the nature of the Debtor's operations. So we thought it was important to establish ground rules up front, and establishing those ground rules was one of the things we did initially in the case. We had opposition from the Committee, and we've worked through the opposition and ultimately arrived at the operating protocols that are attached to the term sheet.

business in violation of 11 U.S.C. § 363(b), and, for the avoidance of doubt, the Debtor will seek this Court's approval prior to conducting any transaction that would be outside the ordinary course of the Debtor's business.

II. The Debtor Has *Not* Conducted Sales Outside of the Ordinary Course of Business

8. Mr. Dondero also argues, without factual support or specificity, that the Debtor has conducted a number of substantial asset sales outside of the ordinary course of business and that the Debtor's non-debtor subsidiaries have also conducted significant asset sales without complying with the Bankruptcy Code. Both of these arguments fail.

The Asset Sales Mentioned in the Motion Did Not Involve Property of the Estate

9. Mr. Dondero alleges that three sales violated 11 U.S.C. § 363: sales conducted by the Highland Multi Strategy Credit Fund, L.P. ("MSCF"), Highland Restoration Capital Partners, L.P. ("RCP"), and the sale of SSPI Holdings, Inc. ("SSPI").[5] These sales were subject to the Protocols (and consistent with the Protocols, each sale was approved by the Committee); however, they were not subject to 11 U.S.C. § 363(b).

10. Section 363(b) applies to "property of the estate." 11 U.S.C. § 363(b)(1) ("The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, ***property of the estate***. . . .") (emphasis added). In the Motion, Mr. Dondero asserts – without support – that sales of assets owned by subsidiaries of the Debtor must comply with 11 U.S.C. § 363. However, the assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."); *see also Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975)

[5] In the Motion, Mr. Dondero refers to SSP Holdings generically as a subsidiary of "Trussway." (Motion ¶13). The actual entity that was sold was SSPI.

("Ownership of all of the outstanding stock of a corporation, however, is not the equivalent of ownership of the subsidiary's property or assets. . . Even though the value of the subsidiary's outstanding shares owned by the debtor may be directly affected by the subsidiary's disputes with third parties,' Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate.'") (*citing In re Beck Indus., Inc.*, 479 F.2d 410 (2d Cir. 1973)).

11. Further, while the Debtor has certain control rights over RCP, MSCF, and SSPI, those rights do not make the assets of RCP, MSCF, and SSPI property of the Debtor's estate. *See In re Thomas*, 2020 Bankr. LEXIS 1364 at *31 (Bankr. W.D. Tenn. 2020) (a debtor's membership interest in an LLC, including both its economic rights and governance rights, became property of the estate on the petition date, but the assets of the LLC remain separate and the debtor must manage them consistent with the terms of the operating agreement and applicable law); *In re Cardinal Indus.*, 105 B.R. 834, 849 (Bankr. S.D. Ohio 1989) (a debtor's ownership interests and control rights in non-debtor partnerships were property of the estate; but those rights did not make the assets of the partnership property of the estate or implicate the automatic stay so as to prevent secured creditors of the non-debtor partnerships from foreclosing on properties of the partnerships).

12. None of RCP, MSCF, or SSPI is a wholly-owned subsidiary of the Debtor and each has meaningful third party investors. The assets of those entities – and by extension the interests of the third party investors – are not property of the estate and, therefore, are not subject to 11 U.S.C. § 363(b). The assets of these entities are only subject to this Court's oversight because of the agreement the Debtor reached with the Committee to enter into and be bound by the Protocols.

The Debtor Is Authorized to Sell Assets Pursuant to 11 U.S.C. § 363(c)(1)

13. Further, in the Motion, Mr. Dondero focuses on 11 U.S.C. § 363(b), but ignores 11 U.S.C. § 363(c)(1), which grants the Debtor the authority to operate its business in the ordinary course without notice or hearing. Specifically, section 363(c)(1) provides:

> [i]f the business of the debtor is authorized to be operated under section. . . 1108. . . of this title... the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). As such, a debtor may enter into post-petition transactions, including the sale or lease of its property, if the debtor is authorized to operate its business under section 1108 and such transactions are "in the ordinary course of business."

14. An activity is "ordinary course" if it satisfies both the "horizontal test" and the "vertical test." S*ee, e.g., Denton Cty. Elec. Coop. v. Eldorado Ranch, Ltd. (In re Denton Cty. Elec. Coop.)*, 281 B.R. 876, 882 n.12 (Bankr. N.D. Tex. 2002); *see also In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). The vertical test looks to "whether the transaction subjects a hypothetical creditor to a different economic risk than existed when the creditor originally extended credit." *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013). The horizontal test considers "whether the transaction was of the sort commonly undertaken by companies in the industry." *Id.* As such, even if the MSCF, RCP, and SSPI asset sales mentioned in the Motion were subject to this Court's jurisdiction (and they were not), they are allowed by the Bankruptcy Code because they are within the ordinary course of the Debtor's business.

15. First, the vertical test is satisfied with respect to such sales. As Mr. Dondero knows, the Debtor is an investment manager and its business *is* buying and selling assets on behalf of its managed investment vehicles. As such, any creditor of the Debtor (with the

potential exception of Mr. Dondero) would expect the Debtor to continue buying and selling assets; that is what the Debtor does. The MSCF, RCP, and SSPI sales are thus consistent with the expectations of the Debtor's creditors and the Debtor's obligations to MSCF, RCP, and SSPI.[6] *See Thomas*, 2020 Bankr. LEXIS 1364 at *31. The MSCF, RCP, and SSPI sales are examples of the Debtor selling assets on behalf of a managed investment vehicles and include no different economic risk than existed prepetition. Because the Debtor is engaging in the same conduct post-petition as it did prepetition (which is what debtors-in-possession are intended and expected to do under 11 U.S.C. § 1107 of the Bankruptcy Code), the Debtor's creditors will incur no additional risk. This risk is further mitigated because any such sales will be authorized by the Debtor's new management, not Mr. Dondero.

16. Second, the horizontal test is satisfied. The Debtor, again, is an investment manager. Investment managers manage investment vehicles and by definition, buy and sell assets and distribute the proceeds of those assets to investors. The sales referenced in the Motion are consistent with that business as they are the sales of assets held by managed investment vehicles – some of which are currently in orderly liquidation. Selling assets *is* the Debtor's industry, and the sales referenced in the Motion are the sorts of sales commonly conducted in the industry. The Debtor is thus simply operating post-petition in the same manner it did prepetition, albeit under Court-mandated new management. Consequently, the horizontal test is also satisfied.

17. Regardless, if the Court believes the Debtor should be required to justify its conduct, the Debtor is ready to do so as it has acted, in all instances, in a commercially reasonable manner and in the best interests of the Debtor's estate and the stakeholders of MSCF,

[6] In fact, creditors should support the asset sales and such sales were supported by the Committee. The sales liquidated assets at non-Debtor entities to which the Debtor's creditors had no recourse and the net proceeds of those sales were distributed, in part, to the Debtor, to which the Debtor's creditors have recourse.

RCP, and SSPI.[7]

III. Mr. Dondero Has a *De Minimis* Interest in the Debtor

18. In the Motion, Mr. Dondero asserts he is a "creditor, indirect equity security holder, and party in interest" in the Debtor's bankruptcy. While that claim is ostensibly true, it is tenuous. Mr. Dondero filed five proofs of claim in the Debtor's bankruptcy case. Two of those proofs of claim were withdrawn with prejudice on November 23, 2020 [Docket No. 1460]. The other three are unliquidated, contingent claims, each of which said that Mr. Dondero would "update his claim in the next ninety days." Ninety days has passed since those proofs of claim were filed and yet Mr. Dondero has not updated those claims to assert an actual claim against the Debtor's estate.[8]

19. Mr. Dondero's claim as an "indirect equity security holder" is also a stretch. Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. ("Strand"), the Debtor's general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor's Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero's recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his "indirect" equity interest, the Debtor's

[7] The Dugaboy Investment Trust ("Dugaboy") – Mr. Dondero's family trust and a limited partner in MSCF – filed a proof of claim [Claim No. 177] asserting that the Debtor mismanaged MSCF during the pendency of the bankruptcy by causing MSCF to sell certain of its assets [Docket No. 1154] (the "Dugaboy Claim"). The Debtor believes that the sales discussed in the Dugaboy Claim are the same MSCF sales alluded to in the Motion. The Debtor is currently negotiating a briefing and discovery schedule with respect to the Dugaboy Claim with Mr. Dondero's counsel – which also represents Dugaboy. Consequently, even if the Motion is denied, the Debtor will still be required to account for its conduct with respect to the MSCF sales.

[8] Without knowing the what nature of the "updates" would have been, the Debtor does not concede that any "updates" would have been procedurally proper and reserves the right to object to any proposed amendment to Mr. Dondero's claims.

estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be paid.

20. Consequently, although in a purely technical sense Mr. Dondero may have standing as a "creditor" to object to asset sales, his standing is attenuated and his chances of recovery in this case are speculative. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had "pecuniary interest. . . directly affected by the bankruptcy proceeding"); *see also In re Flintkote Co*. 486 B.R. 99, 114-15 (Bankr. D. Del. 2012), *aff'd*. 526 B.R. 515 (D. Del. 2014) (a claim that is speculative cannot confer party in interest standing).

21. Mr. Dondero's minimal interest in the estate should not allow him to control the disposition of assets in the ordinary course of the Debtor's business, especially when those asset sales have the blessing of the Debtor's *actual* creditors and constituents. As the court said in *In re Lionel* (a case cited by Mr. Dondero), "a bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, [the judge] should consider all salient factors. . . and . . . act to further the diverse interests of the debtor, creditors and equity holders, alike." 722 F.2d 1063, 1071 (2d Cir. 1983). Mr. Dondero's attempt to re-assert his lost control over the Debtor should be rejected and the Motion should be denied.

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WHEREFORE, for the reasons set forth above, the Debtor respectfully requests that the Court deny the Motion.

Dated: December 11, 2020.

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 34

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
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006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
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007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
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007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
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007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
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007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
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007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
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007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
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008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
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008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

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Counsel and Proposed Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket No. 281

NOTICE OF FINAL TERM SHEET

TO: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) counsel to the Committee; (d) the Debtor's principal secured parties; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The head address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Dondero Ex. 8

PLEASE TAKE NOTICE that on January 9, 2020, the Court held a hearing (the "Hearing") on that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Dkt. No. 281] (the "Motion") filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (collectively, the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Case").

PLEASE TAKE FURTHER NOTICE that at the Hearing, the Debtor presented to the Court an amended and modified version of the Term Sheet (as defined in the Motion) and the exhibits thereto (collectively, the "Amended Term Sheet").

PLEASE TAKE FURTHER NOTICE that the Amended Term Sheet is attached hereto as **Exhibit A.**

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: January 14, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
(*admitted pro hac vice*)
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-and-

HAYWARD & ASSOCIATES PLLC

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Counsel and Proposed Counsel for the Debtor and Debtor-in-Possession

EXHIBIT "A"

Highland Capital Management, L.P.

Preliminary Term Sheet

This term sheet ("Term Sheet") outlines the principal terms of a proposed settlement between Highland Capital Management, L.P. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 case captioned In re Highland Capital Mgm't, L.P, Case No. 19-34054 (SGJ) (the "Chapter 11 Case"), pending in the Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), to resolve a good faith dispute between the parties related to the Debtor's corporate governance, and specifically, the Committee's various objections to certain relief being sought by the Debtors in the Chapter 11 Case [Del. Docket No. 125]. *This Term Sheet shall be subject to approval by the Bankruptcy Court.*

Topic	Proposed Terms
Parties	Highland Capital Management, L.P. (the "Debtor"). The Official Committee of Unsecured Creditors of Highland Capital Management, L.P. (the "Committee").
Independent Directors	The Debtor's general partner, Strand Advisors, Inc., will appoint the following three (3) independent directors (the "Independent Directors"): James Seery, John Dubel, and Judge Russell Nelms. The Independent Directors will be granted exclusive control over the Debtor and its operations. Among other things, the Independent Directors shall conduct a review of all current employees as soon as practicable following the Independent Directors' appointment, determine whether and which employees should be subject to a key employee retention plan and/or key employee incentive plan and, if applicable, propose plan(s) covering such employees. The appointment and powers of the Independent Directors and the corporate governance structure shall be pursuant to the documents attached hereto as **Exhibit A**, which documents shall be satisfactory to the Committee. Once appointed, the Independent Directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the Independent Directors, to object to such removal and replacement). The Independent Directors shall be compensated in a manner to be determined with an understanding that the

	source of funding, whether directly or via reimbursement, will be the Debtor. As soon as practicable after their appointments, the Independent Directors shall, in consultation with the Committee, determine whether an interim Chief Executive Officer (the "CEO") should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as practicable, which may be one of the Independent Directors. Once appointed, the CEO cannot be removed without the Committee's written consent or Order of the Court. The Committee shall have regular, direct access to the Independent Directors, provided, however that (1) if the communications include FTI Consulting Inc. ("FTI"), Development Specialists Inc. ("DSI") shall also participate in such communications; and (2) if the communications include counsel, then either Debtor's counsel or, if retained, counsel to the Independent Directors shall also participate in such communications.
Role of Mr. James Dondero	Upon approval of this Term Sheet by the Bankruptcy Court, Mr. Dondero will (1) resign from his position as a Board of Director of Strand Advisors, Inc., (2) resign as an officer of Strand Advisors, Inc., and (3) resign as President and CEO of the Debtor, and (4) will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.
CRO	DSI shall, subject to approval of the Bankruptcy Court, be retained as chief restructuring officer ("CRO") to the

	Debtor and report to and be directed by the Independent Directors and, if and once appointed, the CEO. The retention and scope of duties of DSI shall be pursuant to the Further Amended Retention Agreement, attached hereto as **Exhibit B**. DSI and all other Debtor professionals shall serve at the direction of the CEO, if any, and the Independent Directors.
Estate Claims	The Committee is granted standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing (collectively, the "Estate Claims"); provided, however, that the term Estate Claims will not include any estate claim or cause of action against any then-current employee of the Debtor other than Mr. Dondero.
Document Management, Preservation, and Production	The Debtor shall be subject to and comply with the document management, preservation, and production requirements attached hereto as **Exhibit C**, which requirements cannot be modified without the consent of the Committee or Court order (the "Document Production Protocol"). Solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control ("Shared Privilege"). With respect to determining if any particular document is subject to the Shared Privilege, the following process shall be followed: (i) the Committee will request documents from the Debtor, (ii) the Debtor shall log all documents requested but withheld on the basis of privilege, (iii) the Debtor shall not withhold documents it understands to be subject to the Shared Privilege; (iv) the Committee will identify each additional document on the log that the Committee believes is subject to the Shared Privilege, and (v) a special master or other third party neutral agreed to by the Committee and the Debtor shall make a determination if such documents are subject to the Shared Privilege. The Committee further agrees that the production of any particular document by

	the Debtor under this process will not be used as a basis for a claim of subject matter waiver.
Reporting Requirements	The Debtor shall be subject to and comply with the reporting requirements attached hereto as **Exhibit D**, which reporting requirements cannot be modified without the consent of the Committee or Court order (the "Reporting Requirements").
Plan Exclusivity	The Independent Directors may elect to waive the Debtor's exclusive right to file a plan under section 1121 of the Bankruptcy Code.
Operating Protocols	The Debtor shall comply with the operating protocols set forth in **Exhibit D** hereto, regarding the Debtor's operation in the ordinary course of business, which protocols cannot be modified without the consent of the Committee or Court order.
Reservation of Rights	This agreement is without prejudice to the Committee's rights to, among other things, seek the appointment of a trustee or examiner at a later date. Nothing herein shall constitute or be construed as a waiver of any right of the Debtor or any other party in interest to contest the appointment of a trustee or examiner, and all such rights are expressly reserved.

Exhibit A

Debtor's Corporate Governance Documents

WRITTEN CONSENT OF SOLE STOCKHOLDER AND DIRECTOR

OF

STRAND ADVISORS, INC.

January 9, 2020

Pursuant to the provisions of the General Corporation Law of the State of Delaware (the "DGCL") and consistent with the provisions of the Certificate of Incorporation (the "Certificate") and Bylaws (the "Bylaws") of Strand Advisors, Inc., a Delaware corporation (the "Company"), the undersigned, being the holder of all of the issued and outstanding shares of common stock, par value $0.01 per share, of the Company and the sole director of the Company (the "Stockholder"), acting by written consent without a meeting pursuant to Section 228 of the DGCL and Article IV, Section 6, and Article XII of the Bylaws, does hereby consent to the adoption of the following resolutions and to the taking of the actions contemplated thereby, in each case with the same force and effect as if presented to and adopted at a meeting of the stockholders:

I. AMENDMENT OF BYLAWS

WHEREAS, it is acknowledged that the Board of Directors of the Company (the "Board") has heretofore been fixed at one (1) and that the Board currently consists of James Dondero;

WHEREAS, pursuant to Article XII of the Bylaws, the Stockholder wishes to amend the Bylaws in the manner set forth on **Appendix A** hereto (the "Bylaws Amendment") to increase the size of the Board from one (1) to three (3) directors, and to add certain provisions respecting director qualifications and the removal of directors; and

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws Amendment is hereby authorized and approved, and the Board is increased from one (1) to three (3) directors;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as may be required to effectuate the Bylaws Amendment; and

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate such Bylaws Amendment is hereby authorized and affirmed.

II. ELECTION OF DIRECTORS

WHEREAS, the Stockholder desires to appoint James Seery, John Dubel, and Russell Nelms to the Board and desires that such individuals constitute the whole Board;

NOW, THEREFORE, BE IT RESOLVED, that James Seery, John Dubel, and Russell Nelms, having consented to act as such, be, and each of them hereby is, appointed as a director, to serve as a director of the Company and to hold such office until such director's respective successor shall have been duly elected or appointed and shall qualify, or until such director's death, resignation or removal;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as

may be required to effectuate the appointment of the foregoing directors, including executing an indemnification agreement in favor of such directors in substantially the form attached hereto as **Appendix B** (each, an "Indemnification Agreement");

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate the appointment of such directors, including the execution of an Indemnification Agreement, is hereby authorized and affirmed.

RESOLVED FURTHER, that James Dondero and any other directors of the Company are hereby removed as directors of the Company;

RESOLVED FURTHER, that the directors appointed pursuant to these resolutions shall, pursuant to the terms of the Bylaws, appoint a Chairman of the Board.

III. STIPULATION WITH THE BANKRUPTCY COURT

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. ("HCMLP") filed for chapter 11 bankruptcy protection in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Bankruptcy Case");

WHEREAS, the Company is the general partner for HCMLP;

WHEREAS, the Bankruptcy Case was transferred to the Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-sgj11 (the "Texas Court") by order of the Bankruptcy Court for the District of Delaware on December 4, 2019;

WHEREAS, the Company and the Stockholder wish to enter into a stipulation (the "Stipulation") with HCMLP and the Official Unsecured Creditors Committee appointed in the Bankruptcy Case (the "Committee"), such Stipulation to be approved by the Texas Court, whereby the Stockholder will agree (a) not to transfer or assign his shares in the Company or exercise the voting power of such shares to remove any member of the Board appointed pursuant to these resolutions or further change the authorized number of directors from three (3) directors; (b) to exercise the voting power of his shares so as to cause each member of the Board appointed by these resolutions to be re-elected upon the expiration of his or her term; (c) upon the death, disability, or resignation of a member of the Board, will exercise the voting power of such shares so as to cause the resulting vacancy to be filled by a successor that is both independent and (i) acceptable to the Stockholder and the Committee or (ii) selected by the remaining members of the Board; and (d) not take any action or exercise the voting power of such shares in any way that is inconsistent with the term sheet agreed to by HCMLP and the Committee and any order of the Texas Court approving such agreement and compromise between HCMLP and the Committee;

WHEREAS, for purposes of the Stipulation, "independent" would exclude the Stockholder, any affiliate of the Stockholder, and any member of management of the Company; and

WHEREAS, it is in the intent of the parties that the Stipulation will no longer be effective or bind the Company or the Stockholder following the termination of the Bankruptcy Case.

NOW, THEREFORE, BE IT RESOLVED, that the Company is authorized to take such actions as may be necessary to enter into and effectuate the Stipulation in the manner and on the terms set forth above, including, but not limited to, further amending the Certificate, Bylaws, or any other corporate governance documents; and

RESOLVED FURTHER, that Scott Ellington, as an officer of the Company, is authorized to take any such actions as may be required to enter into and effectuate the Stipulation in the manner set forth herein; and

RESOLVED FURTHER, that any action taken by Scott Ellington or any other officer of the Company on or prior to the date hereof to effectuate such Stipulation is hereby authorized and affirmed.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned has executed this Written Consent as of the respective date and year first appearing above.

STOCKHOLDER:

_____
James Dondero

[Signature Page to Written Consent of Sole Stockholder of Strand Advisors, Inc.]

First Amendment to Bylaws of
Strand Advisors, Inc.

Strand Advisors, Inc. (the "Company"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that the Company's sole stockholder, acting by written consent without a meeting, resolved to amend the Company's Bylaws (the "Bylaws") as follows:

1. Article III, Section 2, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be three (3).

2. Article III, Section 5, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 5. Director Qualifications. Each director appointed to serve on the Board shall (A) (i) be an independent director, (ii) not be affiliated with the corporation's stockholders, and (iii) not be an officer of the corporation; and (B) have been (x) nominated by the official committee of unsecured creditors (the "Committee") appointed in the chapter 11 bankruptcy of Highland Capital Management, L.P. (the "Debtor") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Court"), Case No. 19-34054-sgj11 and reasonably acceptable to the stockholders; (y) nominated by the stockholders and acceptable to the Committee; or (z) selected by the duly appointed independent directors.

3. The following shall be added as Section 6 to Article III of the Bylaws:

> Section 6. Removal of Directors. Once appointed, the independent directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the independent directors, to object to such removal and replacement).

Except as expressly amended hereby, the terms of the Company's Bylaws shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this amendment to be signed this 9th day of January, 2020.

STRAND ADVISORS, INC.

_____
By: Scott Ellington
Its: Secretary

INSERT STRAND ADVISORS, INC. LETTERHEAD

[_____]

[NAME]
[ADDRESS]
[ADDRESS]
[ADDRESS]

Re: Strand Advisors, Inc. – Director Agreement

Dear [_____]:

On behalf of Strand Advisors, Inc. (the "Company"), I am pleased to have you join the Company's Board of Directors. This letter sets forth the terms of the Director Agreement (the "Agreement") that the Company is offering to you.

1. APPOINTMENT TO THE BOARD OF DIRECTORS.

a. Title, Term and Responsibilities.

i. Subject to terms set forth herein, the Company agrees to appoint you to serve as a Director on the Company's Board of Directors (the "Board"), and you hereby accept such appointment the date you sign this Agreement (the "Effective Date"). You will serve as a Director of the Board from the Effective Date until you voluntarily resign, are removed from the Board, or are not re-elected (the "Term"). Your rights, duties and obligations as a Director shall be governed by the Certificate of Incorporation and Bylaws of the Company, each as amended from time to time (collectively, the "Governing Documents"), except that where the Governing Documents conflict with this Agreement, this Agreement shall control.

ii. You acknowledge and understand that the Company is the general partner of Highland Capital Management, L.P. ("HCMLP") and that HCMLP is currently the debtor in possession in a chapter 11 bankruptcy proceeding (the "Bankruptcy") pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). Your rights, duties, and obligations may in certain instances require your involvement, either directly or indirectly, in the Bankruptcy and such rights, duties, and obligations may be impacted in whole or in part by the Bankruptcy.

b. Mandatory Board Meeting Attendance. As a Director, you agree to apply all reasonable efforts to attend each regular meeting of the Board. You also agree to devote sufficient time to matters that may arise at the Company from time to time that require your attention as a Director.

c. Independent Contractor. Under this Agreement, your relationship with the Company will be that of an independent contractor as you will not be an employee of the Company nor eligible to participate in regular employee benefit and compensation plans of the Company.

d. Information Provided by the Company. The Company shall: (i) provide you with reasonable access to management and other representatives of the Company and HCMLP; and (ii) furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company and HCMLP that you request in connection with the services to be provided to the Company. You will rely, without further independent verification,

on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by you in connection with the services performed for the Company. The Company acknowledges and agrees that you are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein, provided that if you become aware of material inaccuracies or errors in any such information you shall promptly notify the Board of such errors, inaccuracies or concerns.

2. COMPENSATION AND BENEFITS.

a. Retainer. The Company will pay you a retainer for each month you serve on the Board (the "Retainer") to be paid in monthly installments of (a) $60,000 for each of the first three months, (b) $50,000 for each of the next three months, and (c) $30,000 for each of the following six months. The parties will re-visit the Retainer after the sixth month. The Company's obligation to pay the Retainer will cease upon the termination of the Term.

b. Expense Reimbursement. The Company will reimburse you for all reasonable travel or other expenses, including expenses of counsel, incurred by you in connection with your services hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

c. Invoices; Payment.

i. In order to receive the compensation and reimbursement set forth in this Section 2, you are required to send to the Company regular monthly invoices indicating your fees, costs, and expenses incurred. Payment of the Retainer will be due on the first business day of each month regardless of whether an invoice has been provided. Reimbursement of expenses will also occur on the first business day of each month, subject to the Company's receipt of appropriate documentation required by the Company's expenses reimbursement policy.

ii. You further agree that the Company's obligation to pay the compensation and reimbursement set forth in this Section 2 is conditioned in all respects on the entry of a final order in the court overseeing the Bankruptcy that authorizes and requires HCMLP to reimburse the Company for all such payments to you.

d. Indemnification; D&O Insurance. You will receive indemnification as a Director of the Company on the terms set forth in that certain Indemnification Agreement, dated [_____], a copy of which is attached hereto as **Appendix A** (the "Indemnification Agreement"). You will also be provided coverage under the Company's directors' and officers' insurance policy as set forth in the Indemnification Agreement.

e. Tax Indemnification. You acknowledge that the Company will not be responsible for the payment of any federal or state taxes that might be assessed with respect to the Retainer and you agree to be responsible for all such taxes.

3. PROPRIETARY INFORMATION OBLIGATIONS.

a. Proprietary Information. You agree that during the Term and thereafter that you will take all steps reasonably necessary to hold all information of the Company, its affiliates, and related entities, which a reasonable person would believe to be confidential or proprietary information, in trust and confidence, and not disclose any such confidential or proprietary information to any third party without first obtaining the Company's express written consent on a case-by-case basis.

b. Third Party Information. The Company has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. You agree to hold such Third Party Information in confidence and not to disclose it to anyone (other than Company personnel who need to know such information in connection with their work for Company) or to use, except in connection with your services for Company under this Agreement, Third Party Information unless expressly authorized in writing by the Company.

c. Return of Company Property. Upon the end of the Term or upon the Company's earlier request, you agree to deliver to the Company any and all notes, materials and documents, together with any copies thereof, which contain or disclose any confidential or proprietary information or Third Party Information.

4. OUTSIDE ACTIVITIES.

a. Investments and Interests. Except as permitted by Section 4(b), you agree not to participate in, directly or indirectly, any position or investment known by you to be materially adverse to the Company or any of its affiliates or related entities.

b. Activities. Except with the prior written consent of the Board, you will not during your tenure as a member of the Company's Board undertake or engage in any other directorship, employment or business enterprise in direct competition with the Company or any of its affiliates or related entities, other than ones in which you are a passive investor or other activities in which you were a participant prior to your appointment to the Board as disclosed to the Company.

c. Other Agreements. You agree that you will not disclose to the Company or use on behalf of the Company any confidential information governed by any agreement between you and any third party except in accordance with such agreement.

5. TERMINATION OF DIRECTORSHIP.

a. Voluntary Resignation, Removal Pursuant to Bylaws. You may resign from the Board at any time with or without advance notice, with or without reason. Subject to any orders or agreements entered into in connection with the Bankruptcy, you may be removed from the Board at any time, for any reason, in any manner provided by the Governing Documents and applicable law.

b. Continuation. The provisions of this Agreement that give the parties rights or obligations beyond the termination of this Agreement will survive and continue to bind the parties.

c. Payment of Fees; Reimbursement. Following termination of this Agreement, any undisputed fees and expenses due to you will be remitted promptly following receipt by the Company of any outstanding invoices.

6. GENERAL PROVISIONS.

a. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal or unenforceable such provision will be reformed, construed and enforced to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

b. Entire Agreement. This Agreement constitutes the entire agreement between you and the Company with respect to your service as a Director and supersedes any prior agreement, promise, representation or statement written between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by the party or parties affected by such modification or amendment.

c. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you and the Company and our respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your rights or duties hereunder.

d. Governing Law. This Agreement will be governed by the law of the State of Delaware as applied to contracts made and performed entirely within Delaware.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer, please sign and date this Agreement below.

Sincerely,

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

[Signature Page Follows]

ACCEPTED AND AGREED:

_____
[NAME]
Date: _____

INDEMNIFICATION AND GUARANTY AGREEMENT

This Indemnification and Guaranty Agreement ("**Agreement**"), dated as of [_____], is by and between STRAND ADVISORS, INC., a Delaware corporation (the "**Company**"), HIGHLAND CAPITAL MANAGEMENT, LP, a Delaware partnership (the "**Debtor**") (solely as to Section 29 hereunder), and [_____] (the "**Indemnitee**").

WHEREAS, the Company is the general partner of the Debtor and, in such capacity, manages the business affairs of the Debtor;

WHEREAS, Indemnitee has agreed to serve as a member of the Company's board of directors (the "**Board**") effective as of the date hereof;

WHEREAS, the Board has determined that enhancing the ability of the Company, on its own behalf and for the benefit of the Debtor, to retain and attract as directors the most capable Persons is in the best interests of the Company and the Debtor and that the Company and the Debtor therefore should seek to assure such Persons that indemnification and insurance coverage is available; and

WHEREAS, in recognition of the need to provide Indemnitee with protection against personal liability, in order to procure Indemnitee's service as a director of the Company, in order to enhance Indemnitee's ability to serve the Company in an effective manner and in order to provide such protection pursuant to express contract rights (intended to be enforceable irrespective of, among other things, any amendment to the Company's Bylaws (as may be amended further from time to time, the "**Bylaws**"), any change in the composition of the Board or any change in control, business combination or similar transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of, and the advancement of Expenses (as defined in Section 1(g) below) to, Indemnitee as set forth in this Agreement and for the coverage of Indemnitee under the Company's directors' and officers' liability or similar insurance policies ("**D&O Insurance**").

NOW, THEREFORE, in consideration of the foregoing and the Indemnitee's agreement to provide services to the Company, the parties (including the Debtor solely as to Section 29 hereunder) agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "**Change in Control**" means the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions (including any merger or consolidation or whether by operation of law or otherwise), of all or substantially all of the properties or assets of the Company and its subsidiaries, to a third party purchaser (or group of affiliated third party purchasers) or (ii) the consummation of any transaction (including any merger or consolidation or whether by operation of law or otherwise), the result of which is that a third party purchaser (or group of affiliated third party purchasers) becomes the beneficial

owner, directly or indirectly, of more than fifty percent (50%) of the then outstanding Shares or of the surviving entity of any such merger or consolidation.

(b) "**Claim**" means:

(i) any threatened, pending or completed action, suit, claim, demand, arbitration, inquiry, hearing, proceeding or alternative dispute resolution mechanism, or any actual, threatened or completed proceeding, including any and all appeals, in each case, whether brought by or in the right of the Company or otherwise, whether civil, criminal, administrative, arbitrative, investigative or other, whether formal or informal, and whether made pursuant to federal, state, local, foreign or other law, and whether or not commenced prior to the date of this Agreement, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of or relating to either (a) any action or alleged action taken by Indemnitee (or failure or alleged failure to act) or of any action or alleged action (or failure or alleged failure to act) on Indemnitee's part, while acting in his or her Corporate Status or (b) the fact that Indemnitee is or was serving at the request of the Company or any subsidiary of the Company as director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise, in each case, whether or not serving in such capacity at the time any Loss or Expense is paid or incurred for which indemnification or advancement of Expenses can be provided under this Agreement, except one initiated by Indemnitee to enforce his or her rights under this Agreement; or

(ii) any inquiry, hearing or investigation that the Indemnitee determines might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism.

(c) "**Controlled Entity**" means any corporation, limited liability company, partnership, joint venture, trust or other Enterprise, whether or not for profit, that is, directly or indirectly, controlled by the Company. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of an Enterprise, whether through the ownership of voting securities, through other voting rights, by contract or otherwise.

(d) "**Corporate Status**" means the status of a Person who is or was a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of the Company or of any other Enterprise which such Person is or was serving at the request of the Company or any subsidiary of the Company. In addition to any service at the actual request of the Company, Indemnitee will be deemed, for purposes of this Agreement, to be serving or to have served at the request of the Company or any subsidiary of the Company as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise if Indemnitee is or was serving as a director, officer, employee, partner, member, manager, fiduciary, trustee or agent of such Enterprise and (i) such Enterprise is or at the time of such service was a Controlled Entity, (ii) such Enterprise is or at the time of such service was an employee benefit plan (or related trust) sponsored or maintained by the Company or a Controlled Entity or (iii) the Company or a

Controlled Entity, directly or indirectly, caused Indemnitee to be nominated, elected, appointed, designated, employed, engaged or selected to serve in such capacity.

(e) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Claim in respect of which indemnification is sought by Indemnitee. Under no circumstances will James Dondero be considered a Disinterested Director.

(f) "**Enterprise**" means the Company or any subsidiary of the Company or any other corporation, partnership, limited liability company, joint venture, employee benefit plan, trust or other entity or other enterprise of which Indemnitee is or was serving at the request of the Company or any subsidiary of the Company in a Corporate Status.

(g) "**Expenses**" means any and all expenses, fees, including attorneys', witnesses' and experts' fees, disbursements and retainers, court costs, transcript costs, travel expenses, duplicating, printing and binding costs, telephone charges, postage, fax transmission charges, secretarial services, delivery services fees, and all other fees, costs, disbursements and expenses paid or incurred in connection with investigating, defending, prosecuting, being a witness in or participating in (including on appeal), or preparing to defend, prosecute, be a witness or participate in, any Claim. Expenses also shall include (i) Expenses paid or incurred in connection with any appeal resulting from any Claim, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 4 only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute thereto, and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

(i) "**Expense Advance**" means any payment of Expenses advanced to Indemnitee by the Company pursuant to Section 4 or Section 5 hereof.

(j) "**Indemnifiable Event**" means any event or occurrence, whether occurring before, on or after the date of this Agreement, related to the fact that Indemnitee is or was a manager, director, officer, employee or agent of the Company or any subsidiary of the Company, or is or was serving at the request of the Company or any subsidiary of the Company as a manager, director, officer, employee, member, manager, trustee or agent of any other Enterprise or by reason of an action or inaction by Indemnitee in any such capacity (whether or not serving in such capacity at the time any Loss is incurred for which indemnification can be provided under this Agreement).

(k) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently performs, nor in the past three (3) years has performed, services for any of: (i) James Dondero, (ii) the

Company or Indemnitee (other than in connection with matters concerning Indemnitee under this Agreement or of other indemnitees under similar agreements), or (iii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) "**Losses**" means any and all Expenses, damages, losses, liabilities, judgments, fines (including excise taxes and penalties assessed with respect to employee benefit plans and ERISA excise taxes), penalties (whether civil, criminal or other), amounts paid or payable in settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other charges paid or payable in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim.

(m) "**Person**" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity and includes the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act.

(n) "**Shares**" means an ownership interest of a member in the Company, including each of the common shares of the Company or any other class or series of Shares designated by the Board.

(o) References to "**serving at the request of the Company**" include any service as a director, manager, officer, employee, representative or agent of the Company which imposes duties on, or involves services by, such director, manager, officer, employee or agent, including but not limited to any employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interests of the Company in Indemnitee's capacity as a director, manager, officer, employee, representative or agent of the Company, including but not limited to acting in the best interest of participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to under applicable law or in this Agreement.

2. Indemnification.

(a) Subject to Section 9 and Section 10 of this Agreement, the Company shall indemnify and hold Indemnitee harmless, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Losses and Expenses if Indemnitee was or is or becomes a party to or participant in, or is threatened to be made a party to or participant in, any Claim by reason of or arising in part out of an Indemnifiable Event, including, without limitation, Claims

brought by or in the right of the Company, Claims brought by third parties, and Claims in which the Indemnitee is solely a witness.

(b) For the avoidance of doubt, the indemnification rights and obligations contained herein shall also extend to any Claim in which the Indemnitee was or is a party to, was or is threatened to be made a party to or was or is otherwise involved in any capacity in by reason of Indemnitee's Corporate Status as a fiduciary capacity with respect to an employee benefit plan. In connection therewith, if the Indemnitee has acted in good faith and in a manner which appeared to be consistent with the best interests of the participants and beneficiaries of an employee benefit plan and not opposed thereto, the Indemnitee shall be deemed to have acted in a manner not opposed to the best interests of the Company.

3. Contribution.

(a) Whether or not the indemnification provided in Section 2 is available, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Claim in which the Company is jointly liable with Indemnitee (or would be if joined in such Claim), the Company shall contribute to the amount of Losses paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Claim arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors, managers or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such Losses, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(b) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, managers or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(c) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes,

amounts paid or to be paid in settlement and/or for Expenses, in connection with any Claim relating to an Indemnifiable Event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Claim in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Claim; and/or (ii) the relative fault of the Company (and its directors, managers, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Advancement of Expenses. The Company shall, if requested by Indemnitee, advance, to the fullest extent permitted by law, to Indemnitee (an "**Expense Advance**") any and all Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any Claim arising out of an Indemnifiable Event (whether prior to or after its final disposition). Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of the foregoing, within thirty (30) business days after any request by Indemnitee, the Company shall, in accordance with such request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. In connection with any request for Expense Advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Execution and delivery to the Company of this Agreement by Indemnitee constitutes an undertaking by the Indemnitee to repay any amounts paid, advanced or reimbursed by the Company pursuant to this Section 4, the final sentence of Section 9(b), or Section 11(b) in respect of Expenses relating to, arising out of or resulting from any Claim in respect of which it shall be determined, pursuant to Section 9, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. No other form of undertaking shall be required other than the execution of this Agreement. Each Expense Advance will be unsecured and interest free and will be made by the Company without regard to Indemnitee's ability to repay the Expense Advance.

5. Indemnification for Expenses in Enforcing Rights. To the fullest extent allowable under applicable law, the Company shall also indemnify against, and, if requested by Indemnitee, shall advance to Indemnitee subject to and in accordance with Section 4, any Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any action or proceeding by Indemnitee for (a) indemnification or reimbursement or advance payment of Expenses by the Company under any provision of this Agreement, or under any other agreement or provision of the Bylaws now or hereafter in effect relating to Claims relating to Indemnifiable Events, and/or (b) recovery under any D&O Insurance maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery, as the case may be. Indemnitee shall be required to reimburse the Company in the event that a final judicial determination is made that such action brought by Indemnitee was frivolous or not made in good faith.

6. Partial Indemnity. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of any Losses in respect of a Claim

related to an Indemnifiable Event but not for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

7. Notification and Defense of Claims.

(a) Notification of Claims. Indemnitee shall notify the Company in writing as soon as reasonably practicable of any Claim which could relate to an Indemnifiable Event or for which Indemnitee could seek Expense Advances, including a brief description (based upon information then available to Indemnitee) of the nature of, and the facts underlying, such Claim, to the extent then known. The failure by Indemnitee to timely notify the Company hereunder shall not relieve the Company from any liability hereunder except to the extent the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure. If at the time of the receipt of such notice, the Company has D&O Insurance or any other insurance in effect under which coverage for Claims related to Indemnifiable Events is potentially available, the Company shall give prompt written notice to the applicable insurers in accordance with the procedures, provisions, and terms set forth in the applicable policies. The Company shall provide to Indemnitee a copy of such notice delivered to the applicable insurers, and copies of all subsequent correspondence between the Company and such insurers regarding the Claim, in each case substantially concurrently with the delivery or receipt thereof by the Company.

(b) Defense of Claims. The Company shall be entitled to participate in the defense of any Claim relating to an Indemnifiable Event at its own expense and, except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any such Claim, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently directly incurred by Indemnitee in connection with Indemnitee's defense of such Claim other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own legal counsel in such Claim, but all Expenses related to such counsel incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's own expense; provided, however, that if (i) Indemnitee's employment of its own legal counsel has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of such Claim, (iii) after a Change in Control, Indemnitee's employment of its own counsel has been approved by the Independent Counsel or (iv) the Company shall not in fact have employed counsel to assume the defense of such Claim, then Indemnitee shall be entitled to retain its own separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any such Claim) and all Expenses related to such separate counsel shall be borne by the Company.

8. Procedure upon Application for Indemnification. In order to obtain indemnification pursuant to this Agreement, Indemnitee shall submit to the Company a written request therefor, including in such request such documentation and information as

is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Claim, provided that documentation and information need not be so provided to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnification shall be made insofar as the Company determines Indemnitee is entitled to indemnification in accordance with Section 9 below.

9. Determination of Right to Indemnification.

(a) Mandatory Indemnification; Indemnification as a Witness.

(i) To the extent that Indemnitee shall have been successful on the merits or otherwise in defense of any Claim relating to an Indemnifiable Event or any portion thereof or in defense of any issue or matter therein, including without limitation dismissal without prejudice, Indemnitee shall be indemnified against all Losses relating to such Claim in accordance with Section 2, and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(ii) To the extent that Indemnitee's involvement in a Claim relating to an Indemnifiable Event is to prepare to serve and serve as a witness, and not as a party, the Indemnitee shall be indemnified against all Losses incurred in connection therewith to the fullest extent allowable by law and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(b) Standard of Conduct. To the extent that the provisions of Section 9(a) are inapplicable to a Claim related to an Indemnifiable Event that shall have been finally disposed of, any determination of whether Indemnitee has satisfied any applicable standard of conduct under Delaware law that is a legally required condition to indemnification of Indemnitee hereunder against Losses relating to such Claim and any determination that Expense Advances must be repaid to the Company (a "**Standard of Conduct Determination**") shall be made as follows:

(i) if no Change in Control has occurred, (A) by a majority vote of the Disinterested Directors, even if less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum or (C) if there are no such Disinterested Directors, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee; and

(ii) if a Change in Control shall have occurred, (A) if the Indemnitee so requests in writing, by a majority vote of the Disinterested Directors, even if less than a quorum of the Board or (B) otherwise, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee.

Subject to Section 4, the Company shall indemnify and hold Indemnitee harmless against and, if requested by Indemnitee, shall reimburse Indemnitee for, or advance to Indemnitee, within thirty (30) business days of such request, any and all Expenses

incurred by Indemnitee in cooperating with the Person or Persons making such Standard of Conduct Determination.

(c) Making the Standard of Conduct Determination. The Company shall use its reasonable best efforts to cause any Standard of Conduct Determination required under Section 9(b) to be made as promptly as practicable. If the Person or Persons designated to make the Standard of Conduct Determination under Section 9(b) shall not have made a determination within ninety (90) days after the later of (A) receipt by the Company of a written request from Indemnitee for indemnification pursuant to Section 8 (the date of such receipt being the "**Notification Date**") and (B) the selection of an Independent Counsel, if such determination is to be made by Independent Counsel, then Indemnitee shall be deemed to have satisfied the applicable standard of conduct; provided that such 90-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the Person or Persons making such determination in good faith requires such additional time to obtain or evaluate information relating thereto. Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of any Claim.

(d) Payment of Indemnification. If, in regard to any Losses:

(i) Indemnitee shall be entitled to indemnification pursuant to Section 9(a);

(ii) no Standard of Conduct Determination is legally required as a condition to indemnification of Indemnitee hereunder; or

(iii) Indemnitee has been determined or deemed pursuant to Section 9(b) or Section 9(c) to have satisfied the Standard of Conduct Determination,

then the Company shall pay to Indemnitee, within thirty (30) business days after the later of (A) the Notification Date or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) is satisfied, an amount equal to such Losses.

(e) Selection of Independent Counsel for Standard of Conduct Determination. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(i), the Independent Counsel shall be selected by the Board and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(ii), the Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, Indemnitee or the Company, as applicable, may, within thirty (3) business days after receiving written notice of selection from the other, deliver to the other a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not satisfy the criteria set forth in the definition of "Independent Counsel" in Section 1(k), and the objection shall

set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the Person or firm so selected shall act as Independent Counsel. If such written objection is properly and timely made and substantiated, (i) the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit; and (ii) the non-objecting party may, at its option, select an alternative Independent Counsel and give written notice to the other party advising such other party of the identity of the alternative Independent Counsel so selected, in which case the provisions of the two immediately preceding sentences, the introductory clause of this sentence and numbered clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no Independent Counsel that is permitted under the foregoing provisions of this Section 9(e) to make the Standard of Conduct Determination shall have been selected within twenty (20) days after the Company gives its initial notice pursuant to the first sentence of this Section 9(e) or Indemnitee gives its initial notice pursuant to the second sentence of this Section 9(e), as the case may be, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware ("**Delaware Court**") to resolve any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or to appoint as Independent Counsel a Person to be selected by the Court or such other Person as the Court shall designate, and the Person or firm with respect to whom all objections are so resolved or the Person or firm so appointed will act as Independent Counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the Independent Counsel incurred in connection with the Independent Counsel's determination pursuant to Section 9(b).

(f) Presumptions and Defenses.

(i) Indemnitee's Entitlement to Indemnification. In making any Standard of Conduct Determination, the Person or Persons making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification, and the Company shall have the burden of proof to overcome that presumption and establish that Indemnitee is not so entitled. Any Standard of Conduct Determination that is adverse to Indemnitee may be challenged by the Indemnitee in the Delaware Court. No determination by the Company (including by its Board or any Independent Counsel) that Indemnitee has not satisfied any applicable standard of conduct may be used as a defense to enforcement by Indemnitee of Indemnitee's rights of indemnification or reimbursement or advance of payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(ii) Reliance as a Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports

or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, manager, officer, agent or employee of the Company (other than Indemnitee) shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(iii) Defense to Indemnification and Burden of Proof. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a claim for Losses incurred in defending against a Claim related to an Indemnifiable Event in advance of its final disposition) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any related Standard of Conduct Determination, the burden of proving such a defense or that the Indemnitee did not satisfy the applicable standard of conduct shall be on the Company.

10. Exclusions from Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated to:

(a) indemnify or advance funds to Indemnitee for Losses with respect to proceedings initiated by Indemnitee, including any proceedings against the Company or its managers, officers, employees or other indemnitees and not by way of defense, except:

(i) proceedings referenced in Section 4 above (unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous); or

(ii) where the Company has joined in or the Board has consented to the initiation of such proceedings.

(b) indemnify Indemnitee if a final decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law.

(c) indemnify Indemnitee for the disgorgement of profits arising from the purchase or sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Exchange Act, or any similar successor statute.

11. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 9 that Indemnitee is not entitled to indemnification under this Agreement, (ii) an Expense Advance is not timely made pursuant to Section 4, (iii) no determination of entitlement to indemnification is made pursuant to Section 9 within 90 days after receipt by the Company of the request for indemnification, or (iv) payment of indemnification is not made pursuant Section 9(d), Indemnitee shall be entitled to an adjudication in a Delaware Court, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such

indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that Indemnitee, pursuant to this Section 11, seeks a judicial adjudication or arbitration of his or her rights under, or to recover damages for breach of, this Agreement, any other agreement for indemnification, payment of Expenses in advance or contribution hereunder or to recover under any director, manager, and officer liability insurance policies or any other insurance policies maintained by the Company, the Company will, to the fullest extent permitted by law and subject to Section 4, indemnify and hold harmless Indemnitee against any and all Expenses which are paid or incurred by Indemnitee in connection with such judicial adjudication or arbitration, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, payment of Expenses in advance or contribution or insurance recovery. In addition, if requested by Indemnitee, subject to Section 4 the Company will (within thirty (30) days after receipt by the Company of the written request therefor), pay as an Expense Advance such Expenses, to the fullest extent permitted by law.

(c) In the event that a determination shall have been made pursuant to Section 9 that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 11 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 9.

(d) If a determination shall have been made pursuant to Section 9 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 11, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

12. Settlement of Claims. The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any threatened or pending Claim related to an Indemnifiable Event effected without the Company's prior written consent, which shall not be unreasonably withheld; provided, however, that if a Change in Control has occurred, the Company shall be liable for indemnification of the Indemnitee for amounts paid in settlement if an Independent Counsel (which, for purposes of this Section 12, shall be selected by the Company with the prior consent of the Indemnitee, such consent not to be unreasonably withheld or delayed) has approved the settlement. The Company shall not settle any Claim related to an Indemnifiable Event in any manner that would impose any Losses on the Indemnitee without the Indemnitee's prior written consent.

13. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a manager of the Company (or is serving at the request of the Company as a director, manager, officer, employee, member, trustee or

agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to an Indemnifiable Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

14. Other Indemnitors. The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by certain private equity funds, hedge funds or other investment vehicles or management companies and/or certain of their affiliates and by personal policies (collectively, the "**Other Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Other Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 14.

15. Non-Exclusivity. The rights of Indemnitee hereunder will be in addition to any other rights Indemnitee may have under the Bylaws, the General Corporation Law of the State of Delaware (as may be amended from time to time, the "**DGCL**"), any other contract, in law or in equity, and under the laws of any state, territory, or jurisdiction, or otherwise (collectively, "**Other Indemnity Provisions**"). The Company will not adopt any amendment to its Bylaws the effect of which would be to deny, diminish, encumber or limit Indemnitee's right to indemnification under this Agreement or any Other Indemnity Provision.

16. Liability Insurance. For the duration of Indemnitee's service as a director of the Company, and thereafter for so long as Indemnitee shall be subject to any pending Claim relating to an Indemnifiable Event, the Company shall use best efforts to continue to maintain in effect policies of D&O Insurance providing coverage that is at least substantially comparable in scope and amount to that provided by similarly situated companies. In all policies of D&O Insurance maintained by the Company, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights

and benefits as are provided to the most favorably insured of the Company's directors. Upon request, the Company will provide to Indemnitee copies of all D&O Insurance applications, binders, policies, declarations, endorsements and other related materials.

17. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment to Indemnitee in respect of any Losses to the extent Indemnitee has otherwise received payment under any insurance policy, any Other Indemnity Provisions or otherwise of the amounts otherwise indemnifiable by the Company hereunder.

18. Subrogation. In the event of payment to Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee. Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

19. Indemnitee Consent. The Company will not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (a) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or a Loss for which Indemnitee is not wholly indemnified hereunder or (b) with respect to any Claim with respect to which Indemnitee may be or is made a party or a participant or may be or is otherwise entitled to seek indemnification hereunder, does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Claim, which release will be in form and substance reasonably satisfactory to Indemnitee. Neither the Company nor Indemnitee will unreasonably withhold its consent to any proposed settlement; provided, however, Indemnitee may withhold consent to any settlement that does not provide a full and unconditional release of Indemnitee from all liability in respect of such Claim.

20. Amendments. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume

and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

22. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or contrary to the DGCL or existing or future applicable law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it valid, enforceable and legal within the requirements of any applicable law, and in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid, unenforceable or illegal provisions.

23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed, by postage prepaid, certified or registered mail:

(a) if to Indemnitee, to the address set forth on the signature page hereto.

(b) if to the Company, to:

Strand Advisors, Inc.
Attention: Isaac Leventon
Address: 300 Crescent Court, Suite 700
Dallas, Texas 75201
Email: ileventon@highlandcapital.com

Notice of change of address shall be effective only when given in accordance with this Section 23. All notices complying with this Section 23 shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

24. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (OTHER THAN ITS RULES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY).

25. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such court lacks subject matter jurisdiction, in the Superior Court of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably

consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

26. Enforcement.

(a) Without limiting Section 15, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(b) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of Expenses under this Agreement other than in accordance with this Agreement.

27. Headings and Captions. All headings and captions contained in this Agreement and the table of contents hereto are inserted for convenience only and shall not be deemed a part of this Agreement.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. Facsimile counterpart signatures to this Agreement shall be binding and enforceable.

29. Guaranty By Debtor. The Debtor guarantees to Indemnitee the performance of the obligations of the Company hereunder (the "**Guaranteed Obligations**"). If the Company does not satisfy any of the Guaranteed Obligations when due, Indemnitee may demand that the Debtor satisfy such obligations and the Debtor shall be required to do so by making payment to, or for the benefit of, Indemnitee. Indemnitee can make any number of demands upon the Debtor and such demands can be made for all or part of the Guaranteed Obligations. This guaranty by the Debtor is for the full amount of the Guaranteed Obligations. The Debtor's obligations under this Agreement are continuing. Even though Indemnitee receives payments from or makes arrangements with the Company or anyone else, the Debtor shall remain liable for the Guaranteed Obligations until satisfied in full. The guaranty hereunder is a guaranty of payment, and not merely of collectability, and may be enforced against the Debtor. The Debtor's liability under this Section 29 is unconditional. It is not affected by anything that might release the Debtor from or limit all or part of its obligations.

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

STRAND ADVISORS, INC.

By: _____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, LP (solely as to Section 29 hereunder)

By: _____
Name:
Title:

INDEMNITEE:

_____

Name: [_____]
Address: _____
_____
_____

Email:

Exhibit B

Amended DSI Retention Letter

January ___, 2020

Attn: Independent Directors
Highland Capital Management, LP
300 Crescent Court, Ste. 700
Dallas, TX 75201

Re: Development Specialists, Inc. ("DSI")
Retention and Letter of Engagement

Dear Members of the Board:

Please accept this letter as our firm's formal written agreement (the "Agreement") to provide restructuring support services to Highland Capital Management, L.P. (the "Company"). This Agreement replaces and supersedes in all respects the letter agreement between DSI and the Company, dated October 7, 2019, as amended and revised by the letter agreement dated October 29, 2019. However, all fees and expenses incurred by DSI prior to the date hereof in accordance with such prior letter agreements will be paid by the Company, subject to allowance of such fees and expenses by the U.S. Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). The Agreement will become effective upon execution by duly authorized representatives of the respective parties and approval of the Bankruptcy Court.

Section 1 – Scope of Work

DSI will provide the following services (the "Services") to the Company:

1. Bradley D. Sharp will act as the Company's Chief Restructuring Officer ("CRO") with other DSI personnel to assist Mr. Sharp in carrying out those duties and responsibilities.
2. Subject to the terms of this Agreement, Mr. Sharp will report to the Independent Directors and, if appointed, the Chief Executive Officer of the Company ("CEO") and will comply with the Company's corporate governance requirements.
3. Mr. Sharp will fulfill such duties as directed by the Independent Directors and/or CEO, if any, of the Company with respect to the Company's restructuring and bankruptcy filed on October 16, 2019 (the "Chapter 11 Case"), including implementation and prosecution of the Chapter 11 Case.
4. Provide other personnel of DSI ("Additional Personnel") to provide restructuring support services as requested or required to the Company, which may include but are not limited to:
    a. assisting the Company in the preparation of financial disclosures required by the Bankruptcy Code, including the Schedules of Assets and Liabilities, the Statements of Financial Affairs and Monthly Operating Reports;

b. advising and assisting the Company, the Company's legal counsel, and other professionals in responding to third party requests;
c. attending meetings and assisting in communications with parties in interest and their professionals, including the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case;
d. providing litigation advisory services with respect to accounting matters, along with expert witness testimony on case related issues; and
e. rendering such other general business consulting services or other assistance as the Company may deem necessary and which are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this case.

DSI's ability to adequately perform the Services is dependent upon the Company timely providing reliable, accurate, and complete necessary information. The Company agrees that CRO will have (i) access to and the ability to communicate with any employee of the Company or any affiliate of the Company and (ii) access to any information, including documents, relating to the Company or any Company affiliate, including, but not limited to, information concerning collections and disbursements. The Company acknowledges that DSI or CRO are not responsible for independently verifying the veracity, completeness, or accuracy of any information supplied to us by or on behalf of the Company.

DSI will submit its evaluations and analyses pursuant to this Agreement in periodic oral and written reports. Such reports are intended to and shall constitute privileged and confidential information, and shall constitute the Company's property.

Although we do not predict or warrant the outcome of any particular matter or issue, and our fees are not dependent upon such outcomes, we will perform the Services with reasonable care and in a diligent and competent manner.

Section 2 – Rates, Invoicing and Retainer

DSI will be compensated at a rate of $100,000 per month, plus expenses (capped at $10,000 per month), for the services of Bradley D. Sharp as CRO and such DSI personnel (including Fred Caruso) as are required to fulfill Mr. Sharp's responsibilities as CRO; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

A number of DSI's personnel have experience in providing restructuring support services and may be utilized as Additional Personnel in this representation. Although others of our staff may also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel. The individuals are:

R. Brian Calvert	$640.00/hr.
Thomas P. Jeremiassen	$575.00/hr.
Eric J. Held	$495.00/hr.
Nicholas R. Troszak	$485.00/hr.
Spencer G. Ferrero	$350.00/hr.
Tom Frey	$325.00/hr.

The above rates are adjusted as of January 1 of each year to reflect advancing experience, capabilities, and seniority of our professionals as well as general economic factors.

We acknowledge receipt of a retainer of $250,000 from the Company. The purpose of the retainer is to secure a portion of our fees and expenses and to retain our status as a non-creditor should such be required for DSI to continue to provide the Services. As such, should a need arise to increase this retainer due to the level of Services DSI is providing or projected to provide, we will send the Company a supplement to this Agreement requesting the necessary increases and discuss with the Company the amount and timing of providing such increase to the retainer.

This retainer will be applied to our final invoice. If the retainer exceeds the amount of our final invoice, we will refund the difference to the Company at that time. In the event that periodic invoices are not paid timely, we will apply the retainer to the amounts owing on such invoices and, if applicable, any related late charges, and we will stop work until the retainer is replenished to the full amount required. If the retainer is not replenished within ten (10) days after the application of the retainer to unpaid balances, we reserve the right to terminate this Agreement in accordance with the provisions of Section 3 of this Agreement.

DSI also will be entitled to reimbursement for its reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

This Agreement shall be presented to the Bankruptcy Court for approval and continuation, pursuant to Bankruptcy Code Section 363 and DSI's then-prospective obligations shall be contingent upon such approval.

Section 3 – Termination

Either the Company or DSI may terminate this Agreement for any reason with ten (10) business days' written notice. Notwithstanding anything to the contrary contained herein, the Company

shall be obligated, in accordance with any orders of or procedures established by the Court, to pay and/or reimburse DSI all fees and expenses accrued under this Agreement as of the effective date of the termination.

Section 4 – Relationship of the Parties, Confidentiality

DSI will provide the Services to and for the Company, with select members of DSI assigned to specific roles for the benefit of the Company. These members will remain as DSI employees during the pendency of this case. Specifically, the parties intend that an independent contractor relationship will be created by this Agreement. Employees of DSI are not to be considered employees of the Company and are not entitled to any of the benefits that the Company provides for the Company's employees.

The Company acknowledges that all advice (written or oral) given by DSI to the Company in connection with DSI's engagement is intended solely for the benefit and use of the Company in considering the transaction to which it relates, and that no third party is entitled to rely on any such advice or communication. DSI will in no way be deemed to be providing services for any person not a party to this Agreement.

DSI agrees that all information not publicly available that is received by DSI from the Company in connection with this Agreement or that is developed pursuant to this Agreement, will be treated as confidential and will not be disclosed by DSI, except as required by Court order, or other legal process, or as may be authorized by the Company. DSI shall not be required to defend any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to the Company so that it may seek appropriate remedies, including a protective order. The Company shall reimburse DSI for all costs and fees (including reasonable attorney's fees) incurred by DSI relating to responding to (whether by objecting to or complying with) any subpoenas or requests for production of information or documents.

Section 5 – Indemnity

The Company shall name Bradley D. Sharp as its Chief Restructuring Officer and shall indemnify him on the same terms as provided to the Company's other officers and directors under the Company partnership agreement or other governing document and applicable state law. Mr. Sharp shall be included as an insured under any insurance policies or coverage available to officers and directors of the Company.

The Company shall additionally indemnify those persons, and only those persons, serving as executive officers on the same terms as provided to the Company's other officers and directors under the Company's partnership agreement or other governing document and applicable state law, along with insurance coverage under the Company's D&O policies. Any such indemnity shall survive the expiration or termination by either party of this Agreement. Except as provided

in this Section and in Section 4, there shall be no indemnification of DSI, its affiliates or the Additional Personnel.

Each and every one of the personnel employed by DSI who works on this particular project, as well as DSI officers, directors, employees and agents (the "DSI Parties") shall not be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination (not subject to further appeal) by a court of competent jurisdiction to be the direct result of the bad faith, self-dealing or intentional misconduct or gross negligence of DSI.

Section 6 – Conflicts

DSI has made diligent inquiries to determine whether it or any of its professionals have any connections with the Company, its creditors, or other parties in interest in the Chapter 11 Case. Based on that review, the review of DSI's conflict files and responses to inquiries from DSI's professional staff, neither DSI nor its professionals have any known conflicts with the parties in this case. DSI will separately provide its connections to parties in this case and/or their professionals.

Section 7 – No Audit

The Company acknowledges that it is hiring DSI to assist and advise the Company in business planning and operations. DSI's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA or other such state and national professional bodies.

Section 8 – Non-Solicitation

The Company agrees not to solicit, recruit or hire any employees or agents of DSI for a period of one year subsequent to the completion and/or termination of this Agreement; provided that the Company shall not be prohibited from (x) making general advertisements for employment not specifically directed at employees of DSI or (y) employees of DSI responding to unsolicited requests for employment.

Section 9 – Survival

The provisions of this Agreement relating to indemnification, the non-solicitation or hiring of DSI employees, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

Section 10 – Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law principles.

Section 11 – Entire Agreement, Amendment

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

If you are in agreement with the foregoing terms and conditions please indicate your acceptance by signing an original copy of this Agreement on the signature lines below, then returning one fully-executed Agreement to DSI's office. The Agreement will become effective upon execution by duly authorized representatives of the respective parties.

Very truly yours,

Bradley Sharp
Development Specialists, Inc.

AGREED AND ACKNOWLEDGED:

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

_____
By: _____, Independent Director
Date: _____

Exhibit C

Document Production Protocol

A. Definitions

a. Electronically stored information" or "ESI" shall include all electronic files, documents, data, and information covered under the Federal Rules of Civil Procedure.

B. Preservation of ESI - Generally

a. Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data.

C. Preservation of ESI – Specific Forms

a. For email, Debtor uses Outlook Email on an Exchange server. Veritas Enterprise Vault is used to archive emails. Journaling is and has been in active use since 2007, and all inbound, outbound, and in-system email communications have been preserved and are not at risk of deletion due to normal document retention practices. Out of an abundance of caution, a copy of the latest email back-up, which was performed two months ago, shall be copied and stored at a secured location.
b. The file server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created and stored on a portable hard drive at a secured location.
c. The Sharepoint server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format that maintains all potentially relevant information and stored at a secured location.
d. The Oracle E-Business Suite (EBS) server used by Debtor was backed up one week ago. A copy of this backup shall be created in a format and stored at a secured location.
e. The Advent Geneva accounting system used by Debtor was backed up approximately one week ago. Upon reasonable notice, the Committee may submit search criteria to Debtor to run searches in Advent Geneva. Subject to Debtor's rights to assert objections as provided by Part G herein, Debtor will provide the data resulting from such agreed searches pursuant to Part F herein.
f. The Siepe Database (data warehouse) used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format and stored at a secured location.
g. For the Box account used by Debtor, to the extent routine data retention practices may result in file deletion, they shall be suspended pending further discussion with the Committee concerning the relevance of such data. Users of the Box account who have the ability to delete files shall be notified of the obligation to suspend deletion of any data stored in Box.
h. Bloomberg data is archived for five years. Debtor shall work with Bloomberg client services to preserve a copy of all such archived material, which shall be stored at a secured location, or otherwise extend the backup window in which Bloomberg preserves the data by reasonable time to be agreed by the parties.

i. Files may be saved locally on laptops/work computers used by employees of Debtor. This practice is discouraged, but may result in the creation of relevant ESI on local systems in a manner that will not be replicated elsewhere. Debtor shall therefore cease the deletion of data (*i.e.*, wiping) of any employee-assigned computer hard drives, such as for departing employees. Debtor shall furthermore instruct current employees not to delete files stored locally on their assigned computers.

D. Not Reasonably Accessible Documents

a. Absent an order from the Court upon a showing of good cause, a Party from whom ESI has been requested shall not be required to search for responsive ESI from sources that are not reasonably accessible without undue burden or cost. The following types of data stores are presumed to be inaccessible and are not subject to discovery, and need not be collected or preserved, absent a particularized need for the data as established by the facts and legal issues of the case:
   i. Deleted, slack, fragmented, or other data only accessible by forensics;
   ii. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system; and
   iii. On-line access data such as temporary internet files, history, cache, cookies, and the like.

b. To conduct collections in a focused and efficient manner, the Parties also agree to exclude the following file types from collection: Standard system file extensions including, but not limited to, BIN, CAB, CHK, CLASS, COD, COM, DLL DRV, EXE, INF, INI, JAVA, LIB, LOG, SYS and TMP and other file extensions and directories that likely do not contain user generated content such as files identified by hash value when compared to the National Software Reference Library reference data set (RDS Hash), a sub-project of the National Institute of Standards and Technology ("NIST"), of known traceable system and application files. This process is commonly referred to as "De-NISTing."

E. Collection and Search Methodology

a. Searches for emails in Debtor's custody shall be conducted by DSI on Debtor's Veritas Enterprise Vault storage using an unrestricted account at the earliest opportunity, but in no event later than seven (7) days after the Committee requests ESI from the Debtor. DSI shall use an add-on component called Discovery Assistant, which enables searches based on email properties, such as senders, recipients, and dates. Discovery Assistant also permits text searching of email contents and the contents of electronic file attachments, although not pictures of text (*e.g.*, scanned PDFs). Debtor did not employ employee message or file encryption that would prevent reasonable operation of the Discovery Assistant search capabilities.

b. The results of email searches shall be produced to the Committee pursuant to Part F below, subject to completion of any review for privilege or other purposes contemplated by this Agreement.

c. A snapshot copy of Debtor databases (Oracle, Siepe) shall be created in a format to be specified later by agreement with the Committee per Part (C)(d), (f), above. Prior to any production of responsive data from such a structured database Debtor will first identify the database type and version number, provide the vendor-originated database dictionary, if any, (identifying all tables in the database, their fields, the meaning of those fields, and any interrelation among fields) and any user manuals, or any other documentation describing the structure and/or content of the database, and a list of all reports that can be generated from the database. The list of reports shall be provided in native Excel (.xis or .xlsx) format.
d. The Geneva system is highly proprietary and shall not be collected, but the Committee will be given reasonable access to that system per Part C(e), above.
e. Debtor and Committee will meet and confer to discuss the scope of any necessary searches on the Box account.
f. Debtor file server contents, where requested by the Committee, shall be produced pursuant to Part F below.
g. Debtor shall propose a format for producing Sharepoint data. The Committee agrees that it is not necessary to reproduce the interface used by Debtor in the ordinary course of business for Sharepoint.

F. Format of Documents Produced

a. Non-database ESI shall be produced as black and white Group 4 TIFF files, with a resolution of 300 DPI. Page size shall be 8.5 x 11 inches unless, in the reasonable judgment of the Producing Party, a particular item requires a different page size, and original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape). A Requesting Party may, in good faith and reasonable judgment, request a color copy of a production document if it is necessary to convey the relevant and responsive information. Such color copies may be produced as single page JPG (JPEG) image files. The Requesting Party will bear the costs for color images.
b. The files shall be accompanied by a metadata load file, in a single standard format to be requested by the Receiving Party prior to any production (e.g., Opticon, Summation DII, or the like) showing the Bates number of each page, the appropriate unitization of the documents, and the entire family range. The Parties agree to meet and confer regarding the requested standard format prior to production.
c. The files shall be accompanied by a .DAT text file including the delimited fields identified in the Metadata List (below). No Party will have any obligation to manually generate information to provide the fields identified in the Metadata List.
d. The Producing Party reserves the right to make hard copy documents available for inspection and copying pursuant to Federal Rule of Civil Procedure 34.
e. In the event that a Party identifies hard copy documents for production, hard copy paper documents shall be scanned and will include, to the extent feasible, the following fields in the .DAT text file: PRODBEG, PRODEND, PAGECOUNT, FULLTEXT, and CUSTODIAN. The Parties agree to share equally in the cost of scanning hard copy documents.

f. For any documents that were scanned from hard copy paper documents, the Parties will produce images of hard copy documents unitized to the extent the original documents appeared to be units in physical form, with attachments following parents, and with information that identifies the holder (or container) structure, to the extent such structure exists and it is reasonable to do so. The Producing Party is not required to OCR (Optical Character Recognition) hard copy documents. If the Receiving Party requests that hard copy documents be OCR'ed, the Receiving Party shall bear the cost of such request, unless the Parties agree to split the cost so that each has an OCR'ed copy of the documents.

g. For ESI that the Producing Party produces in TIFF or JPEG format, the Producing Party shall electronically "burn" a legible, unique Bates number onto each page. The Bates number shall, to the extent reasonably possible: (1) identify the Producing Party; (2) maintain a constant length of nine numeric digits (including 0-padding) across the entire production; (3) contain only alphanumeric characters, no special characters or embedded spaces; and (4) be sequential within a given document. If the Bates number conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

h. For ESI that the Producing Party produces in TIFF format, if the Producing Party is producing the ESI subject to a claim that it is protected from disclosure under any confidentiality order entered in this matter, the Producing Party shall electronically "burn" the appropriate confidentiality designation onto each page of the document. If the designation conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

i. The Parties agree to produce e-mail families intact absent a privilege or work product claim, so long as each document contains responsive information; for all documents that contain a responsive, non-privileged attachment, the following fields will be produced (if available) as part of the metadata load file to indicate the parent child or parent/sibling relationship:

    i. Production Bates begin
    ii. Production Bates end
    iii. Production Bates begin attachment
    iv. Production Bates end attachment

Notwithstanding the aforementioned, all parties acknowledge that Debtor's Veritas Enterprise Vault system does not have the ability to search for the family members of responsive documents, and that Debtor does not have an obligation to manually search for non-responsive family members of otherwise responsive documents.

j. Unless otherwise agreed, all dynamic date and time fields, where such fields are processed to contain a value, and all metadata pertaining to dates and times, will be standardized to Universal Coordinated Time (UTC) or Universal Coordinated Time + 1 (UTC+1) **[TBD]**. The Parties understand and acknowledge that such standardization affects only dynamic fields and metadata values and does not affect, among other things, dates and times that are hard-coded text within a file. Dates and times that are hard-coded text within a file (for example, in an email

thread, dates and times of earlier messages that were converted to body text when subsequently replied to or forwarded; and in any file type, dates and times that are typed as such by users) will be produced as part of the document text in accordance with the provisions herein.

k. Excel spreadsheets shall be produced in native application format, unless redactions are required. The Producing Party will make reasonable efforts to provide a TIFF image of a slip sheet with the Bates number of documents produced natively in its production. The corresponding native file shall be named by using the same Bates number identified on the placeholder TIFF image. Any Excel spreadsheet that requires redaction will be produced in TIFF format only. Certain types of databases are dynamic in nature and may contain information that is irrelevant. These files are sometimes large and would, if rendered to TIFF images completely, produce thousands of pages that would have little utility to a reviewer without the associated database.

l. To the extent information from a structured data repository, such as a database, is requested, responsive information will be produced via a report or export of such data to an appropriate program that is agreeable to the requesting Party. The Parties agree to meet and confer before such data is exported.

G. Production Format Shall Not Alter Authenticity, Admissibility, or Privilege Status

a. No Party shall object that ESI produced pursuant to this Protocol is not authentic by virtue of the ESI having been converted to TIFF. The Parties otherwise reserve all rights regarding their ability to object to the authenticity of documents.

b. Nothing in this Protocol shall be construed to affect in any way the rights of any Party to make any objection as to the production, discoverability, admissibility, or confidentiality of documents and ESI.

c. Nothing in this Protocol shall constitute a waiver by any Party of any claim or privilege or other protection from discovery.

d. Nothing in this Protocol shall be interpreted to in any way limit a Producing Parties right and ability to review documents for responsiveness prior to production.

e. Nothing in the Protocol shall require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity.

Metadata List

File Name	Field Description	Sample Values
BegBates	Bates number for the first page of the document	ABC-0000001
EndBates	Bates number for the last page of the document	ABC-0000002
BegAttach	Bates number for the first page of parent document	ABC-0000001
EndAttach	Bates number for the last page of last attachment	ABC-0000005
Pages	Number of printed pages of the	2

	document	
Global Custodian	Custodian name produced in format: Lastname, Firstname.	Smith, Jane; Taylor, Michael
Confidentiality	Indicates if the document has been designated as "Confidential" or "Highly Confidential" pursuant to the applicable Protective Order	Confidential; Highly Confidential
Redacted	Descriptor for documents that have been redacted: "Yes" for redacted documents; "No" for non-redacted documents	Yes
Email Subject	Subject line of Email or	Text of the subject line
Document Subject	Subject value of documents	Text of the subject line
Date Sent	Date email sent	mm/dd/yyyy
Time Sent	Time email sent	hh:mm:ss AM
Date Last Modified	Date document was last modified	mm/dd/yyyy
Time Last Modified	Time document was last modified	hh:mm:ss AM
Date Created	Date document was first created	mm/dd/yyyy
To	All SMTP address of email recipients, separated by a semi-colon	Larry.murphy@email.com
From	All SMTP address of email author	Bart.cole@email.com
CC	All SMTP address of email "CC" recipients, separated by a semi-colon	Jim.James@gmail.com; bjones@yahoo.com
BCC	All SMTP address of email "BCC" recipients, separated by a semi-colon	mjones@gmail.com
Attach	The file name(s) of the documents attached to emails or embedded in files. Multiple files should be delimited by a semicolon	Filename.doc; filename2.doc
Title	The Title property of a file.	Title
Author	The Author property of a file	John Doe
MessageID	The email message ID	
FILENAME	The original name of the file excluding the path	C:\My Documents\letter.doc
DocType	Email, letter, memo, invoice, etc., if available	
Extension	The file extension	.doc

FileType	The actual file type of the document (Word, Excel, etc.) regardless of the file extension	
HashValue	MD5 Hash value of original file	
FilePath	The directory structure of the original file.	C:\My Documents\ letter.doc
PathToNative	The relative path to a produced native document	C:\VOL001\BATES000000001.xls
PathToText	The relative path to the accompanying text file	C:\VOL001\BATES000000001.txt
Volume	The production number or reference from the production	
Other Custodian	To the extent global deduplication is used, the field indicates the other custodians who also were in possession of the document at the time of collection	

Exhibit D

Reporting Requirements

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the

Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor <u>does not hold a direct or indirect interest</u>

A. **Covered Entities**: See **<u>Schedule A</u>** hereto. **<u>Schedule A</u>** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) <u>Stage 1 and Stage 2</u>: ordinary course determined by the CRO.

b) <u>Stage 3</u>: ordinary course determined by the Debtor.

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

a) Except as set forth in (b) and (c) below, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. Transactions involving Non-Discretionary Accounts

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

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[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VIII. Additional Reporting Requirements – All Stages (to the extent applicable)

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. **Shared Services**

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

<u>Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest</u>

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

<u>Transactions involving Non-Discretionary Accounts</u>

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

From: Gregory V. Demo
To: Michael Lynn; Michael Lynn; Bryan Assink
Cc: Jeff Pomerantz; Ira Kharasch; John A. Morris; Hayley R. Winograd
Subject: Highland - Letter & Discovery Requests
Date: Wednesday, December 23, 2020 10:19:06 PM
Attachments: Letter to D.M. Lynn - 12.23.20.pdf
DOCS_NY-#41817-v3-Document_Requests_Dondero.pdf
DOCS_NY-#41819-v3-Depo_Notice_Dondero.pdf

Dear Judge Lynn,

Please see attached letter and discovery requests.

Best,
Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

PACHULSKI STANG ZIEHL & JONES
Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

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Dondero Ex. 9

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S OBJECTIONS AND RESPONSES
TO DEBTOR'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Plaintiff, by and through its attorneys of record, John A. Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure,

Dondero Ex. 10

Defendant James Dondero ("Defendant") hereby serves the following objections and responses to Debtor's First Request for Production of Documents Directed to James Dondero (the "Request").

Dated: December 31, 2020

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on December 31, 2020, a true and correct copy of the foregoing document was served via email on counsel for the Plaintiff as listed below.

Jeffrey Pomerantz
John Morris
Ira Kharasch
Greg Demo
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com
Email: jmorris@pszjlaw.com
Email: ikharasch@pszjlaw.com
Email: gdemo@pszjlaw.com

/s/ Bryan C. Assink
Bryan C. Assink

REQUEST FOR PRODUCTION

Request No. 1: For the period November 1, 2020, to the present, all Communications between You and Andrew Clubok.

Response: Defendant objects to this request as being overbroad and irrelevant to the relief requested in Plaintiff's Complaint. Defendant further objects to this request to the extent it seeks to discover communications and documents that are confidential and/or privileged under the attorney-client privilege, this Court's mediation order, and/or Rule 408 of the Federal Rules of Evidence. Defendant further objects to this request to the extent it calls for the production of documents or communications no longer in Defendant's possession, custody, or control. Specifically, Defendant no longer has access to all communications and documents that may have been exchanged during the period from November 1, 2020 through December 10, 2020.

Subject to the foregoing objections and without waiver of same, and in accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 2: For the period November 1, 2020, to the present, all Documents provided to or received from Andrew Clubok.

Response: Defendant objects to this request as being overbroad and irrelevant to the relief requested in Plaintiff's Complaint. Defendant further objects to this request to the extent it seeks to discover communications and documents that are confidential and/or privileged under the attorney-client privilege, this Court's mediation order, and/or Rule 408 of the Federal Rules of Evidence. Defendant further objects to this request to the extent it calls for the production of documents or communications no longer in Defendant's possession, custody, or control. Specifically, Defendant no longer has access to all communications and documents that may have been exchanged during the period from November 1, 2020 through December 10, 2020.

Subject to the foregoing objections and without waiver of same, and in accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 3: All Communications between You and any person employed by the Debtor.

Response: In accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 4: All Documents provided to or received from any person employed by the Debtor.

Response: In accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 5: All Documents and Communications concerning MultiStrat.

Response: Defendant objects to this request as being overbroad and irrelevant to the relief requested in Plaintiff's Complaint. Defendant further objects to this request to the extent it seeks to discover communications and documents that are confidential and/or privileged under the attorney-client privilege, this Court's mediation order, and/or Rule 408 of the Federal Rules of Evidence. Defendant further objects to this request to the extent it seeks or calls for documents or communications concerning the allegations underlying the proof of claim filed by The Dugaboy Investment Trust, as there is a pending proceeding through which discovery concerning those allegations should be conducted.

Subject to the foregoing objections and without waiver of same, and in accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 6: All Documents and Communications that You intended to introduce into evidence at the Hearing.

Response: While Defendant has not at this time determined which documents and communications, if any, he intends to introduce into evidence at the Hearing, all such responsive documents are being produced or will be timely produced before the Hearing in accordance with the Local Bankruptcy Rules.

From: Bryan Assink
To: Jeff Pomerantz; "John A. Morris"; Ira Kharasch; Gregory V. Demo
Cc: "Michael Lynn"; John Bonds; John Wilson
Subject: Highland Capital Management - Dondero"s Production in Response to Debtor"s Document Request
Date: Thursday, December 31, 2020 9:24:00 AM
Attachments: Dondero Response to Debtor"s First RFP 12.31.20.pdf
Dondero 000001 - 000108.pdf

Counsel:

Attached please find (i) James Dondero's Objections and Responses to Debtor's First Request for Production; and (ii) documents responsive to Debtor's document requests, which are designated Dondero 000001 – 000108.

While Mr. Dondero believes that certain of the documents and communications responsive to the request and included in this production may be privileged or confidential, including under the Court's mediation order and Rule 408, he is producing them to ensure compliance with the Court's ruling of December 28 and to alleviate the need for the parties and the Court to incur additional time on these discovery requests.

Best,
Bryan

Bryan C. Assink, Associate
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton St. | Suite 1000 | Fort Worth, Texas 76102
office 817.779.4297 | fax 817.405.6902
bryan.assink@bondsellis.com

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Dondero Ex. 11

SUB-ADVISORY AGREEMENT

This Sub-Advisory Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this "Agreement"), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the "Management Company"), and Highland Capital Management, L.P., a Delaware limited partnership ("Highland"), as the sub-advisor hereunder (in such capacity, the "Sub-Advisor" and together with the Management Company, the "Parties").

WHEREAS, the Management Company from time to time has entered and will enter into portfolio management agreements, investment management agreements and/or similar agreements (each such agreement as amended, modified, waived, supplemented or restated, subject in each case to the requirements of Section 8, a "Management Agreement") and related indentures, credit agreements, collateral administration agreements, service agreements or other agreements (each such agreement as amended, modified, waived, supplemented or restated, subject in each case to the requirements of Section 8, a "Related Agreement"), in each case as set forth on Appendix A hereto, as amended from time to time, pursuant to which the Management Company has agreed to provide portfolio and/or investment management services to certain funds and accounts (any such fund or account, an "Account", and the assets comprising the portfolio of such Account, a "Portfolio"); and

WHEREAS, the Management Company and the Sub-Advisor desire to enter into this Agreement in order to permit the Sub-Advisor to provide certain limited services to assist the Management Company in performing certain obligations under the Management Agreements and Related Agreements.

NOW, THEREFORE, in consideration of the foregoing recitals, and the receipt of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows.

1. Appointment; Limited Scope of Services.

(a) Highland is hereby appointed as Sub-Advisor to the Management Company for the purpose of assisting the Management Company in managing the Portfolios of each Account pursuant to the related Management Agreement and Related Agreements, in each case that have been included in the scope of this Agreement pursuant to the provisions of Section 8, subject to the terms set forth herein and subject to the supervision of the Management Company, and Highland hereby accepts such appointment.

(b) Without limiting the generality of the foregoing, the Sub-Advisor shall, during the term and subject to the provisions of this Agreement:

(i) make recommendations to the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account as to the general composition and allocation of the Portfolio with respect to such Account among various types of securities, the nature and timing of the changes therein and the manner of implementing such changes,

Dondero Ex. 12

including recommendations as to the specific assets to be purchased, retained or sold by any such Account;

(ii) place orders with respect to, and arrange for, any investment by or on behalf of such Account (including executing and delivering all documents relating to such Account's investments on behalf of such Account or the Management Company, as applicable), upon receiving a proper instruction from the Management Company;

(iii) identify, evaluate and recommend to the Management Company, in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account, and, if applicable, negotiate the structure and/or terms of investment opportunities within the specific investment strategy of the Management Company for such Account;

(iv) assist the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account in performing due diligence on prospective Portfolio investments by such Account;

(v) provide information to the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account regarding any investments to facilitate the monitoring and servicing of such investments and, if requested by the Management Company, provide information to assist in monitoring and servicing other investments by such Account;

(vi) assist and advise the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account with respect to credit functions including, but not limited to, credit analysis and market research and analysis; and

(vii) assist the Management Company in performing any of its other obligations or duties as portfolio manager, investment manager or any similar capacity for any applicable Account.

The foregoing responsibilities and obligations are collectively referred to herein as the "Services."

Notwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, the Management Company. Furthermore, the parties acknowledge and agree that the Sub-Advisor shall be required to provide only the services expressly described in this Section 1(b), and shall have no responsibility hereunder to provide any other services to the Management Company, including, but not limited to, administrative, management or similar services.

(c) The Sub-Advisor agrees during the term hereof to furnish the Services on the terms and conditions set forth herein and subject to the limitations contained herein. The Sub-Advisor agrees that, in performing the Services, it will comply with all applicable obligations of the Management Company set forth in the Management Agreements and the Related Agreements.

In addition, with respect to any obligation that would be part of the Services but for the fact that the relevant Management Agreement or Related Agreement does not permit such obligation to be delegated by the Management Company to the Sub-Advisor, the Sub-Advisor, upon request in writing by the Management Company, shall work in good faith with the Management Company and shall use commercially reasonable efforts to assist the Management Company in satisfying all such obligations.

2. Compensation.

(a) As compensation for its performance of its obligations as Sub-Advisor under this Agreement, the Sub-Advisor will be entitled to receive a monthly fee in the amount of Two Hundred Fifty-Two Thousand and 00/100 Dollars ($252,000.00) (the "Sub-Advisory Fee"). The Sub-Advisory Fee shall be payable monthly in advance.

(b) Each party shall bear its own expenses.

(c) Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any and all amounts payable to the Sub-Advisor pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

3. Representations and Warranties.

(a) Each of the Management Company and the Sub-Advisor represents and warrants, as to itself only, that:

(i) it has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(ii) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(iii) no consent, approval, authorization or order of or declaration or filing with any government, governmental instrumentality or court or other person or entity is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(iv) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (A) its constituting and organizational documents; (B) the terms of any material indenture, contract,

lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound; (C) any statute applicable to it; or (D) any law, decree, order, rule or regulation applicable to it of any court or regulatory, administrative or governmental agency, body of authority or arbitration having or asserting jurisdiction over it or its properties, which, in the case of clauses (B) through (D) above, would have a material adverse effect upon the performance of its duties hereunder.

(b) The Sub-Advisor represents and warrants to the Management Company that it is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act").

(c) The Management Company acknowledges that it has received Part 2 of the Sub-Advisor's Form ADV filed with the Securities and Exchange Commission. The Sub-Advisor will provide to the Management Company an updated copy of Part 2 of its Form ADV promptly upon any amendment to such Form ADV being filed with the Securities and Exchange Commission.

4. Standard of Care; Liability; Indemnification.

(a) Sub-Advisor Standard of Care. Subject to the terms and provisions of this Agreement, the Management Agreements and/or the Related Agreements, as applicable, the Sub-Advisor will perform its obligations hereunder and under the Management Agreements and/or the Related Agreements in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios, in each case except as expressly provided otherwise under this Agreement, the Management Agreements and/or the Related Agreements. To the extent not inconsistent with the foregoing, the Sub-Advisor will follow its customary standards, policies and procedures in performing its duties hereunder, under the Management Agreements and/or under the Related Agreements.

(b) Exculpation. To the fullest extent permitted by law, none of the Sub-Advisor, any of its affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)) (each a "Covered Person") will be liable to the Management Company, any Member, any shareholder, partner or member thereof, any Account (or any other adviser, agent or representative thereof), or to any holder of notes, securities or other indebtedness issued by any Account (collectively, the "Management Company Related Parties"), for (i) any acts or omissions by such Covered Person arising out of or in connection with the provision of the Services hereunder, for any losses that may be sustained in the purchase, holding or sale of any security or debt obligation by any Account, or as a result of any activities of the Sub-Advisor, the Management Company or any other adviser to or agent of the Account or

any other sub-advisor appointed by the Management Company to provide portfolio management services to any other delegatee of the Management Company or any other person or entity, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a "Disabling Conduct") on the part of such Covered Person, (ii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of the Sub-Advisor, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of the Sub-Advisor with reasonable care, or (iii) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to any Management Company Related Party, no Covered Person acting under this Agreement shall be liable to such Management Company Related Party for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 4(b) shall exculpate any Covered Person regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to any Management Company Related Party solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to any such Management Company Related Party, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to any Management Company Related Party in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

(c) Indemnification. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, whether currently existing or accruing in the future ("Claims"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the Services, the activities of the Management Company Related Parties, or activities undertaken in connection with the Management Company Related Parties, or otherwise relating to or arising out of this Agreement, any Management Agreement and/or the Related Documents, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"),

whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 4(c) regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 4(c) shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 4(c) to the fullest extent permitted by law

(d) Other Sources of Recovery etc. The indemnification rights set forth in Section 4(c) are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any Account has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained

(e) Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 4(c) shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person

(f) Reliance. A Covered Person shall incur no liability to any Management Company Related Party in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

(g) Rights Under Management Agreements and Related Agreements. The Management Company will ensure that the Sub-Advisor is provided substantially similar indemnification and exculpation rights as are afforded to the Management Company in its role as portfolio manager under any future Management Agreement or Related Agreement encompassed within the Services hereunder, and it is expressly acknowledged by the Parties that the Sub-Advisor may not consent to including a Management Agreement and Related Agreements within the scope of this Agreement pursuant to Section 8 if such indemnification and exculpation rights are not reasonably acceptable to it.

5. Limitations on Employment of the Sub-Advisor; Conflicts of Interest.

(a) The services of the Sub-Advisor to the Management Company are not exclusive, and the Sub-Advisor may engage in any other business or render similar or different services to others including, without limitation, the direct or indirect sponsorship or management of other transactions, investment-based accounts or commingled pools of capital, however structured, having investment objectives similar to those of the Management Company or the Accounts. Moreover, nothing in this Agreement shall limit or restrict the right of any manager, partner, officer or employee of the Sub-Advisor to engage in any other business or to devote his or her time and attention in part to any other business, whether of a similar or dissimilar nature to the Management Company or any Account, or to receive any fees or compensation in connection therewith.

(b) So long as this Agreement or any extension, renewal or amendment of this Agreement remains in effect, the Sub-Advisor shall be the only portfolio management sub-advisor for the Management Company. The Sub-Advisor assumes no responsibility under this Agreement other than to render the services called for hereunder. It is understood that directors, officers, employees, members and managers of the Management Company are or may become interested in the Sub-Advisor and its Affiliates as directors, officers, employees, partners, stockholders, members, managers or otherwise, and that the Sub-Advisor and directors, officers, employees, partners, stockholders, members and managers of the Sub-Advisor and its Affiliates are or may become similarly interested in the Management Company as members or otherwise.

(c) The Management Company acknowledges that various potential and actual conflicts of interest may exist with respect to the Sub-Advisor as described in the Sub-Advisor's Form ADV Part 2A and as described in Appendix B hereto, and the Management Company expressly acknowledges and agrees to the provisions contained in such Appendix B, as amended from time to time with mutual consent of the Parties.

6. Termination; Survival.

(a) This Agreement may be terminated, in its entirety or with respect to any Management Agreement, at any time without payment of penalty, by the Management Company upon 30 days' prior written notice to the Sub-Advisor.

(b) This Agreement shall terminate automatically with respect to any Management Agreement on the date on which (i) such Management Agreement has been terminated (and, if required thereunder, a successor portfolio manager has been appointed and accepted) or discharged; or (ii) the Management Company is no longer acting as portfolio manager, investment manager or in a similar capacity (whether due to removal, resignation or assignment) under such Management Agreement and the Related Agreements. Upon the termination of this Agreement with respect to any Management Agreement the Management Company shall provide prompt notice thereof to the Sub-Advisor, and Appendix A hereto shall be deemed to be amended by deleting such Management Agreement and the Related Agreements related thereto.

(c) All accrued and unpaid financial and indemnification obligations with respect to any conduct or events occurring prior to the effective date of the termination of this Agreement shall survive the termination of this Agreement.

7. Cooperation with Management Company. The Sub-Advisor shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Sub-Advisor. Specifically, the Sub-Advisor agrees that it will provide the Management Company with reasonable access to information relating to the performance of Sub-Advisor's obligations under this Agreement.

8. Management Agreements and Related Agreements. The Sub-Advisor's duty to provide Services in connection with any Management Agreement shall not commence until (a) Appendix A to this Agreement has been amended by mutual agreement of the Parties to include such Management Agreement and the related Account, fund and/or account and Related Agreements and (b) the Sub-Advisor acknowledges receipt of such Management Agreement and each Related Agreement. The Sub-Advisor shall not be bound to comply with any amendment, modification, supplement or waiver to any Management Agreement or any Related Agreement until it has received a copy thereof from the Management Company. No amendment, modification, supplement or waiver to any Management Agreement or Related Agreement that, when applied to the obligations and rights of the Management Company under such Management Agreement or Related Agreement, affects (i) the obligations or rights of the Sub-Advisor hereunder; (ii) the amount of priority of any fees or other amounts payable to the Sub-Advisor hereunder; or (iii) any definitions relating to the matters covered in clause (i) or (ii) above, will apply to the Sub-Advisor under this Agreement unless in each such case the Sub-Advisor has consented thereto in writing (such consent not to be unreasonably withheld or delayed unless the Sub-Advisor determines in its reasonable judgment that such amendment, modification, supplement or waiver could have a material adverse effect on the Sub-Advisor).

9. Amendments; Assignments.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 9, without the prior written consent of the other Party and (ii) in accordance with the Advisers Act and other applicable law.

(b) Except as otherwise provided in this Section 9, the Sub-Advisor may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with the Advisers Act and other applicable law.

(c) The Sub-Advisor may, without satisfying any of the conditions of Section 9(a) other than clause (ii) thereof (so long as such assignment does not constitute an assignment within the meaning of Section 202(a)(1) of the Advisers Act), (1) assign any of its rights or obligations under this Agreement to an affiliate; *provided* that such affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Sub-Advisor pursuant to this Agreement and (ii) has the legal right and capacity to act as Sub-Advisor under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Sub-Advisor under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Sub-Advisor in another corporate or similar form and has substantially the same staff; provided, further, that the Sub-Advisor shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Sub-Advisor will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

10. Advisory Restrictions. This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any Management Agreement or any part thereof. It is the express intention of the parties hereto that (i) the Services are limited in scope; and (ii) this Agreement complies in all respects with all applicable (A) contractual provisions and restrictions contained in each Management Agreement and each Related Agreement and (B) laws, rules and regulations (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the Services to be provided under this Agreement shall automatically without action by any person or entity be limited, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

11. Records; Confidentiality.

(a) The Sub-Advisor shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon

not less than three (3) Business Days' prior notice; provided, that the Sub-Advisor shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

(b) The Sub-Advisor shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Sub-Advisor hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its rating of notes issued by an Account or supplying credit estimates on any obligation included in the Portfolios, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Account for which the Management Company serves as portfolio manager, (iv) as required by (A) applicable law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Sub-Advisor or any of its affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Sub-Advisor on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Sub-Advisor may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any transaction, or (ix) information relating to performance of the Portfolios as may be used by the Sub-Advisor in the ordinary course of its business. Notwithstanding the foregoing, it is agreed that the Sub-Advisor may disclose without the consent of any Person (1) that it is serving as Sub-Advisor to the Management Company and each Account, (2) the nature, aggregate principal amount and overall performance of the Portfolios, (3) the amount of earnings on the Portfolios, (4) such other information about the Management Company, the Portfolios as is customarily disclosed by Sub-Advisors to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Sub-Advisor, the Management Company, the Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

12. Notice. Any notice or demand to any party to this Agreement to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail, facsimile or email transmission or by delivering it by hand as follows (or to such other address, email address or facsimile number as shall have been notified to the other parties hereto):

(a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Sub-Advisor:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

14. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

15. Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties.

16. No Waiver. The performance of any condition or obligation imposed upon any party hereunder may be waived only upon the written consent of the parties hereto. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other party under this Agreement. Any failure by any party to this Agreement to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

18. Third Party Beneficiaries. Nothing in this Agreement will be construed to give any person or entity other than the parties to this Agreement, the Accounts and any person or entity with indemnification rights hereunder any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. Except as provided in the foregoing sentence, this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns.

19. No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the parties. Except as expressly provided herein or in any other written agreement between the parties, no party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other party.

20. Entire Agreement. This Agreement, together with each Management Agreement and Related Agreement, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to such subject matter.

[Remainder of Page Intentionally Left Blank]

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as the Sub-Advisor

By: Strand Advisors, Inc., its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

NEXPOINT ADVISORS, L.P.,
as the Management Company

By: NexPoint Advisors GP, LLC, its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

Appendix A

Fund or Account	Management Agreement	Related Agreements	Date of Management Agreement
[__]	[__]	[__]	[__]
[__]	[__]	[__]	[__]

APPENDIX B

Purchase and Sale Transactions; Brokerage

The Management Company acknowledges and agrees that the Sub-Advisor or any of its affiliates may acquire or sell obligations or securities, for its own account or for the accounts of its clients, without either requiring or precluding the acquisition or sale of such obligations or securities for the account of any Account. Such investments may be the same or different from those made by or on behalf of the Management Company or the Accounts.

Additional Activities of the Sub-Advisor

Nothing herein shall prevent the Sub-Advisor or any of its clients, its partners, its members, funds or other investment accounts managed by it or any of its affiliates, or their employees and their affiliates (collectively, the "Related Entities"), from engaging in other businesses, or from rendering services of any kind to the Management Company, its affiliates, any Account or any other Person or entity regardless of whether such business is in competition with the Management Company, its affiliates, such Account or otherwise. Without limiting the generality of the Sub-Advisor and its Related Entities may:

(a) serve as managers or directors (whether supervisory or managing), officers, employees, partners, agents, nominees or signatories for the Management Company or any affiliate thereof, or for any obligor or issuer in respect of any of the Portfolio assets or any affiliate thereof, to the extent permitted by their respective organizational documents and underlying instruments, as from time to time amended, or by any resolutions duly adopted by the Management Company, any Account, their respective affiliates or any obligor or issuer in respect of any of the Portfolio assets (or any affiliate thereof) pursuant to their respective organizational documents;

(b) receive fees for services of whatever nature rendered to the obligor or issuer in respect of any of the Portfolio Assets or any affiliate thereof;

(c) be retained to provide services unrelated to this Agreement to the Management Company, any Account or their respective affiliates and be paid therefor, on an arm's-length basis;

(d) be a secured or unsecured creditor of, or hold a debt obligation of or equity interest in, the Management Company, any Account or any affiliate thereof or any obligor or issuer of any Portfolio asset or any affiliate thereof;

(e) sell any Portfolio asset to, or purchase or acquire any Portfolio asset from, any Account while acting in the capacity of principal or agent; *provided, however*, that any such sale or purchase effected by the Sub-Advisor shall be subject to applicable law and any applicable provisions of this Agreement, the related Management Agreement and Related Agreements, as applicable;

(f) underwrite, arrange, structure, originate, syndicate, act as a distributor of or make a market in any Portfolio asset;

(g) serve as a member of any "creditors' board", "creditors' committee" or similar creditor group with respect to any Portfolio asset; or

(h) act as portfolio manager, portfolio manager, investment manager and/or investment adviser or sub-advisor in collateralized bond obligation vehicles, collateralized loan obligation vehicles and other similar warehousing, financing or other investment vehicles.

As a result, such individuals may possess information relating to obligors and issuers of Portfolio assets that is (a) not known to or (b) known but restricted as to its use by the individuals at the Sub-Advisor responsible for monitoring the Portfolio assets and performing the Services under this Agreement. Each of such ownership and other relationships may result in securities laws restrictions on Transactions in such securities by the Management Company and/or any Account and otherwise create conflicts of interest for the Management Company and/or any Account. The Management Company acknowledges and agrees that, in all such instances, the Sub-Advisor and its affiliates may in their discretion make investment recommendations and decisions that may be the same as or different from those made by the Management Company with respect to the investments of any Account and they have no duty, in making or managing such investments, to act in a way that is favorable to any Account.

The Management Company acknowledges that there are generally no ethical screens or information barriers between the Sub-Advisor and certain of its affiliates of the type that many firms implement to separate Persons who make investment decisions from others who might possess applicable material, non-public information that could influence such decisions. The officers or affiliates of the Sub-Advisor may possess information relating to obligors or issuers of Portfolio Assets that is not known to the individuals at the Sub-Advisor responsible for providing the Services under this Agreement. As a result, the Sub-Advisor may from time to time come into possession of material nonpublic information that limits the ability of the Sub-Advisor to effect a Transaction for the Management Company and/or any Account, and the Management Company and/or such Account's investments may be constrained as a consequence of the Sub-Advisor's inability to use such information for advisory purposes or otherwise to effect Transactions that otherwise may have been initiated on behalf of its clients, including the Management Company and/or such Account.

Unless the Sub-Advisor determines in its sole discretion that a Portfolio investment complies with the conflicts of interest provisions set forth in the applicable Management Agreement and Related Agreements, the Sub-Advisor will not direct any Account to acquire or sell loans or securities entered into or issued by (i) Persons of which the Sub-Advisor, any of its affiliates or any of its officers, directors or employees are directors or officers, (ii) Persons of which the Sub-Advisor or any of its respective affiliates act as principal or (iii) Persons about which the Sub-Advisor or any of its affiliates have material non-public information which the Sub-Advisor deems would prohibit it from advising as to the trading of such securities in accordance with applicable law.

It is understood that the Sub-Advisor and any of its affiliates may engage in any other business and furnish investment management and advisory services to others, including Persons which may have investment policies similar to those followed by the Management Company with respect to the Portfolio assets and which may own securities or obligations of the same class, or which are of the same type, as the Portfolio assets or other securities or obligations of the obligors or issuers of the Portfolio assets. The Sub-Advisor and its affiliates will be free, in their sole discretion, to

make recommendations to others, or effect Transactions on behalf of themselves or for others, which may be the same as or different from those effected with respect to the Collateral. Nothing in this Agreement, in the Management Agreements or in the Related Agreements shall prevent the Sub-Advisor or any of its affiliates, acting either as principal or agent on behalf of others, from buying or selling, or from recommending to or directing any other account to buy or sell, at any time, securities or obligations of the same kind or class, or securities or obligations of a different kind or class of the same obligor or issuer, as those directed by the Sub-Advisor to be purchased or sold on behalf of an Account. It is understood that, to the extent permitted by applicable law, the Sub-Advisor, its Related Entities, or any of their owners, directors, managers, officers, stockholders, members, partners, partnership committee members, employees, agents or affiliates or the other Covered Persons or any member of their families or a Person or entity advised by the Sub-Advisor may have an interest in a particular transaction or in securities or obligations of the same kind or class, or securities or obligations of a different kind or class of the same issuer, as those that may be owned or acquired by an Account. The Management Company agrees that, in the course of providing the Services, the Sub-Advisor may consider its relationships with other clients (including obligors and issuers) and its affiliates.

The Management Company agrees that neither the Sub-Advisor nor any of its affiliates is under any obligation to offer any investment opportunity of which they become aware to the Management Company or any Account or to account to the Management Company or any Account for (or share with the Management Company or any Account or inform the Management Company or any Account of) any such transaction or any benefit received by them from any such transaction. The Management Company understands that the Sub-Advisor and/or its affiliates may have, for their own accounts or for the accounts of others, portfolios with substantially the same portfolio criteria as are applicable to the Accounts. Furthermore, the Sub-Advisor and/or its affiliates may make an investment on behalf of any client or on their own behalf without offering the investment opportunity or making any investment on behalf of the Management Company or any Account and, accordingly, investment opportunities may not be allocated among all such clients. The Management Company acknowledges that affirmative obligations may arise in the future, whereby the Sub-Advisor and/or its affiliates are obligated to offer certain investments to clients before or without the Sub-Advisor offering those investments to the Management Company or any Account.

The Management Company acknowledges that the Sub-Advisor and its affiliates may make and/or hold investments in an obligor's or issuer's obligations or securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor's or issuer's obligations or securities made and/or held by the Management Company or any Account, or in which partners, security holders, members, officers, directors, agents or employees of the Sub-Advisor and its affiliates serve on boards of directors, or otherwise have ongoing relationships or otherwise have interests different from or adverse to those of the Management Company and the Accounts.

Defined Terms

For purposes of this Appendix B, the following defined terms shall have the meanings set forth below:

"Portfolio" shall mean, with respect to any Account, the assets held by or in the name of the Account or any subsidiary of the Account in respect of such Transaction, whether or not for the benefit of the related secured parties, securing the obligations of such Account.

"Transaction" shall mean any action taken by the Sub-Advisor on behalf of any Account with respect to the Portfolio, including, without limitation, (i) selecting the Portfolio assets to be acquired by the Account, (ii) investing and reinvesting the Portfolio, (iii) amending, waiving and/or taking any other action commensurate with managing the Portfolio and (iv) instructing the Account with respect to any acquisition, disposition or tender of a Portfolio asset or other assets received in respect thereof in the open market or otherwise by the Account.

PAYROLL REIMBURSEMENT AGREEMENT

THIS PAYROLL REIMBURSEMENT AGREEMENT (this "***Agreement***") entered into on this 1st day of May, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and NexPoint Advisors, L.P., a Delaware limited partnership ("***NexPoint***"), and any affiliate of NexPoint that becomes a party hereto, is effective as of January 1, 2018 (the "***Effective Date***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will seek reimbursement from NexPoint for the cost of certain employees who are dual employees of HCMLP and NexPoint and who provide advice to registered investment companies advised by NexPoint under the direction and supervision of NexPoint as more fully described in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, the actual costs and expenses caused by, incurred or otherwise arising from or relating to each Dual Employee, in each case during such period. Absent any changes to employee reimbursement, as set forth in Section 2.02, such costs and expenses are equal to $252,000 per month.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 3.01.

"***Dual Employee***" has the meaning set forth in Section 2.01.

"***Effective Date***" has the meaning set forth in the preamble.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services

and the Shared Assets identified and authorized by applicable tariffs.

ARTICLE II
EMPLOYEE REIMBURSEMENT

Section 2.01 Employee Reimbursement. During the Term, NexPoint shall reimburse HCMLP for the Actual Cost to HCMLP of certain employees who (i) are dual employees of HCMLP and NexPoint and (ii) provide advice to any investment company registered under the Investment Company Act of 1940, as amended (the "***1940 Act***") pursuant to an investment advisory agreement between NexPoint and such investment company (each, a "***Fund***") under the direction and supervision of NexPoint (each, a "***Dual Employee***").

Section 2.02 Changes to Employee Reimbursement. During the Term, the Parties may agree to modify the terms and conditions of NexPoint's reimbursement in order to reflect new procedures or processes, including modifying the Allocation Percentage (defined below) applicable to such Dual Employee to reflect the then current fair market value of such Dual Employee's employment. The Parties will negotiate in good faith the terms of such modification.

ARTICLE III
COST ALLOCATION

Section 3.01 Actual Cost Allocation Formula. The Actual Cost of any Dual Employee relating to the investment advisory services provided to a Fund shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means the Parties' good faith determination of the percentage of each Dual Employee's aggregate hours worked during a quarter that were spent on NexPoint matters, as listed on Exhibit A.

ARTICLE IV
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 4.01 Settlement Payments. At any time during the Term, NexPoint may make payment of the amounts that are allocable to it.

Section 4.02 Determination and Payment of Cost. NexPoint shall promptly make payment of the Actual Cost within ten (10) days of the end of each calendar month. Should either Party determine that a change to employee reimbursement is appropriate, as set forth in Section 2.02, the Party requesting the modification shall notify the other Party on or before the last business day of the calendar month.

Section 4.03 Taxes.

(a) NexPoint is responsible for and will pay all Taxes applicable to it, provided, that such payments by NexPoint to HCMLP will be made in the most tax-efficient manner and provided further, that HCMLP will not be subject to any liability for Taxes applicable to the cost of a Dual Employee of NexPointas a result of such payment by NexPoint. HCMLP will collect such Tax from NexPoint in the same manner it collects such Taxes from other customers in the ordinary course of its business, but in no event prior to the time it invoices NexPoint for costs for which such Taxes are levied. NexPoint may provide HCMLP with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) NexPoint will reimburse HCMLP for any Taxes collected from HCMLP and refunded to NexPoint. In the event a Tax is assessed against NexPoint that is solely the responsibility of HCMLP and HCMLP desires to protest such assessment, HCMLP will submit to NexPoint a statement of

the issues and arguments requesting that NexPoint grant HCMLP the authority to prosecute the protest in NexPoint's name. NexPoint's authorization will not be unreasonably withheld. HCMLP will finance, manage, control and determine the strategy for such protest while keeping NexPoint reasonably informed of the proceedings. However, the authorization will be periodically reviewed by NexPoint to determine any adverse impact on NexPoint, and NexPoint will have the right to reasonably withdraw such authority at any time. Upon notice by NexPoint that it is so withdrawing such authority, HCMLP will expeditiously terminate all proceedings. Any adverse consequences suffered by HCMLP as a result of the withdrawal will be submitted to litigation pursuant to Section 6.14. Any contest for Taxes brought by HCMLP may not result in any lien attaching to any property or rights of NexPoint or otherwise jeopardize NexPoint's interests or rights in any of its property.

(c) The provisions of this Section 4.03 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE V
TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 5.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
MISCELLANEOUS

Section 6.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or NexPoint or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. Neither Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever.

Section 6.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 6.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 6.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 6.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 6.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 6.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 6.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 6.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to NexPoint, addressed to:

NexPoint Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 6.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 6.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 6.14 Dispute Resolution; Jurisdiction. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement, including, but not limited to, claims sounding in contract, equity, tort, fraud and statute ("Dispute") shall be submitted exclusively to the the courts located in Dallas County, Texas, and any appellate court thereof ("Enforcement Court"). Each party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including, but not limited to, administrative, arbitration, or litigation, other than the Enforcement Court.

Section 6.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: _____
Title: _____

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:_____
Title:_____

EXHIBIT A

EMPLOYEE ALLOCATIONS
(AS OF JANUARY 1, 2018)

EMPLOYEE NAME	PERCENTAGE (%) ALLOCATION TO NEXPOINT ADVISORS, L.P.
Abayarathna, Sahan	9%
Baynard, Cameron	9%
Burns, Nathan	70%
Covitz, Hunter	25%
Desai, Neil	25%
Fedoryshyn, Eric	9%
Gray, Matthew	9%
Hayes, Christopher	9%
Hill, Robert	5%
McFarling, Brandon	9%
Moore, Carl	10%
Nikolayev, Yegor	9%
Okada, Mark	20%
Owens, David	9%
Parker, Trey	15%
Parmentier, Andrew	40%
Phillips, Michael	9%
Poglitsch, Jon	10%
Ryder, Phillip	5%
Sachdev, Kunal	9%
Smallwood, Allan	9%
Staltari, Mauro	9%
Tomlin, Jake	9%
Vira, Sagar	9%
Wilson, Scott	5%

PAYROLL REIMBURSEMENT AGREEMENT

THIS PAYROLL REIMBURSEMENT AGREEMENT (this "***Agreement***") entered into on this 1st day of May, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto, is effective as of January 1, 2018 (the "***Effective Date***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will seek reimbursement from HCMFA for the cost of certain employees who are dual employees of HCMLP and HCMFA and who provide advice to registered investment companies advised by HCMFA under the direction and supervision of HCMFA as more fully described in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, the actual costs and expenses caused by, incurred or otherwise arising from or relating to each Dual Employee, in each case during such period. Absent any changes to employee reimbursement, as set forth in Section 2.02, such costs and expenses are equal to $416,000 per month.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 3.01.

"***Dual Employee***" has the meaning set forth in Section 2.01.

"***Effective Date***" has the meaning set forth in the preamble.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared

Dondero Ex. 14

Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

ARTICLE II
EMPLOYEE REIMBURSEMENT

Section 2.01 Employee Reimbursement. During the Term, HCMFA shall reimburse HCMLP for the Actual Cost to HCMLP of certain employees who (i) are dual employees of HCMLP and HCMFA and (ii) provide advice to any investment company registered under the Investment Company Act of 1940, as amended (the "***1940 Act***") pursuant to an investment advisory agreement between HCMFA and such investment company (each, a "***Fund***") under the direction and supervision of HCMFA (each, a "***Dual Employee***").

Section 2.02 Changes to Employee Reimbursement. During the Term, the Parties may agree to modify the terms and conditions of HCMFA's reimbursement in order to reflect new procedures or processes, including modifying the Allocation Percentage (defined below) applicable to such Dual Employee to reflect the then current fair market value of such Dual Employee's employment. The Parties will negotiate in good faith the terms of such modification.

ARTICLE III
COST ALLOCATION

Section 3.01 Actual Cost Allocation Formula. The Actual Cost of any Dual Employee relating to the investment advisory services provided to a Fund shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means the Parties' good faith determination of the percentage of each Dual Employee's aggregate hours worked during a quarter that were spent on HCMFA matters, as listed on Exhibit A.

ARTICLE IV
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 4.01 Settlement Payments. At any time during the Term, HCMFA may make payment of the amounts that are allocable to it.

Section 4.02 Determination and Payment of Cost. HCMFA shall promptly make payment of the Actual Cost within ten (10) days of the end of each calendar month. Should either Party determine that a change to employee reimbursement is appropriate, as set forth in Section 2.02, the Party requesting the modification shall notify the other Party on or before the last business day of the calendar month.

Section 4.03 Taxes.

(a) HCMFA is responsible for and will pay all Taxes applicable to it, provided, that such payments by HCMFA to HCMLP will be made in the most tax-efficient manner and provided further, that HCMLP will not be subject to any liability for Taxes applicable to the cost of a Dual Employee of HCMFAas a result of such payment by HCMFA. HCMLP will collect such Tax from HCMFA in the same manner it collects such Taxes from other customers in the ordinary course of its business, but in no event prior to the time it invoices HCMFA for costs for which such Taxes are levied. HCMFA may provide HCMLP with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) HCMFA will reimburse HCMLP for any Taxes collected from HCMLP and refunded to HCMFA. In the event a Tax is assessed against HCMFA that is solely the responsibility of

HCMLP and HCMLP desires to protest such assessment, HCMLP will submit to HCMFA a statement of the issues and arguments requesting that HCMFA grant HCMLP the authority to prosecute the protest in HCMFA's name. HCMFA's authorization will not be unreasonably withheld. HCMLP will finance, manage, control and determine the strategy for such protest while keeping HCMFA reasonably informed of the proceedings. However, the authorization will be periodically reviewed by HCMFA to determine any adverse impact on HCMFA, and HCMFA will have the right to reasonably withdraw such authority at any time. Upon notice by HCMFA that it is so withdrawing such authority, HCMLP will expeditiously terminate all proceedings. Any adverse consequences suffered by HCMLP as a result of the withdrawal will be submitted to litigation pursuant to Section 6.14. Any contest for Taxes brought by HCMLP may not result in any lien attaching to any property or rights of HCMFA or otherwise jeopardize HCMFA's interests or rights in any of its property.

(c) The provisions of this Section 4.03 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE V
TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 5.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
MISCELLANEOUS

Section 6.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. Neither Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever.

Section 6.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 6.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 6.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 6.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 6.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 6.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 6.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 6.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 6.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 6.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 6.14 Dispute Resolution; Jurisdiction. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement, including, but not limited to, claims sounding in contract, equity, tort, fraud and statute ("Dispute") shall be submitted exclusively to the the courts located in Dallas County, Texas, and any appellate court thereof ("Enforcement Court"). Each party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including, but not limited to, administrative, arbitration, or litigation, other than the Enforcement Court.

Section 6.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name:_____
Title:_____

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name:_____
Title:_____

EXHIBIT A

EMPLOYEE ALLOCATIONS
(AS OF JANUARY 1, 2018)

EMPLOYEE NAME	PERCENTAGE (%) ALLOCATION TO HCMFA ADVISORS, L.P.
Abayarathna, Sahan	29%
Baynard, Cameron	29%
Burns, Nathan	10%
Covitz, Hunter	5%
Desai, Neil	5%
Dondero, James	30%
Fedoryshyn, Eric	29%
Gray, Matthew	29%
Gulati, Sanjay	100%
Hayes, Christopher	29%
Hill, Robert	5%
McFarling, Brandon	29%
Moore, Carl	5%
Nikolayev, Yegor	29%
Owens, David	29%
Parker, Trey	30%
Parmentier, Andrew	40%
Phillips, Michael	29%
Poglitsch, Jon	75%
Ryder, Phillip	5%
Sachdev, Kunal	29%
Smallwood, Allan	29%
Staltari, Mauro	29%
Tomlin, Jake	29%
Vira, Sagar	29%

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas December 10, 2020 9:30 a.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES D. DONDERO, Defendant.	**Adversary Proceeding 20-3190-sgj** - MOTION FOR PRELIMINARY INJUNCTION - MOTION FOR TEMPORARY RESTRAINING ORDER

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Plaintiff: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Plaintiff: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Official Committee of Unsecured Creditors: Matthew A. Clemente
SIDLEY AUSTIN, LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7539

Dondero Ex. 15

APPEARANCES, cont'd.:

For the Defendant: D. Michael Lynn
John Y. Bonds, III
BONDS ELLIS EPPICH SCHAFER JONES, LLP
420 Throckmorton Street, Suite 1000
Fort Worth, TX 76102-5304
(817) 405-6903

For the NexPoint Parties: James A. Wright, III
K&L GATES
State Street Financial Center
One Lincoln Street
Boston, MA 02111
(617) 261-3193

For the CLOs/Issuer Group: James E. Bain
JONES WALKER, LLP
811 Main Street, Suite 2900
Houston, TX 77002
(713) 437-1820

Recorded by: Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

Transcribed by: Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 DALLAS, TEXAS - DECEMBER 10, 2020 - 9:58 A.M.
2 THE COURT: We only have left today the Highland
3 matter. There may be people on the line for the RE Palm
4 Springs matter, but if you're on the line for that, the Court
5 granted a motion for continuance that was filed by SR
6 Construction, Inc. a few days ago. So if you were on the line
7 for that, that's been continued at the Movant's request. Or
8 the Objector's request, I should say. And it's to be reset at
9 such point in time as the lawyers seek that.
10 All right. So, with that, I am going to turn to Highland
11 and our emergency motion for a temporary restraining order
12 against James Dondero that was filed by the Debtor. First,
13 for the Debtor team, who do we have appearing?
14 MR. POMERANTZ: Good morning, Your Honor. It's Jeff
15 Pomerantz, also with John Morris. John Morris will be handling the
16 hearing today on behalf of the Debtor.
17 THE COURT: All right. Thank you. For Mr. Dondero, who
18 do we have appearing?
19 MR. BONDS: Your Honor, John Bonds and Michael Lynn.
20 THE COURT: All right. Thank you. The Committee, I know,
21 is interested in this. Who do we have appearing for the Committee?
22 MR. CLEMENTE: Good morning, Your Honor. Matthew
23 Clemente; Sidley Austin; on behalf of the Committee.
24 THE COURT: All right. I'm going to ask, do we have
25 anyone appearing for certain parties who filed another emergency

motion yesterday, I think involving what seemed like very overlapping issues. The parties that I'm talking about are Highland Fixed Income Fund; NexPoint Advisors, LP; NexPoint Capital, Inc.; and NexPoint Strategic Opportunities Fund. Do we have anyone -- I think it was the K&L Gates firm who filed an emergency motion yesterday on, like I said, what I think are some overlapping issues with what we're going to hear about today. Anyone here on the line for those entities?

MR. WRIGHT: Yes. Good morning, Your Honor. It's James Wright, K&L Gates. I wasn't expecting this matter to be on today, so I need to apologize for not having a coat and a tie.

THE COURT: Okay. Well, I realize I picked you out. But could you, for the court reporter, say your last name again? It was a little garbley.

MR. WRIGHT: Yes. It's James Wright, W-R-I-G-H-T.

THE COURT: Okay. Thank you. Well, we have a lot of other folks on the line, so I'll just ask: Is there anyone else out there who desires to appear? This was obviously set very expedited, so maybe people did not file a pleading to weigh in, but maybe they're wanting to appear. If so, go ahead. (No response.) All right. Hearing no others, I will go to you, I guess, Mr. --

MR. BAIN: Your Honor?

THE COURT: Oh, go ahead.

MR. BAIN: Your Honor?

THE COURT: Yes?

MR. BAIN: I'm sorry. I was on mute. This is Joseph Bain of the law firm of Jones Walker. I represent the CLOs. And Your Honor, at the appropriate time, if Your Honor doesn't mind, I have a few comments that may help inform the Court on kind of what's going on. But I'm happy to wait until the appropriate time.

THE COURT: Okay. Very good. Well, and the reason why I picked out Mr. Wright regarding that newest emergency motion is, you know, I know they've asked for an emergency setting next Tuesday, and I have not -- I've not made a decision on that. I kind of wanted to see what I hear about today and figure out if there's really, you know, a need for that or not.

So, thank you, Mr. Bain. We'll talk to you at some point today.

MR. BAIN: Thank you, Your Honor.

THE COURT: Any other appearances?

All right. Well, I was about to go back to or go to Mr. Morris. But let me ask Mr. Bonds or Mr. Lynn: Did you file a responsive pleading? When I left here yesterday afternoon, I did not see one. But was there one filed late at night, by chance, that I just haven't seen?

MR. BONDS: No, Your Honor, we have not.

THE COURT: Okay. Thank you.

MR. BONDS: (garbled)

THE COURT: All right. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor. John Morris;

Pachulski, Stang, Ziehl & Jones; for the Debtor.

Let me begin by thanking Your Honor for hearing us on such shortened notice. What I thought I'd do is spend a few minutes, Your Honor, talking about why we're here, summarizing the facts, and then summarizing for the Court the relief that we're seeking.

As Your Honor, I presume, is aware, we filed this motion on Monday, together with a declaration from Jim Seery, the Debtor's CEO and CRO, with 29 separate exhibits. And if it pleases the Court, I'd like to proceed in that manner.

THE COURT: All right. You may.

MR. MORRIS: Okay. Your Honor, we do regret that we're here, frankly. The Debtor has worked very hard during the course of this case to get to where we are. We have a plan on file that calls for the monetization of the Debtor's assets for distribution to holders of allowed claims, we have an approved disclosure statement, and confirmation is just five weeks away.

Unfortunately, in the last couple of weeks, Mr. Dondero has engaged in what we firmly believe is wrongful conduct and can't really be credibly disputed or justified. As Mr. Seery lays out in his declaration and as Mr. Dondero's own written words show, Mr. Dondero recently interfered with the Debtor's operations and decisions and made some rather explicit threats.

We're not here to punish Mr. Dondero. We're not here seeking sanctions for violation of the automatic stay. Rather, we're here to simply set some very clear and firm ground rules on a go-forward basis so the Debtor can get across the finish line without interference or coercion by Mr. Dondero or anyone acting on his behalf. That's all we're here to do today.

We tried to work with Mr. Dondero's counsel on a stipulation, but regrettably were unable to do so.

So let me describe for the Court the facts that support the motion, and at the end of that I will offer our exhibits into evidence.

I do want to provide some context into how we got here. The facts are pretty simple. As Your Honor will recall, back in January, with this Court's approval, Mr. Dondero surrendered control of the Debtor to an independent board of directors, including Mr. Seery. As Your Honor knows, though, Mr. Dondero was retained as a portfolio manager and as an unpaid employee of the Debtor.

Pursuant to the Court's order and the term sheet entered into with the Unsecured Creditors' Committee, Mr. Dondero's responsibilities were to be determined by the board, and he agreed to resign at the board's request.

Over the summer, as Your Honor will recall, Mr. Seery was appointed the Debtor's CEO and CRO. Throughout this time, Mr.

Seery worked closely with Mr. Dondero. And one of the things they worked on was trying to come up with a so-called pot plan, the goal of which was to come to a consensual resolution of this case. Mr. Seery's goal, the (garbled) goal, the Debtor's goal, was to try to give the estate an alternative to the monetization of the Debtor's assets, and Mr. Seery worked hard and in good faith in that regard.

As Your Honor will also recall, in late summer the Debtor and certain litigation creditors agreed to mediate these disputes. In September, the Debtor announced that it had reached an agreement with Josh Terry and Acis to resolve their claims. I don't need to remind the Court of the nature of the disputes between Mr. Dondero and Mr. Terry, but suffice it to say that Mr. Dondero made clear that he opposed not only the settlement that was reached at the mediation, but, really, any settlement at all with Mr. Terry.

At around the same time, while still trying to get to the pot plan and a consensual resolution, the Debtor did present its plan of reorganization that provides for the monetization of the assets for the benefit of creditors. By the end of September, Mr. Dondero made it clear that he would oppose both the Acis settlement and the Debtor's plan.

He has every right to do that, Your Honor. Well, those steps are contrary to the interests of the Debtor. In addition, it also became clear that Mr. Dondero, through

(garbled) trust, has continued to press his claims that the Debtor had -- that the Debtor had mismanaged Multi-Strat during the case.

For these reasons, I think on October 2nd the board asked Mr. Dondero to resign, and he did so on October 9th.

With confirmation on the horizon, in the last couple of weeks, regrettably, Mr. Dondero has, in fact, interfered with the Debtor's business. There's no dispute that the Debtor serves as the manager of certain CLOs. There's no dispute that Mr. Dondero and certain of his affiliates hold a portion of the preferred notes in the CLOs managed by the Debtors. I don't think there's any dispute that the Debtor's duty is to the CLOs and not to any particular holder of CLO interests.

In late November, in furtherance of his duties, Mr. Seery directed that certain assets held by the CLOs be sold. Mr. Dondero and certain entities he controls, the ones that we mentioned earlier, Your Honor, the ones that are the (garbled), apparently disagreed with Mr. Seery's business judgment, and that happens.

I do want to point out, I don't know if Your Honor has had a chance to read the competing TRO, --

THE COURT: I have.

MR. MORRIS: -- but what's notable -- okay. What's notable in there, Your Honor, is that they expressly admit, and I'm quoting, the Debtor is responsible for making

decisions to sell the CLOs' assets. They admit that in their request for a TRO.

So there's no dispute that Mr. Seery has the right to do what he set out to do. Nevertheless, Mr. Dondero intervened and personally stopped the trades that Mr. Seery authorized. It's in writing. It can't be disputed. In fact, it's set forth in Exhibit 8, which is attached to Mr. Seery's declaration, which can be found at Docket 4 to the adversary proceeding.

Not only did Mr. Dondero cause the trades to halt, he told certain people, including the Debtor's chief compliance officer, not to do it again, and (inaudible) that they would face personal liability if they did so.

The Debtor sent cease-and-desist letters to Mr. Dondero and his affiliated entities. Those letters are attached as Exhibits 9 and 10 to Mr. Seery's declaration. And the fact is, Your Honor, for this particular part of the episode, Mr. Seery's conduct is simply unacceptable and was one of the events that precipitated the filing of this motion.

THE COURT: You said Mr. Seery. I think you meant Mr. Dondero.

MR. MORRIS: I apologize, Your Honor. I certainly did, yes.

THE COURT: Okay.

MR. MORRIS: The other event that caused the Debtor

to file this motion was a rather explicit written threat that Mr. Dondero made to Mr. Seery promptly after the Debtor acted to fulfill its fiduciary duties to the estate.

As the Court may generally be aware, Mr. Dondero and certain of his affiliates are the makers under a series of promissory notes in favor of the Debtor. The notes are attached as Exhibits 11 through 23 to Mr. Seery's declaration. Certain of these notes are demand notes, meaning that they don't have a term, they don't expire at some defined point in the future, they're payable upon demand by the holder. The Debtor is the holder of these notes.

Last week, the Debtor exercised its right to make a demand for payment of all unpaid principal and accrued interest, estimated to be approximately $30 million in the aggregate. Those demands are set forth in Exhibits 24 through 27 in Mr. Seery's declaration.

The demand notes are property of the Debtor's estate, collection of the notes is part of the Debtor's liquidity plan, and the proceeds are expected to be used to pay creditors' claims.

Shortly after the demand for payment on the notes was made, Mr. Seery [sic] sent a short text that can be found at Exhibit 28, saying simply, Be careful what you do. Last warning.

To Mr. Seery's surprise, Mr. Dondero called him the

following morning, ostensibly to talk about his pot plan. As laid out in his declaration, Mr. Seery expressed considerable concern over the threat, expressed his view that he thought it was unlawful, and was surprised, really, at the nature of the conversation.

Mr. Dondero didn't apologize during that call. He didn't express regret. Instead, he suggested that the lawyers would handle that issue. And only at the end of the call, when Mr. Seery pressed, did Mr. Dondero begrudgingly say that he didn't mean any physical harm.

Your Honor, we're five weeks away from confirmation. The Debtor is laser-focused on getting there. We are -- continue -- we have resolved substantial claims. We continue to resolve substantial claims. And though if there was a viable pot plan the Debtor would still pursue it, the Debtor is seeking a smooth transition into its post-bankruptcy state. We continue to negotiate with creditors who have outstanding claims. And we need peace. We need the freedom to get there.

As a result of the foregoing, the Debtor seeks the entry of a temporary restraining order in the form of Exhibit A attached to the motion, which is on Docket #2 in the adversary proceeding. In substance, the form is intended to prevent Mr. Dondero from interfering with the Debtor's business, engaging in threatening or coercive conduct, and using his affiliates or others acting on his behalf to do the same.

In our discussions with Mr. Dondero's counsel, it became clear that Mr. Dondero was not interested at this time in resolving the entirety of the dispute. We wanted to get this whole adversary proceeding open and closed and put this behind us. But regrettably, we're here today to press the motion because we were unable to come to that agreement.

So, in addition to the entry of the order attached to the motion, the Debtor also requests that the Court hold an evidentiary hearing on the Debtor's request for a preliminary injunction on January 4th, when we already have time on the Court's calendar.

And so that there's no misunderstanding, if the parties cannot resolve this matter beforehand, the Debtors do intend to take discovery during the intervening period. We will be prepared on January 4th, and we would expect, if forced to, to call Mr. Dondero as a witness at that hearing.

I have nothing further, Your Honor. Oh, actually, I do have something further. The Debtor moves for the entry into evidence of the declaration of Mr. James P. Seery, Jr. (muffled).

THE COURT: Okay. You got a little garbley. I think someone unmuted their device during your --

THE CLERK: Mr. Bonds --

THE COURT: Okay. But the request was that the Court admit into evidence the declaration of Mr. Seery at Docket

Entry #4, along with the 29 exhibits that were attached to that declaration. Any objection? (No response.) All right. Those will be admitted into evidence.

(Debtor's 29 exhibits are received into evidence.)

THE COURT: All right. Mr. Bonds, what does Mr. Dondero wish to tell the Court? All right. I think you put yourself back on mute when I made the comment. Please unmute your device.

MR. BONDS: I'm sorry, Your Honor. Can you hear me?

THE COURT: I can.

MR. BONDS: Your Honor, I would first like to apologize for Mr. Dondero's email to Mr. Seery. It should not have been sent. It is unfortunate that Mr. Dondero had several good points to make, but the message he was trying to send to the Debtor seems to have been lost, and for that I apologize.

Mr. Dondero had serious concerns about the way in which the Debtor's employees have been treated in this case. As the Court knows, the employees who built this company will be terminated either on December 31st or upon confirmation of the Debtor's most recent plan. Mr. Dondero does not agree to such termination or the financial treatment of the employees, especially the treatment over the last few months, in which they have seen their claims be substantially reduced.

Your Honor, Mr. Dondero is further concerned with the

Debtor's lack of sale of assets, especially the lack of competitive bidding. Mr. Dondero may want to bid on some of those assets, and under the Debtor's procedure, he is being precluded from bidding, even if the sale is outside of the ordinary course of business.

Mr. Dondero is further frustrated by the Debtor's sale of certain CLOs under applicable law. Is this an attempt around the hearing on the 16th? I don't know, Your Honor, but we are set for the 16th on the issue of whether or not the sales are being made outside the ordinary course of business. Is the Debtor trying to sell its assets without competitive business -- bidding? Why is that?

And what the Debtor would like you to sign is as an overly broad TRO written, I suspect, with a peppering of anger throughout. The relief requested is basically in the declaration of Jim Seery. It contains a number of acts which the Debtor seeks to have this Court determine are prohibited conduct. That term is defined in the Debtor's motion for TRO. We assert that such language is overly broad and its (inaudible) behavior which Debtor seeks to prohibit is not justified, inapplicable, or simply does not make common sense.

Your Honor, in the second paragraph of the proposed TRO, there are five general concepts that are listed as prohibited conduct. The first category of prohibited conduct which we have issues with relates to Mr. Dondero communicating with the

1 Debtor's employees except as it relates to the shared services
2 provided by or controlled by Mr. Dondero. Such a prohibition
3 is unreasonably broad and seemingly may well violate the First
4 and the Fourth Amendments.
5 Your Honor, we ask the question: Can Mr. Dondero
6 communicate something as basic as an employment contract with
7 an employee who is going to be let go without violating the
8 TRO?
9 The second category of prohibited conduct relates to
10 allegedly interfering or otherwise impeding, directly or
11 indirectly, the Debtor's business concerning its operations,
12 management, treatment of claims, disposition of assets owned
13 or controlled by the Debtor, and pursuit of the plan or any
14 alternative to the plan. Your Honor, what does the word
15 indirectly mean? Does such prohibition prohibit the Debtor
16 from pursuing -- or Mr. Dondero from pursuing his Acis 9019
17 motion or appeal? What does the language mean with regard to
18 pursuit of the plan or any plan alternative? Has the Debtor
19 turned the shield into a sword? Can the Debtor -- can Mr.
20 Dondero try to sell his pot plan which he and the mediators
21 have worked so diligently on? Does Mr. Dondero violate the
22 terms of the TRO simply by voting against the plan?
23 Is this really what the Debtor wants, or does the Debtor
24 want to return the most money that it can to the Debtor's
25 creditors?

Can Mr. Dondero even (inaudible) in the organization without violating the TRO?

Finally, the proposed order provides that Mr. Dondero is further temporarily causing -- temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) an entity owned or controlled by him and/or any person or any entity acting on his behalf from directly or indirectly engaging in any prohibited conduct. Again, what does the word causing mean? What about the word encouraging? Does that mean that the Debtor simply cannot do any action to protect himself -- Mr. Dondero cannot take any action to protect himself? Are we setting up Mr. Dondero to fail?

Your Honor, what we would ask, what we would ask the Court to do is either deny the TRO as being overly broad or order the Debtor to come up with some reasonable restrictions going forward. We are happy to consider anything reasonable, but the proposed TRO is anything but reasonable.

In summary, we ask the Court how the status quo would be altered by a TRO.

Your Honor, I think Mr. Morris has indicated that the Debtor intends to be able to confirm a plan on the 5th -- or the 12th, excuse me, of January. Your Honor, we don't believe that that's appropriate. Is Mr. Dondero prohibited from trying to get his plan confirmed? Is he -- I mean, it seems to me that he basically is.

Your Honor, with regard to two arguments made by Mr. Morris, or at least one, we deny that any demand notes precipitated Mr. Dondero's email. It had absolutely nothing to do with it. But we're not here to talk about Mr. Dondero's demand notes at this point.

I don't think I have anything further.

MR. MORRIS: If I may respond very briefly, Your Honor?

THE COURT: You may. Go ahead.

MR. MORRIS: Okay. Your Honor, we are cognizant, and we don't mean, with all due respect to Mr. Bonds, to infringe on any way Mr. Dondero's right to make applications to this Court, to file motions. I think I heard mention of, you know, questions as to whether Mr. Dondero could pursue his motion against Acis, his appeal of the Acis, about whether or not or he could file things in this Court. We expressly put in a footnote, in order to try to make it clear, that Mr. Dondero has and will continue to have a right to make any application he wants to this Court, to object to any motion that's made. That's not the point of the exercise. The point of the exercise is to protect the Debtor from interference -- to protect the Debtor (echoing) from interference, coercion, and from threats. It's really that simple. I don't know why words that we use in common language every day, such as causing or conspiring or encouraging, should be deemed to be

ambiguous. I think, given the importance of these issues, one ought to be able to stay on the right side of that line without questioning whether or not they're actually conspiring with somebody or encouraging somebody to do something that they're otherwise prohibited from doing.

What the Debtor will not tolerate, Your Honor, is play whack-the-mole, where we get an order against Mr. Dondero, only to have one of his affiliated entities or somebody acting on his behalf attempt to say, oh, no, I'm here acting on my own independent behalf, and they're going to do exactly what Mr. Dondero is prohibited from doing. So that's all.

Again, Your Honor, we're not here with hysteria. I don't think our papers were intended to nor did they project any hysteria. I think, with counsel, as provided for in the proposed order, we would be delighted to continue to work with Mr. Dondero constructively. If he's got ideas on his pot plan, we're not precluding him from doing that at all. All we're saying is that he's got to participate with counsel and that he's not going to make any further direct communications to the Debtor's officers, directors, or employees. That's all, Your Honor. We think it's really quite reasonable under the circumstances.

I have nothing further.

THE COURT: All right. Well, --

MR. BAIN: Your Honor?

THE COURT: Who just spoke up?

MR. BAIN: (garbled) Yes. Joseph Bain on behalf of the CLOs, if I may be heard.

THE COURT: Okay. Everybody else mute their line. Okay. Go ahead, Mr. Bain.

MR. BAIN: Yes, Your Honor. And can you hear me okay?

THE COURT: I can.

MR. BAIN: Wonderful. Your Honor, for the record, Joseph Bain of the law firm of Jones Walker on behalf of the CLOs.

Our role in this is obviously very sensitive, given the nature and relationships that exist. One of the things I did want to let Your Honor know, though, is that -- two things. One, one of the most outstanding issues, at least in my opinion, regarding confirmation of the plan is essentially what to do with the CLOs and collateral management agreements. That's still an open issue. If that's not resolved, there are significant rejection damages that could come from that. So that's the bad news.

The good news, however, is, up until this week, we've been negotiating with the Debtors and we have calls set for NexPoint -- with NexPoint to negotiate what all parties kind of refer to as a soft landing for the CLOs, which, to a large extent, involve the issues that are before you today.

I just, I just wanted to provide that context because the parties are talking and we are kind of taken aback by kind of the most recent event this week, because from an outsider's perspective, the current issues that are currently kind of at dispute here, we thought everyone was working towards a deal. And I think it is a little ironic that -- and as Your Honor knows, I was involved in the *Hoactzin* case, and I thought that that was a very -- I represented Mac Murray (phonetic) in that case, and I thought Ms. Byrnes and Mr. Hendricks did an excellent job of pulling all the parties together.

And Your Honor, I don't want to stray too far outside of my lane to suggest that that same approach is what is needed here, but I just want to raise for Your Honor to let you know that we are here. We're kind of the party stuck in the middle. And we're hoping and we're -- remain willing to negotiate all the outstanding issues. But obviously, given the nature of some of the allegations, it's more complicated right now.

THE COURT: Okay.

MR. BAIN: And that's all I have, Your Honor.

THE COURT: All right. Well, I appreciate you speaking up. And you may or may not remember that the Court ordered mediation last July, global mediation, including Mr. Dondero, mediation among the Debtor, Mr. Dondero, UBS, Acis, the Crusader Redeemer Committee, and we had a co-mediation

1 team. Retired Bankruptcy Judge Allan Gropper and former Weil
2 Gotshal partner Sylvia Mayer. And while I don't communicate
3 with mediators, I fully believe from the parties' reports that
4 was mediation that the parties and lawyers tried very, very
5 hard in to get to some settlements, and in fact, they did get
6 to a settlement with Acis and the Redeemer Committee.
7 So, I have a heck of a lot of thoughts here, and I'll
8 refrain from sharing every one of them, but I'm going to share
9 a few of them. While I appreciate Mr. Bonds doing what was an
10 honorable thing and apologizing on behalf of his client for
11 the written communications that were worded in such a way
12 where someone might think they were threatening or a violation
13 of the stay, it wasn't an apology from Mr. Dondero directly.
14 I think the really, really honorable thing might have been if
15 Mr. Dondero came here, hat in hand, willing to go under oath
16 and explain himself. You can share that with him, that's what
17 this judge thinks, that the apology through counsel fell a
18 little short, although I definitely appreciate counsel
19 expressing the apology.
20 You know, I've been going back and forth looking at my
21 computer screen today, and, you know, it's rather shocking to
22 see in writing, you know, with the photo shot of a text where
23 Dondero says, "Be careful what you do-last warning." I mean,
24 that's just pretty shocking.
25 MR. BONDS: Your Honor? Your Honor?

THE COURT: Yes.

MR. BONDS: Can I have a second? Mr. Dondero did apologize to counsel and to Mr. Seery as well, and so the idea that Mr. Dondero has not apologized is not entirely correct.

THE COURT: Okay. Well, if I misunderstood, I apologize. But I guess what I was really trying to convey is, in a situation like this, I think coming into court and taking his lumps and saying things under oath might have been a better way to proceed.

I guess the second thing I want to say is I wish Mr. Dondero was here, because maybe I'm reading this wrong, but I think he needs to hear and know he is not in charge anymore of Highland. It may have been his baby. He may have created its wealth. But when he and the board made the decision to file Chapter 11, number one, that changed everything. And then number two, when the Committee was formed and was threatening "We think we need a Chapter 11 trustee because of conflicts of interest of Mr. Dondero and others," and when the Committee negotiated something short of that with the Debtor in January 2020, you know, a settlement that involved Mr. Dondero no longer being in charge, no longer being CEO, no longer having any role except portfolio manager with the Debtor, and when various protocols were negotiated, heavily negotiated, for weeks, detailed, complex protocols, life changed even further. It changed when he filed Chapter 11, when he put his baby,

1 Highland, in Chapter 11, and then it changed further in
2 January 2020 when this global corporate governance settlement
3 was reached. As we know, it involved independent new board
4 members coming in and eventually a new CEO. He's not in
5 charge.
6 Now, that doesn't mean he's not a party in interest, and
7 he can certainly weigh in with pleadings in the bankruptcy
8 court. But these communications that I've admitted into
9 evidence, and the declaration, the sworn declaration of Mr.
10 Seery, suggest to me that he's not fully appreciating that,
11 sorry, you're not in charge. And when you chose to put the
12 company in bankruptcy because of the overwhelming debt, it
13 started a cascade of events, so that now I'm depending on a
14 debtor-in-possession with a new board and a new CEO and a
15 Committee of very sophisticated members and professionals who
16 are working in tandem with the Debtor to be in charge,
17 basically. All right? So that's another thing I just feel
18 compelled to say for Mr. Dondero's benefit.
19 I guess another thing is there was a little bit of a
20 theme, Mr. Bonds, in your comments that Mr. Dondero is just
21 concerned, more than anything else, about the way employees
22 are being treated, or at least that's a major concern. And I
23 don't find that to be especially compelling. I mean, maybe if
24 he was sworn under oath and testified, I would believe that,
25 but it doesn't feel like what's really going on here. Again,

he took the step of deciding that the company should file Chapter 11. We had the change in corporate governance in January. And he has the ability -- everyone, I think, would very much be interested in a plan that he supports. You know, he wants to get the company back. That has been made clear in hearings from time to time, and I believe, from Seery's declaration and Highland's lawyers, that they've been and will remain receptive to Mr. Dondero's ideas for a different type of plan that might allow him to get back into control of Highland, if he puts in adequate consideration that makes the Committee and others happy.

But we're in a proverbial the-train-is-leaving-the-station posture right now. Okay? We've got confirmation coming up the second week of January or something like that. Okay. So the train is leaving the station, so we're running out of time to hear what Dondero might want to do as far as an alternative plan.

So, as far as the requested TRO, I appreciate that Mr. Dondero and his counsel are worried about some ambiguity, but I'm looking through the literal wording that has been proposed, and the wording proposed is that Dondero is temporarily enjoined and restrained for communicating, whether orally, in writing, or otherwise, directly or indirectly, with any board member, unless Mr. Dondero's counsel and counsel for the Debtor are included in such communications. Not ambiguous

at all to me, and not unreasonable. Okay? Time to have counsel involved in these conversations because, you know, we can't have businesspeople-to-businesspeople sending texts that look like threats to me.

Second, making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents. I don't think that's too much to ask. Please don't let him make threats to us anymore.

C, communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero. That seems reasonable to me because of the evidence in front of me.

Then D, interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the plan or any alternative to the plan.

Now, I guess maybe you're confused or feel like that is ambiguous. I will just say, for the sake of any doubt, and I think I heard Mr. Morris saying precisely this, that, you know, Dondero can file pleadings. Okay? He can file pleadings asking for relief. He can object to the plan. He can vote against the plan. And they are completely still open

to hearing about -- and I think they would have a fiduciary duty -- to hear about a pot plan that might be more favorable than what's on the table right now. But Mr. Morris, have I put words into your mouth? Isn't that exactly what you were saying?

MR. MORRIS: That is exactly right, Your Honor. And if you look, I think there's a footnote there that expressly provides -- gives Mr. Dondero the right --

THE COURT: Okay.

MR. MORRIS: -- confirms his right to do exactly what you just described.

(Echoing.)

THE COURT: Okay. Thank you for that. And I should say exclusivity is still in place, right? We don't -- I mean, I'm not inviting him to file a plan right now in violation of the exclusivity provisions, but I'm just saying discussions among lawyers, I think, are not only not prohibited but encouraged here.

And then, last, otherwise violating Section 362 of the Bankruptcy Code. Okay, the sky is blue. That is obviously not problematic.

Okay. So the next paragraph, James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with any entity owned or controlled by him and/or any person or entity acting on his behalf from directly

or indirectly engaging in any prohibited conduct.

You know, I don't -- I understand that indirectly, you know, there might be some concern about the ambiguity, but it looks like to me just sort of a catchall, okay, to the extent we didn't explicitly say it in the preceding paragraph, we don't want Dondero causing some employee of an affiliate he controls to do exactly what Dondero himself is prohibited from doing.

I don't think it's ambiguous. And if it is, if someone runs in here, he's violated Paragraph 3 of the TRO, well, obviously we would have a contested hearing where I'm not going to hold him in contempt of court unless I've got an evidentiary showing that would convince me of that.

So, I guess, on balance, I'm overruling the objections and I am granting the TRO.

And just to be clear, I'll make a record that bankruptcy courts certainly under Section 105 can issue a TRO, and courts are usually bound by the traditional factors of Rule 65 -- that is, looking at has there been a showing of immediate and irreparable harm? Is there a probability of success on the merits that the Debtor will be entitled to this when we have a later more fulsome hearing on the preliminary injunction request? Would the balance of equities favor the Movant Debtor here? And would the injunction serve the public interest?

I find from the evidence, the declaration of Mr. Seery, and the supporting documents, that all four prongs for a TRO are met here, so I am ordering it.

A couple of remaining things. We'll come back on January 4th to consider whether extension of this relief in a preliminary injunction is appropriate. I don't have at my fingertips the time of day where it's set on the 4th. Is it -- I think that's the Monday after the New Year's Day holiday. So I'm guessing we're set at 1:30.

Traci, if you're out there, can you confirm it's 1:30 on January 4th?

Okay. I'm not hearing a response from her. But Nate, maybe you can double-check that.

(Echoing.)

All right. Well, let's talk a minute about what is going to happen next week.

Mr. Bonds, I set -- okay, back on November -- please take your phone off mute when I am talking. Or put it on mute when I'm talking, please.

On November 19th, you filed the motion, basically -- I can't remember the wording of it -- but something like wanting to change the protocol for non-ordinary-course sales of assets. And you asked for an emergency hearing, and I denied that. And I was very concerned that it looked like an attempt to renegotiate the January protocol order that the Committee

had worked so hard to negotiate on. But it's set, finally. I think it's this next Thursday, a week from today.

But meanwhile, you know, again, I feel like the issues raised in that are very much overlapping with what we talked about today, as well as I feel like the January protocol order controls here, and it's an attempt to revisit that a month before confirmation.

But this newest emergency motion filed by Mr. Wright's client, it feels like, as I think I mentioned, the same type of motion dressed a little bit differently from entities controlled by Dondero rather than Dondero directly. And meanwhile, Mr. Wright has asked for a hearing next Tuesday. I'm not going to have three hearings on the same issue. So I guess I'll hear first from Mr. Dondero's counsel. I mean, what do you think I'm going to hear next Thursday that is going to change my mind about this was all covered in the January protocol order and I'm not going to revisit it a month before confirmation? Mr. Lynn, are you here to address that one?

MR. LYNN: Yes, Your Honor. First of all, I think the hearing is actually set for next Wednesday.

THE COURT: Okay.

MR. LYNN: Secondly, the motion filed by Mr. Wright, as I understand it, has to do with sales of assets by the CLOs that the Debtor manages as portfolio manager and not -- and

1 does not have to do with any sales of assets by the Debtor or
2 its estate. So they're two different issues.
3 As I understand Mr. Wright's pleading, he is arguing that
4 under the Advisers Investment Act, if I have that name right,
5 that Mr. Seery, on behalf of the Debtor, ought not to ignore
6 directions from or suggestions, requests, as they actually
7 are, from investors in the CLOs with respect to the assets of
8 the CLOs. That's entirely different from the concern that we
9 are expressing with respect to sales of assets by the Debtor.
10 Secondly, while Mr. Dondero may have some influence on the
11 CLOs, it is my understanding that the investors that Mr.
12 Wright represents are governed by an independent board of
13 directors, which Mr. Dondero may be on. I don't know whether
14 he is or not.
15 Third, we are not trying to change the protocols. We do
16 not believe anything in the protocols at all -- we've
17 identified nothing in the protocols at all that says that the
18 Debtor, and, by extension, Mr. Seery and the independent
19 board, may take actions outside the ordinary course of
20 business without notice and an opportunity for hearing before
21 this Court.
22 We have asked in the alternative that if somehow the
23 protocols authorize these actions, that the Court alter the
24 protocols.
25 What triggered this, Your Honor, was a sale of an entity

1 known as SSP, which belonged to Trussway, which in turn
2 belongs to the Debtor. We believe but we do not know for sure
3 that the sale is below the price that could have been
4 obtained. However, the sale was undertaken, as we understand,
5 without competitive bidding, without notice -- certainly,
6 there was no notice to Mr. Dondero -- and without an
7 opportunity for anyone to be heard.
8 We do not think that the intention of the protocols was
9 for this Court to abdicate its authority to oversee the
10 Debtor's operations and to limit the authorities entitled to
11 participate in decisions involving disposition of assets of
12 major value, to limit the decision-makers to the independent
13 board -- in particular, Mr. Seery -- and to limit it to the
14 members of the Creditors' Committee, rather than providing
15 notice generally to creditors, rather than providing a method
16 for competitive bidding, rather than letting people know what
17 is going on.
18 Your Honor has often stated, not just in this case, your
19 concern that the process should be transparent. We believe
20 that at this point the Debtor is attempting to use the
21 protocols in an effort to avoid the transparency that
22 creditors, equity interest owners, and most of all, this
23 Court, are entitled to.
24 THE COURT: All right. Well, I don't know if anyone
25 wants to respond to that, but --

1 MR. MORRIS: If I may, Your Honor.
2 THE COURT: Go ahead, Mr. Morris.
3 MR. MORRIS: Just very briefly. I think I heard
4 Judge Lynn say that there's nothing in the protocols that
5 authorizes the Debtor to sell assets outside the ordinary
6 course of business. And if he made that admission, I still
7 don't see the point of this motion next week. All they're
8 doing is questioning the Debtor's business judgment. They
9 don't really have a right to do that. Mr. Dondero doesn't
10 have a right to participate in the sale of those assets. The
11 Debtor -- you know, there's no evidence before the Court,
12 there will be no evidence before the Court, as to how the
13 Debtor decided, what factors they considered when deciding to
14 sell these assets. This is just completely improper.
15 (Echoing.)
16 Mr. Dondero personally participated in the corporate
17 governance resolution last January. There has been no
18 complaint by him or anybody else about the protocols, about
19 the Debtor having operated outside the protocols. The Debtor
20 is transparent. Every single month, we file monthly operating
21 reports. You can see what's happening with assets, right? We
22 work with the Committee. The Committee's not here joining in
23 this motion. The Committee hasn't complained about the
24 process. It's just Mr. Dondero. He's simply trying to
25 exercise -- this is just another attempt to further exercise

control. He can make his motion. It will be denied because the facts simply don't support it.

THE COURT: Mr. Clemente, is it wrong of me to assume that you and your clients are very vigilant in paying attention to trades, transfers, outside the ordinary course? I assume since, again, you have a committee of sophisticated parties who are owed hundreds of millions of dollars, and you so heavily negotiated the January protocol order, that you're following it meticulously and paying attention to what's happening. Do you care to comment?

MR. CLEMENTE: Thank you, Your Honor. I do. Matt Clemente, for the record, on behalf of the Committee.

You're exactly right, Your Honor, and Your Honor actually touched on several things that I would have said earlier.

First of all, the Committee is made up of very sophisticated members, which makes my job sometimes easy and sometimes challenging, because they are very hands-on and they do understand the business of Highland and we did heavily negotiate the protocols early in the case, Your Honor, and they were designed with exactly these types of transactions in mind, so that the Debtor had to come to the Committee and lay out its case for a particular transaction.

With respect to the transaction at issue, that's exactly what happened, Your Honor. We're not going to get into, obviously, Committee deliberations, but I can tell you that

the protocols have been followed.

As Your Honor knows, when we've had an issue under the protocols, I remember several months ago when we argued about certain distributions being made, the Committee certainly was not shy about bringing it to Your Honor's attention.

So we have been very vigilant and very diligent in holding the Debtor accountable under the protocols. And we believe that -- although, again, when we've had an issue, we've come to Your Honor. We believe that the protocols have worked as they were intended to and as they were designed, Your Honor.

So I can assure you that the Committee has been very vigilant and the Committee will continue to be very vigilant. These issues were all raised in the context of negotiating the protocols. That was before Your Honor. Mr. Dondero was involved with that. It was very difficult negotiations, Your Honor.

But this does seem like somebody now trying to renegotiate what it was that the parties agreed to and Your Honor approved early on in this case.

So, Your Honor, rest assured, the Committee has been very vigilant and will continue to be very vigilant.

THE COURT: All right. And I guess the last thing I'll say on that point is, while of course we always want transparency --

(Interruption.)

THE COURT: While we, of course, always want transparency and notice and opportunity to object, I mean, these are not your typical run-of-the-mill assets. They're not a parcel of real property or a building somewhere or inventory somewhere or intellectual property. I mean, these are -- you know, again, we have a unique business here. And I think that was very much recognized in the process of negotiating the protocols, that this is not the type of business where you do a 363 motion on 21 days' notice any time you feel like, oh, today's a great day to trade this or that in whatever fund.

Well, we will go forward on this motion, because Mr. Dondero is entitled to his day in court to make his argument, put on his evidence, and try to convince me that this is not just trying to renegotiate something Mr. Dondero agreed to 11 months ago on the eve of confirmation. But I want to make sure -- oh, we're getting --

(Echoing.)

(Clerk advises Court.)

THE COURT: Okay. You're on mute. You're on mute, Mr. Lynn.

MR. LYNN: Your Honor, may I explain briefly? This is very distressing. Mr. Morris says that it is the ordinary course of this Debtor's business to sell a subsidiary. This is not the ordinary course of the Debtor's business. There is

1 nothing in the protocols that says that the independent board
2 and just the creditors on the Creditors' Committee may make
3 decisions concerning major sales. We will present evidence to
4 that effect when it occurs, and we believe strongly -- and I
5 want to state, Your Honor, I didn't participate in
6 negotiations of those protocols. I wasn't involved. And I've
7 looked at them. There's nothing that says that this can occur
8 without going to a hearing. And there is nothing in the
9 protocols that defines ordinary course of business to involve
10 this.
11 This motion was not filed because Mr. Dondero wanted to
12 get in the way. It was filed because I thought it was the
13 right thing to do because I thought that this was contrary to
14 the way bankruptcy and Chapter 11 should work. And it was
15 reasoned by me, with Mr. Dondero's consent. And I very, very
16 much am upset to hear things people say that he's trying to
17 get in the way with this. He is not. He's asking for
18 something that is very, very, very reasonable. If they have
19 nothing to hide, and I hope they don't and don't believe they
20 do, but if the Debtor has nothing to hide, what is wrong with
21 notice and a chance for hearing?
22 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
23 If I briefly may be heard.
24 THE COURT: Go ahead.
25 MR. POMERANTZ: I actually did negotiate the

1 protocols. And I think what Mr. Lynn is conflating is the
2 Debtor selling Debtor assets and the Debtor acting in its
3 management capacity to sell assets of entities it manages.
4 We will also present the case law that basically an entity
5 that is not a debtor whose assets are being sold by the Debtor
6 acting as a manager is not within the purview of this Court.
7 So Mr. Lynn can be frustrated, could be upset with what's
8 happening, but we dealt with these issues last year. Because
9 as Your Honor mentioned, this Debtor is not the typical
10 debtor. And we had long negotiations with the Committee on
11 what is ordinary course and what is not ordinary course. And
12 as I mentioned to you the last time we were here, Your Honor,
13 as I mentioned to you in January when we had this approved, we
14 were not seeking to get authority to sell assets out of the
15 ordinary course of business or do any transactions out of the
16 ordinary course of business.
17 Mr. Lynn thinks that what's happening is out of the
18 ordinary course of the business. This Court has said it's
19 not. So we are prepared to go forward with the hearing.
20 We've also spoken to the affiliated entities about putting
21 their hearing on for the same date, because we also agree they
22 -- both motions raise similar issues. And I think we're close
23 to an agreement on having both of those motions heard at the
24 same time on the 16th.
25 Thank you, Your Honor.

THE COURT: All right. So it's the 16th, Wednesday. Did we look that up, Nate?

THE CLERK: It's at 1:30.

THE COURT: It's at 1:30? All right. So we will go forward with the Dondero motion Wednesday, December 16th, at 1:30, and we will go ahead and set the what I consider closely overlapping motion filed by the NexPoint entities and Highland Fixed Income Fund by Mr. Wright, we'll go ahead and set that at the same time.

Let me say this as clearly as I can. If there's going to be a challenge to the Debtor's business judgment, Mr. Dondero, he needs to be present at the hearing on video and he needs to testify, okay? I understand what Mr. Lynn said, that this was his idea, he thought the January protocol order violated the Bankruptcy Code, blah, blah, blah, but I am going to order that Mr. Dondero be present December 16th at 1:30 and testify. Okay?

So I've kind of modified that. I said if the business judgment of the Debtor is being challenged, but no, I'm broadening that. I think Mr. Dondero just needs to provide testimony on Wednesday. Given everything I heard today with the TRO request, and given that, in substance, he's -- he is challenging the Debtor's business judgment and the mechanism where the Committee oversees it, he just needs to testify. All right? So please convey that to him.

Now, Mr. Wright, I'm first going to ask, I know you weren't -- you were just listening in today, but do you want to say anything? I see you put your jacket on now. Thank you.

MR. WRIGHT: I did. I did find a jacket. I'm sorry, Your Honor.

THE COURT: Okay. Go ahead.

MR. WRIGHT: (muffled) So I, you know, I can address why we're asking for limited relief. I can also address the underlying motion, which (inaudible) some of -- in the underlying motion --

THE COURT: Okay. Your sound is very difficult to hear. Could you repeat what you just said? I didn't get it.

MR. WRIGHT: Yes, Your Honor. I'm happy to address our motion for an emergency hearing. I'm also happy to address the underlying motion we're asking be heard on an emergency basis. I didn't know, do you want me to address both or just the motion for why we're asking for emergency relief?

THE COURT: Well, I've gone ahead and said I will set it next Wednesday. It sounds like the Debtor saw the efficiencies maybe in having this one heard at the same time as the Dondero motion.

I have a couple of things I want to say for the benefit of you and your client, but I was giving you the chance to say

1 something first.
2 Here's what I'm thinking, going into this, so you can be
3 prepared to address this next Wednesday. Your motion feels to
4 me exactly like what we litigated *ad nauseam* in the Acis case.
5 Now, if any of the Acis lawyers are on the line or Mr. Terry
6 is on the line, I wonder if they are chuckling. And what I
7 mean is -- I heard a chuckle. I don't know if that was Ms.
8 Patel. We had hearings --
9 MS. PATEL: It was, Your Honor.
10 THE COURT: Okay. We had hearings in the Acis case.
11 Remember, Acis was a portfolio manager for CLOs. And the
12 party that was in the bottom tranche of the CLOs, okay, the
13 equivalent, I think, to your clients here, the NexPoint
14 entities and Highland Fixed Income Fund, we sometimes called
15 them the subordinated debtholders or the equity-holders, that
16 party -- it was a party named HCLOF -- began during the *Acis*
17 case trying to do a call, trying -- redemption notice. Acis,
18 liquidate these CLOs. We are -- we're done. We're tired.
19 You know, we're outside the reinvestment period. We want you
20 to liquidate. And started to kind of force that issue.
21 Highland was the sub-manager of Acis at that time. So, guess
22 what, the Chapter 11 trustee filed an adversary proceeding
23 asking for TROs, saying, you know, this is the portfolio
24 manager's discretion. And not only that, what they're doing
25 isn't a reflection of reasonable business judgment because,

you know, we don't think it's the right time actually to liquidate these CLOs, they're just trying to deprive the portfolio manager of his stream of revenue for managing this.

So we had multiple hearings about this. I issued a TRO saying stop it, bottom tranche of the CLOs. It seems transparent you're just trying to deprive Acis, the portfolio manager, of value. And you know, irony, irony, it's like the backwards situation here. They were saying, but we're so late in the life of these CLOs, it makes sense to liquidate them. Why would you want to keep these things going? We're not violating the stay. We're not jacking with the estate value and trying to deprive Acis of its revenue stream. Anybody knows it makes sense to liquidate these late-in-life CLOs. Very ironic to me, although maybe it's not the situation, apples to apples, but here, you see what I'm saying, it feels like same situation, only flip-flopped. The portfolio manager here, Highland, is going to be engaged in liquidating the CLOs, and your client, bottom tranche of equity, is saying no, don't do that. You know, there's still value there.

Now, I will say, in my Acis case, the equity tranche, they kind of -- their theory evolved over time. They were like, well, we actually just want CLOs managed by Highland, a Highland entity, and Acis isn't a Highland entity.

So, bottom line, I issued a TRO. Stop it, equity tranche. This is not your call, it's the portfolio manager, and I think

you're just jacking with the portfolio manager to screw up the reorganization. And guess what, we even had then a preliminary injunction and then a plan injunction. And of course, there were bells and whistles on what would evaporate the injunction. But that's now on appeal to the Fifth Circuit.

So, you know, at my confirmation hearing at least in Acis, if not previous hearings, we even had expert witnesses and we pored through the language of the portfolio management agreements. And I don't know if here we have the same situation, but it was complicated in Acis because we had the portfolio management agreements between the CLO manager and the CLO issuers, but then there was a separate management agreement between the equity tranche and, I don't know, I can't remember who the counterparty to that one was. But there, there were multiple agreements, and you had to parse through it, and we had experts testifying about, you know, discretion of the equity-holder versus not, or portfolio manager, da, da, da, da, da. And I ruled as I ruled. I granted the injunction, to the detriment of the equity tranche. And maybe the Fifth Circuit one day will tell me I was wrong. You know, I really think it's a hard, hard, hard issue.

But I'm just telling you, that's how I ruled on, I think, three occasions.

Maybe the portfolio management agreements are worded differently here. You know, maybe -- maybe it's a different issue. But I will say I read your motion yesterday with frustration. I'm like, haven't I ruled on this like three times in the Acis case? And then, you know, maybe I haven't. Again, maybe, maybe the portfolio management agreements in this case would convince me differently. But were you aware of how I ruled in Acis?

MR. WRIGHT: Your Honor, I'm aware of the Acis case, but no, I wasn't aware that this particular issue was addressed in such depth.

THE COURT: Okay.

MR. WRIGHT: (muffled) I will, of course, go take a look at all those hearings. I anticipate that I'm going to try to draw some distinctions between my situation and the situations there, but I certainly will be prepared to address that next week.

I think the thing that I would say just very broadly is that we are not -- I think our request is very limited in what we're asking for. All we are asking for is that there is a temporary pause on the Debtor exercising its right as portfolio manager to direct sales that we don't agree with for a ten-day period. And we would then use that period of time to explore, either consensually or through rights that we (inaudible). And then in the process of looking at this, Your

Honor, under the documents effecting a transfer of portfolio management, you know, these documents, they're based on the rights of the preference holders.

You know, my client's concern is really about the, you know, the investment time window of claim today versus the funds, the relevant -- again, Mr. Macur (phonetic) -- my clients include two advisors that are, you know, that are ultimately I think controlled by a vehicle that Mr. Dondero controls, but also I have a few clients that are funds that are required by SEC rules, as I understand it, to have a majority independent board. So I dispute that they're a Dondero-controlled entity, but I understand that that's testimony (inaudible). But I -- that's -- that's not right.

And so the funds, --

THE COURT: Who are the board members?

MR. WRIGHT: I can have that for you next week, Your Honor.

THE COURT: Okay.

MR. WRIGHT: I don't have it in front of me. But they're required by SEC rules to have a majority independent board. And so we -- the funds that are an advisor of my clients, they have a much longer-term investment horizon. So, you know, in my mind, I probably overly-simplistically analogize it to the difference between saving money for a house you intend to buy in a year and how you might invest

that versus saving money for retirement that you might do in 20 years. And I think any investment advisor will tell you you're going to -- you're going to do that differently, because with a long horizon you can accept (inaudible) and bucket changes and stuff like that. When they go out a long time, you know, it'll be okay. And on a short horizon, you know, you need to sort of make sure you're holding onto what you have and just approach it differently.

Highland, under its plan, is intending to liquidate at the end of 2022, which that's -- that's fine. That's what they're intending to do. But that's a very different investment time horizon than my clients, and so we -- you know, and they're -- they're proceeding to run, you know, their liquidations that way. I don't think that there's anything wrong with that. You know, that's their discretion. But we think that we'd be better served with a portfolio manager that is taking a long-term time horizon, which once was Highland but now not, given the bankruptcy case. And so, you know, we'd like to ask that -- and we're just -- we're really not -- we're not asking for a TRO. I think Mr. Morris (inaudible) a TRO. I understand that's their position. But I dispute it.

Highland is in bankruptcy, and so it's subject to the, you know, it's subject to the bankruptcy system and subject to the control of the Court. What we are asking would be for the Court to use its power under 363 and 1107 and 105 to tell

Highland rough -- for 30 -- within 30 days to figure out if they can replace you under the documents or if there can be a deal, as Mr. -- Mr. Bain mentions, there will be discussion of a (inaudible) to reach a consensual resolution in which the portfolio manager would change that would have to involve the CLOs and probably my clients and also the Debtor, probably, to see if we can get there. And, you know, if we can't, we can't. That's really the limited nature of what we're asking for now. It may be different than what you were describing in the Acis case. But again, I will go and read those cases and I will be prepared to address that more fully next week.

MR. POMERANTZ: I mean, Your Honor, this is Jeff Pomerantz, if I may briefly respond.

THE COURT: Go ahead.

MR. POMERANTZ: I think there's a fundamental problem with the argument that Mr. Wright just made. First of all, there are other investors and other people with interests in those CLOs. It's not Mr. Wright's clients only.

And also, the premise that the decisions that are being made in terms of liquidating those assets have to do with the Debtor's timeline on liquidation, just, you'll hear from Mr. Seery next week, is fundamentally incorrect. Mr. Seery is making decisions on behalf of Highland that he believes are within his fiduciary duty to the funds to maximize value.

So the whole premise of the argument that this is between

a long-term horizon and a short-term horizon is just incorrect. And there are other people that Mr. Seery has to worry about. He has a duty to the CLO, and just because one set of investors wanted to do certain things, they don't have that right. It's -- it's -- it wasn't lost on us that, in Mr. Wright's motion, he did not point to any language in any agreements that in any way give him that right.

So while we appreciate that these CLOs have to be addressed, and we have engaged in discussions with Mr. Wright's client and Mr. Bain's client to try to have a soft landing, they have not occurred yet. And in the interim, the Debtor has to do what it is obligated to do and act in a fiduciary manner and act consistent with the agreements. That's why we objected and we will be objecting to any moratorium on any of those efforts.

THE COURT: Okay. All right. So, Mr. Wright, I am also going to direct that you have a client witness to testify about these things. And I do want to understand, you know, who you're taking instructions from and who is on the board on these entities.

You know, we had a hearing before I think you were involved where the Committee was seeking discovery of documents, and a lot of the what I'm going to call Highland affiliates -- and I know people sometimes cringe when I use that word affiliates; you know, it may or may not meet the

Bankruptcy Code 101 definition of affiliate. But entities in the Highland umbrella, many of them resisted production of documents from the Committee. And I got concerned at that point in time of who is instructing the lawyers, because I felt like, in many instances -- not all, but in several instances -- you know, I was concerned it's in the estate's best interest to get these documents. You know, the Committee was the one seeking the documents, but we've got entities in the Highland umbrella resisting. And so it felt like there was a conflict. And if the same human beings were employees of the Debtor, and --

Anyway, I think we got through a lot of that, but I remember, in connection with all of that, looking at the list of Highland entities who filed proofs of claim in the bankruptcy case. And I remember asking, in some cases, like, who filed the proof of claim, and I was told that Mr. Dondero's counsel prepared a lot of these proofs of claim of the different entities. And at least signatories, I saw that Frank Waterhouse has signed the proofs of claim at least for NexPoint Advisors, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.

Anyway, we had a discussion about my concerns about conflicts back around that time, but here's what I'm getting at. I'm worried all over again about do we have any human beings involved calling the shots for your client, Mr. Wright,

that have fiduciary duties to the Debtor, and maybe this is getting in conflict with that. I just don't know. I just don't know. But it's concerning to the Court. So, what would help is if we have a human being testify for your clients so we can clear the air on that one. Okay?

So, next Wednesday, December 16th, at 1:30, we'll have a hearing on the Dondero motion and on these NexPoint motions of your client, Mr. Wright. And we're going to have a witness for Mr. Wright's client and we're going to have a witness -- and we're going to have Dondero being a witness. And Mr. Morris is going to upload your TRO, and we're going to have a follow-up hearing on January 4th on the preliminary injunction request.

All right. So, anything else?

MR. MORRIS: Yes, Your Honor. It's John Morris for the Debtor. I've got Mr. Seery on the phone, the Debtor's CEO --

THE COURT: Okay.

MR. MORRIS: -- and CRO. And if it pleases the Court, he would just like to spend a moment giving the Court an update as to where he is in the process.

THE COURT: Thank you. He may.

MR. MORRIS: Is that okay?

THE COURT: Uh-huh.

MR. MORRIS: Okay.

MR. SEERY: Thank you, Your Honor. Can you hear me?

THE COURT: Yes.

MR. SEERY: I appreciate the Court's time. I think with the overlapping motions it would be useful just to tick through very quickly, not to take too much of your time, where we are and why some of these things have come before you in the last couple days.

First, as you're aware, we have a plan out for a vote. We believe we're going to get confirmed. We believe we'll get the votes. We're still waiting on the votes. And we're still working on claims. So, as we speak, including even this morning, trying to resolve certain of the other open claims.

The Debtor is still managing its assets. And what that means is we're addressing financing with underlying assets that are in portfolio companies. We are addressing our own debtor-owned assets, some of which we are selling in the ordinary course. So, for example, securities. Where we have securities in an account, we have been selling those where we think the market opportunity was ripe.

Up until mid-March, Mr. Dondero controlled those accounts. He was the portfolio manager. We took them away after they lost considerable amounts of money, about ninety million bucks. Real money. So we took over control of those accounts since then, and we've been managing to sell them down to create cash where we think the market opportunity is correct.

With respect to subsidiaries, we don't have any plans to sell any PV assets now. These are companies that are part-owned, either directly or indirectly, through subsidiaries, with a number of other (inaudible) who are interest holders.

SSP, for example, there's been a lot of noise this morning, no real facts. I will tell you that we did sell SSP. We did it in conjunction, as Mr. Clemente indicated, with the Committee. We looked at number of bids. That entity was a private-equity-owned asset. We believe that it was sold appropriately. It wasn't selling an asset of the estate. It was actually a thrice-removed asset, also with other interest holders, including mostly completely independent, including SIBC -- SBIC owners who wanted to choose off that asset as well. We believe we got a very good price and executed that well. Happy to litigate and defend that at any time.

The CLOs, we're the manager of the CLOs. What we're trying to do in our plan is assign CLOs back to NexPoint Advisors. The reason for that is, while they do generate income, we didn't believe that the income was enough to justify us maintaining them. They would not be assets that we would continue to hold through the case. Or through the liquidation. Unclear whether NexPoint wants those assets now back or not. We have been working, as Mr. Bain indicated, closely with the Issuers and the Issuers' counsel, because there's very particular, specific ways to deal with those

assets under the documents that protect the various investors. As Mr. Morris pointed out, entities related, controlled by, managed by Mr. Dondero are not the only investors in these CLOs. Our duty is to the CLOs. We believe that we are adhering to that duty. We are happy to at some day litigate that.

With respect to asset sales, the Debtor has a team that manages these assets. The team came to me to sell certain assets. Mr. Dondero, NexPoint Advisors, they don't monitor these assets. They don't know anything about them. The assets we're talking about are loans, though the Debtor hasn't sold any of those, or securities that trade, equity securities that trade in the liquid markets. These are securities, you can go on the screen, you can go on Yahoo Finance and see how they trade.

Our team came to us and suggested that we sell some. I sat down with the analyst and the analyst suggested we sell. The manager of the day-to-day operations of CLOs suggested we sell. We set the sell notice within the context of the market. This wasn't a dumping. We thought that the market would support what we were doing, and it did.

Another asset that we were going to sell is an asset we don't have an analyst on. Haven't had one for years, apparently. It's not very much money. Mr. Dondero's related entities don't hold very much of the interests in the CLOs

that have that. They have debt which is owned by third parties. It's a good trade, in our opinion. Our analysis was it made sense to sell it within the context of the market. The Equity has no decision as to whether we do that. We're the manager.

Mr. Wright's example and his offer is, frankly, silly. If those public funds want to indemnify the Debtor and CLOs for any potential losses, that would be great, we can do that, we can talk about that, how to arrange that.

As to the pot plan, nobody has worked harder on the pot plan -- and I include Mr. Dondero -- than I have. Nobody. I didn't do it because I was trying to help Mr. Dondero. I thought it would be in the best interest of the estate, which means the creditors, the employees, and the investors whose funds we manage, to try to get a consensual deal done. So far, we've been unable to do that. In my declaration, there's a footnote. Not only did I help work on the idea, I actually drafted the term sheet. (inaudible) to do it, I presented it to the Creditors' Committee. Not that I wanted to do it. I thought they should do it. I did it. No one has worked harder for that.

The employees, unbelievably frustrated to hear that. Mr. Dondero put this company into bankruptcy. Our management of this estate has required that we fight with a lot of folks about keeping the team together. Again, we did it, not so

much for the individual team members, but we thought that would be the best way to enhance value for the estate and it would encourage an alternative plan that could be value-maximizing.

The employees have deferred compensation. That was all set up by Mr. Dondero. The money that was taken out and used in this -- by this company for other things rather than paying employees cash on a regular basis was used by Mr. Dondero well before I ever came into this case. If there are repercussions to employees because we are liquidating this entity or monetizing these assets, and because we have to do it through this vehicle, Mr. Dondero can stay in the mirror and not abort. It's very insulting and frustrating to hear that from counsel, who doesn't understand a thing about what we've done to try to keep the business together.

The CLO part of the business, we'd like to assign. We would like to assign as many of the employees over to help manage the business and have those go to Mr. Dondero's entities. And that's fine with us. You know, that is a concrete benefit to him, because it's also beneficial to the estate. We're not in the anger business. We are independent. The only thing that makes us angry is that when somebody just makes up noise, not facts, just statements that have no basis in reality of what's happened in this case, when we're trying to hold it together and come to a conclusion.

Sorry if I sound frustrated, Your Honor, because I really am, and I thought you should see that going forward before we go into next week. If the NexPoint entities want the CLOs, let's just work on that transfer. We have Mr. Bain and his clients. They are very good. They are CLO specialists. His co-counsel at Schulte is renowned in this space. We will work through it and make sure it works for the Issuers, make sure it works for NexPoint, and of course make sure it works for the estate.

Thank you, Your Honor.

THE COURT: All right. Mr. Seery, I really appreciate these comments. They've been very helpful to my thinking. In fact, I want to make sure it's under oath in case I ever want to take judicial notice of anything you've said just now. Do you solemnly swear or affirm that the statements you made were true and correct today, so help you God?

MR. SEERY: I do, Your Honor.

THE COURT: All right.

MR. SEERY: And just to be clear, if I ever make a statement to the Court, I consider it under oath.

THE COURT: Okay. Thank you. I appreciate that.

All right. So, again, I feel like that was so very helpful. And, you know, this is a precise example of why I am directing, if Mr. Dondero is going to urge a position with the

Court next Wednesday, he needs to testify. And if NexPoint, through whoever their decision-maker is, is wanting to urge a position to the Court, they need a human being to testify. And I'll hear Seery and I'll hear Dondero and I'll hear whoever that person is, and that's what's going to matter, you know, most to me. Yeah, we have some legal issues, certainly, but I like to hear business people explain things, no offense to the lawyers. But it's always very helpful to hear the business people in addition to the lawyers. All right. So, Mr. Morris, you're going to upload that TRO for me.

MR. MORRIS: Yes, Your Honor.

THE COURT: Mr. Wright, you can upload your order setting your motion for hearing next Wednesday at 1:30. And I think we have our game plan for now. Anything else? All right. We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 11:33 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/11/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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From: John A. Morris <jmorris@pszjlaw.com>
Sent: Wednesday, December 16, 2020 11:26 AM
To: Douglas Draper <ddraper@hellerdraper.com>
Subject: RE: Document production

Yes, a protective order was entered on January 22, 2020, at Docket No. 382.

The documents would be designated as "Highly Confidential" and would be limited to the Committee's professionals (and would not be provided to the individual Committee Members).

Please let me know if you're able to grab the document from Pacer or the claims agent's website.

I have another evidentiary hearing in two hours, but will call when able.

Thanks,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

PACHULSKI STANG ZIEHL JONES
Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

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From: Douglas Draper [mailto:ddraper@hellerdraper.com]
Sent: Wednesday, December 16, 2020 12:22 PM
To: John A. Morris
Subject: Re: Document production

Do you have a confidentiality agreement with the party requesting the information.

Sent from my iPhone

On Dec 16, 2020, at 10:26 AM, John A. Morris <jmorris@pszjlaw.com> wrote:

> I have been tied up, but will call Doug as soon as I'm able.

Dondero Ex. 16

Thanks for following up, Isaac.

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

<image001.jpg>

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

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From: Isaac Leventon [mailto:ILeventon@HighlandCapital.com]
Sent: Wednesday, December 16, 2020 11:24 AM
To: Douglas Draper
Cc: John A. Morris
Subject: RE: Document production

Douglas, John – did the two of you resolve any outstanding issues? Is there any objection to the production?

Thanks, Isaac

From: Douglas Draper <ddraper@hellerdraper.com>
Sent: Tuesday, December 15, 2020 2:29 PM
To: Isaac Leventon <ILeventon@HighlandCapital.com>
Cc: John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Document production

Do you all have a time for a call today ? Need to see the informal document request

Sent from my iPhone

> On Dec 15, 2020, at 12:58 PM, Isaac Leventon <ILeventon@highlandcapital.com> wrote:
>
> Douglas – I do not believe Dugaboy has a shared services agreement with Highland.
>
> Thanks, Isaac
>
> -----Original Message-----
> From: Douglas Draper [mailto:ddraper@hellerdraper.com]
> Sent: Tuesday, December 15, 2020 12:42 PM
> To: John A. Morris <jmorris@pszjlaw.com>; Isaac Leventon
> Subject: Document production
>
> Can we have a call so I can advise with respect to the document production issue. Anytime after 4 eastern/ I understand works for john.

Please advise. One question before the call does dugaboy have a shared services agreement with highland

Sent from my iPhone
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From: John A. Morris <jmorris@pszjlaw.com>
Sent: Friday, December 18, 2020 11:27 AM
To: Douglas Draper <ddraper@hellerdraper.com>
Subject: RE: Documents

Will do.

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
www.pszjlaw.com

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From: Douglas Draper [mailto:ddraper@hellerdraper.com]
Sent: Friday, December 18, 2020 12:25 PM
To: John A. Morris
Subject: Re: Documents

Let's get the documents reviewed first. I may not have an issue.

Sent from my iPhone

> On Dec 18, 2020, at 10:58 AM, John A. Morris <jmorris@pszjlaw.com> wrote:
>
> I understand this request but I will have to see the documents myself before I can definitively respond.
>
> As discussed and agreed, there is no shared services agreement so its not clear what basis there could conceivably be that would permit the Debtor to withhold accounting documents that are within its possession, custody, and control. If you know of any, please let me know as soon as possible.
>
> Regards,
>
> John
>
> John A. Morris
> Pachulski Stang Ziehl & Jones LLP
> Direct Dial: 212.561.7760

Dondero Ex. 17

> Tel: 212.561.7700 | Fax: 212.561.7777
> jmorris@pszjlaw.com
> http://www.pszjlaw.com
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa
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> Sent: Friday, December 18, 2020 11:52 AM
> To: John A. Morris
> Subject: Re: Documents
>
> Would like to see them before they go out. I now need to look at the
> issue in light of the complaint filed last night
>
> Sent from my iPhone
>
>> On Dec 18, 2020, at 10:45 AM, John A. Morris <jmorris@pszjlaw.com> wrote:
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>> I haven't seen them yet, Douglas, but will follow up and let you know.
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>> Regards,
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>> John
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>> John A. Morris
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>> Direct Dial: 212.561.7760
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>> Sent: Thursday, December 17, 2020 6:14 PM
>> To: John A. Morris
>> Subject: Re: Documents
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>> Following up. Did you get the documents yet ?
>>
>> Sent from my iPhone
>>
>>>> On Dec 16, 2020, at 5:24 PM, John A. Morris <jmorris@pszjlaw.com> wrote:
>>>
>>> As I mentioned, they are being gathered and prepared for production.
>>>
>>> I don't have them yet, but we will get a copy set to you.
>>>
>>> Regards,
>>>
>>> John

>>>
>>> John A. Morris
>>> Pachulski Stang Ziehl & Jones LLP
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>>> From: Douglas Draper [mailto:ddraper@hellerdraper.com]
>>> Sent: Wednesday, December 16, 2020 6:23 PM
>>> To: John A. Morris
>>> Subject: Documents
>>>
>>> Please send me the documents to review
>>>
>>> Sent from my iPhone
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-----Original Message-----
From: John A. Morris <jmorris@pszjlaw.com>
Sent: Wednesday, December 23, 2020 9:15 AM
To: Douglas Draper <ddraper@hellerdraper.com>
Cc: Warren Horn <whorn@hellerdraper.com>
Subject: RE: Two questions

Douglas:

I apologize for not responding yesterday; I had a contested hearing that did not end until after 7:00 pm eastern.

In any event, you should have received a copy of my e-mail to the UCC's counsel asking them to forward a copy of the Complaint. Let me know if you haven't received it by the end of the day, and I will follow up.

Separately, I was told that the person gathering the Dugaboy documents was out at the end of last week and did not have a chance to follow up because of the work leading to yesterday's hearing. But I will do that today and let you know.

Please let me know if you have any questions.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
www.pszjlaw.com

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

-----Original Message-----
From: Douglas Draper [mailto:ddraper@hellerdraper.com]
Sent: Tuesday, December 22, 2020 10:05 AM
To: John A. Morris
Cc: Warren Horn
Subject: Two questions

1) Have you received a copy of the documents you want to produce ? 2) inasmuch as I am representing Dugaboy in the Complaint that was recently filed can I get a copy or should I request it from Sidley ?

Sent from my iPhone
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Dondero Ex. 19

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-----Original Message-----
From: John A. Morris <jmorris@pszjlaw.com>
Sent: Thursday, January 14, 2021 2:52 PM
To: Douglas Draper <ddraper@hellerdraper.com>
Subject: RE: Dugaboy documents

How can you do that?

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
www.pszjlaw.com

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

-----Original Message-----
From: Douglas Draper [mailto:ddraper@hellerdraper.com]
Sent: Thursday, January 14, 2021 3:52 PM
To: John A. Morris
Subject: Re: Dugaboy documents

We can expedite things if I can see the docs that are going over

Sent from my iPhone

> On Jan 14, 2021, at 2:45 PM, John A. Morris <jmorris@pszjlaw.com> wrote:
>
> Nothing has been produced to the UCC, Douglas.
>
> Regards,
>
> John
>
> John A. Morris
> Pachulski Stang Ziehl & Jones LLP
> Direct Dial: 212.561.7760
> Tel: 212.561.7700 | Fax: 212.561.7777
> jmorris@pszjlaw.com
> http://www.pszjlaw.com
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa
>

Dondero Ex. 20

>
> -----Original Message-----
> From: Douglas Draper [mailto:ddraper@hellerdraper.com]
> Sent: Thursday, January 14, 2021 12:35 PM
> To: John A. Morris
> Subject: Dugaboy documents
>
> Have you ascertained whether the Dugaboy documents have been turned
> over. If they have been turned over can you send me a copy what was produced and whether it was protected as confidential or highly confidential under the NDA Please advise.
>
> Sent from my iPhone
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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 35

John T. Wilson IV
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Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
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Fort Worth, Texas 76102
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(817) 405-6902 facsimile

ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
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006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
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006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
			Transcripts	
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S EMERGENCY MOTION IN LIMINE
AND TO EXCLUDE EVIDENCE AND ARGUMENT

James D. Dondero ("Defendant" or "Dondero"), the defendant in the above-captioned adversary proceeding, pursuant to Rules 103(a),(c), 402, and 403 of the Federal Rules of Evidence, made applicable to this proceeding through Rule 9017 of the Federal Rules of Bankruptcy Procedure, and 11 U.S.C. § 105(a), hereby files this *Emergency Motion in Limine and to Exclude Evidence and Argument* (the "Motion") in connection with the hearing on *Plaintiff's Motion for*

an Order Requiring Mr. James Dondero to Show Cause Why He Should not be Held in Civil Contempt for Violating the TRO [Adv. Dkt. 48] and *Debtor's Memorandum of Law in Support of Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 49] (collectively, the "Contempt Motion") scheduled for February 23, 2021 at 9:30 a.m. In support thereof, Defendant respectfully represents as follows:

I. SUMMARY OF ARGUMENT

1. Through the Contempt Motion, the Debtor seeks to impugn and prejudice Dondero and color the Court's view of the Contempt Motion by introducing all sorts of irrelevant and prejudicial evidence completely unrelated to Dondero's compliance with the terms of the TRO. Among these are Dondero's alleged trespass of the Debtor's shared office space, the request for documents of The Dugaboy Investment Trust ("Dugaboy") and The Get Good Trust ("Get Good"), and matters related to Dondero's cell phone.[1] While the Debtor's true motive in pursuing these irrelevant allegations in the context of a contempt proceeding is unclear, what is unmistakable is that these allegations are unrelated to any provision of the TRO and the Court's consideration of this evidence and related argument will unduly prejudice Dondero. Moreover, allowing for a lengthy and convoluted evidentiary hearing on these irrelevant matters will significantly distort the record and distract the Court from focusing on the key issue in the context of the Contempt Motion: namely, whether the Debtor can show by clear and convincing evidence that Dondero violated a ***clear and specific*** provision of the TRO. Several actions complained of by the Debtor in the Contempt Motion do not support this claim for relief and the Contempt Motion does not

[1] While Dondero also believes that evidence related to the CLO Motion and the "K&L Gates" letters is also generally irrelevant to the Contempt Motion because these actions did not violate a clear and specific provision of the TRO, Dondero is not seeking to exclude such evidence through this motion and the admissibility and merits of such evidence can be addressed at the hearing.

plead a plausible claim for relief that these actions violated the TRO. The Court should therefore exclude and/or strike any evidence and argument related to these irrelevant and prejudicial matters, including (i) Dondero's alleged "trespass" of the Debtor's shared office space; (ii) the Debtor's attempt to have Dondero produce Dugaboy and Get Good documents through the Contempt Motion; and (iii) matters related to Dondero's cell phone. Dondero further respectfully requests that the Court prevent the Debtor from asking for substantive remedies related to this evidence and argument, including any finding of trespass, any finding of spoliation or destruction of evidence, and any request for production of documents, as these matters are improper in the context of a contempt proceeding and, in any event, haven't been properly pleaded as to satisfy applicable law and notice standards.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The predicates of the relief requested in the Motion are sections 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 103(a), (c), 402, and 403 of the Federal Rules of Evidence, and Rule 9017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

III. ARGUMENT AND AUTHORITIES

5. Motions in limine allow a trial court to make a pretrial ruling on the admissibility and relevance of evidence. *Wechsler v. Hunt Health Sys., Ltd.*, 381 F. Supp. 2d 135, 140 (S.D.N.Y. 2003) (citing *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984) ("Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the practice has developed pursuant to the

district court's inherent authority to manage the course of trials.) (citing Fed. R. Evid. 103(c)). In the Fifth Circuit, motions in limine are not improper or moot merely because the matter will be tried to a judge rather than a jury. *See, e.g.*, *Atl. Specialty Ins. Co. v. Porter, Inc.*, 742 F. App'x 850 (5th Cir. 2018); *Samson v. Apollo Res., Inc.*, 242 F.3d 629, 642 (5th Cir. 2001); *Kinnerson v. Arena Offshore, LP*, 2019 U.S. Dist. LEXIS 104519 (W.D. La. June 21, 2019) ("the mere fact that a case is being tried as a bench trial does not completely remove the Court's gate-keeping role.")

6. Rule 103(c) of the Federal Rules of Evidence states as follows:

> (c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

Fed. R. Evid. 103(c).

7. Rule 402 of the Federal Rules of Evidence provides that irrelevant evidence is not admissible. Fed. R. Evid. 402.

8. Rule 403 further provides that, even if evidence is relevant, "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

9. The Court should exclude evidence, argument, and any request for a substantive remedy or form of relief as to (i) Dondero's alleged "trespass" of the Debtor's shared office space; (ii) the Debtor's attempt to have Dondero produce Dugaboy and Get Good documents through the Contempt Motion; and (iii) Dondero's cell phone. None of these alleged actions are clearly restricted by a clear and definite term of the TRO, nor are they even relevant to the determination as to whether Dondero violated the TRO. Instead, the Debtor has made these allegations to confuse the issues, improperly influence the Court's opinion, and to unduly prejudice Dondero.

10. While Dondero understands that the Court has expressed certain concerns over some of the above allegations made in the Contempt Motion, the contempt proceeding is not the proper context to address these matters since they do not relate to the TRO. Even if a contempt proceeding otherwise could be, the Debtor's Contempt Motion does not properly plead any legitimate claim or request for relief with respect to these matters. If the Court would like to address these matters, it should be done in the context of a clear, discrete request for relief, properly pleaded, so that the Court and all parties can narrowly focus only on plainly relevant issues, which, in this instance, could each be extremely complex and fact-intensive in their own right.

11. To illustrate Dondero's argument further, the Court need do nothing more than read the Debtor's Contempt Motion (including the brief). Section B of the brief contains argument regarding Dondero's cell phone. But it does not state anywhere how the replacement (and alleged disposal) of the phone violated the TRO. Instead, despite not being related to a violation of the TRO, the Contempt Motion simply states that "the Court should find that Mr. Dondero has attempted to spoil evidence and draw a negative inference." But, as the Debtor fails to mention, the majority of events surrounding the phone happened before the TRO was even entered. Dondero has testified that he bought his replacement phone before the TRO was entered. His new phone was activated either before or around the time the TRO was entered on December 10, 2020, and Dondero has produced text messages from his new phone from December 10, 2020 onward. The Debtor's motion for entry of the TRO never mentioned Dondero's phone and the phone was never contemplated under any clear and specific term of the TRO or even mentioned at the hearing on the TRO that occurred on December 10, 2020.[2] Accordingly, any evidence related to the phone is irrelevant to this proceeding and should be excluded. And even if it somehow could be relevant,

[2] *See* Transcript of Proceedings in Adversary Proceeding Number 20-03190, dated December 10, 2020.

without a clear and definite provision in the TRO restricting Dondero's use of his phone, Dondero cannot be held in contempt. *See Waste Management of Wash. v Kattler*, 776 F.3d 336, 343 (5th Cir. 2015) (reversing district court's contempt order for party's failure to turn over iPad where no "definite and specific" court order required the same).

12. Section G is similar. In this section, the Debtor asserts that Dondero violated the TRO by preventing the Debtor from completing its document production related to The Dugaboy Investment Trust and The Get Good Trust that the Debtor alleges, without support, are hidden on its system. But whether these allegations are true or not is irrelevant to this proceeding because the TRO contained no provision requiring these documents be produced or any provision in any way related to the discovery matters between the Debtor and the Committee. If the Debtor or the Committee believes they are entitled to discovery from Dugaboy or Get Good, they can seek to conduct that discovery. But considering this matter in the context of a contempt proceeding against Dondero individually confuses the issue, wastes the Court's time, and potentially draws the Court into the middle of a discovery dispute between those who aren't even a party to this proceeding. It is also unclear how the Debtor expected or expects Dondero to produce documents on the Debtor's system when he has been prevented from accessing the Debtor's system for quite some time and has not had access to it for months. Further, given that the Committee filed suit against Dugaboy and Get Good in December 2020 and there is now a pending adversary proceeding[3], it seems that trying to require Dondero (who is not the Trustee of the trusts) to produce these documents may deprive Dugaboy and Get Good of their rights and discovery protections under the Federal and Bankruptcy Rules. The TRO did not contemplate this issue and the Court should not consider it in the context of this contempt proceeding.

[3] *See Official Committee of Unsecured Creditors v. CLO Holdco, Ltd., et al.*, Adv. Proc. No. 20-03195, Amended Complaint at Adv. Dkt. 6.

13. Section C of the Contempt Motion contains another baseless and unsupported allegation that Mr. Dondero violated the TRO by "trespassing on the Debtor's property." But as the Court can easily see from the face of the TRO, the TRO contained no provision clearly restricting Mr. Dondero's ability to enter the Debtor's shared office space on or after December 10, 2020. Nor could it because, as stated in the Debtor's own pleading, the Debtor did not even allegedly "evict" Mr. Dondero until nearly three weeks after the TRO was entered, on December 30, 2020. The Debtor has failed to state a plausible claim for relief on this allegation. Accordingly, the facts and circumstances of this alleged "trespass" are irrelevant to this proceeding and should be excluded from evidence and consideration by the Court.

14. Even if evidence related to the allegations made in sections B, C, and G meets the relevance standard, the Court should exclude such evidence under FRE 403 because its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the Court, and wasting time. As stated above, the allegations in these sections do not satisfy the relevance standard. Even if they can somehow satisfy the standard, the probative value in relation to the TRO and the contempt proceeding is extremely tenuous at best and whether the allegations are true or not has no bearing on whether Dondero violated the TRO. Instead, these allegations were made in the context of this contempt proceeding in an effort to tarnish the Court's opinion of Dondero, to unfairly prejudice Dondero in responding to these allegations in the context of an unclear motion and ill-defined hearing, and to corrupt this proceeding with evidence spanning a wide variety of factual and legal issues not implicated by the TRO or Contempt Motion. The potential probative value of this evidence is substantially dwarfed by the danger and prejudice that will result to Dondero if the Court allows the consideration of all this evidence in the context of this proceeding. Among other things, there is an imminent danger that the Court will spend a

considerable amount of time hearing evidence that does not relate to whether Dondero violated the TRO. If the Debtor is allowed to present all of this evidence, the Court will hear hours of irrelevant testimony as to matters that have no bearing on whether Dondero complied with the TRO. This not only wastes the Court's time but confuses the issue and distracts the Court from whether Dondero violated a clear and specific provision of the TRO. Moreover, given the complete lack of adequate pleading in the Contempt Motion, considering this evidence and argument in the context of any tangential request for relief purportedly made in the motion (for example, regarding Dondero's cell phone) deprives Dondero (and potentially others) of due process and fair notice and opportunity to respond.

15. Finally, even if there is somehow a possibility that any of the foregoing actions could potentially violate a term of the TRO, the Contempt Motion fails to state a plausible claim for relief that these actions violated the TRO because the motion contains absolutely no explanation or analysis as to what definite and specific provisions of the TRO were supposedly violated by these actions. Instead, the analysis contained in the Contempt Motion is limited to the following conclusory phrase that fails to satisfy even the most minimal pleading and notice standards: "The Debtor easily meets the foregoing standards. Based on the evidence, there can be no dispute that Mr. Dondero has wantonly and intentionally violated the TRO on many occasions, in many ways. Mr. Dondero's conduct cannot be justified or explained away and there is no basis to oppose this relief requested herein."[4] For this independent reason, the Court should exclude evidence, argument, and any substantive request for relief related to the allegations contained in sections B, C, and G of the Contempt Motion.

16. Because the allegations contained in sections B, C, and G of the Contempt Motion

[4] Contempt Motion, para. 22.

are irrelevant to whether Dondero violated the TRO, the Court should exclude any of the Debtor's evidence allegedly in support of these allegations, including, without limitation, Debtor's Exhibits 28-36, 40-47, and 54-55[5], and any testimony of any witnesses regarding the allegations made in sections B, C, and G of the Contempt Motion. Dondero objects to the admissibility and consideration of such evidence, including under Rules 402 and 403 of the Federal Rules of Evidence. Dondero reserves the right to object to any and all other exhibits or other evidence identified or proffered by the Debtor for any reason.

17. For the foregoing reasons, Dondero respectfully requests that the Court exclude evidence, argument, and any request for a substantive remedy or form of relief as to (i) Dondero's alleged "trespass" of the Debtor's shared office space; (ii) the Debtor's attempt to have Dondero produce Dugaboy and Get Good documents through the Contempt Motion; and (iii) Dondero's cell phone. This request is justified under the Federal Rules of Evidence and will alleviate the Court from having to consider a wide variety of unrelated matters and complex legal issues in the context of a matter that would otherwise be relatively straightforward. The Court should grant this Motion and exclude the irrelevant and prejudicial evidence as requested herein.

18. Because the hearing on the Contempt Motion is set for February 23, 2021 at 9:30 a.m., Dondero respectfully requests that the Court set this Motion for hearing contemporaneously with the Contempt Motion so the Court can hear argument regarding these evidentiary issues before proceeding on the merits of the Contempt Motion. If the Court finds that sufficient cause exists to consider this matter on Monday, prior to the hearing, Dondero is agreeable to such a setting. A request for emergency hearing is being filed contemporaneously with this motion.

[5] See Debtor's Supplemental Witness and Exhibit List filed on February 17, 2021 [Adv. Dkt. 101].

CONCLUSION

For the foregoing reasons, Dondero respectfully requests that the Court enter an order (i) setting this matter for hearing contemporaneously with the Contempt Motion or sooner if the Court believes it justified; (ii) granting the relief requested in this Motion; (iii) excluding and/or striking evidence related to the allegations made in Sections B, C, and G of the Contempt Motion; (iv) excluding and/or striking the Debtor's evidence allegedly in support of these allegations, including, without limitation, Debtor's Exhibits 28-36, 40-47, and 54-55[6], and any testimony of any witnesses regarding the allegations made in sections B, C, and G of the Contempt Motion; and (v) providing Dondero such other and further relief to which he may be justly entitled.

Dated: February 20, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

[6] See Debtor's Supplemental Witness and Exhibit List filed on February 17, 2021 [Adv. Dkt. 101].

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on February 19, 2021, I conferred with counsel for the Debtor in an attempt to resolve the relief requested by the Motion and the request for emergency hearing. The Debtor has indicated it is opposed to the relief sought in the underlying Motion, but is unopposed to the Motion being heard at the beginning of the hearing on Tuesday, February 23, 2021 at 9:30 a.m.

/s/ Bryan C. Assink
Bryan C. Assink

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 20, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING JAMES DONDERO'S EMERGENCY MOTION IN LIMINE
AND TO EXCLUDE EVIDENCE AND ARGUMENT

Having considered the *Emergency Motion in Limine and to Exclude Evidence and Argument* (the "Motion")[1] filed by Defendant James Dondero ("Movant"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion, any and all other documents filed in support of the Motion and any responses thereto; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. Any evidence and argument related to the following matters shall be excluded and/or stricken and not considered at any hearing on the Contempt Motion: (i) Dondero's alleged "trespass" of the Debtor's shared office space; (ii) the Debtor's attempt to have Dondero produce Dugaboy and Get Good documents through the Contempt Motion or any matters related to such documents; and (iii) any matters related to Dondero's cell phone and circumstances surrounding the phone's replacement (collectively, the "Matters").

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

3. In the context of the Contempt Motion and hearing on the Contempt Motion, the Debtor is prohibited from asking for any substantive remedies, requests for relief, or claims related to or allegedly arising out of the Matters.

4. Debtor's Exhibits 28-36, 40-47, and 54-55[2], and any testimony of any witnesses regarding the allegations made in sections B, C, and G of the Contempt Motion, and other evidence related to the allegations made in sections B, C, and G of the Contempt Motion are hereby EXCLUDED and/or STRICKEN, and the Court will not consider any such evidence during the hearing on the Debtor's Contempt Motion.

5. The Debtor is further prohibited from making argument or introducing any other evidence related to the Matters during the hearing on the Contempt Motion or in any prosecution of the Contempt Motion.

6. This order is without prejudice to other evidentiary objections made by any parties during the hearing on the Contempt Motion, including, without limitation, as to admissibility and relevance.

7. The Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[2] See Debtor's Supplemental Witness and Exhibit List filed on February 17, 2021 [Adv. Dkt. 101].

Respectfully submitted by:

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

REQUEST FOR EMERGENCY HEARING

James Dondero ("Defendant"), the Defendant in the above-captioned adversary proceeding, hereby files this Request for Emergency Hearing (the "Request") on the *Emergency Motion in Limine and to Exclude Evidence and Argument* (the "Motion") filed by Defendant on February 19, 2021. In support thereof, Defendant respectfully represents as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion and this Request pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The predicates of the relief requested in the Motion are sections 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 103(a), (c), 402, and 403 of the Federal Rules of Evidence, and Rule 9017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

II. RELIEF REQUESTED AND BASIS FOR RELIEF

4. Section 105(a) of the Bankruptcy Code provides that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Further, Bankruptcy Rule 9006(d) permits a court to fix any period of notice by order. Thus, the Court has broad latitude to fix the time for presentment of motions, particularly when "necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

5. For the reasons set forth herein and in the underlying Motion, good cause exists to consider the Motion on an immediate basis and schedule an emergency hearing contemporaneously with the Contempt Motion for Tuesday, February 23, 2021 at 9:30 a.m.

6. Because the underlying Motion deals with primarily a legal question as to whether certain allegations made in the Contempt Motion are relevant to whether a clear and specific provision of the TRO was violated and whether evidence can be admitted related to those allegations, and whether the Contempt Motion properly pleads a plausible claim for relief that these actions violated the TRO, the Court should consider the Motion on an emergency basis at the same time as the hearing on the Contempt Motion, which is currently set for February 23, 2021

at 9:30 a.m.

7. Defendant has acted diligently in filing the Motion with sufficient time for the Debtor to respond and for the Court to hear argument concurrently with the hearing on the Contempt Motion.

8. Undersigned counsel has conferred with counsel for the Debtor, who has indicated that although Debtor opposes the substantive relief requested in the Motion, it is not opposed to having the Motion heard on an emergency basis at the beginning of the hearing on Tuesday, February 23, 2021 at 9:30 a.m.

9. Accordingly, due to the immediate need for the relief requested, Defendant respectfully requests that a hearing be scheduled on the Motion for Tuesday, February 23, 2021 at 9:30 a.m.

WHEREFORE, Defendant respectfully requests entry of an order scheduling a hearing on the Motion on an emergency basis and granting Defendant such other relief as is just and proper.

Dated: February 20, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on February 19, 2021, I conferred with counsel for the Debtor in an attempt to resolve the relief requested by the Motion and this request for emergency hearing. The Debtor has indicated it is opposed to the relief sought in the underlying Motion, but is unopposed to the Motion being heard at the beginning of the hearing on Tuesday, February 23, 2021 at 9:30 a.m.

/s/ Bryan C. Assink
Bryan C. Assink

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 20, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING REQUEST FOR EMERGENCY HEARING

On this date, the Court considered the *Request for Emergency Hearing* (the "Request") filed by Defendant James Dondero (the "Movant") with respect to the *Emergency Motion in*

Limine and to Exclude Evidence and Argument (the "Motion")[1] filed by Movant on February 19, 2021.

Having considered the Request, and the fact that the Debtor has represented it is unopposed to the Request, the Court finds that good and sufficient cause exists for granting the Request and scheduling an emergency hearing to consider the Motion. Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The Request is **GRANTED** as provided herein.

2. A hearing on the Motion shall occur on **February 23, 2021 at 9:30 a.m.**

END OF ORDER # #

Respectfully submitted by:

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

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In re:	§	**Case No. 19-34054**
	§	
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	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE

James D. Dondero ("Defendant" or "Dondero"), the defendant in the above-captioned adversary proceeding, hereby files this Objection and Response to *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should not be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 48]. In support thereof, Defendant respectfully represents as follows:

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I. PRELIMINARY STATEMENT

1. The Contempt Motion[1] has little to do with a legitimate violation of a court order and resulting damages to the Debtor. The Debtor well knows that the majority of actions complained of in the Contempt Motion do not violate a clear and specific provision of the TRO. Yet, it has brought the motion to further impugn Dondero's reputation before this Court, prevent Dondero and his related entities from being able to exercise and pursue their legal rights and remedies related to this case or their relationship with the Debtor or its business, and to attempt to gain an undue advantage in potential future disputes between the parties. The evidence will show—contrary to the Debtor's bluster and inuendo at prior hearings—that Dondero substantially complied with the TRO and did not violate any clear and specific provision of the TRO. Accordingly, the Contempt Motion should be denied.

2. The grounds underlying the Contempt Motion evidence the concern that Dondero expressed to the Court during both the TRO and the Preliminary Injunction hearings that the broad and vague TRO (and later the injunction) does not provide clear notice to Dondero of the acts restrained and allows the Debtor to use the threat of contempt as a weapon to enjoin otherwise lawful conduct.

3. As can be seen by the Contempt Motion, the Debtor has done just that. Despite not being explicitly restrained by the TRO, the Debtor is seeking to have Dondero found in contempt for a number of actions that cannot reasonably be interpreted to violate the TRO, including (i) Dondero replacing his cell phone and leaving the old phone at Debtor's office; (ii) going into Debtor's empty office space (which Dondero was arguably entitled to do under the shared services

[1] As used herein, the term Contempt Motion shall refer to *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should not be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 48] and the supporting brief [Adv. Dkt. 49], collectively.

agreements) to appear for a deposition noticed by the Debtor; (iii) two letters sent by counsel for third-party entities to Debtor's counsel making certain requests, which requests the Debtor rejected and for which no additional action was taken by Dondero or these third parties after the sending of the letters; and (iv) the filing (and eventual prosecution) of a motion brought by third party entities before the TRO was even entered and which action was explicitly allowed under the TRO. The Contempt Motion does not even attempt to describe how these actions violated the TRO. Nor could it. Under its terms, the TRO simply does not apply to these actions. The Debtor will not be able to satisfy its high burden that these actions violated a clear and specific term of the TRO.

4. While Dondero admits that there were certain, extremely limited communications made between him and certain of the Debtor's employees, the evidence will show that all or substantially all of the communications made were allowed and Dondero substantially complied with this provision of the TRO. The limited communications exchanged between Dondero and Debtor employees were either allowed pursuant to the Shared Services Agreements, related to the Pot Plan or other settlement discussions, or were otherwise authorized by the Debtor. Even if certain communications could be found as violating the letter of the TRO, there were no communications made that related to, interfered with, or otherwise impeded the Debtor's business, or that caused harm to the Debtor's business.

5. For these reasons, the Contempt Motion should be denied. The Debtor will not be able to show by clear and convincing evidence that Dondero violated a clear and specific provision of the TRO. To the extent the Court finds that there were any ministerial violations of the TRO, the Court should refrain from holding Dondero in contempt because (i) he substantially complied with the TRO; (ii) any ministerial communications made and not subject to an exception under the TRO did not relate to, interfere with, or otherwise impede the Debtor's business; and (iii) the

Debtor's business suffered no actual damages or harm as a result of such communications or other potential violation of the TRO.

II. ARGUMENT AND AUTHORITIES

6. Bankruptcy courts in the Fifth Circuit have the authority to conduct civil contempt proceedings. *Placid Refining Company v. Terrebonne Fuel and Lube, Inc.,* 108 F.3d 609, 613 (5th Cir. 1997). The test for contempt in the Fifth Circuit requires the showing that (1) a court order was in effect; (2) the order required certain conduct; and (3) the respondent failed to comply with the order. *Piggly Wiggly Clarksville, Inc. v. Mrs. Baird's Bakeries, Inc.,* 177 F.3d 380, 382 (5th Cir. 1999). In civil contempt, the burden of proof is clear and convincing, as opposed to preponderance of evidence. *Petroleos Mexicanos v. Crawford Enterprises, Inc.,* 826 F.2d 392, 401 (5th Cir. 1987). Clear and convincing evidence is "that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *Travelhost, Inc. v. Blandford,* 68 F.3d 958, 961 (5th Cir. 1995). "A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Id.*

7. "A party may avoid a contempt finding where it can show that it has substantially complied with the order, or has made every reasonable effort to comply." *United States Steel Corp. v. United Mine Workers,* 598 F.2d 363, 368 (5th Cir. 1979).

8. "[S]anctions for civil contempt are meant to be wholly remedial and serve to benefit the party who has suffered injury or loss at the hands of the contemnor." *Petroleos Mexicanos,* 826 F.2d at 399. "Compensatory damages awarded as a sanction for violation of a court order are to

"[reimburse] the injured party for the losses and expenses incurred because of his adversary's noncompliance." *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 827 (5th Cir.1976).

A. The TRO is not clear and unambiguous.

9. A finding of civil contempt must be supported by clear and convincing evidence that "(1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order." *Ga. Power Co. v. NLRB*, 484 F.3d 1288, 1291 (11th Cir. 2007); *Riccard v. Prudential Life Ins. Co.*, 307 F.3d 1277, 1298 (11th Cir. 2002).

10. Injunctions and Temporary Restraining Orders are required to be definite and specific to be enforceable. Rule 65(d) of the Federal Rules of Civil Procedure provides that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." The specificity requirement "ensures that a party who is restrained by a preliminary injunction knows clearly what conduct is being restrained and why." *MillerCoors LLC v. Anheuser-Busch Cos., LLC*, 940 F.3d 922, 924 (7th Cir. 2019).

11. The specificity provisions of Rule 65(d) are not mere technical requirements. "The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam). Accordingly, an injunction "cannot be so general as to leave the party open to the hazard of conducting business in the mistaken belief that it is not prohibited by the injunction and thus make him vulnerable to prosecution for contempt." *Williams v. United States*, 402 F.2d 47, 48 (10th Cir. 1967).

12. As the Supreme Court has stated,

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.

Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n, 389 U.S. 64, 76 (1967).

13. Two principles must be established to show a civil violation of a court order. "The first of these is that it must be proved that the alleged contemnor had knowledge of the order which he is said to have violated. The corollary of this proposition is that the order which is said to have been violated must be specific and definite."[2]

14. As to the latter issue, "[a]n order may be so vague or indefinite that, even though the alleged contemnor is chargeable with knowledge of such order, he cannot be punished for doing what he did in view of lack of certainty as to what it prohibited or directed." *Id.* In addition, it is a "long-standing, salutary rule in contempt cases [] that ambiguities and omissions in orders redound to the benefit of the person charged with contempt." *Id.*

15. As described in detail below, several provisions of the TRO (and later the Preliminary Injunction) are too broad, vague, nonspecific, and ambiguous as to be enforceable. Given the lack of specificity and ambiguous nature of the order, the Court should err on the side of caution, resolve the ambiguities in Dondero's favor, and deny the Contempt Motion

16. First, the provision of the TRO that prohibits Dondero from "interfering with or otherwise impeding, directly or indirectly, with the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan" is not clear, definite, and specific because it does not list specific acts that are to be restrained. Rather,

[2] *Eavenson v. Holtzman*, 775 F.2d 535, 544 (3d Cir. 1985).

it lists a broad, vaguely-worded category of conduct that could be read to apply to any number of unidentified actions related to this bankruptcy case or Debtor's business. Interpreted broadly, this provision could be read to prevent any action of Dondero or his related entities to assert their individual legal rights in this case or to protect their individual business interests. This provision could also be read to restrict any action that is in disagreement with a decision of the Debtor, such as whether claims are properly treated or classified ("treatment of claims"), whether the Debtor's Plan complies with applicable law ("pursuit of the Plan"), whether Dondero can disagree with any sale of assets owned or controlled by the Debtor ("disposition of assets owned or controlled by the Debtor"), and whether Dondero could attempt to pursue his own alternative plan ("alternative to the Plan"). Further, it is not clear how Dondero, as a former employee of the Debtor, can "interfere" with the "Debtor's decisions" given that he has no standing, decision-making authority, or ability to control the Debtor or its independent decisions, rather than simply to disagree with them or assert his own legal positions that may be adverse to the Debtor.

17. This is similar to a broad and sweeping injunction that broadly attempts to enjoin any "interference" with the administration of the Debtor's estate or the Debtor's business, which courts in other circumstances have held is not specific enough to be enforceable. *See, e.g.*, *Robinson v. Rothwell (In re Robinson)*, 342 Fed. Appx. 235, 2009 U.S. App. LEXIS 19040 (8th Cir. 2009) (reversing contempt finding resulting from provision in order preventing "any actions to interfere in any way with administration of these jointly administered bankruptcies," because bankruptcy court's order was neither sufficiently specific to be enforceable, nor clear and unambiguous).

18. Here, the restrictions in the TRO are similar in that the TRO contains the broad phrase "interfering with or otherwise impeding, directly or indirectly, the Debtor's business"

which is just as non-specific, unclear and ambiguous as the phrase from the case above. Further, it appears the intent of this provision is at least partially to prevent Dondero from supposedly "interfering" with the bankruptcy case as the Debtor then lists a series of general duties of a debtor in possession as being included within this broad and amorphous category of interference. The "treatment of claims," for example, has nothing to do with how the Debtor's business operates. It instead appears the intent of this provision is also to enjoin Dondero and his related entities (and their attorneys) from exercising their legal rights and asserting legal positions that the Debtor simply disagrees with. Accordingly, these alleged restrictions are likewise non-specific, vague, and ambiguous because no specific actions are identified as being restricted. It remains unclear what actions Dondero can or cannot do related to this bankruptcy case or the Debtor's business.

19. The ambiguity of the TRO is further evidenced by the fact that the Debtor has asserted that attorneys for the Funds and Advisors[3] may not send letters to the Debtor asserting certain legal positions and making certain requests because such actions "interfere" with the Debtor's business, even if no further action was taken after the letters were sent. While the TRO does not say that counsel for certain of Dondero-related entities are prohibited from sending letters to Debtor's counsel to make requests, the Debtor has asserted that these entities sending such letters caused Dondero to violate the TRO as falling under this broad category of "direct or indirect" interference with Debtor's business.[4] Plainly put, if legal requests made by third parties through their counsel can cause Dondero to violate the TRO, neither Dondero nor his related entities have fair notice of the acts allegedly restrained by the TRO.

20. By way of example, this is probably why the TRO entered against the Funds and

[3] As used herein, "Funds and Advisors" shall mean and refer to Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.

[4] *See* Debtor's Brief in Support of Motion for Order to Show Cause, Adv. Dkt. 49.

Advisors is more specific as to the acts restrained and includes a restriction on the Funds and Advisors "seeking to terminate the portfolio management agreements and/or servicing agreements between the Debtor and the CLOs." The TRO entered against Dondero, however, contains no such restriction. The sending of letters by these attorneys for third parties does not violate the TRO entered against Dondero.

21. In addition, while Dondero is bound to respect the automatic stay, the provision of the TRO (and later the injunction) that prevents Dondero from "violating section 362(a) of the Bankruptcy Code" is nonspecific, lacking in detail, and too vague as to be enforceable. There are no specific prohibited actions listed, and it is unclear what actions the Debtor may assert violate the automatic stay, particularly as to sections 362(a)(1)-(5) (preventing actions against the Debtor and property of the Debtor's estate). This lack of specificity is material and significant because the Debtor has apparently taken the position (or may later take the position) in this adversary proceeding that any action taken by Dondero or his related entities that *may* impact the property of non-Debtor subsidiaries may violate the automatic stay, despite asserting elsewhere in this bankruptcy case that the property held by these subsidiaries is not property of the estate or subject to the Bankruptcy Court's jurisdiction or oversight.[5][6] Therefore, this provision of the TRO does not describe in reasonable detail the acts restrained and, in explicit violation of Rule 65(d), makes reference to an outside source.

22. In sum, the TRO on its face lacks specificity and is unclear and unambiguous. The

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[5] *See Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Docket No. 1546], Para. 5 ("[T]he assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate." and "transactions occurring at non-Debtor entities . . . were otherwise arguably outside of this Court's jurisdiction and oversight.') (emphasis in original).

[6] *Id.* at para. 10 ("Even though the value of the subsidiary's outstanding shares owned by the debtor may be directly affected by the subsidiary's disputes with third parties, Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate.") (citing *Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975)) (internal citations and quotations omitted).

Debtor's actions indicate that it has interpreted the TRO so broadly as to make it impossible for Dondero to know what actions he can or cannot take. The Preliminary Injunction is substantially similar to the TRO and identical in the particular areas of concern presented to the Court here. Given how the Debtor has moved for contempt based on the non-specific, broad, and unclear provisions of the TRO, there is an imminent danger that the Debtor will broadly interpret the terms of the Preliminary Injunction the same way, all without fair notice to Dondero. The Court should not hold Dondero in contempt based on an unclear, broad, and non-specific order that can be so broadly interpreted.

B. Even if the TRO is clear and unambiguous, the vast majority of actions alleged by the Debtor do not violate the TRO.

23. Even if the TRO is clear and unambiguous, the vast majority of actions the Debtor alleges violate the TRO do not do so under any fair reading. Further, the Contempt Motion fails to state a plausible claim for relief for nearly all actions it alleges violated the TRO. Accordingly, the Contempt Motion should be denied.

24. As described in detail below, despite not being explicitly or even implicitly restrained by the TRO, the Debtor is seeking to have Dondero found in contempt for a number of actions that plainly cannot violate the TRO, including (i) Dondero replacing his cell phone and leaving the old phone at Debtor's office; (ii) Dondero going into Debtor's mostly-empty office space (which Dondero was arguably entitled to do under the shared services agreements) to appear for a deposition noticed by the Debtor; (iii) two letters sent by counsel for third-party entities to Debtor's counsel making certain requests, which the Debtor rejected and for which no additional action was taken by Dondero or these third parties after the Debtor denied the requests made in the letters; and (iv) the filing (and eventual prosecution) of a motion brought by third party entities before the TRO was even entered and which action was explicitly allowed under the TRO. The

Contempt Motion does not even attempt to describe how these actions violated the TRO. Nor could it. Under its terms, the TRO simply does not apply to these actions. Accordingly, the Debtor will not be able to satisfy its high evidentiary burden that these actions violated a clear and specific term of the TRO.

25. To the extent that the Court finds that any of these actions are *consistent* with an alleged violation (rather than violate a clear and specific term under clear and convincing evidence), the Court should resolve any ambiguities and omissions in the TRO for Dondero's benefit. *See Doe v. Bush*, 261 F.3d 1037, 1062 (11th Cir. 2001) (reversing contempt finding when there were two reasonable, competing interpretations of order, stating that ambiguities should be construed in favor of the alleged contemnor).

i. Dondero's alleged "trespass" did not violate the TRO because the TRO contained no restriction on his ability to be in the shared office space and the Debtor did not request he vacate the space until December 23, 2020.

26. Dondero's alleged "trespass" of the Debtor's office space was not a violation of the TRO. As the Court is aware, the TRO was entered on December 10, 2020. The Debtor did not request that Dondero cease using his office space until nearly two weeks later, on December 23, 2020. Dondero does not understand how this can be a violation of the TRO, especially when his only reason for entering the office space was to ensure attendance at a deposition requested by the Debtor. Similarly, Dondero, as President and a portfolio manager of NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, LP ("HCMFA"), was entitled to share the Debtor's office space under the shared services agreements between the Debtor NexPoint and HCMFA. Nevertheless, and despite his rights under these shared services agreements, he, after receipt of the Debtor's demand letter, did timely vacate the permanent use of his office space and only returned to attend this deposition. Perhaps that was not the wisest decision, but it did not

violate the TRO, and the Debtor suffered no harm as a result.

ii. The request letters sent by counsel for the Funds and Advisors did not violate the TRO, and no subsequent actions were taken that could have impacted the Debtor's business.

27. The request letters sent by counsel for the Funds and Advisors do not violate a clear and specific provision of the TRO. First, the letters were not sent by Dondero, but by counsel for third parties, the Funds and Advisors, who made an independent decision to send these letters on behalf of their clients. While Dondero is the President of the Advisors, there is no evidence that he is solely in "control" of either the Funds or Advisors, and the evidence shows that the Funds each have an independent board of directors. At any rate, most of this is beside the point because the letters themselves did nothing. They made requests of the Debtor, which the Debtor rejected. Neither the Funds and Advisors, nor Dondero, took any subsequent action on these requests after they were rejected. There is no clear and specific provision of the TRO preventing counsel for the Funds and Advisors from sending request letters related to the CLOs. Even if there were, no subsequent action was taken and the Debtor suffered no harm.

iii. Contrary to the Debtor's assertion, Dondero did not prevent the Debtor from executing any trades.

28. Contrary to the Debtor's assertion, Dondero did not prevent the Debtor from executing certain securities transactions.

29. As Mr. Seery has testified during his deposition, no finalized trades were ultimately prevented from occurring.[7] With respect to the trades of December 22, 2020, at that time the Debtor requested that two non-Debtor employees (Matt Pearson and Joe Sowin), both of whom worked for non-Debtor HCMFA, to settle the trades of AVYA and SKY. These trades were not

[7] *See* Seery Deposition Transcript dated January 20, 2021, p. 55:13-14 ("I don't think we had an agreed trade that didn't close.").

"interfered with," as alleged by the Debtor. Rather, the potential trade was simply delayed (meaning simply the Debtor did not execute the trade in the market at the exact moment requested) because the non-Debtor employees of HCMFA wanted to first independently investigate whether the trade should occur based on concerns raised by their compliance department. The Advisors' Chief Compliance Officer, Jason Post, testified at the Funds and Advisors Preliminary Injunction hearing that Dondero did not instruct or pressure him or HCMFA employees not to book Seery's proposed trades. Rather, Dondero merely requested that HCMFA look at the trades from a compliance perspective.[8] After review of the proposed trades by compliance, compliance made the independent decision not to have HCMFA book the trades because they had not been run through its pre-trade compliance process. As an independent entity with no apparent written agreement with the Debtor requiring it to settle these trades, HCMFA was well within its rights to temporarily not book the trades to investigate whether they satisfied its compliance process.[9] There was no agreed trade that was prevented from occurring,[10] and the Debtor appears to have ultimately sold some or all of these securities a short time later.

iv. The filing and prosecution of the CLO Motion by the Funds and Advisors does not violate the TRO because the Motion was filed before the TRO was entered, the Motion was not filed by Dondero, and the TRO contains a carve out allowing Dondero to "seek judicial relief" with the Court.

30. While it is unclear whether the Debtor is seeking to hold Dondero in contempt for

[8] *See* January 26, 2021 Hearing Transcript, p. 95: 13-15 ("My recollection is I encouraged Compliance to look at those trades") and p. 96: 3-4 ("I never gave instructions not to settle the trades that occurred, but that's a different ball of wax.").

[9] Mr. Seery has testified at his deposition that he is not aware of any written contract or agreement (other than potentially shared services) between the Debtor and HCMFA that would require HCMFA to settle these trades. See January 20, 2021 Seery Deposition Transcript, p. 50: 3-8.

[10] *See* January 26, 2021 Hearing Transcript, p. 96: 3-4 ("I never gave instructions not to settle the trades that occurred, but that's a different ball of wax."); Seery Deposition Transcript, p. 55:13-14 ("I don't think we had an agreed trade that didn't close.").

the filing and prosecution by the Funds and Advisors of the CLO Motion,[11] to the extent Debtor purports to do so it did not violate the TRO and, accordingly, the Debtor should not be granted its attorney fees incurred in connection with the motion as it requests in the Contempt Motion.

31. While Dondero understands that the Court did not find the presentation of the CLO Motion to be persuasive, the motion was filed before the TRO was entered and the TRO, even if it applies to the conduct of the Funds and Advisors, provided a carve-out to allow for "seeking judicial relief upon proper notice." The CLO Motion was a request for relief that was made by the Funds and Advisors upon proper notice. Accordingly, while the Court ultimately denied the motion, the filing and prosecution of the motion by the Funds and Advisors cannot be found to violate the TRO.

32. While the Debtor has presented very limited evidence on the management or ownership structure of the Funds and Advisors, it repeatedly asserts that, because Dondero has ownership or control rights in these entities that these entities do not, and cannot, act independently. But the evidence shows that the Funds have independent boards that meet frequently, have independent counsel, and they make independent decision. The Advisors, while owned by Dondero, are not solely controlled by Dondero. Dondero, of course, has influence with these entities, but they are independent companies that act to protect their independent interests.

33. In any event, to the extent that the filing and prosecution of the CLO Motion by the Funds and Advisors can even be attributed to Dondero, those actions cannot be fairly read to violate a clear and specific provision of the TRO because (i) the motion was filed before the TRO was even entered; and (ii) the filing and prosecution of the CLO Motion fall under the carve out of "seeking judicial relief upon proper notice" as explicitly allowed under the TRO.

[11] *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Docket No. 1522] (the "CLO Motion").

34. In addition, like with the sending of letters by counsel for the Funds and Advisors, there was no harm to the Debtor's business as a result of the filing of the CLO Motion. Mr. Seery has testified that no finalized trades were blocked or stopped as a result of the letters or the CLO Motion[12] and that no contracts were terminated or breached as a result of either action.[13]

35. Because the filing and prosecution of the CLO Motion did not violate the TRO, the Debtor should not be granted any attorney's fees or expenses incurred relating to the CLO Motion. Further, the Debtor should also not be granted its attorney's fees because the motion was filed by a separate entity, not Dondero, and other potential remedies existed against those entities if the Debtor desired to recover its attorney's fees. The Court should not allow the Debtor to sidestep proper procedures by making Dondero pay the Debtor for attorney fees related to a motion he did not file, which was filed before the TRO was even entered, and which was specifically authorized to be filed under the TRO.

v. Dondero's replacement of his cell phone did not violate the TRO because the TRO contained no provision preventing the phone's replacement.

36. Dondero understands that the Court is concerned about the cell phone. And the Debtor certainly made it appear as though Dondero replacing his cell phone was some significant, watershed event. But from Dondero's perspective, it was completely reasonable for him to replace his cell phone. Dondero was no longer an employee of the Debtor as of October 9, 2020—about two months before he replaced his phone. It is worth recalling that, at the time Dondero bought his new cell phone and left his old phone at Highland's offices on December 10th, the Debtor was anticipating terminating all or virtually all employees before December 31, 2020. Given that Dondero was no longer an employee of the Debtor at that time, and the fact that the company in

[12] *See* Seery Deposition Transcript, p. 55:13-14 ("I don't think we had an agreed trade that didn't close.").

[13] *See id.* at p. 62.

its then-present form would no longer exist within a few short weeks, it was not only reasonable but expected that Dondero would replace his phone. This is probably why a week before the end of the year the Debtor sent its December 23, 2020 letter stating that Dondero's cell phone plan would be terminated as of December 31, 2020 and requesting that Dondero return his phone.

37. Dondero, to prepare for the unwinding of the Debtor's business, purchased a new phone in early December before the TRO was entered and, in accordance with historic company practice, left his prior phone with IT to be recycled or disposed of on or around December 10th. [14]

38. At the time Dondero replaced his phone, he had not been sent any preservation notice, litigation hold letter, or any discovery requests in this adversary proceeding or in any other matter related to this bankruptcy case.

39. But whether Dondero followed proper company procedure in replacing the phone is irrelevant to the Contempt Motion because the TRO contains absolutely no restriction on his ability to replace his phone. And without such a clear and definite restriction, he cannot be held in contempt. *See Waste Management of Wash. v Kattler*, 776 F.3d 336, 343 (5th Cir. 2015) (reversing district court's contempt order for party's failure to turn over iPad where no "definite and specific" court order required the same).

40. In sum, at the time Dondero bought his new cell phone and worked to replace his phone, (i) the TRO either had not been entered or Dondero did not yet have knowledge about its entry;[15] (ii) Dondero was not under any litigation hold or similar letter (the Debtor sent the preservation request letter nearly two weeks *later* on December 23rd along with the sole discovery requests served against Dondero in this case); and (iii) no discovery was pending against Dondero

[14] Dondero also testified at his deposition that his phone may have been provided under Shared Services Agreements.

[15] Deposition Transcript of James Dondero, January 5, 2021, p. 71:24-25 – 72:3.

in this adversary proceeding, the bankruptcy case, or in any other adversary proceeding or contested matter. Further, the only discovery that has been sought in this adversary proceeding predominantly asked for documents and communications starting on the date the TRO was entered (December 10, 2020) onward—meaning the replacement of his phone on or around December 10 did not impact his responses to the Debtor's document requests, which Dondero fully and completed complied with. No party in this adversary proceeding or bankruptcy case has requested that Dondero produce documents or communications from before December 10, 2020, with one limited exception under the document requests served by the Debtor in this proceeding on December 23, 2020.[16]

41. It is worth reiterating the point that, except with respect to the Clubok communications requested in this adversary on December 23, 2020, no party has actually asked Dondero to produce any text messages from any time period prior to December 10, 2020. On December 23, 2020, about 2 weeks after Dondero replaced his phone, the Debtor by letter instead demanded that Dondero *turn over* the cell phone to the Debtor and preserve all communications on the phone, presumably so the Debtor could have unfettered access to all communications Dondero made, in any nature, business-related or not, which would likely include a great deal of privileged communications with his attorneys.

42. In fact, it was the Debtor's obligation under the Term Sheet[17] to take "reasonable and proportional" steps to preserve discoverable information, including by "notifying employees

[16] The document requests propounded by the Debtor in this adversary proceeding on December 23 asked for documents and communications starting on December 10 with the exception of document requests related to Dondero's communications with Andrew Clubok, which period commenced on November 1, 2020, which were not relevant to the claims in this proceeding. After having the opportunity to review emails and documents exchanged between Dondero and Clubok, including settlement discussions and communications related to the Pot Plan, the Debtor later admitted on the record that its alleged concerns were unfounded.

[17] *See* Term Sheet, Dkt. 354, Exhibit C.

possessing relevant information of their obligation to preserve such data."[18] If the Debtor believed that Dondero might possess relevant information, it was the Debtor's obligation under the Term Sheet to notify Dondero. The Debtor did not do so until December 23, 2020. The Debtor's failure to timely do so should not be imputed to Dondero, when Dondero had held his phone for more than a year after this case was filed and only replaced it when it became clear that the company's monetization plan would proceed and nearly all employees would be imminently terminated.

C. Any violation of the TRO was ministerial, the Debtor suffered no harm, and Dondero substantially complied with the order.

43. While Dondero concedes that he made certain, extremely limited and inconsequential communications with certain of the Debtor's employees, Dondero believed that those communications were allowed for him to pursue his Pot Plan or were otherwise explicitly allowed as a result of the Shared Services Agreements, pursuant to which certain employees of the Debtor (referred to as the "Shared Employees" in those agreements) also provide certain services to NexPoint and HCMFA, including in the areas of information technology, legal and compliance, accounting, telecom (including cell phones), and administrative and secretarial support. As an employee and/or representative of these two entities, it was standard practice for Dondero to confer with these employees under the Shared Services Agreements related to these services.

44. And even if there were communications made that could be viewed as violating the TRO, the communications themselves were either ministerial in nature or did not in any way relate to trying to interfere with or other impede the Debtor's business. The Debtor will not be able to show these communications interfered with or impeded the Debtor's business or how they caused harm, financial or otherwise, to the Debtor.

[18] *Id.* at p. 44 of 62. ("Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data").

45. The ministerial nature of the communications is evidenced by the communications themselves. One such communication put into evidence by the Debtor was a text message to Isaac Leventon wherein Dondero simply requested the contact information for the Committee's counsel so he could contact them regarding his Pot Plan. Other communications identified by the Debtor are similar in that they do not relate to the Debtor's business or operations or any attempt by Dondero to interfere with the Debtor's business. All or substantially all of the communications made by Dondero to Debtor's employees, which were extremely limited, were made under the Shared Services Agreements, related to the Pot Plan, or were otherwise explicitly authorized by the Debtor or made for settlement purposes.

46. In this case of communications with Scott Ellington, for example, the evidence will show that the communications between Dondero and Ellington were extremely limited during the applicable period and were made only pursuant to Shared Services or in Ellington's role as "go-between" or "settlement counsel" for Dondero and the Debtor.

47. For these reasons, although there were certain limited communications made between Dondero and certain of the Debtor's employees, the Court should find that Dondero substantially complied with the TRO because the communications were either subject to an exception under the TRO, related to the Pot Plan, or were otherwise not related to the Debtor's business or any attempt by Dondero to interfere with the Debtor's business. In the event the Court finds that any communications violated the TRO, the sanctions should be limited because the Debtor suffered no harm to its business or operations as a result of these limited communications.

D. The Debtor improperly seeks to conduct irrelevant and unauthorized discovery against third parties in connection with the Contempt Motion.

48. The Debtor asserts that Dondero violated the TRO by preventing the Debtor from completing its document production related to The Dugaboy Investment Trust and The Get Good

Trust that the Debtor alleges, without support, are hidden on its system. But whether these allegations are true or not is irrelevant to this proceeding because the TRO contained no provision requiring these documents be produced or any provision in any way related to the discovery matters between the Debtor and the Committee. If the Debtor or the Committee believes they are entitled to discovery from Dugaboy or Get Good, they can seek to conduct that discovery. But considering this matter in the context of a contempt proceeding against Dondero individually confuses the issue, wastes the Court's time, and potentially draws the Court into the middle of a discovery dispute between those who aren't even a party to this proceeding. It is also unclear how the Debtor expected or expects Dondero to produce documents on the Debtor's system when he has been prevented from accessing the Debtor's system for quite some time and has not had access to it for months. Further, given that the Committee filed suit against Dugaboy and Get Good in December 2020 and there is now a pending adversary proceeding,[19] it seems that trying to require Dondero (who is not the Trustee of the trusts) to produce these documents may deprive Dugaboy and Get Good of their rights and discovery protections under the Federal and Bankruptcy Rules.[20] The TRO did not contemplate this issue and the Court should not consider it in this context.

49. Moreover, even if this issue is relevant, the evidence will show that counsel for the Trusts and the Debtor have been engaging in discussions since mid-December and into January 2021 regarding the production of these documents, and the Trusts have been working in good faith with the Debtor to foster the eventual production of these documents.

E. The Debtor improperly seeks damages and to punish Dondero for conduct that could not in good faith violate the TRO and that pre-dated the TRO.

[19] *See Official Committee of Unsecured Creditors v. CLO Holdco, Ltd., et al.*, Adv. Proc. No. 20-03195, Amended Complaint at Adv. Dkt. 6.

[20] There are also concerns about production in this context because the Debtor, on January 22, 2021, commenced adversary proceedings against all Dondero-related entities for certain demand notes except for those between the Debtor and Dugaboy and Get Good.

50. The Court should reject the Debtor's attempt to impose broad damages on Dondero related to actions that could not in good faith be found to violate the TRO. To the extent the Court finds any material violations of the TRO, the damages should be limited to actual damages resulting directly from such actions only, which Dondero believes will be minimal because the Debtor's business suffered no harm. The Debtor is improperly seeking damages resulting from numerous actions and events that have nothing to do with the TRO, pre-dated the TRO, or just are plainly wholly outside the scope of the TRO.

51. Among these are (i) Dondero's replacement of his cell phone; (ii) Dondero's "trespass" on Debtor's property; (iii) the filing and prosecution of the CLO Motion by the Funds and Advisors; and (iv) the sending of request letters to the Debtor by counsel for the Funds and Advisors. As explained above, none of these actions can be considered violations of the TRO and therefore should not be considered in any damages, compensatory or otherwise, sought by the Debtor, including Debtor's request for attorney's fees and expenses related to the CLO Motion.

III. ADMISSIONS/DENIALS[21]

52. Paragraph 1 of the Contempt Motion asserts a legal conclusion to which no response is required, to the extent a response is required, Dondero denies the allegations.

53. Dondero admits the allegations in paragraph 2 of the Contempt Motion.

54. Paragraph 3 of the Contempt Motion asserts a legal conclusion to which no response is required. To the extent a response is required or appropriate, Dondero lacks knowledge upon which to either admit or denial the allegations.

[21] Dondero makes these qualified admissions and denials to comply with applicable law and rules, but denies that the allegations in the Contempt Motion, including Sections B, C, and G, and certain of these admissions and denials in response are relevant or admissible in the hearing on the Contempt Motion, particularly as in response to the allegations made in Sections B, C, and G of the Contempt Motion. On February 20, 2021, Dondero filed a motion in limine seeking to exclude irrelevant and prejudicial evidence the Debtor will seek to admit on these matters. Dondero objects to the inclusion of any evidence related to these matters at the Contempt Hearing and reserve all rights.

55. Paragraphs 4-6 of the Contempt Motion asserts legal conclusions to which no response is required. To the extent a response is required, Dondero denies the allegations.

56. Dondero denies the allegations in paragraph 7 of the Contempt Motion.

57. Dondero admits that notice of the Contempt Motion was provided to his counsel as alleged in paragraph 8 of the Contempt Motion.

58. To the extent necessary, Dondero further responds to the legal assertions and other allegations made in the Debtor's Brief[22] as follows: Dondero admits that on December 10, 2020, the TRO was entered as alleged in paragraph 1 of the Brief. This paragraph is not an exact recitation of the terms of the TRO, and Dondero avers that the terms of the TRO speak for themselves. To the extent a response is required or appropriate, Dondero denies the allegations because that is not an accurate recitation of the terms of the TRO.

59. Dondero denies the allegations contained in paragraphs 2-4 of the Brief.

60. Dondero admits that on December 10, 2020, the TRO was entered as alleged in paragraph 5 of the Brief. This paragraph does not appear to be an exact quotation of the terms of the TRO, and Dondero avers that the terms of the TRO speak for themselves. Dondero denies the remainder of the allegations contained in paragraph 5 of the Brief.

61. Dondero denies the allegations contained in the first sentence of paragraph 6 of the Brief. Dondero admits he never reviewed the declaration of Seery. With respect to the remainder of the allegations of paragraph 6, Dondero admits that the bullet points 1, 4, 5, 6 appear to be a generally accurate recitation of Dondero's deposition testimony on January 4. Dondero denies the remainder of the allegations as they are not a complete and accurate portrayal of the facts surrounding Dondero's efforts to review the TRO.

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[22] *Debtor's Memorandum of Law in Support of Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. 49] (the "Brief").

62. Dondero denies the allegations contained in paragraph 7 of the Brief.

63. Dondero lacks knowledge after reasonable inquiry to form a belief as to the allegations in the first and second sentences of paragraph 8 of the Brief, and therefore denies same. Dondero denies the allegations contained in the third sentence of paragraph 8 of the Brief. Dondero admits that during his deposition he could not recall what happened to the phone. Dondero denies the remainder of the allegations of paragraph 8 of the Brief. Dondero has also testified that the phone may have been provided to him for use under the Shared Services Agreements.

64. Dondero lacks knowledge after reasonable inquiry to form a belief as to the allegations in paragraph 9 of the Brief about the Debtor's demands, and therefore denies same. Dondero denies the remainder of the allegations in paragraph 9 of the Brief.

65. Dondero admits he has previously communicated by text as alleged in paragraph 10 of the Brief. Dondero denies the remainder of the allegations in this paragraph.

66. Dondero admits that on or about December 23, 2020, the Debtor demanded that Dondero no longer access the Debtor's office space as alleged in paragraph 11 of the Brief. Dondero denies the remainder of the allegations contained in paragraph 11.

67. Dondero admits that he was at the Debtor's office on January 5th to attend his deposition, but denies that he was not authorized to access the space and denies that this was a violation of the TRO. Dondero denies the remainder of the allegations in this paragraph.

68. Dondero admits that he did not seek Debtor's explicit permission to enter the premises as alleged in paragraph 13 of the Brief, but believes no permission was required, because he was only there to attend his deposition and because of the shared services agreements.

69. Dondero denies the allegations made in the first sentence of paragraph 14 of the Brief, however Dondero admits that he has certain control and/or ownerships rights of certain

funds and financial advisory firms that are not named or identified in this paragraph. Therefore, Dondero lacks knowledge on which to admit or deny the allegations or insinuations made by the Debtor in paragraph 14 of the Brief, and therefore denies same. Dondero denies the remainder of the allegations made in paragraph 14 of the Brief.

70. While Dondero upon information and belief is aware that letters were sent by attorneys for certain funds and financial advisory firms to the Debtor on or around December 22, 23, and 30, 2020, Dondero lacks knowledge after reasonably inquiry sufficient to form a basis to admit or deny the remainder of the allegations of paragraph 15 of the Brief, and therefore denies same. Dondero denies the remainder of any additional allegations made in this paragraph. Dondero denies there were any threats in any letters to the Debtor.

71. Dondero admits that he knew the letters were being sent but denies that he knew the full content of the letters as alleged by the Debtor in paragraph 16 of the Brief. Dondero denies the remainder of the allegations of paragraph 16 of the Brief.

72. In reference to paragraph 17 of the Brief, while Dondero admits that there were certain extremely limited communications made between him and Leventon and Ellington, he believed that those communications were allowed under an exception to the TRO, to pursue his Pot Plan, under the shared services agreements, or with respect to Ellington, due to his role as a "go-between" between him and the Debtor or the Independent Board. Dondero denies the insinuations and allegations made by the Debtor related to the alleged communications in paragraph 17 of the Brief. Dondero denies the remainder of the allegations in paragraph 17.

73. With respect to paragraph 18 of the Brief, Dondero admits he became aware that "several entities" had reportedly been looking for the Dugaboy and Get Good financial documents, but otherwise denies the allegations in paragraph 18 of the Brief. Dondero denies that the

documents of Dugaboy and Get Good are the Debtor's property. Dondero denies the remainder of the allegations of paragraph 18 of the Brief.

74. Paragraphs 19-21 of the Brief contain legal authorities/assertions to which no responses are required. To the extent a response is required or appropriate, Dondero denies the allegations. Dondero denies the allegations contained in paragraph 22 of the Brief.

CONCLUSION

Defendant respectfully requests that the Court deny the Contempt Motion and grant Defendant such other and further relief to which he may be justly entitled.

Dated: February 21, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 21, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, LP, Debtor.	§	Bankruptcy Case No. 19-34054-SGJ11
JAMES DONDERO, Appellant,	§	Adversary No.: 20-03190-sgj
v.	§	Civil Action No. 3:21-CV-0132-E
HIGHLAND CAPITAL MANAGEMENT LP, Appellee.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Appellant James Dondero's Motion for Leave to Appeal (Doc. No. 2-1). Appellant seeks to appeal a bankruptcy court order granting a preliminary injunction against him. Having carefully considered the motion for leave to appeal, the parties' briefing, and applicable law, the Court finds the motion for leave to appeal should be DENIED.

In October 2019, debtor Highland Capital Management, L.P. filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code. The petition was filed in bankruptcy court for the District of Delaware, but later was transferred to this district. Appellant alleges he is "a creditor, indirect equity holder, and party in interest" in the bankruptcy case. In December 2020, Debtor initiated an adversary proceeding by filing a complaint seeking injunctive relief against Appellant. Upon Debtor's motion, and after a hearing, the bankruptcy court issued a preliminary injunction order. Among other things, the preliminary injunction enjoins Appellant from communicating with any Board member unless counsel for Appellant and Debtor are included in the communication; from physically or virtually entering Debtor's offices without the prior written

permission of Debtor's counsel; and from communicating with two specific individuals, former employees of Debtor, unless otherwise ordered by the court. In addition, Appellant must attend all future hearings in the bankruptcy case via video unless otherwise ordered by the court. The order remains in effect until the date that any plan of reorganization or liquidation resolving Debtor's case becomes effective or unless otherwise ordered by the bankruptcy court. Appellant filed a notice of appeal and an alternative motion for leave to appeal.

Citing 28 U.S.C. § 158(a) and 28 U.S.C. § 1292(a), Appellant asserts that he may appeal the bankruptcy court's preliminary injunction as a matter of right. Appeals from bankruptcy courts are governed by 28 U.S.C. § 158. It permits district courts to hear appeals from final bankruptcy judgments and, with leave of court, other interlocutory orders. Section 158(a)(3) expressly requires leave of the district court to appeal an interlocutory bankruptcy court order. 28 U.S.C. § 158(a)(3); *see* FED. R. BANKR. P. 8004(a).

Section 158(a)(3) does not provide a standard for determining when to grant leave. District courts have generally looked to the standard that applies for circuit court review of interlocutory district court orders, which is found in 28 U.S.C. § 1292. *See In re First Rep. Grp. Realty, LLC*, No. M47(SAS), 2010 WL 882986, at *1 (S.D.N.Y. Mar. 2, 2010). But there is a difference of opinion regarding whether to apply section 1292(a) or 1292(b) when the interlocutory order involved is a preliminary injunction. *See In re Reserve Prod.*, 190 B.R. 287, 289 (E.D. Tex. Oct. 3, 1995). The Fifth Circuit has left this issue open. *See Ichinose v. Homer National Bank* (*In re Ichinose*), 946 F.2d 1169, 1177 (5th Cir. 1991). Under 1292(a), a court of appeals has jurisdiction over an interlocutory order of a district court that grants an injunction. 28 U.S.C. § 1292(a). Under 1292(b), an interlocutory order is appealable when it involves "a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from

the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b).

Section 158(a) plainly gives district courts discretion over whether to accept appeals from interlocutory bankruptcy court orders. Thus, "[i]t would make little sense for the bankruptcy appeals statute to group preliminary injunctions with other interlocutory orders but intend for 'leave to appeal' these injunctions to be granted as of right." *First Rep. Grp.*, 2010 WL 882986, at *1 (quoting *In re Quigley Co.*, 323 B.R. 70, 77 (S.D.N.Y. 2005)); *see In re Goldberg*, No. 16 C 6993, 2016 WL 6070364, at *3 (N.D. Ill. Oct. 17, 2016). Requiring leave in all instances is more faithful to the plain language of section 158(a)(3). *In re Goldberg*, 2016 WL 6070364, at 3. The Court concludes that any interlocutory appeal under section 158(a) requires leave of the district court and that such an appeal must meet the requirements set out in section 1292(b). *See In re Ichinose*, 946 F.2d at 1177 (stating, in case involving interlocutory bankruptcy court order that was not preliminary injunction, "the vast majority of district courts faced with the problem have adopted the standard under 28 U.S.C. § 1292(b)."); *but see In re Reserve Prod.*, 190 B.R. at 290 ("As a policy matter, the rulings of a non-article III bankruptcy court should not be more insulated from appellate review then the rulings of an Article III district court.").

In his motion for leave, Appellant argues that good cause exists to grant leave to appeal. He contends the injunction effectively permanently fixes his rights in the bankruptcy case. He further asserts the injunction is "overbroad, nonspecific, and inconsistent with applicable law" and violates his First Amendment rights. According to Appellant, granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by the preliminary injunction. Debtor responds that appeals of interlocutory bankruptcy court orders are strongly disfavored and that interlocutory appeal is inappropriate under section 1292(b). Appellant argues

in his reply for the first time that if the Court applies 1292(b), the standard has been met because a controlling question of law has been presented: a question of law which could materially advance the ultimate termination of the litigation.

As stated, under section 1292(b), the interlocutory order must (1) involve a controlling issue of law and (2) present a question upon which there is substantial ground for difference of opinion, and (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). All three of the statutory criteria must be met before an interlocutory appeal is proper. *See Arparicio v. Swan Lake*, 643 F.2d 1109, 1110 n.2 (5th Cir. 1981). "[T]he Fifth Circuit disfavors interlocutory appeals" and leave to appeal is "sparingly granted." *See Odle v. Wal-Mart Stores Inc.*, No. 3:11-CV-2954-O, 2013 WL 66035, at *2 (N.D. Tex. Jan. 7, 2013) (citing *United States v. Garner*, 749 F.2d 281, 286 (5th Cir. 1985)).

Appellant asserts he has presented a controlling question of law because the issue on appeal could materially affect the outcome of litigation in the bankruptcy court and save time and expense for the court and litigants. Appeals under 1292(b) "were intended and should be reserved, for situations in which the court of appeals can rule on a pure, controlling question of law without having to delve beyond the surface of the record in order to determine the facts." *Oasis Res., LLC v. Carbonite, Inc.*, No. 4:10-CV-435, 2015 WL 12829617, at *3 (E.D. Tex. June 11, 2015) (quoting *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004)). A review of the preliminary injunction in this case would involve a fact-intensive analysis, not consideration of a pure question of law.

Accordingly, this Court finds Appellant has not sufficiently demonstrated the bankruptcy court order involves a controlling question of law. Because there is no controlling issue of law involved, the Court need not reach the issues of whether the preliminary injunction involves

questions with a substantial ground for difference of opinion or whether an immediate appeal would materially advance the ultimate termination of the litigation. *See* 28 U.S.C. §§ 158(a)(3); 1292(b). Appellant's Motion for Leave to Appeal is **DENIED**.

SO ORDERED.

Signed February 11, 2021.

ADA BROWN
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-3190-sgj11 Related to Dkt. No. 107

DEBTOR'S OBJECTION TO JAMES DONDERO'S EMERGENCY MOTION IN LIMINE AND TO EXCLUDE EVIDENCE AND ARGUMENT

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Debtor and debtor-in-possession Highland Capital Management, L.P. (the "Debtor") hereby objects (the "Objection") to *James Dondero's Emergency Motion in Limine and to Exclude Evidence and Argument* (the "Motion") [Docket No. 107] filed by Mr. James Dondero ("Mr. Dondero") and submitted in connection with the hearing to be held (the "Contempt Hearing") on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. 48]. In support of the Objection, the Debtor respectfully represents as follows:

PRELIMINARY STATEMENT

1. By his Motion, James Dondero seeks to prevent the Debtor from offering into evidence during the Contempt Hearing information relating to three topics on the grounds that it is purportedly "prejudicial" and "irrelevant" because it is not tied to any particular provision of the temporary restraining order (the "TRO") entered against Mr. Dondero. The topics are the (i) cell phone, (ii) trespass, and (iii) the Dugaboy and Get Good documents (together, the "Topics"). The Motion is disingenuous, at best, and can be denied for three independent reasons.

2. ***First***, Mr. Dondero should be estopped from making the Motion on the ground that he specifically sought and obtained from the Debtor in discovery evidence he now seeks to exclude. Indeed, as discussed below, Mr. Dondero included on his *Second Amended Witness and Exhibit List* [Docket No. 106]—filed just hours before the Motion—evidence pertaining to two of the three allegedly "irrelevant" Topics.

3. ***Second***, Mr. Dondero has waived any right to object on relevance grounds to anything related to the Topics because he failed to object before it was admitted into evidence during the January 8, 2021 hearing on the Debtor's motion for a preliminary injunction. Mr. Dondero offers no reason or explanation as to how the same evidence could be (a) relied upon by the Court to enter the preliminary injunction (the "Preliminary Injunction"), but (b) be irrelevant

for the Contempt Hearing when the applicable provisions of the TRO and the Preliminary Injunction are the exact same.

4. ***Third***, all three categories of evidence relate to a violation of section 3(e) of the TRO, which enjoined Mr. Dondero from "otherwise violating section 362(a) of the Bankruptcy Code." Section 362(a) of the Bankruptcy Code provides that the filing of a petition acts as a stay of any act to "exercise control over property of the estate." As discussed below, the evidence Mr. Dondero seeks to exclude proves that he violated section 362(a) by exercising control over the Debtor's cell phone, text messages, offices, and documents.

5. For the reasons set forth above and below, the Motion should be denied.

A. Mr. Dondero Seeks to Exclude as "Prejudicial" and "Irrelevant" Evidence He Sought and Obtained in Discovery and Included on His Exhibit List in Connection with the Contempt Hearing

6. Mr. Dondero seeks to exclude as "prejudicial" and "irrelevant" evidence that he sought and obtained in discovery and included on his own witness and exhibit List filed in connection with the Contempt Hearing.

7. Mr. Dondero served document requests on the Debtor seeking information relating to the cell phone and the Dugaboy and Get Good issues (*see* Exhibit 3 (*Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests Directed to Highland Capital Management, L.P.*) on *James Dondero's Second Amended Witness and Exhibit List* [Docket No. 106] (the "Exhibit List")):

Request for Production No. 14:

> Produce all internal policy documents, memorandums, communications, agreements, contracts, directives, and any other document related to the Debtor's policy in effect as of the Petition Date, if any, related to employee use of mobile phones allegedly supplied by the Debtor to its employees.

Request for Production No. 15:

Produce all purchase agreements, purchase orders, agreements, invoices, contracts, statements, bills, and any other documents related to the Debtor's claim of ownership of the mobile phone it alleges Debtor disposed of for the period from the Petition Date to the present.

Request for Production No. 17:

Produce a copy of any and all requests, formal or informal, that require the Debtor to produce documents of The Dugaboy Investment Trust and/or The Get Good Trust to the UCC or any other party for the period from the Petition Date to the present.

Request for Production No. 19:

Produce all communications from the Debtor to Defendant in which the Debtor requested that the Defendant retain his cell phone.

Request for Production No. 20:

Produce all internal policy documents, memorandums, communications, contracts, directives, and any other document related to the Debtor's policy in effect as of December 10, 2020, if any, related to employee use of mobile phones allegedly supplied by the Debtor to its employees.

8. After Mr. Dondero served the above-quoted discovery requests and the Debtor took the time and effort to search for and produce responsive documents, Mr. Dondero included certain of the documents on his Exhibit List. *See* Exhibit List, Exhibit 6 (Employee Handbook, including provisions concerning cell phones) and Exhibits 16, 17, 18, 19, and 20 (respectively, e-mail communications "regarding Dugaboy documents").

9. Mr. Dondero should be estopped from seeking to exclude as "prejudicial" or "irrelevant" information that (a) he specifically sought in discovery, (b) caused the Debtor to produce in discovery, and (c) he included on his own Exhibit List.

B. Mr. Dondero Seeks to Exclude as "Prejudicial" and "Irrelevant" Evidence that Was Already Admitted without Objection in the Preliminary Injunction Hearing

10. Mr. Dondero seeks to exclude as "prejudicial" and "irrelevant" evidence that was admitted into the record—without objection—during the hearing on the Debtor's motion for a preliminary injunction in this adversary proceeding. During that hearing, the Court admitted into evidence various documents that relate to all three issues Mr. Dondero now contends are "irrelevant," including: Exhibit G (text message from Jason Rothstein dated December 10 stating "I left your old phone in the top draw of Tara's desk"); Exhibit K (letter from Pachulski Stang Ziehl & Jones dated December 23, 2020 that demanded the return on the Debtor's cell phone, gave notice of eviction, and informed Mr. Dondero's counsel that "[a]ny attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass"); Exhibit R (text message from Mr. Dondero to an employee of the Debtor, Melissa Schroth, stating "[n]o dugaboy details without subpoena"). *See Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* [Docket No. 46] and *Court Admitted Exhibits* (including Debtor's Exhibits A through Y) [Docket No. 54]. Furthermore, the witnesses at the hearing on the Debtor's motion for a preliminary injunction testified at length concerning all three Topics.

11. Having failed to object on relevance grounds to the introduction of evidence relating to the Topics at the hearing on the Debtor's motion for a preliminary injunction, Mr. Dondero has waived his right to do so now in connection with the Contempt Hearing.

C. The Topics All Relate to Violations of the TRO

12. The TRO enjoined Mr. Dondero from violating section 362(a) of the Bankruptcy Code.

13. Section 362(a)(3) states that the filing of a petition for relief under the Bankruptcy Code operates as a stay to prevent any act to "exercise control over property of the estate."

14. The evidence will show that the cell phone, the text messages concerning the Debtor, the offices leased by the Debtor, and the Dugaboy and Get Good records that were in the Debtor's possession, custody, and control, were property of the Debtor's estate that Mr. Dondero exercised control over without the Debtor's knowledge or consent.

15. On this basis, the evidence concerning the Topics is plainly relevant to the matters to be considered at the Contempt Hearing.

CONCLUSION

For the foregoing reasons, the Motion should be denied with prejudice.

Dated: February 24, 2021.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
v.	§	Adv. Proc. No. 20-3190-sgj11
JAMES D. DONDERO,	§	
Defendant.	§	

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that the following matter is scheduled for hearing on **Monday, March 22, 2021 at 9:30 a.m. (Central Time)** (the "Hearing") in the above-captioned adversary proceeding (the "Adversary Proceeding"):

1. *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Dkt. No. 48] (the "Motion").

The Hearing will be held before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom No. 1, Dallas, TX 75242-1496.

[*Remainder of Page Intentionally Left Blank*]

Dated: March 4, 2021.

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COUNSEL FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Case No. 19-34054-SGJ-11
	§	
HIGHLAND CAPITAL MANAGEMENT, LP,	§	
	§	Chapter 11
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, LP,	§	
	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	Adversary No.: 21-3190-SGJ-11
JAMES D. DONDERO,	§	
	§	
	§	
Defendant.	§	

MOTION FOR CONTINUANCE OF CONTEMPT HEARING

TO THE HONORABLE STACEY G.C. JERNIGAN:

COMES NOW Defendant James Dondero ("Dondero") and files this Motion for Continuance of the hearing to consider *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Contempt Motion"), by way of which he would respectfully show the Court as follows:

1. This Contempt Motion is currently set for hearing on March 22, 2021 at 9:30 a.m.

2. On March 8, 2021, Dondero filed with the United States Court of Appeals for the Fifth Circuit a Petition for Writ of Mandamus (the "Mandamus") seeking review of the Court's *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction"). A true and correct copy of the Mandamus is attached hereto as Exhibit "A".

3. The Fifth Circuit Court of Appeals has sent a letter to the Debtor in this case requesting the Debtor file a response to the Mandamus by March 16, 2021. A true and correct copy of the letter from the Fifth Circuit Court of Appeals is attached hereto as Exhibit "B".

4. Because of the issues raised by the Mandamus, there is good cause for the Court to grant a continuance of the hearing on the Contempt Motion while the Fifth Circuit considers the Mandamus and the merits of the Preliminary Injunction.

5. It appears that counsel for the Debtor will be spending time in this matter on the relief requested by the Mandamus. Moreover, this Court may prefer to work within the parameters which may be established by the Fifth Circuit Court of Appeals.

6. Dondero further seeks a continuance so that the parties do not do anything that might adversely affect any future rulings by this Court.

WHEREFORE, promises considered, Dondero prays that the Court grant Dondero a Continuance of the Contempt Hearing, and for such any and other further relief as he may be entitled.

Dated: March 10, 2021

Respectfully submitted,

/s/ John Y. Bonds, III

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COUNSEL FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on March 10, 2021, I conferred with counsel for the Debtor, Mr. John Morris, regarding the relief requested herein. Mr. Morris indicated that the Debtor is opposed to the request for continuance.

/s/ John Y. Bonds, III
John Y. Bonds, III

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on March 10, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff as listed below and on any other party requesting electronic service in this case.

/s/ John Y. Bonds, III
John Y. Bonds, III

No. _____

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

***In re James D. Dondero*,**

***Petitioner*.**

On Petition for Writ of Mandamus to the
United States District Court for the Northern District of Texas
Civil Action No. 3:21-CV-00132-E
Hon. Ada Brown, Judge

PETITION FOR WRIT OF MANDAMUS

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ATTORNEYS FOR PETITIONER

EXHIBIT A

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Highland Capital Management, L.P.

2. James D. Dondero

3. Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, counsel for Highland Capital Management, L.P.

4. Hayward PLLC, 10501 N. Central Expy, Ste. 106, Dallas, TX 75231, counsel for Highland Capital Management, L.P.

5. Bonds Ellis Eppich Schafer Jones LLP, 420 Throckmorton Street, Suite 1000, Fort Worth, TX 76102, counsel for James D. Dondero

/s/ Matthew Stayton
Matthew Stayton,
Counsel for Petitioner

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RELIEF SOUGHT

Mr. James Dondero respectfully requests that this Court grant his Petition for Writ of Mandamus and (1) dissolve the bankruptcy court's preliminary injunction against Mr. Dondero; or (2) alternatively, direct the District Court to accept and consider the merits of Mr. Dondero's appeal of the preliminary injunction under 28 U.S.C. § 1292(a) or (b).

ISSUES PRESENTED

1. Did the bankruptcy court's preliminary injunction order against Mr. Dondero fail to set forth the reasons for its issuance and its restrictions in clear and specific terms and reasonable detail to ensure reasonable compliance under the threat of contempt?

2. Did the District Court abuse its discretion by rejecting Mr. Dondero's clear and indisputable statutory right to appeal the injunction under the plain language of 28 U.S.C. § 1292(a)?

3. Did the District Court abuse its discretion by refusing to grant Mr. Dondero leave to appeal the injunction under 28 U.S.C. § 1292(b), where it is clear and indisputable that injunctive relief is the controlling issue materially affecting the case?

4. Does Mr. Dondero have no other adequate means to seek review of the injunction? Alternatively, should this Court treat this mandamus as an interlocutory appeal and dissolve the injunction or reverse and remand?

INTRODUCTION

This dispute presents the rare case justifying extraordinary mandamus relief. The bankruptcy court issued an injunction order so broad and vague that Mr. Dondero cannot conduct normal affairs without the threat of contempt at every turn. This threat is real, not perceived, and has been used in the underlying case.

Making matters worse, the District Court denied Mr. Dondero his statutory right to appeal the injunction under 28 U.S.C. § 1292(a), ruled it was within the court's sole discretion to grant leave to accept the appeal under section 1292(b), and then simply denied leave to appeal—a clear and indisputable error from which there is no viable remedy. As a legal matter, the plain language of section 1292(a) demonstrates that injunctions are not insulated from review. As a policy matter, injunctions entered by Article I bankruptcy courts cannot be more insulated from appellate review than those entered by Article III courts.

This Court should grant mandamus and dissolve the overbroad injunction or, alternatively, direct the District Court to accept the appeal as a matter of statutory right.

STATEMENT OF FACTS

1. Background of the Highland Capital bankruptcy and its CEO James Dondero.

On October 16, 2019, Highland Capital Management, L.P. (the "Debtor") filed a voluntary petition for relief in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (the "Bankruptcy Case"). (App.0011) At the time, Mr. James D. Dondero ("Mr. Dondero"), the Debtor's co-founder, was the Debtor's President and Chief Executive Officer and signed the voluntary petition for relief as the President of Strand Advisors, Inc., the Debtor's General Partner. (App.0014) Later, venue was transferred to the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). (App.1349)

On December 27, 2019, the Debtor filed a *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*. (App.0109) The Bankruptcy Court entered an order approving this motion on January 9, 2020. (App.0188)

In connection therewith, an independent board of directors was appointed for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S.

Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor's Chief Executive Officer. (App.0197)

2. After Mr. Dondero expresses concern regarding the Debtor's management, he is asked to resign.

Mr. Dondero continued to work for the Debtor as a portfolio manager. (App.0198) During that time, he expressed concern regarding Mr. Seery's management of the Debtor, as well as the dissipation of assets. As a result of Mr. Dondero's disagreement with Debtor's management and his filing of pleadings allegedly adverse to the Debtor, the Debtor asked for Mr. Dondero to resign, which he did effective October 9, 2020. (App.0786)

On November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as later modified, the "Plan") and the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Disclosure Statement"). (App.1536) That same day, the Bankruptcy Court entered an order approving the Disclosure Statement, allowing for the solicitation of the Debtor's Plan. (App.1536)

3. Highland Capital seeks to restrain Mr. Dondero through an adversary proceeding.

On December 7, 2020, the Debtor commenced the adversary proceeding styled *Highland Capital Management, L.P. v. James D. Dondero*, Adv. Proc. No. 20-03190 by filing *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* (the "Complaint"). (App.0556) The Debtor also filed *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero*. (App.0569)

Mr. Dondero believes that the Debtor sought the TRO (and later filed a contempt motion) to (i) impugn Mr. Dondero's reputation before the Bankruptcy Court, (ii) prevent Mr. Dondero and his related entities from being able to exercise and pursue their legal rights and remedies related to the Bankruptcy Case or their relationship with the Debtor or its business, and (iii) attempt to gain an undue advantage in potential future disputes between the parties. (App.1245)

Three days later, the Bankruptcy Court entered the temporary restraining order against Mr. Dondero (the "TRO"). (App.0635)

The Bankruptcy Court then set the hearing on Debtor's motion for

a preliminary injunction for January 8, 2021, and Mr. Dondero filed a response in opposition to the motion. (App.1008) Trial concerning the Debtor's request for a permanent injunction is currently set for the week of May 17, 2021. (App. 0696)

4. Highland Capital immediately seeks to hold Mr. Dondero in contempt for violations of a broad and unclear temporary restraining order.

On January 7, 2021, the Debtor moved to hold Mr. Dondero in contempt for allegedly violating the TRO. (App.0975, 0984)

Rather than citing a violation of a clear and specific term of the TRO, the Contempt Motion seeks to hold Mr. Dondero in contempt for several actions that cannot be fairly interpreted to violate the TRO, including (i) Mr. Dondero replacing his cell phone and leaving the old phone at Debtor's office; (ii) going into Debtor's near-empty office space (which he was arguably entitled to do under certain shared services agreements) to appear for a deposition noticed by the Debtor; (iii) two request letters sent by counsel for related third-party entities to Debtor's counsel; and (iv) the filing (and eventual prosecution) of a motion brought by related third-party entities (before the TRO was even entered), which was explicitly allowed under the TRO. (App.0986, 0990-92, 1543)

The Contempt Motion hearing has been continued or delayed several times and is now set to occur on March 22, 2021. (App.1288)

5. The Bankruptcy Court enters a broad preliminary injunction order against Mr. Dondero.

On January 8, 2021, the Court conducted a hearing and found that a preliminary injunction should be entered against Mr. Dondero. (App.1015) On January 12, 2021, the Court entered its *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* (the "Preliminary Injunction"). (App.0001)

Among other things, the overbroad Preliminary Injunction enjoins and restrains Mr. Dondero from "(c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct")." (App.0003-04)

The Preliminary Injunction also purports to restrain Mr. Dondero "from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct." The Preliminary Injunction further prevents Mr. Dondero from speaking with two former employees of the Debtor and from entering Debtor's office space or using any of the Debtor's computer, email, or information systems.[1] (App.0004)

The Preliminary Injunction provides that it "shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court." (App.0004)

6. The District Court refuses Mr. Dondero's statutory right to appeal the injunction.

On January 12, 2021, Mr. Dondero filed a *Notice of Appeal as of Right or, Alternatively, Notice of Appeal with Motion for Leave to Appeal* to appeal the entry of the broad and unclear Preliminary Injunction. (App. 1220) The following day, the Bankruptcy Clerk instructed Mr.

[1] Paragraphs 2 and 3 of the Preliminary Injunction are identical in all material respects with paragraphs 2 and 3 of the TRO. The Preliminary Injunction also contains three additional paragraphs of vague restrictions. (App.0002-04)

Dondero to separately file the notice of appeal and the motion for leave to appeal, and Mr. Dondero complied. (App.1229-30, 1234)

Eight days later, the Bankruptcy Clerk then transmitted the amended notice of appeal and motion for leave to the U.S. District Court for the Northern District of Texas, Dallas Division (the "District Court") and docketed the appeal. (App.1290, 1577-78)

On February 11, 2021, the District Court issued a *Memorandum Opinion and Order* (the "Memorandum Opinion") denying Mr. Dondero's right to appeal the Preliminary Injunction. (App.0006) In the Memorandum Opinion, the District Court ruled that (i) Mr. Dondero could not appeal the Preliminary Injunction as of right under 28 U.S.C. § 1292(a); and (ii) leave to appeal the Preliminary Injunction would not be granted under 28 U.S.C. § 158(a)(3) and 28 U.S.C. § 1292(b) because the appeal did not involve a controlling issue of law. (App.0006-10)

7. The Bankruptcy Court confirms the Plan—but its effective date remains unknown.

Meanwhile, on February 22, 2021, the Bankruptcy Court entered an order confirming the Debtor's Plan. (App.0361) The Plan's Effective Date is to be the business day on which the Confirmation Order becomes a final order and other conditions precedent to the effective date are

satisfied under Article VIII.A of the Plan.[2] (App.0308, App.0346) Article VIII.B further provides that the "conditions to effectiveness of this Plan . . . may be waived in whole or in part by the Debtor." (App.0347)

The Debtor has refused to provide Mr. Dondero with a date certain on which the Plan will go effective. In addition, other parties have filed motions to stay the effectiveness of the Confirmation Order pending appeal. (App.0522) If those motions are successful, the Effective Date of the Plan will be stayed pending the resolution of the appeals. Accordingly, the preliminary injunction against Mr. Dondero remains effective indefinitely.

STANDARD OF REVIEW

This Court's standard for issuing a writ of mandamus is well settled. *See In re Occidental Petroleum Corp.*, 217 F.3d 293, 295 (5th Cir. 2000). Mandamus is an appropriate remedy "when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court," and that error is

[2] *See* Plan, Article I.B, p. 14 of 66 ("*Effective Date* means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof."); Article VIII.A-B, p. 52 of 66.

irremediable on ordinary appeal. *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir. 1992) (internal citations and quotation marks omitted); *In re Occidental*, 217 F.3d at 295.

A party seeking mandamus relief must satisfy three requirements before the court will issue a writ of mandamus: (1) the petitioner must have "no other adequate means" to obtain the relief requested; (2) the petitioner must show a "clear and indisputable" right to the relief requested; and (3) the court, in its discretion, "must be satisfied that the writ is appropriate under the circumstances." *In re Volkswagen of America, Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc).

In the Fifth Circuit, mandamus relief may be available to obtain appellate review of bankruptcy orders that are otherwise non-appealable. *In re Lieb*, 915 F.2d 180, 186 (5th Cir. 1990) (citing *In re Barrier*, 776 F.2d 1298 (5th Cir. 1985) (per curiam)).

REASONS THE WRIT SHOULD ISSUE

The Bankruptcy Court entered an overbroad, ambiguous, unclear, and unspecific preliminary injunction in violation of Rule 65(d) leaving Mr. Dondero vulnerable to contempt proceedings on orders too vague to be understood or enforced. The District Court then refused to allow Mr.

Dondero's clear and indisputable right to appeal the preliminary injunction pursuant to 28 U.S.C. § 1292(a)—a plain misapplication of the statute. Preliminary injunctions entered by Article I bankruptcy courts should not be more insulated from appellate review than those entered by Article III courts. Because the District Court refused to consider Mr. Dondero's appeal of the preliminary injunction, Mr. Dondero has "no other adequate means" to obtain review of the preliminary injunction and mandamus relief is appropriate.

I. On its face, the preliminary injunction is overbroad, ambiguous, and not clear and specific—subjecting Mr. Dondero to contempt for lawful acts.

Several provisions of the preliminary injunction entered against Mr. Dondero are overbroad, vague, ambiguous, and unspecific—making Mr. Dondero vulnerable to prosecution for contempt for lawful acts.

Rule 65(d) of the Federal Rules of Civil Procedure provides that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Fed. R. Civ. P. 65(d). The specificity requirement "ensures that a party who is restrained

by a preliminary injunction knows clearly what conduct is being restrained and why." *MillerCoors LLC v. Anheuser-Busch Cos., LLC*, 940 F.3d 922, 924 (7th Cir. 2019)

"The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam). Accordingly, an injunction "cannot be so general as to leave the party open to the hazard of conducting business in the mistaken belief that it is not prohibited by the injunction and thus make him vulnerable to prosecution for contempt." *Williams v. United States*, 402 F.2d 47, 48 (10th Cir. 1967).

First, the provision of the injunction that prohibits Mr. Dondero from "interfering with or otherwise impeding, directly or indirectly, with the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan" is not clear, definite, and specific because it

does not list specific acts that are to be restrained.[3] Rather, it lists a broad category of conduct that could be read to apply to any number of unidentified actions related to the bankruptcy case or Debtor's business. This provision could be read to prevent any action of Mr. Dondero or his related entities to assert their individual legal rights in the bankruptcy case or to protect their individual business interests. It is simply that broad.[4]

Moreover, this provision prevents Mr. Dondero from engaging in other lawful conduct and duties. For example, Mr. Dondero is an investor in funds managed by the Debtor and the injunction bars him from acting in that capacity. (App.1150).

Second, the provision of the injunction restricting Mr. Dondero's communication with the Debtor's employees (and two of Debtor's former employees) is too broad and may impair Mr. Dondero's freedom of speech

[3] (App.0003-04)

[4] This provision could also be read to restrict the exercise of legal rights or other lawful actions that simply have the effect of being in disagreement with a decision of the Debtor, such as whether claims are properly treated or classified ("treatment of claims"), whether the Debtor's Plan complies with applicable law ("pursuit of the Plan"), whether the sale of assets owned or controlled by the Debtor is a proper exercise of its business judgment or should otherwise be pursued ("disposition of assets owned or controlled by the Debtor"), and whether Dondero could attempt to pursue his own alternative plan ("alternative to the Plan").

under the First Amendment to the U.S. Constitution.[5]

The Supreme Court has directed judges to scrutinize injunctions restricting speech carefully and ensure that they are "no broader than necessary to achieve [their] desired goals." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 764-65 (1994).

Here, the scope of this provision of the injunction is too broad because it effectively enjoins all communications—of any kind, and of any nature—between Mr. Dondero and anyone employed by the Debtor (except as it relates to the shared services agreements). The provision fails to allow Mr. Dondero to communicate with Debtor's employees on personal or other routine matters unrelated to the Debtor's business or the bankruptcy case, and potentially restricts his ability to (i) communicate with employees of the Debtor who also serve in other capacities for Mr. Dondero, such as his personal assistants under the shared services agreements; and (ii) communicate with employees of the Debtor once their employment with the Debtor ceases. As a result, it is too broad. *See generally Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 183 (1968) ("An order issued in the area of First

[5] (App.0003-04)

Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted.”).

Third, and similarly, the provision of the injunction that enjoins and restrains Mr. Dondero from “causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in the Prohibited Conduct” is too broad because it may enjoin unidentified third parties that are not a party to this proceeding. Those third-party entities have complex rights and interests independent from Mr. Dondero. There were no other parties to the underlying adversary proceeding. Because the injunction purports to restrain the independent actions of third parties from the same broad, vague, and nonspecific conduct as Mr. Dondero, it is improper and should be dissolved.

Fourth, the ambiguity of the preliminary injunction is further evidenced by the Debtor’s attempt to hold Mr. Dondero in contempt for actions that do not violate a clear and specific provision of the TRO. *See supra* at p. 5. While the Debtor’s Contempt Motion remains pending, the fact that the Debtor has utilized the broad and unclear provisions contained in the TRO and injunction to threaten contempt against Mr.

Dondero evidences the immediate and irreparable harm that will occur to Mr. Dondero if the preliminary injunction is allowed to stand. In addition, the purported exceptions of the TRO and preliminary injunction—those for communications regarding shared services and for "seeking judicial relief"—are vague and unclear as evidenced by the allegations of contempt for activity that should fall within these exceptions.[6]

Finally, while Mr. Dondero must obey the automatic stay, the provision of the injunction that prevents Mr. Dondero from "violating section 362(a) of the Bankruptcy Code" also violates Rule 65 because it is vague, nonspecific, and does not describe in reasonable detail the acts restrained.[7]

In violation of Rule 65(d), this portion of the injunction does not include any specific and identifiable prohibitions. Instead, it refers to an outside document or source and purports to make matters contained therein (11 U.S.C. § 362(a)) a violation of the injunction. This plainly violates Rule 65(d)(1)(C) because it refers to a document or source outside

[6] (App.0004, fn 2)

[7] (App.0004)

the face of the order instead of describing in reasonable detail the specific acts restrained. *See* Fed. R. Civ. P. 65(d). Accordingly, Mr. Dondero cannot ascertain from the face of the preliminary injunction what acts may or may not be prohibited by this provision.

This lack of specificity is particularly problematic in this case because of the complexity of the Debtor's business and the unclear positions asserted by the Debtor as to what qualifies as property of the estate.[8] Most of the Debtor's business is conducted either through subsidiaries or by the management of assets held by subsidiaries.[9] The Debtor has asserted in the bankruptcy case that the property held by these subsidiaries is not property of the estate or subject to the Bankruptcy Court's jurisdiction or oversight.[10] (App.0284-0294) Through

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[8] *See generally* (App.0284)

[9] (App.0027, 0037-0038, 1891-1917, 0258-0270)

[10] *See Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Bankr. Dkt. 1546], para. 5 ("[T]he assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate." and "transactions occurring at non-Debtor entities . . . were otherwise arguably outside of this Court's jurisdiction and oversight.') (emphasis in original) and para. 10 ("Even though the value of the subsidiary's outstanding shares owned by the debtor may be directly affected by the subsidiary's disputes with third parties, Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate.") (citing *Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975)) (internal citations and quotations omitted).

the adversary proceeding and contempt motion, however, the Debtor suggests that the Bankruptcy Court has jurisdiction to enjoin actions that may impact these subsidiaries or the property held by these subsidiaries. (App.0556-0596, 0975-0997) Given these issues, it is unclear what actions the Debtor may assert violate the automatic stay, particularly as to sections 362(a)(1)-(5) (preventing actions against the Debtor and property of the Debtor's estate), and the lack of specific restrictions in the order does not provide fair notice to Mr. Dondero of the acts restrained.

II. The District Court's refusal to allow Mr. Dondero to appeal the injunction as a matter of right under 28 U.S.C. § 1292(a) was error correctable by mandamus.

The District Court committed clear and egregious error in denying Mr. Dondero his statutory right to appeal the Bankruptcy Court's preliminary injunction under 28 U.S.C. § 1292(a). Moreover, on its face, the District Court's Order purports to be insulated from appellate review as a non-appealable interlocutory order denying leave to appeal under section 1292(b). Therefore, mandamus is warranted and the only available remedy.

The District Court, sitting as an appellate court, was required to accept and consider the appeal from the Bankruptcy Court's injunctive order under 28 U.S.C. § 1292(a), which provides:

> (a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:
>
> > (1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court . . . .

28 U.S.C. § 1292(a)(1).

Three Circuit Courts of Appeals—the Third, Sixth, and Seventh—agree that section 1292(a) permits the immediate appeal of bankruptcy court injunction orders to the district courts as a matter of right. *See Lindsey v. Pinnacle Nat'l Bank*,726 F.3d 857, 860 (6th Cir. 2013) ("Section 1292 also permits the immediate appeal of injunction orders, including those arising in all manner of situations in a bankruptcy proceeding."); *United Airlines, Inc. v. U.S. Bank N.A.*, 406 F.3d 918, 923 (7th Cir. 2005) (holding that under 1292(a) and bankruptcy court injunction must be treated as an appealable interlocutory order by the district court); *In re Prof'l Ins. Mgmt.*, 285 F.3d 268, 282 n.16 (3d Cir. 2002) (same).

This makes great sense: "As a policy matter, the rulings of a non-Article III bankruptcy court should not be more insulated from appellate review than the rulings of an Article III district court. The wiser exercise of discretion is to apply § 1292(a)(1) by analogy and allow the appeal of the preliminary injunction [to the district court]." *In re Reserve Prod.*, 190 B.R. 287, 290 (E.D. Tex. 1995)

For this reason, other district courts across the country have likewise held that a party may appeal as of right the grant or denial of an injunction by the bankruptcy court. *See, e.g., In re Midstate Mortg. Investors Group*, Civ. A. No. 06-2581, 2006 U.S. Dist. LEXIS 82474, 2006 WL 3308585, at *4-5 (D.N.J. Nov. 6, 2006) ("where the orders entered in the bankruptcy court are in the form of injunctive relief, the district court, sitting as an appellate court, is authorized under § 1292(a) to hear the appeal without the need to resort to discretion to grant leave to appeal"); *see also In re Reliance Acceptance Group, Inc.*, 235 B.R. 548 (D. Del. 1999).

Nevertheless, here, the District Court refused to apply section 1292(a)—denying Mr. Dondero his appeal as a matter of right. (App.0006-0010) Instead, the court erroneously found the appeal fell only

under the discretionary requirements set forth in section 1292(b), and then denied discretionary leave to appeal under the same subsection. (App.0009) Because the District Court framed its erroneous ruling as a denial of leave under section 1292(b), which is not generally an appealable interlocutory order, mandamus remains the only available remedy from this clear and egregious error.[11]

III. Even if an appeal as of right was unavailable under 28 U.S.C. § 1292(a), leave to appeal the preliminary injunction under 28 U.S.C. § 1292(b) should have been granted.

Even if the Preliminary Injunction is not appealable as of right under section 1292(a), leave to appeal should have been granted under section 1292(b) because there exists a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation.

28 U.S.C. § 158 permits interlocutory appeals to this Court from the bankruptcy court. It expressly provides that "the district courts of the

[11] And although the District Court here declared this an open question (i.e., whether section 1292(a) or (b) must apply), (App.0006-0009) the plain text of the statute and scores of cases interpreting section 1292(a) do not support this conclusion. *See* supra at II. The District Court simply had no discretion to refuse Mr. Dondero's statutory right to appeal the injunction order under section 1292(a).

United States shall have jurisdiction to hear appeals . . . (a)(3) with leave of the court, from other interlocutory orders and decrees; and with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title." 28 U.S.C. § 158(a)(3).

"Section 158(a) does not provide a standard for a district court to use in determining whether to grant leave to appeal; however, the courts generally have applied the standard provided under 28 U.S.C. § 1292(b) for interlocutory appeals from district court orders to a court of appeals." *Golden Rests., Inc. v. Denar Rests., LLC (In re Denar Rests., LLC)*, No. 4:09-CV-616-A, 2010 U.S. Dist. LEXIS 3317, at *35-36 (N.D. Tex. Jan. 14, 2010) (citing *Ichinose v. Homer Nat'l Bank*, 946 F.2d 1169, 1177 (5th Cir. 1991)). That standard includes the following elements: "(1) the existence of a controlling issue of law as to the interlocutory order, (2) as to which there is substantial ground for difference of opinion, and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation." *Id.*; 28 U.S.C. § 1292(b).

"[A]ll that must be shown in order for a question to be 'controlling' is that resolution of the issue on appeal could materially affect the

outcome of litigation in the district court." *Arizona v. Ideal Basic Indus. (In re Cement Antitrust Litigation),* 673 F.2d 1020, 1026 (9th Cir. 1982). "[A] controlling question of law-although not consistently defined-at the very least means a question of law the resolution of which could materially advance the ultimate termination of the litigation-thereby saving time and expense for the court and the litigants." *Ryan v. Flowserve Corp.*, 444 F. Supp. 2d 718, 723 (N.D. Tex. 2006).

There is one controlling issue of law guiding the entire case—injunctive relief. The litigation itself is solely and entirely based on the Debtor's request for a preliminary, and eventually, a permanent injunction. (App.0556-0596) There are no other claims for relief in this adversary proceeding. Whether the injunction is vague and overbroad undoubtedly affects the outcome of the litigation as injunctive relief is the only relief sought. There is also a substantial difference of opinion—as demonstrated among other things by the parties' dispute and the Bankruptcy Court's entry of the injunction—that (i) cause existed for the injunction in the first instance; and (ii) whether the provisions of the injunction satisfy applicable legal standards, including Rule 65 of the Federal Rules of Civil Procedure. Stated differently, whether the

injunction satisfies applicable standards by being clear and specific is a controlling issue of law driving the entire case.

Nor will leave to appeal the preliminary injunction delay the bankruptcy case, as confirmation of the Plan occurred on February 22, 2021. (App.0361) Rather, a favorable resolution of these issues will avoid protracted and expensive litigation by clarifying the propriety and/or scope of the Preliminary Injunction that could relieve the parties from being involved in multiple proceedings and multiple appeals, including with respect to the pending Contempt Motion. *See Total Benefit Servs., Inc. v. Grp. Ins. Admin., Inc.*, U.S. Dist. LEXIS 4362, at *5 (E.D. La. Mar. 25, 1993) ("Resolution of these issues could materially affect the outcome of the litigation. . . . Furthermore, a favorable resolution of these issues will avoid protracted and expensive litigation.").

Finally, public policy and due process support Mr. Dondero's request. If leave to appeal is not granted, Mr. Dondero's rights may be permanently impacted by the injunction and he will have no remedy at law or any opportunity for any court to review the bankruptcy court's preliminary injunction order. "As a policy matter, the rulings of a non-Article III bankruptcy court should not be more insulated from appellate

review than the rulings of an Article III district court." *In re Reserve Prod.*, 190 B.R. 287, 290 (E.D. Tex. 1995).

IV. Alternatively, this Court should treat this mandamus as an ordinary appeal and dissolve the injunction or remand.

Alternatively, if this Court determines that mandamus is not warranted or that it possesses appellate jurisdiction under section 1292(a), Mr. Dondero requests this Court treat this mandamus petition as an ordinary appeal. Mr. Dondero hereby incorporates by reference this mandamus as his timely and proper Notice of Appeal under Rule 3 and opening brief. *United Airlines*, 406 F.3d at 923; Fed. R. App. P. 3; Fed. R. App. P. 4. Mr. Dondero is hereby timely providing notice of his appeal to the District Court's February 11, 2021 order to this Court via his mandamus petition. *Id.*; *Smith v. Barry*, 502 U.S. 244 (1992).[12]

For all the reasons briefed herein, this Court should reverse the District Court's order and opinion and dissolve the injunction; alternatively, it should remand with instructions to exercise jurisdiction over the appeal under section 1292(a). *See United Airlines*, 406 F.3d at

[12] The information for Respondent's counsel can be found in the Certificate of Interested Persons.

923 (treating mandamus as appeal, exercising appellate jurisdiction under § 1292(a), and reversing and rendering judgment dissolving injunction from bankruptcy court).

PRAYER

Petitioner James Dondero respectfully requests that this Court issue a writ of mandamus or other order dissolving the preliminary injunction against Mr. Dondero or, alternatively, directing the District Court to accept and consider the merits of Mr. Dondero's appeal of the preliminary injunction under 28 U.S.C. § 1292(a) or (b). Mr. Dondero further requests any further relief to which he is entitled in equity or law.

Dated: March 8, 2021

Respectfully submitted,

/s/ D. Michael Lynn

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ATTORNEYS FOR PETITIONER JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on March 8, 2021, the foregoing document was served via first class mail upon counsel for Respondent Highland Capital Management, L.P. as listed below, and by the Court's CM/ECF system on all parties requesting or consenting to such service.

Jeffrey Pomerantz
Ira Kharasch
John Morris
Gregory Demo
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Melissa Hayward
Zachery Annable
Hayward PLLC
10501 N. Central Expy, Ste. 106
Dallas, TX 75231

I further certify that a copy of the foregoing document is being provided to the Honorable Ada Brown.

/s/ Matthew Stayton
Matthew Stayton

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App.P. 21(d) because this document contains 5,364 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font.

/s/ Matthew Stayton
Matthew Stayton

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 09, 2021

Mr. Zachery Z. Annable
Hayward, P.L.L.C.
10501 N. Central Expressway
Suite 106
Dallas, TX 75231-0000

No. 21-10219 In re: James Dondero
USDC No. 3:21-CV-132

Dear Counsel:

This letter will serve to confirm our telephone conversation this date advising the parties that the court has requested a response/opposition to the petition for writ of mandamus.

The response should be filed in this office on or before March 16, 2021.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Laney L. Lampard, Deputy Clerk
504-310-7652

cc:
Mr. Matthew David Stayton

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Case No. 19-34054-SGJ-11
	§	
HIGHLAND CAPITAL MANAGEMENT, LP,	§	
	§	Chapter 11
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, LP,	§	
	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	Adversary No.: 21-3190-SGJ-11
JAMES D. DONDERO,	§	
	§	
	§	
Defendant.	§	

ORDER GRANTING MOTION FOR CONTINUANCE OF CONTEMPT HEARING

On this date, the Court considered Defendant James Dondero's ("Dondero") Motion for

Continuance (the "Motion") of the hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Contempt Motion"), which is currently set for March 22, 2021 at 9:30 a.m. Upon consideration of the Motion, the Court finds that the Motion is well taken and should be granted as set forth herein. Accordingly, it is hereby ordered as follows:

1. The Motion is **GRANTED** as set forth herein.
2. The hearing on the Contempt Motion is continued from March 22, 2021 to _____, __, 2021 at _:__ _m.

###END OF ORDER###

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Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DEBTOR'S NOTICE OF REPLACEMENT EXHIBITS 11, 38, AND 39 WITH RESPECT TO EVIDENTIARY HEARING TO BE HELD ON MARCH 22, 2021

Highland Capital Management, L.P. (the "Debtor") hereby gives notice that it intends to offer into evidence the attached documents annexed hereto as Exhibits 11, 38, and 39 during the evidentiary hearing scheduled for March 22, 2021 with respect to *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. 48].

Please take further notice that (a) the exhibit numbers correspond to *Debtor's Supplemental Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on February 23, 2021* [now, March 22, 2021] filed at Docket No. 101 (the "Exhibit List"); (b) the only difference between Exhibit 11 attached to the Exhibit List and the version of Exhibit 11 attached hereto is that the top line (which identifies, among other things, the date and time that the TRO was filed on the docket) is legible on the version attached hereto; and (c) Exhibits 38 and 39 (which are certain time records) are being filed consistent with the statement on the Exhibit List that they were "under review."

Dated: March 21, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for Highland Capital Management, L.P.

EXHIBIT 11

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 10, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION
<u>FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO</u>

Having considered the *Debtor's Motion for a Temporary Restraining Order and*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Preliminary Injunction against James Dondero [Docket No. 6] (the "Motion"), the *Memorandum of Law* (the "Memorandum of Law")[2] in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against James Dondero* [Docket No. 4] (the "Seery Declaration"), including the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[3]

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[3] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

EXHIBIT 38

Bankruptcy Litigation [L430]

11/03/2020	LSC	BL	Retrieve appendices regarding Daugherty motion and prepare file for attorney review.	0.40	425.00	$170.00
11/06/2020	RMP	BL	Conference with I. Kharasch re UBS.	0.20	1445.00	$289.00
11/07/2020	LSC	BL	Retrieve exhibits in connection with Daugherty 3018 motion and opposition to summary judgment for E. Wagner (.5).	0.50	425.00	$212.50
11/09/2020	LSC	BL	Retrieve exhibits for H. Winograd in connection with 3018 pleadings.	0.30	425.00	$127.50
11/18/2020	RMP	BL	Conferences with I. Kharasch re plan and litigation issues.	0.40	1445.00	$578.00
11/20/2020	RMP	BL	Conferences with J. Pomerantz and I. Kharasch re UBS and other claim issues.	0.40	1445.00	$578.00
12/01/2020	JAM	BL	Review e-mails re: document production (0.3); telephone conference with J. Romey, T. Jeremiassen re: document production (financial documents) (0.4); telephone conference with T. Jeremiassen, J. Romey, P. Montgomery, C. Rognes, FTI re: document production (financial documents) (0.6); e-mail to J. Seery re: Daugherty?s Delaware II case (0.1); e-mails with J. Kane, I. Leventon, S. Vitiello, DSI re: Grant Scott e-mails (0.2); communications with J. Seery, Z. Annable, J. Pomerantz, I. Kharasch, G. Demo re: Daugherty motion to lift the automatic stay (0.2); review Daugherty motion to lift the automatic stay (0.4); review/revise letter to K&L Gates re: Dondero (0.4).	2.60	1075.00	$2,795.00
12/01/2020	GVD	BL	Multiple conferences with J. Morris and J. Romey re discovery issues (0.5); correspondence with J. Seery re potential structured products issues (0.6); review correspondence re CLO issuers and next steps (0.2); review cease and desist letters (0.5)	1.80	825.00	$1,485.00
12/02/2020	KKY	BL	Draft 3rd removal extension motion	0.60	425.00	$255.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

				Hours	Rate	Amount
12/02/2020	JAM	BL	Review/revise cease and desist letter to KL &Gates re: CLO investment decisions (0.2); e-mails with J. Seery, G. Demo re: revised letter to K&L Gates (0.1); e-mails with M. Hankin, G. Demo, E. Wagner re: appellate record for UBS appeal of Redeemer 9019 order (0.1); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: demands for payment on Promissory Notes and related matters (0.8).	1.20	1075.00	$1,290.00
12/02/2020	LSC	BL	Prepare and transmit document production to Committee.	0.50	425.00	$212.50
12/02/2020	GVD	BL	Review revisions to cease and desist letter	0.30	825.00	$247.50
12/03/2020	IDK	BL	Review of numerous correspondence with J Morris, I Leventon, CEO on issues of production of certain docs to UCC and related Dugaboy issues (.2); Review of related correspondence with J Morris, Klos, re UCC discovery and next steps, as well as further production issues (.1).	0.30	1145.00	$343.50
12/03/2020	IDK	BL	E-mails to J Morris, J. Pomerantz re cease and desist letter to NextPoint (.1); E-mails to G Demo re CLO issuers and Dondero communication to same (.1).	0.20	1145.00	$229.00
12/03/2020	IDK	BL	E-mails to G Demo re revised draft cease and desist letter to Dondero, including review of same, and J Morris markup (.2); E-mails to J Morris re his markup of same and my feedback, and next steps (.2).	0.40	1145.00	$458.00
12/03/2020	JNP	BL	Conference with J. Dubel regarding Dondero actions, response thereto and other issues.	0.50	1075.00	$537.50
12/03/2020	JNP	BL	Review email regarding Committee request for discovery.	0.10	1075.00	$107.50
12/03/2020	JNP	BL	Conference with Gregory V. Demo, John A. Morris and Ira D. Kharasch regarding Dondero conduct and next steps.	0.50	1075.00	$537.50
12/03/2020	JNP	BL	Conference with John A. Morris regarding Dondero conduct and letter.	0.10	1075.00	$107.50
12/03/2020	JNP	BL	Conference with Gregory V. Demo (2x) regarding letter to Dondero.	0.30	1075.00	$322.50
12/03/2020	JNP	BL	Review letter to Dondero regarding interference.	0.10	1075.00	$107.50
12/03/2020	JNP	BL	Conference with J. Seery regarding Dondero conduct and call with M. Lynne (2x).	0.30	1075.00	$322.50
12/03/2020	JNP	BL	Emails with M. Lynne regarding call.	0.10	1075.00	$107.50
12/03/2020	JNP	BL	Conference with Ira D. Kharasch and M. Lynne	0.30	1075.00	$322.50

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				Hours	Rate	Amount
			regarding call to discuss concerns with Dondero conduct.			
12/03/2020	RMP	BL	Conference with I. Kharasch and review agreements.	0.60	1445.00	$867.00
12/03/2020	JAM	BL	Telephone conference with T. Jeremiassen, J. Romey re: status of document production (0.2); e-mails with I. Leventon, S. Vitiello, T. Jeremiassen, J. Romey re: Dugaboy documents (0.2); e-mails with J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: document production issues (0.2); e-mail to I. Leventon, S. Vitiello, T. Jeremiassen, J. Romey re: text messages/cell phones (0.1); review of record for UBS appeal for Redeemer Rule 9019 motion (2.4); e-mails w/ Z. Annable re: counter-designations for UBS appeal of Redeemer Rule 9019 order (0.1); telephone conference with M. Hankin re: potential counter-designations for UBS appeal of Redeemer Rule 9019 order (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo (partial) re: Dondero threats and related conduct (0.4); revise letter to M. Lynn re: Dondero threats and related conduct (0.2).	4.00	1075.00	$4,300.00
12/03/2020	LSC	BL	Prepare and transmit document production to Committee.	0.50	425.00	$212.50
12/03/2020	GVD	BL	Revise and send cease and desist letter to K&L Gates (0.6); conference with J. Morris re litigation strategy (0.3); multiple correspondence with B. Assink re Dondero claims (0.5); conference with H. O'Neill re Foley proof of claim (0.1); conference re potential CLO issues (0.8); conference with J. Pomerantz re cease & desist letters (0.2); revise additional cease & desist letter re comments from J. Pomerantz (0.5); conference with K&L Gates re cease and desist letter (0.5); conference with J. Pomerantz, I. Kharasch, and J. Morris re potential litigation issues (partial attendance) (0.3); conference with J. Romey re discovery issues (0.2)	4.00	825.00	$3,300.00
12/04/2020	IDK	BL	E-mails with attorneys re my recommendations on steps re injunction action vs Dondero (.2); E-mails to attorneys re draft of cease and desist letter vs Dondero, including feedback from Board, others re same, and re timing and status on same (.3); Review of revised and then finalized letter re same (.1).	0.60	1145.00	$687.00
12/04/2020	IDK	BL	Consider Stern issues re actions vs Dondero on notes (.2); E-mails to J. Pomerantz re anticipated collection action vs Dondero and Stern issues (.1); Numerous E-mails with G Glazer re same, jurisdictional concerns, initial feedback on turnover	0.70	1145.00	$801.50

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				Hours	Rate	Amount
			of assets as core proceeding, and need for memo for Board (.4).			
12/04/2020	IDK	BL	Review of various E-mails with CEO, J Morris on update on discovery issues with UCC and next steps.	0.10	1145.00	$114.50
12/04/2020	JNP	BL	Conference with Latham, Elissa A. Wagner and Robert J. Feinstein regarding UBS summary judgment order.	0.60	1075.00	$645.00
12/04/2020	JNP	BL	Conference with J. Dubel regarding Dondero litigation.	0.20	1075.00	$215.00
12/04/2020	JAM	BL	Revise letter to M. Lynn re: Dondero business interference (0.1); draft letter to M. Lynn re: Dondero threats to J. Seery (0.5); e-mails with Board, J. Pomerantz, I. Kharasch, G. Demo re: letter to M. Lynn concerning Dondero threats to J. Seery (0.2); e-mails with I. Leventon re: production of valuation report (0.1); revise letter to M. Lynn concerning Dondero threats to J. Seery (0.1); e-mail to J. Pomerantz, I. Kharasch, G. Demo re: Disclosure of Interested Parties for UBS appeal of Redeemer Rule 9019 motion (0.1); telephone conference with R. Patel re: indemnification claim relating to Acis and NWCC (0.2); telephone conference with G. Demo re: litigation matters (0.2); telephone conference with J. Seery re: discovery issues (0.4); telephone conference with J. Romey re: document production issues (0.2); e-mails to J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: discovery issues (0.3); e-mail to UCC counsel re: document production (0.1).	2.50	1075.00	$2,687.50
12/04/2020	GIG	BL	Multiple emails with Ira D. Kharasch re jurisdiction issue	0.30	895.00	$268.50
12/04/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	3.60	895.00	$3,222.00
12/04/2020	GVD	BL	Correspondence with Board re cease & desist letters (0.1); attend to matters re service of cease and desist letters (1.2); conference with J. Morris re litigation strategy (0.3)	1.60	825.00	$1,320.00
12/05/2020	IDK	BL	Telephone conferences with J Morris re logistics of preparing injunction papers vs Dondero, issues on potential other defendants, this weekend to file Sunday night (.2); E-mails to J. Pomerantz re same and consider (.2); E-mails to J Morris, others re his draft order re same and list of tasks for motion, TRO re same, further issues (.3).	0.70	1145.00	$801.50
12/05/2020	JEO	BL	Initial drafting of complaint for injunctive relief against James Dondero	3.00	925.00	$2,775.00

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				Hours	Rate	Amount
12/05/2020	JAM	BL	Work on Seery affidavit in support of TRO against Dondero (3.7); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, J. O?Neill re: complaint and TRO against Dondero (0.3); telephone conference I. Kharasch re: complaint and TRO against Dondero (0.1); telephone conference with G. Demo re: complaint and TRO against Dondero (0.1); telephone conference J. O?Neill re: complaint and TRO against Dondero (0.1).	4.30	1075.00	$4,622.50
12/05/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	2.20	895.00	$1,969.00
12/05/2020	GVD	BL	Conference with J. Morris re litigation strategy (0.2); draft insert to J. Seery declaration (1.4); conference with J. Seery re litigation issues and next steps (0.5)	2.10	825.00	$1,732.50
12/06/2020	IDK	BL	E-mails to attorneys re draft of CEO declaration in support of TRO vs Dondero, including brief review of same, and feedback on same from CEO (.2); Review of revised motion papers and declaration (.2); E-mail and telephone conference with J. Pomerantz re same and re other related motions vs Dondero and CLO noteholders issues (.3).	0.70	1145.00	$801.50
12/06/2020	JNP	BL	Conference with Board, John A. Morris, H. Winograd and Gregory V. Demo regarding Dondero litigation.	1.00	1075.00	$1,075.00
12/06/2020	JNP	BL	Review J. Seery Declaration regarding Dondero litigation.	0.20	1075.00	$215.00
12/06/2020	JEO	BL	Drafting ancillary documents for complaint for injunctive relief against James Dondero	2.50	925.00	$2,312.50
12/06/2020	JAM	BL	Complete/review/revise J. Seery declaration in support of TRO (2.9): e-mails to J. Pomerantz, I. Kharasch, G. Demo, J. O'Neill, H. Winograd re: revised versions of the Seery declaration (0.3); e-mails to G. Demo, H. Winograd, L. Canty re: exhibits to J. Seery declaration (0.5); further revisions to J. Seery declaration in support of TRO (1.3); e-mails to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: J. Seery declaration, proposed order on TRO, and revisions thereto (0.2); e-mail to Z. Annable re: potential counter-designations concerning Dondero's appeal of Acis Rule 9019 order (0.2); further revisions to Seery declaration in light of comments received from J. Seery and J. Dubel (0.2); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised Seery declaration (0.1); e-mails with J. O'Neill, H. Winograd re: status of Complaint against	6.90	1075.00	$7,417.50

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				Hours	Rate	Amount
			Dondero and related matters (0.1); e-mail to J. O'Neill, H. Winograd, L. Canty re: status, filings (0.1) ; telephone conference with J. Seery, J. Dubel, R. Nelms, J. Pomerantz, G. Demo, H. Winograd (partial participation) re: Dondero filings, Daugherty settlement, and related matters (1.0).			
12/06/2020	GVD	BL	Review Seery declaration (0.7); conference with Board re potential litigation issues (1.0)	1.70	825.00	$1,402.50
12/06/2020	HRW	BL	Draft MOL and Complaint in support of application for TRO (10.0); Call with J. Morris, J. Pomerantz, G. Demo, and client re: Dondero issues and TRO (0.5).	10.50	625.00	$6,562.50
12/07/2020	IDK	BL	E-mails with Board, J Morris re draft complaint vs Dondero, including brief review of same, and feedback from CEO (.3); E-mails with attorneys re need to contact UCC re upcoming complaint vs Dondero, and feedback from CEO re same (.1); E-mails with Board, attorneys re draft of motion in support of TRO vs Dondero, and need for substantial revisions, including review of same, and further changes to complaint, as well as motion for expedited hearing (.4); Review briefly correspondence with local counsel on filing such documents and questions on verified complaint (.1).	0.90	1145.00	$1,030.50
12/07/2020	IDK	BL	E-mails with attorneys re filing of complaint/TRO vs Dondero and next steps, including communications with Lynn.	0.20	1145.00	$229.00
12/07/2020	IDK	BL	Telephone conference with J. Pomerantz re his call with Lynn on Dondero (.1); Attend conference call with Board on complaint vs Dondero and communications with Dondero counsel re same (.5); Telephone conference with J. Pomerantz re his next call with Lynn re same (.1).	0.70	1145.00	$801.50
12/07/2020	IDK	BL	E-mails with G Glazer on status of Stern issues re demand note litigation vs Dondero related entities.	0.10	1145.00	$114.50
12/07/2020	JNP	BL	Review complaint and TRO against Dondero.	0.20	1075.00	$215.00
12/07/2020	JNP	BL	Conference with John A. Morris regarding complaint and TRO against Dondero.	0.10	1075.00	$107.50
12/07/2020	JNP	BL	Conference with M. Clemente regarding complaint and TRO against Dondero.	0.20	1075.00	$215.00
12/07/2020	JNP	BL	Conference with J. Dubel regarding complaint against Dondero.	0.10	1075.00	$107.50
12/07/2020	JNP	BL	Email to M. Lynn regarding Complaint and TRO.	0.10	1075.00	$107.50
12/07/2020	JNP	BL	Conference with John A. Morris regarding Dondero	0.30	1075.00	$322.50

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				Hours	Rate	Amount
			Complaint and TRO (multiple).			
12/07/2020	JNP	BL	Conference with John A. Morris in preparation for call with M. Lynn regarding Dondero complaint.	0.10	1075.00	$107.50
12/07/2020	JNP	BL	Conference with John A. Morris and M. Lynn regarding Dondero complaint and TRO (2x).	0.60	1075.00	$645.00
12/07/2020	JNP	BL	Email to Board regarding call to discuss call with M. Lynn regarding Dondero complaint.	0.10	1075.00	$107.50
12/07/2020	JNP	BL	Conference with Board and PSZJ regarding debrief of call with M. Lynn regarding Dondero complaint.	0.50	1075.00	$537.50
12/07/2020	JNP	BL	Email to John A. Morris regarding proposed email to local counsel regarding TRO.	0.10	1075.00	$107.50
12/07/2020	JNP	BL	Conference with Ira D. Kharasch regarding call with M.Lynn.	0.10	1075.00	$107.50
12/07/2020	JNP	BL	Review email regarding CLOs; Conference with Gregory V. Demo and Ira D. Kharasch regarding same.	0.30	1075.00	$322.50
12/07/2020	JNP	BL	Conference with J. Dubel regarding UBS (2x).	0.50	1075.00	$537.50
12/07/2020	JNP	BL	Conference with Robert J. Feinstein regarding UBS.	0.10	1075.00	$107.50
12/07/2020	RMP	BL	Conference with I. Kharasch re claims status.	0.30	1445.00	$433.50
12/07/2020	JEO	BL	Emails with PSZJ team re new adv proceeding against James Dondero	0.40	925.00	$370.00
12/07/2020	JMF	BL	Review complaint re Dondero and prohibited actions.	0.40	925.00	$370.00
12/07/2020	JAM	BL	Review/revise Complaint, Memorandum of Law, Seery Declaration, proposed Order, Emergency Motion and Motion for TRO in connection action against James Dondero (7.9); review/revise Motion for Expedited Hearing (0.2); communications with Z. Annable re: Motion for Expedited Hearing (0.1); telephone conference with J. Pomerantz, M. Lynn re: ?meet and confer? on injunction papers (0.3); telephone conference with Board, J. Pomerantz, G. Demo, H. Winograd re: action against James Dondero (0.4); communications with H. Winograd, Z. Annable, M. Heyward re: preparation of papers to be filed against James Dondero (0.6); communications with J. Pomerantz re: papers to be filed against James Dondero (0.4); communications with G. Demo re: papers to be filed against James Dondero (0.3); telephone conference with J. Pomerantz, M. Lynn re: ?meet and confer? on injunction papers (0.2); telephone conference with J. Kathman re: Daugherty litigation and settlement	11.50	1075.00	$12,362.50

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				Hours	Rate	Amount
			matters (0.4); telephone conference with G. Demo re: litigation matters (0.1); telephone conference with J. Pomerantz re: litigation matters (0.2); review Adversary Cover Sheet and communications with Z. Annable, J. Pomerantz re: same (0.1); e-mail to J. Pomerantz re: Dondero compliance with January 9, 2020, Order (0.3).			
12/07/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	5.50	895.00	$4,922.50
12/07/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	4.30	895.00	$3,848.50
12/07/2020	GVD	BL	Attend to issues re Dondero TRO (2.2); conference with J. Seery re Dondero TRO (0.3); attend Board call re Dondero issues (0.4); conference with J. Morris re litigation strategy (0.1)	3.00	825.00	$2,475.00
12/07/2020	HRW	BL	Edit and review Complaint, Memorandum of Law, Seery Declaration, proposed Order, Emergency Motion and Motion for TRO in connection action against James Dondero (8.5); Call with Board, J. Pomerantz, G. Demo J. Morris re: action against James Dondero (0.4); Communications with J. Morris, Z. Annable, M. Heyward re: preparation of papers to be filed against James Dondero (0.6).	9.50	625.00	$5,937.50
12/08/2020	IDK	BL	Attend conference call on TRO papers (.4); E-mails with J Morris re court?s setting of hearing on same (.1).	0.50	1145.00	$572.50
12/08/2020	IDK	BL	E-mail to Board, J. Pomerantz re Dondero counsel?s comments to proposed TRO, including review of same, as well as separate communication from Dondero personally re his text/threat (.2); E-mails with Board, J Morris, others re proposed markup to TRO in light of Lynn?s feedback re same, including review of same, and comments/feedback re same (.3); Review of correspondence with Lynn re our demand for permanent injunction, and Lynn response (.1).	0.60	1145.00	$687.00
12/08/2020	IDK	BL	E-mails with J Fried re his comments to draft of removal motion, and my feedback re same, including review of same and draft motion.	0.30	1145.00	$343.50
12/08/2020	JNP	BL	Email to and from M. Hankin regarding TRO hearing on Dondero matter.	0.10	1075.00	$107.50
12/08/2020	JNP	BL	Review email from B. Assink and email to Board regarding proposed modifications to TRO.	0.10	1075.00	$107.50
12/08/2020	JNP	BL	Conference with Gregory V. Demo, John A. Morris and Ira D. Kharasch regarding Dondero TRO	0.40	1075.00	$430.00

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				Hours	Rate	Amount
			changes requested.			
12/08/2020	JNP	BL	Conference with J. Dubel regarding TRO against Dondero.	0.10	1075.00	$107.50
12/08/2020	JNP	BL	Review revised Injunction Order.	0.10	1075.00	$107.50
12/08/2020	JNP	BL	Emails to and from M. Lynne regarding TRO.	0.20	1075.00	$215.00
12/08/2020	JNP	BL	Review Motion for Temporary Restraining Order by CLOs regarding sales and emails regarding same.	0.20	1075.00	$215.00
12/08/2020	RMP	BL	Conference with J. Pomerantz and I. Kharasch re Dondero issues and review e-mails re same.	0.60	1445.00	$867.00
12/08/2020	JMF	BL	Review and comment re removal extension motion.	0.80	925.00	$740.00
12/08/2020	JAM	BL	Telephone conference with J. Seery re: Dondero motion and related matters (0.2); telephone conference with J. Seery, G. Demo, Kasowitz attorney re: potential litigation (0.5); telephone conference with T. Jeremiassen, J. Romey re: document production (0.1); e-mails w/ P. Montgomery, C. Rognes re: document production (0.1); telephone conference with P. Montgomery, C. Rognes re: document production (0.3); telephone conference with G. Demo re: CLO/Dondero litigation matters (0.3); e-mails with J. Kathman re: Daugherty litigation and related matters (0.3); e-mail to L. Drawhorn, G. Demo re: SE Multifamily scheduling order (0.1); e-mail to S. Tomkowiak, J. Pomerantz, A. Clubok re: UBS record on appeal (0.1); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: ?as filed? papers concerning Dondero (0.1); review amended Memorandum of Law on Dondero TRO motion (0.2); e-mails with H. Winograd re: amended Memorandum of Law on Dondero TRO motion (0.2); e-mail to M. Katz, C. Woods re: Daugherty litigation issues (0.2); e-mail to K. Lee, J. O'Neill, J. Fried re: litigation scheduling matters (0.1); e-mail to Z. Annable re: amended Memorandum of Law on Dondero TRO motion (0.1); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: M. Lynn's comments to proposed Order resolving Dondero TRO (0.4); review/revise proposed Order resolving Dondero litigation (0.5); e-mails re: J. Pomerantz re: revisions to proposed Order resolving Dondero litigation (0.1); further revisions to proposed Order resolving Dondero litigation (0.2); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised proposed Order resolving Dondero litigation (0.2); review draft notice re: hearing on TRO motion (0.1); communications with Z. Annable	4.50	1075.00	$4,837.50

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				Hours	Rate	Amount
			re: draft notice for TRO motion (0.1);			
12/08/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	1.20	895.00	$1,074.00
12/08/2020	GIG	BL	Prepare memo re jurisdiction issue	6.90	895.00	$6,175.50
12/08/2020	GIG	BL	Emails Ira D. Kharasch re jurisdiction memo	0.10	895.00	$89.50
12/08/2020	GVD	BL	Review discovery related to UBS litigation	1.10	825.00	$907.50
12/08/2020	GVD	BL	Review Dondero motion re 363 and respond to same	2.00	825.00	$1,650.00
12/08/2020	GVD	BL	Conference with PSZJ team re Dondero TRO	0.40	825.00	$330.00
12/08/2020	GVD	BL	Conference with J. Morris re bankruptcy strategy	0.40	825.00	$330.00
12/08/2020	HRW	BL	Edit and review Memorandum of Law in Support of TRO against Dondero (2.0).	2.00	625.00	$1,250.00
12/09/2020	IDK	BL	Review of new motion by NPA re motion to stop CLOs from selling assets, and consider response (.3); Numerous E-mails with attorneys re basis of same and next steps to respond, as well as need for call on Dondero motion (.2); Attend conference call with J. Pomerantz, others, on new litigation from CLO, demand note upcoming litigation, Debtors? TRO litigation vs Dondero, others, Daugherty, Hunter Mountain, and other (.8).	1.30	1145.00	$1,488.50
12/09/2020	IDK	BL	E-mails with CEO and attorneys re CLO litigation and retention of Kasowitz, and correspondence with Wilmer Hale re same, as well as correspondence with CLO issuers on supporting our position vs NPA, and our position on expedited hearing (.3); Review of correspondence with local counsel re our position to chambers re not consenting to NPA motion for expedited hearing, and feedback from chambers (.2).	0.50	1145.00	$572.50
12/09/2020	IDK	BL	Various E-mails with attorneys re communications with Lynn re issues on form of TRO and need for permanent injunction language and their disagreement, as well as need for indemnity for damages if sales not occurring (.2); Numerous E-mails with CEO and attorneys re further markup of draft order re Dondero TRO and timing for Board (.2).	0.40	1145.00	$458.00
12/09/2020	IDK	BL	E-mails with G Demo re his correspondence with NPA re their motion to compel (.1); Numerous E-mails with CEO and attorneys re NPA?s counter to resolution of timing of expedited hearing re sale limitations in interim, and how to respond on limitations on trade issues, and my feedback on same (.3).	0.40	1145.00	$458.00

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				Hours	Rate	Amount
12/09/2020	JNP	BL	Email to and from team regarding status of TRO Order.	0.10	1075.00	$107.50
12/09/2020	JNP	BL	Email to M. Lynn enclosing Order on TR.	0.10	1075.00	$107.50
12/09/2020	JNP	BL	Conference with PSZJ team regarding CLO litigation and other pending litigation.	0.80	1075.00	$860.00
12/09/2020	JNP	BL	Conference with Gregory V. Demo, John A. Morris and KL Gates regarding scheduling hearing on NPA motion.	0.20	1075.00	$215.00
12/09/2020	JNP	BL	Conference with John A. Morris after call with KL Gates.	0.10	1075.00	$107.50
12/09/2020	JNP	BL	Conference with M. Clemente regarding Dondero TRO hearing.	0.20	1075.00	$215.00
12/09/2020	JNP	BL	Review and respond to emails regarding hearing date for CLO litigation.	0.10	1075.00	$107.50
12/09/2020	JNP	BL	Conference with John A. Morris regarding Dondero TRO hearing.	0.30	1075.00	$322.50
12/09/2020	JNP	BL	Begin to review draft opposition to Dondero sale motion.	0.10	1075.00	$107.50
12/09/2020	JNP	BL	Email to Board regarding Dondero response to injunction.	0.10	1075.00	$107.50
12/09/2020	RMP	BL	Conference with I. Kharasch re pending litigation issues.	0.30	1445.00	$433.50
12/09/2020	JEO	BL	Review issues and scheduling re TRO for Dondero	0.40	925.00	$370.00
12/09/2020	JMF	BL	Review motion for TRO.	0.40	925.00	$370.00
12/09/2020	JMF	BL	Review HCMFA motion to restrict sales.	0.50	925.00	$462.50
12/09/2020	JAM	BL	Review/analyze motion for TRO filed by NexPoint (0.6); e-mail to J. Pomerantz, I. Kharasch, G. Demo re: motion for TRO filed by NexPoint (0.1); review draft Notice of Adjournment for HarbourVest Rule 3018 hearing (0.1); communications with Z. Annable, E. Weinberger, D. Stroik re: Notice of Adjournment for HarbourVest Rule 3018 hearing (0.1); telephone conference with J. Seery, G. Demo, Quinn Emanuel re: potential engagement for CLO litigation (0.6); revise draft Order resolving Dondero injunction proceedings (0.1); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: TRO litigation matters (0.8); e-mails with Board, J. Pomerantz, I. Kharasch, G. Demo re: revised draft Order resolving Dondero injunction proceedings (0.1); e-mails with I. Leventon, S. Vitiello, T. Jeremiassen, J. Romey re: document production	7.60	1075.00	$8,170.00

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				Hours	Rate	Amount
			(0.1); telephone conference with I. Leventon re: document production, Daugherty litigation (0.3); draft Stipulation resolving Daugherty (second) Adversary Proceeding concerning stay extension (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo re: revised draft Order resolving Dondero injunction proceedings (0.1); prepare for TRO hearing (2.3); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, B. Sharp, T. Jeremiassen, J. Romey re: document production issues (0.3); e-mail to J. Kathman re: draft Stipulation resolving Daugherty (second) Adversary Proceeding concerning stay extension (0.1); review draft stipulation extending UCC deadline to commence an action against CLO HoldCo (0.1); e-mails with C. Rognes, P. Montgomery re: draft stipulation extending UCC deadline to commence an action against CLO HoldCo (0.1); e-mails with C. Rognes, P. Montgomery re: document production (0.1); telephone conference with J. Seery re: preparation for TRO hearing (0.5); telephone conference with J. Pomerantz re: preparation for TRO hearing (0.3).			
12/09/2020	GVD	BL	Draft response to Dondero 363 motion	3.40	825.00	$2,805.00
12/09/2020	GVD	BL	Revise and circulate response to Dondero 363 re additional research	2.40	825.00	$1,980.00
12/09/2020	GVD	BL	Conference with PSZJ litigation team re open litigation items	0.80	825.00	$660.00
12/09/2020	GVD	BL	Conference with U. Itkin re CLO litigation issues	0.60	825.00	$495.00
12/09/2020	GVD	BL	Conference with counsel to CLO issuers counsel re CLO litigation	0.40	825.00	$330.00
12/09/2020	GVD	BL	Compile documents re CLO litigation issues	0.20	825.00	$165.00
12/09/2020	GVD	BL	Conference with J. Seery re CLO litigation	0.10	825.00	$82.50
12/09/2020	GVD	BL	Conference with counsel to CLO issuers re expedited hearing	0.30	825.00	$247.50
12/09/2020	GVD	BL	Multiple conferences with J. Elkin re research issues	0.60	825.00	$495.00
12/09/2020	JE	BL	Telephone conference with Mr. Demo regarding research issues in response to Dondero motion (.3); review Dondero motion; draft response and operations protocol (1.2); research issues relating to same as to property of estate, operations in the ordinary course of business and standing (4.8); review revised response (.5).	6.80	1100.00	$7,480.00
12/09/2020	HRW	BL	PSZJ call re: litigation update (0.8).	0.80	625.00	$500.00
12/10/2020	IDK	BL	Review and consider revised opposition to Dondero	0.90	1145.00	$1,030.50

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				Hours	Rate	Amount
			363 motion (.2); E-mails with G Demo re my extensive comments for changes to same, as well as feedback of others (.4); Further correspondence with attorneys on other issues to address in opposition to Dondero motion, including competitive bidding issues, Multi Strat sales re comp bidding and other examples (.3).			
12/10/2020	IDK	BL	Review of various revised oppositions to Dondero 363 motion, including J. Pomerantz revision to intro and my feedback re same (.3); E-mails with attorneys re Lynn proposal on resolving 363 motion by agreement on no sales, and how to respond (.2); E-mails with J. Pomerantz re his draft response to Lynn re counter proposal, and feedback/changes of G Demo to same (.2); Review of correspondence with Lynn re same and Lynn further counter-proposal re notice of sales, and intention to depose all 3 directors (.1); E-mails with Board and attorneys re same and how to respond, including CEO feedback on asset sale issues/procedure (.2).	1.00	1145.00	$1,145.00
12/10/2020	IDK	BL	E-mails with J Morris re his draft notes on opening and other remarks for today?s upcoming hearing, including feedback of others (.3); Attend most of court hearing on motion for injunction against Dondero conduct (2.0); Office conference from J. Pomerantz re result of same and next steps for Dondero motion next week, and need for call re same (.2); Attend conference call with attorneys re same (.3).	2.80	1145.00	$3,206.00
12/10/2020	IDK	BL	E-mails with DSI re NPA and DLA, and potential conflict issues given NPA motion (.1); Attend conference call with attorneys re K&L Gates motion for Nextpoint re CLOs (.4); Telephone conference with J. Pomerantz and RMP re Dondero hearing on TRO (.2); Telephone conference with J. Pomerantz re opposition to 363 motion (.1).	0.80	1145.00	$916.00
12/10/2020	IDK	BL	Review of correspondence to Board, others re current issues on discovery with UCC.	0.10	1145.00	$114.50
12/10/2020	IDK	BL	Review of correspondence with NPA counsel on their motion re CLO sales and discovery issues, as well as with Hayley re same (.2); Review of Kasowitz outline of arguments vs NPA on its motion re CLO contracts/manager obligations, and consider (.2); Review briefly G Demo?s initial outline of argument for opposition to NPA motion (.1); E-mail to G Demo re his communication with CLO issuers re NPA motion and its role re same (.1).	0.60	1145.00	$687.00

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				Hours	Rate	Amount
12/10/2020	IDK	BL	E-mails with attorneys re revised removal motion and outstanding issues re same.	0.20	1145.00	$229.00
12/10/2020	JNP	BL	Review and comment on John A. Morris argument notes.	0.10	1075.00	$107.50
12/10/2020	JNP	BL	Conference with Ira D. Kharasch regarding opposition to Dondero ordinary course motion.	0.10	1075.00	$107.50
12/10/2020	JNP	BL	Participate in Dondero injunction hearing.	2.40	1075.00	$2,580.00
12/10/2020	JNP	BL	Conference with J. Dubel after Dondero injunction hearing.	0.10	1075.00	$107.50
12/10/2020	JNP	BL	Conference with Ira D. Kharasch after Dondero injunction hearing.	0.10	1075.00	$107.50
12/10/2020	JNP	BL	Conference with Wilmer Hale, Kasowitz, John A. Morris, H. Winograd and Gregory V. Demo regarding CLO motion.	0.50	1075.00	$537.50
12/10/2020	JNP	BL	Conference with Gregory V. Demo, H. Winograd, Ira D. Kharasch and John A. Morris regarding planning for hearing in connection with CLO motion and Dondero ordinary course motion.	0.40	1075.00	$430.00
12/10/2020	JNP	BL	Conference with John A. Morris regarding email from M. Lynn regarding asset sales.	0.10	1075.00	$107.50
12/10/2020	JNP	BL	Conference with J. Seery regarding email from M. Lynn and proposed response.	0.30	1075.00	$322.50
12/10/2020	JNP	BL	Draft email to M. Lynn regarding request to halt asset sales and emails regarding same.	0.30	1075.00	$322.50
12/10/2020	JNP	BL	Revise intro to brief in opposition to Dondero motion.	0.50	1075.00	$537.50
12/10/2020	JNP	BL	Conference with Ira D. Kharasch and Richard M. Pachulski regarding Dondero hearing.	0.20	1075.00	$215.00
12/10/2020	JNP	BL	Conference with Gregory V. Demo regarding Dondero ordinary course motion.	0.10	1075.00	$107.50
12/10/2020	JNP	BL	Conference with J. Dubel regarding Dondero hearing and pending motion.	0.30	1075.00	$322.50
12/10/2020	JNP	BL	Conference with John A. Morris regarding Dondero pending motion.	0.10	1075.00	$107.50
12/10/2020	JEO	BL	Revisions to Highland Removal extension motion	1.20	925.00	$1,110.00
12/10/2020	JMF	BL	Review and comment re removal extension.	0.40	925.00	$370.00
12/10/2020	JMF	BL	Review HCRE stipulation and protective order.	0.20	925.00	$185.00
12/10/2020	JAM	BL	Draft outline for Opening in connection with motion for TRO against Dondero (1.5); prepare for hearing	8.80	1075.00	$9,460.00

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				Hours	Rate	Amount
			(1.0); e-mails to J. Seery, I. Kharasch, G. Demo re: outline for Opening in connection with motion for TRO against Dondero (0.1); e-mail to D. Klos, J. Seery, T. Jeremiassen, R. Romey re: meeting with FTI/Sidley (0.1); review/revise draft objection to Dondero section 363 motion (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo re: revisions to draft objection to Dondero section 363 motion (0.1); court hearing on Debtor?s motion for TRO and related matters (2.3); telephone conference with J. Seery, G. Demo re: court hearing and follow up issues (0.4); telephone conference with J. Pomerantz re: court hearing (0.1); telephone conference with J. Pomerantz, G. Demo, Y. Itkin, T. Silva re: CLO issues (0.5); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: discovery, next week's hearings (0.4); review TRO and communications with Z. Annable re: same (0.1); e-mail to K&L Gates, J. Pomerantz, G. Demo re: discovery on Advisors? motion (0.2); e-mails with D. Klos, T. Jeremiassen, J. Romey re: meeting with FTI/Sidley and discovery (0.1); e-mails with P. Montgomery, C. Rognes re: document production (0.1); e-mails with E. Weinberger, D. Stroik, G. Demo re: protective order and confidential information (0.1); e-mails with J. Pomerantz, I. Kharasch, G. Demo re: M. Lynn communications and discovery (0.3); telephone conference with H. Winograd re: legal research for opposition to Daugherty lift stay motion (0.3); telephone conference with G. Demo re: litigation matters (0.2); telephone conference with J. Pomerantz re: upcoming litigation issues (0.1).			
12/10/2020	GIG	BL	Emails Ira D. Kharasch re jurisdiction memo	0.10	895.00	$89.50
12/10/2020	GVD	BL	Draft outline re response to NPA on CLO issues	0.90	825.00	$742.50
12/10/2020	GVD	BL	Review NPA motion on CLO standstill	0.50	825.00	$412.50
12/10/2020	GVD	BL	Revise and circulate response to Dondero 363 motion	1.50	825.00	$1,237.50
12/10/2020	GVD	BL	Review outline for presentation at hearing	0.40	825.00	$330.00
12/10/2020	GVD	BL	Conference with J. Morris re litigation strategy	0.30	825.00	$247.50
12/10/2020	GVD	BL	Review correspondence to M. Lynn re Dondero issues	0.10	825.00	$82.50
12/10/2020	GVD	BL	Conference with WilmerHale/Kasowitz re response to CLO motion	0.50	825.00	$412.50
12/10/2020	GVD	BL	Conference with J. Morris and J. Seery re follow up to TRO hearing	0.40	825.00	$330.00

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12/10/2020	GVD	BL	Attend hearing on Dondero TRO	2.20	825.00	$1,815.00
12/10/2020	JE	BL	Consolidate and write up additional research on property of the estate, standing and ordinary course of business (3.8); review and revise several drafts of response to Dondero motion (1.6); miscellaneous correspondence regarding same (.5); review report of TRO hearing (.2).	6.10	1100.00	$6,710.00
12/10/2020	HRW	BL	Call with J. Morris re: opposition to Daugherty stay lift motion (0.2); Dondero TRO Hearing (1.5); Draft deposition notice for Dustin Norris (1.3).	3.00	625.00	$1,875.00
12/11/2020	IDK	BL	E-mails with J Morris re his suggested changes to opposition to Dondero 363 motion, including mine and others feedback, and status of Board feedback re Lynn counter-proposal to resolve (.4); Review of UCC opposition to Dondero 363 motion (.2).	0.60	1145.00	$687.00
12/11/2020	IDK	BL	Telephone conference with J. Pomerantz re issues on negotiations with Dondero on CLOs/ordinary course motion (.1); Attend part of conference call with attorneys on various pending litigation with Dondero and his 363 motion, and CLO motion to stop trading (.4); E-mails with J Morris and CEO re discovery to go out re NPA motion to stop CLO trades (.1).	0.60	1145.00	$687.00
12/11/2020	IDK	BL	E-mail to Dondero counsel re depos (.1); E-mails with attorneys re same and taking other depos, and issues re same, and info on moving parties ? independent? boards (.3).	0.40	1145.00	$458.00
12/11/2020	IDK	BL	Review and consider G Demo draft of response to NPA motion to prevent CLO trading (.3); E-mail to G Demo re my feedback on changes to be made, and feedback of others (.3).	0.60	1145.00	$687.00
12/11/2020	JNP	BL	Conference with J. Dubel regarding pending litigation matters.	0.20	1075.00	$215.00
12/11/2020	JNP	BL	Conference with Gregory V. Demo regarding pending litigation matters.	0.10	1075.00	$107.50
12/11/2020	JNP	BL	Review opposition to Dondero ordinary course motion.	0.10	1075.00	$107.50
12/11/2020	JNP	BL	Conference with John A. Morris, Gregory V. Demo, Ira D. Kharasch and H. Winograd regarding pending litigation matters.	0.50	1075.00	$537.50
12/11/2020	JNP	BL	Conference with J. Seery, Gregory V. Demo, John A. Morris and H. Winograd regarding pending litigation issues.	0.70	1075.00	$752.50
12/11/2020	JNP	BL	Review letter from HCLOF.	0.10	1075.00	$107.50

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12/11/2020	JNP	BL	Review Committee brief regarding Dondero motion.	0.10	1075.00	$107.50
12/11/2020	RMP	BL	Conference with I. Kharasch re Dondero litigation.	0.40	1445.00	$578.00
12/11/2020	JMF	BL	Review opposition to motion to prohibit ordinary course transactions.	0.30	925.00	$277.50
12/11/2020	JAM	BL	Review/revise draft objection to Dondero 363 motion (0.7); e-mail to J. Pomerantz, I. Kharasch, G. Demo re: JAM comments to draft objection to Dondero 363 motion (0.1); review stipulation concerning resolution of Daugherty Adversary Proceeding No. 2 (0.1); e-mail to Z. Annable, J. Pomerantz, G. Demo re: stipulation concerning resolution of Daugherty Adversary Proceeding No. 2 (0.1); e-mails with J. Pomerantz, I. Kharasch, G. Demo re: Dondero 363 motion (0.2); review/revise deposition notice for Advisors (0.3); e-mails with L. Canty, Z. Annable, J. Pomerantz, G. Demo, H. Winograd re: deposition notice for Advisors (0.1); telephone conference with G. Demo re: litigation matters (0.2); telephone conference with J. Seery re: litigation matters (0.1); work on objection to Daugherty lift stay motion (3.6); draft deposition notice for James Dondero (0.2); e-mails with Dondero?s counsel re: discovery (0.2); telephone conference with J. Pomerantz, Redeemer counsel, UBS counsel re: Redeemer intervention on UBS appeal of Rule 9019 order (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo. H. Winograd re: litigation matters, strategy (0.5); telephone conference with J. Seery, J. Pomerantz, G. Demo, H. Winograd re: litigation matters, strategy (0.7); telephone conference with B. Assink re: meet and confer over discovery on Dondero motion (0.3); e-mails with B. Assink re: meet and confer over discovery on Dondero motion (0.2); communications with J. Wright, Pomerantz, G. Demo, H. Winograd re: discovery for Advisors? hearing (0.3).	8.10	1075.00	$8,707.50
12/11/2020	GIG	BL	Emails with Gregory V. Demo re jurisdiction question, review memo re same	0.20	895.00	$179.00
12/11/2020	GVD	BL	Review offering memoranda re CLO litigation	0.40	825.00	$330.00
12/11/2020	GVD	BL	Finalize response to Dondero 363 motion and file same	1.20	825.00	$990.00
12/11/2020	GVD	BL	Review research re bankruptcy jurisdiction	0.30	825.00	$247.50
12/11/2020	GVD	BL	Conduct research re CLO litigation	1.50	825.00	$1,237.50
12/11/2020	GVD	BL	Draft response re CLO litigation	2.60	825.00	$2,145.00

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				Hours	Rate	Amount
12/11/2020	GVD	BL	Multiple conferences with PSZJ and J. Seery re litigation strategy and next steps	1.20	825.00	$990.00
12/11/2020	GVD	BL	Revise and circulate outline re CLO motion	0.20	825.00	$165.00
12/11/2020	JE	BL	Discuss TRO ruling with Mr. Pomerantz.	0.20	1100.00	$220.00
12/11/2020	HRW	BL	Draft document requests to NexPoint Advisors and related parties (1.8); PSZJ litigation update call (1.0); Call with G. Demo re: document requests to NexPoint Advisors and related parties (0.1).	2.90	625.00	$1,812.50
12/12/2020	IDK	BL	Numerous E-mails with CEO, J Morris re communications with Dondero counsel on their changing depo demands/ideas of today (.2); Numerous E-mails with attorneys re draft of potential settlement proposal to Dondero re sales, and issues/problems with same and fiduciary out issues (.2).	0.40	1145.00	$458.00
12/12/2020	IDK	BL	E-mails with Board re its feedback on potential settlement proposal to Dondero (.1); Review of correspondence with Dondero counsels re their reaction to same proposal (.1); Telephone conference with J. Pomerantz re status on settlement negotiations re same (.1); E-mails with Board, J. Pomerantz, re how to respond to Dondero counsel?s concerns re proposal to resolve (.2); E-mails with and review of correspondence with Dondero counsel on our response to their counter, and how to respond (.2).	0.70	1145.00	$801.50
12/12/2020	JNP	BL	Draft email to Board regarding resolution to Dondero motion.	0.20	1075.00	$215.00
12/12/2020	JNP	BL	Emails to and from M. Lynn regarding proposal to resolve Dondero motion.	0.40	1075.00	$430.00
12/12/2020	JNP	BL	Emails with Board regarding proposal to resolve Dondero motion.	0.10	1075.00	$107.50
12/12/2020	JNP	BL	Conference with J. Dubel regarding Dondero motion and related matters (2X).	0.60	1075.00	$645.00
12/12/2020	JNP	BL	Conference with John A. Morris regarding Dondero proposal and response.	0.10	1075.00	$107.50
12/12/2020	JNP	BL	Review emails regarding discovery on Dondero motion.	0.10	1075.00	$107.50
12/12/2020	JAM	BL	E-mails with B. Assink, J. Wilson, J. Pomerantz, G. Demo, H. Winograd re: depositions (0.2); e-mails to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: depositions for Dondero motion (0.1); amend Notice of Deposition for Dondero and	7.20	1075.00	$7,740.00

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			communications with Z. Annable concerning the same (0.2); e-mail to L. Canty, G. Demo, H. Winograd re: depositions, court reporter (0.2); work on Objection to Daugherty Lift Stay Motion (4.7); telephone conference with J. Seery re: negotiations concerning Dondero motion (0.5); telephone conference with L. Canty re: depositions (0.1); e-mails to B. Assink, J. Wilson, J. Pomerantz, G. Demo re: depositions (0.4); e-mails with J. Seery, J. Dubel, R. Nelms, J. Pomerantz, I. Kharasch. G. Demo re: negotiations concerning Dondero (0.5); e-mails with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft Objection to Daugherty Lift Stay Motion (0.2); telephone conference with L. Canty re: depositions (0.1).			
12/12/2020	GVD	BL	Research and draft response to NexPoint CLO motion	6.10	825.00	$5,032.50
12/12/2020	GVD	BL	Conference with U. Itkin re status of insert to NexPoint CLO motion	0.20	825.00	$165.00
12/12/2020	HRW	BL	Draft opposition to Daugherty stay relief motion (7.5).	7.50	625.00	$4,687.50
12/13/2020	IDK	BL	Review of further correspondence with Dondero counsels re discovery and depo issues re 363 motion (.1); E-mails with Board re same and finalized deposition schedule tomorrow (.1); E-mails with Board, J Morris re new subpoena for Caruso, Sevilla, and our intention to prepare motions to quash/protective order (.2).	0.40	1145.00	$458.00
12/13/2020	IDK	BL	E-mails with G Demo re status on our response to NPA motion re CLO sales, and its prior position in Acis on same.	0.20	1145.00	$229.00
12/13/2020	IDK	BL	E-mails with G Demo re his draft response to NPA/HCMFA motion re CLO sales, including J. Pomerantz comments to same.	0.30	1145.00	$343.50
12/13/2020	JNP	BL	Review letter from Next Point regarding claims and review and revise proposed response.	0.20	1075.00	$215.00
12/13/2020	JNP	BL	Review and revise opposition to CLO motion.	1.00	1075.00	$1,075.00
12/13/2020	JNP	BL	Conference with John A. Morris regarding discovery in connection with Dondero motion and CLO motion.	0.20	1075.00	$215.00
12/13/2020	JNP	BL	Review TRO transcript.	0.20	1075.00	$215.00
12/13/2020	JAM	BL	Telephone conference with J. Dubel re: Dondero litigation tactics (0.2); telephone conference with G. Demo re: litigation issues (0.4); telephone	1.90	1075.00	$2,042.50

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				Hours	Rate	Amount
			conference with J. Pomerantz re: Dondero litigation tactics (0.2); telephone conference with J. Seery re: Dondero litigation (0.2); e-mails with all counsel re: deposition instructions (0.2); review/revise witness and exhibit list (0.2); e-mail to Z. Annable, L. Canty, G. Demo, H. Winograd re: witness and exhibit list (0.1); prepare for depositions (0.4).			
12/13/2020	GVD	BL	Draft response to K&L Gates demand letter	0.20	825.00	$165.00
12/13/2020	GVD	BL	Further research and revise response to NPA motion on CLOs	2.60	825.00	$2,145.00
12/13/2020	GVD	BL	Conference with U. Itkin re CLOs	0.40	825.00	$330.00
12/13/2020	HRW	BL	Draft opposition to Daugherty stay relief motion (4.5); Call with J. Morris re: opposition to Daugherty stay relief motion (0.1).	4.60	625.00	$2,875.00
12/14/2020	IDK	BL	E-mails with Board, others re J Morris draft of motion to quash and for protective order, including brief review of same, and feedback for changes (.3); E-mails with J Morris and local counsel re status of feedback from chambers on same motion, including later court?s direction on same, and Dondero agreement to expedited hearing (.3).	0.60	1145.00	$687.00
12/14/2020	IDK	BL	Review and consider numerous correspondence with Dondero counsels re our motion to quash and their continued insistence on depos of others, as well as various new proposals from Dondero counsels re temporary resolution of the 363 motion, including feedback from Board and attorneys as to how to respond (.5); Review of further various correspondence with Dondero counsel re our issues with their proposal and Dondero?s prior interference, as well as scheduling of call tomorrow (.3).	0.80	1145.00	$916.00
12/14/2020	IDK	BL	E-mails with Board and attorneys re Dondero opposition to motion to quash, including brief review of same, and Dondero proposal to continue contained therein, including problems on same and how to respond.	0.30	1145.00	$343.50
12/14/2020	IDK	BL	E-mails with J Morris re questions for upcoming Dondero deposition, and issue of J Terry attendance and Board feedback.	0.20	1145.00	$229.00
12/14/2020	IDK	BL	Telephone conference with J Pomerantz re result of Seery deposition re Dondero motion (.1); Attend internal conference call with attorneys re status of litigation hearings for 12/16, and today?s motion to quash re Dondero, and prep for hearings on 12/16 (.4).	0.50	1145.00	$572.50

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				Hours	Rate	Amount
12/14/2020	IDK	BL	Telephone conference with J. Pomerantz re result of Board call on motion to quash (.1); Telephone conference with J. Pomerantz in break of Dondero deposition of questions needed to be asked (.1); Telephone conference with J. Pomerantz re result of deposition on the opposition to NPA motion re CLOs (.1).	0.30	1145.00	$343.50
12/14/2020	IDK	BL	Attend most of Dondero deposition (1.5).	1.50	1145.00	$1,717.50
12/14/2020	IDK	BL	E-mails with G Demo re questions on our draft response to NPA motion re CLOs, including review of his revised response re same (.3); E-mails with G Demo, J. Pomerantz re my comments to revised draft and timing of running by CEO and others, including review of correspondence to same (.3).	0.60	1145.00	$687.00
12/14/2020	JNP	BL	Review motion to quash.	0.10	1075.00	$107.50
12/14/2020	JNP	BL	Conference with John A. Morris regarding motion to quash.	0.10	1075.00	$107.50
12/14/2020	JNP	BL	Conference with J. Dubel regarding pending litigation matters.	0.20	1075.00	$215.00
12/14/2020	JNP	BL	Listen in to J. Seery deposition.	1.60	1075.00	$1,720.00
12/14/2020	JNP	BL	Conference with Ira D. Kharasch regarding J. Seery deposition.	0.10	1075.00	$107.50
12/14/2020	JNP	BL	Conference with Ira D. Kharasch, John A. Morris, Gregory V. Demo and H. Winograd regarding litigation planning.	0.40	1075.00	$430.00
12/14/2020	JNP	BL	Conference with Board, John A. Morris and Gregory V. Demo regarding Dondero proposal.	0.30	1075.00	$322.50
12/14/2020	JNP	BL	Email to and from M. Lynn regarding proposal.	0.10	1075.00	$107.50
12/14/2020	JNP	BL	Participate in J. Dondero deposition.	2.00	1075.00	$2,150.00
12/14/2020	JNP	BL	Conference with Ira D. Kharasch after j. Dondero deposition.	0.10	1075.00	$107.50
12/14/2020	JNP	BL	Conference with J. Dubel after J. Dondero deposition.	0.10	1075.00	$107.50
12/14/2020	JNP	BL	Review Dondero opposition to motion to quash.	0.10	1075.00	$107.50
12/14/2020	JNP	BL	Conference with John A. Morris regarding Dondero opposition and motion to quash.	0.20	1075.00	$215.00
12/14/2020	JNP	BL	Email to Gregory V. Demo regarding Dondero opposition to motion to quash.	0.10	1075.00	$107.50
12/14/2020	JMF	BL	Review motion to quash (.3) and opposition to same (.2).	0.50	925.00	$462.50

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12/14/2020	JMF	BL	Review request re temporary restrictions on non debtor CLO vehicle sales.	0.40	925.00	$370.00
12/14/2020	JAM	BL	Draft motion for a protective order/motion to quash subpoenas (3.5); telephone conference with J. Pomerantz re: draft motion for a protective order/motion to quash subpoenas (0.1); review/revise draft motion for a protective order/motion to quash subpoenas (0.1); e-mails with Board, J. Pomerantz, I. Kharasch, G. Demo re: draft motion for a protective order/motion to quash subpoenas (0.1); communications with Z. Annable, H. Winograd, G. Demo re: draft motion for a protective order/motion to quash subpoenas (0.2); prepare for Dondero deposition (1.6); telephone conference with J. Seery re: deposition (0.1); Seery deposition (1.6); telephone conference with J. Seery re: deposition (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Seery deposition (0.3); telephone conference with Board, J. Pomerantz, I. Kharasch, G. Demo re: potential settlement with Dondero (0.3); prepare for Dondero deposition (1.4); Dondero deposition (2.0); e-mails with L. Canty re: exhibit and witness list (0.2); telephone conference with G. Demo, Cameron, Sean re: Norris deposition (0.4); review objection to motion for protective order/motion to quash (0.2); telephone conference with J. Seery re: depositions (0.5).	12.80	1075.00	$13,760.00
12/14/2020	GVD	BL	Attend Dondero deposition (partial)	1.50	825.00	$1,237.50
12/14/2020	GVD	BL	Revise and circulate response to CLO motion	5.00	825.00	$4,125.00
12/14/2020	GVD	BL	Conference with J. Morris re preparation for Norris deposition	0.60	825.00	$495.00
12/14/2020	GVD	BL	Correspondence with J. Pomerantz re current protocols	0.10	825.00	$82.50
12/14/2020	GVD	BL	Review motion re Daugherty automatic stay	0.20	825.00	$165.00
12/14/2020	GVD	BL	Conference with Board re Dondero motion and potential resolution	0.30	825.00	$247.50
12/14/2020	GVD	BL	Review exhibit list re CLO motion	0.20	825.00	$165.00
12/14/2020	GVD	BL	Attend to issues re potential resolution of Dondero motion	0.20	825.00	$165.00
12/14/2020	HRW	BL	Edit and review opposition to Daugherty stay relief motion (1.1); PSZJ call re: Deposition Prep (0.4); PSZJ call re: Motion to Quash (0.3); Seery deposition (1.4); Dondero deposition (1.5); Review NPA/CLO pleadings (0.8); Review Dondero section	6.10	625.00	$3,812.50

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				Hours	Rate	Amount
			363 pleadings (0.6).			
12/15/2020	IDK	BL	E-mails with Board, others re court?s partial ruling on our motion to quash, and next steps (.2); Review of correspondence with Dondero counsel re their cancellation of call, and court?s ruling on motion to quash re same (.2); Telephone conference with J. Pomerantz re Dondero request to speak to entire Board (.1); Review of numerous correspondence with Dondero counsel re his request to speak to non-Seery board members, and willingness to continue hearing on 363 motion, and next steps re implementing same (.3).	0.80	1145.00	$916.00
12/15/2020	IDK	BL	E-mails with Board, J Morris re status on tomorrow?s hearing (.1); E-mails with same re order to adjourn same hearing (.1); E-mails with attorneys re Dondero counsel disputes with form of order on same and related discovery issues (.2).	0.30	1145.00	$343.50
12/15/2020	IDK	BL	E-mails with J Morris re his correspondence with internal staff on pushback on UCC discovery, including review of same, and how to respond (.2); Telephone conference with J. Pomerantz re problems on UCC discovery on employees and Klos position and next steps (.2).	0.40	1145.00	$458.00
12/15/2020	IDK	BL	Review of correspondence with DSI, J. Pomerantz re asset sale summaries re NPA motion to restrict CLO sales (.2); E-mail to G Demo re prior stipulation with Dondero re Strand (.1); Review of G Demo?s draft of oral argument for tomorrow?s hearing with NPA and consider, as well as feedback from J. Pomerantz re same (.3).	0.60	1145.00	$687.00
12/15/2020	IDK	BL	E-mails with G Demo re my comments and Board feedback to revised motion to extend removal deadline, including review of such motion.	0.30	1145.00	$343.50
12/15/2020	JNP	BL	Conference with John A. Morris regarding deposition.	0.10	1075.00	$107.50
12/15/2020	JNP	BL	Participating in deposition of Dustin Norris.	2.70	1075.00	$2,902.50
12/15/2020	JNP	BL	Conference with J. Dubel regarding Dondero motion and next steps.	0.20	1075.00	$215.00
12/15/2020	JNP	BL	Emails to and from M. Lynn regarding resolution of Dondero motion.	0.10	1075.00	$107.50
12/15/2020	JNP	BL	Conference with CLO issuers counsel, Ira D. Kharasch and Gregory V. Demo regarding status and moving forward.	0.60	1075.00	$645.00
12/15/2020	JNP	BL	Review Gregory V. Demo outline for CLO hearing	0.50	1075.00	$537.50

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				Hours	Rate	Amount
			and provide comments.			
12/15/2020	JNP	BL	Conference with M. Clemente regarding discovery issues.	0.20	1075.00	$215.00
12/15/2020	JNP	BL	Emails to and from M. Lynn regarding hearing resolution and request for Board meeting.	0.50	1075.00	$537.50
12/15/2020	JNP	BL	Emails to and from PSZJ team regarding pending litigation; Calls with Gregory V. Demo and John A. Morris regarding same.	0.50	1075.00	$537.50
12/15/2020	JNP	BL	Review order regarding Dondero motion; Conference with John A. Morris regarding same.	0.10	1075.00	$107.50
12/15/2020	JNP	BL	Conference with Ira D. Kharasch regarding pending litigation issues.	0.10	1075.00	$107.50
12/15/2020	JNP	BL	Review and respond to several emails with M. Lynn regarding Order on Dondero motion.	0.50	1075.00	$537.50
12/15/2020	RMP	BL	Conference with I. Kharasch re litigation status.	0.20	1445.00	$289.00
12/15/2020	BEL	BL	Telephone conference with John A. Morris regarding complaint regarding demand notes.	0.20	825.00	$165.00
12/15/2020	BEL	BL	Review demand notes.	0.50	825.00	$412.50
12/15/2020	JMF	BL	Review removal extension motion.	0.30	925.00	$277.50
12/15/2020	JMF	BL	Review opposition to motion to restrain ordinary course training.	0.40	925.00	$370.00
12/15/2020	JMF	BL	Review docket re CLO sales and draft memorandum re case issues (.6); telephone call with G. Demo, J.N. Pomerantz, I. Kharasch, J. O'Neill, H, Winograd re same (.6); telephone call with J. Donahue, I. Kharasch, G. Demo, James Romey (.4).	1.60	925.00	$1,480.00
12/15/2020	JAM	BL	Prepare for Norris deposition (3.8); telephone conference with G. Demo re: Norris deposition (0.1); telephone conference with J. Dubel re: status of hearing, motion for protective order (0.1); e-mails with J. Pomerantz, I. Kharasch, G. Demo, M. Lynn re: issues related to Dondero and hearing (0.3); Norris deposition (1.7); telephone conference with J. Pomerantz re: Norris deposition (0.1); telephone conference with G. Demo re: Norris deposition (0.1); telephone conference with D. Draper re: Dugaboy, Get Good document productions (0.1); telephone conference with B. Levine re: collection actions on demand notes (0.1); telephone conference with J. Seery re: document production (0.1); telephone conference with G. Demo, J. Romey re: document production (0.1); telephone conference with G. Demo re: document production and related	9.20	1075.00	$9,890.00

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				Hours	Rate	Amount
			matters (0.1); telephone conference with J. Dubel, J. Pomerantz re: discovery issues and related matters (0.4); telephone conference with Board, J. Pomerantz, I. Kharasch, G. Demo re: employee issues, discovery (0.7); telephone conference with J. Seery re: employee issues, discovery (0.2); telephone conference with P. Montgomery re: meeting with FTI (0.1); telephone conference with J. Seery re: discovery issues (0.1); review/revise draft order adjourning Dondero Rule 363 motion (0.4); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft order adjourning Dondero Rule 363 motion (0.1); telephone conference with J. Seery re: Klos and FTI meeting (0.1); e-mails with J. Seery, D. Klos, D. Neier re: Klos and FTI meeting (0.1); telephone conference with P. Montgomery re: FTI meeting (0.1); review G. Demo draft opening statement for hearing on NexPoint motion (0.2).			
12/15/2020	GVD	BL	Prepare for hearing re CLO standstill	2.40	825.00	$1,980.00
12/15/2020	GVD	BL	Revise and file objection to CLO motion	0.70	825.00	$577.50
12/15/2020	GVD	BL	Review and revise deposition outline re D. Norris	0.70	825.00	$577.50
12/15/2020	GVD	BL	Attend deposition of D. Norris (partial)	1.50	825.00	$1,237.50
12/15/2020	GVD	BL	Conference with J. Morris and J. Pomerantz re discovery issues	0.30	825.00	$247.50
12/15/2020	HRW	BL	Draft proposed order to adjourn Dondero motion (2.3); D. Norris Deposition (2.0).	4.30	625.00	$2,687.50
12/16/2020	IDK	BL	E-mails with Board, others on temporary resolution of UCC discovery and employee role in same.	0.10	1145.00	$114.50
12/16/2020	IDK	BL	E-mails with G Demo, others on his revised summary of his oral argument for today?s hearing on NPA motion, including my feedback, questions on same.	0.30	1145.00	$343.50
12/16/2020	IDK	BL	Review and consider Dondero just filed motion to modify TRO to communicate with Board (.2); E-mails with CEO, others re same and next steps (.2).	0.40	1145.00	$458.00
12/16/2020	IDK	BL	E-mails with internal team on need for hearing prep call (.1); Attend conference call with J. Pomerantz, G Demo and J Morris re prep for today?s hearing on NPA/HCLOF motion re CLOs (.4); Attend hearing today re same (1.7); Office conference with J. Pomerantz re same (.1).	2.30	1145.00	$2,633.50
12/16/2020	IDK	BL	E-mails with Dondero counsel, J. Pomerantz re Lynn?s request to speak to entire Board.	0.10	1145.00	$114.50

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12/16/2020	IDK	BL	E-mail to J Morris re result of UCC counsel interview with Klos (.1).	0.10	1145.00	$114.50
12/16/2020	IDK	BL	Review and consider briefly extensive UBS correspondence re both MS settlement concerns and CDO Fund collection re judgment (.2); Review briefly extensive correspondence with Board, others re legal issues on CDO collection efforts by UBS, and possible responses (.2).	0.40	1145.00	$458.00
12/16/2020	JNP	BL	Review revisions to Gregory V. Demo opening on CLO motion.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Review emails regarding modifications to Order on Dondero motion.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Conference with Gregory V. Demo regarding CLO motion and J. Seery call with HCLOF.	0.20	1075.00	$215.00
12/16/2020	JNP	BL	Conference with Gregory V. Demo, Ira D. Kharasch and John A. Morris regarding hearing preparation.	0.40	1075.00	$430.00
12/16/2020	JNP	BL	Review Dondero motion to amend TRO.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Participate in hearing on CLO motion.	1.90	1075.00	$2,042.50
12/16/2020	JNP	BL	Conference with Gregory V. Demo regarding UBS (2x).	0.20	1075.00	$215.00
12/16/2020	JNP	BL	Conference with Gregory V. Demo regarding CLO Holdco demand.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Conference with J. Dubel regarding hearing and UBS, and hearing (several).	1.30	1075.00	$1,397.50
12/16/2020	JNP	BL	Conference with John A. Morris regarding hearing and related issues.	0.20	1075.00	$215.00
12/16/2020	JNP	BL	Review issues relating to UBS letter asking for assistance in transferring assets.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Email from M. Lynn regarding communications with Board and forward to Board.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Review Order regarding hearing on CLO motion.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	.Email to Z. Anabale regarding Order resolving Dondero motion and motion to quash.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Conference with .J. Seery regarding UBS, hearing and related.	0.30	1075.00	$322.50
12/16/2020	JNP	BL	Conference with Ira D. Kharasch regarding UBS and litigation issues.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Review demand letters from CLO Holdco.	0.10	1075.00	$107.50
12/16/2020	JNP	BL	Email to Board regarding CLO Fund and SOHC	0.10	1075.00	$107.50

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				Hours	Rate	Amount
			issues.			
12/16/2020	KKY	BL	Serve (.1) and prepare for service (.1) removal extension motion	0.20	425.00	$85.00
12/16/2020	KKY	BL	Draft (.1) and prepare for filing (.1) certificate of service for removal extension motion	0.20	425.00	$85.00
12/16/2020	RMP	BL	Conferences with J. Pomerantz and I. Kharasch re pending motions and responses thereto.	0.60	1445.00	$867.00
12/16/2020	BEL	BL	Review notes and draft complaint.	3.70	825.00	$3,052.50
12/16/2020	JAM	BL	Prepare for hearing on CLO motion (6.2); telephone conference with J. Donohue re: discovery meeting with UCC (0.1); telephone conference with G. Demo re: today?s hearing (0.1); telephone conference with D. Klos, D. Neier re: discovery meeting with UCC (0.3); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: preparation for hearing (0.3); telephone conference with J. Seery re: preparation for hearing (0.2); review Demo draft opening statement for CLO hearing (0.2); telephone conference with G. Demo re: opening statement (0.1); review/revise proposed order on Dondero-related motions (0.2); e-mail to Bond Ellis, J. Pomerantz, I. Kharasch, G. Demo re: proposed order on Dondero-related motions (0.1); court hearing on Dondero-related motion and CLO motion (1.8); telephone conference with J. Seery re: CLO hearing (0.3); telephone conference with J. Dubel re: CLO hearing (0.2); telephone conference with J. Pomerantz re: CLO hearing (0.1); telephone conference with D. Draper re: Dugaboy and Get Good document production (0.1); e-mails with J. Seery, DSI, HCMLP personnel re: discovery (0.1); telephone conference with Z. Annable re: Daugherty lift stay motion (0.1); e-mails with J. Kathman, Z. Annable, J. Pomerantz, I. Kharasch, G. Demo re: Daugherty lift stay motion (0.2); telephone conference with D. Klos, D. Neier, Sidley, FTI re: discovery (0.8); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo re: discovery call with UCC (0.1); telephone conference with I. Leventon re: CLO hearing, Daugherty lift stay motion (0.3); telephone conference with J. Seery re: UCC discovery meeting (0.1); e-mail to J. Kathman re: Stipulation, proposed order concerning Adversary Proceeding No. 2 (0.1); review/revise proposed Order on CLO motion (0.3); e-mails with J. Pomerantz, I. Kharasch, G. Demo, Z. Annable re: proposed order on CLO motion (0.1).	12.50	1075.00	$13,437.50

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12/16/2020	GVD	BL	Review D. Norris transcript in preparation for hearing	0.50	825.00	$412.50
12/16/2020	GVD	BL	Prepare for hearing re CLO motion	2.10	825.00	$1,732.50
12/16/2020	GVD	BL	Correspondence re affiliate status under CLO agreements	0.30	825.00	$247.50
12/16/2020	GVD	BL	Conference with J. Pomerantz re preparation for hearing	0.20	825.00	$165.00
12/16/2020	GVD	BL	Attend hearing re CLO issues	1.60	825.00	$1,320.00
12/16/2020	GVD	BL	Conference with J. Morris and J. Seery re follow up to hearing	0.20	825.00	$165.00
12/16/2020	GVD	BL	Multiple conferences with J. Pomerantz re UBS demand letters	0.20	825.00	$165.00
12/16/2020	GVD	BL	Draft multiple emails re UBS demand letters	1.00	825.00	$825.00
12/16/2020	HRW	BL	Draft proposed order denying CLO Motion (1.5); Hearing on CLO Motion (1.8).	3.30	625.00	$2,062.50
12/17/2020	IDK	BL	E-mails with local counsel re court?s order denying Dondero emergency hearing on motion to modify tentative and setting on January 4.	0.10	1145.00	$114.50
12/17/2020	JNP	BL	Email to Elissa A. Wagner regarding response to UBS letters.	0.10	1075.00	$107.50
12/17/2020	JNP	BL	Conference with Robert J. Feinstein regarding UBS letters.	0.20	1075.00	$215.00
12/17/2020	BEL	BL	Draft, review and revise complaint.	3.20	825.00	$2,640.00
12/17/2020	JAM	BL	Prepare for hearing on Daugherty Lift Stay Motion (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo re: Daugherty lift stay hearing (0.1); e-mails with J. Wright, G. Demo, Z. Annable re: order on CLO motion (0.1); hearing on Daugherty lift stay motion (1.2); telephone conference with J. Pomerantz re: Daugherty lift stay motion, other potential litigation matters (0.3); telephone conference with J. Seery re: Daugherty lift stay motion and other potential litigation matters (0.1).	2.60	1075.00	$2,795.00
12/17/2020	GVD	BL	Attend hearing re Daugherty relief from stay	1.20	825.00	$990.00
12/17/2020	HRW	BL	Draft proposed order denying Daugherty Lift Stay Motion (0.8); Hearing on Daugherty Lift Stay Motion (1.0).	1.80	625.00	$1,125.00
12/18/2020	IDK	BL	E-mails with J Morris re draft amended complaint vs Dondero and UCC complaint re Holdco.	0.20	1145.00	$229.00
12/18/2020	JMF	BL	Review motion to seal and preliminary injunction motion re CLO Holdco.	0.40	925.00	$370.00

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12/18/2020	JAM	BL	E-mail to J. Kathman re: proposed Order on Daugherty Lift Stay motion (0.1); prepare Amended Complaint against Dondero to extend injunctive relief to Successor Parties (as defined in the Amended Complaint) (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: proposed Amended Complaint against Dondero (0.1); review UCC?s complaint and motion for injunctive relief against CLO HoldCo and related entities (0.5); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: UCC?s complaint and motion for injunctive relief against CLO HoldCo and related entities (0.1); telephone conference with P. Montgomery, C. Rognes re: sealing issues pertaining to UCC?s complaint against CLO HoldCo and related entities (0.2); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: UCC pleadings and confidentiality (0.1); e-mail to S. Vitiello, I. Leventon, T. Jeremiassen, J. Romey re: Get Good and Dugaboy document production (0.1); e-mail with D. Draper re: Get Good and Dugaboy document productions (0.1).	2.10	1075.00	$2,257.50
12/18/2020	GVD	BL	Multiple conferences with J. Pomerantz, I. Kharasch, and J. Seery re potential litigation issues and next steps	0.70	825.00	$577.50
12/18/2020	HRW	BL	PSZJ call with Debevoise re: HarbourVest settlement (0.5).	0.50	625.00	$312.50
12/19/2020	JAM	BL	Telephone conference with G. Demo re: litigation matters (0.2); e-mails with J. Kane, D. Draper, M. Lynn, J. Pomerantz, I. Kharasch, G. Demo re: confidentiality and UCC's suit against CLO Holdco, Dondero and others (0.3); e-mails with M. Lynn, M. Clemente, J. Bond, P. Montgomery, J. Pomerantz, G. Demo re: UCC Complaint against CLO Holdco, Dondero and others and related issues of confidentiality (0.3); review documents cited in UCC Complaint as confidential (0.2).	1.00	1075.00	$1,075.00
12/20/2020	IDK	BL	Telephone conference with J. Pomerantz on 12/19 re general case and litigation issues, including Dondero counsel communications (.2); E-mails with J. Pomerantz and CEO re same and Moodys (.1).	0.30	1145.00	$343.50
12/20/2020	JNP	BL	Conference with J. Seery regarding UBS, Harbourvest and other litigation related issues.	0.40	1075.00	$430.00
12/20/2020	BEL	BL	Review rules regarding attachment and emails regarding same.	0.20	825.00	$165.00
12/20/2020	JAM	BL	Review/revise draft Scheduling Order for litigation	1.30	1075.00	$1,397.50

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			of Dugaboy claim objections (0.2); e-mails with G. Demo, H. Winograd, Z. Annable re: draft Scheduling Order for litigation of Dugaboy claim objections (0.2); review/revise complaint against Dondero for breach of demand notes (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, B. Levine re: complaint against Dondero (0.1).			
12/20/2020	HRW	BL	Draft HarbourVest 9019 motion (9.9).	9.90	625.00	$6,187.50
12/21/2020	IDK	BL	Attend conference call with J Pomerantz, G Demo, J Morris re HarbourVest claim settlement issues, 3018 motion re same, claim of HCLOM re note transfer, other issues (1.0).	1.00	1145.00	$1,145.00
12/21/2020	JNP	BL	Review email from Latham regarding Summary Judgment Order and forward to Board.	0.10	1075.00	$107.50
12/21/2020	JNP	BL	Conference with Robert J. Feinstein regarding UBS Order and Latham request regarding appealability.	0.10	1075.00	$107.50
12/21/2020	JNP	BL	Internal team on Harbourvest Settlement Agreement and other claims issues.	1.00	1075.00	$1,075.00
12/21/2020	JNP	BL	Review Committee complaint against CLO Holdco.	0.20	1075.00	$215.00
12/21/2020	JNP	BL	Conference with Board regarding UBS issues and go forward strategy.	0.80	1075.00	$860.00
12/21/2020	JNP	BL	Conference with Ira D. Kharasch and Robert J. Feinstein regarding UBS issues and go forward strategy (several separate and together).	0.50	1075.00	$537.50
12/21/2020	JNP	BL	Email to and from T. Mascherin regarding call to discuss UBS issues.	0.10	1075.00	$107.50
12/21/2020	JNP	BL	Review draft complaint against Dondero for demand notes.	0.10	1075.00	$107.50
12/21/2020	JNP	BL	Conference with Richard M. Pachulski regarding litigation issues and strategy.	0.30	1075.00	$322.50
12/21/2020	RMP	BL	Conference with I. Kharasch and then J. Pomerantz re UBS issues.	0.60	1445.00	$867.00
12/21/2020	JAM	BL	Telephone conference with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: HarbourVest settlement, demand notes, other litigation matters (1.0); e-mails with P. Montgomery re: HCLO Holdco Complaint (0.1); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: complaint against Dondero (demand notes) (0.1).	1.20	1075.00	$1,290.00
12/21/2020	GVD	BL	Conference with PSZJ re litigation matters	1.00	825.00	$825.00
12/21/2020	JE	BL	Correspondence with Mr. Kharasch and Mr. Glazer; research issue on breach of one related contracts	4.20	1100.00	$4,620.00

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				Hours	Rate	Amount
			excusing breach of other.			
12/21/2020	HRW	BL	Review HarbourVest 9019 motion and settlement papers (1.9); PSZJ call re: HarbourVest Settlement (1.0).	2.90	625.00	$1,812.50
12/22/2020	IDK	BL	Telephone conference with J. Pomerantz re litigation issues re Dondero and his new behavior, UBS next steps (.3) ; Attend conference call with J. Pomerantz, R. Pachulski and G Demo re same, and potential alternatives (1.0) ; Review and consider G Demo?s summary of same and next steps/tasks re same on UBS potential reach out to MS redeemers, and additions by J. Pomerantz re same (.2) ; E-mails with G Demo re need for info/data for starting draft letter to MS redeemers re potential sales re same, and his response (.2).	1.70	1145.00	$1,946.50
12/22/2020	IDK	BL	E-mails with attorneys re potential sanctions re K&L Gates motion (.1).	0.10	1145.00	$114.50
12/22/2020	IDK	BL	Review of extensive correspondence with Board re NextPoint and its related parties new correspondence on CLO management and demand for no more sales, including consider next steps.	0.20	1145.00	$229.00
12/22/2020	IDK	BL	Review of correspondence with Dondero counsel re new interference with estate and TRO with Klos.	0.10	1145.00	$114.50
12/22/2020	JNP	BL	Review issues regarding UBS request for determination of order status and emails regarding same.	0.20	1075.00	$215.00
12/22/2020	JNP	BL	Conference with Ira D. Kharasch regarding litigation strategy issues	0.30	1075.00	$322.50
12/22/2020	JNP	BL	Conference with Jenner and Ira D. Kharasch regarding UBS issues.	0.50	1075.00	$537.50
12/22/2020	JNP	BL	Conference with J. Dubel regarding UBS litigation issues.	0.20	1075.00	$215.00
12/22/2020	JNP	BL	Conference with Richard M. Pachulski, Ira D. Kharasch, and Gregory V. Demo regarding UBS litigation issues.	1.00	1075.00	$1,075.00
12/22/2020	JNP	BL	Review and revise email regarding litigation strategy.	0.20	1075.00	$215.00
12/22/2020	JNP	BL	Review letter from KL Gates regarding CLOs.	0.10	1075.00	$107.50
12/22/2020	JNP	BL	Email to and from M. Lynn regarding Mr. Dondero violation of TRO.	0.30	1075.00	$322.50
12/22/2020	JNP	BL	Conference with Ira D. Kharasch after Board call regarding litigation issues.	0.20	1075.00	$215.00

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				Hours	Rate	Amount
12/22/2020	JNP	BL	Participate in Board call regarding various litigation issues.	1.20	1075.00	$1,290.00
12/22/2020	RMP	BL	Conference call with team re UBS issues.	1.00	1445.00	$1,445.00
12/22/2020	RMP	BL	Review MCSF analysis and telephone conference re same.	0.30	1445.00	$433.50
12/22/2020	GVD	BL	Conference with J. Pomerantz, I. Kharasch, and R. Pachulski re litigation matters	1.00	825.00	$825.00
12/22/2020	GVD	BL	Draft correspondence re proposed response to litigation issues	0.30	825.00	$247.50
12/22/2020	GVD	BL	Attend Acis hearing re final decree	0.90	825.00	$742.50
12/22/2020	JE	BL	Review cases on contract breach and prepare summary memo on same; correspondence with Mr. Glazer on issues.	6.40	1100.00	$7,040.00
12/23/2020	IDK	BL	Telephone conference with J. Pomerantz re issues on draft letter to MS investors re UBS (.1); Review and consider briefly draft letter to UBS counsel in response to its correspondence and communications with MS investors, as well as comments to same (.2); E-mails with attorneys re need for call on same (.1); Attend conference call with internal team on draft letter to UBS counsel and issues on letter to investors in MS (.5); Attend later conference call with R Feinstein and J. Pomerantz re UBS letter on settlement just with MS and next steps (.3).	1.20	1145.00	$1,374.00
12/23/2020	IDK	BL	Telephone conferences with J. Pomerantz re issues on draft letters re MS (.2); E-mails with G Demo re same and information needed (.1); E-mail to J Morris re draft deposition notices for Dondero, Clubock re MS (.1).	0.40	1145.00	$458.00
12/23/2020	IDK	BL	Review of various documents, phone summaries of Dondero/Clubock statements re approaching Redeemer claimants in Multi-Strat (.3); Prep of draft letter to Redeemer claimants of Multi-Strat re potential approaches by Dondero and UBS and issues re same (.4); E-mails with J. Pomerantz re his comments/questions on same letter (.3); Further revise letter to such claimants, along with memo to Board re same (.2).	1.20	1145.00	$1,374.00
12/23/2020	IDK	BL	E-mails with Board, J. Pomerantz re further correspondence with Dondero counsel on interference and Dondero requested discovery re plan	0.10	1145.00	$114.50
12/23/2020	IDK	BL	Telephone conference with Dondero counsel and J. Pomerantz re further interference and next steps (.1);	0.30	1145.00	$343.50

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			Review and consider draft of extensive letter to Dondero counsel re same and CLO instances and consequences, along with J Morris revisions of same (.2).			
12/23/2020	IDK	BL	Review and consider extensive letter from UBS on MS issues, and also re settlement offer on same (.2); E-mail to attorneys re same and need to revise letter to UBS/Clubock re same (.1); Review of further revised letter to UBS on interference and MS, and intent to take depos of Dondero and Clubock (.1); E-mails to R Feinstein re need to revise letter to UBS to address new items on settlement history, delinking, and other items (.3); Review of further revised letter to UBS re same (.1); E-mails with R Feinstein re same, as well as his correspondence to Board (.1).	0.90	1145.00	$1,030.50
12/23/2020	IDK	BL	Review of Dondero withdrawal of motion to clarify TRO and E-mail to J Morris re same (.1).	0.10	1145.00	$114.50
12/23/2020	IDK	BL	E-mails with attorneys re draft of letter to NextPoint in response to its latest demands/threats yesterday re CLOs and asset sales, and issues of sanctions (.2); Review of new correspondence of today from NextPoint, others re their attempt to remove Debtor as manager of CLOs (.1); E-mails with attorneys re same and impact on next steps re NextPoint, and need for further revisions and sending to Board (.2).	0.50	1145.00	$572.50
12/23/2020	IDK	BL	Review of further correspondence tonight with Dondero counsel on discovery and TRO issues (.1); Review briefly further revisions to letters to K&L Gates re NP and violations, and with Lynn (.2).	0.30	1145.00	$343.50
12/23/2020	JNP	BL	Review and revise letter to Latham regarding Multi Strat and review drafts regarding same.	0.90	1075.00	$967.50
12/23/2020	JNP	BL	Conference with Ira D. Kharasch regarding Multi Strat.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Conference with John A. Morris regarding document preservation issues.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Conference with PSZJ regarding letter to UBS regarding pending issue.	0.50	1075.00	$537.50
12/23/2020	JNP	BL	Review letter to KL Gates regarding demand for sanctions.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Review 2 versions of letter to M. Lynn regarding Dondero and emails regarding same.	0.20	1075.00	$215.00
12/23/2020	JNP	BL	Conference with M. Lynn and Ira D. Kharasch regarding termination of Dondero access.	0.10	1075.00	$107.50

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				Hours	Rate	Amount
12/23/2020	JNP	BL	Conference with J. Dubel regarding UBS issues.	0.20	1075.00	$215.00
12/23/2020	JNP	BL	Conference with Robert J. Feinstein regarding letter to Latham regarding UBS.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Review draft discovery.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Conference with John A. Morris regarding discovery.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Conference with Ira D. Kharasch regarding Latham latest letter regarding Multi Strat.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Participate on Board call regarding UBS and other litigation issues.	1.20	1075.00	$1,290.00
12/23/2020	JNP	BL	Conference with Robert J. Feinstein and Ira D. Kharasch regarding UBS issues and strategy.	0.30	1075.00	$322.50
12/23/2020	JNP	BL	Conference with Robert J. Feinstein after Board call regarding UBS.	0.10	1075.00	$107.50
12/23/2020	JNP	BL	Review letter to KL Gates and email regarding same.	0.10	1075.00	$107.50
12/23/2020	RMP	BL	Conference with I. Kharasch re litigation issues.	0.20	1445.00	$289.00
12/23/2020	JAM	BL	E-mail to M. Clemente, P. Montgomery, D. Draper, G. Demo re: UCC complaint against Dugaboy (0.1); e-mail to D. Draper, W. Horn re: UCC?s suit against Dugaboy and related matters (0.1); telephone conference with G. Demo re: CLOs demand letter and related litigation matters (0.2); telephone conference with P. Montgomery re: confidentiality and work-product issues (0.4); e-mail to P. Montgomery, M. Clemente, C. Rognes re: confidentiality issues relating to the Appendix to the UCC?s complaint against Dondero and others (0.1); telephone conference with J. Pomerantz, R. Feinstein, I. Kharasch, G. Demo re: litigation issues relating to Dondero, Clubok, and MultiSrat (0.5): review/revise deposition notices and document requests for Dondero and Clubok (0.6); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: discovery demands for Clubok and Dondero (0.1); telephone conference with J. Pomerantz, G. Demo, I. Kharasch, R. Feinstein re: UBS, Dondero issues (0.5); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, B. Sharp, J. Seery re: document preservation and related matters (1.0); telephone conference with J. Pomerantz re: Dondero issues (0.1); review/revise HarbourVest Rule 9019 motion (0.2); further revisions to discovery demands for Dondero and Clubok (0.4); e-mails with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, R.	7.70	1075.00	$8,277.50

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				Hours	Rate	Amount
			Feinstein re: discovery demands for Dondero and Clubok (0.2); review e-mails between G. Demo, Debevoise re: HarbourVest settlement, including revisions to agreement (0.5); review/revise letter to M. Lynn re: Dondero and TRO violations (0.5); telephone conference with Board, J. Pomerantz, I. Kharasch, R. Feinstein re: Dondero and Clubok issues and other litigation matters (0.2); e-mails w/ H. Winograd re: revisions to discovery demands for Dondero, Clubok (0.1); review draft letter to K&L Gates re: CLOs (0.3); e-mail to Board re: discovery demands for Dondero, Clublok (0.1); telephone conference with Board, J. Pomerantz, I. Kharasch, R. Feinstein re: Dondero and Clubok issues and other litigation matters (1.0); e-mail to J. Pomerantz, I. Kharasch, G. Demo draft letter to K&L Gates re: CLOs (0.1); telephone conference with J. Pomerantz, G. Demo re: letter to K&L Gates concerning CLO issues (0.4).			
12/23/2020	GVD	BL	Review letter from R. Feinstein re discovery issues	0.90	825.00	$742.50
12/23/2020	GVD	BL	Conference with J. Morris re litigation strategy	0.20	825.00	$165.00
12/23/2020	GVD	BL	Draft response letters to K&L Gates	1.20	825.00	$990.00
12/23/2020	GVD	BL	Draft letter to M. Lynn re J. Dondero	1.20	825.00	$990.00
12/23/2020	GVD	BL	Attend internal conference re potential litigation	0.50	825.00	$412.50
12/23/2020	HRW	BL	Review and edit HarbourVest 9019 motion (1.5); Review letters to K&L Gates (0.6); Draft notice of hearing for HarbourVest 9019 motion (0.5); PSZJ call re: HarbourVest Settlement (0.3); PSZJ call with Debevoise re: HarbourVest Settlement (0.5); Review and edit document requests and depo notices (1.3).	4.10	625.00	$2,562.50
12/24/2020	IDK	BL	E-mails with attorneys re status of various litigation items, need for call and agenda of items (.2); Attend conference call with attorneys re various litigation matters ongoing, including Dondero issues, UBS issues (.7); Review of J Morris extensive summary of numerous tasks re same (.1).	1.00	1145.00	$1,145.00
12/24/2020	IDK	BL	Review of numerous E-mails with attorneys re deposition logistics on Clubock.	0.20	1145.00	$229.00
12/24/2020	IDK	BL	Review of E-mails with CEO, others on further revised letters to K&L Gates on responses to their NextPoint letters re CLOs.	0.20	1145.00	$229.00
12/24/2020	IDK	BL	E-mail to J Morris re revised complaint for injunction vs Dondero re plan, including brief review.	0.20	1145.00	$229.00

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12/24/2020	IDK	BL	E-mails with Dondero counsel re his feedback on our letters to and from NextPoint counsel on CLOs, interference, sales from same, and Dondero role.	0.20	1145.00	$229.00
12/24/2020	JNP	BL	Email to team regarding litigation call and agenda.	0.10	1075.00	$107.50
12/24/2020	JNP	BL	Review letters to KL Gates regarding CLOs.	0.10	1075.00	$107.50
12/24/2020	JNP	BL	Conference with J. Dubel regarding outstanding litigation issue.	0.70	1075.00	$752.50
12/24/2020	JNP	BL	Conference with PSZJ regarding discovery and litigation issues.	0.70	1075.00	$752.50
12/24/2020	JNP	BL	Review and forward M Lynn email regarding discovery to the Board.	0.10	1075.00	$107.50
12/24/2020	JNP	BL	Email to M. Lynn enclosing letters to K&L Gates and subsequent emails regarding same.	0.20	1075.00	$215.00
12/24/2020	JNP	BL	Email to and from M. Lynn regarding discovery.	0.10	1075.00	$107.50
12/24/2020	JAM	BL	Draft JAM Declaration in support of HarbourVest Rule 9019 motion (0.3); e-mail to G. Demo, H. Winograd re: JAM Declaration in support of HarbourVest Rule 9019 motion (0.1); review/revise letter to K&L Gates re: interference with Debtor?s role as CLO portfolio manager (0.4); e-mail to G. Demo re: revisions to K&L Gates re: interference with Debtor?s role as CLO portfolio manager (0.1); review/revise letter to K&L Gates re: threatened termination of Debtor as CLO portfolio manager (0.3); review e-mails between H. Winograd, Z. Annable re: HarbourVest filings (0.2); e-mail to G. Demo re: revisions to letter to K&L Gates re: threatened termination of Debtor as CLO portfolio manager (0.1); e-mails with J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: Clubok deposition (0.1); e-mails with H. Winograd, L. Canty, K. Klausner re: court reporter for Dondero and Clubok depositions (0.2); telephone conference with G. Demo re: status of letters to K&L Gates and related litigation issues (0.3); review proposed Order for HarbourVest Rule 9019 motion (0.1); e-mails with Z. Annabel re: filing of Dondero and Clubok deposition notices (0.1); telephone conference with J. Pomerantz, R. Feinstein, I. Kharasch, G. Demo, H. Winograd re: litigation workstreams (0.7); e-mail to J. Pomerantz, R. Feinstein, I. Kharasch, G. Demo, H. Winograd re: litigation workstreams (0.7); review e-mails between J. Pomerantz, M. Lynn re: document requests and CLO issues (0.2); telephone conference with H. Winograd re: litigation workstream issues (0.1); e-mail to J. Seery re:	4.10	1075.00	$4,407.50

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			proposed amended Complaint against Dondero (0.1).			
12/24/2020	GVD	BL	Revise and circulate letters to K&L Gates re CLO issues	1.00	825.00	$825.00
12/24/2020	GVD	BL	Conference with J. Morris re litigation strategy	0.30	825.00	$247.50
12/24/2020	GVD	BL	Conference with PSZJ team re litigation strategy and next steps	0.70	825.00	$577.50
12/24/2020	HRW	BL	Draft and prepare Proposed Order and Declaration for HarbourVest 9019 Motion (3.5); PSZJ Scheduling Call (0.6); Call with J. Morris re: TRO against Advisors, Funds, CLO Holdco (0.1).	4.20	625.00	$2,625.00
12/25/2020	JAM	BL	Review documents and begin working on outline for Dondero deposition (3.4).	3.40	1075.00	$3,655.00
12/26/2020	IDK	BL	E-mails with J Morris re IFA counsel request to attend depo and status of IFA.	0.20	1145.00	$229.00
12/26/2020	JNP	BL	Conference with J. Dubel regarding UBS and related litigation matters (2x).	0.60	1075.00	$645.00
12/26/2020	JNP	BL	Conference with Gregory V. Demo and Robert J. Feinstein regarding Multi Strat state court litigation.	0.20	1075.00	$215.00
12/26/2020	JNP	BL	Conference with Gregory V. Demo regarding litigation matters.	0.20	1075.00	$215.00
12/26/2020	JNP	BL	Emails regarding request to participate in J. Dondero deposition.	0.10	1075.00	$107.50
12/26/2020	JAM	BL	Continued work on outline for Dondero deposition (2.2); e-mail to J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: Dondero deposition outline (0.1); review documents and draft statement of facts for TRO against K&L Gates? clients (1.1).	3.40	1075.00	$3,655.00
12/26/2020	GVD	BL	Conference with R. Feinstein and J. Pomerantz re UBS litigation	0.20	825.00	$165.00
12/26/2020	GVD	BL	Review issues re state court litigation for UBS claim	0.70	825.00	$577.50
12/26/2020	HRW	BL	Draft Complaint and Memo of Law in support of TRO against Advisors, Funds, CLO Holdco (1.8).	1.80	625.00	$1,125.00
12/27/2020	IDK	BL	Review of correspondence re draft of amended complaint vs Dondero for violation of TRO, as well as correspondence with Dondero counsel re discovery re TRO and Board.	0.30	1145.00	$343.50
12/27/2020	JNP	BL	Review email from B. Assink regarding Dondero discovery and forward to Board.	0.10	1075.00	$107.50
12/27/2020	JNP	BL	Review email from Gregory V. Demo regarding Multi Strat litigation and respond.	0.10	1075.00	$107.50

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12/27/2020	JAM	BL	Continued work on Seery Declaration in support of TRO (2.9); e-mail to G. Demo, H. Winograd re: draft Seery Declaration (0.1); e-mails to L. Canty, G. Demo, H. Winograd re: exhibits for Seery Declaration (0.2); e-mails with G. Demo re: various litigation issues (0.2); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft Seery Declaration (0.1); draft proposed temporary restraining order against the Advisors, Funds and CLO Holdco (0.4); e-mails with H. Winograd re: form of papers in support of TRO (0.1).	4.00	1075.00	$4,300.00
12/27/2020	GVD	BL	Review docket entries in UBS matter and respond to same	0.30	825.00	$247.50
12/27/2020	GVD	BL	Review and revise declaration in support of restraining order	1.10	825.00	$907.50
12/27/2020	GVD	BL	Review and revise complaint re demand notes	0.50	825.00	$412.50
12/27/2020	GVD	BL	Review outline re Dondero deposition	0.80	825.00	$660.00
12/27/2020	GVD	BL	Review amended complaint re TRO	0.50	825.00	$412.50
12/27/2020	HRW	BL	Draft Complaint and Memo of Law in support of TRO against Advisors, Funds, CLO Holdco (7.5).	7.50	625.00	$4,687.50
12/28/2020	IDK	BL	E-mails with CEO, attorneys re today's e-mail exchanges with Dondero counsel re its objection to Dondero deposition later this week, including review of same, and next steps re pulling e-mails with Dondero (.2); Brief review of various e-mails produced by Dondero (.3).	0.50	1145.00	$572.50
12/28/2020	IDK	BL	Numerous e-mails with attorneys re draft TRO, including brief review of same, re Dondero, as well as draft complaint vs NPA and HCMFA (.3); E-mails with attorneys re Dondero's just filed motion to quash discovery and potential responses, and potential draft response to same, including finalized version for filing today (.3); Review of Court's chambers message on Dondero motion to quash (.1); E-mails with attorneys re our draft of order re same, as well as Dondero counsel comments/disputes to same (.1).	0.80	1145.00	$916.00
12/28/2020	IDK	BL	Review of numerous e-mails with Board, others on MS and Reid Collins role and inquiries re same (.2); Review of correspondence from Reid Collins after call re same today and its reaction (.1); Telephone conference with J. Pomerantz re same (.1).	0.40	1145.00	$458.00
12/28/2020	IDK	BL	E-mails with Board, others re NPA/Holdco extensive response letter to Debtor on allegations of breach of TRO and potential response and hearing	0.20	1145.00	$229.00

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				Hours	Rate	Amount
			(.2).			
12/28/2020	IDK	BL	Telephone conference with R. Pachulski and J. Pomerantz on various litigation issues with UBS, Clubbock, Dondero.	0.40	1145.00	$458.00
12/28/2020	JNP	BL	Review emails regarding Dondero discovery.	0.10	1075.00	$107.50
12/28/2020	JNP	BL	Review Dondero motion for protective order.	0.10	1075.00	$107.50
12/28/2020	JNP	BL	Review proposed TRO regarding CLO investors and advisors.	0.10	1075.00	$107.50
12/28/2020	JNP	BL	Review J. Seery Declaration regarding TRO regarding CLO investors and advisors.	0.30	1075.00	$322.50
12/28/2020	JNP	BL	Conference with John A. Morris regarding Dondero discovery motion and related issues.	0.20	1075.00	$215.00
12/28/2020	JNP	BL	Conference with Robert J. Feinstein and John A. Morris regarding Dondero and UBS discovery.	0.30	1075.00	$322.50
12/28/2020	JNP	BL	Conference with J. Dubel regarding Dondero discovery dispute and UBS (Several).	0.80	1075.00	$860.00
12/28/2020	JNP	BL	Review opposition to discovery motion by Dondero.	0.10	1075.00	$107.50
12/28/2020	JNP	BL	Conference with John A. Morris regarding opposition to discovery motion by Dondero.	0.10	1075.00	$107.50
12/28/2020	JNP	BL	Review emails with Reid Collins regarding UBS and Multi Strat.	0.20	1075.00	$215.00
12/28/2020	JNP	BL	Conference with John A. Morris and Gregory V. Demo regarding UBS Multi Strat litigation.	0.20	1075.00	$215.00
12/28/2020	JNP	BL	Email regarding creditor participation in J. Dondero deposition.	0.10	1075.00	$107.50
12/28/2020	JNP	BL	Conference with Reid Collins, John A. Morris and Gregory V. Demo regarding UBS Multi Strat litigation.	0.30	1075.00	$322.50
12/28/2020	JNP	BL	Conference with J. Seery, Robert J. Feinstein, John A. Morris and Gregory V. Demo regarding UBS Multi Strat litigation.	0.70	1075.00	$752.50
12/28/2020	JNP	BL	Conference with Richard M. Pachulski and Ira D. Kharasch regarding UBS and Multi Strat.	0.40	1075.00	$430.00
12/28/2020	JNP	BL	Conference with Gregory V. Demo and John A. Morris regarding discovery from Dondero.	0.30	1075.00	$322.50
12/28/2020	JNP	BL	Conference with Gregory V. Demo regarding J. Seery compensation proposal.	0.10	1075.00	$107.50
12/28/2020	JNP	BL	Email to and from John A. Morris regarding Dondero edits to Order.	0.10	1075.00	$107.50

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				Hours	Rate	Amount
12/28/2020	JNP	BL	Review internal emails regarding Preliminary Injunction.	0.20	1075.00	$215.00
12/28/2020	RMP	BL	Conferences with J. Pomerantz and I. Kharasch re UBS and Dondero issues.	0.60	1445.00	$867.00
12/28/2020	JMF	BL	Review Harborvest 9019 pleadings.	0.40	925.00	$370.00
12/28/2020	JMF	BL	Review motion for protective order re discovery.	0.30	925.00	$277.50
12/28/2020	JAM	BL	E-mail to B. Assink, M. Lynn, J. Bonds, J. Pomerantz, I. Kharasch, G. Demo re: Dondero?s emergency motion for a protective order (0.4); review/revise Seery declaration in support of TRO (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised version of Seery Declaration in support of TRO (0.1); review/revise Complaint for declaratory and injunctive relief against Dondero-related entities (1.2); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised version of Complaint for declaratory and injunctive relief against Dondero-related entities (0.1); review/revise proposed Temporary Restraining Order against Dondero-related entities (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised version of Temporary Restraining Order against Dondero-related entities (0.1); e-mail to H. Winograd re: Complaint (0.1); e-mails to Z. Annable, G. Demo, H. Winograd, M. Hayward re: further filings (0.1); review Dondero emergency motion for a protective order (0.7); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: objection to Dondero emergency motion for protective order (0.7); draft objection to Dondero emergency motion for a protective order (2.2); telephone conference with G. Demo re: Dondero emails (0.1); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft objection to Dondero emergency motion for a protective order (0.1); revise draft objection to Dondero emergency motion for a protective order (0.1); telephone conference with J. Pomerantz, R. Feinstein re: Dondero motion for protective order and related matters (0.3); telephone conference with J. Pomerantz, G. Demo, W. Reid re: UBS litigation (0.3); telephone conference with J. Seery, J. Pomerantz, R. Feinstein, G. Demo re: UBS litigation and related matters (0.7); review communications from Court re: Dondero emergency motion for a protective order (0.1); telephone conference with J. Kathman re: Daugherty claim and litigation (0.1); draft Amended Notices of Deposition for Dondero	10.90	1075.00	$11,717.50

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				Hours	Rate	Amount
			and Clubok (0.2); draft proposed Order resolving Dondero motion for a protective order (0.7); e-mail to B. Assink, M. Lynn, J. Bond, J. Pomerantz, G. Demo re: proposed Order resolving Dondero motion for protective order (0.1); telephone conference with G. Demo re: document review (0.1); telephone conference with J. Pomerantz, G. Demo re: document review (0.3); review revised Complaint against Dondero-related entities (0.4).			
12/28/2020	GVD	BL	Review Dondero motions to quash discovery	0.20	825.00	$165.00
12/28/2020	GVD	BL	Conference with Reid Collins, J. Pomerantz, and J. Morris	0.30	825.00	$247.50
12/28/2020	GVD	BL	Conference re compiling discovery requests	0.30	825.00	$247.50
12/28/2020	GVD	BL	Conference with J. Seery re discovery issues	0.20	825.00	$165.00
12/28/2020	GVD	BL	Review multiple motions re potential Dondero litigation	1.30	825.00	$1,072.50
12/28/2020	GVD	BL	Review discovery materials and correspondence re same	1.50	825.00	$1,237.50
12/28/2020	GVD	BL	Conference with J. Dubel re correspondence with Reid Collins; revise and send same	0.70	825.00	$577.50
12/28/2020	GVD	BL	Conference with J. Pomerantz, J. Morris, R. Feinstein, and J. Seery re open litigation issues and next steps	0.70	825.00	$577.50
12/28/2020	HRW	BL	Draft and prepare Complaint, Memo of Law, and ancillary papers in support of TRO against Advisors, Funds, CLO Holdco (9.8).	9.80	625.00	$6,125.00
12/29/2020	JNP	BL	Review and respond to draft email to A. Clubock.	0.10	1075.00	$107.50
12/29/2020	JNP	BL	Conference with John A. Morris regarding discovery.	0.10	1075.00	$107.50
12/29/2020	JNP	BL	Conference with J. Dubel regarding status of various litigation matters (4x).	0.70	1075.00	$752.50
12/29/2020	JNP	BL	Conference with D. Draper, John A. Morris and Gregory V. Demo regarding claims.	0.30	1075.00	$322.50
12/29/2020	JNP	BL	Conference with Ira D. Kharasch, John A. Morris, H.. Winograd, Gregory V. Demo and Robert J. Feinstein regarding various pending litigation matters including UBS, CLOs and Dondero.	1.00	1075.00	$1,075.00
12/29/2020	JNP	BL	Review M. Sosland letter regarding discovery.	0.10	1075.00	$107.50
12/29/2020	JNP	BL	Conference with John A. Morris regarding M. Sosland letter.	0.10	1075.00	$107.50
12/29/2020	JNP	BL	Conference with Ira D. Kharasch regarding litigation	0.10	1075.00	$107.50

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				Hours	Rate	Amount
			issues.			
12/29/2020	JNP	BL	Meet and confer with M. Sosland, Latham, John A. Morris and Robert J. Feinstein regarding discovery.	0.80	1075.00	$860.00
12/29/2020	JNP	BL	Email to and from M. Lynn regarding discovery.	0.10	1075.00	$107.50
12/29/2020	JNP	BL	Conference with Robert J. Feinstein and John A. Morris after Latham Sosland meet and confer.	0.40	1075.00	$430.00
12/29/2020	JNP	BL	Review email regarding summary of Multi Strat issues.	0.20	1075.00	$215.00
12/29/2020	JNP	BL	Review email regarding response to Dondero letter regarding missing phone.	0.10	1075.00	$107.50
12/29/2020	JNP	BL	Review emails regarding AT&T wireless account.	0.10	1075.00	$107.50
12/29/2020	JMF	BL	Review motion and entered order re Dondero protective request.	0.20	925.00	$185.00
12/29/2020	JMF	BL	Review committee complaint (.3) and seal order re court registry.	0.30	925.00	$277.50
12/29/2020	JAM	BL	Review documents in connection with Dondero contempt motion (0.5); e-mail to the Board re: documents reviewed in connection with the Dondero contempt motion (0.8); draft e-mail to A. Clubok re: discovery (0.4); e-mails with J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo re: A. Clubok discovery (0.2); revisions to e-mail to A. Clubok (0.1); e-mails with A. Clubok re: discovery (0.2); revise proposed Order resolving Dondero emergency motion for protective Order (0.1); e-mails with B. Assink, Z. Annable re: revised Order resolving Dondero emergency motion for protective Order (0.1); telephone conference with J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: various litigation issues (1.0); telephone conference with G. Demo re: privilege issues (0.1); telephone conference with J. Pomerantz re: Clubok response on discovery issues (0.1); e-mails with J. Seery, J. Kathman re: extension of deadline to serve discovery in Daugherty case (0.2); e-mails with B. Assink, M. Lynn, J. Pomerantz, G. Demo re: status of Dondero motions for TRO modifications and future estate transactions (0.2); telephone conference with J. Pomerantz, R. Feinstein, M. Sosland, A. Clubok re: meet and confer on discovery directed to Clubok (0.8); telephone conference with J. Pomerantz, R. Feinstein re: meet and confer on discovery directed to Clubok (0.4); revise document request for Andrew Clubok (0.2); draft e-mail to J. Pomerantz, R. Feinstein, M. Sosland, A. Clubok re: meet and confer on discovery directed to Clubok	7.00	1075.00	$7,525.00

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				Hours	Rate	Amount
			(0.4); telephone conference with J. Pomerantz re: draft e-mail concerning meet and confer on Clubok discovery (0.1); revise draft e-mail to J. Pomerantz, R. Feinstein, M. Sosland, A. Clubok re: meet and confer on discovery directed to Clubok (0.2); e-mail to J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: Dondero cell phone (0.4); e-mail to M. Lynn, B. Assink, J. Pomerantz, R. Feinstein, I. Kharasch, G. Demo, re: Dondero?s cell phone (0.3); telephone conference with J. Seery re: Dondero/Clubok discovery issues (0.2).			
12/29/2020	EAW	BL	Review letter from A. Clubok re: claims against MultiStrat.	0.20	825.00	$165.00
12/29/2020	GVD	BL	Review correspondence re email discovery	0.20	825.00	$165.00
12/29/2020	GVD	BL	Conference with J. Morris re discovery issues	0.10	825.00	$82.50
12/29/2020	GVD	BL	Review draft correspondence re deposition and discovery notices	0.30	825.00	$247.50
12/29/2020	GVD	BL	Review presentation re historic trading	0.30	825.00	$247.50
12/29/2020	GVD	BL	Conference with Draper firm re Dugaboy claims	0.30	825.00	$247.50
12/29/2020	GVD	BL	Conference with PSZJ team re litigation issues (1.0); draft notes re same (0.2)	1.20	825.00	$990.00
12/29/2020	GVD	BL	Conference with J. Morris re privilege issues	0.20	825.00	$165.00
12/29/2020	GVD	BL	Multiple conferences with J. Seery re discovery issues	0.30	825.00	$247.50
12/29/2020	GVD	BL	Correspondence with K&L Gates re litigation issues	0.20	825.00	$165.00
12/29/2020	HRW	BL	Draft and edit TRO papers (1.5); Draft Document requests directed to Hunter Mountain (1.3); PSZJ call re: Discovery Issues (0.8); Review Clubok objections to document requests (0.2); Review Dondero objections to document production (0.2).	4.00	625.00	$2,500.00
12/30/2020	JNP	BL	Review proposed email to clerk regarding discovery.	0.10	1075.00	$107.50
12/30/2020	JNP	BL	Conference with Ira D. Kharasch and John A. Morris regarding Dondero phone and clerk email regarding discovery.	0.30	1075.00	$322.50
12/30/2020	JNP	BL	Conference with J. Dubel regarding call with KL Gates and UBS matters.	0.20	1075.00	$215.00
12/30/2020	JNP	BL	Conference with J. Kane, KL Gates, Gregory V. Demo and John A. Morris regarding CLO issues.	0.50	1075.00	$537.50
12/30/2020	JNP	BL	Conference with Gregory V. Demo and John A. Morris after call with KL Gates.	0.30	1075.00	$322.50
12/30/2020	JNP	BL	Conference with Ira D. Kharasch regarding call with	0.20	1075.00	$215.00

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				Hours	Rate	Amount
			KL Gates and UBS matters.			
12/30/2020	JNP	BL	Email to and from M. Lynn regarding request to allow Dondero one more day to clean out office.	0.10	1075.00	$107.50
12/30/2020	JNP	BL	Conference with John A. Morris regarding discovery.	0.20	1075.00	$215.00
12/30/2020	RMP	BL	Conferences with J. Pomerantz and I. Kharasch re various litigation and plan issues.	0.80	1445.00	$1,156.00
12/30/2020	JMF	BL	Review amended complaint re CLO Holdco entities.	0.30	925.00	$277.50
12/30/2020	JAM	BL	E-mail to J. Donohue, G. Demo re: AT&T contract (0.1); e-mails with R. Feinstein, H. Winograd re: AT&T and cell phone issues (0.1); draft e-mail to court re: Dondero document production and privilege issues (0.7); telephone conference with J. Pomerantz re: discovery issues (0.3); revise e-mail to court re: Dondero document production and privilege issues (0.1); telephone conference with J. Pomerantz, G. Demo, J. Kane, K&L Gates lawyers re: management and control of CLOs (0.5); telephone conference with J. Pomerantz, G. Demo re: follow-up to call with K&L Gates concerning management and control of CLOs (0.3); draft letter to M. Lynn re: Dondero?s cell phones (0.4); draft e-mail to M. Sosland re: Clubok discovery issues (0.3); communications with J. Pomerantz re: draft e-mail to M. Sosland re: Clubok discovery issues (0.1); revise e-mail to M. Sosland re: Clubok discovery issues (0.1).	3.00	1075.00	$3,225.00
12/30/2020	GVD	BL	Conference with counsel to employees re indemnification issues	0.30	825.00	$247.50
12/30/2020	GVD	BL	Compile and email transcripts to counsel to employees	0.30	825.00	$247.50
12/30/2020	GVD	BL	Review discovery issues	0.70	825.00	$577.50
12/30/2020	GVD	BL	Conference with counsel to NPA/HCMFA/DAF re CLO issues and follow up re same	0.80	825.00	$660.00
12/30/2020	GVD	BL	Conference with J. Seery re discovery issues	0.20	825.00	$165.00
12/30/2020	GVD	BL	Correspondence with M. Lynn re discovery issues	0.30	825.00	$247.50
12/30/2020	GVD	BL	Conference with J. Morris re discovery issues	0.20	825.00	$165.00
12/30/2020	HRW	BL	Draft document requests directed to Hunter Mountain and HCRE (3.9); Call AT&T to retrieve HCMLP phone records (0.3); Call with K&L Gates re: Discussion of open issues (0.5).	4.70	625.00	$2,937.50
12/31/2020	JNP	BL	Conference with Gregory V. Demo regarding discovery and related issues.	0.20	1075.00	$215.00

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				Hours	Rate	Amount
12/31/2020	JNP	BL	Conference with John A. Morris regarding discovery.	0.10	1075.00	$107.50
12/31/2020	JNP	BL	Review discovery provided by J. Dondero.	0.20	1075.00	$215.00
12/31/2020	JNP	BL	Conference with J. Dubel regarding UBS status and related matters.	0.70	1075.00	$752.50
12/31/2020	JNP	BL	Conference with Ira D. Kharasch regarding call with J. Dubel regarding UBS.	0.20	1075.00	$215.00
12/31/2020	JAM	BL	Review documents/e-mails in connection with Preliminary Injunction motion (0.9); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, L. Canty re: document review (0.3); communications with Court, B. Assink, M. Lynn, J. Pomerantz, G. Demo re: Dondero document production (0.1); review documents produced by Dondero (0.8); review/revise document requests for Hunter Mountain (0.4); e-mail to J. Pomerantz, I. Kharasch, G. Demo, J. Seery, H. Winograd re: document requests for Hunter Mountain (0.1) review/revise document requests for HCREP (0.3); e-mail to J. Pomerantz, I. Kharasch, G. Demo, J. Seery, H. Winograd re: document requests for HCREP (0.1); telephone conference with J. Seery re: litigation issues (0.2): telephone conference with J. Pomerantz re: Dondero discovery issues (0.1); e-mail to G. Demo, H. Winograd, L. Drawhorn re: document requests for HCREP (0.1); e-mail to G. Demo, H. Winograd, P. Keiffer re: document requests for Hunter Mountain (0.1).	3.50	1075.00	$3,762.50
12/31/2020	GVD	BL	Review discovery materials	4.30	825.00	$3,547.50
12/31/2020	GVD	BL	Review letters from K&L Gates re Dondero issues	0.30	825.00	$247.50
12/31/2020	HRW	BL	Review document requests directed to Hunter Mountain and HCRE (0.6).	0.60	625.00	$375.00
				562.10		**$526,686.00**

EXHIBIT 39

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

January 31, 2021
Invoice 127077
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700 Dallas,
TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 01/31/2021

FEES	$698,770.00
TOTAL CURRENT CHARGES	**$698,770.00**

Bankruptcy Litigation [L430]

12/10/2020	LSC	BL	Prepare for and attend hearing on emergency TRO hearing.	3.00	425.00	$1,275.00
12/14/2020	LSC	BL	Prepare for and assist at deposition of James Dondero (3.4); prepare exhibits and related documents for Norris deposition (3.7).	7.10	425.00	$3,017.50
12/15/2020	LSC	BL	Prepare for and assist at Norris deposition.	3.70	425.00	$1,572.50

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				Hours	Rate	Amount
12/23/2020	JNP	BL	Conference with J. Dubel regarding UBS and Multi Strat.	0.20	1075.00	$215.00
12/23/2020	JNP	BL	Conference with Gregory V. Demo and John A. Morris regarding CLO issues and Dondero issues.	0.50	1075.00	$537.50
12/23/2020	JNP	BL	Review and respond to M. Lynn email regarding discovery requests (2x).	0.20	1075.00	$215.00
12/23/2020	JNP	BL	Conference with J. Seery regarding litigation and discovery related issues.	0.20	1075.00	$215.00
12/24/2020	RJF	BL	Internal emails regarding pending litigation matters, including UBS discovery.	0.70	1245.00	$871.50
12/26/2020	RJF	BL	Telephone conference with Jeffrey N. Pomerantz, Gregory V.Demo, Multi-Strat litigation counsel.	0.30	1245.00	$373.50
12/28/2020	RJF	BL	Telephone conference with John A. Morris regarding discovery motion.	0.30	1245.00	$373.50
12/28/2020	RJF	BL	Review Dondero motion to quash, related emails.	0.30	1245.00	$373.50
12/28/2020	RJF	BL	Internal call regarding litigation issues.	0.70	1245.00	$871.50
12/29/2020	IDK	BL	Attend conference call with internal team on next steps re UBS and Dondero interference, upcoming depos with Clubok, issues on employees conspiring with Dondero (1.0).	1.00	1145.00	$1,145.00
12/29/2020	IDK	BL	Review of UBS extensive letter denying conspiracy allegations with Dondero, and correspondence with attorneys re same and related discovery, and draft response to same on discovery (.3).	0.30	1145.00	$343.50
12/29/2020	IDK	BL	E-mails with attorneys re draft memo to Board on E-mails found on system re Dondero, others on TRO issues (.1); E-mail to DSI re CLO similar trades made by Dondero (.1); E-mails with attorneys re next steps in UBS/Clubok discovery given non-production by same, including draft E-mail to Clubok, and later re Clubok response to same, and how to respond (.2).	0.40	1145.00	$458.00
12/29/2020	IDK	BL	E-mails with Board, others re summary of E-mails of Dondero, others on system demonstrating breach of TRO and evidence (.2); E-mails with attorneys re Dondero counsel letter re lost cell phone and next steps re same, including draft of letter re same (.2).	0.40	1145.00	$458.00
12/29/2020	IDK	BL	Telephone conference with J. Pomerantz re depos and Scott Ellington (.1).	0.10	1145.00	$114.50

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				Hours	Rate	Amount
12/29/2020	RJF	BL	Review emails regarding Multi-Strat and draft discovery request regarding same.	0.10	1245.00	$124.50
12/29/2020	RJF	BL	Attend Board Meeting.	1.30	1245.00	$1,618.50
12/29/2020	RJF	BL	Call with Jeffrey N. Pomerantz, John A. Morris, Ira Kharasch, Gregory V. Demo and Hayley R. Winograd regarding pending litigation matters.	1.00	1245.00	$1,245.00
12/29/2020	RJF	BL	Review internal claims memo, related research.	2.00	1245.00	$2,490.00
12/29/2020	RJF	BL	Review Latham letter regarding multi-strat and related docs.	0.40	1245.00	$498.00
12/29/2020	RJF	BL	Call with Sosland, Clubok, John A. Morris, and Jeffrey N. Pomerantz regarding Clubok discovery meet and confer (.7), follow up call with Jeffrey N. Pomerantz and John A. Morris regarding Clubok discovery (.3).	1.00	1245.00	$1,245.00
12/29/2020	RJF	BL	Review UBS correspondence.	0.50	1245.00	$622.50
12/30/2020	IDK	BL	Telephone conference with J. Pomerantz and J Morris re draft letter to clerk of court on dispute over attorney client privilege in discovery disputes with UBS/Dondero (.2); E-mails with J Morris, others re same, as well as my feedback for changes to same (.2).	0.40	1145.00	$458.00
12/30/2020	IDK	BL	Telephone conference with J. Pomerantz re result of call with NextPoint counsel and related litigation issues (.2).	0.20	1145.00	$229.00
12/30/2020	IDK	BL	E-mails with Board, others on proposed response to Dondero counsel's latest on lost cell phone, and revisions to same (.2); E-mail to J Morris re going for contempt of TRO based on various violations (.1).	0.30	1145.00	$343.50
12/30/2020	IDK	BL	Review of numerous correspondence with Board, others on drafts response to UBS counsel on discovery/depos.	0.20	1145.00	$229.00
12/30/2020	RJF	BL	Review debtor emails and related research regarding Multi-Strat.	1.00	1245.00	$1,245.00
12/30/2020	RJF	BL	Telephone conference with Rob Saunders regarding multi-strat research.	0.40	1245.00	$498.00
12/30/2020	RJF	BL	Internal emails regarding cell phones.	0.30	1245.00	$373.50
12/30/2020	RJF	BL	Review and comment on correspondence with UBS	0.70	1245.00	$871.50

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				Hours	Rate	Amount
			regarding discovery, related internal emails.			
12/30/2020	RJF	BL	Review and comment on response to Clubok motion for protective order.	0.30	1245.00	$373.50
12/31/2020	IDK	BL	Review of NPA counsel letter re eviction of Dondero from office and consequences (.1); E-mails with attorneys, Board re same (.1).	0.20	1145.00	$229.00
12/31/2020	IDK	BL	Review briefly correspondence from Dondero re document production, as well as summary of document review re same, and lost cell phone issues.	0.20	1145.00	$229.00
12/31/2020	RJF	BL	Attend Board of Directors meeting.	1.00	1245.00	$1,245.00
12/31/2020	RJF	BL	Review docs produced by Clubok and related internal emails.	1.00	1245.00	$1,245.00
01/01/2021	IDK	BL	E-mails with J Morris, and G Demo re discovery on E-mails with Ellington, Leventon re Dondero and conflicts, including getting Gov Re to authorized payments to employees for law firms.	0.20	1325.00	$265.00
01/01/2021	IDK	BL	Attend conference call with J. Pomerantz, others on UBS issues (.5).	0.50	1325.00	$662.50
01/01/2021	IDK	BL	Review of correspondence with CEO with J Morris on Harbourvest negotiations.	0.20	1325.00	$265.00
01/01/2021	JNP	BL	Conference with John A. Morris (several) regarding litigation issues.	0.50	1295.00	$647.50
01/01/2021	JNP	BL	Conference with Ira D. Kharasch, Robert J. Feinstein and John A. Morris regarding UBS issues.	0.50	1295.00	$647.50
01/01/2021	JNP	BL	Various calls with J. Dubel regarding UBS issues.	0.90	1295.00	$1,165.50
01/01/2021	RJF	BL	Internal call regarding UBS developments.	0.50	1395.00	$697.50
01/01/2021	JAM	BL	Review documents produced by Dondero (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: review of documents (0.2); e-mail to J. Pomerantz, I. Kharasch, G. Demo H. Winograd re: Dondero request for HarbourVest deposition (0.2); review documents produced by Clubok (1.1); telephone conference with J. Dubel re: UBS litigation issues (0.2); e-mail to J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: documents produced by Clubok (0.3); telephone conference with J. Dubel re: follow up on UBS litigation issues (0.2); e-mails to J. Dubel re: UBS litigation issues (0.1); telephone conference with G. Demo, E. Weisgerber, D. Stroik re: Dondero request	3.90	1245.00	$4,855.50

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				Hours	Rate	Amount
			for HarbourVest deposition (0.1); telephone conference with J. Pomerantz re: litigation issues (0.1); telephone conference with J. Dubel re: further discussion about UBS-related litigation issues (0.1); telephone conference with J. Pomerantz re: Dondero, UBS, and related litigation matters (0.2); telephone conference with J. Pomerantz, I. Kharasch, R Feinstein (partial participation) re: Dondero, UBS and related litigation matters (0.3).			
01/01/2021	GVD	BL	Conference with J. Morris re discovery issues	0.20	950.00	$190.00
01/01/2021	GVD	BL	Review discovery	1.80	950.00	$1,710.00
01/02/2021	IDK	BL	Attend conference call with J. Pomerantz, R Feinstein, G Demo re UBS and litigation issues (.6).	0.60	1325.00	$795.00
01/02/2021	IDK	BL	E-mails J Morris, others on Seery deposition and form of TRO, and list of issues for deposition (.2).	0.20	1325.00	$265.00
01/02/2021	IDK	BL	Telephone conferences with I Nasatir re Gov Re issues (.2); Review and consider I Nasatir memo on Gov Re policy issues on coverage and Ellington/Leventon use for wage issues (.2); E-mail to I Nasatir re follow up issues for same (.1).	0.50	1325.00	$662.50
01/02/2021	JNP	BL	Conference with J. Seery, John A. Morris, Gregory V. Demo and Robert J. Feinstein regarding UBS and other litigation issues.	1.50	1295.00	$1,942.50
01/02/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS issues.	0.10	1295.00	$129.50
01/02/2021	JNP	BL	Email to and from Robert J. Feinstein issues relating to UBS settlement.	0.10	1295.00	$129.50
01/02/2021	JNP	BL	Conference with J. Dubel regarding status of various litigation issues.	0.70	1295.00	$906.50
01/02/2021	JNP	BL	Conference with J. Seery regarding UBS and related issues.	0.40	1295.00	$518.00
01/02/2021	JNP	BL	Review Seery Declaration and order regarding CLO Advisors, Funds and emails regarding same.	0.30	1295.00	$388.50
01/02/2021	JNP	BL	Conference with John A. Morris, Gregory V. Demo, Richard J. Gruber and Ira D. Kharasch regarding UBS and litigation issues.	0.60	1295.00	$777.00
01/02/2021	JNP	BL	Review email from Gregory V. Demo regarding issues to address in UBS settlement.	0.10	1295.00	$129.50
01/02/2021	RJF	BL	Internal call regarding open UBS items (.6), analysis	3.90	1395.00	$5,440.50

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				Hours	Rate	Amount
			of claim vs. multi-strat (1.8), call with Seery regarding multi-strat claim (1.5).			
01/02/2021	JAM	BL	Review documents/prepare for Dondero deposition (2.1); review/revise Seery Declaration in support of TRO (0.7); review/revise proposed TRO (0.2); review/revise Emergency Motion for TRO (0.3); review/revise Notice of Hearing (0.2); review/revise Complaint (1.4); telephone conference with G. Demo re: litigation issues (0.2); e-mails to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: papers against Advisors, Funds, and CLO Holdco (0.2); telephone conference with J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo re: UBS and litigation issues (0.6); telephone conference with J. Seery, J. Pomerantz, R. Feinstein, G. Demo re: Multistrat litigation and potential UBS settlement analysis (1.5).	7.40	1245.00	$9,213.00
01/02/2021	GVD	BL	Draft response to third K&L Gates letter	0.90	950.00	$855.00
01/02/2021	GVD	BL	Multiple conferences with J. Seery re bankruptcy litigation and discovery issues	0.70	950.00	$665.00
01/02/2021	GVD	BL	Review discovery	0.90	950.00	$855.00
01/02/2021	GVD	BL	Conference with PSZJ team and J. Seery re potential litigation issues and next steps	1.50	950.00	$1,425.00
01/02/2021	GVD	BL	Internal PSZJ conference re open litigation items and next steps	0.60	950.00	$570.00
01/02/2021	GVD	BL	Review draft motion for TRO and related documents	1.00	950.00	$950.00
01/02/2021	GVD	BL	Draft list of open settlement items	0.50	950.00	$475.00
01/02/2021	HRW	BL	PSZJ internal call (0.6); Review TRO documents re: Advisors, Funds, CLO Holdco (1.5).	2.10	695.00	$1,459.50
01/03/2021	IDK	BL	E-mail to I Nasatir re his responses to questions re Gov Re policy issues (.2); E-mail to team re same (.1); E-mails with G Demo re his draft memo to CEO re Gov Re and renewal, other issues (.2); Numerous E-mails with CEO, J. Pomerantz re issues on Ellington/Leventon raid on Gov Re policy and implications re estate issues (.4).	0.90	1325.00	$1,192.50
01/03/2021	IDK	BL	E-mails with J Morris, J. Pomerantz, re revised complaint re CLOs, including numerous E-mails re legal issues on CLOs and changes to Seery declaration re same (.3).	0.30	1325.00	$397.50
01/03/2021	JNP	BL	Conference with John A. Morris regarding litigation	0.10	1295.00	$129.50

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				Hours	Rate	Amount
			issues.			
01/03/2021	JNP	BL	Conference with J. Dubel regarding pending litigation matters (several).	0.50	1295.00	$647.50
01/03/2021	JNP	BL	Review letter to KL Gates regarding J. Dondero.	0.10	1295.00	$129.50
01/03/2021	JNP	BL	Review email regarding returns of UBS settlement.	0.10	1295.00	$129.50
01/03/2021	JNP	BL	Participate on Board call regarding UBS, Dondero and related issues.	1.50	1295.00	$1,942.50
01/03/2021	RJF	BL	Email and telephone conference with Seery regarding f.c. claims.	0.20	1395.00	$279.00
01/03/2021	RJF	BL	Review research regarding NY debtor and creditor law.	0.40	1395.00	$558.00
01/03/2021	RJF	BL	Attend BOD meeting.	1.40	1395.00	$1,953.00
01/03/2021	RJF	BL	Review emails regarding settlement proposal.	0.40	1395.00	$558.00
01/03/2021	JAM	BL	Review/revise letter to K&L Gates re: Dondero (0.7); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised letter to K&L Gates (0.1); e-mails to L. Canty, G. Demo, H. Winograd re: exhibits to Seery Declaration (0.2); review/revise Seery declaration in support of TRO based on comments received (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised Seery declaration (0.1); review/revise Complaint against the Advisors, the Funds, and CLO Holdco (0.7); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised Complaint (0.1); e-mails with G. Demo (copies to J. Pomerantz, I. Kharasch, H. Winograd re: facts concerning ownership and control of Advisors and the Funds, and related matters (0.3); telephone conference with G. Demo re: e-mail concerning Gov Re (0.1); telephone conference with J. Pomerantz, G.Demo, T. Silva, E. Weisgerber, D. Stroik re: HCLOF (0.3); telephone conference with J. Pomerantz, G. Demo, R. Patel, B. Shaw re: Dondero request for deposition on HarbourVest settlement (0.5); telephone conference with Board, J. Pomerantz, I. Kharasch, G. Demo, R. Feinstein re: litigation issues, UBS settlement (1.4); telephone conference with J. Dubel re: litigation issues, UBS settlement (0.4); further discussion with J. Dubel re: UBS issues (0.2); telephone conference with J. Pomerantz re: UBS issues (0.1); e-mails J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: UBS issues (0.2).	6.20	1245.00	$7,719.00

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				Hours	Rate	Amount
01/03/2021	GVD	BL	Review J. Morris revisions to litigation materials	0.70	950.00	$665.00
01/03/2021	GVD	BL	Conference with J. Morris re litigation strategy	0.20	950.00	$190.00
01/03/2021	HRW	BL	Call re: HCLOF/HarbourVest (0.2).	0.20	695.00	$139.00
01/04/2021	IDK	BL	Numerous correspondence with DSI on Gov Re policy concerns on improper use of proceeds, need for further related docs re bylaws, certificate of incorporation.	0.30	1325.00	$397.50
01/04/2021	IDK	BL	Telephone conferences with J. Pomerantz re Gov Re D&O policy issues on improper taking of funds, and UBS settlement issues (.5); Telephone conference with G Demo re Gov Re documents on authority of Dondero, others to direct payment of proceeds (.2); Telephone conferences with J Morris re Gov Re issues for his upcoming depositions and related questions to ask re Gov Re (.3); E-mails with J. Pomerantz and G Demo re CEO issues on Gov Re and damage issue, and structure of Gov Re control issues (.3).	1.30	1325.00	$1,722.50
01/04/2021	IDK	BL	E-mails J Morris, others re his memo on confirmation discovery schedule (.1); E-mails with J Morris, client, Leventon re Leventon and Ellington request to attend Dondero deposition (.1).	0.20	1325.00	$265.00
01/04/2021	IDK	BL	Review of draft agenda for 1/6 hearing and correspondence re same (.1).	0.10	1325.00	$132.50
01/04/2021	JNP	BL	Conference with John A. Morris regarding discovery issues (multiple).	0.50	1295.00	$647.50
01/04/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS settlement.	0.10	1295.00	$129.50
01/04/2021	JNP	BL	Review John A. Morris proposed litigation time line.	0.10	1295.00	$129.50
01/04/2021	JNP	BL	Email regarding participation of senior employees in deposition.	0.10	1295.00	$129.50
01/04/2021	JNP	BL	Conference with J. Dubel regarding UBS settlement.	0.20	1295.00	$259.00
01/04/2021	JNP	BL	Conference with J. Dubel regarding UBS and related issues.	0.40	1295.00	$518.00
01/04/2021	KKY	BL	Draft 1/16/21 agenda	1.70	460.00	$782.00
01/04/2021	RJF	BL	Emails Jeffrey N. Pomerantz, Elissa A. Wagner regarding UBS settlement.	0.30	1395.00	$418.50
01/04/2021	JAM	BL	Draft Second Amended Notice of deposition for	10.20	1245.00	$12,699.00

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				Hours	Rate	Amount
			Clubok (0.2); telephone conference with G. Demo re: various litigation issues (0.4); telephone conference with L. Canty re: Dondero deposition, exhibits (0.2); telephone conference with J. Pomerantz re: various litigation issues (0.1); e-mails with Z. Annable, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Second Amended Notice of deposition for Clubok (0.1); telephone conference with J. Pomerantz re: various litigation issues (0.2); emails with Z. Annable, J. Pomerantz re: court availability (0.1); communications with J. Seery, I. Soto re: changes to Seery declaration and related documents for action against Advisors, Funds (0.2); prepare for Dondero deposition (7.4); communications with counsel re: Dondero deposition logistics (0.4); communications with M. Sosland re: Dondero and UBS depositions (0.2); telephone conference with I. Kharasch re: various litigation issues (0.2); telephone conference with J. Seery re: Dondero deposition, Ellington, Leventon (0.2); e-mails concerning Ellington, Leventon and the Dondero deposition (0.2); telephone conference with J. Seery re: Dondero deposition, Ellington, Leventon (0.1).			
01/04/2021	GVD	BL	Conference with J. Morris re bankruptcy litigation	0.10	950.00	$95.00
01/04/2021	GVD	BL	Finalize and send response letter to K&L Gates	0.20	950.00	$190.00
01/04/2021	GVD	BL	Conference with WilmerHale re employee issues	0.80	950.00	$760.00
01/04/2021	GVD	BL	Conference with WilmerHale, J. Seery, and J. Pomerantz re employee issues	0.50	950.00	$475.00
01/04/2021	GVD	BL	Review discovery	0.30	950.00	$285.00
01/04/2021	GVD	BL	Correspondence with H. Winograd re document review issues	0.10	950.00	$95.00
01/04/2021	GVD	BL	Review J. Seery revisions to TRO and correspondence re same	0.30	950.00	$285.00
01/04/2021	GVD	BL	Conference with H. Winograd re review of open discovery issues	0.30	950.00	$285.00
01/04/2021	GVD	BL	Conference with J. Pomerantz re open plan issues	0.10	950.00	$95.00
01/04/2021	HRW	BL	Document review in preparation for Dondero deposition (3.8); HCLOF/HCM Call (0.5).	4.30	695.00	$2,988.50
01/05/2021	IDK	BL	Attend and participate in most of Dondero deposition, including internal calls during breaks (3.5); Telephone conference with J. Pomerantz after	3.60	1325.00	$4,770.00

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				Hours	Rate	Amount
			deposition re same (.1).			
01/05/2021	IDK	BL	E-mails with CEO, J Morris re deposition issues and Senior Employee counsel demands on attendance.	0.10	1325.00	$132.50
01/05/2021	IDK	BL	E-mails with M. Lynn re issues (.2).	0.20	1325.00	$265.00
01/05/2021	IDK	BL	E-mails with local counsel, J O'Neill re agenda and potential cancellation of hearing tomorrow.	0.10	1325.00	$132.50
01/05/2021	JNP	BL	Participate in J. Dondero deposition.	4.50	1295.00	$5,827.50
01/05/2021	JNP	BL	Conference with Board after J. Dondero deposition.	0.70	1295.00	$906.50
01/05/2021	JNP	BL	Review and respond to Robert J. Feinstein email regarding UBS Settlement Agreement.	0.30	1295.00	$388.50
01/05/2021	JNP	BL	Conference with Richard M. Pachulski regarding J. Dondero deposition.	0.10	1295.00	$129.50
01/05/2021	JNP	BL	Conference with John A. Morris regarding litigation issues.	0.10	1295.00	$129.50
01/05/2021	JNP	BL	Review and respond to email regarding senior employee participation in Dondero deposition.	0.10	1295.00	$129.50
01/05/2021	JNP	BL	Conference with John A. Morris regarding trial subpoenas.	0.10	1295.00	$129.50
01/05/2021	JNP	BL	Review outline for J. Dondero deposition.	0.30	1295.00	$388.50
01/05/2021	JNP	BL	Email to Baker and McKenzie and local counsel regarding trial subpoenas.	0.10	1295.00	$129.50
01/05/2021	KKY	BL	Review and revise 1/6/21 agenda	0.20	460.00	$92.00
01/05/2021	JAM	BL	Review/revise deposition subpoenas for Ellington and Leventon and Notice of Service of Subpoena (0.3); e-mail to J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: revised deposition subpoenas for Ellington and Leventon and Notice of Service of Subpoena (0.1); prepare for Dondero deposition (1.5); e-mail to J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: Dondero deposition outline and exhibits (0.3); e-mail to L. Canty, G. Demo, H. Winograd re: Dondero exhibits (0.1); review scripts for termination of Ellington and Leventon (0.2); Dondero deposition (4.6); telephone conference with Board, J. Pomerantz, I. Kharasch, G Demo re: Dondero deposition and strategic issues (0.7); telephone conference with G. Demo, H. Winograd re: litigation issues (0.4); telephone conference with	9.70	1245.00	$12,076.50

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				Hours	Rate	Amount
			H. Winograd, A. Clubok re: UBS settlement and related matters (0.3); telephone conference with P. Montgomery re: Dondero deposition and related matters (0.1); telephone conference with J. Pomerantz re: Ellington and Leventon issues (0.1); telephone conference with Board, J. Pomerantz, I. Kharasch, G. Demo re: litigation issues, confirmation (1.0).			
01/05/2021	GVD	BL	Attend board conference re deposition of J. Dondero and next steps	0.80	950.00	$760.00
01/05/2021	GVD	BL	Attend to issues re serving of termination notices	0.20	950.00	$190.00
01/05/2021	GVD	BL	Conference with J. Morris and H. Winograd re litigation strategy	0.40	950.00	$380.00
01/05/2021	GVD	BL	Review outline re Dondero deposition and attend to issues re same	1.10	950.00	$1,045.00
01/05/2021	GVD	BL	Attend deposition of J. Dondero	4.50	950.00	$4,275.00
01/05/2021	HRW	BL	Draft trial subpoenas for Dondero preliminary injunction hearing (2.2); Dondero deposition (3.5); Document review in preparation for Dondero deposition (0.1); Document review to corroborate Ellington's address (0.5); Call with G. Demo and J. Morris re: Dondero deposition (0.1); Call with G. Demo re: Cameron Baynard and Sean Fox document review (0.1); Document review re: Cameron Baynard and Sean Fox (0.8); Edit Memo of Law in support of TRO against Advisors, Funds, CLO Holdco (0.5).	7.80	695.00	$5,421.00
01/06/2021	IDK	BL	Telephone conference with J. Pomerantz re Redeemer feedback on UBS settlement (.1); Attend initial conference call with attorneys on R Feinstein draft UBS settlement agreement (.5); Attend 2d conference call re same (.5).	1.10	1325.00	$1,457.50
01/06/2021	JNP	BL	Emails to and from M. Hartman regarding deposition transcript and trial subpoena.	0.20	1295.00	$259.00
01/06/2021	JNP	BL	Review emails regarding scheduling of TRO hearing.	0.10	1295.00	$129.50
01/06/2021	JNP	BL	Review and comment on UBS Settlement Agreement.	0.50	1295.00	$647.50
01/06/2021	JNP	BL	Conference with J. Dubel regarding pending litigation issues.	0.20	1295.00	$259.00
01/06/2021	JNP	BL	Conference with Ira D. Kharasch, Robert J.	1.00	1295.00	$1,295.00

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				Hours	Rate	Amount
			Feinstein and Gregory V. Demo regarding UBS settlement (2x).			
01/06/2021	JNP	BL	Review email from M. Hankin and call regarding same regarding UBS settlement.	0.10	1295.00	$129.50
01/06/2021	JNP	BL	Conference with John A. Morris (several) regarding response to requests for transcript by employees and related issues.	0.30	1295.00	$388.50
01/06/2021	JAM	BL	Review/revise Dondero subpoena and Notice of Service (0.2); e-mail to Bond Ellis, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Dondero subpoena (0.1); revise/revise Amended Complaint against Dondero (0.1); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, Z. Annable, M. Hayward re: Amended Complaint against Dondero (0.1); review/revise Ellington and Leventon subpoena and Notice of Service (0.2); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, Z. Annable, M. Hayward re: Amended Complaint against Dondero (0.2); further revisions to Ellington and Leventon subpoena (0.1); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, Z. Annable, M. Hayward re: revised subpoena for Ellington and Leventon (0.1); review/revise draft Witness and Exhibit list for January 8 hearing (0.3); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, Z. Annable, M. Hayward re: draft Witness and Exhibit list for January 8 hearing (0.2); telephone conference with J. Dubel re: various litigation matters (0.4); telephone conference with G. Demo, E. Weisgerber re: HarbourVest matters (0.4); review/revise Memorandum of Law in Support of TRO against K&L Gates clients (1.8); prepare for hearing (including analysis of Dondero deposition transcript and preparation of cross-examination) (8.6); telephone conference with J. Pomerantz re: witness and exhibit list (0.1); review/revise witness and exhibit list (0.2); e-mails with Z. Annable, J. Pomerantz, G. Demo, H. Winograd, L. Canty re: witness and exhibit list (0.2); telephone conference with J. Seery re: litigation and employee matters (0.1); telephone conference with P. Montgomery, C. Rognes re: discovery (0.4); communications with J. Seery re: Complaint and TRO against K&L Gates clients (0.2); communications with Z. Annable, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: filing of Complaint and TRO papers against K&L Gates clients (0.3); e-mails with Z. Annable, J.	14.50	1245.00	$18,052.50

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				Hours	Rate	Amount
			Pomerantz, G. Demo, H. Winograd re: attempted service of subpoenas on Ellington and Leventon (0.2).			
01/06/2021	GVD	BL	Attend to issues re subpoena	0.10	950.00	$95.00
01/06/2021	GVD	BL	Review supplemental Dondero discovery production	0.20	950.00	$190.00
01/06/2021	GVD	BL	Conference with PSZJ and Winstead re plan issues	0.50	950.00	$475.00
01/06/2021	HRW	BL	Draft Dondero memorandum of law in support of Dondero motion for order to show cause (7.5); Prepare and review documents in support of TRO against Advisors, Funds, CLO Holdco (1.2).	8.70	695.00	$6,046.50
01/07/2021	IDK	BL	Review briefly numerous correspondence with Dondero counsel, court clerk, others on need for expedited hearing for contempt vs Dondero, and drafts of pleadings on same (.3); Review of correspondence on demand letters to Dondero and related entities (.1).	0.40	1325.00	$530.00
01/07/2021	JNP	BL	Review Dondero opposition to preliminary injunction.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Conference with John A. Morris regarding hearing and Plan confirmation.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Conference with John A. Morris regarding call with Latham.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Email to KCC regarding ballots.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Conference with Latham regarding UBS settlement.	0.20	1295.00	$259.00
01/07/2021	JNP	BL	Conference with Robert J. Feinstein regarding call with Latham.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Review and comment on motion to hold J. Dondero in contempt for violating TRO.	0.30	1295.00	$388.50
01/07/2021	JNP	BL	Email to A. Clubok and J. Bjork regarding settlement.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Prepare notes for hearing to raise scheduling issues.	0.30	1295.00	$388.50
01/07/2021	JNP	BL	Conference with John A. Morris regarding contempt motion.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Review proposed response to KL Gates regarding offer to assume and assign agreements.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS settlement status.	0.10	1295.00	$129.50

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				Hours	Rate	Amount
01/07/2021	JNP	BL	Emails to team regarding UBS.	0.10	1295.00	$129.50
01/07/2021	JNP	BL	Review and revise letter to KL Gates regarding CLO proposal.	0.20	1295.00	$259.00
01/07/2021	JNP	BL	Email to Board regarding call to discuss UBS settlement agreement.	0.10	1295.00	$129.50
01/07/2021	KKY	BL	Draft (.1) certification of no objection re removal extension motion; and prepare (.1) order re same	0.20	460.00	$92.00
01/07/2021	JAM	BL	Work on documents (including JAM Declaration, Memorandum of Law, Motion, Emergency Motion, and proposed form of Order) relating to motion to hold Dondero in contempt (8.6); draft amended witness and exhibit list (0.2); e-mails with M. Lynn, B. Assink, J. Pomerantz, G. Demo re: HarbourVest and confirmation depositions (0.3); e-mails with Z. Annable, G. Demo, H. Winograd, L. Canty re: exhibits (0.3); telephone conference with H. Winograd re: Dondero motion papers (0.1); telephone conference with Z. Annable re: motion papers (0.2); telephone conference with J. Pomerantz, G. Demo, KCC re: Dondero subpoenas for ballots (0.2); telephone conference with J. Pomerantz re: Dondero contempt motion (0.1); telephone conference with J. Seery re: Dondero contempt motion (0.2); e-mails with M. Lynn, J. Bonds, B. Assink, J. Pomerantz, G. Demo re: "meet and confer" on emergency motion for contempt (0.2); communications with Z. Annable, H. Winograd re: Dondero contempt motion papers and "meet and confer" with Dondero's attorneys (0.5); e-mails with Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re; Dondero contempt motion (0.3); e-mails with J. Seery, J. Dubel, J. Pomerantz, G. Demo, H. Winograd re: UBS and Clubok issues (0.4); telephone conference with J. Dubel re: UBS and Clubok issues (0.2); e-mail to M. Clemente, P. Montgomery, J. Pomerantz, G. Demo re: complaint against defaulting demand note parties (0.2); e-mail to M. Lynn, B. Assink, J. Pomerantz, G. Demo, KCC re: subpoenas (0.1).	12.10	1245.00	$15,064.50
01/07/2021	GVD	BL	Review discovery issues	0.20	950.00	$190.00
01/07/2021	GVD	BL	Draft fourth K&L Gates response letter	0.90	950.00	$855.00
01/07/2021	GVD	BL	Conference with KCC re subpoena issues	0.20	950.00	$190.00
01/07/2021	GVD	BL	Review Dondero response to preliminary injunction	0.20	950.00	$190.00

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				Hours	Rate	Amount
01/07/2021	GVD	BL	Conference with I. Kharasch re fourth K&L Gates letter	0.20	950.00	$190.00
01/07/2021	HRW	BL	Draft Dondero motion for order to show cause and ancillary documents (3.8); Call with J. Morris re: contempt motion (0.1); Review Dondero deposition transcript and cross in preparation for January 8, 2021 hearing (2.5).	6.40	695.00	$4,448.00
01/08/2021	IDK	BL	E-mails with J Morris, others on UBS statement to read at hearing (.1); Attend substantial part of hearing on Dondero contempt of TRO/preliminary injunction (5.3).	5.40	1325.00	$7,155.00
01/08/2021	IDK	BL	Attend conference call with Board, J Pomerantz, J Morris and G Demo re result of hearing and next steps (.6).	0.60	1325.00	$795.00
01/08/2021	JNP	BL	Conference with J. Dubel and John A. Morris in preparation for hearing.	0.10	1295.00	$129.50
01/08/2021	JNP	BL	Participate in Dondero preliminary injunction hearing.	7.00	1295.00	$9,065.00
01/08/2021	JNP	BL	Conference with John A. Morris in preparation for hearing.	0.20	1295.00	$259.00
01/08/2021	JNP	BL	Conference with Board, Ira D. Kharasch, John A. Morris, and Gregory V. Demo after hearing regarding next steps.	0.60	1295.00	$777.00
01/08/2021	JMF	BL	Review motion for contempt and response	0.70	1050.00	$735.00
01/08/2021	JAM	BL	Prepare for hearing on motion for preliminary injunction against Dondero (3.7); e-mails with G. Demo, L. Canty re: trial exhibits (0.2); draft e-mail to A. Clubok re: statement concerning UBS (0.2); telephone conference with J. Dubel, J. Pomerantz re: statement concerning UBS (0.1); telephone conference with J. Pomerantz re: statement concerning UBS (0.1); telephone conference with J. Dubel re: statement concerning UBS (0.1); hearing on Debtor's motion for preliminary injunction against Dondero (6.7); telephone conference with Board, J. Pomerantz re: hearing on Debtor's motion for preliminary injunction (0.2).	11.30	1245.00	$14,068.50
01/08/2021	GVD	BL	Prepare for hearing on Dondero injunction	1.10	950.00	$1,045.00
01/08/2021	GVD	BL	Attend multiple board calls re status of action against J. Dondero	0.80	950.00	$760.00

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01/08/2021	HRW	BL	Draft proposed PI hearing (2.3); Preliminary Injunction Hearing (6.0).	8.30	695.00	$5,768.50
01/09/2021	IDK	BL	E-mails with J Morris re pending discovery and related staffing on same (.2).	0.20	1325.00	$265.00
01/09/2021	JNP	BL	Review J. Bonds email regarding response to proposed order and email to John A. Morris regarding same.	0.10	1295.00	$129.50
01/09/2021	JNP	BL	Conference with J. Seery regarding retention of Multi Strat litigation counsel.	0.10	1295.00	$129.50
01/09/2021	JAM	BL	Review/revise draft order on Preliminary Injunction against Dondero (0.3); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft order on Preliminary Injunction against Dondero (0.1); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft order on Preliminary Injunction against Dondero (0.1); review/respond to litigation-related e-mails from Friday (0.6); telephone conference with G. Demo re: 1/8 hearing and related matters (0.2); telephone conference with G. Demo, H. Winograd, E. Weisgerber, D. Stroik re: hearing on HarbourVest Rule 9019 motion (0.6); telephone conference with J. Seery re: draft order on Preliminary Injunction against Dondero and related matters (0.3); further revisions to draft order on Preliminary Injunction (0.1); e-mail to M. Lynn, J. Bonds, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft order on Preliminary Injunction (0.1); e-mail to F. Smith, D. Dandeneau, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft order on Preliminary Injunction (0.1); communications with L. Canty, H. Winograd re: Witness and Exhibit list for CLO/TRO hearing (0.2); review/revise Witness and Exhibit list for CLO/TRO hearing (0.2).	2.90	1245.00	$3,610.50
01/09/2021	GVD	BL	Conference with J. Morris re litigation strategy	0.20	950.00	$190.00
01/09/2021	HRW	BL	Call with Debevoise re: HarbourVest-Highland 9019 hearing (0.5); Review proposed PI Order (0.3); Draft summary of claims against Advisors, Funds, CLO Holdco for confirmation brief (0.6); Gather and review exhibits for TRO hearing on 1.13.2021 (0.7).	2.10	695.00	$1,459.50
01/10/2021	IDK	BL	Conference call with J. Pomerantz and G Demo re Harbourvest and CLO litigation (.8); E-mails with G Demo re his summary and analysis of same objections, as well as J. Pomerantz feedback (.2);	1.10	1325.00	$1,457.50

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				Hours	Rate	Amount
			Review of correspondence with G Demo, Wilmer Hale on transferability issues of interests from Harbourvest (.1).			
01/10/2021	IDK	BL	Review briefly E-mails with attorneys re discovery and cell phone issues.	0.10	1325.00	$132.50
01/10/2021	IDK	BL	E-mails with K Brown re overseeing demand note complaints and related litigation (.2).	0.20	1325.00	$265.00
01/10/2021	JNP	BL	Conference with John A. Morris Harbourvest and CLO litigation.	0.30	1295.00	$388.50
01/10/2021	JNP	BL	Conference with John A. Morris, Gregory V. Demo and Ira D. Kharasch regarding Harbourvest and CLO litigation.	0.80	1295.00	$1,036.00
01/10/2021	BEL	BL	Review discovery request and telephone conference with John A. Morris regarding discovery.	0.30	950.00	$285.00
01/10/2021	JAM	BL	E-mail to B. Levine re: responding to confirmation and other discovery requests (0.1); telephone conference with B. Levine re: responding to confirmation and other discovery requests (0.2); e-mails with P. Montgomery, C. Rognes re: document preservation letters (0.1); review documents and e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: Ellington's cell phone (0.2); e-mail to J. Bonds, M. Lynn, J. Pomerantz, G. Demo, H. Winograd re: Dondero as a witness at the CLO/TRO hearing (0.1); prepare for HarbourVest Rule 9019 hearing (0.7); e-mails w/ D. Rukavina, L. Hodgwood, J. Pomerantz, G. Demo, H. Winograd re: K&L Gates Clients' exhibit and witness list for CLO/TRO hearing (0.2); telephone conference with G. Demo re: (0.1); telephone conference with J. Pomerantz re: objections to HarbourVest settlement (0.3); telephone conference with B. Levine re: document production (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: HarbourVest Rule 9019 motion and CLO/TRO hearing and related issues (0.8); e-mails with E. Weisgerber, J. Pomerantz, G. Demo re: HarbourVest issues for hearing (0.1); e-mails with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Grant Scott as witness for CLO/TRO hearing (0.1); e-mail to J. Kane, J. Pomerantz, G. Demo re: Grant Scott as CLO Holdco witness (0.1).	3.30	1245.00	$4,108.50
01/10/2021	GVD	BL	Conference with PSZJ team re open litigation items	0.80	950.00	$760.00
01/10/2021	HRW	BL	Draft amended notice of confirmation hearing (1.2);	2.30	695.00	$1,598.50

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				Hours	Rate	Amount
			Review Dondero objection to 9019 motion (0.5); Review CLO Holdco objection to 9019 motion (0.5); Gather exhibits for response to Dondero 9019 objection (0.1).			
01/11/2021	IDK	BL	Telephone conference and e-mails with K Brown re prosecuting demand notes vs Dondero (.2).	0.20	1325.00	$265.00
01/11/2021	IDK	BL	E-mails with B Levine re demand notes and need to commence actions and prior draft of complaint (.2); E-mails with local counsel re same re writs of attachment for same (.3).	0.50	1325.00	$662.50
01/11/2021	IDK	BL	Brief review of correspondence with Dondero counsel, others on resolution of timing/expiration of TRO, as well as with counsels to Ellington/Leventon re issues on missing phones re discovery.	0.20	1325.00	$265.00
01/11/2021	IDK	BL	E-mails with J. Pomerantz re Gov Re and need for demand letter re same (.1).	0.10	1325.00	$132.50
01/11/2021	JNP	BL	Review emails regarding request for Ellington phone and response and related emails.	0.10	1295.00	$129.50
01/11/2021	JNP	BL	Review of Order regarding CLO TR litigation.	0.10	1295.00	$129.50
01/11/2021	JNP	BL	Conference with KL Gates, Munsch and J. Kane regarding TRO and related issues.	0.30	1295.00	$388.50
01/11/2021	JNP	BL	Conference with John A. Morris and Gregory V. Demo after call with KL Gates.	0.10	1295.00	$129.50
01/11/2021	JNP	BL	Conference with John A. Morris regarding Harbourvest deposition.	0.10	1295.00	$129.50
01/11/2021	JNP	BL	Review emails regarding TRO Order for CLO litigation.	0.10	1295.00	$129.50
01/11/2021	JNP	BL	Review modifications to agreed TRO; Conference with John A. Morris regarding same.	0.20	1295.00	$259.00
01/11/2021	JNP	BL	Review Dondero Answer to Complaint.	0.10	1295.00	$129.50
01/11/2021	KHB	BL	Telephone call with Ira Karasch re litigation matter (.2); emails with Ira Karasch re same (.1).	0.30	1225.00	$367.50
01/11/2021	JAM	BL	Prepare for CLO/TRO hearing (2.2); e-mail to G. Demo, H. Winograd, L. Canty re: exhibit and witness list for HarbourVest Rule 9019 motion (0.2); telephone conference with G. Demo re: HarbourVest issues (0.2); telephone conference with E. Weisgerber, D. Stroik, G. Demo re: HarbourVest deposition (0.2); prepare for HarbourVest hearing	10.20	1245.00	$12,699.00

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				Hours	Rate	Amount
			(1.5); telephone conference with J. Pomerantz, G. Demo, counsel to K&L Gates Parties re: CLO/TRO hearing (0.3); telephone conference with J. Pomerantz re: hearings this week (0.1); telephone conference with J. Seery re: Daugherty, HarbourVest, CLO/TRO hearings (0.1); e-mails with Court re: order granting Debtor's motion for Preliminary Injunction against Dondero (0.2); HarbourVest deposition (3.7); telephone conference with G. Demo re: HarbourVest deposition (0.3); e-mails to G. Demo, H. Winograd, counsel to parties to HCLOF re: sealing of documents (0.2); telephone conference with J. Pomerantz re: call with Lynn and Bonds (0.1); e-mails with J. Pomerantz, G. Demo, Z. Annable re: K&L Gates Clients' proposed revisions to proposed order resolving TRO hearing (0.3); e-mails with Z. Annable, others re: Debtor's exhibit and witness list for hearing on HarbourVest Rule 9019 motion (0.3); e-mail to F. Smith, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, D. Dandeneau re: Ellington phone (0.3).			
01/11/2021	GVD	BL	Conference with counsel to NPA/HCMFA re resolution of temporary restraining order	0.30	950.00	$285.00
01/11/2021	GVD	BL	Conference with J. Pomerantz and J. Morris re issues re TRO on NPA/HCMFA	0.20	950.00	$190.00
01/11/2021	HRW	BL	Call with K&L Gates re: TRO and 30(b)(6) witness (0.2); Review and prepare amended notice of confirmation hearing (0.2); Review reply in support of HarbourVest 9019 motion (0.5); Review proposed TRO re: related entities (0.2); Review PI order against Dondero (0.1); Gather and review exhibits for HarbourVest 9019 W&E list (0.2); Review Dondero's answer to Complaint for Injunctive relief (0.5); M. Pugatch Deposition (3.2); Communicate with Debevoise re: 9019 W&E list filing (0.1).	5.20	695.00	$3,614.00
01/12/2021	JNP	BL	Emails with John A. Morris regarding deposition transcript.	0.10	1295.00	$129.50
01/12/2021	JNP	BL	Emails with John A. Morris regarding scheduling contempt motion.	0.10	1295.00	$129.50
01/12/2021	JNP	BL	Conference with J. Seery regarding document production.	0.10	1295.00	$129.50
01/12/2021	JNP	BL	Conference with M. Clemente regarding letter regarding examiner.	0.10	1295.00	$129.50
01/12/2021	JNP	BL	Review of letter regarding examiner; conference	0.20	1295.00	$259.00

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			with John A. Morris and then Ira D. Kharasch regarding same.			
01/12/2021	JNP	BL	Conference with John A. Morris regarding CLO litigation (several).	0.50	1295.00	$647.50
01/12/2021	JNP	BL	Emails regarding employee indemnity letter.	0.10	1295.00	$129.50
01/12/2021	JNP	BL	Draft proposed response to D. Draper letter regarding examiner.	0.30	1295.00	$388.50
01/12/2021	JNP	BL	Conference with Ira D. Kharasch regarding Gov Re and review draft letter.	0.20	1295.00	$259.00
01/12/2021	KHB	BL	Emails with I. Kharasch and Hayley R. Winograd re complaints on promissory notes and writs of attachment.	0.20	1225.00	$245.00
01/12/2021	MDJ	BL	Email exchanges re hearing binder preparation; Organize and arrange for delivery to I. Kharasch and J. Pomerantz.	0.70	395.00	$276.50
01/12/2021	BEL	BL	Emails regarding draft complaint.	0.20	950.00	$190.00
01/12/2021	JAM	BL	Prepare for hearing on HarbourVest Rule 9019 motion (4.4); telephone conference with J. Dubel re: status of various litigation matters (0.3); telephone conference with G. Demo re: matters concerning HarbourVest Rule 9019 motion (0.2); review/revise draft omnibus reply to objections to HarbourVest Rule 9019 motion (2.8); telephone conference with S. Vitiello re: document production (0.1); communications with S. Vitiello, B. Levine re: document production (0.1); telephone conference with T. Frohne re: document production and Robert Half role (0.1); telephone conference with S. Seery re: M. Schroth and Dugaboy financial statements (0.1); e-mails with J. Kane, D. Rukavina, L. Hodgwood, J. Pomerantz, G. Demo, H. Winograd re: consensual TRO against G&L Gates parties (0.4); revisions to consensual TRO against G&L Gates parties (0.3); e-mails with Z. Annable, J. Pomerantz, I. Kharasch, G. Demo re: consensual TRO against G&L Gates parties and communications with the court (0.2); telephone conference with I. Kharasch re: complaints to collect on notes (0.1); telephone conference with J. Seery re: various litigation matters (0.3); telephone conference with J. Pomerantz re: M. Schroth and Dugaboy document production (0.1); telephone conference with E. Weisgerber re: HarbourVest hearing (0.2).	9.70	1245.00	$12,076.50

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				Hours	Rate	Amount
01/12/2021	GVD	BL	Correspondence with PSZJ litigation team re demand letters	0.20	950.00	$190.00
01/12/2021	GVD	BL	Conference with PSZJ team re NPA/HCMFA TRO	0.40	950.00	$380.00
01/12/2021	HRW	BL	Highland WIP call (0.4); Review proposed TRO re: related entities (0.2) Edit and review reply in support of HarbourVest 9019 (3.2); Review Dondero demand note complaint (0.2); Research writ of attachment procedure (1.5); Draft Motion/MOL for writ of attachment (2.5); Review demand letters (0.3); Review Dondero notice of appeal (0.1); Review draft of Seery direct (0.2).	8.60	695.00	$5,977.00
01/13/2021	JNP	BL	Emails regarding stipulated facts for Harbourvest hearing.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Draft insert into opposition to examiner motion.	0.20	1295.00	$259.00
01/13/2021	JNP	BL	Conference with J. Seery regarding letter to Draper regarding examiner.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Conference with J. Dubel regarding letter to Draper regarding examiner.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Review and revise letter to Draper regarding examiner.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Email to Board regarding status of UBS Settlement Agreement.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Review Dondero motion for leave to appeal preliminary injunction.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Conference with Robert J. Feinstein regarding opposition to emergency motion for examiner.	0.20	1295.00	$259.00
01/13/2021	JNP	BL	Conference with M. Clemente regarding letter to Draper regarding examiner.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Email response to reporter regarding CLO litigation.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Conference with Ira D. Kharasch regarding Gov Re issues.	0.30	1295.00	$388.50
01/13/2021	JNP	BL	Conference with John A. Morris regarding document preservation.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Review Committee response to request to support an examiner.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Conference with Ira D. Kharasch regarding letter to attorneys regarding Gov Re.	0.10	1295.00	$129.50

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				Hours	Rate	Amount
01/13/2021	JNP	BL	Further review of examination for Harbourvest hearing.	0.10	1295.00	$129.50
01/13/2021	JNP	BL	Conference with Ira D. Kharasch regarding anticipated examiner motion.	0.20	1295.00	$259.00
01/13/2021	JNP	BL	Conference with John A. Morris regarding Harbourvest hearing.	0.20	1295.00	$259.00
01/13/2021	KHB	BL	Emails to client re plan supplement (.2); conference call with client and R. Pachulski re next steps and litigation strategy (1.1); confer with Cia Mackel re fraud analysis (.2); emails to Cia Mackel re same (.1).	1.60	1225.00	$1,960.00
01/13/2021	KHB	BL	Review complaint and demand letters re promissory notes (.4); consider jurisdictional and Stern issues and emails to Hayley Winpograd (HG) and Greg Demo (GD) re same (.4); review authorities re jurisdictional and Stern issues (.5); conference call with HG and GD re complaints on promissory notes and applications for writs of attachment (.6); emails with Beth Levine re core vs. non-core issues (.2); review Texas authority re writs of attachment and preliminary injunctions and consider required evidence and timing issues (2.3); consider nature of additional claims necessary to obtain injunction from bankruptcy court and analyze authority re same (1.3); emails with HG re same (.2); emails with L. Forrester re obtaining pleadings from Texas bankruptcy court on writs of attachment and preliminary injunctions (.2).	6.10	1225.00	$7,472.50
01/13/2021	KKY	BL	Draft (.1) and prepare for filing (.1) certificate of service for [signed] removal extension order	0.20	460.00	$92.00
01/13/2021	KKY	BL	Serve [signed] removal extension order	0.10	460.00	$46.00
01/13/2021	RJF	BL	Review emails regarding examiner motion.	0.30	1395.00	$418.50
01/13/2021	RJF	BL	Telephone conference with Cia H. Mackle regarding examiner research.	0.30	1395.00	$418.50
01/13/2021	RJF	BL	Telephone conference with Jeffrey N. Pomerantz regarding examiner motion.	0.30	1395.00	$418.50
01/13/2021	RJF	BL	Begin drafting opposition to expected motion to shorten time.	0.90	1395.00	$1,255.50
01/13/2021	BEL	BL	Emails regarding draft Dondero complaint.	0.20	950.00	$190.00
01/13/2021	BEL	BL	Review Nexpoint claim and response to claim	0.60	950.00	$570.00

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				Hours	Rate	Amount
			objection.			
01/13/2021	BEL	BL	Review Nexpoint discovery requests and Telephone conference with Stephanie Vitello and John A. Morris regarding discovery request.	0.80	950.00	$760.00
01/13/2021	BEL	BL	Review memo regarding jurisdiction issues and draft email regarding same.	0.30	950.00	$285.00
01/13/2021	JMF	BL	Review reply to HarvourVest objection to 9019 motion.	0.40	1050.00	$420.00
01/13/2021	JAM	BL	Communications with J. Seery re: M. Schroth (0.3); review/revise Omnibus Reply on HarbourVest Rule 9019 motion (1.3); telephone conference with J. Pomerantz re: litigation matters (0.2); telephone conference with B. Levine, S. Vitiello re: document production issues (0.3); telephone conference with J. Pomerantz, G. Demo, H. Winograd, E. Weisgerber re: hearing on HarbourVest Rule 9019 hearing (0.3); prepare for hearing on HarbourVest Rule 9019 motion (4.3); e-mails with Z. Annable, G. Demo re: exhibits and sealing issues (0.4); telephone conference with B. Sharp re: document retention/preservation issues (0.2); telephone conference with J. Seery re: litigation matters (0.1); telephone conference with B. Sharp, J. Romey, Sidley, FTI re: document retention/preservation issues (0.6); follow up call with B. Sharp on document retention/preservation issues (0.2); e-mails with J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Seery direct examination (0.1); telephone conference with J. Pomerantz re: document retention/preservation issues (0.1); e-mails with J. Pomerantz, Z. Annable, court re: hearing on Debtor's contempt motion against Dondero (0.2); review correspondence concerning Dugaboy's request for the appointment of an examiner (0.2); telephone conference with J. Seery to prepare for direct testimony on HarbourVest Rule 9019 motion (1.1); e-mails with Trial Graphics, G. Demo, J. Seery re: revised demonstrative exhibits (0.2).	10.10	1245.00	$12,574.50
01/13/2021	GVD	BL	Review draft letter re insurance reclamation issues	0.30	950.00	$285.00
01/13/2021	GVD	BL	Conference with Committee re data preservation issues	0.30	950.00	$285.00
01/13/2021	GVD	BL	Conference with K. Brown and H. Winograd re demand note issues	0.80	950.00	$760.00
01/13/2021	HRW	BL	Call re: HarbourVest settlement (0.2): Call with G.	9.00	695.00	$6,255.00

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				Hours	Rate	Amount
			Demo and K. Brown re: demand note complaints (0.6); Call with G. Demo re: demand note complaints (0.1); Research re: bankruptcy court's jurisdiction over turnover claims and contractual disputes (1.8); Research re: alter ego claims (1.0); Review Demand Notes and related documents (0.8) Draft Demand Note Complaints against Dondero and related entities (4.5).			
01/14/2021	JNP	BL	Review email regarding suits against noteholders and next steps.	0.10	1295.00	$129.50
01/14/2021	JNP	BL	Conference with Robert J. Feinstein regarding examiner motion.	0.10	1295.00	$129.50
01/14/2021	JNP	BL	Conference with J. Dubel regarding hearing on Harbourvest and Plan related matters.	0.40	1295.00	$518.00
01/14/2021	JNP	BL	Conference with Robert J. Feinstein regarding court hearing and examiner motion.	0.10	1295.00	$129.50
01/14/2021	KHB	BL	Confer with L. Forrester re Texas authority on writs of attachment and preliminary injunctions (.2); review authorities and email to internal litigation team re same (1.6); call with Greg Demo (GD), J. Morris (JM) and Hayley Winograd ("HG") re litigation strategy on promissory notes (.4); confer with HG re form of complaints (.2); review and revise complaint (1.6); emails with HG re revisions to complaints (.5).	4.50	1225.00	$5,512.50
01/14/2021	RJF	BL	Telephone conference with Jeffrey N. Pomerantz regarding examiner motion.	0.20	1395.00	$279.00
01/14/2021	RJF	BL	Review examiner motion and related emails.	0.30	1395.00	$418.50
01/14/2021	RJF	BL	Work on opposition to expected motion to shorten time.	0.40	1395.00	$558.00
01/14/2021	JMF	BL	Review motion to appoint examiner.	0.30	1050.00	$315.00
01/14/2021	JAM	BL	Prepare for hearing on HarbourVest Rule 9019 motion (1.7); e-mails w/ J. Pomerantz, G. Demo, E. Weisgerber, D. Stroik re: potential stipulation concerning ROFR (0.1); e-mails with L. Canty re: exhibits for hearing (0.1); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: Seery direct testimony (0.1); e-mails with J. Pomerantz, I. Kharasch, G. Demo re: Gov Re, Ellington, and Leventon (0.2); hearing on HarbourVest Rule 9019 motion (with intermittent communications with J. Seery, J. Pomerantz, I. Kharasch, G. Demo) (4.8);	9.70	1245.00	$12,076.50

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				Hours	Rate	Amount
			review/revise order concerning motion to pay (0.2); e-mail to G. Demo re: revised order on motion to pay (0.1); telephone conference with G. Demo re: litigation matters (0.1); telephone conference with J. Pomerantz re: HarbourVest hearing telephone conference with Board, J. Pomerantz, G. Demo re: HarbourVest hearing and employment related issues (0.7); telephone conference with G. Demo re: complaints against makers of notes (0.2); telephone conference with J. Seery re: litigation matters (0.2); e-mail to J. Seery re: confirmation and CLO/TRO depositions (0.2); telephone conference with K. Brown, H. Winograd, G. Demo (partial participation) re: complaints against makers of notes (0.5); telephone conference with G. Demo re: litigation matters (0.1); telephone conference with B. Sharp re: document preservation issues (0.1); telephone conference with J. Seery re: depositions, litigation issues (0.2).			
01/14/2021	EAW	BL	Review emails from R. Feinstein re: examiner motion (J. Dondero).	0.10	925.00	$92.50
01/14/2021	GVD	BL	Conference with PSZJ litigation team re litigation strategy	0.60	950.00	$570.00
01/14/2021	GVD	BL	Conference with J. Morris re litigation strategy	0.30	950.00	$285.00
01/14/2021	HRW	BL	Draft Demand Note Complaints against Dondero and related entities (5.5); Research re: alter ego claims (0.6); PSZJ call re: Demand Note Complaints and litigation strategy (0.5); Review Demand Notes and related documents (1.0); Call with K. Brown re: Demand Note Complaints (0.1); Draft proposed HarbourVest Settlement Order (1.9).	9.60	695.00	$6,672.00
01/15/2021	JNP	BL	Email to Board regarding Dondero request regarding UBS settlement.	0.10	1295.00	$129.50
01/15/2021	JNP	BL	Conference with Robert J. Feinstein regarding examiner motion and emails regarding same.	0.10	1295.00	$129.50
01/15/2021	JNP	BL	Conference with Dubel regarding UBS status.	0.20	1295.00	$259.00
01/15/2021	KHB	BL	Work on complaints on promissory notes (4.4). emails with G. Demo re payment on NPA note (.2); review draft letter to NPA re same (.2); email from J. Pomerantz re writs of attachment (.1); email from I. Kharasch re same (.1); emails with H. Winograd and G. Demo re complaints (.2).	5.20	1225.00	$6,370.00
01/15/2021	RJF	BL	Emails Jeffrey N. Pomerantz regarding UBS status.	0.10	1395.00	$139.50

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				Hours	Rate	Amount
01/15/2021	RJF	BL	Emails regarding denial of motion to shorten time.	0.10	1395.00	$139.50
01/15/2021	RJF	BL	Review examiner research.	0.50	1395.00	$697.50
01/15/2021	RJF	BL	Telephone conference with Jeffrey N. Pomerantz regarding examiner motion.	0.10	1395.00	$139.50
01/15/2021	BEL	BL	Review SE Multifamily partnership agreement.	0.20	950.00	$190.00
01/15/2021	JAM	BL	E-mail to counsel for K&L Gates Parties, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: depositions (0.3); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: depositions (0.1); e-mail to counsel for Ellington and Leventon re: depositions (0.3); e-mail to J. Bonds, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: witness(es) for hearing on contempt motion (0.1); review/revise draft order on HarbourVest settlement (0.4); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, Z. Annable, M. Hayward re: draft order on HarbourVest settlement (0.1); telephone conference with J. Seery re: depositions (0.1); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: litigation issues (0.4); e-mail to objecting parties on HarbourVest Rule 9019 motion (0.1); revise proposed order on HarbourVest settlement (0.1); e-mails to J. Bonds, J. Kane, D. Draper, J. Pomerantz, G. Demo re: proposed order on HarbourVest settlement (0.1); telephone conference with B. Sharp, J. Vaughn re: forensic investigation of computers (0.3); telephone conference with B. Sharp re: forensic investigation of computers (0.1); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, B. Sharp re: iDiscovery Solutions and forensic investigation (0.3); draft deposition notice for Seery (confirmation) (0.3); e-mail to J. Pomerantz, I. Kharasch, G. Demo, Z. Annable re: deposition notice (0.1); telephone conference with J. Seery re: litigation matters (0.2).	3.40	1245.00	$4,233.00
01/15/2021	GVD	BL	Draft and send response to NPA letter	1.10	950.00	$1,045.00
01/15/2021	GVD	BL	Conference with T. Surgent re discovery issues	0.30	950.00	$285.00
01/15/2021	GVD	BL	Review and revise demand note complaint	0.30	950.00	$285.00
01/15/2021	GVD	BL	Conference with PSZJ team re open discovery issues	0.50	950.00	$475.00
01/15/2021	HRW	BL	Review and edit HarbourVest proposed Settlement Order (0.7); Draft Demand Note Complaints against Dondero and related entities (7.5).	8.20	695.00	$5,699.00

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01/16/2021	JAM	BL	E-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, DSI re: forensic analysis of computers (0.2); e-mail to J. Kane, J. Pomerantz, G. Demo re: document production (0.1); revise deposition notice for Seery confirmation deposition (0.2); e-mail to Z. Annable, J. Pomerantz, G. Demo, H. Winograd re: Seery confirmation deposition (0.1); e-mail to counsel for K&L Gates parties re: discovery (0.2); draft deposition notice for Grant Scott (0.3); e-mail to Z. Annable, J. Pomerantz, G. Demo, H. Winograd re: Scott deposition notice (0.1); e-mail to counsel to all parties objecting to confirmation re: depositions (0.4); e-mail to M. Lynn, J. Bonds, J. Pomerantz, I. Kharasch, G. Demo re: Dondero purported notice and appeal of preliminary injunction (0.8); e-mail to K. Klausner, H. Winograd, L. Canty re: depositions (0.1); e-mail to L. Canty re: depositions (0.1); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft response to Senior Employees (0.7); telephone conference with J. Seery re: forensic investigation (0.4); telephone conference with J. Pomerantz re: litigation, forensic investigation (0.5); telephone conference with B. Sharp re: forensic investigation (0.1); telephone conference with J. Seery re: forensic investigation (0.1); revise draft e-mail to counsel for the Senior Employees (0.2).	4.60	1245.00	$5,727.00
01/16/2021	GVD	BL	Conference with J. Morris re bankruptcy litigation	0.20	950.00	$190.00
01/16/2021	GVD	BL	Correspondence with J. Pomerantz re discovery issues	0.10	950.00	$95.00
01/16/2021	HRW	BL	Draft complaints against Dondero and related entities re: demand notes (4.8).	4.80	695.00	$3,336.00
01/17/2021	JNP	BL	Conference with John A. Morris,. J. Seery, company employees, DSI and outside consultant regarding services relating to protection of evidence.	0.50	1295.00	$647.50
01/17/2021	BEL	BL	Review discovery requests and emails regarding same.	0.30	950.00	$285.00
01/17/2021	BEL	BL	Telephone conference with John A. Morris regarding discovery requests.	0.40	950.00	$380.00
01/17/2021	JAM	BL	E-mail to counsel to K&L Gates Clients, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: discovery in connection with PI motion and confirmation (1.2); revise and send e-mail to counsel for Senior Employees, J. Pomerantz, I. Kharasch, G.	3.80	1245.00	$4,731.00

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				Hours	Rate	Amount
			Demo, H. Winograd re: discovery (0.2); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: confirmation witnesses (0.2); e-mail to J. Seery, PSZJ, DSI re: follow up litigation matters, including document production and email searches (0.8); telephone conference with B. Levine re: document production (0.4); telephone conference with J. Seery re: Senior Employee issues (0.1); telephone conference with J. Seery, J. Pomerantz (partial), H. Winograd, DSI, J. Vaughn, T. Surgent, J. Rothstein re: forensic investigation (0.8); telephone conference with J. Seery re: forensic investigation (0.1).			
01/17/2021	GVD	BL	Review draft complaints re demand letters	0.40	950.00	$380.00
01/17/2021	GVD	BL	Correspondence re negotiation of senior employee stipulation	0.20	950.00	$190.00
01/17/2021	GVD	BL	Correspondence re discovery issues	0.30	950.00	$285.00
01/17/2021	HRW	BL	Call re: forensic investigation and return of Debtor's property (0.7); Draft complaints against Dondero and related entities re: demand notes (4.5).	5.20	695.00	$3,614.00
01/18/2021	JNP	BL	Conference with Sidley, John A. Morris, Ira D. Kharasch and Gregory V. Demo regarding litigation matters including notes, Plan confirmation and related.	0.70	1295.00	$906.50
01/18/2021	JNP	BL	Review emails regarding discovery and comments to John A. Morris email regarding same.	0.10	1295.00	$129.50
01/18/2021	JNP	BL	Review F. Smith response regarding indemnification letter.	0.10	1295.00	$129.50
01/18/2021	JNP	BL	Emails to and from M. Lynn regarding discovery issues.	0.10	1295.00	$129.50
01/18/2021	KHB	BL	Review local rules re summary judgment motions (.2); review comments to complaints on promissory notes by J. Morris and email to J. Morris and H. Winograd re same (.2); work on complaints (.7); call with Committee counsel, J. Morris and J. Pomerantz re litigation strategy (.7).	1.80	1225.00	$2,205.00
01/18/2021	BEL	BL	Review document requests and relevant and background and emails regarding searches for documents.	1.30	950.00	$1,235.00
01/18/2021	JAM	BL	E-mails with G. Demo, E. Weisgerber re: HarbourVest settlement (0.1); e-mails with PSZJ and Sidley lawyers re: litigation strategy call (0.1); telephone conference with I. Kharasch, G. Demo,	8.00	1245.00	$9,960.00

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			Bermuda counsel (who participated for a part of the call) (0.5); e-mails with J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: deposition dates (0.1); review/revise draft Complaint against Dondero for recovery under demand notes (0.9); e-mail to K. Brown, H. Winograd, J. Pomerantz, I. Kharasch, G. Demo re: revisions to draft Complaint against Dondero for recovery under demand notes (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, F. Smith, D. Dandeneau re: Senior Employee issues (0.7); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: litigation issues (0.5); e-mail to counsel for K&L Gates Clients re: discovery (0.5); e-mail to D. Dandeneau, F. Smith, J. Pomerantz, G. Demo, I. Kharasch re: Firm Phones (0.6); telephone conference with PSZJ and Sidley over litigation, document preservation, and confirmation issues (0.8); telephone conference with J. Pomerantz re: call with Sidley (0.1); e-mails to Sidley, J. Pomerantz, G. Demo, H. Winograd re: complaints for recovery under demand notes (0.3); telephone conference with J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: plan and litigation issues (1.3); e-mails with E. Sonderlund, F. Smith, D. Dandeneau, J. Pomerantz, I. Kharasch, G. Demo re: discovery (0.3); draft e-mail to plan objectors re: confirmation witnesses and discovery (0.3); e-mails with E. Sonderlund, J. Pomerantz, I. Kharasch, G. Demo, F. Smith re: discovery (0.1); revise and send e-mail to plan objectors re: confirmation witnesses and discovery (0.2); e-mails with P. Montgomery, M. Clemente, J. Pomerantz, G. Demo re: deposition schedule (0.1); telephone conference with J. Pomerantz, counsel for UDF re: Dondero tender offer and related matters (0.2); e-mails with J. Seery, D. Rukavina re: Rule 30(b)(6) topics for deposition (0.1).			
01/18/2021	GVD	BL	Conference with Carey Olsen re Bermuda discovery issues	0.50	950.00	$475.00
01/18/2021	GVD	BL	Conference with Committee re open litigation items	0.80	950.00	$760.00
01/18/2021	GVD	BL	Prepare for conference with Bermuda counsel	0.10	950.00	$95.00
01/18/2021	HRW	BL	Draft complaints against Dondero and related entities re: demand notes (7.5); Call with Committee re: litigation strategy (0.8).	8.30	695.00	$5,768.50
01/19/2021	JNP	BL	Conference with J. Seery, John A. Morris, Gregory V. Demo and Ira D. Kharasch regarding deposition	0.50	1295.00	$647.50

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			preparation for J. Seery.			
01/19/2021	JNP	BL	Email to Latham regarding status of Settlement Agreement.	0.10	1295.00	$129.50
01/19/2021	BEL	BL	Review documents to be produced to senior employees.	0.60	950.00	$570.00
01/19/2021	BEL	BL	Emails regarding discovery response.	0.10	950.00	$95.00
01/19/2021	BEL	BL	Finalize search terms for response to document requests.	0.50	950.00	$475.00
01/19/2021	JAM	BL	Analysis of Rule 30(b)(6) topics for Seery deposition (3.6); telephone conference with J. Pomerantz re: confirmation evidence (0.1); draft Amended Deposition Notice for Seery confirmation deposition and e-mail to Z. Annable re: same (0.1); e-mails with counsel re: logistics for Seery deposition (0.2); draft Deposition Notice for Jason Post and e-mail to Z. Annable re: same (0.3); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, Gov Re representatives re: D&O Issues (0.2); telephone conference with J. Pomerantz re: confirmation evidence (0.1); analysis of confirmation evidence and exhibits (1.6); telephone conference with J. Seery, J. Dubel, J. Pomerantz, I. Kharasch, G. Demo re: confirmation evidence and exculpation (0.5); telephone conference with J. Dubel re: confirmation evidence and exculpation (0.1); telephone conference with J. Seery, J. Pomerantz, G. Demo re: preparation for deposition (0.7); e-mails with L. Canty re: documents/exhibits for deposition and confirmation hearing (0.2); e-mails with counsel for objecting parties re: confirmation witnesses (0.2).	7.90	1245.00	$9,835.50
01/19/2021	HRW	BL	Draft deposition subpoena and notices for M. Schroth (1.2); Call with J. Morris re: demonstratives for Seery testimony during confirmation hearing (0.2); Review Omnibus Reply to Confirmation Objections (0.3).	1.70	695.00	$1,181.50
01/20/2021	JNP	BL	Conference with John A. Morris regarding CLO deposition, discovery and related.	0.30	1295.00	$388.50
01/20/2021	JNP	BL	Conference with J. Seery regarding CLO deposition and related.	0.10	1295.00	$129.50
01/20/2021	BEL	BL	Review documents.	1.20	950.00	$1,140.00
01/20/2021	JAM	BL	Prepare for Seery deposition (0.3); telephone	6.30	1245.00	$7,843.50

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				Hours	Rate	Amount
			conference with J. Seery re: deposition preparation (0.2); telephone conference with L. Canty re: depositions (0.1); Seery deposition (CLO preliminary injunction) (2.3); telephone conference with J. Seery re: deposition (0.1); telephone conference with J. Pomerantz re: various litigation issues (0.3); e-mail to D. Draper, J. Pomerantz, I. Kharasch, G. Demo re: Dondero Trusts' requests for document (0.5); e-mail to D. Draper re: document requests by Dugaboy and Get Good (0.5); e-mails with D. Rukavina, J. Kane re: deposition exhibits (0.2); telephone conference with J. Seery re: JP Sevilla and discovery (0.1); e-mail to D. Draper, J. Bonds, J. Wilson re: confidentiality and document production (0.3); e-mails with Trial Graphix team re: demonstrative exhibits (0.3); e-mail to D. Dandeneau, F. Smith, J. Pomerantz, G. Demo re: Leventon deposition and related matters (0.3); review documents and prepare for depositions (0.8).			
01/20/2021	GVD	BL	Attend deposition of J. Seery	2.00	950.00	$1,900.00
01/20/2021	HRW	BL	Review draft plan of reorganization (0.3).	0.30	695.00	$208.50
01/21/2021	JNP	BL	Email to and from Robert J. Feinstein regarding examiner motion.	0.10	1295.00	$129.50
01/21/2021	JNP	BL	Review and respond to email from Bond Ellis regarding discovery; Conference with Ira D. Kharasch regarding same.	0.20	1295.00	$259.00
01/21/2021	BEL	BL	Review documents.	2.20	950.00	$2,090.00
01/21/2021	BEL	BL	Emails to Gregory V. Demo regarding document production.	0.20	950.00	$190.00
01/21/2021	BEL	BL	Telephone conference with La Asia Canty regarding document production issues.	0.20	950.00	$190.00
01/21/2021	BEL	BL	Review documents.	0.20	950.00	$190.00
01/21/2021	BEL	BL	Telephone conference with John A. Morris and Stephanie Vitiello regarding discovery request.	0.50	950.00	$475.00
01/21/2021	JAM	BL	E-mails with J. Pomerantz, H. Winograd re: Dondero appeal of preliminary injunction (0.1); e-mail to PSZJ Team re: confirmation hearing exhibits (0.1); e-mail to counsel for objectors re: Post deposition (0.1); e-mails with court reporting service re: depositions (0.2); e-mails with L. Canty re: exhibits for Scott deposition (0.2); review/revise demonstrative exhibit for Scott deposition (0.1);	9.60	1245.00	$11,952.00

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				Hours	Rate	Amount
			prepare for Scott deposition (3.4); telephone conference with F. Smith re: discovery (0.1); e-mails with F. Smith re: discovery (0.1); Scott deposition (3.0); telephone conference with H. Winograd re: litigation projects (0.2); telephone conference with J. Pomerantz re: Scott deposition (0.1); review analyses of Dondero trading (0.2); telephone conference with B. Sharp, J. Romey, G. Demo re: analyses of Dondero trading (0.3); telephone conference with J. Kane re: Scott deposition, CLO Holdco (0.3); telephone conference with G. Demo re: Scott deposition (0.1); telephone conference with S. Vitiello, B. Levine re: document production (0.4); telephone conference with J. Seery re: Scott deposition and litigation update (0.4); telephone conference with J. Pomerantz re: status of various litigation matters (0.1); e-mails with I. Nasatir re: exhibits for insurance matters (0.1).			
01/21/2021	GVD	BL	Review CLO agreements re termination date	1.00	950.00	$950.00
01/21/2021	GVD	BL	Conference with PSZJ team re evidentiary issues	0.50	950.00	$475.00
01/21/2021	GVD	BL	Review transcript from G. Scott deposition	0.30	950.00	$285.00
01/21/2021	HRW	BL	Call with J. Morris re: opposition to Dondero's motion for leave to appeal PI (0.1); Research re: opposition to Dondero's motion for leave to appeal PI (1.5); PSZJ call re: witness & exhibit list (0.5); Draft demonstrative re: Terry-Acis litigation for Seery testimony at confirmation hearing (7.5).	9.60	695.00	$6,672.00
01/22/2021	KHB	BL	Emails with H. Winograd and J. Morris re complaints on promissory notes.	0.20	1225.00	$245.00
01/22/2021	MDJ	BL	Work with H. Winogard on preparing Highland adversary complaint exhibits for filing.	0.90	395.00	$355.50
01/22/2021	RJF	BL	Emails Cia H. Mackle, Jeffrey N. Pomerantz regarding examiner motion.	0.30	1395.00	$418.50
01/22/2021	BEL	BL	Emails regarding document production.	0.50	950.00	$475.00
01/22/2021	JAM	BL	Review documents concerning AVAYA and SKY trading and e-mail to J. Pomerantz, I. Kharasch, G, Demo, B. Sharp, J. Romey re: same (0.3); revise e-mail to Court re: possible adjournment of confirmation and send to Z. Annable, J. Pomerantz, I. Kharasch, G. Demo (0.2); review complaints concerning demand notes and send e-mail to Z. Annable, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd concerning the same (0.2); work on	11.90	1245.00	$14,815.50

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				Hours	Rate	Amount
			exhibit list for preliminary injunction hearing against K&L Gates Clients and CLO Holdco (0.7); prepare for Post deposition (2.6); e-mail to H. Winograd re: work priorities (0.3); e-mail to H. Winograd, L. Canty re: insurance-related exhibits (0.1); e-mail to H. Winograd, L. Canty re: exhibits from J. Pomerantz list (0.1); revise confirmation witness and exhibit list (0.1); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, L. Canty re: revised confirmation witness and exhibit list (0.1); e-mail to L. Canty re: exhibits for Post deposition (0.3); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, L. Canty re: confirmation exhibits (0.5); Post deposition (3.0); telephone conference with P. Montgomery re: litigation issues (0.1); telephone conference with J. Seery re: Post deposition (0.2); telephone conference with J. Pomerantz, I. Nasatir, M. Tauber re: insurance issues and trial preparation (0.9); telephone conference with J. Pomerantz re: litigation issues (0.1); telephone conference with C. Taylor re: meet and confer on discovery issues (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: litigation issues (0.4); review Z. Annable comments to note complaints and cover sheets (0.2); e-mail to Z. Annable re: note complaints and cover sheets (0.1); telephone conference with J. Seery re: note complaints (0.1); review witness and exhibits lists filed by objectors (0.3); telephone conference with J. Pomerantz re: litigation issues (0.2); review court filings (0.5); communications with Z. Annable, L. Canty, H. Winograd re: witness and exhibit lists (0.1).			
01/22/2021	HRW	BL	Prepare Witness & Exhibit List for confirmation hearing (3.9); Draft Opposition to Dondero motion for leave to appeal and for expedited hearing (2.8); PSZJ plan coordination call (0.4).	7.10	695.00	$4,934.50
01/23/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS Settlement Agreement.	0.20	1295.00	$259.00
01/23/2021	JAM	BL	Review filings, including UCC memorandum in support of confirmation, witness and exhibit lists for confirmation and the preliminary injunction hearing and related matters (1.3); e-mail to counsel for the objecting parties re: Seery deposition (0.2); prepare Grant Scott cross-examination (5.3); e-mails with L. Canty re: exhibits (0.2); e-mails with D. Rukavina, J. Pomerantz re: Seery deposition (0.1); telephone conference with J. Seery re: deposition (0.1); draft	10.20	1245.00	$12,699.00

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				Hours	Rate	Amount
			Second Amended Deposition Notice for Seery (0.1); e-mail to counsel for all objecting parties adjourning the Seery deposition (0.1); e-mail to Board, PSZJ team re: schedule (0.1); review Seery transcript and prepare direct (1.5); telephone conference with J. Pomerantz, I. Kharasch re: confirmation and preliminary injunction trial issues (0.5); analyze fact issues to support motion for preliminary injunction (0.7).			
01/23/2021	GVD	BL	Review transcript of J. Post deposition	0.60	950.00	$570.00
01/23/2021	HRW	BL	Draft Opposition to Dondero motion for leave to appeal and for expedited hearing (6.0).	6.00	695.00	$4,170.00
01/24/2021	JNP	BL	Conference with J. Dubel regarding UBS.	0.10	1295.00	$129.50
01/24/2021	JNP	BL	Conference with J. Kane, Ira D. Kharasch, and John A. Morris regarding Preliminary Injunction hearing and Plan Confirmation potential settlement.	0.50	1295.00	$647.50
01/24/2021	JNP	BL	Conference with J. Seery and John A. Morris regarding potential resolution with CLO Holdco.	0.20	1295.00	$259.00
01/24/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS Settlement Agreement.	0.20	1295.00	$259.00
01/24/2021	JNP	BL	Review and comment on Robert J. Feinstein mark-up of UBS Settlement Agreement and email regarding same.	0.70	1295.00	$906.50
01/24/2021	JNP	BL	Review and revise CLO Holdco Term Sheet.	0.50	1295.00	$647.50
01/24/2021	JMF	BL	Review motion to appoint examiner and status of hearing.	0.30	1050.00	$315.00
01/24/2021	JAM	BL	E-mails to J. Pomerantz, I. Kharasch, G. Demo, DSI re: discovery (0.2); review e-mails re: litigation matters (0.3); telephone conference with D. Neier re: JP Sevilla subpoena (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, DSI re: discovery (0.8); tel c. G. Demo re: litigation issues (0.2); telephone conference with J. Pomerantz, I. Kharasch, J. Kane re: potential settlement with CLO Holdco (0.6); telephone conference with J. Seery, J. Pomerantz re: potential settlement with CLO Holdco (0.2); telephone conference with G. Demo re: CLO Holdco and related matters (0.2); prepare for CLO-related preliminary injunction hearing (1.6); review e-mails re: Dondero appeal of preliminary injunction (0.2).	4.50	1245.00	$5,602.50
01/24/2021	GVD	BL	Conference with PSZJ team re outstanding	0.80	950.00	$760.00

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				Hours	Rate	Amount
			discovery issues			
01/24/2021	GVD	BL	Multiple conferences with J. Morris re outstanding discovery issues	0.20	950.00	$190.00
01/24/2021	GVD	BL	Conference with J. Romey re open discovery issues	0.10	950.00	$95.00
01/24/2021	GVD	BL	Review research and draft response re response to NPA objection to preliminary injunction	0.60	950.00	$570.00
01/24/2021	HRW	BL	Draft Opposition to Dondero motion for leave to appeal and for expedited hearing (7.5).	7.50	695.00	$5,212.50
01/25/2021	JNP	BL	Conference with Ira D. Kharasch and Gregory V. Demo regarding UBS Settlement Agreement.	0.70	1295.00	$906.50
01/25/2021	JNP	BL	Brief review of opposition to preliminary injunction and reply.	0.20	1295.00	$259.00
01/25/2021	JNP	BL	Conference with John A. Morris and Gregory V. Demo regarding CLO Holdco settlement.	0.10	1295.00	$129.50
01/25/2021	JNP	BL	Review of J. Kane response to CLO Holdco settlement.	0.10	1295.00	$129.50
01/25/2021	JNP	BL	Review of UBS Settlement Agreement before Board call; Conference with Gregory V. Demo regarding same.	0.20	1295.00	$259.00
01/25/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS Settlement Agreement.	0.20	1295.00	$259.00
01/25/2021	JNP	BL	Conference with Ira D. Kharasch, Gregory V. Demo and John A. Morris regarding CLO Holdco agreement (2x).	1.20	1295.00	$1,554.00
01/25/2021	JMF	BL	Review CLO Holdco opposition to preliminary injunction.	0.30	1050.00	$315.00
01/25/2021	JAM	BL	Communications with Z. Annable, J. Pomerantz, I. Kharasch, G. Demo re: Dondero appeal of preliminary injunction (0.1); review/revise proposed term sheet to settle dispute with CLO Holdco, Ltd. (0.6); e-mails to J. Pomerantz, I. Kharasch, G. Demo re: revised term sheet for CLO Holdco (0.1); prepare for preliminary injunction hearing (6.1) telephone conference with G. Demo re: litigation issues, CLO Holdco (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: CLO Holdco term sheet/agreement (0.8); telephone conference with H. Winograd re: Dondero emergency motion for leave to appeal preliminary injunction (0.3); meet and confer with K&L Gates, J. Kane re:	9.90	1245.00	$12,325.50

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				Hours	Rate	Amount
			preliminary injunction hearing (0.4); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: CLO Holdco settlement issues (0.3); telephone conference with J. Dondero, Board, counsel for Dondero, counsel for Board re: settlement (0.5); telephone conference with Board, PSZJ team re: CLO Holdco settlement and related matters (partial participation) (0.2); telephone conference with J. Kane re: CLO Holdco settlement (0.1); telephone conference with D. Rukavina re: CLO Holdco settlement and related matters (0.1); telephone conference with J. Seery re: trial preparation (0.1).			
01/25/2021	GVD	BL	Conference with PSZJ working group re additional changes to CLO Holdco settlement	0.40	950.00	$380.00
01/25/2021	GVD	BL	Review CLO Management Agreements re termination	1.10	950.00	$1,045.00
01/25/2021	GVD	BL	Conference with J. Morris re open bankruptcy issues	0.20	950.00	$190.00
01/25/2021	GVD	BL	Multiple conferences with J. Kane re CLO Holdco settlement	0.30	950.00	$285.00
01/25/2021	GVD	BL	Conference with PSZJ working group re CLO Holdco settlement	0.80	950.00	$760.00
01/25/2021	GVD	BL	Draft response to NPA objection to preliminary injunction and file same	4.20	950.00	$3,990.00
01/25/2021	GVD	BL	Review and revise settlement with CLO Holdco	2.30	950.00	$2,185.00
01/25/2021	GVD	BL	Review discovery issues	1.00	950.00	$950.00
01/25/2021	HRW	BL	Draft Opposition to Dondero motion for leave to appeal and for expedited hearing (7.0); Communicate with DSI re: confirmation witness & exhibit list redactions (0.3); Review redacted exhibits for amended W&E list filing (0.4); Review and edit motion to redact and proposed order regarding W&I list for confirmation hearing (0.5); Draft notice of settlement with CLO Holdco (0.4).	8.60	695.00	$5,977.00
01/26/2021	JNP	BL	Participate in KERP and CLO Preliminary Injunction hearing.	7.30	1295.00	$9,453.50
01/26/2021	JNP	BL	Conference with John A. Morris regarding hearing.	0.10	1295.00	$129.50
01/26/2021	JAM	BL	Prepare Dondero cross (5.8); draft Notice of Agreement (0.4); communications with L. Canty re: trial exhibits (0.2); telephone conference with G. Demo re: Notice of Settlement and related matters (0.1); prepare opening statement (1.5); trial	16.60	1245.00	$20,667.00

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				Hours	Rate	Amount
			(morning session) (2.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: morning session hearing (0.2); prepare for afternoon session (0.3): telephone conference with J. Seery re: trial (0.1); trial (afternoon session) (5.3); telephone conference with J. Seery, G. Demo re: court hearing (0.1); telephone conference with Board, J. Pomerantz, G. Demo re: court hearing, next steps (0.4).			
01/26/2021	GVD	BL	Conference with J. Morris re preparation for hearing	0.10	950.00	$95.00
01/26/2021	GVD	BL	Attend hearing re NPA preliminary injunction	6.80	950.00	$6,460.00
01/26/2021	GVD	BL	Prepare for hearing on preliminary injunction	0.20	950.00	$190.00
01/26/2021	GVD	BL	Conference with Board re preliminary injunction hearing	0.40	950.00	$380.00
01/26/2021	GVD	BL	Review and finalize CLO Holdco settlement	0.40	950.00	$380.00
01/26/2021	HRW	BL	Draft and prepare opposition and ancillary papers for opposition to Dondero motion for leave to appeal and for expedited hearing (6.5); K&L Gates Preliminary Injunction Hearing (7.0).	13.50	695.00	$9,382.50
01/27/2021	JNP	BL	Conference with J. Dubel before and after call with Latham regarding UBS.	0.10	1295.00	$129.50
01/27/2021	JNP	BL	Review emergency motion to continue contempt motion.	0.10	1295.00	$129.50
01/27/2021	JNP	BL	Conference with J. Dubel, J. Seery, Latham, Robert J. Feinstein and Gregory V. Demo regarding UBS Settlement Agreement.	1.30	1295.00	$1,683.50
01/27/2021	JNP	BL	Conference with John A. Morris regarding meet and confer with D. Draper and email regarding same.	0.10	1295.00	$129.50
01/27/2021	JNP	BL	Conference with John A. Morris regarding discovery issues and related and opposition to Dondero district court motion on preliminary injunction.	0.20	1295.00	$259.00
01/27/2021	JNP	BL	Emails internally regarding examiner motion.	0.10	1295.00	$129.50
01/27/2021	JNP	BL	Conference with Ira D. Kharasch, Gregory V. Demo and John A. Morris regarding employees, Plan and UBS (partial).	0.40	1295.00	$518.00
01/27/2021	JNP	BL	Review and respond to emails regarding Dondero request to continue contempt hearing.	0.10	1295.00	$129.50
01/27/2021	JNP	BL	Review opposition regarding Dondero preliminary	0.20	1295.00	$259.00

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				Hours	Rate	Amount
			injunction appeal.			
01/27/2021	JNP	BL	Email to and from D. Draper regarding hearing on examiner motion.	0.10	1295.00	$129.50
01/27/2021	JNP	BL	Conference with Gregory V. Demo regarding CLO litigation and potential settlement.	0.10	1295.00	$129.50
01/27/2021	JNP	BL	Conference with J. Seery regarding UBS settlement, Plan hearing, contempt and related issues.	0.30	1295.00	$388.50
01/27/2021	RJF	BL	Internal emails regarding examiner response.	0.20	1395.00	$279.00
01/27/2021	JAM	BL	Draft e-mail to Funds' counsel re: Waterhouse deposition (0.1); communications with B. Levine re: confirmation discovery (0.3); revise draft e-mail to Gov Re re: documents (0.3); review/revise opposition to Dondero emergency appeal of preliminary injunction (2.7); draft Leventon deposition notice (0.2); e-mail to objecting parties re: Leventon deposition (0.2); telephone conference with H. Winograd re: opposition to Dondero emergency appeal of preliminary injunction (0.1); telephone conference with M Matteo re: analysis of expenses incurred addressing Dondero misconduct (0.1); e-mail to M. Matteo, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, M. Hayward re: analysis of expenses incurred addressing Dondero misconduct (0.5); e-mail with court reporter re: Leventon deposition (0.1); telephone conference with L. Hogewood re: Funds and PI motion (0.2); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo re: Funds and PI motion (0.1); telephone conference with J. Pomerantz re: Waterhouse deposition (0.1); telephone conference with J. Seery re: call with Hogewood concerning Funds and PI motion (0.1); telephone conference with J. Pomerantz re: call with Hogewood, Funds, and the PI motion (0.1); revise e-mail to Funds' counsel re: Waterhouse deposition (0.1); telephone conference with J. Pomerantz re: various litigation matters (0.2); e-mails with D. Rukavina, J. Pomerantz, G. Demo, others re: Waterhouse deposition (0.3); reviewing Winograd declaration in support of opposition to Dondero emergency appeal of preliminary injunction (0.2); prepare for Leventon deposition (0.6); review revisions to opposition papers to Dondero emergency appeal of preliminary injunction (0.2); review e-mails among H. Winograd, Z. Annable, K. Brown, L. Canty re: finalizing and filing opposition to Dondero emergency appeal of preliminary injunction (0.5); video meeting with J. Pomerantz, I.	8.80	1245.00	$10,956.00

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				Hours	Rate	Amount
			Kharasch, G. Demo, DSI re: liquidation analysis (1.0); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: Gov Re and litigation issues (0.5).			
01/27/2021	GVD	BL	Conference re potential insurance litigation issues	0.50	950.00	$475.00
01/27/2021	GVD	BL	Conference with J. Romey re discovery issues	0.30	950.00	$285.00
01/27/2021	GVD	BL	Correspondence with B. Assink re potential adjournment of contempt motion	0.30	950.00	$285.00
01/27/2021	GVD	BL	Draft response to Dondero objection to assumption of contracts	0.40	950.00	$380.00
01/27/2021	GVD	BL	Analyze open discovery issues	0.10	950.00	$95.00
01/27/2021	HRW	BL	PSZJ call re: Gov Re (0.5); PSZJ WIP Call (1.0); Draft and prepare opposition and ancillary papers for opposition to Dondero motion for leave to appeal and for expedited hearing (6.5); Draft Notice of Hearing for Dondero Contempt Motion (0.3); Review Dondero motion for continuance of contempt hearing (0.1).	8.40	695.00	$5,838.00
01/28/2021	JNP	BL	Conference with Ira D. Kharasch regarding CLO potential settlement terms.	0.10	1295.00	$129.50
01/28/2021	JNP	BL	Review and respond to emails regarding potential CLO settlement terms.	0.10	1295.00	$129.50
01/28/2021	JNP	BL	Review email from H. Winograd regarding Dondero District Court motion regarding preliminary injunction.	0.10	1295.00	$129.50
01/28/2021	JNP	BL	Conference with J. Dubel regarding UBS and related.	0.30	1295.00	$388.50
01/28/2021	JNP	BL	Email to J. Bjork regarding UBS settlement status.	0.20	1295.00	$259.00
01/28/2021	JMF	BL	Review complaints and background re notes receivables re HCMS, HCRE, and HCMFA.	1.10	1050.00	$1,155.00
01/28/2021	JAM	BL	Analysis and e-mail to PSZJ and DSI teams concerning Dondero additional discovery demands (1.3); telephone conference with G. Demo re: litigation matters (0.1); meet and confer call with D. Draper, J. Pomerantz (0.2); telephone conference with J. Pomerantz re: litigation matters (0.1); e-mail to G. Demo, T. Surgent, DSI re: document production issues (0.8); telephone conference with D. Demo, DSI re: document production issues (0.3); telephone conference with G. Demo, T. Surgent,	11.60	1245.00	$14,442.00

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				Hours	Rate	Amount
			DSI re: document production issues (0.6); telephone conference with G. Demo re: litigation issues/shared services transition (0.3); telephone conference with J. Pomerantz re: litigation issues (0.2); prepare for Seery deposition (1.3); telephone conference with L. Hogewood re: Fund litigation, transition issues (0.1); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: call with Hogewood (0.1); telephone conference with J. Seery, J. Pomerantz, I. Kharasch, G. Demo (partial participation) (2.5); review Dondero reply on appeal of preliminary injunction (0.3); telephone conference with J. Seery, G. Demo re: Funds, transition issues (0.5); telephone conference with T. Silva, M. Hartmann, [another B&M attorney] re: Frank Waterhouse and fund issues (0.5); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, DSI re: fund transition and litigation issues (0.6); telephone conference with J. Seery, J. Pomerantz, G. Demo, T. Silva re: fund transition and litigation issues (0.8); telephone conference with G. Demo, T. Silva, K&L Gates lawyers re: fund transition and litigation issues (0.4); telephone conference with G. Demo, T. Silva re: follow up to call with K&L Gates (0.1); telephone conference with J. Pomerantz re: follow up call with K&L Gates (0.1); telephone conference with J. Seery re: follow up call with K&L Gates (0.2); e-mails with J. Pomerantz re: Daugherty litigation issues (0.2).			
01/28/2021	GVD	BL	Attend to issues re discovery	0.90	950.00	$855.00
01/28/2021	GVD	BL	Conference with J. Morris re discovery issues	0.30	950.00	$285.00
01/28/2021	GVD	BL	Conference with T. Surgent and J. Morris re discovery issues	0.50	950.00	$475.00
01/28/2021	GVD	BL	Conference re preparation of J. Seery for deposition	2.00	950.00	$1,900.00
01/28/2021	GVD	BL	Draft response to Dondero objection to contract assumption	0.60	950.00	$570.00
01/28/2021	HRW	BL	Review Dondero's reply in support of motion for leave to appeal (1.8); Draft demonstratives re: Highland litigation (2.5); Communicate with DSI re: redactions on org chart and legal entities list (0.6); Review redactions on org chart and legal entities list (0.5); Review Dondero's requests for production (0.9).	6.30	695.00	$4,378.50
01/29/2021	JMF	BL	Review motion and opposition re continuation of preliminary injunction.	0.40	1050.00	$420.00

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				Hours	Rate	Amount
01/29/2021	JAM	BL	Prepare for Seery deposition (0.4); draft opposition to Dondero motion for continuance (1.7); telephone conference with J. Kathman re: Daugherty settlement (0.2); telephone conference with J. Seery re: deposition (0.1); Seery deposition (5.0); telephone conference with J. Seery re: deposition (0.3); e-mails with Z. Annable, H. Winograd, L. Canty re: amended exhibit list (0.3); telephone conference with J. Pomerantz, I. Kharasch re: Seery deposition (0.5); telephone conference with B. Levine re: document production (0.1); review Ellington and Leventon deposition notices and e-mails with Z. Annable, H. Winograd concerning the same (0.1); review stipulation dismissing Daugherty adversary proceeding and e-mails with Z. Annable, H. Winograd concerning the same (0.1); prepare for confirmation hearing (0.6); telephone conference with G. Demo re: funds' transition and related issues (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo, J. Fried re: confirmation preparation and analysis (0.8); telephone conference with M. Hartmann re: Waterhouse (0.1); telephone conference with D. Rukavina re: Waterhouse, confirmation evidence (0.1).	10.60	1245.00	$13,197.00
01/29/2021	GVD	BL	Conference with J. Morris re litigation issues	0.20	950.00	$190.00
01/29/2021	GVD	BL	Attend Seery deposition (in part)	0.50	950.00	$475.00
01/29/2021	HRW	BL	Draft demonstratives re: Highland litigation (1.9); Review and edit w&e list for confirmation hearing (0.5); Prepare notice of depositions for Ellington/Leventon (0.9); Prepare notice of withdrawal re: Daugherty adversary proceeding (1.3); Call with DSI re: redacting exhibits for confirmation hearing (0.5); Review redactions on org chart and legal entities chart (1.5).	6.60	695.00	$4,587.00
01/30/2021	JAM	BL	Review/revise written responses to Dondero's discovery requests (2.2); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, L. Canty, DSI re: written responses to Dondero's discovery requests (0.3); create and revise demonstrative exhibits (0.7); telephone conference with G. Demo, T. Silva, DSI re: funds transition and litigation issues (0.7); telephone conference with J. Seery re: deposition, trial preparation (0.3); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re analysis of issues of confirmation/J. Pomerantz presentation (1.8); prepare for confirmation (1.8); telephone	8.10	1245.00	$10,084.50

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				Hours	Rate	Amount
			conference with G. Demo, H. Winograd re: projects for Dondero contempt hearing (0.3).			
01/30/2021	GVD	BL	Conference with J. Morris re litigation strategy	0.10	950.00	$95.00
01/30/2021	GVD	BL	Conference with H. Winograd and J. Morris re discovery issues	0.30	950.00	$285.00
01/30/2021	HRW	BL	Call with J. Morris and G. Demo re: document review and production (0.2); Draft demonstratives re: Highland litigation for confirmation hearing (1.5).	1.70	695.00	$1,181.50
01/31/2021	JAM	BL	Prepare direct examination for J. Seery (4.8); telephone conference with J. Pomerantz re: Seery testimony (0.1); e-mails with H. Winograd, L. Canty re: document review for Dondero contempt hearing (0.1); telephone conference with G. Demo re: litigation issues (0.1); telephone conference with J. Pomerantz re: evidence, testimony of Aon representative (0.1).	5.20	1245.00	$6,474.00
01/31/2021	HRW	BL	Review documents for Dondero production (5.8) Review documents for contempt motion (3.9) Draft demonstratives re: Highland litigation for confirmation hearing (1.5)	11.20	695.00	$7,784.00
				670.90		**$698,770.00**

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
v.	§	Adv. Proc. No. 20-3190-sgj11
JAMES D. DONDERO,	§	
Defendant.	§	

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

NOTICE OF CONTINUED HEARING

PLEASE TAKE NOTICE that the following matter is scheduled for hearing on **Wednesday, March 24, 2021 at 9:30 a.m. (Central Time)** (the "Hearing") in the above-captioned adversary proceeding (the "Adversary Proceeding"):

1. *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Dkt. No. 48] (the "Motion").

The Hearing on the Motion will be held via WebEx videoconference before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge. The WebEx video participation/attendance link for the Hearing is: https://us-courts.webex.com/meet/jerniga.

A copy of the WebEx Hearing Instructions for the Hearing is attached hereto as **Exhibit A**; alternatively, the WebEx Hearing Instructions for the Hearing may be obtained from Judge Jernigan's hearing/calendar site at: https://www.txnb.uscourts.gov/judges-info/hearing-dates/judge-jernigans-hearing-dates.

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Dated: March 23, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

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Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A

WebEx Hearing Instructions
Judge Stacey G. Jernigan

Pursuant to General Order 2020-14 issued by the Court on May 20, 2020, all hearings before Judge Stacey G. Jernigan are currently being conducted by WebEx videoconference unless ordered otherwise.

For WebEx Video Participation/Attendance:

Link: https://us-courts.webex.com/meet/jerniga

For WebEx Telephonic Only Participation/Attendance:

Dial-In: 1.650.479.3207
Meeting ID: 479 393 582

Participation/Attendance Requirements:

- Counsel and other parties in interest who plan to actively participate in the hearing are encouraged to attend the hearing in the WebEx video mode using the WebEx video link above. Counsel and other parties in interest who will not be seeking to introduce any evidence at the hearing and who wish to attend the hearing in a telephonic only mode may attend the hearing in the WebEx telephonic only mode using the WebEx dial-in and meeting ID above.
- Attendees should join the WebEx hearing at least 10 minutes prior to the hearing start time. Please be advised that a hearing may already be in progress. During hearings, participants are required to keep their lines on mute at all times that they are not addressing the Court or otherwise actively participating in the hearing. **The Court reserves the right to disconnect or place on permanent mute any attendee that causes any disruption to the proceedings**. For general information and tips with respect to WebEx participation and attendance, please see Clerk's Notice 20-04: https://www.txnb.uscourts.gov/sites/txnb/files/hearings/Webex%20Information%20and%20Tips_0.pdf
- **Witnesses are required to attend the hearing in the WebEx video mode and live testimony will only be accepted from witnesses who have the WebEx video function activated**. Telephonic testimony without accompanying video will not be accepted by the Court.
- All WebEx hearing attendees are required to comply with Judge Jernigan's Telephonic and Videoconference Hearing Policy (included within Judge Jernigan's Judge-Specific Guidelines): https://www.txnb.uscourts.gov/content/judge-stacey-g-c-jernigan

Exhibit Requirements:

- Any party intending to introduce documentary evidence at the hearing must file an exhibit list in the case with a true and correct copy of each designated exhibit filed as a separate, individual attachment thereto so that the Court and all participants have ready access to all designated exhibits.
- If the number of pages of such exhibits exceeds 100, then such party must also deliver two (2) sets of such exhibits in exhibit binders to the Court by no later than twenty-four (24) hours in advance of the hearing.

Notice of Hearing Content and Filing Requirements:

IMPORTANT: For all hearings that will be conducted by WebEx only:

- The Notice of Hearing filed in the case and served on parties in interest must: (1) provide notice that the hearing will be conducted by WebEx videoconference only, (2) provide notice of the above WebEx video participation/attendance link, and (3) attach a copy of these WebEx Hearing Instructions or provide notice that they may be obtained from Judge Jernigan's hearing/calendar site: https://www.txnb.uscourts.gov/judges-info/hearing-dates/judge-jernigans-hearing-dates.
- When electronically filing the Notice of Hearing via CM/ECF select "at https://us-courts.webex.com/meet/jerniga" as the location of the hearing (note: this option appears immediately after the first set of Wichita Falls locations). Do not select Judge Jernigan's Dallas courtroom as the location for the hearing.

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S MOTION TO REOPEN EVIDENCE TO
ALLOW FOR ADDITIONAL REBUTTAL WITNESS TESTIMONY

James D. Dondero ("Defendant"), the defendant in the above-captioned adversary proceeding, hereby files this *Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony* (the "Motion"). In support thereof, Defendant respectfully represents as follows:

1. On March 22, 2021, the Court conducted a hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should not be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 48] and *Debtor's Memorandum of Law in Support of Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Adv. Dkt. 49] (collectively, the "Contempt Motion").

2. Mr. James P. Seery, Jr., the Debtor's CEO, was the last witness to testify during the hearing. At about 5:30 p.m., after Mr. Seery's testimony concluded, the Court stated that closing arguments would occur on Wednesday, March 24, 2021 starting at 9:30 a.m. since there was already a related setting scheduled for the same time.

3. As the Court is aware, at the outset of the hearing on the Contempt Motion, each side had agreed to limit their presentation to a total of three and a half hours. At the time that Seery's testimony concluded, counsel for Defendant had utilized approximately 2 hours, 45 minutes of his allotted time.

4. Based on a review of Mr. Seery's testimony, it appears that Mr. Seery may have made some inaccurate or incomplete statements regarding Defendant's cell phone, the Debtor's cell phone replacement policy, and certain other matters.

5. During the hearing, Defendant testified as to the cell phone replacement policy that had existed at the Debtor during his approximate twenty-five-year tenure as the Debtor's CEO and that he complied with that policy when he replaced his cell phone on or around December 10, 2020. Defendant also testified to certain other matters that conflicted with the testimony Mr. Seery gave during the hearing.

6. Accordingly, Defendant believes that additional witness testimony should be presented to the Court to briefly rebut the testimony of Mr. Seery regarding the Debtor's cell phone

policy, Defendant's replacement of his phone, and certain limited other matters.

7. To that end, Defendant respectfully requests that the Court allow Defendant to call additional witnesses, Jason Rothstein, Thomas Surgent, and/or Scott Ellington, to provide brief additional testimony regarding these matters and to rebut certain testimony that Mr. Seery provided. For example, Mr. Jason Rothstein would testify that he transitioned Defendant's cell phone in the same way that he had for other senior employees over the last 13 years. *See* Declaration of Jason Rothstein, attached hereto as "**Exhibit A**."

8. Moreover, Mr. Ellington testified in his deposition to several matters addressed by Mr. Seery and Mr. Ellington's testimony directly contradicts that of Mr. Seery. *See* Excerpts of Ellington Deposition, attached hereto as "**Exhibit B**."

9. While Defendant understands that the Court believed testimony was concluded at the end of March 22nd, Defendant's counsel has not utilized all his allotted time and briefly calling one or more additional witnesses to testify as to certain limited topics will not take much additional time or prejudice the Court or the parties. If allowed by the Court, Defendant would agree that direct examination and cross examination of such witness would be limited and that Defendant would not exceed his previously-agreed to 3.5 hours of total time. Defendant believes that justice will be served by allowing for this additional witness testimony so the Court has a complete picture as to the Debtor's cell phone policy and certain other matters.

10. Defendant therefore respectfully requests that the Court allow for the presentation of this additional witness testimony and, to the extent necessary to allow for witness availability, briefly reschedule or continue the hearing on the Contempt Motion to allow for this additional witness testimony, with closing arguments occurring thereafter.

11. At a minimum, Defendant seeks to proffer the deposition testimony of Mr.

Ellington as rebuttal evidence to Mr. Seery's testimony.

12. Alternatively, Defendant submits the Rothstein Declaration and Ellington Deposition Excerpts as an offer of proof.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court enter an order (i) granting this Motion, (ii) allowing for limited additional witness testimony as requested herein, and continuing or rescheduling the hearing on the Contempt Motion to the extent necessary to allow for such testimony, (iii) at a minimum, allowing Defendant to proffer the Ellington deposition testimony as rebuttal evidence and allowing Defendant to submit the attached exhibits as an offer of proof, and (iv) granting Defendant such other and further relief to which he may be justly entitled.

Dated: March 24, 2021

Respectfully submitted,

/s/ D. Michael Lynn

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on March 24, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DECLARATION OF JASON ROTHSTEIN

I, Jason Rothstein, hereby declare the following under penalty of perjury:

1. I am over 18 years of age and if called upon I would competently testify to the matters set forth herein from my own personal knowledge, or my opinion based upon my experience.

Exhibit A

2. Although Highland's policy for replacing cell phones was not specifically referenced in the Employee Manual, for 13 years I performed the same procedures when senior executives replaced their phone or left the firm.

3. I transitioned Jim Dondero's cell phone in the same way that I have for other senior executives over the last 13 years.

4. I wiped Mr. Dondero's old cell phone clean of all business data subject to retention policies (emails and attachments) so that the business data was not inadvertently distributed to the public.

5. I returned Mr. Dondero's cell phone to his assistant's desk.

6. I did the same procedure for transitioning cell phones for many former Highland employees when they left their employment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Dated: March 24, 2021

By: *<u>/s/ Jason Rothstein</u>*
Name: Jason Rothstein

1 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
2 DALLAS DIVISION

3

IN RE:	)
4	) CHAPTER 11
HIGHLAND CAPITAL	)
5 MANAGEMENT, L.P.,	) CASE NO. 19-34054-sgj11
	)
6 Debtor.	)
----------	)
7 HIGHLAND CAPITAL	)
MANAGEMENT, L.P.,	)
8	) ADVERSARY PROCEEDING
Plaintiff,	)
9	)
vs.	)
10	) NO: 20-3190-sgj11
JAMES D. DONDERO,	)
11	)
Defendant.	)

12

13

14

15

16 DEPOSITION OF SCOTT ELLINGTON

17 DALLAS, TEXAS

18 TUESDAY, FEBRUARY 16, 2021

19

20 (Reported Remotely)

21

22

23 REPORTED BY: TANYA L. VERHOVEN-PAGE,
CCR-B-1790

24

25 JOB NO. 189884

Exhibit B

1 February 16, 2021
2 10:04 a.m.
3
4 Deposition of
5 SCOTT ELLINGTON, held in Dallas, Texas before
6 Tanya L. Verhoven-Page, Certified Court
7 Reporter and Notary Public of the State of
8 Texas.
9
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22
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24
25

1 APPEARANCES OF COUNSEL

2
On behalf of the Debtor:
3
PACHULSKI STANG ZIEHL & JONES
4 780 Third Avenue
New York, New York 10017
5

6 BY: JOHN MORRIS, ESQ.

7 (Via Zoom)

8 ALSO PRESENT: La Asia Canty

9

10

11 On behalf of Highland CLO Funding Ltd.:

12 KING & SPALDING
500 West 2nd Street
13 Austin, Texas 78701

14
BY: REBECCA MATSUMURA, ESQ.
15
(Via Zoom)
16

17

18 On behalf of James Dondero:

19 BONDS ELLIS EPPICH SCHAFER JONES
420 Throckmorton Street
20 Fort Worth, Texas 76102

21
BY: JOHN WILSON, IV, ESQ.
22
(Via Zoom)
23

24

25

1 APPEARANCES OF COUNSEL

2

3 On behalf of Unsecured Creditors Committee:

4 SIDLEY AUSTIN
2021 McKinney Avenue
5 Dallas, Texas 75201

6
BY: PAIGE HOLDEN MONTGOMERY, ESQ.
7
BY: PENNY REID, ESQ.
8
(Via Zoom)
9

10

11 On behalf of CLO holdco and Grant Scott:

12 KANE RUSSELL COLEMAN LOGAN
Bank of America Plaza
13 901 Main street
Dallas, Texas 75202
14

15 BY: BRIAN CLARK, ESQ.

16 BY: JOHN KANE, ESQ.

17 (Via Zoom)

18

19
On behalf of HCRE Partners, LLC (n/k/a NexPoint Real
20 Estate Partners, LLC:

21 WICK, PHILLIPS, GOULD & MARTIN
100 Throckmorton Street
22 Fort Worth, Texas 76102

23
BY: PAUL ELKINS, ESQ.
24
(Via Zoom)
25

1 APPEARANCES OF COUNSEL

2

3 On behalf of Scott Ellington:

4 BAKER MCKENZIE
1900 North Pearl Street
5 Dallas, Texas 75201

6 BY: DEBRA DANDENEAU, ESQ.
BY: MICHELLE HARTMANN, ESQ.
7 (Via Zoom)

8

9

10

11
ROSS & SMITH
12 Plaza of the Americas
700 N. Pearl Street
13 Dallas, Texas 75201

14
BY: FRANCES SMITH, ESQ.
15
(Via Zoom)
16

17

18 - - -

19

20

21

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25

S. ELLINGTON

DALLAS, TEXAS; TUESDAY, FEBRUARY 16, 2021

10:04 A.M.

Thereupon --

SCOTT ELLINGTON,

called as a witness, having been first duly sworn, was examined and testified as follows:

MS. HARTMANN: John, are you okay with me putting a couple things on the record again?

MR. MORRIS: Sure. Go right ahead.

MS. HARTMANN: This is Michelle Hartman, Baker McKenzie, on behalf of the witness Scott Ellington, and we have agreed voluntarily to produce Mr. Ellington today. As stated yesterday, we have rolling power outages. So Mr. Ellington was unable to return from President's Day weekend and will be taking this by phone.

He did get the exhibits a short time ago. He's not been able to print them yet. That's going to take about 45

S. ELLINGTON

minutes. We're willing to go forward, but at a convenient time we want to take a break so he can get those, if that's okay with you, Mr. Morris.

MR. MORRIS: Yeah, no problem at all.

MS. HARTMANN: I also just want to say on the record, we sent a letter on February 11th to all the parties that we believed that there might be a privilege issue with. Mr. Ellington served as general counsel for Highland Capital Management and also provided legal advice pursuant to a shared services agreement to several Jim Dondero affiliated entities.

We expect and hope that counsel for those entities who are on the call, the video deposition today, will make the right privilege objections should they see fit.

Thanks, John.

MS. MATSUMURA: And, John, I'd like to again make my statement on the record,

S. ELLINGTON

if that's all right.

MR. MORRIS: Yeah.

MS. MATSUMURA: This is Rebecca Matsumura from King & Spalding, representing Highland Funding, Limited. We're one of the parties that received a letter informing us to attend this deposition to object in case our privileged information was discussed.

We don't think that our privileged information will be discussed and, of course, we'll object if the question calls for it, but we don't agree that the witness is released from any obligation he would otherwise have to protect the fund's privileged information.

Thank you.

MR. CLARK: And this is Brian Clark on behalf of CLO Holdco. We would echo the same thing.

MR. MORRIS: Are we ready to proceed?

So my name is John Morris. I'm an attorney with Pachulski, Stang, Ziehl &

S. ELLINGTON

Jones. I represent the debtor, Highland Capital Management, LP in its bankruptcy. We're here today for the deposition of Scott Ellington.

As has been the procedure, I would ask anybody to speak up and object if any party has an objection to the use of the transcript of this deposition during any future proceeding in the bankruptcy case, notwithstanding the fact that this is being conducted -- or because this is being conducted remotely.

Okay. So I've heard no objection. So let's proceed. Can you please swear the witness in?

MS. HARTMANN: I believe she has.

THE REPORTER: I swore him at the beginning.

MR. MORRIS: Very well.

EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Ellington. Can you hear me okay?

S. ELLINGTON

MR. WILSON: I'd like to ask a few questions.

MS. HARTMANN: Okay.

EXAMINATION

BY MR. WILSON:

Q Mr. Ellington, my name is John Wilson. I represent Mr. Dondero.

A Okay.

Q You discussed a little earlier in this deposition a phone policy, that Highland --

A Yeah.

Q -- may or may not have had a written policy on? Do you recall that?

A Yes, I do.

S. ELLINGTON

Q Okay. And can you describe for me again the basis for the treatment of old cell phones when new cell phones were acquired?

A Absolutely.

MR. MORRIS: Objection to the form of the question.

THE WITNESS: When a new cell phone was acquired, my understanding of the policy is that Highland's IT department would wipe -- for lack of a better term -- your existing phone, your old phone I'll call it, and they were to remove all Highland related information, debtor related information from that phone.

Then it was returned to you and, in the abundance of caution and prudence, the SEC was concerned with personal communication devices retaining nonpublic, private proprietary information or investor related information, and you were told to recycle or destroy the phone to make sure that information did not get into other

people's hands.

BY MR. WILSON:

Q And do you know when that formal or informal policy was put into place?

A The policy --

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Sorry, John.

The policy, the training around that, was conducted by compliance years ago. I would say five to seven years ago.

BY MR. WILSON:

Q And are you aware of the person who made the decision to implement that policy?

A It would be Thomas Surgent, the chief compliance officer.

Q O okay. And I think you may have testified earlier that Mr. Surgent conducted some training sessions on this issue?

A Yes.

Q And you attended those training sessions?

A Yes.

Q And did Mr. Dondero attend those training

S. ELLINGTON

sessions?

A It would be my strong assumption, yes. I believe in those trainings everyone needs to certify they've attended compliance trainings in writing.

Q Okay. And I think you also testified earlier that you were not initially aware that Highland was paying for your cell phone; is that correct?

A That's correct. I was not aware.

Q And do you know when you became aware that Highland was paying for your cell phone?

A Yes.

Q When was that?

A Late November.

Q Okay. And how long had Highland been paying for your cell phone?

A Since --

Q When did you become aware of that?

A Since the inception of my employment. They used to pay for all employees' cell phones.

Q Okay. Do you know of any other current or former Highland employees who got new phones at the time that you did?

A I'm now aware that Mr. Dondero did.

S. ELLINGTON

Q But you're not aware of any others?

A I'm not aware of any others, but there were some senior people that departed during the pendency of the bankruptcy that I would assume Highland no longer pays for their phones after they resigned.

Q So before December of 2020, you had gone through the process of acquiring a new cell phone in the past?

A At least a half a dozen times.

Q Okay. And was there anything different about the process that was used in December of 2020 than the process that had been used previously?

A The process was exactly the same with one exception. Jason Rothstein, the head of Highland IT, terminating Highland's financial responsibility, and myself and Ms. Goldsmith, my assistant, phoning AT&T and making myself financially responsible.

Q Thank you.

When was your employment from Highland terminated?

A January the 5th, 2020 -- sorry -- 2021.

Q Are you familiar with a term -- with the term settlement counsel?

A I am.
Q And is that a role that you were given?
A I was certainly tasked as being a go-between. I can see where someone would use that moniker for what I was doing.
Q Okay. And are you aware that Mr. Dondero would use that moniker?
A I am.
Q And when -- when were you tasked with the role as go-between?
A Pretty much from the inception of the board being put in place.
Q Okay. And tasked you with that role?
A The board, primarily, at the beginning asked me to carry messages and get responses from Mr. Dondero, and then specifically tasked with individual missions, for lack of a better term, to go and negotiate and elicit information and responses from Mr. Dondero by Mr. Seery.
Q And when you talked about a communication with Mr. Dondero on January 4th, and you believe possibly January 5th, was that related to your role as settlement counsel?
MR. MORRIS: Objection to the form

S. ELLINGTON

of the question.

THE WITNESS: On January 4th, Mr. Seery -- and I believe Pachulski, as well, I can't remember -- sent an e-mail with an attached document to myself, Frank Waterhouse -- I'm doing this out of memory -- Mr. Dondero and Mr. Lynn, maybe some others at Bonds Ellis, or yourself, John, that was a line by line item of all of the overhead, for lack of a better term, of the debtor.

And there was a proposal in what Mr. Seery sent the group that those costs would be shared some by the debtor and some by the affiliated entities that had been under the sub-servicing sub-advisory agreement.

And I notified Mr. Seery on the phone that I would be meeting with Mr. Dondero, Mr. Rothstein and Mr. Waterhouse on January 4th to go line by line through that item and get a response, which I was singularly tasked with, back from Mr. Dondero with what,

S. ELLINGTON

quote, unquote, he was willing to pay for, meaning the other registered advisors and sub-servicing sub-advisory contractual parties.

BY MR. WILSON:

Q And is it fair to say that, from the inception of the Highland bankruptcy and the institution of the independent board, that you performed this role as settlement counsel for roughly a year?

A Yes.

MR. MORRIS: Objection to the form of the question.

BY MR. WILSON:

Q And did you routinely have communications with Mr. Dondero over the course of that year related to your role as settlement counsel?

A Well, communications relative to the operation of the debtor while Mr. Dondero was still employed there as a portfolio manager, of the shared services and sub-advisory agreements of the contractual parties, the other RIAs, NexBank and The Daf, and on a -- Mr. Dondero's sponsored debtor accepted or not accepted, as it's been called, pot

S. ELLINGTON

plant.

It was that amalgamation of topics that I communicated with Mr. Dondero with at various times.

Q Did Mr. Seery ever tell you after the -- after the TRO was issued that you needed to stop that role as settlement counsel?

A No. Mr. Seery's direct advice to me when I raised how often I was being contacted by Mr. Dondero, the subject matter of those contacts and the contacts I was receiving from former Judge Lynn, was that I -- because of the shared services sub-advisory agreements, I needed to answer Dondero's phone calls, Mr. Dondero's phone calls.

And when I spoke about how Mr. Dondero would sometimes meander in a conversation from shared services into bankruptcy specific matters, Mr. Seery's direct instruction to me was, well, you have to answer his calls but try to stay out of those kind of conversations.

In regards to former Judge Lynn, Mr. Seery's direct instructions were, you can talk to Judge Lynn as much as you want, he's an ethical guy.

Q Okay. Thank you.

One of the things you mentioned in your

S. ELLINGTON

list of topics that you discussed with Mr. Dondero under your role as settlement counsel was the pot plant?

A Correct.

Q And did Mr. Seery expect for you to be the go-between on the pot plant discussions between Mr. Seery and Mr. Dondero?

A I've been tasked with that directly --

MR. MORRIS: Objection to the form of the question.

THE WITNESS: I had been tasked with that directly by Mr. Seery and included in communications from Pachulski and Mr. Seery copying me, along with Mr. Dondero and his proposals, around pot plant proposal for months.

BY MR. WILSON:

Q Did anyone ever communicate with you after September 10th, which is the date that the TRO was entered, that you could not talk to Mr. Dondero in your role as settlement counsel.

A No, and not in my role as general counsel because I was being tasked directly by Mr. Seery to have conversations on specific items with

S. ELLINGTON

Mr. Dondero.

MR. WILSON: No further questions. Thank you.

THE WITNESS: Thank you.

MS. HARTMANN: John, do you have any? I want to do just a short redirect on one issue.

MR. MORRIS: Why don't you do that first.

EXAMINATION

BY MS. HARTMANN:

Q Mr. Ellington, you were asked a few questions about your cell phone, and I just want to get the time line together.

Do you have a sense of when your new business phone was ordered?

A I asked my admin to order me the new iPhone in late October. She began the presale process in early November. The phone was charged to me on December the 4th, the new phone, and was delivered within a day or so after that. So the 5th or 6th it was in my possession.

Q And just for the record, can you tell me the name of your admin?

S. ELLINGTON

A Sarah Goldsmith.

Q And did you follow the same process with regard to her ordering a phone as you did in the past?

A Yes, she always handled everything with IT. I was never involved other than request, wanting a new phone, not very often. But when a new phone came out, she would just proactively order it for me.

Q I believe you said you worked with the head of IT for Highland when you obtained your new phone to essentially move the date onto your new phone; is that true?

A Correct. Well, my -- Ms. Goldsmith would have interacted and done all that process, but I had the initial call with the head of IT and Ms. Goldsmith to start the process.

Q Did the head of IT for Highland have your phone in his possession for a period of time?

A That's the way I understand it. It's always worked in the past is the head of IT, or his direct reports, need my old phone in hand to move and install Outlook on a new phone.

Q And if you were charged for your phone December 4th, do you know why it took the head of

S. ELLINGTON

Highland IT so long to transfer the financial responsibility? I think we saw it took until February -- excuse me. Let me start over.

If you were charged for your phone in early December, I think you testified December 4th, do you know why it took the head of Highland IT so long to transfer responsibility? I believe we saw December 9th.

A I don't --

MR. MORRIS: Object to the form of the question.

THE WITNESS: I do not know why. I'm sure it's you order something, you're charged on the 4th, it takes a day or two to arrive in the mail, is my assumption. And then I believe the financial responsibility was terminated December 8th.

And then December 9th is when we and my admin, Ms. Goldsmith, called AT&T and they asked me a bunch of personal questions to set up me as the responsible party. It looks like that was confirmed on the 9th.

S. ELLINGTON

BY MS. HARTMANN:

Q Right. And you testified that you weren't aware that Highland was paying for your phone.

Can you explain that to the court? Were you receiving a bill?

A It's a little more complex than that. My understanding is that the debtor would reimburse or pay supplement to every employee X amount of dollars a month, and then any above that goes onto their personal credit card, when they had personal financial responsibility for the phone.

So I was receiving a charge from AT&T, but I didn't know if I was receiving the reimbursement or not. I just didn't pay attention to what the charges were.

Q You didn't pay attention to the amount, but you were receiving a bill from AT&T?

A Yes, I was receiving a monthly charge from AT&T.

Q And when financial responsibility for your work phone was moved to you, did you pay down the old phone?

A Yes. Mr. Rothstein and Ms. Goldsmith

S. ELLINGTON

informed me that there was an installment plan on the old phone and that there was a remaining balance, and I paid off that balance.

Q Do you know about how much of the phone you bought?

A I believe it was more than 50 percent, is what I was told, that only a few payments had been made.

Q Did you work with the head of IT to do that?

A Yes. The head of IT got my credit card because he was the contact person, and from what I've been told, the only person at the debtor that could interact with AT&T around phone issues.

So he said there's an outstanding balance, you need to pay it off before I switch over financial responsibility. The head of Highland IT told myself and my admin that, I gave him my credit card and he paid it off.

Q To your knowledge, at any point during the bankruptcy case did debtor's counsel ask you to issue a litigation hold or preservation of any kind?

A No, no one ever asked.

Q As I understand it, the deputy general

S. ELLINGTON

counsel would normally issue a litigation hold; is that fair?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: The litigation --

BY MS. HARTMANN:

Q I'll rephrase.

Do you know who formally issues the litigation hold?

A Yes, the litigation hold e-mails normally come from Thomas Surgent and are firm wide, and I don't remember one ever being sent.

Q And, to your knowledge, has the head of Highland IT worked with litigation holds in the past?

A Yes.

Q If a litigation hold or preservation hold was put in place, based on your experience with them, do you believe you would have followed it?

A Yes.

Q Mark Okada was the founder -- co-founder of the debtor, true?

A Yes.

Q Did you ever hear that his documents or his electronically stored information was the subject

of a motion to compel filed by the UCC?

A No, I've never heard of that.

Q When he left the company during bankruptcy, do you know what happened to his phone?

A I do not know for a fact, but I -- I don't think it was ever turned over to anyone in legal or HR to -- to look through or to image or document.

Q What position did Trey Parker hold?

A He was the head of private equity and was a partner.

Q When he left during the pendency of bankruptcy, do you know what happened to his phone?

A Exactly the same as Mark's, Mr. Okada's. I do not know personally what happened to it, but again, it was never given, to my knowledge, to legal, compliance or HR to look through or assess.

Q Did you recently, and I believe it was post termination, receive a preservation notice from the UCC?

A I believe I did, yes.

Q Do you know the date of that?

A I do not.

Q Would that have been sometime after your

S. ELLINGTON

termination, you believe?

A It would have been, yes.

Q So sometime in January of 2021?

A Yes.

Q Do you recall receiving any kind of preservation notice from the UCC before that?

A No.

Q Has anyone from debtor's counsel ever told you to preserve text messages?

A No.

MS. HARTMANN: Thank you, Mr. Ellington.

THE WITNESS: You're welcome.

MR. MORRIS: I'll pass, John.

ERRATA SHEET

Deposition of Scott Ellington dated February 16, 2021

Highland Capital Management, L.P. v. James D. Dondero, Adv. Proc. No. 20-03190-sgj

Page	Line	Change From	Change To	Reason for Change
22	23	"Not that I recall, no."	"Not that I recall, not other than compensation from Highland, and other than the shares in trusts, funds, or affiliates managed by Nexpoint that I referenced."	Clarification
113	11-12	"I received shares in funds managed by NexPoint Advisors."	"I received shares in trusts, funds, or affiliates managed by NexPoint Advisors."	Clarification
116	8	"No."	"No, not other than compensation from Highland, and other than the shares in trusts, funds, or affiliates managed by Nextpoint that I referenced."	Clarification

Scott Ellington

Sworn to before me this 22 day of March, 2021

Notary Public

MICHAEL JASON COULOMBE
Notary ID #128219747
My Commission Expires
March 25, 2022

J U R A T

I, , do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on ; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 20 ,

at _____, .

SIGNATURE OF WITNESS

1 C E R T I F I C A T E

2

3 STATE OF TEXAS:

4 DALLAS COUNTY:

5

6 I hereby certify that the foregoing
7 deposition was reported, as stated in the
8 caption, and the questions and answers
9 thereto were reduced to written page
10 under my direction, that the preceding
11 pages represent a true and correct
12 transcript of the evidence given by said
13 witness.
14 I further certify that I am not of
15 kin or counsel to the parties in the
16 case, am not in the regular employ of
17 counsel for any of said parties, nor am I
18 in any way financially interested in the
19 result of said case.
20 Dated this 11th day of February,
21 2021.
22
23
24 Tanya L. Verhoven-Page,
Certified Court Reporter,
B-1790.
25

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING JAMES DONDERO'S MOTION TO REOPEN EVIDENCE TO ALLOW FOR ADDITIONAL REBUTTAL WITNESS TESTIMONY

On this date, the Court considered the *Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony* (the "Motion") filed by Defendant James Dondero ("Dondero")

regarding the hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Dkt. 48] (the "Contempt Motion"), which is currently set for March 24, 2021 at 9:30 a.m. Upon consideration of the Motion, the Court finds that the Motion is well taken and should be granted as set forth herein. Accordingly, it is hereby ordered as follows:

1. The Motion is **GRANTED** as set forth herein.
2. The Court will reopen the evidence to allow for the additional witness testimony as requested in the Motion.
3. The hearing on the Contempt Motion will resume on March __, 2021 at ____.

###END OF ORDER###

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 36

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ATTORNEYS FOR APPELLANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
006285	14.	Adv. Dkt. 7	12/7/20	Brief in Support of Debtor's Motion for Temporary Restraining Order
006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol. 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

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006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
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007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 24, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER DENYING JAMES DONDERO'S MOTION TO REOPEN EVIDENCE TO ALLOW FOR ADDITIONAL REBUTTAL WITNESS TESTIMONY

On March 24, 2021, the Court considered the *Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony* [Adv. Dkt. 132] (the "Motion") filed by Defendant James

Dondero ("Dondero") regarding the hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Dkt. 48] (the "Contempt Motion"). Upon consideration of the Motion and the arguments made by counsel during the hearing on March 24, 2021, the Court finds that the Motion should be denied for the reasons stated on the record during the hearing. Accordingly, it is hereby ordered as follows:

1. The Motion is **DENIED**.

###END OF ORDER###

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S TRIAL BRIEF OPPOSED TO
PLAINTIFF'S COMPLAINT FOR INJUNCTIVE RELIEF

James D. Dondero ("Defendant" or "Dondero"), the defendant in the above-captioned adversary proceeding, hereby files this Trial Brief Opposed to Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief [Adv. Dkt. 1] (the "Complaint"). In support thereof, Defendant respectfully represents as follows:

I. PRELIMINARY STATEMENT

1. The Bankruptcy Court should reject the Debtor's request to impose the broad permanent injunctive relief requested by the Debtor in its Complaint. The injunctive relief sought by the Debtor is neither necessary nor warranted under the facts. Mr. Dondero has complied with the terms of the Preliminary Injunction, which was entered nearly four months ago. As he testified during the hearing on the Contempt Motion, Mr. Dondero changed his behavior after the TRO and Preliminary Injunction were entered. Since that time, he has attempted to comply with the orders and there have been no allegations that Mr. Dondero has violated the terms of the Preliminary Injunction.

2. Even if the Debtor can satisfy its burden to show that some permanent injunctive relief is warranted, it will not be able to show that the broad and unclear injunction requested satisfies applicable law. The proposed injunction—among other things—blatantly violates Mr. Dondero's First Amendment rights. Other provisions of the requested injunction are so broad and ambiguous as to not provide Mr. Dondero with fair notice of the acts restrained. There are no grounds for the entry of such an unprecedented and unclear injunction on the facts of this case. This is even more so because the Debtor—whose business is essentially gone and being run by a skeleton crew—is liquidating and what is left of the business will be protected by the Debtor's plan injunction. The Court should reject the Debtor's attempt to impose a broad and unnecessary injunction against Mr. Dondero.

II. ARGUMENT AND AUTHORITIES

3. "A party seeking a permanent injunction must show: (1) that it has succeeded on the merits; (2) that a failure to grant the injunction will result in irreparable injury; (3) that said injury outweighs any damage that the injunction will cause the opposing party; and (4) that the

injunction will not disserve the public interest. *VRC LLC v. City of Dallas*, 460 F.3d 607, 611 (5th Cir. 2006). Furthermore, "[a] permanent injunction is appropriate only if a defendant's past conduct gives rise to an inference that, in light of present circumstances, there is a reasonable likelihood of future transgressions." *Sec. & Exch. Comm'n v. Life Partners Holdings, Inc.*, 854 F.3d 765, 784 (5th Cir. 2017).

A. The proposed permanent injunction is neither necessary nor warranted under the facts.

4. There is no need for the entry of a permanent injunction in this case. While the Debtor may have previously convinced the Court that it met the lesser standard for the entry of the preliminary injunction to "get it over the finish line" and confirm its plan, those purported concerns no longer exist. The Debtor's Plan[1] has been confirmed. The Debtor has terminated virtually all of its employees. And the Debtor will soon be operating post-effective date with the protections of a broad plan injunction. And, significantly, Mr. Dondero has complied with the terms of the Preliminary Injunction, which will be in effect until the effective date of the Debtor's plan.

5. Under these circumstances, the facts do not support the entry of the broad permanent injunction requested by the Debtor.

B. The proposed permanent injunction restricting Mr. Dondero's communications is unconstitutional.

6. The proposed permanent injunction contains another flaw: it is blatantly unconstitutional. A blanket, unqualified restriction on **all** communications of any subject matter between Dondero, on the one hand, and the Debtor's employees, and two former employees (Isaac Leventon and Scott Ellington), on the other hand, violates the First Amendment to the U.S. Constitution by restricting their freedom of speech and freedom of assembly.

[1] As used herein, the term "Plan" means the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808].

7. Prior restraints on freedom of speech such as those proposed by the Debtor have long been disfavored in American law. *Near v. Minnesota*, 283 U.S. 697 (1931). While a prior restraint is not unconstitutional per se, there is a heavy presumption against its constitutionality. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558-59 (1975).

8. An injunction restricting all communication (as is the case here) acts as a prior restraint and thus bears a heavy presumption against constitutional validity. *See Auburn Police Union v. Carpenter*, 8 F.3d 886, 903 (1st Cir. 1993). A prior restraint "must be narrowly drawn and cannot be upheld if reasonable alternatives are available having a lesser impact on First Amendment freedoms." *Bernard v. Gulf Oil Co.*, 619 F.2d 459, 467 (5th Cir. 1980) (citing *CBS, Inc. v. Young*, 522 F.2d 234, 238 (6th Cir. 1975) and *Nebraska Press Association v. Stuart, supra; Carroll v. Commissioners of Princess Anne*, 393 U.S. 175 (1968)).

9. The Supreme Court has directed judges to scrutinize injunctions restricting speech carefully and ensure that they are "no broader than necessary to achieve [their] desired goals." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 764-65, 114 S. Ct. 2516 (1994).

10. Accordingly, before an injunction restricting speech can be entered, the moving party must show that reasonable alternatives with a less severe impact are unavailable. In this case, the Debtor has made no showing that least restrictive means are not available to achieve the purported purpose behind the injunction besides a blanket restriction on communications with Debtor's employees and two former employees. Accordingly, the injunction restricting Mr. Dondero's communications is too broad and unconstitutional. *See Bernard v. Gulf Oil Co.*, 619 F.2d 459, 476-77 (5th Cir. 1980) ("The order before us suppresses essentially everything, and one seeking to exercise his right to speech or association must petition the court. No showing has been made, or even offered, that reasonable alternatives with lesser impact are unavailable.").

11. Federal courts routinely hold that a blanket prohibition on all communications, regardless of the subject, are not narrowly tailored and therefore are unconstitutional as an unlawful prior restraint. *See Haseotes v. Cumberland Farms*, 216 B.R. 690, 695 (D. Mass. 1997) ("To the extent, however, that the injunction enjoins communications which do not constitute interference with the day-to-day operations of CFI, it is overly broad and, therefore, unconstitutional."); *Beck v. Boce Grp.*, No. 04-20683-CIV-COOKE, 2005 U.S. Dist. LEXIS 58658, at *8-9 (S.D. Fla. 2005) (noting that an injunction on *all* communications between two parties "would not be narrowly tailored" to address the alleged harm).

12. Finally, the Court lacks the authority and jurisdiction to enter such a broad injunction against Mr. Dondero. The Debtor did not request in its Complaint or by motion that Mr. Dondero be enjoined (much less permanently) from speaking to any employees of the Debtor after their employment terminates. Through the pre-trial order, however, the Debtor, for the first time in this case, proposes that a permanent, blanket restriction on communications be made between Mr. Dondero and Mr. Ellington and Mr. Leventon. Such a restriction would violate a number of legal and Constitutional rights of these individuals, including their First Amendment rights to freedom of speech and assembly, as well as their due process rights. The Court should reject this request. There are no grounds to grant such relief in this case.

C. The proposed permanent injunction is overbroad, vague, not clear and specific, and otherwise violates applicable law.

13. The proposed permanent injunction requested by the Debtor is overbroad, vague, ambiguous, and unspecific—making Mr. Dondero vulnerable to prosecution for contempt for lawful acts.

14. Rule 65(d) of the Federal Rules of Civil Procedure provides that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall

be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." The specificity requirement "ensures that a party who is restrained by a preliminary injunction knows clearly what conduct is being restrained and why." *MillerCoors LLC v. Anheuser-Busch Cos., LLC*, 940 F.3d 922, 924 (7th Cir. 2019).

15. "The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam). Accordingly, an injunction "cannot be so general as to leave the party open to the hazard of conducting business in the mistaken belief that it is not prohibited by the injunction and thus make him vulnerable to prosecution for contempt." *Williams v. United States*, 402 F.2d 47, 48 (10th Cir. 1967).

16. First, the provision of the injunction that prohibits Dondero from "interfering with or otherwise impeding, directly or indirectly, with the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan" is not clear, definite, and specific because it does not list specific acts that are to be restrained. Rather, it lists a broad, vaguely-worded category of conduct that could be read to apply to any number of unidentified actions related to this bankruptcy case or Debtor's business. Interpreted broadly, this provision could be read to prevent any action of Dondero or his related entities to assert their individual legal rights in this case or to protect their individual business interests. This provision could also be read to restrict any action that is in disagreement with a decision of the Debtor, such as whether claims are properly treated or classified ("treatment of claims"), whether

the Debtor's Plan complies with applicable law ("pursuit of the Plan"), whether Dondero can disagree with any sale of assets owned or controlled by the Debtor ("disposition of assets owned or controlled by the Debtor"), and whether Dondero could attempt to pursue his own alternative plan ("alternative to the Plan").

17. This is similar to a broad and sweeping injunction that broadly attempts to enjoin any "interference" with the administration of the Debtor's estate or the Debtor's business, which courts in other circumstances have held is not specific enough to be enforceable. *See, e.g.*, *Robinson v. Rothwell (In re Robinson)*, 342 Fed. Appx. 235, 2009 U.S. App. LEXIS 19040 (8th Cir. 2009) (reversing contempt finding resulting from provision in order preventing "any actions to interfere in any way with administration of these jointly administered bankruptcies," because bankruptcy court's order was neither sufficiently specific to be enforceable, nor clear and unambiguous).

18. Here, the restrictions in the injunction are similar in that the injunction contains the broad phrase "interfering with or otherwise impeding, directly or indirectly, the Debtor's business" which is just as non-specific, unclear and ambiguous as the phrase from the case above. Further, it appears the intent of this provision is at least partially to prevent Dondero from supposedly "interfering" with the bankruptcy case as the Debtor then lists a series of general duties of a debtor in possession as being included within this broad and amorphous category of interference. The "treatment of claims," for example, has nothing to do with how the Debtor's business operates. It instead appears the intent of this provision is also to enjoin Dondero and his related entities (and their attorneys) from exercising their legal rights and asserting legal positions that the Debtor simply disagrees with. Accordingly, these alleged restrictions are likewise non-specific, vague, and ambiguous because no specific actions are identified as being restricted. It remains unclear

what actions Dondero can or cannot do related to this bankruptcy case or the Debtor's business.

19. The ambiguity of the injunction is further evidenced by the fact that the Debtor, in connection with its Contempt Motion, asserted that attorneys for the Funds and Advisors[2] may not send letters to the Debtor asserting certain legal positions and making certain requests because such actions "interfere" with the Debtor's business, even if no further action was taken after the letters were sent. While the TRO did not say that counsel for certain of Dondero-related entities were prohibited from sending letters to Debtor's counsel to make requests, the Debtor asserted that these entities sending such letters caused Dondero to violate the order as falling under this broad category of "direct or indirect" interference with Debtor's business.[3] This broad interpretation by the Debtor raises serious questions as to the clarify and specificity of the proposed injunction requested by the Debtor. If legal requests made by third parties through their counsel such as this could cause Dondero to violate the injunction, neither Dondero nor his related entities have fair notice of the acts allegedly restrained.

20. In addition, the provision of the injunction that enjoins and restrains Mr. Dondero from "causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in the Prohibited Conduct" is too broad because it may enjoin unidentified third parties that are not a party to this proceeding. Those third-party entities have complex rights and interests independent from Mr. Dondero. There were no other parties to the underlying adversary proceeding. The proposed permanent injunction is therefore too broad and not clear and specific as it may purport to restrain these third parties.

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[2] As used herein, "Funds and Advisors" shall mean and refer to Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.

[3] *See* Debtor's Brief in Support of Motion for Order to Show Cause, Adv. Dkt. 49.

21. Finally, while Mr. Dondero must obey the automatic stay, the provision of the injunction that prevents Mr. Dondero from "violating section 362(a) of the Bankruptcy Code" also violates Rule 65 because it is vague, nonspecific, and does not describe in reasonable detail the acts restrained.

22. In violation of Rule 65(d), this portion of the injunction does not include any specific and identifiable prohibitions. Instead, it refers to an outside document or source and purports to make matters contained therein (11 U.S.C. § 362(a)) a violation of the injunction. This plainly violates Rule 65(d)(1)(C) because it refers to a document or source outside the face of the order instead of describing in reasonable detail the specific acts restrained. See Fed. R. Civ. P. 65(d). Accordingly, Mr. Dondero cannot ascertain from the face of the preliminary injunction what acts may or may not be prohibited by this provision.

CONCLUSION

Based on the foregoing, Defendant respectfully requests that the Court deny the relief requested in Debtor's Complaint.

Dated: May 3, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on May 3, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Bryan C. Assink
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FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. 20-3190-sgj11

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

NOTICE OF FILING OF PROPOSED CONSENSUAL ORDER RESOLVING ADVERSARY PROCEEDING

Highland Capital Management, L.P. ("Plaintiff") and James Dondero ("Defendant"), all of the parties (together, the "Parties") in the above-captioned adversary proceeding (the "Adversary Proceeding"), hereby give notice that they intend to jointly request that the Court approve the proposed Order attached as **Exhibit A** (the "Proposed Order") during the hearing scheduled to take place on **May 18, 2021, at 9:30 a.m. (Central Time)**. For convenience, attached as **Exhibit B** is a legal blackline showing the differences between the Proposed Order and the relief requested by the Debtor in paragraphs 11 through 13 of its *Proposed Findings of Fact and Conclusions of Law* [Docket No. 156] (the "Original Proposed Findings and Conclusions") filed May 3, 2021.

[*Remainder of Page Intentionally Blank*]

Dated: May 18, 2021.

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

ORDER RESOLVING ADVERSARY PROCEEDING

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

This matter having come before the Court on the joint request of Highland Capital Management, L.P. ("Plaintiff" or the "Debtor") and James Dondero ("Defendant" or "Mr. Dondero"), all of the parties (together, the "Parties") in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the *Debtor's Proposed Findings of Fact and Conclusions of Law* [Adv. Pro. Docket No. 156], (b) the *Joint Pre-Trial Order* [Adv. Pro. Docket No. 157], (c) *James Dondero's Proposed Findings of Fact and Conclusions of Law* [Adv. Pro. Docket No. 158], (d) *James Dondero's Trial Brief Opposed to Plaintiff's Complaint for Injunctive Relief* [Adv. Pro. Docket No. 159], (e) the stipulated facts, the proposed factual findings, the proposed conclusions of law, and the arguments and law cited in the foregoing documents, and (f) all prior proceedings arising in and relating to this Adversary Proceeding; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that there is a factual basis for the relief requested and that the requested relief is appropriate under sections 105(a) and 362(a) of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record, it is **HEREBY ORDERED THAT**:

1. James Dondero is enjoined and restrained from the following conduct until the Court enters an order granting a motion made by the Debtor or its successors or assigns, seeking to close of the above-captioned Chapter 11 Case (the "Case Closing"):

(a) communicating directly or indirectly with (i) any member of the Independent Board,[2] (ii) any current or former member of the Claimant Trust Oversight Board,[3] (iii) the Claimant Trustee, or (iv) the Litigation Trustee ((i)-(iv) collectively, the "Protected Entities"), any communication with the Protected Entities must be conducted directly through respective counsel;

(b) making any express or implied threats of any nature against the Debtor, the Reorganized Debtor, any of the Protected Entities or any of their directors, officers, employees, professionals, or agents, in whatever capacity they are acting;

(c) communicating with any person then employed by the Debtor or the Reorganized Debtor; and

(d) interfering or otherwise impeding, directly or indirectly, with the Debtor's, the Reorganized Debtor's or the Protected Entities' business, including, but not limited to, any decisions concerning their respective operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Protected Entities, and the implementation of the Plan (collectively, the "Prohibited Conduct").[4]

---

[2] "Independent Board" means the board of directors at Strand Advisors, Inc., the Debtor's general partner, appointed on January 9, 2020, and their successors. The current members of the Independent Board are John Dubel, James P. Seery, Jr., and Russell Nelms.

[3] All capitalized terms used but not defined herein have the meaning given to them in *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as amended, the "Plan"), which included certain amendments. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Ex. B [Docket No. 1875].

[4] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice, from objecting to any motion filed in this Bankruptcy Case, or from the exercise of all rights at law, contract, or equity made in accordance with any "gatekeeper" provision then in place, including those in the Plan, the *Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339], and the *Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* [Docket No. 854] , and no communication conducted through respective counsel will be deemed to violate this Order or constitute Prohibited Conduct unless such communication is found to violate (b) (pertaining to threats) and (d) (pertaining to interference).

2. It is further **ORDERED** that, for the avoidance of doubt, Mr. Dondero is also enjoined and restrained from otherwise violating section 362(a) of the Bankruptcy Code, until such section is no longer in force under its terms or the discharge injunction contained in the Plan after the Effective Date.

3. It is further **ORDERED** that Mr. Dondero is enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct until the Case Closing, ***except*** that this Order does not enjoin or restrain Mr. Dondero's employees or any of his affiliates' employees from communicating with the Debtor, the Reorganized Debtor, or the Protected Entities or any of their directors, officers, employees, professionals, or agents in connection with any requests for data or information made pursuant to that certain *Order*, Adv. Proc. No. 21-03010-sgj [Docket No. 24] (Bankr. N.D. Tex. Feb. 24, 2021), or in connection with the Shared Resources Agreement, dated March 1, 2021, by and among Highland Capital Management, L.P. and NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. (as may be amended or restated), subject to the limitations of (b) and (d) of the Prohibited Conduct.

4. It is further **ORDERED** that Mr. Dondero is enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at 200 Crescent Court, Suite 700 Dallas, Texas or 300 Crescent Court, Suite 700 Dallas, Texas, or any other offices in which the Debtor operates, or offices or facilities owned or leased by the Debtor(the address(es) of which the Debtor will provide to Mr. Dondero's counsel), regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written

permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

5. It is further **ORDERED** that the *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Pro. Docket No. 59] is deemed dissolved and superseded by this Order.

6. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

EXHIBIT B

For the reasons set forth herein, it is hereby **ORDERED** that James Dondero is ~~permanently~~ enjoined and restrained from the following conduct until the Court enters an order granting a motion made by the Debtor or its successors or assigns, seeking to close of the above-captioned Chapter 11 Case (the "Case Closing"):

(a) communicating ~~(whether orally, in writing, or otherwise),~~ directly or indirectly~~,~~ with (i) any member of the Independent Board,[1] ~~unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication~~(ii) any current or former member of the Claimant Trust Oversight Board,[2] (iii) the Claimant Trustee, or (iv) the Litigation Trustee ((i)-(iv) collectively, the "Protected Entities"), any communication with the Protected Entities must be conducted directly through respective counsel;

(b) making any express or implied threats of any nature against the Debtor, the Reorganized Debtor, any of the Protected Entities or any of ~~its~~their directors, officers, employees, professionals, or agents, in whatever capacity they are acting;

(c) communicating with any ~~of~~person then employed by the Debtor~~'s employees;~~ or the Reorganized Debtor; and

(d) interfering ~~with~~ or otherwise impeding, directly or indirectly, with the Debtor's, the Reorganized Debtor's or the Protected Entities' business, including, but not limited to ~~the Debtor's~~, any decisions concerning ~~its~~their respective operations, management, treatment of

[1] "Independent Board" means the board of directors at Strand Advisors, Inc., the Debtor's general partner, appointed on January 9, 2020, and their successors. The current members of the Independent Board are John Dubel, James P. Seery, Jr., and Russell Nelms.

[2] All capitalized terms used but not defined herein have the meaning given to them in *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as amended, the "Plan"), which included certain amendments. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Ex. B [Docket No. 1875].

claims, disposition of assets owned, controlled or managed by the ~~Debtor~~Protected Entities, and the implementation of the ~~Debtor's Plan; and (e)~~Plan ~~(collectively, the "Prohibited Conduct").~~[3]

It is further **ORDERED** that, for the avoidance of doubt, Mr. Dondero is also enjoined and restrained from otherwise violating section 362(a) of the Bankruptcy Code ~~(collectively, the "Prohibited Conduct").~~[2], until such section is no longer in force under its terms or the discharge injunction contained in the Plan after the Effective Date.

It is further **ORDERED** that Mr. Dondero is ~~also preliminarily~~ enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct~~.~~ until the Case Closing, ***except*** that this Order does not enjoin or restrain Mr. Dondero's employees or any of his affiliates' employees from communicating with the Debtor, the Reorganized Debtor, or the Protected Entities or any of their directors, officers, employees, professionals, or agents in connection with any requests for data or information made pursuant to that certain *Order*, Adv. Proc. No. 21-03010-sgj [Docket No. 24] (Bankr. N.D. Tex. Feb. 24, 2021), or in connection with the Shared Resources Agreement, dated March 1, 2021, by and among Highland Capital Management, L.P. and NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. (as may be amended or restated), subject to the limitations of (b) and (d) of the Prohibited Conduct.

[3] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice, from objecting to any motion filed in this Bankruptcy Case, or from the exercise of all rights at law, contract, or equity made in accordance with any "gatekeeper" provision then in place, including those in the Plan, the *Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339], and the *Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* [Docket No. 854] , and no communication conducted through respective counsel will be deemed to violate this Order or constitute Prohibited Conduct unless such communication is found to violate (b) (pertaining to threats) and (d) (pertaining to interference).

~~[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case.~~

It is further **ORDERED** that Mr. Dondero is ~~also preliminarily~~ enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at 200 Crescent Court, Suite 700 Dallas, Texas or 300 Crescent Court ~~in~~, Suite 700 Dallas, Texas, or any other offices in which the Debtor operates, or offices or facilities owned or leased by the Debtor (the address(es) of which the Debtor will provide to Mr. Dondero's counsel), regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

It is further **ORDERED** that the *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Pro. Docket No. 59] is deemed dissolved and superseded by this Order.

Document comparison by Workshare 9.5 on Tuesday, May 18, 2021 9:22:23 AM

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Document 1 ID	PowerDocs://DOCS_NY/43178/1
Description	DOCS_NY-#43178-v1-Original_Permanent_Injunctive_Relief
Document 2 ID	PowerDocs://DOCS_NY/43174/5
Description	DOCS_NY-#43174-v5-Highland_-_Dondero_Injunction
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Deletions	26
Moved from	1
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Style change	0
Format changed	0
Total changes	62

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 18, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

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This matter having come before the Court on the joint request of Highland Capital Management, L.P. ("Plaintiff" or the "Debtor") and James Dondero ("Defendant" or "Mr. Dondero"), all of the parties (together, the "Parties") in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the *Debtor's Proposed Findings of Fact and Conclusions of Law* [Adv. Pro. Docket No. 156], (b) the *Joint Pre-Trial Order* [Adv. Pro. Docket No. 157], (c) *James Dondero's Proposed Findings of Fact and Conclusions of Law* [Adv. Pro. Docket No. 158], (d) *James Dondero's Trial Brief Opposed to Plaintiff's Complaint for Injunctive Relief* [Adv. Pro. Docket No. 159], (e) the stipulated facts, the proposed factual findings, the proposed conclusions of law, and the arguments and law cited in the foregoing documents, and (f) all prior proceedings arising in and relating to this Adversary Proceeding; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that there is a factual basis for the relief requested and that the requested relief is appropriate under sections 105(a) and 362(a) of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record, it is **HEREBY ORDERED THAT**:

1. James Dondero is enjoined and restrained from the following conduct until the Court enters an order granting a motion made by the Debtor or its successors or assigns, seeking to close of the above-captioned Chapter 11 Case (the "Case Closing"):

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[4] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice, from objecting to any motion filed in this Bankruptcy Case, or from the exercise of all rights at law, contract, or equity made in accordance with any "gatekeeper" provision then in place, including those in the Plan, the *Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339], and the *Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* [Docket No. 854] , and no communication conducted through respective counsel will be deemed to violate this Order or constitute Prohibited Conduct unless such communication is found to violate (b) (pertaining to threats) and (d) (pertaining to interference).

2. It is further **ORDERED** that, for the avoidance of doubt, Mr. Dondero is also enjoined and restrained from otherwise violating section 362(a) of the Bankruptcy Code, until such section is no longer in force under its terms or the discharge injunction contained in the Plan after the Effective Date.

3. It is further **ORDERED** that Mr. Dondero is enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct until the Case Closing, ***except*** that this Order does not enjoin or restrain Mr. Dondero's employees or any of his affiliates' employees from communicating with the Debtor, the Reorganized Debtor, or the Protected Entities or any of their directors, officers, employees, professionals, or agents in connection with any requests for data or information made pursuant to that certain *Order*, Adv. Proc. No. 21-03010-sgj [Docket No. 24] (Bankr. N.D. Tex. Feb. 24, 2021), or in connection with the Shared Resources Agreement, dated March 1, 2021, by and among Highland Capital Management, L.P. and NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. (as may be amended or restated), subject to the limitations of (b) and (d) of the Prohibited Conduct.

4. It is further **ORDERED** that Mr. Dondero is enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at 200 Crescent Court, Suite 700 Dallas, Texas or 300 Crescent Court, Suite 700 Dallas, Texas, or any other offices in which the Debtor operates, or offices or facilities owned or leased by the Debtor(the address(es) of which the Debtor will provide to Mr. Dondero's counsel), regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written

permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

5. It is further **ORDERED** that the *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Pro. Docket No. 59] is deemed dissolved and superseded by this Order.

6. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

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State Bar I.D. No. 24033261
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT'S EMERGENCY MOTION TO STAY PENDING APPEAL
AND FOR APPROVAL OF SUPERSEDEAS BOND OR OTHER SECURITY

TO THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Defendant James Dondero ("Dondero"), pursuant to Rule 62(b) of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this proceeding through Rule 7062 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Bankruptcy Rule 8007, hereby files *Defendant's Emergency Motion to Stay Pending Appeal and for Approval of*

Supersedeas Bond or Other Security (the "Motion"). In support thereof, Dondero respectfully shows the Court as follows:

I. BACKGROUND

1. On March 22 and 24, 2021, this Court conducted a hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Contempt Motion"). At the conclusion of the hearing on March 24, 2021, the Court took the matter under advisement.

2. On June 7, 2021, this Court entered its *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Docket Nos. 190 and 191] (the "Contempt Order").

3. Among other things, the Contempt Order requires Dondero to pay the Debtor $450,000 by June 22, 2021. The order also provides that a "sanction of $100,000" will be added by the Court for "each level of rehearing, appeal, or petition for certiorari that Mr. Dondero may choose to take" to the extent such appellate remedy is unsuccessful.

4. On June 15, 2021, Defendant filed a notice of appeal of the Contempt Order. *See* Docket No. 195.

5. Because Dondero is appealing the Contempt Order, the Court should stay the enforcement of the Contempt Order pending appeal upon the posting of a proper supersedeas bond or equivalent security.

II. ARGUMENT AND AUTHORITIES

6. Pursuant to Bankruptcy Rule 8007 and Federal Rule 62(b), made applicable here through Bankruptcy Rule 7062, Dondero respectfully requests that the Court (i) stay execution and enforcement of the Contempt Order pending appeal; and (ii) approve a supersedeas bond or

equivalent cash security in the amount of $550,000 to cover the monetary award contained in the Contempt Order.

7. Federal Rule 62(b) provides that "[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security." Fed. R. Civ. P. 62(b).[1]

8. Under this rule, the posting of a sufficient supersedeas bond or equivalent security provides the movant with a stay as a matter of right. Fed. R. Civ. P. 62(b); *Hebert v. Exxon Corp.*, 953 F.2d 936, 938 (5th Cir. 1992).

9. Bankruptcy Rule 8007(a) in turn provides as follows:

> (a) Initial Motion in the Bankruptcy Court.
>
> (1) *In General*. Ordinarily, a party must move first in the bankruptcy court for the following relief:
>
> (A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal;
> (B) the approval of a bond or other security provided to obtain a stay of judgment;
> (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or
> (D) the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e).
>
> (2) *Time to File*. The motion may be made either before or after the notice of appeal is filed.

Fed. R. Bankr. P. 8007.

[1] On December 1, 2018, existing Rule 62(b) replaced and expanded former Rule 62(d), "carr[ying] forward in modified form the supersedeas bond provisions" of the former rule. *Seneca Nation of Indians v. New York*, 2019 U.S. Dist. LEXIS 214399, at *2 (W.D.N.Y. 2019) (citing Fed. R. Civ. P. 62 (b) advisory committee's note to 2018 amendment). "Rule 62(b) now makes explicit the opportunity to post security in a form other than a bond, by providing that at any time after judgment is entered, a party may obtain a stay by providing a bond or other security." *Id.* (citing Fed. R. Civ. P. 62 (b)) (internal quotations omitted). The availability of a stay is no longer contingent on the filing of an appeal. *See Murillo v. A Better Way Wholesale Autos & Westlake Servs.*, LLC, 2019 U.S. Dist. LEXIS 213987, 2019 WL 6700185, at *2 n.1 (D. Conn. Dec. 9, 2019).

10. "The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party's rights pending appeal." *Poplar Grove Planting & Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190-91 (5th Cir. 1979). Accordingly, a judgment debtor may post security "to avoid the risk of satisfying the judgment only to find that restitution is impossible after reversal on appeal." *Id.* In contrast, "the bond secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal." *Id.*

11. Because Dondero is appealing the Contempt Order, he therefore respectfully requests that the Court stay the enforcement of the Contempt Order pending appeal upon the posting of an appropriate supersedeas bond or equivalent security.

12. Dondero respectfully requests that the Court approve the depositing of a cash security (in lieu of bond) in the amount of $550,000, which will stay execution on the Contempt Order pending appeal. Upon a ruling from the Court granting this Motion, Dondero will promptly deposit a cash security in the amount of $550,000 with the registry of the Court. While Dondero does not believe that the additional $100,000 sanction imposed by the Court for unsuccessful appeals is justified, he proposes this amount be included in the amount of the cash security to be deposited with the Court pending the appeal. The proposed security will cover the monetary amounts awarded under the Contempt Order and provide sufficient security to the Debtor while the appeal is pending.

III. PRAYER

For the reasons set forth above, Dondero prays that the Court enter an order (i) granting this Motion; (ii) staying the enforcement of the Contempt Order pending disposition of Defendant's appeal; (iii) approving the amount of cash security proposed herein, or alternatively

establishing such other reasonable amount of security in accordance with applicable law; and (iv) providing Dondero such other and further relief to which he may be entitled.[2]

Dated: June 15, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John T. Wilson IV
State Bar I.D. No. 24033344
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on June 14-15, 2021 I conferred with counsel for the Debtor, Mr. John Morris, regarding the relief requested herein. Mr. Morris indicated that the Debtor is still evaluating the substance of this Motion and therefore has not yet taken a position as to the relief requested.

/s/ Bryan C. Assink
Bryan C. Assink

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 15, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Debtor and on any other party requesting electronic service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

[2] While not required, a discretionary stay would also be justified here under the factors articulated by the Fifth Circuit because Defendant could show (i) a likelihood of success on the merits; (ii) irreparable injury if the stay is not granted; (iii) no prejudice to others if the stay is granted; and (iv) the granting of a stay would serve the public interest. *See In re First South Sav. Ass'n*, 820 F.2d 700, 704 (5th Cir. 1987).

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING DEFENDANT'S EMERGENCY MOTION TO STAY PENDING APPEAL AND FOR APPROVAL OF SUPERSEDEAS BOND OR OTHER SECURITY

On this date, the Court considered *Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security* (the "Motion")[1]. Upon consideration of

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

the Motion, the arguments of counsel, and the evidence presented during the hearing on the Motion, if any, and the record of this proceeding, the Court finds that the Motion is well taken and should be granted as set forth herein. Accordingly, the Court finds that just cause exists for entry of the following order.

IT IS THEREFORE ORDERED that the Motion is **GRANTED** as set forth herein.

IT IS FURTHER ORDERED that, within three (3) business days after entry of this Order, the Defendant shall deposit with the Clerk of the Court a cash security in the amount of $550,000 (the "Cash Security") to be held in the registry of the Court pending the disposition of Defendant's appeal of the Contempt Order.

IT IS FURTHER ORDERED that the execution and/or enforcement of the Contempt Order is hereby **STAYED** on and after June 21, 2021 pending further order of this Court.

IT IS FURTHER ORDERED that upon disposition of the appeal of the Contempt Order, either Plaintiff or Defendant may file a motion with this Court requesting payment or disposition of all or a portion of the Cash Security in accordance with any applicable order or ruling from the appellate court.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction related to the enforcement or implementation of this Order.

 # # # END OF ORDER # # #

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

REQUEST FOR EMERGENCY HEARING

James Dondero ("Defendant" or "Dondero"), the Defendant in the above-captioned adversary proceeding, hereby files this Request for Emergency Hearing (the "Request") on *Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security* (the "Motion")[1] filed by Defendant on June 15, 2021. In support thereof, Defendant respectfully represents as follows:

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion and this Request pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The predicates of the relief requested herein are section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Federal Rule 62, and Bankruptcy Rules 7062 and 8007.

II. RELIEF REQUESTED AND BASIS FOR RELIEF

4. Section 105(a) of the Bankruptcy Code provides that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Further, Bankruptcy Rule 9006(d) permits a court to fix any period of notice by order. Thus, the Court has broad latitude to fix the time for presentment of motions, particularly when "necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

5. For the reasons set forth herein and in the underlying Motion, good cause exists to consider the Motion on an immediate basis and schedule an emergency hearing on the Motion as soon as possible as the Court's schedule allows. Defendant respectfully requests that the Court schedule a hearing on this Motion for **June 17, 18, or the morning of June 21** so that the Motion can be heard before Defendant's deadline to appeal the Contempt Order and the June 22nd deadline by which the amounts awarded under the Contempt Order would otherwise have to be paid.

6. Undersigned counsel has conferred with counsel for the Debtor as to the relief requested in the Motion and this Request. The Debtor has not yet taken a position as to the underlying Motion, but has stated that it would not oppose an emergency hearing if held on Monday June 21 and completed before 1:00 pm (CT).

7. Accordingly, due to the immediate need for the relief requested, Defendant respectfully requests that a hearing be scheduled on the Motion for **June 17, 18, or the morning of June 21**.

WHEREFORE, Defendant respectfully requests entry of an order scheduling a hearing on the Motion on an emergency basis and granting Defendant such other relief as is just and proper.

Dated: June 15, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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Bryan C. Assink
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that, on June 14-15, 2021, I conferred with counsel for the Debtor in an attempt to resolve the relief requested by the Motion and this request for emergency hearing. The Debtor has not yet taken a position as to the underlying Motion, but has stated that it would not oppose an emergency hearing if held on Monday June 21 and completed before 1:00 pm (CT).

/s/ Bryan C. Assink
Bryan C. Assink

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 15, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

---

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

ORDER GRANTING REQUEST FOR EMERGENCY HEARING

On this date, the Court considered the *Request for Emergency Hearing* (the "Request") filed by Defendant James Dondero (the "Movant") with respect to the *Defendant's Emergency*

Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security (the "Motion")[1].

Having considered the Request, the Court finds that good and sufficient cause exists for granting the Request and scheduling an emergency hearing to consider the Motion. Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The Request is **GRANTED** as provided herein.

2. A hearing on the Motion shall occur on **June __, 2021 at _:__ _.m.**

END OF ORDER # #

Respectfully submitted by:

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Clay M. Taylor
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT the following matter is scheduled for hearing on **Monday, June 21, 2021 at 12:00 p.m. (Central Time)** in the above-captioned adversary proceeding:

1. *Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security* [Docket No. 196] filed by James Dondero on June 15, 2021.

The hearing on the Motion will be held via WebEx videoconference before the Honorable

Stacey G.C. Jernigan, United States Bankruptcy Judge. The WebEx video participation/attendance link for the hearing is: https://us-courts.webex.com/meet/jerniga.

WebEx Hearing Instructions for the Hearing may be obtained from: https://www.txnb.uscourts.gov/judges-info/hearing-dates/judgejernigans-hearing-dates and a copy of those instructions is attached to this Notice of Hearing.

Dated: June 17, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 17, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

WebEx Hearing Instructions
Judge Stacey G. Jernigan

Pursuant to General Order 2020-14 issued by the Court on May 20, 2020, all hearings before Judge Stacey G. Jernigan are currently being conducted by WebEx videoconference unless ordered otherwise.

For WebEx Video Participation/Attendance:

Link: https://us-courts.webex.com/meet/jerniga

For WebEx Telephonic Only Participation/Attendance:

Dial-In: 1.650.479.3207
Meeting ID: 479 393 582

Participation/Attendance Requirements:

- Counsel and other parties in interest who plan to actively participate in the hearing are encouraged to attend the hearing in the WebEx video mode using the WebEx video link above. Counsel and other parties in interest who will not be seeking to introduce any evidence at the hearing and who wish to attend the hearing in a telephonic only mode may attend the hearing in the WebEx telephonic only mode using the WebEx dial-in and meeting ID above.
- Attendees should join the WebEx hearing at least 10 minutes prior to the hearing start time. Please be advised that a hearing may already be in progress. During hearings, participants are required to keep their lines on mute at all times that they are not addressing the Court or otherwise actively participating in the hearing. **The Court reserves the right to disconnect or place on permanent mute any attendee that causes any disruption to the proceedings**. For general information and tips with respect to WebEx participation and attendance, please see Clerk's Notice 20-04: https://www.txnb.uscourts.gov/sites/txnb/files/hearings/Webex%20Information%20and%20Tips_0.pdf
- **Witnesses are required to attend the hearing in the WebEx video mode and live testimony will only be accepted from witnesses who have the WebEx video function activated**. Telephonic testimony without accompanying video will not be accepted by the Court.
- All WebEx hearing attendees are required to comply with Judge Jernigan's Telephonic and Videoconference Hearing Policy (included within Judge Jernigan's Judge-Specific Guidelines): https://www.txnb.uscourts.gov/content/judge-stacey-g-c-jernigan

Exhibit Requirements:

- Any party intending to introduce documentary evidence at the hearing must file an exhibit list in the case with a true and correct copy of each designated exhibit filed as a separate, individual attachment thereto so that the Court and all participants have ready access to all designated exhibits.
- If the number of pages of such exhibits exceeds 100, then such party must also deliver two (2) sets of such exhibits in exhibit binders to the Court by no later than twenty-four (24) hours in advance of the hearing.

Notice of Hearing Content and Filing Requirements:

IMPORTANT: For all hearings that will be conducted by WebEx only:

- The Notice of Hearing filed in the case and served on parties in interest must: (1) provide notice that the hearing will be conducted by WebEx videoconference only, (2) provide notice of the above WebEx video participation/attendance link, and (3) attach a copy of these WebEx Hearing Instructions or provide notice that they may be obtained from Judge Jernigan's hearing/calendar site: https://www.txnb.uscourts.gov/judges-info/hearing-dates/judge-jernigans-hearing-dates.
- When electronically filing the Notice of Hearing via CM/ECF select "at https://us-courts.webex.com/meet/jerniga" as the location of the hearing (note: this option appears immediately after the first set of Wichita Falls locations). Do not select Judge Jernigan's Dallas courtroom as the location for the hearing.

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 22, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

STIPULATION AND AGREED ORDER RESOLVING DEFENDANT'S EMERGENCY MOTION TO STAY PENDING APPEAL AND FOR <u>APPROVAL OF SUPERSEDEAS BOND OR OTHER SECURITY</u>
[Relates to Docket No. 196]

This stipulation and agreed order (the "Stipulation and Order") is entered into between Plaintiff Highland Capital Management, L.P. (the "Debtor") and Defendant James Dondero ("Dondero"). The Debtor and Dondero are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, on March 22 and 24, 2021, this Court conducted a hearing on *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Contempt Motion"). At the conclusion of the hearing on March 24, 2021, the Court took the matter under advisement.

WHEREAS, on June 7, 2021, this Court entered its *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Docket Nos. 190 and 191] (the "Contempt Order"). Among other things, the Contempt Order requires Dondero to pay the Debtor $450,000 by June 22, 2021. The order also provides that a "sanction of $100,000" will be added by the Court for "each level of rehearing, appeal, or petition for certiorari that Mr. Dondero may choose to take" to the extent such appellate remedy is unsuccessful.

WHEREAS, on June 15, 2021, Dondero filed a Notice of Appeal of the Contempt Order. *See* Docket No. 195 (the "Current Appeal").

WHEREAS, on June 15, 2021, Dondero filed *Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security* [Docket No. 196] (the "Motion to Stay") requesting that this Court stay the enforcement of the Contempt Order pending appeal through the posting of a cash security with the Court in the amount of $550,000.

WHEREAS, since the filing of the Motion to Stay, the Parties have conferred regarding the relief requested in the Motion to Stay and desire to resolve the Motion to Stay on the terms set forth in this stipulation.

STIPULATION

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, AND SUBJECT TO THE BANKRUPTCY COURT'S APPROVAL, THE PARTIES HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. Subject to the terms and conditions herein, the Motion to Stay is **GRANTED**.

2. The enforcement of the Contempt Order is hereby **STAYED** on and after June 21, 2021 until the earlier to occur of (a) the Contempt Order becoming a final, non-appealable order, or (b) the Contempt Order being reversed or vacated by pursuant to a final, non-appealable order.

3. Within twenty-four (24) hours of the Bankruptcy Court's entry of an order approving this Stipulation and Order, Dondero shall deposit $600,000 in cash into the Court Registry System, administered by the Administrative Office of the United States Courts under 28 U.S.C. § 2045 (the "Court Registry").

4. Should Dondero choose to take further appeals, Dondero shall thereafter post an additional $100,000 in cash simultaneously with the filing of each further appeal beyond the Current Appeal (*i.e.*, a direct or indirect appeal to the Fifth Circuit Court of Appeals, a direct or indirect appeal to the Fifth Circuit *en banc*, and a petition for certiorari to the United States Supreme Court).

5. The deposit of the foregoing amounts into the Court Registry will be done in each case in accordance with General Order 2016-03, Order Regarding Deposit and Investment of Registry Funds, entered by the United States Bankruptcy Court of the Northern District of Texas

on November 17, 2016 (the "General Order"). For the avoidance of doubt, this Order shall constitute the Court's express order authorizing the deposit or transfer of funds into the Court Registry as required by the terms of the General Order, and the Clerk of Court shall accept this Order as the requisite order of the Court permitting the deposit or transfer of funds into the Court Registry.

6. The Parties reserve their respective rights concerning the precise amount due to the Debtor if and when the Contempt Order becomes a non-appealable, final order.

7. The Bankruptcy Court retains exclusive jurisdiction to interpret and enforce this Stipulation and Order.

IT IS SO STIPULATED.

Dated: June 21, 2021

CONSENTED AND AGREED TO BY:

/s/ John A. Morris
Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
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Counsel for Plaintiff Highland Capital Management, L.P.

/s/ Bryan C. Assink
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

BTXN 208 (rev. 07/09)

IN RE: Highland Capital Management, L.P. v. Dondero

DEBTOR

Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO

Case # 20−03190−sgj

TYPE OF HEARING

Highland Capital Management, L.P.

PLAINTIFF / MOVANT

VS

James D. Dondero

DEFENDANT / RESPONDENT

John A. Morris

ATTORNEY

John T. Wilson

ATTORNEY

EXHIBITS

SEE EXHIBIT LIST

Court Admitted Plaintiff's Exhibits #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 Through #57

SEE EXHIBIT LIST

Court Admitted Defendant's Exhibits #1 Through #20

Michael Edmond

REPORTED BY

March 22, 2021

HEARING DATE

Stacey G. Jernigan

JUDGE PRESIDING

Continued Exhibit List (Hearing 3/22/21)	Reference Page
Document# 80	Volume 28 Page 006478
Document# 101	Volume 33 Page 007553
Document# 106	Volume 33 Page 007695
Document# 128	Volume 35 Page 008101

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas December 10, 2020 9:30 a.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES D. DONDERO, Defendant.	**Adversary Proceeding 20-3190-sgj** - MOTION FOR PRELIMINARY INJUNCTION - MOTION FOR TEMPORARY RESTRAINING ORDER

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

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For the Plaintiff: John A. Morris
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For the Official Committee of Unsecured Creditors: Matthew A. Clemente
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APPEARANCES, cont'd.:

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For the NexPoint Parties: James A. Wright, III
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For the CLOs/Issuer Group: James E. Bain
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Recorded by: Michael F. Edmond, Sr.
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(214) 753-2062

Transcribed by: Kathy Rehling
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Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 DALLAS, TEXAS - DECEMBER 10, 2020 - 9:58 A.M.
2 THE COURT: We only have left today the Highland
3 matter. There may be people on the line for the RE Palm
4 Springs matter, but if you're on the line for that, the Court
5 granted a motion for continuance that was filed by SR
6 Construction, Inc. a few days ago. So if you were on the line
7 for that, that's been continued at the Movant's request. Or
8 the Objector's request, I should say. And it's to be reset at
9 such point in time as the lawyers seek that.
10 All right. So, with that, I am going to turn to Highland
11 and our emergency motion for a temporary restraining order
12 against James Dondero that was filed by the Debtor. First,
13 for the Debtor team, who do we have appearing?
14 MR. POMERANTZ: Good morning, Your Honor. It's Jeff
15 Pomerantz, also with John Morris. John Morris will be handling the
16 hearing today on behalf of the Debtor.
17 THE COURT: All right. Thank you. For Mr. Dondero, who
18 do we have appearing?
19 MR. BONDS: Your Honor, John Bonds and Michael Lynn.
20 THE COURT: All right. Thank you. The Committee, I know,
21 is interested in this. Who do we have appearing for the Committee?
22 MR. CLEMENTE: Good morning, Your Honor. Matthew
23 Clemente; Sidley Austin; on behalf of the Committee.
24 THE COURT: All right. I'm going to ask, do we have
25 anyone appearing for certain parties who filed another emergency

motion yesterday, I think involving what seemed like very overlapping issues. The parties that I'm talking about are Highland Fixed Income Fund; NexPoint Advisors, LP; NexPoint Capital, Inc.; and NexPoint Strategic Opportunities Fund. Do we have anyone -- I think it was the K&L Gates firm who filed an emergency motion yesterday on, like I said, what I think are some overlapping issues with what we're going to hear about today. Anyone here on the line for those entities?

MR. WRIGHT: Yes. Good morning, Your Honor. It's James Wright, K&L Gates. I wasn't expecting this matter to be on today, so I need to apologize for not having a coat and a tie.

THE COURT: Okay. Well, I realize I picked you out. But could you, for the court reporter, say your last name again? It was a little garbley.

MR. WRIGHT: Yes. It's James Wright, W-R-I-G-H-T.

THE COURT: Okay. Thank you. Well, we have a lot of other folks on the line, so I'll just ask: Is there anyone else out there who desires to appear? This was obviously set very expedited, so maybe people did not file a pleading to weigh in, but maybe they're wanting to appear. If so, go ahead. (No response.) All right. Hearing no others, I will go to you, I guess, Mr. --

MR. BAIN: Your Honor?

THE COURT: Oh, go ahead.

MR. BAIN: Your Honor?

THE COURT: Yes?

MR. BAIN: I'm sorry. I was on mute. This is Joseph Bain of the law firm of Jones Walker. I represent the CLOs. And Your Honor, at the appropriate time, if Your Honor doesn't mind, I have a few comments that may help inform the Court on kind of what's going on. But I'm happy to wait until the appropriate time.

THE COURT: Okay. Very good. Well, and the reason why I picked out Mr. Wright regarding that newest emergency motion is, you know, I know they've asked for an emergency setting next Tuesday, and I have not -- I've not made a decision on that. I kind of wanted to see what I hear about today and figure out if there's really, you know, a need for that or not.

So, thank you, Mr. Bain. We'll talk to you at some point today.

MR. BAIN: Thank you, Your Honor.

THE COURT: Any other appearances?

All right. Well, I was about to go back to or go to Mr. Morris. But let me ask Mr. Bonds or Mr. Lynn: Did you file a responsive pleading? When I left here yesterday afternoon, I did not see one. But was there one filed late at night, by chance, that I just haven't seen?

MR. BONDS: No, Your Honor, we have not.

THE COURT: Okay. Thank you.

MR. BONDS: (garbled)

THE COURT: All right. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor. John Morris;

Pachulski, Stang, Ziehl & Jones; for the Debtor.

Let me begin by thanking Your Honor for hearing us on such shortened notice. What I thought I'd do is spend a few minutes, Your Honor, talking about why we're here, summarizing the facts, and then summarizing for the Court the relief that we're seeking.

As Your Honor, I presume, is aware, we filed this motion on Monday, together with a declaration from Jim Seery, the Debtor's CEO and CRO, with 29 separate exhibits. And if it pleases the Court, I'd like to proceed in that manner.

THE COURT: All right. You may.

MR. MORRIS: Okay. Your Honor, we do regret that we're here, frankly. The Debtor has worked very hard during the course of this case to get to where we are. We have a plan on file that calls for the monetization of the Debtor's assets for distribution to holders of allowed claims, we have an approved disclosure statement, and confirmation is just five weeks away.

Unfortunately, in the last couple of weeks, Mr. Dondero has engaged in what we firmly believe is wrongful conduct and can't really be credibly disputed or justified. As Mr. Seery lays out in his declaration and as Mr. Dondero's own written words show, Mr. Dondero recently interfered with the Debtor's operations and decisions and made some rather explicit threats.

We're not here to punish Mr. Dondero. We're not here seeking sanctions for violation of the automatic stay. Rather, we're here to simply set some very clear and firm ground rules on a go-forward basis so the Debtor can get across the finish line without interference or coercion by Mr. Dondero or anyone acting on his behalf. That's all we're here to do today.

We tried to work with Mr. Dondero's counsel on a stipulation, but regrettably were unable to do so.

So let me describe for the Court the facts that support the motion, and at the end of that I will offer our exhibits into evidence.

I do want to provide some context into how we got here. The facts are pretty simple. As Your Honor will recall, back in January, with this Court's approval, Mr. Dondero surrendered control of the Debtor to an independent board of directors, including Mr. Seery. As Your Honor knows, though, Mr. Dondero was retained as a portfolio manager and as an unpaid employee of the Debtor.

Pursuant to the Court's order and the term sheet entered into with the Unsecured Creditors' Committee, Mr. Dondero's responsibilities were to be determined by the board, and he agreed to resign at the board's request.

Over the summer, as Your Honor will recall, Mr. Seery was appointed the Debtor's CEO and CRO. Throughout this time, Mr.

1 Seery worked closely with Mr. Dondero. And one of the things
2 they worked on was trying to come up with a so-called pot
3 plan, the goal of which was to come to a consensual resolution
4 of this case. Mr. Seery's goal, the (garbled) goal, the
5 Debtor's goal, was to try to give the estate an alternative to
6 the monetization of the Debtor's assets, and Mr. Seery worked
7 hard and in good faith in that regard.
8 As Your Honor will also recall, in late summer the Debtor
9 and certain litigation creditors agreed to mediate these
10 disputes. In September, the Debtor announced that it had
11 reached an agreement with Josh Terry and Acis to resolve their
12 claims. I don't need to remind the Court of the nature of the
13 disputes between Mr. Dondero and Mr. Terry, but suffice it to
14 say that Mr. Dondero made clear that he opposed not only the
15 settlement that was reached at the mediation, but, really, any
16 settlement at all with Mr. Terry.
17 At around the same time, while still trying to get to the
18 pot plan and a consensual resolution, the Debtor did present
19 its plan of reorganization that provides for the monetization
20 of the assets for the benefit of creditors. By the end of
21 September, Mr. Dondero made it clear that he would oppose both
22 the Acis settlement and the Debtor's plan.
23 He has every right to do that, Your Honor. Well, those
24 steps are contrary to the interests of the Debtor. In
25 addition, it also became clear that Mr. Dondero, through

(garbled) trust, has continued to press his claims that the Debtor had -- that the Debtor had mismanaged Multi-Strat during the case.

For these reasons, I think on October 2nd the board asked Mr. Dondero to resign, and he did so on October 9th.

With confirmation on the horizon, in the last couple of weeks, regrettably, Mr. Dondero has, in fact, interfered with the Debtor's business. There's no dispute that the Debtor serves as the manager of certain CLOs. There's no dispute that Mr. Dondero and certain of his affiliates hold a portion of the preferred notes in the CLOs managed by the Debtors. I don't think there's any dispute that the Debtor's duty is to the CLOs and not to any particular holder of CLO interests.

In late November, in furtherance of his duties, Mr. Seery directed that certain assets held by the CLOs be sold. Mr. Dondero and certain entities he controls, the ones that we mentioned earlier, Your Honor, the ones that are the (garbled), apparently disagreed with Mr. Seery's business judgment, and that happens.

I do want to point out, I don't know if Your Honor has had a chance to read the competing TRO, --

THE COURT: I have.

MR. MORRIS: -- but what's notable -- okay. What's notable in there, Your Honor, is that they expressly admit, and I'm quoting, the Debtor is responsible for making

1 decisions to sell the CLOs' assets. They admit that in their
2 request for a TRO.
3 So there's no dispute that Mr. Seery has the right to do
4 what he set out to do. Nevertheless, Mr. Dondero intervened
5 and personally stopped the trades that Mr. Seery authorized.
6 It's in writing. It can't be disputed. In fact, it's set
7 forth in Exhibit 8, which is attached to Mr. Seery's
8 declaration, which can be found at Docket 4 to the adversary
9 proceeding.
10 Not only did Mr. Dondero cause the trades to halt, he told
11 certain people, including the Debtor's chief compliance
12 officer, not to do it again, and (inaudible) that they would
13 face personal liability if they did so.
14 The Debtor sent cease-and-desist letters to Mr. Dondero
15 and his affiliated entities. Those letters are attached as
16 Exhibits 9 and 10 to Mr. Seery's declaration. And the fact
17 is, Your Honor, for this particular part of the episode, Mr.
18 Seery's conduct is simply unacceptable and was one of the
19 events that precipitated the filing of this motion.
20 THE COURT: You said Mr. Seery. I think you meant
21 Mr. Dondero.
22 MR. MORRIS: I apologize, Your Honor. I certainly
23 did, yes.
24 THE COURT: Okay.
25 MR. MORRIS: The other event that caused the Debtor

1 to file this motion was a rather explicit written threat that
2 Mr. Dondero made to Mr. Seery promptly after the Debtor acted
3 to fulfill its fiduciary duties to the estate.
4 As the Court may generally be aware, Mr. Dondero and
5 certain of his affiliates are the makers under a series of
6 promissory notes in favor of the Debtor. The notes are
7 attached as Exhibits 11 through 23 to Mr. Seery's declaration.
8 Certain of these notes are demand notes, meaning that they
9 don't have a term, they don't expire at some defined point in
10 the future, they're payable upon demand by the holder. The
11 Debtor is the holder of these notes.
12 Last week, the Debtor exercised its right to make a demand
13 for payment of all unpaid principal and accrued interest,
14 estimated to be approximately $30 million in the aggregate.
15 Those demands are set forth in Exhibits 24 through 27 in Mr.
16 Seery's declaration.
17 The demand notes are property of the Debtor's estate,
18 collection of the notes is part of the Debtor's liquidity
19 plan, and the proceeds are expected to be used to pay
20 creditors' claims.
21 Shortly after the demand for payment on the notes was
22 made, Mr. Seery [sic] sent a short text that can be found at
23 Exhibit 28, saying simply, Be careful what you do. Last
24 warning.
25 To Mr. Seery's surprise, Mr. Dondero called him the

following morning, ostensibly to talk about his pot plan. As laid out in his declaration, Mr. Seery expressed considerable concern over the threat, expressed his view that he thought it was unlawful, and was surprised, really, at the nature of the conversation.

Mr. Dondero didn't apologize during that call. He didn't express regret. Instead, he suggested that the lawyers would handle that issue. And only at the end of the call, when Mr. Seery pressed, did Mr. Dondero begrudgingly say that he didn't mean any physical harm.

Your Honor, we're five weeks away from confirmation. The Debtor is laser-focused on getting there. We are -- continue -- we have resolved substantial claims. We continue to resolve substantial claims. And though if there was a viable pot plan the Debtor would still pursue it, the Debtor is seeking a smooth transition into its post-bankruptcy state. We continue to negotiate with creditors who have outstanding claims. And we need peace. We need the freedom to get there.

As a result of the foregoing, the Debtor seeks the entry of a temporary restraining order in the form of Exhibit A attached to the motion, which is on Docket #2 in the adversary proceeding. In substance, the form is intended to prevent Mr. Dondero from interfering with the Debtor's business, engaging in threatening or coercive conduct, and using his affiliates or others acting on his behalf to do the same.

In our discussions with Mr. Dondero's counsel, it became clear that Mr. Dondero was not interested at this time in resolving the entirety of the dispute. We wanted to get this whole adversary proceeding open and closed and put this behind us. But regrettably, we're here today to press the motion because we were unable to come to that agreement.

So, in addition to the entry of the order attached to the motion, the Debtor also requests that the Court hold an evidentiary hearing on the Debtor's request for a preliminary injunction on January 4th, when we already have time on the Court's calendar.

And so that there's no misunderstanding, if the parties cannot resolve this matter beforehand, the Debtors do intend to take discovery during the intervening period. We will be prepared on January 4th, and we would expect, if forced to, to call Mr. Dondero as a witness at that hearing.

I have nothing further, Your Honor. Oh, actually, I do have something further. The Debtor moves for the entry into evidence of the declaration of Mr. James P. Seery, Jr. (muffled).

THE COURT: Okay. You got a little garbley. I think someone unmuted their device during your --

THE CLERK: Mr. Bonds --

THE COURT: Okay. But the request was that the Court admit into evidence the declaration of Mr. Seery at Docket

Entry #4, along with the 29 exhibits that were attached to that declaration. Any objection? (No response.) All right. Those will be admitted into evidence.

(Debtor's 29 exhibits are received into evidence.)

THE COURT: All right. Mr. Bonds, what does Mr. Dondero wish to tell the Court? All right. I think you put yourself back on mute when I made the comment. Please unmute your device.

MR. BONDS: I'm sorry, Your Honor. Can you hear me?

THE COURT: I can.

MR. BONDS: Your Honor, I would first like to apologize for Mr. Dondero's email to Mr. Seery. It should not have been sent. It is unfortunate that Mr. Dondero had several good points to make, but the message he was trying to send to the Debtor seems to have been lost, and for that I apologize.

Mr. Dondero had serious concerns about the way in which the Debtor's employees have been treated in this case. As the Court knows, the employees who built this company will be terminated either on December 31st or upon confirmation of the Debtor's most recent plan. Mr. Dondero does not agree to such termination or the financial treatment of the employees, especially the treatment over the last few months, in which they have seen their claims be substantially reduced.

Your Honor, Mr. Dondero is further concerned with the

Debtor's lack of sale of assets, especially the lack of competitive bidding. Mr. Dondero may want to bid on some of those assets, and under the Debtor's procedure, he is being precluded from bidding, even if the sale is outside of the ordinary course of business.

Mr. Dondero is further frustrated by the Debtor's sale of certain CLOs under applicable law. Is this an attempt around the hearing on the 16th? I don't know, Your Honor, but we are set for the 16th on the issue of whether or not the sales are being made outside the ordinary course of business. Is the Debtor trying to sell its assets without competitive business -- bidding? Why is that?

And what the Debtor would like you to sign is as an overly broad TRO written, I suspect, with a peppering of anger throughout. The relief requested is basically in the declaration of Jim Seery. It contains a number of acts which the Debtor seeks to have this Court determine are prohibited conduct. That term is defined in the Debtor's motion for TRO. We assert that such language is overly broad and its (inaudible) behavior which Debtor seeks to prohibit is not justified, inapplicable, or simply does not make common sense.

Your Honor, in the second paragraph of the proposed TRO, there are five general concepts that are listed as prohibited conduct. The first category of prohibited conduct which we have issues with relates to Mr. Dondero communicating with the

Debtor's employees except as it relates to the shared services provided by or controlled by Mr. Dondero. Such a prohibition is unreasonably broad and seemingly may well violate the First and the Fourth Amendments.

Your Honor, we ask the question: Can Mr. Dondero communicate something as basic as an employment contract with an employee who is going to be let go without violating the TRO?

The second category of prohibited conduct relates to allegedly interfering or otherwise impeding, directly or indirectly, the Debtor's business concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the plan or any alternative to the plan. Your Honor, what does the word indirectly mean? Does such prohibition prohibit the Debtor from pursuing -- or Mr. Dondero from pursuing his Acis 9019 motion or appeal? What does the language mean with regard to pursuit of the plan or any plan alternative? Has the Debtor turned the shield into a sword? Can the Debtor -- can Mr. Dondero try to sell his pot plan which he and the mediators have worked so diligently on? Does Mr. Dondero violate the terms of the TRO simply by voting against the plan?

Is this really what the Debtor wants, or does the Debtor want to return the most money that it can to the Debtor's creditors?

1 Can Mr. Dondero even (inaudible) in the organization
2 without violating the TRO?
3 Finally, the proposed order provides that Mr. Dondero is
4 further temporarily causing -- temporarily enjoined and
5 restrained from causing, encouraging, or conspiring with (a)
6 an entity owned or controlled by him and/or any person or any
7 entity acting on his behalf from directly or indirectly
8 engaging in any prohibited conduct. Again, what does the word
9 causing mean? What about the word encouraging? Does that
10 mean that the Debtor simply cannot do any action to protect
11 himself -- Mr. Dondero cannot take any action to protect
12 himself? Are we setting up Mr. Dondero to fail?
13 Your Honor, what we would ask, what we would ask the Court
14 to do is either deny the TRO as being overly broad or order
15 the Debtor to come up with some reasonable restrictions going
16 forward. We are happy to consider anything reasonable, but
17 the proposed TRO is anything but reasonable.
18 In summary, we ask the Court how the status quo would be
19 altered by a TRO.
20 Your Honor, I think Mr. Morris has indicated that the
21 Debtor intends to be able to confirm a plan on the 5th -- or
22 the 12th, excuse me, of January. Your Honor, we don't believe
23 that that's appropriate. Is Mr. Dondero prohibited from
24 trying to get his plan confirmed? Is he -- I mean, it seems
25 to me that he basically is.

1 Your Honor, with regard to two arguments made by Mr.
2 Morris, or at least one, we deny that any demand notes
3 precipitated Mr. Dondero's email. It had absolutely nothing
4 to do with it. But we're not here to talk about Mr. Dondero's
5 demand notes at this point.
6 I don't think I have anything further.
7 MR. MORRIS: If I may respond very briefly, Your
8 Honor?
9 THE COURT: You may. Go ahead.
10 MR. MORRIS: Okay. Your Honor, we are cognizant, and
11 we don't mean, with all due respect to Mr. Bonds, to infringe
12 on any way Mr. Dondero's right to make applications to this
13 Court, to file motions. I think I heard mention of, you know,
14 questions as to whether Mr. Dondero could pursue his motion
15 against Acis, his appeal of the Acis, about whether or not or
16 he could file things in this Court. We expressly put in a
17 footnote, in order to try to make it clear, that Mr. Dondero
18 has and will continue to have a right to make any application
19 he wants to this Court, to object to any motion that's made.
20 That's not the point of the exercise. The point of the
21 exercise is to protect the Debtor from interference -- to
22 protect the Debtor (echoing) from interference, coercion, and
23 from threats. It's really that simple. I don't know why
24 words that we use in common language every day, such as
25 causing or conspiring or encouraging, should be deemed to be

1 ambiguous. I think, given the importance of these issues, one
2 ought to be able to stay on the right side of that line
3 without questioning whether or not they're actually conspiring
4 with somebody or encouraging somebody to do something that
5 they're otherwise prohibited from doing.
6 What the Debtor will not tolerate, Your Honor, is play
7 whack-the-mole, where we get an order against Mr. Dondero,
8 only to have one of his affiliated entities or somebody acting
9 on his behalf attempt to say, oh, no, I'm here acting on my
10 own independent behalf, and they're going to do exactly what
11 Mr. Dondero is prohibited from doing. So that's all.
12 Again, Your Honor, we're not here with hysteria. I don't
13 think our papers were intended to nor did they project any
14 hysteria. I think, with counsel, as provided for in the
15 proposed order, we would be delighted to continue to work with
16 Mr. Dondero constructively. If he's got ideas on his pot
17 plan, we're not precluding him from doing that at all. All
18 we're saying is that he's got to participate with counsel and
19 that he's not going to make any further direct communications
20 to the Debtor's officers, directors, or employees. That's
21 all, Your Honor. We think it's really quite reasonable under
22 the circumstances.
23 I have nothing further.
24 THE COURT: All right. Well, --
25 MR. BAIN: Your Honor?

THE COURT: Who just spoke up?

MR. BAIN: (garbled) Yes. Joseph Bain on behalf of the CLOs, if I may be heard.

THE COURT: Okay. Everybody else mute their line. Okay. Go ahead, Mr. Bain.

MR. BAIN: Yes, Your Honor. And can you hear me okay?

THE COURT: I can.

MR. BAIN: Wonderful. Your Honor, for the record, Joseph Bain of the law firm of Jones Walker on behalf of the CLOs.

Our role in this is obviously very sensitive, given the nature and relationships that exist. One of the things I did want to let Your Honor know, though, is that -- two things. One, one of the most outstanding issues, at least in my opinion, regarding confirmation of the plan is essentially what to do with the CLOs and collateral management agreements. That's still an open issue. If that's not resolved, there are significant rejection damages that could come from that. So that's the bad news.

The good news, however, is, up until this week, we've been negotiating with the Debtors and we have calls set for NexPoint -- with NexPoint to negotiate what all parties kind of refer to as a soft landing for the CLOs, which, to a large extent, involve the issues that are before you today.

I just, I just wanted to provide that context because the parties are talking and we are kind of taken aback by kind of the most recent event this week, because from an outsider's perspective, the current issues that are currently kind of at dispute here, we thought everyone was working towards a deal. And I think it is a little ironic that -- and as Your Honor knows, I was involved in the *Hoactzin* case, and I thought that that was a very -- I represented Mac Murray (phonetic) in that case, and I thought Ms. Byrnes and Mr. Hendricks did an excellent job of pulling all the parties together.

And Your Honor, I don't want to stray too far outside of my lane to suggest that that same approach is what is needed here, but I just want to raise for Your Honor to let you know that we are here. We're kind of the party stuck in the middle. And we're hoping and we're -- remain willing to negotiate all the outstanding issues. But obviously, given the nature of some of the allegations, it's more complicated right now.

THE COURT: Okay.

MR. BAIN: And that's all I have, Your Honor.

THE COURT: All right. Well, I appreciate you speaking up. And you may or may not remember that the Court ordered mediation last July, global mediation, including Mr. Dondero, mediation among the Debtor, Mr. Dondero, UBS, Acis, the Crusader Redeemer Committee, and we had a co-mediation

team. Retired Bankruptcy Judge Allan Gropper and former Weil Gotshal partner Sylvia Mayer. And while I don't communicate with mediators, I fully believe from the parties' reports that was mediation that the parties and lawyers tried very, very hard in to get to some settlements, and in fact, they did get to a settlement with Acis and the Redeemer Committee.

So, I have a heck of a lot of thoughts here, and I'll refrain from sharing every one of them, but I'm going to share a few of them. While I appreciate Mr. Bonds doing what was an honorable thing and apologizing on behalf of his client for the written communications that were worded in such a way where someone might think they were threatening or a violation of the stay, it wasn't an apology from Mr. Dondero directly. I think the really, really honorable thing might have been if Mr. Dondero came here, hat in hand, willing to go under oath and explain himself. You can share that with him, that's what this judge thinks, that the apology through counsel fell a little short, although I definitely appreciate counsel expressing the apology.

You know, I've been going back and forth looking at my computer screen today, and, you know, it's rather shocking to see in writing, you know, with the photo shot of a text where Dondero says, "Be careful what you do-last warning." I mean, that's just pretty shocking.

MR. BONDS: Your Honor? Your Honor?

THE COURT: Yes.

MR. BONDS: Can I have a second? Mr. Dondero did apologize to counsel and to Mr. Seery as well, and so the idea that Mr. Dondero has not apologized is not entirely correct.

THE COURT: Okay. Well, if I misunderstood, I apologize. But I guess what I was really trying to convey is, in a situation like this, I think coming into court and taking his lumps and saying things under oath might have been a better way to proceed.

I guess the second thing I want to say is I wish Mr. Dondero was here, because maybe I'm reading this wrong, but I think he needs to hear and know he is not in charge anymore of Highland. It may have been his baby. He may have created its wealth. But when he and the board made the decision to file Chapter 11, number one, that changed everything. And then number two, when the Committee was formed and was threatening "We think we need a Chapter 11 trustee because of conflicts of interest of Mr. Dondero and others," and when the Committee negotiated something short of that with the Debtor in January 2020, you know, a settlement that involved Mr. Dondero no longer being in charge, no longer being CEO, no longer having any role except portfolio manager with the Debtor, and when various protocols were negotiated, heavily negotiated, for weeks, detailed, complex protocols, life changed even further. It changed when he filed Chapter 11, when he put his baby,

1 Highland, in Chapter 11, and then it changed further in
2 January 2020 when this global corporate governance settlement
3 was reached. As we know, it involved independent new board
4 members coming in and eventually a new CEO. He's not in
5 charge.
6 Now, that doesn't mean he's not a party in interest, and
7 he can certainly weigh in with pleadings in the bankruptcy
8 court. But these communications that I've admitted into
9 evidence, and the declaration, the sworn declaration of Mr.
10 Seery, suggest to me that he's not fully appreciating that,
11 sorry, you're not in charge. And when you chose to put the
12 company in bankruptcy because of the overwhelming debt, it
13 started a cascade of events, so that now I'm depending on a
14 debtor-in-possession with a new board and a new CEO and a
15 Committee of very sophisticated members and professionals who
16 are working in tandem with the Debtor to be in charge,
17 basically. All right? So that's another thing I just feel
18 compelled to say for Mr. Dondero's benefit.
19 I guess another thing is there was a little bit of a
20 theme, Mr. Bonds, in your comments that Mr. Dondero is just
21 concerned, more than anything else, about the way employees
22 are being treated, or at least that's a major concern. And I
23 don't find that to be especially compelling. I mean, maybe if
24 he was sworn under oath and testified, I would believe that,
25 but it doesn't feel like what's really going on here. Again,

he took the step of deciding that the company should file Chapter 11. We had the change in corporate governance in January. And he has the ability -- everyone, I think, would very much be interested in a plan that he supports. You know, he wants to get the company back. That has been made clear in hearings from time to time, and I believe, from Seery's declaration and Highland's lawyers, that they've been and will remain receptive to Mr. Dondero's ideas for a different type of plan that might allow him to get back into control of Highland, if he puts in adequate consideration that makes the Committee and others happy.

But we're in a proverbial the-train-is-leaving-the-station posture right now. Okay? We've got confirmation coming up the second week of January or something like that. Okay. So the train is leaving the station, so we're running out of time to hear what Dondero might want to do as far as an alternative plan.

So, as far as the requested TRO, I appreciate that Mr. Dondero and his counsel are worried about some ambiguity, but I'm looking through the literal wording that has been proposed, and the wording proposed is that Dondero is temporarily enjoined and restrained for communicating, whether orally, in writing, or otherwise, directly or indirectly, with any board member, unless Mr. Dondero's counsel and counsel for the Debtor are included in such communications. Not ambiguous

at all to me, and not unreasonable. Okay? Time to have counsel involved in these conversations because, you know, we can't have businesspeople-to-businesspeople sending texts that look like threats to me.

Second, making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents. I don't think that's too much to ask. Please don't let him make threats to us anymore.

C, communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero. That seems reasonable to me because of the evidence in front of me.

Then D, interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the plan or any alternative to the plan.

Now, I guess maybe you're confused or feel like that is ambiguous. I will just say, for the sake of any doubt, and I think I heard Mr. Morris saying precisely this, that, you know, Dondero can file pleadings. Okay? He can file pleadings asking for relief. He can object to the plan. He can vote against the plan. And they are completely still open

to hearing about -- and I think they would have a fiduciary duty -- to hear about a pot plan that might be more favorable than what's on the table right now. But Mr. Morris, have I put words into your mouth? Isn't that exactly what you were saying?

MR. MORRIS: That is exactly right, Your Honor. And if you look, I think there's a footnote there that expressly provides -- gives Mr. Dondero the right --

THE COURT: Okay.

MR. MORRIS: -- confirms his right to do exactly what you just described.

(Echoing.)

THE COURT: Okay. Thank you for that. And I should say exclusivity is still in place, right? We don't -- I mean, I'm not inviting him to file a plan right now in violation of the exclusivity provisions, but I'm just saying discussions among lawyers, I think, are not only not prohibited but encouraged here.

And then, last, otherwise violating Section 362 of the Bankruptcy Code. Okay, the sky is blue. That is obviously not problematic.

Okay. So the next paragraph, James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with any entity owned or controlled by him and/or any person or entity acting on his behalf from directly

or indirectly engaging in any prohibited conduct.

You know, I don't -- I understand that indirectly, you know, there might be some concern about the ambiguity, but it looks like to me just sort of a catchall, okay, to the extent we didn't explicitly say it in the preceding paragraph, we don't want Dondero causing some employee of an affiliate he controls to do exactly what Dondero himself is prohibited from doing.

I don't think it's ambiguous. And if it is, if someone runs in here, he's violated Paragraph 3 of the TRO, well, obviously we would have a contested hearing where I'm not going to hold him in contempt of court unless I've got an evidentiary showing that would convince me of that.

So, I guess, on balance, I'm overruling the objections and I am granting the TRO.

And just to be clear, I'll make a record that bankruptcy courts certainly under Section 105 can issue a TRO, and courts are usually bound by the traditional factors of Rule 65 -- that is, looking at has there been a showing of immediate and irreparable harm? Is there a probability of success on the merits that the Debtor will be entitled to this when we have a later more fulsome hearing on the preliminary injunction request? Would the balance of equities favor the Movant Debtor here? And would the injunction serve the public interest?

I find from the evidence, the declaration of Mr. Seery, and the supporting documents, that all four prongs for a TRO are met here, so I am ordering it.

A couple of remaining things. We'll come back on January 4th to consider whether extension of this relief in a preliminary injunction is appropriate. I don't have at my fingertips the time of day where it's set on the 4th. Is it -- I think that's the Monday after the New Year's Day holiday. So I'm guessing we're set at 1:30.

Traci, if you're out there, can you confirm it's 1:30 on January 4th?

Okay. I'm not hearing a response from her. But Nate, maybe you can double-check that.

(Echoing.)

All right. Well, let's talk a minute about what is going to happen next week.

Mr. Bonds, I set -- okay, back on November -- please take your phone off mute when I am talking. Or put it on mute when I'm talking, please.

On November 19th, you filed the motion, basically -- I can't remember the wording of it -- but something like wanting to change the protocol for non-ordinary-course sales of assets. And you asked for an emergency hearing, and I denied that. And I was very concerned that it looked like an attempt to renegotiate the January protocol order that the Committee

had worked so hard to negotiate on. But it's set, finally. I think it's this next Thursday, a week from today.

But meanwhile, you know, again, I feel like the issues raised in that are very much overlapping with what we talked about today, as well as I feel like the January protocol order controls here, and it's an attempt to revisit that a month before confirmation.

But this newest emergency motion filed by Mr. Wright's client, it feels like, as I think I mentioned, the same type of motion dressed a little bit differently from entities controlled by Dondero rather than Dondero directly. And meanwhile, Mr. Wright has asked for a hearing next Tuesday. I'm not going to have three hearings on the same issue. So I guess I'll hear first from Mr. Dondero's counsel. I mean, what do you think I'm going to hear next Thursday that is going to change my mind about this was all covered in the January protocol order and I'm not going to revisit it a month before confirmation? Mr. Lynn, are you here to address that one?

MR. LYNN: Yes, Your Honor. First of all, I think the hearing is actually set for next Wednesday.

THE COURT: Okay.

MR. LYNN: Secondly, the motion filed by Mr. Wright, as I understand it, has to do with sales of assets by the CLOs that the Debtor manages as portfolio manager and not -- and

1 does not have to do with any sales of assets by the Debtor or
2 its estate. So they're two different issues.
3 As I understand Mr. Wright's pleading, he is arguing that
4 under the Advisers Investment Act, if I have that name right,
5 that Mr. Seery, on behalf of the Debtor, ought not to ignore
6 directions from or suggestions, requests, as they actually
7 are, from investors in the CLOs with respect to the assets of
8 the CLOs. That's entirely different from the concern that we
9 are expressing with respect to sales of assets by the Debtor.
10 Secondly, while Mr. Dondero may have some influence on the
11 CLOs, it is my understanding that the investors that Mr.
12 Wright represents are governed by an independent board of
13 directors, which Mr. Dondero may be on. I don't know whether
14 he is or not.
15 Third, we are not trying to change the protocols. We do
16 not believe anything in the protocols at all -- we've
17 identified nothing in the protocols at all that says that the
18 Debtor, and, by extension, Mr. Seery and the independent
19 board, may take actions outside the ordinary course of
20 business without notice and an opportunity for hearing before
21 this Court.
22 We have asked in the alternative that if somehow the
23 protocols authorize these actions, that the Court alter the
24 protocols.
25 What triggered this, Your Honor, was a sale of an entity

1 known as SSP, which belonged to Trussway, which in turn
2 belongs to the Debtor. We believe but we do not know for sure
3 that the sale is below the price that could have been
4 obtained. However, the sale was undertaken, as we understand,
5 without competitive bidding, without notice -- certainly,
6 there was no notice to Mr. Dondero -- and without an
7 opportunity for anyone to be heard.
8 We do not think that the intention of the protocols was
9 for this Court to abdicate its authority to oversee the
10 Debtor's operations and to limit the authorities entitled to
11 participate in decisions involving disposition of assets of
12 major value, to limit the decision-makers to the independent
13 board -- in particular, Mr. Seery -- and to limit it to the
14 members of the Creditors' Committee, rather than providing
15 notice generally to creditors, rather than providing a method
16 for competitive bidding, rather than letting people know what
17 is going on.
18 Your Honor has often stated, not just in this case, your
19 concern that the process should be transparent. We believe
20 that at this point the Debtor is attempting to use the
21 protocols in an effort to avoid the transparency that
22 creditors, equity interest owners, and most of all, this
23 Court, are entitled to.
24 THE COURT: All right. Well, I don't know if anyone
25 wants to respond to that, but --

MR. MORRIS: If I may, Your Honor.

THE COURT: Go ahead, Mr. Morris.

MR. MORRIS: Just very briefly. I think I heard Judge Lynn say that there's nothing in the protocols that authorizes the Debtor to sell assets outside the ordinary course of business. And if he made that admission, I still don't see the point of this motion next week. All they're doing is questioning the Debtor's business judgment. They don't really have a right to do that. Mr. Dondero doesn't have a right to participate in the sale of those assets. The Debtor -- you know, there's no evidence before the Court, there will be no evidence before the Court, as to how the Debtor decided, what factors they considered when deciding to sell these assets. This is just completely improper.

(Echoing.)

Mr. Dondero personally participated in the corporate governance resolution last January. There has been no complaint by him or anybody else about the protocols, about the Debtor having operated outside the protocols. The Debtor is transparent. Every single month, we file monthly operating reports. You can see what's happening with assets, right? We work with the Committee. The Committee's not here joining in this motion. The Committee hasn't complained about the process. It's just Mr. Dondero. He's simply trying to exercise -- this is just another attempt to further exercise

control. He can make his motion. It will be denied because the facts simply don't support it.

THE COURT: Mr. Clemente, is it wrong of me to assume that you and your clients are very vigilant in paying attention to trades, transfers, outside the ordinary course? I assume since, again, you have a committee of sophisticated parties who are owed hundreds of millions of dollars, and you so heavily negotiated the January protocol order, that you're following it meticulously and paying attention to what's happening. Do you care to comment?

MR. CLEMENTE: Thank you, Your Honor. I do. Matt Clemente, for the record, on behalf of the Committee.

You're exactly right, Your Honor, and Your Honor actually touched on several things that I would have said earlier.

First of all, the Committee is made up of very sophisticated members, which makes my job sometimes easy and sometimes challenging, because they are very hands-on and they do understand the business of Highland and we did heavily negotiate the protocols early in the case, Your Honor, and they were designed with exactly these types of transactions in mind, so that the Debtor had to come to the Committee and lay out its case for a particular transaction.

With respect to the transaction at issue, that's exactly what happened, Your Honor. We're not going to get into, obviously, Committee deliberations, but I can tell you that

the protocols have been followed.

As Your Honor knows, when we've had an issue under the protocols, I remember several months ago when we argued about certain distributions being made, the Committee certainly was not shy about bringing it to Your Honor's attention.

So we have been very vigilant and very diligent in holding the Debtor accountable under the protocols. And we believe that -- although, again, when we've had an issue, we've come to Your Honor. We believe that the protocols have worked as they were intended to and as they were designed, Your Honor.

So I can assure you that the Committee has been very vigilant and the Committee will continue to be very vigilant. These issues were all raised in the context of negotiating the protocols. That was before Your Honor. Mr. Dondero was involved with that. It was very difficult negotiations, Your Honor.

But this does seem like somebody now trying to renegotiate what it was that the parties agreed to and Your Honor approved early on in this case.

So, Your Honor, rest assured, the Committee has been very vigilant and will continue to be very vigilant.

THE COURT: All right. And I guess the last thing I'll say on that point is, while of course we always want transparency --

(Interruption.)

THE COURT: While we, of course, always want transparency and notice and opportunity to object, I mean, these are not your typical run-of-the-mill assets. They're not a parcel of real property or a building somewhere or inventory somewhere or intellectual property. I mean, these are -- you know, again, we have a unique business here. And I think that was very much recognized in the process of negotiating the protocols, that this is not the type of business where you do a 363 motion on 21 days' notice any time you feel like, oh, today's a great day to trade this or that in whatever fund.

Well, we will go forward on this motion, because Mr. Dondero is entitled to his day in court to make his argument, put on his evidence, and try to convince me that this is not just trying to renegotiate something Mr. Dondero agreed to 11 months ago on the eve of confirmation. But I want to make sure -- oh, we're getting --

(Echoing.)

(Clerk advises Court.)

THE COURT: Okay. You're on mute. You're on mute, Mr. Lynn.

MR. LYNN: Your Honor, may I explain briefly? This is very distressing. Mr. Morris says that it is the ordinary course of this Debtor's business to sell a subsidiary. This is not the ordinary course of the Debtor's business. There is

1 nothing in the protocols that says that the independent board
2 and just the creditors on the Creditors' Committee may make
3 decisions concerning major sales. We will present evidence to
4 that effect when it occurs, and we believe strongly -- and I
5 want to state, Your Honor, I didn't participate in
6 negotiations of those protocols. I wasn't involved. And I've
7 looked at them. There's nothing that says that this can occur
8 without going to a hearing. And there is nothing in the
9 protocols that defines ordinary course of business to involve
10 this.
11 This motion was not filed because Mr. Dondero wanted to
12 get in the way. It was filed because I thought it was the
13 right thing to do because I thought that this was contrary to
14 the way bankruptcy and Chapter 11 should work. And it was
15 reasoned by me, with Mr. Dondero's consent. And I very, very
16 much am upset to hear things people say that he's trying to
17 get in the way with this. He is not. He's asking for
18 something that is very, very, very reasonable. If they have
19 nothing to hide, and I hope they don't and don't believe they
20 do, but if the Debtor has nothing to hide, what is wrong with
21 notice and a chance for hearing?
22 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
23 If I briefly may be heard.
24 THE COURT: Go ahead.
25 MR. POMERANTZ: I actually did negotiate the

1 protocols. And I think what Mr. Lynn is conflating is the
2 Debtor selling Debtor assets and the Debtor acting in its
3 management capacity to sell assets of entities it manages.
4 We will also present the case law that basically an entity
5 that is not a debtor whose assets are being sold by the Debtor
6 acting as a manager is not within the purview of this Court.
7 So Mr. Lynn can be frustrated, could be upset with what's
8 happening, but we dealt with these issues last year. Because
9 as Your Honor mentioned, this Debtor is not the typical
10 debtor. And we had long negotiations with the Committee on
11 what is ordinary course and what is not ordinary course. And
12 as I mentioned to you the last time we were here, Your Honor,
13 as I mentioned to you in January when we had this approved, we
14 were not seeking to get authority to sell assets out of the
15 ordinary course of business or do any transactions out of the
16 ordinary course of business.
17 Mr. Lynn thinks that what's happening is out of the
18 ordinary course of the business. This Court has said it's
19 not. So we are prepared to go forward with the hearing.
20 We've also spoken to the affiliated entities about putting
21 their hearing on for the same date, because we also agree they
22 -- both motions raise similar issues. And I think we're close
23 to an agreement on having both of those motions heard at the
24 same time on the 16th.
25 Thank you, Your Honor.

THE COURT: All right. So it's the 16th, Wednesday. Did we look that up, Nate?

THE CLERK: It's at 1:30.

THE COURT: It's at 1:30? All right. So we will go forward with the Dondero motion Wednesday, December 16th, at 1:30, and we will go ahead and set the what I consider closely overlapping motion filed by the NexPoint entities and Highland Fixed Income Fund by Mr. Wright, we'll go ahead and set that at the same time.

Let me say this as clearly as I can. If there's going to be a challenge to the Debtor's business judgment, Mr. Dondero, he needs to be present at the hearing on video and he needs to testify, okay? I understand what Mr. Lynn said, that this was his idea, he thought the January protocol order violated the Bankruptcy Code, blah, blah, blah, but I am going to order that Mr. Dondero be present December 16th at 1:30 and testify. Okay?

So I've kind of modified that. I said if the business judgment of the Debtor is being challenged, but no, I'm broadening that. I think Mr. Dondero just needs to provide testimony on Wednesday. Given everything I heard today with the TRO request, and given that, in substance, he's -- he is challenging the Debtor's business judgment and the mechanism where the Committee oversees it, he just needs to testify. All right? So please convey that to him.

Now, Mr. Wright, I'm first going to ask, I know you weren't -- you were just listening in today, but do you want to say anything? I see you put your jacket on now. Thank you.

MR. WRIGHT: I did. I did find a jacket. I'm sorry, Your Honor.

THE COURT: Okay. Go ahead.

MR. WRIGHT: (muffled) So I, you know, I can address why we're asking for limited relief. I can also address the underlying motion, which (inaudible) some of -- in the underlying motion --

THE COURT: Okay. Your sound is very difficult to hear. Could you repeat what you just said? I didn't get it.

MR. WRIGHT: Yes, Your Honor. I'm happy to address our motion for an emergency hearing. I'm also happy to address the underlying motion we're asking be heard on an emergency basis. I didn't know, do you want me to address both or just the motion for why we're asking for emergency relief?

THE COURT: Well, I've gone ahead and said I will set it next Wednesday. It sounds like the Debtor saw the efficiencies maybe in having this one heard at the same time as the Dondero motion.

I have a couple of things I want to say for the benefit of you and your client, but I was giving you the chance to say

something first.

Here's what I'm thinking, going into this, so you can be prepared to address this next Wednesday. Your motion feels to me exactly like what we litigated *ad nauseam* in the Acis case. Now, if any of the Acis lawyers are on the line or Mr. Terry is on the line, I wonder if they are chuckling. And what I mean is -- I heard a chuckle. I don't know if that was Ms. Patel. We had hearings --

MS. PATEL: It was, Your Honor.

THE COURT: Okay. We had hearings in the Acis case. Remember, Acis was a portfolio manager for CLOs. And the party that was in the bottom tranche of the CLOs, okay, the equivalent, I think, to your clients here, the NexPoint entities and Highland Fixed Income Fund, we sometimes called them the subordinated debtholders or the equity-holders, that party -- it was a party named HCLOF -- began during the *Acis* case trying to do a call, trying -- redemption notice. Acis, liquidate these CLOs. We are -- we're done. We're tired. You know, we're outside the reinvestment period. We want you to liquidate. And started to kind of force that issue. Highland was the sub-manager of Acis at that time. So, guess what, the Chapter 11 trustee filed an adversary proceeding asking for TROs, saying, you know, this is the portfolio manager's discretion. And not only that, what they're doing isn't a reflection of reasonable business judgment because,

you know, we don't think it's the right time actually to liquidate these CLOs, they're just trying to deprive the portfolio manager of his stream of revenue for managing this.

So we had multiple hearings about this. I issued a TRO saying stop it, bottom tranche of the CLOs. It seems transparent you're just trying to deprive Acis, the portfolio manager, of value. And you know, irony, irony, it's like the backwards situation here. They were saying, but we're so late in the life of these CLOs, it makes sense to liquidate them. Why would you want to keep these things going? We're not violating the stay. We're not jacking with the estate value and trying to deprive Acis of its revenue stream. Anybody knows it makes sense to liquidate these late-in-life CLOs. Very ironic to me, although maybe it's not the situation, apples to apples, but here, you see what I'm saying, it feels like same situation, only flip-flopped. The portfolio manager here, Highland, is going to be engaged in liquidating the CLOs, and your client, bottom tranche of equity, is saying no, don't do that. You know, there's still value there.

Now, I will say, in my Acis case, the equity tranche, they kind of -- their theory evolved over time. They were like, well, we actually just want CLOs managed by Highland, a Highland entity, and Acis isn't a Highland entity.

So, bottom line, I issued a TRO. Stop it, equity tranche. This is not your call, it's the portfolio manager, and I think

you're just jacking with the portfolio manager to screw up the reorganization. And guess what, we even had then a preliminary injunction and then a plan injunction. And of course, there were bells and whistles on what would evaporate the injunction. But that's now on appeal to the Fifth Circuit.

So, you know, at my confirmation hearing at least in Acis, if not previous hearings, we even had expert witnesses and we pored through the language of the portfolio management agreements. And I don't know if here we have the same situation, but it was complicated in Acis because we had the portfolio management agreements between the CLO manager and the CLO issuers, but then there was a separate management agreement between the equity tranche and, I don't know, I can't remember who the counterparty to that one was. But there, there were multiple agreements, and you had to parse through it, and we had experts testifying about, you know, discretion of the equity-holder versus not, or portfolio manager, da, da, da, da, da. And I ruled as I ruled. I granted the injunction, to the detriment of the equity tranche. And maybe the Fifth Circuit one day will tell me I was wrong. You know, I really think it's a hard, hard, hard issue.

But I'm just telling you, that's how I ruled on, I think, three occasions.

Maybe the portfolio management agreements are worded differently here. You know, maybe -- maybe it's a different issue. But I will say I read your motion yesterday with frustration. I'm like, haven't I ruled on this like three times in the Acis case? And then, you know, maybe I haven't. Again, maybe, maybe the portfolio management agreements in this case would convince me differently. But were you aware of how I ruled in Acis?

MR. WRIGHT: Your Honor, I'm aware of the Acis case, but no, I wasn't aware that this particular issue was addressed in such depth.

THE COURT: Okay.

MR. WRIGHT: (muffled) I will, of course, go take a look at all those hearings. I anticipate that I'm going to try to draw some distinctions between my situation and the situations there, but I certainly will be prepared to address that next week.

I think the thing that I would say just very broadly is that we are not -- I think our request is very limited in what we're asking for. All we are asking for is that there is a temporary pause on the Debtor exercising its right as portfolio manager to direct sales that we don't agree with for a ten-day period. And we would then use that period of time to explore, either consensually or through rights that we (inaudible). And then in the process of looking at this, Your

Honor, under the documents effecting a transfer of portfolio management, you know, these documents, they're based on the rights of the preference holders.

You know, my client's concern is really about the, you know, the investment time window of claim today versus the funds, the relevant -- again, Mr. Macur (phonetic) -- my clients include two advisors that are, you know, that are ultimately I think controlled by a vehicle that Mr. Dondero controls, but also I have a few clients that are funds that are required by SEC rules, as I understand it, to have a majority independent board. So I dispute that they're a Dondero-controlled entity, but I understand that that's testimony (inaudible). But I -- that's -- that's not right.

And so the funds, --

THE COURT: Who are the board members?

MR. WRIGHT: I can have that for you next week, Your Honor.

THE COURT: Okay.

MR. WRIGHT: I don't have it in front of me. But they're required by SEC rules to have a majority independent board. And so we -- the funds that are an advisor of my clients, they have a much longer-term investment horizon. So, you know, in my mind, I probably overly-simplistically analogize it to the difference between saving money for a house you intend to buy in a year and how you might invest

that versus saving money for retirement that you might do in 20 years. And I think any investment advisor will tell you you're going to -- you're going to do that differently, because with a long horizon you can accept (inaudible) and bucket changes and stuff like that. When they go out a long time, you know, it'll be okay. And on a short horizon, you know, you need to sort of make sure you're holding onto what you have and just approach it differently.

Highland, under its plan, is intending to liquidate at the end of 2022, which that's -- that's fine. That's what they're intending to do. But that's a very different investment time horizon than my clients, and so we -- you know, and they're -- they're proceeding to run, you know, their liquidations that way. I don't think that there's anything wrong with that. You know, that's their discretion. But we think that we'd be better served with a portfolio manager that is taking a long-term time horizon, which once was Highland but now not, given the bankruptcy case. And so, you know, we'd like to ask that -- and we're just -- we're really not -- we're not asking for a TRO. I think Mr. Morris (inaudible) a TRO. I understand that's their position. But I dispute it.

Highland is in bankruptcy, and so it's subject to the, you know, it's subject to the bankruptcy system and subject to the control of the Court. What we are asking would be for the Court to use its power under 363 and 1107 and 105 to tell

Highland rough -- for 30 -- within 30 days to figure out if they can replace you under the documents or if there can be a deal, as Mr. -- Mr. Bain mentions, there will be discussion of a (inaudible) to reach a consensual resolution in which the portfolio manager would change that would have to involve the CLOs and probably my clients and also the Debtor, probably, to see if we can get there. And, you know, if we can't, we can't. That's really the limited nature of what we're asking for now. It may be different than what you were describing in the Acis case. But again, I will go and read those cases and I will be prepared to address that more fully next week.

MR. POMERANTZ: I mean, Your Honor, this is Jeff Pomerantz, if I may briefly respond.

THE COURT: Go ahead.

MR. POMERANTZ: I think there's a fundamental problem with the argument that Mr. Wright just made. First of all, there are other investors and other people with interests in those CLOs. It's not Mr. Wright's clients only.

And also, the premise that the decisions that are being made in terms of liquidating those assets have to do with the Debtor's timeline on liquidation, just, you'll hear from Mr. Seery next week, is fundamentally incorrect. Mr. Seery is making decisions on behalf of Highland that he believes are within his fiduciary duty to the funds to maximize value.

So the whole premise of the argument that this is between

a long-term horizon and a short-term horizon is just incorrect. And there are other people that Mr. Seery has to worry about. He has a duty to the CLO, and just because one set of investors wanted to do certain things, they don't have that right. It's -- it's -- it wasn't lost on us that, in Mr. Wright's motion, he did not point to any language in any agreements that in any way give him that right.

So while we appreciate that these CLOs have to be addressed, and we have engaged in discussions with Mr. Wright's client and Mr. Bain's client to try to have a soft landing, they have not occurred yet. And in the interim, the Debtor has to do what it is obligated to do and act in a fiduciary manner and act consistent with the agreements. That's why we objected and we will be objecting to any moratorium on any of those efforts.

THE COURT: Okay. All right. So, Mr. Wright, I am also going to direct that you have a client witness to testify about these things. And I do want to understand, you know, who you're taking instructions from and who is on the board on these entities.

You know, we had a hearing before I think you were involved where the Committee was seeking discovery of documents, and a lot of the what I'm going to call Highland affiliates -- and I know people sometimes cringe when I use that word affiliates; you know, it may or may not meet the

1 Bankruptcy Code 101 definition of affiliate. But entities in
2 the Highland umbrella, many of them resisted production of
3 documents from the Committee. And I got concerned at that
4 point in time of who is instructing the lawyers, because I
5 felt like, in many instances -- not all, but in several
6 instances -- you know, I was concerned it's in the estate's
7 best interest to get these documents. You know, the Committee
8 was the one seeking the documents, but we've got entities in
9 the Highland umbrella resisting. And so it felt like there
10 was a conflict. And if the same human beings were employees
11 of the Debtor, and --
12 Anyway, I think we got through a lot of that, but I
13 remember, in connection with all of that, looking at the list
14 of Highland entities who filed proofs of claim in the
15 bankruptcy case. And I remember asking, in some cases, like,
16 who filed the proof of claim, and I was told that Mr.
17 Dondero's counsel prepared a lot of these proofs of claim of
18 the different entities. And at least signatories, I saw that
19 Frank Waterhouse has signed the proofs of claim at least for
20 NexPoint Advisors, NexPoint Capital, Inc., NexPoint Strategic
21 Opportunities Fund.
22 Anyway, we had a discussion about my concerns about
23 conflicts back around that time, but here's what I'm getting
24 at. I'm worried all over again about do we have any human
25 beings involved calling the shots for your client, Mr. Wright,

that have fiduciary duties to the Debtor, and maybe this is getting in conflict with that. I just don't know. I just don't know. But it's concerning to the Court. So, what would help is if we have a human being testify for your clients so we can clear the air on that one. Okay?

So, next Wednesday, December 16th, at 1:30, we'll have a hearing on the Dondero motion and on these NexPoint motions of your client, Mr. Wright. And we're going to have a witness for Mr. Wright's client and we're going to have a witness -- and we're going to have Dondero being a witness. And Mr. Morris is going to upload your TRO, and we're going to have a follow-up hearing on January 4th on the preliminary injunction request.

All right. So, anything else?

MR. MORRIS: Yes, Your Honor. It's John Morris for the Debtor. I've got Mr. Seery on the phone, the Debtor's CEO --

THE COURT: Okay.

MR. MORRIS: -- and CRO. And if it pleases the Court, he would just like to spend a moment giving the Court an update as to where he is in the process.

THE COURT: Thank you. He may.

MR. MORRIS: Is that okay?

THE COURT: Uh-huh.

MR. MORRIS: Okay.

MR. SEERY: Thank you, Your Honor. Can you hear me?

THE COURT: Yes.

MR. SEERY: I appreciate the Court's time. I think with the overlapping motions it would be useful just to tick through very quickly, not to take too much of your time, where we are and why some of these things have come before you in the last couple days.

First, as you're aware, we have a plan out for a vote. We believe we're going to get confirmed. We believe we'll get the votes. We're still waiting on the votes. And we're still working on claims. So, as we speak, including even this morning, trying to resolve certain of the other open claims.

The Debtor is still managing its assets. And what that means is we're addressing financing with underlying assets that are in portfolio companies. We are addressing our own debtor-owned assets, some of which we are selling in the ordinary course. So, for example, securities. Where we have securities in an account, we have been selling those where we think the market opportunity was ripe.

Up until mid-March, Mr. Dondero controlled those accounts. He was the portfolio manager. We took them away after they lost considerable amounts of money, about ninety million bucks. Real money. So we took over control of those accounts since then, and we've been managing to sell them down to create cash where we think the market opportunity is correct.

With respect to subsidiaries, we don't have any plans to sell any PV assets now. These are companies that are part-owned, either directly or indirectly, through subsidiaries, with a number of other (inaudible) who are interest holders.

SSP, for example, there's been a lot of noise this morning, no real facts. I will tell you that we did sell SSP. We did it in conjunction, as Mr. Clemente indicated, with the Committee. We looked at number of bids. That entity was a private-equity-owned asset. We believe that it was sold appropriately. It wasn't selling an asset of the estate. It was actually a thrice-removed asset, also with other interest holders, including mostly completely independent, including SIBC -- SBIC owners who wanted to choose off that asset as well. We believe we got a very good price and executed that well. Happy to litigate and defend that at any time.

The CLOs, we're the manager of the CLOs. What we're trying to do in our plan is assign CLOs back to NexPoint Advisors. The reason for that is, while they do generate income, we didn't believe that the income was enough to justify us maintaining them. They would not be assets that we would continue to hold through the case. Or through the liquidation. Unclear whether NexPoint wants those assets now back or not. We have been working, as Mr. Bain indicated, closely with the Issuers and the Issuers' counsel, because there's very particular, specific ways to deal with those

1 assets under the documents that protect the various investors.
2 As Mr. Morris pointed out, entities related, controlled by,
3 managed by Mr. Dondero are not the only investors in these
4 CLOs. Our duty is to the CLOs. We believe that we are
5 adhering to that duty. We are happy to at some day litigate
6 that.
7 With respect to asset sales, the Debtor has a team that
8 manages these assets. The team came to me to sell certain
9 assets. Mr. Dondero, NexPoint Advisors, they don't monitor
10 these assets. They don't know anything about them. The
11 assets we're talking about are loans, though the Debtor hasn't
12 sold any of those, or securities that trade, equity securities
13 that trade in the liquid markets. These are securities, you
14 can go on the screen, you can go on Yahoo Finance and see how
15 they trade.
16 Our team came to us and suggested that we sell some. I
17 sat down with the analyst and the analyst suggested we sell.
18 The manager of the day-to-day operations of CLOs suggested we
19 sell. We set the sell notice within the context of the
20 market. This wasn't a dumping. We thought that the market
21 would support what we were doing, and it did.
22 Another asset that we were going to sell is an asset we
23 don't have an analyst on. Haven't had one for years,
24 apparently. It's not very much money. Mr. Dondero's related
25 entities don't hold very much of the interests in the CLOs

that have that. They have debt which is owned by third parties. It's a good trade, in our opinion. Our analysis was it made sense to sell it within the context of the market. The Equity has no decision as to whether we do that. We're the manager.

Mr. Wright's example and his offer is, frankly, silly. If those public funds want to indemnify the Debtor and CLOs for any potential losses, that would be great, we can do that, we can talk about that, how to arrange that.

As to the pot plan, nobody has worked harder on the pot plan -- and I include Mr. Dondero -- than I have. Nobody. I didn't do it because I was trying to help Mr. Dondero. I thought it would be in the best interest of the estate, which means the creditors, the employees, and the investors whose funds we manage, to try to get a consensual deal done. So far, we've been unable to do that. In my declaration, there's a footnote. Not only did I help work on the idea, I actually drafted the term sheet. (inaudible) to do it, I presented it to the Creditors' Committee. Not that I wanted to do it. I thought they should do it. I did it. No one has worked harder for that.

The employees, unbelievably frustrated to hear that. Mr. Dondero put this company into bankruptcy. Our management of this estate has required that we fight with a lot of folks about keeping the team together. Again, we did it, not so

1 much for the individual team members, but we thought that
2 would be the best way to enhance value for the estate and it
3 would encourage an alternative plan that could be value-
4 maximizing.
5 The employees have deferred compensation. That was all
6 set up by Mr. Dondero. The money that was taken out and used
7 in this -- by this company for other things rather than paying
8 employees cash on a regular basis was used by Mr. Dondero well
9 before I ever came into this case. If there are repercussions
10 to employees because we are liquidating this entity or
11 monetizing these assets, and because we have to do it through
12 this vehicle, Mr. Dondero can stay in the mirror and not
13 abort. It's very insulting and frustrating to hear that from
14 counsel, who doesn't understand a thing about what we've done
15 to try to keep the business together.
16 The CLO part of the business, we'd like to assign. We
17 would like to assign as many of the employees over to help
18 manage the business and have those go to Mr. Dondero's
19 entities. And that's fine with us. You know, that is a
20 concrete benefit to him, because it's also beneficial to the
21 estate. We're not in the anger business. We are independent.
22 The only thing that makes us angry is that when somebody just
23 makes up noise, not facts, just statements that have no basis
24 in reality of what's happened in this case, when we're trying
25 to hold it together and come to a conclusion.

Sorry if I sound frustrated, Your Honor, because I really am, and I thought you should see that going forward before we go into next week. If the NexPoint entities want the CLOs, let's just work on that transfer. We have Mr. Bain and his clients. They are very good. They are CLO specialists. His co-counsel at Schulte is renowned in this space. We will work through it and make sure it works for the Issuers, make sure it works for NexPoint, and of course make sure it works for the estate.

Thank you, Your Honor.

THE COURT: All right. Mr. Seery, I really appreciate these comments. They've been very helpful to my thinking. In fact, I want to make sure it's under oath in case I ever want to take judicial notice of anything you've said just now. Do you solemnly swear or affirm that the statements you made were true and correct today, so help you God?

MR. SEERY: I do, Your Honor.

THE COURT: All right.

MR. SEERY: And just to be clear, if I ever make a statement to the Court, I consider it under oath.

THE COURT: Okay. Thank you. I appreciate that.

All right. So, again, I feel like that was so very helpful. And, you know, this is a precise example of why I am directing, if Mr. Dondero is going to urge a position with the

Court next Wednesday, he needs to testify. And if NexPoint, through whoever their decision-maker is, is wanting to urge a position to the Court, they need a human being to testify. And I'll hear Seery and I'll hear Dondero and I'll hear whoever that person is, and that's what's going to matter, you know, most to me. Yeah, we have some legal issues, certainly, but I like to hear business people explain things, no offense to the lawyers. But it's always very helpful to hear the business people in addition to the lawyers. All right. So, Mr. Morris, you're going to upload that TRO for me.

MR. MORRIS: Yes, Your Honor.

THE COURT: Mr. Wright, you can upload your order setting your motion for hearing next Wednesday at 1:30. And I think we have our game plan for now. Anything else? All right. We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 11:33 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/11/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Wednesday, December 16, 2020 1:30 p.m. Docket - MOTION FOR ORDER IMPOSING TEMPORARY RESTRICTIONS [1528] - DEBTOR'S EMERGENCY MOTION TO QUASH SUBPOENA AND FOR ENTRY OF PROTECTIVE ORDER [1564, 1565] - JAMES DONDERO'S MOTION FOR ENTRY OF ORDER REQUIRING NOTICE AND HEARING [1439]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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DALLAS, TEXAS - DECEMBER 16, 2020 - 1:35 P.M.

THE COURT: All right. This is Judge Jernigan. We have settings in Highland. We have -- I guess the very first thing that we had set today was a motion of Dondero, Mr. Dondero wanting some sort of revised procedures for "future estate transactions occurring outside the ordinary course of business." Then, related to that, we received the other day -- I'm not showing it on the calendar, I'm not sure if that means it's moot now or not, but we had a motion for protective order and a motion to quash with regard to certain depositions that Mr. Dondero wanted in connection with his motion. The Debtor filed that motion to quash. It was to quash a deposition of Mr. Dubel, Mr. Nelms, Mr. Sevilla, and Mr. Caruso. And then we have the CLO Motion, what I'm calling the CLO Motion, of --

(Interruption.)

THE COURT: Okay. Let's --

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. The first two motions have been resolved. And after Your Honor takes appearances, I'm happy to inform the Court of the proposed resolution, and there's an agreed order that we would upload after the hearing.

THE COURT: Okay. Well, that is certainly music to my ears. All right. So I was just trying to lay out the program for what I thought was set, potentially three motions,

one of which was a deposition dispute.

All right. So let's go ahead and get appearances. Mr. Pomerantz, you're obviously appearing for the Debtor team.

MR. POMERANTZ: Yes. Good morning, Your Honor. Or good afternoon, Your Honor. Jeff Pomerantz; Pachulski Stang Ziehl & Jones. Also on the video with me today are John Morris and Greg Demo. They will be handling the CLO Motion, and I will be reporting to the Court on the resolution of Mr. Dondero's motion and our corollary discovery motions.

THE COURT: Okay. All right. Well, why don't I take an appearance from Mr. Dondero next. Mr. Lynn, I see you there.

MR. LYNN: Yes, Your Honor. I am here with Bryan Assink, who will replace me after the preliminaries when our business is done. Other than concurring with Mr. Pomerantz, I wanted to advise Your Honor that in the last 30 minutes we filed an additional motion where we're seeking a clarification with respect to the temporary restraining order that the Court entered last week.

THE COURT: All right. Well, I did see an email from my courtroom deputy right before walking in about that motion, and so that's why I was a little surprised and said "Music to my ears" that there was an agreed order on the Dondero motions. But I'll get the details --

MR. LYNN: Well, we're --

THE COURT: I'll get the details about that in a minute. Let me go ahead and get the other appearances.

For the Movants on what I've called the CLO Motion, who do we have appearing?

MR. WRIGHT: Good afternoon, Your Honor. It's James Wright of K&L Gates for the -- I guess I'll call them the Movant for this motion.

THE COURT: Yes. Sometimes you're referred to as the Advisors and the Funds and -- but Movants on Docket Entry 1528.

All right. For the Committee, I know you have weighed in on a couple of these motions. Who do we have?

MR. CLEMENTE: Good afternoon, Your Honor. Matt Clemente with Sidley Austin on behalf of the Committee.

THE COURT: All right. Well, we have a lot of folks on the phone. I think I've covered everybody who filed a pleading for today. Is there anyone else who would like to appear? I'd really like to restrict it only to those who have filed pleadings today.

MS. MATSUMURA: This is Rebecca Matsumura from King & Spalding representing Highland CLO Funding, Ltd. I don't expect I'll be weighing in today, but there are a couple issues that I may say a sentence on, so I want to go ahead and make my appearance now.

THE COURT: All right. Thank you. Anyone else?

MR. BAIN: Yes, Your Honor. Joseph Bain; Jones Walker; on behalf of the CLO Issuers.

THE COURT: All right.

MR. BAIN: And Your Honor, if we may make certain comments at the requisite time, we'd appreciate it.

THE COURT: All right. Thank you. Anyone else? All right. Well, Mr. Pomerantz, let's hear about the agreements you have on the Dondero-related motions.

MR. POMERANTZ: Happy to, Your Honor. And yes, Mr. Lynn is correct, we saw also an emergency motion that came through that I'll have a couple of comments at the end of my presentation.

So, as I mentioned before, Your Honor, I'm pleased to report that with respect to the two motions that Your Honor scheduled for today's hearing, we have an agreement with Mr. Dondero. One was the motion of Mr. Dondero requiring transactions out of the ordinary course to be brought before this Court. The second was the Debtor's motion to quash a series of subpoenas that had been issued in the last two days, requiring board members and others to testify.

As part of the agreement, we have agreed with Mr. Dondero that his motion, which is presently set for today, shall be continued to January 4th, which is the same date set as the continued hearing on the preliminary injunction relating to the TRO that Your Honor had entered last week.

As part of that agreement, the Debtor has agreed that it will provide Mr. Dondero with three business days' notice before selling any non-security assets from any managed funds accounts through and including January 13th, which is the date set for confirmation.

While, as the Court is aware, the Debtor doesn't believe that any notice, opportunity for hearing, or an order from the Court is required in connection with such transactions, as the Debtor does not have any current plans to sell non-security assets from managed funds before confirmation, it was willing to agree to the notice requirement as essentially a way of resolving the motion before Your Honor today and continuing until the 4th.

As part of the agreement as well, Your Honor, the parties have agreed that there will be no further discovery in connection with the motion that is set. That'll be no additional discovery by Mr. Dondero, so he is withdrawing the subpoenas as it relates to this motion, and there will be no further discovery as -- by the Debtor. As Your Honor, I think, is aware, there were depositions conducted of both Mr. Seery and Mr. Dondero on Monday in connection with this motion, but the discovery will not happen over the next couple of weeks.

Mr. Dondero wanted to make sure, and the Debtor didn't have any opposition, that that agreement with respect to no

discovery only relates to the pending motion before the Court. And in connection with any other matters relating to this bankruptcy case, Mr. Dondero would reserve the right to pursue discovery, and of course the Debtors would reserve the right to challenge discovery if we believed it was inappropriate or unduly burdensome.

With respect to the motion that was just filed, Your Honor, we had a chance to briefly review it. We haven't had a chance to discuss it with the board. In any event, we don't think there's an emergency. Mr. Dondero wants the opportunity to approach and communicate with the board. I've told Mr. Lynn that communications regarding the plan are to go through Mr. Seery. Mr. Seery is the Debtor's chief executive officer. He's the chief restructuring officer. And at this point, the board doesn't see a reason or have a desire to meet with Mr. Dondero to talk about his plan, but, again, would be happy to receive any written communications that Mr. Dondero has.

Mr. Dondero has sought to modify the TRO to allow him to speak to the board. Again, if the board agreed to speak with Mr. Dondero, that wouldn't violate the TRO, provided that counsel would be present. But at this point, the board has decided that it would be inappropriate and not a good use of anyone's time to have that communication and that Mr. Dondero should continue to communicate through Mr. Seery, the Debtor's chief executive officer.

If Your Honor, after reading the motion and hearing my comments, and I'm sure Judge Lynn's comments that he will make to Your Honor, Your Honor wants to set it for hearing, we would submit, Your Honor, there's no emergency and that a hearing could be set next week, but we would think Your Honor might be able to dispose of the motion just on the papers and the limited argument that would go on today.

THE COURT: All right.

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: All right. Mr. Lynn, first, could you confirm the terms of the agreed order that Mr. Pomerantz just announced are consistent with what you and your client believed was negotiated?

THE CLERK: He's on mute.

THE COURT: You're on mute, sir.

MR. LYNN: Mr. Pomerantz has correctly stated the agreement of the parties. I am pleased to advise Your Honor that I expect that we will withdraw the motion that is presently pending to be heard on January 4th, since all we were asking for was notice until confirmation date. If those sales are going to take place before then, we don't have a problem any longer with the pre-confirmation activity of Mr. Seery.

With regard to the motion that we filed requesting that the temporary restraining order be modified, we would point

out, respectfully, that the independent board is the board of directors of Strand Advisors. Strand Advisors belongs to Mr. Dondero. It is not unreasonable for the sole stockholder of Strand Advisors to ask the board questions or present thoughts to the board or ask its advice. Mr. Seery, on the other hand, while being a member of the board of Strand, is the chief executive officer and the chief restructuring officer of Highland, which is not the same as Strand.

Furthermore, Your Honor, Mr. Dondero has been attempting for several months to negotiate an arrangement by which the Debtor can continue as a going concern. It is his desire to discuss further with the board as a whole what he can do in that regard. I think the Court, by directing him originally to participate in the mediation that took place in September, expected him to do so. He has attempted to do so. And while he has not gotten a response from the Creditors' Committee that is definitive, he has at least caught the interest of Mr. Seery, though that interest may have died for a variety of reasons in recent weeks.

And by the way, next week is fine with us. We're not in a hurry beyond that if the Court feels further discussion would be useful.

MR. POMERANTZ: Your Honor, just a couple of points in response.

Mr. Dondero has the right to request an audience with the

board. He has requested the audience with the board. The board has considered it and decided not to communicate in that fashion with Mr. Dondero at this time. There is nothing that Your Honor can do in the TRO that would change that, other than ordering the board to speak with Mr. Dondero, which I highly doubt Your Honor would do.

Having said that, this board in general and Mr. Seery in particular have been very supportive of an overall resolution to this case, not only with the creditors, but with Mr. Dondero. Mr. Seery has spent tens if not hundreds of hours over the last several months working with Mr. Dondero to try to get him in a position to present something that would have traction with the Unsecured Creditors. Unfortunately, that hasn't occurred. We understand there have been communications between Mr. Lynn and Mr. Clemente. And if there is any hope of a plan and any traction with the creditors, this Debtor in general and Mr. Seery in particular stands ready, willing, and able to do anything within the Debtor's power to help that out.

So, it's not really the Debtor standing in the way. It's an economic agreement ultimately that needs to be reached with Mr. Clemente and his constituents and Mr. Lynn. And if that can be reached, we will be the first to jump on that bandwagon and do everything humanly possible to have that occur.

Thank you, Your Honor.

THE COURT: All right. Well, again, I've not read the motion. I've just seen an email that I have this motion. I'm a little bit confused. I don't want to spend too long on this because we have another motion to get to. But I'm a little bit confused on how Dondero wants the TRO to be modified. If he has the right already to request an audience of the board, what is it that is problematic about the TRO that he wants modified?

THE CLERK: He's on mute.

THE COURT: You're on mute.

MR. LYNN: Sorry, Your Honor. As I told you before, you must forgive me, my command of technology is not great.

In response, I would say that I question whether it is appropriate, in advance of a meeting with the board of his company, that what he wants to talk about should be screened. And that is what has occurred in our effort to meet by telephone with the board.

Any such meeting would, of course, be subject to the restraints that are included in the temporary restraining order, in that both Mr. Pomerantz or his designee and I would participate in any such discussion. I respectfully submit Strand is his. Nobody may like that, but it is his, and he ought to be able to talk to his own board.

THE COURT: Is this about having a conversation without the Committee's involvement? I just don't -- hmm. I

just need to see the motion.

Mr. Clemente, anything you want to add at this juncture? Have you even reviewed the motion yet?

MR. CLEMENTE: Your Honor, I apologize. I haven't actually even seen the motion. And so I have no comment on it, Your Honor. I apologize for not having been able to look at it.

THE COURT: Okay. Well, what about the agreed order that's been announced? Any comment on that?

MR. CLEMENTE: Your Honor, we support the resolution that Mr. Pomerantz announced on the record.

THE COURT: Okay. All right. Well, I assume there's nothing further, then, on the Dondero motions that were scheduled today?

All right. So I will happily accept the agreed order that has been announced. For now, we will continue the Dondero motion that was Docket Entry No. 1439 to January 4th, when the preliminary injunction hearing is set. And we -- I understand there are going to be no more discovery requests in connection with these matters that were set today.

And I will review the motion that Mr. Dondero has filed shortly before today's hearing in chambers later, and I will have my courtroom deputy communicate to the lawyers whether I see fit to set it for an emergency hearing next week or rule on the pleadings or set it for January 4th. Those are, I

guess, the three possibilities I can think of that I might decide upon.

So, again, I'm not making any ruling at all on a motion I haven't read yet. So I'll -- the courtroom deputy will let you all know, if not later today, tomorrow. Probably tomorrow, because I have a confirmation hearing set later today in another case.

All right. So, thank you all for working these issues out. And Mr. Pomerantz, Mr. Dondero -- or, excuse me, Mr. Lynn, anything further on the Dondero disputes?

MR. POMERANTZ: Nothing from the Debtor, Your Honor.

MR. LYNN: Your Honor, nothing from Mr. Dondero. May I be excused?

THE COURT: Is anyone anticipating needing Mr. Dondero's counsel for the other matter? All right. If not, then I certainly have no problem with you dropping off the line, Mr. Lynn. Thank you.

MR. LYNN: Thank you, Your Honor.

THE COURT: Okay. All right. So let's turn next to the CLO Motion. I take it there are no agreements on this one?

MR. POMERANTZ: There are not, Your Honor.

MR. WRIGHT: There are not, Your Honor. I can confirm that.

THE COURT: All right. Mr. Wright, do you have

anything you want to say as far as an opening statement before we go to the evidence?

MR. WRIGHT: I don't, Your Honor. My intention, if it's okay with you, you asked me to bring a witness, so I do have Mr. Norris from my client, and I was going to just remind the Court who I am and state the name of all of my Movants, and then I was going to move directly to put him on the stand and go through a brief direct.

THE COURT: All right. I think I heard Mr. Morris is going to handle this phase of the hearing.

MR. DEMO: And Your Honor, this is Greg Demo from Pachulski on behalf of the Debtor.

THE COURT: Oh, okay.

MR. DEMO: We would like to make a brief opening statement before we have witnesses, if that's all right with Your Honor.

THE COURT: All right. I'm fine with that. So, --

MR. DEMO: All right.

THE COURT: -- go ahead.

MR. DEMO: All right. Well, thank you, Your Honor. Again, Greg Demo; Pachulski Stang; on behalf of the Debtor.

We are here today on what really amounts to the third of three motions that deal with Mr. Dondero's attempts, either directly or through a proxy, to transfer control away from the Debtor and back to Mr. Dondero.

The current motion is filed by NexPoint Capital and Highland Capital Management Fund Advisors and three of their managed funds: Highland Income Fund, NexPoint Capital, and NexPoint Strategic Opportunities Funds.

Mr. Dondero owns and controls NexPoint Capital and Highland Capital Management Fund Advisors. While both NexPoint Capital and Highland Capital Management Fund Advisors are governed by boards, the boards have no investment authority with respect to the funds they manage, nor was the boards' approval necessary to file the motion, or obtained.

Mr. Dondero is the sole portfolio manager for NexPoint Strategic Opportunities Fund and Highland Income Fund. Mr. Dondero is one of three portfolio managers for NexPoint Capital. Mr. Dondero's decisions are not subject to oversight.

The Movants disclosed these facts in their recent SEC filings, and there can be no dispute that Mr. Dondero is the controlling figure behind the Movants in the relief being sought in the motion which seeks to impede the Debtor's efforts to exercise its rights as a CLO manager.

The fact that this motion was even filed is quite surprising, since on December 7th the Debtor filed a complaint and TRO based upon Mr. Dondero's unlawful efforts to frustrate the Debtor's efforts to sell assets from the very CLOs that are the subject of this motion.

The Court granted the TRO on December 10th. Mr. Dondero also filed a motion seeking similar relief in November, which has now been adjourned to January 4th.

The Movants are essentially now seeking an order from this Court enjoining the Debtor from exercising its rights as a CLO manager and requiring the Debtor to seek the Movants' and Mr. Dondero's permission to fulfill its obligations as a manager for the CLOs.

The Movants, however, do not come right out and say this, and instead couch the motion as seeking to simply pause the CLOs' asset sales while the Movants and the Debtor engage in discussions regarding the future of the CLOs' management.

In the motion, the Movants also argue the Debtor has made decisions detrimental to the interests of the preference shareholders because the Debtor is trying to monetize its assets in a manner inconsistent with the preference shares' objectives.

The Movants simply mischaracterize the facts, the parties' respective rights under contracts, and the law.

First, to the extent the Movants hold interests, they hold only preference shares in the CLOs and are minority investors in the preference shares of 12 of the 15 CLOs at issue. In one third of the CLOs, the Movants' interests sit behind senior debt which must be paid first.

Notably, Your Honor, no other investors in the CLOs are

here or have expressed support for the Movants' position.

Second, the Movants simply have no right under the contracts governing the CLOs to the relief they are requesting. The CLOs are governed by a series of agreements which were agreed to long ago and dictate the rights of all investors of the CLOs. The enforceability of those agreements is relied on by all investors, not just the Movants.

Under these agreements, investment discretion is given to the CLOs' manager -- in this case, the Debtor -- and no investor has the right to direct the CLO manager. The manager was chosen to manage the CLOs' assets. No individual investor was chosen to manage the CLOs' assets.

Simply said, there will be no evidence that the Movants have the right to do what they're trying to do, and there will be no evidence that the Movants' preferences with respect to the CLOs' assets is in line with that of the other investors in the CLOs.

Under the relevant agreements, if an investor is not happy with a manager's performance, the investor's rights are generally limited to replacing the manager. The investors here -- excuse me, the Movants here -- have not done that and cannot do that. Under the agreements, replacement requires at least the majority of the preference shares that are not affiliates of the managers. In 12 of the 15 CLOs, the Movants hold a substantial minority interest position. They are not

the majority. In the three CLOs in which they are the majority, the Movants still cannot replace the Debtor as the investment manager because they are the Debtor's affiliates.

It is indisputable that, prior to January 9th, when Mr. Dondero was removed from control of the Debtor, that the Debtor, NexPoint Advisors, Highland Capital Management Fund Advisors, and the three funds were the Debtor's affiliates because of Mr. Dondero's common control.

After January 9th, where the Court removed Mr. Dondero from control of the Debtor, the Debtor is arguably, under the documents, not an affiliate. However, Your Honor, the Movants have disclosed in their recent proxy statements filed in 2020 that they still consider themselves the Debtor's affiliate, and they should be bound by that statement. The Movants, by virtue of Mr. Dondero's being removed from control of the Debtor, should not be able to use that removal to reassert control over the CLOs that were taken away from Mr. Dondero when he was removed in January 2020.

The Debtor believes that additional briefing may be needed on this issue, and that a ruling specifically on this issue and the parties' relative rights under the CLO management agreements may be needed. The Debtor reserves its right to brief this issue and to bring it before this Court, either as a declaratory judgment or any other procedurally-appropriate motion.

Because the Debtor -- excuse me. The Movants have no right to the relief requested. They argue that the relief is justified because of the mismatch between the investors' timelines and the Movants'. This is not true. The Movants cite to three transactions to justify their statement in the motion: SSP, OmniMax, and certain recent transactions.

The recent transactions were the attempted sales of two public equities immediately before Thanksgiving that Mr. Dondero interfered with. You'll hear testimony from Mr. Seery about each of these transactions and how each was in the best interest of the CLOs.

First, SSP. SSP is a steel business that was suffering for a number of reasons. The Debtor's investment team believed SSP should be sold since 2019. The Debtor received multiple offers for SSP, the Debtor evaluated these offers, and the Debtor choose the one that was the best. The SSP sale closed in early November.

Notably, Your Honor, none of the CLOs held an equity interest in SSP, its parent, or in Trussway. Instead, they held debt, and they got exactly what they bargained for, repayment of their debt obligations in full.

OmniMax, Your Honor, is the second one. It is a fabricator of building materials. The CLOs and the Movants held an interest in OmniMax debt which they have been trying to refinance or equitize since 2019. That deal was intended

to include the Movants, but instead of working with the Debtor, Mr. Dondero held out and used the threat of litigation against OmniMax to secure a higher price for the Movants, to the detriment of the CLOs.

As Mr. Seery will testify, these two transactions were all about maximizing value and have nothing to do with investment timelines.

Finally, Your Honor, the Movants reference the Thanksgiving transactions. These transactions were discussed in the context of Mr. Dondero's TRO. Mr. Seery directed Debtor personnel, on the advice of his investment team, to sell these securities. Mr. Dondero blocked those trades. Now the Movants argue that the reason those trades were blocked was because of a mismatch between the Movants' and the Debtor's investment timelines. That is not the case. Mr. Seery will testify as to these trades. The Debtor is an investment manager and appreciates that its decisions with respect to how it manages its assets are -- is a judgment call. The evidence, however, will show that the Debtor at all times exercised that judgment in good faith based on all available information.

The Movants may disagree with the Debtor's judgment, Your Honor, but that is irrelevant. The Movants have no right to interfere with the Debtor's management of the CLOs. There is simply no statutory or contractual basis for this, not under

Section 363 and not under the CLO agreements.

Finally, Your Honor, -- I guess not finally. There's one more point I want to make. But Your Honor, this -- what we're here on today is notably similar to the Acis bankruptcy that Your Honor noted last time we were here last week. In that bankruptcy, HCLOF tried to direct the collateral manager to take certain actions that HCLOF thought were in the best interest of the CLOs. In this case, the Movants, through Mr. Dondero, are trying to file an action that functionally seeks to direct the Debtor to take interests that the Movants believe are in their best interest. There is substantial overlap between the litigation in Acis and the litigation here.

Finally, Your Honor, the Debtor has been in discussions with the CLOs' counsel on this issue. And the Debtor has been informed that the CLOs' position is that the Debtor's ability to operate under the management agreements should not be interfered with, not by the Movants or not by any other party.

Thank you, Your Honor. With that, I will turn it over to Mr. Norris. Or, I'm sorry, Mr. Wright.

THE COURT: All right. Mr. Wright, you may call your witness.

MR. WRIGHT: All right, Your Honor. Dustin Norris should be -- should be dialed in and should be available on screens.

THE COURT: Okay. I'm going to --

MR. WRIGHT: I'll pause and have him confirm that.

THE COURT: I'm going to ask you, Mr. Wright, to speak up or closer to your device. I didn't hear the name of your witness.

MR. WRIGHT: Sure. Sorry. It's Dustin Norris. I -- last time, you were having trouble hearing me, and so I'm trying a different device this time. I actually followed the instructions that I found very helpful, so I'm trying my phone in hopes that it will work better.

THE COURT: All right.

MR. WRIGHT: But, yeah, it's Dustin Norris. D-U-S-T-I-N, N-O-R-R -- N-O-R-R-I-S.

THE COURT: All right. Mr. Norris, can you say "Testing one two" so we pick up your video?

MR. NORRIS: Testing one two.

THE COURT: All right.

MR. NORRIS: Testing one two.

THE COURT: All right. Please raise your right hand.

DUSTIN NORRIS, MOVANTS' WITNESS, SWORN

THE COURT: All right. Mr. Wright, you may proceed.

MR. WRIGHT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. WRIGHT:

Q Mr. Norris, you're employed by NexPoint Advisors?

A I am. That's correct.
Q And what is your title and role there?
A Yeah. I am the executive vice president of NexPoint Advisors. In that role, I oversee business development, marketing, sales, investor relations. And as far as the funds advised by the advisor, I'm the liaison with the independent board on the business side.
Q Thank you. Do you also have a role for Highland Capital Management Fund Advisors?
A I do. I'm also the same executive vice president and fulfill that same role as it pertains to business development, sales, investor relations. And in both, I'm also working on product development. So, launching, developing new products and investment funds.
Q Do you also have a role for Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.?
A I do. I'm also executive vice president for each of those funds.
Q Thank you. Have you ever served on the boards of these three funds?
A I have. I've served as the interested trustee, sole interested trustee for each of these funds. I'm no longer the board member or interested trustee, but still serve as an officer, executive vice president, for each fund.
Q At times, I'm going to refer to NexPoint Advisors, LP and

Highland Capital Management Fund Advisors, LP simply as the Advisors, to avoid having to keep saying their long names. And similarly with the three funds that are part of the motion, I may just call them the Funds.

Can you explain the relationship between the Advisors and the Funds, briefly?

A Yeah. So, each of these are investment companies that are registered under the Investment Company Act of 1940. So, with that comes a unique relationship between an investment advisor and the funds themselves. The Funds don't have employees. They rely on the investment advisor and investment advisor employees. And between the Funds and the Advisors is an investment advisory agreement. And the Funds themselves are also overseen by an independent board, and that's by statute by the 1940 Act.

Q Okay. And just to be clear, when you said that these are -- entities are investment companies, you meant that the three Funds are investment companies?

A Correct. Correct. The three Funds are investment companies. The investment advisors are not investment companies.

Q Thank you. Can you explain the role of the board for the Funds?

A Yeah. So, as prescribed by the Investment Company Act of 1940, there are certain obligations related to an investment

company, and one of those is they must be overseen by an independent board. And the independent board has a responsibility to oversee the -- certain material agreements, including the advisory agreement. And we meet regularly with the boards. They overseas certain processes and, again, all material contracts. And the board is, by Section 15(c) of the 1940 Act, required by law to annually review the capabilities of the Advisor and to either approve or reject the advisory contracts. So, each year, those contracts are renewed by the independent board.

There are certain obligations of the Fund and operations that are delegated responsibility to the investment advisors. That includes portfolio management and investment decisions. But all those are overseen by the board.

Q Okay. And are the boards involved in the day-to-day operations of the Funds?

A They're not.

Q Okay. And do you know who the members of the boards of these three Funds are?

A I do.

Q Could you share that with us?

A Yeah. So, the -- there is one interested trustee of each board, and that's John Honis. And then for the Highland Income Fund and the NexPoint Strategic Opportunities Fund -- sorry, for NexPoint -- for Highland Income Fund and NexPoint

Capital, we have the same three disinterested or independent trustees, and that's Bryan Ward, Dr. Bob Froehlich, and Ethan Powell. And for NexPoint Strategic Opportunities Fund, we have the same four trustees, one interested, three independent, but there's another fourth independent trustee, Ed Constantino.

Q And when you refer to independent trustees, do you mean independent for purposes of the Investment Company Act of 1940, as amended?

A That's correct. They, by statute, they are independent trustees. They also have an independent legal counsel. Stacy Louizos represents them from Blank Rome. And also two of these Funds are listed on the New York Stock Exchange, and the New York Stock Exchange has various independence requirements that each independent director has met.

Q Thank you. And which are the two Funds that are listed on NYSE?

A The Highland Income Fund and the NexPoint Strategic Opportunities Fund are both NYSE-listed.

Q And I know you probably haven't memorized everybody who invests in the Funds, but can you give us a general idea of who invests in these Funds?

A Certainly. I definitely have not memorized them. There are thousands of individual investors in each of these Funds. Part of my role overseeing investor relations and sales, I do

1 talk to a lot of those investors. But the majority of the
2 investors in each of these Funds are individual investors.
3 As '40 Act Funds, almost anybody with a brokerage account
4 can buy them. They have tickers, particularly the Funds that
5 are listed. Closed-end funds. And so, with that, it is mom-
6 and-pop investors. It's retail investors, including myself.
7 I've allocated my 401(k) to these funds, the majority of my
8 401(k) to these funds. But there are also institutional
9 investors. There's hedge funds. There's ETFs. There are
10 large high-net-worth individuals. But the majority of it is
11 individual investors that have invested through their
12 brokerage firms, be it Wells Fargo, Morgan Stanley, or Cetera.
13 These are -- these are -- these are the individual investors.
14 Q Thank you. Does Mr. Dondero have investments in the
15 Funds? Do you know?
16 A He does. He's invested in each of the Funds.
17 Q Does he have a majority investment in any of the Funds?
18 A He does not have a majority investment in any of the
19 Funds.
20 Q Thank you. Does Mr. Dondero have a control relationship
21 with the two Advisors?
22 A Yes. He does. With the Advisors.
23 Q And does he have a control relationship with the Funds?
24 A As it pertains to portfolio management, he is a portfolio
25 manager of each Fund. But as discussed, as I mentioned, the

1 independent board on an annual basis has the ability to
2 terminate or renew our advisory contracts, and that -- that
3 dynamic removes the control, overall control, of the Funds in
4 that regard.
5 Q Are you familiar with the motion that the Court I think
6 has accurately referred to as the CLO Motion that was filed by
7 the two Advisors and the three Funds?
8 A Yes. I am familiar with it.
9 Q And I'm going to ask you a question now that I think is of
10 interest to the Court, based on the last time I was in front
11 of Judge Jernigan. Were any employees of the Debtor involved
12 in deciding to bring this motion or in preparing the motion?
13 A No. None of the HCMLP employees, to my knowledge, were
14 involved in preparing or deciding to bring the motion.
15 Q Okay. And you investigated who was involved in preparing
16 the motion, so your knowledge is pretty good on this point?
17 A Correct. I have. And none were involved, based on that
18 investigation.
19 Q (garbled) involved in deciding to bring a motion,
20 preparing it, other than outside counsel and my firm?
21 A Yeah. So, the initial cause for concern was raised by Mr.
22 Dondero himself to our legal -- internal legal team and
23 compliance team. And working together with them, myself, and
24 outside counsel, and senior management of Highland Capital
25 Management Fund Advisors, including Joe Sowin, we prepared the

order. Or, sorry, not the order, the motion.
Q All right. Thank you. Were the boards of the three Funds involved at all with bringing the motion?
A They were not involved in the preparation of the motion itself. They were aware and supportive, but they did not prepare the motion.
Q You provided a (audio gap), correct?
A Sorry. You did cut out there. I didn't hear the question.
Q I'll try again. You provided a declaration (garbled) motion, correct?
A I did, yes.
Q And there are two exhibits to your declaration. There's an Exhibit A and an Exhibit B.
A Correct.
Q Exhibit A, does this reflect the current repayment status of the various CLOs as we -- as you understand it to be as of December 1st?
A Yes, it does.
Q And does Exhibit (garbled) of the three Funds --
THE COURT: Okay. Mr. --
BY MR. WRIGHT:
Q -- and the various CLOs, --
THE COURT: Mr. Wright?
BY MR. WRIGHT:

Q -- as you understand it?

THE COURT: Mr. Wright, time out. Two things. First, I don't know what you can do to improve --

MR. WRIGHT: Sure.

THE COURT: -- your connection, but you're occasionally breaking up a little.

But second, can we be clear for myself, the record, everyone else, what you're referring to right now? We have an Advis... your witness and exhibit list is at Docket 1573. Is that what I should be looking at first?

MR. WRIGHT: Yes, Your Honor. The declaration of Mr. Norris. It's Docket 1522-1. And it's on our exhibit list. It may be the only exhibit on our exhibit list, frankly.

THE COURT: Okay. So you're talking about his declaration now, not the witness and exhibit list with the attachments to it? Actually, it is attached here. Exhibit A. Okay. I'm there. I went to Exhibit A in your attachments to your exhibit list at 1573.

All right. Let's try again with your question you just asked.

MR. WRIGHT: Sure.

BY MR. WRIGHT:

Q So, Mr. Norris, Exhibit A, this reflects the current repayment status of the CLOs that are the subject of the motion as of December 1. Correct?

A Correct.

Q And then --

MR. WRIGHT: Your Honor, if you turn to Exhibit B, which is just a couple pages forward.

MR. MORRIS: Your Honor, I would ask that this be put up on the screen, if possible.

THE COURT: Yes. Can you do that, please?

MR. WRIGHT: I'm sorry. I couldn't hear that, John.

THE COURT: He asked if you could --

MR. MORRIS: I would --

THE COURT: -- share your screen. Can you share your screen as to what you're looking at?

MR. WRIGHT: Can I share my screen? Last time I was using a computer and you were having trouble hearing me, so this time I'm doing it on my phone. So my phone, no, I don't have this on my phone to share my screen that way. It's Docket 1522-1, and it's the only exhibit that was on our exhibit list.

MR. MORRIS: No objection, Your Honor.

MR. WRIGHT: All it shows is the holdings in Funds in the CLOs. That's all it is.

MR. MORRIS: No objection, Your Honor.

THE COURT: Okay.

MR. NORRIS: I'm sorry, John. I didn't hear.

THE COURT: Give me a minute, because I was at 1573,

your witness and exhibit list.

(Pause.)

THE COURT: Okay. That's not the correct docket number.

MR. MORRIS: Your Honor?

THE COURT: Yes?

MR. MORRIS: If I may, it's John -- it's John Morris. It's Docket No. 1528. And the declaration can be found at Page 12 of 26.

MR. WRIGHT: Thank you.

THE COURT: 1528?

MR. WRIGHT: That's bizarre, because I have a printout of it and it says Docket 1522-1.

THE COURT: Okay. 1528 is the -- the actual motion we've set for hearing.

MR. MORRIS: And it's attached to that, yes. If you -- if you go to PDF Page 12, it's the first page of the declaration.

THE COURT: Okay. I'm there now. Okay. So we're on that declaration. And then you were having the witness look first at Exhibit A to that declaration. And then where are you having him look next? Exhibit B, which is entitled "Holdings of Preferred Shares in CLOs"?

MR. WRIGHT: Exhibit B, Your Honor.

THE COURT: Okay. Continue.

MR. WRIGHT: (garbled) I think some of the exhibits that I have had the wrong docket number printed on the top, and I --

BY MR. WRIGHT:

Q Exhibit B. So, Mr. Norris, Exhibit B to your declaration shows the holdings of the preference shares of the Funds in the various CLOs that are the subject of the motion, correct?

A That's correct. One clarification. It shows the percentage ownership of each of those preference share tranches that each Fund owns.

Q Thank you. Mr. Norris, do the three Funds have a date by which they have to liquidate their investments?

A Sorry, you did skip out there. If you could you repeat the question. I apologize.

Q It's frustrating. Do the three Funds have a date by which they must liquidate their investments?

A No. They do not.

Q Okay. Can you briefly explain why the Advisors and the Funds brought this motion?

A Yeah. The Advisors and the Funds were concerned with certain transactions, as described in the motion. As preference share owners, we own the majority or a substantial portion of the economics of most of these CLOs, and in three instances the majority of the economic benefit. And there was concern with the way that the sales were executed. And so,

with that, we're simply asking for a temporary relief in order to benefit and to maximize the recovery for our preference shares that we own.

Q Thank you.

MR. WRIGHT: All right, Your Honor. I have no further questions for Mr. Norris, although I guess I reserve the right to redirect.

THE COURT: All right. Cross-examination?

MR. MORRIS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Norris. Can you hear me?

A I can. Thank you, Mr. Morris.

Q All right. I'm going to go into a little bit more detail about some of the topics that you discussed. To be clear here, there are five moving parties; is that right?

A That's correct. The two Advisors and the three Funds.

Q And one of the advisory firms is Highland Capital Management Fund Advisors, LP; is that right?

A That's correct.

Q And I'll refer to that as Fund Advisors; is that okay?

A That's great.

Q James Dondero and Mark Okada are the beneficial owners of Fund Advisors, correct?

A That is my understanding, yes.

Q And your understanding is that Mr. Dondero controls Fund Advisors, correct?
A That's correct.
Q And the other advisory firm that brought the motion is NexPoint Advisors, LP; is that right?
A That is correct.
Q And Mr. Dondero is the beneficial owner of NexPoint; is that right?
A A family trust where Jim is the sole beneficiary, I believe, controls or owns NexPoint Advisors.
Q Okay. And Mr. Dondero --
A Or 99.9 percent of NexPoint Advisors.
Q Thank you for the clarification. Mr. Dondero controls NexPoint; is that right?
A Correct.
Q All right. And I'm going to refer to Fund Advisors and NexPoint as the Advisors going forward; is that fair?
A That's fair.
Q Each of the Advisors manages certain funds; is that right?
A That is correct.
Q And three of those funds that are managed by the Advisors are the Movants on this motion, correct?
A Correct.
Q All right. The Advisors caused these three Funds to invest in CLOs that are managed by the Debtor; is that right?

A The portfolio managers working for the Advisors did. That's correct.
Q And Mr. Dondero is the portfolio manager of the Highland Income Fund; is that right?
A He is one of the portfolio managers for that Fund.
Q And he's also --
A I believe there are two.
Q And he's also a portfolio manager of NexPoint Capital, Inc., one of the Movants here, right?
A That is correct.
Q And he's also the portfolio manager of NexPoint Strategic Opportunities Fund, another Movant; is that right?
A Yes. That is correct.
Q Okay. And I think you testified earlier that each of these Funds has a board. Is that right?
A That is correct.
Q But the boards don't make investment decisions for the Funds, do they?
A They do not. They have delegated that authority.
Q And that authority to make investment decisions is delegated to the Advisors; is that right?
A Yes.
Q Okay. And none of the boards of the Funds who are Movants here adopted any resolution authorizing the Funds to file this motion; is that right?

A To my knowledge, that is correct.
Q And in fact, the boards were not required to approve the filing of this motion, correct?
A I'm not -- I believe that's a legal question, but to my knowledge, there was not a requirement of the board to -- or, to adopt a resolution for that.
Q Okay. Let's talk a little bit about your background. I think you testified that you're the executive vice president at NexPoint Advisors, one of the Movants. Is that right?
A That's right.
Q Who's the president of NexPoint Advisors, LP?
A Mr. Dondero.
Q And you report directly to him; is that right?
A I do.
Q You're also the executive vice president of Fund Advisors, another Movant; is that right?
A Correct.
Q And Mr. Dondero is the president of Fund Advisors; is that right?
A He is not. There is no president of Fund Advisors. But he -- yeah.
Q You're the president of another entity called NexPoint Securities; is that right?
A That's correct.
Q And you're also the executive vice president of the 11 or

12 funds that are managed by the Advisors here, right?
A Yes. That is correct.
Q Okay. You've been working for Highland Capital Management or other Highland-related entities for a little more than a decade; is that right?
A That's correct. Since June 2010.
Q Okay. Now, you don't personally make any investment decisions for -- for the Funds. Is that right?
A That's correct.
Q And you don't hold yourself out as an investment manager, do you?
A I do not.
Q And you've never worked for a CLO, have you?
A Never worked for a -- for a C -- employed by a CLO. Worked on accounting, various other aspects, but never worked for a CLO.
Q Okay. You referred earlier to the declaration that you've submitted in support of the motion. Do you remember that?
A I do.
Q I've got an assistant on the line here.
MR. MORRIS: Ms. Cantey, can we put up onto the screen Debtor's Exhibit C, which I believe was Mr. Norris's declaration? And if we could go to Page 12 of 26. Oh, all right.
BY MR. MORRIS:

Q And, again, Mr. Norris, as we did in the deposition yesterday, I'll remind you of the difficulty of doing a virtual examination. And if at any time I ask you a question about your declaration that prompts you to think you need to see another portion of the declaration, will you let me know that?

A Yes, I will.

Q Okay. Because I'm not here to test your memory. I'm just here to ask you certain questions. So please let me know if you need to see something that's not on the screen itself.

You didn't write any portion of this declaration; is that right?

A I did not.

Q And you didn't provide any substantive comments to the declaration as drafted because you agreed with -- with the declaration as written by others; is that fair?

A Correct.

Q And all of the key information in your declaration was supplied by NexPoint's management; isn't that right?

A Correct.

Q The individuals who provided the information that's in your declaration include D.C. Sauter, Jason Post, Mr. Dondero, and outside counsel at K&L Gates; is that right?

A Correct.

Q And Mr. Sauter is in-house counsel at the Advisors; is

that right?
A That is right.
Q And Mr. Post is the chief compliance officer at NexPoint; is that right?
A That's correct.
Q The whole idea for this motion initiated with Mr. Dondero; isn't that right?
A The concern, yes, the concern originated, and his concern was voiced to our legal and compliance team.
Q Okay.
MR. MORRIS: Can we take the declaration down for -- oh, actually, no, I'm sorry, leave it there, and let's talk about Exhibit B. Now we can all see it. If you can scroll down to Exhibit B, please. Okay.
BY MR. MORRIS:
Q This page is attached to your declaration, right?
A That's correct.
Q And this page is intended to show the percentage of preferred shares owned by each of the Movant Funds and the 15 different CLOs, right?
A That's right.
Q And the Debtor is the portfolio manager for each of these CLOs; is that right?
A Yes.
Q And it's your understanding that the Debtor's management

of the CLOs on this page is governed by written agreements between the Debtor and each of the CLOs, right?
A Yes.
Q None of the Movants are parties to the agreements between the Debtor and each of the CLOs pursuant to which the Debtor serves as portfolio manager; is that correct?
A I believe that is correct. One, I think, important -- even though they're not subject to the agreement, they are the -- they have the economic ownership of each of these CLOs.
Q But they're not party to the agreement; is that right?
A Not that I'm aware of.
Q Okay. And in preparing for this motion and preparing for your testimony, you didn't personally review any of the agreements between the Debtor and any of the CLOs listed on this page, right?
A No. I relied on legal counsel for that review.
Q Okay. And, but even though you didn't review the agreements, it's your understanding that among the responsibilities that the Debtor has as the portfolio manager is buying and selling assets on behalf of the CLOs; is that right?
A Yes. And I believe I specifically stated in my statement, if you want to turn to it, what I (audio gap) to regarding the CLOs' duties under the agreements.
Q Okay. It's your understanding, in fact, that nobody other

than the Debtor has the right or the authority to buy and sell assets on behalf of the CLOs listed on Exhibit B, correct?
A That's my understanding.
Q Okay. And it's also your understanding, your specific understanding, that holders of preferred shares do not make investment decisions on behalf of the CLO; is that right?
A Correct.
Q And that's something that the Advisors knew when they decided to invest in the CLOs on behalf of the Movant Funds; is that fair?
A That's right. And at that time, the knowledge in the purchase was with Highland Capital Management, LP and the portfolio management team at that time.
Q And it's still with Highland Capital Management, LP; isn't that right?
A That's correct. I'm not sure that the portfolio management team looks the same, but it was HCMLP.
Q Okay. Let's just look at this document for a second. The first column has the list of the CLOs in which the Movant Funds have invested; is that right?
A Correct.
Q And the second column, HIF, that stands for Highland Income Fund; is that right?
A Yes, sir.
Q And Highland Income Fund is one of the Funds who are the

Movants here, right?
A That is correct.
Q And the percentages below that show the percentage of the preference shares of each of the CLOs that that particular fund holds; is that right?
A That's right.
Q And then the third column relates to NexPoint Strategic Opportunities Fund, one of the Movants here; is that right?
A That's correct.
Q And the next column, the fourth column, relates to NexPoint Capital, Inc.'s holding of preference shares in the 15 CLOs, right?
A That's right.
Q So, NexPoint Capital doesn't hold any preference shares in any of the CLOs except for a less-than-one-percent interest in Grayson; am I reading that correctly?
A Yes, that's correct.
Q Okay. And then the last column is intended to show the aggregate portion or percentage of preference shares that the three moving Funds have in each of the 15 CLOs; is that right?
A Yes, that's right.
Q Okay. Am I reading this correctly that, for 12 of the 15 Funds, the moving Funds own less than a majority of the outstanding preferred shares?
A Yes, that's correct.

Q And is it also -- am I also reading this correctly to conclude that the moving Funds owned less than 70 percent of every one of these CLOs; is that right?
A That's correct.
Q You don't know who owns the preferred shares in the CLOs that are not owned by the Movant Funds, do you?
A I don't know any -- any specific owners.
Q And some of these CLOs still have notes that are outstanding; is that right?
A Yes. Very small amounts as a percentage of the overall CLO original capital structure, but yes, some still have small --
Q So, --
A -- notes. Small amounts of notes.
Q Okay. I'm sorry to interrupt. If we looked at Exhibit A, if we took the time to look at Exhibit A, Exhibit A would show, for each of the 15 CLOs, which of those CLOs still had notes outstanding and the amount of out -- the dollar value of those notes. Is that right?
A That's correct.
Q Okay. And your understanding is that -- your understanding -- withdrawn. The payment -- the distributions from the CLOs are made pursuant to a waterfall; is that right?
A Yes, that's correct.
Q And your understanding of the waterfall process is that

the notes that are still outstanding at any CLO must be paid -- must be paid in full before the preferred shares receive any recovery; is that right?

A So, I would say that my understanding is slightly different. It's going to be dependent on each indenture. But, in general, interest payments are made to the debt holders, and anything extra is then allocated to the equity. But ultimate recovery, to your point, would be once those -- once the debt is paid off. And that's the critical thing here, where the preference shares here now with most of these CLOs almost all the way wound down, with the exception of a small piece of debt. The equity owns the lion's share of the economic interest of every one of these CLOs. And I think that's important.

Q Okay. Some of the CLOs still have outstanding notes. Is that right?

A Yes. As we discussed on -- Exhibit A will have the notes that are -- that are remaining on those.

Q And you don't know who holds the notes in the other CLOs, right?

A I don't.

Q The only holders of preferred shares that are pursuing this motion are the three Funds managed by the Advisors, right?

A In this motion, yes.

Q You're not aware of any holder of preferred shares pursuing this motion other than the three Funds managed by the Advisors, correct?
A No, I'm not aware of any others.
Q You didn't personally inform any holder of preferred shares, other than the Funds that are the Movants, that this motion would be filed, did you?
A No, I did not.
Q You're not aware of any steps taken by either of the Advisors to provide notice to holders of preferred shares that this motion was going to be filed, are you?
A I'm not, no.
Q And you're not aware of any attempt that was made to obtain the consent of all of the holders of the preferred shares to seek the relief sought in this motion, correct?
A That's correct.
Q You don't have any personal knowledge, personal knowledge, as to whether any holder of preferred shares other than the Funds managed by the Advisors wants the relief sought in the motion, correct?
A Correct.
Q You don't have any personal knowledge as to whether any of the CLOs that are subject to the contracts that you described want the relief that's being requested in this motion, right?
A That's correct. I have not spoken or been involved at all

directly with the CLOs. I'm representing the Funds.
Q Okay. Now, two of the Funds, two of the three Movant Funds, I believe you testified are publicly traded; is that right?
A That's correct.
Q And that's the Highland Income Fund and the NexPoint Strategic Opportunities Fund; is that right?
A That's right. That's right.
Q And because they are publicly-traded, the shareholders in those two funds can sell their shares any time the market is open; is that right?
A If they're willing to take the price that the market is willing to give, yes.
Q Yes.
A Between market hours.
Q And if they -- if they don't like the way the assets that are -- that the Funds have been invested, one of the things they could do is simply sell their shares, right?
A Yes.
Q And the third fund, the shareholders in the third fund have the right to sell out not on a public market but on a quarterly basis; is that right?
A Correct.
Q That third Movant Fund is NexPoint Capital; do I have that right?

A Correct.
Q So they also have the ability to exit if they don't like management on a quarterly basis; is that right?
A Correct.
Q All right. Can we turn to Paragraph -- Paragraphs 8 and 9 of your declaration? Okay. Paragraph 8 describes a transaction that's been referred to as OmniMax; is that right?
A Yes.
Q And Paragraph 9 refers to a transaction involving SSP Holdings, LLC; do I have that right?
A That's correct.
Q Do you know what SSP stands for?
A See if we say it in there. SSP Holdings, LLC.
Q Right. Do you know what SSP stands for?
A I don't. Something Steel Products. I --
Q Okay. You don't need to guess. These are the only two transactions that the Movants question; is that right?
A These transactions, as well as certain transactions around Thanksgiving time.
Q Okay. We'll talk about those. But those transactions about -- around Thanksgiving time aren't in your declaration, are they?
A Not specifically mentioned by name.
Q Okay. Let's talk about the two that are mentioned by name, Trussway and SSP. The Movants do not contend that

either transaction was the product of fraudulent conduct, do they?
A No.
Q The Movants do not contend that the Debtor breached any agreement by effectuating these transactions, do they?
A I don't believe so.
Q In fact, the Movants do not contend that the Debtor violated any agreement at any time in the management of the CLOs listed on Exhibit B; is that right?
A That's right.
Q The Movants don't even question the Debtor's business judgment, only the results of the trans -- of these two transactions. Is that right?
A That's right. And results is the key here and the approach.
Q I see. And the reason the Movants do not question the Debtor's business judgment is because you don't know what factor or factors the Debtor considered in executing these transactions, right?
A That's right. I can't look into the mind or know the business judgment and the inputs that went into this. We do know the outcomes. And to us, that's troubling, right, as the owners of the lion's share or the majority or even significant amounts of the economic ownership of the CLOs. And having insight into those transactions, as mentioned in my statement,

really just trying to maximize recoveries for our Funds.

MR. MORRIS: Your Honor, I move to strike the portion of his answer following that which was responsive to the question.

THE COURT: All right. I grant that motion.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Sir, you never asked the Debtor what factors it considered in making these trades, right?

A I did not.

Q And you have no reason to believe that anyone on behalf of the Movants ever asked the Debtor why it executed these trades, right?

A I don't have any knowledge. There could have been somebody from -- from the Movants. But I did not.

Q Okay. On OmniMax, the Movants disagree with the price at which the Debtor effectuated the trade, right?

A Correct.

Q And I believe there was a meeting of the boards of the Funds back in August at which Mr. Seery appeared. Do I have that right?

A I believe it was August, but he did appear.

Q And the purpose of the appearance was so that Mr. Seery could give an update on the bankruptcy; is that right?

A That's correct, and on the services provided by Highland

Capital Management, LP to our Advisor. Advisors. They provide various shared services.

Q And it was during that meeting that Mr. Seery forthrightly told the boards the price at which he was planning to execute the OmniMax transaction, correct?

A Correct.

Q The transaction hadn't yet occurred, right?

A I'm not sure if it had been finalized. He had a price, and these -- these things are negotiated. This was, I believe, a company in restructuring. So I don't know whether it had been transacted or not.

Q Okay. The board didn't ask Mr. Seery not to execute the transaction, did it?

A Not to my knowledge. The board wouldn't -- I don't think the board would have that authority, either.

Q Okay. But it's here asking the Court to cause the Debtor to pause in the execution of any trades in the CLOs; is that right?

A I think the order speaks in that regard.

Q Yeah. Okay. Let's talk about the SSP transaction for a moment. It's your understanding that Trussway Holdings, LLC owned a majority interest in SSP Holdings, LLC, right? That's in Paragraph 9.

A Yes. The statement in Paragraph 9 is what I believe is correct.

Q Okay. And it's also your understanding that Trussway is a wholly-owned subsi... I'm sorry, that SSP Holdings is a wholly-owned subsidiary -- withdrawn. It's also your understanding that Trussway is a wholly-owned subsidiary of the Debtor, right?
A Yes.
Q But Trussway is not a debtor in bankruptcy, right?
A I'm not sure.
Q Okay. You have no reason to believe that; is that fair?
A That it's not a debtor in bankruptcy? That Trussway is not in bankruptcy itself?
Q Correct.
A Yeah. I have no knowledge of Trussway's situation.
Q Okay. But you -- but according to your declaration that was prepared by the Advisors' management team, Trussway and not the Debtor owned SSP Holdings, LLC. Is that right?
A I'm looking here at the statement just to make sure.
Q Sure.
(Pause.)
A I -- again, I -- the statement is correct, and I believe speaks for itself regarding entity ownership.
Q The only things you know about the SSP transaction are, one, that you believe it was made without a formal bidding process; and two, that it resulted in a $10 million loss. Is that right?

A Correct.
Q Okay. But, again, neither you, or to the best of your knowledge, anybody at Advisors, ever spoke with anybody at the Debtor about the circumstances concerning either of the transactions, right?
A I don't know the conversations that were had at anyone else from our Advisors, but this is the knowledge that -- that I have.
Q Okay. And it's the only knowledge you have, right? You don't know anything about the SSP transaction other than those two facts, right?
A Correct.
Q In fact, I think you testified yesterday that you've been very remote from the SSP transaction, right?
A That's correct.
Q And that it's not a transaction that you have much knowledge on. Fair?
A Fair.
Q Let's just talk briefly about the transactions that occurred (garbled) Thanksgiving. They're not specifically referred to in your declaration; is that right?
A That's correct.
Q And you have no knowledge about any transaction that Mr. Seery wanted to execute around Thanksgiving; is that right?
A I know there were transactions and there were concerns

from our management team, but I'm not aware of what the transactions were.

Q In fact, you can't even identify the assets that Mr. Seery wanted to sell around Thanksgiving, or at least you couldn't at the time of your deposition yesterday. Is that right?

A That's correct.

Q And you have no knowledge as to why Mr. Seery wanted to make those particular trades at around Thanksgiving?

A No, I don't.

Q And in fact, you don't even know if the transactions that Mr. Seery wanted to close around Thanksgiving ever in fact closed. Is that fair?

A Correct.

Q Okay. Let's just -- let's just finish up with a few questions about the boards.

MR. MORRIS: Ms. Cantey, can we put up Debtor's Exhibit EEEE? Four E's, Your Honor. Thank you.

BY MR. MORRIS:

Q This particular page identifies the directors for each of the three Movant Funds; is that right?

A Let me take a look and confirm. (Pause.) Yes. That looks correct.

Q Okay. And this was prepared by the Movants; is that right?

A I'm not sure who prepared it.

Q Okay. To the best of your knowledge, does this document accurately reflect the composition of the boards of each of the three Movant Funds?
A Yes, it does.
Q Okay. John Honis, I think you mentioned him earlier. He's on all three boards. Is that right?
A That's correct. And the reason being we have a unitary board structure, so -- which is very common in '40 Act Fund land, where the board sits, for efficiency purposes, on multiple fund boards, and there's a lot of economies of scale from an operating standpoint. So, yes, they sit on multiple boards.
Q Okay. And for purposes of the '40 Act, Mr. Honis has been deemed to be an interested trustee. Is that right?
A That's correct.
Q Okay. But you don't specifically know what facts caused that designation; you only know that the designation exists. Right?
A That's right. And I know they are disclosed in the proxy -- or, in the -- the relative filings related to those Funds.
Q Okay. Three other people are common to all three of the Movant Funds. I think you've got Dr. Froehlich, Ethan Powell, --
A Froehlich.
Q Froehlich. Ethan Powell and Bryan Ward. Right?

A That is correct.
Q Okay. All three of those individuals actually serve on the 11 or 12 boards that you mentioned earlier that are managed by the Advisors, right?
A Yes, that is correct.
Q And they're the same Funds for which you serve as an executive vice president, right?
A Yes. That's correct.
Q So, for all of the Funds that are managed by the Advisors, you serve as executive vice president and all four of these directors -- trustees serve as trustees on the boards, right?
A Yes, that's correct.
Q Okay. In exchange for serving on all of these boards, the three individuals -- Dr. Froehlich, Mr. Ward, and Mr. Powell -- each receive $150,000 a year for services across the Highland complex; is that right?
A That's correct.
Q Dr. Froehlich has been serving as a board member across the Highland complex for seven or eight years now; is that right?
A That's correct.
Q Mr. --
A I believe it's about seven or eight years.
Q And Mr. Powell, he actually was employed by Highland or related entities from about 2007 or 2008 until 2015, right?

A That's correct.
Q And Mr. Ward, the third of the independent trustees, he's been serving as a board member on various Highland-related funds on a continuous basis since about 2004. Do I have that right?
A Yeah, I believe that's correct.
Q Okay. Just a couple of final questions. You would agree, would you not, sir, that portfolio managers have an obligation to effectuate transactions concerning the assets that they manage based on their business judgment?
A Yes. And in accordance with whatever governing documents govern the fund structure.
Q And you would personally expect a portfolio manager to execute a transaction that he or she reasonably believes in good faith and in their business judgment would maximize value for the CLO, even if the CLO did not need cash at that particular time. Is that right?
A I think it would come down to the governing documents. And I think what you're getting at here is, in this instance, these sales and the intent of the portfolio manager. And our view, again, is -- and the request for the motion is simply there is a lot at play here. Several negotiations. And in order to maximize returns, simply asking for a pause on transactions.
Q All right. Let me -- let me ask the question again, and I

would ask that you please listen carefully to the question. You would expect a portfolio manager would execute a transaction that he or she believes maximizes value, even if the CLO didn't need cash at that particular moment in time. Correct?

A Yeah. As long as that is maximizing value for the stakeholders, and in the instance of a CLO, the economic interest is owned by the equity holders. So, to their benefit, yes, that -- that would be the idea.

MR. MORRIS: Your Honor, I have no further questions.

THE COURT: Any redirect, Mr. Wright?

MR. WRIGHT: Only briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. WRIGHT:

Q Mr. Norris, I think you were asked at one point about how long you'd been working for Highland Capital Management, which there's -- there's Highland Capital Management Fund Advisors and then there's Highland Capital Management, LP, Debtor. And I wanted to give you an opportunity to just explain when and what years you worked for HCMLP and then when and what years you worked for NexPoint Advisors or Highland Capital Management Fund Advisors.

A Yes. From June 2010, I was employed by Highland Capital Management, LP, until July or August of 2012, at which time I was then hired by Highland Capital Management Fund Advisors,

not HCML -- no longer employed by HCMLP, and have worked since that time for HCMFA and NexPoint Advisors and not for the Debtor, HCMLP.

Q Okay. So -- and I'm sorry if I missed a year, but it's been about ten years since you had worked for HCMLP or been an employee of HCMLP, correct?

A Yeah. It's been over eight years since I have left employment by HCMLP. Ten and a half years ago, I started working for HCMLP, and then two years after that transitioned away and started working for the Advisors that are part of this motion.

Q Thank you for clarifying.

MR. WRIGHT: Your Honor, I hope -- you directed us to have a witness here today, and so we do. And I know that you had asked me at the last hearing some questions about the involvement of people at HCMLP, which I tried to address with Mr. Norris in my direct. But I, you know, I do want to make sure that we've answered any questions that you have.

THE COURT: All right. Yes, that's fine. Are you -- does that conclude your redirect?

MR. WRIGHT: It does, Your Honor.

THE COURT: Any recross, Mr. Morris, on that redirect?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right, then. That concludes the

testimony of Mr. Norris.

Any other evidence, Mr. Wright?

MR. WRIGHT: I do not, Your Honor, although I guess I would offer the Exhibit A and Exhibit B to Mr. Norris's declaration --

THE COURT: Any objection to that?

MR. WRIGHT: -- into evidence.

MR. MORRIS: No, Your Honor.

THE COURT: All right. Those are admitted.

(Movants' Exhibits A and B are received into evidence.)

THE COURT: All right. Well, Mr. Morris, did you want to put on any evidence?

MR. MORRIS: Does the -- do the Movants rest, Your Honor?

THE COURT: I understood that they rest. Correct, Mr. Wright?

MR. WRIGHT: That's correct, Your Honor.

MR. MORRIS: Your Honor, I would move, effectively, for a directed verdict here. The Movants have the burden of establishing a *prima facie* case to entitlement to the relief that's been requested, and they have failed to meet that burden. The Debtor has -- we -- the undisputed facts are the Debtor has the contractual right, and indeed, the obligation, to serve as the portfolio manager of the CLOs pursuant to written agreements.

The Movants are not parties to those agreements. The testimony is undisputed that there are many holders of preferred shares and notes that have had no notice of this proceeding that will undoubtedly be impacted by the tying of the hands of the portfolio manager. The chart that was attached as Exhibit B expressly shows just what a large portion of interested parties and people who would be affected by this motion are not -- they didn't get notice. There was no attempt to get notice. There was no attempt to get their consent. All of that testimony is now in the record, and I think due process alone would prevent the entry or even the consideration of an order of this type.

There is nothing improper that's been alleged. There is no -- there is no allegation of fraud. There is no allegation of breach of contract of any kind. There's not even a question of business judgment. The Movants didn't even do their diligence to ask the Debtor why they made these transactions. There is nothing in the record that shows that the Debtor, as the portfolio manager of the CLOs, did anything improper.

The only thing that the Movants care about is that they don't like the results in two particular trades. I don't think that that meets their burden of persuasion that the Court should enter an order of this type, and I would like to relieve Mr. Seery of the burden, frankly, and the Court, of

having to put on testimony to justify transactions that really aren't even being questioned, Your Honor.

So the Debtor would respectfully move for the denial of the motion and the relief sought therein.

THE COURT: All right. Your request for a directed verdict, something equivalent to a directed verdict here, is granted. I agree that the Movant has wholly failed to meet its burden of proof here today to show the Court, persuade the Court that, as Mr. Morris said, I should essentially tie the hands of the Debtor as a portfolio manager here, as stated. Nothing improper has been alleged. There has been no showing of a statutory right here, or a contractual right here, on the part of the Movants.

I am -- I'm utterly dumbfounded, really. I agree with the -- I was going to say innuendo; not really innuendo -- I agree with part of the theme, I think, asserted by the Debtor here today that this is Mr. Dondero, through different entities, through a different motion. I feel like he sidestepped the requirement that I stated last week that if we had a contested hearing on his motion, Dondero's motion, that I was going to require Mr. Dondero to testify. He apparently worked out an eleventh hour agreement with the Debtor on his motion to avoid that. But, again, these so-called CLO Motions very clearly, very clearly, in this Court's view, were pursued at his sole direction here.

This is almost Rule 11 frivolous to me. You know, we're -- we didn't have a Rule 11 motion filed, and, you know, I guess, frankly, I'm glad that a week before the holidays begin we don't have that, but that's how bad I think it was, Mr. Wright and Mr. Norris. This is a very, very frivolous motion. Again, no statutory basis for it. No contractual basis. You know, you didn't even walk me through the provisions of the contracts. I guess that would have been fruitless. But you haven't even shown something equitable, some lack of reasonable business judgment.

Bluntly, don't waste my time with this kind of thing again. You wasted my time. We have 70 people on the video. Utter waste of time.

All right. So, motion is denied. Mr. Morris, please upload an order.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. Do we have any other business to accomplish today?

MR. POMERANTZ: I don't think so, Your Honor. I know we will see you tomorrow in connection with Mr. Daugherty's relief from stay motion.

THE COURT: Well, yeah, we do have that. Okay. We will see you tomorrow. We stand adjourned.

MR. CLEMENTE: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 3:05 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/17/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 37

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729 50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731 51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734 52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736 53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738 54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741 55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743 56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746 57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749 58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752 59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755 60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759 61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868 62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882 63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352 Vol. 37	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
008418 Vol. 38	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
008623 Vol. 39	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
008880 Vol. 40	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Friday, January 8, 2021 9:30 a.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES D. DONDERO, Defendant.	**Adversary Proceeding 20-3190-sgj** PRELIMINARY INJUNCTION HEARING [#2]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

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APPEARANCES, cont'd.:

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DALLAS, TEXAS - JANUARY 8, 2021 - 9:41 A.M.

THE COURT: All right. We are here for Highland Capital Management, L.P. versus James Dondero, a preliminary injunction hearing. This is Adversary 20-3190.

All right. Let's start out by getting appearances from counsel. First, for the Plaintiff/Debtor, who do we have appearing?

MR. MORRIS: Your Honor, John Morris; Pachulski Stang Ziehl & Jones. I'm here with my partner, Jeff Pomerantz, and others.

THE COURT: All right. Good morning. All right. For Mr. Dondero, who do we have appearing?

MR. LYNN: Michael Lynn, together with John Bonds, for Mr. Dondero.

THE COURT: Good morning.

All right. I know we have a lot of parties in interest represented on the video or phone today. I'm not going to go through a roll call, other than I'll see if we have the Committee, the Unsecured Creditors' Committee counsel on the line. Do we have anyone appearing for them?

MR. CLEMENTE: Yes, good morning, Your Honor. Matthew Clemente from Sidley Austin on behalf of the Committee.

THE COURT: Okay. Thank you. All right.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: Well, as I said, I'm not going to do a roll call. I don't think we had any specific parties in interest, you know, file a pleading, or any other parties other than the Debtor and Mr. Dondero in this adversary. So I'll just let the others kind of listen in without appearing.

All right. Mr. Morris, are you going to start us off this morning with, I don't know, an opening statement or any housekeeping matters?

MR. MORRIS: I have both an opening statement and housekeeping matters. I just wanted to see if Mr. Pomerantz has anything he wants to convey to the Court before I begin.

MR. POMERANTZ: (garbled)

THE COURT: Mr. Pomerantz, if you could take your device off mute, please.

THE CLERK: He's off mute. I don't know what --

THE COURT: Okay. Well, we're showing you're not on mute, but we can't hear you. What now?

THE CLERK: He's not on mute now. He's --

THE COURT: Okay. Go ahead, Mr. Pomerantz.

(Pause.)

THE CLERK: He's not coming through.

THE COURT: We're -- you're not coming through, and we're not sure what the problem is. We're not showing you on mute.

(Pause.)

THE COURT: All right. Should we have him call back in on his phone? All right. If you could, if you have a phone, maybe you can try calling in on your phone and speak through your phone, not your computer.

MR. MORRIS: You know what, Your Honor? I'm going to proceed, and Mr. Pomerantz will address the Court at the conclusion of the hearing on the motion.

THE COURT: Okay. Very good. We usually hear him loud and clear, so I don't know what's going on this morning. Go ahead, Mr. Morris.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. MORRIS: Yes. Thank you very much, Your Honor. John Morris; Pachulski Stang; for the Debtor.

We are here this morning, Your Honor, on the Debtor's motion for preliminary injunction against Mr. Dondero. We filed last night also an emergency motion for an order to show cause as to why this Court should not hold Mr. Dondero in contempt of court --

THE COURT: All right.

MR. MORRIS: -- for violating a previously-issued TRO.

THE COURT: Yes. Let me just interject, in case there's any confusion by anyone. I am not going to hear the motion for show cause order this morning. While I understand you think there might be some efficiency and overlap in

evidence, it's not enough notice. So we'll talk about scheduling that at the end of the presentations this morning. All right?

MR. MORRIS: Thank you for addressing that, Your Honor.

THE COURT: Okay.

MR. MORRIS: Your Honor, then let's just proceed right to the preliminary injunction motion. There is ample evidence to support the Debtor's motion for a preliminary injunction. There would have been substantial evidence to support it based on the conduct that occurred prior to the issuance of the TRO, but the conduct that did occur following the TRO only emphasizes the urgent need for an injunction in this case.

I want to begin by just telling Your Honor what evidence we intend to introduce here today. We filed at Docket 46 in the adversary proceeding our witness and exhibit list. The exhibit list contains Exhibits A through Y. And at the appropriate time, I will move for the admission into evidence of those exhibits.

The exhibit list and the witness list also identifies three witnesses for today. Mr. Dondero. Mr. Dondero is here today. Notwithstanding Your Honor's comments on December 10th and on December 16th, when I deposed him on Tuesday he was unsure whether he was going to come here today to testify.

1 And he will inform Your Honor of that on cross-examination.
2 And so the Debtor was forced to prepare and serve a subpoena
3 to make sure that he was here today. But Mr. Dondero is here
4 today.
5 Following the conclusion of Mr. Dondero's deposition on
6 Tuesday, and based in part on the evidence adduced during that
7 deposition, the Debtor terminated for cause Scott Ellington
8 and Isaac Leventon. We had asked counsel for those former
9 employees to accept service of a trial subpoena so that they
10 would appear today. We were told that they would do so if we
11 gave them a copy of the transcript of Mr. Dondero's
12 deposition.
13 We thought that was inappropriate and we declined to do
14 so, and they declined to accept service of the subpoenas. We
15 have spent two days with a professional process server
16 attempting to effectuate service of the trial subpoenas for
17 Mr. Ellington and Mr. Leventon, but we were unsuccessful in
18 doing that. So we'll only have one witness today, unless we
19 have cause to call anybody on rebuttal, and that witness will
20 be Mr. Dondero.
21 I want to talk for a few moments as to what Mr. Dondero
22 will testify to and what the evidence will show. Mr. Dondero
23 will testify that he never read the TRO, Your Honor. He will
24 testify that he didn't participate in the motion on the
25 hearing for the TRO, that he never read Mr. Seery's

declaration in support of the Debtor's motion for the TRO, that he never bothered to read the transcript of the proceedings on December 10th so that he could understand the evidence that was being used against him. He had no knowledge of the terms of the TRO when he was deposed on Tuesday.

And that's the backdrop of what we're doing here today, because he didn't know what he was enjoined from doing, other than speaking to employees. He actually did testify and he will testify that he knew he wasn't supposed to speak with the Debtor's employees, but he spoke with the Debtor's employees in all kinds of ways, as the evidence will show.

The evidence will also show that Mr. Dondero violated the TRO by throwing away the cell phone that the company bought and paid for after the TRO was entered into. He's going to be unable to tell you who threw it away. He's going to be unable to tell you who gave the order to throw it away. He's going to be unable to tell you when after the TRO was entered the phone was thrown away.

But we do have as one fact and as I believe one violation of the TRO --

MR. POMERANTZ: So, I'm on a WebEx.

MR. MORRIS: Jeff, --

THE COURT: Mr. Pomerantz, we heard you. We heard you say something. So, apparently, you got your audio working.

All right. Mr. Morris, continue.

MR. MORRIS: Yeah. And what Mr. Dondero may tell you, Your Honor, is that it's really Mr. Seery's fault that the phone got thrown away, because Mr. Seery announced that all of the employees were going to be terminated at the end of January, and because Mr. Seery did that, he and I believe Mr. Ellington thought it was appropriate to just throw their phones away, without getting the Debtor's consent, without informing the Debtor, and switching the phone numbers that were in the Debtor's account to their own personal names. So that's Item No. 1.

Item No. 2 -- and this is in no particular order, Your Honor. I don't want you to think that I'm bringing these things up in terms of priority. But they're just the order in which they came up in the deposition, and so I'm just following it as well.

Item No. 2 is trespass. On December 22nd, you will hear evidence that Mr. Dondero personally intervened to yet again stop trades that Mr. Seery was trying to effectuate in his capacity as portfolio managers of the CLOs. He did that just six days after Your Honor dismissed as frivolous a motion brought by the very Advisors and Funds that he owns and controls.

Therefore, the very next day, the Debtor sent him a letter, sent through counsel a letter, evicting him from the

1 premises, demanding the return of the phone, and telling him
2 that he had to be out by December 30th.
3 I was stunned, Your Honor, stunned, when I took his
4 deposition on Tuesday and he was sitting in Highland's
5 offices. He hadn't asked for permission to be there. He
6 hadn't obtained consent to be there. But he just doesn't care
7 what the Debtor has to say here. He just doesn't.
8 I don't know when he got there or when he left. I don't
9 know if he spoke to anybody while he was there. But he just
10 took it upon himself to show up in the Debtor's office,
11 notwithstanding the very explicit eviction notice that he got
12 on December 23rd.
13 Mr. Dondero, as I mentioned, clearly violated the TRO by
14 knowingly and intentionally and purposely interfering with the
15 Debtor's trading as the portfolio manager of the CLOs. This
16 has just gone on too long. There have been multiple hearings
17 on this matter, but he doesn't care. So he gave the order to
18 stop trades that Mr. Seery had effectuated. That's a clear
19 violation of the TRO, and it certainly supports the imposition
20 of a preliminary injunction.
21 Mr. Seery -- Mr. Dondero is going to testify that multiple
22 letters -- that I'm going to refer to them, Your Honor, as the
23 K&L Gates Parties, and those are the two Advisors and the
24 three investment funds and CLO Holdco that are all owned and/
25 or controlled by Mr. Dondero -- after that hearing on the

16th, K&L Gates, the K&L Gates Parties sent not one, not two, but three separate letters. They said they may take steps to terminate the CLO management agreements. After we evicted Mr. Dondero, sent a letter suggesting that we would be held liable for damages because we were interfering with their business.

And Mr. Dondero is going to tell you, Your Honor, that he encouraged the sending of those letters, that he approved of those letters, that he thought those letters were the right things to send to the Debtor, even after -- even with the knowledge of what happened on December 16th.

He's going to tell you he knew about that hearing and he still, he still approves of those letters, and never bothered to exercise his control to have those letters withdrawn upon the Debtor's request. We asked them to withdraw it, and when they wouldn't do it, Your Honor, that's what prompted the filing of yet another adversary proceeding. And we're going to have another TRO hearing next Wednesday because they won't stop.

Next, a preliminary injunction should issue because Mr. Dondero violated the TRO by communicating with the Debtor's employees to coordinate their legal strategy against the Debtor. The evidence will show, in documents and in testimony, that on December 12th, while he was prohibited from speaking to any employee except in the context of shared services, you're going to see the documents and you're going

to hear the evidence that on December 12th Scott Ellington was actively involved in identifying a witness to support Mr. Dondero's interests at the December 16th hearing.

You will receive evidence that on December 15th Mr. Ellington and Mr. Leventon collaborated with Mr. Dondero's lawyers to prepare a common interest agreement.

You will hear evidence that on the next day, December 16th, the day of that hearing, that Mr. Dondero solicited Mr. Ellington's help to coordinate all of the lawyers representing Mr. Dondero's interests, telling Mr. Ellington that he needed to show leadership, and Mr. Ellington readily agreed to do just that.

You will hear evidence that on December 23rd Mr. Ellington and Grant Scott communicated in connection with calls that were being scheduled with Mr. Dondero and with K&L Gates, the very K&L Gates Clients who filed the frivolous motion that was heard on December 16th and that persisted in sending multiple letters threatening the Debtor thereafter.

You will hear evidence that late in December Mr. Dondero sought contact information for Mr. Ellington and Mr. Leventon's lawyer, and he will tell you that he did it for the explicit purpose of advancing their mutual shared interest agreement, while they were employed by the Debtor. While they were employed by the Debtor.

Finally, you will hear evidence, and it will not be

1 disputed, you will see the evidence, it's on the documents,
2 that Mr. Dondero personally intervened to stop the Debtor from
3 producing the financial statements of Get Good and Dugaboy,
4 two entities that he controls, that the U.C.C. had been asking
5 for for some time, that the Debtor had been asking of its
6 employees for some time to produce. And it was only when we
7 got, frankly, the discovery from Mr. Dondero when there's a
8 text message that says, Not without a subpoena.
9 The documents are on the Debtor's system. We just don't
10 know where they are because they're hidden someplace. But Mr.
11 Dondero knows where they are. He can certainly force -- he
12 can certainly get them produced. And one of the things we'll
13 be asking for when we seek the contempt motion is the
14 production of those very documents.
15 So, Your Honor, that's what the evidence is going to show.
16 I don't think there's going to be any question that a
17 preliminary injunction ought to issue. But I do want to spend
18 just a few minutes rebutting some of the assertions made in
19 the filing by Mr. Dondero last night.
20 Of course, they offer no evidence. There is no
21 declaration. There is no document. There is merely argument.
22 It's been that way throughout this case. For a year, Mr.
23 Dondero has never stood before Your Honor to tell you why
24 something was wrong being done to him, why -- he hasn't
25 offered to be here at all, and he's here today, again, only

because he got a subpoena. That's the only reason we know he's here today.

So let's just spend a few minutes talking about the assertions made in the document last night. Mr. Dondero complains about the scope of the injunction, and I say to myself, in all seriousness, Are you kidding me? You didn't even read the TRO and you're going to be concerned about what the scope of the injunction is? You didn't even have enough respect for the Court to read the TRO and we're going to worry about the scope of some future injunction? Doesn't make any sense to me.

But let's talk about the specific arguments that they make.

Third parties. They're concerned that somehow third parties don't have notice of the injunction. Your Honor, third parties are not impacted by the injunction. The only third parties that are impacted by the injunction are those that are owned and/or controlled by Mr. Dondero. If he doesn't tell them, that's his breach of duty. He created the Byzantine empire of over 2,000 entities, and he wants the Debtor to have the burden of notifying all of them so that they can all come in here and make 2,000 arguments as to why they shouldn't be enjoined?

He owns and controls them. They are the only third parties who are impacted by this proposed preliminary

1 injunction, and he has the responsibility, he has the duty to
2 inform them, because he owns and controls them.
3 We know of the K&L Gates Parties. We know Get Good and
4 Dugaboy are in this courtroom. We know CLO Holdco. So many
5 of these parties have been so -- they're on the phone now.
6 They don't have notice? It is insulting, frankly, to suggest
7 that the Debtor somehow has some obligation to figure out who
8 Mr. Dondero owns and controls. He should know that. That's
9 number one.
10 Number two, there is a statement in there about employees
11 and how he should be able to speak with them about personal
12 and routine matters. As to that, Your Honor, he has forfeited
13 that opportunity. He cannot be trusted. There cannot be any
14 communication because nobody can police it. And so we think a
15 complete bar to any discussion with any employee, except as it
16 relates to shared services -- because we do have a contractual
17 obligation; that's what was in it -- ought to be barred.
18 That's number one.
19 Number two, there's a reference in the objection to Mr.
20 Dondero's personal assistant. I'd like to know who that is,
21 Your Honor. I wasn't aware that he still was using a personal
22 assistant at the Debtor. I want to know specifically who that
23 is. I don't know that they -- you know, I just -- we need to
24 cut that off. And he should not be communicating with any
25 employee. The Debtor should not be paying for his personal

1 assistant.
2 It's offensive to think that he's still doing that,
3 particularly after he was terminated or his resignation was
4 requested back in October precisely because his interests were
5 adverse to the Debtor.
6 Number three, he's concerned that the Debtor is somehow
7 preventing him from speaking to former employees. We now
8 know, Your Honor, that that's a, I'm sure, a very specific
9 reference to Mr. Ellington and Mr. Leventon. Right? He wants
10 a green light to be able to do that. And you know, I'll leave
11 it to Your Honor as to whether that's appropriate. I'll leave
12 it to their counsel as to whether, going forward, colluding
13 together against the Debtor at this point in time is in
14 anybody's best interest. But I will -- what I will demand in
15 the preliminary injunction is a very explicit statement that
16 Mr. Ellington and Mr. Leventon are not to share any
17 confidential or privileged information that they received in
18 their capacity as general counsel and assistant general
19 counsel of the Debtor.
20 The pot plan. He's afraid somehow the order is going to
21 prevent him from pursuing the pot plan. He's had over a year
22 to pursue this pot plan, Your Honor. Frankly, I don't, you
23 know, I don't know what to say. He has never made a proposal
24 that has gotten any traction with the only people who matter.
25 And it's not the Debtor. It's the creditors. It's the

Creditors' Committee.

If you want to put in an exception that he can call Matt Clemente, I don't mean to put this on Mr. Clemente, he can decide whether or not that's appropriate, but the creditors are the only ones who matter here. Your Honor, it's not the Debtor.

And I'll let Mr. Dondero's counsel explain to Your Honor why he thinks he still needs to pursue a pot plan, and Your Honor can decide. I trust Your Honor to decide what boundaries and what guardrails might be appropriate for him to continue to pursue his pot plan.

That's all I have, Your Honor. Not much.

THE COURT: All right.

MR. MORRIS: But I think there's going to be -- there's going to be an awful lot of evidence. This is going to be a lengthy examination. I ask the Court for your patience.

THE COURT: I've got --

MR. MORRIS: But that's all I have.

THE COURT: I've got all day, if we need it.

MR. MORRIS: Okay.

THE COURT: I hope we don't, but I've got all day if we need it. All right.

MR. MORRIS: That's what I have, Your Honor.

THE COURT: All right. Mr. Dondero's counsel, your

opening statement?

MR. BONDS: Your Honor, I would reserve my opening statement to the end of the hearing.

I would also point out that anything that Mr. Morris just said was not evidence, and we think that the evidence will show completely differently than argued or articulated by Mr. Morris.

THE COURT: All right.

MR. BONDS: That's all.

THE COURT: Thank you, Mr. Bonds.

Mr. Morris, you may call your witness.

MR. MORRIS: The Debtor calls James Dondero.

THE COURT: All right. Mr. Dondero, this is Judge Jernigan. I would ask you to say, "Testing, one, two," so we pick up your video so I can swear you in.

All right. Mr. Dondero, if you're speaking up, we're not hearing you, so please make sure you're unmuted and have your video --

(Echoing.)

MR. DONDERO: Hello. One, two.

THE COURT: Okay. We got you.

MR. DONDERO: One, two three.

THE COURT: We got you now.

JAMES D. DONDERO, PLAINTIFF'S WITNESS, SWORN

THE COURT: All right. Thank you.

Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

(Echoing.)

THE COURT: I'm going to ask everyone except Mr. Dondero and Mr. Morris to put your device on mute. We're getting a little distortion.

All right. Go ahead.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. Can you hear me?

A Yes.

(Echoing.)

THE COURT: Ooh. Okay. We're having a little echo when you speak, Mr. Dondero. Do you have -- well, first, you have headphones. That always helps.

(Echoing.)

THE COURT: Okay. That may help as well.

(Pause.)

THE COURT: Okay. Let's try again. If you could say, "Testing, one, two."

THE WITNESS: Is that better?

THE COURT: That is better, yes.

All right. Go ahead.

THE WITNESS: Okay. Great.

MR. MORRIS: Thank you.

BY MR. MORRIS:
Q Can you hear me, Mr. Dondero?
A You're a bit faint. Give me one second. Okay. Got you.
Q Okay. Thank you. Who is in the room with you right now?
A Bonds, Lynn, and a tech.
A VOICE: Bryan Assink.
THE WITNESS: Oh, is Assink here? Oh, okay, I'm sorry. All right. I'm sorry. Bonds, Lynn, and Bryan Assink.
BY MR. MORRIS:
Q Okay. You're testifying today pursuant to a subpoena, correct?
A Yes.
Q Okay.
MR. MORRIS: And Your Honor, that subpoena can be found at Docket No. 44 in the adversary proceeding.
THE COURT: All right.
BY MR. MORRIS:
Q In the absence of a subpoena, in the absence of a subpoena, you didn't know if you would show up to testify at this hearing; is that right?
A I -- I do what my counsel directs me to do, and I didn't know at that time whether they would direct me to come or not.
Q Okay. And when I -- when I deposed you earlier this week, you agreed that you may or may not testify; is that right?
A It depends on what counsel instructs me to do, correct. I

1 didn't know at the time.
2 Q Okay. And you didn't mention anything about counsel when
3 I asked you the questions earlier this week, correct?
4 A That was the undertone in almost all my answers, that I
5 relied on counsel.
6 MR. MORRIS: Your Honor, I move to strike. I'm
7 asking very specific questions. And if I need to go to the
8 deposition transcript, I'm happy to do that.
9 THE COURT: All --
10 MR. MORRIS: Just going forward, Your Honor, this is
11 cross-examination. It's really yes or no at this point.
12 That's what I would request, anyway.
13 THE COURT: All right. Mr. Dondero, do you
14 understand --
15 (Echoing.)
16 THE COURT: Do you understand what Mr. Morris was
17 raising there? We really need you to give specific answers --
18 and usually they're going to be yes or no answers -- to Mr.
19 Morris's questioning. Okay? So let's try again. Mr. Morris,
20 go ahead.
21 THE WITNESS: Yeah.
22 BY MR. MORRIS:
23 Q Mr. Dondero, you're aware that Judge Jernigan granted the
24 Debtor's request for a TRO against you on December 10th,
25 correct?

A Yes.
Q But you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for a TRO, correct?
A I relied on counsel.
Q Sir, you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for a TRO, correct?
A Correct.
Q You didn't even know the substance of what Mr. Seery alleged in his declaration at the time that I deposed you on Tuesday, correct?
A Correct.
Q And that's because you didn't even think about the fact that the Debtor was seeking a TRO against you; isn't that right?
A No.
Q That's not right?
A No.
Q All right.
MR. MORRIS: Your Honor, could I ask my assistant, Ms. Canty, to put up on the screen what had been designated as the Debtor's Exhibit Z in connection with the motion for contempt? Exhibit Z is the transcript from Tuesday's hearing.
THE COURT: All right.
MR. MORRIS: And I would like to -- I'd like to cross-examine Mr. Dondero on his testimony on Tuesday.

1 THE COURT: All right. You may.
2 MR. MORRIS: Can we put up Page 15, please? And go
3 to Lines 15 through 17.
4 BY MR. MORRIS:
5 Q Sir, you recall being deposed on Tuesday by my -- by me,
6 correct?
7 A Yes.
8 Q Okay. Did you hear this question and did you hear this
9 answer?
10 "Q Did you care that the Debtor was seeking a TRO
11 against you?
12 "A I didn't think about it."
13 Q Is that -- is that your testimony from the other day?
14 A Yes.
15 Q You didn't dial in to the hearing when the Court
16 considered the Debtor's motion for a TRO against you, did you?
17 A I -- I don't recall. I don't think so.
18 Q You never read the transcript in order to understand what
19 took place in this courtroom when Judge Jernigan decided to
20 enter a TRO against you; isn't that right?
21 A I relied on counsel, which has been my testimony all
22 along.
23 MR. MORRIS: Can we go to Page 13 of the transcript,
24 please? Beginning at Line 24.
25 BY MR. MORRIS:

Q (reading)

"Q Did you read a transcript of the hearing?

"A No."

Q Did you testify on Tuesday that you did not read a transcript of the hearing?

A Yes.

Q In fact, as of at least last Tuesday, you hadn't even bothered to read the TRO that this Court entered against you. Isn't that right?

MR. BONDS: Your Honor, I'm going to object.

(Echoing.)

THE COURT: Okay. We're getting that echo from you now, Mr. Bonds. So maybe you need to turn your volume down a little. But what is the basis for your objection?

(Echoing.)

MR. BONDS: Leading and rhetorical.

MR. MORRIS: I think it's because they're in the same room.

THE COURT: Okay. Do you have -- I don't know what you're doing. I guess you're moving to a different room?

MR. BONDS: I am, Your Honor.

THE COURT: Okay.

(Echoing.)

THE COURT: Okay. I'm waiting for the objection basis.

MR. BONDS: The basis of the objection, Your Honor, is that --

(Echoing.)

THE COURT: Okay. We're going to have to do something different here. We can't have this issue for the entire hearing. Do you need to get a tech person in there, or maybe call in on your phone? I don't know.

MR. BONDS: Your Honor, I'm going into the conference room.

(Pause.)

THE COURT: Okay. Are we going to try again here?

MR. BONDS: Yes. Is this working?

THE COURT: Yes.

MR. BONDS: Perfect. Your Honor, my objection is that Mr. Dondero has already testified that he relied on his lawyers. I don't know where Mr. Morris is going with this, but it's pretty clear that Mr. Dondero simply relies on his lawyers to tell him what happened. I don't know that that's that different than any other layperson.

MR. MORRIS: Your Honor, if this is --

THE COURT: Well, --

MR. MORRIS: If I may?

THE COURT: Yes.

MR. MORRIS: I believe it's terribly relevant to know how seriously Mr. Dondero takes this Court and this Court's

1 proceedings and this Court's orders. If the Court decides
2 that it doesn't matter whether or not he read the transcript,
3 you're the fact-finder and you'll make that decision. But I
4 believe it's at least relevant.
5 THE COURT: Okay. I agree and I overrule the
6 objection.
7 Go ahead.
8 BY MR. MORRIS:
9 Q Mr. Dondero, as of at least Tuesday, you never bothered to
10 read the TRO that was entered against you, correct?
11 A I'm sorry. We're dealing with some tech stuff here for a
12 second. Can you repeat the question?
13 Q Yes.
14 (Echoing.)
15 Q As of Tuesday, you had not bothered to read the TRO that
16 was entered against you?
17 (Echoing.)
18 MR. MORRIS: Your Honor, can we take a break? I
19 can't do this. I just --
20 THE COURT: Okay. I agree. Okay. Mr. Bonds, what
21 do we need to do to fix these technical problems? Do I need
22 to get my IT guy in here and help you? This is terrible.
23 This connection is terrible. And I understand people have
24 technical problems sometimes, but we've been doing these video
25 hearings since March, so --

MR. BONDS: Your Honor, I have simply gone to another conference room. The Debtor (garbled) I think that Mr. Dondero should be fine.

THE COURT: Okay. I don't know what you said except that you think Mr. Dondero should be fine. I --

MR. MORRIS: Is there anybody in that room with a cell phone on, Mr. Dondero?

THE WITNESS: No.

MR. BONDS: And I'm completely over in --

THE COURT: Okay.

MR. MORRIS: Can I try and proceed?

THE COURT: Try to proceed.

MR. MORRIS: Okay.

(Echoing.)

BY MR. MORRIS:

Q Mr. Dondero, as of Tuesday you only had a general view of what this Court restrained you from doing; is that correct?

(Echoing.)

MR. MORRIS: I'd still -- I -- there's too much noise, Your Honor. I can't do it.

THE COURT: Okay. We're going to take a five-minute break. Mr. Bonds, can you get a technical person there to work through these problems?

And Mike, let's get Bruce up here to --

THE CLERK: It's because they're in the same room.

1 That's the problem.
2 THE COURT: They're -- they're --
3 THE CLERK: Judge Jernigan, this is Traci. Bruce is
4 on his way up there.
5 THE COURT: Thank you.
6 Mike, explain it to me, because I don't understand.
7 You're saying if they have two devices on in the same room?
8 THE CLERK: The same -- that's the problem. They're
9 so close. And they're trying to use the same device, give it
10 back to you.
11 A VOICE: He has a phone on in the room.
12 MR. MORRIS: I asked that question.
13 THE COURT: Okay.
14 MR. MORRIS: Please instruct the witness to exclude
15 everybody from the room, to turn off all electronic devices
16 except the device that's being used for this (garbled). At
17 least have --
18 THE COURT: All right. So, the consensus of more
19 technical people than me is you've got two devices on in the
20 same room and that's what's causing the distortion and echo.
21 So I don't know if it's somebody's phone that needs to be
22 turned off or if you have two iPads or laptops.
23 (Court confers with Clerk.)
24 (Pause.)
25 MR. BONDS: I think I'm unmuted. Can people hear me?

THE WITNESS: Yes.

(Pause.)

THE COURT: Okay. Bruce, can you walk their office through? They have, I think, two devices in the same room. It's a horrible echo. So, Mr. Bonds or some --

MR. BONDS: Yes, Your Honor.

THE COURT: We have a lawyer and the lawyer's client who is testifying right now in the same room.

I.T. STAFF: Uh-huh.

THE COURT: And --

I.T. STAFF: Yeah. Yeah. Because -- is one a call-in user on a telephone?

THE COURT: I don't know. I don't --

I.T. STAFF: Yeah. Whatever's coming -- the audio is feeding back in. They need to separate if they're both on. Or just use one and the attorney can slide over and the client can --

THE COURT: Okay.

I.T. STAFF: -- go in his place. Just use one --

THE COURT: Our IT person is confirming what everyone else has been saying, that you really can only have one device in the same room. It's just unavoidable, the echoing.

I.T. STAFF: Unless everybody has --

THE COURT: Unless everyone has headphones on.

I.T. STAFF: Right.

THE COURT: So we either need everyone to have headphones on, or one device in the room. And you all, awkward as it is, just have to share. Or I guess you could have two laptops, but one person has to --

I.T. STAFF: Has to have a headset.

THE COURT: Has to --

I.T. STAFF: Because the other one, the audio is going to be feeing into the microphone of the other one.

THE COURT: Okay. So, Mr. Bonds, I don't know if you've heard any of that, but --

THE CLERK: He needs to unmute himself.

THE COURT: You're on mute, Mr. Bonds.

MR. BONDS: I'm sorry, Your Honor. I'm going to sit next to Mr. Dondero and answer any questions that may come up.

THE COURT: Okay.

MR. BONDS: If any objections --

THE COURT: Okay. So we're going to have one device?

MR. BONDS: Yes.

THE COURT: Okay. Let's try again.

Okay. Go ahead, Mr. Morris.

BY MR. MORRIS:

Q Mr. Dondero, is Mr. Ellington listening to this hearing?

THE COURT: I didn't hear you, Mr. Morris. What?

BY MR. MORRIS:

Q Mr. Dondero, is Mr. Ellington listening to this hearing?

A I have no idea.
Q Is Mr. Leventon listening to this hearing?
A I have no idea. I haven't spoken with him.
Q Okay. So let's try again. At least as of today, you never bothered to read the TRO that was entered against you, correct?
A Correct.
Q As of Tuesday, you only had a general understanding of what the Court restrained you from doing, correct?
(Echoing.)
A I had an adequate understanding.
Q You had a what?
A Adequate understanding.
Q Your understanding --
A VOICE: Your Honor?
BY MR. MORRIS:
Q -- was that you were prohibited from speaking to the Debtor's board without counsel and from speaking to the Debtor's employees; is that right?
A No.
Q Okay.
MR. MORRIS: Can we go to Page 13, Line 8, please?
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q Tell me your understanding of what the temporary

1 restraining order restrains you from doing.
2 "A To talk to Independent Board directly or talking
3 directly with employees.
4 "Q Is there any other aspect of the temporary
5 restraining order that you're aware of that would
6 otherwise constrain or restrain your conduct?
7 "A Those are the points I (garbled)."
8 Q Did you give those answers to the questions that I asked?
9 A Yes.
10 Q And even with that general understanding, you went ahead
11 and communicated directly (garbled) employees many, many, many
12 times after the TRO was entered?
13 A Only with regard to shared services, pot plan, and
14 Ellington, the settlement counsel.
15 Q Does the restraining order permit you to speak with
16 Debtor's employees about the pot plan?
17 (Echoing.)
18 THE COURT: Mr. Morris, let me stop.
19 MR. MORRIS: Yeah. I appreciate that, Your Honor.
20 THE COURT: Even --
21 MR. MORRIS: It's not working.
22 THE COURT: Even your sound is not coming through
23 clearly. And I think it's the echo coming out of their
24 speakers, Mr. Dondero and Mr. Bonds' speakers. But before we
25 conclude that, would you turn off your video and ask your

1 question again and see if it's any better, just to confirm
2 it's not a bandwidth issue on your end? I doubt it is, but --
3 okay. So, try asking your question again, and I'm going to
4 see if it's still distorted.
5 BY MR. MORRIS:
6 Q There's nothing in the TRO that permitted you to speak
7 with Debtor employees about the pot plan, correct?
8 THE COURT: Okay. Mr. Morris, it's not at your end.
9 It's -- it's their end. Okay. So you can turn your video
10 back on.
11 Mr. Bonds?
12 MR. BONDS: Yes, ma'am.
13 THE COURT: You all are going to have to use earbuds,
14 apparently. We're getting -- we're getting a feedback loop,
15 okay? Whenever Mr. Morris talks or I talk, we're hearing
16 ourselves echo through your speakers.
17 MR. BONDS: Can you check right now to see if it's
18 true, if we're experiencing the same problem?
19 THE WITNESS: In other words, is this better? We
20 unplugged the cord here.
21 THE COURT: Well, when you all speak, it's -- it's
22 better now. But when --
23 MR. MORRIS: It is better.
24 THE COURT: But when Mr. Morris asks a question, it's
25 echoing through your speakers. But I don't hear myself

echoing through your speakers.

I.T. STAFF: Can Mr. Morris say something, please?

THE COURT: Mr. Morris, say something.

MR. MORRIS: They may have solved the problem. They may have solved the problem. How's that?

THE COURT: Okay. I think the problem is solved, whatever you did, so let's try once again.

Go ahead, Mr. Morris. Repeat your last question. I didn't hear it.

BY MR. MORRIS:

Q Mr. Dondero, the temporary restraining order doesn't permit you to speak with the Debtor's employees about a pot plan; isn't that right?

A There was a presentation on the pot plan given to the Independent Board after the restraining order was put in place. What are you implying, that that wasn't proper?

MR. MORRIS: Your Honor, I move to strike. It's a very simple question.

THE COURT: Okay. Sustained. If you could just answer the specific question, Mr. Dondero.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Fair enough. Sir, let's talk about some of the events that led up to the imposition of the TRO. I appreciate the fact that you hadn't read Mr. Seery's declaration or any of

the evidence that was submitted in connection with the TRO, so let's spend some time talking about that now. CLO stands for Collateralized Loan Obligation, correct?

A Yes.

Q And the Debtor is party to certain contracts that give it the exclusive right and responsibility to manage certain CLOs, correct?

A Yes.

Q NexPoint Advisors, LP is an advisory firm. Do I have that right?

A Yes.

Q And we can refer to that, that firm, as NexPoint; is that fair?

A Yes.

Q You have a direct or indirect ownership interest in NexPoint, correct?

A Yes.

Q You're the president of NexPoint; isn't that right?

A Yes.

Q And as the president of NexPoint, it's fair to say that you control that entity, correct?

A To a certain extent.

Q Sir, as the president of NexPoint, it's fair to say that you control that entity, correct?

A To a certain extent.

MR. MORRIS: Can we go to Page 18 of the transcript, please? Lines 19 and 21.

BY MR. MORRIS:

Q Were you asked this question and did you give this answer?

"Q As the president of NexPoint, it's fair to say that you control that entity?

"A Generally."

Q Is that the right answer that you gave the other day?

A I think it's similar to what I just said, yeah, yeah.

Q Sir, you're familiar with Highland Capital Management Fund Advisors, LP; is that right?

A Yes.

Q And we'll call that Fund Advisors; is that fair?

A Yes.

Q And we'll refer to Fund Advisors and NexPoint together as the Advisors; is that okay?

A Yes.

Q Fund Advisors is also an advisory firm, correct?

A Yes.

Q You have a direct or indirect ownership interest in Fund Advisors, correct?

A Yes.

Q You're the president of Fund Advisors, correct?

A Yes.

Q And you also have an ownership interest in the general

partner of Fund Advisors; isn't that right?
A I believe so.
Q It's fair to say that you control Fund Advisors, correct?
A Generally.
Q NexPoint and Fund Advisors manage certain investments funds; is that right?
A Yes.
Q Among the funds that they manage are High Point Income Fund; is that right?
A I don't think that's a name that we manage.
Q Let's put it this way. There are three funds that are represented by K&L Gates that are managed by the Advisors, correct?
A I don't know.
Q Okay. You're the portfolio manager of the investment funds advised by NexPoint and Fund Advisors, correct?
A Largely.
Q And NexPoint and Fund Advisors caused the investment funds that they manage to invest in CLOs that are managed by the Debtors, correct?
A Years ago, they bought the equity interests, if that -- if that's what you're asking me, in various CLOs.
Q The two Advisors that you own and control caused the investment funds to purchase interests in CLOs that are managed by the Debtor, correct?

A Not recently. Not recently. Years ago. Yes.
Q And they still hold those interests today, correct?
A Yes.
Q And K&L Gates represents all of those entities, correct?
A Yes.
Q And we'll call those the K&L Gates Clients; is that fair?
A Yes.
Q Before the TRO was entered, the K&L Gates Clients sent two letters to the Debtor concerning the Debtor's management of certain CLOs, right?
A Yes.
Q Okay.
MR. MORRIS: Your Honor, I just want to take a moment now, because we're going to start to look at some documents. The Debtor would respectfully move into evidence Exhibits A through Y that are on their exhibit list.
THE COURT: All right.
MR. BONDS: Your Honor, we have no objection.
THE COURT: A through Y are admitted. And for the record, these appear at Docket No. 46 in this adversary.
(Plaintiff's Exhibits A through Y are received into evidence.)
MR. MORRIS: Okay. Can we please put up Exhibit B as in boy? (Pause.) Ms. Canty? If you need a moment, just let us know.

MS. CANTY: Yeah. I'm pulling it up right now.

MR. MORRIS: Thank you. (Pause.) Can you scroll down just a bit?

BY MR. MORRIS:

Q All right. Can you see this letter was sent on October 16th?

A Yes.

Q And we see the entities that are reflected on this letter. We've got Highland Capital Management, LP. That's the question that they're asking. And the questions and the statements are being asserted on behalf of NexPoint Advisors, LP. Do you see that?

A Yes.

Q And Highland Capital Management Fund Advisors, LP. Those are the two Advisors that you own and control, correct?

A Control to a large extent.

Q Okay.

MR. MORRIS: And can we put up Exhibit C, please?

BY MR. MORRIS:

Q This is a second letter sent by NexPoint on November 24th. Do you see that?

A Yes.

Q Okay. And you're familiar with the substance of these letters, correct?

A Yes.

Q And you were familiar -- you were aware of these letters before they were sent. Is that correct?
A Yes.
Q And you generally discussed the substance of these letters with NexPoint; is that right?
A Generally, yes.
Q And you discussed the substance of the letters with the Advisors' internal counsel; is that right?
A Yes.
Q That's D.C. Sauter?
A Yes.
Q And you have been on some calls with K&L Gates about these letters, right?
A I believe so.
Q And you knew these letters were being sent, correct?
A Yeah, they're -- they're reported.
Q You knew these letters for being sent; isn't that right, sir?
A Yes.
Q And you didn't object to the sending of these letters, correct?
A No.
Q In fact, you supported the sending of these letters. Is that right?
A Yes.

Q And you have never directed NexPoint to withdraw these letters, correct?
A No.
Q Around Thanksgiving, you learned that Mr. Seery had given a direction to sell certain securities owned by the CLOs managed by the Debtors, correct?
A Yes.
Q And when you learned that, you personally intervened to stop the trades, correct?
A Yes. I believe they were inappropriate.
MR. MORRIS: I move to strike the latter part of the answer, Your Honor.
THE COURT: It's stricken.
MR. MORRIS: Can we put up Exhibit D, please?
BY MR. MORRIS:
Q We looked at this email string the other day. Do you recall that?
A Yes.
MR. MORRIS: Can we start at the bottom, please?
BY MR. MORRIS:
Q There's an email from Hunter Covitz. Do you see that?
A Yes.
Q Now, this is November 24th. It's before the TRO. Is that fair?
A Yes.

Q Mr. Covitz is an employee of the Debtor, right?
A I believe so.
Q And Mr. Covitz helps manage the CLOs on behalf of the Debtor. Is that your understanding?
A Yes.
Q And Mr. Covitz in this email is giving directions to Matt Pearson and Joe Sowin to sell certain securities held by the CLOs. Is that correct?
A No. He's giving Jim Seery's direction.
MR. BONDS: And Your Honor, I'm going to object. This is all before the TRO was ever entered. It doesn't have anything to do with today's hearing.
THE COURT: Overruled.
MR. MORRIS: May I respond, Your Honor?
THE COURT: I --
MR. MORRIS: Okay. Thank you.
THE COURT: I think it's relevant. Go ahead.
MR. MORRIS: Thank you. Okay.
BY MR. MORRIS:
Q Mr. Seery is the CEO of the Debtor; is that right?
A Yes.
Q And the Debtor is the contractual party with the CLOs charged with the exclusive responsibility of managing the CLOs, correct?
A I don't believe so. The Debtor is in default of the

1 agreements.
2 MR. MORRIS: I move to strike, Your Honor.
3 THE COURT: Sustained.
4 BY MR. MORRIS:
5 Q Sir, the Debtor has the exclusive contractual right and
6 obligation to manage the CLOs, correct?
7 A I don't agree with that.
8 Q Okay.
9 MR. MORRIS: Can we scroll up to the -- just --
10 BY MR. MORRIS:
11 Q Do you see that Mr. Pearson acknowledges receipt of Mr.
12 Covitz's email?
13 A Yes.
14 Q And you received a copy of Mr. Covitz's email, did you --
15 did you not?
16 A Yes.
17 MR. MORRIS: Can you scroll up a little bit, please?
18 BY MR. MORRIS:
19 Q And can you just read for Judge Jernigan your response
20 that you provided to Mr. Pearson, Mr. Covitz, and Mr. Sowin on
21 November 24th?
22 A (reading) No, do not.
23 Q You instructed the recipients of Mr. Covitz's email not to
24 sell the SKY securities as had been specifically instructed by
25 Mr. Seery, correct?

A Yes.
Q And you understood when you gave that instruction that the people on the email were trying to execute trades that Mr. Seery had authorized, correct?
A No. I -- no, that isn't how I would describe it.
MR. MORRIS: A second, Your Honor?
THE COURT: Okay.
(Pause.)
BY MR. MORRIS:
Q Sir, when you gave the instruction reflected in this email, you knew that you were stopping trades that were authorized and directed by Mr. Seery, correct?
A I don't think -- I -- I wasn't -- I wasn't sure at the moment I did that. I didn't find out until later that it was Seery who directed it.
MR. MORRIS: Can we please go back to the deposition transcript, Debtor's Exhibit Z, at Page 42? Line 12.
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q At the time that you gave the instruction, "No, do not," you knew that you were stopping trades that had been authorized and directed by Mr. Seery, correct?
"A Yes."
Q Did you give that answer to my question on Tuesday?
A I'd like to clarify it, but yes, I did give that answer.

Q Okay. You didn't speak with Mr. Seery before sending your instructions interfering with his trade, the trades that he had authorized, correct?
A No, I did not.
Q And you took no steps to seek the Debtor's consent before instructing the recipients of your email to stop executing the SKY transactions that had been authorized by Mr. Seery, correct?
A I'm sorry. Can you repeat the question?
Q You took no steps to seek the Debtor's consent before stepping in to stop the trades that Mr. Seery had authorized, correct?
A I took other actions instead.
Q Okay. But you didn't seek the Debtor's consent? That's not one of the actions you took, right?
A No, I educated the traders as to why it was inappropriate.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Sir, did you seek the Debtor's consent before stepping in to stop the trades that Mr. Seery had authorized?
A No, I did not seek consent.
Q In response to your instruction, Mr. Pearson canceled all of the trades that Mr. Seery had authorized, correct?
A Yes.

MR. MORRIS: Can we go back to the exhibit, please? And if we could just scroll -- stop right there.

BY MR. MORRIS:

Q That's -- that's Mr. Pearson's response to your email, confirming that he had canceled both the SKY and the AVAYA trades that had not yet been executed, correct?

A Yes.

MR. MORRIS: Can we scroll to the response to that?

BY MR. MORRIS:

Q Is this your response?

A Yes.

Q Can you read that aloud, please?

A (reading) HFAM and DAF have instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again, please.

Q The writings that you're referring to are the two letters from NexPoint, Exhibits B and C that we just looked at, correct?

A Yeah. There might have been a third letter. I don't know. But, yes, generally, those letters.

Q Okay. And at this juncture, the reference to potential liability was a statement intended for Mr. Pearson. Is that correct?

A Um, I -- no. Pearson wouldn't have had any personal liability. It was -- it was meant for the -- there was

potential liability to the Debtor or to the compliance officers at the Debtor.

MR. MORRIS: Can we go to Page 45 of the deposition transcript, please? Line -- beginning at Line 11, through 18.

BY MR. MORRIS:

Q Did I ask these questions and did you give these answers?

"Q Do you see the reference there in the latter portion of your email, 'There is potential liability. Don't do it again'?

"A Yes.

"Q Who was the intended recipient of that message?

"A At this juncture, it's Matt Pearson, I believe."

Q Did you give those answers to my questions on Tuesday?

A Yeah. That's not inconsistent.

MR. MORRIS: Let's go back to the email, please.

BY MR. MORRIS:

Q Mr. Sowin responded to your email; is that right?

MR. MORRIS: Can we scroll up?

BY MR. MORRIS:

Q Okay. Who's Mr. Sowin?

A He's the head trader.

Q Who's he employed by?

A I believe he's employed by HFAM but not the Debtor.

Q Okay. So he's -- he's somebody who's employed by one of the Advisors; is that right?

A I believe so.
Q And Mr. Sowin responded to your email and he indicated that he would follow your instructions. Is that right?
A Yeah. He understands that it's inappropriate. That's what he's reflecting. Yes.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Sir, Mr. Sowin responded and indicated that he would follow your instructions, correct?
A (no audible response)
Q Did you answer? I'm sorry.
A No, I didn't answer. It's -- I don't know if you could expressly say that from that email. Maybe we should read the email.
MR. MORRIS: Let's just move on, Your Honor.
THE COURT: Okay.
BY MR. MORRIS:
Q A few days later, you learned -- you learned that Mr. Seery was trying a workaround to effectuate the trades anyway, correct?
A I believe so.
Q Uh-huh. And when you learned that, you wrote to Thomas Surgent; is that right?
A I -- I believe so.

Q I don't -- I don't mean to -- this is not a test here.

MR. MORRIS: Can we just scroll up to the next email, please? Okay. Stop right there.

BY MR. MORRIS:

Q When you -- when you learned that Mr. Seery was trying a workaround, you wrote to Mr. Surgent when you learned that, right?

A Yes.

Q And Mr. Surgent is an employee of the Debtor; is that correct?

A I believe he's still the chief compliance officer of the Debtor.

Q Okay. Now, as a factual matter, you never asked Mr. Seery why he wanted to make these trades; isn't that right?

A I -- I did not.

Q Okay. And before the TRO was entered, there was nothing that prevented you from picking up the phone and asking Mr. Seery why he wanted to make these trades, correct?

A That's not true.

MR. MORRIS: One second, please, Your Honor.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Can we go to Page 60 of the transcript? Mr. Bonds says -- beginning at Line 14. There is an objection there, Your Honor, and I would ask that the Court rule on the

1 objection before I read from the transcript.
2 THE COURT: Okay.
3 MR. MORRIS: There you go.
4 THE COURT: (sotto voce) (reading) Is there
5 anything that you're aware of that prevented you from picking
6 up the phone and asking Mr. Seery for his business
7 justification for these trades prior to December 10.
8 Objection, form.
9 I overrule the objection to the form of that question.
10 MR. MORRIS: Okay.
11 BY MR. MORRIS:
12 Q Mr. Dondero, were you asked this question and did you give
13 this answer?
14 "Q Is there anything that you're aware of that
15 prevented you from picking up the phone and asking Mr.
16 Seery for his business justification for these trades
17 prior to December 10, 2010?
18 "A No. I expressed my disapproval via email."
19 Q Is that right?
20 A I'd like to adjust that answer to the answer I just gave.
21 Q Okay.
22 MR. MORRIS: And I move to strike.
23 BY MR. MORRIS:
24 Q I'm just asking you if that's the answer you gave on
25 Tuesday.

THE COURT: Sustained.

THE WITNESS: Yes.

BY MR. MORRIS:

Q Thank you. Now, you wrote to Mr. Surgent because you wanted to remind him of his personal liability for regulatory breaches and for doing things that aren't in the best interest of investors, correct?

A Yes.

Q And you actually thought about this and you -- because you didn't believe that Mr. Surgent had extra insurance and indemnities like Mr. Seery, right?

A No.

Q Didn't you testify to that the other day?

A I don't remember, but that isn't the only reason.

Q I didn't ask you if it was the only reason. Listen carefully to my question. Did you send this email because you -- because you wanted to remind him of his personal liability for regulatory breaches and for doing things that aren't in the -- I apologize. Withdrawn.

You did not believe at the time that you sent this email that he, Mr. Surgent, had insurance and indemnities like Mr. Seery, correct?

A Yes.

Q Okay.

MR. MORRIS: Can we go back to the email, please?

BY MR. MORRIS:
Q Can you just read the entirety of your email to Mr. Surgent out loud?
A (reading) I understand Seery is working on a workaround to trade these securities anyway, trades that contradict investor desires and have no business purpose or investment rationale. You might want to remind him and yourself that the chief compliance officer has personal liability.
Q Okay. That's -- that's the message you wanted to convey to Mr. Surgent, right?
A Yes.
Q And, again, you never bothered to ask Mr. Seery what his businessperson -- purpose or investment rationale was, correct?
A I -- I didn't believe I could talk to him directly.
Q This is before the --
A That's why I never picked up the phone.
Q Okay. You intended to convey the message to Mr. Surgent that, by following Mr. Seery's orders to execute the trades, that Mr. Surgent faced personal liability, correct?
A Yes, he does.
Q And that's the message you wanted to send to him, right?
A It's a true and accurate message, yes.
Q Okay. Just a few days earlier, you also threatened Mr. Seery, right?

A I wouldn't use the word "threatened."
Q Okay. Let's let -- let's let it speak for itself.
MR. MORRIS: Can we go to Exhibit E, please? Keep scrolling down just a bit.
BY MR. MORRIS:
Q This is an email that you sent to Mr. Seery on November 24th. And as always, Mr. Dondero -- this is the third time we're meeting -- if there's something in the document that you need to see, please just let me know, because I don't -- I don't mean to test your memory if the document can help refresh your recollection.
MR. MORRIS: Can we just scroll up a little bit further to the top to see the date?
BY MR. MORRIS:
Q Okay. So, Jim, there, JD, who is that?
A That's me.
Q Okay. And can you tell by the substance of the email, of the text messages, this is communications between you and Mr. Seery, right?
A Yes.
Q Okay. And you see that it's dated November 24th there?
A Yes. Right after we were discussing the pipeline. Or right when we were working on the pipeline.
Q Okay.
MR. MORRIS: Can you scroll down a little bit,

please?
BY MR. MORRIS:
Q At 5:26 p.m., you sent Mr. Seery a text, correct?
A Yes.
Q Can you read that, please?
A (reading) Be careful what you do. Last warning.
Q Okay. This was a warning telling Mr. Seery to stop selling assets out of the CLOs or the beneficial owners would take more significant action against him, correct?
A It was a general statement that what he was doing was regulatorily inappropriate and ethically inappropriate and he was in breach of the contracts he was operating.
Q Neither you nor any entity owned or controlled by you are parties to the contracts you just referred to; isn't that correct?
A I believe they're indirectly parties to those contracts, especially when they're in default.
Q Neither you nor any entity owned or controlled by you is a signatory to any CLO management contract pursuant to which the Debtor is a party, correct?
A I -- I don't know and I don't want to make legal conclusions on that.
Q Okay. At the deposition the other day, some of the things that you suggested the beneficial owners of the CLO interests might do against Mr. Seery and the Debtor are class action

lawsuits. Is that right?
A I -- I did not suggest the entities I control would do that. If anybody on this call were to call a class action lawsuit -- a class action law firm and tell them what's been going on with the CLOs, I think a class action law firm would file it on their own regard, not on the behalf of my entities.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Let's talk about that cell phone. Okay? Until at least December 10th, the day the TRO was entered, you had a cell phone that was bought and paid by the Debtor, right?
A Yes.
Q But sometime after December 10th, your phone was disposed of or thrown in the garbage; is that right?
A Yes.
Q And you don't know when after December 10th the cell phone that was the Debtor's property was disposed of, right?
A I don't believe at that point it was the Debtor's property. I think I paid it off in full and the Debtor had announced that they were canceling everybody's cell phones so it was appropriate for me to get another one.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
MR. BONDS: Your Honor, at some point, I mean, Mr.

Morris just ought to go on and testify.

MR. MORRIS: No, this is Mr. Dondero's testimony, Your Honor. He gave it the other day. I'm just asking him to confirm it, basically.

THE COURT: Okay. I overrule the objection, if any there was, on the part of Mr. Bonds.

BY MR. MORRIS:

Q Sometime after December 10th, the cell phone that prior to that time had been owned and paid for by the Debtor was thrown in the garbage or otherwise disposed of, correct?

A Yes.

Q And you don't know when after December 10th that was -- the phone was disposed of, correct?

A It was on or about that date, I'm sure.

Q Well, we know it was after December 10th, right?

A Okay. Or about that date.

Q You testified the other day that you just don't know who made the decision to throw your phone away, right?

A I could find out, but I don't know. I would have to talk to employees.

Q Did you make any request of the Debtor since your deposition to try to find out the answer as to who made the decision to throw your phone away?

A No.

Q How did you learn that your phone was thrown away?

A As I testified, it's standard operating procedures every time a senior executive gets a new phone.
Q Hmm. You don't know exactly who threw the phone away; is that right?
A No, but I can find out.
Q Okay. I'm just asking -- I'm not asking you to find out. I'm just asking you if you know. Do you know who threw your phone away?
A No.
Q Do you know who made the decision to throw your phone away?
A It -- there wasn't a decision. It was standard operating procedure.
MR. MORRIS: I move to strike.
THE COURT: Sustained.
BY MR. MORRIS:
Q You and Mr. Ellington disposed of your phones at the same time, correct?
A I don't have specific awareness regarding what Mr. Ellington did with his phone.
Q It never occurred to you to get the Debtor's consent before throwing the phone that they had purchased away, right?
A I'm not permitted to talk to the Debtor.
Q Sir, it never occurred to you to get the Debtor's consent before throwing the phone away, correct?

A I'm going to stick with the answer I just gave.

MR. MORRIS: Can we go to Page 75 of the transcript? Lines 12 through 15. There is an objection there, Your Honor. I would respectfully request that the Court rule on the objection before I read the testimony.

THE COURT: Okay. Starting at Line 12?

MR. MORRIS: 12.

THE COURT: (sotto voce) (reading) Did it ever occur to you to get the Debtor's consent before doing this? Objection, form.

That objection is overruled.

BY MR. MORRIS:

Q All right. Mr. Dondero, did you give this answer to my question on Tuesday?

"Q Did it ever occur to you to get the Debtor's consent before doing this?

"A No."

A Yes, I gave that testimony.

Q Okay. And you also had the phone number changed from the Debtor's account to your own personal account; is that right?

A The phone number changed? The phone number stayed the same.

Q But you had the number changed from the Debtor's account to your own personal account, correct?

A The Debtor said they wouldn't pay for it anymore. Who

else could I change it to?

MR. MORRIS: Your Honor, I move to strike. It's a very simple question.

THE COURT: Sustained.

BY MR. MORRIS:

Q I'll ask it one more time, Mr. Dondero. You had the phone number changed from the Debtor's account to your personal account, correct?

A I didn't change the number. I had the billing changed to my personal account versus the company account.

Q And you never asked the Debtor for permission to do that, correct?

A No.

Q And you never told Debtor you were doing that, correct?

A No.

Q And nobody ever told Mr. Seery or anybody at my firm that the phone was being thrown in the garbage, correct?

A Well, --

MR. BONDS: To the extent he knows.

THE WITNESS: Yeah. I have no idea. But I didn't.

BY MR. MORRIS:

Q You didn't believe it was necessary to give the Debtor notice that you were taking the phone number for your own personal account and throwing the phone in the garbage, correct?

A Correct.
Q The phone --
MR. BONDS: Your Honor, I'm going to object. He -- Mr. Dondero did not testify he personally threw the phone in the garbage.
MR. MORRIS: Withdrawn.
THE COURT: Okay.
BY MR. MORRIS:
Q Mr. Dondero, the phone was in Highland's offices on December 10th, the date the TRO was in effect, correct?
A I -- I don't -- I -- I -- I don't know. You know, I don't know. It's -- I remember going over to -- well, anyway, I -- I don't know. We'll leave it at that.
MR. MORRIS: Can we go to Exhibit G, please?
BY MR. MORRIS:
Q Who's Jason Rothstein, while we wait?
A Jason, Jason is our -- is the Highland head of technology.
Q Okay. And did you text with him from time to time? On or about December 10th?
A Yes.
Q Okay.
MR. MORRIS: Can we just scroll up a little bit?
BY MR. MORRIS:
Q Is that Mr. Rothstein there?
A Yes. Yeah.

Q Okay. And do you see that there's a text message that you sent to him on December 10th, right at the top? Can you read -- can you read the text message Mr. Rothstein --
A He sent that to me. At the top.
Q I apologize. Thank you for the correction. Can you read what Mr. Rothstein told you on December 10th?
A That my old phone is in the top drawer of Tara's desk.
Q And who's Tara?
A My assistant.
Q Is she still your assistant today?
A Yes.
Q And has she been serving as your assistant since the TRO was entered into on December 10th?
A Yes.
Q Okay. Is it fair to say that you were informed on December 10th that the phone was not thrown in the garbage, had not been disposed of, but was instead sitting in Tara's desk?
A As of that moment, yes.
Q Okay. And it's also fair to say that, as of December 10th, Mr. Rothstein didn't take it upon himself to throw your old phone in the garbage, right?
A Not as of that moment. But like I said, I can find out how it was disposed of.
Q If you were curious to do that, would you have done that

before today?
A I haven't been curious.
Q Thank you very much. Someone you can't identify made the decision after December 10th to throw the phone in the garbage without asking the Debtor for permission or seeking the Debtor's consent, correct?
MR. BONDS: I'm going to object, Your Honor. To the extent that the witness knows, he can answer.
THE COURT: I -- I didn't hear --
THE WITNESS: I don't know.
THE COURT: I didn't hear what your objection was, Mr. Bonds. Repeat.
MR. BONDS: Your Honor, my objection was along the lines of to the extent that the witness knows, he could testify, but if he doesn't know, he doesn't need to speculate.
THE COURT: All right. Well, I don't hear an objection there, but go ahead, Mr. Dondero, if you have knowledge and can answer the question.
THE WITNESS: I don't know.
BY MR. MORRIS:
Q Do you recall that the Debtor subsequently gave notice to you to vacate its offices and to return its cell phone?
A I don't know.
Q Did you ever --
A I know I -- I know I was told to vacate the offices. I

didn't see the specific --

Q Uh-huh. Your lawyer -- your lawyers never told that Debtor that the cell phone had been disposed of or thrown in the garbage, consistent with company practice, right?

A I don't know.

MR. MORRIS: Can we put up Exhibit K, please?

BY MR. MORRIS:

Q This is the letter that my firm sent to your lawyer on December 23rd. Do you see that?

A Yeah, I see it.

Q Okay.

MR. MORRIS: Can we scroll down a little bit? Keep going. Okay. Stop right there.

BY MR. MORRIS:

Q Do you see that it says that, as a result of the conduct described above, that the Debtor "has concluded that Mr. Dondero's presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive"?

A Yeah, I see it.

Q And this is the letter that gave you notice that you had to vacate the premises by December 30th, correct?

A I believe so.

MR. MORRIS: Can we scroll down a little bit?

BY MR. MORRIS:

Q You see at the bottom there's a reference to a defined term of "cell phones"?
A Yes.
Q And it says that the Debtor "will also terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero." Do you see that?
A Yes. Yeah.
Q Have I read that accurately?
A Yes.
Q And then my colleagues went on to write, "HCMLP demands that Mr. Dondero immediately turn over the cell phones to HCMLP by delivering them to you, Mr. Lynn." Do you see that?
A Yes.
Q Have I read that accurately?
A Yes.
Q The last sentence on the page begins, "The cell phones and."
MR. MORRIS: And let's scroll down further.
BY MR. MORRIS:
Q "The cell phones and the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or wiping any information or messages on the cell phone. HCMLP, as the owner of the account and cell phones, intends to recover all information related to the cell phones and

accounts, and reserves the right to use the business-related information." Have I read that accurately?

A Yes.

Q Okay. We were a couple of weeks too late, huh?

A It sounds like it.

Q Yeah. Because the phones were already in the garbage, right?

A Yes.

Q Uh-huh. But that's not what Mr. Lynn told the Debtor on your behalf, right?

A I don't know.

Q Mr. Lynn -- all right. Let's -- let's see what Mr. Lynn said.

MR. MORRIS: Can we go to Exhibit U, please?

BY MR. MORRIS:

Q It took Mr. Lynn six days to write a one-paragraph letter in response, right? December 29th, he responded?

MR. MORRIS: Can we scroll down a bit?

BY MR. MORRIS:

Q Let me read beginning with the second sentence of the first substantive paragraph. "We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor, but we are not prepared to turn it over without ensuring the privacy of the attorney-client communications." And then he goes on.

Have I read that correctly?
A Yes.
Q Okay. So Mr. Lynn didn't say anything about the phone being thrown in the garbage, right?
A No.
Q He didn't say that it was disposed of, did he?
A No.
Q He didn't refer to any company practice or policy, right?
A No.
Q Mr. Lynn's not a liar, is he?
A No, he's not.
Q He's a decent and honest professional. Wouldn't you agree with that?
A Yes.
Q And is it fair to say that he conveyed only the information that he had at the time?
A I don't know.
Q Do you have any reason to believe that Mr. Lynn would withhold from the Debtor the information that the cell phone had been thrown in the garbage, consistent with company practice?
A No, I don't believe he would withhold whatever he knew.
Q All right. Let's talk about -- let's talk about other matters. You do know, sir, do you not, that the Debtor is subject to the Bankruptcy Court's jurisdiction?

A Yes.
Q Okay. And we just saw in the December 23rd letter that the Debtor demanded that you vacate their offices a week later, right?
A Yes.
Q And you knew that at or around the time the letter was sent on December 23rd, correct?
A I -- I don't remember when I knew.
Q Well, in fact, in fact, you or through counsel asked for an accommodation and asked for an extension of time to December 31st; isn't that right?
A I had to pack up 30 years of stuff in three days. I -- I know we asked for some forbearance. I don't think we got any. I don't remember the details. I don't understand why it's important.
Q Okay. It was actually -- withdrawn. The Debtor actually gave you seven days' notice, right? They sent the letter on December 23rd and asked you to vacate on December 30th, correct?
A I don't -- I don't remember. But, again, I think the initial response was it was inconsistent with shared services agreement. No Highland employees are coming into the office anyway. So kicking me out of my office was -- seemed vindictive and overreaching. And we tried to get some, you know, forbearance.

Q Okay.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, you were given seven days' notice before -- before you were going to be barred from the Debtor's office, correct?

A I don't know.

Q Okay.

MR. MORRIS: Can we go back to Exhibit K, please? Oh, actually, it's okay.

BY MR. MORRIS:

Q We just read, actually, the piece from the Debtor's letter of December 23rd barring you from the Debtor's office. Do you remember that? And we can go back and look at it if you want.

A Yes.

Q Was there anything ambiguous that you recall about the Debtor's demand that you not enter their offices after December 30th?

A Ambiguous? I can tell you what my understanding was or I can tell you what the letter says. What would you like to know?

Q I'd just like to know if, as you sit here right now, you believe there was anything ambiguous about the Debtor's demand that you vacate the offices as of December 30th?

A I mean, I did vacate the offices as of December 30th.
Q Correct. And you knew that -- and you were complying with the Debtor's demand you do that, right?
A Well, with the Court's demand, I guess.
Q Okay. And it's your understanding that you would not be permitted in the Debtor's offices after that time, correct?
A Um, (pause), uh, I don't know how to answer that question. I knew I wouldn't be residing in the offices anymore. But for legitimate business purposes, to visit the people at NexPoint who were in the office, since there are no Highland people in the office, or to handle a deposition, you know, there was nothing I thought inappropriate about that.
Q Did the Debtor tell you that they would allow you to enter the offices any time you just believed that it would be appropriate to do that?
A I used my business judgment.
MR. MORRIS: I move to strike.
BY MR. MORRIS:
Q I'm asking you a very --
THE COURT: Sustained.
BY MR. MORRIS:
Q -- specific question, sir. Did the Debtor ever tell you that they -- that you would be permitted to enter their offices after December 30th if you, in your own personal discretion, believed it to be appropriate?

A No.
Q Did the Debtor provide you any exception to their demand that you vacate the offices, without access, by and after December 30th?
A I always do what I think is appropriate and in the best interests. I don't know. I didn't know the specifics of the Debtor's -- okay, yeah, what the specifics of the Debtor was.
Q Despite the unambiguous nature of the Debtor's demands letter, on Tuesday you just walked right into the Debtor's office and sat for the deposition, correct?
A I believe that was reasonable, yes.
Q Okay. But you didn't -- you didn't have the Debtor's approval to do that, correct?
A We didn't have technology to do it anywhere else, so if the deposition was going to occur, it had to occur there.
Q Sir, --
MR. MORRIS: Move to strike.
THE COURT: Sustained.
BY MR. MORRIS:
Q And I ask you to just listen very carefully. And if it's not clear to you, please let me know. You did not have the Debtor's approval to enter their offices on Tuesday to give your deposition, correct?
A No.
Q And you did not even bother to ask the Debtor for

1 permission, correct?
2 A I'm prohibited from contacting them, so no, I did not.
3 Q Okay. Let's talk about other events that occurred after
4 the entry of the TRO. We talked earlier about how you
5 interfered with Mr. Seery's trading activities on behalf of
6 the CLOs around Thanksgiving. Do you remember that?
7 A Yes.
8 Q But after the TRO was entered, the K&L Gates Clients also
9 interfered with the Debtor's trading activities, correct?
10 A No.
11 MR. MORRIS: Can we go to Exhibit K, please? Can we
12 start at the first page? And scroll down just a bit.
13 BY MR. MORRIS:
14 Q Do you see there's an explanation there about the Debtor's
15 management of CLOs?
16 A Yes.
17 Q And there's a recitation of the history that we talked
18 about earlier, where around Thanksgiving you intervened to
19 block those trades?
20 A Yes.
21 Q And then the next paragraph refers to the prior motion
22 that was brought by the CLO entities? I mean, the K&L Gates
23 entities, right?
24 A Yes.
25 Q And you were aware of that motion at the time it was made,

1 right?
2 A Yes.
3 Q And you were supportive of the making of that motion,
4 right?
5 A Supportive? Yes.
6 MR. MORRIS: And scroll down to the next paragraph,
7 please.
8 BY MR. MORRIS:
9 Q Okay. So, my colleague wrote that, "On December 22nd,
10 2020, employees of NPA and HCMFA notified the Debtor that they
11 would not settle the CLO sale of the AVAYA and SKY
12 securities." Have I read that right?
13 A Yes.
14 Q And that took place six days after the motion that the
15 Court characterized as frivolous was denied on December 16th?
16 A Yes. I wasn't aware of that, for what that's worth.
17 Q Okay. You personally instructed the employees --
18 withdrawn. NPA -- that refers to NexPoint, correct?
19 A Yes.
20 Q That's an entity you own and control, right?
21 A I -- largely.
22 Q And that's one of the Advisors we defined earlier, right?
23 A Yes.
24 Q And HCMFA, that's Fund Advisors, another advisory firm
25 that you own and control, correct?

A Yes.
Q And you personally instructed, on or about December 22nd, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect SKY and AVAYA, right?
A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle trades that occurred. But that's a different ball of wax.
Q Okay. But you did instruct them not to execute trades that had not been made yet, right?
A Yeah. Trades that I thought were inappropriate, for no business purpose, I -- I told them not to execute.
Q Okay. You actually learned that Mr. Seery wanted to effectuate these trades the Friday before, right?
A I don't know, but what did I do? When did I know it? What did I do? When I knew things are inappropriate, I reacted immediately. I don't -- I don't -- whenever -- whenever I found out about inappropriate things, I reacted to the best of my ability.
Q Okay.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
Mr. Dondero, I'm going to -- I'm going to interject some instructions once again here. Remember we talked about early

on, and I know you've testified before, but I'll repeat it: You need to just give direct yes or no answers.

And let me just say that we see witnesses all the time do what you're doing here, and that is they feel they need to say more than yes or no. They feel the need to clarify or supplement the yes or no answer they give. And just to remind you how this works, your lawyer, Mr. Bonds, is going to be given the opportunity when Mr. Morris is through to ask you all the questions he wants, and that will be your chance to clarify yes and no answers to the extent he asks you to revisit certain of these questions and answers. Okay?

So I'm going to remind you once again: yes or no or direct -- you know, other appropriate direct answers. Mr. Bonds can let you clarify later. All right?

Mr. Morris, continue.

MR. MORRIS: Okay. Thank you, Your Honor.

Can we please put up on the screen Exhibit L? And at the, I guess, the bottom of Page 1.

BY MR. MORRIS:

Q This is an email string. And --

MR. MORRIS: Go to the email below that, please. Yeah. Okay. Right there.

BY MR. MORRIS:

Q This is an email from Mr. Seery dated December 18th at (garbled) :30 p.m. Do you see that?

A Yes.
Q And in the substantive portion of his email, continuing on to the next page, he's giving instructions to sell certain SKY and AVAYA securities that are held by CLOs, correct?
A Yes.
Q And Mr. Sowin forwarded this email to you, right?
A Yes.
MR. MORRIS: If we can scroll up.
BY MR. MORRIS:
Q And you forwarded it to Mr. Ellington, right? I'm sorry. Let's just give Ms. Canty a chance.
MR. MORRIS: Keep scrolling up.
BY MR. MORRIS:
Q So, Mr. Sowin forwarded it to you at 3:34 p.m. Do you see that?
A Yes.
Q And if we scroll up, you turn around and give it to Mr. Ellington a few minutes later, right?
A Yes.
Q So that you and Mr. Ellington and Mr. Sowin are all aware that Mr. Seery wants to sell AVAYA and SKY securities on behalf of the CLOs, right?
A Yes.
Q Why did you decide to forward this email to Mr. Ellington?
A Ellington's role has been of settlement counsel that

1 supposedly everybody is able to talk to to try and bridge some
2 kind of settlement. Ellington, I thought, should be aware of
3 things that would make settlement more difficult or create
4 liabilities for the Debtor. And so I thought it was
5 appropriate for him to know.
6 Q Okay. This is the email that caused you to put a stop to
7 the trades that Mr. Seery wanted to effectuate, correct?
8 A This is the -- I'm sorry. Ask the question again. This
9 is the email that what?
10 Q This is -- this is how you learned that Mr. Seery wanted
11 to effectuate rates in AVAYA and SKY securities, right?
12 A I -- I learned about it pretty early on of him trading it.
13 I don't know if it was this email or -- or one of the others.
14 But yes, it was from -- it was from Joe Sowin.
15 Q And you would agree with me, would you not, that you
16 personally instructed the employees of the Advisors not to
17 execute the very trades that Mr. Seery identifies in this
18 email, correct?
19 A Yes.
20 Q At no time after December 10th, when the TRO was entered
21 into, did you instruct the employees of the Funds that you own
22 and control not to interfere or impede the Debtor's management
23 of the CLOs, correct?
24 MR. BONDS: Can you repeat the question? I'm sorry.
25 BY MR. MORRIS:

Q At no time after December 10th, when the TRO was entered, did Mr. Dondero instruct any employee of either of the Advisors that he owns and controls not to interfere or impede with the Debtor's business and management of the CLOs, correct?

A I did not.

Q Okay. Neither you nor anybody that you know of ever provided a copy of the TRO to the employees of the Advisors that you own and control, correct?

A I don't know.

Q Okay. After the TRO was entered, the K -- after the TRO was entered, and after the hearing on December 16th, the K&L Gates Clients sent three more letters to the Debtor, right?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, those are Exhibits M as in Mary, N as in Nancy, and X as in x-ray.

THE COURT: Okay.

MR. MORRIS: Unless the witness thinks there is a need to look at them specifically -- oh, let me just ask a couple of questions.

BY MR. MORRIS:

Q Mr. Dondero, in those letters, it's your understanding that the K&L Gates Clients again requested that the Debtor not trade any securities on behalf of the CLOs, right?

A Yes.
Q And it's your understanding that in those letters the K&L Gates Clients suggested that they might seek to terminate the CLO management agreements to which the Debtor was a party, correct?
A I don't know specifically, but that wouldn't surprise me.
Q Okay.
A So, --
Q Is it your understanding that the K&L Gates Clients also sent the letter a Debtor -- the Debtor a letter in which they asserted that your eviction from the offices might cause them damages and harm?
A I know there was objections to me -- I assume so. I don't know specifically.
Q And you were aware of these letters at the time that they were being sent, right?
A I'm sorry, what?
Q You were aware of these letters at the time they were being sent by the K&L Gates Clients, right?
A Generally, yes.
Q And you were generally supportive of the sending of those letters, right?
A I'm always supportive of doing what we believe is the right thing, yes.
Q And in this case, you were supportive of the sending of

1 these three letters, correct?
2 A I -- yes.
3 Q In fact, you pushed and encouraged the chief compliance
4 officer and the general counsel to send these letters, right?
5 A I push them to do the right thing. I didn't push them
6 specifically.
7 Q Okay. At the time the letters were sent, you were aware
8 that the K&L Gates Clients had filed that motion that was
9 heard on the 16th of December, correct?
10 A Yes.
11 Q And you were aware that they advanced the very same --
12 withdrawn. You're aware that in the letters they advance some
13 of the very same arguments that Judge Jernigan had dismissed
14 as frivolous just six days earlier, right?
15 A I wasn't at the hearing. I don't know if it was the same
16 arguments or similar arguments. I -- I can't -- I can't
17 corroborate the similarity or contrast the differences between
18 the two.
19 Q All right. So it's fair to say, then, that you were
20 supportive of the sending of these letters, you were aware of
21 the December 16 argument, but you didn't take the time to see
22 whether or not any of the arguments being advanced in the
23 letters were consistent or any different from the arguments
24 that were made at the December 16th hearing, correct?
25 A Correct. I wasn't directly involved, but still believed

that fundamentally Seery's behavior was wrong.
Q You never instructed the K&L Gates Clients to withdraw the three letters that were sent after December 10th, correct?
A No.
Q And you're aware that the Debtor had demanded that those letters be withdrawn or it would seek a temporary restraining order against the K&L Gates Clients, correct?
A I'm not aware of the back and forth.
Q Okay. Let's talk about your communications with Mr. Ellington and Mr. Leventon. You communicated with them on numerous occasions after December 16th, correct?
A No.
Q No, you didn't communicate with them many times after December 10th?
A You're lumping in Ellington and Isaac, and numerous times is a bad clarifier, so the answer is no.
Q I appreciate that. You communicated many times with Mr. Ellington after December 10th, right?
A Not -- not outside shared services, pot plan, and him being the go-between between me and Seery. I would say virtually none.
Q Okay. On Saturday, December 12th, two days after the temporary restraining order was entered against you, Mr. Ellington was involved in discussions with your personal counsel about who would serve as a witness at the upcoming

December 16th hearing, correct?
A I don't -- I don't remember.
Q Let's see if we can refresh your recollection.
MR. MORRIS: Can we please put up Exhibit P? Can we scroll down? Okay.
BY MR. MORRIS:
Q Do you see where Mr. Lynn writes you an email on Saturday, December 12th, and he says, among other things, it looks like trial?
A Yes.
Q And then if we scroll up a little bit, he wrote further, "That said, we must have a witness now." Have I read that accurately?
A Yes.
Q Okay.
MR. MORRIS: Can we scroll back up?
BY MR. MORRIS:
Q And this is Mr. Ellington's response, right?
A Yes.
Q Can you read Mr. Ellington's response for Judge Jernigan?
A (reading) It will be J.P. Sevilla. I'll tell him that he needs to contact you first thing in the morning.
Q Is it your testimony that this email relates to -- withdrawn. Mr. Ellington is not your personal lawyer, right?
A No. Mr. Ellington has been functioning as settlement

1 counsel, trying to bridge settlement, --
2 Q Okay.
3 A -- which is what this email looks like to me.
4 Q Okay. I'll let -- I'll let the judge --
5 MR. MORRIS: I move to strike, Your Honor.
6 THE COURT: Sustained.
7 BY MR. MORRIS:
8 Q So, after the TRO was entered, you and Mr. Ellington not
9 only communicated but Mr. Ellington was actively involved in
10 identifying witnesses to testify on behalf of your interests
11 at the December 16th hearing, correct?
12 A I -- I don't know what the witness was for, but I believe
13 Ellington was doing his job as settlement counsel, trying to
14 facilitate settlement. I don't -- I have no reason to think
15 this was anything more nefarious.
16 Q Okay. You looked to Mr. Ellington for leadership in
17 coordinating with all of the lawyers who were working for you
18 and your personal interests, right?
19 A I'm not agreeing with that.
20 Q No? All right.
21 MR. MORRIS: Let's look at the next exhibit. I think
22 it's Exhibit Q. And if we could stop right there.
23 BY MR. MORRIS:
24 Q There's an email from Douglas Draper, do you see that, on
25 December 16th?

A Yes.
Q So this is after the TRO was entered into, right?
A I believe so.
Q And Mr. Draper represents Get Good and Dugaboy; is that right?
A I believe so.
Q And he was new to the case at that moment in time, right?
A On or about, I believe so.
Q And he was looking to -- he was looking for a joint meeting among all of the lawyers representing your personal interests, right?
A No. I think he was trying to coordinate -- coordinate or understand whatever. But not everybody -- he doesn't just talk to lawyers around my interests. I mean, and he hasn't sought agreements with just lawyers reflecting my interests.
Q You forwarded Mr. Draper's email to Mr. Ellington, right?
A Yes.
Q But you can't remember why you did that, right, or at least -- withdrawn. You couldn't remember as of Tuesday's deposition why you forwarded this email to Mr. Ellington, right?
A Not specifically. But, again, Ellington is settlement counsel.
MR. MORRIS: I move to strike, Your Honor, after the initial phrase "Not specifically."

THE COURT: Sustained.

MR. MORRIS: Can we scroll up a little bit, please?

BY MR. MORRIS:

Q Mr. Lynn responded initially with a reference to the assumption that a particular lawyer was with K&L Gates, right?

A Yes.

MR. MORRIS: And if we could scroll up a little bit.

BY MR. MORRIS:

Q That's where you forward this email to Mr. Ellington, right?

A Yes.

Q And can you read to Judge Jernigan what you wrote at 1:33 p.m.?

A (reading) I'm going to need you to provide leadership here.

Q But at least as of Tuesday's deposition, you couldn't remember why you needed Mr. Ellington to provide leadership, right?

A Correct. Nor if he did.

MR. MORRIS: I move to strike the latter portion of the answer, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q So you have no --

(Echoing.)

MR. MORRIS: We're getting --

THE WITNESS: Can I -- can I hold -- can I hold on for one second here? Can I just put you guys on mute, please?

MR. MORRIS: Sure.

(Pause.)

THE COURT: All right.

THE CLERK: John, there's some feedback again. I'm sorry.

MR. MORRIS: That's okay.

THE COURT: Mr. Bonds, --

MR. MORRIS: We lost Mr. --

THE COURT: Mr. Bonds, what's going on?

MR. MORRIS: We've lost -- the screen --

THE COURT: You know you can't counsel your client in the middle of court testimony. I thought maybe Mr. Dondero had some non-legal thing going on in the background. Mr. Bonds?

MR. BONDS: Your Honor, I -- I did not in any way counsel Mr. Dondero.

THE COURT: Okay. Well, I'll take your representation on that. Are we ready to go forward?

MR. MORRIS: I'll readily accept Mr. Bonds' representation as well, Your Honor.

THE COURT: Okay.

MR. MORRIS: But I'd ask that it not happen again.

1 THE COURT: Well, fair enough. I think Mr. Bonds
2 understands.
3 BY MR. MORRIS:
4 Q Mr. Dondero, you have no recollection of why you forwarded
5 this email to Mr. Ellington and why you told him you needed
6 him to provide leadership, correct?
7 A Correct.
8 MR. MORRIS: And if we can scroll up, can we just see
9 how Mr. Ellington responded?
10 BY MR. MORRIS:
11 Q All right. And can you just read for Judge Jernigan what
12 Mr. Ellington said on December 16th in response to your
13 statement that you're going to need him to provide leadership
14 here?
15 A (reading) On it.
16 Q Thank you. In your deposition, you testified without
17 qualification that Scott Ellington and Isaac Leventon did not
18 participate in the drafting of a joint interest or mutual
19 defense agreement. Do you recall that testimony?
20 A Yes, as far as I knew.
21 Q And you also testified that you never discussed with
22 either of them the topic of a joint defense or mutual defense
23 agreement; is that right?
24 A Correct. That was Draper.
25 Q Okay.

MR. MORRIS: Can we put up Exhibit 11, please? I apologize. It's Exhibit W. Okay. Can we stop right there?

BY MR. MORRIS:

Q This is an email between some of your counsel and Mr. Ellington. Do you see that?

A Yes.

Q And a common interest agreement is attached to the communication. Is that a fair reading of the portion of the exhibit that's on the screen?

A Yes.

MR. MORRIS: And can we scroll to the top of the exhibit, please?

BY MR. MORRIS:

Q And do you see that there is an email exchange between Mr. Ellington and Mr. Leventon concerning the common interest agreement?

A Yes.

Q Okay. So it's your testimony that this email may exist but you had no idea that Mr. Ellington and Mr. Leventon were working with your lawyers to draft a common interest agreement? Is that your testimony?

A I wasn't part of this. It looks to me like they were just included in a -- a final draft. And, again, Ellington is settlement counsel. I -- but I don't want to speculate why or what they were doing.

Q Do you remember that I asked you a few questions the other day about Multi-Strat financial statements and whether or not you'd ever given -- you'd ever received any of those documents from Mr. Ellington and Mr. Leventon?

A Yes.

Q Okay. And you testified under oath that you never got any financial information, including balance sheets, concerning Multi-Strat from either of those lawyers, correct?

A I -- hmm. I -- I don't remember. Yeah, I don't remember. I may have to clarify that, but I don't remember.

Q You testified under oath the other day that you wouldn't even think to ask them for financial information relating to Multi-Strat because it's not natural for them to have it, right?

A I -- I'm sorry.

THE WITNESS: Your Honor, do I just have to answer these questions yes or no, or is that the -- can I clarify at all, or can I --

THE COURT: Well, I mean, if the question simply directs a yes or no answer, that's correct, you just answer yes or no. And I think this one did.

Again, your lawyer is going to have the chance to do follow-up examination later.

BY MR. MORRIS:

Q So let me try again. During your deposition, you

1 testified under oath without qualification that you never got
2 any financial information, including balance sheets,
3 concerning Multi-Strat from Scott Ellington or Isaac Leventon,
4 correct?
5 A I believe I might have misspoken there.
6 Q Okay. But that was your testimony the other day, right?
7 A Yes.
8 Q And today, you believe you might have gotten that
9 information from them, right?
10 A Only because Ellington was supposed to be the go-between
11 and I couldn't go directly to somebody. But he wouldn't
12 normally have that information, which is what I was saying.
13 MR. MORRIS: Your Honor, I have an exhibit that's not
14 on the Debtor's exhibit list, and I was going to use it for
15 impeachment purposes to establish the fact that Mr. Ellington
16 and Mr. Leventon in fact gave to Mr. Dondero, after December
17 10th, financial information concerning Multi-Strat, which Mr.
18 Dondero had previously denied receiving. May I -- may I use
19 that document to impeach Mr. Dondero?
20 THE COURT: You may.
21 MR. BONDS: Your Honor, I'm going to object. This is
22 pretty clearly something that should have been disclosed and
23 it wasn't.
24 THE COURT: Well, he says it's purely to impeach the
25 testimony that Mr. Dondero just now gave. So we'll -- we'll

see the document and, you know, I'll either agree with that being impeachment or not. So, he may proceed.

MR. BONDS: Your Honor, I think that the testimony -- Your Honor, I'm sorry. I think that the testimony that was (inaudible) given was that he thought that he may have talked to Scott or Isaac, not that he did not.

MR. MORRIS: Your Honor, if I may, the testimony the other day was unequivocal and unambiguous that not only didn't he get this information from the two lawyers, but that he had no reason to believe he would ever get the information from those two lawyers.

I appreciate the fact that Mr. Dondero today is suggesting that he may have, but I -- I would still like to use this document to refresh his recollection and to impeach even the possibility that he's giving this qualified testimony that he may have.

THE COURT: All right.

MR. MORRIS: There's no doubt that he did.

THE COURT: I overrule the objection. You can go forward.

MR. MORRIS: Can we please put up on the screen -- I believe it's Debtor's Exhibit AA. And if we can scroll down, please. And just stop, yeah, towards the top. All right. Stop right there.

BY MR. MORRIS:

Q Do you see in the first email Mr. Klos -- he's an employee of the Debtor, right?
A Yes.
Q And he provides Multi-Strat balance sheet and financial information to Mr. Leventon, Mr. Ellington, and Mr. Waterhouse. Do you see that?
A Yes. He's the person I would normally go to.
Q Okay. And they're all Debtor employees, right?
A Yes.
Q Okay. And then Mr. Leventon sends it to you and Mr. Ellington on February 4th, 2020; is that correct?
A Yes.
Q And this is confidential information; is that fair?
A No.
Q Okay. Let's -- let's talk about the next --
A No, it's not -- wait, wait, hold on a second. Judge, I need to clarify this. I -- it's not confidential information. It's available to every investor, of which I was one of them. Okay? So, let's -- let's not mischaracterize this as some corporate secret.
Q Okay. You interfered with the Debtor's production of documents; isn't that right?
A No.
Q Several times in the last year, various entities have requested that Dugaboy produce its financial statements,

1 correct?
2 A Dugaboy is my personal trust. It's not an entity of the
3 Debtor in any form or fashion.
4 Q Sir, you're aware that several times in the last year
5 various entities requested that the Debtor produce Dugaboy
6 financial information, correct?
7 A The Debtor is not in a position to do it. I -- I don't
8 know if it's been several times or whatever, but it's not
9 appropriate.
10 MR. MORRIS: I move to strike, Your Honor.
11 THE COURT: Sustained.
12 BY MR. MORRIS:
13 Q I'll try one more time. If we need to go to the
14 transcript, we can. It's a very simple question. You knew
15 and you know that several times in the last year various
16 entities have requested that the Debtor produce Dugaboy
17 financial statements, correct?
18 A Yes.
19 Q Do you recall at the deposition the other day I asked you
20 whether you had ever discussed with Mr. Ellington and Mr.
21 Leventon whether or not the Dugaboy financial statements
22 needed to be produced, and you were directed not to answer the
23 question by counsel and you followed those directions?
24 A Yes.
25 Q But you communicated with at least one employee concerning

the production of the Dugaboy financial statements, correct?
A Yes.
Q And that's Melissa Schroth; is that right?
A Yes.
Q She's an executive accountant employed by the Debtor, right?
A Yes.
Q And on December 16th, after the TRO was entered into, you instructed Ms. Schroth not to produce the Dugaboy financials without a subpoena, correct?
A That was the advice I had gotten from counsel, yes.
Q Okay. The Dugaboy and Get Good financial statements are on the Debtor's platform, correct?
A I do not know.
Q There is no shared services agreement between Dugaboy or Get Good and the Debtor, correct?
A I don't know.
Q You're not aware of any; is that fair?
A Yes.
Q Okay.
MR. MORRIS: Can we put on the screen Exhibit R? And can you scroll down a bit?
BY MR. MORRIS:
Q Okay. That's Melissa Schroth at the top there; is that right?

A Yes.
Q And these are texts that you exchanged with her after the TRO was entered into, correct?
A Yes.
MR. MORRIS: Can we scroll down a little bit?
BY MR. MORRIS:
Q And do you see on December 16th you sent Ms. Schroth an email -- I apologize -- a text that says, "No Dugaboy details without subpoena"?
A Yeah.
Q But you can't remember why you sent this text, correct? At least you couldn't as of Tuesday?
A I believe it was on advice of counsel.
Q But that's not what you said on Tuesday, correct?
A I don't remember.
Q You sent this text even though you knew that various entities had requested the Dugaboy financials, but you have no recollection of ever talking to anyone at any time about the production of those documents, right?
A Can you repeat the question?
Q I'll move on. Let me just -- last topic, and then I'm going to respectfully request that we just take a short break. You're familiar with the law firm of Baker & McKenzie; is that right?
(Echoing.)

A I'm sorry. You broke up on us there.
Q No problem. You're familiar with the law firm Baker & McKenzie, correct?
A Yes.
Q That firm has never -- never represented you or any entity in which you have an ownership interest, correct?
A Correct.
Q But in December, the Employee Group, of which Mr. Leventon and Mr. Ellington was a part, was considering changing counsel from Winston & Strawn to Baker & McKenzie, right?
A I believe so.
Q And you asked -- and because of that, you specifically asked Mr. Leventon for the contact information for the lawyers at Baker & McKenzie, right?
A I believe so.
Q Okay.
MR. MORRIS: Can we put up Exhibit S, please?
BY MR. MORRIS:
Q And who is that email sent from? I apologize. Withdrawn. Who is that text message exchange with?
A Isaac Leventon.
Q Okay. And Mr. Leventon was an employee of the Debtor after December 10th, correct?
A Yes.
MR. MORRIS: Can we scroll down a little bit?

BY MR. MORRIS:
Q And on December 22nd, you asked Mr. Leventon for the contact information at Baker & McKenzie, correct?
A Yes.
Q And the reason you asked Mr. Leventon for the contact information, that was in connection with the shared defense or mutual defense agreement, right?
A I -- I don't remember why. It might have just been for my records. I don't know.
Q The only reason that you could think of for asking for this information was for the shared defense or mutual defense agreement, correct?
A I -- no, it -- I don't know and I don't want to speculate. I don't want to -- I don't want to speculate. I -- did -- I don't think I ever got -- I don't know what your point is.
MR. MORRIS: May we please go back to the transcript at Page 136? At the bottom, Line 23.
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q Do you recall asking Isaac Leventon for the contact information for the -- for the lawyers at Bakers & McKenzie?
"A I -- I don't -- I don't -- it might have been for part of the shared defense, mutual defense whatever agreement, but that's -- that's the only reason I would

1 have asked for it."
2 Q Did you give that answer to my question?
3 A Yeah. I shouldn't have speculated.
4 Q Okay. But that's the answer you gave the other day; is
5 that right?
6 A I shouldn't have speculated. That's my answer today.
7 Q And today -- withdrawn. In fact, you wanted the Baker
8 contact information in order to help Mr. Draper coordinate the
9 mutual defense agreement, correct?
10 A I don't want to speculate.
11 MR. MORRIS: Can we go to Page 139, please? Lines 2
12 to 5.
13 BY MR. MORRIS:
14 Q Did you -- did you hear this question and did you give
15 this answer on Tuesday?
16 "Q Why did you want the Baker & McKenzie contact
17 information?
18 "A I was trying to help Draper coordinate the mutual
19 shared defense agreement, period."
20 Q Did you give that answer to my question on Tuesday?
21 A Yes.
22 MR. MORRIS: Your Honor, I'd respectfully request a
23 short break to see if I've got anything more.
24 THE COURT: All right. Well, I was going to ask you
25 how much more do you think you have. We've been going almost

two hours.

So we'll take a break. Let's make it a ten-minute break. And then, depending on how much more you have and how much Mr. Bonds is going to have, we'll figure out are we going to need a lunch break in just a bit.

All right. So it's 12:00 noon Central. We'll come back at 12:10. Ten minutes.

MR. MORRIS: Your Honor, may I have an instruction of the witness not to check his phone for any purposes, not to make -- not to communicate with anybody until -- until his testimony is completed?

THE COURT: All right. Any -- any --

MR. BONDS: Your Honor, he's going to speak with me.

THE COURT: Pardon?

MR. BONDS: I assumed he will speak to me about just general events. I mean, I don't want to be in breach of some order.

MR. MORRIS: Yeah. I would -- I would -- I would ask for -- you know, it's not -- he's on the stand. He's still on the stand.

THE COURT: Yeah. He --

MR. MORRIS: He shouldn't be conferring with counsel, either. No disrespect to Mr. Bonds at all.

THE COURT: Exactly. I mean, you all can talk about, you know, the national champion football game or whatever, but

it would be counseling your client in the middle of testimony if you -- if you talk about this case at the moment. So, you know, --

MR. BONDS: I understand, Your Honor.

THE COURT: All right.

MR. BONDS: I just didn't want to be --

THE COURT: All right. So now we'll come back at 12:11.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(A recess ensued from 12:01 p.m. until 12:12 p.m.

THE CLERK: All rise.

THE COURT: Please be seated. This is Judge Jernigan. We're going back on the record in Highland Capital versus Dondero. We have taken an 11-minute break. It looks like we have Mr. Dondero and counsel back. And Mr. Morris, are you out there, ready to proceed?

MR. MORRIS: I am, Your Honor. And I do have just a few more questions.

THE COURT: Okay. I'm sorry. Mr. Lynn, I see you're there in the room with Mr. Dondero. Now, did you want to --

MR. LYNN: Here's Mr. Bonds. I apologize. He was in the restroom.

THE COURT: Okay. All right. Everyone ready to proceed?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Can you hear me, Mr. Dondero?

A Yes.

Q Did you ever discuss the request of any party to produce the financial statements of Get Good and Dugaboy with Scott Ellington?

A Not that I recall.

Q Did you ever communicate with Mr. Leventon on the subject matter of whether or not the financial statements for Get Good and Dugaboy needed to be produced by the Debtor?

A No.

Q Those are the two questions that you were directed not to answer the other day, right?

A I don't remember.

Q Okay. You mentioned that Mr. Ellington serves in some capacity as settlement counsel. Do I have that right?

A Yes.

Q Do you know if there's any exception in the TRO that permits you to communicate directly with Mr. Ellington in his so-called capacity as settlement counsel?

A There was no change in his status in the TRO. It's -- and

I think he was still used by both the Debtor and by me in that function.

Q You said that -- you testified earlier that you understood that you were prohibited from speaking with the Debtor's employees, correct?

A Except for -- except for with regard to the pot plan, shared services, and Ellington as settlement counsel. But I continued to talk to employees about the pot plan as recently as the end of the year, and I continued to talk to employees about shared services based on the shared services proposal that was sent to Ellington and forwarded to me as recently as two days ago.

Q You never -- you never read the TRO, right?

A No.

MR. MORRIS: Can we have it put up on the screen? I don't know the exhibit number, Ms. Canty, but hopefully it's clear on the exhibit list.

MS. CANTY: I'm sorry, John. Can you repeat what you're looking for?

MR. MORRIS: The TRO. (Pause.) Can we scroll down to Paragraph 2, please? Okay.

BY MR. MORRIS:

Q I appreciate the fact that you've never seen this before, Mr. Dondero, but let me know if I'm reading Section 2(c) correctly. "James Dondero is temporarily enjoined and

1 refrained from" -- subparagraph (c) -- "communicating with any
2 of the Debtor's employees, except for specifically -- except
3 as it specifically relates to shared services currently
4 provided to affiliates owned or controlled by Mr. Dondero."
5 Have I read that correctly?
6 A Yes.
7 Q Does that provide for any exceptions concerning the pot
8 plan?
9 A The Independent Board requested a meeting on the pot plan.
10 Q Okay. But does it -- I appreciate that, and we'll talk
11 about that in a moment, but my question is very specifically
12 looking at the order. And I, again, appreciate that you've
13 never seen it before. But looking at the order now, is there
14 any exception for you to communicate with the Debtor's
15 employees concerning the pot plan?
16 A I would think the pot plan would fall under that, since
17 some of the pot plan value is coming from affiliated entities
18 that are subject to the shared services agreement. I would
19 think that would be reasonable, again, plus the -- well, it
20 was the subject of a meeting with the Independent Board at the
21 end of the month.
22 Q Okay.
23 A I still think it's the best alternative for this estate.
24 Q Okay. Did you -- did you ever -- did you ever ask
25 anybody, on your behalf, have asked the Debtors whether they

1 agreed with what you believed was a reasonable interpretation
2 of the restraining order?
3 A I did not.
4 Q Okay. And let's just deal with the notion of settlement
5 counsel. Do you see anywhere in this TRO -- and if you want
6 to read anything more, please let me know -- do you see
7 anything in this TRO that would permit you to speak with Mr.
8 Ellington in his so-called role as settlement counsel?
9 A Well, I would say, more importantly, I don't see anything
10 that takes away his role as settlement counsel, which was
11 formally done six months ago.
12 Q Okay. I did read Section 2(c) correctly, right?
13 A Yes.
14 Q And the only exception that's in Judge Jernigan's
15 restraining order that she entered against you relates to
16 shared services. Have I read that correctly?
17 A Yes.
18 Q Okay. Let's talk about the pot plan for a moment. After
19 the TRO was entered, you were interested in continuing to
20 pursue the pot plan; is that right?
21 A I still believe it's the best possible result for this
22 estate.
23 Q And you sought a forum with the Debtor's board, correct?
24 A Yes.
25 Q And you knew that you couldn't speak directly with any

1 member of the Debtor's board unless your counsel and the
2 Debtor's counsel was -- was present at the same time.
3 Correct?
4 A Yeah. As a matter of fact, I didn't go. I just had
5 counsel go.
6 Q And the Debtor's board gave Mr. Lynn a forum for him to
7 present your pot plan after the TRO was entered. Isn't that
8 right?
9 A I believe so.
10 Q And are you aware that the Debtor's board spent more than
11 an hour and a half with Mr. Lynn talking about your pot plan
12 after the TRO was entered?
13 A Yes.
14 Q And is it fair to say that, notwithstanding Mr. Lynn's
15 goodwill and Mr. Lynn's efforts to try to get to a successful
16 resolution here, the terms on which the pot plan were offered
17 were unacceptable to the Debtor?
18 A I wasn't there. I -- I don't know.
19 Q The Debtor never made a counteroffer, did it?
20 A Not that I heard.
21 Q You'll admit, will you not, that over the last year you or
22 others acting on behalf -- on your behalf have made various
23 pot plan proposals to the Official Committee of Unsecured
24 Creditors?
25 A Quite generous pot plans that I think will exceed any

other recoveries.

Q Okay. So you're aware that your pot plan was delivered either by you or on your behalf to the U.C.C., correct?

A I -- some were. Some, I don't know.

Q Okay. Has the U.C.C. ever made a counterproposal to you?

A Nope.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Pass the witness.

Mr. Bonds, do you have any time estimate for me, guesstimate?

MR. BONDS: My guess is, Your Honor, it'll be about an hour. I would hope that we could take some type of a break, just because I'm a diabetic and need to have some --

THE COURT: All right. Well, --

MR. MORRIS: I have no objection, Your Honor. Whatever suits the Court. I'm willing to accommodate Mr. Bonds always.

THE COURT: Okay. Let's take a 45-minute break. Forty-five minutes. So, it's 12:22. We'll come back at seven minutes after 1:00 Central time.

All right. We're in recess.

THE CLERK: All rise.

(A luncheon recess ensued from 12:23 p.m. to 1:15 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. This is Judge

Jernigan. We are going back on the record in Highland Capital Management versus Dondero. We took a lunch break. And when we broke, Mr. Bonds was going to have the chance to examine Mr. Dondero.

Let me just make sure we have, first, Mr. Dondero and Mr. Bonds. Are you there?

MR. BONDS: Yes, we are.

THE COURT: All right. Very good. I don't see your video yet, but -- there you are. All right. Mr. Morris, are you there?

MR. MORRIS: I am here. Can you hear me, Your Honor?

THE COURT: I can. All right.

MR. MORRIS: Thank you.

THE COURT: Well, we've got lots of other people, but that's all I'll make sure we have at this moment. All right. Mr. Bonds, you may proceed.

And, Mr. Dondero, I know you know this, but I'm required to remind you you're still under oath.

Okay, go ahead.

CROSS-EXAMINATION

BY MR. BONDS:

Q Before you resigned as portfolio manager, how long had you had with Highland Capital Management?

A Since inception in 1994.

Q Okay. And how long have your offices been at the

Crescent?
A Eight years.
Q Okay. Before you resigned as portfolio manager, did you spend a lot of time in the office?
A Yes. I spent every business day this -- or 2020, including COVID, in the office.
Q Okay. And this is the first time that you are not in the office, is that right, in decades?
A Yes.
Q Can you tell us about the shared services agreement that exists between the Debtor and the other entities in which you have an interest?
A NexPoint, NexBank, the DAF, HFAM, primarily. I don't know what other entities paid. Shared services, which is typical in finance, for centralized tax, accounting, RICO function, so that we don't have to have redundant, multiple high-paid people in different entities. We'd have them centralized and with collective experience and collective functionality. And so, historically and recently, they pay Highland for those -- fees for those services. And I, as a non-paid employee, or a non-employee of Highland but a paid employee of NexBank -- of NexPoint, was -- and my occupancy and support were part of those shared services agreement.
Q What do those agreements allow those entities to do?
A Would it allow those entities to do? Well, to access the

Highland functionality as appropriate, because most of those entities, as is typical in finance, did not have their own functionality, legal, tax, and -- legal, tax, and accounting, but although they've been -- they've been building it lately in anticipation of the pot plan not going through at Highland.

Q Okay. Do those agreements allow you to share office space with --

MR. MORRIS: Objection --

THE WITNESS: Yes.

MR. MORRIS: -- to the form of the question, Your Honor. I think the exhibits and the agreements themselves would be the best evidence. They're not in evidence. They haven't been offered in evidence. I have no way to challenge the witness on anything he's saying. And on that basis, I'd -- it's not fair to the Plaintiff.

THE COURT: All right. Mr. Bonds, can I ask you to repeat your question? It was muffled and I was about to ask you to repeat it before I got the objection. So, repeat the question so I can --

MR. BONDS: Okay. I'm going to repeat it and amend it.

THE COURT: Okay.

BY MR. BONDS:

Q Is it your understanding that those agreements allow you to share office space with the Debtor?

A Yes. Virtually all of NexPoint's employees share the Highland office space as part of a shared services agreement.
Q Do those agreements allow you to share -- I'm sorry, excuse me. Strike that. What else do they allow?
A Typically is used in coordination of systems, servers, software, cloud software, Internet software, office software, tax, accounting, and legal functionality are all part of the shared services agreement, although, you know, much of -- much of that was stripped, you know, four or five months ago, especially legal functionality and the accounting functionality, without the concurrent adjustment in the building.
Q Okay. And you previously testified that you generally control NexPoint; is that correct?
A Generally. And the distinction I was trying to make is, you know, following the financial crisis in '08, compliance and the chief compliance officer has personal liability. along with the rest of the C Suite, and operates independently, with primary loyalty to the regulatory bodies. And they're -- they're not controlled, bamboozled, or segued away from their responsibility. And at all times, they're supposed to be doing what they believe is right, regulatorily-compliant, and in the best interest of investors.
So that was the distinction I was drawing between, A, what I was trying to remind Thomas of, that he should be

1 independent of Seery, in terms of following what he believes
2 is correct and regulatory-compliant. And I don't have to push
3 the NexPoint compliance people and general counsel to do
4 anything specific, nor could I. They are supposed to do what
5 is right from a regulatory investor standpoint, and I believe
6 that's what they've done.
7 Q All right. And what do you mean by the term or the usage
8 of the word "generally"?
9 A Well, that's the distinction I was just drawing. I mean,
10 generally, on regular business strategy, you know, major
11 investments, you know, other business items, I'm in control of
12 those entities. But in terms of the content and allegations,
13 regulatory opinions that come from compliance and the general
14 counsel, that is their best views on their own, knowing they
15 have compliance obligations and personal liability.
16 Q Do you believe that NexPoint and its other owners and
17 interest holders have rights independent from your own in this
18 case?
19 A Right, yes, and obligations, and responsibilities to
20 investors. I believe the attempt by the Debtor or Seery to
21 hide behind contracts that the Debtor has with the CLOs are --
22 are a spurious, incomplete argument. You know, they're not in
23 compliance with those contracts. Bankruptcy alone is an event
24 of default. Not having the key man -- the key men, the
25 required requisite professionals that they're obligated to

contractually have working at the Debtor is a clear breach, in violation of those CLO contracts. Not having adequate staff or investment professionals to analyze, evaluate, or follow the investments in the portfolio is a clear violation. And specifically telling investors in the marketplace that you plan to terminate all employees, a date certain January 24th, is a proclamation that you're not going to be in any form able to be a qualified registered investment advisor or qualified in any which way to manage the portfolio or be in compliance with the CLO contracts.

I would -- I would further add that the selling of the securities, and the SKY securities, represent incomplete intentional incurring of loss against the investors. You have securities that are less liquid with, you know, restructured securities that have been owned for ten years, and they were sold during the most illiquid weeks of the year, the couple days before and after Thanksgiving, couple days before and after Christmas, where the investors could have gotten 10 or 15 percent more on their monies if they were just sold in a normal week. It's -- it's preposterous to me. It's consistent with Seery not being an investment (garbled).

But it's preposterous to me that -- that this treatment of investors is allowed or being camouflaged as some kind of contractual obligation, when the investors have said these funds are clearly in transition and the manager clearly is

1 incapable of managing them. You know, please don't transact
2 until the transition is complete. But Jim Seery has traded
3 every day, including -- I don't know about today, but every
4 day this week, selling securities for no investment rationale
5 and no business purpose.
6 Q Are you also portfolio manager for NexPoint?
7 A Yeah, I'm a portfolio manager for the closed-end retail
8 funds, which do have a higher fiduciary obligation than
9 anything on the institutional side. I'm a portfolio manager
10 for those '40 Act funds that are the primary owners of the
11 CLOs that Seery is selling securities in for some unknown
12 reason.
13 Q And what shared service agreements exist between NexPoint
14 and the Debtor?
15 A Those are the shared service agreements I spoke of. I
16 don't want to repeat myself.
17 Q And I'm going to call Highland Capital Management Fund
18 Advisors, LP just Fund Advisors. Is that okay with you?
19 A Yes.
20 Q Okay. And you testified generally -- that you generally
21 control Fund Advisors; is that correct?
22 A Yes.
23 Q Do you believe that Fund Advisors and its owners and
24 interest holders have rights independent from your own in this
25 case?

A Yes.
Q Are you the portfolio manager for Fund Advisors?
A Yes.
Q What shared services agreements exist between Fund Advisors and the Debtor?
MR. MORRIS: Objection, Your Honor. The agreements themselves are the best evidence of the existence in terms of any agreement between the Debtor and these entities.
MR. BONDS: Your Honor, I can fix that.
THE COURT: Okay.
BY MR. BONDS:
Q I'm just asking: What is your understanding, Mr. Dondero, of the shared service agreements between the Debtor and Fund Advisors?
A It's similar to the agreement I mentioned earlier. It covers a broad range of centralized services historically provided by Highland, but now those, while still paying smaller than historic fees, those entities now have been required to incur the expenses of duplicating those functions.
Q Okay. Do you recall the email string dated November 24th regarding SKY equity that the Debtor talked about?
A Yes.
Q What did you mean when you sent that email about the trade? What did you mean, I'm sorry?
A I was trying to inform the traders, and once they knew --

they weren't willing to do the trades anymore once they knew that the underlying investors had requested that their accounts not being traded until the transition be -- until the transition of the CLOs was effectuated.

It's -- it's standard by, you know, statute or understanding, in the money and management business, when you're moving accounts from one asset manager to another, and someone requests that you don't do anything to their account, you don't trade it whimsically. And so I was -- I was making sure the traders knew that the underlying investors had requested that no trades occur in their accounts.

And then I believed it was a clear violation of the Registered Investment Adviser's Act. I believe that people involved at a senior level or at a compliance level could have material liability, and could create material liability for the Debtor. And I think if, as I said before, I think if anybody on this call were to call the SEC, they would start on audit on this.

MR. MORRIS: Your Honor, I move to strike the first portion of the answer prior to when he started to describe what he believes and what he thinks. The first portion of the answer was devoted to testifying about what is in the knowledge of the people who he was communicating with. There's no evidence. Mr. Dondero, of course, was free to call any witness he wanted. He could have called the chief

compliance officer. He could have called the general counsel. He could have called all the people he's now testifying on behalf of, and he did not.

So I move to strike anything in the record that purports to reflect or suggest the knowledge on behalf of any party other than Mr. Dondero.

THE COURT: Okay. I'm --

MR. BONDS: Let me rephrase -- Your Honor, I'm going to rephrase the question.

THE COURT: Okay. Very well.

MR. BONDS: I'm sorry.

THE COURT: So the motion to strike is granted. If you're going to rephrase, go ahead.

MR. BONDS: Okay.

BY MR. BONDS:

Q Mr. Dondero, what did you mean when you said -- that the emails about the trade?

A Okay. I'll give my intention by sending emails to stop the trade and my basis for those emails. My intentions were to inform the traders and to inform the compliance people that I believe there was a trade that wasn't in the best interest of the employees that had no business purpose for its occurring. And the people involved weren't aware that the investors had sent over requests not to trade their accounts while they were in transition.

So I made the traders aware of that. I made compliance aware of that also. And it's my belief, based on 30 years' experience in the industry, that it is entirely inappropriate to trade the accounts of investors that are in transition, and especially when you're not -- you're not contractually -- you are contractually in default with that client, to trade their account whimsically, for no business purpose. And I thought it was a clear breach of both regulatory, ethical, and fairness with regard to the investors.

So I -- what did you know, when did you know it, what did you do? I did what I felt was the right thing, which I try and do every day, and made all the relevant parties aware of what was going on.

Q Mr. Dondero, do you recall the text message you sent to Mr. Seery in which you said, "Be careful what you do"?

A Yes.

Q What did you mean by that message?

A It's -- I even said, Last warning. I mean, I -- he's doing things against the interests of investors. He's purposely incurring losses by trading in days and weeks and time of the year, the day before and after Thanksgiving, where any novice knows the markets are illiquid and anybody who can read a computer screen can see you get ten percent less -- five or ten percent less than you would the week before or the week after. And with as much professional umbrage as

1 possible, I was recommending that he stop.
2 Q Did you intend to personally threaten Mr. Seery in any
3 way?
4 A No. It was bad -- bad intentional professional acts
5 against the interests of investors that flow through to '40
6 Act retail mom-and-pop investors. I was trying to prevent
7 those losses and those bad acts from occurring. And I believe
8 everybody who's -- everybody around that issue should be
9 ashamed of themselves, in my opinion.
10 Q Do you now regret sending the text?
11 A No. No, I mean, I could have worded it differently. I
12 was angry on behalf of the investors.
13 Q And Mr. Dondero, you have management ownership interest in
14 that entity; is that right?
15 A Yes.
16 Q Do you believe the interests or other entities in which
17 you are involved are independent from your personal rights in
18 this case?
19 A Yes.
20 Q And do you believe you caused anyone to violate the TRO?
21 A No. I've been -- I've been very conscious to just try and
22 champion the thing that -- things that I think are important
23 and the things that I've been tasked to do, like an attractive
24 pot plan to help resolve this case. I spend time on that.
25 But every once in a while, do I have to access, let's say,

1 David Klos, who is the person who put the model together, who
2 has been working on it for six or nine months, and no one else
3 S has a copy of? Yes. Yeah, I have to -- I have to access
4 him. I don't believe that's the -- inappropriate or in any
5 way violating the spirit of the TRO.
6 I believe settlement in this case is only going to happen
7 with somebody fostering communication. And Ellington's role,
8 which I thought was a good one and I thought he was performing
9 well as settlement counsel, was an important role. And I used
10 him for things like -- and Seery also used him for things. As
11 recently as two days before Ellington was fired, Seery gave
12 him a shared services proposal to negotiate with me.
13 Ellington has always been the go-between from a settlement and
14 a legal standpoint. I think his role there was -- it was
15 valued. To try to honor the TRO was things like Multi-Strat,
16 that I didn't remember correctly. Ninety percent of the time
17 or for the last 20 years I would have gone directly to
18 Accounting and Dave Klos for it, but I purposely went to
19 settlement counsel in terms of Ellington in order to get the
20 Multi-Strat information which we needed in order to put the
21 pot plan together that we went to the Independent Board with
22 at the end of December.
23 Q (faintly) And do you recall the questions that Debtor's
24 counsel had regarding the letters sent by K&L Gates to clients
25 of the Debtor?

1 MR. MORRIS: I'm sorry, Your Honor. I had trouble
2 hearing that question.
3 THE COURT: Please repeat.
4 MR. BONDS: Sure.
5 BY MR. BONDS:
6 Q Do you recall the questions Debtor's counsel had regarding
7 the letters sent by K&L Gates to the clients of the Debtor --
8 to the Debtor?
9 A Yes.
10 Q You testified on direct that the letters were sent to do
11 the right thing; is that correct?
12 A Yes.
13 Q What did you mean by that?
14 A I don't want to repeat too much of what I just said, but
15 the Debtor has a contract to manage the CLOs, which in no way
16 is it not in default of. It doesn't have the staff. It
17 doesn't have the expertise. Seery has no historic knowledge
18 on the investments. The investment staff of Highland has been
19 gutted, with me being gone, with Mark Okada being gone, with
20 Trey Parker being gone, with John Poglitsch being gone.
21 And there's -- there's a couple analysts that are a year
22 or two out of school. The overall portfolio is in no way
23 being understood, managed, or monitored. And for it to be
24 amateur hour, incurring losses for no business purpose, when
25 the investors have requested numerous times for their account

not to be traded, is crazy to me. Where the investors say, We just want our account left alone. We just want to keep the exposure. And Jim Seery decides no, there's -- I'm going to turn it into cash for no reason. I'm just going to sell your assets and turn them to cash and incur losses by doing it the week of Thanksgiving and the week of Christmas. I think it's -- it's shameful. I'm glad the compliance people and the general counsel at HFAM and NexPoint saw it the same way. I didn't edit their letters, proof their letters, tell them how to craft their letters. They did that themselves, with regulatory counsel and personal liability. They put forward those letters.

MR. MORRIS: Your Honor (garbled) the testimony that Mr. Dondero just gave about these people saw it. They're not here to testify how they saw it. We know that Mr. Dondero personally saw and approved the letters before they went out. He can testify what he thinks, what he believes. I have no problem with that. But there should be no evidence in the record of what the compliance people thought, believed, understood, anything like that. It's not right.

THE COURT: All right. That's essentially a --

MR. BONDS: Your Honor?

THE COURT: -- a hearsay objection, I would say, or lack of personal knowledge, perhaps. Mr. Bonds, what is your response?

MR. BONDS: Your Honor, my response would be that there are several exhibits the Debtor introduced today that stand for the proposition that the compliance officers were concerned. So I think there is ample evidence of that in the record.

THE COURT: I didn't --

MR. MORRIS: Your Honor, the letter --

THE COURT: I did not understand what you said is in the record. Say again.

MR. BONDS: Your Honor, I'm sorry. The -- there are -- there are references that are replete in the record that have to do with the compliance officers' understanding of the transactions.

THE COURT: I don't know what you're referring to.

THE WITNESS: Your Honor?

THE COURT: I've got a lot of exhibits. You're going to have to point out what you think --

THE WITNESS: Can I -- can I -- can I -- can I answer for -- that for a second? The letters that were signed by the compliance people or by the businesspeople at NexPoint and HFAM objecting to the transactions, those letters were their beliefs, their researched beliefs. They weren't --

THE COURT: Okay.

THE WITNESS: -- micromanaged by me. You know, they weren't -- I agree with them, but those weren't my beliefs

that they've stated. Those were their own beliefs and their own research, --

THE COURT: All right.

THE WITNESS: -- and the record should reflect --

THE COURT: This is clearly hearsay. I mean, it's one thing to have a letter, but to go behind the letter and say, you know, what the beliefs inherent in the words were is inadmissible. All right? So I strike that.

THE WITNESS: Maybe ask your question again.

BY MR. BONDS:

Q Yeah. What is your understanding of the rights that these parties had and what do you believe that was intended to be conveyed by the compliance officers?

MR. MORRIS: Objection. Calls -- calls for Mr. Dondero to divine the intent of third parties. Hearsay.

THE COURT: I sustain.

MR. BONDS: Your Honor, --

MR. MORRIS: No foundation.

MR. BONDS: -- I don't agree. I think that this is asking Mr. Dondero what he thinks.

MR. MORRIS: The letters speak for themselves, Your Honor.

THE COURT: Okay. I sustain --

MR. MORRIS: And Mr. --

THE COURT: I sustain the objection.

MR. MORRIS: All right. Thank you.

THE WITNESS: Ask me what I know. Or ask me what my concerns --

BY MR. BONDS:

Q Let me ask you this. What were your concerns relating to the compliance officers' exhibit?

A My concerns regarding the transaction, the transactions, which may repeat what I've said before, but I do want to make sure it gets in the record. So if we have to make a -- these were my concerns, whether or not they were the compliance people's concerns. I believe they were, and I believe they were similar, but I'm just going to say these are -- these were my concerns.

The Debtor, with its contractual -- with its contract with the CLOs, were in no way -- was in no way compliant with that contract or not in default of that contract. Bankruptcy is a reason for default. Not having the key men specified in the contract currently employed by the Advisor is a violation. Not having adequate investment staff to manage the portfolio is a violation of that contract. Announcing that you're laying off everybody and will no longer be a registered investment advisor is proclaiming that you, if you even have any -- any -- pretend that you're qualified or in compliance with the contract now, you're broadcasting that you won't be in three weeks, are -- are all mean that you're not in good

standing. Okay? Number one.

Number two, when the investors know that it's in transition, you're not in compliance as a manager, you're not going to be an RIA in three weeks, the accounts are going to have to transition to somebody else in three weeks, and the investors ask you, Please don't trade my accounts between now and then, that is -- that is a -- if it's not a *per se*, it's an ethical and a spirit violation of any relationship between an investor and an asset manager.

To then sell assets -- not replace assets, just sell assets for cash -- and purposely do it on the least liquid days of the year -- the day before Thanksgiving, the day after Thanksgiving, the week of Christmas, this past week, whatever -- to purposely incur losses so that the investors suffer ten or fifteen percent losses that other -- on each of those sales that they wouldn't otherwise have to incur, and for no stated business purpose, for no investment rationale, with no staff to even say whether the investment is potentially going up or down, is -- is -- is -- I've never seen anything else like it.

And I will stand up and say it every day: I'm glad the letters went out from HFAM and from NexPoint. I would never recommend they get retracted. And I believe everybody who signed those letters meant everything in those letters. And I believe the letters are correct. And I believe the whole selling of CLO assets is a travesty.

My personal opinion, we need an examiner or somebody here to look at this junk and look at some of the junk that occurred earlier this year. This -- this stuff is unbelievable to me.

Q Generally, who holds interests in the CLOs?

A A vast majority of the CLOs that we're speaking of that Seery has been selling the assets of are owned by the two mutual funds, the two '40 Act -- the two '40 Act mutual funds and the DAF. Between them, I think out of -- eleven out of the sixteen CLOs, they own a vast majority, and then I think, whatever, two or three they own a hundred percent, and I think two or three they own a significant minority.

And just because they don't own a hundred percent doesn't somehow allow a registered investment advisor to take advantage of an investor. And I -- I've never understood that defense. I wouldn't be able -- in my role of 30 years, I wouldn't be able to tell that to an investor, that, hey, you had a contract with us, we did something that wasn't in your best interest, but we got away with it because you didn't own a hundred percent, you only owned eighty percent.

MR. MORRIS: Your Honor, I move to strike. There's no contract between the Debtor and Mr. Dondero's -- and the entities that he owns and controls for purposes of the CLO. The only contract is between the Debtor and the CLOs themselves.

THE COURT: All right. Well, I overrule whatever objection that is. Again, if you want to bring something out on cross-examination or through Mr. Seery, you know, you're entitled to do that.

All right. Please continue.

BY MR. BONDS:

Q Do you believe these letters were sent by the Funds to the Advisors because they are trying to protect the independent entities?

A They're trying to protect their investors. They were trying to protect their regulatory liability for activities they see that are not in the best interests of investors.

MR. MORRIS: Objection, Your Honor. I move to strike. He's again testifying as to the intent of the people who sent the letters who are not here to testify today.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, what is your belief as to the letters that were sent by the Funds and Advisor? Is -- are they trying to protect their independent interests?

MR. MORRIS: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

THE WITNESS: Ask me --

BY MR. BONDS:

Q What is your understanding of why the letters were sent?

MR. MORRIS: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, would you have sent the letters?

A I would have sent the letters exactly or very similar or probably even more strongly than the letters were stated, for the purposes of protecting investors, to protecting mom-and-pop mutual fund investors from incurring unnecessary losses by an entity that was no longer in compliance with their -- with their asset management contract and because the investors had requested that their account just be frozen until it was transitioned.

That's why I would have sent the letter. That's why I believe the letter should be sent. That's why I'm happy they were sent. That's why we've never retracted.

Q Mr. Dondero, who is Jason Rothstein?

THE COURT: I did not hear the question.

THE WITNESS: Jason -- Jason --

MR. BONDS: Who --

THE COURT: Please repeat.

MR. BONDS: Yes. I asked Mr. Dondero who Jason Rothstein was.

THE WITNESS: Jason Rothstein heads up our systems

department at Highland Capital.
BY MR. BONDS:
Q Can you explain what your text message to Mr. Rothstein was about?
A Which text message? The one where it was in the drawer?
Q Yeah.
A Uh, --
Q And that was actually from him, not you.
A Yeah. That was from him. I think he transferred icons or set up personal stuff to the new phone, and he was just saying that the old phone was in Tara's drawer.
Q And you don't know whether -- what's happened to the phones, do you?
A No. Like I said, I believe they've been destroyed, but I -- I can find out. I mean, I can query and find out who destroyed it, if that's important.
Q And you understood that you were not supposed to talk to the Debtor's employees; is that correct?
A Like I said, except for my roles regarding shared services, the pot plan, and trying to reach some type of settlement, I've had painfully few conversations with the Debtor's employees.
Q When you talked to certain employees, did you think it was an -- under an exception to the TRO, like shared services, related to the pot plan, or settlement communications?

A Yes.

MR. MORRIS: Your Honor, I move to strike. Mr. Dondero never read the TRO. He's got no basis to say what the TRO required and didn't require.

MR. BONDS: That wasn't the -- that wasn't the question.

THE COURT: Okay.

MR. BONDS: I'm sorry.

THE COURT: Okay. Rephrase the question, please.

MR. BONDS: Okay. I'm sorry.

BY MR. BONDS:

Q When you talked to these -- to certain employees, did you think it was under an exception to the TRO, like shared services, relating to the pot plan, or settlement communications?

A Yes. Absolutely.

MR. MORRIS: I object. No foundation.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, do you understand -- did your lawyers explain to you the TRO?

A Yes.

Q And who was the lawyer that explained the TRO to you?

MR. MORRIS: Your Honor, I don't know if we're getting into a waiver of privilege, but I just want to tell

you that my antenna are up very high.

THE COURT: Okay. Mine are as well, Mr. Bonds. Are you about to waive the privilege?

MR. BONDS: No, Your Honor, I am not.

THE COURT: Okay. Well, it sounded like perhaps we were about to have the witness testify about conversations he had with lawyers.

MR. BONDS: I'm sorry, Your Honor. That was not my intention. Again, I'm asking Mr. Dondero to explain for us his contact with -- or, his impression of the TRO.

BY MR. BONDS:

Q What did the TRO mean to you?

A The TRO meant to me that I was precluded from talking to Highland employees -- which, again, very few, if any, were coming into the office. I was not talking to Highland employees with any regularity anyway. But there was an exception with regard to Scott Ellington regard -- Scott Ellington in terms of him functioning as settlement attorney to try and bridge the U.C.C., the Independent Board, Jim Seery, other people, and things that impacted me or other entities.

I also viewed that there was an exception for the pot plan, which had been presented and gone over as recently as December 18th and 20th. And -- or December 18th, I think, was the date.

And you know what, I want to clarify a characterization of the pot plan. I still believe it's the best and most likely alternative for this estate in the long run. I think what we've proposed numerous times is more generous than what anyone will receive in a liquidation and in a more timely fashion.

And the last time we presented it to the Independent Board, the Independent Board thought it was attractive and thought we should go forward with it to the U.C.C. and other parties.

MR. MORRIS: Your Honor, I move to strike the last portion of the answer that purports to describe what the Independent Board thought.

THE COURT: Well, --

MR. MORRIS: No foundation. Hearsay.

THE COURT: What is your response to the hearsay objection, Mr. Bonds?

MR. BONDS: Your Honor, I don't have one.

THE COURT: Okay. I sustain.

BY MR. BONDS:

Q What exceptions did you believe there were for communications with employees?

A Okay. Thank you. Yeah. Like I said, I covered Scott Ellington and settlement counsel. I covered the pot plan.

Q Okay.

A My -- my view of the pot plan as -- my view of the pot plan was that it was very attractive, and I had received encouragement to go forward with it as something that should be workable. That's my testimony on that.

And then -- and we talk about negotiating shared services. So, there's shared services in terms of overlap in functionality, but there's also, in terms of negotiating the shared services agreement, which, as I said, was something that Ellington was put in charge of three or four days ago by Jim Seery to negotiate with us. And he reached out to me to negotiate it. And I think the Pachulski deadline on it was three days later. That whole process was something that I viewed as separate from the TRO, especially since it was initiated by Jim Seery, DSI, et cetera, and consistent with what Scott Ellington's role had been for the last six, nine months.

Q As to the Debtor's request that you vacate the office space, did you comply with this request?

A Yes.

Q What did you think that vacating meant?

A I moved out all my -- my personal items to a new office at NexBank.

Q (faintly) And, in fact, did you work on the last day over to 3:00 a.m.?

A Yes. 4:00.

THE COURT: Mr. Bonds, I didn't hear your question. I didn't hear your question.

MR. BONDS: Okay. I'm sorry.

BY MR. BONDS:

Q Did -- isn't it true that you worked through the night, to 3:00 or 4:00 a.m., to vacate the premises?

A Yes. Until 4:00 a.m. on the last day, to organize and pack up all my stuff, yes.

Q Did you think your presence in the office, with no other employees there, violated the spirit of the TRO?

A No. I thought it was over the top and meant to tweak me, but, yeah, there's no -- there's not Debtor employees coming in since COVID.

Q (faintly) Okay. And you thought you could talk to Mr. Ellington and -- as settlement counsel; is that correct?

MR. MORRIS: I'm having trouble hearing it, Your Honor.

THE WITNESS: Yes.

THE COURT: Yeah. We're -- Mr. Bonds, please make sure you speak into the device.

MR. BONDS: I'm sorry. I'll try to get closer. Okay. I asked the Debtor -- or I, excuse me, I asked Mr. Dondero if he thought he could talk to Ellington as a go-between or settlement counsel. And I asked him if that was correct.

1 THE WITNESS: Yes. For settlement, shared services,
2 the pot plan. Nothing that interrupts or affects the Debtor,
3 but for those purposes, as has consistently occurred for the
4 last six months.
5 BY MR. BONDS:
6 Q Okay. And you saw the texts and emails presented by the
7 Debtor between you and Mr. Leventon; is that correct?
8 A The one regarding Multi-Strat?
9 Q Yes.
10 A Yes.
11 Q In your understanding, did you believe those
12 communications were allowed under the TRO?
13 A Well, yes. And, again, to clarify my -- my contrasting
14 testimony, I would never typically have gone to them for that
15 kind of information, but to be compliant with the TRO, for
16 Multi-Strat information, which I needed in order to put
17 together the pot plan that the Independent Board audienced on
18 December 18, I needed the information on Multi-Strat, and I
19 requested it as appropriate through settlement counsel
20 Ellington. And I think Ellington requested it from Isaac, who
21 requested it from David Klos.
22 The whole purpose, I believe -- my belief is the whole
23 purpose of this TRO is to make it impossible for us to get
24 information to come up with alternatives other than a -- the
25 plan proposed by Jim Seery. It's our -- if -- if -- without

Ellington in the go-between, which he's now no longer an employee, I assume the only way we get any information, balance sheet or anything from Highland Capital, is with a subpoena.

And as much as I've tried to engage or make an attractive pot plan for everybody, each one of them has been a complete shot in the dark, without even knowing the assets and liabilities of Highland, but just estimating where they were or were likely to be.

Q Do you believe your text message with Leventon caused any harm to the Debtor's business?

A No. It potentially fostered a pot plan, because, you have to know, the pot plan needed -- one of the aspects of the pot plan was the --

Q Do you still want to advocate for your pot plan?

A I think that's eventually where we ultimately end up. Or -- or should end up. Otherwise, I fear it's going to be an extended, drawn-out process.

Q And how much did you initially propose to pay creditors in this case?

A The most recent -- the most recent pot plan?

Q No. The -- initially.

A The initial pot plan, I believe, was $160 million.

Q And what about the notes?

A There was $90 [million] of cash and I believe $70

[million] of notes.
Q And what is Multi-Strat?
A Multi-Strat is a fund that's managed by Highland. They used to have $40 or $50 million in value. It used to contain a lot of life settlement policies. And I believe now has $5 or $6 million of value, after assets have been sold.
Q Do you recall the email Debtor's counsel presented regarding the balance sheet today?
A The balance sheet of Multi-Strat?
Q Correct.
A Yes.
Q Do you believe you were entitled to see that document?
A Yes. It's just -- again, for the pot plan, I needed it. But also I'm an investor in that fund and I'm entitled to it. It's -- there was nothing in there that was improper or untoward or in any way damaged the Debtor.
Q And you recall the request for documents sent by the Debtor; is that correct?
A On my -- my personal estate plan?
Q No, on Multi-Strat.
A The Debtor's request on -- I'm sorry. What was that?
Q The Debtor sent you a request for Multi-Strat. For Duga -- I'm sorry.
A For Dugaboy? Okay.
Q Dugaboy.

A Yeah. There's -- there's personal estate planning trusts. Some are active. Some are inactive. Some have been around for 15 years. But they're -- they're not assets or anything that's related to the estate. And that was -- that was my text to Melissa that said, you know, Not without a subpoena.

Q Mr. Dondero, if you remember back on Exhibit K, there was some request that you terminate your offices at the Crescent, and I think you were given seven days' notice to do that. Do you know if Christmas occurred during that time?

A I believe it did.

Q So, if Christmas and Christmas Eve are both holidays, how many days, business days, did they give you to terminate or to get out of the space?

A There would have been three business days. It was Monday through Wednesday that I moved out.

MR. BONDS: Your Honor, I'll pass the witness.

THE COURT: All right. Mr. Morris?

THE WITNESS: Take a break. I hope.

MR. BONDS: Your Honor, I'm sorry, can I take a ten-minute break? I think that I'm going to be through, but I don't know.

THE COURT: All right. I'll give you a ten-minute break.

MR. BONDS: All right. Thank you, Your Honor.

THE COURT: We're coming back at 2:15.

THE CLERK: All rise.

(A recess ensued from 2:06 p.m. until 2:16 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in Highland versus Dondero. Mr. Bonds, do you have more examination?

MR. BONDS: Your Honor, I have one question.

THE COURT: Okay.

MR. BONDS: And that's --

MR. LYNN: And one more witness.

MR. BONDS: And one more witness.

CROSS-EXAMINATION, RESUMED

BY MR. BONDS:

Q Do you think that Scott Ellington and Isaac Leventon were treated appropriately by the Debtor?

A No, I do not. I don't think they've been treated fairly, nor do I think other senior employees have been treated fairly. I've never seen a bankruptcy like this where, during complex unwinding of 20 years of various different entities and structures, relying on the staff, working them hard, working overtime, a lot of investment professionals like lawyers and DSI just putting their name on the work of stuff that was done by internal employees, getting to the end of the year, trying to pay people zero bonuses and retract prior years' bonuses, and try and come up with legal charges against

1 those people is unusual to this case and my experience, in the
2 bankruptcies we've been involved in, where typically
3 management teams get paid multiples of current salary to stay
4 on and be the experts.
5 I also think they were put in difficult spots from the
6 very beginning. It was Jim Seery that made Scott Ellington
7 the settlement counsel six, seven months ago. It was a
8 broadly-defined role that was never retracted, never adjusted,
9 never modified, yet somehow he and Isaac violated it. I don't
10 know. I haven't spoken to them since they've been terminated.
11 They aren't allowed to speak to me, from what I hear. But I
12 wish them luck in their claims.
13 THE COURT: Okay. You pass the witness?
14 MR. BONDS: Yes, Your Honor.
15 THE COURT: All right. Mr. Morris, do you have
16 further examination?
17 MR. MORRIS: Just a few questions.
18 REDIRECT EXAMINATION
19 BY MR. BONDS:
20 Q Mr. Dondero, you knew about this hearing for some time,
21 right?
22 A No.
23 Q When did you first learn this hearing was going to take
24 place?
25 A Two days ago.

Q Two days ago?
A When was the depo, three days ago? Whatever.
Q And you didn't know prior to the deposition that we would be having a hearing today on the Debtor's motion for a preliminary injunction?
A No. I thought it was going to be postponed or canceled. I was waiting for the text last night.
Q You had an opportunity to call any witness in the world you wanted to today, right?
A I guess.
Q You could have called -- you could have called the chief compliance officer at the Advisors if you thought the Court should hear from him as to the compliance issues that you've testified to, right?
A I think their letters stand on their own.
Q Okay. So you didn't think that it was important for the Court to hear from Mr. Sowin directly, correct?
A Sowin is a trader.
Q I'm sorry. Who's the chief compliance officer of the Advisors?
A Jason Post, as far as NexPoint is concerned. He's the one that would have been behind the K&L -- K&L letters.
Q And he is not here today to testify, right?
A I think his letters stand on their own and I think everybody should read them, make sure they read them.

Q Okay. But Mr. Post is not here to answer any questions; is that right?
A I don't know if there are any questions beyond what's obviously stated in the letters. You should read the letters carefully. They're -- they're -- they talk about clear violations.
MR. MORRIS: Your Honor, I move to strike. It's a very simple question.
THE COURT: Sustained. That was another yes or no answer, Mr. Dondero. Go ahead.
THE WITNESS: I'm sorry.
BY MR. MORRIS:
Q Mr. Dondero, Mr. Post is not here to testify in order to explain to the Court what he thinks the regulatory issues are, correct?
A He's not here today.
Q And you could have called him as a witness, correct?
A Yes.
Q And you thought Mr. Ellington and Mr. Leventon were treated unfairly, right?
A Yes.
Q And there's no reason why they couldn't have come today to testify, correct?
A I guess they could have.
Q And there's no reason why anybody on behalf of the K&L

Gates clients couldn't have been here to testify, correct?
A I didn't deem it necessary, I guess.
Q Okay. You could have offered into evidence, at least offered into evidence, any document you wanted, right?
A Yes.
Q And you could have offered the judge, for example, the shared services agreement, the shared services agreements for which you gave the Court your understanding, right?
A Which shared services, the one that Seery gave Ellington three days ago or the original one from years ago?
Q Any of the ones -- any of the ones that you have referred to today. You could have given any of them to the judge, right?
A Correct.
Q And you didn't, right?
A I did not.
Q In fact, there's not a single piece of evidence in the record that corroborates anything you say; isn't that right?
A I -- I believe all those documents are in the record. They're just not in the record of this TRO. But they're all --
Q Oh.
A They're all in the record.
Q Do you remember that there was a hearing on December 16th? I think you -- you testified that you're fully aware of that

hearing that was brought by the K&L Gates Clients. Do you remember that?

A Yes.

Q Who testified at that hearing on behalf of the K&L Gates Clients? Dustin Norris?

A I believe -- I believe Dustin Norris testified.

Q Uh-huh. And what's Mr. Norris's role at the Advisors?

A He's one of the senior managers.

Q Is he a compliance officer?

A No.

Q Is he a trader?

A No. But he's one of the senior managers.

Q Okay. They could have called anybody they wanted, to the best of your understanding, right?

A I don't think they got a chance to. Wasn't it an abbreviated hearing?

Q They offered Mr. Norris as a witness. Do you understand that?

A I -- all I -- I wasn't there. I didn't attend virtually. I -- but I did know that Norris testified. But I don't know who else was called, wasn't called, was going to be called, was on the witness list. I have no awareness.

Q Okay. You were pretty critical of the trades that Mr. Seery wanted to make that you interfered to stop, right?

A I think he's subsequently done most of those trades.

Q And you called them preposterous because he wanted to do it around Thanksgiving or around Christmas, at least based on your testimony, correct?
A That's when it did occur.
Q And is it your testimony -- is it your testimony that every single person in the world who trades securities near a holiday is making a preposterous trade?
A I think it's amateur and not what an investment professional would do.
Q So you never trade on holidays; is that your testimony? You've never done it once in your life?
A Very rarely, unless there's another overriding reason. And there was no overriding reasons, period.
Q How would you know that when you didn't even ask Mr. Seery why he wanted to make the trades?
A I asked Joe Sowin, who asked Jim Seery. And Joe Sowin said that Jim Seery just said for risk reduction.
MR. MORRIS: I move to strike on the grounds that it's hearsay, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q You never asked Mr. Seery why he wanted to make the trades, correct?
A I'm not allowed to talk to Mr. Seery.
Q You certainly were around Thanksgiving; isn't that right?

A I don't know.
Q There was no TRO in place at that time, correct?
A That's true.
Q You're pretty critical of Mr. Seery and his capabilities; is that right?
A He's a lawyer. He's not an investment professional.
Q Did you object to his appointment as the CEO of the Debtor?
A No.
Q Have you made any motion to the Court to have him removed as unqualified?
A Not yet.
Q Okay. But with all the knowledge of all the preposterous things that he's been doing for months now, you haven't done it, right?
A No.
Q When you -- when -- before you threw the phone in the garbage, did you back it up?
A No.
Q Did it occur to you that maybe you should save the data?
A No.
Q You said that the only way you think you might be able to get information going forward is through a subpoena. Do I have that right?
A I mean, that's how it seems. I mean, it seems at every

1 turn -- and now with Scott Ellington being gone and Isaac
2 being gone -- I have no idea how the Debtor is ever going to
3 defend against UBS.
4 THE COURT: I did not --
5 THE WITNESS: I have no idea how --
6 THE COURT: I didn't hear the answer after with
7 Ellington and Leventon being gone. I didn't hear the rest of
8 the answer. Could you repeat?
9 THE WITNESS: I said I have no idea how the Debtor is
10 ever going to defend itself against UBS. But I also have no
11 idea how we're ever going to get any information or ever push
12 forward any kind of settlement without having any access to
13 information or anybody to talk to.
14 BY MR. MORRIS:
15 Q Do you trust Judge Lynn?
16 (Echoing.)
17 A Yes.
18 Q Is he a good advocate?
19 A Yes. If anybody returns his phone calls.
20 Q Do you recall that on October 24th Judge Lynn specifically
21 asked my law firm to provide information on your behalf in
22 connection with the Debtor's financial information, their
23 assets and their liabilities?
24 A Yes.
25 Q Do you recall that the Debtor simply asked that you

1 acknowledge in an email between and among counsel that you
2 would abide by the confidentiality agreement that was entered
3 by the Court?
4 A I wasn't involved in those details.
5 Q Didn't you send an email in which you agreed to receive
6 the financial information subject to the protective order that
7 this Court entered?
8 A I'm sure I would. I just don't remember.
9 Q That was a condition that the Debtors made. That doesn't
10 refresh your recollection?
11 A I'm not denying it. I just don't remember, and --
12 Q Okay. And --
13 A (overspoken)
14 Q I'm sorry, I don't mean to cut you off. And in fact, on
15 December 30th, the day you were supposed to vacate the office,
16 the Debtor voluntarily provided to Judge Lynn all of the
17 information that had been requested on your behalf without the
18 need for a subpoena, right?
19 A Yeah. It took a week. It's 40,000 pages of mixed
20 gobbledygook that we're -- we're going through. But it should
21 provide enough information for us to negotiate a pot plan if
22 anybody so chose.
23 Q So you didn't need to (echoing) the 40,000 pages of
24 financial information from the Debtor; all you needed was an
25 agreement that you would abide by the protective order.

Correct?

A I think that was the first thing that was ever produced on request that I can remember. But yes.

Q And it was just a week ago, right?

A Yes.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Mr. Bonds, do you have anything else?

MR. BONDS: I do not, Your Honor, as to this witness. I have one other witness.

THE COURT: All right.

MR. MORRIS: Your Honor, I don't know who they plan on calling, but he's not on the witness list.

THE COURT: All right. Well, --

MR. BONDS: Your Honor, this other witness --

THE COURT: Just a moment. This concludes, for the record, Mr. Dondero's testimony. But, obviously, stick around, because we're going to have a lot to talk about when this is finished as far as the evidence.

All right. Now, who are you wanting to call that you did not identify?

MR. BONDS: I'd like to call Mike Lynn for the purpose -- or, to -- as a rebuttal witness.

THE COURT: Lawyer as witness?

MR. MORRIS: Your Honor?

THE COURT: Well, you know, first off, rebuttal of what? Rebuttal --

MR. MORRIS: Exactly. He's going to rebut his own client, Your Honor? He's going to rebut his own client? There's only been one witness to testify here. He was on their exhibit list. How do they call a witness to rebut their own client?

THE COURT: Yes. What -- I don't --

MR. BONDS: Your Honor?

THE COURT: Go ahead.

MR. BONDS: Mr. Morris testified or attempted to testify that the pot plan didn't gain any traction. We will submit Mike Lynn on that issue.

THE COURT: No.

MR. MORRIS: Your Honor?

THE COURT: I'm not going to allow a lawyer to testify to rebut lawyer argument. That's very inappropriate, in my view. So, not going to happen.

MR. LYNN: (garbled)

MR. BONDS: Your Honor, he would be a fact witness to discussions with the other side.

MR. MORRIS: Your Honor, I strenuously object. They're -- he's only rebutting -- my questions are not evidence. The only evidence in the record is Mr. Dondero's testimony. Mr. Dondero is their client. Mr. Dondero was on

their witness list. They should not be permitted to call any witness, with all due respect to Mr. Lynn, to rebut their own witness.

THE COURT: All right.

MR. BONDS: Your Honor, we're not rebutting our witness. We are rebutting the testimony that Mr. Morris gave.

THE COURT: Mr. Morris is a lawyer. He makes argument. He asks questions. He was not a witness today. Okay?

So if you want to say whatever you want to say as lawyers in closing arguments, then obviously you can do that. But I'm not going to allow a lawyer to be a witness to rebut something another lawyer said in argument or in a question. I -- it's -- so, I disallow that.

Anything else, then?

MR. BONDS: No.

THE COURT: Okay. And while we're talking about procedure, actually, Mr. Morris, it's the Debtor's motion, and I'm not even sure that's all of your evidence. So, do you have any more evidence as Movant?

MR. MORRIS: No, Your Honor. The Plaintiff and the Debtor rest.

THE COURT: All right. So, at the risk of repeating, now that the Movant has rested, it would be Mr. Dondero's chance to put on supplemental evidence. But what I'm hearing

from Mr. Morris is there were no witnesses identified on your witness list?

MR. BONDS: Other than Mr. Dondero, Your Honor.

THE COURT: Okay. All right. Well, was there any stipulated documentary evidence that -- that you had --

MR. BONDS: No, Your Honor.

THE COURT: All right. Well, I guess we're done with evidence.

Mr. Morris, your closing argument?

MR. MORRIS: All right. Before I get to that, Your Honor, I just want to make a very brief statement. When the Debtor objected to Mr. Dondero's emergency motion for a protective order, the Debtor stated that it sought discovery from Mr. Dondero to determine whether Mr. Dondero may have violated the TRO by interfering and impeding the Debtor's business, including by potentially colluding with UBS. After that motion was decided, both Mr. Dondero and UBS produced documents to the Debtor.

Based on the review of that information, the Debtor found no evidence that Mr. Dondero and UBS colluded to purchase redeemed limited partnership interests of Multi-Strat, nor any inappropriate conduct by UBS or its counsel.

The Debtor appreciates the opportunity to clear that part of the record.

THE COURT: All right.

CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

MR. MORRIS: Now, with respect to the motion at hand today, Your Honor, I want to take you back just about a month ago to December 10th, 2020. At that time, we had a hearing on the Debtor's motion for a TRO. The motion had been filed in advance. Mr. Dondero had filed an objection. He had concerns about the scope and the language of the terms of the proposed TRO.

And at that hearing, Your Honor, if you'll recall, you listened carefully to the arguments that were made on behalf of Mr. Dondero. You heard carefully -- you listened carefully to the proposed changes that he sought to make. And you went through that proposed TRO word by word, Paragraph 2 and 3, and you read them out loud, and you made decisions at that time as to whether the Court believed any portion of that was ambiguous or whether it was clear. You made determinations at that time whether or not the provisions were reasonable.

Mr. Dondero wasn't there. He didn't read the transcript. He has no idea what you said. But his lawyers were there, and they had an opportunity to object and they had an opportunity to make comments, and the order is what the order is. And for whatever reason, Mr. Dondero chose not to read it, or, frankly, even understand it, based on his testimony.

The fact is, Your Honor, the one thing that the evidence shows very clearly here is that Mr. Dondero thinks that he is

the judge. He believes that he is the decider. He believes that he decides what the TRO means, even though he never read it. He believes that he decides what exceptions exist in the TRO, even though he never read it.

He believes that he decides that it's okay to ditch the Debtor's cell phone without even seeking, let alone obtaining, the Debtor's consent. I guess he decides that he can ditch the phone and trash it without seeking to back it up or informing the Debtor.

Mr. Dondero believes that he gets to decide that it's okay to take a deposition from the Debtor's office, even when the Debtor specifically says you're evicted and you're not allowed to have access.

Mr. Dondero believes that he gets to decide that Mr. Seery has no justification for making trades, even though he couldn't take the time to pick up the phone or otherwise inquire as to why Mr. Seery wanted to do that.

Mr. Seery -- Mr. Dondero believes that he is the arbiter and the decision-maker and gets to decide to stop trades, notwithstanding the TRO, notwithstanding the CLO agreements that he is not a party to, that his entities are not a party to.

Mr. Dondero thinks that he gets to decide that the Debtor has breached the agreements with the CLOs. He gets to decide that the Debtor is in default under those agreements. He gets

1 to decide that it's perfectly fine for Ellington and Leventon
2 to support his interests while they have obvious duties of
3 loyalty to the Debtor.
4 It is not right, Your Honor. It is not right. I stood
5 here, I sat here, about four hours ago, five hours ago, and
6 told the Court what the evidence was going to show, and it
7 showed every single thing that I expected it to show and
8 everything I just described for the Court about Mr. Dondero's
9 belief that he's the decider.
10 He's not the decider, Your Honor. You are. And you made
11 a decision on June -- on December 10th that he ignored.
12 There is ample evidence in the record to support the
13 imposition of a preliminary injunction. And Your Honor, I'm
14 putting everybody on notice now that we're amending our
15 complaint momentarily to add all of the post-petition parties,
16 because this has to stop. The threats have to stop. The
17 interference has to stop. Mr. Dondero can always make a
18 proposal if he thinks that there's something that will capture
19 the imagination and the approval -- more importantly, the
20 approval -- of the Debtor's creditors. We have no interest in
21 stopping him from doing that. He's got very able and
22 honorable counsel, and he can go to them and through them any
23 time he wants.
24 But the record is crystal clear here that, notwithstanding
25 Your Honor's order, one entered after serious deliberation, is

of no meaning to him. And we'll be back at the Court's convenience on the Debtor's motion to hold him in contempt. It'll just be a repeat of what we've heard today, because, frankly, the evidence is exactly the same.

With that, Your Honor, unless you have any questions, the Debtor rests.

THE COURT: All right. I do not.

Mr. Bonds?

MR. BONDS: Your Honor, we would like to divide our time between Mike Lynn and myself. Is that a problem?

THE COURT: That's fine. Go ahead.

MR. LYNN: Are we on mute?

MR. BONDS: No.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. LYNN: Your Honor, I'm taking a leaf out of Mr. Phelan's book. I happened to read the confirmation hearing in the *Acis* case regarding what was referred to as Clients A, B, and C. And Mr. Phelan, who testified, really gave an oral argument to the Court which was very persuasive and very thorough. So I'm going to sort of do the reverse, because I hope that the Court would find useful some information regarding the pot plan about which you've heard many words spoken but very little to do with what that plan was or how it came about.

The pot plan was proposed by Mr. Dondero for the first

time in September of 2020, shortly after the conclusion of the first round of mediations. Though there had been versions of it before, and lesser versions, the pot plan was finally in the form that would more or less survive it in September. Under the pot plan, Mr. Dondero proposed to come up with $90 million of cash and $70 million in promissory notes, and that was to form a pot which creditors would share in.

The proposal was provided to the Debtor and then shared with the Committee. Mr. Seery responded with a degree, a degree only, of enthusiasm to the pot plan, and indeed provided a counter-term sheet to the pot plan. He also, so he said, and I believe him, approached the Committee and said this is a proposal to be taken seriously.

He proposed some improvements in his view to the pot plan. No response was received from the Creditors' Committee at that time.

After going back and forth with the Debtor -- and Mr. Seery, not unreasonably, was unwilling to propose the pot plan without some support on the Creditors' Committee -- I contacted Matt Clemente. We had a nice conversation. And at that time, Mr. Clemente raised two particular concerns. The $160 million, which creditors did not think was enough, was not enough, in part, because that included no consideration for the acquisition of promissory notes executed some by Mr. Dondero and some by entities controlled by Mr. Dondero, which

1 notes total approximately $90 million.
2 The second concern was that Mr. Dondero would get a
3 release under the plan. During that call, I said the issue of
4 the notes is subject to negotiation and might well result in a
5 transfer of those notes, possibly with some amendments, to the
6 pot, and that Mr. Dondero was prepared, in all likelihood, to
7 forego a release.
8 Mr. Clemente agreed to get back to me. He did. And he
9 said to me, I have talked to the Committee about this and they
10 would like you to go to or they want you to go first to Mr.
11 Seery, work off of his revised timesheet -- or term sheet,
12 sorry -- and after you have reached an agreement with him,
13 come to us, come to the Committee, and we'll negotiate with
14 you.
15 Now, I might have agreed that that was a reasonable
16 approach if there were a possibility that Mr. Seery would
17 propose a plan without the agreement of creditors. But the
18 way I took it was that the Committee was saying go make a deal
19 with Seery and then we'll start negotiating, and we know,
20 correctly, that Mr. Seery will not propose a plan that does
21 not have our support.
22 So, effectively, we get to go through two rounds of
23 negotiations, even though effectively everything that is in
24 the estate, everything -- causes of action against Mr.
25 Dondero, promissory notes from Mr. Dondero -- everything that

they would get under a plan or under a liquidation, they would get under the pot plan.

Now, I wanted you to know that, Your Honor, not because I'm now trying to get you or anyone else to sell the pot plan. But I think it's important that Your Honor know that Mr. Dondero's approach in this case has not been a hostile approach.

I know the Court had what it found to be an unsatisfactory experience with Mr. Dondero in the *Acis* case. But from the time I became involved in this case and Mr. Bonds became involved, we have been quiet, we have said nothing, and we've done virtually nothing in the case, up until the time after the mediation, when negotiations regarding a pot plan broke down.

Since that time, regrettably, there has been a good deal of hostility, and it's spreading. I would like to see it stop spreading. I will do what I can to make it stop spreading. But I need others to help me on that. And it's my hope that I can count on the Pachulski law firm, the Sidley law firm, and the firms representing the major creditors to help make that happen.

I do not think, and I would submit that it is not to the benefit of the estate, it is not to the likely workout of this case, that it would be best served by entering a preliminary injunction, which it appears to me prevents Mr. Dondero from

1 saying good morning to one of the employees of the Debtor that
2 he knows.
3 It seems to me, Your Honor, that the injunction, by its
4 terms, as Mr. Morris would have it, is an injunction that
5 would prevent Mr. Dondero from discussing politics with Mr.
6 Ellington. And it seems to me that an injunction that broad,
7 that extensive, and one which lasts, as far as I can tell,
8 until infinity, that such an injunction is not the right thing
9 to do, given, if nothing else, the First Amendment to the
10 United States Constitution.
11 That will conclude my presentation, and I will turn it
12 over to the wiser and better-spoken colleague, John Bonds.
13 Thank you, Your Honor.
14 THE COURT: Thank you. Mr. Bonds, what else do you
15 have to say?
16 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT
17 MR. BONDS: Your Honor, has the Debtor met the
18 requirements for the issuance of a preliminary injunction? We
19 submit that they have not. And the Fifth Circuit's rules are
20 fairly clear as to the awarding of a preliminary injunction.
21 First, let's look at the type of preliminary injunction
22 that the Debtor would like you to enter today. It provides
23 that Mr. Dondero cannot talk to any employee, regardless of
24 what is being communicated. Mr. Dondero can pass an employee
25 on the street, but he can't acknowledge the employee, with

whom he may have worked for years. Nor can he talk to his personal assistants, again, which he has worked with for years. Does that violate the First Amendment of the Constitution?

What about the shared services agreement? What about the pot plan which he is advocating as a means of reorganizing the Debtor? Not the liquidation proposed by the Debtor. Can Mr. Dondero communicate with creditors about the pot plan and the other proposals without violating the TRO or the preliminary injunction which deals with interfering with the Debtor's business?

Your Honor, I think it's important to note that a preliminary injunction is an extraordinary remedy that may only be awarded upon a clear showing that the Plaintiff is entitled to such relief. Plaintiffs are entitled to a preliminary injunction if they show, one, a substantial likelihood that they will prevail on the merits of their claims; two, a substantial threat that they will suffer an irreparable injury if the injunction is not granted; three, their threatened injury outweighs the harm to the estate or the other party; and four, the public interest will not be disserved, misserved, if the preliminary injunction is granted.

The party seeking the preliminary injunction bears the burden of persuasion on all four requirements. We believe

that the Debtor today has failed to carry its burden of persuasion of proof with regard to the second element, which I'm going to refer to as the irreparable injury requirement. In order to show irreparable harm to the Court, the Plaintiff must prove that if the District Court denied the grant of a preliminary injunction, irreparable harm would be the result. Injuries are irreparable only when they cannot be undone through monetary remedies. There is no evidence before the Court today that Mr. Dondero cannot respond to any judgment that is rendered against him by this Court.

Your Honor, this preliminary injunction does not involve real property. Unlike the *Saldana* case, this request for the issuance of a preliminary injunction involves personal property only. The request that Mr. Dondero cease and desist all contact with employees is just wrong and may violate the First Amendment of the Constitution, as I previously stated.

We have other concerns regarding the issuance of a preliminary injunction. We feel that the preliminary injunction is too broad. It lacks a beginning and an end. When does the preliminary injunction terminate? What about the former employees? Once they are terminated, can Mr. Dondero speak to them? What about the pot plan? Is it gone forever? Can Mr. Dondero talk with the mediators about the pot plan? Can Mr. Dondero speak with the members of the U.C.C.?

It is easy to criticize Mr. Dondero. Did he violate the TRO? We submit that he didn't and the Debtor says that he did. What matters going forward is the lack of evidence of irreparable harm.

Mr. Seery sure wants to keep Mr. Dondero from talking to anyone in this case. Why is that? Does Mr. Seery believe that the only way to get his liquidation plan confirmed is to keep Mr. Dondero from talking to anyone? How will the preliminary injunction help the Debtor's creditors? Does keeping Mr. Dondero from talking with anyone mean that there will be a greater return to the creditor body? Does precluding Mr. Dondero from talking about his pot plan mean that the creditors will take home more money on their claims, or does it eliminate the possibility that they may take home more money on their claims?

Your Honor, what we are seeing here today is an attempt by a group to destroy what Mr. Dondero has built over the last few years. That isn't the way Chapter 11 should work.

Just one last thing to keep in mind, Your Honor. Mr. Seery's plan is a liquidation of the Debtor. Mr. Dondero's pot plan is a reorganization of the Debtor.

Thank you, Your Honor.

THE COURT: All right. Mr. Morris, you get the last word. Anything in rebuttal?

MR. MORRIS: I would just point out, Your Honor, that

nobody here has objected to the Debtor's motion for the entry of a preliminary injunction except Mr. Dondero. While I appreciate that this is an adversary proceeding, anybody who felt strongly about the matter certainly could have moved to intervene. The Creditors' Committee could have moved to intervene. Mr. Clemente could have stood at the podium and begged Your Honor not to impose the injunction because he thought it was in the best interest of creditors to allow Mr. Dondero to interfere with the Debtor's business and to speak with their employees. Nobody has done that, Your Honor. Nobody's here speaking on behalf of Mr. Dondero. Nobody's here to testify on his behalf. Nobody's -- there's no evidence in the record that supports or corroborates anything that he said at all, Your Honor.

Unless Your Honor has any specific questions, the Debtor is prepared to rest.

THE COURT: All right. I do not have any follow-up questions.

All right. I have a lot to say. I'm sorry, I apologize in advance, but I've got a heck of a lot to say right now. I'm going to give you a ruling on the motion before me, but I've got a lot to add onto that, so I hope all the key parties in interest are listening carefully. Mr. Bonds, in the video, I can only see you. I hope Mr. Dondero is just right there out of the video camera view. Okay, there you are. I wanted

to make sure you didn't wander off to take a bathroom break or anything. So, again, I have a whole lot to say here today.

First, I'm going to rule on the motion. The Court does find there is sufficient compelling evidence to grant a preliminary injunction that is completely consistent with the prior TRO. Okay? So, specifically, the Court today is going to continue to prevent Mr. Dondero from (a) communicating in any way, directly or indirectly, with any of the Debtor's board members -- I think that's really Strand board members -- unless Mr. Dondero's counsel and counsel for the Debtor are included. Okay. I'm saying those words slowly and carefully. There is no bar on Mr. Dondero talking to the board about a pot plan or anything else in the universe Mr. Dondero wants to talk to them about. There's just a preclusion from him doing it without his counsel and the Debtor's counsel present. Okay?

I did that before and I'm doing it now because I've seen concerning evidence that some communications to Mr. Seery and others had an intimidating tone, a threatening tone one or two times, an interfering tone. So, guess what, we're just going to have lawyers involved if any more conversations happen. Okay.

So (b) the preliminary injunction, just as the TRO did, is going to prevent Mr. Dondero from making any threats of any nature against the Debtor or any of its directors, officers,

1 employees, professionals, or agents. Okay. It's almost
2 embarrassing having to say that or order that with regard to
3 such an accomplished and sophisticated person, but, you know,
4 I saw the evidence. I've got to do what I've got to do. You
5 know, words in a text like, Don't do it, this is your last
6 warning, and some of the other things, that has a threatening
7 tone, so I'm going to order this.
8 Third, the preliminary injunction will prevent Mr. Dondero
9 from communicating with any of the Debtor's employees except
10 as it specifically relates to shared services provided to
11 affiliates owned or controlled by Mr. Dondero.
12 Now, I'm going to elaborate in a couple of ways here. I
13 think in closing argument there was a suggestion that he can't
14 even talk to his friend, Mr. Ellington, about anything. Well,
15 I heard today that Mr. Ellington and Mr. Leventon are no
16 longer employees of the Debtor, so actually that's not an
17 issue. But while this is very restrictive, while this
18 prevents Mr. Dondero from engaging in small talk with Debtor
19 employees about the weather or the football game or whatever,
20 it's regrettable, but I feel like I'm forced to order this
21 now, because, again, the communications that were put in the
22 record. Okay? We just can't take any chances, as far as I'm
23 concerned, with regard to there being potential interference
24 with the Debtor's operations that might be harmful or contrary
25 to creditors' interests.

Fourth, the preliminary injunction, just like the TRO, will prevent Mr. Dondero from interfering with or otherwise impeding the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of any plan or alternative to the plan.

Now, I understand the argument that this is pretty broad and might be, I don't know, subject to some disputes regarding was it interference, did it impede the Debtor's business or not? You know what, if you follow the other prongs of the preliminary injunction, that you don't talk to the board without your counsel, Mr. Dondero, and the Debtor's counsel, and you don't talk to Debtor's employees except with regard to matters pertaining to the shared services agreement, and, bottom line, if you just run everything by your attorneys, you'll be okay. We won't have this ambiguous, vague, problematic territory.

Fifth, I will go ahead and, for good measure, belts and suspenders, whatever you want to call it, prevent Mr. Dondero from otherwise violating Section 362(a) of the Bankruptcy Code.

Now, I read the response filed at 9:30 last night by Mr. Dondero's counsel. It's a good response. It makes legal arguments about that being, you know, it just being too vague.

1 Well, to the contrary, it just restates what's already in the
2 Bankruptcy Code, right? Persons are prohibited from violating
3 Section 362(a) of the Bankruptcy Code. If anything, it's the
4 sky is blue, right, just stating what is true. But I
5 understand Debtor wanting some clarity in an order, because we
6 want you to take this seriously, Mr. Dondero, and not just do
7 something and then say, well, you didn't know what was in the
8 Code. You know, you need to consult with your lawyer. That's
9 going to be in there.
10 Bottom line, I want that language in there because, Mr.
11 Dondero, I want you to see an order that this Court expects
12 you to comply with the Bankruptcy Code. And again, if you
13 don't understand, if you're unsure whether you can take action
14 *x* or *y*, consult with your very capable lawyers.
15 I note that if you listened carefully to these words,
16 there was nothing in here that stopped Mr. Dondero from
17 talking to the Creditors' Committee about a pot plan. Nothing
18 in this injunction, nothing in the previous TRO, ever
19 prohibited that.
20 Last, with regard to the ruling -- and again, I've got a
21 lot more to say when I'm done -- I am going to further enjoin
22 Mr. Dondero from what we said in the TRO: causing,
23 encouraging, or conspiring with any entity controlled by him
24 and/or any person or entity acting on his behalf from directly
25 or indirectly engaging in any of the aforementioned items.

1 This is not an injunction as to nonparties to the adversary
2 proceeding. It is an injunction as to Mr. Dondero from doing
3 the various enjoined acts that I previously listed under the
4 guise of another entity or a person that he controls.
5 Again, if you're dealing with and through your attorneys,
6 Mr. Dondero, I don't think this will be hard to maneuver.
7 I guess I'm actually not through with my ruling yet. I do
8 want to add that the Court rules that the injunction shall
9 last through the time of confirmation of a plan in this case
10 unless otherwise ordered by this Court.
11 And as to the legal standards, I want to be clear for the
12 record that the Court believes this injunction is necessary to
13 avoid immediate and irreparable harm to the Debtor's estate
14 and to its reorganization prospects. I believe that there's a
15 strong likelihood the Debtor will succeed in a trial on the
16 merits of this adversary proceeding. I believe the public
17 interest strongly favors this injunction. And I believe the
18 balance of harms weighs in favor of the Debtor on all of these
19 various issues.
20 Again, I want to reiterate, the intimidation and
21 interference that came through in some of these email and text
22 communications was concerning to the Court and is a motivation
23 for this preliminary injunction.
24 Now, I'm going to add on a couple of things today. The
25 first thing I'm going to add on -- and I want this, Mr.

Morris, in the order you submit. You didn't ask me for this, but I'm going to do it. I'm going to order you, Mr. Dondero, to attend all future hearings in this bankruptcy case unless and until this Court orders otherwise. And I'm doing this -- it's not really that unusual a thing for me to do. I sometimes order this in cases when I'm concerned about, you know, is the businessperson paying attention to what's going on in the case and is he engaged, is he invested, is he available when we need him?

In this case in particular, the evidence was that you didn't read the TRO. You were not aware of its basic terms and you didn't read it. Okay? So that was what sent me over the edge as far as requiring this new element that you're going to attend every hearing. Obviously, we're doing video court, so that's not that much of a burden or imposition. You can pretty much be anywhere in the world and patch in by video, since we're in the pandemic and not doing live court. But I think it's necessary so I know you hear what I rule and what goes on in this case.

I will tell you that I was having a real hard time during your testimony deciding if I believe you didn't read the TRO or know about the different things that were prohibited. You know, I was thinking maybe you're not being candid to help yourself in a future contempt hearing, or actually maybe you're being a hundred percent honest and candid but you're

kind of hiding behind your lawyers so that you can argue the old plausible deniability when it suits you.

But no more. No more. I'm not going to risk this situation again of you not knowing what's in an order that affects you. So you must be in court by video until I order otherwise.

Second, and I regret having to do this, but I want it explicit in the preliminary injunction that Mr. Dondero shall not enter Highland Capital Management's offices, regardless of whether there are subleases or agreements of Highland affiliates or Dondero-controlled entities to occupy the office, unless Mr. Dondero has explicit written permission that comes from Highland's bankruptcy counsel to Dondero's bankruptcy counsel. Okay? If he does, it will be regarded as trespassing.

And, I don't know, are there security guards on the premises? I mean, gosh, I hate to be getting into this minutia, but -- well, I just want it explicit in the order that Mr. Dondero, I'm sorry, but you can't go to these offices without written permission. And again, that can only be given from Debtor's counsel to Mr. Dondero's counsel. Okay? So it's going to be trespassing. You know, someone can call the Dallas Police Department and have you escorted out. Again, I hate having to do that. It's just, it's embarrassing for me. I think it's embarrassing for everyone. But I'm backed up in

1 that corner.
2 Next, I am going to ask that it be clear that Mr. Dondero
3 can deal with the Unsecured Creditors' Committee and its
4 professionals with regard to talking about a pot plan.
5 And next, I'm going to add -- and I think, Mr. Morris, you
6 requested this at some point today in oral argument -- Mr.
7 Ellington and Mr. Leventon shall not share any confidential
8 information that they received as general counsel, assistant
9 general counsel for the Debtor, without Debtor's counsel's
10 explicit written permission. Okay? So we've got that in
11 writing.
12 And, you know, that's a little awkward because they're not
13 here, they weren't parties to the injunction, but they were
14 Debtor employees until recently. If they want to risk
15 violating that and come back to the Court and argue about
16 whether they got notice and whatnot of that, they can argue
17 that, but I want it in the order regardless.
18 So that is the ruling. And now I want to kind of talk
19 about a few other things. And before we're done here, Mr.
20 Morris, I'll ask do you have questions, does Mr. Bonds have
21 questions, does anyone have questions about the ruling. But I
22 want to talk about a couple of things. And again, I hope that
23 I'm coming through loud and clear, Mr. Bonds, in your office
24 for Mr. Dondero to hear this. It's really, really important
25 that he heard what I'm about to say. I'm going to say some

kind of unpleasant things and then I'm going to say some hopeful things, okay?

Mr. Dondero? Okay. Mr. Dondero, I'm going to -- Mr. Morris, you've got your hands on your head. Did I miss something?

MR. MORRIS: No. I was just surprised to see Mr. Dondero on his phone. I apologize, Your Honor.

THE COURT: Oh, my goodness. Were you on your phone, Mr. Dondero?

MR. DONDERO: No, I was not.

THE COURT: Okay. I want you to listen to this really closely, and then I promise I'm going to have something hopeful to say after this very unpleasant stuff. You know, I keep a whiteboard up at my bench. I don't know if you can read it. But sometimes I hear something in a hearing and I think, okay, this is one of my major takeaways from what I heard today. And I've got two, I've got two big takeaways here. Number one on my whiteboard is Dondero's spoliated evidence. Game-changer for all future litigation. Okay.

MR. DONDERO: I'm sorry. I didn't hear that. I didn't hear that. Could you repeat that, please?

THE COURT: Mr. Dondero, spoliated evidence, game-changer in future litigation.

Okay. Let me tell you, the throwing away of the phone, that was the worst thing I heard all day. That was far and

1 away the worst thing I heard all today. I don't know what I'm
2 going to hear down the road to fix this, but if it's really
3 gone, let me tell you how bad this is. We have all sorts of
4 Federal Rules of Civil Procedure that talk about this being a
5 bad thing, but I wrote an opinion a couple years ago dealing
6 with spoliation of electronic evidence, and I think it might
7 be helpful for everyone to read. It was called *In re Correra*,
8 C-O-R-R-E-R-A. I have no idea what the cite on it is. But in
9 this case, *Correra*, we had a debtor who had a laptop, and he
10 gave the laptop to his personal assistant, who took it away to
11 another state. And at some point during the case, parties
12 discovered, oh, there's a laptop that may have a treasure
13 trove of information. Who knows? Maybe it does; maybe it
14 doesn't. But there's a laptop that we just now learned about
15 that the personal assistant has.
16 And so I issued an order that she turn it over, and there
17 were subpoenas and depositions, blah, blah, blah. Long story
18 short, the evidence ended up being that she deleted everything
19 on the laptop, and then -- this would almost be funny if it
20 wasn't so serious -- she downloaded thousands of pictures of
21 cats onto the laptop. I kid you not, cats. Meow, meow, cats.
22 And she downloaded a hundred-something full-length movies.
23 And we had two days of forensic experts come in and take the
24 witness stand and tell me about how, okay, this is like an
25 amateurish -- you've talked about amateur hour today -- this

is kind of an amateurish way of deleting data, right. You first delete all the files on the laptop and then you cover over all the space to make sure the information is not retrievable. You know, this genius ended up retrieving some of the information.

But the long story short is I sanctioned the debtor and his assistant jointly and severally. You'll have to go back and look at the opinion. I'm pretty sure it was over a million dollars. And I can't remember if that was attorneys' fee-shifting only, or monetary, like penalty on top of the attorneys' fees-shifting. I just can't remember. But maybe poor Tara needs to be advised of that opinion, too. I mean, --

But the other reason I put game-changer in future litigation is, in my *Correra* case, it wasn't just the monetary million-dollar sanction or whatever it was; it was a game-changer in future litigation because the adverse party to the debtor ended up arguing -- and it was the state of New Mexico, by the way -- they ended up saying, in all future litigation, we want you -- some adversaries, we want you to make an adverse inference. In other words, for all of these elements that we're trying to prove in our fraudulent transfer litigation and whatever else was going on, we want you to make an adverse inference that there would have been evidence there on that laptop that would have supported some of our causes of

action and it was destroyed to keep us from having that evidence.

And they brought forth all kinds of case law. It's a hard area. It's a really, really hard area. But I ended up -- again, it's not in the main opinion. It was in subsequent orders. I ended up saying, yeah, I think you've met the standard here to draw adverse inferences.

So, again, this is a very unpleasant message for me to deliver today. But the destruction of the phone is my biggest takeaway of concern today, how that might have ramifications. You know, there are other bad things, too, about that. I'm not even going to go there right now. But the, you know, Title 18, you can ask your lawyer what that means, but okay.

My second big takeaway before we get to the hopeful stuff is -- and this is kind of harsh, what I'm about to say -- but Ellington and Leventon maybe care more about you, Mr. Dondero, than their law license. You know, I guess it's great to have people in your life who are very, very loyal to you. I mean, loyalty is a wonderful thing. But I am just so worried about things I've heard. Again, the phone and in-house lawyers. The biggest concerns in my brains right now. I have worried about them for a while.

You all will -- well, Mr. Dondero, you might not know this. But we had a hearing a few months ago, maybe September, October, where the Creditors' Committee was trying to get

1 discovery of documents. And we had some sort of hearing,
2 maybe a motion to compel production. And we had many, many
3 entities that you control file objections: NexPoint, NexBank.
4 I can't even remember. We just had a whole slew. CLO Holdco.
5 Many, many of these entities objected. And I was trying to
6 figure out that day who was instructing them. And oh my
7 goodness, I hope the in-house layers are not involved in this
8 document discovery dispute, because, you know, they have
9 fiduciary duties. And are -- you know, is it -- it feels like
10 it's breaching a duty to the bankruptcy estate when it's in
11 the bankruptcy estate's best interest to get these documents
12 if you're meanwhile hiring lawyers for these other entities,
13 Holdco, et cetera, and saying, Fight this.
14 I never really pressed it very hard back then, but I
15 raised the issue and I said, I'm really, really concerned
16 about this. And I continue to be concerned about it. I had
17 experiences with Mr. Ellington in the *Acis* case where he
18 testified on the witness stand, and later it looked a heck of
19 a lot like he might have committed perjury. I hate to use
20 such blunt terms. But I let it go. I'm just like, you know,
21 I'm not going to -- you know, I'm going to just hope for the
22 best that he misspoke.
23 But I'm getting a really bad taste in my mouth about
24 Ellington and Leventon, and I hope that they will be careful
25 and you will be careful, Mr. Dondero, in future actions.

Is Mr. -- I can't see Mr. Dondero. I want to make sure he's not on the phone. Okay. Okay. Thank you.

So where was I going to head next? I guess I want to say a couple of things now that I would describe as a little bit more hopeful, and that is pertaining to this whole pot plan thing.

You know, I tend to think, without knowing what's being said outside the courtroom, that a pot plan would be the best of all worlds, okay, because the plan that we have set for confirmation next week, I understand we have a lot of objections, and if I approve it, if I confirm the plan, we're going to have a lot of appeals and motions for stay pending appeal, and no matter how that turns out, we're going to have a lot of litigation. Okay? You know, we're going to have adversaries. And we have a not-very-workable situation here where we have these Dondero-controlled affiliates questioning Mr. Seery's every move.

I would love to have a pot plan that would involve, Mr. Dondero, you getting to keep your baby, okay? I acknowledge, everyone here acknowledges, you are the founder of this company. This is your baby. You created a multi-billion-dollar empire, okay? I would be shocked if you didn't want to keep your baby. Okay? If there was a reasonable pot plan, I would love it.

But I'm telling you, the numbers I heard didn't impress me

a heck of a lot. I'm not an economic stakeholder. It's not my claim that would be getting paid. But I can see where these Creditor Committee members, they're not going to think $160 million -- $90 million in cash, $70 million in notes, or vive-versa -- is nearly enough. Okay?

So I am going -- what just happened? What just happened? I lost Mr. Dondero. Okay. This is getting kind of humorous, almost.

Okay. I am going to order that between now and the end of the day Tuesday there be good-faith, and I'll say face-to-face -- Zoom, WebEx, whatever -- negotiations between Mr. Dondero and his counsel and at least the Committee and its professionals regarding this pot plan.

Now, the train is leaving the station next Wednesday, okay? If we don't have Creditors' Committee and Debtor and Dondero rushing in here saying, Please continue the confirmation hearing next Wednesday, if we don't have like unanimous sentiment to do that, you know, this is a 15-month-old case, I'm going to go forward with the plan that's on file.

And it's been a long, expensive case. I had great mediators try to give it their best shot to get a grand compromise. I just, I'm not going to drag this out unless you all tell me Wednesday morning, We want you to continue this a week or two.

And let me tell you -- this may be the stars lining up, or it may not be -- I was supposed to have a seven-day trial starting the week after next, and then I was supposed to have a four- or five-day day trial starting immediately after that. And all of those lawyers came in and asked for a continuance because of COVID. They wanted a face-to-face trial, and so I've put them off until April.

So if you wanted to postpone the confirmation hearing to the following week or even the following week, I have the gift of time to give you. But I'm not going to do it lightly. I'm, again, I'm just going to order face-to-face meetings. And I said Dondero and his counsel and the Committee and its professionals. You know, if -- I'm not slighting the Debtor here or Mr. Seery, but I'm kind of taking a cue from what Mr. Morris, I think I heard you say, that at this point it's the Committee, it's the Committee's money, and I think that's the starting place. And if they want to join the Debtor in at the beginning or midway through, you know, wonderful, but I think it needs --

MR. POMERANTZ: Your Honor, this is Jeff -- this is Jeff Pomerantz. I hate to interrupt, and I never do that to a judge, but I did have something to say in my comments about a continuance that we've talked about with the Committee and some other developments in the case.

THE COURT: Oh.

MR. POMERANTZ: I'm happy to wait. But it has -- it has nothing to do with the comments you said, although, as I think you've heard from me before, the Debtor has been a supporter, a supporter of a pot plan. Mr. Seery has done a tremendous amount of work working with Mr. Dondero, working with Mr. Lynn, to try to make that happen. And if the Committee is willing to engage in a pot plan, we would definitely support that. Because we do agree with Your Honor that, absent a pot plan, we are looking at a lot of litigation.

Some of the issues you're going to have to deal with at the confirmation hearing if we do not have a peace-in-the-valley settlement is exculpations, releases, moratoriums on litigation, extensions of your January 9th order --

THE COURT: Uh-huh.

MR. POMERANTZ: -- with respect to pursuing certain people.

So, we get it, and we've gotten it from the beginning. And Mr. Seery, sometimes even at a fault, has been singlehandedly focused on trying to get that done. It's just unfortunate where we are here.

But having said that, I wanted to first apprise the Court of a recent major development in the case. I'm pleased to report that the Debtor and UBS have reached a settlement in principle which will resolve all of UBS's claims against the

1 estate, all of UBS's claims against Multi-Strat. The parties
2 are working on documentation. The settlement is subject to
3 internal approvals from UBS, but we've been led to believe
4 those approvals will occur, and we would hope to file a Rule
5 9019 motion in the near future.
6 I'm sure Your Honor is quite pleased to hear that. The
7 UBS matters have taken a substantial amount of time. And with
8 the settlement of UBS's claims, the only material unresolved
9 claim, unrelated to Mr. Dondero or the employees, are Mr.
10 Daugherty. And Mr. Seery will continue to work with Mr.
11 Daugherty to try to settle that.
12 THE COURT: Okay.
13 MR. POMERANTZ: With respect to the scheduling, with
14 respect to the scheduling, Your Honor, there are three
15 significant matters on for hearing on the 13th. The first is
16 the Debtor's motion to approve a settlement with HarbourVest,
17 which Mr. Dondero is contesting. Depositions are being
18 conducted on Monday, and we anticipate an evidentiary hearing
19 in connection therewith.
20 The Debtors, as Mr. Morris indicated earlier on in the
21 hearing, have also filed a complaint and a motion for a
22 temporary restraining order against certain of the Advisors
23 and Funds owned and controlled by Mr. Dondero which relate to
24 the CLO management agreements for which Your Honor has heard a
25 lot of testimony today. We also expect that TRO to be

1 contested and for the Court to have an evidentiary hearing.
2 And as Your Honor mentioned, the confirmation of the plan
3 was scheduled for Wednesday, and there were 15 objections. I
4 would point out, Your Honor, all but four of which were Mr.
5 Dondero, his related entities that he owns or controls, and
6 employees or former employees.
7 The Court previously gave us time on the 13th and the
8 14th, I think anticipating that we would have a lot and it may
9 be necessary to go into two days. However, Your Honor, those
10 two days are not going to be enough to deal with all the
11 issues that we have before Your Honor.
12 So what we suggest, and we've spoken to the Committee and
13 the Committee is supportive, that we continue confirmation to
14 a day around January 27th. This will enable the Debtor to not
15 only -- and the Committee -- not only to take Your Honor up on
16 what you'd like to see accomplished in the next few days. I'm
17 sure the Debtor is supportive and will be supportive, and we
18 hope the Committee will engage in good-faith negotiations, and
19 if there's a way to do a pot plan, we are all for it. It'll
20 give time for that to happen.
21 But at the same time, and I think what you'll hear from
22 Mr. Clemente, that we're willing to give a continuance, we all
23 know that if there is not a settlement to be had, if there is
24 not a pot plan to be had, this case has to confirm, it has to
25 exit bankruptcy, and at least from the Debtor's perspective, a

lot of protections will have to be in place that basically this has not just been a pit stop in Bankruptcy Court and we return to the litigation ways that Highland is involved in.

So, Your Honor, we believe that the two evidentiary hearings on for next week probably will fill up both days. We would suggest that the first day be the complaint and the TRO against the Advisors and the Funds for the 13th, and the 14th be the HarbourVest.

We also recognized as we were preparing for today, Your Honor, looking ahead, that we thought it was not fair for us, although we know Your Honor works tirelessly and as hard as anyone on this hearing and that Your Honor would be prepared for confirmation and would be prepared for each of those trials, given the gravity of these issues, the extensive pleadings, pleadings that you would get in confirmation on Monday from the Debtor, that it made sense to continue the hearing.

So, again, fully supportive of Your Honor's mandate to try to see if we could work things out, fully supportive of a continuance until the 27th, if that date works for Your Honor, but we believe we do need to go ahead with the two matters that are on for calendar next week.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. May I be heard briefly?

THE COURT: Oh my goodness. Who do you represent,

Mr. Rukavina?

MR. RUKAVINA: And I apologize -- Your Honor, I am the new counsel who will be representing the Funds and Advisors. I will probably be taking the laboring oar at confirmation.

I apologize I'm not wearing a suit and tie. I did not anticipate speaking right now.

I support -- to the extent that that's an oral motion for continuance by Mr. Pomerantz, I certainly support that. I would suggest that the Court give us an understanding of that today, because we do have depositions and discovery lined up which we can then push if the hearing on confirmation is pushed to the 27th. And we have no problem going forward on the other matters on the 13th.

So, I am co-counsel to K&L Gates, Your Honor, so whoever the K&L Clients are, they're now my clients as well. I just wanted to be heard briefly that we support the recommendation by Mr. Pomerantz and just urge that the Court give us finality on that issue today so that we're not burning the midnight oil, many sets of lawyers preparing for confirmation on the 13th.

Thank you for hearing me, Your Honor.

THE COURT: All right. So, just to be clear, the proposal is that we go forward next Wednesday on the newest request for a TRO with regard to -- is -- the CLO Funds and

the Advisors. I'm forgetting the exact names. And then that would take likely the whole day, but whether it does or does not, we would roll over to Wednesday of next week -- that'd be the 14th -- to do the HarbourVest. It's a compromise motion, right? Is there anything else?

MR. POMERANTZ: No, correct, it's the compromise motion, Your Honor. There are two pending objections on this and discovery scheduled for Monday.

THE COURT: All right. Well, as far as --

MR. CLEMENTE: Your Honor?

THE COURT: Yes, who is that?

MR. CLEMENTE: Oh, Your Honor, it's Matt Clemente at Sidley on behalf of the Committee. I'm here, and I thought maybe I'd offer just a couple of comments at this point, but I'm happy to hold them.

THE COURT: Well, --

MS. SMITH: And Your Honor, this is Frances Smith. I would also like to be heard before you wrap up.

THE COURT: Okay. Well, I guess generally I want to know, does anyone have any objection -- I can't imagine they would -- but any objection to pushing confirmation out to around the 27th? I'm going to say that because I have an issue middle of the day the 28th. If we do it the 27th, I could only go a day and a half, okay? I have to go out of town the evening of the 28th, and I would be out the 29th as

well. That's Thursday and Friday. So we'll talk about that. But anyone, Mr. Clemente or anyone else, want to say anything about continuing the confirmation?

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. No, Your Honor, we're supportive of that schedule.

And Your Honor, just briefly, I heard my name discussed quite a bit at this hearing as well as the Committee. I'm not going to get into it unless Your Honor would like me to, but let me be very clear: The committee has taken very seriously the pot plan proposals that Mr. Dondero has presented, and there's much more to the discussion other than what Mr. Lynn suggested in his remarks.

So I'm not going to get into all that unless Your Honor thinks it's necessary. I think it's of no moment here. But I did want Your Honor to know that we have carefully considered the pot plan proposals and have communicated a variety of issues about that to Mr. Lynn and will continue to take the direction of Your Honor and engage on a pot plan, Your Honor. But I did not want there to be any suggestion that we did not take it seriously and that there was much, much more consideration and discussion about it than what was suggested.

THE COURT: Uh-huh.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: All right.

MS. SMITH: Your Honor, this is Frances Smith.

THE COURT: Who do you represent, Ms. Smith?

MS. SMITH: Your Honor, we were recently retained by the four senior employees: Tom Surgent, Frank Waterhouse, Scott Ellington, Isaac Leventon, along with Baker & McKenzie, and I believe we have the Baker & McKenzie lawyers Deb Dandeneau and Michelle Hartmann on the line.

Your Honor, we have listened to the whole hearing. And I was not going to make an appearance. I was following your instructions and listening carefully. But Your Honor, I -- first of all, we hate to be before you for the first time in a discovery dispute. We did file a very limited objection to the plan because of the disparate treatment of our clients, which we are not arguing today, of course. We received -- it is our usual practice, Your Honor -- you've known me for a long time -- to cooperate on having witnesses appear. We got -- we were notified very late Tuesday that the Debtor's counsel would like two of our clients to appear. We made what we thought was a reasonable request for a copy of the transcript from the deposition. We were invited to the deposition and then told we could not attend, or our clients could not attend. When we offered to make it lawyers-only, they said no. So we did not produce our clients without a subpoena.

Our clients have not been evading service. As far as we know, they were each attempted service one time, late

Wednesday, when they were -- around dinnertime. Mr. Leventon was home all day today. Didn't go any -- or yesterday. Didn't go anywhere. Was not served. Wasn't served this morning. The same, as far as we know, with Mr. Ellenton.

Your Honor, on the order that you just entered, I am a little unclear of where your findings of fact stopped. First of all, I do not think that you can enjoin Mr. Ellenton and Mr. Leventon. They are not parties to the adversary proceeding.

You know, we did some very quick research. There's a Seventh Circuit case, a district court may not enjoin nonparties who are not either acting in concert with an enjoined party nor in the capacity of agents, employees, officers of the enjoined party. Mr. Ellington and Mr. Leventon are not agents, employees, officers of Mr. Dondero. So I think that, Your Honor, you cannot make that ruling.

Of course, you can rule that Mr. Dondero cannot talk to Mr. Leventon and Mr. Ellington. That might be a way to fix that one part. But as nonparties, I don't believe that you can enjoin them.

Also, Your Honor, there was just no evidence against them to support that. Out of more than two dozen exhibits, there was one mention of Mr. Leventon, where all he did was give Mr. Dondero Matt Clemente's phone number. And you yourself ruled, Your Honor, that Mr. Dondero could speak with the Committee,

so that wouldn't even have been a violation of your orders. There's three related to Mr. Ellington, but no evidence of confidential information.

And, Your Honor, I'm very concerned about the comments that you made about Mr. Ellington and perjury. I just want to make sure that it's clear on the record that those were not findings of fact. That did not -- there was no evidence about that today. And I understand Your Honor's frustration. I was -- but I just want to be very clear on the record that those were not findings of fact that you were making during that part of your comments. I was a little unclear about where the ruling exactly stopped when you said you wanted to add onto the order and then you were going to make a few more comments.

So that's all I have, Your Honor.

THE COURT: Okay.

MS. SMITH: Thank you for listening and --

THE COURT: Thank you. Fair comments, one and all. I'm first going to tweak. I was concerned. You heard me express concern about, you know, Ellington and Leventon aren't parties to this adversary. Not here. So here's -- Mr. Morris, I assume you're the scrivener. Let's change what I said earlier and have the injunction read that Mr. Dondero shall not request that Mr. Ellington or Mr. Leventon share any confidential information they received as general counsel or assistant general counsel for the Debtor without Debtor's

1 counsel's explicit written permission, nor accept any
2 confidential information that the two of them may have
3 received as general counsel or assistant general counsel for
4 the Debtor. Okay? So the injunction is --
5 MR. MORRIS: Your Honor, if I may, --
6 THE COURT: Who?
7 MR. MORRIS: Your Honor, if I may, that is not
8 sufficient for us, because that means that they can actually
9 share it with him as long as he doesn't request it. I'm a
10 little surprised --
11 THE COURT: No. You didn't hear the accept -- the
12 last part.
13 MR. MORRIS: Okay.
14 THE COURT: I added on at the end, nor shall Mr.
15 Dondero accept any confidential information. They -- he shall
16 not request that they share it, nor shall he accept it. Okay?
17 I --
18 MR. MORRIS: So, but that -- my concern is that that
19 makes Mr. Dondero the arbiter of what's confidential and
20 what's privileged. And I think that's improper. I think it's
21 really reasonable, and I'm surprised -- you know, we're all
22 advocates here, so I take no issue with counsel, but the order
23 was going to be pretty simple: Don't disclose privileged or
24 confidential information. If they don't like that, that's
25 fine. Just bar Mr. Dondero from speaking to either one of

them, period, full stop. Because we should not be in a position where he doesn't request it but somehow they send it to him. It is confidential.

I mean, who's deciding what's confidential here? Mr. Ellington? Mr. Leventon? Mr. Dondero? Just stop their communication. Mr. Dondero is subject to the Court's order. He's the one who's subject to this motion. Bar him from speaking to either one of them. It's a very -- very simple solution.

MR. BONDS: Your Honor, I agree that it's a simple solution. It's, I mean, not correct to assume that Mr. Dondero is in any way going to breach his obligations to the Court or to Mr. Ellington and Mr. Leventon. I don't see where -- what we're talking about.

MS. SMITH: Also, Your Honor, I have to object to him disparaging my clients that way. There's been no evidence that they improperly shared any information. They are licensed lawyers and they know the Rules of Professional -- they know the rules of professionalism, so --

THE COURT: Okay. I, you know, I didn't make a finding earlier when I held out my two giant takeaways, to get to your later question, no findings. But I really hope you share with them everything I said, the concerns I expressed. Maybe get the transcript.

MS. SMITH: Absolutely, Your Honor.

THE COURT: Because I have huge concerns about conflicts of interest here. Okay? Huge, huge concerns. I had them back when we had the discovery fight, Committee wanting documents, and, you know, and I still have them. You know, did Ellington know about the TRO?

MS. SMITH: Understood, Your Honor.

THE COURT: Okay. So let me backtrack. We already had a TRO that prevented Mr. Dondero from talking to any employees of the Debtor unless it was about shared services agreement.

So, Mr. Bonds, I'm going to flip it back to you on this one. Why shouldn't I at this point just say, okay, guess what, no talking to Mr. Leventon or Ellington for the time being? Why --

MR. BONDS: First of all, --

MS. SMITH: Your Honor, that's acceptable to us.

THE COURT: Okay. What's wrong with that, Mr. Bonds?

MR. BONDS: Your Honor, we don't believe that Mr. Dondero has violated the TRO.

And secondly and more importantly, we don't believe that there's any way that you can enter an order that singles out two former employees. I mean, that's bizarre.

THE COURT: If I'm concerned that it's thwarting the reorganization efforts and there are conflicts of interest here, why can't I?

You know, this is -- I hate to say it, but I feel like I've been in the role of a divorce judge today. We have very much a corporate divorce that has been in the works, unless we get this pot plan on track, okay, and I'm a judge having to enter interim orders keeping one spouse away from the other, keeping one spouse out of the house, keeping one spouse away from the kids. It's not pleasant at all. But I don't -- the more I think about it, the more I have authority to do it just to protect, to protect the nest egg here.

MS. SMITH: Your Honor, we are perfectly fine with you enjoining Mr. Dondero from speaking to our clients, and we will convey that to our clients.

THE COURT: Okay. Mr. Bonds, I can't hear you.

MR. BONDS: I'm sorry, Your Honor. What evidence is there of irreparable harm as to Mr. Dondero talking with either Mr. Leventon or Mr. Ellington?

THE COURT: Okay. Do I need to parse through the communications I saw? Do I need to parse-

MR. BONDS: Yeah, I think so. I mean, I don't understand.

THE COURT: Okay. I never authorized Mr. Ellington to be the settlement lawyer or whatever, okay? I never would have, okay? And maybe Mr. Seery, you know, said something to -- early on in the case to make him think he had that authority, but no, we're done. Okay? And I feel like it's

1 causing more harm than good right now. Okay?
2 I don't know who instructed all of these Dondero-
3 controlled entities to hire lawyers. I don't know if
4 Ellington and Leventon have been giving instructions to these
5 entities. But we've got conflicts everywhere now. Okay?
6 We've got -- and by the way, I'm just going to list them now.
7 We have, of course, Bonds Ellis representing Dondero. We have
8 Doug Draper, Heller Draper, now representing these trusts, Get
9 Good Trust, Dugaboy Investment Trust. We have K&L Gates and
10 now Munsch Hardt also representing the Advisors, NexPoint and
11 the various CLO or other Funds. We have CLO Holdco
12 represented by Kane Russell Coleman Logan. We have NexPoint
13 Real Estate represented by Wick Phillips. Who have I left --
14 and, of course, the employees, Baker & McKenzie and Ms. Smith.
15 We have Spencer Fane in there for other current or former
16 employees. We have Loewinsohn Flegle in there for certain
17 former or current employees.
18 I mean, the proliferation of lawyers. And again, I don't
19 know if Mr. Ellington and Mr. Leventon have had a role in
20 hiring counsel, wearing their hat for these other entities or
21 not. Can anyone tell me? Maybe I'm worried about something I
22 shouldn't be worried about.
23 MR. DONDERO: You're worried about something you
24 shouldn't worry about, Your Honor.
25 THE COURT: Okay. So Ellington --

MR. MORRIS: Your Honor, I would just point to the evidence that's in the record, Your Honor. You have Mr. Dondero asking Mr. Ellington to show leadership in coordinating all of the lawyers you just mentioned. It's in the record.

THE COURT: Yes. I'm just going to, until otherwise ordered, no conversations between Dondero and Ellington and Leventon, and that's just going to be my ruling until further order. That's what I feel best about.

Now, let me ask you, knowing that I could only give you a half a day on the 28th of January, if we start the confirmation hearing on whatever the plan looks like on January 27th, I mean, do people want to go with that, --

MR. POMERANTZ: Your --

THE COURT: -- even knowing we might not finish that day, or no?

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. Maybe if we could start on the 26th, have the 26th, 27th, and then maybe half of the 28th. I would think two and a half days should be enough, notwithstanding the volume of objections, because I think you'll find that, while there may be some evidence, I think the majority of the objections are really legal in nature.

THE COURT: All right. Traci, are you out there in video-land?

THE CLERK: Yes, I'm here.

THE COURT: Okay. Have I overcommitted the 26th? If we start the 26th at 9:30 in the morning, can we do that? Or --

MR. BONDS: Your Honor?

THE CLERK: That'd be fine.

THE COURT: Okay.

THE CLERK: Just remember that you have an appointment at lunchtime that day at noon on the 26th.

THE COURT: Okay. I --

THE CLERK: You don't have any court hearings.

THE COURT: Okay.

MR. BONDS: Your Honor, I'm sorry.

THE COURT: Go ahead.

MR. BONDS: Your Honor, I'm sorry. This is John Bonds. I have a hearing on the 26th that I can't miss.

THE COURT: Well, can someone else --

MR. POMERANTZ: Your Honor, we would request, right, that Mr. Lynn lead the confirmation hearing. There's a lot of lawyers. If we try to look at everyone's calendar, we're never going to be able --

THE COURT: Yes.

MR. POMERANTZ: -- to get something that's good for everyone.

THE COURT: Okay. Yes. Well, Mr. Lynn or Mr. Assink

can handle it, Mr. Bonds.

So we're going to start the 26th at 9:30. We'll go all day, except I have something at lunchtime, apparently. And then we'll go all day on the 27th, and then I can give you half a day on the 28th.

So you'll upload immediately a notice to that effect, Mr. Pomerantz.

MR. POMERANTZ: Yes, we would.

Your Honor, in terms of our documents in support of confirmation, we want to make it convenient with the Court. We know your Court would at least need one business day, so we would prefer to file, say, by 2:00 Central on the 24th, on a Sunday. Everyone will have it, and have one business day. I mean, the old order only had one business day in advance as well. So that's what we would propose for our confirmation documents to be filed.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. An important issue here is how the creditors have voted, and I have no idea how they have voted. The voting deadline has expired. So I have no problem with what Mr. Pomerantz suggests, but I do think that the Debtor should file its tabulation of votes sooner rather than later so we all know one of the central elements for the hearing that we'll have.

THE COURT: Okay.

MR. POMERANTZ: That's fair, Your Honor. We're

prepared to file the summary of voting and tabulation by the 15th of January.

THE COURT: Okay. Very good.

So, backing up, Mr. Pomerantz, you asked that I approve you filing any plan modifications by noon on Sunday, the 24th? Is that what you said?

MR. POMERANTZ: Yeah. So, there's a couple of things. There's our confirmation brief.

THE COURT: Uh-huh.

MR. POMERANTZ: There is our -- any evidence we would submit, although I suspect we are likely to provide live testimony, as opposed to a declaration. There was our summary of ballots, which we will now do on the 15th. And to the extent we have any modifications, we would provide them on Sunday by 12:00 noon Central time as well. Yes.

THE COURT: All right.

MR. RUKAVINA: Well, Your Honor, this is Davor Rukavina. Does that mean the witness and exhibit lists also will not be due until Sunday at noon? Because I would request that we have the normal period of time to exchange exhibits and witnesses.

MR. BONDS: Your Honor, I think that the normal time period is also important in this case.

THE COURT: Okay. I'm going to --

MR. POMERANTZ: Your Honor, we could -- if everyone

agrees on witness lists, we could do those by 5:00 p.m. Central on the 22nd.

THE COURT: Okay. Let's do that. Okay.

MR. POMERANTZ: But that -- but that needs to be for everybody.

THE COURT: Oh, it will be for everyone.

MR. RUKAVINA: Your Honor, no problem.

THE COURT: Okay. Let's --

MR. POMERANTZ: 5:00 p.m. Central Standard Time.

THE COURT: No more discussions. That'll be the ruling, okay? Everything is going to be due by 5:00 p.m. Central time on Friday, the 22nd. All right.

MR. POMERANTZ: Your Honor, is that our brief as well, or --

THE COURT: Yes.

MR. POMERANTZ: -- was that just the witness list?

THE COURT: Everything. Brief, witness list, and --

MR. POMERANTZ: Okay.

THE COURT: -- plan mods.

Let me look through my notes and see if there's anything else I want to say. You know, let me do some quick math here. I know there was one other thing I wanted to say that involves math. Okay. I think my math is right here. Okay. You know, I mentioned the proliferation of lawyers. And let me just say this. We had -- we've had about 90 people on the -- showing

1 up on the video screen today -- 89, 90, 91, 92. A few, a
2 little over 90. Okay? So let's say 90. It's been up to 95
3 earlier. But let's pretend that 60 of those are lawyers
4 billing by the hour. That's very conservative. Probably many
5 more than 60. And let's assume conservatively that the
6 average billing rate is $700 an hour. That's probably very
7 low, right? We probably don't have many baby lawyers on the
8 phone. So that's a very low average. So, 60 lawyers times
9 $700 an hour, $42,000 an hour this hearing has cost. And then
10 we've been going over seven hours. So let's say seven,
11 conservatively, times $42,000. This hearing has cost $294,000
12 today. A preliminary injunction hearing. I mean, no one
13 thinks that's chump change. I don't know, maybe some people
14 do. This just seems like a ridiculous way to spend resources.
15 No offense to all the wonderful lawyers, but this is just --
16 it's crazy-town, right? It is crazy-town. So I implore you,
17 okay, how about I use that word, I implore you to have these
18 good-faith discussions on a pot plan.
19 Please, Mr. Dondero, I mean, don't waste people's time.
20 $160 million, I know that's not going to cut it. Okay? So
21 it's going to have to be more meaningful. I just know that in
22 my gut.
23 But having said that, I mean, I honestly mean I think a
24 pot plan -- I think you getting your baby back is the best
25 thing for everyone. Okay? I think it's the best thing for

everyone. So I want you all to --

MR. DONDERO: Judge, I -- Judge, I just need to interject for a second, because no one follows the big picture. We filed for bankruptcy with $450 million of assets. $360 million of third-party net assets, $90 million of affiliated notes. The third-party assets are down to $130 million and falling fast.

MR. POMERANTZ: Your Honor, I hate to interrupt Mr. Dondero, but that is not the purpose of this hearing.

THE COURT: Well, --

MR. POMERANTZ: Mr. Dondero's statement of the assets and value is just not something that the Debtors would agree and support. I'm sure it's not something the creditors -- I think we understand what Your Honor is saying. I think the Committee understands. And Your Honor knows that the Debtor and the Committee are close to the asset values. And Mr. Dondero should be making his argument to the Debtor and the Committee, not Your Honor, in this open forum.

THE COURT: Okay.

MR. POMERANTZ: It's just not appropriate.

THE COURT: And I understand where you're both coming from. And he's saying that because I made the comment I made about $160 million not being enough.

I've seen the evidence. I've heard the evidence at prior hearings, Mr. Dondero. We've had a lot of hearings. And I

1 remember writing that down. Wow, why did that happen? Seeing
2 the dissipation of value. I couldn't remember the exact
3 numbers, but I thought it was like $500 million something and
4 then $300 million or whatever. And I remember Multi-Strat,
5 that being sold, and blah, blah, blah, blah.
6 But having said that, there are a lot of causes of action
7 that have been hinted at by the Creditors' Committee and
8 others. So, causes of action is one of the things they are
9 looking at when they start thinking about what's appropriate
10 value.
11 So I just, I get where everyone is coming from. I get
12 where everyone is coming from. But, again, let's take one
13 more stab at this, please. Okay?
14 MR. POMERANTZ: Yeah. And Your Honor, my last
15 comment. We're commercial people. The creditors are
16 commercial people. I think we've done a tremendous job in
17 being able to resolve most every one of the significant
18 claims. I think the Court should trust the process. Mr.
19 Dondero should trust the process.
20 And again, if there's a commercial deal to be worked out,
21 I don't think there's anyone more than of course the Debtor
22 and the people on the Committee, who have been litigating in
23 many cases with Mr. Dondero and Highland for ten years, I
24 don't think it's anyone's desire. So if there's a reasonable,
25 rational proposal that the creditors can get behind and want

to engage, then there'll be a discussion. If they don't believe it's a reasonable, rational proposal, they won't.

THE COURT: Yes. All right. Well, I do feel very good about what I've heard about the UBS issues being worked out. I mean, we have come a long way in 15 months, even though it's frustrating to me and others. But, again, I know you all are going to do what you need to do. And I'll look for the form of order. I'm going to see you all, Mr. Dondero, including you, next Wednesday. And if there's nothing else, we stand adjourned.

MS. SMITH: Your Honor, I'd like to review the form of order as it regards my clients before it's submitted.

THE COURT: Okay.

MS. SMITH: If I could have a courtesy copy, please.

THE COURT: Yes. Well, yes. I'm not going to require 90 lawyers to get the order, but I will ask Mr. Pomerantz, Mr. Morris, make sure Ms. Smith gets it and obviously Mr. Dondero's counsel gets it. And I probably won't get it until Monday, it sounds like, but --

MR. POMERANTZ: That's likely.

THE COURT: But I'll be on the lookout for it. Okay. Thank you. We stand adjourned.

MS. SMITH: Thank you, Your Honor.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

MR. BONDS: Thank you, Your Honor.

(Proceedings concluded at 4:09 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **01/11/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P.	§	Case No. 19-34054-SGJ-11
James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 38

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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	Documents filed in Adversary Proceeding – Adv. Proc. No. 20-03190			
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006248	11.	Adv. Dkt. 2	12/7/20	Debtor's Motion for Preliminary Injunction
006257	12.	Adv. Dkt. 3	12/7/20	Brief in Support of Debtor's Motion for Preliminary Injunction
006276	13.	Adv. Dkt. 6	12/7/20	Debtor's Motion for Temporary Restraining Order
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006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
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006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
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006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
			Transcripts	
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Tuesday, January 26, 2021 9:30 a.m. Docket MOTION FOR ENTRY OF ORDER AUTHORIZING DEBTOR TO IMPLEMENT KEY EMPLOYEE PLAN [1777]
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al. Defendants.	**Adversary Proceeding 21-3000-sjg** PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST CERTAIN ENTITIES OWNED AND/OR CONTROLLED BY MR. JAMES DONDERO [5]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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25 Proceedings recorded by electronic sound recording;
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DALLAS, TEXAS - JANUARY 26, 2021 - 9:40 A.M.

THE COURT: All right. We have Highland settings this morning: a Motion for Approval of a KERP, which I didn't see objections to, and then a Preliminary Injunction hearing. Let me get appearances from the parties who have filed pleadings.

For the Debtor team, I see Mr. Morris. Who do we have appearing?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz and John Morris appearing on behalf of the Debtor. I will handle the KERP motion, which we'll propose goes first and quickly, and then Mr. Morris will handle the adversary proceeding.

THE COURT: All right. Very good.

All right. Let me get appearances from the Defendants in the preliminary injunction matter. Do we have Mr. Kane or someone for CLO Holdco?

MR. KANE: Yes, Your Honor. John Kane for CLO Holdco, Ltd.

THE COURT: All right. What about for the Funds and Advisors? I guess we have a couple of law firms involved. Who do we have appearing for the K&L Gates firm?

MR. HOGEWOOD: Good morning, Your Honor. This is Lee Hogewood with K&L Gates, and also with our firm appearing today is Emily Mather.

THE COURT: Okay. I didn't get Emily's last name. Could you repeat that?

MR. HOGEWOOD: I'm sorry, Your Honor. Emily Mather, M-A-T-H-E-R.

THE COURT: Thank you.

All right. For the Munsch Hardt team, do we have Mr. Rukavina or someone else appearing?

MR. RUKAVINA: Your Honor, good morning. This is Davor Rukavina. I represent all of the Defendants in the adversary except CLO Holdco.

Pursuant to the Court's instructions, Mr. Dondero is also present here in my conference room, so he is here. He is not on the camera, but he is here.

THE COURT: Okay. All right. And does Mr. Dondero have counsel, his individual counsel appearing today?

MR. WILSON: Your Honor, John Wilson for Jim Dondero.

THE COURT: Okay. Thank you. Do we have Creditors' Committee lawyers on the phone today?

MR. CLEMENTE: Yes, Your Honor. Good morning. Matthew Clemente; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. Thank you.

All right. Well, obviously, if any other lawyer is dying to chime in at some point today, I will consider letting that happen. But, again, I think we've got the parties who have

filed pleadings having appeared at this point. So, let's turn to the KERP motion. Mr. Pomerantz?

MR. POMERANTZ: Yes, Your Honor. Good morning again. On January 19th, the Debtor filed its motion for approval of a Key Employee Retention Program which would substitute out its annual bonus plan.

We have not received any opposition to the motion, although the United States Trustee did ask some questions which we are prepared to address in connection with the proposed proffer of Mr. Seery's testimony. I'm happy to make a full presentation of the motion to Your Honor, if you would like, or I could just present Mr. Seery's proffer, which I should -- which I believe will establish the factual predicate and the evidence to support the motion.

THE COURT: All right. Let's just go straight to the proffer, please.

MR. POMERANTZ: Okay. Thank you, Your Honor.

PROFFER OF TESTIMONY OF JAMES P. SEERY

MR. POMERANTZ: Mr. Seery is on the video today, and if he was called to testify he would testify that his name is James P. Seery, Jr. and that he is the chief executive officer and chief restructuring officer of Highland Capital Management.

He would also testify that he was one of the independent directors appointed to the Court on January 9th, 2020.

Because of his role with the Debtor, he is familiar with the company's day-to-day operations, including its -- the company's employee and wage benefit and bonus plans relating to the employees.

He would testify that he has been involved in the negotiation and drafting of the company's plan of reorganization, and is familiar with the expected operation of the Claimant Trust and Reorganized Debtor post-confirmation in connection with the plan.

He would testify that the plan generally provides for the monetization of the company's assets for the benefit of creditors and stakeholders, and he would testify that, as part of the plan process, he worked closely with DSI, the company's financial advisor, to assess both the costs of the Debtor's current employee base and the projected cost of operations in connection with the Reorganized Debtor and Claimant Trust following the effective date.

He would testify that, to ensure the continued smooth operation of the company in connection with the continuation and consummation of the plan for the benefit of all stakeholders, that he worked with DSI to determine the appropriate staffing needs necessary for the company's remaining operations.

He would testify that he analyzed the current employees to determine which, if any, would need to be continued to be

retained by the Debtor and operate during the Reorganized Debtor and Claimant Trust period following the effective date of the plan.

He would testify as part of that analysis he reviewed the roles and functions of the non-insider employees with respect to the services that they needed, and he reviewed the wages, benefits, and bonuses for those remaining non-insider employees necessary for those functions.

He would testify, that based upon his review, the company determined that it was in the best interests of the estate to terminate the existing annual bonus plan, as it was no longer necessary to effectively incentivize the remaining non-insider employees who would be terminated prior to being entitled to any further payments under the annual bonus plan.

He would testify that, instead, the company developed a new retention plan that was designed to incentivize the non-insider employees to remain with the company for as long as they are needed to assist in the effectuation of the plan.

He would testify that Mr. Waterhouse and Surgent, arguably two insiders of the Debtor, are not eligible for the retention plan, and that's not because there is any concern regarding their loyalty, but the Debtor is looking at ways to appropriately incentivize and compensate those people as appropriate in the future.

He would testify that there are a few persons on the list

of people who are part of the retention plan with a title that includes director or manager; however, he would testify that none of those individuals are corporate officers or directors of the Debtors -- the Debtor, and that the titles are for convenience only. He would testify that the individuals who are employed in these roles do not have any authority whatsoever to make any decisions on behalf of the Debtor.

He would testify that in connection with the new retention plan, the non-insider employees may be offered the opportunity to enter into a termination agreement with the company that will provide specified benefits and payments in return for the non-insider employee remaining as an employee in good standing with the company through the separation date.

He would testify that a key component of the retention plan is that non-insider employees will be entitled to the specific bonus payments provided that they do not voluntarily terminate their employment with the Debtor prior to the separation date and are not terminated for cause.

He would testify that that is in contrast to the existing or the prior annual bonus plan, which provided that non-insider employees would not receive their bonus payments if they were not employed by the Debtor on the vesting date for any reason except on account of disability, including termination without cause.

Mr. Seery would further testify that the retention plan is

being offered to approximately 53 employees, and the projected aggregate amount of payments under the retention plan is approximately $1,481,000, which is $32,000 approximately less than the amount that would have been paid to such employees under the annual bonus plan.

He would testify that the retention plan includes 20 employees who are not entitled to benefits under the annual bonus plan. Fourteen employees are entitled to receive more under the retention plan than they would have received under the annual bonus plan.

With respect to the 20 employees I've previously mentioned who are not otherwise entitled to receive anything under the annual bonus plan, the vast majority of those -- 18 -- will be entitled to payments of $2,500 each, and the other two entitled to payments of $10,000 and $7,500, respectively.

Mr. Seery would testify that he believes that these additional payments are reasonable in light of the current status of the company and the value to be added to the estate through the retention of these employees, and that this plan is more accurately and narrowly-tailored to achieve the company's reorganization goals.

On this basis, Your Honor, Mr. Seery would testify that he presented the proposed retention plan to the independent directors and they agreed with Mr. Seery's assessment that entry into the retention plan was in the best interests of the

estate and its creditors.

He would also testify that he had negotiations with the Creditors' Committee and its advisors regarding the retention plan and that the Committee is supportive of the retention plan.

And that would conclude my proffer of testimony from Mr. Seery, Your Honor.

THE COURT: All right. Mr. Seery, if you could say "Testing, one, two" so we can catch your audio and video, please?

MR. SEERY: Testing, one, two, Your Honor.

THE COURT: All right. There you are. Please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Is there anyone who has questions at this time for Mr. Seery?

(No response.0

THE COURT: All right. Well, I'll just double-check with the Committee. It's been represented that you all are in support of this. Mr. Clemente, if you could confirm that on the record?

MR. CLEMENTE: That's correct, Your Honor. The Committee has no objection to the motion, so Mr. Pomerantz's statements are accurate.

THE COURT: All right. Anyone else?

MS. LAMBERT: This is Lisa Lambert for the United States Trustee. The U.S. Trustee has reviewed the actual data about the comparatives, and the U.S. Trustee, based on the stipulations, has no objection.

THE COURT: All right. Thank you. Anyone else?

All right. Well, the Court will approve this motion. First, while the notice was expedited, the Court finds that it was sufficient under the circumstances. We are many months into the case, it's been vetted by the Committee, and the Court is satisfied with the level of notice here.

The Court finds that this is a KERP that is justified by all the facts and circumstance of this case, to use the wording of Section 503(c)(3) of the Bankruptcy Code. There also appears to be a very sound business purpose justifying the proposed KERP. It appears to be reasonable in all ways, and fair under the circumstances, so I do approve it.

All right. So if you all will get the order uploaded electronically, I will promise to sign it promptly.

MR. POMERANTZ: We will do so, Your Honor. Thank you.

THE COURT: All right. So, the preliminary injunction. Mr. Morris, I heard you were going to be taking the lead on that, so go ahead.

MR. MORRIS: Indeed. Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

THE COURT: Good morning.

MR. MORRIS: A few items before I give what I hope will be an informative opening statement. I trust that Your Honor has not had the opportunity, because it was just filed a moment ago, to see that the Debtor filed on the docket notice of a settlement with CLO Holdco, Ltd., one of the Defendants here today.

THE COURT: I have not seen that. Okay.

MR. MORRIS: Right. So you'll find that at Docket 1838.

THE COURT: Okay.

MR. MORRIS: It really is a very simple settlement, Your Honor. In exchange for the withdrawal of CLO Holdco's objection to the Debtor's plan of reorganization, the Debtor is dismissing CLO Holdco from this adversary proceeding with prejudice. There are, you know, some other bells and whistles there, the most important of which to the Debtor is simply that, under the CLO management agreements, most of them but not all of them require that a level of cause be established before the contracts can be terminated, and CLO Holdco has agreed that, before it seeks to terminate a contract for cause, there will be a gating provision or a gatekeeping provision that requires them to come to this Court to simply establish whether or not there is a colorable claim -- not for a determination on the merits, but simply to protect the

Debtor from frivolous lawsuits.

So that's really the sum and substance of it. Mr. Kane is on the line now, and if I've either inaccurately or incompletely characterized the settlement, I'm sure he'll take the opportunity to supplement the record. But we don't see any need, really, to go through a full 9019 motion here. There's no releases. There's no exchange of money. It's the withdrawal of a plan objection in consideration for the dismissal of an injunctive proceeding.

So we did want to alert you to that. And as a result, there was one witness that we intended to call today, Grant Scott. Mr. Scott is the director of CLO Holdco. And with the resolution of the issues between the Debtor and CLO Holdco, we have no intention of calling Mr. Scott today. But I'd like to give Mr. Kane an opportunity to be heard just in case he's got anything to add.

THE COURT: All right. Mr. Kane, can you confirm? Do you have anything to change about what you heard?

MR. KANE: Your Honor, I do not. The settlement agreement speaks for itself. We did reach an agreement with Debtor's counsel and the Debtor yesterday evening, fairly late in the evening. Mr. Morris's synopsis of the proposed settlement is accurate. The Debtor has agreed to dismiss CLO Holdco from the preliminary injunction adversary proceeding with prejudice.

THE COURT: All right. Well, thank you. I've pulled it up on my screen. It's very short and to the point. And I agree with the comment of Mr. Morris that I don't think a formal 9019 motion is required here, given no consideration is going back and forth, or releases. It's just exactly as you described orally. So, I appreciate that. It simplifies a little bit what we have set today. And we will accept this settlement as being in place as we roll forward. All right? Thank you.

MR. MORRIS: Thank you, Your Honor.

So, before I get to the substance of the argument, I would like to take care of some housekeeping items relative to today's proceedings.

THE COURT: Okay.

MR. MORRIS: You know, this has been a bit of a challenge for me personally, and it's going to be a little bit of a challenge today for Ms. Canty, my assistant, in part because it's almost like Groundhog's Day. This is, I think, the third time that we're covering some of the same issues. We had covered them the first time on December 16th in connection with what I'll now just simply refer to as the Defendants, the Defendants' motion to try to limit the Debtor from trading the CLO assets. We heard a lot of what we're going to hear today again on January 8th in connection with the preliminary injunction motion against Mr. Dondero. And so

there's already a ton of evidence in the record. We do believe that we need to present our evidence today, but one of the challenges that we'll face, and I think we'll be able to do it efficiently, Your Honor, is there may just be some back and forth between various documents. But everything's gone pretty smoothly, and I'm optimistic we'll get through that part of it today.

So I want to deal with the exhibits themselves, Your Honor. As you may have seen, there have been a number of different filings relating to the Debtor's exhibits for this particular motion, and I just want to go through the exhibits and make sure that we're all on the same page here. I want to tell the Court exactly what happened and why and where we are today.

The Debtor timely filed its original witness and exhibit list on January 22nd. They filed that witness and exhibit list at Docket 39 in this Adversary Proceeding 21-3000. The exhibit list referenced Exhibits A through I'll just say AAAAA. It was a lot of exhibits, and somebody had the wise idea to convert them to numbers, but it wasn't me, so I can't take credit. But we're left with letters, and they go from A through AAAAA.

After filing that initial exhibit list, we realized that --

(Interruption.)

THE COURT: All right. Does someone have their device unmuted? Okay. It went away. Go ahead, Mr. Morris.

MR. MORRIS: Thank you. So, shortly after filing that initial exhibit list, we realized that we forgot to file among the exhibits AAAAA. So at Docket #40 in the adversary proceeding, the Court can find Debtor's Exhibit AAAAA.

And then we're going to -- I'm going to refer in a few minutes -- I'm going to use in a few minutes some demonstrative exhibits, and I'm going to use them again with Mr. Seery. And these exhibits concern trading in AVYA and SKY securities that you've heard about previously.

But I'm pointing that out now because I'm kind of old school, Your Honor, and I won't use a demonstrative exhibit if it doesn't have the evidence in the record. And what we realized, Your Honor, is we made two additional mistakes on Friday with all the papers that we filed. The backup for these demonstratives was mistakenly included on the exhibit list for the confirmation hearing as opposed to the preliminary injunction hearing. That was error number one. And error number two, we hadn't redacted the information to show only the SKY and AVYA.

And that's why, Your Honor, at Docket #48, you will find our amended exhibit list that includes what we have identified as Exhibits BBBBB as in boy through SSSSS as in Sam. And those exhibits, Your Honor, are the backup to the

demonstrative exhibits. I don't expect to use them at all, but I do believe strongly that one should not use a demonstrative exhibit unless the evidence is in the record to support it, and now it is.

So that's why, Your Honor, I do appreciate your court staff. I do appreciate Your Honor. I think you either had before you and you may have signed an order on redacting. This is what it was all about. It was just to make sure we had the proper evidence in the record, so I appreciate that.

At this time, Your Honor, I think, just because I'll be referring to it in the opening, the Debtor would move for the admission into evidence of Exhibits A through SSSSS.

THE COURT: All right. Is there any objection?

MR. RUKAVINA: Your Honor, there is. Your Honor, I object to UUUU. I'll object to VVVV as in Victor. I object to AAAAA. That's it, Your Honor.

I will note that there are several exhibits in here of relevance to CLO Holdco that may not be relevant to my clients, but those are my limited objections for now.

THE COURT: All right. Before we ask the nature of your objection, let me ask Mr. Morris: Shall we just --

MR. MORRIS: Yeah.

THE COURT: -- carve these out for now, and then if you want to offer them the old-fashioned way, we'll hear the objection then?

MR. MORRIS: Yes, although I can make it very clear that UUUU should not be in there precisely because it's demonstrative. We had talked that yesterday and I agreed; I just forgot that. UUUU should not be part of the record.

THE COURT: Okay. And so you'll just decide later do you want to offer VVVV and AAAAA the old-fashioned way?

MR. MORRIS: Correct.

THE COURT: All right. So, for the record, I am admitting by stipulation -- with three exceptions I'll note -- all of the exhibits of the Debtor that appear at Exhibits 39 and, well, and 48. And we're carving out of that admission UUUU, VVVV, and AAAAA, which actually appears at Exhibit -- Docket Entry 40. Those are not admitted at this time.

(Debtor's Exhibits A through SSSSS, exclusive of Exhibits UUUU, VVVV, and AAAAA, are received into evidence.)

THE COURT: All right. Go ahead, Mr. Morris.

MR. MORRIS: Yes.

MR. RUKAVINA: Well, Your Honor, while we're talking about housekeeping -- Mr. Morris, I apologize. Is there more housekeeping?

MR. MORRIS: I'd like to continue. I was going to describe the witnesses.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: So, Your Honor, the Debtor is going to call three witnesses today. The first witness will be Mr.

Dondero, the second will be Jason Post, and then the third will be Mr. Seery.

Obviously, Mr. Dondero and Mr. Seery are very familiar to the Court and they will cover much but not all of the same ground that you've heard previously.

Mr. Post, I believe, is a new witness appearing in this court for the first time. I understand that he is the chief compliance officer of each of the Debtors [sic]. He had worked at Highland Capital Management, the Debtor, for more than a decade, I believe, but moved over to NexPoint to work with Mr. Dondero shortly after Mr. Dondero resigned from Highland Capital on or about October 10th last year.

So those are the three witnesses that we plan to present today, and I'd like to describe briefly kind of what we think the evidence will show.

The theme from our perspective here, Your Honor, is that this is a case that is about power and not rights. The Debtor brings this motion for preliminary injunction in order to protect itself from the interference of Mr. Dondero and the Defendants, entities that there will be no dispute he owns and controls.

You may have read in the papers, and I suspect you will hear today from the Defendants, the clarion call for contractual rights and the need for this Court to protect their contractual rights. This is a red herring, Your Honor.

1 There are no contractual rights at issue here. What Mr.
2 Dondero and the Defendants really want is to maintain control,
3 or at least to deny Mr. Seery from exercising the Debtor's
4 valuable contractual rights. If there are any contractual
5 rights at issue here, it is the Debtor's. The Debtor is the
6 party to the CLO management agreements, and it's those very
7 rights that are being infringed upon.
8 This was supposed to have been resolved 53 or 54 weeks ago
9 now, Your Honor, when Mr. Dondero agreed and this Court
10 ordered that Mr. Dondero could not use related entities to
11 terminate any of the Debtor's agreements. There is no dispute
12 that each of the Defendants is a related entity for purposes
13 of the January 9th order, since Mr. Dondero and Mr. Norris
14 have already testified that the Defendants are owned and/or
15 controlled by Mr. Dondero.
16 Notwithstanding the plain language of the January 9th
17 order, which Mr. Dondero not only agreed to, but it may be one
18 of the very few orders in this case that he hasn't appealed,
19 notwithstanding the plain language, Your Honor, he persists,
20 and that is why we are here.
21 How do we know that this is about power and not rights?
22 How do we know that everything that's going to be described
23 for you, what the evidence is going to show that this is about
24 power and not rights, is very simple. Mr. Dondero and Mr.
25 Post will testify -- I'm just going to give four, five, six

1 examples here -- are going to testify that Mr. Seery's AVYA
2 trades were not in the Funds' best interests. It's an
3 irrelevant point, Your Honor. There is no contractual right
4 that gives them the ability to terminate because they don't
5 like trades that are being made. They can sell. If they
6 don't like it, they can sell. That's what's really funny
7 about this.
8 But what's -- what makes it even more clear that this is
9 about power and not rights is the evidence is going to show
10 that Mr. Dondero sold AVYA shares throughout 2020. He sold
11 those shares right up until the day he resigned. And yet six
12 days after resigning, NexPoint sends a letter saying, Don't
13 sell any assets.
14 Ms. Canty, can we put up Exhibit number -- Demonstrative
15 Exhibit 1, please?
16 Okay, Your Honor. We have redacted this to shield from
17 public disclosure the name of each fund that's trading, but
18 the backup, as I alluded to earlier, in Exhibits BBBBB through
19 SSSSS, some portion of those documents, that's where these
20 demonstrative figures come from.
21 And as you can see, beginning on January 29, 2000,
22 continuing through the bottom of the page, October 9th, 2020,
23 when Mr. Dondero left Highland Capital, he traded millions and
24 millions and millions of dollars in AVYA stock.
25 Can we go to Demonstrative Exhibit #2, please?

This chart is really -- no, I apologize if I -- the other one. The AVYA trading activity chart. Yeah.

This one is really interesting, Your Honor, because it shows the trading throughout the year of AVYA stock, and you can see the brown bars there represent Mr. Dondero's trades. And you can see just how many trades there are. There are over a million shares, I think, if you added it up. They're represented by the brown bars. You can see him selling AVYA stock throughout the period, sometimes at a price really near its bottom.

And then Mr. Seery tries and actually does sell some stock toward the end of the year. That's the green bars on the right. A very, very tiny amount compared to Mr. Dondero. And he sells it at a substantially greater price than Mr. Dondero sold the AVYA stock. And yet they're here telling you, Your Honor, that somehow Mr. Seery is mismanaging the CLOs and they disagree with what he's doing and he's not acting in the best interests of the investors. That's what they want -- but this is what the evidence shows, Your Honor.

With respect to SKY, if we could go to the next slide, please.

So this is SKY. Now, Mr. Dondero did not trade any SKY securities, but Mr. Seery did. And this was another security -- and we'll get to the evidence in a moment -- that Mr. Dondero interfered with and tried to stop. So Mr. Seery

succeeded sometimes and he was stopped sometimes, but the point is, Your Honor, look at the price that Mr. Seery sold.

And remember, you heard this before and you're going to hear it again. Nobody from the Defendants ever asked Mr. Seery, Why do you want to trade this? Not that they even had to. Not that Mr. Seery needs to defend himself, frankly. He's got the authority under the management contracts to act in the way that he thinks is in the best interest. But look at this chart. He made these sales, Your Honor, at more than twice the price of the bottom.

How can they have any credibility? How can Mr. Dondero and Mr. Post come into this courtroom and assert that Mr. Seery is doing anything other than a fabulous job? He is selling at the top of the market. Because they think that some high -- in the future, it's going to go higher? It's prudent, Your Honor.

Mr. Seery is going to tell you the work that he did. He is going to give you the rationale for his decisions. And the only conclusion that I hope and believe the Court will be able to reach is that these were not only rational decisions but they were prudent, taking some money off the table when the stock was near its high.

That's how we know, this is more evidence how we know this is about power. It's not about rights. It's not about justice. It's not about anything having to do with anything

other than Mr. Dondero wanting to maintain control.

How else do we know? What other evidence is there that this is about power and not rights? Again, the timing. The calendar here is going to be very, very important. The first demand from NexPoint from the Defendants that Mr. Seery stop trading came on October 16th. It was less than a week after Mr. Dondero -- like, where does this come from? There's no right to demand stopping of trading. You don't get to do it. And they're going to minimize it. They're going to spend the whole day, Your Honor, either -- either focusing on the law or trying to minimize. And they'll say, well, it was just a request, Your Honor. And if it was a third-party request, I bet Mr. Seery -- Mr. Seery is going to tell you, if it was a third party, he wouldn't care. But when you put all of this together, it is oppressive. It is an exertion -- it's an attempt at exertion of control. That's how it's perceived and that's actually what happened.

Do you need more evidence? Again, they'll talk about termination for cause and how they have the right and the Court -- you, Your Honor, don't have the power to infringe upon their contractual rights. But there will be no evidence. Absolutely none. Mr. Post is going to tell you, in fact, that he has no evidence of any breach, of any default, of any reason whatsoever that cause might exist for the termination of these contracts. That's how you know this is about power

and not rights.

Last point on the issue of power versus rights: Who were the counterparties to the CLO agreements? Did the CLO Issuers -- where are they? They're not here. They're not here to tell the Court that Mr. Seery is breaching his duty. They're not here to tell the Court that the Debtor is in default. In fact, what Mr. Seery is going to tell you, and it won't be rebutted, is that the CLO Issuers are close to finalizing a deal that will permit the Debtor to assume the CLO management contracts.

Mr. Post or Mr. Dondero might get up on the stand today and say, oh, because people have left the firm, that somehow they don't have the ability to service the contracts anymore. You know who doesn't believe that? The contractual counterparty, the Issuers. It's about power, Your Honor. It's not about rights.

There is substantial evidence that warrants the imposition of a preliminary injunction, substantial evidence, much of which you've heard already.

The October and November letters demanding or requesting that the Debtor halt trades. There's no right to that.

Mr. Dondero's interference with the support of Joe Sowin, the Advisors' trader, around Thanksgiving, when they actively moved in. And it's in the emails. It's in the record. We'll put in the record again.

1 And then he made the threat to Thomas Surgent -- Mr.
2 Dondero made the threat to Thomas Surgent about potential
3 personal liability.
4 The ridiculous -- remember the ridiculous motion that was
5 heard on December 16th, a motion so devoid of factual or legal
6 basis that the Court granted the Debtor a directed verdict and
7 dismissed the motion as frivolous? Notably, neither Mr.
8 Dondero nor Mr. Post testified at that hearing. Yet, within a
9 week, Your Honor -- the hearing was on a Wednesday. The
10 hearing was on Wednesday, December 16th. The Court entered
11 the order on Friday, December 18th. On Monday, December 21st,
12 the next business day, Mr. Dondero and Mr. Post and the
13 lawyers for the Defendants held conference calls to figure out
14 what to do next.
15 And the very next day, the evidence is going to show --
16 it's already in the record -- Mr. Dondero again actively
17 stopped Mr. Seery's trades from being effectuated. They sent
18 their first letter. This is less than a week after that
19 hearing, Your Honor. They sent another letter asking the
20 Debtor -- again, they requested -- minimize -- this is what
21 you're going to hear: Well, we just sent a letter requesting
22 no more trading.
23 What happened the next day, December 23rd? They send
24 another letter and they say, We're thinking about terminating
25 the contracts. Now we think we're going to terminate the

1 contracts. And we just want to let you know we're thinking
2 about terminating the contracts.
3 And we call them -- and Mr. Seery is going to testify to
4 this -- we say, What are you doing? Every time we just said,
5 Please withdraw your letter. There's no basis for doing this.
6 Leave us alone and let us do our job. They wouldn't -- they
7 refused to withdraw the letter.
8 And finally -- again, Mr. Seery will testify to this -- we
9 told them, If you think you really have a basis for
10 terminating the contract, make your motion to lift the stay.
11 And if you don't, the Debtor will file the motion that brings
12 us here today.
13 And that's how we got here, because they continued to
14 interfere with the trading. They continued to send these
15 specious letters that are implicit threats. Mr. Seery is
16 going to tell you that every one of these, he -- is an
17 implicit threat. We asked them, Just withdraw the letters and
18 stop it. We asked them to make their own motion if you think
19 so strongly of it. They wouldn't do that, either. They just
20 want it hanging out there. They just want it all hanging out
21 there over Mr. Seery's head so that he knows somebody's --
22 somebody's watching and somebody's planning, you know, to take
23 action.
24 It's not right, Your Honor. They have no right to any of
25 this. There's nothing in the contract that allows them to

1 make even a good-faith -- to make any claim that they have
2 cause to terminate the contract. They have no right under any
3 circumstances to stop Mr. Seery from trading.
4 What they are going to tell you is there's no agreement
5 between the Advisors and the Debtor that requires the Advisors
6 to execute the trades. And they're right about that. They're
7 actually right about that. But here's the thing, Your Honor.
8 What Mr. Seery is going to tell you is that Advisors has the
9 trading desk. For more than a decade, they executed the
10 trades. Through the entirety of this bankruptcy case, until
11 Mr. Dondero left Highland, they executed the trades. Even
12 after Mr. Dondero left Highland in October, they continued to
13 execute the trades. And on December 22nd, they fold their
14 hands and they say, Nope, I don't care about the course of
15 dealing, I don't care what impact it has, you can't make me do
16 it. So Mr. Seery has tried end-arounds, and that'll be in the
17 record, too, and that's when the threats to Surgent come.
18 That's when the threat to Surgent come, when we try to do the
19 workaround. Cannot do it.
20 This is just not right, Your Honor. It's just not right.
21 There's order -- there's the January 9th order. There was the
22 TRO that was in effect that we're going to hear about again,
23 because that TRO not only applied to Mr. Dondero, it prevented
24 him from conspiring with or even encouraging a related entity
25 from engaging in prohibited conduct. And that prohibited

1 conduct, as Your Honor knows, because it's your order, is
2 plain and as unambiguous as can possibly be: Don't interfere
3 with the Debtor's business. It's all we're asking for. It's
4 the only reason we're here today.
5 Interestingly, Your Honor, probably the best piece of
6 evidence that I'll put in front of you today are going to be
7 the words out of Mr. Post's mouth, because basically what he's
8 going to tell you is that, as chief compliance officer, he has
9 never once in the history of his employment told Mr. Dondero
10 to stop. In fact, what he's going to tell you is that he
11 defers to the investment professionals, and that but for the
12 TRO that is consensually in place today, it would depend on
13 the facts and circumstances as to whether or not he actually
14 does anything as chief compliance officer to stop this
15 conduct. Depends on the -- maybe he can explain to Your Honor
16 what facts and circumstances he thinks, as chief compliance
17 officer, would allow the Advisors to interfere with the
18 Debtor's business. It'll be interesting to hear him answer
19 that question.
20 That's all I have, Your Honor. I look forward to
21 presenting the evidence today. I'd like this done once and
22 for all. It's time to move on. And the Debtor -- the Debtor
23 is in bankruptcy. Your Honor, I think, has every power, every
24 right, and frankly, you know -- I feel very strongly about
25 this, obviously, Your Honor -- the Debtor needs the breathing

space and to be left alone so it can do its job. And we'll respectfully request at the end of this that the Court enter an order allowing it to do so.

Thank you, Your Honor.

THE COURT: All right. We were hearing some distortion there, I'm not sure where it was coming from, but we'll try to keep it reined in.

Mr. Rukavina, your opening statement.

MR. RUKAVINA: Your Honor, thank you. Can the Court hear me?

THE COURT: Yes.

OPENING STATEMENT ON BEHALF OF CERTAIN DEFENDANTS

MR. RUKAVINA: Your Honor, I think it's important first to note a few obvious things. One, what we're talking about today is enjoining future rights, future rights under a contract. Hearing Mr. Morris's opening, it sounds like we're trying a breach of contract case. There is no declaratory relief sought for whether there is grounds for a breach of contract case. And prior to assumption and prior to confirmation, the automatic stay applies.

So let me be clear that what they're asking the Court to do today is to excise from these contracts our rights in the future, effectively for all time, as I'll explain.

The second thing that merits real consideration is that it is the Funds, Your Honor, not the Advisors, it is the Funds

that have the right to remove the Debtor as manager.

Those Funds, as you will hear, have independent boards. Mr. Dondero doesn't own those Funds. He's not on those boards. He doesn't control them.

When Mr. Morris talks about Mr. Norris's prior testimony, that testimony was limited to the Advisors. And yes, Mr. Dondero does own the Advisors, and Mr. Dondero, while I won't say controls the Advisors, certainly has a lot of input. That is not the case for the Funds, which are the ones with the contractual powers here to remove the Debtor.

You will hear that those -- that that board or those boards meet frequently, they have independent counsel, and they take separate actions, including very recently where they did not do something that was advised and acted independently.

And the third thing that makes this case different and that all of us should bear in mind is that we're talking today about other people's money. There's more than one billion dollars of investment funds, retirement funds, pension funds, firefighter funds, school funds, wealthy individuals, having nothing in the world to do with Mr. Dondero or anyone in this case.

So what we're talking about here today, Your Honor, is that if my retirement manager files bankruptcy, that I for all time would be effectively enjoined from removing him, no matter what he may do in the future, just because he needs

1 that revenue.
2 That is an absolutely inappropriate use of a preliminary
3 injunction. It is the modification of a contract that the
4 Debtor seeks to assume, and there is going to be no evidence
5 on the underlying elements that the Court must consider.
6 I say that, Your Honor, because I'm new to -- I'm late to
7 this case but I have studied in detail what Your Honor did in
8 the *Acis* case. And I think that we have to qualitatively
9 differentiate today from *Acis*. In *Acis*, there were
10 allegations of fraudulent transfer. When Your Honor enjoined
11 future actions, I believe in part it was because the
12 legitimate owner of those rights might not have been having
13 those rights.
14 So that was a very important difference. Here, there's no
15 question that we have more than billion dollars of other
16 people's funds at issue.
17 Also in *Acis*, as confirmed by the District Court, there
18 was the exercise of an optional redemption right, which could
19 have very well been used as a weapon to strip the manager of
20 its rights. That's not the case here today. We are talking
21 about removing the Debtor in the future -- not today, not
22 prior to assumption, in the future -- for such things as if
23 the Debtor commits fraud, if Mr. Seery is indicted for
24 felonies, if the Debtor absconds with our funds. We are
25 talking about potential hypothetical actions in the future

1 that are not even ripe based on the Debtor's potential
2 wrongful actions, not based anything on our motivations or our
3 intentions.
4 So this is a different case than Your Honor has heard so
5 far in these cases. And what it boils down to, Your Honor, is
6 will the Court give judicial immunity to the post-assumption,
7 post-confirmation Debtor over the next two or three years as
8 it manages and liquidates more than a billion dollars of other
9 people's funds? It is their money at issue.
10 So, in order to do this, the Debtor first has to tell Your
11 Honor that it has a likelihood of merits on the success [sic]
12 of some claim. The Debtor cannot just come to you -- because
13 the Debtor knows Your Honor's opinion on 105(a) and the
14 Supreme Court law -- and the Debtor cannot just say, Judge,
15 please give us an injunction because it's convenient or
16 because we don't want to comply with our obligations. So they
17 concoct a tortious interference claim. They argue that there
18 is an automatic stay violation, which, as Your Honor knows,
19 all of us bankruptcy lawyers take most seriously. And they
20 argue that, well, whatever Mr. Dondero has been enjoined from
21 doing, somehow we *a priori* are also enjoined. Basically, an
22 alter ego with no facts, law, trial, or due process.
23 On the tortious interference, Your Honor will hear
24 absolute evidence that cannot be refuted that all that we did,
25 all that we did was we refused, our employees refused to make

a ministerial entry into a computer program of two trades that Mr. Seery authorized. Those trades closed exactly as Mr. Seery wanted. Those trades closed, were executed, before Mr. Seery asked our employees to do his bidding. And the reason why our employees were instructed not to do what Mr. Seery wanted was because our chief compliance officer looked at it, those employees looked at it, and they all said, What is this? Our internal protocols were not followed. We don't know anything about these trades. We have fiduciary duties, we have SEC obligations, and Mr. Seery has his own employees whom he can instruct to enter these two trades into the computer and our employees aren't going to do it. It's as simple as that.

Mr. Dondero did not command that decision. Mr. Dondero did not instruct that decision.

Our employees not doing what Mr. Seery requested of them is not tortious interference. It is not interference as a matter of law. There was no breach of contract as a result.

So the two elements -- two of the elements required for tortious interference, there will be zero evidence on. But in the bigger picture, what they're talking about again is restraining our rights in the future. And whether -- whether we are party to these contracts or a third-party beneficiary, it doesn't matter, because we are not a stranger to these contracts. These contracts expressly give us rights. And a

1 party exercising their right under a contract, it could be
2 breaching that contract, but it cannot be tortious
3 interference as a matter of law.
4 And if Your Honor is concerned about us tortiously
5 interfering in the future, then the Court should enjoin us
6 from tortious interference in the future, not excise from the
7 contract the remedies that the Debtor must accept if it wants
8 to assume these contracts.
9 Moving to the automatic stay issue, the sole and exclusive
10 argument for why we violated the stay is because our counsel,
11 a seasoned, gentlemanly bankruptcy lawyer of many years'
12 experience, sent two letters to seasoned veteran bankruptcy
13 lawyers for the Debtor. Communications. Communications
14 amongst counsel.
15 The first, the December 22nd letter, is a request: Okay,
16 we lost in front of Judge Jernigan, Judge Jernigan called our
17 motion frivolous, we get that, but we ask you to please stop
18 trading until the plan is confirmed. A request which the
19 Debtor ignored. Or that's not true, didn't ignore: refused
20 to comply with.
21 The second letter, a day later, after various
22 communications, was: Okay, we are going to initiate the
23 process of terminating you as the servicer.
24 Mr. Dondero had nothing in the world to do with these
25 letters. Mr. Dondero did not direct these letters. This was

1 professional advice from outside counsel and the independent
2 boards of the Advisors believing that their fiduciary duty
3 compelled that.
4 And guess what, that letter even said: subject to the
5 automatic stay. You heard from Mr. Morris that they basically
6 said, File your stay motion.
7 Our follow-up letter clarified anything that we might do
8 is subject to the automatic stay. We never said we're going
9 to act in a way that the stay doesn't permit. We said we're
10 going to come to this Court first.
11 But even all that, all those communications, while it may
12 be interesting, are irrelevant, because we never took any
13 action. You will hear that we never communicated with the
14 CLOs, the Trustees, or the Issuers, anything like we went over
15 with the Debtor, anything like, Please start the process of
16 removing the Debtor. We have done nothing of the sort, we
17 will do nothing of the sort, precisely because of the
18 automatic stay.
19 So I equate this, Your Honor, to your average home lender
20 whose lawyer sends a letter to the borrower saying, You don't
21 have insurance; we're going to start the process of
22 foreclosure. You're past due on your post-petition adequate
23 protection payments; we're going to start the foreclosure
24 process; we're going to go seek a list of stay. That is not
25 actionable. It is not a stay violation. Those are

1 communications, not actions. And that is precisely what
2 seasoned professional counsel should be doing.
3 And now, Your Honor, we move to the Mr. Dondero issue.
4 The argument is, well, on January the 9th, Mr. Dondero,
5 apparently for all time, in perpetuity, agreed that he will
6 not cause the related entities to terminate these agreements.
7 And then the argument is, well, the Court entered a TRO
8 against Mr. Dondero and the Court entered a preliminary
9 injunction against Mr. Dondero. Okay?
10 I don't see where the problem is. Mr. Dondero is
11 prohibited from causing us to terminate these agreements.
12 There are many ways, with independent boards, that Mr. Dondero
13 has nothing to do with that. And he will have nothing to do
14 with that in the future. So if the concern is enjoining us
15 because of an injunction against Mr. Dondero, enjoin Mr.
16 Dondero. Just like if the concern is that we're going to
17 tortiously interfere, you enjoin us from tortious
18 interference. Or if we're going to violate the stay, enjoin
19 us from violating the stay. But do not for all time assume
20 that any right that we may exercise in the future will
21 necessarily be tainted and the corrupt product of Mr.
22 Dondero's instructions. You will see today on the evidence
23 that that has not happened and it will not happen.
24 And whatever Mr. Dondero may have agreed to, we are
25 separate entities. Again, the Funds have -- are not

1 controlled or owned, and Mr. Dondero is not on the board. So
2 whatever he may have agreed to is between the Court and the
3 Debtor and him, but he never agreed to that on behalf of the
4 Funds. He never agreed to that on behalf of the Advisors, who
5 have their own independent fiduciary duties and duties under
6 the law.
7 So, Your Honor, there will be no substantial likelihood of
8 success on the merits. There will be no likelihood of success
9 on the merits. And I'm talking about the post-assumption,
10 post-confirmation time frame. The issue is fundamentally
11 different pre-assumption and pre-confirmation. But post-
12 assumption and post-confirmation, the Debtor will not show a
13 likelihood of success on the merits. The Debtor will not show
14 any irreparable injury. None.
15 Mr. Seery will testify that managing these agreements for
16 the coming couple or three years will have some value to the
17 Debtor. He doesn't know what the profitability of that is to
18 the Debtor. You will hear that, in fact, managing these
19 contracts for the next two years does not bring any
20 profitability to the Debtor. The Debtor will lose money
21 managing of them. But whatever damages there are are monetary
22 damages, and monetary damages are not an irreparable injury as
23 a matter of law.
24 Now, the Debtor says, well, the Court can enter an
25 injunction in the aid of restructuring, but this injunction

will happen after restructuring.

On the balance of harm and public interest, Your Honor, I think we're dealing with more than a billion dollars of clean, innocent third-party funds. The balance of harm here weighs against granting this injunction. If we try to do anything in the post-confirmation world, the Debtor has all of its rights and remedies to contest what we do. If we do it wrong, we're liable in contract or in tort, there's monetary damages, and the Debtor has already successfully organized.

But if the Debtor does something wrong in the future and we cannot take action to stop a gross mismanagement or a denution [sic] of the Debtor or an abscondence with funds, then think about the harm to the innocent investors here. Because if we even go to court, your Court, any court, we will be in violation of a federal court injunction.

Your Honor, this is not the appropriate purpose of an injunction for the preservation of the status quo. The status quo, by definition, cannot extend post-assumption or post-confirmation. This is not a proper exercise of equity. We have done nothing wrong, we have threatened to do nothing wrong, and we will do nothing wrong to justify forever being prejudiced and enjoined from exercising our contractual and statutory rights.

Your Honor, this TRO extends through February the 15th. We asked the Debtor to continue this hearing. We asked the

Debtor to go to our independent boards and seek approval of the same settlement that the Debtor has with CLO Holdco, which we learned about last night. We simply haven't had the time to get those boards aligned up and present a settlement to them. We're trying to put together a competing plan.

Your Honor, there is no reason to go forward today except, like Mr. Morris said, power. Power. Mr. Seery's power, Your Honor. Not ours. Mr. Seery's power in perpetuity or for judicial immunity, get out of jail free card. Thank you.

THE COURT: All right. Mr. Morris, you may call your witness.

MR. MORRIS: Yeah. I just want to make a motion to strike the notion of a get out of jail free card. I appreciated everything counsel had to say, but I think that's a little -- a little over the top.

We call Mr. James Dondero, please.

THE COURT: Mr. Dondero, --

MR. RUKAVINA: Your Honor, bear with me.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, bear with me. I'm going to get out of this chair. Mr. Dondero will get in this chair. And so that there's no reverberation, I will be sitting next to Mr. Dondero in case I have to make any objections.

THE COURT: Okay. All right. Good morning, Mr. Dondero.

MR. DONDERO: Good morning.

THE COURT: Please raise your right hand.

JAMES DONDERO, DEBTOR'S WITNESS, SWORN

THE COURT: Thank you. Mr. Morris, go ahead.

MR. MORRIS: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. Okay. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor. Can you hear me okay, sir?

A Yes.

Q There are no board members here on behalf of any of the Funds to testify or offer any evidence; isn't that right?

A Not that I'm aware of.

Q Okay. And you knew the hearing was going to be today on the preliminary injunction, right?

A Yes.

Q And you had an opportunity to confer with the boards of the Funds in advance of this hearing, right?

A No.

Q There's no -- there's no -- no board member is expected to testify, fair?

A Correct.

Q So the Court isn't going to hear any evidence as to the

1 board's perception of what's happening here, right?
2 A Not that I'm aware of.
3 Q Okay. Until January 9th, 2020, you controlled the debtor
4 Highland Capital Management, LP; isn't that right?
5 A I don't remember exactly when these -- when the
6 independent board was put in place, but up until around that
7 time, I believe.
8 Q Okay. So, January 2020?
9 A Yes.
10 Q And during that month, you completed an agreement with the
11 Creditors' Committee where you ceded control of the Debtor
12 pursuant to a court order, right?
13 A Pursuant to a court ...? I thought it was pursuant to a
14 negotiation where they would have fiduciary responsibility to
15 the estate in my absence. That's -- that's what I think the
16 (garbled).
17 Q Okay. You're aware -- so you entered into an agreement
18 with the Creditors' Committee pursuant to which you ceded
19 control of the Debtor, right?
20 MR. RUKAVINA: Your Honor, I'll object. That
21 agreement speaks for itself. And if Mr. Morris wants to
22 present it to Mr. Dondero, he can.
23 THE COURT: Um, --
24 MR. MORRIS: Sure. Ms. Canty, can we please put up
25 --

THE COURT: All right. Well, I --

MR. MORRIS: I'm happy to put it up, Your Honor.

THE COURT: I overrule that objection. You can ask. And then if he's not sure, you can present the agreement. All right? Go ahead.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Mr. Dondero, is there any doubt in your mind that in January of 2020 you gave up control of Highland in favor of an independent board at the Strand Advisors level?

A No. I -- yes, I agree with that.

Q Okay. And do you recall that, in connection with that agreement, the Court entered an order?

A Several orders. Which one?

Q Okay.

MR. MORRIS: Can we please put up Docket No. 339?

MS. CANTY: Sure, just one second.

MR. RUKAVINA: And you have it here.

John, I have the order if just want Mr. Dondero to review it.

MR. MORRIS: I think -- I think everybody should have the benefit of seeing it. But thank you very much.

Your Honor, while we take this moment, can you just remind me of when the Court needs to take a break today, so that I'm mindful of that and respectful of your time?

THE COURT: 11:30.

MR. MORRIS: Okay. And what time will we reconvene?

THE COURT: Well, I have said 1:00. I hope it can be a little sooner, but let's just plan on 1:00, okay, so there's no confusion.

MR. MORRIS: Okay. All right. All right. So, on the screen here, we have Exhibit OOOO, which is in the record.

BY MR. MORRIS:

Q This is an order that was entered by the Court on January 9th, 2020. Do you see that, sir?

A Yes.

MR. MORRIS: Can we scroll down to Paragraph 9, please? (Pause.) Are you having problems, Ms. Canty?

MS. CANTY: It's on the screen. You can't see it?

MR. MORRIS: Yeah. Can you scroll down to Paragraph 9?

MS. CANTY: It's on Paragraph --

MR. MORRIS: That's on Page 2, I believe.

MS. CANTY: Yeah, I have it up. I'm not sure what the disconnect is, because I can see it on my screen. I'm going to stop it and reshare it.

MR. MORRIS: Thank you very much.

(Pause.)

MS. CANTY: Do you see it now?

MR. MORRIS: Okay. Beautiful.

BY MR. MORRIS:
Q Mr. Dondero, if you'd just read Paragraph 9 out loud.
A (reading) Mr. Dondero shall not cause any related entity to terminate any agreements with the Debtor.
Q Okay. So you understood, as part of the corporate governance settlement pursuant to which you avoided the imposition of a trustee, that you agreed that you wouldn't cause any related entity to terminate any agreements with the Debtor, right?
A Uh, --
Q Is that correct? You understood that paragraph?
A Yes.
Q Okay. And you didn't appeal this particular order, did you, sir?
A I -- I believe I've refuted -- I've adhered to that order entirely.
Q Okay. NexPoint Advisors LP, is one of the defendants in this matter, right?
A Yes.
(Pause.)
Q Can you hear me, sir?
A Yes. Yes, I said, "Yes."
MR. NICHOLSON: Well, John, did you -- did you ask a question? Because you went offline for a few seconds there.
MR. MORRIS: I asked whether NexPoint Advisors, LP

1 was an advisory firm.
2 THE WITNESS: Yes.
3 BY MR. MORRIS:
4 Q And you have a direct or indirect ownership interest in
5 NexPoint Advisors, LP, correct?
6 A Yes.
7 Q And you understand that, based on that direct or indirect
8 ownership interest, NexPoint Advisors, LP is a related entity
9 under Paragraph 9 of this order, right?
10 A Yes.
11 Q Okay. Highland Capital Management Fund Advisors, LP is
12 one of the other defendants in this case, right?
13 A Yes.
14 Q And we'll refer to that entity as Fund Advisors; is that
15 fair?
16 A Yes.
17 Q And we'll refer to Fund Advisors together with NexPoint
18 Advisors, LP as the Advisors; is that fair?
19 A Yes.
20 Q Okay. Fund Advisors is also an advisory firm; is that
21 (audio gap)?
22 A I missed that last question.
23 MR. RUKAVINA: John, you're freezing up on us. Is it
24 on our end, Your Honor, or is it on Mr. Morris's end?
25 MR. MORRIS: Just let me know -- just let me know

when it happens.

THE COURT: Yes. I'm hearing him. But go ahead, Mr. Morris. Let's try again.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q You have a direct or indirect ownership interest in Fund Advisors, correct, sir?

A Yes.

Q (audio garbled) And based on that direct or indirect interest, you would agree that Fund Advisors is a related entity for purposes of this order, correct?

A Yes.

Q In addition to your ownership interest, you're also the president of Fund Advisors; is that (audio gap)?

THE COURT: All right. Now --

THE WITNESS: I believe so.

THE COURT: Yes. Now I'm starting to have some trouble, Mr. Morris. Every once in a while, you're freezing towards the end of a sentence. So I don't know what can be done, but it's --

MR. MORRIS: All right. Let me know if that continues.

THE COURT: Okay.

BY MR. MORRIS:

Q To use your words -- to use your words, Mr. Dondero, it's

fair to say that you generally control Fund Advisors, right?
A Yes.
Q And based on that, you acknowledge that Fund Advisors is a related entity under the Court's order, correct?
A Yes.
Q And together, the Advisors that you own and control manage certain investment funds, correct?
A Yes.
Q And three of those funds are defendants in this case, correct?
A Yes.
Q And you are the portfolio manager of each of those funds; is that right?
A I believe so.
Q Okay. Let's talk about the events that led to this matter. CLO stands for Collateralized Loan Obligations, correct?
A I'm sorry. Repeat that, please?
Q Sure. CLO stands for Collateralized Loan Obligations, correct?
A Yes.
Q Years ago, the Advisors that you own and control caused the investment funds that they manage to buy the interests in CLOs that are managed by the Debtor, correct?
A Yes. Yes.

Q Okay. And those Funds still hold an equity interest today, correct?
A Yes.
Q And K&L Gates is one of the law firms that represents the Advisors and the Funds that are managed by the Advisors, correct?
A Yes.
Q You would agree that the Debtor is party to certain contracts that give it the right and the responsibility to manage certain CLO assets, right?
A Yes.
Q And you recall that --
MR. RUKAVINA: Your Honor, Mr. Morris is frozen on our end.
THE COURT: Yes. Mr. Morris, you just froze.
MR. RUKAVINA: We heard nothing, Mr. Morris.
THE COURT: Yes.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q Sir, do you recall that you resigned from the Debtor on or around October 10th, 2020?
A Yes.
Q Okay. And shortly thereafter, K&L Gates sent a couple of letters to the Debtor on behalf of the Advisors and the Funds, correct?

A Yes.
Q Okay.
MR. MORRIS: Can we take a look at these? These are documents that were admitted into evidence in a different matter, but they're actually referred to in his prior testimony, which is in evidence in this case. So I would just ask Ms. Canty to go to Trial Exhibit B, which was filed in the Adversary Proceeding 20-3190 at Docket 46. And for the record, it's PDF Page #184 out of 270. I just want to take a look at these two letters.
BY MR. MORRIS:
Q Okay. Do you see this letter, sir?
A Yes.
Q And NexPoint is one of the defendants here; is that right?
A Yes.
Q And that's one of the Advisors that you own and generally control, correct?
A Yes.
Q And so this letter is sent less than a week after you've left Highland Capital Management, right?
A Yes.
Q Do you recall this particular letter?
A No.
Q Can -- you're familiar with the substance of this letter and the other one that was sent in November, correct?

A Could you pull it a little higher and let me read it?
Q Yes. Sure.
MR. RUKAVINA: If this is an exhibit, I can show it to him as an exhibit, Mr. Morris.
MR. MORRIS: I don't know that this is one of the marked exhibits. It's one of the exhibits that's used within his prior testimony. So, but I want to give Mr. Dondero a chance to review it. And please let us know if you need to scroll further down.
(Pause.)
MR. RUKAVINA: You're going to have to scroll down.
THE WITNESS: Scroll down a little further, please.
(Pause.)
MR. RUKAVINA: Mr. Morris, can you please scroll down? Neither Mr. Dondero nor I can read the balance.
BY MR. MORRIS:
Q There you go. (Pause.) So, you see at the top of the page there there is a reference to the sale of assets and a, quote, "a rush to sell these assets at fire sale prices." Is that what you think -- did you think that Mr. Seery was selling (audio garbled) CLO assets at fire sale prices in October 2020, --
MR. RUKAVINA: Your Honor, --
MR. MORRIS: -- less than a week after --
MR. RUKAVINA: Your Honor, I'll object. We did not

hear Mr. Morris's question.

THE COURT: All right. Could you repeat the question?

MR. MORRIS: Okay. Yes, Your Honor.

BY MR. MORRIS:

Q Mr. Dondero, on or about October 16th, did you personally believe that Mr. Seery was in a rush to sell CLO assets at fire sale prices?

A I believe he had no business purpose to sell any of the assets, which I believe he stated that to Joe Sowin, our trader. I -- I -- there was no business purpose stated or ever given or obvious from the sales. And --

Q Okay.

A -- I (indecipherable) draft this letter.

Q Okay.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question --

THE COURT: Sustained.

MR. MORRIS: -- and it has to do solely with Mr. Dondero's state of mind.

BY MR. MORRIS:

Q Mr. Dondero, on or about October 16th, did you personally believe that Mr. Seery was in a rush to sell CLO assets at fire sale prices?

A He was in a rush to sell them for some reason with no

business purpose. I don't know the reason.

THE COURT: All right. Can you --

BY MR. MORRIS:

Q Okay. And you never asked him, right?

THE COURT: Yes. Yes or no answer, Mr. Dondero.

THE WITNESS: Never asked him.

MR. MORRIS: Okay. Can we turn to the next exhibit, which is Exhibit C on that same docket?

(Pause.)

BY MR. MORRIS:

Q While we're waiting, can you just read the last sentence of the paragraph that ends at the top of the page, Mr. Dondero, beginning, "Accordingly"?

A (reading) Accordingly, we hereby request that no CLO assets be sold without prior notice and prior consent from the Advisors.

Q Are you aware of any contractual provision pursuant to which the Funds or the Advisors can -- can expect that the Debtor will refrain from any -- selling any assets without giving prior notice and obtaining prior consent from those entities?

A I think the documents have an overall good-faith/fair-dealing clause which would cover something like this, I believe.

Q Your -- is it your testimony, sir, that the duty of good

1 faith and fair dealing requires the Debtor to give notice to
2 the Advisors and to obtain the Advisors' prior consent before
3 they can sell any CLO assets?
4 A Well, I think -- yes, I do. I think --
5 Q All right.
6 A Yes. Yeah.
7 Q Okay. And then the next month, another letter was sent by
8 NexPoint to Mr. Seery. Do you recall that?
9 A Not specifically. If you bring it up, we can talk about
10 it.
11 MR. MORRIS: Can we scroll down a little bit?
12 (Pause.)
13 MS. CANTY: John, are you talking to me? I was
14 frozen out. I just got back on. I apologize.
15 MR. MORRIS: That's okay. Can we just scroll down so
16 Mr. Dondero can see more of this particular letter?
17 MS. CANTY: Okay.
18 MR. MORRIS: Okay.
19 BY MR. MORRIS:
20 Q Can you just read out loud, Mr. Dondero, out loud the last
21 two sentences, please, beginning with, "We understand"?
22 A (reading) We understand that Charitable DAF Holdco, Ltd.
23 has made a similar request. Accordingly, we hereby re-urge
24 our request that no CLO assets be sold without prior notice to
25 and prior consent from the Advisors.

Q What's the Charitable DAF Holdco, Ltd.?
A I think that's who you settled with yesterday.
Q Do you have an interest in that entity?
A No. It's a bona fide charity. It was one of the largest in Dallas before it got cut in half by Acis.
Q Does -- are you familiar with the Get Good and the Dugaboy Investment Trusts?
MR. RUKAVINA: Your Honor, at this time I would object to relevance. I don't see what this has to do with tortious interference and stay violation on December 22nd and December 23rd, 2020.
THE COURT: Response?
MR. MORRIS: Your Honor, I'm trying to establish that Charitable DAF Holdco, Ltd. is another entity in which Mr. Dondero holds a beneficial interest.
THE COURT: Okay. Overrule the objection.
MR. RUKAVINA: John, you're not only frozen, now you're off.
MR. MORRIS: Yeah, I can see myself. You can't hear me?
MR. RUKAVINA: We can now, but Your Honor, we lost Mr. Morris for a bit there.
THE COURT: All right. I think we were --
MR. MORRIS: Okay.
THE COURT: -- waiting on an answer from Mr. Dondero,

actually.

THE WITNESS: We didn't hear the question at --

BY MR. MORRIS:

Q Sure. Are you familiar with the Get Good and Dugaboy Investment Trusts?

A Yes.

Q Are you the beneficiary of those trusts?

MR. RUKAVINA: Your Honor, again, objection to relevance. These are non-parties, and what his personal interests are has no relevance to this.

THE COURT: Overruled.

THE WITNESS: The Get Good Trust, Get -- I believe those are defective grantor trusts. I don't believe I have any interest whatsoever in those. Dugaboy is a perpetual Delaware trust. I don't know how that's set up, but I believe I do have an interest there until I pass.

BY MR. MORRIS:

Q In fact, you're -- you're the sole beneficiary of the Dugaboy Investment Trust, right?

A Until I pass. It's a -- it's a estate planning trust.

Q I appreciate that. And the Dugaboy and the Get Good Trusts are the owners of the Charitable DAF Holdco Ltd., correct?

A No. Not as far as I know.

Q Okay.

A (garbled) time at all.
Q All right. So we just looked at these two letters, sir. And you were familiar with the substance of the letters before they were sent, right?
A Uh, just --
MR. MORRIS: You can take it down, Ms. Canty.
THE WITNESS: Just generally. Again, I wasn't involved directly with the letters.
BY MR. MORRIS:
Q You were aware of the letters before they were sent, right?
A Yes.
Q And you discussed the substance of the letters with NexPoint, correct?
A Not the substance of the letters, just the substance of the issue.
Q You actually discussed the substance of the letters with NexPoint, correct?
A I -- Again, I remember it being the substance of the issue. Generally, at most, the substance of the letters.
Q And you discussed the substance of the letters with the Advisors' internal counsel, too, right?
A The sub -- generally, the substance, yes, but more the issue than the letter.
Q Okay. If I pull up your transcript from the TRO hearing,

would that refresh your recollection that you discussed the substance of these letters with NexPoint and with the Advisors' internal counsel?

A I'd like to clarify with the testimony I just gave.

Q Okay. Would you -- do you have any reason to believe that you did not previously testify that you discussed the substance of the letters with NexPoint and with NexPoint Advisors' internal counsel?

A I repeat the same testimony. Generally. Like, those letters that you put on the screen, I have no recollection of those specifically.

MR. MORRIS: Ms. Canty, can we please call up on the screen Exhibit NNNN, which was the transcript from the January 8th, 2021 preliminary injunction hearing?

MR. RUKAVINA: Mr. Morris, just one sec. I'm trying to find it on paper.

MR. MORRIS: Yeah. It's four Ns.

MR. RUKAVINA: One, two, three, four. (inaudible) put that on the screen.

MS. CANTY: John, I'm not sure what's going on, but it won't come up on the screen. I've tried three times. I'm going to keep trying.

MR. MORRIS: All right. I have it in front of me. Do you have it, too?

MR. RUKAVINA: Yes, the witness has it --

MR. MORRIS: Okay.

MR. RUKAVINA: -- in front of him. This is NNNN, just to confirm?

MR. MORRIS: Yes. And it is the January 8th transcript.

BY MR. MORRIS:

Q Mr. Dondero, were you asked these questions and did you give these answers? Question: Are you familiar with --

MR. RUKAVINA: Where are you, John? Where are you? Where are you? We -- we -- we --

MR. MORRIS: I apologize. Page 40. I'm going to read Page 40, Lines 1 through 14.

MR. RUKAVINA: Okay. He has it in front of him, if you just want him to read it.

BY MR. MORRIS:

Q Did you give these answers at Page 40, beginning Line 1:

"Q And were you -- and you were familiar, you were aware of these letters before they were sent; is that correct?

"A Yes.

"Q And you generally discussed the substance of these letters with NexPoint; is that right?

"A Generally, yes.

"Q You discussed the letters with the internal counsel; is that right?

"A Yes.
"Q That's D.C. Sauter?
"A Yes.
"Q And you have been on some calls with K&L Gates about these letters, right?
"A I believe so.
"Q And you knew these letters were being sent, correct?
"A Yeah. They're -- they're reported.
Q Did you give those answers to those questions at the prior hearing?
A I -- I believe it's what I -- it's almost exactly what I just said, but yes.
Q And you supported the sending of the letters; isn't that right?
A Absolutely.
Q And you encouraged the sending of the letters, right?
A Absolutely.
Q Around Thanksgiving, you learned that Mr. Seery had given a direction to sell certain securities owned by CLOs managed by the Debtor, correct?
A Yes.
Q And when you learned that, you personally intervened to stop the trades, correct?
A Yes.

Q Let's -- I want to look at that email string that we looked at once before. It can be found at Trial Exhibit D found on Docket No. 46 in the adversary proceeding. It's PDF Number -- it's PDF Page 189 of two (garbled).

MR. RUKAVINA: Did you catch that?

THE COURT: Which -- which exhibit number -- letter is it?

MR. MORRIS: It's on the docket in the Adversary Proceeding 20-3190. And in that adversary proceeding, at Docket No. 46, you've got the Debtor's exhibit list. And Exhibit D, which can be found at PDF Page 189 of 270, is the email string I'm looking for.

I apologize, Your Honor. It wasn't until I was reading the transcript yesterday that I realized I needed these documents. But they are in the record. Obviously, they're referred to in the transcript that is in the record.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, I would like to interject for the record here that this is the first time my clients have been sued. They have a right to be confronted with the witnesses and testimony and evidence against them. So if Mr. Morris wants to introduce this as an exhibit here today, that's one thing, but I object to any notion that there's a prior record that is going to tie my clients' hands. It might tie Mr. Dondero's hands, but not my clients' hands.

MR. MORRIS: I'd move for the introduction into evidence of this document that has emails not only from Mr. Dondero, but from Joe Sowin, the head trader of the Defendants.

MR. RUKAVINA: And Your Honor, I have no problem with that admission. I just want to make it clear that we're not conceding that whatever happened in this case previous to this is a part of today's record. That's all. So I do not have a problem with the admission of this. I would, however, ask you, Mr. Morris, to have someone email it to us so that I can use it today if I need to.

THE COURT: All right.

MR. MORRIS: Okay. Will do.

THE COURT: So, I'll --

MR. MORRIS: We'll do that at the --

THE COURT: I'll admit it into evidence. You'll need to not only email it Mr. Rukavina, but you'll need to file a supplement to your exhibit and witness list after the hearing showing the admission of --

MR. RUKAVINA: And Mr. Morris, if you could email it to Mr. -- if you could email it to Mr. Vasek as well, because obviously I can't get to it now. Thank you.

MR. MORRIS: Sure.

THE COURT: All right. So this --

MR. MORRIS: Okay. So, --

THE COURT: For the record, let's just be clear what the record is -- this is going to be called on the record. I think you are up to SSSSS, so this would be TTTTT when you file it on the record. All right? Go ahead.

MR. MORRIS: Thank you very much, Your Honor.

(Debtor's Exhibit TTTTT is received into evidence.)

BY MR. MORRIS:

Q Mr. Dondero, you recall looking at this email string at the last hearing, right?

A Yes.

Q Let's start at the bottom, please, with Mr. Covitz's email.

(Pause.)

MR. RUKAVINA: Hey, John, real quick, now we've lost you. We've lost you and we're not seeing anything from your assistant. Do you have the email, Mr. Vasek?

MR. MORRIS: I'm here. Can you hear me?

MS. CANTY: I'm here. (garbled) on the screen.

MR. MORRIS: Yeah. Can we scroll down to the bottom?

MS. CANTY: I did. I don't know why it's not showing on you guys' screen.

MR. MORRIS: Hopefully this gets fixed. Yeah. We've never had this problem before, Your Honor. I'm not sure what the issue is, but I do apologize.

THE COURT: All right. Well, I can hear you, but we

1 don't see movement of the exhibit.
2 MR. MORRIS: Yeah. When I began earlier today by
3 suggesting that this was going to be challenging, this was not
4 one of the challenges I anticipated.
5 THE COURT: Okay. All right.
6 MR. RUKAVINA: Do you have the email yet?
7 MS. CANTY: I'm sorry. I don't know what's happening
8 on this end. I have three streams of Internet going, and I
9 don't think it's the Internet. I don't know what's going on.
10 MR. MORRIS: Hmm.
11 MR. RUKAVINA: Yeah, John, what I'm suggesting is
12 that you have an associate email it to Mr. Vasek immediately
13 and then we can present it to Mr. Dondero.
14 MR. MORRIS: I'll tell you what. While that -- one
15 more try.
16 MR. CANTY: Can you see it now?
17 MR. MORRIS: Okay. Yes.
18 BY MR. MORRIS:
19 Q All right. Mr. Dondero, Hunter Covitz is an employee of
20 the Debtor, right?
21 MR. RUKAVINA: Hold on a sec. Hold on a sec.
22 Your Honor, I believe that I have the right to see the
23 full email here. I believe that Mr. Dondero does. And we've
24 just seen the first little bit and now some middle piece.
25 THE COURT: All right. So are you saying --

MR. MORRIS: And in the order that --

THE COURT: -- you want to see the whole string?

MR. RUKAVINA: Well, I think -- Mr. Dondero, do you need to see the whole string? I don't know what this is, but maybe you do.

MR. DONDERO: It depends on what the question is. I can answer some questions off of this email.

THE COURT: Okay, let's go.

MR. MORRIS: Yeah.

BY MR. MORRIS:

Q All right. So, for the moment, Mr. Covitz is an employee of the Debtor, correct?

A Yes.

Q And he's the author of this email in front of us, correct?

A Yes.

Q And Mr. Covitz helps to manage the CLO assets on behalf of the Debtor, correct?

A Yes.

Q Mr. Covitz is giving directions to Matt Pearson and Joe Sowin to sell certain securities held by the CLOs, correct?

A Yes.

Q And if we can scroll up, I think we can see that you received a copy of this email?

(Pause, 11:15 a.m.)

MR. MORRIS: What I would like to do instead, we'll

1 take a break in about 15 or 20 (audio gap). When we
2 disconnect, we'll get a better connection after the break.
3 And in the interim, I've got testimony that I would like
4 that's already been admitted into the record but there's
5 portions of which I would like to read into the record from
6 Dustin Norris, who is the executive vice president for each of
7 the Defendants. And maybe it would be easiest for me to do
8 that.
9 THE COURT: Okay.
10 MR. MORRIS: All right. On Docket No. 39.
11 MR. RUKAVINA: Your Honor, I apologize. Your Honor,
12 I apologize. We did not hear --
13 MR. MORRIS: I'm going to read into the record a
14 portion of Mr. Norris' testimony from the December 16th
15 hearing.
16 MR. RUKAVINA: Your Honor, I do not see that
17 transcript in the exhibits. If Mr. Morris could give me an
18 exhibit.
19 MR. MORRIS: Exhibit B as in boy.
20 MR. RUKAVINA: Thank you.
21 MR. MORRIS: All right. Instead of putting it on the
22 screen, if we could take the exhibit down, Ms. Canty. He can
23 just follow along. Beginning at Page 38, Line 7 through -- 7
24 through 17.
25 Are you there, Mr. Rukavina?

1 MR. RUKAVINA: I am. Thank you. I have it in front
2 of Mr. Dondero.
3 MR. MORRIS: Okay. Page 38, Lines 7 through 17:
4 "Q I think you testified that you're one of the
5 executive vice presidents at NexPoint Advisors, one of
6 the Movants. Is that right?
7 "A That's right.
8 "Q Who is the president of NexPoint Advisors, LP?
9 "A Mr. Dondero.
10 "Q And you report directly to him; is that right?
11 "A I do.
12 "Q You're also the executive vice president of Fund
13 Advisors, another Movant; is that right?
14 "A Correct."
15 MR. MORRIS: Beginning on Page 38, Line 25:
16 "Q You're also the executive vice president (audio
17 gap) that are managed by the Advisors here, right?
18 "A Yes. That is correct."
19 MR. MORRIS: Then going back to Page 35, beginning at
20 Line 15:
21 "Q To be clear here, there are five moving parties;
22 is that right?
23 "A That's correct. The two Advisors and the three
24 Funds.
25 "Q And one of the advisory firms is Highland Capital

Management Fund Advisors, LP; is that right?

"A That's correct.

"Q And I'll refer to that as Fund Advisors; is that okay?

"A That's great.

"Q James Dondero and Mark Okada are the beneficial owners of Fund Advisors, correct?

"A That is my understanding.

"Q And your understanding is that Mr. Dondero controls Fund Advisors, correct?

"A That's correct.

"Q And the other advisory firm that brought the motion is NexPoint Advisors, LP; is that right?

"A That is correct.

"Q And Mr. Dondero is the beneficial owner of NexPoint; is that right?

"A A family trust where Jim is the sole beneficiary, I believe, controls or owns NexPoint Advisors.

"Q Okay. And Mr. Dondero --

"A Or 99 percent of NexPoint Advisors.

"Q Mr. Dondero controls NexPoint; is that right?

"A Correct."

MR. MORRIS: Continuing at Line 16 on Page 36:

"Q All right. And I'm going to refer to Fund Advisors and NexPoint as the Advisors going forward; is

1 that fair?
2 "A That's fair.
3 "Q Each of the Advisors manages certain funds; is
4 that right?
5 "A That is correct.
6 "Q And three of those funds that are managed by the
7 Advisors are Movants on this motion, correct?
8 "A Correct.
9 "Q All right. The Advisors caused these three Funds
10 to invest in CLOs that are managed by the Debtor; is
11 that right?"
12 "A --"
13 MR. RUKAVINA: Your Honor, I object. Is there a
14 question at the end of this? I mean, Mr. Dondero can't
15 possibly remember all this and then be asked a question.
16 MR. MORRIS: He doesn't have to answer any questions.
17 I'm just reading the evidence into the record.
18 THE COURT: Okay.
19 MR. RUKAVINA: Your Honor?
20 MR. MORRIS: Since we're having difficulty --
21 MR. RUKAVINA: Your Honor, that's a matter for
22 summation. That's -- this is a question and answer, I submit.
23 THE COURT: Well, I overrule.
24 MR. MORRIS: Your Honor, here's -- here's --
25 THE COURT: This has been admitted into --

1 MR. MORRIS: Yeah.
2 THE COURT: -- evidence. And if he wants to
3 highlight to the Court portions of the evidence, he can.
4 Go ahead.
5 MR. MORRIS: Thank you, Your Honor.
6 "A The portfolio managers working for the Advisors
7 did. That's correct.
8 "Q And Mr. Dondero is the portfolio manager of the
9 Highland Income Fund; is that right?
10 "A He is one of the portfolio managers for that Fund.
11 "Q And he's also --
12 "A I believe there are two.
13 "Q And he's also a portfolio manager of NexPoint
14 Capital, Inc., one of the Movants here, right?
15 "A That is correct.
16 "Q And he's also the portfolio manager of NexPoint
17 Strategic Opportunities Fund, another Movant; is that
18 right?
19 "A Yes. That is correct."
20 MR. MORRIS: Going to Line -- Page 41, Lines 6
21 through 9:
22 "Q The whole idea for this motion initiated with Mr.
23 Dondero; isn't that right?
24 "A The concern, yes, the concern originated, and his
25 concern was voiced to our legal and compliance team."

1 MR. MORRIS: Page 42, Lines 4 through 11:
2 "Q None of the Movants are parties to the agreements
3 between the Debtor and each of the Debtors pursuant --
4 each of the CLOs pursuant to which the Debtor serves as
5 portfolio manager; is that correct?
6 "A I believe that is correct. One, I think,
7 important -- even though they're not (audio gap), they
8 are the -- they have the economic ownership of each of
9 these CLOs.
10 "Q But they're not party to the agreement; is that
11 right?
12 "A Not that I am aware of."
13 MR. MORRIS: Page 42, Line 25:
14 "Q Okay. It's your understanding, in fact, that
15 nobody other than the Debtor has the right or the
16 authority to buy and sell assets on behalf of the CLOs
17 listed on Exhibit B, correct?
18 "A That is my understanding.
19 "Q Okay. And it's also your understanding, your
20 specific understanding, that holders of preferred
21 shares do not make investment decisions on behalf of
22 the CLO; is that right?
23 "A (audio gap)
24 "Q And that's something the Advisors knew when they
25 decided to invest in the CLOs on behalf of the Movant

Funds; is that fair?

"A That's right. And at that time, the knowledge in the purchase was with Highland Capital Management, LP and the portfolio management team at the time.

"Q And it's still with Highland Capital Management, LP; isn't that right?

"A That's correct. I'm not sure that the portfolio management team looks the same, but it was HCMLP."

MR. MORRIS: Moving on to Page 46, Line 22:

"Q The only holders of preferred shares that are pursuing this motion are the three Funds managed by the Advisors, right?

"A In this motion, yes.

"Q You're not aware of any holder of preferred shares pursuing this motion other than the three Funds managed by the Advisors, correct?

"A No, I'm not aware of any others.

"Q You didn't personally inform any holder of preferred shares, other than the Funds that are the Movants, that this motion would be filed, did you?

"A No, I did not.

"Q You're not aware of any steps taken by either of the Advisors to provide notice to holders of preferred shares that this motion was going to be filed, are you?

"A I'm not, no.

"Q And you're not aware of any attempt that was made to obtain the consent of all of the noteholder -- of all the holders of the preferred shares to seek the relief that is sought in this motion, correct?

"A That's correct.

"Q You don't have any personal knowledge, personal knowledge, as to whether any holder of preferred shares other than the Funds managed by the Advisors wants the relief sought in this motion, correct?

"A Correct.

"Q You don't have any personal knowledge as to whether any of the CLOs that are subject to the contracts that you described want the relief that's being requested in this motion, right?

"A That's correct. I have not spoken or been involved at all directly with the CLOs. I'm representing the Funds."

MR. MORRIS: Moving to Page 49. I just have a bit more, Your Honor. Page 49, Line 9. And this is the reference to his declaration.

"Q And Paragraph 9 refers to a transaction involving SSP Holdings, LLC; do I have that right?

"A That's correct.

"Q Do you know what SSP stands for?

"A See if we say it in there. SSP Holdings, LLC.

"Q Right. Do you know what SSP stands for?
"A I don't. Something Steel Products. I --
"Q Okay. You don't need to guess. These are the only two transactions that the Movants question; is that right?
"A These transactions, as well as certain transactions around Thanksgiving time.
"Q Okay. We'll talk about those. But those transactions about -- around Thanksgiving time aren't in your (audio gap)?
"A Not specifically mentioned by name.
"Q Okay. Let's talk about the two that are mentioned by name, Trussway and SSP. The Movants do not contend that either transaction was the product of fraudulent conduct, do they?
"A No.
"Q The Movants do not contend that the Debtor breached any agreement by effectuating these transactions, do they?
"A I don't believe so.
"Q In fact, the Movants do not contend that the Debtor violated any agreement at any time in the management of the CLOs listed on Exhibit B; is that right?
"A That's right.

1 "Q The Movants don't even question the Debtor's
2 business judgment, only the results of the trans -- of
3 these two transactions. Is that right?
4 "A That's right. And the results is the key here,
5 and the approach."
6 MR. MORRIS: Moving on to Page 51, Line 8:
7 "Q Sir, you never asked the Debtor what factors it
8 considered in making these trades, right?
9 "A I did not.
10 "Q And you have no reason to believe that anyone on
11 behalf of the Movants ever asked the Debtor why it
12 executed these (audio gap), right?
13 "A I don't have any knowledge. There could have been
14 somebody from (audio gap) Movants. But I do not."
15 MR. MORRIS: Page 54, Line 19:
16 "Q Let's just talk briefly about the transactions
17 that occurred (garbled) Thanksgiving. They're not
18 specifically referred to in your declaration; is that
19 right?
20 "A That's correct.
21 "Q And you have no knowledge about any transaction
22 that Mr. Seery wanted to execute around Thanksgiving;
23 is that right?
24 "A I know there were transactions and there were
25 concerns from our management team, but I'm not aware of

1 what those transactions were.
2 "Q In fact, you can't even identify the assets that
3 Mr. Seery wanted to sell around Thanksgiving, or at
4 least you couldn't at the time of your deposition
5 yesterday. Is that right?
6 "A That's correct.
7 "Q And you have no knowledge as to why Mr. Seery
8 wanted to make particular trades around Thanksgiving?
9 "A No, I don't.
10 "Q And in fact, you don't even know if the
11 transactions that Mr. Seery wanted to close around
12 Thanksgiving ever in fact closed. Is that fair?
13 "A Correct."
14 MR. MORRIS: Last one. Page 56, Line 1:
15 "Q Okay. To the best of your knowledge, does this
16 document accurately reflect the composition of the
17 boards of each of the three Movant Funds?
18 "A Yes, it does.
19 "Q Okay. John Honis, I think you mentioned him
20 earlier. He's on all three boards. Is that right?
21 "A Yeah, that's correct. And the reason we're --
22 we're being -- we have a unitary board structure, so --
23 which is very common in '40 Act Fund land, where the
24 board sits, for efficiency purposes, on multiple fund
25 boards, and there's a lot of economies of scale from an

1 operating standpoint. So, yes, they sit on multiple
2 boards.
3 "Q Okay. And for purposes of the '40 Act, Mr. Honis
4 has been deemed to be an interested trustee. Is that
5 right?
6 "A That's correct.
7 "Q Okay. But you don't specifically know what (audio
8 gap) caused that designation; you only know that the
9 designation exists. Right?
10 "A That's right. And I know they are disclosed in
11 the proxy -- or, in the -- the relative filings related
12 to those Funds.
13 "Q Okay. Three other people are common to all three
14 Movant Funds. I think you've got Dr. Froehlich, Ethan
15 Powell, --
16 MR. MORRIS: I think he -- pronunciation.
17 "A Froehlich.
18 "Q Ethan Powell and Bryan Ward. Right?
19 "A That is correct.
20 "Q Okay. All three of those individuals actually
21 serve on the 11 or 12 boards that you mentioned earlier
22 that are managed by the Advisors, right?
23 "A That is correct.
24 "Q And they're the same Funds for which you serve as
25 the executive vice president, right?

"A This is correct -- yes. That's correct.
"Q So, for all of the Funds that are managed by the Advisors, you serve as executive vice president and all four of these directors -- trustees serve as trustees on the boards, right?
"A Yes, that's correct.
"Q Okay. In exchange for serving on all of these boards, the three individuals -- Dr. Froehlich, Mr. Ward, and Mr. Powell -- each receive $150,000 a year for services across the Highland complex; is that right?
"A That's correct.
"Q Dr. Froehlich has been serving as a board member across the Highland complex for seven or eight years now; is that right?
"A That's correct.
"Q Mr. --
"A I believe it's about seven or eight years.
"Q Mr. Powell, he actually was employed by Highland related -- Highland or related entities from about 2007 or 2008 until 2015, right?
"A That's correct.
"Q And Mr. Ward, the third of the independent trustees, he's been serving on a board or various of -- on various Highland-related funds on a continuous basis

since about 2004. Do I have that right?

"A Yeah, I believe that's correct."

MR. MORRIS: Your Honor, that concludes the reading of the portions of Mr. Norris's testimony that I wanted to present to the Court.

I know it's 11:30 now, and I would respectfully request that we simply adjourn and let Your Honor tend to your business.

THE COURT: Okay.

MR. MORRIS: And hopefully when we come back at 1:00 o'clock, we'll have a better connection.

THE COURT: All right. So, we are going to go into recess until 1:00 o'clock Central. Mike, can people just stay connected, or should they --

THE CLERK: Yes. They can stay. Yes.

THE COURT: You can stay or reconnect, whichever you want. But we'll see you at 1:00.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(A luncheon recess ensued from 11:33 a.m. until 1:37 p.m.)

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good afternoon. Please be seated. Apologies. I was a little ambitious in my time estimate. So,

anyway, I didn't have any control over getting in and out of Parkland Hospital, so I'm just grateful to be here.

All right. We were in the middle of direct examination of Mr. Dondero. Mr. Morris, are you ready to proceed?

MR. MORRIS: I am, Your Honor, and I'm hopeful that the computer issues have resolved themselves. It remains to be seen once we try. If problems arise again, I plan on just putting this on mute and dialing in through the telephone, kind of the other alternative.

THE COURT: All right.

MR. MORRIS: So (garbled) and I apologize to Mr. Dondero, too. I know I'm testing his patience. But it's not for any reason other than technological.

THE COURT: All right.

MR. MORRIS: And Your Honor, you don't have to apologize for keeping us waiting. That's okay.

THE COURT: Okay.

MR. MORRIS: But thank you.

THE COURT: All right. Mr. Dondero, --

MR. MORRIS: All right. So, --

THE WITNESS: Yeah.

THE COURT: I was just going to remind you, I have to remind you you're still under oath.

Are you ready, Mr. Morris?

MR. MORRIS: I am, Your Honor.

THE COURT: All right. You may proceed.

MR. MORRIS: And we're going to begin with the document that we had difficulty scrolling through earlier, which we have now sent to counsel, and that would be what was marked as Exhibit D on Docket No. 46.

THE COURT: All right.

MR. MORRIS: That's the email string that we had seen earlier that I think Your Honor admitted into evidence. Do I have that right?

THE COURT: Yes.

MR. MORRIS: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q So, let's just start at the bottom and see if we can do this more easily, Mr. Dondero. And again, I apologize for keeping you waiting before. Starting at the bottom, that's an email from Hunter Covitz. Do you see that?

A Yeah, I see it.

Q And he's an employee of the Debtor, right?

A Yes.

Q And your understanding is that Mr. Covitz actually helps the Debtor manage the CLO assets, right?

A Yes.

Q And in this email, Mr. Covitz is giving directions to Matt Pearson and Joe Sowin regarding certain securities held by the

CLOs, right?
A Yes.
Q And if we could scroll up, hopefully, we can see that you received a copy of this email.
MR. MORRIS: Yeah. Right there.
BY MR. MORRIS:
Q Do you see that?
A Yes.
Q And then -- and then you instructed the recipients of Mr. Covitz's email not to sell the SKY securities as had been instructed by Mr. Seery, correct?
A Yes.
Q And you understood when you gave that instruction that the people on the email were trying to execute trades that Mr. Seery had authorized, correct?
A Incorrect.
Q You didn't know that, sir?
A What I knew was that Seery had not authorized the trade, he had orchestrated the trade. Hunter is not an analyst with any particular knowledge. I called Hunter, why would he sell those? And he said Seery told him to sell those. So it wasn't that Seery authorized Hunter trading it. It was Seery told Hunter to trade it, which is -- which is a material difference in my mind.
Q Okay. So I'll ask you again. At the time you gave the

instruction, "No, do not," you knew that you were stopping trades that had been authorized and directed by Mr. Seery, correct?

A Yes.

Q You didn't speak with Mr. Seery before sending this email, did you?

A No.

Q And you took no steps to seek the Debtor's consent before instructing the recipients of this email to stop executing the SKY transactions. Is that right?

A I'm sorry. I missed the first part of that question.

Q Okay. You took no steps to seek the Debtor's consent before instructing the recipients of this email to stop executing the SKY transactions that were authorized by Mr. Seery, correct?

A I don't -- I'm not sure I was permitted to talk to Seery at this point, but I don't recall specifically, no.

Q You didn't seek consent, did you, before stopping these trades?

A No.

Q Okay. In response to your instruction --

MR. MORRIS: If we could scroll up to the next response.

BY MR. MORRIS:

Q You see the response from Mr. Pearson?

A Yes.
Q And in response to your instructions, Mr. Pearson canceled all of the SKY and AVYA sales that the Debtor had directed but which had not yet been executed, right?
A Yes.
Q Okay.
MR. MORRIS: Can we scroll up to the next email, please?
BY MR. MORRIS:
Q And you responded again, right? That's your response?
A Yes.
Q Can you read your response out loud, please?
A (reading) HFAM and DAF have instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again, please.
Q And the writings that you refer to there are the two letters that we looked at earlier, the October 16 and the November 24 letter, right?
A I believe so. If not, if there's a third or fourth letter, all the letters in aggregate.
Q All right. And you, you interpreted those letters not as requests but, as you tell the recipients of your email here, that they were actually instructions, right?
A That was -- that was my choice of words. I don't know if I thought about it that clearly.

Q Okay. But the reci... you have no reason to believe that the recipient of this email wouldn't understand that you believed that Highland had been instructed not to do these trades, right?

A I'm sorry. Can you ask that again? I had no reason to believe what?

Q That's okay. I'll move on. At this juncture, the reference to potential liability was intended for Mr. Pearson, right?

A Frankly, when you violate the Advisers Act, the CFO has liability. I mean, I'm sorry, the chief compliance officer has liability, and anybody who has an awareness that it violates the Advisers Act has potential liability also.

Q And is it -- is it your testimony and your position that Mr. Pearson had potential liability under the Advisers Act for carrying out Mr. Seery's trade requests?

A Yes, once he was informed that the underlying investors didn't want assets sold and Seery had stated he had no business purpose in selling those assets.

MR. MORRIS: I move to strike the latter part of the answer, Your Honor. Mr. Dondero has testified repeatedly multiple times that he has never communicated with Mr. Seery about why he wanted to make these transactions.

THE COURT: I grant that.

BY MR. MORRIS:

Q Mr. Sowin responded and indicated that he would follow your instructions, right, if we scroll to the next email?
A I'm sorry. What part are you saying, or what part are you referring to?
Q Mr. Sowin. Who is Mr. Sowin?
A He's Matt Pearson's boss. He's the head trader.
Q And he works for the Advisors, right?
A Yes.
Q He's one of your employees, right?
A Yes.
Q Mr. Sowin followed your instructions as set forth in this email, right?
A He did a bunch of things, but, yes, I believe -- yes, that's a fair way to characterize.
Q And the only information that you know of that he's relying upon to state that Compliance should never have approved this order was your email that preceded it, right?
A No.
Q No? There's nothing else on this email other than your email that preceded it, correct?
A Correct.
Q Okay. A few days later, you learned that Mr. Seery was trying a workaround to effectuate the trades anyway, right?
A I believe so.
MR. MORRIS: Can we scroll up to the next email?

BY MR. MORRIS:
Q This is your response to Mr. Surgent, right?
A Yes.
Q Now, Mr. Surgent hasn't written anything. He is not part of this conversation, is he?
A No.
Q But you bring him into the conversation, right?
A Because he's the chief compliance officer at Highland, yes.
Q He's not -- he's not the chief compliance officer for the Advisors. He's the chief compliance officer for a company that you no longer work for, right?
A Correct, but he has personal liability for violations of the Advisers Act.
Q Okay. And you thought it was your responsibility to remind him of that, right?
A It was my view of the situation, and at least he could evaluate it himself if I reminded him of it, yes.
Q Uh-huh. What does it mean to do a workaround? What did you mean by that?
A There's a concept in compliance called you can't do something indirectly that you can't do directly, and that's what I was referring to there.
Q Does that mean that he was trying to effectuate the trade without the assistance of the Advisors?

A I believed he was trying to do it without compliance and without proper regard for investors, so that's why I described it as a workaround.

MR. MORRIS: I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:

Q I'm asking you a very specific question.

MR. MORRIS: Can I have a ruling, Your Honor? Thank you.

THE COURT: Yes.

BY MR. MORRIS:

Q Did you, when you used the phrase workaround, did you mean that he was trying to effectuate the trade without relying on the Advisors' employees?

A No.

Q Okay. But you found out about the trade and you thought it was a good idea to send Mr. Surgent this email, right?

A Yes.

Q Can you read the last line of your email?

A (reading) You might want to remind him and yourself that the chief compliance officer has personal liability.

Q Personal liability for effectuating a trade that Mr. Seery had authorized, correct?

A For violating the Advisers Act, is what I meant.

Q Uh-huh. Did you report anybody to the SEC?

A I would be happy to if it's permitted by the Court.
Q But you didn't -- you never asked the Court to do that, right?
A No.
Q It didn't seem important enough for you to take that step, right? But you wanted -- you had to make sure that you told Mr. Surgent that he might be personally liable, right? That was what you needed to do?
A Could you repeat that question, please?
Q You needed to make sure that Mr. Surgent knew that you were threatening him with personal liability if he followed Mr. Seery's instructions, right?
A No.
Q As a factual matter, you never asked Mr. Seery why he wanted to make these trades, right?
A I asked Joe Sowin to ask him.
Q As a factual matter, you never asked Mr. Seery why he wanted to make these trades, correct?
A I believe I wasn't permitted to talk to him.
Q In November 2020? What would have prevented that?
A I believe Scott Ellington was the go-between at that point in time.
Q Is it your testimony that you never spoke with Jim Seery in November 2020?
A I believe in an unauthorized fashion, the day after

Thanksgiving I talked to him, but that's the only day I can remember.

Q Should we call up the email where you threatened him not to do it again?

A That was an email.

Q Ah. So you could communicate by email? Did you ever send Mr. Seery an email and say, Why do you want to do these trades?

A No.

Q But somehow you thought you couldn't even speak to him? You couldn't speak to him but you can send him emails? That's the world that you live in, right? That's what you think?

A I have no comment on that.

Q All right. So, after this exchange, --

MR. MORRIS: And this is what I read out-of-order before, Your Honor. We moved to the December 16th hearing.

BY MR. MORRIS:

Q And you remember, Mr. Dondero, that the Defendants made that motion that asked the Court to stop the Debtor from trading in the CLO assets? Do you remember that?

A I'm sorry. You're asking me do I remember letters were sent? Yes.

Q No. Do you remember that there was a hearing in mid-December?

A Yes.

Q Okay.

MR. MORRIS: And Your Honor, for the record, Exhibit A is the Debtor -- is the Defendants' motion. Exhibit B is the transcript that we had looked at earlier or that I had read portions of earlier.

THE COURT: Okay.

MR. MORRIS: And Exhibit C is the order that the Court entered denying the Defendants' motion.

Can we call up Exhibit C, please?

BY MR. MORRIS:

Q All right. Do you see --

MR. MORRIS: If we could scroll to the very top, please. All right.

BY MR. MORRIS:

Q Do you see this document is dated December 18th, sir?

A Yes.

Q And if we scroll down, this is the order denying the motion of the Advisors and the Funds for an order trying to temporarily restrict the Debtor's ability as portfolio manager from initiating sales. Do you see that?

A Yes.

Q Okay. So, this is December 18th. And if you'll recall, the TRO was issued against you on December 10th. Do you remember that?

A I don't believe it was the 10th.

Q Okay. It was in December, and it was just before this. Is that fair?

A I believe there was an intent, and then the actual filing I think was much later. I don't have -- I don't have the knowledge. I don't have the knowledge of when the TRO was put in place.

Q Okay. (Pause.) Okay. We talked earlier about how you interfered with Mr. Seery's trading activities around Thanksgiving. Do you remember that?

A Yes, I do. I do remember the trading then, also.

Q Okay. And do you remember that just before Christmas you interfered with Mr. Seery's tradings again?

A Yes.

Q Okay.

MR. MORRIS: If we can call up Exhibit K from Docket No. 46, which I have shared with counsel?

THE WITNESS: You know what?

BY MR. MORRIS:

Q Yeah.

A Let's handle these each incident one at a time. And I don't want to use the word "interfering" or accept the word "interfering" as an answer because I think my participation in each situation was very different.

MR. MORRIS: All right. Can we scroll down?

BY MR. MORRIS:

Q This is a letter that my firm wrote to Mr. Lynn. Mr. Lynn is your lawyer. Is that right?
A Yes.
MR. MORRIS: And if we could start down at the first page. We've seen these letter before. A little further.
BY MR. MORRIS:
Q Do you see there is a reference there to the Debtor's management of CLOs?
A Yes.
Q And there is a recitation of the history that we talked about a bit earlier. If we -- if we look further in that paragraph to around Thanksgiving, when you intervened to block the trades.
A Yes, I see that sentence.
Q Okay.
MR. MORRIS: And then if we can go to the next page, the next paragraph. Yeah, that's where.
BY MR. MORRIS:
Q Then we referred to the December 16th hearing, right? And then the next paragraph says, "On December 22, 2020" --
MR. MORRIS: Can you scroll down just a little bit? Nope, the other way. Yeah, right there.
BY MR. MORRIS:
Q "On December 22, 2020, employees of NPA and HCMFA" -- those are the Advisors, right?

A Yes.
Q -- "notified the Debtor that they would not settle the CLO's sale of the AVYA and SKY security." Have I read that correctly?
A Yes.
Q All right. On or about December 22nd, you personally instructed employees of the Advisors not to trade the SKY and AVYA securities that Mr. Seery had authorized. Is that right?
A No.
Q You personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA, right?
A No. You know, we need to look at source documents. My recollection is I encouraged Compliance to look at those trades. But I'm willing to be -- I'm willing to be -- get source documents again, if you'd like.
Q All right. My source document is your prior testimony.
MR. MORRIS: Can we please call up Exhibit NNNN at Page 73? Beginning at Line 2? Okay.
BY MR. MORRIS:
Q Page 73, beginning at Line 2, did you give the following answer to my question?
"Q And you personally instructed, on or about December 22nd, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized

with respect to SKY and AVYA, right?

"A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle the trades that occurred, but that's a different ball of wax."

Q Did you give that answer, sir?

A I believe I confused dates or misspoke there, but I did give that answer.

Q Okay. Thank you. Stated a different way, you personally instructed the Advisors' employees not to execute the trades that Mr. Seery had authorized but which had not yet been made, right?

A No. Not -- not on December 22nd. That was in November. November 22nd, I did not do that.

Q Okay.

MR. MORRIS: Can we go to Page 76, please? Line 15.

BY MR. MORRIS:

Q Did you give this answer to my question?

"Q And you would agree with me, would you not, that you instructed the employees of the Advisors not to execute the very trades that Mr. Seery identifies in this email, correct?

"A Yes."

Q Did you give that answer, sir?

A Well, like I said, I -- I confused the Thanksgiving

trades, the week of Thanksgiving, with my more nuanced responses to later trades.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question.

THE COURT: Granted.

BY MR. MORRIS:

Q Did you give that answer to my question, sir?

A I -- yes, I did.

Q Thank you. Now, all of this is just a week after that December 16th hearing, right?

A Yes.

Q And right after that hearing, the K&L Gates firm sent, on behalf of the Defendants, more letters to the Debtors, right?

A Yes.

MR. MORRIS: Can we please pull up the first letter? It's Exhibit DDDD. And if we can go not to our response but to the original letter that was sent that's attached to this. I think it is Exhibit A. Right there.

BY MR. MORRIS:

Q That's the first of the letters, December 22, 2020. Do you see that?

A Yes.

MR. MORRIS: And can we scroll down to the end of the letter to see what the request is here? Right there.

BY MR. MORRIS:

Q Can you read the end of that letter right there, sir?
A (reading) Sincerely, A. Lee Hogewood, III.
Q Nice. I meant the actual substance.
A (reading) For the foregoing and other reasons, we request that no further CLO transactions occur, at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.
Q Okay. And that's similar in substance to the letter that was sent on behalf of the Defendants on October 16th that you saw and approved, right?
A I did not see and approve.
Q All right. The record will speak for itself. And it's similar in substance to the letter that was sent on November 24th by the K&L Gates clients on behalf of the Defendants, right?
A I don't know.
Q We looked at it before. Should we get it again?
A It's a -- all the letters, as far as I understand, were similar in requesting that the -- the beneficial owners of the CLOs were requesting that no wholesale liquidation of their assets occur. That's how I understand it.
Q And that's --
A You asked my understanding. That's my understanding.
Q Okay. And notwithstanding the request in this letter, when you were -- when you were talking to the traders at your

shop, you actually told them that the Debtor was instructed not to do these trades, right?

A Are you parsing "instructed" versus "requested"? I don't understand the question.

Q I am, in fact. You used a very different phrase when speaking to your employees than you did -- then your lawyers did when they wrote to the Debtor, right?

A It seems to be a difference, yes.

Q Okay. So, this is on December 22nd. Now, the night before, you participated in a meeting with Grant Scott and with the lawyers for the Defendants, right, to talk about what you guys were going to do with respect to the Debtor's management of the CLOs. Isn't that right?

A I don't remember specifically.

Q Okay. But is it fair to say it's true, is it not, that during the week leading up to Christmas you participated in several phone calls with the K&L Gates firm and with other members of the Defendants' -- the Advisors, Mr. Sowin or Mr. Post or Mr. Sauter, and the lawyers, right? You were all together talking about these issues during the week before Christmas, right?

MR. RUKAVINA: Your Honor, I'm going to object. If counsel is asking what was discussed with counsel present for the purpose of legal advice, that is an inappropriate question.

THE COURT: Okay.

MR. MORRIS: I'm certainly not. I'm asking if the conversations took place.

MR. RUKAVINA: And the conversations -- the question was, did they discuss what to do with respect to the CLOs? That would be privileged, Your Honor. If they discussed football, that's not privileged, but what to do with the CLO management agreements is privileged.

THE COURT: Okay. I sustain.

MR. MORRIS: Can we please call up Exhibit TT? I'm sorry, TTT. Nope, TTTT. TTTT. Can you scroll down a bit? Right there.

BY MR. MORRIS:

Q Do you see -- this is an email from Grant Scott to Scott Ellington; do you see that?

A Yes.

Q And at this point, Mr. Ellington is still working for the Debtor, right?

A Yes. I believe he was settlement counsel.

Q Uh-huh. And do you see that this is an email that refers to your availability for a 9:00 a.m. call?

A Yes.

Q And do you see that there's a question as to whether the K&L people can make it?

A Yes.

Q And you understand that refers to K&L Gates, right?
A I -- I guess so.
Q And so does this refresh your recollection that at or around Christmas, or in the days leading up to Christmas, you participated in calls with Mr. Scott, with Scott Ellington, and with the K&L Gates folks?
A I -- I don't know. I don't know if -- if I actually did or not. But I was highly concerned with inappropriate behavior.
Q And you were available -- and did you tell somebody that you were available for this call on the morning of the 23rd?
A I don't know.
Q This is the day after you stopped the trades, right?
A Again, I didn't stop the trades on the 23rd.
Q You stopped them on the 22nd, right?
A No, I stopped them on the week of Thanksgiving.
MR. MORRIS: Can we go back to Exhibit NNNN, the transcript? Page 73?
BY MR. MORRIS:
Q Let me see if I can refresh your recollection. Tab 2. Did you give this answer to this question:
"Q And you personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA, right?

"A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them."
Q Did you give that answer to the question?
A Yes.
Q Okay.
A But we -- we corrected.
Q All right. You didn't correct it at the preliminary injunction hearing, did you?
A No, I did not.
Q Okay. So as far as the Court knows as of this moment, that's the only testimony that you've ever given on the topic, right?
A I'm trying to give some now.
Q Okay. And on December 22nd, that's the date that the first letter was also sent, right, we just looked at?
A All right. Okay.
Q You agree with that, right?
A I don't remember the date on the letter. If you want to pull it up, I'll say it is the 22nd or the 23rd, whatever it says. I don't know.
Q Sure.
MR. MORRIS: Let's go back to DDDD, please. And if we can just go to the top of the letter. Thank you.
BY MR. MORRIS:
Q K&L Gates. December 22nd. That's the letter, right?

A Yes.
Q And according to the testimony that you gave at the preliminary injunction hearing on January 8th, that's the day that you also stopped AVYA and SKY trades, right?
A I'm not agreeing to that testimony. I am changing the testimony.
Q Okay. And then we just saw that other exhibit where they were trying to arrange a phone call with you, the K&L Gates lawyers, and Mr. Ellington and Grant Scott for the 23rd. Do you remember that one we just looked at?
A Yes.
Q And then later on the day on the 23rd, K&L Gates sends another letter, right?
MR. MORRIS: Can we call up EEEE? And can we scroll to the Exhibit A, to our response? Right there.
BY MR. MORRIS:
Q That's the 23rd. Do you see that letter?
A Yes.
Q Again, this is one week after the hearing, right?
A Yes.
Q Okay. And this is a letter where K&L Gates states on behalf of the Defendants that they are contemplating taking steps to terminate the CLO management agreements, right?
A I don't know. Can you scroll down, if you want to ask me --

Q Sure.

MR. MORRIS: Can we flip to the next page, please? Keep going. Right there.

BY MR. MORRIS:

Q Can you read the first sentence of the paragraph beginning, "Consequently"?

A (reading) Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant Trustees and/or Issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference to the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362.

Q Okay. So, on December 23rd, the Defendants told the Debtor that they intended to notify the relevant Trustees and/or the Issuers that the process of removing the Debtor as the fund manager should be initiated, right?

A That's what it says.

Q And then the K&L Gates firm sent yet another letter to the Debtor, right? Do you remember that?

A No.

MR. MORRIS: Can we get up FFFF, please?

BY MR. MORRIS:

Q This is dated December 31st. Do you see that?

A Yes.

MR. MORRIS: Can we scroll down a bit?

BY MR. MORRIS:

Q Do you recall this is the letter where they claim that they've been damaged by the Debtor's eviction of you from the Highland offices?

A I don't remember specifically, but that's true.

Q Okay. So we just saw these three letters, in addition to your -- the -- at least the testimony you gave regarding your conduct on the 22nd of December. You were aware that all of these letters were being sent by K&L Gates, correct?

A Yes, generally.

Q And you were supportive of the sending of these letters, right?

A Absolutely. They were appropriate.

Q And you pushed and encouraged the chief compliance officer and the general counsel to send these letters, right?

A I'd like to think that they believed and they acted largely on their own judgment, but I strongly believed it was a violation of the Advisers Act, and stated that numerous times.

Q Sir, you pushed and encouraged the chief compliance officer and the general counsel to send these letters, correct?

A No, I wouldn't use those words.

Q Do you understand that the Debtor demanded that the K&L Gates clients or the Defendants withdraw these letters?
A I believe they requested it. I didn't -- I didn't know the former, what you mean by demand, but --
Q Well, it's fair to say you never instructed the K&L Gates clients or the Defendants to withdraw these letters, right?
A No. I still believe they are appropriate and accurate. I wouldn't withdraw them today.
Q Okay. Sir, throughout 2020, when you were still the portfolio manager at Highland Capital Management, it's true that you sold AVYA shares on numerous occasions on behalf of both the CLOs and on behalf of the Funds outside of the holdings of the CLOs?
A Always with a business purpose, yes. That is still a small percentage of our total AVYA holdings, and we still liked AVYA.
Q Sir, I'm going to ask you just one more time. In 2020, you sold AVYA stock many times on behalf of the CLOs and on behalf of the Funds?
A Yes.
Q Thank you.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Rukavina?
MR. RUKAVINA: Your Honor, I will reserve my questions to my case in chief, and I would request a very

short restroom break.

THE COURT: All right. Mr. Dondero, we're --

MR. RUKAVINA: And I do mean short. I will --

THE COURT: I'm sorry. What?

MR. RUKAVINA: And I do mean short, Your Honor. I just need to run and be back -- I can be back in three minutes.

MR. MORRIS: No problem, Your Honor.

THE COURT: Okay. You're finished for now, Mr. Dondero, but you're going to be recalled, so hang tight.

Your next witness, Mr. Morris?

MR. MORRIS: The Debtor calls Jason Post.

MR. RUKAVINA: Your Honor, may I be excused to run to the restroom and Mr. Vasek take over for a few minutes?

THE COURT: Oh. Okay. I'm sorry. If you made that request, I didn't hear you. So that's fine.

All right. Mr. Post, --

MR. MORRIS: Your Honor, can we just -- I apologize for interrupting. Can we just direct Mr. Dondero not to speak with anybody about anything at any time? Not by phone, not by text, not by email, not by meeting, not by anything? Because he's still on the stand.

MR. RUKAVINA: Well, Your Honor, anything at any time. I think I know that Mr. Morris is being facetious, but if he's trying to get the rule invoked, that's different.

MR. MORRIS: Okay. I'm trying to get the rule invoked.

THE COURT: Okay. All right. I'm not going to make that instruction. All right. So, --

MR. RUKAVINA: I've got to run to the restroom. I'll be -- listen for the instructions.

THE COURT: Jason Post, you've been called to the witness stand. Could you say, "Testing, one, two"?

MR. POST: (Indiscernible.)

THE COURT: All right. Please raise --

MR. POST: Testing, one, two.

THE COURT: Thank you. Please raise your right hand.

JASON POST, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Mr. Morris, go ahead.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Post. We met the other day. Do you remember that?

A I do.

Q Okay. So, again, just to remind you, my name is John Morris. I'm an attorney at Pachulski, Stang, Ziehl & Jones. We represent the Debtor here. You're the chief compliance officer for each of the Defendants; is that right?

A I am.

Q And in your role as the chief compliance officer, your job

is to act as a liaison between regulatory bodies and internal working groups with respect to the rules and regulations for the funds advised by the Advisors; is that correct?

A Correct, that's -- that's the (inaudible). Correct.

Q All right. And internally, you report to Mr. Dondero. Isn't that right?

A Correct.

Q And you've been working with Mr. Dondero since 2008 when you joined Highland Capital Management, correct?

A I worked at Mr. Dondero's firm since 2008, but I reported to other direct reports during that time outside of Mr. Dondero. I started to report to him directly in October of 2020.

Q Okay.

A (overspoken)

Q But you've -- you've worked at Highland -- you worked at Highland since 2008, fair?

A Yes.

Q Okay. And you were employed by Highland up until October 2020, correct?

A Yes.

Q Okay. And at that time, Mr. Dondero left and he went to NexPoint and you went to NexPoint. Is that right?

A Shortly after Mr. Dondero left Highland, I transitioned over to NexPoint.

Q And that's where Mr. Dondero is, right?
A Correct.
Q Okay. You joined Highland in 2008, and in around 2011 you joined Highland's internal legal and compliance team, correct?
A That's correct.
Q And in 2015, while still employed by Highland, Mr. Dondero appointed you as the chief compliance officer of the Advisors and the Funds, right?
A Technically, the retail board appointed me the CCO of the Funds, and then I was appointed internally. I believe Mr. Dondero was part of that decision for the Advisors.
Q Had you ever worked with the retail boards before that?
A There was about -- I worked with them for about a year prior to that.
Q Okay. And you've served as the CCO, the chief compliance officer, of each of the Advisors and each of the Funds since September 2015 on a continuous basis, right?
A That is correct.
Q You know Thomas Surgent; is that right?
A I do.
Q Mr. Surgent has been the Debtor's chief compliance officer since around 2013 or 2014; is that right?
A I believe -- uh -- I -- I think that's correct. It may be a year or two off. He took the role after the former CO resigned, which I don't know if that was 2011 or 2012. I

can't recall specifically.
Q Okay. But he's been -- he's been in that position for a long time, right? Fair enough?
A Yes, that's fair.
Q And during the whole time that you were employed by Highland and serving as the chief compliance officer for the Funds and the Advisors, you reported to Mr. Surgent?
A Internally. Yes, that's correct.
Q Yeah. And you respect Mr. Surgent; isn't that right?
A During the time I reported to him, yes.
Q Yeah. And you believed that he did his job well, right?
A As far as I could see, yes.
Q You viewed it as -- you viewed him as a mentor, did you not?
A Yes. I mean, when I joined the legal compliance team, you know, he was there. He was a senior member on the team. And he, you know, helped educate me, along with other, you know, external sources, et cetera, on the compliance function.
Q Uh-huh. He trained you for the work you're doing now, right?
A With respect to the on-the-job training, yes.
Q Uh-huh. Despite all of that, throughout all the proceedings, the court hearings, all of the issues that we're talking about in this case, you never, ever stopped to discuss any of these issues with your former mentor, Mr. Surgent; is

that right?
A The -- with respect to, for example, the trade (garbled) that you were talking about earlier?
Q Let's do it this way. From the time that you left Highland until today, you've never discussed with Mr. Surgent Mr. Seery's trades; is that right?
A I believe there was a discussion after -- I can't recall exactly the context. There was a discussion after the trades in the November time frame. And then I believe there was a -- I responded to an email exchange in the December time frame regarding booking of the trades.
Q Sir, you -- you've never spoken with Mr. Surgent about any issue concerning the Debtor's management of the CLOs, correct?
A I don't recall directly, no.
Q In fact, you're not aware of anyone acting on behalf of the Advisors or the Funds who has reached out to Mr. Surgent to get his views on any of the issues related to this motion. Isn't that right?
A I believe previously there's correspondence that Mr. Dondero had with Surgent. But aside from that, I'm not aware of any.
Q Is that the email where he reminded him of his personal liability? Is that the one you're thinking of?
A Correct.
Q Yeah. Do you know of any other communication -- do you

1 know of any other communication that any of the Defendants had
2 with Mr. Surgent concerning the Debtor's management of the
3 CLOs?
4 A With Mr. Surgent directly, I don't -- I don't -- I don't
5 believe so.
6 Q Yeah. You graduated from Baylor; is that right?
7 A Correct.
8 Q But you don't have any certifications or licenses
9 applicable to your work, correct?
10 A Correct.
11 Q You don't have any specialized training or education
12 that's relevant to your work as a chief compliance officer,
13 correct?
14 A Correct.
15 Q Your job -- your training is limited to on-the-job
16 training; isn't that right?
17 A That is correct.
18 Q You've never spoken at any conferences on compliance
19 matters, have you?
20 A Spoken, no. Attended, yes.
21 Q You don't recall presenting any papers at any compliance-
22 related conferences, do you?
23 A That is correct.
24 Q You've never published anything in connection with your
25 work as a compliance officer; isn't that right?

A Not that I can recall.
Q Let's talk about the CLO management agreements briefly. You're aware that the Debtor is party to certain management agreements pursuant to which it serves as the portfolio manager for certain CLOs, correct?
A Correct.
Q And until your lawyers recently asked you to review them, you last had reason to review a CLO management agreement about five or six years ago; isn't that right?
A I believe that's correct.
Q And the request from your lawyers to look at the CLO management agreements, that request came in late November/ early December; isn't that right?
A I believe that's around the right time frame.
Q And the portions of the management agreements that you read were the portions that your counsel asked you to read; isn't that right?
A Correct.
Q And other than the general recollection of having read something about the rights of preference shareholders, you don't recall much about the agreements at all; isn't that right?
A I mean, the agreements are very lengthy in nature. You know, I think it was probably rights that the preference shareholders had, and, you know, possibly indemnification

provisions. But aside from that, I don't recall anything else specifically right now.

Q As the chief compliance officer of the Advisors and the Funds, you don't know whether any of them are party to the CLO management agreements between the Debtors and -- between the Debtor and the Issuers, correct?

MR. RUKAVINA: And Your Honor, I would just object to the extent that that calls for a legal conclusion. This witness is not a lawyer.

THE COURT: Overruled.

THE WITNESS: I'm sorry. Can you repeat the question, please?

BY MR. MORRIS:

Q Sure. As the chief compliance officer for each of the Defendants, you don't know whether any of them are party to the CLO management agreements between the Debtor and the Issuers, correct?

A They're not the named collateral manager, but they're a security holder of the CLOs, so they should be entitled to, you know, the rights that those security holders are afforded under those agreements.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Granted.

BY MR. MORRIS:

Q All right. So, now, Mr. Post, I know this is difficult,

and I do appreciate that it's difficult just to focus on the question. Your counsel will have the opportunity to ask you whatever he wants. But I would respectfully request that you listen to my question and only answer my question. It really is very likely to require just a yes or no answer.

So, let me try again. As the chief compliance officer of the Advisors and the Funds, you don't know whether any of them are a party to the CLO management agreements between the Debtor and the Issuers, correct?

A I don't believe they are, correct.

Q Okay. Let's talk about that prior hearing. Now, by the way, Mr. Post, did you listen in to Mr. Dondero's testimony earlier?

MR. RUKAVINA: Mr. Post was here with me --

MR. MORRIS: Yeah.

MR. RUKAVINA: -- as my representative..

MR. MORRIS: Okay. I -- there's no problem. I just -- I just -- that way there's some background and he has some context. That's the only reason I asked.

BY MR. MORRIS:

Q You're aware that the Funds and the Advisors previously filed a motion in the Bankruptcy Court asking the Court to institute a pause in the Debtor's ability to sell CLO assets, correct?

A Correct.

Q And you recall that that happened in mid-December, around December 16th; is that right?
A That sounds correct.
Q And in connection with that motion, you provided information to counsel that they requested from you, right?
A Yes. I was part of the working -- internal working group, with internal and external counsel.
Q Other than providing that information, you generally agreed with the position being taken that it wasn't in the best interest of the Funds involved for Highland to make any trades; isn't that right?
A Yes. And that was based off of discussions with the investment professionals.
Q And the investment professionals are Mr. Sowin and Mr. Dondero, correct?
A Correct.
Q Okay. So you're the chief compliance officer, and they made a motion that was based on the idea that the fund manager, Highland Capital Management, shouldn't trade any assets in the CLOs. Do I have that right?
A I believe that's what the motion contained.
Q But you don't even remember who authorized the filing of the motion; isn't that right?
A I believe it was pursuant to discussions internally and with external counsel, and I believe Mr. Norris signed the

filing, if I -- if I recall correctly.
Q Sir, you don't remember who authorized the filing of the motion, correct?
A It -- it was pursuant to a discussion with the investment professionals and counsel, and it was in the best interest of the Funds to make the filing. So I think it was a collaborative determination.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Granted.
MR. MORRIS: Ms. Canty, can we please pull up Mr. Post's deposition transcript? And let's go to Page 35. Line 21. Okay.
BY MR. MORRIS:
Q Do you remember giving the following answer to the following question:
"Q Who authorized the filing of this motion?
"A I can't recall specifically who authorized it."
Q Did you give that answer to my question just the other day?
A That's -- that's what it says there, yes.
Q And it says that because that's, in fact, what you testified to under oath the other day, right?
A Correct.
Q Okay. And the one thing that you know for certain is that you didn't authorize the filing of the motion; isn't that

1 right?
2 A I didn't sign anything in connection with the filing.
3 Q All right. Listen carefully to my question. The one
4 thing that you're certain of is that you did not authorize the
5 filing of the motion as the chief compliance officer of the
6 Debtors, correct?
7 A Correct.
8 Q Okay. But you did participate in conversations with Mr.
9 Dondero and counsel concerning the motion; is that fair?
10 A There were conversations with Mr. Dondero initially, and
11 then the conversations were then more so with internal and
12 external counsel in terms of the filing.
13 Q Okay. So they started just with Mr. Dondero, and then
14 they moved on to counsel. Is that what you're saying?
15 A I can't recall specifically. It may have been part of a
16 discussion internally with internal counsel and Mr. Dondero.
17 I just -- I can't recall the specifics.
18 Q Okay. But Mr. Dondero certainly supported the filing of
19 the motion, right?
20 A Yes. From an investment perspective, it was in the best
21 interest of the Funds in terms of the sales that were
22 occurring.
23 Q Okay.
24 MR. MORRIS: I move to strike.
25 THE COURT: Granted.

BY MR. MORRIS:
Q It's a very simple question. Mr. Dondero supported the filing of the motion; is that correct?
A Yes.
Q You did not file a declaration in support of the motion; is that correct?
A Me personally, no.
Q Okay. So you're the chief compliance officer of the Defendants; is that right?
A Correct.
Q But instead of you filing a declaration, Mr. Norris filed the declaration. Do I have that right?
A Correct. My understanding is one person needs to sign the declaration.
Q And remind me, what is Mr. Norris's position? He's the executive vice president, right?
A Correct.
Q What responsibilities does he have? Does he have trading responsibility?
A He does not.
Q Does he have compliance responsibility?
A Not directly, no.
Q Does he have investment responsibility?
A He's familiar with the composition of the portfolios in his role as a product strategy team member.

Q Does he have investment responsibility, sir?
A He is not making direct investments for the -- for the Funds.
Q Okay. So he doesn't -- and he's not a compliance person, right?
A Correct.
Q And he's not a lawyer, right?
A Correct.
Q But nevertheless, as the chief compliance officer, you believed that Mr. Norris's declaration contained all of the information that was relevant to support the motion, right?
A It was a determin... or a collaborative determination in conjunction with counsel. But I, you know, I don't -- yeah, it was -- it was a collaborative determination. There were multiple elements that went into that -- the letter.
Q Okay. You believed that the motion and Mr. Norris's declaration contained all the relevant facts that supported the Advisors and the Funds' requests to the Court, correct?
A Yes.
Q In fact, you believed that Mr. Norris was the most knowledgeable person to testify on behalf of the Movants; isn't that right?
A I think it was -- he was identified pursuant to discussions with counsel to be the most knowledgeable.
Q I'm going to ask you just about you and not counsel. You

1 believed at the time that Mr. Norris was the most
2 knowledgeable witness to testify on behalf of the Movants;
3 isn't that right?
4 A Yes.
5 Q And you didn't testify -- not only didn't you submit a
6 declaration, but you didn't testify at the hearing, did you?
7 A Correct on both.
8 Q Okay. And you listened to parts of the hearing, but not
9 all of it, because you were busy doing other stuff, right?
10 A Correct.
11 Q You didn't listen to Mr. Norris's testimony at all, right?
12 A I don't believe I did.
13 Q You didn't listen to the Court when the Court rendered its
14 decision, did you?
15 A I don't -- I don't believe I did.
16 Q And you didn't read the transcript from the hearing, did
17 you?
18 A I don't -- correct. I did not.
19 Q Okay. So in your capacity as the chief compliance
20 officer, you didn't believe that you should take the time to
21 review the transcript, did you?
22 A Correct. I mean, just it was filed based off of the
23 belief that the -- that the trades weren't in the best
24 interest, and I -- and no, I didn't read it personally.
25 Q And you didn't believe, in -- that in your capacity as the

1 CCO, the chief compliance officer, that it was in the scope of
2 your responsibility to listen to the hearing, correct?
3 A I was -- I wasn't asked to listen, and quite frankly, I
4 don't -- I don't recall if I remember the timing, but I did
5 not listen.
6 Q Okay. And in your capacity as the chief compliance
7 officer, you didn't believe that it was in the scope of your
8 responsibilities to listen to the hearing; isn't that right?
9 A Correct.
10 Q And because you didn't listen to the hearing or review the
11 transcript, you were unaware of what the Court said or how
12 Judge Jernigan described the motion or the people involved in
13 presenting the case on behalf of the Defendants, right?
14 A Correct, but I -- I believe I probably would have received
15 some guidance from counsel who attended or listened to the
16 hearing.
17 Q Well, after the hearing was over, you did speak to Mr.
18 Norris, right?
19 A Very briefly.
20 Q In fact, --
21 A Very --
22 Q In fact, the only thing you can remember about your
23 conversation with Mr. Norris following the hearing was
24 discussing with him how long the hearing took. Isn't that
25 right?

A Correct, because I -- I believe I heard it was a short hearing.
Q And that's -- that's all -- that's all you asked Mr. Norris about, about the hearing, right? That's all you remember talking to him about?
A I believe so, correct.
Q You don't recall discussing with Mr. Norris any other aspect of the hearing other than the length of time it took to conduct, correct?
A I don't recall specifically.
Q And you have no recollection of ever discussing with Mr. Dondero what happened at the hearing, right?
A I don't think I talked with Jim, Jim Dondero about that.
Q Nor did you talk to Mr. Dondero about the Court's ruling; isn't that right?
A Correct.
Q Okay. Let's talk about the events that occurred after the hearing, in the two weeks following the hearing. The Defendants for which you serve as the chief compliance officer sent three separate letters to the Defendant [sic], correct?
A If you could bring them up, I can confirm.
Q Sure.
MR. MORRIS: Let's start with DDDD, please. Okay. Okay. Can we scroll to the attachment, please?
BY MR. MORRIS:

Q All right. So this is the first letter, Mr. Post. Do you recall, on or about December 22nd, the K&L Gates firm sent, on behalf of the Advisors and Funds for which you serve as the chief compliance officer, a letter to the Debtors?

A Yes.

Q Okay.

MR. MORRIS: And can we call the next exhibit? I guess it's EEEE.

And I don't mean to be quick about these. If there's any reason that you want to read them, I wasn't planning on asking any questions about the substance of the letters of this witness.

BY MR. MORRIS:

Q But Mr. Post, I don't mean to be quick here. So if you think there's a benefit to you to reading the letters, please let me know.

Do you see, December 23rd, the next day, another letter was sent by K&L Gates?

A Yes.

Q Okay. And do you recall generally that the Advisors and Funds for which you serve as chief compliance officer told the -- told the Debtor that they were going to begin the process of seeking to terminate the CLO management agreements?

A I believe -- I believe that was contained in the letter, so long as it was done in compliance with the Court.

Q Uh-huh. And do you remember there was a third letter that was sent?
A If you wouldn't mind pulling it up.
Q Yeah, not at all.
MR. MORRIS: Can we get the December 31st letter? I think it might be -- yeah.
BY MR. MORRIS:
Q Now, here's the December 31st letter. Do you remember the December 31st letter was the one where K&L Gates suggested that the Advisors and the Funds had suffered damages because the Debtor evicted Mr. Dondero from the Highland suite of offices?
A I -- I had heard of that letter being drafted, but I don't recall -- I obviously don't recall a specific date. But if it says December 31st, --
Q Okay. Mr. Dondero was one of the main voices in the decision to send these letters, correct?
A He was part of the preliminary conversation and expressed his opinion, and then myself and others internally, and with external counsel, then worked to draft the letters.
THE COURT: All right. Mr. Post, I am going to interject. I have heard Mr. Morris give you this instruction many times. Maybe it's time for me to. Maybe it's past time for me to.
Most of his questions simply require a yes or no answer.

If you feel like there are other things that you want to supplement your testimony with, Mr. Rukavina is going to have a chance to question you, and that would be the situation where maybe you could give more fulsome answers. But please listen to the question. If it's a yes or no answer, that's all we want you to give right now. Okay? Got it?

THE WITNESS: Understood.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

BY MR. MORRIS:

Q Mr. Post, Mr. Dondero was one of the main voices in the decision to send the letters; isn't that correct?

A He was a voice.

THE COURT: That was not a yes --

BY MR. MORRIS:

A And he was -- he --

THE COURT: Okay.

THE WITNESS: I'm --

THE COURT: Please, just a yes or no answer, okay?

THE WITNESS: No.

MR. MORRIS: Okay. Can we go to Mr. Post's transcript, please, Page 47? Line 22?

And Your Honor, when we pull it up on the screen, there is an objection, and I would respectfully request that the Court rule on the objection before I read the question and the

1 answer.
2 THE COURT: All right.
3 MR. MORRIS: So if we could just call up Page 47
4 beginning at Line 22.
5 MR. RUKAVINA: Page 47, Line 22.
6 THE COURT: Okay.
7 MR. MORRIS: One moment. Give her a moment. She's
8 not there.
9 MR. RUKAVINA: Do you remember what exhibit this is?
10 MR. MORRIS: Yeah. There it is. Beginning at Line
11 22, "Do you know?" And there is Mr. Rukavina's objection.
12 MR. RUKAVINA: Your Honor, it's very simple. He
13 can't go into Mr. Dondero's head. But he -- but if Mr.
14 Dondero told him something, that's different. So I think
15 counsel can rephrase the question and it's perfectly fine, but
16 he can't go into Mr. Dondero's state of mind.
17 MR. MORRIS: Your Honor, I'm not asking for Mr.
18 Dondero's state of mind. I'm asking for Mr. Post's knowledge.
19 "Do you know?"
20 THE COURT: Okay. I'll overrule the objection. He
21 can answer.
22 BY MR. MORRIS:
23 Q All right. So, Mr. Post, do you remember giving this
24 answer to the following question:
25 "Q Do you know whether Mr. Dondero supported the

1 sending of each of these three letters?
2 "A I don't -- I don't recall specifically. I think
3 he had his views on certain of the transactions that
4 were occurring, and he wasn't in agreement with those
5 transactions, as one of the main voices."
6 Q Do you see that?
7 A I do.
8 Q Does that refresh your recollection that Mr. -- that you
9 testified that Mr. Dondero was one of the main voices?
10 A Yes.
11 Q Okay. Mr. Dondero --
12 MR. MORRIS: You can take that down now for the
13 moment, please.
14 BY MR. MORRIS:
15 Q Mr. Dondero had his views on certain of the transactions
16 that were occurring, and he wasn't in agreement with those
17 transactions. Isn't that right?
18 A Yes.
19 Q All right. Going back to the letters that we just looked
20 at quickly, you recall the Debtor responded to each of those
21 letters, but as the chief compliance officer, you couldn't
22 really recall what the Debtor said in response. Is that fair?
23 A I'm -- I believe they -- I'm sorry. I can't recall
24 specifically without seeing the letters.
25 Q Okay. So you don't recall that, in response, the Debtor

1 requested that the Advisors and the Funds withdraw the
2 letters, right?
3 A I believe that was requested in the letters.
4 Q Okay. But the Funds and the Advisors didn't comply with
5 that request, right?
6 A To my knowledge, they have not withdrawn the letters.
7 Q You do recall that the Debtor specifically asked the
8 Defendants to file their lift stay motion so that they could
9 finally resolve the issue of whether or not the Advisors and
10 the Funds could actually terminate the agreement, right?
11 A I -- I'm sorry. Can you repeat that question, please?
12 Q Do you recall that the Funds and the Advisors informed the
13 Debtor that they were going to initiate steps to terminate the
14 CLO management agreements, including moving to lift the stay?
15 A I think they indicated that they were going to take steps,
16 but it would be pursuant to what was permitted in the court.
17 Q And do you remember that the Debtor specifically asked the
18 Defendants to do exactly that, to bring this matter to a
19 conclusion, to file the motion so that the Court could resolve
20 the issue of whether or not they had a right to terminate the
21 agreement? You remember that, right?
22 MR. RUKAVINA: Objection, compound, Your Honor.
23 THE WITNESS: I can't --
24 THE COURT: I'm sorry.
25 MR. MORRIS: I can't recall.

THE COURT: Was there an objection?

MR. RUKAVINA: Yes, Your Honor. That's four questions in one. That's compound.

MR. MORRIS: I'll rephrase, Your Honor.

THE COURT: Okay. And let me interject a minute. Mr. Post, you have this habit of not looking squarely at the camera but looking over to your right. And in a normal courtroom setting, that might be fine, but I have no way of knowing if some lawyer or some other person is -- you're looking at them and they're somehow instructing you. I would certainly hope that's not what's going on, but it just kind of leaves room for me to wonder when you're not looking squarely at the camera. So can you start looking squarely at the camera, please?

MR. RUKAVINA: Your Honor, I can explain that, and certainly there's no funny business going on. There are two cameras on Mr. Post. One is on a laptop. We're looking at the Court on the big camera. I'm sitting behind Mr. Post. So if the Court would prefer that Mr. Post look directly into the laptop, then that's what he'll do, or if the Court would prefer that he look into the big camera.

THE COURT: Okay. Well, I prefer he look into the big camera just because it --

MR. RUKAVINA: So keep looking there? Yeah.

THE COURT: No, no, no, no. Okay. I don't know what

-- I thought -- okay. Do you see what I'm seeing? I don't know if you can see what I'm seeing.

MR. MORRIS: Yes.

THE COURT: I'm seeing the left side of his face.

THE WITNESS: I'm sorry. I'll just look at the laptop. Sorry. I was -- I was looking at who was speaking to me.

THE COURT: Okay. Well, I don't --

MR. MORRIS: Okay.

THE COURT: I don't know the setup, so it was confusing to me.

All right. This is better. Thank you.

THE WITNESS: Yeah. I apologize.

MR. RUKAVINA: We'll focus on the laptop, Judge.

BY MR. MORRIS:

Q All right. So the question, Mr. Post, is: You do recall that the Debtor specifically asked the Defendants to file their motion to lift the stay so that the issue could finally be resolved; isn't that right?

A I can't recall that specifically.

Q You believe that may be one of the options that the Debtor specifically proposed, right?

A It -- yes.

Q Okay. But the Defendants never filed their lift stay motion to terminate the agreements; isn't that right?

A I don't believe so.
Q Right. So the Debtor filed its complaint and its request for the injunction, right?
A Correct.
Q As the CO -- as the CCO, you may have reviewed the Debtor's complaint and motion, but you can't recall, given all the documentation that's involved, right?
A Correct.
Q You can't recall any facts that the Debtor asserted in support of its motion; isn't that right?
A I can't recall specifically. Correct.
Q But the one thing you do know is that the Debtor's motion is based on its entitlement to transact business pursuant to their arrangement with the CLOs as collateral manager, correct?
A Yes.
Q Now, you heard that there was supposed to be an initial hearing on the Debtor's motion for a temporary restraining order against the Defendants, right?
A Correct.
Q But you don't believe the motion for the TRO got heard, and you presume it got resolved, right?
A I don't believe it was heard.
Q Okay. And you understand that there is a TRO in place now, pursuant to which the Advisors and the Funds are

1 prevented from interfering with the Debtor's execution of its
2 rights under the CLO management agreements, right?
3 A Correct.
4 Q Before the TRO was resolved, you weren't personally
5 involved in the process of deciding what witnesses would be
6 called and what exhibits would be offered into evidence; is
7 that right?
8 A No.
9 MR. MORRIS: During the deposition, Your Honor,
10 subject to correction from Mr. Rukavina, I believe that the
11 Defendants and the Debtor reached the following two
12 stipulations.
13 First, the Defendants and the Debtor stipulate that Mr.
14 Post was not going to be called as a witness at the TRO
15 hearing.
16 MR. RUKAVINA: That is correct.
17 MR. MORRIS: And second, the Defendants and the
18 Debtor stipulate that the Defendants were not going to offer
19 into evidence any exhibits other than those specifically
20 listed on their witness and exhibit list.
21 MR. RUKAVINA: That being the witness and exhibit
22 list filed before the TRO. That is correct.
23 MR. MORRIS: Okay.
24 BY MR. MORRIS:
25 Q Let's talk about Mr. Seery for a minute. You know who Mr.

Seery is, correct?
A Correct.
Q You understand he's an independent director and the CEO of the Debtor, right?
A Correct.
Q And you also understand that his -- in his capacity as the Debtor's CEO, Mr. Seery is authorized to sell certain securities and assets that are owned by the CLOs, correct?
A Correct.
Q In your opinion as the CCO, the chief compliance officer of the Advisors and the Funds, Mr. Seery has the knowledge and experience to trade securities on behalf of the CLOs, correct?
A Correct.
Q But you don't believe that it's in the Funds' best interest for Mr. Seery to sell SKY and AVYA securities, right?
A Correct.
Q But even though you reached that decision about Mr. Seery, you have no knowledge as to whether Mr. Dondero ever traded either of those securities before he resigned from Highland; isn't that right?
A I saw some trades that were shown on the screen earlier. I don't think I recalled at the time I was asked on Friday.
Q As of the time -- as of Friday, you had no knowledge as to whether Mr. Dondero had traded in AVYA securities prior to his departure from Highland, correct?

A Correct.
Q And before, before forming your view as the chief compliance officer that Mr. Seery's trading of AVYA was not in the best interest of the Funds, you made no effort to see if Mr. Dondero had sold the exact same securities Mr. Seery was selling, correct?
A Correct.
Q And the sole source of information that you relied upon to reach your opinion that the trades weren't in the best interest of the Funds is Jim Dondero and Joe Sowin, correct?
A I'm sorry. Can you repeat that? You kind of cut out at the beginning.
Q Sure. And please, any time that happens, let me know. We had some problems this morning.
The sole source of information that you relied upon to reach your opinion that the trades weren't in the best interest of the funds is Jim Dondero and Joe Sowin; isn't that correct?
A Correct. They're the investment professionals, yes.
Q And you have no understanding as to why Mr. Seery wanted to sell the AVYA and SKY securities, do you?
A I was told that -- I don't know why he wanted to sell them personally, correct.
Q Okay. In fact, before reaching your conclusion as the CCO that Mr. Seery's trades were not in the best interest of the

1 Fund, you did not undertake any investigation of any kind to
2 try to determine why Mr. Seery wanted to sell AVYA or SKY
3 stock, correct?
4 A Correct. I didn't reach out to Mr. Seery.
5 Q All right. You believe that Mr. Dondero and Mr. Sowin's
6 opinion that Mr. Seery's trades aren't in the Funds' best
7 interest should be heard pursuant to the Advisers Act, right?
8 A Correct.
9 Q Specifically, Section 2000 -- 206 of the Advisers Act,
10 right?
11 A Correct.
12 Q Have you ever read Section 206 of the Advisers Act?
13 A Yes.
14 Q Okay.
15 MR. MORRIS: Ms. Canty, can you please put up the
16 demonstrative for Section 206 of the Advisers Act?
17 MR. RUKAVINA: Your Honor, the witness just asked me
18 for water. Nothing more.
19 THE COURT: Okay.
20 MR. MORRIS: Yeah. No problem.
21 BY MR. MORRIS:
22 Q I've put on the screen Section 206 of the Advisers Act,
23 Mr. Post. Can you please tell the Court what provision of 206
24 you believe Mr. Seery allegedly breached when he sought to
25 sell AVYA and SKY securities?

A It would be Number 4.
Q Do you believe that Mr. Seery engaged in fraudulent, deceptive, or manipulative practices by trying to trade AVYA and SKY securities?
A The -- as collateral manager for the CLOs, they're supposed to maximize returns for the preference shares, which we didn't believe the sales reflected that, and so they weren't acting, --
THE COURT: Okay.
THE WITNESS: -- you know, pursuant to their duties --
THE COURT: Here I -- here I go --
THE WITNESS: -- under the collateral management --
THE COURT: Here I go again. Here you go again.
THE WITNESS: I'm sorry.
THE COURT: It really was a yes or no question. All right?
BY MR. MORRIS:
Q You're the -- you're the chief compliance officer, right?
A Yes.
Q And this is the provision in Section 4 that you cite to as the provision that Mr. Seery violated when he attempted to sell SKY and AVYA securities, correct?
A Yes.
Q Did Mr. Seery engage in an act, practice, or course of

1 business which was fraudulent when he looked to sell those
2 securities?
3 A No.
4 Q Do you believe that Mr. Seery engaged in an act, a
5 practice, or a course of business which was deceptive when he
6 went to sell the SKY and the AVYA securities?
7 A Yes.
8 Q Who did he deceive?
9 A The investors of the CLOs, --
10 Q How?
11 A -- the preference shareholders.
12 Q How?
13 A By selling securities that the preference shareholder
14 investors believed had further upside to them.
15 Q Did he lie to them?
16 A I don't believe he talked to the investors.
17 Q But you're putting your reputation on the line here and
18 you're swearing under oath that Mr. Seery deceptively tried to
19 sell SKY and AVYA securities?
20 A I believe that based off of a review and discussion with
21 counsel.
22 Q Do you think he was manipulative?
23 A No.
24 Q Did you -- did you check in with the SEC to tell them that
25 you had a bad actor here?

A No.
Q You first formed your view that the Debtor violated Section 206 of the Advisers Act after the sales started to occur in the CLOs, correct?
A Correct.
Q But you don't know when the sales actually started, right?
A I believe there were sales --
Q And I assume, since you were the chief compliance officer since 2015, you don't believe that Mr. Dondero's sale of AVYA stock was deceptive, right?
A You would have to ask Mr. Dondero that, but I believe he was selling for cash, cash needs for other funds.
MR. MORRIS: Okay. I move to strike. I'm asking him not --
THE COURT: Sustained.
BY MR. MORRIS:
Q I'm asking about you. I'm asking about you. You're the chief compliance officer, right?
A Yes.
Q And you don't believe that when Mr. Dondero sold AVYA stock that he was engaged in deceptive practices, do you?
A No.
Q And that's because you don't even know whether he sold AVYA stock; isn't that right?
A On Friday, I -- that is correct.

Q In fact, the only reason you learned that Mr. Seery wanted to sell AVYA and SKY stock is because Mr. Dondero told you; isn't that right?
A I believe I was forwarded the email after -- after there was communications on the sales.
Q And that's the email where Mr. Dondero told Mr. Surgent that he had personal liability, correct?
A I -- I believe it was an email prior to that about were trades being requested and Mr. Dondero responding.
Q You're familiar with the email where Mr. Dondero interfered with Mr. Seery's trades?
A Yes.
Q Okay. And you're aware that Mr. Dondero told Mr. Surgent that he faced potential liability if he continued to follow Mr. Seery's instructions, correct?
A Correct. Based off of Mr. Dondero's view.
Q Notwithstanding all of that, in your capacity as the chief compliance officer, you don't believe it's ever appropriate for an investor to step in and impede transactions that have been authorized by the portfolio manager unless the contract permits the investor to step in; isn't that right?
A I believe -- I'm sorry, can you repeat that, please? There was a lot of question.
Q Sure. Sure. In your capacity as the chief compliance officer, you don't believe it's ever appropriate for an

1 investor to step in and impede transactions that were
2 authorized by the portfolio manager unless the contract
3 permits the investor to do so; isn't that correct? Isn't that
4 correct?
5 A Yes.
6 Q Okay. I know you're not a lawyer, but you are the chief
7 compliance officer of the Funds; isn't that right?
8 A Correct.
9 Q And you can't point to anything in any contract that gives
10 Mr. Dondero the right to step in and impede transactions that
11 have been authorized by Mr. Seery; isn't that correct?
12 A He's entitled rights as preference shareholders for the --
13 for the Funds that hold those preference shareholders. So,
14 indirectly, he should be afforded those rights as portfolio
15 manager for those Funds.
16 Q Sir, you can't point to anything in any contract that
17 gives Mr. Dondero the right to step in and impede transactions
18 that have been authorized by Mr. Seery; isn't that correct?
19 A Correct.
20 Q Okay. But yet you have never told Mr. Dondero that he
21 should not interfere with Mr. Seery's trades; isn't that a
22 fact?
23 A Correct.
24 Q In fact, you never personally took any steps at any time
25 to make sure that there would be no further interference with

1 the Debtor's trading activities; isn't that correct?
2 A Correct.
3 Q And that's because you believe, as the chief compliance
4 officer of the Funds, that Mr. Dondero should have the leeway
5 to make the determination as to whether or not the
6 transactions are appropriate; isn't that correct?
7 A He should be able to be heard in the transactions that are
8 being made, correct.
9 Q Sir, not to be heard, but to make the determination. Let
10 me ask the question again. You believe, as the CO -- CCO of
11 the Funds, that Mr. Dondero should have the leeway to make the
12 determination as to whether or not the transactions are
13 appropriate; isn't that correct?
14 A Yes.
15 Q Okay. And you completely deferred to Mr. Dondero; isn't
16 that right?
17 A For the investment determination, yes.
18 Q And based on that deference, you never took any steps at
19 any time to make sure no one on behalf of the Advisors or the
20 Funds impeded or stopped transactions authorized by Mr. Seery,
21 correct?
22 A Correct.
23 Q You understand there's a TRO in place today that prevents
24 Mr. Dondero and the Advisors and the Funds from interfering
25 with Mr. Seery's trading activities; isn't that right?

1 MR. RUKAVINA: I'm going to object to that, Your
2 Honor, to the extent that calls for a legal conclusion. And I
3 do think it mischaracterizes the testimony. I'm sorry. The
4 TRO.
5 THE COURT: Overruled.
6 BY MR. MORRIS:
7 Q You can answer, sir. Would you like me to repeat the
8 question?
9 A Yes, please.
10 Q You understand that there is a TRO in place -- TRO in
11 place today that prevents Mr. Dondero, the Advisors, and the
12 Funds from interfering with Mr. Seery's trading activities on
13 behalf of the CLOs, correct?
14 A Correct.
15 Q But in the absence of the TRO, in your view, whether you
16 tell Mr. Dondero not to interfere with Mr. Seery's trades
17 depends on the facts and circumstances that exist at the time,
18 right?
19 A Correct. From a -- yes.
20 Q Okay. And up until this point, there have been no facts
21 and circumstances that have caused you to tell Mr. Dondero not
22 to interfere with Mr. Seery's trades on behalf of the CLOs,
23 correct?
24 A He can't because of the TRO.
25 Q Correct. But if the TRO wasn't in place, it's possible

1 that you wouldn't take any steps to stop Mr. Dondero from
2 impeding Mr. Seery's trades; isn't that right?
3 A I mean, if Mr. Dondero or other investment professionals
4 have a view, that they should be -- they should have a right
5 to be heard as preference shareholders of the CLOs.
6 Q Okay. But if the TRO wasn't in place, you wouldn't act to
7 stop Mr. Dondero from interfering or impeding the Debtor's
8 trades on behalf of the CLO; isn't that right?
9 A He would -- if he would be permitted to talk to Mr. Seery.
10 Q Okay. Prior to the imposition of the TRO, you took no
11 steps to stop Mr. Dondero from interfering with Mr. Seery's
12 trades, correct?
13 A Correct.
14 Q And if the TRO wasn't in place, it's possible you wouldn't
15 take any steps to stop Mr. Dondero from impeding -- impeding
16 Mr. Seery's trades again; isn't that right?
17 A If there's an investment rationale as to why they feel the
18 trades shouldn't be done, I -- again, I feel like Mr. Dondero
19 or the other investment professionals should be able to raise
20 those points with Mr. Seery.
21 Q Do you think they should be able to stop the trades?
22 A I -- I -- I think they should be able to question the
23 trades. But flat-out stop them, I'd probably say no.
24 Q Then why didn't you do anything before the TRO was
25 entered?

A Um, I'm sorry, can you repeat the -- do anything in -- in what manner?
Q Why didn't you take any steps before the TRO was entered to stop Mr. Dondero from interfering and stopping and impeding the Debtor's trades?
A I think, as I recall, there was only one -- one set of trades in question that he stepped in on.
Q So, one is okay? How about two?
A Or, sorry. There were two trades on one day that -- that, you know, he questioned. Or stepped in on. I don't -- I don't recall him stopping any other trades thereafter.
Q That's all you know about, right?
A Correct.
Q And with that knowledge, it never occurred to you to tell Mr. Dondero to knock it off, did it?
A He believed the trades weren't in the best interest for the investors, so I did not.
Q And that's what you mean by deferring to him; isn't that right?
A From the investment perspective, yes.
Q Thank you for your -- thank you for your honesty. As the CCO, you have never communicated with the Issuers about the Debtor's performance under the CLO management agreements; isn't that right?
A Correct.

Q And that's because you didn't believe it was in your responsibility as the CCO to check with the Issuers to see if the Issuers believed that the Debtor was in compliance with the CLO management agreements, correct?

A That communication would have involved counsel and that communication didn't occur. I wouldn't have reached out to them directly.

Q Yeah. You didn't believe it was within your responsibility as the chief compliance officer to communicate with the Issuers to see if they had any views as to Mr. Seery's performance as portfolio manager, correct?

A Correct, because it would have involved me working with counsel and there was never direction to do that.

Q As the chief compliance officer of the Defendants, you have no idea if anyone on behalf of the Advisors or the Funds ever asked the Issuers whether they believed the Debtor was in default under the CLO management agreements, correct?

A Correct.

Q As the CCO, you have no idea if anyone on behalf of the Advisors or the Funds ever asked the Issuers whether they believed was in breach under the CLO management agreements, correct?

A Correct. I believe there was a call that I wasn't a part of, that it was just involving lawyers, that I don't know what was discussed on the call. So, correct.

Q As the CCO, you have no idea if anyone on behalf of the Advisors or Funds ever asked the Issuers whether they believed it was appropriate to try to take steps to terminate the CLO management agreements; isn't that right?
A Correct.
Q None of the Issuers joined any of the letters that were sent on behalf of the Funds and the Advisors, right?
A I didn't -- I don't recall seeing their names listed.
Q As the CCO, you don't have any understanding as to what the standard is for terminating the CLO management agreements unless you get legal advice; isn't that right?
A Yes. It was -- it would be a discussion with counsel, given the complexity of the agreements.
Q But as a factual matter, you're not aware of any facts that would support the termination of the CLO management agreements except that there were trades that Mr. Dondero didn't think were in the best interests of the Funds; isn't that right?
A Yes. And because the belief was those trades weren't maximizing value for the preference shareholders.
MR. MORRIS: I move to strike everything after the word yes, Your Honor.
THE COURT: Granted.
MR. MORRIS: I have no further questions.
THE COURT: All right. Mr. Rukavina?

MR. RUKAVINA: Your Honor, I'll reserve my questions for my case in chief.

THE COURT: All right. Mr. Post, that concludes your testimony for now. Stick around.

Mr. Morris?

MR. MORRIS: Your Honor, last witness, and I hope it's rather brief, actually. The Debtor calls James Seery.

MR. RUKAVINA: Your Honor, may we have a brief restroom break, all of us in this room, before we start the next witness?

THE COURT: All right. We'll take a five-minute restroom break. I know part of the long day is because of my commitment at the lunch hour, but you all did estimate three or four hours for this hearing, right? That's what I recall.

MR. MORRIS: We did.

MR. RUKAVINA: Your Honor, I was never consulted on a time estimate. I had no idea that someone said three to four hours.

THE COURT: All right.

MR. MORRIS: And part -- part of that is my fault and the technological problems we had this morning, so I take responsibility for that, Your Honor, and I sincerely apologize.

THE COURT: Okay. Well, just so you know, we cannot come back tomorrow. I've got two -- too booked today tomorrow

to come back, so --

MR. MORRIS: I don't expect Mr. Seery to be more than about 15 minutes.

THE COURT: Okay. We'll take a five-minute break.

THE CLERK: All rise.

(A recess ensued from 3:22 p.m. until 3:32 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. I wanted to clarify one thing I said, just so no one is confused. I know that originally you had today, Wednesday, and Thursday, 26th, 27th, and 28th, for confirmation. So if anyone thought, oh, we're coming back tomorrow on this if we don't finish, because originally you had all three of those days, you know, as soon as we continued the confirmation hearing, we started filling in Wednesday. So we have three different Chapter 11 case matters set tomorrow. And so it was, you know, you give up time and we have people usually wanting to get that time, so that's what happened.

But anyway, people, we'll talk fast and we'll get it done today, right?

MR. RUKAVINA: Your Honor, my -- Your Honor? Oh, wait. I need to --

THE COURT: Ooh, it sounds like you're in a cave. Let's get those headphones on.

MR. MORRIS: I promise to be as quick as I can, Your

Honor.

THE COURT: Okay. Mr. Rukavina, were you trying to say something?

MR. RUKAVINA: I was, Your Honor. Can you hear me?

THE COURT: Yes.

MR. RUKAVINA: This darn video. Too many -- Your Honor, we have an agreed TRO that goes through February the 15th. And I'm certainly not suggesting taking any more of the Court's time than is necessary, but I cannot commit to finishing today, especially because Mr. Morris has taken so much time. So I think we will do our best, but I just want the Court to know that there's no urgency to this, and if we have to come back at some point after Tuesday or Wednesday, there's no possible harm to the Debtor.

MR. MORRIS: Your Honor, it's my hope that we can get this done, and I think the sooner we begin the better.

THE COURT: Okay. Well, we're going to try to get it done. All right, Mr. Seery. You've called Mr. Seery to the stand now?

MR. MORRIS: Yes, Your Honor. The Debtor calls James Seery.

THE COURT: All right. Mr. Seery, please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you.

MR. MORRIS: May I proceed?

THE COURT: You may.

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Seery. Can you hear me okay?

A I can, yes.

Q Okay. Let's just cut to the chase here. You're the CEO of the Debtor; is that right?

A That's correct.

Q And in that capacity, do you understand that the Debtor is party to contracts pursuant to which it manages certain CLO assets?

A Yes.

Q And are you personally involved in the management of those assets?

A Yes.

Q Do you have any prior experience managing other people's money or other people's assets?

A Yes.

Q Can you please explain to the Court your experience and your knowledge as to investing other people's money?

A Yes. I was a finance lawyer -- I'll go quickly, if it's okay. I can fill in later, if you like. I was a finance and bankruptcy lawyer for ten years before I went to Lehman on the

business side in 1999.

In that role, I started immediately in distressed investing. I worked as part of a team of analysts and traders to build distressed positions in prop (phonetic) business, trading Lehman Brothers balance sheet at the time. This was in 1999 and 2000. We were one of the most significant investors on the Street, and I was part of that team, and a leading part of the team, putting on significant investments of our balance sheet, which was Lehman's money, into different kinds of stressed, distressed, high yield investments. That included bonds, that included loans, unsecured, subordinated. Sometimes equity. Typically, we stayed in credit, but a lot of this was very distressed credit, which often ended up as reorg equity.

After that, I began running different teams for making distressed loans to companies that no one else would lend money to. These investments were significant, anywhere from fifty to a billion dollars. Some of the largest transactions in the world at the time were transactions I ran, like a rescue loan to PG&E for a billion dollars. That was in 2000.

After that, I continued to grow my career there, running distressed investments. In 2005, I took over the loan business at Lehman. That included all high-grade loans, high-yield loans, trading and sales of those loans; managing that portfolio, which was in excess of $10 or $20 billion,

depending on the time; exposure both in committed transactions as well as funded loans; the hedging of that portfolio; traders and salespeople working for me. In addition, I had significant responsibility for the distressed book, as well as all restructuring business at Lehman.

After Lehman, I -- and I was one of the people who sold Lehman -- I became a senior investing partner at RiverBirch Capital. We were about a billion and a half dollar long/short investor, mostly stressed and distressed, but a lot of high-grade trades as well, particularly in preferred stocks. That was a global business, but primarily U.S., Europe, some Asian investments as well.

Since then, I've gotten to Highland. I've been responsible for Highland's investments. After the first quarter, when the performance managed by Mr. Dondero was absolutely disastrous -- we lost about $80 million in equity securities, positions that he managed, about $50 million in the Select Equity Fund, and about $30 million in the -- in the Highland internal account. After Jefferies seized the Select account, I took over the --

A VOICE: I think Mr. Seery has sort of gone beyond the question of his background.

THE WITNESS: He's asked me if I was experienced in investing other people's money. I was giving that background. But we -- I can stop or I can keep going, if you like.

1 THE COURT: Okay. If that was an objection, --
2 MR. MORRIS: Let's --
3 THE COURT: -- I overrule it. Go ahead.
4 THE WITNESS: I've been managing that portfolio. In
5 addition, after Mr. Dondero left, but I actually started
6 looking at it before that, started taking over the CLO
7 portfolio, or taking a look at it, frankly. We have a -- we
8 have an experienced professional sitting on top of it, Hunter
9 Covitz, who manages the day-to-day exposure. But those
10 portfolios -- we call them CLOs, Your Honor, but I think
11 you've heard testimony before, they're not really. Acis 7 is
12 a CLO. The 1.0 CLOs are very old investment vehicles that are
13 primarily structured as, right now, closed-end investment
14 funds. They don't have the typical diverse portfolio of loans
15 that a CLO has. They have mostly reorg equity or positions in
16 real estate and in MGM. So the -- the securities we've been
17 talking about in these trades are publicly-traded liquid
18 securities that Highland took as post-reorganization equity.
19 Q Thank you, Mr. Seery. Let's cut to the chase on the AVYA
20 and the SKY. Nobody seems to have asked you this question,
21 but did you -- have you looked to sell AVYA and SKY securities
22 since the time that Mr. Dondero left in October?
23 A I have, yes.
24 Q Can you please explain to the Court your investment
25 rationale, the reason why you wanted to sell -- let's just

1 take them one at a time. Let's start with AVYA. In the last
2 couple of months, why have you wanted to sell AVYA?
3 A Well, the original impetus to sell AVYA came from Mr.
4 Covitz when it started moving up as a post-reorg security in
5 the communications space that had -- had really performed
6 extremely poorly post its Chapter 11. Mr. Covitz over the
7 summer felt we should start lightening up on that position. I
8 agreed. He did that. And Mr. Dondero eventually cut him off.
9 As it got to the fall, what I did was I got Mr. Covitz, as
10 well as then the analyst -- the analyst on that is Kunal
11 Sachdev. That's the Highland analyst on the position -- as
12 well as Joe Sowin and Matthew Gray, who's another senior
13 analyst. And I looked at all of the equity positions in the
14 CLOs and wondered why we had them. What was the view? Were
15 they worth keeping?
16 Primarily, the ones we looked at were four of the post-
17 reorg equities that were liquid. A company called Vistra, a
18 company called Arch Coal. Vistra is the old TXU, a well-known
19 bankruptcy. Arch Coal, another well-known bankruptcy. Avaya,
20 a bankruptcy; and Sky Champion, a less -- less-known
21 bankruptcy but came out of there.
22 Mr. Gray is the analyst on Vistra and Arch. We
23 determined, based upon his recommendations, not to sell those.
24 Mr. Sachdev was the analyst on Avaya, and he believed that it
25 had reached its peak, and even though it could continue to go

1 up or down -- stocks often do that -- he did not think that
2 the value was there. His recommendation was to sell.
3 Mr. Sowin was in those meetings. Prior testimony to the
4 contrary or any statements that were said before are
5 completely false, they're completely made up, so I know it's
6 frustrating and I apologize for -- for being frustrated.
7 So we decided that we would sell the Sky Champion. A
8 pretty simple answer. Highland didn't have an analyst.
9 Literally didn't have an analyst. Nobody had a view as to
10 what the stock was. It just sat in there, in two CLOs,
11 without anybody paying any attention to it.
12 I had Matthew Gray take a look. He felt that it was at
13 fair value. I did my own work on it, felt it was at fair
14 value, notwithstanding some good tailwinds in -- secular
15 tailwinds in the home building space, and determined that that
16 CLO should sell those securities.
17 Q Thank you, sir. Prior to his departure at Highland, did
18 Mr. Dondero have responsibility over the management of any of
19 the CLO assets?
20 A He did, yes.
21 Q And do you understand, do you know whether Mr. Dondero
22 sold AVYA securities on behalf of the CLOs and on behalf of
23 the Funds during the time that he was employed as the
24 portfolio manager from January until October 2020?
25 A I do. And he did sell those securities. The chart you

1 put up, based upon our business record, is accurate, and he
2 engaged in significant sales of those securities throughout
3 the year.
4 Q Okay.
5 MR. MORRIS: Can we please put upon Demonstrative #1?
6 BY MR. MORRIS:
7 Q Okay. And can you just explain to the Court what this
8 document is?
9 A It's a trade report, one of Highland's -- this shows the
10 whole platform, so it's the aggregate sales. The name of the
11 email -- I apologize, I forgot the system; it just left my
12 mind. But the email you saw before is anybody on the platform
13 used for various trades if they're part of a trading group.
14 And that's to make sure that, across the portfolio, in its
15 corporate platform, you aren't running into either compliance
16 problems or allocation problems that could lead to a
17 compliance problem.
18 Q So this shows sales of Avaya on these particular dates.
19 The trade is -- the trade symbol is AVYA. This is a liquid
20 security. Trades in, you know, liquid equity markets. I
21 believe its average trading volume is somewhere about a
22 million and a half a day, approximately. So you have a trade
23 date. You have the type of transaction. It could be a buy or
24 a sell. These are all sales. The quantity. And then the
25 price. And then it would have the Fund, and then the

aggregate dollars, which is simply multiplying the price times the quantity.

Q And if we just scroll down to the end of the document, October 9th, is that around the time that Mr. Dondero left Highland?

A Right around that time. This was coming into a number of hearings that we thought it was most important to have Mr. Dondero depart, particularly in light of some of the positions that he and his companies were taking vis-à-vis the Debtor.

MR. MORRIS: Can we put up Demonstrative Exhibit #2, please?

BY MR. MORRIS:

Q Can you explain to the Court what this is?

A Uh, --

MR. MORRIS: And again, just for -- just for the record -- sorry to interrupt, Mr. Seery -- the backup for this information can be found at Debtor's Exhibits BBBBB to SSSSS

BY MR. MORRIS:

Q Go ahead, sir. Could you explain to the Court what this is?

A Yeah. This is just a pretty straightforward chart showing the bars being sales and the lines being the -- the closing sale price of a buy on that day. And so you can see, you know, with the market fallout in the early part of the year, AVYA hit a low, but like most of the securities in the market,

it has come back very strongly. And you see Mr. Dondero's trades earlier in the year, the rest of it during the middle part of the year, sales in the third quarter, and then, when he's gone, I began selling in November and December.

Q Now, so is it fair to say that Mr. Dondero and the Defendants didn't completely impede and stop the Debtor from selling AVYA shares?

A That's fair. What -- there's a little bit of confusion. The way the trading desk worked previously is that you have these separate companies but they're not really separate companies. HCFMA is populated by about seven employees. Many of them have functions across a number of different companies. HCFMA exists solely because Highland funds it. They haven't paid fees of about three million bucks this year. They owe $10 million related to a disastrous bailout of what was an open-end fund called Global Al a couple years ago where the SEC, you know, came in and took significant action, almost shut significant parts of Highland down. And these traders do the trading of all the equities across the platform.

So I typically would call them, and this is how we worked in the spring when I took over the internal account after the seizure by Jefferies of Mr. Dondero's management of the Select Equity account. I would work with Joe Sowin as the trader, make decisions on what we wanted to do for the day, he would execute those trades by going out in the market with a broker,

selling them to -- to the dealer on the other side, run it through our automated system, and then the trades get closed with the back office.

So there's the trade, which is your agreement to buy or sell at a particular dollar price. That gets inputted into the OMS system, and then from there it's the back office takes over, and then ultimately securities are delivered versus payment to the counterparty.

Q Okay. And can you just describe, you know, in one or two sentences, your interpretation of this chart and how your sales and the green bars compare to Mr. Dondero's sales and the brown bars?

A Well, the two simple obvious answers are, one, they're smaller, and two, they're at higher prices.

Q Okay. You also traded, since Mr. Dondero's departure, securities known as SKY; is that right?

A That's correct. It's Sky Champion Corp. The ticker is SKY.

Q And did Mr. -- to the best of your knowledge, Dr. Mr. Dondero trade in SKY securities prior to his departure?

A I don't believe so. As I said earlier, we didn't appear to have an analyst on that for some time. I don't even know how far back it goes. It was a bit of an orphan security sitting in the portfolio. It's only -- it was only in two of the CLOs.

Q Okay.

MR. MORRIS: Can we please put up Demonstrative #3, please? Okay.

BY MR. MORRIS:

Q And can you just explain to the judge what's depicted on this page?

A Again, similar to the last chart, you have the dollar price of the security at the close each day, throughout the year, and then the green bar showing where we began to sell securities for those CLOs.

Q And so, again, is it fair to say that Mr. Dondero and the Defendants haven't completely stopped the Debtor from engaging in SKY transactions?

A That's correct. What we did was the so-called workaround previously mentioned, was that we decided that I would have to do the trading directly. So I'd literally look at the stock each day, talk to the broker at Jefferies, determine what level to sell at, communicate with him throughout the day, work through transactions. Then he reports in whether he's been able to sell and execute on our behalf. When he's done that, then we have the back office manually enter the trades, as opposed to doing it from the automated trading desk, and then have those trades close. So, so far, knock on wood, we haven't failed on any trades.

Q Okay.

MR. MORRIS: We can the demonstrative down, please.

BY MR. MORRIS:

Q Just two more topics here, sir. Can we talk briefly about what efforts, if any, the Debtors have made to avoid this litigation? I'll just ask them one at a time. Has the Debtor made any attempt to transfer the CLO management agreements to the Defendants or to others?

A Well, our original construct of our plan was to do that. We've since determined, when we tried to do that, we got virtually no response from the Dondero interests. The structure of the original thought of the plan was if we didn't get a grand bargain we would effectively transition a significant part of the business to Dondero entities, they would assume employee responsibilities and the operations, and then assure that the third-party funds were not impacted.

As I think I testified on the -- I can't recall if it was the deposition or my prior testimony in court -- Mr. Dondero, true to his word, told me that would be very difficult, he would not agree, and he has made that very difficult.

So we examined it. We've determined that we're going to maintain the CLOs and assume them. But we originally tried to contemplate a way to assign those management agreements. We've had --

Q All right.

A -- significant discussions with the CLO Issuers, and

they're supportive of us retaining them.

Q Okay. You were on the -- you've been participating or listening in to the hearing throughout the day; is that right?

A I have, yes. I apologize. I didn't leave the screen on because I didn't want to suck up bandwidth.

Q Are you familiar with all of the K&L Gates letters that that were reviewed today?

A I am, yes.

Q Did the Debtor request that the Defendants withdraw those letters?

A Yes, we did.

Q Had the Defendants withdrawn those letters, might that have avoided this whole litigation?

A I think it would have. What we wanted to have here is a withdrawal of the letters and an agreement by the clients for the -- the K&L Gates clients that they wouldn't interfere with the operations of the Debtor and our drive towards a plan. They could take their legal positions and object to the plan, if they like, but interfering on a day-to-day basis was unacceptable to us in terms of trying to operate this business in the most efficient manner.

We specifically requested that they do that. This is, I don't think, lost on anybody, certainly not on me in my experience here for years: These entities are all dominated and controlled by Mr. Dondero, and each of these attacks is

specifically coordinated for the purpose of diverting the Debtor, causing confusion, and forcing us to spend estate resources.

Q Do you know if the Debtor also asked the Defendants to avoid this whole injunction proceeding by simply filing their motion to lift the stay and see if they could actually win a motion to terminate the contract?

A Well, what we did was we contemplated the best, most efficient way out, and it was either withdrawing the agreement; if they didn't agree, then we'd said you should file your stay motion immediately and let's have this determined. We told them, short of that, if they weren't willing to do that, then we would have to put this in front of the Court to try to make sure that we could operate the business.

Q All right. So, just to summarize, you attempted to sell the CLO management agreements, but were unable to do so; is that right?

A I would say assign. We would have looked for a payment, there is a cure payment that we have to make, but we didn't we didn't conduct an auction for the CLO assets.

Q And to the best of your knowledge, the Defendants never withdrew the letters; is that right?

A They did not.

Q And to the best of your knowledge, the Debtors -- the

1 Defendants never brought their contemplated lift stay motion,
2 right?
3 A They have not, no.
4 Q And so why did the Debtor bring this action?
5 A Well, quite clearly, to try to prevent the managers and
6 Mr. Dondero and the Funds from interfering with the way that
7 we operate the business. We intend to continue to manage the
8 CLOs, we intend to assume those contracts, we intend to manage
9 them post-confirmation, after exit from bankruptcy. And
10 causing confusion among the employees, preventing the Debtor
11 from consummating trades in the ordinary course, deferring
12 those transactions, we thought put the estate at significant
13 risk, in addition to the cost.
14 Q Did you hear Mr. Rukavina in the opening suggest that
15 these might, in fact, be money-losing contracts?
16 A I did, yes.
17 Q Why would the Debtor want to assume money-losing
18 contracts?
19 A They're not money losing contracts.
20 Q And why, why do you say that?
21 A They generate fee income. So the fees on each of these
22 CLOs get paid to the Debtor. Now, not all of these CLOs, as I
23 mentioned earlier, are -- none of them are ordinary CLOs,
24 other than Acis 7. But not all -- because they don't all have
25 liquid assets that are able to pay their fees each quarter,

some are deferred. There are some CLOs that will probably never pay any deferred fee because they are underwater. Those are not CLOs that Mr. Dondero or the Funds own any of. That's not really a surprise. But we will continue to manage those and look for ways to exit for those investors who are noteholders who are underwater in those CLOs.

Q Okay. Can you describe for the Court the Debtor's contentions as to how the conduct that has been adduced through today's evidence, how is the Debtor harmed by Mr. Dondero's interference in the trades and the sending of these letters?

A I think it's clear in terms of operational risk. Being forced to construct a workaround to consummate trades that we think are in the best interest of the Funds.

It's telling not only that neither Mr. Dondero nor Mr. Sowin nor -- Mr. Sowin was on the calls and agreed to the analyst view, by the way -- nor anybody from MHF ever asked me a question, their lawyers in the deposition never asked me why we were selling these securities. They simply want to get in the way, cause additional risk to the estate, and cause additional exposure with respect to legal fees, divert our attention from trying to consummate the case. I think that's, in my opinion, that's pretty clear.

Q Is there any concern on the part of the Debtor that that Mr. Dondero's emails and conduct is creating uncertainty

among the staff as to who's in charge?

A I think they did initially, and if they continued, they would. Right now, the workaround is working pretty well. We still do keep Mr. Sowin on the emails to make sure that, you know, from a compliance perspective, that our sales, he knows about; that we're not stepping on each other's markets, if you will; that we're not getting in the way that -- in the way if he wants to sell assets from a different MHF other managed asset holding, but we do have a workaround that works right now.

I think the biggest risk is, because it's much more manual, you have risk of so-called fat-finger trades, where you think you're selling a thousand and you sell 10,000, you think you're executing a sale and you're executing a buy, you think you're executing from an account that has the securities and end up selling short from an account that doesn't. So we've got to be very careful of that, but the team is doing that now. There certainly was confusion at the start.

Q And can you just explain to the Court your view as to how the Debtor is able to -- how the Debtor will be able to service the contract on a go-forward basis?

A The CLO contracts?

Q Yes.

A We'll have a team of folks able to manage these assets with professionals that are experienced credit analysts,

1 equity analysts. I think we'll be able to manage this --
2 these assets in a pretty straightforward manner. It's not
3 going to be very difficult.
4 Q Has the Debtor been harmed through the diversion of your
5 personal attention as CEO in responding to all of this?
6 A I like to think that I can juggle a lot of different
7 things. I would prefer not to have to be looking at the
8 securities levels each day and feeding out securities that we
9 determine to sell through the broker at Jefferies, who,
10 notwithstanding, is doing a great job. It's the job of the
11 trader to actually do that and day-to-day -- throughout the
12 day monitor the markets and look for the best place to sell.
13 So do I think I'm getting the best execution? I think the
14 trader at Jefferies is excellent. Do I think if a trader on
15 the Highland side was involved every step of the way, I think
16 it would be better.
17 Q Have the Debtor's professionals' attention and resources
18 been diverted to deal with all of this stuff?
19 A That -- I think that's -- that's quite clear as well.
20 It's a significant expense.
21 Q Okay.
22 MR. MORRIS: Your Honor, I have no further questions
23 of this witness.
24 THE COURT: All right. Mr. Rukavina?
25 MR. HOGEWOOD: Your Honor, if you please, Lee

Hogewood from North Carolina. You've admitted me *pro hac vice*. If I may do cross-examination, I would appreciate it.

THE COURT: All right. Go ahead.

MR. HOGEWOOD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HOGEWOOD:

Q Mr. Seery, let me ask you about the letters that came from our firm, and especially from me, beginning on December 22nd. I think you spoke about those generally. If you need them to be called up, I think my questions will be crisp as to the letters generally, but we could certainly look at them specifically, if need be.

There was initially a letter dated December 22nd, 2020, that's Debtor's Exhibit DDDD, at Docket 39. I take it you've read that letter?

A I have, yes.

Q And it's fair to say that was a request you had seen before?

A I don't think that's fair to say, no.

Q You had not seen a request to discontinue trades until the confirmation hearing?

A I don't believe so, no.

Q Okay. So that, that was the first time a request had been made not to trade in the CLO securities prior to confirmation?

MR. MORRIS: Objection to the form of the question.

1 THE COURT: Overruled.
2 THE WITNESS: I --
3 THE COURT: Go ahead. You can answer.
4 THE WITNESS: I don't recall you sending me a letter
5 before that, but I -- if you have, then I apologize. I
6 thought I was pretty familiar with them, but I don't recall
7 you sending me that request previously.
8 BY MR. HOGEWOOD:
9 Q Okay. I'm sorry. That was the first request you had
10 received from me, is that -- that's correct?
11 A Yes.
12 Q But there had been prior requests of a similar nature?
13 A Not to my recollection. Is there a letter?
14 Q All right. Well, let me -- let me move on. You
15 weren't intimidated by my letter, were you?
16 A Was I intimidated by your letter? No, I was not
17 intimidated.
18 Q And it didn't cause -- the letter itself did not cause you
19 or the Debtor to alter your investment strategy?
20 A It did not, no.
21 Q And it did not cause you or the Debtor to refrain from
22 operating the company in the manner that you perceived to be
23 in its best interest?
24 A It did not.
25 Q It did not cause you to change any of your trading

1 decisions?
2 A No.
3 Q You and your counsel responded -- or, your counsel
4 responded to the letter a couple of days later; isn't that
5 correct?
6 A Yes.
7 Q And the response rejected the request that had been made
8 and demanded that the letter be withdrawn; is that right?
9 A Yes.
10 Q So the range of communication is a set of lawyers
11 representing adverse parties asserting their respective
12 positions? Is that a fair characterization of that set of
13 communications?
14 A No.
15 Q Okay. Would you characterize it differently?
16 A Yes.
17 Q All right. How so?
18 A I believe you sent a letter with no good-faith basis,
19 knowing what the contracts say as an experienced lawyer,
20 knowing there was not cause, yet still making the same
21 threats, basically couching them as a request. But I don't
22 think there was any good-faith exchange of ideas. No one even
23 asked me why I was making the trades. I think you were aware
24 of that.
25 Q You -- but you testified that, nonetheless, the letter did

not cause you to conduct yourself in any other manner than you would have conducted had you not received the letter; isn't that right?

A That's correct.

Q So I think there's some confusion, then, and I just want to clear this up. There was earlier testimony, both at your deposition, that -- that my clients actually interfered with and caused trades not to occur on or around December 22nd and 23rd of 2020. And that's not correct.

MR. MORRIS: Objection. Your Honor, the evidence is in the record.

MR. HOGEWOOD: Okay. Well, let me --

THE COURT: All right. You're going to have to rephrase.

BY MR. HOGEWOOD:

Q Yeah. Let me -- let me say it differently. Focusing solely on December of 2020, every trade that you initiated closed; isn't that correct?

A Every trade. Yes. We did not fail one trade.

Q Okay. And so the issue that you have raised in your pleading is that there were -- there was an expectation that employees of my clients would book trades, which is essentially a backroom operation, after the trade has closed. Isn't that right?

A That's incorrect.

Q Okay. So, once again, let me just get -- there were no trades that you initiated that failed to close; is that right?
A That's correct.
Q And nothing that was done by the Defendants resulted in a trade that you wished to make in December of 2020 to fail to occur or fail to close; isn't that right?
A That incorrect.
Q So you initiated a trade that did not close?
A Yes.
Q In December of 2020? And when was that?
A I believe that's the case, yes.
Q And specifically what trade did not close that you initiated?
A I'd have to check the notes, but the specific trades were my attempt to initiate the trade with the desk. Then the trading desk goes into the market and makes the sale. Once it's inputted into the order management system, referred to as an OMS, then it gets processed for closing. In November and in December, Mr. Dondero instructed those employees not to initiate those trades. So there was never an agreement. When I initiated a trade, which was the workaround you saw referred to, I quite simply called Jefferies directly and I had the back-office folks manually input it instead of the trading desk.
Sorry. I just wanted to make sure we cleared that up.

Q No, just -- that -- that's helpful to understand. But I think, focusing again solely on December, every trade you initiated closed?

A Every trade that I actually went and made in the market closed.

Q And indeed, if --

MR. HOGEWOOD: I observed your demonstrative exhibits, and if I could ask that the one related to the Avaya trades be called up, Mr. Morris. is that possible?

MR. MORRIS: Yeah, sure. Is that the first one with Mr. Dondero's trades, or do you want the chart?

MR. HOGEWOOD: The -- the -- I think it was your Demonstrative #2 that showed the timeline of the trades.

MR. MORRIS: Yeah. You bet.

(Pause.)

MR. HOGEWOOD: Thank you. Thank you very much.

BY MR. HOGEWOOD:

Q So, just so I understand this document, the bottom axis is the passage of time, and when we get into the period between November of 2020 and the end of 2020, 12/31/2020, there are -- there's a green bar that has the numbers 50,000 at the top of it. That reflects what, Mr. Seery? The number of shares or the dollar amount of the trades?

A Number of shares.

Q And while this is not date-specific, do you know when

1 those sets of $50,000 trades happened? Or --
2 A I don't --
3 Q -- 50,000 shares trades happened?
4 A I don't know the specific dates off the top of my head,
5 no.
6 Q But looking at it just in comparison to the calendar, that
7 -- that's awfully close to December 22nd and 23rd, is it not?
8 A It appears to be, yes.
9 MR. HOGEWOOD: And Mr. Morris, if the I guess it's
10 the SKY document could be pulled up as well? I just want to
11 be clear --
12 MR. MORRIS: Demonstrative #3, please.
13 MR. HOGEWOOD: Yes. Thank you.
14 BY MR. HOGEWOOD:
15 Q The timeline on this demonstrative is similar, is it not?
16 A Yes, it is.
17 Q It's showing trades by day throughout the course of the
18 year?
19 A That's correct.
20 Q And again, there are a significant number of trades in SKY
21 on what looks awfully close to the few days before Christmas
22 of 2020; is that right?
23 A That's correct.
24 Q Okay. And this is the period of time that we're talking
25 about there being interference by the Defendants' employees;

is that right?
A Yes.
Q Okay. I'll move on. So, the next letter in question was one that came the day after, on December 23rd. Again, that was a letter from me to your counsel. Do you recall that letter?
A Yes.
Q And the letter of the 23rd, if we need to look at it, is the EEEE, Docket 39. You read that letter as well?
A Yes.
Q And you disagreed with the position taken in the letter?
A I'm trying to remember the specific position in that one. Was that the one threatening to try to terminate the CLOs without having checked whether there's cause? I just don't recall.
Q Why don't we call it up, if we can?
MR. HOGEWOOD: Mr. Morris, if you could help us, because it's one of your exhibits, that would be great. But Ms. Mather has got it up, so that's great.
BY MR. HOGEWOOD:
Q Mr. Seery, can you see the December 23rd letter?
A I can, yes.
Q And I think you referred to it as a threat to terminate the portfolio management contracts?
A I wasn't sure. That's why I was just asking if this was

that one. I don't -- I don't recall.
Q Right. And if you review the first page and the second page, does that confirm your recollection that that is the one related to portfolio management contracts?
A I can't see the second page. I believe it is. I'm not trying to --
Q Yeah, no, --
A If you represent, I'll accept it.
Q Take your time.
A (Pause.) Yes.
Q Okay. And I think you already said this: You strenuously disagreed with the positions stated in the letter?
A Yes.
Q But again, you were not intimidated by the letter?
A Intimidated? No.
Q The letter didn't cause you to change your investment strategy?
A No.
Q It didn't cause you to trade or not trade in a particular manner?
A No.
Q You continued to function the Debtor's operations as you deemed appropriate?
A Yes.
Q To your knowledge, no CLO or Issuer has taken any steps to

1 remove the Debtor as the portfolio manager?
2 A The CLO or the Issuers?
3 Q Yeah. No one's -- no one's taken a position that you
4 should -- that the Debtor should be removed as a portfolio
5 manager?
6 A Not -- not from the Issuers, no.
7 Q And -- or, I'm sorry. And so when you -- when you brought
8 a distinction between the Issuer and the CLO, are you -- are
9 you referring to CLO Holdco?
10 A No.
11 Q Okay. Has a CLO taken steps to remove the Debtor as a
12 portfolio manager?
13 A The CLO is the Issuer.
14 Q Okay.
15 A So the answer is no.
16 Q Okay. So no one has -- no one has acted to take any -- to
17 do anything as it relates to the removal of the Debtor as the
18 portfolio manager?
19 MR. MORRIS: Objection to the form of the question.
20 THE COURT: Overruled.
21 THE WITNESS: I'm quite sure the CLO Issuers haven't,
22 as they agreed and we've been working with them on an
23 assumption. With respect to what your clients have done, I
24 don't know.
25 BY MR. HOGEWOOD:

Q But you don't have any evidence that my clients have taken any action in violation of the automatic stay to -- to move or encourage the removal of the Debtor as the portfolio manager, do you?
A Other than the letter? No.
Q Other than the letter between me and your counsel?
A Correct.
Q All right. So, and that letter expressly states that any of those actions that would be taken are subject to the automatic stay and the Bankruptcy Code; is that right?
A That's correct.
Q And as we sit here today, the Debtor is not in breach of any contract with any of the Issuers; is that right?
A That's correct.
Q And the letter didn't cause the Debtor to breach any contract with any Issuer, did it?
A Did not.
Q And I think you've already testified today and you also testified in deposition that you anticipate that the -- all of the CLOs will consent to the assumption of the portfolio management agreements in the context of confirmation; is that right?
A Yes.
Q And the plan supplement that you recently filed, you provide a mechanism by which the issue of for-cause

1 termination is to be resolved, do you not?
2 A I don't recall if there's a specific provision in the plan
3 supplement. We certainly have, either in the plan or in the
4 plan supplement, a provision related to the gatekeeper
5 function.
6 Q And that's similar to the settlement that you entered into
7 with CLO Holdco in terms of resolving both their objection to
8 confirmation and the lawsuit against them today; is that
9 right?
10 A I believe it's similar.
11 Q Okay. And the gatekeeper is the Bankruptcy Court to
12 determine, short of a full-blown trial, that if cause exists,
13 isn't that correct, under the plan?
14 A Among other functions, yes.
15 Q So if the Court confirms the plan, then the concerns that
16 you have are resolved by the gatekeeper function that is the
17 subject of this motion; is that right?
18 A I think it depends on the contents of the confirmation
19 order.
20 Q And if the Court denies confirmation, then the stay
21 remains in effect and the letter related to the removal of the
22 portfolio manager was expressly subject to the stay; isn't
23 that right?
24 A If the letter says it's subject to the stay? It does say
25 that, but it says other false things as well, so I'm not sure

-- I don't know exactly what you're asking me there.
Q All right. It wasn't a very good question, frankly.
Your counsel responded to the December 23rd letter as well and demanded a retraction; isn't that right?
A Yes.
Q And that was sort of a separate (audio gap) with counsel?
A I'm sorry. You broke up for a second there, sir. I'm sorry.
Q I'm sorry. That -- that' -- let's just skip that. You had testified that neither letter was withdrawn?
A I believe that's correct, yes.
Q Are you familiar -- and -- are you familiar with the fact that, in the response letters, your counsel insisted that there be a response and withdrawal by not later than, I believe, 5:00 on December 28th? Do you recall that?
A I don't recall that specifically, but I accept your representation.
Q And do you know whether or not there was a response dated December 28th?
A I don't believe there was a written response. I don't -- I don't recall.
Q All right.
MR. HOGEWOOD: Ms. Mather, can you call up Defendant's Exhibit 84, which is at Docket 45, please? Thank you.

BY MR. HOGEWOOD:
Q So, Mr. Seery, have you ever seen this letter dated December 28?
A I believe I have, yes.
Q And this letter was not attached to the complaint nor your declaration nor the request for a TRO or preliminary injunction, was it?
A If you say it wasn't. I don't recall specifically.
Q Okay. So, you, by seeing this, you realize now there was a response by the 28th. Is that right?
A Yes.
Q And in the -- let me just direct your attention to the final sentence of the first paragraph. It says -- it makes once again clear that the -- any efforts to remove the Debtor as manager would be subject to applicable orders of the pending bankruptcy case, provisions of the Bankruptcy Code, and specifically, the automatic stay. Do you see that?
A I apologize. I don't see it. Which paragraph?
Q I'm at the very last sentence of the first paragraph. There's a sentence that --
A (reading) Subject to applicable orders in the pending bankruptcy case, provisions of the Bankruptcy Code, specifically, the automatic stay.
I read that, yes.
Q Yes. Okay. There was some testimony about the letter

related to Mr. Dondero's eviction. I don't intend to belabor that. But once again, that was a letter between counsel, was it not?

A I believe it -- I believe it was. I don't recall specifically now. I assume -- I assume all of these were directed to counsel.

Q Right. And again, the fact that counsel wrote a letter requesting that the eviction not occur did not change your process and you proceeded with the eviction, did you not?

A I think the letter came after Mr. Dondero was no longer permitted. Eviction is an odd word. He was no longer an employee, so employee not being able to come into the office and hang around and disrupt business isn't exactly an eviction. So I disagree with your characterization there.

Q Okay. Well, so I'll just leave that. I mean, the -- since this exchange of letters, are you aware -- I mean, there was some testimony about the Debtors presenting the Defendants with the choice of either filing a motion for relief from stay or this injunction proceeding would be brought. Isn't that right?

A Yes.

Q And no motion for relief from stay was filed, and therefore this injection proceeding was brought. Is that correct?

A Yes.

Q So the other thing that you know was filed by the Defendants was an objection to confirmation, which was due on January 5th of 2020, correct?
A I'm sorry, Mr. Hogewood. You broke up. Did you say the other paper or pleading that was filed?
Q The pleading that was filed by the -- these who are Defendants as well as other parties to this case was an objection to confirmation, the deadline for which was January 5, 2020. Are you familiar that an objection to confirmation was filed?
A I'm familiar that one was filed, yes.
Q And so the objection to confirmation raised many of these same issues regarding the circumstances under which the various CLO agreements could be assumed; isn't that right?
A I'm not aware of the specifics of the objection.
Q Okay. But nonetheless, my client was under no obligation to initiate yet another motion or lawsuit or pleading against the Debtor beyond objecting to confirmation, was it?
A An obligation? No.
Q And since the objection to confirmation has been filed, there have been a number of pleadings filed in the case. We obviously were required to respond to the motion for preliminary injunction, and it says there's been an objection filed to that. Are you aware of that?
A That -- that you objected to the preliminary injunction?

Q Yes.
A Yes, yes, I'm aware of that.
Q And --
A I'm very aware.
Q And you're aware that there was a proposed settlement with HarbourVest; is that correct?
A We have an approved settlement with HarbourVest.
Q Right. And there were objections filed to that particular -- or, to that particular settlement agreement, were there not?
A Yes.
Q But none of my clients participated in that objection, did they?
A I don't recall the specifics of your clients versus the other Dondero entities, but I'm certain Mr. Dondero participated.
Q But the De... the parties that we represent did not object to the settlement?
A I don't recall specifically.
Q Okay. And another motion that was filed was for an examiner. Isn't that correct?
A I believe that's the case, yes.
Q Yeah. And my clients didn't join that motion, either?
A No. It's a bit of whack-a-mole, but they did not -- they did not -- I don't -- I don't know. To be honest, I don't

know if they did or not.
Q All right. Toward the end of your testimony, you were giving some information about the value of these management contracts in terms of income over the course of the coming year or two. What is the projected revenue with respect to these management contracts?
A Do you mean the CLO 1.0 management contracts?
Q Yes.
A They generate about four-and-a-half to five million dollars a year, depending on the asset base in total, but that's accrual, as I mentioned earlier. It doesn't all come in in cash. It depends on the waterfall. Expect about two-and-a-half to 2.7 million to come in per year during the course of the projected time period.
(Echoing.)
Q Have you done any sort of profitability analysis on the management contracts?
A Not specifically on those contracts, no. We look at the --
Q Okay.
A -- aggregate of the Debtor's receipts versus its costs.
Q Can you -- so, --
MR. HOGEWOOD: Ms. Mather, can you call up the disclosure statement? This is Docket 1473. And in particular, Page 176.

BY MR. HOGEWOOD:
Q So, I'm, Mr. Seery, I'm trying to square the 779 for the month ended -- month period ended in March '21 and no further revenue coming in on management fees with what you just said.
A I'm not -- I'm not sure why. This should -- certainly should have the management fees according to the CLOs if this was included in the assumption of those. We have revenue, they do generate revenue, they currently generate and they will continue to generate.
Q But this is the disclosure statement approved by the Court, right?
A Yes. I'll have to come back and check why that for the year doesn't have it, unless we were assuming that we wouldn't receive any into the -- into this vehicle. I just, I don't know the answer.
MR. HOGEWOOD: Your Honor, that's all the questions I have. Thank you very much.
THE COURT: All right. Redirect?
MR. MORRIS: Can we just leave this up on the screen for a second, very quickly, for Mr. Seery? Can we put the document back?

REDIRECT EXAMINATION

BY MR. MORRIS:
Q Mr. Seery, do you recall that the disclosure statement was approved back in November?

A Yes.

THE COURT: Could you repeat the question? I couldn't hear it.

MR. MORRIS: Yeah. That is -- I don't know if somebody's phone is not on mute.

THE COURT: Yes. Please put your device on mute if you're not the one talking. Okay. Someone did. Go ahead.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q Mr. Seery, do you recall that this disclosure statement was approved back in November?

A Yeah. What I'd said earlier was that I'm not sure if the -- this plan projection conforms with our decision to maintain the CLO management contracts, and so there certainly should be revenue, while it comes in quarterly on the management fee, the base management fee. And it's not always -- each CLO is not always able to pay it in cash. It will depend on our ability to monetize assets, because they don't -- a lot of the assets are not cash-generative. Some are. For example, the Trussway loan is cash generative. The CCS loan is not.

But I'm just not sure why this doesn't show the management fees at all. At least for the whole year, we certainly will have them, unless this is prior to the determination to assume those agreements.

Q Okay. So if the assumption in November was that the

agreements would be assigned, there would be no revenue shown. Is that fair?

A That would have been the assumption prior to us determining that we wanted to assume them, yes.

Q Okay. And do you recall whether the Debtor became more convinced that it would assume the contracts rather than assign them before or after the disclosure statement was approved?

A I don't recall the specific timing, but a number of things happened around this time. First, the Dondero entities were unwilling to even engage on assignment because they were on a much more aggressive, quote, blow up the place strategy. That's Mr. Dondero's quote.

Number two, we settled with HarbourVest, and that significantly increased the value of maintaining the CLO management. The HarbourVest -- or the HCLOF entities own significant preferred shares in the 1.0 CLO structures, and having management of those and being able to monetize those in accordance with the agreement, maximizing value for the benefit of HCLOF, would be far, far better for the estate than letting these assets just sit. We're not trying to drive the price down, because we wouldn't be in the business of trying to buy back those securities on the cheap. We're in the business of trying to maximize value.

Q All right.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: Any recross on that redirect?

MR. HOGEWOOD: No, thank you, Your Honor. Appreciate the opportunity to appear before you.

THE COURT: All right. Thank you.

Mr. Seery, before we let you go, I have a couple of follow-up questions.

EXAMINATION BY THE COURT

THE COURT: These CLOs, I mean, you've said a couple of times they're not really traditional CLOs, except for the Acis 7 one. But I have this question. I've learned back in the Acis case most of what I know about CLOs, I suppose. And what the witnesses told me there were they typically had a 12-year life, and then, yeah, there was some period, you know, the first five years, seven years, something like that, where it was in a reinvestment/refinancing phase, but then after that, you know, we couldn't do that anymore and it was kind of heading towards wind-down.

Anyway, my long-winded question is: Do these CLOs work generally like that or not? Because you said they're atypical.

THE WITNESS: They -- they --

THE COURT: Go ahead.

THE WITNESS: They used to.

THE COURT: Okay.

THE WITNESS: So these are extremely old. These go back to 2006, '07, '08. These are very old CLOs. So they're far beyond their investment periods. Some of them are coming up on their maturities on their debt. Many of them don't have any debt at all.

So you'll recall, Your Honor, that a CLO is a vehicle where you take x-hundred million -- we'll use 400 for fun -- million dollars. You ramp up $400 million of assets. You sell off, for our purposes, $350 million of securities. You have the AAA securities, the AAs, all the way down. And then you have these preference shares.

During a period of time, as cash is generated in the CLO, the CLO is entitled to reinvest it. And that keeps it going. And then it gets beyond its reinvestment period and it's in what folks usually refer to as its harvest period. That's when oftentimes, depending on where rates are, depending on asset value, the rates for the debt obligations or the rate you can receive on your assets, you may see refinancings or resets. Otherwise, the CLOs begin to wind down. They have -- they don't have a life, like a partnership with a final date, but there's maturities on the debt and then there's an expectation that they would wind down.

These CLOs -- which typically CLOs only invest in performing loans, and oftentimes, particularly Highland -- and I could regale you with stories how Highland would take

virtually non-interest-bearing, seventh lien debt -- that's a bit of an exaggeration -- but just to keep the fees going, and not actually convert to equity. A lot of these, that wasn't an option, so they've converted to equity. So I just have one that I happen to have on my screen, Your Honor, Gleneagles. The assets in Gleneagles (echoing) are 16 -- MGMs.

THE COURT: Okay. Someone needs to put their phone on mute. All right. I'm sorry.

THE WITNESS: So it has -- it has -- the specifics aren't particularly important, but its assets are -- just this one I just pulled up; they're all a little different, and -- but mostly the same -- MGM stock. This is MGM Studios, which you read about with James Bond, a very valuable asset. Across the Highland platform, there's roughly $500 million worth of stock. It doesn't pay off any income. So if it had debt -- and I'm not sure if Gleneagles still has any; I'd have to switch screens; I don't believe it does; if it does, it's small -- it wouldn't get any income-generating -- that's not income generating asset.

Vistra, which is the TXU stock I talked about before, is the next biggest asset. Skyline Corporation, which was the one we were selling. That's no longer in there. TCI portfolio, which is a Dondero real estate asset it has, it's an old Las Vegas and Phoenix, Arizona real estate developments. Not income-generating. Not that they don't

have value, but this is much more like what would be referred to as a closed-end fund. It's not going to go out and buy anything. It can't. It can only generate cash by selling assets, give that cash to the trustee, and then the trustee pays it through the waterfall. And that's the way all of these CLOs work.

Now, some of them do have debt. And some of them have a lot of debt, and the preferred shares will never be worth any money, so we refer to those as being underwater. No surprise, the Dondero-related entities don't own any of those junior securities.

The -- some do have debt. A lot of that debt is going to get paid off in the first half of the year because there'll be refinancings at Trussway and a refinancing at Cornerstone. They own debt, and that'll generate cash. It'll go to the CLOs, go to the trustee. First it goes to pay the obligations for the outstanding debt of the CLO, and then the asset dollars, they get put through the waterfall to pay the more junior securities.

THE COURT: Okay. And --

THE WITNESS: And I --

THE COURT: The --

THE WITNESS: I was going to give you -- I contrast that to a more typical CLO, which is whether it's beyond its investment period or not, will have something like 150 to 250,

sometimes more, loans in it. 150 would be on the loan side. It'll own -- own those in smaller amounts. It has requirements as to what its concentrations are in different buckets of types of assets. It has to return -- it has to have an income-generating ability to satisfy certain covenants in its debt obligations and in the indenture. And then it will, once it gets past its investment period, it will start to harvest those assets.

There are different ways for the CLO manager to swap assets, to stay in compliance, to extend out the tenure, but usually markets start to move and there's some reason for the CLO manager to do something like a reset or a refinancing or to call the CLO.

So you'll see a number -- there was one this week, and there'll be a number because of the conditions in the market -- of CLOs called by the, effectively, the equity, saying, Great time to sell, I don't need the short income, call the CLO, do a BWIC or some other way to get dollars for all of the assets, pay off all of my debt, and give me the balance of the proceeds.

THE COURT: Okay. All right. And the plan contemplates that these will all be wound down over a two-year period, correct?

THE WITNESS: It's not a hard -- it's not a hard period.

THE COURT: Okay.

THE WITNESS: So it's not a two-year period. We're going to -- we're going to manage these assets, as any asset manager would, and we've had direct discussions with some of the underlying holders, including one of the biggest investors in the world who's an investor in the CLO but also has a couple separate accounts which they want us to manage, and we'll look for opportunities, depending on the market. We're not going to -- we're not going to just sell. It's not a liquidation. We're going to find opportunities where, if we believe it's the right value, we'll sell. That doesn't mean we'll sell it all in a big chunk. We may manage pieces. We may hold on to some.

Some of them may perform -- some of the assets may actually do things differently than others. For example, Cornerstone, for unknown reasons, has $60 million of MGM stock, not an asset that you'd think you'd stuff into a healthcare business, but this is Highland. That may be sold before, for example, Gleneagles sells its MGM. It'll just depend on, you know, market and the need of the specific investor.

THE COURT: All right. Thank you. That's all the questions I have.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. So, Mr. Seery, I think we're

done with you, but we hope you'll stick around for however longer this goes.

THE WITNESS: I will indeed.

THE COURT: Okay.

THE WITNESS: Thank you.

THE COURT: Does the Debtor rest, Mr. Morris?

MR. MORRIS: Yes, Your Honor. There were those couple of documents that we had used from the different docket that we'll certainly put on the docket with the supplement witness and exhibit list. I just wanted to point that out. And I, you know, I don't recall, frankly, if I moved into evidence each of those extras, and I'm happy to go through it, but it's very important to me that those documents be part of the record. So --

THE COURT: Okay. I think what you added was TTTTT, and I think I admitted it. You moved to admit it, and I said yes, but you're going to have to file it on the docket --

MR. MORRIS: Yeah.

THE COURT: -- as a supplemental exhibit.

MR. MORRIS: Right. And then there were the couple from the other -- let me see if I can get them.

THE COURT: I admitted everything else that you filed on the docket except UUUU, VVVV, and AAAAA.

MR. HOGEWOOD: Yeah. And that's fine.

Can we, Ms. Canty, going from Docket No. 46, can we just

call up Exhibit K to make sure that that's in evidence? Docket 46 from the Dondero adversary proceeding.

Okay. So this was the letter, Your Honor, that I used earlier today with Mr. Dondero. If you scroll down, where I examined him on the trading. This is what led into the December 22nd trading, if you go to the next page. So if it's not in evidence, I would respectfully request that this document be admitted into evidence, Your Honor.

MR. RUKAVINA: Your Honor, I object. This document is hearsay of Mr. Pomerantz.

THE COURT: Okay.

MR. MORRIS: Mr. Dondero has already -- I'm sorry, Your Honor.

THE COURT: Okay. So this is -- I wholesale-admitted all of your exhibits with those three carved out that I mentioned. So you're saying I've not admitted this one yet?

MR. MORRIS: I just don't recall, because this wasn't on the exhibit list. I will point out that we had no objection to the entry into the evidence of all of K&L Gates letters, and I'm really a little surprised, having heard the testimony from Mr. Dondero on this particular letter, that there would be an objection. But I would respectfully request that it be admitted as an exception to the hearsay rule.

THE COURT: All right. Well, I'm going to overrule the objection. I'll admit it.

So, again, it has to be supplemented on the docket.

(Debtor's Exhibit K is received into evidence)

MR. MORRIS: Yes. And there's just one other document, Your Honor, from that same docket. It's Exhibit D, Ms. Canty. I just want to make sure that's in the record as well. And I do apologize again, Your Honor.

THE COURT: Okay.

MR. MORRIS: I didn't realize until I was reading --

THE COURT: We're getting terrible distortion. I don't know where it's coming from, but --

MR. MORRIS: Okay. And this is, this is the email that I -- it's Mr. Dondero's own statement, so it's not even hearsay, but I just want to make sure this is part of the evidentiary record, Your Honor. So I move for the admission of this document as well to our exhibit list.

MR. RUKAVINA: I believe this document has been admitted. I believe -- I believe --

(Echoing.)

MR. RUKAVINA: Is that us? Testing.

THE COURT: All right. Mike, where is that coming from?

(Clerk advises.)

THE COURT: Okay. Mike thinks it's Mr. Morris, but -- so put yourself on mute.

Mr. Rukavina, go ahead.

MR. RUKAVINA: Your Honor, I think this exhibit is in already. If it's not, no objection.

THE COURT: All right. So it will be admitted, and again, you need to file it as a supplement, Mr. Morris.

(Debtor's Exhibit D is received into evidence)

MR. MORRIS: Yeah. Thank you, Your Honor. The Debtor rests.

THE COURT: All right. Mr. Rukavina, I want to go a while longer, so let's at least -- do you have Mr. Dondero as well as Mr. Post?

MR. RUKAVINA: I do, Your Honor. I have both.

THE COURT: Okay. Well, let's go. You may call your witness.

MR. RUKAVINA: Your Honor, we'll call Jason Post.

THE COURT: All right. Mr. Post, I swore you in earlier and I consider you still under oath. Do you understand that?

MR. POST: I do.

THE COURT: All right. Go ahead.

JASON POST, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

MR. RUKAVINA: Oh, turn on the video. Can you see how to do that? Is Jason on the video? Okay. All right. Mr. Post? Hold on a second. I'm hearing myself.

THE WITNESS: I'm hearing the same.

MR. RUKAVINA: Let me turn down my volume. Testing.

Okay. Mr. Post, can you hear me?

THE WITNESS: Yes.

MR. RUKAVINA: Okay.

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q You were asked about some of your background and qualifications. Just so that the record is clear, you are the chief compliance officer for both two Advisors and each of the Funds, correct?

A Correct.

Q And I think we refer to these three defendant funds as retail funds; is that correct?

A Correct.

Q Describe what we mean or what you mean by a retail fund.

A I look at it two ways. There's private funds, which are institutional in nature, and retail funds, which are comprised of open-end funds, closed-end funds, BDCs, ETFs, and that constitutes the suite of funds that are advised by Highland Capital Management Fund Advisors and NexPoint Advisors. And they generally have a broad swath of investors, including institutional investors, but also, you know, just regular mom-and-pop investors.

Q Okay. So, for the Highland -- I'm sorry, for the three retail funds, how much in ballpark investments do they have in the CLOs that are at issue today? Ballpark.

A Maybe call it a hundred million, ballpark. Or a hundred million, give or take.
Q Okay. And for all of the CLOs that Highland manages that the Advisors and other Funds have an interest in, do you have an estimate of how much it manages of CLO assets?
A I believe it's approximately a billion, a little over a billion that HCMLP manages for its CLO assets.
Q Do you have an estimate of how many individual investors there are in the three retail funds?
A I -- thousands. I don't have an exact number.
Q Okay. And I think you mentioned some of the types. Do you have any names of the types of investors that Her Honor might know or have heard of before?
A Off the top of my head, I do not, just -- but they're generally constituted or characterized of the investor types that I mentioned earlier.
Q Okay. Now, these three retail funds, do they own voting preference shares in any of the CLOs that the Debtor manages?
A Yes.
Q Okay. Do they own a majority in any of those CLOs' voting preference shares?
A In aggregate, across the three, they would.
Q Okay.
A With other CLOs.
Q What are those three CLOs, sir?

A I believe it's Greenbrier, Graceland, and Stratford, if I recall correctly.

MR. RUKAVINA: Your Honor, have you received a couriered binder of our exhibits?

THE COURT: I have. I've got them right here.

MR. RUKAVINA: Now I can't hear the judge. What's she saying?

THE COURT: Yes. I've got them.

MR. RUKAVINA: I think you're on mute, Judge.

MR. VASEK: No, you turned your volume down.

MR. RUKAVINA: Oh. I apologize, Your Honor.

So, Mr. Vasek, if you'll please put Exhibit 2 up.

BY MR. RUKAVINA:

Q Mr. Post, are you the custodian of records for the Funds and Advisors?

A Yes. We're required to keep records of ownership and trades for the Funds involved.

Q And you are an actual officer of these Funds and Advisors, correct?

A Correct.

Q Okay. Are you familiar with this Exhibit 2?

A I am.

Q Did you participate in pulling together the underlying information with others to prepare Exhibit 2?

A I did.

Q Does Exhibit 2 accurately reflect the current ownership of the various CLOs by the three retail funds that are --
A At the time it was put together, I believe it did.
Q And approximately when was that?
A I believe it was in the November time frame, middle of November, end of November.
Q Do you have reason to believe that the numbers we're referring to would be materially different today?
A I don't believe they would be materially different.
MR. RUKAVINA: Your Honor, I move for the admission of Exhibit 2 as a summary of underlying data.
THE COURT: All right. Any objection?
MR. MORRIS: Yes, Your Honor. It's hearsay. I understand that the witness has testified to it, but just as I put in the backup for my demonstrative, where's the backup? We're just supposed to take his word for it? There's no ability to check this. This is not evidence. It's a demonstrative.
THE COURT: All right. Mr. Rukavina, do you have backup?
MR. RUKAVINA: Let me ask the witness a couple more questions.
BY MR. RUKAVINA:
Q What would be the backup for this Exhibit 2?
A We'd have to pull the holdings from the intranet and that

1 would identify the quantity that's held by each of the
2 respective funds and then an aggregate that, over the
3 preference shares outstanding, would give you the percentages
4 that are outlined in this exhibit.
5 Q Okay. And is that a database that you have personal
6 access and authority over?
7 A I have personal access to it. Yes.
8 Q Okay.
9 MR. MORRIS: Your Honor, *voir dire*?
10 BY MR. RUKAVINA:
11 Q Can you easily take that data from a computer and show it
12 to the Court here today?
13 A Yes. It would just require the CUSIPs for each of the
14 preference shares and then plug it into the intranet and then
15 that would provide a screenshot of the ownership of the CLOs.
16 Q And is this what that is, basically?
17 A This is an aggregation -- or, this is a percentage of the
18 shares outstanding, the preference shares. So what would be
19 shown on the intranet would be the quantity and then you'd
20 have to tie that back to the shares outstanding and that would
21 give you the percentages that are shown on this exhibit.
22 MR. MORRIS: *Voir dire*, Your Honor?
23 THE COURT: I'm sorry?
24 MR. MORRIS: May I inquire before this --
25 THE COURT: Mr. Morris, is that you? Okay. You want

to take him on *voir dire*?

MR. MORRIS: Yes.

THE COURT: Go ahead. Uh-huh.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Yes. Mr. Post, did you prepare this document?

A I provided information and the document was ultimately prepared by counsel.

Q So you didn't personally prepare this, right?

A I didn't personally put this chart together.

Q And you didn't personally make the calculations on this chart, right?

A I would have supplied or assisted in supplying the holdings with reference to the shares outstanding and then they would have done the math to place the percentages.

Q I'm asking a very specific question. You didn't do the calculations necessary to come up with the percentages on this chart, right?

A Me personally, no, I did not.

Q And you can't verify that this chart is accurate, can you?

A I provided, provided the information. Then it's a mathematical calculation.

Q Okay. You didn't take any steps to determine the accuracy of this chart, right? You relied on others?

A There's a -- I would have cross -- you know, maybe cross-

1 referenced some of the percentages against another spreadsheet
2 that was -- that we had internally.
3 Q Sir, I didn't want to know what you would have done. You
4 didn't do anything to confirm the accuracy of all of the
5 numbers on this page, correct?
6 A I believe I may have spot-checked a couple of them. I
7 can't recall specifically.
8 MR. MORRIS: Your Honor, not only don't we have the
9 backup, but this witness isn't even competent to testify to
10 the accuracy of the chart. I renew my objection.
11 THE COURT: All right. I sustain the objection.
12 MR. RUKAVINA: Your Honor, I'll --
13 THE COURT: It's not allowed.
14 MR. RUKAVINA: Going back to the -- take that down.
15 THE COURT: All right. Mr. Rukavina, we're -- our
16 connection to your office is suddenly not very good. Both you
17 and Mr. Post are very hard to hear. So let's see what we can
18 to improve.
19 MR. RUKAVINA: Is it a question of loudness or
20 quality?
21 THE COURT: Quality. And I heard you fine just then,
22 but -- so let's try again.
23 DIRECT EXAMINATION, RESUMED
24 BY MR. RUKAVINA:
25 Q Mr. Post, let's go back to those retail funds. How are

1 those funds managed at the top level?
2 A They're overseen by a board of trustees.
3 Q Okay. Do you interact with that board of trustees
4 periodically?
5 A I do.
6 Q Okay. Approximately how often?
7 A At least quarterly, and generally intervening periods.
8 I'd probably say anywhere from every five to six weeks, if not
9 more frequent.
10 Q Have you been communicating with them more frequently
11 recently?
12 A Yes.
13 Q As the CCO of the funds, who do you ultimately report to?
14 A The board.
15 Q Is Mr. Dondero on any of those boards?
16 A He is not.
17 Q Okay. Are those boards capable, to your experience, of
18 making independent decisions?
19 MR. MORRIS: Objection to the form of the question.
20 THE COURT: Overruled.
21 THE WITNESS: I think the question, is are they
22 capable of making independent determinations? Yes.
23 BY MR. RUKAVINA:
24 Q Okay. Explain the interaction between the Fund Advisors
25 and the retail funds. What -- what does the one do for the

other, if you will?
A I'm sorry. Can you repeat that? I didn't -- I didn't hear the question.
Q So, we have the three retail funds.
A Yes.
Q What relationship, if any, is there between the two Advisor defendants and any retail fund defendants?
A So, there's an investment advisory agreement that the Funds have entered into with the investment advisor, and the investment advisor performs investment functions on behalf of those Funds, along with other noninvestment functions.
Q Okay. So is it fair to conclude that, for investment purposes, the Advisors make pretty much all, if not all, decisions for the three Funds?
A Yes.
Q Okay. What about other matters that the board might consider? Do the Funds make -- I'm sorry. Do the Advisors make other decisions for the Funds, or is it an advisory role?
A The Advisors may make other decisions or recommendations, which they then set forth to the board for their approval, if needed.
Q Okay. Does the board have independent counsel?
A They do.
Q Okay. Have you interacted before?
A I have.

Q And is it fair to conclude that the board not only is capable of making independent decisions but has made independent decisions recently?

MR. MORRIS: Objection. Leading.

THE COURT: Sustained.

THE WITNESS: They have.

MR. RUKAVINA: Okay.

THE COURT: That was --

MR. RUKAVINA: And we'll get --

THE COURT: You don't answer.

MR. RUKAVINA: Go into that in another bit.

THE WITNESS: Oh. Sorry.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Explain to the Court what your role as the chief compliance officer for the Advisors and the Funds is.

A I think, as you mentioned earlier, it's interaction with the board. Also with regulatory bodies to the extent examinations occur. It could be to ensure oversight and compliance with a fund's prospectus and SAI limitations, and then it's establishing policies and procedures and ensuring that those policies and procedures are adequate to detect any sort of violations that could occur by the Funds.

Q And are you an attorney?

A I am not.

Q Do you frequently work with attorneys?
A I do.
Q Both in-house and external?
A Yes.
Q Good. And do you frequently rely on the advice of counsel?
A I do. At times will present, you know, if there is a question or an issue, present the background to either internal or external counsel and then request their advice on certain matters.
Q So when counsel was asking about why you wouldn't appear at a hearing or listen to a hearing or read a transcript of a hearing, are those the kinds of things that you would rely on counsel?
A Yes. If counsel were to tell me to, you know, attend the hearing, I would have attended the hearing.
Q Okay. Does -- do the Funds and Advisors also have in-house counsel?
A Yes.
Q I think we established that's D.C. Sauter?
A He's been the primary point of in-house counsel more recently, I'd say, within the past three to four months.
Q Okay. And would you expect that perhaps he would be attending hearings and reading transcripts instead of you for some of these litigated matters?

MR. MORRIS: Objection to the form of the question.
THE COURT: Overruled.
MR. MORRIS: Leading.
THE COURT: Overruled.
THE WITNESS: I believe he would be.
BY MR. RUKAVINA:
Q Okay. Well, the implication was made, Mr. Post, that somehow you were negligent as CCO by not following the December 16th hearing. I'd like to know, --
THE COURT: Okay. Could you -- could you repeat --
BY MR. RUKAVINA:
Q -- Did you have counsel at the hearing and did you hear from --
THE COURT: Mr. Rukavina, start over with your question. It was a little hard to hear.
MR. RUKAVINA: Okay.
BY MR. RUKAVINA:
Q Mr. Post, the implication had been made that, because you weren't at the December 16th hearing and because you had not read the transcript, that you were somehow deficient as a CCO. I'd like to know, Did you have the benefit of outside counsel's views both before and after that hearing as to that hearing and what happened?
A Yes.
Q It's not that you put your head in the sand and ignored

what's happening, is it?
A That is correct.
Q Okay. And is it fair to say that when you deal with compliance, you deal with complicated statutes and regulations?
A That is correct.
Q Okay.
MR. RUKAVINA: Mr. Vasek, if you'll please pull up (garbled).
(Pause.)
BY MR. RUKAVINA:
Q Okay. Taking you back to Mr. Morris's questions, do you recall Mr. Morris asking you whether you believe that any of the trades that were being discussed were deceptive?
MR. MORRIS: Hold on one second, Your Honor. What exhibit is this?
THE COURT: I don't know. What is it?
MR. RUKAVINA: Can you hear me, Mr. Post?
THE WITNESS: They're asking a question as to what exhibit this is.
MR. RUKAVINA: Your Honor, this is not an exhibit. This is a Commission Interpreting Regarding Standard of Conduct for Investment Advisors, an SEC regulation in conjunction with 17 CFR 276.
THE COURT: Okay. How are we --

MR. RUKAVINA: So, Your Honor, these are the actual regulations.

THE COURT: I mean, it's -- okay. The answer to the question is it's not an exhibit. You have pulled up 17 CFR part 276. Is that what the answer is?

MR. RUKAVINA: Yes, Your Honor. And I haven't offered this as an exhibit.

THE COURT: All right.

MR. MORRIS: You have -- Your Honor, I don't know why this is being put up on the screen now. It's not an exhibit. It's not in the record like a couple of those that I had. I used the statute that he relied on to cross-examine him with the 206. I don't know what this is. I don't know if it's accurate. I don't know anything about it.

MR. RUKAVINA: Your Honor, this is a rule and regulation. This is not an exhibit. If it is an exhibit, I haven't moved to admit it yet. I'm going to use this to refresh his memory and explain why he believed that the actions were deceptive, a door opened solely by Mr. Morris.

MR. MORRIS: His recollection hasn't -- there's no need to refresh it yet. He hasn't even answered a question where he says, "I don't remember."

THE COURT: Okay. I sustain the objection here. I mean, you can ask him a question, but, again, it's kind of hard for us to tell what this is, actually. I mean,

1 Commission Interpretation Regarding Standard of Conduct for
2 Investment Advisors. I mean, is this actually a -- I mean,
3 it's not a statute. I'm not even sure it's a reg. It's --
4 MR. MORRIS: Okay.
5 THE COURT: I don't know what it is. So, --
6 MR. RUKAVINA: Your Honor, we'll lay a predicate
7 later. First, let me ask some other questions.
8 BY MR. RUKAVINA:
9 Q Again, you recall that you were asked whether, pursuant to
10 Section 206 of the Advisers Act, you believed the trades that
11 have been discussed were deceptive. Do you recall?
12 A Yes.
13 Q Okay. And you answered that you believed that they were
14 deceptive?
15 A Correct. I did.
16 Q As the CCO, do you have an understanding of what role, if
17 any, conflicts of interest play in an advisor's duties under
18 the Advisers Act?
19 A Yes.
20 Q Okay. What is your understanding?
21 A All -- all known material conflicts of interests need to
22 be disclosed -- need to be disclosed by the advisor to the
23 underlying investors.
24 Q Okay. And why, why do those conflicts of interests have
25 to be disclosed?

A Because an advisor could have a view that may deviate from the underlying investors' view of how the portfolio could be managed and in contradiction to it.

Q And do you have an understanding as to whether, pursuant to your experience as the CEO [sic], the Advisers Act and the SEC regulations (garbled) it require an advisor to adopt the principal's goals as opposed to his or her own goals?

MR. MORRIS: Objection to the form of the question. Your Honor, he has not been offered as an expert. He shouldn't be permitted to provide -- this is -- this would be, at best, expert testimony. I asked him 30 different questions about his background. He's got no training. He's got no licenses. He's taken no special courses. He doesn't have anything except on-the-job training. This is not right.

MR. RUKAVINA: Your Honor, Mr. Morris got to ask yes-and-no questions all day, leading questions, and the witness was told that he could explain his answers. The Court told him that. And I am trying to explain his answer as to why he believed that these transactions were deceptive, especially because the allegation is that we willfully and intentionally violated the stay by sending letters that this witness authorized. So understanding his understanding is very important to Your Honor's determination of the actual --

THE COURT: Well, I sustain the objection.

MR. RUKAVINA: And Mr. Morris opened this door.

1 THE COURT: You can ask him why he thought the
2 actions were deceptive, but he's starting to go into what may
3 or may not be CFRs and conflicts of interest. No. This is
4 going well beyond asking him, Why do you think it was
5 deceptive? And I agree: It's straying into expert testimony.
6 BY MR. RUKAVINA:
7 Q Mr. Post, you are familiar with the December 22nd AVYA
8 and SKY sales and transactions which you were asked about by
9 Mr. Morris and that you previously have testified about,
10 correct?
11 A Correct.
12 Q Okay. How are you familiar with those sales and
13 transactions as they were occurring? How did you learn about
14 them?
15 A There was some internal email correspondence. If I recall
16 from memory, at the bottom it provided fill information that
17 Jefferies provided to, I believe, Mr. Seery and others on the
18 email. And then it kind of worked its way up to get the
19 trades that had been executed administratively booked into the
20 OMS.
21 Q Why did you get involved with those transactions?
22 A They were requesting that employees of HCMFA book those --
23 I'm sorry, Highland Capital Management Fund Advisors -- book
24 those into the system. And those employees were not a party
25 to the trade. I don't believe --

Q Well, let me pause you. Let me pause you. Those two employees, who were they?
A Joe Sowin and Matt Pearson.
Q Were they at that time employees of the Debtor?
A They were not.
Q Okay. So, how did you come to learn about this ask that those two employees book -- book it?
A I believe there was an email that was sent to me, or I was on it. I can't recall specifically.
Q Okay. And did you undertake any review as to whether those two employees should or should not do what was being asked of them?
A Once it was brought to my attention, I discussed with -- I looked at it. It looked like, pursuant to prior correspondence with -- that Joe Sowin made, he wasn't aware of the trades.
You know, I also had a discussion with K&L based off of -- our legal counsel based off of a prior letter that was sent, and just it didn't -- it didn't look right that they would be booking trades on behalf of the two Advisors that are named in the letters when they had nothing to do with it and weren't -- weren't a part of any of the pre-trade compliance checks, et cetera.
Q What is a pre-trade compliance check?
A Well, there's an electronic system, a -- or a management

1 system we have, the OMS, which is called Verda (phonetic).
2 And generally, trades are entered into the system by the
3 portfolio manager, and they then go through pre-trade
4 compliance checks. And once those compliance checks are
5 passed, they're then routed to the trading desk for direction
6 or execution, where the executing brokers and the trading desk
7 will then monitor that execution over the course of the day.
8 And at the conclusion of the trading day, those trades, if
9 they weren't already allocated, would be allocated, and then a
10 trade would be sent to custodian prime brokers to identify the
11 trades that occurred in the respective Funds for those -- or,
12 on that day, and then they would then be dropped into the
13 database and our -- the settlement team would kind of work to
14 settle those trades or ensure that those trades were settled
15 based off of the stipulated time frame for settlement on the
16 trades.
17 Q So, in all that course of a transaction, what exactly was
18 it that those two employees of the Advisors were being asked
19 to do on behalf of the Debtor? What exactly were they being
20 asked to do?
21 A To just book them in the system because they are trades
22 that already have been executed.
23 Q Did you stop that?
24 A I believe I responded and said, you know, it -- they're
25 employees of, if I recall, employees of one of the named

1 Advisors, and believe those trades are in the best interest of
2 those Advisors, and separately, you know, the Debtor has
3 designated operators/traders that should be able to enter
4 those trades as well, aside from Mr. Sowin and Matt Pearson.
5 Q So can you think of any reason why Mr. Seery would ask
6 your employees, as with his own employees, to book these
7 trades?
8 A I believe based off of past practice.
9 Q Okay. But nevertheless, those two trades did not comply
10 with internal compliance?
11 A They weren't run through the OMS. We try and route trades
12 through the order management system because there's pre-trade
13 compliance checks that can be performed, and it reduces any
14 sort of back-end reallocation or trade errors that may occur
15 as a result of, you know, trades being entered after the fact,
16 because quantities could be, you know, referenced incorrectly
17 or funds could be identified incorrectly.
18 Q Based on prior practices, have these internal policies
19 been followed when perhaps employees of the Debtor asked
20 employees of the Advisors to take a particular action in the
21 course of a transaction?
22 A Yes.
23 Q When internal practices are not followed, what is your
24 job? What are you supposed to do?
25 A When internal practices are followed, --

Q Are not followed.
A Oh. Not followed? To the extent that they're not followed, we would question, you know, number one, why weren't they followed? You know, we -- we try and have all trades booked in the OMS so that the necessary checks could be performed, and as I mentioned earlier, to avoid any reallocation or trade errors. So I would then question, you know, why was this done outside of the system?
Q And if you did not get an appropriate response back to your question, what are you supposed to do?
A If I didn't get an appropriate response, would, you know, research it further and elevate it to senior management and/or any of the board if it was ultimately an issue.
Q Are you supposed to stop trades or stop the process if you see something that you believe is not compliant with your obligations and the fiduciary obligations of the Advisors?
A Yes.
Q Have you done that in the past?
A Yes.
Q Have you done that frequently, or infrequently?
A I would say it's -- it's infrequent, but they do occur. For example, if a fund is trading in a security that it's not permitted to invest in based off of a prospectus limitation, it would get flagged in the OMS and we would then not permit the trade to go forward because it could cause the breach to

1 go further offsides or it could cause it to go offsides.
2 Q Okay. And these December 22nd trades, were they the type
3 of, in your past experience, problematic trades like you have
4 interfered or stopped or intervened to stop in other
5 situations in the past? Do you understand my question? That
6 was an inartful question. Do you understand it?
7 A If the question is because they were done outside of the
8 system?
9 Q Yes.
10 A And repeatedly?
11 Q Yes.
12 A I would have raised the question with the trading desk or
13 the portfolio manager as to why that's being done, because it
14 was not in -- not consistent with how we instruct trades be
15 booked.
16 Q Did Mr. Dondero, for these December 22nd transactions,
17 tell these two employees not to book the trades?
18 THE COURT: Okay. Please repeat the question. It
19 was garbled.
20 MR. RUKAVINA: Thank you, Your Honor.
21 BY MR. RUKAVINA:
22 Q For these December 22nd trades, did Mr. Dondero tell those
23 two employees not to book the trades?
24 MR. MORRIS: I object, Your Honor. No foundation.
25 This witness has no personal knowledge to testify to this --

to answer this question.

THE COURT: Overruled. If he knows.

THE WITNESS: I do not know.

BY MR. RUKAVINA:

Q Okay. Do you have a reason to believe that he did?

A I don't know. I just saw the email traffic and Mr. Sowin, I believe, was questioning the trades, you know, more in the sense that he wasn't aware of them. So, I don't -- I don't know what kind of conversations, what happened in the background, just that he -- he didn't recognized that rates.

Q Let me try it this way. You determined that these trade would have violated the Advisors' policies and procedures, correct?

A Yes, because they were done outside of the OMS.

Q Did Mr. Dondero tell you to come to that conclusion?

A He did not.

Q Did Mr. Dondero pressure you to come to that conclusion?

A He did not. He had indicated that there -- there are these trades, and you should take a look at it from a legal compliance perspective, which I did.

Q And you talked to K&L Gates?

A Correct.

Q And when Mr. Dondero told you to look at these trades, did he suggest to you in any way, shape, or form what you should conclude or decide to do, if anything, with respect to these

1 trades?
2 A I don't believe so.
3 Q Okay. Let's go back to that question about your view that
4 some of what Mr. Seery was doing was deceptive under the 1940
5 Investors Act. When did you form that view?
6 A I believe it was after it was identified that there was
7 not (inaudible) on certain of the trades that were entered
8 into at the end of the November time frame, the SKY and AVYA
9 trades.
10 Q And why did you form the opinion that those trades that
11 Mr. Seery was attempting to do or had done were deceptive
12 under the statute that Mr. Morris asked you about?
13 A It was pursuant to reviewing them and supplemental
14 discussion. A review with the portfolio managers and then
15 supplemental discussion with K&L be it from a (inaudible)
16 perspective, through, you know, perform in the best interest
17 of your clients, it was expressed that, at least with respect
18 to preference shareholders, they were supposed to maximize
19 value, and those sales, they're not really maximizing value.
20 And it was also identified that the Debtor was planning to
21 liquidate the CLOs based off of a filing within the Court
22 within a few-year period. And the investors -- or, the Funds
23 that invested and the preference shareholders, or preference
24 shares, had a longer-time view in those assets.
25 So the sales, coupled with the short duration, or the

1 anticipated, you know, two-year duration, didn't line up with
2 the investment objective that they were seeking to maximize
3 returns.
4 Q To your understanding and your experience, does the
5 servicer of the CLOs owe fiduciary duties to anyone?
6 THE COURT: Okay. I cannot -- someone is flipping
7 paper. Please stop flipping paper. Okay. Repeat your
8 question, Mr. Rukavina.
9 MR. RUKAVINA: Thank you, Your Honor.
10 BY MR. RUKAVINA:
11 Q In your experience and in your knowledge, does the
12 servicer of the CLOs owe fiduciary duties to anyone?
13 A They should, yeah, the underlying investors in the CLO,
14 whether it be the Debtor or the equity holders.
15 Q Do the Advisors owe fiduciary duties to anyone?
16 MR. MORRIS: Your Honor, I'm sorry, I apologize. I
17 really do move to strike. He's not a lawyer. There is no
18 foundation. He's not here as an expert. There's no basis for
19 this witness to be talking about who owes who fiduciary
20 duties. I don't even think that's the law, what's just been
21 stated.
22 THE COURT: Okay. I sustain.
23 MR. RUKAVINA: Okay.
24 BY MR. RUKAVINA:
25 Q Well, let me make it very easy, then. Do you have an

1 understanding as to whether Advisors subject to the 1940 Act
2 owe a fiduciary duty?
3 A Yes.
4 Q Do you have an understanding of how a conflict of interest
5 plays into a fiduciary duty?
6 A Yes.
7 Q What is your understanding?
8 A If there's a material conflict of interest, it should be
9 disclosed.
10 Q And what did you conclude with respect to Mr. Seery and
11 the Debtor once the Debtor stated that it will liquidate
12 within two years?
13 A That's not the investment horizon that the underlying
14 preference shareholders have, especially with respect to the
15 underlying assets held in those CLOs. More or less, you're --
16 they're now put on a clock, and those preference shareholders
17 may have a longer-term view on the underlying assets of those
18 CLOs.
19 Q Let's move on to those December 22nd and December twenty
20 -- well, let me strike that. You heard Mr. Seery testify that
21 those December 22nd trades closed, correct?
22 A I did.
23 Q And did you independently look at whether that's true?
24 A I did.
25 Q And what did you conclude?

A They showed a sale in the -- on the intranet.
Q Okay. Let's move on to the December 22nd and December 23rd letters. Are you familiar with those letters from K&L Gates to counsel for the Debtor?
A I am.
Q And did you participate in preparing those letters?
A I did.
Q Okay. And I think Mr. Morris asked you and I think you testified you supported or agreed with the sending of those letters. Is that generally accurate?
A Yes.
Q Why? Why did you support sending those letters?
A It wasn't in the best interest of the Funds pursuant to discussions with the portfolio managers and the investment objectives that they were looking to seek any of those investment in the preference -- preference securities and CLOs.
Q Was that a purpose that you were trying to achieve by sending those?
THE COURT: Repeat the question.
THE WITNESS: Ah, --
THE COURT: Repeat the question.
BY MR. RUKAVINA:
Q Was that a purpose that you were trying to achieve by sending those letters?

A Yes. I believe there was something towards the end of one or both letters that said, to the extent, you know, transactions occur, if, for lack of better words, a courtesy heads up could be given to the Funds and the Advisor.

Q Did you intend in any way to intimidate the Debtor by authorizing or supporting the sending of those letters?

A No.

Q Did you intend in any way to violate the automatic stay by sending those letters?

A No.

Q Were you trying to engage the Debtor in a dialogue at that time as to what to do with these CLO management agreements?

A Yes. I believe that was stated at one -- at the end of one or both of the letters.

Q And I think Mr. Morris discussed with you that the Debtor sent back letters asking you to withdraw these two letters. Do you recall that discussion?

A Yes.

Q And do you recall saying that we never withdrew these letters, right?

A Correct.

Q Why did we not withdraw these letters?

A Because we don't believe that the trades that are being entered into are in the best interest of the shareholders -- *i.e.*, the Funds.

Q To your knowledge, did we ever, or did you ever, communicate to the Trustees or Issuers anything in the nature of instructing them to terminate the CLO management agreements with the Debtor?

A I did not.

Q To your knowledge, did anyone, for the Funds or Advisors?

A I don't believe so.

Q Did you or anyone to your knowledge communicate to the Issuers or Trustees that the process of removing the Debtor as manager should commence?

A I don't believe so.

Q Okay. To your knowledge, have any of the Issuers or Trustees undertaken any steps to remove the Debtor or terminate these contracts?

MR. MORRIS: Objection to the extent it calls for the conduct or knowledge of the Issuers.

THE COURT: Overruled. He can answer if he knows.

THE WITNESS: I don't believe so.

BY MR. RUKAVINA:

Q Had they, is that something that you would have expected them to inform the Funds of?

A Yes. The Funds would have received some type of notification if there was a new Advisor on the CLOs.

Q So, other than these two letters -- let me stop there. Did any discussion of trying to terminate these contracts

1 basically cease with the sending of these two letters and the
2 Debtor's responsive letters?
3 A That's my understanding, yes.
4 Q Okay. And we never did file a motion for lift stay. Can
5 you explain to the judge why we didn't file a motion for
6 relief from the stay?
7 A It's my understanding that the intent was that the
8 management of the CLOs was going to be heard in conjunction
9 with the confirmation hearing.
10 Q And do you recall when that confirmation hearing was
11 originally set for?
12 A I believe it was supposed to start today. Or tomorrow.
13 Q Well, wasn't it earlier in January? Around January 11th?
14 A Uh, I -- I don't recall specifically.
15 MR. RUKAVINA: Mr. Vasek, if we could pull up the
16 Form CLO agreement. What exhibit is that?
17 (Pause. Counsel confer.)
18 MR. RUKAVINA: No, that's not.
19 THE COURT: Can I ask what we're about to start
20 doing?
21 MR. RUKAVINA: Eight.
22 THE COURT: Can I ask what we are about to start
23 doing?
24 MR. RUKAVINA: Your Honor, I apologize. I'm trying
25 to find one of the CLO portfolio management agreements. I'm

trying to pull it up for you.

THE COURT: Okay.

MR. RUKAVINA: It should be in your binder.

THE COURT: All right. Well, --

MR. RUKAVINA: Where is it, Julian?

MR. VASEK: It should be 8.

MR. RUKAVINA: I'm sorry?

MR. VASEK: 8.

MR. RUKAVINA: Your Honor, it's Exhibit 8 in your binder.

THE COURT: Exhibit --

BY MR. RUKAVINA:

Q And Mr. Post, you have that in front of you, right?

MR. RUKAVINA: Mr. Vasek, if you'll go to Page 14, please. Section 14. Termination by the Issuer for Cause.

MR. VASEK: Okay.

MR. RUKAVINA: Your Honor, the contract speaks for itself, and I'm not about to read the contract to the Court. The Court can read. I want to ask him certain questions about this. And you'll note that the contract gives the requisite holders of voting preference shares certain rights.

MR. MORRIS: Your Honor, respectfully, the witness has testified that he hadn't seen any of these contracts for five or six years, until the lawyers asked him to look at it, and they told him which specific provisions to look at.

1 The document does speak for itself. Counsel should just
2 make it part of his closing argument. There's no evidence
3 that there's a quote/unquote Form CLO Management Agreement.
4 And I would just respectfully suggest that this is better
5 saved for closing argument.
6 THE COURT: Yes. What are we going to do here? He
7 did not seem like he was an expert on these CLOs in his
8 earlier testimony. He hadn't read much of them until
9 recently. So where are we going with this?
10 MR. RUKAVINA: Well, Your Honor, the question, again,
11 is -- can you hear me? The question again is, Are we going to
12 be enjoined from exercising any rights in the future, so I
13 would like to take the witness through the importance from a
14 regulatory perspective and a fiduciary perspective of some of
15 these rights. If Your Honor thinks that that's for closing
16 argument, that's fine. But I will note that that Your Honor
17 allowed Mr. Morris for some forty minutes to read prior
18 testimony into the record.
19 MR. MORRIS: I'm happy to respond if Your Honor needs
20 me to.
21 THE COURT: Go ahead.
22 MR. MORRIS: There is a complete difference, Your
23 Honor. To read statements against interest, to read defense's
24 own sworn statements that they made at a prior proceeding, as
25 opposed to trying to get a witness who has admitted that he's

not familiar with these documents, to try to convince the Court that they said something that the witness doesn't have any personal knowledge or expertise about. It's completely different.

THE COURT: All right. I sustain the objection. You can make whatever argument you want in the closing arguments about whatever provisions of whichever CLO agreements justify actions. I guess that's where we're going.

MR. RUKAVINA: Then, if you could pull up Exhibit 78, and if Your Honor could turn to Exhibit 78.

THE COURT: All right.

MR. RUKAVINA: Is this a confidential -- Julian, what does it mean, it's confidential? 78. Is this confidential?

MR. VASEK: It says confidential on the --

MR. RUKAVINA: Your Honor, apparently this is a confidential document, so how does the Court want to proceed on this WebEx?

THE COURT: All right. We're stopping. We're stopping. We have protocols in place in this case, and people usually file motions to present things under seal or redactions. My patience is shot, so we're going to stop. Let's talk about where we go from here.

MR. MORRIS: If I may, Your Honor?

THE COURT: Yes.

MR. MORRIS: John Morris from Pachulski Stang --

THE COURT: Uh-huh.

MR. MORRIS: -- for the Debtor.

MR. RUKAVINA: We filed this under seal, right?

MR. MORRIS: We were --

MR. RUKAVINA: Oh, I thought we had.

MR. MORRIS: -- hoping that we would get this finished today, Your Honor, and the Debtor was really hoping to get a ruling before confirmation. But given all that's in front of us, including the contempt hearing next Friday, just a couple of days after the confirmation hearing, I think the Debtor at this point is prepared to agree, if it's okay with the Defendants' counsel, to push this to the following week, since the -- you know, with the understanding that everybody stipulate on the record that the TRO stays in place. And if we could have this particular motion heard, I guess, somewhere -- it's the week of February 8th, the Debtor would consent to that.

THE COURT: All right. Do we already have a --

MR. RUKAVINA: Your Honor, can the Court --

THE COURT: -- setting that week? Because I know we have confirmation, what, are we set for the 2nd, 3rd, and 4th? Three days next week.

MR. MORRIS: I believe -- yeah. I think it's just two, Your Honor. I think --

THE COURT: Okay.

MR. MORRIS: -- confirmation is the 2nd and the 3rd, and then I think the 5th is the contempt hearing. I'm not aware, but I don't -- I don't profess to know the entirety of the calendar. I'm not aware of anything that's on for the following week.

THE COURT: Does it make sense to continue this to the 5th? Because the issues are so overlapping here. I feel like it's been a contempt hearing half of today, actually.

MR. MORRIS: Yeah.

THE COURT: So, shall we just set it for -- is it Friday, the 5th?

MR. MORRIS: It is.

THE COURT: At 9:30?

MR. MORRIS: And I think that's a great idea, yeah. Yeah.

THE COURT: What do you want to say about that, Mr. Rukavina?

MR. RUKAVINA: Thank you, Your Honor. We're fine with that.

Let me just point out, so that if the Court is impatient or frustrated, we did move Exhibit 78 to be filed under seal. The Court did enter an order allowing it to be filed under seal. So that the Court doesn't think that somehow we were negligent in that.

But February the 5th works for us.

THE COURT: Okay. All right. So I have an unredacted clean copy up here, which, if and when I admit it, we will put it under seal in our exhibit room, or I guess our electronic exhibit room.

So, we'll come back on the 5th at 9:30. But I am not -- I am not done. Yes, I am frustrated. Yes, I'm impatient. I have asked myself "Why are we here?" so many times today. Why are we here? I mean, I've had this conversation before. I mean, we had a, as you know, a very lengthy hearing on the motion for a TRO or preliminary injunction against Mr. Dondero personally. And I think it was Mr. Morris who said, it's a little bit like Groundhog Day. You know, that was actually a more flattering way of describing it than I might have. I might have said this is reminding me of Albert Einstein's definition of insanity. You all know what I'm talking about? When you're doing the same thing over and over again and expecting a different result.

And, you know, no offense, Mr. Dondero, if you're still there listening, but that's what it feels like to me. I mean, it is -- it's the same thing over and over again. And we've spent very, very, very little time talking about the January 9th, 2020 corporate governance settlement agreement. Of course, it was mentioned extensively in the pleadings, at least by the Debtor. But, you know, I've heard all of this evidence today, and I'm going to hear more evidence,

1 apparently, on the 5th. But Paragraph -- was it 9? --
2 Paragraph 9 of the January 9th, 2020 settlement agreement.
3 The order directed Mr. Dondero not to "cause any related
4 entity to terminate any agreements with the Debtor."
5 And, you know, I thought to myself as I was reading,
6 preparing for this hearing, that, you know, I seem to remember
7 those words meant so, so much to me. And then this reply
8 brief was filed by the Debtor at 6:00 or 7:00 o'clock last
9 night, and it gave an excerpt of the transcript, the hearing
10 where I approved this corporate governance settlement
11 agreement, and I said, that language is so important to me
12 because of my history in the *Acis* case, I want it in the
13 order. I don't even -- I don't want it merely in the term
14 sheet, and then, of course, the order cross-references,
15 approves the term sheet. I want that in the order. Because,
16 you know, I knew, even with this highly-qualified independent
17 board of directors, and even with this very sophisticated
18 Creditors' Committee with very sophisticated professionals
19 monitoring everything that happened, and having not just the
20 monitoring rights but the standing to pursue things, I knew,
21 even with this great system that had been negotiated in the
22 January term sheet, there was the possibility of things
23 happening through Dondero-controlled entities indirectly. And
24 so that's why we had that Paragraph 9. So, --
25 (Interruption.)

THE COURT: I don't know what that was I just heard, but someone needs to put me on mute.

So, I mean, we've heard a lot. We've heard a lot, but --

MR. DONDERO: Hello? Your Honor? Your Honor?

THE COURT: Okay. I --

MR. DONDERO: Hi. Jim Dondero.

THE COURT: Oh, okay. I'm still talking. I'm still talking. But I --

MR. DONDERO: Okay.

THE COURT: But I said --

MR. DONDERO: I'm sorry.

THE COURT: I said at the hearing on the preliminary injunction as to Mr. Dondero personally, do you remember what I said, I said life changed when you put your company in Chapter 11. And, you know, even if you had stayed on as president of the Debtor, life changed. Okay? Because you're a debtor-in-possession. You have to say, "Mother, may I?" to the Court. Creditors get to object to things. So things changed.

But things really, really, really changed, you know, they changed in October 2019, and then they changed dramatically in January 2020, when independent board members were put in place and you were taken out of management.

So, the reason I'm coming back to that concept is this: I've heard a lot about the preferred shareholders didn't like

1 the trades Mr. Seery was implementing, the sale of AVYA, the
2 sale of SKY. They didn't like it. Well, I mean, I hate to
3 say something flippant like tough luck, but really: Tough
4 luck. Okay? We all know that with a company like this, with
5 a company like Acis, it's complicated, right? Because you've
6 got a fiduciary duty to your creditors to maximize value of
7 the estate so creditors get paid in Chapter 11, right? But
8 meanwhile, you know, you've got to have fiduciary duties, I
9 don't know if it's directly to preferred shareholders or just
10 to the CLOs. But whatever it is, you know, there may be
11 differing views that individual preferred shareholders have.
12 But Mr. Seery is in charge. The Debtor is in charge. You
13 don't like it, I'm sorry, but he's in charge.
14 So, you know, I thought, am I going to come in here today
15 and see all kinds of specific contractual references, where, I
16 don't know, somehow you have an argument that you can control
17 buys and sells? Of course, in this case, it would just be
18 sells at this point. You know, no. I knew I wasn't going to
19 see that. And I haven't.
20 So I don't know what I'm going to hear more on the 5th
21 that is going to tilt me a different way, but right now, if I
22 had to rule right now, this would be a total no-brainer to
23 issue this preliminary injunction. Okay? I feel like it's
24 been teed up almost like find Dondero in contempt, find these
25 entities in contempt. What I'm here on today is whether I

should issue a preliminary injunction, and the December letters, the emails, the communications, they lead me to believe that this preliminary injunction is needed because someone doesn't understand that Mr. Seery is in charge and the preferred shareholders, the Funds, the Advisors, they don't have the ability to interfere with what he's doing in running the company.

And the threats of we're going to, you know, direct -- we may direct the CLO Issuer to terminate the Debtor: I mean, it's just -- there's no sound business justification for that. Okay? I don't know what we're doing, where we're going.

Mr. Dondero, I said to you in December, you know, I really wanted to encourage good-faith negotiations on your possible pot plan because I thought you wanted to save your baby. But the more I hear, the more I feel you're just trying to burn the house down. Okay? Maybe it's an either/or proposition with you: I'll either get my company back or I'll burn the house down. That's what it feels like. And I have no choice but to enter preliminary injunctions with this kind of behavior.

So, I'm very frustrated. I'm very frustrated. I don't know if anyone wants to say anything or we just end it on this frustrating note.

Mr. Rukavina, did you want to let your client speak, or no?

MR. RUKAVINA: Your Honor?

THE COURT: Not your client.

MR. RUKAVINA: No, but --

THE COURT: The client representative.

MR. RUKAVINA: Your Honor, I take issue with what the Court has said, but we did file a motion yesterday to file a plan under seal. It is -- Mr. Dondero, can you mute your phone? The Court should have seen that by now. It is a pot plan with much more cash consideration. We have discussed it with the Debtor and the Committee. We are in earnest negotiations. I have no reason to believe or disbelieve that we're close to a settlement.

But recall what I said at the beginning. We asked the Debtor to continue this hearing. We said, You have a TRO that ends February the 15th. Why are you doing this? Well, the Debtor did it to smear Mr. Dondero on a very carefully crafted record, without telling you the other half of it. And when I tried to have Mr. Post explain it, opposing counsel won't let me even tell you our views. So there is a competing plan. We want to try --

THE COURT: You tried to get him to testify about comments to CFRs when he has shown no expertise whatsoever --

MR. RUKAVINA: That's fine.

THE COURT: -- to permit that.

MR. RUKAVINA: And I understand, Your Honor. I don't

want -- Your Honor has made her evidentiary rulings. I'm not here to second-guess them.

I'm telling you that Mr. Dondero -- and more importantly, the other companies, *i.e.*, NexPoint -- we heard you loud and clear. We did not just send forward some cocktail-napkin term sheet. I spent the weekend and Friday preparing a comprehensive plan and disclosure statement. I hope that the Court will allow it to be filed under seal. Exclusivity has expired. I am asking to file it under seal only.

THE COURT: Tell me what utility that has. What utility does that have if you don't have one plan supporter? I mean, where are we going with this? I have invited, I have encouraged, I have directed good-faith negotiations with the Committee. If you don't have the Committee on board, what utility is there in allowing you to file a plan under seal?

MR. RUKAVINA: Well, if it's filed under seal, Your Honor, then, really, no one is going to be prejudiced or hurt. But we have not been told --

THE COURT: Then why --

MR. RUKAVINA: -- from the Committee --

THE COURT: Then why are we doing it? Help me to understand the strategy. Maybe I'm just naïve.

MR. RUKAVINA: Your Honor, there is no strategy and the Court is not naïve. Pursuant to an agreement of the Committee and the Debtor, I sent that draft plan to them over

the weekend, and they agree it's not solicitation. It has not gone to the creditors. No one has seen it.

The reason why we sent it to the Committee and the Debtor was to foster ongoing negotiations. We had negotiations last night. The Committee and the Debtor had negotiations last night. We've been promised a response in the next couple of days, and we have a follow-up meeting scheduled for Thursday.

The reason why I wanted the plan filed under seal is so that there is a record of what is being discussed so the U.S. Trustee can see it, if she wants to, and so that other key constituents, if they want to or have a reason to, can see it.

But I agree with you: That plan ain't going nowhere if we don't have some material creditor support. We won't know that for a couple more days.

So my only point in saying this to Your Honor is that we are working earnestly, we are increasing our consideration, we have heard you loud and clear, and all the parties are negotiating.

Again, we did not want this hearing to happen today because it's a step backwards from negotiations, not a step forward. Thank you.

MR. POMERANTZ: Your Honor, may I be heard?

THE COURT: Go ahead, Mr. Pomerantz. Go ahead.

MR. POMERANTZ: Mr. Rukavina sent us over the plan, and we had no problem with it being sent to the Committee. He

then sent us over the motion. Now, aside from the fact that the motion contains some statements which the Debtor strongly disagrees with, with respect to the ability of administrative claims or other claims to be assumed, but putting that aside, we were concerned that the filing of a plan on the docket, unsealed, would be a distraction.

Having said that, we also saw utility in the plan being put in the hands of the largest creditors so that they can evaluate what was being proposed.

We told Mr. Rukavina we have no problem if the plan was filed under seal, stayed under seal until after confirmation, and then, in exchange, we would agree to something that we don't think we had to agree: That he could send the plan to UBS, to Acis, to Redeemer, to Meta-e, to HarbourVest, and Daugherty. Essentially, all the players in the case. Mr. Rukavina said he would consider that, and then just filed his motion.

We don't have any problem with him doing that still, sending it to the six creditors so they can look at it. We don't think it should be unsealed on the docket.

And the discussion of status of negotiations, Your Honor, as we've told you many times before, we would love there to be a plan. We would love there to be support of a plan. Mr. Dondero asked to approach the board and speak to the board yesterday. We heard him out. The plan essentially is the

same document and the same term sheet, I think, that has been floating around for several weeks.

Having said that, we said, We are not going to stand in the way of Mr. Dondero and the Creditors' Committee. And if the Creditors' Committee and Mr. Dondero have a meeting of the minds, if there's any desire of them to have more time, we would be supportive of it. I'll let Mr. Clemente respond as to whether there's any negotiation -- (echoing.) But when Mr. Rukavina said that last night there were negotiations between the Debtor and Mr. Dondero, that's just not accurate. We, we look at ourselves as the honest broker. But at the end of the day, as Your Honor has remarked many times throughout this case and just remarked a few moments ago, unless the Creditors' Committee supports this plan, it is DOA. And we have communicated that several times to Mr. Dondero and his team.

So, I just wanted to speak to correct the record. We're, again, supportive of a plan if there can be one. But at this point, we haven't seen anything, the parties coming any closer or any more negotiations, and we just have to get confirmed sooner rather than later (echoing), prepared to go forward.

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. I'm happy to make some comments to Your Honor, --

THE COURT: Okay.

MR. CLEMENTE: -- if you -- if you wish.

THE COURT: Please do.

MR. CLEMENTE: I think it's fair to say that the Committee believes the plan needs to go forward next week, Your Honor. We have, of course, taken your direction very seriously, and we very seriously consider all of the communications we get from Mr. Dondero. There exists still a material value gap in what is being offered under Mr. Dondero's plan, as well as a quality of the value.

So, Your Honor, while we continue to consider the plan and what we receive from Mr. Dondero, I do not want to leave Your Honor with the impression that the Committee feels like we are close to an agreement, and we anticipate going forward with the plan next week.

That being said, we of course will respond to Mr. Dondero as we review the plan, but as I sit here today, I don't believe that we are close. But, again, the Committee will continue to review it, and we should anticipate going forward with confirmation next week.

THE COURT: All right. So, you don't have any problem with the plan being filed under seal?

MR. CLEMENTE: Your Honor, we -- the Committee does have the plan, and I guess I'm not sure I'd see the point of having it filed it under seal. I think it serves to confuse issues. But, you know, hearing what Your Honor said earlier, I don't think we need to continue to bring different fights in

1 front of Your Honor, so I'm not sure that I see necessarily
2 the harm in a plan being filed under seal, again, with the
3 idea that, you know, why bring -- continue to bring fights to
4 Your Honor if we don't need to?
5 THE COURT: All right.
6 MR. CLEMENTE: But what I do think is clear, Your
7 Honor, that I do want to express to you is that the
8 representations in that motion the Committee do not believe
9 are accurate. We do not believe that there's been a
10 significant value increase. We do not believe that we are
11 close. That would be the point that I would make in
12 connection with a response to that motion. So, but in terms
13 of filing it under seal, I'm not sure the Committee has a
14 strong feeling that that should not happen.
15 THE COURT: Yes.
16 MR. RUKAVINA: And Your Honor, very quickly, --
17 THE COURT: The words --
18 MR. RUKAVINA: -- I never represented that we're
19 close.
20 THE COURT: The words I remember in the motion were
21 significant value increase, something to that effect. But
22 also more recovery than the plan that's on file.
23 (Echoing.)
24 THE COURT: So I was kind of darn curious to see it
25 just for that.

MR. RUKAVINA: And Your Honor, obviously, because there's many people on this call, I don't want to run afoul of any kind of procedures. I'd be happy to walk Your Honor through, but I can't, not with 90 people on the call.

THE COURT: Right.

MR. RUKAVINA: I did not represent that we're close to a settlement in that motion, and I did not send the plan to those people that Mr. Pomerantz mentioned.

So, right now, the Committee, the Debtor, and the employees, because they requested it after Mr. Pomerantz approved it, have what I would like to file under seal. I'm not suggesting here today that it go any farther than being filed under seal, but at least it be there for some record.

THE COURT: Well, didn't you -- did I dream this? -- didn't you say that there would be something like 48 hours for people to object or then it would be filed not under seal? Did I dream that?

MR. RUKAVINA: Your Honor, that was my proposal, and Your Honor can certainly reject that. Mr. Pomerantz asked that the plan should never be unsealed pending confirmation of the Debtor's plan. I have a different proposal. Your Honor will rule and we'll comply with Your Honor's ruling.

MR. DONDERO: Jim Dondero here. Can I have two -- two quick minutes and just say two quick things?

THE COURT: Well, only if your counsel permits it. I

1 don't want to get in --
2 MR. RUKAVINA: I just don't -- yeah. Mr. Dondero, if
3 you would please just not describe the substance, the economic
4 substance of our proposed plan, not with so many people on the
5 line.
6 MR. DONDERO: Sure. I just want to make two quick
7 points. I couldn't apologize more for taking the Court's time
8 today. It wasn't our 'druthers. You heard, I think, at least
9 five or six hours from the Debtor. You never once heard them
10 say that their activities didn't violate the Advisers Act.
11 And they never once said that violating the Advisers Act
12 wasn't a big deal. You know, they never said that.
13 What they tried to say, oh, we have these other contracts.
14 Let's try and turn this into an injunction against Dondero
15 interfering. But they never -- they never denied that Dondero
16 and the NexPoint team was trying to do what was in the best
17 interest of investors and that they had violated the Advisers
18 Act.
19 I think, in normal course, each side would have had an
20 expert and you could have opined on whether it was a violation
21 of the Advisers Act, but they know they did something wrong so
22 they're trying to make it an injunction against me. Okay.
23 That's all I have to say about that point.
24 As far as the alternative plan, Your Honor, we heard you
25 loud and clear. And the economics that we put forward, I

can't talk them about specifically, but they're at least 20 percent better than what the Debtor has put forward as far as a plan. And what we put forward is elegant, it's simpler, it treats the employees fairly, it gives the business continuity, it gives investors continuity, and it's not just a harsh, punitive liquidation that's going to end up in a myriad of litigation.

We're paying a premium, it's a capitulation price, to try and get to some kind of settlement. And I encourage you to look at it. It's elegant. It's straightforward. It's simple. And now that you've encouraged and gotten us up to a number that's well in excess of the Debtor, maybe a little pressure on other people to treat employees fairly, maybe not liquidate a business that's important in Dallas, that has been a big business for a number of years, doing enormous good things for a lot of people.

You know, we went into bankruptcy with $450 million of assets and almost no debt. And we've been driven into the ground by the process. And then the plan is to just harshly liquidate going forward. I -- I -- it's crazy. I don't know what else to do to stop the train other than what we've offered.

THE COURT: All right. Well, I hear what you're saying, and I do, just because -- I don't know if you left the room or not, but we did have discussion of Section 206 of the

Investment Advisers Act today. It was put on the screen. Mr. Post was asked what was unlawful as far as what had happened here, what was going on here, what was fraudulent, deceptive, or manipulative, in parsing through the words of the statute. And he said Mr. Seery engaged in deceptive acts because he wasn't trying to maximize value. Okay? I'm not an expert on the Investment Advisers Act, but I know that that was not a deceptive act.

And so I'll allow the plan to be filed under seal, but it's not going to be unsealed absent an order of the Court. Okay? So we'll just leave it at that for now. And while I still encourage good-faith negotiations here, I've said it umpteen times, where you're tired of the cliché, probably: The train is leaving the station. And if you want the Court to have patience in the process and if you want the parties to cooperate in good faith, it might help if we didn't have things like Dugaboy and Get Good Trust filing a motion for an examiner 15 months into the case.

I mean, it feels to me, Mr. Dondero, whether I'm right or wrong, that it's like you've got a twofold approach here: I either get the company back or I burn the house down. And I'm telling you right now, if we don't have agreements, --

MR. DONDERO: That's not true.

THE COURT: -- if we don't have agreements and we come back on the 5th for a continuation of this hearing and a

1 motion to hold you in contempt, you know, I'm leaning right
2 now, based on what I've heard so far, and I know I haven't
3 heard everything, but I'm leaning right now towards finding
4 contempt and shifting a whole bundle of attorneys' fees.
5 That, to me, seems like the likely place we're heading.
6 I mean, I commented at the December hearing on the
7 preliminary injunction against you personally that it had been
8 like a $250,000 hearing, I figured, okay, just guesstimating
9 everybody's billable rate times the hours we spent. Well,
10 here we were again, and I know we've got all this time outside
11 the courtroom preparing, taking depositions. I mean, what
12 else is a judge to think except, by God, let's drive up
13 administrative expenses as much as we can; if we can't win,
14 we're going to go down fighting? That's what this looks like.
15 Okay? So if it's not really what's going on, then you've got
16 to work hard to change my perceptions at this point.
17 MR. RUKAVINA: Your Honor, I hear everything what
18 you're saying, and I'm going to discuss it very bluntly with
19 my clients. But we're being asked not to exercise contract
20 rights in the future. This is not a contempt hearing. And
21 Your Honor, we did ask and offered the estate a million
22 dollars, found money, plus to waive almost all our plan
23 objections, if they would just put this case on pause for 30
24 days.
25 So we are trying. We are trying creative solutions here.

We know that the train is leaving. We've put our money where our mouth is. We will continue trying. But Your Honor, this is not a contempt proceeding, and my clients are not Mr. Dondero. You've heard they're independent boards.

MR. POMERANTZ: I can't leave that last comment without a response. Yes, there was an offer of a million dollars, by an entity that owes the estate multiples of that. So they are offering to pay us something that they already owe us. So Mr. Rukavina continues try to do this. We will not stand for it.

MR. RUKAVINA: That is not a fair statement, sir. I misrepresented nothing. We were offering you a million dollars, with no conditions, earned upon receipt, with no credit, no deduction for any of our liability. So you're free to say no, sir, but you're not going to tell the judge that I misrepresented something.

THE COURT: All right.

MR. POMERANTZ: Should tell the Court --

THE COURT: You know what?

MR. POMERANTZ: -- that that entity owed the Debtor.

THE COURT: You know what? You know what? I am more focused on, Mr. Rukavina, your comment that this Court can't enjoin your clients from exercising contractual rights when, again, in January of 2020, the representation was made and it was ordered, "Mr. Dondero shall not cause any related entity

1 to terminate any agreements with the Debtor." Okay? That was
2 -- go back and look at the transcript. That was so meaningful
3 to me.
4 We were facing a possible trustee. And that's what I did
5 in the *Acis* case. Okay? I had a Chapter 11 trustee. And it
6 was not a perfect fit, to be sure. But it is where we were
7 heading in this case, had the lawyers and parties not
8 negotiated what they did. That was a very important
9 provision, convincing me that, you know what, I think the
10 structure they've got will be better than a trustee. And it
11 has, for the most part. But the fees have gone out the roof,
12 and I lay that at the feet of Mr. Dondero, for the most part.
13 Okay? We have a bomb thrown every five minutes by either him
14 personally or the Dugaboy or the Get Good Trust or the Funds
15 or the Advisors or I don't know who else. Okay?
16 So the train is leaving the station, unless you all come
17 to me and say, okay, we've maybe got a -- Mr. Pomerantz's word
18 -- grand solution here. Okay? If you get there in the next
19 few days, wonderful. Okay? But I don't know what else to say
20 except I'm tired of the carpet-bombing, and if I had to rule
21 this minute, there would be a huge amount of fee-shifting for
22 what we went through today, for what we went through in
23 December, for the restriction motion that, after I called it
24 frivolous, the lawyers were sending letters pretty much
25 regurgitating the same arguments. All right. So, not a happy

camper.

But upload your order on the motion to seal the plan. And, again, it's not going to be unsealed absent a further order of the Court. And if you all come to me next week and say, hey, we've got something in the works here, okay, I'll consider unsealing it and letting you go down a different path. But I'm not naïve. I feel like this is just more burning the house down, maybe. I don't know. I hope I'm wrong. I hope I'm wrong. But all right. So I guess we'll see you next week.

MR. POMERANTZ: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. We're adjourned.

MR. RUKAVINA: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 6:08 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **01/28/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 39

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
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006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
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006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
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006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

Vol. 33				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Monday, March 22, 2021 9:30 a.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES D. DONDERO, Defendant.	**Adversary Proceeding 20-3190-sgj** PLAINTIFF'S MOTION FOR ORDER REQUIRING JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO [48]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - MARCH 22, 2021 - 9:39 A.M.

THE COURT: We have a setting in Highland Capital Management, Case No. 20-3190. It's an adversary. We have Plaintiff's Motion to Hold Mr. James Dondero in Civil Contempt of Court.

Let's get lawyer appearances to start out with. Who do we have appearing for Highland this morning?

MR. MORRIS: Good morning, Your Honor. It's John Morris from Pachulski Stang Ziehl & Jones on behalf of the Debtor.

THE COURT: Good morning. All right. And who is appearing for Mr. Dondero's legal team?

MR. WILSON: This is John Wilson, Bonds Ellis Eppich Schafer Jones, for Mr. Dondero.

THE COURT: All right. I know we have lots of other observers on the video, but those are the only appearances I will take for this matter.

All right. Well, let's talk about some housekeeping matters before we get underway. Just to be clear, the motion --

MS. SMITH: I can't hear.

THE COURT: Who says they can't hear? All right. Can everyone hear me?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. Mr. Wilson, you can hear me okay?

MS. DANDENEAU: Excuse me, Your Honor. This is Debra Dandeneau from Baker McKenzie. I believe that our local -- our co-counsel, Ms. Smith, wanted to make an appearance because we will be participating in this hearing, and I believe she's the one who's having the audio issues. Sorry to interrupt.

THE COURT: All right. Now, well, first, Ms. Smith, can you hear me okay?

(No response.)

THE COURT: All right. Ms. Dandeneau, remind me who your clients are and what their role is in this matter.

MS. DANDENEAU: Your Honor, our clients are Mr. Leventon and Mr. Ellington, at least in this matter. And they have been -- they've -- they were requested to appear as witnesses at this hearing. And so we are appearing to represent them in connection with this hearing. By agreement with the Pachulski firm, we're voluntarily producing them. We are appearing -- I'm here. My partner, Michelle Hartmann from Baker McKenzie, is here. Ms. Smith is here -- unfortunately, without audio.

And we do have an agreement with the Debtor that, among other things, they are -- they are not parties to this proceeding. We are producing them voluntarily. But we do have an agreement with the Pachulski firm that we will be permitted to at least ask questions on redirect of these

1 witnesses, and just wanted to make that clear, why we are here
2 and why our -- and Mr. Ellington and Mr. Leventon are
3 appearing voluntarily in this matter.
4 THE COURT: All right. Well, thank you, Ms.
5 Dandeneau. Hopefully, Ms. Smith will get her audio working
6 here shortly.
7 So I guess I should ask at this point, are there any other
8 attorneys in a similar posture that want to make an appearance
9 before we get started?
10 All right. Well, then let me get going with some
11 preliminary housekeeping matters. I'm noting for the record
12 that this motion asking the Court to hold Mr. Dondero in
13 contempt of court was filed January 7, 2021, and the order
14 that Mr. Dondero is alleged to have violated is a December 10,
15 2020 TRO the Court issued in this adversary proceeding, a
16 short three-page order.
17 So what I want to clarify at the outset is this. There's
18 been a lot of activity in the adversary. For example, on the
19 very day after this motion to hold Mr. Dondero in contempt was
20 filed, the Court issued a preliminary injunction, okay, in
21 other words, the follow-up to the TRO, on January 8th. So
22 sort of a weird posture, you might say. We're having a
23 hearing now, over two months later, on a motion to hold Mr.
24 Dondero in contempt of the TRO from December 10th, even though
25 we've subsequently had a preliminary injunction.

I'm just clarifying that point to make sure our evidence is carefully tailored here today. I think it would only be evidence for activity between December 10, 2020 and January 7, 2021, because, again, you know, order entered December 10th, motion to hold Mr. Dondero in contempt filed January 7th. So this doesn't pertain to any alleged violations of the preliminary injunction after it was issued on January 8th.

So, with that, I will allow opening statements. And if you have anything to clarify about what the Court just said, if someone views this any differently, please let me know in your opening statements.

All right. Mr. Morris, you may proceed.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for the Debtor. Let me begin by saying you have it exactly right.

THE COURT: Okay.

MR. MORRIS: We are only going to put forth evidence of violations of the TRO that took place between December 10th and the day that the preliminary injunction was issued on January 8th. So it's a very short 29-period -- 29-day period, and that really is what we're focused on here today.

As Your Honor just alluded to, on December 10th the Debtor obtained a TRO against Mr. Dondero. The TRO was based on uncontroverted testimony, including written threats to Mr.

1 Seery and Mr. Surgent. It included evidence of interference
2 with Mr. Seery's trading activities as the CLO manager. And
3 so that happened on December 10th.
4 The TRO, Your Honor, is very clear. It is completely
5 unambiguous. If Your Honor will recall, on December 10th you
6 actually read out word for word of the operative portion of
7 the TRO and you made assessments with respect to every
8 provision in it as to whether or not it was clear and
9 unambiguous and whether or not it was reasonable. And after
10 that painstaking analysis, Your Honor signed the order.
11 In their opposition, Mr. Dondero now asserts -- and this
12 is said several times -- the exact opposite. He claims not to
13 know what conduct was prohibited. This is just not credible.
14 We are going to go through the TRO as applicable to the
15 violations that the Debtor is alleging here and we will show
16 that there is no room for debate as to what the TRO provided
17 and how his conduct was in violation of those very clear and
18 unambiguous provisions.
19 Mr. Dondero makes much in his opposition papers of the
20 clear and convincing evidence standard, Your Honor, and they
21 suggest that it's such a high hurdle we can't possibly meet
22 that here. Your Honor, the evidence that we will present
23 today doesn't prove that Mr. Dondero violated the TRO by clear
24 and convincing evidence. It proves it, not that we have to,
25 beyond reasonable doubt. Okay? There is no doubt that he

violated the TRO in more than a dozen ways, and we're going to prove that to you today.

Again, we don't have to meet that high standard, but clear and convincing evidence is easy. Why is it easy? It's easy for two very simple reasons. Mr. Dondero has already admitted to certain of the violations, and you are going to see documents today that say what they say, their meaning is unambiguous, you will see the parties to the communications, you will see the interference with the business, you will see -- there is just no room for debate. It is not clear and convincing. It's to a certainty that he violated the TRO more than a dozen times.

Mr. Dondero claims repeatedly in his papers that he substantially complied with the TRO. I don't know of any law, any case that says that the Court is supposed to overlook violations of a TRO if the person against whom it was entered is otherwise in substantial compliance, but it's really irrelevant. He did not substantially comply with anything. The fact is that, despite being in place for only 29 days, we are going to present evidence today of 17 specific violations that are beyond dispute. Seventeen violations in just 29 days. The notion that he was in substantial compliance is not credible.

I've got a short deck, Your Honor, that I just want to go through with the Court so that I can preview the evidence that

we're going to present today. And if Ms. Canty can just put up the first page of the deck.

So, I don't know that the evidence is going to come in in exactly this order, but the TRO states in Section 2(c) that Mr. Dondero is enjoined, quote, from communicating with any of the Debtor's employees except as it specifically relates to shared services. It is a blanket prohibition on communicating with the Debtor's employees unless it relates to shared services. Not ambiguous. Pretty clear. The conduct couldn't -- right? Put yourself in Mr. Dondero's position. You have been ordered by a court of law not to communicate with the Debtor's employees unless it relates to shared services.

And so if you read the opposition, you'll see all the different kinds of excuses as to these communications. You'll see that they talked about the pot plan. There's nothing in the TRO that allowed Mr. Dondero to speak with any of the Debtor's employees about the pot plan. And he knew that and his lawyers knew that. And how do you know they knew that? Because on December 16th, just six days after the TRO was entered into, they filed a motion at Docket 24 seeking to modify the TRO to allow Mr. Dondero to speak directly with the independent board about a pot plan. Right? He knew he couldn't speak to anybody about the pot plan. He wanted to speak with the board about the pot plan.

If he thought that the TRO allowed him to speak with the

Debtor's employees about the pot plan, why didn't he think that it was -- allowed him to talk to the independent board about the pot plan?

He withdrew that motion, Your Honor, but that's -- that was his state of mind. He knew he couldn't do that.

But here's the thing, Your Honor. None of the communications that we're going to be -- put before you today have anything to do with the pot plan. So not only is discussion about the pot plan not permitted, it's not even -- it's not even relevant to today's discussion. But it's in their papers.

They also put in their papers that somehow these communications were authorized. Other than what Mr. Dondero may say, there will be no evidence of any kind that the Debtor authorized any of the communications. In fact, Mr. Seery is going to testify and he will tell Your Honor that he did not only not know of these communications, but had he known of them, whether there was a TRO or not, he would have fired the employees on the spot. And we're going to see the communications, and Your Honor can form your own judgment as to whether or not an employer, particularly an employer in bankruptcy, should tolerate the communications that we're about to look at.

Shared services. You might hear, oh, oh, these communications were about shared services. They will never be

able to prove that because they have not put on their exhibit list any shared services agreement. And why don't they have a shared services agreement on their exhibit list? Because Mr. Dondero is not party to one. He is not party to one. The lawyers at Bonds Ellis do not represent an entity that was party to a shared services agreement. Doug Draper, who you will see on some of these emails, does not represent an entity who was party to any shared services agreements. There is no exception in the TRO for the communications that we will look at.

Can you go to the next slide, please?

Here are 13 separate communications that we're going to go through today that included Mr. Dondero and one of the Debtor's employees or Mr. Dondero's lawyers and one or more of the Debtor's employees. They cover topics. The first three relate to the Bonds Ellis firm's request of Mr. Ellington to provide a witness who was going to testify on behalf of Mr. Dondero against the Debtor. There's communications about a common interest agreement that was going to be between and among, among others, Mr. Dondero and certain of the Debtor's employees. There's communications about the UBS appeal of the Redeemer 9019 settlement and the HarbourVest settlement. There's -- there is communications where Mr. Dondero asks Mr. Ellington to provide leadership in the coordination of all of the lawyers representing Mr. Dondero's interests.

There's more. We're going to go through these in detail, Your Honor, but there's 13 different communications that took place in just the two weeks after the TRO was entered into. Every single one of them -- these are not technical violations. This is not Mr. Dondero saying hello to an employee in the hallway. This is not Mr. Dondero asking about somebody's, you know, family. Every single one of these communications is adverse to the Debtor. Adverse to the Debtor's interests. And the Debtor knew about none of them.

Go back to the first slide, please.

The automatic stay. Section 2(e) of the TRO prohibits Mr. Dondero from otherwise violating Section 362(a) of the Bankruptcy Code. Section 362(a)(3) states that the filing of a bankruptcy acts as, quote, to prevent any act to exercise control over the property of the estate. There can't be anything ambiguous about a TRO that says don't violate the automatic stay. If there's an ambiguity in that provision, there must be an ambiguity in Section 362(a). And I submit, Your Honor, there's no ambiguity in Section 362(a)(3) that says you are prohibited from exercising control over property of the estate. But that's exactly what Mr. Dondero did, not once, not twice, but three times in the short 29-day period following the entry of the TRO.

Can we go to the third slide, please?

As Your Honor may recall from the preliminary injunction

1 hearing, Mr. Dondero's cell phone that he admitted was the
2 company's property was thrown in the garbage. So that's stay
3 violation one. I remember Mr. Lynn kind of flippantly saying
4 he offered to pay the $500, but he completed missed the point
5 then and I think they continue to miss the point now. Because
6 the second stay violation was the tossing in the garbage of
7 the Debtor's text messages.
8 The Debtor, for years, right -- Mr. Dondero, this is his
9 baby, he ran this company -- they had an employee handbook.
10 The employee handbook were the company's policies that guided
11 and dictated the conduct of its employees. And they have a
12 provision in there, and we're going to look at it carefully
13 with Mr. Dondero. They had an option where the company might
14 subsidize some of the phone bill if employees participated.
15 But importantly, Your Honor, on this slide is an excerpt from
16 Page 13 of the handbook. It'll be Debtor's Exhibit 55. And
17 it says, regardless of whether the employee chooses to
18 participate in the policy, right -- this is for people who had
19 their own phone, not even ones that were paid by the company
20 -- this says specifically all text messages, quote, sent and/
21 or received related to company business remain the property of
22 Highland.
23 There's that word property again, right out of 362(a)(3).
24 Property. Do not control the Debtor's property. All
25 employees, including Mr. Dondero, were told that text messages

related to company business shall remain the property of Highland.

Mr. Dondero knew this. How do we know that Mr. Dondero knew this?

Let's go to the next slide, please.

Mr. Dondero is going to tell you, because it's going to be in evidence, that periodically each year Mr. Surgent, as the chief compliance officer, had certain senior employees fill out certifications. On the screen is an excerpt from Mr. Dondero's certification done in early 2020. And in that certification, he says, among other things, quote, I have received, have access to, and have read a copy of the employee handbook and I am in compliance with the obligations applicable to employees set forth therein.

So this is his certification that he understands that text messages are the Debtor's property -- to the extent that they relate to company business, admittedly. And he knew long ago that the U.C.C. wanted his text messages. How do we know that? Because he filed a pleading and he told Your Honor that.

If we can go to the next slide, please.

If Your Honor will recall, last summer the U.C.C. made a motion to compel the production of documents. They sought to get emails and ESI from nine custodians. Mr. Dondero's lawyers filed a response to that motion. On the screen now is

1 Paragraph 3 from Docket No. 942, which is Debtor's Exhibit 40
2 for this purpose. And in Mr. Dondero's own pleading to the
3 Court, he tells the Court the Committee seeks the ESI from
4 nine different custodians, who include the Dondero. The
5 Committee has requested all ESI for the nine custodians,
6 including text messages.
7 So, so Mr. Dondero knew. Certainly, his lawyers knew. He
8 knew in July that the U.C.C. wanted the text messages. The
9 employee handbook provided that they're the Debtor's property.
10 He certified that he understood that. He told the Court that
11 he was aware the U.C.C. wanted Mr. Dondero's text messages.
12 The TRO is entered into, is entered by the Court during
13 the afternoon of December 10th, and later in the evening we
14 know the phone still exists. How do we know that? Again, not
15 clear and convincing evidence, beyond a reasonable doubt,
16 because if we go to the next slide, certainty. Forget beyond
17 a reasonable doubt. Certainty. At 6:25 p.m., Mr. Dondero is
18 told, on the day that the TRO is entered into, that the phone
19 exists.
20 The phone doesn't exist now. It was thrown in the
21 garbage. Mr. Dondero doesn't know how, why, who, when, what.
22 He had the phone. He knew it was -- it contained the Debtor's
23 text messages. He knew the U.C.C. wanted them. And the phone
24 doesn't exist today.
25 Call it spoliation. Call it a violation of 362(a).

1 There's no question that this is a violation of the TRO.
2 The third way he violated the TRO, Section 2(e) under
3 362(a)(3), is by entering the Debtor's premises without
4 permission. Now, I will admit and Mr. Seery will probably
5 tell Your Honor that if this was the only thing that Mr.
6 Dondero did, you know, maybe it wouldn't be a big deal. But
7 it's not, and it's consistent -- we're seeking to hold him in
8 contempt today, Your Honor, but here's the thing. He holds
9 the Debtor in contempt. He holds this Court in contempt. He
10 could not care less what anybody has to say. He will do what
11 he wants. And how do we know that? How do we know that, that
12 this is not a gotcha thing? Because we sent a letter to him.
13 Can we go to the next slide, please?
14 This is going to be in evidence. It's going to be at
15 Exhibit 12. You will see the letter that we sent on December
16 23rd, while the TRO is in effect, where we gave him seven days
17 before we were evicting him. We were evicting him because the
18 Debtor believed he was interfering with the business, but the
19 Debtor didn't need a reason, frankly. But they gave notice.
20 Not only did they give notice of eviction, look at what they
21 told Mr. Dondero. Any attempt by Mr. Dondero to enter the
22 office, regardless of whether he is entering on his own or as
23 a guest, will be viewed as an act of trespass.
24 We told him. He knew that. And yet what does he do? He
25 waltzes right into the Debtor's offices right after the new

1 year to give a deposition. If you read carefully Mr.
2 Dondero's response to the Debtor's motion here, he says, well,
3 there was nobody in the office, like -- he says he used his
4 judgment. He thought it was okay. They even make the
5 argument that maybe the shared services allowed this, the
6 shared services agreement.
7 Again, there's no shared services agreement. Mr.
8 Dondero's not a party to a shared services agreement. But
9 let's remember what the purpose of the exercise was. He went
10 to the office to give a deposition in connection with a motion
11 for a preliminary injunction against him personally. How
12 could this -- every time you hear this shared services,
13 remember -- ask yourself, where is the agreement, how do I
14 know, and how could this possibly relate to shared services?
15 And Mr. Seery is going to tell you he's not going to be
16 able to say, oh, I need $10 or $100 or I can quantify the
17 damage. He's going to tell you, Your Honor, that this and all
18 of the communications that we looked at, he just completely
19 undermined his authority. They undermined the Debtor. They
20 created -- because everybody knows that Mr. Dondero was
21 evicted from the office. But he walks right in. And he's
22 creating -- this is what Mr. Seery will tell you --
23 noneconomic harm that the Debtor has suffered by Mr. Dondero's
24 unmitigated arrogance and contempt that he has for the Debtor.
25 The Debtor is a company in bankruptcy. They have -- they

have asked for your resignation. They have sought and obtained a TRO. They have evicted you from the offices. They told you that if you come back we will treat it as trespass. He is in contempt of the Debtor, of the TRO, of this Court. He could not care less, Your Honor. And that's really why -- that's why we're here. That's what all of this shows.

Contempt. I've got more.

Can we go back to the first page, please?

Section 3(a) of the TRO enjoins Mr. Dondero from causing, encouraging, or conspiring with any entity owned or controlled by him to engage in any of the prohibited conduct. And the prohibited conduct includes interfering or otherwise impeding the Debtor's business.

Now, you remember, when we got the TRO, one of the things that happened -- and I'm not saying that this is a violation of the TRO, I'm just trying to provide some context, and you'll hear it from Mr. Dondero himself -- one of the reasons we got the TRO is, remember about Thanksgiving, he interfered with Mr. Seery's attempt to sell AVYA and SKY stock on behalf of the CLOs, right? And that's where he made the threat to Mr. Surgent, right? So, --

And go to the last slide here.

He does the exact same thing on December 22nd. He engages in the exact same conduct that formed the basis of the TRO just 12 days after the TRO was entered. And he admits to it,

Your Honor. This is not can I meet a clear and convincing? It is not even beyond a reasonable doubt. There is no doubt. There is a certainty. Because he admitted to it right here at the preliminary injunction hearing.

Question, "And you personally instructed, on or about December 22nd, employees of those Advisors to stop doing the trades that Mr. Seery had authorized, right?" Answer, "Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle the trades that occurred, but that's a different ball of wax."

And later on, question, "And you would agree with me, would you not, that you personally instructed the employees of the Advisors not to execute the very trades that Mr. Seery identifies in this email, correct?" Answer, "Yes."

You know, certainty, Your Honor. Not clear and convincing. Not beyond a reasonable doubt. Certainty, because he has admitted to it.

So there you have it, Your Honor. We're going to present evidence today of -- I think I've got 17 separate violations in just a 29-day period. Mr. Seery will testify, hopefully quite briefly, that he never authorized any of this, that he had no knowledge of this, that if he knew any of this was occurring he would have fired these people immediately, whether or not there was a TRO in place.

We're going to put evidence before the Court as to the

1 fees that my firm has charged the Debtor's estate dealing with
2 all of this. Mr. Seery will testify that those fees don't
3 begin to adequately compensate the Debtor because they don't
4 include the fees that are incurred by the Creditors' Committee
5 or FTI or DSI. Mr. Seery will testify that the Debtor went
6 out and hired Kasowitz Benson because they needed some very
7 technical advice on the CLOs. Another $70,000.
8 He's going to testify that there's noneconomic harm here.
9 The undermining of his authority. The -- just the contempt
10 with which all of the employees clearly saw Mr. Dondero
11 treating the Debtor with. And all of that is really
12 problematic.
13 So, at the end of the day, Your Honor, I don't know what
14 Mr. Dondero's excuses are going to be here, but I want to be
15 really, really clear: These provisions could not be more
16 clear. They're going to have to explain away 17 different
17 things. There is no pot plan exception, there is no
18 settlement exception, although there will be no communications
19 that relate to either topic. There will be no shared services
20 exception because nobody party to these communications are
21 party to a shared services agreement, and there will be no
22 shared services agreement in the record.
23 The Debtor is tired of this. I'm tired of it, personally.
24 I've really gone through this way too much. I know this
25 record better than I should, to be honest with you. But we're

1 going to do it today, and I'm glad we're going to do it today,
2 and I assure you, Your Honor, that I will do my very best to
3 make sure this hearing is concluded today.
4 Thank you very much.
5 THE COURT: All right. A couple of follow-up
6 questions on that point, concluding today. I know that at one
7 point there was some back-and-forth through my courtroom
8 deputy about putting limitations on the time this hearing
9 would take. And I never weighed in, I don't think, on that.
10 How many witnesses and how much time do you expect your case
11 in chief to take? You've mentioned Seery and we've heard
12 about Leventon and Ellington.
13 MR. MORRIS: Yeah. Well, I'll just -- I'll just put
14 it out there right now, Your Honor. We made a decision
15 yesterday, because we are so desirous of getting this done
16 today, I don't think we're going to call Mr. Leventon and Mr.
17 Ellington today. I think that they have information that
18 corroborates some of the allegations and some of the facts
19 that we'll be adducing, but I think, between the documents and
20 Mr. Dondero himself, you know, we thought long and hard about
21 it, but I'm prepared to try to limit -- I don't know how long
22 I took on the opening, but I offered to do this with Mr.
23 Dondero and say three-and-a-half hours each, and that way we
24 get done today. And I'm still prepared to do that.
25 And so now, you know, now the cat's out of the bag. I'm

not going to call Mr. -- I mean, I'll cross them if -- because they're on -- they're on Mr. Dondero's list, too. I mean, you know, I heard counsel talk about agreements with the Debtor and all of that. I don't know what agreement she has with Mr. Dondero. But he's on their list, too, so that, you know, Mr. Dondero may call them, and if they do, I'll certainly cross them then. But I want to get this case done today. I'm going to call Mr. Dondero, I'm going to call Mr. Seery, and I'm going to rest. So there's no surprises.

THE COURT: All right. Well, it sounds like you're not committing a hundred percent to no Leventon and no Ellington.

MR. MORRIS: No, I am, in fact. I'm committing a hundred percent --

THE COURT: You're just saying --

MR. MORRIS: -- to my case in chief.

THE COURT: Okay.

MR. MORRIS: To my case in chief. If Mr. --

THE COURT: You're just saying if --

MR. MORRIS: If Mr. Dondero chooses to call them, --

THE COURT: If Dondero calls them, --

MR. MORRIS: -- I'll cross them.

THE COURT: -- you'll cross them?

MR. MORRIS: Yeah.

THE COURT: Okay.

MS. DANDENEAU: Your Honor, this is Debra Dandeneau. In light of what we just heard from Mr. Morris, which we have not heard up until now, may Mr. Ellington and Mr. Leventon be excused? We have no agreement with any other party to produce Mr. Ellington and Mr. Leventon for this hearing.

THE COURT: All right. Mr. Wilson, --

MR. WILSON: Yes, Your Honor.

THE COURT: -- do you have anything to say on this?

MR. WILSON: Yes. I was planning to ask some questions, not a whole lot, but I did want to ask questions of both Mr. Ellington and Mr. Leventon. They are on our witness list as well.

MS. DANDENEAU: Okay. Thank you.

THE COURT: All right. Let's have them stick around.

MS. DANDENEAU: I tried, Mr. Morris.

THE COURT: Okay.

MR. MORRIS: And I tried for you.

THE COURT: All right. Well, Mr. Wilson, let me hear from you on how many witnesses and how long you think your case will take.

MR. WILSON: Your Honor, I am planning to conclude my presentation in the time that we've agreed to. I don't have any additional witnesses that I plan on calling except those that have been mentioned already.

There is a reference to Jason Post on our exhibit list,

but he will not be called today.

THE COURT: All right. So you expect to have questions of Seery, Dondero, and Leventon and Ellington. Is that correct?

MR. WILSON: That's correct, Your Honor.

THE COURT: All right. Well, can we talk about mechanics? Rather than recalling them, I mean, can we just all agree that any cross can go beyond the scope of direct so we can --

MR. MORRIS: Yes, Your Honor.

THE COURT: -- only call them one time? Everyone agree? Mr. Morris says yes.

MR. MORRIS: Yes.

THE COURT: Can you agree?

MR. WILSON: Yes, I agree to that.

THE COURT: Okay. All right. Well, do you agree to three-and-a-half hours total for your case?

MR. WILSON: Are you speaking to me, Your Honor? If so, yes, I do.

THE COURT: Okay. Very good.

Well, Nate, we've got the time parameters to work within.

Mr. Wilson, the one other housekeeping matter I had was I see on the docket that I never specifically entered an order on your motion *in limine*. I did remember telling you all at one point in open court right after it was filed that I was

not inclined to grant it, but I want you to know that I'm not going to grant that.

As you know, there's no jury. And as we judges tend to say in this context, we can weed out what is relevant versus irrelevant. And so I think we need to go ahead and sustain the objection on that and allow the full amount of testimony and evidence that Movant seeks to put in.

All right. So, with that, you may make your opening statement.

MR. WILSON: All right. Thank you, Your Honor. May it please the Court?

THE COURT: Go ahead.

OPENING STATEMENT ON BEHALF OF JAMES D. DONDERO

MR. WILSON: The Fifth Circuit instructs that a party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order. And we know that from a variety of Fifth Circuit cases, but the one I was just quoting from is *Travelhost v. Blandford*, 68 F.3rd 958.

We also know that in a civil contempt proceeding the burden of proof, as Mr. Morris alluded to, is clear and convincing evidence. And the Fifth Circuit in the *Travelhost* case defines clear and convincing evidence as that weight of proof which produces in the mind of the trier of fact a firm

1 belief or conviction as to the truth of the allegations sought
2 to be established, evidence so clear, direct and weighty and
3 convincing as to enable the factfinder to come to a clear
4 conviction without hesitancy of the truth of the precise facts
5 of the case.
6 And I submit to you, Your Honor, that the evidence that
7 you will hear today does not rise to the level of clear and
8 convincing that Mr. Dondero violated a definite and specific
9 order of the Court.
10 In fact, I think the evidence will demonstrate just the
11 opposite. Mr. Dondero recognized why the Court entered the
12 temporary restraining order, and he's going to talk to you
13 about that. He took the Court's order seriously. He
14 discussed it with his counsel and he even had follow-up
15 discussions with his counsel to ask specific questions about
16 what the order allowed him and did not allow him to do. And
17 then, accordingly, he tried to shape his behavior so that he
18 would not run afoul of the order.
19 But unfortunately, the Debtor interprets the order much
20 more broadly than Mr. Dondero and his counsel did, and therein
21 lies the problem. If the Debtor is correct and Mr. Dondero
22 getting a new phone or appearing at the Highland office to
23 give his deposition or attempting to ensure that the proper
24 procedures for discovery are followed violates the TRO, it is
25 simply too broad and too vague to be enforceable.

In reality, what the Debtor wants to do is hold Mr. Dondero in contempt for violating not the TRO but a letter that the Debtor's counsel sent to Mr. Dondero's counsel two weeks after the TRO was entered. You're going to see that letter today.

The prohibitions against communications in the order are confusing and problematic. There's a nonspecific carve-out for communications regarding shared services. And by the way, contrary to what Mr. Morris told you, Mr. Dondero has both the shared services agreements on his exhibit list today, Exhibits 1 and 2.

The only two Highland employees that the Debtor alleges that Mr. Dondero communicated with are two lawyers who are covered by the shared services agreement. Moreover, Mr. Ellington was also tasked -- and you'll hear about this -- as being a go-between between Mr. Seery and Mr. Dondero from the inception of the independent board and continuing through Mr. Seery becoming the CEO and until the day Mr. Ellington was terminated in January.

Mr. Seery never told Mr. Ellington that he was to stop performing his go-between role with Mr. Dondero, even after the December 10th TRO was entered. In fact, he instructed Mr. Ellington to take Mr. Dondero's calls, and he continued to send messages to Mr. Dondero through Mr. Ellington up until the day before Mr. Ellington was terminated.

The footnote in the TRO is equally confusing because the footnote states that, for the avoidance of doubt, this order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to motions filed in the above-referenced bankruptcy case. However, the Debtor now says that Mr. Lynn, Mr. Dondero's attorney, sending emails to Mr. Ellington seeking to identify a witness for a hearing violates the TRO. This is true even though Mr. Seery instructed Mr. Ellington that he could talk to Mr. Lynn as much as he wanted to.

The evidence will further reveal that the meaning of the words "interference" and "threat" are subject to varying interpretations. And you'll hear evidence of what the Debtor contends are threats and interference, and you'll hear testimony from Mr. Seery about how he was impeded, if at all, in his conduct running the Debtor.

Now, Mr. Dondero has conceded that the events that led to the TRO in the first place were inappropriate, and he will testify about that today. He sent emails and texts that ultimately led to the TRO. But he changed his behavior. He conscientiously tried to avoid doing any like thing after the entry of the TRO.

I think Mr. Seery will testify today that no trades were stopped, he has not changed his investment strategies or any other aspect of his responsibility since the entry of the TRO.

And so therefore, even if Mr. Morris is going to argue that the violations of the TRO by Mr. Dondero impeded the Debtor, I think the evidence will reflect otherwise. At most, it could be considered a technical violation, but I believe that Mr. Dondero tried his best to do nothing to violate this TRO and only operate -- tried to operate within its bounds.

Now, the Supreme Court has stated in a case called *Longshoremen Association v. Philadelphia Marine Trade*, 389 U.S. 64, that the judicial contempt power is a potent weapon. When it's founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who obey them will know what the court intends to require and what it means to forbid.

The evidence today is going to show that Mr. Dondero did not understand that the items that the Debtor contends violate the TRO were, in fact, violations of the TRO. Because as you'll see when you look at the language of the TRO and compare it to the allegations made by the Debtor, that there's no violation of a clear and specific provision of the TRO.

Thank you.

THE COURT: All right. Thank you.

Mr. Morris, you may call your first witness.

MR. MORRIS: Thank you, Your Honor. The Debtor calls Mr. James Dondero.

THE COURT: All right. Mr. Dondero, could you speak up and say, "Testing, one, two" so I can pick up your --

MR. DONDERO: Testing, one, two.

THE COURT: All right. I hear you but I don't see you yet. Is your video turned on?

MR. DONDERO: Here we go.

THE COURT: Okay. Gotcha. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you.

Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

JAMES D. DONDERO, DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. You're aware, sir, are you not, that Judge Jernigan entered a TRO against you on December 10th, correct?

A Yes.

Q But you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for the TRO, correct?

A I don't believe so.

Q You didn't even know the substance of what Mr. Seery alleged in his declaration, correct?

A I discussed the TRO itself and I guess, broadly, the

supporting documents with counsel.

MR. MORRIS: Just one moment, Your Honor.

THE COURT: Okay.

(Pause.)

BY MR. MORRIS:

Q I'll ask the question again. You didn't even know the substance of what Mr. Seery alleged in his declaration, correct?

A As far as I know, it hinged on the trades in the week of Thanksgiving.

Q Okay. As of the time of the preliminary -- withdrawn. Do you recall that you testified at the preliminary injunction hearing on January 8th?

A Yes.

Q Okay. And do you recall, as of that time, you did not even know the substance of what Mr. Seery alleged in his declaration?

A I don't recall what I said then.

Q That's because you didn't even think about the fact that the Debtor was seeking a TRO against you; isn't that right?

A That I don't -- what do you mean by that?

Q You didn't even think about the fact that the Debtor was obtaining a TRO against you when you put yourself back in December; isn't that right?

A When the TRO was put in, I changed my behavior materially,

and I -- I got enough of an understanding of it from my counsel.

MR. MORRIS: Move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q You did not care that the Debtor was seeking a TRO against you; isn't that right?

A I wouldn't describe it like that, no.

MR. MORRIS: Can we go to -- you know what? Before I do that, Your Honor, in order to just make this easier, I'd like to move into evidence the Debtor's exhibits at one time, now that we have Your Honor's ruling on the motion *in limine*. The Debtor has Exhibits 1 through 37 that were lodged at Adversary Proceeding Docker No. 80 on February 1st. I guess let's just do them one at a time. And the Debtor would respectfully request that those documents be admitted into evidence.

THE COURT: All right. Mr. Wilson, any objection? (Pause.) You're on mute. Mr. Wilson, you're on mute.

MR. WILSON: I didn't understand the request. Did he say all of his evidence?

THE COURT: Well, he's got --

MR. MORRIS: We're --

THE COURT: -- a couple of different batches on the docket. He's asked for 1 through 37 at Docket Entry No. 80 to

be admitted at this time.

MR. WILSON: Okay. I do have some objections to some of those items.

THE COURT: Okay. Do you want to go through which ones you want to object to?

MR. WILSON: Yeah. I would object to 3, 4, 5, 6, 16, 23, 29, 30, 31, 32, 33, 34, and 35.

THE COURT: Well, so shall we just let you offer those the old-fashioned way, Mr. Morris, as you want a witness to testify about them? Or do you have a response right now? I haven't really heard the substance of the objection, but it probably makes more sense to just admit what's not objected to now and you can --

MR. MORRIS: Yeah. Let's start, let's start with that.

THE COURT: All right.

MR. MORRIS: Let's start with that.

THE COURT: All right. So the Court is admitting 1, 2, 7 through 15, 17 through 22, 24 through 28, and then 36 and 37 at this time. All right?

(Debtor's Exhibits 1, 2, 7 through 15, 17 through 22, 24 through 28, 36, and 37 are received into evidence.)

MR. MORRIS: All right. And next we have, Your Honor, Exhibits 40 through 59 that can be found at Adversary Proceeding Docket No. 101 that was filed on February 19th.

1 THE COURT: All right. You're offering all of those?
2 MR. MORRIS: Yes.
3 THE COURT: All right. Mr. Wilson, any objection?
4 MR. WILSON: Yes. I object to 40 through 46 and then
5 56 through 69.
6 THE COURT: All right. Well, so I will admit 47
7 through 55, and then we'll let Mr. Morris offer the others the
8 old-fashioned way if he wants to.
9 (Debtor's Exhibits 47 through 55 are received into
10 evidence.)
11 MR. MORRIS: Okay. And just to make this easy for
12 the Court, the Debtor will withdraw Exhibits 41 through 46 --
13 THE COURT: Okay.
14 MR. MORRIS: -- and 58 and 59.
15 THE COURT: All right.
16 (Debtor's Exhibits 41 through 46 and Exhibits 58 and 59
17 are withdrawn.)
18 MR. MORRIS: All right. So if we go back now,
19 Exhibit 36 is in evidence. Exhibit 36 is the transcript from
20 the preliminary injunction hearing on January 8th. And I
21 would ask Ms. Canty to put up Page 23, Lines 10 through 12.
22 BY MR. MORRIS:
23 Q Mr. Dondero, were you asked this question and did you give
24 this answer? Actually, beginning at Line 8. Question, "You
25 didn't even know the substance of what Mr. Seery alleged in

his declaration at the time I deposed you on Tuesday, correct?" Answer, "Correct."

And that's because --

A I'm sorry, what page are you on?

Q Yeah, it's Page -- I apologize -- 23.

MR. MORRIS: And then you can see, Your Honor, we read from his deposition transcript and I ask the following question and get the following answer beginning at Line 10.

BY MR. MORRIS:

Q (reading) Question, "Did you care that the Debtor was seeking a TRO against you?" Answer, "I didn't think about it."

That was the testimony that you gave at your deposition and that you affirmed at the hearing on January 8th. Isn't that right, Mr. Dondero?

A Yes.

Q Okay.

MR. MORRIS: Can we take this down, please?

BY MR. MORRIS:

Q You didn't listen to the hearing where the Court considered the Debtor's motion for the TRO, correct?

A Correct.

Q You never read the transcript in order to understand what took place in the courtroom when Judge Jernigan decided to enter the TRO against you, correct?

A Correct. I relied on counsel.

MR. MORRIS: I move to strike the latter portion of the answer.

THE COURT: Overruled.

BY MR. MORRIS:

Q Mr. Dondero, at least as of the preliminary injunction hearing on January 8th, you never bothered to read the TRO that was entered against you, correct?

A Again, I relied on counsel. I don't -- I don't remember exactly when I read it. But I -- I think you're correct.

Q Okay. Let's talk about the cell phone for a bit. How long were you the CEO of Highland Capital Management?

A Since 1994.

Q And Highland had an employee handbook; isn't that right?

A Yes.

Q And they had that handbook during the period of time that you were the CEO, right?

A I'm not sure we had one for the first half-dozen years, but more recently, for sure, we've had a handbook.

Q Is it fair to say that you had the handbook for at least ten years prior to the petition date?

A Yes.

Q Okay. And as the CEO of Highland Capital Management, you knew that the purpose of maintaining the handbook was to inform Highland's employees of Highland's policies and

1 practices, correct?
2 A Yes.
3 Q Okay. And you personally reviewed the handbook, right?
4 A Once a year, in compliance training, we go over the
5 compliance manual or any major changes for about half an hour.
6 Q Can you describe for the Court the compliance training
7 that you just referred to?
8 A Usually, senior executives would meet with Thomas Surgent
9 for -- one-on-one for about half an hour to go over any
10 changes or anything different on the regulatory front that
11 affect the manual.
12 Q And that included both the compliance manual and the
13 employee handbook, correct?
14 A I -- I believe so. Mainly the compliance manual, but --
15 yeah, I believe so.
16 Q And you actually completed certifications on an annual
17 basis with respect to your compliance with the compliance
18 policies and the employee handbook, right?
19 A When the meeting is concluded, yes, we sign what was gone
20 over in the meeting. But that paper would probably explain
21 what was gone over in the meeting. I don't remember exactly
22 what was gone over.
23 Q Okay. That's fair.
24 MR. MORRIS: Can we -- let's take a look at Exhibit
25 55, if we could. That's a copy of the employee handbook, and

that's been admitted into evidence.

BY MR. MORRIS:

Q Do you recall that one of the --

MR. MORRIS: If we could just go to the first page of the document. Yeah.

BY MR. MORRIS:

Q Do you recall that one of the policies in the handbook pertained to a cell phone benefit that HCMLP made available to employees?

A No.

MR. MORRIS: Okay. Can we go to Page 12, please? Scroll down just a little bit.

BY MR. MORRIS:

Q You see there's a cell phone benefit there? And do you recall that under the cell phone benefit employees could obtain up to a hundred dollars a month towards the cost of their own cell phone if they -- if they complied with the policy?

A Yes, I see that.

Q Yeah. And participation in the cell phone benefit, that was voluntary, right? Nobody was required to do that?

A I -- I -- I don't know.

MR. MORRIS: All right. Let's go to the next page, Page 13.

BY MR. MORRIS:

Q Do you see the first sentence of the first full paragraph, "Participation in this policy is entirely voluntary"? Do you see that?
A Yes.
Q So does that refresh your recollection that the cell phone benefit policy was voluntary?
A We can go through the manual. I don't have a detailed memory of the employee manual. It says what it says. I --
Q Okay.
A I don't know.
Q Okay.
MR. MORRIS: Let's just scroll down a little bit. Right there.
BY MR. MORRIS:
Q Do you see the paragraph beginning, Employees?
A Yes.
Q And about halfway through that paragraph, there's a sentence that begins, "Further." Can you just read that sentence out loud?
A (reading) Further, regardless of whether employees choose to participate in this policy, all email, voicemail, text messages, graphics, and other electronic data composed, sent, and/or received related to company business remain the property of Highland.
Q So that was the company's policy, correct?

A Yes.
Q And that was --
A It appears so.
Q And that was the company's policy that applied to all employees, correct?
A As far as I know, although didn't we just establish it's voluntary, the participation, or no?
Q Voluntary to participate in the -- in the cell phone benefit. But what you just read says, quote, Further, regardless of whether the employees choose to participate in this policy, all --
A Okay.
Q And then it goes on. So will you agree with me that it applies to all employees?
A Yes.
Q Okay. The compliance group was responsible for making sure that all of its -- all of Highland's employees were in compliance with the various firm policies, correct?
A Yes.
Q And for a number of years prior to the petition date, Thomas Surgent served as the chief compliance officer, correct?
A Yes.
Q And I think, as you just alluded to, at least on an annual basis, Mr. Surgent sat down with senior executives to go over

the compliance in the -- the compliance policies in the employee handbook, correct?

A Yes.

Q And you personally participated in those meetings, right?

A Yes. And I believe I followed it to the letter.

Q Okay. And as part of the process, you certified that you were in compliance with the obligations applicable as set forth in the employee handbook, correct?

A Yes, and I believe I have been.

MR. MORRIS: Can we put up Exhibit 56, please?

BY MR. MORRIS:

Q And is this the certification --

MR. MORRIS: And we can scroll down.

BY MR. MORRIS:

Q Again, this is the first like real document we're looking at here, Mr. Dondero. The same rule always applies: If there's anything that you think you need to see in the document, just let me know. We've taken pains to redact all of your personal information.

MR. MORRIS: If we go down.

BY MR. MORRIS:

Q But this is the form that was completed for you in 2020 with respect --

MR. MORRIS: If we go to the top.

BY MR. MORRIS:

Q This is the Annual Certification and Conflicts of Interest Disclosure in 2019. This is the firm you were referring to earlier, right?

A Can you show me the part that talks about the employee manual? Because I didn't see that.

Q Sure.

MR. MORRIS: Let's go to the last page, please.

BY MR. MORRIS:

Q Do you see Notes there?

A Yes.

Q All right. And about five lines down -- and I'm just going to read from it -- it says, quote, I have received, have access to, and have a -- and have read a copy of the employee handbook, and I am in compliance with the obligations applicable to employees set forth therein.

Have I read that correctly?

A Yes.

Q So this is your compliance certification in which, among other things, you certify that you had access to and had read and were in compliance with the employee handbook, right?

A Yes.

Q Okay.

A I believe I was, within my tenure at Highland, compliant with it.

Q Okay.

MR. MORRIS: Can we go to Exhibit 57, please?

BY MR. MORRIS:

Q And this is a Q3 2020 questionnaire and transaction certification from you effective as of October 7th. Do you see that?

A Yes.

Q And is this just another periodic compliance certification that Mr. Surgent and the compliance group obtained from senior employees?

A I'm not aware of this one. I mean, I -- I don't remember these questions being part of a --

(Echoing.)

Q Okay.

MR. MORRIS: Let's look to the bottom of the document, Page 8 of 8.

BY MR. MORRIS:

Q Again, we've tried to redact everything that's personal to you, sir. You'll see that there's another certification that you had, quote, received, have access to, and are otherwise in compliance with the handbook. Do you see that?

A Yes.

Q And was that a true statement in October 2020?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, these two exhibits, 56 and

57, are two exhibits that Mr. Dondero's counsel had objected to, so I move for their admission into evidence.

THE COURT: All right. Mr. Wilson, your objection?

MR. WILSON: I'm sorry, Your Honor, were you asking for a response from me?

THE COURT: Yes. Earlier you had objected to 56 and 57 --

(Echoing.)

MR. WILSON: I'm getting a lot of feedback. I'm having trouble hearing.

THE COURT: Yes. Mr. Dondero, your past few answers have had some distortion. So I don't know if you've got anyone there to kind of help you make some adjustments. I'm not sure what --

It's coming from Mr. Dondero, correct?

THE WITNESS: I'm sorry, are you saying it's on my end, the distortion?

THE COURT: Yes. Right now you're loud and clear, but your -- a few answers previously, it's been distorted.

All right. So let's just turn to Mr. Wilson. You had earlier objected to Exhibits 56 and 57. They are now being offered. Do you have an objection still?

MR. WILSON: Well, I do, Your Honor. I don't believe that Mr. Dondero has authenticated these exhibits. He wasn't familiar with them. They're not signed by him. I think that

-- I think they're also hearsay.

Without -- without more confirmation by Mr. Dondero as to what's in these, that he actually made these statements and he signed them, I don't think that they qualify as competent evidence.

THE COURT: Mr. Morris?

MR. MORRIS: If I may, Your Honor.

THE COURT: Uh-huh.

MR. MORRIS: Number one, Mr. Dondero testified unambiguously that each year he -- he completed this form. Particularly as it relates to Exhibit 56, he specifically acknowledged that that was the form that was prepared for him at that time as of the date.

It is true that he did say that with respect to 57 he didn't specifically recall it, but he did testify that he was in compliance and that he understood and agreed with the statement that's in the note itself. And that's the only reason that we're offering the document. So, based on his testimony, I'd respectfully request that both documents be admitted into evidence.

THE COURT: All right. I'll overrule the objections. 56 and 57 are admitted.

(Debtor's Exhibits 56 and 57 are received into evidence.)

THE COURT: All right. Mr. Morris, --

MR. MORRIS: Mr. Dondero?

1 THE COURT: -- you may continue.
2 MR. MORRIS: Yes.
3 BY MR. MORRIS:
4 Q Mr. Dondero, you knew no later than July 2020 that the
5 U.C.C. wanted your text messages; isn't that right?
6 A I heard your opening but I was not specifically aware or
7 noticed, nor did I -- nor did I believe getting a new phone
8 changed any of that.
9 MR. MORRIS: I move to strike, Your Honor.
10 THE COURT: Sustained.
11 BY MR. MORRIS:
12 Q Mr. Dondero, you knew no later than July 2020 that the
13 U.C.C. wanted your text messages, correct?
14 A No.
15 Q In fact, this Court and all parties in interest were
16 explicitly told in July that you knew the U.C.C. wanted your
17 text messages; isn't that correct?
18 A I was not specifically aware.
19 Q Okay. Do you remember last summer that the Creditors'
20 Committee made a motion to compel?
21 A I have no recollection of that.
22 Q Okay.
23 MR. MORRIS: Can we put up Exhibit 34, please?
24 Okay. Your Honor, this is a copy of the Creditors'
25 Committee Emergency Motion to Compel Production by the Debtor

1 dated -- I'm not sure of the date.
2 Can we just go up to the top?
3 Dated July 8th, 2020, that was lodged at Docket No. 808.
4 And I'd like to offer this into the record simply to establish
5 that a request was publicly made by the U.C.C. for Mr.
6 Dondero's text messages.
7 THE COURT: All right. Mr. Wilson, you had an
8 objection earlier. What would you like to say?
9 MR. WILSON: Yes. Yes, Your Honor. My objection is
10 just primarily relevance. As you stated in your opening
11 remarks, the time period we're concerned with is December 10th
12 through January 7th, I believe, and the Debtor is trying to
13 use a document from July of 2020 to impute some knowledge to
14 Mr. Dondero and tie it into that time period six months later.
15 I don't believe that's proper and I would object.
16 MR. MORRIS: If I may, Your Honor?
17 THE COURT: You may.
18 MR. MORRIS: This is -- this is a very simple
19 connect-the-dots. Mr. Dondero was the CEO of Highland Capital
20 Management. Highland Capital Management had an employee
21 handbook. The employee handbook specifically said that text
22 messages related to the company's business were the company's
23 property. Mr. Dondero certified in the exhibits that were
24 just admitted into evidence that he was familiar with the
25 company's employee handbook and that he was in compliance

1 thereof.
2 This document establishes that the Debtor -- that the
3 Creditors' Committee wanted Mr. Dondero's text messages. The
4 next document that we're going to look at is from Mr.
5 Dondero's own lawyers where he acknowledges that he
6 understands that the Creditors' Committee wants his text
7 messages. And all of that is directly relevant to why, when
8 the phone gets thrown away after the TRO is entered into, the
9 damage that is caused the Debtor. The Debtor has lost its
10 property, in violation of 362(a)(3) of the Bankruptcy Code.
11 It's property that Mr. Dondero knew was the Debtor's property.
12 It's property that Mr. Dondero's -- at least his lawyers knew
13 the U.C.C. wanted.
14 So I'm not charging that anything that happened in July
15 2020 was a violation of the TRO. What I am saying, though,
16 and what the evidence clearly shows, is that when that phone
17 was disposed of after the TRO was entered, it was disposed of
18 at a time when Mr. Dondero knew that these text messages were
19 the company's property and that the U.C.C. wanted them.
20 THE COURT: All right. I overrule the objection. 33
21 is admitted.
22 (Debtor's Exhibit 33 is received into evidence.)
23 MR. MORRIS: Go to Paragraph 6, please, just to make
24 it clear.
25 BY MR. MORRIS:

Q Okay. In Paragraph 6 there, there is a sentence that says, quote, In particular, the Committee has spent a considerable amount of time attempting to obtain any production of emails, chats, texts, or ESI communications from the Debtor.

Do you see that?

A Yes.

Q And the U.C.C. specifically identified you as one of the custodians from whom it was seeking this information. Do you recall that?

A Vaguely.

Q All right. Let's just go to Paragraph 10 and Footnote 8. There's a reference to nine identified custodians. Do you see Footnote 8? You're among the custodians that the U.C.C. identified as folks from whom they wanted text messages and other ESI. Right?

A Yes.

Q And your lawyers certainly knew that the U.C.C. wanted your text messages, right?

A Why didn't they just get them from the phone company? Just, if they were trying that hard, why -- why did they -- why did they not get them from -- directly from the phone company?

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:
Q Mr. Dondero, your lawyers knew that the U.C.C. wanted your text messages. Isn't that correct?
A I don't know.
Q Do you recall that your lawyers filed a response to the U.C.C.'s motion?
A (no immediate response)
Q Do you recall that your lawyers filed a response to the U.C.C.'s motion?
A I -- I do not. I hope they said, just get all the texts you want from the phone company. I hope that's what they said.
MR. MORRIS: Okay. Can we put up -- I move to strike, Your Honor.
THE COURT: Overruled.
MR. MORRIS: Can we put up Exhibit 40, please?
BY MR. MORRIS:
Q And this document is in evidence. Do you see that this is your response or the response that was filed on your behalf?
A Yes.
MR. MORRIS: Can we go to Paragraph 3, please?
BY MR. MORRIS:
Q Can you just read that paragraph out loud?
A (reading) Accordingly, the proposed protocol of the Committee seeks, among other things, documents, emails, and

other electronically-stored information, ESI, exchanged from or between nine different custodians, to include Dondero. The Committee has requested all the ESI for the nine custodians, including, without limitation, email, chat, and text, Bloomberg Messaging, or any other ESI attributable to the custodians.

Q So, on July 14th, your lawyers told the Court on your behalf that it knew -- that they knew that you were on one of nine custodians from whom the Committee wanted text messages. Correct?

A That's what it says.

Q Okay. And are you aware that the Court subsequently entered an order giving the Committee the relief that it sought?

A Okay. No, I'm not specifically aware.

Q Okay. Until -- until at least December 10th, the day that the TRO was entered into, you had a cell phone that was bought and paid for by the Debtor. Correct?

A Yes.

Q And that cell phone had text messages on it. Correct?

A Yes.

Q And from time to time, you use your phone to exchange text messages concerning company business. Correct?

A Very rarely. But yes.

Q But you do. Correct?

A Yes.
Q And in fact, in fact, we're going to look at certain text messages that were sent to you or that were sent by you on your new phone concerning company business. Correct?
A Yes, we will.
Q And we know that the cell phone existed after the TRO was entered, correct?
A I don't -- maybe a day or two, but it -- it -- I don't know if it's fair to say it existed. I followed protocol. I gave my old phone to the tech group. They got me a new phone. They handled it according to the manual and the protocol. When it was put back in Tara's drawer, I don't know if it had any information on it at that point in time. But, again, you could have gotten all the texts you want from the phone company.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
MR. WILSON: Your Honor, can Mr. Morris state the objection that he has to that testimony?
MR. MORRIS: It's not responsive to the question. It's a speaking -- it's just -- it's what he wants to say. I'm asking a leading question, Your Honor, that's a yes or no answer, and he's giving me the answer that he wants, --
THE COURT: All right. I agree --
MR. MORRIS: -- not the answer that I've asked for.

THE COURT: I agree. It was nonresponsive.

MR. MORRIS: Your Honor, I forgot in my -- in going over the exhibits. Last night, we filed a notice of a replacement of certain exhibits. That could be found at Docket No. 128. And among the three exhibits that were replaced was Exhibit 11.

Exhibit 11 is a copy of the TRO. The reason that we replaced it is because the version that was on Docket No. 80 had -- I guess there was typing along the top so you couldn't see the date and time of the entry.

But I would ask Ms. Canty just to put up onto the screen the version of Exhibit 11 that was attached to Document 128 last night.

THE COURT: Okay.

BY MR. MORRIS:

Q And so here, you can see -- you see this is the TRO, Mr. Dondero? We can scroll down a little bit if that's helpful. All right. This is the TRO, right?

A Yep.

Q And if you go to the top, you can see that it's entered on December 10th at 1:31 in the afternoon. Am I reading that correctly?

A Yes.

Q Okay. And later that night, you were told that your own

-- your old phone was in the top of Tara's desk drawer. Correct?

A Yes.

Q Okay.

MR. MORRIS: Can we just put up Exhibit 8, please?

BY MR. MORRIS:

Q And this is the text message that Mr. Rothstein sent to you on December 10th at 6:25 p.m. at night. Right?

A Yes.

Q And so your phone existed after the TRO was put into effect, correct?

A Again, I have to answer that question by saying that the process for getting a new phone started two weeks earlier. The technology group, Jason and crew, could have saved or done whatever with the phone, but they followed protocol and they wiped the phone exactly as Thomas Surgent and the employee manual says, and the phone that was put back on my desk, the old phone, had nothing on it.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Okay. Sustained.

MR. MORRIS: It's a very simple question.

THE COURT: Mr. Dondero, I'm going to --

MR. MORRIS: Sir, --

THE COURT: I'm going to remind you of the rules. You need to give direct answers to the questions, and most of

these questions are yes or no answers. And then when Mr. Wilson has the chance to examine you, presumably he will ask follow-up questions that allow you to give some of these answers that I guess you're wanting to give. Okay? So please, please listen carefully and just directly answer the questions.

All right. Mr. Morris, go ahead.

THE WITNESS: I'll do the best -- Your Honor, listen, I'll do the best I can. In all due respect, I will do the best I can. But if I don't believe I can give an honest or not misleading answer with a yes/no, I need to give a more detailed answer or I need to say I can't answer the question that you've put forward.

THE COURT: Okay. I understand why it's difficult, but, again, that's why we allow direct, cross, redirect, recross, because it is your own lawyer's responsibility, in cooperation with you, to ask questions that allow you to give the fulsome answers that you think the Court needs to hear. But at this juncture, please just try to directly answer the question yes or no when that's all it is aimed at asking.

All right, Mr. Morris. Go ahead.

MR. MORRIS: Thank you, Your Honor.

BY MR. MORRIS:

Q On December 10th at 6:25 p.m., after the TRO was entered into, Mr. Rothstein told you that your old phone was in the

top of Tara's desk. Correct?
A Yes.
Q Okay. And Mr. Rothstein is not going to testify in this proceeding, is he? You're not calling him to testify on your behalf, right?
A I don't know.
Q Mr. Surgent is not being called to testify in connection with this proceeding, correct?
A I -- I don't -- I didn't hear him mentioned earlier. I don't think so.
Q Okay. Tara was still serving as your assistant as of January 8, 2021, right?
A Yes.
Q So it's fair to say that you were informed on December 10th that the phone, the old phone, was not thrown in the garbage, had not been disposed of, but was instead sitting in Tara's desk. Correct?
A Yes.
Q And it's also fair to say that, as of December 10th, Mr. Rothstein didn't take it upon himself to throw your old cell phone away. Correct?
A I don't know.
Q So it's fair to say that you were informed on December 10th that the phone was not thrown in the garbage -- withdrawn. It's also fair to say that, as of December 10th,

Mr. Rothstein didn't take it upon himself to throw your old phone in the garbage. Right?

A I don't know what happened to the phone. I don't know what Jason did or did not do.

MR. MORRIS: Can we pull up Page 61 from the transcript of the preliminary injunction proceeding? And if we can go down to Line 20 to 23?

BY MR. MORRIS:

Q Were you asked this question and did you give this answer: "And it's also fair to say that, as of December 10th, Mr. Rothstein didn't take it upon himself to throw your old phone in the garbage, right?" Answer, "Not as that moment, but like I said, I can find out how it was disposed of."

Did you give that answer to that question at that time?

A Yes.

Q Okay. But you don't know who threw your phone away, right?

A No.

Q It never occurred to you to get the Debtor's consent before the phone was thrown away, correct?

A I -- everything I did with regard to the phone was with the Debtor's consent and process. If that answers your question.

Q Sir, you never -- you never asked the Debtor for permission to throw your phone away, did you?

A I -- I didn't have to because I handled it according to the employee manual by giving it to the tech group.
Q Does the employee manual tell you that you're allowed to throw away a phone with the Debtor's property on it when a party to a litigation has asked for the text messages?
A There were no text messages on the phone by that point in time.
Q So, so you -- so you allowed the text messages to be erased, even though your lawyers told the Court that the -- that they understood that the U.C.C. wanted your text messages, and in fact, the Court entered an order in order to get those text messages?
A No, that is not correct. I gave it to the tech group, which was part of the Debtor, and they handled it in any which way they could have, but in compliance with the manual. And they wiped the old phone as they got me a new phone. And the Debtor at that point in time could have downloaded, copied, or got from the phone company whatever text messages they wanted.
Q But Mr. Seery didn't even know you were doing this; isn't that right?
A I have no idea.
Q You have no reason to believe that Mr. Seery had any knowledge that you were trading out your phone, correct?
A I believe he knew because he had told all employees to get new phones within the next 30 days. So it wasn't -- it wasn't

a surprise, I don't think, to him or anybody else. And I don't under -- this -- I don't understand the brouhaha over what's really nonsense.

Q Do you think it's nonsense that text messages that are the company's property were disposed of even though they were specifically requested by the U.C.C. and ordered by the Court to be produced? That's what you describe as nonsense?

A I describe it as nonsense when everybody was told to get new phones and everybody got new phones and everybody went through the protocol of giving them to the tech group. The tech group ordered the new phones, got rid of the old phones to protect client data, et cetera, like they've always done. And the Debtor could have made as much copies of anything, knowing that everybody had to get new phones because they were canceling everybody's cell phone in the next 30 days. The Debtor could have done whatever it wanted with the material. And just because the tech group went through the normal historic process, you're trying to hold me and other people on that list somehow accountable, and it's craziness.

Q Okay. It never occurred to you to get the Debtor's consent before you did this, right?

A By not doing it on my own, by not ordering my own phone, I didn't think it was necessary to get Debtor consent because I gave the phone to the Debtor as part of getting a new phone.

MR. MORRIS: Can we get Exhibit -- go to Page 58,

please, Line 15?

BY MR. MORRIS:

Q Were you asked this question and did you give this answer?

MR. MORRIS: If we can scroll down to Line 15.

BY MR. MORRIS:

Q Question, "Did it ever occur to you to get the Debtor's consent before doing this?" Answer, "No."

Did you give that testimony, sir?

A Yes. Because I gave the Debtor my phone. When I got a new phone, I gave them my old phone. The Debtor wiped the phone and gave it back to me.

THE COURT: Is it --

MR. MORRIS: I move to strike every -- after -- after he confirms that he gave that answer to his prior testimony.

THE COURT: Sustained.

MR. MORRIS: Sir, --

MR. WILSON: Your Honor, I'll object that Mr. Morris has asked and answered these questions several times. At this point, he's badgering the witness.

THE COURT: Overruled.

BY MR. MORRIS:

Q Sir, you had the billing changed from the company account to your personal account, correct?

A As did everybody, at the direction of Seery.

Q Sir, you had your account changed; isn't that correct?

A I -- I handled my personal -- or, I had my assistant handle my own personal phone based on the notice that Seery had given everybody.

Q Do you have a copy of that notice? Are we going to have that in evidence today?

A I don't think Seery would deny it. He's not -- hasn't -- well, whatever. No, I don't have a -- I don't have a copy of a memo.

Q So you're telling me that Mr. Seery gave an instruction for everybody to throw the cell phones away that had been asked for by the U.C.C., and he didn't even do that in writing? That's your testimony, is that -- is that he gave that instruction to throw cell phones away that had been specifically requested by the U.C.C., and he didn't even do that in writing?

MR. WILSON: Objection, Your Honor. Mr. Morris is mischaracterizing the testimony.

THE WITNESS: He's -- he's horribly mischaracterizing it.

THE COURT: Okay.

THE WITNESS: I'm saying he told everybody and he stopped paying everybody's cell phone bill at the end of January and he told everybody to get new phones. And to be as compliant as possible, I gave it to the Debtor's employees to handle buying a new phone and handling the old phone according

to the manual and whatever else the Debtor needed to do with the phone.

THE COURT: Okay. Let's try to --

THE WITNESS: So the Debtor --

THE COURT: -- get back on track.

THE WITNESS: -- wiped the phone.

THE COURT: Let's try to get back on track --

MR. MORRIS: So, so you --

THE COURT: -- with the instruction --

MR. MORRIS: Go ahead.

THE COURT: -- of giving yes and no answers. Again, Mr. Wilson is going to get all the time he needs to follow up with his own questions. All right?

Go ahead, Mr. Morris.

MR. MORRIS: Sir, -- thank you, Your Honor.

BY MR. MORRIS:

Q Sir, you never asked the Debtor for permission to change the phone from its account to your personal account. Correct?

A As I've stated, I gave the Debtor my phone. No, I did not ask specific permission. That would be ridiculously redundant.

MR. MORRIS: I move to strike, Your Honor. It's a really simple question. Either he -- either he -- either he asked for permission or he did not. The commentary really needs to stop.

1 THE COURT: Sustained.
2 Yes or no? Permission or not?
3 BY MR. MORRIS:
4 Q I'll ask the question again. Sir, you never asked the
5 Debtor for permission to change the phone from its account to
6 your personal account, correct?
7 A I believe I implicitly did by giving them the phone, so
8 I'm going to say yes.
9 MR. MORRIS: Go to Page 59, please, Line -- Line 11.
10 BY MR. MORRIS:
11 Q Were you asked this question and did you give this answer?
12 Question, "And you never asked the Debtor for permission to do
13 that. Correct?" Answer, "No."
14 Did you give that testimony on January 8th?
15 A Yes. But I'd like to correct it as I just said.
16 Q Sir, you never even told the Debtor you were doing what
17 you did. You never even told the Debtor that you were
18 changing, let alone -- withdrawn. Not only didn't you obtain
19 their consent, you never told the Debtor that you were
20 changing the account from its account to your personal
21 account. Correct?
22 A We were required to move our phones, so no, I didn't tell
23 them that we were honoring their request.
24 Q This notion of being required to do that, did your lawyers
25 mention that in their papers in opposition to this motion

today, that Mr. Seery had required all of this? Do you recall reading the papers? Is there anything in there about that?

A It's the truth. I -- I don't -- in the papers. I don't know.

Q Okay. Let's look at Line 14, since it's just still on the screen, and I'll ask it again. Were you asked this question and did you give this answer? "You never told the Debtor you were doing that. Correct?" Answer, "No."

Was that the testimony you gave then?

A Again, yes, but I'd like to --

Q Okay.

A -- clarify with what I just said.

Q And you never told Mr. Seery or anybody at my firm that the phone was being thrown in the garbage, correct?

A They knew what the protocol was. You knew what the protocol was. I didn't think there was a reason to.

Q Sir, you never told anybody at my firm or Mr. Seery that you were throwing -- that the phone was being thrown in the garbage, correct?

A No, I did not.

Q Okay. That's all I'm asking. You didn't believe it was necessary to give the Debtor notice that you were taking the phone number for your own personal account and throwing the phone in the garbage, correct?

A I'm sorry. Can you repeat that question?

Q You didn't believe it was necessary to give the Debtor notice that you were taking the phone number for your own personal account and throwing the phone in the garbage. Correct?

A I didn't think -- correct. I didn't think I needed to do anything other than what I did.

MR. MORRIS: I move to strike after the word "Correct," Your Honor.

THE COURT: Overruled.

BY MR. MORRIS:

Q Do you remember, a couple of weeks after Mr. Rothstein told you that your own -- old phone was in Tara's drawer, that the Debtor sent a letter to your lawyers in which it gave notice to you to vacate the offices and return its cell phone?

A I believe, yeah, I believe that was the end of December.

MR. MORRIS: Can we look at that document, please? It's Exhibit 27.

This document is in evidence, Your Honor.

And if we can go to the bottom of the second page.

BY MR. MORRIS:

Q This is a letter from my firm to your lawyers, right?

A Yes.

Q You want to read the first sentence of that last paragraph out loud? "HCMLP."

A (reading) HCMLP will also terminate Mr. Dondero's cell

phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero -- collectively, the cell phones. HCMLP demands that Mr. Dondero immediately turn over the cell phones to HCMLP by delivering them to you. We can make arrangements to recover the phones from you at a later date.

MR. MORRIS: Okay. Can we just scroll back --

MR. WILSON: Your Honor?

MR. MORRIS: -- to see the

MR. WILSON: Can I -- can I make a request that the rule of optional completeness be invoked and the date of the letter be shown?

MR. MORRIS: Yeah. I was just about to get there, sir. I join.

THE COURT: All right. Fair enough.

MR. MORRIS: It's December 23rd.

BY MR. MORRIS:

Q Do you see that, sir?

A Yes.

Q So, if we can go back to what you just read down at the bottom there. So, on December 23rd, my firm, on behalf of the Debtor, is informing your lawyers that it will terminate your cell phone plan. Isn't that right?

A Yes.

Q Can you think of any reason why they would be informing

your lawyers of that on December 23rd if they had already told you that?

MR. WILSON: Objection, Your Honor. He has no knowledge of what the Debtor's lawyers were thinking when they wrote this letter.

THE COURT: Overruled. He can answer if he has an answer.

THE WITNESS: I have -- I have no idea.

BY MR. MORRIS:

Q Okay. But it's true that, on December 23rd, my firm, on behalf of the Debtor, informed your lawyer of its intent to terminate the phone plan of which you were a part. Correct?

A Again, no. I believe the notice happened much sooner, and that's why a whole bunch of people changed their phones at or around the time I did.

Q Who else had phones that were paid for by the Debtor?

A I believe a significant majority of the firm.

Q Isn't it true that only you and Mr. Ellington had phones that were paid for by the Debtor? I'm not talking about the $100 policy that we looked at before. But isn't it true that you and Scott Ellington were the only people in the whole firm who had phones that were paid for by the Debtor?

A I did not know that.

Q Okay. All right. So do you see later on in that paragraph, at the top of Page 3 -- I'll just read it. Quote,

HCMLP further demands --

MR. MORRIS: Oh, no. I'm sorry. Can we go back up a little bit? I'm having trouble. Yeah. Right there.

BY MR. MORRIS:

Q (reading) The cell phones and the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or wiping any information or messages on the cell phone. HCMLP, as the owner of the account and the cell phones, intends to recover all information relating to the cell phones and the accounts and reserves the right to use the business-related information.

Have I read that correctly?

A Yes.

Q And that's what your -- that's what -- that's what the Debtor told your lawyers on December 23rd. Correct?

A Yes.

Q But the Debtor was a couple of weeks too late in making these demands. Correct?

A Because the Debtor wiped my phone. I never wiped my phone.

Q Sir, the Debtor was a couple of weeks too late in making these demands. Correct?

A No.

MR. MORRIS: Page 65 of the transcript, please. Line 4 through 5.

BY MR. MORRIS:
Q (reading) "We were a couple of weeks too late, huh?" Answer, "It sounds like it."
Did you give that answer back on January 8th?
A Yes.
Q And that's because the phones were already in the garbage. Correct?
A No, it -- the phones were already wiped by the Debtor's personnel.
Q Look at Line 6 and Line -- through Line 8 and see if you gave this testimony on January 8th. Question, "Because the phones were already in the garbage; isn't that right?" Answer, "Yes."
Did you give that answer back on January 8th?
A Yes.
Q And that's not -- but that's not what Mr. Lynn told the Debtor in response to the Debtor's letter of January 20 -- December 23rd. Correct?
A I don't know.
Q Well, let's see.
MR. MORRIS: Can we go to Exhibit 22, please?
BY MR. MORRIS:
Q This is your lawyer's response to the December 23rd letter that we just saw. Do you see that?
A Yep.

Q Mr. Lynn doesn't say anything about the cell phone being thrown in the garbage, right?
A He doesn't know what happened to the phone. Neither do I.
Q Sir, Mr. Lynn doesn't say anything about the cell phone being thrown in the garbage, does he?
A No.
Q And Mr. Lynn doesn't say that the phone was disposed of, correct?
A (no immediate response)
Q Mr. Lynn didn't say that the phone was disposed of, did he?
A No, I don't see it in that paragraph.
Q Okay. Mr. Lynn didn't describe any company or policy whereby old cell phones are to be thrown in the garbage or otherwise disposed of, correct?
A I don't know if he would have awareness of that, but no, he doesn't mention it.
Q Mr. Lynn doesn't cite to anything Mr. Seery said with respect to the wiping of phones, right?
A No.
Q Mr. Seery -- Mr. Lynn doesn't reference Mr. Seery at all in this letter response to my colleague, correct?
A Nope.
Q He doesn't cite to any policy in the employee handbook to justify the loss of the cell phone, correct?

A No.
Q And you have no reason to believe that Mr. Lynn would withhold from the Debtor the information that the cell phone had been thrown in the garbage consistent with company practice, correct?
A No.
Q Let's talk about the trespass issue for a moment. Where are the Debtor's offices located, to the best of your knowledge?
A 300 Crescent Court, Suite 700.
Q And how long have they --
A Dallas, Texas.
Q And they're a tenant in that space; is that correct?
A Yes.
Q And they're a tenant pursuant to a lease; is that right?
A Yes.
Q And to the best of your knowledge, Suite 300, the Debtor is the sole tenant under the lease for that space. Correct?
A I -- yeah, I bel... I don't know. I -- the building has rules for subleases. I don't know if it -- affiliates are on the lease or not. I -- I don't -- I don't have an awareness of the lease.
Q So, but you don't have any reason to believe that anybody's on the lease other than the Debtor. Is that fair?
A I -- I just don't know. But it -- I don't -- when it

1 started, when the lease started ten years ago or eight and a
2 half years ago, I'm sure it had just Highland, but I don't
3 know who's on it now.
4 Q Okay. Okay. To the best -- you understand the Debtor is
5 subject to the bankruptcy court's jurisdiction, correct?
6 A Yes.
7 Q And in that December 23rd letter that we just looked at,
8 the Debtor demanded that you vacate their offices. Correct?
9 A Yes.
10 MR. MORRIS: Okay. Let's just look at a little bit
11 of that letter, if we can call back Exhibit 27, please.
12 BY MR. MORRIS:
13 Q On the second page, do you see that there's a statement,
14 the paragraph beginning, "As a consequence." That's the
15 paragraph where the Debtor informed your lawyers that your
16 access, quote, will be revoked effective Wednesday, December
17 30, 2020. Do you see that?
18 A Yes.
19 Q And the Debtor informed your lawyers that it was taking
20 steps to revoke your access to the offices because the Debtor
21 believed that you were interfering with the Debtor's business.
22 Right?
23 A It doesn't say that here, but --
24 Q Well, look at the paragraph above, if we can. And I don't
25 mean to -- I don't mean to, you know, play games, but the

paragraph above says specifically that, as a result of the conduct, your presence at the offices is being revoked because it's too disruptive to continued management. Do you see that?

A Yes.

Q So I'm not asking you if you agree with it, but there's no question that, on December 23rd, the Debtor told your lawyers that your access was being revoked as of December 30th because the Debtor believed that you were being a disruptive force in the offices. Right?

A Yes.

Q Okay.

MR. MORRIS: And if we can go to the last page, please. If we could just push it down a little bit, because I have this in the upper right corner. No, the other way. I'm sorry. Yeah. Right there.

BY MR. MORRIS:

Q And the Debtor told your lawyers, quote, any attempt by Mr. Dondero to enter the office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Do you see that?

A Yes.

Q So the Debtor's position was very, very, very clear to your lawyers as of January -- as of December 23rd. Is that fair?

A No.

Q The Debtor never -- no, you think -- is it -- are you aware of any exception that Debtor made in this letter that would allow you entry into the offices without protest by the Debtor?

A As I've stated before, my belief was, for the deposition on the 4th, I had no other way to electronically appear, I would have had to cancel, other than coming back to the main conference room at Highland. It looks like there's four days' difference, but with New Year's and the holiday and days off, there's really one business day difference between when I got kicked out and the deposition. I wouldn't have been able to attend the deposition otherwise if -- I didn't -- I still don't believe attending the deposition that you required was a trespass.

Q The Debtor never told you that you would be permitted to enter their offices after December 30th if you, in your own personal discretion, believed it was appropriate. Correct?

MR. WILSON: Objection, Your Honor. I'm going to object to this line of questioning because this doesn't have anything to do with the TRO and instead it's a letter dated December 23rd, 2020 from the Debtor's counsel.

THE COURT: Your response?

MR. MORRIS: Yeah. This is just so simple, Your Honor. The TRO prevents Mr. Dondero from violating the automatic stay. The automatic stay says that Mr. Dondero

1 cannot take any steps to control the Debtor's property.
2 The evidence is now in the record that the Debtor is a
3 lease -- is the leaseholder on this space. The Debtor told
4 Mr. Dondero not to enter the space because he was a disruptive
5 force, and the Debtor told Mr. Dondero that if he attempted to
6 enter the space for any purpose, that they would be viewing it
7 as an act of trespass.
8 So, by entering into the Debtor's premises, by entering
9 into the Debtor's property without the Debtor's consent, is a
10 violation of the automatic stay.
11 As I said at the beginning of this, if this were the only
12 thing, Your Honor, I probably wouldn't belabor the point. But
13 it's -- it is just more evidence of his complete contempt for
14 the Debtor and for the automatic stay and for the TRO. And I
15 believe it's completely relevant.
16 THE COURT: All right. I'm going to --
17 MR. WILSON: Your Honor, my response to that is that
18 he's now got the TRO and trying to invoke two different
19 documents, one of which being 362 itself and the other being
20 this letter, but Rule 65(d) states that a restraining order
21 must describe in reasonable detail, and not by referring to
22 the complaint or other document, the act or acts restrained or
23 required.
24 THE COURT: Okay. I'm going to sustain the
25 objection. Let's move on.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q During the first week of January, you just walked right into the Debtor's office and sat for the deposition. Correct?

A Yes.

Q And you didn't have the Debtor's approval to enter their offices at any time in the year 2021. Correct?

A Not explicitly.

Q You didn't have the Debtor's approval to enter their offices to give a deposition. Correct?

A Not explicitly. Correct.

Q Now, --

MR. WILSON: Your Honor, I believe you sustained my objection, and I would renew it to the extent that Mr. Morris is trying to establish that entering the Debtor's property on January 4th was a violation of the temporary restraining order.

THE COURT: All right. Well, I think we have a legitimate issue whether the so-called trespass, the entry of Mr. Dondero onto the premises in early January, violated the explicit terms of the TRO, so I'm going to sustain the objection, and move on, please.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Mr. Dondero, in December, after the TRO was entered into,

you interfered with the Debtor's business, correct?
A No, I did not.
Q Well, one of the reasons that the Debtor evicted you is precisely because you were interfering with their business. Correct?
A No, I did not.
MR. MORRIS: Can we go back to Exhibit 27, please?
BY MR. MORRIS:
Q Do you see on the first page, at the bottom, there is an explanation about the Debtor's management of the CLOs?
A Yes.
Q And there's a recitation of the history where, around Thanksgiving, you intervened to block those trades?
A Yes.
Q And if we can continue, the next paragraph refers to a prior motion that was brought by K&L Gates on behalf of the Advisors and certain funds managed by the Advisors?
MR. MORRIS: If we keep going. Yeah.
THE WITNESS: Yes.
BY MR. MORRIS:
Q You were aware of that motion when it was filed, correct?
A Yes.
Q And you were -- you were supportive of making that motion. Right?
A Yes. Generally.

Q Okay.

MR. MORRIS: And just scroll down, down to the next paragraph.

BY MR. MORRIS:

Q The next paragraph says, quote, on December 22, 2020, employees of NPA and HCMFA.

MR. MORRIS: I'm sorry. I can't read it. If we can just push the language down. Let me try again.

BY MR. MORRIS:

Q (reading) On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs' sale of AVYA and SKY securities. Have I read that correctly?

A Yes.

Q NPA refers to NexPoint, right?

A Yes.

Q That's an entity that you largely own and control, correct?

A Yes.

Q And HCMFA refers to Fund Advisors, another advisory firm that you own and control. Correct?

A Yes.

Q On or about December 22, 2020, you personally instructed employees of the Advisors not to execute trades that Mr. Seery had authorized with respect to SKY and AVYA, correct?

A No. That's absolutely not true. I've corrected that

1 several times now.
2 Q Sir, you personally instructed employees of the Advisors
3 not to execute the very trades that Mr. Seery wanted executed.
4 Correct?
5 A Not on December 22nd. The week before Thanksgiving, yes.
6 I respected the -- I respected the TRO and the week of
7 Christmas trades that also gave a multimillion dollar loss to
8 the Funds. I just asked Jason Post to look at the trades.
9 MR. MORRIS: Can we go to Page 76 of the transcript,
10 please? Line 15 through Line 19.
11 BY MR. MORRIS:
12 Q Did you give this answer to this question? Question, "And
13 you would agree with me, would you not, that you personally
14 instructed the employees of the Advisors not to execute the
15 very trades that Mr. Seery identifies in this email, correct?"
16 Answer, "Yes."
17 Is that the answer you gave back on January 8th?
18 A I have corrected this half a dozen times.
19 Q Okay. When you said you corrected it, let me ask you
20 this, is that because instead of saying that the letter
21 shouldn't have referred to the refusal to settle trades, that
22 -- that it would be more appropriate that you instructed
23 Advisors' employees not to execute the trades?
24 A No, that is not correct.
25 MR. MORRIS: Can we go to Page 73, please?

BY MR. MORRIS:

Q Were you asked these questions and did you give these answers? Question, "And you personally instructed, on or about December 22, 2020, employees of the Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA. Right?" Answer, "Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions to settle trades that occurred, but that's a different ball of wax." "Okay." Question, "But you did instruct them not to execute trades that had not yet been made. Right?" Answer, "Yeah. Trades that I thought were inappropriate for no business purpose, I -- I told them not to execute."

Was that truthful testimony at the time you gave it?

A No. It's -- this is part of the -- this is part of the clarification from 6 or 8 lines ago or 10 or 15 lines ago. It's all the same. I was in a truly emotional disapproving state during this part of the deposition. I believed it was against the Advisers' Act and Seery was intentionally causing harm to the CLOs. And I stopped the trades around Thanksgiving. I called the traders. I specifically stopped them.

Once the TRO was in effect, I respected the TRO. I respected the Court. I did not call anybody. There's no evidence of me calling anybody. No one said I called anybody.

I just sent one email to Jason Post, a non-Highland employee, that he should look at the trades. And all this gobbledygook is -- is -- for the last 10 or 15 lines is the same question that I've clarified half a dozen times.

Q Okay. That's fine. Let's talk about some of your communications with the Debtor's employees.

MR. MORRIS: I apologize. Before I -- I'm going to move to the next and last topic, Your Honor, but this will be a little bit -- while longer, and I just wanted to check and make sure, I don't know if the Court wanted to take a short break. I'm okay. Or if the witness did. We've been going for a while.

THE COURT: All right. Let's take a ten-minute break. It's 11:40 Central time. We'll come back at 11:50.

MR. MORRIS: Okay. Thank you, Your Honor.

THE CLERK: All rise.

(A recess ensued from 11:40 a.m. until 11:52 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. We are going back on the record in the Highland matter.

Mr. Morris, are you ready?

MR. MORRIS: I am, Your Honor.

THE COURT: All right. Mr. Dondero, are you ready to go forward? (No response.) Mr. Dondero, are you there?

MR. WILSON: Mr. Dondero will be on his line

1 momentarily. He's attending from a different room so we don't
2 have feedback issues.
3 THE COURT: All right.
4 (Pause.)
5 THE COURT: All right. Are we almost ready, Mr.
6 Wilson? You're on mute.
7 MR. WILSON: I believe so, Your Honor. He -- he
8 walked out of our room right before you came on and said he
9 was going to run to the restroom and go back to his room. So
10 I think it should just be a second.
11 (Pause.)
12 THE WITNESS: I'm back.
13 THE COURT: All right. Mr. Dondero, you're still
14 under oath.
15 Mr. Morris, you may proceed. (Pause.) Mr. Morris, now
16 you're on mute.
17 MR. MORRIS: Thanks for letting me know.
18 DIRECT EXAMINATION, RESUMED
19 BY MR. MORRIS:
20 Q Mr. Dondero, you understand that the TRO prevented you
21 from communicating with any of the Debtor's employees except
22 as it specifically related to shared services to affiliates
23 owned or controlled by you. Correct?
24 A Well, shared services broadly, as I would -- I would
25 describe it. And -- yes. But -- but the -- the proposal for

quite a while, for months, was shared services partly to affiliates but partly to a new entity also.

MR. MORRIS: Okay. Can we pull up Exhibit 11, please, from the Docket No. 128? And if we can go to Page -- the bottom of Page 2, just to make sure that we're on the same point here.

BY MR. MORRIS:

Q Paragraph 2 says, James Dondero is temporarily enjoined and refrained from, little (c) at the bottom, communicating with any of the Debtor's employees except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero.

Do you see that?

A Okay. That's correct as far as it goes, but yes.

Q Okay. And there's nothing ambiguous to you about the language that's in the order, correct?

A That's correct. That -- yes.

Q And you personally don't have a shared services agreement with the Debtor, do you?

A Not at this -- no -- with the Debtor. No, I don't. Not with the Debtor.

Q Okay.

A No.

Q And the Bonds Ellis firm only represents you in your individual capacity in the bankruptcy case, right?

A Yes.
Q The Bonds Ellis firm doesn't represent any entity that is owned or controlled by you. Right?
A Correct.
Q So the Bonds Ellis firm doesn't represent any entity owned or controlled by you that's party to a shared services agreement with the Debtor. Correct?
A I believe that's correct.
Q Okay. And Douglas Draper is a lawyer who represents the Get Good and Dugaboy Investment Trusts. Right?
A Yes.
Q And you're a lifetime beneficiary of each of those trusts, correct?
A For Dugaboy, yes. For Get Good, I'm not sure.
Q Okay. To the best of your knowledge, neither the Get Good nor the Dugaboy Investment Trust ever had a shared services agreement with the Debtor, correct?
A No. They didn't have a formal agreement.
Q Okay. And Scott Ellington is not your personal lawyer. Is that right?
A Not in this bankruptcy.
Q Okay. He was not your personal lawyer in December 2020, correct?
A No.
Q He never represented you personally. Scott Ellington, as

a human being, never represented Jim Dondero as a human being at any time after the petition date. Fair?

A I don't know how to answer that with regard to settlement counsel. I -- in his role as settlement counsel, I'm not a lawyer, who does he work for when he's been tasked with being settlement counsel and he can talk to all parties on behalf of all parties in order to get a deal done? I don't know -- I don't know how to describe that role.

Q To the best of your knowledge, has Mr. Ellington ever been employed by anybody after the petition date other than the Debtor?

A I don't believe so.

Q Did you ever retain Mr. Ellington to represent you?

A Not -- not formally, but in his role as settlement counsel, I believe he was in some ways trying to represent all parties to try and kick a deal to the altar, so to speak.

Q Did he owe you a duty?

A I don't think in a classic -- I don't -- that -- I don't know. That's a legal -- I don't want to make a legal interpretation.

Q You've represented -- you've retained and engaged lots of lawyers and law firms over time. Is that fair?

A Yes.

Q Did you engage or retain Mr. Ellington at any time after the petition date?

A Well, I mean, very recently, he's heading up our shared services group or our shared services entity. But again, I don't know how to answer. The role of settlement counsel was an in-between role that I don't think it was documented formally, so I don't know how to -- I don't know how to answer that.

Q When did -- have you -- has Mr. Ellington been hired by you or any company you own or control since the time that he was terminated in early January?

A No. But he's the owner of the entity that houses a lot of the employees that migrated over.

Q Okay. So I want to -- I want to try to clear this up. I'm not asking you about settlement counsel. It's a very, very specific question. Did James Dondero ever retain or engage Scott Ellington to represent him? Did you ever engage or retain Scott Ellington for the purpose of providing legal advice to you?

A And that's the question I'm struggling with, because I believe, as settlement counsel, he was representing -- trying to represent multiple parties to strike a deal.

Q Did you ever pay him any money for services rendered to you in your individual capacity?

A No.

Q Did you ever give him anything of value in exchange for legal services rendered by him to you in your individual

capacity?
A No.
Q Did you ever sign an engagement letter with Scott Ellington pursuant to which he provided legal services to you in your individual capacity?
A No.
Q How about Isaac Leventon? Did Isaac Leventon ever represent you in your individual capacity?
A You mean since the advent of the bankruptcy, right? Yeah, no.
Q Okay. Let's say after the TRO was in place. Did Mr. -- did you ever retain or engage Mr. Leventon to provide legal services to you in your individual capacity?
A No.
Q Between December 10, 2020, the date the TRO was entered, and January 8, 2021, excuse me, the date the TRO was converted to a preliminary injunction, you communicated with certain of the Debtor's employees about matters that did not concern shared services, correct?
A No.
Q No, it's your testimony that all of your communications concerned shared services?
A Yes. Yeah, and shared services or the pot plan or in his go-between role where he would be used as a messenger by Seery or by me to get to Seery because I hadn't communicated

1 directly with Seery in six or seven months other than that
2 interaction around Thanksgiving.
3 Q Sir, between the time the TRO was entered and the
4 preliminary injunction was entered, you communicated with
5 certain of the Debtor's employees about matters that were
6 adverse to the Debtor's interests, correct?
7 A Absolutely not. I respectfully disagree with that
8 characterization whenever it occurs.
9 Q Okay. After the TRO was entered, you and your lawyers at
10 Bonds Ellis worked with Scott Ellington to identify a witness
11 who would testify on your behalf in support of a motion
12 against the Debtor, correct?
13 A I don't know what the witness was for. I know there was
14 -- I know there was some back and forth on the witness, but I
15 don't remember what the witness was for.
16 Q All right. Let's just see if we can get through this
17 quickly.
18 MR. MORRIS: Can we put up Exhibit 48, please?
19 BY MR. MORRIS:
20 Q So this is December 11th. Do you see that?
21 A Yes.
22 Q The day after the TRO was entered into, correct?
23 A Yes.
24 Q It's sent from Mr. Lynn to Mr. Ellington and is entitled
25 "Testimony," correct?

A Yes.
Q Mr. Ellington was the Debtor's general counsel at the time, correct?
A Among other things, yes.
Q In fact, Mr. Ellington was the Debtor's general counsel throughout the month of December 2020, to the best of your knowledge, correct?
A Yes, but not solely, yeah.
Q Was he -- was he a general counsel for somebody else?
A No, but he was also settlement counsel and he was also the go-between with Seery.
Q Sir, really, I respectfully ask that you listen to my question. To the best of your knowledge, Mr. Ellington was the Debtor's general counsel throughout the month of December 2020, correct?
A Yes.
Q Can you please read Mr. Lynn's email out loud?
A (reading) Scott, you are going to talk with John Wilson of our firm or have JP do so. He needs to speak today so we know who to put on the witness and exhibit list and will be waiting for a call. Thanks.
Q Now, again, the Bonds Ellis firm doesn't represent any party to a shared services agreement, correct?
A Well, they represent me and I'm on the other side of the shared services agreement we were trying to put together.

Q You're not a party to shared services agreements, are you, sir?
A No, but the solution that everybody was negotiating that fell apart that we had a hearing on a couple weeks ago, everybody was trying hard in good faith until negotiations failed to migrate the shared services in a way that would have resulted in $3 or $5 million to the Debtor. But the negotiations fell apart.
Q Sir, in this email from Mr. Lynn in which you're copied to the Debtor's general counsel the day after the TRO is entered, your lawyer is asking the Debtor's general counsel to have a conversation about a witness and exhibit list that your lawyers were putting together. Fair?
A That appears to be what it's about.
Q Okay. And the next day, the topic of identifying a witness who would testify on your behalf continued, correct?
A I don't know.
MR. MORRIS: Can we go to Exhibit 49, please?
BY MR. MORRIS:
Q This is an email string from Saturday evening, December 12th, in which the Bonds Ellis firm's -- firm brings you and Mr. Ellington into the discussion about identifying a witness who would testify on your behalf at the upcoming hearing, correct?
A Yeah, but I -- okay. I have no idea what this refers to,

1 though, or what this is in regard.
2 Q Well, if you look at Mr. Assink's email at the bottom
3 dated December 12, do you see the subject is "Witnesses for
4 Hearing"? Do you see that?
5 A Yes.
6 Q And he asks Mr. Wilson whether Mr. Wilson had heard from
7 Ellington or Sevilla yet. Do you see that?
8 A Yes.
9 Q And he -- he says that he needs to let the other side know
10 if you're going to call one of them as a witness. Isn't that
11 right?
12 A Yes. I can read all that. But again, I don't know -- I
13 don't know -- I have no idea what witness for what, if it
14 represents -- and what the witness would represent and if it
15 is in any way adverse to the Debtor. I have no idea.
16 Q Well, you're adverse to the Debtor, are you not?
17 A Well, I do not believe so. I mean, I -- I've been doing
18 everything possible to try and preserve this estate as it's
19 getting run into the ground. But no, I mean, I've -- I've
20 done everything to try and maximize value.
21 Q Well, Mr. Lynn brings you and Mr. Ellington in the
22 conversation on Saturday, December 20th, on the topic of
23 witnesses for a hearing, right? That's -- that's what's
24 happening at the top of the page? You and Mr. Ellington are
25 now included, correct?

A Okay.
Q It's true; isn't that right?
A Right.
Q Okay. And this is the debate over whether to include Mr. Ellington or Mr. Sevilla on your witness list, correct?
A Again, I don't know with regard to what or for, you know -- I don't know if it's background context. I don't know if it's corporate rep. I don't know -- I don't know -- I have no idea what this is about.
Q Okay. Do you recall that the issue of identifying a witness who would testify on your behalf was resolved later that night?
A No.
MR. MORRIS: Can we go to Exhibit 17, please?
BY MR. MORRIS:
Q And if we start at the bottom, you'll see there's an email from Mr. Lynn to you and other lawyers at Bonds Ellis where he says the possible deal with the Debtor went nowhere, and I think he meant to say it looks like trial. Is that a fair reading of Mr. Lynn's email to you on the evening of December 12th?
A Yes.
Q And then if we scroll up he says, quote, that said, we must have a witness now.
Do you see that?

A Yes.
Q And the "we" there refers to you and the Bond Ellis firm, right? You guys needed a witness now. Is that fair?
A I don't know.
Q Well, if you look -- if you look up at the top, Mr. Ellington responds. So this is an email from Mr. Ellington to you and your personal lawyers at Bonds Ellis. Do I have that right?
A Yes.
Q And in that email, Mr. Ellington responds to Mr. Lynn's request for a witness and he identifies Mr. Sevilla, correct?
A Yes.
Q And Mr. Ellington told your lawyers that he would instruct Mr. Sevilla to contact them the first thing in the morning, correct?
A That seems to be what it says.
Q Okay. Is there any exception in the TRO that we looked at that you're aware of that would allow you and your lawyers to communicate with Mr. Ellington for the purpose of having Mr. Ellington identify a witness who would testify on your behalf against the Debtor?
A Again, I go back to his role as settlement counsel and go-between with Seery. If you look at the subject line here, it says "Possible Deal." I -- I think this is all perfectly within the scope and not adverse to the Debtor, but I'm

1 willing to be educated if you think otherwise.
2 Q Sure. I'll try. Let's go back to Mr. Lynn's email at the
3 bottom. The email is titled, Possible Deal, and what he says
4 is, quote, the possible deal with the Debtor went nowhere. It
5 looks like trial.
6 Does that refresh your recollection that this string of
7 communications had nothing to do with a deal, but it had to do
8 with a trial, and it specifically had to do with your lawyers
9 communicating with Mr. Ellington to identify a witness who
10 would testify on your behalf against the Debtors?
11 A That's not how I view this and that's not how I view
12 Ellington's role.
13 Q Okay. I'm going to ask you again. Very simple. And I'll
14 put it back up on the screen if you want.
15 MR. MORRIS: In fact, let's do that. Let's go back
16 to Exhibit 11. And let's look at Paragraph 2(c).
17 BY MR. MORRIS:
18 Q And if you can tell me, right, Paragraph 2(c) prohibited
19 you from communicating with any of the Debtor's employees
20 except as it specifically relates to shared services currently
21 provided to affiliates owned or controlled by you. Do you see
22 that?
23 A Yes.
24 Q Okay. Does that provision authorize you and your lawyers
25 to communicate with the Debtor's general counsel for the

purpose of identifying a witness who would testify on your behalf, your personal behalf, against the Debtor?

A Again, we haven't established that it's on my behalf against the Debtor, so I can't say -- I can't say yes to that. And again, you know, Scott Ellington, up until the day he was terminated, was settlement counsel and go-between for Seery, and that role never changed, even after the TRO was put into place. And Seery even acknowledged it after the TRO was put in place and continued to use Ellington as a go-between.

Q So, so the Bonds Ellis --

THE COURT: All right. All right. Let me just interject again,--

MR. MORRIS: -- firm represents --

THE COURT: -- because here we go again with the narrative answer way beyond yes or no. Here is a big, big concern I have. You both estimated three and a half hours, but if I continue to get the long narrative answers, I don't think it's fair to count all of this against Mr. Morris. Okay? So, Mr. Wilson, what can we do about this? We've had this witness on the stand since 10:24 minus 14 minutes, so we're getting close to two hours. But again, you know, I've been, I think, extremely overly-patient with allowing these narrative answers.

So, Mr. Wilson, can you help us out here and -- I mean, I don't know how many more times I can say it, that yes, no, and

then when it's Mr. Wilson's time to cross-examine you, to examine you, Mr. Dondero, that's when you can give all of these more fulsome answers. All right? We're going to be here much beyond today if we don't get this under control. All right?

So, Mr. Wilson, --

MR. MORRIS: I appreciate --

THE COURT: Mr. Wilson, please make sure your client understands this. Can you add to this? Can you let him know you're going to examine him later?

MR. WILSON: Yeah, I agree -- I agree with that, Your Honor, but I also would just state that a lot of Mr. Morris's questions don't call for a simple yes or no answer, and I think Mr. Dondero maybe needs to change his response to "I can't answer that yes or no."

THE COURT: Well, you can't coach your client like that. Okay?

MR. MORRIS: Your Honor? Your Honor, with all due respect, every single question I'm asking is a leading question. When it ends "Is that correct?" or "Is that right?" he either says yes, it is, or no, it's not.

THE COURT: All right.

MR. MORRIS: Then I'll have the decision as to what to do at that point. Every single question I'm asking is leading.

1 THE COURT: All right. Well, I tend to agree with
2 that, Mr. Wilson. All right?
3 So, Mr. Dondero, you've heard us say it a few times now.
4 Yes. No. I understand you want to say more in many
5 situations, but Mr. Wilson can get at that later when he
6 examines you. Okay?
7 Continue, Mr. Morris.
8 MR. MORRIS: Thank you, Your Honor.
9 BY MR. MORRIS:
10 Q On this series of emails that we've looked at, these last
11 three exhibits that are to and from the Bonds Ellis firm, the
12 Bonds Ellis firm only represents you in your individual
13 capacity, correct?
14 A Correct.
15 Q And the Bonds Ellis firm was communicating with Mr.
16 Ellington in order to have Mr. Ellington identify a witness
17 for their witness and exhibit list, correct?
18 A Yes.
19 Q Okay. At the same time you and your lawyers were
20 communicating with Mr. Ellington about identifying a witness
21 who would testify on your behalf, you and your lawyers were
22 also engaged in discussions about entering into a common
23 interest agreement among you, certain entities in which you
24 have an interest, and certain of the Debtor's then-employees,
25 correct?

A I have no idea -- conversations like that happened. I don't know when they occurred.

Q Okay. Let's see if we can put a time on it.

MR. MORRIS: Can we please put up Exhibit 24?

BY MR. MORRIS:

Q And starting at the bottom, you'll see there's an email string from Deborah Heckin (phonetic) on behalf of Douglas Draper. Do you see that?

A Yes.

Q And this email string is dated December 15th, right after the TRO was entered into?

A Why isn't this privileged?

Q We'll talk about that in a moment, but --

A What was your question?

Q -- be that as it may, this email string is dated December 15th, after the TRO was entered into, correct?

A Yes.

Q Okay. And you'll see that Mr. Draper, or at least on his behalf, attaches a form of a common interest agreement. Do you see the reference to that in his email?

A Yes.

Q Okay. And Mr. Lynn responds, if we scroll up, and he includes Scott Ellington on this email, right?

A Yes.

Q And Mr. Lynn informs Mr. Ellington and his colleagues that

Bryan or John would review the agreement. Is that -- is that right?
A Yes.
Q And if we scroll up, Mr. Assink then later that day sends your lawyer's comments -- sends your lawyer's comments to his colleagues and to Mr. Ellington, right?
A Yes.
Q And Mr. Ellington then forwards the revised common interest agreement to Mr. Leventon, right?
A Yes.
Q As contemplated at that time, you and the Get Good Trust and the Dugaboy Investment Trust and certain of the Debtor's then-employees were engaged in discussions about entering into a common interest agreement, correct?
A Yes.
Q And those discussions continued for a while in December; isn't that right?
A I believe so.
Q You're familiar with the law firm Baker & McKenzie, correct?
A Generally.
Q That firm has never represented you or any entity in which you have an ownership interest, correct?
A Boy, I don't know. It depends on how far back you went, but I don't know.

Q To the best of your knowledge, Baker and McKenzie has never represented you or any entity in which you have an ownership interest, correct?
A Don't know.
Q Okay. In December, there was an employee group. There was a group of Debtor employees that were known as the Employee Group; is that right?
A I believe there was a general employee group and then there was a senior management group.
Q Okay.
A I don't know what they were called.
Q And Mr. Ellington and Mr. Leventon were part of the group who were considering in December changing their counsel from Winston & Strawn to Baker & McKenzie, correct?
A I -- I only have -- I don't know for sure. That sounds correct, but I don't know for sure.
Q All right. But that was your belief at the time, right?
A I don't remember.
Q Well, because of that, you specifically asked Mr. Leventon for the contact information for the lawyers at Baker & McKenzie, right?
A I remember asking Isaac for Clemente's number. I may have asked -- yeah, yeah, I think I -- I needed to speak to somebody at some point over there, so I did ask -- I asked somebody for the number. If I asked Isaac, it could have

been.
Q Okay.
MR. MORRIS: Can we put up Exhibit 20, please?
BY MR. MORRIS:
Q And this is -- that's Mr. Leventon at the top. Is that right?
A Yes.
Q And on December 22nd, you specifically asked him to send you Mr. Clemente's contact information as well as the Baker & McKenzie contact information, correct?
A Yes.
Q And this was a week after the -- after your lawyers provided their comments to the common interest agreement and Mr. Leventon -- Mr. Ellington forwarded the draft agreement to Mr. Leventon, right? That was December 15th, so this is a week later?
A Yes.
Q And Mr. Leventon was an employee of the Debtor at the time, correct?
A Yes, I believe so.
Q And you specifically wanted the contact information from Baker & McKenzie in order to help Mr. Draper coordinate the mutual shared defense agreement that was the subject of the December 15th email, right?
A I don't know if that was the purpose.

MR. MORRIS: Can we go back to the transcript line, Line -- Page 97, please? Down at Line 16. To be clear, I'm reading at the January 8th hearing from the deposition transcript.

BY MR. MORRIS:

Q But can you confirm for me, sir, that when asked the following question, you gave the following answer? Question, "Why did you want the Baker & McKenzie contact information?" Answer, "I was trying to help Draper coordinate the mutual shared defense agreement, period."

Is that your -- was that the answer that you gave in your deposition?

A Yes.

Q And is that the answer that you confirmed at the preliminary injunction hearing on January 8th?

A I don't remember.

Q Are you aware of any exception in the TRO that would permit you and your lawyers to communicate with the Debtor's employees about entering into a common interest agreement?

A To the extent Scott Ellington was continuing as settlement counsel, I -- I viewed these types of things as very appropriate.

Q The only exception in the TRO was for shared services, right?

A Shared services, yes, but shared services broadly

incorporates a lot of things, in my opinion.
Q And in your opinion, it's perfectly appropriate for you to be discussing, after a TRO is entered that prohibits you from discussing anything with any of the Debtor's employees except for shared services, in your opinion, it's perfectly appropriate for you and your lawyers to be engaged in conversation with the Debtor's employees about possibly entering into a common interest agreement? That's your testimony?
A Yes.
Q Okay. Let's go back in time, December 15th. Do you recall writing to Mr. Lynn and Mr. Draper and Mr. Ellington about a conversation you had with Mr. Clubok, UBS's counsel?
A I don't remember, but I'm willing to be refreshed.
Q Okay.
MR. MORRIS: Let's do that, and put up Exhibit 50, please. Five zero.
BY MR. MORRIS:
Q This is an email that you wrote, correct?
A (no immediate response)
Q This is your email, sir?
A Yes.
Q Okay. Why did you decide to -- this is an email about a conversation that you had with Mr. Clubok, right?
A Yes.

Q And you understood at the time that Mr. Clubok represented UBS, right?
A Yes.
Q And at the time, you knew that UBS was going to appeal the settlement that had been entered into between the Debtor and Acis, correct? I'm sorry, between the Debtor and the Redeemer Committee?
A Yes.
Q Okay. And so the Debtor had entered into a -- you knew that the Debtor entered into a settlement with the Redeemer Committee, right?
A Yes.
Q And that settlement was approved by the Court, correct?
A I don't remember if it was ever scrutinized at all. It wasn't -- I don't know if it was approved.
Q Well, this email is about the appeal of the approved order, the order approving the settlement, right?
A Appears to be.
Q Okay. And so UBS was challenging the very agreement that the Debtor wanted to enter into, right?
A Yes.
Q And you -- and you decided, after the TRO was entered into, to bring Scott Ellington into the discussion between you and your lawyers about supporting UBS and otherwise getting evidence against Mr. Seery. Is that right?

A We already had the evidence against Seery not seeking court approval, being inept in asset sales. We already had all that evidence.

Q But you're bringing -- you voluntarily brought Mr. Ellington into this discussion; isn't that right?

A Because Ellington was settlement counsel. We were trying to push -- he was trying to push all parties to some kind of reasonable settlement before the estate got wiped out by tripling everybody's claims.

Q And you thought it would be helpful to bring Mr. Ellington into a conversation where you're discussing with your lawyers supporting UBS in their objection to the Debtor's settlement and to -- and to give him evidence of Seery's ineptitude and improper asset sales? You think that was going to advance the cause of the settlement, right?

A Yes.

Q Okay. And again, there's no -- there's no exception in the TRO for settlement, right? That's just your own thinking, fair?

A Since the summertime, more than a few people have testified Scott Ellington was settlement counsel.

MR. MORRIS: I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:

Q Is there anything in TRO that you are aware of that

authorizes you to speak with Mr. Ellington in his capacity as so-called settlement counsel?

MR. WILSON: Objection to the extent it calls for a legal conclusion.

THE COURT: Overruled.

MR. MORRIS: I'll reframe the question. I'll reframe the question, Your Honor.

THE COURT: Okay.

BY MR. MORRIS:

Q Do you have any -- is there anything that you are aware of in the TRO that would permit you to speak with Mr. Ellington as settlement counsel?

A I think it's trickery to try and say it takes that away. That's my opinion.

Q Okay. But other than your opinion, you can't point to anything in the TRO that you're relying upon that would permit you to speak with Mr. Ellington as settlement counsel. Fair?

A Other than broadly, settlement or not settlement all filters into shared services and whether or not we buy the employees, don't buy the employees, etc.

Q Okay. This email has absolutely nothing to with shared services, right?

A It's one step removed but ultimately leads into it.

Q The settlement between the Debtor and the Redeemer Committee has nothing to do with shared services, correct?

A Ultimately, the settlement with Redeemer and Clubok had everything to do with shared settlement. With shared services.

Q All right. Maybe your lawyer will put that up on the screen later.

After the TRO was entered, you also communicated with one or -- one of the Debtor's employees to make sure that she didn't produce the Dugaboy financial statements to the U.C.C., correct?

A Yeah. They weren't properly requested, and they weren't requested of me.

Q Sir, you communicated with one of the Debtor's employees to make sure she did not produce the Dugaboy financial statements to the U.C.C. without a subpoena, correct?

A That was my -- the advice of counsel to say exactly that in response, and I think ultimately -- I think ultimately counsel was okay with it. They just wanted to review the documents first.

Q Dugaboy's financial statements were maintained on the Debtor's server, correct?

A Yeah, and I think most of them weren't even password-protected.

Q You communicated with at least one employee concerning the production of the Dugaboy financial statements, correct?

A Under advice of counsel, yes.

Q And that's Melissa Schrath, right?
A Yes.
Q Ms. Schrath was employed by the Debtor as an executive accountant in December 2020, correct?
A Yes, solely working on mine and Mark Okada's financials.
Q She's the one -- she's the Debtor employee who maintained the Dugaboy financial statements, right?
A Yes.
Q And on December 16th, after the TRO was entered, you communicated with Ms. Schrath for the very specific purpose of instructing her not to produce the Dugaboy financials without a subpoena, correct?
A I gave her a legal response that came directly from my lawyers from an improper -- what my lawyers viewed as an improper request improperly done.
Q Dugaboy had their own lawyer, right? Mr. Draper?
A I -- uh, I believe -- I believe he was coming on board or up to speed around that time.
Q Yeah. Why didn't Mr. Draper take a hold of this issue? Why did you do that?
A I think, again, I think he was just coming up to speed at that point. I think ultimately he was okay with it; he just said he wanted to review the documents first. But I think he was agreeable in trying to work with you guys.
Q He was, in fact. So why did you, instead of letting him

do his job on behalf of his client, the Dugaboy Investment Trust, why did you, after the TRO was entered, communicate with the Debtor's employees to give instructions not to produce the Dugaboy financial statements without a subpoena? Why did you do that?

A Those words and requiring a subpoena were the specific legal advice I got from counsel at Bonds Ellis before Draper was up to speed on the issue. And then when Draper got up to speed on the issue, which I think was only a couple days later, he tried hard to work with you guys.

Q And he never asked for a subpoena, did he?

A I -- I don't believe he did. I think he asked to just review stuff first.

Q Did you ever tell him that you had made a demand for a subpoena, that -- withdrawn. Did you ever tell Mr. Draper that you had instructed one of the Debtor's employees not to produce the documents without a subpoena?

A I -- I think Draper was fully -- fully informed of everything that happened with regard to the Dugaboy financials before he got involved. Yes.

Q So, so for all of the communications that occur after the time that you instruct Ms. Schrath not to produce the documents without a subpoena, would it surprise you to learn that Mr. Draper never once mentions the subpoena? Never once mentions that the documents shouldn't be produced without a

1 subpoena?
2 A Different -- different lawyers have different views at
3 different times. I don't know what else to tell you.
4 Q All right. Let's just confirm for the record.
5 MR. MORRIS: Can we please put up Exhibit 19?
6 BY MR. MORRIS:
7 Q And that's Ms. Schrath at the top; is that right?
8 A Yes.
9 Q And this is, if we scroll down a bit, this is where you
10 give her the instruction after the -- you communicate with her
11 -- withdrawn. This text messages show that you communicated
12 with Ms. Schrath, one of the Debtor's employees, after the TRO
13 was entered into, for the purpose of instructing her not to
14 provide the Dugaboy details without a subpoena, correct?
15 A Yes.
16 Q There is no exception in the TRO that you are aware of
17 that permits you to communicate with any of the Debtor's
18 employees about the production of documents, right?
19 A Regarding a personal entity that's not in bankruptcy and
20 not subject to the estate, it -- this -- I believe this was
21 appropriate. And again, the advice I got from counsel.
22 Q Sir, are you aware of anything in the TRO that permits you
23 -- is there any exception in the TRO that permits you to give
24 instructions to one of the Debtor's employees about whether
25 and how to produce documents that are on the Debtor's system?

MR. WILSON: Objection. It calls for a legal conclusion.

THE COURT: Overruled.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Okay. You can't point to anything as we sit here right now, right?

A Don't know.

Q And again, Dugaboy is not party to a shared services agreement, correct?

A Not formally. It is -- I think -- I believe it is now.

Q On the same day that you were instructing Ms. Schrath not to produce Dugaboy financials without a subpoena, you were also communicating with Mr. Ellington about providing leadership with respect to the coordination of counsel for you and the various entities owned and controlled by you. correct?

A I don't -- I think that may be a mischaracterization of the leadership email. Let's go to that, please.

Q Okay.

MR. MORRIS: Exhibit 18, please.

BY MR. MORRIS:

Q On December -- December 16th, Mr. Draper wrote to you, at the bottom of the exhibit, Mr. Draper wrote to you and to Mr. Lynn, correct?

A Yep.
Q And again, Mr. Draper represents Dugaboy and Get Good, right?
A Yep.
Q And the subject matter of his email is a List for a Joint Meeting. Do you see that?
A Yes.
Q And Mr. Draper proceeded to list a number of lawyers and entities, correct?
A Yes.
Q And first is John Kane, counsel to the DAF, right?
A Yes.
Q And then you have George Zarate (phonetic), who was counsel to HCM Advisor, correct?
A Yes, sir.
Q And third is Lauren Drawhorn, counsel to NexPoint, correct?
A Yes.
Q Fourth is Mark Maloney, counsel to CLO Funding, correct?
A Yes.
Q And last is David Neier, who was then counsel to certain of the Debtor's employees, correct?
A Yes.
Q And Mr. Draper specifically asked you and Mr. Lynn whether anyone should be added or removed from the list, correct?

A Yes.
Q And neither you nor Mr. Lynn identified anyone to be added or removed, correct?
A No.
Q And then you, you forwarded the email string to Mr. Leventon -- Ellington, correct?
A Yes.
Q And so you're the one who's sharing your attorney-client communications with Mr. Ellington, right, in this email?
A Yes.
Q Okay. And he's not your lawyer, right?
A He's settlement counsel.
Q Yeah. Okay. Why don't you read what you wrote to Mr. Ellington?
A (reading) I'm going to need you to provide leadership here.
Q But reviewing this email, at least as of the January 8th hearing, you had no recollection of why you forwarded the email string to Mr. Ellington and why you told him you needed him to provide leadership, correct?
A Correct.
Q But Mr. Ellington did respond; isn't that right?
A Yeah. I think he just said "I'm on it" or "I'll handle it" or something.
Q Okay. Are you aware of any exception in the TRO that

would permit you to ask Mr. Leventon -- Ellington to provide leadership in the context of working on a joint meeting that would include lawyers for you and any entities -- and various entities owned or controlled by you?

A I -- I don't know. I don't have any answers other than some of the narrative ones I've given before.

Q Okay. And again, there's no lawyer on this whole email string that represents any entity that's subject to a shared services agreement, right?

A That's not true.

Q I apologize. Let me rephrase the question. There's no lawyer who sent, received, or were copied on any of these emails who represents an entity that was subject to a shared services agreement, correct?

A That's not true.

Q Well, does Mr. Lynn or Mr. Draper represent an entity who's subject to a shared services agreement?

A No, but the other lawyers referenced in the text of the email, almost all of them are.

Q Right. I'm just -- I'm asking you very specifically just about the people to whom this email string was sent or received from. Right? Sent to or received from. And they only include Mr. Draper and Mr. Lynn, right? They're the only ones who were --

A Yes.

Q Right?
A Yes.
Q And neither one of them represents a party to a shared services agreement, right?
A Not a formal one, correct.
Q Right. So there's nobody on this email string where you're asking Mr. Ellington to provide leadership, there's nobody who's sending or receiving this email string that represents a party to a shared services agreement, right?
A No formal -- yes. Those three people, there's no formal shared services agreement.
Q Later on in December is when you learn that Mr. Seery was again seeking to trade in certain securities held in the CLOs, correct?
A Yes.
Q And as soon as you learned that Mr. Seery was again seeking to trade in certain securities, you sent an email to Mr. Ellington letting him know that, right?
A Oh, yes. Yes.
Q And this is the information that caused you to personally instruct employees of the Advisors not to execute the trades that Mr. Seery had authorized, correct?
A No. We've gone through this before. I did nothing in the December 20th trades to do anything to interrupt or speak with any Highland employees. I sent one email to Jason Post to say

you should look into this. It was -- it was a completely different interaction. It was respectful of the TRO. It was completely different than the November trades.

But the trades were the same. He handed a couple million-dollar lawsuits to the Funds, he sold things during the least liquid week of the year, the day before Thanksgiving and the day before Christmas, and he was purposely trying to push losses to investors.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained. And I'm just letting you know it's 12:50. We're taking a break at 1:00 o'clock.

MR. MORRIS: Yeah, that's fine. I think I should be done right there, Your Honor.

BY MR. MORRIS:

Q The next day, on December 23rd, you had a call among you, Scott Ellington, Grant Scott, and certain lawyers representing various entities you own and control, correct?

A Yeah. I don't remember specifically, but yeah, I remember a couple conference calls.

Q Yeah.

MR. MORRIS: Can we go to Exhibit 26, please?

BY MR. MORRIS:

Q You'll see the subject matter is "It appears Jim will be available for a 9:00 a.m. Central time conference call."

Do you see that?

A Yes.
Q Okay. And this email string is between and among employees of the Advisors, Grant Scott, Scott Ellington, and outside counsel to the Advisors, correct?
A Can you scroll up or down? I mean, I --
Q Sure.
A What was the question again regarding the people?
Q Yeah. The folks on this email string are employees of the Advisors, outside counsel to the Advisors, and Scott Ellington, right?
A I'm sorry. I'm struggling to see Ellington on this one.
Q Oh, it's at the top. There you go.
A Okay.
Q And Mr. -- and Grant Scott, right?
A Yes.
Q And Grant Scott is the director of the DAF, correct?
A Yes.
Q And this is the exact same time that K&L Gates are sending the letters to the Debtor concerning the CLOs, correct?
A I believe it's around that same time.
(Interruption.)
MR. MORRIS: Your Honor, somebody's not on mute.
THE COURT: Yeah, who is that, Mike? Can you tell?
THE CLERK: It was one of the call-ins. I just muted them.

THE COURT: Okay. It was one of the call-ins. We've muted them.

MR. MORRIS: Okay. Yeah.

BY MR. MORRIS:

Q It's your understanding that those letters -- in those letters, the Advisors and Funds represented by K&L Gates asked that the Debtor not trade in securities on behalf of the CLOs, correct?

A Yes.

Q And this was just days after the Court dismissed as frivolous the motion that they brought seeking the exact same relief?

A I believe it was about that same time frame, yes.

Q Okay. So, all in this same time frame, December 22nd, December 23rd, K&L Gates is sending those letters and Mr. -- and Mr. Ellington is participating in conversations with you and lawyers for the Advisors and Mr. Scott, right? This is all happening in the same two or three days?

A I continue to struggle to see the issue, but yes.

Q Okay. You were aware of the letters that K&L Gates sent at the time they sent them, correct?

A Yes.

Q Okay. And despite the outcome at the December 16th hearing, you were supportive of the sending of those letters, right?

A I still believe they are bona fide. I still believe we just -- maybe not as good a presentation to make the Court understand. But yes, I still believe they're bona fide and were done in good faith.

Q Okay. And so you think it was a problem with presentation at that hearing; is that right?

A Yeah. I mean, you have -- yes. I believe you have no business purpose booking losses for investors that asked that their accounts not be traded while they were being migrated, and instead they were handed a bunch of losses and then they've been, they've, in a backdoor way, lost control by the Advisor buying assets without court approval to block the DAF and the retail funds' rights. I mean, it's craziness.

Q And then you brought Mr. Ellington into the discussion about these letters specifically; isn't that right?

A No. I -- I remember my main --

MR. MORRIS: Your Honor, it's a --

THE COURT: Okay.

THE WITNESS: Well, the answer is no.

THE COURT: It's a yes or no, a yes or no question.

THE WITNESS: No. The answer is no.

MR. MORRIS: Okay. Can we go to Exhibit 52, please?

BY MR. MORRIS:

Q And if we look at the bottom and scroll up, the email string begins with some back and forth between your lawyers

and my colleague, Mr. Pomerantz. Do you see that? And they discuss specifically the K&L Gates letters.

A Yep.

Q Okay. And then they're forwarded to you and you respond to Mr. Lynn and to your lawyers, right?

A Yep.

MR. MORRIS: Can we scroll up just a bit more?

BY MR. MORRIS:

Q And you write to your lawyers -- now, this is -- this is at this time a very private conversation between you and your lawyers, right? And -- and --

A Yeah.

Q And you could share whatever view you had at the time with your lawyers, because at least as of December 24th at 5:53, you thought that that would be a protected conversation and communication, correct?

A I don't know what I thought then.

Q Well, you told Mr. Lynn, "Who knows how Jernigan reacts." Do you see that?

A Yes.

Q And that's because you were unsure of how Judge Jernigan was going to react; is that right?

A Yes.

Q You didn't express the view to your lawyer on December 24th that Judge Jernigan was going to rule against you because

she was biased, did you?
A I don't know if that's in this email chain.
Q I'm happy to look at it from top to bottom.
A I -- but I -- I don't know.
Q And it's certainly not in this email, right? You didn't -- you didn't tell -- you didn't tell your lawyers in this private conversation that you had any concerns about Judge Jernigan's bias, right?
A Not -- not here.
Q And you didn't -- you didn't say anything in this email on December 24th that you thought Ms. -- that you thought Judge Jernigan was anything but partial, right?
A The issue is not addressed in this email.
Q In fact, you told -- you told your lawyers just the opposite, didn't you? Isn't that right?
A No.
Q You told your lawyers "Who knows how Judge Jernigan is going to react;" isn't that right?
A Yes.
Q Okay. And then you forward your private communications with your lawyers to Mr. Ellington, correct?
A Yes.
Q And in your communications with Mr. Ellington, you included the K&L Gates letters, correct?
A Yes.

Q Are you aware of anything in the TRO that would allow you to communicate with Mr. Ellington concerning the letters between the Debtor and the K&L Gates clients?
A I don't know. Goes back to settlement counsel.
Q Okay. You had other communications with Mr. Ellington on Christmas Eve, didn't you?
A I did.
Q And in fact, you communicated with Mr. Ellington about your decision to object to the Debtor's settlement with HarbourVest; isn't that right?
A Yes.
Q Okay.
MR. MORRIS: Can we just see that for the record, Exhibit 21?
BY MR. MORRIS:
Q You recall that, in late December, the Debtor filed notice of a settlement it reached with HarbourVest, correct?
A Yeah.
Q And in this email string, Mr. Assink, one of your personal lawyers, purported to summarize the terms of the settlement for Mr. Lynn and other attorneys at Bonds Ellis. Do you see that at the bottom?
MR. MORRIS: Yep, right there.
THE WITNESS: Yes.
BY MR. MORRIS:

Q And then Mr. Lynn forwarded Mr. Assink's email to you, correct?
A Yep.
Q And you responded to your lawyers and told him to make sure that you objected, correct?
A Yes.
Q You didn't like the terms of the deal; isn't that right?
A Well, at the time -- at the time, we didn't realize that -- yeah. And -- yes. It was -- it was a ridiculous way of destroying the estate, in our opinion.
Q Okay. So, so you were adverse to the Debtor at this moment in time with respect to the Debtor's decision to enter into the HarbourVest settlement, correct?
A We disagreed with the HarbourVest settlement is as far as I want to answer that question.
Q And you wanted to challenge the Debtor's decision to reach an agreement on the terms set forth in Mr. Assink's email, correct?
A Yes.
Q And you decided to forward your communications with your lawyers on the topic of your decision to object to the HarbourVest settlement to Mr. Ellington on Christmas Eve, correct?
A Yes.
Q Okay. Can you identify anything in the TRO that would

1 authorize you to communicate with the Debtor's employees after
2 the TRO was entered into about your decision to object to the
3 HarbourVest settlement that the Debtor was seeking to enter
4 into?
5 A I don't know. I was relying on Ellington's role as
6 settlement counsel.
7 Q Okay.
8 THE COURT: All right. We're going to have to stop.
9 Are you almost through, Mr. Morris?
10 MR. MORRIS: I have one more document.
11 THE COURT: Okay.
12 MR. MORRIS: Literally three -- two or three minutes.
13 THE COURT: Okay.
14 BY MR. MORRIS:
15 Q You had one more communication on Christmas Eve with Mr.
16 Ellington; isn't that right?
17 A Uh-huh.
18 Q Okay. And this is -- this is where you told him about the
19 Debtor's letter evicting you from the offices and about their
20 demand for your cell phone, right?
21 A I -- please refresh me.
22 Q Okay.
23 MR. MORRIS: Exhibit 53, please.
24 BY MR. MORRIS:
25 Q On December 23rd, the Debtor sent your lawyers that letter

that we looked at earlier giving notice of eviction and demanding the return of your cell phones, correct?

A Yep.

Q And then the next day, on December 24th, Mr. Lynn forwarded the letter to you, correct?

A Yep.

Q And Mr. Lynn forwards that to you and he provides advice about the contents of the cell phone, correct?

A Yes.

Q And you pass this advice, along with the letter, to Mr. Ellington, correct?

A Yes.

Q This email string and the letter have nothing to do with shared services, correct?

A Okay. Broadly, shared services includes everything trying to get to a settlement of what to do with the employees. And so I, again, I view it broadly as yes.

Q Okay. Mr. Lynn's advice that you're passing along to Mr. Ellington is limited to the cell phone, correct?

A I think he has the same view that I do regarding Ellington as settlement counsel should be -- should be restricted and not open up a window into all legal communication with me and my lawyers. But obviously you're taking a different view.

MR. MORRIS: I move to strike. Real simple. Last question, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, you forwarded -- the email that you forwarded to Mr. Ellington included the advice from your lawyer about your cell phone and the letter that evicted you from the Debtor's offices and made the demand for the cell phones back, correct?

A Yes.

Q Okay.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. It's --

MS. SMITH: Your Honor, this is Frances Smith. Before we go on break, I just wanted to give Your Honor one piece of good news that might help save you some time this afternoon.

THE COURT: Okay.

MS. SMITH: We now have an agreement with Mr. Dondero's counsel that they will not be calling Mr. Leventon, and the Debtor has already agreed that they would not be calling Mr. Leventon. So if we could please release Mr. Leventon for the rest of the afternoon, we would appreciate that, Your Honor.

THE COURT: All right. Mr. Wilson, you confirm?

MR. WILSON: Yes, Your Honor.

THE COURT: All right. Well, Mr. Leventon is

excused. Thank you for that.

MS. SMITH: Thank you, Your Honor.

THE COURT: All right. It's 1:06. We're going to take a 30-minute break. We'll come back at 1:36.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(A luncheon recess ensued from 1:06 p.m. until 1:42 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. All right. We are going back on the record, a few minutes late, 1:42, in Highland Capital Management.

Mr. Morris had just passed the witness, Mr. Dondero, to Mr. Wilson. And remember, we were clear earlier on that this can be both cross as well as direct, beyond the scope of Mr. Morris's direct, so that we can hopefully be more efficient with our time.

All right. So, Mr. Dondero, you're still under oath. Mr. Wilson, you may go ahead. (Pause.) All right. Mr. Wilson, can you hear me?

MR. WILSON: I apologize, Judge. I forgot to unmute.

THE COURT: All right. You may proceed.

MR. WILSON: All right.

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Dondero, when did you learn that the Debtor was

seeking a TRO against you?
A On or about the time they filed it.
Q And did anyone at that time explain to you the relief the Debtor was seeking?
A Shortly thereafter, counsel went over it with me.
Q And did they -- your counsel explain the relief to you?
A Yes.
Q And did you end up attending the hearing on the TRO?
A No.
Q And why did you not attend the hearing on the TRO?
A Well, all of these hearings tend to start with a diatribe of what I think are untruthful, hurtful, and insulting comments about me that seem to go on for hours. And I -- I don't know, what's the expression, twisted by knaves to make a trap for fools, but I hate -- I hate hearing it, so I -- I've done nothing but try and help the estate and buy the estate in good faith, but people are moving to different agendas, and I think we've been betrayed by Seery morphing from a Chapter 11 to a Chapter 7 trustee for his own benefit.
Q After the hearing, did you learn that there was a TRO entered against you?
A Yes.
Q And how did you learn that a TRO had been entered against you?
A From counsel.

Q And how long after the hearing did you learn about that?
A Shortly thereafter. I'm not sure exactly when.
Q And did your counsel provide you a copy of the TRO?
A Yes.
Q And did anyone explain to you what the TRO meant?
A Yeah, I -- again, I take seriously anything that comes from the Court, and I did adjust my behavior, but the overall theme, that somehow I was doing something to hurt the creditor or hurt the Debtor or hurt investors I viewed as incongruent with any of my behavior. So I didn't think it was going to require much adjustment. I -- I -- yes. So, anyway. But I paid attention. I listened. I understood that we're still moving forward with pot plan activities. I understood we were still moving forward on trying to migrate the employees peacefully under a shared services agreement. And I understood that we were still trying to figure a settlement, either individually with different creditors or globally with different creditors.
Q Okay. Did you -- you said that your counsel provided you a copy of the TRO and you discussed the TRO with your counsel. Did you -- did you form an understanding of what you could and could not do under the TRO?
A Yeah, I -- again, like I -- like I just said, I thought the spirit was to make sure I didn't do anything that could be interpreted as moving against the Debtor, but still

nonetheless trying to preserve value and reach a settlement. And, you know, the -- the employees have been treated more shoddy than in any bankruptcy we've ever been involved in, and so I was also wanting to make sure that shared services went as smoothly as possible.

Q Did you have an opportunity to ask your counsel questions about the TRO?

A Yes.

Q And did you rely on your counsel to explain to you what the TRO meant?

A Yes.

Q And in the weeks that followed the entry of the TRO, did you continue to seek advice from your counsel regarding what you could and could not do under the TRO?

A Yes.

Q And why did you do that?

A Again, to stay compliant, not -- to stay compliant and avoid any specific tripwires or any trickery that might have been in the agreement.

Q Did you -- why do you believe that the TRO was entered against you?

A It goes back to the trades that were done for no business purpose the week of Thanksgiving, two days before Thanksgiving, I think, actually, the Friday after Thanksgiving, when only five percent of the people on Wall

Street are actually in the office, selling securities for no business purpose at a 10 percent loss to where they were trading and a 50 percent loss to where they were trading a month later.

Q Well, did you interfere with Mr. Seery's trading activities?

A I've been as clear as I can be. I take much umbrage in capricious, wanton destruction of investor value. And I interfered with the trades around Thanksgiving directly by telling the traders that they shouldn't put the trades through, there's no business purpose, there's no rationale, that the investors that control a vast majority of the CLOs are going to move the contracts and they don't want the securities traded. So, yes, I objected strenuously in the November Thanksgiving time frame.

As far as December 20th is concerned -- I know I've corrected this testimony three or four times -- there is no evidence of me talking to anybody other than sending one email to Jason Post, who is a NexPoint employee, not a Highland employee, and just saying, you know, Jason, you need to look at these trades. Because I couldn't believe they would pass through compliance when they were against the specific interests of investors.

Q Well, Mr. Dondero, did you rethink your actions around Thanksgiving, after the filing of the TRO motion by the

Debtors?
A Yeah. I mean, yes. I mean, just to repeat, again, I did nothing regarding the December 20th trades except for one email to Jason Post saying you should take a look at it. I never followed up with him. I never knew what he was doing. It wasn't until he testified a month later that he looked at it with outside counsel, agreed that the trades were improper, so he wouldn't put them through the order management system, so Seery and Highland had to come up with their own workaround to do trades that I still believe are improper.
Q Did you respect the Court's authority to enter a TRO against you?
A Yes. I mean, like I said, I didn't interfere directly or -- and I think Seery has testified twice that he had his own workarounds, he did what he wanted to do, regardless of investor thoughts or compliance, and no one stopped him or slowed him down anyway. So there's no -- there was no harm whatsoever regarding the December trades.
Q So you took the TRO seriously?
A Absolutely.
Q And the TRO was important to you?
A Well, I -- yes. I mean, I understood, I respected, you know, I modified my direct behavior, but I still had my views on what's proper for the estate and what's proper for investors, so I have to reflect those, you know, differently

or indirectly.

Q So I guess a fair characterization of what you just said is that you may have had differing opinions on the actions the Debtor was taking but you changed the way that you reacted to those actions?

MR. MORRIS: Objection to the form of the question. Leading.

THE COURT: Sustained.

BY MR. WILSON:

Q Well, Mr. Dondero, did you -- did you agree with everything Mr. Seery did after December 10, 2021? I'm sorry, 2020?

A No.

Q Did you take any action -- did you take any action after December 10, 2020 to -- that you understood might violate the TRO?

A No. And, again, with the goal of trying to transition employees fairly, make up to them the fact that their 401(k) contributions were canceled, their 2019 bonuses were canceled, their 2020 bonuses were canceled. You know, I tried to do what was best and fair for everybody, but not in a way that disrupted the Debtor or even contacted, you know, people directly.

Q And so were you aware on December 10th that you were restrained from communicating, whether orally, in writing, or

otherwise, directly or indirectly, with any board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication?

A Yes. And that's how we handled it. We had a meeting with -- or, in fact, I wasn't even at the meeting, but Judge Lynn had a meeting with the independent board members to discuss the pot plan towards the end of the month of December.

Q And in your understanding, did you ever do anything to violate that provision of the TRO?

A No.

Q Were you aware that on December 10th you were restrained from making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents?

A Yes.

Q And did you do, in your understanding, did you do anything after December 10th to violate that provision of the TRO?

A No. I mean, that's -- I had very -- very little, if any, contact with any Highland employees or board members, or Seery, other than the day after Thanksgiving, in that period of time whatsoever. So I never -- I never threatened anybody -- I'm going to say period -- but even during the injunction period, for sure.

Q Were you aware that on December 10th you were restrained from communicating with any of the Debtor's employees except

as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero?

A Yes.

Q And did you knowingly do anything to violate this provision of the TRO?

A No. I said this before, probably not in the right format, on whatever it was, cross or direct earlier, but shared services was a broad, multifaceted discussion that a lot of people were involved in and moving towards for three or four months. It included systems, it included accounting personnel, it included what was going to happen to 40-odd employees, which asset management contracts were potentially going to move or not move. At one point, the CLOs were, and then those CLOs weren't. You know, whatever.

So, there was -- it was not just about moving back office. It was also about front office and valuation and whether or not there was going to be an overall settlement, whether or not the pot plan was going to work out, whether or not there was going to be an ability to buy out individual creditors. All those things were being explored, as you saw in the emails earlier, like with Clubok. There was a -- exploring buying out his interest or changing his dynamics.

There was also conversations where Redeemer Committee had agreed to sell their interest in Cornerstone for ninety million bucks but then changed their mind.

There was agreements with -- there was negotiations going on all over the place. And I needed help, since I'd been isolated, and Scott Ellington, as my settlement counsel, or as the go-between with Seery and with the creditors, was an important piece of trying to get something done.

Q Mr. Dondero, were you aware that on December 10th you were restrained from interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the plan or any alternative to the plan?

A Yes. I mean, it was -- it was clear this was the final step in the divide-and-conquer strategy. It was clear that Pachulski and Seery were going to be rewarded a multiple of ten or fifteen times compensation for becoming liquidating trustees instead of Chapter 11 trustees. And the best way to do that was to isolate me by creating gigantic awards to claimants who six, nine months earlier, Seery would bet his career had zero claims, all of a sudden got a hundred million bucks.

It was a way of distorting those claims between Class 8 and Class 9 so that there would never be a residual interest, and then for Pachulski and Seery to get paid large incentive compensation for administering a liquidation, even though they

were betraying the estate that they had been hired for to do a Chapter 11.

Q Given all that, did you do anything that you believed would violate the -- that provision of the TRO?

A No. I don't believe that objecting to the 9019s that had no basis in economic reality or legal risk, that were never scrutinized, you know, by the Court, I did not believe that objecting to those in any way violated the TRO.

Q All right. Well, in any event, are you -- are you aware that the TRO included a footnote that says, For the avoidance of doubt, this order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case?

A Yes.

Q Were you aware that on December 10th you were restrained from otherwise violating Section 362(a) of the Bankruptcy Code?

A Yes.

Q And do you know what Section 362(a) of the Bankruptcy Code is?

A That's -- is that the one with disturbing contracts or taking property? It's one of those two, right?

Q Well, would it -- would it be the automatic stay, in your understanding?

A Yeah, okay, the automatic stay regarding contracts.
Q And did you violate, after December 10th, that provision of the TRO?
A No.
Q Were you aware that on December 10th you were restrained from causing, encouraging, or conspiring with any entity owned or controlled by him -- meaning you -- and/or any person or entity acting on his behalf from, directly or indirectly, engaging in any prohibited conduct?
A Again, yes. Again, it's broad and far-reaching, but it's an intent to isolate anybody who -- myself and any other third party or related party that has bona fide interests in stopping this destruction of an estate that started with $450 million of assets and $110 or $120 million of claims the first three months in. And that was Pachulski's work and everybody else's. And then somehow at the end we end up with $200 million of assets and $300 million of claims.
Where did it go? Where's the examiner? Where's the -- where's the -- where's the scrutiny of giving HarbourVest more of an award than they had in investment in the funds? Where is the scrutiny of giving Josh Terry another $28 million on top of the 18 he's already taken out of Acis on a $1 million employee dispute? Where's the scrutiny of Redeemer getting more in terms of cash, noncash, keeping of Cornerstone, than their original arbitration award? Where is the fairness in

this process?
Q Despite your personal beliefs on those matters, did you do anything that would violate that provision of the TRO?
A No.
Q And, in fact, after December 10th, did you do anything at all that you believed would violate the TRO?
A I've done nothing except, in a complex, shifting betrayal, trying to provide continuity for the business and for the employees. I've tried nothing except try to settle this. But as the -- as the Court's best judgment is to relentlessly pound on everything we do, there's no way to ever to reach a compromise because the other side figures they're going to win everything and has no downside. So I don't see how I could ever negotiate more on a settlement.
(Interruption.)
Q So, to clarify, after December 10th, did you ever do anything that you believed might violate the TRO?
A No.
Q All right. I'm going to show you an exhibit -- and I think Bryan Assink is going to put it on the screen -- that was previously admitted for the Debtor. And that would be Debtor's 55. And I want to go to Page 14 of that document.
MR. WILSON: And scroll down just a hair, Bryan. All right. That'll work.
BY MR. WILSON:

Q All right. Mr. Dondero, you were asked to read some provisions from this. And to refresh you, this is the Highland Capital Management Employee Handbook, Exhibit 55 for the Debtor. But you were asked to review and read some provisions from this exhibit in your earlier testimony, but I want to point you to one sentence that you were not asked to read, and that would be the last sentence of the paragraph in the middle of the page there that starts with "Participation in this policy." Can you read that sentence, starting with "Your obligations"?

A I'm sorry. Where is it? In the first full paragraph or the second full paragraph?

Q Yeah. The first -- the last sentence of the first full paragraph, starting with "Your obligations."

A Okay. (reading) Your obligations under this policy shall terminate upon the termination of your employment, provided that you will remain obligated to furnish historical call records covering the period through the date of your termination, as requested, through the termination of your employment.

So I had been terminated -- I had been terminated long ago, if that's what you're asking.

Q Yes. What day were you terminated?

A Well, I was terminated as a Highland employee early on in the case, and I was -- well, I guess I was paid by NexPoint,

but no, then I was terminated by Highland -- you know what, I don't remember, honestly.

Q Well, do you -- do you recall if you submitted a letter of resignation on October 9th?

A You know what, that -- that sounds familiar. Yeah, I would have -- yes. I would have preferred not to resign, but I contractually had to.

Q Well, so what were the reasons that led to you resigning?

A I was asked to resign.

Q And who asked you?

A Jim Seery.

Q During your time with Highland, did Highland pay for your personal cell phone bill?

A I -- I don't know. I -- pre-bankruptcy, I assume yes. I don't know what was going on after bankruptcy.

Q Do you know whether you or Highland paid for the cell phone itself?

A I don't know.

Q And by cell phone itself, I'm referring to the cell phone you had up until around mid-December. You don't recall who paid for that cell phone?

A No.

Q How often do you get a new --

A But that'd be a --

Q -- cell phone? I'm sorry. You --

A That'd be a good -- I was going to say, that would be a good question to research. It might not have even being been paid by Highland. I don't -- I just don't know the answer.
Q Did you --
A Yeah.
Q Did you routinely replace your cell phone?
A Usually every three or four years, although I really do not like this new 5G phone at all.
Q Well, do you know when you last got a phone prior to December of 2020?
A Three years ago.
Q And did Highland have a procedure for replacing your cell phone?
A Yes. It was -- it was put in place by Thomas Surgent as head of compliance with the goal of protecting investor information or anything that could be business communication being misused by a recycled or destroyed phone. So there was a process by which, when you got a new phone, you gave it to Jason Saffery -- I'm sorry, wrong Jason -- Jason Rothstein, and -- or one of the tech guys, and then they would order your new phone and they would wipe the old phone clean. I think -- I think in this case they had my phone for -- my old phone for the better part of a week.
Q All right. And you said it was Thomas Surgent who put that policy in place?

A Yeah. That's been a policy for at least a decade.
Q And who is Thomas Surgent?
A He heads up -- he's a very experienced, very thoughtful compliance guy. He's headed up compliance at Highland for over a decade.
Q And did Mr. Surgent hold compliance training sessions for Highland employees and executives?
A Yes.
Q And how often would those training sessions be held?
A I remember them as an annual event. And it was really -- it wasn't a page by page, line by line, through, you know, hundreds of pages of manuals. It was really what had changed in the environment, you know, usually more from a compliance standpoint than anything. But it would also include a refresh of any sort of manual stuff.
Q And so you attended these compliance training sessions?
A Yes.
Q And did these compliance training session specifically include training on Highland's cell phone replacement policy?
A That's part of the employee manual. You know, again, to not have to be aware of every single rule at Highland, when I have something that I know requires compliance issues, I don't solve the compliance issues myself, I give the proposed investment or solution to Compliance and they come back and tell me if it's okay or how to do it.

If I have a phone or technology issue, I give my phone to the technology guys and tell them that I want a new phone, and then they handle it in a compliant manner.

Q Do you recall when you first got your very first cell phone?

A In 1980 -- '89.

Q Okay. And when did you start Highland?

A 1994.

Q Okay. So you had a --

A '93.

Q So you had a cell phone prior to Highland ever existing, correct?

A Yes. That was in California. But once we moved to Dallas, I've had the same phone number, probably half a dozen different phones or more in Dallas.

Q So when did you move to Dallas?

A '93, '94.

Q Okay. And you've had the same cell phone number ever since that time?

A Yes.

Q And did you keep your cell phone number when you got a new phone in December of 2020?

A Yes.

Q Do you use that cell phone number for personal use?

A Yes.

Q Do you have --
A I only have one cell phone.
Q Okay. You only have one cell phone? Do you use that cell phone number to communicate with your friends and family?
A Yes.
Q Do you use that cell phone number to communicate with your attorneys?
A Yes.
Q And is there personal information on your cell phone?
A Yes.
Q Is there information on your cell phone related to business interests other than Highland?
A Yes. Some.
Q And are there communications from your attorneys on your cell phone?
A Yes.
Q Have any Highland employees with company-paid phones ever left Highland in the past?
A Yes.
Q And did Highland ever keep an employee's cell phone number when an employee would leave Highland?
A No. We didn't have a unique prefix like some companies do that designates that it's a company phone. So there was no reason for the company to ever keep cell phone numbers versus new random numbers.

Q All right. So let's go back to December of 2020. And you may have hit on this earlier. But why specifically did you decide to make changes to your cell phone plan in December of 2020?

A You know, and again, as I said, I didn't even know if my phones were -- my phone was being paid for or by who, but I assumed they were still being paid by Highland, and it's just the notice to all Highland employees they were going to be terminated without bonuses, without '19 or '20 bonuses, was going to be December 31st, then it was pushed off until January 31st, then February 15th, then February 28th. But part of that was that their benefits were ceasing at that point in time, too. So, as far as I knew, everybody was migrating their phone over, and I did mine in the most compliant way I knew how to, by giving it to the -- to the tech guys.

Q So, if Highland was still paying for your cell phone, and you're not a hundred percent sure of that, your testimony is that Highland was going to discontinue paying for that cell phone?

A That was -- that's what they had told all the employees as part of their termination.

Q Okay. So were you changing the financial responsibility to ensure that it was in your name?

MR. MORRIS: Objection, Your Honor. Just leading

1 questions.
2 THE COURT: Sustained.
3 BY MR. WILSON:
4 Q Did you put the financial responsibility for your cell
5 phone in your name in December 2020?
6 A I -- December -- yes.
7 Q And when you were doing that, why did you decide to get a
8 new cell phone at the time?
9 MR. MORRIS: Objection. Asked and answered.
10 THE COURT: Sustained.
11 BY MR. WILSON:
12 Q Mr. Dondero, did you -- did you keep the cell phone you
13 had in December 2020 when you changed the financial
14 responsibility on your phone?
15 A I got a more advanced 5G with better picture-taking
16 capability and more -- more storage.
17 Q And do you recall when you made the decision to get that
18 new cell phone?
19 A A couple weeks before the 10th. It take -- it take -- it
20 took -- during COVID, it takes longer to get the phones, so it
21 took a couple weeks to get it and then for the tech guys to
22 swipe or clean out the old one and then for me to get the new
23 one and for the old one that hit Tara's desk on the 10th.
24 Q Okay. Well, who ordered the new cell phone?
25 A I don't know. Sometimes -- most of the time, it's the

guys in tech who do it, and then they coordinate people's credit card to pay for it.

Q Okay. But it was not you that actually made the order?

A No. I was not involved.

Q Okay. And you say you think it was ordered about a week to ten days before your new phone was set up?

A At least. The iPhone 12 is -- is and has been backlogged.

Q After the cell phone policy that you testified to earlier was put in place, did you follow this policy every time you got a new cell phone?

A Yes.

Q Did you do anything differently with respect to the process of replacing your cell phone in December of 2020?

A No, I did not.

Q At the time you got a new phone, were you aware that Scott Ellington was also getting a new phone?

A No.

Q So did you discuss your decision to get a new phone with Mr. Ellington?

A No. Again, I assumed everybody was doing it. It wasn't something I needed to discuss with him.

Q So, --

A Yeah.

Q -- do you recall if you had any discussions with Isaac Leventon about getting a new cell phone?

A No.
Q No, you don't recall, or no, you did not?
A No, I did not.
Q At the time you got your new phone, were you aware that any party was seeking information from your old phone?
A No.
Q Did Isaac Leventon ever tell you that anyone wanted to preserve text messages on your old phone?
A No.
Q Were you ever provided a litigation hold letter or other notification to preserve information on your phone?
A No.
Q Did you ever receive -- or, I'm sorry -- did you receive a text message from Jason -- Jason Rothstein on December 10th stating that your old phone was in Tara's desk drawer?
A Yes.
Q And who is Tara?
A Tara is my assistant.
Q Did you ever see your old phone again after receiving that text?
A No.
Q And who -- do you recall who -- the individual you handed your phone to when you initiated the process to getting a new one?
A It was Jason Rothstein in the Systems or the Technology

Group.
Q And to be clear, Mr. Rothstein is a Highland employee, right?
A Yes.
Q Do you have any personal knowledge about what happened to your phone after Jason Rothstein texted you that he left it in Tara's desk?
A No.
Q Did you ever look to see if it was in Tara's desk?
A No.
Q Did you -- you -- you didn't take the phone out of Tara's desk?
A No.
Q So did you ever see the phone again after you turned it over to Jason Rothstein?
A No.
Q Do you know where the phone is today?
A No. But, again, I don't know why this is relevant. They can get the text messages from the phone company if they think it's that big of a deal.
Q When you previously testified that the phone was disposed of, what did you mean?
A I mean, that's -- that's the last step. That's what always happens to the old phones. But to say it was tossed in the garbage, I have no idea. I have no idea what happened to

it after it went back to Tara's desk.
Q So do you have any personal knowledge that your phone was actually disposed of?
A I don't know.
Q When did you first become aware that the Debtor wanted to see your phone?
A Again, when I had given it to Jason, I thought they had seen it. You know, so I was surprised by the communication during the week of Christmas, I think it was, when I was -- I was out of town.
Q Well, yeah, I'll rephrase my question. When did you first become aware that the Debtor's counsel wanted to see your phone?
A I had some communication from my counsel the week of Christmas.
Q Okay. And what did you do for Christmas last year?
A I took my girls to Aspen.
Q And do you recall the dates that you were in Aspen?
A Until the 28th.
Q I'm sorry. I think you cut out.
A Until the -- until the 28th.
Q Okay. And were you working while you were in Aspen?
A A little bit.
Q So, there was some talk earlier about the Committee filing a motion to get ESI from Highland and certain individuals.

Did anyone, after or contemporaneously with the filing of that motion, ever inform you that the Committee was seeking your text messages?

A No. And -- yeah. No. And it's -- that's an indirect request versus a direct request, right?

Q Well, so no one at the Debtor ever asked you to preserve text messages?

A Correct.

Q And so would that include Isaac Leventon? He never asked you to preserve any text messages?

A Correct. No one -- no one -- no one from the Debtor did.

Q And, so, going back, you were in Aspen when the Debtor's December 23rd letter was sent to Mr. Lynn, correct?

A Yes.

Q And Mr. Lynn communicated that letter to you?

A Yes.

Q And did you discuss that letter with Mr. Lynn?

A Yes.

Q And are you aware that Mr. Lynn wrote a response to Jeff Pomerantz regarding that letter?

A Yes.

Q And are you aware that that response was sent on or about December 29th?

THE WITNESS: You want to -- can John Morris maybe put his phone on mute, because he's -- he's shuffling papers

and it's -- it's throwing it off on this end.

THE COURT: I --

MR. WILSON: Yeah. My question was, are you aware that that letter was sent on or about December 29th?

THE WITNESS: Yes.

BY MR. WILSON:

Q And are you aware that that letter from Mr. Lynn to Mr. Pomerantz stated that, we are, at present, not sure of the location of the cell phone issued to Mr. Dondero by the Debtor?

A Yes.

Q On December 29, 2020, did you know the location of your cell phone?

A No.

MR. WILSON: Your Honor, at this time I would like to ask for the admission of the exhibits on my second amended witness and exhibit list.

THE COURT: All right. Are you talking about Exhibits 1 through 20 at Docket Entry 106?

MR. WILSON: That's correct. Exhibits 1 through 20.

THE COURT: Any objection?

MR. MORRIS: No, Your Honor.

THE COURT: All right. They're admitted.

MR. WILSON: All right. All right, thank you.

(Dondero's Exhibits 1 through 20 are received into

evidence.)

MR. WILSON: Can you turn to 1?

BY MR. WILSON:

Q We're going to put an exhibit -- Dondero Exhibit No. 1 on the screen. Mr. Dondero, have you seen this document before?

A Yes.

Q And can you identify what this document is?

A It's a shared services agreement -- (pause). It's a shared services agreement between Highland and NexPoint Advisors.

Q Okay. And in the first paragraph, is NexPoint Advisors defined as the Management Company?

A Yes.

MR. WILSON: Go to Page 3, the bottom. Article 2.

BY MR. WILSON:

Q Now, I want to direct your attention to the bottom of Page 3, Article 2. Can you read the first paragraph, Section 2.01?

A (reading) Highland is hereby appointed as staff and services provider for the purpose of providing such services and assistance as the management company may request from time to time to -- and as applicable to make available the shared employees to the management company, in accordance with and subject to the provisions of this agreement, and the staff and services provided -- and the staff and services provider hereby accepts such appointment. The staff and services

provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Q All right. And can you read for me the first part of Paragraph 2.02, please?

A (reading) Without limiting the generality of 2.01, and subject to Section 2.04, applicable asset criterion concentrations below, the staff and services provider hereby agrees from the date hereof to provide the following back and middle office services, administrative infrastructure, and other services to the management company.

Q All right. In Paragraph A, under Back and Middle Office, if we go down to the next page, does that include Finance and Accounting Services?

A Yes.

Q And then Paragraph B, does that include Legal, Compliance, and Risk Analysis services?

A Yes.

Q And specifically, would that be assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis?

A Yes.

Q So, did NexPoint Bank have its own accountants?

A No. NexPoint -- NexPoint Advisors, that's who we're talking about here, --
Q I'm sorry. NexPoint Advisors.
A -- yeah, relied on Highland for those services. I mean, it subsequently -- it subsequently had to hire a couple lawyers because it wasn't getting those services to the extent it used to. But it used to have zero, zero of its own accountants and lawyers.
Q Okay. And then you had -- you said it had zero lawyers initially. Was it the intention that, that by shared services, that NexPoint Advisors would use Highland's lawyers and accountants without the need of having to hire their own?
A Yes. I mean, the structure might be unusual compared to other companies that run through bankruptcy, but in financial services, there's -- there's generally a centralized model for high-cost people in the legal, accounting, and tax arena so that each subsidiary doesn't have to have their own expensive, duplicative set of employees.
Q Okay.
MR. WILSON: Can you go to the next exhibit? 2?
BY MR. WILSON:
Q I'm going to put up Dondero Exhibit 2. (Pause.) It should be here momentarily. All right. Can you see that document, Mr. Dondero?
A Yes.

Q And have you seen this document before?
A This is a similar shared services agreement, but this time with HCMFA, the other asset management arm.
Q Okay. And you would agree with me that Highland Capital Management, LP is defined as HCMLP and that Highland Capital Management Fund Advisors, LP is identified as HCMFA? Do you agree with that?
A Yes.
Q Okay.
MR. WILSON: Go to Page 3.
BY MR. WILSON:
Q Now, can you read Paragraph 2.01 to me?
A It's almost the exact same as the other one. Do you really want me to read it? I mean, it just -- is there something different in this paragraph? It's just a different entity.
Q Right. Well, just -- just read the Paragraph 2.01.
A Okay. (reading) During -- during the term, service provider -- service provider will provide recipient with shared services, including, without limitation, all of the finance and accounting services, human resources services, marketing services, legal services, corporate services, information technology services, and operations services, each as requested by HCMFA and as described more fully on Annex A attached hereto, the shared services exhibit, it being

1 understood that personnel providing shared services may be
2 deemed to be employees of HCMFA to the extent necessary for
3 purposes of the Investment Advisers Act of 1940, as amended.
4 Q All right. And you stated a minute ago that, although
5 worded differently, this paragraph has the same structure and
6 intent of the prior document we looked at, correct?
7 A Yes.
8 Q And there's a -- a sentence and a portion of a sentence
9 that you read that says that the personnel providing shared
10 services may be deemed to be employees of HCMFA. Do you see
11 that?
12 A Yes.
13 Q And do you know why that provision is in there?
14 A Sometimes the Investment Advisers Act requires
15 specifically employees to be named that are key man in
16 different -- whatever. So sometimes people have to be dual
17 employees or -- or in the entity. Even if there are very few
18 people in the entity and it's relying on shared services,
19 sometimes, yeah, sometimes you need to have split people or
20 move them in.
21 Q All right. I just want to ask you a couple questions
22 about your depositions given in this case. Did you give a
23 deposition on December 14th?
24 A Yes.
25 Q And who took that deposition?

A I believe that -- I believe that was John Morris.
Q Okay. And was that deposition given remotely by Zoom?
A Yes.
Q And December 14th is four days after the TRO was entered, correct?
A Yes.
Q And at that deposition, did Mr. Morris ask you where you were located?
A Yes.
Q And what did you tell him?
A In the Madrone conference room. Or the main conference room at Highland.
Q Okay. Now, you acknowledged that you personally intervened to stop trades that Mr. Seery wanted to make around the time of Thanksgiving, correct?
A Yes.
Q Were any trades halted as a result of your actions?
A I -- I don't believe, even when I directly impacted it in November, I don't believe it actually stopped or slowed anything down. And I believe he testified similarly. And I know for sure in December, because I had no contact with any of the traders, I know I did nothing to disrupt anything in December 20th --
Q But in any event, it's your understanding, as you earlier testified, that those events around Thanksgiving led to the

entry of the TRO?
A Yeah. I mean, again, I think he intentionally did it to get my attention. He sold illiquid restructured equities that the CLOs had owned for ten years, had no reason to sell, would have liked to have held longer, and he sold them for almost -- for about half the price that they were two months later. It was -- it was a colossal, intentional harm of investors.
Q But you believe that those events led to the entry of the TRO?
A Yes. I reacted severely and -- by telling him not to do it again. And then that got perceived as a threat and got perceived as somehow usurping his power to harm the beneficial holders of those CLO assets, which are the retail funds, the DAF, HarbourVest at the time, et cetera.
Q Since that TRO was entered, have you taken any actions to try to stop Mr. Seery's trading?
A No.
Q Have you interfered with the Debtor's trading in any way since the TRO was entered on December 10th?
A No.
Q Have you agreed with every trade that the Debtor has made since December 10th?
A No.
Q Now, you -- there's -- there's been testimony in this case that Mr. Seery wanted to make more trades in December of 2020.

Do you recall that testimony?
A More trades between Thanksgiving and New Year's like the other ones? I mean, I -- I don't know how crazy we could get here, but I -- I don't remember that testimony.
Q Okay. Well, did you become aware that Mr. Seery was making trades in December of 2020?
A I believe in the same names, you know, the same AVYA at $17, $18, $20 a share, $21, before it hit $35, $37, you know, after he sold it. You know, that kind of stuff.
Q But you did become aware that Mr. Seery was attempting to make trades in December, correct?
A Yes.
Q And did you attempt to stop any of those trades?
A No.
Q Did you call Mr. Seery about those trades?
A Nope. I didn't call the traders. I just -- again, I thought it was another compliance breach, I thought it was another violation of the Registered Investers Act, and so I just highlighted it to Jason Post, the NexPoint compliance guy, said, take a look at it.
Q Did you send Mr. Seery any texts or emails about the trades?
A Nope.
Q Did you threaten Mr. Seery in any way about the trades?
A No.

Q Do you recall how you became aware that Mr. Seery wanted to make trades in December of 2020?
A He was -- he was either still using Highland Fund traders or he was using NexPoint or the OMS system. Somehow, he was using either traders or an OMS system that wasn't his and was ours. It -- the -- either the OMS system or the general blotter or something, where other employees made me aware of it.
Q And so did you -- did you receive that notification through an email?
A I don't believe -- yeah, no, I think I did, because that's what I forwarded to Jason Post, I believe.
Q Okay. And who is Mr. Post?
A Jason Post is the compliance officer at NexPoint.
Q Okay. And he's not a Highland employee, correct?
A No.
Q Did you have any follow-up communications with Mr. Post after you forwarded him that email?
A No, I did not.
Q Did you ever give Mr. Post any direction or any instruction to take any action with respect to those December trades?
A No. And like I said, the first time I found out he did anything, which he just found them to be noncompliant and I think he would have let them go through our order management

system, I didn't find that out until a month, month and a half later.

Q And how did you find that out?

A When I was in Davor's offices and he testified.

Q Was that hearing in January of this year?

A Yes.

Q And so did -- did Mr. Post, to your understanding, end up interfering with the booking of trades?

A I -- I think what ended up happening was, instead of using the order management system, I think Seery just started going directly through Jefferies without any compliance oversight. That's how I understood.

(Interruption.)

THE COURT: All right. Someone needs to put their phone on mute.

Go ahead.

BY MR. WILSON:

Q Okay. Can you tell me what you mean by booking of trades?

A If you don't have access to the order management system, then you have to book them directly with the dealer.

Q Well, so when the trade is booked, has it already been executed?

A Yeah, generally.

Q Okay. And you talked about the OMS or the order management system. What is that?

A Well, it's like an automated version of the old trade blotter that used to be a gigantic book that everything had to be written in in pen back in the old days. That's essentially the source document for all trades that an organization performs.

Q Okay. So what's the benefit of using the OMS system?

A It's a necessary part of compliance with the SEC. You have to show that you have a discrete and protected primary source for all your trades, all your trade information.

Q And so, if I understand you, you said that these trades that Mr. Seery executed in December weren't run through the OMS?

A I understand that when Jason Post, I think, made the determination with outside counsel that they weren't properly -- that they weren't proper trades for some reason, and then he didn't allow them to go through the order management system, so I think Seery's testimony was he wasn't impaired at all, he just did the trades himself through Jefferies. But it -- yeah, that's all from -- that's all from memory.

Q Well, had the Advisors booked trades for Highland in the past?

A Yes.

Q And were the trades that the Advisors booked for Highland run through the OMS?

A Yes.

Q Were the Advisors contractually obligated to book trades for Highland?
A I don't know. But first and foremost, they have to be compliant, you know.
Q Did you have any role in instructing the employees of the Advisors not to book Mr. Seery's trades in December of 2020?
A I had no involvement whatsoever.
Q Now, are you familiar with letters that were sent in December of 2020 from the K&L Gates law firm to the Pachulski law firm?
A Yes.
Q Do you know how those letters came about?
A I believe the CLO equity investors -- and remind you, those are old CLOs where there's almost no debt on them at all; they're just pools of assets -- that the CLOs -- that the CLO investors had owned for years and wanted to keep the exposure, they were witnessing Seery selling things from their portfolio for no business purpose. And as the beneficial holders of, I think, in aggregate, between the retail funds and the DAF, they owned more than a majority of 13 of the 18 yields and a supermajority of seven of them, and they had every intention of replacing Highland as manager once the bankruptcy ended because Highland had no staff, it was going to have no staff post the bankruptcy and would not qualify under key man provisions and would not have the expertise

1 necessary to manage their CLO.
2 We had seen what happened in Acis when a manager has no
3 employees and no skill to manage a CLO. You end up with the
4 Fort Worth performing CLOs in the universe and the destruction
5 of value. And so I think that NexPoint and DAF investors were
6 -- were worried --
7 (Interruption.)
8 THE WITNESS: -- about what would happen if they
9 didn't get control of the CLOs.
10 THE COURT: Someone needs to put their device on
11 mute. I'm not sure who it is. Caller 77. Anyway, it went
12 away. Continue.
13 MR. WILSON: Okay. Can you pull up Debtor's 14?
14 BY MR. WILSON:
15 Q All right. I'm going to pull up the Debtor's Exhibit No.
16 14.
17 MR. WILSON: And go to Page 5. Yeah, that's right.
18 BY MR. WILSON:
19 Q All right. Do you recognize this document as being one of
20 the letters sent from K&L Gates to the Pachulski firm?
21 A Yes.
22 Q Did you instruct anyone at K&L Gates to send this letter?
23 A No.
24 MR. WILSON: Let's go to 15, hopefully. And then go
25 to Page 6.

BY MR. WILSON:
Q And I'm now going to show you 15, Exhibit -- Debtor's Exhibit 15. And this is Page 6. This is another letter from K&L Gates, it looks like sent the following day from the last letter we looked at. And so I'm going to ask a few questions referring to both of these letters. But did you instruct K&L Gates to send either one of these letters?
A No. If I -- if I had had involvement in these, I would have written them much stronger than these letters are written. You know, these letters are written with a little bit of needing approval from the independent board, a little bit of fear of the, you know, bankruptcy process, not understanding what's going on or why Seery is doing what he's doing, you know, understanding the detriment of the portfolios from -- from me or the manager, et cetera.
So it's -- both these letters are fairly diluted in what they say they'll do. You know, it's -- they both say subject to bankruptcy court approval or subject to this, we may do that or this, or we're concerned about this. But I think the behavior was egregious and self-serving. I would have had much stronger letters if I had anything to do with them.
Q So you're saying that these letters don't contain your words?
A They do not.
Q Did you participate in the drafting of these letters in

any way?
A I did not. Like I said, I would have done something much stronger and I was disappointed on how watered down they were.
Q Did you instruct anyone as to the general substance that these letters should convey?
A No, I -- it's -- I applauded it and I encourage people to do their jobs, which is to watch out for the investors and watch out for capricious behavior on the part of Jim Seery. But -- yeah, but no, I did not -- I did not draft it or have direct input into it.
Q Did you read or approve the letters before they went out?
A No.
Q Did you have any part in putting together these letters?
A No. I mean, like I said, I was -- I was disappointed in the soft -- I would have had more umbrage. I was disappointed in the softness of the letters.
Q But were -- you were provided a copy of these letters after they were sent?
A Yes.
Q So was the sending of the letters in general your idea?
A In general, I thought it was a good idea. I mean, in general, like I said, I viewed it as a violation of the Advisers Act and the spirit of the Advisers Act, when the beneficial holders have told you they're going to change managers and don't want their account liquidated. And I still

to this day believe -- believe that. And if it was -- if it was money I inherited from my grandmother, I would be extremely annoyed if a financial advisor or something did this to the portfolio.

Q And I appreciate your answer, but that wasn't exactly what I asked you. Was the sending of the letters your idea?

A No. The sending -- I believe Jason used outside counsel to, you know, validate the impropriety, and then he championed the letter dealing with independent boards and third parties and, you know, whatever, and this is -- these are the letters that came out.

Q So did he cause the sending of these letters?

A I wouldn't use the word cause. I mean, like, again, I was supportive. I encouraged them. I think they were the right thing to do. I would -- I would do them again. Would encourage someone to do them again. I still think this issue isn't resolved. I still think it's -- it's craziness that Highland is managing these CLOs.

Q Since December 10th, have you ever communicated with any Highland employee to coordinate your litigation strategy?

A No.

Q And you're familiar with Scott Ellington?

A Yes.

Q And he was a Highland employee?

A Yes.

Q And what was your understanding of his role at Highland after December 10th?

A Again, I was being -- I was being, you know, increasingly without support and isolated. I didn't even -- you know, I was trying to put pot plants together without even knowledge of the assets, you know, and I was -- I was increasingly in a vacuum. But Scott Ellington was helping, as settlement counsel, trying to reach some kind of agreement to exit Highland, transition the employees, et cetera.

It was important for him to know everything that was going on, in my opinion. Because whether it included the letters we just went over that reduced the value of the assets at the Debtor such that, you know, you know, we could pay less, whether it was legal matters or legal risks, you know, I thought it was important for him to be -- important for him to be aware and important for him to be fully informed so that he could be nimble in his role as settlement counsel and in his role on shared services. Because, again, we were trying to -- we were trying to transition 40 or 50 employees that were being treated extremely harshly by the Debtor. And we were trying to provide fair and proper continuity for them also.

Q When you refer to settlement counsel, are you referring to what others may have referred to as a go-between between you and Mr. Seery?

A Go-between was part of it, but he had -- Ellington had

been anointed in the late spring/early summer as a go-between to work different parties and angles during the mediation and after the mediation and around the pot plan, et cetera. And he was integrally involved in all of those.

And then as far as the shared services and transitioning employees, he was deeply involved in that, and I think he actually spoke as almost a union rep for the employees. So there was -- he was intimately involved in that.

And then how the shared services were going to work going forward, once everybody was terminated from Highland, you know, to treat people as fairly and smoothly as possible.

Q Was Mr. Ellington --

A I'm sorry. Let me just say the last thing. I don't think, other than the Thanksgiving time frame, I don't think I talked to Seery in the last seven or eight months. So he was an important go-between and an acknowledged go-between and used as a go-between by Seery as much as by me. So whether his role was official, he was def... the form -- or, the substance over form is that he was being used in that role, literally having meetings on shared services a day or two before he was terminated for cause.

Q And was Mr. Ellington general counsel at Highland?

A Yes, he was.

Q And as part of Highland's legal department, did he provide shared services to the Advisors?

A Yes.
Q And would those Advisors be Highland Capital Management Fund Advisors and NexPoint Fund Advisors?
A Yes.
Q And those are both entities that -- that you -- that are part of your umbrella?
A Yes.
Q After the independent board was established, you testified that Mr. Ellington started serving as a go-between between you and the board, correct?
A Yeah, I'd say the official go-between role, because I was actively talking to board members and I was actively talking to Seery, and every time Seery sold something in a non-arm's-length transaction or below market or without court approval, I went and I complained to the other independent board members.
So I was having active conversation around the life settlement transactions with the independent board, around the SSP transaction, et cetera. But by the summertime, like I said, Ellington was the primary contact person for me and I -- to deal with Seery, and I think the primary contact person for Seery to deal with me.
Q And did Mr. Ellington -- I'm sorry. Did you use, actually use Mr. Ellington to communicate ideas to the boards or Mr. Seery concerning your pot plan proposals?

A Yes. We did a couple pot plans of our own when we couldn't get the independent board to focus. And once Seery shifted to whispering to creditors about a liquidation plan, we couldn't get Seery to buy into a pot plan at all, so Ellington and I went forward with a couple of pot plans on our own, and then -- but the last pot plan was solely with Judge Lynn and the independent board members, without me and without Ellington.

Q Well, did Mr. Seery use Mr. Ellington to communicate ideas back to you?

A Yes.

Q Did Mr. Seery use Mr. Ellington to communicate ideas to you after December 10th?

A Yes. Like I said, up until literally a day or two before he was terminated, there were authorized shared services meetings, because there was a couple-week period there where no one was allowed to have a shared services meeting unless approved by Seery in advance, and nothing was getting done. So he -- Seery anointed a couple people at Highland to be able to deal with a few people at NexPoint and to have a couple meetings, and Ellington was one of those people who actually led the meetings in the last week of December.

Q Did you ever discuss entering a common interest agreement with Mr. Ellington?

A I believe -- I believe the lawyers had a couple different

conference calls on it, and then I think the lawyers for the employees and for the senior employees determined that their strategies and tactics would be best served by not being a part of it. But I think in the beginning there was thought that it would be good for them to be in the group. But that wasn't a conversation I had with Ellington. Those were decisions the lawyers made amongst themselves.

Q Did you ever have any discussions about a common interest agreement with Mr. Leventon?

A No.

Q Did you ever discuss entering a common interest agreement with any current or former Highland employee?

A No. No.

Q Did you have discussions regarding a common interest agreement with Douglas Draper?

A Yes.

Q And who, again, is Douglas Draper?

A He represents Dugaboy and the Get Good Trust. And, you know, more importantly, there needed to be some coordination among the lawyers, and then I think it was clear to him that positioning for the Fifth Circuit was going to be important, so he -- he coordinated -- or, he led the coordination of the law firms.

Q Did you ever participate in any conference calls regarding a common interest agreement?

A I'm going to say maybe one, but it quickly -- I'm not a lawyer by training, so it was quickly not something that I added value in, and I wasn't the one that made the decisions or influenced anybody to be in or out of the agreement. So, again, maybe once, but -- but --

Q Well, was -- was Mr. Leventon or Mr. Ellington on any conference calls you might have been on regarding a common interest agreement?

A Not that I'm aware of. I have not talked a single word to Mr. Ellington or Isaac since they were terminated, which was, I believe, the last week of December. Because I have not spoken a single word to either one of them since then.

But, again, as recently as a day or two before they were terminated, they were actively involved in shared services meetings.

Q So you're not aware that they were on any conference calls that you were on regarding a common interest agreement?

A Correct.

Q And other than you, are you aware that there were any other current or former Highland employees on a conference call about a common interest agreement?

A I believe it was all employees. I mean, it was all lawyers for the different entities.

Q Would -- would -- were you aware if counsel for Mr. Ellington or Mr. Leventon were on any of these conference

calls?
A That, I believe, is true. Yeah, I believe his -- their counsels were.
Q So, you're familiar with the Dugaboy and the Get Good Trusts?
A Yes.
Q And are you the trustee for either one of those trusts?
A No.
Q Do you control either one of those trusts?
A No. Not directly. I'm a lifetime beneficiary of the Dugaboy Trust, but I don't control it.
Q When did you become aware that the U.C.C. was seeking production of documents from Dugaboy and the Get Good Trust?
A Around when -- a day or two before that Melissa email requesting a subpoena, for whoever -- but it -- I think it was a midlevel person at DSI was asking or demanding Dugaboy financials, and that was her response to that person.
Q So would that have been approximately December 2020 when you learned of that?
A Right. And, again, that was -- that response was the exact specific wording I was given by counsel to tell them at that moment.
Q Were you served with any formal requests for the Dugaboy or Get Good Trust documents?
A No.

Q And you stated that the Dugaboy and Get Good Trusts have hired counsel to represent them?
A Yes.
Q And that counsel is Douglas Draper?
A Yes.
Q And to your knowledge, has Mr. Draper been working with the Debtor's counsel to produce the Dugaboy and Get Good documents?
A Yes. I think he investigated the requests. I think he got a more formal official request, and then I think he analyzed it and said, as long as he got to review what was provided, he was okay with it. That's -- that's what I understand.
Q Well, have you or Mr. Draper ever taken the position that the documents would not be turned over?
A No. I mean, I've -- I've delegated it to Douglas to handle.
Q Have those documents, at this point, actually been produced?
A I have no idea.
Q Do you have any objection to the documents being produced?
A No.
Q And you testified that Melissa Schrath is an accountant?
A Yes.
Q And so she was a Highland employee that was contracted to

the Advisors under the shared services agreement?
A Yeah. That's -- that's the way I would describe it, because she was -- you know, I was a NexBank and -- a NexPoint employee. I was being paid by NexPoint. And she was a hundred percent -- well, 80 percent servicing me, 20 percent servicing Mark Okada. And so she was properly, as was my administrative assistant, properly lumped as part of the NexPoint shared services.
Q Okay. And in December of 2020, did Melissa have access to the Dugaboy documents?
A Yes.
Q Did you say "I guess" or "Yes"?
A Oh, yes, she did. And as a matter of fact, she said 70-80 percent of them were on the server and non-password protected.
Q So, why did you send a text message to Melissa in December?
A I didn't know they were non-password protected at that time. But, again, that was a specific advice of counsel, that it was -- it was a personal entity, not involved in the bankruptcy, and for a midlevel DSI person to ask my accountant was not -- I believe that wasn't perceived as adequate proper channels. So that was -- that was the legal advice I got from your firm. So, --
Q All right. When was your access to the Highland computer system shut down?

A I believe at night right around the 30th.
Q All right. So I just want to -- I just want to ask you a couple more questions. Did you, after the entry of the TRO, did you make an effort to modify your behavior in such a way that you would comply with the TRO?
A Yes. And, you know, something I want to make clear that I discovered during the break when I went through my phone, the January 5th deposition that has somehow become important, even though there were no Highland employees in the office other than the receptionist, is memorialized by a calendar invite on my phone -- which will also be in the Highland system -- where it was an invite a week earlier from Sarah Goldsmith, who was one of the Highland employees supporting the legal team that was largely supporting Jim Seery, sent me a calendar invite to the conference room at Highland for the deposition on the 5th. It's right front and center in my calendar. It'll be on the Highland Outlook program. And Sarah Smith -- I mean, Sarah Goldsmith works directly for Jim Seery.
So, just to maybe put that issue to bed, I would highlight that for everybody.
Q So, the answer to my last question was you made a concerted effort to modify your behavior in response to the TRO?
A Yes. The only two times I've been in Crescent was for those two depos. I don't even go to -- when people have happy

hour at Moxie's, because it's in the lobby of the other -- one of the adjacent buildings, I don't even attend happy hours at the bar in the lobby for fear of somehow violating the building order.

Q All right. So, have you thought better of your actions that you took around Thanksgiving of last year?

A I mean, you know, in due respect for the Court and the Court may be thinking that the investor allegations are fanciful or frivolous, it granted nonetheless an injunction, and I respect it. And I -- so I've been -- I handle things differently as far as what I think are material breaches on the 20th and I've -- I've adjusted my behavior. But I do not regret or think differently about the -- liquidating the portfolio the week of Thanksgiving, liquidating illiquid assets for no business purpose. I still think that was highly irregular and highly wrong.

Q So, to sum up, your opinions of the way Highland is currently being managed are not -- sorry, start over. Although your opinions of the way Highland is being managed have not changed, has your outlook on what your behavior ought to be changed?

A Yeah, my outlook really is the same, that material assets are being sold without court approval, material assets are being bought without court approval, material assets are being sold in a non-arm's-length noncompetitive way for less than

full value. I still believe that it's impacted the estate materially. I know somehow my limited involvement in portfolio management responsibility on very limited funds only through March or April, and then the performance of Highland is somehow laid at my feet, but the destruction of value has been entirely based on major asset sales by Jim Seery. Number one.

And then I would say, number two, how analysis of liabilities against Highland go from an estimate of a total of $100 to $120 million in the first quarter and end up ending up at almost $300 million, with nothing ever being litigated or challenged, just business judgment rule, that somehow it would be cheaper than litigating some of these frivolous litigation claims, has destroyed the liability side of the balance sheet.

But, anyway, but I -- you know, life goes on and I'm doing the best I can to move the rest of the business forward, move the employees forward, and we will do the best we can to get justice for the Highland estate at some point.

Q And just to clarify your testimony earlier, the last time that you saw your old cell phone in December of 2020 was when you handed it to a Highland employee, correct?

A Yes.

Q And do you have any personal knowledge whether that cell phone was actually wiped, according to company policy?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: I was told that it was.

BY MR. WILSON:

Q Okay. But you don't have personal knowledge as to whether the phone was indeed wiped by Highland, in accordance with its policies?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: I was told by --

THE COURT: Sustained.

THE WITNESS: -- Jason Rothstein --

THE COURT: Sustained.

THE WITNESS: -- that it was wiped.

THE COURT: Sustained. Rephrase the question.

MR. WILSON: I'm just trying to get him to let us know if he has any personal knowledge that the phone was ever actually wiped in accordance with Highland's policies.

THE COURT: Okay.

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Jason Rothstein told me that it had been wiped according to Highland policies.

MR. MORRIS: Objection to the form of the -- I move to strike. It's hearsay.

THE COURT: Sustained.

MR. WILSON: Your Honor, that -- Your Honor, that

would be a statement by a party opponent.

THE COURT: Who --

MR. WILSON: And it's --

THE COURT: Who's the party opponent here?

MR. WILSON: And it's just going to show Mr. Dondero's state of knowledge.

THE COURT: All right. Well, the party opponent, how do you justify that exception?

MR. MORRIS: I --

MR. WILSON: Well, Mr. Rothstein is an employee of Highland, as we've talked about, and -- and then the second point of my response will be that it's not to go to the truth of the matter asserted, just that that's the extent of Mr. Dondero's state of mind, is what he was told by Mr. Rothstein, not whether it was actually true or not.

THE COURT: All right. I'll overrule the objection.

MR. WILSON: All right. Thank you. We'll pass the witness.

THE COURT: All right. That was an hour thirty-three minutes. Mr. Dondero, do you need a five-minute break?

THE WITNESS: Sure.

THE COURT: Okay. We'll take a five-minute break, please.

THE CLERK: All rise.

(A recess ensued from 3:15 p.m. to 3:25 p.m.)

THE COURT: All right. Please be seated. All right. Just --

MS. SMITH: Your Honor, Frances Smith --

THE COURT: Go ahead.

MS. SMITH: -- for Scott Ellington and Isaac Leventon.

Your Honor, I have more good news. After the break, we reached an agreement with Mr. Wilson that they would not be calling Mr. Ellington.

THE COURT: All right. Mr. Wilson, you confirm?

MR. WILSON: I do, Your Honor.

THE COURT: All right. Well, they're excused, then.

MS. SMITH: With that, Your Honor, may he be excused?

THE COURT: Yes, ma'am.

MS. SMITH: Thank you.

THE COURT: All right. Thank you.

All right. Mr. Morris, do you have further examination of Mr. Dondero?

MR. MORRIS: I do. I hope, I hope it's not too lengthy, particularly if I'm allowed to ask my leading questions on cross-examination.

THE COURT: All right. And let me --

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Dondero, can you hear me, sir?

THE COURT: Let me just let you all know where you are timing-wise.

MR. MORRIS: Yeah.

THE COURT: You used two hours and sixteen minutes this morning on examination. But as I told you, I think you're entitled to some credit, so to speak, on your three-and-a-half hour total because of the narrative answers. So I'm not -- I'm not sure yet where I'm going to chop time, but please be mindful that's where we are. Okay?

MR. MORRIS: I'll try to limit this to 15 or 20 minutes, Your Honor.

THE COURT: All right.

BY MR. MORRIS:

Q Mr. Dondero, can you hear me, sir?

A Yes.

Q You testified that you're seeking justice for the estate. Is that right?

A Yes.

Q Your claims against the Debtor consist solely of indemnification claims and tax claims; is that right?

A Well, I mean, with proper 9019s, I think there's a residual equity value to Highland, and Highland should be able to resurrect and go forward.

MR. MORRIS: Your Honor, I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:
Q Sir, the only claims that you have filed against the Debtor are for indemnification and for taxes, right?
A Yes.
Q Okay. And you made a lot of -- a lot of allegations about Mr. Seery, my firm, and the Debtor, and your views on what we're doing in this bankruptcy case. Isn't that right?
A I think it's transparent now, yes.
Q And you -- one of the complaints you have were the settlements that the Debtor entered into with certain of the creditors, right?
A Yes.
Q And you said that they weren't -- there was no scrutiny. Isn't that the word you used?
A Yes.
Q But you had every single opportunity in the world to take discovery with respect to every single one of these settlements; isn't that right?
A We did and we tried.
Q Okay. And you failed; isn't that right?
A Yeah, I -- yes. I guess that's --
Q Right? And you could have -- you, with all of your knowledge, with all of your wisdom, you could have tried to persuade the Court that these settlements were wrong. Correct?

A Yes.
Q And you did not personally ever take the stand to try to explain to the judge why these settlements were wrong. Isn't that right?
A Willing to.
Q But those hearings are over long ago. Isn't that right?
A Yes.
Q So you sit here and you complain about them, but when you had the opportunity, you chose not to testify in order to educate the judge and try to -- and try to show the judge that those were bad settlements. Isn't that right? You didn't do that?
A Counsel chose their strategy, which evidently, based on our success in overturning them, maybe it wasn't the right strategy, but their strategy was for me not to be the expert.
Q And the U.C.C. represents the interests of general unsecured creditors; isn't that correct?
A Yes.
Q And to the best of your knowledge, the U.C.C. did not object to any of the settlements that you complain about, correct?
A Everybody got three or four times more than they deserved, except for Redeemer, that got about 20 percent more.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.

BY MR. MORRIS:
Q Sir, the U.C.C. did not object to any of the settlements that you complain about, correct?
A I don't -- I don't know the answer to that. I thought more than one person objected to Josh Terry and Acis and I -- we haven't seen the 9019 for UBS or Pat Daugherty yet.
MR. MORRIS: I move to strike and I'll try one more time, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Mr. Dondero, it's a very simple question. The settlements that you complained about -- Acis, HarbourVest -- the U.C.C. didn't object to them at all. Correct?
A Yeah, I guess not. I don't know if they did or -- yes. I don't know.
Q Okay. And Mr. Seery, we -- the Debtor made a motion last summer to have Mr. Seery appointed as the CEO. Do you remember that?
A Yes.
Q And you didn't object to that, correct?
A We didn't realize he had betrayed the estate at that point. We thought he was still trying to negotiate a settlement, not give the company away.
MR. MORRIS: I move to strike.
THE WITNESS: So we did not --

THE COURT: Sus...

THE WITNESS: We did not object.

THE COURT: Okay.

BY MR. MORRIS:

Q And the Debtor didn't -- I mean, the U.C.C. --

THE COURT: Wait. It's happening again, --

MR. MORRIS: -- didn't object, correct?

THE COURT: -- Mr. Dondero. Okay? Please. Yes or no where you get a yes-or-no question.

Go ahead, Mr. Morris.

BY MR. MORRIS:

Q And to the best of your recollection, the U.C.C. was supportive of the appointment of Mr. Seery as CEO, correct?

A Yes.

Q And the Debtors just had a plan of reorganization confirmed, correct?

A Yes.

Q And as part of that plan, Mr. Seery is going to continue on as the post-confirmation executive, correct?

A I believe so.

Q And the U.C.C. is supportive of that, to the best of your understanding, correct?

A Yes.

Q Yeah. Let's talk about the phone for bit. You testified at length about this policy pursuant to which phones can just

be discarded and wiped down. Do you remember that?
A Yes.
Q You took some time to prepare for your testimony today. Isn't that right?
A No, not really.
Q You did meet with your counsel and communicate with your counsel over what grounds would be covered, right?
A Half an hour last night.
Q Okay. And despite all of the testimony that you provided about the policy of discarding phones and changing phone numbers and the rest of it, your counsel didn't show you anything in that 50-page employment handbook to corroborate what you were saying, correct?
A I don't know what you're asking. I'm sorry.
Q There's nothing in the employee handbook that reflects any of the policies you described with respect to cell phones, correct?
A That wasn't my testimony. I don't -- I don't know.
Q Okay. And your lawyer didn't show you anything, to the best of your recollection, that would corroborate what you said about this cell phone policy, correct?
A My testimony was I gave my phone to the Debtor's employee, the technology folks, and I knew they knew what to do in a compliant manner. I did not know the specifics of the employee manual. That was my testimony. I'm sorry. I --

you're asking me something else, but I don't -- I can't answer what you're asking. I don't know the employee manual.

Q Okay. And as you sit here right now, you're not prepared to give the judge any information that would show that there's any written policy of any kind that corroborates your -- the policy that you've described, correct?

A Written evidence? I know it to be approved at the highest levels by Thomas Surgent, whatever Jason Rothstein does with the phones. That's all I know. I assume it's memorialized in -- somehow in the employee manual, but I don't know, nor should I.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question.

THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, Jason Rothstein was on your witness list for this hearing; isn't that right?

A I believe he was at one point.

Q And you and your lawyers actually served him with a subpoena; isn't that right?

A I do believe -- yes, I do believe I heard something about that.

Q And so you had him under your control to come here today to give testimony to corroborate what you testified to on the cell phone policy. Isn't that right? You could have had him

1 come tell the judge what you've testified to, correct?
2 A I guess.
3 Q But you didn't, right?
4 A We didn't believe it was necessary.
5 Q So, so you're not aware of anything in the employee
6 handbook that corroborates the cell phone policy that you've
7 described, correct?
8 A We went over it in detail. I don't want to pull up those
9 pages again. But it either says it or it doesn't on those
10 pages. So, --
11 Q Okay. I'm going to try once again. You are not aware, as
12 you sit here right now, that there is anything in the employee
13 handbook that corroborates the cell phone policy that you've
14 described, correct?
15 A I don't know.
16 Q And there's not a single document on your exhibit list
17 that corroborates the cell phone policy that you've described,
18 correct?
19 A I don't know.
20 Q And Jason Rothstein, who you've testified a whole lot
21 about, was on your witness list, but you didn't call him today
22 to testify, correct?
23 A Yes. We didn't believe we needed him.
24 Q Okay. And let's talk about the policy itself that you've
25 described. Is there any exception to the policy that you've

1 described for saving text messages if you are personally a
2 target of an investigation?
3 A I have no idea.
4 Q So, so the policy that you've described, to the best of
5 your knowledge, doesn't contain an exception that maybe you
6 shouldn't do those things if you're the target of an
7 investigation. Is that right?
8 A No. I'm just saying that when Jason and Thomas Surgent
9 had my phone, they could have done anything they wanted to.
10 MR. MORRIS: I move to strike, Your Honor. I'm
11 asking him about the policy that he's described.
12 THE COURT: Sustained.
13 BY MR. MORRIS:
14 Q Sir, when you negotiated the corporate governance
15 settlement, part of that settlement was to state that the
16 Creditors' Committee would share the privilege for estate
17 claims. Do you remember that?
18 A Not specifically.
19 Q Do you remember that the Creditors' Committee had the
20 authority to investigate claims against you?
21 A I believe they were doing that during that six, seven
22 months in the beginning of the estate.
23 Q Okay. So is there any exception to your policy that
24 you've described with regard to cell phones that would say
25 maybe I shouldn't throw away the cell phone if I'm the subject

of an investigation?
A I don't want to speculate.
Q Okay. You're not aware of an exception to that policy, right?
A I don't want, yeah, I don't want to speculate. I don't know.
Q Is there an exception -- is there an exception to the policy to perhaps not throw away the cell phone if there's a court order that grants a Creditors' Committee the right to the text messages?
A I don't know.
Q You don't know? Okay. We talked about Mr. Rothstein. We talked about the handbook. Just to complete it, are you aware of any document anywhere in the world that's going to be put before the judge today that's going to corroborate the cell phone policy that you've described?
A I -- I don't know. But I would say I challenge you to tell me a different policy.
Q Okay. We looked briefly at the letter that my firm sent to your lawyers on December 23rd when they asked for the cell phone back and they made a very specific statement about the text messages. Do you remember that?
A No.
Q All right. Let's take a quick look at it. And it's Exhibit -- (pause).

MR. MORRIS: It's Exhibit 27, please. And if we can go down to the bottom of Page 2.

BY MR. MORRIS:

Q And this is where they -- they -- the Debtor informed your lawyers that it would be terminating the cell phone plan and they asked for the immediate turnover of the cell phone and they told you to refrain from deleting or wiping any information, right?

A Yes.

Q And you testified earlier that you actually discussed this letter with your lawyers, right?

A Yes.

Q Okay. And let's look back at what your lawyers' response is.

MR. MORRIS: Exhibit 22, please.

BY MR. MORRIS:

Q Now, in this letter, it says, in the second sentence, quote, We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor.

There is no doubt that the -- that the phone that's at issue here was the -- was the Debtor's cell phone, the Debtor paid for it, correct?

A I don't know that.

Q But you've already testified to it; isn't that right?

A Well, if I did, I was guessing. I don't know.

MR. MORRIS: Can we put up Page 55 from the transcript, please? And -- I'm sorry. One sec. Lines 10 through 13.

BY MR. MORRIS:

Q (reading) "Until December 10th, the day the TRO was entered, you had a cell phone that was bought and paid by the Debtor, right?" Answer, "Yes."

Did you give that answer the last time you were examined in this courtroom, sir?

A Yes.

Q Okay. And in fact, not only did you know that it was paid for by the Debtor, but you actually knew the last time you testified that the phone was thrown in the garbage, right?

A That's correct.

Q Is that correct?

A Again, I just assumed. But I -- I don't know the answer for sure to either question. But there's a way to find out whether or not the company paid for it and there's a way to find out whether or not it was in the garbage, too. But I don't know for sure.

MR. MORRIS: Can we go to Page 65, please? Right there, Lines 6 through 8. We'll go to Line 4.

BY MR. MORRIS:

Q Question, "We were a couple of weeks too late, huh?" Answer, "It sounds like it." Question, "Yeah. Because the

phones were already in the garbage, right?" Answer, "Yes."
That was the testimony you gave then, right?
A Yeah. We went over this earlier today.
Q Okay. I just want to make sure.
MR. MORRIS: And now let's go back to Mr. Lynn's letter to the Debtor about the cell phone.
BY MR. MORRIS:
Q There's absolutely nothing in this letter about the policy that you testified to under questioning from Mr. Wilson, correct?
A Not that I could see.
Q There's nothing in this letter, after discussing -- withdrawn. After discussing the Debtor's letter with your lawyer, your lawyer wrote this letter and it doesn't say anything about a practice, a company practice that would align itself with the policies and procedures that you've described, correct?
A Yes. We'll have to -- I was on vacation. We'll have to chastise Judge Lynn for not reading the employee manual or my deposition. I don't know what to say here.
Q Well, forget about the employee manual and the deposition. You actually spoke to him about the Debtor's letter, right?
A Not -- not for an extended period of time, I'll tell you that.
Q Okay. Well, in any event, Mr. Lynn doesn't tell the

Debtor, what are you talking about, Mr. Seery knows all about this and approved it all, right?
A Okay.
Q He -- right? Mr. Seery's not mentioned in this letter, correct?
A Correct.
Q The only statements in this letter about that cell phone are that it was issued to you by the Debtor, that they're not sure of the location, and that you're not prepared to turn it over. Correct?
A Yes. I guess that's what it says here.
Q Okay. Let's talk about that trespass for a bit. You testified that on December 14th you gave a deposition in the Debtor's office and nobody complained. Isn't that right?
A Yes.
Q That's because the Debtor had not yet evicted you from their offices. Isn't that right?
A Yeah, correct. But the TRO was in place.
Q But the reason that the TRO becomes important is because, as you testified earlier, it has that provision about the automatic stay relating to the Debtor's property. Right?
A Yes.
Q And the Debtor evicted you from the property on January -- on December 23rd, right?
A Effective the 30th, yes.

Q Yeah. And the Debtor told you that if you were on their property again, they would consider it trespass, correct?
A They sent me a calendar invite.
Q All right. We looked at those shared services agreements before. Is that right?
A Yes.
Q Okay. Anything in the shared services agreements that requires Debtor employees to take actions that are adverse to the Debtor?
A No.
Q Okay. So when you were the CEO, would you have allowed or required your employees to take action on behalf of the shared services partner that you believed or knew were adverse to the Debtor's interests?
A I'd expect them to honor the contracts. I -- it would depend on what the issue was.
Q Okay. Does the contract require the Debtor's employees to take actions that are adverse to the Debtor's interests?
A Read implicitly, yes, because whenever you manage money for somebody, your fiduciary responsibility trumps what issues that might be adverse to the Debtor. Or adverse to the company.
Q Can -- if I put the documents on the screen, will you be able to tell me where the shared services agreement provides for the resolution of conflicts between the service provider

and the service receiver?
A I don't believe it does, unless there's an arbitration clause. But -- but I don't know.
Q Okay. Let's talk about the trading for a minute. You insist that you did absolutely nothing to interfere with the trading; isn't that right?
A I tried hard to interfere with the November trades. I did nothing to interfere with the December trades.
Q Okay. Let's test that theory for a moment.
MR. MORRIS: If we can go back to Exhibit 27, please. Page 2, the top of Page 2.
BY MR. MORRIS:
Q This is where the -- this is where the Debtors tell your lawyers of their belief that you've interfered with the trading of the AVYA and the SKY securities on December 22nd, correct?
A Okay. But I'm telling you, I did not interfere on the 22nd.
Q I'm just asking you, sir, a very simple question. This is where the Debtors are informing your lawyers of their belief that you interfered with the trades on December 22nd. Correct?
A Yes.
Q Okay. Can you point to me where your lawyers wrote back and disputed that contention?

A I don't know if they did.
Q But they did write back in response to this very specific letter on the issue of the cell phone? We just looked at that response, right?
A Yes.
Q But you don't have any recollection and there's nothing in the record that will show that your lawyers disputed the allegations about your conduct on December 22nd, correct?
A Not that I'm aware of.
Q Okay. I appreciate that. And, in fact, notwithstanding what you testified to today, you testified previously rather unambiguously that, in fact, you did interfere with the Debtor's business, right?
A I clarified that -- I clarified that half a dozen times in the last few weeks. I mixed up the November and the December time frames a couple times. Or once, really.
Q Okay.
MR. MORRIS: Okay. Can we go to Page 73?
BY MR. MORRIS:
Q In case you were confused about the date, let's just look at the transcript, Page 73.
Were you asked these questions and did you give this answer? Question, "And you personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY

and AVYA, right?" Answer, "Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle trades that occurred, but that's a different ball of wax." Question, "Okay. But you did instruct them not to execute the trades that had not yet been made, right?" Answer, "Yeah," and then you went on.

That was the testimony that you gave at the time, correct?

A We went over this earlier today. I've clarified this several times. There is nobody, there's no emails, there's no one who says I contacted them on the 22nd. I misspoke. I contacted everybody the week of Thanksgiving. The only thing I did on the 22nd of December was one email to Jason Post, full stop, period. You have the system. If I am lying or you had any evidence of me talking to somebody else, you would have it, instead of just making me clarify this for the fifteenth time.

Q Well, I do have evidence, sir. I have -- I have the Debtor's letters to your lawyers that your lawyers didn't respond to. Isn't that correct?

A That's not evidence.

Q Okay. It actually is evidence, but I won't argue with you.

You testified a bit about Dugaboy and the financial statements. Do you remember that?

A Yes.

Q And you had no objection to those documents being produced? Is that right?
A Well, once I delegated it to my -- to Douglas, I let him handle it, and I haven't kept abreast of him. I don't even know where it stands at this point. But I trust him to do the right thing.
Q Does Ms. Schrath work for one of your -- one of the companies that you own or control?
A Yes. We -- yes, she does now.
Q Will you -- will you to authorize her to speak with the Debtor in order to identify where on the Debtor's server the Dugaboy financial statements are located?
A I think the proper channel is I'll authorize -- and he is fully authorized already -- Douglas Draper to appropriately work with you guys on an appropriate request for appropriate materials. But I -- I'll do whatever Douglas tells me is appropriate, but otherwise I'm -- I'm not going to get involved.
Q But Melissa Schrath was the one who knew where the documents were. Isn't that right? That's why you specifically went to her and told her not to produce the documents without a subpoena, correct?
A She keeps the records. So, --
Q Okay.
A But anyway, but she will -- she will march to what -- I

promise you she'll march to whatever Douglas tells her to do, so you work it out with Douglas.

Q I'm not asking you about Douglas. I'm asking about you, James Dondero, would you authorize your employee, Melissa Schrath, to provide information to the Debtor that will allow the Debtor to obtain these documents?

A Only after approved by Douglas, the counsel for Dugaboy.

Q Okay. Let's see what Douglas said previously, because they're your exhibits, actually.

MR. MORRIS: You know what, Your Honor, I'm not going to do this. I'll save it for argument. Because Exhibits 16 through 20 on the -- on Mr. Dondero's exhibit list are all the emails with Mr. Draper. He has no knowledge of the -- of Mr. Dondero's email about the subpoena. He has -- he is actually looking to get the documents, but he's being undermined.

BY MR. MORRIS:

Q Let's talk -- let's talk briefly about Mr. Ellington. You testified that he was settlement counsel, right?

A Correct.

Q After the TRO was entered into, do you know whether your lawyers ever made any attempt to confirm with the Debtor that the Debtor was comfortable, notwithstanding the TRO, having Mr. Ellington talk to you about issues other than shared services?

A No, but he was.

Q Okay. Do you have any documents to corroborate your testimony that, after the TRO was entered into, and notwithstanding the very strict prohibition on communicating with employees other than shared services, any document at all that corroborates your testimony that Jim Seery authorized Mr. Ellington to continue to talk about topics other than shared services?

A No.

Q Okay. I appreciate that.

MR. MORRIS: Your Honor, I have no further questions.

THE COURT: All right. Mr. Wilson, anything further?

MR. WILSON: I'll have a short redirect or recross, whatever this is.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Dondero, you testified under my examination and then again under Mr. Morris's about the cell phone policy that was put in place by Thomas Surgent. Do you remember that testimony?

A Yes.

Q Are you aware if there was ever a written policy regarding the cell phones?

A I -- I don't know. But I would have assumed it was in the employee manual.

Q But whether there was or there was not a written policy in place, you testified that you were instructed in compliance with that policy with annual meetings, correct?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. MORRIS: Leading.

THE COURT: Overruled.

BY MR. WILSON:

Q Do you recall my question, Mr. Dondero?

A I think I said yes.

Q Okay. Were you the only one at Highland who followed that cell phone replacement procedure that you were trained on by Thomas Surgent?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained.

MR. MORRIS: Calls for speculation.

THE COURT: Sustained.

THE WITNESS: Again, the --

THE COURT: Sustained.

THE WITNESS: The policy wasn't --

THE COURT: No, no, no, no.

THE WITNESS: -- set --

THE COURT: That means don't answer. I sustained the objection.

Mr. Wilson, go ahead.

BY MR. WILSON:

Q All right. Mr. Dondero, are you aware of any other employees that followed that cell phone replacement policy at Highland?

MR. MORRIS: Objection to the form of the question. There's no foundation that anybody else -- I'll just leave it at that. No foundation.

MR. WILSON: Well, I'm -- Your Honor, I'm asking if he has personal knowledge of other employees. We're trying to establish a foundation.

THE COURT: Overruled.

THE WITNESS: My belief, the policies weren't set up in anticipation of bankruptcy or anticipation of infighting. In anticipation --

(Interruption.)

THE WITNESS: John, you're -- John Morris, you're making noise in front of the speaker again.

MR. MORRIS: I apologize. Thank you.

THE WITNESS: The policy wasn't set up in anticipation of bankruptcy. The policy was set up to prevent recycled, refurbished cell phones of former executives forming -- falling into a Sony-type scandal where the business emails get promulgated all over the Internet or something. It was meant to protect investor information, and that's -- that's my belief regarding the wiping of the phone.

And I believed and my knowledge is that it was for every senior manager, senior executive when they got a new phone at Highland. It wasn't just me.

BY MR. WILSON:

Q And to confirm your earlier testimony, the last time you saw your cell phone was when you handed it to Jason Rothstein, who's a former Highland employee, correct?

A Yes.

Q And if that phone was indeed wiped of the information on it, who performed that wiping?

A Jason --

MR. MORRIS: Objec...

THE WITNESS: -- or one of the guys on his team.

THE COURT: Okay. Hang on.

MR. MORRIS: Objection to the form of the question. Speculation.

THE COURT: Yeah. Sustained.

BY MR. WILSON:

Q Did you wipe the phone yourself, Mr. Dondero?

A No.

Q Why would you have testified in the past that the phone might have been destroyed or disposed of?

A Because that's what I assumed or thought happened to prior cell phones.

Q But in any event, you did not destroy or dispose of your

cell phone in December of 2020, correct?
A No, I did not.
Q Now, in December of 2020, did Dugaboy and the Get Good Trust hire Douglas Draper to represent their interests, and one of the issues that Mr. Draper had to address was the production of trust documents, correct?
A Yes.
Q Did you communicate with Mr. Draper any unwillingness to produce those documents?
A What I said, which I had testified to, I bought he was aware of the initial response of not without a subpoena, but then he was -- he didn't consider the information a big deal and so he just wanted to see it before it went out. And again, I thought that he was negotiating well with the Pachulski lawyers and I didn't know where that stood, but I wouldn't have been surprised if the information had been provided or was about to be. I don't know. I delegated it to him.
Q In the text that was sent to Melissa, --
MR. WILSON: Can you pull up Debtor's 19?
BY MR. WILSON:
Q I'm going to pull up Debtor's 19, which is the text string with Melissa. And what's --
MR. WILSON: Go down.
BY MR. WILSON:

Q What's the date on the text regarding the Dugaboy Trust?
A The 16th.
MR. WILSON: Okay. Go to our -- go to our 16. And this is going to be Dondero Exhibit 16. Go to the bottom of Page 2.
BY MR. WILSON:
Q Do you see this email at the bottom of the page from Douglas Draper --
A Yes.
Q -- to John Morris and Isaac Leventon? And what's the date of that email?
A The 15th.
Q Okay. So that's the day before you sent the text message to Melissa, correct?
A Yes.
Q So Mr. Draper was already coordinating with the Debtor's counsel to produce these documents prior to your text to Melissa, correct?
A Yes.
Q All right.
MR. WILSON: I have no further questions.
MR. MORRIS: Can we keep that document up on the screen for a moment?
THE COURT: All right. Normally, this would be the end of Mr. Dondero's examination, with recross, but it was

technically redirect as well, so Mr. Morris, you get the last short, and please make it brief.

MR. MORRIS: Yeah. Sure.

FURTHER REDIRECT EXAMINATION

BY MR. MORRIS:

Q The email that -- the email we just looked at was from Douglas Draper dated December 15th, right?

A Yes.

Q And Douglas Draper represents Dugaboy, correct?

A Yes.

Q And yet you're telling the Court that your lawyers told you, notwithstanding a TRO that prohibits you from communicating with Debtor's employees, except for shared services, that they thought you should be the one to instruct Melissa Schrath not to produce the Dugaboy documents without a subpoena? Is that your testimony, --

A That's correct.

Q -- that your lawyers told you to do that?

A That's absolutely correct.

Q Okay.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Mr. Dondero, that concludes your testimony today.

All right. We have one more witness, Mr. Seery, correct?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. Maybe --

MR. MORRIS: I hope this isn't too long, actually.

THE COURT: Maybe some people want to watch basketball. I don't know.

All right. Mr. Seery, could you say "Testing, one, two" so we pick up your video?

MR. SEERY: Testing, one, two.

THE COURT: All right. I hear you but I don't see you yet. Let's see if we --

MR. SEERY: Testing, one, two, Your Honor.

THE COURT: Okay.

MR. SEERY: Testing, one, two.

THE COURT: There you are. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. Mr. Morris, go ahead.

MR. MORRIS: All right, Your Honor. I'll try to be as quick as I can here.

JAMES P. SEERY, JR., DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, did the Debtor -- did the Debtor's independent board --

(Interruption.)

THE COURT: All right. We are getting some sort of feedback. So everyone but Mr. Morris, and Mr. Seery, when he answers, please have your device on mute.

Go ahead.

THE CLERK: Mr. Morris is on mute.

THE COURT: Okay. Now you're on mute, Mr. Morris.

MR. MORRIS: All-righty. Let's see if this works.

BY MR. MORRIS:

Q Mr. Seery, can you hear me now?

A I can, yes.

Q Okay. Did the Debtor's independent board make a decision in early October to demand Mr. Dondero's resignation?

A Yes.

Q And why -- what were the reasons?

A Quite simply, he was taking aggressive actions, interfering with the operations of the Debtor and our pursuit of a plan. Objections, claim objections, even things as far-fetched as piercing the corporate veil, which we're surely going to see later on in this case.

Q And did there come a time a few weeks later that the Debtor sought and obtained a TRO against Mr. Dondero?

A That's correct, yes.

Q And is it fair to characterize Mr. Dondero's relationship to the Debtor in December of 2020 as adverse?

A Extremely.

Q And why would you describe the Debtor's relationship with Mr. Dondero in December 2020 as adverse?
A Well, the discussions regarding any kind of bargain plan had really fallen apart. Mr. Dondero was actively objecting to the pursuit of the monetization plan, either individually or through his multiple entities. He had begun to move forward on litigation strategies versus me. And those, among other reasons, were the reasons that it had become extremely obvious that we were adverse.
Q I'll try to do this as quickly and as easily as I can. You were here this morning for my opening statement; is that right?
A Yes.
Q And did you listen in and watch my examination of Mr. Dondero when I went through the 13 email communications with the Debtor's employees?
A Yes.
Q Were you aware of any of the communications that we looked at today --
A No.
Q -- at the time that the communications were made?
A Well, yeah, I'm obviously aware of them today. They're on your schedule. But I was not aware of them at the time they were made, no.
Q Okay. And is it fair to say, then, that you did not

1 authorize any of those communications?
2 A They were definitely not authorized.
3 Q And having reviewed those communications, do you believe
4 that those communications, each of those communications was
5 adverse to the Debtor's interests?
6 A They were extremely adverse to the Debtor's interests.
7 They -- they even went so far as to be coordinating shared
8 privilege among adverse parties who were contesting the
9 Debtor's actions with respect to both claims and the plan
10 monetization process. What could be more adverse?
11 Q Had you known of these communications at the time they
12 were made, do you have any idea as to what you would have
13 thought or what you would have done?
14 A We would have terminated the employees involved. In
15 fact, when they found out about them, we terminated the
16 employees involved.
17 Q Okay. And why did you take that step when you learned
18 about these communications?
19 A The -- some of the issues with respect to Mr. Dondero and
20 certain employees have been brewing for some time, but these
21 were just all examples of employees breaching their duties to
22 the Debtor and taking adverse interests and pursuing them
23 against the Debtor. And we couldn't continue to have those
24 employees in place.
25 Q Okay. Let's just move quickly to the issue of the cell

phone policy. Did you listen to Mr. Dondero's description of the cell phone policy pursuant to which they could recycle phone numbers or change the account holders and wipe phones clean?

A Yes, I heard it.

Q Okay. Are you aware of any written policy that supports that?

A No. That testimony was largely made up. The policy -- just so we're clear, and this is pretty typical -- and he knows this, of course -- but when someone has a phone at a financial firm, often you get your emails on the phone. When you leave the employ, that's deleted, because it's gone -- the server is the one that connects with your phone. It's not like your Yahoo. This is very standard. The rest of the data on the phone is not deleted and wiped unless you go wipe it.

Mr. Dondero's phone was paid for by the Debtor. Not only Mr. Dondero's phone, his housekeeper's phone, Ellington's phone, his driver's phone, his iPad in Florida. This -- he knows this.

Q And --

A They have the documents. I have them in front of me. Sorry.

Q That's okay. With respect to the trades, you heard some testimony about the trades and how Mr. Dondero insists that

he didn't do anything to interfere with the trades in December. Do you have any -- any knowledge or information that you can share with the Court on the Debtor's allegation as set forth in the letter that we looked at, that, indeed, on December 22nd, Mr. Dondero was involved in interfering with the Debtor's trading activity at that time?

A I think it's pretty clear, and my recollection was that he very directly instructed employees of HCMFA as well as Jason Post to prevent those trades from going through. His description of an OMS system and compliance was complete nonsense. These trades are compliant. You don't have to run a trade through an OMS system to be compliant. They were screened against the restricted list. It's -- it didn't have any basis in fact, what he was saying.

Q Okay. Let's talk just about -- about harm to the Debtor from the breaches that we have been discussing today. Has the Debtor suffered any economic harm, any financial harm, from Mr. Dondero's conduct with respect to the TRO violations?

A Well, I think -- I think the combination of the TRO violations and the continuing attempts to just make the Debtors spend a lot of money. We've spent literally millions, more than a million dollars, just on litigating TRO issues, just dealing with the initial TRO, the hearing, the order, the various appearances, the preliminary injunction,

and taking the preliminary injunction to this stage. We then, with respect to the trades, had to litigate those issues with both Mr. Dondero and his multiple related parties. We had to both pay your firm, DSI, not to mention individual time, but also Kasowitz, as you mentioned, we went out and hired with respect to some of the CLO issues in the litigation.

It's literally millions of dollars. And that doesn't even get to the multiple millions that were spent negotiating the transition that Mr. Dondero talked so glowingly about that he did nothing but throw (garbled). These are not -- these are not my guesses. This is not my supposition. I'm not thinking these are the case. These are just facts. And that's been his design, and he's doing it well. He's making us spend a lot of money.

There's no rebuilding Highland. The employees have been terminated. The contracts have been rejected. Highland, remember, was run to lose money. I've testified to this before. It was designed and he uses it to siphon off lots of value to these other entities. And we're going to keep seeing this. So it will continue to come.

But these actions with respect to blaming it on Jason Rothstein or claiming that Thomas Surgent ever touched his phone: complete nonsense. Not true. Didn't happen. Rothstein followed his orders. Great example of Dondero's

interference and contempt. He's just controlling these employees because they know ultimately they're going to be, many of them, working for him again. So their only avenue to remuneration is -- continued employment, is to do what he asks them to do. And you figure these are, you know, these are some really good folks. Jason Rothstein is a very talented and I think very ethical guy. To throw him under the bus like that is absurd. He doesn't --

Q Um, --

A By the way, he doesn't work for me. Right now.

Q Okay. Let's talk about noneconomic harm. We -- you saw the three categories that we went through from the -- from the 13 communications with the Debtor's employees, the three alleged violations of the automatic stay, the interference with the trading. Do you have a view or a, you know, knowledge that you can share what the Court as to whether the Debtor suffered noneconomic harm from these violations of the TRO?

A Well, absolutely. And I think it's pretty clear, and some of it is from Mr. Dondero's own testimony. A lot of confusion among the employees during the transition. So, in order to make sure that we could try to hold them through the transition and to complete a transition, we -- we entered into a KERP program. We actually spent a lot of money in designing it, coming up with it and bringing it to this

Court.

These employees are confused about where they're going. Are they going to go to this Newco, which is going to have to provide services to Dondero entities? Are they going to go to Dondero entities? That confusion made it more difficult for us to retain employees, and more expensive.

In addition, we went through the whole process of the KERP program. No one who is retaining employee -- employment with either Mr. Dondero or with the Newco actually ended up taking the KERP. They turned down money because he required them, in order to get a job with them, to give that money up and assign their claims to him, which he intends to try to use in some other way to slow up the case or cause more damage, make us spend more money. It's inconceivable. And I'm talking about employees who had a $2,500 KERP payment. He took them. It's crazy.

Q Um, --

A I apologize if -- since I'm not in the courtroom, Your Honor, I'm probably not as formal as I should be. I will -- I will -- I will endeavor to be a little bit more formal. My apologies.

THE COURT: Okay.

BY MR. MORRIS:

Q Did you have any -- did you have any concerns about the conduct that's been presented today in terms of undermining

your own authority as the CEO of the Debtor?

A Well, it's -- it's been very clear. And, again, that relates to both retaining employees and then working on transition services arrangements. We had a whole hearing a couple weeks ago on how the Fund Advisors and the Funds didn't need anything from Highland. They just needed old records. Well, it turns out, we've been working three weeks negotiating the shared resource agreement, that wasn't quite true.

And so we think we have something in place, but it's been much more difficult to get these kinds of arrangements done because authority has been undermined and because employees who are working in that sphere and working on the transition are worried about what the next opportunity is going to be for them. So it's been very, very difficult.

In addition, during January, because of this undermining, we saw some significant cover-ups around certain transfers. Those will be coming to light soon. But it -- I don't think these would have happened without Mr. Dondero's influence, his -- his contumacious conduct with respect to the Court, with respect to the authority, with respect to the transition, frankly, that he initiated when he started this bankruptcy.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Mr. Wilson, cross?

MR. WILSON: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Seery, the Debtor filed the contempt motion on January 7th, correct?

A I don't recall the specific date, but if you represent it, I assume that to be true. Don't know.

Q Do you recall that the Debtor also filed a motion for an expedited hearing on the motion for contempt?

A I -- I believe so. I don't recall the specifics.

Q And the Debtor filed a memorandum of law setting forth the actions that it contends constitute violations of the TRO. Were you aware of that?

A I assume there was an accompanying memorandum of law, yes.

Q Well, did you see a memorandum of law that was filed?

A I certainly would have seen the pleadings. I don't recall whether I read the memorandum of law.

Q Well, did you participate in the process of determining the allegations that the Debtor was alleging should be held in contempt?

A I'm sure they were reviewed with me. I don't recall the specifics of how they were laid out in the pleadings. But I'm sure that counsel reviewed them with me.

Q Well, who decided for the Debtor to make the contempt allegations?

A Ultimately, the decision would have been mine, under the advice of counsel.

Q But did you -- did you not tell counsel what you -- what you contended was a violation of the TRO?

MR. MORRIS: Objection to the form of the question and direct the witness not to answer. He's really asking about Mr. Seery's communications with his lawyers, Your Honor.

THE COURT: Sustained.

MR. WILSON: I'll ask it a different way.

BY MR. WILSON:

Q Who came up with the idea of which allegations were going to be made, were contempt?

MR. MORRIS: Objection. Direct the witness not to answer.

He can ask him about Mr. Seery, but these questions are going to get into attorney-client privilege.

THE COURT: All right. Sus...

MR. WILSON: Your Honor, I'm not asking him to reveal any attorney-client privilege. I'm just asking for his knowledge of who came up with these allegations, outside of counsel.

THE COURT: I sustain the objection.

BY MR. WILSON:
Q Did you yourself form the allegations that were going to be in the contempt motion?
A I certainly gave the recitation of facts to my counsel as to what was happening in the case and Mr. Dondero's actions.
Q Is it the Debtor's contention that Mr. Dondero's willful ignorance of the TRO and the evidence supporting the entry of the TRO is itself contemptible?
A I think I'm answering your question. I -- I don't believe that he was ignorant of it. I think the insinuation, if it's claimed that he's ignorant of it, is highly contemptible, yes.
Q I'm sorry. I didn't understand that. You don't believe that Mr. Dondero was ignorant of the TRO?
A No, I don't believe that at all.
Q Well, so if Mr. Dondero -- if the Debtor contended that Mr. Dondero was willfully ignorant of the TRO, do you disagree with that statement?
MR. MORRIS: Objection to the form of the question. I mean, the -- the evidence is what the evidence is. It's not about our contentions at this point.
THE COURT: I overrule. He can answer.
THE WITNESS: Yeah, I don't -- I don't -- I disagree with that statement. I think, to some degree, I think that the idea that a -- no one's that obtuse, that a relatively

sophisticated man who is fighting for this wouldn't have any idea that there was a TRO in place I think is -- is far afield.

Q Which specific provision of the TRO do you contend that Mr. Dondero violated with respect to his cell phone?

A I'd have to go through each of the -- each of the provisions. I -- I don't have a list of them in front of me.

Q Well, I can put it up on the screen.

A Okay.

MR. WILSON: Can you pull up Debtor's 11?

(Pause.)

BY MR. WILSON:

Q Well, there's provision -- well, Paragraph 2, which has the various provisions in it.

A Just, just starting from there, this is -- this is -- I'm walking through this now. You're going to hear the same. He clearly communicated with Debtor employees, directing them to do something with his phone that had no basis in policy, was clearly destroying property of the Debtors, and I think violates (a) to start with. I -- just to start. I don't have the rest of the -- rest of the paragraph.

MR. MORRIS: Can we -- can we scroll down so he can see the rest of it before he finishes his answer?

MR. WILSON: I thought he was finished.

MR. MORRIS: Well, you haven't shown him the whole

1 document.
2 THE WITNESS: I mean, as we talked about earlier,
3 (e) is pretty clear, too. This is destruction of property of
4 the estate and these records. And -- and with respect to
5 wiping it clear, as was previously discussed. I don't think
6 that that's really debatable.
7 Q Who is Jason Rothstein?
8 A Jason was the head of IT at Highland. He's a longtime
9 employee of Highland, had worked for Highland I think at
10 least ten years.
11 Q Have you ever had a conversation with Mr. Rothstein about
12 the Debtor's cell phone policy?
13 A I think I have.
14 Q And when was that conversation?
15 A I believe in and around this time, we talked about it.
16 Because it was pretty clear -- the testimony that Mr. Dondero
17 gave was completely untrue. I've never issued any edict,
18 order, or statement that people lose their job --
19 MR. WILSON: I'm going to object to nonresponsive.
20 THE COURT: Sustained.
21 BY MR. WILSON:
22 Q What did Mr. Rothstein tell you that the Debtor's cell
23 phone policy was? And by that, I mean the replacement
24 policy.
25 MR. MORRIS: Objection to the form of the question.

THE WITNESS: I didn't testify to that. I didn't say that.

THE COURT: I overrule.

THE WITNESS: I know -- it -- that's not what I said.

BY MR. WILSON:

Q Well, did Mr. Rothstein ever tell you anything about the Debtor's telephone policy?

A I don't believe so, no.

Q But in any event, we can agree that Mr. Dondero turned over his phone to Mr. Rothstein, correct?

A It appears that way from the information we have.

Q And you testified that Mr. Rothstein is an ethical and honest individual, correct?

A I believe he is, yes.

Q And so are you -- are you insinuating by your testimony earlier that Mr. Dondero caused Mr. Rothstein to do something improper with the cell phone?

A Yes.

Q But yet you said that Mr. Rothstein is an honorable and ethical person, correct?

A Yes.

Q And so does -- how do you square your opinion with him as being honest and ethical, but yet he did something improper under Mr. Dondero's direction?

A I think Mr. Dondero told him to get him a new cell phone or wipe that one clean and he did so. And he's not a lawyer. He's an IT professional. If there was email, it was backed up. He may or may not have known how much Dondero used texts to conduct business.

But he would have done what he was told to do because that's what he was expecting -- where he expects to be working at some time in the future. It's a perfect example of why there was a TRO in place and why this kind of contumacious conduct is harmful to the estate.

Q From the time that you took over as an independent board member and also as CEO later, did you or anyone else at the Debtor ask Mr. Rothstein to back up anyone's text messages when they turned their phone in for replacement?

A No. Not to my knowledge.

Q Did anyone at the Pachulski firm, to your knowledge, ask Mr. Rothstein to back up text messages from anyone's phone?

A Not to my knowledge, no.

Q And you're aware that other Highland executives have left the employment of Highland during the pending of this bankruptcy, correct?

A Not who had a phone that was Highland's phone.

Q So did Mark Okada not have a Highland phone?

A No, he did not.

Q Did Mark Okada have any Highland information on his phone

when he left?
A I don't know. He didn't have a Highland phone. We didn't seize his personal phone.
Q So does it depend on whether the phone was paid for by Highland whether or not that Highland should be able to access the information on the phone?
A That's not the policy, no.
Q Well, my question is, is that did you -- were you at all concerned about any information that might have been on Mr. Okada's phone when he left Highland?
A I wasn't because I had no experience with him texting me to conduct business.
Q Has the Debtor ever requested the phone company to search and see if they can recover any text messages from Mr. Dondero's phone?
A No, we haven't.
Q But the Debtor established a protocol for conducting electronic discovery in this case, correct?
A That's very different. The phone company doesn't maintain text chains for those who use Apple products. Apple maintains them.
MR. WILSON: Your Honor, I object as nonresponsive.
BY MR. WILSON:
Q I'm asking you a different question.
THE COURT: Okay.

BY MR. WILSON:
Q Did the Debtor establish a protocol for conducting electronic discovery in this case?
A I -- I believe there's an order in place.
MR. WILSON: Why don't you pull up 8? Yes. And go -- just scroll on the first page.
BY MR. WILSON:
Q This is Dondero Exhibit 8 that we're pulling up. Do you recognize this document?
A I'd have to see -- I don't. I'd have to see more of it. I'm only seeing a small snippet.
Q Okay. Well, we can -- we can scroll down to satisfy you. (Pause.) The top of the document is Notice of Final Term Sheet, and it looks like the date is January 14, 2020.
A Yes, I recognize this document.
MR. WILSON: Okay. Go to Page 44. Actually, go to 43. Yeah, that's it.
BY MR. WILSON:
Q Do you see -- I'm now looking at Page 43 of the document where it says Exhibit C, Document Production Protocol.
A I see it.
MR. WILSON: All right. Scroll down to the next page.
BY MR. WILSON:
Q And then it, in (a), it talks about ESI or

Electronically-Stored Information. And this appears to be the protocol for preservation of ESI. Would you agree with that?

A In accordance with the term sheet, yes.

Q Right. Are text messages referenced in this document?

A I don't know.

Q Well, if we scroll through letter C, where it says Preservation of ESI, do you see anywhere under Preservation of ESI where it refers to text messages?

A I -- I don't -- I don't see --

MR. WILSON: Then I --

THE WITNESS: I don't see it. This seems to be dealing with the server.

MR. WILSON: And then scroll down to I.

BY MR. WILSON:

Q And here's the final --

MR. WILSON: It's -- no, no, no. It's -- it's Page 45.

BY MR. WILSON:

Q This is -- letter (i) at the top is the final paragraph under that section. That seems to refer to hard drives and laptops and work computers, but does it -- do you see anywhere where it mentions phones or text messages?

A Doesn't use those words, but it certainly covers it.

Q But this would be the protocol that covers ESI that the

-- that Debtor agreed to, correct?
A I believe so, yes.
Q And you approved this protocol prior to its adoption?
A I don't believe so, no.
Q You didn't approve it?
A My recollection is this was right around the time we came in. I think this was part of the agreement that the Debtor had with the Committee. And I don't believe it was subject to independent board approval before its entry. I don't -- I just don't recall specifically. That's my recollection.
Q Did you -- do you recall if you participated in the development of this protocol?
A I did not.
Q But you would agree that this is the protocol that the Debtor agreed to adopt in connection with this bankruptcy case, correct?
A It is a protocol entered in January of 2020.
Q Do you have a Highland email account?
A I do.
Q Do you have a personal email account?
A I do.
Q And do you conduct Highland business on your personal email account?
A I do.
Q Do you preserve your personal emails?

A I do.
Q Do you have a Highland cell phone?
A No.
Q So do you use your personal cell phone for Highland business?
A Yes.
Q Do you preserve all your text messages?
A I don't delete them. I believe that they're accessible, yes.
Q Are your personal emails stored on the Highland server?
A No.
Q Are your text messages stored on the Highland server?
A No.
Q With respect to the motion filed by the U.C.C. in January 2020 relating to discovery, did the Debtor oppose the motion? Or I'm sorry. I said January. I meant July 2020.
A I believe we did.
Q Did the Debtor agree with the U.C.C. at that time to preserve and produce text messages?
A I believe that we did.
Q Do you know if that's in writing anywhere?
A The order was pretty broad. There was obviously significant -- I don't know if it's in writing anywhere.
Q During the pendency of this case -- well, I guess I need to ask a question before that. Who at the Debtor is

1 responsible for sending litigation preservation notices?
2 MR. MORRIS: Objection to the form of the question.
3 THE COURT: Overruled.
4 THE WITNESS: Currently, the general counsel.
5 BY MR. WILSON:
6 Q Currently, the general counsel? Well, who would -- who
7 would have been responsible for sending it during the year
8 2020?
9 A Scott Ellington.
10 Q Were you aware of Thomas Surgent ever sending any
11 litigation preservation notices?
12 A Since he became general counsel, he has, yes.
13 Q When did Mr. Surgent become general counsel?
14 A After Mr. Ellington was terminated.
15 Q Well, during the pendency of this case, have either Mr.
16 Ellington or Mr. Surgent ever sent around any preservation
17 notices pertaining to text messages?
18 A I was -- I don't know if it -- I assume they pertain to
19 text messages. I -- I believe there was one, and I asked
20 about it my first day at Highland, that it was -- it was a
21 litigation preservation notice.
22 Q And that was around the time of your first day at
23 Highland?
24 A Correct.
25 Q So, but since that time, are you aware of any

preservation notices pertaining to text messages sent?
A Not specifically, no. Well, certainly, Mr. Surgent's preservation notice since he became general counsel would cover that. I am certain of that.
Q But that would have been in January of this year, correct?
A Correct.
Q Did you ever ask Mr. Ellington or Mr. Surgent to send any preservation notices pertaining to text messages prior to Mr. Ellington's termination?
A I believe I asked on the first day that I was there about document preservation notice, did it go out? Didn't specifically reference text messages.
Q But after that -- after that preservation notice at the beginning of your employment, you're not aware of any other preservation notices that you requested should go out?
A I didn't make any requests after the first one went out.
Q And that -- and that request that went out or that notice that went out in January of 2020 did not specifically refer to text messages, correct?
A I don't know. I actually think, when it would have gone out in -- at the filing, any responsible general counsel would have issued it, and I was told that they did.
Q Are you aware of anyone at the Pachulski firm that asked Mr. Surgent or Mr. Ellington to send any preservation notices

1 pertaining to text messages?
2 A Certainly, Mr. Surgent, I don't know if Pachulski asked
3 him, I certainly did, to redo it after we made some
4 significant discoveries in January. But I don't know if
5 Pachulski -- the Pachulski firm or anyone there asking -- it
6 wouldn't have been Mr. Surgent. He was the CCO. It would
7 have been Mr. Ellington, the GC. Other than the, as I said,
8 the request I made in January to confirm that one was sent
9 out at the start of the case.
10 Q Referring back to Mr. Mark Okada and also Trey Parker,
11 were those individuals covered by the custodians of the
12 U.C.C.'s request?
13 A I didn't -- I didn't understand your question. I'm
14 sorry.
15 Q Were Trey Parker and Mark Okada custodians under the
16 U.C.C.'s preservation request or discovery request?
17 A I don't -- I don't know.
18 Q Did you ever -- did -- both of those individuals left
19 during the pendency of the Highland bankruptcy, correct?
20 A Yes.
21 Q Did the Debtor do anything to preserve text messages from
22 either Mr. Parker or Mr. Okada when they left Highland?
23 A Not to my knowledge.
24 Q Now, earlier, you tried to testify about your knowledge
25 of cell phone policies from other financial companies. Do

you recall that testimony?
A Yes.
Q And which financial companies are you referring to?
A River Birch Capital. And Lehman Brothers.
Q So you've -- you have two examples of cell phone policies that you were referring to?
A Well, I -- I know of others as well.
Q But you don't have any firsthand knowledge of Highland's policy, particularly going back ten years, correct?
A That's incorrect.
Q Well, were you -- did you -- were you a Highland employee ten years ago?
A No.
Q Did you attend training by Thomas Surgent on cell phone replacement policies?
A I don't believe there was such a thing. I attended compliance training with Mr. Surgent, yes.
Q But yet you -- you claim that Mr. Dondero made that testimony up, correct?
A Yes.
Q And you heard Mr. Dondero's testimony that ever since he's been attending these compliance training sessions over the last ten years, every time he's replaced his cell phone, he's followed the same procedure: handed it over to a Highland employee and then the Highland employee would wipe

it and provide him with a new cell phone. You heard that testimony, correct?
A I heard it, yes.
Q And you have reason to doubt the veracity of that testimony?
A Yes.
Q And what is that reason?
A Well, for one, his testimony about the numbers and how they got them was untrue, at least from information I've received from the earliest days.
Number two is that's not how you wipe a phone. You can wipe it remotely. That's how you remove access to the system. You don't need the guy's phone in order to wipe it. He had already done that after threatening me with a text and engaging in numerable -- innumerable engagements on texts to conduct business. And then when it became crucial and there were issues regarding his texts, he suddenly decided to get a new phone and destroy it. I found it to be incredible.
Q But you would have to agree with me that, regardless of whether Highland had a written policy, it was actually the Debtor who wiped Mr. Dondero's phone, correct?
A I don't -- I don't believe that to be the case and I don't know. Again, Highland can wipe the phone without having access to it. It can do it remotely. It doesn't delete the texts. It just removes your access to Highland's

system and the records of your emails. You'd still have your phone. You'd still have your texts. It's your phone.

Dondero's problem is it wasn't his phone. It was Highland's phone. So he couldn't just wipe it. He had to get rid of it.

Q But you would agree with me that if anyone wiped the phone, it was Jason Rothstein or someone working under his direction? You testified to that just a few minutes ago.

A The wiping of the phone does not wipe the texts. The wiping of the phone removes the email access and the email records that you can get on your phone when you work for a financial institution. Law firms may have the same thing, if they're sophisticated enough. It prevents that person from getting it. It doesn't clean out the phone. It doesn't get rid of everything you have.

The one problem with it is it does tend to remove your Out... a lot of your Outlook names, because those are connected to your work server.

MR. WILSON: I'll object as nonresponsive.

BY MR. WILSON:

Q You testified --

THE COURT: Overruled.

MR. MORRIS: Your Honor, can I -- can I have a ruling on that, please?

THE COURT: I said overruled.

MR. MORRIS: Because I thought it was terribly responsive.

THE COURT: I said overruled, yes. Thank you.

MR. MORRIS: Thank you.

BY MR. WILSON:

Q So, do you know who wiped the text messages off Mr. Dondero's phone?

MR. MORRIS: Objection --

THE WITNESS: I don't know --

MR. MORRIS: -- to the form of the question.

THE COURT: I didn't hear -- okay.

THE WITNESS: I don't know that the text messages were wiped.

THE COURT: Okay.

THE WITNESS: I'm sorry.

THE COURT: Time out. Would you repeat the question, Mr. Wilson?

BY MR. WILSON:

Q My question was, do you -- do you know who wiped text messages from Mr. Dondero's phone?

MR. MORRIS: Objection to the form of the question. No foundation.

THE COURT: Sustained.

MR. WILSON: Again, I'm trying to ask him if he has personal knowledge of something.

THE COURT: It -- you'll have to rephrase it.

MR. MORRIS: Your Honor, there's no -- he --

THE COURT: You'll have to rephrase what you said.

BY MR. WILSON:

Q Do you have personal knowledge of whether text messages were actually ever wiped off Mr. Dondero's phone?

A No, I don't.

Q So, therefore, if text messages were wiped on Mr. Dondero's phone, you would not have personal knowledge of who actually did it. Correct?

MR. MORRIS: Objection to the form of the question. Calls for speculation.

THE COURT: Sustained.

BY MR. WILSON:

Q Well, if you -- if you don't have personal knowledge that they've been wiped, I don't understand how it would be speculation that you don't know who would have wiped them if they were wiped, but --

MR. MORRIS: Objection. (garbled).

THE COURT: Sustained.

BY MR. WILSON:

Q Prior to becoming the CEO of Highland, did you change or implement a cell phone replacement policy?

A No.

Q Prior to Mr. Pomerantz sending his letter to Mr. Lynn on

December 23, 2020, had the Debtor notified Mr. Dondero that the Debtor wanted his cell phone?

A No.

Q And you're now aware that Mr. Dondero began the process of acquiring a new cell phone well before the TRO was entered on December 10th, correct?

MR. MORRIS: Objection to (garbled) question.

THE COURT: I couldn't hear. Was there an objection, Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: Say again what the objection was.

MR. MORRIS: To the form of the question, the use of the phrase "well before." I think the testimony is two weeks.

THE COURT: Okay.

MR. MORRIS: According to Mr. Dondero.

THE COURT: Sustained. If you could rephrase.

BY MR. WILSON:

Q So, you heard Mr. Dondero's testimony that he began the process of acquiring a new cell phone two weeks before the TRO was entered, correct?

A I heard it.

Q And as of December 10th, Mr. Dondero was still performing work at the Highland offices for the Funds and Advisors, correct?

A I don't know what he was performing. He was there.
Q Is it the Debtor's contention that Mr. Dondero violated the TRO by personally intervening to prevent the Debtor from executing certain securities transactions on December 22, 2020?
A Among other things, yes.
Q What actions of Mr. Dondero does the Debtor contend constitute Mr. Dondero's personal intervention to prevent the Debtor from executing certain securities transactions?
A With respect to the December ones?
Q Yes.
A Yeah, he -- he instructed, through either Post or Joseph Sowin, I don't recall specifically, that the trades not be completed. And notwithstanding that we were trying to get it done because we thought it was an advantageous time to make those trades, he got involved and prevented it.
Q What evidence have you presented that Mr. Dondero instructed Mr. Post not to complete trades?
A I believe when you put together his email and the letters from counsel, you'll see, when you piece them together, that that's what happened. I don't think Jason Post did this on his own.
Q So your testimony is speculation, correct?
A No. I think there's -- there's very specific instructions.

Q Well, have you brought that email with those very specific instructions before the Court?
A I think Mr. Morris did earlier.
Q Can you point me in the record to where that is?
A I -- I don't keep track of the exhibits, but this is the -- this is the stuff that Mr. Morris went through earlier today. I don't have -- I don't have it specifically in front of me.
Q In December of 2020, did Mr. Dondero send you any emails regarding the trades that you wanted to make?
A I don't believe he did, although he did email me on December 14th and -- or 4th, and he did email me on December 8th with an apology, and he did email me on December 17th with some material nonpublic information.
Q In December of 2020, did Mr. Dondero send you a text regarding trades that you wanted to make?
A In December? December 3rd, I believe, was his threat, and I don't believe I got a text from him after that.
Q In December of 2020, did Mr. Dondero call you regarding the trades he wanted to make? Regarding that you wanted to make.
A I don't believe so, no.
Q Did Mr. Dondero block any trades in December of 2020 that you wanted to make?
A I don't recall if we completed the -- the end of December

trades or we just determined not -- not to do them because it was too difficult.

Q But, in fact, every trade you initiated in December 2020 closed, correct?

A I don't -- I don't recall if the ones that we're referring to now actually closed or if we just decided not to do them. If I made a trade with --

(Interruption.)

A -- with a dealer, then we completed it. We didn't fail on any trades.

MR. WILSON: Which exhibit is it?

BY MR. WILSON:

Q All right. I'm going to pull up Debtor's 37.

MR. WILSON: Go to Page 173. Of the transcript. Go down where it says, "By Mr. Hogewood."

BY MR. WILSON:

Q Sir, do you recall giving testimony on January 26th in connection with Plaintiff's motion for a preliminary injunction against certain entities owned and/or controlled by Mr. James Dondero?

A I believe I did.

Q Do you recall being asked this question by Mr. Hogewood on Line 16? "Yeah, let me -- let me say it differently. Focusing solely on December of 2020, every trade that you initiated closed; isn't that correct?" A, "Every trade, yes.

We did not fail one trade."

MR. MORRIS: Objection. Objection. He's seeking to impeach Mr. Seery with the exact same testimony that he just gave.

THE COURT: What --

MR. WILSON: Well, I would disagree, Your Honor. Mr. Seery has equivocated on whether all of his trades went through in December of 2020.

THE COURT: He equivocated? I don't remember him being equivocal. Remind me of what the testimony was.

MR. WILSON: Well, I believe that Mr. Seery said that he thinks he gave up on some trades and decided not to complete them.

MR. MORRIS: Objection. The testimony that's being read into the record from the earlier hearing is not inconsistent with anything that Mr. Seery just testified to.

THE COURT: (reading) "Every trade that you initiated closed; isn't that correct?" "Every trade, yes."

I sustain the objection. I don't think it's inconsistent.

BY MR. WILSON:

Q Okay. Mr. Seery, would it be fair to say that the trades that we are referring to in that December 22nd time frame were initiated?

A I -- I don't recall. The -- and that's -- and I think

you're -- you're trying to create some ambiguity where there is none or inconsistency where there is none. I'm sorry. That if we initiated a trade, because I did them through a broker and told them sell or -- at a particular level on a particular day, if he was able to complete that and get a buyer on the other side, we completed the trade. So if we initiated it, we got it done.

I don't recall if those trades that we're talking about earlier were initiated. And this is a little bit of, I guess, inside baseball knowledge Mr. Dondero started going through a little bit before. Typically, the trades are put in through the order management system. It's easier to track the trades then. It's all automated. What we did instead, where we actually initiated a trade, was we did it manually. So we closed those trades manually. And to be clear, the order management system is not -- is not the Advisors'. It's Highland's.

Q Well, Mr. Seery, if the -- if the complaint is that the Advisors' employees did not book the trades, then those trades were initiated. Would you agree with that?

MR. MORRIS: Objection to the form of the question. Conflicts with the testimony.

THE COURT: Sustained.

BY MR. WILSON:

Q Do you understand the -- what's implicated by booking a

trade?
A Do I understand what's implicated by booking a trade?
Q Yes.
A Do I know how to book a trade? Yeah.
Q And would that not be a trade that has been executed? A trade that would be booked would not be booked until after it was executed, correct?
A That's correct.
Q And so the -- the trades that we are talking about in the December 22nd time frame were initiated and executed and then later booked, correct?
A Any trade would have been initiated, executed, and booked. That's the correct order.
Q All right. And you've previously testified, and you testified again today, that every trade that you initiated closed, correct?
A If --
Q In December 2020?
A If we initiated it and we got it done, of course. The issue is whether, when calling up the traders, if they refuse to actually initiate the trade or take it, that -- that wouldn't have closed.
Mr. Dondero didn't get this from some strange, you know, premonition from the sky. He's on a -- he was on a system that showed all of the trades. And that's where the email

1 back and forth, where he's on that list and says, Don't --
2 don't do this, both earlier and later, that's where those
3 come from. It's not -- it's not that he had some great
4 insight into what's going on. He's getting email.
5 Q And, in fact, you did not fail one trade in December
6 2020, correct?
7 A No. Didn't fail.
8 Q Is it the Debtor's contention that the K&L Gates law firm
9 sending letters to the Pachulski law firm on December 22nd
10 and 23rd was a violation of the TRO?
11 A I think it was, yes.
12 Q To be clear, these are letters between counsel, correct?
13 A They are.
14 Q And, in fact, K&L Gates is not Mr. Dondero's personal
15 counsel, correct?
16 A That's what I'm hearing.
17 Q And K&L Gates at the time represented the Funds and
18 Advisors, correct?
19 A I -- there's so many counsel, I don't recall if they
20 represent just the Fund -- I think they represent just the
21 Funds, not the Advisors. But if they represent the Funds and
22 the Advisors, then I'd precedent your next question, because
23 Mr. Dondero clearly controls the Advisors and he's -- he
24 basically said so earlier today.
25 Q Can you tell me what threat means in the context of a

TRO?

A What a threat is?

Q Well, what -- what's meant by threat in the context of a TRO.

A I believe -- I believe that a threat is a -- either a statement or action that one takes against another that puts them at risk of some kind of loss or harm in order to get someone to do or not do something. I think that's the common -- relatively common usage of threat as I would use it.

THE COURT: Mr. Wilson, how much longer do you think you're going to take? I probably need to take a break if you're going to be much longer.

MR. WILSON: Yeah. Now would be a great time for a break, Your Honor.

THE COURT: What was the answer to my question?

MR. WILSON: Well, I said now would be a great time for a break, but I don't have an exact time estimate on the remainder of my questions for Mr. Seery.

THE COURT: All right. Well, we're going to stop at 5:30 tonight. I've got a very long day tomorrow so I've got to prepare for it at some point.

Nate will check the time, see how much time you've each used. But we'll take a five-minute break.

MR. WILSON: All right. Thanks, Your Honor.

THE CLERK: All rise.

(A recess ensued from 5:01 p.m. until 5:07 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in Highland.

All right. Nate has told me that, Mr. Wilson, you're at two hours and twenty minutes. So you're actually well within your time frame. And what did you say Mr. Morris is at, without deductions?

THE CLERK: Three hours.

THE COURT: You're at three hours, Mr. Morris, without deductions.

Here's what we'll try to do. We'll try to get through Mr. Seery today, but we're not going to do closing arguments tonight. And what I'm thinking is we're coming back Wednesday on the bond, the supersedeas bond issue with regard to the requested stay pending appeal. So we'll roll into closing arguments on Wednesday after we're finished with that matter. That matters starts at 9:30. So, presumably you'll all be here for that anyway, so we'll defer closing arguments until Wednesday.

MR. MORRIS: Your Honor?

THE COURT: Yes?

MR. MORRIS: Can we put a time limit on that, too, just to make sure it's sufficient? I don't think I'd need more than 15 or 20 minutes.

THE COURT: Okay. I think 20 minutes is plenty per side. In fact, hopefully, with this gap in time, I'll be able to kind of go through the exhibits and have my thoughts collected, so therefore that I don't I'll need a lengthy closing at that point.

Mr. Wilson, sound like a deal to you, 20 minutes?

MR. WILSON: I think 20 minutes will be sufficient, Your Honor.

THE COURT: All right. So you may proceed now with your questioning of Mr. Seery.

MR. WILSON: All right. Thank you.

CROSS-EXAMINATION, RESUMED

BY MR. WILSON:

Q When we left off, Mr. Seery, we were talking about the letters sent by K&L Gates on the 22nd and the 23rd. You would agree with me that these letters did not have any effect on the Debtor, correct?

A The lett... well, they certainly caused us to spend a lot of time and money dealing with the issues that we thought were handled at the prior hearing, where it was basically found to be frivolous. So I disagree with that.

Q You weren't intimidated by the letters, correct?

A No.

Q And the letters didn't cause you or the Debtor to refrain from operating the company in the manner that you perceived

to be in its best interest, correct?
A It did not.
Q The letters didn't cause you to change any of your trading decisions, correct?
A Nope, they did not.
Q The letters didn't cause you to change your investment strategy, correct?
A No.
Q And the letters didn't cause you to trade or not trade in a particular manner, correct?
A That's correct.
Q And you continued to function the Debtor's operations as you deemed appropriate, right?
A Yes.
Q In fact, the Debtor rejected the requests made in the letters and demanded a withdrawal, correct?
A Yes.
Q So the letters did not cause you to conduct yourself in any other manner than you would have conducted yourself had you not received the letters, correct?
A Well, as I said, we spent a lot of time and money responding to them and dealing with them because we didn't just leave them hanging out there. So that's not correct.
Q Did the letters cause the Debtor to breach any contracts?
A No.

Q And, again, every trade you initiated in December 2020 closed, correct?
A Yes.
Q But yet the Debtor considers the sending of these letters between counsel to be an interference with or impeding the Debtor's business?
A Yes.
Q So is it your contention that that provision of the TRO is clear and unambiguous?
A Yes.
Q But could you see where someone might disagree?
A No.
Q Could you see where someone might believe that a letter sent between counsel that did not cause the Debtor to alter its course in any way was not an interference with the Debtor's business?
A A threat doesn't have to be successful in order to be a threat and one that could affect us, and I said it did actually affect what we did because we had to spend money and time dealing with it.
Q Who is Scott Ellington?
A Who is Scott Ellington?
THE COURT: Okay.
THE WITNESS: He's the former general --
THE COURT: Mr. Wilson, --

THE WITNESS: -- general -- former --

THE COURT: Mr. Wilson, we all know who Scott Ellington is, okay? Please. Let's --

MR. WILSON: Oh, I'm sorry. I was just asking the question for the record.

THE WITNESS: He's the former general counsel of Highland.

BY MR. WILSON:

Q And as general counsel, did you believe that Mr. Ellington owed duties to Highland?

A Absolutely.

Q As general counsel, Mr. Ellington would have been part of the legal department at Highland, correct?

A Yes.

Q And that legal department was part of the shared services agreements between the Debtor and the Advisors, correct?

A No, it wasn't.

Q Can you tell me what you mean by that?

A It was not, meaning no. In answer to your question, it was not.

Q Are you saying that the shared services agreements between the Debtor and the Advisors did not cover legal services?

A They included legal services, yes, but you asked me if the legal department was part of it. No.

Q Can you tell me what you mean by when you hear the term legal department?
A Highland's legal department was a pretty unusual thing. It included lawyers and non-lawyers. Not just, you know, administrators, administrative assistants, and paralegals, but even some people who were accountants or MBAs. It did work all over the -- either the Highland complex or even through numbers of entities for which it didn't get paid. Dondero entities. It was a -- it was a pretty standalone odd thing, one of the most unusual I've seen. It's really unusual to have an investment firm with more people in the tax department and in the legal department than in the investing side.
Q Would you agree with me that this is a pretty broad shared services agreement, correct?
A There are a number of services that are performed under it, yes.
Q And it, in fact, says in Provision 2.02 of Exhibit 1 that, without limiting the generality of Section 2.01, and subject to 2.04, the following are the services that are going to be provided. So this -- this document wasn't intended to be limited, correct?
A I can't speak to what was intended. It's a pretty unusual document. Legal services, typically, you don't split legal services, since it's unethical to split fees, so it

wouldn't be providing attorney services. Highland often used it to, in the past, to shield things based on a claim of attorney-client privilege. But I think that that document, whether it's intended to be broad or not, is certainly ambiguous in places.

Q Did you task Mr. Ellington with the role of a go-between between the board and Mr. Dondero?

A No. This -- this settlement counsel is something I'd never heard until Dondero raised it and made it up. It -- it's wholly fictitious.

Now, what Ellington did do is he was on a number of calls with me and Dondero, and he had a communication line with Dondero. This was through the first half of the case and into -- into the summer. But as it started to become more adversarial, particularly around the mediation, he wasn't invited. So, for example, Mr. Ellington was not invited to -- to participate in the mediation. He asked. I said no.

The -- in addition, this idea that he was drafting the pot plan, well, not to my knowledge or understanding, because I drafted it for Dondero and his lawyers because you guys couldn't.

MR. WILSON: Object as nonresponsive.

THE COURT: Overruled.

BY MR. WILSON:

Q Did you send Mr. Dondero messages through Mr. Ellington?

A No.
Q So you're denying Mr. Dondero's testimony to the contrary?
A Yes.
Q Did Mr. Dondero send messages to you through Mr. Ellington?
A No. Mr. Ellington often came back and gave me messages. They were often critical of Mr. Dondero. I didn't always believe them, because I figured Mr. Ellington had an ulterior motive. But he took a number of, you know, shots at Mr. Dondero and he came back and gave his color of what he thought was going on in Mr. Dondero's mind.
MR. WILSON: Object as nonresponsive.
THE COURT: Overruled.
BY MR. WILSON:
Q Did you task Mr. Ellington with negotiating certain items with Mr. Dondero?
A No.
Q Was there not a time, in January, early January, before Mr. Ellington's termination, that you tasked him with negotiating a new shared services agreement with Mr. Dondero?
A No.
Q Did you believe that there were legitimate items that Mr. Ellington needed to discuss with Mr. Dondero?
A I'm sorry. Can you say that again? It --

Q Did you believe that there were legitimate items that Mr. Ellington needed to discuss with Mr. Dondero?
A When?
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained.
BY MR. WILSON:
Q During the year of 2020, were there legitimate items that Mr. Dondero [sic] needed to discuss with Mr. Dondero?
MR. MORRIS: Objection. Vague and ambiguous.
THE COURT: Sustained.
THE WITNESS: Well, I believe you just asked me if --
THE COURT: Sustained.
THE WITNESS: -- Mr. Dondero could discuss with Mr. Dondero. I think --
THE COURT: I --
THE WITNESS: -- the question is --
THE COURT: I sustained the objection.
THE WITNESS: I'm sorry, Your Honor.
THE COURT: I need it to be rephrased.
BY MR. WILSON:
Q Did you ever instruct Mr. Ellington to keep taking Mr. Dondero's calls after the entry of the TRO?
A No.
Q So are you denying that on January 4, 2021, you

instructed Mr. Ellington to communicate with Mr. Dondero and negotiate a number of expense items?

A Expense items? Not to my knowledge. No, I don't recall that at all.

Q Did you ever tell Mr. Ellington that he could talk to Michael Lynn as much as he wanted because Mr. Lynn was an honorable and ethical person?

A I believe over the summer I did. Meaning summer of 2020. I don't know if I used the honorable and -- but I -- I thought Mr. Lynn, if he needed to talk to Mr. Ellington, that would be appropriate at that time.

MR. WILSON: Pull up Debtor's 17.

BY MR. WILSON:

Q This was the Debtor's Exhibit No. 17.

MR. WILSON: Go down to the bottom.

BY MR. WILSON:

Q Do you remember this email that came into evidence earlier?

A I saw it earlier, yes. I've seen it before.

Q And it starts at the bottom with a discussion between Michael Lynn and Mr. Dondero and other counsel.

MR. WILSON: Scroll up.

BY MR. WILSON:

Q Do you see where -- apparently, Mr. Lynn forwarded that email to Mr. Ellington at 8:44. We can't tell all the

1 senders and recipients. But do you see where Mr. Ellington
2 responds later that evening on December 12th?
3 A Yes, I see the email.
4 Q And is it the Debtor's contention that this email between
5 Mr. Dondero's counsel, Michael Lynn, and Scott Ellington is a
6 violation of the TRO?
7 A Yeah, I think it is. I think that they're -- they're
8 reaching out, I assume on behalf of Mr. Dondero, to try to
9 create a witness. I assume this is for the confirmation
10 hearing. I don't have the -- the times. But it's a pretty
11 unusual thing to do. I know they ended up ultimately serving
12 a subpoena on Mr. Sevilla but then not calling him.
13 Q Do you agree that Footnote 2 -- and we can pull it up if
14 you want to.
15 MR. WILSON: Pull up 11. Debtor's 11. Bottom of
16 Page 2. Bottom of Page 3. No, no. Bottom of the Page 4 on
17 the document. Go to the very bottom of the footnote.
18 BY MR. WILSON:
19 Q I'm going to represent to you that this is Debtor's
20 Exhibit 11, and this is the last page of it, and the footnote
21 at the bottom says, "For the avoidance of doubt, this order
22 does not enjoin or restrain Mr. Dondero from seeking judicial
23 relief upon proper notice or from objecting to any motion
24 filed in the above-referenced bankruptcy case."
25 Were you -- were you aware that that provision was in

this order?
A I'm sure I was at the time. I read it closely.
Q Would you agree with me that attempting to identify a witness for a hearing could be considered seeking judicial relief?
A No, I don't. I don't agree with you, no.
Q Are you aware that Mr. Ellington testified that while at Highland he'd been asked dozens of time by opposing counsel who they should subpoena to testify?
MR. MORRIS: Objection. I move to strike.
THE COURT: I --
MR. MORRIS: If they wanted Mr. Ellington to testify, he should have been here.
THE COURT: Yes. Actually, I couldn't even understand what the question was. Could you say what the question was again?
MR. WILSON: The question was, are you aware that Mr. Ellington testified that while at Highland he had been asked dozens of times by opposing counsel who they should subpoena to testify about a certain topic?
MR. MORRIS: Objection to the form of the question. No foundation.
THE COURT: Okay. Sustained.
THE WITNESS: I'm sorry?
THE COURT: Okay. I sustained the objection. You

don't have to answer it.

THE WITNESS: Oh, okay. I'm sorry, Your Honor.

BY MR. WILSON:

Q The Debtor's memorandum of law says that Mr. Dondero knew that several times in the last year several entities had requested the Dugaboy financial statements. Who are these several entities?

A Well, certainly, the U.C.C. I don't -- we did from Ms. Schrath, who was working for us at the time. And he instructed her, notwithstanding that she was working for Highland, to not give it over. I don't know who else had requested them.

Q Are these documents located on the Highland servers?

A I believe so. We haven't been able to find all of them yet.

Q So, have you looked for them?

A Yes.

Q How -- how many of the documents have you located?

A I don't know.

Q How do you know that there are documents that you haven't located?

A There are numbers of documents that are listed around different servers -- I don't know, I haven't done this work myself -- that indicate that they're Dugaboy. But we haven't been able to get to all of them.

Q How did Mr. Dondero personally interfere with the Debtor's search for the documents?
A I think it's pretty clear. He told a Debtor employee who worked extensively for him, who probably looked to work for him in the future, to not turn them over, notwithstanding that they're on the Debtor's server and they're the Debtor's property.
MR. WILSON: I'll object as nonresponsive.
THE WITNESS: You asked me how.
THE COURT: Overruled.
MR. WILSON: Turn to the list of -- 19.
BY MR. WILSON:
Q We're going to pull up Debtor's 19. Now, my problem with the answer you gave to the last question, Mr. Seery, is that you said that Mr. Dondero ordered that the documents not be turned over. But does the text he sent to Melissa Schrath on December 16th in fact say, No Dugaboy details without subpoena?
A That's what it says, yes.
Q So, in fact, Mr. Dondero wasn't saying that the documents couldn't be turned over, correct?
A It says, No -- No Dugaboy details without subpoena. I read that to mean don't give up anything unless ordered to do so, notwithstanding that they're on Highland's server and that make them Highland's property.

Q Well, I object to your legal conclusion.

THE COURT: Overruled.

THE WITNESS: I think it's factual, but --

MR. WILSON: Can I get a ruling, Your Honor?

THE COURT: I said overruled.

MR. WILSON: Okay. Thank you.

BY MR. WILSON:

Q But you're aware that prior to the communication that Dondero sent to Melissa Schrath on December 16th, that Douglas Draper had been communicating with Mr. Morris about producing these documents, correct?

A I'm aware of that, yes.

MR. WILSON: Let's go to our 16 real quick.

BY MR. WILSON:

Q If you look at the bottom of this, this is Debtor's -- I'm sorry -- Dondero's Exhibit 16. If you look at the bottom, do you see the email from Douglas Draper on Wednesday, December 16th, that said, Do you have a confidentiality agreement with the party requesting the information?

A I see that it says that, yes.

MR. WILSON: Can you go to 17? And can we go to Page 2?

BY MR. WILSON:

Q At the top of this -- this is Dondero Exhibit 17. The

first email on this page is from Douglas Draper on Friday, December 18th, to John Morris, that says, Would like to see them before they go out. I now need to look at the issue in light of the complaint filed (garbled).

Were you aware that Mr. Draper wanted to see the documents before they went out?

A I've -- I've seen this email, yes.

Q Do you know, as of December 16th, whether a formal request for the documents had been made to the trusts or Mr. Dondero?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Yes, I do. They were requested by the Committee long prior. Remember that these were documents in the Debtor's possession. Mr. Draper doesn't represent the Debtor. Mr. Draper represents Dugaboy. These are the Debtor's -- this is the Debtor's information. He doesn't have a right to see anything.

BY MR. WILSON:

Q But do you know whether a formal request for the documents had been made to the trusts or Mr. Dondero at this point?

A I don't know. Certainly, to the Debtor, I know, but I don't know.

Q And the Debtor -- strike that. Do you believe it's

unreasonable for Mr. Dondero to ask that a formal request, such as a subpoena, be sent regarding the documents?

A Yes. (garbled) control of the Debtor. That -- that's totally unreasonable. He completely interfered with our employee who was required to respond to me, who specifically directed her multiple times to produce them as requested. Initially, to our own counsel. I'm entitled to see them as the CEO. Our counsel is entitled to see them. I requested it multiple times, and she didn't. She rather would be fired because she knew she was being picked up by him.

Q Is it reasonable that counsel for the trusts might want to review the documents before they're produced?

A It might be helpful, but they're not his documents. And from a --

MR. WILSON: I object again.

THE WITNESS: -- perspective, it's not reasonable. The man should be able --

MR. WILSON: Object again as nonresponsive.

THE WITNESS: I don't think it's reasonable.

THE COURT: Overruled.

MR. WILSON: All right. I'll pass the witness.

THE COURT: All right. Redirect?

MR. MORRIS: Your Honor, I'm going to spare any further examination here.

Actually, just two questions.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, was -- was Trey Parker -- withdrawn. Was Mark Okada an employee of the Debtor at the time the independent board was appointed?

A You know, he wasn't on the payroll and he didn't have any real authority. He had an office. I don't believe he actually was. I think he had left, according to Mr. Okada, actually before that. He hadn't actually just vacated. But he wasn't doing any work. He wasn't involved in the business.

Q Okay.

A He certainly wasn't on the payroll. He may have been -- he may still have been getting some kind of benefits. I don't know.

Q All right.

MR. MORRIS: Your Honor, I'm mindful of the Court's time. If I may, I'd like to just take three minutes on the exhibits so that -- so that I can rest, and I guess -- I guess Mr. Dondero will rest, too.

THE COURT: All right. All right. All right. I --

MR. MORRIS: But there's only a couple of exhibits that were objected to.

THE COURT: As a technical matter, --

MR. MORRIS: Very quickly.

THE COURT: As a technical matter, I have to ask Mr. Wilson, did you have any recross on that redirect regarding Mr. Okada?

MR. WILSON: No, Your Honor. That's --

THE COURT: All right. So, thank you, Mr. Seery. Your testimony is concluded.

All right. Now, Mr. Morris?

MR. SEERY: Thank you, Your Honor.

THE COURT: You were saying?

MR. MORRIS: Okay. So, yes, just going through the list, I believe -- and Mr. Wilson, please correct me if I miss anything here -- but I believe that they objected to Exhibits 3, 4, 5, and 6. Do I have that right?

THE COURT: That's what I show.

MR. MORRIS: Okay. The Debtor would -- will withdraw those exhibits.

THE COURT: Okay.

(Debtor's Exhibits 3 through 6 are withdrawn.)

MR. MORRIS: The Debtor will also withdraw Exhibit 16.

THE COURT: Okay.

(Debtor's Exhibit 16 is withdrawn.)

MR. MORRIS: But 17 through 22 are in evidence, right?

THE COURT: Correct.

MR. MORRIS: The Debtor will withdraw No. 23.

(Debtor's Exhibit 23 is withdrawn.)

THE COURT: Okay.

MR. MORRIS: But the Debtor does seek to admit into evidence Exhibits 29, 30, 31, and 32, in light of the testimony that we just had, because these, in fact, are the very formal requests by the Creditors' Committee for the Dugaboy financials.

THE COURT: All right.

MR. MORRIS: So we would -- we would move them into evidence for that limited purpose.

THE COURT: All right. Your response, Mr. Wilson?

MR. WILSON: My response was not contesting that the Creditors' Committee had ever sent requests to Highland. My question to Mr. Seery was whether anyone had ever sent a request to the trusts or Mr. Dondero.

MR. MORRIS: Your Honor, I still think that it's relevant to support Mr. Seery's testimony where he testified that he had asked Ms. Schrath to produce the documents on multiple occasions, and this is the reason why he did it. Here is the requests.

THE COURT: All right. I overrule the objection, and so will allow 29, 30, 31, and 32.

(Debtor's Exhibits 29, 30, 31, and 32 are received into evidence.)

MR. MORRIS: Next, Your Honor, Exhibit 35, which is the transcript from the hearing on the protective order. I'd like to offer that into evidence for the limited purpose of any admissions by Mr. Dondero's counsel that he knew and was aware that the -- that the Creditors' Committee was seeking ESI from Mr. Dondero, including text messages.

THE COURT: Okay. Mr. Wilson, your response?

MR. WILSON: I think, yeah, I think we're talking about two different issues. We're -- Mr. Morris is focusing on these events that occurred earlier in the year in 2020, and we're focusing on what Mr. Dondero himself knew in -- in the time frame that's relevant at this -- for this hearing. And not to mention, we called into question, I believe, the definition of ESI under the Debtor's own protocols and whether that would even include text messages. I don't believe that the text messages are -- you know, knowledge that the Committee was seeking those from Mr. Dondero can be imputed onto this transcript of statements by his attorneys.

THE COURT: Okay. I'll overrule the objection. I'll find that these have some relevance. So 35 will get in.

(Debtor's Exhibit 35 is received into evidence.)

MR. MORRIS: Okay. And then the last two, Your Honor, are Exhibits 38 and 39. 38 and 39 are the -- are two exhibits that were on Docket 128 that was filed last night. We had placeholders there previously. These are my firm's

time entries, bankruptcy litigation time entries related to the Dondero litigation in December, is No. 38. And No. 39 is the time entries for January of 2021.

This material was specifically requested by Mr. Dondero in discovery. We produced a form of it at that time, but it had not yet been completed at the time we produced it, and that's why we supplemented it last night. But it's directly responsive both to Mr. Dondero's discovery requests as well as the Debtor's claim for economic harm, at least partially.

THE COURT: All right. Mr. Wilson, any objection to those?

MR. WILSON: My objection to these would be that the requests -- or, I'm sorry, the statements aren't limited to -- or I assume they're not limited to what he's seeking in this hearing, because the fee statements start on November 3, 2020. And, you know, for instance, Exhibit 38 is 46 pages long of fee entries, and they seem to include every entry that Highland's made on this case, that the Pachulski's firm has made on this case, and -- and we can't tell which ones of these items that they are seeking to -- as part of their damage model.

MR. MORRIS: Your Honor, that's just not an accurate characterization of the document. The document is specifically limited to bankruptcy litigation. It's not nearly all of the fees that have been incurred in this case.

You know, to the extent that somebody disputes any particular entry, they have every right to do that. But we believe that it accurately reflects only the litigation matters that are related to Mr. Dondero's conduct. For -- for January and February.

THE COURT: Wait. December and January, you mean?

MR. MORRIS: Yes. I apologize. Thank you very much, Your Honor.

THE COURT: All right. And you're saying it relates to just this TRO matter, or are you saying it also relates maybe to the Advisor dispute as well?

MR. MORRIS: It does relate to both, Your Honor. It does, in all candor, it definitely relates to both, from this same period of time, because, you know, as Your Honor knows, the Court found that whole litigation in December of 2020 to be frivolous, and it was directly related to the letters that were subsequently written.

So, you know, they can argue otherwise, but that's our position.

THE COURT: All right. Well, Mr. Wilson, it sounds like it's perfectly acceptable to allow it to in as their evidence of some of the alleged damages, and then you're certainly able to argue on closing arguments why, you know, *x* amount would not be compensable if I were to allow damages on this front.

So it's at Docket Entry 128 from last night. 38 and 39 are admitted.

(Debtor's Exhibits 38 and 39 are received into evidence.)

THE COURT: But you also talked about earlier today a cleaned-up version of Exhibit 11, a replacement version to just clean the --

MR. MORRIS: Correct.

THE COURT: -- the heading at the top. So I assume no one has a problem with that replacement No. 11 getting in. So all three of those will be allowed.

(Debtor's Replacement Exhibit 11 is received into evidence.)

THE COURT: All right. Anything else?

MR. MORRIS: No. With that, Your Honor, the Plaintiff rests.

THE COURT: Okay. Let me be clear on a couple of these. There was an objection to your Exhibit 34 that we carried this morning. Is that not being offered? I don't show it as either withdrawn --

MR. MORRIS: I'll withdraw that exhibit as well, Your Honor.

THE COURT: Okay. So that's withdrawn. All right.

MR. MORRIS: Yeah.

(Debtor's Exhibit 34 is withdrawn.)

THE COURT: So, with that, the Debtor rests? All

right.

Mr. Wilson, I know you don't have any other witnesses. Do you have any documents that you need to clarify the record on? I admitted all of your exhibits earlier, so I presume no.

MR. MORRIS: Correct.

MR. WILSON: No, I think that that's -- I think that's all we have.

THE COURT: Okay. All right. Well, thank you. If there's nothing further in the way of a housekeeping matter, again, what we'll do is reconvene on Wednesday at 9:30. I'll start with the bond issue pertaining to the requested stay pending appeal, and then we'll allow closing arguments, 20 minutes each side, for this matter. All right?

MR. MORRIS: Thank you for your patience, Your Honor.

MR. WILSON: Thank you, Your Honor.

THE COURT: All right. And I didn't mean the thing about the basketball tournament earlier that someone wanted to get to. My team got utterly humiliated --

MR. MORRIS: We know.

THE COURT: -- Saturday night, so at this point I don't care so much. I do, but all right.

MR. MORRIS: So did Colgate.

THE COURT: Okay. Good evening.

THE CLERK: All rise.

MR. MORRIS: Good night, Your Honor.

MR. WILSON: Thanks, Judge.

(Proceedings concluded at 5:41 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/24/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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James Dondero	§	
Appellant	§	20-03190
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01590-N
Appellee	§	

[191] Order granting in part plaintiff's motion to hold James Dondero in civil contempt of court for alleged violation of TRO (related document # 48) Entered on 6/7/2021

APPELLANT RECORD
VOLUME 40

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellant James Dondero ("Appellant") in this appeal as noticed by the *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant on June 15, 2021, files this *Appellant's Amended Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* in the

above-captioned case and requests that the Clerk prepare and forward the items listed herein to the District Court for inclusion in the record in connection with this appeal.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Vol. 1
000001 1. *Notice of Appeal* [Adv. Dkt. 195] filed by Appellant;

000059 2. *Memorandum Opinion and Order Granting In Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Adv. Dkt. 191];

000114 3. Docket entries kept by the bankruptcy clerk in case no. 19-34054;

000489 4. All docket entries and filings kept by the bankruptcy clerk in adversary proceeding number 20-03190; and

5. Each of the additional documents and items designated below:

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Designation No.	Docket No.	Date	Description
	Documents filed in Main Bankruptcy Case- Case No. 19-34054		
1.	Bankr. Dkt. 1472	11/24/20	Debtor's Fifth Amended Plan of Reorganization
2.	Bankr. Dkt. 1473	11/24/20	Disclosure Statement for Fifth Amended Plan of Reorganization
3.	Bankr. Dkt. 1476	11/24/20	Order Approving Disclosure Statement
4.	Bankr. Dkt. 1528	12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
5.	Bankr. Dkt. 1578	12/15/20	Debtor's Objection to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
6.	Bankr. Dkt. 1605	12/18/20	Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles
7.	Bankr. Dkt. 1808	1/22/21	Debtor's Fifth Amended Plan of Reorganization (as modified)
8.	Bankr. Dkt. 1809	1/22/21	Redline of Fifth Amended Plan of Reorganization (as modified)
9.	Bankr. Dkt. 1943	2/22/21	Order Confirming Fifth Amended Plan of Reorganization

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006306	15.	Adv. Dkt. 10	12/10/20	Order Granting Debtor's Motion for Temporary Restraining Order
006309	16.	Adv. Dkt. 32	12/28/20	James Dondero's Motion for Protective Order
006331	17.	Adv. Dkt. 33	12/28/20	Motion for Expedited Hearing on Motion for Protective Order
006337	18.	Adv. Dkt. 34	12/28/20	Debtor's Objection to Motion for Protective Order
006343	19.	Adv. Dkt. 38	12/29/20	Order Resolving Motion for Protective Order
006346	20.	Adv. Dkt. 45	1/6/21	Debtor's Witness and Exhibit List for January 8, 2021 hearing
Vol. 27 006604	21.	Adv. Dkt. 48	1/07/21	Debtor's Motion for Contempt against James Dondero
006613	22.	Adv. Dkt. 49	1/07/21	Brief in Support of Debtor's Motion for Contempt
006627	23.	Adv. Dkt. 51	1/07/21	Debtor's Motion for Expedited Hearing on Motion for Contempt
006633	24.	Adv. Dkt. 52	1/07/21	James Dondero's Objection to Debtor's Motion for a Preliminary Injunction
006640	25.	Adv. Dkt. 59	1/12/21	Order Granting Debtor's Motion for Preliminary Injunction
006645	26.	Adv. Dkt. 60	1/12/21	James Dondero's Notice of Appeal of Preliminary Injunction
006654	27.	Adv. Dkt. 63	1/13/21	Amended Notice of Appeal
006663	28.	Adv. Dkt. 64	1/13/21	James Dondero's Motion for Leave to Appeal
006674	29.	Adv. Dkt. 71	1/20/21	Notice of Docketing of Appeal
006709	30.	Adv. Dkt. 73	1/20/21	Notice of Transmittal of Appeal
006721	31.	Adv. Dkt. 75	1/27/21	Emergency Motion to Continue Contempt Hearing
006731	32.	Adv. Dkt. 77	1/29/21	Debtor's Objection to Motion to Continue
Vol. 28 006478	33.	Adv. Dkt. 80	2/1/21	Witness and Exhibit List filed by Debtor
006484	34.	Adv. Dkt. 80-1	2/1/21	Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on January 8, 2021 [Docket No. 46]
006490	35.	Adv. Dkt. 80-2	2/1/21	Declaration of Mr. James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero [Docket No. 46-1]

Vol. 28 006668	36.	Adv. Dkt. 80-3	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated October 16, 2020 [Dondero Deposition Exhibit 1; Docket No. 46-2]
006671	37.	Adv. Dkt. 80-4	2/1/21	Letter from NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P to James Seery dated November 24, 2020 [Dondero Deposition Exhibit 2; Docket No. 46-3]
006673	38.	Adv. Dkt. 80-5	2/1/21	Email string dated between November 24, 2020 and November 27, 2020 re SKY equity [Dondero Deposition Exhibit 3; Docket No. 46-4]
006677	39.	Adv. Dkt. 80-6	2/1/21	James Dondero text messages dated November 24, 2020 [Dondero Deposition Exhibit 4; Docket No. 46-5]
006679	40.	Adv. Dkt. 80-7	2/1/21	Debtor's First Request for the Production of Documents Directed to James Dondero [Dondero Deposition Exhibit 5; Docket No. 46-6]
006686	41.	Adv. Dkt. 80-8	2/1/21	Text messages between James Dondero and Jason Rothstein (Dondero 000022; Dondero Deposition Exhibit 6; Docket No. 46-7]
006688	42.	Adv. Dkt. 80-9	2/1/21	Text messages between James Dondero and Tara Loiben (Dondero 000013; Dondero Deposition Exhibit 7; Docket No. 46-8]
006690	43.	Adv. Dkt. 80-10	2/1/21	Order Resolving James Dondero's Emergency Motion for a Protective Order [Docket No. 46-9]
006694	44.	Adv. Dkt. 80-11	2/1/21	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero [Dondero Deposition Exhibit 9; Leventon Deposition Exhibit 1; Ellington Deposition Exhibit 1; Docket No. 46-10]
006698	45.	Adv. Dkt. 80-12	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10; Docket No. 46-11]
006702	46.	Adv. Dkt. 80-13	2/1/21	Email string dated December 18, 2020 re Jefferies recap [Dondero Deposition Exhibit 11; Docket No. 46-12]
006706	47.	Adv. Dkt. 80-14	2/1/21	Response to K&L Gates LLP dated December 22, 2020 [Dondero Deposition Exhibit 12; Docket No. 46-13]
006713	48.	Adv. Dkt. 80-15	2/1/21	Response to K&L Gates LLP dated December 23, 2020 [Dondero Deposition Exhibit 13; Docket No. 46-14]
Vol 29 006727	49.	Adv. Dkt. 80-16	2/1/21	Email string dated December 4, 2020 re Multi Strat summary balance sheet as of October 31, 2020 [Docket No. 46-15]

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006729	50.	Adv. Dkt. 80-17	2/1/21	Email string dated December 12, 2020 re possible deal [Dondero Deposition Exhibit 15; Docket No. 46-16]
006731	51.	Adv. Dkt. 80-18	2/1/21	Email string dated December 16, 2020 re list for joint meeting [Dondero Deposition Exhibit 16; Docket No. 46-17; Bates Nos. HCMLP 000487-000488]
006734	52.	Adv. Dkt. 80-19	2/1/21	Text messages between James Dondero and Melissa Schroth (Dondero 000014; Dondero Deposition Exhibit 17; Docket No. 46-18]
006736	53.	Adv. Dkt. 80-20	2/1/21	Text messages between James Dondero and Isaac Leventon (Dondero 000043; Dondero Deposition Exhibit 18; Leventon Deposition 9; Docket No. 46-19]
006738	54.	Adv. Dkt. 80-21	2/1/21	Email string dated December 24, 2020 re HarbourVest settlement motion [Docket No. 46-20]
006741	55.	Adv. Dkt. 80-22	2/1/21	Letter from Bonds Ellis to J. Pomerantz dated December 29, 2020 [Docket No. 46-21]
006743	56.	Adv. Dkt. 80-23	2/1/21	Email string dated between December 7, 2020 and December 8, 2020 re call scheduled by Scott Ellington [Docket No. 46-22]
006746	57.	Adv. Dkt. 80-24	2/1/21	Email string dated December 15, 2020 re The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement [Leventon Deposition Exhibit 8; Docket No. 46-23]
006749	58.	Adv. Dkt. 80-25	2/1/21	Letter from K&L Gates to J. Pomerantz dated December 31, 2020 [Docket No. 46-24]
006752	59.	Adv. Dkt. 80-26	2/1/21	Email string dated December 23, 2020 re Dondero call [Docket No. 46-25]
006755	60.	Adv. Dkt. 80-27	2/1/21	Letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn dated December 23, 2020 [Dondero Deposition Exhibit 10]
006759	61.	Adv. Dkt. 80-28	2/1/21	Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [Docket No. 50]
006868	62.	Adv. Dkt. 80-29	2/1/21	The Official Committee of Unsecured Creditors' Expedited Requests for Production of Documents to Highland
006882	63.	Adv. Dkt. 80-30	2/1/21	The Official Committee of Unsecured Creditors' Second Requests for Production of Documents to Highland

Vol. 29 006896	64.	Adv. Dkt. 80-31	2/1/21	The Official Committee of Unsecured Creditors' Third Requests for Production of Documents to Highland
006901	65.	Adv. Dkt. 80-32	2/1/21	The Official Committee of Unsecured Creditors' Fourth Requests for Production of Documents to Highland
006926	66.	Adv. Dkt. 80-33	2/1/21	Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Docket 808]
006944	67.	Adv. Dkt. 80-34	2/1/21	Debtor's Motion for Entry of (I) A Protective Order, or, in the Alternative, (Ii) An Order Directing the Debtor to Comply With Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 [Docket 810]
Vol. 30 006960	68.	Adv. Dkt. 80-35	2/1/21	Transcript of 07/21/20 Hearing
007086	69.	Adv. Dkt. 80-36	2/1/21	Transcript of 01/08/21 Hearing
Vol. 31 007292 thru Vol. 32	70.	Adv. Dkt. 80-37	2/1/21	Transcript of 01/26/21 Hearing
Vol. 33 007550	71.	Adv. Dkt. 88	2/5/21	Amended Notice of Hearing on Motion for Contempt
007553	72.	Adv. Dkt. 101	2/17/21	Debtor's Amended Witness and Exhibit List for Hearing on Motion for Contempt
007560	73.	Adv. Dkt. 101-1	2/17/21	Response of James Dondero to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor [Case No. 19-34054, Docket No. 832]
007570	74.	Adv. Dkt. 101-2	2/17/21	E-mail string from October 26, 2020 titled "Highland: Privilege Terms Searches" [Leventon Deposition Exhibit 2]
007574	75.	Adv. Dkt. 101-3	2/17/21	E-mail string from November 13, 2020 titled "Highland: Document Production Issues" [Leventon Deposition Exhibit 3]
007578	76.	Adv. Dkt. 101-4	2/17/21	E-mail string dated December 3, 2020 titled "Highland: Firm Phones" [Leventon Deposition Exhibit 4]
007580	77.	Adv. Dkt. 101-5	2/17/21	E-mail dated December 3, 2020 from Leventon to Kim, Schroth [Leventon Deposition Exhibit 5; Bates No. HCMLP 000382]
007582	78.	Adv. Dkt. 101-6	2/17/21	E-mail string dated December 4, 2020 titled "Dugaboy Investment Trust" [Leventon Deposition Exhibit 6; Bates Nos. HCMLP 000426-000427]

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007585	79.	Adv. Dkt. 101-7	2/17/21	E-mail string dated December 7, 2020 re Engagement [Leventon Deposition Exhibit 7; Bates Nos. HCMLP 000374-000376]
007589	80.	Adv. Dkt. 101-8	2/17/21	E-mail dated January 11, 2021 re AT&T changes to account [Ellington Deposition Exhibit 2; Bates Nos. HCMLP 000372-000373]
007592	81.	Adv. Dkt. 101-9	2/17/21	E-mail dated December 11, 2020 re Testimony [Ellington Deposition Exhibit 3; Bates No. HCMLP 000498]
007594	82.	Adv. Dkt. 101-10	2/17/21	E-mail dated December 12, 2020 re witnesses for hearing [Ellington Deposition Exhibit 4; Bates No. HCMLP 000504]
007596	83.	Adv. Dkt. 101-11	2/17/21	E-mail dated December 15, 2020 re Clubok [Ellington Deposition Exhibit 6; Bates No. HCMLP 000496]
007598	84.	Adv. Dkt. 101-12	2/17/21	E-mail dated December 16, 2020 from Michael Lynn to Scott Ellington re Call [Ellington Deposition Exhibit 9; Bates No. HCMLP 000515]
007600	85.	Adv. Dkt. 101-13	2/17/21	E-mail dated December 24, 2020 re Letters to and From K&L Gates [Ellington Deposition Exhibit 11; Bates Nos. HCMLP 000509-000512]
007605	86.	Adv. Dkt. 101-14	2/17/21	E-mail string dated December 24, 2020 re Letter and Discovery Requests [Ellington Deposition Exhibit 12; Bates Nos. HCMLP 000606-000619]
007620	87.	Adv. Dkt. 101-15	2/17/21	Highland's New Cell Phone Reimbursement Policy dated March 27, 2012
007623	88.	Adv. Dkt. 101-16	2/17/21	Highland Capital Management Employee Handbook
007672	89.	Adv. Dkt. 101-17	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (James Dondero) **(REDACTED)**
007680	90.	Adv. Dkt. 101-18	2/17/21	Q3 2020 Questionnaire and Transactions Certification (James Dondero) **(REDACTED)**
007689	91.	Adv. Dkt. 101-19	2/17/21	Annual Certification and Conflicts of Interest Disclosure 2019 (Scott Ellington)
007692	92.	Adv. Dkt. 101-20	2/17/21	Q3 2020 Questionnaire and Transactions Certification (Scott Ellington)
007695	93.	Adv. Dkt. 106	2/20/21	James Dondero's Witness and Exhibit List for Contempt Hearing
007700	94.	Adv. Dkt. 106-1	2/20/21	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.
007719	95.	Adv. Dkt. 106-2	2/20/21	Second Amended and Restated Shared Services Agreement by and between Highland Capital

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				Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013
007732	96.	Adv. Dkt. 106-3	2/20/21	Debtor's Responses and Objections to Defendant James Dondero's First Set of Discovery Requests to Highland Capital Management, L.P.
007751	97.	Adv. Dkt. 106-4	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021
007752	98.	Adv. Dkt. 106-5	2/20/21	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021
007753	99.	Adv. Dkt. 106-6	2/20/21	Employee Handbook of Highland Capital Management, L.P.
007801	100.	Adv. Dkt. 106-7	2/20/21	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]
Vol. 34 007812	101.	Adv. Dkt. 106-8	2/20/21	Term Sheet [Dkt. 354 and 354-1]
007877	102.	Adv. Dkt. 106-9	2/20/21	Email from Debtor's counsel to Dondero's counsel, dated December 23, 2020
007878	103.	Adv. Dkt. 106-10	2/20/21	Dondero's Objections and Responses to Debtor's First Request for Production
007882	104.	Adv. Dkt. 106-11	2/20/21	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020
007883	105.	Adv. Dkt. 106-12	2/20/21	Sub-Advisory Agreement between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007901	106.	Adv. Dkt. 106-13	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of January 1, 2018 by and between NexPoint Advisors, L.P. and Highland Capital Management, L.P.
007908	107.	Adv. Dkt. 106-14	2/20/21	Payroll Expense Reimbursement Agreement dated effective as of May 1, 2018 by and between Highland Capital Management Fund Advisors, L.P. and Highland Capital Management, L.P.
007915	108.	Adv. Dkt. 106-15	2/20/21	Transcript of December 10, 2020 Hearing
007973	109.	Adv. Dkt. 106-16	2/20/21	Email chain between Douglas Draper, John Morris, and Isaac Leventon regarding Dugaboy documents, dated December 16, 2020

Vol. 34 007978	110.	Adv. Dkt. 106-17	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007984	111.	Adv. Dkt. 106-18	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 18, 2020
007990	112.	Adv. Dkt. 106-19	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated December 23, 2020
007992	113.	Adv. Dkt. 106-20	2/20/21	Email chain between Douglas Draper and John Morris regarding Dugaboy documents, dated January 14, 2021
Vol. 35 007996	114.	Adv. Dkt. 107	2/20/21	James Dondero's Motion in Limine
008011	115.	Adv. Dkt. 108	2/20/21	James Dondero's Motion for Emergency Hearing on Motion in Limine
008017	116.	Adv. Dkt. 110	2/21/21	James Dondero's Objection to Debtor's Motion for Contempt
008044	117.	Adv. Dkt. 111	2/11/21	District Court Memorandum Opinion and Order Denying Leave to Appeal Preliminary Injunction
008049	118.	Adv. Dkt. 115	2/24/21	Debtor's Objection to James Dondero's Motion in Limine
008056	119.	Adv. Dkt. 121	3/4/21	Amended Notice of Hearing on Motion for Contempt
008059	120.	Adv. Dkt. 126	3/10/21	Motion to Continue Contempt Hearing, with exhibits
008062	121.	Adv. Dkt. 126-1	3/10/21	Exhibit A to Motion to Continue
008096	122.	Adv. Dkt. 126-2	3/10/21	Exhibit B to Motion to Continue
008101	123.	Adv. Dkt. 128	3/21/21	Debtor's Amended Exhibit List (Debtor's Notice of Replacement Exhibits 11, 38, and 39)
008104	124.	Adv. Dkt. 128-1	3/21/21	Debtor's Exhibit 11 - Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero
008108	125.	Adv. Dkt. 128-2	3/21/21	Debtor's Exhibit 38 – Invoice of Debtor's counsel for the period from November 3, 2020 through December 31, 2020
008154	126.	Adv. Dkt. 128-3	3/21/21	Debtor's Exhibit 39 – Invoice of Debtor's counsel for the period from December 10, 2020 through January 31, 2021
008197	127.	Adv. Dkt. 131	3/23/21	Notice of Continued Hearing on Motion for Contempt
008202	128.	Adv. Dkt. 132, 132-1, 132-2, 132-3	3/24/21	James Dondero's Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, with exhibits

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008241	129.	Adv. Dkt. 134	3/24/21	Order Denying James Dondero's Motion to Reopen
008243	130.	Adv. Dkt. 159	5/3/21	James Dondero's Brief Opposed to Debtor's Complaint for Injunctive Relief
008253	131.	Adv. Dkt. 180	5/18/21	Notice of Filing of Proposed Consensual Order Resolving Adversary Proceeding
008267	132.	Adv. Dkt. 182	5/18/21	Order Resolving Adversary Proceeding
008272	133.	Adv. Dkt. 196	6/15/21	James Dondero's Emergency Motion to Stay Pending Appeal
008279	134.	Adv. Dkt. 197	6/15/21	Motion for Emergency Hearing on Motion to Stay Pending Appeal
008285	135.	Adv. Dkt. 198	6/17/21	Notice of Hearing on Motion to Stay
008288	136.	Adv. Dkt. 201	6/22/21	Stipulation and Agreed Order Resolving Defendant's Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security
	137. Did Not PROVIDE	Adv. Dkt. 14	12/10/20	Court admitted exhibits date of hearing December 10, 2020 (RE: related document(s)1 Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Nature(s) of suit: 72 (Injunctive relief - other). filed by Plaintiff Highland Capital Management, L.P.) (COURT ADMITTED THE Declaration of James P. Seery, Jr. and Exhibit's #1 Through #29 that was attached to his declaration). (Edmond, Michael)
	138. Did Not PROVIDE	Adv. Dkt. 54	1/8/21	Court admitted exhibits date of hearing January 8, 2021 (RE: related document(s)2 Motion for preliminary injunction (Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero) filed by Plaintiff Highland Capital Management, L.P. (COURT ADMITTED PLAINTIFF/DEBTOR'S EXHIBIT'S #A THROUGH #Y By Mr. John Morris) (Edmond, Michael)
008293	139.	Adv. Dkt. 140	3/22/21	Court admitted exhibits date of hearing March 22, 2021 (RE: related document(s)48 Motion for contempt against James Dondero regarding Violation of the Temporary Restraining Order (Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO) filed by Plaintiff Highland Capital

Vol. 36				Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #7, #8, #9, #10, #11, #12, #13, #14, #15, #17, #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, #33, #35, #36, #37, #38, #39, #47 THROUGH #57, & DEFENDANT/JAMES DONDERO EXHIBIT'S #1 THROUGH #20) (Edmond, Michael) (Entered: 03/25/2021) *Note: See Adv. Dkts. 80, 101, 106, and 128 for Witness and Exhibit Lists with attached exhibits*
	Transcripts			
008294	140.	Adv. Dkt. 19 in Case No. 20-03190	12/10/20	Transcript of hearing conducted on December 10, 2020 in Adv. No. 20-03190
008352	141.	Bankr. Dkt. 1610	12/16/20	Transcript of hearing conducted on December 16, 2020 in Case No. 19-34054
Vol. 37 008418	142.	Adv. Dkt. 56 in Case No. 20-03190	1/8/21	Transcript of hearing conducted on January 8, 2021 in Adv. No. 20-03190
Vol. 38 008623	143.	Adv. Dkt. 56 in Case No. 21-3000	1/26/21	Transcript of hearing conducted on January 26, 2021 in Adv. No. 21-3000
Vol. 39 008880	144.	Adv. Dkt. 138 in Case No. 20-03190	3/22/21	Transcript of hearing conducted on March 22, 2021 in Adv. No. 20-03190
Vol. 40 009158	145.	Adv. Dkt. 139 in Case No. 20-03190	3/24/21	Transcript of hearing conducted on March 24, 2021 in Adv. No. 20-03190
009233	146.	Adv. Dkt. 185 in Case No. 20-03190	5/18/21	Transcript of hearing conducted on May 18, 2021 in Adv. No. 20-03190
009248	147.	Adv. Dkt. 65 in Case No. 20-03195	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 20-03195
009334	148.	Adv. Dkt. 50 in Case No. 21-03003	5/20/21	Transcript of hearing conducted on May 20, 2021 in Adv. No. 21-03003

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding Appellant violated the TRO.

2. Whether the Bankruptcy Court erred in finding by clear and convincing evidence that Appellant violated a clear, definite, and specific provision of the TRO.

3. Whether the Bankruptcy Court erred in imposing significant monetary sanctions against Appellant when, among other things, the Debtor failed to demonstrate that its business suffered any financial harm, damages, interruption, or losses resulting from the purported violations.

4. Whether the Bankruptcy Court erred in imposing a "$100,000 sanction" for each level of appeal of the Contempt Order that Appellant may take.

5. Whether the Bankruptcy Court improperly and contrary to the evidence found Appellant violated the TRO for actions he took before the TRO was entered.

6. Whether the Bankruptcy Court erred in assessing monetary contempt sanctions against Appellant for purported violations of the TRO when the Debtor failed to put on any evidence of financial harm suffered by the Debtor resulting from the purported violations.

7. Whether the Bankruptcy Court erred in admitting and considering the invoices of Debtor's counsel in imposing contempt sanctions, including because (i) the invoices were admitted without competent testimony; (ii) there was no independent evidence that the fees incurred in the invoices related to the Contempt Motion; and (iii) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

8. Whether the Bankruptcy Court erred in purportedly basing its monetary contempt sanction on the invoices of Debtor's counsel when (i) the invoices were admitted without competent testimony; (ii) the invoices did not segregate time entries for matters solely related to

the Contempt Motion; (iii) the invoices included the Debtor's professional fees for all time incurred in the broad category of "Bankruptcy Litigation," which included hundreds of time entries—and hundreds of thousands of dollars in fees—for matters not even related to this adversary proceeding; (iv) there was no evidence that the sanctions imposed by the Court, which were purportedly based on the fees incurred by the Debtor as shown in counsel's invoices, were related to the Contempt Motion or the actions on which the motion is based; and (v) the fees incurred were not reasonable, necessary, or sufficient as to be compensable under the law of the Fifth Circuit.

9. Whether the Bankruptcy Court erred in basing certain of its contempt sanctions on attorney's fees purportedly incurred by the Debtor in February and March when there were no invoices, testimony, or other evidence in the record to support the purported fees as estimated by the Bankruptcy Court.

10. Whether the Bankruptcy Court erred by improperly shifting the burden of proof to Appellant in determining whether he violated the TRO, including by finding his communications with certain employees of the Debtor were not authorized under the exceptions to the TRO despite the fact that the Debtor did not establish by clear and convincing evidence that these exceptions did not apply to the alleged offending conduct.

11. Whether the contempt sanctions imposed by the Bankruptcy Court are in effect punitive, criminal contempt sanctions that the Bankruptcy Court lacks authority and jurisdiction to impose.

Dated: July 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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ATTORNEYS FOR APPELLANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Debtor-Appellee Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Wednesday, March 24, 2021 9:30 a.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES D. DONDERO, Defendant.	**Adversary Proceeding 20-3190-sgj** PLAINTIFF'S MOTION FOR ORDER REQUIRING JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO [48] *Continued from 03/22/2021*

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor/Plaintiff: John A. Morris
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DALLAS, TEXAS - MARCH 24, 2021 - 9:40 A.M.

THE COURT: All right. We have Highland settings. We're going to talk about what's set and what's not set and what's requested to be set. But let's start by getting lawyer appearances. First, for the Debtor team, who will be appearing?

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

MR. POMERANTZ: Your Honor, Jeff Pomerantz is also here, to the extent necessary.

THE COURT: Okay. Thank you. All right. For Mr. Dondero, who is appearing? (Pause.) If you're appearing, I can't hear you.

MR. WILSON: Your Honor? Sorry, Your Honor. John Wilson with Bonds, Ellis, Eppich, Schafer, Jones for Mr. Dondero.

THE COURT: All right. Well, I'll see if we have people appearing for the Advisors or Funds, because we did originally have matters set involving them. Do we have counsel, Mr. Rukavina or anyone, for the Advisors?

MR. VASEK: Good morning, Your Honor. Julian Vasek for the Advisors.

THE COURT: All right. Thank you. All right. What about the Funds? Do we have Mr. Hogewood?

MR. HOGEWOOD: Good morning, Your Honor. Lee

Hogewood with K&L Gates for the Funds is on the line.

THE COURT: All right. Mr. Draper, do we have you for the Trusts?

MR. DRAPER: Yes, Your Honor. Douglas Draper on the line.

THE COURT: All right. Thank you. And for the Committee, I think I saw Mr. Clemente, correct?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matt Clemente, Sidley Austin, on behalf of the Committee.

THE COURT: All right. Thank you.

All right. Because there were some late afternoon decisions made yesterday with regard to our calendar, let me just make sure the record is clear. We originally had a follow-up hearing regarding the Motion for Stay Pending Appeal, the Motion for Stay Pending Appeal of the Confirmation Order that was filed by Mr. Dondero, the Advisors, the Funds, and the Trusts. The follow-up hearing was regarding, I guess to phrase it most clearly, whether Bankruptcy Rule 7062 and Federal Rule of Civil Procedure 62 might apply here, so that if the Appellants offered a sufficient monetary bond, supersedeas bond, I would be required to ender a mandatory stay.

There was a little bit of confusion, I guess I should say on my part maybe more than anybody else's, at the end of our hearing last Friday whether someone was suggesting that,

because there was some discussion of a monetary appeal. So I invited parties to -- in fact, the Appellants asked that I allow them an opportunity to brief that and maybe we'd have a follow-up hearing on that today. So I gave the affected parties until 3:00 p.m. Central time yesterday to submit briefs, and shortly before 3:00 p.m. the Court received a letter from the Funds and from the Advisors' counsel saying that they had concluded that there was no legally-viable path there and so they were withdrawing their request for a follow-up hearing on that.

I did get briefing from the Debtor and the Committee that was quite persuasive and convinced me that, in the context of confirmation order, you either meet the 8007 discretionary standards for a stay pending appeal and maybe add on a request for a bond if the four prongs are met or not.

So I was glad not to have a hearing. I understand the Debtor still wanted to have a hearing, thinking there might be some efficiencies in putting on a record at the bankruptcy court if the Appellants plan on next going to the district court seeking a stay pending appeal, or the Fifth Circuit. But I concluded that was not an appropriate way to go forward.

So I instructed Debtor's counsel late yesterday afternoon to submit an order, and I indicated in the email that should have been copied on all counsel what I thought that order should say to make clear for the record that the Court had

1 concluded, and I think all parties had concluded, that there
2 was no possibility of a mandatory stay here pursuant to Rule
3 7062.
4 So, while our posted calendar still shows a follow-up
5 hearing on the stay pending appeal issue, I have cancelled
6 that.
7 So what we are here on today, what we're definitely here
8 on today is scheduled closing arguments on the motion that the
9 Debtor had filed several weeks ago, a couple months ago,
10 asking this Court to hold Mr. Dondero in contempt of court for
11 allegedly violating a TRO that the Court issued December 10th,
12 2020. I had allotted twenty minutes per side when we came
13 back this morning for closing arguments on that contempt
14 matter.
15 Now I see at 9:01 this morning -- news flash for anyone
16 who didn't check their docket this morning within the last
17 half hour or so -- Mr. Dondero's counsel has filed a Motion to
18 Reopen Evidence to Allow for Additional Rebuttal Witness
19 Testimony, and this pertains to what I'll call the cell phone
20 issue that Mr. Dondero and Mr. Seery had inconsistent
21 testimony on.
22 So, I'll ask, has the Debtor seen this motion? Again, it
23 was filed at 9:01 this morning. Are you aware, I'll ask Mr.
24 Morris, are you aware of the motion?
25 MR. MORRIS: Your Honor, John Morris; Pachulski,

Stang, Ziehl & Jones. I am aware of the motion. I read it briefly, and I've got argument and commentary to the extent the Court wants to hear anything.

THE COURT: All right. Well, --

MR. MORRIS: I'm prepared to proceed. The fact of the matter is, Your Honor, this is a motion. It's not on an emergency basis. It should be heard on regular notice.

What I would say, having read it, Your Honor, is that I give Mr. Dondero and his law firm 24 hours to withdraw it or we will be filing a motion under Rule 11 for sanctions. It is frivolous. This motion has been pending -- the motion for contempt has been pending since January 7th, more than two months ago. The issue of the cell phone has been front and center. So concerned were they about the cell phone that they actually made a motion to try to exclude it from evidence. Your Honor has made very specific comments about the cell phone. There is nothing here that would allow them in good faith to make this motion. They've got 24 hours to withdraw it or we will be seeking sanctions.

They seek to introduce testimony from Jason Rothstein? Jason Rothstein, as Mr. Dondero testified yesterday under oath, was under subpoena. He was on their witness list. Why they chose not to call him I'll leave for them to explain. Mr. Ellington was in the courtroom on Monday. He was their witness. They released him. And now they want to put in his

1 evidence?
2 They ended the proceedings on Monday and they rested.
3 They made no reservation of rights. They did nothing of the
4 kind. This motion is not made in good faith, and we will seek
5 sanctions if it's not withdrawn in 24 hours.
6 THE COURT: All right. Well, Mr. Wilson, tell me
7 about the filing of this motion. I'll let you know, by the
8 way, you may think I'm being very technical, but one of the
9 first things I do whenever I get a motion, especially when
10 it's kind of emergency, short-notice in nature, is I go see if
11 you have the required certificate of conference that our Local
12 Rules require. And that always makes me grimace when I don't
13 see that, because, you know, I know there are some contexts in
14 a complex Chapter 11 case where you obviously can't have a
15 conference with every affected party, but certainly in this
16 one you could have had that conference.
17 So, anyway, but let's talk about the motion beyond just
18 that technical point. What would you like to say, Mr. Wilson?
19 MR. WILSON: Well, Your Honor, Mr. Morris is correct
20 that Mr. Rothstein and Mr. Ellington were on our witness list,
21 although we did amend our witness to omit Mr. Rothstein prior
22 to the time that this matter was heard yesterday.
23 The real substance of it is, is that Mr. Rothstein and Mr.
24 Ellington's testimony, in our estimation, would have just been
25 cumulative of other testimony in this proceeding. And because

1 Mr. Morris had, you know, released Mr. Ellington yesterday and
2 said he would not be calling him -- or not yesterday, but
3 Monday, I'm sorry -- we ended up thinking it through over the
4 course of the hearing and determining that, you know, his
5 testimony would just merely be cumulative of testimony that
6 Mr. Dondero would offer and that we suspected that Mr. Seery
7 would confirm.
8 However, we were greatly surprised by some of Mr. Seery's
9 testimony, including his statements made about Mr. Rothstein
10 and also statements regarding Mr. Ellington, stuff that
11 directly contradicts what was in Mr. Ellington's deposition
12 testimony and what we learned from our client, Mr. Dondero,
13 and that he testified to yesterday.
14 So we ended up releasing Mr. Ellington prior to the
15 testimony of Mr. Seery, and at such time that Mr. Seery made
16 the statements, he was no longer under the Court's control to
17 call as a witness, and that's why we had to work hurriedly to
18 put this motion together. We had to go through Mr.
19 Rothstein's counsel to get the declaration we got. We were
20 finally able to get that early this morning. You know, I
21 apologize if there's no certificate of conference. That was
22 merely an oversight in a rush to get this filed.
23 So, you know, my other thought is that I'm not sure that
24 we officially rested our evidence yesterday. But in any
25 event, I understand the Court may --

THE COURT: Okay. Stop right there. You did. The whole discussion was we'll come back for closing arguments Wednesday. I mean, there's no way you could have been mistaken about that.

MR. WILSON: I understand that, Your Honor. And I'm not trying to -- I'm not trying to argue the point. My next statement was going to be that I, you know, I suspect the Court considers that we did. So I would say, if it is to be treated as a motion to reopen the evidence, I mean, there actually is case law on that from the Fifth Circuit. And there's a relevant case, *Garcia v. Woman's Hospital*, 97 F.3d 810, from 1996, and that case says that among the factors the trial court should examine in deciding whether to allow reopening are the importance and probative value of the evidence, the reason for the moving party's failure to introduce the evidence earlier, and the possibility of prejudice to the nonmoving party. And we think that analysis of those factors supports allowing this testimony from Mr. Ellington and Mr. Rothstein, and potentially Mr. Surgent, to rebut specific testimony given by Mr. Seery that we did not anticipate --

THE COURT: Okay. Let me stop --

MR. WILSON: -- that he would give.

THE COURT: Let me stop you right there. Those are broad principles, and every situation is going to be fact-

1 specific as far as reopening evidence. But you've more than
2 once used the word rebuttal. You used it in the title of the
3 pleading you filed at 9:01 this morning, and you've used it in
4 oral argument. Mr. Seery was in the case in chief of the
5 Movants, the Debtor. Okay? Then you all had your chance to
6 put in your responsive evidence. Why are you calling it
7 rebuttal? Rebuttal is --
8 MR. WILSON: Well, --
9 THE COURT: -- is if the Debtor then came along and
10 said, you know, hey, I didn't have this person on my witness
11 list but their witness said something completely different
12 than what he said in discovery and I think, you know, I need
13 rebuttal evidence, not just impeaching him or whatever with a
14 prior depo. I mean, that's a -- there are other examples I
15 could give, but my point is, this isn't rebuttal. This would
16 have been your defensive evidence to the motion, okay?
17 Rebuttal has a more, I don't know, sympathetic, equitable ring
18 to it, like something came out you just had no way of
19 anticipating. Okay? And so now, beyond everyone's case in
20 chief and defensive case, we need something to shed new light.
21 That's not what we're talking about. You had every reason
22 to know, if you chose to do a deposition of Mr. Seery -- which
23 I'm guessing you did, but I don't know -- to know what he
24 might say. And then he was in their case in chief, so you had
25 your chance to put in a defensive witness at that point.

I have no idea why you decided, eh, we don't need Ellington, eh, we don't need Rothstein. We named them on our witness list. You know, there was a subpoena, I guess, it sounds like, of Rothstein. But correct me if you think I'm viewing this too harshly. It just seems like a litigation strategy that came back to haunt you.

MR. WILSON: Well, I would -- I would disagree with that, Your Honor. I mean, I -- the rebuttal term may be an imprecise moniker for this particular motion, but in essence that's exactly what it is. I mean, we were -- we were greatly surprised by the way Mr. Seery testified and we did not have another witness that was in court at the time to come on and to --

THE COURT: Because of your own --

MR. WILSON: -- counter it.

THE COURT: Because of your own litigation strategy to release them. No one forced you to do that. No one forced you to do that.

MR. WILSON: That may be true, Your Honor. Decisions were made. I've explained, you know, why decisions were made. And -- because I think we do have a couple options here. As I suggested in my motion, I don't believe a continuance is necessary to the extent that we can bring in Mr. Ellington's testimony by deposition. And secondly, if --

THE COURT: They don't agree to that. They don't

1 agree to that. They don't agree to this --
2 MR. WILSON: Well, I understand that.
3 THE COURT: -- entire motion, but I guarantee you, if
4 I said I'm granting the motion, they're not going to agree to
5 a declaration or deposition testimony. I'm sure they would
6 want to cross-examine them. I mean, Mr. Morris, am I making a
7 wrong assumption here?
8 MR. MORRIS: Your Honor, a couple -- just a couple of
9 things. First of all, they actually never did take Mr.
10 Seery's deposition in connection with the TRO enforcement
11 contempt proceedings. They didn't even do that. Number two,
12 I was specifically asked by Mr. Ellington's counsel at a break
13 yesterday whether I would consent to the entry of Mr.
14 Ellington's deposition transcript, and I categorically said
15 no. I'm not going to call him, but if Mr. Dondero calls him,
16 I'm going to cross-examine him live. And they knew that. And
17 then they had the choice. They had the choice, Your Honor, to
18 call him live or to not call him, and they chose not to call
19 him.
20 And not only did they rest, if this -- if Mr. Seery's
21 testimony was so stunning, if they were so surprised by the
22 testimony, how come nobody said anything on Monday? How come
23 they let the Court close the evidence? How come they didn't
24 reserve the right? How come they didn't say, We'd like the
25 opportunity to put on a rebuttal case because we just heard

1 something we didn't anticipate?
2 They did none of that, Your Honor. This is frivolous, and
3 if it's not withdrawn in 24 hours we will move for sanctions.
4 THE COURT: All right. Well, Mr. Wilson, anything
5 else you want to urge that you think I'm not hearing, missing
6 here?
7 MR. WILSON: Well, Your Honor, I think I've
8 explained, you know, our reasons for why we filed this motion.
9 I would say that, in -- that --
10 THE COURT: And by the way -- I'm sorry to interrupt
11 you again -- but I'm not clear even what you think you heard
12 from Mr. Seery that you think is so surprising it made your
13 team conclude we've got to call -- you say rebuttal evidence
14 -- we've got to call Ellington or Rothstein. What even was
15 it?
16 MR. WILSON: Well, there were -- there were a few
17 things, Your Honor. I mean, as with respect to Mr. Rothstein,
18 the issue was the written or unwritten -- and I believe the
19 testimony was there was an unwritten policy of how cell phones
20 were disposed of. There was testimony from Mr. Seery,
21 although I believe it was speculation on his part, that the --
22 that Mr. Dondero actually instructed Mr. Rothstein to do
23 something different in this instance when he submitted his
24 cell phone for replacement. Mr. Rothstein, as shown in his
25 affidavit, would say that --

1 THE COURT: Okay. Stop.
2 MR. WILSON: -- you know, he's been --
3 THE COURT: Stop right now. I feel like you're about
4 to try to get in front of me evidence that you chose not to
5 try to get in front of me Monday. I asked, what did Mr. Seery
6 say in testimony Monday that you think warrants a reopening of
7 evidence? I really, I get it that it's about a cell phone and
8 company policy, but what specifically did he say, --
9 MR. WILSON: Well, the specific --
10 THE COURT: -- Seery say?
11 MR. WILSON: Right. And I gave one instance. But
12 the specific testimony was that Mr. Seery accused Mr. Dondero
13 of making up his testimony regarding the fact that there was
14 ever a cell phone policy, number one. And number two, that
15 Mr. Dondero persuaded Mr. Rothstein to do something improper
16 that was out of the ordinary course with respect to the
17 replacement of his cell phone.
18 THE COURT: All right. Well, again, if you had
19 deposed Mr. Seery, or even just listening to him, you would
20 have known at the conclusion of that. I mean, you could have
21 cross-examined him and then decided did you need to call
22 Rothstein or Ellington.
23 I just, it's not like you are articulating unfair
24 surprise. You had every reason to know the theory of the case
25 was he exercised control over property of the estate, *i.e.*,

1 the phone, in a way that violated the automatic stay. And I
2 guess if you looked at their witness list you knew that the
3 employee handbook and its policy stated therein might be a
4 focus of their evidence. I mean, I'm just not getting what
5 the unfair surprise is here, if that's one of the ways I
6 should look at this.
7 MR. WILSON: Well, Your Honor, it's true that we did
8 not depose Mr. Seery, but to be honest, we did not believe it
9 was necessary at the time. We had no indication, no idea that
10 he would have a completely different testimony on this from
11 the employees who'd worked at Highland for, you know, many,
12 many years. And we had -- we'd heard from three people,
13 including Mr. Ellington, who confirms that testimony, and
14 that's why we let Mr. Rothstein go.
15 With respect to Mr. Ellington, the issue runs deeper.
16 It's not only --
17 THE COURT: I am not --
18 MR. WILSON: -- his testimony --
19 THE COURT: -- asking -- I'm not going to allow you
20 to get in evidence before me. I'm really just trying to give
21 you every opportunity to articulate why Seery said something
22 that was an unfair surprise or you think somehow rises to the
23 level where I should reopen the evidence. And I'm just, I'm
24 not hearing --
25 MR. WILSON: Well, that's --

THE COURT: -- either an unfair surprise or some other reason. And I'm just trying to give you every opportunity to convince me if you think I'm missing something.

MR. WILSON: Well, I appreciate it, Your Honor. I was trying to get to a second point without trying to improperly admit evidence at this stage. But with respect to Mr. Ellington, he -- I did depose Mr. Ellington and got the pages of deposition testimony that I submitted with that motion. Among those pages, there were -- there were statements that contradicted Mr. Seery's testimony yesterday that he did not use Mr. Ellington as a go-between between Mr. Seery and Mr. Dondero. And Mr. Ellington's testimony directly conflicts with what Mr. Seery offered yesterday.

MR. MORRIS: Your Honor, if I might just --

THE COURT: All I can say is you should not have released him. I'm just baffled. I am baffled. I was baffled when it happened Monday, and now I'm baffled that you would argue, I guess, we rethought it after we left and we really wished we would have called him. I mean, that's not grounds to reopen the evidence. All right? So your motion is denied.

MR. WILSON: All right. Thank you, Your Honor. I'd like to make an offer of proof of the Rothstein declaration as well as the Ellington deposition testimony that I've submitted.

MR. MORRIS: We object, Your Honor. The motion was

1 just denied. There is no basis to offer proof in a record
2 that's been closed.
3 THE COURT: All right. I'm not getting your
4 procedural request. It's one thing if I deny the
5 admissibility of evidence during a trial. Obviously, then a
6 smart lawyer asks to make an offer of proof so a higher court
7 can decide if that was error in not considering the evidence.
8 But this different. Right, Mr. Wilson?
9 MR. WILSON: Well, I don't know that it's that
10 different. But I think for purposes of review, I want to make
11 a complete record, and I would offer the evidence as an offer
12 of proof.
13 THE COURT: Well, didn't you say you attached to the
14 motion -- I didn't look at the attachments -- the substance of
15 the evidence you want to --
16 MR. WILSON: Yes. Both of the --
17 THE COURT: -- the substance of the evidence you want
18 to get in?
19 MR. WILSON: That's true, Your Honor. It's in the
20 attachments to our motion.
21 THE COURT: All right. Well, then it's there in the
22 record if you want to appeal my denial of your motion to
23 reopen evidence, okay?
24 All right. Well, let's hear closing arguments, then.
25 Mr. Morris, as you all will recall, I've limited you to

twenty minutes each, so I'm ready to hear your argument.

MR. MORRIS: Before we go on the clock, Your Honor, just one housekeeping matter.

THE COURT: Okay.

MR. MORRIS: Filed at Docket No. 130 is a list of the exhibits that were admitted into evidence. And because I have some feeling that there might be an appeal, I'd like to make sure that that's accurate, and there are several items that need to be corrected.

THE COURT: Okay. Let me pull this up. Where is the adversary? Here it is. Okay. So you're looking at what the --

MR. MORRIS: I think it's Exhibit -- I think it's Docket No. 130, is the list of exhibits.

THE COURT: Okay. I have it in front of me. You're saying it's inconsistent with what you thought was --

MR. MORRIS: Yeah. There are -- there are three errors, Your Honor.

THE COURT: Okay. I'm trying to -- I don't think I have in here with me my notes on the exhibits because I didn't anticipate this. They must be back in chambers, or maybe -- all right. Well, let's just let you present what you think is missing, and --

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay. Go ahead.

MR. MORRIS: First is actually -- first is actually an item that we had on our exhibit list that I agreed to withdraw, so it's actually, it's an exhibit against the Debtor.

THE COURT: Okay.

MR. MORRIS: And that's Exhibit No. 3. We had agreed to withdraw that exhibit from evidence, so it should not be on the list.

THE COURT: Okay. So we'll revise that to show No. 3 was withdrawn. Okay.

MR. MORRIS: Correct.

(Debtor's Exhibit 3 is withdrawn.)

MR. MORRIS: But Exhibits 35 and 36, which are the transcripts from the oral argument on the Committee's Motion for a Protective Order, and Exhibit 36, which is the transcript from the preliminary injunction hearing on January 8th, both of those transcript were admitted into evidence. And we would respectfully request that the Court amend the list to exclude Exhibit 3 and to add Exhibits 35 and 36.

THE COURT: Okay. Tell me again what the 35 transcript was. What hearing?

MR. MORRIS: That's the July 21, 2020 hearing on the discovery motions where the issue was the Committee's request for, among other things, ESI, including text messages from nine custodians, including Mr. Dondero.

THE COURT: All right. Mr. Wilson, do you have any contradictory view of that? I can go back in my chambers and get my own list if I need to. I definitely remember the preliminary injunction transcript coming in. I just couldn't remember for certain the July one. Do you have any contrary view?

MR. WILSON: I think that that's true. Was Exhibit 37 admitted?

MR. MORRIS: Yes, and it's on the list.

THE COURT: It's on the list.

MR. WILSON: That was my question. So 35, 36, and 37 are all admitted and in evidence?

THE COURT: Well, he is pointing out, Mr. Wilson, that the official record of the Court does not show 35 and 36, and he's saying that is a mistake. And I'm just asking, do you agree that they were admitted? Otherwise, we can go back and listen to the audio and I can pull my notes from chambers. But --

MR. WILSON: Well, I'm being told by my co-counsel that Your Honor admitted 35 and 36 yesterday.

THE COURT: Okay. Very good. So we will correct the official record here to show 35 and 36 are part of the evidence and No. 3 is not.

All right. Any other housekeeping matters?

MR. MORRIS: No, Your Honor. I'm ready to proceed if

Your Honor is.

THE COURT: Okay. I am ready. And it's 10:12. I have no problem if you save some of your twenty minutes for rebuttal. And if I stop either one of you and ask questions, Nate, you'll stop counting the time.

All right. You may proceed.

MR. MORRIS: That's my intention.

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

Your Honor, as you'll recall, in the face of explicit threats to Mr. Seery and Mr. Surgent, as well as the brash interference with the Debtor's operations a few weeks after the board asked for Mr. Dondero's resignation, the Debtor sought and obtained a TRO against Mr. Dondero. Mr. Dondero has questioned the Debtor's motivation in seeking the TRO, but the motivation could not be clearer. Leave the Debtor alone. Unless he's in the courtroom, unless he's on the phone with lawyers or communicating with lawyers or is communicating with shared services, leave the Debtor alone. That's what the TRO was about, and that's exactly what it says.

But Mr. Dondero cannot help himself. Whether because he wants to burn the house down or he just cannot listen to authority, Mr. Dondero refuses to leave the Debtor alone.

The Debtor has proven by clear and convincing evidence

that in the few short weeks between the time the TRO was issued and the time it was converted to a preliminary injunction, he violated the TRO at least 18 separate times. Section 2(c) of the TRO says clearly and unambiguously, do not communicate with the Debtor's employees unless it's about shared services. It could not be any clearer. It was -- that was the only exception, shared services.

Can we put Slide 2 from the opening dep up on the screen?

Mr. Dondero -- while we wait for that, I'll continue. Mr. Dondero did offer into evidence two shared services agreements. We didn't dispute that shared services agreements existed. That's why there's an exception in the TRO for that. But while Mr. Wilson went through some of the communications that are at issue with Mr. Seery, it's interesting that he did not put one of these 13 communications in front of his client to try to show how any of the communications connected to shared services. And the reason he didn't do that, Your Honor, is because he can't. Every one of these communications is adverse to the Debtor's interests. Mr. Seery testified that he did not know of or authorize any of these communications, and that if he had known, he would have fired the employees on the spot.

And I ask Your Honor to put yourself in Mr. Seery's chair. If you were the CEO of the Debtor and you learned that your employees were engaged in these kinds of communications, what

would you have thought, what would you have done? These are not technical violations. They are not foot faults. Every one of these communications is adverse to the Debtor.

Look at the topics. Getting a witness to testify against the -- to testify on Mr. Dondero's behalf at a hearing against the Debtor. Discussions concerning the entry into a common interest agreement between certain of the Debtor's employees, Mr. Dondero, and other entities owned or controlled by him. Challenging the Debtor's decision to enter into the settlement agreements with Acis and HarbourVest.

And by the way, there's no problem with Mr. Dondero challenging those. The problem is when he brings the Debtor's employees, and in this case, Mr. Ellington, into those discussions.

He directed an employee not to produce documents that were in the Debtor's possession, custody, and control. He engaged in numerous communications between December 22nd and December 24th with Mr. Ellington concerning K&L Gates, the Advisors, the interference with the trading, the letters that were sent. Mr. Ellington's name was all over that.

This is wrong. And Mr. Dondero knows it. How do we know that he knows it was wrong? Because of one singular statement that he made that wasn't even in response to a question that I asked. If you recall, Your Honor, as I was putting these documents up on the screen, there were privileged

1 communications between Mr. Dondero and his lawyers, and at one
2 point Mr. Dondero said -- and I can't quote because I don't
3 have the transcript -- what are my privileged communications
4 doing up on the screen? They were up on the screen because
5 Mr. Dondero chose to forward them to the Debtor's general
6 counsel.
7 We are going to deal with the consequences of that for a
8 long time. It is a plain and blatant breach of the attorney-
9 client privilege. It is on a number of topics. It is
10 expensive. The ramifications will be felt for a long time in
11 this case.
12 But the important point here, Your Honor, is consciousness
13 of guilt. Mr. Dondero's statement of surprise that his
14 communications could be shared with Mr. Ellington but would
15 otherwise have been shielded from the rest of the world both
16 completely destroys any argument, and there was no credible
17 argument to begin with, that he was engaged in shared
18 services, because if it were shared services, he would have no
19 problem with the Debtor seeing the documents, he would have no
20 problem with the Debtor seeing the communications that he
21 voluntarily and knowingly shared with Debtor's general
22 counsel.
23 But what it really shows is that he never thought these
24 communications would see the light of day. The Court should
25 hear Mr. Dondero's surprise for exactly what it is, an

1 admission of guilt.
2 Mr. Dondero wasn't shown any of these 13 communications.
3 He offers no testimony as to how to connect any of them to
4 shared services. And the explanations that he provided have
5 no credibility and are completely undermined by the documents.
6 I'm just going to take a couple of examples. Exhibit 19
7 is the text message that he sent to Ms. Schroth: No Dugaboy
8 details without the subpoena. Clearly, it's a violation of
9 the TRO. Ms. Schroth was an employee of the Debtor. It can't
10 have anything to do with shared services because the
11 unrebutted testimony was that Dugaboy was not party to a
12 shared services agreement. But it was -- his explanation is
13 that the lawyers told him to do it.
14 Think about the credibility. Your Honor really should
15 make some credibility findings here. Think about the
16 credibility of blaming the lawyers. A lawyer who six days
17 earlier heard a court enter a TRO against his client
18 preventing him from speaking to the Debtor's employees except
19 for shared services instructed his client to speak to the
20 Debtor's employees about something other than shared services?
21 Does that make any sense at all? Bonds Ellis is not that bad.
22 They -- they -- I mean, they're good lawyers. They're good
23 lawyers. I don't meant to demean them at all. I'm sure that
24 they had no idea that this was happening. There is no way
25 that somebody at Bonds Ellis -- and I specifically didn't ask

Mr. Dondero to identify the lawyer who told him that, because that wouldn't have been fair -- but somebody from Bonds Ellis, six days after the TRO is entered, instructs Jim Dondero to communicate with the Debtor's employee about something other than shared services? It makes no sense.

You know how I also know it makes no sense? Because Mr. Dondero put into evidence at Exhibits 16 through 20 a string of emails between and among me and Mr. Draper and Mr. Leventon concerning the Dugaboy financials. Mr. Draper was the lawyer for Dugaboy, and he and I are going back and forth about the documents, and he wants to know if I have them. And as Mr. Dondero did testify, Mr. Draper wanted to see them and I told him, I'll give you a copy when I get them, but they're in the Debtor's subject -- custody and control. You can see it. It's at Exhibit 20. I told that to Mr. Draper. I'll give you a copy, but I've got to get them and I've got to produce them.

None of us knew, right, and it's reflected in those exhibits, nobody ever says you need a subpoena. Mr. Draper never says they're not the Debtor's documents. He never seeks to exercise control of the documents. This is the lawyer for Dugaboy, with no knowledge that Mr. Dondero has instructed the one person at the Debtor who knows where the documents are not to produce them. And nobody knows that.

It's not right, Your Honor. This stuff is not right. So there you have 13 different instances where Mr. Dondero is

1 communicating with the Debtor's employees in ways that are
2 adverse to the Debtor that have nothing to do with shared
3 services.
4 Next, 362(a). Again, the TRO at Section 2(e) could not be
5 clearer. There's nothing ambiguous. It's not overbroad. It
6 simply says, don't violate the automatic stay.
7 362(a)(3), as we talked about the other day, prevents
8 anyone from trying to exercise control over property of the
9 Debtor. Mr. Dondero violated this at least three separate
10 ways. The phone twice, because the phone, as he admitted, was
11 the Debtor's property, and as the employee handbook of his
12 baby showed, the text messages were the Debtor's property. I
13 know on cross-examination or direct Mr. Wilson had him point
14 to a line that says the Debtor's obligations or the employee's
15 obligations, you know, maybe they terminate upon the end of
16 the employment. The statement about the text messages being
17 the Debtor's property, that's not an obligation of the
18 employee. That's not an obligation at all. It's completely
19 irrelevant.
20 The important point is that Mr. Dondero knew that the text
21 messages were the property of the Debtor. And how do we know
22 that? Because not once, but twice, in 2020 he executed
23 certifications where he acknowledged that, and those can be
24 found at Exhibits 56 and 57. Your Honor will recall, as part
25 of the corporate governance settlement, Mr. Dondero agreed

that the Committee would do an investigation on related-party claims. Related-party claims included an investigation of Mr. Dondero. Mr. Dondero knew since no later than January 9, 2020 that he was under investigation.

If that were not enough, we had the motion practice last summer and the Committee said, I want the documents and I want the ESI and I want the text messages of nine custodians. We know that Mr. Dondero knew that. How do we know? Because he filed a pleading in this Court that said so. He said specifically at Paragraph 3 of his response to the Committee's motion, I know the Committee wants my ESI. I know the Committee wants my text messages. And yet there we were, in December, after he's fired, he changes out the phone, the text messages are gone, and we know the phone existed, we know the phone existed after the TRO was entered into.

And let's think about -- so, you know, again, not clear and convincing evidence, Your Honor. Beyond reasonable doubt. It's beyond reasonable doubt that he knew the text messages were the company's property. It's beyond reasonable doubt that he knew the company -- that he was under investigation. It's beyond reasonable doubt that he knew the U.C.C. wanted the text messages. And it's beyond reasonable doubt that the phone existed after the TRO was entered into. Beyond reasonable doubt. No dispute.

Let's look at some of his excuses as to why none of this

1 really matters. Again, you know, I'll just repeat, he refers
2 to Rothstein and Surgent and Ellington. Again, Rothstein was
3 under subpoena. He didn't call him here. Ellington was in
4 the courtroom yesterday, or on Monday. He didn't sign -- he
5 didn't sign -- where are the people corroborating his story?
6 He had them here and he chose not to put them on.
7 There's no corroboration in any documents. A 50-page
8 employee handbook that does say text messages are the Debtor's
9 property, does not say anything that corroborates anything
10 that Mr. Dondero said.
11 There's no communication. There no email. There's no
12 document. There's nothing to corroborate what he said at all.
13 He says, oh, but there's no litigation hold letter. I
14 have to tell you, Your Honor, I'm a little -- it's -- I don't
15 know what to say when he just keeps trying to blame others.
16 Litigation hold letters -- and this is argument, so I'm going
17 to say what my view is -- litigation hold letters are used to
18 put somebody who might not otherwise be on notice that claims
19 might be asserted against them. You don't send a litigation
20 hold letter to somebody who has agreed to submit to an
21 investigation. You don't send a litigation hold letter to
22 somebody who has acknowledged to a court that they know their
23 text messages are being sought in the context of litigation.
24 It's just, it's just ridiculous, Your Honor. It really is
25 just ridiculous. As my kids would say, give me a break.

In the end, the evidence clearly and convincingly showed that Mr. Dondero controlled the Debtor's property, and in violation of TRO Section 2(e) he controlled it, he discarded it when he knew investigation was underway and when he knew the text messages were at issue.

The third part is trespass. I won't spend a lot of time on it, Your Honor. But, you know, it doesn't matter that he didn't trespass before the TRO was entered. What matters is that on January -- on December 23rd, in the letter, the Debtor told Mr. Dondero that it was going to exercise control over its property. And they told him, don't enter our premises after December 30th or we will consider it a trespass. The Debtor has every right to do that. So Mr. Dondero walking in on January 5th is a violation of the TRO.

Interference with trading. Mr. Dondero, his admission of interference with the trading is clear. It's unambiguous. The Debtor told his lawyers in that December 23rd letter that one of the very reasons they were evicting him was because of his interference with the trading and his interference with the Debtor's operations, and they never, ever rebut that. His lawyers never contest that. They never respond to it. They just let it go.

And so all you have now is Mr. Dondero backpedaling, you have the failure of his lawyers to respond, and you have his plain unambiguous admission, really, with the words December

22nd in my question from the earlier trial.

Your Honor can make whatever credibility findings the Court thinks is appropriate, but that's the evidence that exists, his backpedaling from clear and unambiguous admissions.

We can take down the slide.

I did want to point out just one more thing on the phone, right. The -- he thinks all of these people are going to corroborate what he has to say. You know who actually spoke on the topic and who didn't corroborate a single thing that he said was he lawyers. Because if you remember that one-paragraph letter, Your Honor, where his lawyers actually responded to the Debtor's demand for the cell phone -- let me see if I can find the exhibit number for you. I don't have it handy. But it's the one-page letter from Bonds Ellis where they respond on the issue of the cell phone, and they don't say anything that Mr. Dondero testified to. They don't say that Mr. Seery told them all to swap out their phones. They don't tell the Debtor that there's a longstanding company practice or policy that allows people to switch phones. They don't say anything. All they say is, we can't find it. They do admit that it's the company's phone, though. They do make that admission in their letter. So I just wanted to make that clear.

You know, they want to bring those guys in, Rothstein or

1 Surgent or Ellington. What about their lawyers? Just think
2 about what their lawyers said contemporaneously in response to
3 the Debtors' demand for the cell phone. They say nothing
4 other than it is the Debtor's cell phone and we can't find it.
5 Let's just talk quickly about damages, Your Honor, and an
6 appropriate sanction. It's very difficult to quantify. We've
7 put in time records. I know people can have different views
8 of what should and should not be included. I know there's a
9 lot of stuff in there that's not included that probably should
10 be. We don't have any evidence of the costs that the Debtor
11 has borne as a result of these violations from FTI or Sidley
12 or DSI. Kasowitz Benson was hired to analyze some of the
13 issues my firm admittedly is not an expert on. So there's a
14 lot of other expenses.
15 There's -- Mr. Seery testified extensively, and it's not
16 contradicted, it's not rebutted at all, that there's
17 noneconomic harm here, that his authority was undermined. You
18 know, one could say the communications about a common interest
19 agreement, how can you quantify the harm of knowing that your
20 employees are engaged in discussions about entering into a
21 common interest agreement with your adversary? How can you
22 quantify that harm?
23 So I don't think that we have a burden, frankly, of
24 proving to the dollar of the harm that the Debtor suffered,
25 but it has suffered immensely. And it's suffered both

1 economically and non-economically. And we respectfully
2 request that the Court enter a sanction for the violation of
3 the TRO.
4 I think, Your Honor, I'm at eighteen minutes, and I'm
5 going to save my last two minutes for rebuttal.
6 THE COURT: Okay. Thank you. Mr. Wilson?
7 MR. WILSON: Yes, Your Honor. May it please the
8 Court.
9 THE COURT: Yes.
10 CLOSING ARGUMENT ON BEHALF OF JAMES D. DONDERO
11 MR. WILSON: A party commits contempt when he
12 violates a definite and specific order of the court requiring
13 him to perform or refrain from performing a particular act or
14 acts with knowledge of the court's order. To hold a party in
15 civil contempt, the court must find such a violation by clear
16 and convincing evidence. And I cited you a similar passage
17 from a case yesterday from the Fifth Circuit. That passage is
18 from *Waste Management of Washington v. Kattler*, 776 F.3d 336.
19 That's a case that I believe is in our briefing, but I'd like
20 to highlight that in that case the Fifth Circuit was
21 considering a contempt order issued by a district court, and
22 the district court had issued a TRO enjoining a guy named Mr.
23 Moore from disclosing confidential information and requiring
24 Moore to produce images of electronic devices containing the
25 confidential information.

1 The district court held Mr. Moore in contempt for failing
2 to produce an iPad, and the Fifth Circuit reversed that
3 contempt finding, holding, however, no contempt liability may
4 attach if a party does not violate a definite and specific
5 order of the court.
6 After the district judge determined that the iPad was a
7 personal device that should have been produced to WM on
8 December 22nd, Moore stated, If you want that device turned
9 over directly to Waste Management, we'll do it tomorrow. The
10 court responded, I think that's what the order said. The
11 court was mistaken. The order required Kattler to produce an
12 image of the device only, not the device itself. Several days
13 later, after WM determined the image did not contain the
14 relevant information, WM moved to hold Kattler in contempt
15 because he had failed to produce the device itself in
16 accordance with the court's alleged order from the bench. But
17 Moore was under the understandable impression that the only
18 order in place was to produce an image of the device.
19 Therefore, given the degree of confusion surrounding whether
20 the district court ordered production of the physical device,
21 we conclude that Moore did not violate a definite and specific
22 order of the court.
23 So with respect of each of charges of contempt that the
24 Debtor makes here, Your Honor, you must determine whether the
25 Debtor has met its burden by clear and convincing evidence

that Mr. Dondero violated a definite and specific order of the Court. I submit to you that the Debtor has failed to meet that burden.

With respect to the first charge of willful ignorance of the TRO, it's important to note that willful ignorance of a TRO is not a violation of a definite and specific order of the Court.

But equally important, I would point to you that the allegation simply isn't true. You heard testimony from Mr. Dondero that he was aware of why the TRO was entered. He discussed the order with his counsel. He became aware of what he could and couldn't do through those discussions. Mr. Dondero testified that he respected the Court's order. He took it seriously. He followed up with his counsel over the next few weeks, seeking advice regarding whether certain actions may or may not violate that order. And it was important to him. He made a conscious effort to modify his behavior after the TRO. He told you that yesterday. Or, I'm sorry, on Monday.

Moreover, Mr. Dondero testified that he did not believe that any action that he took would violate the TRO. And in fact, you heard Mr. Seery testify on Monday that he did not believe that Mr. Dondero was, in fact, ignorant of the TRO, in contradiction to what his papers would say.

Number two, the second charge that Mr. Dondero is alleged

1 to have violated is by throwing away his cell phone. Again,
2 this is not a clear violation of any definite and specific
3 order of the Court. Mr. Dondero did not have any reason to
4 believe that getting a new phone would violate the TRO. Mr.
5 Dondero testified that he changed over the financial
6 responsibility for his phone and got a new device because he
7 was made aware that the Debtor would be terminating all
8 employees and discontinue paying for their cell phone plans.
9 In fact, Mr. Dondero decided to get a new cell phone and
10 initiated the process two weeks before the TRO had been
11 entered.
12 Moreover, the evidence shows that when Mr. Dondero got a
13 new phone, he simply followed the procedure that Highland had
14 always required its employees to follow. In fact, the wiping
15 of the cell phone was performed by the Debtor's own employee,
16 Jason Rothstein, the head of IT.
17 And finally, Mr. Dondero did not personally throw away or
18 destroy his phone. He turned it over to the Debtor and he
19 never saw it again.
20 And I remind you, he turned it over to the Debtor well
21 before the entry of the TRO, up to two weeks. The Debtor was,
22 of course, free at that point, when they had possession of the
23 phone, to preserve any information on the phone that they
24 deemed appropriate. They apparently chose not to do so. Mr.
25 Dondero testified that he assumed that the phone had been

1 destroyed in compliance with Highland's policies and
2 procedures, but the evidence shows that the last he heard
3 about his phone, it was actually in the Highland offices.
4 And finally, the Debtor's request for the phone did not
5 come until nearly two weeks after the entry of the TRO and two
6 weeks after Mr. Dondero had received his replacement cell
7 phone, up to four weeks since Mr. Dondero had actually seen
8 his cell phone.
9 But, however, we were surprised by Mr. Seery's testimony
10 on Monday that accused Mr. Dondero of making up his testimony
11 about the cell phone policy. And in fact, despite testifying
12 that Mr. Rothstein was honest and ethical, Mr. Seery attempted
13 to slander Mr. Rothstein by claiming that he did something
14 nefarious at Mr. Dondero's instruction. Of course, there was
15 no direct evidence of any nefarious conduct on Mr. Rothstein's
16 part.
17 But in any event, Mr. Dondero's actions in replacing the
18 cell phone, which actually occurred two weeks before the TRO,
19 cannot violate the TRO itself. And there's two very specific
20 reasons for that. Number one, it's not in the time frame.
21 The evidence was that Mr. Dondero has not seen his cell phone
22 since the TRO has been entered.
23 Second, that provision of -- to enforce that order -- oh,
24 I'm sorry -- to enforce that action against Mr. Dondero does
25 not violate any clear and specific provision in the TRO. The

1 TRO does not order Mr. Dondero not to replace his cell phone
2 or destroy the old one, even if he did. And it -- in any
3 event, the Debtor has tried to tie it into 362 and its letter
4 that it sent on December 23rd. Both of those documents are
5 documents outside of the TRO itself and cannot be considered
6 to be a part of the TRO for enforcement purposes because that
7 would violate Rule 65(d).
8 Now, finally, the Debtor, on this point, the Debtor wants
9 a spoliation instruction against Mr. Dondero, apparently. But
10 the spoliation instruction is confusing to us, Your Honor,
11 because in the context of the Debtor's request, the Debtor
12 would actually be seeking a spoliation instruction against
13 itself as it relates to the litigation with the U.C.C.. This
14 Court discussed spoliation in the *Carrera* case, writing,
15 Generally, a party claiming spoliation of evidence must show
16 the following events -- I'm sorry -- elements. That, one, the
17 party had an obligation to preserve the electronic evidence at
18 the time it was destroyed; number two, the electronic evidence
19 was destroyed with a culpable state of mind; and three, the
20 destroyed evidence was relevant and favorable to the party's
21 claim, such that a reasonable trier of fact could support that
22 claim. A duty to preserve arises when a party knows or should
23 know that certain evidence is relevant to pending or future
24 litigation.
25 The Debtor did not plead or prove any of these elements,

1 particularly the elements that electronic evidence was
2 destroyed and that Mr. Dondero had an obligation to preserve
3 that evidence at the time.
4 In any event, it did not occur during the pendency of this
5 TRO and so it cannot be a violation of the TRO.
6 The third charge that the Debtor brings is that Mr.
7 Dondero trespassed on the Debtor's property. Again, it is not
8 a clear violation of any specific and definite order of the
9 Court. Mr. Dondero did not have any reason to believe that
10 going to the Highland office would violate the TRO. The
11 charge relates to Mr. Dondero giving his deposition in a
12 conference room at the Highland office on January 5, 2021.
13 However, Mr. Dondero testified that he gave his deposition in
14 the Highland offices on December 14th, four days after the
15 entry of the TRO. And at that TRO [sic], Mr. Dondero made
16 clear to Mr. Morris that he was giving his deposition in the
17 Highland conference room. No one at the Debtor claimed that
18 it violated the TRO for Mr. Dondero to give his deposition on
19 December 14th from the Highland conference room, and the TRO
20 did not change between the time that Mr. Dondero gave his
21 deposition on the 14th and the time that he gave it on January
22 5th.
23 Therefore, if it wasn't a violation of the TRO on December
24 14th, it wasn't a violation on January 5th. The only thing
25 that changed was that Mr. Pomerantz, in his letter on December

1 23rd to Mr. Lynn, but as we discussed in our objection to this
2 line of questioning, that -- that violates Rule 65(d) because
3 that is a document outside of the TRO itself.
4 Fourth, the Debtor claims that Mr. Dondero violated the
5 TRO by interfering with the Debtor's trading as the portfolio
6 manager of certain CLOs. This charge is admittedly closer to
7 the language of the TRO. However, this allegation is
8 insufficient to hold Mr. Dondero in contempt. There is no
9 clear and convincing evidence that Mr. Dondero violated the
10 TRO.
11 In fact, Mr. Morris just told you in his argument that his
12 evidence of this charge is that the Debtor alleged in the
13 December 23rd letter that Mr. Dondero had interfered with the
14 Debtor's business and that Mr. Dondero's lawyers did not
15 respond.
16 There were various reasons of why the response that was
17 given by Mr. Dondero's lawyers was quick and to the point and
18 addressed what seemed to be the main thrust of the letter,
19 being the cell phone. Mr. Dondero was on vacation in Aspen at
20 the time, he was communicating with his lawyers over the phone
21 around the Christmas holidays, and the letter is what it is.
22 But in any event, the letter that went unresponded to with
23 respect to that allegation is not clear and convincing
24 evidence of anything that Mr. Dondero did.
25 But there's a real question as to what interference means.

1 Mr. Seery testified that Mr. Dondero did not stop trades. Mr.
2 Seery was able to execute every trade he wanted to make in
3 December. He didn't change his investment strategy. He
4 didn't change his trading decisions. He continued to operate
5 the Debtor as he deemed appropriate.
6 So it begs the question of what does interference mean?
7 We cite an Eighth Circuit case in our brief, *Robinson vs.*
8 *Rothwell*, that holds that an order that prevented any actions
9 to interfere in any way with the administration of those
10 jointly administered bankruptcies was neither sufficiently
11 specific to be enforceable, nor clear and unambiguous.
12 The evidence shows that the only action Mr. Dondero took
13 was to ask Jason Post, his chief compliance officer, to take a
14 look into some of the trades that Mr. Dondero was made aware
15 of. Mr. Dondero did not know what Mr. Post did with respect
16 to the trades until he heard Mr. Post's testimony at the
17 January 23rd hearing. He testified to that on Monday.
18 But to be clear, all of the trades were executed and they
19 all closed. Mr. Post's actions were merely to instruct the
20 Advisors' employees not to book the trades after the fact
21 because they did not conform to compliance procedures, but the
22 Advisors' employees were under no obligation to book those
23 trades in the first place.
24 In any event, those are actions of Mr. Post, not of Mr.
25 Dondero, and there was no evidence that Mr. Dondero even took

those actions or even encouraged those actions.

Number five, the Debtor claims that Mr. Dondero violated the TRO by pushing and encouraging the K&L Gates clients to make further demands and threats against the Debtor. This charge attempts to invoke Paragraph 3 of the TRO that Mr. Dondero is enjoined from causing, encouraging, or conspiring with a person or entity to engage in any of the prohibited conduct, the allegation being threats against the Debtor. This charge is problematic for two reasons. First, what is a threat? The evidence consisted of two letters from the K&L Gates law firm to the Pachulski law firm. The first letter was a December 22nd letter that was simply a request between counsel that Debtor refrain from certain actions. The Debtor rejected that request. The Debtor was not intimidated or threatened by the request and did not change its course in any way. Mr. Seery testified to that.

In fact, the Debtor sent a rejection of the request the following day, and also demanded a withdrawal of the request and threatened sanctions for filing it, but -- or for sending it, but it was -- it did not change the Debtor's course in any way.

The next letter referred to was the Funds and Advisors letter, that they may take subject to the automatic stay to exercise a contractual right that they along with their counsel felt that they had. That was a letter that -- that,

again, Mr. Dondero testified he had nothing to do with the sending of, and although he later approved the position taken in the letter, agreed with the position taken in the letter, he did not do anything to cause the sending of the letter.

But, and that goes to my next point, that there was no evidence, other than the Debtor's suspicions, and Mr. Seery testified that his only evidence of this was that Mr. Dondero admitted that he sent an email to Mr. Post and that subsequently these letters were sent. And he concluded that, based on those two facts, that Mr. Dondero was pushing, encouraging, or directing the sending of these letters. However, you heard evidence directly to the contrary from Mr. Dondero himself.

Number six, the Debtor alleges that Mr. Dondero violated the TRO by communicating with the Debtor's employees to coordinate their litigation strategies against the Debtor. The first problem with this charge is the ambiguity of what Mr. Dondero is and is not allowed to do under the TRO, because you've got Footnote 2 of the TRO that says, For the avoidance of doubt, this order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

That footnote is at the very end of Paragraph 2, so that footnote apparently applies to every single prohibited conduct

element in Paragraph 2. So, therefore, you've got that exception to the TRO.

Second, you've got an exception to the TRO that's built into letter (c) that says that the -- Mr. Dondero was specifically allowed to communicate with employees related to shared services. The employees, Mr. Ellington and Mr. Leventon, were both part of Highland's legal department, which was part of a shared services agreement.

Third, Mr. Ellington was tasked with the role of go-between between Mr. Seery and Mr. Dondero. Mr. Dondero testified to that. Mr. Dondero testified that that role did not change after December 10th and that he continued to receive communications from Mr. Ellington that were -- or, I guess sent through Mr. Ellington that were from Mr. Seery. And moreover, Mr. Seery continued to talk to Mr. Ellington and send such messages up until January 4, 2021.

Given these exceptions to the TRO and the necessity of analyzing each communication to determine if it's permissible creates uncertainty and ambiguity. Therefore, this provision is not sufficiently specific to be enforceable.

In any event, the Debtor has not proved its allegation that Mr. Dondero coordinated his legal strategy against the Debtor with Mr. Ellington and Mr. Leventon. All you have is a few text messages and emails that may have been forwarded to Mr. Ellington or text message -- one text message sent to Mr.

Leventon. There's no evidence of a coordination of legal strategies against the Debtor.

Even if they had a common interest to pursue in this bankruptcy, the evidence showed that neither Mr. Ellington nor Mr. Leventon discussed a common interest agreement with Mr. Dondero's lawyers or participated in a drafting of a common interest agreement with Mr. Dondero and his lawyers, and that they never entered a common interest agreement with Mr. Dondero and his lawyers.

Number seven, finally, the Debtor alleges that Mr. Dondero violated the TRO by preventing the Debtor from completing its document production. This relates to the production of financial documents for the Get Good and Dugaboy Trusts. Once again, this is not a clear, direct violation of a specific order of the TRO because there's no provision in the TRO regarding the Debtor's document production or Mr. Dondero's document production or the document production of trusts that he may be related to.

But the evidence does not even support a finding that Mr. Dondero prevented the Debtor from completing its document production with the U.C.C.. In fact, Douglas Draper has been attempting to work, as you see from our exhibits, with Mr. Morris to get these documents produced since mid-December. Mr. Draper simply requested that he be allowed to look at the documents before they went out.

1 The only action that Mr. Dondero has taken in this regard
2 was to ask that Melissa Schrath not produce the documents
3 without a subpoena, which is to say that he wanted the proper
4 legal protocols followed.
5 I will address their damages, Your Honor. With respect to
6 damages, I submit that Mr. Dondero does not have fair notice
7 of the damages that the Debtor seeks in this proceeding. The
8 Debtor has put on no evidence of any monetary damage.
9 Instead, the Debtor appeared to seek its fees in connection
10 with bringing the contempt charges.
11 However, the evidence the Debtor submits is over 85 pages
12 of fee statements reflecting time entries starting on November
13 3, 2020. Those entries date back well before the relevant
14 time period.
15 And moreover, the Debtor did not introduce the fee
16 statements with a sponsoring witness, so we have no testimony
17 as to the reasonableness or necessity of these fees or any of
18 the other loadstar factors.
19 But more problematic, we have no way to sort through the
20 85 pages of the statements and identify which entries the
21 Debtor contends were incurred in connection with the Debtor's
22 motion.
23 Although the burden is not on Mr. Dondero to do so, an
24 examination of the fee statements would suggest that hundreds
25 of thousands of dollars in fees were wholly unrelated to the

1 proper time period or the subject matter.
2 In sum, Your Honor, there is simply no clear and
3 convincing evidence that Mr. Dondero violated a definite and
4 specific order of this Court. The TRO had its intended
5 effect. Mr. Dondero changed his behavior. Even though he may
6 not have agreed, and he testified that he did not agree with
7 many decisions that Mr. Seery made after the entry of a TRO,
8 he made a conscious effort not to interfere.
9 However, the TRO had unintended effects as well, creating
10 a situation where Mr. Dondero tried to comply with the order
11 and he thought he was complying with the order but he wound up
12 defending himself in a contempt proceeding.
13 The mere fact that the Debtor contends that Mr. Dondero
14 getting a new phone, appearing at the Highland offices to give
15 his deposition, or attempting to ensure that proper procedures
16 for discovery are followed violates the TRO means that the TRO
17 does not give fair notice to Mr. Dondero of what he was and
18 was not allowed to do.
19 I'll close with a reference back to the case I cited in my
20 opening. It's *United States Steel Corp. v. United Mine*
21 *Workers* from the U.S. Supreme Court. This is 598 [F.2d] 363
22 (5th Cir. 1979). It says that a party may avoid a contempt
23 finding where it can show that it substantially complied with
24 the order or has made every reasonable effort to comply.
25 The evidence shows, at a bare minimum, Mr. Dondero

1 substantially complied with the Court's order.
2 And I misspoke. That wasn't the case I thought I was
3 closing with. This is the case from the Supreme Court. The
4 judicial contempt power is a potent weapon. When it is
5 founded upon a decree too vague to be understood, it can be a
6 deadly one.
7 Congress responded to that danger by requiring a federal
8 court frame its orders so that those who must obey them will
9 know what the court intends to require and what it means to
10 forbid. That's the *Longshoremen Association v. Philadelphia*
11 *Marine Trade Association* case, 389 U.S. 64.
12 THE COURT: All right. Your time is up. Thank you.
13 MR. WILSON: Thank you, Your Honor.
14 THE COURT: I'm going to have some questions for you
15 and Mr. Morris, but I'm going to wait and hear the rebuttal
16 and then have some questions for -- a couple of questions for
17 each of you.
18 Mr. Morris, go ahead.
19 MR. MORRIS: Sure. Two minutes, Your Honor.
20 There's nothing ambiguous about the order. It says don't
21 talk to employees except for shared services. Mr. Wilson just
22 talked about all kinds of things that have -- he made no
23 attempt to argue that any of these communications have to do
24 with shared services.
25 The order says don't violate the automatic stay. You

1 didn't need the order to do that. Your Honor actually made
2 the observation at the time. So, you didn't need it, but it
3 was in there, and he knew it. There's nothing vague and
4 ambiguous about that.
5 Don't interfere with the Debtor's business. I don't know
6 how it could be any clearer, Your Honor. They seem to suggest
7 that you should have put in the order, don't communicate about
8 discovery. Don't communicate about common interests. Don't
9 communicate -- no. That's not what's required. There's a
10 blanket prohibition on communication, and that applies to
11 everything except for shared services.
12 With respect to Mr. Rothstein, Mr. Seery testified
13 accurately, it will never be factually disputed, that what Mr.
14 Rothstein did with the wiping down of the phones was to wipe
15 down the information that was on the Debtor's server, *i.e.*,
16 emails and things that are on the Debtor's server. He
17 testified very clearly that text messages are not part of
18 that. So the wiping that Mr. Rothstein did was really at Mr.
19 Seery's instruction and it was just to get him off the
20 Debtor's system.
21 Interference. Mr. Wilson seems to think that the only
22 thing we have here is the Debtor's letter. No. The Debtor's
23 letter said you interfered. There's no response. But more
24 importantly, we rely on Mr. Dondero's sworn testimony.
25 Question, "You personally instructed on or about December 22,

2020 employees of those Advisors to stop doing the trades that Mr. Seery had authorized?" Answer, "Yeah." That's at Page 73. He's trying to walk it back, but the testimony is what it is.

We have proven beyond clear and convincing evidence. We've actually proven beyond reasonable doubt that Mr. Dondero has violated the TRO multiple ways.

With respect to damages, if Your Honor wants to have a hearing, if we really need to go down that path, that's fine, but it's always going to be subject to dispute because there's so many professionals involved. Think about all the people on the phone today.

I have nothing further, Your Honor.

THE COURT: All right. A couple of follow-up questions.

With regard to the cell phone, tell me what evidence I really have before me. I mean, there's a lot of, you know, argument and commentary of Mr. Dondero whether this is much ado about nothing or not, but what really is my evidence besides the testimony I heard? You've mentioned the I forget what date letter from the Bonds Ellis law firm regarding the phone, but what other evidence do I have that you would say is relevant on this issue?

MR. MORRIS: I'm sorry, who's the question directed to, Your Honor?

THE COURT: You, and then I'm going to ask Mr. Wilson the same thing.

MR. MORRIS: Okay. Very, very, very simply. Just one second, Your Honor. The evidence that I have on the issue of the cell phone. Exhibit 55 says that text messages are the Debtor's property. Right? And this is an allegation -- this is an allegation that Mr. Dondero violated Section 2(e) of the TRO, which (audio gap) him from violating the automatic stay. Section 263(a)(3) prevents anyone from exercising control over the Debtor's property. So the handbook itself describes text messages related to company business are the property of Highland. Right? So you've got the word property in the handbook, you've got the word property in Section 263(a)(3), and you've got the TRO provision that prevents the violation of the automatic stay.

THE COURT: All right. So the evidence --

MR. MORRIS: Next, --

THE COURT: -- Exhibit 55, the employee handbook. And what other evidence?

MR. MORRIS: Right. And then, next, we know that Mr. Dondero understood that. How do we know that he understood that? Because twice in the year 2020, including just moments before he left, he agreed to the certifications that can be found at Exhibits 56 and 57. And those certifications state, among other things, this is Mr. Dondero's certification: I

1 have received, have access to, and have read a copy of the
2 employee handbook, and I am in compliance with the obligations
3 applicable therein.
4 So he -- that's what the handbook, that was the company
5 policy, and he said that he knew it.
6 We know that in January of 2020 he specifically entered
7 into a corporate governance agreement in which the U.C.C.
8 obtained the right to conduct an investigation of related-
9 party claims. We know that Mr. Dondero was the subject of
10 related-party claims. We know that the U.C.C. shares the
11 privilege with the Debtor with respect to related party-
12 claims. This was part of the agreement that he entered into.
13 He knew no later than January 9, 2020 that the Debtor -- that
14 the U.C.C. was conducting an investigation of him.
15 And if there was any doubt about that, in July 2020 the
16 U.C.C. filed its motion for -- to compel the production of
17 documents. And Mr. Dondero's own lawyers, at Exhibit 40,
18 submitted a response to the U.C.C.'s motion to compel in which
19 it said the proposed protocol the Committee seeks, among other
20 things, documents, emails, and other electronically-stored
21 information, exchanged from or between nine different
22 custodians, who include Dondero. The Committee has requested
23 all ESI for the non-custodians, including, without limitation,
24 text messages.
25 So he knew he was under investigation. He knew the

1 Committee wanted them. His lawyers told you that he knew the
2 Committee wanted them. And Your Honor subsequently issued an
3 order relating to those text messages.
4 With no notice to the Debtor, and this is his testimony,
5 with no notice to the Debtor, with no approval of the Debtor,
6 he went out and swapped the phone. And nobody knows where the
7 phone is today, but he had it. He knew where it was after the
8 TRO was entered. He knew because Jason Rothstein told him on
9 December 10th at 6:25 p.m. at Exhibit 8 that the cell phone
10 exists. Okay? He swapped out the number without the
11 knowledge and consent of the Debtor. He, you know, did
12 whatever he did with the cell phone and the information.
13 Nobody knows where it is.
14 He actually testified, and I don't have the line, he
15 actually testified that it was thrown in the garbage last
16 time. Now he says I don't know what happened to it. I could
17 dig it out, Your Honor, if I had the time. I don't even think
18 it's necessary. But at the last hearing on January 8th, it's
19 in the evidence and I'll pull it out on appeal when that
20 happens, Mr. Dondero testified that it was disposed of and
21 thrown in the garbage.
22 That's the evidence that I have, Your Honor, as to what
23 happened to the cell phone, why it was the company's property,
24 and why it's a violation of the TRO Section 2(e) to have
25 thrown it in the garbage without notice, when he knew he was

1 subject to investigation, when his lawyers told you that they
2 knew the U.C.C. wanted the text messages, when you ordered
3 that those text messages be produced.
4 THE COURT: All right. And I can go back and look at
5 the transcript I'm sure we're going to have shortly from
6 Monday's hearing to verify my memory of this, but maybe you
7 can tell me. Am I remembering correctly that Mr. Seery
8 testified that Highland should have -- the Debtor should have
9 the emails that might have been on the phone because they
10 would be on either Highland's server or the cloud, Highland's
11 cloud or something, correct?
12 MR. MORRIS: Yes. This is not about emails. We do
13 have emails, and that's how we were able to offer some of them
14 into evidence, frankly, because we do have emails, if it was
15 on the Debtor's server. Now, we understand that Mr. Dondero
16 may have used other URLs, other email addresses that we would
17 never have. But any information that was on the Debtor's
18 server, we admittedly have. Text messages are not among them.
19 And you heard Mr. Seery testify that we cannot go to AT&T or
20 Verizon or whatever the carrier is. You have to go to Apple,
21 and they won't give them to you. Okay? We can't -- they will
22 never, ever be found. They just won't.
23 And so it's only the text messages that we're talking
24 about. We're not talking about email. In fact, Your Honor,
25 in compliance with the Court's order, because we were able to

do it as Debtor's counsel, in compliance with your Court's order, the Debtor produced, I think, seven or eight or nine million emails of the nine custodians over the five years prior to the petition date to the Committee over the summer. It was a gargantuan task. So, just to be clear, this is about text messages, not about emails.

THE COURT: Okay. All right. Well, let me --

MR. MORRIS: Oh, I'm sorry. If I may, just one more thing.

THE COURT: Uh-huh.

MR. MORRIS: Because the evidence is also in the record that he used text messages to communicate with business. There's no dispute about that.

THE COURT: Okay.

MR. MORRIS: Now I'm through.

THE COURT: All right. Well, I'm going to go to Mr. Wilson now. What do you think is the evidence in the record that is relevant to this whole cell phone issue?

MR. WILSON: Well, I would -- I would say two, two things, two big-picture items, Your Honor. Number one, like I referred to on Monday and like I referred to in my closing, Rule 65(d) says that every restraining order or injunction must describe in a reasonable detail and not by referring to the complaint or other document the act or acts restrained or required.

They're having to refer to Section 362 of the Bankruptcy Code. They're having to refer to --

THE COURT: Okay, Mr. Wilson, I'm going to stop you. This is turning into legal argument. And I understand your legal argument, that you don't think the TRO was specific enough with regard to the cell phone. I understand that, and you may be right. You may be wrong; you may be right. But I'm asking now, assuming you're wrong and this cell phone issue is a big deal, tell me what evidence you think I should focus on.

MR. WILSON: Well, Your Honor, there's really only one document that I think is relevant to this issue, and that would be the Debtor's Exhibit 8, which is the text message from Jason Rothstein to Mr. Dondero on Thursday, December 10th, at 6:25 p.m. And that text message says, I left your old phone --

THE COURT: Right.

MR. WILSON: -- in the top drawer of Tara's desk.

THE COURT: Uh-huh.

MR. WILSON: Your Honor, that testimony confirms what Mr. Dondero said about how he already had a new cell phone by December 10th. And I would say that the other -- the other issue is that if anybody improperly wiped the cell phone, it was Highland itself. Highland had possession of the cell phone up to two weeks before December 10th. And so the

actions --

THE COURT: Okay, again, not argument, evidence. My evidence.

MR. WILSON: Well, I think that this -- I think this exhibit is this evidence, because Jason Rothstein was a Highland employee, and the Highland employee is telling Mr. Dondero on December 10th that he's returning his cell phone to the desk drawer. So that's why I think this is the most relevant piece of written evidence on this. I think that the testimony also addresses it, and you can review that if you would like, Your Honor.

THE COURT: Okay. Let me figure out my notes here. My next question is for you, Mr. Morris. The prohibition in the TRO on Mr. Dondero communicating with Highland employees except as it pertained to shared services agreement, I think I hear you making the argument that Mr. Ellington was in Highland's legal department and shared services agreements encompassed the legal department of Highland; therefore, it was okay for him to talk to Mr. Ellington about anything. Am I putting words in your mouth, or is that your argument?

MR. MORRIS: That's for Mr. Wilson or for me?

THE COURT: That's for Mr. Wilson. Okay? And I have a second -- a follow-up to that, but go ahead and help me to understand. Is that your argument?

MR. WILSON: I think that my argument is, on this

matter, that the -- that the provision is not clear and specific enough to be enforceable because it's vague and unambiguous -- I'm sorry, vague and ambiguous, given that there's two exceptions in the TRO itself that are subject to interpretation, as well as an exception --

THE COURT: Okay. Again, again -- okay. I understand there's the exception with regard to the shared services agreement and with regard to you can file court pleadings or take legal positions in court. But I'm trying to get at, is your -- is the thrust of your argument that hey, any communications with Scott Ellington were fine because he was in the legal department and legal services are part of shared services agreements, which were excepted out of the TRO. Is that a proper characterization of your legal argument?

MR. WILSON: Well, I've got to tell you, Your Honor, I think that that is part of it. I think that the real -- the real issue goes to Mr. Dondero's state of mind and what he believed he was and was not restrained from doing and what the order on its face clearly and specifically restrains him from doing.

And my argument is that, with the exceptions and with the other testimony that was offered about Mr. Ellington's role between Mr. Seery and Mr. Dondero, that he was simply unclear as to what he was restrained --

THE COURT: Okay. Tell me -- tell me -- okay. I'm trying to get a direct answer, and what I think I'm hearing is you don't necessarily think conversations with Ellington would fit into the shared services agreement but you think that's what James Dondero thought. Is that what you're now saying?

MR. WILSON: Well, I believe that Mr. Dondero's testimony was that he was under the impression that because, for various reasons, because that he had been doing this for twelve months and also because it continued after the December 10th hearing, that he was allowed to communicate items to the Debtor in what he termed the role as settlement counsel. And despite Mr. Seery's denial of giving Mr. Ellington any instruction, I think that the issue is what was Mr. Dondero's state of mind, and so I do believe that Mr. Dondero thought he was communicating pursuant to shared services. I do believe he thought he was communicating in a permissible way pursuant to the settlement counsel issue, because he thought that a lot of these issues that he was forwarding text messages to Mr. Ellington would only -- would keep him apprised of where they were, because the whole time Mr. Dondero was still attempting to settle this case through a pot plan.

THE COURT: Okay. And I guess, since you've mentioned it, what is my evidence that Mr. Ellington was the designated, recognized settlement counsel? You know, he -- Mr. Dondero says it. Mr. Seery says absolutely no. Do I have

any other evidence on that point in the record?

MR. WILSON: Well, there -- there was proposed evidence that I submitted earlier this morning on that issue from Mr. Ellington's deposition.

THE COURT: I am not -- I'm asking what's in the record. What's in the record?

MR. WILSON: Right. Well, the evidence in the record on that is Mr. Dondero's testimony.

THE COURT: Okay. And here was a follow-up I meant to ask on shared services, and I'm going to ask Mr. Morris this, too. I thought I heard Mr. Seery testify that -- he testified about what he considered kind of the bizarreness of the legal department at Highland as it had historically been set up, and I thought he said legal was not part of the shared services agreement. Do you want to respond to that?

MR. WILSON: Well, I would respond to that, Your Honor. The shared services agreements were in place many years before Mr. Seery came into being.

THE COURT: Right. Okay.

MR. WILSON: And Mr. Dondero had been operating under those agreements for many years before Mr. Seery came into being.

THE COURT: Was legal covered by the shared services agreement or not?

MR. WILSON: It was, Your Honor. I put -- I put both

of the shared services agreements in the record, and I had Mr. Dondero read the provisions that talked about how broadly the legal services were covered by shared services.

THE COURT: Did it change during the bankruptcy?

MR. WILSON: Your Honor, there was no amendments or modifications to those agreements until they were eventually terminated by the --

THE COURT: Okay.

MR. WILSON: -- Debtor. We had the --

THE COURT: Okay. So there were no written --

MR. WILSON: We had the evidence in our record.

THE COURT: There were no written amendments that -- all right.

MR. MORRIS: If I may, Your Honor? Because I --

THE COURT: You may. Mr. Morris, go ahead.

MR. MORRIS: I've got -- I've got a number of thoughts on this.

THE COURT: Okay.

MR. MORRIS: If Mr. Dondero -- let's look at the language. It's always helpful to look at the language of the order. The language of the order could not be clearer. Section 2(c) prohibited him from communicating with any of the Debtor's employees. Full stop. That is a blanket, unambiguous prohibition. Total and complete. There is one exception. Not two, but one: except as it specifically

1 relates to shared services currently provided to affiliates
2 owned or controlled by Mr. Dondero.
3 Mr. Dondero was not party to a shared services agreement.
4 You have two entities that are. They're the Advisors. Those
5 shared services are in Exhibits 1 and 2 of the -- of the
6 Defendant.
7 There is no dispute that among the services provided were
8 legal services. The point that Mr. Seery was making and the
9 objection that he took to the way the question was phrased was
10 the notion that the legal department was somehow kind of
11 assigned or available. The Debtor wasn't obligated to provide
12 legal services. He just -- he was making a very technical but
13 very accurate and careful distinction between the legal
14 department and the obligation to provide legal services.
15 THE COURT: Okay.
16 MR. MORRIS: We don't dispute it. It's, in fact,
17 precisely why we agreed to put it in there, because the Debtor
18 had a contractual obligation to provide all kinds of services,
19 whatever they may be, under those agreements. So I want to be
20 really clear about that.
21 What Mr. Wilson cannot do and what he will never be able
22 to do is show you that any of the communications that are at
23 issue in this case have anything to do with shared services.
24 And if they're not related to shared services, they are a
25 violation of the TRO.

1 There's only arguably, arguably, two that could be -- and
2 why do I know that? I know that because none of these
3 communications have any -- have any employee of the Advisors
4 on it. They don't have the lawyers for the Advisors on it.
5 They have people who represent entities other than anybody --
6 Mr. Draper doesn't represent -- this is the evidence. Mr.
7 Draper doesn't represent anybody who's party to a shared
8 services agreement. Bonds Ellis doesn't do that. Right?
9 There is only two.
10 Exhibits 26 and 52 are with K&L Gates and Mr. Ellington.
11 And so you can say, well, at least K&L Gates represents
12 Advisors, and at least Advisors are party to shared services
13 agreements. But those communications themselves are adverse
14 to the Debtor. And I asked Mr. Dondero specifically, is there
15 any provision in the shared services agreements that requires
16 the Debtor to provide services to the counterparty that are
17 adverse to itself? Right? And he said no, I can't think of
18 any. It was a candid admission on his part.
19 So, there's -- there's nothing in this long list, Your
20 Honor, there's nothing in here that has anything to do with
21 shared services. Getting a witness for a hearing to testify
22 on behalf of Mr. Dondero doesn't concern shared services.
23 Discussions, discussions with employees about entering a
24 common interest agreement has nothing to do with shared
25 services. Discussing Mr. Dondero's interest in the UBS appeal

of Acis or the potential appeal of HarbourVest's settlement agreement has absolutely nothing to do with shared services. Asking Mr. Dondero to provide leadership in the coordination of his counsel has nothing to do with shared services. Talk -- telling Mr. Seery about no Dugaboy without a subpoena, what does that have to do with shared services? Dugaboy doesn't have a shared services agreement. There is nothing that fits into the exception.

Mr. Wilson talks about the footnote. We want -- I wrote that footnote, okay, and I wanted to make it clear that this injunction would not permit him -- would not prohibit him from seeking relief before Your Honor. And that's all it says. It doesn't say that he can communicate with the Debtor's employees about these things. It says for the avoidance of doubt because I didn't -- I didn't think it would be appropriate, I didn't think it would be proper to clip his wings and prevent him from coming to the Court to seek relief. He could come to the Court to seek relief. What he can't do is call up the Debtor's general counsel and say hey, I need a witness to testify on my behalf. That's not what the footnote -- that's not what the footnote says, Your Honor. It says he can come to this Court or to seek judicial relief upon proper notice.

I mean, certainly have no notice that Mr. Ellington was identifying witnesses who would testify against the Debtor.

1 Had -- Mr. Seery testified to, to that. That's in the record.
2 That if he knew that was happening, he would have fired them
3 on the spot.
4 So, there's no exception. None of this stuff falls into
5 any -- the one exception is shared services. Yes, there's a
6 shared services agreement. Yes, it includes provision of
7 legal services. But none of these communications have
8 anything to do with that.
9 Mr. Wilson has made no attempts -- he never put one of the
10 communications in front of Your Honor. He never had Mr.
11 Dondero try to explain how any particular communication
12 related to shared services, because they can't. They just
13 can't. So they say, oh, well, there is a shared services
14 agreement, and so -- or, he was talking about settlement
15 counsel. They knew -- here's -- we have the consciousness of
16 guilt that I mentioned earlier. We know that Mr. Dondero
17 didn't think these communications would ever see the light of
18 day because he expressed surprise that his privileged
19 communications were up on the screen. That's the tell. If
20 you play poker, Your Honor, that's the tell. He tipped his
21 hand and he gave me the signal, I didn't think anybody was
22 going to see this stuff because I'm really mad that my
23 privileged communications are out there. But he shared them
24 with Mr. Ellington. That's number one.
25 And number two, Mr. Dondero and his lawyers knew how to

1 get -- knew how to seek clarification if they thought there
2 was any ambiguity. And how do we know that? Because at
3 Docket No. 24 they filed a motion, and the motion was to
4 clarify the TRO in order to permit Mr. Dondero to speak
5 directly with board members about the pot plan. He wanted the
6 permission, he wanted it to be clear that he had the right to
7 talk to the independent directors about the pot plan. That
8 can be found at Exhibit 24. But a week later or six days
9 later, at Docket No. 29, he withdrew that motion.
10 So he knew that if he was confused about what this allowed
11 and what it didn't allow, he knew he could make a motion.
12 There was absolutely nothing preventing him or his lawyers
13 from coming to the Debtor and saying look, there's a blanket
14 prohibition against shared services, can we still talk to Mr.
15 Ellington about settlement? Nothing prevented him from doing
16 that.
17 But here's the kicker. Number three. What do any of
18 these communications have to do with settlement? There's not
19 a settlement proposal. There's not a request for information
20 about the settlement. They have nothing to do with
21 settlement. This is Mr. Dondero trying to say Scott Ellington
22 had to know everything I thought about every issue in this
23 case.
24 I mean, if Your Honor buys that, then we've wasted many,
25 many, many, many, many hours of time and hundreds of thousands

of dollars on this process, if he can just say, I'm basically allowed to talk to Scott Ellington about anything because it's in my head and I want to try to settle the case and therefore I can share it with Scott Ellington.

Number one, there's nothing in the order that allows him to talk to Scott Ellington about settlement. Number two, there's nothing on the face of any of these communications that are about settlement. And number three, again, consciousness of guilt. He was shocked that his privileged communications were disclosed. He thought he could share them with Mr. Ellington but not with you and not with me and not with Mr. Seery.

I have nothing further.

THE COURT: All right.

MR. WILSON: May I respond to that, Your Honor?

THE COURT: Um, --

MR. WILSON: Just briefly.

THE COURT: Briefly.

MR. WILSON: Yeah. So, I pointed you to Exhibits 1 and 2 in the -- in the Dondero exhibits.

THE COURT: The shared services agreements.

MR. WILSON: Those exhibits are --

THE COURT: The shared services agreements.

MR. WILSON: That's correct. Those --

THE COURT: Uh-huh.

MR. WILSON: That's correct. Those two shared services agreements relate to Exhibits 4 and 5, which show that those agreements were in place up until they were terminated by the Debtor effective January 31, 2021.

The next point I'd make is that the order itself says specifically relates to shared services. And those shared services agreements are drafted very broadly. They talk about legal compliance and risk analysis, and one of them says assistance with advice with respect to legal issues, litigation support, management of outside counsel, compliance support, and implementation and general risk analysis. The other agreement just says legal services.

But the agreements themselves were drafted very broadly and intended to cover a large array of services to be provided, because the parties receiving the services in these agreements did not provide any of their own accountants or any of their own lawyers or any of their own back office people or any of their own various other providers that are covered by these agreements. And so, therefore, over the years that these agreements were in place, Mr. Dondero was used to going to his lawyers, which were both employees of Highland and employees of the Advisors under these agreements, for compliance purposes, and he was able to talk to them about all of these various issues. And so if on December 10th Mr. -- and accountants as well.

Mr. Dondero then on December 10th was prohibited from doing certain things, with the exception of items that specifically relate to shared services. So my argument would be that Mr. Dondero did not know whether he could talk to these people or not under the Court's order because the order was not clear and specific enough.

If these agreements broadly covered legal services and accounting services, and Mr. Dondero was free to talk to these people whenever he wants before the order, but then the order creates a carve-out for talking about anything specifically relating to the shared services, that broadly does cover legal and accounting, and the people he's accused of talking to in violation of the TRO are lawyers and accountants.

THE COURT: All right. Here's my last question. With regard to the trespassing argument, as I understand it, we're talking about December 14th and January 5th, two times, both of which --

MR. MORRIS: Your Honor, if I may, I really apologize for interrupting, but that's not -- that's not accurate.

THE COURT: Okay.

MR. MORRIS: As I brought out in the questioning yesterday, the Debtor had no problem with Mr. Dondero being in their offices on December 14th.

THE COURT: Okay.

MR. MORRIS: Okay? What happened was it was a change

because the Debtor exercised control over its property in its letter of December 23rd when it evicted Mr. Dondero from its premises and informed him in writing that any entry by him in the future would be deemed a trespass. So we take no issue --

THE COURT: Okay.

MR. MORRIS: -- and have no quarrel with December 14th.

THE COURT: Okay. I'm glad I asked. I was forgetting that train of event, chain of events.

All right. So we're just talking about the January 5th occasion where he came onsite for a deposition, correct, Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. Do we have any evidence of that, other than, I guess, the testimony that is relevant for me to consider -- and this is to you, but it's especially going to be to Mr. Wilson, because I heard some testimony of Mr. Dondero: oh, look, I've got a calendar invite, or I don't know if he looked at his phone or was just recalling he had a calendar invite from someone on behalf of the Debtor saying, Go to the Highland conference room. Do I have any evidence of that calendar invite or any other evidence that is in the record you think I need to focus on?

MR. WILSON: Your Honor, we did not admit the calendar invite into the record, although we could do so. Mr.

Dondero, you know, testified about it, but the testimony he gave was that someone from the Highland legal department named Sarah Goldsmith sent him a calendar invite for his deposition to appear the same way he did at the December 14th deposition.

THE COURT: Okay. So we have just the testimony? Okay.

Mr. Morris, anything further?

MR. WILSON: Your Honor, we'd be -- we'd be willing to supplement the record with the actual calendar invite.

THE COURT: I'm not --

MR. WILSON: We have it --

THE COURT: We've already gone through that.

MR. WILSON: -- on PDF.

THE COURT: We've already gone through that. I'm just asking was it in there and I just missed it on Monday? And the answer is no.

Any other evidence that I need to consider, you think, on the trespassing issue that's in the record?

MR. WILSON: Well, Your Honor, just that -- that, I mean, as you pointed out earlier, the -- it's the evidence that Mr. Dondero appeared in the Highland conference room on December 14th, which was after the entry of the TRO, and if that's not a violation of the TRO, then it can't be a violation of the TRO on January 5th.

MR. MORRIS: Your Honor, I do have evidence.

THE COURT: Okay. Tell me.

MR. MORRIS: Okay. So this would be at Exhibit -- Exhibit 36, which is the transcript of the preliminary injunction hearing, at Page 70, beginning at Line 20. I asked the following questions and got the following answers: Question, "You did not have the Debtor's approval to enter their offices on Tuesday to give your deposition, correct?" Answer, "No." "You did not even bother to ask the Debtor for permission, correct?" Answer, "I'm prohibiting -- I'm prohibited from contacting them, so, no, I did not."

THE COURT: Okay.

MR. MORRIS: So, he was in the offices. He didn't have approval. He didn't obtain consent. He didn't seek consent. That's his unambiguous testimony at Page 70, Line 22, continuing on through Page 71, Line 2.

THE COURT: All right. Thank you.

All right. Well, I'm going to wrap it up here. This obviously warrants very careful consideration of the evidence, and so I'm going to take under advisement this matter and get you out a detailed written ruling as soon as I can get it out. So you'll be expecting something from me, again, detailed, in writing, in the hopefully very near future.

All right. If there's nothing else, we're adjourned.

MR. MORRIS: Thank you, Your Honor.

MR. WILSON: Thank you, Your Honor.

THE CLERK: All rise.

MR. POMERANTZ: Thank you, Your Honor.

(Proceedings concluded at 11:27 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/25/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	Case No. 19-34054-11(SGJ)
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Earle Cabell Federal Building 1100 Commerce Street Dallas, TX 75242-1496
Debtor.	
. . . . .	
	Adv. No. 20-03190(SGJ)
HIGHLAND CAPITAL, MANAGEMENT, L.P.,	
Plaintiff,	
v.	
JAMES D. DONDERO,	
Defendant.	May 18, 2021 9:37 a.m.

TRANSCRIPT OF HEARING ON RULING RESOLVING ADVERSARY PROCEEDING
FILED BY PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.
BEFORE HONORABLE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For Highland Capital Management:	Pachulski Stang Ziehl & Jones LLP BY: JOHN MORRIS, ESQ. 780 3rd Avenue, 34th Floor New York, NY 10017
For James Dondero:	Bonds Ellis Eppich Schafer Jones LLP By: JOHN WILSON, ESQ. 420 Thockmorton Street, Suite 1000 Fort Worth, TX 76102

(TELEPHONIC APPEARANCES CONTINUED ON NEXT PAGE.)

Audio Operator: Michael F. Edmond

Proceedings recorded by electronic sound recording, transcript produced by a transcript service.

TELEPHONIC APPEARANCES (CONTINUED):

For Official Committee of Unsecured Creditors: Sidley Austin, LLP
By: MATTHEW CLEMENT, ESQ.
One South Dearborn
Chicago, IL 60603

THE COURT: -- now in session. The Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated.

Well, I came in here not with a giant stack of paper but a very small stack of paper. We have a setting in Highland Capital Management, Case Number 19-34054 and Adversary 20-03190.

Let me get appearances first from the main parties. For the debtor this morning, who is appearing?

MR. MORRIS: Good morning, Your Honor. Can you hear me? It's John Morris from Pachulski Stang Ziehl & Jones for the debtor.

THE COURT: Thank you.

All right. For Mr. Dondero, who do we have appearing?

MR. WILSON: John Wilson with Bonds Ellis Eppich Schafer Jones for Mr. Dondero.

THE COURT: All right. And I'll ask for an appearance from the Creditors Committee, please. Who do we have appearing?

MR. CLEMENTE: Good morning, Your Honor. Matthew Clemente, Sidley Austin, on behalf of the Creditors' Committee.

THE COURT: All right. Thank you.

Well, I guess I should ask for an appearance from Wick Phillips. I think we're going to have a status conference

maybe on a motion that was set. Who is appearing for I guess I should say HCRE Partners and/or Wick Phillips?

MR. MORRIS: There may not be anybody here, Your Honor. We filed -- I think we filed notice of cancellation of the status conference.

THE COURT: Okay.

MR. MORRIS: And that's an item I was going to address, but --

THE COURT: Okay. Thank you.

MR. MORRIS: -- that we have cancelled that conference (indiscernible).

THE COURT: All right. Well, let's -- I'll stop with appearances at this point, and let me just say for the record where we are this morning.

We did have four interim fee applications of professionals for the Unsecured Creditors' Committee. We did not have any objections on those. I reviewed them in chambers and signed orders approving those on an interim basis yesterday evening. So we have no business to accomplish on those four fee applications.

The main event that I thought we had going today was the final trial in the injunctive relief sought against Mr. Dondero in Adversary 20-03190. And much to my delight and surprise, I saw that at 8:38 this morning a proposed consensual order resolving the adversary proceeding has been submitted.

So, Mr. Morris, do you want to start with that?

MR. MORRIS: I would, Your Honor. But just to make sure the record is clear with respect to the Wick Phillips matter. I believe at Docket 2321 we did specifically file a notice of cancellation of today's status conference. I have sought from Your Honor's clerk yesterday a trial date in the matter, and I was able to back into that with Wick Phillips on a proposed scheduling order, which if we haven't already done so, we'll be uploading later today. And that's the reason for the cancellation of that conference.

THE COURT: Okay. Thank you. And you've reminded me. I remember late-ish yesterday afternoon getting that communication and seeing the proposed, I think, October -- it's an October trial setting you've agreed to with them?

MR. MORRIS: That's the date that we were told was convenient for the Court.

THE COURT: Okay.

MR. MORRIS: But we had agreed to the balance of the schedule.

THE COURT: Okay. Very good. So there's no business to accomplish there. I'll be looking for that order to sign it today -- the scheduling order, I should say.

All right. So now, again, turning to the main event, Mr. Morris?

MR. MORRIS: Yes. Thank you, Your Honor. John

1 Morris, Pachulski Stang Ziehl & Jones. We were scheduled
2 today, as Your Honor pointed out, for a trial on the merits of
3 the debtor's claim for permanent injunctive relief. We did
4 file at Docket 180 this morning in the adversary proceeding
5 notice of a consensual proposed order that we'd like to present
6 today.
7 As Your Honor knows as well as anybody, this has been
8 a very long road. You know, our only goal, the debtor's only
9 goal as I tried to make clear was to be left alone, was to be
10 free from threats and interference and related improper
11 conduct. We're pleased that we've gotten to this point. I
12 can't tell you that I know what's motivating Mr. Dondero. But
13 I can tell you that from the debtor's perspective, that we
14 believe that the evidence supporting the requested relief and
15 relief now obtained is overwhelming.
16 We've put forth substantial proposed findings of fact
17 and conclusions of law, including 120-numbered paragraphs that
18 cited to dozens of documentary exhibits and expensive trial
19 testimony. And so we believe that on the strength of that
20 evidence, we were able to come to this agreement, an agreement
21 that we believe protects the debtor in the ways that the debtor
22 believes it needs to be protected.
23 I'd like to just highlight some of the changes in the
24 proposed order of what the debtor had originally sought in its
25 proposed findings of fact and conclusions of law so that Your

1 Honor is familiar with, you know, the substantive changes that
2 have been made.
3 The first change, Your Honor, I'm just taking them in
4 the order in which they appear, and I don't know if Your Honor
5 has the blackline or the clean copy.
6 THE COURT: I do.
7 MR. MORRIS: But the first change -- okay, the first
8 change is that this is no longer a permanent injunction. It's
9 an injunction that will stay in effect until the Court grants a
10 motion by the debtor to close its Chapter 11 case. So that's
11 the first change.
12 The second change is that while we believe it was
13 implicit in the earlier draft, this proposed order now
14 expressly applies the debtor's successors including, as you can
15 see, the Claimant Trust Oversight Board, the claimant trustee,
16 the litigation trustee, which are defined as the protected
17 entities, as well as the reorganized debtor. And I think
18 that's the relief that we would have obtained had we gone to
19 trial. But it is helpful that that is qualified in this
20 version of the order.
21 As we discussed at the docket call conference, there
22 are no longer any shared services agreements between the debtor
23 and any related entity and, therefore, there is now a blanket
24 prohibition preventing Mr. Dondero from communicating with any
25 person employed by the debtor or the reorganized debtor.

But there are new arrangements in place between the debtor and some of the entities controlled by Mr. Dondero, and this order reflects that. Specifically, if we can go to the next page.

You'll see at the end of the second ordered paragraph, Mr. Dondero is still enjoined from working with entities or people under his control, but the exception now is no longer to shared services agreements. They're to a prior order of this Court and something that's known as the shared resources agreement because, you know, frankly, and this was a constructive part of the negotiations over the last 24 or 48 hours.

There are still ongoing communications between the debtor's employees or certain of the debtor's employees and certain employees in Mr. Dondero's companies. And we need those communications to continue. So we wanted to make it clear that all of that is permitted except as it says at the very end of that paragraph, except for threats or acts of interference. Even if it's under the guise of the shared resources agreement, that kind of conduct is not acceptable.

Also, in footnote 3 there, we've also made it clear that communications between and among counsel are -- will not be a violation of this order, again, unless it violates (b) pertaining to threats or (d) pertaining to interference.

The last I think substantive change, which is

1 consistent with what we believe to be the law, is you'll see at
2 the bottom of the document we make it clear that the prior
3 preliminary injunction will be deemed dissolved and superseded
4 by this order upon entry.
5 Those are really the substantive changes, Your Honor.
6 I think it actually does improve the document. I think it
7 provides some clarifications that are worth -- that were worth
8 negotiating, and I do appreciate the Bonds Ellis firm's efforts
9 in that regard.
10 A couple of other things, we have agreed, and I'd
11 like Mr. Wilson to come on the record that upon entry of this
12 order, Mr. Dondero will as soon as practicable withdraw with
13 prejudice his petition for a writ of mandamus that is pending
14 in the Fifth Circuit. He will withdraw with prejudice his
15 motion for a stay of these proceedings pending a determination
16 on the petition for a writ of mandamus. And he will withdraw
17 with prejudice his interlocutory appeal that's now pending in
18 the United States District Court for the Northern District of
19 Texas.
20 The debtor is pleased, as I said, to resolve this
21 particular proceeding. As Your Honor knows too well, this is
22 just one aspect of a much larger landscape that we're dealing
23 with here. And I just -- I need to emphasize that the debtor
24 will always look to work cooperatively, but at all times, it is
25 determined to continue to take all steps necessary to protect

its estate and the integrity of this bankruptcy process.

That's all I have, Your Honor, unless Your Honor has any questions.

THE COURT: All right. Not yet. I want to hear from Mr. Wilson and see if I have any questions after I hear from him.

Mr. Wilson, would you confirm these statements and add anything you think needs to be added?

MR. WILSON: I apologize, Your Honor. I have a mouse problem. But, yes, I agree with -- largely with what Mr. Morris stated. It was actually upon the status conference hearing when we heard that the relief that the debtor was seeking would be narrowed that I suspected that we could resolve this matter because, in truth, I've visited with my client about this.

Mr. Dondero has no intention of threatening the debtor or interfering with their business and, therefore, does not -- is not concerned with these provisions in this injunction to that effect.

Our main concern was simply that the order provided enough clarity and also, you know, provided for the necessary transitioning things that needed to occur between Highland and the Dondero-related entities to complete the unwinding that is there.

And, of course, there's agreements in place, as

you've heard, and those agreements need to be carried out. And so, therefore, we feel like we were able to achieve a working version of the order that both sides could live with. And so we are -- we're pleased that we were able to reach this agreement.

And as to the point about the Fifth Circuit proceedings, we have notified the Fifth Circuit this morning about the -- that we will be withdrawing the mandamus seeking its dismissal and the accompanying motions. And at the conclusion of the proceeding upon entry of this order, yes, we do intend to file those documents.

THE COURT: All right. Thank you.

All right. A follow-up question I have, I'm looking at my computer screen, you cannot see what's on it, but what is on it is a draft so far 29-page ruling, order, and opinion on the motion for contempt that, as you know, I've had under advisement since March 24th. No one has said anything about whether this is an intention to resolve or withdraw that.

So can I assume that I should continue forward and issue my ruling on this?

MR. MORRIS: The debtor would urge you to do so, Your Honor. This -- that was implicit in what I was trying to say is that this resolves solely the debtor's motion for permanent injunctive relief. The debtor hopes and expects that the Court will continue to work on and ultimately issue its ruling on its

motion for contempt.

THE COURT: All right.

Mr. Wilson, any misunderstanding on that part?

MR. WILSON: Your Honor, the motion for contempt was not discussed in our negotiations that were this final objection.

THE COURT: Okay. All right. Well, then I expect to get this done now that I have today freed up and tomorrow, unless I have an emergencies I don't know about right now. I think I can get this out in the next few days.

No judge likes to keep things under advisement more than 60 days. You've probably heard that before. That's kind of our internal deadline we give ourselves. So I guess Monday would be May 24th. I'm going to try very hard to have this out to you by then and just so you know, if you've been wondering where things stood on that,

My other question, I mean, this is just curiosity. So obviously, a big part of the injunction request had to do with the debtor's management of the CLOs and the debtor's liquidating certain assets in those CLOs and the alleged interference with Mr. Dondero. I mean I presume that part of what's going on outside of the Court is maybe a transition of that or no? Is that not something happening?

MR. MORRIS: That's not happening, Your Honor.

THE COURT: Okay. I just wasn't sure where things

1 stood on that.
2 MR. MORRIS: And I just do want to make it clear
3 because now I recall that at 4 o'clock this morning I think I
4 wrote somewhere that this settlement resolves the adversary
5 proceeding. Obviously, the debtor does not intend and, by Mr.
6 Wilson's comments, I think he does not intend that the
7 adversary proceeding is going to be closed upon the entry of
8 the order resolving the claim for injunctive relief.
9 I just don't want to have any argument later that
10 somehow the resolution of this claim precludes the Court from
11 issuing its ruling on the contempt motion. I think Mr. Wilson
12 has made that perfectly clear that it wasn't part of the
13 discussions, and I just want to make sure and nip that in the
14 bud so that somebody doesn't make any argument at some future
15 point that because there's a statement in a title of a document
16 that addresses the adversary proceeding, that the Court still
17 has -- that the case -- that the adversary proceeding is not
18 closed and that the Court has the full authority to render its
19 ruling on the motion for contempt.
20 THE COURT: All right. Let me look at the order real
21 quick on that point.
22 (Pause)
23 THE COURT: And there is the final paragraph that:
24 "Court retains exclusive jurisdiction with respect to all
25 matters arising from or relating to the implementation,

interpretation, and enforcement of this order." And the paragraph before that, it's a resolution of the injunctive relief and not any broader than that.

All right. Well, anything else anyone wants to put on the record?

(No audible response)

THE COURT: No?

MR. MORRIS: Nothing from the debtor, Your Honor.

THE COURT: Mr. Wilson, anything?

MR. WILSON: No, Your Honor.

THE COURT: All right. Well, again, I appreciate these good-faith efforts outside of the courtroom. And in light of, you know, where things are today, it seems like, you know, this is reasonable. So I will happily sign this order. And I guess the next time I will see you is Friday morning at 9 o'clock Central Time, right, on the UBS compromise motion?

MR. MORRIS: Yes, Your Honor. That's the only thing -- that's the next item scheduled.

THE COURT: All right. Well, thank you all. And I hope we all have a good day doing other things than trying this matter. And I'll see you Friday morning, okay.

(Proceedings concluded at 9:57 a.m.)

* * * * *

C E R T I F I C A T I O N

I, DIPTI PATEL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL

LIBERTY TRANSCRIPTS DATE: May 21, 2021

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	Case No. 19-34054-sgj11
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Plaintiff, v. CLO HOLDCO, LTD., et al., Defendants.	Adv. Proc. No. 20-03195-sgj PLAINTIFF'S MOTION for CONTINUANCE
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES DONDERO, Defendant.	Adv. Proc. No. 21-03003-sgj DEFENDANT DONDERO'S MOTION to COMPEL DISCOVERY, the TESTIMONY of JAMES P. SEERY, JR. May 20, 2021 Dallas, Texas (Via WebEx)

Appearances in 21-03003:

For Plaintiff Highland Capital Management,
John A. Morris
Pachulski Stang Ziehl & Jones LLP
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Los Angeles, California 90067

For Defendant-Movant James Dondero:
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Stinson, L.L.P.
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Bryan C. Assink
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420 Throckmorton Street, Suite 1000
Forth Worth, Texas 76102

Appearances continued on next page.

Appearances in 20-3195:

For the Official Committee of Unsecured Creditors:	Paige Holden Montgomery Sidley Austin LLP 2021 McKinney Avenue, Suite 2000 Dallas, Texas 75201 Matthew A. Clemente Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
For Defendants Highland Dallas Foundation and CLO Holdco Ltd.:	Louis M. Phillips Kelly Hart & Pitre 301 Main Street, Suite 1600 Baton Rouge, Louisiana 70801 Amelia L. Hurt Kelly Hart & Pitre 400 Poydras Street, Suite 1812 New Orleans, Louisiana 70130
For Defendants The Dugaboy Investment Trust and The Get Good Nonexempt Trust:	Douglas S. Draper Heller, Draper, Patrick & Horn, L.L.C. 650 Poydras Street, Suite 2500 New Orleans, Louisiana 70130-6103
For Grant James: Scott, III:	John J. Kane Kane Russell Coleman Logan Bank of America Plaza 901 Main Street, Suite 5200 Dallas, Texas 75202
For UBS Securities LLC:	Andrew Clubok Latham & Watkins, LLP 555 Eleventh Street, NW, Suite 1000 Washington, D.C. 20004-1304
For Scott Ellington, Jean Paul Sevilla, Isaac Leventon, and others:	Frances Smith Ross & Smith, PC Plaza of the Americas 700 North Pearl Street, Suite 1610 Dallas, Texas 75201
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Certified Electronic Transcriber:	Susan Palmer Palmer Reporting Services

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1 Thursday, May 20, 2021 9:40 o'clock a.m.
2 P R O C E E D I N G S
3 THE COURT: — settings in Highland Capital adversary
4 proceedings.
5 Before I start with that, I want to let anyone who is
6 on the line for a different case, RE Palm Springs II, LLC, that
7 the hearing we had on that matter was continued. Certain of the
8 parties filed an agreed motion to continue, and so I continued
9 that to June 9th at 9:30. So to the extent you are on the line
10 only for the Palm Springs matter, that matter is not going
11 forward today.
12 All right. So turning to Highland, I will start with
13 the first-filed emergency motion. It was in Highland versus
14 Dondero, Adversary 21-3003. Counsel for Dondero filed a motion
15 to compel testimony of James Seery. So who do we have appearing
16 for Mr. Dondero this morning?
17 All right. So —
18 MR. [SPEAKER]: I think he's on mute, Your Honor.
19 THE COURT: Sir, you are on mute. Try again.
20 MR. AIGEN: Ah, I apologize, Your Honor. Is this
21 better?
22 THE COURT: Yes.
23 MR. AIGEN: Okay. Good morning, Your Honor. Michael
24 Aigen from Stinson, representing Mr. Dondero. I apologize for
25 that.

1 THE COURT: All right. So you are now co-counsel with
2 Bond Ellis, perceive?
3 MR. AIGEN: That is correct. The lead counsel from
4 our firm is Ms. Deborah Deitsch-Perez. She unfortunately has
5 medical emergencies going on with her family and is
6 unfortunately unable to be here for this hearing.
7 THE COURT: All right. Thank you.
8 For Highland, who do we have appearing on this matter?
9 MR. MORRIS: Good morning, Your Honor. It's John
10 Morris From Pachulski Stang Ziehl and Jones for the debtor.
11 THE COURT: All right. Thank you. I presume those
12 are the only appearances on this discovery dispute.
13 MR. AIGEN: That's correct.
14 THE COURT: All right. Well, Ms. — Mr. Aigen, you're,
15 I guess, new on the scene in the Highland matters. And let me
16 just tell you I've read all the pleadings. So I am aware that
17 of our numerous adversary proceedings, this is the one only
18 involving Dondero as a defendant and only involving three notes.
19 So, to help you find your argument, I'm going to say this. I
20 remember when I was in law school — here comes a story — one of
21 our law professors said a suit on a note is the simplest kind of
22 lawsuit there is. And probably when you are a young lawyer and
23 if you go to a civil business practice type law firm, this is
24 probably where you're going to get your feet wet.
25 And so, with that in my brain and having read the

1 pleadings, I'm asking: Why is this going to be complicated
2 where we need extensive discovery from the CRO/CEO who came on
3 the scene post bankruptcy two plus years after the notes?
4 So that's what's in my brain having read the
5 pleadings. And so convince me why I'm totally misreading the
6 situation.
7 MR. AIGEN: Thank you, Your Honor. I appreciate that.
8 One thing I want to make sure we understand is this is we're
9 seeking to compel deposition testimony for Mr. Seery in his
10 corporate rep capacity. We're not specifically asking for Mr.
11 Seery. We sent corporate rep depo topics over. They told us
12 Mr. Seery would be the corporate rep but they objected to
13 certain topics, as is their right. The specific topics, as you
14 know, we're seeking discovery on, there's Numbers 9, 14 through
15 17 go together, Number 20. In that sense what we're seeking
16 discovery on is a defense that we have asserted in this
17 proceeding that's currently pending.
18 As I'm sure you know from reading the pleadings, one
19 of Mr. Dondero's defenses is that there was a subsequent oral
20 agreement that the home would be discharged based upon certain
21 conditions being met. Highland, as is their right, believes
22 that this oral agreement never happened. And, as a result, it
23 contends that the defense has no merit. In their motion, I
24 think it was, or in their response, paragraph 4, they
25 specifically say that this defense has no basis in fact. That's

1 their right. The problem, however, is just taking this
2 position, based on this position they're also saying, well, we
3 don't get discovery on this event.
4 And although we're talking about six different
5 requests, it really comes down to three different areas, and
6 I'll jump into those and explain each one. The first one, which
7 I think is the most straightforward, is topic nine, which asks
8 for testimony regarding Mr. Dondero's defenses. Initially we
9 got a response saying that the objection wasn't relevant and
10 then they filed a response. And I think they realized that
11 might not have made a lot of sense saying it wasn't relevant, so
12 they said it was vague or invalid.
13 Counsel's well aware, as you are, what are defenses in
14 this case. They served discovery on these defenses. We
15 responded. They never complained that they're inadequate. They
16 know that our defense, at least one of them, is there had been
17 oral agreement on the loan, that it would be forgiven if certain
18 conditions occur, and that's what we want to take discovery on.
19 I'm confident counsel has interviewed Highland
20 employees to see who knows anything about this agreement. I'm
21 sure it's very possible that no one knows anything about this
22 agreement, and that's fine. But we certainly have a right to
23 ask the corporate rep about this and find out if anyone's going
24 to talk about this oral agreement at trial. This isn't
25 burdensome discovery —

1 THE COURT: Can I — can I — let me ask a question
2 right there. The defense is based on an oral agreement. I mean
3 your client is the payee on the notes — excuse me — excuse me —
4 the maker. It's easy to get confused here. He's the maker on
5 the notes, but he was the CEO of the payee on the notes. So
6 this is not Bank of America makes a loan to Joe, the plumber,
7 or, you know, I mean this is — he's on both sides of the
8 transaction. So he knows who the oral agreement was made with,
9 right?
10 MR. AIGEN: Correct, Your Honor.
11 THE COURT: So, again, I'm trying to understand —
12 MR. AIGEN: May I follow up —
13 THE COURT: — the depth of the discovery needed.
14 Presumably, I think I read in here, that you're deposing — or I
15 don't know if it's agreed or not — you're deposing various other
16 Highland former employees. But — but I don't understand why the
17 current CEO that was not around before the bankruptcy would have
18 any personal knowledge about oral agreements. I mean this would
19 all be in Mr. Dondero's head, right?
20 MR. AIGEN: Your Honor, I absolutely agree. And there
21 are, I guess, two parts to that answer. One is we aren't taking
22 other Highland employees' depositions. We've asked for them,
23 and they have refused to give them to us and said they're
24 irrelevant. We're trying to work that issue out. And we may
25 get one of their depositions. If they go give us one for a

1 couple hours and drop off, but this is – right now this is the
2 only discovery we're getting. Their doc requests, they're not
3 going to give us any documents related to these topics. So this
4 is our chance to get discovery on it.
5 As to his personal knowledge, he's their corporate
6 rep. As a corporate rep, he can go figure out what other people
7 know. But they're going to put someone on the stand – and I
8 think it's important, Your Honor, obviously they're going to
9 make a defense in this case – or, sorry – which stops our
10 defense with legal arguments saying even if this oral agreement
11 occurred and took place, it's not legally enforceable. I
12 understand.
13 THE COURT: Yeah, and what about –
14 MR. AIGEN: I mean this is –
15 THE COURT: – what about that? What about that? I
16 mean it's hard not to separate the need for discovery from that,
17 so what about that?
18 MR. AIGEN: Well, your – yeah. No, that's – if they
19 file a summary judgment on a legal issue, then we will address
20 that in our summary judgment legal issue, but right now we have
21 a pending defense. And, Your Honor, one of their responses to
22 our defense, as they put in their response in paragraph 4, they
23 specifically state that this oral agreement never occurred. So
24 I need to know how they know that, who are they going to put on
25 the stand. I don't know which people are saying that. So we

1 ask for – to put it down into corporate rep topic. They could
2 have given us anyone. They decided to give us Mr. Seery. But,
3 yes, he may not have personal knowledge, but that's who they
4 chose for their corporate rep to testify on this topic.
5 He's the only one I'm able to get this information
6 from. And he may come up and say no one knows anything about
7 that. That's fine. But they have already said: We're taking
8 the position that this oral agreement never occurred. I don't
9 know how they know that, I don't know who they're going to put
10 on the stand, but they are taking a factual position on that.
11 So we should have a right to take discovery on it. Whether they
12 don't think this is a legally-valid defense, well, that's fine,
13 they could have moved for summary judgment on day one. They
14 didn't. As of now, this defense is still pending.
15 We have less than two months until trial. I don't
16 know when the summary judgment's going to come, so there's not
17 going to be a chance to wait until the legal aspects of these
18 defenses are heard and then take discovery. This is our one
19 opportunity to do it.
20 THE COURT: Okay. So this is topic number nine. And
21 you say why not, let us ask a few questions, it may be five
22 minutes of questioning if he doesn't really know anything. Is
23 that a summary of your position?
24 MR. AIGEN: Well, yeah, he may not know anything and
25 they may not know anything, or they may, yes. I don't know how

1 much time it's going to take. The fact that they put in writing
2 that this agreement never occurred makes me think that someone
3 must know something, but I don't know. It could be on that.
4 that —
5 THE COURT: All right.
6 MR. AIGEN: — it's certainly possible, Your Honor.
7 THE COURT: All right.
8 MR. AIGEN: That — and then the second topic or
9 second, I guess, group is 14 through 17 where we ask about
10 information about loans made by Highland or the debtor that were
11 particular to other people. And the reason these requests are
12 relevant is, once again, — well, not once again — but it's our
13 position that Highland commonly entered into these types of
14 agreements. They're saying: Hey, this never happened, this
15 agreement didn't take place.
16 So the fact that Highland entered into other similar
17 type loan agreements with similar type business group
18 provisions, although maybe not dispositive, it certainly leads
19 to evidence that this agreement did in fact take place in the
20 situation where they're telling you and putting a pleading and
21 writing in the pleading, hey, this never — this agreement never
22 took place. So this is relevant —
23 THE COURT: So — so — so —
24 MR. AIGEN: — and, like I said, —
25 THE COURT: — on topics 14 through 17 you're saying

1 it's relevant if loans were made to other employees or officers
2 besides Mr. Dondero and it's relevant if those loans were
3 forgiven or not as to these three notes?
4 MR. AIGEN: Correct, Your Honor. Because they are
5 challenging that this agreement took place, for the —
6 THE COURT: Well, —
7 MR. AIGEN: — fact that other similar —
8 THE COURT: — what if they did do this with another
9 employee, why is that relevant these three notes?
10 MR. AIGEN: Well, because they're challenging that our
11 oral agreement took place. The fact that oral agreements like
12 this were routine at Highland would make it more believable and
13 factual that our agreement took place, in light of their
14 challenge to the fact that the agreement took place.
15 Like I said, if they were just making legal challenges
16 to whether the agreement is enforceable, that would be one
17 thing. So instead they're also taking the position, hey, we
18 don't think this actually took place. So all — if Highland
19 routinely entered into agreements like this for other employees,
20 like I said, I understand that wouldn't be dispositive, but that
21 would tend to show that this pattern and practice of Highland
22 did include oral agreements like this.
23 THE COURT: Okay. I don't mean to get off on a
24 tangent here, but, you know, are there going to be a lot of
25 fraudulent-transfer lawsuits if in fact there was debt forgiven

in the couple of years or four years leading up to bankruptcy? And are we going to have — well, I just don't understand, you know, the obvious big tax exposure to your client and other human beings if your — if your argument prevails, but I guess I shouldn't — I shouldn't second guess legal strategy, but my brain can't help to go there.

All right. But, again to the relevance, your defense is: There was an agreement to forgive these notes. It was oral and we're entitled to discovery regarding other loans to other employees for which there might have been oral forgiveness because that will help establish our defense; that's the sum and substance of categories 14 through 17?

MR. AIGEN: That's correct, Your Honor.

THE COURT: Okay.

MR. AIGEN: And obviously I don't think there's any need to try the ultimate legal issues here, but we're well aware of these tax issues and we've worked into it, and so there are different tax consequences depending on how conditions are structured and it's my understanding that in situations like this there wouldn't be sort of tax consequences, but that's an issue for another day. But because you raised it, Your Honor, I want to make sure that you know we are aware of that issue and that is something we're prepared to address when it — when it comes before this.

So should I move on to the last — last topic, Your

1 Honor?
2 THE COURT: Okay.
3 MR. AIGEN: The last topic is Request Number 20 which
4 asks for testimony regarding compensation paid by Highland to
5 Mr. Dondero. And I know this might be a little unusual because
6 someone should know what they were paid, but obviously in a
7 situation like this where we don't have control of all the
8 records and the pay structure is complicated, we don't have all
9 of that, so it's a little different than your usual situation.
10 And the reason this is relevant, obviously this goes to the
11 forgiveness aspect of it, and basically information regarding
12 Mr. Dondero's compensation will be helpful or relevant because
13 it shows part of the story here is that if you look at his
14 compensation as a whole, he was underpaid and the notes were
15 forgiven as part of this compensation which goes along with the
16 underpaid. In other words, it puts this oral agreement into
17 context and explains why it is thus. Again, they're saying this
18 never happened, so as part of our presentation of our case,
19 we're going to explain why this was done and why it makes sense.
20 And to put that into context, we want information related to Mr.
21 Dondero's compensation. We're not asking for other people's
22 compensation on this, we said information related to Mr.
23 Dondero's own compensation.
24 And, again, I understand that counsel thinks that
25 these defenses have no merit. That's their right. That makes

1 sense. And I assume they will file a summary judgment on these,
2 but they haven't done it. These defenses are currently pending.
3 We're going to trial in less than two months. We may not be
4 getting anyone else's depositions. They're not giving us
5 documents on this topic. And I understand it may be a little
6 unique to have Mr. Seery testify on this, but that's because we
7 just presented them with topics. That's the witness they are
8 putting forward, which is their right. I have no problem with
9 that. But this is our one opportunity to get discovery on this
10 and that's why we're before the Court today. Thank you for your
11 time.
12 THE COURT: Okay. Just to clarify, I think I heard
13 you saying Mr. Dondero doesn't have access to the records. Mr.
14 Dondero doesn't have records regarding the compensation paid by
15 Highland to him and any agreements related to that?
16 MR. AIGEN: He — he had some but not all.
17 THE COURT: Okay. Well, I don't understand that. Why
18 would that be? He's the founder, he was the CEO of this company
19 until three months after the bankruptcy was filed. He — I mean
20 it sounds inconceivable to me that he wouldn't have everything
21 he needs as far as what he was paid in the agreements regarding
22 what he was paid by his company Highland.
23 MR. AIGEN: Well, Your Honor, fortunately or
24 unfortunately I have not been involved what I understand is sort
25 of disagreements between the parties here on Mr. Dondero's

1 access to certain documents of Highland, but my understanding is
2 he — Highland now has possession of all its documents. And he —
3 I know there were requests between counsels on Dondero to get
4 particular documents in other matters and other situations going
5 on. But he — Highland is the one that has possession of those
6 documents now, not — not Mr. Dondero.
7 THE COURT: Okay. He'd at least have his tax returns,
8 right, and files regarding his tax returns?
9 MR. AIGEN: Correct, correct. Correct. Yes. Yes,
10 Your Honor.
11 THE COURT: All right. Well, Mr. Morris, now for your
12 responses in — I'm playing devil's advocate with you. If y'all
13 have named Mr. Seery as a 30(b) corporate rep and out of these
14 20 topics you agree to — two, three, four, five, six — I guess
15 13 of the subject matters, what's the big deal about a few extra
16 questions?
17 MR. MORRIS: A few — a few issues.
18 First, Your Honor, is Mr. Dondero on the line?
19 THE COURT: Well, that's a good question. I forgot to
20 check that because I have ordered him in the past to be at every
21 hearing.
22 Mr. Dondero, are you with us this morning?
23 Mike, did you see him —
24 MR. ASSINK: No, Your Honor. This is —
25 THE REPORTER: I haven't seen Mr. Dondero.

1 THE COURT: Okay. Well, Mr. Aigen, what do you know
2 about that? Or I see Mr. Bryan Assink is out there as well.
3 What do y'all know about that?
4 THE REPORTER: He's on mute, Your Honor.
5 THE COURT: You're on mute, sir.
6 MR. ASSINK: Your Honor, I apologize. This is Bryan
7 Assink of Bonds Ellis. I'm just trying to — I'm just trying
8 to —
9 THE COURT: Okay. It sounds like someone's speaking,
10 but I can't hear it.
11 THE REPORTER: Bryan Assink, his voice is low. He's —
12 THE COURT: Okay. Mr. Assink, please turn your volume
13 up. We can barely, barely, barely hear you.
14 Mr. Assink.
15 MR. ASSINK: Your Honor, is that — is that better?
16 I'm sorry. I tested this before —
17 THE COURT: Okay, it's better now. Go ahead.
18 MR. ASSINK: — I joined and —
19 THE COURT: Go ahead.
20 MR. ASSINK: Your Honor, this was set on an emergency
21 basis, and we just didn't coordinate with Mr. Dondero. We
22 didn't think he needed to attend these kind of nonevidentiary
23 hearings and —
24 THE COURT: Mr. Assink, you asked for the emergency
25 hearing. And you filed your motion Friday afternoon. We were

1 in court Tuesday. And I was happy that you resolved our
2 disputes Tuesday. And I remember saying: Preview of coming
3 attractions, I guess I'll see y'all Friday, right. Right,
4 nobody said anything about, uh, we have an emergency setting,
5 we're hoping to have.
6 But, anyway, be that as it may, an hour or two after I
7 got out of court Tuesday, my Courtroom Deputy was telling me
8 that you were wanting the hearing this week. And I first said
9 it'll have to be Monday. I mean we're — we've got a backlog of
10 stuff in our queue that we're really trying to get out. And —
11 and I understood that you really pressed for having this hearing
12 today. I didn't see the — all the emails, but my Courtroom
13 Deputy said you all really wanted this hearing today, not
14 Monday.
15 So, with that, why would you press for today if Mr.
16 Dondero wasn't available, number one? And, number two, why
17 would you think he wasn't needed? I mean it was a couple of
18 hearings ago that I said someone pull out my order and see what
19 I said, because I couldn't remember the exact wording —
20 MR. ASSINK: No, Your Honor, I apologize. I'm sorry,
21 Your Honor. I apologize. There's been a lot going. I think it
22 — the coordination might have just slipped. I'm not sure, Your
23 Honor, I wasn't sure what order required him to be here today
24 with the preliminary injunction dissolves but, you know, it
25 wasn't our intention that he would not — he would not appear.

1 We — it was more just a coordination thing. We intend that he
2 will be at all hearings before, Your Honor, you know, Friday's
3 hearing and substantive hearings. I just — I think this is more
4 of a coordination issue, Your Honor, and I apologize.
5 THE COURT: Okay.
6 MR. ASSINK: There has been a lot going on.
7 THE COURT: Oh, don't I know. There's two of us, me
8 and my Law Clerk working on this, and there are a bunch of
9 y'all. So, yes, I feel — I feel absolutely what you feel and
10 more as far as a lot going on.
11 So let me clarify. My language that ordered Mr.
12 Dondero to be at every hearing was in the preliminary injunction
13 that's now superseded by the agreed order y'all announced
14 Tuesday. So are you telling me you thought now that mandate
15 didn't apply? Is that one of the things —
16 MR. ASSINK: Not — not specifically, Your Honor, —
17 THE COURT: — I'm hearing?
18 MR. ASSINK: Not specifically, Your Honor. We thought
19 perhaps the formal mandate in the order was no longer applying,
20 but our understanding was you would want Mr. Dondero at
21 substantive hearings going forward, and that has been our
22 understanding. And we would expect him to be before Your Honor
23 at all such hearings. Part of the basis, the reasoning he's not
24 here today was perhaps as an oversight on my part due to the
25 scheduling, and I had a lot of deadlines yesterday and I think

1 it just maybe fell through the cracks, and I apologize, Your
2 Honor.
3 THE COURT: All right.
4 MR. ASSINK: You know, we — Your Honor, —
5 THE COURT: Well, I'm going to say a couple of things.
6 You know this could have been raised Tuesday, when we were here
7 on the adversary proceeding, in which the preliminary injunction
8 was issued, okay, it would have been — it would have been wise,
9 it would have been very wise to raise the issue.
10 Second, it screams irony, if nothing else, that at a
11 time when I have under advisement a motion to hold Mr. Dondero
12 in contempt of Court that there would be a trip-up, the
13 second-recent trip-up, by the way, where he didn't appear at a
14 hearing. There was a time a few weeks ago, two or three weeks
15 ago, can't remember what hearing it was then, but he wasn't
16 here.
17 Okay. The —
18 MR. ASSINK: Well, Your Honor, I just want to say —
19 THE COURT: — the third thing I'm going to say — the
20 third thing I'm going to say is I guess I'll issue an order in
21 the main case now, you know, a one- or two-sentence order in the
22 main case saying repeating the sentence that was in the
23 preliminary injunction, that he's going to show up at every
24 hearing. I never said only at substantive hearings. The only
25 thing I hesitated on at all, because I've done this in other

1 cases, is sometimes I'll say any hearing at which, you know, the
2 person is taking a position, okay, an opposition, an objection,
3 you know, even if you file a pleading taking a neutral stand, if
4 he's going to file a pleading that requires the Court and all
5 the lawyers' attention to some extent, he's going to need to be
6 in court. So that's something I thought about doing, but then I
7 was reminded, that I said, no, he's just going to be at all
8 hearings in the future.
9 And procedural, substantive, I never made that
10 distinction and I never would because — because it's taking up
11 time, it's taking up time of the Court, lawyers, parties. And
12 if he is going to use the offices of this Court or, you know,
13 take up the time of any lawyers, then he needs to be a part of
14 it, okay?
15 MR. ASSINK: Your Honor, yes, I —
16 THE COURT: So I thought I made that very clear the
17 last time he didn't show up, but I think —
18 MR. ASSINK: Your Honor, I apologize. You know that's
19 certainly not our intention here. We've been rushing around. I
20 think this is more — this is more on — on me and just the fast
21 pace with everything. We would intend that he would be here at
22 all hearings. We're not trying to make any exception. We're
23 not trying to say that the preliminary injunction got rid of his
24 obligation to be before, Your Honor. You know, we weren't clear
25 exactly what the directive was for these kinds of hearings, or

1 at least perhaps I wasn't fully, and — but, nevertheless, Your
2 Honor, we would — we would have had him be here. I think the
3 fast pace with the hearing settings and just everything going
4 on, it might have slipped through the cracks. It's not — there
5 was no ill will with him not being here, Your Honor. I
6 apologize. It's just an oversight on our part. We would
7 anticipate that he will be here for all future hearings. You
8 know it's no disrespect to the Court. It was not an intentional
9 thing. We apologize, Your Honor. So I understand the Court's
10 comments. It's — but I just want to make clear it's we're not
11 trying to be cute, we're not trying to say that, oh, the
12 preliminary injunction is gone, he doesn't have to be here.
13 That's not our intention, Your Honor. It was I think just an
14 oversight and a scheduling issue this time, but Mr. Dondero will
15 of course appear before Your Honor in all matters going forward,
16 so I apologize.
17 THE COURT: All right. Well, again, you're
18 scheduling. You sought the scheduling, you sought the emergency
19 hearing, and this is the second time we've had this discussion
20 in less than a month.
21 All right. So, Mr. Morris, back to you. I think —
22 MR. MORRIS: Yeah.
23 THE COURT: — you were about to answer the question of
24 if Mr. Seery is going to be produced and talk about 13 different
25 topics, why is it a big deal to talk about these other seven

1 topics.
2 MR. MORRIS: Because there is no way to prepare a
3 witness for the vague statements that are being offered by
4 counsel. I'll point out that Mr. Aigen is yet another former –
5 a lawyer who formerly represented Highland and is now suing us,
6 but we'll dispense with the disqualification motion right now.
7 Your Honor, here is the deal. There have to be some
8 limits, there have to be some reasonable limits. As you
9 started, Your Honor, in law school you're taught that a
10 collection case under demand notes is the simplest thing there
11 is. In fact, in New York there's a special provision in state
12 law that permits a plaintiff to file a motion for summary
13 judgment in lieu of a complaint when they have an instrument
14 such as a note, which is exactly what we have here.
15 Mr. Dondero has already admitted in his answer, in his
16 interrogatories, and in his answers to several requests to admit
17 that the notes are valid, that he received the money
18 contemporaneously with the notes. When he signed the note, he
19 received the money. The debtor has made demand and he hasn't
20 paid, so we will be moving for summary judgment on that basis.
21 So let's look at what the defenses are and why we just
22 feel like it's a burden on the debtor to even entertain these
23 concepts. His first answer, Your Honor, said that the notes
24 were forgiven based on an agreement. So we asked him in the
25 interrogatory or request to admit, I forget which, show us your

1 tax returns that you paid the taxes. Of course he didn't pay
2 taxes because of course the note wasn't forgiven. So instead he
3 amends his answers, he amends the affirmative defense to add the
4 words: Pursuant to a condition subsequent. Okay, he didn't say
5 that the first time.
6 The first time it was — it was forgiven and now it's
7 not forgiven but it's basically deferred until a condition
8 subsequent. So he is not even contending. If you look at his
9 amended answer, he's not even contending that it was forgiven,
10 he's simply saying that the obligation to repay has been
11 deferred pursuant to an oral agreement under which he does have
12 to pay until the debtor completes the liquidation of his assets,
13 basically, if you read it. That's what it says. And that's how
14 we got here.
15 I don't know if you picked up on it, Your Honor, but
16 in response to an interrogatory, when we said who made the
17 agreement on behalf of the debtor, Mr. Dondero said that he did.
18 Okay, this isn't an oral agreement unless he was talking to
19 himself. This is something that happened, according to him, in
20 his head; that somehow he, as the maker of the note, had a
21 discussion with himself in his capacity as the chief executive
22 officer of the debtor, and the two of them, in his head, agreed
23 that he wouldn't have to pay. Initially wouldn't have to pay at
24 all and now apparently doesn't have to pay until the debtor
25 completes its sale of assets. That is what the defense is here,

1 so let's be very, very clear about it.
2 It's not an oral agreement, it's something that he's
3 making up in his head that he didn't make up the first time,
4 that he changed the second time, and that he — that he can't
5 describe at all. One of the interrogatories said: When did
6 this take place. He didn't answer that part of the
7 interrogatory. He hasn't told us.
8 And here is the interesting thing, Your Honor. He's
9 partially performed. He has admitted in response to — I forget
10 if it was an interrogatory or a request to admit, it's in our
11 papers — he has admitted that in December 2019, after the
12 petition date, and while he was still in control of the debtor,
13 that he made a payment to the debtor, a portion of which was
14 used to pay principal and interest on one or more of the notes,
15 so. So either he made that payment after he made his agreement
16 in his head that it would be deferred, which makes no sense, or
17 he entered the agreement in his head after the time that he made
18 the payment, which would be in violation of the automatic stay,
19 because how did he just get to forgive or to defer payment of an
20 obligation to the debtor without seeking permission from the
21 Bankruptcy Court. Those are the only two possibilities here,
22 okay.
23 So I don't want to have to prepare my client for such
24 nonsense. I don't think we should be required to prepare my
25 client for such nonsense. And if you take a look at the other

1 so-called affirmative defenses, he's got waiver, but he doesn't
2 know — he doesn't identify how we waived, when we waived, who
3 waived. And, in fact, it's completely contradicted from the
4 evidence that's already in the record. Every single monthly
5 operating report, all of the debtor's contemporaneous books and
6 records, they're in the record. I actually submitted them in
7 opposition to his first request for an adjournment of this
8 proceeding because I wanted — I put my cards on the table, Your
9 Honor. I really don't — I don't like to play games. I put my
10 cards on the table. They see all of that. All of that is
11 there. The debtor has — can see them. So how could we have
12 waived everything.
13 Consideration, I'm supposed to prepare my client to
14 answer questions on his defense of lack of consideration, when
15 Mr. Dondero has already admitted that he received the face
16 amount of each note at the time the note was executed? What —
17 we should not be entertaining this.
18 And let's talk about topics 14 to 17, the so-called
19 other loans that were forgiven. Mr. Dondero was the president
20 and chief executive officer of this company for decades. Has he
21 identified one single person who received a forgiven loan?
22 Nope. Has he identified one loan that was ever forgiven? Nope.
23 Has he ever contended that he had a forgivable loan? Nope.
24 He's got this vague and ambiguous defense that somehow — it's
25 not even a defense, frankly. His defense is that he had an oral

1 agreement with himself, either he did or he didn't, right.
2 We've got document requests outstanding. They were due weeks
3 ago. Mr. Aigen has promised me in writing tomorrow, tomorrow,
4 Friday. May 21st, he's going to complete his document
5 production.
6 We've gotten two documents so far, two bank statements
7 that show his receipt of the loan proceeds, right. We don't
8 have — there is no evidence for this. We don't have the
9 identification of a loan that was ever forgiven. We don't have
10 the identification of a person whose loan was forgiven. We have
11 nothing. How can we possibly prepare?
12 Rule 30(b)(6) actually requires them to describe with
13 reasonable particularity the matters for examination. How do I
14 prepare my client on — on these things? What he's trying to do,
15 I think what they're trying to do is be cute, of course, and
16 they're trying to — they want to ask Mr. Seery and Mr. Seery
17 will say, 'I don't have any knowledge of this.' And then
18 they're going to show up to trial and they're going to put on a
19 case and say, 'Mr. Seery didn't have any knowledge of it, so he
20 can't rebut,' or something — something silly like — I mean I
21 don't really know what they're doing. This is just such bad
22 faith.
23 Your Honor, you heard counsel say that the loan was
24 forgiven or deferred, but it's not even forgiven. So — so it
25 doesn't even make sense, but you heard him say that he was

1 underpaid, that Mr. Dondero was underpaid and that there's some
2 connection not with forgiveness because he's admitted that he's
3 now changed his story, it hasn't been forgiven. It was
4 originally forgiven, now it's just deferred, and that that
5 happened because he was underpaid. Does that make any sense at
6 all?
7 The guy who was in control of this enterprise from day
8 one, and I'm supposed to prepare my client to provide a history
9 of Mr. Dondero's compensation. He doesn't know what he was —
10 did he not pay his taxes? Should we go down that path and
11 should I now start subpoenaing his tax returns? Because I think
12 that's appropriate. If you want to ask what I have, I want to
13 know what you have. So maybe Mr. Aigen can agree on the record
14 that I can have Mr. Dondero's tax returns. If he'll do that
15 maybe I'll reconsider, because this is nonsense, Your Honor.
16 And that's really the point. And I want to nip this in the bud
17 now because this is the first of five note cases for entities
18 owned and controlled by Mr. Dondero, and the same thing is
19 happening in some of these other cases, Your Honor. It is.
20 And — and if we go down this path, you know you're the
21 Judge, you make the call, but we're going to be having a lot of
22 these because I'm not volunteering putting my client through
23 this process. It's not right. It's just not right.
24 He made an oral agreement with himself? Please. You
25 either violated the automatic stay or you partially performed,

1 thereby proving it never happened. Mr. Aigen says, oh, we
2 contest it. We don't sit here and contest it. The proof is in
3 the record. The proof is his client's own words. The proof of
4 the documents that we've already put before the Court. (Briefly
5 garbled audio) — never happened.
6 And I just — I just want to nip this in the bud.
7 That's really our point, Your Honor. To put forth a client in —
8 in a notes action, the simplest form of action there could
9 possibly be, to answer questions on 13 different topics, but
10 there's a limit to what we'll do, and this is our limit. And
11 that's why we won't — we won't do it in the absence of a court
12 order.
13 THE COURT: Okay.
14 MR. MORRIS: Thank you, Your Honor.
15 THE COURT: All right. So I will give the last word
16 to you, Mr. Aigen. What would you like to say in rebuttal?
17 All right. You must be on mute.
18 MR. [SPEAKER]: He's on mute.
19 MR. AIGEN: Sorry.
20 THE COURT: Okay.
21 MR. AIGEN: A few quick points, Your Honor. Number
22 one, counsel has referred to New York procedure on how he could
23 file a quick summary judgment. Well, he can file summary
24 judgment here too. They didn't do it. These defenses are
25 pending, we have a right to take discovery on it. I think

1 that's pretty straightforward.
2 Number two, counsel has repeatedly stated, as he
3 states in his pleading, that we changed our position and that
4 first answer it said that the notes were forgiven. It doesn't
5 say that. I'm reading from their pleading at paragraph 16 where
6 they quote our answer, the original one where it says,
7 "Defendant asserts that plaintiff's claim should be barred
8 because it was previously agreed by plaintiff that plaintiff
9 would not collect on the note." There's no change in the
10 position. It wasn't asserted before these notes were actually
11 forgiven, so that's just not true, and his own pleadings reflect
12 that.
13 We also heard a lot of conversation about what we have
14 given them. We have answered their interrogatories. They
15 didn't ask about other people who may have loans forgiven. They
16 had never asked about that. That's why we haven't told them.
17 They could get that information. They could serve discovery.
18 They're the one that wanted this case on a fast track. So keep
19 talking about discovery or answers he doesn't have because those
20 are answers to questions he never asked. There is no discovery
21 out there where they said to us identify the individual who you
22 believe received loans that are forgiven. They never asked
23 that. That's why they don't —
24 THE COURT: Let me —
25 MR. AIGEN: — that answer, so I don't think that's

1 right.
2 THE COURT: Let me ask you this. If Bank of America
3 loaned money to Mr. Dondero and he defaulted and they sued him
4 on the note, do you think Mr. Dondero could get discovery
5 regarding all other borrowers or any other borrower that Bank of
6 America may have lent money to and did they forgive some of
7 their indebtedness, did they have special arrangements? Do you
8 think in a million years a state court judge would allow
9 discovery on this?
10 MR. AIGEN: Not under that hypothetical, but I would –
11 what I would say, Your Honor, if there was an oral condition as
12 part of that loan and it turns out that everyone knew that Bank
13 of America provided those same oral conditions to a subset other
14 group of lenders – or borrowers, for whatever reason, and the
15 parties disputed that, then I think it would be discoverable.
16 So I think the situation here is –
17 THE COURT: Oral agreements –
18 MR. AIGEN: – different from your situation. I agree
19 with the hypothetical.
20 THE COURT: I mean again I – you know, oral
21 agreements. I mean give me examples of case law where oral
22 agreements somehow prevailed at the end of the day. I mean I
23 just...
24 MR. AIGEN: And, Your Honor, at summary judgment, when
25 we have to present our case, we'll present our case. Like I

said, they could have filed the summary judgment on day one, just like they could do in New York, and said, you know, on the defenses, but we're doing this and we're doing it on a fast track obviously with trial in less than two months. So this is our one opportunity to get discovery. And when they filed their summary judgment, we'll respond with the law. But until they do, for whatever reason they have waived it. They have told you that it would be burdensome to allow him to answer a few other questions. I don't — for one thing, burden was not an objection they made, so he's talking about how it's burdensome and he doesn't want to do it. But this is our one opportunity to get this information. And if they file summary judgment, and, you know, these defenses go away, obviously it won't be an issue later, but this is our one opportunity to get this discovery.

THE COURT: Okay.

MR. MORRIS: Your Honor, if I may? Just one last point. There is zero chance, zero chance that if any loan was ever forgiven by the debtor that it was on the same terms on which Mr. Dondero now claims his loan would be forgiven or deferred. And how do I know that? Because if you look at his response to the interrogatory, the condition subsequent, by them. And Mr. Aigen is just wrong, he did change his answer. His original answer was that he wouldn't have to pay. And then his new answer, his amended answer is that he wouldn't have to pay until a condition subsequent. And when we asked him what

1 that condition subsequent was, it was the liquidation of certain
2 assets. Since the liquidation of those assets has not been
3 completed, by definition, no other maker could have had a note
4 or an oral agreement or an agreement of any kind of the type
5 that Mr. Dondero has. So yet another reason why it fails to
6 meet the burden, they fail to meet the burden under Rule 26.
7 Nobody could have ever had the same note forgiven or agreement,
8 because the condition subsequent hasn't been met yet.
9 THE COURT'S RULING ON THE MOTION TO COMPEL
10 THE COURT: All right. Well, I'm going to deny the
11 motion to compel. I don't think that the burden has been met to
12 establish the relevance of these, I guess it's — one, two,
13 three, four, five — six topics that are now at issue, topics 9,
14 14 through 17, or 20, and, you know, I don't think the
15 proportionality standard is met here.
16 I do think it would be not proportionate to the needs
17 of the case for the CEO, who came in place in 2020,
18 postpetition, two years after these notes were executed, to have
19 to go do research about any loans made by Highland to any
20 officers and employees over the years and, you know, I don't
21 know who he's going to question, what policy he is going to look
22 into that might be some substance or evidence as to oral
23 agreements or forgiveness. I don't think he should have any
24 obligation to search files and interview people to figure out
25 what the affirmative defenses and Mr. Dondero are all about or

1 based in. And, again, no one would have better information
2 about his own compensation than Mr. Dondero himself.
3 I mean I want to stress that this comes against a
4 backdrop of — well, it seems like some antagonism, to say the
5 least, on the part of Mr. Dondero where Mr. Seery's concerned.
6 It seems like it's always a fight with Mr. Seery. And you say,
7 well, we didn't handpick him as the 30(b)(6) witness, but, you
8 know, the motion to compel names him by name. It just — it
9 feels like another antagonistic move.
10 You've got him for a deposition next Monday on 13 or
11 so different topics. I think it is appropriate to draw the line
12 on these six or so topics that again just don't seem relevant or
13 proportional to the needs of the case.
14 All right. So, Mr. Morris, would you please upload
15 just a simple order reflecting the Court's ruling?
16 MR. MORRIS: I would be happy to, Your Honor.
17 THE COURT: Okay. Actually I'm going to ask Mr. Aigen
18 to do it. I'm sorry. I need to be thinking about attorney's
19 fees and who should bear the costs of what.
20 So, Mr. Aigen, would you please electronically submit
21 an order?
22 MR. AIGEN: Yes.
23 THE COURT: All right. Thank you.
24 All right. Well, if there's nothing else on this
25 particular adversary, let me just double check. Any

1 housekeeping matters before I move onto the other adversary?
2 MR. AIGEN: Not from the debtor, Your Honor.
3 MR. CLUBOK: Your Honor, —
4 THE COURT: All right.
5 MR. CLUBOK: I don't know if you're about to move on.
6 Your Honor, can you hear me?
7 THE COURT: I'm sorry, Mr. Clubok?
8 MR. CLUBOK: Your Honor, —
9 THE COURT: Were you weighing in on —
10 MR. CLUBOK: Yeah, I'm — I'm sorry. It's not about
11 that proceeding, but are you about to move on beyond — beyond
12 the Highland matters?
13 THE COURT: No, no, no.
14 MR. CLUBOK: There was another Highland matter —
15 THE COURT: I was next — I was next going to go to the
16 other adversary, the dispute between the committee and seven or
17 so defendants. And, yes, I know we have UBS I guess all day
18 tomorrow unless anything has changed. So we'll — we'll hear
19 before we're done any previews about tomorrow.
20 All right, so moving on —
21 MR. CLUBOK: Thank you.
22 THE COURT: — the Committee versus CLO Holdco,
23 20-3195. We have a committee motion to basically stay the
24 adversary proceeding for 90 days. So I will get lawyer
25 appearances on that.

1 Who do we have appearing for the committee, the
2 movant?
3 MS. MONTGOMERY: Yes, Your Honor. Paige Montgomery
4 for the committee.
5 THE COURT: All right. And for the defendants, who do
6 we have appearing?
7 MR. PHILLIPS: Good morning, Your Honor. Louis M.
8 Phillips on behalf of Highland Dallas Foundation and CLO Holdco
9 Ltd., along with my associate Amelia Hurt.
10 THE COURT: All right. I saw your —
11 MR. DRAPER: Good morning, Your —
12 THE COURT: — pleading filed at 9:00 something last
13 night.
14 Any other defendant appearances?
15 MR. KANE: Yes, Your Honor, —
16 MR. DRAPER: Yes, Your Honor. Douglas Draper on
17 behalf of the Dugaboy Investment Trust —
18 THE COURT: All right. Thank you.
19 MR. DRAPER: — and Get Good.
20 THE COURT: Oh, okay. Thank you.
21 Other appearances?
22 MR. KANE: Yes, Your Honor. John Kane on behalf of
23 Grant James Scott, III.
24 THE COURT: Okay. Mr. Kane, your volume was very low.
25 You're — you're Mr. Scott's counsel as trustee for these trusts?

1 MR. KANE: In – in a sense, Your Honor, and in his
2 individual capacity. I no longer represent CLO Holdco.
3 THE COURT: Okay. I don't know if you got that at
4 all, Michael. It was so faint.
5 THE REPORTER: Yeah, I got a little of it, but it –
6 THE COURT: Okay. you're no longer representing CLO
7 Holdco, Ltd., but you're representing Grant Scott in his trustee
8 capacity for these two trusts?
9 MR. KANE: Your Honor, Grant Scott is no longer the
10 acting director or trustee of CLO Holdco, but he was a named
11 defendant in this action based on his time as trustee or
12 director of CLO Holdco, and I represent him in that capacity.
13 THE COURT: Okay. Any other defendant appearances?
14 MR. ASSINK: Good morning, Your Honor. This is Bryan
15 Assink for Mr. Dondero.
16 THE COURT: Okay. Any other appearances?
17 All right. Well, Ms. Montgomery, you may make your
18 argument.
19 MS. MONTGOMERY: Thank you, Your Honor. And thank you
20 for taking the time to consider our motion so quickly.
21 I'd like to just briefly address how we plan to
22 proceed today. To make more time, we'd like to give a brief
23 opening statement. I'm not sure who among the defendants
24 intends to be heard specifically today in opening, but at the
25 conclusion of that we would like to proceed to testimony. We

1 have Mr. Kirschner, who you can see on the screen, Your Honor,
2 and he's here today. We plan, for efficiency sake, to put him
3 on by proffer to the extent that that is acceptable to the
4 Court. And then he will be available to answer any questions
5 that the Court or the defendants may have.
6 THE COURT: All right.
7 MS. MONTGOMERY: As you can see in our motion, we're
8 requesting a 90-day stay of the adversary proceeding. And the
9 purpose for that stay is to allow Mr. Kirschner and his firm,
10 Teneo, the time they need to get up to speed on this case.
11 Stepping back for a moment, it was always the
12 committee's intention have these claims prosecuted by the
13 ultimate litigation trustee. However, due to a disagreement
14 about certain funds that are held in the Court's registry, the
15 clock started ticking on the committee's time to bring this
16 adversary proceeding. So but for the order that the committee
17 commenced an adversary proceeding by a date certain, this action
18 would have been brought at a later time by a litigation trustee
19 post effective date as part of a comprehensive litigation
20 strategy related to all estate claims.
21 For a variety of reasons the effective date of the
22 plan has been repeatedly delayed, which has necessarily delayed
23 the formation of the litigation subtrust. We're coming up on
24 two years since the filing of the bankruptcy proceeding and
25 there's limited time available for the trust to be formed and

1 the trustee to develop a comprehensive litigation strategy.
2 As the Court may have noted, as we are wrapping things
3 up, two of our four committee members have also recently
4 retired/withdrawn from the committee. So as a result last
5 Friday, the committee filed an application —
6 THE COURT: Just inquiring minds want to know. I mean
7 did they — did they by chance sell their claims or they just
8 were tired of the committee role?
9 MR. CLEMENTE: Your Honor, if I may? It's Matt
10 Clemente. I'll just jump in on that, Your Honor, —
11 THE COURT: Um-hum.
12 MR. CLEMENTE: — very quickly. I don't know how
13 anybody could be tired of being on the committee, but the answer
14 is, Your Honor, that they both sold their claims and
15 claim-transfer notices have been placed on the docket. The
16 United States Trustee is aware and the trustee's position at
17 this point is to keep the committee at the two members, which
18 are Meta E and UBS, as we continue forward here through the case
19 and hopefully to an effective date in the near future.
20 THE COURT: All right. Thank you.
21 All right. Ms. Montgomery, continue.
22 MS. MONTGOMERY: Thank you, Your Honor.
23 So as a result, last Friday the committee filed an
24 application to retain Mr. Kirschner and his firm as litigation
25 advisor to the committee until the plan goes effective and the

1 litigation subtrust is formed. At that point Mr. Kirschner will
2 become the litigation trustee under the plan and he'll be
3 responsible for all claims brought seeking recovery on behalf of
4 the estate. So obviously under the terms of the plan, our
5 client, the committee, will cease to exist at that point and
6 responsibility for the adversary proceeding that we're currently
7 being heard in will pass to the litigation trustee. And there
8 will be a new oversight committee, which has not been formed yet
9 either as of the effective date.
10 So because this adversary proceeding will transfer to
11 the litigation subtrust upon the effective date of the plan,
12 it's imperative that Mr. Kirschner be involved in the
13 prosecution of the adversary proceeding immediately and the
14 development of legal strategy for all of the estate claims as a
15 whole. For a number of reasons, the 90-day stay of the
16 adversary proceeding will provide Mr. Kirschner with the
17 necessary time he needs to get up to speed.
18 Mr. Kirschner needs to familiarize himself with the
19 Byzantine structure of the debtor and the relationships among
20 the debtor and its thousands of related entities and insiders.
21 The corporate structure, as you have noted on several occasions,
22 is highly complicated. And the ownership and beneficial
23 ownership of entities is confusing enough even before you
24 consider the variety of transfers of estate assets between and
25 among those entities — entities. We've heard these

1 relationships described as tentacles. I tend to think of them
2 as a web, and the allegations of this adversary proceeding
3 represent only a small section of strands.
4 Mr. Kirschner also needs time to familiarize himself
5 with the pending motions to withdraw the reference and the
6 motions to dismiss, and to develop the strategy which could
7 significantly change the trajectory of the adversary proceeding
8 and future adversary proceedings. Mr. Kirschner's decisions
9 regarding how to respond to these motions may change the course
10 of the litigation in ways that are material to the pending
11 motions. For example, he could determine to amend the complaint
12 or he could bring additional claims that the committee does not
13 have standing to bring on its own. For example, breach of
14 fiduciary duty. Importantly, there could be arguments
15 surrounding the motion to withdraw the reference and have
16 impacts on the other actions that may be brought by Mr.
17 Kirschner in his role as litigation trustee.
18 The strategy surrounding plaintiff's response to the
19 motion to withdraw the reference may also depend on facts that
20 have not yet been developed. Mr. Kirschner should be given at
21 least some time to develop that strategy.
22 It's also worth noting that the notice period on Mr.
23 Kirschner's retention application does not end until June 7th,
24 which is after the current hearing date for the motions to
25 withdraw the reference, which are set for June 3rd. Given his

1 proposed role as litigation advisor and his future role as
2 litigation trustee, he will be responsible for this adversary
3 proceeding, he should be involved in the strategy to oppose the
4 motions to withdraw the reference.
5 As you know, Your Honor, the Highland entities have an
6 extremely complex structure involving obscure relationships and
7 ownership structures. Mr. Kirschner not only has to get up to
8 speed with those facts, but he also needs to wrap his hands
9 around the transfer of information obtained from both the debtor
10 and the committee over the course of these proceedings. So this
11 adversary proceeding is just one part of the complexity that is
12 the estate claims, but it's an important part and he should have
13 time to ensure that he's proceeding in the most efficient way
14 and in the way that's best for the debtor's estate.
15 In addition to needing to get up to speed on the facts
16 giving rise to this case, Mr. Kirschner is also — will be
17 working on a comprehensive strategy for all estate claims. As
18 pointed out in the response that was filed last night, since he
19 is familiar with the adversary proceeding, obviously, we filed
20 it, and we did so after tedious review of thousands of
21 documents, and it took us months to put together a picture of
22 the transactions that are underlying the complaint, and those
23 months were after we had been actively involved in these
24 proceedings for over a year, so it's a very complicated —
25 there's some pretty complicated stuff going on there.

1 We also believe that we provide competent
2 representation, which is at least tangentially challenged in
3 that response, but we're the lawyers that represent the
4 committee. We're not the party that's responsible for the
5 decisions of the underlying management of the litigation.
6 Obviously lawyers take direction from their clients and ours as
7 of the effective date will no longer exist, and Mr. Kirschner
8 will be the person who's responsible for making those decisions.
9 So to put it slightly differently, we may be driving
10 the car but we're not deciding, you know, where the car is
11 going. That's the client's decision.
12 I am at least somewhat offended by opposing counsel's
13 implication that the motion to stay was brought in bad faith
14 because it smelled that there might be some litigation
15 advantage. All I can do in response to that, Your Honor, is
16 assure the Court that the stay is not being sought for such a
17 purpose. To the extent that there's any gamesmanship occurring
18 in these proceedings, it's not us that's engaging in it.
19 Mr. Kirschner is entitled to gain his own
20 understanding of the issues underlying this adversary and of the
21 litigation landscape as a whole, and to have an orderly
22 transition of responsibilities from the committee, the debtor,
23 and counsel for both before he's asked to make important
24 strategic decisions that could have long-lasting implications on
25 his work.

1 In short, Your Honor, there is no rush to have the
2 pending motions heard and no prejudice to defendants by a stay
3 of proceedings. As they point out in their response, the Court
4 has delayed the hearing on the motion to dismiss until after
5 consideration on the motion to withdraw the reference.
6 Additionally, as they make clear in their response, discovery is
7 not underway at this point. We still haven't effectuated
8 service as to all defendants. We have some defendants that are
9 foreign entities and we're still working through the service of
10 process. We're not entirely sure how much longer that's going
11 to take, but it has proven to be a lengthy process to date, and
12 we don't really have an estimated time for when that will be
13 done. So, if anything, there is an ideal time for a pause on
14 proceedings that won't prejudice any party.
15 The only purported harm our opponents have identified
16 is the delay itself, and I have to admit, Your Honor, that this
17 is the first time I've ever heard a defendant argue that they're
18 prejudiced by litigation against them not proceeding. In fact,
19 we reviewed the cases that are cited in the response that
20 purport to support a right of good — to a determination of
21 rights and liabilities without undue delay. Unsurprisingly,
22 both involve instances of a defendant seeking to delay
23 prosecution of a plaintiff's case rather than the reverse, as we
24 see here. And in those cases, the stays that were sought were
25 either indefinite or extremely long. They were not a brief

1 90-day extension of the sort recognize requested here. There's
2 simply no prejudice to the defendant in the adversary by staying
3 the proceeding for 90 days.
4 On the other hand, the 90-day stay of the adversary
5 proceeding will provide Mr. Kirschner with the time that he
6 needs to develop an understanding of this adversary proceeding
7 and the litigation strategy as a whole. And moving forward
8 without the stay may very well prejudice the future litigation
9 subtrust and harm the debtor's estate.
10 That's all I have for now, Your Honor.
11 THE COURT: All right. A couple of questions. You
12 said there's been no service on certain defendants, and I know
13 that certain of these defendants are said to be Cayman Island
14 entities, these various Charitable — Charitable Daf (phonetic),
15 maybe CLO Holdco Ltd, Charitable Daf Fund, those three in
16 particular, right, right foreign entities? Okay, so they have
17 gone —
18 MS. MONTGOMERY: Yes, Your Honor.
19 THE COURT: — they have not — those are the three, I
20 presume, that have not been served?
21 MS. MONTGOMERY: CLO Holdco has been served, the
22 others have not.
23 THE COURT: Okay, okay. Thank you. I'm sorry, I'm
24 getting a little mixed up. So there's been money in the
25 registry of the Court and I remember that was why early on I

1 sort of created a quick time table for you all getting this
2 filed. How much money is still in the registry of the Court? I
3 remember there were agreed orders that some of it could be paid
4 over, I think, to Mr. Rocatta (phonetic). I can't remember who
5 — who all. But is there still a substantial fund in the
6 registry of the Court without me going online and looking that
7 up?
8 MS. MONTGOMERY: I'm going to have to look and get the
9 exact numbers as well, Your Honor, but it's the portion of the
10 moneys that were purportedly payable to CLO Holdco are still in
11 the Court's registry.
12 THE COURT: Okay. So it's just that defendant's
13 funds. And am I also correct that now the debtor ultimately has
14 a majority interest in CLO Holdco, the debtor itself, because of
15 that Harbor Vest (phonetic) settlement?
16 MR. PHILLIPS: No, Your Honor.
17 THE COURT: Oh, that's not right?
18 MR. PHILLIPS: I don't think so, no.
19 MR. KANE: Your Honor, this is John Kane. I can
20 actually provide some clarity on that. The Harbor Vest
21 acquisition by the debtor's affiliate relates to HCLOF, Highland
22 CLO Funding, not CLO Holdco. CLO Holdco is the 49-percent
23 interest owner in HCLOF.
24 THE COURT: Okay.
25 MR. DEMO: And this is Greg Demo, Your Honor, from the

1 debtor. I can confirm what Mr. Kane just said.
2 THE COURT: Okay, okay. So CLO Holdco is just
3 strictly in that line of the Charitable Daf and as far as who
4 owns — who owns it —
5 MS. MONTGOMERY: That is — that's my understanding,
6 Your Honor.
7 THE COURT: Okay, okay, so I — once again I have
8 flipped the organizational structure.
9 All right. And then my last question for you, Ms.
10 Montgomery, is the effective date of the plan has not occurred.
11 There's obviously an appeal now at the Fifth Circuit, a direct
12 appeal of the confirmation order. Is there still a stay pending
13 appeal — a motion for a stay pending appeal pending out there
14 either at the District Court or Fifth Circuit, or have those
15 been ruled on one way or the other?
16 MS. MONTGOMERY: Mr. Demo, could you — were you
17 popping on to answer that question?
18 MR. DEMO: Yes, Ms. Montgomery.
19 This is Greg Demo, Your Honor, from Highland Capital
20 Management. We still intend to try to go effective after the
21 hearing on the exit financing, which has been postponed until
22 June 25th. That's counsel to NexPoint Advisors, and counsel to
23 Highland Capital Management Fund Advisors filed a motion last
24 night with the Fifth Circuit seeking a further stay of the — of
25 the effective date, pending the resolution of their appeal. So

1 we don't know how that's going to shake out, but the debtor does
2 anticipate trying to go effective following June 25th.
3 THE COURT: All right. So has there been a stay of
4 the confirmation order?
5 MR. DEMO: We've agreed to a short administrative
6 stay —
7 THE COURT: Okay.
8 MR. DEMO: — as all this stuff has been going on. I
9 believe the administrative stay — actually I can't remember when
10 it expires, but we have agreed to a short administrative stay.
11 THE COURT: Okay. And so it's —
12 MR. DRAPER: Your Honor, this is Douglas Draper.
13 THE COURT: Okay, go ahead.
14 MR. DRAPER: Just to give the Court some background, —
15 THE COURT: Go ahead.
16 MR. DRAPER: — there were two — you denied the stay
17 pending appeal. There were two appeals taken from your ruling.
18 One by myself on behalf of Dugaboy and one by Devor (phonetic)
19 on behalf of other entities. They both went up to Judge Godbey.
20 He has never ruled on the stays pending appeal. So what was
21 done is inasmuch as the motion — the appeal of the confirmation
22 order is up in the Fifth Circuit, last night Devor filed a
23 motion for a stay pending appeal in the Fifth Circuit, and
24 that's pending. So that's the procedural background of what's
25 gone on.

1 THE COURT: All right. Thank you, Mr. Draper.
2 All right. Well, I'll hear opening statements from
3 our defendants. And I ask you please not to be duplicative of
4 each other. So who wants to go first for the defendants?
5 MR. PHILLIPS: Your Honor, Louis M. Phillips on behalf
6 of Highland Dallas Foundation and CLO Holdco Ltd. We filed a
7 response in opposition to the motion to stay. And we are the
8 ones who, my firm and I, and I'm the one that filed, that sent
9 messages across to counsel for the committee in response to the
10 request for consent or notice of opposition. So I guess since
11 we filed the response we ought to go forward.
12 We have reviewed the — we laid out a time line in our
13 response. We've laid out communications between counsel and our
14 response. We laid out what we think the burden is. And we've
15 laid out the case law that we think establishes the burden for a
16 stay.
17 What we are concerned about is the — first of all, the
18 90-day stay, it might even come around as far as further
19 activity in the lawsuit because we don't know what the Court
20 would do on June 3rd. We know that the Local Rules require that
21 — or set forth that the Court will issue a report after the
22 conference on June 3rd about — to the District Court concerning
23 the motion to withdraw reference. We filed a motion to withdraw
24 reference. We filed a first response to the litigation, A, a
25 motion to withdraw reference; and, B, a motion to dismiss under

1 Rule 12(b)(6) and a motion for a more definite statement as
2 well. Both our filings were followed by other defendants who
3 sought withdrawal of the reference and also dismissal.
4 This Court has pushed aside the motion to dismiss
5 pending resolution of the — of the motion to withdraw reference,
6 which we think is entirely appropriate and we're fine with, so
7 where we are, Your Honor, —
8 THE COURT: And let me — let me just interject there.
9 That is always 100 percent of the time my practice, and I think
10 the other bankruptcy judges here. It's out of deference to the
11 District Court. If the District Court ends up withdrawing the
12 reference, they may want to say, 'I want to withdraw the whole
13 darn thing. We don't even want you doing pretrial matters,' so
14 we don't want to get ahead of them by considering a pretrial
15 matter. So I did what I do in every case and will take the next
16 steps —
17 MR. PHILLIPS: And we agree a hundred percent with
18 that approach, Your Honor. We didn't really know how we were
19 going to proceed on the motions to dismiss. But we had
20 deadlines to filing and we got very brief extensions for one of
21 our clients to file a response to the complaint after service.
22 On the other client, we didn't get any extension to file a
23 response. So we filed timely responses and we didn't know how
24 the Court was going to handle the motion to dismiss. And the
25 way the Court just handled them is entirely what we — we agreed

1 that that was the way to do it, because the District Court has
2 several alternatives if it determines to withdraw the reference.
3 And we know the courts, we've looked at the Court's Local Rule.
4 We just don't know how long, and we have no control and we're
5 fine with having no control over how long the Court would —
6 would have to take, given its docket, to issue its report to the
7 District Court. And we have no control over what the District
8 Court would do.
9 Our problem with the motion for a stay is that we know
10 that the only things really pending now are motions to withdraw
11 reference. Those are subject to being brought before Your Honor
12 at either kind of a hearing/conference where the parties will
13 put forth their legal arguments and any evidence, but the
14 evidence will basically be the nature of a litigation and the
15 situation of the docket. So there's no real factual issues in
16 dispute. We have a lawsuit, we have a motion to withdraw
17 reference that's been briefed. We grant an extension of the
18 response deadline to May 21st in connection with the request by
19 counsel. And we purposely asked the Court for the June 3rd
20 date, all with agreement of all counsel. And then two days we
21 get the emergency motion — or last night, yesterday we get the
22 emergency motion to stay when the litigation assistant was, in
23 fact, retained on the day or two after we filed our responses.
24 And there was no mention in any way, shape, or form of a need to
25 stay at that time.

1 So we have one thing pending: Motions to withdraw the
2 reference. We have reviewed and set forth in our response the
3 scope of services for which Teneo was being retained. It does
4 look to us like it is — it looks like litigation support and
5 litigation analysis.
6 And I hear what counsel for the plaintiff is saying,
7 but there have been — she's — we agree that there has been
8 months and months and months of analysis, there have been
9 millions and millions and millions of dollars spent on U.S. —
10 UCC counsel fees. They have gone through thousands and
11 thousands of documents. They came up with this piece of
12 litigation. This is the one I know about. This is the one
13 pending before the Court. And there might be — there is a
14 suggestion that there is an overarching litigation strategy
15 being employed, but this is what we have right here. And that's
16 speculation that we have no idea about and we assume the Court
17 has no idea about.
18 So we have one thing that we want decided and it's
19 easy for a plaintiff to say — and, look, we're chastised for
20 being defendants who want to move the lawsuit. One of our
21 clients didn't even ask for an extension of the deadline to
22 respond. We have — we asked for one extension for one of
23 clients. And that extension dovetailed into the response date
24 for the other client so that we could file a single response for
25 both clients. That was granted. We appreciate that. And when

1 the committee asked for an additional time, we granted it with
2 the proviso that we get the June 3rd date so that if we need to
3 file a reply, we'd have three or four days to file the reply.
4 We have been — we have not been the ones asking for
5 any delay and we're not going to ask for any delay. And so I
6 don't care what other cases say, I don't care what the
7 plaintiff's lawyer says about defendants always want to delay.
8 We're not asking for any kind of delay. We want to move
9 forward. And we think we have the right to figure out and find
10 out what court is going to be handling our litigation. That's
11 what we're asking for.
12 We've already said in the communications that we've
13 listed on our witness and exhibit list that we'll be more than
14 happy to talk about some type of stay about motions — you know,
15 discovery, whatever, whatever, if there — if the litigation
16 advisor needs to get up to speed on what documents are out
17 there, what documents it would have to review, that's fine.
18 We're probably going to do some discovery. But we're only going
19 to discovery if our motion to dismiss under 12(b) are not
20 granted, because if they are there doesn't need to be any
21 litigation advice or any analysis about alternatives or
22 objectives or overarching strategy to deal with the motion to
23 dismiss under Rule 12(b). That's a legal issue. And the
24 counsel is very adept — we say counsel's adept. We know they're
25 adept. That's why we know that they are ready to proceed in

1 response to our motion to withdraw reference.
2 And then if the District Court takes it after Your
3 Honor gives her report, then we'll bring the motions, we'll get
4 with the lawyers for the plaintiff and we'll make — bring our
5 motion to dismiss before the District Court on some kind of
6 agreed schedule, but those are legal issues. There is no advice
7 needed for a motion to withdraw reference. There's no advice
8 needed for a motion to dismiss under 12(b). Those are legal
9 questions and — and the idea that Sidley and Austin needs
10 assistance from an advisor as to how to approach a legal issue,
11 we don't think is meritorious.
12 So, Your Honor, we have put — we have a witness and
13 exhibit list of six documents. One is — Document 1 is the
14 application to employ the Teneo firm. 2 is the — 2, 3, 4, 5,
15 and 6 are email communications we have provided them. They are
16 between counsel that are before the Court here today, just to
17 show that we granted extension for them to respond, then they
18 ask, and we responded, and so that they were on notice that we
19 opposed the requested stay. And we would like for the motion to
20 withdraw reference to go forward.
21 The parties will have plenty of time to work out
22 discovery, Rule 26 issues, motion for relief — motion to dismiss
23 under 12(b) in front of whichever court is going to handle it.
24 Certainly this Court is — if the motion to withdraw reference is
25 denied, this Court will be in full control of when we have

1 hearings on the motion to dismiss. And we understand that. So
2 will the District Court if the District Court grants the motion
3 to withdraw the reference. The District Court will determine
4 hearings on the motion to dismiss under Rule 12(b). And then we
5 have those two things to get past. And those are legal
6 questions, legal questions that are already before the Court or
7 already there. So we don't see how additional time is necessary
8 with respect to that.
9 We think by the time the stay — quote stay expires
10 we'll have a determination at least on the withdrawal motions.
11 And we can probably have a setting on the dismissal motions.
12 And if there — if the plaintiffs survive dismissal, then we'll
13 have discovery that all litigants will be involved in and
14 agreeing to and with scheduling orders, et cetera, from whatever
15 court is going to try this case.
16 And I'd like to say also that once we have — CLO
17 Holdco has been involved in the bankruptcy case. We recognize
18 that. I was not the lawyer for CLO Holdco, but I'm representing
19 CLO Holdco now. The Highland Dallas Foundation has not been.
20 And the Highland Dallas Foundation is a charitable organization
21 that has institutional people on the board, has one donor seat
22 on the board, but it's — it's being sued for twenty something
23 million dollars. And the idea that it has no interest in
24 getting this resolved is not correct. It wants to get it
25 resolved and that's why we're opposing this stay. Thank you,

1 Your Honor.
2 THE COURT: All right. A couple of follow-up
3 questions. I'm struggling a bit with the fact that we have a
4 couple of defendants, two or three defendants that have not even
5 been served yet. So is it appropriate for this Court to be
6 going forward on a motion to withdraw the reference when I don't
7 know what's going to happen with those two defendants. Are they
8 going to be served? If so, what sort of position are they going
9 to have with regard to the reference being withdrawn?
10 And, in any event, ultimately I'm going to have to
11 slice and dice this in a report to the District Court saying,
12 you know, these entities filed proofs of claim and that may
13 affect the authority of the Court, you know, maybe it does. I
14 mean a part of me thinks what's going on here and should we just
15 wait till they have been served so we have the ability to report
16 to the District Court: Here is every defendants' position on
17 this.
18 MR. PHILLIPS: Your Honor, I can't answer the
19 question. I don't — I mean it seems to me like we have — we
20 have — CLO Holdco was served. And it is a foreign entity. We
21 don't know why the other two have not been served. I'm not — we
22 just don't know. So I mean does that mean if we — I mean we had
23 to go forward, we had to answer, we had to respond. We had a
24 deadline to do it. It didn't matter that two hadn't been
25 served. And so we — you know, if we hadn't responded, given our

1 service, we would have had a default entered against us and a
2 request for a default judgment. So I don't know the answer to
3 the question because I can't imagine that a plaintiff can file a
4 lawsuit and then the lawsuit was filed months ago and not serve
5 two people and keep the defendants hung up.
6 I don't know if there is a problem of service. There
7 was one entity that got served that is a foreign entity. I
8 don't know why the other ones haven't been served. The Highland
9 Dallas Foundation was served. The other parties who have
10 appeared were served. So we have no control over that because
11 we're not serving anybody. And I would think that the part — I
12 did some looking in the — in the record and it seems to me like
13 we don't have — you know, I can't tell you whether we have —
14 what the arguments would be for the parties who have not been
15 served.
16 I would assume given that everybody has — my two
17 clients have filed what they filed. CLO Holdco filed a proof of
18 claim, but it was in effect disallowed and converted to a claim
19 for zero. My other client, Highland Dallas Foundation, has not
20 made any appearance in this case. So all I can say is we think
21 two — I think the two clients that I'm currently representing,
22 we know they have been served. We had a deadline to respond.
23 We have responded. And we think we're entitled to a jury trial
24 and withdrawal of the reference.
25 MS. MONTGOMERY: Your Honor, if I can answer the

1 question. CLO Holdco was served through its counsel, whereas
2 the other two foreign entities require domestication of the
3 subpoena in the Caymans. And it's our understanding that may
4 take as long as — just having heard — as another two months for
5 that process to be complete.
6 THE COURT: All right. My other question I guess is
7 maybe more rhetorical than something you could really answer. I
8 — you know — on the one hand, you know, what Ms. Montgomery is
9 arguing: Our true plaintiff contemplated for this lawsuit isn't
10 in place yet because the plan hadn't gone effective and, you
11 know, some — some of the defendants here or affiliates of
12 defendants are wanting to delay, delay, delay further when the
13 plan can go effective. You know last night a motion for stay
14 pending appeal with the Fifth Circuit was filed. So it's like,
15 no, don't let the plan go forward, let's not get Mr. Kirschner
16 in place. But, oh, don't issue a stay on this lawsuit. It just
17 feels a little bit inconsistent, the two positions. What — do
18 you have anything to say to that?
19 MR. PHILLIPS: I have — all I have to say, all I can
20 say, Your Honor, and that is CLO Holdco, as I understand it, is
21 not an appealing party. My other client that's been served,
22 Highland Dallas Foundation, is not an appealing party. We're a
23 defendant in — in this lawsuit. And so we don't see — we're not
24 in a position to be inconsistent about anything. We're not an
25 appellant. We're not seeking any kind of relief on appeal. And

1 we — but we are defendants who have been served and who have
2 filed motions to withdraw reference. So you will have to ask
3 other people about that. I'm completely consistent in my
4 position.
5 MR. DRAPER: Your Honor, this is Douglas Draper on
6 behalf of Dugaboy, who has both —
7 THE COURT: All right.
8 MR. DRAPER: — appealed your decision —
9 THE COURT: Okay.
10 MR. DRAPER: — and has asked for a stay pending
11 appeal.
12 THE COURT: Okay.
13 MR. DRAPER: It's not an inconsistent position because
14 two reasons. Number one, you gave the committee authority to
15 file this suit. The committee took that authority and filed the
16 suit within the time period. So whether the case is going
17 forward or — the stay — the case is stayed and the confirmation
18 order is stayed or not, this action and this entity and this
19 proceeding is going to go forward.
20 And so all we're talking about here, just so we — it's
21 all clear, we're just talking about who is going to try this
22 suit. We're not talking about a master litigation strategy.
23 We're talking about a location. And, quite frankly, it would
24 surprise the hell out of me if — if the new person, or whoever,
25 says, look, I want to go to the District Court.

1 This is just a location issue, nothing more. You can
2 sift through each one of these defendants who have been served
3 as to whether we have a right to a jury trial or not. And each
4 one, as the Court recognized, is on a — on a defendant-by-
5 defendant basis. I did file a proof of claim. Whether I have a
6 right to a jury trial, you're going to have to look at to see if
7 in fact my proof of claim relates to this claim.
8 Mr. — Mr. Phillips is a defendant set of facts. And
9 these other defendants may be a different set of facts. So all
10 we're talking about is location. It is purely procedural. And
11 I don't think the stay at the district — of the confirmation
12 order or not is — is in any way impacts this whatsoever. This
13 is a location question.
14 THE COURT: All right. Any other opening statements
15 from defendants?
16 All right. Ms. Montgomery, you may put on your
17 witness. And I'm fine with the proffer, but we'll then swear
18 him in and see if there cross-examination from the others. All
19 right, you may proceed.
20 MS. MONTGOMERY: Yes, Your Honor. At this point we'd
21 like to proffer Mr. Kirschner's declaration that was submitted
22 in support of our motion for the stay as the content of his
23 proposed testimony. Mr. Kirschner is obviously here to answer
24 any questions you have or on cross-examination after he's been
25 sworn in. And, Your Honor, we would just reserve our right to a

1 brief redirect should that prove necessary.
2 THE COURT: All right. So I have in front of me the
3 Declaration of Marc S. Kirschner. It was actually attached to
4 the committee's motion for stay. It's about four pages long.
5 Let me ask: Are there lawyers who are going to want
6 to cross-examine Mr. Kirschner?
7 Going once, going twice, no one wishes to
8 cross-examine him?
9 THE REPORTER: He's on mute.
10 THE COURT: Oh, Mr. Phillips, —
11 MR. PHILLIPS: Your Honor, I'm sorry. I was on mute.
12 I'm on mute, as I probably already muted, but I was on mute and
13 I apologize.
14 Your Honor, this — this is — this declaration, there's
15 no way to cross-examine a declaration that speaks in conclusory
16 language. The declaration, it was mimicked and mirrors —
17 mirrors exactly as the party looking into the mirror, not as the
18 reverse of the party looking into the mirror, argument by —
19 opening statement by counsel. I would ask a couple of questions
20 of Mr. Kirschner, please.
21 THE COURT: All right. Mr. Kirschner, I need to swear
22 you in. Would you speak up, say, "testing one, two."
23 MR. KIRSCHNER: Yes. Testing one, two.
24 THE COURT: All right.
25 MR. KIRSCHNER: Coming through?

1 THE COURT: I — I hear you, I don't see —
2 MR. KIRSCHNER: Okay.
3 THE COURT: There you are. Please raise your right
4 hand.
5 MR. KIRSCHNER: I can.
6 MARC S. KIRSCHNER, COMMITTEE'S WITNESS, SWORN/AFFIRMED
7 THE WITNESS: I do.
8 THE COURT: All right. Thank you.
9 Mr. Phillips, go ahead.
10 MR. PHILLIPS: Yes, Your Honor. Thank you. Just a
11 couple of questions.
12 CROSS-EXAMINATION
13 BY MR. PHILLIPS:
14 Q. Mr. Kirschner, in paragraph 7 of your declaration, if you
15 could find it. Just let me know when you're there.
16 A. I'm there. Thank you.
17 Q. Okay. Thanks. You say that it's important for your firm to
18 gain an understanding of the complex transactions described in
19 the adversary proceeding, particularly in connection with the
20 motion to dismiss and motions to withdraw reference and complex
21 issues before the Court. What does that mean?
22 A. That means that, as Ms. Paige indicated in her opening
23 statement and as the Court and all the defendants understand, I
24 was — when I was designated as litigation trustee in January,
25 there has been delay after delay after delay in the effective

1 date of the plan, and now we're even at the Fifth Circuit, so
2 the trust and my role as subtrustee has not yet gone into
3 effect. Prior to April 15th, I had no access to the debtor, to
4 the committee, or any of the attorneys, no access through any
5 protected information. I had no input on the complaint.
6 I became worried as the passage of time went on about
7 the possible running of statute of limitations later on this
8 year in October. And it was I who suggested to Mr. Clemente to
9 come up with what is an extremely unusual procedure, to permit
10 the committee retain me on an interim basis until the
11 effectiveness of the trust, and then to flip my work effectively
12 into the trust.
13 This is very unusual. It's not even yet approved by
14 the Court. Nevertheless, I and my firm have worked very
15 diligently since April 15th to get up to speed on this entire
16 complex factual and legal situation. I cannot just look at the
17 Holdco adversary in a vacuum.
18 There has been as the Court and all the parties here
19 know much better than I, there has been ongoing litigation on
20 many fronts for quite a long time. There has been supplied a
21 Byzantine web of some 1400 entities —
22 MR. PHILLIPS: Your Honor, Your Honor, —
23 THE WITNESS: — to accomplish —
24 MR. PHILLIPS: Your Honor, could I interrupt? He
25 needs to answer the question.

1 BY MR. PHILLIPS:
2 Q. What does — what does — what does the understanding about
3 the motion to withdraw reference mean? What do you need to get
4 up to date on the motion to withdraw reference?
5 A. I'm responding to your question.
6 THE WITNESS: If I may, Your Honor, I'm responding to
7 the question. I'm almost done —
8 MR. PHILLIPS: Your Honor, a narrative, a preexisting
9 narrative —
10 THE COURT: Ah, —
11 MR. PHILLIPS: We just — I just want to know. We have
12 legal issues.
13 THE COURT: Okay, I sustain the objection —
14 MR. PHILLIPS: I want to know what he —
15 THE COURT: If you could reask the question and we'll
16 see if we can get an answer —
17 MR. PHILLIPS: All right. I'll reask the question,
18 Your Honor. I'm sorry. I apologize.
19 Your Honor, I'm going to withdraw any questions. I'm
20 — this is — this is going to turn into just an argument. His
21 declaration and conclusory and it's just going to be more
22 conclusion. So I'm — I'm willing to argue from his declaration
23 in closing.
24 THE COURT: All right. Any other questions?
25 No other —

1 MR. DRAPER: None, Your Honor, from Dugaboy.
2 THE COURT: Okay. Anyone else?
3 Ms. Montgomery, do you have any redirect on that brief
4 cross?
5 REDIRECT EXAMINATION
6 MS. MONTGOMERY: Yes. I think, Your Honor, I would
7 just ask if there is anything else that Mr. Kirschner feels the
8 Court should be aware of before reaching a decision on today's —
9 on today's motion?
10 MR. PHILLIPS: Your Honor, we object to that question.
11 That's not even a question.
12 THE COURT: I overrule. He can answer.
13 THE WITNESS: Okay. Thank you very much, Your Honor.
14 As I was saying, there is a Byzantine web here of over
15 1400 entities, many moving intertwined parts. I have literally
16 and my firm has literally had to triage the monumental amount of
17 work that is necessary to get my hands on this overall
18 situation. There's allegations that money's been flying all
19 over the world —
20 MR. PHILLIPS: Your Honor, this is not — this is not
21 appropriate testimony. This is — that's hearsay. There's
22 allegations all — money flowing all over the world. This is —
23 this is a narrative that has nothing to do with the pending
24 motion to withdraw reference and is, in essence, an
25 assassination piece. This is — what we —

1 THE COURT: I overrule. He's trying to explain why he
2 needs 90 days at bottom here, so I think it's relevant.
3 MR. PHILLIPS: Well, the long —
4 THE COURT: And I understand everything's an
5 allegation subject to evidence.
6 MR. PHILLIPS: Well, we're talking about
7 allegations, —
8 MR. [SPEAKER]: Right.
9 MR. PHILLIPS: — we're talking about — we just heard
10 they're allegations about money flying all over the world.
11 That's not an acceptable testimony. You know that and everybody
12 on this call knows that. That's absolute abject hearsay and the
13 idea that you could — you could buttress a motion for stay after
14 you've had 30 days to review a legal analysis about a motion to
15 withdraw reference, because there are allegations of money
16 flowing all over the world is ridiculous. Your Honor, we — we
17 firmly and in this way object —
18 THE COURT: Overruled. I understand you don't like
19 the emotional, if you want to call it, emotional language. You
20 think it's hyperbole, you think it's hearsay, but he didn't — he
21 didn't offer an out-of-court statement. He's just saying the
22 allegations — you know, they're in pleadings, they're
23 allegations in many different adversaries, and so I overrule the
24 objection.
25 You can complete your answer, Mr. Kirschner.

1 THE WITNESS: Thank you very much, Your Honor.
2 All of these complexities in my view potentially
3 impact on the motions to withdraw. I recently realized that I
4 cannot properly perform my fiduciary duty to all creditors by
5 the deadline for a response to the motion to withdraw and the
6 motions to dismiss. I am in fact considering potential
7 amendments to the existing Holdco adversary to possibly other
8 issues that may impact the withdrawal motion.
9 Your Honor said this morning that it's important to
10 take into consideration both procedural and substantive matters.
11 I am worried about potential impacts of whatever I do. And bear
12 in mind, as Ms. Paige indicated, I am — (brief garbled audio) —
13 no process plan. All of this was supposed to have been put in
14 the litigation trust under my auspices. I am now litigation
15 advisor, not yet approved by the Court. It is the client, I,
16 who direct, after consultation, all strategy by lawyers.
17 I have a long history, as Your Honor has seen from my
18 C.V., of directing complex billions of dollars of litigations.
19 I rely on lawyers, but I am very involved in every aspect of the
20 case. This is very confusing, not just the CLO Holdco itself
21 but the entire complexity of all of the potential matters here
22 that I need to study in a very short period of time. I'm
23 concerned that dealing just with this in this couple of days is
24 going to be harmful to creditors ultimately and respectfully
25 request the Court to grant the 90-days adjournment.

1 Maybe I'm being overly cautious and I apologize for
2 that, but I feel strongly about my fiduciary duty and want to do
3 the best I can to understand everything that's going on before
4 we have to respond both to the withdrawal motion and the motion
5 to dismiss. So thank you, Your Honor.
6 THE COURT: Thank you.
7 Anything else, Ms. Montgomery, as far as examination?
8 MS. MONTGOMERY: No, Your Honor. I have no further
9 questions.
10 THE COURT: All right. Mr. Phillips, or anyone else,
11 any recross on that redirect?
12 No? All right. Thank you.
13 All right. This —
14 MR. PHILLIPS: No, Your Honor. I muted myself again.
15 No, Your Honor.
16 THE COURT: Okay. Is that all of the evidence you're
17 going to present, Ms. Montgomery?
18 MS. MONTGOMERY: It is, Your Honor.
19 THE COURT: All right. Well, I'll turn to our
20 objectors —
21 MR. PHILLIPS: We —
22 THE COURT: I'm sorry?
23 MR. PHILLIPS: We'd like the enter and offer — we'd
24 like to offer and introduce our exhibits that we put on our
25 witness and exhibit list, Your Honor.

1 THE COURT: Okay.
2 MR. PHILLIPS: And we've submitted them to the Court,
3 Exhibit 1 through 6, as itemized in our witness and exhibit
4 list.
5 THE COURT: All right. This is Docket Number 52 in
6 the adversary, correct?
7 MR. PHILLIPS: Yes. Yes, ma'am.
8 THE COURT: All right. So let me pull it up here.
9 Okay, we've got the application to employ Teneo and different
10 emails.
11 Any objection, Ms. Montgomery, to this?
12 MS. MONTGOMERY: I have no objection to Exhibit 1,
13 Your Honor, the application, and obviously it's a pleading that
14 we filed. I have questions about the relevance of the other
15 exhibits, but I have no objection to their admission. They're
16 emails that went back and forth between the parties.
17 THE COURT: All right. Well, do you want to address
18 that relevance? I'm not sure if it was an objection or — was it
19 an objection ultimately? Was it —
20 MR. PHILLIPS: I didn't hear an objection, Your Honor.
21 THE COURT: Ms. Montgomery.
22 MS. MONTGOMERY: Your Honor, for purposes of today's
23 hearing, I have — I have no concerns about their admission for
24 your consideration.
25 THE COURT: Oh, okay, so —

1 MS. MONTGOMERY: We're not contesting the history of
2 the back-and-forth between the parties.
3 THE COURT: Okay. I will admit 1 through 6.
4 (Defendants' Exhibits 1 through 6 received in evidence.)
5 THE COURT: All right. Any — any other evidence from
6 our defendants?
7 MR. PHILLIPS: No, Your Honor.
8 THE COURT: All right. Well, anything in the way of
9 closing argument? Ms. Montgomery, you are the movant. You go
10 first.
11 MS. MONTGOMERY: Yes, Your Honor, just very briefly to
12 address a couple of points. First of all, I think that there's
13 been some sort of misconstruing of Mr. Kirschner's role as the
14 litigation advisor and ultimately the litigation trustee. He —
15 functionally, the litigation advisor — we're in a very unique
16 situation here.
17 The parties never expected that the effective date
18 would be delayed in the way that it has been. We're coming up
19 on the two-year anniversary of the filing of the proceedings.
20 There are a number of claims that need to be investigated and
21 decisions make about how they will be pursued in the next couple
22 of months. And so this litigation advisor role, as Mr.
23 Kirschner testified, is somewhere unique in that we're trying to
24 work around the constraints that have been created by the way
25 that these proceedings have moved forward.

1 The litigation advisor is really functionally a proxy
2 for the role that Mr. Kirschner will have upon the effective
3 date of the plan as litigation trustee. He's not acting in the
4 capacity of a law firm or like and FTI or a DSI, or any of the
5 other professionals that have been specifically retained in the
6 bankruptcy to date because the role isn't the same traditional
7 role. Right, he is functioning in a way that will allow him
8 access that he needs to the data to get up to speed to make the
9 decisions that have to be made so that he can, you know, proceed
10 in the way that is best for meeting his fiduciary duties to the
11 ultimate litigation subtrust.
12 So to the extent that there is any sort of argument
13 that, you know, he — that his role is duplicative or any of the
14 other things that we've heard today or that we've seen in the
15 response, I think that those are just a misunderstanding of what
16 he will actually be doing. He is going to be the client, Your
17 Honor. He is not going to be the lawyer.
18 The other thing I think that we talked about a bit is,
19 you know, this argument that Mr. Kirschner has been involved in
20 the case since April 15th and therefore he's had plenty of time
21 to understand everything that he needs to know to be able to
22 move forward. Technically, Your Honor, I think it goes without
23 saying he's not officially retained until after the return date
24 on the motion to withdraw. And even so, just based on the years
25 now that we've spent in this case, I can — I can argue to you

1 and I think Your Honor will feel the same way, there's too much
2 learn in that short a time period to be able to say that you are
3 proceeding in the way that is going to be best for the estate in
4 that short timeframe.
5 We're working to get Mr. Kirschner up to speed, the
6 debtor is working to get Mr. Kirschner up to speed, but there is
7 a lot that has happened here and that continues to change on a
8 daily basis, including the stay that was filed just last night.
9 And then, finally, Your Honor, I would argue that
10 there has been no harm established by virtue of the stay. And,
11 in fact, all of the things we've heard today established the
12 fact that there may be harm if the stay is denied. So, for
13 example, Your Honor you know very correctly pointed out that we
14 have two international defendants who haven't even appeared at
15 this proceeding yet, right. We may not effectuate service for
16 another two months. It may be another 60 of these 90 days that
17 we're requesting for a stay may be required just to get them
18 properly served and into this proceeding.
19 And, you know, I agree, Your Honor, that there may be
20 issues that surround those two defendants that, you know, we
21 won't be able to take into consideration until they're properly
22 here in the Court and able to file their own motion to withdraw,
23 if that's what they want, or state their position with regard to
24 it.
25 You know, Your Honor, moreover, there is a lot going

on here and Mr. Kirschner does realistically need time to be able to develop his approach and make decisions about whether or not there will be amendments to the complaint that could impact the motion to withdraw. He needs to make decisions about other claims that may be brought. There are a lot of moving parts. It's a unique situation. And we would urge the Court to allow him the time that he needs to be able to effectuate his duties in the way that he sees fit.

THE COURT: And I know I have it right in front of me, but the employment application for Mr. Kirschner and his firm to potentially be litigation advisor until the plan goes effective, when is that set for hearing?

MS. MONTGOMERY: It's set for June 7th, Your Honor, and the motion to withdraw is currently set for June 3rd. And that — that motion to retain Mr. Kirschner was only filed on Friday of last week, and our motions that you're hearing today were filed on Tuesday.

THE COURT: Okay.

MS. MONTGOMERY: So it's a very short delay of time between the two.

THE COURT: All right. I'll hear other closing arguments.

MR. PHILLIPS: Your Honor, thank you. As far as harm, we have one — we have one client, Highland Dallas Foundation, who has made no appearance in this case, as has very — and

1 assume they're being sued for $24 million, and that's not a
2 problem.
3 Under the argument structure we're hearing today, we
4 could never really get until a plaintiff has said, 'I have no
5 further ability to amend the complaint,' a hearing on a motion
6 to withdraw reference. Look, we didn't file the complaint. The
7 complaint was filed four or five months ago. And very able
8 counsel looked, and as counsel has argued, has looked at
9 thousands and thousands of documents, have been paid millions
10 and millions of dollars for its work, and it came up with this
11 lawsuit that was filed — I've forgotten the filing date, but it
12 was filed at least four and a half months ago, January of this
13 year I believe. Ms. Montgomery — counsel for plaintiff can say
14 the exact date.
15 But we've got two defendants who haven't been served,
16 but I've got one — I've got two that have been served. And we
17 have established a basis upon which we can get — we have a right
18 to a jury trial and a right to withdrawal of the reference. And
19 that motion has been filed. And the idea that I'm going to
20 bring — I'm going to change clients — and it's really
21 complicated. After we've done millions and millions and
22 millions of dollars worth of work, looked at thousands and
23 thousands and thousands of documents, that we may come in and do
24 a different lawsuit that pleads around a motion to withdraw
25 reference is no basis for a stay.

1 That — that — the narrative about, you know, the
2 hearsay, the narrative about the aspersions, the this and the
3 that, this is really complicated, this is really hard, well, we
4 have a lawsuit in front of you, Your Honor, and it's been
5 pending for months. And it was filed by the committee that had
6 authority to file it and it was filed by the law firm for the
7 committee that had authority to represent the client who filed
8 it. And that's what they came up with after months and months
9 and months of years of looking at stuff and looking at documents
10 and deciding what to bring as far as claims of this nature
11 against these defendants. I'm worried about two of them.
12 I'm worried about — particularly worried with respect
13 to the stay, I'm worried about both of them for — with respect
14 to the stay, but one of my clients, Highland Dallas Foundation,
15 has had no involvement in this bankruptcy case. And now let's
16 just wait around. It's got a $24 million cloud hanging over its
17 head and it's expected to continue to try to raise money and try
18 to act as a charity while — while Mr. Kirschner gets familiar —
19 refamiliarized and gets familiar with the situation where
20 counsel and the committee have been working for, what, a year
21 and a half, two years, to get ready, and here's what the lawsuit
22 — here's the lawsuit they came up with.
23 So no harm has been alleged. In fact, harm will be —
24 all you heard about the potential harm to the estate is that
25 notwithstanding millions and tens of millions of dollars of fees

1 paid to professionals to determine litigation claims and we have
2 barely, what, two months left to bring them? That's 22 months
3 worth of looking into things, millions and millions of fees.
4 The estate might be irretrievably harmed if a motion to withdraw
5 reference moves forward, when the committee and counsel were
6 responsible and filed this complaint, and they were responsible
7 to file the complaint under the transaction and occurrences,
8 standards such that whatever they haven't pled, whatever they
9 haven't pled by the time to plead is gone. And the idea that we
10 need another 22 months for Mr. Kirschner to get up to speed or
11 some other to come up with additional litigation and additional
12 amendments to postpone a withdrawal of reference means that you
13 can never get a hearing on a withdrawal of reference.
14 We think the pleadings are there. They have been —
15 they have been investigated, we assume. They're subject to
16 motions to dismiss, which are legal questions. They're subject
17 to motions to withdraw reference, which are legal questions.
18 And we're ready for a decision on what court's going to handle
19 this. And by the time that's done, Mr. Kirschner will have
20 whatever rights he has, as if he has any. The plan will either
21 be confirmed and effective or it won't be, but that's not our
22 problem. Thank you.
23 THE COURT: Any other closing arguments?
24 Going once, going twice.
25 MR. ASSINK: Your Honor, I apologize. Just for the

1 record, this is Bryan Assink for Mr. Dondero. And Mr. Dondero
2 joins in the objections made by defendants in this proceeding
3 and adopts the arguments made by Mr. Phillips. That is all,
4 Your Honor. Thank you.
5 MR. DRAPER: Your Honor, can the Court hear me?
6 THE COURT: Yes.
7 MR. DRAPER: This is Douglas – okay. What I'd like to
8 make, a short comment. The argument that there are unserved
9 parties is a red herring and it's a red herring for the
10 following reason. The Court has to go through each defendant to
11 determine if they have a right to – a right to withdraw a
12 reference. The facts with respect to Mr. Phillips' clients are
13 different than the facts with respect to my clients. So the two
14 unserved parties may have a right to do it, they may not, but it
15 doesn't affect your ruling with respect to Mr. Phillips' clients
16 or mine because we have either waived or didn't waive our right
17 to a jury trial. And so this argument that there's two other
18 parties out there, again, is a red herring. They have their own
19 right and it will not affect Mr. Phillips' right or mine. So I
20 think that needs to be taken into account.
21 And, again, all we're talking about is location. The
22 – if they want to amend their suit at a later point, that's
23 fine, but we are just talking about who's going to hear the
24 case. And, quite frankly, Mr. Phillips is right, I don't think
25 the Court can in a very short period of time unpack these

1 withdrawal issues. And so you may be looking at a
2 recommendation that you make that takes 30 or 60 days. We don't
3 know what the District Court's going to do with it. And, quite
4 frankly, you know we may be 90 or 120 days down the road before
5 the location is even determined.
6 That's all I have to say, Your Honor.
7 THE COURT: All right. Anyone else?
8 THE RULING OF THE COURT
9 THE COURT: All right. I'll just be honest, I've
10 tried hard to understand where everyone is coming from here, but
11 this has been yet another hearing where I just frankly don't
12 understand why the big fight, why all the papers, and why all
13 the Court time used.
14 I mean I think I hear everyone agreeing that the
15 plaintiff is essentially going to get its/his 90-day stay here.
16 I mean if I were to go forward on the motions, plural, motions
17 to withdraw the reference, let's be real, it's going to take:
18 This Court two or three or four weeks to get a report and
19 recommendation to the District Court, given the complexity here
20 of the parties and, you know, we try to do a very clear roadmap
21 for the District Court, what's this lawsuit about, who are the
22 parties; and then it's going to take a few weeks for the
23 District Court to rule on that. So I mean optimistically, the
24 most optimistic thing I can imagine is 60 days from now you have
25 an order from the District Court saying where the lawsuit's

1 going to go forward.
2 I mean so we're fighting, to me, over a big nothing
3 burger. I think the stay is, in effect, going to happen. So
4 all we're talking about here is pushing a plaintiff to go
5 forward, who at this point is working for free because the plan
6 hadn't gone effective and he hadn't been appointed. I mean it
7 seems like from my perspective the defendants — again I'm trying
8 to understand the practicalities here, but I'm going to be
9 honest, it almost feels like defendants tweaking with the future
10 litigation trustee, 'We're going to make you go forward and work
11 for free when at the end of the day you're probably going to get
12 a stay anyway,' because there's no way a district judge is going
13 to rule on this in much sooner than 90 days. It's like you're
14 just forcing him to work for free and move fast on the motion to
15 withdraw the reference.
16 And it is a red herring? I don't know, maybe. I
17 think likely this is ultimately going to be tried in the
18 District Court since certain parties haven't filed proofs of
19 claim. But if the District Court does what it always does, in
20 my experience, I've never had, I can't remember ever having a
21 district court say, 'I'm withdrawing the whole darn thing.'
22 They almost always use the — they almost always use the
23 bankruptcy judges as their magistrates in a case when they
24 withdraw the reference.
25 Bankruptcy judge, handle all the pretrial stuff, the

1 discovery disputes, the motions to dismiss, motions for summary
2 judgment. If you were on a motion to dismiss or a motion for
3 summary judgment in a way that would finally dispose of any
4 claims, well, you have to do that in a report and recommendation
5 to me. So I feel like we all know that's likely where this is
6 heading, so I don't know why we had to have an hour fight.
7 I don't know why it's any big shakes to just stay the
8 whole darn thing for 90 days, especially when we have the whole
9 reason the plaintiff, liquidating trustee is not in place yet,
10 because of a stay, that some of these defendants or their
11 affiliates have wanted. It just seems silly to me.
12 And I do want to address one other thing. There has
13 been an argument that Sidley and Austin and the committee have
14 had months to get up to speed on the issues in the lawsuit, they
15 had months to bring it. It's been pending months. But I'll say
16 something for the benefit of those who have not been around for
17 this whole case, in July of last year, July 2020, which by that
18 point was about 10 months into the case, it was front and center
19 to this Court the difficulty the committee was having getting
20 discovery. They had served four requests for production, going
21 back to before this case was even pending before me. When the
22 case was in Delaware, they were already filing, serving requests
23 for production of documents, wanting to get a protocol in place
24 for ESI, and then finally it all kind of came to a head in July.
25 And I remember saying, 'I'm sure there's a transcript

1 out there you can access.' Gee, I may not have pressed the
2 issue so much on this lawsuit being filed involving CLO Holdco.
3 I may not have pressed the committee's feet to the fire so much
4 on getting that filed if I had been fully aware at all of these
5 efforts going on outside of the Court to get documents, to get
6 documents, four requests for production, and then finally the
7 protocol order, if you will, that the committee filed, asking
8 this Court to put in place some protocol to get ESI from like
9 nine different custodians of debtor records. So my point is
10 those who have not lived with this case for the whole time, they
11 don't know that I kind of live to regret pressing the committee
12 to get this lawsuit on file. You know I was worried because of
13 Holdco. I had like ordered money to be put in the registry of
14 the Court before I had, you know, litigation pending. So that's
15 why I put pressure. But then I learned and had a multi-hour
16 hearing on what the committee had gone through trying to get
17 documentation. So that's very much in the back of my mind here
18 in my ruling.
19 And my ruling is going to be that I grant the 90-day
20 continuance. Again, I hope that in 90 days, we — I don't know
21 if we'll know something from the Fifth Circuit on the plan or
22 not, but at least we'll be closer to that point. And, again,
23 we're looming, you know October 16th, 2021 as a deadline for
24 bringing claims, and I think that's relevant here. There's a
25 lot to be focused on that may or may not impact the way this

1 lawsuit ultimately is mapped out. I think the fact that we have
2 two unserved defendants, I think it does matter.
3 I think a district court may be a little hesitant,
4 really want to see the complete picture on each defendants'
5 position before it rules. So the 90-day stay is granted.
6 All right. So please upload the order, Ms.
7 Montgomery.
8 Thank you, all, for your arguments.
9 Before we wrap it up, Mr. Clubok, if you're still with
10 us, I think you were hoping to raise something that might
11 pertain to tomorrow's hearing on the UBS debtor compromise. If
12 you're still there, you may speak to whatever it was you wanted
13 to present.
14 MR. CLUBOK: Good morning, Your Honor. Still — still
15 the morning. Hopefully you can hear me.
16 THE COURT: I can.
17 MR. CLUBOK: Your Honor, I'm really just previewing an
18 issue. In light of the comment that you made earlier today
19 about having this motion, discovery, and then folks not
20 previewing it, I just wanted to alert you to the fact that in
21 our adversary proceeding we have sought discovery against five
22 third parties, Scott Ellington, Isaac Ellington, three other
23 folks, all of whom are represented by Ms. Smith, who is here,
24 you can see. And we first sought —
25 MS. SMITH: This is Frances Smith. Your Honor,

1 Frances Smith on behalf of Mr. Ellington, J.P. Sevilla, Mr.
2 Isaac Leventon, Matt VRO, and Mary Catherine Lucas (phonetics).
3 I just received an email earlier this morning from Mr.
4 Clubok that he was going to do this preview for you. To the
5 extent he gets into the substance of any motions that are not
6 filed, that's inappropriate. And so —
7 THE COURT: Okay.
8 MS. SMITH: — if he wants to take Your Honor offer of
9 a preview to say what he is going to file, I'm fine with that.
10 But if he's going to start going into the substance, that is not
11 appropriate.
12 THE COURT: Okay. We'll let Mr. Clubok get a little
13 further into what he was going to say, and then we'll decide do
14 we need to cut it off.
15 Mr. Clubok, go ahead.
16 MR. CLUBOK: Thank you, Your Honor. I was about to
17 say that there were five — there's the five individuals that Ms.
18 Smith represents, we sought discovery from in April 2nd, and,
19 namely, depositions. After a long period of time culminating in
20 a meet-and-confer last week, Ms. Smith filed a motion to quash
21 on behalf of these five individuals on Monday and set a hearing
22 date for July 29th.
23 All I'm — all I'm previewing, Your Honor, is to alert
24 you that in response to that motion to quash, a hearing date set
25 for July 29th, so effectively will end up being, you know,

1 months and months of delay to these individuals who are needed
2 to move this conjunctive-relief proceeding forward, we are
3 filing our response today to Ms. Smith's motion and a
4 countermotion to compel. And I'm merely flagging this issue for
5 Your Honor because we are going to ask either Your Honor or Ms.
6 Ellison, we're going to style our motion as an expedited
7 request, we would just simply love to have a hearing as early as
8 reasonably practicable on these issues. And I have no intention
9 of getting into the merits now, but happy to do so. I think it
10 will all be familiar to you from their discussions in the
11 Dondero deposition dispute, but we just — or simply I'm just
12 flagging for you, because you raised it this morning, you know,
13 why didn't people tell me, so we just are going to ask the
14 hearing, the soonest-possible hearing, and I don't think it has
15 to be a very long hearing, on whether or not we get third-party
16 discovery, depositions of Mr. Ellington, Mr. Leventon, and the
17 other three individuals that Ms. Smith represents; subject to
18 one of them is on maternity leave, and we're going to be
19 pursuing discovery of that while she's in that state, but —
20 THE COURT: All right.
21 MR. CLUBOK: — but other than that we just ask that a
22 hearing to be scheduled. And I'm just alerting you that we're
23 going to be making that request.
24 THE COURT: Okay. Well, I have been forewarned. I
25 have been forewarned. And I'll wait to see the motion for

expedited hearing and decide if I think it's appropriate to give an expedited hearing, okay? I'll look at the pleadings and likely just rule on the pleadings on the timing, okay?

Thank you.

MR. CLUBOK: Your Honor, —

MS. SMITH: Your Honor, since we're previewing, we will be filing a response to that as well.

THE COURT: All right.

MS. SMITH: Thank you, Your Honor.

COURT SECURITY OFFICER: All rise.

(The hearing was adjourned at 11:45 o'clock a.m.)

—o0o—

State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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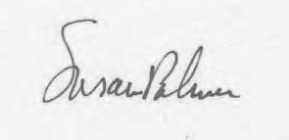

Susan Palmer
Palmer Reporting Services

Dated May 22, 2021

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	Case No. 19-34054-sgj11
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Plaintiff, v. CLO HOLDCO, LTD., et al., Defendants.	Adv. Proc. No. 20-03195-sgj PLAINTIFF'S MOTION for CONTINUANCE
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES DONDERO, Defendant.	Adv. Proc. No. 21-03003-sgj DEFENDANT DONDERO'S MOTION to COMPEL DISCOVERY, the TESTIMONY of JAMES P. SEERY, JR. May 20, 2021 Dallas, Texas (Via WebEx)

Appearances in 21-03003:

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Appearances continued on next page.

Appearances in 20-3195:

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1 Thursday, May 20, 2021 9:40 o'clock a.m.
2 P R O C E E D I N G S
3 THE COURT: — settings in Highland Capital adversary
4 proceedings.
5 Before I start with that, I want to let anyone who is
6 on the line for a different case, RE Palm Springs II, LLC, that
7 the hearing we had on that matter was continued. Certain of the
8 parties filed an agreed motion to continue, and so I continued
9 that to June 9th at 9:30. So to the extent you are on the line
10 only for the Palm Springs matter, that matter is not going
11 forward today.
12 All right. So turning to Highland, I will start with
13 the first-filed emergency motion. It was in Highland versus
14 Dondero, Adversary 21-3003. Counsel for Dondero filed a motion
15 to compel testimony of James Seery. So who do we have appearing
16 for Mr. Dondero this morning?
17 All right. So —
18 MR. [SPEAKER]: I think he's on mute, Your Honor.
19 THE COURT: Sir, you are on mute. Try again.
20 MR. AIGEN: Ah, I apologize, Your Honor. Is this
21 better?
22 THE COURT: Yes.
23 MR. AIGEN: Okay. Good morning, Your Honor. Michael
24 Aigen from Stinson, representing Mr. Dondero. I apologize for
25 that.

1 THE COURT: All right. So you are now co-counsel with
2 Bond Ellis, perceive?
3 MR. AIGEN: That is correct. The lead counsel from
4 our firm is Ms. Deborah Deitsch-Perez. She unfortunately has
5 medical emergencies going on with her family and is
6 unfortunately unable to be here for this hearing.
7 THE COURT: All right. Thank you.
8 For Highland, who do we have appearing on this matter?
9 MR. MORRIS: Good morning, Your Honor. It's John
10 Morris From Pachulski Stang Ziehl and Jones for the debtor.
11 THE COURT: All right. Thank you. I presume those
12 are the only appearances on this discovery dispute.
13 MR. AIGEN: That's correct.
14 THE COURT: All right. Well, Ms. — Mr. Aigen, you're,
15 I guess, new on the scene in the Highland matters. And let me
16 just tell you I've read all the pleadings. So I am aware that
17 of our numerous adversary proceedings, this is the one only
18 involving Dondero as a defendant and only involving three notes.
19 So, to help you find your argument, I'm going to say this. I
20 remember when I was in law school — here comes a story — one of
21 our law professors said a suit on a note is the simplest kind of
22 lawsuit there is. And probably when you are a young lawyer and
23 if you go to a civil business practice type law firm, this is
24 probably where you're going to get your feet wet.
25 And so, with that in my brain and having read the

1 pleadings, I'm asking: Why is this going to be complicated
2 where we need extensive discovery from the CRO/CEO who came on
3 the scene post bankruptcy two plus years after the notes?
4 So that's what's in my brain having read the
5 pleadings. And so convince me why I'm totally misreading the
6 situation.
7 MR. AIGEN: Thank you, Your Honor. I appreciate that.
8 One thing I want to make sure we understand is this is we're
9 seeking to compel deposition testimony for Mr. Seery in his
10 corporate rep capacity. We're not specifically asking for Mr.
11 Seery. We sent corporate rep depo topics over. They told us
12 Mr. Seery would be the corporate rep but they objected to
13 certain topics, as is their right. The specific topics, as you
14 know, we're seeking discovery on, there's Numbers 9, 14 through
15 17 go together, Number 20. In that sense what we're seeking
16 discovery on is a defense that we have asserted in this
17 proceeding that's currently pending.
18 As I'm sure you know from reading the pleadings, one
19 of Mr. Dondero's defenses is that there was a subsequent oral
20 agreement that the home would be discharged based upon certain
21 conditions being met. Highland, as is their right, believes
22 that this oral agreement never happened. And, as a result, it
23 contends that the defense has no merit. In their motion, I
24 think it was, or in their response, paragraph 4, they
25 specifically say that this defense has no basis in fact. That's

1 their right. The problem, however, is just taking this
2 position, based on this position they're also saying, well, we
3 don't get discovery on this event.
4 And although we're talking about six different
5 requests, it really comes down to three different areas, and
6 I'll jump into those and explain each one. The first one, which
7 I think is the most straightforward, is topic nine, which asks
8 for testimony regarding Mr. Dondero's defenses. Initially we
9 got a response saying that the objection wasn't relevant and
10 then they filed a response. And I think they realized that
11 might not have made a lot of sense saying it wasn't relevant, so
12 they said it was vague or invalid.
13 Counsel's well aware, as you are, what are defenses in
14 this case. They served discovery on these defenses. We
15 responded. They never complained that they're inadequate. They
16 know that our defense, at least one of them, is there had been
17 oral agreement on the loan, that it would be forgiven if certain
18 conditions occur, and that's what we want to take discovery on.
19 I'm confident counsel has interviewed Highland
20 employees to see who knows anything about this agreement. I'm
21 sure it's very possible that no one knows anything about this
22 agreement, and that's fine. But we certainly have a right to
23 ask the corporate rep about this and find out if anyone's going
24 to talk about this oral agreement at trial. This isn't
25 burdensome discovery —

1 THE COURT: Can I — can I — let me ask a question
2 right there. The defense is based on an oral agreement. I mean
3 your client is the payee on the notes — excuse me — excuse me —
4 the maker. It's easy to get confused here. He's the maker on
5 the notes, but he was the CEO of the payee on the notes. So
6 this is not Bank of America makes a loan to Joe, the plumber,
7 or, you know, I mean this is — he's on both sides of the
8 transaction. So he knows who the oral agreement was made with,
9 right?
10 MR. AIGEN: Correct, Your Honor.
11 THE COURT: So, again, I'm trying to understand —
12 MR. AIGEN: May I follow up —
13 THE COURT: — the depth of the discovery needed.
14 Presumably, I think I read in here, that you're deposing — or I
15 don't know if it's agreed or not — you're deposing various other
16 Highland former employees. But — but I don't understand why the
17 current CEO that was not around before the bankruptcy would have
18 any personal knowledge about oral agreements. I mean this would
19 all be in Mr. Dondero's head, right?
20 MR. AIGEN: Your Honor, I absolutely agree. And there
21 are, I guess, two parts to that answer. One is we aren't taking
22 other Highland employees' depositions. We've asked for them,
23 and they have refused to give them to us and said they're
24 irrelevant. We're trying to work that issue out. And we may
25 get one of their depositions. If they go give us one for a

1 couple hours and drop off, but this is – right now this is the
2 only discovery we're getting. Their doc requests, they're not
3 going to give us any documents related to these topics. So this
4 is our chance to get discovery on it.
5 As to his personal knowledge, he's their corporate
6 rep. As a corporate rep, he can go figure out what other people
7 know. But they're going to put someone on the stand – and I
8 think it's important, Your Honor, obviously they're going to
9 make a defense in this case – or, sorry – which stops our
10 defense with legal arguments saying even if this oral agreement
11 occurred and took place, it's not legally enforceable. I
12 understand.
13 THE COURT: Yeah, and what about –
14 MR. AIGEN: I mean this is –
15 THE COURT: – what about that? What about that? I
16 mean it's hard not to separate the need for discovery from that,
17 so what about that?
18 MR. AIGEN: Well, your – yeah. No, that's – if they
19 file a summary judgment on a legal issue, then we will address
20 that in our summary judgment legal issue, but right now we have
21 a pending defense. And, Your Honor, one of their responses to
22 our defense, as they put in their response in paragraph 4, they
23 specifically state that this oral agreement never occurred. So
24 I need to know how they know that, who are they going to put on
25 the stand. I don't know which people are saying that. So we

1 ask for — to put it down into corporate rep topic. They could
2 have given us anyone. They decided to give us Mr. Seery. But,
3 yes, he may not have personal knowledge, but that's who they
4 chose for their corporate rep to testify on this topic.
5 He's the only one I'm able to get this information
6 from. And he may come up and say no one knows anything about
7 that. That's fine. But they have already said: We're taking
8 the position that this oral agreement never occurred. I don't
9 know how they know that, I don't know who they're going to put
10 on the stand, but they are taking a factual position on that.
11 So we should have a right to take discovery on it. Whether they
12 don't think this is a legally-valid defense, well, that's fine,
13 they could have moved for summary judgment on day one. They
14 didn't. As of now, this defense is still pending.
15 We have less than two months until trial. I don't
16 know when the summary judgment's going to come, so there's not
17 going to be a chance to wait until the legal aspects of these
18 defenses are heard and then take discovery. This is our one
19 opportunity to do it.
20 THE COURT: Okay. So this is topic number nine. And
21 you say why not, let us ask a few questions, it may be five
22 minutes of questioning if he doesn't really know anything. Is
23 that a summary of your position?
24 MR. AIGEN: Well, yeah, he may not know anything and
25 they may not know anything, or they may, yes. I don't know how

much time it's going to take. The fact that they put in writing that this agreement never occurred makes me think that someone must know something, but I don't know. It could be on that. that —

THE COURT: All right.

MR. AIGEN: — it's certainly possible, Your Honor.

THE COURT: All right.

MR. AIGEN: That — and then the second topic or second, I guess, group is 14 through 17 where we ask about information about loans made by Highland or the debtor that were particular to other people. And the reason these requests are relevant is, once again, — well, not once again — but it's our position that Highland commonly entered into these types of agreements. They're saying: Hey, this never happened, this agreement didn't take place.

So the fact that Highland entered into other similar type loan agreements with similar type business group provisions, although maybe not dispositive, it certainly leads to evidence that this agreement did in fact take place in the situation where they're telling you and putting a pleading and writing in the pleading, hey, this never — this agreement never took place. So this is relevant —

THE COURT: So — so — so —

MR. AIGEN: — and, like I said, —

THE COURT: — on topics 14 through 17 you're saying

1 it's relevant if loans were made to other employees or officers
2 besides Mr. Dondero and it's relevant if those loans were
3 forgiven or not as to these three notes?
4 MR. AIGEN: Correct, Your Honor. Because they are
5 challenging that this agreement took place, for the —
6 THE COURT: Well, —
7 MR. AIGEN: — fact that other similar —
8 THE COURT: — what if they did do this with another
9 employee, why is that relevant these three notes?
10 MR. AIGEN: Well, because they're challenging that our
11 oral agreement took place. The fact that oral agreements like
12 this were routine at Highland would make it more believable and
13 factual that our agreement took place, in light of their
14 challenge to the fact that the agreement took place.
15 Like I said, if they were just making legal challenges
16 to whether the agreement is enforceable, that would be one
17 thing. So instead they're also taking the position, hey, we
18 don't think this actually took place. So all — if Highland
19 routinely entered into agreements like this for other employees,
20 like I said, I understand that wouldn't be dispositive, but that
21 would tend to show that this pattern and practice of Highland
22 did include oral agreements like this.
23 THE COURT: Okay. I don't mean to get off on a
24 tangent here, but, you know, are there going to be a lot of
25 fraudulent-transfer lawsuits if in fact there was debt forgiven

in the couple of years or four years leading up to bankruptcy? And are we going to have — well, I just don't understand, you know, the obvious big tax exposure to your client and other human beings if your — if your argument prevails, but I guess I shouldn't — I shouldn't second guess legal strategy, but my brain can't help to go there.

All right. But, again to the relevance, your defense is: There was an agreement to forgive these notes. It was oral and we're entitled to discovery regarding other loans to other employees for which there might have been oral forgiveness because that will help establish our defense; that's the sum and substance of categories 14 through 17?

MR. AIGEN: That's correct, Your Honor.

THE COURT: Okay.

MR. AIGEN: And obviously I don't think there's any need to try the ultimate legal issues here, but we're well aware of these tax issues and we've worked into it, and so there are different tax consequences depending on how conditions are structured and it's my understanding that in situations like this there wouldn't be sort of tax consequences, but that's an issue for another day. But because you raised it, Your Honor, I want to make sure that you know we are aware of that issue and that is something we're prepared to address when it — when it comes before this.

So should I move on to the last — last topic, Your

1 Honor?
2 THE COURT: Okay.
3 MR. AIGEN: The last topic is Request Number 20 which
4 asks for testimony regarding compensation paid by Highland to
5 Mr. Dondero. And I know this might be a little unusual because
6 someone should know what they were paid, but obviously in a
7 situation like this where we don't have control of all the
8 records and the pay structure is complicated, we don't have all
9 of that, so it's a little different than your usual situation.
10 And the reason this is relevant, obviously this goes to the
11 forgiveness aspect of it, and basically information regarding
12 Mr. Dondero's compensation will be helpful or relevant because
13 it shows part of the story here is that if you look at his
14 compensation as a whole, he was underpaid and the notes were
15 forgiven as part of this compensation which goes along with the
16 underpaid. In other words, it puts this oral agreement into
17 context and explains why it is thus. Again, they're saying this
18 never happened, so as part of our presentation of our case,
19 we're going to explain why this was done and why it makes sense.
20 And to put that into context, we want information related to Mr.
21 Dondero's compensation. We're not asking for other people's
22 compensation on this, we said information related to Mr.
23 Dondero's own compensation.
24 And, again, I understand that counsel thinks that
25 these defenses have no merit. That's their right. That makes

1 sense. And I assume they will file a summary judgment on these,
2 but they haven't done it. These defenses are currently pending.
3 We're going to trial in less than two months. We may not be
4 getting anyone else's depositions. They're not giving us
5 documents on this topic. And I understand it may be a little
6 unique to have Mr. Seery testify on this, but that's because we
7 just presented them with topics. That's the witness they are
8 putting forward, which is their right. I have no problem with
9 that. But this is our one opportunity to get discovery on this
10 and that's why we're before the Court today. Thank you for your
11 time.
12 THE COURT: Okay. Just to clarify, I think I heard
13 you saying Mr. Dondero doesn't have access to the records. Mr.
14 Dondero doesn't have records regarding the compensation paid by
15 Highland to him and any agreements related to that?
16 MR. AIGEN: He — he had some but not all.
17 THE COURT: Okay. Well, I don't understand that. Why
18 would that be? He's the founder, he was the CEO of this company
19 until three months after the bankruptcy was filed. He — I mean
20 it sounds inconceivable to me that he wouldn't have everything
21 he needs as far as what he was paid in the agreements regarding
22 what he was paid by his company Highland.
23 MR. AIGEN: Well, Your Honor, fortunately or
24 unfortunately I have not been involved what I understand is sort
25 of disagreements between the parties here on Mr. Dondero's

1 access to certain documents of Highland, but my understanding is
2 he — Highland now has possession of all its documents. And he —
3 I know there were requests between counsels on Dondero to get
4 particular documents in other matters and other situations going
5 on. But he — Highland is the one that has possession of those
6 documents now, not — not Mr. Dondero.
7 THE COURT: Okay. He'd at least have his tax returns,
8 right, and files regarding his tax returns?
9 MR. AIGEN: Correct, correct. Correct. Yes. Yes,
10 Your Honor.
11 THE COURT: All right. Well, Mr. Morris, now for your
12 responses in — I'm playing devil's advocate with you. If y'all
13 have named Mr. Seery as a 30(b) corporate rep and out of these
14 20 topics you agree to — two, three, four, five, six — I guess
15 13 of the subject matters, what's the big deal about a few extra
16 questions?
17 MR. MORRIS: A few — a few issues.
18 First, Your Honor, is Mr. Dondero on the line?
19 THE COURT: Well, that's a good question. I forgot to
20 check that because I have ordered him in the past to be at every
21 hearing.
22 Mr. Dondero, are you with us this morning?
23 Mike, did you see him —
24 MR. ASSINK: No, Your Honor. This is —
25 THE REPORTER: I haven't seen Mr. Dondero.

1 THE COURT: Okay. Well, Mr. Aigen, what do you know
2 about that? Or I see Mr. Bryan Assink is out there as well.
3 What do y'all know about that?
4 THE REPORTER: He's on mute, Your Honor.
5 THE COURT: You're on mute, sir.
6 MR. ASSINK: Your Honor, I apologize. This is Bryan
7 Assink of Bonds Ellis. I'm just trying to — I'm just trying
8 to —
9 THE COURT: Okay. It sounds like someone's speaking,
10 but I can't hear it.
11 THE REPORTER: Bryan Assink, his voice is low. He's —
12 THE COURT: Okay. Mr. Assink, please turn your volume
13 up. We can barely, barely, barely hear you.
14 Mr. Assink.
15 MR. ASSINK: Your Honor, is that — is that better?
16 I'm sorry. I tested this before —
17 THE COURT: Okay, it's better now. Go ahead.
18 MR. ASSINK: — I joined and —
19 THE COURT: Go ahead.
20 MR. ASSINK: Your Honor, this was set on an emergency
21 basis, and we just didn't coordinate with Mr. Dondero. We
22 didn't think he needed to attend these kind of nonevidentiary
23 hearings and —
24 THE COURT: Mr. Assink, you asked for the emergency
25 hearing. And you filed your motion Friday afternoon. We were

1 in court Tuesday. And I was happy that you resolved our
2 disputes Tuesday. And I remember saying: Preview of coming
3 attractions, I guess I'll see y'all Friday, right. Right,
4 nobody said anything about, uh, we have an emergency setting,
5 we're hoping to have.
6 But, anyway, be that as it may, an hour or two after I
7 got out of court Tuesday, my Courtroom Deputy was telling me
8 that you were wanting the hearing this week. And I first said
9 it'll have to be Monday. I mean we're — we've got a backlog of
10 stuff in our queue that we're really trying to get out. And —
11 and I understood that you really pressed for having this hearing
12 today. I didn't see the — all the emails, but my Courtroom
13 Deputy said you all really wanted this hearing today, not
14 Monday.
15 So, with that, why would you press for today if Mr.
16 Dondero wasn't available, number one? And, number two, why
17 would you think he wasn't needed? I mean it was a couple of
18 hearings ago that I said someone pull out my order and see what
19 I said, because I couldn't remember the exact wording —
20 MR. ASSINK: No, Your Honor, I apologize. I'm sorry,
21 Your Honor. I apologize. There's been a lot going. I think it
22 — the coordination might have just slipped. I'm not sure, Your
23 Honor, I wasn't sure what order required him to be here today
24 with the preliminary injunction dissolves but, you know, it
25 wasn't our intention that he would not — he would not appear.

1 We – it was more just a coordination thing. We intend that he
2 will be at all hearings before, Your Honor, you know, Friday's
3 hearing and substantive hearings. I just – I think this is more
4 of a coordination issue, Your Honor, and I apologize.
5 THE COURT: Okay.
6 MR. ASSINK: There has been a lot going on.
7 THE COURT: Oh, don't I know. There's two of us, me
8 and my Law Clerk working on this, and there are a bunch of
9 y'all. So, yes, I feel – I feel absolutely what you feel and
10 more as far as a lot going on.
11 So let me clarify. My language that ordered Mr.
12 Dondero to be at every hearing was in the preliminary injunction
13 that's now superseded by the agreed order y'all announced
14 Tuesday. So are you telling me you thought now that mandate
15 didn't apply? Is that one of the things –
16 MR. ASSINK: Not – not specifically, Your Honor, –
17 THE COURT: – I'm hearing?
18 MR. ASSINK: Not specifically, Your Honor. We thought
19 perhaps the formal mandate in the order was no longer applying,
20 but our understanding was you would want Mr. Dondero at
21 substantive hearings going forward, and that has been our
22 understanding. And we would expect him to be before Your Honor
23 at all such hearings. Part of the basis, the reasoning he's not
24 here today was perhaps as an oversight on my part due to the
25 scheduling, and I had a lot of deadlines yesterday and I think

1 it just maybe fell through the cracks, and I apologize, Your
2 Honor.
3 THE COURT: All right.
4 MR. ASSINK: You know, we — Your Honor, —
5 THE COURT: Well, I'm going to say a couple of things.
6 You know this could have been raised Tuesday, when we were here
7 on the adversary proceeding, in which the preliminary injunction
8 was issued, okay, it would have been — it would have been wise,
9 it would have been very wise to raise the issue.
10 Second, it screams irony, if nothing else, that at a
11 time when I have under advisement a motion to hold Mr. Dondero
12 in contempt of Court that there would be a trip-up, the
13 second-recent trip-up, by the way, where he didn't appear at a
14 hearing. There was a time a few weeks ago, two or three weeks
15 ago, can't remember what hearing it was then, but he wasn't
16 here.
17 Okay. The —
18 MR. ASSINK: Well, Your Honor, I just want to say —
19 THE COURT: — the third thing I'm going to say — the
20 third thing I'm going to say is I guess I'll issue an order in
21 the main case now, you know, a one- or two-sentence order in the
22 main case saying repeating the sentence that was in the
23 preliminary injunction, that he's going to show up at every
24 hearing. I never said only at substantive hearings. The only
25 thing I hesitated on at all, because I've done this in other

1 cases, is sometimes I'll say any hearing at which, you know, the
2 person is taking a position, okay, an opposition, an objection,
3 you know, even if you file a pleading taking a neutral stand, if
4 he's going to file a pleading that requires the Court and all
5 the lawyers' attention to some extent, he's going to need to be
6 in court. So that's something I thought about doing, but then I
7 was reminded, that I said, no, he's just going to be at all
8 hearings in the future.
9 And procedural, substantive, I never made that
10 distinction and I never would because — because it's taking up
11 time, it's taking up time of the Court, lawyers, parties. And
12 if he is going to use the offices of this Court or, you know,
13 take up the time of any lawyers, then he needs to be a part of
14 it, okay?
15 MR. ASSINK: Your Honor, yes, I —
16 THE COURT: So I thought I made that very clear the
17 last time he didn't show up, but I think —
18 MR. ASSINK: Your Honor, I apologize. You know that's
19 certainly not our intention here. We've been rushing around. I
20 think this is more — this is more on — on me and just the fast
21 pace with everything. We would intend that he would be here at
22 all hearings. We're not trying to make any exception. We're
23 not trying to say that the preliminary injunction got rid of his
24 obligation to be before, Your Honor. You know, we weren't clear
25 exactly what the directive was for these kinds of hearings, or

1 at least perhaps I wasn't fully, and — but, nevertheless, Your
2 Honor, we would — we would have had him be here. I think the
3 fast pace with the hearing settings and just everything going
4 on, it might have slipped through the cracks. It's not — there
5 was no ill will with him not being here, Your Honor. I
6 apologize. It's just an oversight on our part. We would
7 anticipate that he will be here for all future hearings. You
8 know it's no disrespect to the Court. It was not an intentional
9 thing. We apologize, Your Honor. So I understand the Court's
10 comments. It's — but I just want to make clear it's we're not
11 trying to be cute, we're not trying to say that, oh, the
12 preliminary injunction is gone, he doesn't have to be here.
13 That's not our intention, Your Honor. It was I think just an
14 oversight and a scheduling issue this time, but Mr. Dondero will
15 of course appear before Your Honor in all matters going forward,
16 so I apologize.
17 THE COURT: All right. Well, again, you're
18 scheduling. You sought the scheduling, you sought the emergency
19 hearing, and this is the second time we've had this discussion
20 in less than a month.
21 All right. So, Mr. Morris, back to you. I think —
22 MR. MORRIS: Yeah.
23 THE COURT: — you were about to answer the question of
24 if Mr. Seery is going to be produced and talk about 13 different
25 topics, why is it a big deal to talk about these other seven

1 topics.
2 MR. MORRIS: Because there is no way to prepare a
3 witness for the vague statements that are being offered by
4 counsel. I'll point out that Mr. Aigen is yet another former –
5 a lawyer who formerly represented Highland and is now suing us,
6 but we'll dispense with the disqualification motion right now.
7 Your Honor, here is the deal. There have to be some
8 limits, there have to be some reasonable limits. As you
9 started, Your Honor, in law school you're taught that a
10 collection case under demand notes is the simplest thing there
11 is. In fact, in New York there's a special provision in state
12 law that permits a plaintiff to file a motion for summary
13 judgment in lieu of a complaint when they have an instrument
14 such as a note, which is exactly what we have here.
15 Mr. Dondero has already admitted in his answer, in his
16 interrogatories, and in his answers to several requests to admit
17 that the notes are valid, that he received the money
18 contemporaneously with the notes. When he signed the note, he
19 received the money. The debtor has made demand and he hasn't
20 paid, so we will be moving for summary judgment on that basis.
21 So let's look at what the defenses are and why we just
22 feel like it's a burden on the debtor to even entertain these
23 concepts. His first answer, Your Honor, said that the notes
24 were forgiven based on an agreement. So we asked him in the
25 interrogatory or request to admit, I forget which, show us your

1 tax returns that you paid the taxes. Of course he didn't pay
2 taxes because of course the note wasn't forgiven. So instead he
3 amends his answers, he amends the affirmative defense to add the
4 words: Pursuant to a condition subsequent. Okay, he didn't say
5 that the first time.
6 The first time it was — it was forgiven and now it's
7 not forgiven but it's basically deferred until a condition
8 subsequent. So he is not even contending. If you look at his
9 amended answer, he's not even contending that it was forgiven,
10 he's simply saying that the obligation to repay has been
11 deferred pursuant to an oral agreement under which he does have
12 to pay until the debtor completes the liquidation of his assets,
13 basically, if you read it. That's what it says. And that's how
14 we got here.
15 I don't know if you picked up on it, Your Honor, but
16 in response to an interrogatory, when we said who made the
17 agreement on behalf of the debtor, Mr. Dondero said that he did.
18 Okay, this isn't an oral agreement unless he was talking to
19 himself. This is something that happened, according to him, in
20 his head; that somehow he, as the maker of the note, had a
21 discussion with himself in his capacity as the chief executive
22 officer of the debtor, and the two of them, in his head, agreed
23 that he wouldn't have to pay. Initially wouldn't have to pay at
24 all and now apparently doesn't have to pay until the debtor
25 completes its sale of assets. That is what the defense is here,

1 so let's be very, very clear about it.
2 It's not an oral agreement, it's something that he's
3 making up in his head that he didn't make up the first time,
4 that he changed the second time, and that he — that he can't
5 describe at all. One of the interrogatories said: When did
6 this take place. He didn't answer that part of the
7 interrogatory. He hasn't told us.
8 And here is the interesting thing, Your Honor. He's
9 partially performed. He has admitted in response to — I forget
10 if it was an interrogatory or a request to admit, it's in our
11 papers — he has admitted that in December 2019, after the
12 petition date, and while he was still in control of the debtor,
13 that he made a payment to the debtor, a portion of which was
14 used to pay principal and interest on one or more of the notes,
15 so. So either he made that payment after he made his agreement
16 in his head that it would be deferred, which makes no sense, or
17 he entered the agreement in his head after the time that he made
18 the payment, which would be in violation of the automatic stay,
19 because how did he just get to forgive or to defer payment of an
20 obligation to the debtor without seeking permission from the
21 Bankruptcy Court. Those are the only two possibilities here,
22 okay.
23 So I don't want to have to prepare my client for such
24 nonsense. I don't think we should be required to prepare my
25 client for such nonsense. And if you take a look at the other

1 so-called affirmative defenses, he's got waiver, but he doesn't
2 know — he doesn't identify how we waived, when we waived, who
3 waived. And, in fact, it's completely contradicted from the
4 evidence that's already in the record. Every single monthly
5 operating report, all of the debtor's contemporaneous books and
6 records, they're in the record. I actually submitted them in
7 opposition to his first request for an adjournment of this
8 proceeding because I wanted — I put my cards on the table, Your
9 Honor. I really don't — I don't like to play games. I put my
10 cards on the table. They see all of that. All of that is
11 there. The debtor has — can see them. So how could we have
12 waived everything.
13 Consideration, I'm supposed to prepare my client to
14 answer questions on his defense of lack of consideration, when
15 Mr. Dondero has already admitted that he received the face
16 amount of each note at the time the note was executed? What —
17 we should not be entertaining this.
18 And let's talk about topics 14 to 17, the so-called
19 other loans that were forgiven. Mr. Dondero was the president
20 and chief executive officer of this company for decades. Has he
21 identified one single person who received a forgiven loan?
22 Nope. Has he identified one loan that was ever forgiven? Nope.
23 Has he ever contended that he had a forgivable loan? Nope.
24 He's got this vague and ambiguous defense that somehow — it's
25 not even a defense, frankly. His defense is that he had an oral

1 agreement with himself, either he did or he didn't, right.
2 We've got document requests outstanding. They were due weeks
3 ago. Mr. Aigen has promised me in writing tomorrow, tomorrow,
4 Friday. May 21st, he's going to complete his document
5 production.
6 We've gotten two documents so far, two bank statements
7 that show his receipt of the loan proceeds, right. We don't
8 have — there is no evidence for this. We don't have the
9 identification of a loan that was ever forgiven. We don't have
10 the identification of a person whose loan was forgiven. We have
11 nothing. How can we possibly prepare?
12 Rule 30(b)(6) actually requires them to describe with
13 reasonable particularity the matters for examination. How do I
14 prepare my client on — on these things? What he's trying to do,
15 I think what they're trying to do is be cute, of course, and
16 they're trying to — they want to ask Mr. Seery and Mr. Seery
17 will say, 'I don't have any knowledge of this.' And then
18 they're going to show up to trial and they're going to put on a
19 case and say, 'Mr. Seery didn't have any knowledge of it, so he
20 can't rebut,' or something — something silly like — I mean I
21 don't really know what they're doing. This is just such bad
22 faith.
23 Your Honor, you heard counsel say that the loan was
24 forgiven or deferred, but it's not even forgiven. So — so it
25 doesn't even make sense, but you heard him say that he was

1 underpaid, that Mr. Dondero was underpaid and that there's some
2 connection not with forgiveness because he's admitted that he's
3 now changed his story, it hasn't been forgiven. It was
4 originally forgiven, now it's just deferred, and that that
5 happened because he was underpaid. Does that make any sense at
6 all?
7 The guy who was in control of this enterprise from day
8 one, and I'm supposed to prepare my client to provide a history
9 of Mr. Dondero's compensation. He doesn't know what he was —
10 did he not pay his taxes? Should we go down that path and
11 should I now start subpoenaing his tax returns? Because I think
12 that's appropriate. If you want to ask what I have, I want to
13 know what you have. So maybe Mr. Aigen can agree on the record
14 that I can have Mr. Dondero's tax returns. If he'll do that
15 maybe I'll reconsider, because this is nonsense, Your Honor.
16 And that's really the point. And I want to nip this in the bud
17 now because this is the first of five note cases for entities
18 owned and controlled by Mr. Dondero, and the same thing is
19 happening in some of these other cases, Your Honor. It is.
20 And — and if we go down this path, you know you're the
21 Judge, you make the call, but we're going to be having a lot of
22 these because I'm not volunteering putting my client through
23 this process. It's not right. It's just not right.
24 He made an oral agreement with himself? Please. You
25 either violated the automatic stay or you partially performed,

1 thereby proving it never happened. Mr. Aigen says, oh, we
2 contest it. We don't sit here and contest it. The proof is in
3 the record. The proof is his client's own words. The proof of
4 the documents that we've already put before the Court. (Briefly
5 garbled audio) — never happened.
6 And I just — I just want to nip this in the bud.
7 That's really our point, Your Honor. To put forth a client in —
8 in a notes action, the simplest form of action there could
9 possibly be, to answer questions on 13 different topics, but
10 there's a limit to what we'll do, and this is our limit. And
11 that's why we won't — we won't do it in the absence of a court
12 order.
13 THE COURT: Okay.
14 MR. MORRIS: Thank you, Your Honor.
15 THE COURT: All right. So I will give the last word
16 to you, Mr. Aigen. What would you like to say in rebuttal?
17 All right. You must be on mute.
18 MR. [SPEAKER]: He's on mute.
19 MR. AIGEN: Sorry.
20 THE COURT: Okay.
21 MR. AIGEN: A few quick points, Your Honor. Number
22 one, counsel has referred to New York procedure on how he could
23 file a quick summary judgment. Well, he can file summary
24 judgment here too. They didn't do it. These defenses are
25 pending, we have a right to take discovery on it. I think

1 that's pretty straightforward.
2 Number two, counsel has repeatedly stated, as he
3 states in his pleading, that we changed our position and that
4 first answer it said that the notes were forgiven. It doesn't
5 say that. I'm reading from their pleading at paragraph 16 where
6 they quote our answer, the original one where it says,
7 "Defendant asserts that plaintiff's claim should be barred
8 because it was previously agreed by plaintiff that plaintiff
9 would not collect on the note." There's no change in the
10 position. It wasn't asserted before these notes were actually
11 forgiven, so that's just not true, and his own pleadings reflect
12 that.
13 We also heard a lot of conversation about what we have
14 given them. We have answered their interrogatories. They
15 didn't ask about other people who may have loans forgiven. They
16 had never asked about that. That's why we haven't told them.
17 They could get that information. They could serve discovery.
18 They're the one that wanted this case on a fast track. So keep
19 talking about discovery or answers he doesn't have because those
20 are answers to questions he never asked. There is no discovery
21 out there where they said to us identify the individual who you
22 believe received loans that are forgiven. They never asked
23 that. That's why they don't —
24 THE COURT: Let me —
25 MR. AIGEN: — that answer, so I don't think that's

1 right.
2 THE COURT: Let me ask you this. If Bank of America
3 loaned money to Mr. Dondero and he defaulted and they sued him
4 on the note, do you think Mr. Dondero could get discovery
5 regarding all other borrowers or any other borrower that Bank of
6 America may have lent money to and did they forgive some of
7 their indebtedness, did they have special arrangements? Do you
8 think in a million years a state court judge would allow
9 discovery on this?
10 MR. AIGEN: Not under that hypothetical, but I would –
11 what I would say, Your Honor, if there was an oral condition as
12 part of that loan and it turns out that everyone knew that Bank
13 of America provided those same oral conditions to a subset other
14 group of lenders – or borrowers, for whatever reason, and the
15 parties disputed that, then I think it would be discoverable.
16 So I think the situation here is –
17 THE COURT: Oral agreements –
18 MR. AIGEN: – different from your situation. I agree
19 with the hypothetical.
20 THE COURT: I mean again I – you know, oral
21 agreements. I mean give me examples of case law where oral
22 agreements somehow prevailed at the end of the day. I mean I
23 just...
24 MR. AIGEN: And, Your Honor, at summary judgment, when
25 we have to present our case, we'll present our case. Like I

said, they could have filed the summary judgment on day one, just like they could do in New York, and said, you know, on the defenses, but we're doing this and we're doing it on a fast track obviously with trial in less than two months. So this is our one opportunity to get discovery. And when they filed their summary judgment, we'll respond with the law. But until they do, for whatever reason they have waived it. They have told you that it would be burdensome to allow him to answer a few other questions. I don't — for one thing, burden was not an objection they made, so he's talking about how it's burdensome and he doesn't want to do it. But this is our one opportunity to get this information. And if they file summary judgment, and, you know, these defenses go away, obviously it won't be an issue later, but this is our one opportunity to get this discovery.

THE COURT: Okay.

MR. MORRIS: Your Honor, if I may? Just one last point. There is zero chance, zero chance that if any loan was ever forgiven by the debtor that it was on the same terms on which Mr. Dondero now claims his loan would be forgiven or deferred. And how do I know that? Because if you look at his response to the interrogatory, the condition subsequent, by them. And Mr. Aigen is just wrong, he did change his answer. His original answer was that he wouldn't have to pay. And then his new answer, his amended answer is that he wouldn't have to pay until a condition subsequent. And when we asked him what

1 that condition subsequent was, it was the liquidation of certain
2 assets. Since the liquidation of those assets has not been
3 completed, by definition, no other maker could have had a note
4 or an oral agreement or an agreement of any kind of the type
5 that Mr. Dondero has. So yet another reason why it fails to
6 meet the burden, they fail to meet the burden under Rule 26.
7 Nobody could have ever had the same note forgiven or agreement,
8 because the condition subsequent hasn't been met yet.
9 THE COURT'S RULING ON THE MOTION TO COMPEL
10 THE COURT: All right. Well, I'm going to deny the
11 motion to compel. I don't think that the burden has been met to
12 establish the relevance of these, I guess it's — one, two,
13 three, four, five — six topics that are now at issue, topics 9,
14 14 through 17, or 20, and, you know, I don't think the
15 proportionality standard is met here.
16 I do think it would be not proportionate to the needs
17 of the case for the CEO, who came in place in 2020,
18 postpetition, two years after these notes were executed, to have
19 to go do research about any loans made by Highland to any
20 officers and employees over the years and, you know, I don't
21 know who he's going to question, what policy he is going to look
22 into that might be some substance or evidence as to oral
23 agreements or forgiveness. I don't think he should have any
24 obligation to search files and interview people to figure out
25 what the affirmative defenses and Mr. Dondero are all about or

1 based in. And, again, no one would have better information
2 about his own compensation than Mr. Dondero himself.
3 I mean I want to stress that this comes against a
4 backdrop of — well, it seems like some antagonism, to say the
5 least, on the part of Mr. Dondero where Mr. Seery's concerned.
6 It seems like it's always a fight with Mr. Seery. And you say,
7 well, we didn't handpick him as the 30(b)(6) witness, but, you
8 know, the motion to compel names him by name. It just — it
9 feels like another antagonistic move.
10 You've got him for a deposition next Monday on 13 or
11 so different topics. I think it is appropriate to draw the line
12 on these six or so topics that again just don't seem relevant or
13 proportional to the needs of the case.
14 All right. So, Mr. Morris, would you please upload
15 just a simple order reflecting the Court's ruling?
16 MR. MORRIS: I would be happy to, Your Honor.
17 THE COURT: Okay. Actually I'm going to ask Mr. Aigen
18 to do it. I'm sorry. I need to be thinking about attorney's
19 fees and who should bear the costs of what.
20 So, Mr. Aigen, would you please electronically submit
21 an order?
22 MR. AIGEN: Yes.
23 THE COURT: All right. Thank you.
24 All right. Well, if there's nothing else on this
25 particular adversary, let me just double check. Any

1 housekeeping matters before I move onto the other adversary?
2 MR. AIGEN: Not from the debtor, Your Honor.
3 MR. CLUBOK: Your Honor, —
4 THE COURT: All right.
5 MR. CLUBOK: I don't know if you're about to move on.
6 Your Honor, can you hear me?
7 THE COURT: I'm sorry, Mr. Clubok?
8 MR. CLUBOK: Your Honor, —
9 THE COURT: Were you weighing in on —
10 MR. CLUBOK: Yeah, I'm — I'm sorry. It's not about
11 that proceeding, but are you about to move on beyond — beyond
12 the Highland matters?
13 THE COURT: No, no, no.
14 MR. CLUBOK: There was another Highland matter —
15 THE COURT: I was next — I was next going to go to the
16 other adversary, the dispute between the committee and seven or
17 so defendants. And, yes, I know we have UBS I guess all day
18 tomorrow unless anything has changed. So we'll — we'll hear
19 before we're done any previews about tomorrow.
20 All right, so moving on —
21 MR. CLUBOK: Thank you.
22 THE COURT: — the Committee versus CLO Holdco,
23 20-3195. We have a committee motion to basically stay the
24 adversary proceeding for 90 days. So I will get lawyer
25 appearances on that.

1 Who do we have appearing for the committee, the
2 movant?
3 MS. MONTGOMERY: Yes, Your Honor. Paige Montgomery
4 for the committee.
5 THE COURT: All right. And for the defendants, who do
6 we have appearing?
7 MR. PHILLIPS: Good morning, Your Honor. Louis M.
8 Phillips on behalf of Highland Dallas Foundation and CLO Holdco
9 Ltd., along with my associate Amelia Hurt.
10 THE COURT: All right. I saw your —
11 MR. DRAPER: Good morning, Your —
12 THE COURT: — pleading filed at 9:00 something last
13 night.
14 Any other defendant appearances?
15 MR. KANE: Yes, Your Honor, —
16 MR. DRAPER: Yes, Your Honor. Douglas Draper on
17 behalf of the Dugaboy Investment Trust —
18 THE COURT: All right. Thank you.
19 MR. DRAPER: — and Get Good.
20 THE COURT: Oh, okay. Thank you.
21 Other appearances?
22 MR. KANE: Yes, Your Honor. John Kane on behalf of
23 Grant James Scott, III.
24 THE COURT: Okay. Mr. Kane, your volume was very low.
25 You're — you're Mr. Scott's counsel as trustee for these trusts?

1 MR. KANE: In – in a sense, Your Honor, and in his
2 individual capacity. I no longer represent CLO Holdco.
3 THE COURT: Okay. I don't know if you got that at
4 all, Michael. It was so faint.
5 THE REPORTER: Yeah, I got a little of it, but it –
6 THE COURT: Okay. you're no longer representing CLO
7 Holdco, Ltd., but you're representing Grant Scott in his trustee
8 capacity for these two trusts?
9 MR. KANE: Your Honor, Grant Scott is no longer the
10 acting director or trustee of CLO Holdco, but he was a named
11 defendant in this action based on his time as trustee or
12 director of CLO Holdco, and I represent him in that capacity.
13 THE COURT: Okay. Any other defendant appearances?
14 MR. ASSINK: Good morning, Your Honor. This is Bryan
15 Assink for Mr. Dondero.
16 THE COURT: Okay. Any other appearances?
17 All right. Well, Ms. Montgomery, you may make your
18 argument.
19 MS. MONTGOMERY: Thank you, Your Honor. And thank you
20 for taking the time to consider our motion so quickly.
21 I'd like to just briefly address how we plan to
22 proceed today. To make more time, we'd like to give a brief
23 opening statement. I'm not sure who among the defendants
24 intends to be heard specifically today in opening, but at the
25 conclusion of that we would like to proceed to testimony. We

1 have Mr. Kirschner, who you can see on the screen, Your Honor,
2 and he's here today. We plan, for efficiency sake, to put him
3 on by proffer to the extent that that is acceptable to the
4 Court. And then he will be available to answer any questions
5 that the Court or the defendants may have.
6 THE COURT: All right.
7 MS. MONTGOMERY: As you can see in our motion, we're
8 requesting a 90-day stay of the adversary proceeding. And the
9 purpose for that stay is to allow Mr. Kirschner and his firm,
10 Teneo, the time they need to get up to speed on this case.
11 Stepping back for a moment, it was always the
12 committee's intention have these claims prosecuted by the
13 ultimate litigation trustee. However, due to a disagreement
14 about certain funds that are held in the Court's registry, the
15 clock started ticking on the committee's time to bring this
16 adversary proceeding. So but for the order that the committee
17 commenced an adversary proceeding by a date certain, this action
18 would have been brought at a later time by a litigation trustee
19 post effective date as part of a comprehensive litigation
20 strategy related to all estate claims.
21 For a variety of reasons the effective date of the
22 plan has been repeatedly delayed, which has necessarily delayed
23 the formation of the litigation subtrust. We're coming up on
24 two years since the filing of the bankruptcy proceeding and
25 there's limited time available for the trust to be formed and

1 the trustee to develop a comprehensive litigation strategy.
2 As the Court may have noted, as we are wrapping things
3 up, two of our four committee members have also recently
4 retired/withdrawn from the committee. So as a result last
5 Friday, the committee filed an application —
6 THE COURT: Just inquiring minds want to know. I mean
7 did they — did they by chance sell their claims or they just
8 were tired of the committee role?
9 MR. CLEMENTE: Your Honor, if I may? It's Matt
10 Clemente. I'll just jump in on that, Your Honor, —
11 THE COURT: Um-hum.
12 MR. CLEMENTE: — very quickly. I don't know how
13 anybody could be tired of being on the committee, but the answer
14 is, Your Honor, that they both sold their claims and
15 claim-transfer notices have been placed on the docket. The
16 United States Trustee is aware and the trustee's position at
17 this point is to keep the committee at the two members, which
18 are Meta E and UBS, as we continue forward here through the case
19 and hopefully to an effective date in the near future.
20 THE COURT: All right. Thank you.
21 All right. Ms. Montgomery, continue.
22 MS. MONTGOMERY: Thank you, Your Honor.
23 So as a result, last Friday the committee filed an
24 application to retain Mr. Kirschner and his firm as litigation
25 advisor to the committee until the plan goes effective and the

1 litigation subtrust is formed. At that point Mr. Kirschner will
2 become the litigation trustee under the plan and he'll be
3 responsible for all claims brought seeking recovery on behalf of
4 the estate. So obviously under the terms of the plan, our
5 client, the committee, will cease to exist at that point and
6 responsibility for the adversary proceeding that we're currently
7 being heard in will pass to the litigation trustee. And there
8 will be a new oversight committee, which has not been formed yet
9 either as of the effective date.
10 So because this adversary proceeding will transfer to
11 the litigation subtrust upon the effective date of the plan,
12 it's imperative that Mr. Kirschner be involved in the
13 prosecution of the adversary proceeding immediately and the
14 development of legal strategy for all of the estate claims as a
15 whole. For a number of reasons, the 90-day stay of the
16 adversary proceeding will provide Mr. Kirschner with the
17 necessary time he needs to get up to speed.
18 Mr. Kirschner needs to familiarize himself with the
19 Byzantine structure of the debtor and the relationships among
20 the debtor and its thousands of related entities and insiders.
21 The corporate structure, as you have noted on several occasions,
22 is highly complicated. And the ownership and beneficial
23 ownership of entities is confusing enough even before you
24 consider the variety of transfers of estate assets between and
25 among those entities — entities. We've heard these

1 relationships described as tentacles. I tend to think of them
2 as a web, and the allegations of this adversary proceeding
3 represent only a small section of strands.
4 Mr. Kirschner also needs time to familiarize himself
5 with the pending motions to withdraw the reference and the
6 motions to dismiss, and to develop the strategy which could
7 significantly change the trajectory of the adversary proceeding
8 and future adversary proceedings. Mr. Kirschner's decisions
9 regarding how to respond to these motions may change the course
10 of the litigation in ways that are material to the pending
11 motions. For example, he could determine to amend the complaint
12 or he could bring additional claims that the committee does not
13 have standing to bring on its own. For example, breach of
14 fiduciary duty. Importantly, there could be arguments
15 surrounding the motion to withdraw the reference and have
16 impacts on the other actions that may be brought by Mr.
17 Kirschner in his role as litigation trustee.
18 The strategy surrounding plaintiff's response to the
19 motion to withdraw the reference may also depend on facts that
20 have not yet been developed. Mr. Kirschner should be given at
21 least some time to develop that strategy.
22 It's also worth noting that the notice period on Mr.
23 Kirschner's retention application does not end until June 7th,
24 which is after the current hearing date for the motions to
25 withdraw the reference, which are set for June 3rd. Given his

1 proposed role as litigation advisor and his future role as
2 litigation trustee, he will be responsible for this adversary
3 proceeding, he should be involved in the strategy to oppose the
4 motions to withdraw the reference.
5 As you know, Your Honor, the Highland entities have an
6 extremely complex structure involving obscure relationships and
7 ownership structures. Mr. Kirschner not only has to get up to
8 speed with those facts, but he also needs to wrap his hands
9 around the transfer of information obtained from both the debtor
10 and the committee over the course of these proceedings. So this
11 adversary proceeding is just one part of the complexity that is
12 the estate claims, but it's an important part and he should have
13 time to ensure that he's proceeding in the most efficient way
14 and in the way that's best for the debtor's estate.
15 In addition to needing to get up to speed on the facts
16 giving rise to this case, Mr. Kirschner is also — will be
17 working on a comprehensive strategy for all estate claims. As
18 pointed out in the response that was filed last night, since he
19 is familiar with the adversary proceeding, obviously, we filed
20 it, and we did so after tedious review of thousands of
21 documents, and it took us months to put together a picture of
22 the transactions that are underlying the complaint, and those
23 months were after we had been actively involved in these
24 proceedings for over a year, so it's a very complicated —
25 there's some pretty complicated stuff going on there.

1 We also believe that we provide competent
2 representation, which is at least tangentially challenged in
3 that response, but we're the lawyers that represent the
4 committee. We're not the party that's responsible for the
5 decisions of the underlying management of the litigation.
6 Obviously lawyers take direction from their clients and ours as
7 of the effective date will no longer exist, and Mr. Kirschner
8 will be the person who's responsible for making those decisions.
9 So to put it slightly differently, we may be driving
10 the car but we're not deciding, you know, where the car is
11 going. That's the client's decision.
12 I am at least somewhat offended by opposing counsel's
13 implication that the motion to stay was brought in bad faith
14 because it smelled that there might be some litigation
15 advantage. All I can do in response to that, Your Honor, is
16 assure the Court that the stay is not being sought for such a
17 purpose. To the extent that there's any gamesmanship occurring
18 in these proceedings, it's not us that's engaging in it.
19 Mr. Kirschner is entitled to gain his own
20 understanding of the issues underlying this adversary and of the
21 litigation landscape as a whole, and to have an orderly
22 transition of responsibilities from the committee, the debtor,
23 and counsel for both before he's asked to make important
24 strategic decisions that could have long-lasting implications on
25 his work.

1 In short, Your Honor, there is no rush to have the
2 pending motions heard and no prejudice to defendants by a stay
3 of proceedings. As they point out in their response, the Court
4 has delayed the hearing on the motion to dismiss until after
5 consideration on the motion to withdraw the reference.
6 Additionally, as they make clear in their response, discovery is
7 not underway at this point. We still haven't effectuated
8 service as to all defendants. We have some defendants that are
9 foreign entities and we're still working through the service of
10 process. We're not entirely sure how much longer that's going
11 to take, but it has proven to be a lengthy process to date, and
12 we don't really have an estimated time for when that will be
13 done. So, if anything, there is an ideal time for a pause on
14 proceedings that won't prejudice any party.
15 The only purported harm our opponents have identified
16 is the delay itself, and I have to admit, Your Honor, that this
17 is the first time I've ever heard a defendant argue that they're
18 prejudiced by litigation against them not proceeding. In fact,
19 we reviewed the cases that are cited in the response that
20 purport to support a right of good — to a determination of
21 rights and liabilities without undue delay. Unsurprisingly,
22 both involve instances of a defendant seeking to delay
23 prosecution of a plaintiff's case rather than the reverse, as we
24 see here. And in those cases, the stays that were sought were
25 either indefinite or extremely long. They were not a brief

1 90-day extension of the sort recognize requested here. There's
2 simply no prejudice to the defendant in the adversary by staying
3 the proceeding for 90 days.
4 On the other hand, the 90-day stay of the adversary
5 proceeding will provide Mr. Kirschner with the time that he
6 needs to develop an understanding of this adversary proceeding
7 and the litigation strategy as a whole. And moving forward
8 without the stay may very well prejudice the future litigation
9 subtrust and harm the debtor's estate.
10 That's all I have for now, Your Honor.
11 THE COURT: All right. A couple of questions. You
12 said there's been no service on certain defendants, and I know
13 that certain of these defendants are said to be Cayman Island
14 entities, these various Charitable — Charitable Daf (phonetic),
15 maybe CLO Holdco Ltd, Charitable Daf Fund, those three in
16 particular, right, right foreign entities? Okay, so they have
17 gone —
18 MS. MONTGOMERY: Yes, Your Honor.
19 THE COURT: — they have not — those are the three, I
20 presume, that have not been served?
21 MS. MONTGOMERY: CLO Holdco has been served, the
22 others have not.
23 THE COURT: Okay, okay. Thank you. I'm sorry, I'm
24 getting a little mixed up. So there's been money in the
25 registry of the Court and I remember that was why early on I

1 sort of created a quick time table for you all getting this
2 filed. How much money is still in the registry of the Court? I
3 remember there were agreed orders that some of it could be paid
4 over, I think, to Mr. Rocatta (phonetic). I can't remember who
5 — who all. But is there still a substantial fund in the
6 registry of the Court without me going online and looking that
7 up?
8 MS. MONTGOMERY: I'm going to have to look and get the
9 exact numbers as well, Your Honor, but it's the portion of the
10 moneys that were purportedly payable to CLO Holdco are still in
11 the Court's registry.
12 THE COURT: Okay. So it's just that defendant's
13 funds. And am I also correct that now the debtor ultimately has
14 a majority interest in CLO Holdco, the debtor itself, because of
15 that Harbor Vest (phonetic) settlement?
16 MR. PHILLIPS: No, Your Honor.
17 THE COURT: Oh, that's not right?
18 MR. PHILLIPS: I don't think so, no.
19 MR. KANE: Your Honor, this is John Kane. I can
20 actually provide some clarity on that. The Harbor Vest
21 acquisition by the debtor's affiliate relates to HCLOF, Highland
22 CLO Funding, not CLO Holdco. CLO Holdco is the 49-percent
23 interest owner in HCLOF.
24 THE COURT: Okay.
25 MR. DEMO: And this is Greg Demo, Your Honor, from the

1 debtor. I can confirm what Mr. Kane just said.
2 THE COURT: Okay, okay. So CLO Holdco is just
3 strictly in that line of the Charitable Daf and as far as who
4 owns — who owns it —
5 MS. MONTGOMERY: That is — that's my understanding,
6 Your Honor.
7 THE COURT: Okay, okay, so I — once again I have
8 flipped the organizational structure.
9 All right. And then my last question for you, Ms.
10 Montgomery, is the effective date of the plan has not occurred.
11 There's obviously an appeal now at the Fifth Circuit, a direct
12 appeal of the confirmation order. Is there still a stay pending
13 appeal — a motion for a stay pending appeal pending out there
14 either at the District Court or Fifth Circuit, or have those
15 been ruled on one way or the other?
16 MS. MONTGOMERY: Mr. Demo, could you — were you
17 popping on to answer that question?
18 MR. DEMO: Yes, Ms. Montgomery.
19 This is Greg Demo, Your Honor, from Highland Capital
20 Management. We still intend to try to go effective after the
21 hearing on the exit financing, which has been postponed until
22 June 25th. That's counsel to NexPoint Advisors, and counsel to
23 Highland Capital Management Fund Advisors filed a motion last
24 night with the Fifth Circuit seeking a further stay of the — of
25 the effective date, pending the resolution of their appeal. So

1 we don't know how that's going to shake out, but the debtor does
2 anticipate trying to go effective following June 25th.
3 THE COURT: All right. So has there been a stay of
4 the confirmation order?
5 MR. DEMO: We've agreed to a short administrative
6 stay —
7 THE COURT: Okay.
8 MR. DEMO: — as all this stuff has been going on. I
9 believe the administrative stay — actually I can't remember when
10 it expires, but we have agreed to a short administrative stay.
11 THE COURT: Okay. And so it's —
12 MR. DRAPER: Your Honor, this is Douglas Draper.
13 THE COURT: Okay, go ahead.
14 MR. DRAPER: Just to give the Court some background, —
15 THE COURT: Go ahead.
16 MR. DRAPER: — there were two — you denied the stay
17 pending appeal. There were two appeals taken from your ruling.
18 One by myself on behalf of Dugaboy and one by Devor (phonetic)
19 on behalf of other entities. They both went up to Judge Godbey.
20 He has never ruled on the stays pending appeal. So what was
21 done is inasmuch as the motion — the appeal of the confirmation
22 order is up in the Fifth Circuit, last night Devor filed a
23 motion for a stay pending appeal in the Fifth Circuit, and
24 that's pending. So that's the procedural background of what's
25 gone on.

1 THE COURT: All right. Thank you, Mr. Draper.
2 All right. Well, I'll hear opening statements from
3 our defendants. And I ask you please not to be duplicative of
4 each other. So who wants to go first for the defendants?
5 MR. PHILLIPS: Your Honor, Louis M. Phillips on behalf
6 of Highland Dallas Foundation and CLO Holdco Ltd. We filed a
7 response in opposition to the motion to stay. And we are the
8 ones who, my firm and I, and I'm the one that filed, that sent
9 messages across to counsel for the committee in response to the
10 request for consent or notice of opposition. So I guess since
11 we filed the response we ought to go forward.
12 We have reviewed the — we laid out a time line in our
13 response. We've laid out communications between counsel and our
14 response. We laid out what we think the burden is. And we've
15 laid out the case law that we think establishes the burden for a
16 stay.
17 What we are concerned about is the — first of all, the
18 90-day stay, it might even come around as far as further
19 activity in the lawsuit because we don't know what the Court
20 would do on June 3rd. We know that the Local Rules require that
21 — or set forth that the Court will issue a report after the
22 conference on June 3rd about — to the District Court concerning
23 the motion to withdraw reference. We filed a motion to withdraw
24 reference. We filed a first response to the litigation, A, a
25 motion to withdraw reference; and, B, a motion to dismiss under

1 Rule 12(b)(6) and a motion for a more definite statement as
2 well. Both our filings were followed by other defendants who
3 sought withdrawal of the reference and also dismissal.
4 This Court has pushed aside the motion to dismiss
5 pending resolution of the — of the motion to withdraw reference,
6 which we think is entirely appropriate and we're fine with, so
7 where we are, Your Honor, —
8 THE COURT: And let me — let me just interject there.
9 That is always 100 percent of the time my practice, and I think
10 the other bankruptcy judges here. It's out of deference to the
11 District Court. If the District Court ends up withdrawing the
12 reference, they may want to say, 'I want to withdraw the whole
13 darn thing. We don't even want you doing pretrial matters,' so
14 we don't want to get ahead of them by considering a pretrial
15 matter. So I did what I do in every case and will take the next
16 steps —
17 MR. PHILLIPS: And we agree a hundred percent with
18 that approach, Your Honor. We didn't really know how we were
19 going to proceed on the motions to dismiss. But we had
20 deadlines to filing and we got very brief extensions for one of
21 our clients to file a response to the complaint after service.
22 On the other client, we didn't get any extension to file a
23 response. So we filed timely responses and we didn't know how
24 the Court was going to handle the motion to dismiss. And the
25 way the Court just handled them is entirely what we — we agreed

1 that that was the way to do it, because the District Court has
2 several alternatives if it determines to withdraw the reference.
3 And we know the courts, we've looked at the Court's Local Rule.
4 We just don't know how long, and we have no control and we're
5 fine with having no control over how long the Court would —
6 would have to take, given its docket, to issue its report to the
7 District Court. And we have no control over what the District
8 Court would do.
9 Our problem with the motion for a stay is that we know
10 that the only things really pending now are motions to withdraw
11 reference. Those are subject to being brought before Your Honor
12 at either kind of a hearing/conference where the parties will
13 put forth their legal arguments and any evidence, but the
14 evidence will basically be the nature of a litigation and the
15 situation of the docket. So there's no real factual issues in
16 dispute. We have a lawsuit, we have a motion to withdraw
17 reference that's been briefed. We grant an extension of the
18 response deadline to May 21st in connection with the request by
19 counsel. And we purposely asked the Court for the June 3rd
20 date, all with agreement of all counsel. And then two days we
21 get the emergency motion — or last night, yesterday we get the
22 emergency motion to stay when the litigation assistant was, in
23 fact, retained on the day or two after we filed our responses.
24 And there was no mention in any way, shape, or form of a need to
25 stay at that time.

1 So we have one thing pending: Motions to withdraw the
2 reference. We have reviewed and set forth in our response the
3 scope of services for which Teneo was being retained. It does
4 look to us like it is — it looks like litigation support and
5 litigation analysis.
6 And I hear what counsel for the plaintiff is saying,
7 but there have been — she's — we agree that there has been
8 months and months and months of analysis, there have been
9 millions and millions and millions of dollars spent on U.S. —
10 UCC counsel fees. They have gone through thousands and
11 thousands of documents. They came up with this piece of
12 litigation. This is the one I know about. This is the one
13 pending before the Court. And there might be — there is a
14 suggestion that there is an overarching litigation strategy
15 being employed, but this is what we have right here. And that's
16 speculation that we have no idea about and we assume the Court
17 has no idea about.
18 So we have one thing that we want decided and it's
19 easy for a plaintiff to say — and, look, we're chastised for
20 being defendants who want to move the lawsuit. One of our
21 clients didn't even ask for an extension of the deadline to
22 respond. We have — we asked for one extension for one of
23 clients. And that extension dovetailed into the response date
24 for the other client so that we could file a single response for
25 both clients. That was granted. We appreciate that. And when

1 the committee asked for an additional time, we granted it with
2 the proviso that we get the June 3rd date so that if we need to
3 file a reply, we'd have three or four days to file the reply.
4 We have been — we have not been the ones asking for
5 any delay and we're not going to ask for any delay. And so I
6 don't care what other cases say, I don't care what the
7 plaintiff's lawyer says about defendants always want to delay.
8 We're not asking for any kind of delay. We want to move
9 forward. And we think we have the right to figure out and find
10 out what court is going to be handling our litigation. That's
11 what we're asking for.
12 We've already said in the communications that we've
13 listed on our witness and exhibit list that we'll be more than
14 happy to talk about some type of stay about motions — you know,
15 discovery, whatever, whatever, if there — if the litigation
16 advisor needs to get up to speed on what documents are out
17 there, what documents it would have to review, that's fine.
18 We're probably going to do some discovery. But we're only going
19 to discovery if our motion to dismiss under 12(b) are not
20 granted, because if they are there doesn't need to be any
21 litigation advice or any analysis about alternatives or
22 objectives or overarching strategy to deal with the motion to
23 dismiss under Rule 12(b). That's a legal issue. And the
24 counsel is very adept — we say counsel's adept. We know they're
25 adept. That's why we know that they are ready to proceed in

1 response to our motion to withdraw reference.
2 And then if the District Court takes it after Your
3 Honor gives her report, then we'll bring the motions, we'll get
4 with the lawyers for the plaintiff and we'll make — bring our
5 motion to dismiss before the District Court on some kind of
6 agreed schedule, but those are legal issues. There is no advice
7 needed for a motion to withdraw reference. There's no advice
8 needed for a motion to dismiss under 12(b). Those are legal
9 questions and — and the idea that Sidley and Austin needs
10 assistance from an advisor as to how to approach a legal issue,
11 we don't think is meritorious.
12 So, Your Honor, we have put — we have a witness and
13 exhibit list of six documents. One is — Document 1 is the
14 application to employ the Teneo firm. 2 is the — 2, 3, 4, 5,
15 and 6 are email communications we have provided them. They are
16 between counsel that are before the Court here today, just to
17 show that we granted extension for them to respond, then they
18 ask, and we responded, and so that they were on notice that we
19 opposed the requested stay. And we would like for the motion to
20 withdraw reference to go forward.
21 The parties will have plenty of time to work out
22 discovery, Rule 26 issues, motion for relief — motion to dismiss
23 under 12(b) in front of whichever court is going to handle it.
24 Certainly this Court is — if the motion to withdraw reference is
25 denied, this Court will be in full control of when we have

1 hearings on the motion to dismiss. And we understand that. So
2 will the District Court if the District Court grants the motion
3 to withdraw the reference. The District Court will determine
4 hearings on the motion to dismiss under Rule 12(b). And then we
5 have those two things to get past. And those are legal
6 questions, legal questions that are already before the Court or
7 already there. So we don't see how additional time is necessary
8 with respect to that.
9 We think by the time the stay — quote stay expires
10 we'll have a determination at least on the withdrawal motions.
11 And we can probably have a setting on the dismissal motions.
12 And if there — if the plaintiffs survive dismissal, then we'll
13 have discovery that all litigants will be involved in and
14 agreeing to and with scheduling orders, et cetera, from whatever
15 court is going to try this case.
16 And I'd like to say also that once we have — CLO
17 Holdco has been involved in the bankruptcy case. We recognize
18 that. I was not the lawyer for CLO Holdco, but I'm representing
19 CLO Holdco now. The Highland Dallas Foundation has not been.
20 And the Highland Dallas Foundation is a charitable organization
21 that has institutional people on the board, has one donor seat
22 on the board, but it's — it's being sued for twenty something
23 million dollars. And the idea that it has no interest in
24 getting this resolved is not correct. It wants to get it
25 resolved and that's why we're opposing this stay. Thank you,

1 Your Honor.
2 THE COURT: All right. A couple of follow-up
3 questions. I'm struggling a bit with the fact that we have a
4 couple of defendants, two or three defendants that have not even
5 been served yet. So is it appropriate for this Court to be
6 going forward on a motion to withdraw the reference when I don't
7 know what's going to happen with those two defendants. Are they
8 going to be served? If so, what sort of position are they going
9 to have with regard to the reference being withdrawn?
10 And, in any event, ultimately I'm going to have to
11 slice and dice this in a report to the District Court saying,
12 you know, these entities filed proofs of claim and that may
13 affect the authority of the Court, you know, maybe it does. I
14 mean a part of me thinks what's going on here and should we just
15 wait till they have been served so we have the ability to report
16 to the District Court: Here is every defendants' position on
17 this.
18 MR. PHILLIPS: Your Honor, I can't answer the
19 question. I don't — I mean it seems to me like we have — we
20 have — CLO Holdco was served. And it is a foreign entity. We
21 don't know why the other two have not been served. I'm not — we
22 just don't know. So I mean does that mean if we — I mean we had
23 to go forward, we had to answer, we had to respond. We had a
24 deadline to do it. It didn't matter that two hadn't been
25 served. And so we — you know, if we hadn't responded, given our

1 service, we would have had a default entered against us and a
2 request for a default judgment. So I don't know the answer to
3 the question because I can't imagine that a plaintiff can file a
4 lawsuit and then the lawsuit was filed months ago and not serve
5 two people and keep the defendants hung up.
6 I don't know if there is a problem of service. There
7 was one entity that got served that is a foreign entity. I
8 don't know why the other ones haven't been served. The Highland
9 Dallas Foundation was served. The other parties who have
10 appeared were served. So we have no control over that because
11 we're not serving anybody. And I would think that the part — I
12 did some looking in the — in the record and it seems to me like
13 we don't have — you know, I can't tell you whether we have —
14 what the arguments would be for the parties who have not been
15 served.
16 I would assume given that everybody has — my two
17 clients have filed what they filed. CLO Holdco filed a proof of
18 claim, but it was in effect disallowed and converted to a claim
19 for zero. My other client, Highland Dallas Foundation, has not
20 made any appearance in this case. So all I can say is we think
21 two — I think the two clients that I'm currently representing,
22 we know they have been served. We had a deadline to respond.
23 We have responded. And we think we're entitled to a jury trial
24 and withdrawal of the reference.
25 MS. MONTGOMERY: Your Honor, if I can answer the

1 question. CLO Holdco was served through its counsel, whereas
2 the other two foreign entities require domestication of the
3 subpoena in the Caymans. And it's our understanding that may
4 take as long as — just having heard — as another two months for
5 that process to be complete.
6 THE COURT: All right. My other question I guess is
7 maybe more rhetorical than something you could really answer. I
8 — you know — on the one hand, you know, what Ms. Montgomery is
9 arguing: Our true plaintiff contemplated for this lawsuit isn't
10 in place yet because the plan hadn't gone effective and, you
11 know, some — some of the defendants here or affiliates of
12 defendants are wanting to delay, delay, delay further when the
13 plan can go effective. You know last night a motion for stay
14 pending appeal with the Fifth Circuit was filed. So it's like,
15 no, don't let the plan go forward, let's not get Mr. Kirschner
16 in place. But, oh, don't issue a stay on this lawsuit. It just
17 feels a little bit inconsistent, the two positions. What — do
18 you have anything to say to that?
19 MR. PHILLIPS: I have — all I have to say, all I can
20 say, Your Honor, and that is CLO Holdco, as I understand it, is
21 not an appealing party. My other client that's been served,
22 Highland Dallas Foundation, is not an appealing party. We're a
23 defendant in — in this lawsuit. And so we don't see — we're not
24 in a position to be inconsistent about anything. We're not an
25 appellant. We're not seeking any kind of relief on appeal. And

1 we — but we are defendants who have been served and who have
2 filed motions to withdraw reference. So you will have to ask
3 other people about that. I'm completely consistent in my
4 position.
5 MR. DRAPER: Your Honor, this is Douglas Draper on
6 behalf of Dugaboy, who has both —
7 THE COURT: All right.
8 MR. DRAPER: — appealed your decision —
9 THE COURT: Okay.
10 MR. DRAPER: — and has asked for a stay pending
11 appeal.
12 THE COURT: Okay.
13 MR. DRAPER: It's not an inconsistent position because
14 two reasons. Number one, you gave the committee authority to
15 file this suit. The committee took that authority and filed the
16 suit within the time period. So whether the case is going
17 forward or — the stay — the case is stayed and the confirmation
18 order is stayed or not, this action and this entity and this
19 proceeding is going to go forward.
20 And so all we're talking about here, just so we — it's
21 all clear, we're just talking about who is going to try this
22 suit. We're not talking about a master litigation strategy.
23 We're talking about a location. And, quite frankly, it would
24 surprise the hell out of me if — if the new person, or whoever,
25 says, look, I want to go to the District Court.

1 This is just a location issue, nothing more. You can
2 sift through each one of these defendants who have been served
3 as to whether we have a right to a jury trial or not. And each
4 one, as the Court recognized, is on a — on a defendant-by-
5 defendant basis. I did file a proof of claim. Whether I have a
6 right to a jury trial, you're going to have to look at to see if
7 in fact my proof of claim relates to this claim.
8 Mr. — Mr. Phillips is a defendant set of facts. And
9 these other defendants may be a different set of facts. So all
10 we're talking about is location. It is purely procedural. And
11 I don't think the stay at the district — of the confirmation
12 order or not is — is in any way impacts this whatsoever. This
13 is a location question.
14 THE COURT: All right. Any other opening statements
15 from defendants?
16 All right. Ms. Montgomery, you may put on your
17 witness. And I'm fine with the proffer, but we'll then swear
18 him in and see if there cross-examination from the others. All
19 right, you may proceed.
20 MS. MONTGOMERY: Yes, Your Honor. At this point we'd
21 like to proffer Mr. Kirschner's declaration that was submitted
22 in support of our motion for the stay as the content of his
23 proposed testimony. Mr. Kirschner is obviously here to answer
24 any questions you have or on cross-examination after he's been
25 sworn in. And, Your Honor, we would just reserve our right to a

1 brief redirect should that prove necessary.
2 THE COURT: All right. So I have in front of me the
3 Declaration of Marc S. Kirschner. It was actually attached to
4 the committee's motion for stay. It's about four pages long.
5 Let me ask: Are there lawyers who are going to want
6 to cross-examine Mr. Kirschner?
7 Going once, going twice, no one wishes to
8 cross-examine him?
9 THE REPORTER: He's on mute.
10 THE COURT: Oh, Mr. Phillips, —
11 MR. PHILLIPS: Your Honor, I'm sorry. I was on mute.
12 I'm on mute, as I probably already muted, but I was on mute and
13 I apologize.
14 Your Honor, this — this is — this declaration, there's
15 no way to cross-examine a declaration that speaks in conclusory
16 language. The declaration, it was mimicked and mirrors —
17 mirrors exactly as the party looking into the mirror, not as the
18 reverse of the party looking into the mirror, argument by —
19 opening statement by counsel. I would ask a couple of questions
20 of Mr. Kirschner, please.
21 THE COURT: All right. Mr. Kirschner, I need to swear
22 you in. Would you speak up, say, "testing one, two."
23 MR. KIRSCHNER: Yes. Testing one, two.
24 THE COURT: All right.
25 MR. KIRSCHNER: Coming through?

1 THE COURT: I — I hear you, I don't see —
2 MR. KIRSCHNER: Okay.
3 THE COURT: There you are. Please raise your right
4 hand.
5 MR. KIRSCHNER: I can.
6 MARC S. KIRSCHNER, COMMITTEE'S WITNESS, SWORN/AFFIRMED
7 THE WITNESS: I do.
8 THE COURT: All right. Thank you.
9 Mr. Phillips, go ahead.
10 MR. PHILLIPS: Yes, Your Honor. Thank you. Just a
11 couple of questions.
12 CROSS-EXAMINATION
13 BY MR. PHILLIPS:
14 Q. Mr. Kirschner, in paragraph 7 of your declaration, if you
15 could find it. Just let me know when you're there.
16 A. I'm there. Thank you.
17 Q. Okay. Thanks. You say that it's important for your firm to
18 gain an understanding of the complex transactions described in
19 the adversary proceeding, particularly in connection with the
20 motion to dismiss and motions to withdraw reference and complex
21 issues before the Court. What does that mean?
22 A. That means that, as Ms. Paige indicated in her opening
23 statement and as the Court and all the defendants understand, I
24 was — when I was designated as litigation trustee in January,
25 there has been delay after delay after delay in the effective

1 date of the plan, and now we're even at the Fifth Circuit, so
2 the trust and my role as subtrustee has not yet gone into
3 effect. Prior to April 15th, I had no access to the debtor, to
4 the committee, or any of the attorneys, no access through any
5 protected information. I had no input on the complaint.
6 I became worried as the passage of time went on about
7 the possible running of statute of limitations later on this
8 year in October. And it was I who suggested to Mr. Clemente to
9 come up with what is an extremely unusual procedure, to permit
10 the committee retain me on an interim basis until the
11 effectiveness of the trust, and then to flip my work effectively
12 into the trust.
13 This is very unusual. It's not even yet approved by
14 the Court. Nevertheless, I and my firm have worked very
15 diligently since April 15th to get up to speed on this entire
16 complex factual and legal situation. I cannot just look at the
17 Holdco adversary in a vacuum.
18 There has been as the Court and all the parties here
19 know much better than I, there has been ongoing litigation on
20 many fronts for quite a long time. There has been supplied a
21 Byzantine web of some 1400 entities —
22 MR. PHILLIPS: Your Honor, Your Honor, —
23 THE WITNESS: — to accomplish —
24 MR. PHILLIPS: Your Honor, could I interrupt? He
25 needs to answer the question.

1 BY MR. PHILLIPS:
2 Q. What does — what does — what does the understanding about
3 the motion to withdraw reference mean? What do you need to get
4 up to date on the motion to withdraw reference?
5 A. I'm responding to your question.
6 THE WITNESS: If I may, Your Honor, I'm responding to
7 the question. I'm almost done —
8 MR. PHILLIPS: Your Honor, a narrative, a preexisting
9 narrative —
10 THE COURT: Ah, —
11 MR. PHILLIPS: We just — I just want to know. We have
12 legal issues.
13 THE COURT: Okay, I sustain the objection —
14 MR. PHILLIPS: I want to know what he —
15 THE COURT: If you could reask the question and we'll
16 see if we can get an answer —
17 MR. PHILLIPS: All right. I'll reask the question,
18 Your Honor. I'm sorry. I apologize.
19 Your Honor, I'm going to withdraw any questions. I'm
20 — this is — this is going to turn into just an argument. His
21 declaration and conclusory and it's just going to be more
22 conclusion. So I'm — I'm willing to argue from his declaration
23 in closing.
24 THE COURT: All right. Any other questions?
25 No other —

1 MR. DRAPER: None, Your Honor, from Dugaboy.
2 THE COURT: Okay. Anyone else?
3 Ms. Montgomery, do you have any redirect on that brief
4 cross?
5 REDIRECT EXAMINATION
6 MS. MONTGOMERY: Yes. I think, Your Honor, I would
7 just ask if there is anything else that Mr. Kirschner feels the
8 Court should be aware of before reaching a decision on today's —
9 on today's motion?
10 MR. PHILLIPS: Your Honor, we object to that question.
11 That's not even a question.
12 THE COURT: I overrule. He can answer.
13 THE WITNESS: Okay. Thank you very much, Your Honor.
14 As I was saying, there is a Byzantine web here of over
15 1400 entities, many moving intertwined parts. I have literally
16 and my firm has literally had to triage the monumental amount of
17 work that is necessary to get my hands on this overall
18 situation. There's allegations that money's been flying all
19 over the world —
20 MR. PHILLIPS: Your Honor, this is not — this is not
21 appropriate testimony. This is — that's hearsay. There's
22 allegations all — money flowing all over the world. This is —
23 this is a narrative that has nothing to do with the pending
24 motion to withdraw reference and is, in essence, an
25 assassination piece. This is — what we —

1 THE COURT: I overrule. He's trying to explain why he
2 needs 90 days at bottom here, so I think it's relevant.
3 MR. PHILLIPS: Well, the long –
4 THE COURT: And I understand everything's an
5 allegation subject to evidence.
6 MR. PHILLIPS: Well, we're talking about
7 allegations, –
8 MR. [SPEAKER]: Right.
9 MR. PHILLIPS: – we're talking about – we just heard
10 they're allegations about money flying all over the world.
11 That's not an acceptable testimony. You know that and everybody
12 on this call knows that. That's absolute abject hearsay and the
13 idea that you could – you could buttress a motion for stay after
14 you've had 30 days to review a legal analysis about a motion to
15 withdraw reference, because there are allegations of money
16 flowing all over the world is ridiculous. Your Honor, we – we
17 firmly and in this way object –
18 THE COURT: Overruled. I understand you don't like
19 the emotional, if you want to call it, emotional language. You
20 think it's hyperbole, you think it's hearsay, but he didn't – he
21 didn't offer an out-of-court statement. He's just saying the
22 allegations – you know, they're in pleadings, they're
23 allegations in many different adversaries, and so I overrule the
24 objection.
25 You can complete your answer, Mr. Kirschner.

1 THE WITNESS: Thank you very much, Your Honor.
2 All of these complexities in my view potentially
3 impact on the motions to withdraw. I recently realized that I
4 cannot properly perform my fiduciary duty to all creditors by
5 the deadline for a response to the motion to withdraw and the
6 motions to dismiss. I am in fact considering potential
7 amendments to the existing Holdco adversary to possibly other
8 issues that may impact the withdrawal motion.
9 Your Honor said this morning that it's important to
10 take into consideration both procedural and substantive matters.
11 I am worried about potential impacts of whatever I do. And bear
12 in mind, as Ms. Paige indicated, I am — (brief garbled audio) —
13 no process plan. All of this was supposed to have been put in
14 the litigation trust under my auspices. I am now litigation
15 advisor, not yet approved by the Court. It is the client, I,
16 who direct, after consultation, all strategy by lawyers.
17 I have a long history, as Your Honor has seen from my
18 C.V., of directing complex billions of dollars of litigations.
19 I rely on lawyers, but I am very involved in every aspect of the
20 case. This is very confusing, not just the CLO Holdco itself
21 but the entire complexity of all of the potential matters here
22 that I need to study in a very short period of time. I'm
23 concerned that dealing just with this in this couple of days is
24 going to be harmful to creditors ultimately and respectfully
25 request the Court to grant the 90-days adjournment.

1 Maybe I'm being overly cautious and I apologize for
2 that, but I feel strongly about my fiduciary duty and want to do
3 the best I can to understand everything that's going on before
4 we have to respond both to the withdrawal motion and the motion
5 to dismiss. So thank you, Your Honor.
6 THE COURT: Thank you.
7 Anything else, Ms. Montgomery, as far as examination?
8 MS. MONTGOMERY: No, Your Honor. I have no further
9 questions.
10 THE COURT: All right. Mr. Phillips, or anyone else,
11 any recross on that redirect?
12 No? All right. Thank you.
13 All right. This —
14 MR. PHILLIPS: No, Your Honor. I muted myself again.
15 No, Your Honor.
16 THE COURT: Okay. Is that all of the evidence you're
17 going to present, Ms. Montgomery?
18 MS. MONTGOMERY: It is, Your Honor.
19 THE COURT: All right. Well, I'll turn to our
20 objectors —
21 MR. PHILLIPS: We —
22 THE COURT: I'm sorry?
23 MR. PHILLIPS: We'd like the enter and offer — we'd
24 like to offer and introduce our exhibits that we put on our
25 witness and exhibit list, Your Honor.

1 THE COURT: Okay.
2 MR. PHILLIPS: And we've submitted them to the Court,
3 Exhibit 1 through 6, as itemized in our witness and exhibit
4 list.
5 THE COURT: All right. This is Docket Number 52 in
6 the adversary, correct?
7 MR. PHILLIPS: Yes. Yes, ma'am.
8 THE COURT: All right. So let me pull it up here.
9 Okay, we've got the application to employ Teneo and different
10 emails.
11 Any objection, Ms. Montgomery, to this?
12 MS. MONTGOMERY: I have no objection to Exhibit 1,
13 Your Honor, the application, and obviously it's a pleading that
14 we filed. I have questions about the relevance of the other
15 exhibits, but I have no objection to their admission. They're
16 emails that went back and forth between the parties.
17 THE COURT: All right. Well, do you want to address
18 that relevance? I'm not sure if it was an objection or — was it
19 an objection ultimately? Was it —
20 MR. PHILLIPS: I didn't hear an objection, Your Honor.
21 THE COURT: Ms. Montgomery.
22 MS. MONTGOMERY: Your Honor, for purposes of today's
23 hearing, I have — I have no concerns about their admission for
24 your consideration.
25 THE COURT: Oh, okay, so —

1 MS. MONTGOMERY: We're not contesting the history of
2 the back-and-forth between the parties.
3 THE COURT: Okay. I will admit 1 through 6.
4 (Defendants' Exhibits 1 through 6 received in evidence.)
5 THE COURT: All right. Any — any other evidence from
6 our defendants?
7 MR. PHILLIPS: No, Your Honor.
8 THE COURT: All right. Well, anything in the way of
9 closing argument? Ms. Montgomery, you are the movant. You go
10 first.
11 MS. MONTGOMERY: Yes, Your Honor, just very briefly to
12 address a couple of points. First of all, I think that there's
13 been some sort of misconstruing of Mr. Kirschner's role as the
14 litigation advisor and ultimately the litigation trustee. He —
15 functionally, the litigation advisor — we're in a very unique
16 situation here.
17 The parties never expected that the effective date
18 would be delayed in the way that it has been. We're coming up
19 on the two-year anniversary of the filing of the proceedings.
20 There are a number of claims that need to be investigated and
21 decisions make about how they will be pursued in the next couple
22 of months. And so this litigation advisor role, as Mr.
23 Kirschner testified, is somewhere unique in that we're trying to
24 work around the constraints that have been created by the way
25 that these proceedings have moved forward.

1 The litigation advisor is really functionally a proxy
2 for the role that Mr. Kirschner will have upon the effective
3 date of the plan as litigation trustee. He's not acting in the
4 capacity of a law firm or like and FTI or a DSI, or any of the
5 other professionals that have been specifically retained in the
6 bankruptcy to date because the role isn't the same traditional
7 role. Right, he is functioning in a way that will allow him
8 access that he needs to the data to get up to speed to make the
9 decisions that have to be made so that he can, you know, proceed
10 in the way that is best for meeting his fiduciary duties to the
11 ultimate litigation subtrust.
12 So to the extent that there is any sort of argument
13 that, you know, he — that his role is duplicative or any of the
14 other things that we've heard today or that we've seen in the
15 response, I think that those are just a misunderstanding of what
16 he will actually be doing. He is going to be the client, Your
17 Honor. He is not going to be the lawyer.
18 The other thing I think that we talked about a bit is,
19 you know, this argument that Mr. Kirschner has been involved in
20 the case since April 15th and therefore he's had plenty of time
21 to understand everything that he needs to know to be able to
22 move forward. Technically, Your Honor, I think it goes without
23 saying he's not officially retained until after the return date
24 on the motion to withdraw. And even so, just based on the years
25 now that we've spent in this case, I can — I can argue to you

1 and I think Your Honor will feel the same way, there's too much
2 learn in that short a time period to be able to say that you are
3 proceeding in the way that is going to be best for the estate in
4 that short timeframe.
5 We're working to get Mr. Kirschner up to speed, the
6 debtor is working to get Mr. Kirschner up to speed, but there is
7 a lot that has happened here and that continues to change on a
8 daily basis, including the stay that was filed just last night.
9 And then, finally, Your Honor, I would argue that
10 there has been no harm established by virtue of the stay. And,
11 in fact, all of the things we've heard today established the
12 fact that there may be harm if the stay is denied. So, for
13 example, Your Honor you know very correctly pointed out that we
14 have two international defendants who haven't even appeared at
15 this proceeding yet, right. We may not effectuate service for
16 another two months. It may be another 60 of these 90 days that
17 we're requesting for a stay may be required just to get them
18 properly served and into this proceeding.
19 And, you know, I agree, Your Honor, that there may be
20 issues that surround those two defendants that, you know, we
21 won't be able to take into consideration until they're properly
22 here in the Court and able to file their own motion to withdraw,
23 if that's what they want, or state their position with regard to
24 it.
25 You know, Your Honor, moreover, there is a lot going

1 on here and Mr. Kirschner does realistically need time to be
2 able to develop his approach and make decisions about whether or
3 not there will be amendments to the complaint that could impact
4 the motion to withdraw. He needs to make decisions about other
5 claims that may be brought. There are a lot of moving parts.
6 It's a unique situation. And we would urge the Court to allow
7 him the time that he needs to be able to effectuate his duties
8 in the way that he sees fit.
9 THE COURT: And I know I have it right in front of me,
10 but the employment application for Mr. Kirschner and his firm to
11 potentially be litigation advisor until the plan goes effective,
12 when is that set for hearing?
13 MS. MONTGOMERY: It's set for June 7th, Your Honor,
14 and the motion to withdraw is currently set for June 3rd. And
15 that — that motion to retain Mr. Kirschner was only filed on
16 Friday of last week, and our motions that you're hearing today
17 were filed on Tuesday.
18 THE COURT: Okay.
19 MS. MONTGOMERY: So it's a very short delay of time
20 between the two.
21 THE COURT: All right. I'll hear other closing
22 arguments.
23 MR. PHILLIPS: Your Honor, thank you. As far as harm,
24 we have one — we have one client, Highland Dallas Foundation,
25 who has made no appearance in this case, as has very — and

1 assume they're being sued for $24 million, and that's not a
2 problem.
3 Under the argument structure we're hearing today, we
4 could never really get until a plaintiff has said, 'I have no
5 further ability to amend the complaint,' a hearing on a motion
6 to withdraw reference. Look, we didn't file the complaint. The
7 complaint was filed four or five months ago. And very able
8 counsel looked, and as counsel has argued, has looked at
9 thousands and thousands of documents, have been paid millions
10 and millions of dollars for its work, and it came up with this
11 lawsuit that was filed — I've forgotten the filing date, but it
12 was filed at least four and a half months ago, January of this
13 year I believe. Ms. Montgomery — counsel for plaintiff can say
14 the exact date.
15 But we've got two defendants who haven't been served,
16 but I've got one — I've got two that have been served. And we
17 have established a basis upon which we can get — we have a right
18 to a jury trial and a right to withdrawal of the reference. And
19 that motion has been filed. And the idea that I'm going to
20 bring — I'm going to change clients — and it's really
21 complicated. After we've done millions and millions and
22 millions of dollars worth of work, looked at thousands and
23 thousands and thousands of documents, that we may come in and do
24 a different lawsuit that pleads around a motion to withdraw
25 reference is no basis for a stay.

1 That — that — the narrative about, you know, the
2 hearsay, the narrative about the aspersions, the this and the
3 that, this is really complicated, this is really hard, well, we
4 have a lawsuit in front of you, Your Honor, and it's been
5 pending for months. And it was filed by the committee that had
6 authority to file it and it was filed by the law firm for the
7 committee that had authority to represent the client who filed
8 it. And that's what they came up with after months and months
9 and months of years of looking at stuff and looking at documents
10 and deciding what to bring as far as claims of this nature
11 against these defendants. I'm worried about two of them.
12 I'm worried about — particularly worried with respect
13 to the stay, I'm worried about both of them for — with respect
14 to the stay, but one of my clients, Highland Dallas Foundation,
15 has had no involvement in this bankruptcy case. And now let's
16 just wait around. It's got a $24 million cloud hanging over its
17 head and it's expected to continue to try to raise money and try
18 to act as a charity while — while Mr. Kirschner gets familiar —
19 refamiliarized and gets familiar with the situation where
20 counsel and the committee have been working for, what, a year
21 and a half, two years, to get ready, and here's what the lawsuit
22 — here's the lawsuit they came up with.
23 So no harm has been alleged. In fact, harm will be —
24 all you heard about the potential harm to the estate is that
25 notwithstanding millions and tens of millions of dollars of fees

1 paid to professionals to determine litigation claims and we have
2 barely, what, two months left to bring them? That's 22 months
3 worth of looking into things, millions and millions of fees.
4 The estate might be irretrievably harmed if a motion to withdraw
5 reference moves forward, when the committee and counsel were
6 responsible and filed this complaint, and they were responsible
7 to file the complaint under the transaction and occurrences,
8 standards such that whatever they haven't pled, whatever they
9 haven't pled by the time to plead is gone. And the idea that we
10 need another 22 months for Mr. Kirschner to get up to speed or
11 some other to come up with additional litigation and additional
12 amendments to postpone a withdrawal of reference means that you
13 can never get a hearing on a withdrawal of reference.
14 We think the pleadings are there. They have been —
15 they have been investigated, we assume. They're subject to
16 motions to dismiss, which are legal questions. They're subject
17 to motions to withdraw reference, which are legal questions.
18 And we're ready for a decision on what court's going to handle
19 this. And by the time that's done, Mr. Kirschner will have
20 whatever rights he has, as if he has any. The plan will either
21 be confirmed and effective or it won't be, but that's not our
22 problem. Thank you.
23 THE COURT: Any other closing arguments?
24 Going once, going twice.
25 MR. ASSINK: Your Honor, I apologize. Just for the

1 record, this is Bryan Assink for Mr. Dondero. And Mr. Dondero
2 joins in the objections made by defendants in this proceeding
3 and adopts the arguments made by Mr. Phillips. That is all,
4 Your Honor. Thank you.
5 MR. DRAPER: Your Honor, can the Court hear me?
6 THE COURT: Yes.
7 MR. DRAPER: This is Douglas – okay. What I'd like to
8 make, a short comment. The argument that there are unserved
9 parties is a red herring and it's a red herring for the
10 following reason. The Court has to go through each defendant to
11 determine if they have a right to – a right to withdraw a
12 reference. The facts with respect to Mr. Phillips' clients are
13 different than the facts with respect to my clients. So the two
14 unserved parties may have a right to do it, they may not, but it
15 doesn't affect your ruling with respect to Mr. Phillips' clients
16 or mine because we have either waived or didn't waive our right
17 to a jury trial. And so this argument that there's two other
18 parties out there, again, is a red herring. They have their own
19 right and it will not affect Mr. Phillips' right or mine. So I
20 think that needs to be taken into account.
21 And, again, all we're talking about is location. The
22 – if they want to amend their suit at a later point, that's
23 fine, but we are just talking about who's going to hear the
24 case. And, quite frankly, Mr. Phillips is right, I don't think
25 the Court can in a very short period of time unpack these

1 withdrawal issues. And so you may be looking at a
2 recommendation that you make that takes 30 or 60 days. We don't
3 know what the District Court's going to do with it. And, quite
4 frankly, you know we may be 90 or 120 days down the road before
5 the location is even determined.
6 That's all I have to say, Your Honor.
7 THE COURT: All right. Anyone else?
8 THE RULING OF THE COURT
9 THE COURT: All right. I'll just be honest, I've
10 tried hard to understand where everyone is coming from here, but
11 this has been yet another hearing where I just frankly don't
12 understand why the big fight, why all the papers, and why all
13 the Court time used.
14 I mean I think I hear everyone agreeing that the
15 plaintiff is essentially going to get its/his 90-day stay here.
16 I mean if I were to go forward on the motions, plural, motions
17 to withdraw the reference, let's be real, it's going to take:
18 This Court two or three or four weeks to get a report and
19 recommendation to the District Court, given the complexity here
20 of the parties and, you know, we try to do a very clear roadmap
21 for the District Court, what's this lawsuit about, who are the
22 parties; and then it's going to take a few weeks for the
23 District Court to rule on that. So I mean optimistically, the
24 most optimistic thing I can imagine is 60 days from now you have
25 an order from the District Court saying where the lawsuit's

1 going to go forward.
2 I mean so we're fighting, to me, over a big nothing
3 burger. I think the stay is, in effect, going to happen. So
4 all we're talking about here is pushing a plaintiff to go
5 forward, who at this point is working for free because the plan
6 hadn't gone effective and he hadn't been appointed. I mean it
7 seems like from my perspective the defendants — again I'm trying
8 to understand the practicalities here, but I'm going to be
9 honest, it almost feels like defendants tweaking with the future
10 litigation trustee, 'We're going to make you go forward and work
11 for free when at the end of the day you're probably going to get
12 a stay anyway,' because there's no way a district judge is going
13 to rule on this in much sooner than 90 days. It's like you're
14 just forcing him to work for free and move fast on the motion to
15 withdraw the reference.
16 And it is a red herring? I don't know, maybe. I
17 think likely this is ultimately going to be tried in the
18 District Court since certain parties haven't filed proofs of
19 claim. But if the District Court does what it always does, in
20 my experience, I've never had, I can't remember ever having a
21 district court say, 'I'm withdrawing the whole darn thing.'
22 They almost always use the — they almost always use the
23 bankruptcy judges as their magistrates in a case when they
24 withdraw the reference.
25 Bankruptcy judge, handle all the pretrial stuff, the

1 discovery disputes, the motions to dismiss, motions for summary
2 judgment. If you were on a motion to dismiss or a motion for
3 summary judgment in a way that would finally dispose of any
4 claims, well, you have to do that in a report and recommendation
5 to me. So I feel like we all know that's likely where this is
6 heading, so I don't know why we had to have an hour fight.
7 I don't know why it's any big shakes to just stay the
8 whole darn thing for 90 days, especially when we have the whole
9 reason the plaintiff, liquidating trustee is not in place yet,
10 because of a stay, that some of these defendants or their
11 affiliates have wanted. It just seems silly to me.
12 And I do want to address one other thing. There has
13 been an argument that Sidley and Austin and the committee have
14 had months to get up to speed on the issues in the lawsuit, they
15 had months to bring it. It's been pending months. But I'll say
16 something for the benefit of those who have not been around for
17 this whole case, in July of last year, July 2020, which by that
18 point was about 10 months into the case, it was front and center
19 to this Court the difficulty the committee was having getting
20 discovery. They had served four requests for production, going
21 back to before this case was even pending before me. When the
22 case was in Delaware, they were already filing, serving requests
23 for production of documents, wanting to get a protocol in place
24 for ESI, and then finally it all kind of came to a head in July.
25 And I remember saying, 'I'm sure there's a transcript

1 out there you can access.' Gee, I may not have pressed the
2 issue so much on this lawsuit being filed involving CLO Holdco.
3 I may not have pressed the committee's feet to the fire so much
4 on getting that filed if I had been fully aware at all of these
5 efforts going on outside of the Court to get documents, to get
6 documents, four requests for production, and then finally the
7 protocol order, if you will, that the committee filed, asking
8 this Court to put in place some protocol to get ESI from like
9 nine different custodians of debtor records. So my point is
10 those who have not lived with this case for the whole time, they
11 don't know that I kind of live to regret pressing the committee
12 to get this lawsuit on file. You know I was worried because of
13 Holdco. I had like ordered money to be put in the registry of
14 the Court before I had, you know, litigation pending. So that's
15 why I put pressure. But then I learned and had a multi-hour
16 hearing on what the committee had gone through trying to get
17 documentation. So that's very much in the back of my mind here
18 in my ruling.
19 And my ruling is going to be that I grant the 90-day
20 continuance. Again, I hope that in 90 days, we — I don't know
21 if we'll know something from the Fifth Circuit on the plan or
22 not, but at least we'll be closer to that point. And, again,
23 we're looming, you know October 16th, 2021 as a deadline for
24 bringing claims, and I think that's relevant here. There's a
25 lot to be focused on that may or may not impact the way this

1 lawsuit ultimately is mapped out. I think the fact that we have
2 two unserved defendants, I think it does matter.
3 I think a district court may be a little hesitant,
4 really want to see the complete picture on each defendants'
5 position before it rules. So the 90-day stay is granted.
6 All right. So please upload the order, Ms.
7 Montgomery.
8 Thank you, all, for your arguments.
9 Before we wrap it up, Mr. Clubok, if you're still with
10 us, I think you were hoping to raise something that might
11 pertain to tomorrow's hearing on the UBS debtor compromise. If
12 you're still there, you may speak to whatever it was you wanted
13 to present.
14 MR. CLUBOK: Good morning, Your Honor. Still — still
15 the morning. Hopefully you can hear me.
16 THE COURT: I can.
17 MR. CLUBOK: Your Honor, I'm really just previewing an
18 issue. In light of the comment that you made earlier today
19 about having this motion, discovery, and then folks not
20 previewing it, I just wanted to alert you to the fact that in
21 our adversary proceeding we have sought discovery against five
22 third parties, Scott Ellington, Isaac Ellington, three other
23 folks, all of whom are represented by Ms. Smith, who is here,
24 you can see. And we first sought —
25 MS. SMITH: This is Frances Smith. Your Honor,

1 Frances Smith on behalf of Mr. Ellington, J.P. Sevilla, Mr.
2 Isaac Leventon, Matt VRO, and Mary Catherine Lucas (phonetics).
3 I just received an email earlier this morning from Mr.
4 Clubok that he was going to do this preview for you. To the
5 extent he gets into the substance of any motions that are not
6 filed, that's inappropriate. And so —
7 THE COURT: Okay.
8 MS. SMITH: — if he wants to take Your Honor offer of
9 a preview to say what he is going to file, I'm fine with that.
10 But if he's going to start going into the substance, that is not
11 appropriate.
12 THE COURT: Okay. We'll let Mr. Clubok get a little
13 further into what he was going to say, and then we'll decide do
14 we need to cut it off.
15 Mr. Clubok, go ahead.
16 MR. CLUBOK: Thank you, Your Honor. I was about to
17 say that there were five — there's the five individuals that Ms.
18 Smith represents, we sought discovery from in April 2nd, and,
19 namely, depositions. After a long period of time culminating in
20 a meet-and-confer last week, Ms. Smith filed a motion to quash
21 on behalf of these five individuals on Monday and set a hearing
22 date for July 29th.
23 All I'm — all I'm previewing, Your Honor, is to alert
24 you that in response to that motion to quash, a hearing date set
25 for July 29th, so effectively will end up being, you know,

1 months and months of delay to these individuals who are needed
2 to move this conjunctive-relief proceeding forward, we are
3 filing our response today to Ms. Smith's motion and a
4 countermotion to compel. And I'm merely flagging this issue for
5 Your Honor because we are going to ask either Your Honor or Ms.
6 Ellison, we're going to style our motion as an expedited
7 request, we would just simply love to have a hearing as early as
8 reasonably practicable on these issues. And I have no intention
9 of getting into the merits now, but happy to do so. I think it
10 will all be familiar to you from their discussions in the
11 Dondero deposition dispute, but we just — or simply I'm just
12 flagging for you, because you raised it this morning, you know,
13 why didn't people tell me, so we just are going to ask the
14 hearing, the soonest-possible hearing, and I don't think it has
15 to be a very long hearing, on whether or not we get third-party
16 discovery, depositions of Mr. Ellington, Mr. Leventon, and the
17 other three individuals that Ms. Smith represents; subject to
18 one of them is on maternity leave, and we're going to be
19 pursuing discovery of that while she's in that state, but —
20 THE COURT: All right.
21 MR. CLUBOK: — but other than that we just ask that a
22 hearing to be scheduled. And I'm just alerting you that we're
23 going to be making that request.
24 THE COURT: Okay. Well, I have been forewarned. I
25 have been forewarned. And I'll wait to see the motion for

1 expedited hearing and decide if I think it's appropriate to give
2 an expedited hearing, okay? I'll look at the pleadings and
3 likely just rule on the pleadings on the timing, okay?
4 Thank you.
5 MR. CLUBOK: Your Honor, —
6 MS. SMITH: Your Honor, since we're previewing, we
7 will be filing a response to that as well.
8 THE COURT: All right.
9 MS. SMITH: Thank you, Your Honor.
10 COURT SECURITY OFFICER: All rise.
11 (The hearing was adjourned at 11:45 o'clock a.m.)
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State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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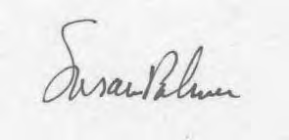

Susan Palmer
Palmer Reporting Services

Dated May 22, 2021